

**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 5**

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1           A.    Yes.

2           Q.    Okay.  So, now, as they're -- these three  
3 stagehands -- or four -- they're standing on one side,  
4 and they're looking at these -- how many people?  13?  
5 16? -- sometimes?

6           A.    They're not just standing far away from them  
7 looking at them.

8           Q.    Okay.  But it is 13 to 16 people; right?

9           A.    13 to 15, yes.

10          Q.    Yeah, sometimes -- actually, I heard that  
11 there's sometimes 16.

12          A.    I'm not sure where that number came from,  
13 but --

14          Q.    Okay.  But let's just say it's 15 or 13.  
15 Doesn't really matter.

16                So now they're walking up, and the stagehands  
17 are -- they're standing close to them, as close as you  
18 and I are right now?

19          A.    Probably closer.  It's -- it's a tight  
20 position.  I could stand up and demonstrate if you  
21 would like.

22          Q.    No, no.

23          A.    It would be very simple to demonstrate it  
24 right here.  I could show --

25          Q.    I do the demonstrations, Mr. Kenner.

1           A.    Okay.  I mean --

2           Q.    Okay?

3           A.    -- it would just clarify it simply for the

4 jury.

5           Q.    Is this as close as they are, or are they

6 closer than this?

7           A.    I would say a little bit closer.

8           Q.    Is this as close as they are?

9           A.    Yes.

10          Q.    So let's say 8 feet? 6 feet?

11          A.    This is 6 feet, yeah.

12          Q.    Okay.  All right.

13                So are all three stagehands 6 feet away?

14          A.    Yes.

15          Q.    Okay.

16          A.    It's a tight, contained spot.  It's --

17 it's -- they're in a contained area, so it's not like

18 I'm standing here and they're walking past back there;

19 it's an area very similar to right here.

20          Q.    Okay.  So now they're -- they're looking.

21 And when they're looking -- and I -- I just want to

22 understand.  Let's assume it's 15 people.  They all

23 come up.  Are they all, like, in a crowd and the three

24 people are standing 6 feet away approximately?

25          A.    No.

1 Q. Okay. Do they come one at a time?

2 A. Basically, yes.

3 Q. Oh, so they come one at a time. And the  
4 three stagehands are standing there and they're making  
5 an assessment before they walk up the stairs --

6 A. Correct.

7 Q. -- correct?

8 Okay. So now the three stagehands, one says  
9 to the other, "She's physically fit."

10 What happens if stagehand number two  
11 disagrees? What happens then?

12 A. We would always err on the safety side. If  
13 one person said, "I don't think this person should go  
14 on stage," no matter what anyone else says, we would do  
15 it.

16 Q. So, really, you only need one stagehand?

17 A. No, you would need multiple because there's  
18 so many people coming, you want to make sure you get  
19 everyone.

20 Q. Oh, okay. So not each stagehand sees every  
21 potential participant?

22 MR. POPOVICH: Objection. Calls for  
23 speculation.

24 THE COURT: If he knows.

25 THE WITNESS: They walk right past them.

1 Every single one walks right past each one of them.

2 BY MR. MORELLI:

3 Q. Okay. But -- but just so that I understand,  
4 is this right next to the stage before the stairs?

5 A. In a theater, you have -- let's say that this  
6 is the stage.

7 Q. Uh-huh.

8 A. And here -- here's the stage. These -- we'll  
9 do it this way so it's a little bigger.

10 Q. Right. Make sure you don't roll off there.

11 A. So there's aisles that come down.

12 Q. I know. I know what it looks like; they  
13 don't. But we'll show them.

14 A. I understand, but this is really -- this  
15 really will make it simple.

16 There are aisles that come down. So on the  
17 side there's a wall right here. So as the people all  
18 are told to come over here and come down this edge of  
19 the wall, they come down this edge of the wall. And  
20 that's the people standing right here at the bottom  
21 right before the stairs.

22 And they come one at a time right past them.  
23 So they're going to walk right past each person. So  
24 they're going to see each person as they walk past.

25 Q. Okay. So now the -- if -- if one of them

1 says, "Huh-uh, not physically fit," that person's put  
2 on the side?

3 A. Correct.

4 Q. Okay. And that happens, doesn't it --

5 A. Yes.

6 Q. -- a fair amount?

7 A. Oh, yes.

8 Q. Okay. So then, by the time they're walking  
9 up the stairs, it's already been determined whether or  
10 not they're going to be selected? Or they've already  
11 been selected, so to speak?

12 A. That's not the final, no.

13 Q. Okay. So, now, just so that I understand, it  
14 really is immaterial whether it's 13 or 15 people.  
15 Let's assume it's somewhere around there.

16 A. Correct.

17 Q. And there's three or four stagehands. And  
18 one of them has already determined that someone's not  
19 physically fit. Because that's all I'm talking about  
20 right now. I know that there are other things -- and  
21 we'll discuss that -- but just with reference to  
22 physical fitness, if -- if one -- if -- if one  
23 stagehand says the person's not physically fit, you say  
24 they're out because you err on the side of extreme  
25 caution?

1           A.    Correct.

2           Q.    Okay.  So if they're out, why would you need  
3 any more determining factors?  Do they become fit after  
4 they get on the stage?  Answer no; correct?

5           A.    I'm not sure what that question is.

6           Q.    Well, in other words, you're saying that they  
7 make a determination before they walk up the stairs  
8 whether they're physically fit; correct?

9           A.    Yes.

10          Q.    Okay.  And only one stagehand is necessary to  
11 weed out a person who that person thinks is not  
12 physically fit --

13          A.    No.

14          Q.    -- because you err on the side of caution.

15          A.    Say that again.

16          Q.    Okay.  Three stagehands, to make it easy.  
17 There may be four, but just to make it easy, there's  
18 three.

19                   And one of them looks at one of the possible  
20 participants and says, "I don't believe that this  
21 person is physically fit enough to be involved in the  
22 illusion."  And you said earlier, unless I  
23 misunderstood, that they're definitely out because you  
24 err on the side of caution.

25          A.    Correct.



1 Q. Okay. So, now, once they're out, can they  
2 get back in?

3 A. No.

4 Q. Okay. So -- so then when -- when -- after  
5 they're out, do they walk up the stairs and go on the  
6 stage?

7 A. Yes.

8 Q. Okay. So now they walk up the stairs and  
9 they go on the stage, and they're definitely out.  
10 Is -- is that articulated to everybody?

11 A. The only person that needs to be informed is  
12 David Copperfield.

13 Q. Okay. So then the stagehand who made the  
14 determination tells him that they're out, and they're  
15 put on the side?

16 A. Correct.

17 Q. Okay.

18 THE COURT: Counsel, why don't we take a  
19 recess now?

20 MR. MORELLI: Sure.

21 THE COURT: Okay. Let's recess until 11:00.

22 All right. During the recess, ladies and  
23 gentlemen, you're admonished not to talk or converse  
24 among yourselves or with anyone else, including,  
25 without limitation, the lawyers, parties, and

1 witnesses, on any subject connected with the trial or  
2 read, watch, or listen to any report of or commentary  
3 on the trial or any person connected with the trial by  
4 any medium of information, including, without  
5 limitation, newspapers, television, the internet, and  
6 radio, or to form or express any opinion on any subject  
7 connected with the trial until the case is finally  
8 submitted to you.

9 Be outside the courtroom down to the south  
10 just 11:00. Okay?

11 (Whereupon a short recess was taken.)

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

14 THE MARSHAL: Please rise. Department is  
15 back in session.

16 THE COURT: You may be seated. We're back on  
17 the record.

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

20 MR. ROBERTS: Yes, Your Honor. I wanted to  
21 address this. I know we've moved on. The Court  
22 overruled my objection. But I believe this is  
23 something that is going to come up with other witnesses  
24 periodically through trial.

25 There were repeated references to Mr. Kenner

1 as the person most knowledgeable. And, as the Court  
2 knows, that's a term that was used under the old rules.  
3 The new rules, modeled after the Federal Rules of Civil  
4 Procedure, Rule 30(b)(6), doesn't contain the word  
5 "person most knowledgeable." There is no such thing as  
6 a person most knowledgeable under our rules. And there  
7 is no requirement for a corporation to produce, on  
8 every topic designated, the person most knowledgeable  
9 in the corporation or even a person in the corporation  
10 at the time. They simply have to produce someone to  
11 testify to the knowledge reasonably available to the  
12 corporation, and the corporation is bound by that  
13 testimony.

14 And it's very misleading and confusing to  
15 repeatedly ask witnesses whether they are the person  
16 most knowledgeable on the topic and that, if there's  
17 someone else there, somehow there's an appearance of  
18 impropriety if someone else in the corporation or  
19 outside the corporation knows more than the witness on  
20 the stand.

21 Thank you, Your Honor.

22 MR. DEUTSCH: Your Honor, obviously, if we  
23 ask -- we didn't use 32(b)(6). We didn't mention any  
24 of that. We just asked him, "Do you have the most  
25 knowledge on this subject?" He could say "Yes, I do";

1 "No, I don't. There's someone else," who would be if  
2 it's that person.

3 MR. MORELLI: And it can't come up again.

4 MR. DEUTSCH: And -- so -- so there's nothing  
5 wrong with asking a witness, Your Honor, if we're  
6 talking about the subject of X, "Are you the person in  
7 the company that knows the most about subject X? Are  
8 you the most knowledgeable about that subject, or is  
9 someone else more knowledgeable about it than you?"

10 Nobody's talked about any legal standards of  
11 any kind at all.

12 MR. ROBERTS: Actually, the Court will recall  
13 that that's not what they did. They asked the witness  
14 if he was designated as the person most knowledgeable.  
15 "Did you make that decision? Did Mr. Copperfield make  
16 that decision?"

17 Well, he didn't ask the next question, but,  
18 obviously, the lawyers made that decision, Your Honor.

19 THE COURT: All right. Let's go forward.  
20 And if you have an objection to make at any given time,  
21 go ahead and make it and I'll rule on it.

22 MR. ROBERTS: Thank you, Your Honor.

23 THE COURT: Ready for the jury?

24 All right.

25 THE MARSHAL: All rise.

1 (The following proceedings were held in  
2 the presence of the jury.)  
3 THE COURT: You maybe be seated.  
4 Do counsel stipulate that the jury is now  
5 present?  
6 MR. MORELLI: Yes, Your Honor.  
7 MR. POPOVICH: Yes, Your Honor.  
8 MR. ROBERTS: Yes, Your Honor.  
9 THE COURT: You may resume, Mr. Morelli.  
10 MR. MORELLI: Thank you, Your Honor.  
11 BY MR. MORELLI:  
12 Q. Mr. Kenner, in a couple of minutes, we'll  
13 watch portions of the -- it's not up there yet --  
14 portions of the video from the audience perspective of  
15 what we were talking about, where they catch the ball  
16 and they come up.  
17 A. Fair.  
18 Q. Okay?  
19 And this way, we can put it in context. Fair  
20 enough?  
21 A. Uh-huh.  
22 Q. Before we do that, I have a couple of  
23 questions.  
24 After that assessment that we've already  
25 discussed -- okay? -- about the stagehands looking and

1 doing a visual assessment -- let's call it that. Fair  
2 enough?

3 A. Yes.

4 Q. They're then -- they then go up to the stage,  
5 and the people who are still in contention, let's say,  
6 to be in the illusion are then asked questions as part  
7 of a further screening. Is that fair?

8 A. Say that again, because they're not on stage  
9 at this time.

10 Q. No, I'm saying -- I'm talking about  
11 they're -- they're down before they go up the stairs.

12 A. Correct.

13 Q. And that's when you and I discussed the  
14 visual assessment.

15 A. Correct.

16 Q. Okay. Now they walk up the stairs. And  
17 isn't that the time --

18 A. No, sir.

19 Q. -- when they're asked questions?

20 A. No, sir.

21 Q. Okay. They're asked questions before they  
22 walk up the stairs?

23 A. Correct.

24 Q. Okay. Are there any questions asked of them  
25 after they're on the stage?

1       A.    No, unless Mr. Copperfield were to ask them a  
2 question for whatever reason for the show. Like, is  
3 that your -- you know, is that your real suit? You  
4 know, whatever he wanted to ask them.

5       Q.    Yeah, sort of kidding around stuff?

6       A.    Yes.

7       Q.    But as you understand, even though you're not  
8 physically there at the time, it's set up for the  
9 questions to be before they get on the stage?

10      A.    Correct.

11      Q.    Okay. So when they get on the stage, you  
12 know whether to put them on the side or not?

13      A.    Yes.

14      Q.    Fair enough?

15            Okay. And one of the questions that's asked  
16 is, "Can you run?"

17      A.    Yes.

18      Q.    That's -- that's correct?

19      A.    Yes.

20      Q.    Right?

21            And this particular illusion has been  
22 referred to as "the runaround"; correct?

23      A.    Correct.

24      Q.    Okay. So am I also correct, sir, that when  
25 they're asked the question, "Can you run?" that's the

1 whole question: "Can you run?"

2 A. Yes.

3 Q. It's not like "Can you run 100 yards?"

4 Correct?

5 A. Correct.

6 Q. It's not "Can you run a certain route or  
7 route?" Correct?

8 A. Correct.

9 Q. Because -- am I also correct, Mr. Kenner,  
10 that the participants, even after they're selected, are  
11 not told exactly what they're going to do? As a matter  
12 of fact, they're not told anything?

13 A. Correct.

14 MR. MORELLI: So, Mr. Deutsch, can we --  
15 okay. Let's --

16 MR. DEUTSCH: This is Exhibit 94, Your Honor.

17 BY MR. MORELLI:

18 Q. Mr. Kenner, can you see it from there?

19 A. Yeah, I think --

20 MR. DEUTSCH: Mr. Kenner, you have a monitor.

21 THE WITNESS: Yes. Thank you.

22 BY MR. MORELLI:

23 Q. You can watch it there.

24 MR. POPOVICH: Your Honor, can we clarify  
25 that this is not the night of the accident?



1 MR. DEUTSCH: Yes.

2 BY MR. MORELLI:

3 Q. Yeah, this is not November 12th, 2013.

4 We've -- we all understand that it's -- would be the  
5 same as it would have been, but it's not that night.

6 A. Correct.

7 Q. Fair enough?

8 A. Yes.

9 MR. POPOVICH: Thank you.

10 MR. MORELLI: Thank you, Mr. Popovich.

11 (Whereupon video was played.)

12 MR. MORELLI: Could we wait a second. Could  
13 we wait a second.

14 Your Honor, are we able to dim the lights?

15 THE COURT: You want the lights up?

16 MR. MORELLI: Can we lower the lights so we  
17 can see it better?

18 That's better, I think.

19 (Whereupon video was played.)

20 MR. MORELLI: Okay. Mr. Deutsch, can you  
21 stop it there.

22 BY MR. MORELLI:

23 Q. So -- just -- 'cause I didn't want to watch  
24 certain parts. I think the entire tape is over ten  
25 minutes. So we're just going to show a few minutes and

1 ask you certain questions.

2 At this point, Mr. Copperfield has told the  
3 entire audience that certain people who are randomly  
4 selected will be disappearing; correct?

5 A. Yes.

6 Q. I mean, that's all that he's telling them --

7 A. Correct.

8 Q. -- at that point?

9 And now I want to take it to the point that  
10 you and I were discussing, and that was right before  
11 they walk up the stairs. After they've been visually  
12 assessed, they were asked questions. Okay?

13 So if you would look at the monitor and tell  
14 us exactly when to stop -- okay? -- when they're being  
15 asked those questions. Is that fair enough?

16 A. Sure.

17 (Whereupon video was played.)

18 BY MR. MORELLI:

19 Q. Okay. So, now, if we could -- we're going to  
20 take it to the point where they're about to go up the  
21 stairs, and you'll tell us that that is or it was a bit  
22 before or a little after. Fair enough?

23 A. Sure.

24 MR. MORELLI: Okay.

25 (Whereupon video deposition was played.)

1 BY MR. MORELLI:

2 Q. So, now, Mr. Kenner, the question that I have  
3 is that Mr. Copperfield is telling the audience  
4 members -- and we don't know who the participants are  
5 going to be, obviously, at this point, but he's saying  
6 to them, "Don't catch a ball unless you could speak  
7 English." Is that correct?

8 A. Yes.

9 Q. Is it important for them to be able to speak  
10 English? Just yes or no.

11 A. Yes.

12 Q. And when it was determined that this was  
13 going to be said by Mr. Copperfield, "Don't catch a  
14 ball unless you can speak English," did you determine  
15 that or did he determine that or did you do it  
16 together?

17 A. As a group.

18 Q. As a group. So the stagehands were involved  
19 in that too?

20 A. I'm not sure exactly who was. Again, this  
21 would have been 1998 when we first started discussing  
22 this.

23 Q. So it's always been the same script?

24 A. It's been very similar.

25 Q. Right. So sometimes it's changed, but this

1 particular script was used on the night of  
2 November 12th, 2013?

3 A. Oh, yes.

4 Q. That's the important thing.

5 A. Yes.

6 Q. Okay. And so he is asking the audience not  
7 to catch a ball unless they could speak English. And  
8 is it important to speak English because they're going  
9 to have to be able to follow certain instructions along  
10 the route that they're going to run? Yes?

11 A. Correct. Yes.

12 Q. And -- and we're going to go a little further  
13 now and it will come across your screen.

14 (Whereupon video was played.)

15 MR. MORELLI: Could you stop it there.

16 BY MR. MORELLI:

17 Q. Okay. So Mr. Copperfield just said to the --  
18 to the audience that "it's important that you  
19 understand the risks, and there may be violence."

20 Okay. That's a joke; right?

21 A. Yes.

22 Q. Okay. So -- just so that we clarify --

23 A. Yeah.

24 Q. -- that part.

25 So that -- during his presentation -- this

1 presentation to the audience, he is saying certain  
2 things that are jokes. Is this correct?

3 A. Yes.

4 Q. And are other things serious? In other  
5 words, does he mean some of the things he's saying or  
6 are all of them just a joke?

7 A. No, some are serious.

8 Q. Okay.

9 MR. MORELLI: Next.

10 (Whereupon video was played.)

11 BY MR. MORELLI:

12 Q. So, now, Mr. Kenner, you tell us --

13 A. Right now. Stop. As soon as they start to  
14 hit the -- I'm sorry. I was so excited watching the  
15 show.

16 Q. No, no, no. That's okay.

17 A. It's so good, I was, like, enthralled. I'm  
18 sorry. I just tuned in.

19 Q. I know. To bad it wasn't good for Mr. Cox,  
20 but I get it.

21 This is the point at which what? Tell us  
22 what --

23 A. This is where the audience members are  
24 walking up that part of the stage I was just  
25 describing.

1 Q. Right.

2 A. And they all walk to the one side. So, you  
3 know, David has obviously told them to go to the one  
4 side.

5 Q. Right.

6 A. As they're coming up, there's a little --  
7 what you can't see in this video -- right past --

8 Q. Yeah, because the stage is sort of off --

9 A. -- right past -- the girl that has the ball,  
10 there's a slight alcove that has, like, an exit. So  
11 there's a little room for the -- for our people to  
12 stand there so they're not blocking that aisleway for  
13 the people to walk.

14 Q. Got it. So now this is right at the  
15 beginning before the visual assessment?

16 A. They are visually going to assess them as  
17 they come towards them.

18 Q. It's not yet? It hasn't happened?

19 A. Well, that girl that has the ball that's at  
20 the front is being visually assessed as we speak.

21 Q. Okay. And this one hasn't moved yet, so --

22 A. Correct. They are -- they are frozen there  
23 on that screen. In the eighth row, basically.

24 Q. All right. So let's move it along. And then  
25 you'll tell us when to stop when the questions are

1 coming.

2 (Whereupon video was played.)

3 THE WITNESS: Right now. Stop.

4 BY MR. MORELLI:

5 Q. Okay. So that it's already -- when -- when  
6 the person comes up, they have a ball. They're being  
7 visually assessed and asked questions at the same time?

8 A. Correct.

9 Q. Is that correct?

10 A. Correct.

11 Q. Okay. So that if they're visually assessed  
12 and they're out, do you still ask questions? because  
13 the questions aren't going to change anything.

14 A. I think they would still ask the questions  
15 just out of habit and just to do it, so it's not like  
16 they don't go, oop, they're out. Not going to ask  
17 that. They keep their rhythm.

18 Q. Keep the flow?

19 A. Correct.

20 Q. Okay. So you could watch now, and -- until  
21 we get up on the stage.

22 (Whereupon video was played.)

23 MR. MORELLI: So could you stop it there for  
24 a second, Adam?

25 /////

1 BY MR. MORELLI:  
2 Q. Now, you know, you could see better probably  
3 over there. But this over here --  
4 A. Yes.  
5 Q. -- that's David Copperfield. He's on the  
6 stage?  
7 A. Correct.  
8 Q. Right? So the people who we see walking  
9 there are already on the stage?  
10 A. Yes. You can't quite see the steps. They're  
11 right --  
12 Q. Right.  
13 A. -- off the screen.  
14 Q. Right. Because, you know, we don't have the  
15 whole thing, so --  
16 A. Correct.  
17 Q. All right. So approximately -- would you say  
18 that mostly everyone at this particular point is  
19 already on the stage?  
20 A. I couldn't -- I didn't count everyone as they  
21 were coming up, but it looks --  
22 Q. Just approximately. I'm not trying to hold  
23 you to it.  
24 A. Yeah. Seven-eighths of them are on stage,  
25 7.5.



1 Q. Okay. So let's go a little further.

2 (Whereupon video was played.)

3 MR. MORELLI: So, Adam, let's stop it when  
4 they all get on the stage. Okay?

5 (Whereupon video deposition was played.)

6 MR. MORELLI: Okay. You could stop it now.

7 BY MR. MORELLI:

8 Q. So the -- everyone's on the stage now.

9 A. It looks like it, yes.

10 Q. As far as we could tell. When they're coming  
11 up to the stage, I see Mr. Copperfield standing there.  
12 That's not part of the questioning process?

13 A. No.

14 Q. Because the questioning process has already  
15 been done by the stagehands?

16 A. Correct.

17 Q. Fair enough? Okay.

18 So now, before we go any further, let's talk  
19 about that questioning process. The first thing that  
20 they're -- they're asked is, "Can you run?"

21 A. I'm not sure if it's exactly the first  
22 question.

23 Q. I'm not saying it's first.

24 A. You said it was the first question.

25 Q. Well, I'm going to withdraw that question.

1           A.    Okay.

2           Q.    Okay? One of the questions that -- that

3 they're asked is "Can you run?"

4           A.    Correct.

5           Q.    Okay. Now, I would assume that sometimes

6 that could be the first question and sometimes it's not

7 the first question.

8           A.    Yes, I guess so.

9           Q.    Yeah. It doesn't happen probably exactly the

10 same every night.

11          A.    I bet it does.

12          Q.    But they do ask that question?

13          A.    Yes.

14          Q.    Okay. And so you bet that it does happen

15 exactly the same every night; right?

16          A.    Yes. It's a routine that they're going

17 through, and it's part of what they do every day.

18          Q.    But you are the boss. So is it the first

19 question?

20          A.    I don't know.

21          Q.    Well, as the executive producer, if you're

22 saying that it -- that you believe it happens the same

23 every night, what's the order of the questioning? Is

24 the first question, "Can you run?"

25          A.    I don't know.

1 Q. Okay. So you don't tell them the order; they  
2 make it up?

3 A. I am not sure of that either. No.

4 Q. Okay. So let's assume that "Can you run?" is  
5 one of the questions. All right? And the person is  
6 only asked that question. If they say no, they're out.

7 A. If they say no, correct.

8 Q. Right. If they say yes, there's more  
9 questions.

10 A. Yes.

11 Q. Right? Now, one of the questions that is  
12 asked is "Are you pregnant?" I assume that women are  
13 asked these questions.

14 A. Yes.

15 Q. Okay. Is every woman asked "Are you  
16 pregnant?"

17 A. Yes. I would think yes.

18 Q. Okay. Well, you would think or you know? I  
19 mean, you are the executive producer. So you have to  
20 tell us, is every woman asked "Are you pregnant?"

21 A. I don't ask the questions, so I would -- yes.  
22 I would say yes.

23 Q. Okay.

24 A. They do a routine that's so specific when  
25 they do it, I'm sure they ask the exact same questions.

1           Q.   Mr. Kenner, if it's very specific, then you  
2 would tell us for sure that they ask that question. So  
3 all I'm asking is -- and I'm not trying to trick you --  
4 is do they ask all women "Are you pregnant?"

5           A.   I don't ask the question, so I don't know.

6           Q.   Now, am I correct, sir, that you're asking  
7 women are they pregnant because there's a certain  
8 reason for doing that? Right? You're not just asking  
9 them questions.

10          A.   Yes.

11          Q.   Right. There's a particular reason that you  
12 would ask a woman "Are you pregnant?" Right? And that  
13 is to protect them?

14          A.   Yes. Obviously.

15          Q.   Okay. That's obvious. Right?

16          A.   Yeah.

17          Q.   It's to protect them. And is that to protect  
18 them because pregnant women can't run? Yes or no.

19          A.   No. I'm -- say the question again. I just  
20 want to make sure I'm hearing you.

21          Q.   Is the reason for the question "Are you  
22 pregnant?" to protect women because pregnant women  
23 can't run?

24          A.   I will answer that with pregnant women can  
25 run, however that transfers into the correct answer for

1 that.

2 Q. Okay. But the reason for the question, in  
3 your opinion, is not because pregnant women can't run.  
4 That's not the reason for the question --

5 A. Correct.

6 Q. -- is because they can't run.

7 A. Correct.

8 Q. Because pregnant women run. Sometimes  
9 pregnant women run marathons; isn't that correct?

10 A. Yes.

11 Q. Right. So am I correct that the reason for  
12 the question about whether a woman is pregnant is to  
13 protect them?

14 A. Correct.

15 Q. Okay. Is the reason for the question to also  
16 protect the unborn child? Yes or no.

17 A. Yes.

18 Q. Okay. So that -- is the reason that you have  
19 to protect pregnant women in particular, and their  
20 unborn children, is because you know that in this  
21 particular runaround someone can fall? Yes or no.

22 A. No.

23 Q. Okay. So that's not the reason?

24 A. No.

25 Q. You're not trying to protect pregnant women

1 and their unborn children because they're going to  
2 fall?

3 A. No.

4 Q. Okay. Is it because -- and we know it's not  
5 because they can't run. Right? So it's not because  
6 they can't run and it's not because they could fall,  
7 because you don't think that if a pregnant woman is  
8 running this route, they can fall. You don't think  
9 that, do you? Yes or no. Do you think it?

10 A. No. No.

11 Q. They can't. Okay. So pregnant women running  
12 this route can't fall. Okay. So there's got to be a  
13 reason that you're weeding out these pregnant women.  
14 Right? It's got to be a reason. Right?

15 A. Yeah.

16 Q. You were one of the people that made this  
17 determination, did you not?

18 A. Yes.

19 Q. Okay. So when you were making this  
20 determination with Mr. Copperfield, you said, Hey, we  
21 better protect these pregnant women because they can?

22 A. They can what?

23 Q. They can what? They can't fall. They can  
24 run. So what are you protecting them for?

25 A. It's just obvious to protect -- it's to

1 protect a person.

2 Q. Really? But -- but only pregnant women?

3 A. Different pregnant women might have --

4 Q. Wait a second. You're saying that pregnant  
5 women, you're not protecting them because they can  
6 fall. Are you sure about that?

7 A. I did not say that. No.

8 Q. Was the reason that you were weeding out, and  
9 still weed out, pregnant women is because there's a  
10 possibility, during the runaround, they can fall? Yes  
11 or no.

12 A. No.

13 Q. Okay. Is it because, during the runaround,  
14 they could be bumped into and maybe injured? Yes or  
15 no.

16 A. No. It's for safety, the safety of a woman  
17 who's pregnant and her unborn child. I mean, why would  
18 we be hurt for trying to protect them?

19 Q. Mr. Kenner, I'm not telling you why you  
20 should do anything. I'm trying to find out why you do  
21 things, if we understand each other. There's got to be  
22 a reason that you are not protecting everyone the same  
23 way. Right? You would assume that if somebody singles  
24 out a group, there's a reason. Is that fair?

25 A. Why --

1 Q. If you single out a group, there's a reason.  
2 Now, I understand, to say, hey, look, why wouldn't  
3 someone protect someone pregnant? That sounds like a  
4 very nice thing to do, but that's not the issue. Why  
5 are you singling them out? Okay? Are you singling  
6 them out because they could be bumped into and fall?  
7 Or they could just fall, trip and fall, slip and fall?  
8 Is that the reason?

9 A. No.

10 Q. There's got to be a reason. There's got to  
11 be a reason. You said they could run. But you don't  
12 think that they could fall. They could run, but they  
13 can't fall. Is that your testimony, that they could  
14 run but you have no worries about them falling?

