

**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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Electronically Filed  
Jun 13 2019 01:45 p.m.  
Elizabeth K. Brown  
Clerk of Supreme Court

**JOINT APPENDIX - VOLUME 11**

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1 and giving that answer? You can answer.

2 A. Okay.

3 Q. Do you recall being asked that question and  
4 giving that answer?

5 A. I don't recall.

6 Q. Okay. But in your deposition, when you said  
7 that the participants set the pace, was that not really  
8 accurate?

9 A. Are you asking me right now or --

10 Q. Yeah. Well, now you're saying you don't know  
11 or maybe it's Ryan. And at your deposition you said  
12 that it was the participants that set the pace.

13 So which one is it?

14 MR. RUSSELL: Object. Misstates testimony.

15 THE COURT: Overruled. She can say so if it  
16 does.

17 BY MR. DEUTSCH:

18 Q. Which one is it? Do they set the pace? Does  
19 Ryan set the pace? Or are you not sure who sets the  
20 pace?

21 A. I'm not sure.

22 Q. If Ryan came in here yesterday and said that  
23 he was the one who sets the pace, would that change  
24 your feeling in any way? Or you still wouldn't know?

25 A. No, I wouldn't know because I was never in

1 the front.

2 Q. And from where you are in the back to where  
3 Ryan is in the front, can you see him?

4 A. At one point I can.

5 Q. Okay. What point is that?

6 A. We reenter the MGM and he gathers everyone up  
7 before we head into the kitchen area. So I can see him  
8 then.

9 Q. Okay. But at any point in time from when you  
10 leave the dragon until you get back into the -- into  
11 the casino right before you enter the kitchen, you  
12 can't see him at any point there?

13 A. No.

14 Q. It's just because the group is too spread  
15 out?

16 A. It could be that. I know the route we take,  
17 I can only see maybe two or three people in front of me  
18 in the train.

19 Q. Okay. Now, we know that it's called the  
20 runaround; correct?

21 A. Correct.

22 Q. And at your deposition, you were asked how  
23 you would describe the pace of the runaround; true?

24 A. True.

25 Q. Okay. And at your deposition you said that

1 people weren't required to run; is that true?

2 A. True.

3 Q. Okay. But you said sometimes they did run.

4 A. Yes.

5 Q. True?

6 A. True.

7 Q. Okay. If they did run, you wouldn't tell  
8 them to slow down; true?

9 A. No, I wouldn't use that word -- wording.

10 Q. Okay. So even though people weren't required  
11 to run, in your experience, people sometimes did.

12 A. Yes, sometimes they did.

13 Q. And when -- when asked about the pace that  
14 you would describe it, I guess, generally, you used the  
15 very specific term; is that fair?

16 A. Yes.

17 Q. Okay. You used the term "brisk walk"?

18 A. Yes.

19 Q. Okay. Did you know that Mr. Carvalho also  
20 called it a "brisk walk"?

21 A. I did not know that.

22 Q. Okay. Would that surprise you, that you  
23 both, like, picked the same one?

24 A. I don't think so.

25 Q. Okay. How about if I told you that

1 Mr. Carvalho used the term "brisk walk" and Mr. Kenner  
2 used the brisk walk? Would it then surprise you that  
3 all three of you chose that exact same speed?

4 MR. RUSSELL: Objection to the extent it  
5 misstates Mr. Kenner's testimony.

6 MR. POPOVICH: Also relevance as to --

7 THE COURT: I will allow it.

8 BY MR. DEUTSCH:

9 Q. Would that surprise you?

10 A. No.

11 Q. Okay. How about if Mr. Kenner, Mr. Carvalho,  
12 Mr. Copperfield, and you all chose that exact same term  
13 for the speed, a brisk walk? Would that surprise you?

14 A. No.

15 Q. Okay. Did you ever talk to Mr. Carvalho  
16 about using that term "brisk walk"?

17 A. No.

18 Q. Did you ever talk to Mr. Kenner about using  
19 that term "brisk walk"?

20 A. No.

21 Q. Did you ever talk to Mr. Copperfield about  
22 describing it at your deposition as a brisk walk?

23 A. No.

24 Q. Now, on the -- you were working on  
25 November 12th, 2013; correct?

1           A.    Correct.

2           Q.    Okay.  And that night you were doing -- in  
3 the back of the runaround; is that right?

4           A.    Yes.

5           Q.    And did you see Mr. Cox fall?

6           A.    No, I didn't.

7           Q.    Did you know at the time that he had fallen?

8           A.    No, I didn't.

9           Q.    When would you have been -- were you behind  
10 him?

11          A.    I would have been, yes, because I was at the  
12 end of the train.

13          Q.    Okay.  And when you -- when you came around  
14 that corner, was -- was he on the ground, had he  
15 already gotten up, or something else?  Or you're not  
16 sure?

17          A.    I don't remember at all.

18          Q.    You don't remember if he was still on the  
19 ground or not?

20          A.    I don't remember seeing him fall at all.

21          Q.    Okay.  Do you remember seeing him on the  
22 ground?

23          A.    No, I don't.

24          Q.    Do you remember seeing him get up?

25          A.    No, I didn't.

1 Q. You didn't or you don't remember?

2 A. No, I don't remember seeing anything.

3 Q. Okay. Did there come a point in time when

4 you learned that he had fallen?

5 A. Yes, there was a point in time.

6 Q. And how did you learn?

7 A. It was about a little over a year ago, I was

8 contacted by our stage manager, and he let me know that

9 there was a case happening around an incident from the

10 show. So he filled me in on sort of the background of

11 that and had me connect with the lawyer.

12 Q. So if Mr. Carvalho told this jury yesterday

13 that, on the evening of the accident, you were the one

14 who told him about the accident, you would think that

15 was a not true statement?

16 A. I just don't remember.

17 Q. Okay. So it's possible that you were the one

18 who told him?

19 A. Possibly.

20 Q. Okay. So do you go into the little room

21 during the speeches afterwards?

22 A. No, not during the speeches.

23 Q. Okay. Were you there at any point in time

24 and see an ambulance arrive?

25 A. No, I don't remember an ambulance.



1 Q. What do you do after the show? Do you go --  
2 where do you usually go?

3 A. So, as soon as we bring the disappearing  
4 participants back into -- it's kind of like a  
5 debriefing room, which I think is the room you were  
6 just referring to where they get the speech and watch  
7 playback of the show, some of them have flashlights on  
8 them. So I just collect their flashlights, and then I  
9 actually exit.

10 Q. You said some of them have flashlights. Not  
11 all of them have flashlights?

12 A. I don't think all of them have flashlights.

13 Q. And that evening of the accident, did  
14 anyone -- do you know -- do you remember if Mr. Kenner  
15 came to you and asked you any questions about what had  
16 happened with Mr. Cox?

17 A. No, I don't remember.

18 Q. Do you know if Mr. Copperfield came to you  
19 and asked you any questions about what had happened  
20 with Mr. Cox?

21 A. No.

22 Q. Other than your recollection of someone  
23 coming, like, a year later and asking you about it, did  
24 anyone in any capacity with Backstage ask you any  
25 questions to inquire in any way about what had happened

1 with Mr. Cox?

2 A. No. I do remember, when I was still there,  
3 one of the other assistants had been going through  
4 scheduling, and so they had asked -- they were trying  
5 to figure out who was working that night and -- because  
6 of days off and whatnot. And I learned later that it  
7 was in reference to that specific incident. I didn't  
8 know the background of why they were asking.

9 Q. But nobody -- nobody ever came to you to try  
10 to ascertain if you had any information about what had  
11 happened; is that fair?

12 A. Yes.

13 Q. No one ever came to you to try to determine  
14 what had happened with respect to Mr. Cox; true?

15 A. True.

16 Q. Did anyone from MGM ever come to you and ask  
17 you any questions, interview you as a potential witness  
18 to this accident?

19 A. No.

20 Q. Is it fair for me to say that -- that, other  
21 than Mr. Cox, you're aware of other people who have  
22 fallen? Is that fair?

23 A. I remember one person falling.

24 Q. Okay. And the person that fell, that person  
25 that you remember, that person also fell doing the

1 runaround; is that true?

2 A. Yes.

3 Q. And were you on the runaround at the time

4 that that person fell?

5 A. Yes.

6 Q. Did you actually see that person fall?

7 A. I did see that person fall.

8 Q. You did. And where in the runaround did you

9 see that person fall? Do you remember?

10 A. I know we were outside of the building. I

11 don't remember where exactly outside, but I know we

12 were outside.

13 Q. Okay. So was it at some point when you leave

14 the doors before you enter?

15 A. Yes.

16 Q. Okay. And after -- did that person fall,

17 like, all the way to the ground?

18 A. She did.

19 Q. It was a woman?

20 A. Uh-huh.

21 Q. And, you know, I'm assuming that David

22 Copperfield and the show or Backstage had some sort of

23 protocol of what to do if there was some sort of fall

24 or something out of the ordinary at the show. Is that

25 fair?

1 A. Yes.

2 Q. And that would be because Backstage would  
3 want to know what happened; is that right?

4 A. Yes.

5 MR. RUSSELL: Objection. Foundation.

6 THE COURT: Sustained.

7 BY MR. DEUTSCH:

8 Q. Okay. Well, would the protocol be that, if  
9 something out of the ordinary happened, that -- that  
10 you were supposed to go to someone and notify them that  
11 that happened?

12 A. Yes.

13 Q. Who were you supposed to go and notify?

14 A. If it was a matter of safety, definitely  
15 letting security know right away so that they can  
16 actually step in and -- and check on the person.

17 Q. Okay. And that would be MGM security?

18 A. Yes.

19 Q. Okay. How about people at the Copperfield  
20 show or Backstage employees, like Chris Kenner, for  
21 example? Would -- would -- if someone fell during the  
22 Thirteen Illusion or, I guess, any other illusion,  
23 would that be something that Chris Kenner, as the  
24 executive producer of the show, would want to know?

25 A. Yes.

1 Q. So did you -- so I'm assuming, then, that if  
2 the protocol was to go to Mr. Kenner about the fact  
3 that someone else had fallen, then on that night, when  
4 this other woman had fallen that you remember, you went  
5 to Mr. Kenner and told him, "Hey, someone had fallen."  
6 Is that fair?

7 A. Yes.

8 MR. RUSSELL: Objection. Misstates  
9 testimony.

10 THE COURT: If it does, she can say so.

11 BY MR. DEUTSCH:

12 Q. Is that fair?

13 A. Yes.

14 Q. Okay. So, therefore, if Mr. Kenner came in  
15 and told this jury that he was unaware of anybody other  
16 than Mr. Cox falling, that would be not accurate --

17 MR. RUSSELL: Objection.

18 BY MR. DEUTSCH:

19 Q. -- because you would have informed him of  
20 this; is that fair?

21 MR. RUSSELL: Misstates Mr. Kenner's  
22 testimony and calls for speculation.

23 THE COURT: Well, it's the jury's prerogative  
24 to determine what the testimony -- what the testimony  
25 was. So they'll consider it in light of what they have

1 heard.

2 BY MR. DEUTSCH:

3 Q. Do you need the question read back?

4 A. Yeah. Sorry.

5 Q. No problem. I assumed you did.

6 (Record read by the reporter.)

7 THE WITNESS: I don't know what he remembers.  
8 I do remember informing him of that one incident that I  
9 personally saw.

10 BY MR. DEUTSCH:

11 Q. Okay. Did you -- was it also -- you know,  
12 was it also part of the protocol to notify  
13 Mr. Copperfield if something went awry or went -- out  
14 of the ordinary occurred?

15 A. If it was specific to his involvement in the  
16 show.

17 Q. Okay. So he wouldn't care if someone had  
18 fallen while doing the runaround. That wouldn't be  
19 something he would want to know?

20 MS. FRESCH: Objection. Lacks foundation.  
21 Calls for speculation.

22 THE COURT: Sustained.

23 MR. RUSSELL: Join.

24 BY MR. DEUTSCH:

25 Q. Well, was it part of the protocol that if --

1 would someone falling during the runaround be something  
2 that the protocol would require you to tell  
3 Mr. Copperfield?

4 A. Not that I was aware of.

5 Q. Okay. When did you start? What year -- your  
6 two and a half years, when did that start?

7 A. I believe it was August of 2012.

8 Q. August of 2012. Okay.

9 And so at the time of Mr. Cox's accident in  
10 November of 2013, you had been there for a little over  
11 a year?

12 A. Yes.

13 Q. Fourteen months or so?

14 And when you -- how long after you started  
15 working at the show did you start doing the runaround  
16 for the Thirteen Illusion?

17 A. I think I had been there about a month.

18 Q. Okay. And -- and was it -- Mr. Carvalho  
19 explained to us yesterday that for, like, a period of  
20 time -- maybe, like, a week or so -- you did the  
21 runaround following someone else?

22 A. Yeah. So the training itself sort of it went  
23 over probably like three or four weeks. Actually  
24 shadowing was -- was part of that training.

25 Q. So you -- you shadowed someone else for a

1 little bit, and then that person shadowed you for a  
2 little bit, and then you started doing it by yourself?

3 A. Yes.

4 Q. Okay. And the -- the -- the incident that  
5 you recalled with someone else falling during the  
6 runaround, was that when you first started doing the  
7 Thirteen Illusion, or was it the end -- sort of at the  
8 end of when you did the Thirteen -- you know, closer to  
9 November, was it when you started?

10 A. I don't remember exactly when that incident  
11 took place.

12 Q. Okay. Can you -- I mean, was it, like,  
13 something that -- was it -- you know, I'm not asking  
14 for a specific date.

15 A. Okay.

16 Q. I -- I understand that you might not recall  
17 that, but was it, like, in the first three months,  
18 let's say, of you doing it?

19 A. No, I think I had been there for a little  
20 while.

21 Q. Okay. The person -- did you talk with this  
22 other person that had fallen?

23 A. I did.

24 Q. Okay. And do you know if -- if there was a  
25 protocol that Chris Kenner came and talked to the



1 person?

2 A. If the person decided to stay. In this case,  
3 she did not want to stay. She didn't want to file a  
4 report. She just said she was fine and she felt fine  
5 to leave. So he did not meet with her at that time.

6 Q. Okay. Well, so -- so -- even if -- let's say  
7 a person doesn't want to stay. Was -- is it fair of me  
8 to say that the Copperfield show or Backstage would  
9 still make some sort of record of the fact that the  
10 person had fallen, or would they only do it if that  
11 person decided to stay and -- and make some sort of  
12 record?

13 A. I'm not sure. Aside from -- so my sort of  
14 leaving a record or communicating, it was just a verbal  
15 communication. I know there wasn't, like, a paperwork  
16 or a document that we had to sort of -- like a report  
17 to file in our back end; it was just a verbal  
18 communication of what had happened.

19 Q. And then you're not sure what they did?

20 A. Yeah, I'm not sure on their end.

21 Q. The other person that had fallen, did that  
22 person get injured?

23 A. I --

24 Q. And -- and I'm not asking you the severity of  
25 the injury right now; I'm just asking if they got

1 injured.

2 A. Sure. I wasn't sure. So that's why we  
3 stopped, check on her, brought security over. She said  
4 she wasn't injured. She didn't have any appearance,  
5 like no scrapes or bruises or --

6 Q. She wasn't bleeding or anything?

7 A. No, she wasn't -- she didn't have, like, a  
8 visible sign of injury.

9 Q. Okay. No blood, though, or anything that you  
10 saw?

11 A. No.

12 Q. Just a fall?

13 A. Yes.

14 Q. Okay. Did you -- did you check her over?

15 A. Like, did I look at her?

16 Q. Yeah. Did you, like, look to make sure there  
17 was no blood?

18 A. I did, yes.

19 Q. And you didn't see any?

20 A. No.

21 Q. Can you -- can you describe the person  
22 that -- that fell, that other person -- the woman that  
23 you remember falling?

24 A. She was a woman.

25 Q. Okay.

1           A.    That's --  
2           Q.    Got that much.  
3           A.    That's about all I remember about -- about  
4 her.  
5           Q.    That's all you remember what she looks like?  
6           A.    Yeah.  
7           Q.    So you just -- the only things you remember  
8 about her for sure is that she was a woman and that she  
9 wasn't bleeding?  
10          A.    Yes.  
11          Q.    Fair enough. Do you remember what kind of  
12 shoe she was wearing?  
13          A.    I remember, like, a modest heel.  
14          Q.    Okay.  
15          A.    I don't remember the color or the --  
16          Q.    But she was wearing heels of some sort?  
17          A.    Yes.  
18          Q.    Okay. Do you remember if -- I know you said  
19 that -- that she was -- had fallen outside. Do you  
20 remember if it was on that -- sort of the first  
21 straightaway when you first come outside, or had you  
22 already turned the corner to go towards that set of  
23 doors?  
24          A.    I don't remember exactly where outside.  
25          Q.    Okay. So when the people are coming off of

1 the -- the dragon and you're, like, one of the first  
2 people to meet them, is -- do you -- is it fair for me  
3 to say that -- that you don't really give them any  
4 specific instructions at that point about what they're  
5 about to encounter? Is that fair?

6 A. I basically give them their next step. So I  
7 just say "Take my hand. You're about to go down  
8 stairs."

9 Q. Okay. But would it be fair for me to say  
10 that you're pretty vague at that point about what  
11 you -- what you say? That a fair description of it?

12 A. I actually would say it a little more  
13 specific because I'm -- I would say "Take my hand.  
14 You're about to walk down stairs."

15 Q. Okay. Well, let me just show you what -- you  
16 say -- do you -- after saying that you're about to walk  
17 down the stairs, do you then continue to give them any  
18 instructions as they're going?

19 A. Yes. After that, the instruction is vague.  
20 It's just basically, "Follow the person in front of you  
21 and watch your step."

22 Q. Okay. What are you telling -- what are you  
23 warning them to watch their step about? Any hazard in  
24 particular?

25 A. No, not a hazard, just they're going to be

1 moving. So just a general "watch your step."

2 Q. Okay. When you first -- when you first went  
3 to work at Backstage and -- did you go to the job with  
4 the understanding that you were going to be  
5 Mr. Copperfield's personal assistant?

6 A. Yes.

7 Q. Okay. And did he interview -- did you have  
8 to interview with him personally?

9 A. I did.

10 Q. Okay. And did you -- did you also have to  
11 interview with someone else, or was it just with him?

12 A. He was actually the last person I interviewed  
13 with.

14 Q. You also interviewed with Chris Kenner?

15 A. No. Chris Kenner wasn't part of the  
16 interview, but the other assistants were sort of the  
17 first step in the process, and then David was the next  
18 step.

19 Q. Okay. And then when you left, did you just  
20 decide to change career paths and go somewhere else?

21 A. Yeah. I did pretty much a 180.

22 Q. Okay. All right. Thank you, Ms. Weall.  
23 I have nothing further.

24 A. Okay. Thanks.

25

1 CROSS-EXAMINATION

2 BY MR. RUSSELL:

3 Q. Hello.

4 A. Hello.

5 Q. Get my water before I get too dry up here.

6 You -- you were discussing with -- well,  
7 before we get into the show, where are you currently  
8 employed?

9 A. I work for the Las Vegas Metro Chamber of  
10 Commerce.

11 Q. What do you do for them?

12 A. I'm their marketing coordinator.

13 Q. How long have you been over there?

14 A. A little over three years.

15 Q. Essentially since you left Backstage?

16 A. Yes.

17 Q. You started talking with Mr. Deutsch about  
18 the show track. Tell the jury what your show track was  
19 with the Thirteen Illusion during the questioning  
20 portion. Just walk them through it.

21 A. So it starts off the audience members are  
22 sort of trying to grab hold of these giant inflatable  
23 balls. And the ones that do make their way down to the  
24 edge of the stage where the stairs are. That's where I  
25 was stationed. So the first part of the Thirteen track

1 would just be asking those questions to the people who  
2 came down to the stage.

3 And then the second part of the track would  
4 involve the runaround, so actually helping the people  
5 off the prop, out and around, and then having them  
6 reappear.

7 Q. And you talked to him a little bit about  
8 shadowing and training. Who was your predecessor for  
9 your show track in the Thirteen Illusion?

10 A. Her name was Ashley Kelly.

11 Q. How long did you shadow Ms. Kelly for?

12 A. About three or four weeks.

13 Q. And during the time you're shadowing  
14 Ms. Kelly, were you both on stage together?

15 A. Yes.

16 Q. What do you recall Ms. Kelly communicating to  
17 you as far as the specifics of the track?

18 A. What do you mean?

19 Q. Well, what do you recall, if anything,  
20 Ms. Kelly communicating to you about the specifics of  
21 the track as it related to participant safety?

22 A. With the questioning or --

23 Q. Yes.

24 A. Just be really clear in the questions, that  
25 everyone had to be asked the questions. If there

1 was -- if anyone essentially answered yes to any of the  
2 questions, it was really important to then communicate  
3 that to David so that he was aware.

4 And then, for the runaround, you're also  
5 wondering specifics?

6 Q. No, let's stick with the questioning for  
7 right now.

8 What was your practice in communicating with  
9 the participants as far as how clearly you would  
10 communicate with them? What was your practice?

11 A. Essentially, we -- they would have to sort of  
12 get in a single-file line, just lining up in -- along  
13 the edge of the theater itself, against the wall. And  
14 just, one by one, we would ask them the series of four  
15 questions. Once we got through the questioning, then  
16 they'd just move forward to actually go onto the stage.

17 And then, yeah, if anyone answered yes,  
18 basically, to any of the questions, then we'd just  
19 communicate that to David.

20 Q. And what was your practice during the  
21 questioning session on making eye contact with the  
22 participants?

23 A. You need to definitely make sure they're  
24 listening to you. It's -- sometimes it's hard because  
25 everyone's so excited. That was the general theme and



1 the general energy. But everyone was really clear when  
2 it came down to questioning. Even if they wanted to  
3 keep moving forward and getting closer to stage, we'd  
4 just say, "Okay. Hold on. You're almost there. We  
5 just have a few questions for you." And everyone was  
6 really receptive and stopped. Once they realized we  
7 were serious and were actually going to ask them  
8 questions, they're really good about answering.

9 Q. Just to make sure they heard your questions?

10 A. Yeah.

11 Q. Now, part of the questioning, did that  
12 include any visual assessment?

13 A. There are a few visual assessments.

14 One is if -- sometimes people would walk up  
15 without shoes on. So we would have to nicely say, "I'm  
16 so sorry. You have to be wearing shoes to participate  
17 in this."

18 Or if they looked younger than 18, we would  
19 just politely ask how old they were. If they weren't  
20 18, we would have to have them go back to their seats.

21 And then, just in general, if someone --  
22 because, at this point, we're able to actually watch  
23 all the audience members walk towards us and down the  
24 stairs and line up. If someone was moving a little  
25 slowly or maybe seemed unsteady, then that was a pretty

1 clear visual indication.

2 Q. And describe for the jury a little bit better  
3 what -- what the auditorium -- the theater looks like.  
4 Is it all -- from the stage straight out, is it all  
5 just one level?

6 A. No. I don't remember how many levels, but,  
7 yeah, it's sort of staggered. So it -- each -- you  
8 know, each row is higher than the one below it.

9 Q. What would you be looking for as participants  
10 crossed those tiers to come down for you to -- towards  
11 you?

12 A. You would just sort of get a preliminary  
13 indication of how they're moving. So if -- and mostly  
14 if they -- if they weren't moving in a way that we felt  
15 was maybe normal, I guess. So, yeah, if they were --  
16 if they were maybe stumbling or just in general moving  
17 very, very slowly, then we can get a pretty clear  
18 visual that, okay, so if we ask them these questions,  
19 we really need to make sure that they're answering.

20 Q. So the way the theater's laid out, does it  
21 require the participants to walk across and -- and then  
22 down as well?

23 A. Uh-huh. Yes, it does.

24 Q. And how many people from Backstage were lined  
25 up to sort of greet the audience participants before

1 they got to the stage?

2 A. So there were three of us, myself included.

3 Q. And when you were doing your visual  
4 assessment of people coming across and coming down,  
5 what sort of things would you be looking for to make  
6 sure they were in good health?

7 A. Yeah, I think I mentioned, like, the walking,  
8 like, if they were, you know, maybe stumbling a little  
9 bit or just moving very slowly.

10 You never want to assume if a lady is  
11 expecting, but, you know, if she looks like she is,  
12 that's -- you know, you really want to be extra  
13 cautious helping her. She can still participate in --  
14 in the illusion, just not -- she wouldn't disappear.  
15 So just make sure we really help her up the stairs and  
16 get her settled.

17 Q. She would become a witness?

18 A. A witness.

19 Q. What sort of signs would you look for of --  
20 of a participant being intoxicated?

21 A. I mean, the walking is a good giveaway. When  
22 you're right in front of someone who has been drinking,  
23 you know, they tend to get a little handsy and really  
24 in your face and close and -- especially when they're  
25 very excited that they just, you know, caught a ball

1 and are about to participate on stage. And then, you  
2 know, if they've really been drinking, you can  
3 obviously smell alcohol on them.

4 Q. And if someone came up to you and they were  
5 handsy or if you smelled alcohol, what would you do?

6 A. I wouldn't even bother asking -- or I would  
7 ask the questions but already know that they were going  
8 to be sitting down. So just communicate to David that  
9 this person's been having a lot of fun and they should  
10 probably be sitting down.

11 Q. You mentioned having no shoes. Were there  
12 any other footwear issues that you would look for?

13 A. Our -- no, I mean, our -- at the questions,  
14 our main visual -- I mean, if you weren't wearing any  
15 shoes, that's -- we would have you go right back to  
16 your seat, but we didn't really have any part of  
17 assessing footwear beyond that.

18 Q. Regardless of whether it was because of  
19 footwear or intoxication, for whatever reason, what  
20 would you do if somebody did not appear steady as  
21 they're walking across the auditorium and down to you?

22 A. Well, I think one of two things. So if  
23 they -- in the case of intoxication, if they couldn't  
24 even, you know, follow basic direction of answering the  
25 question, security was next to us. So they would just

1 politely help people back to their seats.

2 But if it was just someone who's a little  
3 unsteady, we would just help them up the stairs. And  
4 then David would have them sit down on the stage as a  
5 witness.

6 Q. You said you would communicate things to  
7 Mr. Copperfield. The jury has seen a video -- and we  
8 don't necessarily need to see it again -- where,  
9 essentially, looking at the stage, Mr. Copperfield  
10 is -- is over here, the participants are lining up  
11 here. Would you be off the corner here in that video  
12 if this is the edge of the stage here?

13 I can show you the video, if you'd like.

14 A. No, that's okay. I think I've got you.

15 Yes. So I would be on the -- the stair --  
16 there's stairs that actually take you up to the stage.  
17 So David would be at the top of those stairs and I  
18 would be on one of, like, the first stairs.

19 Q. And what were some of the things that you  
20 would say to Mr. Copperfield as you were -- you were  
21 handing off a participant who you believe needed to be  
22 sat?

23 A. I would just say the answer to the questions.  
24 So, you know, "This person doesn't speak English. This  
25 person's expecting a child. This person has a

1 disability that is -- you know, they can't move as well  
2 or they can't climb stairs or they said they have a  
3 hard time running. This person has kids at their  
4 table."

5           And then, for the drinking, you know, we try  
6 not to specifically say that because those -- those  
7 participants are standing right next to you. So we  
8 just, you know, say "This person's been having a lot of  
9 fun."

10          Q.   And -- and did you -- did you have a goal in  
11 that position you were at to sort of keep things  
12 lighthearted and keep it entertaining even for the  
13 people who were going to be sitting as witnesses?

14          A.   Yeah. So they don't -- you know, they just  
15 answer the questions and -- and are still excited to  
16 participate either way.

17          Q.   All right. Now, once the participants are on  
18 stage -- you talked about this a little bit with  
19 Mr. Deutsch -- but go ahead and explain in your own  
20 words to the jury, after the participants are on stage,  
21 what do you do next?

22          A.   So once everyone is on stage, actually would  
23 walk around backstage and wait for -- I think you guys  
24 maybe have been described the dragon and the prop that  
25 sort of helps -- connects to the main prop that

1 everyone is sitting on. So once that prop gets  
2 connected, that sort of marks, like, beginning of the  
3 runaround. So there would be two other -- I think I  
4 use the word "magi," but basically stagehands would go  
5 onto the dragon. And I would be right behind them.

6           So the first guy would actually lift up --  
7 the whole prop is sort of covered by this curtain, if  
8 you will. So the first guy would actually lift the  
9 curtain so that the second guy could go onto the prop.  
10 And that person would just sort of have everyone stand  
11 up and let them know, "Okay. You know, we're about to  
12 move. Everyone stand up."

13           Then I would go -- not on the prop, but  
14 where the dragon and the prop connect. I would just  
15 sort of step forward to grab the first person's hands  
16 and walk them off and just say, "Okay. We're about to  
17 walk and head downstairs." So help them down the  
18 stairs, hand that first person off to Ryan, and then I  
19 would actually just stand at those stairs, flashlight,  
20 to help everybody else off the prop. Once the last  
21 person exited the prop, then I would just follow behind  
22 them.

23           Q. Pomai, I'm going to show you. This is  
24 93-154. I'm going to hand you this pointer. This is a  
25 photograph the jury has already seen, Exhibit 93-154.

