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WILD ANIMALS IN TRAVELLING CIRCUSES

THE REPORT OF THE CHAIRMAN OF THE CIRCUS WORKING GROUP

OCTOBER 2007

"We know so little about the physiology and the sentience of the exotic species that often used to be seen - and still are - in some travelling circuses."

Lord Soulsby of Swaffham Prior FRCVS

Debate on the Animal Welfare Bill in Grand Committee, House of Lords, 23 May 2006

CHAIRMAN'S FOREWORD

I would like to make four important points at the outset of this Report.

First, I am conscious that, to varying degrees, all the members of the Circus Working Group have had serious reservations about participating in the process we have undertaken. This was perhaps inevitable in bringing together two groups of people with diametrically opposed views about the continued use of non-domesticated animals in circuses. Those from the industry clearly wish to see their traditional livelihood secured and protected, while all the welfare organisations involved have long campaigned for a total ban on the use of non-domesticated animals in circuses. It is not surprising if the industry regarded the process with suspicion and not a little fear, while the welfare organisations were concerned that the Working Group was a mechanism to frustrate their ultimate objective. There have been a number of occasions when it seemed that the process might fail altogether. Most, if not all, of the participants have been on the point of walking away at least once, and I think it is some achievement to have completed our work with only a single refusal to participate and one resignation during the process. An exercise of this nature cannot please everyone - possibly the outcome will please no one - but however the various participants view the conclusion, I hope they feel that their views have been treated seriously, objectively, and with due respect. Against this background, I would like to take this opportunity to pay tribute to all the members of the Working Group for their time, their effort, and the professional manner in which they have advanced their respective arguments.

Second, I wish to emphasise that the primary purpose of the exercise has been to subject scientific evidence submitted by each side of the controversy to independent expert review better to inform Ministers and the wider debate about the use of non-domesticated animals in circuses. Although I have explored various issues separately with each side, the Working Group was not intended to be a negotiating forum. Neither side has been asked to compromise its principles during our work, and neither has done so. Furthermore, involvement with the Working Group has not prevented either side from continuing to campaign for its particular viewpoint.

Third, it must be understood that this is the Chairman's Report, not that of the Working Group. With the exception of Chapter 5, which is the work of the Academic Panel, this Report represents my personal analysis and conclusions. The members of the Circus Working Group have not been party to the compilation of the Report, and I have not sought their views or agreement prior to its publication. Indeed, the final Report was delivered to Ministers before its contents were presented to the Working Group. It follows that none of the members of the Working Group – neither as individuals nor on behalf of the organizations they represent – should be taken to have endorsed the Report's contents or to be a party to them.

Fourth, the contribution of the Academic Panel has been invaluable and much appreciated. The distinguished and learned nominees who served on the Panel not only undertook a complex and onerous task, but the credibility of the entire exercise

has been wholly dependent on their individual and collective analysis of the available evidence and also their personal expertise, reputation and standing.

Finally, I would like to take this opportunity to thank all those who have contributed to the activities of the Circus Working Party: the members of the Group itself; the members of the Academic Panel, especially its Chairman, Mike Lomas, whose efforts succeeded in producing a unanimous view of the evidence; Laura John, who was responsible for the administration associated with establishing the Working Group; Hugh Togher and Charlotte Coles, for administrative and technical support; and Jennifer Anderson, for undertaking documentary research. In particular, however, I would like to express my gratitude to Helen Odom whose intellect, initiative, organisational skills, and good humour combined to make an indispensable contribution to the activities of the Working Group and the contents of this Report.

MIKE RADFORD
Aberdeen, October 2007

CONTENTS

1. EXECUTIVE SUMMARY

- The number of non-domesticated animals used in circuses in the United Kingdom is less than 50, but the issue generates strongly held opinions on both sides of the debate and a considerable degree of public and political interest. In addition, there is potentially an international dimension to the issue as the scope and number of non-domesticated animals used in circuses throughout continental Europe is much greater than is the case in this country.

- The Academic Panel considered that, in order to justify a change to the status quo, the balance of the evidence would have to present a convincing and coherent argument for change. On the basis of the scientific evidence submitted to it, the Panel concluded that such an argument had not been made out.

- The Academic Panel concluded that there appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments.

- It is concluded that in relation to England, Wales, and Scotland, the consequence of the Academic Panel's Report is that Ministers do not have before them scientific evidence sufficient to demonstrate that travelling circuses are not compatible with meeting the welfare needs of any type of non-domesticated animal presently being used in the United Kingdom. It is further submitted that such a decision must be based on scientific evidence, and other considerations are extraneous, and therefore unlawful in the context of section 12. Furthermore, in the absence of compelling scientific evidence, any attempt to ban the use of an animal would fall foul of the principle of proportionality. Accordingly, it is proposed that further primary legislation would be required to have any realistic prospect of achieving a lawful ban.

- The status quo is not a tenable option.

- It is submitted that if a partial or complete ban on the use of non-domesticated animals used in travelling circuses is to be introduced, it would have to be done by means of primary legislation.

- The circus industry has indicated that it is receptive to the principle of regulation but, to be credible, any such regulation must not only ensure high standards of welfare for the animals, it must also result in a significant degree of transparency and accountability if it is to win over public confidence.

- Regulation could be introduced under the authority of section 13 of the Animal Welfare Act using the Zoo Licensing Act as a model.

- If the use of any non-domesticated animals is to remain lawful, the issue of blanket bans by local authorities on the use of their land requires further consideration.

- The overriding conclusion of this exercise is that our present state of knowledge about the welfare of non-domesticated animals used in circuses is such that we cannot look to scientific evidence for a steer in the development of policy; it is, ultimately, an entirely political decision. Once the relevant policy is decided upon, its implementation is essentially a question of politics and law; science, on this occasion, provides no relevant guidance as to the appropriate principle to be adopted.

2. BACKGROUND

2.1 THE MINISTERIAL STATEMENT OF 8TH MARCH 2006

2.1.1. A week before Report and Third Reading of the Animal Welfare Bill in the House of Commons, the Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, Ben Bradshaw MP, made the following Written Statement relating to circuses:

> I have previously made it clear that I sympathise with the view that performances by some wild animals in travelling circuses are not compatible with meeting their welfare needs. The Animal Welfare Bill will itself represent a significant step forward: Clause 8 [now Section 9] imposes a requirement that someone responsible for an animal, such as a circus proprietor, should meet its reasonable welfare needs.
> But having listened carefully to the arguments of hon. Members of this House at Second Reading and during Standing Committee I am not convinced that by itself this element of the Animal Welfare Bill will provide sufficient clarity to circus proprietors and enforcers on what is permitted and what is not. To provide this clarity I intend to use a regulation under clause 10 of the Animal Welfare Bill [now section 12 of the Act] to ban the use in travelling circuses of certain non-domesticated species whose welfare needs cannot be satisfactorily met in that environment. In drawing up proposals for secondary legislation we intend to ensure a clear read-across between zoo licensing standards and those standards that we will require from permanent circus premises. Individuals or organisations who train performing animals will be subject to inspection. This will be in addition to existing proposals that we introduce a code of practice for circuses and performing animals to deal with other issues such as training activities, trainer competences and accommodation needs for animals when travelling.
> The ban will apply to travelling circuses only—zoo performances, performances in the audio-visual industry and performances in static circuses will not be affected. Discussions will start shortly with industry, welfare organisations and other Government Departments on the content of draft regulations, which will then go to public consultation.[1]

2.2. THE REMIT OF THE CIRCUS WORKING GROUP

2.2.1. The Circus Working Group was subsequently established in June 2006 with a remit derived directly from this statement. In its initial letter advising representatives of interested parties of the establishment of the Working Group

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1 8 March 2006, col 60WS.

and inviting them to participate in its work, Defra wrote:

> Mr Bradshaw's written statement to the House of Commons on 8 March 2006 explained that we intend to introduce a ban, using a regulation made under clause 12 of the Animal Welfare Bill, on the use of certain non-domesticated species in travelling circuses. This is on the basis that we accept that the welfare needs of certain non-domesticated species cannot be readily met in a travelling circus environment....
>
> The remit of the group is to provide, and consider, evidence relating to the transportation and housing needs of non-domesticated species. It will look at the possibility of a read across between the welfare standards for non-domesticated animals being kept in zoos with those being used in travelling circuses. Training will not be included in the remit as it is being considered as part of the wider Defra review of the regulation of animals used in performance.
>
> For the purposes of this working group, a non-domesticated animal is a member of a species that is not normally domesticated in the British Islands; that is to say, a species whose collective behaviour, life cycle or physiology remains unaltered from the wild type despite their breeding and living conditions being under human control for multiple generations....

2.2.2. The letter further indicated that the members of the Working Group would be asked to provide evidence and, on the basis of this evidence, "to consider, which, if any, non-domesticated species are suitable for use in travelling circuses". The scope of the evidence was to include material relating to:

- welfare during transportation;
- accommodation standards;
- behavioural needs, and whether these can be met in a travelling circus environment;
- the future of those animals deemed unsuitable for a circus environment, but already represented in circuses;
- the percentage of time that animals are on tour with travelling circuses and the extent to which they may also be travelling and in temporary accommodation for use in media other than circuses;
- the ability of the industry to meet the cost of higher welfare standards.

2.2.3. The Department also indicated that it would look to the Working Group to offer advice on how to define the term 'travelling circuses'. The letter indicated that, in order to distinguish these from zoos and audio-visual performances, it was intended to define 'travelling circus' in terms of the length of time the animals spend away from their permanent premises and the Working Group was asked for its views on what this length of time ought to be.[2]

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2 Defra, Invitation Letter, 13 June 2006.

2.2.4. It will be noted from the above that issues relating to the training and performance of non-domesticated circus animals were expressly omitted from the Working Group's terms of reference as these matters are currently being considered by a separate working group concerned with the training and performance of animals generally. While one can understand that any duplication of effort would be undesirable and there is a logic in looking at the subject of training and performance in the round and in all its various contexts, it is nevertheless the case that in consequence the remit of the Circus Working Group and, accordingly, the focus of this Report is concerned only with two of the four factors which impact on the welfare of non-domesticated animals used in circuses, namely transportation and housing. One can only speculate whether the substance of this Report would have been materially different if the Working Group had looked at the full picture.

2.3. MEMBERSHIP OF THE WORKING GROUP

2.3.1. The membership of the Circus Working Group consisted of the following:

Chairman

Mike Radford (Reader in Law, University of Aberdeen)

Chairman of the Academic Panel

Mike Lomas (formerly Deputy Head of Animal Welfare Veterinary Division, Defra)

Industry Sub-Group

Chris Barltrop	Equity
Malcolm Clay	Association of Circus Proprietors of Great Britain
Peter Jolly Jr	Jollys' Circus
Peter Jolly Sr	Jollys' Circus
Carol MacManus	Circus Mondao
Arie Oudenes	European Circus Association
Laura Van Der Meer	European Circus Association
Moira Roberts	Bobby Robert's Super Circus
Albert Tyler-Moore	The Great British Circus

Welfare Organisations Sub-Group

Rob Atkinson	RSPCA
Ros Clubb	RSPCA
Helder Constantino	Animal Defenders International
Jan Creamer	Animal Defenders International
Chris Draper	Born Free Foundation

Mike Flynn	Scottish SPCA
Sasha Foreman	RSPCA
Tim Phillips	Animal Defenders International
Will Travers	Born Free Foundation
Daniel Turner	Born Free Foundation

Secretariat

Helen Odom	Animal Welfare Act Team, Defra

2.3.2. Representatives of a number of other interested organisations were kept informed of the Working Group's activities as were officials of Defra; the Department for Culture, Media, and Sport; the Arts Council of England; the Scottish Government; and the Welsh Assembly Government.

2.3.3. Administrative support was provided by Defra, but the Working Group has at all times acted independently of the Department.

2.4. HOW THE WORKING GROUP FUNCTIONED

2.4.1. The phrase 'Working Group' is somewhat misleading, as it suggests a body which works together towards a common end. In this case, however, the nature of the exercise was to engage with those representing both sides of the debate, and to ask them to submit such evidence as they considered relevant for review by an independent expert panel.

2.4.2. Defra contacted appropriate organisations in June 2006, inviting them to participate in the Circus Working Group. Of those, only the Captive Animals Protection Society declined to take part.

