

An elephant condemned to life in a circus may yet be helped by a well-known federal law

BY MICHAEL WINIKOFF

IN 1950 an Asian elephant was born in Hyderabad, in southern India. She tasted freedom for four short years. On May 22, 1954, the four-year-old elephant was captured and separated from her family; in fact, the elephant hunters may have killed other family members to capture the baby. She was immediately sold by the Zeehandelaar Corporation to the Milwaukee County Zoo for \$3,500 and shipped from the hot climate of southern India to the cold of Milwaukee, where, named Lota, she remained in confining, unnatural quarters for the next thirty-six years.

The Zoo

Milwaukee citizens had for years vigorously protested the deficient conditions for elephants at the Milwaukee zoo. But Lota would endure something much worse. After thirty-six years Milwaukee, like most zoos, apparently had no use for an "elderly" elephant such as Lota. Perhaps she was no longer considered "cute" and had become what zoo folks call "surplus." In 1990 the zoo decided to dump her.

If the zoo had consulted humane organizations, it could have found Lota a home such as a wildlife sanctuary. Instead, the zoo asked "elephant management" consultant Don Meyer, who has close ties to the circus community, to help place Lota. Mr. Meyer arranged for the zoo to give Lota to the Grayslake, Illinois-based Hawthorn Corporation; she would be trained for circus performances and rides. Mr. Meyer hired his own private company to transport Lota and sent the bill to the Milwaukee zoo.

The Move

Rachel Anastasi covered the move for the *Milwaukee Sentinel*. She arrived at the zoo at 8 A.M. and later told the *HSUS News*:

It would be three hours before Lota would be able to negotiate a left turn down a long, unfamiliar corridor and up an incline into a loudly rumbling truck. Turning left was a foreign concept for the animal who for years walked only a few feet straight from her indoor enclosure through a door leading outdoors.

Ms. Anastasi described Lota's search for food: *The other three elephants in Lota's enclosure had been fed. Attempts by Lota to reach some of the food pellets on the floor across the enclosure were futile; she was chained around her left front, right front, and right rear ankles.*

Even before the actual move, Lota was in severe distress. Ms. Anastasi wrote: She would lift those legs one at a time and rock back and forth. This rocking action became swifter as members of the media began arriving and peering at her from outside the glass enclosure. The rocking motion intensified, and then came a bowel movement. Then the diarrhea began. Rivers of it. Shouting was loud and constant. It was obvious things were not going smoothly with this move.

As horrified reporters looked on, a night-

marish scene unfolded. Elephant keepers know that elephants must be gradually taught how to board a truck. An elephant who has not been moved in thirty-six years is naturally frightened when forced by strange faces to perform a new act, especially to enter a loud, dark, unfamiliar en-

closure. Lota was petrified, as most elephants would be, and refused to enter the truck. To her it was a rumbling box, up a ramp, the likes of which she had never seen.

Captive elephants show severe stress in several ways. Typically, captive elephants are disciplined until they begin to defecate, a

keepers used the hooks is inexcusable." The tape also showed a keeper stomping on the tip of Lota's trunk, the most sensitive part of an elephant. Mr. Willingham continued: "This type of behavior toward an animal constitutes animal abuse. All that was accomplished by the procedures I witnessed

sign that they are extremely frightened and overstressed. In a severe state of panic, elephants may lose control of their bodily functions. Lota began urinating and evacuating huge quantities of liquid feces.

One of the movers repeatedly struck Lota with the pointed end of an elephant hook, embedding it in her skin. One blow sank the hook in so deeply that the handler had to use considerable force to remove it from her body. When Lota raised her left leg toward the keeper to help dislodge the sharp hook, he wildly hit and jabbed her. She tried simply to ward off the blows, but after he struck her ear, Lota flinched in obvious pain. After viewing a videotape of the incident, which showed Lota apparently bleeding from the ear, Ken Willingham, one of the founders of the American Association of Zoo Keepers, stated: "The manner in which the

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on the tape was that Lota was unnecessarily brutalized."

As she began to move into the truck, Lota noticed several keepers in the truck yelling at her, hooking her, and prodding her. Reacting to the frightening display, she leaned back, and a chain around one of her front legs broke. Because the movers did not then let the slack out of the restraint on her other leg, she fell to the side, tumbled out of the back of the truck, and landed on her head. In the words of the *Sentinel's* Rachel Anastasi, "Suddenly there was a thud against the concrete and a horrendously shrill sound coming from the elephant." Lota cried loudly and struggled to right herself. Both front legs were trapped beneath her, so all of her weight was on her head and trunk. Still no one eased the restraint holding her other front leg; she was stuck.