1 Do you recognize that photograph?

2 A. Yes.

3 Q. What is that in that photograph?

4 A. That's the dragon.

5 Q. All right. Feel free to stand up.

6 Show us -- show the jury where the curtain is

7 that you were talking about someone holding up at the

8 back of the platform.

9 A. Sure. So this up-and-down area, it's

10 actually a curtain. It's just a black curtain. So the

11 first person that I described would actually lift that

12 curtain up.

13 Q. And when you say "the first person," this was

14 a Backstage employee?

15 A. Yeah, the magi.

16 Q. And where would you stand when the

17 participants started coming out of the dragon?

18 A. So when they first started coming out of the

19 dragon?

20 Q. Yes.

21 A. So I would actually be -- it's kind of hard

22 to see, but where the curtain is, essentially that's

23 where the dragon meets the prop. So I would just be

24 standing there. The other two magi, one would be on

25 the prop and the other is still holding the curtain.



1 They would actually hand off the first person right  
2 there. I'd help them down the stairs. And then I'd  
3 actually just stand here while everyone else exited the  
4 prop, and then follow behind.

5 Q. And so the people coming off the prop, from  
6 your perspective, could they even get onto the dragon  
7 without running into you first? You're the first thing  
8 they see -- right? -- as they come onto the dragon?

9 A. Yes.

10 Q. Okay. They can't get onto the dragon -- the  
11 first person can't get onto the dragon without taking  
12 your hand; right?

13 A. Yes.

14 Q. On the stairs there, there's some white tape.  
15 Do you know what that is?

16 A. Yeah, it's glow tape.

17 Q. All right. You can have a seat. Thank you.  
18 Could you please describe what sort of -- and  
19 I'll use the pointer this time -- but what sort of  
20 ambient light comes from the prop over the top of the  
21 dragon?

22 MR. DEUTSCH: Objection to the form.

23 THE COURT: Sustained.

24 MR. RUSSELL: I'm sorry. I didn't hear what  
25 it was.

1 MR. DEUTSCH: Form.

2 And foundation.

3 BY MR. RUSSELL:

4 Q. As you come out of the dragon and you're  
5 waiting at the bottom of the stairs, are you able to  
6 see any light coming from over the top of the dragon?

7 MR. DEUTSCH: Note my objection. Misstates  
8 her testimony.

9 THE COURT: Overruled. She can say so if it  
10 does.

11 BY MR. RUSSELL:

12 Q. Go ahead.

13 A. Sorry. Can you rerepeat the question.

14 Q. Sure. After you've taken the first  
15 participant out, are you able to see any light coming  
16 over the top of the dragon?

17 A. I'm not sure. I'm not really looking up over  
18 the dragon.

19 Q. Is there ambient light back there?

20 A. There is ambient light. I don't know where  
21 it's coming from.

22 Q. Can you identify -- well, I want to put this  
23 up here. This is a diagram that's been used by a few  
24 different witnesses.

25 A. Do you need help?

1 Q. No, I'm good. But you can stand up because  
2 I'll have you use the pointer again.

3 MR. POPOVICH: Your Honor, I'm kind of  
4 thinking it's high time we give that board a number.

5 MR. RUSSELL: Can you all see this?

6 THE COURT: In other words, for the record,  
7 demonstrative exhibit next in order.

8 MR. RUSSELL: You're pretty familiar with it.  
9 That's why --

10 THE COURT: I guess this would be  
11 demonstrative exhibit --

12 MR. POPOVICH: Okay. Thank you.

13 MR. DEUTSCH: All right.

14 THE COURT: This will be marked Demonstrative  
15 Exhibit 1. Is it defendant Backstage's demonstrative  
16 or --

17 MR. RUSSELL: I believe.

18 MR. POPOVICH: It's actually Copperfield.

19 THE COURT: Copperfield Demonstrative  
20 Exhibit 1.

21 BY MR. RUSSELL:

22 Q. All right. Pomai, this -- again, this is a  
23 diagram that's been used by quite a few witnesses in  
24 this case.

25 From your perspective, having done the

1 runaround, can you identify where along the route --  
2 again, from your perspective -- is the darkest part of  
3 the runaround?

4 A. I would say where the stage area is.

5 Q. And is that coming -- right when you come off  
6 the dragon?

7 A. Yes.

8 Q. Okay. Is there lighting in the -- in these  
9 hallways here?

10 A. Oh, yeah. They're fully lit.

11 Q. Leave that up there for a second.

12 Can you identify any point in the route --  
13 again, from your perspective -- where either you or the  
14 participants have to run in total darkness?

15 A. In total darkness?

16 Q. Yeah.

17 A. I don't think at any point.

18 Q. All right. Let's go back to the point where  
19 you've left the dragon. You stand at the bottom of the  
20 stairs -- is that what you said? -- of the dragon?

21 A. Yes.

22 Q. What efforts do you make to assist the  
23 participants down the stairs of the dragon?

24 A. So I'm basically just standing like this. So  
25 I extend my hand. I light the stairs. I just say,

1 "Take my hand. You're about to walk downstairs. Take  
2 my hand. You're about to walk downstairs."

3 If they took my hand, they did; if not, they  
4 saw the stairs.

5 Q. How long -- you can have a seat. Thank you.

6 How long, typically, would it take the  
7 participants to get out of the platform and out of the  
8 dragon after the curtain drops?

9 A. Are we talking about, like, when the  
10 dragon -- like, from the dragon being dumped or just --

11 Q. No.

12 A. -- in total?

13 Q. From the moment the -- from the moment the  
14 person opens the curtain to let the participants out,  
15 from that moment until they're all out, about how long  
16 is that?

17 A. It probably took about 30 seconds.

18 Q. What do you do after all of the participants  
19 are out of the dragon?

20 A. I would just follow the last person.

21 Q. And as you're following the last person, what  
22 are you saying to that person?

23 A. I basically just say, "Watch your step and  
24 follow the person in front of you."

25 Q. What language, if you use -- what language do

1 you use, if any, to communicate any sort of pace to the  
2 participants?

3 A. I didn't really give direction on pace but  
4 just be to follow the person in front of them.

5 Q. For your part of the runaround, did you have  
6 a flashlight with you?

7 A. I did.

8 Q. Where did you shine the flashlight?

9 A. So I basically just shine it at the ground in  
10 front of them.

11 Q. How were the participants provided guidance  
12 along the runaround?

13 A. So I'm assuming the dots are maybe people?  
14 Is that -- I don't know.

15 MR. DEUTSCH: Note my objection. Move to  
16 strike, Your Honor. She's making an assumption.

17 MR. RUSSELL: I don't want you to assume  
18 anything.

19 THE COURT: Motion granted. Ask the next  
20 question.

21 BY MR. RUSSELL:

22 Q. Let's just start with, tell us verbally --  
23 don't worry about the drawing right now -- tell us  
24 verbally, how are the participants provided guidance  
25 along the runaround?

1       A.    As to their main thing -- their main  
2 direction is just to follow the person in front of  
3 them.  So they're in almost like a train, like a  
4 single-file line, and I've never seen anyone veer off  
5 the single-file line.

6               And then along the route itself, we do have  
7 stagehands sort of stationed along the way.  So they're  
8 lighting, so it's additional light, but they're also  
9 just sort of a visual of this is sort of your -- your  
10 lane that you're staying in, if that makes sense.  I  
11 don't know if that -- you wouldn't go -- if someone is  
12 standing here and here, you're not -- you wouldn't have  
13 any inclination to run past them, like a barrier.

14       Q.    When -- when you said there are stagehands  
15 along the way, do you know who those stagehands work  
16 for?

17       A.    I believe they work for MGM.

18       Q.    And looking at the demonstrative --  
19 demonstrative exhibit, do you recognize the dots on  
20 that diagram?

21       A.    The reason I said I assume they're people is  
22 because that's where stagehands were actually standing  
23 along the route.

24       Q.    Is there any use of lights by the MGM  
25 stagehands?

1           A.    Yeah, they all have flashlights.

2           Q.    What direction do they point the lights?

3           A.    They're essentially pointing at the same  
4 direction, so they're pointing at the ground in front  
5 of the participants.

6                   I do remember the people stationed outside,  
7 they would also sort of move the light in the direction  
8 that the participants were moving.

9           Q.    What, if anything, have you heard the MGM  
10 stagehands say as the participants are going through  
11 the runaround?

12          A.    I just remember very short, specific  
13 instructions of what exactly was coming next. So if  
14 someone was stationed outside, for example, they'd say,  
15 "You're about to take a turn. You're about to take a  
16 turn." That was pretty much it. They didn't -- they  
17 didn't yell out a ton of commands. It was basically  
18 just whatever your next step is going to be along the  
19 route.

20          Q.    Are the participants -- are the audience  
21 participants handed lights at any point in time?

22          A.    They are handed lights.

23          Q.    Where along the runaround are they handed the  
24 lights?

25          A.    Once they're offstage, the -- the additional



1 stagehands that are sort of stationed, they do have  
2 flashlights with them. I kind of think of it as, like,  
3 passing out water during a marathon. So they have  
4 flashlights that they'll extend. If no one takes them,  
5 then no one takes them. But that's sort of when they  
6 try to pass out flashlights.

7 Q. Do you know why the participants are given  
8 those lights?

9 A. For when they reappear so that they can sort  
10 of light up the space that they're standing in.

11 Q. From your perspective, having gone through  
12 this, do they actually need the lights to light their  
13 way on the runaround?

14 No.

15 MR. DEUTSCH: Note my objection.

16 BY MR. RUSSELL:

17 Q. What was -- what was the normal pace on a  
18 typical evening during the runaround? How would you  
19 describe that?

20 A. I would describe --

21 MR. DEUTSCH: Objection to the form.

22 THE COURT: Sustained.

23 BY MR. RUSSELL:

24 Q. What was your usual pace, the way you walked,  
25 through the runaround?

1       A.    I would, on average, describe it as a brisk  
2 walk.  I always just followed the last person in the  
3 train, and it was usually about a brisk walk.

4       Q.    How much -- how much space is there if  
5 someone wanted to run in the hallways backstage?

6       A.    Backstage?  They really don't have space to  
7 run.  If someone were to run, it would mostly be in the  
8 outside where the -- when they exit the building in  
9 that time before they reenter the building.

10      Q.    And your experience, again, from --  
11 understanding that it's at the back of the line and I  
12 know you can't see everyone in the line.  But in your  
13 experience from the back of the line, as you go through  
14 the hallways backstage, how often would you see the  
15 participants actually run through those hallways?

16      A.    The hallways?  Sorry.

17      Q.    Yeah, the hallways backstage.

18      A.    The hallways backstage.  I never saw someone  
19 run backstage.

20      Q.    What efforts do you take, from your position  
21 at the back of the line, to keep people in a  
22 single-file line?

23      A.    It's mostly just my verbal direction to  
24 follow the person in front of them.

25      Q.    You mentioned the dots.  Those are where you

1 recall the stagehands being -- the MGM stagehands being  
2 stationed?

3 A. Yes.

4 Q. So if a participant is walking through the  
5 backstage area, or proceeding through the backstage  
6 area, whatever pace it might be, as they're proceeding  
7 through the backstage area and they're coming up on a  
8 turn, what are they going to see at the turn before  
9 they get there?

10 A. They would see a person.

11 Q. And that person would be directing them?

12 A. Yes. So it would be a -- like a stagehand.

13 Q. Have you ever heard anyone, while you were  
14 proceeding along the runaround, shout out a time that  
15 you had to get the runaround done?

16 A. No.

17 Q. Never heard anybody say, "Okay. You've only  
18 got 48 seconds"?

19 A. No.

20 Q. What would -- what would happen if the  
21 runaround took a few minutes -- not a few minutes.  
22 What would happen if the runaround took a few seconds  
23 less -- a few seconds more than usual? What would  
24 happen?

25 A. It didn't happen often, but if we -- so I --

1 again, I'm at the back of the train, if you will. If  
2 people in the -- towards the back of the train start  
3 slowing down a little bit -- it didn't happen often,  
4 but when it did, I would just sort of yell out, "Okay,  
5 everyone. We're going to come to a stop right here.  
6 Everyone come to a stop right here." I'd actually stop  
7 them, go in front of them, and just say, "Okay. Just  
8 follow me the rest of the way." And basically what  
9 that meant is we're not going to make it in time to  
10 reappear.

11           So instead of -- it's sort of obvious if, you  
12 know, you're trying to reappear and you see people sort  
13 of trickling in from a direction. So I would get in  
14 front of them and just sort of walk them through the  
15 rest of the route, hold them. There's a little alcove  
16 by there -- so the kitchen doors that lead back into  
17 the theater, there's a little bit of an alcove there.  
18 So in the event that, you know, you weren't going to  
19 reappear in time, just walk them the rest of the way,  
20 have them stand in that alcove. When everybody else  
21 who did reappear started heading backstage, we would  
22 just subtly get in line right behind them and then head  
23 backstage.

24           Q. Other than those circumstances where you --  
25 you said you had to kind of cut people off and stop

1 them, other than those times, where were you located in  
2 relation to the audience participants?

3 A. I was always at the -- behind them at the end  
4 of the line, the train.

5 Q. And the circumstances you just talked about  
6 of sort of cutting people off, how often did that  
7 happen?

8 A. It didn't happen very often. Maybe my whole  
9 time there, maybe a handful of times.

10 Q. And in those handful of times, would you try  
11 to force the participants to finish the illusion?

12 A. No.

13 Q. Would you ever push the participants from  
14 behind?

15 A. No.

16 Q. How does the -- the situation where you have  
17 to cut people off and pull them out of the illusion,  
18 how does that impact the effect of the illusion?

19 A. If it was a majority of the people who  
20 disappeared, it's pretty obvious. You know, say ten  
21 people disappear, if only four reappear, that --  
22 something is a little off about that. So in that case,  
23 we're actually able to -- to stretch the music and, you  
24 know, David would sort of distract on stage and just  
25 sort of be like, wow, nothing to see here, just to buy

1 us more time.

2 But if it was just, you know, less than half  
3 of the group, it wasn't as big of a deal. So, in the  
4 handful of times it did happen, yeah, I would just sort  
5 of have them stop and then have them follow me the rest  
6 of the way.

7 Q. Okay. So one adjustment you have is, if it's  
8 going to be a lot of people that can't make it, your  
9 testimony is the music just continues until you can get  
10 enough people there?

11 A. Yeah. Basically, it's called stretching.  
12 You just stretch the track that's playing during the  
13 illusion, we can just keep it -- keep it going.

14 Q. And what about the times where you have to  
15 cut some people off and they don't reappear? How do  
16 you make adjustments then to get them back into the  
17 illusion?

18 A. So once the participants reappear, they're  
19 only at the back of the theater for a handful of  
20 seconds before we usher them backstage so that they can  
21 actually get debriefed on what -- you know, what they  
22 just participated in. They get to see -- not that  
23 show, but they do get to see a video of -- of what the  
24 audience saw.

25 So before then -- we usher them backstage --

1 they actually follow the pathway along the theater wall  
2 to get backstage. And that wall is the same wall where  
3 the kitchen doors are, where the alcove is. So they  
4 actually do walk past us. If I do -- if I had to hold  
5 people back, the participants would walk past us, Ryan  
6 leading the way, and we would just very subtly get  
7 right back in line with them at the end. So it was  
8 sort of like the train sort of picked up where it left  
9 off.

10 Q. You were able to make a pretty seamless  
11 adjustment?

12 A. Yes.

13 Q. If there were tripping hazards along -- well,  
14 let me ask you this: The route that the participants  
15 take, same route you run; correct?

16 A. Yes.

17 Q. If there are tripping hazards along the  
18 route, could that affect you personally?

19 A. Absolutely.

20 Q. If the audience participants were confused or  
21 erratic, could that affect you personally?

22 A. Yes.

23 Q. If the -- if the illusion was run in such a  
24 way that would be described as pandemonium, could that  
25 affect you personally?

1           A.    Yes.

2           MR. DEUTSCH:  Objection to the form, Your  
3 Honor.

4           THE COURT:  Overruled.

5 BY MR. RUSSELL:

6           Q.    You already told Mr. Deutsch you did not see  
7 Mr. Cox fall; correct?

8           A.    I don't remember seeing that happen.

9           Q.    Okay.  If he was the last participant in  
10 line, he was the last audience participant, where would  
11 he have been in relation to you?

12          A.    He would have been right in front of me.

13          Q.    And how many people ahead of you -- I think  
14 you told Mr. Deutsch you can usually see, what, two to  
15 three people ahead of you?

16          A.    Yes.

17          Q.    What would you be able to see if two or three  
18 of the audience participants ahead of you fell?

19          A.    What I would see?

20          Q.    Yeah.

21          A.    If they fell?

22          Q.    Yeah.  Would you see them fall?

23          A.    I would see them fall.

24          Q.    The woman that you talk about with  
25 Mr. Deutsch who fell, after she fell, what did you do?



1       A.    She was right in front of me, so I did see  
2 her fall. I helped her back up, and I just assumed  
3 she'd want to stop. But she didn't; she actually  
4 wanted to continue. So we did. We ended up finishing  
5 up the runaround, she reappeared; and when we got  
6 backstage to that debriefing room, I actually had  
7 pulled security in there so that security can check on  
8 her.

9            So we checked on her. We kind of did a  
10 visual, and I think we talked about blood. But she  
11 visually looked okay. She was very insistent that she  
12 was okay. Security wanted to know if she wanted to  
13 file a report or if she wanted any additional medical  
14 attention. And she said, no, she didn't want anything,  
15 she felt fine, and did not want to file a report.

16           So she stayed for the debriefing where you  
17 sort of get to watch the video of what just happened.  
18 Then they actually get to meet David as well. So she  
19 stayed through all of that and then left after that.

20       Q.    Did -- did that woman ask you to go get  
21 security, or did you go get security on your own?

22       A.    No, I got security.

23       Q.    Mr. Deutsch asked you a little bit about  
24 protocols and what Mr. Kenner may have said. If, in  
25 fact, Mr. Kenner testified at trial that he does know

1 that people have fallen during the runaround, would  
2 that be consistent with you telling him about that  
3 woman that night?

4 A. I would assume so.

5 MR. RUSSELL: May we approach, Your Honor?

6 THE COURT: Yes.

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

9 MR. RUSSELL: Ms. Weall, I'll have some more  
10 questions for you in a few minutes.

11

12 CROSS-EXAMINATION

13 BY MR. POPOVICH:

14 Q. But, meanwhile, I'm Jerry Popovich for MGM  
15 Grand Hotel. Okay?

16 A. Hello.

17 Q. Hello. A few questions. Well, lawyers say  
18 that all the time. It's more than a few.

19 The woman you talked about falling and  
20 helping up, do you remember the race she was?  
21 Caucasian?

22 A. Oh, I don't remember.

23 Q. Just remember female and nothing -- and  
24 modest heel?

25 A. Yeah.

1       Q.    Okay.  When the first words are spoken by  
2 stagehands to the participants in the prop, you're  
3 right there at where the prop meets the dragon?

4       A.    Yes.  So the -- there's like a little bit of  
5 a hallway on the dragon, if you will.  I'm on that  
6 hallway with them.

7       Q.    Music's going?

8       A.    Music is going.

9       Q.    Pretty loud?

10      A.    It's pretty loud.

11      Q.    The people who -- or at least the person who  
12 goes in to start having the participants come out has  
13 to speak loudly to be heard over the music?

14      A.    Yes.  The music is also being projected out  
15 to the audience.  So on stage, even though there is --  
16 it's -- it's really more background noise.  So we can  
17 actually yell and be quite loud, and the audience  
18 wouldn't hear us.

19                So there is loud music playing, but it's  
20 projected to the audience, if that makes sense.

21      Q.    When that person goes into the prop to start  
22 bringing people out, can you hear what that person  
23 says?

24      A.    I can.

25      Q.    And I think I already heard it once.  Is one

1 of the first things they tell the people is to stand  
2 up?

3 A. Yes.

4 Q. Would it make any sense to tell people in  
5 that prop to run at that point?

6 MR. DEUTSCH: Objection to the form.

7 THE COURT: I will allow it.

8 THE WITNESS: Do I answer? Sorry.

9 BY MR. POPOVICH:

10 Q. Yes, you get to answer.

11 A. Okay. What was the question?

12 Q. Would it make any sense to tell people seated  
13 in the prop to run, first thing?

14 A. No, it wouldn't make sense.

15 Q. Got to get them up?

16 A. We have to have them -- one thing at a time.  
17 So standing up first.

18 Q. And then does the back row -- well, from the  
19 audience's perspective, the back row of the prop, those  
20 people exit first?

21 A. Actually, I remember the first row exiting  
22 first.

23 Q. Okay. There is created a path for them to  
24 reach the exit?

25 A. Yes.

1 Q. At any point do you recall people -- a  
2 stagehand -- yelling at the participants in the prop,  
3 very loudly, "Run, run, run," three times?

4 A. No.

5 Q. Is there room for people to run in that prop?

6 A. No.

7 Q. Okay. I think you've already said you  
8 haven't shoved a participant to make them go faster.

9 Have you seen any stagehands shove a  
10 participants in the Thirteen Illusion to get them  
11 moving?

12 A. No, I have never seen that. I do extend my  
13 arm to help them off the prop, but that's sort of the  
14 extent of me touching them.

15 Q. No, I'm talking about a slow mover at the  
16 back of the train and you moving them with a shove.

17 A. Oh, got you. No, absolutely not.

18 Q. Was your understanding that that would not be  
19 acceptable behavior for you?

20 A. That would not be acceptable.

21 Q. For the two and a half years you were  
22 involved in the Thirteen Illusion, was the route from  
23 the prop to the reappearance the same?

24 A. Yes.

25 Q. During that time, you've already talked about

1 the stagehands and the positions of the dots. Those  
2 stagehands were essentially in one general area and  
3 stayed there during the process of the train going  
4 through the route?

5 A. Yes.

6 Q. Either just to holding a flashlight or you  
7 said the ones outside might be directing?

8 A. Yes.

9 Q. Do you remember a night where any of those  
10 stagehands that were supposed to be in that position  
11 were flat-out missing? Somebody that should have been  
12 at a corner just wasn't there?

13 A. No.

14 Q. Was there some testimony about sometimes it  
15 would take the participants a little longer to reach  
16 the reappearance point, just a slower moving group;  
17 fair?

18 A. Yes.

19 Q. Have you ever seen Mr. Copperfield angry  
20 about it taking longer?

21 A. No. He would definitely inquire. He would  
22 just wonder, you know, if there was a reason or if the  
23 reason was simply the group is moving a little bit  
24 slower, which was always the reason. So he would just  
25 ask why if we had to hold people back. And the reason

1 was always the same. It was always just people were  
2 moving just a little bit slower so we didn't end up  
3 reappearing with them. No. He would definitely inquire.  
4 He would just wonder, you know, if there was a reason  
5 or if the reason was simply the group is moving a  
6 little bit slower, which was always the reason. So he  
7 would just ask why if we had to hold people back. And  
8 the reason was always the same. It was always just  
9 people were moving just a little bit slower, so we  
10 didn't end up reappearing with them.

11 Q. Okay. So that was one of those occasions  
12 where you talked about where you would get in front and  
13 just -- you would make the call, this person or maybe  
14 two or three people wouldn't make the reappearance  
15 and -- and you just take control of that process?

16 A. Yes.

17 Q. What I'm asking about is, if they were a  
18 little slower but made the reappearance, would -- was  
19 he ever angry that it took longer?

20 A. Oh, no.

21 Q. Because of the reasons you talked about  
22 before, there was a Plan B if it took longer?

23 A. Yes. And he also wouldn't -- he -- all he  
24 sees are the people reappearing. So, from his  
25 perspective, what -- however long we're moving in the

1 background wouldn't really cross his mind. It -- only  
2 if we didn't reappear.

3 MR. DEUTSCH: Objection, Your Honor. Move to  
4 strike what goes through someone else's mind.

5 THE COURT: Motion is granted.

6 The jury will disregard.

7 BY MR. POPOVICH:

8 Q. I want to go back for one moment to the woman  
9 you did see fall. You're in the room where the  
10 discussion was going on about what had happened.  
11 And -- and Ryan does his thing and Mr. Copperfield does  
12 his thing, that room. Okay? You with me?

13 A. I'm with you.

14 Q. All right. So --

15 A. Not in that room.

16 Q. The time the woman fell, you were with her in  
17 that room?

18 A. So the hallway actually is two parts. So  
19 that debriefing room is one part of a longer hallway.  
20 So we actually had her in that hallway, chatting with  
21 her before she went into the debriefing room. So she  
22 was separate from the rest of the people who  
23 reappeared.

24 Q. I see. Thank you for clarifying.

25 And you had pulled in an MGM security person?



1           A.    Yes.

2           Q.    And are you clear in your memory that this  
3 woman was offered a chance to make a report?

4           A.    Yes.

5           Q.    And she turned it down?

6           A.    Yes.

7           Q.    She was offered medical assistance?

8           A.    Yes.

9           Q.    She turned it down?

10          A.    Yes.

11          Q.    After those inquiries, did you just decide  
12 done what I can do and walked away, or what happened?

13          A.    No, she was pretty clear that she felt fine,  
14 wanted to continue because the rest of the group, like  
15 I said, went into that debriefing room. So she just  
16 wanted to finish out the rest of that -- like, the  
17 participation part, and then just wanted to go after  
18 that.

19          Q.    So then you went on to do your pickup of the  
20 flashlights and go on your duties?

21          A.    Yes.

22          Q.    All right. We've talked about this  
23 debriefing room or breakout room, we've called it. Is  
24 there any way -- is that Copperfield Demonstrative  
25 No. 1 diagram, is there any way you can point out where

1 that is in relationship to what's on that diagram?

2 A. I can try.

3 Q. Just even a general area would help. I don't  
4 think we --

5 A. Sure. It would be this -- this area here.

6 Q. Oh, so it's the last hallway before the exit  
7 outdoors on the route?

8 A. Yes.

9 Q. How far of a walk is it from where the  
10 participants reappear to get back to that hallway, if  
11 you can estimate for us?

12 A. I wouldn't even -- I'm not sure. I wouldn't  
13 be able to guess.

14 Q. Okay. So there -- the participants,  
15 Mr. Carvalho, and you are at the -- a back corner of  
16 the theater when the reappearance occurs; is that  
17 right?

18 A. Yes.

19 Q. And when the show's over, you and  
20 Mr. Carvalho escort them to this area?

21 A. Yes.

22 Q. Describe where you take them. Do you take  
23 them inside the theater a ways or do you immediately  
24 take them back out the doors they just reappeared  
25 through?

1       A.    So they're actually -- we're in the theater  
2 for the first part of it.  It's actually the exact  
3 opposite side of where we sort of bring them down for  
4 questioning.  So I think earlier we sort of -- if the  
5 questioning happened on -- looking at the stage on the  
6 left wall of the theater, we'd actually walk them  
7 backstage down the right wall of the theater.

8               And then there are mirroring double doors  
9 that lead backstage.  So we then walk them -- once they  
10 get down to the first row where the stage stairs are,  
11 there's actually double doors that lead backstage from  
12 there.  And that's that -- that hallway.

13       Q.    So I get it.  So, just so I'm clear, you walk  
14 them down that kind of terraced theater area along the  
15 right-side wall; correct?

16       A.    Yes.

17       Q.    Would people leaving the show be going the  
18 opposite direction?

19       A.    No, because we -- they're actually not moving  
20 at that point.  So they're sort of watching us go back  
21 down the stage or back down backstage.  They're not  
22 exiting against us, if that makes sense.

23       Q.    They haven't started leaving yet?

24       A.    No.

25       Q.    So you take your group along that wall.

1 Essentially, do you get even with the front of the  
2 stage before then going out double doors?

3 A. Yes.

4 Q. And then there's some backstage area that you  
5 walk through to get them to that debrief area?

6 A. Well, it's a hallway.

7 Q. Hallway. Okay.

8 I think that's all I have.

9 A. Okay.

10

11

CROSS-EXAMINATION

12 BY MR. FREEMAN:

13 Q. Good afternoon, Ms. Weall.

14 A. Hi.

15 Q. My name is Eric Freeman. I represent David  
16 Copperfield and David Copperfield Disappearing, Inc.

17 You've been asked a lot of questions and I  
18 just have a few follow-ups.

19 I want to take you back to your testimony  
20 about when you get up onto the dragon and you're  
21 assisting the people off. Are you -- are you -- are  
22 they -- you're helping them off one by one?

23 A. Yes.

24 Q. And telling "follow the person in front of  
25 you"?

1           A.    Not while they're actually exiting the  
2 dragon.  Once they're off the dragon, yes, but, while  
3 they're exiting, no.  It's just what -- basically what  
4 the next step is.  So your next step is, "Okay.  You're  
5 about to go down stairs.  Take my hand.  You're about  
6 to go down stairs."

7           Q.    Okay.  Kind of starting the train?

8           A.    And then, yeah, that's -- once they exit the  
9 dragon, that's when they start the train.

10          Q.    Okay.  Now -- and then once you let the last  
11 person down, what do you do then?

12          A.    Then I just follow behind them.

13          Q.    Okay.  And using your train analogy, would  
14 you say you're the caboose?

15          A.    Yes, I guess so.

16          Q.    Okay.  And -- and while you're -- while  
17 you're doing that -- you know, you're starting to  
18 follow them.  Has there ever been an occasion where you  
19 catch up to a person in front -- in front of you?