15 A. We tell them not -- we're not asking them to  
16 do it. There's no worry of them falling if we're not  
17 asking them to do it. Society deems us, basically, to  
18 protect pregnant women. And if that's a problem,  
19 then --

20 Q. Mr. Kenner --

21 A. -- I don't understand that.

22 Q. Mr. Kenner, look, I think I'm asking you  
23 straightforward questions. I'm not trying to trick  
24 you; I'm really not. I'm trying to find out -- I'm  
25 going to do my best to find out why you're singling out



1 these pregnant women.

2 Now, if pregnant women are singled out, you  
3 would agree with me that a reasonable person would say,  
4 they're doing for a reason. Right? You're doing it  
5 for a reason. You're not just protecting pregnant  
6 women; you are doing it for a reason.

7 And isn't this entire screening process for a  
8 reason? Didn't you tell me earlier it's for a reason?

9 A. Yeah.

10 Q. Yeah. And the screening process is -- the  
11 reason that you are doing it is because for safety.  
12 Isn't that what you told me earlier?

13 A. Yes.

14 Q. It's for safety. So you're keeping pregnant  
15 women safe. Is that what you are doing?

16 A. Yes.

17 Q. You're keeping them safe. Okay. So let's  
18 find out how you are keeping them safe. And safe from  
19 what? Safe from what? That's what I want to know.  
20 What are you keeping them safe from? They can't fall.  
21 Right?

22 A. Yes.

23 Q. They can't fall. They can't get bumped into  
24 and get injured or injure their fetus; true?

25 A. You're asking the reason or if they could?

1 Q. You can answer either one of those questions.  
2 It's okay with me. Can they?  
3 A. Can they?  
4 Q. Yeah. Can they be bumped into?  
5 A. They could fall right here. Anybody could  
6 fall.  
7 Q. You know the route; correct?  
8 A. Correct.  
9 Q. You designed it.  
10 A. Well, I helped.  
11 Q. Well, you designed it with Mr. Copperfield;  
12 right?  
13 A. Yes.  
14 Q. Okay.  
15 A. And Mr. Buttoner.  
16 Q. So the three of you designed it. And seeing  
17 that you're one of the bosses, you certainly had a lot  
18 of input, if not more than a lot; true?  
19 A. Yes.  
20 Q. And when you designed it, you wanted to  
21 determine that you kept the participants who were  
22 randomly selected -- that's what David Copperfield  
23 says -- you want to keep them safe.  
24 A. Correct.  
25 Q. Okay. And I don't want to beat this to

1 death, but I need to know exactly why you're doing  
2 things. I'm not afraid of the answer. Okay? Why are  
3 you doing these things?

4 MR. ROBERTS: Objection to form.

5 BY MR. MORELLI:

6 Q. You're asking them can they run?

7 MR. ROBERTS: These are compound, Your Honor.  
8 He needs to stop at each question.

9 THE COURT: Sustained. Just pose a question.

10 BY MR. MORELLI:

11 Q. All women are asked, you think, whether  
12 they're pregnant. If they say yes, they're out.  
13 Correct?

14 A. Yes.

15 Q. Now, when you were deciding that this would  
16 be a question, who came up with it first? You,  
17 Mr. Copperfield, or this other fellow that you talk  
18 about, Ben?

19 A. About the -- say that question. Again about  
20 the pregnancy?

21 Q. Yeah.

22 A. Ben had nothing to do with deciding the  
23 question.

24 Q. Okay. You and David Copperfield?

25 A. And Homer Liwag.

1 Q. And Homer Liwag. The three of you got  
2 together. And who came up with it? If it were you,  
3 you would remember. Correct?

4 A. Probably. But it was a group effort.

5 Q. Right. And ultimately --

6 A. Pregnant women -- pregnant women --

7 Q. Before you give a speech -- I understand  
8 you're an entertainer, but let me just ask certain  
9 questions. All right? And that is the -- the  
10 determination was made as a group.

11 A. Yes.

12 Q. Fair enough?

13 A. Uh-huh.

14 Q. But someone said, hey, why don't we put  
15 pregnant women in that group of disqualified people.  
16 Did you come up with that idea before you gave it to  
17 the other two guys?

18 A. Not me, no.

19 Q. Okay. Did Homer come up with the idea before  
20 he gave it -- it went to the group?

21 A. I don't know that.

22 Q. Okay. Do you know whether it was  
23 Mr. Copperfield who came up with that question to  
24 determine to keep pregnant women out?

25 A. David might have mentioned it because, in

1 general, on stage, if there's even assumption -- an  
2 assumption of a person walking -- before asking, if  
3 someone walks on stage and they are -- visually look  
4 pregnant, you're going to be more tender with that  
5 person, because women tend to be -- some women don't  
6 like to even stand up. They want to sit a certain way.  
7 They don't want -- so you just -- we're just respecting  
8 women --

9 Q. Okay.

10 A. -- that are pregnant.

11 Q. And I'm very glad that you're doing that.

12 A. That's it. That's the answer.

13 Q. But you said you're asking every woman if  
14 they're pregnant. So you're not -- you're not making  
15 that determination. The only determination that you  
16 are making visually -- am I correct? -- is whether or  
17 not someone's physically fit. Correct?

18 A. Correct.

19 Q. That's the only determination that's done  
20 visually?

21 A. No.

22 Q. Okay. Now, are you making a determination  
23 visually if someone's pregnant?

24 A. They're asking the question. There's no need  
25 to make the decision.

1 Q. Every woman is being asked "Are you  
2 pregnant?"

3 A. Yes.

4 Q. If they're like -- like this and obviously  
5 pregnant or not. Correct?

6 A. Correct.

7 Q. They're still asked the question?

8 A. Correct.

9 Q. Now, you know the route, do you not --

10 A. Yes.

11 Q. -- that they have to run.

12 A. Yes.

13 Q. Right?

14 Have you ever run that route?

15 A. Yes.

16 Q. You personally?

17 A. Yes.

18 Q. Okay. How many times?

19 A. Oh, my God.

20 Q. A lot?

21 A. A lot.

22 Q. A lot. Okay. And when you run it, you know  
23 where you're going.

24 A. Yes.

25 Q. You know the route?

1           A.    Yeah.

2           Q.    Okay. But when the participants are running  
3 it, they don't know the route?

4           A.    No.

5           Q.    Okay. And so now, do -- from your knowledge,  
6 because you are not there, do the pregnant women ever  
7 ask "Why are you asking me that?" I mean, I would  
8 think that there are certain women who wouldn't want to  
9 be asked that question. Do you agree with that?

10          A.    Yes.

11          Q.    Okay. I mean, you look at a certain woman  
12 and you say "Are you pregnant?"

13                    "What?"

14          A.    It's not asked like that. "Oh, you're  
15 pregnant." It's -- it's asked more of a -- in a  
16 succession of questions.

17          Q.    "Are you pregnant?"

18          A.    No. But it's asked in a succession of  
19 questions.

20          Q.    I understand.

21          A.    So questions are being asked. It's not a --  
22 it's not a -- just a one question, "Are you pregnant?"  
23 You're making it sound like that.

24          Q.    It's one of the questions.

25          A.    Correct.

1 Q. And how many questions do you ask altogether?  
2 A. It's four or five questions.  
3 Q. Right. So it's not like there's 28 questions  
4 and one of them is "Are you pregnant?" I mean, it's  
5 actually not that many questions.  
6 A. Correct.  
7 Q. Fair enough? Okay. Now, one of the  
8 questions is, "Are you a magician?"  
9 A. Yes.  
10 Q. Correct?  
11 A. Yes.  
12 Q. And the reason that you ask that question is  
13 to protect the secret of the illusion.  
14 A. Correct.  
15 Q. Fair enough? Right?  
16 A. Correct.  
17 Q. Okay. You also ask on -- I mean, I don't  
18 mean to -- when I say you also ask, I don't mean it's  
19 you.  
20 A. I understand.  
21 Q. Okay. It's also asked "Are you a member of  
22 the press?"  
23 A. Yes.  
24 Q. Correct? And the reason for that question is  
25 also to protect the secrets of the illusion?



1           A.    Correct.

2           Q.    Fair enough?  Okay.

3                   Now, I know that you have, you know, been

4 asked these questions before.  So am I correct that you

5 also ask "Are you a lawyer?"  Or they ask "Are you a

6 lawyer?"  And the reason for that question -- I'm going

7 to ask you, the -- one of the reasons is because you

8 think that someone could get injured?  Is that true?

9 Yes or no.

10          A.    No.  I'm not exactly sure the reason that

11 question is there.

12          Q.    Okay.  But would you agree with me that

13 asking if someone's a lawyer is a strange question?

14          A.    No.

15          Q.    You don't think it's strange?

16          A.    No.

17          Q.    Okay.  All right.  Do you ask anybody if

18 they're doctors?

19          A.    No.

20          Q.    No.  Accountants?

21          A.    No.

22          Q.    Generally speaking, when one wants to know if

23 someone is a lawyer, they're thinking they might get

24 sued.  Is that true?

25               MR. POPOVICH:  Objection.  Speculation.

1 THE COURT: He can state his opinion.  
2 BY MR. MORELLI:  
3 Q. I just want your opinion, Mr. Kenner. If  
4 somebody asks somebody "Are you a lawyer?" if they're  
5 singling out lawyers, as a group, people generally  
6 think lawyers could sue them. True? Yes or no.  
7 A. Sure. People can sue.  
8 Q. Sure. Okay. So you would agree with me that  
9 one of the possibilities of why that question is asked  
10 is because you and your buddy, Mr. Copperfield, don't  
11 want to get sued. Yes or no.  
12 A. No. I don't think that's the reason for the  
13 question.  
14 Q. Okay. But is it possible that that's the  
15 reason?  
16 A. I guess it's possible.  
17 Q. Okay. So now let's go a little bit further  
18 on -- on the video you could watch there so that we --  
19 we see -- we're going to stop it just when  
20 Mr. Copperfield is walking around with the possible  
21 participants.  
22 A. Got you.  
23 Q. Okay?  
24 (Whereupon video deposition was played.)  
25 MR. MORELLI: All right. Can you stop it,

1 Mr. Deutsch, right there.

2 BY MR. MORELLI:

3 Q. Okay. Now, you -- you watched the

4 walk-around -- and it's not totally completed, but it's

5 almost completed. So I'm going to complete it in a

6 second.

7 Do you see Mr. Copperfield? What's he doing?

8 A. Just standing there, blurry.

9 Q. I'm not talking about right now; I'm talking

10 about in the video that you just watched.

11 A. He's getting them -- he's walking them behind

12 this --

13 Q. Right.

14 A. -- kind of letting them understand this

15 follow-the-leader principle that's going to come in in

16 a minute.

17 Q. And so is he looking straight? Is he looking

18 to the right or left? Is he walking backwards?

19 A. He's walking around the platform.

20 Q. And they're just following him. He's not

21 looking at them at this point, really; he's just having

22 them follow him. Fair enough?

23 A. Correct. Correct.

24 Q. Okay.

25 MR. MORELLI: Want to finish it, Mr. Deutsch.

1 MR. DEUTSCH: Okay.

2 (Whereupon video deposition was played.)

3 MR. MORELLI: Could you stop it there,  
4 Mr. Deutsch.

5 BY MR. MORELLI:

6 Q. Can you -- this is -- Mr. Kenner, I'm sorry.  
7 But this is the best video that we have of this  
8 particular thing.

9 A. Right.

10 Q. So just the best that you could see, because  
11 I don't know how clear it is on your --

12 A. It's pretty clear.

13 Q. Okay.

14 Am I correct, sir, that, at this particular  
15 point, there's also more visual screening that goes on?  
16 I think you said that to me earlier; correct?

17 A. Well, yeah, David would be making -- if he  
18 has any -- any doubts at all, he will put them to the  
19 side.

20 Q. Right. So --

21 A. After anything that anyone else has said, he  
22 would say -- you know, he would just put them to the  
23 side. Get another chair, give this person a chair.

24 Q. Okay. And so one of the things that he would  
25 be looking for is footwear; correct?

1           A.    Could -- could be one of the things, yes.

2           Q.    Yeah, because I -- I believe that they --  
3 "they" meaning the team and -- and Mr. Copperfield --  
4 are screening out women in high heels; is that correct?

5           A.    Yes.

6           Q.    Okay. And one of the reasons or the  
7 reason -- let me ask you -- is the reason that they're  
8 screening out women in high heels is because they're  
9 going to be running, and if you are wearing high heels,  
10 you can fall and get hurt. Fair enough?

11          A.    Fair enough.

12          Q.    Okay. And, also, I believe -- and you  
13 correct me if I'm wrong -- that if, in fact, he's  
14 visually screening -- Mr. Copperfield and his crew --  
15 they're also looking to screen out people with other  
16 kinds of footwear that may be a problem in the  
17 runaround. Fair enough?

18          A.    Correct.

19          Q.    Okay. And one of those things -- or items of  
20 footwear would be flip-flops?

21          A.    Correct.

22          Q.    Okay. Now, the -- do you know -- do you know  
23 how far it goes with reference to screening out the  
24 footwear? In other words, high heels, yes; flip-flops,  
25 yes. Are there other kinds of footwear that maybe

1 screen a person out?

2 A. Clown shoes.

3 Q. Okay.

4 A. I mean, if someone had a big shoe on a  
5 foot -- you know, I mean, it's -- it's a visual  
6 assessment of an odd shoe or an odd thing.

7 Q. Okay.

8 A. If anything would impair that person  
9 to -- to, you know, be able to do anything, yeah.

10 Q. Okay. I mean, I don't know if you've ever  
11 encountered somebody coming up with clown shoes on.

12 A. Yeah, you'd be surprised. No joke. You'd be  
13 surprised at what -- we've done, like, millions of  
14 people in the show. Somebody's going to have -- we've  
15 had a clown in the audience, Twister the Clown, sitting  
16 in the audience. Long story.

17 Q. Okay. All right. So now we know which items  
18 of footwear. What about -- 'cause it could be any kind  
19 of footwear that you're screening out.

20 Do you know exactly -- I mean, do you screen  
21 out people who are wearing, like, driving shoes that  
22 aren't really appropriate for running?

23 A. No.

24 MR. POPOVICH: Objection. Argumentative as  
25 to the last part.

1 THE COURT: Sustained.

2 BY MR. MORELLI:

3 Q. Okay. So let's take the -- we're going to  
4 take the video back just a drop, Mr. Kenner, so that  
5 you could see people walking up to the thing.

6 Now, before I do that, when they walk up  
7 into -- what do they call it? -- "the box" or "the  
8 cage" or --

9 A. The Thirteen prop, I guess. We would always  
10 just call it the Thirteen prop. We refer to it as just  
11 the number 13. Thirteen, it's, like, an easy, quick  
12 thing.

13 Q. So when they go up into their -- there is,  
14 would you say, stadium seating? I mean, that's what it  
15 has been referred to as --

16 A. Yes, yes.

17 Q. -- but you could tell me what you think.

18 A. Yes. Exactly.

19 Q. Okay. And so once they -- they're walking up  
20 to take those seats, basically, they're in. Because  
21 the screening has been done, so the only thing that --  
22 that they could do is say, "Hey, I want out of here"?

23 A. Correct.

24 Q. They could say that. But other than that --  
25 I'm talking about the screening now is basically done?

1 A. Yes.

2 Q. Okay. So I'm just going to show you this.

3 And I want you to watch carefully. I don't know which  
4 way is better for you to watch, the screen or here,  
5 whichever way you would like.

6 A. I can watch here.

7 (Whereupon video was played.)

8 BY MR. MORELLI:

9 Q. Just watch them walking up and see if you can  
10 see the footwear.

11 MR. DEUTSCH: Morelli?

12 BY MR. MORELLI:

13 Q. Do you see any women there with high heels?

14 A. Yes.

15 Q. Okay.

16 A. Well, they're not high heels; they're heels.  
17 There's two different -- stiletto is a -- there's many  
18 women here on the jury that know a stiletto is a 6-inch  
19 heel and -- and a high heel.

20 Q. I want you to watch. Okay?

21 (Whereupon video was played.)

22 BY MR. MORELLI:

23 Q. Okay. Right there. Is she wearing high  
24 heels?

25 A. In the red dress?



1 Q. Yeah.

2 A. It doesn't look like a high heel. It looks  
3 like a clog heel maybe.

4 Q. All right. So that particular heel is  
5 acceptable. Is -- are the stagehands told certain  
6 inches that they have to deal with in terms of the  
7 heel? Yes or no.

8 A. No.

9 Q. Okay. So let's look further.

10 (Whereupon video was played.)

11 MR. DEUTSCH: Morelli.

12 BY MR. MORELLI:

13 Q. You see anybody there in flip-flops?

14 A. Flip-flops?

15 Q. Yeah, just take a quick look if you can.

16 A. I can't quite tell. That gentleman with the  
17 striped shirt here might have flip-flops on or -- I  
18 can't tell what his shoes are.

19 Q. Okay.

20 (Whereupon video was played.)

21 THE WITNESS: Yeah, they look like  
22 flip-flops.

23 MR. MORELLI: Yep. Go ahead.

24 (Whereupon video was played.)

25 MR. MORELLI: Okay. Let's have them all sit.

1 (Whereupon video was played.)

2 BY MR. MORELLI:

3 Q. So now everybody is in the Thirteen or the  
4 prop?

5 A. Yes.

6 Q. Okay. So that we -- as we see, there are  
7 people with -- women with heels and there's a man in  
8 flip-flops. Okay?

9 A. Yes.

10 Q. So, now, my question is, is there a protocol  
11 with reference to that that nobody in high heels and no  
12 one in flip-flops? Yes or no.

13 A. Say the question again.

14 Q. Is there a protocol that no one with high  
15 heels and no one with flip-flops should be taken as a  
16 participant? Yes or no.

17 A. It's not a simple yes-or-no answer, but say  
18 the question again one more time so I get it right.

19 Q. Sure. That's fine.

20 Is it a protocol that no one with high heels  
21 or wearing flip-flops should be accepted as a  
22 participant?

23 A. That's all part of the visual assessment.

24 Q. So the answer is yes?

25 A. Is?

1 Q. Is it a protocol that they should be weeded  
2 out?

3 A. That they -- well, the person's making a  
4 judgment if they should be weeded out. It would depend  
5 on how a person is walking in a pair of heels or  
6 walking in a pair of flip-flops or walking -- if  
7 someone comes up and they have -- again, if you have  
8 heels -- if you wear heels -- not --

9 Q. Mr. Kenner, I --

10 A. -- not flip-flops, you know, people walk  
11 different. And it's -- it's part of the visual  
12 assessment.

13 Q. I understand that you're doing this visual  
14 assessment. My question is -- and I asked you this  
15 question earlier and -- and I thought I knew your  
16 answer, that there is a protocol that no one in high  
17 heels should be taken.

18 Is that correct, or do you want to change  
19 that?

20 A. Well, high heels --

21 Q. Just yes or no, Mr. Kenner.

22 A. No. High heels is -- is -- what's the --  
23 explain high heels exactly to me.

24 Q. Mr. Kenner --

25 A. We would have no women on stage.

1 Q. Is it a protocol that no one with flip-flops  
2 should be accepted? Yes or no?

3 A. I don't see -- I do not have that protocol  
4 sheet in front of me to answer that with a  
5 1,000 percent yes or no.

6 Q. So you don't know?  
7 You don't know?

8 A. It's -- as I've said before --

9 Q. Is your answer you don't know?

10 A. -- it's a visual assessment. It's a visual  
11 assessment.

12 Q. I understand that. But everybody knows what  
13 flip-flops look like. We don't even have to measure  
14 them; right?

15 So let's just take flip-flops so we're on the  
16 same page. Is it a protocol that anyone in flip-flops  
17 is weeded out of being a participant? Yes or no.

18 A. Yes.

19 Q. Okay. So am I correct, sir, that if, in  
20 fact, one of these people had flip-flops on and they  
21 were accepted to do the runaround, the illusion, that  
22 was a breach of protocol? Yes or no.

23 A. Yes.

24 Q. Okay. Now, I know that you watched  
25 carefully -- and I think we all did -- when

1 Mr. Copperfield was walking around and they were  
2 following him.

3 A. Correct.

4 Q. Just -- just that one thing. That's all I'm  
5 talking about. We'll call it the walk-around just for  
6 us.

7 A. Perfect.

8 Q. Okay?

9 Would you consider that walk-around an  
10 obstacle course? Yes or no.

11 A. No.

12 Q. Okay. Would you say that that walk-around is  
13 more extreme than what they're going to have to do when  
14 they're doing the runaround?

15 A. Are you asking me if there's more things that  
16 they would have to walk over?

17 Q. No.

18 A. The answer is yes. There would be more  
19 things they would have to walk over. So it's more of  
20 an obstacle course.

21 Q. My question -- my question. Okay?

22 You were in the courtroom, were you not, when  
23 you heard all the opening statements of the lawyers?

24 A. Yeah.

25 Q. Okay. Did you hear any lawyers say that that

1 walk-around was more extreme than what they would have  
2 to do later on? Did you hear anybody say that?

3 A. Maybe. I can't recall every single -- six  
4 hours.

5 Q. Now, do you agree that that walk-around that  
6 we just watched is more extreme than the runaround of  
7 the route that they don't know about that they're going  
8 to do? Is that walk-around more extreme? It is; it  
9 isn't?

10 A. It is.

11 Q. Okay. That's more extreme?

12 A. If you're talking about obstacles. You said  
13 the word "obstacle." So, yes, it is extremely -- more  
14 obstacle --

15 Q. You said it wasn't an obstacle course. Now  
16 I'm asking you a different question.

17 Is it, in your opinion? If you think it is,  
18 it is. Is it, in your opinion, that walk-around where  
19 everybody's following Mr. Copperfield, is it more  
20 extreme?

21 Why don't we watch it again, and then you'll  
22 tell me what's extreme about it. Okay? Fair enough?

23 (Whereupon video was played.)

24 THE WITNESS: Can I stand up to point?

25 MR. MORELLI: Your Honor, can he stand so he

1 can see?

2 THE WITNESS: I might want to point to the  
3 screen if we get to a spot.

4 BY MR. MORELLI:

5 Q. Well, I'm not asking you to point. I don't  
6 have a question.

7 A. Your question is if there's an -- if it's  
8 more extreme.

9 Q. I didn't ask you -- there's no question right  
10 now. We're just watching. I'll ask you a question as  
11 we go.

12 A. Okay.

13 (Whereupon video was played.)

14 THE WITNESS: Am I supposed to pause it at  
15 any time?

16 BY MR. MORELLI:

17 Q. No, no, just -- let's just watch the whole  
18 thing.

19 (Whereupon video deposition was played.)

20 BY MR. MORELLI:

21 Q. Okay. So, now, that's the -- the  
22 walk-around?

23 A. Correct.

24 Q. All right. Now, my question to you is --  
25 very straightforward question -- is that walk-around --

1 let's forget about obstacles for a minute. Okay?

2 Is that walk-around more extreme for these

3 participants than what they're going to encounter

4 after? Is it more extreme?

5 A. Describe extreme.

6 Q. I don't have to; it wasn't my term. Okay?

7 Do you think -- you understand what extreme

8 means. You're a smart guy.

9 Does that look, in your opinion -- and you

10 know more about this than any of us. Is it more

11 extreme than what they're going to encounter later on?

12 A. Yes.

13 Q. Yes or no?

14 A. Yes.

15 Q. Okay. So, in other words, you're saying that

16 that's more extreme than the runaround. Okay.

17 And -- and the reason that it's more extreme

18 is because this walk-around here, you have to walk

19 over, like, a cable or something like that as you're

20 walking around. Is that one of the things you have to

21 do?

22 A. You have to jockey back and forth between

23 lights and over cables --

24 Q. Okay. You have to do a little jockeying as

25 you're walking with the lights on; is that correct?



1           A.    It's -- yeah.

2           Q.    You're walking with the lights on; is that  
3 correct?

4           A.    It might be darker back there than it is on  
5 the runner.

6           Q.    Okay. So it's a little darker once in a  
7 while. Okay. But you consider that more extreme?

8           A.    Yes.

9           Q.    Okay. So is it correct, Mr. Kenner --  
10                Your Honor, this is a good time to break, if  
11 you want, for lunch. But I'll ask this last question.

12           THE COURT: Okay.

13           MR. MORELLI: Thank you.

14 BY MR. MORELLI:

15           Q.    Am I correct, sir, that, based on that  
16 walk-around, which you just stated to the -- to this  
17 jury is more extreme than what they're going to  
18 encounter later on, that's one of the ways you  
19 determine whether or not someone can complete the  
20 runaround?

21           A.    Yes.

22           Q.    Fair enough?

23           A.    Fair enough.

24           MR. MORELLI: Okay.

25           THE COURT: All right. We'll break for lunch

1 now, ladies and gentlemen. We'll reconvene at 1:30.

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

13           Be outside the courtroom just before 1:30.  
14 Okay.

15           THE MARSHAL: All rise.

16                   (The following proceedings were held  
17                   outside the presence of the jury.)

18           THE MARSHAL: All rise.

19           THE COURT: Okay. We're -- I was told  
20 somebody has something to take up.

21           MR. ROBERTS: Your Honor, they just wanted to  
22 confirm the witness, that because he was under oath, he  
23 was not allowed to talk to others about the substance  
24 of the case until he had been released from the stand.

25           MR. MORELLI: Lee, I'm not going to make a

1 big deal out of this. We just --

2 MR. DEUTSCH: Ms. Fresch informed them that  
3 that was not appropriate, and we're all good.

4 Thank you, Your Honor.

5 THE COURT: All right.

6 MR. ROBERTS: All right. Thank you, Your  
7 Honor.

8 (Whereupon a luncheon recess was taken.)

9 THE MARSHAL: All rise.

10 (The following proceedings were held in  
11 the presence of the jury.)

12 THE COURT: You may be seated, ladies and  
13 gentlemen. We're back on the record. Will counsel  
14 stipulate that the jury is present?

15 MR. MORELLI: The jury is present.

16 MR. POPOVICH: Yes, Your Honor.

17 MR. ROBERTS: Yes, Your Honor.

18 THE COURT: All right. The witness has  
19 retaken the stand. You may resume your examination,  
20 Mr. Morelli.

21 MR. DEUTSCH: Your Honor, just for the  
22 record, I don't think we ever officially moved into  
23 evidence Exhibit 94, which is this video that we're  
24 showing, officially. But I don't believe there's any  
25 objections.

1 MR. POPOVICH: No objection.  
2 MR. ROBERTS: No objection.  
3 THE COURT: Okay.  
4 MS. FRESCH: No objection.  
5 THE COURT: It's admitted.  
6 (Whereupon, Plaintiffs' Exhibit 94 was  
7 admitted into evidence.)  
8 MR. MORELLI: Yeah, thank you.  
9 BY MR. MORELLI:  
10 Q. So good afternoon, Mr. Kenner.  
11 A. Hello. Good afternoon.  
12 Q. We're going to just -- and you could watch,  
13 you know, the big screen or the small screen, either  
14 way.  
15 A. Got you.  
16 Q. Let's just go a little bit further so that  
17 you can explain to us what we're seeing. You know,  
18 what -- where we are in the illusion. Fair enough?  
19 A. Okay. Yeah.  
20 (Whereupon video was played.)  
21 MR. DEUTSCH: Morelli.  
22 MR. MORELLI: Can you stop it right there,  
23 Mr. Deutsch?  
24 BY MR. MORELLI:  
25 Q. Okay. So in this video, I see that there are

1 young men sitting here.

2 A. Yes.

3 Q. Correct?

4 A. Yes, sir.

5 Q. And am I correct, sir, that some of the

6 people who are, for lack of a better term, weeded out,

7 let's say, not selected --

8 A. Okay.

9 Q. -- are what the people who do the illusion

10 call young, hip men; is that correct?

11 A. Sure. I guess that's the terminology used.

12 Q. Okay. And the reason to unselect them, for

13 lack of a better term, these young, hip men, is because

14 they're more apt to reveal the secrets of the illusion

15 if they participated. Is that fair?

16 A. Yeah. That would be part of it. Yes.

17 Q. Okay. Well, is that the whole reason or just

18 part of it? I mean, is the other part that they're not

19 physically able to do it? It's not that?

20 A. No. Sometimes we would -- sometimes you can

21 kind of think that they might be magicians and they

22 didn't tell us they were magicians.

23 Q. Okay.

24 A. That's a -- we have learned that through

25 history, that that does happen.

1 Q. So it's not only that they -- well, it's  
2 actually the same reason. Right? The same reason is  
3 so that they don't reveal the illusion?

4 A. Correct.

5 Q. So it's the same reason. So these young, hip  
6 men may not be telling the truth when you ask is anyone  
7 a magician? Fair enough?

8 A. Fair enough.

9 Q. Okay. Okay. So now we'll go further, and  
10 we're going to stop at just when the curtain goes down.  
11 Okay?

12 A. Okay.

13 (Whereupon video was played.)

14 BY MR. MORELLI:

15 Q. Okay. Now, the curtain comes down. And,  
16 before, Mr. Copperfield was talking about flashlights.  
17 Remember that? You saw that?

