

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 6

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1 MR. ROBERTS: At this time I would like to
2 move to admit Exhibit 84, No. 14, 84-14. This is one
3 of the four I showed before court.

4 MR. DEUTSCH: Thank you.

5 MR. POPOVICH: 84-14.

6 MR. ROBERTS: 84-14.

7 MR. POPOVICH: No objection.

8 MS. FRESCH: No objection.

9 MR. DEUTSCH: None, Your Honor.

10 THE COURT: It's admitted.

11 (Whereupon, Defendants' Exhibit 84-14
12 admitted into evidence.)

13 BY MR. ROBERTS:

14 Q. Okay. Is this -- is this another view which
15 accurately depicts what the volunteers would see as
16 they rounded the point?

17 A. Correct.

18 Q. And you mentioned the door would be open and
19 light be coming out of it?

20 A. Yes. And I think, during the effect, both
21 doors are open. That's just one. So I think the
22 double doors are open, so it's even more light than
23 this.

24 Q. Can you tell me, based on your own views of
25 this scene, whether or not the lighting reflected in

1 this photograph accurately reflects the visibility at
2 8:40 at night when the illusion is performed?

3 MR. DEUTSCH: Objection, Your Honor. There's
4 a flash in the photograph, which he's already
5 established.

6 THE COURT: Well, he can -- he can answer the
7 question as to his perception.

8 THE WITNESS: Yeah. I mean, I know a little
9 bit about flashes and cameras. No, I mean, you're
10 going to say it's a flash, it's a flash. But flash
11 also darkens the background. If you take a picture of
12 someone, I take a picture of you, even in this room,
13 the background is going to be --

14 MR. DEUTSCH: Objection, Your Honor. Is he
15 an expert now in cameras and not a scientist? Move to
16 strike, Your Honor.

17 THE COURT: Sustained. Motion is granted.
18 The jury will disregard the last part.

19 BY MR. ROBERTS:

20 Q. Is what you were saying, that the foreground
21 looked a little brighter than it actually is and the
22 background looked a little darker than what it actually
23 is in --

24 MR. DEUTSCH: Objection, Your Honor.
25 Leading.

1 THE COURT: Sustained.

2 BY MR. ROBERTS:

3 Q. Let me go back to my original question,
4 Mr. Kenner.

5 A. The building looks much brighter in real
6 life.

7 MR. DEUTSCH: There's no question, Your
8 Honor. Move to strike.

9 THE COURT: Motion is granted. Next
10 question.

11 BY MR. ROBERTS:

12 Q. Let's go back to my original question. Does
13 the lighting, as reflected in this photograph taken a
14 year later, accurately reflect the lighting conditions
15 in the evening on the runaround route? And feel free
16 to explain any discrepancies you see.

17 A. I'm sure I will be told I'm not a photography
18 expert. So the building looks brighter to me during
19 the -- during this time. In real life, if you were
20 staring at the building, if you were standing there
21 looking at the building, it wouldn't look that dark.

22 Q. In real life, is it -- is there enough light
23 to see where you're going?

24 A. Yes.

25 MR. DEUTSCH: Objection, Your Honor. Depends

1 on the person, necessarily.

2 THE COURT: He can state his perception.

3 Overruled.

4 MR. DEUTSCH: Okay.

5 BY MR. ROBERTS:

6 Q. On the many occasions that you go out in this
7 area and use your phone and pace, have you ever had any
8 difficulty seeing where you were going?

9 A. No.

10 Q. So do you know what construction dust looks
11 like?

12 MR. DEUTSCH: Objection, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: I looked up construction dust
15 this morning online.

16 MR. DEUTSCH: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. ROBERTS: That's --

19 THE WITNESS: So I can't look up construction
20 dust?

21 BY MR. ROBERTS:

22 Q. No. Let -- let me start over, Mr. Kenner.
23 If you looked at the concrete prior to this morning
24 when you did some independent research, would you have
25 been able to tell the difference between dust on the

1 sidewalk and construction dust on the sidewalk?

2 MR. DEUTSCH: Objection.

3 THE COURT: He can state his perception.

4 Overruled.

5 THE WITNESS: Yes. From what I have seen and
6 read recently, I would definitely say I could tell the
7 difference between dust and construction dust.

8 BY MR. ROBERTS:

9 Q. Do you see the white all over the concrete?

10 MR. DEUTSCH: Objection, Your Honor. May we
11 approach? I don't want to say it in front of jury.

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

14 MR. DEUTSCH: Just move to strike the last
15 question, Your Honor.

16 THE COURT: Motion is granted. Jury will
17 disregard the last question. You'll rephrase, Counsel.

18 MR. ROBERTS: Thank you.

19 BY MR. ROBERTS:

20 Q. Let me ask you a different question.

21 In this area outside the building, have you
22 ever gotten dust on your clothes, even though you could
23 not visibly see dust on the sidewalk?

24 MR. DEUTSCH: Objection, Your Honor.
25 Relevance.

1 THE COURT: Overruled.

2 THE WITNESS: No.

3 MR. ROBERTS: So the only thing I wanted
4 to ...

5 (Discussion was held off the record.)

6 BY MR. ROBERTS:

7 Q. Okay. And Mr. Morelli showed you some
8 photographs that were four on a page?

9 A. Yes.

10 Q. Okay. The only thing I wanted to clarify,
11 were you aware that all of those photographs were
12 taken, again, after the accident that was in about July
13 of 2014?

14 A. Yes.

15 Q. Okay. And so they accurately depict the
16 runaround but not the conditions on the very night of
17 the runaround; correct?

18 A. Yes.

19 MR. ROBERTS: Audra, if I could have 403-9
20 which was admitted yesterday.

21 BY MR. ROBERTS:

22 Q. Remind the jury of what this depicts.

23 A. Okay.

24 MR. DEUTSCH: Lee.

25 THE WITNESS: This -- this is the door into

1 what they call the kitchen, which there's no food made
2 there, but we -- they call it the kitchen. There's
3 a -- it's a bar, a bar area. These are the doors that
4 are open that they come through. And this is that big,
5 giant hallway. So these are the basically emergency
6 exit doors for the hotel. And it's right next to the
7 cage, so that's why they're so secure.

8 And this is the doors that the security guard
9 opens. And, again, I think they're both open when
10 this -- when they go through here. They come through
11 here, round this, and go into the kitchen area, what we
12 call it. We call it kitchen, so we'll call it the
13 kitchen.

14 BY MR. ROBERTS:

15 Q. So you could take your pointer and trace the
16 path on the carpet that the volunteers would follow?

17 A. From here, they come out and go into here,
18 and then they're going to go right there.

19 Q. At the point where the volunteers enter those
20 doors and walk on that carpet, have they just come from
21 that outside area where the fall occurred?

22 A. They're in -- they're in that big -- this is
23 the -- behind this door is that long, open hallway
24 between the -- this and the exit doors. So it's as big
25 as this room with a bunch of doors. Like, if you put a

1 bunch of doors here, a bunch of doors there, it would
2 be basically this.

3 Q. So they come in from the outside area where
4 the fall occurred, they run through a room about as big
5 as this. And what's the flooring material in that
6 room?

7 A. It's -- I think it's linoleum-ish. I keep
8 saying linoleum; I know it's not linoleum. It's
9 whatever the -- I -- it's "linoleummy." I don't know.

10 Q. Okay.

11 A. I'm not a flooring expert. I need a flooring
12 scientist.

13 Q. And were you aware that this photograph was
14 taken by MGM as a result of their investigation of this
15 incident on the very night of the incident?

16 A. I was not.

17 Q. Okay. Do you see any type of dust on the
18 carpet along the path that the participants would have
19 taken?

20 A. No. And I go through that door into that way
21 five times a day, every single day. We do shows every
22 single day.

23 Q. And, Mr. Kenner, would every volunteer in the
24 show who would run past the dumpster have also,
25 immediately or within seconds after, traipsed across

1 that carpeting?

2 A. Yeah. Within 10, 15 seconds, they're walking
3 through that carpet.

4 Q. And Ryan and Pomai would have also walked
5 through the same area?

6 A. Correct.

7 Q. And walked on that carpet?

8 A. Correct.

9 Q. So did you know that MGM had investigated
10 this incident on the very night of the incident?

11 A. I heard later. I did not know it that
12 evening.

13 Q. You explained to the jury yesterday that the
14 protocol was to call the MGM, not you, as the first
15 thing to do; correct?

16 A. Correct.

17 MR. DEUTSCH: Objection, Your Honor, to the
18 leading nature of all these questions.

19 THE COURT: Sustained.

20 BY MR. ROBERTS:

21 Q. Jury has heard it before. Tell the -- tell
22 the jury what the protocol is if someone says they have
23 been injured during the show.

24 A. Well, any --

25 Q. On the runaround or anywhere.

1 A. If a person is injured anywhere, we would
2 contact the MGM security first and foremost. We have
3 reiterated that through the MGM many times. And you --
4 first thing you would do is you tell your manager, if
5 you're not standing right next to a security guard,
6 because there's not -- there's, like, two or three at
7 any time, roaming around the backstage area.

8 And you would tell the security, who can
9 immediately radio it in, and they can call. Again,
10 they have a special number. They don't call just 911
11 from the hotel. They have another number they call
12 that -- so that they know it's legitimately the MGM,
13 they know it's a real problem, and they know it's
14 coming from security. So they call, they dispatch the
15 person, they come.

16 And in the meantime, the security has
17 dispatched their ER person that can come and assist if
18 there's any issue that they can take care of
19 immediately on site, live, right there. And that would
20 be a procedure. And that's far more important than
21 telling me, telling David, telling anyone. It's
22 dealing with the safety of the person.

23 Q. And do you know whether or not it's the
24 standard practice for MGM to create an investigation
25 report whenever your staff reports an incident to them?

1 A. I'm pretty sure they make a report with
2 everything. When they -- when there's any incident,
3 you know, we basically, you know, rely on the MGM for
4 that as part of our deal kind of.

5 Q. On the night of the incident, based on what
6 you know now, do you believe that your staff followed
7 these protocols when Mr. Cox reported that he had been
8 injured on the runaround?

9 A. Oh, absolutely.

10 Q. Talking about the MGM, remind the jury who
11 Mr. Habersack is.

12 A. He's the -- was head of risk management. I
13 used the word safety, head of safety, but he's head of
14 risk management for the MGM.

15 Q. And do you recall Mr. Morelli reading a
16 portion of his deposition under oath to you yesterday?

17 A. Yes.

18 Q. Okay. And have you reviewed that deposition
19 prior to that time?

20 A. Mr. Habersack's? No.

21 MR. ROBERTS: Your Honor, permission to
22 display page 64, Mr. Habersack's deposition, the
23 deposition of a party, which was read into the record
24 yesterday.

25 MR. DEUTSCH: Can I have one second, Your

1 Honor, to pull it up?

2 MR. POPOVICH: Me too.

3 BY MR. ROBERTS:

4 Q. While he's pulling that up, you said you tell
5 your managers. Who are your managers?

6 A. The managers would be in -- there's -- it's
7 kind of -- we're little compartmentalized. So let's
8 say that David's personal assistants, there would be a
9 manager for -- there's, like, six personal assistants,
10 so they would have a managerial person. At that time
11 that would have been, I think, Stacy De Rosa. I'm not
12 sure. I'm not sure who that was at the time.

13 Then management on stage, in the case of it
14 being one of our employees, a Backstage employee
15 calling, it would be -- we would call -- we would go
16 directly to Brian, who's an assistant stage manager,
17 which would be management, or to Jay, Jay Harmas, who
18 is the stage manager.

19 And we also have a company manager, who, if
20 there's any issue too, a lot of times we go first from
21 the person that would witness anything, whatever it
22 would be that needs to be brought to a manager, to
23 their management. And then we go to -- to company
24 manager, who is Lori Gamble, and then to me. That
25 would be the process. Because some things can get

1 solved before it gets to me and it's not an issue
2 that -- you know, as any company, you try to stop the
3 things before they go as high up as they go.

4 Q. You told the jury yesterday, as executive
5 producer, you are the boss of the show. Right?

6 A. Yes.

7 Q. Okay. Tell the jury about your -- your
8 management style. Or do you micromanage every detail
9 of the show or do you delegate to your managers?

10 A. Oh, we delegate. It's very difficult. You
11 know, we have been -- I kind of mentioned a little bit
12 yesterday, we -- there's so many cues and issues and
13 things in the show. So the show is a gigantic machine.
14 It's like a shark that's swimming in the ocean, and if
15 it stops, it just can't stop; it's got to move. And it
16 takes all these people to make it move.

17 So to know every single thing and to
18 micromanage every little detail of that show would be
19 very difficult. Like the sound person has -- it's -- I
20 didn't ask yesterday, but I have asked before and
21 it's -- it's over 800 cues just in the first half of
22 the show. We have tricks that have 75 cues, where she
23 consistently has to hit a button and be on the thing,
24 and she is making sure the mic levels are correct.
25 That's just one human being. And then the lighting

1 person, and then you got each person doing a track.

2 MR. DEUTSCH: Objection, Your Honor. In
3 light of the objections by the defendants about other
4 pieces of the show that aren't relevant, I would move
5 to strike this.

6 THE COURT: Next question.

7 MR. ROBERTS: Thank you, Your Honor.

8 BY MR. ROBERTS:

9 Q. Let's go back to Mr. Habersack.

10 A. Okay.

11 MR. ROBERTS: I believe no objection?

12 MR. DEUTSCH: Well, one question.

13 MR. POPOVICH: That was my concern as well.

14 If it's just the question and answer, no problem.

15 MR. ROBERTS: Just a second, Your Honor.

16 We're going to do something very high tech here.

17 THE WITNESS: Judge, I actually have a
18 question for you now that something's -- I would like
19 to ask you.

20 THE COURT: Hold on a second. Bench
21 conference, counsel.

22 MR. ROBERTS: We are just doing a little
23 courtroom origami, Your Honor.

24 THE WITNESS: No. I have a question.

25 MR. POPOVICH: Well, before.

1 (A discussion was held at the bench,
2 not reported.)
3 THE WITNESS: I have a question.
4 THE COURT: I would like to direct an
5 admonition to the recorders, all right, cameras and
6 recording equipment. Bench conferences are not to be
7 recorded.
8 MS. CAHILL: Not recording.
9 THE COURT: And I'm told that there are times
10 when -- when it's not being turned off.
11 MR. DEUTSCH: The audio.
12 THE COURT: The audio portion of the bench
13 conference.
14 UNIDENTIFIED SPEAKER: This is off. Not
15 recording.
16 MR. HOFFMAN: Also not recording.
17 MR. POPOVICH: I know what I was told.
18 THE COURT: Well, just be very careful.
19 Bench conferences are not recorded. All right?
20 MR. POPOVICH: Thank you, Your Honor.
21 THE WITNESS: I have a question.
22 (A discussion was held at the bench,
23 not reported.)
24 THE COURT: All right. We're back on the
25 record.

1 BY MR. ROBERTS:

2 Q. Okay. We're going to go back to
3 Mr. Habersack --

4 A. Okay.

5 Q. -- and what he said. And to refresh your
6 recollection, he was referring to that elevation change
7 after you turn the point. There's an elevation change
8 as you go up to the doors.

9 A. Correct.

10 Q. Okay. And this is what was read to you
11 yesterday.

12 MR. ROBERTS: Could I have the ELMO?

13 THE COURT RECORDER: It's on.

14 MR. ROBERTS: It's on?

15 THE COURT RECORDER: I'm sorry. Now.

16 MR. ROBERTS: Very good.

17 BY MR. ROBERTS:

18 Q. There we go. Okay.

19 So the question is, "So with that in mind,
20 would you expect that Mr. Copperfield would warn his
21 participants of the elevation change as they're
22 participating in the act?"

23 His answer: "Okay. I'm sorry. Anybody
24 else want to chime in on this? I mean, any prudent
25 person would, would be my answer. I would hope that

1 they would explain to the customer, or through whatever
2 vetting process that they have prior to the illusion,
3 to make sure the participants are actually able to
4 maneuver this and perform it."

5 Did I read that correctly?

6 A. Yes.

7 Q. Okay. And we established yesterday that you
8 did not explain to the customer -- in this case,
9 Mr. Cox -- that he would be encountering that elevation
10 change; correct?

11 A. Correct.

12 Q. But Mr. Habersack says that you would either
13 do that or, through whatever vetting process that they
14 had prior to the illusion, make sure that the
15 participants are able to perform it, to navigate that
16 ramp, that elevation change.

17 Do you have an understanding of whether or
18 not you did, through the vetting process, try to make a
19 determination of whether someone would be physically
20 able to navigate that mild elevation change?

21 A. Yes. I think we kind of covered that
22 yesterday.

23 Q. So do you believe that, based upon what
24 Mr. Habersack said, you satisfied his concerns through
25 one of his alternatives?

1 MR. DEUTSCH: Objection, Your Honor.
2 BY MR. ROBERTS:
3 Q. Did you satisfy Mr. Habersack's concerns --
4 THE COURT: Rephrase.
5 BY MR. ROBERTS:
6 Q. -- in your opinion?
7 MR. DEUTSCH: Objection, Your Honor.
8 THE COURT: State another question.
9 MR. ROBERTS: I said "did."
10 BY MR. ROBERTS:
11 Q. Did you satisfy his concerns?
12 A. Yes.
13 Q. Okay. You told the jury yesterday that you
14 didn't think the runaround route was dangerous.
15 A. Correct.
16 Q. And you heard Mr. Morelli said it was fraught
17 with danger?
18 A. Yes.
19 Q. Do you agree with that?
20 A. Do I agree it was fraught with danger?
21 Q. Yes.
22 A. No.
23 Q. Just so there's no misunderstanding with
24 terminology and ambiguous, explain to the jury what, in
25 your mind, you were thinking of.

1 How do you define danger or fraught with
2 danger when answering that question? What do you mean
3 by that?

4 A. Well, you know -- and obstacles in the way
5 would of course be, you know, an issue. But we -- we
6 move -- there's just nothing there. We walk this so --
7 we've done this so many times, I -- I don't know how to
8 describe it. It's not fraught with danger. It's --
9 we -- 600 shows a year, we run people through there,
10 walk people through there. How they get through,
11 it's -- just do it so many times.

12 We, when we get there, check out any kind of
13 a runaround situation. We check every single part of
14 it. We check it, we walk it. We show it to David. He
15 walks it. We make sure it's safe. We make sure it's
16 fine. I don't have any -- I don't know how to describe
17 it other than we just, through repetition, have looked
18 at it every -- it's not once a night, it's not twice a
19 night, because multiple people walk through there every
20 single show.

21 Q. Yesterday, Mr. Morelli established that no
22 one told you about this incident on the night of the
23 incident.

24 A. Correct.

25 Q. Okay. Nevertheless, if this was common, do

1 you believe you would have heard about it?

2 A. If it was common?

3 Q. If it was common.

4 A. Oh, yes.

5 Q. Mr. Morelli did some statistics with you

6 about tossing a coin and every event is the same

7 probability.

8 A. Right.

9 Q. Right.

10 MR. DEUTSCH: Objection, Your Honor.

11 Misstates his testimony.

12 BY MR. ROBERTS:

13 Q. That every time you flip the coin, it's

14 50-50, regardless of even if you had three heads or

15 three tails in a row before that.

16 A. Correct.

17 Q. Okay. What you tried -- I thought I heard

18 you trying to explain something to him, yes, but if you

19 did it enough times, it would even out?

20 A. Well --

21 Q. I didn't -- explain to the jury what you --

22 what you meant by that.

23 A. Just having dealt with -- again, he mentioned

24 I have had coins in my hand a lot. So having dealt

25 with coins and -- and the probabilities of coin tosses,

1 that's -- I mean, I've heard magicians do magic tricks
2 when they -- they give an explanation of probabilities
3 of coin tosses. Coin tosses just aren't -- it doesn't
4 work that way, it's just 50-50 at some point. This is
5 kind of pointless in a way, but yeah.

6 I don't know what else to say. That's such a
7 strange -- the coin toss analogy is a strange analogy
8 because it's not a 50-50 chance that a person is going
9 to fall every night and, flipping a coin, it's going to
10 be the next night. And it did it 100,000 times heads,
11 and then the next time you flipped it and it's tails.
12 It's not like that. It's not -- it's not a probability
13 thing.

14 Q. What you were trying to say is that if you do
15 something enough times and it's dangerous --

16 A. Well, you do it enough times, somebody may,
17 you know, fall. If you walk -- I -- I mean, can I just
18 make a general observation of this place?

19 MR. DEUTSCH: Is it in response to a
20 question, Your Honor?

21 THE COURT: I think --

22 BY MR. ROBERTS:

23 Q. Are there similarities --

24 A. Is that yes?

25 /////

1 BY MR. ROBERTS:

2 Q. -- to dangers that you --

3 THE COURT: You have to respond to questions.

4 BY MR. ROBERTS:

5 Q. Are there similarities to dangers in this
6 courtroom similar to the ones on the route?

7 MR. DEUTSCH: Objection, Your Honor.

8 THE COURT: I'll allow it.

9 THE WITNESS: Every day I have been here I've
10 watched you guys walk in this room. And it's a similar
11 route. If you really think about it, you walk through
12 a hallway, you're on different surfaces, you walk up a
13 ramp. I don't know if anyone's ever mentioned, "Hey,
14 guys, there's a ramp there." That ramp actually has a
15 lip on the end of it. It's just an even ramp -- even,
16 level thing here. That's -- that's a lip right there.
17 Right here, there's objects in the way. We would never
18 allow that. This is a more severe ramp than that one.

19 And when you leave here single file, it's
20 exactly like the people leaving single file. And it's
21 kind of -- they go open area, they make a turn, a --
22 one turn, and then they make a turn through a doorway
23 and they're in another area. It's like that.

24 You guys don't even have anyone guiding you.
25 The very first time you went, did someone tell you you

1 had to go this way, that way? And before you walked in
2 the room, did they vet you with that set of stairs and
3 that ramp and tell you you're going to pass a ramp
4 that's going to -- you could possibly trip on?

5 This is a courtroom. There's a police
6 officer in here.

7 BY MR. ROBERTS:

8 Q. Okay. Let -- I think they got the idea.
9 Let's move on.

10 A. I just ...

11 Q. The jury has heard reference to it -- and I'm
12 sure they'll hear again about a speech that Ryan gives
13 to the participants after they've performed in the
14 illusion.

15 A. Correct.

16 Q. And that's scripted; right?

17 A. It's scripted, but I think that Ryan gets
18 to -- it's -- anytime you have a little script like
19 that, each person's a little different. So they might
20 choose words -- words -- because once they've done
21 it -- they do it twice a night, so they do it 600 times
22 a year -- 640 times a year. He's going to add his own
23 little twist to it because he sees -- what works funny
24 for him, what works. He has to make sure they
25 understand. I'm trying to speak slow. Sorry. He

1 makes sure they understand, you know, what he's trying
2 to get across, the point he's trying to get across.

3 Q. Is that speech solely to inform the
4 contestants, or are there also elements to it that are
5 for entertainment?

6 A. Oh, there's definitely -- yeah, everything in
7 the show is an entertainment.

8 Q. Does Ryan, or at least the script, contain
9 something about running for your lives?

10 A. Yes.

11 Q. What does he say?

12 A. I -- I -- I -- "With crazy looks on your
13 faces, you ran for your lives. Did you think your
14 friends -- you know, your friends -- do you think your
15 friends realized you were running for your lives with a
16 crazy look on your face?"

17 Q. As you planned this illusion, did you plan
18 and design the illusion for people to be running for
19 their lives with crazy looks on their faces?

20 A. No.

21 Q. Why not?

22 A. Why not? Well, we wouldn't do that. So --
23 if we did, I would just take pictures of all their
24 faces as they came through. That would be funny.

25 Q. Would chaos and pandemonium assist in the

1 performance of the illusion?

2 A. Not at all.

3 Q. Why not?

4 A. Well, it wouldn't be practical. And, again,
5 we do it so much and it's such a routine, it's just
6 like walking. If you moved quicker, it's the same.
7 You know, we -- we have it down. We understand, having
8 done this repeatedly and all over the world -- we're
9 not talking just there, and we're talking longer runs,
10 more complicated things, way more complicated runs
11 with -- with steps, with situations. And, at every
12 junction, we would always have a person with a
13 flashlight, even -- even -- even in the light, we would
14 normally have a flashlight.

15 If it was right here, right now, this light,
16 we would have a person doing this with a flashlight
17 just as an arrow indicator on the ground.

18 Q. So the flashlights, weren't they to light up
19 the room, to light the way?

20 A. The --

21 Q. Could you see without the flashlights?

22 A. Oh, yes.

23 Q. Just to lay the premise for the -- a few of
24 my next questions, you were here during the opening.
25 You heard Mr. Morelli prove that -- say he was going to

1 prove there would not only be negligence shown on the
2 part of your company but also that that negligence
3 caused the injuries to Mr. Cox.

4 Based on your understanding of the facts of
5 this case, do you believe that Mr. Cox's injuries --

6 MR. DEUTSCH: Objection, Your Honor.

7 THE COURT: I'd like to hear the question
8 before I hear an objection.

9 Don't answer the question until I rule on any
10 objection.

11 THE WITNESS: Yes, sir.

12 BY MR. ROBERTS:

13 Q. Based on your understanding of the facts, do
14 you think that this fall was caused by anything having
15 to do with high heels?

16 A. No.

17 Q. Flip-flops?

18 A. No.

19 Q. Pregnancy?

20 A. No.

21 Q. The ramp?

22 A. No.

23 Q. The change in elevation?

24 A. No.

25 Q. The lighting?

1 A. No.

2 Q. In your opinion, do the participants who
3 choose to catch a ball and come up on stage have an
4 obligation to be truthful with the stagehands when
5 they're answering the questions?

6 A. Yes, we would hope so.

7 Q. Who is in a better position to know if a
8 volunteer is in good health: the volunteer or the
9 stagehands trying to observe them?

10 A. The volunteer.

11 Q. Who is in a better position --

12 MR. DEUTSCH: Objection to the leading nature
13 of all these questions, Your Honor.

14 THE COURT: Sustained.

15 MR. MORELLI: Move to strike.

16 MR. DEUTSCH: Move to strike.

17 THE COURT: I'll deny the motion. Just, next
18 question, don't lead.

19 BY MR. ROBERTS:

20 Q. Do you have an opinion or understanding as to
21 who would be in a better position to know if they could
22 run in the shoes they were wearing: the volunteer or
23 the stagehand?

24 I'm not suggesting an answer to you; I'm
25 asking if you have an opinion.

1 A. The volunteer.

2 Q. Once the volunteers take the stage and they

3 pass the screening of the stagehands and

4 Mr. Copperfield, is their choice over at that point?

5 Do you force them to continue with the illusion all the

6 way to the very end?

7 A. No.

8 Q. Have there ever been participants who chose

9 not to continue with the illusion?

10 A. Yes.

11 Q. Tell the jury about that.

12 A. It's -- it's -- you know, it's not often, but

13 a person, they start -- they'd come out -- if any --

14 for any reason, if they were just confused and said,

15 "Oh, I don't want -- I don't want to go any further. I

16 don't know where I'm going," we would just stop right

17 there. They'd stop and, "Okay. Cool. Come with us."

18 If there's a person that came out and just

19 started walking -- they just decided they couldn't --

20 we would just see that they -- okay. They're not going

21 to make it in the time allotted that we kind of want

22 them to make it, we'd just say, "Okay. Hey, you guys,

23 you can just stop here. Wait here."

24 You know, so you can see the general effect.

25 Again, having done it so many times with hundreds --

1 100,000 people, you -- you run into, like, a lot of
2 situations. I'm trying to think of other examples.

3 Ryan would probably have -- or Pomai would
4 have a better -- and -- and I don't think it's -- like
5 I said, it's not often at all. It's not like it's once
6 a week. I mean, it's like --

7 Q. Chris, I just got one more question for you.
8 And I don't want it to be taken out of context later.

9 You -- you told the jury yesterday, answering
10 a yes-or-no question, whether or not you were curious
11 about Mr. Cox. Do you recall that question? You said
12 no.

13 A. Whether I was curious about Mr. Cox that --
14 that night?

15 Q. Yes.

16 A. When our -- at all or that night? I can't
17 remember the question exactly, whether I was curious
18 about the -- the accident.

19 Q. Do you recall enough to explain what you were
20 thinking when you said that?

21 MR. DEUTSCH: Objection, Your Honor.

22 THE WITNESS: Yesterday was --

23 THE COURT: I'll allow it.

24 THE WITNESS: -- a blur in a way. I -- maybe
25 ask the question a different way. I'm not sure if I --

1 BY MR. ROBERTS:

2 Q. After you found out that Mr. Cox had filed an
3 incident report with MGM and alleged that he had been
4 injured, were you curious about his injuries and how he
5 was doing?

