

**IN THE SUPREME COURT STATE OF NEVADA**

GAVIN COX and MINH-HAHN COX,  
Husband and Wife,

Appellants,

vs.

MGM GRAND HOTEL, LLC; DAVID  
COPPERFIELD aka DAVID S. KOTKIN;  
BACKSTAGE EMPLOYMENT AND  
REFERRAL, INC.; DAVID  
COPPERFIELD'S DISAPPEARING, INC.;  
TEAM CONSTRUCTION  
MANAGEMENT, INC.; and BEACHERS  
LV, LLC,

Respondents.

) Supreme Court No. 76422

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**JOINT APPENDIX - VOLUME 4**

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1 LAS VEGAS, NEVADA, FRIDAY, APRIL 13, 2018;

2 9:10 A.M.

3  
4 P R O C E E D I N G S

5 \* \* \* \* \*

6  
7 THE MARSHAL: All rise. Eighth District  
8 Court, Department 13, is now in session, the Honorable  
9 Mark Denton presiding.

10 THE COURT: Good morning. Please be seated.

11 We're reconvening in -- outside the presence  
12 of the jury in Gavin Cox, et al. v. MGM Grand Hotel,  
13 LLC, et al. Please state appearances of counsel,  
14 identify parties and party representatives who are  
15 present today.

16 MR. MORELLI: Benedict T. Morelli for the  
17 plaintiff Gavin and Minh Cox. And they are here in the  
18 courtroom, Gavin Cox, Minh Cox, and their three sons.

19 MR. DEUTSCH: Good morning, Your Honor. Adam  
20 Deutsch, also for the plaintiffs.

21 MR. FALLICK: Good morning, Your Honor.  
22 Perry Fallick, also for the plaintiffs.

23 MR. POPOVICH: Good morning, Your Honor.  
24 Jerry Popovich for defendant MGM Grand Hotel, with Mike  
25 Infuso, Kelly Davis, Will Martin, and Mark Habersack.

1 MS. FRESCH: Good morning, Your Honor.  
2 Elaine Fresch of Selman Breitman for David Copperfield,  
3 David Copperfield Disappearing, Inc. Sitting next to  
4 me is David Copperfield, my client, and -- excuse me --  
5 Gil Glancz is also here today from my office, and Eric  
6 Freeman.

7 THE COURT: Good morning.

8 MR. ROBERTS: Good morning, Your Honor. Lee  
9 Roberts for Backstage. With us today is the president  
10 of Backstage, Mr. Chris Kenner.

11 MR. RUSSELL: Good morning, Your Honor.  
12 Howard Russell, also on behalf of Backstage.

13 MR. STRASSBURG: May it please the Court,  
14 Roger Strassburg on behalf of Team Construction  
15 Management. And I'm assisted ably by my partner, Gary  
16 Call, who's also here.

17 MR. CALL: Thank you.

18 THE COURT: As I indicated, this is the time  
19 for resumption of trial. I understand there's  
20 something to be taken up before we proceed.

21 MS. FRESCH: Sorry.

22 MR. GLANCZ: Good morning, Your Honor. Gil  
23 Glancz on behalf of David Copperfield and David  
24 Copperfield Disappearing, Inc. I'm here to argue with  
25 respect to our trial brief relating to closing certain

1 portions of the court proceedings from the media and  
2 the general public. And I'll also be, if necessary,  
3 arguing our motion to stay pending a writ, depending on  
4 your decision.

5           First, Nevada law recognizes that courts  
6 should protect trade secrets and other confidential  
7 information by reasonable means by putting stuff under  
8 seal and sometimes closing the proceedings. Here,  
9 we're seeking to close the proceedings so that David  
10 Copperfield's trademarked secrets won't get out.

11           His trademarked secrets are, obviously, his  
12 illusions and different magic steps that go to his  
13 things. He's worked his whole career, lifetime and  
14 years, putting together these different illusions and  
15 magic tricks for him to use, and he has secrets behind  
16 it.

17           Plaintiffs have argued that everybody knows  
18 these tricks, he's making someone appear and disappear,  
19 but that's not entirely correct. He's -- there's a lot  
20 more that goes on with the trick. And if everybody  
21 knew how to do it, they would be doing it as well. And  
22 no one else is.

23           One of the other things that plaintiffs  
24 argued is that the plaintiffs themselves and all other  
25 participating audience members in his trick also know

1 how that trick was done because they're part of it.

2           But, again, that's only a small portion of  
3 the illusion itself. They don't have an idea of what's  
4 going on on stage and different things that David  
5 Copperfield is doing to -- sleight of hands, moving  
6 people, and how everything else works. And a lot goes  
7 into these tricks. And Mr. Copperfield is going to  
8 have to testify to all of these different aspects of  
9 it -- of the trick, the methods, in order to defend  
10 himself properly in this case.

11           Additionally, the magic trick in question,  
12 the Thirteen, also is related to several of his other  
13 tricks and illusions, one being the fan illusion, where  
14 no other audience participants are even part of the  
15 illusion at all. So no one has any idea how he does  
16 it. The reason that illusion is relevant is because  
17 Mr. Copperfield walks that same exact path that  
18 plaintiffs walked when doing the Thirteen Illusion.

19           And it's -- it's clear that there are trade  
20 secrets and they should be protected. It meets all the  
21 standards. They've guarded the secret. No one else  
22 knows the secret. They've taken all the steps that  
23 they can to keep it protected. So it's clearly a trade  
24 secret. If all of that is revealed to the general  
25 public and to the media, then that trick is worthless.

1 Once the secret is revealed, you can't use that trick  
2 anymore.

3 And because that illusion has the same  
4 methods as other tricks of -- other tricks of David  
5 Copperfield, then he would have to give up using all  
6 those other illusions as well because people would  
7 already know what it is. The value of a magic illusion  
8 is the fact that no one knows how it's done.

9 Additionally, there's a growing trend to  
10 afford magic illusions and tricks copyright protection.  
11 We brought the case of Teller v. Dogge, where the court  
12 found that dramatic works are protected and can be  
13 copyright-protected. In this case, Mr. Copperfield  
14 doesn't have a copyright on -- on his illusion, but the  
15 case still stands that the court found whatever reason  
16 it could to protect Teller's copyright protection in  
17 that case.

18 And what -- there's plenty of ways that the  
19 court could have said it's not valid because he didn't  
20 file it in the proper time. They could have found that  
21 it was abandoned. But the court went out of its way to  
22 show that it's a copyrighted material and even said  
23 that dramatic works as well as pantomimes are subject  
24 to copyright protection.

25 Additionally, currently going through the



1 United States Congress House of Representatives is a  
2 bill that's -- that they're passing, Congressional  
3 Resolution 698, which is intended to preserve and  
4 protect and promote magic in its form, specifically, to  
5 treat it as a rare and valuable art form and national  
6 treasure.

7 By putting it into that, if that bill goes  
8 through, automatically, those become trade secrets and  
9 they'll be -- they'll be protected the same way any  
10 musical piece, movie, other artworks are protected.

11 We've -- we haven't even begun the trial  
12 already, and there's been significant media coverage.  
13 We have people in here today from the media taking  
14 pictures of the courtroom. We've had lots of  
15 interviews and things going on. And the advertisers  
16 are now actually teasing that they're going to be  
17 revealing how some of his illusions are performed.

18 That's not -- it's basically not fair to have  
19 Mr. Copperfield have to divulge all of his trade  
20 secrets related to this trick and others when there's  
21 no reason for it. So we believe that eliminating  
22 the -- by precluding media and general public to come  
23 in during his testimony and several others where they  
24 discuss the actual methods and design of the illusion  
25 would -- would -- would protect Mr. Copperfield's trade

1 secrets.

2 MR. DEUTSCH: Thank you, Your Honor.

3 Your Honor, we submitted a brief on this  
4 yesterday, I believe. It starts off with the  
5 Constitution of the United States, Your Honor. The  
6 First Amendment holds very clearly that legal  
7 proceedings should be open to the public. The Supreme  
8 Court of Nevada in the Del Papa case has said that.  
9 There was another case, Suen v. Las Vegas Sands that  
10 said very clearly that legal proceedings are public  
11 affairs and should be open to the public for that  
12 purpose.

13 The argument that this trick that is relevant  
14 in this case, the Thirteen Illusion, is -- is a trade  
15 secret or a secret of any kind is belied by the  
16 position that Mr. Copperfield is taking in this case.  
17 Yesterday in the discussion about opening statements,  
18 Mr. Copperfield's attorneys provided the Court with  
19 some photograph demonstrative exhibits that they wanted  
20 to use to show how many people already know about how  
21 this trick is done.

22 And they're taking the position that there's  
23 over 100,000 people that already know how this trick is  
24 done. Every single night this trick is done,  
25 Mr. Copperfield selects 13 people, tells them how the

1 trick is done, shows them how the trick is done,  
2 doesn't make them sign any type of nondisclosure  
3 agreement of any kind. The world knows how this trick  
4 is done.

5           Any discussion about any other tricks, as far  
6 as we're concerned, Your Honor, have nothing to do with  
7 this case. If the defendants choose to come in here  
8 and disclose how other tricks are done, they do that at  
9 their own peril. This case is about one trick, the  
10 Thirteen, a trick that Mr. Copperfield claims he  
11 doesn't do anymore, which means therefore that there's  
12 no reason to protect the secret anymore; a trick that a  
13 simple search of the internet already discloses how the  
14 trick is done; a trick that 13 people every night for  
15 all the years knew how it was done.

16           So there's nothing secret about the Thirteen  
17 Illusion at this point. Anything having to do with  
18 another trick, we don't even think it's relevant to the  
19 case. And if they choose to use it, then they do so at  
20 their own peril, Your Honor. I think that the public  
21 has a right to know what's going on in this courtroom,  
22 and I think there's no reason to preclude anyone from  
23 being in here, including cameras.

24           Thank you, Your Honor.

25           Oh, can I just say one more thing? I

1 apologize.

2           There's no proof of any copyright here  
3 either. They didn't put that in their initial papers.  
4 There's no proof of a copyright anywhere, I don't  
5 believe. And they raised it today for the first time.  
6 So I don't think there's been any proof that anything  
7 here is copyrighted.

8           THE COURT: Okay.

9           MR. GLANCZ: Your Honor, to that point, I  
10 agree the tricks are not copyrighted. We've raised it  
11 just as an example of magic illusions being able to  
12 have that kind of protection, and that's what we're  
13 seeking here.

14           The case that plaintiff just cited as far as  
15 the openness of the proceedings to the media and  
16 general public, none of those cases that he cited have  
17 to deal with trademarked secrets. There's plenty of  
18 cases -- and the supreme court here in Nevada has said  
19 that they -- that closing proceedings may be weighed to  
20 protect trade secrets such as this.

21           His secrets are what makes him the magician  
22 he is today. And while the audience participants may  
23 be able to share their limited experience with respect  
24 to the small portion of the illusion, they would not be  
25 able to provide any information to the majority of the

1 illusion.

2           There's a lot of stuff that goes on while the  
3 audience participants are moving from one part of the  
4 stage to another, a lot. That's where most of the  
5 trick happens. Yes, the reveal is the -- the big  
6 climax of the trick, but a lot of other things go on  
7 during that time. And no one can testify to that.

8           Plaintiffs don't know the whole trick. The  
9 only person that does is Mr. Copperfield sitting right  
10 here next to us. So he should be able to be protected  
11 and not have to give up that information.

12           Additionally -- sorry -- excuse me -- with  
13 respect to the other trick, it goes without saying that  
14 that has to be revealed. It's definitely relevant to  
15 this case. When you have a person walking the same  
16 path as the plaintiffs no more than ten minutes before,  
17 it's going to be relevant. You have to discuss that.  
18 If he's discussing every method that goes on with the  
19 Thirteen Illusion, you're going to find out every  
20 method that goes along with the other illusions as  
21 well. And he should be protected from having to reveal  
22 all that just to defend himself in this case.

23           THE COURT: But you're the one that brought  
24 that out on this argument; right?

25           MR. GLANCZ: I am.

1 THE COURT: I didn't hear the plaintiffs  
2 bring out the resemblance of another act.

3 MR. GLANCZ: That's true. I don't know. I  
4 haven't been part of the whole discovery process of  
5 what they know, but I'm assuming that it came through  
6 in deposition testimony, and this is the first they  
7 learned about it.

8 MR. DEUTSCH: It did not, Your Honor.

9 MS. FRESCH: Your Honor, may I insert?

10 Mr. Copperfield testified about that in his  
11 deposition.

12 THE COURT: All right.

13 MS. FRESCH: It has been --

14 THE COURT: The fact is it hasn't been  
15 brought out by the plaintiff --

16 MS. FRESCH: But, Your Honor --

17 THE COURT: -- as being similar.

18 MS. FRESCH: But for us to properly defend  
19 Mr. Copperfield in this case and for him to properly  
20 defend himself, what -- what Mr. Deutsch is suggesting  
21 is that he has to choose between not bringing up  
22 another illusion so that he does not reveal the secrets  
23 behind how that illusion is performed, or he just  
24 doesn't get to defend himself properly. That's not  
25 fair. That's prejudicial to him. He has to be able to

1 bring up another illusion in order to properly --

2 THE COURT: And if that's the case, then  
3 there may be reason to close the court at that time.  
4 But that doesn't mean that everything having to do with  
5 this illusion has to be closed.

6 MS. FRESCH: Well, obviously, our argument is  
7 that this illusion should be the same closed proceeding  
8 because not everyone knows the entire process of how  
9 the Thirteen is developed and performed from step one  
10 to the end when those audience members reappear. No  
11 one knows that. Only Mr. Copperfield and the people of  
12 Backstage and the other stagehands have any concept of  
13 how that is done. That is secret.

14 Mr. Deutsch talks about things like, yeah,  
15 there's 96,000 participants. True. But they only know  
16 the part from when they leave the stage to where they  
17 end up in the back. They don't know how the rest of  
18 the illusion. For us to properly defend,  
19 Mr. Copperfield needs to explain all of that. I need  
20 to explain that in opening statements. How can I do  
21 that if I'm going to run the risk that  
22 Mr. Copperfield's illusions, the source of his entire  
23 career, will be revealed and will be on the news  
24 tonight?

25 It already was on "Good Morning America." It

1 was on all the local stations. This is, like, getting  
2 more media coverage. It's going to be on the news  
3 tonight. That's prejudicial to Mr. Copperfield in his  
4 business. These are proprietary information. That's  
5 why originally there was a confidential order that was  
6 agreed to by plaintiffs and signed by -- signed by Your  
7 Honor.

8 I'm sorry.

9 THE COURT: All right. Thank you.

10 MR. DEUTSCH: Your Honor, may I just make one  
11 point?

12 THE COURT: All right. The defense will have  
13 the last word on it. It's their motion.

14 MR. DEUTSCH: Yeah, I understand, Your Honor.

15 Two things. One, if -- if the relevance of  
16 the -- the second trick --

17 THE COURT: Don't refer to --

18 MR. DEUTSCH: I'm not. If the relevance of  
19 the second trick -- that's why I didn't name it, but  
20 "the second trick" -- is just that -- that there's a  
21 walking of the similar route, like counsel just said,  
22 they could say that without revealing anything else  
23 about that -- that illusion.

24 But the more concerning thing for us, Your  
25 Honor, is that this case has been through discovery for



1 four years now. We've had interrogatories, we've had  
2 multiple depositions of multiple witnesses, including  
3 Mr. Copperfield, Mr. Kenner, other employees that are  
4 involved in this illusion, the Thirteen Illusion.

5 And all of those witnesses were asked under  
6 oath in multiple occasions, explain to us how the  
7 illusion is done. Both Ms. Fresch and -- I'm sorry.

8 I don't know your name.

9 MR. GLANCZ: Mr. Glancz.

10 MR. DEUTSCH: -- Mr. Glancz just got up here  
11 and say even the plaintiffs don't know how this entire  
12 illusion is going to be done. And Ms. Fresch just said  
13 that she's going to tell the jury how the entire  
14 illusion is going to be done.

15 So we're sort of perplexed, Your Honor, how  
16 we're supposed to start this trial and open when we're  
17 now being told in front of everybody in this courtroom  
18 that there has been discovery that's been withheld from  
19 us in terms of all of the details of this illusion.  
20 Mr. Copperfield was asked under oath, "Tell us how the  
21 illusion was done."

22 It's now been clear that he didn't share all  
23 that information with us. Mr. Kenner was asked that  
24 question. It's clear that he didn't share all that  
25 information with us.

1           So we now feel that we're being prejudiced by  
2 starting a trial where the defendants have purposefully  
3 withheld information from us.

4           THE COURT: Okay. Thank you.

5           Let me hear last from defense.

6           MR. GLANCZ: Your Honor, first point is if we  
7 did say something to the effect that plaintiffs don't  
8 know how the -- plaintiffs' counsel doesn't know how  
9 the trick is done, that's -- I didn't mean to say that.  
10 They didn't -- they've gotten all the information. But  
11 it's also given under confidentiality and a protective  
12 order. So they have that, but they can't disclose it  
13 to anybody.

14           We want the same -- we want that to be -- to  
15 be protected here in trial, where he shouldn't have to  
16 make a choice between his future financial capacity in  
17 being able to perform different magic tricks versus  
18 trying to defend himself in a case.

19           And, currently, besides the one illusion that  
20 we talked about, Mr. Copperfield just informed us  
21 there's another illusion that is very similar to the --

22           THE COURT: Don't identify what it is,  
23 please.

24           MR. GLANCZ: I'm not.

25           MR. DEUTSCH: Your Honor, I just want to know

1 if Ms. Fresch misspoke also.

2 MS. FRESCH: No, Your Honor. I can tell you  
3 that, because I was at all those depositions, it -- it  
4 depends on how plaintiff asked their questions and what  
5 they asked. If they chose not to ask questions in  
6 depositions to elaborate on every process of the  
7 illusion, that's their problem. We get to talk about  
8 that now because we're in trial.

9 THE COURT: All right. Thank you. I don't  
10 consider -- yes?

11 MR. ROBERTS: Yes. Your Honor, Lee Roberts,  
12 Backstage Employment and Referral.

13 As you know, Your Honor, my company employs  
14 the stagehands. And I just wanted to -- to tell the  
15 Court that we would support the request to close the  
16 courtroom only during the limited portions of the  
17 opening and the trial where the details of the illusion  
18 are discussed.

19 The continued employment and the ability to  
20 earn a living of the stagehands depends upon  
21 Mr. Copperfield's success, which, in the case of a  
22 magician, depends on the preservation of trade secrets.  
23 When illusions are known, they lose their magic.

24 In Richmond Newspapers v. Virginia, 448 U.S.  
25 555, page 600, note 5, Justice Stewart noted that "the

1 protection of trade secrets is one of the limited  
2 circumstances that can justify the exclusion of the  
3 public from a trial during very limited segments of the  
4 trial."

5 And we're not asking to close the whole  
6 trial, but we support a request to close very limited  
7 portions of the trial, Your Honor.

8 Thank you.

9 MR. DEUTSCH: Your Honor, can I just make a  
10 clarification after Mr. Roberts's comments?

11 Our understanding was that the only dispute  
12 that we were having at this moment was whether or not  
13 cameras would be allowed to roll and not an issue -- I  
14 was pretty confident that Your Honor has already ruled  
15 on two occasions very clearly that Your Honor was not  
16 going to close the courtroom as to reporters and that  
17 the only thing that was being discussed here was the  
18 issue of whether cameras would be allowed --

19 THE COURT: No, I think the motion goes  
20 beyond that.

21 MR. DEUTSCH: Okay.

22 THE COURT: So I -- I looked at it. Here's  
23 what I understand the defendant to be seeking. This is  
24 page 6 of the defendants' motion that was filed  
25 April 10th.

1           It says, "Therefore, defendants request that  
2 the Court close the proceedings for opening statements,  
3 closing arguments, and parts of the argument and  
4 testimony related to the defendant's trade secrets, and  
5 specifically the Thirteen Illusion" -- and I'm not  
6 going to go beyond that.

7           MS. FRESCH: Right.

8           THE COURT: Okay.

9           MS. FRESCH: Okay.

10          THE COURT: All right. Well, here's my -- my  
11 ruling: I don't consider the -- the specific illusion  
12 involved in this case to be -- to warrant closing the  
13 courtroom. Okay? So opening statements, questioning  
14 of witnesses, everything else, I'm not going to close  
15 the courtroom or the cameras relative to that illusion.

16          But if you're going to get into something  
17 else, approach the bench -- approach the bench -- and  
18 let me know, because there may be reason to either --  
19 either close the cameras or close the courtroom or  
20 whatever. Okay? There are some things there that may  
21 be protectable trade secrets that would warrant the  
22 Court's consideration of closure of proceedings.

23          But I'm not going to close the proceedings  
24 relative to the specific illusion that's involved here,  
25 the Thirteen Illusion, because I think that's -- that's

1 been out for quite some time in terms of -- and what  
2 we're talking about is -- is what happened in this  
3 case. And I think that's certainly something that's  
4 subject to open court proceedings. Okay?

5 So there's my ruling.

6 So I'm going to need an order to be  
7 submitted. And I'm -- I want counsel to be on the same  
8 page on it; if not, submit competing orders and then  
9 I'll determine which one to sign.

10 MR. GLANCZ: That's fine, Your Honor. I'll  
11 draft that order, and then I can pass it over to  
12 plaintiffs' counsel for their approval.

13 In the meantime, I'd also like to do an oral  
14 motion for stay pending the writ that we'll be filing  
15 today.

16 THE COURT: Well, all we're doing today is  
17 opening statements. So I'm not going to stay the  
18 proceedings. We'll go on with opening statements. And  
19 that gives you time if you're going to be seeking a  
20 writ. You know, we're not going to be reconvening  
21 until next Tuesday, so -- right?

22 MR. GLANCZ: Yes. Thank you, Your Honor.

23 THE COURT: All right. So we're ready for  
24 the jury?

25 MR. MORELLI: Finally. Yes.

1 THE COURT: Okay. Let's have the jury  
2 brought in. I stand, and I expect everybody else to do  
3 so when the jury comes in.

4 THE MARSHAL: All rise.

5 (The following proceedings were held in  
6 the presence of the jury.)

7 THE COURT: Good morning, ladies and  
8 gentlemen.

9 IN UNISON: Good morning.

10 THE COURT: You may be seated when you've  
11 found your assigned seats. You may be seated, ladies  
12 and gentlemen.

13 Do counsel stipulate that the jury is now  
14 present?

15 MR. MORELLI: So stipulated, Your Honor.

16 MR. POPOVICH: Yes, Your Honor.

17 MS. FRESCH: Yes, Your Honor.

18 MR. RUSSELL: Yes, Your Honor.

19 THE COURT: Ladies and gentlemen of the jury,  
20 the plaintiffs are entitled to present the first  
21 opening statement. And, at this time, you may proceed,  
22 counsel.

23

24 OPENING STATEMENT

25 MR. MORELLI: Thank you, Your Honor. May it

1 please the Court. Multiple counsel -- I'm not naming  
2 all of you -- good morning.

3 IN UNISON: Good morning.

4 MR. MORELLI: He's back. I have a number of  
5 things to talk to you about. You're all the way back  
6 there, so if I get a little wet up here, you won't get  
7 hurt.

8 It's interesting that -- that we are here to  
9 discuss the Thirteen Illusion on Friday the 13th.  
10 Okay? Hopefully none of you are too superstitious.  
11 There are no black cats in the audience.

12 We're going to be discussing exactly what the  
13 evidence is going to show. And I want you to  
14 understand that, as I told you for many hours in jury  
15 selection, that the evidence comes during the trial.  
16 So although what I say to you and what the other  
17 lawyers say to you is important for you to pay  
18 attention to and listen to, it's not evidence in the  
19 case. All right? And so I'm not going to be showing  
20 you photographs or charts or anything in opening  
21 statement. We're going to talk. Okay? Just like we  
22 talked in jury selection, maybe you would say for too  
23 many days, but thank you for hanging in there.

24 First thing I want to note is that my clients  
25 are in the courtroom today. And that is Gavin Cox



1 sitting there and his wife Minh. And their three sons  
2 are in the corner there.

3 And it's very important for you to  
4 understand -- and I think I told you this in jury  
5 selection -- that we're not here to prove that David  
6 Copperfield's a bad person. That's not this case, not  
7 this case. We're not here to prove that MGM Grand is a  
8 bad company or that anybody -- or the other defendants  
9 are bad. You know what I'm saying?

10 No. As a matter of fact, Gavin Cox isn't in  
11 here suing because he's angry. You're going to hear  
12 him testify he's not angry; he's injured. And if you  
13 remember, I told you, right from the beginning, about  
14 this trivialization. And you're going to hear the  
15 testimony in this case. This is no trivial matter.

16 So the Thirteen Illusion, we're going to show  
17 you that it's an accident waiting to happen. It's  
18 obviously dangerous. And the additional actions that  
19 the defendants took, and failed to take, caused Mr. Cox  
20 to be injured. And I'm talking about all of the  
21 defendants that you heard about in jury selection.

22 Now, it's very important to recognize that in  
23 jury selection we're very fortunate that we're able to  
24 talk with you, ask you questions, you give us answers.  
25 I believe every one of you was about as open as you

1 could be, surprisingly, even more than I thought. And  
2 we take those answers and we decide whether or not --

3 MR. POPOVICH: Objection. Now, this is not  
4 opening. It's argument.

5 THE COURT: Okay. Go ahead, counsel.

6 MR. MORELLI: Thank you, Your Honor.

7 So you are going to hear that, when the  
8 witnesses take the stand, all of the witnesses who are  
9 going to be called, other than the plaintiffs  
10 themselves, are going to be defendants' witnesses. We  
11 don't have the information; they have the information.  
12 The only information we have on our side, without  
13 getting it from them, is what the plaintiff says. And  
14 I want you to remember that as I go through in detail  
15 what I think this case is really about.

16 There was a duty by the defendants to provide  
17 a safe environment for the audience participants. Now,  
18 there's many things that I'm going to tell you today,  
19 all of which will be proven during the trial. We're  
20 going to prove to you that this Thirteen Illusion was  
21 fraught with danger. And it's about the illusion that  
22 was performed on November 12th, 2013. And you remember  
23 I told you that you could remember easily the date of  
24 the accident, 11/12/13. Okay? That's how I remember  
25 it, anyway. We're going to prove to you that it was

1 dangerous in the way it was designed and dangerous in  
2 the way it was executed. That's what we're going to  
3 prove.

4 Now, the MGM Grand defendant is not the only  
5 defendant that was complicit in this accident. David  
6 Copperfield himself -- and as you can see, he's here in  
7 court -- David Copperfield Disappearing, Inc.,  
8 Backstage Employment and Referral, all of those  
9 defendants were complicit in causing this accident that  
10 Mr. Cox had. Team Construction is liable in a  
11 different way, and you are going to hear about that.  
12 I'm going to talk about it. Got to leave you something  
13 to anticipate. Okay?

14 You're going to find that David Copperfield  
15 needs help to do his illusion -- help from the  
16 Backstage Employment employees, we're going to prove to  
17 you; help from MGM Grand employees; and help from the  
18 audience, the audience participants.

19 Now, the audience participants do not know  
20 what to expect. Now, understand that the evidence that  
21 I will be bringing to you during this trial along with  
22 my associate, Mr. Deutsch, who's not listening to me  
23 this morning. Okay? You know what I'm going to do  
24 about that when I get back.

25 We're going to be bringing forth the

1 evidence, and I can tell you that with confidence  
2 because we have all the deposition testimony of the  
3 witnesses in this case: Backstage Employment  
4 employees, David Copperfield himself, MGM Grand. We  
5 have taken this testimony over the years, over the four  
6 years that we have been doing this case.

7           Now, you're going to hear that they agree.  
8 They will tell you, because I'm going to call them on  
9 my case and I'm going to cross-examine them. And they  
10 will tell you that the audience members were never told  
11 what they were going to encounter during this illusion.

12           So I say that Mr. Cox was never warned of a  
13 possible accident. He was never warned or thought of a  
14 possible injury. Quite the contrary. He and possibly  
15 all of the other participants had an expectation of  
16 safety. An expectation. Because if, in fact,  
17 Mr. Copperfield is standing up on the stage and he's  
18 telling everybody in his opening -- and I'm sure that  
19 you'll see this video of that, not of the night of this  
20 accident, but the way he normally talks to everybody --  
21 he tells the audience, "You're going to be randomly  
22 selected."

23           So Mr. Cox said okay. I guess I'm going to  
24 be okay, you know. Why would David Copperfield, who is  
25 so famous, select me and not protect me? Select me and

1 not protect me.

2           So I'll tell you that Mr. Cox was never  
3 warned, never asked to sign a waiver assuming the risk,  
4 so Mr. Cox never assumed any risk.

5           Now, let's talk a little bit about this  
6 Thirteen Illusion. I'm not sure that it's clear that  
7 13 balls -- plastic, glass, rubber, whatever they are,  
8 immaterial to me -- are thrown out into the audience,  
9 music playing, lights flashing, and the people who  
10 catch the balls have an opportunity to go up to the  
11 stage.

12           Now, you're going to learn that sometimes  
13 there's 16 people who go up to the stage, 13 people.  
14 It varies. And then they go up to the stage. They go  
15 into a -- really not a box, but sort of configured like  
16 a box with curtains all around, and they disappear.  
17 They disappear. And when they reappear -- and keep  
18 that thought in your mind, when they reappear, because  
19 I'm going to talk to you about specifically yes and no,  
20 okay, they reappear in the back of the audience.  
21 Stage, disappear, back of the audience, reappear.

22           From the audience perspective, the entire  
23 trick or illusion is very polished and smooth, because  
24 that's their perspective, just like this. So when the  
25 curtain comes down and you can't see the participants

1 any longer, the audience doesn't know what's happening.  
2 That's the idea. But what the audience doesn't see is  
3 the chaos that's going on behind the scenes, behind the  
4 curtain, and further behind the scenes.

5 And we're going to talk about that. We're  
6 going to talk about this chaos, because that's what I  
7 think it is, and I think you are going to agree.

8 MR. RUSSELL: Objection. Personal opinion.

9 THE COURT: Hold on one second. There's an  
10 objection.

11 MR. RUSSELL: Objection as to personal  
12 opinion.

13 THE COURT: Sustained.

14 MR. MORELLI: We're going to talk about how  
15 the chaos was created, who created the chaos, why there  
16 was chaos, and how that chaos caused injury to Mr. Cox,  
17 because I submit to you that the evidence is going to  
18 show you that that was a major reason why Mr. Cox had  
19 an accident. And I'm not so sure I want to call it  
20 that.

21 Now, participants are put in the box or  
22 behind the curtains, and they're sitting in stadium  
23 seating, and there's approximately 13 of them.  
24 Sometimes there is; sometimes there isn't. But when I  
25 question the witnesses, you are going to hear that

1 there could be as few as 10 and there could be 13. So,  
2 not so sure that's relevant, but it's called the  
3 Thirteen Illusion anyway.

4           The curtain comes down. And as soon as that  
5 curtain comes down and the audience sees the curtain  
6 coming down, the clock starts ticking because that's  
7 the beginning of the illusion. And you'll see that  
8 when that happens, Mr. Cox describes it as "all hell  
9 breaks loose." And he says that he goes from -- and  
10 that is Mr. Cox talking. That's who you are going to  
11 hear from the witness stand. He goes from a feeling of  
12 excitement to sheer panic. That's his testimony.

13           And you have to understand that the box or  
14 the cage is -- has curtains on all sides and the  
15 participants are sitting in there. They don't know  
16 what to expect, and they haven't been told anything.  
17 So they're sitting there and they're listening, and  
18 they're hearing the music that all of the audience  
19 members who aren't involved as participants are  
20 hearing. And the music is very loud.