Ms. Anastasi, an experienced zoo reporter, wrote that what she saw changed her life forever:

I could not believe that I was suddenly looking at this pathetic creature, her body partially inside the truck, her head and trunk twisted around, upside down on the pavement. I was sickened by the sight. I remember thinking how I felt naive and betrayed, and each person there, myself included, had to take responsibility for what was happening.

Lota struggled to move but could not. Several keepers continued to beat her, yelling her name and repeatedly striking her head, back, and legs with metal elephant hooks. She kept on bellowing, and, though she could not move, they kept beating her. Noted Ms. Anastasi:

She had abrasions and was bleeding. One of the truck drivers said the stream of red

Elephant handlers coerce Lota out of her enclosure and into a truck for transport to the Hawthorn Corporation to begin life as a performing animal.



L O T A L O S T ?

“This type of behavior toward an animal constitutes animal abuse.”

—Ken Willingham

running down the middle of the inside of the truck was “urine mixed with some rusty part of the floor.” But rust does not get thicker and redder, as this was doing.

A brief jolt of common sense struck the keepers, and they let the slack out of the rope holding Lota's front leg and moved the truck forward, allowing her to pull out of the truck and immediately right herself. But during a second attempt to get her into the truck, she fell again. The keepers resumed striking her on the legs, the wrist joints, the head, and the feet, landing some blows so hard that a rod used in the beatings was bent. Finally, three hours after the ordeal began, the poor creature was pounded into confused submission and taken away to become a circus performer. We can only imagine what she now suffers as she is forced to learn new tricks.

Rachel Anastasi left the *Milwaukee Sentinel* zoo beat soon after Lota's ordeal. As she told The HSUS, *I wrote what became my final zoo story. When my city editor called my resigning from the zoo beat in December “foolish and self-destructive,” there was no way to explain to him how what I saw changed me forever, because I did not have an explanation for my feelings. How do you adequately express to someone that you will be haunted by a sight and sound forever? In the journalistic world of black and white, you don't.*

Lota's New Owners

The truck and the handlers who caused Lota three hours of hell then brought Lota to the Hawthorn Corporation, an Illinois firm that trains and leases out elephants and wild cats for circuses, “entertainment,” and rides. Hawthorn's owner, John Cuneo, admits that Lota looks “grotesque” more than a year after the move. He said, “You gotta realize she was in a rather bad condition when we got her” from the Milwaukee zoo.

At least as of January 1992, when an HSUS investigator visited Hawthorn, Lota was still being kept chained in an indoor enclosure with no continuous access to water. She is given water only four times a day—according to her trainer's needs, not her own. When she does something right, Lota's trainers give her food “rewards”—they toss her some bread. Each day she gets four hours of “exercise,” which essentially is wandering around in a bigger room. Then she is brought into a training ring, which

looks like a circus ring. There she is forced to run in a clockwise circle for fifteen minutes and then in a counterclockwise circle for another fifteen minutes. Next she is taught to stand on tubs. The HSUS does not consider this to be a natural activity for an endangered Asian elephant. None of the trainers is a zoologist, and there is no veterinarian stationed on the premises. When needed, a veterinarian from Ringling Bros. is called, if he is not traveling around the country with the circus.

Hawthorn plans to use Lota for children's rides and for circuses. Despite recent elephant-riding tragedies (see sidebar), the U.S. Department of Agriculture (USDA) appears willing to allow Lota's use in this exploitative business.

Legal Cruelty?

People fighting the abuse of an animal used for exhibition or entertainment can resort to two legal tools: local anticruelty statutes in the state where the abuse occurred; and the federal Animal Welfare Act (AWA), enforced by the USDA.

Because The HSUS has no legal authority to bring cruelty charges, our investigators asked the local district attorney to pursue such charges after he viewed the videotape. But Milwaukee County District Attorney E. Michael McCann simply declared: “I'm satisfied that it did not constitute cruelty. . . . Did what happened here strike me as unconscionable? It didn't.” His decision removes any possibility of prosecuting Lota's tormentors under Milwaukee's anticruelty statute.