18 A. Yep.

19 Q. And he emphatically told them, after he gave  
20 it to them, to turn them off?

21 A. Correct.

22 Q. And keep them off?

23 A. Correct.

24 Q. Correct? And, actually, there is a point  
25 that we're going to look at that we're going to see

1 flashlights behind the curtain, but that's not those  
2 people turning their flashlights back on. Correct?

3 A. Correct.

4 Q. Okay.

5 MS. FRESCH: Objection. Relevance and, Your  
6 Honor, that -- may we approach for a moment?

7 THE COURT: Yes.

8 (A discussion was held at the bench,  
9 not reported.)

10 BY MR. MORELLI:

11 Q. Okay. So, Mr. Kenner, the curtain is now  
12 down. Okay?

13 A. Yes.

14 Q. And we don't -- we don't see anything.

15 (Whereupon video was played.)

16 MR. MORELLI: Just wait. Just wait.

17 BY MR. MORELLI:

18 Q. Are the people still there?

19 A. Yes.

20 Q. At that point?

21 A. Yes. I don't think -- this is very quickly  
22 after the curtain had dropped, so I don't think that  
23 they have exited quite yet.

24 Q. Okay. So -- okay. So it's -- it's possible  
25 that they may have, but this is sort of around the

1 time --

2 A. That they would start.

3 Q. -- that they were going to start?

4 A. They don't -- they don't just vanish and  
5 appear. You know, they have to get off of it.

6 Q. Right.

7 A. David has to give a good -- all of the -- all  
8 of the curtain closures are closed so that no one in  
9 the audience can see in so that, you know, if they  
10 aren't -- there's a little Velcro tab.

11 Q. Right.

12 A. The curtain falls down. There's a little  
13 Velcro here, little Velcro here. Just make sure that  
14 the front is covered so the wind or anything doesn't  
15 flap it up --

16 Q. Right.

17 A. -- or the people's movement inside.

18 Q. Right.

19 A. So everything's kind of Velcroed down.

20 Q. Okay. So why don't we watch this video, and  
21 you'll say what you say, which is they're not there  
22 now, and you'll describe what we're seeing.

23 A. This is -- this is very quick. It's almost  
24 like you'll have to pause so I can say here's where he  
25 lifts up the chair. Now, do I describe the method?



1 THE COURT: Just one minute. Do you want --  
2 the witness needs to be warned about our bench  
3 conference.  
4 MS. FRESCH: Yes, I think so.  
5 THE COURT: So do you want to approach?  
6 MS. FRESCH: Yes.  
7 (A discussion was held at the bench,  
8 not reported.)  
9 THE COURT: Okay. We need to turn off any  
10 microphones that are on, and you can admonish the  
11 witness.  
12 MR. MORELLI: So you don't need me.  
13 MS. FRESCH: I don't think he needs me  
14 either.  
15 MR. ROBERTS: Thank you, Your Honor.  
16 MR. MORELLI: All right?  
17 THE WITNESS: Yes, I think so.  
18 BY MR. MORELLI:  
19 Q. Okay. I don't know what you talked about,  
20 but whatever. All right.  
21 A. I don't either, actually.  
22 Q. That's bad.  
23 A. No, I'm kidding.  
24 Q. Bad answer. Your lawyer's going to have a  
25 heart attack.

1           Anyways, why don't you describe -- you know,  
2 we're going to go slowly and we'll stop, you know,  
3 along the way. But you can even say stop, and then you  
4 could describe what we should know.

5           A.   We'll stop right here.

6           Q.   Okay. Great.

7           A.   So as soon as David has realized that the  
8 entire curtain area is --

9           Q.   Is secured.

10          A.   -- secured because the back curtain is a  
11 U shape, so the side corners are going to be covered.  
12 So it comes down. Everything's ready. And I think  
13 David gives an actual verbal cue, may be "good," "yes,"  
14 something.

15          Q.   Okay.

16          A.   And that means that, at that point, the  
17 people would start -- they would be preparing them to  
18 exit.

19          Q.   Okay.

20          A.   Which is right now. As soon as it's good and  
21 it's clear that those are closed, they would say.

22          Q.   Okay. So when the curtain comes down, it's  
23 not immediate?

24          A.   Correct.

25          Q.   Okay. Because the curtain has to come down

1 and it has to be secured?

2 A. Correct.

3 Q. Fair enough?

4 A. Uh-huh.

5 Q. And then they're exiting?

6 A. They're's starting to exit, correct.

7 Q. Okay. Now, the -- let's just stay at this

8 point just for a second. The exiting, is that done

9 quickly?

10 A. It's done as quickly and efficiently as it

11 possibly can.

12 Q. And -- because we have to get the

13 participants out of the chairs; correct?

14 A. Correct.

15 Q. And have them exit?

16 A. Correct.

17 Q. Okay. So -- and we're going -- we'll, you

18 know, after we get through with this video, then we'll

19 show certain photographs that I'm going to ask you

20 about.

21 A. Okay.

22 Q. Okay? Now, am I correct, sir, that one of

23 the chairs of the Thirteen, while they're still in the

24 prop or the -- or in the 13 or the prop?

25 A. Prop is fine.

1           Q.    Okay.  The -- goes down, and one of the  
2 Backstage employees appears.  Is that true?

3           A.    No.

4           Q.    Okay.  You tell me.

5           A.    The back curtain is lifted up.

6           Q.    Okay.

7           A.    So it's not a chair.  The chair is still  
8 there.  The back curtain is lifted up, and a person is  
9 going to hold it.  And then there's a hook, up high, so  
10 they can hook the other half, which make a large  
11 opening with the cloth.

12          Q.    See, I wasn't --

13          A.    I did -- I'm not sure how to answer these  
14 questions.

15          Q.    No, no.  That's okay.  You'll be able to tell  
16 me the way you want to tell me.  But my question was  
17 does someone, a Backstage employee, appear in the prop  
18 right before they exit?

19          A.    Well, they're not magical, you know, bodies.

20          Q.    I mean they come in.  I mean, "appear"  
21 meaning it's quick?

22          A.    Yes.

23          Q.    That's what I mean.  And that person yells  
24 "Stand up."

25          A.    Correct.

1 Q. Okay. And they yell it because the music is  
2 playing?

3 A. Correct.

4 Q. And it's, you know, it's noisy and  
5 everything, and they're in this confined space. So he  
6 yells "Stand up. Hurry. Come with me."

7 Does that sound right?

8 A. I don't know the exact words that he says.  
9 It's probably -- at that moment he's not going to say  
10 "Stand up. Hurry. Come with me" because a procedure  
11 has to happen there. He has to -- you know, they're --  
12 they're blocked by the chairs, so if he just said  
13 "Stand up. Come with me," it wouldn't work.

14 Q. See, that's where the --

15 A. They'd be climbing over the chairs.

16 Q. So that's where he moves the chair?

17 A. Correct. He moves the top of the chair.

18 Q. Okay. And that creates the opening or the  
19 exit?

20 A. Yes. Correct.

21 Q. Okay. So let's take it from there.

22 (Whereupon video was played.)

23 BY MR. MORELLI:

24 Q. So they've gone already?

25 A. They're leaving now. They're exiting right

1 now.

2 Q. Okay.

3 A. And that's one of our people.

4 Q. Okay.

5 A. They're gone.

6 Q. Okay. So they've already started the route?

7 A. Correct. They should be -- once these lights

8 come on, they are outside of the physical prop --

9 Q. Right.

10 A. -- once the group of lights comes on.

11 Q. Yes. Okay.

12 A. Yeah, because one light comes on first and

13 then the group. Correct.

14 (Whereupon video was played.)

15 BY MR. MORELLI:

16 Q. Now, during this time period, they're en

17 route, let's say. Right?

18 A. Correct.

19 Q. They're en route to appear in the back of the

20 theater?

21 A. Yes.

22 Q. Okay.

23 MR. DEUTSCH: That's the end.

24 MR. MORELLI: Okay. So that's the end.

25 /////

1 BY MR. MORELLI:  
2 Q. Okay.  
3 A. Okay.  
4 MR. MORELLI: So we could turn it off.  
5 We could put the lights on now, Your Honor.  
6 BY MR. MORELLI:  
7 Q. Now, am I correct, Mr. Kenner -- and we spoke  
8 about this earlier, but now we're at a different point.  
9 They've all left; they're en route?  
10 A. Correct.  
11 Q. And they don't know where they're going?  
12 A. No.  
13 Q. Okay. And, actually, at no time are they  
14 told where they're going, what the route is, or what  
15 they have to do in order to complete the illusion;  
16 correct?  
17 A. They're guided through the route.  
18 Q. Well, my -- my question was, at no time are  
19 they told what they have to do or where they're going  
20 before they start this illusion?  
21 A. Before they start, no. No, sir.  
22 Q. Okay. And what you're saying is they're told  
23 as they're running the route. Correct?  
24 A. Correct.  
25 Q. Okay. So let's -- yeah, give me that photo.

1 MR. DEUTSCH: This is Exhibit 93, Bates --  
2 MR. MORELLI: We can see it with the lights  
3 on. I think we can.  
4 MR. DEUTSCH: Bates stamp 153.  
5 BY MR. MORELLI:  
6 Q. Okay. So Mr. Kenner --  
7 THE COURT: For the record, this is in  
8 evidence?  
9 MR. DEUTSCH: I believe.  
10 THE CLERK: I do not believe so, Judge.  
11 MR. DEUTSCH: I thought we had all --  
12 THE COURT: Take it off the screen until  
13 we're --  
14 THE CLERK: No, it has not been formally  
15 admitted.  
16 MR. DEUTSCH: Sorry. I thought we had when  
17 we discussed --  
18 MR. MORELLI: We're going to unsee it now.  
19 MR. DEUTSCH: We had discussed it this  
20 morning, and I thought we had all agreed, and I thought  
21 it was in evidence. But we are going to move this  
22 photograph, which is going to be Exhibit 93A, and it's  
23 Bates page 153 of Exhibit 93.  
24 MR. MORELLI: You are allowed to know anyway.  
25 THE WITNESS: Okay.



1 MR. POPOVICH: Your Honor, just for ease,  
2 because I think there's a number of these, can't we  
3 call it 93-153?

4 MR. DEUTSCH: That makes it easier.

5 MR. MORELLI: Absolutely.

6 MR. POPOVICH: No objection.

7 MS. FRESCH: No objection.

8 MR. ROBERTS: No objection.

9 THE COURT: Admitted.

10 (Whereupon, Plaintiffs' Exhibit 93-153  
11 was admitted into evidence.)

12 MR. MORELLI: It's just photos of different  
13 places in the route. So let's bring up the first one.  
14 BY MR. MORELLI:

15 Q. And, Mr. Kenner, why don't you tell us what  
16 that's a photograph of?

17 A. It's a photograph of -- it's the -- what we  
18 call the dragon. So that's what -- where you see the  
19 black cloth if I could -- can I stand up?

20 MR. DEUTSCH: Can we give him a pointer,  
21 Morelli?

22 MR. MORELLI: Well, let me try.

23 MR. DEUTSCH: No, Morelli. Here.

24 MR. MORELLI: You talking about this black  
25 cord?

1 MR. DEUTSCH: Yeah.

2 THE WITNESS: That's the back center of the  
3 prop. And then there's a little, it looks like,  
4 hallway which is 10 feet. I'm sure you have  
5 measurements.

6 BY MR. MORELLI:

7 Q. Yeah.

8 A. Then there's the steps down. So that's the  
9 way -- oh, perfect. Okay. There we go.

10 MR. DEUTSCH: The laser won't work on a TV  
11 screen, I was just told.

12 THE WITNESS: Darn it. I will try to not  
13 point it at your eyes.

14 MR. DEUTSCH: I'm getting back in the  
15 dumpster.

16 MR. MORELLI: Mr. Kenner can get up and point  
17 to it.

18 BY MR. MORELLI:

19 Q. Mr. Kenner, come around. We're not afraid of  
20 you. Why don't you show us what you were going to tell  
21 us.

22 A. This is the back of the Thirteen prop, and  
23 then this is a little hallway, covered at the top, they  
24 would come through and then step down the stairs. That  
25 would be the first exit out of the prop. That would be

1 part one of their journey.

2 Q. Okay. Thank you.

3 Now, after they come down those stairs and  
4 exit the dragon, as you said, they then have to go into  
5 the first hallway. Fair enough?

6 A. Yeah. They go down a little -- backstage,  
7 like the edge of the backstage, you know, it's hard to  
8 describe.

9 Q. Right.

10 A. I would call it up -- up stage left -- right,  
11 stage right. Is that right?

12 MR. DEUTSCH: Your Honor, at this time we'd  
13 like to move in Exhibit 93-160.

14 MR. POPOVICH: Of the ones from the marking?

15 MR. DEUTSCH: Yeah.

16 MR. POPOVICH: No objection.

17 MR. ROBERTS: No objection, Your Honor.

18 MS. FRESCH: No objection.

19 MR. MORELLI: It will be easier if we put it  
20 up.

21 THE COURT: 93-160 is admitted.

22 MR. DEUTSCH: Thank you.

23 (Whereupon, Plaintiffs' Exhibit 93-160  
24 was admitted into evidence.)

25 /////

1 BY MR. MORELLI:

2 Q. Okay. Can you see that, Mr. Kenner?

3 A. Yes, so --

4 Q. Why don't you tell us what that is.

5 This is where they go when they come down  
6 from the --

7 A. Correct.

8 Q. -- the dragon?

9 A. I would say the dragon has a piece of cloth  
10 on it that's 15 feet long, so they walk past that area  
11 of the cloth, and it's very wide, very wide and open,  
12 and then they come to this hallway. It's a little --  
13 so that's -- that's -- from that area that I would be  
14 talking about would be approximately right here, you  
15 know, the black cloth.

16 Q. Right.

17 A. And then they would go down that, go down  
18 there.

19 Q. Okay.

20 A. And there's a person right here.

21 Q. Right. And now they're -- they're told, are  
22 they not, to make a right, make a left, go straight,  
23 whatever they have to do?

24 A. Yes. It's essentially follow the leader.

25 Q. Well, you know, there -- there are times when

1 there's 13 people. Am I correct?

2 A. Yes.

3 Q. Right. So if the leader's in the front and

4 No. 13 --

5 A. That's not how follow the leader works.

6 Q. Huh?

7 A. You follow the leader. The next person

8 follows the next person, the next person follows the

9 next.

10 Q. I understand.

11 A. That's follow the leader. Each person

12 becomes the leader.

13 Q. I understand. Thank you.

14 The first person is the person who works for

15 you?

16 A. Yes, sir.

17 Q. Okay. And that person is, on the night of

18 this accident, the 12th of November, 2013, was

19 Mr. Carvalho?

20 A. Yeah.

21 Q. Okay. So he's the leader; correct?

22 A. That's him right there, actually.

23 Q. Right.

24 A. Handsome young guy.

25 Q. And, actually, he -- well, we're going to

1 meet him. Okay?

2 A. Cool.

3 Q. We're going to meet him. And he has a big

4 spotlight; correct?

5 A. Yes.

6 Q. He doesn't have a regular flashlight?

7 A. He has a big spotlight.

8 Q. He's got a big spotlight. And it's important

9 for him to have this big spotlight because he's leading

10 the way? Fair enough?

11 A. Yeah. Two reasons. That's one of them.

12 Q. One of them is he's leading the way?

13 A. Yes.

14 Q. And it's important for him to, along the

15 entire route, to have the flashlight on. Okay? Would

16 that be true?

17 A. I don't think it is, because what it's really

18 for -- what the flashlight is really for is to give to

19 her. So he's not sitting there going -- guiding the

20 route in front of him or behind him because he's going

21 forward.

22 Q. Let's call it the spotlight.

23 A. Okay.

24 Q. So we're going forward. And, now, that was

25 the second -- the second photograph is where they

1 encounter; is that correct?

2 A. Correct.

3 Q. Okay. Now, am I correct, sir, that this  
4 route -- and we're going to go through the whole  
5 route -- this route is all done in approximately a  
6 minute?

7 A. Yeah, a minute, minute 15, minute 20, yeah.

8 Q. Yeah. And that's important; right?

9 A. Yeah.

10 Q. It's important -- my father would say time is  
11 of the essence. Yes?

12 A. Yes.

13 Q. Okay. And so it's not true, is it, that  
14 there's no rush, that somebody could just hang around  
15 and take as long as they want, five minutes, ten  
16 minutes? That's not true, is it?

17 A. No. Of course not.

18 Q. Of course not. It's ridiculous.

19 So the participants are now moving, running  
20 as quickly as they can, to get to the final destination  
21 that they don't know about. They don't know where  
22 they're going. They don't know the final destination?

23 A. They're heading toward their final  
24 destination.

25 Q. They're heading toward it. Okay.

1 MR. MORELLI: So could we have the next  
2 photograph, Mr. Deutsch.  
3 BY MR. MORELLI:  
4 Q. And, Mr. Kenner, tell me if this is not the  
5 sequence. Okay?  
6 A. Of course. I'll tell you.  
7 Q. Okay.  
8 MR. DEUTSCH: Your Honor, this is -- we'd  
9 like to move Exhibit 93, page 168, into evidence.  
10 MR. POPOVICH: No objection.  
11 MS. FRESCH: No objection.  
12 MR. ROBERTS: No objection.  
13 THE COURT: It's admitted.  
14 (Whereupon, Plaintiffs' Exhibit 93-168  
15 was admitted into evidence.)  
16 BY MR. MORELLI:  
17 Q. Okay. You could see it either place now.  
18 A. Got it.  
19 Q. Okay. And so in the sequence -- is this the  
20 proper sequence that I'm -- that -- that we've been  
21 looking at?  
22 A. Correct. It's a weird angle to shoot it  
23 from, but yes.  
24 Q. This is all we have.  
25 A. Okay. I can describe -- I can explain it



1 really easily, but I can just --

2 Q. So now -- so now the -- the participants are  
3 running down this particular hall; right? And then,  
4 when they get to the end of this particular hall, do  
5 they make a right? a left? go straight? What do they  
6 do?

7 A. A left.

8 Q. Okay. So let's -- let's bring up the next  
9 photograph. They've already made a left now, and  
10 they're -- we're in the next photograph.

11 Hello?

12 MR. DEUTSCH: This is Exhibit 93, 167, into  
13 evidence, please.

14 MR. POPOVICH: No objection.

15 MS. FRESCH: No objection.

16 MR. ROBERTS: No objection.

17 THE COURT: Any objection from Team?

18 MR. STRASSBURG: Sorry, Judge?

19 THE COURT: No objection?

20 MR. STRASSBURG: No.

21 THE COURT: Everybody. We need to hear from  
22 everybody.

23 MR. MORELLI: You see what I have to deal  
24 with; right?

25 (Whereupon, Plaintiffs' Exhibit 93-167

1                               was admitted into evidence.)

2 BY MR. MORELLI:

3       Q.    Okay.  Could we have the photograph now.

4            Okay.  Here it is.

5       A.    Okay.  Just made their left.

6       Q.    Okay.  Now, this is -- and -- and, of course,

7 always tell me if I got it wrong.

8            This is hallway number three; right?

9 Which --

10       A.    Yeah.

11       Q.    I'm calling it hallway.

12       A.    Yeah, yeah.  The first one is really short,

13 but yeah.

14       Q.    Hallway number three.  And at the end of this

15 particular hallway -- I'm standing over here.  At the

16 end of this particular hallway, they're now going

17 outside?

18       A.    Correct.

19       Q.    That's why it -- the doors are open and you

20 could sort of see outside?

21       A.    Uh-huh.

22       Q.    Correct?

23            Okay.  So, now, when they -- when they exit

24 those doors, do they go straight, do they make a right,

25 or do they make a left?

1           A.    They make a right.

2           Q.    Okay.  So now, as they're running along, the  
3 person in the front, Mr. Carvalho, is he the one that's  
4 yelling the instructions?

5                   MR. POPOVICH:  Objection.  Compound.

6                   THE COURT:  Sustained.

7 BY MR. MORELLI:

8           Q.    Is Mr. Carvalho the one who's yelling the  
9 instructions as they're running, following him?

10          A.    No.

11          Q.    Okay.  So are there people at the doors who  
12 are going to be telling them which direction to go?

13          A.    Correct.  There's a person at each  
14 intersection, guiding them so they don't get lost.

15          Q.    Now, those people who are guiding them are  
16 fixed.  They're in -- they're in a certain position.

17          A.    Correct.

18          Q.    They're not running along; they're in a  
19 certain position.

20          A.    Correct.

21          Q.    Okay.  And those people are Backstage  
22 employees or MGM Grand employees?

23          A.    The people that are standing at these  
24 spots --

25          Q.    Yeah.

1           A.    -- are MGM employees.

2           Q.    Okay.  And at those doors?

3           A.    Right.  They're still under our blanket of  
4 stagehands, so --

5           Q.    Right.  They're still stagehands, but they're  
6 MGM employees?

7           A.    Correct.

8           Q.    Okay.  So now they -- they run down and they  
9 get to the end, and they're told by one of the MGM  
10 stagehands to make a right.

11          A.    Yes, here.  Correct.

12          Q.    Over here.

13               And they're now outside.  Okay?  Now, could  
14 you tell us, Mr. Kenner, what surface is this here?

15          A.    Linoleum, I think.

16          Q.    Okay.  And one of the surfaces from before  
17 was carpeting; correct?

18          A.    I don't think there's any carpeting on the  
19 walk, no.

20          Q.    Okay.

21          A.    I'm pretty sure there's no carpeting.

22          Q.    As I said, we're just going to look just to  
23 be clear.

24          A.    Yeah.  I walk it every day.  I can't, like --  
25 my brain shuts off on what I'm walking on.

1 Q. That's okay. What about this?

2 A. Yeah, that's carpet. So yeah.

3 Q. Okay. All right. So now we could go back to  
4 the last photo.

5 So you went from carpet to Kentile, or  
6 linoleum, to outside which is concrete; fair?

7 A. Correct.

8 Q. Okay. So now they made a right, and they're  
9 running outside on what? Like a sidewalk?

10 A. Yes.

11 Q. Okay. And it doesn't matter, you know,  
12 whether it's Tropicana Avenue or XYZ Street or  
13 whatever, they're running on concrete that's like a  
14 sidewalk. Fair enough?

15 A. Yes.

16 Q. Okay. And now they run along. And it's dark  
17 out, is it not?

18 A. It's nighttime.

19 Q. Yeah. Is that a yes?

20 A. Well, I describe dark in Las Vegas. These  
21 people live in Las Vegas and they've driven down  
22 Tropicana. It's extremely bright.

23 Q. Yeah, but, you see, we've already been told  
24 we're not on Tropicana Avenue. So --

25 A. All right. Well, it's literally from here to

1 the wall.

2 Q. We're going to be looking at -- at a  
3 photograph of it. Okay?

4 A. Perfect.

5 MR. DEUTSCH: Your Honor, at this time, we'd  
6 like to move in Exhibit 93-170.

7 MR. POPOVICH: No objection.

8 MS. FRESCH: No objection.

9 MR. STRASSBURG: No objection.

10 MR. ROBERTS: No objection.

11 THE COURT: Admitted.

12 (Whereupon, Plaintiffs' Exhibit 93-170  
13 was admitted into evidence.)

14 BY MR. MORELLI:

15 Q. Okay. Does that show where they're running?

16 A. Yeah, it's so changed now. Yeah.

17 Q. The --

18 A. Yes.

19 Q. Understand that -- that this particular  
20 photograph was taken with a flash. Okay? So -- but it  
21 is dark out; correct?

22 A. Correct. So it blows out the background,  
23 makes it look darker.

24 Q. So I'm not trying to trick you.

25 A. No, I'm just saying that's what a flash does.

1 Q. Believe me, this is up -- up to them, not you  
2 and I. We don't make the decisions, thank God.

3 So from here are they going to make --  
4 they're going to go straight, make a left, or make a  
5 right?

6 A. They're going to go here and go right.

7 Q. Okay. Now, while they're running along with  
8 the rest of the pack, they don't know at that  
9 particular time if they're making a right or a left or  
10 going straight until they encounter another point  
11 person. Is there another point person -- another  
12 MGM --

13 A. Correct.

14 Q. -- person?

15 A. Correct.

16 Q. Okay. And that person is standing, let's  
17 say, over here on the left. They're running here.  
18 They have to make a right --

19 A. Could you bring your photo back up. I could  
20 show you.

21 MR. DEUTSCH: I think this might be better,  
22 Your Honor. Exhibit 93-171, we'd like to move into  
23 evidence.

24 THE COURT: 93 what?

25 MR. DEUTSCH: 171.

1 MR. POPOVICH: No objection.

2 MS. FRESCH: No objection.

3 MR. ROBERTS: No objection.

4 MR. STRASSBURG: No objection.

5 THE COURT: Admitted.

6 (Whereupon, Plaintiffs' Exhibit 93-171  
7 was admitted into evidence.)

8 THE WITNESS: Perfect.

9 BY MR. MORELLI:

10 Q. That's better.

11 A. Can I stand up and walk to the screen?

12 THE COURT: Yes.

13 BY MR. MORELLI:

14 Q. Of course. Go ahead.

15 A. So, at this point, a person was standing  
16 about where he is.

17 Q. You're probably better off standing here so  
18 the jury can see.

19 A. Well, I'm going to point to here, though.

20 Q. That's all right.

21 A. Just using my theatrical experience.

22 Q. It's the long-arm method.

23 A. The long arm? That's funny.

24 So the -- and, here, it's not -- the way he  
25 was describing it was that they're standing here and



1 the people run by. It's -- they've gotten used to the  
2 fact that a person -- they come toward a person,  
3 there's a person standing there, and they're saying,  
4 "This way. This way. This way." So that they head  
5 off the person at the pass, and then they turn them.

6           So now they go here. There's a person  
7 standing right here.

8           Q. Right. On the point.

9           A. And they come here and they go this way. So  
10 he's telling them to turn right here and go this way.  
11 And it's rather obvious because there are open doors  
12 there and people are going that direction. So it's not  
13 like it's a confusing situation.

14          Q. Well, just to be fair -- Mr. Kenner, you can  
15 take a seat.

16          A. Thank you.

17          Q. Just to be fair, when they're running this  
18 way -- now, let's assume for a moment that this is what  
19 we're talking about because this is a better photo than  
20 the other one, I think.

21          A. Oh, yeah.

22          Q. Running this way, you can't see the doors  
23 yet; correct? You can't see the doors --

24          A. Correct.

25          Q. -- from this perspective?

1           There's no doors?

2           A.    This is deceiving in the fact that these are  
3 all very short distances.

4           Q.    Mr. Kenner, I know you want to say certain  
5 things. Your lawyer is going to have a chance to  
6 question you, and you can clean up anything you want.

7                   Fair enough?

8           A.    Sure.

9           Q.    But it's just my questions because I'm going  
10 to try to finish in this lifetime.

11                   So you're running down here. You can't see  
12 the doors. And is it the person who's standing on the  
13 point or approximately here who says "Turn right"?

14          A.    Yes.

15          Q.    Okay. Now, you would -- you would admit  
16 that, generally speaking, there's approximately 13  
17 people running. Is that true?

18          A.    Yes.

19          Q.    Okay. Now, you were there on November 12th,  
20 2013; correct?

21          A.    Yes.

22          Q.    And do you know -- and -- and what -- you  
23 know, I'm not asking you whether you remember  
24 specifically that night. Okay? But do you know at  
25 this time whether or not there were 13 people or fewer?

1           A.    I don't know. I didn't count the people. I  
2 did not.

3           Q.    Okay. So -- but I am correct, sir, that  
4 there are times when as few as three people do the  
5 route?

6           A.    I have never heard that less of a number.

7           Q.    Okay.

8           A.    So I -- that would be -- that's not much of a  
9 trick.

10          Q.    What's the least that you've heard?

11          A.    Heard? I --

12          Q.    Five? Six?

13          A.    I don't know. I don't -- it could be five or  
14 six. I can't -- I don't know that we would go that low  
15 of the amount of people.

16          Q.    Okay. Okay. So -- so it really -- it really  
17 isn't something that -- that you know in terms of how  
18 many people are doing the trick on any given night?

19          A.    Yeah. We've done 20,000 shows with this. I  
20 can't keep track of them all.

21          Q.    Well -- okay.

22               MR. DEUTSCH: Morelli.

23               MR. MORELLI: Okay. Why don't we have the  
24 next -- yeah, the -- the -- yes. Okay. Good.

25               MR. DEUTSCH: All right. Your Honor, we'd

1 like to move to admit Exhibit 93-173.

2 MR. POPOVICH: No objection.

3 MS. FRESCH: No objection.

4 MR. ROBERTS: No objection.

5 MR. STRASSBURG: None here.

6 THE COURT: Admitted.

7 (Whereupon, Plaintiffs' Exhibit 93-173  
8 was admitted into evidence.)