21           So therefore one of the Backstage  
22 employees -- and I -- I guess we'll see this, but I'll  
23 describe it the best I can. One of the seats pulls up  
24 and out comes a Backstage employee. And he yells,  
25 "Stand up." Yells it out. And he yells it out in this

1 confined space. But he yells it out because the music  
2 is playing so loudly that no one would hear him. So he  
3 yells it out. "Stand up. Come with me." And Mr. Cox  
4 describes it as a rabbit coming out of a rabbit hole,  
5 just startling.

6           So, now, you're going to find that this  
7 illusion is planned to decide how the participants are  
8 going to get from Point A to Point B, Point A to Point  
9 B. And, as with sound common sense -- and you are  
10 going to hear the testimony in this case, that in order  
11 for this illusion to work and for there to -- for it to  
12 be more amazing, it has to be quick. Has to be quick.  
13 Has to move very quickly. So I'm going to see that  
14 they have to get from the stage to the back of the  
15 audience as quickly as possible.

16           Now, you're going to learn -- 'cause we  
17 know -- that David Copperfield bought this trick from  
18 someone else a very long time ago. And he states, and  
19 other witnesses, their witnesses, state that after he  
20 bought the illusion, he then totally redesigned it.  
21 And I think the term that he used and the other  
22 witnesses used is, "He made it his own." So it was  
23 totally redesigned. And you're going to know that the  
24 shortest distance between two points, we all know, is a  
25 straight line. And there's no straight lines here.



1 For the audience to go from the stage to the back, the  
2 participants, is anything but a straight line.

3           And the entire route, you're going to hear,  
4 was designed by David Copperfield and some of the  
5 Backstage Employment people. They designed the route.  
6 Which means that they could have designed the route any  
7 way they wanted. Their illusion, their design, their  
8 route, their responsibility.

9           So you're going to know and learn that it was  
10 filled with confusion -- the route -- surprise, and  
11 danger. Confusion, surprise, and danger. Now, what do  
12 I mean by that? Well, you are going to learn that  
13 there were multiple turns, going from dark to light,  
14 from light to dark, from carpet to tile, from carpet to  
15 concrete, from inside to outside, and from outside to  
16 back to inside. That's the route.

17           Now, when I say outside, I mean outside the  
18 entire building, outside on the street, in the street.  
19 That's the route that was designed by Mr. Copperfield  
20 and Backstage. This is when he made it his own.

21           Now, when they're doing this route, they're  
22 being prompted by Backstage employees to hurry, hurry  
23 up. Run, run, run. Hurry up. Run, run, run. Hurry  
24 up. Run, run, run. And they're then directed to turn  
25 right or left at the very last second. No notice.

1 Very last second. So that the employees of the  
2 defendants forced these unsuspecting participants to  
3 run around an unknown route, not knowing what they're  
4 going to encounter.

5           So let's talk about the -- the -- exactly  
6 what the trick is. I'm sure you have been waiting for  
7 that. But, you know, we have so much information  
8 already in jury selection and now that you probably  
9 figured it out. So, as I told you, the curtain comes  
10 down and the clock starts ticking.

11           So they're in this box, curtains, curtains,  
12 curtains. You heard about the employee yelling "Stand  
13 up. Come with me." And now they file out the back.  
14 And it's called -- this tight passageway -- that's  
15 called the dragon. That's what they call it. It's a  
16 hidden stage prop and they file out the back, and they  
17 run down six stairs. I think it's six. I think if I  
18 counted right. Mr. Cox describes the employees yelling  
19 "Hurry up. Run, run, run."

20           At the bottom of the stairs is the first  
21 intersection, for lack of a better term. So they don't  
22 know if they have to go straight, left, or right. So  
23 the last minute, they're told to turn right. So they  
24 turn right. And they go into a hallway.

25           Now, Mr. Cox says, "Everyone in front of me

1 was running as fast as they could." And hallway No. 1  
2 is a dark hallway. So they run to the end of that  
3 hallway and they meet up with another intersection.  
4 Another decision: Are they making a right, are they  
5 making a left, or are they going straight? They don't  
6 know until the last second.

7           So now, this time, they get to the end, and  
8 they have to make a left, right away, all the time  
9 being prompted to hurry and to run. And they now go  
10 down another hallway, which is different. And they  
11 come to the end of the second hallway, and the same  
12 thing happens: They're at this intersection where they  
13 have to make a right or a left, because they don't  
14 know. Last second, turn left.

15           Now, at the end of that hallway, which is  
16 lit, by the way, they make a left, again, into hallway  
17 No. 3. But it's a little different this time, because  
18 they're running, running, running, hurrying, hurrying,  
19 hurrying, and they get to the end of hallway No. 3, and  
20 there's a set of doors, and the doors are opened, and  
21 they go through the doors, and they find themselves  
22 outside.

23           Now, you are going to see that when they  
24 found themselves outside, it was 8:30 at night,  
25 approximately. I think maybe a little shy of 8:30. It

1 was dark. It was dark, and there was no overhead  
2 lighting. And outside in the dark, when they're on the  
3 street -- and I believe that was Tropicana Avenue --  
4 there's MGM employees standing outside, some of which  
5 had flashlights. And again, they don't know where  
6 they're going.

7           So they get to the outside, and the last  
8 second, they're told "Turn right, turn right." So they  
9 make a right. And now they're running on concrete,  
10 outside, along the side of the building in the dark.

11           Now, you're going to learn that the MGM  
12 employees are along the route, some of which -- or some  
13 of whom had flashlights. And that was even more  
14 disconcerting and confusing that the light was moving,  
15 and it was dark out. No overhead lights. And they're  
16 still running and hurrying.

17           And you're going to -- you're going to --  
18 you're going to see that this was a big-time rush, that  
19 they were running for their lives, with crazy looks on  
20 their faces. And I want you to remember that because  
21 we're going to revisit that at the end of my opening  
22 statement to you. Running for their lives with crazy  
23 looks on their faces.

24           Now, along with the MGM employees who were  
25 along the route, with the flashlights, there were

1 Backstage employees, one of them in front pulling the  
2 herd, and one of them in back. And you're going to  
3 hear from them. I'm calling those people to testify to  
4 you. And one of them in the back, pushing the herd.  
5 Because that's the way it was.

6           Now they're running outside. The building is  
7 to their right. They're running, and there's a --  
8 there's an employee, an MGM employee, standing right at  
9 that point -- let's assume that this is the next  
10 right -- standing over here with a flashlight. And  
11 he's yelling "Turn right. Turn right." So now, when  
12 he's yelling "Turn right," you're coming along, you're  
13 running and you're running and you're running. And as  
14 soon as you turn right, this next right, there's an  
15 additional obstacle that no one warned anybody of. An  
16 additional obstacle. And what was that obstacle?  
17 Well, they weren't turning onto a flat surface. They  
18 were turning from a flat surface to an incline, an  
19 unsuspected incline. Now, nobody warned any of the  
20 participants. And obviously, we're interested that  
21 Mr. Cox wasn't warned of this incline.

22           And so at that time -- and you're going to  
23 hear testimony because I'm going to be calling this  
24 witness too -- you're going to learn that the director  
25 of risk management for MGM Grand, who's here in the

1 courtroom -- he's the first person in the second row  
2 here -- Mark Habersack, he's going to testify. I'm  
3 going to call him. But we already know what he says  
4 under oath. And I'm going to read it to you so I get  
5 it exactly right. He says --

6 MR. RUSSELL: Objection, Your Honor. Reading  
7 a deposition.

8 THE COURT: Sustained.

9 MR. MORELLI: -- that any prudent person, any  
10 prudent person would warn his participants of the  
11 elevation change as they are participating in the act.  
12 I would hope Copperfield did do that.

13 So now what happens is they go up this  
14 incline -- call it a ramp -- and they continue on,  
15 going through the doors, back inside the building.  
16 They go through -- and they're now into this loading  
17 area. And then they go through another set of doors to  
18 inside the casino. And, again, they don't know which  
19 direction to go -- right, left, straight.

20 So they get sent in to the kitchen. That's  
21 what they call it. Into the kitchen. And you're going  
22 to hear that that kitchen has been described as a maze  
23 into itself. And what's in the kitchen? Well, it's an  
24 active kitchen with cleaning supplies, boxes, food  
25 service items. They're running through a kitchen.

1 Running. And they run up another set of stairs, back  
2 into the theater. Finally, Point B.

3 Now they've gone from light to dark. They've  
4 gone from different surfaces to different conditions.  
5 And all of that, you're going to hear from their  
6 witnesses, takes about a minute. So you can imagine,  
7 in order for all of that to take a minute, how fast you  
8 have to do it.

9 So we'll prove to you that this accident that  
10 Mr. Cox had was foreseeable. They certainly could  
11 figure it out, that this could happen. And I'm going  
12 to talk, in a little while, about the fact of what they  
13 do, which will prove to you, during this trial, that it  
14 was foreseeable and that they had an obligation to keep  
15 these people safe and keep Mr. Cox safe.

16 Now, on this night, you are going to learn  
17 that, when they turned this last turn that's outside  
18 onto this ramp, there was an additional obstacle, an  
19 additional obstacle. And what was that? Well, you're  
20 going to learn that there was construction going on  
21 inside the MGM Grand. They were building a nightclub.  
22 And Team Construction was building that nightclub. And  
23 the MGM Grand had the right to tell Team Construction  
24 where to place their dumpster. And I think all of us  
25 know what a dumpster is, you know, for debris and

1 garbage that has to be thrown out. And the dumpster  
2 was placed -- and let's assume that this is the incline  
3 here -- right adjacent, right over here.

4           Putting Mr. Deutsch right in the dumpster.  
5 That might happen.

6           And they knew -- the MGM Grand knew that,  
7 when they told Team Construction that they should place  
8 their dumpster there, that that's where the Thirteen  
9 Illusion had its route. Part of its route was right  
10 there. They knew it. And yet they decided to make,  
11 tell, instruct Team Construction to place their  
12 dumpster there. So that they -- and you -- you are  
13 also going to learn that the MGM Grand has an agreement  
14 with the construction company and the nightclub that's  
15 being built, Beacher's, that they have the right, MGM  
16 does, to instruct them as to where they place their  
17 materials and things like the dumpster and that they,  
18 therefore, violated their own rules by placing it  
19 there, because Team Construction doesn't know anything  
20 about this Thirteen Illusion, but MGM Grand does.  
21 Their employees are working it.

22           So now you're going to hear that Team  
23 Construction was doing the construction work. They  
24 were the general contractor. And, as the general  
25 contractor, you are responsible for any subcontractors



1 who you hire and whatever their actions are.

2           And you are going to learn that the corner  
3 where Mr. Cox fell, when he turned the corner on that  
4 elevation, you're going to see photographs of him --  
5 not now, during the real trial; not now, although I  
6 could.

7           You're going to see photographs of -- after  
8 Mr. Cox fell, of this dust and debris all over his  
9 clothing and all over his shoes.

10           So it was a confluence of events that caused  
11 Mr. Cox to fall and be injured. Running, dark, unknown  
12 incline, unknown route, dust and debris. That's what  
13 we submit to you caused Mr. Cox to be injured. And  
14 we're going to prove it to you.

15           So, you know, we heard a number of things  
16 during -- during jury selection about, you know,  
17 when -- when we talk to you in jury selection,  
18 obviously, what we say is not evidence, just like now,  
19 but you remember.

20           And it doesn't matter, you will see, that --  
21 whether or not Team Construction employees were home  
22 with their families at the time when the accident  
23 happened because they left the job at 2:30 and the  
24 accident happened around 8:30 at night. What does  
25 matter is not when they left the job but how they left

1 the job. So whether they're home with their families  
2 when Mr. Cox gets injured is not the issue. The issue  
3 is in what condition did you leave the job?

4 Now, you're going to learn, through the  
5 evidence in this case -- and I'll tell you that Team  
6 Construction, in their own materials talking to their  
7 employees about safety, state they agree that poor  
8 housekeeping is a frequent cause of accidents. Poor  
9 housekeeping. They also state they agree that anything  
10 left lying around can become a slipping or tripping  
11 hazard. They don't differentiate between slipping and  
12 tripping because it doesn't matter. Because when  
13 someone is caused to fall and get injured, you know --  
14 so that's what Team Construction says.

15 Now, it's important for us to talk about  
16 the -- what I call the so-called screening process that  
17 David Copperfield and his people do after they call the  
18 participants up to the stage. They say -- and you will  
19 hear on the testimony -- that as the participants are  
20 walking up the stairs to the stage, they're eyeballing  
21 them, looking at them and trying to decide whether  
22 they're going to be able to do this magic.

23 So, now, you will also learn that this entire  
24 process, this screening process of eyeballing and  
25 asking questions and so-called weeding out people,

1 takes a few minutes. That's like us picking a jury in  
2 three or four minutes instead of a week and a half or a  
3 week or -- you probably felt it was a month.

4 MR. POPOVICH: Objection. Argument.

5 THE COURT: Sustained.

6 Go ahead.

7 MR. MORELLI: So they ask questions of the  
8 people who come up. And they say, "Can you speak  
9 English?"

10 I don't know if you're asking somebody who  
11 doesn't speak English if they could speak English  
12 whether or not you're going to get an answer, but let's  
13 assume that "Do you speak English? Yes or no?" you  
14 have to speak English. And the reason, we're going to  
15 prove to you, that they ask that question is because  
16 they know they're going to give all of these  
17 instructions as they're running, right, left, straight,  
18 hurry, you know, stand up. So they want them to speak  
19 English.

20 But -- I'll ask them. But the more  
21 interesting question is that they ask, "Are you  
22 pregnant?" Are you pregnant? They ask women this,  
23 obviously, "Are you pregnant?"

24 Now, I would -- I'm going to probe to find  
25 out whether or not they're asking every single woman if

1 they're pregnant, but that's one of their questions.  
2 And I'm going to prove to you that the reason that they  
3 ask that question is because they know that, with this  
4 illusion, someone can get hurt, someone can fall,  
5 someone can get bumped into. And I'm sure that we're  
6 going to find out that they want to protect the unborn  
7 child. So that's another question.

8           Now, third question of category number one of  
9 questions, which I call the category where they're  
10 deciding who should participate. And I'm going to ask  
11 whether or not they're deciding who to participate to  
12 protect the participants or to protect themselves from  
13 liability, going to ask that question. Remember that.

14           And they ask, "Can you run?" Can you run?  
15 Now, that's a, I would state, pretty straightforward  
16 question, very obscure. They're never told how fast,  
17 how far, or in what manner. Never told.

18           So they have a second set of questions. "Are  
19 you a member of the press?" That's one question.

20           These questions are to protect  
21 Mr. Copperfield's secrets. I understand that.

22           "Are you a magician?" I'm sure that's hard  
23 to answer because I would think some people think they  
24 are.

25           And they then -- and you're going to learn

1 that, along with these questions -- Are you a member of  
2 the press and are you a magician? -- that I couldn't  
3 participate in this illusion, neither could Mr. Deutsch  
4 and Mr. Perry or any of those lawyers over there or  
5 even the judge because they ask, "Are you a lawyer?"  
6 Are you a lawyer? And I'm going to leave it to you to  
7 figure out why they ask that question, but I'm going to  
8 prove to you that they do. Are you a lawyer?

9           Now, they're also doing other screening,  
10 which they call "visual screening." And they state  
11 that they're screening out -- and when I say "screening  
12 out," what they do is, when people come up to the  
13 stage, certain people, they eyeball, and they put them  
14 on chairs to the side. They'll tell you that. This  
15 isn't a secret. Okay? They put them to the side.  
16 There's chairs to the side.

17           And one group that they eyeball to put to the  
18 side that won't be participating, they say, are young,  
19 hip men. I don't know if I was one of those at one  
20 point, but hip. We're going to find out what that  
21 means, young, hip men. And the reason that they don't  
22 want young, hip men -- we'll find out whether they  
23 allow young men who aren't hip -- I don't know -- young  
24 laymen -- I don't know -- but young, hip men because  
25 they are more likely -- this is what they've decided,

1 that they're more likely to tell the secrets of the  
2 trick, young, hip men. So they're weeded out.

3 So they also state that they weed out people  
4 with certain footwear, like flip-flops and heels.  
5 We're going to prove to you they're not so good at  
6 that.

7 Now, we're going to show you that the reason  
8 that they're doing this is because they know that this  
9 could be dangerous. They're undertaking this duty to  
10 decide whether or not certain audience members can  
11 participate. They therefore, I will show you, have a  
12 heightened duty --

13 MR. RUSSELL: Objection, Your Honor.

14 MR. MORELLI: -- to protect them.

15 THE COURT: Sustained. That's a legal  
16 question.

17 MR. MORELLI: They have to protect the people  
18 who are unsuspecting, who don't know what's going to  
19 happen. And it's so clear. Everyone testifies that  
20 they don't tell them anything about what's going to  
21 happen.

22 Now, after the screening is done and the  
23 people are chosen -- chosen -- oftentimes, the people  
24 who started don't finish. They don't finish. And  
25 we're going to prove to you, for various reasons. It's

1 too hard, they're out of breath, they lose shoes, they  
2 fall, they stumble into one another, and they don't  
3 finish.

4           So we submit to you that, not knowing what  
5 they have to do, they can't make a decision as to  
6 whether to say yes. So we're going to show you that,  
7 no matter what the defendants tell you now, people have  
8 fallen before.

9           And it's not a safe route that they have them  
10 run because of all of the problems that I have told  
11 you.

12           And let's talk about the surveillance now.  
13 And I think I mentioned this to you in jury selection  
14 about the -- somebody's always watching. And we have a  
15 situation, you'll see, that this case is one of common  
16 sense. And I think I told you that from the beginning,  
17 and that's why I'm not doing anything fancy now. I'm  
18 just talking to you. It's a case of common sense -- no  
19 illusions here, common sense -- for you to decide.

20           And you don't need an expert, you don't need  
21 an engineer to tell you what happened here.

22           MR. POPOVICH: Objection. Argument.

23           THE COURT: This is argument, Counsel.

24           MR. MORELLI: All you need is the evidence  
25 that we're going to show you, which is what happened.

1           Now, what you're going to see is that,  
2 although it's believed that, in Vegas, somebody's  
3 always watching and there's the eye in the sky. And I  
4 believe that the jurors had talked about that. So  
5 that's no secret. That -- not that I think it's  
6 necessary, but, certainly, it would be helpful to have  
7 a clear video.

8           Now, this entire route, I'm going to show  
9 you, as I told you before, is created and designed by  
10 Copperfield and Backstage. MGM knows about it, so  
11 they're involved. And you're going to see that all of  
12 the route that I told you, the first hallway -- coming  
13 down out of the box, the first hallway, the second  
14 hallway, the third hallway, through the doors, outside,  
15 all around, up the ramp, back inside, through another  
16 set of doors, into the kitchen, out of the kitchen, up  
17 another set of stairs, into the casino, all of this,  
18 not on video at the MGM Grand Casino.

19           Now, you're going to learn that the head of  
20 risk management, Mr. Habersack, who I introduced you  
21 to, states that the MGM Grand property has over 2,000  
22 video cameras that he knows of -- that he knows of --  
23 over 2,000 that he knows of. And the one video that we  
24 were provided is dark, grainy, and shot through a tree.

25           Okay? Now, understand that we have a



1 situation where it would be more helpful to certainly  
2 have a video of what happened during the accident. I  
3 think we would all agree to that. And it's even more  
4 important for you to know that this area -- I go back  
5 over here because that's when I was talking about the  
6 ramp area -- this area here, this ramp that's outside  
7 the hotel and casino, is concrete.

8           And it's an area that is not only used by  
9 Team Construction as a lay-down area for their  
10 materials and everything, which MGM Grand told them to  
11 do, but it's also a high-security area. You're going  
12 to learn it's a high-security area. Why? Because,  
13 during the day, the Brinks truck backs up in there to  
14 take all the money out of the cage, which is through  
15 those double doors that the participants run through  
16 after they go up that ramp. And so this high-security  
17 area has one video camera in the corner of the building  
18 shot through a tree.

19           So I submit to you that you're going to see,  
20 when you have all of the evidence that I've already  
21 spoken about, that you're not going to need any  
22 animation, we're not going to have to know whether you  
23 like Captain America; you're going to see that this  
24 accident is caused 100 percent by the defendants the  
25 way I have described it.

1           Now, let's talk about the investigation part  
2 of what happened. The accident happens. Mr. Cox is  
3 injured. And after all of this happens, his wife,  
4 Minh, who is sitting next to him right there, no one  
5 tells her that -- where her husband is or that he's  
6 injured. No one tells her. And she's asking, but no  
7 one would talk to her and no one would give her  
8 information. That's what she's going to testify to.  
9 She's trying to find out where he was because it was a  
10 long time after the --

11           MR. POPOVICH: Objection. This is Phase 2  
12 issues.

13           MR. MORELLI: We're not talking about  
14 injuries, Mr. Popovich.

15           MR. POPOVICH: Okay. Your Honor --

16           MR. MORELLI: So --

17           THE COURT: Go ahead.

18           MR. MORELLI: -- now you're going to see  
19 that, at a certain point, she says that they were  
20 utterly -- that they utterly refused to answer her  
21 questions about anything. "I begged them, and they  
22 wouldn't answer."

23           So now you're going to learn, with the  
24 evidence in this case, that the MGM Grand has a  
25 security department handbook that states, "You should

1 not, under any circumstance, discuss or accept  
2 liability with a guest on behalf of the MGM Grand or  
3 management for a situation in which a guest claims to  
4 have suffered harm or damages."

5           So they are now instructing their security  
6 department to not talk to these people. They're  
7 controlling the situation right away. Right away.

8           And with the lack of surveillance and this  
9 rule and what I'm going to talk to you about in a  
10 minute, which is the investigation phase, I submit to  
11 you that's what they wanted.

12           So now the MGM Grand, who is supposed to be  
13 doing an investigation when something like this  
14 happens, you will see -- because we have the  
15 evidence -- and all the evidence other than Mr. Cox and  
16 his wife is their evidence, their witnesses, their  
17 documents, their photographs, not mine, not ours.

18           And they have Backstage employees, MGM Grand  
19 employees. They work for them. They're available.  
20 Right after the accident, the next day after that, no  
21 interviews, no interviews. They interview none of  
22 them.

23           Now, one of the MGM Grand employees is  
24 standing right here at the point when Mr. Cox rounds  
25 the corner. They don't interview him. There's a

1 person from Backstage pushing the herd. They don't  
2 interview him. There's a person in the front pulling  
3 the herd. They don't interview him. So that's their  
4 employees.

5 Now, what about the participants? I mean,  
6 there are 12 others, I guess, running along with  
7 Mr. Cox, 10 others. We don't know who dropped out  
8 because we don't have an investigation that was done.  
9 And so if there isn't an investigation done, then I  
10 guess it didn't happen. Hmm?

11 So now the participants who were running  
12 alongside, in front, in back maybe of Mr. Cox, they're  
13 not interviewed. And you're going to see that -- and  
14 I'm going to talk about that in a minute -- they're  
15 brought -- they're not released right away after the  
16 illusion is over. They're brought into a room to be  
17 debriefed. I'm going to talk to you about that in a  
18 minute.

19 So now let's talk about Gavin Cox for a  
20 couple of minutes, just maybe one minute. Gavin Cox  
21 was living in London with his family and he was turning  
22 53. Some of us remember that. And he's going to tell  
23 you that this man was his idol, not like, "Hey, look,  
24 I'd like to see a magic show" or "Hey, you know, I  
25 think that guy does pretty good illusions," his idol.

1 That's big-time stuff. He's going to tell you, yeah.  
2 And so, for his 53rd birthday, they came from London to  
3 see his idol. And, like I said to you, he's not angry;  
4 he's injured.

5 And so he was there. And when he had the  
6 opportunity to catch a ball and meet his idol --  
7 actually meet him -- and be part of what his idol does  
8 is these illusions -- and I'm not here to tell you that  
9 he's not great at it at all -- he said, "Oh, my God,  
10 this is so great."

11 And so when he's asked the question, "Do you  
12 speak English?" -- I mean, the guy is from London, he  
13 says yes -- okay? -- his form of English. And then  
14 when he's asked "Can you run?" he had an expectation of  
15 safety, so of course he says yes to be involved and go  
16 home and tell everybody that he was selected. Big time  
17 for him. And that's Gavin Cox's story.

18 And his three boys are in the corner there.  
19 We didn't put them there because they were bad; it was  
20 the only seats available.

21 What you're going to see is, after all the  
22 illusion is completed and the participants are now --  
23 if this is the stage, they're in the back of the  
24 audience; right? Oftentimes, they're not all there.  
25 That's part of the illusion, because who's going to

1 count? You know, so 13 start, 10 finish. 10 start, 7  
2 finish. We'll ask those questions, let's find out who  
3 finishes and who doesn't.

4 But I submit to you that it's very important  
5 for us to be listening to the fact of this surveillance  
6 video and why there weren't videos in more places or  
7 whether there were. And the investigation that was a  
8 noninvestigation, that didn't find anything -- and, as  
9 a matter of fact, you're going to learn that if it  
10 wasn't for Gavin Cox putting in an accident report a  
11 few days later, it wouldn't have been reported at all.

12 Now, I'll ask the questions of if something's  
13 not reported or if something's not written down, does  
14 that mean it didn't happen? Is -- does that mean that  
15 you can now say 100,000 people have participated and no  
16 one's ever been injured because you don't take down the  
17 information and you don't investigate and you don't ask  
18 questions of witnesses and you don't ask questions of  
19 the participants, therefore it didn't happen? So you  
20 so it anecdotally? I'm going to ask those questions.  
21 I'm good at it.

22 So, now, for the debriefing, they're not  
23 released. They're called back into a small room and  
24 they're all spoken to by David Copperfield and by  
25 somebody from Backstage Employment. And it's not clear

1 whether or not they both speak one after another or one  
2 speaks once in -- every once in a while and the other  
3 one speaks at the other time, but they give the same  
4 speech.

5           And that speech is that, "Hey, I bet you had  
6 no idea that you were going to get entertainment  
7 tonight and exercise and too bad we don't have any  
8 Gatorade for you," Gatorade that they give football  
9 players, not water.

10           So, now, after they tell them that, they say,  
11 "We're now going to show you a video" -- after these  
12 people participated, whoever is left, who finished, is  
13 shown a video. And they're told it's not a video of  
14 tonight; it's a video of what the audience sees. It's  
15 not a video of you running for your lives with crazy  
16 looks on your faces. Remember, I mentioned that to you  
17 before. That's what they say to these people, running  
18 for your lives with crazy looks on your faces. It's  
19 not a video of that.

20           And, now, in order to protect his secrets --  
21 and I understand -- he tells the participants who have  
22 finished and are in the room, he says he wants to make,  
23 like, an agreement with them, a contract, that they're  
24 not going to tell anybody what they just experienced.

25           So he has three versions for them, three,

1 because one's not enough, three versions. And one  
2 version is for your family members. And he tells them  
3 the version, you'll hear about it. I don't have to  
4 tell you specifically right now, but you'll hear about  
5 it.

6 One version is for your close family members,  
7 I guess, spouses, brothers and sisters, whatever. I  
8 don't know where cousins fit in, but we'll ask. Okay?

9 Second version is for your friends. So  
10 there's a separate version for the friends. Okay?

11 Now, obviously, these versions are not  
12 accurate of how the trick is done because that's the  
13 point; right? So version one, family members; version  
14 two, friends.

15 Now, version three is for, like,  
16 acquaintances, you know, people in the street, you  
17 know, say, "Hey, you know, Joe told me you were  
18 involved in this." And that version is very simple,  
19 tell them you don't know, "I have no idea." Okay?  
20 That's the third version. It was simple, forget to  
21 tell them.

22 So, now, I submit to you that the evidence is  
23 going to show you that those three versions that were  
24 thought up by Mr. Copperfield and his compatriots are  
25 for the participants. And you're going to hear,



1 because I know the evidence in this case and I'm going  
2 to call these witnesses, that there's going to be a  
3 version four.

4 And version four is for you. And here's the  
5 way it goes in simple terms. There may be more.

6 First, we don't select the audience  
7 participants; they volunteer. That's part one of  
8 version four, which is for you.

9 Part two of version four, which is for you,  
10 is that there's no rush to finish this illusion or  
11 trick. There's no rush because the music is playing in  
12 a loop. So you're going to hear testimony that they're  
13 telling you that there's no rush. The audience  
14 participants can show up in five minutes, ten minutes,  
15 it doesn't matter. No rush. What matters is they get  
16 back safely. That's the testimony in this case.  
17 There's no rush, no. Now, after you hear this  
18 testimony -- and I'm going to pry it -- you have to use  
19 your common sense about that.

20 Third, part three of the version that's for  
21 you is that there's no running involved. There's no  
22 running. And this particular part of version four is a  
23 collaborative effort because a number of the witnesses  
24 used the same term under oath. And that is they don't  
25 run; it's a brisk walk.

1           We're going to find out where they got that  
2 term from. I'm not so sure I heard that before. But  
3 they've all come up with the term that it's a "brisk  
4 walk." And I submit to you that I'm going to prove to  
5 you it was a collaborative effort. They don't run, no  
6 rush.

7           I now want to say to you that I know that  
8 there's a version five. And that's the version that  
9 you decide from the evidence, the only version that  
10 counts.

11           And if you remember, in jury selection, I  
12 said to you there's no facts until you say there's  
13 facts, none.

14           And so I submit to you that, at the end, when  
15 you listen to the evidence in this case, you're going  
16 to find version five. You're going to find that  
17 there's going to be a lot of talk in this case that  
18 they're not responsible, so much. And every method  
19 possible used --

20           MR. POPOVICH: Argument. Objection.

21           THE COURT: Sustained.

22           MR. MORELLI: And yet you'll find that  
23 version five is very clear, that they put Gavin Cox in  
24 a dangerous position. And, as a result, he had an  
25 accident and was injured.

1           And that -- I believe that, after you hear  
2 the evidence in the case and you apply the law to the  
3 evidence as you find it to be, as you find the evidence  
4 that's important, you are going to find that the  
5 defendants were negligent, that that negligence caused  
6 Mr. Cox's accident, and that they're responsible to him  
7 100 percent.

8           And I leave you with that you only need your  
9 common sense and keep your eye on the ball. Keep your  
10 eye on the ball. Thanks so much.

11           THE COURT: Counsel approach, please.

12                   (A discussion was held at the bench,  
13                   not reported.)

14           THE COURT: All right. Ladies and gentlemen,  
15 we're going to take a 15-minute recess now, or  
16 thereabouts, 15 minutes.

17           During the recess, you're admonished not to  
18 talk or converse among yourselves or with anyone else,  
19 including, without limitation, the lawyers, parties,  
20 and witnesses on any subject connected with the trial  
21 or read, watch, or listen to any report of or  
22 commentary on the trial or any person connected with  
23 the trial by any medium of information, including,  
24 without limitation, newspapers, television, the  
25 internet, and radio, or to form or express any opinion

1 on any subject connected with the trial until the case  
2 is finally submitted to you.

3 Be outside the courtroom at -- let's make it  
4 11:20. Okay? 11:20. Actually, be down to the south a  
5 little bit, not -- not right by the doors to the  
6 courtroom, but, you know, to the south there. Okay?  
7 Bob will bring you in when we're ready. Okay?

8 Thank you.

9 THE MARSHAL: All rise.

10 (Whereupon a short recess was taken.)

11 (The following proceedings were held  
12 outside the presence of the jury.)

13 THE MARSHAL: All rise. Eighth Judicial  
14 District Court, Department 13, is again in session.

15 THE COURT: You may be seated. We're back on  
16 the record. We're outside the presence of the jury.

17 Mr. Roberts, I understand you have something  
18 to address.

19 MR. ROBERTS: I had something, Your Honor.

20 Your Honor, I'd cite the Court to the  
21 realtime and about nine minutes -- 9:48:41.

22 Mr. Morelli stated -- I'm sorry.

23 MR. DEUTSCH: I'm sorry. 9:48?

24 MR. ROBERTS: 9:48:41, Mr. Morelli stated  
25 "because that's what I think it is, and I think you are

1 going to agree."