20          A.    Well, I'm always behind the last person.  So  
21 I don't know if I would ever need to catch up with them  
22 because I'm always behind the last person --

23          Q.    Okay.

24          A.    -- if that makes sense.

25          Q.    If they were moving slowly and you just

1 caught up naturally to them, has that ever happened on  
2 occasion?

3 A. Yes.

4 Q. Okay. Do you ever try to grab them or drag  
5 them and pull them trying to make them go faster?

6 A. Definitely not.

7 Q. You let them take their own pace?

8 A. Yes. So I'm -- I just follow basically  
9 during the train. So whatever pace the person in front  
10 of me is going, that's the pace I'm going. If -- in,  
11 like, the handful of times that I've described, if they  
12 have come to, like, a full mosey and I know we're not  
13 going to reappear, that's when I would have them stop  
14 and then get in front of them.

15 Q. Okay.

16 A. That -- that would be the only time I'd ever  
17 be in front of them.

18 Q. In the 2 1/2 years that you did this  
19 runaround, the Thirteen Illusion, how many times did  
20 that happen?

21 A. Like, a handful. Probably, like, maybe  
22 literally five.

23 Q. Okay. There's been a lot of talk about the  
24 runaround, brisk walk, jog, fast walk. Even someone  
25 said a crappy jog. Does the pace matter?

1       A.   Does the pace matter? I mean, yeah, it does  
2 matter. I -- obviously, I follow behind. But if it  
3 was too fast of a pace, we would lose track of the  
4 group. So sort of the route they're taking, there are  
5 turns. And, with that, you know, you lose sight of --  
6 or at least I think I described how I can only see two  
7 or three people in front of me until we reenter the  
8 building and are actually in a single-file line.

9       So if people were moving too quickly, we  
10 would probably -- I would lose sight of them. But, at  
11 the same time, the handful of times I described if  
12 they're -- I mean -- I mean, moseying, then we wouldn't  
13 reappear. So not that it would matter, but I would  
14 have to then go to a Plan B of stopping and going in  
15 front of them.

16       Q.   Okay. And it sounds like you're talking  
17 about you don't want the people to move too quickly; is  
18 that correct?

19       A.   Correct.

20       Q.   And you're at the end. Is Ryan controlling  
21 that at the front?

22       A.   I don't know what he's controlling. I've  
23 never been in the front. But I just know whoever's in  
24 front of me, that's the pace I'm moving at.

25       Q.   Okay. Is -- the main point is that you want

1 people moving forward -- to continue to be moving  
2 forward, follow the person in front of them?

3 A. Yes.

4 Q. Okay. You don't want people stopping, taking  
5 a photograph?

6 A. No.

7 Q. Pulling out a selfie stick, going to film  
8 themselves as they're doing it?

9 A. No, that's never happened.

10 Q. Okay.

11 A. A lot of high fives. People like to high  
12 five, but that's okay.

13 Q. Okay. So the point is that you -- you want  
14 the people to follow the leader and move throughout the  
15 route?

16 A. Yes.

17 Q. Okay. You talked a little bit about  
18 stagehands along the path. What are they there for?

19 A. So they kind of have dual roles. They're  
20 there to assist with lighting the paths. They hold  
21 flashlights. But then they're also, like, human  
22 barriers, if you will. So they're stationed so that  
23 you can always see where you're going next because  
24 there's always going to be someone in front of you  
25 along the path to kind of guide the way.



1           And then outside, because, you know, we are  
2 exiting the building, it allows them a sort of a visual  
3 barrier. If they decide not to follow the person in  
4 front of them, they can see, oh, okay, there's people  
5 here. We don't want to go past them.

6           Q. I want to show you some photographs. I don't  
7 believe they're admitted yet, Exhibit 84.

8           Adam, do you have any problem with  
9 Photographs 6, 8, 9, and 13?

10           MR. STRASSBURG: I will get it.

11           MR. FREEMAN: Thanks, Roger.

12           MR. DEUTSCH: 84, you said 6?

13           MR. FALICK: 8, 9, 13.

14           MR. DEUTSCH: 6, no problem. What was the  
15 next one?

16           MR. FREEMAN: 8, 9, and 13.

17           MR. DEUTSCH: No problem with 8. No problem  
18 with 9. No problem with 13.

19           Just with the understanding that these were  
20 not the night of the incident.

21           MR. FREEMAN: Yes.

22           MR. DEUTSCH: What we've said about the other  
23 ones as well.

24           MR. FREEMAN: Yes.

25           /////

1 BY MR. FREEMAN:

2 Q. And I'll affirm that all of the photos I'm  
3 going to be showing you were not taken on the night of  
4 the incident.

5 THE COURT: So they're being proffered now?

6 MR. FREEMAN: Yes, starting off with 84,  
7 No. 6, I move that into evidence -- request?

8 MS. FRESCH: No objection.

9 MR. POPOVICH: I'll stipulate to all four.

10 MR. DEUTSCH: Thanks, Elaine.

11 MR. FREEMAN: Any objection to all four?

12 MR. DEUTSCH: No objection to all four.

13 THE COURT: They're all admitted.

14 (Whereupon, Defendant's Exhibit 84-6 was  
15 admitted into evidence.)

16 BY MR. FREEMAN:

17 Q. Okay. Let's start with No. 6.

18 If you would, Audra. Thank you.

19 Okay. You see that photograph?

20 A. Yes.

21 Q. Okay. What does that look like to you?

22 A. That looks like backstage and part of the  
23 dragon.

24 Q. Okay. Is that -- I know, before, they showed  
25 you a picture of the -- of the dragon, and we talked

1 about that. Is this once you get off of the dragon?

2 A. Yes. So the curtain on the left is actually,  
3 like, a backstage -- actually attached to the stage.  
4 And then the lighter curtain on the right that this  
5 magi is holding is part of the dragon.

6 Q. Okay. Okay. And once the participants  
7 descend the stairs, where -- where are they supposed to  
8 go?

9 A. So they're just supposed to follow the person  
10 in front of them. But, from their perspective, once  
11 they exit, they're going to head right.

12 Q. Would they be heading in this direction as  
13 this photo shows?

14 A. Yes.

15 Q. Now, when -- when you follow the last  
16 participant off the -- the dragon, you take this same  
17 route?

18 A. Yes.

19 Q. Typically, from this point of view, how many  
20 stage -- not stagehands -- I'm sorry -- how many  
21 participants would be in front of you at this time?

22 A. Probably two or three.

23 MR. FREEMAN: Could you put up 84, No. 8,  
24 please.

25 /////

1 BY MR. FREEMAN:

2 Q. Okay. Do you recognize that picture?

3 A. Yes.

4 Q. Okay. Now, is this -- explain this for us,  
5 what this picture shows.

6 A. So this is actually where you're walking off  
7 of backstage, the stage itself. So this is the  
8 first -- first hallway. It's, like, a little -- it's a  
9 mini hallway that connects to that debriefing room that  
10 I sort of explained. So they're going to head towards  
11 the guy with the flashlight and turn right.

12 Q. Okay. Would -- the person in the photograph  
13 holding the flashlight, is that an example of a  
14 stagehand being in the position that they would at the  
15 show?

16 A. Yes.

17 Q. Okay. Have you ever -- following people,  
18 have you ever seen anyone go through that hallway and  
19 try to get past the stagehand and run up the stairs?

20 A. No.

21 Q. Okay. Have you ever seen anyone go down that  
22 hallway and stop and look confused as to which way  
23 they're going?

24 A. No.

25 Q. Why is that?

1 MR. DEUTSCH: Note my objection.

2 THE COURT: The question is why is that?

3 I'll sustain it.

4 BY MR. FREEMAN:

5 Q. Okay. I'll strike that.

6 Is -- that stagehand there, what is -- what  
7 is he doing while he's standing there and participants  
8 are coming by?

9 A. He's just lighting the path. So he would  
10 just let them know, "All right. That's sort of the  
11 next step of the path." So while they're following  
12 along in the train, that person would just sort of be  
13 there as extra light.

14 Q. Telling them which way to go?

15 A. I don't remember exactly what that person was  
16 saying.

17 Q. If they don't say anything, are they  
18 directing with their body language?

19 A. With the flashlights.

20 Q. With the flashlights. Okay.

21 Let's see. Audra, if you would pull up 84,  
22 No. 9, please.

23 Can you tell us what this photo shows?

24 A. Sure. So the guy with the flashlight in the  
25 last image would essentially be facing -- this would be

1 his view facing another mini hallway. The two  
2 gentlemen in the photo are actually in the debriefing  
3 room. So it looks like they would just turn through  
4 there before turning left to exit the building.

5 Q. Okay. Would there be a stagehand in -- in  
6 this hallway at the time of the illusion?

7 A. Yes. So where the -- there's someone in  
8 black there, a magi, there would be someone there.

9 Q. Okay. Do you want the pointer or -- you said  
10 the -- the person wearing the black clothes?

11 A. Yes.

12 Q. Okay. That -- that's a position of where a  
13 stagehand would be standing?

14 A. Yes.

15 Q. Okay. And what would that stagehand be  
16 doing?

17 A. The same thing with the flashlights, except  
18 they would also -- at that point, you know, they'd  
19 offer -- hold out flashlights as well, so -- for  
20 everyone to take one.

21 Q. Now, when you turned down this hallway, would  
22 you see participants in front of you?

23 A. Not down this hallway. I would only see,  
24 like, the person -- the last person in the line, so the  
25 person right in front of me.

1 Q. Have you ever seen anyone come to this  
2 hallway and stop, they're not sure which way to go?

3 A. No.

4 Q. Because they're being directed?

5 A. Yes. And they can see there's someone in  
6 front of them. And they've been directed to sort of  
7 keep going where the people are, so they just keep  
8 following forward.

9 Q. Okay. And the next photograph, Exhibit  
10 No. 93, Photograph 167, I believe it's already in  
11 evidence.

12 Okay. What does this photograph show?

13 A. So I call this the debriefing room. It's  
14 the -- it's the room right before they actually exit  
15 the MGM.

16 Q. Okay. And --

17 A. So it's sort of like a hallway room, if that  
18 makes sense.

19 Q. Okay. And is this part of the route?

20 A. Yes.

21 Q. Okay. Is this the hallway the participants  
22 would see once they were told to take a left turn in  
23 the previous photograph?

24 A. Yes.

25 Q. Okay. Now, there isn't anyone standing in

1 this one, but would there be a stagehand present during  
2 the illusion?

3 A. Not in this room, besides the last  
4 photograph, there was someone stationed in that corner.  
5 But as soon as they -- it's kind of hard to tell with  
6 the lighting, but there's actually stagehands out  
7 there, outside, with lights -- with flashlights who are  
8 guiding.

9 Q. Okay.

10 A. I don't see any in this photo, but there  
11 usually is.

12 Q. Well, again, this photograph was taken a year  
13 later, well after the show and not during a show.

14 A. Oh, got you.

15 Q. In fact, 2014.

16 Okay. And so, again, there would be a  
17 positioned stagehand at that location?

18 A. Yes.

19 Q. Okay. Now, you mentioned the stagehands  
20 outside would have lights. Is this an example of the  
21 light they'd have?

22 A. I don't remember exactly what lights they  
23 were holding. I know those -- two of the participants  
24 who disappeared would be handed those pretty large  
25 flashlights for when they reappeared.



1 Q. Okay. But they would be holding some sort of  
2 light?

3 A. Yes.

4 Q. To -- all right.

5 Audra, would you pull up 84, No. 13, please.

6 Okay. Before we get to this photograph, that  
7 last photograph shows the hallway to go outdoors.

8 Which way would the participants turn?

9 A. Once they go out of those doors outside the  
10 building, they'd turn right.

11 Q. They would take a right. Okay.

12 Now, this next photograph, does that look  
13 familiar to you?

14 A. Yes.

15 Q. Okay. What is that showing?

16 A. So that's actually outside MGM.

17 Q. Okay. And would this be a view the  
18 participants would see after they went outside and  
19 turned right?

20 A. Yes. Not this -- as you clarify, not this  
21 exact view with all the people and everything, but  
22 there would be stagehands instead of those groups of  
23 people.

24 Q. Okay. So there would -- there would be  
25 stagehands out the door, not a group of attorneys?

1           A.    Yeah.

2           Q.    Okay.  Where would the stagehands be standing  
3 in -- in that photograph?

4           A.    Should I point?

5           Q.    If that's easier.

6                   May I approach, Your Honor?

7           THE COURT:  Yes.

8           THE WITNESS:  Thank you.

9                   So they would have someone stationed here  
10 (witness indicating).  And that's essentially where  
11 the -- the next turn is going to be.

12 BY MR. FREEMAN:

13          Q.    Okay.  Okay.  And that would be a stagehand  
14 that was stationed there, not moving?

15          A.    Right.  Correct.

16          Q.    What direction would be -- would they be  
17 directing them in?

18          A.    Well, they're -- they're directing the train  
19 or runaround or whatever?

20          Q.    Yes.

21          A.    Their next turn would be right.

22          Q.    Okay.  So the participants are told to follow  
23 the person in front of you, and they're also directed  
24 by the positioned stagehands?

25          A.    Yes.  They would mostly use their lights.

1 Q. Okay. Okay. One more photograph.

2 84 -- Exhibit 84, No. 22, please.

3 Okay. Does that photograph -- does that  
4 photograph, what it's depicting, look familiar?

5 A. Yes.

6 Q. Okay. Can you tell the jury what that is?

7 A. Sure. So it's outside of the MGM again. The  
8 doors to the right are actually the first doors they  
9 exit through. They follow along the next doors that  
10 are open on the left-hand side of the screen. That's  
11 where they'd reenter the MGM.

12 Q. Would you point to the two doors again so  
13 everyone understands which door they come out of and  
14 which door they enter into?

15 A. So they're actually exiting out of these  
16 doors. And then they reenter through these doors.

17 Q. Okay. Thank you. Thank you. And that  
18 second group of doors you showed that they went in, is  
19 that the area where they'd regroup before entering the  
20 casino?

21 A. Yes. So it's -- it's a hallway. It's -- it  
22 looks similar to the debriefing room, which is much,  
23 much bigger. So we just sort of -- Ryan would sort of  
24 regather everyone there. And then, in a single-file  
25 line again, we just walk through the kitchen.

1 Q. Okay. Now, in your time being involved in  
2 the route, what is the audience participants' mood  
3 during that illusion?

4 A. It was always really excited. They're --  
5 they're really happy. I think I mentioned high fives,  
6 everyone big on high-fiving. But everyone is just  
7 really excited.

8 Q. They have a chance to be part of magic?

9 A. Yeah. I think they're -- they're already  
10 excited when they catch a ball, so like the start of  
11 the trick. I think the whole time, they're -- that  
12 level is matched.

13 Q. Okay. They're happy to be there?

14 A. Yes.

15 Q. Okay. Would you expect anything else?

16 A. Would I expect anything other than excited?

17 Q. Yes.

18 A. No.

19 Q. After the illusion, has anyone ever  
20 complained to you about being in the illusion?

21 A. I've never had a complaint, no.

22 Q. Did they ever complain to you about the  
23 lighting conditions?

24 A. No.

25 Q. Did anyone ever complain to you about the way

1 they were treated by a stagehand?

2 A. No.

3 MR. FREEMAN: All right. Thank you very  
4 much. That's all the questions.

5 THE WITNESS: Thank you.

6 MR. CALL: Good afternoon, Ms. Weall. How  
7 you doing?

8 THE COURT: I see a hand being raised. You  
9 need a break, I think; right?

10 JUROR: Yes, please.

11 THE COURT: What we'll do is let's take,  
12 what, 15 minutes?

13 MR. POPOVICH: Yes.

14 MR. CALL: That sounds fine.

15 THE COURT: 15 minutes and make it 5 to 4:00.  
16 Okay?

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

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

3 Be outside the courtroom 5 to 4:00. Thanks.

4 THE MARSHAL: All rise.

5 (Whereupon, a short recess was taken.)

6 THE MARSHAL: All rise. Counsel, Counsel,  
7 real fast. Being in the back hallways is a privilege  
8 to use the restrooms and stuff, but don't loiter and  
9 don't be going down in other courtrooms because we got  
10 a call. Okay? Whoever it may be.

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

13 THE MARSHAL: Department is in session.

14 THE COURT: You may be seated. Do counsel  
15 stipulate that the jury is present?

16 MR. DEUTSCH: Yes, Your Honor.

17 MR. POPOVICH: Yes, Your Honor.

18 MR. CALL: Yes, Your Honor.

19 Your Honor, decided to pass.

20 MR. DEUTSCH: Okay.

21 THE COURT: All right. Redirect?

22 MR. DEUTSCH: Yes.

23 I've been watching you, Roger, too long.

24 MR. STRASSBURG: Hope you learned something.

25 MR. DEUTSCH: How to drop my stuff all over

1 the place.

2

3

REDIRECT EXAMINATION

4 BY MR. DEUTSCH:

5 Q. Ms. Weall, how are you?

6 A. Good. Thank you.

7 Q. Good. A couple of questions. I might jump  
8 around a little bit.

9 The other woman who fell, you said that an  
10 MGM security guard -- that you were there when an MGM  
11 security guard came over to talk to her?

12 A. Yes.

13 Q. You were there when the MGM security guard  
14 came over to talk to her?

15 A. Yes.

16 Q. Okay. And was that MGM security guard a man  
17 or a woman?

18 A. It was a man.

19 Q. Now, you had -- I think you had mentioned  
20 that -- that, during the part that you are running  
21 around, that you hold the flashlight. Is that right?

22 A. Yes.

23 Q. And I think you said that the reason you hold  
24 the flashlight was to light up the -- sort of the route  
25 as the people are going?

1           A.    Yes.

2           Q.    I want to show you 402.

3           MR. POPOVICH:  Yep.

4  BY MR. DEUTSCH:

5           Q.    Exhibit 402, in evidence.  And this is a

6  video of -- surveillance video from the night of the

7  accident.  Okay?  I don't know.  Have you -- do you

8  know -- I don't know if you've seen -- let me go back.

9           So have you seen this before?

10          A.    Yes, I have seen this.

11          Q.    Okay.  When was that that you saw it?

12          A.    It was in the meeting when they called me in

13  to the lawyers to explain the whole incident in the

14  first place.

15          Q.    Okay.  And you're -- did you -- were you able

16  to identify yourself on this video?

17          A.    I was able to identify myself because I was

18  the last person.

19          Q.    Okay.  So let me -- I'm going to just kind of

20  play it.  We've seen it a lot.  So I'm just --

21                So, as I understand it -- and tell me if I'm

22  wrong -- but this person right here is you?

23                If you need me to rewind it again so you can

24  see, I can do that if you're not sure.

25          A.    Sure.



1 Q. Okay. So let's rewind it.  
2 Oh, is that you?  
3 A. Yes, the last person.  
4 Q. Okay. And can you tell, by looking at this,  
5 if you were holding a flashlight?  
6 A. I --  
7 Q. Doesn't appear that you are.  
8 A. I know I was because I always did, but I  
9 don't know --  
10 Q. Let's see.  
11 A. -- when I was.  
12 It would have been in my left hand.  
13 Q. Okay. So it's your understanding that you  
14 were -- you were seen carrying a flashlight in that  
15 video?  
16 A. Yes.  
17 Q. Now, you mentioned before -- you were talking  
18 about the speed, and you talked about that -- that  
19 generally -- you used the term brisk walk, was  
20 generally the speed; right?  
21 A. Yes.  
22 Q. But you said sometimes people did run;  
23 correct?  
24 A. Correct.  
25 Q. Okay. And is it fair of me to say that you

1 don't have an independent recollection of the night of  
2 Mr. Cox's accident? Is that fair?

3 A. That's fair.

4 Q. Okay. So, therefore, on that night, you  
5 don't know if they were running or brisk-walking or  
6 something else?

7 A. On that night, no. Just generally.

8 Q. And, obviously, the speed that they were  
9 going on that night is really what's relevant to this  
10 case. Would you agree with that?

11 A. Sure.

12 Q. Now, you were asked a question by  
13 Mr. Popovich, I believe, about times that maybe  
14 Mr. Copperfield got angry.

15 Do you recall that?

16 A. I think he asked if he got angry.

17 Q. Right. If he got angry.

18 A. Yes.

19 Q. I want to read you the question that he asked  
20 you and your answer, and then I want to ask some  
21 follow-up questions. Okay?

22 So the question was -- and this is at  
23 15:11:59.

24 MS. FRESCH: Which page?

25 MR. DEUTSCH: You know, I can't quite

1 understand how these numbers work. It's from the  
2 realtime.

3 MR. POPOVICH: The time stamp?

4 MR. DEUTSCH: The time stamp is because the  
5 pages seem to -- I don't understand how they work. It  
6 says it's 7916, then 15:11:59.

7 MR. RUSSELL: Oh, I'm sorry.

8 MR. DEUTSCH: The realtime.

9 MR. RUSSELL: Go ahead.

10 MR. DEUTSCH: You got it?

11 "QUESTION: Have you ever seen  
12 Mr. Copperfield angry about it taking longer?

13 "ANSWER: No. He would definitely  
14 inquire. He would just wonder, you know, if  
15 there was a reason or if the reason was simply  
16 the group is moving a little bit slower, which  
17 was always the reason. So he would just ask  
18 why if we had to hold people back, and then the  
19 reason was always the same. It was always just  
20 people were moving a little bit slower, so we  
21 didn't end up reappearing with them.

22 "No. He would definitely inquire.  
23 He would just wonder, you know, if there was a  
24 reason" -- I think it was actually typed twice,  
25 but I will keep reading -- "or the reason was

1        simply the group is moving a little bit slower,  
2        which was always the reason. So he would just  
3        ask why if we had held people back. And the  
4        reason was always that same. It was always  
5        people moving a bit slower."

6 BY MR. DEUTSCH:

7        Q. Do you recall being asked that question and  
8        giving that answer?

9        A. Yes.

10       Q. But, in fact, Ms. Weall, there were actually  
11       other reasons other than people walking slower that you  
12       had to do that and when Mr. Copperfield would inquire  
13       about it; true? Moving slower is not the only reason  
14       that Mr. Copperfield would inquire about why things  
15       took longer; isn't that true?

16       MR. RUSSELL: Objection. Foundation as to  
17       why he would inquire.

18       MS. FRESCH: And speculation.

19       MR. DEUTSCH: I'll rephrase the question.

20 BY MR. DEUTSCH:

21       Q. People moving slower. Here, you said that  
22       that was always the reason. But, in fact, sometimes  
23       there were other reasons why it would take longer;  
24       true?

25       A. It could be true. For me, I know when I was

1 there, if we were moving slower and didn't reappear --

2 Q. That's not the question I asked you,

3 Ms. Weall.

4 A. Oh, sorry.

5 Q. The question I asked you were, in the court

6 just a little while ago, you told this jury that the

7 only reason that it would take longer was because

8 people would be moving slower.

9 My question is isn't it true that there were  
10 other reasons people would be moving slower? Yes or  
11 no.

12 A. For me --

13 MR. RUSSELL: Objection. Foundation.

14 THE COURT: I'll allow it.

15 THE WITNESS: For me, that was always the  
16 reason.

17 BY MR. DEUTSCH:

18 Q. Let me ask you if you remember being asked  
19 this question or giving this answer at your deposition.

20 Page 34 at line 18. Let's put it up on the screen.

21 MS. FRESCH: No objection.

22 MR. POPOVICH: No objections.

23 MR. DEUTSCH:

24 "QUESTION: If it took too long, would

25 David or had David ever become angry that the

1 time had taken too long to get participants  
2 back into the audience?

3 "ANSWER: No. He would wonder if we were  
4 late. Just making sure if there was an  
5 obstacle or, if there was something weird, that  
6 we get it resolved. But he was never angry  
7 about it."

8 BY MR. DEUTSCH:

9 Q. Do you remember me asking that question and  
10 giving that answer?

11 A. Yes.

12 Q. So, in fact, sometimes there were obstacles  
13 in the way that caused you to take longer; true?

14 MR. POPOVICH: Objection. Misstates --

15 MR. RUSSELL: Misstates testimony.

16 MR. DEUTSCH: I'm asking her.

17 THE COURT: I will sustain it.

18 BY MR. DEUTSCH:

19 Q. Well, was one of the reasons that it would  
20 sometimes take longer because there was obstacle in the  
21 path?

22 A. I guess I view obstacle as someone moving a  
23 little bit slower.

24 Q. How about something weird? You obviously, in  
25 your deposition, denoted the difference between

1 obstacles and something weird.

2 So what weird things occurred?

3 A. I know -- so when I say high fives, I mean,  
4 people are really excited about giving high fives. And  
5 the people along the path, like the stagehands, they  
6 want to high-five every single person along the way,  
7 which would, in turn, slow us down. I thought that was  
8 a little weird, but everyone is also excited, which is  
9 understandable.

10 Q. So just so we're clear, the things that would  
11 slow you down are people walking slowly, high-fiving  
12 the security guards; right?

13 A. The stagehand.

14 Q. And that's it. No -- nothing having to do  
15 with obstacles; right?

16 A. Yeah. Sure.

17 Q. Is there a reason why you didn't say "walking  
18 slow" and instead used the term "was an obstacle"?

19 MR. POPOVICH: Objection. Vague and  
20 ambiguous.

21 THE COURT: Do you want to maybe put it on  
22 the screen so she can see what you're referring to?

23 MR. DEUTSCH: Sure.

24 BY MR. DEUTSCH:

25 Q. I just want to see if I understand your --

1 your testimony correctly, so give me one second.

2           So if I understand your testimony correctly,  
3 at your deposition where you said "if there was an  
4 obstacle," "if there was an obstacle," you aren't  
5 referring to specific, like, things that people can  
6 either trip on or slip on or anything like that?

7           MR. RUSSELL: Objection. Asked and answered.

8           THE COURT: Overruled.

9           THE WITNESS: Do I answer? Sorry.

10 BY MR. DEUTSCH:

11           Q. You can answer.

12           A. Okay. No, so he would just inquire what in  
13 general --

14           Q. That's not what I asked you.

15           A. Okay.

16           Q. What I asked you was if, when you said in  
17 your deposition that you were making sure if there was  
18 an obstacle, you weren't talking about a physical  
19 obstacle that you could trip on or slip on in the way  
20 of the run or walk.

21           MR. POPOVICH: Objection. Misconstrues the  
22 testimony.

23           MR. RUSSELL: Objection. It's what  
24 Mr. Copperfield --

25           THE COURT: Overruled. If it does, she can



1 say so.

2 THE WITNESS: I'm so sorry. Can you ask one  
3 more time?

4 BY MR. DEUTSCH:

5 Q. Sure. When you said at your deposition that  
6 Mr. Copperfield would wonder if you were late and he  
7 was making sure if there was an obstacle. So my  
8 question to you is, when you said that, that "he was  
9 just making sure if there was an obstacle," is that him  
10 wondering if there was some sort of physical hazard in  
11 the route that could be tripped on or slipped on or  
12 have to go around or something like that?

13 MR. RUSSELL: Objection. Speculation.

14 THE COURT: You can ask her what she means  
15 by --

16 MR. DEUTSCH: That's what I'm asking her, I  
17 thought.

18 BY MR. DEUTSCH:

19 Q. Is that what you meant when you said "just  
20 making sure if there was an obstacle"? Is that what  
21 you meant?

22 A. Sort of. So along the route -- I wasn't a  
23 part of the precheck, but anytime -- I don't know if  
24 you guys covered it, but there's another trick right  
25 before and they do the similar checks.

1 Q. Let me stop you.

2 MR. RUSSELL: We already talked about that.

3 BY MR. DEUTSCH:

4 Q. We're going to talk about that in a second.

5 A. So if a door was closed, like, that would be  
6 an obstacle slowing us down.

7 Q. I understand. But this question that was  
8 asked of you at the deposition had nothing to do with  
9 prior tricks or anything else. This question  
10 specifically asked you about reasons why it could take  
11 too long to get the participants back into the lines.

12 That's what the question was. True?

13 A. True.

14 Q. And the answer you gave is that  
15 Mr. Copperfield would want to make sure that there  
16 wasn't an obstacle in the way. That's what you said at  
17 your deposition. True?

18 A. True.

19 Q. And what you were talking about was physical  
20 obstacles that you could either trip on or slip on or  
21 have to go around. True?

22 A. True. Mostly go around if a door was closed  
23 for whatever reason.

24 Q. So that's one obstacle. If the door was  
25 closed, you would consider that an obstacle.

1           A.    Yes.

2           Q.    But we've been told that the security guards  
3 for MGM know this like clockwork and are always there  
4 to open the doors.

5           A.    Yes.

6           Q.    So that didn't happen very often?

7           A.    No.  He would still inquire.

8           Q.    No, no.  The fact that the doors wouldn't be  
9 open for you guys didn't really happen very often  
10 because MGM knew exactly when you were coming through.

11               MR. RUSSELL:  Asked and answered.  She  
12 answered the question.

13 BY MR. DEUTSCH:

14           Q.    True?

15               THE COURT:  Overruled.

16               THE WITNESS:  That's true.  But he would  
17 still inquire.

18 BY MR. DEUTSCH:

19           Q.    He would inquire about -- no, no, no.  Maybe  
20 we're not understanding each other.

21           A.    I'm sorry.

22           Q.    I apologize.  But what we're talking about  
23 right now is that there were times when it took longer  
24 than usual to do the runaround.  True?

25           A.    True.

1 Q. Okay. And on the times that it took longer  
2 than usual to do the runaround, Mr. Copperfield would  
3 inquire to you or whoever else was doing the runaround,  
4 "Hey, what happened?"

