

TRANSCRIPT OF THE POOL TV FEED FROM DEPP v HEARD

FAIRFAX COUNTY COURT Thursday 26 May 2022

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Judge Azcarate: Okay, thank you. All right. Good morning, ladies and gentlemen. All right, have a seat. All right, your next witness.

Mr. Moniz: We call Dr. Richard Gilbert, Your Honor.

Judge Azcarate: Dr. Gilbert.

Bailiff: Sir? Please raise your right hand.

Woman: Do you solemnly swear or affirm to testify truthfully in this case under penalty of law?

Dr. Gilbert: I do.

Judge Azcarate: Good morning, sir.

Dr. Gilbert: Good morning.

Mr. Moniz: Good morning, Dr. Gilbert.

Dr. Gilbert: Good morning.

Mr. Moniz: Would you please state your name for the record?

Dr. Gilbert: Richard Stephen Gilbert.

Mr. Moniz: And what is your occupation?

Dr. Gilbert: I am an orthopedic surgeon and I have a subspecialty training in surgery of the hand and upper extremity.

Mr. Moniz: Dr. Gilbert, where do you work currently?

Dr. Gilbert: I currently work in New York and Long Island at Northwell Health.

Mr. Moniz: And you mentioned you have a specialty, can you tell us a little bit more about what your specialty is?

Dr. Gilbert: So, after medical school, I trained in orthopedic surgery and I did an orthopedic surgery residency. And for a year thereafter, I did a

hand and upper extremity surgery fellowship. And so, my practice for the past 22 years has been limited to surgery of the hand, wrist, and elbow.

Mr. Moniz: And I think you may have gotten ahead of me there, but how long have you been practicing?

Dr. Gilbert: Twenty-two years.

Mr. Moniz: Okay. What percentage of your practice over the past 22 years has involved surgery?

Dr. Gilbert: Approximately one-third of my practice.

Mr. Moniz: Okay. And other than that one-third that involves surgery, what does the rest of your practice entail?

Dr. Gilbert: The rest of my practice entails some academic work, but mostly seeing patients in the office, seeing them either pre or post-doc really, a large portion of hand surgeons treat patients non-operatively.

Mr. Moniz: In terms of the surgeries that you do, can you describe for us the types of surgeries that you will perform?

Dr. Gilbert: So, again, I limit my practice to hand, wrist, and elbow. I would say approximately 75% or so of my practice is limited to the hand itself and this really varies from anything from conditions like carpal tunnel syndrome to tendinitis to injuries such as amputations, fractures, sharp lacerations, etc.

Mr. Moniz: Over the course of your 22 years of practice, how many surgeries would you estimate you've performed?

Dr. Gilbert: I perform about 300 to 400 surgeries a year. So, a rough estimate would be approximately 10,000, maybe a little less.

Mr. Moniz: Where are you currently licensed?

Dr. Gilbert: In New York.

Mr. Moniz: And how long have you been licensed in New York?

Dr. Gilbert: I have been licensed in New York since 1994. So, that would be 28 years.

Mr. Moniz: And do you have any certifications?

Dr. Gilbert: Yes.

Mr. Moniz: And can you tell us about those?

Dr. Gilbert: I am board certified by the American Board of Orthopedic Surgery, and I have a certificate of added qualifications in Surgery of the Hand from the American Society for Surgery of the Hand.

Mr. Moniz: When did you receive your board certification?

Dr. Gilbert: 2002.

Mr. Moniz: And can you describe for us what current positions you hold?

Dr. Gilbert: I am currently an assistant professor of orthopedic surgery at Northwell Health and I'm also the president-elect of the New York Society for Surgery of the Hand.

Mr. Moniz: In what professional organizations are you a member?

Dr. Gilbert: I'm a member of multiple orthopedic organizations including the American Board of Orthopedic Surgery, the American Association of Orthopedic Surgery, and the American Society for Surgery of the Hand as well as the New York Society for Surgery of the hand.

Mr. Moniz: Have you published any articles in your field?

Dr. Gilbert: Yes, I have.

Mr. Moniz: Have you testified as an expert before?

Dr. Gilbert: Yes, I have.

Mr. Moniz: Can you ballpark for us how many times?

Dr. Gilbert: Certainly less than 10 over the past 22 years.

Mr. Moniz: Your Honor, at this time we'd like to offer Dr. Gilbert as an expert in the field of orthopedic surgery specializing in the hand.

Judge Azcarate: All right, any objection?

Mr. Rottenborn: No objection, Your Honor.

Judge Azcarate: So moved.

Mr. Moniz: So, Dr. Gilbert, what work were you asked to do in connection with this case?

Dr. Gilbert: So, I was asked to review medical records, radiographs, pictures, as well as testimonies and depositions related to Mr. Depp's finger injury.

Mr. Moniz: Okay. And to your understanding, what is Mr. Depp's explanation of how his finger was injured?

Dr. Gilbert: He describes that he was in Australia and his right hand was over the side of a bar when a vodka bottle was thrown at his hand, injuring his right middle finger, and he describes that the vodka bottle exploded.

Mr. Moniz: Are you aware of other explanations for that injury?

Dr. Gilbert: There have been multiple other explanations but I think that the one that was brought out was by Ms. Heard who believe that Mr. Depp was holding a landline and in anger, was punching it against the wall and this resulted in his right middle finger injury.

Mr. Moniz: Okay. Based on your review of the medical records and other documents in connection with Mr. Depp's finger injury, how would you describe the nature of the injury to Mr. Depp's finger?

Dr. Gilbert: Well, the nature of the injury was...he had what we describe as a comminuted fracture of the distal phalanx, meaning there was a fracture of the tip of the finger, and comminuted meaning that there are multiple pieces. So, this is some type of blunt force with a high mechanism of injury. He also sustained loss of the tissue along what's called the ulnar side of the finger towards the little finger. And this appeared, based upon my review of the pictures, to be some type of sharp laceration because it represented a clean edges of the wound.

Mr. Moniz: Let's take a look at Plaintiff's Exhibit 60. And pull up to go and go to page three. And Dr. Gilbert, are you familiar with this document?

Dr. Gilbert: Yes.

Mr. Moniz: And what is it?

Dr. Gilbert: So, these are two radiographs, X-rays of Mr. Depp's fingers...finger, his middle finger.

Mr. Moniz: Okay. Sorry, just to stop you but, Your Honor, may we publish this to the jury as a demonstrative?

Judge Azcarate: Any objection?

Mr. Rottenborn: No objection.

Judge Azcarate: All right, we'll identify it as 60, page three, and published to the jury.

Mr. Moniz: And Dr. Gilbert, sorry, to cut you off there. Can you just tell the jury what we're looking at here in this X-ray?

Dr. Gilbert: Two X-rays of Mr. Depp's right middle finger after the injury, and towards the tip of the finger, there's a fracture, again, what I described as a comminuted fracture, meaning there are multiple pieces at the tip. There's also a transverse component to the fracture closer to the joint.

Mr. Moniz: In your view, what types of mechanisms can cause this sort of injury?

Dr. Gilbert: So, this is a mechanism of injury that has high velocity or force, generally a crush-type injury. A simple fall would not result in a comminuted fracture such as seen in these X-rays.

Mr. Moniz: And we're using the term comminuted fracture, can you just define that quickly for us?

Dr. Gilbert: So, again, comminuted, and it's not particular to a finger, is a medical term for a fracture that has multiple fragments.

Mr. Moniz: In your opinion, could this injury have been sustained in the manner Mr. Depp described?

Dr. Gilbert: I do believe so.

Mr. Moniz: And how might that work? How might a thrown vodka bottle produce an injury like this?

Dr. Gilbert: So, a vodka bottle, which is a hard object would have crushed the tip of the finger resulting in the comminuted fracture. And in addition, as the vodka bottle broke, the glass would have lacerated the finger resulting in the soft tissue loss that was also seen with this injury.

Mr. Moniz: What's your assessment of the description of the cause of the injury offered by Ms. Heard?

Dr. Gilbert: I think that's highly unlikely.

Mr. Moniz: And why is that?

Dr. Gilbert: Because, in general, an injury that's caused by punching against a wall or hard object, it is extremely rare to see an injury to the tips of the fingers which is seen with Mr. Depp's injury. Generally, you're holding something with a fist and that, in general, leads to injuries most commonly of the knuckles here or fractures of metacarpal, we call these boxer fractures. The second most common after those would be injuries

to these but as you can see, if you're holding something and hitting against something, it is very unlikely that the tips of the fingers will be injured. In addition, just taking into account the radiographs and the pictures of the injury, I would not believe that a blunt force, solely a blunt force against a low would result in the soft tissue loss.

Mr. Moniz: Okay. What other injuries, if any, would you expect to see on Mr. Depp's hand if the injury had occurred as Ms. Heard described?

Dr. Gilbert: So, if you would have...if that were the cause of the injury, you would certainly...that would be dorsally directed, so this is a dorsal in the back of the hand, as opposed to the palmar side. So, if you're punching against something, you would certainly expect an injury to the nail bed and those are always seen in those type of injuries if there is an injury to the tip of the finger, which again, I said is rare. So, you would see either a loss of the nail or blood underneath the nail called the subungual hematoma.

Mr. Moniz: In your review of the medical records, did you see any sign of anything like that?

Dr. Gilbert: None whatsoever.

Mr. Moniz: In your view, is the injury...can you explain to us exactly why you think the injury is consistent with Mr. Depp's description?

Dr. Gilbert: Well, again, his hand...he describes his hand being held over a marble bar, which is a firm...something firm, unyielding, and the bottle hit against the finger. So, basically, the finger is crushed, resulting in, again, what I described as a comminuted fracture. And as Mr. Depp described, the bottle exploded, so it's certainly reasonable that the glass that exploded as well lead to the soft tissue loss along the ulnar aspect of his finger.

Mr. Moniz: Okay. Now, did you observe the testimony of Dr. Richard Moore?

Dr. Gilbert: Yes, I did.

Mr. Moniz: And he testified about Mr. Depp's finger injury as well, right?

Dr. Gilbert: Correct.

Mr. Moniz: Did you agree with Dr. Moore's testimony?

Dr. Gilbert: Certain parts of his testimony, I did, yes. But not all of it.

Mr. Moniz: Focusing on the parts that you...well, first of all, why don't you tell us what you agree on?

Dr. Gilbert: Well, I agreed in terms of his interpretation of the X-rays, saying that he had a comminuted fracture and this was some type of high-force injury.

Mr. Moniz: Okay. What did you disagree with?

Dr. Gilbert: Well, I disagreed with several things that he said. He first said that he does not believe that the mechanism of injury could be as described by Mr. Depp, holding the hand on the side of a marble bar, because he said it was all palmar injury. And there was a palmar component to the injury but I'm talking about the soft tissue loss, but there's also a dorsal, meaning the back of the finger. So, the soft tissue loss was actually, if you looked at the pictures which were shown when Dr. Moore testified, the injury goes like this. So, it's an angled or an oblique type entry, and there's no way that anybody could determine whether or not it was a palmar directive force, meaning from the palm side, or dorsally directive force, but certainly, either is plausible.

Mr. Moniz: Okay. Anything else come to mind that you disagreed with?

Dr. Gilbert: Well, he also described that this was...well, he thought that this was a pinching or what he described as an avulsion-type injury and that's referring to the soft tissue loss. That's certainly possible but if you look at the pictures that were shown when he testified, the laceration looked fairly clean, there were clean edges, it was not jagged. And generally, when you have an avulsion or a pinch-type injury, you see a very irregular border to the skin. It's pinched off, you can imagine, as opposed to something that's cleaner that would be lacerated by, let's just say a piece of glass or a knife or whatever. And that's more consistent with the pictures of Mr. Depp's injury.

Mr. Moniz: And we were using the term soft tissue loss and just to make sure we're on the same page, can you just tell very quickly what you're referring to there?

Dr. Gilbert: So, there were two components to this injury, one that fracture the bone, and two, he had loss of the soft tissues so that the bone was exposed. So, that amputated part that was found at the bar.

Mr. Moniz: Now, you were saying that Dr. Moore testified that this was an avulsion, meaning a pinching injury, right?

Dr. Gilbert: Correct.

Mr. Moniz: Why do you believe it's more likely that it was a laceration?

Dr. Gilbert: Well, again, in general, a pinch type of injury results in, one, much more damage to the remaining tissue, but the remaining tissue is usually very irregular, the borders are jagged, and that's not what was depicted in the pictures.

Mr. Moniz: Okay. Dr. Moore also testified that he thought a vodka bottle might not have sufficient force to cause the injury here. Is that your understanding of his testimony?

Dr. Gilbert: Correct.

Mr. Moniz: What's your response to that?

Dr. Gilbert: I certainly believe that a vodka bottle that was thrown from a distance against a hand that was resting on the marble bar is more than sufficient for this to result in this fracture and soft tissue loss.

Mr. Moniz: Now, in looking at the medical records and the pictures of Mr. Depp's hand, what was the condition of his nail?

Dr. Gilbert: There was no injury to the nail.

Mr. Moniz: And other than what you've already told us, how does that factor into your analysis, if at all, the fact that there was no injury to the nail?

Dr. Gilbert: Well, it makes it highly unlikely that the mechanism of injury described by Ms. Heard resulted in this injury because you really would always see an injury to the nail and/or nail bed.

Mr. Moniz: Do you have any opinion regarding the direction of the injury?

Dr. Gilbert: Well, it's certainly...based upon the soft tissue loss, it's an angled injury or what we call medically an oblique injury because of soft tissue loss is at an angle. He lost some of the tissue on the back of the finger as well as the palm side, primarily along the palm side. But other than that, you can't make any assumptions. Unless you saw a videotape of this injury, nobody could tell you definitively what the direction of the injury was.

Mr. Moniz: Dr. Moore also commented on the absence of fragments of broken glass in Mr. Depp's injury. Do you remember that?

Dr. Gilbert: Yes, I do.

Mr. Moniz: And how does the absence of glass fragments factor into your analysis?

Dr. Gilbert: It really doesn't. I've seen hundreds, if not...probably at least 500 or more glass injuries, and I would say probably the majority, you don't see glass in these injuries. It is much more common to see glass embedded in the wounds when you're talking about very fine glass, so, if, let's say, a wineglass would explode or something of that nature where you get little tiny shards. But in general, when you have thick glass such as you see in a bottle or a pane of glass, you generally don't see...because they break into bigger pieces and you generally don't see the glass but...you certainly can, but it's not surprising that you don't.

Mr. Moniz: Can you definitively state how this injury occurred?

Dr. Gilbert: No, nobody can definitively state.

Mr. Moniz: Okay. I have no further questions, Your Honor.

Judge Azcarate: All right, cross-examination.

Mr. Rottenborn: Thank you, Your Honor. Good morning, Dr. Gilbert.

Dr. Gilbert: Good morning.

Mr. Rottenborn: Now, you're being paid \$1,000 an hour for your work on this case, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: And you agree, just to sum up how Mr. Moniz finished, you agree that the finger injury could have been caused by any number of things, right?

Dr. Gilbert: Yes.