2 We objected based on personal opinion and the  
3 Court sustained it. And we appreciate that.

4 However, in Lioce, the Court stated that  
5 "Where an objection is sustained due to attorney  
6 misconduct, the court is required to admonish the  
7 jury."

8 So the question is whether this is --

9 THE COURT: The -- the -- what was involved  
10 in that case was far different from just a statement  
11 that "I think that."

12 MR. ROBERTS: Your Honor, under Rule 3.4(e),  
13 "An attorney shall not, in front of the jury, assert a  
14 personal opinion about knowledge of the facts." You  
15 heard him say, "I know this. I've studied this. I  
16 know it. And this is what I think."

17 "And he shall not state a personal opinion as  
18 to the justness of a cause, the credibility of a  
19 witness, or the culpability of a civil litigant."

20 Under Lioce, a violation of Rule 3.4 is  
21 defined as attorney misconduct, and the court is  
22 required by Lioce to admonish the jury and tell them to  
23 disregard Mr. Morelli's assertions about what he knows  
24 and his personal opinion about what he thinks the  
25 evidence will show. And we would request that the --

1 the jury do that.

2 And -- and, by the way, Your Honor, I looked  
3 it up. New York has the exact same rules. So this is  
4 no surprise to Mr. Morelli. In New York it's 3.4(d)(2)  
5 and (d)(3).

6 MR. MORELLI: Maybe you could give me some of  
7 that research so that when you give your opening  
8 statement, I'll hold you to the same thing. Okay? So  
9 don't slip up.

10 MR. ROBERTS: And, Your Honor, Lioce also  
11 addressed repeated misconduct. And, as Your Honor may  
12 remember, Mr. Morelli asserted his personal opinion to  
13 the jury during voir dire, where I had to object and it  
14 was sustained. And, at some point, this is going to  
15 become prejudicial to the point that we would be able  
16 to request further relief. But, for now, we're just  
17 requesting an admonishment.

18 THE COURT: Okay.

19 MR. DEUTSCH: Your Honor, first of all, we  
20 don't think that -- that what was said was improper.  
21 We don't think any of it rises anywhere near to the  
22 level of what was done in that case.

23 And Mr. Morelli made very clear multiple  
24 times, both during jury selection and during his  
25 opening statement, that nobody's opinion on this

1 subject matters, not mine, not theirs, nobody's. The  
2 only opinion that matters is version five, Your Honor,  
3 which is the jury's version. That's the only one that  
4 matters. And he made that clear.

5 And that would be the exact same instruction  
6 that Your Honor would give, is that nobody's opinions  
7 mean anything but the jury. And since Mr. Morelli made  
8 that clear already, there's clearly nothing harmful  
9 here and no reason for any further instruction.

10 THE COURT: Anything else?

11 MR. POPOVICH: No.

12 THE COURT: Okay. Let's have the jury  
13 brought in.

14 THE MARSHAL: All rise.

15 (The following proceedings were held in  
16 the presence of the jury.)

17 THE COURT: You may be seated. Do counsel  
18 stipulate that the jury is now present?

19 MR. MORELLI: Yes, Your Honor.

20 MS. FRESCH: Yes, Your Honor.

21 THE COURT: Before we begin, ladies and  
22 gentlemen, one thing that I read to you the other day,  
23 and I will read it again. That is, parties on both  
24 sides have the opportunity to make opening statements.  
25 What is said in the opening statements is not evidence,

1 nor are the personal opinions of counsel. The personal  
2 opinions of counsel are not evidence either. Okay?  
3 You may proceed.

4

5

OPENING STATEMENT

6

MR. POPOVICH: Thank you, Your Honor.

7

And good morning.

8

IN UNISON: Good morning.

9

MR. POPOVICH: Indeed, it is Friday the 13th.

10 This case is about an illusion called Thirteen. We are  
11 also in His Honor, Judge Denton's, courtroom,  
12 Department 13. And I'm going to be talking to you  
13 about evidence relating to an accident that happened in  
14 2013. This seems right to be here talking to you about  
15 what we believe the evidence is going to show for the  
16 MGM Grand Hotel as a defendant in this case.

17

So in 2013, every day of the year, thousands  
18 of people are on the MGM Grand Hotel grounds, both  
19 inside the hotel and outside.

20

In a given year, with that many people coming  
21 and going, people will have accidents, no matter what  
22 the condition of the property. And particularly there  
23 will be people having accidents on the property that  
24 have nothing do with any dangerous or improper or  
25 otherwise poor condition of the property. The



1 accidents can just happen. Mr. Cox had an accident  
2 like that. Even though it was participating in an  
3 illusion at an event at the property, there was no  
4 condition of the property which in any way contributed  
5 to that accident and the fall.

6           So I do have a presentation here. There are  
7 some pictures. If a picture's worth a thousand words,  
8 I'm going to try to save a few thousand words with some  
9 pictures and help you be oriented to what was going on,  
10 what happened, where it happened, and ultimately why it  
11 happened.

12           So these four are what I call signposts.  
13 They're points that I plan to talk around. So the  
14 first one is that Mr. Cox's fall had nothing to do with  
15 a condition at the hotel.

16           Second signpost is Mr. Cox did not slip. As  
17 he will testify, he tripped. That will be, through the  
18 evidence, very important distinction to understand.  
19 And ultimately, although there was dust on the concrete  
20 where he fell, because he gets some on his clothes, the  
21 dust has nothing to do with a trip-and-fall accident  
22 and in particular has nothing to do with his  
23 trip-and-fall accident.

24           So the last point, ultimately, is the  
25 conclusion that is generated by the first three points,

1 is that Mr. Cox simply missed his step when he fell,  
2 and that is why he fell.

3           So the Thirteen Illusion -- before we get  
4 into those signposts, I want to give you some context  
5 relating to the Thirteen Illusion. It is what is  
6 called a closing illusion. It does involve audience  
7 participation. In Mr. Copperfield's performances, many  
8 illusions involve audience participation. In order for  
9 the audience members to be chosen at random, it can be  
10 through the throwing of a Frisbee multiple times, not  
11 just to a person where it could be argued that's a  
12 plant. Throughout the -- he threw the Frisbee to the  
13 person, and that person is in on the illusion. No. It  
14 will be once, twice, three, four times, and maybe the  
15 fourth person that catches the Frisbee is the person  
16 that participates.

17           In this Thirteen Illusion, that random  
18 process comes from bouncing balls. Bouncing balls,  
19 clear plastic beach ball-type balls -- there was a  
20 reference earlier about glass because that's part of a  
21 joke. Mr. Copperfield's shows are not just magic and  
22 illusions, they're entertainment. There's jokes.  
23 There's stories. So if you hear reference to a glass  
24 ball, that's just setting up a big plastic ball and  
25 coming out.

1           So Mr. Morelli talked in terms of you're  
2 going to hear about volunteers. This presentation was  
3 provided to counsel, so they knew where I was heading  
4 with some of these slides here. So, yes, it is not  
5 choosing audience members to be participants. There is  
6 a setup that Mr. Copperfield does in order to start the  
7 process of these bouncing balls, which ends up with  
8 people holding the balls at the end of the music and  
9 then coming forward to be part of the -- part of  
10 illusion.

11           So as Mr. Copperfield stands before the  
12 audience, he says some things before that screening  
13 process you have already heard about. Some of the  
14 things he says are -- by the way, the audience is  
15 standing when these things are being said -- that if  
16 you don't want to be a part of the illusion, you should  
17 sit down. So there's a choice. You're also, they're  
18 told, somewhat jokingly I believe, from what I have  
19 heard --

20           MR. DEUTSCH: Objection, Your Honor.  
21 Personal opinion.

22           THE COURT: Are you -- are you telling the  
23 jury what the evidence is going to show?

24           MR. POPOVICH: Yes, Your Honor.

25           There is evidence, through video, of an

1 example of this performance. It wasn't the performance  
2 on the night of the accident, but it's the audience  
3 view. And I actually have some screen grabs to show  
4 you in this presentation from that to help orient you.

5           So part of the discussion is about if you  
6 speak -- can't speak English, don't catch a ball. If  
7 you don't understand what I'm saying, that doesn't  
8 help. If you're a neighbor of someone that doesn't  
9 speak English, knock the ball away so that they will  
10 not be a participant or have to be excluded from being  
11 a participant when they get to the stage. Another  
12 thing that they are told is you need to be at least 18  
13 years old and you need to be in good health. That's  
14 before the plastic balls even start moving.

15           Also, message from Mr. Copperfield is, if you  
16 want to -- if you do not want to participate, go ahead  
17 and sit down. Okay?

18           So this is a screen grab from an example of  
19 the illusion at the beginning. You have  
20 Mr. Copperfield in the middle of the stage holding one  
21 of the big plastic balls. This is when he's talking to  
22 the audience letting them know the things I have just  
23 outlined. Next up, the balls start moving. Yes, the  
24 music's going, it's fun, lively music, there's lights  
25 going on, people are bopping the balls around. I

1 equivocate -- no.

2           The balls are bopping around, people are  
3 having fun, they're flipping the balls, waiting for the  
4 music to stop because, when the music stops, that's  
5 when, if you're interested, you can grab one of the  
6 balls and maybe participate in the illusion.

7           Another screen grab from the same process.  
8 Lights going on, music going on. And then the music  
9 stops. People then come forward towards the stage. As  
10 they're coming forward, they're being observed by these  
11 magician's assistants and by Mr. Copperfield. The  
12 magician's assistants, if they see something, can  
13 communicate to Mr. Copperfield about a particular  
14 participant.

15           But when they get to -- I don't know my  
16 showbiz terms -- as you're from the audience to the  
17 left of the stage, I don't know whether that's stage  
18 left or stage right, but that's okay. From the  
19 audience, it's on the left side. Mr. Copperfield is at  
20 the top of those steps, up on the stage. Magician's  
21 assistants are down below and up behind  
22 Mr. Copperfield.

23           And this process of evaluating the people  
24 that have the bouncing balls includes looking for  
25 anybody that looks like they have had too much to

1 drink. It includes observing, not asking, if anybody  
2 is pregnant. It observes whether the clothing is  
3 appropriate, shoes are appropriate.

4           Also, questions are asked. As they are  
5 trained, the question is are you healthy enough to run?  
6 Mr. Cox's testimony is that he was just asked "Can you  
7 run?" But some question like that was asked. Are you  
8 a member of the media? Are you a magician? Do you  
9 speak English? Those are the screening questions  
10 before the people even get up onto the stage.

11           And as they're getting up on the stage,  
12 Mr. Copperfield is also observing. He's observing how  
13 each person walks forward. And an important  
14 observation point is when the people mount the stairs  
15 to get up onto the stage. How do they move? Can they  
16 handle the stairs easily? Those are things he's  
17 looking at. They're -- he's also, as I said, getting  
18 information from the magician's assistants and making  
19 decisions about who's going to get onto the platform.  
20 Platform is a structure -- I have a picture of it for  
21 you in a moment -- where the people actually sit right  
22 before they disappear.

23           Now, anybody that isn't considered right to  
24 be a participant in the disappearing portion of the  
25 illusion are moved to the side. There are already

1 chairs there. If more people are determined that they  
2 need to be moved to the side, more chairs can be added.  
3 That's normal part of this illusion and all part of the  
4 process. I have a fancy pointer, so I'm going to use  
5 it.

6 In the gray shirt, Mr. Copperfield. That's  
7 from the audience perspective, the left side of the  
8 stage. He is greeting people and observing people as  
9 they come up the steps, which is to the left of this  
10 screen grab. You can see the lighting, poor in front  
11 right here in this photo, but you can see that people  
12 are standing in front of what we call the platform, and  
13 that's this metal frame structure here. There are  
14 chairs on that platform that, ultimately, the  
15 participants will sit.

16 You will also note that already some  
17 participants have been asked to take seats to the side  
18 of the platform. One other point is, to the left of  
19 the platform, there is a screen in the background which  
20 is part of the illusion because there will be a camera  
21 position to show the back side of the platform so that  
22 the audience can be seeing not only the front and the  
23 sides but the back as well.

24 Excuse me a moment. Now, this next screen  
25 grab, Mr. Copperfield is talking to the audience and

1 the participants. You've got the people on both sides  
2 who have been moved off to the side. And the  
3 participants that Mr. Copperfield, with the help of the  
4 magician's assistants, are appropriate to be in the  
5 illusion have already been seated. There is even the  
6 possibility that once they have been seated, if any  
7 type of behavior or maybe -- maybe making statements or  
8 things that are impacting the illusion, participant  
9 could be taken off the platform before the disappearing  
10 part of the illusion.

11           Again, here's the screen showing the back  
12 side of the platform. And so, now, the illusion is set  
13 up. Next part, curtain comes down, all four sides.  
14 You'll notice that the people who are sitting are now  
15 being asked to move around towards the back so that  
16 they can check and be witnesses that this platform is  
17 fully covered. And also at this point in time, the  
18 platform is taken up into the air.

19           Once the platform is up in the air and the  
20 curtains are dropped, the participants who are in the  
21 platform are removed from the platform through the help  
22 of magician's assistants. The flashlights these folks  
23 were given while they were in the platform continue to  
24 play on the curtain. Even though the participants are  
25 not in the platform anymore, there are still lights.



1 The audience believes the people are still there. All  
2 part of the illusion.

3           Ultimately, after Mr. Copperfield has gone on  
4 for a minute, minute and a half, because there's part  
5 in this -- this illusion that he's playing in front of  
6 the audience, when this curtain is up -- and let me  
7 back up. There are seams on the corners of those  
8 curtains. And while the participants are already out,  
9 part of the illusion for the audience is to hand  
10 flashlights into the curtains, again raising the belief  
11 that -- to the audience -- that the participants are  
12 still there.

13           This takes time. It takes time for  
14 Mr. Copperfield to set up the illusion so that when,  
15 ultimately, after the flashlights have been handed in,  
16 he can remove the curtain from the front. The backs  
17 and sides fall away. And the audience is amazed.  
18 You've got a platform in the air. The participants are  
19 gone. And the audience did not see anything. You've  
20 got the people on the sides here to be witnesses to the  
21 fact that nothing was seen.

22           While Mr. Copperfield is building to the  
23 conclusion of this illusion by pulling the curtains  
24 down -- and as he pulls the curtains down, he points to  
25 the back of the auditorium. And the participants are

1 there, waving at their family and friends. So that is,  
2 in essence, some of the illusion so that you have it in  
3 context now.

4           So, for those of you old enough to remember  
5 the original Willie Wonka and the Chocolate Factory,  
6 there was Mike TV, who wanted to be so part of the TV  
7 that he got Willie Wonka's machine. It broke him down  
8 into particles like a signal and shipped him somewhere  
9 else, but he came out smaller. This is an illusion.  
10 That is not what happened. It is not Mike TV. This is  
11 not some scientific event. It is an illusion, and it  
12 was set up as an illusion.

13           And so how do the participants go from the  
14 back of the stage to the back of the auditorium? And  
15 there's a route. This is a grainy overhead picture of  
16 the outside of the MGM. Tropicana Boulevard is off the  
17 picture here below. The participants never touch  
18 Tropicana, ever. That is incorrect. So I also have a  
19 drawing that I did with a ruler. This is an attempt at  
20 that. But it also shows what's going on on the inside  
21 of the theater and the route that the participants  
22 take.

23           So we have the stage here at the right part.  
24 And the participants, once they are removed with the  
25 direction of the magician's assistant, leave the stage

1 and exit into a hallway. The hallway, approximately  
2 17 1/2 feet. The -- there are stagehands positioned at  
3 the corners, at the entrance to the hallway, stagehands  
4 that, as this route was set up when Mr. Copperfield  
5 designed the illusion with his coworkers and the people  
6 from Backstage, the designers of the illusion, and then  
7 they brought it to MGM. This illusion had been done at  
8 other places other than MGM. When the illusion's done,  
9 a route has to be chosen. When they came to MGM, the  
10 route that is being used on November 12, 2013, is the  
11 route that was chosen. And it was worked through, and  
12 a plan was prepared. And part of that plan was to have  
13 the stagehands positioned at important points, giving  
14 direction to the participants.

15           There will be testimony different from the  
16 testimony of Mr. Cox, talking about pandemonium or  
17 chaos, about the fact that, yes, the participants are  
18 guided, there are flashlights being used by the  
19 stagehands to help direct the way, light the way.  
20 They're giving direction, and it is not at  
21 full-throttle screams. They are telling the  
22 participants where to go. Plus, remember, there is a  
23 magician's assistant who is leading the group, actually  
24 has a hand of the first person. And they are going  
25 this route. The other participants can follow.

1 Mr. Cox will certainly say that he was not the first  
2 one in the line of participants going through this  
3 route.

4           So there is then another hallway, and there  
5 is a stagehand directing for the turn to the right,  
6 another 17 1/2 feet. So from the time of leaving the  
7 stage, the first two halls, we're talking 35 feet.  
8 There is one last turn before they exit the building,  
9 in a hallway, and that is 14 feet. And we have a  
10 picture coming up of that hallway. Not quite yet.

11           When they exit out of this door, on the route  
12 that is set out for the participants, there is a  
13 driveway here for MGM's purposes, not a public  
14 thoroughfare, not Tropicana Avenue.

15           There are stagehands at the corner for where  
16 the turn, once the participants come out of the door.  
17 There is a stagehand positioned at this left point that  
18 I'm pointing to, where they make the right turn towards  
19 the building. They head towards an entrance or doors  
20 for the casino. These are not normal public entrances;  
21 that wouldn't work so well with this illusion. And  
22 then, with the door open, there is light coming out of  
23 the door, they would head back into the building and  
24 follow the route. Now, in this case, Mr. Cox did not  
25 get to the point where he reentered the casino.

1           So let me -- the picture we're looking at  
2 here is the exit that I'm pointing to that goes from  
3 inside to outside. We're looking back into this  
4 hallway. So the participants would come out this door,  
5 stagehand somewhere in this area giving direction, and  
6 make a right turn to proceed along the route.

7           This corner that we're looking at is the  
8 second corner on the outside, where the participants  
9 would normally make another right turn, moving from the  
10 bottom of the photograph toward the top, and make a  
11 soft right turn to head toward the doors. Typically,  
12 the doors that were open were these double doors,  
13 second from the left in the group of four sets.

14           Now, don't be confused by this. This  
15 photograph was taken during an inspection in this case.  
16 Somebody put that there as a marker for measuring.  
17 It's got nothing to do with the accident, was not there  
18 the day of the accident. Okay?

19           Another view exit, that's this here. Second  
20 turn to head back into the doors. This is here. Now,  
21 once the participants make this turn -- and as you can  
22 note, this was done in an inspection almost, well, ten  
23 months, roughly, after the accident.

24           This tree that I'm pointing to at the top  
25 center of the photograph is a tree that is a factor in

1 what the security camera can see, the surveillance  
2 camera can see. That surveillance camera is up on the  
3 top corner of this building. If you follow that corner  
4 up, that's where it is.

5           The participants would have been -- or  
6 Mr. Cox would have been heading towards this door,  
7 having come out of here, gone roughly 30 feet, and then  
8 made the turn. The fall did not happen as he turned  
9 the corner. The fall happened about 20 feet, over  
10 20 feet, 20 feet and some inches after the turn,  
11 20 feet 5 inches from that point, really, which puts  
12 the accident somewhere about where I'm pointing here.

13           There is a rise for a certain distance after  
14 that turn. That is not where the accident happened.  
15 Where the accident happened had leveled off. There is  
16 an expansion joint in the concrete there, and there's a  
17 change from a slight incline to almost no incline.  
18 Where the accident happened, the slope there is 1  
19 degree, which is essentially enough for rainwater to  
20 drain away from the building, essentially level.

21           Same corner, the last corner before where the  
22 accident is, slight incline, expansion joint,  
23 essentially flat, and that's where the accident  
24 happens, about 22 feet before reaching the door.

25           We know exactly where the accident happened

1 because of work done by an expert retained by MGM Grand  
2 and other defendants, Dr. Baker. Dr. Baker used  
3 surveillance footage from that night, which I think  
4 might be the next photo. There we go.

5 This is a screen grab from the surveillance  
6 video from the night of the accident, year 2013,  
7 November 12, roughly 8:35 p.m. There will be playing  
8 of this video for you during the trial.

9 First thing you will note is it's dark. The  
10 evidence will be, from the witnesses, that the  
11 appearance that night at that time is not as dark as  
12 this. This is a camera issue and a settings issue.  
13 That said, you will see that that tree I had pointed  
14 out earlier does block part of the area. If you back  
15 up from the doors, there's that concrete area leading  
16 up to the doors, and the participants would have been  
17 coming from around the corner, which is down about here  
18 at the bottom left of this image.

19 From this screen grab, you cannot make out  
20 clearly where Mr. Cox is, but this is essentially when  
21 Mr. Cox is on the ground after the fall. We know that  
22 from what happens after, and you'll see that when we  
23 show you the video. This person in yellow, I -- we --  
24 the person in yellow, the evidence will show, is  
25 another participant who was picking up Mr. Cox's

1 flashlight that had been, obviously, dropped when he  
2 fell.

3           So what Dr. Baker did is go to the camera  
4 rooms at MGM Grand, pull up this surveillance video and  
5 have that on one screen. Dr. Baker then, using an MGM  
6 employee, had them out on the concrete looking down  
7 through the same camera that took this image, with a  
8 cone. They would -- he would look at this image and  
9 the video. He would then compare them on the screen  
10 next to it with the then-existing daylight view of the  
11 area.

12           And they would tell the person, by radio,  
13 "Okay, you need to move two steps to your left. You  
14 need to move one step forward." Kept zeroing in that  
15 person until where the area where Mr. Cox fell was  
16 determined to be exactly where that person had the cone  
17 positioned on that time of the inspection.

18           Once the cone was positioned in the right  
19 spot, then Dr. Baker goes out and takes his  
20 measurements. That's where we get these measurements.  
21 That's how we know that Mr. Cox did not fall going  
22 around the corner. That's how we know that where he  
23 fell was essentially level, straight.

24           You have already heard part of this. But  
25 Mr. Cox's deposition was taken. And in his deposition,



1 he said he came around this particular corner fast, his  
2 feet slipped out from under him, and he fell onto his  
3 right side.

4           What we learned through the expert evaluation  
5 and through the surveillance video is that where he  
6 fell was after the turn, on the level ground. He was  
7 headed straight to the doors. And the video also shows  
8 us that he fell in the direction toward the doors. In  
9 other words, his head traveled forward, not backward.  
10 For Dr. Baker's evaluation of this case and the  
11 accident, that's an important fact.

12           Okay. Hopefully we have an understanding of  
13 the illusion and an understanding of some of the basic  
14 evaluation of what happened. So, first sign point --  
15 signpost, Mr. Cox's fall had nothing to do with a  
16 condition on MGM Grand Hotel's property. There was an  
17 investigation the night of the accident. There is an  
18 accident report that was produced to all parties in  
19 this accident -- in this case. A security officer  
20 named Jansen went out and checked the area where the  
21 accident occurred. No holes were found in the  
22 concrete. No debris confirmed that, immediately after  
23 the accident, meaning things to trip over, whatever,  
24 cans, bottles, anything, nothing. There were no raised  
25 joints or cracks in the concrete surface. And

1 Dr. Baker confirmed that the ground where the accident  
2 was was essentially level. Was there some dust on the  
3 concrete? Yes, there was.

4           The surveillance video tells us more things  
5 about that night because it's focused on those doors.  
6 And despite the tree, the doors are very clearly shown,  
7 obviously. You have seen that. In looking at the 40  
8 minutes before the participants come through that area  
9 during the Thirteen Illusion, nine people either walk  
10 or trot through the area where Mr. Cox tripped.

11           One of those people did it multiple times,  
12 and that's an MGM Grand security guard named Dennis --  
13 oh, boy -- Navas. I'm sorry. I've forgotten his name.  
14 He is the one, during the Copperfield show that was  
15 responsible for opening those doors during particular  
16 illusions. He knew the routine of the shows, he knew  
17 the basic timing, although the timing always varied.  
18 And he could even peek into the theater to see exactly  
19 where they were. There are certain illusions that  
20 require people to move through that area. And those  
21 doors are shut all the time except when there's a need  
22 for the show.

23           So he would open the door, prop it open  
24 before a particular illusion. He would then often, as  
25 we will see in the video, walk through the exact area

1 where Mr. Cox fell. And he will tell you that he was  
2 looking for anything that would be a potential problem.  
3 It could be people who may be hanging out there, and he  
4 might want to clear them out to make sure that there  
5 was no interference with whatever was happening for the  
6 show. He would indeed also, if he noticed any debris  
7 or problems, he would either deal with it or call  
8 maintenance to come and deal with it.

9           During those times, he will tell you, on this  
10 particular night, he didn't notice any problems. You  
11 will see him walking back and forth several times. One  
12 of the other things he did is, when he would open the  
13 door, he would walk down to make sure that the exit  
14 door for whoever was -- whether it's a participant or  
15 even Mr. Copperfield himself, was open and available.

16           Ten minutes before Mr. Cox had his  
17 accident -- and we will be able to show you this by  
18 videotape as well -- Mr. Copperfield was engaged in  
19 another illusion that did not have audience  
20 participants, just him. And he goes through this area.  
21 He will tell you that, yes, he is focused on the job at  
22 hand, but if he noticed any problem in the route, he  
23 would have immediately told somebody to deal with it.  
24 And there are -- as he's traveling that route for this  
25 other illusion, there are stagehands with him.

1           So he would have had somebody to -- to deal  
2 with something if something came up. That night, there  
3 was no issue with this route that he had created and  
4 used for multiple illusions.

5           So, as I mentioned, Mr. Navas -- that's it,  
6 Dennis Navas -- sorry -- Mr. Navas had walked through  
7 several times before, and he's looking for anything  
8 that might be a problem, including conditions with the  
9 property and the walking surface. Based on this  
10 evidence of repeated use, the investigation afterwards,  
11 there was nothing going on with that property that had  
12 anything to do with this accident. There was no  
13 failure of maintenance here by anybody for MGM Grand.

14           Second signpost, Mr. Cox did not slip; he  
15 tripped. Seems like it may be small or inconsequential  
16 difference between a slip or a trip, but because there  
17 was dust on that concrete, the difference makes all the  
18 difference.

19           Dust on concrete could make it somewhat  
20 slippery. It could cause a shoe not to grab into the  
21 concrete and allow a slip. But there are mechanisms  
22 that we look at in evaluating a fall to determine  
23 whether it was a slip or a trip. And that's one of the  
24 things -- excuse me -- Dr. Baker did.

25           So when we're considering slip versus trip,

1 we have to look at the mechanics, we have to look at  
2 how the person fell. And the surveillance video does  
3 help us with this. Also, there was statements earlier  
4 that all of the evidence comes from the defendant. Not  
5 true. Mrs. Cox took photos of Mr. Cox's pants and  
6 shoes that night. And they're very informative in  
7 helping us understand how he fell.

8           There's one picture. And that is Mr. Cox,  
9 and you can see dust on the jeans. The dust stops  
10 essentially at the seam, maybe slightly below the seam  
11 toward the buttock, but there is no dust on his back  
12 pocket. That's important for the expert.

13           The shoes were either scuffed -- excuse me --  
14 or had dirt both on the toe and on the top of the shoe.  
15 That mark on the top of the shoe, also very important  
16 for Dr. Baker in analyzing what happened here.

17           The surveillance video, as I indicated  
18 before, ended and would show, as we go farther into the  
19 video, that when Mr. Cox got up, he got up from a  
20 position at the doors here. He got up with his head  
21 closest to the door. That was the body part that was  
22 closest to the doors. That was the direction he was  
23 traveling.

24           So when we look at the mechanics,  
25 slip-and-falls typically happen a couple of ways. If

1 you are slipping on your back push-off foot, and it  
2 gives out, you slip, you tend to go straight down, land  
3 on the knee. There's the old banana-peel-in-a-store  
4 kind of slip, where somebody hits something slippery  
5 with their heel, (descriptive sound) leg goes up, they  
6 go back. We know that Mr. Cox landed head toward the  
7 door. We know that his shoes are -- are marked in this  
8 way.

9           What the expert, Dr. Baker, will say is that  
10 is absolutely consistent with a trip-and-fall. A  
11 trip-and-fall is when the -- the -- there is not  
12 slipping happening -- sorry -- but the progress of the  
13 foot is stopped in the walking process perhaps because  
14 of a misstep. Sometimes there could be debris on the  
15 ground.

16           But a trip-and-fall ends with somebody going  
17 forward because their foot progress has stopped. And  
18 that is the way Mr. Cox fell.

19           That second mark on the top of the foot, if  
20 somebody missteps and digs in their toe, their body  
21 momentum is going forward, but their leg isn't coming  
22 forward fast enough to catch the momentum of the body.  
23 So as they're starting to fall, there is still a fight  
24 to get this back leg in front in time before you go  
25 down.

1           That second mark there on the top of the shoe  
2 is from that effort to -- after the first trip, to get  
3 that foot forward. And it tends to flatten out the  
4 foot, and you're fighting to get there. And that's  
5 when that happened.

6           So these pictures taken by Ms. Cox are very  
7 helpful in showing us that this was a trip-and-fall.  
8 So if there's no debris, no holes, no cracks, no raised  
9 concrete where Mr. Cox fell, there was the dust. So  
10 let's talk about the dust.

11           In a trip-and-fall scenario like this, fine  
12 dust like we see on his clothes matters not one little  
13 bit. It cannot trip somebody. If it does anything, it  
14 makes the surface slippery, makes it less likely to  
15 catch a toe.

16           Dr. Baker indicates that this is a  
17 trip-and-fall. He's looked at all the evidence. And  
18 the Cox plaintiffs will not present any expert  
19 testimony that this is a slip-and-fall. The only  
20 testimony that this is a slip-and-fall is from Mr. Cox.  
21 And he was wrong about the location, and he's wrong  
22 about how it happened, and that's understandable.

23           He wasn't expecting to trip or slip and fall.  
24 He had an accident. And he will tell you, as we  
25 learned through his deposition, that he came back two

1 days later to the accident scene and inspected it. And  
2 he saw some dust then and knew he had dust on his  
3 clothes. And, at that point, in essence, he put the  
4 scenario together in his mind of what he thought really  
5 happened. And he believes that he slipped and fell.  
6 Understandable, but wrong.

7           So, as we've indicated, this -- the final  
8 bullet there, or final signpost, is that if it was a  
9 trip-and-fall that wasn't caused by any condition of  
10 the MGM property, what we're talking about is an  
11 accident that is either Mr. Cox's own fault or nobody's  
12 fault, depending on your point of view.

13           Now, the -- little bit of clarification here.  
14 There was some statements --

15           MR. DEUTSCH: Objection. Your Honor, may we  
16 approach before he does this?

17           THE COURT: Yes.

18                   (A discussion was held at the bench,  
19                   not reported.)

20           THE COURT: All right. You may proceed.

21           MR. DEUTSCH: No objection, Your Honor.

22           MR. POPOVICH: Just wanted to be clear about  
23 the relationship between some of the entities you're  
24 hearing about.

25           MGM Grand Hotel, Beacher's. They were the



1 ones that were building out the nightclub to run the  
2 nightclub. There was a lease between MGM Grand Hotel  
3 and Beacher's. There was no direct contract, lease,  
4 construction contract, anything between MGM Grand Hotel  
5 and Team.

6           Where that -- where Team came in is that  
7 Beacher's was going to open up a nightclub, wanted to  
8 build it out, make it look nice. And Beacher had a  
9 construction contract with Team. Just wanted to make  
10 that clear because that's going to be coming up.  
11 You're going to be hearing about Beacher's and Team and  
12 all this. That's the way it lays out.

13           So, ladies and gentlemen, the evidence here  
14 is that Mr. Cox participated in an illusion. One of  
15 the things he heard is you need to be in good health.  
16 He was asked if he could run, and he said yes.