Concurrent with the complaint to District Attorney McCann, The HSUS requested an investigation by the USDA into possible AWA violations. The USDA sent a veterinarian to interview the participants and view the videotape. As we feared, the USDA resorted to the AWA's built-in cop-out: If the handlers of the animal use methods that are “standard” or “commonly accepted in the business,” the actions, regardless of their severity, are excused. Dr. John E. Kolpanen, the USDA's investigator, stated in his report: “The keepers appeared to use normal elephant discipline and handling techniques to respond to the situation.” Based on Dr. Kolpanen's judgment, USDA Supervisor for Animal Care Gary L. Brickler concluded that “we have found no evidence of violation of the Animal Welfare Act relative to



the transportation and care of Lota.”

In its decision, the USDA appeared to side with the old school of elephant training: pound animals into submission and show them who's the boss. This way of thinking, all too common in zoos and circuses, springs from the notion that nonhuman animals are beasts, permanently set apart from the human community, and that any relations “we” have with “them” must be based on the principle of dominance.

A new, better school of thought (setting aside for now the issue of whether we should be “handling” elephants in any way) is more compassionate and encourages handlers to develop cooperative, personal, and friendly relations with the animal. Elephant

keepers seek to develop a relationship based on trust, not fear. Sadly, the old school of thought still prevails in the United States.

Brick Walls Can Be Broken

All of us in animal protection have encountered this phenomenon: we document an instance of animal abuse, follow all the proper channels, and prepare what should be an open-and-shut case. We bring the evidence to the proper authorities, but they minimize or mock our concerns and finally dismiss them.

We remember animals like Dunda, the elephant from the San Diego Wild Animal Park who in 1988 was chained and beaten by her keepers for two days. Using ax

handles, elephant hooks, and shovel handles, they bludgeoned her so badly that people who had worked with her for years could no longer recognize her. No cruelty charges were filed.

We studied every federal law that had anything to do with animals—and found the key to Lota's possible salvation.

The Endangered Species Act

The Endangered Species Act (ESA) protects endangered species by eliminating the profit made on those animals. When Congress framed the act, it realized that the motivation for most animal exploiters is financial gain. Legislators thought that banning commercial trade in endangered

In 1987 Lota was photographed as she was being weighed at the Milwaukee zoo. She spent thirty-six years at the zoo prior to her move.

species would allow endangered species to survive.

In 1976 the U.S. Department of the Interior (DOI) listed the Asian elephant as an endangered species. However, one seemingly small loophole built into the act soon grew beyond all bounds. The DOI allowed “scientific” institutions, which it claims include zoos, to continue to take endangered species. The DOI does not regulate what zoos do with these animals after they have become “surplus,” like Lota. So the zoos give or sell the animals to profit-making corporations, such as the Hawthorn Corporation.

Although Hawthorn trains the animals for circuses and rides, a purpose one would think would be prohibited by the ESA, the DOI allowed the transfer despite our submitting written objections to it, objections based upon the requirements imposed by law for the humane transportation of endangered species. Then the DOI swiftly granted Hawthorn a permit to ship Lota around the world to perform in circuses. Lota, who had spent her entire adult life at the Milwaukee zoo, was now condemned by the DOI to spend much of her remaining life traveling in a box, occasionally let out to perform demeaning stunts.

The Lawsuit

On November 26, 1991, the one-year anniversary of Lota's beatings, The HSUS announced our intention to sue the DOI for violating the ESA by allowing zoos to transfer unwanted endangered species to profit-making corporations. Unfortunately, lawsuits often drag on for years, so legal recourse for Lota will not be swift.

The implications of this lawsuit are huge, not only for Lota but for animal protection in the United States. When used properly, the ESA can be a vital tool for the animal-protection movement. As written by Congress, the ESA is far stronger than DOI interpretations would lead one to believe. Our lawsuit will force a return to Congress's original intent, resulting in stronger protections for thousands of animals.

The Lota lawsuit may at last dispel the myth that so-called “pre-act animals” are

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not protected by the ESA. The DOI has argued for years that endangered species held in captivity in the United States since before passage of the act are exempt. Thus Lota, who was at the zoo before the act was passed, would not be protected.

Our research revealed that Congress never intended such an interpretation. Congress clearly indicated that only those animals permanently kept out of the "chain of commerce"—not used for profit—are left unprotected. Congress intended the protections of the act to "kick in" if the animal was ever returned to a profit-making venture.