Mr. Rottenborn: And you're not offering an expert opinion on what you believe caused the finger injury, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: And you're aware...you said a few times Ms. Heard's account or Ms. Heard's explanation, right? You remember saying that?

Dr. Gilbert: Yes.

Mr. Rottenborn: You're actually aware that Amber has said she doesn't know how he lost his finger. You're aware of that, right?

Dr. Gilbert: Yes.

Mr. Rottenborn: So, when you were just talking about Ms. Heard's account or Ms. Heard's explanation, she's never actually given an explanation for how she thinks he lost his finger, correct?

Dr. Gilbert: No.

Mr. Rottenborn: You're aware that Ms. Heard testified...and this is from your deposition, you're aware that she testified she doesn't know how he got his fingertip chopped off. You're aware of that, right?

Mr. Moniz: Asked and answered, Your Honor.

Judge Azcarate: Overruled.

Dr. Gilbert: No, I'm not. I reviewed the records and in one of the testimonies that I...depositions that I reviewed, it was described that potentially it was lost when he was punching against the wall with a phone.

Mr. Rottenborn: And on the last point there, I think we agree, Ms. Heard testified in this trial and previously that she saw him smash a phone to smithereens, a wall phone, you'd agree with that, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: But she doesn't know if that was what caused him to lose his finger. You agree with that, correct?

Dr. Gilbert: I agree, I cannot speak for her but yes.

Mr. Rottenborn: Okay. May I approach, Your Honor?

Judge Azcarate: Yes, sir.

Mr. Rottenborn: Dr. Gilbert, you gave a deposition in this case on March 17th, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: You are under oath in that deposition, you swear to tell the truth, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: Okay, if you could turn to page 61, please. You can see there are four pages per page of paper. It's on page 16 of the document.

Dr. Gilbert: Okay.

Mr. Rottenborn: Okay, in line nine, you're asked the question, and then Amber's response to that question, that's line nine. Can you read that, please? Answer, "I do not know, I did not see his finger go off." Question, "And Dr. Gilbert, are you aware that Amber did not see Mr. Depp's finger go off?" Answer, "I mean, I'm aware of that...well, I'm aware from reading...from reading this, I'm aware of the mechanism that she claimed would cause the finger injury." Question, "But have you read anything so far that indicates she doesn't know how the finger injury happened?" Answer, "So far from what I'm reading here, yes." Did I read that right?

Dr. Gilbert: Yes.

Mr. Rottenborn: And you've heard no testimony in this trial for Ms. Heard that the finger injury was definitively caused by the phone, so she doesn't know, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: And you'd agree that the fingernail was uninjured? You said that, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: And the nail bed was uninjured, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: But the area under the fingernail in the pulp of the finger, that's where the injury took place, right?

Dr. Gilbert: It was not isolated to the pulp, no.

Mr. Rottenborn: But it didn't enter the fingernail? That's my question.

Dr. Gilbert: That's correct.

Mr. Rottenborn: Okay. And under Mr. Depp's alleged theory, Amber threw a vodka bottle at him from 10 feet away or so, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: And you testified you have no way to determine the angle that the bottle was coming from, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: But she threw it on a downward trajectory, correct? There's no allegation, you've never read anything that she's somehow underhanded it, so it came up to his finger, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: And there's no way to tell as he testified what exact direction it came from, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: And the glass exploded but you've already testified there was no glass in the wound, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: You haven't read any record of that in any medical records, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: And you also haven't read anything about there being cuts on the rest of his hand, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: And there was no glass found anywhere on the rest of his hand, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: No bruising or injury on any other part of his hand other than the tip of his middle finger?

Dr. Gilbert: Correct.

Mr. Rottenborn: And somehow, under Mr. Depp's theory, that bottle hit the bar and his fingers, but didn't damage the fingernail while it amputated the area under the nail, correct?

Dr. Gilbert: Correct.

Mr. Rottenborn: And your explanation of that is that you believe that his hand must have moved at some point during the force of the injury. Isn't that correct?

Dr. Gilbert: No, I said it could have been but I did not say that it did.

Mr. Rottenborn: No, you believe that it did, don't you?

Dr. Gilbert: I said that it likely did, but I was not there and I don't have a videotape of the injury, so I can't determine that definitively.

Mr. Rottenborn: Okay. Well, let's turn to page 25 of your deposition, please, on page seven.

Dr. Gilbert: So, page?

Mr. Rottenborn: Page 25 and 26. So, it's page seven of the doc.

Dr. Gilbert: Okay.

Mr. Rottenborn: Sorry, if I was unclear on that.

Dr. Gilbert: No problem. I'm there.

Mr. Rottenborn: Okay. Line 18. Question, "And to be clear, by "sitting in that position," you mean hand down, palmar side down?" Answer, "That's what he claimed. I mean, according to the history, yes". Question, "And would it matter if Mr. Depp's hand was palmar side down?" Answer, "Not really, because it really...and I discussed this, it really just depends upon the angle at which the injury occurred. And as well, you can't determine if his hand had moved at some point during the force of the injury, which I believe it probably did, which I didn't get into in my note here." Question, "And why do you believe that? Have you read anything in any of the materials to suggest that?" Answer, "No, just that if it completely hit on the back of the finger, then he would have had a nail bed injury, which he did not." Did I read that right?

Dr. Gilbert: Correct.

Mr. Rottenborn: That was testimony you gave under oath a month or two ago, right?

Dr. Gilbert: Correct.

Mr. Rottenborn: So, even though you have never read anything that suggests Mr. Depp's hand moved, his hand moving is the only way that you can fit your testimony into what Mr. Depp wants you to testify to about how the injury occurred, isn't it?

Dr. Gilbert: No, that's incorrect.

Mr. Rottenborn: Okay. That's what you testified to that if his hand hadn't moved, that there would be a nail bed injury, correct?

Dr. Gilbert: That is incorrect, that's not what I testified. It's not what...

Mr. Rottenborn: In fact, Dr. Gilbert, there's another explanation for how Mr. Depp somehow suffered an injury that didn't injure his nail one bit but injured underneath the nail. And that explanation is that it didn't happen how Mr. Depp says it did, correct?

Dr. Gilbert: I cannot make that assumption, nor can you.

Mr. Rottenborn: No further questions.

Judge Azcarate: All right, redirect.

Mr. Moniz: Dr. Gilbert, just very briefly, the absence of other cuts on Mr. Depp's hand, how do you factor that into your analysis?

Dr. Gilbert: You certainly can see an isolated finger injury with any type of injury and I would say any other host of mechanism of injuries, you'd more likely see other...so, again, if you're...I'm just using this in the example. If you're punching against a wall, you would more likely see multiple injuries to multiple fingers. It really just depends upon how the bottle...or how the mechanism of the injury impacted the hand at that point in time.

Mr. Moniz: And Ms. Heard's counsel made a point of emphasizing that there were no bruises or other injuries on the hand, right?

Dr. Gilbert: Correct.

Mr. Moniz: And how does that fact affect your analysis, if at all?

Dr. Gilbert: Well, it doesn't discount anything, but it certainly makes other potential causes of injury more unlikely, meaning punching against a wall or getting the hand slammed in a door or something like that.

Mr. Moniz: Okay. And your discussion of Ms. Heard's explanation of the alternative cause of the injury, was that based on anything other than Ms. Heard's statements?

Dr. Gilbert: No.

Mr. Moniz: No further questions, Your Honor.

Judge Azcarate: All right, thank you. Dr., you can have a seat in the courtroom or you're free to go.

Dr. Gilbert: Thank you. Should I leave this here?

Judge Azcarate: You can just leave it there, that's fine. Thank you, sir.

Dr. Gilbert: Thank you.

Judge Azcarate: All right, your next witness?

Mr. Chew: Plaintiff rest, Your Honor.

Judge Azcarate: All right, plaintiff rests their rebuttal case. All right, counter-plaintiff rebuttal case.

Ms. Bredehoft: May we approach?

Judge Azcarate: Sure. All right, rebuttal evidence?

Mr. Murphy: Yes, Your Honor.

Judge Azcarate: Mr. Murphy?

Mr. Murphy: We call Mr. Julian Ackert.

Judge Azcarate: All right, Mr. Ackert.

Woman: Do you solemnly swear or affirm to testify truthfully in this case under the penalty of law?

Julian: Yes.

Mr. Murphy: Good morning.

Julian: Morning.

Mr. Murphy: Can you please state your name?

Julian: Julian Ackert.

Mr. Murphy: And can you please describe your educational background following high school?

Julian: I have a Bachelor of Science in computer science from the University of Virginia.

Mr. Murphy: What is your profession?

Julian: I am a computer forensics investigator.

Mr. Murphy: Where are you employed?

Julian: I work for a company called iDiscovery Solutions or IDS.

Mr. Murphy: And what is your title?

Julian: I'm a managing director of that company.

Mr. Murphy: What services does IDS perform?

Julian: IDS provides consulting, expert testimony, forensic analysis, data analysis, electronic data, review and production services, all to the business and legal community.

Mr. Murphy: What, if any, of those services performed by IDS that you performed?

Julian: I perform all of those services.

Mr. Murphy: How many years of experience do you have in computer forensics investigation?

Julian: I've worked in the industry for 20 years.

Mr. Murphy: Can you please describe that experience to the jury?

Julian: I have experience creating and implementing data preservation and collection strategies, doing data collections in a forensically sound manner, extracting data from collections, as well as analysis and metadata analysis of the evidence that I extract.

Mr. Murphy: You mentioned collecting data from forensic collections. What material are you forensically imaging?

Julian: This would be any type of material that stores digital evidence, an iPhone, an iPad, a tablet, laptop, a cloud account, your Gmail account, anything that has digital evidence.

Mr. Murphy: Have you published in your areas of expertise?

Julian: Yes, I've published on data preservation and collection and analysis strategies.

Mr. Murphy: Have you ever given any trainings or presentations to other individuals in the e-discovery area?

Julian: Yes, I have, I do trainings and presentations to lawyers through Continuous Learning Education.

Mr. Murphy: What, if any, professional certifications do you have?

Julian: I have a GIAC GCSE, that's the GIAC-certified forensic examiner certification.

Mr. Murphy: And what were the requirements of obtaining that certification?

Julian: To obtain that certification, you need a minimum number of hours in the field, as well as you need to pass a test with a certain degree of...a certain percentage of passing.

Mr. Murphy: Do you belong to any professional organizations?

Julian: I do, I'm a member of a conference called the Sedona Conference. It's a conference that is a group of legal professionals, judges, and technologists, and we discuss the intersection of law and technology and technology issues in the legal community.

Mr. Murphy: Have you previously served as an expert witness?

Julian: Yes, I have.

Mr. Murphy: And when did you first serve as an expert witness?

Julian: I believe that would have been around 2009 was the first time I served.

Mr. Murphy: Have you previously been qualified as an expert witness in the field of computer forensics?

Julian: Yes, I have. I've been qualified probably a half dozen to a dozen times in both federal and state court including this court right here.

Mr. Murphy: And has a court ever declined to qualify you as an expert witness?

Julian: No, they have not.

Mr. Murphy: Your Honor, I offer Julian Ackert is an expert in the field of computer forensics.

Mr. Dennison: No objection, Your Honor.

Judge Azcarate: All right, so moved. Could you spell your last name for me, Mr. Ackert?

Julian: Ackert, A-C-K-E-R-T.

Judge Azcarate: Thank you so much, sir.

Mr. Murphy: Mr. Ackert, what is forensic imaging?

Julian: Forensic imaging is the process of capturing the data on a digital device in a forensically sound manner.

Mr. Murphy: And how is a forensic copy created?

Julian: Using specialized software that's available to forensic investigators, we're able to collect the data from devices and that software may vary depending on the device like a phone or a laptop.

Mr. Murphy: What type of information does a forensic image collect?

Julian: It's meant to really collect everything on the device. So, for example, on a laptop, it's going to collect your documents, your emails, your photographs, your documents like Excel spreadsheets, PDF files, any applications that you ran, the history of what you've opened or looked at on the laptop, as well as all of the metadata for these different types of electronically stored information files.

Mr. Murphy: And does any other information accompany that information that's collected?

Julian: Typically, with a forensic image, you're also going to get log files. Log files are files that help you validate the forensic image and verify that it was a forensically sound data collection.

Mr. Murphy: And how do log files enable you to do that?

Julian: Log files list information within the files. Sometimes they're even embedded within the images themselves, but they provide verification information that allows you to authenticate the image and the data on the image.

Mr. Murphy: What is the purpose of creating a forensic image of devices or data?

Julian: In order to extract and analyze data forensically for the courts, you need to create a forensic image of the data first and gather the forensic...gather the data from the forensic image.

Mr. Murphy: And what, if any, specific types of data are collected in that imaging extraction?

Julian: It's going to be any type of data that comes from the image whether you're extracting photographs or documents or spreadsheets or anything of that nature.

Mr. Murphy: Do you recall Mr. Neumeister mentioning the term hashing yesterday?

Julian: I do.

Mr. Murphy: What is that?

Julian: Hashing is essentially a digital fingerprint of a file. It's an evaluation of the binary ones and zeros or how the file is stored on a hard drive and it examines the ones and zeros in a manner that gives every file a digital fingerprint essentially and identifies the uniqueness of the file.

Mr. Murphy: And what, if any, applicability does hashing have to the visual appearance of data?

Julian: Hashing has nothing to do with the visual appearance. For example, if I had a Word document that I printed and then save, therefore, I haven't visually changed the Word document, the metadata of that Word document indicating that I printed it would be different. And therefore, that Word document would not hash to the version that I used before printing.

Mr. Murphy: Can you give any examples of digital photographs that visually appear the same not hashing?

Julian: I believe Mr. Neumeister included three of those in his demonstrative yesterday, three side-by-side photographs that looked visually the same but did not hash. It made sense that they wouldn't hash, each of them had different file sizes. And a file size can change for a photograph depending on what you do with the photograph. So, for example, maybe you want to take that photograph and email it to somebody and on your phone, you choose to use a small, medium, or large or different size of the photograph when you email. When you send that email with that photograph, you've changed the hash value because you've changed the ones and zeros because you've changed the size of the photograph.

Mr. Murphy: And what, if anything, do you recall from Mr. Neumeister's testimony regarding Photos 3?

Julian: Mr. Neumeister was concerned about a particular metadata field, the EXIF metadata, which there's two types of metadata for files, there's the embedded metadata, which is what we're discussing here, the EXIF metadata, and external metadata. And Mr. Neumeister was concerned with embedded metadata within the file that indicated that the software version that the file last ran through was Photos.

Mr. Murphy: What is Photos 3.0?

Julian: Photos is actually the software application that's built into the Apple Macintosh operating system for laptops. This is the application

that launches by default when you're on an Apple computer and use photos.

Mr. Murphy: What are the capabilities of Photos 3.0?

Julian: There's multiple capabilities for it. You can, for example, create an album with it and put multiple photos within an album. You can organize or sort your photos by date and time taken or place. You can also use that to edit photos.

Mr. Murphy: You mentioned metadata earlier. What is that?