2.4.3. The Chairman of the Working Group and the Chairman of the Academic Panel were both appointed by Defra.

2.4.4. The first meeting of the Group was held on 10 July 2006 at which it was agreed that the nature of the task and the respective positions of the two sides necessitated the formation of two sub-groups, one made up of the representatives from the industry, the other comprising representatives from the welfare organisations.

2.4.5. Formal meetings were held with each Sub-Group on three occasions. In addition, there were regular informal contacts between the Chairman and the members of the two Sub-Groups; the Chairman also made a two-day visit to The Great British Circus on 10 and 11 June, 2007.

2.4.6. In order to carry out its remit, the Working Group was required to identify for submission to an Academic Panel all relevant evidence which might assist in our understanding of the effects of transport and housing on the welfare of non-domesticated circus animals. This was achieved by the Industry Sub-

Group and the Welfare Organisations Sub-Group working independently of each other to draw up their respective submissions and supporting evidence. In addition, although beyond a strict view of our remit, it became clear that, to be useful, this Report would have to include some consideration of relevant regulatory issues, and both Sub-Groups were therefore invited to submit a paper on this topic.

2.4.7. The Sub-Groups were therefore asked to perform four functions:

1. To identify and submit evidence which their respective members considered relevant to the Working Group's remit.

2. To nominate individuals with the appropriate degree of scientific knowledge, expertise and experience to act as members of the Academic Panel.

3. To submit their views on regulatory issues arising from the Working Group's remit.

4. To provide further explanation and background information about the use of non-domesticated animals in circuses from their particular perspective.

3. THE SIGNIFICANCE OF THE ISSUE

3.1. According to the information provided by the Industry Sub-Group, there are only four British circuses currently using non-domesticated animals. At present, a total of no more than 47 animals are involved:[3]

The Great British Circus	1 Kangaroo 2 Llamas 4 Reindeer 5 Lions 7 Tigers 7 Camels 1 Zebra
Bobby Robert's Super Circus	1 Elephant (touring, but retired from performance) 1 camel
Circus Mondao	3 Zebras 2 Llamas and acquiring 2 Camels
Jollys' Circus	2 crocodiles 1 Zebra 1 Ankole 1 Llama 6 Snakes

3.2. We are concerned, then, with only a handful of animals. However, the significance of this issue cannot be measured only by reference to the number of animals involved. For the use of non-domesticated animals in circuses generates deeply held but entirely divergent views: those who use such animals in circuses consider that they are doing nothing wrong, are caring for their animals to a high standard, and should be allowed to continue to make a living by this traditional, and hitherto entirely legal, means; whereas their opponents believe the use of non-domesticated animals is morally unacceptable, their welfare inevitably poor, and regard the relatively few animals still being used in this way in the United Kingdom to be a measure of their success in campaigning against circuses.

3.3. It is claimed by the welfare organisations that a majority of the population are opposed to the use of non-domesticated animals in circuses. While it may be countered that opinion polls can be used to demonstrate anything, it is

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3 The precise number of animals involved is entirely dependent on the definition to be attached to the term 'non-domesticated animals'.

undoubtedly the case that there exists a influential body of opinion which wishes to see an end to non-domesticated animals in circuses. Moreover, the issue is of some political significance: members of both Houses of Parliament took a keen interest in it during the passage of the Animal Welfare Bill and of those who expressed a view, the vast majority were against the practice.

3.4. In addition, there is a wider, international dimension to the debate. In many European countries the tradition of the travelling circus remain strong, and both the number and the range of animals involved is significantly greater than in the United Kingdom. The European Circus Association has provided what it describes as 'an indicative list' of domesticated and non-domesticated animals featured in circuses in Europe, which is reproduced below. Those most commonly used are indicated by an asterisk.

Mammals

Elephant* African/Asian
Sea Lion*
Alpaca
Snow Leopard
Antelope
Tapir
Baboon
Tiger*
Bison
Water Buffalo
Black Bear
Wolf
Bovine animal*
Zebra*
Camel*
Zebu
Cat (several races)
Chimpanzee
Dog (several races)
Donkey
Dromedary*
Eland
European brown bear
Fox
Giraffe
Goat*
Guanaco*
Hippopotamus
Horse (several types)*
Hyena
Jaguar
Kangaroo
Leopard
Liger
Lion*

Llama*
Mule
Panther
Pig*
Pony*
Puma*
Pygmy Hippopotamus
Reindeer
Rhesus Monkey
Rhinoceros

Birds

Canary
Emu
Ostrich
Parakeet
Parrot (several types such as macaw)
Penguin
Pigeon*
Vulture

Reptiles

Alligator
Snakes (several types including Indian Python and African Python)*

3.5. Those who wish to see an end to the use of such animals in circuses campaign in many other European countries, and the industry seeks to protect its position throughout the continent. Consequently, although the number of animals presently being used in the United Kingdom is very small, the contents of this Report, and the way in which the Government decides to respond to it, will be keenly watched not only in the UK but also throughout the rest of Europe.

4. CONSIDERATION OF THE EVIDENCE

4.1. THE NATURE OF THE EVIDENCE TO BE CONSIDERED

4.1.1. The Minister of State, Lord Rooker, explained to the House of Lords the nature of the evidence that the Government would take into account in developing its policy:

> When deciding whether types of wild animals are suitable for performance in travelling circuses, decisions will need to be anchored in what the available scientific evidence tells us, but we recognise the need to listen to those with experience of wild animals in circuses. That obviously includes those in the industry, as well as welfare organisations and people who have gained evidence and experience from direct observation. Just because they are not commercially involved in running a circus does not mean to say that they do not have a view that is worth taking into account....
>
> The Government are willing to consider any evidence that has a sound scientific base, preferably peer-reviewed and conducted in an environment where the animals were performing and travelling. We acknowledge that there is likely to be a lack of scientific evidence related to animals used specifically in entertainment, and we would be willing to consider sound scientific results obtained on species kept in different conditions, if we can establish that those results could reasonably be extrapolated to other circumstances. We do not consider photographic or video evidence to be sufficient to base policy decisions on. Such evidence can be open to misinterpretation and gives only a snapshot in time. A film showing a lion pacing up and down may indicate evidence of stereotypical behaviour, but equally the film may have been shot when the lion had seen its keeper approaching with food. So the context in which the film was made is important and the evidence has to go wider.
>
> On evidence of particular instances of cruelty, while that is distressing, it is of course not sufficient to demonstrate that a particular environment necessarily causes animal suffering. Animals in any environment may be subject to particular instances of cruelty—private pet ownership is the most common example, even though one assumes that animals are safe and well looked after in those circumstances. In order to establish that a certain environment inevitably causes suffering or distress to an animal, supporting scientific evidence set out in published papers that have been peer reviewed would have to be submitted. The point here is that it must be demonstrated that animals suffer and are in distress simply by being in a certain environment, and that is why it is not something that can be proved with a snapshot.[4]

4.1.2. This statement provided the basis for defining the scope and character of the

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4 23 May 2006, Col GC176-7.

evidence which would be considered during this exercise. The two Sub-Groups were invited to submit a paper outlining their case, together with citations of the evidence they sought to rely upon. At a meeting between the Chairman of the Working Group and the Chairman of the Academic Panel held on 4th December 2006, consideration was given to these submissions before they were sent to the other Sub-Group for its comments. These were restricted to issues of fact, accuracy, and interpretation. The respective submissions and the comments on them were considered further by the Chairman of the Working Group and the Chairman of the Academic Panel on 24th January 2007 before they were forwarded to the Academic Panel.

4.1.3. In drawing up the body of evidence, four issues arose. First, whether all the evidence had to be of a scientific nature; second, whether it had to be peer-reviewed; third, whether any photographs or video material was to be permitted; and, finally, the relevance of court proceedings and the accompanying evidence. Although these issues required considerable time and diplomacy, the only one which could not be resolved informally was that relating to court proceedings. The Welfare Organisations Sub-Group sought to submit a significant volume of material, including video evidence, which had been used in the successful prosecution for cruelty of Mary Chipperfield and Roger Crawley. The Chairman of the Working Group and the Chairman of the Academic Panel agreed that this fell outside the conditions laid down by the Minister, and the material was not put forward. Apart from this, everything of a scientific nature which the Sub-Groups submitted was considered by the Academic Panel.

4.2. APPOINTMENT OF THE ACADEMIC PANEL

4.2.1. The Chairman of the Academic Panel was Mike Lomas, a veterinarian with considerable experience and formerly Deputy Head of Animal Welfare Veterinary Division at Defra.

4.2.2. The other members of the Panel were appointed by Defra, having been nominated by the Sub-Groups: the Industry Sub-Group made three nominations, as did the Welfare Organisations Sub-Group. All the nominations were accepted and appointed. Each member of the Academic Panel acted as an independent expert; their role was not to promote the interests of the Sub-Group which had nominated them. None of the members of the Academic Panel was paid or otherwise rewarded for their services by the organisations which nominated them.

4.3. MEMBERS OF THE ACADEMIC PANEL

4.3.1. The Members of the Academic Panel were:

Mike Lomas BVSc MRCVS JP (Chairman)

Professor Sir Patrick Bateson MA PhD ScD FRS

Professor of Ethology, University of Cambridge, UK

Professor Ted Friend PhD
Department of Animal Science, Texas A&M University, United States

Dr Marthe Kiley-Worthington BSc DPhil MPhil
Director Centre of Eco-Etho Research and Education, Drome, France
Fellow, Berkeley, University of California

Samantha Lindley BVSc MRCVS
Veterinary Surgeon Behaviourist, United Kingdom

Professor Georgia Mason BSc PhD
Canada Research Chair in Animal Welfare
University of Guelph, Canada
Visiting Professor in Animal Welfare, Royal Veterinary College, UK

Peter Scott MSc BVSc FRCVS
RCVS Specialist in Zoo and Wildlife Medicine
Biotope Specialist Veterinary Consultancy, Winchester, UK

4.4. THE ACADEMIC PANEL'S TERMS OF REFERENCE

4.4.1. The Academic Panel received: the submissions from both Sub-Groups; each Sub-Group's comments on the other Group's submission; and all the references which were cited to support the respective submissions.

4.4.2. The members of the Academic Panel were asked:

- to assess the quality of the evidence in the submissions provided by the Welfare and Industry Sub-Groups; and
- to consider any evidence with a sound scientific basis, preferably peer-reviewed and conducted in an environment where the animals were performing and travelling, to support a ban in relation to a particular non-domesticated species.

4.4.3. A bibliography of the relevant reference is set out in the Appendix to this Report.

4.5. HOW THE ACADEMIC PANEL CARRIED OUT ITS TASK

4.5.1. The Panel did not meet; it carried out all its deliberations by email. Its work was co-ordinated by the Chairman of the Panel. The Chairman of the Working Group took no part in its work.

4.5.2. Having considered all the material which was submitted to it, the Academic Panel agreed the Report which is set out in the following chapter.

5. THE REPORT OF THE ACADEMIC PANEL

Having considered all the material which was submitted to them, the members of the Academic Panel have agreed the following Report.

5.1. INTRODUCTION

5.1.1. In general, the Academic Panel was disappointed with the evidence submitted by both the Welfare and Industry Sub-Groups and was divided over which Sub-Group presented the stronger argument. For the status quo to be changed the balance of evidence would have to present a convincing and coherent argument for change.

5.1.2. The opinion of the Academic Panel members is that such an argument, based on a sound scientific basis, has not been made.

5.1.3. There appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments.

5.1.4. When seeking submissions, Defra anticipated that identifying research meeting its stated criteria might prove difficult. At the outset of the exercise, it acknowledged "that there is likely to be a lack of scientific evidence relating to animals used specifically in entertainment, and would be willing to consider sound scientific results obtained on species kept in different conditions, if it can be established that those results can reasonably be extrapolated to other circumstances."[5]

5.1.5. The opinion of the Academic Panel is that the environment in circuses is too different from those of farms or zoos for helpful comparisons of research findings to be made. Legitimate comparisons could possibly be made with animals transported regularly to shows or competitions involving a high degree of training and human contact but the data are not available at present although even this could be problematic as these are usually domesticated animals.