5 A. Yes.

6 Q. "Why did it take so long?"

7 A. Yes.

8 Q. Okay. And you said that there were a number  
9 of things that he could be thinking about in terms of  
10 why it would take so long in terms of what you would  
11 tell him.

12 A. Yes.

13 Q. Right? One of them is you would say to him,  
14 you know, the people today were moseying. That was a  
15 new -- we've had a lot of speeds, but that was the  
16 first time we've heard moseying. Moseying, I think, is  
17 slower than a brisk walk. Am I right?

18 A. That's -- you're right.

19 Q. So you would say to Mr. Copperfield, "It took  
20 so long tonight because people were moseying." Right?

21 A. Right.

22 Q. So that's one thing you would tell him.  
23 The other thing you might tell him is  
24 something weird happened; right?

25 A. If something weird happened.

1       Q.    Right.  So -- and the something weird that  
2 you say you were referring to at your deposition was  
3 that people would be high-fiving the security guard,  
4 and that could slow them down?

5       A.    Yes.

6       Q.    Okay.  But you said that happened pretty  
7 frequently.  So that, I guess, wouldn't really be  
8 weird, would it?

9       A.    It wouldn't happen frequently in the sense  
10 that it would slow everyone down, but I feel like it  
11 was quite often that people would want to -- want to  
12 high-five.  If they were trying to high-five every  
13 single person they saw, that would slow it down.

14       Q.    So let me see if I understand this.  You  
15 would tell Mr. Copperfield, if people were high-fiving  
16 the security guards during the runaround, that, you  
17 felt like it was something that you needed to tell him;  
18 right?  That's what you said here, that that's what you  
19 would tell him.

20       A.    If it affected reappearing.

21       Q.    Okay.  But if someone fell during the  
22 runaround, you told us before that that was something  
23 that he didn't need to know?

24       A.    I was just --

25       Q.    That's what you told us before.

1 MR. RUSSELL: Asked and answered.

2 BY MR. DEUTSCH:

3 Q. Right.

4 THE COURT: Overruled.

5 BY MR. DEUTSCH:

6 Q. You told us before that, if someone fell,

7 Mr. Copperfield wouldn't need to know that. But if

8 someone high-fived a security guard during the

9 runaround, that's something you would tell him.

10 MS. FRESCH: Objection. Misstates her prior

11 testimony.

12 MR. RUSSELL: And badgering at this point,

13 Your Honor.

14 THE COURT: I'll allow it.

15 BY MR. DEUTSCH:

16 Q. Is that true? Is that what your testimony is

17 to this jury?

18 A. Could you repeat your question.

19 Q. Sure. Is your testimony to the jury that

20 Mr. Copperfield wouldn't want to or wouldn't need to

21 know if someone fell during the runaround, but if some

22 people were high-fiving the security guards during the

23 runaround, that's something he would want to know? Is

24 that your testimony to the jury?

25 MS. FRESCH: Objection. Lacks foundation.

1 Misstates her prior testimony.

2 THE COURT: Overruled.

3 THE WITNESS: So he would --

4 BY MR. DEUTSCH:

5 Q. That's not my question. It's a yes/no  
6 question.

7 THE COURT: She can answer the question.

8 MR. DEUTSCH: It was a yes/no question, Your  
9 Honor. It's a yes/no question. The question is --

10 THE COURT: You said is that what you're  
11 saying?

12 MR. DEUTSCH: I said, "Is it your testimony."

13 BY MR. DEUTSCH:

14 Q. Yes or no, is it your testimony to this jury  
15 that Mr. Copperfield would not need to know about  
16 someone falling but would need to know about the fact  
17 that the people in the runaround were high-fiving  
18 security guards? Is that your testimony? Yes or no.

19 A. Do you mean for me or in general?

20 Q. In general.

21 A. I feel he would need to know in general, not  
22 necessarily from me specifically. So if there were  
23 just, for example -- not saying -- but if there were  
24 something that would happen, he would walk through that  
25 with the stage manager most likely.

1           Q.    I understand that, but I don't think you  
2 quite answered my question.

3                    You told the jury before that Mr. Copperfield  
4 wouldn't need to know about whether or not someone fell  
5 during the runaround.

6           MR. FREEMAN:  Misstates testimony, Your  
7 Honor.

8           MR. POPOVICH:  Join.

9           THE COURT:  If she does, she can say so.  
10 It's her testimony, so she can --

11           MR. DEUTSCH:  You know what?  I'll withdraw  
12 the question.

13 BY MR. DEUTSCH:

14           Q.    So let's get back to this obstacle thing.

15           A.    Okay.

16           Q.    Other than the door not being open, what  
17 other obstacles -- physical obstacles were you  
18 referring to here?  You said mostly it was the door.  
19 "Mostly" means not always, means there must be  
20 something else.  So what is the something else?

21           MR. RUSSELL:  Object.  She didn't say --  
22 misstates testimony.

23           THE COURT:  She can clarify what she intends  
24 by her use of the term "obstacle."  I'll allow that.

25           THE WITNESS:  I guess I just used that as a



1 vague way to describe something out of the ordinary.

2 BY MR. DEUTSCH:

3 Q. That's what I'm trying to figure out, though.

4 We're trying to figure out these out-of-the-ordinary  
5 things that would slow you down. I'm just trying to  
6 get the complete list.

7 We've got people walk too slowly, they mosey.  
8 We have people high-five people. We have the doors not  
9 being opened. You said that was mostly the obstacle  
10 you were referring to. And now I'm asking you what the  
11 other part of that is. "Mostly" means that there's  
12 other things. So what are the other obstacles that  
13 you're referring to?

14 A. For me personally, that was about it --

15 Q. Okay.

16 A. -- that I experienced.

17 Q. Okay. Now, you were shown a picture. It  
18 was -- you had mentioned before that the backstage --  
19 excuse me -- the backstage area when you first got off  
20 the dragon, that was the darkest part of this -- the  
21 runaround?

22 A. Yes.

23 Q. Okay. And you were shown this picture. I  
24 think it was No. 6, 84-6. That one; right?

25 A. Yes.

1 Q. Okay. And -- and that's in the backstage  
2 area that you were talking about, which is the darkest  
3 part of the runaround?

4 A. Yes.

5 Q. So just to be clear, the lighting in this  
6 photograph is not what it looks like on show night; is  
7 that true?

8 A. True.

9 Q. When -- when it was going too slowly and you  
10 said people didn't reappear, I just wasn't clear. Is  
11 that just the one person who was moving too slowly or  
12 the whole group or sometimes both?

13 A. Sometimes both. And -- and both occasions,  
14 they were very rare, in a handful of times. So if the  
15 majority of the group is moving pretty slow, that's  
16 when we would have the music be stretched so that we  
17 had enough time to reappear. If it's just two or  
18 three, or even just one, then, in that case --

19 Q. Then you'd just pull them out?

20 A. Yeah.

21 Q. But if it was the whole group, you would  
22 stretch it?

23 A. Yes.

24 Q. But if it was just one, you'd pull them out?

25 A. Yes.

1 Q. And I think you said also that the woman who  
2 fell, that you were the one who helped her up?

3 A. Yes.

4 Q. Do you recall if there was any -- any of the  
5 other participants helped her up also, or was it just  
6 you?

7 A. It was just me. They were all in front of  
8 her.

9 Q. Okay.

10 Okay. I have nothing further. Thank you,  
11 Ms. Weall.

12 A. Thank you.

13 THE COURT: Mr. Russell?

14 MR. DEUTSCH: Are -- are we now going to  
15 have --

16 MR. RUSSELL: No, not -- in a second.

17

18 RECROSS-EXAMINATION

19 BY MR. RUSSELL:

20 Q. I'm not sure I understand what obstacle means  
21 anymore at this point, but let me see if I understand.

22 A. Okay.

23 Q. In your experience, if someone falling had  
24 caused the people to arrive for the reappearance late,  
25 would that have been something you would communicate to

1 Mr. Copperfield? If that was the reason you were late,  
2 because somebody fell, would you have communicated  
3 that?

4 A. Yes.

5 Q. Okay. The one time the woman fell, did that  
6 make the reappearance late?

7 A. It did not.

8 Q. Okay. So were you ever involved in a  
9 situation in your time with the Thirteen Illusion where  
10 someone fell and you had to tell Mr. Copperfield that  
11 that was the reason you were late?

12 A. No.

13 Q. Take a look at the screen again.

14 Let's just show Exhibit 402.

15 Go ahead and watch it again.

16 (Whereupon video was played.)

17 BY MR. RUSSELL:

18 Q. And now just focus on yourself coming into  
19 the building.

20 Okay. Stop right there. Back it up just a  
21 couple of shades there, Audra. Right there is good.  
22 Just take it frame by frame.

23 I think you told Mr. Deutsch that you would  
24 keep the flashlight in your left hand; is that correct?

25 A. If I remember correctly.

1 Q. Okay.

2 Go a couple of frames up, Audra, please.

3 And if you look now to the left of your body,  
4 do you see a flashlight shining on the ground?

5 A. Yes.

6 Q. And Mr. Deutsch asked you that what would be  
7 relevant to this case is the pace that the illusion  
8 moved at on the night of Mr. Cox's accident. You  
9 remember he asked you that question?

10 A. Yes.

11 Q. You've now seen this video. The pace that  
12 you're moving in this video, is that consistent with  
13 the pace you would usually use during the Thirteen  
14 Illusion?

15 A. Yes.

16 Q. Okay. Thank you, Ms. Weall.

17 THE COURT: Mr. Popovich?

18 MR. POPOVICH: Just a few real quick.

19

20 RECROSS-EXAMINATION

21 BY MR. POPOVICH:

22 Q. When participants are high-fiving stagehands,  
23 do they appear to be confused about what they're doing  
24 in the process?

25 A. No. They're so excited. That's why they're

1 high-fiving.

2 Q. When they're high-fiving those stagehands,  
3 does it look like they're in chaos?

4 A. No.

5 Q. Or pandemonium?

6 A. No.

7 Q. It looks like they're having fun; right?

8 A. Yeah.

9 MR. DEUTSCH: Just -- just --

10 THE COURT: Wait a second. Is there any --  
11 any other questions from the team?

12 MR. FREEMAN: No further.

13 MR. DEUTSCH: Just one question, Your Honor.

14

15 FURTHER REDIRECT EXAMINATION

16 BY MR. DEUTSCH:

17 Q. So Mr. Russell just asked you about, you  
18 know, that -- that if -- if the person fell and that  
19 slowed down the ability to reappear, then you would  
20 tell Mr. Copperfield; right? That's what Mr. Russell  
21 just asked you; correct?

22 A. Yes.

23 Q. Okay. So what that means to me -- and let me  
24 know if you agree -- is that the only thing  
25 Mr. Copperfield cares about is whether his illusion

1 looks good and doesn't care about whether someone got  
2 hurt or not.

3 MR. RUSSELL: Objection.

4 THE COURT: Sustained.

5 BY MR. DEUTSCH:

6 Q. Well, if -- if you -- if you -- if  
7 Mr. Copperfield would only be told about someone  
8 falling if it slowed down his illusion and he wouldn't  
9 want to know about someone falling if the illusion  
10 didn't slow down, what does that say to you?

11 MR. RUSSELL: Objection. Speculation.

12 THE COURT: Sustained.

13 MR. POPOVICH: Join.

14 MR. DEUTSCH: Nothing further.

15 THE COURT: All right. Now, the witness will  
16 remain. Okay?

17 At this time, all persons who are not  
18 parties, counsel, jurors, or court personnel are  
19 directed to leave the courtroom. And any official  
20 cameras in the courtroom -- any unofficial cameras and  
21 recordings or other effective media are to be  
22 inactivated. Okay?

23 So anybody who is in the courtroom who's not  
24 a party, an attorney, or a juror, or court personnel.

25 (Whereupon media exited the courtroom.)

1 THE COURT: All right. Mr. Russell?

2 MR. RUSSELL: Audra, can you please pull up  
3 402, Clip 5.

4 THE COURT: And we're dealing with that  
5 aspect of your cross-examination --

6 MR. RUSSELL: Correct.

7 THE COURT: -- that has to do with things  
8 that are not --

9 MR. RUSSELL: Correct. They're not public  
10 record. Correct.

11

12 EXAMINATION

13 BY MR. RUSSELL:

14 Q. Pomai, you -- you mentioned -- started to  
15 mention earlier during your testimony an earlier  
16 illusion.

17 MR. RUSSELL: Feedback.

18 THE MARSHAL: I don't know if it's recording.

19 MR. RUSSELL: Thank you.

20 BY MR. RUSSELL:

21 Q. Are you familiar with an illusion called the  
22 Fan?

23 A. Yes.

24 Q. All right. Tell the jury what -- what the  
25 Fan is.



1       A.    So it's actually pretty similar to Thirteen  
2 except for David would be the one disappearing from  
3 stage and reappearing in the audience.

4       Q.    Are you part of that illusion?

5       A.    I was.

6       Q.    All right. And tell the jury how you play a  
7 role in that illusion.

8       A.    So I basically assist him exiting from stage,  
9 disappearing from stage. And I basically do a very  
10 similar runaround. So it's the same exact route,  
11 just -- just with David instead of a group of people.

12            But, yeah, we'd go -- we'd exit the theater,  
13 reenter MGM, and then reenter the -- the back of the  
14 theater.

15       Q.    And as you're proceeding along that route  
16 with Mr. Copperfield, where are you in relation to him  
17 when you're outside the MGM?

18       A.    So, outside, I actually get in front of him,  
19 and then he follows me the rest of the way.

20       Q.    If you were to see any hazards along that  
21 route while you were proceeding with Mr. Copperfield,  
22 how would you respond to that?

23       A.    If I saw any hazards?

24       Q.    Yeah.

25       A.    I would definitely alert him in some way, and

1 then we would work to remove a hazard if there was one.

2 MR. RUSSELL: Audra, please go ahead and play  
3 Exhibit 402, Clip 5.

4 (Whereupon video was played.)

5 BY MR. RUSSELL:

6 Q. Okay. So is that the Fan there that you're  
7 seeing?

8 A. Yes. So that's -- what you just saw was  
9 David and then two -- me and another DC World -- an  
10 assistant.

11 Q. The first person that walks through the door  
12 that was -- that was you?

13 A. Yes.

14 Q. The -- and I'm not asking you as -- as any  
15 sort of expert in cameras.

16 A. Okay.

17 Q. However, you are familiar with the lighting  
18 outside the MGM during the time that you're running  
19 these illusions; correct?

20 A. Yes.

21 Q. As you view the video there, is the lighting  
22 on that video, from your perspective, darker than,  
23 lighter than, or the same as the actual lighting  
24 conditions --

25 MR. DEUTSCH: Objection, Your Honor.

1 THE COURT: Overruled.

2 BY MR. RUSSELL:

3 Q. Go ahead.

4 A. Answer?

5 In my opinion, this looks way darker than  
6 what I felt like it actually was lit.

7 MR. DEUTSCH: Objection, Your Honor. Move to  
8 strike what she felt. In her opinion?

9 MR. RUSSELL: Well, I said from her  
10 perspective. That was the question, Your Honor. It's  
11 a personal -- it's a percipient witness who's got her  
12 own perception of the --

13 THE COURT: Motion is denied.

14 Next question.

15 MR. RUSSELL: Thank you. No further  
16 questions.

17 Thank you, Pomai.

18 THE COURT: Anybody else?

19 MR. POPOVICH: No.

20 THE COURT: Any questions regarding that  
21 aspect of the cross-examination or -- how about you,  
22 Mr. Deutsch? Any redirect on that point?

23 MR. DEUTSCH: I don't think I have anything,  
24 Your Honor.

25 THE COURT: Okay.

1 MR. RUSSELL: That's all, Your Honor.  
2 THE COURT: You can stand down.  
3 MR. RUSSELL: We have some juror questions.  
4 THE COURT: Hey, Bob.  
5 JUROR NO. 8: No, no.  
6 (A discussion was held at the bench,  
7 not reported.)  
8 THE COURT: Bob, the courtroom is reopened.  
9 MR. POPOVICH: The courtroom is open again.  
10 You can invite the media.  
11 THE COURT: I don't think there's any  
12 particular order in which these questions need to be  
13 asked. I'll ask each one of the questions that I will  
14 be posing separately, of course. And then you can  
15 follow up with the witness after I've -- after she's  
16 answered the questions.  
17 MR. DEUTSCH: After each one.  
18 THE COURT: Okay. The courtroom's reopened.  
19 At this time, I have received several  
20 questions from members of the jury. I'm going -- that  
21 there's -- one of these questions, it's not really a  
22 question to the witness. So that item will be  
23 deferred. Counsel has been made aware of what it is,  
24 and counsel will do what they think needs to be done  
25 relative to the subject matter of that item. Okay?

1 And that has to do with photos. Okay?

2 The rest of these will be posed by the Court.

3 And the witness will respond to the question, then I'll  
4 allow counsel to follow up with each of the questions  
5 if they wish to do so.

6 Okay. First question here: From the point  
7 of reappearance to the debriefing room, are there any  
8 stairs the participants must walk down or up?

9 THE WITNESS: Yes. There are stairs they  
10 have to walk down. So when they reappear in the back  
11 of the theater, they're sort of at the top of the  
12 stairs, if you will. And then, as they make their way  
13 down to stage level, they're actually descending  
14 stairs.

15 THE COURT: Okay. Next court exhibit in  
16 order.

17 And any follow-up on that?

18 MR. DEUTSCH: No.

19 MR. RUSSELL: No.

20 MR. POPOVICH: No, Your Honor.

21 THE COURT: Next question: Was the  
22 reappearance delayed or late on the night -- the show  
23 time of the incident?

24 THE WITNESS: I'm sorry. Can you repeat  
25 that.

1 THE COURT: Was the -- was the reappearance  
2 delayed/late on the night/show time of the incident?  
3 THE WITNESS: I -- I don't remember that  
4 night.  
5 THE COURT: Okay.  
6 Any follow-up?  
7 MR. POPOVICH: No, Your Honor.  
8 MR. DEUTSCH: No, Your Honor.  
9 MR. POPOVICH: Okay. No, Your Honor.  
10 MR. DEUTSCH: No, Your Honor. Nothing.  
11 MR. RUSSELL: No.  
12 THE COURT: Next court exhibit number.  
13 Okay. Did you lose sight of Cox on the night  
14 of the accident?  
15 THE WITNESS: I -- I wouldn't even remember  
16 that show or night, let alone him specifically in  
17 participating.  
18 THE COURT: Did you notice Mr. Cox getting  
19 help or anything?  
20 THE WITNESS: I don't remember seeing  
21 anything.  
22 MR. DEUTSCH: I do have a couple follow-up  
23 questions, Your Honor.  
24 EXAMINATION  
25 /////

1 BY MR. DEUTSCH:

2 Q. That -- is it fair for me to say that the  
3 reason you don't remember that specific night is  
4 because it was a long time ago?

5 A. Probably.

6 Q. Okay. And is there a reason why you were  
7 able to remember the specifics about the other woman  
8 who had fallen and the specific conversation she had  
9 with the security guard but you don't remember anything  
10 about this night?

11 A. I know, for the woman, she was right in front  
12 of me. So I remember seeing it. And it -- for me,  
13 that was the only time I remember anything like that  
14 happening. I don't remember seeing anyone else fall  
15 besides that one woman, so it really stuck out --

16 Q. Stuck out in your mind?

17 A. -- in my mind.

18 Q. Okay. Fair enough. Thank you.

19 MR. POPOVICH: Your Honor, I would like to  
20 follow up on that by showing Exhibit 402, Clip 8, which  
21 is the actual Thirteen Illusion.

22 THE COURT: All right.

23 MS. FRESCH: On that night?

24 MR. POPOVICH: On that night.

25 And can I go forward?

1 THE COURT: Yes.

2 (Whereupon video was played.)

3 EXAMINATION

4 BY MR. POPOVICH:

5 Q. Well -- and stop.

6 Ms. Weall, can you see in this area a bit of  
7 light?

8 A. I do see light.

9 Q. Okay. I'm going to ask you to assume, just  
10 for the watching of the rest of the video, that that  
11 was Mr. Cox, where he fell.

12 A. Okay.

13 Q. Okay.

14 MR. DEUTSCH: Objection, Your Honor.  
15 Hypothetical to a lay witness?

16 MR. POPOVICH: It's been happening, Your  
17 Honor.

18 THE COURT: I'll allow it.

19 MR. POPOVICH: Thank you.

20 BY MR. POPOVICH:

21 Q. And when we proceed, I want you to see what  
22 you can see about what happens with him and then when  
23 you appear timing-wise. Okay?

24 A. Okay.

25 MR. POPOVICH: Now, can you roll it.



1 (Whereupon video was played.)

2 BY MR. POPOVICH:

3 Q. Did you see a person in kind of a  
4 yellowish-gold shirt seeming to stop and maybe help?

5 A. I -- I didn't really see specifics of that,  
6 but I did see someone in a yellow shirt.

7 MR. POPOVICH: Can we back up to that same  
8 spot.

9 BY MR. POPOVICH:

10 Q. All right.

11 A. Okay.

12 Q. Towards the -- the bend, I think you're going  
13 to see the yellow shirt, and I believe the white shirt  
14 is Mr. Cox getting up.

15 A. Oh, okay.

16 Q. And so if we roll it forward there, and  
17 you're now appearing; correct?

18 A. Yes.

19 Q. Can you tell whether or not, by the time you  
20 came around the right turn, did it appear that Mr. Cox  
21 would have been up on his feet by then?

22 MR. DEUTSCH: Objection to the form.

23 THE COURT: Overruled.

24 MR. DEUTSCH: Foundation.

25 THE COURT: Well, "the person" -- you can say

1 "the person."

2 BY MR. POPOVICH:

3 Q. The person. The person in the white shirt,  
4 did --

5 MR. DEUTSCH: Well, that's not --

6 BY MR. POPOVICH:

7 Q. -- did it appear that that person was on his  
8 or her feet by the time you would have come around the  
9 corner?

10 A. From what I see here, yes.

11 Q. Just from your knowledge of the illusion, the  
12 timing you see in this video?

13 A. Yes.

14 Q. Nothing further. Thank you.

15 MR. DEUTSCH: Just a couple of questions.

16 THE COURT: Is there anything else from any  
17 of the defendants' counsel?

18 MR. RUSSELL: No, Your Honor.

19 MR. CALL: No, Your Honor.

20 MR. DEUTSCH: Couple of questions.

21 Would you mind just throwing it up instead of  
22 having to switch back and forth. Thank you.

23 (Whereupon video was played.)

24 EXAMINATION

25 /////

1 BY MR. DEUTSCH:

2 Q. Now, this video, you could only see yourself  
3 once you get up past this tree up over in this area;  
4 correct?

5 A. In the video, yes.

6 Q. Okay. So coming around the corner, you can't  
7 see at all in this video because there's a big tree  
8 there; right?

9 Is that true?

10 A. Sorry. I'm not understanding.

11 Q. Well, you can't see when you came around the  
12 corner because there's a big tree covering that whole  
13 area?

14 A. Oh, yes. Yes.

15 Q. Is that true?

16 A. Yes.

17 Q. And I notice that -- if you could just -- you  
18 know, I'll make it easier.

19 Do you mind just switching real quick,  
20 Jennifer, so I can control that.

21 Thank you, though, Audra. Appreciate it.

22 THE COURT RECORDER: It's already on.

23 BY MR. DEUTSCH:

24 Q. So does the -- does this -- the -- the MGM  
25 security guard that stands on the corner, at that

1 corner, does he usually stay in that spot?  
2 MR. POPOVICH: Stagehand?  
3 BY MR. DEUTSCH:  
4 Q. The stagehand. Sorry. What did I call him?  
5 Security guard. Sorry. The MGM stagehand. There's a  
6 guy that stands at that corner; correct?  
7 A. Yes.  
8 Q. And does he usually stay at that spot?  
9 A. Yes.  
10 Q. He doesn't usually move to another spot?  
11 A. No.  
12 Q. So in this video, take a look, you can --  
13 fast-forward a little bit -- you can see, I think,  
14 there in that corner -- the left-hand corner of the  
15 video, do you see a flashlight down there?  
16 A. Yes.  
17 Q. That's -- that would be the guy at that  
18 corner with that flashlight; correct?  
19 A. Yes.  
20 Q. You agree?  
21 A. Yes.  
22 Q. And at the time that Mr. Cox falls, that guy  
23 that was standing at the corner has now moved up to  
24 where Mr. Cox fell; true?  
25 A. It looks like that, yeah.

1 Q. So when you came around the corner, that guy,  
2 the MGM stagehand that would have been at that corner,  
3 had, in fact, moved to a place that you would not have  
4 seen him before; true?

5 A. I guess, yeah.

6 Q. But you didn't notice anything odd going on?

7 A. I don't remember.

8 Q. You don't really remember one way or another?

9 A. No.

10 Q. Okay. Fair enough?

11 MR. DEUTSCH: Nothing further.

12 THE COURT: Follow-up by Mr. Russell?

13

14 EXAMINATION

15 BY MR. RUSSELL:

16 Q. Pomai, you've now watched this video several  
17 times. The amount of time from when you saw Ryan first  
18 run into the building, you see him first enter the  
19 building, until the time you come up behind and enter  
20 in the building, is that amount of time any amount that  
21 would have ever delayed this illusion from finishing?

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

24 THE COURT: If she knows.

25 /////

1 BY MR. RUSSELL:

2 Q. If you know.

3 A. Could you repeat the question? I'm sorry.

4 Q. Sure. Now that you have seen this a few  
5 times, you've seen the point where Ryan enters the  
6 building and you've see the point where you enter the  
7 building, is that time frame between when Ryan enters  
8 the building and when you enter the building, is that a  
9 time frame that would have delayed this illusion?

10 MR. DEUTSCH: Calls for speculation. There's  
11 a lot that happens after this point as well.

12 THE COURT: She can state her understanding  
13 of that particular segment.

14 THE WITNESS: That looks like a pretty normal  
15 pace that we would be able to reappear.

16 BY MR. RUSSELL:

17 Q. Thank you. I think we have one more question  
18 over there. Okay. We have one more question over  
19 there.

20 THE COURT: I've still got some here.

21 MR. RUSSELL: Oh, some more. I apologize,  
22 Your Honor.

23 THE COURT: No, we're not done yet. All  
24 right.

25 So the last one I gave, that's court's

1 exhibit in order.

2 Now the next question, couple of questions  
3 actually.

4 "Are you -- were you aware of an incline at  
5 the second right turn outside?

6 THE WITNESS: I -- I vaguely remember the  
7 levels. I -- I really can't remember.

8 THE COURT: Okay. Well, the next part of the  
9 question is this: "If so, were you concerned at all  
10 with a potential hazard while running the route?"

11 THE WITNESS: Is that that specific night or  
12 in general?

13 THE COURT: It has to do with the prior part  
14 of the question. It says --

15 MR. DEUTSCH: In light of her lack of memory,  
16 Your Honor, the first one.

17 THE COURT: The first one was "Are you --  
18 were you aware of an incline at the second right turn  
19 outside? And, if so, were you concerned at all of a  
20 potential hazard while running the route?"

21 THE WITNESS: I don't remember much of an  
22 incline outside, so I guess I wouldn't remember  
23 there -- feeling like there was a hazard.

24 THE COURT: Okay. Any follow-up?

25 MR. RUSSELL: No, Your Honor.

1 MR. POPOVICH: No, Your Honor.

2 MS. FRESCH: No, Your Honor.

3 MR. DEUTSCH: I have something, Your Honor.

4 Just got to find what I'm looking for. Give me one  
5 second.

6 I want to show you --

7 I'm pretty sure this is in evidence already.  
8 It's 93-173. Yes?

9

10 EXAMINATION

11 BY MR. DEUTSCH:

12 Q. How many times did you do this illusion, do  
13 you think, the runaround part?

14 A. Like, all together or maybe a week, per week?

15 Q. No, all together. Hundred?

16 A. Probably more than that.

17 Q. Okay. And we're looking at the corner, I  
18 think, if you recognize it, coming from -- this is  
19 coming from the first set of doors, and then they would  
20 make a right-hand turn into the other doors; correct?

21 A. Correct.

22 Q. Okay. Is that the incline that you don't  
23 remember?

24 A. Yeah, I guess not. I don't remember that.

25 JUROR NO. 8: That's kind of funny.



1 MR. DEUTSCH: I have nothing further, Your  
2 Honor.  
3 THE COURT: Follow-up?  
4 MR. RUSSELL: None, Your Honor.  
5 THE COURT: Okay. That's the next court  
6 exhibit in order.  
7 Okay. Now, "If you remember, the woman that  
8 fell, one, wearing a skirt? dress? pants?  
9 THE WITNESS: I don't remember what she was  
10 wearing.  
11 THE COURT: "Was there any debris or dust  
12 present?"  
13 THE WITNESS: On her or the -- or --  
14 MR. DEUTSCH: On the prior woman.  
15 THE WITNESS: On her person?  
16 THE COURT: This is the woman that fell.  
17 THE WITNESS: Oh, okay. No, I don't  
18 remember. I don't remember.  
19 THE COURT: Okay. Now, "The night of the  
20 accident, if you remember, did you notice any dust on  
21 the route?"  
22 THE WITNESS: I don't remember seeing dust in  
23 general, but definitely not anything specific from that  
24 night.  
25 THE COURT: "Any dust on your shoes?"