Julian: Metadata is information about a file. For example, with a document, it could be when was the document created or last saved or who saved it, who was the author of the document. For photographs, metadata includes information that you've seen on demonstrative before including when was the image taken? What kind of phone took the image? What software was originally used for that image? Any type of information inside the photograph, the EXIF data that you've heard is metadata.

Mr. Murphy: Did you form any opinions in response to Mr. Neumeister's testimony regarding Photos 3.0 appearing in a software EXIF metadata field?

Julian: Yes, I did.

Mr. Murphy: And what are those?

Julian: My opinion is that for each of the photos that he identified, for all but one in his demonstrative, I actually found the equivalent original photo that did not have Photos in the EXIF metadata. In other words, those are the photos that he indicated he would have expected to see the iOS or the Phone software version on those photos.

Mr. Murphy: How do you know it is an original version of the photograph?

Julian: This is a little bit dependent on the Apple ecosystem. Amber uses Apple devices and those devices, by definition of how Apple works, synchronize your information from device to device. So, for example, if you take a photo on your phone, you see that same photo on your tablet or your iPad or your iCloud account, or even your MacBook. And that's all because of user experience, Apple wants you to be able to see and visually have the same experience on all your devices. So, the photo that was originally taken traverses or gets synchronized to other devices by design of Apple, and that synchronization process, it does not affect

the metadata that we're talking about here, which is the embedded metadata.

Mr. Murphy: When you say that a version of iOS software was listed in the software EXIF metadata field, what does that mean?

Julian: That means that the photo was not saved using the Photos application.

Mr. Murphy: And what if any datasets did you use to come to that conclusion?

Julian: I used all of the datasets that I collected or were collected for Amber including mobile devices, tablets, laptops, etc.

Mr. Murphy: Michelle, can you please pull up Defendant's Exhibit 1671? Do you recognize this chart, Mr. Ackert?

Julian: I do.

Mr. Murphy: What is it? Without yet saying what the contents, just generally what is it?

Julian: This is a chart I created as part of my report.

Mr. Murphy: Your Honor, permission to publish Defendant's 671 as a demonstrative.

Judge Azcarate: Any objection?

Mr. Dennison: No objection, Your Honor.

Judge Azcarate: All right, it'll be published as a demonstrative.

Mr. Murphy: Mr. Ackert, can you please describe in more detail what the information in this chart? Michelle, if you could just stay at the top for a quick second? A little further up? Great.

Julian: Thank you. This chart represents, for each of the items in Neumeister's report, which his demonstrative was based on, the page number of the item on his report, and the items that I found on Ms. Heard's devices that did not indicate the software metadata fields showing Photos, rather they indicated that they were the original software metadata field of iOS.

Mr. Murphy: And do you see the second column titled, "Neumeister Report Date Captured?"

Julian: Yes, I do.

Mr. Murphy: ...the information in that column mean?

Julian: This is date-time metadata of the particular photo on Neumeister's report. So, for example, the first row 23, the date time captured or the date captured is December 16th, 2015. The second row, 24, you see that the date/time is May 21st, 2016. Third row, May 21st, 2016. Fourth row, May 21st, 2016.

Mr. Murphy: Can you just scroll to the next page, please, Michelle? Please continue for the items on this page.

Julian: The top row of this page, the one that came from Neumeister report, page 30, shows December 16th, 2016. And then finally, 32 shows March 23rd, 2013.

Mr. Murphy: Do you see...can you scroll back to the top, please, Michelle? Do you see...all they way to the top, I'm sorry, the right-hand column of this chart?

Julian: Yes, I do.

Mr. Murphy: And where it says, "Device ID and file name?"

Julian: Yes.

Mr. Murphy: Can you please explain what the information in that column means for each of the items identified for Mr. Neumeister's demonstrative?

Julian: So, these are the evidence IDs and evidence ID is the ID value I give to a particular piece of data that I collect, for example, a phone or a laptop. And the matching file name found on that evidence ID that indicated the original version of the same photograph that Neumeister identified that did not show Photos in the software metadata and rather showed the iOS version in the metadata.

Mr. Murphy: And what do the little A's followed by numbers, backup, what does that mean?

Julian: Those are evidence IDs. Anything within a number is the evidence ID of an actual device collected. Anything that starts with a "backup" and follows by another number is an iTunes backup.

Mr. Murphy: So, what items in this right-hand column, based on the coding you have here, are iTunes backups?

Julian: Only the ones that start with the word "backup." Even the ones that start within a number are actually an iTunes or an iOS backup in

iCloud, so your phone can actually be backed up to iCloud and those are coming from an iOS back as an iCloud. Everything else is coming from an actual physical device.

Mr. Murphy: Can you just take this down for a second, Michelle, and pull up 1675, please? Defendant's 1675. And do you recognize this chart, Mr. Ackert?

Julian: Yes, I do.

Mr. Murphy: Without yet getting into the contents, can you please describe generally what it is?

Julian: This is a chart that I prepared as a summary of my findings.

Mr. Murphy: Permission to publish Defendant's 1675 as a demonstrative, Your Honor.

Judge Azcarate: Any objection?

Mr. Dennison: No objection.

Judge Azcarate: All right, 1675 will be published as demonstrative.

Mr. Murphy: Can you please describe in more detail what the three columns you can see in this chart represent?

Julian: Sure, this starts to give some detail about the particular evidence ID. So, for example, A001 was an iPhone X of Amber's that was collected, A002 was an iPad of Amber's collected, A10...I'm sorry, A11, 12, and 1,3 slightly down, are three different laptops that were collected for Amber.

Mr. Murphy: And do you see the IDS evidence number column?

Julian: Yes, I do.

Mr. Murphy: Do you see the source type column?

Julian: Yes, I do.

Mr. Murphy: And the source details column?

Julian: Yes, I do.

Mr. Murphy: Can you please describe what those columns mean?

Julian: Generally, IDS evidence number is the evidence number that we assigned to a particular piece of evidence, and the type and details

come from a description of that type of evidence based upon the collection set.

Mr. Murphy: And Michelle, can you please do a side-by-side of 1675 and 1671? Thank you. So, Mr. Ackert, can you please describe the relationship between these two demonstrative exhibits?

Julian: Certainly. If you look at 1671, the one on the left, you can see in the fourth column the different evidence IDs where I identified the original versions of those same pictures that Mr. Neumeister had specifically identified and the sources of where they were identified. So, if you look at the first one, for example, the picture...Neumeister reference on page 24, or I guess that's the second one, there are equivalent versions or original versions of those that do not show the software EXIF metadata field of photos. Rather, it shows the original iOS version on A001, which was Amber Heard's iPhone X, A002, which is Amber Heard's iPad Pro.

Scrolling on down through there, you see it on A0011, which is Amber Heard's laptop, same with A0012 and 13. You can see this again with the next row that's visible at the very top, Neumeister identified a photograph on page 30, taken on December 16th, 2015, and he was concerned about the EXIF metadata of that, showing the software version of photos. The original versions of those were found, again, on A001, that's her iPhone X, A002, her iPad. And it's not surprising to me that I found all these on all the devices because that's how the Apple ecosystem works. It replicates your pictures or synchronizes your pictures across your devices when you take them.

Mr. Murphy: Mr. Ackert...you can take this down this down, Michelle. Do you recall Mr. Neumeister's testimony regarding what he claims of EXIF metadata modification?

Julian: Yes, I do. This is a completely hypothetical scenario. Mr. Neumeister never specified any pictures with specificity that had EXIF metadata modification and it's hypothetical in my opinion.

Mr. Murphy: Mr. Ackert, did you form any overall conclusions in this case?

Julian: Yes, I did.

Mr. Murphy: And what were those?

Julian: The images that were created in this case included log files that allowed me to validate and verify the evidence collected. I validated and

verified the log files of the evidence for which I found Mr. Neumeister's original photos that he had concerns about, specifically the ones that had iOS in the software metadata field. I validated that those came from devices that had log files that were validated by me. In other words, they came from original evidence files, and in most instances, they came from more than one file.

Mr. Murphy: Mr. Ackert, the opinions you have testified to today made through a reasonable degree of forensic certainty?

Julian: Yes, they are.

Mr. Murphy: No further questions, Your Honor.

Judge Azcarate: All right, cross-examination, sir.

Mr. Dennison: Thank you, Your Honor. Good morning, sir.

Julian: Good morning.

Mr. Dennison: You've worked with opposing counsel's law firm approximately 20 times before?

Julian: Give or take, yes.

Mr. Dennison: For more than a dozen years?

Julian: Those 20 probably would have been spread out over more than a dozen years.

Mr. Dennison: Okay. As you sit here today, you cannot testify that all of the photographs produced by Ms. Heard are authentic originals, correct?

Julian: I can testify to the ones that Mr. Neumeister identified with specificity.

Mr. Dennison: Right, but there were thousands of photographs provided that Mr. Neumeister didn't testify about, right?

Julian: I have no opinions on any photographs that the opposing expert has no opinions on.

Mr. Dennison: All right. My question to you, though, is, as you sit here today, can you testify that all the photographs produced by Ms. Heard are authentic originals?

Julian: As I sit here today, I cannot opine to photographs that have not been presented to me that are not authentic originals.

Mr. Dennison: All right. You'll agree with me that in some instances, Ms. Heard produced multiple versions of the same photograph, right?

Julian: Yes.

Mr. Dennison: Yeah, you just talked about it, right?

Julian: Yes.

Mr. Dennison: All right. And you'll agree with me that the EXIF data of some of the photos produced by Ms. Heard reflect the use of a photo editing application?

Julian: No.

Mr. Dennison: No?

Julian: I agree that they show the use of the photos application, which is a sorting and editing application.

Mr. Dennison: Okay, so what you were quibbling with is that it will both sort and edit?

Julian: That is correct.

Mr. Dennison: Okay. Are you prepared to swear under oath that each and every photograph provided by Ms. Heard and entered into evidence in this court is an authentic original?

Julian: Based on the metadata that I have reviewed of the specific photographs I have reviewed, I can confirm that those are authentic original photographs. For the ones that Mr. Neumeister identified, I identified photos that were authentic originals.

Mr. Dennison: Let me ask you a broader question than that. There were multiple photographs that Ms. Heard provided that were entered into evidence in this court. Are you testifying that those are each authentic originals?

Julian: I have no testimony or opinion on those because nobody's provided me an opinion that they're not.

Mr. Dennison: Okay. Mr. Gibson, will you pull up Defendant's Exhibit 712 and Defendant's 713 next to one another, Your Honor, these have already been admitted and I ask if we can publish it to the jury?

Judge Azcarate: Okay, they're admitted, we can publish.

Mr. Dennison: Can you see those side-by-side?

Julian: Yes, I can.

Mr. Dennison: You'll agree with me that those are different pictures?

Julian: Visually, they look different to me, yes.

Mr. Dennison: All right, we can take that down.

[00:50:19]

[silence]

[00:50:37]

Mr. Dennison: Mr. Gibson, can you pull up Plaintiff's Exhibit 1308? This has not been admitted, Your Honor, and I propose to use it as a demonstrative.

Judge Azcarate: Any objection?

Mr. Murphy: Not as a demonstrative, Your Honor.

Judge Azcarate: All right, be identified and published to the jury as a demonstrative.

Mr. Dennison: Any objection to entering it into evidence?

Mr. Murphy: I would object, it's cumulative, Your Honor. Actually, no, no objection, Your Honor.

Judge Azcarate: No objection? All right, it's in evidence then.

Mr. Dennison: All right, 1308 is in evidence. Mr. Gibson, can you blow up the time, date, and file name? Sir, you just agreed with me that those two photos are different photos, correct?

Julian: I agree that they were visually different, yes.

Mr. Dennison: Right, so they're two visually different photos that were created at the exact same hour, the exact same minute, the exact same second as each other, correct?

Julian: That's what the day-time metadata shows, yes.

Mr. Dennison: And the metadata shows something else too. They have the exact same file name, don't they, sir?

Julian: Yes, but that's not embedded metadata.

Mr. Dennison: Right. How would you have this jury decide which one is real?

Julian: I think you would need to look at the software metadata field, which I haven't looked at. I don't recall if I looked at for this particular field. But I think that's what even Mr. Neumeister said, that you need to look at the software metadata field.

Mr. Dennison: But we have two photographs entered into evidence in this court that have the same identifying information, but in your view, look visually different, correct?

Julian: I don't agree that they have the same identifying information. I don't see a software metadata field here.

Mr. Dennison: The identifying information includes the hour, minute, and second they were taken...these pictures were taken?

Julian: I see that.

Mr. Dennison: No further questions.

Judge Azcarate: All right. And just for the record, since we already have 712 and 713 in evidence as redacted, now these will be 712 and 713A...712A and 713A are now in evidence just to keep the record clean, okay?

Mr. Murphy: Thank you, Your Honor.

Judge Azcarate: All right, redirect.

Mr. Murphy: Mr. Ackert, you just mentioned embedded metadata. What is that?

Julian: Embedded metadata is metadata inside a file. I talked earlier about the date printed of a Word document. That's embedded into the file and that traverses with the file wherever it goes.

Mr. Murphy: And based on all of the photo metadata you have reviewed, do you have any reason to question the forensic authenticity of any photos Mr. Neumeister testified to for which you are responding to?

Julian: Can you repeat that question, please?

Mr. Murphy: Yes, based on all of the photo metadata you have reviewed based on the photos Mr. Neumeister testified to, do you have any reason to question the forensic authenticity of those photos?

Julian: I do not.

Mr. Murphy: Following your cross-examination, Mr. Ackert, have any of your opinions in this matter changed?

Julian: They have not.

Mr. Murphy: And is it still your testimony that the opinions you testify to today are made with a reasonable degree of forensic certainty?

Julian: Yes.

Mr. Murphy: No further questions, Your Honor.

Judge Azcarate: Thank you. Sir, you can have a seat in the courtroom or you're free to go. All right. Did you want to approach just for a moment? All right, your next witness?

Ms. Bredehoff: Your Honor, we would like to call Dr. Dawn Hughes to the stand again.

Judge Azcarate: All right, Dr. Hughes. Thank you, doctor, just to remind that you're still under oath, okay, ma'am?

Dr. Hughes: Yes, Your Honor.

Judge Azcarate: Thank you.

Ms. Bredehoff: And could you please just remind the jury who you are again?

Dr. Hughes: Sure, I'm a clinical and forensic psychologist, I am board certified in forensic psychology, I am the president-elect of the trauma division of the American Psychological Association, and I evaluated Amber Heard over six visits for approximately 29 hours.

Ms. Bredehoff: Okay. And why are you here today?

Dr. Hughes: To offer rebuttal testimony to Shannon Curry's testimony yesterday.

Ms. Bredehoff: Okay. Now, Dr. Curry said you used improper methods. Would you agree with that?

Dr. Hughes: No, I would not.

Ms. Bredehoff: Why? Please explain.

Dr. Hughes: As I testified to you all several weeks ago, I used a standard forensic procedure that is well established in our field that is a multi-method, multi-hypothesis driven procedure where you're looking at a

variety of different details and tests and external data to arrive at an opinion and you're looking at the consistency across that data. There are three sort of sets of tests that we use as forensic psychologists, and I think that's where it seems that Dr. Curry seems confused. We have forensic assessment instruments. Those are instruments that are very neatly tied to a legal criteria.