6 A. Yeah. I mean, I -- curious about his
7 injuries? You know, yes. But I -- I -- I didn't --
8 I'm not sure I understand the answer that I'm supposed
9 to give here. I don't even know what the question is.
10 I probably don't understand this.

11 Q. And that's all you -- we can ask, is that you
12 tell the truth. And I know yesterday was a little bit
13 of a blur. And -- and, to the -- don't -- forget about
14 yesterday.

15 Were you curious about how badly he was
16 injured?

17 A. Once I heard?

18 Q. Yes, once you heard.

19 A. Yes, but not -- I mean, it's one of -- I
20 don't know. I -- I have no recollection of that whole
21 time frame.

22 Q. Okay. So the problem is it's been four years
23 ago and you just don't recall right now what you were
24 thinking?

25 A. Yeah.

1 Q. Okay. Thank you, sir. Appreciate it.

2 MR. ROBERTS: That's all I have, Your Honor.

3 THE COURT: All right.

4 MR. POPOVICH: Want me to go, or do we want a
5 break?

6 THE COURT: Anybody want to break?

7 Heads are shaking. We do.

8 Okay. Let's take our morning recess, then,
9 and recess till ten to 11:00. All right.

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

21 Be outside the courtroom at -- what did I
22 say? -- 15 minutes; right? So 20 to now, so let's make
23 it five to 11:00. Okay?

24 MR. DEUTSCH: Yes, Your Honor. Thank you.

25 THE COURT: And I'd like counsel to remain.

1 (The following proceedings were held
2 outside the presence of the jury.)

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

4 As we discussed briefly, this -- this item
5 here that's on the -- on the bench here is going to the
6 recordation in the back; right?

7 MR. HOFFMANN: Correct, sir.

8 THE COURT: Okay. When the green light's on,
9 that means it's being recorded; right?

10 MR. HOFFMANN: No, it simply means the mic
11 has power.

12 THE COURT: Okay. Because what was brought
13 to my attention during the bench conference is that
14 what's being recorded in the back, and videoed or
15 whatever, is actually being heard; is that correct?

16 MR. POPOVICH: At sidebar -- someone that we
17 are affiliated with has reported by text that, even at
18 sidebar, when the green light is lit, they're still
19 hearing what's going on at sidebars. And that happened
20 twice, even after the Court discussed with the media
21 folks about that.

22 When we pressed the button such that the
23 light went out, then that person could no longer hear.

24 MS. FRESCH: Except, Your Honor, I've just
25 been informed that, with the last sidebar, when we were

1 pressing down the button, the people watching and
2 listening, they can hear the white noise. So it seems
3 like there's still noise. And that could potentially
4 pick up, because it's right there where we are --

5 MR. POPOVICH: There are other mics that
6 would hear the white noise. There are mics here; there
7 are mics there.

8 MS. FRESCH: Yeah, I'm just -- I'm not sure
9 that they heard that before, yeah.

10 THE COURT: But could be --

11 MS. FRESCH: I'm just informing the Court.

12 THE COURT: But once -- when this green light
13 was off, there's a button on it --

14 MR. POPOVICH: Not hearing the voices.

15 THE COURT: They're not hearing the voices.

16 MR. LASSART: Still, the mics are live here,
17 though, because they're hearing the white noise.

18 THE COURT: Okay. Well, the white noise is
19 okay. It's what is being said that's the problem;
20 right?

21 MR. POPOVICH: So I think we just have to
22 deal with it there.

23 THE COURT: Okay. So, in other words, I have
24 to push the button each time we have --

25 MR. POPOVICH: And hold, somebody does.

1 MS. FRESCH: Do we need to hold the button
2 that's by the witness, because there's one by the
3 witness as well. I just noticed that.

4 THE COURT RECORDER: No, that's -- the white
5 noise will probably cover it.

6 THE WITNESS: I can barely hear you.

7 MR. HOFFMANN: It shouldn't be heard. If we
8 need to, we can unplug your mic, Your Honor.

9 THE COURT: This one here?

10 MR. HOFFMANN: Yes.

11 THE COURT: You don't really need that one,
12 do you?

13 MR. HOFFMANN: I need it to hear what you're
14 saying, Your Honor, but it's not absolutely essential.
15 And I'm happy to have it unplugged if that's the
16 problem. I have killed the mics. There should be
17 nothing going anywhere.

18 THE COURT: Okay.

19 MR. HOFFMANN: My boards tell me there's no
20 audio, but I'm happy to unplug the mic or turn it off.

21 THE COURT: Do counsel have a preference on
22 that?

23 MR. MORELLI: I think that now that he's
24 stated what he's stated, if it happens again, there
25 would be a problem. So I think we'll go with it the

1 way it is, but you better be careful because --

2 MR. HOFFMANN: I understand.

3 THE COURT: So this button here. Okay. When
4 that light is off, it's not being recorded; right? The
5 green light?

6 MR. HOFFMANN: That mic has no power at that
7 point, yes, sir.

8 THE COURT: Okay. So I'll just -- now that I
9 know that.

10 MR. MORELLI: Okay.

11 MR. POPOVICH: And -- and, for the voices,
12 that seemed to work for the person monitoring for us.

13 THE COURT: Okay. Very well.

14 MR. POPOVICH: So that's okay.

15 MR. HOFFMANN: Your Honor, we could just turn
16 the mic off too. If you'd like to just hold down the
17 button and turn it off. I'm all right with that, Your
18 Honor.

19 MR. POPOVICH: Thank you, Your Honor.

20 THE COURT: Okay. Well, we'll figure it out.
21 For now, I'll just press the button. Okay?

22 MR. ROBERTS: Your Honor?

23 THE COURT: Yes.

24 MR. ROBERTS: There's one other issue as long
25 as we're out of the presence.

1 At this time, I'd like to object to the
2 teaming up on us that's happening. I've been trying
3 not to -- to object to the fact that they're not
4 following local protocol. If Mr. Morelli has the
5 witnesses, he has to do the objections.

6 THE COURT: You're right. Well, you've
7 brought that matter up now. Actually, the way it's
8 supposed to work is that examining counsel for the
9 plaintiffs should be the one making the objections.

10 MR. ROBERTS: Right.

11 THE COURT: Okay. So -- all right. But
12 there was no objection previously.

13 MR. ROBERTS: I -- I understand, and I was --
14 I think it had not become disruptive until that --

15 THE COURT: So now we're going to be
16 commencing another cross-examination. So, at this
17 point, then, Mr. Morelli, you'll be the one who makes
18 any objections.

19 MR. MORELLI: Absolutely. And I'm much
20 tougher than Mr. -- because I used to be 6-7, and I've
21 been beaten down. So I'm tough.

22 THE COURT: All right. Thank you.

23 THE MARSHAL: All rise.

24 THE COURT: Five to 11:00.

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 COURT: You may be seated. We're back on
5 the record.

6 Will counsel stipulate that the jury is
7 present?

8 MR. MORELLI: The jury is present.

9 MR. POPOVICH: Yes, Your Honor.

10 THE COURT: Everybody stipulates? Okay?

11 MR. POPOVICH: May I proceed, Your Honor?

12 THE COURT: Yes, you may.

13 MR. POPOVICH: Thank you.

14

15 CROSS-EXAMINATION

16 BY MR. POPOVICH:

17 Q. Good morning, Mr. Kenner.

18 A. Good morning.

19 Q. I am Jerry Popovich representing MGM Grand
20 Hotel.

21 And I'm going to ask Ms. Bonney to put up
22 Exhibit 93-168, which is already in evidence.

23 Mr. Kenner, is this the photo where you
24 described that you could see where your office is?

25 A. Yes.

1 Q. And this photograph shows, at least in part,
2 the route the participants take from backstage leading
3 to the outside?

4 A. Yes.

5 Q. Where is your office?

6 A. You're looking right at it, that -- there's a
7 computer screen in the back back there, right in the
8 back. If you -- to the -- yes -- whoa -- some fancy
9 stuff. To the right of that --

10 MR. DEUTSCH: Magic.

11 THE WITNESS: Yeah. To the right of that,
12 like 5 feet, is my office -- my desk.

13 BY MR. POPOVICH:

14 Q. So when you are in your office during
15 the Thirteen Illusion, do you sometimes hear the
16 participants going past?

17 A. Yeah. I can hear conversations. It's --
18 it's -- it's the way the -- acoustically, I can hear if
19 someone's -- a lot of times, the stagehands sit on
20 those stairs if they're waiting to do a cue -- and not
21 at this moment, not during this effect. I can hear
22 their conversations pretty good in there. So, yes, I
23 can hear that if my door is open. I can hear them if
24 the door is open.

25 Q. Are your doors sometimes open during the

1 Thirteen Illusion?

2 A. I would say most of the time, yeah.

3 Q. So you are able to then hear the passing
4 participants in the Thirteen Illusion?

5 MR. MORELLI: Objection, Your Honor.

6 Your Honor, I believe there shouldn't be any
7 leading questions, seeing that they were all involved
8 in preparing this witness.

9 THE COURT: Overruled. Go ahead.

10 THE WITNESS: Can I hear them?

11 BY MR. POPOVICH:

12 Q. Sure.

13 A. Yes.

14 Q. Have you heard, like, shrieks of terror that
15 you would --

16 A. No. It's not like that at all. No.

17 Q. Have you heard people crying, like tears?

18 A. No.

19 Q. What kind of things do you hear?

20 A. It's, you know, basically the shuffling of
21 feet, kind of a little excitement of moving quickly,
22 and the -- the most thing you hear is the person
23 standing there, you know, "This way, this way, this
24 way, this way," you know. I don't know if it's -- you
25 know how when you hear something over and over and

1 over, you block out the sound. You have a child, that
2 you don't -- you kind of don't hear the crying after a
3 while, it's like -- so I don't necessarily hear exactly
4 what they say. Might be "Go, go, this way, this, this
5 way," but it's not like -- it's not like screaming at
6 them.

7 Q. During the Thirteen Illusion, when you have
8 had your door open, does it sound to you like
9 uncontrolled chaos for the participants in the
10 illusion?

11 MR. MORELLI: Objection, Your Honor.

12 THE WITNESS: No, not at all.

13 THE COURT: Overruled.

14 THE WITNESS: Not at all.

15 BY MR. POPOVICH:

16 Q. Changing topics now.

17 And you can take that picture down,
18 Ms. Bonney. Thank you.

19 During the time when the participants come
20 out of the dragon, are those participants that do not
21 have a flashlight given a flashlight?

22 A. Yes.

23 Q. Is that to light their way on this -- this
24 pathway around to the entry?

25 A. No. They're not told to turn it on; they're

1 actually told to keep it off.

2 Q. What are they for, then?

3 A. They're so that when they -- as I was
4 explaining before, when the people reappear, that's
5 when they're told to turn the light on because there's
6 a short spot -- let's say they had them on -- to give
7 you the bad -- say the bad part, if they had it on, why
8 we wouldn't want them to have it on.

9 If they had the flashlight on, when they exit
10 from that kitchen area through the door, it goes into
11 the actual theater. So they are in the back of the
12 theater. And it's -- it's a fairly short distance
13 again. I will say it's from here to the wall that they
14 have to walk, maybe less. Probably is about here to
15 the wall, where they're physically in the theater.

16 If they had a flashlight on, they would
17 probably draw attention to themselves at that time.
18 And then the people sitting around there would turn
19 around and see the flashlights and realize, Hey, wait a
20 minute. They're supposed to be up there.

21 So we want them to have them off until the
22 very last second, when Pomai and Ryan, who are there,
23 say, "Turn on your flashlights, flashlights,
24 flashlights." So they turn the flashlights on. So
25 that's the reason that they have the flashlights

1 anyway. They don't -- they're not for them to turn on
2 and use to light their path. They're there for them to
3 reappear. Because we don't want them on until that
4 moment.

5 Q. Is the purpose of those flashlights to
6 emphasize the reappearance at exactly the right time?

7 A. Yes. Correct.

8 Q. So when Mr. Copperfield takes down the
9 curtain off the front of the prop or platform, he can
10 then turn and say "There they are"?

11 A. Yeah, it's like -- I think we showed the
12 video. It's like he'll -- he'll pull -- David himself
13 pulls that curtain off. And as soon as that happens,
14 he'll make a -- I think he -- I think that the first
15 thing is he makes a gesture, and the back curtain goes
16 also. And then he turns around and gestures toward the
17 back of the house, and all the lights in the house and
18 everything point to them, and they're pointing their
19 lights at the crowd, moving them back and forth.

20 Q. All to emphasize the reappearance?

21 A. Correct.

22 Q. All right. Switching gears on you again, I
23 want to talk about the outside portion of the route.

24 MR. POPOVICH: And Ms. Bonney, if I could get
25 84-14, which is already admitted into evidence.

1 BY MR. POPOVICH:

2 Q. There was discussion about change in
3 elevation when the participants make the right around
4 this corner. Correct?

5 A. Yes.

6 Q. Is it a change or -- is the change in
7 elevation from the corner all the way to that door?

8 A. No. I mean, you had mentioned there's -- the
9 normal break of any building, there's the tiniest
10 little bit so the water doesn't run into the building.
11 So it's -- essentially it's flat, from -- you can see
12 it. It's flat from here to there.

13 Q. Okay. Is there any way for us --

14 MR. POPOVICH: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. POPOVICH:

17 Q. Any way for us to describe in the photo --
18 okay. Where you're pointing for the change to a more
19 flattened area, does there appear to be a concrete
20 expansion joint in that photo?

21 A. If that's what that's called, if that's
22 what -- I think this is the exact same kind of thing,
23 so I guess that's called the concrete expansion joint.

24 Q. So when the participants first round the
25 corner, there is some change in elevation in that

1 initial part?

2 A. Here (witness indicating), yes.

3 Q. Until we get to the point where you were
4 pointing, which appears to be some kind of joint in the
5 concrete?

6 A. Yeah.

7 Q. And from there, that joint, to the door, how
8 would you describe that concrete as far as levelness?

9 A. Flat.

10 Q. All right. Thank you, sir.

11 MR. POPOVICH: And thank you, Ms. Bonney.

12 BY MR. POPOVICH:

13 Q. You've talked about the MGM stagehands and
14 their involvement in this illusion. During the
15 Thirteen Illusion, do the MGM stagehands go with the
16 audience participants?

17 A. Yes. Oh, no, the MGM, no. Ours do. The
18 Backstage do. MGM no.

19 Q. MGM people are doing what, exactly?

20 A. They're guiding the people in the path.
21 They're the -- when we talk about these point people,
22 they are the point people that are -- basically, "Go
23 this way, this way," and handing them the flashlights.

24 Q. For the Thirteen Illusion, for the route that
25 the participants take, are the MGM stagehands

1 essentially stationary?

2 A. Yes.

3 Q. They will be talking?

4 A. Yes. You know, just -- it's all simple
5 directions, and I'm sure each person has a little bit
6 different way of saying it. "This way, please go this
7 way, that way." It's however they are wording it. And
8 they're using the light to guide the path, as you would
9 like an arrow, like you are using the flashlight as
10 your arrow.

11 Q. And you're gesturing like the light is
12 moving, demonstrating the path they want the
13 participants to take?

14 A. Correct. And it's very -- again, it's --
15 it's very obvious anyway, because if there was a -- you
16 walk through this door, there's a person standing here,
17 and there's a person standing there, then there's a
18 person standing there, and then there's one there, and
19 each one of them are -- you're going to just -- you
20 are -- you're -- you'll get it, and it's short.

21 MR. MORELLI: Your Honor, objection. I
22 didn't know there was a question, so I would like to
23 hear the last question read back and see if that's a
24 response to it.

25 THE COURT: Yes. Next question, Counsel.

1 MR. POPOVICH: Thank you, Your Honor.

2 BY MR. POPOVICH:

3 Q. Were the MGM stagehands with the show seven
4 days a week that the show was running?

5 A. Do each individual stagehand work seven days
6 a week?

7 Q. Yes.

8 A. No, they do not.

9 Some of the -- we have -- we have MGM
10 stagehands every show, but they work five days a week,
11 each person or whatever. I don't know their all
12 schedules, so I'm not going to sit and say they work --
13 this guy works five days; this guy works four days.

14 Q. Is there a MGM stage manager for the show?

15 A. Yes.

16 Q. In -- let me ask -- in 2013?

17 A. Yes.

18 Q. Who was it?

19 A. J.R. Leake.

20 Q. Did you have to deal with J.R.? Mr. Leake?

21 A. Yes.

22 Q. And -- does sound funny, Mr. Leake. Was he
23 responsible for the MGM stagehands?

24 A. Yes.

25 Q. If you had an issue with the performance of

1 an MGM stagehand, how would you deal it?

2 A. Any time we have an issue or when we have --
3 I hate to say the word "issue." But any time we need
4 to talk to an MGM stagehand about a note or what to do,
5 we would always go through the MGM stage manager, and
6 then they would relay it to -- to them, because they
7 were their -- their employees, not mine.

8 Q. Would this stage manager have communications
9 back to you where they wanted to deal with certain
10 things?

11 A. Oh, yes.

12 Q. How would you describe Mr. Leake as far as
13 ease to get along with?

14 A. Yeah, he's -- he's very good at his job, so
15 yes.

16 Q. Was he sometimes tough?

17 A. Oh, yeah. Yes. He was difficult, you know,
18 he was -- yeah.

19 Q. Would he approach you in order to work out
20 details of things to make sure both sides got it right?

21 A. Oh, for sure. Yeah.

22 Q. Not shy, was he?

23 A. J.R.? Absolutely not.

24 Q. All right. Those MGM stagehands, were they
25 ever involved in that screening process in the theater

1 for participants on the Thirteen Illusion before they
2 reached the steps to go up onto the stage?

3 A. No. No.

4 Q. Mr. Morelli asked you questions about
5 investigation of the accident. Do you recall some of
6 that yesterday?

7 A. Oh, man, yesterday. Yes.

8 Q. You had indicated that a lawyer got involved
9 soon for Mr. Cox?

10 A. Yes.

11 Q. Did you personally do -- ever do anything
12 that would prevent Mr. Cox's lawyer from investigating
13 this accident?

14 A. No.

15 Q. Did you ever learn of anybody from MGM ever
16 doing anything to prevent Mr. Cox's lawyer from
17 investigating this accident?

18 A. No.

19 MR. POPOVICH: No further questions. Thank
20 you.

21 THE COURT: All right.

22 MR. DEUTSCH: Just so we're clear, Your
23 Honor, this is just being used as a demonstrative, as I
24 understand it, and not in evidence.

25 MS. FRESCH: Yes.

1 THE COURT: Is that correct?

2 MS. FRESCH: Yes, Your Honor.

3

4 CROSS-EXAMINATION

5 BY MS. FRESCH:

6 Q. Good morning, Mr. Kenner.

7 A. Good morning.

8 Q. Okay. Let's start with this: There's been a
9 lot of testimony where the word "runaround" is used.

10 A. Yes.

11 Q. Okay. Why is that route called runaround at
12 times?

13 A. Well, it's always called the runaround. It's
14 just -- it's actually -- it's a -- it's almost a show
15 business term, not just our term. Anytime that a
16 performer has to go from stage to anyplace during a
17 performance, whether it's a rock show, whether it's our
18 show, whether it's anything, it's going to be called
19 the runaround, whether they walk it, they take a car.
20 That's just what -- it's a show business lingo.

21 Q. Is the use of the word "runaround" with
22 respect to the route for the Thirteen volunteers in
23 that illusion, is that a reflection at all about the
24 necessary pace?

25 A. Well, no. It just all depends on what your

1 opinion of the word "run" is. So, yeah. No.

2 Q. And let's go to that. There was a lot of
3 discussion yesterday in your testimony with
4 Mr. Morelli's questions with respect to running,
5 volunteers are running. In your mind, what's -- what's
6 the pace? because running has different paces to it.
7 What's your definition, when you acknowledged with
8 Mr. Morelli, running?

9 MR. MORELLI: Objection.

10 THE COURT: What's the objection? Overruled.
11 Go ahead.

12 THE WITNESS: Are you speaking about this
13 particular situation?

14 BY MS. FRESCH:

15 Q. Yes.

16 A. Well, as you've seen it on -- on the tape,
17 Ryan grabs a woman's hand. It's always a woman; it's
18 never a man because in that situation -- in that
19 situation, that's the way it works, the way we put
20 people in the prop. A woman comes out first.

21 So first off, you have to, before you even
22 think of the word "run," just realize that he's
23 grabbing a woman's hand. He's -- if he was running,
24 like, we'll call it -- I'll say running, like running
25 quick, fast, with a woman's hand, that's not -- that

1 wouldn't happen. We would definitely have a problem.
2 Something would happen. We wouldn't -- we wouldn't
3 allow that, if he was trying to make her sprint and
4 pulling her arm. So he would yank somebody's arm out
5 of their socket at some point, you know, because,
6 again, having done it so many times, you couldn't pull
7 a woman this way and sprint with her. And he sets the
8 pace.

9 So that pace is set by Ryan and the woman
10 that he's taking. So obviously, they're not, you know,
11 sprinting for their lives and running like crazy.
12 They're just -- he's moving at the pace that she's
13 going to be comfortable, and that's probably going to
14 be a little different each time but very similar. And
15 I'm sure Ryan can elaborate more on the actual pace.
16 But just to put it in your head, that's the way that
17 pace is started. And it's, you know, a light jog, I
18 guess, or brisk walk. I have heard it mentioned so
19 many times different ways. So -- but you can see
20 yourself kind of the speed of it.

21 Q. Okay. Over the course of the years, given
22 what you described as where your office location is,
23 have you ever observed, prior to November 12th, 2013,
24 any of the volunteers while they were en route?

25 A. Oh, yes. I have stood outside many times,

1 because, like I said, I'm outside pacing on the phone.
2 There have been many times where I'm outside while this
3 is happening. Like -- I would say it has to have been
4 hundreds of times I have seen that route.

5 Q. And from those observations -- well, what
6 were your observations of the pace of the participants?

7 MR. MORELLI: Objection, Your Honor. May we
8 approach?

9 THE COURT: All right.

10 (A discussion was held at the bench,
11 not reported.)

12 THE COURT: All right. You may proceed.

13 MS. FRESCH: Okay. Thank you, Your Honor.

14 BY MS. FRESCH:

15 Q. Mr. Kenner, going back to the question. From
16 your observations, either from your office or from what
17 you said when you're outside chatting on the phone,
18 pacing around, what has been your -- prior to
19 November 12th, 2013, what were your observations of the
20 pace of the volunteer participants?

21 A. It's -- again, it's like a soft jog, brisk
22 walk, you know. It's -- it's -- we don't -- it's --
23 you have a whole -- they have a whole minute to get
24 there. And within, I would say, 15 seconds, I think
25 that's 15 seconds, 20 seconds, they're standing, about

1 to walk through those doors. So they have an entire 45
2 seconds to get the rest of the way. So it's not this
3 crazy distance that they're sprinting or running. Like
4 the word "run" is so weird, so -- because it means so
5 much to different people, you know.

6 Q. Okay. While you have been in your office --
7 and, again, these questions are all before
8 November 12th, 2013.

9 A. Understand.

10 Q. Okay. Had you ever heard -- when the
11 volunteers of the Thirteen are on the route, had you
12 ever heard any noises or -- or things coming from
13 people that concerned you?

14 A. No.

15 Q. Okay. And if you had heard anything that
16 concerned you, what -- what steps, as the executive
17 producer, would you have taken?

18 A. Well, I would have immediately stood up and
19 walked out to -- walked out to see what it was because
20 I'm very close. And what's going on? What's
21 happening? if there was something, if there was an
22 issue.

23 Q. Okay. All right. Next I would like to
24 direct your attention to --

25 MS. FRESCH: And, Your Honor, may I approach?

1 THE COURT: Yes.

2 MS. FRESCH: This diagram -- and, Mr. Kenner,
3 you might have to get up because I couldn't fix this
4 tripod thingy.

5 THE WITNESS: No problem.

6 BY MS. FRESCH:

7 Q. Okay. Do you -- you recognize what this
8 diagram is of --

9 A. Yes.

10 Q. -- correct? Okay. And this is the stage;
11 correct?

12 A. Uh-huh.

13 Q. And these are the doors going back into the
14 casino area; correct?

15 A. Correct.

16 Q. Okay. So I would like to just focus on from
17 the moment that the participants or volunteers come out
18 of the dragon. And this is not perfect to scale. But
19 I would like you to take a little red dot to just --
20 just to mark the first person from the dragon that the
21 folks encounter when they go down the stairs of the
22 dragon. And we're going to --

23 MR. DEUTSCH: Your Honor, just for the
24 record, I just want to make it clear that the
25 stipulated agreement with respect to this diagram was

1 that the green lines just represent the route and
2 nothing else in terms of the hallways or anything but
3 just a general idea of where the route was, was what
4 the agreement was.

5 MS. FRESCH: Yes, that's true. We're just
6 showing the route. All right.

7 THE WITNESS: All right. So this is -- this
8 is the audience. This is center stage. And the dragon
9 would be right here. So they come out of this dragon.
10 And standing right at the base, back of the dragon,
11 immediately after they get out of it, would be a person
12 shining a light on the floor heading this direction.

13 BY MS. FRESCH:

14 Q. Okay. And what type of light do they have in
15 their hands? This first little red dot or orange dot?

16 A. They actually -- they do not have any of the
17 flashlights we have. They're using an even brighter
18 light. It's a -- I can't think of it. There's so many
19 names. Used to be a called a SureFire in our world.
20 Now you can just go to Fry's, and there's a billion LED
21 versions of it. But they're super little, super
22 bright. And you just pop it on. And it's small. It's
23 probably as bright or brighter than these big lights.
24 So they light the ground, and they're saying "Go this
25 way, this way, this way.

1 Q. Okay. So that's the first person. Where's
2 the next person that the volunteers encounter on the
3 route?

4 A. Right here.

5 Q. Okay. Can we put a little ...

6 A. (Witness indicating.) Probably lower.

7 Q. Oops.

8 A. You get the idea. They're right here.

9 Q. All right. Does that person have any
10 lighting apparatus in their hands?

11 A. Yes.

12 Q. Uh-oh.

13 A. That's okay.

14 Q. That's indelible.

15 A. Permanently there. And there's another human
16 being in between that's -- that big cloth that we have
17 been showing -- that's holding that cloth right here.
18 And they -- I am not 1,000 percent sure. I think they
19 have a flashlight also, but they're standing right here
20 just holding the thing. So in between this spot and
21 this spot is another person. There's definitely a
22 person here that's helping guide them, at least talking
23 to them.

24 Q. Okay. Why don't you make that person in
25 neon.

1 A. They're neon. Oh, God, that's sticky.

2 Q. Okay. So I wasn't sure if I -- what does

3 this person --

4 A. They're telling these people to go here.

5 Q. Okay. And what type of light does that

6 person have?

7 A. Again, a flashlight like the SureFire.

8 Q. Okay. And these three people are stationary;

9 correct?

10 A. Yes.

11 Q. When the route begins?

12 A. Yes.

13 Q. Okay. All right. So, then, what's the next

14 place that the volunteers would encounter a stationary

15 stagehand?

16 A. Right here.

17 Q. Okay. So let's put another little red one.

18 A. And proportionally this is not correct.

19 Q. But it's showing the turns; correct?

20 A. Correct.

21 Q. It is accurate for the turns that --

22 A. Yes.

23 Q. -- the participants make. Okay?

24 A. Yeah, because this distance is longer than

25 this.

1 Q. Right. So where -- who's starting to hand
2 out flashlights to the volunteers?

3 A. This person.

4 Q. Okay. And you have already described the
5 process of why they would get flashlights; correct?

6 A. Correct.

7 Q. Okay. All right. So, then, where's the next
8 person on the route?

9 A. Right here. (Witness indicating.)

10 Q. Okay. Let's put that.

11 A. And I think they're informing them. I don't
12 think -- I know they're informing them "Don't turn them
13 on."

14 Q. Okay. And what's the function of this
15 person?

16 A. To tell them to go this way. So for us --

17 Q. To turn left?

18 A. -- we're going directly at the person. Like
19 if -- if Mr. Morelli would be the person with the
20 flashlight, I would go -- if he's the person, I'm going
21 to go directly to him and he's going to guide me, you
22 know, the direction as opposed to he's not standing to
23 the side, "This way." You know, it's a -- it's a
24 direct target. So it makes it easier.