9 BY MR. MORELLI:

10 Q. Okay. Now -- and, Mr. Kenner, anytime I  
11 misspeak, just tell me. Okay?

12 A. Okay.

13 Q. The participants are coming toward us --

14 A. Correct.

15 Q. -- if we're in this photograph --

16 A. Correct.

17 Q. -- right?

18 And they're going to make a right?

19 A. Correct.

20 Q. Okay?

21 Now, the -- obviously, this photo was not  
22 taken the same night of the accident, 'cause you could  
23 see the date. It's almost a year later. Okay? You  
24 see that?

25 A. Yes.

1 Q. Okay. So now the -- they turn right. And  
2 there's an incline there; is that correct?

3 A. Yes.

4 Q. Okay. Now, did you -- did you warn any of  
5 these participants that there -- they were going to be  
6 running up an incline in the dark?

7 A. No.

8 Q. Just yes or no.

9 A. No.

10 Q. Okay. Did you think it was important to do  
11 that? Yes or no.

12 A. No.

13 Q. Okay. Do you think that running in the dark,  
14 not knowing where you're going, there's a possibility  
15 that someone can fall and get injured?

16 MR. POPOVICH: Objection. Assumes facts.

17 BY MR. MORELLI:

18 Q. Yes or no.

19 THE COURT: What's the objection?

20 MR. POPOVICH: Assumes facts not in evidence.

21 THE COURT: Well, he's seeking to adduce  
22 evidence, so overruled.

23 MR. MORELLI: All right. Can I have the  
24 question read back, please.

25 (Record read by the reporter.)

1 BY MR. MORELLI:  
2 Q. Yes or no.  
3 A. What's dark? That's --  
4 Q. Mr. Kenner --  
5 A. -- just -- yes, then.  
6 Q. Okay. Do you think that someone running in  
7 the dark up an incline makes it even more dangerous?  
8 Yes or no.  
9 A. Yes.  
10 Q. And if that's true, don't you think that it  
11 would be prudent to warn people that that's what they  
12 were going to encounter? Yes or no.  
13 Would it be prudent?  
14 A. Yes.  
15 Q. Okay. Now, do you know that -- do you know  
16 who Mr. Habersack is?  
17 A. Yes.  
18 Q. Okay. Why don't you tell the jury who he is.  
19 A. I think he's head of safety at the MGM Grand.  
20 Q. Okay.  
21 A. Or I don't know if head is his title. It's  
22 something of safety.  
23 Q. Yeah, I think he's the head of risk  
24 management.  
25 A. Yeah, risk management.

1 Q. But similar to safety.  
2 And do you know that -- that he stated --  
3 Do we have his exact quote?  
4 MR. DEUTSCH: Sure. Give me one second.  
5 BY MR. MORELLI:  
6 Q. I'm going to read you the quote and just see  
7 if you agree with him or not. Have you had  
8 conversations with him, by the way, about this -- this  
9 particular --  
10 A. No. Actually, first time I ever met him  
11 was --  
12 Q. Was in the courtroom?  
13 A. Yes.  
14 Q. Page 64, line 13. And I'm just going to read  
15 to you what he said under oath.  
16 MR. POPOVICH: If I can have a moment to get  
17 there, please.  
18 MR. MORELLI: Sure.  
19 MR. POPOVICH: 64/13, was it?  
20 MR. MORELLI: 64 -- yeah, 13 is really where  
21 it starts. After "I mean."  
22 See where it says "I mean"?  
23 MS. FRESCH: No.  
24 MR. POPOVICH: So the question begins at  
25 line 2?

1           MR. MORELLI: The question begins at -- at  
2 line 2, yeah.

3           MR. POPOVICH: No objection.

4           MR. MORELLI: Okay.

5 BY MR. MORELLI:

6           Q. So this is part of his answer, but it's  
7 specifically what he said. Okay?

8           He said that "I mean, any prudent person  
9 would, would be my answer. I would hope that they  
10 would explain to the customer, or through whatever  
11 vetting process that they have, prior to the illusion  
12 to make sure that the -- make sure the person --  
13 participants are actually able to maneuver this and  
14 perform it."

15           Okay? Did you -- did you ever hear him tell  
16 you that?

17           A. No, I didn't hear him tell me that.

18           MR. MORELLI: That's not the exact quote.  
19 It's the incline quote.

20           Okay.

21           MR. DEUTSCH: 64, line 11.

22 BY MR. MORELLI:

23           Q. So, now, if Mr. Habersack thought that the  
24 people who were about to participate in the illusion  
25 should be warned, you would agree with him?



1 A. No.

2 Q. Okay. So, once again, Mr. Kenner, I'm going  
3 to read you the question and the answer -- okay? -- so  
4 that we have it clear.

5 "QUESTION: So with that in mind, would  
6 you expect that Mr. Copperfield would warn his  
7 participants of the elevation change as they're  
8 participating in the act?"

9 And that's when he then said, "I mean, any  
10 prudent person would, would be my answer."

11 Okay?

12 So you'd disagree with him that that had to  
13 be done?

14 A. Correct.

15 Q. Okay. Now, all of the screening that's  
16 done -- and I believe you told me this earlier, but --  
17 is done for safety reasons?

18 A. Yes.

19 Q. Right?

20 And one of the -- one of the reasons that you  
21 do all of this screening, visual and questions -- some  
22 of the questions -- is to make sure that the  
23 participants are kept safe; correct?

24 A. Correct.

25 Q. Okay. So, now, they're being kept safe from

1 something; correct?

2 Correct. I mean, you're keeping them safe  
3 from something?

4 A. Yes.

5 Q. Right. I mean, that's obvious; right?

6 Okay. And are they being kept safe from  
7 falling and being injured?

8 A. I guess you could say that's part of it.

9 Q. It would have to be; right?

10 A. Yeah.

11 Q. Yeah. And were they also being kept -- are  
12 they being kept safe from bumping into one another and  
13 maybe getting injured even if they don't fall? Is that  
14 fair?

15 A. Sure.

16 Q. Okay. And that is also true of pregnant  
17 women; correct? I mean, they're part of the group that  
18 you're trying to keep safe; right?

19 A. Yeah, but pregnant women is a different  
20 animal.

21 Q. Okay. Not going to use that term, but okay.

22 What you mean is that there might be  
23 additional reasons with reference to pregnant women?

24 A. Correct.

25 Q. Okay. But, certainly, the reasons that would

1 be true of everyone else would be true for pregnant  
2 women too; correct?

3 A. Sure.

4 Q. Sure.

5 So can we have the next photograph.

6 MR. DEUTSCH: Give me one second.

7 MR. MORELLI: Okay.

8 MR. DEUTSCH: All right. This is Exhibit 90,  
9 page 62.

10 THE COURT: So it's 90.

11 MR. DEUTSCH: With the agreed-upon removals,  
12 Ms. Fresch.

13 MS. FRESCH: Okay.

14 THE COURT: 90-62?

15 MR. DEUTSCH: Yes. And the one that goes  
16 into evidence, Your Honor, is going to be subject to  
17 some redaction, but I've redacted for the purposes of  
18 our prior discussions.

19 MR. POPOVICH: No objection.

20 MS. FRESCH: No objection.

21 MR. ROBERTS: Assuming the words have been  
22 taken off. Is that what --

23 MR. DEUTSCH: Yeah, the redactions that we  
24 talked about. Do you want to take a look or you trust  
25 me?

1 MR. ROBERTS: I trust you.  
2 MR. DEUTSCH: Okay. Thank you.  
3 MR. STRASSBURG: No objection.  
4 THE COURT: Admitted.  
5 (Whereupon, Plaintiffs' Exhibit 90-62  
6 was admitted into evidence.)  
7 MR. MORELLI: Now they're trusting each  
8 other.  
9 Is this the photo that we're looking at?  
10 MR. DEUTSCH: Yeah. It's the next one inside  
11 the doorway. Okay. Sorry.  
12 MR. MORELLI: We're not up to this yet.  
13 BY MR. MORELLI:  
14 Q. Trying to follow along, so it's sort of  
15 sequential?  
16 A. Yes.  
17 MR. DEUTSCH: Okay? So this is going to be  
18 Exhibit 4 -- Defendant's 403, Exhibit 8, No. 8.  
19 THE COURT: What's the designation?  
20 MR. DEUTSCH: D403, No. 8.  
21 Any objection?  
22 MR. POPOVICH: No objection.  
23 MR. RUSSELL: No objection.  
24 MR. STRASSBURG: No objection.  
25 THE COURT: Okay. Apparently, it's a

1 stipulated exhibit.

2 MR. DEUTSCH: I thought so.

3 THE COURT: All right.

4 MR. MORELLI: I think it was already agreed  
5 to, yeah.

6 MR. DEUTSCH: Okay.

7 BY MR. MORELLI:

8 Q. Okay. Now, Mr. Kenner, let's -- am I correct  
9 that we're looking toward the street now?

10 A. Yes.

11 Q. Right. From the building or close to the  
12 building?

13 A. Yes.

14 Q. Okay. And this photograph was taken actually  
15 the night of the accident, just to tell you. This is  
16 actually November 12th, 2013. Okay? Now, the night of  
17 this particular accident, now we're looking -- the  
18 participants, and you correct me if I'm wrong,  
19 Mr. Kenner.

20 A. Yeah. I'm looking at the picture.

21 Q. I know. But I'm pointing. So they're coming  
22 around the corner?

23 A. Yes.

24 Q. And they're going this way?

25 A. Coming toward.

1 Q. Towards the --

2 A. Towards this camera.

3 Q. Okay. Good. Sorry. So now --

4 A. You are better on this side.

5 Q. Yeah, I know, I know, but I didn't want to  
6 block you.

7 So they're coming -- they're coming toward  
8 the building. Now, the night of this accident,  
9 November 12th, 2013, did you yourself walk, run, trot,  
10 that particular route --

11 A. No.

12 Q. -- before it happened?

13 A. No.

14 Q. Okay. So that you didn't know that there was  
15 construction dust on this particular route? You didn't  
16 know that, did you?

17 MR. POPOVICH: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MR. MORELLI:

20 Q. You didn't know -- well, you were in the  
21 courtroom when Mr. Popovich says that there was dust on  
22 the ground at this particular point. Were you here  
23 when he said that?

24 A. Yes.

25 /////

1 Q. Okay. So let's talk about the dust that  
2 Mr. Popovich is talking about. Okay? You didn't know  
3 that this dust was this -- was on the route where the  
4 participants had to run, did you?

5 A. Well, what --

6 MR. CALL: Object, Your Honor. Facts not in  
7 evidence.

8 MR. ROBERTS: Mr. Popovich --

9 THE COURT: Overruled.

10 MS. FRESCH: It's not --

11 MR. ROBERTS: Mr. Popovich said it's not  
12 evidence, Your Honor.

13 THE COURT: You're right. I will retract  
14 that. Sustained.

15 BY MR. MORELLI:

16 Q. Did you know, Mr. Kenner, of any construction  
17 dust on the route that these participants had to run?

18 A. No.

19 MR. CALL: Objection. Calls for speculation.

20 THE COURT: He's asking whether he knew.  
21 Overruled.

22 THE WITNESS: No.

23 BY MR. MORELLI:

24 Q. Okay. Now, my question is, if you did know,  
25 would that have made you change the route of the

1 illusion that particular night?

2 MR. POPOVICH: Objection. Calls for  
3 speculation. Incomplete hypothetical.

4 THE COURT: Overruled.

5 BY MR. MORELLI:

6 Q. Yes or no.

7 A. Say the question again.

8 Q. Sure.

9 A. Because I'm just looking at this picture  
10 versus this one in there. This one is a little bit  
11 different.

12 Q. Mr. Kenner --

13 A. I'm just saying they look different.

14 Q. Mr. Kenner, I understand that you want to  
15 keep talking.

16 A. I will let you keep talking.

17 Q. That's my job.

18 A. I see that.

19 Q. I get paid to talk.

20 My question is that if you knew that there  
21 was dust on the concrete on the route that the  
22 participants were running that night, would you have  
23 changed the route? Yes or no.

24 A. No.

25 Q. Okay. Do you think that construction dust on



1 concrete could be slippery? Yes or no.

2 A. I don't know if it's slippery or not.

3 Q. Okay. Would it be important for you to know  
4 if there are any obstacles, physical obstacles, along  
5 the route where the participants are running? Would  
6 that be important for you to know?

7 A. Yes.

8 Q. Okay. So if you knew that there was, you  
9 still wouldn't do anything about it?

10 MR. POPOVICH: Objection. Vague. Ambiguous.

11 THE COURT: Sustained.

12 BY MR. MORELLI:

13 Q. Okay. Now, I'm going to read to you --

14 MR. DEUTSCH: Wait. We have to move into  
15 evidence -- at this time we offer Defendant's  
16 Exhibit 409, page 34.

17 MR. MORELLI: Right. It's D409, 34.

18 MR. DEUTSCH: It's Team Construction. It was  
19 agreed upon already.

20 THE COURT: It's a stipulated exhibit?

21 MR. DEUTSCH: It was a stipulated exhibit,  
22 Your Honor.

23 MR. POPOVICH: What page was that?

24 MR. DEUTSCH: Page 34 of the Team  
25 Construction docs, Defendant's 409.

1 BY MR. MORELLI:

2 Q. Do you agree, Mr. Kenner, the statement made  
3 by Team Construction in this case, under "Poor  
4 Housekeeping" -- and you could read it for yourself;  
5 the jury could see it -- "anything left lying around  
6 becomes a slipping or a tripping hazard."

7 Do you agree with that?

8 A. Yes.

9 Q. Okay. So if, in fact, it was construction  
10 dust on the concrete, would that fall in to the  
11 category of "anything"?

12 MR. POPOVICH: Objection. Calls for  
13 speculation.

14 THE COURT: I don't even know what  
15 construction dust is. He needs to have an  
16 understanding of that term.

17 THE WITNESS: There's construction -- there's  
18 dust on the carpet here. There's dust on this. Super  
19 slippery. I mean, I don't know how to --

20 BY MR. MORELLI:

21 Q. Do you want to answer my question or do you  
22 want to just have a conversation with someone?

23 A. What's the question? What is -- read back  
24 the question.

25 MR. MORELLI: Well, you were busy talking.

1                   Could you read it back for him?

2                   (Record read by the reporter.)

3                   THE WITNESS:   Sure.

4 BY MR. MORELLI:

5           Q.     Now, you would agree with me, Mr. Kenner,  
6 would you not, that after they run through that area on  
7 the concrete, they then run back into the building?

8           A.     Correct.

9           Q.     Correct? And they run into an area that's  
10 called, like, a loading zone or something like that?

11          A.     I think it's an exit. I think it's an  
12 emergency exit.

13          Q.     Okay. And -- but there's another set of  
14 doors after those set of doors --

15          A.     Correct.

16          Q.     -- correct? So you -- you go through the set  
17 of doors that, let's say, were open that night for them  
18 to run in?

19          A.     Correct.

20          Q.     Right? And then you have -- I don't know.  
21 What would you call it? Like a vestibule or, you  
22 know --

23          A.     It's like an empty hall, a big empty hallway.

24                   MR. DEUTSCH: Just showing Exhibit 62, Your  
25 Honor, just admitted. Exhibit 90, Plaintiffs' 90-62.

1 THE WITNESS: Yeah. Michael Meyers.  
2 MR. MORELLI: We can make it a little bigger  
3 there.  
4 MR. DEUTSCH: I can try.  
5 MR. MORELLI: The hallway is not that small.  
6 Okay. There we go.  
7 BY MR. MORELLI:  
8 Q. And that's -- and that's where they -- they  
9 run in toward us; correct?  
10 A. I'm trying -- I'm not sure what the  
11 orientation is.  
12 Q. Yeah?  
13 A. Is this door open from the -- is that the  
14 outside? Because both doors, if you were standing in  
15 the center of the room and you went like this  
16 (indicating), that door looks the same as that door.  
17 Q. Got it.  
18 A. I'm not sure. I think he's standing, and  
19 that's the outside.  
20 MR. DEUTSCH: I might be able to help it.  
21 Give me one second.  
22 THE WITNESS: So, yeah.  
23 MR. MORELLI: We're going to get the answer  
24 of which perspective we are looking at.  
25 MR. DEUTSCH: Give me one second. Same

1 exhibit, Your Honor, but I just got to redact  
2 something. Maybe this will help.

3 MR. MORELLI: Can you make it bigger?

4 MR. DEUTSCH: I'm trying. There you go.

5 MR. MORELLI: Okay.

6 BY MR. MORELLI:

7 Q. Does that help us?

8 A. It's too different. That's both directions.  
9 So you got -- that's looking -- one of those is facing  
10 one way; one is facing the other.

11 Q. Right. Why don't you tell us which is facing  
12 which way.

13 A. That's like a security hallway. I really  
14 don't go in that hallway very often.

15 Q. Okay.

16 A. So I'm assuming. My assumption, by looking,  
17 is that the one with the light --

18 Q. Right.

19 A. -- that's facing to the outside. They would  
20 be coming in that door.

21 Q. Okay.

22 A. And then the one with the --

23 Q. Now you're talking about the one on the left?

24 A. I'm sorry. I'm sorry. Yeah. The one with  
25 the light.

1 Q. With the light, yeah. The one on the left.  
2 A. They would be coming in from there.  
3 Q. Right.  
4 A. And then they would go --  
5 Q. Then they would be going --  
6 A. Through there, to there, into there.  
7 Q. All right. Got it.  
8 Okay. So now, after they do that, they then  
9 run into the kitchen. True?  
10 A. I think right there they're gathered  
11 together. This will be a -- better described by the  
12 person that actually physically does this part.  
13 Q. Okay. So your answer is "I don't know"?  
14 A. My answer is they stop there, gather. What  
15 he says exactly to them --  
16 Q. No, no. But -- but before they get into the  
17 theater, they run through the kitchen.  
18 A. They don't run. It's impossible to run  
19 through the kitchen.  
20 Q. Okay.  
21 A. But they go through the kitchen.  
22 Q. Okay. They move as quickly as possible  
23 through the kitchen.  
24 A. Yeah.  
25 MR. DEUTSCH: Your Honor, at this time we

1 would like to move in Exhibit 403, page 9.

2 THE COURT: Okay. It's a stipulated exhibit.

3 MR. MORELLI: We're going to show --

4 MR. POPOVICH: It is not stipulated, Your  
5 Honor. I'm going to object to its relevance.

6 MR. DEUTSCH: It is 403, page 9.

7 MR. POPOVICH: Correct. It is not.

8 MR. DEUTSCH: You sure?

9 Right. I thought it was, Your Honor. But,  
10 if not, then can everyone see what it is?

11 MS. FRESCH: Can I join the objection? It's  
12 not relevant.

13 MR. POPOVICH: We might need to approach  
14 because I think it might affect the next few  
15 photographs, Your Honor.

16 MR. DEUTSCH: It is stipulated, Your Honor.

17 THE COURT: I thought the clerk's notes --

18 THE CLERK: It came in on April 11th.

19 THE WITNESS: Is there any way I can text on  
20 my phone?

21 MR. MORELLI: All right. It's been  
22 stipulated to, Your Honor.

23 THE WITNESS: I need to make sure my wife's  
24 going to pick up my daughter.

25 MR. MORELLI: Your Honor, we can take a break

1 for two seconds. Why don't we just take --

2 THE COURT: Take the afternoon recess now?

3 MR. MORELLI: Yeah. Quarter to three anyway.

4 THE COURT: Okay. We'll recess. Do you want  
5 15 minutes? We'll recess till 3:00.

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

17 Be outside the courtroom, down to the south a  
18 little bit, just at 3:00 o'clock. Thank you.

19 THE MARSHAL: All rise.

20 THE COURT: I'd like counsel to remain,  
21 please.

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

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

25 And you are admonished, of course, not to



1 discuss --

2 THE WITNESS: Just two seconds.

3 THE COURT: No, I understand that. I have  
4 already recessed for 15 minutes. Okay.

5 I would like the people from the media here,  
6 who are with cameras and recording equipment, you're --  
7 during recesses, the cameras are to be turned off;  
8 correct? And during any bench conferences, you know  
9 already that any bench microphones are to be turned  
10 off. Correct?

11 UNIDENTIFIED SPEAKER: Correct.

12 THE COURT: All right.

13 MR. MORELLI: Okay.

14 THE COURT: Okay.

15 MR. POPOVICH: Do you want to deal with the  
16 issue now?

17 THE COURT: The issue about the exhibit?

18 MR. POPOVICH: Right.

19 THE COURT: Oh, okay.

20 MS. FRESCH: I mean --

21 THE COURT: That's fine. I thought --

22 MR. DEUTSCH: I'm still here. I'm e-mailing  
23 him something he didn't have.

24 MR. POPOVICH: Exhibit 403 is a batch of  
25 photos, Your Honor. And the defense -- it was listed

1 as defense exhibits, and there were no objections, and  
2 I believe that's how they came in. In looking at what  
3 plaintiffs propose today -- and my understanding is  
4 that, yes, they were preadmitted under 403.

5           The concern is, the next series of objections  
6 show portions of the route that Mr. Cox never reached,  
7 including the going back into the casino, going through  
8 the kitchen area. And the position is, it's  
9 irrelevant. He never got there. It played no part in  
10 the accident. What's the point in wasting time with  
11 this jury, going through the areas that he did not  
12 reach?

13           So that is the argument. And I don't even  
14 know if it's possible, but if it's possible to withdraw  
15 our stipulation to those that are post area of the  
16 fall, I would do it.

17           MR. DEUTSCH: Your Honor --

18           MR. ROBERTS: To clarify, Your Honor, I  
19 believe what Mr. Popovich means is he fell before he  
20 got there.

21           THE COURT: I know what he means.

22           MR. ROBERTS: Yes.

23           MR. POPOVICH: I may not have said it,  
24 though.

25           THE COURT: Say that again. I mean,

1 elaborate a bit on -- you were elaborating, one way or  
2 another, on what Mr. Popovich said.

3 MR. ROBERTS: Yes. We would object, after  
4 considering the way it's being used, is that to the  
5 extent that the purpose of showing this is to show a  
6 transition to carpet and additional dangers of the  
7 route, that any dangers they might want to argue after  
8 the fall are irrelevant and prejudice would outweigh  
9 probative.

10 MR. DEUTSCH: Your Honor, obviously --

11 MR. STRASSBURG: Judge, Team does --

12 MR. DEUTSCH: Just in case, he didn't  
13 understand what either of them meant.

14 MR. STRASSBURG: Can I say something?

15 THE COURT: Go ahead.

16 MR. STRASSBURG: Team does have something to  
17 say. We think this is relevant to show that there was  
18 no track-in from this alleged dust outside on the  
19 sidewalk.

20 THE COURT: It appears to me that it also  
21 shows what's contemplated at the time of planning the  
22 route.

23 MR. DEUTSCH: Absolutely.

24 THE COURT: Okay. So I will not allow the  
25 stipulation to be withdrawn.

1 MR. POPOVICH: Thank you.

2 MS. FRESCH: Thank you, Your Honor.

3 MR. POPOVICH: If it's relevant, I understand  
4 that, certainly.

5 (Whereupon a short recess was taken.)

6 THE MARSHAL: All rise for the jury.

7 (The following proceedings were held in  
8 the presence of the jury.)

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

11 MR. MORELLI: Jury is present.

12 MR. POPOVICH: So stipulated.

13 MR. ROBERTS: So stipulated.

14 MR. CALL: Yes, Your Honor.

15 THE COURT: Give me just a minute.

16 MR. DEUTSCH: So, Your Honor, just so we're  
17 clear, Exhibit 403 --

18 THE COURT: One second.

19 MR. DEUTSCH: Sorry.

20 THE COURT: Go ahead.

21 MR. DEUTSCH: Just so we're clear,  
22 Exhibit 403, page 9 is now in evidence.

23 THE COURT: Yes.

24 MR. DEUTSCH: Okay.

25 /////

1 (Whereupon, Plaintiffs' Exhibit 403-9  
2 was admitted into evidence.)

3 BY MR. MORELLI:

4 Q. So you could see that, Mr. Kenner, on your  
5 screen?

6 A. Yes.

7 Q. Okay. That is a photo in the sequence;  
8 right? It's the next place where they go?

9 A. Correct.

10 Q. Right?

11 A. In the last photo, that's the door that was  
12 open that was close to the wall.

13 Q. Right. And that's one -- one of the doors  
14 here is the one?

15 A. Yeah, the --

16 Q. The furthest one?

17 A. The furthest one, closest to the jury.

18 Q. To the wall. Okay. Okay.

19 So now they're running in this area. And  
20 they're -- the participants are going that way, the way  
21 that we're looking; correct?

22 A. Correct.

23 Q. Okay.

24 MR. MORELLI: Could I have the next photo?

25 MR. DEUTSCH: Just give me one second.

1           This is page -- Your Honor, at this time, we  
2 would like to move in Exhibit 90, page 64, into  
3 evidence subject to the redactions that we discussed  
4 which were done before I put them up.

5           MR. POPOVICH: No objection.

6           MS. FRESCH: No objection.

7           MR. RUSSELL: No objection.

8           THE COURT: It's admitted.

9                       (Whereupon, Plaintiffs' Exhibit 90-64  
10                      was admitted into evidence.)

11           MR. MORELLI: Okay. I think if you make it  
12 bigger, then we can -- okay.

13 BY MR. MORELLI:

14           Q. Now, Mr. Kenner, if you know, can you  
15 identify these -- these photographs or -- all of them  
16 or any of them?

17           A. Yeah. That's -- it's -- yes.

18           Q. Okay. So from the last photograph where they  
19 were running toward that hall, okay, where do they go  
20 next? Is -- does it show it on here?

21           A. Yeah. The --

22           Q. Is it the front one here?

23           A. Yeah.

24           Q. They go here. Because we had seen, I think,  
25 this --

1           A.    Yeah.

2           Q.    -- on the wall when we were looking?

3           A.    You can cut -- that cuts a corner.

4           Q.    Right.

5           A.    It's a very tight little, you know, walking

6 right there, you know. However, it's right there.

7           Q.    Okay. So then from here, which is the next

8 step?

9           A.    These are so confusing looking.

10          Q.    Yeah. There's one of the photographs --

11          A.    There's a clearer -- I can't tell what this

12 is.

13                   MR. DEUTSCH: I have another batch,

14 Mr. Morelli.

15                   MR. MORELLI: You know, is it easier for you

16 to see it here? Why don't you bring up the last one so

17 Mr. Kenner can look at them. Okay?

18                   Yeah. Why don't you come up so can see.

19                   MR. DEUTSCH: I have another batch. That be

20 perfect.

21 BY MR. MORELLI:

22          Q.    Is that clearer? Is that helpful?

23          A.    Yeah. It's this -- they come in through this

24 or are going through here. This is one of those

25 mirrors so you can see --

1 Q. Watch your step.

2 A. Thank you.

3 Q. Okay.

4 A. This is one of those mirrors so that you

5 can -- if you look up, you can see if someone is coming

6 around a corner.

7 Q. Right?

8 A. Because, you know, a waitress would be --

9 when this is in working, they actually all stop what

10 they're doing at this time. Everyone knows it's going

11 to happen.

12 Q. The kitchen staff.

13 A. The bartenders aren't walking out. So when

14 the bartenders would walk out, they could -- you know,

15 you walk in, you see them with their -- you don't want

16 to knock them over.

17 Q. Right.

18 A. So they'll go in there and come to this area,

19 but this is -- they don't go anywhere near here.

20 They're turning right here. It's a very short -- you

21 know, the length of that bar is half of that -- half of

22 your jury --

23 Q. Of the jury box.

24 A. Yes.

25 Q. Okay.



1           A.    And then there's a little door with another  
2 tiny hallway that's shorter -- it's really short.

3           Q.    Right.

4           A.    -- which would be right through that door,  
5 which I -- I don't really know what this is.

6           Q.    That's probably just the floor.

7           A.    Yeah, I'm not sure what this is depicting.

8           MR. DEUTSCH: I have one more page.

9           THE WITNESS: Yeah, they go into there, and  
10 then they appear in a trial on an iPad page.

11           MR. DEUTSCH: One more page. This is -- this  
12 is --

13           MR. MORELLI: Next.

14           MR. DEUTSCH: -- page -- Your Honor, move  
15 into evidence Exhibit 90, page 6, subject to the same  
16 redactions.

17           MR. POPOVICH: No objection.

18           MS. FRESCH: No objection.

19           MR. RUSSELL: No objection.

20           THE COURT: Admitted.

21                   (Whereupon, Plaintiffs' Exhibit 90-6 was  
22                   admitted into evidence.)

23 BY MR. MORELLI:

24           Q.    Okay.

25                   Could we make those bigger? Great.

1           So now you tell us in -- if -- in sequence so  
2 we know where they're going or --

3           A.    This is that little hall, that little tiny --  
4 and so they just ran the bar this way, come past here.