Those are most notably done in a criminal court for competency. If someone has competency to stand trial, we have very clear measures that can track that legal criteria. The next level are forensically relevant instruments, and those instruments are not linked to a specific legal criteria but they do have information that's germane to that finding. And that can be an example of a risk assessment measure and a malingering measure.

So, the malingering measure that I utilized was the M-FAST and that was the only malingering measure in this case. The third category are clinical assessment instruments, and those are instruments that are validated and well researched and used in the clinical realm as we understand people's symptomatology and diagnostic and functional capacities. Those are things like the MMPI, the PAI, the CAPS, the TSI, because they are clinically relevant and they still give us very valuable information to individuals who are involved in a court case. And the reason that we do that and we use these clinical measures is because the majority of the people that we see are in a clinical realm, they're not in a courtroom.

So, they're well validated and well-researched methods. What we also do is use very different types of tests within that category. We use some checklists, some face valid checklists, we use some tests that are those broad band personality inventories, we use structured clinical interviews, and then we look for the consistency across those data points. And when we use different types of tests, it gives us information about the individual and how they go about these tests in these different modalities.

Ms. Bredehoff: Now, Dr. Curry seems to suggest that Amber Heard tested the most extreme category in all of these different tests. Is that accurate?

Mr. Dennison: Objection, compound.

Judge Azcarate: Overruled.

Dr. Hughes: That is not accurate, they were not on the checklist. I mean, people sometimes do, they go, "All the time, this happens to me all the

time frequently," and that is not how she endorsed these tests. She endorsed them in a very moderate way, in a very nuanced way, describing her symptoms that I determined was accurate and reliable.

Ms. Bredehoff: Now, Dr. Curry also suggested that Ms. Heard was tested very, very high, 98th percentile, I think, on malingering and feigning. Could you speak to that, please?

Dr. Hughes: Sure. So, I mean, she said a lot of things, so let's go through those tests. The first was the PAI and that's that other broad band psychological measure...

Mr. Dennison: Objection, non-responsive.

Ms. Bredehoff: I think it's very responsive.

Judge Azcarate: Sustained.

Ms. Bredehoff: Okay. Could you tell the jury about the PAI test that Dr. Curry addressed?

Dr. Hughes: Yes, thank you. So, that's the broad band measure that has validity scales built into it that gives us indications about how the individual goes about the test. I told you last time that there was no evidence of malingering or exaggeration or feigning on that test. What Dr. Curry was talking about was this tendency to put your best foot forward to minimize false on this PAI. That scale was right at the cusp, and then there were two other measures that we look at that to say, "You know, is this enough for an elevation for me to consider that as a serious response distortion?" Of which Dr. Curry was saying, and it was not. What was relevant on this test was there were elevations on anxiety, on affective anxiety, meaning anxiety, tension worry, on traumatic stress, on hyperactivity, and on an aspect of instability. Those were the four scales that were elevated on this test. The borderline scale was not elevated on this test, and this test...

Mr. Dennison: Objection, Your Honor. May we approach?

Judge Azcarate: Yes.

Ms. Bredehoff: Let's move to the TSI-2, Dr. Curry testified about your findings on that. Did you agree with her testimony yesterday?

Dr. Hughes: No.

Ms. Bredehoff: And please describe why. Explain why.

Dr. Hughes: What Dr. Curry went back to, which is this 98th percentile, which I told you in the manual, all you have to do is read the manual. It says specifically that we do not use the percentile ranks for this test. That indicates to me that, you know, Dr. Curry does not know the psychometric properties of this test and then she then is therefore not qualified to interpret it. That score, the one that's elevated when she's talking about that percentile rank, has a raw score, Amber's raw score as the 10, the cutoff score is the 15. She's nowhere near that level of exaggerated symptoms where I can't further look at that test.

Secondly, there are three scales at or about...maybe it's about 20, a little more on the TSI that were elevated. Intrusive experiences, that's when thoughts and memories of the trauma come into your mind when you don't want them. Defensive avoidance, sort of behavioral ways that we try to push out those memories and not think about them. And then relational avoidance, a way of having difficulty in interpersonal relationships. Those are all trauma-based symptoms, and those were elevated on this test.

Ms. Bredehoff: Thank you. Dr. Hughes, the M-FAST, Dr. Curry addressed that as well and had criticisms for your interpretations. Do you agree with that?

Dr. Hughes: No.

Ms. Bredehoff: Please explain to the jury.

Dr. Hughes: So, the M-FAST, as I told you last time, is a measure of malingering. It's the only measure of malingering that was done in this case. Dr. Curry did not independently administer measure of malingering and there are other ones that she could have done to augment her evaluation. And she kept saying something that M-FAST is not for malingering PTSD. That's wrong on a couple of levels. People who are going through malingering and feign don't only feign one diagnosis, they sometimes talk about all different symptoms that they have, and they exaggerate, and they make themselves seem much worse than they are.

So, when you're doing an evaluation, you're giving them a malingering measure to get a sense of how this person is responding to this evaluation. Now, what you do is you take those three tests that I talked to you about, the PAI, the TSI, and the M-FAST, all with valid validity scales, you have greater confidence in your results. And that is in the literature and that's literature that Dr. Curry cited in her report that bolster the methodology that I used, that in the study that had the PAI,

the M-FAST, and the TSI in the title of detecting feign from bona fide PTSD.

Ms. Bredehoff: Thank you. Now, Dr. Curry also talked about the Danger Assessment Scale and suggested that you had inappropriately interpreted that. Do you agree?

Dr. Hughes: That's also incorrect.

Ms. Bredehoff: Please describe for the jury why.

Dr. Hughes: Which I told you last time, the Danger Assessment Scale has statistically validated risk factors for serious or lethal domestic violence. Those risk factors exist whether we go forward, we're sitting with someone in an acute setting and assessing them right now, or if we look backward and we look retrospectively about what factors may have been present in a case that indicated severity. That instrument is used in what we call...there's called Domestic Fatality Review Boards, those are boards after somebody has been killed, a homicide has occurred in a domestic situation, they look at these risk factors to see what was there and what could be done.

Ms. Bredehoff: Right. Dr. Curry also criticized your administering of the CAPS-5, do you agree with her criticisms?

Dr. Hughes: I do not.

Ms. Bredehoff: Will you please explain to the jury?

Dr. Hughes: So, the CAP-5, as you all have heard multiple times, is a structured clinical interview in determining PTSD according to DSM-5 criteria. On this measure, Amber Heard scored in the moderate range. She did not over exaggerate on this test. She could have said no, mild, moderate, severe, and extreme. All of hers were either twos or ones or zeros. Not above that. So, she's scoring in the moderate range, which still has functional impairments. I mean, we don't want someone to be having moderate PTSD but that's not an exaggerated profile or exaggerated response style of someone who's answering an instrument.

Ms. Bredehoff: All right. And the last of these Dr. Curry referred to was the PCL-5. Do you agree with her criticisms of your administration and interpretation of that?

Dr. Hughes: No, so the PCL-5 is a checklist of symptoms of PTSD. As she said, it is a face valid instrument, it's very clear about how you can endorse this. But what the person has to do is say, "How disturbed am I by these symptoms?" And when you have face valid measures with

these other measures that have the built-in sort of validity scales, you're sort of controlling for that response bias error, you were controlling for that individual to sort of over exaggerate. But then what you do with that test because this is...you know, we're not just administering them like robots, is you go and you do a clinical assessment. And that's what I did, I took what she endorsed on that test in January of 2021 and I did a clinical assessment of those symptoms to see if they meet criteria for PTSD. That is something we do clinically and I do in my office all the time. And yes, she did meet PTSD from that in January 2021.

Ms. Bredehoff: Thank you. Now, Dr. Curry said you misinterpreted her test results. Do you agree with that?

Dr. Hughes: Yeah, I agree that I...I agree that I interpreted that she misinterpreted them.

Ms. Bredehoff: Okay. And please explain that.

Dr. Hughes: Yes, so I said that before, you know, my stance on the MMPI and how she interpreted it is, I believe, wrong and I think...

Mr. Dennison: Objection, Your Honor.

Judge Azcarate: All right.

Mr. Dennison: That's the issue we just addressed.

Judge Azcarate: All right.

Judge Azcarate: If you want to approach?

Ms. Bredehoff: Now, Dr. Hughes, Dr. Curry also testified that the victim of PTSD has to effectively be prone and unable to function at all. Would you agree with that?

Mr. Dennison: Objection, mistakes the evidence.

Dr. Hughes: She said they couldn't hike, they couldn't move, they couldn't function in any way, shape, or form.

Judge Azcarate: I overruled the objection.

Ms. Bredehoff: Thank you.

Dr. Hughes: No, that is not correct. That is often actually a myth and misconception about individuals who were struggling with PTSD or trauma-based disorders and I'm often called to answer that and speak to that. You know, people who are struggling with trauma and PTSD are very strong, courageous, resilient people, even though that they're

struggling. They get up, they have to go to work and drop their kid off at school and go to the market even though they're struggling with these symptoms.

So, I often talk about it as just sort of walking around with a 50-pound bag of flour on their backs, just sort of trying to get through the day where sometimes that button is going to press play and the trauma is going to start activating in their head and then they're going to be having to think about it and have startled and have physiological reactions until they can find a way to hit that pause and shut it off again. So, they still have, you know, impairments in other ways, but they go about their lives, they're not, you know, totally debilitated. If you have someone in that high range...the highest score is 80 on the CAPS, Ms. Heard had a 28. If you have someone in the higher range, we have seen people who are, you know, severely disabled because of it but that's not the norm of people who have this moderate PTSD.

Ms. Bredehoff: And did you find functional impairment with Amber?

Dr. Hughes: Yes, I did.

Ms. Bredehoff: Okay. Now, Dr. Curry also said that it is not within the scope of a psychologist to evaluate domestic violence. Do you agree with that?

Ms. Bredehoff: Of course, I don't agree with that. This is what I do for a living day in and day out for 25 years. We are specifically trained to understand the profound impact that trauma has on people's lives. That's what we do in the trauma division of the American Psychological Association, we disseminate that knowledge. And domestic violence is one of those profound traumas. Domestic violence is part of state licensing boards that you can't get licensed in some states unless you take training on domestic violence, you can't renew your license unless you get training on domestic violence.

So, people who have, you know, specialized training in this area, it is, you know, holding upon them to accurately assess for intimate partner violence and sexual violence. And it's more important to assess for the sort of scientific understanding of what domestic violence is, so you have to assess for the physical violence, the psychological violence, the surveillance, the economic, the emotional abuse, and the sexual violence. That is not fortuitous...

Mr. Dennison: Objection, narrative.

Judge Azcarate: All right. Next question.

Ms. Bredehoff: Okay. Now, Dr. Curry suggested that you made a determination just based on personal opinion and just on checklists and a couple of tests that you misinterpreted, would you agree with that?

Dr. Hughes: I vehemently disagree with that. As I stated to you, over 29 hours and 12 psychological tests and reviewing a slew of documents in this case, and most importantly, therapy records and interviews, collateral interviews with therapists using all that data, that is what a solid forensic methodological exam looks like. And then I made my conclusions based on my clinical education, knowledge, and training to come up with a professional expert opinion.

Ms. Bredehoff: Okay. And just to remind...to make sure we're reminded here, you are qualified in this court, in this case, as an expert in forensic psychology and specifically in domestic violence and in the...no, I just lost it. And in violence, correct? And in trauma, correct?

Mr. Dennison: Objection, Your Honor, mistakes the record.

Judge Azcarate: If you want to ask the question again.

Ms. Bredehoff: Yeah, I probably should do that. You were qualified...I gotta find my note. You were qualified as an expert in forensic psychology with a specialty in domestic violence and in trauma, correct?

Dr. Hughes: Correct.

Ms. Bredehoff: Okay. And that was in this case?

Dr. Hughes: That's correct.

Ms. Bredehoff: Okay. Now, do you still hold the same opinions you did that you gave the jury earlier?

Dr. Hughes: Yes, I do.

Ms. Bredehoff: And do you still hold them within a reasonable degree of psychological probability and certainty?

Dr. Hughes: Yes, I do.

Ms. Bredehoff: Thank you.

Judge Azcarate: All right, cross-examination.

Mr. Dennison: Yes, Your Honor. Can we approach quickly?

Judge Azcarate: Sure.

Mr. Dennison: Good morning, Dr. Hughes.

Dr. Hughes: Good morning, Mr. Dennison.

Mr. Dennison: The last time you were here, I believed that you testified that you had diagnosed Ms. Heard with PTSD before you gave the gold standard CAPS-5 test?

Dr. Hughes: That's correct.

Mr. Dennison: Right. And that diagnosis is actually reflected in the first of the disclosures you put forward in this case.

Dr. Hughes: I believe the first disclosure was February 2021, and at that point, I had done 11 psychological tests. That's correct.

Mr. Dennison: Right. And your disclosure reads, "Ms. Heard's responses on the PCL-5 support a DSM-5 diagnosis of post-traumatic stress disorder with an etiology of intimate partner violence she experienced by her former partner." Remember writing that?

Dr. Hughes: That's correct

Mr. Dennison: Okay. You just testified that you need to read the manual, right?

Dr. Hughes: Yes.

Mr. Dennison: Okay. Can we put up 1311 as a demonstrative?

[01:12:48]

[silence]

[01:13:04]

Judge Azcarate: Any objection to 1311?

Ms. Bredehoff: I don't know what it is, Your Honor. May we approach?

Judge Azcarate: Do you want to approach?

Ms. Bredehoff: Thank you. I don't see this in my document either.

Judge Azcarate: They're getting the right one up.

Mr. Dennison: Yeah, we got it up. Let's use 1312.

Judge Azcarate: 1312. Okay. Any objection to that demonstrative?

Ms. Bredehoff: No, Your Honor.

Judge Azcarate: Okay, 1312 can be published to the jury.

Mr. Dennison: Dr. Hughes, do you recognize what the National Center for PTSD is?

Dr. Hughes: What it is?

Mr. Dennison: Yes.

Dr. Hughes: Yes, I do.

Mr. Dennison: And they published the PTSD checklist for DSM-5?

Dr. Hughes: That's correct.

Mr. Dennison: What we've been calling the PCL-5?

Dr. Hughes: Correct.

Mr. Dennison: All right. Are you familiar with the document that's on your screen?

Dr. Hughes: Yes.

Mr. Dennison: All right. What is it?

Dr. Hughes: It's the instruction manual to how to administer the PCL-5.

Mr. Dennison: Okay. I'd like to move for the admission of 1312.

Judge Azcarate: Any objections to 1312 coming into evidence? All right, 1312 in evidence.

Mr. Dennison: All right. Can we go to the second page? Can we blow up the second paragraph on the right? "The PCL-5 should not be used as a stand-alone diagnostic tool. When considering a diagnosis, the clinician will still need to use clinical interviewing skills and a recommended structured interview, e.g., the CAPS-5, to determine a diagnosis," correct? That's what the manual says.

Dr. Hughes: Right, and this manual also says that this is a screening instrument so when you do clinical interviewing, you absolutely can determine diagnosis...