25 For having done this, again, tons of times,

1 it's easier to have them -- you know, they know to come
2 hither. So it's just an easy way to -- to -- for them
3 to be directed.

4 Q. Okay. So this person tells them to go down
5 this hallway. This person tells them to go left. This
6 person tells them to go right. Correct?

7 A. Correct. And these are very short.

8 Q. Okay. Now --

9 A. Like, there's no way to -- there's no way to
10 run through these halls.

11 Q. Okay. Where's the -- the next person
12 stationed?

13 A. Right here (indicating).

14 Q. Okay. And we're going to put this -- this is
15 an outside person -- or he or she is an outside person.

16 Okay. And what's the function of that
17 person?

18 A. To direct them to go this way.

19 Q. Okay. And what type of light do they have in
20 their hands?

21 A. Well, he has a similar -- all -- every
22 stagehand -- we don't have a required stagehand light,
23 but they all have these very bright LED or SureFire
24 type -- the back guy might -- I don't know if he has
25 that light.

1 Q. The one -- the green guy?

2 A. This guy? I don't know exactly what light he
3 has.

4 Q. Okay. Do you recognize this light?

5 A. Yes.

6 Q. Who has this light, from your recollection?

7 A. Ryan will have that, for sure.

8 Q. Okay. Anybody else?

9 A. I'm not 100 percent sure who else has that
10 light on this route.

11 Q. Okay.

12 A. The other -- the little lights are as bright
13 or brighter than that light.

14 Q. And when you say "little light," what's a --
15 a little light?

16 A. It's -- it's an expensive little flashlight
17 that, you know, every stagehand on the planet has that
18 they can use to -- you know, for their own purpose if
19 they're walking around, to guide themselves or to light
20 something up or -- and they're usually more directional
21 than that. So they can take the front, turn it, make
22 it wide; turn it, make it a spot.

23 So -- and a lot of them now -- it's kind of a
24 pain -- you know, you push the button, it will blink;
25 you push the button, it'll red. LED technology has

1 changed all these lights.

2 Q. All right. So where's the next person who's
3 stationary, if any?

4 A. Right here.

5 Q. Okay. Another -- because he's now -- he or
6 she is an outdoor person, let's put another little
7 green sticker.

8 A. (Witness complies.)

9 Q. Okay. And that person has a light in their
10 hands as well?

11 A. Yes.

12 Q. Same type of flashlight? Well, I call it a
13 flashlight.

14 A. Yeah, same kind of torch, if we're in Europe.
15 Same type of flashlight.

16 Q. Okay. Now, how many sets of doors are there
17 back into the casino?

18 A. Well, how many sets are here?

19 Q. Yes.

20 A. It's just like this. It's -- there's four
21 sets of two doors. I'm sure you've all seen those kind
22 of doors in the casinos.

23 Q. Okay. Is there -- from the protocol for the
24 route, is there a particular set of doors that the
25 volunteers go through for the first set of doors to go

1 inside at all?

2 A. Yes. I'm pretty sure it's this set right
3 here.

4 Q. The third set?

5 A. Correct.

6 Q. Is there any particular reason that going
7 into the outside to the inside, that they go through
8 the third set of doors versus the first or second?

9 A. Well, 'cause it's -- it's easier and safer
10 for them to go through this set of doors because they
11 don't have -- like, when David would walk through this
12 area and look at it, you know, he might go through this
13 set or this set. I don't know which set of doors he
14 goes through.

15 But he knows the path. And when an MGM --
16 the security guard goes through the door, he's always
17 going to cut through here just because he just -- he
18 knows where he's going.

19 So, here, they -- since they're being guided
20 and -- we make it as wide as possible of a spot. You
21 know, so it's open and there's no obstacles or
22 anything. So they just come to the door because -- I
23 think it's this set right here.

24 Q. Okay.

25 A. And, again, they're open -- they're open and

1 the light is coming out of them, so it's also an
2 obvious target to go to.

3 Q. All right. So there's seven stationary folks
4 on the route; correct?

5 A. Correct.

6 Q. All right. And it's my understanding there's
7 Ryan and -- for November 12th, 2013, Ryan and Pomai
8 were the leader and the caboose of the
9 follow-the-leader route --

10 A. Correct.

11 Q. -- correct?

12 Okay. And is -- who opens, in your
13 understanding, these casino doors, since they're
14 obviously locked?

15 A. The security has to open those doors because
16 it's a -- there's a code. You just try to open that
17 door -- even though it's an exit door, you could
18 exit -- it's going to set off an alarm. Every door --
19 every one of these exit doors, here and the ones that
20 are here, you walk through from the casino, this alarm
21 would go off. You walk through that one, the alarm
22 would go off.

23 I think it's a code pad that's right -- right
24 there. And then one on the outside, one on -- on both
25 sides of it. I'm pretty sure that's how that code

1 thing works with the door.

2 Q. And does Pomai carry any type of light?

3 A. Yes. I think she has a flashlight. I'm not
4 1,000 percent sure what she carries, what kind of light
5 she has either.

6 Q. Okay. Okay. All right. Thank you.

7 Now, sticking a little bit with the route at
8 the MGM specifically for the Thirteen -- and you talked
9 about this a bit yesterday. But why was this
10 particular route -- as you've just described and
11 described in other testimony, why was this route chosen
12 versus any other potential route for these volunteers
13 for this illusion?

14 A. Well, there's -- there's actually no other
15 real -- okay. You could go another way. If you walked
16 out the other side, went through the front doors of the
17 casino, walked through the casino. So, obviously, I'm
18 trying to say there's really not another way. Like,
19 I'm sure that we brought up that there were other ways.
20 Yes, if you went through -- all the way out and took
21 the two-minute trip through the casino, which would --
22 which we would never do, because it would be crazy and
23 dangerous to try to run people through it, keep them in
24 line with us. It would be 20 different people just to
25 keep them there.

1 And going in through the theater doors is not
2 possible for us because it -- as I described, when
3 you -- when people came into the theater, if they have
4 the lights on, the audience members would see them.
5 The only door into the -- into the theater is right
6 next to the edge of the stage -- like, as we were
7 talking about with the people that ask questions or
8 staging, they're asking the questions, they're right
9 there. So that's the only other way to get into the
10 theater.

11 So if they did that, they'd have to walk up
12 right past the entire audience. So we could never do
13 it. As a magic trick, it wouldn't even work to walk
14 them through that area.

15 So the only route that is even possible is to
16 go outside and to cut through these doors and then to
17 make that little turn, go into the kitchen area and
18 right back into the theater. And it's actually -- and
19 it's rather short.

20 Q. Okay. You mentioned -- or testified that
21 there are -- you've -- this illusion has been performed
22 in many different venues across the world; is that
23 correct?

24 A. Yes.

25 Q. Okay. How does the route at the MGM that

1 we've just gone over, and as somewhat reflected in
2 terms of the turns on the diagram, how does this route
3 compare to the -- some of the other routes that you've
4 had to utilize in performing this illusion in other
5 venues?

6 A. Oh, we've had -- it's -- okay. We've done so
7 many venues and so many different situations. This one
8 is actually pretty simple. It's a very simple and
9 direct, it's not -- I mean, when you're in an arena or
10 you're in a -- an older theater -- there's very few
11 access to backstage. In older theaters and in arenas,
12 you have to run around, get up into the arena section,
13 you know, where there's the -- I don't know what
14 they're called, the -- the -- there's a name for them,
15 the little arena areas -- to get up to those and then
16 get into a seat to appear.

17 Because, again, we always try to make the
18 people appear as far back as we can in the audience,
19 because if they appeared right next to the stage, it
20 just is -- it's not really an effect.

21 So, in reality, this is all basically the
22 same -- no one's going crazy upstairs into a balcony.
23 We've had people go into the balcony at theaters
24 before, like into the -- I think at the Fox Theatre in
25 Troy -- in Atlanta, they have a beautiful balcony. I

1 think we've made them appear up in the balcony, which
2 was a -- a far, far run.

3 Q. So was that route, from your perception, the
4 one you just said in Detroit, was that more complex or
5 challenging than the route that the volunteers take at
6 MGM?

7 A. It's much more complex and challenging.

8 Q. And would that be fair to say for other
9 routes in other venues that you-all have performed this
10 illusion?

11 A. Yes, I think this is really very simple
12 compared to most of the routes, because it's -- the
13 casinos are -- you know, a theater is built -- this is
14 a theater, but when a -- a theater that's a stand-alone
15 theater, it's a different kind of idea of construction.
16 So the situation is different. The hallways and the
17 dressing rooms are usually on the sides of the theater,
18 like this -- actual physical sides, not behind it. So
19 it's -- you -- you end up going past the dressing rooms
20 before you get to the hallway, before you can get back
21 into the -- into the theater. It's all -- every single
22 one is different, every one. There's not a single
23 theater that's the same.

24 Q. Prior to you-all performing the Thirteen
25 Illusion at the MGM, were test runs or some type of

1 process of rehearsing the route done before the first
2 time volunteers actually did it?

3 A. Oh, always, yeah.

4 Q. And -- and what's the process that was used
5 for the route for the Thirteen prior to volunteers
6 actually taking that route?

7 A. At the MGM?

8 Q. Yes.

9 A. Okay. So the very first time we ever
10 performed at the MGM, our stage manager at the time,
11 which would, I think, nine -- pretty sure it was Ben
12 Butner, who was with us for so long. Ben would have
13 looked for a route, picked the best route, walked that
14 route first just to see if it could be done, checked
15 with the venue that it was okay with the venue that we
16 took that route.

17 That's another problem that we would have
18 with venues, where they'd say, "No, you can't go
19 through that hallway. We can't unlock that door. This
20 takes a security person." So you have to make sure
21 that it's possible from the building that we can do it.

22 So he would do that first. He would -- he
23 would -- first he would walk it. And then he would
24 take it and go exactly from the center of the stage
25 where the thing was, where the dragon was, and, you

1 know, kind of pace himself through the thing to see how
2 long it took him to get through there. And he kind of
3 did it extremely slow so that we could kind of judge
4 the time. He wouldn't run it to see what's the fastest
5 we can get this done, because we knew our parameter for
6 that was, you know, a minute to minute and a half,
7 minute 40. We have extra loop music that we can put in
8 if we need to in a venue.

9 So he would walk it, make sure that was all
10 good, talk to myself or Mr. Liwag, Homer Liwag, who's
11 also codirector and he's been with David for 25 years
12 like myself. And we would go, "Okay. Let's show this
13 to David." And we would show it to David. And David
14 would walk it, look at it, make sure it was okay, check
15 it out, perfect, and then we would perform it.

16 Q. In comparison with other venues, did you have
17 that much time to plan out and prepare a route for the
18 Thirteen Illusion?

19 A. In this venue versus other venues?

20 Q. Yes. In other venues, did you have as much
21 time as you just described for the process to determine
22 the route at the MGM?

23 A. It's usually about the same. But, in this
24 particular case, he may have had more time because our
25 first initial loading at the MGM was two days as

1 opposed to a single day, the very first time we loaded
2 into this venue, just due to the fact that it was going
3 to be a place we were going to sort of pick up a
4 residency and stay for multiple, multiple weeks of the
5 year. So the very first time we came in, it was an
6 extra day of the load-in, which is not normal at all.

7 Q. Okay. Now, there was some testimony
8 yesterday with respect about the protocols in place.
9 And your testimony was that the protocols in place for
10 the Thirteen Illusion with respect to safety were
11 already in place by the time you reached the MGM as a
12 venue. Do you recall that?

13 A. Yes.

14 Q. Okay. Just to set you up there, now -- and
15 you mentioned just now about checking with the venue.
16 Prior to starting the performances with the Thirteen
17 Illusion at the MGM, what was the coordination in terms
18 of the MGM to determine the route and the safety
19 protocols for this route?

20 A. We went to the stage manager, which was Paul
21 Shetter at the time, and would show him what we wanted
22 to do, and then he had to say, "Okay. That looks
23 fine."

24 And then that needs to be coordinated with
25 security because security has to guarantee -- we have

1 to, like, be sure that they'll be there at the right
2 time to open the doors and -- at first, we probably had
3 a person that would remind Dennis -- or whoever --
4 Dennis -- I'm saying Dennis, but the security guard in
5 time to open the door. Probably, the first day we did
6 it, you know. "Don't forget we need to open the doors
7 at -- when this trick starts."

8 Q. So were there any modifications or additions
9 to the safety protocols for this route for MGM versus
10 all the different venues you had done prior to
11 beginning with -- at the MGM in 2000?

12 A. You mean did we do it the same way?

13 Q. No, was anything added or evolved or changed
14 with respect to being at the MGM versus other venues in
15 terms of your safety protocols?

16 A. No. No.

17 Q. Okay. All right. Let's switch gears and go
18 to how often this illusion has been performed. Okay?
19 I believe you said it began approximately in 1998;
20 correct?

21 A. Yes.

22 Q. Okay. And, on average, how many shows does
23 the David Copperfield show perform per year?

24 A. Between 6 -- 600 and 660.

25 Q. Okay. And what's the average number of

1 participants, give or take, over the course of the
2 years from 1998 to 2013?

3 A. Participants in the Thirteen Illusion?

4 Q. Yes. I'm sorry.

5 A. That's -- it's over 100,000. I mean, the
6 amount of -- the entire amount?

7 Q. No, no, no. I was saying the average
8 number -- I'm sorry. My question wasn't clear enough.

9 The average number of participants per show
10 who participate in the illusion.

11 A. I would say 10 -- 10. We'll call it 10, 10,
12 11, 10. Make it easy add, easy math number, 10.

13 Q. And over the years, on average, how many
14 shows per week does David Copperfield perform his show?

15 A. 15.

16 Q. Okay. And that is seven days a week?

17 A. At the MGM, we're going to be seven days a
18 week. On the road, it's -- it varies.

19 Q. Right. Okay. So let's go from 2000 to 2013
20 when the show is being performed at seven days a week?

21 A. At the MGM, yes.

22 Q. Yes. I'm sorry. At the MGM.

23 A. At the MGM, it's always seven days a week.

24 The only time we would ever deviate from that is if --
25 the Mayweather fight, there's -- if there's an event

1 that the MGM would ask us. And we're happy to not be
2 there for a event because it's usually kind of -- kind
3 of a crazy thing and we don't get any real ticket
4 sales. So it's no problem for us.

5 Q. Okay. So seven days a week. How many shows
6 per night?

7 A. Two a night, three on Saturdays.

8 Q. Okay.

9 A. 15 a week.

10 Q. All right. And when you -- when you-all
11 first moved to the MGM in 2000, how many -- how many
12 weeks per year was the show being performed?

13 A. 20.

14 Q. Okay. And, at a certain point, did that --

15 A. At the MGM, 20 -- 20 weeks at the MGM; the
16 rest of the time on the road.

17 Q. Okay. I'm sorry. I cut you off by accident
18 there.

19 Okay. So -- and I'm just -- my questions are
20 now just about the MGM.

21 A. Okay.

22 Q. Okay?

23 So you started out in 2000 with 20 weeks per
24 year; correct?

25 A. Yeah.

1 Q. All right. At a certain point, was that
2 increased?

3 A. Yeah. 2005 to 2009, we were there about 26
4 weeks -- on average, 26 weeks a year.

5 Q. Okay. And then from 2009 up to 2013, or
6 through the majority of 2013, how many weeks per year
7 did David Copperfield perform the show?

8 A. 42 weeks a year.

9 Q. Okay. And same thing, 15 shows per week?

10 A. Yes.

11 Q. Okay. And have you looked at what the
12 average -- how many participants have been volunteers
13 in the Thirteen Illusion from 1998 to approximately
14 2013?

15 A. The entire amount? Yeah, have I done the
16 math? Yeah. I don't have my phone to, like, calculate
17 it again, but it's, like, over -- well over 100,000
18 people.

19 Q. And with respect to the MGM, do you know how
20 many from 2000 to 2013?

21 A. I think it was over 50,000 people.

22 Q. Okay. Oh, by the way, with respect to the
23 seven individuals -- the stagehands who are on the
24 route, at what point in time do they line up to their
25 stations on the route prior to the volunteers coming

1 out of the dragon?

2 A. I would say as soon as they hear the -- most
3 every -- like, the way people know to go to their next
4 cue for the next effect is that you can hear the music
5 from that illusion. As soon as that music from that
6 illusion where David pops the balls around, they know,
7 "Okay. I should get down there. I've got plenty of
8 time." They head over there to their spot.

9 And they're there quite early, because,
10 again, in my office, if I walk out my office, they're
11 always standing there at their spots with the doors
12 open and ready to go.

13 Q. So they're able and have the time to observe
14 if everything's clear on their portion of the route;
15 correct?

16 A. Oh, yeah. They don't show up at the last
17 minute. That's for sure.

18 Q. Okay. So they would know if there was
19 anything on the route that should be addressed?

20 A. Oh, yes.

21 Q. Now, during the course of the years, I would
22 presume that some stagehands give notice and leave and
23 you hire new stagehands?

24 MR. MORELLI: Objection to the form of the
25 question.

1 THE COURT: Sustained. Rephrase.

2 BY MS. FRESCH:

3 Q. On occasion, is there -- from 2000 to 2013,
4 have all the stagehands been the same stagehands?

5 MR. MORELLI: Objection. Same objection.

6 THE COURT: I'll allow it. It's a premise
7 for the next question.

8 THE WITNESS: No.

9 BY MS. FRESCH:

10 Q. Okay. When -- what is the process for
11 training when a new stagehand is hired that would be
12 designated to be on this route?

13 A. If -- let's say that someone -- whoever --
14 when Ryan came in or whomever would come in that
15 would -- would do that route, he would be trained by
16 the person who did it before with the stage managers
17 overseeing it, because the stage manager -- the stage
18 manager usually has the most information of who -- what
19 cues there are and what -- who does what cue, partially
20 because, if anyone is -- gets ill or gets sick, he's
21 the person that would be the -- the most information,
22 because he's physically watching the show, every night,
23 every show, calling cues from his seat. So he knows
24 who does what. He would be the person that would come
25 in and take their place, do their cues. So he really

1 knows what people do.

2 And so Ryan would have been trained by the
3 person that did it before Ryan, with the supervision of
4 the stage manager.

5 Q. Okay. And what about the people that you
6 described who are out in the audience with the
7 volunteers, the stagehands that are asking the
8 questions, the people that are out on the stage with
9 Mr. Copperfield from the time the volunteers come with
10 the ball, with -- when -- what's the process of
11 training those people when someone departs?

12 A. That would be basically the same, but instead
13 of Mr. Harmas, the stage manager -- or whoever the
14 stage manager would be -- those are usually -- or,
15 actually, not usually -- they are -- and the personal
16 assistant -- we talked about the different kind of
17 categories we have and that David's personal assistants
18 are the ones that ask those questions.

19 So they would be -- the manager of the girls
20 and David's office would be the ones that would be the
21 one that would oversee them being trained through a
22 legacy training so that the person that knows it trains
23 the next person.

24 Q. Okay. Now, you've known -- you've mentioned
25 in your testimony you've known Mr. Copperfield for many

1 years; correct?

2 A. Yes.

3 Q. All right. How do you describe
4 Mr. Copperfield in terms of his involvement in the
5 aspects of the David Copperfield show?

6 A. Very -- he's very involved in the aspects of
7 the David Copperfield show.

8 Q. And would you describe him as a
9 detail-oriented person?

10 A. Oh, yes. He's extremely detailed and
11 extremely -- he sees things that we don't always see,
12 sometimes from the stage because he's standing down
13 looking at people and he can see things. And he's --
14 on any entity, whether it's our warehouse -- David has
15 a museum -- whether it's the show, he -- he -- oh,
16 he'll walk and if there's a -- we have a very big
17 policy. And this is -- again, this is something
18 that's -- like, you can -- David does and it's -- you
19 can see his process.

20 You're not supposed to have water bottles
21 backstage.

22 MR. MORELLI: Objection, Your Honor. This is
23 not an answer to the question. He answered it already.
24 I move to strike it.

25 THE COURT: Next question.

1 BY MS. FRESCH:

2 Q. Okay. Mr. Kenner, is there something about
3 water bottles that Mr. Copperfield has directives on?

4 MR. DEUTSCH: Objection to the relevance.

5 THE WITNESS: No objection? Okay.

6 MS. FRESCH: Go ahead.

7 THE WITNESS: We -- we have a policy of no
8 water bottles backstage. And it's, you know, like
9 carrying a cell phone around, people carry a water
10 bottle a lot of times and will just carry it backstage.
11 And David will, as he's walking through, you know, he
12 can easily say, "Hey, hey, can you take your water
13 bottle away? Pick that up." He sees everything. It's
14 like he, as he's walking in the -- the warehouse is a
15 good example, the theater too. If there's anything on
16 the ground in the show, like you can go -- you could
17 ask any person that's ever worked for David in the
18 show, if something -- a piece of tape, there's tons of
19 tape.

20 This is a great example right here. This
21 would be 100 percent unacceptable to us, the way this
22 is taped down. That tape is curling up. David doesn't
23 want to trip on it. We don't want anybody else to trip
24 on it. We don't want it to stick on their feet.

25 Any person that's worked for David,

1 literally, call them all. They'll tell you this exact
2 same thing. He would look at the -- when he's on
3 stage, when he's backstage, when he's in his dressing
4 room. And we have things taped down in the dressing
5 room. We want it looking perfect. It's got to look
6 neat. No way would we let cables like this sit here.
7 We just wouldn't do it. There's a piece of tape right
8 there. David would walk by and say "Can someone grab
9 that tape. Clean it up."

10 We're constantly rechanging the tape on the
11 stage. If you look on a stage, any stage, there's
12 little pieces of tape everywhere that are corners where
13 you put a prop. And after you roll the prop on it a
14 few times, that tape might peel up. David's going to
15 always see it. And when he sees it, "Can we change
16 that? Can we fix that?" He's so observant for things
17 like that. So, yes, he's detail-oriented, if that
18 answers the question.

19 BY MS. FRESCH:

20 Q. Thank you. Yesterday, Mr. Morelli had asked
21 you a question about the route being done in
22 approximately one minute. And you had said, minute 20,
23 et cetera. And then Mr. Morelli asked you if you
24 agreed that time is of the essence on the route. And
25 you had said, yes.

1 Why did you say time was of the essence on
2 the route?

3 A. Well, you know, we don't want it to be crazy
4 long. And it's -- it's not -- they reappear here --
5 they vanish here and reappear ten minutes later,
6 there's no real effect. Obviously, it's a magic show,
7 trying to get magic, trying to create an effect, and
8 that is the effect.

9 So we try -- we know -- we know through
10 experience that the audience will look at anything and
11 go okay, okay. That's been too much time. That's how
12 that worked. Or that's -- they just moved around. So
13 you want to have that element of, you know, surprise,
14 so time.

15 Q. And, then, you also had said you agreed that
16 people can't hang out and take as long as they want.
17 And why did you agree when Mr. Morelli asked you that
18 question?

19 A. That they can't?

20 Q. Hang out -- hang around and take as long as
21 they want.

22 A. They -- yeah, they can't. Well, if they hang
23 out and take -- we'll just pull them out of the effect.

24 Q. Okay.

25 A. Is that -- I mean, if someone were to come

1 out -- I think I mentioned it. If someone came out and
2 was just like, "Hey, you know, hey, what's going on?"
3 and start lollygagging to the next person, we'll stop
4 them. "Hey, stand here." Then we put them in the
5 place where David and Ryan speak to them about secrecy.

6 Q. So there are protocols in place to address
7 someone who is going slower than to achieve the end
8 portion of the illusion; correct?

9 A. Yes.

10 Q. Okay. All right. Hold on. Okay.

11 And just one final question. Yesterday you
12 stated that Mr. Copperfield has the -- had or has --
13 had, since we were talking about before November 12th,
14 2013 -- had final approval of the route. And why does
15 Mr. Copperfield have final approval of the route?

16 A. Well, he's -- well, he's going to run it;
17 he's going to walk it; he's going to move it. We would
18 always show him, you know, we would always -- it's a
19 safety issue. It's David's effect. It's David's, you
20 know. It's -- I don't know how to describe that answer
21 because it's really the way we do it. It's our method
22 of doing the route. We look at the route, stage
23 manager looks at the route, we look at the route. We
24 show it to David. He looks at the route, and he says
25 yes. There's been times where he said, "Hey, is there

1 a quicker way or a different way?" And then we've
2 looked for it and changed it.

3 Q. Okay. And is that still a consensus of what
4 would be the best way to proceed?

5 A. The way we go now?

6 Q. With just what you said about when there's
7 going to be changes.

8 A. Yes.

9 Q. Okay. Consensus of you and whoever else at
10 Backstage is involved in design of illusions; correct?

11 A. Yeah, they would. Yeah.

12 MS. FRESCH: I believe I'm finished. Thank
13 you, Mr. Kenner.

14 THE COURT: Counsel approach.

15 (A discussion was held at the bench,
16 not reported.)

17 THE COURT: All right. Mr. Call.

18

19 CROSS-EXAMINATION

20 BY MR. CALL:

21 Q. Okay. Mr. Kenner, my name is Gary Call, and
22 my partner is Roger Strassburg. You understand we
23 represent Team Construction and Beacher's in this
24 matter?

25 A. Yes.

1 Q. Okay. Do you recall Mr. Morelli was talking
2 to you yesterday about your preparation for your
3 testimony here today, yesterday and today?

4 A. Yes.

5 Q. Okay. And at that meeting, there was --
6 Elaine Fresch was there? Wasn't that correct?

7 A. Yes.

8 Q. And Eric Freeman was present; is that
9 correct?

10 A. Yes.

11 Q. Along with Lee Roberts and Howard Russell?

12 A. Yes.

13 Q. Okay. Team Construction's attorneys were not
14 present at that preparation meeting for your testimony
15 today in this trial; isn't that correct?

16 A. Correct. I didn't meet you guys till opening
17 statements.

18 Q. Okay. So you would agree Team Construction
19 didn't prepare you for your testimony?

20 A. No, no.

21 Q. All right. Thank you. No further questions.

22 THE COURT: All right. At this time we'll
23 recess for lunch. Ladies and gentlemen, we'll
24 reconvene at 1:30.

25 During the recess, you're admonished not to

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

11 Be outside the courtroom, little bit to the
12 south, no later than 1:30 so we can get started and
13 resume. All right.

14 THE MARSHAL: All rise.

15 (Whereupon a luncheon recess was taken.)

16 THE MARSHAL: All rise. Come to order.

17 THE COURT: Please be seated. Good
18 afternoon. We're back on the record, outside the
19 presence of the jury.

20 Ms. Fresch, I understand you have something
21 to address.

22 MS. FRESCH: Could we approach, Your Honor?

23 THE COURT: Sure.

24 (A discussion was held at the bench,
25 not reported.)

1 THE COURT: Okay. Are we ready for the jury,
2 then? I'll need to make a record.

3 Did you get that down?

4 Bench conference was recorded by the clerk.

5 All right. Are we ready for the jury, Counsel?

6 MR. POPOVICH: Yes, Your Honor.

7 MS. FRESCH: Yes, Your Honor.

8 THE MARSHAL: All rise.

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

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

13 MR. MORELLI: Jury is present.

14 MS. FRESCH: Yes, Your Honor.

15 MR. POPOVICH: Yes, Your Honor.

16 MR. CALL: Yes.

17 THE COURT: I realize it's not 1:30, but once
18 again we've taken up some matters that will save time
19 in the long run.

20 Okay. You may do redirect, Counsel.

21 MR. MORELLI: Thank you.

22 Good afternoon, jurors.

23 IN UNISON: Good afternoon.

24

25 REDIRECT EXAMINATION

1 BY MR. MORELLI:

2 Q. Mr. Kenner, hopefully I'm not your worst
3 nightmare at this point. But I have certain questions
4 to -- to ask you based on the questions that you've
5 been asked by other counsel. Okay?

6 A. Yes.

7 Q. So with the same understanding that if you
8 don't understand my question, let me know. I'll
9 rephrase it, have it read back, whatever works. Fair
10 enough?

11 A. Yes.

12 Q. Okay. The first thing I want to talk to you
13 about is -- because I have been listening carefully to
14 your testimony from the questions of the other lawyers,
15 and I believe today you spoke about another route.
16 Remember that? Another route to finish the illusion?

17 A. Correct.

18 Q. Okay. And I think that it was referenced as
19 "I brought up another route." But if you remember
20 correctly, yesterday you told the jury, answering one
21 of my questions, that there was a second route that is
22 used to do the illusion. Remember that? You said
23 there was a second route.