5.1.6. Non-domesticated circus animals have been the subjects of research carried out by two members of the Panel as well as others. Although this research has not found evidence of adverse welfare, the Panel encourages continued monitoring and research on the welfare of circus animals.

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5 Defra, Invitation Letter, 13 June 2006.

5.2. GENERAL COMMENTS ON THE EVIDENCE

5.2.1. Unfortunately, significant parts of the submissions, and the comments on submissions, tended to err towards being adversarial and, in the view of the Academic Panel, without any evidence being presented to support a ban.

5.2.2. Perhaps understandably, both submissions rely heavily on 'cherry-picking' the references or parts of references which support their particular case. Both submissions also interpret such evidence as there is in a way to support the case being presented. Two examples of this, stereotypic behaviour and transport, are detailed below.

5.2.3. The results of opinion polls were disregarded, as they do not provide evidence of suffering in circus animals.

5.2.4. A significant part of the Industry submission concerned regulatory issues (to be considered separately) and this was disregarded by the Panel.

5.2.5. Much of the background presented by the industry, although interesting, did not present credible evidence that animals in circuses do not suffer, and was disregarded. However, there have been several studies conducted on aspects of the behaviour of circus animals and those studies did not identify inherent problems with the welfare of the animals that were studied. However, some members of the Group felt that this still needs corroborating with larger samples, physiological as well as behavioural data, and a reference population for comparison.

5.3. HOUSING

5.3.1. Comparisons were made with zoos where some animals might be more confined than circuses whereas, in others, they might have more space.

5.3.2. The extra stimuli experienced by animals in circuses by way of performing, being trained, being transported, and a regularly changing environment was said to be negative by the Welfare Sub-Group and positive by the Industry Sub-Group with little supporting evidence. Although the Academic Panel has not considered evidence relating to performance and training this, nevertheless, accounts for a significant part of the time budget of animals and makes circus animals different from other animals in captivity.

5.3.3. It should be noted that there is an element of selection for animals in circuses. Animals that are difficult to transport or which react adversely to performance and the presence of crowds are unlikely to be retained in the circus. The Panel debated whether such selection might 'pass on' welfare problems but that was outside the remit of this Report.

5.3.4. Whilst it was accepted that animals kept in circuses were more confined than

in the wild the opinion of most of the Panel was that this did not, necessarily, lead to adverse welfare.

5.4. TRAVEL

5.4.1. The Welfare Sub-Group made much of transport being a cause of stress to animals and cited papers relating to the transport of farm animals. They stated that, as circus animals were transported regularly, this meant that they must be subject to more stress than animals in zoos. The Industry Sub-Group argued the opposite. All transport will cause some stress but if the conditions are good and the animals are properly trained then that stress may be minimised. Circus animals are often transported in containers/vehicles that are also 'home'; therefore the stress of a novel environment may be reduced. They infrequently appear to object to being loaded and unloaded compared to animals not used to being transported regularly, although systematic data on this have not yet been collected.

5.4.2. There is much made of the distance and the duration of journeys whereas it is well documented that it is the quality of the journey that is important and other factors such as poor means of transport, poor handling/driving and inappropriate feeding/watering contribute to increased stress.

5.4.3. The Panel concluded that, although circus animals are transported regularly, there is no evidence that this, of its own nature, causes the animals' welfare to be adversely affected.

5.5. STEREOTYPIC BEHAVIOUR

5.5.1. The exchanges between Panel members indicated that this is a very complex area. There appears to be no data to indicate that the presence of stereotypic behaviour proves bad welfare or that the absence of stereotypic behaviour proves that welfare is good. Where animals have been brought in to circuses, separating the stereotypic behaviour resulting from earlier experience from current experience is difficult. Some researchers concluded that a significant number of stereotypic behaviours in circus tigers and elephants are anticipatory and not indicative of poor welfare. However, others, who argue that these could still be triggered by frustration or a poor environment, contest this.

5.5.2. Thus the Panel concluded that it is very difficult to make a decision on welfare based on stereotypic behaviour alone.

5.6. PHYSICAL HEALTH

5.6.1. Although some health problems (for example, arthritis and foot problems in elephants) are reported, in general, the overall health of animals, based on some of the papers cited, in travelling circuses is reported as being good. It is

true that the state of performing animals is fully open to public view during the travelling season although some concerns have been expressed about the conditions in winter quarters.

5.6.2. The Panel concluded that there is little evidence that the health of circus animals is any better or worse than animals in other captive environments.

5.7. THE FUTURE

5.7.1. The Academic Panel believes that circus animals should continue to receive full protection under the law that can be addressed by

- the effective enforcement of existing legislation together with the provisions of the new Animal Welfare Act;
- the development of codes of practice (for example Association of Circus Proprietors and Performing Animals Welfare Standards International); and
- the revision of the Performing Animals (Registration) Act 1925 concerning the registration of trainers of performing animals.

5.7.2. It is worth emphasising the word 'effective' in the first bullet point. It is the view of the Panel that a significant number of statutory instruments fail, not because of inherent flaws, but because of ineffective enforcement.

5.7.3. The Panel urges further investigation and research. For example,

- improving the knowledge base to enable behavioural and physiological comparisons of circus animals with conspecifics in other environments; and
- comparative data on other animals regularly transported to shows and competitions, for example horses and dogs.

5.8 ACKNOWLEDGMENT

5.8.1. The Academic panel acted entirely independently and separately from their nominating sub-group. The six members of the Panel generously gave their time voluntarily and were not reimbursed by their nominating Sub-Group or Defra.

PATRICK BATESON
TED FRIEND
MARTHE KILEY-WORTHINGTON
SAMANTHA LINDLEY
GEORGIA MASON
PETER SCOTT

6. THE IMPLICATIONS OF THE ACADEMIC PANEL'S REPORT

6.1. INTRODUCTION

6.1.1. During the passage of the Animal Welfare Bill, the Minister told the House of Commons that the Circus Working Group

> will consider the scientific evidence and make recommendations to inform Ministers and to inform the debate. However, its role is to inform, not to prepare a binding list, and it is premature to draw conclusions as to the evidence that it will provide.[6]

6.1.2. The process adopted provided both the Industry Sub-Group and the Welfare Organisations Sub-Group with a substantial degree of autonomy: each was invited to set out its respective arguments; to identify and marshal the scientific evidence which it judged best advanced its case; and to nominate appropriate experts to assess the material.

6.1.3. On the basis of the evidence they were asked to consider, those experts have agreed that there appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or any worse than that of animals kept in other captive environments.

6.1.4. In the light of the Academic Panel's conclusions, it would be inappropriate to make any specific recommendation; better to consider the implications of its Report with a view to informing Ministers and informing the debate.

6.2. THE SIGNIFICANCE OF THE ACADEMIC PANEL'S CONCLUSIONS

6.2.1. The significance of the Academic Panel's conclusions is twofold.

6.2.2. First, the conclusions should not be regarded as establishing conclusively one way or the other whether the welfare of non-domesticated circus animals is either compromised or of an acceptable standard. The Panel did not undertake its own investigations, neither was any independent research commissioned as part of the present process. The Panel could reach its conclusions only on the basis of the evidence which was submitted by the two Sub-Groups, and it is apparent from the Panel's report that it had serious reservations about the cogency and relevance of much of the material. Thus, the Panel states that it was "disappointed with the evidence". It further concluded that the particularity of the circus environment was such that research findings relating to animals kept in other contexts was not helpful, and there was a difference of

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6 6 November 2006, Col 614 (Ben Bradshaw MP)

opinion on the significance to be attached to the studies which were concerned with circus animals.

6.2.3. Despite the best efforts of the respective Sub-Groups to present what each regarded to be the most persuasive evidence to support its case, the question as to the precise effect of the circus environment on the welfare of non-domesticated animals remains open. Accordingly, neither side of the debate should regard the issue to have been adequately resolved. As the eminent veterinarian, Lord Soulsby of Swaffham Prior, observed when this issue was debated in the House of Lords, "We know little about the physiology and the sentience of the exotic species that often used to be seen – and still are – in some travelling circuses."[7]

6.2.4. Notwithstanding this situation, the Academic Panel's conclusions undoubtedly have profound legal implications in the present context. This is the second area of significance of its Report and is further discussed below.

6.3. MINISTERIAL POLICY

6.3.1. During the passage through Parliament of the Animal Welfare Bill, responsible Ministers adopted a consistent policy towards non-domesticated animals in circuses: they rejected proposals for a blanket ban, indicating instead that they were minded to introduce a ban on specific types of animals by means of a regulation made under the authority of section 12. In doing so, they repeatedly indicated that the basis of such a ban would be scientific evidence that the welfare needs of the animal to which it applied cannot be satisfactorily met in that environment.

6.3.2. Thus, in Standing Committee, Ben Bradshaw responded to a an amendment which would have had the effect of banning the use of all non-domesticated animals in circuses in the following terms:

> ...we should think very carefully about banning an activity unless we are convinced that it is unavoidably cruel or that the welfare needs of all animals involved cannot be met....We should acknowledge that most of the wild animals used in circuses are, in fact, captive bred. With all species...there is a debate about where we should draw the line, not only on the animal's definition but on whether it is strictly the case that it is impossible in circus conditions to meet the welfare needs of every animal that we would normally describe as wild. I am advised that it is not possible to say that categorically. For me, that doubt is one reason – a fundamental one – to oppose the banning of wild animals....The fundamental point I want to get across is that I share my hon. Friend's concerns – in some circuses, current practices do not meet acceptable welfare standards. I also accept that it is likely that the welfare needs of some, if not most, cannot be met in circus conditions. However, both these concerns are best met by regulation

7 House of Lords, 23 May 2006, col GC 169.

rather than a blanket ban.[8]

6.3.3. Similarly, in his Statement of 8 March 2006 setting out the Government's policy, the Minister said that he intended "to use a regulation under clause 10 of the Animal Welfare Bill [now section 12 of the Act] to ban the use in travelling circuses of certain non-domesticated species whose welfare needs cannot be satisfactorily met in that environment."[9]

6.3.4. As has already been noted,[10] Lord Rooker told the House of Lords that "When deciding whether types of wild animals are suitable for performance in travelling circuses, decisions will need to be anchored in what the available scientific evidence tells us".

6.3.5. He explained further at Third Reading:

> The Government's commitment to ban certain non-domesticated species will be based on scientific evidence.[11]

6.3.6. Later in the same debate, Lord Rooker reiterated the point: "We have always proposed to ban certain species of wild animals on the basis of scientific evidence"; he then repeated it only two paragraphs later: "The Government's commitment to ban certain non-domesticated species will be based on scientific evidence".[12]

6.4. THE CONSEQUENCES OF THIS REPORT

(a) <u>England</u>

6.4.1. The power to make regulations under the authority of section 12 is wide, but nevertheless must be used in accordance with the normal principles of administrative law. In particular, Ministers are required to have regard to relevant considerations and disregard irrelevant considerations; it may be used only for the purpose which Parliament intended; and it must be used in a proportionate manner.

6.4.2. Ministers will wish to receive the advice of their own lawyers but, taking account of these ministerial statements in the context of the Academic Panel's Report, it is submitted that to introduce a ban on the use of any type of non-domesticated animal presently in use by circuses in the United Kingdom – and possibly a ban of a more general nature – by way of a Regulation made under the authority of section 12 of the Animal Welfare Act would be vulnerable to legal challenge.

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8 Standing Committee A, 24 January 2006, col 237.
9 8 March 2006, col 60WS.
10 See para 4.1.1. above.
11 1 November 2006, col 315.
12 1 November 2006, col 317.

6.3.7. This conclusion is based on four considerations.

6.3.8. First, in their statements, Ministers clearly stated or otherwise implied that their decisions would be based on consideration of the scientific evidence. It is suggested that they are bound by the conclusions that have been drawn from that evidence unless there are very pressing reasons to bring other factors into account. To adopt a policy which did not follow the evidence, especially in circumstances where a group had been established specifically for the purpose of identifying and reviewing that evidence, would be vulnerable to legal challenge.