17           The illusion was set up in a way so that  
18 Mr. Copperfield actually needed time for the  
19 participants to get from the platform to their magical  
20 reappearance in the back of the theater. That also  
21 could be longer. Mr. Copperfield is a pro. He can  
22 take an extra 15 seconds or extra 30 seconds, whatever  
23 he needs in order for -- to get the go-ahead with the  
24 big reveal at the back. As you've already heard, the  
25 music was on a loop. There is flexibility in this

1 process.

2           There is a route that has been marked out by  
3 Mr. Copperfield and his team. It is lit by the workers  
4 for them. It is there with help. You will hear  
5 testimony from the gal at the back of the process that  
6 there was never any shoving or touching of Mr. Cox.

7           Mr. Cox is convinced that he was the last  
8 person from the platform to reach the area where he  
9 fell. That's not correct. The surveillance video will  
10 show you that, after he fell, multiple participants  
11 came up around him moving at a slower pace. The first  
12 participants were moving pretty quickly. The later  
13 participants were moving at a fast walk at best. So  
14 there is flexibility built in here.

15           And there was steps taken at every point in  
16 the illusion to make sure that they had participants  
17 that could participate in the illusion safely.

18           Ultimately, this accident did not happen  
19 because of any condition of MGM or its property, not  
20 the behavior of any MGM employee. They did their jobs  
21 right.

22           And, ultimately, when the evidence is done,  
23 we're going to ask you to find that MGM did nothing  
24 wrong here and is not negligent, and we're going to ask  
25 you for a verdict at that time.

1           You've been very attentive, even after the  
2 noon hour. I appreciate it. Thank you very much.

3           THE COURT: Thank you, Counsel.

4           At this time, we'll recess for lunch. And  
5 since it's 12:15 and since I've said that we usually  
6 are in recess from 12:00 to 1:30, we'll go from 12:00  
7 to 1:45. Okay.

8           So, during the recess, you're admonished not  
9 to talk or converse among yourselves or with anyone  
10 else, including, without limitation, the lawyers,  
11 parties, and witnesses, on any subject connected with  
12 the trial, or read, watch, or listen to any report of  
13 or commentary on the trial or any person connected with  
14 the trial by any medium of information, including,  
15 without limitation, newspapers, television, the  
16 internet, and radio, or to form or express any opinion  
17 on any subject connected with the trial until the case  
18 is finally submitted to you.

19           Be outside the courtroom at 1:45. Be down to  
20 the south a bit so you're not right by the door. Okay?

21           Ladies and gentlemen, have a nice lunch.

22           THE MARSHAL: All rise.

23                     (The following proceedings were held  
24                     outside the presence of the jury.)

25           THE COURT: Resume at 1:45.

1 MR. POPOVICH: Thank you, Your Honor.

2 (Whereupon a luncheon recess was taken.)

3 THE MARSHAL: All rise for the jury.

4 (The following proceedings were held in  
5 the presence of the jury.)

6 THE MARSHAL: Department 13 is again in  
7 session. Remain in order.

8 THE COURT: You may be seated. We're back on  
9 the record. Do counsel stipulate that the jury is  
10 present?

11 IN UNISON: Yes, Your Honor.

12 THE COURT: All right. Ms. Fresch, you may  
13 proceed.

14 OPENING STATEMENT

15 MS. FRESCH: Thank you.

16 Okay. Good afternoon.

17 IN UNISON: Good afternoon.

18 MS. FRESCH: I'm Elaine Fresch. Hopefully,  
19 you remember that. I represent David Copperfield and  
20 David Copperfield Disappearing, Inc. I'd like to  
21 introduce you to my client David Copperfield.

22 This is a very straightforward case. Mr. Cox  
23 tripped and fell down. But to understand why this has  
24 nothing to do with my clients David Copperfield  
25 Disappearing, Inc., or Mr. Copperfield, that they did

1 not fail to do anything and they did not do anything to  
2 cause the fall, we have to spend some time in this  
3 trial discussing magic and how Mr. Copperfield develops  
4 his illusions and how the show is produced.

5           First, a definition of magic. Magic is a  
6 performing art in which audiences are entertained by  
7 staged illusions, seemingly impossible feats using  
8 natural means. The evidence will show that David  
9 Copperfield has developed and performed incredible  
10 illusions over the course of many, many years.  
11 Performing each of these illusions is a form of art in  
12 and of itself. One of those illusions is the illusions  
13 that you're going to hear about throughout this entire  
14 trial in this first phase, is the Thirteen Illusion.

15           Art takes time to create and to develop. The  
16 evidence will show that the Thirteen Illusion was  
17 developed -- we will show you evidence about the  
18 pathway the audience participants took that was  
19 determined and all the practice and all the rehearsing  
20 that was done in order to have this illusion become not  
21 just a illusion in Mr. Copperfield's show, but the  
22 finale, the end, the big final illusion of the -- of --  
23 of the show.

24           This is important. A lot of rehearsal and  
25 practice goes into this. That same rehearsal, that

1 same practice, not only goes into the illusion on the  
2 part that you see as an audience member that  
3 Mr. Copperfield is doing but also for that same pathway  
4 that the audience volunteers take to go from one point  
5 to another.

6           Mr. Copperfield's shows, over all the course  
7 of years, involves many, many illusions that involve  
8 audience participation. Safety for the audience  
9 participants is important for the show. It is  
10 important for Mr. Copperfield and it is important for  
11 the audience members. Safety for the audience is  
12 important too because Mr. Copperfield's shows involve  
13 certain illusions that, in fact, car over participants'  
14 heads on the stage, a big box coming down just over the  
15 seated audience.

16           All of this has to be practiced. All of this  
17 has to be determined so that all of these illusions  
18 throughout the show are done successfully and safely,  
19 because, otherwise, there would be no show.

20 Mr. Copperfield would just not be performing all these  
21 years if all of his illusions were not done in a safe  
22 manner for participants as well as for the audience as  
23 well as for the stagehands as well as for  
24 Mr. Copperfield.

25           The evidence will show that the way this

1 illusion, the Thirteen, was performed on November 12th,  
2 2013, by Mr. Copperfield, by Mr. Copperfield's company,  
3 David Copperfield Disappearing, Inc., and the various  
4 assistants and stagehands was the way it had been done  
5 many, many times before Mr. Cox participated that  
6 particular night.

7           Okay. So the Thirteen Illusion. As you have  
8 heard, the Thirteen is an illusion where David  
9 Copperfield makes up to 13 people disappear before the  
10 audience's eyes and then they reappear in a completely  
11 different place. We will present evidence on how this  
12 illusion was developed by Mr. Copperfield.

13           You will also hear testimony about how Chris  
14 Kenner as well as Homer Liwag also helped  
15 Mr. Copperfield develop this illusion. Mr. Kenner is  
16 here as well. He's the president of Backstage  
17 Employment.

18           Developing this illusion many years ago was a  
19 collaborative effort to work out each and every precise  
20 detail to engage the audience while performing the  
21 illusion to make people sitting in a platform on top of  
22 the stage all of a sudden disappear and then reappear.  
23 It took well over a year to develop this illusion  
24 before it was ever performed in public.

25           In order to perform the Thirteen, it requires

1 a certain group of people. It requires Mr. Copperfield  
2 on the stage. He is on the stage the whole time. It  
3 requires a variety of stagehands to participate in  
4 order to make this illusion work. It also requires  
5 audience volunteers. And, of course, it requires the  
6 audience. All of those people are involved in this  
7 illusion.

8           And the audience and the volunteers are an  
9 important part of any illusion for Mr. Copperfield.  
10 Mr. Copperfield will testify, and he will discuss the  
11 importance of the audience and the importance of the  
12 volunteers. And the goal is to inspire all of those  
13 people at -- for being in the show and from leaving the  
14 show, that they are inspired to continue on and dream  
15 and possibly maybe do magic themselves.

16           Doing this illusion, as all of the illusions  
17 that Mr. Copperfield performs, requires teamwork. This  
18 is important. Mr. Copperfield has performed the  
19 Thirteen Illusion all over the world. We will present  
20 evidence about how this illusion and the route, or the  
21 pathway, that the volunteers take has been adapted to  
22 many different venues all over the world. Not just  
23 here at the MGM, but all over the world, this same  
24 illusion has been performed, and it always involves  
25 volunteers going from one point to the other in order



1 to reappear.

2           This illusion was first performed back in  
3 1998. It has been the final act for Mr. Copperfield.  
4 For over 15 years, it was the final act. In 2000,  
5 David Copperfield Disappearing, Inc., entered into  
6 agreement with the MGM Grand for David Copperfield  
7 Disappearing, Inc., to perform the David Copperfield  
8 show at the Hollywood Theater, which is now the David  
9 Copperfield Theater.

10           Briefly, David Copperfield Disappearing,  
11 Inc., is a closely held corporation. Mr. Copperfield  
12 is the sole shareholder. Mr. Copperfield is also an  
13 employee of David Copperfield Disappearing, Inc. David  
14 Copperfield Disappearing, Inc., has an agreement with  
15 the MGM to hold his shows at the MGM. David  
16 Copperfield Disappearing, Inc., also has an agreement  
17 with Backstage Employment wherein Backstage provides  
18 the magician assistants as well as the stagehands for  
19 the show. Mr. Kenner, as I've mentioned, is the  
20 executive producer of the show and he is the president  
21 of Backstage.

22           Mr. Copperfield has been performing the  
23 Thirteen Illusion as part of the show at the MGM for --  
24 he had performed it for 13 years prior to Mr. Cox  
25 participating on the night of November 12th, 2013.

1           During the entire illusion, from the moment  
2 that David Copperfield begins to talk about this  
3 illusion to the -- throwing the balls to the volunteers  
4 disappearing and then reappearing, David Copperfield is  
5 always on stage.

6           David, for this -- Copperfield -- excuse  
7 me -- for this illusion, does not accompany the  
8 volunteers when they leave the platform and then  
9 proceed along the route. Because Mr. Copperfield is  
10 out on stage the entire time because he needs to make  
11 the illusion work. He needs to make participants  
12 disappear or there is no illusion. Mr. Copperfield,  
13 then, is on the stage the whole time.

14           Skip that one.

15           Now, segue here for a moment and talk about  
16 participants. So we will present evidence that, from  
17 1998 to 2013, on average, there was 640 shows per year.  
18 So I got to get my piece of paper out here for this  
19 one.

20           Okay. So that's 15 shows per week times 640,  
21 that's 9600. I believe that's big enough. Okay. An  
22 average number of participants for the illusion at each  
23 show is about 10. You've already heard sometimes it's  
24 not 13, sometimes it could be six, sometimes it could  
25 be eight. On average, the evidence will show it's

1 about 10 participants per show.

2 9600 times 10 -- I don't know why I have to

3 look at my paper for that -- is 96,000. 96,000 people

4 participated in this exact same illusion that Mr. Cox

5 participated in prior to Mr. Cox participating on

6 November 12th, 2013.

7 Now, to get a sense of 96,000 people, I

8 thought I would show --

9 JUROR: It's upside-down.

10 MS. FRESCH: Oops. Thank you. Hey, this is

11 not my skill set.

12 All right. This is a photograph of the

13 T-Mobile Arena. Trying to -- good karma here for

14 tonight. T-Mobile Arena holds approximately, for a

15 hockey game, 17,500 people for capacity. Here is that

16 photo of T-Mobile Arena during a hockey game.

17 96,000 people. Imagine this many people

18 times 5.

19 MR. DEUTSCH: Objection, Your Honor.

20 Argument.

21 THE COURT: Overruled.

22 MS. FRESCH: 5 T-Mobiles of people

23 participated in this illusion successfully before

24 Mr. Cox did.

25 Okay. Now let's focus on the MGM as a venue

1 for this show. Okay. Again, I have to use another  
2 piece of paper.

3 Okay. All right. The evidence will show  
4 that Mr. Copperfield, when he first began performing at  
5 the MGM, he did shows 20 weeks of the year -- all  
6 right -- on average, 15 shows per week for 20 weeks.

7 So that's 20 times 15, that equals 300 times.  
8 And he performed 20 weeks for the first five years  
9 while he was at the MGM. So that equals 1500.

10 Okay. Then, from 2005 to 2008,  
11 Mr. Copperfield increased the number of weeks he  
12 performed his show to 26 weeks per year, 15 shows per  
13 week, basically, seven days a week. So do that math,  
14 which is 26 weeks times 15 equals 390. Times four  
15 years, that's 1560.

16 Okay. Now, from 2009 to 2013,  
17 Mr. Copperfield didn't decrease, he actually increased  
18 the number of weeks he performs his shows at the MGM to  
19 42 weeks. Same thing, 15 shows per -- per week, seven  
20 days a week. So that math, 42 times 15 is 630, times  
21 4, that's 2,520.

22 All right. So you take all that numbers,  
23 you've got 5580. You take the 5580 times the average  
24 10 participants, and that comes out to -- again, I'm  
25 not sure -- I'm looking at my paper -- 55,800

1 participants participated in that illusion successfully  
2 prior to Mr. Cox. That's three T-Mobile Arenas at  
3 capacity for a hockey game like there will be tonight.

4 That's how many people participated as a  
5 volunteer for this illusion, the Thirteen Illusion,  
6 prior to Mr. Cox that night successfully. There were  
7 no prior injuries, the evidence will show, prior to  
8 Mr. Cox tripping and falling that night.

9 All right. The reason why this illusion has  
10 been so successful for all these participants and for  
11 all the audience members who sat there and saw that  
12 illusion was due to the practice, the preparation, and  
13 the precision that this team of people that you will  
14 meet over the course of this trial do in order to  
15 ensure that this illusion is done successfully, is done  
16 in a way for the audience to enjoy, in a way for the  
17 volunteers to enjoy.

18 Now, you've heard also about the screening  
19 process for the people who volunteer for this. It  
20 seems simple, but it's actually pretty intricate,  
21 really. Unbeknownst to any of the people who are going  
22 to be volunteers, they're not even aware that they're  
23 being screened when they grab a ball. They don't  
24 realize that there is a screening process. And the  
25 screening process is very important.

1           And that was developed by Mr. Copperfield and  
2 by the -- the people at Backstage in order to ensure  
3 that the people who are going to be -- to be the  
4 volunteers, who actually do disappear, are people who  
5 are capable of -- of completing the illusion. But  
6 what's important is, if someone along that route, for  
7 any reason, decides that they do not want to  
8 participate any longer, they don't have to. It's okay.  
9 It's not a bad thing if someone says, I decide I don't  
10 want to do it.

11           You'll hear testimony that, for the majority  
12 of people, that never happens. It does occasionally,  
13 but that's okay.

14           There's a lot of flexibility that goes into  
15 this illusion in terms of the audience volunteers. It  
16 can change over time because each show is different.  
17 There's a different group of people each time who are  
18 going to be involved -- involved in -- excuse me --  
19 involved in disappearing and reappearing. There is no  
20 magic number to who and how many people need to  
21 participate in any given show. It is all flexible  
22 depending on who those volunteers are at that  
23 particular show.

24           The flexibility of this illusion is one of  
25 the most unique things about that illusion, is that

1 it -- it adapts to who volunteers that night, who grabs  
2 the ball, who decides that they want to participate and  
3 be up on the stage and possibly disappear that night.

4           Now, the screening process is done to see  
5 are -- is someone there a little tipsy? Do they have  
6 inappropriate shoes on? Are there stilettos? Are they  
7 unable to maneuver the obstacle course that  
8 Mr. Copperfield walks with them when he is on stage as  
9 you will see in the video during the course of this  
10 trial?

11           If any of the people have those signs, they  
12 do not go into the platform; they go over to a side  
13 chair. They're still participating; they're just not  
14 the ones who, quote/unquote, disappear. And the reason  
15 that that is done is that is a safety assessment before  
16 the individuals who end up on the platform and who will  
17 eventually disappear.

18           Mr. Copperfield actually begins his screening  
19 process of the volunteers the moment that they take the  
20 balls and approach the stage, as do the Backstage  
21 assistants. When Mr. Copperfield begins talking about  
22 the illusion, when he starts to set it up, he's on  
23 stage. He's walking around. And he's basically giving  
24 some information to the audience about, okay, here  
25 comes the next illusion.

1           He starts telling everyone in the audience  
2 what the criteria will be to be a volunteer. You need  
3 to be in good health. Mr. Copperfield says this to all  
4 the audience members, you need to be in good health.  
5 You need to be able to speak English. Yes, of course  
6 you need to be able to speak English, as the evidence  
7 will show, because you do need to understand and follow  
8 direction if you're going to be one of the people who  
9 disappear. You need to be over 18 years old.

10           Now, while Mr. Copperfield is asking these  
11 questions and while he's performing the illusion, he's  
12 also entertaining his audience. And that includes  
13 humor. That includes some jokes. Are you a lawyer?  
14 Things like that. That's part of the show. That's  
15 what he's there doing. He is an entertainer.

16           Mr. Copperfield -- and this is prior to  
17 anyone grabbing a ball -- tells the audience that the  
18 volunteers will hang in the air and be made to  
19 disappear. 13 men and women will vanish. He tells  
20 them that if they grab a ball, they may get bumps and  
21 bruises. And, most importantly -- and this is before  
22 they grab the ball -- he says, "If you don't want to  
23 play, sit down."

24           It's a choice. It is a choice for each  
25 person who decides to become an audience volunteer.



1 They don't have to. You're sitting in the audience.  
2 You don't have to stand up and grab a ball. It's your  
3 choice if you want to take on and be a participant in  
4 the show.

5           And Mr. Copperfield says specifically -- you  
6 will see it in the video that we will show you of an  
7 exemplar show -- if you -- if you don't sit down, you  
8 understand the risk. He says that to all the audience  
9 members, again, before the balls are thrown out.  
10 Before anyone has the opportunity to grab a ball, he  
11 has given the audience criteria to make them decide, do  
12 I want to be a potential participant? Do I want to  
13 maybe be up on stage? Do I want to participate where I  
14 might disappear?

15           There's a mystery, of course, about what are  
16 you going to do if you disappear? Because we all know,  
17 when we go to a magic show, the whole thing is we don't  
18 know how the magic is performed. What would be the  
19 point if you always knew what -- what was the illusion  
20 and how the illusion was performed? It wouldn't be any  
21 fun. The whole idea is the mystery.

22           So if someone chooses to participate in an  
23 illusion, they can't know everything before they start  
24 participating because that would take away and defeat  
25 the whole point of the entertainment value of being a

1 volunteer and being the one who disappears.

2 All right. Now, there's further screening.  
3 Mr. Copperfield has said all of this when he's up on  
4 stage. Then the music starts to play, the balls go  
5 bouncing into the audience, same kind of beach ball  
6 effect as when you're at a sporting event and people  
7 are bouncing the balls around.

8 As they approach -- the music stops, people  
9 grab the balls. As they approach over to the stairs --  
10 which will be the left stairs if you're facing the  
11 stage -- Mr. Copperfield is standing near the stairs  
12 that go up onto the stage. There are Backstage  
13 assistants down at the bottom of those stairs. So as  
14 each person goes with their ball up to them, the  
15 Backstage people are right there. And they ask them  
16 three important questions. Can they run? Are they  
17 members of the press? And are they magicians?

18 Now, for the purposes of this trial, the key  
19 question was "Can you run?" Does that mean anyone has  
20 to run? No. The point of that question is can you  
21 run. That is telling that volunteer, when they are  
22 asked that question, "Can you run?" that you might need  
23 to run, or maybe you don't, but we want to know that  
24 you can run. Just like Mr. Copperfield has already  
25 said, are you in good health? Two key questions: Are

1 you in good health? And can you run?

2           Average adult goes up, hears those questions,  
3 thinks I need to be in good health, I need to be able  
4 to potentially run. That is giving a clue. That is  
5 giving a warning to them that they need to be in good  
6 health and they need to be able to run. It's your  
7 choice when you're asked those questions to continue to  
8 participate or not.

9           Now, the screening process continues.  
10 They've asked the questions. Then they go up the  
11 stairs. Mr. Copperfield is at the top of the stage  
12 looking down at each volunteer as they walk up those  
13 stairs. What's the point? Because you're assessing  
14 the person. How well do they walk up the stairs? Are  
15 they a little uneven on their feet? Are they having  
16 any problems?

17           The Backstage assistants are also watching  
18 them as they walk up, again, part of the screening  
19 process. And the screening process about going up the  
20 stairs, just as with the questions, is about safety.  
21 Because if someone doesn't answer the question and say  
22 they can't run, then, you know what? It's no big deal.  
23 They'll go up the stairs; they'll go and sit down.  
24 They'll be on the side chairs. They'll be the person  
25 who's at the back that is used to show that there's

1 nothing going on behind the platform during the  
2 illusion.

3           So the evidence will show you that this  
4 illusion could not have been performed successfully at  
5 the MGM if it was unsafe for all of these audience  
6 participants for all these years, for all 55,000 people  
7 who participated in it. If it was unsafe, 55,000  
8 people would not have participated in this  
9 successfully.

10           Again, they're asked specific questions.  
11 They are watched as they are walked upstairs. Now,  
12 they get up on the stage. They are also viewed,  
13 because Mr. Copperfield takes all of these volunteers,  
14 and he walks around the platform. Now, he's doing this  
15 to show them and show the audience about the platform.

16           But what an audience member does not really  
17 see is that, walking around the platform, there's  
18 cables, there's lights. These volunteers have to  
19 maneuver around these cables and lights as  
20 Mr. Copperfield is leading them around, looking behind  
21 them. Backstage are looking at them too. That's part  
22 of the assessment process.

23           Again, if someone is unable to manage to make  
24 it around this big platform and back to the front of  
25 the stage, again, they'll go to a side chair.

1           Now, final screening, they go -- platform,  
2 you got to go up some stairs. Again, if it looks like  
3 someone is physically not doing well to get up those  
4 stairs, they're taken over and put on a chair. And  
5 it's done very casually. The audience watching this  
6 does not think anything about it that some people are  
7 put over at chairs and some are put in the platform.  
8 It's part of the illusion.

9           Now, as much as there's stairs getting up on  
10 the stage, going into the platform, for the purposes of  
11 what we are all here about, from the point of the  
12 dragon, which you've heard about a little bit from  
13 Mr. Morelli, which is how -- the apparatus that the  
14 volunteers utilize in order to leave the platform to  
15 start on the pathway -- from the point of the dragon,  
16 getting out of the dragon, to the point of the doors by  
17 the cage of the casino of the hotel, there are no  
18 stairs. So the stairs are used as assessment, but,  
19 technically, there really are no stairs on this route  
20 for the purposes of what we are here today.

21           Again, there are no magic numbers about how  
22 many people need to participate. There are diagrams  
23 that the stagehands have that actually show the  
24 platform setup because there is a specific seating  
25 arrangement. And Mr. Copperfield will explain the

1 process of that seating arrangement, as will  
2 Mr. Kenner, to -- if there's only 6, if there's only 8,  
3 if there's 13, there's a precise seating order.

4           And they have all of those different  
5 alternates available and ready to go depending on how  
6 many people volunteer, how many people met and made it  
7 through the screening process.

8           Now, another key point is that there is no  
9 hurry or urgency to have these participants reappear.  
10 Why? The evidence will establish that there are a  
11 variety of alternate endings to the illusion, to no one  
12 appearing, to some reappearing, to all reappearing.

13           Now, as I mentioned, there will be testimony  
14 that the majority of people who participate in this  
15 illusion, they do reappear. But there are times when  
16 someone doesn't reappear or something happens. And  
17 guess what? Just no one reappears.

18           The audience is watching Mr. Copperfield up  
19 on stage. People disappear. If for some reason it --  
20 it ends up no one reappears, it's okay. The illusion  
21 has still been successful. They disappeared.

22           Again, going back to the flexibility, the  
23 flexibility is so that, no matter what is going on with  
24 the volunteers, there are different ways to end this  
25 illusion so that there is no issue. If there is a

1 problem with a volunteer, if something occurs, odd  
2 things happen, doesn't matter. Some people don't  
3 reappear? It's okay.

4           There's -- this illusion is not a timed  
5 event. And that's key because that goes with the no  
6 hurry, no urgency. It's not a timed event.

7           In fact, as Mr. Popovich mentioned, the only  
8 part that's really a key critical thing of timing is  
9 actually for the part that Mr. Copperfield is doing  
10 while he's on stage. He needs to do the illusion of  
11 having them disappear. You can't have people reappear  
12 too quickly because he has not had sufficient time to  
13 interact with the audience about the people  
14 disappearing.

15           So, in fact, there needs to be enough time  
16 for Mr. Copperfield to be performing the illusion in  
17 front of the audience members. That needs at least a  
18 minute. And, on average, the evidence will show that  
19 typically it's about a minute 20, a minute 40, a minute  
20 and a half for the participants from the time that the  
21 curtain goes down -- because that's when they start on  
22 the route -- from the time the curtain goes down on the  
23 platform to the time that they reappear when we're  
24 talking about the venue at MGM.

25           Mr. Morelli mentioned how the music can loop.

1 Yes. Why is that important? Because, again, it's so  
2 that, as people are going a little -- walking slower  
3 that way as the participants, it's okay. The music  
4 just loops. Mr. Copperfield is a great performer and  
5 entertainer. He can handle being on stage. Doesn't  
6 matter. Music keeps looping; he keeps entertaining the  
7 audience. The audience is having fun. They don't  
8 care. So what if it was actually 2 1/2 minutes?  
9 Doesn't matter. The music can reloop and reloop and  
10 reloop. No one's going to matter. And then the  
11 audience reappears. Those volunteers reappear. Then  
12 that's perfect. That's why the music can reloop. It's  
13 because -- the whole point of this illusion is the  
14 flexibility of it so that everyone is having a good  
15 time.

16 Now, a minute doesn't seem like a long time,  
17 in some respects. Minute, minute and a half, that  
18 doesn't seem like a long time. However, as the  
19 photograph that Mr. Popovich showed you of the outside  
20 and -- oops -- of the nice diagram here, it's not a  
21 really big distance. And that one photograph that  
22 Mr. Popovich showed you shows like it's a pretty short  
23 amount of feet, especially from the time that the  
24 volunteers go out the 30 feet, to the approximate  
25 43 feet, to go into the third door back into the hotel



1 by the cage. And there will be testimony as to why.

2           Because, again, everyone involved in  
3 designing this illusion and developing it, and  
4 developing this route at the MGM specifically, took  
5 into consideration what made best sense for these  
6 volunteers from the time that they leave the dragon, go  
7 through the back of the theater, out the door, and that  
8 it would make the best sense and the most direct  
9 pathway for those people to go into the third set of  
10 doors. Not the first, not the second, and not the  
11 fourth.

12           So now that we're looking at the diagram, I  
13 want to also point out a little -- again, I have to use  
14 my little cheat sheet here with my bad memory.

15           So, as I said, there's -- the evidence will  
16 show there's -- this is not a long route at all. It's  
17 pretty quick in terms of the length. Now, there's a  
18 lot of people in this route with the volunteers. You  
19 can't quite see it with this diagram. But just imagine  
20 for a moment, where the volunteers come out from the  
21 dragon, there's a stagehand right there with a  
22 flashlight. Because, yes, they're on the back of the  
23 stage; the audience is out in front of the stage. So  
24 it's not brightly lit because, otherwise, you couldn't  
25 be doing this illusion. It's a stage.

1           So -- but for the volunteers who come out of  
2 the dragon, there is a stagehand right there with a  
3 flashlight and directing them. They're directed  
4 towards here. Where it says "stage" right below here,  
5 there's an individual, another stagehand, who's holding  
6 back a curtain and telling them and guiding them where  
7 they're going. Okay. So that's No. 2.

8           There's also an individual there, a third  
9 individual in this same area right in the back of the  
10 stage, with a flashlight, because, again, you're still  
11 on the back of the stage, so it isn't brightly lit, of  
12 course, because of the stage being backstage, needing  
13 it to be dark so people can't see anyone leaving or  
14 their -- or that would be like a buzz kill for this  
15 illusion. So there's three people, so far, in this  
16 little space right here guiding the volunteers on their  
17 route. Okay. So then they've turned, they've been  
18 guided down towards here.

19           No. 4, stagehand No. 4, now this person is  
20 starting to hand out flashlights to them. Because this  
21 is important in terms of when they reappear, they're  
22 given a flashlight not to turn on, actually, not for  
23 them to use to light their pathway, because that's not  
24 necessary. This is for later on. But they get a  
25 flashlight here.

1           There's also then another person here at this  
2 corner, another stagehand. So we've got one, two,  
3 three, four. We're at stagehand 5 at this point. Five  
4 different people have been assisting the volunteers so  
5 that they know where they're going. There's no  
6 pandemonium; there's no chaos. People are just being  
7 guided along the route.

8           All right. So then here we have five going  
9 out the door. They walk outside of the door of the  
10 theater. There is a person, stagehand, here, that  
11 person to help guide them to go right because it's  
12 asphalt. And like Mr. Popovich said, it's not  
13 Tropicana Avenue. It's just a driveway for MGM's use.  
14 That person has a spotlight this big (indicating), not  
15 a flashlight. They have a spotlight. All right.  
16 They're pointing the flashlight to provide the guide  
17 for the people to be walking along. Just very simple.

18           Now, so we have got, one, two, three, four,  
19 five. We're at No. 6. A mere 30 feet down this way,  
20 as they're being led, there's another person, another  
21 stagehand, right here at this corner. And this is  
22 where that tree is. You saw the pictures that  
23 Mr. Popovich showed you of the tree in the corner. All  
24 right. There's another person here, and guess what?  
25 He's holding the big spotlight too. So we've got two

1 people outside holding the big spotlights. So two big  
2 spotlights, two people here. All right.

3           So one, two, three, four, five, six, seven  
4 people. Seven people are guiding these volunteers.  
5 Now, besides those seven, there are two backstage  
6 people for the particular night that we have where  
7 Mr. Cox was a volunteer. The person who was leading  
8 the volunteers from the time they leave the dragon to  
9 the time that they reenter the theater, the back of the  
10 theater and reappear, Mr. Ryan Carvalho was leading  
11 them that night.

12           You've got the volunteers, and you also have  
13 another individual. Her name -- and she will testify  
14 as well, Pomai Weall. She was leading. And it was in  
15 the caboose, if you will, the end of it. So you have  
16 got seven people in stationery positions, all lined up  
17 to help these volunteers to go from over here and over  
18 here.

19           Mr. Carvalho is leading them. Ms. Pomai  
20 Weall -- and I think I'm mispronouncing her name  
21 slightly -- she's at the end of it to ensure everyone  
22 is going, no one's wondering off, no one's getting  
23 lost. Not that you could because there's not that many  
24 people, and there's these people with the spotlights.  
25 But she's right there. They're going this way, the

1 direction towards the third door.

2 Now, where the X is, as we know, that's the  
3 approximate location where Mr. Cox tripped and fell  
4 down. But the pathway that they were taking was to go  
5 through these doors, through the next set of doors, and  
6 then back into the theater to reappear. So nine  
7 people, nine people are helping, on average, 10, 13, 13  
8 people. 9 people are actually helping them on this  
9 route. That's 9 stagehands helping them. Not one, not  
10 two, but 9.

11 And I'm not even including the fact that  
12 there -- the security guard who opens up the door  
13 initially to set light. So if you really talk about  
14 that person and that individual and their role in this  
15 pathway, that's ten people. All right. Let me see.  
16 All right.

17 Now, on November 12th, 2013, the night that  
18 Mr. Cox attended the show with his wife, the evidence  
19 will show that Mr. Cox, as well as the other members of  
20 the audience that night, was told that volunteers will  
21 disappear, that the volunteers need to be in good  
22 health.

23 Mr. Cox was asked if he could run when he was  
24 at the bottom of the stairs to go on the stage.  
25 Because he chose to grab a ball -- didn't have to grab

1 a ball; he chose to grab that ball. He was asked if he  
2 could run, and he said, yes, he could. He told them he  
3 was in good health and that he could run. All right.  
4 I talk faster than I read.