24 A. No, I did not. I don't remember that.

25 Q. Okay. So -- yeah.

1 MR. MORELLI: Can I have the testimony?

2 MR. DEUTSCH: Can we switch to the ELMO?

3 BY MR. MORELLI:

4 Q. Just going to put it up so that you -- and
5 you can probably see it on your screen too.

6 A. Oh, yeah.

7 Q. Just so there's no confusion.

8 MS. FRESCH: Adam, what page?

9 MR. DEUTSCH: Starts on page 242.

10 MR. MORELLI: Is it only the highlighted
11 portion?

12 MR. DEUTSCH: Well, the question starts at
13 the top and then the answer goes down.

14 MR. MORELLI: Okay.

15 BY MR. MORELLI:

16 Q. Okay. I'm going to allow you to read it
17 first before I read it. Okay?

18 A. Okay.

19 Q. This way, you know what we're talking about.

20 A. (Witness reviewing document.)

21 Q. Okay?

22 A. Yep.

23 Q. Okay. So, for the jurors, maybe you could
24 all read it. But the question was, "Okay. So explain
25 to the jury why you would not do it if it was raining."

1 "ANSWER: Well, it's wet. It's -- you
2 know, it's wet and slippery. We would be
3 more -- in that particular case, if we were to
4 get wet and then walk into -- on the linoleum,
5 I can't -- I think it's linoleum, whatever the
6 flooring is as you walk back in, that would be
7 very slippery.

8 "So we just -- we just -- there's no
9 way we're going to do that. We would take --
10 there are times I've asked David not to do
11 that. And there's a -- we have a -- we have a
12 second way that he could go which we don't
13 particularly like because he can be exposed to
14 the audience. I think we've done there at the
15 MGM if it's been really raining hard."

16 Okay? Remember that?

17 A. Yes.

18 Q. Does that refresh your memory?

19 A. Yes.

20 Q. So there is a second way that has been used,
21 another route that you've used before. Correct?

22 A. Yes.

23 Q. Okay. And, now, when you use that second
24 route, is that only when it's raining that you have
25 used that second route?

1 A. It would only be if it was raining, for sure.

2 Q. Okay. Now, let's -- let's talk about the

3 rain. If it's raining -- and I believe you told me, on

4 my questions to you, that when it's raining, the

5 surface could be slippery. Correct?

6 A. Yes.

7 Q. And you would agree, would you not,

8 Mr. Kenner, that the surface outside on the concrete,

9 if it's raining, would also be slippery in the rain;

10 correct?

11 A. Sure. Yes.

12 Q. And so you wouldn't want to expose the

13 participants to that. So you would use the second

14 route. Fair enough?

15 A. No.

16 Q. You would not use the route at all?

17 A. Correct.

18 Q. Okay. So there's two options, in other

19 words?

20 A. Correct.

21 Q. Not use the route; use the second route?

22 A. Correct.

23 Q. Okay. Now, were you always concerned about

24 the rain making the surfaces slippery? Were you always

25 concerned about that, from day one of doing this

1 illusion?

2 A. Yes.

3 Q. Okay. So that when you very first -- when
4 you first started doing the illusion and some -- and
5 the participants had to run outside, you immediately
6 never let anyone do that. Is that a correct statement?

7 A. Say the question again.

8 Q. Okay. Sure.

9 THE WITNESS: Read -- could you read it back
10 to me, please?

11 (Record read by the reporter.)

12 THE WITNESS: Can you rephrase the question
13 or say it again?

14 MR. MORELLI: Sure. Sure.

15 BY MR. MORELLI:

16 Q. What I'm trying to find out is whether or not
17 you immediately decided that rain was a problem and,
18 therefore, never let anyone run out in the rain. Okay?
19 Or there was an event that happened that made you say,
20 "Hey, wait a second. We have to not do this again."
21 Which one is it?

22 A. What are my two choices? This is like a very
23 complicated -- kind of a complicated question.

24 Q. Okay. Let me ask you this way. Did you ever
25 let the illusion be completed with the participants

1 running outside when it was raining?

2 A. No.

3 Q. Okay. So there's never been a time where the
4 participants have run in the rain because you have a
5 protocol that there is no running in the rain. And
6 that was always true?

7 A. No, it's not a protocol of no running in the
8 rain.

9 Q. Okay. So forget that for a moment.
10 Let's forget about the word "protocol"
11 because that might mean something specific to you.

12 A. Yes, it seems to be.

13 Q. So let's say that -- is it true that at one
14 point you said, "David, I don't want you to do this in
15 the rain"? Or you and he had already decided before
16 this illusion was ever done, going outside, never done,
17 that there was never going to be any running in the
18 rain? That's what I want to know.

19 A. No, we never decided there would never be
20 running in the rain.

21 Q. Okay. So there was at least one, two, a few
22 times where there was running in the rain, and you
23 decided -- maybe you, along with Mr. Copperfield,
24 decided that that wasn't prudent and you stopped it.
25 Is that fair? I mean, I think that's pretty clear.

1 A. Yes, I stopped this from anyone going outside
2 in the rain before.

3 Q. All right. But, what I -- what I'm trying to
4 establish -- and I don't know if I understand yet.
5 There was a time when people had -- no matter how many
6 times it was -- 1, 2, 3, 13, doesn't matter -- people
7 had run in the rain and you established that it wasn't
8 safe and you stopped it. And you said, "Look, we're
9 not doing this anymore. We're going to either use
10 route two or we're not going to use any route at all
11 and not have them reappear."

12 Do you understand my question?

13 A. That's like multiple questions. Is it --

14 Q. Okay. Let me -- let me break it down. I'm
15 trying.

16 A. I know. I'm just -- I'm --

17 Q. That's okay. I don't want you to answer a
18 question you don't understand. We already talked about
19 that. So what I want to know is, when you decided and
20 made the rule, okay, that there was not going to be
21 participants running in the rain, had people run in the
22 rain before finishing the illusion when you made that
23 rule, or was that a rule from the get-go?

24 Do we understand each other?

25 A. You're saying it like it's a rule that they

1 don't run in the rain. I said it wasn't a protocol
2 that they don't run in the rain.

3 Q. Okay. My question is, had you ever allowed
4 the participants to run in the rain before you decided
5 that they shouldn't run in the rain?

6 A. People -- it's -- it's obviously on the basis
7 of the situation of the rain. When did it rain? Is it
8 raining then? Is it storming? Is it sprinkling? Rain
9 can be, you know, like I said, here in Las Vegas,
10 sheets of rain come and then it stops.

11 Q. Okay. So what you're saying is that we have
12 to now not only establish what "running" means, but we
13 have to establish what "raining" means. So let's do
14 the raining first. Okay? Do the participants
15 sometimes -- or have -- withdrawn.

16 In the past -- I don't care what happens now.
17 In the past, have the participants run in the rain if
18 it was light rain?

19 A. Yes.

20 Q. Okay. Have the participants run in the rain
21 when it was moderate rain? This is the best I can do.
22 I'm not going to make it rain here. I'm not that good.

23 A. I will say --

24 Q. I'm not a magician.

25 A. I will say yes.

1 Q. Okay.

2 A. Yes. Moderate rain would be you don't really
3 get wet in a -- in the time of walking in that little
4 area, moving in that little area, you wouldn't get
5 really wet.

6 Q. Okay. So, now, heavy rain -- I think I know
7 your answer. In heavy rain, all bets are off?

8 A. No way.

9 Q. Okay. Now, let's assume for a moment that it
10 rained and it stopped half an hour before. But it's at
11 night. Right? So there's no sun. Okay. Stopped a
12 half an hour before. Is that okay?

13 A. Most likely, yes.

14 Q. Okay. So, now, is it -- is it because you
15 believe that if it rains and it stops, that the surface
16 outside, the concrete surface, cannot be slippery? Is
17 that --

18 A. I don't think it's very slippery, that area,
19 when it's wet.

20 Q. Okay. I think we already established that.
21 Let's not go back.

22 A. I'm saying when it's wet, I don't think it's
23 crazy slippery.

24 Q. Okay. But you can tell me whatever you want.
25 I'm asking you questions.

1 A. I just answered I don't think it's crazy
2 slippery.

3 Q. You don't -- you don't think, if it rains and
4 it stops, that it's slippery?

5 A. Not -- not really, no.

6 Q. Okay. So what I'm trying to establish is
7 that have there been participants -- and I'm only
8 talking about the Thirteen illusion. I'm not talking
9 about anything else.

10 A. Understood.

11 Q. And this route, this outside route, has it
12 ever -- has there ever been an occasion where somebody
13 has run that route in the rain and gotten injured?

14 A. No.

15 Q. Okay. Ever?

16 A. Ever.

17 Q. Okay. That you know of?

18 A. Yes. That I know of.

19 Q. Okay. Now, I listened, I think, fairly
20 carefully to your answers to the other lawyers'
21 questions -- Mr. Roberts, Ms. Fresch, and
22 Mr. Popovich -- and I heard some different things from
23 the answers you gave me.

24 MR. POPOVICH: Objection. Argument.

25 /////

1 BY MR. MORELLI:

2 Q. So I want to -- I want to clear it up.

3 THE COURT: What's the objection?

4 MR. POPOVICH: Argument.

5 THE COURT: I'm taking it as a premise to a
6 question.

7 MR. MORELLI: Okay.

8 BY MR. MORELLI:

9 Q. So I want to clear it up.

10 Am I correct, sir, that yesterday I asked you
11 questions for a number of hours?

12 A. Yes.

13 Q. Okay.

14 A. I think that's true.

15 Q. That one we can agree on. Okay? And that
16 during that time we used the term "run." True?

17 A. Correct.

18 Q. During that time, we used the term
19 "runaround." We used the term "they run," "run, run,
20 run," and "run." Right? That's all we used.

21 A. Uh-huh.

22 Q. And at no time did I have to define for you
23 what running means, did I? Did you ever ask me to
24 define "run" yesterday when I was questioning you?

25 A. I don't remember if I did or not.

1 Q. Okay.

2 A. But run has been a discussion over this
3 entire case.

4 Q. Okay. Now -- okay. So I'm going to show you
5 your testimony from yesterday.

6 MR. DEUTSCH: Page 194.

7 MR. MORELLI: One question. I'm going to
8 show the jury also.

9 THE WITNESS: One more question, you said?
10 BY MR. MORELLI:

11 Q. Huh?

12 A. You said one more question?

13 Q. No. It's one more question we're going to
14 show you from yesterday.

15 A. I thought you said one more question.

16 Q. You know, hope springs eternal, but not that
17 eternal.

18 It's not that clear, Mr. Deutsch.

19 Okay.

20 MR. POPOVICH: 194, Adam.

21 MR. DEUTSCH: Yeah. Line 15.

22 BY MR. MORELLI:

23 Q. "And during the runaround -- and we're going
24 to watch the video -- okay? -- of that night -- they
25 were running; is that correct?"

1 What was your answer?

2 A. "Yes."

3 Q. Okay. So do you agree with me that that was

4 your answer? because that was true. Right?

5 A. Sure.

6 Q. Okay.

7 A. Yes.

8 Q. So, now, the -- today, on certain questions,

9 you used the term "brisk walk." Brisk walk. Do you

10 remember using that term today?

11 A. Yes.

12 Q. You didn't use it yesterday, did you?

13 A. No.

14 Q. No?

15 A. I don't think so, no. No, I'm not sure.

16 Q. Did you ever use that term before in your

17 life? Did you ever use the term "brisk walk" in your

18 life?

19 A. Sure. In my life, I'm sure I have used the

20 term "brisk walk."

21 Q. Okay. How about in your deposition? Did you

22 ever say that during this illusion there was a brisk

23 walk?

24 A. I don't remember. I don't recall that.

25 Q. Well, I can tell you, you didn't. Okay?

1 MR. POPOVICH: Objection to Mr. Morelli
2 testifying.

3 THE COURT: Sustained.

4 MR. POPOVICH: Move to strike.

5 MR. MORELLI: Then I will bring it up.

6 MR. DEUTSCH: The whole transcript?

7 MR. MORELLI: No. Just give me the
8 deposition of where he said "run."

9 BY MR. MORELLI:

10 Q. If I was to say to you that nowhere in your
11 transcript, during your deposition, you used the term
12 "brisk walk," would you disagree with me?

13 A. No.

14 Q. Okay.

15 A. So you don't have to.

16 Q. Now, because, you know, we're not going to
17 look at the whole transcript now.

18 A. I would have actually wanted to read it.

19 Q. Well, your lawyers should have given it to
20 you.

21 A. No. I mean now just to verify.

22 MR. DEUTSCH: Hold on.

23 BY MR. MORELLI:

24 Q. I can -- I can tell you that -- have you ever
25 spoken to Mr. Carvalho after this accident?

1 A. After the accident? He works for me. Of
2 course I have spoken to Mr. Carvalho.

3 Q. Okay. Did you ever speak to him about this
4 case and about his testimony when he gave a deposition?

5 A. I don't recall talking to him about his
6 deposition at all.

7 Q. Did he ever tell you that he used the term
8 "brisk walk"?

9 A. No, I didn't. I don't remember ever talking
10 to him.

11 Q. Did Pomai Weall ever speak to you about this
12 case and tell you that in her deposition she used the
13 term "brisk walk"?

14 A. No.

15 Q. Okay. How about your closest friend,
16 Mr. Copperfield? Did you ever have a discussion with
17 him about him using the term "brisk walk"?

18 A. No.

19 Q. Okay.

20 A. I just have heard it in the past two days
21 used a few times.

22 Q. Okay.

23 A. I think in my testimony I might have said a
24 brisk walk, a jog, a run. I think I might have used
25 multiple things. If we could look back and see what

1 that was, that would be great.

2 Q. Yeah. That was -- we're going to cover that.

3 That was --

4 A. Okay.

5 Q. -- not on my questions.

6 Now, with reference to -- you said that
7 they -- I think you used the term today "jog." Jog.
8 Remember using that term?

9 A. Yeah. Jog is a form of running. Yes.

10 Q. Jog.

11 Okay. "Trot." Did you use that term?

12 A. Trot is a form of running.

13 Q. Okay. And what's the difference, in your
14 opinion, between a brisk walk and a trot?

15 A. I think if you were to look at the video, you
16 could see that --

17 Q. Well, instead of doing that, why don't you --
18 why don't you show me what a brisk walk is?

19 A. -- as a brisk walk.

20 Q. Why don't you show me what a brisk walk is.
21 Show me. Show me a brisk walk.

22 A. (Witness complies.)

23 Q. Okay. Now show me a trot.

24 A. (Witness complies.) Run, to you.

25 Q. Look, you were getting the exercise, just

1 like you are telling the participants.

2 Now -- now show me the jog. That was the
3 trot, don't forget.

4 A. The jog.

5 Q. Because, obviously, you said trot and jog, so
6 there must be difference. So show me the jog.

7 A. (Witness complies.)

8 Q. That's a little faster than the trot.

9 A. Yeah.

10 Q. That's pretty good. Thank God you didn't
11 fall and get injured.

12 A. That would have been awesome because you told
13 me to do it.

14 Q. I heard what he said. I'm not deaf yet.
15 Soon, not yet.

16 Okay. So you would agree, would you not -- I
17 didn't ask you to run, so -- you would agree that if
18 somebody is selecting someone to do something, they
19 have to take responsibility for that person because I
20 asked you to do it. What I didn't ask you to do was to
21 jump on the table, but that's another story.

22 But am I right? I mean, if you ask somebody
23 to do something, then you have to take responsibility
24 for it. Would you agree with me?

25 MR. POPOVICH: Objection. Overbroad.

1 Incomplete hypothetical.

2 THE COURT: I will allow it.

3 MR. MORELLI: Yes or no.

4 THE WITNESS: Say again?

5 BY MR. MORELLI:

6 Q. If you --

7 A. I'm winded.

8 Q. If you ask somebody to do something, you have

9 to take responsibility for it because you're assuming

10 the responsibility for that person. Do you agree with

11 me?

12 A. Sure.

13 Q. Okay. Now --

14 MR. MORELLI: Let's offer the photos into

15 evidence.

16 MR. DEUTSCH: These are already in evidence.

17 Plaintiffs' No. 83-1 and 2. I believe those were

18 already in evidence. They were used in the opening.

19 Show him.

20 MR. MORELLI: These --

21 MR. POPOVICH: Let me see the other one.

22 MR. MORELLI: Yeah, they're both the same.

23 Yeah, this is the one with the pocket. Remember?

24 MR. POPOVICH: Yeah.

25 Not admitted, but no objection.

1 MR. DEUTSCH: Well, we're going to move to
2 admit them, then, at that point.

3 MR. MORELLI: Do they know the numbers?

4 MR. DEUTSCH: Yes.

5 THE COURT: What are the numbers?

6 MR. DEUTSCH: 83, pages 1 and 2.

7 THE COURT: 883?

8 MR. DEUTSCH: 83-1 and 83-2.

9 MR. MORELLI: 83-1 and 2, Your Honor.

10 MR. ROBERTS: Objection. Beyond the scope.

11 THE COURT: I need to see them.

12 MR. MORELLI: It's about dust, questions are
13 about dust.

14 THE COURT: All right.

15 MR. MORELLI: I just want to publish them to
16 the jury if I can, Your Honor.

17 THE COURT: Okay. I'll overrule the
18 objection for the limited purpose of the question.

19 THE COURT RECORDER: The computer or the
20 ELMO?

21 THE COURT: Are they being offered into
22 evidence?

23 MR. DEUTSCH: Yes. There was -- they were
24 stipulated in.

25 THE COURT: Oh, okay. Go ahead.

1 They're already in. The objection was that
2 it went beyond the scope of the cross, and I am
3 overruling the objection based on the limitation of the
4 question.

5 BY MR. MORELLI:

6 Q. Now, you were asked a number of questions
7 after my questioning about dust. You remember that?

8 A. Correct.

9 Q. About walking in and not having dust on your
10 shoe and you're always outside. Remember all of those?

11 A. Yes.

12 Q. Okay. Now, before we -- before we get to
13 that, did you have occasion to discuss your testimony
14 that you were going to give today with Mr. Copperfield?

15 A. Today? No.

16 Q. No, no.

17 A. Like --

18 Q. I'm talking about before you testified today.
19 Last night, did you see Mr. Copperfield last night?

20 A. Briefly during the show -- or at the show,
21 but ...

22 Q. Okay. Did you have any conversations with
23 him about this trial and about your testimony or --

24 A. No.

25 Q. -- he said to you, good job, bad job?

1 A. No.

2 Q. Anything? Okay.

3 A. No.

4 Q. Did -- did he tell you anything about what he
5 thought -- thank you.

6 I'm just showing you these. It's easier than
7 looking on the thing.

8 A. Got you.

9 Q. So no conversations with Mr. Copperfield?

10 A. No. I -- I briefly saw him -- by the time --

11 Q. No, I'm talking just about your testimony.
12 Whatever else you talked about is not my business.

13 A. Okay. No.

14 Q. Nothing about that?

15 A. No. About this case, no.

16 Q. Okay. Now, did you have any conversations
17 with anyone else, like the attorneys or anything, about
18 your testimony --

19 A. No.

20 Q. -- in -- and, you know, about anything at all
21 about your testimony?

22 A. No.

23 Q. Okay. You didn't meet with them?

24 A. Meet with -- no.

25 Q. Okay. And you didn't talk to them on the

1 telephone or anything?

2 A. No.

3 Q. Okay. Now, you could see the photos. Do you
4 see the photos that -- those are photos of Mr. Cox --

5 A. Yes.

6 Q. -- right after the accident. You know that;
7 right?

8 A. Yes.

9 Q. Okay. I mean, you know that at this time;
10 right?

11 A. Correct. Yes.

12 Q. And do you see the dust all over his
13 clothing?

14 A. I do.

15 Q. Okay. Now, you would agree with me, would
16 you not, that that's not like regular dust that might,
17 you know, just be on the carpet here; right? That
18 looks a little different to you, or does it look like
19 dust in the courtroom?

20 MR. CALL: Objection. Calls for speculation.

21 MR. MORELLI: Really?

22 THE COURT: Rephrase. You can ask him what
23 the dust looks like.

24 BY MR. MORELLI:

25 Q. Okay. What does the dust look like to you?

1 Does it look like normal dust that you would see in
2 someone's apartment?

3 A. It looks similar to -- it looks very similar
4 to, last night, I was wearing jeans and I -- actually
5 in the exact same spot --

6 Q. This is a yes and no. I want to know whether
7 or not that looks like construction dust to you.

8 A. Construction dust?

9 Q. You can say no. Okay?

10 THE COURT: What's the objection?

11 MR. CALL: Calls for speculation about
12 construction dust.

13 THE COURT: He can say what it looks like to
14 him.

15 THE WITNESS: It does not look like
16 construction dust.

17 BY MR. MORELLI:

18 Q. Okay. Now, am I correct, sir, that you knew
19 that the dumpster -- the Team Construction dumpster was
20 along the outside route that the Thirteen Illusion had
21 to run?

22 A. Yes. I knew, the first day, it was there,
23 yes.

24 Q. Okay. And that the -- the night of
25 November 12th, 2013, wasn't raining?

1 A. No.

2 Q. Okay. And you would also agree with me that
3 that area, only if you know that area -- and we showed
4 the photos yesterday of --

5 A. Yes.

6 Q. -- that concrete area?

7 A. Of that night, yes.

8 Q. Yeah. The -- that area was used as a
9 lay-down area for the -- the construction company?

10 MR. CALL: Objection. Facts not in evidence.

11 THE COURT: Well, he's asking to adduce
12 evidence, so ...

13 THE WITNESS: When you say "lay-down area,"
14 you mean just a place that they throw the trash?

15 BY MR. MORELLI:

16 Q. No, the place that they -- well, the --
17 the -- the concrete area itself was used as a lay-down
18 area where they put their tools, they put their
19 Sheetrock, they put everything down. And the dumpster
20 was right adjacent to it. The dumpster was where they
21 put the trash and other materials that --

22 MR. CALL: Object.

23 BY MR. MORELLI:

24 Q. -- they were discarding.

25 MR. CALL: Objection. Facts not in evidence.

1 THE COURT: Well, he's seeking to adduce
2 evidence, so --

3 MR. CALL: And he mischaracterizes the
4 evidence.

5 Go ahead.

6 THE WITNESS: I've never seen Sheetrock there
7 nor tools.

8 BY MR. MORELLI:

9 Q. I'm -- I'm not asking you that. I'm asking
10 you whether or not you knew that that was the lay-down
11 area.

12 MR. CALL: Same objection.

13 BY MR. MORELLI:

14 Q. You might not know.

15 A. I don't know.

16 THE COURT: You can ask him whether it was a
17 lay-down area.

18 BY MR. MORELLI:

19 Q. Yeah. I want to know whether it was the
20 lay-down area.

21 A. I don't know.

22 Q. Okay. What you did know is that there was
23 the construction dumpster there --

24 A. Correct.

25 Q. -- correct?

1 Now, do you know who decided to place the
2 dumpster in that position?

3 A. No.

4 Q. Okay. Now, would you say that you thought
5 about -- at any time, because you knew your illusion
6 was taking that route, did you ever say, "Well, maybe
7 that's not a good place for the dumpster"?

8 A. No.

9 Q. Had you thought of that, would you have told
10 MGM to move it?

11 A. I would have asked them to take it and move
12 it.

13 MR. POPOVICH: Objection. Speculation.

14 THE COURT: Overruled. I'll allow it.

15 THE WITNESS: I would have asked them if they
16 could move it.

17 BY MR. MORELLI:

18 Q. Okay. Now, would you agree with me that
19 words matter -- words matter -- exact words matter?

20 A. Yes.

21 Q. Okay. We're not going to go into it.

22 And am I correct that you stated on questions
23 today that certain things were a joke? Remember saying
24 that?

25 A. Yes.

1 Q. Certain things were a joke.

2 Now, I had spoken to you yesterday about
3 certain things being a joke. Remember that?

4 A. Yes. I guess.

5 Q. Well, I had said to you that Mr. Copperfield
6 says certain things, and certain things that he says
7 are possibly a joke and other things that he says are
8 not a joke. Correct?

9 A. Correct.

10 Q. Okay. And would you agree with me that he
11 doesn't differentiate between when he's making a joke
12 and when he's being dead serious?

13 A. No, he does not.

14 Q. Okay. So you agree with me?

15 A. I do.

16 Q. Okay. So, now, I think you said that -- you
17 do know, do you not, that, at the end of the runaround,
18 the participants are asked to go into a room where
19 Mr. Carvalho speaks to them?

20 A. Yes.

21 Q. Okay. And I think you -- you mentioned that
22 briefly when I was questioning you. You remember that;
23 right?

24 A. Yes.

25 Q. Okay. And that not only does Mr. Carvalho

1 question these participants -- and let's not only say
2 question, he is sort of speaking to them?

3 A. Correct. Question is not -- they're not --

4 Q. Yeah, it's not really a question.

5 A. -- they're not a witness.

6 Q. Right. They're -- he's telling them things?

7 A. Yeah.

8 Q. All right. And, also, Mr. Copperfield comes
9 in at a certain point and he also tells them things;
10 correct?

11 A. Yes.

12 Q. And -- and the things that he tells them,
13 you -- you realize, do you not, is a certain script?
14 It's a script -- it's something -- it's a written
15 script of what he tells them?

16 A. Yes, and I -- as I described earlier, people
17 can elaborate. People say different words and
18 different things.

19 Q. But there is a written script?

20 A. Yeah.

21 Q. Yeah. And, in the written script, it
22 mentions certain very specific things. And one of the
23 things is, if you know -- and I'm going to ask
24 Mr. Copperfield if he knows. Okay?

25 A. Okay.

1 Q. But if you know -- because you're not there;
2 correct?

3 A. Correct.

4 Q. Okay. But you know about the script; right?

5 A. Yes.

6 Q. Okay. And he asks -- he doesn't ask. They
7 say to the participants that "I guess you didn't
8 realize that you were going to get entertained and
9 exercise at the same time," basically?

10 A. Yes.

11 Q. True; right?

12 A. Just like I did recently. I didn't know I
13 was going to be getting exercise here --

14 Q. Well, thank God you were --

15 A. -- and entertained.

16 Q. Thank God you were ready. I scoped you out.
17 I thought you were fit. So --

18 A. Did he?

19 Q. Thank God I wasn't wrong.

20 When he tells them that -- and I'm not
21 talking about whether it's Mr. Copperfield or
22 Mr. Carvalho -- it really doesn't matter -- but when he
23 says, "I guess you didn't realize you were going to get
24 entertainment and get exercise," is that a joke?

25 A. Sure.

1 Q. Okay. So that's a joke.
2 A. And it has, you know, a bit of truth to it.
3 Q. Yeah. Okay.
4 Wait. Wait. It has a bit of truth to it.
5 Okay. I'm going to let you tell me what that
6 is.
7 A. Yes. Walking briskly, jogging -- just
8 walking is exercise.
9 Q. Okay. So -- so -- the -- during that --
10 that's referring to the runaround; right?
11 A. Sure.
12 Q. Okay. Now, the -- the -- the runaround
13 doesn't really mean that it's running; correct? Isn't
14 that true? Isn't that what you said?
15 A. Running -- yes, we went through all of what
16 running means, yes. I think --
17 Q. Yeah, it doesn't --
18 A. I don't need to go over that.
19 Q. It doesn't mean running?
20 A. I said I don't need to go over the -- when
21 you say running --
22 Q. No, no.
23 A. -- it's a -- that word, we've had this
24 problem with.
25 Q. I understand. We didn't have a problem

1 yesterday, but we had a problem today.

2 A. Well, you wouldn't let me explain anything
3 yesterday.

4 Q. That's unfair. You don't want to hurt my
5 feelings.

6 A. Okay.

7 Q. The -- the runaround is a term of art. Is
8 that -- is that what it is? It's not really running;
9 it's a term of art. You always use that term,
10 "runaround," even when people aren't running. Yes or
11 no?

12 A. Yes.

13 Q. Okay. So let's get it straight. Do
14 participants run in the runaround? Because I asked you
15 yesterday and you said yes. What's your answer today?
16 Yes or no.

17 A. Yes. Yes.

18 Q. Okay. Now, we're talking about jokes. And
19 you said that some parts of things are jokes and some
20 parts are true; correct?

21 A. Sure.

22 Q. Okay. So they're running for their lives
23 with crazy looks on their faces. Is that a joke too?

24 A. Yes.

25 Q. Okay. Totally? 100 percent a joke?

1 A. Yeah.

2 Q. Okay. So which part of it is not true:

3 the running part for their lives or crazy looks on

4 their faces? Which part would you say is the joke?

5 A. I would say they were both the joke.

6 Q. Well, there's three parts.

7 A. Running for --

8 Q. The only part that's not a joke is the

9 running.