1 THE WITNESS: No, not that I recall.

2 THE COURT: Okay. Follow-up?

3 MR. DEUTSCH: Just one.

4

5 EXAMINATION

6 BY MR. DEUTSCH:

7 Q. So just so I'm clear in terms of the dust  
8 that night, your testimony is that, I think you told us  
9 already, that you don't have any specific recollection  
10 of that night at all; correct?

11 A. Uh-huh, yes.

12 Q. So when you -- is that a yes?

13 A. Yes.

14 Q. So the answer you gave to the judge was just  
15 a general recollection. About that specific night you  
16 don't recall one way or another; is that fair?

17 A. Yes.

18 MR. DEUTSCH: Okay. Nothing further.

19 MR. RUSSELL: Nothing, Your Honor.

20 MR. POPOVICH: Thank you.

21

22 EXAMINATION

23 BY MR. POPOVICH:

24 Q. What color were your shoes?

25 A. They were black.

1 Q. Dust would show?

2 A. It would show.

3 Q. Going back to the woman who fell, do you have  
4 any recollection of forming an opinion that she fell  
5 because of a condition on the ground?

6 A. No.

7 Q. Whether it's debris, a hole, a crack,  
8 anything?

9 A. No.

10 MR. POPOVICH: Okay. Thank you.

11

12 EXAMINATION

13 BY MR. DEUTSCH:

14 Q. Just to clarify, you don't have any  
15 recollection of forming an opinion; correct?

16 A. No, I don't remember her tripping -- I  
17 remember her tripping over her shoe, not over something  
18 like a crack or something.

19 Q. Okay. So she tripped over her shoe just  
20 because she was running in the dark.

21 MS. FRESCH: Well, objection. Speculation.

22 BY MR. DEUTSCH:

23 Q. No? No? I'm just asking if that's what  
24 happened.

25 A. If she tripped over her shoe? Yes.

1 MR. DEUTSCH: Okay. Thank you. Nothing  
2 further.

3 THE COURT: Okay. That's the next court  
4 exhibit in order. Okay.

5 And the last one, as I indicated earlier,  
6 it's not a question to the witness, but counsel has  
7 been made aware of its subject matter. All right? It  
8 will be made the next court exhibit in order. If  
9 counsel want to look at it, you're free to do so.

10 Okay. Anything else?

11 MR. DEUTSCH: Is there any -- was there  
12 another question? Was there one more? I thought we  
13 had one more question.

14 JUROR: No, that was the question.

15 MR. DEUTSCH: Got you. Thank you.

16 THE COURT: Ma'am, you may stand down. Thank  
17 you very much.

18 THE WITNESS: Thank you.

19 THE COURT: I will ask counsel to approach.

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

22 THE COURT: Okay. Ladies and gentlemen, at  
23 this time we're going to adjourn as far as you're  
24 concerned. Counsel and the Court have to do a few  
25 things before we can adjourn. But, in any event, we'll

1 adjourn now with the jury and reconvene tomorrow  
2 morning at 9:00.

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

14           Once again, you're directed to return to the  
15 outside of the courtroom, just to the south of the  
16 courtroom, tomorrow, Friday, April 27th, 2018, no later  
17 than 8:50 a.m., 10 to 9:00, so we can resume here at  
18 9:00.

19           Thank you very much. Have a nice night,  
20 ladies and gentlemen. See you tomorrow.

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

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

24           I understand, Mr. Deutsch, you wanted to make  
25 a record relative to a deposition.

1 MR. DEUTSCH: Oh, no. We just wanted to --  
2 to publish --

3 THE COURT: That's what I mean. Yeah, to  
4 publish.

5 MR. DEUTSCH: Yeah, that was Ms. Weall's  
6 deposition, I believe.

7 THE COURT: Okay. It will be -- it's ordered  
8 published, then.

9 MR. DEUTSCH: Thank you.

10 THE COURT: All right. So see you tomorrow,  
11 everybody. Have a nice night.

12 (Thereupon, the proceedings  
13 concluded at 4:55 p.m.)  
14  
15  
16

17 -oOo-  
18

19 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
20 PROCEEDINGS.  
21  
22

23   
24 \_\_\_\_\_  
25 KRISTY L. CLARK, CCR #708

CASE NO. A705164

DEPT. NO. 13

DOCKET U

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

GAVIN COX and MINH-HAHN COX,  
husband and wife,

Plaintiffs,

VS.

MGM GRAND HOTEL, LLC; DAVID  
COPPERFIELD aka DAVIS S. KOTKIN;  
BACKSTAGE EMPLOYMENT AND REFERRAL,  
INC.; DAVID COPPERFIELD'S  
DISAPPEARING, INC.; TEAM  
CONSTRUCTION MANAGEMENT, INC.;  
DOES 1 through 20; DOE EMPLOYEES  
1 through 20; and;  
ROE CORPORATIONS 1 through 20,

Defendants.

MGM GRAND HOTEL, LLC.,

Third-Party Plaintiff,

VS.

BEACHER'S LV, LLC, and DOES 1  
through 20, inclusive,

Third-Party Defendants.

REPORTER'S  
TRANSCRIPT  
OF

JURY TRIAL

BEFORE THE  
HONORABLE

MARK R. DENTON

DEPARTMENT XIII

FRIDAY,  
APRIL 27, 2018

REPORTED BY: KIMBERLY A. FARKAS, CRR, NV CCR #741

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## I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Mark Habersack	13	166		
		189		

## E X H I B I T S

Number:	Marked:	Admitted:	Joint:
D552-2		138	
D536 pages 1 and 64		144	
90 page 61		198	
401-5		215	
553		229	

1 LAS VEGAS, NEVADA, FRIDAY, APRIL 27, 2018;

2 9:11 A.M.

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

5 \* \* \* \* \*

6 **(The following proceedings were held**  
7 **outside the presence of the jury.)**

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

11 **THE COURT:** Good morning. Please be  
12 seated. We're reconvening the jury trial in the  
13 case of Cox v. MGM Grand Hotel, LLC, et al.  
14 Please state appearances of counsel, identify  
15 parties and party representatives who are present.

16 **MR. MORELLI:** Benedict Morelli for the  
17 plaintiff Gavin and Minh Cox, who are in the  
18 courtroom.

19 **MR. DEUTSCH:** Good morning, Your Honor.  
20 Adam Deutsch.

21 **MR. FALICK:** Good morning, Your Honor.  
22 Perry Fallick for plaintiffs.

23 **MR. POPOVICH:** Good morning. Jerry  
24 Popovich for defendant MGM Grand Hotel. For the  
25 hotel, Mr. Habersack. And we have Will Martin and

1 counsel Mike Infuso as well.

2 **MS. FRESCH:** Good morning, Your Honor.  
3 Elaine Fresch for David Copperfield and David  
4 Copperfield Disappearing, Inc., and Eric Freeman  
5 of my office as well.

6 **MR. ROBERTS:** Good morning, Your Honor.  
7 Lee Roberts and Howard Russell for Backstage  
8 Employment and Referral.

9 **MR. STRASSBURG:** May it please the  
10 court, Roger Strassburg and my partner Gary Call  
11 for defendant Team Construction Management.

12 **THE COURT:** Good morning. As I  
13 indicated, we're outside the presence of the jury.  
14 I understand there was something that needed to be  
15 addressed.

16 **MR. DEUTSCH:** I thought, Your Honor, we  
17 were just going to discuss what we were doing with  
18 those two witnesses and which portions of their --

19 **THE COURT:** I thought yesterday, before  
20 we adjourned at the bench conference, you said you  
21 had somebody you were going to call before getting  
22 into that issue.

23 **MR. DEUTSCH:** We could do that. That's  
24 fine.

25 **THE COURT:** We've got the jury sitting

1 out there.

2 **MR. DEUTSCH:** No problem. We can do  
3 that at the first break.

4 **THE COURT:** I think that's probably the  
5 best thing to do. And then during the recess, we  
6 can make the record relative to the deposition  
7 witnesses that we've -- unless somebody thinks it  
8 should be different.

9 **MR. POPOVICH:** Well, the order of  
10 witnesses has changed, Your Honor. Instead of  
11 calling someone from Team first, they're calling  
12 Mr. Habersack now; but as long as it's resolved  
13 today, I think we're okay because we wouldn't be  
14 designating/counterdesignating today anyway.

15 **MR. MORELLI:** The only reason we're  
16 bringing it up -- Benedict Morelli for the  
17 plaintiff. The only reason why we're bringing it  
18 up now, Your Honor, is so we know because we're  
19 going to have to cut the videos, go over them, and  
20 decide which portion of this and which portion of  
21 that so that we're ready. Seeing that Your Honor  
22 is working on Monday afternoon, it might be a good  
23 time to play one of them. So that's the reason.

24 **THE COURT:** All right. Well --

25 **MR. MORELLI:** It wasn't to use it today.

1           **THE COURT:** How long is the witness  
2 going to take that you're going to call if we go  
3 with the witness first?

4           **MR. MORELLI:** I would say at least the  
5 morning.

6           **THE COURT:** At least what?

7           **MR. MORELLI:** At least the morning.

8           **THE COURT:** Because I have a commitment  
9 from 12:00 to 1:30, so I can't do anything during  
10 that time.

11           How long do you think it's going to take  
12 to make the record relative to the depositions?

13           **MR. MORELLI:** I don't think it will take  
14 very long, Your Honor, because I think Your Honor  
15 indicated to us during the time of us taking the  
16 depositions what Your Honor's thinking was with  
17 reference to admissibility. So I don't think -- I  
18 think all counsel know what your thoughts are.  
19 And, also, we've sort of made our arguments  
20 already.

21           **MR. DEUTSCH:** And submitted briefs.

22           **MR. POPOVICH:** I think that's true with  
23 the Seattle accident. I don't think that's true  
24 with Ms. Lawrence because I know I haven't been  
25 heard on my position. Now that I've heard her

1 testimony, I'm ready to argue.

2           **THE COURT:** I can see that that's going  
3 to take a little bit of time. I think what we  
4 need to do is get started with the witness now.  
5 And then what we'll do is, when we recess, I'll  
6 have you approach the bench before we recess and  
7 get an idea as to how long the recess should be.  
8 And then we'll make the record relative -- you'll  
9 have a recess, but then we'll make a record  
10 also --

11           **MR. MORELLI:** After that. I got you.

12           **THE COURT:** Let's do that. All right.

13           **MR. MORELLI:** Yep.

14           **MR. ROBERTS:** Your Honor, I think there  
15 is another issue that we should address with the  
16 jury before we get into the first witness. I know  
17 that Ms. Fresch -- I believe it was on the 24th --  
18 brought to the attention a certain interview that  
19 plaintiffs' counsel had conducted, and we polled  
20 the jury to make sure no one had seen or been  
21 influenced by that.

22           We have just become aware that the AP, a  
23 story by Mr. Ken Ritter, was released by the  
24 Associated Press. And in this, it quotes  
25 Mr. Deutsch, attorney for plaintiff Gavin Cox and

1 his wife: "They felt compelled to testify because  
2 of the dishonest stuff that was put out by the  
3 defense team."

4 So, Your Honor, I don't believe that was  
5 a second interview after the hearing on the 24th.  
6 That appears to be a quote from an argument  
7 Mr. Deutsch made in court.

8 **MR. DEUTSCH:** Yes.

9 **MR. ROBERTS:** But here's the problem.  
10 As you know, in Nevada it's improper to claim that  
11 lawyers are liars, certainly without any evidence  
12 that they knew of things and misrepresented them  
13 to the tribunal. This would have been a violation  
14 of Nevada law had this argument been made to the  
15 jury, to call the defense team dishonest, the  
16 whole defense team dishonest. Highly improper.

17 So an improper argument was made to the  
18 Court outside the presence and now it's been  
19 published nationwide. We need to make sure the  
20 jury hasn't been exposed to this, Your Honor.

21 **MR. DEUTSCH:** If I may just respond,  
22 Your Honor. The comments about the defendants  
23 being dishonest had nothing to do with counsel.  
24 In fact, during the argument, I made clear that it  
25 was very possible that none of the counsel knew



1 that their own clients were not being honest with  
2 them. I made that point very clear.

3 What I was referring to was that the  
4 defendants in this case were being dishonest and  
5 we were going to prove their dishonesty. At no  
6 time did I suggest that it was defense counsel  
7 and, in fact, made clear that I wasn't referring  
8 to defense counsel. And I think Mr. Roberts is  
9 aware of that.

10 **THE COURT:** All right. Let's go forward  
11 now.

12 **MR. ROBERTS:** Thank you, Your Honor.

13 **MR. POPOVICH:** Can we approach one  
14 moment for a private matter?

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

17 **THE COURT:** Plaintiffs may call their  
18 next witness. Or let's have the jury come in  
19 first. Okay. Have the jury in, Bob, please.

20 **THE MARSHAL:** All rise.

21 (The following proceedings were held in  
22 the presence of the jury.)

23 **THE COURT:** Good morning, ladies and  
24 gentlemen of the jury. You may be seated.

25 Counsel stipulate that the jury is now

1 present?

2 **MR. MORELLI:** Stipulated.

3 **MS. FRESCH:** So stipulated.

4 **MR. ROBERTS:** Yes.

5 **THE COURT:** At this time, please call  
6 the next witness.

7 **MR. MORELLI:** Plaintiff calls Mark  
8 Habersack to the stand.

9 **THE CLERK:** You do solemnly swear the  
10 testimony you're about to give in this action  
11 shall be the truth, the whole truth, and nothing  
12 but the truth, so help you God?

13 Please state your name and spell it for  
14 the record, please.

15 **THE WITNESS:** Mark Habersack,  
16 H-a-b-e-r-s-a-c-k.

17 **THE CLERK:** And Mark with a C?

18 **THE WITNESS:** S-a-c, yes, as in cat.

19 I didn't know it was going to swing back  
20 on me.

21 **MR. MORELLI:** Good morning, jurors.

22 **IN UNISON:** Good morning.

23

24 **DIRECT EXAMINATION OF MARK HABERSACK**

25

1 BY MR. MORELLI:

2 Q. Good morning, Mr. Habersack.

3 A. Good morning, sir.

4 Q. I rested for a couple of days, but I'm  
5 back now. So I'm going to be asking you some  
6 questions. It's not that I've lost height. It's  
7 me.

8 Good morning.

9 A. Good morning, sir.

10 Q. Mr. Habersack, you know, you and I have  
11 seen each other in the courtroom. You were here  
12 when I opened to the jury; correct?

13 A. Yes, sir.

14 Q. Okay. And with the same understanding  
15 that, if there are any questions that I ask you  
16 that you don't understand, please tell me and I'll  
17 rephrase them so that you do understand them.

18 A. Yes.

19 Q. Fair enough? Because, you know,  
20 sometimes when we're doing this, the questions get  
21 a little longer than we expect. Okay. So we have  
22 that understanding?

23 A. Yes, sir.

24 Q. All right. Now, if you could,  
25 Mr. Habersack, tell the jury who you're employed

1 by.

2 A. I'm currently employed with MGM Grand  
3 Hotel, LLC.

4 Q. Okay. And what is your position?

5 A. My position is director of risk  
6 management.

7 Q. Okay. And could you tell the jury what  
8 is the definition of risk management?

9 A. That depends who you ask and what day a  
10 week it is.

11 Q. Okay. Today is Friday and I'm asking  
12 you.

13 A. So risk management has a multitude of  
14 functions, from doing loss-control assessments,  
15 claims, insurance certificates, review of  
16 insurance and insurance language in contracts. So  
17 there's a host of various things.

18 We also work closely with the  
19 departments within the location and work closely  
20 with our safety department and our security  
21 department. And then we have dotted lines to our  
22 corporate entities.

23 Q. Okay. Now, that was a mouthful.

24 When you're doing your job, you're  
25 assessing risk; is that true?

1           A.    Yes, sir.

2           Q.    Okay.  And you're trying to determine,  
3 if I'm correct -- and correct me if I'm wrong --  
4 you're trying to determine whether or not the  
5 employer, your employer, has any risk in a  
6 particular area; is that correct?  That's one of  
7 the things?

8           A.    It's one of the things, yes, sir.

9           Q.    Yeah.  And it's -- I'm being specific  
10 about that because, you know, we're dealing here  
11 with this particular case; right?

12          A.    Yes, sir.

13          Q.    And you actually were not employed by  
14 MGM at the time of this particular accident; true?

15          A.    That's true, sir, yes.

16          Q.    And I think that you became employed,  
17 what, a month or two or so after the accident  
18 happened?

19          A.    Yes, sir.

20          Q.    Okay.  And you did have an opportunity,  
21 after you became employed, to work on doing  
22 whatever investigations you thought were  
23 appropriate for this particular case; is that  
24 true?

25          A.    No, sir.

1 Q. Okay. You did, in fact, make certain  
2 determinations about what you thought happened; is  
3 that true?

4 A. Yes, sir.

5 Q. Okay. Now, you sat for a deposition  
6 some years ago; true?

7 A. Yes, sir.

8 Q. You remember that?

9 And, at the time, you were determined to  
10 be the most knowledgeable of the facts, persons,  
11 and events leading to and occurred during this  
12 particular incident.

13 That's correct, sir, is it not?

14 A. Yes, sir.

15 **MR. POPOVICH:** Objection. Misstates the  
16 30(b)(6).

17 **THE COURT:** Sustained.

18 **MR. DEUTSCH:** Page 6, line 15.

19 **MR. MORELLI:** We have an answer, Your  
20 Honor. Okay.

21 **MR. DEUTSCH:** Take a second.

22 **MR. MORELLI:** Okay.

23 **BY MR. MORELLI:**

24 Q. The question on line 12,  
25 Mr. Habersack -- and I know that you answered

1 already, but I'm going to read it to you.

2 "QUESTION: Are you aware of what the  
3 significance of being a deponent" -- that's  
4 having a deposition taken -- "in that type of  
5 deposition is?"

6 And you said, "Yes, sir."

7 "QUESTION: What is your understanding of  
8 it?

9 "ANSWER: That I'm the person most  
10 knowledgeable of the facts, persons, and  
11 events leading to and occurred during this  
12 particular incident."

13 And you gave that answer, did you not,  
14 under oath?

15 A. Yes, sir.

16 Q. Okay. Now, if you could give us an  
17 understanding, Mr. Habersack, of some of your job  
18 responsibilities, you know, your day-to-day  
19 responsibilities. I know you gave us a  
20 wide-ranging definition of risk management, but  
21 now talk maybe a little bit more specifically  
22 about what your job responsibilities are. Okay?

23 A. Okay. I manage a staff of three  
24 individuals. We -- we review incidents that come  
25 into our office. We input information into our

1 systems based on -- based on incidents at the  
2 property.

3 Then throughout the course of the day,  
4 it varies from day to day. There isn't, like, a  
5 set thing that I do at 8:00, 9:00, 10:00. There's  
6 a -- it can change depending on what's going on on  
7 that day between the phone calls and so on.

8 So meetings and -- because I'm involved  
9 in a lot of other aspects of various committees  
10 and meetings and so on throughout the property.

11 Q. Okay. Mr. Habersack --

12 MR. DEUTSCH: 62/10?

13 MR. MORELLI: No. It's 9/12.

14 MR. POPOVICH: May I have an  
15 understanding of when this is?

16 MR. MORELLI: Yeah. It's the question  
17 and answer that he gave at his deposition about  
18 what his job responsibilities were. It's 9/12.

19 MR. POPOVICH: No objection.

20 BY MR. MORELLI:

21 Q. Okay. So, Mr. Habersack, you can see  
22 that on your screen; right?

23 A. Yes, sir.

24 Q. And you were asked this question at your  
25 deposition:



1           "QUESTION: Sir, what are your job  
2 responsibilities? Did you say director of  
3 risk management at MGM?

4           "ANSWER: Yes, sir. I manage the risk  
5 management department, which involves the  
6 review of incidents that occur at the MGM  
7 Grand and the Signature condominiums. We  
8 determine whether or not it's an incident  
9 that could become a claim or a claim.

10           "If it's a claim, it's handled  
11 through our corporate claims office today.  
12 In the past, we used to handle it in-house at  
13 each of the properties. We've reorganized in  
14 the past -- in the last 18 months."

15           And that was your answer; correct?

16           A. Yes, sir.

17           Q. Okay. Now, I'm just going to ask you a  
18 couple of things about that. And, you know, you  
19 differentiate in your answer with reference to  
20 what an incident is and what a claim is, okay, in  
21 your answer.

22           And so am I correct, sir, that there is  
23 a distinction in your mind between those two and  
24 you handle them differently; is that true?

25           A. Yes, sir.

1           Q.    Okay.  Now, you know that Mr. Cox had an  
2   accident at the property November 12th, 2013;  
3   correct?

4           A.    Yes, sir.

5           Q.    And is he an incident or a claim?

6                   **MR. POPOVICH:**  Objection.  Vague as to  
7   the point in time.

8                   **THE COURT:**  Sustained.

9   **BY MR. MORELLI:**

10          Q.    The accident that happened  
11   November 12th, 2013, involving Mr. Cox, did you  
12   construe that as an incident or a claim?

13          A.    As I wasn't employed at the time, I  
14   couldn't make any determination as to whether  
15   there was an incident or a claim.

16          Q.    Okay.  But when you -- when you came  
17   aboard MGM, what date was that?

18          A.    That was on December 23rd, 2013.  And  
19   then on December 24th, I was on vacation for  
20   approximately a week.  So technically --

21          Q.    That was a good job.

22          A.    Yeah.  Technically, I didn't really  
23   start or do anything until roughly New Year's Eve.

24          Q.    Okay.  You got a good start date anyway?

25          A.    I did, sir.

1 Q. Yeah. So there came a time when you  
2 were working for MGM in your capacity. And let's  
3 say that you started doing your job in January.

4 Is that fair enough?

5 A. Sure, that's fair.

6 Q. Okay. And at that time, when you were  
7 reviewing the accident that involved Mr. Cox, did  
8 you then make a determination as to whether it was  
9 an incident or a claim?

10 **MR. POPOVICH:** Objection. Assumes  
11 facts. Lacks foundation.

12 **THE COURT:** Sustained.

13 **BY MR. MORELLI:**

14 Q. One of your job responsibilities was to  
15 make a determination with reference to this  
16 accident. Am I correct?

17 A. To this accident? No, sir.

18 Q. No?

19 A. No, sir.

20 Q. Okay. Did you -- you did, did you not,  
21 do investigation with reference to this accident?

22 **MR. POPOVICH:** Objection. Vague as to  
23 "you."

24 **BY MR. MORELLI:**

25 Q. I'm talking about you, and I'm not being

1 vague. You, Mr. Habersack, did you do or were you  
2 involved in any way in doing an investigation with  
3 reference to this accident? Yes or no.

4 A. I can't answer that as a yes-or-no  
5 question.

6 Q. Okay. Did you have any involvement with  
7 reference to doing an investigation about  
8 Mr. Cox's accident? Did you have any involvement?

9 A. Only at the time we were asked to answer  
10 the interrogatories when a lawsuit was filed.

11 Q. Okay. As a matter of fact, you did go  
12 to the scene; correct?

13 A. During the course of the response to  
14 interrogatories?

15 Q. Yeah. It doesn't -- I'm not asking you  
16 what you were responding to. I'm asking you what  
17 you did. And you did actually go to the scene  
18 because you had to make certain determinations to  
19 give certain answers; is that correct?

20 A. Yes, sir.

21 Q. Okay. Now, there came a time, did there  
22 not, when MGM made a determination with reference  
23 to Mr. Cox's accident as to whether it was an  
24 incident or a claim; is that correct?

25 A. Not to my knowledge.

1           Q.    Okay.  And when you -- when you gave  
2   that answer about the difference between an  
3   incident and a claim, can you explain to us what  
4   that meant?  What makes something an incident?  
5   What makes something a claim?

6           A.    If there's a minor accident that occurs  
7   on the property and it's something that we may be  
8   able to resolve as a gesture of goodwill with that  
9   person, that would be construed as an incident.  
10   We could resolve that issue fairly quickly and  
11   move on.

12                If it's much more complicated, that  
13   could be construed as a claim, such as being  
14   transported to a hospital or something a lot more  
15   serious.

16           Q.    Okay.  So let me understand.  The  
17   differentiation between an incident and a claim is  
18   how serious the injury is.

19                Is that a fair statement?

20           A.    That's a pretty fair statement, if it's  
21   a minor issue.

22           Q.    Okay.  And who makes the determination  
23   as to whether or not an injury is minor or not?  
24   Who makes that determination?

25           A.    That depends.

1           Q.    Okay.  What about in -- you are the  
2   director of risk management.  Are you ultimately  
3   responsible for making a determination as to  
4   whether or not something is an incident or a claim  
5   at this time?  Forgetting about Mr. Cox for the  
6   minute.

7           A.    At this time?

8           Q.    Yeah.

9           A.    I do not make that determination.

10          Q.    Okay.  Are there still these two  
11   categories of incident and claim?

12          A.    Yes, sir, there is.

13          Q.    Okay.  So, now, it doesn't -- the  
14   differentiation does not turn -- so that I  
15   understand, it does not turn on whether someone  
16   brings a lawsuit; it turns on whether or not  
17   someone is injured enough for it to be called a  
18   claim?

19          A.    That could be a fair statement.

20          Q.    Okay.  And you would agree with me,  
21   would you not, that there could be somebody who's  
22   determined to have a minor injury and you would  
23   consider it an incident, and then it turns out to  
24   be a more major injury.  Do you then reclassify  
25   it?

1           A.    It can be reclassified as an incident to  
2 a claim.

3           Q.    Okay. Do you do anything differently  
4 when you make the determination originally as to  
5 whether or not something is an incident or a  
6 claim?

7           A.    I'm not understanding the question, sir.

8           Q.    Okay. Is it handled differently? You  
9 say, "Well, this looks like a minor injury. Let's  
10 call it an incident." Okay? How does that change  
11 what's done by MGM?

12          A.    If I'm understanding your question  
13 correctly, sir, if, say, you stubbed your toe and  
14 you got a bruise, no big deal. That could be an  
15 incident. We reach out, see how you're doing, and  
16 then see what we can do to resolve that issue. So  
17 we immediately reach out.

18                If, in fact, it's all of a sudden now I  
19 broke my toe in two parts and they got to pin in  
20 it or whatever, that obviously is not just a minor  
21 issue that we can do a comp or some cash or a  
22 return stay. Now it's involving a lot more. So  
23 that could then become a claim at that point, and  
24 then we would have to work with that person and  
25 get through their claim.

1 Q. Okay. When you say "work with that  
2 person," does it then go to your lawyers? Is that  
3 the difference?

4 A. No, sir. Lawyers don't generally get  
5 involved until there's an actual lawsuit that's  
6 filed. Even if there's a letter of  
7 representation, we would then work with the  
8 attorney as opposed to the person themselves.

9 Q. Okay. Now, am I correct, sir, that, as  
10 part of your job responsibilities, you have said  
11 that you reduce, eliminate, or transfer risk?

12 Have you said that?

13 A. That sounds like a statement that we  
14 generally would make, yes.

15 MR. DEUTSCH: Page 62, line 14.

16 BY MR. MORELLI:

17 Q. And I'm saying that -- I'm talking  
18 about -- not a statement that we make, although,  
19 if -- you're saying that MGM makes that statement  
20 also. It's a statement that you made under oath;  
21 is that correct?

22 A. Yes, sir.

23 Q. Okay. And I think I understand what  
24 the -- reduce risk. How does one do that? How do  
25 you reduce risk? What do you do?



1           A.   Well, in a general context of reducing  
2 risk is, if we're putting on an event or we're  
3 going to do something on the property, we would do  
4 a risk assessment that we would allow that -- the  
5 department or the departments involved would allow  
6 risk management and safety to come in and look at  
7 what they want to do.

8                       So the issue is is this a risky thing  
9 that we want to do? Could somebody get hurt?  
10 Could there be a problem? Property damage, so on.  
11 If we determine -- we have to determine is there a  
12 risk? If there is, what steps can we take to  
13 reduce, eliminate, or even transfer risk.

14                      So say we're putting an electric  
15 barbecue out at our pool. Okay? Water and  
16 electric really don't mix. So the issue is, how  
17 do we reduce that? If we really are wanting to  
18 put a barbecue, an electric barbecue, at -- well,  
19 you asked. I'm answering your question, sir.

20           Q.   I haven't said anything.

21           A.   I know, but you're waving at me.

22           Q.   Well, I'm actually -- I wanted to ask  
23 you to answer with reference to the MGM Grand.  
24 Are they putting an electric barbecue somewhere,  
25 the MGM Grand?

1           A.    I'm giving you an example, sir.

2           Q.    I understand that.  But I'm asking  
3 now --

4           A.    You asked, sir, how -- how do you  
5 reduce, transfer --

6           Q.    Mr. Habersack, I'm not here to argue  
7 with you.  Believe me.

8           A.    I'm not here to argue with you; I'm  
9 trying to answer --

10          Q.    Okay.  So -- so --

11               **THE COURT:**  He's answering the question.  
12 Just let him answer it.

13 **BY MR. MORELLI:**

14          Q.    I'm asking now about what the MGM Grand  
15 does to reduce risk.  Is that -- you see something  
16 happen, it is, in your opinion, something that's  
17 dangerous enough that it could be risky, and you  
18 want to change the situation so it doesn't happen  
19 again.  Would that be something that would be  
20 reducing risk?