5 Now, let's go back about the route that  
6 night, as with all the nights, because same process,  
7 same practice, same rehearsing, same precision. And as  
8 Mr. Popovich has spoken about, a lot of different  
9 people inspect this route prior to those volunteers for  
10 the Thirteen Illusion. Now, what I find critical is  
11 the fact --

12 MR. DEUTSCH: Objection, Your Honor.  
13 Opinion.

14 MS. FRESCH: What --

15 THE COURT: Go ahead.

16 MS. FRESCH: What's -- as the evidence will  
17 show you, what's critical is one of the individuals who  
18 actually takes this route and inspects this route is  
19 Mr. Copperfield. Mr. Copperfield, for a different  
20 reason -- approximately ten minutes before Mr. Cox took  
21 the same route, Mr. Copperfield takes that route.

22 Now, Mr. Copperfield is going from Point A to  
23 B, true, for a reason. However, for the purposes of  
24 why that's important for all of us in this trial is  
25 that Mr. Copperfield, when he does that, he himself --

1 it's Mr. Copperfield performing; he's the magician,  
2 he's taking that route, he's inspecting the route, he's  
3 looking down, he's aware.

4           Mr. Copperfield is here. It's so critical  
5 for him, for all of his audience members, for the  
6 volunteers to have an enjoyable time. That's why  
7 Mr. Copperfield is performing. That's why  
8 Mr. Copperfield is doing how many shows for 42 weeks of  
9 the year, seven days a week, fifteen shows a week. So  
10 Mr. Copperfield, when he's walking that route, if he  
11 saw debris, if he saw something out of the ordinary on  
12 this route, he would be immediately alerting.

13           There was nothing on the route that night,  
14 and you will see a video of Mr. Copperfield, at least  
15 for a portion, of taking that same route. He is  
16 inspecting that route himself. That's done, literally,  
17 about ten minutes before the 13 volunteers take that  
18 same route.

19           So on the night that Mr. Cox tripped and fell  
20 on a flat surface of the concrete over here where the X  
21 is, Mr. Copperfield had done that same route to go into  
22 the same set of doors, or maybe a different door  
23 because it's more important for the volunteers to go  
24 through the third set of doors. But Mr. Copperfield  
25 essentially walked, ten minutes before, right where

1 Mr. Cox walked ten minutes later. There was no debris  
2 on that route.

3 Now, my client's accident reconstruction  
4 expert is also Dr. Baker. Mr. Popovich has already  
5 talked in detail about Dr. Baker's opinion. It is his  
6 opinion that Mr. Cox tripped; he did not slip and fall.

7 Mr. Cox does not have an accident  
8 reconstruction expert in this lawsuit. The evidence  
9 will show that my clients did not cause Mr. Cox to trip  
10 and fall that night.

11 I conclude this by saying we're going to have  
12 a lot of testimony, a lot of discussion about  
13 illusions. But what is not an illusion is that, at the  
14 end of the day, the evidence presented will demonstrate  
15 to all of you, to each one of you, that neither  
16 Mr. Copperfield nor David Copperfield Disappearing,  
17 Inc., were the cause of Mr. Cox falling on that night.

18 Thank you. I appreciate your attention.

19 THE COURT: Thank you, Counsel.

20 Opening statement? Mr. Russell, you may  
21 proceed.

22 OPENING STATEMENT

23 MR. RUSSELL: I'm just waiting to get it set  
24 up here.

25 Good afternoon.



1           IN UNISON:   Good afternoon.

2           MR. RUSSELL:   Again, my name is Howard  
3 Russell.   And, along with my partner Lee Roberts and  
4 our paralegal Audra Bonney, we're here to represent  
5 Backstage Employment and Referral.   As you heard, we  
6 also have Mr. Kenner, Chris Kenner, in the room with us  
7 today.   He'll be here at parts of the trial.

8           As you have heard, Backstage Employment and  
9 Referral is the team that carries out the illusions at  
10 the David Copperfield show.   It's a group of  
11 individuals who collaborate to bring those illusions to  
12 life.

13           I'd like to thank you for your time and your  
14 attention already.   We had a long jury selection  
15 process.   You all devoted us a great deal of time and  
16 attention, and we appreciate that.   And we're going to  
17 thank you in advance for the time and attention you're  
18 going to provide in the coming days, the coming weeks,  
19 because jury service is not easy, and we know that and  
20 we appreciate it.

21           We'd also like to thank Judge Denton and his  
22 court staff.   Just as Backstage is the man behind the  
23 curtain for the David Copperfield show, Judge Denton  
24 and his staff are sort of the man behind the curtain  
25 for a trial.   They keep things moving smoothly; they

1 keep things moving efficiently. And we appreciate  
2 their time and their service.

3 As you have heard, this is the part of the  
4 trial called opening statements. And, as you know,  
5 this is not evidence. This is the opportunity for the  
6 attorneys to preview the evidence for you, to lay out a  
7 roadmap for you, to keep you on track as you listen to  
8 the evidence, as you hear the testimony throughout the  
9 trial.

10 Now, some of the evidence I'm going to talk  
11 about, you've heard today already. I understand that  
12 you've heard it from Mr. Morelli, Mr. Popovich, and now  
13 Ms. Fresch. But this is our opportunity to give you  
14 our perspective, to give you Backstage's perspective on  
15 the evidence. And as you hear the evidence, you're  
16 going to gather those pieces. You're going to gather  
17 those bits of testimony.

18 You're going to be asked to weigh the  
19 credibility of witnesses. You're going to be asked to  
20 use your common sense along the way. And at the end of  
21 this phase of the trial, Mr. Roberts is going to come  
22 back up here and he's going to summarize that evidence  
23 for you. He's going to take you back down that path to  
24 try to reach your verdict.

25 When you are considering the evidence in this

1 case, I would like you to remember that words matter.  
2 You think about our current culture, and every time a  
3 politician or newscaster or celebrity says something on  
4 Twitter or in a news conference or on TV or on the  
5 radio, the words get dissected. They get picked apart.  
6 They get analyzed. They get reanalyzed. And in a  
7 civil trial, certain words carry a greater significance  
8 than others. There are words you hear often, that are  
9 everyday words, that sort of describe the facts to you.  
10 Other words have a more significant legal meaning.

11           Some of the words you're going to hear a lot  
12 during this trial are the ones you have heard today:  
13 accident, fall, trip, stumble. But those aren't the  
14 words that you are going to have to rely on to reach  
15 your verdict. Those are factual words that no one  
16 really disputes.

17           You're not here to decide whether or not  
18 Mr. Cox tripped and fell. We all know he did. You've  
19 all heard that for a couple of weeks now. No, you are  
20 going to be asked to determine a much more significant  
21 legal word, and that's "negligence." You heard a  
22 little bit about that today. You heard about it during  
23 voir dire. This is a negligence case, and Judge Denton  
24 is going to instruct you what that means. And you're  
25 going to be asked to decide if one or more of the

1 defendants was negligent and if that negligence caused  
2 Mr. Cox to fall.

3           The judge will instruct you about the burden  
4 of proof, which is just because an accident happens --

5           MR. DEUTSCH: Objection, Your Honor. Is this  
6 summation or opening?

7           THE COURT: Overruled. Go ahead.

8           MR. RUSSELL: Just because an accident  
9 happens is not proof that someone was negligent. There  
10 might be a reason that someone falls, but there needs  
11 to be evidence that someone failed to use reasonable  
12 care to cause that fall. And Judge Denton will  
13 instruct you on what you must find to determine if one  
14 or more of the defendants was negligent and if that  
15 negligence caused Mr. Cox's illusion [sic].

16           So for all the times you are going to hear  
17 the word "accident, trip, and fall" over the coming  
18 days, you're going to hear the word "negligent" very  
19 rarely after today's opening statement because, as  
20 you'll be instructed, whether or not one of the  
21 defendants was negligent will be for you to find after  
22 you hear the evidence and after you are instructed on  
23 the law.

24           So when it comes to determining whether there  
25 was negligence, whether there was something more than

1 just an accident here, what evidence do we expect  
2 you're going to hear? Well, you've heard a little bit  
3 about Backstage and its history, and you will hear a  
4 little bit more.

5           Backstage is the team that works with  
6 Mr. Copperfield to put on the performances at the MGM.  
7 The producer, the conceptual artist, the stagehand, the  
8 stage manager, the lighting guys, everyone who works  
9 together to bring those illusions to the public. And  
10 Backstage's employees are employees who assist in  
11 carrying out illusions that are meant to entertain,  
12 clearly, but, just as importantly, illusions that are  
13 carried out with certain protocols, certain designs,  
14 certain plans.

15           And you are going to hear from witnesses who  
16 are involved in the development of the Thirteen  
17 Illusion. From the time they first started working on  
18 it with Mr. Copperfield, you will hear testimony about  
19 the long hours and the efforts that go into developing  
20 any illusion, including the development of plans and  
21 protocols to carry out those illusions.

22           One of the people you hear from is  
23 Mr. Kenner. Now, Mr. Kenner is in somewhat of a unique  
24 position. He has been working with Mr. Copperfield for  
25 over a quarter of a century, over 25 years. He has

1 knowledge of Mr. Copperfield's businesses and work  
2 before Backstage was even created. So he may be  
3 knowledgeable, he may be asked to testify and may be  
4 asked questions about both Backstage and David  
5 Copperfield Disappearing, Inc. Please understand,  
6 these are two separate legal entities.

7 But you're going to be instructed that when  
8 you deliberate, you don't leave your common sense at  
9 the door. You don't forget your common sense. Well,  
10 Mr. Kenner cannot forget what he knows of over 25 years  
11 of working with Mr. Copperfield. So he may be asked to  
12 testify to give you some background on both companies.

13 You're going to hear from the employees who  
14 helped develop the illusion over the years and the  
15 directions and the protocols that were developed for  
16 here at the MGM as well as other places in the world.  
17 And you'll hear from these witnesses that the  
18 directions and the protocols, they have a purpose, they  
19 have a reason. And Mr. Copperfield, I expect, will  
20 explain that as well.

21 One of the purposes of having directions and  
22 protocols and designs is, if it's an illusion where  
23 only the show team is involved, well, it's to protect  
24 their safety. It's to make sure it gets done  
25 efficiently. But when there are audience participants

1 involved, these safeguards and protocols, they are to  
2 protect the audience participants as well.

3           You're going to learn, as you have already  
4 heard, about the creation of a path for the  
5 participants to take, about the use of music and  
6 timing, and how the illusion can be catered to  
7 dangerous conditions. If there's something that needs  
8 to be changed on a certain night because of something  
9 that comes up, how the team works around that.

10           Now, Mr. Morelli told you a little bit about  
11 the timing and he says well, you know, to get through  
12 this whole illusion takes about a minute. You have now  
13 heard that, in that minute, the participants have to  
14 travel less than 100 yards, a few hundred feet, less  
15 than a football field. You've seen Bolt can run a  
16 football field in under 10 seconds, high schoolers that  
17 can run it in 12 to 13 seconds. Here we're talking  
18 about a minute to walk the length of a football field.  
19 And you will hear evidence about what pace you need to  
20 go at to walk the length of a football field in under a  
21 minute.

22           You will hear testimony about how the  
23 protocols and the designs for this illusion are passed  
24 down from employee to employee, how when someone is  
25 taking over a certain role in the illusion, they shadow

1 their predecessor. They learn on the job. They learn  
2 the ins and outs of every piece of their part of the  
3 illusion.

4           You will hear the intricacies of handing off  
5 that knowledge from person to person and how a  
6 Backstage employee will stay in a certain role, what  
7 they call a track. They stay on their track for a very  
8 long period of time. And if they decide to leave,  
9 well, they take a long time to train a new person  
10 before they just send them out there to do the  
11 illusion. They have to learn it cold.

12           And you will also hear from the Backstage  
13 employees, well, there's an overarching plan in place.  
14 There's an overall design in place. Mr. Copperfield  
15 and the Backstage team members can adapt, as necessary,  
16 to make sure that the illusions are carried out safely,  
17 they're carried out effectively, and they're carried  
18 out efficiently.

19           Now, Mr. Morelli talked about the various  
20 versions you're going to hear. This isn't a version of  
21 how the illusion is done. The evidence is going to be  
22 this is just how it's done.

23           So what are some of the protocols and what  
24 are some of the safeguards you're going to hear about?  
25 Well, you've heard some of them already from the



1 attorneys before me. And that's good because the  
2 evidence is going to be that these protocols and  
3 safeguards you've heard about, they're reasonable.  
4 They're there to make the illusion safe and efficient  
5 and effective for everyone involved, including the  
6 audience participants.

7           You've heard that you're going to hear from  
8 two Backstage employees who were there on the night of  
9 Mr. Cox's accident, the ones who were involved in the  
10 runaround. You're going to hear from Ryan Carvalho.  
11 You're going to hear from Pomai Weall. They were the  
12 actual stagehands guiding Mr. Cox's group of  
13 participants around the illusion.

14           Mr. Morelli says, "I'm going to call them in  
15 my case in chief." He's right. And if he didn't, I  
16 would call them in mine because their testimony is  
17 going to establish that Backstage used all reasonable  
18 care in carrying out this illusion. Now, you've heard  
19 about the weeding-out process, the preprocess of  
20 screening participants. You're going to hear that from  
21 the Backstage employees as well. You'll hear how they  
22 watch the audience members as they come up from the  
23 audience, up onto the stage, how they proceed around  
24 the stage, and how the employees are looking for any  
25 signs of ill health, unsteadiness, intoxication,

1 whatever it may be. They're there looking to make sure  
2 that the people involved in the illusion are well  
3 equipped to do so.

4           You'll hear the process of getting the  
5 audience members from the audience onto the stage and  
6 the various times that both Mr. Copperfield and the  
7 Backstage employees have to assess and reassess these  
8 participants. You will hear testimony about the  
9 questions that are asked.

10           Now, Mr. Morelli talked about asking if they  
11 could speak English, asking if they were pregnant.  
12 You've seen Mr. Popovich and Ms. Fresch. They talked  
13 about those as well. Well, there's no evidence that  
14 Mr. Cox's accident happened because he couldn't speak  
15 English or because he was pregnant or because he was a  
16 lawyer or because he was a magician. Okay? Yes, those  
17 are important parts of the protocol, but they really --  
18 the evidence is going to be that they really don't have  
19 any impact here. The question that he was asked was,  
20 "Can you run?" And Mr. Cox will admit he said yes.  
21 And he will admit he had no physical limitations  
22 preventing him from running, and he will admit he had  
23 no difficulty running during the illusion.

24           After you hear about the prescreening  
25 process, next you're going to hear about what happens

1 after the illusion starts. And you have seen some of  
2 the pictures, and you've heard some of the other  
3 lawyers talk about the curtain drops down and now the  
4 participants start moving through the illusion.

5 Well, what happens first is, they're ushered  
6 down these few steps out of what we call the dragon.  
7 The steps are lined with glow tape. Mr. Carvalho  
8 actually takes the hand of the first participant in  
9 line. It's always a female. That's part of the  
10 illusion because of the way they set up the  
11 participants, so it's always a female. He takes her  
12 hand and he guides her through the illusion.

13 And you'll hear how he tells her before every  
14 turn, going to turn left, going to turn right, here we  
15 come. He leads that participant throughout the  
16 illusion while various stagehands from Backstage and  
17 the MGM are lighting the path and ushering the people  
18 along the way. He will tell you how quickly he moves,  
19 how the pace of the illusion depends on where along the  
20 illusion the participants are and how fast and how  
21 sometimes the participants themselves can set the pace.  
22 Because Mr. Morelli is right, there are turns in this,  
23 and you have seen the diagram of that.

24 And Mr. Carvalho will explain you can't run  
25 down a hallway for 17 feet, you can't run down a

1 hallway for 14 feet before you take the turn. There's  
2 no way. You can't physically do it. There's times  
3 that the pace can be faster. When you're on a straight  
4 line, for example, outside, for example, you could have  
5 a faster pace. So there are turns. But there are also  
6 straight lines.

7           You're going to hear different descriptions  
8 of what that pace may be. Some of the Backstage  
9 employees might call it a jog. Some of them say, yes,  
10 we ask the participants to keep moving. And you'll  
11 hear them testify that sometimes the participants do  
12 run because, even while the illusion is going on, there  
13 is still an opportunity to assess and reassess the  
14 participants. And if they're not doing well, if  
15 they're having trouble, as Ms. Fresch said, they just  
16 don't reappear. They're asked to sit out the rest of  
17 the time so they're not putting themselves or anyone  
18 else at risk.

19           Finally you're going to hear about how the  
20 illusion is set to music. And you've heard that it can  
21 be extended -- it's on a loop, it's on a track -- that  
22 if the participants take a little bit longer to get to  
23 the back of the auditorium where they can wave to the  
24 crowd, Mr. Copperfield just keeps entertaining the  
25 crowd. And while the music is playing, in fact, there

1 are stops along the way. There are times Mr. Carvalho  
2 will tell you he regroups the participants, gathers  
3 them together before they move on to the next step.

4           Safeguards, protocols, contingency plans,  
5 these are all part of the illusion that you will hear  
6 about.

7           And the evidence is going to be that these  
8 are in place both for the safety of everyone involved  
9 and to maintain the mystique of the illusion. And it  
10 is that conduct, the way that Backstage proceeds  
11 through this illusion, that you're going to be asked to  
12 evaluate at the end of this phase of the trial to  
13 determine if, in fact, you believe Backstage was  
14 negligent in the way it carried out the illusion.

15           You've heard Mr. Morelli give you their  
16 version of the illusion and how the illusion is rushed,  
17 pandemonium, chaotic. But it will be up for you to  
18 decide whether this illusion is carried out in such a  
19 way that it's so chaotic and so rushed. You'll hear  
20 running as fast as you can.

21           Again, at the end of this case you're going  
22 to be asked to deliberate and use your common sense.  
23 So, as you listen to the evidence, ask yourself, does  
24 it make sense that the illusion would be carried out in  
25 such a way that people are running as fast as they can

1 in a chaotic -- in a -- in a chaotic sense, in a sense  
2 of pandemonium, and then, all of a sudden, they appear  
3 at the back of the auditorium to wave hello to the  
4 their family and friends? Does it make sense that the  
5 illusion would really be carried out that way? Weigh  
6 the evidence that way is what we'll ask you to do.

7           Mr. Morelli has already talked to you today,  
8 and he talked about a little bit during voir dire, that  
9 Mr. Cox wasn't given any instructions. Well, to some  
10 extent, that's true. Mr. Cox was asked whether he  
11 could run. He said yes. But it is true that he and  
12 the other participants are not given a step-by-step  
13 manual of what the illusion is or what the steps are  
14 going to be.

15           But the Backstage employees that will testify  
16 will explain to you there's a reason for that. That's  
17 a more reasonable way to do it. And you can use your  
18 common sense to figure that out, because think about  
19 the scenario in which you have anywhere from 7 to 13  
20 different people, while they're walking up to the  
21 stage, lights going, music on, all of a sudden  
22 receiving instructions in their ear, "Hey, you're going  
23 to take a left turn after 17 feet. Hey, you're going  
24 to take a right turn after 14 feet, then you're going  
25 to take another right turn to go outside and you're

1 going to run 25 feet." Picture that.

2 And then they all get into the platform.

3 And, as they come off the platform, what are they  
4 doing? They're trying to remember in their head which  
5 way they're going to go. What am I -- what did they  
6 tell me? What's more reasonable? To do that or to  
7 play a game of follow the leader? Come with me. Let's  
8 go this way. We're going to turn now. We're going to  
9 turn now. What's more reasonable? That's the conduct  
10 that you're going to be asked to judge.

11 And the evidence is going to establish that  
12 the way Backstage performed this illusion was the  
13 reasonable and safe way.

14 Now, it will also be for you to decide the  
15 issue of causation, which means that not only does a  
16 party have to be negligent but that negligence has to  
17 cause the accident. Now, the undisputed evidence is  
18 that, even with all the criticisms of the accident --  
19 or excuse me -- all the criticisms of how the illusion  
20 is done, there's no causal link between that and  
21 Mr. Cox's actual accident.

22 MR. DEUTSCH: Objection, Your Honor. Is this  
23 what he intends to prove?

24 THE COURT: He's just telling what the  
25 evidence will show, as I understand it.

1           Go ahead.

2           MR. RUSSELL: Now, you're going to have an  
3 opportunity to view the video. You've heard us talk  
4 about it a couple of times today. And, although, yes,  
5 it's partially blocked, the area where you'll see on  
6 the video is a straight path towards the door. You'll  
7 see the amount of light that's provided. I wanted you  
8 to see the video today to give you an idea of what  
9 you're going to see during the trial. And you're going  
10 to see other participants traverse along this path.

11           Audra, please.

12           THE COURT: You're not showing the video  
13 itself, just stills; correct?

14           MR. RUSSELL: I'm showing the video itself.  
15 This has been stipulated into evidence.

16           MR. MORELLI: They told us no videos.

17           MR. RUSSELL: This --

18           THE COURT: Wait just a second.

19           MR. RUSSELL: Audra, pause it for a second,  
20 please.

21           This has been stipulated into evidence, Your  
22 Honor.

23           MR. DEUTSCH: Yeah. Okay. It's no problem.

24           MR. RUSSELL: Thank you.

25           MR. DEUTSCH: Sorry.



1 MR. RUSSELL: No problem.

2 (Whereupon video was played.)

3 MR. RUSSELL: Thank you, Audra.

4 Now, the evidence will be, both from the  
5 testimony here and the video and the expert opinions  
6 you're going to hear, that there's nothing unique about  
7 how the illusion is performed that caused this  
8 accident.

9 You may have assumed during voir dire, what  
10 you heard earlier today, that there's some intricate or  
11 hazardous portion of the illusion that is where this  
12 accident happened. Well, the evidence will show just  
13 the opposite. At the end of the day, the evidence is  
14 going to be that Mr. Cox was asked if he could run. He  
15 said yes. He engaged in the illusion. And while  
16 running in a straight line toward a lit door, he  
17 tripped and stumbled.

18 The evidence is going to be that nothing  
19 Backstage did in the context of carrying out this  
20 illusion caused Mr. Cox to fall. The evidence will be  
21 that there's nothing magical or mystical about how this  
22 accident happened. It was just an accident.

23 You've heard that a trial is where the jury  
24 acts as the finder of fact. And that is what you're  
25 going to be asked here to do. A jury is tasked with

1 weighing disputes over the evidence to find the facts.

2 But there are some facts that are going to be  
3 easier to find than others because they're undisputed.  
4 For example, you're going to hear testimony -- and  
5 Ms. Fresch told you a little bit about this -- that in  
6 just -- in over ten years of performing the illusion at  
7 the MGM -- and, just for understanding, in 2014,  
8 Mr. Copperfield put in a new arena. So this wasn't  
9 done after 2014.

10 With an estimated over 50,000 participants  
11 involved in this illusion, the only injury alleged from  
12 someone falling during the Thirteen illusion was  
13 Mr. Cox. That's it. Now, you might hear about an  
14 incident where a woman lost a shoe, didn't get hurt,  
15 didn't need to call for medical, nothing like that,  
16 lost a shoe. In over ten years and over 50,000  
17 participants.

18 It's also undisputed, as I've already told  
19 you, that, prior to participating in the illusion,  
20 Mr. Cox was asked whether he could run. He said yes.  
21 He had no physical limitations and he had no difficulty  
22 running through parts of the illusion right up until  
23 the moment of his fall. Those aren't my words; those  
24 are going to be Mr. Cox's own words.

25 It's also undisputed that there were lights

1 along the pathway inside the MGM. And now you've seen  
2 on the video, there's lights along the pathway on the  
3 outside as well.

4 And there's no evidence that Backstage -- or  
5 any other defendant, for that matter -- had any  
6 knowledge of any hazardous condition, debris, anything  
7 on the pathway that would present a risk to the people  
8 participating in the illusion.

9 Now, these are the pieces of evidence, along  
10 with the ones we've already talked about, that you will  
11 be able to use at the end of this trial to determine if  
12 there was negligence on the part of any of the  
13 defendants.

14 You've heard a lot about the credibility of  
15 witnesses and that you're going to be asked to judge  
16 that. And, as you receive the evidence, I'd ask you to  
17 keep in mind things like bias, what the witness's  
18 motivation is.

19 And the judge will also instruct you in your  
20 deliberations, as I said, that you're going to have to  
21 use your common sense during your deliberations. So,  
22 as you listen to the testimony, keep in mind what makes  
23 the most sense. Recall that this case is all about  
24 this illusion, all about an illusion that the people  
25 disappeared out of the platform, and, a few minutes

1 later, are in the back of an auditorium waving to their  
2 family and friends.

3           As you listen to the evidence, ask  
4 yourselves, does it make sense that you would have had  
5 those people running at full speed for their lives in a  
6 chaotic situation? Or does it make more sense that  
7 they had a plan in place and they moved the people  
8 through the illusion to the timing of the music and  
9 back out to the back of the auditorium? What will make  
10 more sense to you?

11           Finally, Judge Denton is going to instruct  
12 you about the burden of proof and what it means to  
13 satisfy that burden of proof. And Mr. Roberts will  
14 come up here at the end of the trial. And he'll ask  
15 you to consider, having heard the evidence, consider  
16 the law, weighing the credibility of the witnesses,  
17 whether plaintiffs have truly met their burden of  
18 proof.

19           And, at the end of this phase of the trial,  
20 you'll be asked to determine if any of the defendants  
21 was negligent and whether that negligence caused the  
22 accident.

23           But we submit that the evidence will not  
24 prove to you that Backstage was negligent in the way it  
25 carried out this illusion. And we will ask you to

1 return a verdict in our favor.

2 Thank you. We look forward to speaking with  
3 you throughout the trial.

4 THE COURT: Thank you, Counsel.

5 Okay. Mr. Deutsch, 10? 15? 10? Okay.

6 Ladies and gentlemen, we'll take a 10-minute  
7 recess.

8 During the recess, you're admonished not to  
9 talk or converse among yourselves or with anyone else,  
10 including, without limitation, the lawyers, parties,  
11 and witnesses, on any subject connected with the trial,  
12 or read, watch, or listen to any report of or  
13 commentary on the trial or any person connected with  
14 the trial by any medium of information, including,  
15 without limitation, newspapers, television, the  
16 internet, and radio, or to form or express any opinion  
17 on any subject connected with the trial until the case  
18 is finally submitted to you.

19 Be outside the courtroom at 3:15. Thank you.

20 THE MARSHAL: All rise.

21 (Whereupon a short recess was taken.)

22 THE MARSHAL: All rise for the jury. All  
23 rise.

24 (The following proceedings were held in  
25 the presence of the jury.)

1 THE MARSHAL: Department is again in session.  
2 Remain in order.

3 THE COURT: You may be seated.  
4 Do counsel stipulate that the jury is  
5 present?

6 MR. MORELLI: Jury's present.

7 MR. POPOVICH: Yes, Your Honor.

8 MS. FRESCH: Yes, Your Honor.

9 THE COURT: All right.

10 MR. STRASSBURG: Yes, Judge.

11 THE COURT: You may proceed.

12 MR. STRASSBURG: Thank you, Judge.

13 OPENING STATEMENT

14 MR. STRASSBURG: Hello. You know, I'm -- I'm  
15 not so worried about going after Morelli and these  
16 other fine lawyers; what I'm kind of worried about is  
17 preceding the hockey game.

18 So I want to make sure that there's plenty of  
19 time for those of you who have an interest in the  
20 Golden Nuggets and their historic -- their historic  
21 season. So I'm going to try to be brief. I'm going to  
22 leave some stuff out. I just want to hit the high  
23 points and give you the -- the flavor of what I will  
24 prove to you in this case.

25 I will prove to you that my company, Team,

1 did not have actual control at the time of the  
2 accident. We had been gone for six hours. We had left  
3 the job. I'll prove to you that we didn't leave a  
4 condition behind that had anything to do with what  
5 happened to Mr. Cox.

6 We're sorry about that, wouldn't wish that on  
7 anybody, but we did not do -- create a condition that  
8 led to that.

9 So, at the end of the case, I'm going to come  
10 back and I'm going to ask you for a verdict to clear  
11 Team's name, its reputation 100 percent.

12 Team works in a small market. It's 3 miles  
13 long, it's half a mile wide. It's the Strip. There's  
14 a limited number of players. Everybody knows  
15 everybody. Everybody talks to everybody. A whisper in  
16 the wrong ear at the wrong time -- I want you, at the  
17 end of the case when you've seen everything, when I  
18 prove what I say I'm going to prove, that you hold that  
19 Team is not liable to the plaintiffs and clear their  
20 name.

21 So to start with, who is Team? Team is  
22 basically two guys: David Noble and Chance Hibbard.  
23 They met working at a construction company locally.  
24 The company fell on hard times because it couldn't  
25 control costs. These two guys went out, having learned

1 that lesson, and started Team Construction. 25 years  
2 later, they've built about 70 percent of the TI, the  
3 tenant improvements, in the casinos on the Strip.

4           Just a flavor to give you a sense. And, you  
5 know, it's not that -- like they're so great. Just to  
6 give you a flavor of what it is that they do. They  
7 work inside predominantly. And they build tenant  
8 improvements -- like, well, here's kind of a picture of  
9 Beacher's. They do -- this is the Center Bar at  
10 Mirage, Parasol Up at Wynn, Comedy Club. They do  
11 the -- the Blue Man at Luxor.

12           And you see that, most of the these jobs,  
13 they got one distinguishing feature. It's that they  
14 are built inside a fully operational and operating  
15 casino resort that maintains high standards. And, as a  
16 result of that, Team -- one of Team's competitive edge  
17 that they see as a matter of business -- is  
18 housekeeping. That they can take a crew in on a job,  
19 wreck out existing tenant space, rebuild it, Sheetrock,  
20 concrete, all that stuff, and control conditions so  
21 that the customer, the casino, is satisfied.

22           Control is everything to these guys and they  
23 have developed specialized tools to do that. And if  
24 you bear with me, I need to teach you a little about  
25 this particular kind of construction and the tools that



1 are used specifically for housekeeping.

2           Real quick, just so -- I don't know. I just  
3 like to start, I guess, at the top. Just to give  
4 you -- just so we all know where our job site was, this  
5 is aerial just off Google -- it's right -- of MGM  
6 Grand. You know, this is where you pull in, the porte  
7 cochère. This is the Hollywood Theater, this box here.  
8 This is Tropicana. This is the access road here  
9 that -- the illusion, when the participants moved,  
10 that's where it was. All right?

11           And I think you've seen this already, but  
12 what I showed -- you remember that little square, the  
13 Hollywood Theater, that's this part here. And these  
14 are the security doors. You go through another set of  
15 security doors and you're right -- kind of right next  
16 to the bank. This is where the armored trucks pull up  
17 to take the loot. And so these are security doors.  
18 Nobody goes in and out without approval.

19           So another thing is is that nobody builds in  
20 a top-notch property like MGM Grand without MGM's  
21 approval of the process.

22           Here's the -- kind of a schematic off their  
23 website on where stuff's located, just so we're all  
24 good with this. Here's the theater. Here's that --  
25 you know, this is Tropicana and the -- Las Vegas

1 Boulevard's out here. You with me? Okay?

2           We were building this space here and we were  
3 turning it into what's called a Beacher's Madhouse. It  
4 was kind of a theater/show kind of venue. The  
5 Copperfield theater is over here. Here's the bank.  
6 All right? So we weren't working on the theater, we  
7 weren't working near the theater; we were working over  
8 here.

9           Now, construction work, of course,  
10 generates -- it generates debris and dust. And those  
11 have to be managed and controlled. And one of the  
12 things you do is you haul it off in a dumpster.  
13 They're called roll-on dumpsters because a truck -- you  
14 rent them, a truck comes by that picks it up, leaves  
15 the new one, takes the old one, roll-on, roll-off.  
16 Ours was about 20 feet, 8 by 8; right? So pretty big.  
17 It's like a steel box. I don't know. If you see them  
18 around town, the blue ones, used to be Discount  
19 Dumpster, now it's Western Elite.