10 A. No, it's a sentence. Running for your lives

11 is what the thing is. It's not -- running, for your

12 lives, and then that's the third part. So it's running

13 for your lives.

14 Q. Who wrote this script? Did you write it?

15 A. A group effort.

16 Q. Okay. This -- let's get this group straight.

17 Is it you --

18 A. Well, it's a team effort. It's -- it's a --

19 teamwork is a -- I mean --

20 Q. Listen. Listen. Listen. I ask questions;

21 you answer. Okay? Let's keep it that way. No

22 speeches. All right?

23 So here's my question: I want to know who

24 the group is. Is it you? You part of the group?

25 A. Sure.

1 Q. Okay. Mr. Copperfield part of the group?

2 A. Yes.

3 Q. Okay. Any other people in this group?

4 A. Mr. Liwag.

5 Q. Mr. Liwag. Anybody else in this group just
6 with reference to writing the script of what's told to
7 the people after they participate?

8 A. I'm not sure who was sitting in the room 20
9 years ago when we wrote this.

10 Q. Okay. Okay.

11 MR. DEUTSCH: Your Honor, at this time, we'd
12 like to move into evidence D425. I believe it was
13 stipulated.

14 THE COURT: D425?

15 MR. ROBERTS: This is the script? No
16 objection.

17 MR. DEUTSCH: Yes.

18 THE COURT: Okay. It's admitted if it hasn't
19 been already.

20 (Whereupon, Defendants' Exhibit 425 was
21 admitted into evidence.)

22 MR. POPOVICH: Just a moment, Your Honor,
23 while I'm checking.

24 THE COURT: All right.

25 THE CLERK: It was admitted on the 11th.

1 MR. POPOVICH: Yes. Agreed.

2 MR. DEUTSCH: Yes, Your Honor?

3 THE COURT: Yes.

4 MR. DEUTSCH: Thank you.

5 BY MR. MORELLI:

6 Q. Okay. You could see that on your screen;
7 correct?

8 A. Yes.

9 Q. Okay. And you said that it was the same
10 since when?

11 A. 20 years ago.

12 Q. No, that's not what you said. You said it
13 was the same from the beginning.

14 A. Well, since the beginning 20 years ago.

15 Q. Okay. So it's -- actually was updated in
16 '09, which is actually nine years ago. Correct? So
17 not 20 years?

18 A. I'm not sure what the word "updated" means.
19 Could just mean typed into the computer.

20 Q. Well, I guess you need another definition.

21 A. No. Can I explain or do I just have to say
22 with no explanation?

23 Q. There's no explanation. This is a document
24 that says that this was updated in September 2009. Is
25 that incorrect?

1 A. No, it's not incorrect.

2 Q. Okay. So it was updated. Did you update it?

3 Did you --

4 A. No.

5 Q. Did you update it?

6 A. No.

7 Q. Okay. So what's to explain?

8 A. I just --

9 Q. You didn't update it?

10 A. I didn't update it.

11 Q. So you don't know what they updated. Is that

12 your testimony?

13 A. Sure.

14 Q. Okay. So it's not true -- and I don't want

15 to say it's not true -- it's not accurate -- okay? --

16 that it's been exactly the same for 20 years. It was

17 updated in '09.

18 A. Can we read my testimony from what I said

19 that -- to them earlier about this?

20 Q. Mr. Kenner --

21 A. Because that will explain that I said it. I

22 already said it.

23 Q. Mr. Kenner, you don't tell the reporter what

24 to do. No one tells the reporter what to do except for

25 the Court. Okay? So -- just say it.

1 A. Okay.

2 Q. Okay. Now, who -- so the -- this particular
3 script, in a moment I'm going to highlight a couple of
4 portions for you. Okay?

5 MR. DEUTSCH: Do you want it blown up? You
6 have to do it piece by piece.

7 MR. MORELLI: Yeah, just the first sentence.
8 BY MR. MORELLI:

9 Q. And that says what we're talking about;
10 correct?

11 A. Yes.

12 Q. Which is, "How fun was that? You had no idea
13 you were getting entertainment and exercise." And, for
14 some reason, that "and" is very big, to highlight that
15 they were getting exercise. Correct?

16 A. Yes.

17 Q. Okay. Now, do you know that also in the
18 script it talks about -- well, let's read it
19 specifically. We have a video of what you just did
20 from the audience's point of view. Now, what he's
21 talking about is that video that we saw yesterday --
22 right? -- with the balls bouncing?

23 A. Not that exact video.

24 Q. Not that exact one, but it's a video of --
25 from the audience's perspective?

1 A. Yes.

2 Q. Okay. On -- on whatever night it is. We
3 don't know what night was chosen.

4 A. Yes, I know exactly what night it is, the
5 night that it was filmed in 2011.

6 Q. Okay. But that -- it wasn't the night of
7 2013 is what -- is what I'm saying.

8 A. No, no.

9 Q. So it's not you, it's not tonight, it's not a
10 video of you all running for your lives with crazy
11 looks on your faces. Okay? That's what it says
12 specifically, is it not?

13 A. Yes.

14 Q. Okay. Now, also, just to -- it states at the
15 end, "Sorry we don't have popcorn or Gatorade for you."

16 Now, popcorn, I sort of understand, but he
17 didn't say water there. Did you write that?

18 A. No.

19 Q. Okay. Do you know who wrote that they were
20 talking about Gatorade?

21 A. No.

22 Q. Okay. And you would agree with me, would you
23 not, Mr. Kenner, that they give Gatorade to athletes
24 when they're really, really running around, working
25 hard? Would you agree with me on that?

1 A. Sure. It's also sold at 7-Eleven.

2 Q. Now, earlier today, you were being asked
3 questions about this -- the route, by other lawyers.
4 We don't have to mention who it is, but about the
5 route.

6 A. Yes.

7 Q. And I believe -- and you correct me if I'm
8 wrong -- that you were making the point that it was a
9 simple route. Fair?

10 A. Yes.

11 Q. Okay. And that -- simple in the sense that
12 people could figure out -- people, meaning the
13 participants, can figure out easily where they were
14 going?

15 A. Yes.

16 Q. Fair enough?

17 A. Fair enough. Yes.

18 Q. Okay. And that although, when we looked at
19 all of those photos that I showed you earlier
20 yesterday, it seemed like they were going a lot of
21 places and a lot of lefts and rights and straight and
22 different surfaces. That wasn't necessarily a fair
23 interpretation of what really happens. That's
24 basically what you were trying to say today --
25 correct? -- that it wasn't really a fair interpretation

1 when I was questioning you?

2 A. Correct.

3 Q. That it was confusing, because it isn't?

4 A. No.

5 Q. Okay. And that people really could decide

6 whatever they want to do; right? They could decide

7 whatever they want to do.

8 A. To stop, yes.

9 Q. Yeah. They have full reign over this. They

10 could decide whatever they want to do. As a matter of

11 fact, they don't have to go as fast as you and I

12 discussed yesterday. They could go slower. Right?

13 They can take their time. Is that true? You like

14 that, I know.

15 A. Yeah.

16 Q. They could take their time; right?

17 A. Right.

18 Q. They could take their time. Doesn't matter.

19 Okay. Now, you remember telling me yesterday that time

20 was of the essence. Do you remember telling me that?

21 A. Yes.

22 Q. Okay. So, now, how does time of the essence

23 square with they could take their time? Does that

24 square? Are those two things the same? Yes or no.

25 Are they the same? Time is of the essence,

1 and people could take their time? Are those two things
2 the same?

3 A. No.

4 Q. Now, this is a simple route. No one could
5 get confused. Okay? Actually, there have been
6 occasions -- one, two, three, five, doesn't matter how
7 many -- where people have aborted the route. True?

8 A. True.

9 Q. Okay. And they said, "I can't finish."
10 Anybody ever say I can't -- I can't finish?

11 A. I don't walk them, so I can't answer that to
12 say they just said --

13 Q. But you have been listening a lot from
14 that -- from that office of yours. Remember? All this
15 listening you were doing. You were hearing shuffling,
16 people talking. Lot of listening you were doing.
17 Okay? Did you ever hear anybody say "I can't finish"?

18 A. To me, I'm not on the route. I have never
19 heard it personally because I don't go the route with
20 them.

21 Q. Okay.

22 A. And if -- I would have to hear it.

23 Q. So if you're sitting in your office and
24 you're hearing all this stuff that you were hearing
25 today, did you ever hear anybody say "I can't finish"?

1 A. No.

2 Q. So, now, people have not only aborted the
3 route, but they said that, "Hey, this is too confusing.
4 I can't finish." Confusing. Is that true?

5 A. No.

6 Q. Nobody has ever said it's confusing?

7 A. Again, I haven't done that run, so I have
8 never heard it. No one's ever said it --

9 Q. Mr. Kenner? Mr. Kenner.

10 A. -- to my knowledge.

11 Q. Has anybody ever, ever, ever gotten confused?

12 A. To my knowledge, no.

13 Q. I'm going to show you your testimony from
14 earlier today. We're going to read it together. Okay?

15 A. Okay.

16 Q. So that you and I don't get confused.

17 MR. DEUTSCH: There we go. It's page 51 of
18 this morning.

19 MR. MORELLI: I think we should -- okay. We
20 need the question that's before "yes."

21 MR. DEUTSCH: Okay.

22 MR. MORELLI: So we don't --

23 MR. DEUTSCH: It starts at the bottom of this
24 page.

25 /////

1 BY MR. MORELLI:

2 Q. "Have there ever been participants who chose
3 not to continue with the illusion?" Okay?

4 A. Yeah.

5 Q. That's the question. You see that?

6 "ANSWER: Yes."

7 That's you.

8 "Tell the jury about that."

9 "ANSWER: It's -- it's -- you know, it's
10 not often, but a person, they start -- they
11 come out -- if any -- for any reason, if they
12 were just confused and said, 'Oh, I don't
13 want -- I don't want to go any further, I don't
14 know where I'm going.'"

15 Is that what you said today?

16 A. Yes. The key word "if." If they were
17 confused.

18 Q. We could read the whole thing if you want.
19 Take as much time as you want.

20 A. If. Okay? "If" does not say they did.

21 Q. Okay. "Oh, I don't want" -- that's a quote.
22 "I don't want to go any further." "I don't know where
23 I'm going."

24 Did you say that today?

25 A. I did say "if they were going." "If they

1 were confused."

2 Q. So what you are saying is you didn't really
3 mean it. Did you mean it? Or you didn't mean it?

4 A. I did mean it.

5 Q. Okay.

6 A. It's an option. If they're confused, they
7 don't have to go.

8 Q. Okay. Okay. So --

9 A. If --

10 Q. So it's an option. It's an option. But,
11 obviously, in order for you to have been thinking about
12 this option, somebody had to have been confused.

13 Correct? Yes or no.

14 A. No.

15 Q. Okay. So no one's ever been confused. You
16 just happened to say that. You just happened to say
17 it?

18 A. I happened to use that as an example, yes.

19 Q. Okay. Perfect.

20 And, by the way -- by the way, just remember
21 one thing. The question was tell the jury about that.
22 That wasn't my question. I didn't say yes or no. You
23 could say whatever you wanted, and that's what you
24 chose to say. Is that correct?

25 A. Yes.

1 Q. That's what you chose to say?

2 A. Yes.

3 Q. Okay. Now, you and I were discussing these

4 participants yesterday. Correct?

5 A. Yes.

6 Q. And we were talking about screening. Lot of

7 screening, remember?

8 A. Yes.

9 Q. Okay. Now, that screening involves certain

10 questions; correct?

11 A. Yes.

12 Q. Questions that are asked of the possible

13 participants --

14 A. Yes.

15 Q. -- correct? And based on the visual, the

16 visual and the questions, a determination is made as to

17 whether or not someone is allowed to participate. Is

18 that true?

19 A. Say that again. The way this bouncing ball

20 talk -- just say it as a --

21 Q. One?

22 A. Just would be if a -- this is kind of a --

23 Q. Okay.

24 A. I'm sorry --

25 Q. Okay.

1 A. I'm not trying to be rude. I just --

2 Q. It's okay.

3 A. -- want to hear it right.

4 Q. Look. You're not offending me.

5 All right. If, in fact, the -- there's
6 questions and there's eyeballing or visual, and those
7 two things are put together to make a determination --

8 A. Yes.

9 Q. -- as to whether or not a participant should
10 participate.

11 A. Yes.

12 Q. Okay. And we talked about that yesterday,
13 and there were certain questions that were asked. One
14 of the question is "Can you run?" Correct?

15 A. Yes.

16 Q. And we also determined it might not be the
17 first question asked, but it's one of the questions.

18 A. Correct.

19 Q. Fair enough? And another question is "Are
20 you a magician?"

21 A. Oh, yes, I am.

22 Q. Okay. I know you are.

23 A. Oh, sorry.

24 Q. I told you that you were.

25 A. Okay.

1 Q. Okay. And the other question was "Are you a
2 lawyer?"

3 A. No. I'm not a lawyer.

4 Q. Okay. And is that one of the questions
5 that's asked? And I asked you yesterday, you said yes.
6 Okay. Now, the question "Are you a magician?" is that
7 a joke?

8 A. No.

9 Q. Okay. The question "Can you run?" is that a
10 joke?

11 A. No.

12 Q. The question "Are you a lawyer?" is that a
13 joke?

14 A. No. I don't think so. I didn't decide that
15 question, so ...

16 Q. Okay. Now, today you used the word --
17 withdrawn.

18 On questions asked of you, the lawyers -- not
19 every lawyer but some of the lawyers -- asked you
20 questions using the word "volunteer." Volunteer.
21 Remember that word? Volunteer.

22 A. Uh-huh.

23 Q. Okay. Not participant, not selected, but
24 volunteer.

25 A. Sure. Yes.

1 Q. Okay. Now, these -- would you agree with me
2 that in order for someone to volunteer, they have to be
3 able to make the choice? Is that fair?

4 A. Yes.

5 Q. Okay. And so, when the participants catch a
6 ball, and they come up, and they hand the ball to
7 Mr. Copperfield, right, or somebody?

8 A. Yes. Mr. Copperfield.

9 Q. Mr. Copperfield, I think, if I remember.
10 They are then, even before they come up to
11 the stage, they're already screened visually; true?

12 A. Yes. Yes.

13 Q. And then, when they come up, they're asked
14 certain questions that would disqualify them; correct?

15 A. After they've come up?

16 Q. No, I'm saying --

17 A. When they're on their way.

18 Q. -- on their way.

19 A. I'm just making sure I heard that right.

20 Q. You know, because we discussed yesterday, and
21 you made it clear that, when they get up on the stage,
22 that's sort of done already.

23 A. Yeah, that part is done.

24 Q. Yeah, that part is done. The visual part and
25 the questions are done.

1 And you would agree with me, would you not,
2 that they're then screened. And whether or not a
3 person wants to continue on to be in the illusion, they
4 are -- if they're screened out, they can't be. Is that
5 fair?

6 A. Correct.

7 Q. Yeah. And so that's not volunteering, is it?
8 I mean, think about that. I mean, if, in fact, you are
9 making a determination -- and I don't mean you
10 personally. Okay? I'm talking about your people
11 and -- and your friend Mr. Copperfield. Okay? If you
12 are making a determination that pregnant women can't
13 participate, they can't really volunteer; right? They
14 don't have a free will to volunteer, if they're
15 pregnant.

16 A. They're still a volunteer in the trick.

17 Q. I'm talking about -- you know what I'm
18 talking about: participating in the illusion with
19 the runaround. That's what I'm talking about. I'm not
20 trying to play games with you. Okay?

21 A. There's more than one way to participate in
22 that illusion.

23 Q. I understand. You could sit on the side and
24 all of that. Good. I'm talking about running the
25 route now. Running the route. If somebody wants to do

1 the entire illusion, disappear and reappear, they can't
2 if they're pregnant. Yes or no?

3 A. No.

4 Q. What do you mean, no?

5 A. No, they can't if they're pregnant.

6 Q. So the answer is yes?

7 A. The answer is yes. I'm sorry.

8 Q. They can't if they're pregnant. Okay. And
9 they can't if any of the other things are
10 disqualifying, like someone looks at them, a back -- a
11 stagehand looks at somebody and says, "That person's
12 not fit to do the runaround." Right? I mean, they
13 could do that; right?

14 A. Sure.

15 Q. A stagehand, not a medical doctor; right?

16 A. Correct.

17 Q. Okay. Not somebody from Oxford; right? A
18 stagehand looks and says, "That person's not -- that
19 person's not fit." And, actually, that's the question,
20 is it not? They're eyeballing to see if the person is
21 physically fit. Is that true?

22 A. Yes.

23 Q. Okay. Now, can you do that? Are you good
24 enough to look at somebody, any of these jurors, or me,
25 and say, you know, that person's physically fit; that

1 person could do this runaround. Are you good enough to
2 do that? You, you personally. Yes or no. Can you do
3 that?

4 A. Yes.

5 Q. Okay. And all of these stagehands, they're
6 taught a certain way to do that? I mean, a certain --
7 are they taught how to determine whether someone's
8 physically fit? Are they taught how to do that?

9 A. Yeah. They're all -- when you say "taught,"
10 they're all -- it's a kind of -- I've mentioned many
11 times, it's a commonsense visual to the -- of a person.

12 Q. Okay. So deciding whether somebody's
13 physically fit, by eyeballing them, is common sense?

14 A. In this situation, I would say yes.

15 Q. Okay. It's common sense. Did you ever get
16 it wrong? Did they ever get it wrong?

17 A. I don't -- I don't have that -- I don't
18 recall. I don't remember any issue of someone saying
19 they weren't physically fit.

20 Q. Well --

21 A. We ask them also. David asks them. It's
22 like they're questioned ten times on this.

23 Q. You're not there. So let's -- let's just
24 talk about whether or not they, in terms of eyeballing
25 them -- because you said, as they're walking up,

1 they're making that determination of whether they're in
2 or out, just in terms of being physically fit. Okay?
3 And I'm saying to you, isn't it a fact that they've
4 gotten it wrong because certain people couldn't finish?

5 A. Yeah. People didn't finish for whatever
6 reason.

7 MR. DEUTSCH: Give me a second. Okay?

8 BY MR. MORELLI:

9 Q. Okay. So have you heard from anyone that
10 people who were in the process of the runaround
11 couldn't physically finish? Have you ever heard that?
12 Just yes or no. Have you ever heard of that?

13 A. No. Like physically finish? Like they just
14 exhausted and physically couldn't finish?

15 Q. Just couldn't finish.

16 A. I don't recall that being told to me, no.

17 Q. Did Mr. Copperfield ever tell you that?

18 A. No.

19 Q. Okay. Would you have wanted to know that?

20 A. Sure.

21 Q. And if you knew that, might you change your
22 opinion about how easy this runaround is? Would it
23 change your opinion, if you knew that, about how easy
24 the runaround is?

25 A. If --

1 MR. POPOVICH: Objection. Incomplete
2 hypothetical.

3 THE WITNESS: Yeah. I'm not sure I
4 understand.

5 THE COURT: Sustained.

6 BY MR. MORELLI:

7 Q. If you had learned that there were people in
8 the past that couldn't physically finish, would you
9 decide that maybe some changes would have to be made?

10 A. No.

11 Q. Now -- so here's my question, Mr. Kenner.
12 You stated yesterday -- and correct me if I'm
13 misstating you -- that -- and we watched the video. We
14 don't have to see it again. You and I watched it, I
15 think, a few times, with the people walking around and
16 following David Copperfield. Remember that?

17 A. Correct.

18 Q. Okay. And I think you said that you
19 considered that an obstacle course. Remember that?

20 A. Yes.

21 Q. Okay. And that actually that, you considered
22 an obstacle course, walking around following David
23 Copperfield; and yet, the runaround, that route, was
24 not an obstacle course. Is that correct?

25 A. Correct.

1 Q. Okay. Now, also, when they're walking around
2 following Mr. Copperfield in that walk -- and we
3 watched it -- is that an obstacle course because
4 they're doing something strange? Are they stepping
5 over cables? Are they -- are they -- are there
6 tripping hazards there?

7 A. Yes.

8 Q. Okay. Yes. And -- and when you put them on
9 this so-called obstacle course, where they're walking
10 around following David Copperfield, and you said
11 they're walking in tight spaces. Did you say that?

12 A. Yes.

13 Q. Tight spaces. Did you see -- when you were
14 watching that video, did you see any tight spaces
15 there?

16 A. I know exactly what it's like. So yes.

17 Q. Okay. Well, you didn't see it on the video.
18 You know what it's like?

19 A. I know what it's like. You could -- you
20 could -- well --

21 Q. You could see it, you think?

22 A. No. I'm saying I know. I know what the
23 little route is, so I understand.

24 Q. So, now --

25 A. I understand.

1 Q. So, now, they're stepping over cables and
2 there's things in the way, and this is the obstacle
3 course; correct?

4 A. Yeah. Narrow passageway.

5 Q. Are they warned about this? I mean, are they
6 told, "Hey, listen. Watch your step. We got some
7 cables here. We got lights. We got this. We got
8 that, and you can -- you can trip"?

9 A. If Mr. Copperfield is leading them, he might
10 say something to them. That's a question for
11 Mr. Copperfield.

12 Q. Thank you for that. I want to know, as the
13 executive producer, whether or not they're stepping
14 over things and if, in your opinion, from what you
15 know, they are warned. Are they warned?

16 A. I think David might warn them, yes.

17 Q. Okay. Now, what is the reason that they're
18 stepping over these cables and other objects? Okay.
19 So, now, the reason that this is done, you know the
20 reason that it's done. Right? The walk-around?

21 A. Yes.

22 Q. Okay. And the reason that it's done is to
23 assess further these possible participants, to see
24 whether or not they can do the route. Does that make
25 sense?

1 A. Yes. But that's not really the -- I would
2 say magically, as a magic effect, that's not the main
3 reason.

4 Q. Okay. There's a magic reason?

5 A. Yes, there is, absolutely, 100 percent.

6 Q. Okay. But we're only talking. And all my
7 questions, as you know, are about safety. Right?

8 A. Correct.

9 Q. That's what I'm -- I have been discussing
10 with you since yesterday --

11 A. I understand.

12 Q. -- is about safety. And what I want to know
13 is whether or not that walk-around is giving
14 information to the people watching, if there's anyone
15 watching, or Mr. Copperfield about whether or not these
16 participants are capable of doing the runaround.

17 A. I don't think that's the reason, no.

18 Q. Is that one of the reasons?

19 A. No, I don't think so. No.

20 Q. Okay. So that there is no real reason to
21 compare that walk-around with the runaround 'cause they
22 don't bear any resemblance to each other?

23 A. It's follow the leader. It's very similar.
24 It's basically training them that they're going to
25 follow that leader.

1 Q. Okay. So, in other words, the walk-around is
2 so that these grownups could figure out how to follow
3 somebody, because you believe that these audience
4 participants are not able to realize what following
5 somebody is.

6 And they have to follow them around tight
7 spaces, over cables, and everything. What if someone
8 trips? What do you -- and they get hurt? What about
9 that? Is that a good thing?

10 MR. ROBERTS: Objection. Compound.

11 THE COURT: Sustained.

12 BY MR. MORELLI:

13 Q. Is it a good thing if someone would trip on
14 the walk-around and get hurt?

15 A. No.

16 Q. Now, earlier today, you were talking about
17 this courtroom. You leaned over and you said "You see
18 this tape over here? David Copperfield would never
19 allow this." Did you say that?

20 A. I sure did.

21 Q. Yeah. And this over here, Oh, God, this is
22 terrible. All sloppy. Dangerous. Right?

23 A. Yeah.

24 Q. It's dangerous. Because Mr. Copperfield is
25 so impeccably careful. Is that true?

1 A. He's very careful, yes.

2 Q. No. You said more than very.

3 A. Did I say impeccable?

4 Q. Okay. It was precise.

5 A. He is precise.

6 Q. Yeah. He's very precise, and he's very

7 careful, and he would never allow any of this to go on.

8 But he does allow the participants, before they start

9 the runaround, to walk around in tight spaces, over

10 cables. Cables. You see any cables here?

11 A. No.

12 Q. Over cables and other objects that they don't

13 know about. Is that true? Is that what he does?

14 A. He lets them walk. Yes.

15 Q. Yeah. And -- and so what was the point of

16 saying that? It was so precise. Because he's actually

17 asking these people, without warning them -- and I'm

18 going to find out from him. Okay? -- to walk over

19 objects that are much more dangerous than what's going

20 on here in the courtroom. So why is he doing that?

21 He's doing that to assess these people? Is he doing it

22 to assess these people?

23 A. No. Would you like me to --

24 MR. ROBERTS: Objection. Form.

25 THE COURT: Sustained.

1 THE WITNESS: -- explain?

2 THE COURT: Rephrase, Counsel.

3 BY MR. MORELLI:

4 Q. So now I want to show you some testimony,
5 Mr. Kenner, of Mr. Carvalho. He works for you, doesn't
6 he?

7 A. Yes.

8 Q. And he still works for you?

9 A. No.

10 Q. Not anymore?

11 A. No.

12 Q. Who does he work for now?

13 A. I think Cirque du Soleil. I don't know. I
14 think Cirque du Soleil. I don't know. He's not
15 employed by us. He's out of town. I don't know.

16 Q. Until -- I think I knew that. Until when?
17 When did he leave your employ?

18 A. About two years ago.

19 Q. Okay. But I believe at the time when he gave
20 his deposition he was still working for you.

21 A. Probably, yes.

22 Q. Okay. So I'm just going to show you -- and
23 you could -- you could look on your screen -- about
24 certain things that he's said.

25 Now, just to put it in context, he's the one

1 who's running around with the people; correct?

2 A. Correct. He's in front.

3 Q. And he was the one in the front who was
4 holding a woman's hand and -- and leading the pack, so
5 to speak.

6 MR. ROBERTS: Objection, Your Honor. Who is
7 this?

8 MR. MORELLI: Mr. Carvalho.

9 MR. DEUTSCH: Page 78.

10 MR. MORELLI: I think you have to make it
11 clearer. It's not clear.

12 MR. DEUTSCH: I'm not a magician.

13 MR. MORELLI: Okay.

14 MR. ROBERTS: Your Honor, may we approach?
15 And can we take this down?

16 (A discussion was held at the bench,
17 not reported.)

18 THE COURT: Okay. Go ahead, Mr. Roberts.

19 MR. ROBERTS: Thank you. Withdrawn, Your
20 Honor.

21 BY MR. MORELLI:

22 Q. That's just one of these mics.

23 A. Yeah. It's on, though.

24 Q. Okay. So you could read -- can you -- can
25 you see it on your screen, Mr. Kenner?

1 A. Yeah.

2 Q. Okay. Question -- this is a question of

3 Mr. Carvalho, who was the assistant stage manager at

4 the time; correct?

5 A. Correct.

6 Q. Okay.

7 "QUESTION: And do you and Pomai" --

8 That's Pomai Weall; right?

9 A. Correct.

10 Q. The person you mentioned.

11 " -- try to keep basically the same

12 pace as you're proceeding the participants

13 through the illusion?

14 "ANSWER: I don't think that's our goal.

15 My goal is to lead. And she just kind of --

16 whoever -- like, she doesn't pass anybody.

17 She's making sure that everybody has moved

18 on" --

19 I don't know.

20 MR. DEUTSCH: Sorry.

21 MR. MORELLI: I don't see anything past

22 "move."

23 MR. DEUTSCH: Sorry. "Moved on."

24 MR. MORELLI: They're trying to --

25 MR. DEUTSCH: Sorry.

1 MR. MORELLI: -- trick me.
2 BY MR. MORELLI:
3 Q. Okay.
4 " -- moved on. Like, she doesn't pass
5 anybody. She's making sure that everybody has
6 moved on, like, whatever her pace is --
7 whatever their pace is. We've had times before
8 where somebody, you know, couldn't finish, you
9 know, like, just got winded or whatever. It
10 was, like, an old guy, I think."
11 MS. FRESCH: Objection, Your Honor. Move to
12 strikes as speculation.
13 THE COURT: Overruled.
14 MR. POPOVICH: Your Honor, I would request
15 that the rest of the answer be read for completeness.
16 MS. FRESCH: Yeah.
17 MR. MORELLI: You could do that.
18 THE COURT: No. It's fair for them to ask it
19 be read. Go ahead.
20 We put it on the screen.
21 MR. MORELLI: Okay.
22 MR. DEUTSCH: It's coming back up.
23 MR. MORELLI: Okay.
24 BY MR. MORELLI:
25 Q. Here it is.

1 " And what she would do is she would
2 stay with him."