Mr. Dennison: Yes, the manual says...

Dr. Hughes: Still need to use clinical interviewing skills, which I use.

Mr. Dennison: Let me finish my question. The PCL-5 should not be used as a stand-alone diagnostic tool and they recommend using the CAPS-5 to determine a diagnosis, correct?

Dr. Hughes: It does say that, yes.

Mr. Dennison: Yeah, and you made your diagnosis before you did the CAPS-5?

Dr. Hughes: I made my diagnosis doing clinical interviewing and 11 other psychological tests that supported diagnosis of PTSD and symptomatology consistent with PTSD.

Mr. Dennison: Okay. You said that we should read the manual. Would you also agree with me that we need to read the directions on these tests?

Dr. Hughes: Sure.

Mr. Dennison: Okay. Tom, can you pull up 1309 as a demonstrative? May I approach?

Judge Azcarate: Yes, sir. Thank you. Any objection to 1309 as a demonstrative?

Ms. Bredehoff: May we approach?

Judge Azcarate: Okay. 1309, and published to the jury as a demonstrative.

Mr. Dennison: Doctor, do you recognize the demonstrative that's in front of me?

Dr. Hughes: Yes, but I didn't put the red lines on that.

Mr. Dennison: No, I did it.

Dr. Hughes: Yes, I know.

Mr. Dennison: Okay. So, what do you recognize this as?

Dr. Hughes: I recognize that we previously discussed this, and I told you that I oriented Ms. Heard to a different timeframe because she was already out of the relationship.

Mr. Dennison: Okay, maybe we should back it up a little. This is the CTS2 that you administered as part of this battery of tests that you indicate you did in relationship to your diagnosis.

Dr. Hughes: Right, this is the Conflict Tactic Scale 2.

Mr. Dennison: All right. And you'll agree with me that this test specifically asks, in front of every single question, how often this happened in the past year?

Dr. Hughes: Correct, and I oriented the individual to not limit herself to the last year to get an accurate assessment of the violence and abuse that she experienced in the relationship.

Mr. Dennison: Objection, Your Honor, move to strike...

Judge Azcarate: All right, move to strike the last part of the answer...I mean, I'll strike the last part of the answer. Thank you. Next question.

Mr. Dennison: Yeah. And you know that at the time that you gave this test to Ms. Heard, she had been away from Mr. Depp for far longer than a year, correct?

Dr. Hughes: Which is why I oriented her to a different timeframe in answering the question.

Mr. Dennison: Doctor, yes or no?

Dr. Hughes: Of course.

Mr. Dennison: Okay, you knew she was gone for more than a year?

Dr. Hughes: Of course.

Mr. Dennison: All right. Let's look at another one of these. We talked about...you talked about the Danger Assessment test?

Dr. Hughes: That's correct.

Mr. Dennison: All right.

Judge Azcarate: Plaintiff's 1310.

Dr. Hughes: Thank you.

Mr. Dennison: All right.

Judge Azcarate: Any objection to 1310 as demonstrative?

Ms. Bredehoff: No, Your Honor.

Judge Azcarate: Okay. You can publish to the jury.

Mr. Dennison: Dr. Hughes, this is a blank form, but this is the Danger Assessment test that you also gave to Ms. Heard, correct?

Dr. Hughes: I didn't give it to her, I filled it out based on the data that was provided to me.

Mr. Dennison: Oh, so you asked her the questions and then you filled it in?

Dr. Hughes: It was somewhat collaborative.

Mr. Dennison: Okay. Can we blow up the second full paragraph? It says, "Using the calendar, please mark the approximate dates during the past year when you were abused by your partner or ex-partner." You didn't use any calendar, did you?

Dr. Hughes: I did not use a calendar because she was already out of the relationship. As I said, these are static risk factors, so they don't change. So, I oriented her to the time of the relationship.

Mr. Dennison: Ma'am, it's fair to say that this examination that you gave specifically indicates that you were supposed to look over the past year and that's not the right way...

Dr. Hughes: No, that's one administration. People use this instrument for, if you're in an acute situation in a relationship, trying to get a better assessment of the current behaviors. We can use it retrospectively, like I just stated, in homicides and looking back about what are the serious risk factors that were in this relationship.

Mr. Dennison: I didn't ask you about anything other than don't the instructions limit this test to the previous year?

Dr. Hughes: You can give this test not only on the previous...

Mr. Dennison: Nope, I'm asking you about the instructions.

Dr. Hughes: But I'm telling you how the test is administered in clinical practice and forensic practice.

Mr. Dennison: And opposing counsel can come up and ask questions about it. I'm asking you about the instructions and the instructions say, "Look over the past year."

Dr. Hughes: On this, yes, it says that.

Mr. Dennison: And you had actual knowledge when you gave the test that Mr. Depp was going way more than a year before this test?

Dr. Hughes: That is correct.

Mr. Dennison: All right, let's look at more instructions. Can we look at 1247, which is already in evidence? Dr. Hughes, you recognize this one too, right?

Dr. Hughes: Yes.

Mr. Dennison: All right. This is the whatever it goes to CAPS-5?

Dr. Hughes: Correct.

Mr. Dennison: All right, can we go to the first page? Let's blow up the instructions. "Standard administration and scoring of the CAPS-5 are essential for producing reliable and valid scores and diagnostic decisions." Correct?

Dr. Hughes: Correct.

Mr. Dennison: And you know you have to do this in a standardized way because it is the first instruction, correct?

Dr. Hughes: Correct.

Mr. Dennison: Can we go to the next page? One more? Oh, that's good. This is a page on scoring and we talked about this last time.

Dr. Hughes: Yes.

Mr. Dennison: You score these tasks by frequency and intensity.

Dr. Hughes: Correct.

Mr. Dennison: And you'll remember that in every single instance that you were asked to fill in the blank about frequency, you failed to do so, correct?

Dr. Hughes: That's not correct.

Mr. Dennison: Oh, you filled in any blank on this form with respect to frequency?

Dr. Hughes: I filled in the frequency on the side of the CAPS where I am actually scoring the CAPS.

Mr. Dennison: No, I ask you whether you filled in a single blank on this form with respect to frequency. Is the answer to that yes or no?

Dr. Hughes: I don't know what you mean, a single blank.

Mr. Dennison: All right, let's keep going. All right, we'll stay on this page for a second. This is the very first box you were asked to fill in as to, I think, a fairly fundamental question, right? "What happened?"

Dr. Hughes: We talked about this before, Mr. Dennison, I had 88 pages of notes of what happened. It would have been redundant to put it there.

Mr. Dennison: You know that you are obligated to produce this test in a way that other people can meaningfully review them? Yes?

Dr. Hughes: The people in this case who are meaningfully reviewing them have my 88 pages of notes.

Mr. Dennison: All right, but you chose to put absolutely nothing in the box, the standardized box that said, "What happened?"

Dr. Hughes: You don't have to put it in the box if you have it somewhere else. It's not a...

Mr. Dennison: This is not a standardized test?

Dr. Hughes: Well, if it's another research instrument that is used for research. If you're using it for a clinical diagnostic purpose, no, you don't if you have that data elsewhere.

Mr. Dennison: Okay, let's go to another [inaudible 01:24:23]. All right, let's go to another one. All right, let's look at Item 4 B4. And I asked you that you filled in the blank about frequency and there's a blank in many of these items that asks the number of times. You didn't fill a single one of them in, didn't you?

Dr. Hughes: Right, because I filled them on the right side of the instrument where I am scoring it.

Mr. Dennison: And that is a way that you believe that you followed the instructions of a standardized test?

Dr. Hughes: Yes, correct.

Mr. Dennison: No further questions.

Judge Azcarate: All right, redirect.

Ms. Bredehoff: Very briefly. You used the term static risk factor. What did you mean by that?

Dr. Hughes: Static risk factors are risk factors that don't change. Maybe if you smoke cigarettes, you may have a risk of lung cancer, right? That's a factor that doesn't change. You can look forward if someone's

smoking, you can look to the past if someone's smoking. So, these lethality risk factors are present whether you're evaluating them in the last year or five years ago.

Ms. Bredehoff: When you're trying to assess for trauma related to the interpersonal violence that we discussed, why is it important to get a timeframe in which the relationship was in existence?

Dr. Hughes: Well, you want to see the amount of trauma that the person experienced. The longer that they're in a relationship, you have more successive trauma, and one of the things that we know from the research is more trauma is not better. So, the more successive traumas that you have, the greater likelihood that somebody is going to have psychological consequences and symptomatology as a result.

Ms. Bredehoff: And therefore, you need to get it within the relationship?

Mr. Dennison: Objection, leading.

Ms. Bredehoff: And so, how does that relate to needing to get the timeframe in the relationship?

Dr. Hughes: Well, you need to understand, when you're trying to evaluate the impact of something, you will have to understand what happened to the person and that's sort of the core and the basis of trauma-informed care and of trauma diagnosis. You have to understand, you know, the traumatic events and how it transpired and how it played out for that individual so that you can better assess for the symptomatology that's falling from it.

Ms. Bredehoff: You said you had 88 pages of notes, what were in your 88...and without going into the specifics, can you just describe what was included in the 88 pages of notes?

Dr. Hughes: In the 88 pages were many of the documented incidents of intimate...

Mr. Dennison: Objection, Your Honor.

Ms. Bredehoff: She's just describing it. That came up. He said, "You didn't fill those in the boxes," she said, "It was in my 88 pages," I'm just saying, "What was in your 88 pages?" I'm not asking her to give each of the specific events, she can describe the summary of it.

Mr. Dennison: Can we come up?

Judge Azcarate: Okay.

Ms. Bredehoff: What is the difference between clinical scoring and clinical evaluation and research evaluation with respect to the CAPS-5 and the other tests?

Mr. Dennison: Objection, compound.

Judge Azcarate: Sustained.

Ms. Bredehoff: Your Honor, when it's compounded, it's because it might be confusing to the jury.

Judge Azcarate: Sustained, next question.

Ms. Bredehoff: Okay. Can you explain to the jury what the difference is between clinical scoring and evaluation on a test and research?

Mr. Dennison: Objection, Your Honor, compound.

Judge Azcarate: Overruled, good ahead.

Dr. Hughes: Sure. So, the PCL and the CAPS-5 are frequently used in research. And when they're used in research, that means the document stands alone, they don't have 88 pages of notes to help understand the background of the trauma and what the person has experienced. And why those boxes may be relevant in research is because, you know, back in the day, when I was a research assistant, I had to input that into the computer, and then they would maybe look at some of that data for the research study. So, that becomes very important in research.

Ms. Bredehoff: All right. Thank you, I have no further questions.

Judge Azcarate: All right. Thank you, Dr., you can have a seat in the courtroom or you're free to go, okay?

Dr. Hughes: Thank you very much.

Judge Azcarate: All right, ladies and gentlemen, let's go ahead and take our afternoon recess...I mean, sorry, our morning recess. Let's take a 15-minute recess. Do not discuss the case with anybody and don't do any outside research, okay? All right, why don't we just come back at 11:05 then?

Bailiff: Please be seated.

Judge Azcarate: All right, are we ready for the jury?

Mr. Rottenborn: Yes, Your Honor.

Mr. Chew: Your Honor, is it possible to approach?

Judge Azcarate: Yes. Yes, sir.

[01:29:22]

[silence]

[01:29:40]

Judge Azcarate: All right, thank you, ladies and gentlemen, you may be seated. All right, your next witness.

Mr. Rottenborn: Your Honor, defense calls Amber Heard.

Judge Azcarate: All right, Ms. Heard, come to the stand, please. Yes, ma'am. Water. All right. Thank you, ma'am. Just a reminder, you're still under oath, okay?

Amber: Of course, Your Honor. Thank you.

Judge Azcarate: Thank you. All right, your question.

Mr. Rottenborn: Amber, just to orient you and the jury, at this time, we're in the rebuttal to your counterclaim against Mr. Depp, so I'm going to confine my questions to that, okay?

Amber: All right.

Mr. Rottenborn: How have you suffered publicly as a result of the Depp-Waldman statements?

Ms. Vasquez: Objection, speculation.

Judge Azcarate: Overruled.

Amber: I am harassed, humiliated, threatened every single day. Even just walking into this courtroom, sitting here in front of the world, having the worst parts of my life, things I've lived through, he used humiliate me, people want to kill me and he told me so every day. People want to put my baby in the microwave and he tell me that. Johnny threatened...promised, promised me if I ever left him, he'd made me think of him every single day that I lived...

Ms. Vasquez: Objection, Your Honor, non-responsive.

Judge Azcarate: All right, I sustained the objection as to that. If you want to ask a question.

Mr. Rottenborn: Amber, how did Mr. Depp's statements and threats to you that you were discussing, how do those continue to manifest themselves today?

Amber: In the harassment, in the humiliation, the campaign against me that's echoed every single day on social media and now, in front of cameras in this room. Every single day, I have to relive the trauma. My hands shake, I wake up screaming, I have to live with the trauma and the damage done to me. My friends have to live with a set of unspoken rules about how to not scare me.

Ms. Vasquez: Objection, hearsay.

Judge Azcarate: Ms. Heard.

Amber: Unspoken rules.

Judge Azcarate: Overruled, go ahead.

Amber: About how to not touch me, not to surprise me. My intimate partners have rules about how they can deal with me, how they can touch me. I have rules for doctors and medical professionals I see, gynecologists I see. I live my life with these sets of rules that I have to follow, my friends have to follow for me not to have a panic attack or a triggering event where I relive the trauma. Even if I'm training to do my movie, for instance, I'm training for "Aquaman," a combat scene and a trigger happens, I have a meltdown and have to deal with that, the crew I work with have to deal with that because of the damage I walk around with every single day from what I've lived through, from what I've survived.

I'm not sitting in this courtroom snickering, I'm not sitting in this courtroom laughing, smiling, and making snide jokes. I'm not, this is horrible, this is painful, and this is humiliating for any human being to go through. And perhaps it's easy to forget that but I'm a human being. And even though Johnny promise that I deserve this and promised he'd do this, I don't deserve this. I want to move on. The statements, the attack on me, the campaign that Johnny has elicited millions of people to do on his behalf when he himself couldn't do it...

Ms. Vasquez: Objection, lack of foundation, speculation.

Judge Azcarate: I'll sustain the objection. Next question.

Mr. Rottenborn: Amber, how the Depp-Waldman statements impacted your ability to do charitable work?

Amber: You know, I would...the only reason that people like Dr. Curry can sit up here on the stand and say I'm high functioning and I do things like have hobbies and have interests is because I'm not...

Ms. Vasquez: Objection, non-responsive.

Mr. Rottenborn: Your Honor, Mr. Depp gave long-winded responses yesterday.

Judge Azcarate: Overruled, go ahead.

Amber: It's because I found a solution to that pain. I woke up every morning with panic attacks and trauma until I realized I could do something with it. So, to answer your question, then I was able to turn the things that I've lived through, my pain, my life experiences into work, into action, into providing a voice for other people. I'm not a saint, I'm not trying to present myself as one, as you all know, but I selfishly found relief in being able to use what I've lived through to advocate for others, to bring light to these issues, to give a voice to people who don't have the voice and the platform that I have. And while I would not wish this situation on my worst enemy, if it gives a voice to someone who doesn't have it. But now as I stand here today, I can't have a career, I can't even have people associate with me because of the threats and the attacks that they have to endure...

