

1    there ever occasions when you dive with the animals?

2           A.  No.

3           Q.  Is there any kind of interaction where you would  
4   touch the animals in any way?

5           A.  No.

6           Q.  Is there any kind of guideline in terms of how  
7   close you're permitted to come to the animals?

8           A.  Yes.

9           Q.  How close can you get to the animals?

10          A.  100 meters.

11          Q.  What are you supposed to do if the animals just  
12   start coming towards you?

13          A.  It's quite common.  We take our engines out of  
14   gear.  We shut off and wait for them to move off.  It's  
15   quite a frequent occurrence because in our work we do a  
16   lot of invertebrate sampling; so we'll have stations where  
17   we'll be throwing nets to collect invertebrates, and  
18   frequently the whales will collect invertebrates too and  
19   they'll -- we just have to wait them out.

20          Q.  So you don't move away from them; you just --

21          A.  If they're in too close, we more or less wait.

22          Q.  And you said they frequently do come closer to  
23   the boats.  Is that because they're curious about boats or  
24   do you think it's because they're looking for the same  
25   invertebrates that you are and just happened to be there?

1 Or what's your theory of why that happens?

2 A. I think that most of what all cetaceans do has to  
3 do with procurement of food; so we know how tightly tied  
4 the animals are to their food sources. A lot of people  
5 interpret curiosity. I don't.

6 Q. And why is it you don't think there's any  
7 curiosity from the animals? What makes you believe that?

8 A. Well, I don't interpret it because I can't verify  
9 it.

10 Q. Okay. Other than the boat safety that we  
11 discussed, anything else related to the supervision of the  
12 research crew as it would relate to safety?

13 A. In the research setting every activity we  
14 undertake on the docks, on land, we have a protocol for  
15 the safe execution. We work in a setting that's rife with  
16 wolves, bears, mountain lions, quite close up to our  
17 station; so every time you leave the house, there's an  
18 array of equipment and there's a procedure. Muster sheet,  
19 check in times. And behaviors that we specifically rule  
20 out.

21 Q. Does anything that you do in your research or any  
22 capacity professionally involve actual interaction with  
23 any animals?

24 A. We don't specifically look to interact with them.  
25 That would be a -- in our studies, that would be a

1 methodological difficulty.

2 Q. Could you explain why that would be so?

3 A. Perhaps the best explanation is if I could use  
4 Jane Goodall for an example. Jane studied chimpanzees for  
5 years, but she studied them at very close quarters and she  
6 manipulated them by providing food and also interacting  
7 contact with them. So the behavior of the chimpanzees was  
8 influenced by her presence. So in order to understand  
9 what that is, you need a comparative study without the  
10 interaction.

11 So our study's of ecology and behavior, if it's  
12 possible, and we do our best to maintain a very distant  
13 presence. We don't have any way of knowing, for instance,  
14 especially with killer whales, what they're sensing, the  
15 array of things and the distance at which they sense  
16 things. So, you know, when you see a killer whale's  
17 behavior change, the possibility of a bunch of stimulus  
18 that you're not aware of. It could be a school of fish  
19 moving 400 feet below the surface, could be a noise coming  
20 from one direction or another. You don't know. So our  
21 research is dependent on keeping our interaction out of  
22 it; so we purposely try and stay out of the way.

23 Q. So you don't have any information or studies or  
24 experience with interaction with animals?

25 A. Direct interaction?

1 Q. Yes.

2 A. No.

3 Q. And you wouldn't have any kind of safety  
4 experience related to interaction with animals as a zoo  
5 setting, for instance?

6 A. No.

7 Q. Or animals in a marine setting or -- not a marine  
8 setting, an aquarium setting?

9 A. No.

10 Q. How about your role on the diving safety  
11 committee? For what purposes do you dive in your  
12 professional capacity?

13 A. Well, my crews occasionally will dive to sample.

14 Q. What do they sample?

15 A. Primarily prey.

16 Q. Okay. So when you say "prey," what does that  
17 include?

18 A. Mostly two or three different types of baleen  
19 whale prey.

20 Q. And what would that be? What kind of prey is  
21 that?

22 A. For instance, species groups, the mysid shrimp,  
23 benthic arthropods, intertidal crab larvae and ghost  
24 shrimp.

25 Q. And that's diving for that specific prey of that

1 specific whale?

2 A. M'mm-hmm.

3 Q. Okay. And while they're diving for that prey, is  
4 there any interaction with the whales who are hunting that  
5 prey?

6 A. No.

7 Q. All right. Going to the Keltie Byrne inquest.  
8 How did you get selected for that inquest group?

9 A. The coroner's council contacted me and suggested  
10 that I would be interested in doing it. A minor argument  
11 ensued. I pointed out that I wasn't, and he pointed out  
12 that indeed I was.

13 Q. Did you have a choice to be included or was that  
14 something that was required of you?

15 A. She is able to subpoena and she --

16 Q. When you say "she" -- I'm sorry, I'm confused.

17 A. The coroner.

18 Q. The coroner, okay.

19 A. Yes. But her counsel made the point that what  
20 they're going to try and do on the jury was get people  
21 with experience in the area who can contribute their  
22 experience to a well-rounded assessment.

23 Q. Did you actually receive a subpoena to --

24 A. No.

25 Q. -- participate?

1 my principal recollection is that it was very sparse.