3 I guess that means the person?

4 " She would give me the signal, like I
5 said, in those double doors -- those two set of
6 doors. She would give us -- give me the signal
7 that I could move on as soon as -- because, as
8 soon as she gives me that signal, I can go, you
9 know, yeah."She would give me the signal, like
10 I said, in those double doors -- those two set
11 of doors. She would give us -- give me the
12 signal that I could move on as soon as --
13 because, as soon as, she gives me that signal,
14 I can go, you know, yeah."

15 MR. MORELLI: You wanted me to read that?

16 MR. POPOVICH: I sure did.

17 MR. MORELLI: Okay. Great. Clears it up.

18 BY MR. MORELLI:

19 Q. Anyway, so you could see that -- that he, who
20 actually runs the route, has had occasion to tell -- to
21 say that somebody wasn't able to finish because they
22 were winded; is that correct?

23 A. Yes.

24 Q. That's what it says. Did he ever tell you
25 that?

1 A. No.

2 Q. Okay. You say "no" like it's not important.
3 I mean, would it have been important for you to know
4 that?

5 A. No. They stopped and did exactly what they
6 would have done. For their safety, they stopped them
7 and put them back in the meet-and-greet with David.

8 Q. So, now, this old guy -- and I hate to use
9 that term, but I don't know what that means. Don't go
10 there.

11 This -- this person who was a little older
12 than some other people got winded. Now, doesn't that
13 say to you that the people who made the assessment were
14 wrong -- right? -- because they made a determination
15 that this particular man, no matter how old he was,
16 was -- was able to finish, was able to do the route
17 without a problem, and yet he wasn't.

18 So, in that particular instance, whether they
19 stopped him right away and they gave him a chair or
20 they -- they put him -- they lie him down, or whatever
21 they did with him, that's not the issue. The issue is,
22 isn't it true that, in that particular situation, they
23 got it wrong?

24 A. In that -- did he say that it was 100 percent
25 something that happened? Or he said "maybe." I

1 can't -- I don't think he said this 100 percent
2 happened; he said it's a possibility.

3 Q. Okay.

4 A. So let's -- maybe we could reread it to see
5 that -- because when you're saying "that situation," I
6 don't know if that's a real situation or not.

7 Q. Okay. So you think that he was just giving
8 you a hypothetical of some old guy who got winded?

9 A. I -- I'm just saying if you could reread it.

10 Q. Possibly?

11 A. Possibly, yes.

12 Q. So, now, earlier, you were -- we were talking
13 about -- not we, but you were talking about --

14 A. We, I guess.

15 Q. -- a dangerous situation with reference to
16 the route, and you were being questioned about the
17 incline. Remember that?

18 A. Yes.

19 Q. And you were asked certain questions about
20 being warned?

21 A. Being?

22 Q. Warned.

23 A. Warned.

24 Q. Because you had said yesterday that, you
25 know, you would think it would have been prudent to

1 warn someone of the elevation change. Remember saying
2 that?

3 A. Yeah. But not necessary, yes.

4 Q. I'm sorry?

5 A. I said "but not necessary."

6 Q. You remember yesterday saying --

7 A. Yes, I remember.

8 Q. -- that it was prudent?

9 A. Yeah. You could, yeah.

10 Q. Okay. Now, then you likened it to here;
11 right?

12 A. Yes.

13 Q. To the courtroom and the ramp.

14 A. Yes.

15 Q. Because there's a ramp over here. Now --

16 A. And here.

17 Q. -- would you agree with me that, when the
18 jurors come into the courtroom, they walk in through
19 the door, they don't have to go very far, and then they
20 encounter this ramp; correct?

21 A. Correct.

22 Q. Okay. And when they come into the courtroom,
23 the lights are on; correct?

24 A. Yes.

25 Q. It's not out -- it's not outside in the dark;

1 correct?

2 A. It's not outside on the Strip, yes.

3 Q. It's not outside in the dark. Okay? Because

4 you know where they were going that day was not on the

5 Strip. That isn't on the Strip, is it?

6 A. Okay. At night. It was at night.

7 Q. Okay. It's at night. And wasn't on the

8 Strip. Okay? So if they're coming in the courtroom

9 here, the lights are on; correct?

10 A. Uh-huh.

11 Q. And they're walking; correct?

12 A. Correct.

13 Q. Okay. Now, do you think that if you changed

14 the situation and you turned off the lights and you

15 asked the jurors to walk into the courtroom over that

16 incline with the lights off, that that would raise the

17 level of danger?

18 A. Completely off? No flashlights?

19 Q. Completely off.

20 A. I just want to verify --

21 Q. Yeah, yeah, yeah. Yeah, off.

22 A. -- that this is in complete darkness.

23 Q. Off, in the dark.

24 A. Yes, that would be dangerous.

25 Q. Okay. Now, would it raise the level of

1 danger if we asked them to run into the courtroom over
2 the incline?

3 A. Yes.

4 Q. And am I also correct that there's a --
5 certainly a heightened level of danger when someone is
6 running or moving very fast or trotting in the dark
7 when they don't know where they're going? Would you
8 say that that's a heightened danger?

9 A. So if they were not being led by anyone or if
10 they were not being -- no one was telling them what to
11 do --

12 Q. Mr. Kenner, you're giving a lot of speeches
13 today.

14 A. Well, I'm asking to verify the question.

15 Q. No, no, no. Mr. Kenner, wait. I'm asking
16 questions. If you want me to clarify something --

17 A. So, yes, please --

18 Q. -- just tell me. I'll be glad to do that.

19 A. And is this in total darkness?

20 Q. You told me you didn't meet with anybody last
21 night, but you seem to be a very different guy today.

22 MR. POPOVICH: Objection to the speech of
23 Mr. Morelli.

24 THE COURT: That's sustained. The jury will
25 disregard.

1 Go ahead.

2 THE WITNESS: I take that very personally.
3 That's ridiculous.

4 BY MR. MORELLI:

5 Q. Now, I'm asking you whether, if someone was
6 running into the courtroom with the lights off, not
7 knowing where they were going, would that be a
8 heightened level of danger?

9 MR. POPOVICH: Objection. Incomplete
10 hypothetical.

11 THE COURT: I'll allow it.

12 MR. MORELLI: Yes or no?

13 THE WITNESS: Say it again.

14 MR. MORELLI: Can I read it back, please,
15 Your Honor.

16 (Record read by the reporter.)

17 THE WITNESS: The lights off, yes.

18 BY MR. MORELLI:

19 Q. Okay.

20 A. Darkness. Off.

21 Q. Now, understand, Mr. Kenner, the -- the
22 questions that I just asked you about the courtroom and
23 walking into the courtroom and running into it and the
24 lights off and the lights on, those are things that you
25 brought up, not things that I asked you about

1 originally; correct?

2 A. Correct.

3 Q. That was what you brought up originally --

4 A. Correct.

5 Q. -- and that I'm just questioning you about.

6 A. About -- about in complete darkness, yes.

7 Q. Okay. And -- and when you brought it up, you
8 didn't talk about anybody leading anybody or any
9 complete darkness; all you did was talk about the ramp
10 and that that could be a dangerous thing. Okay? You
11 talked about this ramp. And all I was doing was
12 questioning you about this ramp. That's all. Okay?

13 So you would agree with me that there is a
14 difference if somebody is walking or running over a
15 ramp; correct?

16 A. Yes.

17 Q. That there is a difference if somebody is
18 walking or running over a ramp in the dark?

19 A. Yes.

20 Q. Okay. And that would be more dangerous?

21 A. Yes.

22 Q. And if I was to say to you that somebody was
23 running in the dark over a ramp where there was
24 construction dust, that that would even be more
25 dangerous?

1 A. Yes.

2 Q. Okay. Thank you, Mr. Kenner.

3 THE COURT: Mr. Roberts?

4

5 RECROSS-EXAMINATION

6 BY MR. ROBERTS:

7 Q. Chris, I'm going to try to be brief and just
8 cover some of the points that --

9 THE WITNESS: We done, Mr. Morelli?

10 MR. MORELLI: Yes.

11 THE WITNESS: Thank you so much. Fantastic.

12 MR. MORELLI: You're welcome.

13 THE WITNESS: Can I ask the judge a question?

14 MR. ROBERTS: Sure. That's up to the judge.

15 THE WITNESS: Can I ask you a question?

16 THE COURT: Okay. Bench conference.

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

19 THE COURT: Okay. Ladies and gentlemen,
20 we're going to take the afternoon recess now. We'll
21 reconvene at 3:30.

22 During the recess, you're admonished not to
23 talk or converse among yourselves or with anyone else,
24 including, without limitation, the lawyers, parties,
25 and witnesses on any subject connected with the trial

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

8 Be outside the courtroom to the south there
9 at 3:30. Thank you.

10 MR. ROBERTS: Thank you, Your Honor.

11 (Whereupon a short recess was taken.)

12 THE MARSHAL: All rise.

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

15 THE COURT: Please be seated. We're back on
16 the record.

17 Do counsel stipulate that the jury is
18 present?

19 MR. DEUTSCH: Yes, Your Honor.

20 MR. ROBERTS: Yes, Your Honor.

21 MR. POPOVICH: Yes, Your Honor.

22 MR. STRASSBURG: Yes, Your Honor.

23 THE COURT: All right. Mr. Roberts.

24 MR. ROBERTS: Thank you, Your Honor.

25 /////

1 BY MR. ROBERTS:

2 Q. Okay. Mr. Kenner, I want to go back to the
3 demonstration of the brisk walk, the jog, and the trot
4 that you did for Mr. Morelli.

5 MR. MORELLI: Oh, no. I'm going to move.

6 MR. ROBERTS: Okay.

7 THE WITNESS: No, I want you to stay right
8 there. Right there.

9 MR. MORELLI: No, no, no.

10 MR. ROBERTS: May I ask the witness to step
11 down again, Your Honor?

12 THE COURT: Yes.

13 MR. ROBERTS: Thank you.

14 BY MR. ROBERTS:

15 Q. I'd like to do it again, but I'd like to
16 quantify it a little better than we did the first time.
17 Okay?

18 So here's a cup. All right. I'm going to
19 hold this here. I'd like you to come take this tape
20 measure.

21 A. Me?

22 Q. Yes. Go out 10 feet and put the cup at
23 10 feet.

24 Audra always has a tape measure in the
25 courtroom. It comes in handy sometimes.

1 A. 10 feet.

2 Q. 10 feet. Very good, sir.

3 All right. And now I'm going to give you a
4 second tool.

5 A. Oh, jeez.

6 Q. Stopwatch. Start, stop, reset. So what I'd
7 like you to do is to start at the beginning of the
8 rail. When you're at the beginning of the rail, press
9 start. Press stop when you hit the 10-foot mark so we
10 know how many seconds a brisk walk, in your opinion,
11 takes.

12 A. Brisk walk first?

13 Q. Brisk walk first, 10 feet, start, stop.

14 A. Okay.

15 Q. 1.92?

16 A. Yeah.

17 Q. Very good. Reset. Now try to reenact the
18 jog at about the same pace you did for Mr. Morelli.

19 MR. ROBERTS: Oh, and, Madam Recorder, are we
20 locked in on the main camera?

21 THE COURT RECORDER: Yes, we are.

22 BY MR. ROBERTS:

23 Q. Normally, the cameras shift based on where
24 they hear voices, but I asked the recorder to lock in
25 the main camera to make sure that we have this even

1 though you're not talking. Okay?

2 So a jog.

3 A. (Witness complies.)

4 Q. 1.64.; is that correct?

5 A. Yes.

6 Q. Okay. And then, finally, a trot.

7 A. Oh, this is going to be a meme on the

8 internet. Hi, guys.

9 (Witness complies.)

10 Q. All right. Could you tell the jury how long

11 your trot took?

12 A. 2.07.

13 Q. Okay.

14 MR. ROBERTS: Now, Mr. Morelli, could I get

15 you to demonstrate your slow jog for the jury?

16 MR. MORELLI: No, I don't think that I'm

17 going to be helping you anytime soon.

18 THE WITNESS: I can do his slow jog. I saw

19 him.

20 BY MR. ROBERTS:

21 Q. Okay. Do your best -- do your best Morelli.

22 A. (Witness complies.)

23 Q. All right. How many is that?

24 A. Oh, sorry. That was -- let me do it again.

25 Q. Okay.

1 A. I was having too much fun. Kind of at ...
2 2.89.
3 Q. 2.89. And that's the dawdling Moradi
4 demonstration -- Morelli demonstration, as best as you
5 can re-create it.
6 A. Yeah, best to re-create it.
7 Q. And the jury is going to be able to see the
8 film of this at closing argument --
9 A. Okay. Great.
10 Q. -- so they can remember.
11 The -- confirm -- remind the jury of what
12 Mr. Copperfield says about, if you're catching the
13 ball, what does he tell the members of the audience
14 they have to be? Do you remember?
15 A. Oh, God, the exact -- you have to be in good
16 health. Are you in good health? Are you -- I -- I --
17 I don't know the exact words. Again, this is a great
18 question for David because he says it every night.
19 Q. But in good health?
20 A. Are you in good health? Are you -- he asks
21 several questions right there as he's -- right before
22 he throws the balls out.
23 Q. All right. And they're asked if they can
24 run; right?
25 A. I think David asks it then also, yeah.

1 Q. Okay. So all of the people that participate
2 in the illusion are asked, "Are you in good health?
3 Can you run?"

4 A. Yes, before they're even -- catch a ball.

5 Q. Okay. If you can't make a -- a slow jog of
6 100 yards, what do you think? Are you in good health
7 and can you run if you can't make it 100 yards, a
8 football field?

9 A. No.

10 Q. Mr. Morelli asked you about volunteering.

11 A. Yes.

12 Q. Do the people who come up on stage to
13 participate in the illusion -- Mr. Morelli's right.
14 They don't know everything they're going to have to do,
15 do they?

16 A. No.

17 Q. But do they know that they don't know what
18 they're going to have to do?

19 A. Yes, it's a magic show.

20 Q. And they choose and volunteer to participate
21 anyway?

22 A. Yes. And I've never been in a magic show
23 where there's not participants.

24 Q. Okay. The dumpster that we were talking
25 about, the obstacle, you knew it was there; right?

1 A. Oh, yes.

2 Q. Did it show up the morning of 11/12/13?

3 A. No.

4 Q. It had been there for some time?

5 A. Yes. I don't know how long, but yeah.

6 Q. Had it ever caused a problem with the
7 runaround before?

8 A. No, if -- we obviously noticed it the day it
9 got there.

10 Q. And it had never caused a problem?

11 A. Never, or since.

12 Q. Did you consider it a hazard to the
13 participants in the runaround?

14 A. No, it's not in their path.

15 Q. If you had considered it a hazard, would you
16 have done something about it?

17 A. Oh, yes.

18 MR. ROBERTS: That's all I have, Your Honor.
19 Thank you.

20 THE COURT: Mr. Popovich?

21 MR. POPOVICH: Thank you.

22

23 RECROSS-EXAMINATION

24 BY MR. POPOVICH:

25 Q. Mr. Kenner, that deposition of Mr. Carvalho

1 that was put up and was read through, you remember
2 that --

3 A. Yes.

4 Q. -- when Mr. Morelli did it?

5 And that extra paragraph that I had,
6 Mr. Morelli read --

7 A. Yes.

8 Q. -- talked about Mr. Carvalho waiting until
9 Ms. Weall caught up at the double sets of doors for a
10 signal?

11 A. Yes.

12 Q. Is that part of the planned process for the
13 participants as they're taken through the route?

14 A. The way -- yes, the way I understand it. And
15 again, it's probably better for those two to explain
16 it. But that's the way I understand it, that they
17 pause there and make sure they have their flashlights
18 and that they're off.

19 Q. Okay. Let me just be clear on the location
20 that we're talking about, try to do it without
21 pictures. I want to just cut to the chase here. We
22 know, when they're outside, they come around that -- I
23 think you have termed it "the point"?

24 A. Yeah, they did. Some did, yes.

25 Q. Where they turn right and go back towards the

1 lit, open door, which is the first door into the
2 building?

3 A. Correct.

4 Q. Then there is a open space with a second set
5 of doors which takes you in on the carpet?

6 A. Yes.

7 Q. Is -- are those the double-door sets that
8 Mr. Carvalho was referring to?

9 A. Yes, the second set once they're inside the
10 room. So if this was the set that they had come from,
11 that's outside, they come in, they go to that set of
12 doors and stop.

13 Q. Mr. Carvalho stops with the lead female
14 participant with -- in hand?

15 A. Yes.

16 Q. Waiting for Ms. Weall, who is the caboose, to
17 get there, which indicates that all the participants
18 are now there?

19 A. Yes. And I wouldn't call her "the caboose"
20 to her face.

21 Q. I'll note that.

22 A. Seriously.

23 Q. I'll note that.

24 From there, they enter the casino and go into
25 the -- I think you said -- back bar area?

1 A. Yes.

2 Q. At what pace are they going through that
3 tiled back bar area?

4 A. It's a very -- it's a little quick, you know,
5 jog. So they're not, like, running in there.

6 Q. Going to ask Ms. Bonney to put up Exhibit
7 425, which has already been admitted into evidence.

8 And this is the script for after the illusion
9 with the participants.

10 And if you can highlight that second -- the
11 bigger paragraph, not the first small paragraph, but
12 the second one at the top.

13 Do you see the reference to Britney Spears in
14 the last sentence there?

15 A. Yeah.

16 Q. In 1998, when you originally put this
17 illusion together as a team effort, did anybody know
18 about Britney Spears and her singing talents?

19 A. Nope.

20 Q. Might that be something that could be a,
21 quote, update?

22 A. Yes.

23 Q. One more topic.

24 If we can go to Exhibit 402, which is the
25 actual surveillance video from November 12th, 2013, I'm

1 going to ask for Clip 8, which is a run timed from
2 20:35:03 and runs to 20:35:40.

3 And I'm going to ask you to watch this when
4 we start it. And then there will be questions about
5 the pace for the various participants you see going
6 through.

7 So if we could.

8 (Whereupon video was played.)

9 MR. POPOVICH: Thank you.

10 BY MR. POPOVICH:

11 Q. So the -- so the first people that went
12 through after Mr. Carvalho, what would you call the
13 pace?

14 A. A jog, light jog, jog.

15 Q. The later-arriving participants, were they
16 going that fast?

17 A. A little lighter -- a little less.

18 Q. Would you call all those things a run based
19 on what you've been talking about for the last two
20 days?

21 A. Since we have determined that the word "run"
22 could mean everything, I mean, I -- yeah. It's --
23 they're not sprinting; they're -- lightly jogging
24 version of run, you know.

25 Q. Okay. One last thing. Time is of the

1 essence. People can take their time. People, meaning
2 the participants.

3 A. Yes.

4 Q. Explain how those are consistent for you.

5 A. Well, people can take their time. And, as
6 we've said before, if someone comes out and they can't
7 go, they don't want to go, for whatever reason, they
8 don't have to. They'll just say "Okay. Stay here."

9 So -- so time is of the essence. And say the
10 exact question again so I can make sure I get it
11 correct.

12 Q. "Time is of the essence" as compared to
13 "people can take their time."

14 A. As compared to people can take their time.

15 So the fact that people can take their time
16 is -- it does not hurt the effect. It will not destroy
17 the illusion if the person goes slow.

18 Now, this is being talked about like it
19 happens every day. It's, like, so rare that a person
20 doesn't finish this -- this runaround. It is very,
21 very rare. It's not -- you're going to find out
22 through Pomai and Ryan more info on that one.

23 Q. The illusion, during a rainstorm, if the
24 participants show up at the back of the theater soaked
25 to the skin, does that give away some of the secret of

1 what -- of how they got there?

2 A. Oh, yes.

3 Q. Okay.

4 MR. POPOVICH: Nothing further. Thank you.

5

6 CROSS-EXAMINATION

7 BY MS. FRESCH:

8 Q. Good afternoon, Mr. Kenner.

9 A. Good afternoon.

10 Q. I just have a few questions. Over the course
11 between while at the MGM from 2000 to 2013, have any of
12 the audience volunteers who participated in the
13 Thirteen Illusion made a complaint to you about the
14 route that was taken and their experience with it?

15 A. No.

16 Q. Okay. Has anyone reported to you, as the
17 executive producer of the show and of this particular
18 illusion, that any audience members who had volunteered
19 to participate in the illusion and did so, in the
20 Thirteen Illusion, complain that they -- it was the
21 worst experience, they were running for their lives,
22 complained anything about the route taken or even the
23 entire -- let's just go with the route first.

24 A. No.

25 Q. Okay. And what about just participating in

1 the illusion? From the moment they took that ball and
2 walked up to the stage until they were in the room and
3 met with Mr. Copperfield and with Ryan, had anyone
4 reported to you of any complaints?

5 A. No.

6 Q. Okay. And would that be something, as the
7 executive producer, that you would expect your managers
8 and the rest of the stagehands to report to you?

9 A. Yes.

10 Q. Okay.

11 MS. FRESCH: Ms. Bonney, would you mind
12 pulling up Exhibit 425. And just highlight the first
13 two or -- or magnify, whatever the word is, the first
14 two sentences. I don't know why I'm squinting. I'm
15 looking at it here. All right. Thank you.

16 BY MS. FRESCH:

17 Q. Mr. Kenner, the word "and" is all capped. Do
18 you see that?

19 A. Yeah.

20 Q. And this is part of the script for the Magi;
21 correct?

22 A. Yes.

23 Q. The Magi. Right?

24 A. Right.

25 Q. And that would be Ryan?

1 A. Yes.

2 Q. What's the purpose that -- from your
3 understanding of being involved with this illusion, for
4 the emphasis on the word "and"? If you say in all
5 caps, what's -- what's that denoting for the Magi?

6 A. That the next part is like a -- it's a fun --
7 supposed to be a fun statement, like, and exercise
8 tonight. Right? You know it's, "Do you know you're
9 going to be entertained and exercised?" You know, it's
10 like humor.

11 Q. It's part of the humor?

12 A. Yeah.

13 Q. Okay. And this script and -- is this
14 required to be verbatim stated or ...

15 A. No.

16 Q. All right. So the -- if -- whether it's Ryan
17 or whether it was previous Magi, it's suggested and
18 they can make it their own?

19 A. They -- they -- not -- not crazy make it
20 their own. But like I think I mentioned before, they
21 can change a word here or there, and for the most
22 part -- at some point, David listens to their speech.
23 So if they were going to be saying it incorrectly,
24 David would have noticed for sure.

25 Q. Okay. And then, now, with respect -- similar

1 to Mr. Popovich's question about the not wanting to
2 have the participants appear soaking wet in the back of
3 the theater at the end of the illusion, would it impact
4 the -- the effect of this illusion if your volunteer
5 participants showed up and reappeared sweating,
6 panting, and gasping for breath?

7 A. Oh, yes.

8 Q. Okay. Have you -- in all your years as being
9 with the show and as one of the creators with
10 Mr. Copperfield and Mr. Liwag, have you ever witnessed
11 any participants, anywhere in the world, including the
12 MGM, showing up at the back of the audience in the
13 theater panting, sweating, and gasping for breath?

14 A. No, I have not.

15 Q. Okay.

16 MS. FRESCH: I don't have anything further.
17 Thank you.

18 MR. CALL: We don't have any questions, Your
19 Honor.

20 MR. MORELLI: No questions, Your Honor.

21 THE COURT: All right. Sir, you may stand
22 down. Thank you.

23 THE MARSHAL: Just wait there.

24 THE WITNESS: Oh, wait here.

25 MR. MORELLI: Now we have jury questions.

1 (A discussion was held at the bench,
2 not reported.)

3 THE COURT: All right. Sir, I have received
4 a question from one of the jurors.

5 THE WITNESS: Okay.

6 THE COURT: I will pose the question to you,
7 following which I will allow counsel to follow up on
8 any response that you want to give. Okay?

9 THE WITNESS: Okay.

10 THE COURT: "Was your door opened at the time
11 of, just after the accident?"

12 THE WITNESS: That night? I don't -- I have
13 no idea if it was open or not that night.

14 THE COURT: All right. This will be the next
15 court exhibit in order. Counsel, wish to follow up?

16 MR. MORELLI: No follow-up, Your Honor.

17 MR. POPOVICH: No, Your Honor.

18 MS. FRESCH: No, Your Honor.

19 MR. MORELLI: He gave his answer.

20 MR. ROBERTS: No, Your Honor.

21 MR. CALL: No, Your Honor.

22 THE COURT: Okay. That concludes your
23 testimony, sir. And you may stand down. All right.

24 MR. ROBERTS: Is the witness released, Your
25 Honor?

1 THE COURT: Yes. You're free to go, sir.

2 MR. MORELLI: Yeah, unless anybody has any
3 questions.

4 MR. ROBERTS: No. Thank you.

5 THE COURT: All right. In response to
6 another question that's been received, coming from one
7 of the jurors, counsel has agreed to stipulate to a
8 statement to be made in response thereto.

9 MR. DEUTSCH: If you can give us one second,
10 Your Honor.

11 THE COURT: Would counsel like me to read the
12 question to the jury and then you'll respond with the
13 stipulation?

14 MR. DEUTSCH: Maybe we just show the four
15 photos that answer that question, I think.

16 THE COURT: I mean, do you want me to let
17 them know what the question is?

18 MR. ROBERTS: Yes, because there's only one
19 that knows the question right now, Your Honor.

20 THE COURT: So you want me -- I will go ahead
21 and read this question.

22 MR. MORELLI: Absolutely.

23 THE COURT: And then counsel will have
24 stipulated to a response will be given. Is that
25 correct, Counsel?

1 MR. POPOVICH: The response will be the
2 showing of four photos and no commentary, as I
3 understand.

4 MR. DEUTSCH: Just those -- just the
5 stipulation that those are the only ones from the night
6 of the accident that have been shown so far. Correct.

7 THE COURT: Here's the question, and Counsel
8 will follow up.

9 "Just to confirm, the still photos without
10 dates on them were taken the night of the accident; is
11 that correct?"

12 MR. DEUTSCH: So, Your Honor, there's a
13 stipulation amongst the parties that the four photos
14 that we are going to publish to the jury right now are
15 four photos that are in evidence at this point that
16 were taken on the night of the accident. Everything
17 else but these four were taken at a different time. So
18 we're going to show the four photos.

19 THE COURT: Thank you. And then the record
20 will show.

21 MR. DEUTSCH: So this is the 403-8. That is
22 from the night of the accident.

23 JUROR NO. 11: Could you repeat the number?

24 MR. DEUTSCH: D403-8. Also from the night of
25 the accident is D403-9.

1 And, Audra, just so I'm clear we're on the
2 same page, the next one is 83-1 and 2. Correct?

3 MR. ROBERTS: That's what I have. Correct.

4 MR. DEUTSCH: Just want to make sure. This
5 is Plaintiffs' 83-1. And this is Plaintiffs' 83-2.
6 Those are also from the night of the accident, which
7 were published to you in hard copy as well as put on
8 the screen.

9 MR. CALL: And, Your Honor, I just want to
10 clarify that these are the ones that have been
11 introduced into evidence now, but there may be other
12 photos taken on the date of the accident that have not
13 been introduced.

14 MR. DEUTSCH: Correct.

15 MR. MORELLI: Yeah, these are the only four.

16 MR. DEUTSCH: So far.

17 THE COURT: That are in evidence so far?

18 MR. DEUTSCH: They're in evidence so far.

19 MR. ROBERTS: And, Adam, would you also
20 stipulate that all the photos that are four to a page
21 were taken in July of 2014?

22 MR. DEUTSCH: Yes. Everything but those four
23 were taken at a different time.

24 MR. MORELLI: Yeah, some were in September
25 too.

1 MR. ROBERTS: Very good.

2 THE COURT: Very well. I would like the
3 record to reflect, as counsel know, I have received
4 another question, but that will be separately dealt
5 with pursuant to conference between the Court and
6 counsel. Okay?

7 So, now, at this time, plaintiffs may call
8 their next witness.

9 MR. MORELLI: Your Honor, the plaintiffs
10 would call the defendant Mr. Copperfield to the stand.

11 THE MARSHAL: Remain standing. Raise your
12 right hand.

13 THE CLERK: Do you solemnly swear the
14 testimony you're about to give in this action shall be
15 the truth, the whole truth, and nothing but the truth,
16 so help you God.