6.3.9. Second, the power to make regulations under section 12 is provided for the purpose of promoting the welfare of animals. The term 'animal welfare' is not defined in the Animal Welfare Act, but it is widely accepted to be scientific in nature. The Committee of Inquiry into Hunting with Dogs in England and Wales (the Burns Committee) described it in the following terms:

> Animal welfare is a scientific discipline which has developed rapidly in recent years. It is essentially concerned with assessing the ability of an animal to cope with its environment: if an animal is having difficulty in coping with its environment, or is failing to cope, then its welfare may be regarded as poor. This judgement is distinct from any ethical or moral judgements about the way in which the animal is being treated.[13]

6.3.10. Precisely so. While section 12 does not specify that regulations introduced under its authority must be based on scientific evidence (unlike, for example, the enabling power contained in section 1(4)), even if Ministers had not committed themselves to basing their decision on the scientific evidence, it is submitted that the generally held meaning of the term 'animal welfare' would have required them to focus on the available science. In particular, a decision which was based on ethical or moral considerations as to the acceptability or otherwise of using non-domesticated animals in circuses would, it is suggested, be liable to legal challenge.

6.3.11. Third, it is considered that to impose a ban on the use of non-domesticated animals in circuses by way of delegated legislation in the absence of compelling scientific evidence would be susceptible to legal challenge on the ground that such a measure was disproportionate.

6.3.12. The fourth point focuses on the nature of the power contained in section 12. On the one hand, it provides the appropriate national authority with the power by means of regulations to make such provision as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible. On the one hand, the subjective test – "as the authority thinks fit" – provides it with considerable discretion; on the other, the scope of the power is restricted in that, as has already been discussed, it must be for the purpose of promoting animal welfare. It may be reasonably argued that the term 'animal

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13 Para 6.9.

welfare' means more in this context than simply an assessment of how an animal is 'coping' with its environment. One of the underlying policy objectives of the legislation is to secure a reasonable quality of life for protected animals. Accordingly, by reference to section 9, it can be reasonably implied that 'animal welfare' is intended to be principally, if not exclusively, concerned with meeting an animal's needs.

6.3.13. When this provision was considered by the House of Lords' Committee on Delegated Powers and Regulatory Reform, it explicitly stated that:

> paragraph 38 of the memorandum [submitted to it by Defra] refers to a proposed use of the power to prohibit the use of certain species of wild animals in travelling circuses. The power is not just about prescribing welfare standards. It appears to the Committee to be sufficiently wide to prohibit or restrict (for the stated purpose) well-established activities, such as horseracing, greyhound racing, keeping of game birds and managing circuses.[14]

6.3.14. It is for the courts to give an authoritative view of the precise scope of the power, but it is submitted that if the provision is indeed sufficiently extensive to enable an activity to be banned – and it is arguable that it is not – a very high threshold would have to be met: it would be incumbent on Ministers not only to identify the relevant scientific evidence on which their decision was based, but also to demonstrate how a ban would promote animal welfare by ensuring the needs of the animals involved. In other words, it is submitted that Ministers would not only have to identify nature of the welfare problem they were seeking to address, but also explain how a ban would improve the situation. It is suggested that on the basis of the evidence before Ministers, these requirements would be extremely difficult to meet in relation to animals presently being used by circuses in the United Kingdom.

(b) Wales

6.3.15. Ministers of the Welsh Assembly Government are in a slightly different position than those of the UK Government because they are not bound by express Parliamentary statements, neither were they directly party to the establishment of the Circus Working Group. Nevertheless, for the reasons set out in the proceeding paragraphs, it is submitted that in law Ministers are in essentially the same position as their Westminster counterparts.

(c) Scotland

6.3.16. The situation in Scotland is potentially somewhat different. For example, the equivalent provision contained in the Animal Health and Welfare (Scotland) Act 2006 provides that

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14 House of Lords, Select Committee on Delegated Powers and Regulatory Reform (2006), Eighteenth Report, para 7.

> The Scottish Ministers may by regulations make provision for the purposes of. and in connection with, securing the welfare of
> (a) animals for which a person is responsible,
> (b) the progeny of such animals.[15]

6.3.17. It is submitted that the adoption of the verb 'secure' provides a more extensive power than that provided by the verb 'promote' in the Animal Welfare Act. 'Promote' suggests furthering the progress of a cause, venture, or aim, whereas 'secure' generally means to succeed in obtaining a particular objective. Furthermore, section 26(2)(a) and (3) expressly provide that such regulations may include provision prescribing general or specific requirements or prohibitions relating to, inter alia, the prevention of suffering; the way in which animals are kept and looked after and the conditions in which they are kept; and how animals are transported.

6.3.18. Furthermore, section 28 provides an enabling power of which there is no equivalent in the Animal Welfare Act. Namely, secondary legislation may be introduced which prohibits the keeping at either domestic or other premises of any animals of a kind specified in the regulations. Such regulations must be for the purpose of securing the welfare of animals and, in determining whether to make such regulations in relation to a type of premises, the Scottish Ministers must have regard to whether (and the extent to which) adequate provision for the welfare of animals of the kind in question is capable of being made, and is likely to be made, at that type of premises.[16]

6.3.19. However, notwithstanding these more extensive powers, it is submitted that in the light of the Academic Panel's Report, Scottish Ministers would nevertheless have difficulty in justifying the imposition of a ban by way of regulations.

6.3.20. It is concluded, then, that in relation to England, Wales, and Scotland, the consequence of the Academic Panel's Report is that Ministers do not have before them scientific evidence sufficient to demonstrate that travelling circuses are not compatible with meeting the welfare needs of any type of non-domesticated animal presently being used in the United Kingdom. It is further submitted that such a decision must be based on scientific evidence, and other considerations are extraneous, and therefore unlawful in the context of section 12. Furthermore, in the absence of compelling scientific evidence, any attempt to ban the use of an animal would fall foul of the principle of proportionality. Accordingly, it is proposed that further primary legislation would be required to have any realistic prospect of achieving a lawful ban.

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15 Section 26(1).

16 Section 28(3), (5).

7. THE NEED FOR REFORM

7.1. CONSIDERATION OF THE ACADEMIC PANEL'S RECOMMENDATIONS

7.1.1. In the view of the Academic Panel, the general provisions of the Animal Welfare Act should be relied upon to protect the welfare of non-domesticated circus animals, together with codes of practice and a revision of the legislative regime relating to the trainers of performing animals. In addition, the Panel considers that there is a need for further investigation and research.

7.1.2. It is a truth universally acknowledged, that a scientist in possession of a report must be in want of further research. The submissions of the two Sub-Groups have confirmed the paucity of material in the scientific literature directly relevant to non-domesticated animals in travelling circuses. Furthermore, the Academic Panel concluded that the literature relating to the housing and transport of animals in other contexts, such as agriculture and zoos, could not be applied to circus animals. It would seem, therefore, that based on the scientific literature alone, our understanding of the impact of the circus environment on the welfare of non-domesticated animals is somewhat limited. Nevertheless, in view of the relatively small number of animals involved, it is doubted that the results of further research would be sufficiently meaningful and robust better to inform the debate. On this basis, it would be difficult to justify the expense, and could be regarded in some quarters as merely a delaying tactic.

7.1.3. The Academic Panel's suggestion that the general provisions of the Animal Welfare Act together with a code of practice can be relied upon to protect the welfare of the animals involved may seem appropriate from a scientific perspective, but these would not in themselves adequately address the associated political, legal and administrative issues.

7.1.4. It is the case that the Animal Welfare Act imposes greater legal obligations on those responsible for circus animals than hitherto, as, indeed, it does on all those who have assumed responsibility for an animal. They are now under a duty to take such steps as are reasonable in all the circumstances to ensure that the needs of their animals are met to the extent required by good practice.[17] To rely exclusively on this provision would seem to be unsatisfactory for a number of reasons. First, the number of animals involved is so small that it would be difficult to lay down an objective test which precisely defines 'good practice' in this context. Second, a breach of any such code would not in itself constitute an offence; it would still have to be established beyond reasonable doubt that the responsible person had not taken such steps as are reasonable in all the circumstances to ensure the needs of an animal. Third, the circumstances to which it is relevant to have regard when applying this test specifically include any lawful purpose for which the animal is kept, and any lawful activity undertaken in relation to an animal. Their use in circuses

17 Animal Welfare Act 2006, s 9(1).

would remain a lawful activity and, depending on the attitude of the courts, this provision might serve to undermine the potential effectiveness in this context of the duty to ensure welfare. Conversely, as a result of a successful prosecution, whether brought by a public authority or by means of a private prosecution, the circus industry could find that practices which it had assumed remained lawful were no longer so. In consequence, it is thought that reliance on the duty to ensure welfare alone would not provide sufficiently clear and robust standards to satisfy either political opinion or the need for certainty and specificity as to what is, and what is not, required of circuses.

7.1.5. This is the same conclusion reached by the Minister. Ben Bradshaw specifically rejected the suggestion that what is now section 9 was, in itself, sufficient to regulate the use of non-domesticated animals in circuses because he was not convinced "that by itself this element of the Animal Welfare [Act] will provide sufficient clarity to circus proprietors and enforcers on what is permitted and what is not".[18]

7.2. THE STATUS QUO IS NOT AN OPTION

7.2.1. Accordingly, notwithstanding the conclusion of the Academic Panel, it is submitted that the status quo is not a tenable option. First, expectations have been raised that the Government will do something. Second, the circus industry is exceptional in that the use of animals in most other commercial contexts is generally subject to specific regulation. Third, the present state of uncertainty confronting circuses requires resolution. Fourth, it is considered that the present situation is acting against the interests of the animals involved. For example, it has been suggested that circus proprietors are reluctant to make significant further investment in their facilities unless they have sufficient confidence that the use of the relevant animals will remain lawful. Similarly, there appears to be force in the contention that prohibitions by local authorities on the use of their land is forcing circuses to use private sites which in many cases are less suitable for the animals. Finally, and most significantly, there is support from all sides of the debate for reform.

7.2.2. First and foremost, it is self-evident from events surrounding the enactment of the Animal Welfare Act that Parliament is exercised and concerned by this issue. During the passage of the Bill amendments were put down in the Commons which would have respectively banned the use of wild animals in circuses, banned all animals in circuses, and permitted only (undefined) designated animals to be used. In the Lords, amendments were proposed which would: have banned all animals in circuses subject to the possibility of exemptions; banned all wild animals from circuses; and have made it an offence to keep or use a circus animal not designated by regulations.

7.2.3. In addition, the Environment, Food and Rural Affairs Committee, as part of its pre-legislative scrutiny of the Animal Welfare Bill, recommended that what it referred to as 'wild animals' should be phased out by imposing a prohibition

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18 8 March 2006, col 60WS.

on circuses "either to bring in new wild animals or to breed from their existing wild animals".[19] Furthermore, an Early Day Motion which urged that the Animal Welfare Bill be used "to end the use of animals in traveling circuses and to take measures to protect performing animals in permanent facilities through regulation" attracted 144 signatures (an opposing amendment gained only 4 signatures),[20] and a further EDM which called on the Government "to introduce measures to end the use of wild animals in circuses in the forthcoming Animal Welfare Bill" secured 114 signatures.[21]

7.2.3. Similarly, the circus industry itself accepts the need for change. In the memorandum it submitted to the Environment, Food and Rural Affairs Committee, the Association of Circus Proprietors of Great Britain recognised that "the present legislation on the keeping and training of animals used in entertainment is inadequate",[22] and the Association's Secretary stated in his oral evidence to the Committee that "we welcome legislation which seeks to regulate circuses", observing that "We are a surprisingly unregulated industry".[23] For its part, the European Circus Association has stated that it "strongly supports good regulation for circuses and performing animals in order to establish and maintain a high standard across the circus sector".[24] Finally, it goes without saying that the animal welfare organisations have pursued long-standing campaigns for reform.

7.2.4. However, while there is widespread agreement about the need for change, there is no consensus about the form it should take.

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19 *The Draft Animal Welfare Bill* (2004), HC 52-I, para 381.
20 EDM 1626 Animal Welfare (No 2), 13 February 2006.
21 EDM 468 Circus Animal Welfare, 29 June 2006.
22 *The Draft Animal Welfare Bill* (2004), HC 52-II, Ev 216.
23 Ibid, Q507.
24 European Circus Association, *Proposed Model Regulations for the Care, Transport, and Presentation of Animals in the Circus* (in draft, 2007), Introductory Note.