2 Q. Her testimony?

3 A. Her testimony was --

4 Q. Very sparse?

5 A. Her recollection was sparse.

6 Q. And when you say it was "sparse," what do you  
7 mean by that?

8 A. Well, she didn't seem to know exactly what  
9 happened. Her back was turned when Keltie slipped into  
10 the water, and she didn't fill in too many gaps. I know  
11 the jury as a group were a little frustrated by that, but  
12 of course understanding -- it was our belief she was a --  
13 fairly shocked by the events that ensued.

14 Q. Had they ever had someone fall into the water  
15 with the killer whales before?

16 A. I don't know. And we didn't know.

17 Q. Was that a question anyone asked?

18 A. We asked the chief trainer, and we also asked one  
19 of the original trainers, a fellow who's gone on to make a  
20 career in killer whale science named Graeme Ellis, who was  
21 the original trainer. And he pointed out to us that they  
22 used to swim with the whales daily.

23 Q. Okay. So he testified and said that at some  
24 point in time they actually swam --

25 A. Yes.

1           A. Yes.

2           Q. Are you -- by that, are you saying that after she  
3 had already fallen into the pool, that is, when the whales  
4 came and pulled her away from the edge?

5           A. Yes, the whales didn't pull her into the pool.  
6 She slipped and fell, according to the synthesis of  
7 testimony. She did attempt to get out of the water.  
8 That's when the whales pulled her back in.

9           Q. Did the Sealand park keep any kind of records of  
10 their shows or the interactions that they had with the  
11 killer whales?

12          A. Not that we were provided with.

13          Q. Now, in your report, when you say that Tilikum  
14 actively killed Keltie Byrne, you know that it was Tilikum  
15 who did that and not the other two killer whales?

16          A. According to witnesses, Tilikum was the whale  
17 that held Keltie in his mouth for the duration and  
18 submerged her. Of course these folks weren't experts, but  
19 Tilikum's -- even then he was fairly distinctive.

20          Q. So if these same people at Sealand had told  
21 SeaWorld a different version of events, then they would  
22 have been misstating what you heard in the sworn  
23 testimony?

24          A. The testimony in the transcripts are a matter of  
25 public record, and I believe there was news reports at the

1 Q. And how would that be done?

2 A. Well, you guys are the experts. You've got all  
3 the materials, you've got the history and a lot of  
4 creativity, SeaWorld does, so I'd suggest they go to work.  
5 I don't know. I suggest that people put their heads  
6 together and think about how they can balance stuff. And  
7 if you want to risk people, well, I mean, that's not what  
8 -- I'm not part of a regulatory agency or anything. I'm  
9 just saying that you do risk and that's up -- completely  
10 up to the powers that be. I'm not walking -- I can't be  
11 -- walk down the path of such a small probability that  
12 it's okay to take these risks.

13 Q. Well, I mean, you were providing testimony as an  
14 expert for the government in this case?

15 A. M'mm-hmm.

16 Q. The government has an action against SeaWorld,  
17 and their action by virtue of this citation and by virtue  
18 of testimony that's been taken is, SeaWorld, you can't  
19 have any close contact with killer whales?

20 A. That would be the government's business. I did  
21 not tell the government to issue that citation and -- or  
22 participate in the wording or the delivery of a citation  
23 to anybody for any reason in any foreign country. I  
24 provided an opinion based on materials I was given that  
25 asked me to examine, give my opinion about risk,



1   uncertainty and the fundamental nature of an animal that  
2   I've spent 25 years with.

3           Q.   Well, I mean, the net effect is you're providing  
4   testimony in a case that is telling a company you can't do  
5   the business that you're doing, which is partially housing  
6   killer whales and maintaining them in captivity and having  
7   --

8           MS. HOWARD-FISBURNE:  I'm going to object to the  
9   form of the question.

10          MS. GUNNIN:  You can answer.

11          Q.   I mean, that's what this case is about.  So  
12   ultimately if you're saying that SeaWorld is the expert on  
13   the issue and they need to go back and think about what  
14   they're doing, but you're not telling them what they  
15   should do, then --

16          A.   I have some ideas.  If you just get the people on  
17   your side to just write me a contract, I'd love to engage  
18   in the idealization of what might be done.  But -- I mean  
19   that sincerely.  I've got no particular bone to pick with  
20   the citation and SeaWorld and the corporate behavior and  
21   the governance of these operations in the United States.  
22   That is the outcome, but that is not my outcome.  My  
23   outcome is just expressing an opinion.  And I mean that  
24   sincerely, that SeaWorld does have a lot of expertise.  I  
25   would like to see them incorporate that and outside -- and

1 a really high margin of safety so that the uncertainty can  
2 be cornered. My main concern is I don't -- the coroner's  
3 reports.

4 Q. So taking from what you just said then, you  
5 wouldn't have a problem if SeaWorld continued its shows as  
6 long as they did it in such a way that provided a level of  
7 safety for the employees that would be better than what  
8 they had in the past?

9 A. I've got no particular issue with SeaWorld, their  
10 shows. I guess my main concern is the bar -- is the  
11 height of the bar for safety.

12 Q. And have you read anything about the efforts that  
13 SeaWorld is making to improve the safety for the killer  
14 whale trainers?

15 A. There was a bit of material and then we were able  
16 to see where they intend to implement the rising floor.  
17 There's bits of material here and there, and I think part  
18 of it is in the citation, but I can't recall for sure now.

19 Q. Do you know anything about the rising floor?

20 A. Just from what the engineer explained to us about  
21 the speed with which they could raise the floor.

22 Q. And when did the engineer explain that to you?

23 A. Whilst we were sticking around the site on our  
24 site visit.

25 Q. Okay. Do you have an opinion about that as a