17 THE WITNESS: I do.

18 THE CLERK: Thank you. Please be seated.

19 THE WITNESS: Thank you.

20 THE CLERK: If you could state and spell your
21 name for the record, please.

22 THE WITNESS: My name is David Copperfield.
23 D-a-v-i-d, C-o-p-p-e-r-f-i-e-l-d.

24 MR. MORELLI: I don't have to see how long
25 I'm going to take.

1
2 DIRECT EXAMINATION

3 BY MR. MORELLI:

4 Q. Mr. Copperfield, good afternoon.

5 A. How are you?

6 Q. Is David Copperfield your legal name?

7 A. It is. It's an a.k.a. My real name is
8 David S. Kotkin.

9 Q. Okay.

10 A. But it's both on my passport.

11 Q. Okay. Now, you've -- you've been in the
12 courtroom not only for my opening statements, correct,
13 but also when I was asking questions of Mr. Kenner.
14 Okay? So the same thing will apply. If there's any
15 question that I ask that you don't understand or you
16 can't answer in that matter, I'll try to rephrase it,
17 because it could be my fault.

18 A. Thank you.

19 Q. Fair enough?

20 A. Absolutely.

21 Q. Okay. Now, the -- let's start off by talking
22 about the walk-around that you do in the Thirteen
23 Illusion. Okay? And then we'll talk about your
24 background and things like that. But let's talk about
25 the walk-around.

1 And we're going to show the video so that you
2 can explain to us what's going on. Fair enough?

3 A. Absolutely.

4 Q. Because you're actually there and Mr. Kenner
5 isn't.

6 A. Yes.

7 Q. Fair enough?

8 A. Yes.

9 Q. Okay. How long -- and let me -- let me just
10 ask you this: How long are you and Mr. Kenner
11 together?

12 A. We've known each other -- as he said, he's
13 better with dates. You'll notice that dates and names
14 are not the best for me; it's not my strong suit. But
15 whatever he said, I'm sure, is good and accurate, his
16 statement. Been over 25 years, I think.

17 Q. Okay. And from your perspective, was it love
18 at first sight? You know?

19 A. You're starting rumors now. I'm not sure
20 that my fiance would appreciate that.

21 Q. That he said you were instant friends?

22 A. We were friends. I'm not sure that I love
23 the whole buddy aspect of it, because, you know, as --
24 you know, we're friends, but also we're friends over
25 here. But when we work together, over here we're

1 professionally doing things for safety and for business
2 and for marketing and so forth. Has nothing to do with
3 us being buddies and friends over here. Very separate.

4 Q. Got you. So if you have to take him to task,
5 you are going to do that?

6 A. Yes. And he's taken me to task a few times
7 too.

8 Q. Well, he says he's the boss --

9 A. Sometimes.

10 Q. -- actually.

11 A. In certain areas, yes.

12 Q. Okay.

13 So let's -- let's watch the -- the video.

14 Can we start it, you know, a little bit
15 before that? So, like, when they're catching the balls
16 and --

17 MR. DEUTSCH: That's too far. Just as
18 they're walking up.

19 THE WITNESS: I should look here; right?

20 BY MR. MORELLI:

21 Q. Yeah. You could see it better on that
22 screen.

23 A. Yes, yes. Does this move? It does not.

24 THE COURT: Want the lights down, Counsel?

25 MR. MORELLI: Yeah, please.

1 (Whereupon video was played.)

2 BY MR. MORELLI:

3 Q. Mr. Copperfield, I want you to just pay
4 attention, to tell us when to stop when that
5 walk-around happens where you are making certain
6 determinations.

7 A. Okay.

8 Q. Fair enough?

9 A. Yes. Should I stop you when there's --

10 Q. Yeah. Just say "stop here," and we'll stop.

11 A. Thank you.

12 (Whereupon video was played.)

13 MR. MORELLI: Can you stop it right there?

14 BY MR. MORELLI:

15 Q. Mr. Copperfield, I'm just going to ask you
16 certain questions as we move along so that we
17 understand what's happening.

18 A. Sure.

19 Q. You have told a number of things to the
20 audience so far. Do you mean them all as true, or are
21 some of them jokes?

22 A. I think the audience is very smart,
23 personally.

24 Q. Okay. Mr. Copperfield, my questions. Okay?

25 A. I'm trying to answer your question.

1 Q. No. But my question to you is what you
2 think. I want to know whether or not some of what you
3 told the audience is true, what we heard so far, and is
4 some of it a joke. That's all I want to know.

5 A. It's both.

6 Q. It's both. Thank you. So let's move on a
7 little further.

8 (Whereupon video was played.)

9 THE WITNESS: Stop it there.

10 MR. MORELLI: Okay. Stop, stop, stop. Okay.

11 THE WITNESS: I said, "If you don't want to
12 play, sit down."

13 BY MR. MORELLI:

14 Q. No, but that's not -- it's my questions.
15 Okay?

16 A. I thought you asked me.

17 Q. No, no, no.

18 A. You asked me to stop when I wanted to.

19 Q. No. I wanted you to stop when we get to the
20 point where the walk-around starts. That's where I
21 want you to stop. Okay? I'm sorry that you didn't
22 understand it.

23 A. No, no.

24 Q. Go ahead.

25 (Whereupon video was played.)

1 BY MR. MORELLI:

2 Q. At this point when the audience participants
3 are bringing the balls up to you; right?

4 A. No, no.

5 Q. Up to the stage.

6 A. No. They're bring it to the three or four
7 women who I have scanning them.

8 Q. Okay.

9 A. Off to the side.

10 Q. They're all women, not men.

11 A. Sometimes they've been men.

12 Q. Okay. So persons. Okay?

13 A. Yes.

14 Q. So as they're walking up, they are being
15 evaluated. Is that fair?

16 A. Yes.

17 Q. Okay. So let's get to the -- let's get to
18 the walk-around.

19 MR. DEUTSCH: Fast forward?

20 MR. MORELLI: Yeah, just a little bit. He'll
21 tell you when to stop.

22 (Whereupon video was played.)

23 THE WITNESS: You skipped ahead on purpose?

24 BY MR. MORELLI:

25 Q. Yeah, just to get to the walk-around, yep.

1 (Whereupon video was played.)
2 THE WITNESS: And we're starting the --
3 BY MR. MORELLI:
4 Q. Okay. So it starts now?
5 A. Yep.
6 Q. Okay. So I want to -- the jury and I and
7 you --
8 A. Yes.
9 Q. -- will watch this carefully --
10 A. Yes.
11 Q. -- and then, right after, you tell me when
12 the walk-around is over. Okay?
13 (Whereupon video was played.)
14 THE WITNESS: So -- shall I describe the
15 walk-around now or --
16 BY MR. MORELLI:
17 Q. No, we'll talk about it.
18 A. Just watch it first.
19 Q. Yeah, just tell me when it's over.
20 (Whereupon video was played.)
21 THE WITNESS: Stop right there. Walk-around
22 is --
23 MR. MORELLI: Okay. Stop.
24 THE WITNESS: Walk-around is over when the
25 last person comes around -- I apologize -- the

1 walk-around is over.

2 BY MR. MORELLI:

3 Q. So, at that point, it's over. And we'll --
4 you know, we'll show a little bit more, but let's talk
5 about this in the meantime.

6 So, now, the -- this particular walk-around
7 has been described as more extreme than the route --
8 the route runaround. Okay?

9 A. I think there is a --

10 Q. Let me just --

11 A. Please.

12 Q. -- ask you a question.

13 Do you agree with that? Yes or no. Is it
14 more extreme? That's my question.

15 A. You told me to ask you if I have a question
16 about your question?

17 Q. No, no. I -- I said if you don't understand
18 it, I'll rephrase it.

19 A. Okay. I don't understand the word -- the --
20 the word "extreme" and who said that. I forgot exactly
21 who defined it as such.

22 Q. Okay. So let me -- let me ask you this:
23 There was -- you were in the courtroom when the opening
24 statements were made; correct?

25 A. Yes, sir.

1 Q. Okay. Yep. So I'm going to refer you now to
2 your deposition testimony --

3 A. Okay.

4 Q. -- which was a couple years ago.

5 And you can see that on the screen too when
6 it comes up.

7 A. Thank you.

8 Q. And ask you whether you remember being asked
9 a particular question and giving the answer that you
10 gave. And we have it highlighted. Can you make out
11 the -- now it's better.

12 MS. FRESCH: Counsel, what page are we on?

13 MR. FALLICK: Page 79, line 16.

14 MR. DEUTSCH: It goes on to page 80.

15 MS. FRESCH: Hold on.

16 BY MR. MORELLI:

17 Q. Okay.

18 "QUESTION: The question is how do you
19 know, when people come on stage, that they're
20 going to be able to get from point A to point B
21 as quickly as you need them to?"

22 And this is your answer, and I'm going to ask
23 you if you remember this.

24 "Well, first of all, I don't need them to
25 get there quickly."

1 So let's just stop there. Is that true?

2 A. True.

3 Q. Okay. "They make their own choice of how

4 fast they want to go -- want to move." Is that true?

5 A. Yes, sir.

6 Q. Okay. "And I explained before, we make

7 multiple reviews to their ability and their -- you

8 know, their capabilities to walk up and down things, to

9 move around small places."

10 You remember that answer?

11 A. I do.

12 Q. Okay.

13 A. And that's the fourth -- the walk-around is

14 the fourth assessment.

15 Q. Okay.

16 A. Important.

17 Q. I'm going to be asking you a lot of

18 questions, so you'll be able to give me the answers.

19 A. Thank you.

20 Q. "We actually try to provide an extreme

21 situation, more extreme meaning there's things to walk

22 over around the stage. There's passageways that are

23 narrower on the stage than they ever go on the route

24 from point A to point B."

25 Did you say that?

1 A. I did.

2 Q. Okay. So, now, it was your words. Nobody

3 put the words in your mouth --

4 A. Okay.

5 Q. -- about extreme. And you understood what

6 extreme meant at that time; correct?

7 A. Yes.

8 Q. Okay. So, now, do you consider the

9 walk-around that we just watched on the video as a more

10 extreme situation than the route where they're

11 trotting, running, jogging, all of those things, in and

12 out of different places -- we've seen all the photos;

13 so have you. Okay? Is the walk-around that you just

14 watched with all of us more extreme?

15 Just yes or no. Is it more extreme?

16 A. It's not a yes-or-no question.

17 Q. I know, but it is -- it's my question. Is it

18 more extreme?

19 A. Yes.

20 Q. Okay. So, now, the -- the route --

21 MR. ROBERTS: Your Honor, may we approach?

22 Thank you.

23 (A discussion was held at the bench,

24 not reported.)

25 MR. MORELLI: Okay. So, Your Honor, may I

1 have the last question and answer read back?

2 No? Okay. I'll go on to the next question.

3 THE COURT: Next question.

4 BY MR. MORELLI:

5 Q. Yeah. Mr. Copperfield --

6 A. Yes.

7 Q. -- so that I understand -- and I think we
8 could put the lights on now if we want.

9 So that I understand, the video that we just
10 watched with the walk-around, that walk-around, the
11 participants are going through tight spaces. Is that
12 true?

13 A. True.

14 Q. Okay. And they're -- they're going through
15 obstacles. Is that true?

16 Because it's been termed an obstacle course.
17 Do you agree with that?

18 A. Of sorts, yes.

19 Q. Yeah. And so they're climbing over certain
20 stuff. Is that true?

21 A. There's no climbing, but they're stepping
22 around things.

23 Q. They're stepping around?

24 A. Uh-huh.

25 Q. Okay. And that's why you say it's extreme.

1 You consider that extreme. Is that true?

2 A. It's more extreme than walking or jogging a
3 straight line.

4 Q. Okay. So -- so it's -- it's your -- just so
5 I understand, it's your opinion that the runaround, the
6 route that the participants that are finally selected
7 run around, is a straight line? You think that's a
8 straight line? If it is, tell me. Do you think it's a
9 straight line?

10 A. It's multiple straight lines.

11 Q. It's multiple straight lines?

12 A. With some guided turns, yeah.

13 Q. Right. It's actually a number of turns.
14 Isn't that true?

15 A. Absolutely.

16 Q. Okay. So the -- so that I understand, the --
17 Mr. Kenner said a lot of things in the number of hours
18 that he was testifying, not only to my questions, but
19 to the other lawyers' questions. And -- bless you.

20 Do you agree that the -- that certain things
21 during the route could be dangerous? Do you agree with
22 that?

23 A. I don't agree with that.

24 Q. Okay. You heard -- you heard a lot of things
25 that Mr. Kenner said. Did you agree with him generally

1 or did you disagree with him?

2 MR. POPOVICH: Objection. Overbroad.

3 THE COURT: Sustained.

4 MR. MORELLI: Okay.

5 BY MR. MORELLI:

6 Q. Do you agree with me that the people in the

7 audience are being selected by you and your people?

8 Yes or no. Do you agree with that?

9 A. I can't answer that as a yes or no.

10 Q. Do your employees -- and, by the way, are --

11 are -- the people who work with you on the illusion, do

12 they work for you?

13 A. They work for Backstage or the MGM.

14 Q. Can you fire them?

15 You personally, can you fire them?

16 A. I cannot.

17 Q. Hmm?

18 A. I can request; I can't officially fire them.

19 Q. And we're talking about what? The Backstage

20 employees?

21 A. Correct. And the MGM employees too.

22 Q. Okay. So you have something to say about

23 firing the MGM employees also?

24 A. Not really, no, but I can express -- if

25 anybody has any special problems with doing a

1 particular cue, I will express to their management.

2 Q. You could recommend?

3 A. I could recommend. It's never happened with

4 the MGM employees.

5 Q. Okay. The -- during your deposition, did you

6 ever call all of these people your employees?

7 A. Well --

8 Q. Just yes or no. This is not a difficult

9 question.

10 A. It's not --

11 Q. You did or you didn't.

12 A. It's not a yes-or-no question for me. I can

13 explain.

14 Q. Okay. So -- no, I'm not asking for your

15 explanations; I'm asking for your answers.

16 Did you ever call them your employees?

17 You either did or you didn't.

18 A. In the same way this is my courthouse because

19 I pay taxes. In the same way that MGM is my hotel

20 because I love being there and I love performing there.

21 I don't own the hotel.

22 Q. Mr. Copperfield, can I ask if you would

23 please not give speeches. Okay?

24 A. Fair enough.

25 Q. You know, I understand that your job -- and

1 you have said, actually, being a magician is being
2 nothing if not an entertainer. Isn't that true?

3 That's a yes or no; right? You've said that?

4 A. It's more than just that.

5 Q. Yes?

6 A. Yes.

7 Q. Okay. Well, I said "it's nothing if not." I
8 didn't say it was only that.

9 A. Fair enough.

10 Q. But it's being an entertainer --

11 A. No worries.

12 Q. -- right?

13 And -- and I know that you believe that you
14 and your company and the other defendants in this case
15 are not responsible to Mr. Cox; right? You're not
16 responsible to him. Yes or no?

17 A. I don't think we're responsible.

18 Q. You don't think so; right?

19 A. I don't.

20 Q. Okay. Now, do you -- did you know on
21 November 12th, 2013, that Mr. Cox was injured during
22 your illusion?

23 A. No.

24 Q. Did Mr. Carvalho tell you at any time, when
25 the participants were brought into the room for your

1 speech and Mr. Carvalho's speech, that Mr. Cox was
2 injured?

3 A. I don't recall.

4 Q. Okay. Is that possible?

5 A. I've read a deposition -- deposition
6 testimony of him that he told me that Mr. Cox tripped
7 and that I asked him if he was okay and he said he was.

8 Q. Okay. Actually, Mr. -- you're talking about
9 Mr. Carvalho now?

10 A. His deposition testimony.

11 Q. Okay. So you read Mr. Carvalho's deposition
12 testimony, and that was in preparation of your
13 testimony here today?

14 A. That's correct.

15 Q. Okay. Did you read any other testimony in
16 preparation for your testimony today?

17 A. I don't recall.

18 Q. Okay. Did you read your own testimony?

19 A. Like -- I'm sorry, guys. I didn't read it
20 that good. Not much, little bits of it.

21 Q. But Mr. Carvalho's, you read the whole thing?

22 A. No.

23 Q. You read little bits of that. It just
24 happened that the part I asked you about, you had read?

25 A. Yes.

1 Q. Did you read Mr. Kenner's deposition?

2 A. Did not.

3 Q. Did not. None of it? Not even a little bit?

4 A. Nothing.

5 Q. Okay. Any other depositions? There were a
6 lot of depositions in this case.

7 A. Not that I --

8 Q. Did you get a chance to read any of the
9 others?

10 A. Not that I recall.

11 MR. POPOVICH: Your Honor, can I ask the
12 Court to ask Mr. Copperfield to speak up a little. I'm
13 having trouble hearing him.

14 THE COURT: Yes. You heard the ...

15 THE WITNESS: Yes.

16 BY MR. MORELLI:

17 Q. Sorry. The -- the assessments that are made
18 prior to audience participants being selected, are you
19 involved in those assessments?

20 A. No.

21 Q. Or is it really the people who were working
22 with you? Which one is it -- or both?

23 A. It's hard for me to answer that question
24 because you are saying "the selected," and there's some
25 dispute on whether they're selected if they're

1 volunteers.

2 Q. Well -- well, let's -- let's get into that.

3 Your defense in this case, as I understand
4 it, is if they participated -- right? Listen
5 carefully. If they participated and someone got hurt,
6 it's their fault. Is that -- is that accurate?

7 A. No.

8 MS. FRESCH: Objection. Argumentative.

9 MR. MORELLI: Excuse me? What?

10 THE COURT: I overruled the objection.

11 Go ahead.

12 THE WITNESS: Can you ask again, please.

13 BY MR. MORELLI:

14 Q. Yep.

15 If I understand your defense in this case --
16 yours -- if somebody participated in the Thirteen
17 Illusion and they were injured, it's their fault, not
18 yours? Yes or no?

19 MR. POPOVICH: Objection. Overbroad.

20 MS. FRESCH: Incomplete hypothetical.

21 MR. MORELLI: That's overbroad?

22 THE COURT: Overruled.

23 MR. ROBERTS: Calls for a legal opinion.

24 THE COURT: Overruled. He can state his
25 understanding of what the difference.

1 THE WITNESS: Ask again, please.
2 BY MR. MORELLI:
3 Q. Sure.
4 MR. MORELLI: May I have it read back, Your
5 Honor?
6 THE COURT: Yes.
7 (Record read by the reporter.)
8 THE WITNESS: I can't answer that as a
9 yes-or-no question. It would depend on if we did
10 anything wrong.
11 BY MR. MORELLI:
12 Q. Okay. Well, let's assume for a moment
13 that -- if you can't answer it yes or no, do you
14 believe that if someone was selected and they
15 participated in the illusion and they were injured
16 that, no matter what happened, it's not your fault?
17 MS. FRESCH: Objection. Privilege.
18 MR. MORELLI: Privilege?
19 THE COURT: Overruled.
20 BY MR. MORELLI:
21 Q. It's not your fault?
22 A. It would depend on what happened. If I did
23 something wrong, it would be my fault.
24 Q. Okay. Wait. Now, let's -- let's take
25 what -- you would agree with me that you've heard

1 Mr. Kenner give testimony in this case for hours that
2 this illusion is done over and over and over and over
3 again the same way. Is that true?

4 A. Yes.

5 Q. Yes?

6 A. Yes, sir.

7 Q. Okay. It's just -- it's sort of like
8 practice. It's rote. Over and over and over, it's
9 like rote. And if, in fact, that's true, and this rote
10 is going on, and someone is on the route and they fall
11 and get injured, it's never your fault. Is that a
12 correct statement? It's never your fault?

13 A. If there was a piece of debris in the middle
14 of the way, if -- if we were forcing them to do it --
15 if -- there's -- all these hypothetical things, then of
16 course it would be the fault of us.

17 Q. It's -- it's my question. Okay? Here's my
18 question: This illusion, we just agreed, is done the
19 same way all the time.

20 A. Yeah.

21 Q. Now, let's assume for a moment it's just done
22 on just the regular night. Okay? There's no bombs
23 falling. Nothing's going on except the illusion is
24 going on like it always goes on according to
25 Mr. Kenner, like clockwork precision. Okay?

1 Someone is trotting, running, jogging the
2 route, falls and gets injured; it's never your fault.
3 Is that a correct statement?

4 A. Unless something happened.

5 Q. I'm -- I'm saying to you that it's the
6 regular, normal day or night, and it's being run the
7 same way it's always run, the route. You know that
8 route, don't you?

9 A. I do.

10 Q. You know that route?

11 A. Yes.

12 Q. As a matter of fact, there's been a lot of
13 talk about how often you go that route; true?

14 A. Ten minutes before they do, I do, to inspect
15 the entire route.

16 Q. You do. And you would agree with me that,
17 when you do the route, you know where you're going?

18 A. Yes.

19 Q. Correct?

20 A. Yeah.

21 Q. You know where you're going?

22 A. Of course I do.

23 Q. Right. And you would also agree with me that
24 the participants don't know where they're going?

25 A. They do as they're -- as they're told every

1 single --

2 Q. Am I correct, sir, that they are not told
3 where they are going?

4 A. They are told where they're going.

5 Q. Well, Mr. Kenner disagrees with you, that
6 they're not told where they're going. When they're up
7 on that stage, do you tell them where they're going?

8 A. They are not told.

9 MR. ROBERTS: Objection to the testimony by
10 counsel, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: They're not told in advance.
13 But every single move they make, they're instructed
14 where to go.

15 BY MR. MORELLI:

16 Q. You know, Mr. Copperfield, we're not going to
17 get along if you keep doing this. Okay?

18 A. I'm just trying to tell the truth.

19 THE COURT: Next question.

20 BY MR. MORELLI:

21 Q. All I'm asking you for is answer my
22 questions; no speeches.

23 A. I'm just trying to help.

24 Q. Okay? You're not helping.

25 A. I'm trying to give a complete answer so they

1 have an understanding.

2 Q. Well, you're going to have plenty of time
3 when these other lawyers get up and they give you the
4 softballs. Okay?

5 Now --

6 MR. ROBERTS: Objection. Move to strike.

7 THE COURT: Motion is granted. Jury will
8 disregard the last statement.

9 BY MR. MORELLI:

10 Q. -- am I correct, sir, that Mr. Cox was
11 injured on November 12th, 2013, and you didn't know
12 about it?

13 A. That's -- well, first of all, I know he --
14 I --

15 Q. Forget about what happened to him.

16 A. Yes.

17 Q. You didn't know about it?

18 A. I found out a year later when we were sued --
19 we were sued.

20 Q. Okay. So the time that you -- and my
21 question was that, when it happened, you didn't know
22 about it; correct?

23 A. Correct.

24 Q. That's -- that was my question.

25 Now, am I also correct that it's your defense

1 that this has never happened before with this illusion?
2 Is that true? Never.

3 MS. FRESCH: Objection. Your Honor, may we
4 have a sidebar?

5 THE COURT: Yes.

6 (A discussion was held at the bench,
7 not reported.)

8 THE COURT: Okay. So what's your question,
9 Mr. Morelli?

10 MR. MORELLI: You think I know after all this
11 time?

12 THE COURT: Go ahead.

13 BY MR. MORELLI:

14 Q. Okay. Let me -- let me go to something else.
15 And that is, Mr. Copperfield, you just were answering a
16 question of mine a little while ago. And you said that
17 if, in fact, there was something along the route, like
18 some obstacle that isn't normal, let's say, or isn't in
19 the usual course of the illusion, then -- then it could
20 be your fault. Basically, you said that; correct?

21 A. Yes.

22 Q. Okay. So, now, if, in fact, this particular
23 night and -- November 12th, 2013, that there was -- and
24 I'm -- and I'm asking you to assume that there was
25 construction dust on the incline and further along the

1 route on the outside. Okay? And -- and that was a
2 factor in causing Mr. Cox to fall and get injured,
3 could then, would you say, if you knew about that, that
4 that could be your fault?

5 MR. POPOVICH: Objection. Invades the
6 province of the jury.

7 THE COURT: I will allow him to state his
8 perception of the situation.

9 BY MR. MORELLI:

10 Q. Just yes or no, if you think --

11 A. There wasn't construction dust.

12 Q. Forgetting about whether there was or there
13 wasn't.

14 A. Hypothetically?

15 Q. Okay. Yeah.

16 A. Hypothetically, if there was a -- if there
17 was barbed wire in the way, it could be my fault.

18 Q. I'm asking for anything else; I'm only asking
19 that question. I'm not going to go to barbed wire.
20 I'm not going to go to a massive trench or anything
21 like that, just this question. You would agree with
22 me?

23 A. I -- I would agree with you, but there wasn't
24 construction dust in the way.

25 Q. I -- I understand what your defense is.

1 We've been listening to it for days. Okay?

2 A. Hypothetically?

3 Q. Yes. If it was, you would agree with me that

4 then you could be responsible?

5 MR. ROBERTS: Objection. Incomplete

6 hypothetical.

7 MS. FRESCH: Join.

8 MR. CALL: Join.

9 THE COURT: Overruled.

10 THE WITNESS: I -- I'm not an expert.

11 BY MR. MORELLI:

12 Q. I'm not -- it doesn't take an expert to talk

13 about this.

14 A. It does in the sense that --

15 Q. Let me -- let me -- let me restate.

16 A. Would it be my fault? But I'd have to be an

17 expert to know if it was my fault because it's porous

18 concrete, which would absorb --

19 Q. Mr. Copperfield, remember, you know, it's

20 just my questions; your answers.

21 A. Understood. I'm trying --

22 Q. Okay. Now, you said earlier that if there

23 was something in the way, something that was an

24 obstacle, then it could be your fault. You said that.

25 I didn't say that; you said that.

1 And now I'm saying if it was construction
2 dust, would that be your fault, if it was construction
3 dust? Whether or not there's construction dust there
4 is for the jury to decide.

5 MR. CALL: Objection.

6 BY MR. MORELLI:

7 Q. Let's assume for a moment that there was.
8 Would it then be your responsibility?

9 A. If I didn't go around --

10 Q. Mr. -- Mr. Copperfield, are you going to
11 answer any of my questions? Because if you're not,
12 might as well just tell me.

13 A. It's not a yes-or-no question, though.

14 Q. You said that if there was an obstacle or a
15 problem in the way --

16 A. And I didn't deal with it. If I didn't do
17 anything about it during my runaround. I took a pass
18 before. If I saw it and didn't deal with it, would it
19 be my fault? Sure.

20 Q. Look. Okay.

21 A. If I saw it and didn't --

22 Q. Mr. Copperfield --

23 A. I know.

24 Q. Okay. You know, but you're still doing it.
25 So, obviously --

1 A. I'm trying to get the truth to the jury.
2 Q. Yeah, I know. I know it's -- I know it's a
3 struggle. It's tough for you. I get it. Okay?
4 But understand something. Okay? I have a
5 job to do. My responsibility is to ask you questions;
6 your responsibility is to answer me. If you can't
7 answer me, you say, "Hey, look, your question is too
8 difficult. I don't understand it. It's not in a good
9 form. I can't say yes or no. I can't answer it that
10 way."
11 But no speeches. Fair enough?
12 A. I'm not trying to giving speeches; I'm trying
13 to answer the question.
14 Q. You are giving speeches, and I'm asking you
15 not to do it. I don't want to argue with you; I just
16 want to question you.
17 MR. ROBERTS: Your Honor, I object.
18 Mr. Morelli can ask the Court to instruct the witness,
19 but he can't instruct the witness.
20 THE COURT: Sustained.
21 MR. MORELLI: Your Honor, would you please --
22 THE COURT: Next question.
23 MR. MORELLI: -- instruct the witness before
24 I ask the next question, because he's been doing it the
25 entire time.

1 THE COURT: Just answer the question.

2 But use the word "could" instead of "would"
3 in your question.

4 MR. MORELLI: Okay.

5 BY MR. MORELLI:

6 Q. If, in fact, along this route, on the
7 concrete portion that leads back into the building, the
8 incline and further, there was construction dust, could
9 that be your fault if someone fell and got hurt?

10 MS. FRESCH: Objection. Incomplete
11 hypothetical.

12 THE COURT: Overruled.

13 BY MR. MORELLI:

14 Q. Yes or no?

15 A. It's a hypothetical question. I have trouble
16 answering it because it doesn't state my experience. I
17 would see it there --

18 Q. Mr. Copperfield --

19 Judge, I'm asking you to -- to instruct this
20 witness.

21 THE COURT: He's given the answer.

22 Okay. Next question.

23 MR. MORELLI: What is the answer?

24 What is the answer that he gave? I don't
25 know what it is.

1 THE WITNESS: Could you read it back.

2 (Record read by the reporter.)

3 BY MR. MORELLI:

4 Q. Okay. Now, you -- you go along that route.
5 And you heard Mr. Kenner say, did you not, that you're,
6 like, very careful, very meticulous. You notice
7 everything. Is that true?