8. THE OPTIONS

8.1. THE PRESENT SITUATION

8.1.1. At present, travelling circuses are not subject to any regulation relating to the protection of animals over and above that which applies to any person who assumes responsibility for an animal under the Animal Welfare Act, except that those who exhibit or train performing animals are required to register with his or her local authority (the Performing Animals (Regulation) Act 1925). This legislation is not, however, intended to promote welfare and its provisions are widely regarded to be ineffective.

8.1.2. Travelling circuses are specifically excluded from the ambit of the Dangerous Wild Animals Act 1976 and the Zoo Licensing Act 1981 (in *South Kesteven DC v Mackie* it was held that the exemption under the DWA extended to circus winter quarters).

8.2. SELF REGULATION

8.2.1. It is submitted that self-regulation represented by, for example, the Association of Circus Proprietors' 'Standards for the Care and Welfare of Circus Animals on Tour', has proved to be inadequate to meet public and political concern to which this issue gives rise. Indeed, it is the perceived failure of self-regulation which has contributed to the demand for reform. If non-domesticated animals are to continue to be used in travelling circuses, it is considered that public opinion will require a regulatory system which delivers independence, transparency and accountability.

8.3. THE IMPOSITION OF A BAN

8.3.1. There was a widespread assumption at the outset of the Circus Working Group's task that it would lead eventually to a ban on the use of at least some types of non-domesticated animals. As has been explained, this cannot be achieved in present circumstances using secondary legislation; there would need to be primary legislation.

8.3.2. In enacting primary legislation, Parliament is, of course, in a very different situation from that of a Minister bringing forward regulations. Parliament would not, for example, be confined to taking account of the scientific evidence. It could legitimately give consideration to ethical issues, public opinion, and it is able to attach greater weight to the interests of the animals involved. Furthermore, where there is uncertainty as to the impact on the welfare of the animals, Parliament may give them the benefit of the doubt in a manner which is simply not open to a minister employing delegated statutory powers.

8.3.3. To stand any realistic chance of succeeding, proposals would have to be brought forward in either a Government Bill, or a Private Member's Bill sponsored by an MP with a high position in the ballot.

8.3.4. Leaving aside the vagaries of the parliamentary process, it has been questioned whether such legislation could be drafted so as to be compatible with either EU law or the Human Rights Act 1981. The sponsors of such a Bill would need to take detailed legal advice on the matter. However, the decision of the Court of Appeal in the challenges to the Hunting Act[25] would appear to be relevant to the present case (while it remains good law at the time of writing, the decision is subject to appeal before the House of Lords). It will be recalled that the court rejected the challenges to the Act, holding that it was compatible both with EU law and the Human Rights Act. In so doing, the court gave weight to the fact that, in its view, the objective of the Hunting Act is a composite one of preventing or reducing unnecessary suffering to, in this case, wild mammals, together with the view that causing suffering for sport is unethical.

8.3.5. Furthermore, in response to a complaint that Austria had banned wild animals in circuses, it is understood that the European Commission concluded that the question of how to protect wild animals in circuses is not one to be decided at Community level, but rather should be left to Member States.

8.4. STATUTORY REGULATION

8.4.1. If it were decided to introduce a system of independent regulation, perhaps the most straightforward way of proceeding would be to amend the Zoo Licensing Act so as to bring circuses within its terms so far as is appropriate. However, this strategy would give rise to three issues. First, the Act contains no relevant enabling power, so primary legislation would be necessary to effect such a change. Second, the Zoo Licensing Act, as amended, gives effect to the EU Zoos Directive, which does not apply to circuses and not all of the Act's provisions are relevant. In particular, the Directive requires zoos to be involved in education and conservation programmes. It is acknowledged that some circuses claim to make a contribution to education and/or conservation, but these are unconvincing compared to the resources and expertise which zoos now devote to these activities. Third, it is understood that the zoo community would might be less than enthusiastic at the prospect.

8.4.2. Nevertheless, the provisions of the Zoo Licensing Act do seem to have much to offer: they provide an established and, at least in part, appropriate model, thereby avoiding the need to work up a regulatory system from scratch. Furthermore, Ministers have already indicated that they intend to refer to zoo standards in relation to circus winter quarters,

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25 *R (on the application of the Countryside Alliance and others) v Attorney General and others; R (on the application of Derwin and others) v Attorney General and others* [2006] EWCA Civ 817.

8.4.3. If the continued use of non-domesticated animals in circuses is to be permitted, it is therefore suggested that consideration be given to introducing a regulation under section 13 of the Animal Welfare Act to instigate a licensing regime for circuses which use non-domesticated animals, such a scheme to be based on the relevant provisions of the Zoo Licensing Act.

8.4.4. Such regulations would make it an offence to operate a circus to which the regulations applied except under the authority of a licence. Under the regulations, circuses (adapting the language of section 1A (c)-(f)) would be required to:

1. Accommodate their animals under conditions which aim to satisfy the biological requirement of the species to which they belong, including –
    i. providing each animal with an environment well adapted to meet the physical, psychological and social needs of the species to which it belongs; and
    ii. providing a high standard of animal husbandry with a developed programme of preventative and curative veterinary care and nutrition.
2. Preventing the escape of animals and putting in place measures to be taken in the event of any escape or unauthorized release of animals.
3. Preventing the intrusion of pests and vermin into the circus premises.
4. Keeping up-to-date records of the circus's collection, including records of –
    i. the numbers of different animals;
    ii. acquisitions, births, deaths, disposals and escapes of animals;
    iii. the causes of any such deaths; and
    iv. the health of animals.

8.4.5. The basis of the standards to be imposed on circuses could be the relevant parts of the Secretary of State's Standards of Modern Zoo Practice. For example, those relating to: the provision of food and water, a suitable environment, animal health care, the opportunity to express most normal behaviour, and protection from fear and distress; transportation and movement of live animals; stock records; and staff training. It is also considered that an amended form of the requirement which is placed on zoos to have an ethical review process would also promote public confidence in the practices and procedures adopted by circuses. In addition, much of the advice contained in the Zoos Forum Handbook relating to the ethical review process and, especially, animal welfare and its assessment would appear to be directly relevant to circuses.

8.4.6. A further significant source of relevant standards may be the Proposed Model Regulations for the Care, Transport and Presentation of Animals in Circuses which is in the process of being agreed by the European Circus Association. A confidential draft of this document has been submitted to the Chairman, and both its nature and its contents would appear to represent a positive and significant development on the part of the industry, the terms of which could be incorporated into a legislative regulatory scheme.

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Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0186
Item No. 9
Deputy:

June 5, 2012

The Honorable Paul Koretz
Chair, Personnel and Animal Welfare Committee
Los Angeles City Council
City Hall
200 N Spring Street, Rm 440
Los Angeles, CA 90012

Dear Chairman Koretz:

I am writing on behalf of the American Veterinary Medical Association (AVMA) concerning the proposal being considered by the Personnel and Animal Welfare Committee to prohibit "in any context the use of bullhooks…and other implements and tools designed to inflict pain for the purpose of training and controlling the behavior of elephants."

After a review of the scientific literature and an examination of available practical data by its Animal Welfare Committee, the AVMA adopted the following policy in April 2008:

> ***Elephant Guides and Tethers***
> Elephant guides are husbandry tools that consist of a shaft capped by one curved end. The ends are blunt and tapered, and are used to touch parts of the elephant's body as a cue to elicit specific actions or behaviors, with the handler exerting very little pressure. The ends should contact, but should not tear or penetrate the skin. The AVMA condemns the use of guides to puncture, lacerate, strike or inflict harm upon an elephant.
>
> Tethers provide a means to temporarily limit an elephant's movement for elephant or human safety and well-being. Tethers can be constructed of rope, chain, or nylon webbing, and their use and fit should not result in discomfort or skin injury. Forelimb tethers should be loose on the foot below the ankle joint, and hind limb tethers should fit snugly on the limb between the ankle and knee joints. Tether length should be sufficient to allow the elephant to easily lie down and rise. The AVMA only supports the use of tethers for the shortest time required for specific management purposes.

We understand that the proposed ordinance would prohibit the use of bullhooks (also known as guides) in any context to train elephants. We believe this language is too broad and fails to recognize the ways in which bullhooks/guides may appropriately be used in animal management.

In her April 24, 2012 report to the Board of Animal Services Commissioners, and subsequently in her May 11, 2012 letter to Mayor Villaraigosa, Ms. Brenda Barnette references the AVMA's backgrounder on the *Welfare Implications of Elephant*

Training (available on the AVMA website at http://www.avma.org/reference/backgrounders/elephant_training_bgnd.pdf). Unfortunately, Ms. Barnette has quoted selectively from our backgrounder and, accordingly, has provided a description of the use of the bullhook/guide during "free contact" management that is inconsistent with the information provided in that document.

When used appropriately, the bullhook/guide extends a handler's reach so s/he may touch, push or pull various parts of the elephant's body. Sometimes contact with specific areas of the body is sought, which will elicit an avoidance movement by the elephant; this movement is paired with verbal commands and food or praise to reduce or eliminate the need for further physical contact. The bullhook/guide is intended to produce a light physical contact that the elephant finds mildly unpleasant; thus it acts as negative reinforcement that is then followed by positive reinforcement to encourage a desired behavior. The use of the bullhook/guide may later be replaced by verbal commands. A bullhook/guide is used in all free contact programs in the United States and may also be used in conjunction with protected contact.

Both free and protected contact are currently used in the management of elephants, depending on the needs of individual elephants, facilities available, and the keepers' goals. The best method and extent of training desirable depend largely on context, and no approach developed to date is considered universally optimal. Free contact techniques are necessary to allow animals to be controlled outside of their enclosures or in the absence of equipment, such as an elephant restraint device (ERD). Free contact methods may also help elephants cope with otherwise under-stimulating conditions or be necessary during intensive procedures associated with treating chronic illnesses or during assisted breeding. Protected contact may be preferred for elephants that are potentially dangerous, do not need to perform, or have negligible need for human intervention.

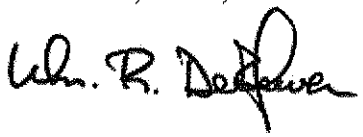
Unfortunately, on a few occasions the bullhook/guide has been abused and implicated in widely publicized investigations into allegations of abusive handling. It is probably for this reason that some groups (including the organizations and individuals who have likely approached you) have been lobbying for the use of the bullhook/guide to be prohibited. Clearly, abuse of bullhooks/guides is inappropriate and is strongly condemned by the AVMA. However, when used appropriately, the bullhook/guide can be a useful tool for management and training. Management and training are key components of the humane treatment of elephants, because they are core to maintaining both physical and mental elephant health. Training facilitates skin and foot care, as well as the veterinarian's ability to safely administer medications, assist with parturition, and perform other veterinary procedures. We strongly believe in training animals, where possible, as an alternative to chemical or manual restraint. In addition, training is an important part of behavioral enrichment for elephants kept in captivity. Bullhooks/guides are tools that can be used humanely to train elephants.

The AVMA, established in 1863, is the largest veterinary medical association in the world. As a not-for-profit association created to advance the science and art of veterinary medicine, AVMA is the recognized national voice for the veterinary profession. The Association's more than 82,000 members represent approximately 85% of U.S. veterinarians, all of whom are involved in the myriad areas of veterinary medical practice including private, corporate, academic, industrial, governmental, military, and public health services.

We hope our comments are helpful. If we can be of further assistance to the Personnel and Animal Welfare Committee, please contact Dr. Gail Golab, Director, Animal Welfare Division, AVMA, at 847-285-6618, ggolab@avma.org. Thank you for your consideration.

Sincerely,

W. Ron DeHaven, DVM, MBA



Chief Executive Officer
American Veterinary Medical Association

Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0186
Item No. 2
Deputy:

FELD
ENTERTAINMENT, INC.