21          A.    Sir, the judge asked me to finish  
22 answering the question.  Should I answer that  
23 before I go to your next question?

24               **THE COURT:**  Just finish the answer to  
25 the previous question and then you can answer his

1 subsequent question.

2 **THE WITNESS:** Thank you, sir.

3 So to continue on, we were discussing  
4 the possibility of electricity on a grill next to  
5 the pool. Electric and pool water don't really go  
6 well together. So to reduce that possibility of a  
7 risk, is there alternatives, such as propane,  
8 charcoal, some other thing that we can do so we  
9 don't run an electrical cord next to water at the  
10 pool.

11 However, if it is something that we  
12 actually have to do, is there a third party, an  
13 outside company, that's doing this for a  
14 conference, convention, whatever. So in a  
15 contractual agreement and insurance, we can either  
16 reduce, eliminate, or transfer that risk to a  
17 third party so that the MGM is not responsible for  
18 any issues or incidents that occur with  
19 electricity next to a pool.

20 So now that I've answered that, can I  
21 understand your next question, sir.

22 **BY MR. MORELLI:**

23 Q. Okay. Can I now ask you a question?

24 A. Oh, yes, sir. I've answered the  
25 question per the judge's request.

1 Q. So, now, I was asking about reducing the  
2 risk, and you also answered about transferring the  
3 risk. So let's talk about that.

4 I think I understand, with reference to  
5 reducing the risk, you want to do something in a  
6 safer way; right?

7 A. Yes, sir.

8 Q. So that there's not a problem?

9 A. Yes, sir.

10 Q. That's fair enough.

11 And eliminating the risk, I think, is  
12 more obvious. You know, you try to, you know,  
13 say, "Well, maybe that shouldn't be done at all  
14 because I can't think of a way to make it safer or  
15 safe enough. So let's not do it."

16 Fair enough? That's eliminating the  
17 risk?

18 A. That could be one term of eliminating --

19 Q. One way?

20 A. Yes. One way, yes, sir.

21 Q. Now, transferring the risk is having  
22 someone else responsible other than the MGM Grand;  
23 is that correct?

24 A. That would be a transfer of risk, yes,  
25 sir.

1 Q. Okay. And my -- my question is, have  
2 you, when you got involved in this particular  
3 case -- because you are obviously involved in the  
4 case now -- did you decide with reference to the  
5 risk in this case who you were going to transfer  
6 it to?

7 MR. POPOVICH: Objection, Your Honor.  
8 Relevance.

9 And can we approach?

10 THE COURT: Yes.

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

13 BY MR. MORELLI:

14 Q. Now, in your job responsibilities that  
15 we were talking about, Mr. Habersack, the --  
16 getting back for one moment to the incidents and  
17 the claims. Okay?

18 If there is an incident -- in other  
19 words, determined by MGM to be an incident --  
20 that's not reported. Is that a fair statement?

21 A. No, sir.

22 Q. Okay. So the difference between an  
23 incident and a claim is not about the reporting of  
24 it; it's about the handling of it after?

25 A. It could be -- yes, that's a fair

1 statement.

2 Q. Okay. So am I correct that, even if  
3 there is what's determined to be by MGM an  
4 incident, meaning that the person was determined  
5 by MGM to not have any kind of a serious injury --  
6 fair enough? -- that would make it an incident? I  
7 just want to understand if I'm correct about that.

8 A. If we're in the context of just  
9 injuries --

10 Q. Yeah.

11 A. -- yes, that's a fair concept.

12 Q. So now it's determined that someone  
13 was -- had an accident on the property and it's  
14 determined by MGM that the person wasn't -- I want  
15 to use the right term -- severely injured or  
16 injured enough for it to be in the claim category.  
17 Fair enough?

18 A. Fair enough.

19 Q. Is there then a report filled out about  
20 that?

21 A. Yes, there has to be a report or we  
22 wouldn't know about it.

23 Q. Yeah -- well, that's true. But what I'm  
24 saying is that someone has an accident on the  
25 property, and that person is determined to not

1 have a serious injury or not having an injury that  
2 is, you know, going to require medical care, let's  
3 say. There is a report filled out by the MGM  
4 Grand with reference to that accident because it  
5 did happen and you want to know about it?

6 A. As long as the guest reports it to us,  
7 yes, there would be a report.

8 Q. Okay. And so -- let's assume for a  
9 moment that the -- the guest has an accident --  
10 forgetting about what kind of accident it is --  
11 and the guest is seen by an MGM employee having  
12 this accident and the guest is determined not to  
13 be injured seriously.

14 Does the MGM employee have a  
15 responsibility to report it to the employer and  
16 fill out an accident report?

17 **MR. POPOVICH:** Objection. Incomplete  
18 hypothetical.

19 **MR. MORELLI:** It's my hypothetical, and  
20 I was complete.

21 **THE COURT:** Overruled.

22 **BY MR. MORELLI:**

23 Q. Go ahead. You can answer. Do you  
24 understand my question? If you don't, I'll try  
25 again.

1           A.    No, I understand your question.

2                    If an employee of the MGM should witness  
3 or see an incident that occurs, yes, that should  
4 be reported to someone at the MGM, whether it's  
5 their supervisor, security, or so on.

6           **MR. MORELLI:** I think you have to put it  
7 in evidence.

8           **MR. DEUTSCH:** Your Honor, at this time,  
9 we would offer Exhibit 87 into evidence, the MGM  
10 security department handbook. I believe there was  
11 no objection. I believe it was stipulated  
12 already.

13                   It wasn't?

14                   Never mind. It was not. So we're  
15 offering it, Your Honor.

16           **MR. POPOVICH:** Well, a portion had been  
17 used at Mr. Habersack's deposition. If that's all  
18 they're offering, no objection. If they're  
19 offering the entire thing, then we would have to  
20 talk about it.

21           **MR. DEUTSCH:** We're offering the entire  
22 thing. I believe most of the sections were  
23 covered, but there may be some additional sections  
24 as well.

25           **MR. MORELLI:** Obviously, there's only



1 certain portions that are relevant, you know. So  
2 we're not going to be talking about 50 pages;  
3 we're talking about three or four.

4 **THE COURT:** Here's what we'll do: We'll  
5 make a record outside the presence of the jury.  
6 At this point -- at this point, utilize portions  
7 of the handbook that relate to his testimony.

8 **MR. MORELLI:** Yes. I think we can agree  
9 quickly because it's not complicated.

10 **MR. POPOVICH:** Can we meet and confer at  
11 a break, Your Honor?

12 **MR. DEUTSCH:** All right. But, for now,  
13 the piece we're going to use is -- you have no  
14 problem, page 35.

15 **THE COURT:** You can utilize what this  
16 witness is going to testify about, but I'm not  
17 admitting the entire thing at this time.

18 **MR. DEUTSCH:** So we're going to show  
19 page 35.

20 **MR. POPOVICH:** No objection to that.

21 **MR. MORELLI:** What about page 1?

22 **MR. DEUTSCH:** That, he has to take a  
23 look at.

24 **MR. MORELLI:** Page 1.

25 **MR. POPOVICH:** I don't have page 1 here.

1           **MR. MORELLI:** All right. So put up 35.

2           **MR. DEUTSCH:** All right. Page 35.

3           **THE WITNESS:** Thank you.

4           **MR. MORELLI:** You want to highlight the  
5 portion -- bring it over a little bit, Adam.

6           **MR. DEUTSCH:** I don't know why this  
7 keeps happening with this.

8           Howard, do you have the remote control?

9           Jennifer, do you have the remote control  
10 for the TV?

11          **MR. RUSSELL:** Jennifer does.

12          **THE COURT RECORDER:** It's back by Audra,  
13 I think.

14          **MR. MORELLI:** I think that's good. Can  
15 all the jurors see that? I'm just going to read  
16 this.

17          **JUROR NO. 8:** Can you turn the screen?

18          **MR. MORELLI:** Sure. Better?

19          **JUROR NO. 8:** Yes.

20       **BY MR. MORELLI:**

21           Q. So under -- on page 35 of the handbook,  
22 the MGM handbook, it talks about guest accidents.

23           "A guest accident report will be  
24 completed whenever a guest-involved accident is  
25 reported to security. First aid and paramedics

1 will be offered to the complainant and noted in  
2 the report narrative. If the complainant" -- and  
3 that would be the guest who's involved in an  
4 accident --

5 A. Yes, sir.

6 Q. Okay?

7 -- "declines filing a report, a report  
8 will be completed by the officer with 'guest  
9 refused report' -- in quotes -- "noted in the  
10 report narrative. The officer will complete the  
11 report detailing the information obtained."

12 Is that correct?

13 A. Yes, sir.

14 Q. Okay. So if I understand that, any  
15 incident that occurs, even if it's not any kind of  
16 an injury that MGM would consider substantial  
17 enough, let's say, there still has to be an  
18 accident report if, in fact, the MGM employee  
19 knows about it or is notified about it.

20 Is that a fair statement?

21 A. If security is notified, yes, sir.

22 Q. Okay. So, now, we had -- we've had a  
23 number of witnesses on the stand. You were here  
24 for some of the testimony but not all of the  
25 testimony. So let me state that we had a witness

1 on the stand yesterday, Pomai Weall, and she  
2 testified that there had been a previous accident  
3 during the runaround of the Thirteen Illusion.

4 Okay?

5 A. Yes, sir.

6 Q. And you know what the runaround from the  
7 Thirteen Illusion is; correct?

8 A. After hearing everything in court, yes.

9 Q. Okay. Well, did you -- when you had to  
10 answer the questions -- when you had to answer the  
11 questions that you say you had to answer, and you  
12 were at work in January, you learned about the  
13 Thirteen Illusion and the runaround and where the  
14 accident happened and all of those things before  
15 hearing it in court; isn't that true?

16 A. That's true. It wasn't in January,  
17 though.

18 Q. Okay. But it was sometime after. I'm  
19 not trying to pin you down that it was January,  
20 but sometime after you were employed. It wasn't  
21 hearing it in court; it was way before hearing it  
22 in court. Correct?

23 A. Yes.

24 Q. Okay. So, now, the statement that was  
25 made under oath by Pomai Weall was that she

1 witnessed -- I think she said -- a woman falling  
2 and determined -- she determined -- that there  
3 was -- that she wasn't injured or injured enough.

4 And there's also been testimony that, at  
5 the time, there was MGM employees along the route  
6 of the Thirteen Illusion. Did you ever know about  
7 that before I just mentioned it?

8 A. Her testimony?

9 Q. No, about the incident.

10 A. Only from what I heard yesterday.

11 Q. Okay. The MGM employee that was  
12 standing at the point where the runaround is  
13 outside and makes a right, wouldn't that person  
14 have a responsibility to fill out an incident or  
15 accident report for the MGM Grand?

16 A. As I wasn't there at that time,  
17 apparently, I don't know.

18 Q. Okay. But I'm not --

19 A. I can't answer that.

20 Q. You know, I'm not blaming you for  
21 anything; I'm just --

22 A. Oh, no. I didn't say you were. I  
23 just -- I wasn't there. I can't answer that.

24 Q. Okay. But I'm saying that, if MGM  
25 security came over to the person who had had the

1 accident and therefore was aware that somebody had  
2 an accident, would that security person, MGM  
3 security person, have the responsibility under the  
4 rules to fill out an incident report or an  
5 accident report?

6 A. Based upon what was posted on the  
7 screen, if MGM security was notified and involved,  
8 yes, they should have filled out a report.

9 Q. Okay.

10 MR. DEUTSCH: Page 198 of Ms. Weall's  
11 testimony from yesterday, line 9.

12 BY MR. MORELLI:

13 Q. Okay.

14 "QUESTION: The other woman who fell, you  
15 said that an MGM security guard -- that you  
16 were there when an MGM security guard came  
17 over to talk to her?

18 "ANSWER: Yes.

19 "QUESTION: You were there when the MGM  
20 security guard came over to talk to her?

21 "ANSWER: Yes."

22 Okay. So if, in fact -- now, you know,  
23 I'm not saying that you were working for the  
24 company at the time; I'm only talking about the  
25 rules now, the rules. That's all.

1           And if -- you would agree with me that,  
2   in that particular instance, there should have  
3   been an incident or accident report filled out by  
4   the MGM employee. Fair enough?

5           A.   That's fair enough.

6           Q.   Okay. And you would also agree with me,  
7   Mr. Habersack, would you not, that if, in fact, an  
8   incident report isn't filled out, then MGM doesn't  
9   know about it -- right? -- and it never happened?  
10   Based on the records, I'm saying. It would be  
11   like it never happened.

12           Is that a fair statement?

13           A.   That's a fair statement.

14           Q.   Yeah. And so if, in fact, there were  
15   one or more people who had fallen and had an  
16   accident during this runaround on the property of  
17   the MGM Grand and the security people knew about  
18   it and they didn't fill out any kind of an  
19   accident report, then people would think that no  
20   one had ever fallen before.

21           That's a fair statement; correct?

22           **MR. RUSSELL:** Objection. Speculation..

23           **MS. FRESCH:** Join. Lacks foundation.

24           **THE COURT:** I'll allow it.

25

1 **BY MR. MORELLI:**

2 Q. That's a fair statement; right?

3 A. That's a fair statement.

4 Q. And I'm also correct, am I not -- and  
5 we'll look at the handbook after the lawyers  
6 confer with reference to the admissibility of some  
7 of it.

8 But it is true, is it not, that every  
9 employee has the responsibility to read,  
10 understand, and follow the guidelines contained in  
11 the handbook. Is that right?

12 A. What handbook are you referring to, sir?

13 Q. The MGM handbook that I can't put up yet  
14 until we make a determination about it.

15 A. There are many handbooks. I don't know  
16 which book you're referring to, sir.

17 Q. It's in evidence. I'll get it for you.  
18 I'll just lay the foundation the old-fashioned  
19 way.

20 I'm talking about -- Mr. Habersack, I'm  
21 talking about the security handbook. Okay? Are  
22 you familiar with that?

23 A. I am familiar with the security  
24 handbook.

25 Q. Okay. We're going to try to find a hard



1 copy of it and show it to you. Okay?

2 **MR. DEUTSCH:** There you go.

3 **THE WITNESS:** Thank you.

4 **MR. MORELLI:** What number would that be?

5 **MR. DEUTSCH:** 87.

6 **MR. MORELLI:** It's Plaintiffs' 87.

7 **BY MR. MORELLI:**

8 Q. I'm just asking you to look at it,  
9 Mr. Habersack. Just -- you know, you don't have  
10 to read the whole thing, just review it a little  
11 bit.

12 And ask you whether or not you're  
13 familiar with the security handbook of MGM.

14 A. I am familiar with the handbook.

15 Q. And that was -- that was the handbook  
16 that was provided to us by MGM in this case.

17 **MR. MORELLI:** And, Your Honor, I'm going  
18 to offer that into evidence so that we can put  
19 portions of it on the screen.

20 **THE COURT:** Is that the one we discussed  
21 previously?

22 **MR. MORELLI:** Yes.

23 **MR. POPOVICH:** The objection is it's  
24 overbroad. There's many things here that are not  
25 relevant to the case. There are things here that

1 are.

2           **THE COURT:** All right. As I indicated,  
3 I'll allow you to show the witness things that are  
4 relevant to his testimony.

5           **MR. MORELLI:** Sure.

6           **THE COURT:** Okay. And then we'll make a  
7 determination as to what portion of the entirety  
8 will be admitted.

9           **MR. MORELLI:** Absolutely.

10          **MR. DEUTSCH:** Do you want to put the  
11 guidelines up?

12          **MR. MORELLI:** Yes.

13          **MR. DEUTSCH:** Okay. Page 1.

14          **MR. POPOVICH:** No objection to that.

15          **MR. DEUTSCH:** Did I screw it up here,  
16 Jennifer, when I pushed a button on the remote?

17          **THE COURT RECORDER:** You're all  
18 connected on my end.

19          **MR. POPOVICH:** So that's a yes.

20          **MR. DEUTSCH:** Yes. All right.

21          **MR. MORELLI:** That was a disclaimer.

22          **JUROR:** Transfer of risk.

23          **MR. MORELLI:** Exactly.

24          **MR. DEUTSCH:** You'll have to give me a  
25 minute. I apologize. I came out for two days and

1 now I'm back in again. There we go. Okay. We're  
2 good.

3 **BY MR. MORELLI:**

4 Q. Okay. So let's just highlight Number 1  
5 and Number 15 for now.

6 **MR. DEUTSCH:** We should only do one at a  
7 time. When we get it big enough, then we'll  
8 scroll down.

9 **MR. MORELLI:** Okay. Scroll down.

10 **MR. DEUTSCH:** That's Number 1.

11 **MR. MORELLI:** Is that big enough?

12 **BY MR. MORELLI:**

13 Q. And that's what I read to you a couple  
14 of moments ago.

15 A. Yes, sir.

16 Q. Okay. And now it's --

17 A. Did you want an answer to that?

18 Q. No. You did answer me originally.

19 A. No, I didn't.

20 Q. Oh, no?

21 A. No, sir.

22 Q. Okay. I'll ask you the question in a  
23 moment.

24 Okay. So Number 1, under the general  
25 guidelines that every employee has the

1 responsibility to read, understand, and follow the  
2 guidelines contained in the department handbook.

3           Okay. Does that need any explanation?

4           A. Yes, sir, it does.

5           Q. Okay. So give it to us.

6           A. Not every employee at the MGM sees this  
7 handbook, only the security department employees.  
8 So that's a true statement for security.

9           Q. Sure. And thank you for clearing that  
10 up. Because that's what it's called, the  
11 "Security Handbook"?

12          A. Yes, sir.

13          Q. Okay. So, now, the -- so it is -- it is  
14 accurate with reference to the security people  
15 that we were just referencing in my last line of  
16 inquiry?

17          A. Yes, sir.

18          Q. Okay. So, now, let's look at Number 15.  
19 You can probably see it better there than here.  
20 Okay. Good. Perfect.

21                "You shall not, under any circumstance,  
22 discuss or accept liability with a guest on behalf  
23 of the MGM Grand or management for a situation in  
24 which a guest claims to have suffered harm or  
25 damages."

1           Okay. So now I think I understand it,  
2 but I'm going to ask you a few things about it so  
3 that you could explain it to me. Okay?

4           A. Yes, sir.

5           Q. You don't want -- not you, but the MGM  
6 Grand does not want the security people, under any  
7 circumstance, to accept liability with a guest.  
8 Like, "I can see it's our fault," or "Sorry it  
9 happened," "It's not your fault; it's ours,"  
10 something like that. Fair enough? To accept  
11 liability. So that would be --

12          A. It's almost a true statement that you  
13 just made.

14          Q. Okay. Almost accurate, you mean?

15          A. Almost accurate.

16          Q. All right. What makes it more accurate?

17          A. There's nothing that says that we can't  
18 say "We're sorry to hear of your incident."

19          Q. Okay.

20          A. Saying "I'm sorry" isn't an admission of  
21 liability.

22          Q. Okay. Well, I didn't say it was, and I  
23 didn't say you couldn't say you're sorry and I'm  
24 sure that you should. But this -- this here, it  
25 says, "You shall not, under any circumstances,

1 discuss." Discuss.

2           So if, in fact, the security people are  
3 told in their rules and regulations that they  
4 can't even discuss what happened, then it would  
5 be, in my opinion -- and you correct me if I'm  
6 getting it wrong -- that -- are they able to say  
7 they're sorry if they can't even discuss it?

8           A. "I'm sorry" is not an admission of  
9 guilt. Matter of fact, we just went through  
10 training on that for all employees that are going  
11 through our show training module right now. "I'm  
12 sorry" is not an admission of guilt. "I'm sorry"  
13 is "I'm sorry that you had an incident."

14          Q. No, sure.

15          A. You're taking it somewhat out of  
16 context. Security's role in this is that they are  
17 to gather the facts, get the facts into the  
18 report, allow then risk management or other  
19 departments to review that report and make  
20 determinations. They're just a fact-gathering  
21 person.

22          Q. Okay. So what I'm trying to understand  
23 is, you know, you would agree with me that  
24 language and words and the way they're in certain  
25 context are important. Fair enough?

1           A.    Words are always important.

2           Q.    Always important.  And so I'm reading  
3 this, and I understand -- and you and I discussed  
4 already -- about accepting liability.  So that's  
5 out of the way.  I understand that.

6                   And I'm saying that it says that there  
7 should be no discussion of anything.  And I'm not  
8 saying that you're wrong about saying you're  
9 sorry, that that's not an admission of liability.  
10 And I'm not talking about liability now.  I'm only  
11 talking about the fact that they can't, under any  
12 circumstance, discuss what happened.

13                   **MR. POPOVICH:**  Objection.  That  
14 misstates the document.

15                   **THE COURT:**  Sustained.

16           **BY MR. MORELLI:**

17           Q.    So, now, drawing the distinction of  
18 discussing liability, that is discussing exactly  
19 how the accident happened?  No, because that you  
20 can discuss.  Correct?

21           A.    You're gathering the facts.

22           Q.    Right.

23           A.    They need to know what happened.

24           Q.    Right.  Now, when you -- when you went  
25 and looked and you had to research this particular

1 accident that we're talking about -- and I think  
2 we should show Number 13, I think.

3 **MR. DEUTSCH:** That's a different  
4 section. Page 2 --

5 **MR. MORELLI:** Let's not go to that  
6 section yet.

7 **MR. DEUTSCH:** Actually, page 3. No?

8 **MR. MORELLI:** No.

9 **MR. DEUTSCH:** Okay.

10 **MR. MORELLI:** Not yet.

11 **BY MR. MORELLI:**

12 Q. So, now, am I correct, sir, that -- that  
13 in this particular case with Mr. Cox, did you have  
14 occasion before taking the stand today to look at  
15 the incident report in this case that was filled  
16 out by the security officer?

17 A. You mean the incident report on Mr. Cox?

18 Q. Yes.

19 A. Yes, I have reviewed it.

20 Q. Okay. And you also reviewed Mr. Cox's  
21 portion of the incident report; is that correct?

22 A. His voluntary statement?

23 Q. Yes.

24 A. Yes, sir, I did see it.

25 Q. Okay. Now, you have stated that, if a



1 complainant -- you know, we talked about if the  
2 complainant even declined to fill out an accident  
3 report, it would still have to be filled out. But  
4 in this case the security person or persons -- I  
5 think there were two people involved here -- did  
6 fill out an accident report; correct?

7 A. Yes, they filled out a report.

8 Q. Okay. And did you note in that report  
9 how many witnesses were interviewed?

10 A. The only statements I saw in the report  
11 was Mr. Cox' statement. I didn't see any other  
12 statements.

13 Q. Okay. Is that in accordance with  
14 protocol?

15 A. I don't understand what you mean by  
16 "protocol." Do you have something specific to  
17 point out?

18 Q. The rules that are in the security  
19 handbook, is it -- in accordance with the rules of  
20 the MGM that an accident happened and someone was  
21 injured, but even if they weren't injured, there  
22 should be a report, and no witnesses were  
23 interviewed. Is that true in this case, no  
24 witnesses were interviewed?

25 A. I can't say it was true or not true. I

1 don't know if they were interviewed. I don't know  
2 that there were any witness statements that were  
3 included in the report.

4 Q. You don't know or you know that there  
5 weren't?

6 A. Your question was were they interviewed?  
7 I don't know whether they were interviewed. I  
8 wasn't employed at the time. So I don't know what  
9 conversations took place.

10 In the actual report, the only attached  
11 statement is from Mr. Cox -- or actually Mr. Cox'  
12 first attorney.

13 Q. And now my question is is that in  
14 accordance with the MGM rules, that there were no  
15 witness statements attached to the report?

16 A. Can you refer me to which page we're  
17 discussing at this point?

18 **MR. DEUTSCH:** Page 33, the bottom of  
19 page 33 of Exhibit 87.

20 **MR. MORELLI:** Why don't you put it up.

21 **MR. POPOVICH:** No objection to page 33.

22 **MR. DEUTSCH:** Just for clarity, the  
23 section starts at the bottom of 31, if you want to  
24 point it out, that we're talking about at the  
25 bottom. This is the bottom of page 31, report

1 writing section. But we're talking about is on  
2 33.

3 **MR. MORELLI:** Go to 31 first --

4 **MR. POPOVICH:** No objection to page 31.

5 **MR. MORELLI:** -- so I can read it.

6 Okay. Can you move it over a little. That's  
7 good.

8 **MR. DEUTSCH:** I wish I could.

9 **MR. MORELLI:** Okay. Can everybody see  
10 that?

11 **BY MR. MORELLI:**

12 Q. "Report Writing. Report writing  
13 guidelines. All reports must be written following  
14 the MGM Grand security department guidelines,  
15 which will result in a correct, clear, concise,  
16 complete, chronological report with proper grammar  
17 and punctuation."

18 Okay. Have to be an Oxford grad to do  
19 that. That's pretty strict, you know. I mean, I  
20 don't know. You don't get called on the carpet if  
21 you left out a comma, I hope, you know. That's  
22 pretty strict. Okay.

23 So those are the guidelines. And,  
24 obviously, whoever wrote that likes the C letter  
25 because all of the five Cs; right? And one of the

1 Cs was completeness; correct?

2 A. Correct.

3 Q. And completeness is obviously important;  
4 correct?

5 A. Correct.

6 Q. Okay. So now let's go to the statements  
7 on page 33.

8 "Every complainant and witness should  
9 complete a written statement when possible."

10 Okay. So let's just take that. And I  
11 know that you may tell me that you don't know if  
12 it was possible, right, because you weren't there.

13 A. Correct.

14 Q. So let's start with that.

15 A. Okay.

16 Q. All right. And now what I'm saying to  
17 you is, from the testimony that's already in this  
18 case, we know that there was an MGM security  
19 person standing at this point. And when the  
20 runaround was being completed, the outside  
21 portion, they make a right to go into the doors  
22 back into the casino, that person was standing  
23 right here. Mr. Cox fell right in his line of  
24 sight. Okay?

25 **MR. POPOVICH:** Your Honor, before we

1 take more time, did Mr. Morelli mean stagehand  
2 instead of security? Just to cut to it.

3 **MR. MORELLI:** Stagehand. MGM employee.  
4 I don't know what he was wearing. I don't know  
5 his name because we weren't provided any of that.  
6 Okay. So I don't know what his designation is. I  
7 don't know if he's a stagehand or a security  
8 guard. I don't know if he was wearing --

9 **MR. POPOVICH:** Objection to the speech.  
10 I get the point.

11 **THE COURT:** Sustained. Just pose the  
12 question.

13 **MR. POPOVICH:** Nice argument.

14 **BY MR. MORELLI:**

15 Q. But you knew that was true.

16 So person -- an MGM employee is standing  
17 there, and the person falls -- Mr. Cox -- in his  
18 line of sight.

19 Should the security officer who's  
20 doing -- who's charged with the responsibility of  
21 doing the report, interview that person?

22 A. I can't answer that because we don't  
23 know if that was the line of sight this way or the  
24 line of sight going the other way back where the  
25 door was.

1           Q.   All possible witnesses should be  
2 interviewed. Is that a fair statement?

3           A.   It's a fair statement based on this page  
4 in the handbook.

5           Q.   Okay. Do you have any reason to believe  
6 that the handbook is not the accurate rules for  
7 people at the MGM Grand in security?

8           A.   I have no reason not to believe that  
9 that's not accurate.

10          Q.   Okay.

11          A.   I don't know, because as you and I both  
12 know, I wasn't there.

13          Q.   Okay.

14          A.   So that question would probably be best  
15 posed to the person who actually completed the  
16 report as to what they did or what they didn't do  
17 when it came to witnesses.

18          Q.   Don't worry. I'll take care of that.

19          A.   Okay.

20          Q.   Okay. But you're the person who is the  
21 director of risk management for the MGM, and  
22 you're the person representing the company in this  
23 case.

24                    You understand that; right?

25          A.   I understand.

1           **MR. POPOVICH:** Objection. I don't  
2 believe that's entirely accurate at trial.

3           **THE COURT:** Sustained.

4           **BY MR. MORELLI:**

5           Q. Are you the person representing the MGM  
6 Grand in this trial? Yes or no.

7           **MR. POPOVICH:** Objection. Vague and  
8 ambiguous. I thought I was representing MGM.

9           **THE COURT:** Sustained. Clarify what the  
10 term "representation" means.

11          **BY MR. MORELLI:**

12          Q. Are you the representative of the MGM  
13 Grand for purposes of this trial?

14          A. I'm here as one of the representatives  
15 of MGM Grand.

16          Q. Now, let's take the next one.

17                "Persons writing a statement should be  
18 interviewed prior to completing the statement.  
19 The goal of the interview is to help the person  
20 write a more complete and factual statement."

21                When you reviewed the reports in this  
22 case with reference to this -- Mr. Cox's accident,  
23 did you feel that -- that the report was complete?  
24 You. What you thought. Did you look at that and  
25 say that it was complete? Did you think it was

1 complete?

2 A. I felt that it was a professionally  
3 written report. I did not understand why there  
4 was only one statement in the report.

5 Q. Okay. And did you ever speak to anyone  
6 to find out why there was only one statement in  
7 the report?

8 A. I did not.

9 Q. You understand that, during the time of  
10 this particular incident and it happening during  
11 the runaround during the Thirteen Illusion, there  
12 were approximately at least ten participants,  
13 audience participants who were also running the  
14 route. And would you agree with me that they also  
15 should have been interviewed?