5           Q.    Right.   Indicating from left to right.

6           A.    Yeah, so they're coming -- and they turn  
7 here.

8           Q.    Right.

9           A.    This door is this door.

10          Q.    Okay.

11          A.    So that door is open.   They go through here.

12          Q.    So it's the top left to the top right?

13          A.    Correct.   And make a slight turn --

14          Q.    Okay.

15          A.    -- into here.

16          Q.    Right.   Bottom left is next.

17                I think that's Mr. Habersack, by the way.

18          A.    And this is -- that's an office that -- I  
19 don't know why this picture is -- it's actually here  
20 because they would be going over here.   So I'm not sure  
21 what this is really depicting.

22                But they would come in back here, and they  
23 immediately turn there, and it's -- they're basically  
24 in the theater.   They make one little tiny jog to the  
25 right and they're in the theater.

1 Q. Okay. Great. Thank you.

2 Okay. So now when they're in the theater,  
3 just to make it clear, that's when they're finished  
4 with the route and they're reappearing?

5 A. Well, they have -- once they go through --

6 Q. They have to go up some steps, though?

7 A. They go stand on some steps, yeah. It's  
8 another 15 feet they walk.

9 Q. And then they're in the theater?

10 A. Correct.

11 Q. Now, am I correct that, in order for this  
12 illusion to work and for everything to go according to  
13 what we talked about earlier, safely --

14 MR. DEUTSCH: Sorry, everybody.

15 BY MR. MORELLI:

16 Q. -- takes a lot of practice? Is that correct?

17 A. Correct.

18 Q. And there's -- not only a lot of practice,  
19 there's what I would call the three Ps. There's  
20 preparation; right?

21 Correct?

22 A. Uh-huh.

23 Q. There's practice and there's precision; is  
24 that correct?

25 A. Well, yeah.

1 Q. I mean --  
2 A. Those don't hurt.  
3 Q. Huh?  
4 A. Those don't hurt.  
5 Q. Right. So, now, the -- those words have been  
6 used in court before when you were sitting listening to  
7 the openings; correct?  
8 A. Yes.  
9 Q. Okay. And you agree that it takes all of  
10 those things?  
11 A. Yeah, I agree they don't -- it doesn't hurt.  
12 I mean, it's not like a -- I don't sit and, you know,  
13 have a three Ps poster in my room. So, you know --  
14 Q. Well, you're not practicing the three Ps?  
15 A. Well, you know, people use their precision,  
16 their -- they use different ways to term it --  
17 Q. Okay.  
18 A. -- to say it. That's just a way to put it.  
19 Q. Okay. So, now, the -- the people who  
20 practice are David Copperfield?  
21 A. Yes.  
22 Q. Does he practice?  
23 A. Oh, yes.  
24 Q. Okay. Does Mr. Carvalho practice?  
25 A. Yes.

1 Q. Okay. What is his title?  
2 A. Assistant stage manager.  
3 Q. Okay. So he practices; right? Who's the  
4 stage manager?  
5 A. Jay Harmas.  
6 Q. Jay Harmas. Does he practice?  
7 A. Of course, yes.  
8 Q. Okay. And you have 32 employees. Do they  
9 all assist with this illusion?  
10 A. With this -- with the Thirteen Illusion?  
11 Q. Yeah, the Thirteen. How many of them, if not  
12 all?  
13 A. Well, myself would not be participating in  
14 the actual running of it. Homer Liwag would not be  
15 participating in the actual running of it.  
16 At that moment, it's a -- pretty much  
17 everyone has something to do because that's a very --  
18 takes a lot of moving -- a lot of moving parts.  
19 Q. Right.  
20 A. So, at any moment, there might be -- it's  
21 actually 45 people because you have to include the MGM  
22 employees.  
23 Q. Yeah, and I'm just -- you know -- but I know.  
24 We're just talking about the Backstage employees would  
25 be about -- about 30 people?

1       A.    Yeah, 29 to 30 people just for this effect to  
2 work, correct.

3       Q.    Okay. And, now, talking about approximately  
4 another 15 people, which would be MGM employees;  
5 correct?

6       A.    Correct.

7       Q.    Do they practice?

8       A.    Yes.

9       Q.    Okay. Does -- is there anyone else involved  
10 that we haven't mentioned who would have to practice?

11       A.    Everyone that's involved in any of the  
12 illusions practices, rehearses, for sure.

13       Q.    Okay. And a lot or a little? I mean, how  
14 much practice is -- is being done?

15       A.    The Thirteen Illusion, I think, traveled with  
16 us for two years before we put it in the show. So  
17 that's quite a bit of practice.

18       Q.    Right. So it was two years of practice  
19 before you put it. But now let's talk about it around  
20 2013. Okay? Because now it's being shown and it's in  
21 one theater. Okay?

22       A.    Correct.

23       Q.    How much practice, you know, goes into that?  
24 There's still practicing; correct?

25       A.    There's no real practice per se for --

1 unless, you know, we change something, which it's --  
2 they're doing the -- track the show -- shows -- they do  
3 the moves, do the correct cue, track cue.

4 Q. So, in other words, every single time they're  
5 doing the show, it's -- it's basically another time  
6 they did it and it's another practice?

7 A. Yeah. Once you've gotten it perfected,  
8 there's no need to practice that particular thing.

9 Q. Because you're doing it?

10 A. Correct.

11 Q. Okay.

12 A. Because once you've learned it, your practice  
13 is kind of over.

14 Q. Right. So now they're doing it, all of the  
15 Backstage employees and the MGM employees. They're all  
16 doing it and they all know what to expect; right? They  
17 know what's going to happen? It's not a secret to  
18 them?

19 A. Correct.

20 Q. Right. We're -- you would agree that you  
21 spend a fair amount of time and effort trying to keep  
22 the secrets -- correct? -- but not from them, not from  
23 the people who are working the illusion?

24 A. No.

25 Q. Because they know; correct?

1           Now, you would agree that Mr. Cox -- you know  
2 who Mr. Cox is; right?

3           A.    Yes.

4           Q.    He's sitting over there with his wife.

5           Mr. -- Mr. Cox wasn't told anything about  
6 what he was going to encounter. You agree with me on  
7 that; right?

8           A.    Yes.

9           Q.    And you also agree that Mr. Cox was not  
10 weeded out; right? Because he wasn't a lawyer; right?

11          A.    Correct.

12          Q.    And he wasn't pregnant; right? And he wasn't  
13 wearing flip-flops, although we don't know if that's a  
14 problem anymore. He wasn't weeded out because you  
15 thought he -- not you --

16          A.    Understand.

17          Q.    -- the people who are looking, thought he was  
18 physically fit enough. You thought he could run;  
19 correct?

20          A.    Correct.

21          Q.    Okay. So he was selected, but he didn't do  
22 any practicing, did he?

23          A.    No.

24          Q.    No. So he was unpracticed and he was caused  
25 to go through what we -- you know, you described for us



1 already -- and appreciate it -- with the photos and  
2 everything -- that particular route. Okay? Right?

3 A. Yes.

4 Q. And that -- that particular route that we've  
5 just shown and described to the jury, is that route, in  
6 your opinion, an obstacle course?

7 A. No.

8 Q. Okay. No way?

9 A. No, no way.

10 Q. Now, the walk-around that we showed in the  
11 video, if you remember, when Mr. Copperfield was  
12 walking around and they were all following him, is that  
13 an obstacle course? Yes or no?

14 A. Yes.

15 Q. Okay. So walking around with the lights on,  
16 following around, that's an obstacle course, but  
17 running through all those different places that we  
18 looked at, different surfaces, light to dark, inside to  
19 outside, every single thing that we looked at, that's  
20 not an obstacle course, so that I understand; is that  
21 correct?

22 A. Correct.

23 Q. Okay. Now, would you -- are you telling this  
24 jury that, when we watched the people, the  
25 participants, following Mr. Copperfield around the

1 stage, the prop, the Thirteen -- whatever you want to  
2 call it -- that was a more extreme circumstance than  
3 what they would encounter during the runaround that we  
4 looked at?

5 MR. ROBERTS: Objection. Vague and  
6 ambiguous.

7 THE COURT: Sustained.

8 BY MR. MORELLI:

9 Q. Was the walk-around more extreme than the  
10 route that the participants had to take?

11 MR. ROBERTS: Same objection.

12 THE COURT: If he understands it.

13 THE WITNESS: The word "extreme" is quite --  
14 it's -- it's --

15 BY MR. MORELLI:

16 Q. It's not my word. And you heard it in the  
17 opening. Did you disagree with that? Did you disagree  
18 that it was more extreme? If so, tell us.

19 MR. ROBERTS: Objection, Your Honor. The  
20 word "extreme" was not used in the opening. I have the  
21 word index.

22 THE COURT: I'll sustain that.

23 BY MR. MORELLI:

24 Q. Now --

25 MR. DEUTSCH: Morelli.

1 BY MR. MORELLI:

2 Q. Now, the -- let's -- let's talk about --  
3 MR. DEUTSCH: Go ahead. Move on. We'll  
4 look.

5 BY MR. MORELLI:

6 Q. So -- Mr. Kenner, so I understand, is it more  
7 likely for someone to trip or slip and fall when  
8 they're walking rather than running?

9 Let's just break it down. More likely  
10 walking or running?

11 A. I'm not a scientist for this. I don't know.

12 Q. You think you have to be a scientist for  
13 this? Really?

14 A. Is it through cables and -- and --

15 Q. No, wait a second.

16 A. -- and scenes and objects in the way or --

17 Q. I'm not -- no, just my question. There's  
18 nothing in the way. There's no cables. There's no  
19 obstacles. We're -- someone is walking or running, and  
20 you're saying you need a scientist for this.

21 Let's just follow. Is it more likely for  
22 someone to fall when they're walking or running?  
23 Whatever answer you want to give.

24 MR. ROBERTS: Objection. Foundation and --

25 THE COURT: Sustained.

1 MR. ROBERTS: -- and incomplete hypothetical.

2 MS. FRESCH: Join.

3 BY MR. MORELLI:

4 Q. Am I correct, sir, that, when they were  
5 coming up to the stage, they were walking, the  
6 participants?

7 A. Yes.

8 Q. Correct?

9 A. Yes.

10 Q. When they followed Mr. Copperfield around the  
11 prop, they were walking?

12 A. Yes.

13 Q. Correct?

14 A. Yes.

15 Q. And during the runaround -- and we're going  
16 to watch the video -- okay? -- of that night -- they  
17 were running; is that correct?

18 A. Yes.

19 Q. Okay. Now, is it more dangerous when they  
20 were walking before the route or running the route?  
21 Which was more dangerous for them to fall?

22 Which one?

23 A. Trip over objects? Probably the walking.

24 Q. Let's assume there's no objects, although you  
25 would like there to be.

1 Walking or running, is my question.

2 A. The question is just walking or running?

3 MR. ROBERTS: Objection, Your Honor. He's  
4 going back to the original question that you sustained.

5 THE COURT: I did sustain it. You can ask  
6 him what he thinks.

7 MR. MORELLI: That's what I'm asking him, is  
8 what he thinks.

9 THE WITNESS: What I think of?

10 BY MR. MORELLI:

11 Q. Okay. I'll ask a different question.

12 Am I correct, sir, that you would say that  
13 it's more dangerous to be running in the dark rather  
14 than walking in the light?

15 A. Yes.

16 Q. Would you agree with me that it's more  
17 dangerous running in the dark when you don't know where  
18 you're going rather than if you did know where you were  
19 going?

20 A. Yes.

21 Q. And do you also agree that if you're running  
22 in the dark and you don't know where you're going, that  
23 it would be more dangerous if you encountered an  
24 incline or a change in grade? Yes or no.

25 A. Yes.

1 Q. And also would you agree with me that if you  
2 were running in the dark, you didn't know where you  
3 were going, you encountered an incline, and the incline  
4 had construction dust on it, that that would even be  
5 more dangerous? Do you agree with that?

6 A. Yes.

7 Q. Now, am I correct, sir, that you agree -- do  
8 you agree with me that, if you select participants to  
9 do the runaround illusion, that you then have a  
10 responsibility to protect them?

11 A. Yes.

12 Q. Now, when you're thinking about this illusion  
13 being done by the participants, you're doing screening,  
14 as you said earlier, for their safety; correct?

15 A. Yes.

16 Q. And there are things that we've already  
17 agreed could be dangerous. We've already agreed. What  
18 level of danger is okay? I mean, if you know that  
19 there's an incline and you don't warn about it, is that  
20 okay? I mean, is that an okay level of danger for you?

21 MR. ROBERTS: Objection, Your Honor. Goes to  
22 the ultimate issue.

23 THE COURT: He can state his thinking.

24 MR. MORELLI: No, I'm going to withdraw the  
25 question.

1 THE WITNESS: I can say what I want?

2 THE COURT: You can say your thinking about  
3 it.

4 BY MR. MORELLI:

5 Q. I'm going to withdraw the question. Okay?

6 Here's my question: In your opinion, when  
7 you're thinking about this illusion, do you decide that  
8 there's a certain level of danger that's okay? Yes or  
9 no.

10 A. I'm not sure that -- the certain level of  
11 danger.

12 Q. You know --

13 A. Danger is such a -- like, what is that? Like  
14 a -- a T. rex coming at me? I mean, what's danger?

15 Q. I hope there's no T. rexes.

16 A. Oh, you haven't seen the show.

17 Q. Well, let's be more specific.

18 We already know that it's foreseeable that  
19 someone can fall. I mean, we already know that. We  
20 talked about it; correct?

21 A. Yes.

22 Q. Okay. If someone falls, can that be  
23 dangerous?

24 A. Sure.

25 Q. Sure. And the reason that it could be

1 dangerous is because they could get hurt; correct?

2 A. Yes.

3 Q. Okay. So you would agree with me that there  
4 are times that people can fall and not get hurt?

5 A. Sure.

6 Q. Right? And we could call that, let's say, in  
7 the accident category. Okay?

8 Fair enough?

9 A. Okay.

10 Q. You had an accident, but, thank God, you were  
11 okay.

12 And there are times when someone can fall and  
13 they do get hurt. And that's not okay; correct?

14 A. Yeah. You don't want anyone to get hurt.

15 Q. Right. So, now, there's been a lot of talk  
16 about how safe this trick is. Now, I want to try to  
17 understand this whole thing about 20 years and  
18 50,000 -- 49 -- you know, I was listening, and I heard  
19 100,000, 96,000, then it went down to 50,000. I don't  
20 know how all of that happened.

21 But the point of that is that it's safe. Is  
22 that -- is that the point of the numbers? Is the point  
23 of the numbers that it shows that the illusion is safe?  
24 Yes or no.

25 A. Yes.



1 Q. Okay. So we agree that that's the point.  
2 Now, am I correct, sir, that your -- as you  
3 told us earlier, you're a magician; correct?  
4 A. Yes.  
5 Q. You ever work with coins?  
6 A. Yes.  
7 Q. You're good at that; right?  
8 A. Yeah. Maybe.  
9 Q. Okay. Well, people think you are; right?  
10 A. I don't know. I'm not going to sit here and  
11 say "I am so great."  
12 Q. You don't have to say you're so great. I  
13 mean, you can say you're good at it.  
14 A. I've done a thing or two before, yeah.  
15 Q. Okay. And am I correct, sir, that -- and  
16 let's just talk about flipping coins now -- okay? --  
17 flipping coins. You flip a coin, it comes up heads,  
18 heads, heads, heads, heads. Does that mean it can't  
19 come up tails, or is there the same -- same -- same  
20 probability that it could come up tails the next time?  
21 MR. POPOVICH: Objection.  
22 BY MR. MORELLI:  
23 Q. Hello?  
24 Yes or no.  
25 A. That's, like, a statistical question kind of

1 thing.

2 THE COURT: Hold on. There's an objection.

3 MR. POPOVICH: Argument and speculation all  
4 at the same time.

5 THE COURT: Well, I'll allow it.

6 THE WITNESS: So the question?

7 BY MR. MORELLI:

8 Q. Am I -- let me rephrase it.

9 We're dealing with flipping a coin. It has a  
10 head; it has a tail. Correct?

11 A. 50-50.

12 Q. 50-50. Now, if I'm flipping this coin and it  
13 comes up ten times heads, does that mean that I'm in a  
14 better position on number 11 to get a head, or am I in  
15 the same position to get a head as I was before I  
16 flipped it ten times?

17 MR. POPOVICH: Objection. Argument.

18 THE COURT: I'll sustain the objection.

19 MR. MORELLI: Okay.

20 BY MR. MORELLI:

21 Q. Do you understand my question?

22 A. Sort of, yes.

23 Q. Getting a little exercised. Okay. I'm going  
24 to calm down.

25 A. Red Bull?

1 Q. Don't give me Red Bull.

2 A. Okay. Just checking.

3 Q. One thing I don't need is Red Bull; I need

4 Red Lamb.

5 My point is that, if you're flipping a coin,

6 just because it came up either heads or tails a number

7 of times doesn't mean that there's a better probability

8 that it's going to come up again; correct?

9 A. I guess. I'm not -- again, when you do flip

10 it multiple, multiple times, I think the odds change.

11 Q. Okay. But --

12 A. So I'm -- seriously, if you -- it changes

13 over time.

14 Q. But you know -- you know that this particular

15 situation -- okay? -- that we're talking about, when

16 you're looking at this particular illusion or trick,

17 you're looking at it from a safety point of view;

18 correct?

19 A. Yes.

20 Q. Okay. Now, have you known that people have

21 fallen before? Fallen? I'm not talking about getting

22 hurt now, fallen?

23 A. Fallen? Have I known that someone has

24 fallen? Yes.

25 Q. Okay. Now, when this particular -- on this

1 particular night -- you were there that day? I think  
2 we spoke earlier about that; right?

3 A. Yes. Yes.

4 Q. Okay. And you -- is it -- is it your  
5 opinion -- well, not your opinion. Withdraw --  
6 withdraw that question.

7 Are you stating that, other than Mr. Cox,  
8 who's in the courtroom today, no one has ever fallen  
9 and gotten injured before from this illusion? Is that  
10 your statement? Yes or no.

11 A. Yes.

12 Q. Okay. And you're basing --

13 A. From this runaround? From the -- from  
14 this -- being a participant in the illusion?

15 Q. Yeah, it has to be this particular illusion.

16 A. Yes.

17 Q. Yeah.

18 A. Sorry. I just wanted to make sure I was  
19 clarifying --

20 Q. No, I should have made that clear. No, no,  
21 just from --

22 A. A participant in this illusion has ever  
23 fallen?

24 Q. In this illusion, yes.

25 A. Correct.

1 Q. Now, you're basing that on your own  
2 knowledge; is that correct?

3 A. Yes.

4 Q. Your knowledge?

5 A. Yes.

6 Q. Okay. And as we saw earlier, when we talked  
7 about certain things, you didn't know every single  
8 thing that went on. Is that fair enough?

9 A. Yes.

10 Q. Okay. But this, this particular thing, this  
11 no one's ever gotten injured with this illusion, that,  
12 you know?

13 A. Yeah.

14 Q. Without a doubt?

15 A. Yes.

16 Q. Right?

17 A. Yes.

18 Q. Okay. No one told you that; you know it.

19 A. Yeah. I know through my experience this,  
20 yes.

21 Q. You know it. Okay. Now, so -- so if, in  
22 fact, no one has ever gotten injured -- and you would  
23 agree with me that, if someone got injured and they  
24 were taken away in an ambulance, that would be  
25 something you would know. Correct?

1           A.    I would have -- I would be told, yes.

2           Q.    Right.

3           A.    At some point, yeah.

4           Q.    At some point? Well, okay. If somebody got

5 injured -- forget about the ambulance part. Okay? If

6 somebody got injured, that would be unusual?

7           A.    Oh, yes.

8           Q.    Because it's never happened?

9           A.    Yes.

10          Q.    It's never happened?

11          A.    Yes.

12          Q.    So it's unusual. Right? Okay. So if it's

13 unusual because it never happened, am I correct that

14 somebody would come to the executive producer and say,

15 Oh, my God, someone just got injured. Is that correct?

16               Well, forget about the, "Oh, my God."

17               Would they say (descriptive sound), "Someone

18 just got injured"? Yes?

19               Would they bring it to your attention, as the

20 boss, like, right away?

21          A.    Depending on the circumstance.

22          Q.    Well, if --

23          A.    If they were -- if somebody was seriously

24 injured, yes.

25          Q.    Okay. But, you know -- you know, you talked

1 a little earlier about extreme, and you said that's  
2 like a tough term to -- to sort of figure out.

3 A. Yes.

4 Q. How about "seriously"? Is that an easy term  
5 to figure out for you?

6 A. Well, depends on what you're talking about  
7 being serious.

8 Q. Right. I'm just talking about being injured  
9 now. I'm not even talking about the severity of it.  
10 Fair enough? If someone was injured during this  
11 illusion, would the protocol be for them to come to you  
12 and say, this is what just happened?

13 A. The very first thing that they would do would  
14 be to contact --

15 Q. I didn't say --

16 A. No. To come to me would not be the first  
17 thing to do.

18 Q. I'm not saying the first thing. What I'm  
19 saying is, would they come to you and tell you that?

20 Let's talk about the same day. Okay? Not  
21 the first thing. The same day.

22 Would they come to you and say, Mr. Kenner,  
23 someone just got injured; you know, we want you to know  
24 that?

25 A. Yeah. They would more likely come and tell

1 me. Yeah.

2 Q. And, actually, you would want to know that,  
3 wouldn't you?

4 A. Yes.

5 Q. Like, sooner rather than later?

6 A. Yes.

7 Q. And did that happen here? When Mr. Cox got  
8 injured, did they go to you at any time during that  
9 night -- because the accident happened like 8:30,  
10 quarter to 9:00, something like that. Okay?

11 A. No.

12 MR. POPOVICH: Objection. Vague, as to  
13 "they."

14 MR. MORELLI: Excuse me?

15 THE COURT: Sustained.

16 MR. MORELLI: I didn't hear what he said.

17 THE COURT: Vague as to "they." Is that you  
18 what you said?

19 MR. POPOVICH: Yes. If there was an answer,  
20 there might have been a move to strike.

21 MR. MORELLI: There wasn't an answer.

22 THE COURT: There was, you said?

23 MR. MORELLI: There wasn't an answer.

24 THE WITNESS: They heard me. There was an  
25 answer they heard.



1 THE COURT: The jury will disregard the  
2 answer. Next question.

3 BY MR. MORELLI:

4 Q. I have to make more clear.

5 Did anyone come to you, of your employees,  
6 and tell you about Mr. Cox getting injured?

7 A. No.

8 Q. Okay. And you found out about it not that  
9 day; correct?

10 A. Correct.

11 Q. Not the next day?

12 A. No.

13 Q. Not the next week; right?

14 A. I don't know exact date, but it was very  
15 quick.

16 Q. Okay. Well, did you find out about it from  
17 one of your employees?

18 A. We were told, basically, that he had an  
19 attorney immediately, so ...

20 Q. Who's "they"?

21 A. Mr. Cox, I think, had an attorney rather  
22 quickly, and it went through attorneys almost  
23 immediately.

24 Q. What's immediately to you? Two days? Same  
25 day?

1           A.    Within two days.

2           Q.    Okay.  So what you're saying is, do you  
3 think -- Mr. Kenner, the way you said that, it seems  
4 like there's something wrong with Mr. Cox retaining an  
5 attorney a couple of days later.  Did you think there  
6 was something wrong with that?

7           A.    I didn't say anything was wrong with it.

8           Q.    No?  Well, the way you put it, it seemed to  
9 me that it was a little disparaging.  Did you mean it  
10 that way?

11          A.    No.  If I said it that way, I didn't mean it  
12 that way.  I apologize.

13          Q.    All right.  So you found out about it not  
14 from Mr. Cox's attorneys.  Right?  You found --

15          A.    No.

16          Q.    You found out about it from the attorneys  
17 representing who?

18          A.    I don't know which attorney contacted who.  
19 But we -- at that time, we had a business manager named  
20 Bob Burrell, and they had contacted Bob Burrell, who  
21 would be the person who would have held our insurance  
22 information, and deal with that.

23          Q.    Okay.  So now --

24          A.    And he contacted me, and that was the first  
25 time I heard about it.

1 Q. So whose business manager was this?

2 A. Mr. Copperfield's.

3 Q. Okay. So the attorneys got in touch with the  
4 business manager, and the business manager told you;  
5 correct?

6 A. Correct.

7 Q. Okay. So, now, is there -- and I'm talking  
8 about now 2013; not talking about now. Was there, more  
9 importantly, a protocol with reference to someone being  
10 injured and what the Backstage employees were supposed  
11 to do? Was there a protocol?

12 A. Yes.

13 Q. Okay. Was that protocol that they had to do  
14 an investigation?

15 A. No.

16 Q. Okay. So there's no protocol for  
17 investigation?

18 A. No.

19 Q. Okay. Was the protocol that they had to tell  
20 David Copperfield right away?

21 A. No.

22 Q. Okay. There was no protocol for them to tell  
23 you right away either; right?

24 A. No. Not immediately.

25 Q. We're talking about protocol now.

1           A.    No.

2           Q.    And they were supposed to do nothing or they  
3 were supposed -- the Backstage employees. That's all  
4 I'm talking about now. There's 30 of them. Okay?

5           A.    Uh-huh.

6           Q.    At the time, you know, working the illusion.  
7 And they don't have any protocol to do anything when  
8 someone gets injured; is that correct?

9           A.    No. They do.

10          Q.    They do. Okay. So they don't have to notify  
11 the boss. They don't have to notify the other boss.  
12 And do they notify MGM Grand?

13          A.    Can I explain what happens? Or do you just  
14 want to ask these questions, like I ask each one?

15                THE COURT: Just answer the question.

16                THE WITNESS: So do they inform MGM Grand?  
17 Yes.

18 BY MR. MORELLI:

19          Q.    Okay.

20          A.    It's just I could say this in one quick time,  
21 and we're just taking hours for this.

22          Q.    I'm not going to take hours, but -- not on  
23 this issue.

24          A.    Okay.

25          Q.    What are they supposed to do? And then you

1 will tell me, if you know, what they did that night.  
2 Okay? So first tell me what you, as the boss, expect  
3 that your employees -- no one else's employees, just  
4 Backstage -- are supposed to do if someone gets  
5 injured?

6 A. Okay.

7 Q. Okay. I'm listening.

8 A. All right.

9 Q. Okay.

10 A. Oh, Lord.

11 Q. Okay. Look, I'm not easy, but I'm  
12 accommodating.

13 A. Yes, you are. Yes, you are.

14 So if anyone gets injured, we are on MGM  
15 property. Obviously, we have 30 employees; we're not  
16 going to have an ER person on staff. We don't have a  
17 person like that on our staff. The MGM does.

18 And the MGM has a very, very direct line  
19 through 911 through their security. And if any time a  
20 person is injured on an MGM property, especially  
21 backstage, in the house, you immediately contact  
22 security. And then you call -- they call 911 if it's  
23 an emergency that they see, is they call 911.

24 And they can because, again, I don't have any  
25 ER people on our staff, and we're under this umbrella

1 because there's Backstage employees; there's MGM  
2 employees. There's another company named Rhino that  
3 that has some people that are employed that are  
4 backstage.

5           There's quite a bit of people back there with  
6 different companies. So the umbrella would be under  
7 the MGM. So we would contact the MGM security very  
8 quickly. They can get a person there that's an ER  
9 person that's on staff there. It's usually the same  
10 one or two people. We have people throw up in the  
11 audience and get sick, and so we have seen them before.

12           So they call, they assess, because that's the  
13 quickest, safest, best way to accommodate the safety of  
14 this person that's been injured, if they're injured.

15       Q.    Okay.

16       A.    It's not -- I'm not going to be able to do  
17 anything. Now, if I called 911 the way I have been  
18 told -- now, I can't verify this --

19       Q.    No. But I wasn't really asking you about  
20 whether or not you were going to call 911. I was only  
21 asking about whether or not you should be notified that  
22 happened. Not to call 911, just because you would want  
23 to know sooner rather than later, which you already  
24 said yes to.

25       A.    Correct. Should I answer the second half of

1 the question?

2 Q. So now -- well, let me go -- let me go to  
3 another thing.

4 You -- you stated that the MGM people then  
5 take over, so to speak?

6 A. Correct.

7 Q. Correct? And is there a protocol, that you  
8 know about, that they follow?

9 A. Yes.

10 Q. Okay. And is one of those protocols that  
11 they follow to do a thorough investigation?

12 A. I'm pretty sure that's -- yes. I think  
13 they -- I'm not sure how far, how deep it goes, but you  
14 know, I -- yes. There's -- you probably need to ask  
15 Mr. Habersack that question.

16 Q. Yeah. I'm going to ask him.

17 A. Okay.

18 Q. Okay. So are they -- were your employees,  
19 Backstage employees, were they interviewed by MGM --

20 A. I don't know.

21 Q. -- during the investigation?

22 A. I'm not -- I'm not sure of that process.

23 Q. You don't know that?

24 A. No.

25 Q. Is that something that you would want to

1 know, as the boss?

2 A. Yes.

3 Q. Okay. But no one told you about it. And did  
4 any of your employees, after this accident happened,  
5 tell you what happened and what they saw?