8 Can you answer that yes or no?

9 A. Yes.

10 Q. Okay. You notice everything. That's how
11 meticulous you are. A piece of paper, boom, you're on
12 it. A cup, boom, you're on it. Water bottle, boom,
13 you're on it. You notice everything.

14 And so is that correct that you notice
15 everything when you walk, run, whatever you do on that
16 path that you know cold -- cold? You notice
17 everything; is that right?

18 A. I believe so.

19 Q. Okay. Now, when you were walking, running --
20 by the way, what were you doing when -- when you went
21 that -- that path that -- that particular night before
22 the illusion. Did you run it? Did you walk it? Did
23 you trot it? That's my question.

24 A. Fast walk.

25 Q. Fast walk. Okay.

1 Now, you do know, do you not, that along
2 that -- I'm calling it a path, for lack of a better
3 term -- okay? -- that that particular night, there was
4 a big dumpster there. You know that now; right?

5 A. Yes.

6 Q. But you didn't know that that night, did you?

7 That night, November 12th, 2013, when you
8 were fast-walking the path, you didn't notice the
9 dumpster, did you?

10 A. Yeah, I probably noticed the dumpster. It's
11 a big thing.

12 Q. Yeah. It's actually, we've heard from
13 counsel, 20 feet by 8 feet by 8 feet. So it's pretty
14 big.

15 And --

16 A. It's next to my path; it's not in the path.

17 Q. Yeah. Well, it's right adjacent, yeah. But
18 you would notice it?

19 A. Yeah.

20 Q. Yeah. So I'm going to ask you to look -- you
21 could look either place that's convenient for you for
22 your deposition testimony.

23 MR. DEUTSCH: It's at page --

24 MR. MORELLI: What page and line is this?

25 MR. DEUTSCH: 177 -- 177, line 25.

1 MR. MORELLI: That's where it starts.
2 MS. FRESCH: Hold on.
3 MR. MORELLI: So just wait a minute, Adam.
4 BY MR. MORELLI:
5 Q. We're just letting your lawyers catch up.
6 Okay? We're good?
7 Okay. So the question on line 25 is, "Do you
8 recall at any time when you were -- either during a
9 show or when you were doing any of your trial runs and
10 practices, where there were dumpsters located in that
11 walkway area where people are running around the
12 building?"
13 And your answer is, "Well, my focus is always
14 on the path. I have to go in like a horse with tunnel
15 vision. So I know -- I want to see if any
16 obstruction's is in my way" -- incorrect pronunciation
17 there -- "so my peripherals really aren't in use at
18 this point."
19 Did you say that?
20 A. Yes.
21 Q. Okay. So that particular night you were like
22 a horse with tunnel vision -- I assume you meant with
23 blinders on; right? And --
24 MR. DEUTSCH: There was no answer to that.
25 /////

1 BY MR. MORELLI:

2 Q. -- you didn't -- is that correct? I mean,
3 you were like a horse with blinders on; correct?

4 A. I was focusing on the path that the audience
5 would eventually go.

6 Q. You were like a horse with blinders on. You
7 said tunnel vision. Is that what you meant by that?

8 A. I meant focusing, tunnel vision, only
9 thinking about the audience going through this space,
10 to make sure it was clear of anything.

11 Q. You weren't thinking about -- you weren't
12 noticing everything? Your peripherals weren't in use
13 at that time?

14 A. I was looking for the tape, the cup, the
15 things -- all those things that I focus on.

16 Q. I -- I see that we're going to be doing this
17 for a very long time because you -- you're just going
18 to keep doing that, and how many times can I ask the
19 judge to instruct you? Really?

20 THE COURT: Next question.

21 MR. ROBERTS: Objection. Move to strike.

22 MS. FRESCH: Join.

23 THE COURT: Next question.

24 BY MR. MORELLI:

25 Q. I want an answer to your question. And I

1 don't think it's funny, by the way. You may.

2 A horse with blinders on, is that similar or

3 the same as you meant it when you said tunnel vision?

4 A. I didn't. I said -- I said tunnel vision.

5 Q. Tunnel vision.

6 A. The tunnel where the people would go.

7 Q. Okay. Tunnel vision.

8 And you did not notice the dumpster that was,

9 like you said today, very big, "I would have noticed

10 it." But you didn't notice it, did you?

11 Yes or no, did you notice it that night?

12 A. Can't answer a yes-or-no question.

13 Q. Okay.

14 A. This is a year afterwards, the -- I think

15 deposition was a year after the --

16 Q. You're still speaking.

17 A. Trying to just give you the truth. It's the

18 truth.

19 Q. Now, am I correct, Mr. Copperfield, that

20 you've been a magician ever since you got out of high

21 school in New Jersey; yes?

22 A. No.

23 Q. Okay. Have you ever had any other job other

24 than being a magician? Yes or no.

25 A. Yes.

1 Q. Okay. And what other job or jobs did you
2 have?

3 A. My job as a magician involves business and
4 running hotels and many different things, but magic is
5 my main thing.

6 Q. Okay. Now -- so you actually have been a
7 magician/entertainer ever since you graduated from high
8 school; correct?

9 A. Earlier than that.

10 Q. Earlier than that. Well, full-time?

11 A. Yes, sir.

12 Q. That's what I mean.

13 Okay. So, now, let's just bring up that
14 photo, Adam, if you could.

15 MR. DEUTSCH: This is D403.

16 MR. MORELLI: This is -- you can see it
17 better probably.

18 MR. DEUTSCH: And we'll publish a hard copy
19 to the jury at a later time. But, for now, this is
20 D4038. It's already in evidence.

21 BY MR. MORELLI:

22 Q. Whichever way is the easiest for you to see
23 it.

24 MR. DEUTSCH: Give me one second.

25 /////

1 BY MR. MORELLI:

2 Q. Now, ask you to look at this and ask you
3 whether or not you -- you saw that particular -- you
4 did do this route before the illusion that night;
5 right?

6 A. Yes, sir.

7 Q. Okay. So did you notice this construction
8 dust that night when you walked this route briskly or
9 however you did it?

10 MR. STRASSBURG: Objection to form.
11 Foundation.

12 Construction dust. I mean, really?

13 THE COURT: Sustained on the foundation.

14 BY MR. MORELLI:

15 Q. Does this photo look familiar to you?

16 A. Yes.

17 Q. Okay. And do you notice that, in this area,
18 there is what appears to be dust?

19 A. No.

20 Q. Okay.

21 MR. MORELLI: Now, put up the photos.

22 I'm going to use the exact photos, Your
23 Honor, if I may.

24 MR. DEUTSCH: We don't have hard copies, but
25 I can show it on here. It's much more clear. I can

1 pass this around.

2 MR. MORELLI: Okay.

3 MR. DEUTSCH: I'll just publish it to the
4 jury this way.

5 MR. MORELLI: But show Mr. Copperfield first.

6 MR. DEUTSCH: I'm just going to hold it up to
7 the jury, the same photo that I just showed. That
8 photo right there -- that photo, I'm just going to show
9 that.

10 MR. POPOVICH: Can you blank out -- I guess
11 that's just numbers.

12 MS. FRESCH: How does that look different?

13 MR. DEUTSCH: I think it looks a lot
14 different. Let the jury decide.

15 MR. ROBERTS: Your Honor, the jury shouldn't
16 see anything the witness hasn't seen, so I'm going to
17 object to the jury seeing --

18 MR. MORELLI: It's the same exhibit.

19 MR. ROBERTS: Well, then the jury has already
20 seen it and there's no reason to show it, Your Honor.

21 THE COURT: Show it to the witness --

22 MR. DEUTSCH: I'll show it to the witness
23 first.

24 MR. MORELLI: I said to show it to
25 Mr. Copperfield first.

1 THE WITNESS: Same picture; right?
2 MR. DEUTSCH: Same picture.
3 THE WITNESS: Yes.
4 MR. MORELLI: Okay. May we show it to the
5 jury now, Your Honor?
6 THE COURT: Go ahead.
7 MS. FRESCH: Oh.
8 MR. CALL: Hold it. I don't think you've
9 ruled, Your Honor, and he's showing --
10 THE COURT: I said he could go ahead and show
11 the picture. It's the same pictures as the one that's
12 being --
13 MS. FRESCH: It's in a binder. Maybe it
14 should be shown in the binder. It's the same exact
15 picture.
16 MR. STRASSBURG: Just show it. Go ahead.
17 MR. DEUTSCH: Thank you, Roger.
18 MS. FRESCH: Well. Mr. Strassburg, I can
19 raise my objection and you don't need to --
20 MR. STRASSBURG: I apologize. I'm sorry. I
21 didn't mean to -- I just meant to ... I'm sorry.
22 (Whereupon photograph was displayed to
23 the jury.)
24 BY MR. MORELLI:
25 Q. So with reference to you looking at the photo

1 the second time, the second photo, do you see the
2 construction dust that I'm referring to?

3 A. I do not.

4 MS. FRESCH: Objection. Lacks foundation.

5 THE COURT: He just said he doesn't, so he
6 answered the question. Overruled.

7 THE WITNESS: Sorry.

8 MR. MORELLI: This is a good time, Your
9 Honor.

10 THE COURT: All right. And I'm going to
11 excuse the jury now. I will ask counsel to remain for
12 a moment.

13 As you know, ladies and gentlemen, we're not
14 going to be in session tomorrow or Friday, but we'll
15 reconvene on Tuesday the 24th. You're aware of that;
16 correct? All right. Very well.

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

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

3 You're directed, once again, to return to the
4 outside of the courtroom, to the south a bit, on
5 Tuesday, April 24th, 2018, no later than 8:50 a.m., ten
6 to 9:00, so that we can resume here at 9:00. Have a
7 nice intervening time, ladies and gentlemen, including
8 the weekend.

9 (The following proceedings were held
10 outside the presence of the jury.)

11 THE COURT: All right. You may be seated.
12 And it occurs to me that, for the record, a picture
13 should be taken of that tablet that you just showed to
14 the jury --

15 MR. MORELLI: Okay.

16 THE COURT: -- with the --

17 MR. MORELLI: Should the witness step down?

18 THE COURT: Yes. You may stand down, sir.

19 -- so that the record will reflect what it is
20 that was shown to the jury, I think the front and back
21 of that item should be -- a picture of it should be
22 taken and it should be made an exhibit. Okay. So the
23 record will reflect.

24 MR. STRASSBURG: Judge, should we not also
25 take a picture of the picture on the big TV as a

1 comparison? Plaintiff maintains that something is
2 shown differently that's not shown in the TV that's on
3 the screen.

4 MR. DEUTSCH: Well, we have a hard copy of
5 it.

6 MR. STRASSBURG: That's not what you used.
7 You used this thing. So ...

8 THE COURT RECORDER: I need --

9 MR. DEUTSCH: Anything you want to do is fine
10 with me.

11 MR. ROBERTS: Maybe in the future we should
12 limit showing the jury the admitted exhibit, and if
13 counsel is unhappy with the resolution of the admitted
14 exhibit, they can substitute in one, but we should
15 probably not be showing things that are not admitted
16 into evidence.

17 MR. DEUTSCH: It is admitted into evidence.

18 MR. ROBERTS: Well, then, use the copy that's
19 admitted into evidence. There's an official court
20 copy. And if it's not appropriate, then let's
21 substitute an appropriate one.

22 THE COURT: My concern was making sure the
23 record reflected what was being shown to the jury.
24 Okay? That's as far as I'm going to go now. And at
25 some point we will discuss this other juror question

1 regarding --

2 MS. FRESCH: Jury view.

3 THE COURT: -- the view. Okay? So I will
4 make it the next court exhibit in order so that it --
5 and then it will be accessible at the proper time.

6 THE CLERK: It's Court Exhibit No. 4.

7 THE COURT: Yeah.

8 THE MARSHAL: All rise.

9 THE COURT: Okay. Have a nice intervening
10 time, ladies and gentlemen.

11 IN UNISON: Thank you, Your Honor.

12 (Thereupon, the proceedings
13 concluded at 5:04 p.m.)

14

15

16 -oOo-

17

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

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KRISTY L. CLARK, CCR #708



1 CASE NO. A705164

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

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

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Plaintiffs,)

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vs.)

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

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Defendants.)

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18 MGM GRAND HOTEL, LLC.,)

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Third-Party Plaintiff,)

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vs.)

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22 BEACHER'S LV, LLC, and DOES 1)
23 through 20, inclusive,)

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Third-Party Defendants.)

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REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
CA CSR #13529

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE

MARK R. DENTON

DEPARTMENT XIII

TUESDAY, APRIL 24, 2018

1 APPEARANCES:

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I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
David	22	114	152	159
Copperfield	130,	133 160		

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
405		33	
424		123	

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 24, 2018;

2 9:15 A.M.

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

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

10 THE COURT: Good morning. Please be seated.
11 We're reconvening in Cox v. MGM Grand Hotel,
12 LLC, et al. We're outside the presence of the jury.
13 Please state appearances of counsel, identify parties
14 and party representatives who are present today.

15 MR. MORELLI: Benedict P. Morelli, for the
16 plaintiffs Gavin and Minh Cox.

17 MR. DEUTSCH: Good morning, Your Honor. Adam
18 Deutsch, also for the plaintiffs. And Mr. and Mrs. Cox
19 are here as well.

20 MR. FALLICK: Morning, Your Honor. Perry
21 Fallick for the plaintiffs as well.

22 MR. POPOVICH: Good morning. Jerry Popovich
23 for defendant MGM Grand Hotel, with Mark Habersack and
24 Bill Martin.

25 MS. FRESCH: Good morning, Your Honor.

1 Elaine Fresch for David Copperfield and David
2 Copperfield Disappearing, Inc. My client David
3 Copperfield is here, as well as my associate Eric
4 Freeman.

5 MR. RUSSELL: Howard Russell for Backstage
6 Employment and Referral.

7 MR. STRASSBURG: May it please the Court,
8 Roger Strassburg and my partner Gary Call for defendant
9 Team Construction Management.

10 THE COURT: All right. As I stated, this is
11 the time for resumption of trial. I understand there's
12 things to be taken up before the jury is brought in.

13 MS. FRESCH: Yes, Your Honor. If it --
14 please, I'd like to start off with -- I'd like to bring
15 to the judge's attention that this morning on CBS News,
16 there was an interview with Mr. Morelli. The
17 headline -- and I watched this -- "More people claiming
18 injuries from David Copperfield magic tricks to come
19 forward."

20 He had an extensive interview. Your Honor, I
21 believe this violates Rule 3.6 of the Nevada Rules of
22 Professional Conduct, which states specifically, "A
23 lawyer who is participating or has participated in the
24 investigation or litigation of a matter shall not make
25 an extrajudicial statement that the lawyer knows or

1 reasonably knows will be disseminated -- excuse me --
2 by means of public communication and will have a
3 substantial likelihood of materially prejudicing an
4 adjudicative proceeding in the matter."

5 Your Honor, this -- this -- there's been so
6 many interviews already, but this one really just --
7 with the fact that Mr. Morelli is claiming, prior to
8 any ruling by Your Honor as to whether there will be
9 any other witnesses in this trial that have not been
10 previously disclosed, making that statement to the
11 press -- I -- I watched it on my TV in the morning.
12 Everyone watched it. It's a violation of the rule.

13 I move for -- I would request to move for a
14 mistrial on that basis because I think this is
15 prejudicial. This also goes along with the brief we
16 filed yesterday about the questioning that counsel
17 conducted last week of both Mr. Kenner and specifically
18 of my client Mr. Copperfield. I've reviewed, again,
19 that testimony, since we filed the brief yesterday.
20 And I move for a mistrial based on that questioning as
21 well because it has inflamed the jury. I think the
22 bell has been rung.

23 He has made implications that my client was
24 lying, that my client wasn't being truthful. And
25 pursuant to the -- to the Lioce case, I believe that

1 it's cast -- we can't remove the effect of that
2 questioning. And I'm placed in a position, if this
3 continues, if my motion for mistrial is denied, it
4 places me in the position that I'm going to have to get
5 up and literally object to almost every question. And
6 all that's going to do is have a negative impact on my
7 client and me in front of the jury because they're just
8 going to keep hearing me do objections.

9 THE COURT: You say "every question." Why
10 every question?

11 MS. FRESCH: Well, when I look back for the
12 few -- the one hour that Mr. Copperfield testified --
13 and I marked all the different pages -- he has five
14 different places where he says "speeches," "you're
15 making a speech," "you're making a speech," "we're not
16 going to get along."

17 I mean, it went on and on. I cited that in
18 the brief, and I can go through it in more detail.

19 THE COURT: No, I read it.

20 MS. FRESCH: But I just feel it places me in
21 a position that I'm going to have to object a lot in
22 this trial, especially with my client testifying. And,
23 again, that has a negative impact, but it also has a
24 bigger negative impact because each time Mr. Morelli
25 does those running speeches before he actually asks a

1 question, all he is doing is inferring and implying
2 that my client is not being truthful and that he's not
3 trying to answer the questions.

4 So based on the story this morning as well as
5 the brief and what I've just submitted to you, Your
6 Honor, I respectfully move for a mistrial.

7 THE COURT: All right. Thank you.

8 MR. DEUTSCH: Thank you, Your Honor.
9 Obviously, we oppose the need for a mistrial. First of
10 all, nothing that Mr. Morelli said to any of the news
11 reporters that asked him questions was anything that
12 hasn't already been discussed. Everything has been
13 provided to them, including names. They've spoken to
14 these witnesses. And there was no information given on
15 the newscast other than other people have come forward.

16 That was in the response to the statements
17 that Mr. Copperfield and his people put out to the
18 newscasters during and before this trial that their
19 official statement in this case is that 55,000 people
20 have done this and nobody has ever gotten hurt.

21 Your Honor has given the jury very clear
22 instructions not to pay attention to anything on the TV
23 or newspapers or anything like that having to do with
24 this case. They've all agreed that they will do so.
25 They've made it clear that they will not pay attention.

1 So there's nothing that was prejudicial in any nature
2 to anything that was -- that Mr. Morelli said to any of
3 the news reporters.

4 With respect to his cross-examination of
5 Mr. Copperfield, Mr. Morelli asked proper questions.
6 Ms. Fresch was free to object to whatever questions she
7 felt were improper. She did so. Your Honor made
8 rulings, some of which Your Honor sustained and some of
9 which you overruled.

10 I believe that's the proper way to continue,
11 and I don't think that there's any need to -- to change
12 Mr. Morelli's cross-examination in any way.

13 THE COURT: Well, it's his direct
14 examination. His direct examination of
15 Mr. Copperfield.

16 All right.

17 MR. DEUTSCH: So that -- that's our position,
18 Your Honor.

19 THE COURT: Anything else?

20 MS. FRESCH: Your Honor, I just want to
21 reiterate the fact that, with this jury, this trial has
22 gotten so much press. And it's literally -- it's
23 impossible -- I don't believe this -- the jury has not
24 been -- has not seen the news, has not read about it.
25 It's nearly impossible.

1 If I want to even look at what -- the weather
2 report, I see an article and I see a clip about
3 Mr. Copperfield. And that's exactly what happened this
4 morning. I was contacted by CBS News as well. I
5 declined to respond because I know the rule, Rule 3.6.
6 I'm quite aware of my professional responsibility in
7 this state.

8 And I question whether -- to me, I take this
9 rule seriously, as I do all professional rules. And my
10 brief yesterday was based on RPC 3.4(e), and then today
11 I'm supplementing with Rule 3.6. I feel that, both
12 situations, the rules have been violated.

13 MR. DEUTSCH: If I may --

14 MS. FRESCH: And this has prejudiced my
15 client. The news will continue to prejudice my client.
16 And, more importantly, again, Your Honor, you have not
17 ruled about these new witnesses. We have also -- we
18 need to address that. We have a lot to address about
19 these so-called witnesses that they have and what has
20 transpired since Friday to now.

21 And I'm just saying the fact that it's out
22 there, that -- that has not even been disclosed before
23 and now that's out there. So the jury saw that.
24 They're now hearing that there was two -- they couldn't
25 have missed that -- two more people are claiming

1 injuries.

2 THE COURT: I don't know what they've heard.
3 I admonish them at every recess and every adjournment.

4 MS. FRESCH: But are you saying to them,
5 "Don't ever turn on your TV"? Because, basically, they
6 can't watch E! channel. They can't watch TMZ. They
7 can't watch CBS News. They can't watch ABC News. They
8 can't watch Good Morning America. It's on every single
9 nation. It's in Israel. It's in Russia. It's in
10 Melbourne. It's everywhere. Every single news station
11 across the world at this point. It's on Facebook.
12 It's everywhere.

13 So I don't believe that a jury in this day of
14 social media has not been exposed to this. And this
15 will get played and played again. And I believe that
16 this jury will have heard that at some point. And it's
17 prejudicial because, again, you have not even made a
18 decision yet if those witnesses will testify, but it's
19 now out there -- the bell has been rung -- that two
20 more people are claiming they were injured. The bell
21 has been rung. I -- I feel that -- this has tainted
22 the jury and -- and it has ruined this jury for this
23 case.

24 MR. DEUTSCH: Your Honor, may I?

25 Based on what Ms. Fresch says, it appears

1 that there is no jury anywhere in the world that we
2 would be able to get in order to sit fairly and listen
3 to the evidence on this case based on her comments.

4 The fact is that all of this information was
5 disclosed. We had a conference with Your Honor last
6 Wednesday where Your Honor gave us a deadline. We
7 disclosed the names of these witnesses long before that
8 deadline, sometime in the early afternoon on Friday. I
9 know for a fact that Mr. Freeman spoke to some of these
10 witnesses. I know Mr. Popovich reached out to some of
11 these witnesses. So all of that information has been
12 disclosed.

13 You know, the funny thing about this, Your
14 Honor, is that this has become an issue because of the
15 defendants' unclean hands in this lawsuit. They raised
16 a defense from day one, and -- and we actually have a
17 motion -- and we could raise it later or at this
18 point -- to strike their answer, Your Honor, because,
19 from day one, they have proffered a defense that nobody
20 has gotten hurt.

21 THE COURT: I understand that. Address the
22 other issue regarding the interview with the press.

23 MR. DEUTSCH: Okay. Your Honor, what the
24 rules -- as the rule states, there needs to be a
25 likelihood that that will in some way -- that whatever

1 the statements were made could in some way affect the
2 case or the trial.

3 There is nothing that was said this morning
4 that would affect that other than the fact that they
5 gave a statement to the press that 55,000 people have
6 never gotten hurt. Mr. Morelli was on the press and
7 said, we're going to prove them wrong. People have
8 come forward that say that that's not true. That's it.

9 So if they're entitled to put the statement
10 out in the first instance that 55,000 people have never
11 gotten hurt, then clearly we're entitled to make a
12 statement to say that's not true. And they have taken
13 that position from day one. We have asked the
14 defendants in discovery, in interrogatory demands for
15 information about prior incidents or accidents. We now
16 know that their responses were not complete and not
17 accurate.

18 And they raised that defense at their own
19 peril because, obviously -- and I'm not suggesting that
20 Ms. Fresch did it intentionally or Mr. Popovich did it
21 intentionally, but I'm suggesting that, when they went
22 to their clients and said, "Hey, has anyone gotten
23 hurt"? their clients weren't truthful with them about
24 that, because a simple search of this would have
25 identified the fact that that's not true.

1 MS. FRESCH: Your Honor --

2 THE COURT: Ms. Fresch, last word -- last
3 word.

4 MS. FRESCH: Oh, I was just going to say,
5 Your Honor, I have the video of this morning's clip so
6 that I can -- if Your Honor wanted to review the CBS.

7 And then, additionally, I've never made --
8 nobody in my firm has ever made a statement to the
9 press. So -- and -- well, I don't want to get into the
10 whole details about two years ago when there was
11 original press, because that's different.

12 I want to focus on the fact mainly that the
13 interviews in the last few days, and specifically this
14 morning, because that is a disclosure of witnesses.
15 And there's a whole -- I don't know if you want us to
16 go into now about the things about the witnesses,
17 because there's a whole host of problems with that.

18 THE COURT: Okay. I think we better take
19 that up later.

20 I'm going to deny motion for mistrial.

21 I will admonish Mr. Morelli, ask the
22 question, let the witness answer the question, ask the
23 next question. Okay? You were alluding to speeches
24 being made. I see speeches coming from your side as
25 well in -- in propounding questions. Okay? Just ask

1 questions; don't make statements about credibility and
2 that kind of thing. Okay?

3 MR. POPOVICH: Based on the Court's denial of
4 mistrial, we would request, Your Honor, that before we
5 get underway with testimony this morning, we at least
6 get the jurors in the box and ask if any of them have
7 seen any of this news coverage.

8 And what I'm even concerned with, Your Honor,
9 is the jurors, I expect, are doing their best to avoid
10 coverage. But, as Ms. Fresch indicates, it's hard to
11 do. You turn on your computer, you turn on your
12 television, it's there.

13 But what I'm even more concerned about is,
14 even with the Court's instructions, chances are these
15 people's families know that they're on jury service and
16 it may have something to do with Copperfield. I'm
17 concerned that people blurt things out "Hey, did you
18 see this morning what was said?" something like that.
19 I think at least a basic inquiry is appropriate now.
20 And if we have people that say "Yes, I've seen
21 something," then we take them one by one to find out
22 what --

23 THE COURT: Are you suggesting that this
24 trial -- that a trial of this type needs -- that the
25 jury needs to be sequestered or something like that? I

1 just want to make sure.

2 MR. POPOVICH: No, Your Honor. I'm just
3 thinking after -- after -- what? -- five days off and
4 the intense media coverage that has come on, we inquire
5 of our jurors whether anybody has seen anything at all.

6 Whether it be print media, whether it be news
7 media, or any of the, you know, Good Morning
8 America-type shows, let's find out. If they raise a
9 hand, then I would ask that we talk with each person
10 that raised their hands one on one and find out what
11 they know.

12 If they saw this one this morning talking
13 about the two potential witnesses, then maybe there
14 would be a renewal of the motion -- or at least
15 possibly the need to get rid of that juror. I -- we've
16 had a long off period with intense media coverage. I
17 would think at least asking the jurors this question
18 makes sense.

19 THE COURT: I'm trying to make sure I
20 understand what -- what the contention is regarding
21 intense media coverage. I just want to make sure I
22 understand. Is that something that's --

23 MR. RUSSELL: Your Honor, just -- just --

24 THE COURT: This is an open courtroom and --

25 MR. POPOVICH: Right.

1 THE COURT: -- we have a public figure
2 involved in the case; right? So --

3 MR. POPOVICH: It's not saying that somehow
4 we should restrict the media coverage. What I'm
5 looking for is, is what have these 12 people actually
6 seen. That's what I'm inquiring about.

7 MR. RUSSELL: And, just for context, Your
8 Honor, I -- I've received e-mails, texts constantly
9 from the east coast just simply saying, "Hey, I saw you
10 on the news this morning." So it's been on the
11 national news.

12 You were asking about what we mean by intense
13 media coverage. I can tell you I've heard from people
14 I haven't talked to in years, "Hey, I saw you on the
15 news this morning," because I'm one of the pictures
16 next to Mr. Copperfield. So it is out there. I think
17 Mr. Popovich's suggestion makes some sense because it
18 has been pretty pervasive.

19 MR. DEUTSCH: My only comment would be, Your
20 Honor, are the defense attorneys surprised that this is
21 getting as much coverage as it is considering who their
22 client is? I don't think anyone is surprised. I think
23 everyone knew it would get this kind of coverage. And
24 I think that there's a possibility that any jury, no
25 matter where we try this case or when we try the case,

1 may potentially see something. Your Honor has
2 instructed them to disregard it.

3 THE COURT: Maybe when counsel has introduced
4 with the press and that kind of thing, you know, that
5 could --

6 MR. DEUTSCH: I think an admonishment, a
7 reminder of them that, if anything comes up, that they
8 should ignore it, which you've already done, but a
9 reminder of that instruction would be more than enough,
10 Your Honor.

11 THE COURT: I think that questioning the jury
12 is appropriate.

13 MS. FRESCH: Thank you.

14 THE COURT: So I will do that.

15 So I think we're going to get to the other
16 issue later. I think, as I recall, that has to do with
17 the disclosures made and what can be done about them
18 and all that. We can take that up later, because, as I
19 recall, we've got limited time today for -- for the
20 witness. Okay? And so I want to utilize that time,
21 but let's have the jury brought in and -- and we'll see
22 what's happened in the meantime.

23 MR. DEUTSCH: Thank you.

24 THE MARSHAL: All rise.

25 (The following proceedings were held in