16 A. I can't answer that as I wasn't there,  
17 but it also depends if they were already gone when  
18 the incident was actually reported.

19 Q. Well, Mr. Cox fell. Okay? And the  
20 stagehands for MGM were there. And there was a  
21 period of time when, we know from the testimony in  
22 this case, that everyone was aware that Mr. Cox  
23 had an accident. Okay?

24 And are you telling the jury that none  
25 of the participants should have been interviewed?



1 What about the employees, the MGM Grand employees?  
2 Shouldn't they have been interviewed to find out  
3 whether or not they knew anything at all? What do  
4 you think?

5 A. You kind of compounded the question. So  
6 what question am I answering?

7 Q. Should the MGM employees have been  
8 interviewed, the ones who were working that night  
9 with reference to this runaround?

10 A. As I had already testified, I don't know  
11 what the circumstances were as to why there wasn't  
12 an interview conducted and that would be a better  
13 question posed to the person who actually did the  
14 report.

15 Q. Mr. Habersack, as director of risk  
16 management, you made certain determinations in  
17 this case, did you not?

18 A. I gathered the facts as I understood  
19 them for the deposition.

20 Q. Okay. And you also made certain  
21 determinations, did you not?

22 A. I don't understand what you mean by a  
23 determination.

24 Q. You made certain decisions based on what  
25 you saw with reference to the reports. Did you

1 make certain decisions?

2 A. I didn't make any decisions. I gathered  
3 facts for my deposition.

4 Q. Okay. Did you feel that the Backstage  
5 employees should have been interviewed? You know  
6 who they are; right? You know who Backstage  
7 employees are?

8 A. I know that there's Backstage employees.  
9 I don't know who they actually are. I've never  
10 met them.

11 Q. Neither do we. Okay.

12 **MR. POPOVICH:** Objection. Move to  
13 strike.

14 **THE COURT:** Sustained.

15 **BY MR. MORELLI:**

16 Q. Should they have been interviewed?  
17 Should the Backstage employees have been  
18 interviewed by the security personnel? And I'm  
19 going to ask them too. But I'm asking you, should  
20 they have been interviewed?

21 A. I can't answer the question, sir. I  
22 wasn't there. I don't know what happened. I  
23 don't know why there isn't statements in there.

24 Q. Did you find it odd there were no  
25 statements except the statement from the plaintiff

1 in this case? Is that odd to you?

2 A. That's a fair statement, that it's odd  
3 that there wasn't statements in there, but I don't  
4 know why.

5 Q. Okay. Now, let's talk about -- am I  
6 correct, sir, that, as far as you know when you  
7 looked at it, there were no witnesses interviewed  
8 in this case; correct? Except the plaintiff.  
9 That's the only statement you saw.

10 A. That's a statement. You asked me  
11 interviewed. I don't know whether anybody was  
12 interviewed or not.

13 Q. Well, if somebody was interviewed --  
14 let's take that. Let's assume that the security  
15 people interviewed certain people and those people  
16 said, "Well, I only saw this or I didn't really  
17 see that." Should that have been put as part of  
18 the report? Yes or no.

19 A. I can't answer that yes or no. I wasn't  
20 there. I don't know what the security officer  
21 did.

22 Q. Mr. Habersack, you keep telling me you  
23 weren't there. Here's what we're going to do.  
24 You and I are going to agree that you weren't  
25 there.

1 A. Correct.

2 Q. Okay? Now we know you weren't there.

3 A. Correct.

4 Q. So I don't have to hear it again.

5 So here's my question. My question to  
6 you is, as the director of risk management and the  
7 person representing MGM Grand as a witness in this  
8 case, I'm asking you whether or not there should  
9 have been a report that said, "I interviewed this  
10 witness, and this is what they knew. I  
11 interviewed this witness, and they didn't know  
12 much or they knew nothing."

13 Should they have done that under the  
14 rules? That's my question. That's a yes or no.  
15 They should have done it; they shouldn't have done  
16 it. It's not complicated.

17 A. Well, you said assume in the first part  
18 of your question. So assuming, that could be a  
19 factual statement.

20 Q. Okay. So do you agree that, if  
21 witnesses were interviewed, even if they didn't  
22 know much, it should have been in the report?

23 A. If the witnesses were interviewed, there  
24 should have been statements in the report.

25 Q. Okay. Even if they didn't witness the

1 exact accident; correct?

2 A. I can't answer that because I don't know  
3 that, if they said they didn't see anything,  
4 whether or not they would have had them fill out a  
5 statement at that time.

6 Q. Now, there were -- did you at any time,  
7 after you saw the reports, question anybody at MGM  
8 about who was working that night, because you came  
9 on board only a few months later; right? Did you  
10 question anybody and say, "Hey, how come we don't  
11 have any statements here, we don't have any  
12 evidence to know what happened?"

13 MR. POPOVICH: Objection. Ambiguous as  
14 to time.

15 THE COURT: Sustained.

16 BY MR. MORELLI:

17 Q. When you came on board in 2014 --  
18 correct? -- and you started looking into this  
19 particular case, whenever that was, did you ask  
20 anybody why there was such an incomplete report of  
21 this accident?

22 A. I did not ask anybody anything further,  
23 as this claim was tendered over to the insurance  
24 company.

25 Q. Now, let me ask you this.

1           There was surveillance tape in this  
2 case; correct?

3           A.    There was some surveillance, yes.

4           Q.    And you saw it?

5           A.    Yes, sir.

6           Q.    You've seen it, I mean.

7           **MR. MORELLI:** Your Honor, do you want us  
8 to take a break now because I'm going to show the  
9 video?

10          **THE COURT:** Maybe that would be a good  
11 idea.

12          Okay. We have some things to take up  
13 outside the presence of the jury. So we'll take a  
14 longer recess than usual because I want counsel to  
15 have a recess too after we take up the items  
16 outside your presence. So why don't we recess  
17 with the jury until five after 11:00. It's now 20  
18 to 11:00. Right?

19          **MR. MORELLI:** Yes.

20          **THE COURT:** We'll take up the items that  
21 we discussed at the bench conference. And then  
22 counsel will also have an opportunity, hopefully,  
23 to have a recess as well.

24          **MR. POPOVICH:** Thank you, Your Honor.

25          **THE COURT:** All right.

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

14           Please be outside the courtroom, to the  
15  south, at five after 11:00.

16           Counsel, remain, please.

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

19           **THE COURT:** Would counsel like to take  
20  their recess first and then make the record?

21           **MR. POPOVICH:** Either way.

22           **THE COURT:** Whichever you prefer.

23           **MR. MORELLI:** We might as well just do  
24  it now and then take the recess; right? We're  
25  here.

1           **THE COURT:** Have a seat.

2           **MR. POPOVICH:** Your Honor, before we get  
3 into those, given, two answers ago, about  
4 insurance, can I ask the Court to instruct the  
5 jurors at some point that they should not  
6 consider --

7           **THE COURT:** Oh, that's going to be one  
8 of the instructions that I give to the jury, yes.  
9 I mean, that's one of the pattern instructions.

10          **MR. POPOVICH:** And I understand that.  
11 I'm just thinking, based on what just came out,  
12 sooner rather than later might be appreciated.

13          **THE COURT:** If there's an agreement, I  
14 can go ahead and do that. It's just -- if you  
15 want to give me an instruction --

16          **MR. POPOVICH:** The Court is inclined to  
17 do it at the end?

18          **THE COURT:** At the end, you said?

19          **MR. POPOVICH:** Is the Court inclined to  
20 do it just at the end like normal rather than --

21          **THE COURT:** Well, I mean, if there's an  
22 agreement that I would do it ahead of time, I can  
23 do that too. I mean, it's just I don't -- I  
24 always give that instruction.

25          **MR. POPOVICH:** Tell you what. Let me



1 think about it.

2           **THE COURT:** Right. And if you have one  
3 you want me to read, give it to me.

4           **MR. POPOVICH:** Thank you.

5           **MR. RUSSELL:** Your Honor, I know I moved  
6 to strike the comment, but in the middle of  
7 questioning about things they don't know,  
8 Mr. Morelli made the comment, "Well, we don't know  
9 the Backstage." They have the name of every -- 32  
10 employees from Backstage Employment that were  
11 there that night. I'd like a curative instruction  
12 on that.

13           **THE COURT:** I don't know what they know,  
14 but you can certainly bring that out during  
15 examination at the appropriate time.

16           **MR. RUSSELL:** Well, the list is in  
17 evidence. I mean, we've already given them the  
18 list. So it's in evidence.

19           **MR. MORELLI:** Howard, I'll clarify.

20           **MR. RUSSELL:** Appreciate that.

21           **THE COURT:** Okay.

22           **MR. MORELLI:** Because I really meant the  
23 MGM, not Backstage. So I'll clarify.

24           **THE COURT:** So I think we need to make a  
25 record, then, relative to these two deposition

1 witnesses; right?

2 **MR. MORELLI:** Yes.

3 **MR. POPOVICH:** Yes.

4 **MR. DEUTSCH:** I'll go first, I guess,  
5 Your Honor.

6 I think -- as Mr. Popovich made clear, I  
7 think Your Honor has already ruled, at least with  
8 respect to Ms. Esack, which is the woman from  
9 Seattle, that Your Honor was going to permit her  
10 to testify about the limited facts of -- that she  
11 was involved in the illusion; that she was  
12 injured; you know, what that injury was; and  
13 Mr. Copperfield's knowledge of that injury but not  
14 about any specifics of the illusion itself,  
15 including how the runaround occurred or anything  
16 like that because Your Honor felt that that was  
17 too remote and it was in a different location.  
18 Obviously, for the record, that was over our  
19 objection, but we understand Your Honor's ruling.

20 So I think that that was -- I think,  
21 with respect to Ms. Esack, I think that we all  
22 agree that that's what it was going to be.

23 **THE COURT:** But I think there was also  
24 some evidence about being out against the wall.

25 **MR. DEUTSCH:** Well, I think that

1 involved the portion of her testimony that  
2 detailed the fact that she was sitting there, that  
3 she had the wrist -- her wrist was broken, and  
4 that Mr. Copperfield came over. So that went into  
5 the piece of her testimony about Mr. Copperfield's  
6 knowledge that the accident and injury had  
7 occurred. So that was what we understood her  
8 testimony would be permitted.

9           **THE COURT:** My recollection is you were  
10 objecting to the "against the wall" portion.

11           **MR. DEUTSCH:** No, no, no. The only  
12 objection that I had to the "against the wall" was  
13 because Ms. Fresch's questions were making it seem  
14 as if, in a vacuum, that maybe she got injured in  
15 some other place instead of during the illusion;  
16 that she, like, tripped on the sidewalk or  
17 something. That's what her questions were sort of  
18 indicating at the time.

19           **THE COURT:** All right. But where she  
20 was and the ambulance and all that, that's part of  
21 what came in.

22           **MR. DEUTSCH:** Yeah. Right. And  
23 Mr. Copperfield knowing about it and  
24 Mr. Copperfield calling her about it and  
25 Mr. Copperfield sending her a Christmas card.

1           **THE COURT:** I think that's relevant.

2           **MS. FRESCH:** Your Honor, I will reassert  
3 my objections to Ms. Esack's testimony in its  
4 entirety because I do think it's not relevant.  
5 It's too remote. And, you know, we're kind of in  
6 a quagmire because Ms. Esack, yeah, there was an  
7 injury, but I don't want -- maybe there has to be  
8 some type of instruction to the jury because she  
9 was injured, but I don't want to leave out there  
10 that somehow -- because there's no finding of why  
11 she fell or how --

12           **THE COURT:** No, I understand that.

13           **MS. FRESCH:** Because just saying she was  
14 injured and -- they'll contend that  
15 Mr. Copperfield actually spoke to her. We would  
16 refute that. But the fact that it just leaves  
17 this little question mark out, like, a little  
18 bubble over a character's head.

19           **THE COURT:** I think her testimony  
20 regarding the fact of injury during the course of  
21 the Thirteen Illusion is appropriate and will be  
22 permitted.

23           There was a discussion about an  
24 instruction that the Court would give that it's  
25 only applicable as to the Copperfield defendants.

1           **MR. DEUTSCH:** Correct. We had  
2 stipulated to that, Your Honor.

3           **THE COURT:** Right. Okay. So that will  
4 have to be something that you'll give me to read  
5 to the jury.

6           **MR. DEUTSCH:** Right.

7           **MR. MORELLI:** Yes.

8           **MR. DEUTSCH:** Correct. Although --

9           **THE COURT:** Now -- okay. So we've dealt  
10 with Ms. Esack, is it?

11          **MR. DEUTSCH:** Right.

12          **MS. FRESCH:** But how are we -- just the  
13 process. So is plaintiff going to give us the  
14 page and line ahead of time so that I can  
15 review --

16          **MR. DEUTSCH:** Yes.

17          **THE COURT:** That's why we're doing this  
18 now, so that they can configure --

19          **MS. FRESCH:** I just want to make sure  
20 we're on the same page.

21          **MR. DEUTSCH:** We will give them to you  
22 by sometime tomorrow, sooner rather than later.  
23 That way, you can get us back, within a certain  
24 amount of time, yours. And then we could maybe,  
25 if we all agree on what pages and lines we can do,

1 we can maybe just have one person do the video --  
2 you know, edit of the video so we can just play  
3 one complete videotape of the whole thing. That  
4 seems to be what makes sense to me.

5 **MR. POPOVICH:** That's what I'm used to.

6 **MR. DEUTSCH:** So we will get them to you  
7 by, like, noon tomorrow. Does that work?

8 **MS. FRESCH:** Yes.

9 **MR. DEUTSCH:** And then you guys can get  
10 them to me by the end of the day tomorrow. And  
11 that way, whoever video has Sunday and Monday  
12 morning, and then we can have it maybe by Monday  
13 afternoon.

14 **MS. FRESCH:** Or maybe first thing  
15 Sunday.

16 **MR. DEUTSCH:** Okay.

17 **THE COURT:** Okay. Now, with respect to  
18 Ms. Lawrence --

19 **MR. DEUTSCH:** Yes. We, Your Honor, feel  
20 that Ms. Lawrence's testimony in its entirety is  
21 relevant and should be permitted. It happened  
22 within a couple of months of this accident.  
23 Mr. Carvalho conceded that he would have been  
24 working that same night. He testified that he was  
25 working in June, that he worked every night, he

1 did all the shows. So it's exactly the same  
2 thing. It was the exact same runaround.  
3 Mr. Carvalho testified that the procedure --

4 **THE COURT:** Again, we're looking at fact  
5 of injury, though, aren't we?

6 **MR. DEUTSCH:** Well, it's more than that  
7 because it's also impeachment about them saying  
8 that nobody runs and -- and --

9 **THE COURT:** But you know what? You  
10 could have developed that with somebody who was in  
11 the incident who wasn't injured.

12 **MR. DEUTSCH:** But, Your Honor --

13 **THE COURT:** Whether it's "run, run,  
14 run," being yelled out, that doesn't depend on  
15 somebody --

16 **MR. DEUTSCH:** Your Honor, we had no  
17 ability to know because --

18 **THE COURT:** Wait a second. I think  
19 maybe you're misunderstanding my point. One of  
20 the things that you're going to adduce or you want  
21 to adduce is that she was told to run, run, run,  
22 run; right? As I recall.

23 **MR. DEUTSCH:** Absolutely.

24 **THE COURT:** Right?

25 Okay. That kind of evidence could have

1 been developed through regular discovery --  
2 right? -- by somebody who was in the incident,  
3 whether they fell or not, "Are you told to run?"

4 **MR. DEUTSCH:** No, because they don't  
5 keep track of the names of the people that  
6 participate in the illusions. So we would have  
7 been unable to find anyone else that was in the  
8 illusion other than by sheer luck.

9 We had put out a Facebook post in  
10 Las Vegas back -- I don't remember exactly when it  
11 was -- in 2016 looking for anyone who had been  
12 involved in this illusion. There's no way for us  
13 to identify -- whether it was someone who was  
14 injured or just someone who participated in the  
15 illusion, there was no way for us to identify any  
16 other participants in the illusion whether they  
17 were injured or not. It was impossible for us to  
18 do that because there's no record of any of those  
19 things. So regardless even of the fact that she  
20 was injured, we had no way of finding it.

21 **THE COURT:** Well, you know, in looking  
22 at your brief that you filed regarding these  
23 witnesses -- okay? -- you have said that the --  
24 that the purpose of the -- of being allowed to  
25 adduce evidence through these witnesses was for



1 impeachment as to whether or not there were prior  
2 injuries, not as to the modus operandi of the  
3 manner in which the show takes place.

4 **MR. DEUTSCH:** Well, Your Honor, I think  
5 that if it wasn't as clear in the brief as it  
6 could have been, but the fact is, Your Honor, that  
7 there has been testimony from every single one of  
8 the defense witnesses thus far -- Mr. Carvalho,  
9 Ms. Weall, Mr. Kenner, all of them -- that --

10 **MR. MORELLI:** And Copperfield.

11 **MR. DEUTSCH:** And Mr. Copperfield --  
12 that nobody runs, that nobody is ever told to run,  
13 that it's a brisk walk, that it's slow, that they  
14 can go at their own pace, that nobody ever says  
15 anything to them about anything about the speed,  
16 that it's calm and collected and super mellow and  
17 totally relaxed.

18 We were finally, thankfully, able to  
19 identify someone -- which is like picking a needle  
20 out of a haystack, Your Honor, to find one person  
21 who actually participated in the trick who would  
22 be willing to come in. The fact that they came  
23 forward is miraculous. It really is. And the  
24 fact is, Your Honor, it clearly impeaches this  
25 testimony.

1           And I'd like to play something for you,  
2 Your Honor, if I may, because, while it's a little  
3 unorthodox, I want to play something for you, Your  
4 Honor, because I think it's relevant because of  
5 what Your Honor stated in terms of the truth --

6           **MS. FRESCH:** But before you play that --

7           **MR. DEUTSCH:** Truth-finding.

8           **MS. FRESCH:** I think I know what he's  
9 going to play, and I would highly object to this,  
10 of him just playing some newscaster --

11          **MR. DEUTSCH:** It's for the purpose of my  
12 argument.

13          **MS. FRESCH:** No, it's not for  
14 purposes -- because that man is not under oath;  
15 he's on TV.

16          **MR. DEUTSCH:** Okay. But it's for the  
17 purpose of my argument. I'm allowed to use it as  
18 my argument.

19          **MS. FRESCH:** I'm objecting to it, Your  
20 Honor. I just want to be on the record.

21          **MR. DEUTSCH:** Your Honor, the point of  
22 this is --

23          **THE COURT:** Just paraphrase what it is.

24          **MR. DEUTSCH:** Sure. The point of this  
25 is, Your Honor, is that the goal in this trial is

1 to get to the truth. That's what Your Honor said.  
2 And, right now, there is one side to this story,  
3 which is that these people are not ever told to  
4 run, that it's calm and collected, and everyone  
5 just walks around very quietly.

6 Mr. Cox is obviously going to testify to  
7 the contrary about that. But Mr. Cox, obviously,  
8 has a dog in this fight, and they're going to  
9 attack his credibility for that purpose, about the  
10 fact that he has some reason to not be telling the  
11 truth.

12 We now have other witnesses who came  
13 forward out of the grace -- goodness of their own  
14 heart, to come in here and say that the statements  
15 made by the defendants in this case are not  
16 accurate.

17 We actually were sent a video, what I  
18 was going to show you, from a newscast in British  
19 Columbia where they were covering this trial. And  
20 the newscaster who was doing it was actually a  
21 participant in this trick as well. And that  
22 newscaster, after they finished playing the clip  
23 of the trial and, you know, what was going on, one  
24 newscaster turns to another newscaster and said,  
25 "Hey, you were, in fact, a participant in this

1 illusion at MGM, weren't you?"

2 And he says, "I was." And he said, "You  
3 know, it was crazy. I was sitting on the  
4 platform. They closed the curtains. And the  
5 second they closed the curtains, they yelled,  
6 'run, run, run.'"

7 So that is another witness who was a  
8 participant in this illusion who we never would  
9 have been able to identify no matter what we did,  
10 who says that what the defendants are saying about  
11 how this works is just not true.

12 And this jury, Your Honor, is entitled  
13 to hear all the facts. They should not decide  
14 this case based on technicalities with respect to  
15 disclosure.

16 And regardless of the technicalities,  
17 Your Honor, the rule is substantial justification  
18 for not giving the late witness notice. It's not  
19 just that if it's a late identification of a  
20 witness that they should just be precluded; there  
21 just needs to be some good cause shown, some  
22 substantial justification, about why that witness  
23 was not disclosed sooner.

24 And I think it's pretty clear that we  
25 showed that, that we had no ability to find them.

1 Within 15 minutes of them coming forward, we  
2 disclosed them. There's no prejudice to them at  
3 all. They knew about all of these other  
4 witnesses. They chose not to keep names of all  
5 these people. So there's no prejudice to them.  
6 It's not harmful to them other than the fact that  
7 it gets to the truth.

8 And to have this jury decide this case  
9 with only half of the facts because of a  
10 technicality of late disclosure when there's  
11 substantial justification for why that disclosure  
12 was late --

13 **THE COURT:** So, basically, what you're  
14 saying is your position has morphed from no prior  
15 injuries now to not only were there prior injuries  
16 but this is how they took place; right?

17 **MR. DEUTSCH:** So -- well, no, no.

18 **THE COURT:** Wasn't your initial position  
19 basically that the stadium has shown this is how  
20 many people have participated, nobody has been  
21 injured. That's the reason why the Court allowed  
22 you then to, you know, adduce evidence regarding  
23 prior injuries. But now you want to take it not  
24 only to the prior injuries but how they took  
25 place.

1           **MR. DEUTSCH:** Well, yes, Your Honor,  
2 because -- that's exactly right.

3           **THE COURT:** There's a distinction  
4 between fact of injury and cause of injury.

5           **MR. DEUTSCH:** Well, I understand that --

6           **THE COURT:** I thought you were focusing  
7 on fact of injury.

8           **MR. DEUTSCH:** I understand that, Your  
9 Honor, but in light of Your Honor saying we could  
10 have a deposition, one of the reasons why we  
11 wanted to do a deposition was so that everyone  
12 could see what the person was going to say. And  
13 then after we heard what the person was going to  
14 say, we were going to figure out what we wanted to  
15 do with the witness.

16           So, now, having heard what the witness  
17 says, that's my position. And it shouldn't make a  
18 difference at this point, having now heard the  
19 testimony, what was the initial thought process.  
20 We now know what the testimony is and we know that  
21 the testimony flat out impeaches the defendants'  
22 position in this case.

23           And, therefore, they would be  
24 permissible as an impeachment witness. They would  
25 be permissible as a rebuttal witness. It doesn't

1 matter what we call them. We can call them  
2 whatever we want to call them. The fact is that  
3 they have evidence that is relevant to this case  
4 that the jury should hear in deciding this case,  
5 because, if they don't, they'll only be deciding  
6 it based on half the evidence.

7           We had substantial justification for why  
8 we didn't have this witness sooner. Had we  
9 disclosed this witness 30 days ago, we wouldn't  
10 even be discussing this. I mean, that's the -- if  
11 I had given them the name of this woman two months  
12 ago or three months ago, assuming I had it --  
13 somehow was able to find this woman out of nowhere  
14 and I found her, and six months ago or a year ago,  
15 I gave them this witness and they got to depose  
16 this witness, there would be no discussion that  
17 her testimony would be relevant, none.

18           It would be admissible and relevant and  
19 she'd be allowed to testify. There's no  
20 discussion. We have a woman who participated in a  
21 trick who says how it was done. It would be  
22 clearly relevant and admissible. So, therefore,  
23 the only issue that we're really looking at right  
24 now is the technical issue of whether the notice  
25 was late or not.

1           And the only showing that we have to  
2 make of the Court on that issue is whether we were  
3 substantially justified in giving the late notice.  
4 And based on the fact that we had absolutely no  
5 way to find anyone in this case that participated  
6 in the illusion other than Mr. Cox -- had MGM and  
7 Mr. Habersack identified those people or Backstage  
8 identified the people that were doing the  
9 runaround with him that night, we'd be in a  
10 different situation.

11           **THE COURT:** Let me hear from counsel.

12           **MR. DEUTSCH:** But we know that didn't  
13 happen.

14           **MS. FRESCH:** Well, Your Honor, I think  
15 we're neglecting to remember that Mr. Cox hired a  
16 very well-respected and great lawyer of Mr. Eglet  
17 two days after this. And you know what? It's too  
18 bad, but Mr. Eglet, for whatever reason --

19           **MR. DEUTSCH:** It was a less  
20 well-respected lawyer, Your Honor.

21           **MS. FRESCH:** I'm sorry. But you know  
22 what? Mr. Eglet was involved in this lawsuit too.  
23 There's been a lot of lawyers involved in this  
24 lawsuit. And, you know, the fact that they didn't  
25 do any discovery and investigation from two days



1 later, from November 14th of 2013, to look for  
2 witnesses, to interview people, to stake out the  
3 illusion for the next 30 days to talk to people or  
4 whatever, that's the problem here. They didn't do  
5 proper discovery or investigation.

6 Now, because someone just came up now,  
7 they're like, well, this person has come up. And  
8 there is a distinction. If this person had been  
9 identified during normal course of discovery --  
10 because, then, we would have taken her deposition,  
11 and I would have had -- or all of us would have  
12 had adequate time to actually do other  
13 investigation to determining whether they're even  
14 telling the truth, to determine -- there's a host  
15 of things.

16 Because, right now, I'm scrambling for  
17 my impeachment evidence of both witnesses because  
18 I've only been able to deal with this since two  
19 days ago. And they're going to go -- potentially  
20 be viewed to the jury on Monday. And then I have  
21 to hurry and scramble as this case takes longer  
22 and longer and longer. And I think it's not  
23 germane.

24 **MR. POPOVICH:** If Ms. Lawrence is  
25 allowed at all for MGM, I would request a limiting

1 instruction. There's no indication from her  
2 testimony that she spoke with an MGM security  
3 person, and she specifically said no report was  
4 taken. As we heard from Mr. Habersack this  
5 morning, if there's no report, MGM doesn't know  
6 about it.

7 **MR. DEUTSCH:** That's actually not what  
8 he said. What he said was that a report is  
9 supposed to be done even if the person refuses the  
10 report.

11 **MR. POPOVICH:** If it's reported to  
12 security. She did not identify anyone that she  
13 talked to as being security.

14 **MR. DEUTSCH:** Your Honor, if I just may  
15 respond to Ms. Fresch's argument. The fact is, is  
16 that their truthfulness and credibility is for the  
17 jury to decide. Okay? That's their job. And  
18 they should get to make that determination in this  
19 case.

20 One of the central issues in this case  
21 is whether or not the people have to walk or run,  
22 if it's chaotic or not chaotic, how it's done.  
23 That's one of the essentials in this case.

24 And Ms. Fresch is suggesting that the  
25 lawyers that were involved in this case before us

1 should have staked out the trick and, while people  
2 were running around in the runaround, they should  
3 have been standing out there, saying, "Hey, can I  
4 get your name real quick?"

5           That's what she's suggesting that we  
6 should have done. It's a ridiculous standard to  
7 hold an attorney to. Every time we have a  
8 slip-and-fall in the supermarket or a  
9 slip-and-fall case anywhere, we're supposed to put  
10 out notices to the world, "Hey, has the millions  
11 of people that have ever been in that supermarket  
12 fallen before?"

13           It's an impossible standard. It's an  
14 impossible standard. We never would have been  
15 able to identify these participants unless the  
16 people that knew who they were at the time they  
17 knew Mr. Cox was hurt took down their names the  
18 way the rules required them to.

19           That's what we're talking about this  
20 morning. Had MGM said, you were there -- we saw  
21 the video, Your Honor. There were four or five,  
22 six people that were around Mr. Cox when he fell,  
23 not only MGM security guards but participants in  
24 the trick. We know from Mr. Carvalho that they  
25 were all in the room together when Mr. Copperfield

1 stopped to question if he was okay or not.

2 At that point they could have identified  
3 all of those people in the room that were there.  
4 We would have been able to depose those people and  
5 said, "Hey, were you running or walking? What  
6 happened?"

7 But it gets back to the point before,  
8 that there is nothing different about this witness  
9 other than the fact that her disclosure was late.  
10 If she was disclosed sooner, there is no doubt  
11 that her testimony would be admissible.

12 So the only question that we believe the  
13 Court needs to be looking at is whether there was  
14 a justification, which is what the rule states --  
15 I think it's 37.1 -- states, that there needs to  
16 be a substantial justification for why there was  
17 late notice.

18 All the courts in this country,  
19 including the Nevada Supreme Court, the Supreme  
20 Court of the United States, say that cases should  
21 be decided on the merits and not based on  
22 technicalities of late notice, especially if good  
23 cause is shown. And we have shown that good  
24 cause, Your Honor. So --

25 **MS. FRESCH:** I think Mr. Roberts --

1           **MR. ROBERTS:** With regard to Lawrence,  
2 it also does affect us. There's no stipulation, I  
3 don't think, on this one.

4           So first, with regard to the idea that  
5 they had no way to obtain evidence of whether  
6 someone said "Run, run, run," or what the scene  
7 was like, we did disclose all 32 employees who  
8 were there, including the two employees who were  
9 inside of the Thirteen prop that night in response  
10 to their discovery request.

11           **THE COURT:** They wouldn't have known the  
12 names of the participants, though.