Ms. Vasquez: Objection, non-responsive.

Judge Azcarate: I'll sustain the objection.

Mr. Rottenborn: Amber, other than the threats that you've described, what other threats have you endured since the Depp-Waldman statements were made?

Amber: I receive hundreds of death threats regularly, if not daily, thousands since this trial has started. People mocking my testimony about being assaulted, making fun of my...

Ms. Vasquez: Objection, relevance, non-responsive.

Judge Azcarate: Overruled.

Mr. Rottenborn: You can continue.

Amber: It's been agonizing, agonizing, painful, and it was humiliating. The thing I've ever had to go through, I hope no one ever has to go through something like this. I just want Johnny to leave me alone. I just

want him to leave me alone. I've said that for years now. And I thought he would after...

Ms. Vasquez: Objection, non-responsive.

Judge Azcarate: All right, I'll sustain the objection. Next question.

Mr. Rottenborn: What do you hope to reclaim after this is over?

Amber: Protecting the secret that I did for as long as I did has taken enough of my voice. Johnny has taken enough of my voice. I have the right to tell my story. I have the right to say what happened to me, I have the right to my voice and my name. He took it long enough. I have a right as an American to talk about what happened to me, to own my story and my truth. I have that right. I hope to get my voice back. It's all I want, and I said that from day one.

Mr. Rottenborn: Thank you, Amber. I don't have anything else.

Judge Azcarate: All right, cross-examination.

Ms. Vasquez: Actually, Your Honor, may we approach very briefly?

Judge Azcarate: Yes.

Ms. Vasquez: Ms. Heard, you just testified that this case has been very hard for you, so let's talk about that and why.

Amber: All right.

Ms. Vasquez: Your lies have been exposed to the world multiple times, right?

Amber: I haven't lied about anything I've been here to say.

Ms. Vasquez: You sat here and told this jury that the events in Hicksville started with Mr. Depp getting really upset about a woman leaning on you. Is that correct?

Amber: Yes, that's effectively what happened. Yeah.

Ms. Vasquez: You testify that he actually grabbed that woman's wrist and twisted it, right?

Amber: And told her that he could effectively break her wrist by saying he knew how many pounds of pressure...asking her how many pounds of pressure it took to break a human wrist.

Ms. Vasquez: But your own witness, your former best friend, Rocky Pennington, she didn't corroborate that, did she?

Amber: I'm not quite sure what part of that night she saw. There were a lot of people there.

Ms. Vasquez: She didn't testify that Mr. Depp grabbed anyone's wrist in Hicksville.

Amber: Again, I don't know what Rocky saw. There were a lot of people there that night.

Ms. Vasquez: You testify that once you brought Mr. Depp back to your trailer, he trashed it, correct?

Amber: That is correct.

Ms. Vasquez: And the manager of the Hicksville trailer park was furious that Johnny had wrecked the whole thing. Do you remember that testimony?

Amber: That's correct.

Ms. Vasquez: Well, we heard from that manager of the Hicksville trailer park, Morgan Knight, on Monday, didn't we?

Amber: I'm not quite sure who that guy was or if he had any involvement in this. I know a lot of people have come out of the woodwork to be involved.

Ms. Vasquez: So, you're accusing Mr. Knight of testifying and committing perjury?

Amber: I'm not accusing anyone, I just don't recognize that man.

Ms. Vasquez: You heard Mr. Knight testify that it was actually you who was upset with Mr. Depp spending time away from him. Isn't that correct?

Amber: How would he know, he wasn't there?

Ms. Vasquez: You heard Mr. Knight testify that it was actually you who was yelling at Mr. Depp?

Amber: Again, I've heard a lot of people say a lot of things to be involved in the Johnny Depp show. But he wasn't there, he doesn't know, and he certainly doesn't know what happened behind closed doors, like most people.

Ms. Vasquez: So, you're calling Mr. Knight a liar?

Amber: I am saying he wasn't there and what he testified to doesn't match what I know happened but I don't fault him. He wasn't there, so how would he know?

Ms. Vasquez: He testified he was there, Ms. Heard. Did you hear that?

Amber: That's his testimony, yes.

Ms. Vasquez: So, you're calling him a liar?

Amber: I'm just saying he wasn't there.

Ms. Vasquez: You heard Mr. Knight testify that the trailer wasn't trashed and that's why you're calling him a liar?

Amber: He testified that a light fixture was broken similar to the way that Johnny's employees testified to my closet being rearranged and things like that.

Ms. Vasquez: Ms. Heard, the only thing that was broken in the trailer according to Mr. Knight was the light fixture, yes or no?

Amber: I realized that he summed it up by saying a light fixture was broken just the way his security guard summed up him trashing my closet as being rearranged.

Ms. Vasquez: Your Honor, I'm going to move to strike everything after "he summed it up that it was a light fixture" as non-responsive.

Mr. Rottenborn: She answered the question, Your Honor.

Judge Azcarate: Overruled.

Ms. Vasquez: And the security guard testimony, Your Honor.

Judge Azcarate: I'll allow it, go ahead.

Ms. Vasquez: Mr. Knight also testified that he charged Mr. Depp only \$62 for the damaged light fixture. You heard that, correct?

Amber: I did.

Ms. Vasquez: All right. In Hicksville, you were the only one that was jealous that Mr. Depp was spending time with other people, isn't that correct, Ms. Heard?

Amber: That is incorrect.

Ms. Vasquez: In Hicksville, you were the one who was upset that Mr. Depp wasn't giving you enough attention?

Amber: Incorrect again.

Ms. Vasquez: Ms. Heard, you told this jury that you had no idea the press was going to be at the courthouse when you got your TRO on May 27th, 2016. Do you remember that testimony?

Amber: I said I did not have anything to do with it, yes.

Ms. Vasquez: No, my question again, you told this jury, that you had no idea that the press was going to be outside after you got the ex parte TRO on May 27th, 2016. Do you remember that testimony?

Amber: I apologize, I must have misunderstood, Ms. Vasquez. I actually had no idea whether they were going to be there or not. When I walked into the courtroom that day, it was completely quiet, still, empty. Even though I had given Johnny's team notice that I was filing the TRO...

Ms. Vasquez: Objection, Your Honor, this is non-responsive. Move to strike...

Judge Azcarate: All right.

Ms. Vasquez: And, Your Honor, I would also ask that you instruct the witness to please stop talking once I lodge an objection.

Mr. Rottenborn: Your Honor, she's trying to answer the question as best she can and Ms. Vasquez is misrepresenting to her what she testified to.

Judge Azcarate: I'll strike the last part as non-responsive. If you could just answer the question she asked, okay? Thank you, Ms. Heard.

Ms. Vasquez: In fact, you testified that you were "shocked" when you saw press when you were leaving the courthouse, yes?

Amber: Yes.

Ms. Vasquez: You weren't shocked at all, though, were you?

Amber: Incorrect, it was...

Ms. Vasquez: You knew the press would be at the courthouse, right, Ms. Heard?

Amber: No.

Ms. Vasquez: Well, you did bring your publicist to the courthouse with you on May 27th, 2016, didn't you?

Amber: I sure did. I'm a public figure, I brought my publicist in case it blew up. In case, and thank God I did.

Ms. Vasquez: You actually had alerted TMZ that you would be filing a TRO against Mr. Depp that very day, didn't you?

Amber: No, I did not.

Ms. Vasquez: The one day you didn't bother to wear makeup to cover up the mark on your face.

Amber: I did not call TMZ or any other news source or paparazzi source. No one. I never did that.

Ms. Vasquez: Well, we heard testimony from former TMZ employee, Morgan Tremain, yesterday, correct?

Amber: Did I hear his testimony?

Ms. Vasquez: Yes.

Amber: Yes, I was here.

Ms. Vasquez: Yes, and you heard Mr. Tremain's testimony that he knew to dispatch the paparazzi to the courthouse on May 27th, right?

Amber: I heard him say that he knew that, yes.

Ms. Vasquez: Yeah, and that he dispatched paparazzi to the courthouse to capture a picture of an alleged bruise on the right side of your face. Do you remember him saying that?

Amber: I remember him saying that.

Ms. Vasquez: That information must have come from your team, right, Ms. Heard?

Amber: Absolutely not. Why would I want that? What actual survivor of domestic violence wants that?

Ms. Vasquez: Now, the video of Mr. Depp beating up some kitchen cabinets. You admit that you took that video, correct?

Amber: Yes, I did.

Ms. Vasquez: All right. And you acknowledge that the video was released online the day before you were deposed in connection with your divorce from Mr. Depp in August of 2016, right?

Amber: I believe it was, yes.

Ms. Vasquez: But you testified that you had absolutely nothing to do with the video's release, right?

Amber: Absolutely not.

Ms. Vasquez: And you testified that you learned about it when you landed after flying into LA. Do you remember that testimony?

Amber: Upon touchdown is when I was alerted to the videos, it just came online.

Ms. Vasquez: You heard Mr. Tremaine testify about this video as well yesterday, didn't you?

Amber: Yes, he did.

Ms. Vasquez: And you heard Mr. Tremaine testify that TMZ received the cabinet video the same day you landed at LAX, yes?

Amber: I don't know if that's what his testimony was, I'm sorry.

Ms. Vasquez: You heard Mr. Tremaine testify that the cabinet video was posted 15 minutes after TMZ received it, yes?

Amber: That's what I heard him say.

Ms. Vasquez: And that this could only have been possible if the video was received directly from the source, yes?

Amber: I heard him say that. I don't know if that's true or if that's possible because it didn't come from me, I was flying.

Ms. Vasquez: Mr. Tremaine testified...

Amber: So, I know that's incorrect, is what I mean to say.

Ms. Vasquez: Another liar on the stand.

Amber: I just know that that's incorrect.

Ms. Vasquez: Right. And you heard Mr. Tremaine testify that TMZ owns the copyright to the cabinet video, right?

Amber: That's news to me.

Ms. Vasquez: The cabinet video you filmed of your then-husband, yes?

Amber: The copyright ownership of that is news to me, I learned that yesterday.

Ms. Vasquez: It's the cabinet video that you captured of your then-husband, yes?

Amber: That is correct, I did capture that video, and yes, that was my husband.

Ms. Vasquez: The same cabinet video that was released the night before you were deposed in your divorce, yes?

Amber: That's correct.

Ms. Vasquez: Okay. You must have also heard Mr. Tremaine testify that the version of the cabinet video that TMZ received was incomplete compared to the video the jury saw on this trial. Did you hear that?

Amber: The video that the jury...that you have seen is complete.

Ms. Vasquez: Right, but the one TMZ got the day before your deposition and the divorce was incomplete.

Amber: I don't know, I haven't seen it.

Ms. Vasquez: He testified that the beginning portion of the video where you set up the camera, that wasn't included in the video that TMZ received.

Amber: I don't know what video TMZ received.

Ms. Vasquez: I'm talking about Mr. Tremaine's testimony, Ms. Heard. Let's just focus on Mr. Tremaine...

Amber: Can you repeat his testimony?

Ms. Vasquez: No, I'm asking you if you recall hearing him say those words to this jury...

Amber: Yes, I heard his testimony, we all did.

Ms. Vasquez: And he testified at the end of the video where you can be seen smirking, I know you testified earlier that you haven't been smirking in this trial but you sure were caught on camera smirking in that video, was also not including in the TMZ video.

Amber: Everyone can watch that video and you can determine whether you think it's funny to me or not.

Ms. Vasquez: That's because the video came from you, right, Ms. Heard?

Amber: No, it did not.

Ms. Vasquez: You edited out the portions...

Amber: The video did not come to me...I mean from me.

Ms. Vasquez: Ms. Heard, you edited out portions that made you look bad before sending it to TMZ?

Amber: You're very wrong about that. If I wanted to leak information, I could have done it in a more effective way a lot sooner and a lot more. I was living with a mountain of this evidence. If I want to leak it, I could have done a lot more with it.

Ms. Vasquez: You testified earlier in this trial that you didn't know how to leak things. Remember that?

Amber: I don't.

Ms. Vasquez: Right. You edited that video before you gave it to TMZ so that only Mr. Depp would look bad, yes?

Amber: That's absurd.

Ms. Vasquez: Right in the middle of your divorce proceedings?

Amber: Again, you're very wrong.

Ms. Vasquez: I'd like to show you a picture from...that's already admitted into evidence, it's Defendant's Exhibit 799. This is you at the courthouse on May 27th, 2016 when you got your domestic violence restraining order against Mr. Depp, right?

Amber: It is.

Ms. Vasquez: And next to you is a woman named Jody Gottlieb, right?

Amber: Yes.

Ms. Vasquez: Jody Gottlieb is your publicist?

Amber: And a dear friend.

Ms. Vasquez: Now, I'd like to show you what's been marked as Plaintiff's Exhibit 1316. This is a picture of you and your friend, Rocky Pennington, right?

Amber: That is correct.

Ms. Vasquez: Your Honor, I'd like to move to admit this photograph.

Judge Azcarate: Any objection to 1316?

Mr. Rottenborn: No, Your Honor.

Judge Azcarate: All right, 1316 in evidence, you can publish to the jury.

Ms. Vasquez: This is a picture of her of you on May 28th, 2016, right, Ms. Heard?

Amber: I don't know when this was taken.

Ms. Vasquez: This is the day after you obtain the domestic violence restraining order against Mr. Depp, right?

Amber: I have no idea when this image was taken. I did not take it.

Ms. Vasquez: There's no bruise on your face in this picture, is there?

Amber: Again, I don't know when this was taken. And also, I'm outside, I was obviously wearing makeup. I have no idea when this was taken, so I have no idea if I can speak to what bruise you can see or not.

Ms. Vasquez: Let's refresh your recollection about when this picture was taken. Can we please pull up Plaintiff's Exhibit 1315 just for the witness? This is an article dated May 30th, 2016, right, Ms. Heard?

Amber: That's what it says, yes.

Ms. Vasquez: And this article contains the same photograph of you and Ms. Pennington we were just looking at, yes?

Amber: Yes, I see that.

Ms. Vasquez: And the article is entitled, "Amber Heard Smiles as She Puts Arm Around Friend One Day After Getting Restraining Order Against Johnny Depp." Is that what the title says?

Amber: I know that's what the title says, yes.

Ms. Vasquez: Your Honor, I'm going to move to admit and publish the article with everything but the headline and date and the photo redacted.

Mr. Rottenborn: Objection, Your Honor, that's inconsistent from the way we treated all of these.

Judge Azcarate: I sustained the objection. All right, next question.

Ms. Vasquez: Let's take a look at Plaintiff's Exhibit 1317. This is also a picture of you and Ms. Pennington on May 28th, 2016, is it?

Amber: I don't know when this photo was taken but it looks like the same outing as the picture prior.

Ms. Vasquez: Your Honor, I'm going to move to admit and publish Plaintiff's Exhibit 1317.

Judge Azcarate: Any objection?

Mr. Rottenborn: No, Your Honor.