6 A. Not until after we had heard -- I had heard  
7 about it.

8 Q. Okay. How long after would you say they told  
9 you about it?

10 A. I -- I'm not sure. It would have been week  
11 or so.

12 Q. Okay.

13 A. I don't know the exact time.

14 Q. Sometime after. Possibly a week?

15 A. Possibly a week. Possibly. Yeah.

16 Q. Okay. And which employees came to you and  
17 told you what had happened?

18 A. Mr. Carvalho. Ryan.

19 Q. Okay. And Ryan Carvalho -- and we're going  
20 to see the video soon, so you'll be able to point him  
21 out for us.

22 A. Right.

23 Q. He is the one who was doing the runaround  
24 with the participants.

25 A. Correct. He was in the front.



1 Q. He was in the front. And, now, someone's in  
2 the front. And I'm going like this because he was  
3 holding hands with somebody who was --

4 A. Correct.

5 Q. -- going in the front. And someone's in the  
6 back. And who is in the back --

7 A. Pomai.

8 Q. -- that night?

9 A. That night, yes. Pomai Weall. I think it's  
10 W-h -- W-e-a-h-l [sic].

11 Q. And that's a woman?

12 A. Yes.

13 Q. Okay. And she's bringing up the rear;  
14 correct?

15 A. Yes.

16 Q. Okay. So, now, the -- you heard from  
17 Mr. Carvalho that this happened. What did he tell you?  
18 I'm talking about the first time any of your employees  
19 spoke to you about this accident involving Mr. Cox was  
20 Mr. Carvalho. Fair enough?

21 A. Correct.

22 Q. What did he tell you?

23 A. When Ryan first told me about this, he said  
24 that -- well, I said -- I might have said -- I'm not  
25 sure how the conversation started. So I don't know if

1 I went to him and said, "Hey, what happened?"

2 Q. Your best recollection; right?

3 A. So when he was describing to me, he said a

4 gentleman slipped during the trick and fell. At the

5 trick, he spoke to him and asked him if he was okay.

6 He said yes. Mr. Cox said, yes, and that he was fine.

7 So they continued. They did the -- we continued the

8 trick. The trick ends. And now we're in the --

9 they're just -- David is about to come in at the -- we

10 do this thing, it's kind of hard to explain, where we

11 talk to the audience members that have vanished, and we

12 basically give them a pep talk. It's kind of funny.

13 Q. It's not you?

14 A. No, no, no, no. It's Ryan.

15 Q. It's Ryan, and then --

16 A. And then David.

17 Q. -- and David Copperfield speaking to them

18 about the trick and how it's over and talking to them

19 about keeping the secret?

20 A. Correct. Ryan goes first, kind of tells the

21 gist of, hey, this is what happened. Hey, oh, my gosh,

22 isn't this fun. It's all about fun. The energy is to

23 be fun. And then, the way I understand it, is that

24 he --

25 Q. Just what Mr. Carvalho told you.

1       A.    Yeah.  We understand.  Well, he --  
2 Mr. Carvalho told me that he, when he had asked him, he  
3 said he was okay.

4       Q.    Yes.  You told us that.

5       A.    He went through the meet-and-greet or to the  
6 thing with David.  And he may have said -- you know, he  
7 may have had a conversation with David.  I don't know.

8       Q.    You mean -- he meaning Carvalho?

9       A.    No.  I --

10      Q.    Mr. Cox?

11      A.    I don't know if Carvalho said to David, "Hey,  
12 he fell," and then David -- I don't know if that was a  
13 conversation.

14      Q.    You don't know if he told David Copperfield?

15      A.    I don't know that conversation part.

16      Q.    Okay.

17      A.    So then, I guess, at the end of this thing,  
18 Mr. Cox said, you know, maybe I will have this looked  
19 at.

20               But the way that it was told to me, and in  
21 the tone, and no disrespect in any way to anyone, it  
22 wasn't like, you know, there's a person that's super  
23 injured.  "Oh, my gosh, he's" -- it was more like, you  
24 know, "Hey, this guy, he might have hurt his shoulder.  
25 He's going to go check it out."

1 Q. No. I understand.

2 A. It wasn't this crazy thing.

3 Q. I understand because, look --

4 A. That would have been another story.

5 Q. What we were talking about -- because now

6 this is a week later --

7 A. Yeah.

8 Q. -- that you're discussing this, so there's

9 nothing really to do at that point.

10 A. Right.

11 Q. Okay. What we were discussing was

12 immediately wanting to know that that -- that's what I

13 was discussing earlier with you. Now, the -- the

14 situation, the conversation between you and Carvalho,

15 were there -- did Mr. Carvalho -- or Ryan as you call

16 him -- did he tell you that he witnessed this accident?

17 Yes or no.

18 A. No. I don't think he witnessed it. No.

19 Q. Did he tell you that he did?

20 A. No. He just told me that the gentleman fell.

21 The biggest thing was him talking to him and saying,

22 "Are you okay?" And him saying yes.

23 Q. He didn't say he witnessed it?

24 A. Correct.

25 Q. Okay. Did he tell you that no one from MGM

1 interviewed him about this accident?

2 A. Yes.

3 Q. Or did you know that already?

4 A. I already knew that.

5 Q. Okay. Did you speak to anybody else, of your  
6 employees, about this accident? Like Ms. Weall, who  
7 was --

8 A. No. I think I -- only person -- other person  
9 I spoke to, again, afterwards was Mr. -- the security  
10 guard that was on that night, Dennis.

11 Q. Okay. And who does Dennis work for?

12 A. MGM.

13 Q. Okay. And do you know Dennis before this  
14 accident happened?

15 A. Yes. He's one of our regulars. There's like  
16 three of them. So he was there all the time. We knew  
17 him very, very well.

18 Q. So he didn't work for you personally, but --

19 A. No.

20 Q. -- he was sort of working with your group?

21 A. Correct.

22 Q. Okay. And you had a conversation with him  
23 about this accident; correct?

24 A. Yes.

25 Q. Did he tell you where he was at the time the

1 accident happened?

2 A. No.

3 Q. Did he -- okay. Did he tell you that he  
4 witnessed the accident?

5 A. No.

6 Q. Okay. Was he the guard that we talked about  
7 earlier was on the point?

8 A. No.

9 Q. He was standing on the point?

10 A. A security guard is not on the point. That's  
11 an MGM Grand employee, stagehand.

12 Q. Okay. Now, the MGM Grand stagehand who was  
13 on the point -- and that would be where they make that  
14 last right turn before Mr. Cox was injured; correct?

15 A. Correct.

16 Q. Was that particular MGM Grand employee ever  
17 in a conversation with you about this accident?

18 A. No.

19 Q. Okay. Did you ever say that, "Hey, I want to  
20 talk to the person who might have witnessed this  
21 accident because this can't happen"? Did you ever do  
22 that?

23 A. Say that question again, just -- or read it  
24 back.

25 (Record read by the reporter.)

1 THE WITNESS: No.

2 BY MR. MORELLI:

3 Q. Okay. Were you at least curious about how  
4 this accident happened? Just yes or no. Were you at  
5 least curious?

6 A. No.

7 Q. Okay. You would agree with me that, when  
8 this accident happened and Mr. Cox was injured and he  
9 was taken by ambulance, that this was a very unusual  
10 occurrence and would normally -- if it was so unusual,  
11 everybody would be talking about it, like, right away?  
12 Does that sound right?

13 MR. POPOVICH: Objection. Vague and  
14 ambiguous.

15 MS. FRESCH: And calls for -- objection --  
16 speculation.

17 THE COURT: Sustained.

18 MR. MORELLI: Okay. I'm going to become less  
19 vague and ambiguous.

20 THE WITNESS: Gosh.

21 MR. MORELLI: Okay. I hate to do it.

22 THE WITNESS: It's about time.

23 MR. MORELLI: But I'm going to try.

24 BY MR. MORELLI:

25 Q. Am I correct that there was -- the night of

1 the accident, after the accident happened. Okay?

2 A. Yes.

3 Q. At 11:04 p.m., there's a guy named Jay Harmas  
4 who you mentioned to us before?

5 A. Yes.

6 Q. And he's the stage manager?

7 A. Correct.

8 Q. Okay. And he sent out e-mails at the end of  
9 the night. Is that correct?

10 A. Correct.

11 Q. Okay. Does he always do that?

12 A. Yes. Every show.

13 Q. Every show. Okay. So after the show is  
14 over, it's the end of the night. Sometime before  
15 midnight, because this is already after 11:00, he sends  
16 out an e-mail to a whole bunch of people. Right?

17 A. Yes.

18 Q. And they think I'm getting senile.

19 A. Oh, is that what it is?

20 Q. That's why they try to prompt me, the young  
21 bucks.

22 So he sends out an e-mail to you -- not only  
23 to you, actually.

24 MR. MORELLI: I'm just going to mark it for  
25 identification, Your Honor. I'm not offering it in



1 evidence.

2 MR. DEUTSCH: It is marked as Exhibit, for  
3 identification, 96.

4 BY MR. MORELLI:

5 Q. 96. I'm just going to show it to you. Okay?

6 A. Of course.

7 Q. I'm not asking you to read it. Just read it  
8 to yourself.

9 MR. DEUTSCH: Two pages.

10 THE WITNESS: It's two things. Don't read it  
11 and read it to yourself.

12 BY MR. MORELLI:

13 Q. Yeah, but this is this date. That says  
14 November 12th -- correct? -- 2013?

15 A. Yeah. Yep.

16 Q. Okay. Now, that e-mail is sent to you and  
17 many other people; correct?

18 A. Correct.

19 Q. Now, is that the usual -- I don't want to  
20 call it protocol, but is it the usual thing that Jay  
21 Harmas does at the end of every show, to send an e-mail  
22 to all of those people?

23 A. Yes.

24 Q. Okay. And what -- what people -- you know,  
25 you don't have to name all the people, just what people

1 is he sending this e-mail to? In other words, what are  
2 their job descriptions?

3 A. It's mostly the stagehands. I don't think I  
4 see -- it looks like it's just the stagehands.

5 Q. And you?

6 A. And me. And, I mean, possibly Homer. I  
7 don't know if I see Homer.

8 Q. Right. And Ryan Carvalho?

9 A. Yeah.

10 Q. Because he's the assistant stage manager?

11 A. Yes.

12 Q. Okay. And in that e-mail he's -- what does  
13 he -- what does he send these e-mails out for? What is  
14 the purpose --

15 A. Well, this particular one --

16 Q. -- of the e-mail?

17 A. -- is sent after the show, the 9:30 show.

18 There would have been one sent out prior, after the  
19 7:30 show. This one is basically saying show notes.

20 So there will be a note, if anything happened  
21 in the show, that we needed to work on, fix, look at,  
22 rehearse, you know. And then we deal with it  
23 immediately.

24 And also, on this particular one, since it's  
25 the -- the second show, he would also put the call

1 times for the next day. So, in this particular case,  
2 it's "3:30, load out dino," and then it lists the names  
3 of the people. "5:30, show call, all." So it's  
4 telling people when to come in.

5 Q. Now, generally, that e-mail will say -- or  
6 state anything of any moment. You understand that  
7 term; right? You know, anything of any importance,  
8 let's say?

9 A. Okay. But not really. It's notes of things  
10 that we were -- we need to fix, we need to work on.

11 Q. Okay.

12 A. It's -- it's not just -- somebody has a blue  
13 shirt that they don't normally have a blue shirt. I'm  
14 not sure what you meant by "moment."

15 Q. Okay. Well, if, in fact, someone breached a  
16 protocol and someone was injured, would that be in an  
17 e-mail like that?

18 A. No.

19 Q. Okay. Now, that particular e-mail is  
20 actually not the e-mail that was after the show where  
21 Mr. Cox was injured; correct?

22 A. Correct.

23 Q. But, actually, am I correct that this  
24 particular e-mail was an e-mail that you reviewed in  
25 preparation of your testimony today?

1           A.    They showed it to me yesterday. But I've  
2 seen this, obviously. I look at the notes every -- you  
3 know, I look at the e-mails.

4           Q.    Yeah, yeah. But you -- you did review this  
5 particular e-mail, which is the date of the accident?

6           A.    Yeah.

7           Q.    Okay. Did -- did you -- I don't have the  
8 e-mail -- withdrawn.

9                   Is there an e-mail sent after the show? I  
10 think you said earlier, the 7:30 show was the show that  
11 Mr. Cox was injured --

12          A.    I'm sure there is, yeah.

13          Q.    Okay. Did you review that e-mail before --

14          A.    I looked at it. I looked at several e-mails  
15 yesterday -- or whatever -- two days ago.

16          Q.    Okay. I'm just going to show you this  
17 other -- this is marked for identification also. But  
18 this is the day before. This is November 11th.

19          A.    Okay.

20          Q.    Okay. Those are the two e-mails you  
21 reviewed; correct?

22          A.    Actually, yes, they are. Yeah.

23          Q.    Now, they -- there is an e-mail that was sent  
24 that would be the one referring to the show that  
25 Mr. Cox was injured in; correct?

1           A.    Yeah, there should be.  Yes.

2           Q.    Okay.  But you didn't review that e-mail?

3           A.    No.

4           Q.    Okay.  Was there a particular purpose that

5 you reviewed the e-mail from the day before the show --

6           MR. ROBERTS:  Objection.

7 BY MR. MORELLI:

8           Q.    -- that we are talking about?

9           THE COURT:  Objection what?

10          MR. ROBERTS:  Privileged.

11          MS. FRESCH:  Privileged.

12          MR. ROBERTS:  His attorneys chose the

13 documents to show him.

14          THE COURT:  Sustained.

15          MR. MORELLI:  Okay.  Well, while his

16 attorneys were choosing those documents, maybe they

17 can -- I can call for the production of the document

18 that has to do with this particular illusion, the 7:30

19 show.  I call for the production because I've never

20 been given it.  So I don't know what it says.

21          MR. ROBERTS:  Objection to form.  Move to

22 strike.

23          THE COURT:  Sustained.  Motion granted.

24 BY MR. MORELLI:

25          Q.    Mr. Kenner, we're going to look at the video

1 of this particular night.

2 A. Okay.

3 Q. Okay?

4 MR. DEUTSCH: And this is, Your Honor,

5 Exhibit 402, which is already in evidence, I believe.

6 THE COURT: I think we'll need to dim the

7 lights again, or do we?

8 MR. MORELLI: Yeah, I think -- I think for

9 this, yes.

10 MR. DEUTSCH: Yeah.

11 MR. MORELLI: Yeah.

12 THE COURT: The designation is then -- you

13 said --

14 MR. DEUTSCH: 402.

15 THE CLERK: It has been stipulated.

16 MR. MORELLI: Thank you, Bob.

17 THE MARSHAL: You're welcome.

18 BY MR. MORELLI:

19 Q. Okay. Can you see it okay on your screen?

20 A. Yeah, it's better -- it's a little darker --

21 a little better here. So I can see it.

22 Q. It's better on your screen?

23 A. Yeah, because it's (witness indicating), you

24 know.

25 MR. DEUTSCH: Play it?

1 MR. MORELLI: Yeah.

2 (Whereupon video was played.)

3 BY MR. MORELLI:

4 Q. Well, if you could, Mr. Kenner, do you know  
5 exactly what this is showing?

6 A. Yes, I do.

7 Q. Okay. This is the outside; correct?

8 A. Correct.

9 Q. That -- I don't know what to call it, but a  
10 ramp, let's say -- that leads to the doors going back  
11 inside. Fair enough?

12 A. I don't know if I'd call it a ramp, but --

13 Q. And this is concrete here?

14 A. Yes.

15 Q. Okay. Now, did you know, the night that the  
16 accident occurred -- because you were there -- not  
17 here, but I'm saying --

18 A. Correct.

19 Q. -- you were -- you were on premises, let's  
20 say -- that there was a construction dumpster here  
21 along the route for them to go back inside? Did you --  
22 just questioning --

23 A. Yes.

24 Q. -- did you know that?

25 A. Oh, yes.

1 Q. Okay. And was -- let's -- let's watch it and  
2 then we'll -- you'll -- I'll ask you where Mr. Carvalho  
3 is. Okay?

4 A. Okay.

5 Q. Okay.

6 MR. MORELLI: Okay, Adam.

7 (Whereupon video was played.)

8 MR. MORELLI: Okay. Stop.

9 THE WITNESS: Yep.

10 MR. MORELLI: Okay. Just -- then you can  
11 rewind it and we'll go, but I just want to stop at this  
12 point.

13 BY MR. MORELLI:

14 Q. So --

15 A. Yes, that's Mr. Carvalho.

16 Q. This is him right here; right?

17 A. Correct.

18 Q. Okay. And this is a woman who's a  
19 participant --

20 A. Yes.

21 Q. -- who he's holding hands with?

22 A. Uh-huh.

23 Q. Correct. And he's in the front?

24 A. Yes.

25 Q. He's the first person that's -- that's going



1 in. Okay?

2 So let's just go back a little bit.

3 (Whereupon video was played.)

4 MR. MORELLI: Okay. So let's just go back  
5 just one frame if we can.

6 THE WITNESS: That's a good trick.

7 BY MR. MORELLI:

8 Q. All right. So now -- oop. So, now, did you  
9 notice that Mr. Carvalho's spotlight was not on? Did  
10 you notice that?

11 A. Correct.

12 Q. Okay. Now, the -- the reason for the  
13 spotlight -- for him to be carrying the spotlight would  
14 be for it to be on --

15 A. No.

16 Q. -- or no?

17 A. No.

18 Q. Okay. He's just carrying a spotlight that's  
19 off?

20 A. Correct.

21 Q. Okay. So that the spotlight that he's  
22 carrying is not to light the way that he's going here?

23 A. Correct.

24 Q. Okay.

25 So let's go back, just so that we can finish

1 this -- just go back so that we can see the whole  
2 thing.

3 All right. Now we're just going to watch the  
4 whole thing. Okay?

5 (Whereupon video was played.)

6 MR. MORELLI: Now, stop for a second.

7 BY MR. MORELLI:

8 Q. This, you -- you notice that there's a tree  
9 here; correct?

10 A. Yes.

11 Q. Okay. And the -- the camera is shooting at  
12 the tree. And you see that there are lights here and  
13 certain people standing around. And there's a person  
14 here with the yellow shirt or something like that.

15 A. Yes.

16 Q. You could see?

17 A. Yeah.

18 Q. Okay. Do you know whether or not this person  
19 who seems to be standing and looking this way was ever  
20 interviewed?

21 A. Which person?

22 Q. This person over here. There seems to be a  
23 person in a yellow shirt here who's looking toward  
24 underneath this tree. He's looking this way. Do you  
25 know if he was ever interviewed?

1       A.    Could we play the whole little -- I don't  
2 know who that is, so --

3       Q.    Yeah, let's play the whole thing.

4       A.    -- I can't quite --

5       Q.    So we'll go back a little, and then you can  
6 just watch it, and then we'll talk.

7                   (Whereupon video was played.)

8 BY MR. MORELLI:

9       Q.    He seems to have a flashlight.

10      A.    Okay. Now ask again. I know.

11      Q.    Okay. So that particular person -- oop.

12                   Go back to where you were. I just don't want  
13 to be in the way of the video.

14                   This person.

15      A.    Yes.

16      Q.    Okay. Do you know who that is?

17      A.    No.

18      Q.    Okay. I thought you did. That's why --  
19 that's why I --

20      A.    No, I just wanted to make sure it wasn't,  
21 like, you know, one of the MGM guys or anything. So,  
22 yes, because the MGM person wouldn't have followed them  
23 in.

24      Q.    Okay. But this person seems to be flashing  
25 the flashlight, but you don't know who that is and --

1 or whether or not they were ever interviewed; correct?  
2 A. Correct.  
3 Q. Okay. Now, you do -- do you know that right  
4 in this area over here -- and it's -- you know, you  
5 can't see with the tree -- that somewhere around this  
6 area is where Mr. Cox slipped and fell?  
7 A. Well, you can see on the camera.  
8 Q. Do you know that?  
9 A. Well, yeah, you can see on the camera.  
10 Q. You can?  
11 A. Yes. I mean, I assume that's right there,  
12 yeah.  
13 Q. Okay.  
14 Okay. So let's -- let's finish it, Adam.  
15 (Whereupon video was played.)  
16 MR. DEUTSCH: Morelli.  
17 MR. MORELLI: Is that the end?  
18 BY MR. MORELLI:  
19 Q. So then the last person, would that be the  
20 Backstage employee, Ms. Weall?  
21 A. Yes. Pomai is -- right there. That's Pomai.  
22 Q. That's her right there; right?  
23 A. Yeah, I think -- I'm 99.99 percent sure. I  
24 have to kind of watch the video again and I can give  
25 you an answer.

1 Q. 99.9 is an A-plus. So we'll go with it.  
2 A. Okay.  
3 Q. Okay. So, now, the -- the people flashing  
4 the flashlights around here now, do you know whether or  
5 not any of those people were interviewed to try to find  
6 out how this happened?  
7 A. I don't know if any of the participants were  
8 interviewed by the MGM at all.  
9 Q. That's an MGM employee; correct?  
10 A. Who is an MGM employee?  
11 Q. The person with the flashlight now.  
12 A. Which -- where?  
13 Q. Just -- well, let me --  
14 A. Well, that's --  
15 Q. Everybody else is now in; right?  
16 A. That person with the flashlight right there  
17 that you just saw, that's an MGM employee, the one that  
18 did -- yeah. I was looking over here, but, yes, I'm  
19 assuming you were talking about -- about --  
20 Q. Yeah, because everybody else is gone.  
21 A. I don't know if they interviewed him or not.  
22 Q. Okay. But you would agree with me that that  
23 might be an important person to ask what happened  
24 instead of trying to recreate what happened; is that  
25 correct?

1           A.     Sure.

2           Q.     Yep.  Now, the -- Mr. Cox fell and was  
3 injured and was taken away by ambulance.  Okay?  You  
4 know that now?

5           A.     Yes.

6           Q.     Okay.  And am I correct that if, in fact, he  
7 was put in a position where it was foreseeable that he  
8 could fall, that it really doesn't matter how he fell?  
9 What matters is that he fell.  Do you agree with that?

10           MR. POPOVICH:  Objection.  Argument.  Goes to  
11 the question that the jury should decide.

12           THE COURT:  Sustained.

13 BY MR. MORELLI:

14           Q.     Am I correct, Mr. Kenner, that if, in fact --  
15 and we -- we talked about light to dark and all of the  
16 running and everything.  We've already covered that.

17           If, in fact, there was construction dust that  
18 was on that outside route going into the doors, that  
19 that would be an additional danger for the  
20 participants?

21           MR. CALL:  Objection.  Calls for expert  
22 testimony.

23           MR. MORELLI:  I didn't finish my -- you think  
24 it calls for an expert?

25           MR. CALL:  Yeah.  That's why I objected.

1 MR. MORELLI: Really? Okay.

2 MS. FRESCH: And objection. It's an

3 incomplete hypothetical.

4 THE COURT: Rephrase.

5 MR. MORELLI: Well, I didn't finish my

6 question before they objected. So it wasn't complete.

7 That's how that works.

8 BY MR. MORELLI:

9 Q. If, in fact, there was construction dust on

10 that concrete incline and beyond and you knew about it,

11 you would consider that an additional safety hazard; is

12 that correct?

13 A. If there was construction dust --

14 Q. Yeah.

15 A. -- on there -- if --

16 Q. Yeah, if.

17 A. That was the term, "if," yeah.

18 Q. Okay. Now, am I correct -- and --

19 Mr. Kenner, thank you. My associate wants me to

20 continue to question you; I disagree. Okay? So --

21 A. He's in the dumpster anyway.

22 Q. So the boss -- thank you so much.

23 A. Thank you.

24 THE COURT: All right.

25 Cross-examination?

1 MR. ROBERTS: Thank you, Your Honor.

2 MR. MORELLI: Let me get out of your way,  
3 Lee.

4

5 CROSS-EXAMINATION

6 BY MR. ROBERTS:

7 Q. Mr. Kenner.

8 A. Lee.

9 Q. Some of the things that I would like to have  
10 covered with you have already been covered in some  
11 detail by Mr. Morelli. So I may be skipping around  
12 just a little bit from subject to subject.

13 Is that okay with you?

14 A. Yes, sir.

15 Q. Very good.

16 One of the questions -- I think toward the  
17 beginning -- that you had was what does it mean  
18 sustained? Should I answer the question? And you  
19 understand that now; right?

20 A. I do now.

21 Q. The judge explained that?

22 A. Yes. Thank you.

23 Q. The question -- if the objection is  
24 sustained, then you didn't have to answer; right?

25 A. Correct.



1 Q. Overruled means you have to give an answer?  
2 A. Right.  
3 Q. You're clear on that now?  
4 A. Yes.  
5 Q. Very good.  
6 Mr. Morelli gave you a series of  
7 hypotheticals, is dust more dangerous than no dust?  
8 You -- you recall that series of hypotheticals?  
9 A. Oh, yes.  
10 Q. Oh, yes.  
11 MR. MORELLI: Your Honor --  
12 BY MR. ROBERTS:  
13 Q. Let me ask the question in this way: Did you  
14 regularly walk that route?  
15 MR. MORELLI: Objection, Your Honor. May we  
16 approach?  
17 THE COURT: Okay.  
18 (A discussion was held at the bench,  
19 not reported.)  
20 THE COURT: Does anybody need a recess?  
21 I don't see anybody raise their hands. So I  
22 think it's 4:20. So just going to be at ease for a  
23 moment, ladies and gentlemen, two seconds. We're not  
24 in recess; we're just going to stand by for him.  
25 Maybe while we're waiting, I can ask counsel

1 to approach.

2 (A discussion was held at the bench,  
3 not reported.)

4 THE COURT: All right. The witness has  
5 retaken the stand.

6 You may proceed.

7 BY MR. ROBERTS:

8 Q. So my -- my question for you, sir, is, at any  
9 time prior to Mr. Cox's fall, did you personally  
10 believe that that route was dangerous?

11 MR. MORELLI: Objection, Your Honor. We just  
12 had this discussion.

13 THE COURT: You can just rephrase the  
14 question. If you ask the question, just rephrase it in  
15 a nonleading way.

16 MR. ROBERTS: Yes. Thank you.

17 BY MR. ROBERTS:

18 Q. Did you think the route was dangerous or not  
19 dangerous before the day of the fall with Mr. Cox?

20 A. Not dangerous.

21 Q. Okay. Could you elaborate for me?

22 A. Well, I mean, that area where -- well, it's  
23 not there now. That area next to the dumpster there  
24 where they run through, my office is right through  
25 those doors, that little -- where they walk. So my

1 little office -- my office is right there.

2 And almost every day, every other day, I'm on  
3 the phone. And I -- I'm a pacer. I pace. I walk and  
4 I pace. So I go outside and I -- right there, I walk  
5 around. I walk around all the time, three, four times  
6 a week, five times, sometimes every night.

7 And I was just thinking about this as I was  
8 doing it yesterday, that I -- and I have on shoes  
9 similar to what I have now. They're small, black  
10 sole -- small, black sole. They're a black leather  
11 shoe. I've had sneakers. I've had suede shoes. I  
12 have never, ever noticed, ever, dust on my shoes, ever.

13 David does that runaround -- or walks that  
14 prior to the people every day. And on stage -- on  
15 stage, we have never seen and never had to dust off his  
16 shoes, ever. So if there's thick construction dust, I  
17 would have seen it. That's -- I mean, I just --

18 MR. MORELLI: You know, objection, Your  
19 Honor. We're talking about this particular night --

20 THE COURT: All right.

21 MR. MORELLI: -- when Mr. Kenner has already  
22 told me on my questioning that he did not --

23 THE COURT: All right.

24 MR. MORELLI: -- go on that route.

25 THE COURT: You'll have an opportunity to

1 redirect.

2 Go ahead.

3 BY MR. ROBERTS:

4 Q. Prior to that night, had you ever found the  
5 route to be slippery or not slippery?

6 MR. MORELLI: Objection. Relevance.

7 THE COURT: Overruled.

8 THE WITNESS: Slippery? In the rain.

9 BY MR. ROBERTS:

10 Q. Yes.

11 A. And if it's raining, we do not make them go  
12 through the rain. We just vanish them.

13 Q. Okay. And you talked originally with  
14 Mr. Morelli about how, early on, the contestants were  
15 just vanished; correct?

16 A. Yes.

17 Q. And they did not reappear in the back?

18 A. We never did that at the MGM, but yes.

19 Q. Okay.

20 A. Except for, if it's raining, we would just  
21 not do it.

22 Q. Okay. So explain to the jury why you would  
23 not do it if it was raining.

24 A. Well, it's wet. It's -- you know, it's wet  
25 and slippery. We would be more -- in that particular

1 case, if you were to get wet and then walk into -- on  
2 the linoleum -- I can't -- I think it's linoleum --  
3 whatever the flooring is as you walk back in, that  
4 would be very slippery.

5           So we just -- we just -- there's no way we're  
6 going to do that. We would take -- there are times  
7 I've asked David not to do that. And there's a -- we  
8 have a -- we have a second way that he could go which  
9 we don't particularly like because he can be exposed to  
10 the audience. I think we've done it there at the MGM  
11 if it's been really raining hard.