20           Do you mind if I just show them a picture of  
21 a dumpster?

22           MR. MORELLI: Go ahead.

23           MR. DEUTSCH: Go ahead.

24           MR. STRASSBURG: So here's what we're talking  
25 about. These are the kind of scale of dumpsters. This

1 is off their website. Western Elite took over  
2 Discount. So here are the trucks, you know, that haul.  
3 Here are the big steel containers. You access them by  
4 a door here. Okay? And they're open on top. That's  
5 where the debris goes.

6           The problem, of course, on every job is where  
7 do you put the dumpster. On this job, we identified  
8 the possible areas to put the -- put the dumpster, and  
9 MGM agreed to the area where -- where it went, per  
10 their rules, and that's where we put it.

11           The access walkway that I just showed you  
12 where the trucks go in and out, that was not a  
13 construction area. That was an access way. The  
14 construction area was inside the -- the casino, the  
15 casino area.

16           You heard some mention of a lay-down area.  
17 You know, lay-down is a construction term. And it's  
18 where, when the trucks bring the materials, you know,  
19 like the -- the wood, the Sheetrock, nails, whatever  
20 you buy, you buy that from a construction house. They  
21 ship it, not to you, not to Team, they ship it to the  
22 job site. And they need a place to drop it off.  
23 That's called the lay-down area.

24           The dumpster's not in the lay-down area;  
25 right? Because the last thing you want is that to end

1 up in the dumpster. The lay-down area is farther down  
2 that access road by the poker gorse. I'll prove that  
3 to you as well.

4           The -- we had a contract with Beacher's, who  
5 is MGM's -- or was. They're gone now. But they were  
6 a -- let's see. Here it is. Sorry about that, Judge.

7           Can you see this?

8           Okay. So Beacher's is the tenant. Their  
9 name is on the door. They have a lease with MGM. The  
10 lease has basically got a construction provision in it  
11 for the -- to build out the space. Beacher's hired  
12 Team on what's called a fixed-amount construction  
13 contract. Okay?

14           So nothing goes on on these TI jobs without  
15 there's a contract. There's rules, contracts,  
16 exhibits. It's all specified out in black and white  
17 for any casino. And the casinos enforce it; right?  
18 Because the last thing they want is somebody tracking  
19 up their expensive carpet or running a beam where it  
20 shouldn't go; right?

21           So we -- Team prides itself on its  
22 faithfulness to -- to the house's rules. MGM had  
23 rules. We prided ourself in following those rules.  
24 They're there for a purpose. They define the  
25 expectations of the owner. We'd be crazy not to follow

1 them. We pride ourselves on doing that. And it's a  
2 competitive advantage that we use in the marketplace to  
3 sell.

4           That's why it's so important to this little  
5 company to -- to have the reputation that it's fought  
6 to earn of faithfulness of the house's rules; right?  
7 Because that's what the casinos are really looking for.  
8 The tenant wants their space built the way they want  
9 it. The house wants the tenant to move in without  
10 disrupting the operations; right? And we got to  
11 satisfy them both.

12           So, here, I just drew this out now so you  
13 could see. You're going to hear in the proof about  
14 Team -- right? -- and Noble Specialties. Okay. Well,  
15 Noble Specialties is the labor contract --  
16 subcontractor of Team; right? But David Noble controls  
17 them both; right? So, really, the other subs, you  
18 know, they're separate, independent companies, the  
19 plumbers, the -- all those guys; right?

20           They sign the same subcontracts as Noble, but  
21 Noble is really the -- that's the -- the union shop,  
22 the laborers, the carpenters. The subcontract defines  
23 their responsibilities same as the other subs, no  
24 different, but they're controlled by the same guys. So  
25 when Team's doing a subcontract with Noble, it's kind

1 of doing it with itself; right?

2           So when the subcontract with Noble says broom  
3 clean -- and that was the specification in the  
4 contract, that the job's to be broom clean. So that is  
5 the standard Team had to hold itself to. Beacher's was  
6 okay with that; MGM too. All right?

7           So broom clean was the standard. So this is  
8 the kind of broom, and it's a construction broom. This  
9 is top-notch polyester bristles. They're stiff; right?  
10 So when you work this broom -- okay? -- it does a  
11 pretty good job. Right? This is broom clean right  
12 here.

13           And these -- this is the kind of equipment  
14 that -- that Team made sure they had for the labor to  
15 use to clean the area around the dumpster before they  
16 knocked off.

17           One other quick -- one other quick  
18 observation. Green, that's the construction site.  
19 Okay? Red, the performance site. Okay?

20           Now, if I could show you this. When MGM,  
21 their construction department, and our guys talked out  
22 how to structure this job, they agreed upon a haul-out  
23 route to get the construction debris and the dust from  
24 the job site area, which is here, to the dumpster,  
25 which is outside and here. This is the casino. So you

1 had to haul it right by all these people, right over  
2 the carpet.

3           And I'll show you -- let me show you what I'm  
4 talking about here. Okay. So this is not, you know,  
5 Beacher's; this is, like, Jabbawockeez. But this is  
6 where Beacher's was. And then they left and somebody  
7 else came in and wrecked them out and put Jabbawockeez  
8 in there. Okay?

9           But -- so this is at one end of the casino.  
10 To get the construction debris -- right? -- you wreck  
11 out the Sheetrock, you wreck out the finishing, the --  
12 you know, the bar, the -- the plywood. You take that  
13 out, you load it in a piece of specialized equipment  
14 which I'm going to show you. It's called a Georgia  
15 buggy; right? It's like a wheelbarrow only it's about  
16 this tall, that wide, and it's deep; right? So when  
17 you put stuff in, it stays in. It doesn't come out.

18           Here's the carpet. Here's the route. Okay?  
19 Now, we fill up the Georgia buggies and then we got to  
20 wheel the buggy out to the dumpster. But there's one  
21 more step.

22           Partner, can you toss me that.

23           Thank you, sir.

24           Here's another piece of specialized  
25 construction equipment. These are called tire booties.

1 I know. I know. The Georgia buggy has wheels like any  
2 wheelbarrow. Okay? Before you take one of those  
3 across MGM's fancy carpet -- right? -- you put one of  
4 these on each wheel; right? And then you're good to go  
5 and you can wheel the thing past all the paying  
6 customers who are really the reason that any of us are  
7 in business.

8 I'll show you the other if I could to try to  
9 give you another view of the haul-out route that we  
10 were policing. Okay. So now we're going to take a  
11 corner. Right. I mean, this is -- we come out this  
12 way. The -- the job site was over here. We take this  
13 corner. We go down. We got -- there's gaming tables  
14 to the left, and the bank is to the right. We go all  
15 the way down here, and then we turn right. And those  
16 are the doors to get outside to the Dumpster. Okay?  
17 There's two sets of doors. Okay.

18 You know, I've got some other pictures I  
19 could show you, but in the interest of time, let me  
20 just -- I mean, you guys get the idea. I just want to  
21 show you how this works. You know, you go out here,  
22 down the hall; right? See, this is where you're coming  
23 out. You go down that hall. You turn like this, here,  
24 actually we're coming this way. That's the bank.  
25 Those are the security doors. And that's where you go



1 outside through the security doors. That's what my  
2 partner looks like without a suit.

3           Oops. You know, I want to apologize. I see  
4 Paul King, my project manager. He's here on behalf of  
5 Team and I forgot to introduce him, I guess because I  
6 was in a hurry to get you guys out of here.

7           Paul, would you stand up. This is Paul King.  
8 He was the project manager on the job and we'll put --  
9 he'll be put on the witness stand. Morelli subpoenaed  
10 him. Good for him. I would have put him on there  
11 anyway. And you'll get to meet him, and Mr. Morelli  
12 will ask him questions, and he'll be there to be asked  
13 questions by everybody, including you, if you want.

14           Thank you, Paul. Sorry.

15           Now, I promise -- let's talk about the  
16 precautionary equipment, precautionary measures, the  
17 equipment that we utilize. And this is a Georgia  
18 buggy. So you see, as I said, it's -- it's pretty  
19 high. So you can -- you can fill it up. It has two  
20 wheels here. That's where the booties go. And then  
21 that's what you take it out with.

22           Now, before anybody moves anything across  
23 MGM's carpet, you do this. This is protective plastic.  
24 It's kind of sticky like a Post-it note. And when the  
25 guys come in in the morning, they roll this across the

1 carpet, they roll the whole route, like this. Okay.  
2 You roll the whole route, just like this  
3 (demonstrating). Okay. And it's sticky, so it sticks  
4 because, you know, so it's not a trip hazard because,  
5 as you can see, people are going to the bank. So this  
6 is to protect the carpet. We put on as much as  
7 necessary. And it is to stop any soiling of the carpet  
8 from our operations.

9           And it won't stand still. All right. So  
10 that's what the Georgia buggies are wheeled across.  
11 And I think -- okay. Now -- all right. The proof is  
12 going to show that, I'll prove to you, on the night of  
13 the 12th of November, all right, before our guys  
14 knocked off, they did cleanup, interior and exterior.

15           The exterior cleanup, that's sweeping around  
16 the Dumpster. I'm going to corroborate that with the  
17 time cards. They're going to show 15 hours for that  
18 particular kind of work. And Team is a very unusual  
19 construction company because their time cards are all  
20 done electronically by the foreman on the job who has  
21 an iPad. Before he leaves for the day, he puts in the  
22 information to show what they did and what kind of  
23 tasks and who did it. And that goes right to  
24 headquarters. Right? And that's kind of what you  
25 would expect from two guys that saw what can happen if

1 you don't control your costs because that's what  
2 happened to the company they started with; right?

3           So the time cards for the 12th; right? Those  
4 were done and in the can before the accident ever  
5 happened; right? So they're not after-the-fact stuff.  
6 That's done before anybody ever knew.

7           And speaking of the secrets of magic, right,  
8 well, I'll tell you somebody else who wasn't in on the  
9 secret, and that was us. 'Cause, you know, Mr. Morelli  
10 and I, maybe we don't agree on a lot, but one of the  
11 things we do agree on -- and I cherish the moment -- is  
12 that we didn't know. We didn't know that these  
13 audience participants were making a use of that access  
14 way because that information is need-to-know, right,  
15 because it's a secret. And I think you understand why.  
16 And that's appropriate. And I'm not complaining about  
17 that. I'm just saying we didn't know.

18           And because we didn't know and we didn't have  
19 control, actual control, we weren't in a position to  
20 exercise precaution. Right? It wasn't foreseeable to  
21 us. And, you know, do you think that the day after the  
22 accident that we got called on the carpet and MGM's  
23 construction head said, you know, you got to clean up  
24 your act, we had somebody get hurt? No. Never  
25 happened. First time we knew was when we got sued.

1 Okay.

2 Another thing I will prove to you is that we  
3 doubled our budget for cleanup, and, you know, we  
4 budget as part of general conditions. I don't know,  
5 you know, construction companies they have, like,  
6 individual items, right, but then there's kind of a  
7 block which is called general conditions. You know,  
8 that's like the trailer and all that stuff. Well,  
9 cleanup is in there. But we track it. We budgeted  
10 22,000 bucks for the whole job, just to do cleanup,  
11 just to roll that plastic and sweep, you know, paying  
12 the laborers to sweep around the dumpster. And we paid  
13 good union wages.

14 So to sweep, we have specific people to do  
15 that. And we may have to spend 22,000 to keep the  
16 customer happy, as we always want to do. We spent  
17 45,000. Now, maybe that doesn't sound like a lot,  
18 like, you know, in a job that's a million five. But I  
19 will tell you, it was like a third of our profit on the  
20 whole job. That's how competitive this business is.  
21 And we were glad to do it because this is the kind of  
22 work that guys like Paul King love to do because, you  
23 know, you are out building bridges, you're building  
24 very fine work. You know, these interior finishes has  
25 to be just right. And that's what our guys like to do.

1 And they don't tolerate sloppy work, and they pride  
2 themselves on controlling and on their housekeeping.

3 I'll also prove to you that the plaintiff, he  
4 didn't know it was dust. He made an assumption it was  
5 dust. And he admitted -- I mean, to his credit, he  
6 admitted that he didn't know, and he couldn't think of  
7 anything else it could be.

8 Now, you know, I was going to show -- play  
9 you the surveillance videos. But, you know, I'm going  
10 to wait on that. We'll save you some time, maybe get  
11 you out early. And we're going to have plenty of  
12 witnesses who can -- you know, we can play the tape for  
13 and they can testify. So why don't we do it that way  
14 if you're okay with that. I mean, you have kind of  
15 gotten a flavor of what it looks like.

16 So let me do this: There are some things  
17 that, you know, we didn't -- we didn't know as part of  
18 our work 'cause, you know, we didn't even know that  
19 Copperfield audience people were running up and down  
20 that access way. So after we got brought into this  
21 case, we've had to learn some stuff. And, you know, we  
22 spent a couple of years learning this evidence, just  
23 like Mr. Morelli and all these other lawyers have.  
24 That's pretty typical in these kind of cases. And so I  
25 want to just try to conclude this by, if you don't

1 mind, just telling you, giving you a quick overview of  
2 kind of a chronology of the project, what happened, to  
3 just clarify, perhaps, in your mind. If I can find it.

4           Let's do it this way. This will be quicker.  
5 Okay. Okay. Can you all see this? Obviously, one of  
6 you could. If I -- we'll see. What we did here or  
7 what I did here, I guess, as part of my learning  
8 process, was I tried to figure out what happened when  
9 because I thought that might be helpful to you to get a  
10 sense of what we're all talking about on this very  
11 important day.

12           So let's start here at the beginning. On the  
13 day of the accident, the 12th, we started at 6:30 a.m.,  
14 as we usually do. At that time, at 8:00 a.m., we had a  
15 job meeting, okay, at MGM in their construction  
16 conference room. And at that meeting were, you know,  
17 everybody who was anybody on the project.

18           We had -- let's see. Paul King was there.  
19 Beacher was there, Kevin Browning at MGM, other MGM  
20 people, you see. And they were there to talk about the  
21 issues on the job. You know, maybe you know how  
22 construction works.

23           But all these job meetings they usually have  
24 once a week, and they have an agenda. And what they do  
25 is, every time they have a problem, they write it on

1 the agenda, and it never falls off until it's resolved.

2           So every meeting, you come in, the agenda  
3 keeps growing, hopefully stuff gets handled. But  
4 these -- and this is right at the job area; right? So  
5 no problems with housekeeping. Okay? We put in our  
6 day. 2:30 p.m., I'll prove to you we left the job  
7 site, handed it over to MGM after our 15 man-hours of  
8 cleanup, you know. There's kind of the form of the  
9 time cards. You'll see them in the evidence.

10           And then the next event is at 5:00 p.m.  
11 We'll prove to you that's when Mr. and Mrs. Cox, that's  
12 when they came to MGM. They weren't staying there.  
13 They drove. They got there at 5:00 p.m. And we'll  
14 prove to you that Mr. Cox had a margarita, and he was  
15 playing blackjack. Ms. Cox got the tickets for the  
16 show, and the show was at 7:00 p.m. That's when the  
17 show began.

18           Now, the surveillance tape, you just saw some  
19 of it because, as I say, we're just trying to give you  
20 a flavor of what's going on here. But there's a fair  
21 amount of it, and it really starts about 7:52 p.m., and  
22 we know that because the camera burns a date time stamp  
23 in the image. You can't -- you can't fuss with that.  
24 It's automatic.

25           So what we'll prove to you, and you will see

1 this, that at 7:52 p.m., MGM security guard opens the  
2 door. Okay?

3 Can you, if you don't mind.

4 Opens the door. And he is standing there,  
5 and he's kind of kicking it, you know, to prop the door  
6 open. Sometimes that's where they smoke, right, so  
7 he's kind of kicking the butts out of the way. But  
8 that's what he is doing there. Then, at 7:59, we have  
9 attendants, four of them, that walk; right? And you  
10 can see them here. They walk across this access ramp;  
11 right? That's right where the plaintiff fell. They  
12 walk right through here.

13 This guy, he takes a look. In the light --  
14 he can see the light from the door; right? It shines  
15 right down on that walkway; right? And there's no  
16 debris. I mean, do you think if we left a big sheet of  
17 plywood there, you don't think MGM would call us up and  
18 say, "Look, you either get your happy butts over here  
19 and fix this or we're going to do it and back charge  
20 you. You know how construction works.

21 No. It was clear. Here are the other people  
22 that walked through here. You're going to see  
23 Copperfield himself on the tape. He's walking through  
24 there as part of, you know, some other kind of illusion  
25 I don't really understand. But he walks through there.



1           And here, here are some more attendants.  
2 Okay? And, you know, he's got a light. You saw the  
3 light; right? Okay. And then that -- I'm sorry. So  
4 that is the number of people, before any audience  
5 members use that walkway, that walked up this area,  
6 right, found it to be suitable for its intended  
7 purpose.

8           Then you're also going to see these. I  
9 counted seven. I don't know. Maybe I'm wrong. You  
10 know, maybe I'm a little off. But you can see here --  
11 and we're going to show you this -- these clips. If  
12 you look there, you see this, this is the burn, right,  
13 where they burn the time stamp in there. 20:35:12.  
14 Subtract 12, so that's 8:35.

15           Okay. So -- and here you have the first  
16 three participants come through. And, see, they're  
17 running along this track. The fourth participant -- I  
18 don't want to play favorite -- the fourth participant,  
19 you know, he's coming through here. Or she. It's kind  
20 of hard to tell. Here's the fifth, and here's the  
21 sixth and seventh. And you see they're moving through  
22 here. And, you know, we'll play the tape for you.  
23 We'll run it back, forward, backwards so you can see  
24 and you can judge for yourself. Are they running? Are  
25 they trotting? Are they sashaying? I don't know what

1 you call it. And you can determine that. But they're  
2 proceeding through this.

3 And you can see in the light that is cast  
4 upon the surface there's no visible debris or dust.  
5 See, and then you'll see on the video -- excuse me.  
6 You'll see on the video right here, this is 20:35:21.  
7 That's Mr. Cox, and he's on the ground. Okay?

8 And remember that question I asked at voir  
9 dire, Can you all see pink? Right. You all thought  
10 that was nuts. Here's the reason. Pink shirt, kind of  
11 you need to see it kind of through the trees. We'll  
12 prove to you that you can see -- you can see the shirt  
13 moving along his line of travel, along his line of  
14 travel before he goes down.

15 I will prove that to you. And that will show  
16 you that he tripped, right, because, just like my  
17 colleague Popovich said, forward. He goes down  
18 forward, with his head closer to the doors than his  
19 feet. If he slipped going around the corner, right,  
20 doesn't look that way. If you slip going backwards,  
21 doesn't look that way. What you can see in this video,  
22 we'll prove to you that it's a trip; right?

23 Now, there's a couple of other, you know,  
24 facts you're going to find as to what happens after the  
25 fall. Okay? Now, you know, I would urge you to, you

1 know, listen to the other lawyers because, you know,  
2 that's what they're expert about. I can only tell you  
3 that it's going to be clear to you, when the security  
4 guard gets there, what Mr. Cox tells the MGM security  
5 guard at -- what is it? 8:42? Okay? He says, at  
6 8:45 -- I'm sorry. The guards's dispatched 8:42 and  
7 he's on property; right? So he's just walking. The  
8 ambulance arrived at 8:45.

9 MR. DEUTSCH: Objection, Your Honor.

10 MR. STRASSBURG: I will prove --

11 MR. DEUTSCH: No.

12 MR. STRASSBURG: The ambulance arrived at  
13 8:45.

14 MR. DEUTSCH: Objection, Your Honor. We  
15 talked about this yesterday.

16 THE COURT: Want to approach?

17 MR. DEUTSCH: Do you want to?

18 MR. MORELLI: Go ahead. Why not?

19 (A discussion was held at the bench,  
20 not reported.)

21 MR. MORELLI: They're both alive.

22 MR. DEUTSCH: I'm not in the dumpster.

23 MR. STRASSBURG: Okay. The judge said I have  
24 to stand here. Okay. So --

25 MR. DEUTSCH: Your Honor.

1 THE COURT: I can't see. You're going to  
2 have to take that other one down so I can see the jury.  
3 I can't see.

4 MR. STRASSBURG: Oh, yeah. Sure. Can I put  
5 this thing here and I will stand on it? Is that okay?

6 MR. MORELLI: Somebody just asked why.  
7 Wasn't me.

8 MR. DEUTSCH: That side of the table asked  
9 why.

10 MR. STRASSBURG: Why what?

11 THE COURT: Can it be seen if you put it on  
12 the other side?

13 MR. STRASSBURG: Over here? I don't know.  
14 Ask them.

15 THE COURT: It looks like it's high enough.  
16 There.

17 MR. STRASSBURG: How about you back row  
18 people? Okay.

19 Okay. So --

20 MS. FRESCH: Well, Your Honor --

21 MR. STRASSBURG: -- we will prove that he  
22 told Mr. Cox, right, minutes after the ambulance got  
23 there, he told him that he slipped on the concrete  
24 while running. He made no mention of dust. We'll  
25 prove to you that, shortly later, he told MGM's

1 security officer that he -- he slipped and fell, no  
2 mention of dust. All right? Dust doesn't come up  
3 until 8:52, when it shows up in the ER record by the ER  
4 doctor. We'll prove to you that the ER doctor was told  
5 by Mr. Cox of something about dust.

6           And then there are -- you can see here the  
7 photographs. There is an investigation by MGM. Their  
8 security officers perform an investigation and they  
9 take photos -- they interview, they write down what Cox  
10 tells them. They -- they take pictures, okay, of, you  
11 know, what they think's important. And then they  
12 attach the -- we can't exactly prove to you, like, when  
13 the photos were taken, but we can prove to you when  
14 they were uploaded to the report. I don't know.  
15 Something about the camera. And they upload at 9:28.

16           And here's the condition of the carpet on the  
17 other side of the security doors. The carpet is clean  
18 after all those people walk through this supposedly  
19 heavily dusty area. Carpet's clear. All right.

20           Here's the first -- the back side of the  
21 outside door. You know, there's two sets of doors;  
22 right? One on the outside; that's the one you've been  
23 seeing. There's another set of doors to the inside.  
24 In the middle is this stretch of concrete; right? That  
25 was open and available for MGM security officer who did

1 the investigation to view. And we'll prove to you that  
2 he put in his report "no hazard." No hazard. All  
3 right?

4 Then we will also prove to you that Mr. Cox  
5 was discharged from the ER at 1:20 a.m. the next day,  
6 so this is the -- on the 13th. And then he -- we'll  
7 prove to you that Team returns 6:30 a.m. on the 13th,  
8 begins its work, and is none the wiser. Nobody says  
9 anything to us until, of course, we're sued.

10 And this here, the next day, we'll prove to  
11 you that Mr. Cox returns to the MGM site with his  
12 lawyer. Not Mr. Morelli; a different lawyer, a local  
13 lawyer. And he -- we'll prove to you that he writes  
14 out an accident report. And we will prove to you that  
15 in the accident report he's saying now that, as he  
16 rounded the corner, okay, rounded the corner, that he  
17 slipped and fell on dust that was covering the walkway.  
18 All right? And we'll prove to you that, as time  
19 progresses, the story evolves of what happened. And  
20 we'll also prove to you that the lawyers are involved  
21 on the 14th.

22 And what I just showed you is, you know,  
23 really, near as I can tell, these facts are -- I mean  
24 the videos, they are what they are. And they're  
25 stamped.

1 MR. DEUTSCH: Objection, Your Honor.

2 Opinion.

3 THE COURT: Just rephrase.

4 MR. STRASSBURG: Okay. Now, to assist you in  
5 gleaning whatever information can be gleaned from these  
6 security videos and to understand them ourselves, we  
7 hired a biomechanical engineer, Dr. Nicholas Yang.  
8 We're going to bring him in to you. And he has  
9 performed an analysis of the accident site. He's  
10 utilized high-tech scanning equipment to try to  
11 recreate the -- what's shown, actually shown on the  
12 surveillance tape, to recreate it as it was when this  
13 happened and subtract the tree.

14 So you can see what he does is he starts with  
15 the stuff you can see, you know, like where the head is  
16 and the head movement. And then they know Mr. Cox's  
17 height and weight, and they extrapolate the rest of it.  
18 And it will show to you that he tripped. All right?  
19 And, you know, you may -- you may ask yourself, isn't  
20 it kind of counterintuitive --

21 MR. DEUTSCH: Objection, Your Honor.

22 THE COURT: I'll allow it. Go ahead. Go  
23 ahead.

24 MR. STRASSBURG: Isn't it kind of  
25 counterintuitive that anybody could trip; right? Just

1 running in a straight line; right? How do you do that?  
2 I mean; right? But I'll prove to you that that's  
3 common. It's called a toe catch, when you catch a toe.  
4 It happens to major league ballplayers. I have some  
5 videos that I will bring in to show you to illustrate  
6 to you how this mechanism of a fall actually takes  
7 place. And if I could get back there, I would like to  
8 dramatize it for you now. If I do it here, you can't  
9 see it. But we'll show you on the video so you can see  
10 that this is a pretty typical thing.

11 And if it can happen to highly trained sports  
12 professionals, right, anybody, it can happen to  
13 anybody. And here it happened to Mr. Cox.

14 Okay. 4:15 I'm going to stop. I appreciate  
15 you listening to me kind of rehearse the high points of  
16 the evidence. And, as I said, at the end of this case,  
17 I'm going to come back here and we'll go through it all  
18 again, and I'll show you what I have proved, the  
19 testimony right out of the record; right? And then I  
20 will ask you to declare that my company's not liable.  
21 We didn't hurt this man. And we're going to ask you to  
22 restore our reputation for good work --

23 MR. DEUTSCH: Objection, Your Honor.

24 MR. STRASSBURG: -- 100 percent.

25 THE COURT: Sustained.



1 MR. DEUTSCH: Not about reputation.

2 THE COURT: All right.

3 MR. STRASSBURG: Judge, thank you. I'm done.

4 THE COURT: Thank you.

5 All right. Very well. Ladies and gentlemen,  
6 at this time we're going to adjourn. We're not 5:00,  
7 but rather than get started with a witness now and  
8 interrupt, it's late enough now to adjourn.

9 Counsel have anything outside the presence?

10 MR. DEUTSCH: Yes, Your Honor.

11 THE COURT: Okay. So let me go ahead. But  
12 the resumption time will be next Tuesday at 9:00 a.m.  
13 Okay?

14 You're admonished, in the meantime, not to  
15 converse among yourselves or with anyone else,  
16 including, without limitation, the lawyers, parties,  
17 and witnesses on any subject connected with the trial  
18 or read, watch, or listen to any report of or  
19 commentary on the trial or any person connected with  
20 the trial by any medium of information, including,  
21 without limitation, newspapers, television, the  
22 internet, or radio. You're further admonished not to  
23 form or express any opinion on any subject connected  
24 with the trial until the case is finally submitted to  
25 you.

1           Once again, you're directed to return to the  
2 outside of this courtroom, to the south a bit, not  
3 right in front of the doors but to the south there,  
4 Tuesday, April 17, 2018, no later than 8:50 a.m., ten  
5 to 9:00, so that we can resume here at 9:00 a.m., at  
6 which time plaintiffs will present -- begin  
7 presentation of their case. Okay?

8           MR. DEUTSCH: Thank you, Your Honor.

9           MS. FRESCH: Thank you, Your Honor.

10          THE COURT: Counsel, remain.

11          Have a nice weekend, everybody. Don't get  
12 blown away.

13                       (The following proceedings were held  
14                       outside the presence of the jury.)

15          THE COURT: All right. You may be seated.

16          Mr. Deutsch.

17          MR. DEUTSCH: Thank you, Your Honor. We have  
18 two issues that we'd like to raise.

19               In light of the opening statements today,  
20 we'd like to make a motion to renew an application that  
21 we had made previously with respect to an argument by  
22 any of the defendants that this had never happened  
23 before. We had argued initially that that wasn't  
24 relevant to this case. Your Honor had ruled already  
25 that they could make that argument, the argument about

1 100,000 people.

2           But what's clear from both Ms. Fresch's  
3 opening as well as Mr. Russell's opening -- I marked  
4 the page at one of Mr. Russell's comments -- I,  
5 unfortunately, just didn't have time to find the part  
6 in Ms. Fresch's. Mr. Russell mentioned it on page, I  
7 think, 4615 at 1502. And what they both said -- and it  
8 was a very interesting choice of words by both of  
9 them -- is neither of them said that there has been --  
10 nobody has fallen before. What they had said is nobody  
11 has gotten injured before. And both of them said that,  
12 that you're going to see that, out of 100,000 people or  
13 the 55,000 people, that no one has gotten injured  
14 before.

15           But whether or not someone has gotten injured  
16 or not is irrelevant in a liability portion of the case  
17 because that means that hundreds of people could have  
18 fallen or dozens of people could have fallen or  
19 thousands of people could have fallen; they just might  
20 not have gotten hurt.

21           And since the case is bifurcated and the  
22 issue is only whether or not Mr. Cox fell, not whether  
23 he got hurt -- because nobody needs to know whether he  
24 got hurt or not. The only questions the jury's going  
25 to have to answer in this part of the case is whether

1 he fell and whether something that was negligent caused  
2 him to fall. They're not asked any questions about  
3 whether he got injured.

4           So, therefore, testimony from the witnesses,  
5 including Mr. Copperfield and Mr. Kenner and Mark  
6 Habersack, that, you know, 55,000 people have done this  
7 and have never gotten injured, is totally irrelevant.  
8 And based on the opening statement, that is what they  
9 told the Court and the jury that they intend to prove  
10 in this case, that nobody has gotten injured.

11           But whether someone got injured is  
12 irrelevant. And, therefore, we would move again to  
13 preclude any further testimony about that and ask the  
14 Court to instruct the jury to disregard comments by  
15 counsel on that issue.

16           THE COURT: Anybody want to be heard on that?

17           MS. FRESCH: Yes, Your Honor. I don't know  
18 if I need to go -- well, I'll just stand here.

19           Your Honor, I think the fact that there are  
20 not any prior injuries is directly relevant to this  
21 trial. And, specifically, I would rely on the jury  
22 instruction regarding "the lack of prior accidents  
23 attributable to similar conditions may be considered by  
24 you as evidence that the landowner or occupier had no  
25 known notice or knowledge of any dangerous condition in

1 the floor where plaintiff's accident occurred."

2 Accident implies injury.

3 MR. DEUTSCH: Absolutely not; otherwise,  
4 there --

5 THE COURT: The motion is denied. I agree  
6 with the defense absolutely. I mean, it's something --  
7 it sounds like you're very well prepared for  
8 cross-examination about the nature of any injuries that  
9 may have happened or what may have happened, but I  
10 think that this -- the thinking about whether or not  
11 there had been prior injuries, that's something that  
12 can be explored. Okay?

13 MR. RUSSELL: Thank you, Your Honor.

14 MR. DEUTSCH: We have one more thing, Your  
15 Honor. And that's the issue with respect to the  
16 representation of the defendants in this case.

17 Throughout the entire litigation, what's  
18 happened here is Mr. -- it occurred yesterday during  
19 the cross-examination of -- of the doctor for the first  
20 time, which is why I'm raising it now.

21 But Mr. Freeman, throughout the course of  
22 this litigation, appeared at the conferences, argued  
23 summary judgment motions on behalf of MGM. He was  
24 representing MGM. Now he came yesterday and appeared  
25 on behalf of another entity in the case,

1 Mr. Copperfield and David Copperfield Disappearing,  
2 Inc.

3 Ms. Fresch appeared throughout this entire  
4 litigation on behalf of MGM and now is appearing only  
5 on behalf of David Copperfield. And we believe that  
6 that presents an inherent conflict of interest.

7 The case that discusses it that I can just  
8 cite to the Court says that if there's any question --  
9 it's Dow Chemical v. Mahlum. And -- and it -- it says  
10 very clearly that when a district court must decide  
11 whether an attorney's office conflicts of interest  
12 should preclude representation, any doubt should be  
13 resolved in favor of disqualification.