We are confident in our approach because we are not seeking to enact a new law or even to change an existing one; we are simply seeking to enforce an established, broadly supported federal statute. While we accept that Lota, unfortunately, would not have been protected by the act had she remained at the zoo, her transfer to a commercial corporation should have triggered ESA protection. The law should prohibit Lota's use by the Hawthorn Corporation in circuses, rides, and "entertainment." A victory for Lota will also be a victory for the hundreds of other endangered animals transferred annually from

zoos to a variety of profit-making endeavors, such as game ranches, roadside zoos, and movies and television. A victory will open a new area of animal-protection law. Because zoos will be forced to guarantee lifetime care for any endangered species currently under their stewardship, they will acquire new animals much more slowly. This will, in turn, reduce the number of animals removed from their natural habitats.

Think about Lota, But Act Locally!

Your local zoo probably keeps a Lota, or someone just like her, waiting to declare her "surplus" and ship her into the animal slave trade. While we certainly are not big fans of zoos, unfortunately, most animals who leave zoos suffer much more than those who remain. An elderly animal who has never been moved from the zoo is especially hard-hit. Exact numbers are unavailable because the DOI regulates zoo-to-corporation transfers inadequately and incompletely, but we estimate that each year hundreds of animals, including numerous endangered animals, are given or sold by zoos to profit-making corporations, including circuses, roadside attractions, and even hunting preserves.

Lota is just one of many victims in this trade. The elephant you view in your local zoo today will be tomorrow's Lota, unless you act *now*.

What You Can Do

- When you hear about incidents such as Lota's beating, write to your district attorney or prosecutor and demand action. Follow up with phone calls and letters to ensure that the case is being pursued to *your* satisfaction. Begin now to monitor your local zoo's disposal of elderly or unwanted animals. Contact the HSUS Investigations section for information on how to do this. We can show you how to follow the paper trail, so that, as soon as we win this lawsuit, you can apply it in your situation.

- Write to your local zoo. If you live in the Milwaukee area, write to the Milwaukee zoo. Ask for a copy of its "surplus animal" disposition policy. Begin a local campaign to convince your zoo to make a lifetime commitment to the animals there.

Ask the zoo to adopt a formal policy that commits to caring for any animal for the duration of the animal's life. Always keep copies of any letters you send and any responses you receive.

- Better yet, tell your zoo that responsible animal stewardship demands that intelligent, highly social animals like elephants be left and protected in their natural habitats rather than turned into living art in American zoos.

- Write to Secretary of the Interior Manuel Lujan. (The Hon. Manuel Lujan, Secretary of the Interior, U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20240.) Ask him to enforce the ESA by prohibiting transfers of endangered species from zoos to profit-making corporations.

- Write letters to the editors of all newspapers and magazines you read concerning animals in zoos and circuses. Such letters are one of the most effective ways that you as an individual can help.

- Teach your children that the best way to learn about animals, besides visiting them in their natural habitats, is to watch a well-done documentary or nature special. Films will teach kids far more than a visit to a zoo or circus and will help them realize that animals cannot be understood when removed from the context of their natural surroundings. ■

Michael Winikoff is The HSUS's legal investigator.

ELEPHANTS ARE NOT FOR ENTERTAINMENT!

The American public is slowly realizing that using elephants for circus stunts and children's rides is both cruel to the animal and dangerous for the children. Consider these incidents, all of which involved the Great American Circus:

- On February 1, 1992, an endangered Asian elephant being used for rides in Palm Bay, Florida, turned on her trainers and others, injuring at least six people and almost killing a police officer. After being chased across the grounds by a trainer with a pitchfork, she was brought down by a hail of police bullets and killed. Circus employees alleged that the elephant was ill and violent before the incident began but was used for rides anyway.

- In June 1990 a circus elephant turned on her trainer in Reading, Pennsylvania, and threw a table into the crowd, injuring one spectator.

- In February 1989 an elephant used for rides in Fort Myers, Florida, broke away from her trainer, with children on her

back, and charged into a nearby pond.

- In July 1987 an elephant still being used for rides today charged through a crowd in Milwaukee, injuring two children.

We don't want to see Lota, or any other elephant, involved in such incidents ever again! While children may dream of running away to the circus, you can be sure that elephants dream of running away *from* the circus, if they can still dream at all.

The greatest circus in the world today uses absolutely no animals—Canada's fabulous Cirque du Soleil. For an evening of great family entertainment, consider supporting a cruelty-free circus!

Make Your Town a Cruelty-Free Zone!

The city of Hollywood, Florida, has adopted a marvelously progressive ordinance that effectively prohibits elephant rides and many other forms of animal exploitation within the city. You can have a similar ordinance passed in your community. Write to The HSUS for help. ■