12           Because here, as you know, it buckets. When  
13 it rains, it can rain for 15 minutes. And it's  
14 buckets. So you don't -- you know, you run out -- you  
15 run from here to you, you're covered in rain. So ...

16           Q. Does Mr. Copperfield -- do you have personal  
17 knowledge of whether Mr. Copperfield walks the exact  
18 same route as the participants in the Thirteen Illusion  
19 before the participants in the Thirteen Illusion take  
20 that route?

21           MR. MORELLI: Same objection, Your Honor.  
22 These are all leading questions. This is his witness.

23           THE COURT: He said "whether or not."  
24 Overruled.

25           THE WITNESS: Yeah. David walks it every

1 single show.

2 BY MR. ROBERTS:

3 Q. Okay. And how do you know this?

4 A. The trick, the illusion prior to the Thirteen  
5 Illusion is -- has that particular aspect of it, where  
6 David is going to appear in the back of the crowd like  
7 the -- like the group did. So he takes the exact same  
8 route, and he's -- he walks. He walks the route.

9 Q. Do you ever accompany him on that route he  
10 takes?

11 A. Yes, I have. Yes.

12 Q. If Mr. Copperfield had observed anything that  
13 appeared to be dangerous, would he have had the  
14 authority to have the participants not take that route?

15 A. Oh, yes.

16 Q. So even though you're the executive producer,  
17 he would have that authority?

18 A. Oh, yes. Yes.

19 Q. You were asked whether or not your authority  
20 was higher than Mr. Copperfield's, I believe --

21 A. Yes.

22 Q. -- at one point. Yes. Was that just in  
23 regard to hiring and firing, or are you a higher  
24 authority in all regards as respects the show?

25 A. No. If someone -- I catch someone stealing

1 or I catch something, I'm going to fire them right  
2 there on the spot. It's not -- I'm not going to call  
3 David and say, Hey, I'm going to fire such-and-such.  
4 If there's an issue, I'm going to let them go. I'm not  
5 going to even bother discussing it with David.

6 Q. So that the jury understands your  
7 involvement, do you participate in this illusion in any  
8 way, the Thirteen Illusion?

9 A. No.

10 Q. You don't personally participate?

11 A. No.

12 Q. And Mr. Morelli referred to some excerpts  
13 from your deposition. Do you remember how many years  
14 ago that deposition was taken?

15 A. Two, I think two-ish.

16 Q. About two years ago?

17 A. Yeah, about two years.

18 Q. January 2016 sound correct?

19 A. Yes.

20 Q. Yes. Does the show still perform the  
21 illusion on a regular basis?

22 A. No.

23 Q. How long has it been since the illusion was  
24 performed?

25 MR. MORELLI: Objection, Your Honor.

1 Relevance.

2 THE COURT: Overruled.

3 THE WITNESS: Approximately end of 2014,  
4 early 2015.

5 BY MR. ROBERTS:

6 Q. So it's been at least three years?

7 A. Yes.

8 Q. Okay. And two years since you were deposed  
9 about it?

10 A. Correct.

11 Q. Okay. And is your memory as sharp in  
12 recollecting the events about the screening and the  
13 other processes as it was several years ago?

14 A. No.

15 Q. Okay. Have you had a chance to review the  
16 protocols for the Thirteen illusion which you have been  
17 discussing with Mr. Morelli recently?

18 A. The protocols, like our little lists of dos  
19 and don'ts? Or not dos and don'ts, but the list of  
20 what the stagehands do?

21 Q. Well, let's back up a little bit.  
22 Mr. Morelli asked you if there were protocols for the  
23 Thirteen Illusion. Right?

24 A. Yes.

25 Q. You said there were. What were you referring



1 to?

2       A.    The -- what protocols for the safety part of  
3 Thirteen Illusion or just in general? There's so much  
4 protocol or not -- you say protocol. We would look at  
5 it like every single human being there has a track, and  
6 each person has a -- they have to do -- it's so much  
7 stuff goes into each illusion, it really is kind of  
8 hard to technically explain it because at any given  
9 moment in a -- in a trick.

10            Say, the Thirteen Illusion, 40 -- more than  
11 40 people are involved doing something at any given  
12 second. It sounds crazy when you look at it. When you  
13 watch the show, you think it's just two guys hitting a  
14 motor or there's motors, there's people lining the --  
15 the ways. It's -- I don't know how to describe this --  
16 answer this question, but ...

17       Q.    So let me ask it -- a better question. Are  
18 there both written protocols and protocols that are not  
19 written?

20       A.    Yes.

21       Q.    Okay. Do you have written protocols that  
22 govern, say, the screening, for example?

23       A.    Yes. I think there's a questionnaire thing  
24 where people -- questions they ask.

25            MR. ROBERTS: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. ROBERTS:

3 Q. I'm going to show you what's previously been  
4 marked as Exhibit D423. Could you review that for me  
5 and tell me if these are the written protocols for the  
6 Thirteen Illusion.

7 A. (Witness reviewing document.) Yes. Yes, it  
8 is.

9 Q. Thank you. Okay. I will put those back up  
10 on the screen.

11 A. Gosh, I forget how much stuff goes in.

12 MR. ROBERTS: Your Honor, I would move to  
13 admit 423, page 2, and 423, page 4, of the Thirteen  
14 show techniques.

15 MR. DEUTSCH: No objection, Your Honor.

16 MR. POPOVICH: Actually already admitted.

17 THE COURT: Stipulated.

18 MR. MORELLI: That makes it easier.

19 BY MR. ROBERTS:

20 Q. Okay.

21 MR. MORELLI: Lee.

22 MR. DEUTSCH: Your Honor, may we approach for  
23 a second?

24 MR. MORELLI: I think the whole thing has  
25 been stipulated.

1 THE COURT: It's stipulated.

2 The whole thing is stipulated, Counsel,  
3 according to this.

4 MR. DEUTSCH: So that's what we thought, Your  
5 Honor. Okay.

6 MS. FRESCH: I would rather have --

7 THE COURT: So that will be 423 in its  
8 entirety; correct.

9 MR. DEUTSCH: And it's five pages, just so  
10 we're clear.

11 MR. ROBERTS: Very good.

12 Audra, do you -- oh, can you toggle to  
13 Ms. Bonney?

14 THE COURT RECORDER: Yes, I can.

15 MR. ROBERTS: Thank you. Can you put up  
16 page 4, Audra, at the bottom one-third. Okay.

17 BY MR. ROBERTS:

18 Q. We're showing the jury, now, page 4,  
19 preselection backup criteria, Vegas. And this is for  
20 the Thirteen Illusion; correct?

21 A. Yes.

22 Q. And these are the written protocols as far as  
23 the criteria for screening the potential participants  
24 in the illusion; is that correct?

25 A. Yes.

1 Q. Okay. Can you run through this list and  
2 explain to the jury, just very quickly, what each one  
3 of them is, just in enough detail to -- to  
4 communicate -- you don't have to spend a lot of time  
5 explaining things you have already explained to  
6 Mr. Morelli.

7 A. Three people on standby are the three people,  
8 our three stagehands that would be there to ask  
9 questions, visually assess. Make sure they speak  
10 English. It is -- we have obviously spoken about that.  
11 Not a member of the press or media; we spoke about  
12 that. Not a magician; we spoke about that. They don't  
13 know anyone that works for our show or the MGM. I  
14 didn't mention that, but that's -- make sure that  
15 they're healthy enough to run.

16 Q. Stop there. I don't see physically fit on  
17 there. But you said generally before that you agreed  
18 with Mr. Morelli that you look for physical fitness?

19 MR. DEUTSCH: Objection, Your Honor.  
20 Impeaching his own witness.

21 THE COURT: He's asking for an explanation.  
22 BY MR. ROBERTS:

23 Q. I would like you to explain what you meant by  
24 physical fitness with Mr. Morelli and whether it's  
25 consistent with the written protocols before you.

1           A.    Well, God, I had so many conversations with  
2 Mr. Morelli. I hope --

3           MR. MORELLI: You sound like my wife now.

4           THE WITNESS: About healthy enough to run,  
5 it's again, if you're -- it's common sense, in a way.  
6 You look at a person. They're coming up. If they're  
7 stumbling, if they're inebriated, if they are showing  
8 any sort of obvious impairment of any way, you would  
9 just tag them, red flag them.

10           It's not like you're looking for a person  
11 that's physically fit, like they have to be an athlete  
12 that's going to run a marathon or that's going to go --  
13 Michael Phelps doesn't have to be the person that's  
14 doing this because if I -- you made it a criteria like  
15 that, it would be one person every time, and that's  
16 only if Michael Phelps came to the show every night.  
17 So it's, you know, it's hard to explain that.

18           Make sure that they're healthy enough to run,  
19 make sure they aren't -- so is that enough of the  
20 physical fitness part?

21 BY MR. ROBERTS:

22           Q.    Yes.

23           A.    Make sure that they aren't pregnant or have  
24 any disabilities, wounds, et cetera. So, obviously, if  
25 one comes up with an open wound or they have a cast on,

1 we would say, you know, we wouldn't want them to do  
2 that.

3 Pregnant, we've kind of gone over that.  
4 Obviously, we don't just --

5 Q. But it's not just pregnant. There are  
6 additional criteria on the same --

7 A. Yeah. Any disabilities. If anyone looks  
8 like they have any disability, you won't -- I don't  
9 want to sit and go through disabilities, but I think  
10 that you can figure out what that would be.

11 Pregnant. Preferably an Asian guy to speak  
12 English to be used as Mr. Miyagi, a joke David does,  
13 calls the second-to-last guy Mr. Miyagi. So if we just  
14 happen to have an Asian gentleman, he would be put in  
15 that spot in the line so he could say Mr. Miyagi. So  
16 he's calling people the Waltons or whatever the joke  
17 is.

18 Q. I noticed that Mr. Copperfield was tapping  
19 the participants in the video which you reviewed and he  
20 was calling them different names, though, like the  
21 Waltons, Gilligan, Professor.

22 A. Yeah, yeah, yeah.

23 Q. What's the purpose of that?

24 A. That's comedy. It's funny. He's there to  
25 entertain the -- entertain. So that's what he's doing.

1 It's, you know, those jokes work, those things work.

2 That's -- that's how show business is. That's how a  
3 show is.

4 Q. Okay. Next, next bullet point, next to last?

5 A. Next to last, no hip guys that might tell the  
6 secret.

7 Q. So are you telling your stagehands to try to  
8 screen out all young, hip guys, or just young, hip guys  
9 that they might believe?

10 A. Again, it's kind of a observation, and I  
11 think most of the people that do this are -- are girls.  
12 I think it's -- some of the people that are assessing  
13 this, I think they're females. So, you know, they have  
14 a pretty good idea of what young guy is going to be a  
15 certain way. You know, through their life they have  
16 been hassled or whatever, so they know, okay, this  
17 person will do this or this person -- so I think that's  
18 kind of -- kind of speaks for that. And ladies are --  
19 ladies are always okay.

20 Q. So are there any other written protocols for  
21 the preselection screening criteria for the  
22 participants of the show other than what's contained in  
23 this exhibit?

24 A. No. I think this is it.

25 Q. That's it. Okay.

1           Audra, can you put up page 2 now?

2           A.    Oh, you're asking a blind guy to read this.

3           Q.    The top third.

4           A.    Yeah.

5           Q.    Okay. Does page 2 at the top describe the  
6 requests that are asked?

7           A.    Well, it says that after the balls are  
8 thrown, someone needs to put the sign at the top of the  
9 stage left -- that's SL -- stairs saying "please use  
10 other stairs." That is so that we can direct everyone  
11 so that we can all give them the same directions on the  
12 other side. So if they decided to try to come up the  
13 wrong set of stairs, because there's -- on our theater,  
14 this particular theater, there's a set of stairs on  
15 each side of the stage. So if they would decide to go  
16 up the wrong way, there's a sign there, someone with a  
17 sign there, "use the other set of stairs." Then they  
18 cut around, go to the other side.

19                Every person comes on stage must have a ball  
20 and must be asked the following set of questions. "Do  
21 you speak English?"

22           Q.    So tell the jury what questions are asked,  
23 according to the written protocols.

24           A.    "Do you speak English? Are you a member of  
25 the press or media? Are you a magician? Do you know



1 anyone that works for the show? Are you able to run?  
2 Are you pregnant?" Vegas. Does anyone -- and the  
3 Vegas word means "Vegas" because if we weren't in  
4 Vegas, we wouldn't ask this question. Do you know  
5 anybody that works for the MGM?

6 After on stage, the dancer needs to ask each  
7 person "Do you speak English? Are you able to run?"  
8 even if the person is designated by M.D. as Skipper --  
9 m.D. would stand for Magic Dave. We sometimes call  
10 David Magic Dave. Sorry. Oh, my God -- as Skipper --  
11 which would be the -- the first joke for the Gilligan's  
12 Island -- Mr. Miyagi, et cetera, you must ask each  
13 person the question. If there is a conflict, notify  
14 Magic Dave on stage and set them down.

15 Q. Are there any other written protocols that  
16 describe the questions that, according to the written  
17 protocols for the Thirteen Illusion, must be asked?

18 MR. MORELLI: Is that a yes or no?

19 THE COURT: That's a yes or no. Is that what  
20 it is?

21 MR. ROBERTS: Well --

22 THE WITNESS: Yeah. No, this is it.

23 MR. MORELLI: It's just hard to do.

24 THE WITNESS: This is the only -- this whole  
25 document is the only thing we have for this. Yeah.

1 BY MR. ROBERTS:

2 Q. And what I would like you to tell me is if  
3 there's somewhere else we could go find more questions  
4 or is this it?

5 A. This is it.

6 Q. Do you see any questions about being a lawyer  
7 on there?

8 MR. MORELLI: Objection again. Same  
9 questions. Yes or no. Your Honor, you made a ruling  
10 about this, and I'm going to have to object every time,  
11 and I don't want to do it.

12 THE WITNESS: That's a yes-or-no question.

13 THE COURT: That's nonleading. Rephrase.

14 BY MR. ROBERTS:

15 Q. Do you have personal knowledge of whether the  
16 show requires the stagehands to ask if potential  
17 participants are lawyers?

18 MR. MORELLI: Same objection.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 BY MR. ROBERTS:

22 Q. When Mr. Morelli was talking to you about  
23 appropriate footwear and high heels, stilettos versus  
24 heels, flip-flops, other footwear, you wanted to  
25 explain about the judgment that was involved in that

1 assessment. Could you explain that to the jury?

2 A. Well, you know, heels, that's a -- that's a,  
3 you know, there's stilettos, there's kitten heels. I  
4 hate that I know that. There's, you know, there's all  
5 sorts of different kinds of heels. My wife could --  
6 there's all sorts of kind of, you know, heels that you  
7 could have. They could be thicker.

8 And there's also the way that you could watch  
9 someone walk in heels. You know, you could -- you can  
10 tell if a girl -- if you have been in a casino, you can  
11 tell, any woman that's walking, some people haven't  
12 walked in heels in a time, or they have been walking  
13 all night in their heels and they're tired. But you  
14 can also tell girls, that's all they do, wear heels.  
15 You can see it. So you're making that observation. It  
16 can't just be a thing where you just eliminate heels in  
17 general.

18 And I'm, you know, if it's like a 6-inch  
19 foot -- 6-inch foot? 6-foot stiletto -- 6-inch  
20 stiletto, you know, they're -- that person is going to  
21 have a hard time walking, much less running. So, you  
22 know, they just kind of have to look and see, and they  
23 use their judgment.

24 And again, these are mostly -- making these  
25 decisions are women, so they know. They're going to

1 look at it. Okay. That's good. She's good. She's  
2 good. You know, I may not know, but they would know.

3 Q. And the -- the whole thing about appropriate  
4 footwear, is that in written protocols or is that just  
5 something that people understand and talk about?

6 A. It's really just a -- yeah, it's -- it's part  
7 of the visual assessment. It's not like this crazy,  
8 in-stone thing. But, you know.

9 Q. Let's go back to the development of this  
10 illusion, the Thirteen Illusion. Could you explain to  
11 the jury where -- where the idea originally came from.

12 A. It originally came from -- there was a  
13 gentleman in Canada performing this -- this --  
14 basically this illusion, little different methodwise, a  
15 little different. He ironically called it the jury  
16 because it looked like a jury box. And --

17 Q. And let me stop you there. How many rows are  
18 there in the current illusion?

19 A. Two.

20 Q. Thank you. Okay. Keep going.

21 A. So we purchased it from this gentleman, and  
22 we didn't purchase the prop that we have; we purchased  
23 the idea of it. And we got his prop, which was much  
24 more -- I don't know -- "basic" is not the word.  
25 It's -- wasn't quite as -- it wasn't -- it definitely

1 wasn't as roadworthy as our prop because it has to be  
2 beefy. It has to travel in trucks. It has to come  
3 apart. So there's a lot to designing a prop like that  
4 to really travel. He did it in a show, a stationary  
5 show, so I think he didn't have to travel with it --  
6 travel it.

7           We purchased it and then kind of made it our  
8 own from the way the method would work and how -- you  
9 know, it might be the similar when they go out the  
10 back. But there's a lot to it, and a lot of things you  
11 can do to disguise that and make that better for the  
12 audience, better for us, and fool people. We try to  
13 fool -- we always try to fool magicians. We try to  
14 fool everybody. But, you know, we added our spin to  
15 and made it our own.

16       Q.   And how long was it between the time that  
17 Mr. Copperfield purchased the idea for this illusion  
18 and the first time that it was performed live in a  
19 show?

20       A.   Oh, that's years. Because you purchase it,  
21 you talk about it, you think about it, you mock it up,  
22 you figure out, you measure parts on stages to see how  
23 big it can be, how -- then you make sure how big the  
24 thing we call the dragon, because that has to be able  
25 to accommodate in a theater. Because if the front edge

1 of the stage is here and the prop is here and this  
2 dragon is really big, you know, it might hit the back  
3 wall in a small theater on the East Coast where there  
4 are a lot of smaller venues that are older. So you  
5 have to -- you have to make -- design it around all  
6 that.

7           So this process took a while, and then we had  
8 it built. And then, once it's built, we get it and  
9 then we rehearse it for -- my God, we carried that  
10 around with us for a while.

11       Q.    This was before you had a regular show at the  
12 MGM?

13       A.    Correct. We were at Caesars.

14       Q.    And was Las Vegas your home base at that time  
15 or some other place?

16       A.    No place. The road.

17       Q.    The road. Where did you do these practices  
18 with the illusion before it was performed?

19       A.    All over the world. First place we did it  
20 was at the Blaisdell theater in Hawaii.

21       Q.    So you had carried it along with you?

22       A.    Yes, we would take it with us. And if we had  
23 the room -- if we get to a theater and it's an arena,  
24 that means we have the room to unload that prop, take  
25 it out, play with it, fiddle with it. If we were in a

1 tiny theater, we wouldn't unload it. But if we had the  
2 space backstage during any show we were performing, we  
3 would take it out and try to work it out.

4 Q. Where was the first place that the illusion  
5 was performed in front of an audience?

6 A. I'm pretty sure --

7 MR. MORELLI: Your Honor, what's the  
8 relevance of this? This -- we care about the MGM Grand  
9 and this route.

10 THE COURT: Overruled.

11 MR. MORELLI: Is the route the same in --  
12 wherever this was?

13 THE COURT: Overruled. Go ahead.

14 MR. ROBERTS: Thank you, Your Honor.

15 THE WITNESS: I am pretty sure it was in  
16 Hawaii.

17 BY MR. ROBERTS:

18 Q. Mr. Morelli wants to know about the route.  
19 What would you do when you're out on the road? Would  
20 you look -- how would you design the route in different  
21 theaters all around the world?

22 A. Okay. So the very -- one of the very first  
23 things in any venue -- and we did one-nighters. So  
24 what that would mean is we would go to a city, we  
25 would -- and this sounds like we're crazy people. We

1 would load in the show starting at 7:00 in the morning.  
2 So they would -- our trucks would pull up to the dock.  
3 Nothing there. Nothing there. The theater is empty.  
4 We would unload the entire show, all the illusions,  
5 unpack them, set them up and do a show at 5:30, another  
6 show at 8:30, pack everything back up. By 2:00 in the  
7 morning, we're on the road to the next city.

8           So in a city like that, no matter how long  
9 we're going to be there -- a lot of times, it was one  
10 night -- one of the first things the stage manager  
11 does, one of the first things, not necessarily the  
12 first, but he would go and look to see what the best  
13 route for that trick would be because now it becomes  
14 the -- again, the process of the approval process. He  
15 would look for what's the easiest, what's the quickest,  
16 what's the safest. Was there no -- no -- and some  
17 theaters are very easy and some theaters are more  
18 difficult. Some theaters, you have to go outside; some  
19 theaters you don't.

20           And we also try to be in the best position in  
21 the house when they reappear. It's not like we just  
22 want to run them out and they're 2 feet from the stage.  
23 So it's better if you were to vanish from right there  
24 if you appeared here; not as good as if you appeared  
25 over there. So we try to find a good spot. So he has



1 to think about it.

2 He thinks about it. He tells myself or Homer  
3 Liwag. We walk it and look at it, and then we show it  
4 to David, every single time. And David will walk it,  
5 make sure it's the way he likes it. And that's how we  
6 discover each route. That's basically it.

7 Q. Do you recall the year the illusion was first  
8 performed live in front of an audience?

9 A. The year -- I don't know the exact year. I'm  
10 not sure.

11 Q. Okay. Do you recall when you first started  
12 performing in the MGM theater?

13 A. 2000.

14 Q. Okay. And at that time, in 2000, was the  
15 Thirteen Illusion part of the show?

16 A. Yes.

17 Q. You told Mr. Morelli that you participated in  
18 planning the route; correct?

19 A. Correct.

20 Q. And he pointed out at one place in your  
21 deposition back in 2016, where you said that something  
22 that he perceived, I believe, is inconsistent with what  
23 you said today.

24 A. Yeah.

25 Q. Could you explain to the jury the process

1 that you used in planning the route and who had the  
2 final approval?

3 A. Well, David will always have the final  
4 approval. Again, it's -- it's a -- we are all --  
5 there's so much stuff -- imagine doing the show and all  
6 the cues in the show -- that's kind of -- kind of try  
7 to touch on that.

8 Now imagine having to load the show in and  
9 load it out every single day. So there's a lot of  
10 stuff going on. So the stage manager, when he figures  
11 out the route, again, he's using his best judgment,  
12 runs through -- figures out where it would be and shows  
13 it to us. And then we decide if it's the best -- it's  
14 the best route that works, it's safe, and it's been --  
15 consistently, it's -- you know, obviously worked.

16 Q. Do you remember being asked about the  
17 comparison between the route that we saw the  
18 participants walk around the prop on the video --

19 A. Oh, yes.

20 Q. -- and comparing -- yes.

21 And I believe you were asked if you agreed  
22 that the walk around the prop on stage was more extreme  
23 than the walk of the route on the runaround. Do you  
24 recall that question?

25 A. Yes.

1           Q.    If I define extreme as meaning there's things  
2 to walk around on the stage and there are passageways  
3 that are narrower on the stage than ever go on the  
4 route from point A to point B --

5           MR. MORELLI:  Objection.

6           MR. ROBERTS:  -- if I define extreme that  
7 way --

8           MR. MORELLI:  Objection.  It was my question.  
9 We didn't define it; I just asked him the question.

10          MR. ROBERTS:  And now I'm defining it.  I'm  
11 defining the term.  Mr. Morelli wouldn't define the  
12 term for him.

13          THE COURT:  Go ahead.

14 BY MR. ROBERTS:

15          Q.    If we defined extreme as meaning there's more  
16 things to walk around on the stage and the passageways  
17 are narrower on the stage.  If I defined extreme that  
18 way, what's more extreme:  the walk around the prop  
19 on the stage or the runaround?

20          A.    The walk around the prop.

21          Q.    Okay.  Why?

22          A.    Well, there's -- if you look at them -- if  
23 you really were to watch it, it's very tight and there  
24 are lights -- big lights and these big giant stands  
25 everywhere.  And the cables that come off them, they're

1 not a cable like this. It's not an extension cord.  
2 It's like -- it's, like, that big (witness indicating).  
3 And you really have to, you know -- and --  
4 and the stage is black, the cables are black. It's --  
5 it's not in daylight; it's pretty dark back there. It  
6 might be darker than the entire runaround when they run  
7 the thing.

8 And it's, like, they jockey back and forth  
9 between -- if you put that there and this there and had  
10 to go like this, it's -- it's definitely more of a --  
11 probably easier to trip there.

12 But that was basically what I was trying to  
13 get at. If you were going to trip, you would trip  
14 there before you would trip in the open.

15 Q. Let's -- if we have time, let's look at a few  
16 pictures.

17 Do you recall the pictures that were  
18 date-stamped September 24th, 2014?

19 A. The ones he showed?

20 Q. Yes.

21 A. The ones of the walk, do you have a picture  
22 of it, the runaround?

23 Q. Yes. I'm going to ask you if you recognize  
24 one more photo from that set.

25 And, at this time, Your Honor, I'm just going

1 to show the witness for identification Exhibit 93-159.  
2 Do you recognize that photo?  
3 A. Yes.  
4 Q. Do you recognize the guy in that photo with  
5 no beard?  
6 A. That's me. Oh, God, I'm fat.  
7 MR. DEUTSCH: Lee, what number? 159?  
8 MR. ROBERTS: Yes.  
9 Move to admit 159.  
10 THE WITNESS: Can we redact my picture?  
11 THE COURT: What's the designation on it?  
12 MR. ROBERTS: 93-159, Your Honor.  
13 THE COURT: Are you offering it?  
14 MR. ROBERTS: Yes.  
15 THE COURT: Any objection?  
16 MS. FRESCH: No objection.  
17 MR. DEUTSCH: No objection.  
18 THE COURT: It's admitted.  
19 (Whereupon, Plaintiffs' Exhibit 93-159  
20 was admitted into evidence.)  
21 BY MR. ROBERTS:  
22 Q. Okay. So this is you?  
23 A. Yes.  
24 Q. So is it fair to say that you were present on  
25 the date that the series of photographs were taken with

1 that same date stamp?

2 A. Yes.

3 Q. Okay. Did you walk around with the

4 photographers?

5 A. Yes.

6 Q. Okay.

7 Audra, could you display 93-154.

8 MR. DEUTSCH: That one wasn't in.

9 MR. ROBERTS: That one was not in?

10 MR. DEUTSCH: 153.

11 MR. ROBERTS: 153. Oh, so I got

12 double-sided.

13 MR. DEUTSCH: I think 154 is the exact same

14 thing. I mean, a little different, but, basically,

15 it's the same.

16 MR. ROBERTS: Okay. So we can put up 153,

17 Audra.

18 MR. DEUTSCH: They're taken one second apart.

19 THE COURT: Is that 93-153?

20 MR. ROBERTS: 93-153, yes, Your Honor.

21 MR. MORELLI: It's already in evidence?

22 MR. ROBERTS: It's in evidence.

23 BY MR. ROBERTS:

24 Q. Okay. And all the way at the end here, up

25 the stairs and through that door, that's the prop;

1 correct?

2 A. Yes.

3 Q. Okay. Did you say something about a  
4 wide-open area when you came down the stairs?

5 A. Yes.

6 Q. Okay. Explain a little bit further what you  
7 meant.

8 A. As soon as you come down the stairs, the --  
9 can I stand up to point to this?

10 Q. Yes.

11 Do you have our pointer, Audra?

12 THE WITNESS: Well, the --

13 MR. MORELLI: Your Honor, I have no objection  
14 if he stands up.

15 THE COURT: That's fine.

16 BY MR. ROBERTS:

17 Q. Here. Chris -- Chris, let me give you this.  
18 This will probably make it easier. That way, you don't  
19 have to block the screen like a professor.

20 A. This right here, this side is -- is -- is  
21 going -- is coming straight -- it's hard to tell here,  
22 but it's coming straight in line with the tail of this  
23 dragon, as we call it.

24 And the reason is because they are going to  
25 go this direction. So we're doing everything we can to

1 make their guided path as easy as possible and as clear  
2 as possible.

3           So this -- they can't come out and run the  
4 other way. And there's a person here that's telling  
5 them to go this way.

6           So there's a cloth that's -- that's right  
7 here. So imagine a large cloth going from this spot --  
8 and it's -- I don't want to -- 10 feet tall, 12 feet  
9 tall. It's going all the way to what we call the wall,  
10 which would be a scenic wall of the show, the theater.  
11 So it's probably 15 feet away. So that's masking the  
12 audience seeing these people run out.

13           So they come down. And as they are going out  
14 from here, it's a big open area from this spot to --  
15 it's -- it's wider than this. I don't know the exact  
16 distance, but it's -- we'll call it 10 feet.