14 So, at this point, Your Honor, we would move  
15 to disqualify Ms. Fresch and Mr. Freeman --

16 THE COURT: Do the plaintiffs have standing  
17 to question conflict between the defendants?

18 MR. DEUTSCH: We do.

19 MR. MORELLI: Of course.

20 MR. DEUTSCH: Of course we do, Your Honor.  
21 That's how a conflict of interest --

22 THE COURT: You're not the client, are you,  
23 of them?

24 MR. DEUTSCH: I understand that, Your Honor.  
25 And -- but we -- we always have standing to raise an

1 issue of conflict. And I'll be happy to brief this  
2 issue over the weekend if you'd like.

3 THE COURT: I don't really want any briefing  
4 or need any briefing. As far as I'm concerned,  
5 yesterday what happened is the Court and counsel  
6 accommodated plaintiffs' witness. So there -- people  
7 can't be two places at one time, so that's what you  
8 raised as the --

9 MR. DEUTSCH: No, no, no. That's not what I  
10 raised. What I raised was the fact that Ms. Fresch and  
11 Mr. Freeman represented MGM throughout the course of  
12 this litigation. They appeared on behalf of MGM; they  
13 represented MGM.

14 Today, they represent -- and, yesterday, they  
15 questioned a witness on behalf of another entity in  
16 this case who have competing interests. Copperfield  
17 and MGM have competing interests. And now they have  
18 represented multiple defendants in a case. And that  
19 presents a conflict.

20 THE COURT: Let me hear from defense counsel.

21 MR. POPOVICH: The representation of MGM,  
22 DCDI, and Copperfield started years ago with the first  
23 answers. Plaintiffs never complained. Went on for  
24 years. Yes, Mr. Freeman would appear for all the  
25 firm's clients. For purposes of this trial, we asked

1 the Court that the final pretrial conference -- I  
2 believe it might have even been in chambers -- about  
3 the fact -- we informed the Court that we intended to  
4 have me represent MGM, Ms. Fresch and Mr. Freeman  
5 represent the Copperfield and Copperfield entity, and  
6 the Court approved it over Mr. Morelli's objection at  
7 that time. Nothing's changed.

8 THE COURT: Okay. Anybody else?

9 MS. FRESCH: No.

10 MR. ROBERTS: Your Honor, not that I have a  
11 dog in this fight, but, just out of curiosity, I  
12 looked. Liapis v. District Court, Supreme Court of  
13 Nevada, 282 P.3d 733, says "the general rule is that  
14 only a former or current client has standing to bring a  
15 motion to disqualify counsel on the basis of conflict  
16 of interest."

17 THE COURT: Okay. Last word?

18 MR. DEUTSCH: Nothing, Your Honor.

19 THE COURT: Okay. It's a motion to  
20 disqualify; right?

21 That's what you -- I mean --

22 MR. DEUTSCH: I guess so, yes. Yes, yes.

23 THE COURT: That's the posture of it?

24 Okay. It's a motion. So I'm ruling on a  
25 motion; right?



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MR. DEUTSCH: Yes, Your Honor.

THE COURT: Okay. All things considered,  
I'll deny the motion. We'll proceed accordingly.  
Okay?

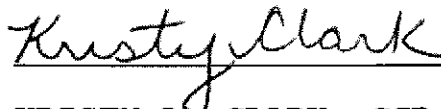
MR. RUSSELL: Thank you, Your Honor.

THE COURT: And -- and we'll resume Tuesday  
at 9:00. See you then. Okay.

(Thereupon, the proceedings  
concluded at 4:26 p.m.)

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
PROCEEDINGS.



KRISTY L. CLARK, CCR #708

*Steven D. Grierson*

1 CASE NO. A705164

2 DEPT. NO. 13

3 DOCKET U

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 \* \* \* \* \*

8 GAVIN COX and MINH-HAHN COX, )  
9 husband and wife, )

10 Plaintiffs, )

11 vs. )

12 MGM GRAND HOTEL, LLC; DAVID )  
13 COPPERFIELD aka DAVIS S. )  
14 KOTKIN; BACKSTAGE EMPLOYMENT )  
15 AND REFERRAL, INC.; DAVID )  
16 COPPERFIELD'S DISAPPEARING, )  
17 INC.; TEAM CONSTRUCTION )  
18 MANAGEMENT, INC.; DOES 1 )  
19 through 20; DOE EMPLOYEES 1 )  
20 through 20; and ROE )  
21 CORPORATIONS 1 through 20, )

22 Defendants. )

23 MGM GRAND HOTEL, LLC., )

24 Third-Party Plaintiff, )

25 vs. )

BEACHER'S LV, LLC, and DOES 1 )  
through 20, inclusive, )

Third-Party Defendants. )

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

TUESDAY, APRIL 17, 2018

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
CA CSR #13529

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21 \* \* \* \* \*

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I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Chris Kenner	16	238		

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
94		122	
93-153		135	
93-160		137	
93-168		142	
93-167		143	
93-170		148	
93-171		150	
93-173		154	
90-62		162	
403-9		179	
90-64		180	
90-6		183	
93-159		267	
93-156		270	
93-151		271	

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 17, 2018;

2 9:27 A.M.

3  
4 P R O C E E D I N G S

5 \* \* \* \* \*

6  
7 THE MARSHAL: All rise. Eighth Judicial  
8 District Court, Department 13, is now in session, the  
9 Honorable Mark Denton presiding.

10 THE COURT: Good morning. Please be seated.  
11 We're reconvening for jury trial in the Gavin Cox,  
12 et al. v. MGM Grand. We are outside the presence of  
13 the jury. Please state appearances of counsel,  
14 identify parties and party representatives who are  
15 present today.

16 MR. MORELLI: Benedict P. Morelli for the  
17 plaintiffs, Gavin and Minh Cox.

18 MR. DEUTSCH: Good morning, Your Honor. Adam  
19 Deutsch also for the plaintiffs. Mr. Cox and Ms. Cox  
20 are here, as well as Brian Harrison.

21 MR. FALLICK: Good morning, Your Honor.  
22 Perry Fallick also for the plaintiffs.

23 MR. POPOVICH: Jerry Popovich for defendant  
24 MGM Grand Hotel, with Mike Infuso, and on behalf of  
25 MGM, Kelly Davis.

1 MS. FRESCH: Good morning, Your Honor.  
2 Elaine Fresch for David Copperfield, David Copperfield  
3 Disappearing, Inc. With me to my right is David  
4 Copperfield.

5 MR. ROBERTS: Good morning, Your Honor. Lee  
6 Roberts and Howard Russell for Backstage Employment and  
7 Referral. And with us today is the president, Chris  
8 Kenner.

9 THE COURT: Good morning.

10 MR. STRASSBURG: May it please the Court,  
11 Roger Strassburg and Gary Call for Team Construction  
12 Management.

13 THE COURT: All right. As I indicated, we're  
14 outside the presence of the jury. I understand there's  
15 something to be taken up.

16 MR. POPOVICH: I think a few items. I'll  
17 deal with the first one, Your Honor, which I think is  
18 quite brief. Plaintiffs intend to call defense-related  
19 witnesses initially this morning, and we wanted to get  
20 the Court's approval for how we intend to go as far as  
21 the defense questioning of these witnesses.

22 Our proposal would be that the attorney for  
23 the party represented by that witness -- for instance,  
24 with Mr. Kenner, it would be Backstage -- would go  
25 after plaintiffs, followed by the other attorneys for

1 the other defendants. When Mr. Copperfield testifies,  
2 Ms. Fresch, on behalf of Copperfield, would go after  
3 plaintiffs, followed by the other defendants. Is that  
4 acceptable?

5 THE COURT: Acceptable to me.

6 MR. POPOVICH: Thank you.

7 MR. MORELLI: It's acceptable to the  
8 plaintiff.

9 THE COURT: Okay.

10 MR. MORELLI: Your Honor, good morning. It's  
11 acceptable to the plaintiff.

12 MR. ROBERTS: And, Your Honor, in the  
13 interest of judicial economy, will we be able to go  
14 beyond the scope of direct during this case in  
15 cross-examination?

16 THE COURT: As far as I'm concerned, if  
17 that's acceptable to --

18 MR. DEUTSCH: To avoid having to bring them  
19 back again at a later date, then, obviously --

20 MR. ROBERTS: Correct.

21 MR. DEUTSCH: -- that's okay with us.

22 MR. ROBERTS: Thank you, sir.

23 MS. FRESCH: Your Honor, the next thing I'll  
24 bring up is -- excuse me -- we filed yesterday a  
25 request for the testimony of Mr. Copperfield not to be



1 filmed. I'm aware of your order that the press can be  
2 in the courtroom. But per our earlier discussion and  
3 per the earlier motions that we brought, it is up to  
4 you in your discretion at the request of the witness.  
5 And Mr. Copperfield is requesting that there is no  
6 filming of his testimony.

7 THE COURT: That's the entirety of the  
8 testimony? Or --

9 MS. FRESCH: Yes, Your Honor, the entirety of  
10 his testimony; but, particularly, those portions that  
11 relate to any illusion and the process of the illusion  
12 is quite important. As I have brought up to Your Honor  
13 before, about the process of the illusion, the secrecy  
14 of the illusion, this is the entire realm of  
15 Mr. Copperfield's profession. If illusions aren't kept  
16 secret, aren't maintained confidentially, then no  
17 magician -- Mr. Copperfield or any magician -- could  
18 continue in their trade.

19 For at least -- I understand that you're  
20 allowing the press to still report. But I believe it  
21 is more crucial that they do not film so that it's not  
22 actually on the 5:00 news with the testimony because  
23 that is, more likely than not, going to, for sure, ring  
24 the bell for the entire world as to how these illusions  
25 are performed. And it will inhibit, really,

1 Mr. Copperfield being as open as he would like to be in  
2 his testimony. And I believe --

3 MR. ROBERTS: And Mr. Kenner would -- has the  
4 same request, Your Honor.

5 THE COURT: All right.

6 MR. DEUTSCH: Your Honor, obviously, we feel  
7 that this motion has been argued already. Your Honor  
8 has already ruled on it. Having the press here to  
9 report on everything he says versus it being filmed  
10 doesn't change anything. And a suggestion by counsel  
11 for a party in a case that a witness will be less than  
12 forthcoming under oath if the cameras are on versus not  
13 is a very dangerous suggestion, Your Honor. And that  
14 is what was just said by Ms. Fresch in this courtroom,  
15 that Mr. Copperfield would be less forthcoming with his  
16 testimony if the cameras were on versus off.

17 That is a significant statement by counsel in  
18 this case, Your Honor. If the press is allowed in  
19 here, there's no difference than having the cameras on.  
20 Your Honor has already ruled that, with respect to this  
21 illusion, that there is no trade secret that warrants  
22 any type of protection.

23 We will not be getting into any specifics of  
24 another illusion during our questioning of  
25 Mr. Copperfield or Mr. Kenner, other than the simple

1 statement that someone -- that during another part of  
2 the evening at another time, walks that route or walks  
3 the same route, with no mention of where it is or what  
4 it is or what it has to do with.

5           So Your Honor's already ruled. This is the  
6 fourth time that they've made this motion. Your  
7 Honor's ruled every time that the cameras can be here  
8 unless there's a trade secret.

9           THE COURT: No. I think I said I would do it  
10 on a witness-by-witness basis.

11           MR. DEUTSCH: You did, Your Honor.

12           THE COURT: Now we're talking about the  
13 witness actually coming onto the stand.

14           MR. DEUTSCH: But what Your Honor was -- I  
15 believe was referring to was -- was a topic-by-topic  
16 basis. And the topic that Your Honor made clear, when  
17 we argued this last week, was things that didn't have  
18 to do with this illusion that may be protected trade  
19 secrets.

20           That was Your Honor's language in the order  
21 that was -- that we worked on together and submitted,  
22 that it was -- that if there were other things that  
23 Your Honor felt were trade secrets, you would think  
24 about making a decision at that point. But if we're  
25 not talking about anything with Mr. Copperfield or

1 Mr. Kenner other than this illusion, which has already  
2 been out there based on the opening statements and a  
3 million other things that we've talked about, we don't  
4 think that there's any need at all to preclude him.

5 And again, Your Honor, the suggestion that  
6 his testimony will be less forthcoming is very  
7 concerning for the plaintiffs in this case.

8 MS. FRESCH: Your Honor, I want to reiterate  
9 that, as you mentioned, that this is witness by  
10 witness. I have now brought the request pursuant to  
11 SCR240, and it says specifically "The court, in  
12 exercising sound discretion, may prohibit the filming  
13 or photographing of any participant who does not  
14 consent to being filmed or photographed." And that is  
15 the request of my client. And I believe it does relate  
16 and it is separate than what we were talking about. I  
17 am doing what we had talked about.

18 THE COURT: All right. I'll grant the motion  
19 in part to the extent that it addresses any testimony  
20 having to do with other illusions or the way things are  
21 planned and take place. I'll deny the motion in part  
22 to the extent that it's simply addressing other  
23 testimony having to do with this particular act and the  
24 like.

25 MS. FRESCH: Your Honor, I filed also a trial

1 brief because we are going to be bringing -- making  
2 objections about relevance because there's two aspects  
3 of the illusion. And not to divulge all of the  
4 specifics of the Thirteen Illusion, but there is the  
5 part that Mr. Cox participated in.

6           The other part of the illusion, I would like  
7 to make the request and -- to request that you modify  
8 the order you just gave, that the Court -- any  
9 portions, if you determine that -- and overrule our  
10 objections on relevance, that those portions of  
11 Mr. Copperfield's testimony be not filmed as well  
12 because that portion has nothing to do with Mr. Cox's  
13 portion, which is, from the moment he's in the platform  
14 and where he goes.

15           The rest of the illusion -- because it's a  
16 much more complex illusion, because there's two parts  
17 to it. The other part, I am requesting that  
18 Mr. Copperfield not be filmed or photographed during  
19 those portions of his testimony.

20           THE COURT: At any given point, if you think  
21 that what you just said is implicated, bring it to the  
22 Court's attention so that I can make a ruling.

23           MS. FRESCH: Okay.

24           THE COURT: Now, I see we have the other.

25           MS. FRESCH: Well --

1           THE COURT: Anything else to be said,  
2 Mr. Roberts?

3           MR. ROBERTS: No, Your Honor. We don't  
4 anticipate Mr. Kenner will be asked about portions of  
5 the illusion, other than the ones in which Mr. Cox had  
6 participation and knowledge. If they go beyond that  
7 and get into that area, even though they did not in his  
8 deposition, then I will raise it and approach the  
9 bench.

10          THE COURT: Very good.

11          MR. ROBERTS: Thank you, Your Honor.

12          MR. DEUTSCH: We have one -- one more issue,  
13 Your Honor. At the beginning of the case, when  
14 Mr. Russell and Mr. Roberts filed a trial brief about  
15 similarity of other accidents that may have occurred;  
16 and at the time, we had agreed that we were not going  
17 to bring up the issue of the gentleman or the woman who  
18 had broken her collarbone, I think it was, when the  
19 balls were thrown out during a trick. We weren't going  
20 to raise that because we agreed it wasn't similar.

21                 Unfortunately, though, during Mr. Russell's  
22 opening statement, he made a statement as an opening  
23 that said that nobody has ever been injured during this  
24 trick instead of saying nobody has ever been injured  
25 during the runaround portion of the trick.

1           And because he said and has now told the jury  
2 that nobody has ever been injured during this trick,  
3 which is a factually untrue statement based upon their  
4 own admissions, we feel that we should be entitled now  
5 to raise this issue with the person getting struck with  
6 the balls. If they don't want us to do that, I would  
7 be happy accepting a stipulation on the record, that  
8 Mr. -- in front of the jury, that Mr. Russell's  
9 statement that nobody has ever been injured during this  
10 trick was not accurate and what he meant was nobody was  
11 being injured during the runaround of the trick.

12           But if we're not going to do that, then I  
13 think we're entitled because that was a factually  
14 incorrect statement that was proffered to the jury that  
15 they're now going to have in their head, Your Honor.

16           MR. RUSSELL: We don't need a stipulation on  
17 that. I have the transcript here, Your Honor.  
18 Page 139, line 10, this is what I said: "With an  
19 estimated over 50,000 participants involved in this  
20 illusion, the only injury alleged from someone falling  
21 during the Thirteen Illusion was Mr. Cox."

22           THE COURT: All right.

23           MR. DEUTSCH: Well, except that I believe  
24 that person that got hurt, breaking her collarbone,  
25 fell during the catching-of-the-balls portion of his

1     trick, which is when you see the video --

2             THE COURT: I think the focus is on the going  
3     through the --

4             MR. DEUTSCH: Okay. Thank you.

5             THE COURT: So, yeah, I think the stipulation  
6     will stand. Okay? Anything else?

7             MR. DEUTSCH: Nothing else, Your Honor.

8             THE COURT: Ready for the jury?

9             MR. DEUTSCH: Yes, sir.

10            THE COURT: Okay. Let's bring the jury in.

11            THE MARSHAL: All rise.

12                     (The following proceedings were held in  
13                     the presence of the jury.)

14            THE COURT: Good morning, ladies and  
15     gentlemen. You may be seated. Everybody may be  
16     seated.

17            Do counsel stipulate that the jury is now  
18     present?

19            MR. MORELLI: So stipulated.

20            MR. POPOVICH: So stipulated.

21            MS. FRESCH: So stipulated.

22            THE COURT: All right. Plaintiffs may call  
23     their first witness.

24            MR. MORELLI: May it please the Court,  
25     Counsel. At this time, Your Honor, the plaintiff would



1 call Mr. Kenner to the stand, Chris Kenner.  
2 Good morning, jurors.  
3 IN UNISON: Good morning.  
4 THE MARSHAL: Remain standing. Raise your  
5 right hand and face the clerk, please.  
6 THE CLERK: Do you solemnly swear the  
7 testimony you're about to give in this action shall be  
8 the truth, the whole truth, and nothing but the truth,  
9 so help you God?  
10 THE WITNESS: Yes, I do.  
11 THE CLERK: Please state your name and spell  
12 it for the record, please.  
13 THE WITNESS: Chris Kenner, C-h-r-i-s,  
14 K-e-n-n-e-r.  
15 THE CLERK: Thank you.  
16  
17 MR. MORELLI: May I, Your Honor?  
18 THE COURT: You may proceed.  
19 MR. MORELLI: Thank you.  
20  
21 DIRECT EXAMINATION  
22 BY MR. MORELLI:  
23 Q. Good morning, Mr. Kenner.  
24 A. Good morning.  
25 Q. I'm Benedict Morelli. I represent the

1 plaintiffs in this case. You know that; right?

2 A. Yes.

3 Q. Okay. You were in the court, were you not,  
4 when opening statements were given?

5 A. Yes.

6 Q. All right. So that you know the parties and  
7 what the claims are in the case --

8 A. Yes.

9 Q. -- correct?

10 And did you listen carefully to the opening  
11 statements so that you know exactly what the claims  
12 that the plaintiff is making in this case and what the  
13 claims that the various defendants are making in this  
14 case?

15 A. Yes.

16 Q. Okay. Now, am I correct, sir, that -- and  
17 let's just talk about -- a little bit about your  
18 background. But before we do that, I want you to  
19 understand that I don't want you to answer any of my  
20 questions unless you totally understand what I'm  
21 saying. Fair enough?

22 A. Fair enough.

23 Q. It may not be your ears; it may be me. Okay?  
24 So if you don't understand a certain question, just  
25 tell me and I will rephrase it. Fair enough?

1           A.    Fair enough.  Thank you.

2           Q.    So you if do answer a question, we know that

3 you're understanding it and you are giving the answer

4 to the question that I'm asking.

5           A.    Correct.

6           Q.    Fair enough?

7           A.    Yes.

8           Q.    Okay.  Now, is it -- is it correct, sir, that

9 you yourself are a magician?

10          A.    Yes.

11          Q.    Okay.  And we've heard in the court that

12 magicians are entertainers.  Do you agree with that?

13          A.    Yes.

14          Q.    Okay.  So that you are in fact an

15 entertainer?

16          A.    Yes.

17          Q.    Okay.  And were you doing magic before you

18 met Mr. Copperfield?

19          A.    Yes.

20          Q.    Okay.  And when did you start doing magic?

21          A.    I was probably 10 or 11 years old.

22          Q.    Okay.  And how old were you when you met

23 Mr. Copperfield?

24          A.    28.  Something like that.  28.

25          Q.    That's how old you were?

1           A.    Yes.

2           Q.    And what year was that?

3           A.    1990, I think.

4           Q.    Okay. And what was his name, then?

5           A.    David Copperfield.

6           Q.    Okay. Did you know him before he changed his

7 name?

8           A.    No.

9           Q.    Okay. How did it come about that you met

10 Mr. Copperfield?

11          A.    We had a mutual friend. I was performing in

12 a magic-themed restaurant with a small comedy club, and

13 I had published a few books and put some tricks on the

14 market. And Mr. Copperfield was kind of fiddling with

15 one of the tricks, I had heard through the grapevine

16 through my friend. And the show was coming through

17 Indianapolis. So my buddy said, "Hey, you should talk

18 to David; you should meet David."

19                So I get a call from one of David's people.

20 They say, "Hey, come to the show. Show David the

21 tricks that you have that, you know, these things."

22                And so I met him, showed him a few things,

23 one of which he immediately said, "I want to do that

24 trick." So we made a deal. He did the trick. And

25 then we became buddies instantly, like we were friends

1 instantly. I think I have spoken to him on the phone  
2 every day since that day, like, literally.

3 Q. So at this time, you're buddies?

4 A. Yeah.

5 Q. Okay. And, as buddies, have you and he had  
6 conversations about this particular case?

7 A. About this case?

8 Q. About this case. This case that we're on.

9 A. Yes.

10 Q. Okay. Have you had conversations with him  
11 about it?

12 A. Yes.

13 Q. Okay. And when was the first time that you  
14 remember having a conversation about this case with  
15 him?

16 A. I don't really have a great memory of the  
17 exact time when it would be. It would have been at  
18 some point after lawyers got involved.

19 Q. Okay. And so would that be -- from your  
20 recollection, can you give us an idea? Was it a year  
21 ago? two years ago? three years ago? four years ago?  
22 right after it happened? What would you say?

23 A. Probably 2014.

24 Q. Okay. And when you -- so that would be at  
25 least months after the accident?

1 A. Correct.

2 Q. Okay. If it was sometime in 2014. Correct?

3 A. Correct.

4 Q. Because you know the date that this accident  
5 happened; right?

6 A. Yes.

7 Q. Okay. What was the date?

8 A. November 12th, 2013.

9 Q. Right. Okay. Now, did you have an  
10 opportunity to prepare for my examination of you?

11 A. Yes.

12 Q. And you knew it was going to be me, didn't  
13 you?

14 A. Yes.

15 Q. They told you?

16 A. Uh-huh.

17 Q. Okay. And how long did you prepare for my  
18 examination of you?

19 A. Oh, two hours.

20 Q. Two hours. What day was that? Was that  
21 yesterday?

22 A. Yes.

23 Q. How about the day before? You didn't do any  
24 preparation?

25 A. No.

1 Q. Okay. So who did you meet with to do this  
2 preparation?

3 A. My attorneys.

4 Q. Who are your attorneys?

5 A. Mr. Russell, Mr. Roberts. And then also  
6 Ms. Fresch was there, and Eric Freeman was there.

7 Q. Okay. Now, so all four of them were there  
8 with you; is that correct?

9 A. Yes.

10 Q. And were they all talking to you, and were  
11 you talking to them?

12 A. Yeah, both. You know, I was asking  
13 questions; they were -- you know, a lot of me asking  
14 questions.

15 Q. Okay. And who's -- let me ask you this:  
16 You -- you are the president of Backstage Employment  
17 and Referral; is that correct?

18 A. Yes.

19 Q. Okay. And you don't work for any other  
20 company other than Backstage, do you?

21 A. No.

22 Q. And Backstage Employment, do you know, is  
23 represented by two lawyers, Lee and Howard? You know  
24 that?

25 A. Yes.

1 Q. Okay. So they're your lawyers?

2 A. Yes.

3 Q. Right? But you met with the lawyers, one of  
4 the lawyers, for -- well, actually two of the lawyers  
5 for Mr. Copperfield; is that correct?

6 A. Yes.

7 Q. And who does Mr. Freeman represent?

8 A. Mr. Freeman represents, I think,  
9 Mr. Copperfield.

10 Q. Okay. Does he represent anybody else?

11 A. Not that I know of. No.

12 Q. Okay. So, now, when you were having these  
13 conversations with them, you recognized, did you not,  
14 that your lawyers were there, but also the lawyers for  
15 another defendant in this case were also preparing you;  
16 is that correct?

17 A. Yes.

18 Q. Okay. So are they working together as one?

19 A. I don't know how that -- I don't know how  
20 that works, so I don't know. I'm not -- I'm not sure  
21 how the attorneys work together, so ...

22 Q. Okay. So let me ask you this: Did you think  
23 it was a little odd that lawyers for another defendant  
24 in this case were also preparing your answers to my  
25 questions?



1 MR. ROBERTS: Objection. Form.  
2 MS. FRESCH: Join.  
3 THE COURT: Overruled.  
4 THE WITNESS: No.  
5 BY MR. MORELLI:  
6 Q. You need it read back?  
7 A. Yes, please, just real quick.  
8 (Record read by the reporter.)  
9 THE WITNESS: No. No.  
10 BY MR. MORELLI:  
11 Q. Prior to yesterday, when you were preparing  
12 for my questions, had you had any other preparation  
13 over the years since you found out about this case in  
14 2014?  
15 A. Yes.  
16 Q. And when was that? Let's take the most  
17 recent and then go to the least recent. Fair enough?  
18 So when was the time before yesterday?  
19 A. That I met with them to discuss -- what am I  
20 discussing with them, the testimony or just the case?  
21 Q. Anything about the case. Anything about the  
22 case.  
23 A. I just want to make sure I can answer this  
24 correctly, so I'm thinking.  
25 Q. Sure. I understand.

1           A.    You want from the most recent?  
2           Q.    Most recent was yesterday.  
3           A.    Prior to the case?  
4           Q.    Prior to yesterday.  
5           A.    Prior to the case, I couldn't tell you the  
6 exact day.  
7           Q.    Just --  
8           A.    Within the past two weeks.  
9           Q.    Let me -- let me be clear.  Any conversations  
10 that have anything to do with this case.  You were  
11 preparing yesterday for my questions.  
12                   Prior to yesterday, when was the time that  
13 you met with any of the attorneys about this case?  
14           A.    Approximately two weeks ago.  It was a  
15 similar -- similar people -- the same people.  
16           Q.    Okay.  It was the same people?  
17           A.    Yeah.  
18           Q.    Okay.  
19           A.    And it was just basically kind of a reminder,  
20 everything that was going on and everything in the  
21 case.  
22           Q.    Mr. Kenner, I'm over here.  I'm asking you  
23 questions.  Okay?  
24                   It was two weeks ago?  
25           MR. ROBERTS:  Your Honor, I object.  The

1 witness is allowed to answer to the jury. They're the  
2 finders of fact.

3 THE COURT: Sustained.

4 THE WITNESS: So what does that mean? I can  
5 look at him or not look at him?

6 BY MR. MORELLI:

7 Q. Before two weeks ago, when was it?

8 A. I wouldn't know the date, but it was prior to  
9 my deposition.

10 Q. Okay. Who was there at that time?

11 A. It would have been Mr. -- Mrs. Fresch,  
12 Mr. Freeman, Mr. Russell. I think that was it.

13 Q. Okay. So, as far as you know, during the  
14 entire time, from the time you took your deposition  
15 until yesterday, the same lawyers have been talking to  
16 you and preparing you; is that correct?

17 A. Yes.

18 Q. Okay. So why don't you tell us what you  
19 spoke about yesterday with these lawyers.

20 MS. FRESCH: Objection.

21 MR. ROBERTS: Objection, Your Honor.

22 MS. FRESCH: Attorney-client privilege.

23 MR. DEUTSCH: May we approach, Your Honor?

24 THE COURT: Sustained. The objection is  
25 sustained.

1 MR. MORELLI: Your Honor --  
2 MR. DEUTSCH: May we approach?  
3 THE COURT: Sure.  
4 (A discussion was held at the bench,  
5 not reported.)  
6 THE COURT: Objection is sustained.  
7 THE WITNESS: May I ask a silly question?  
8 MR. MORELLI: Your Honor, I'll ask another  
9 question.  
10 THE COURT: Hold on just a second here. The  
11 witness wants to ask a question, he just indicated, to  
12 me.  
13 So would you approach, Counsel?  
14 MR. MORELLI: Sure.  
15 (A discussion was held at the bench,  
16 not reported.)  
17 MR. MORELLI: I can't get it any more clear  
18 than that.  
19 BY MR. MORELLI:  
20 Q. Okay. Okay. So we understand. Now we both  
21 have glasses on.  
22 All right. So, Mr. Kenner, let's talk a  
23 little bit about --  
24 THE COURT: Now, I wanted the record to  
25 reflect that my sustaining the objection was based upon

1 the common interest doctrine. Okay?

2 MR. MORELLI: Sure. Thank you, Your Honor.

3 BY MR. MORELLI:

4 Q. Now, Mr. Kenner, when -- when your deposition  
5 was taken, it was a number of years ago --

6 A. Yes.

7 Q. -- correct? And, at that time, you were  
8 called upon to be the corporate representative of  
9 Backstage Employment and Referral?

10 A. Yes.

11 Q. Correct. Let's just talk about that first.

12 What is your position at Backstage and  
13 Referral now? You're the president; correct?

14 A. Yes.

15 Q. Any other titles that you have?

16 A. From Backstage?

17 Q. Yeah.

18 A. I'm executive producer of the show. I'm not  
19 sure if that title would be official Backstage title or  
20 it's the show. It depends on how you look at that.  
21 But certainly the president would be on the paperwork;  
22 it wouldn't say anything else.

23 Q. Okay. And that was true back when you had  
24 your deposition. You were the president at that time  
25 too?

1           A.    Yes, sir.

2           Q.    How long have you been the president of  
3 Backstage Employment and Referral?

4           A.    2002.  It's a long time ago, so it's, like,  
5 2002, 2003, somewhere in there.

6           Q.    Right.  So 15, 16 years, something like that?

7           A.    Yes.

8           Q.    Okay.  Now, was Backstage Employment and  
9 Referral an entity before you were the president?

10          A.    Yes.

11          Q.    Okay.  So there was a president prior to you?

12          A.    Yes.

13          Q.    Okay.  And how did it come about that you  
14 became the president of Backstage Employment and  
15 Referral?

16          A.    We started performing less.  Originally, with  
17 Backstage, it was a payroll situation so that we could  
18 consolidate multiple companies being paid by different  
19 people.  So it made it under one umbrella.

20                And then we stopped doing as much touring, so  
21 it became more obvious that this -- that wasn't really  
22 needed as much, all this, so I just took it over  
23 because I was with the show, at the show, all the time  
24 as opposed to another person from another state being  
25 president.

1 Q. Okay. Now, when you say -- when you say  
2 "we," who's the we?

3 A. When I say "we" -- what was my statement?  
4 Could you read back?

5 Q. He's asking you to read it back.

6 A. I'm sorry. I just want to be as accurate as  
7 I can.

8 (Record read by the reporter.)

9 THE WITNESS: "We," I mean the show -- the  
10 show -- David Copperfield show stopped touring as much  
11 as we were, you know, prior to that.

12 BY MR. MORELLI:

13 Q. So the "we" is a number of people; it's not  
14 just you and David Copperfield?

15 A. Right. It's the show, the entire entity of  
16 the show.

17 Q. It's the people who are employed also;  
18 correct?

19 A. Yes.

20 Q. Okay. Now, the -- Backstage Employment, back  
21 in 2013, how many employees did you have?

22 A. 32, I think. It always fluctuates between 30  
23 and 33 people.

24 Q. Okay. But back in 2013 around the time of  
25 this incident, it was around 32 people?

1 A. Yes.

2 Q. Now, at the time of your deposition, you also  
3 were asked -- or called upon as the person most  
4 informed, let's say, as the corporate representative of  
5 David Copperfield Disappearing, Inc.; correct?