Judge Azcarate: 1317 in evidence, you can publish.

Ms. Vasquez: There's no bruise on your face in this picture, either, right?

Amber: I disagree. If it is taken when you represent it was taken, then obviously there's a bruise on my face. It's covered by makeup as per usual.

Ms. Vasquez: Let's zoom out of that picture for a moment, please. Thanks. That's Josh Drew in this picture, right?

Amber: Yes, that's correct.

Ms. Vasquez: And Ms. Pennington?

Amber: That is correct.

Ms. Vasquez: And there are two?

Amber: That is correct.

Ms. Vasquez: Ms. Pennington submitted a sworn statement on your behalf in support of your domestic violence restraining order, didn't she?

Amber: I believe she did, yes.

Ms. Vasquez: Mr. Drew also submitted a statement in support of your domestic violence restraining order?

Amber: I believe they both did, yes.

Ms. Vasquez: Ms. Heard, I'd like to show you Defendant's Exhibit 512, which is already in evidence. You've seen this photograph before, right?

Amber: I have.

Ms. Vasquez: On the second day of your direct testimony, you testified that this was taken in the downstairs of the main apartment on December 15th, 2015. Do you recall that testimony?

Amber: Yes, I believe so.

Ms. Vasquez: So, it's your testimony that Defendant's Exhibit 512 reflects damage to Penthouse 5 that occurred during the December 15th, 2015 incident, yes?

Amber: I'm not quite sure from what incident this is when I see this photo in a vacuum without context.

Ms. Vasquez: Let's give you that context. Can we please...if I could have Day 16 trial testimony? Your Honor, may we approach?

Judge Azcarate: All right.

[01:52:38]

[silence]

[01:52:57]

Ms. Vasquez: Could you please turn first to page 4585?

[01:53:02]

[silence]

[01:53:24]

Ms. Vasquez: Specifically starting on line 16 where it says, "Let's talk about December 15th, 2015."

Amber: You said 458...I'm on 4485, sorry. You said 4585.

Ms. Vasquez: 4585. Line 16.

[01:53:41]

[silence]

[01:54:00]

Ms. Vasquez: Line 16 where it says, "Let's talk about December 15th, 2015." Do you see that?

Amber: Yes.

Ms. Vasquez: Okay. And then do you see that your testimony about December 15th, 2015 follows?

Amber: Let's see, it's just the first line or two.

[01:54:15]

[silence]

[01:54:31]

Amber: Yes.

Ms. Vasquez: Okay. Now, I'd like you to turn to page 4603. Starting at line 12. 4603. Starting at line 12, and going on to page 4604, line 4.

Amber: Okay.

Ms. Vasquez: And do you see that you testify that Defendant's Exhibit 512, which is on the screen, is a picture of the downstairs of the main apartment?

Amber: That's correct.

Ms. Vasquez: And the main apartment is Penthouse 5 in the Eastern Columbia building, right?

Amber: Well, depends on what...the main apartment is Penthouse 3, generally, when we say main apartment.

Ms. Vasquez: Penthouse 5 was where you had your closet?

Amber: The downstairs is kind of like...it had some of my painting studio set up and a reception area, upstairs was the closet, the mezzanine office was in between.

Ms. Vasquez: All right, so it's your testimony that Defendant's Exhibit 512 reflects damage to the penthouse, Penthouse 5, that occurred during the December 15th, 2015 incident, right?

Amber: I'm just not sure from which incident this is a picture of since I'm only looking at a partial floor.

Ms. Vasquez: Even though your counsel was asking you questions about December 15th, 2015 and then admitted this picture into evidence in relation to that incident?

Amber: Sorry, go ahead.

Ms. Vasquez: In relation to that incident on December 15th, 2015, this exhibit, Defendant's Exhibit, you are the defendant, number 512 was admitted into evidence in this court, you testified that this was a result of damage that occurred on December 15th, 2015, yes or no?

Amber: I just need to orient myself because I'm just looking at a picture of...a partial picture of a floor.

Ms. Vasquez: Ms. Heard, you didn't just look at a picture, you looked at your testimony.

Amber: You pointed me towards the page and then ask me a question, I haven't actually reviewed it. I don't know if this was submitted in relation to that incident.

Ms. Vasquez: Let's pull up...let's actually leave out Defendant's 512 and please pull up Defendant's Exhibit 725, which is already in evidence in redacted form, Your Honor.

Judge Azcarate: All right, thank you. You can publish.

Ms. Vasquez: Just side by side. You've seen this photograph as well, right?

Amber: I have.

Ms. Vasquez: On the third day of your direct testimony, you testify that this photograph reflected spilled wine in Penthouse 5 on May 21st, 2016, didn't you?

Amber: Again, I don't know because I'm looking at a partial picture of a floor. So, unless you've removed the metadata you've covered up, we could then tell. If you remove...

Ms. Vasquez: I didn't cover it up, Your Honor.

Amber: Could we unredacted them so we could get context?

Judge Azcarate: That's how it's in evidence.

Amber: That's how it's in evidence.

Judge Azcarate: Next question.

Amber: Well, the metadata next to it is so that...to avoid this sort of confusion.

Ms. Vasquez: All right, there is no question pending and I would appreciate it if you wouldn't be making argument to the jury.

Amber: Sorry, I thought you would ask me about it.

Ms. Vasquez: I didn't ask you about anything. Let's look at your direct testimony from the third day. Your Honor, may I approach?

Judge Azcarate: Yes, ma'am. Thank you.

Amber: Thank you.

Ms. Vasquez: Let's turn to page 4750 in Day 17 transcript.

Amber: Sorry, can you repeat that?

Ms. Vasquez: 4750.

[01:58:19]

[silence]

[01:58:35]

Ms. Vasquez: Specifically, line 16. Do you see where Ms. Bredehoft asked you to describe for the jury what took place on May 21st, 2016?

Amber: I see that.

Ms. Vasquez: And do you see that your testimony is reflected about May 21st, 2015 that follows?

Amber: Yes.

Ms. Vasquez: Okay. Now, let's turn to page 4804 at line 14. 4804, starting at line 14.

Amber: Yes.

Ms. Vasquez: Through 4805, line 4.

Amber: Going to what line?

Ms. Vasquez: Line 4 at 4805. Do you see that you're testifying that Defendant's Exhibit 527, which is reflected on the right side, reflects spilled wine on the floor in Penthouse 5?

Amber: That's correct.

Ms. Vasquez: Okay. And Defendant's Exhibit 512 and 725 seem to be different versions of the same picture, don't they?

Amber: That's correct.

Ms. Vasquez: Okay. So, which is it? Which one was taken on December 15th, 2015, or May 21st, 2016?

Amber: If you remove the redacted metadata, you can find out. It's right there.

Ms. Vasquez: Or if you're telling the truth, you would know.

Amber: Recognize a portion of spilled wine on a floor and I'm supposed to know off the top of my head when you've lived through five years of this stuff? I don't think so. That's not how that works.

Ms. Vasquez: Okay. Thank you, Tom. Ms. Heard, at the beginning of your cross-examination...

Mr. Rottenborn: Your Honor, may we approach?

Judge Azcarate: Yes. All right, ladies and gentlemen in the gallery, I would ask that there be no words, no phrases, no words, no sounds at all coming from you. If I hear one more sound, I will clear the gallery and we will continue this testimony without anybody in the courtroom, understood? Good. All right, your next question.

Ms. Vasquez: Ms. Heard, at the beginning of your cross-examination last week, I showed you an audio where you told Mr. Depp to tell the jury, tell the judge, tell the world that he is a victim of domestic abuse. Do you remember that?

Amber: That's correct.

Ms. Vasquez: And you testified you found it hard to believe that Mr. Depp would tell the world that he's a victim of domestic abuse, didn't you?

Amber: I said I find it hard to believe that he would do that knowing that he himself had beat me up for five years.

Ms. Vasquez: But he has told the world that he's your victim of domestic abuse, hasn't he?

Amber: Well, he started to say that only recently. He didn't make that claim up until very recently. So, when we signed our divorce agreement and we signed a statement saying that neither party had ever said false

claims for financial gain, it was relevant and important to me because I was the only one making the accusations, I was the only one making those claims. He wasn't doing that at the time, and he signed his name to it.

Ms. Vasquez: You didn't expect many people to show up and testify on his behalf, did you?

Amber: Incorrect.

Ms. Vasquez: When you told this jury under oath that you never assaulted...actually, struck that. When you told this jury under oath that you punched Mr. Depp because you thought of Mr. Depp pushing Kate Moss down the stairs, you didn't expect Ms. Moss to agree to testify that that never happened, did you?

Amber: Incorrect, I know how many people will come out of the woodwork to be in support of Johnny and it's clear by this courtroom how many people will do that.

Ms. Vasquez: So, you think Ms. Moss come out of the woodwork to testify for Mr. Depp?

Amber: Everybody who was around in the '90s and the early aughts knew that rumor. I had heard that rumor from multiple people. Of course, that's what flashed through my head when my violent husband not only swung for me, but all of a sudden, swung for my sister. Of course, I thought of that. I did not expect her to show up or not expect her to show up. It didn't matter. It doesn't change what I believed at the time when we were on the stairs and I thought he was gonna kill my sister by pushing her down the stairs.

Ms. Vasquez: You told this jury under oath that Mr. Depp was aggressive and trashed the trailer in Hicksville. You didn't expect the manager of the Hicksville property, Morgan Knight, to come forward and testify that that wasn't true, did you?

Amber: Incorrect. I've already been through trials with this man, I know how many people will come out in support of him.

Ms. Vasquez: When you told this jury under oath that you had no idea that the paparazzi would be at the courthouse on May 27th, 2016, you didn't expect a TMZ employee to show up to testify that TMZ had been alerted that you would be at the courthouse and knew exactly which side of your face to take a picture of, did you?

Amber: I know how many people will come out and say whatever for him. That's his power. That's why I wrote the op-ed, I was speaking to that phenomenon, how many people will come out in support of him and will fall to his power. He is a very powerful man and people love currying favor with powerful men. And I know that firsthand, I've lived it.

Ms. Vasquez: Currying favor and risking jail time for committing perjury?

Amber: Excuse me? I didn't hear your question, excuse me.

Ms. Vasquez: You didn't hear my question?

Amber: Ms. Vasquez, if you don't mind, please just repeat the question, I didn't hear you.

Ms. Vasquez: Curry favor and commit perjury in this courtroom for a powerful man?

Amber: I have seen people do this time and time again. That's why I wrote the op-ed.

Ms. Vasquez: You didn't expect Ben King, the house manager in Australia to show up from England, he flew from England to testify that Mr. Depp's fingertip was found exactly where he said it would be, did you?

Amber: I have never heard Johnny testify to knowing where his finger was, or really, frankly, making a claim that he knew where it was when it was found. I've never heard Johnny claim that.

Ms. Vasquez: You didn't expect Keenan Wyatt...

Amber: Johnny has never actually said that.

Ms. Vasquez: Ms. Heard, I think the jury can...

Amber: And Ben King, yes.

Ms. Vasquez: Ms. Heard, there is no question pending. You didn't expect Keenan Wyatt, Mr. Depp's longtime sound technician, to show up and testify that Mr. Depp has not been fed line through his earpieces but instead of music, did you?

Amber: Not that it matters much, but of course, of course, I did. I know how his employees treat him, I know how his team treats him. Of course, I expected that.

Ms. Vasquez: Okay, so you probably expected Isaac Baruch to come and testify for Mr. Depp, right?

Amber: I'm not sure I thought about that.

Ms. Vasquez: Yeah, but you didn't expect Mr. Baruch to weep, to weep for Mr. Depp after what you've put him through and so many others with your lies, did you?

Amber: I relate to Isaac because he and I are the only ones who cried on this stand.

Ms. Vasquez: Nothing further.

Judge Azcarate: All right. Redirect.

Mr. Rottenborn: Thank you, Your Honor. Ms. Heard, if Mr. Baruch felt misled, who misled him?

Amber: Johnny. And I don't blame him, I don't blame him from crying. This is horrible.

Mr. Rottenborn: Ms. Vasquez has suggested that you fake bruises on your face. Is that true?

Amber: Absolutely not. I didn't need to.

Mr. Rottenborn: Did you ever fake an injury caused by Mr. Depp?

Amber: No.

Mr. Rottenborn: Is any of the evidence of your injuries that has been put to the jury in this trial fake?

Amber: No, absolutely not.

Mr. Rottenborn: And to the extent that there may be some confusion over when a picture of spilled wine was taken, why might that be?

Ms. Vasquez: Objection, lack of foundation.

Judge Azcarate: Overruled.

Amber: Because there's so many incidents of violence, there's so many pictures, there's so much evidence, most people don't have this kind of evidence for years, five years. And when I was saying that to Johnny on the phone in that recording, I was saying for years, this has been going on and I have pictures, we have text, we have everything. Normally, you don't get this amount of evidence. That's what I was pointing out to Johnny. It would be crazy to try to challenge this in this way. It's crazy. It's easy to not know the context of a picture of spilled wine because

there are so many more important details, pictures, and also so much I didn't photograph, so much I didn't have the presence of mind...

Ms. Vasquez: Objection, non-responsive.

Judge Azcarate: All right, I'll sustain the objection. Next question.

Mr. Rottenborn: Did Mr. Depp abuse you physically?

Amber: Yes.

Mr. Rottenborn: Verbally?

Amber: Yes.

Mr. Rottenborn: Emotionally?

Amber: Yes.

Mr. Rottenborn: Psychologically?

Amber: Yes.

Mr. Rottenborn: How did the threats that Mr. Depp made against you individually years ago resemble what you've endured as a result of the Depp-Waldman's statements?

Ms. Vasquez: Beyond the scope of cross, Your Honor.

Judge Azcarate: Overruled.

Amber: Johnny promised me, promised me he would ruin me, that he'd ruined my career, he'd take my life from me, death was the only way out and if I got out, this is what he'd do to me. He'd made me think of him every single day. He promised me global humiliation, you saw those texts. What he couldn't do, the work of one individual, meaning Johnny, when he was inviting a disgruntled employee over for a spot of purple to fix my flabby ass up, that revenge that he sought back then was just what he could do as an individual. Calling the studio to get me fired, trying to block...

Ms. Vasquez: Objection, Your Honor, lack of foundation, speculation, hearsay, non-responsive.

Judge Azcarate: I sustained as to non-responsive.

Mr. Rottenborn: Ms. Heard, how did those things that you just testified to that Mr. Depp did, how did those resemble what happened to you after the Depp-Waldman counterclaim statements were made?

Amber: Well, those are...

Ms. Vasquez: Objection, Your Honor, lack of foundation.

Judge Azcarate: Overruled.

Mr. Rottenborn: Thank you. Thank you, Your Honor.

Amber: Those are just an echo of what I'm living through today. It's like what I'm living in right now, what you've seen in this courtroom is an echo. This courtroom and the other courtroom he dragged me into to do the same thing again, that's just an echo of the violence and the abuse that I suffered within our relationship. The campaigns to have me fired, blocking me to try to ruin my career, the threats he has made to humiliate me globally are being lived out in real-time in front of you, ladies and gentlemen, for the past six weeks and for the whole world since there are cameras here.