17           Q. Okay. Let me show you something that may  
18 help.

19           MR. ROBERTS: Move to admit 93-156.

20           MR. DEUTSCH: No objection, Your Honor.

21           MR. POPOVICH: No objection.

22           MS. FRESCH: No objection.

23           THE COURT: Admitted.

24                     (Whereupon, Plaintiffs' Exhibit 93-156  
25                     was admitted into evidence.)



1 BY MR. ROBERTS:

2 Q. Okay.

3 Could you display that. Thank you, Audra.

4 A. Now -- okay. This is the -- okay. This is a  
5 weird angle.

6 Q. It is, but you can sort of see.

7 A. Yes.

8 So that's the prop, that's the side -- this  
9 is the one that goes -- goes straight. And then it's  
10 opened on that side to go -- so they can -- they can  
11 run. So you can see how open -- open that area is.  
12 It's not like they come into a little tiny hallway.

13 Q. Just a second. You may want to stay up  
14 there, Mr. Kenner.

15 MR. ROBERTS: Your Honor, move to admit  
16 93-151.

17 MR. MORELLI: Tell him there's no objection.

18 MR. ROBERTS: No objection from the  
19 plaintiffs.

20 As long as we're okay on the defendants?

21 MR. POPOVICH: Yes.

22 MS. FRESCH: Yes.

23 THE COURT: It's admitted.

24 (Whereupon, Defendant's Exhibit 93-151  
25 was admitted into evidence.)

1 MR. ROBERTS: Thank you, Your Honor.

2 Audra, 93-151.

3 BY MR. ROBERTS:

4 Q. Is this angle a little bit better?

5 A. It's perfect.

6 So that's -- that's the -- that's the side  
7 that's -- so that they don't go that direction. The  
8 person would be standing here directing them out, which  
9 would be, like, straight sideways.

10 MR. ROBERTS: Your Honor, this would be a  
11 good time if the Court would like to break at the usual  
12 appointed hour.

13 THE WITNESS: I can go all night.

14 MR. ROBERTS: He just had a Red Bull.

15 MR. MORELLI: Stop bragging.

16 THE COURT: All right. We'll adjourn for the  
17 day. Ladies and gentlemen, we'll recommence tomorrow.

18 You're admonished, in the meantime, not to  
19 converse among yourselves or with anyone else,  
20 including, without limitation, the lawyers, parties,  
21 and witnesses, on any subject connected with the trial  
22 or to read, watch, or listen to any report of or  
23 commentary on the trial or any person connected with  
24 the trial by any medium of information, including,  
25 without limitation, newspapers, television, the

1 internet, and radio, or to form or express any opinion  
2 on any subject connected with the trial until the case  
3 is finally submitted to you.

4 I have something I've got to take up with --  
5 the Court has something to take up outside your  
6 presence tomorrow morning at 9:00. So instead of  
7 having you come back at 9:00, I'll have you -- we'll be  
8 resuming at 9:15 with the jury. All right?

9 So you're directed to return tomorrow,  
10 April 18th, 2018, no later than 9:10 a.m. outside of  
11 the courtroom, down to the south again, so that we can  
12 resume here at 9:15. All right?

13 Have a nice night, ladies and gentlemen.

14 Counsel, anything to come before the Court?

15 MR. MORELLI: Yeah. One thing.

16 MR. DEUTSCH: May we approach?

17 MR. MORELLI: Wait for them.

18 THE MARSHAL: All rise.

19 (The following proceedings were held  
20 outside the presence of the jury.)

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

22 MR. DEUTSCH: Very simple, Your Honor. We  
23 would just like Mr. Kenner to be reminded that he's  
24 still a witness on the stand and not to speak about his  
25 testimony with anyone tonight.

1 THE COURT: Yes. Do you understand that,  
2 sir?

3 THE WITNESS: I do.

4 THE COURT: Yes, do not discuss anything  
5 about your testimony.

6 THE WITNESS: Got it.

7 THE COURT: Okay.

8 MR. ROBERTS: Your Honor, one -- one  
9 additional thing just to note, before we get to  
10 tomorrow, is there were several times when Mr. Morelli  
11 was making objections saying it was leading because it  
12 called for a yes-or-no answer. I'd ask the --

13 MR. MORELLI: There must be a section  
14 somewhere that talks about --

15 MR. ROBERTS: -- Court to take a look at  
16 Salcedo v. State --

17 MR. MORELLI: It's amazing.

18 MR. ROBERTS: -- which is the Supreme Court  
19 of Nevada, 2014 WL 3685927, citing, one, McCormick on  
20 Evidence, Section 6, 7th Edition, quote, a leading  
21 question is one that suggests to the witness the answer  
22 desired by the examiner; citing People v. Pearson from  
23 California, "Questions calling for yes-and-no answer  
24 are not leading questions unless they are unduly  
25 suggestive under the circumstances."

1 MR. DEUTSCH: Which is -- which we thought  
2 his questions were.

3 THE COURT: I take the questions on a  
4 question-by-question basis.

5 MR. ROBERTS: I understand that, Your Honor.  
6 I appreciate it. Thank you.

7 THE COURT: Okay. We are off the record.

8 (Thereupon, the proceedings  
9 concluded at 5:03 p.m.)

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

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21 KRISTY L. CLARK, CCR #708  
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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, )  
husband and wife, )

9 Plaintiffs, )

10 vs. )

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

17 Defendants. )

18 MGM GRAND HOTEL, LLC., )

19 Third-Party Plaintiff, )

20 vs. )

21 BEACHER'S LV, LLC, and DOES 1 )  
22 through 20, inclusive, )

23 Third-Party Defendants. )

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

WEDNESDAY, APRIL 18, 2018

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,  
25 CA CSR #13529

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I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Chris Kenner		17, 65, 77 111, 197	114	
David Copperfield	206			

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
84-16		28	
84-14		29	
425		147	

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 18, 2018;

2 9:04 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 Convening in Cox v. MGM Grand Hotel, LLC.  
12 Please state appearances of counsel and  
13 identify parties and party representatives if present.

14 MS. CAHILL: LaTeigra Cahill with Randazza  
15 Legal Group for CVN.

16 MR. POPOVICH: Appearances.

17 MR. MORELLI: Benedict P. Morelli for the  
18 plaintiffs Gavin and Minh Cox.

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

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

23 MR. HARRIS: Brian Harris for the plaintiffs  
24 as well.

25 MR. POPOVICH: Good morning. Jerry Popovich

1 for MGM Grand Hotel, with Mr. Infuso and Ms. Davis.

2 MS. FRESCH: Good morning, Your Honor.

3 Elaine Fresch for David Copperfield, David Copperfield  
4 Disappearing, Inc., and with Eric Freeman.

5 MR. ROBERTS: Good morning, Your Honor. Lee  
6 Roberts and Howard Russell for Backstage Employment and  
7 Referral.

8 MR. CALL: Gary Call for Team Construction  
9 and Beacher's.

10 THE COURT: All right. Convening at this  
11 time on proposed intervenor Courtroom View Network's  
12 motion to intervene and motion to deem trial open.  
13 Okay.

14 MS. CAHILL: Thank you so much, Your Honor.

15 There is a long tradition of open access to  
16 the courts that predates the Constitution --

17 THE COURT: I understand that. My -- my  
18 concern, I think your motion is premised on a  
19 misunderstanding of what the Court has done.

20 MS. CAHILL: Okay.

21 THE COURT: I'm taking a look at the motion  
22 that was filed April 11th. And it says, at page 3,  
23 line 17, "The Court's order allows any witness to  
24 unilaterally deprive the public of that right by simply  
25 saying, quote, I don't want to be filmed, end quote,

1 without any argument that privacy rights or other  
2 rights will be at risk of harm."

3           Then it goes on to say, at page 4, line 16,  
4 "Moreover, CVN's coverage is limited to public trial  
5 proceedings. CVN does not record or broadcast matters  
6 that are not of public record, nor does it record the  
7 jury. This limitation fully comports with the  
8 restrictions on confidential and closed proceedings as  
9 set forth in Supreme Court Rules 239 and 242. CVN has  
10 recorded the testimony of high-profile witnesses in the  
11 past without incident or security risk."

12           And I think -- the problem I have is I think  
13 the premise -- the motion is premised upon a  
14 misunderstanding of what the Court has determined. If  
15 you take a look at the order -- if I can find it  
16 here --

17           MS. CAHILL: Yesterday's order?

18           THE COURT: The order that was April 17th;  
19 right?

20           MS. CAHILL: Yes, Your Honor.

21           THE COURT: Yeah. That -- that doesn't  
22 close -- it provides, in part, as follows, "It is  
23 ordered, adjudicated, and decreed that defendants'  
24 request to close certain portions of this trial to the  
25 public and media as they relate to the Thirteen

1 Illusion is hereby denied.

2 "It is further ordered, adjudicated, and  
3 decreed that there may be reason to preclude electronic  
4 recording or close the courtroom during certain  
5 portions of the trial related to the defendants' other  
6 illusions, as there are some things there that may be  
7 protectable trade secrets that would warrant the  
8 Court's consideration of closure of the proceedings  
9 and, therefore, must be ruled upon separately as the  
10 situations arise throughout trial."

11 I haven't -- I haven't said that witnesses  
12 could just say "I don't want to be filmed" or whatever.  
13 I think it's a witness-by-witness basis, a record will  
14 be made on each one.

15 MS. CAHILL: Thank you for clarifying that,  
16 Your Honor. And your order yesterday did clarify  
17 several of the issues.

18 We wanted to make sure that, yes, CVN does  
19 not want to film anything that's closed to the public.  
20 They will leave the courtroom along with everybody else  
21 in the courtroom, but they wanted to make sure that  
22 there were going to be no blanket sealings of witnesses  
23 saying "I prefer not to be filmed," and only they would  
24 have to turn off their cameras.

25 THE COURT: That's right. Also, for the

1 record, the motion is one for -- to intervene.

2 MS. CAHILL: Yes, Your Honor.

3 THE COURT: And under Rule 22, I'm just not  
4 so sure that that's the way that this issue would be --  
5 I mean, the issue has been raised. It's just that I  
6 don't know that intervention would be appropriate. I  
7 don't think CVN wants to intervene to become a party in  
8 the case; right?

9 MS. CAHILL: No, Your Honor. CVN does not  
10 want to be a party to the case; however -- so the  
11 defendants raised that an amicus brief would be more  
12 appropriate; however, we disagree. CVN is here to  
13 report; CVN is not here to weigh on their opinion on  
14 the case. CVN is not here to advise the Court.

15 THE COURT: Oh, I understand. But -- but,  
16 just for the record -- is it Rule 22 -- no. Sorry.  
17 It's Rule 24, I believe; right?

18 MS. CAHILL: Rule 24.

19 THE COURT: Yeah, Rule 24, NRCP 24,  
20 "Intervention of right and permissive intervention."  
21 Okay?

22 "Intervention of right pertains to, in part,  
23 when the applicant claims an interest relating to the  
24 property or transaction which is the subject of the  
25 action and the applicant is so situated that the

1 disposition of the action may, as a practical matter,  
2 impair or impede the applicant's ability to protect  
3 that interest," et cetera.

4           The permissive intervention in part, when  
5 a -- (b) (2) says, "When an applicant's claim or defense  
6 and the main action have a question of law or fact in  
7 common."

8           Also, those -- those provisions both also  
9 have a subsection (1) that says, "When the statute  
10 confers an unconditional right to intervene." But I  
11 think the whole idea of intervention is that you're  
12 coming in as a party, but ...

13           MS. CAHILL: Well --

14           THE COURT: And I'm not so sure that  
15 intervention is the context that we -- that we have  
16 here.

17           MS. CAHILL: Many courts around the country  
18 have used intervention as the tool, including courts  
19 here in Nevada and state courts. A case that we cite  
20 to, the Sands case, in our pleadings, it was also on a  
21 motion to intervene. There are cases around the  
22 country where reporters have intervened in cases.

23           Intervention is a proper procedure. I  
24 understand that it's not as of right; it is permissive  
25 only. However, intervention is the only conceivable



1 procedure because an amicus brief is simply not  
2 possible in this situation. CVN has no interest in  
3 weighing in on the advisability of the issues of law  
4 here today.

5 THE COURT: Okay.

6 Anybody else want to be heard?

7 MS. FRESCH: Your Honor, I think my papers  
8 set forth -- and, obviously, over the course of several  
9 days, you've heard my arguments. I would request that  
10 the motion to intervene be denied because it's too late  
11 and it's not -- meet the qualifications of a  
12 permissible intervention.

13 And then, with respect to the request for  
14 opening up the trial, I believe your prior order  
15 sufficiently addresses everything. So I don't --  
16 unless you feel I need to cite anything more about the  
17 Supreme Court rule or anything, I'll just submit.

18 THE COURT: Okay.

19 Anybody else?

20 All right. Very well.

21 Anything else to say, Counsel?

22 MS. CAHILL: No, Your Honor. I think that  
23 you've clarified the issues. I think that your order  
24 yesterday did stress what was going to be allowed and  
25 what was not going to be allowed. However, I do

1 maintain that intervention is the proper procedure  
2 under the rules.

3 THE COURT: Okay. And I saw your brief  
4 referring to courts that have allowed intervention and  
5 the like. It's just, conceptually, I'm just not clear  
6 on intervention being, you know -- not coming in as a  
7 party, and that's what intervention contemplates,  
8 becoming a party to the case.

9 MS. CAHILL: We're only intervening for the  
10 sole purpose of ensuring that there is open access to  
11 the court proceedings for the public and, by extension,  
12 the press.

13 THE COURT: Okay. Thank you very much.

14 I'm going to deny motion to intervene and --  
15 but that's subject to the ruling that the Court has  
16 already made relative to a determination of openness as  
17 to witnesses and -- and evidence on an item-by-item  
18 basis. Okay? The presumption will be that the  
19 courtroom is open.

20 MS. CAHILL: Okay.

21 THE COURT: So I need to have a proposed  
22 order submitted to me.

23 Ms. Fresch, will you --

24 MS. CAHILL: Your Honor, could I clarify that  
25 the order that the motion to intervene is denied based

1 on it being the permissibility?

2 THE COURT: Right.

3 MS. CAHILL: Okay.

4 THE COURT: Yes, that's fine.

5 MS. FRESCH: We can prepare an order, Your  
6 Honor.

7 THE COURT: Run it by counsel, please, so  
8 you're on the same page.

9 MS. FRESCH: Yes, we will.

10 THE COURT: And we need to reference -- what  
11 is it? -- 240?

12 MS. FRESCH: Supreme Court Rule 240 or --  
13 and --

14 THE COURT: And Rule 24.

15 MS. FRESCH: -- as well as NRC 24(b), yes.

16 THE COURT: Okay. Thank you very much.

17 I'll recess now so that counsel can get set  
18 up for the jury.

19 MR. DEUTSCH: Your Honor, may we approach for  
20 a second?

21 THE COURT: Sure.

22 MR. FREEMAN: Well, Your Honor, one more on  
23 this issue. Since your order yesterday has pretty much  
24 put this issue to bed regarding the media access, we  
25 filed a writ.

1           THE COURT: I saw that.

2           MR. FREEMAN: We have a private attorney  
3 coming as well this morning. So I'm making a oral  
4 request -- an oral motion to stay the proceedings. And  
5 you know, based on that, the -- the writ was filed  
6 allowing public and media to be around while trade  
7 secrets are being discussed. And we ask that the  
8 proceedings be stayed so the writ can be heard.

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

10          MR. DEUTSCH: We obviously think it's  
11 unnecessary, Your Honor.

12          THE COURT: All right. All right. Well,  
13 you've got your writ up there. Okay? I'm going to  
14 deny the motion to stay, though.

15          MR. FREEMAN: Okay. Technicality.

16          THE COURT: We'll see what happens.

17          MR. DEUTSCH: Your Honor, may we approach for  
18 a second?

19          THE COURT: Yes.

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

22          THE COURT: Court will be in recess  
23 momentarily.

24          THE MARSHAL: All rise.

25                   (Whereupon a short recess was taken.)

1 THE MARSHAL: All rise for the jury.  
2 (The following proceedings were held in  
3 the presence of the jury.)  
4 THE MARSHAL: This department is again in  
5 session.  
6 THE COURT: Please be seated. We're back on  
7 the record.  
8 Do counsel stipulate that the jury is  
9 present?  
10 MR. ROBERTS: So stipulated, Your Honor.  
11 MR. MORELLI: The jury is present.  
12 MR. POPOVICH: Yes, Your Honor.  
13 MS. FRESCH: Yes, Your Honor.  
14 THE COURT: Okay. Appearances were  
15 previously stated by counsel when the matter was taken  
16 up outside the presence of the jury.  
17 Are there any additional appearances to be  
18 noted for the record?  
19 MR. ROBERTS: No, Your Honor.  
20 THE COURT: Very well. You may -- the  
21 witness will retake the stand.  
22 MR. ROBERTS: Thank you.  
23 At this time, I'd like to continue my  
24 redirect of Mr. Chris Kenner.  
25

1 CROSS-EXAMINATION (Continued)

2 BY MR. ROBERTS:

3 Q. Mr. Kenner, do you have your pointer by any  
4 chance?

5 THE COURT: Just one second.

6 You realize you're still under oath, sir?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right.

9 BY MR. ROBERTS:

10 Q. Do you have your pointer with you?

11 Your Honor, I would ask permission for the  
12 witness to be able to stand. We're going to continue  
13 to review the photographs.

14 THE COURT: That's fine.

15 MR. ROBERTS: Thank you.

16 BY MR. ROBERTS:

17 Q. So, Mr. Kenner, when we broke yesterday, we  
18 were reviewing some of the photographs of the route of  
19 the runaround and I was asking you some follow-up  
20 questions about those photos.

21 I would like to continue at this time with  
22 Exhibit 93-160, which was admitted into evidence during  
23 your initial testimony with Mr. Morelli.

24 A. Okay.

25 Are we waiting?

1 Q. Big resolution photos, they take a minute to  
2 load.

3 A. Pardon me.

4 Q. There we go.

5 A. Okay.

6 Q. Okay. You can stand and take your pointer  
7 with you so you can point things out.

8 So remind the jury of who the gentleman is  
9 with the large spotlight in the back.

10 A. That would be the -- once they've exited the  
11 dragon and they've gone down that open area we spoke  
12 about yesterday, they make a little left jog. And,  
13 again, it's a short distance, maybe between here and  
14 the bench, where Mr. Morelli is at. And that gentleman  
15 would be holding a flashlight, be pointing it at the  
16 ground, and then directing them to turn.

17 Q. And who is that gentleman?

18 A. It's an MGM employee.

19 Q. Okay. And you -- you mentioned that it was  
20 follow the leader; correct?

21 A. Yes.

22 Q. Who was at the front of the line?

23 A. Ryan, that gentleman there.

24 Q. Okay. So explain the procedure. The --  
25 the -- the participants come down out of the dragon

1 into the open area. How do they know what to do?

2 A. They know what to do because, at the bottom  
3 of the dragon, there would be a person standing there  
4 also with a flashlight directing them "go this way."  
5 Even with no words, you could just do this  
6 (indicating), and there's no other way to go, as we  
7 talked about yesterday because it's basically a  
8 blockage of the other way.

9 So they turn here. And, again, this is very  
10 similar to that situation. They would run into a wall.  
11 This is a wall. So there's really only one way to go.  
12 So they -- they turn here towards this gentleman.

13 Q. Okay. At what point in time would the lead  
14 volunteer take Ryan's hand?

15 A. I think pretty quickly. You know, that --  
16 that may depend on, you know, the person and how  
17 they -- how they are with Ryan. You know, every human  
18 being is different when you interact with them. So I'm  
19 assuming very quickly he's going to take them.

20 By this time, he for sure is holding their  
21 hand.

22 Q. Did you mention that there were two reasons  
23 for the stagehand to be holding the spotlight?

24 A. For -- for Ryan?

25 Q. For Ryan to be holding -- okay. Tell me what



1 those two reasons are.

2       A.    Yeah, the main reason is because, in the --  
3 in the illusion, the people sitting in the front --  
4 let's say -- like I said, we call it the jury. So  
5 assume that you guys are in the prop. The center two  
6 people are given these large flashlights during the  
7 trick. He -- he's handing them into -- through the  
8 side of the curtain during the thing -- during the  
9 show -- the presentation of the effect. He's handing  
10 these giant flashlights in.

11               And this -- he -- he uses their name because,  
12 during the effect, David knows the name of the two  
13 center people. It's always a male and a female. So he  
14 knows their name. He says, "Pass this to Karen." And  
15 then you see the light move because our person is  
16 inside taking it, and they're gone.

17               MS. FRESCH: Your Honor, may we remind --  
18 have a brief sidebar?

19               THE COURT: Okay.

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

22 BY MR. ROBERTS:

23       Q.    I'm going to stop you for a second and just  
24 say that, you know, in order not to reveal any trade  
25 secrets of the illusion which have not already been

1 exposed by the lawsuit, could you -- could you rephrase  
2 your answer.

3 A. To not expose it? Okay.

4 So the large -- the large light -- the large  
5 light that Mr. Carvalho -- Ryan is carrying is to be  
6 given to the people that appear in the back of the  
7 house when they turn it on, because the effect is that  
8 you vanish from one spot and they appear in another.  
9 When they appear, they have to have the flashlights  
10 that we supposedly gave them in the effect.

11 So that large one -- there are two large  
12 flashlights. He is carrying one to hand to that girl  
13 who was one of the people that was supposed to have it.  
14 I'm, hopefully, not exposing anything. And then he  
15 gives it to her at the last minute. And then she turns  
16 it on when they're told to turn it on when David says  
17 (descriptive sound). And that's a technical term for  
18 "they're over there." And then they turn it on.

19 Q. Very good.

20 A. So that's -- hopefully, that kind of explains  
21 it.

22 Q. So this picture, we've already established,  
23 was taken almost a year later?

24 A. Yeah.

25 Q. During the illusion when the participants are

1 starting on the runaround, is there a gentleman where  
2 the gentleman with the spotlight is standing?

3 A. Oh, yes.

4 Q. And is that an MGM employee or a Backstage  
5 employee?

6 A. MGM stagehand, yes.

7 Q. Okay. And which way does he tell the  
8 contestants to go?

9 A. He tells them to take a left right there.

10 Q. Okay.

11 Audra, could we have 93-168.

12 This is already in evidence.

13 After you take that left, could you confirm  
14 to me that this is the next view you'd see?

15 A. Yes. Now -- now, that looks -- it's also  
16 very short. That door would be closed.

17 Q. Could you show the jury -- point to the door  
18 that would be closed.

19 A. That door would be closed. And they're  
20 coming here. The gentleman's standing here, basically  
21 facing this direction. So he will -- here, he's  
22 guiding them this direction.

23 Q. So just --

24 A. Make -- they come in here and they make a --  
25 starts a right.

1 Q. Could you take the pointer and trace the path  
2 on the carpet that the --

3 A. Yeah. So if this was a hidden -- like, wall  
4 wasn't there, they would be coming this way -- whoa --  
5 coming this way, and come down that way.

6 Q. Very good. And there would be someone at  
7 that corner?

8 A. Yes. Where this picture was taken, there  
9 would be a person there also.

10 Q. A number of times, Mr. Morelli has described  
11 the number of turns and transitions on this route. You  
12 heard those; right?

13 A. Oh, yeah.

14 Q. Is there any place that the volunteers have  
15 to make a turn where there was not either an MGM or a  
16 Backstage employee directing the way?

17 A. Turn? No.

18 Q. Okay.

19 Audra, could we have 93-171.

20 MR. DEUTSCH: I'm sorry, Lee. What number?

21 MR. ROBERTS: 93-171. I believe that should  
22 be admitted already.

23 MR. DEUTSCH: Yeah, I believe so.

24 MR. MORELLI: I think it's in.

25 /////

1 BY MR. ROBERTS:

2 Q. Okay. Could you describe to the jury where  
3 this is?

4 A. Okay. That's --

5 Q. Sort of a big picture.

6 First of all, the contestants have come  
7 outside. And they're heading which direction?

8 A. Well, they're heading -- they're coming out  
9 straight through that -- through that -- this hallway  
10 right here. There's a door -- the door is right there.

11 Q. Okay.

12 A. Like, if this person just packed up like  
13 this, they'd back right into the door. So the person  
14 would be standing basically right there. Again, with  
15 the flashlight pointing on the ground to go this  
16 direction, which is right. So they'd make that right  
17 turn.

18 And, again, it's a very short distance. As  
19 you can see, it's not far.

20 Q. Okay.

21 A. And then another gentleman is standing right  
22 here with a flashlight pointing this way towards --  
23 again, you can't see it here. These doors would be  
24 open. It's kind of obvious that's where you're going  
25 because these doors are open. It's very brightly lit

1 on the inside. So you can see that it's -- it's very,  
2 very obvious there. And then -- anyway, he's telling  
3 them where to go. So --

4 Q. There was an area where -- which was referred  
5 to earlier as "the point." Where is that?

6 A. Somewhere in this area here. You know, I'm  
7 not exactly -- the exact spot that they stand, but, you  
8 know, somewhere right there.

9 Q. And that would be the person directing that  
10 right-hand turn?

11 A. Correct.

12 Q. We've seen a number of different photographs  
13 of the outside portion of the runaround route.

14 A. Yes.

15 Q. Have you had many occasions to observe that  
16 at or around the time of this incident?

17 A. Yes. I think I mentioned before, I -- my  
18 office is right there. That door that was -- I said is  
19 normally closed, that's my office. So it's 30 feet  
20 from there, 40 feet maybe.

21 So, for privacy, a lot of times I'll go  
22 outside and speak on the phone right there. It's a  
23 nice place to just pace around. I'm a pacer. I walk  
24 around on the phone. So I'm out there every other day,  
25 every -- you know, a lot. The past few days I've been

1 out there, I've been out there every single night. You  
2 know, now that I think about it, I'm like, holy cow,  
3 I'm out here a lot.

4 Q. There was some discussion about how dark it  
5 is. Now, I'm not talking about dark that the sun is  
6 down, but how difficult is it to see, once the sun goes  
7 down, in this area at the MGM?

8 A. Okay. So last night -- again, I -- I have  
9 the advantage of being there. So I paced 30 feet -- my  
10 feet --

11 MR. DEUTSCH: Objection, Your Honor, to the  
12 relevancy of "last night."

13 THE WITNESS: Just -- nothing has changed  
14 in --

15 THE COURT: Overruled.

16 THE WITNESS: I walked. I paced my 30 --  
17 it's 30 -- basically 30 of my paces to my feet. So I  
18 don't even know if that's the distance of this room  
19 from that door to the sidewalk of Tropicana, which is,  
20 obviously, just lit for pedestrians. So this is -- and  
21 that same light lights the street of Tropicana, which  
22 is also lighting the buildings. So it's basically like  
23 walking on the sidewalk, barely any dimmer than the  
24 sidewalk right there.

25 So I don't know what dark is, you know. So,

1 I mean, I pace around and walk around out there. It's  
2 not like I need a flashlight to see where I'm going.

3 BY MR. ROBERTS:

4 Q. Let me ask you this: Would a person -- in  
5 your opinion, would a person standing right where this  
6 photographer is, just as he's come out the door, have  
7 any difficulty seeing the person on the point at night  
8 in this location?

9 MR. DEUTSCH: Objection, Your Honor. State  
10 of mind of someone else.

11 THE COURT: Overruled.

12 THE WITNESS: Yeah. Even without a  
13 flashlight, you could see the person.

14 BY MR. ROBERTS:

15 Q. Would you be able to see their hand motions?

16 A. Oh, yes.

17 Q. Would you be able to see the volunteers in  
18 front of you turning that corner?

19 A. Correct.

20 MR. ROBERTS: Your Honor, I move to admit  
21 Exhibit No. 84, No. 16, 84-16.

22 MR. POPOVICH: No objection here.

23 MS. FRESCH: No objection.

24 MR. DEUTSCH: No objection, your Honor.

25 THE COURT: All right. It's admitted.



1 (Whereupon, Defendants' Exhibit 84-16  
2 was admitted into evidence.)

3 BY MR. ROBERTS:

4 Q. So we're going to show you now another  
5 picture of this area, and this is the view over across  
6 Tropicana. And I'd just like to caution you this is a  
7 Republic dumpster. So this is later and it's a  
8 different construction. This is not the dumpster that  
9 you've heard testimony about. What I would like to ask  
10 you, is this is an accurate view --

11 A. Where is this?

12 Q. -- of what you would see as you looked across  
13 Tropicana Avenue from the door where the volunteers  
14 first exit the building on the runaround route?

15 A. Yeah, I don't know exactly the spot this  
16 photo was taken from. It's within a few feet of that  
17 door, that area. I just can't tell exactly 'cause --

18 Q. Can you see the Tropicana from --

19 A. Oh, yeah, yeah. It's exactly the view we  
20 have. I just don't know how many feet away from this  
21 door this is taken. Yeah.

22 Q. But you can see Tropicana hotel?

23 A. Oh, yeah, yeah.

24 Q. You can see the cars going up and down?

25 A. Yeah. And that's exactly it, that door.