November 12, 2012

Brenda F. Barnette
General Manager
LA Animal Services
Administrative Office
221 N. Figueroa Street, 5th FL
Los Angeles, CA 90012

Re: Department of Animal Services Report Regarding Elephants
(Personnel and Animal Welfare Committee)

Dear Ms. Barnette:

We were surprised and disappointed to learn that your Department has already prepared and forwarded a new report in response to the directive given by the Personnel and Animal Welfare Committee at its October 2, 2012, meeting to conduct further analysis and research regarding the management and presence of elephants (and possibly other animals) in traveling exhibitions. It appears that while this new Animal Services Report does at least respond to some the criticisms of the previous Report, it is also another example of the Department taking a one-sided approach and choosing to ignore the serious issues raised by multiple witnesses before the PAW Committee. For that reason and others we strongly object to the Report and request that it be withdrawn.

As you know we were opposed to the original Report and its recommendation of a proposal to ban elephant guides (or bull hooks). Of course we are just as strongly opposed to the idea of banning elephants and/or other species from circuses and other traveling exhibitions as that would do directly what the original proposal sought to do indirectly: prohibit *Ringling Bros.* from continuing to perform in Los Angeles. Such a ban is unnecessary and would do nothing to enhance or increase animal welfare or protection while negatively impacting hundreds of jobs at Staples Center and elsewhere. Given the significant impact that such proposals might have on our circus and on hundreds, if not thousands, of local jobs, it is unjustifiable for your Department or the Board to proceed without making the slightest effort to allow for input and participation from those who are most directly impacted by these proposals, as well as those who are most knowledgeable about the issue of the care and training of elephants and other exotic animals. In fact it once again seems that the Department has actively sought to exclude them all from this process.

It is also troubling and objectionable that the new Report would reference an outside report related to your Department's inspections of Ringling Bros. at Staples Center this July given that we were not provided with or even told of the existence of that inspection report. As you know, we, through our local legal counsel, identified with specificity our objections to both the Department's choice of an outside consultant and the lack of reasonable notice. Our concerns about the ulterior motives and activist agenda of that person were borne out by the fact that we first became aware of his inspection report's existence when it was posted online by PETA.

This new Animal Services Report reflects many of the same problems as the original Report and those stem from the fact that no credible, independent organizations with expertise regarding elephants or other animals were consulted in connection with its preparation. By this we mean not only *Ringling Bros.* and other traveling exhibitors who regularly work in Los Angeles, but also groups who represent the veterinary and animal care professionals who are most knowledgeable about the care and needs of elephants and other exotic species, such as the following:

- American and California Veterinary Medical Associations
- Elephant Managers Association
- American Association of Zoo Veterinarians
- Association of Zoos and Aquariums (US)
- Zoological Association of America
- California Association of Zoos and Aquariums
- International Elephant Foundation
- California Department of Fish and Game
- National Animal Control Association
- American Humane Association
- International Brotherhood of Teamsters and other effected unions
- Outdoor Amusement Business Association

There is no justification for ignoring the men and women who's livelihoods will be directly impacted by the Departments recommendations, as well as such knowledgeable expert and relevant resources. This new Department Report is neither credible nor objective and is the result yet again of a one-sided approach in which only the voices of professional animal rights organizations are allowed to be heard. It should be withdrawn while the Department undertakes a more inclusive analysis process that is more consistent not only with the PAW Committee's directions but with the principles of fundamental due process and good government.

Sincerely,

Thomas L. Albert
Vice President, Government Relations

Cc: Personnel & Animal Welfare Committee Members

Steven E. Duncan
1822 E ROUTE 66 STE A # 442
Glendora CA 91740
909 599-7577

Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0186
Item No. 2
Deputy:

November 19, 2012

To: Los Angeles City Council Members
Regarding: Circus Elephants

I am writing to urge against banning the use of the ankus and other tools to manage elephants. Such a ban would effectively prohibit Ringling Brothers Circus from performing in Los Angeles, and that is ultimately the goal of this proposal. The ban is not about elephant welfare. It is about protesting the Ringling Brothers Circus firstly and about protesting elephants in captivity secondly. Those are very poor reasons to enact this Los Angeles City ordinance.

The ankus, or bullhook, is a time-honored, valuable tool for elephant handlers and is the main target of this proposal. In addition to their massive size, elephants have very tough skin so what may appear to be cruel to people who are uneducated in elephant biology can in fact be perfectly harmless to them. Because of their extremely tough hide, elephants can charge right through Acacia thorn trees in the wild with impunity. The ankus is nowhere near as sharp or dangerous compared to the extremely long, sharp Acacia thorns that the elephants are adapted to withstand.

As with any tool, there can be misuse, but that statement can be applied to every tool. If there is abuse, then the abuse itself should be addressed. Ringling Brothers has very strict protocols on proper handling of elephants and employs a large veterinary staff to ensure the health and well-being of their animals. Elephants are a huge investment to Ringling Brothers, but more importantly, Ringling Brothers has contributed more to our knowledge of elephant biology and husbandry than any other organization. That research is supported by the money raised through the elephants used in their shows. In addition to that, their shows provide an extremely valuable opportunity to allow people to see these inspiring creatures up close and thereby to be inspired to value and support their conservation.

I have always looked forward to taking my family to Ringling Brothers shows when they come to town. Not only do they support elephant welfare and conservation, but their shows support the local economy. There is no good to come from this proposed ordinance. It does not protect elephant welfare. It does not protect the welfare of the general public. It is purely an anti-circus, anti-captive elephant measure to abuse the city council's power to further the extreme agenda of certain animal activists. I ask you to reject this proposed ordinance.

Steven Duncan

James F. Peddie, D.V.M.
Linda Reeve Peddie, D.V.M.
4201 Faria Road
Ventura CA 93001-9789
Ph: 805-652-1429
Fax: 805-652-1451
Email: jfpeddie@gmail.com
lrpeddie@gmail.com

Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0186
Item No. 2
Deputy:

November 20, 2012

Councilmember Paul Koretz, Personnel & Animal Welfare Committee Chair
200 N Spring Street Room 440
Los Angeles CA 90012

Dear Councilmember Koretz:

Please accept this letter as a formal letter of opposition to a ban on the use of guides and other elephant management tools, or to any other measure designed to prevent circuses and other traveling exhibitions with elephants from visiting the City of Los Angeles, and make it a matter of record to be included in any hearing, studies and/or reports pertaining to such issues.

We oppose any measure that would prevent circuses and other traveling exhibitors with elephants from visiting Los Angeles. Such action will eliminate jobs and will not improve the lives of elephants in managed care.

The traditional traveling circus provides wholesome family entertainment. Elephants performing in circuses today have spent most/all of their lives in managed care. This proposal aims to destroy both a lifestyle and an American tradition.

In his letter to Councilmember Koretz dated June 15, 2012, Dr. Ron DeHaven, representing the American Veterinary Medical Association, strove to dispel any misunderstanding re: the AVMA's backgrounder on the *Welfare Implications of Elephant Training.* He made it clear that the bullhook/guide is an accepted aid in both free contact and protected contact training systems for elephants in the United States.

> "...when used appropriately, the bullhook/guide can be a useful tool for management and training. Management and training are key components of the humane treatment of elephants, because they are core to maintaining both physical and mental elephant health. Training facilitates skin and foot care, as well as the veterinarian's ability to safely administer medications, assist with parturition, and perform other veterinary procedures. We strongly believe in training animals, where possible, as an alternative to chemical or manual restraint. In addition, training is an important part of behavioral enrichment for elephants kept in captivity. Bullhooks/guides are tools that can be used humanely to train elephants."

Linda Reeve Peddie, D.V.M.
4201 Faria Road
Ventura CA 93001-9789
Ph: 805-652-1429
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Email: jfpeddie@gmail.com
lrpeddie@gmail.com

During our 47 years in veterinary practice we have cared for circus elephants revered by their handlers. We have seen the modern day guide used as a humane husbandry tool. As such, it is accepted by the U.S. Department of Agriculture (USDA), which regulates all zoos and circuses, and is approved by the International Elephant Foundation, the Association of Zoos and Aquariums, the Elephant Managers Association, and the American Veterinary Medical Association.

The care and handling of all animals is already subject to strict federal, state and local animal welfare and cruelty laws. All circuses and traveling exhibitors that perform in California are inspected by state and local authorities and are subject to unannounced inspections by USDA personnel to ensure compliance with the Federal Animal Welfare Act.

"Activists" fail to appreciate that working with elephants is a calling. Losing the ability to provide for their animals by generating income with them is equivalent to a death knell for the finest, most caring trainers we know. Aside from the personal consequences, there are very real negative consequences to the species. Advanced training in elephants facilitates veterinary care. When dealing with well-trained individuals, we are able to provide a better quality of service without resorting to inherently dangerous sedatives and anesthetics. Information gleaned in caring for individuals ultimately benefits all elephants.

It is a travesty that vocal well-funded animal activists, who represent a minority interest in this country, are successfully destroying earning opportunities for conscientious elephant managing professionals, and in so doing are eliminating options for an unsuspecting public.

Respectfully,

Linda R. Peddie, D.V.M.

James F. Peddie, D.V.M.

NATIONAL ANIMAL INTEREST ALLIANCE

Supporting the people who care for America's animals

November 19, 2012

Dear Councilmember Koretz:

I am writing on behalf of the National Animal Interest Alliance (NAIA), a broad-based national organization founded in 1991, made up of pet owners, dog and cat organizations, veterinarians and numerous other animal professionals and animal-related businesses. Our mission is to promote the welfare of animals, to strengthen the human-animal bond, and to safeguard the rights of responsible animal owners and professionals through research, public education and sound public policy. We have members in all 50 states, many living in Los Angeles.

I am writing to ask you to please vote against banning the ankus. When used properly the ankus is a safe and humane management tool necessary for working with elephants. It is unfortunate that some people are convinced that keeping large animals like elephants in captivity is inhumane, and that kindness dictates that they should be left in their natural habitat. Although these people are well intentioned, the Asian elephant is endangered in its natural environment, and were it not for some of the larger circuses and a handful of zoos that create environments for them in captivity; their future would be in far more danger than it is today. It's a shame that the public has been exposed to such biased presentations of the facts. If they were aware of the incredible preservation efforts undertaken by Feld in Asia and the US to save the Asian elephant; and understood that responsible and humane treatment of elephants using the bullhook is necessary to assuring their health and wellbeing, perhaps they wouldn't be trying so hard to shut down the circus, but instead would be supporting their conservation efforts.

The circus is one of the oldest forms of entertainment in the world; and provides one of the only opportunities American youngsters have to see an elephant, a lion or tiger. For many, this experience is life changing and sparks an appreciation of animals that lasts a lifetime, spurring careers in wildlife conservation, zoo keeping and veterinary medicine. Seeing magnificent animals awakens a sense of wonder in practically everyone. It is a tragic irony that this appreciation and concern has been twisted into opposition to the ONLY organizations that are funding and looking after the wellbeing of the Asian elephant.

The ankus is an absolutely necessary management tool for the elephant and it is totally humane when used properly. People who work professionally with elephants in zoos and circuses are well trained and governed by strict standards. Any tool can be misused. A leash in the wrong hands can be used to strangle a dog but because we are familiar with how leashes are supposed to be used, no one talks seriously about banning them. Without the ankus, elephants could not be part of the circus and the circus would end. That's the goal of the misguided people who oppose the ankus. Banning the ankus is tantamount to banning the circus. Please don't allow misinformation to determine your vote. Allow LA citizens to continue enjoying the circus. Protect the jobs of people who work in circus and all the business and tax dollars that benefit the California economy. Above all, please protect our magnificent elephants and vote against banning the ankus.

Sincerely,

Patti Strand

Patti Strand, Chair

Date: 11-20-12

Submitted in PAW Committee

Council File No: 12-0186

Item No. 2

Deputy:

Patti Strand, Chairman, PO Box 66579, Portland, OR 97290 – 6579 www.naiaonline.org naia@naiaonline.org 503-761-1139

OABA
Outdoor Amusement Business Association

Our Mission...
To encourage the growth and preservation of the outdoor amusement industry through leadership, legislation, education and membership services.

Date: 11-20-12
Submitted in: PAW Committee
Council File No: 12-0186
Item No. 2
Deputy:

November 19, 2012

Councilmember Richard Alarcon
200 N. Spring Street, Rm 470
Los Angeles, CA 90012

RE: Opposition to Ban Elephant Management Tools

Dear Councilmember Alarcon:

On behalf of the over 10,000 predominantly small family businesses involved in the mobile amusement industry, including circuses as well as animal exhibitors, we respectfully request that the Los Angeles City Council defer and table a ban on the use of elephant management tools and possibly an outright ban on wild and exotic animals in circuses and traveling exhibitions held in the City of Los Angeles. We would urge the Council to seek the input of qualified elephant professionals before bringing this matter to a vote.