6 A. Correct.

7 Q. Okay. And when you were offered as that  
8 witness, as the person most informed about David  
9 Copperfield Disappearing, Inc., was that a decision  
10 that you made personally?

11 A. No.

12 Q. Okay. Was that a decision that David  
13 Copperfield made?

14 A. No.

15 Q. Okay. Now, David Copperfield Disappearing,  
16 Inc., being the person who is the most familiar with  
17 the corporate structure of that, how many employees  
18 does that company have?

19 A. One.

20 Q. And who is that employee?

21 A. David Copperfield.

22 Q. Okay. And are you an employee of that  
23 company?

24 A. No.

25 Q. Okay. Do you -- are you intimately familiar



1 with the books of that company?

2 A. The books?

3 Q. The books. You know, profit, loss, books,  
4 accounting?

5 A. Well --

6 Q. That's a yes or no --

7 A. No.

8 Q. -- if you're familiar or not.

9 A. No.

10 Q. Okay. Now, you were hesitating. Is it  
11 because you know a little bit about the books?

12 A. Yes.

13 Q. Okay. And how do you know a little bit about  
14 the books? You only look a little bit?

15 A. Well, when you say "books" --

16 Q. I'm talking about the records, the financial  
17 statements --

18 MR. ROBERTS: Objection. Relevance.

19 BY MR. MORELLI:

20 Q. -- of the company.

21 THE COURT: What's the relevance, Counsel?

22 MR. MORELLI: Do you want me to state that in  
23 open court on the record?

24 THE COURT: No, I would like you to approach  
25 the bench.

1 (A discussion was held at the bench,  
2 not reported.)

3 THE COURT: All right. I'll overrule  
4 objections subject to our discussion --

5 MR. MORELLI: All right. Thank you, Your  
6 Honor.

7 THE COURT: -- at the bench.

8 MR. MORELLI: May I have my last question  
9 read back.

10 (Record read by the reporter.)

11 BY MR. MORELLI:

12 Q. Now, I don't want you to -- I'm not asking  
13 you a question about what is in the records or books,  
14 please understand, Mr. Kenner. Okay? I'm just asking  
15 you just that question -- general question. Okay?

16 A. So no.

17 Q. Okay. No, you don't look?

18 A. No, I don't look.

19 Q. Okay. So the one thing that you do know is  
20 the relationship between the two corporations; correct?

21 A. Yes.

22 Q. Okay. And there is a relationship between  
23 David Copperfield Disappearing, Inc., and Backstage  
24 Employment. Is that true?

25 A. Yes.

1 Q. And we heard in opening statements that  
2 there's a contract between the two companies. Did you  
3 know that? Did you know that there was --

4 A. A written contract?

5 Q. I just said that -- what we heard was that  
6 there's a contract between the two companies.

7 A. Yes.

8 Q. Okay.

9 Is that a yes or no? Is there a contract?

10 A. Yes.

11 Q. Okay. Now, is there a written contract?

12 A. No.

13 Q. Well, you hesitated. Was there a written  
14 contract at one time?

15 A. I'm not the owner of the company, so I really  
16 don't -- you're asking a question I may not know the  
17 answer to.

18 Q. Okay. Now, Mr. Kenner, let me just go back  
19 for one second, and it was one of the reasons why I was  
20 asking you this question to begin with.

21 You were called upon to be the corporate  
22 representative of David Copperfield Disappearing, Inc.

23 A. Yes.

24 Q. Okay?

25 And you were also called upon as the person

1 most knowledgeable to answer questions for Backstage  
2 Employment and Referral. You understand that --

3 A. Yes.

4 Q. -- correct?

5 Okay. So as the person most knowledgeable,  
6 I'm asking you whether there was ever a written  
7 contract between David Copperfield Disappearing, Inc.,  
8 and Backstage Employment, as the person most  
9 knowledgeable.

10 MR. ROBERTS: Objection to form, Your Honor.  
11 There is no PMK at trial.

12 MS. FRESCH: Join.

13 THE COURT: There's no what?

14 MR. ROBERTS: There's no person most  
15 knowledgeable at trial. It's a discovery mechanism.  
16 There only is a witness on the stand: Mr. Kenner.

17 THE COURT: All right. I'll overrule it.

18 THE WITNESS: Okay. State -- say the  
19 question again. I -- I get confused when this all  
20 happens. I'm so sorry.

21 (Record read by the reporter.)

22 BY MR. MORELLI:

23 Q. And I'm talking about in writing now. That's  
24 the only question that I have, because you hesitated  
25 and I just wanted to know whether or not at one time

1 there was a written contract.

2 A. Yes.

3 Q. Okay. And when was that?

4 A. It would have been when it was initially

5 started.

6 Q. When what was initially started?

7 A. Backstage.

8 Q. Okay. And that was when?

9 A. I think 1998.

10 Q. Okay.

11 A. I was not part of it.

12 Q. Okay. You came in '02 or '03?

13 A. Yes.

14 Q. Correct?

15 Okay. So four to five years before that,

16 there was a written contract?

17 A. Yes.

18 Q. Okay. Now, did you have occasion, when you

19 came aboard, to see that written contract?

20 A. No.

21 Q. How did you know there was one before you

22 came aboard?

23 A. I was told there was.

24 Q. Okay. Who told you that?

25 A. Lori Fry.

1 Q. Who?  
2 A. Lori Fry.  
3 Q. Who's that?  
4 A. The former president of Backstage.  
5 Q. And that was just bringing you up to date?  
6 A. Sure. Just information to know, you know.  
7 Q. Okay. And is there a contract between David  
8 Copperfield Disappearing, Inc., and Backstage  
9 Employment -- in 2013, was there a contract?  
10 A. Verbal.  
11 Q. Okay. And what about now?  
12 A. Verbal.  
13 Q. Okay. And back when you were the president  
14 in '02 or '03, whatever time that was, did you decide  
15 what that verbal contract was going to be?  
16 A. No.  
17 Q. Who decided?  
18 A. The owner.  
19 Q. Okay. Who's that?  
20 A. Ted Blumberg.  
21 Q. Okay. And so is -- is Ted Blumberg more  
22 knowledgeable than you are about some of the questions  
23 I'm asking you today?  
24 A. No.  
25 Q. Okay. Did you think it was important for you

1 to see the written contract that was in existence  
2 before you became the president so that you could  
3 mirror it, even if it was just going to be oral?

4 A. No.

5 MR. POPOVICH: Objection. Relevance.

6 THE COURT: Sustained.

7 MR. POPOVICH: If there was an answer, Your  
8 Honor, I'd move that it be stricken.

9 THE COURT: So ordered.

10 MR. POPOVICH: Thank you.

11 THE COURT: The jury will disregard.

12 BY MR. MORELLI:

13 Q. Mr. Kenner, what is that oral contract? Can  
14 you tell us what it is?

15 A. It's basically just stating that we are an --  
16 a payroll company. That's the sole purpose of it, is  
17 to keep all of the payroll consistent to having  
18 multiple entities of payroll. That's really all it is.

19 Q. And that's what Backstage Employment is?

20 A. Correct.

21 Q. Okay. And what's the contract between David  
22 Copperfield Disappearing, Inc., and Backstage? What's  
23 that oral agreement?

24 A. That they would -- that they would supply  
25 employees to David Copperfield Disappearing, Inc.

1 Q. Okay. So now David Copperfield Disappearing,  
2 Inc., doesn't have any employees, but Backstage has 32  
3 employees?

4 A. Correct.

5 Q. Okay. And all of those employees answer to  
6 Mr. Copperfield?

7 A. They answer to me and Mr. Copperfield.  
8 Their -- their manager -- if they're an employee,  
9 they'd obviously answer to their manager or their  
10 supervisor.

11 Q. Okay. So now let's assume for a moment that  
12 one of the employees of Backstage Employment doesn't do  
13 the right thing. Can you fire them?

14 A. Yes.

15 Q. You can?

16 A. Uh-huh.

17 Q. Okay. Can Mr. Copperfield fire them?

18 A. He has to go through me; but, yes, he can --  
19 he can suggest it. And if -- if I see that -- I agree  
20 with him, I would fire them.

21 Q. Okay. So, at the end of the day, with  
22 reference to that issue, you have more authority than  
23 David Copperfield has. Is that true?

24 A. On the hiring -- on the firing of people?

25 Q. Yeah. On the firing of people, he has to go



1 through you, but you don't have to go through him. Is  
2 that a correct statement?

3 A. I would let him know if I was going to fire  
4 someone.

5 Q. Okay.

6 A. So it would be a group effort, talking. It's  
7 the show, so I can't just randomly disrupt the entire  
8 show by letting someone go.

9 Q. I know, but I'm -- I'm -- I'm just talking  
10 about authority now, Mr. Kenner. You understand what I  
11 mean by authority; right?

12 A. Yeah. Yes, yes.

13 Q. I'm talking about authority. I'm not talking  
14 about what, day to day, happens with you and  
15 Mr. Copperfield because you're buddies. Correct?  
16 Authority.

17 He has to come to you to fire somebody, but  
18 you don't have to go to him. Is that a correct  
19 statement? It's just a yes or no.

20 A. No. I would ask him if I were to fire  
21 someone.

22 Q. I just want an answer to my question. Okay?

23 And my question is authority. It's not what  
24 you would do; it's what you must do. Do you need his  
25 authority to fire people that may have done the wrong

1 thing?

2 A. No.

3 Q. You don't need his authority?

4 A. No.

5 Q. Does he need yours?

6 A. Yes.

7 Q. Okay. So he doesn't have as much authority

8 over those employees that work on his show as you do.

9 You have more authority than he has over the employees

10 who work on Mr. Copperfield's show; is that correct?

11 A. Yes.

12 Q. Okay. Does he know that?

13 A. Yes.

14 Q. Okay. So, now, are there certain

15 protocols -- protocols, you know what that means?

16 A. Yeah, I know what that means.

17 Q. Okay. Are there certain protocols that

18 Backstage Employment follows? Yes or no.

19 A. Yes.

20 Q. Okay. And are those protocols put in place

21 for safety?

22 A. Yes.

23 Q. Okay. Are there protocols that David

24 Copperfield Disappearing, Inc., follows?

25 A. Yes.

1 Q. And are those protocols put in place for  
2 safety?

3 A. Yes.

4 Q. Okay. Do those protocols mirror each other?

5 A. Yes.

6 Q. So they're the same?

7 A. Yes.

8 Q. And who decided on those protocols?

9 A. Well, it's a group effort.

10 Q. Okay. But is the group you and  
11 Mr. Copperfield?

12 A. It would be -- in this particular case, it's  
13 Mr. Copperfield, myself, the MGM Grand, the MGM Grand's  
14 stage management, their security, their -- their --  
15 it's not just us at a venue. We have to also live up  
16 to the rules of the place that we're in.

17 Q. Okay. So the -- you know we're going to be  
18 talking about the Thirteen Illusion at some point?

19 A. Yes.

20 Q. Okay. And the Thirteen Illusion, when that  
21 was developed, you were a part of developing that;  
22 correct?

23 A. Yes.

24 Q. Along with Mr. Copperfield?

25 A. Yes.

1 Q. Along with Mr. Harmas?  
2 A. No.  
3 Q. Okay. So that's not -- he wasn't involved in  
4 that?  
5 A. No.  
6 Q. Okay. When you were developing this Thirteen  
7 Illusion, it was before the MGM Grand?  
8 A. Yes.  
9 Q. Okay. So were there protocols in place  
10 before the illusion was done at the MGM Grand?  
11 A. Yes.  
12 Q. And did those protocols change in any way  
13 when you got to the MGM Grand? Yes or no.  
14 A. No.  
15 Q. Okay. So it was the same protocols that you  
16 had in the last venue as -- as you had in the MGM  
17 Grand?  
18 A. Correct.  
19 Q. Same exact protocols?  
20 A. Yes.  
21 Q. No change?  
22 A. No change.  
23 Q. Okay. Now, so -- actually, the protocols for  
24 the Thirteen Illusion were not decided by the MGM Grand  
25 employees; they were decided by you and

1 Mr. Copperfield. Correct?

2 A. Correct.

3 Q. All right. So it was you, Mr. Copperfield,  
4 and who else who decided the protocols?

5 A. The other person that was involved in the  
6 creation was a gentleman named Homer Liwag.

7 Q. Okay.

8 A. But I don't know how much he was involved in  
9 that particular aspect of it.

10 Q. You're talking about the protocols?

11 A. Right.

12 Q. Okay. He was involved in creating the  
13 illusion with you guys?

14 A. Correct.

15 Q. Okay. So the protocols were -- so that I  
16 understand correctly -- were really developed by you  
17 and Mr. Copperfield?

18 A. Yes.

19 Q. Okay. And when you went to the MGM Grand, it  
20 was the same protocols that you followed; correct?

21 A. Yes.

22 Q. Okay. Now, am I correct, sir, that the  
23 Thirteen Illusion has certain aspects to it, which is  
24 disappearing, reappearing?

25 A. Yes.

1 Q. Now, is that always the case?

2 A. No.

3 Q. Okay. So sometimes people disappear and they  
4 don't reappear?

5 A. Correct.

6 Q. Okay. And what percentage of times would you  
7 say people don't reappear?

8 A. It's not a percentage thing. Because we used  
9 to perform the illusion -- when we first started it, we  
10 were trying to come up with different ideas to make it  
11 the best effect. So one of the ideas was, vanish the  
12 people and don't bring them back. So leave the mystery  
13 to, when the audience leaves, "Oh, my God, where they  
14 did go? Holy cow, where did they leave? Where did  
15 they go?" So that was the original thought.

16 So during that first, possibly, year -- this  
17 is why percentage is a difficult question to say.  
18 During that first year, we would try it in different  
19 venues, in different theaters, different ways. We  
20 would not have them disappear, and then we would play  
21 an announcement after the show, "Ladies and gentlemen,  
22 your friends, if they vanished, have gone off on tour  
23 with us and they've run away." So it was just a funny.

24 Q. Which was done more?

25 A. They reappeared is the most.

1 Q. So the most. So reappeared would be more  
2 than 50 percent?

3 A. Oh, yes.

4 Q. Right?

5 A. Yes, sir.

6 Q. Okay. So when the illusion was done, prior  
7 to the MGM Grand, there obviously was still a  
8 runaround; is that correct?

9 A. Correct.

10 Q. Okay. And when did the illusion start at the  
11 MGM Grand? What year?

12 A. 2000.

13 Q. Okay. And the theater that it's done in  
14 today, is that the same theater that it was done in in  
15 2013?

16 A. Yes.

17 Q. And when the illusion that was done in  
18 2013 -- is that the same theater that it was done in  
19 when you started at the MGM Grand?

20 A. Yes.

21 Q. In 2000?

22 A. Yes.

23 Q. Okay. Was there -- was the -- was the  
24 theater ever reconstructed at all?

25 A. The interior was changed -- carpet, color of

1 the walls --

2 Q. Yeah. I'm just -- I'm talking about more  
3 than cosmetic.

4 A. No. No. I don't think so.

5 Q. Okay. Now, when you went to the MGM Grand,  
6 you and Mr. Copperfield, back in 2000, you were making  
7 a deal and telling them about the illusion; is that  
8 correct?

9 A. Yes.

10 Q. Okay. And did they say to you that they  
11 needed to have some input about the route that the  
12 illusion was going to take? Or was the illusion a  
13 secret to MGM Grand people also?

14 A. Can you restate the question, just --

15 Q. Sure.

16 A. -- just so I --

17 Q. Sure. We've heard a lot about keeping the  
18 illusion secret. And so what my question is is, when  
19 you started doing the illusion at the MGM Grand, were  
20 you able to tell the employees of the MGM Grand, the  
21 people you were meeting with, what the illusion was  
22 going to entail?

23 A. Okay. So are you asking if I did this prior  
24 to us going to the MGM or once we had started  
25 performing?



1           Q.    You could ask -- answer both questions.  What  
2 about prior to?  Did you tell them?

3           A.    No.

4           Q.    Okay.

5           A.    We did not discuss anything about the  
6 illusions prior.

7           Q.    So, now, there was a time when you made a  
8 contract with the MGM Grand; correct?

9           A.    Yes.

10          Q.    And when I say "you," that was David  
11 Copperfield Disappearing, Inc.?

12          A.    Correct.

13          Q.    Okay.  And at that time when you made the  
14 contract, did you have to tell the MGM Grand people,  
15 whoever you were meeting with, exactly how the illusion  
16 was done?

17          A.    No.

18          Q.    Okay.  So that there was nothing about the  
19 stage being lifted?  Nothing about that.  Right?

20          A.    No.

21          Q.    Okay.  Nothing about balls being thrown into  
22 the audience?

23          A.    No.

24          Q.    Okay.  Nothing about people running out from  
25 the stage on a route?

1 A. No.

2 Q. So that -- there did come a time, did there  
3 not, when you decided what this route was going to be?

4 A. Yes.

5 Q. Right? This route? Because it wasn't the  
6 same route as before the MGM Grand because it's a  
7 different place; correct?

8 A. Yes.

9 Q. Okay. So, now, the route itself -- has the  
10 route itself been altered at all from the time you  
11 started in this particular theater?

12 A. No.

13 Q. Okay. So when you were sitting down to  
14 decide this route, you decided it with just  
15 Mr. Copperfield; is that correct?

16 A. Say -- excuse me? Say it again.

17 Q. When you were deciding the route that the  
18 participants were going to take during the illusion,  
19 did you decide that only with Mr. Copperfield, just the  
20 two of you?

21 A. No.

22 Q. Okay. Who else was in the route creation?

23 A. Okay. That's when we were -- this is like  
24 being on the road. It's an explanation.

25 Q. Okay.

1           A.    It's not just a yes or no or a simple answer.

2           Q.    Okay. But it wasn't a yes-or-no question,  
3 actually.

4           A.    It was?

5           Q.    It was -- here's the question.

6           A.    Okay.

7           Q.    Who else, other than the two of you, was  
8 involved in deciding the route? That's not yes or no.

9           A.    Could you read back his first question just  
10 for me?

11                               (Record read by the reporter.)

12                   THE WITNESS: The stage manager.

13 BY MR. MORELLI:

14           Q.    Okay. And who was that?

15           A.    At the time, Ben Buttoner.

16           Q.    Okay. So it was the three of you that  
17 decided?

18           A.    He decided.

19           Q.    He decided the route?

20           A.    The initial discovery of the route would have  
21 been decided by him.

22           Q.    Okay. So after he initially decided or  
23 discovered, as you said, the route, he then came to you  
24 and Mr. Copperfield at the same time?

25           A.    Correct.

1 Q. And the three of you discussed it?

2 A. Probably me first. This is 2000, so I'm not  
3 going to be able to say he came to us on April 3rd.

4 Q. I understand that. That's not a problem.

5 A. Yeah. He would have come to me, and then we  
6 would have shown it to David.

7 Q. Okay. Now, the one thing I didn't ask you  
8 is, as executive producer, what were your duties in  
9 2013? Just what your duties were then. And I don't  
10 know.

11 Have they changed at all between then and  
12 now?

13 A. No.

14 Q. So, as executive producer, what were your  
15 duties?

16 A. I'm basically -- it's a long answer, I guess.  
17 But I'm basically their boss, the employees' bosses. I  
18 kind of -- we have, obviously, management set up so  
19 that the management can, you know, run the -- run  
20 things the way you would run a theater, a stage show,  
21 from a company manager to --

22 Q. I just want to know what your duties are.

23 A. Well, my duties are to make sure they're all  
24 doing their duties to -- I also deal with advertising,  
25 the tickets, the ticket sales, the box office.

1 Q. Okay.

2 A. Any decisions that get made with the show in  
3 general usually all filter through me.

4 Q. So basically the boss of the show?

5 A. Correct.

6 Q. Okay. Now, Mr. Kenner, you stated that the  
7 route was determined by you, Mr. Copperfield, and who  
8 else?

9 A. Ben Buttoner.

10 Q. Okay. And I'm just going to refer you to  
11 your deposition testimony if I could.

12 A. Okay.

13 Q. And this is January 26th, 2016. And you and  
14 I have already --

15 MR. ROBERTS: Objection, Your Honor.  
16 Improper impeachment.

17 MR. MORELLI: And you and I have already --

18 THE COURT: Hold on a second. I need to rule  
19 on the objection.

20 MR. MORELLI: I haven't said anything yet.

21 MR. ROBERTS: I believe he was about to read  
22 from his deposition, Your Honor.

23 THE COURT: He's a representative of a party.  
24 Deposition can be used for any purpose, not just  
25 impeachment. Overruled.

1 MR. MORELLI: Thank you, Your Honor.

2 BY MR. MORELLI:

3 Q. Now, Mr. Kenner, you and I have discussed  
4 already that you were deposed.

5 A. Correct.

6 Q. You had a deposition. And this deposition,  
7 it was back on January 26th, 2016. And you were asked  
8 this question, and I'm just asking you whether or not  
9 you remember being asked this question and giving this  
10 answer. Okay?

11 A. Okay.

12 Q.

13 "QUESTION: So it would have been David  
14 Copperfield that set up the pathway at the  
15 subject theater to determine the best and  
16 safest path to get the participants from the  
17 stage to the back of the theater."

18 "WITNESS" -- that's you -- "Yes."

19 Is that a correct statement?

20 A. Yes.

21 Q. Or is it the statement that you made today?  
22 Just which one?

23 A. It's the same statement. The same answer,  
24 yes.

25 Q. Okay. So the -- so the -- so it was --

1 MR. POPOVICH: Your Honor, can we have page  
2 and line number for counsel so we can follow?

3 THE WITNESS: It's also an explanation. It's  
4 not just an answer.

5 THE COURT: Hold on. Let's get the page.

6 MR. MORELLI: It's page 28, lines 6 through  
7 12.

8 MR. POPOVICH: Thank you.

9 BY MR. MORELLI:

10 Q. So that is an incorrect statement that it was  
11 David Copperfield alone, because that's what you said  
12 here?

13 A. Yes, I guess it's an incorrect statement.

14 Q. Okay. Now, I want to ask you whether or not  
15 you and Mr. Copperfield determined together what you're  
16 going to do with reference to the participants that are  
17 selected from the audience. Do the two of you decide  
18 that together, or does he decide it alone?

19 A. During the show?

20 Q. Prior to the show. Because you have to know  
21 what you're going to do in the show. So I'm talking  
22 about the balls going into the audience. Right?

23 A. Yep.

24 Q. People come up, and then certain things are  
25 done; correct?

1           A.    Correct.

2           Q.    It's called screening.

3           A.    Yes.

4           Q.    Screening.  And did you determine that

5 screening or did Mr. Copperfield?  Was it a joint

6 effort or was there somebody else involved?

7           A.    It's -- everything in our company and in our

8 show is a joint effort.

9           Q.    Okay.  But I'm talking about the screening

10 itself.  Who decided what the screening should be?

11 Mr. Copperfield, you, or the two of you?

12           A.    Again, it was a joint effort of the entire

13 company, of the people involved in doing this.

14           Q.    Okay.  So --

15           A.    It's best to get information from the people

16 that are helping, the people that are doing it.  You

17 get all this information together, then you can make a

18 decision.

19           Q.    So you --

20           A.    So it's not like he just went out and said

21 that's what we're going to do, that's it, that's it.

22 Done.

23           Q.    Do you have meetings about this?  Did you

24 have meetings?  Meetings?

25           A.    We have meetings all the time, yes.



1 Q. Did you have meetings about setting up the  
2 screening?

3 A. This is -- I don't recall. This is 20 years  
4 ago.

5 Q. Okay. So you don't have any meetings on an  
6 ongoing basis about the screening; it just stays the  
7 same. Is that correct?

8 A. Uh --

9 Q. Mr. Kenner, does it say the same? That's my  
10 only question, really. Does it stay --

11 A. I don't know that.

12 Q. Okay. So you don't know whether or not the  
13 screening process, back 15, 20 years ago, is the same  
14 as it is in 2013 or now?

15 A. Correct. I'm not 100 percent sure if it's  
16 exactly the same or different because we would  
17 obviously -- as things change and evolve, we evolve  
18 with it. Show truck evolves; everything evolves.

19 Q. Let's take that statement. "Evolves" means  
20 change; correct? Is that what you mean by evolve?

21 A. Correct.

22 Q. Okay. So, now, if in fact the screening  
23 process was set back in 2000, right, 2000,  
24 approximately?

25 A. 1998.

1           Q.    1998. And it's evolved. It's changed. Now  
2 it either has changed or it didn't. And all I want to  
3 know is if it's changed or it didn't. That's my only  
4 question.

5           A.    I do not know.

6           Q.    Okay. So if you don't know, then you also do  
7 not know if it's evolved; correct? I mean, Mr. Kenner,  
8 listen. The only way we can get to understand each  
9 other is if we use the same terms. You said that  
10 evolved means changed. Correct?

11          A.    Correct.

12          Q.    Okay. Now, you are also saying that the  
13 protocol or the screening process hasn't changed for 20  
14 years. Has it or hasn't it changed? That's all I want  
15 to know.

16                THE WITNESS: Did I say that? Did I say it  
17 had not changed? I'm just curious. Did I say that?  
18 Because he just said I said it.

19                THE COURT REPORTER: Do you want it read  
20 back?

21                MR. MORELLI: I'm going to ask you a new  
22 question so that we understand each other. Has it  
23 changed?

24                THE WITNESS: I don't know.

25                /////

1 BY MR. MORELLI:

2 Q. Okay. So then, if you don't know, you also  
3 don't know if it's evolved. Because if it hasn't  
4 changed and evolved means change, you don't know if  
5 it's changed, then it hasn't evolved because you don't  
6 know that either?

7 A. Correct. That's what I said, I didn't know.  
8 It could have evolved.

9 Q. Okay. It could have. Now, Mr. Kenner,  
10 please understand that I don't mean to be disrespectful  
11 to you.

12 A. No.

13 Q. Okay. Please understand that.  
14 I'm from New York.

15 A. Really?

16 Q. Yeah. And I know you are shocked about that.  
17 So I'm just trying to get certain answers. Fair  
18 enough?

19 A. (Inaudible response.)

20 Q. So the -- do you agree with me that if, in  
21 fact, people are selected from the audience, okay, that  
22 it's important to you, as the executive producer, as  
23 the boss, to protect them?

24 A. Oh, yes.

25 Q. Okay. And when you're thinking about

1 protecting them, that's why you and Mr. Copperfield  
2 have put in place a screening process? Correct?

3 A. Yes.

4 Q. And part of that screening process is  
5 visually looking at the people as they come up to the  
6 stage.

7 A. Correct.

8 Q. Okay. Are you there then?

9 A. No.

10 Q. Okay. So you're not doing the visual  
11 screening?

12 A. No.

13 Q. Or any of it, for that matter?

14 A. Correct.

15 Q. You're just -- you were just involved in  
16 deciding what kind of screening it should have been?

17 A. Yes.

18 Q. Okay. And, by the way, when -- when the  
19 screening is going on -- and we're going to talk about  
20 that, and I'm going to show you a video and we'll  
21 discuss it a little -- where are you? I mean, are you  
22 even on the premises that night?

23 A. For the most part. I'm almost there for  
24 every show.

25 Q. Okay. But not every show?

1           A.    No, not every show.

2           Q.    Okay.  So on November 12th, 2013 -- I don't  
3 want to put words in your mouth -- do you know whether  
4 you were there that night?

5           A.    I was on the premises, yes.

6           Q.    Okay.  And that night, November 12th, 2013,  
7 other than Mr. Cox being injured, was basically the  
8 same show that's been on before?

9           A.    Correct.

10          Q.    Right?

11                And the screening process, as far as you  
12 know, was basically the same as it had been, let's say,  
13 that week?

14          A.    Yes.

15          Q.    Okay.  And so one of the things that is  
16 done -- and correct me if I'm wrong -- that people  
17 catch a ball.  And we'll get into more detail in a  
18 little while.  But just for the purpose of these  
19 questions, certain people catch a ball and music is  
20 going on at the time.  Correct?

21          A.    Yes.

22          Q.    And when the music stops, whoever has the  
23 ball can be a participant?

24          A.    Correct.

25          Q.    Basically can be.

1 A. Right.

2 Q. Right?

3 And they come up to the stage. And am I  
4 correct that, as they come up to the stage, there's a  
5 few steps to get up to the stage?

6 A. Correct.

7 Q. And they're carrying the ball and they're  
8 walking up the steps?

9 A. Correct.

10 Q. And at that time there are Backstage  
11 employees?

12 A. Yes.

13 Q. Your employees --

14 A. Uh-huh.

15 Q. -- who are there?

16 A. Yes.

17 Q. Approximately -- or if you know specifically,  
18 how many employees are there looking at the potential  
19 participants walk up the stage?

20 A. I think it's three to four. I don't know the  
21 exact number.

22 Q. Okay. And are they -- are they positioned  
23 all in the same place, the three or four, or are they  
24 on both sides of the stage, or a different  
25 configuration?

1           A.    They're on one side of the stage, because  
2 everyone that catches the ball is directed to go  
3 directly to that side of the stage.

4           Q.    To walk up those stairs?

5           A.    Correct. So there's no confusion. You know,  
6 we just try to make it as simple as possible so there's  
7 no confusion. They just go to one side, and everybody  
8 just walks up that way.

9           Q.    I gotcha. Okay. So the three -- or do you  
10 know, on November 12th, 2013, whether it was three or  
11 four employees?

12          A.    No, I do not.

13          Q.    Okay. And so there -- they're watching. And  
14 they're watching to determine whether or not a person  
15 can be selected?

16          A.    Yeah. They're assessing them to see.

17          Q.    Whether they could be selected?

18          A.    Correct.

19          Q.    Okay. And part of the assessment is just  
20 looking at them and determining whether they're  
21 physically fit. Is that true?

22          A.    Yes.

23          Q.    Okay. And in your opinion, Mr. Kenner -- now  
24 I know you don't do this. I know you're not involved  
25 in the assessment. But in your opinion, do you think

1 that somebody can eyeball somebody and know if they're  
2 physically fit? Just yes or no. Do you think that's  
3 possible?

4 A. Yes.

5 Q. Okay. So if you look at me, you could say,  
6 "Yeah, Morelli's physically fit or he's not"? Right?  
7 You could just make a determination as to whether or  
8 not I am?

9 A. Yeah.

10 Q. Okay. And does that include -- I mean, when  
11 we -- when you say "physically fit," does that include  
12 whether or not I have cardiovascular disease? Or is  
13 that just, hey, the guy looks okay? He looks slim.  
14 What do you think? Because you're eyeballing and this  
15 is a -- withdrawn. Let's not confuse the issue.

16 Is this not an important determination that  
17 you're making?

18 A. Correct.

19 Q. Okay. So as an important determination,  
20 people are walking up steps. How many steps they  
21 walking up?

22 A. Four, I think. I'm not 100 percent sure the  
23 steps on the stage. I think it's four.

24 Q. Okay. And am I correct that I have learned  
25 that during this walking up the steps is when these



1 stagehands -- because that's what they are; right?

2 Stagehands?

3 A. Yeah.

4 Q. They're stagehands. And these stagehands are  
5 making a determination. They're looking, right, as  
6 they're walking up the stairs. And they're saying, oh,  
7 he's physically fit, she's not physically fit, she's  
8 physically fit, he's not physically fit, basically.

9 Fair enough?

10 A. No.

11 Q. Okay. The stagehands aren't deciding if  
12 anybody's physically fit?

13 A. They're not doing anything to do with the  
14 stairs. They've made their decision prior to them  
15 walking up the stairs.

16 Q. Oh, okay. All right. So if, in fact,  
17 they're walking up the stairs and they're not  
18 physically fit, the determination was made before they  
19 walked up the stairs?

20 A. Correct.

21 Q. So now they catch a ball, and they're all the  
22 way in the back, and they're walking up and -- they got  
23 the ball and they're walking up, and they get near the  
24 stage. Is that where you decide whether they're  
25 physically fit? Yes or no.