13           **MR. ROBERTS:** They would have been able  
14 to testify to what happened inside the prop. Your  
15 Honor, we disclosed 32 names of people who were  
16 there. They deposed three of them. 29 people  
17 they didn't depose that might have known some  
18 information.

19           **MR. DEUTSCH:** Your Honor, there's no  
20 doubt --

21           **MR. ROBERTS:** They did not diligently  
22 pursue discovery in this case, Your Honor.

23           **MR. DEUTSCH:** Your Honor, I don't think  
24 there could be any doubt --

25           **MR. ROBERTS:** Could I --

1           **MR. DEUTSCH:** You want to call --

2           **MR. ROBERTS:** Your Honor --

3           **MR. DEUTSCH:** You want to call --

4           **MR. ROBERTS:** -- could you instruct

5 Mr. Deutsch to sit down until I'm done.

6           **MR. DEUTSCH:** Sorry. Sorry. Sorry. I  
7 apologize.

8           **THE COURT:** I don't think he interrupted  
9 you. So let him speak.

10          **MR. DEUTSCH:** I apologize.

11          **THE COURT:** Go ahead.

12          **MR. ROBERTS:** Thank you, Your Honor.

13               Second, in order for this to be  
14 relevant, there has to be substantial similarity.  
15 I understand impeachment due to the fact of  
16 injury. The only person that they would possibly  
17 impeach are opening statements because  
18 Mr. Copperfield, to his knowledge, no one had been  
19 hurt. This witness testified that she didn't tell  
20 Mr. Copperfield. She testified she didn't tell  
21 Mr. Kenner, that Mr. Kenner was not called.  
22 There's no one that's testified in this trial that  
23 this impeaches, only some claim of no injuries  
24 during opening statement.

25               So the fact of injury, I understand your

1 ruling on the other case; I understand how that  
2 might be relevant. But then you get to her injury  
3 and how she fell. There's no substantial  
4 similarity. She had a problem with her shoe. She  
5 was running in her shoe. She didn't say she  
6 slipped on construction dust. She didn't say she  
7 slipped at all.

8           Finally, Your Honor, there's one more  
9 argument that I need to make, and you may have  
10 heard this when Mr. Russell was doing the  
11 deposition. But she testified the very reason she  
12 came forward is she saw part of the trial on TV.  
13 She saw Mr. Copperfield's testimony regarding this  
14 very issue. And then she researched the trial on  
15 the internet after she met with counsel.

16           Under Givens v. State --

17           **MR. DEUTSCH:** Never met with us.

18           **MR. ROBERTS:** -- 657 P.2d 97, it  
19 discusses the sequestration of witnesses and the  
20 presumption that a prejudice has occurred if  
21 there's a violation of the sequestration order.

22           "The purpose of sequestration of  
23 witnesses is to prevent particular witnesses from  
24 shaping their testimony in light of other  
25 witnesses' testimony and exposing falsehoods by

1 exposing inconsistencies."

2 She actually saw part of  
3 Mr. Copperfield's testimony on the very issue that  
4 she's here to allegedly rebut.

5 The supreme court said, "We hold that,  
6 because requiring the requested -- requesting  
7 party to prove that actual prejudice occurred  
8 would be overly harsh and unjust, we will presume  
9 prejudice from a violation of NRS 50.155 unless  
10 the record shows prejudice did not occur."

11 The court also noted, "In many  
12 instances, the prejudice resulting from a  
13 violation of a sequestration order will be  
14 virtually impossible to detect as the damage will  
15 already have been done and no inconsistencies will  
16 appear."

17 So in this case there's a violation of  
18 the sequestration order. She saw part of the  
19 trial. Witnesses were excluded from the trial.  
20 And she's here to comment on the testimony she saw  
21 of the trial. And there's no exception to the  
22 rule which would allow her to view  
23 Mr. Copperfield's testimony before coming in to  
24 rebut it.

25 **THE COURT:** She hadn't been denominated



1 as a witness at that point. She became aware of  
2 it because of it and then she came forward. So I  
3 disagree with that.

4 **MR. DEUTSCH:** Your Honor, if I may  
5 respond to one thing that Mr. Roberts said. If  
6 Mr. Roberts is suggesting that, had we deposed all  
7 32 of their witnesses, that some of them would  
8 have come in and said something other -- told the  
9 truth or told something other than "brisk walk,"  
10 like the four people that we did depose, if he is  
11 saying that one of the people they would have  
12 produced that they identified would have said what  
13 Ms. Lawrence said, then he could bring that person  
14 in now and we'll ask him the questions in court,  
15 if he's suggesting that one of those people would  
16 have said what Ms. Lawrence said.

17 **MR. ROBERTS:** And, Your Honor, we  
18 mentioned this in our brief. We've had someone  
19 monitoring Facebook, social media, throughout the  
20 trial. And there are at least 12 people that have  
21 posted that they were participants in the illusion  
22 and that it was perfectly safe and that this is a  
23 ridiculous lawsuit. And we should be able to  
24 bring those in to rebut.

25 **THE COURT:** We've got to move on here.

1 We could debate this for a long time.

2 With respect to Ms. Lawrence, at this  
3 point the testimony will be confined to the fact  
4 of injury. That's without prejudice to  
5 utilization of manner of injury or the "run, run,"  
6 whatever in rebuttal if it comes to that. So  
7 that's what I'm doing.

8 **MR. MORELLI:** Your Honor, I don't  
9 understand. What do you mean by "if it comes to  
10 that"? It's come to that.

11 **THE COURT:** I mean, I'm not sure what  
12 evidence the defense is going to put on, but the  
13 plaintiff has the right to rebut.

14 **MR. DEUTSCH:** They've already put on  
15 their evidence, Your Honor. The only witnesses  
16 that they're calling at this point, other than the  
17 ones that are already here, are two security  
18 guards who took the report who don't have any  
19 information about that and an expert who's going  
20 to say that Mr. Cox tripped instead of slipped.

21 So all of the witnesses that the  
22 defendants are going to put on in their case have  
23 already given their defendants' testimony in their  
24 cross-examinations when we did it.

25 So the bell has been rung by them.

1 Their defense is in. All of the evidence is in at  
2 this point. There's going to be nothing new on  
3 the defense case other than an expert who says  
4 that he tripped and two security guards that talk  
5 about their investigation. They weren't part of  
6 the illusion. There was one guy who opened the  
7 door and then walked away, and there's another guy  
8 who came down and wrote the report after the fact  
9 and has no idea about how anything works.

10 So all of their testimony is in, and  
11 this is already rebuttal. I mean, any way you  
12 look at it, it's already happened.

13 **THE COURT:** Let me hear from counsel on  
14 that point -- it's now almost 10 after 11:00 --  
15 what counsel just said. Did you want to address  
16 what counsel just said about the course of the  
17 defense and the -- whether or not anything remains  
18 on this subject?

19 **MS. FRESCH:** Well, Your Honor, plaintiff  
20 hasn't rested yet. So I'm not going to sit here  
21 and say, for the witnesses who have gone before  
22 who were identified on my witness list, then I may  
23 call them back in my case in chief. I have the  
24 ability and right.

25 Yes, I know we talked about that,

1 especially because we thought we'd be done with  
2 this trial. So we went beyond cross-examination.

3 **THE COURT:** Right.

4 **MS. FRESCH:** But that does not mean, by  
5 the time plaintiff closes and the entire  
6 plaintiffs' case is presented, that I would not  
7 still elect to call someone to present more  
8 testimony in my -- in my client's defense. I'm  
9 not aware of a rule --

10 **MR. DEUTSCH:** I agree with her, Your  
11 Honor, other than the fact that she would be  
12 entitled to produce more testimony but not the  
13 same. And the area that we're talking about, the  
14 run versus walk versus that, has already been  
15 covered by her.

16 **MS. FRESCH:** Really? I --

17 **THE COURT:** And it is also the subject  
18 of further defense; right?

19 **MR. DEUTSCH:** Well, if it wasn't  
20 cumulative, I guess, and she could ask the same  
21 questions --

22 **THE COURT:** I guess if it's allowed,  
23 then she would be allowed to adduce evidence that  
24 addresses that; right?

25 Well, that being so, I'll allow the

1 "run, run, run" too.

2 **MR. DEUTSCH:** Okay.

3 **THE COURT:** All right.

4 **MR. DEUTSCH:** Thank you. Good.

5 **THE COURT:** In other words, not just the  
6 fact of injury, but how she claims it happened.  
7 Okay? Her involvement in the illusion as to how  
8 that took place.

9 **MR. ROBERTS:** I'm sorry, Your Honor. I  
10 don't understand how we just flipped.

11 **THE COURT:** The fact is the defense is  
12 going to hear this evidence and have an  
13 opportunity to prepare for it in presenting the  
14 defense case.

15 **MR. ROBERTS:** Your Honor, we're not  
16 putting on any more witnesses. Our witnesses have  
17 taken the stand and they've flown to New York.

18 **THE COURT:** Ms. Fresch just said --

19 **MS. FRESCH:** I'm reserving my right. I  
20 don't feel like I should be boxed into a corner  
21 today without hearing the rest of plaintiffs' --  
22 because basically what they're asking me to  
23 stipulate right now, I'm not going to call any  
24 witnesses. That's really what I hear them saying.

25 **THE COURT:** So that would mean that they

1     couldn't call that person in rebuttal; right?

2               **MS. FRESCH:** Well, they can call that  
3     person in rebuttal, but that shouldn't be done on  
4     Monday.

5               **MR. ROBERTS:** Rebuttal is in their  
6     rebuttal case, Your Honor. But for me, I have no  
7     witnesses left. They've called all my witnesses.

8               **THE COURT:** I ruled on this without  
9     prejudice for the plaintiff calling that aspect of  
10    it in rebuttal. And what I'm hearing you say,  
11    Mr. Roberts, is that there isn't going to be  
12    anything to rebut because it's in already.

13              **MR. ROBERTS:** Correct. As to Backstage,  
14    that's correct.

15              **THE COURT:** That being so, it seems to  
16    me then let the plaintiff put it on and you'll be  
17    prepared for it because you'll know what it is and  
18    you can decide your defense as you go along,  
19    having heard it.

20              **MR. ROBERTS:** I've got no witnesses left  
21    to rebut it even if I hear it and decide I need  
22    to.

23              **THE COURT:** But you're not the only  
24    defendant in the case. Ms. Fresch just said that  
25    she may plan her defense accordingly.

1           **MR. ROBERTS:** But what -- she's gone.  
2 We've deposed her. There's nothing to prepare  
3 for. It's just going to be played.

4           **THE COURT:** No, I understand. I'm not  
5 talking about that person. I'm talking about what  
6 witnesses may be put on by the defense as a result  
7 of it. That's all I'm saying. I don't know.

8           **MS. FRESCH:** Your Honor, now I'm  
9 confused. Are we having Ms. Lawrence's testimony,  
10 from any respect, shown Monday -- potentially  
11 Monday, if we get through all this -- versus that  
12 being in plaintiffs' rebuttal case?

13           **THE COURT:** Well, see, when I said  
14 rebuttal, that's what I said. Then you indicated,  
15 as I understood it, that you may be adjusting your  
16 defense, because the question is whether or not  
17 anybody else is going to be called and you said  
18 you were going to be adjusting your defense based  
19 upon how things are going. So that's why I  
20 thought the rebuttal was fair. I don't know.

21           **MS. FRESCH:** But rebuttal wouldn't be  
22 done on Monday.

23           **THE COURT:** No, it wouldn't.

24           **MS. FRESCH:** Okay. So we're not going  
25 to have Ms. Lawrence's testimony on Monday?

1           **THE COURT:** I don't know. We haven't  
2 got to that point yet.

3           **MR. POPOVICH:** You're getting hung up on  
4 rebuttal. He's allowing the facts of the  
5 illusion, the "run, run, run."

6           **MR. MORELLI:** In chief.

7           **THE COURT:** I originally wasn't going  
8 to. I think I said it would just be in rebuttal,  
9 but in response to what I heard --

10          **MS. FRESCH:** Then I retract it because  
11 I --

12          **THE COURT:** All the witnesses have  
13 testified and everything and therefore --

14          **MR. DEUTSCH:** Can we use the restroom  
15 now, Your Honor?

16          **MS. FRESCH:** I'll be done with that  
17 then.

18          **THE COURT:** Well, let me hear from  
19 Mr. --

20          **MR. POPOVICH:** I just asked for a  
21 limiting instruction as to MGM. Is the Court  
22 going to grant that or is it coming in for all  
23 defendants?

24          **MR. DEUTSCH:** Our position, Your Honor,  
25 is that since we know the MGM employees were there



1 that night, just like they were there a couple  
2 months later, despite the fact that she didn't  
3 specifically report it --

4 **THE COURT:** The whole thing opened up  
5 because of, as I understood your position --

6 **MR. DEUTSCH:** Yes.

7 **THE COURT:** -- because of the number of  
8 people who have participated without injury;  
9 right?

10 **MR. DEUTSCH:** Correct.

11 **THE COURT:** So that was the Copperfield  
12 defendants.

13 **MR. POPOVICH:** It wasn't MGM. I didn't  
14 open up that one.

15 **MS. FRESCH:** Your Honor, I thought you  
16 were for sure allowing it in our case in chief.  
17 So then I feel like, if someone is being allowed  
18 something in case in chief, I would be able to do  
19 a defense.

20 If your ruling as to Ms. Lawrence is  
21 that that would be a rebuttal witness only, I will  
22 not bring anybody in --

23 **THE COURT:** That would mean they  
24 wouldn't have a rebuttal.

25 **MS. FRESCH:** Then they wouldn't need a

1 rebuttal. But if you were saying it would only be  
2 a rebuttal, well, then her testimony then is not  
3 necessary.

4 I misunderstood. And I apologize. I  
5 misunderstood what you were saying at the  
6 beginning because I thought you were saying --  
7 because we started talking about this about  
8 Monday. And maybe I just thought you were stating  
9 they got to do this for their case in chief.  
10 So --

11 **THE COURT:** Well, I think the idea was,  
12 because of the way the examinations have taken  
13 place with the understanding that cross could go  
14 beyond direct and go into the defense case points,  
15 right, that what plaintiffs counsel is saying is  
16 that the evidence is in that you're going to be  
17 putting in relative to the manner in which it took  
18 place, the witnesses have testified, and therefore  
19 it's appropriate at this point to permit them to  
20 call a witness at this stage.

21 **MS. FRESCH:** I'm not going to call  
22 anyone else about "run, run, run."

23 **MR. MORELLI:** You don't have to. It's  
24 in the case ad nauseam.

25 **MS. FRESCH:** Then Ms. Lawrence doesn't

1 need -- her testimony is unnecessary. I guess I'm  
2 very confused because I thought we were talking  
3 that, if there was a ruling that she was coming in  
4 on a case in chief -- which, to me, is totally  
5 different than what you had talked about last week  
6 you were saying, well, maybe as a rebuttal  
7 witness. So if your ruling is she's only going to  
8 be permitted potentially as a rebuttal witness,  
9 then we're not fighting about Monday now.

10 **THE COURT:** What I had said is in the  
11 case in chief -- my original thought was in the  
12 case in chief she could testify about the injury,  
13 right, but not the course of -- the manner in  
14 which the injury took place, the fact of injury.  
15 Because I understood the plaintiffs' position  
16 basically to be impeachment on the occurrence  
17 of -- but as I heard further argument, it appeared  
18 to me that, in this situation regarding her, it's  
19 proximate in time, it's the same place, all right,  
20 and that the manner in which the illusion took  
21 place with respect to the "run, run, run,"  
22 et cetera was -- could be adduced at this time  
23 because it would be in effect not only case in  
24 chief but, in effect, rebuttal of what defense  
25 witnesses have testified about. Okay?

1           So that being the case, then I won't  
2 preclude you from calling any additional witnesses  
3 if you intend, based on the context, if I allow  
4 this to come in, if you have somebody you want to  
5 call on the subject of the "run, run, run" or  
6 whatever, you can do so.

7           **MR. RUSSELL:** Your Honor, the problem  
8 that I'm having here, Mr. Deutsch made a comment  
9 that, well, if we had deposed the other 29 people  
10 that you gave us information on, they would have  
11 just said the same thing.

12           Well, if that was the rule, then no  
13 party would ever have to do discovery. They could  
14 show up at trial and say, "Well, I knew what he  
15 was going to say, so I didn't take his  
16 deposition."

17           And what we disclosed to plaintiffs two  
18 and a half, three years ago, was a list of  
19 employees, including saying these were the two  
20 employees inside the prop.

21           Now, the testimony has been that this  
22 "run, run, run," Ms. Lawrence's testimony, that's  
23 the people that should step inside the prop.  
24 Okay. Ms. Weall testified that she was on the  
25 edge of the dragon and there's loud music going,

1 so that doesn't rebut anything she said.

2 The two employees that were inside the  
3 prop on the night of Mr. Cox's illusion, who could  
4 have been questioned about what they said and how  
5 they carried things out, have been known to the  
6 plaintiffs for more than two and a half years. We  
7 can't assume what they're going to say. That's  
8 what plaintiffs get to do discovery for.

9 **THE COURT:** Those are employees of a  
10 party.

11 **MR. RUSSELL:** Right. My point is -- I'm  
12 talking about the "run, run, run" thing. I'm  
13 talking about the "run, run, run" issue. And my  
14 point is they're saying, "Well, we don't have any  
15 other way of finding witnesses to ask about that."

16 They had the two people that were inside  
17 the prop the night of Mr. Cox's accident to ask  
18 about that and they didn't depose them. So they  
19 can't now say, "Well, this person just came up, so  
20 let's use her instead."

21 They chose who to depose and who not to.  
22 And they chose not to depose the two people that  
23 would have had not only information about the --

24 **THE COURT:** Okay. Those are employees.  
25 Okay? Those are employees affiliated with a

1 party. Okay?

2 **MR. RUSSELL:** I understand this.

3 **THE COURT:** This witness is non -- she's  
4 not a party in the case.

5 **MR. RUSSELL:** I understand that. But  
6 the point of -- we started back -- what  
7 Mr. Deutsch said is that there has to be  
8 substantial justification for allowing this late  
9 witness.

10 My point is there can't be substantial  
11 justification when you didn't do the discovery to  
12 look into those issues in the first place. You  
13 can't say we got this new witness when you had two  
14 witnesses you could have asked a long time ago  
15 about the same exact thing, not only in general,  
16 but the ones there on that night.

17 And they never took that opportunity.  
18 So they can't backdoor it in now, Your Honor.

19 **THE COURT:** All right. Thank you. I  
20 think the question -- yes.

21 **MR. CALL:** Your Honor, for Team, I know  
22 you were giving a limiting instruction --

23 **MR. DEUTSCH:** We consent to that.

24 **MR. CALL:** And as far as --

25 **MR. DEUTSCH:** Ms. Lawrence too. We

1 consent to a limiting instruction because Team was  
2 not doing work at the time of Ms. Lawrence's act.

3 **MR. MORELLI:** Neither one of those  
4 witnesses apply to that defendant, Team.

5 **MR. CALL:** Just so long as the jury  
6 understands.

7 **THE COURT:** Well, I have to have  
8 instructions given to me. Mr. Popovich has also  
9 said --

10 **MR. DEUTSCH:** So if you guys want to  
11 draft something for Ms. Esack for you?

12 **MR. CALL:** Oh, for the three of us?

13 **MR. DEUTSCH:** For the three of you for  
14 Ms. Esack, and if you guys want to draft something  
15 for that, we'll take a look at it. And we agree  
16 to that.

17 **THE COURT:** What is your position on  
18 Ms. Lawrence relative to MGM?

19 **MR. DEUTSCH:** We think that  
20 Ms. Lawrence's testimony should come in against  
21 MGM because it was at the MGM, the MGM security  
22 guards were there at the time participating in the  
23 actual workings of the illusion. Ms. Lawrence  
24 testified that certain people along the route,  
25 which we know are MGM employees, said specific

1 things to her as she was going along. So we think  
2 it should apply to MGM as well.

3 **MR. POPOVICH:** If it's a notice issue,  
4 you've heard today the way that has to happen is  
5 to get it to security. She did not identify ever  
6 divulging any information to security. That's my  
7 argument, and the Court can rule.

8 **MR. DEUTSCH:** I think security and the  
9 people that worked in the illusion are two  
10 different things. I think he's conflating issues.

11 **THE COURT:** How does it apply to  
12 Copperfield?

13 **MR. DEUTSCH:** Because it's his illusion.  
14 He's the guy who designed it. He's the guy who  
15 came up with the protocols with the runaround.  
16 The Backstage employees were working under the  
17 protocols that he developed for his trick.

18 **MR. MORELLI:** Your Honor, are the  
19 attorneys allowed to have a 10-minute break?

20 **MR. POPOVICH:** One way or another, I'd  
21 like to hear if I have a ruling on the limiting  
22 instruction. Do I get it or don't I?

23 **THE COURT:** I think you get the limiting  
24 instruction based on what the evidence was about  
25 the security. Okay?



1           **MR. POPOVICH:** So we will get those  
2 limiting instructions.

3           **THE COURT:** 11:30. Okay?

4           **THE MARSHAL:** All rise.

5           (Whereupon, a recess was taken.)

6           **THE MARSHAL:** All rise.

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

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

12           **MR. POPOVICH:** They are now, Your Honor,  
13 yes.

14           **MR. MORELLI:** Yes.

15           **THE COURT:** We'll be going until 12:00.  
16 As I indicated, I have a commitment from 12:00 to  
17 1:30, so we will be recessing at 12:00 for lunch.

18           **BY MR. MORELLI:**

19           Q. Okay. Mr. Habersack, I just wanted to  
20 clear up a couple things because I thought about a  
21 couple things that I said.

22                     First of all, we did have the names of  
23 all of the Backstage employees. We did have those  
24 names.

25                     The names that I was referring to were

1 the names of the MGM people that were in the  
2 route. Those are the names that we didn't have.  
3 So I wanted to clear that up because I made a  
4 statement that I know now was inaccurate. Okay?

5 A. Sure. Sure.

6 Q. And also we were discussing -- and it  
7 said -- you can't discuss liability. Okay?

8 A. Yes, sir.

9 Q. I understand exactly what you and I are  
10 talking about; it's only about discussing  
11 liability, not discussing what might have  
12 happened. Okay? So that we're on the same page  
13 with that.

14 A. Okay.

15 Q. I don't like things hanging out there  
16 that are inaccurate. All right?

17 So let's talk about some other issues  
18 that we haven't covered. And let's not, you know,  
19 beat dead horses, so to speak.

20 Let's talk about surveillance. You've  
21 seen the video in this case. If you don't mind,  
22 I'm going to show it. It's not very long, as you  
23 know. It's actually very short.

24 **MR. MORELLI:** Are we able to dim the  
25 lights, Your Honor, so we can see it better?

1           **THE COURT:** Bob, lights dimmed.

2           **THE MARSHAL:** Got it.

3           **MR. MORELLI:** The jury has only seen  
4 this video 7,000 times, so --

5           (Whereupon video was played.)

6           **MR. DEUTSCH:** Just for the record,  
7 that's Exhibit 402 that we just showed.

8           **MR. MORELLI:** Okay. We can put the  
9 lights back up. Thank you.

10          **BY MR. MORELLI:**

11           Q. So you've seen that video before. I  
12 wanted to make sure that you had seen it now.  
13 Okay?

14                   This video was the only video that we  
15 were provided. Were there any other videos that  
16 you discovered of this area?

17           A. I believe there are some other videos.

18           Q. Now, I'm talking about videos that show  
19 the accident scene. That's what I'm talking about  
20 specifically. Okay?

21                   This particular area is a high-security  
22 area. Is that not true?

23           A. It's an emergency exit doors out of the  
24 casino.

25           Q. Well, actually, isn't it true that this

1 particular area -- and that's why I showed you the  
2 video -- is where the Brinks trucks come in to  
3 take the cash from the casino? Isn't that true?

4 **MR. DEUTSCH:** Page 104, line 6.

5 **THE WITNESS:** It's my understanding  
6 there are Brinks trucks that use the area.

7 **MR. DEUTSCH:** Page 104, line 6 through  
8 23.

9 Oh, actually, it's 103/18. Sorry.

10 **BY MR. MORELLI:**

11 Q. Okay.

12 "QUESTION: I believe you testified  
13 earlier that the area where this incident  
14 occurred was in a high-security area; is that  
15 correct?

16 "ANSWER: Where the sets of doors, those  
17 two sets on each side, yes, that's considered  
18 a high-security area."

19 **MR. DEUTSCH:** Next page. Page 104,  
20 line 6.

21 **MR. MORELLI:** 104, line 6. You got it.

22 **BY MR. MORELLI:**

23 Q. Okay.

24 "QUESTION: So the area just outside the  
25 set of doors that we were watching on the

1 video earlier --

2 "ANSWER: To exemplify that, yes. Where  
3 the Brinks trucks would be coming in and out.

4 "QUESTION: What does it mean to be a  
5 high-security area?

6 "ANSWER: We're moving an awful lot of  
7 funds in and out of the building. So that  
8 would be -- it would be no different than a  
9 count room or surveillance rooms. They're  
10 high security. I don't know how best to  
11 explain that.

12 "QUESTION: They're areas that are  
13 monitored?

14 "ANSWER: It's a very sensitive area,  
15 yes.

16 "QUESTION: Are there additional cameras  
17 in that area compared to other parts of the  
18 hotel?

19 "ANSWER: I can't even speculate on that.  
20 There's things that they won't divulge, even  
21 for me, because of the money coming in and  
22 out."

23 And you remember those questions and  
24 answers; correct?

25 A. Yes, sir.

1 Q. Okay. And so this particular area where  
2 the accident happened just happens to be one of  
3 those high-security areas; correct?

4 A. Yes, sir.

5 Q. And am I correct that you said "the  
6 count room"? Is the count room where they count  
7 the money?

8 A. Yes, that would be considered a place  
9 where they count money.

10 Q. Okay. I mean, the security or the  
11 surveillance at that place is different from other  
12 places in the hotel; is that correct?

13 **MR. POPOVICH:** Objection. May assume  
14 facts not in evidence or lacks foundation.

15 **THE COURT:** Sustained.

16 **BY MR. MORELLI:**

17 Q. When you stated that the high-security  
18 area was the count room, how does that differ, if  
19 at all, from other areas in the hotel?

20 A. I don't know how it differs. It's an  
21 area where the money is brought in, counted,  
22 sorted, and distributed.

23 Q. Okay. But is the surveillance different  
24 there from other areas in the hotel?

25 **MR. POPOVICH:** Objection. Your Honor,

1 this is a sensitive area. Can we approach?

2 **THE COURT:** Yes.

3 **(A discussion was held at the bench,**  
4 **not reported.)**

5 **THE COURT:** All right. Due to the  
6 subject matter of the upcoming questions, all  
7 persons who are not parties, counsel, jurors, or  
8 court personnel are directed to leave the  
9 courtroom and any nonofficial cameras and  
10 recording or other electronic media are to be  
11 inactivated at this time.

12 **MR. POPOVICH:** Thank you.

13 **THE COURT:** All right.

14 **MR. MORELLI:** All right. Thank you,  
15 Your Honor.

16 **MR. POPOVICH:** There's still a device  
17 there.

18 **THE MARSHAL:** Let me grab that. Thank  
19 you. Thank you.

20 (Whereupon media exited the courtroom.)

21 **MR. MORELLI:** Okay.

22 **BY MR. MORELLI:**

23 Q. Okay. Mr. Habersack, you know, I know  
24 that some of this information might be very  
25 sensitive. So what I'm asking is, the

1 high-security areas, do they not have more  
2 surveillance than generally?

3 A. That would depend on the actual area in  
4 question. So a delivery point may not be as  
5 heavily surveilled as a count room would be under  
6 surveillance.

7 Q. So the count room is more than  
8 generally? Let's just take the count room, one at  
9 a time.

10 A. I can't answer that definitively  
11 because, at the MGM, I've never had the  
12 opportunity to enter the count room or see the  
13 count room.

14 Q. You haven't done any counting?

15 A. I haven't done any counting. I don't go  
16 anywhere near that room.

17 MR. DEUTSCH: Same page, 104, same  
18 questions.

19 BY MR. MORELLI:

20 Q. So, now, let's just read the -- your  
21 answer to "What does it mean to be a high-security  
22 area?" was "We're moving an awful lot of funds in  
23 and out of the building. So that would be -- it  
24 would be no different than a count room or  
25 surveillance rooms."



1           And that's what you said.

2           So what I understood that to mean is --  
3 and you correct me if I'm wrong -- that the  
4 security would be heightened in this particular  
5 area where the Brinks truck comes in the same as  
6 it would be in the count room. I think that's  
7 what you said.

8           A. I believe that may be what I said --  
9 well, it's obviously what I said; it's on paper in  
10 front of everybody.

11          Q. No, no. Right. Okay.

12          A. It's my understanding, though, that  
13 there's different levels of ways security and  
14 surveillance is handled. In a delivery scenario,  
15 those drivers are armed and there are security out  
16 there. There are different times of day that  
17 those deliveries or pickups are done in that  
18 particular area. And where those trucks pull up,  
19 there's a better view than what we were seeing  
20 that whole view through the tree.

21               I hope that explains it a little better.

22          Q. I understand.

23               Here's the question: You agree with me  
24 that you've heard the term "eye in the sky."  
25 You've heard that term; right?