These elephant guides have been in use for thousands of years and are recognized by USDA as a safe, effective and appropriate tool, when used properly, for responsible elephant management.

We believe that more time should be taken to solicit input from elephant handlers, veterinarians and others who have professional expertise in the use of such animal control tools and the responsible care of performing elephants.

Since 1965 the OABA has represented carnivals, circuses, food and game concessionaires and others associated with the mobile amusement business, which operate at state and county fairs, festivals and other civic, religious or philanthropic activities such as Shrine Temple fundraising events. The economic benefits derived from Circus performances at arenas and other venues far exceeds the voices of a minority of folks who do not appreciate such events with exotic, performing animals.

In addition to our agricultural exhibitors, OABA also represents approximately 60 circuses, animal acts and petting zoo members, providing safe, affordable, "G" rated, family entertainment and education at venues throughout the U.S. The vast majority of these exhibitors are small, family owned operators, many of whom represent several generations of animal trainers working with exotic and domestic animals. They are experienced in their craft and dedicated to the care and well being of the animals that are, in many respects, part of their extended families. It is a 24/7 commitment where no one sits down to a meal until the animals have been fed and no one goes to bed at the end of the day until the animals are cared for.

The OABA supports comprehensive regulations that protect the health and well being of all animals and we appreciate the opportunity to provide our comments on tomorrow's City Council's agenda.

Sincerely,

Robert W. Johnson
President

1035 S. Semoran Blvd., Suite 1045A ★ Winter Park, FL 32792
407-681-9444 ★ fax 407-681-9445 ★ 1-800-517-OABA
oaba@oaba.org ★ www.oaba.org

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS,

Plaintiff,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006

Washington, D.C.
Wednesday, March 4, 2009
10:08 a.m.

TRANSCRIPT OF BENCH TRIAL - MORNING SESSION - DAY 16
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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

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

Jacqueline M. Sullivan, RPR
Official Court Reporter

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

INTERPRETERS: Shelley Blumberg-Lorenzana
Teresa Roman

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

Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0186
Item No. 2
Deputy:

Jacqueline M. Sullivan, RPR
Official Court Reporter

PROCEEDINGS

(Answers spoken in English by the witness indicated with an asterisk (*).)

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

Would counsel please identify yourselves for the record?

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

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

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

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

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

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

MS. PETTEWAY: Good morning, your Honor. Kara Petteway for the defendant.

THE COURT: Ms. Petteway.

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

Jacqueline M. Sullivan, RPR
Official Court Reporter

MR. PALISOUL: Derrick Palisoul for the defendant. Good morning.

THE COURT: Interpreters, good morning. You've been sworn in.

THE INTERPRETERS: Good morning.

THE COURT: Let's proceed.

MR. SIMPSON: May it please the Court, defendant calls Daniel Raffo.

THE COURT: All right.

COURTROOM DEPUTY: Please raise your right hand.

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

MR. RAFFO: I do swear.

DANIEL RAFFO, WITNESS FOR THE DEFENDANTS, SWORN

THE COURT: Good morning.

THE WITNESS: Good morning.

DIRECT EXAMINATION

BY MR. SIMPSON:

Q. Would you state your name for the record, sir?

A. Daniel Raffo.

Q. Mr. Raffo, are you currently employed?

A. Yes.

Q. By whom?

A. Ringling Brothers and Barnum Bailey.

Jacqueline M. Sullivan, RPR
Official Court Reporter

I'm sure about what I'm doing, and working with elephants and other animals, the times when accidents happen are when the people are insecure, unsure about themselves, and the animal is trying to test them.

THE COURT: So you don't really need the hook then?

THE WITNESS: What do you mean? You have the hook as part of the daily routine.

THE COURT: Right. But you're telling me there is no way to stop an elephant from charging you, hurting you. So why do you use the hook?

THE WITNESS: Because that is what has been used to create a routine and to teach the elephants with. So what I'm trying to say is that we create a routine, whether it's an elephant or any other animal, you say I tell you do this and I give you food. Come here, it's 20, 24 hours a day doing the same routine, eventually the animal develops a habit. It's recorded in their brain. It's the same thing. I've indicated that the animals are intelligent, but we are more intelligent than they are, so we have to figure out a way to control them.

THE COURT: So you do use it, this can control an elephant then?

THE WITNESS: Not really control, like I want you to come here. You have -- there are wild elephants, wild. You have it separate, who you want. They're not going to bring it to you just like that. You can do whatever you want and nothing

you can do with the hook because you create in the brain a routine, it's a daily routine, you know, so they know the routine by a month, a year or later on, so it's do all the time I do the same thing with the dogs, it's the same thing. You can have the best dog in the world, if you put a leash on it he act different. Why I don't know, but that's the way it is. You can not feel -- he feels different. You don't have to pull the dog to wrong, just hurt, no. Any good dog touch all the time and the best friend from you you can put a leash on it, even if you didn't have to because that's the way the animals are. We are the smart ones. They're over here, so we can control them over them. As with us, you know --

THE COURT: Could you control the elephants with those bamboo sticks you use with the tigers?

THE WITNESS: I did use the bamboo sometimes, yes.

THE COURT: With elephants?

THE WITNESS: Yes, I did that. I always try different things and try this can work, this can be like that, it can be easy for me to work. I, you know, I always try different things myself. I always try to find a better way to do it.

THE COURT: There is a better way than the hook?

THE WITNESS: For the elephant?

THE COURT: Yes.

THE WITNESS: I don't think so there's a better way.

THE COURT: No better way?

THE WITNESS: I mean, you know, even the bamboo, when I worked with the tigers or with the elephants, it happened to me sometimes, you tell them to move down, trunk up, put it up, and then you make a looking somewhere and then you have a bamboo stick or something, they eat or something, they can't use it anymore, so they're stuck, you're like wait, no more bamboo or whatever. So the best way to do it, not just in the circus, the park zoo, anyplace, you're going to have a hook.

THE COURT: I know you're not a veterinarian, you worked with elephants for years. Do you have an opinion as to whether elephants are scared of this hook?

THE WITNESS: In my opinion they're not scared of it. They're not scared to anything. You know, the elephant for the size is one of the most gentle animals for their size compared to lions and tigers. So they might be more easy to control. Like dogs do. Some dogs are not the same habits as other dogs. Horses the same thing. Species act different. Some can be training, some can be no trained. Some dogs are better for police people. Some are not. It all depends what kind of character they have, so, I mean, I'm sorry.

THE COURT: No, no, you're doing well.

THE WITNESS: I'm trying to do my best here. I have to be honest with you. The elephant for the size, with this guide we can control it. I think the elephant more easy to control than the horse. If you ask me why, why. Because the

horse, in my opinion it's the animal that a horse treated any country in the world. Why is that? Because not anybody can touch, but you still need a piece of metal and a mount to control it and people don't realize that. Nice. You're shy. It was good. You have to pull to stop it. We don't use it on the elephant or the tigers or anything, but we have to do this on the horse, and the horse anyone can touch. So then with the elephant there's more easy to control than the horse.

THE COURT: Any questions?

325 is admitted.

(Defendant's Exhibit No. 325 was admitted into evidence at about 1:01 p.m.)

THE COURT: I'm not sure you laid your foundation for it, but you wanted me to use it for demonstrative purposes anyway, right?

MS. MEYER: Actually, your Honor, Mr. Hagen, who testified by videotape, that's the bullhook he used in his testimony and it still bears the exhibit label.

THE COURT: Any objection?

MR. SIMPSON: Mr. Hagen is not an elephant guy, and, as Mr. Raffo just indicated, he might have used it as a trophy.

THE COURT: You can look over your notes. I'm not quite sure about the foundation. For demonstrative purposes I've used it. It served the purpose for that reason, but we can deal with admissibility for a later date. Do you have any

questions? I asked a fair number of questions.

MS. MEYER: No, I don't, your Honor.

THE COURT: Thank you. It's been very helpful. Thank you very much.

(Witness excused.)

THE COURT: All right. It's lunchtime. We'll have to break until 2:30. I have two civil matters that I have to spend some time on, and I'm going to excuse the interpreters, thank the interpreters.

THE INTERPRETERS: Thank you, your Honor.

THE COURT: It's been a pleasure.

(A luncheon recess was taken at about 1:02 p.m.)

- - -

INDEX

WITNESSES:

DANIEL RAFFO

EXHIBITS

Defendants' Exhibit No.	Identification	Marked	Admitted
324A & 324B		20	
32		28	
325		72	

CERTIFICATE

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

Jacqueline M Sullivan

JACQUELINE M. SULLIVAN

Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0186
Item No. 2
Deputy:

Regulation of Animal Welfare in the United States

- All zoos, circuses, universities and commercial facilities with elephants and other animals are required to be licensed by the United States Department of Agriculture (USDA) pursuant to the Animal Welfare Act.
- Ringling Bros. has been licensed by the USDA every year since the licensing program was enacted in 1970 and Ringling Bros. has never had an animal removed from its care by USDA or any other agency. In fact, USDA has requested that Ringling Bros. agree to take custody and ownership of animals that were being removed from another licensee.
- As a USDA licensee, Ringling Bros. is subject to unannounced inspections by the USDA seven days a week to ensure proper animal care and treatment.
- Since elephants and tigers are on the federal endangered species list, the U.S. Department of the Interior also regulates, inspects and issues various permits for elephants and tigers in circuses and zoos.
- States, through statutory enactments, also have concurrent jurisdiction on animal care and treatment to regulate the welfare of performing animals in their jurisdictions.
- In California, the Department of Fish and Game (CAFG) regulates and inspects circuses and other exhibitors with elephants and other exotic species.
- Since Ringling Bros. and other circuses operate in interstate commerce their animals must be inspected for health purposes no more than 30 days prior to entry in each state, including California.
- Ringling Bros. is typically inspected between 5 and 10 times a year by the USDA.
- Ringling Bros. may also be inspected in multiple California cities by CAFG in order to maintain its state permit to enter and remain in the state and is also inspected by local animal control authorities in each of the ten (10) cities we perform.
- In Los Angeles, Ringling Bros. must obtain a permit from and is inspected by the Department of Animal Services with officers visiting the arena every day and often observing performances from backstage.
- During our 2011 California tour, Ringling Bros. had a total of 82 inspections by 18 different agencies and 44 individual inspectors. We spent a total of 221 hours and 50 minutes in inspections. This averages out to nearly three hours spent on animal inspections every single day we were in California.

Scientific Evidence Regarding Animal Welfare in Traveling Exhibitions

In a 2007 report commissioned by the government of the United Kingdom independent experts confirmed that a review of scientific evidence regarding animal welfare did not justify a government ban on various exotic species being presented in circuses. The report stated, "there appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals in other captive environments."

Friend, T. H. and Bushong, D. 1996. Abstract. Stereotypic behavior in circus elephants and the effect of "anticipation" of feeding, watering and performing. Proceedings of the 30th International Congress of the International Society for Applied Ethology 14-17 August 1996, Guelph, Ontario, Canada.

Friend, T. H. 1999. Behavior of picketed circus elephants. Appl. Anim. Behav. Sci. 62:73-88.

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Gruber, T. M., T. H. Friend, J. M. Gardner, J. M. Packard, B. Beaver, and D. Bushong. 2000. Variation in stereotypic behavior related to restraint in circus elephants. Zoo Biology 19:209-221.

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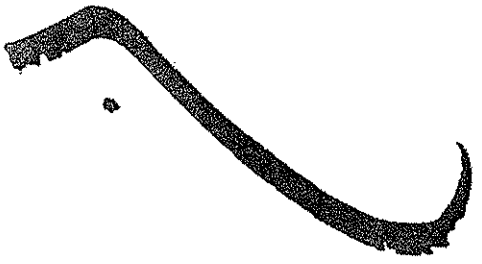
Nevill, C. H. and T. H. Friend. 2006. A preliminary study on the effects of limited access to an exercise pen on stereotypic pacing in circus tigers. Appl. Anim. Behav. Sci.101:355-361.

Krawczel, P.D., T.H. Friend and A. Windom. 2006. Stereotypic behavior of circus tigers: Effects of performance. Appl. Anim. Behav. Sci. 95:189-198.

Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0185
Item No. 2
Deputy:



Date: 11-20-12
Submitted in PAW Committee
Council File No: 12-0186
Item No. 2
Deputy:

THE ELEPHANT MANAGERS ASSOCIATION
1513 Cambridge Street, Houston TX 77030

19 November 2012

To Councilmember Paul Koretz and members of the Personnel and Animal Welfare Committee:

The Elephant Managers Association (EMA) respectfully submits these comments with regard to the proposed recommendations to change the current regulations on the use of exotic and wild animals and/or elephants in performances by traveling shows within the city of Los Angeles. The EMA encourages the LA City Council to reject options 1 through 6 in favor of option 7 which is to take no action at this time. Further, we feel that the report itself is unnecessarily biased against exotic animal exhibition and practices and we would prefer to see a more objective evaluation of the issue at hand.

The EMA is an international nonprofit organization of professional elephant handlers, administrators, veterinarians, researchers, and elephant enthusiasts and is dedicated to the welfare of the world's elephants through improved communication, husbandry, research, education and conservation. The EMA is proud of its constructive efforts with state and federal regulatory agencies on matters relating to elephant care and management. Our members work in a variety of institutions, including zoos, circuses and animal parks and adhere to a code of professional ethics. The EMA and its members are committed to providing elephant care at the highest professional level.

The EMA recognizes the value in and supports the responsible public display of elephants (and other animals) as an essential way to increase public awareness of these animals, whether in the care of humans or in the wild. Indeed, such education and the resulting conservation-related efforts are necessary to ensure the future survival of elephants. Critical issues of habitat degradation and destruction, along with human-elephant conflict and poaching for ivory, threaten the survival of elephant populations in all range countries.

Responsible animal exhibition is often the reason that people become interested in and ultimately retain the conservation message that those of us working with these magnificent animals are committed to promoting. As experienced professionals in the field of animal management we have seen firsthand that direct encounters and interactions with elephants creates an incomparable personal experience. This powerful animal experience helps inspire people to take action in both large and small ways to ensure that elephants are preserved into the future. The EMA remains steadfast in our commitment to the long-term survival of elephants across the globe at a time when their future is more in question than ever.

With respect to the proposed Los Angeles City Council ordinance, the EMA offers the following facts regarding captive elephant management:

- There are existing, and widely accepted, professional industry standards such as the *EMA Guidelines for Elephant Care and Management* and the EMA-supported *Elephant Husbandry Manual*, as well as the

Association of Zoos and Aquariums (AZA) *Elephant Standards and Guidelines*. These stipulate in great detail appropriate elephant care, handling, and management. The comments of Brenda Barnette, General Manager disregard the expertise and knowledge of these well-respected and established groups, and instead supply inflammatory and misleading comments about the techniques used to manage elephants

- The American Veterinary Medical Association (AVMA) has gone on record supporting the use of professional tools, including the guide, in managing elephants. Brenda Barnette's comment, lumping the use of the guide with "baseball bats, axe handles, pitchforks and other implements" is also deliberately inflammatory and misleading. The elephant guide is not intended to injure or harm the animal and does not do so when properly and appropriately used. It is a proven and humane husbandry tool that is used in many U.S. zoos and other facilities that care for elephants.

- Per the AZA and AVMA, tools such as restraints and elephant guides are safe and can be effective and productive components of elephant care and training.

- Existing federal regulations govern elephant care under the Animal Welfare Act and are overseen by the Animal and Plant Health Inspection Service of the U. S. Department of Agriculture. All traveling circuses and animal exhibitors are routinely inspected by the USDA and required to follow these regulations. In recent years, the USDA has even devoted a specialized team of inspectors to be responsible for increasing the consistency and quality of inspections for all travelling exhibitors in order to provide more efficient oversight of licensees.

- Different animal species are trained using "operant conditioning". This is a type of learning in which the probability of a behavior recurring is increased or decreased by the consequences that follow. This teaching process includes both positive and negative reinforcement. Operant conditioning is used in all forms of elephant training including free contact. To represent that free contact is strictly based on punishment and dominance is both inaccurate and misleading

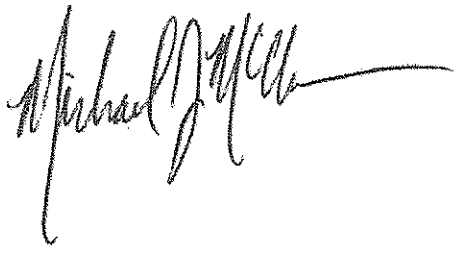
- There is no evidence that elephants transmit tuberculosis to the public. There have been no cases of elephants transmitting tuberculosis to the public. Elephants are mandated to undergo yearly testing under the supervision of the USDA. In addition, the National Association of Public Veterinarians has stated that they feel that there the risk of acquiring tuberculosis for people visiting a circus or touching an elephant is negligible.

- Traveling circuses and exhibitors introduce new people and new generations to the majesty of elephants. The EMA feels that the proposed recommended board actions to the Los Angeles City Council prohibiting or limiting the use of exotic animals, particularly elephants, would only serve to erode respect and understanding of these incredible animals which would, in turn, further diminish their place in the world. Without the connection to people that encountering an elephant directly creates, we will most certainly lose more and more future support for these animals as they struggle to survive in the range countries.

The report submitted to the Board of Animal Services Commissioners by Brenda Barnette is a flawed document that does not appear to have utilized the knowledge or expertise of any established elephant experts, including EMA, AZA, AVMA or AAZV. The document contains numerous falsehoods and incorrect statements, the majority of which demonstrate a complete lack of familiarity with appropriate and accepted techniques in training, managing and caring for elephants. Additionally the report fails to discuss or even acknowledge the less tangible but equally important fact that elephants under human care act as ambassadors for their wild counterparts and without people learning to care and respect them and their place in the world, elephants face a very grim future.

Thank you for your time and consideration. We would be glad to have a representative from our organization come speak to you about captive elephant management issues. Please contact us if you require additional information on this or other important matters of concern to the elephant care community.

Sincerely,



Mike McClure
President

Maria Espinoza <maria.espinoza@lacity.org>

November 20th meeting

1 message

Joanne Smith <elphyjs@gmail.com> Sun, Nov 18, 2012 at 5:06 PM
To: maria.espinoza@lacity.org

November 18, 2012

Personnel & Animal Welfare Committee

Legislative Assistant Maria L. Espinoza

Los Angeles, City Hall

200 N. Spring St. RM 1050

Los Angeles, CA 90012

Ms. Espinoza,

There has been a proposal by Mrs. Barnett, General Manager of Animal Services to ban bullhooks, (guides) and also wild animals in traveling circuses in the City of Los Angeles. As I stated in previous letters, this measure is extremely misleading.

It is my hope that you will oppose this ban and see through the agenda that is behind this proposal. A ban of this nature would affect many people in your community that look forward to the circus, which includes animals every year. Not to mention the loss of revenue if this ban is enacted.

I have worked with elephants for 23 years, both in the zoo field and for private owners. The guide is a training tool, used properly, it is simply to direct an elephant, like a leash on a dog or a bit and reins on a horse. Though this tool is sharp, that does not dictate that it be used in an abusive manner. Extremist groups have attempted to lead you to believe guides are used to inflict pain and fear upon elephants. They are intentionally misleading your committee. They do not agree that animals should be in entertainment and think it is inherently cruel, thus they will use any means possible to force others to accept it.

There are already many regulatory agencies that oversee traveling elephants, such as, the United States Department of Agriculture (USDA), United States Department of Fish and Wildlife (USDFW), California Department of Fish and Game (CDFG), and your own animal control services.

There have been no cases of an elephant transmitting tuberculosis to a member of the public so this is not a public safety concern. Again, there are many regulations regarding tuberculosis and testing in elephants that are in place by the CDFG, the USDA along with the USDA's special elephant team. Since these concerns are already being regulated it would not only be redundant, but an unnecessary waste of Los Angeles' resources.

Traveling does not cause stress. Elephants in the circus are comfortable with traveling. Just like children, the more they are exposed to the more well adjusted they are. There are many studies that show this including Dr. Ted Friend's publishing's, listed below.

Respectfully,

Joanne Smith

P. O. Box 719

Lake Elsinore, CA 92531

Friend, T. H. and Bushong, D. 1996. Abstract. Stereotypic behavior in circus elephants and the effect of "anticipation" of feeding, watering and performing. Proceedings of the 30th International Congress of the International Society for Applied Ethology 14-17 August 1996, Guelph, Ontario, Canada.

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Maria Espinoza <maria.espinoza@lacity.org>

Elephant Ban in LA

1 message

Sun, Nov 18, 2012 at 3:47 PM

I once again write this letter on behalf of the International Animal Welfare Assoc. (IAWA), a non-profit organization of professional animal owners, trainers and enthusiasts primarily based throughout California (Southern Calif.) working in the film, television and education industries. I also write on behalf of Elephants of Africa Rescue Society, a facility for which I am both a director and the caretaker of five African elephants every day. I feel these two titles and responsibilities more than qualifies me to speak to you about this subject. I ask that this letter be made matter of record and part of any reports on this matter.

It has again been brought to our attention that your LA City Animal Welfare Committee will be re-visiting a possible ban on elephant guide tools at your Nov.20th meeting at 3pm. My request is simple; I ask once again that you merely qualify the people testifying for and against this ban when considering your decision. I am all but certain that those who wake to actually care for these animals every day of their lives as they have for years will be opposing the ban for it truly is not in the best interests of the elephants. That is why you are seeing the Elephant Managers Assoc. (EMA), the largest group of elephant caretakers in the country ask that you dismiss the misguided and false information being provided by extremist activists suggesting the ban is necessary.

Listen to the American Veterinary Association AVMA, the elephant owning members of the Zoological Assoc. of America (ZAA), and every other institution that is actually charged with caring for these animals and you will no doubt be overwhelmed with how they all feel the guide tool is a necessary and proper tool for offering captive elephants the optimum care and attention. I realize that our geographic distance makes this offer difficult but I offer it just the same, should time and resources allow you to do so, we would invite you to visit our facility in

Monterey California and learn first hand how our elephants could not receive the medical and mental attention they receive on a daily basis without the use of a guide tool. It is imperative to their optimum care. There have been elephants in other facilities that do not practice free contact that have suffered and died unnecessarily because their caretakers could not get close enough to them to offer them the care that might have saved them. There have been care takers who have lost their lives attempting to do so without the use of a guide tool. The guide tool is not the issue; it is just a vehicle the activists are using to achieve another hidden agenda which is becoming more and more transparent, their obvious aversion to circus, a historical part of American culture.

You will once again be inundated with antiquated video, photos etc... suggesting that elephants are handled today in a fashion that is cruel and unnecessary but should you question the age of the that material you will find that those presenting it are using outdated and misleading information to forward their hidden agenda. The evolution of animal training is no different than the evolution of how people have been historically treated. Video and photos of mistreatment could be provided to depict any and all such tragedy but that would not prove that it is by any means the normalcy of today. Laws already clearly exist to prohibit the abuse of an elephant with a guide tool as do laws that prohibit the abuse of a dog with a leash and collar or the abuse of a horse with a crop and a bit. Banning the use of collars, leashes, bits and crops would be no different than the ban being considered on elephants.

Please Ms. Espinosa, choose the professionals best qualified to inform your committee when making such an important decision on a matter you are forced to depend on the expertise of others. Listen to the facts and scientific proof provided by the professionals who actually and physically care for these animals versus the rhetoric and misinformation provided by those who simply have a misinformed opinion.

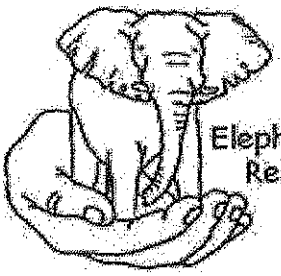
Respectfully,

Charlie Sammut

Director, EARS

President, IAWA

Proud Member of
IAWA
International
Animal Welfare
Association



E.A.R.S.
Elephants of Africa
Rescue Society