Mr. Rottenborn: No further questions. Thank you so much, Amber.

Judge Azcarate: All right, Ms. Heard, you can have a seat next to your attorneys. If I can have the attorneys approach? Witness?

Ms. Bredehoff: Your Honor, the counterclaimant, Amber Heard, rests.

Judge Azcarate: All right. Thank you, ma'am. All right, ladies and gentlemen, you have heard all the evidence you're going to hear in this matter. What I propose doing is to go ahead and give you the rest of the afternoon off so you can have a good restful afternoon and evening and we will do closing arguments tomorrow morning at 9:00 a.m. and then the case will be submitted to you for deliberations. Just to give you a little logistics of how that will go. Tomorrow, I won't give you a time limit as far as how long you can deliberate in the afternoon into the evening, I will tell you...within reason, I will tell you I do not serve dinner, so keep that in mind, okay?

You will not be deliberating on Saturday or Sunday or Monday because Monday is a holiday. I would like to have you back here Tuesday morning at least by 9:00. If you want to come earlier, that's up to you. You can decide as a group if you want to come earlier than 9:00 but you have to be here at least by 9:00 just to resume your deliberations again. And again, on Tuesday night and if you have to go to Wednesday or Thursday, the time when you take your breaks is up to you as long as you take them together as far as not having any deliberations unless all the jurors are in the room at the same time. When you take your lunch is up to you.

And then again in the evening, within reason, I'll let you go as long as you'd like to go. Okay? So, have a good evening and we'll see you tomorrow morning, okay? Do not discuss the case with anybody don't do any outside research. All right, we'll go ahead and take a modified lunch recess just till 12:50, we'll come back at 12:50, we just have a few jury instructions left that we have to do, make sure we get the verdict form taken care of, I want you to review the laptop that we have mocked up and make sure everybody agrees what's on it. And also, I want you to look through all your exhibits and make sure we're on the same page. Before you leave, I'll make sure you have copies of the jury instructions in the order that I'm going to read them and you should be able to prepare for your closing arguments for tomorrow, okay? All right, I'll see you at 12:50 then.

Bailiff: All rise.

Judge Azcarate: So, I think it might just be that it's in evidence, however, it's not going to go back to the jury because it's corrupted. Okay? So, everybody agree with that?

Ms. Vasquez: Yes, Your Honor. Thank you. It's just an Eastern Columbia building video, so that's fine.

Judge Azcarate: Yeah, just it's corrupted.

Ms. Bredehoff: [inaudible 02:11:16]

Judge Azcarate: Okay, do you have more exhibits to give? Good, let's get Jamie here. All right. All right, do you want to get your list, Jamie, and make sure?

Jamie: Go ahead.

Judge Azcarate: All right, it's Defendant's 393, 821, 857, 857A, 883. 1859.

Jamie: Yes.

Judge Azcarate: 1905.

Jamie: Yes.

Judge Azcarate: Make sure that's nothing. It's the second page of that. 1050.

Jamie: Yes.

Judge Azcarate: This seems to be a longer one, hold on. And I think that is it, correct? All right, are you missing any other exhibits?

Ms. Vasquez: Your Honor, if I may approach? We have something today.

Judge Azcarate: Okay. Go ahead and get those. All right. So, these were the two, three...all right, so we have...okay, I think this one is theirs. All right, so I have Plaintiff's Exhibit 1316 and 1317.

Jamie: I still need 1301.

Judge Azcarate: 1301? Does anybody have 1301? Plaintiff's 1301.

Jamie: It's an Instagram post.

Judge Azcarate: An Instagram post.

Ms. Vasquez: We'll get it, Your Honor.

Jamie: And then 711A and 711B from today.

Judge Azcarate: 711A and 711B, the one without the metadata. The one with the metadata showing. It was the same pictures, but it would show the...

Ms. Vasquez: I believe that was 712A and 712...and 713A.

Judge Azcarate: Yes.

Jamie: I don't have those.

Judge Azcarate: Well, we just don't have it. 712 and 713A.

Ms. Vasquez: Understood, okay.

Judge Azcarate: Can't get them now?

Ms. Vasquez: Yes.

Judge Azcarate: I'm trying to get all the exhibits together right now so we have them all together so we can review them.

Jamie: And then the other one is 120D is not in evidence but it's on their list as in evidence.

Judge Azcarate: 120D, as in David?

Jamie: Yes.

Judge Azcarate: So, 120D was listed as...you had it as in evidence, but we do not have it in evidence.

Ms. Vasquez: We'll just confirm that.

Judge Azcarate: All right, is that all the pieces of evidence?

Jamie: Yes.

Judge Azcarate: Excellent. That's good. Good. Okay, so we are very close to getting all that. I just want to...I don't want to leave here until we have every piece of evidence with Jamie and everybody has reviewed it so we don't have to review that tomorrow and waste time with that. Okay? All right, so now I think we can do jury instructions, correct? All right. Let me just go over the ones that we had a few issues with. And the first one I'm going to go over is the self-defense. There's two, that would be number 28 and 29, correct? And I took those under advisement. Do you still have an objection to the self-defense? All right, so what evidence do we have in trial that would allow to have these two jury instructions?

Attorney 1: Sure, Your Honor. So, I think the evidence...there's evidence in the record showing that Mr. Waldman was Mr. Depp's agent, that, you know, he was retained in connection with the UK litigation and with this litigation. There's evidence that he engaged with third parties in that capacity, that he met with "The Daily Mail" with Mr. Depp, and that he believed Mr. Depp's version of events. And so, I think all that, I think, is a relevant evidence to self-defense, that Mr. Waldman made those statements in self-defense on behalf of Mr. Depp.

Ms. Vasquez: All right, so you're saying if agency is found?

Attorney 1: If agency is found.

Mr. Rottenborn: We believe they're inappropriate, Your Honor. First of all, we have not been able to locate case law but...

Judge Azcarate: We found one from...what was it?

Man: 87.

Judge Azcarate: 1887.

Mr. Rottenborn: And I know I had seen one a while back...

Judge Azcarate: We said it was a reversible err if we didn't give the self-defense one.

Mr. Rottenborn: Well, I know we had taken a look at one a while back, I think...but I don't have a case site for you. I think it's a question of law as to whether it applies. And so, at a minimum, I think we should figure that

out, I guess. But the reason we don't think it should apply is these were statements that are made...that were made by Mr. Waldman in 2020. I guess it was before Ms. Heard's counterclaim. So, if he's saying that he...

Judge Azcarate: But it goes to the op-ed, I think.

Mr. Rottenborn: Understood, so if he's saying that this lawsuit was a statement in response to the op-ed, the statements that were made a year and a half later by Mr. Waldman...and it doesn't...I mean, again, Your Honor, the keywords are fairly and reasonably. So, obviously, both sides are going to argue defamatory implications and what did the op-ed really mean, and did it say these things. But saying, even under their theory, "Two years ago, I became a public figure representing domestic abuse," to say that then it's fair for Mr. Waldman a year and a half later to make public statements that Amber and her friends roughed up the place and spilled a little wine, you know, all the things that he said in those statements, that's not fairly and reasonably.

Ms. Heard responded fairly and reasonably to Mr. Depp's case through her counterclaim, the parties can speak to each other in the courtroom here. But saying that if someone makes a statement in an op-ed that then you can go and launch...do whatever you want for two years, say whatever you want. And obviously, there's only three statements that comprise the counterclaim but as the evidence has shown, it was part of a pattern by Mr. Waldman that was...I mean, it's the opposite of proportionate. It's the opposite of fair and reasonable response.

Judge Azcarate: Okay.

Mr. Rottenborn: "Mr. Depp's opportunity for a fair and reasonable response," well, we don't believe it was either but he had the opportunity to file a lawsuit in this court. To have Mr. Waldman be his attack dog and to say anything Mr. Waldman then says as his attack dog is somehow fair and reasonable and entitled to the privilege is inappropriate. And I do think that before Your Honor gives it, we need to confirm whether it's a question of law.

Judge Azcarate: Okay.

Attorney 1: Your Honor, Mr. Rottenborn noted that this lawsuit was a response to the op-ed, but I think there could be multiple statements in response to the op-ed, so I don't think that's not dispositive of anything. And the statements were clearly the direct response to Ms. Heard's allegations on their face, and whether that response was fair and reasonable, it's a jury question.

Judge Azcarate: What do you say is the matter of law, the privilege of self-defense as a matter of law?

Mr. Rottenborn: I think it could be whether it applies.

Judge Azcarate: Okay. Well, I don't think it's a matter of law, I think it's whether or not there is any evidence that a jury could find it being protected speech, not the weight of the evidence, but if there is any evidence, and I don't think it's my role to weigh that evidence as far as how long it was made afterwards.

Mr. Rottenborn: I think it is, Your Honor. I mean, it can't be the case that anytime there's an alleged...this is why this doesn't come up often because this isn't...if it were appropriate here, every time there's a defamation case, this would be an instruction. Even the person who's the defendant in the case could say, "Well, all I said, I was responding to something that was said before."

Judge Azcarate: So, all your evidence that you say goes to the jury are the statements, that's why this should be given, that he made the statements? That's the only evidence?

Attorney 1: Well, I think...

Judge Azcarate: You gave me evidence of agency, but that's just agency. Do you have any evidence of self-defense? That this was...that he actually said these statements because of what she said?

Attorney 1: Well, I think there's circumstantial evidence, at least, that he's...so it's agencies, he's an attorney who is retained in connection with this litigation and the UK litigation...

Judge Azcarate: That doesn't automatically give you self-defense, though, a privilege of self-defense. You have to make them...I have to have some evidence that the statements were made in response to the direct accusations of Ms. Heard. At least some evidence.

Attorney 1: On their face, they appear to be a direct response.

Judge Azcarate: Not the statements themselves, but is there any other evidence that the statements are fair and reasonable in response to Ms. Heard's accusation? Did anybody testify that he made these statements in response to her op-ed?

Attorney 1: No. Not that I'm aware of, Your Honor.

Mr. Rottenborn: All right.

Mr. Moniz: Your Honor, just one small point there. There's no requirement that it be in response to the op-ed in particular. The question for self-defense to apply is simply whether it's made in response to an allegation against Mr. Depp. And Mr. Waldman's evidence is clear, I think, that he was responding to allegations against Mr. Depp and he believed those allegations to be false. There was extensive evidence in the record on that, in fact, I think.

Mr. Rottenborn: That he was responding to...so if it's not the op-ed, then we are really in a murky ground. If he says, "Well, I was responding to what she said in 2016," that's...

Judge Azcarate: Well, what Mr. Moniz is saying is that you take it as a separate case, you take it as a separate case, they claim, and then your counterclaim. So, your counterclaim is a separate standalone case, right?

Mr. Rottenborn: Okay.

Judge Azcarate: So, the standalone case doesn't...your claim doesn't deal with the op-ed, so they're saying in defense of your case, that's why this comes in.

Mr. Rottenborn: But he couldn't have made it...he couldn't have made the statements in defense of our case because these are the basis for our case. So, what was he responding to if it wasn't the op-ed? And if it's not the op-ed, then we're really in murky ground because there's no...plus, Your Honor, a couple of points. There was no...to your point, there's been no testimony that he made these in self-defense to anything. Two, the defense doesn't apply and this is...this is on the Haycox case, 1958, it doesn't apply if we prove malice, so it has to be made in good faith and without malice. So, it's coextensive, I can bring the case off if you want, Your Honor.

So, if the malice inquiry incorporates this, this is the...let's see. 200 Virginia 212, Haycox versus Wilcox Dunn, and it looks like on page...sorry, 231, they're discussing a Massachusetts case that says, "Statements made in an honest endeavor to vindicate one's character or to protect one's interests are usually regarded as qualifiedly privileged, even though they are false, if they are made in good faith and without malice. So, the malice inquiry takes care of this. And, in addition, I don't think I need to remind the court but for the record, you know, Mr. Waldman was not allowed to answer any questions about this. So, to say, "Well, you know, he could have been making it in defense of something," they could have let him answer questions and get that

evidence on the record. They can't say, "Well, he could have been making it in defense to something now."

Judge Azcarate: And when I say...just looking at your case, you're claiming this alleged defamation, the three we have allegations, well, they're saying in response that they made them because of something she said, maybe it's not the op-ed.

Mr. Rottenborn: Then there's no evidence of what that is. She was sued, she said 2016 when she made her...

Judge Azcarate: Mm-hmm.

Mr. Rottenborn: And 2018, she has the op-ed that have, you know, a couple of words that they're trying to turn into what we've seen for the last six weeks, and then she responded to the lawsuit.

Judge Azcarate: Okay.

Mr. Rottenborn: So, it can't be the case that by trying to defend yourself in a lawsuit that was brought against you, if it's not the op-ed, then it's got to be her statements in the lawsuit, that somehow trying to defend yourself through judicially immune statements in a lawsuit entitles someone else to go out and say whatever they want and then try to veil themselves in the privilege.

Mr. Moniz: And counsel for Ms. Heard made a point of making clear that there were extensive allegations about Mr. Depp circulating. They repeatedly brought up the UK action, which was in fact the context in which I believe these statements were made based on the date, it was very close in time to the UK action. They brought up the Dan Wootton article. These allegations date back to 2016, these allegations are out there, and there's history from which...there's evidence, excuse me, from which the jury could find that Mr. Waldman was acting in defense of Mr. Depp.

Judge Azcarate: Well, no, acting in defense against Ms. Heard's accusations. So, what are Ms. Heard's accusations that would be defense that are in evidence?

Mr. Moniz: Your Honor, there has been extensive evidence of the accusations against Mr. Depp going back to 2016. For example, the Dan Wootton article that they raised in evidence prior to the op-ed, which included the word wife beater and it was essentially, you know...

Judge Azcarate: But it has to be Ms. Heard's statement.

Mr. Rottenborn: That's not Ms. Heard's statement.

Mr. Moniz: I don't believe that's correct, Your Honor. It doesn't have to be...

Judge Azcarate: Against Ms. Heard's accusations, it is, it is correct.

Mr. Moniz: That would be crazy, Your Honor, they get a jury instruction because he was responding...

Judge Azcarate: I understand that.

Mr. Moniz: Yeah, again, the number of allegations made by Ms. Heard, it's been very well documented in this case. You have the op-ed and it doesn't have to be just...it doesn't have to be any one particular allegation. But you have the op-ed, you have the "People" magazine article, you have the republication of her statements through the wife beater in the Dan Wootton article, you have the fact that she was giving testimony in the UK action about these issues.

Judge Azcarate: Okay. Well, then, would you agree that actual malice...you don't get the self-defense if there's actual malice in his statements? If the jury finds actual malice, then you don't...

Mr. Moniz: If the jury finds actual malice, that may negate the privilege, but that doesn't mean that the privilege is not applicable or...

Judge Azcarate: But the only way they can find in this case is if there is actual malice. This goes back to their defense, the slap defense as well. The only way they find defamatory statements in this case is if there's actual malice. And it's unique to this case, I understand that, but if they find actual malice and inflammatory statements, you don't have protected speech privilege.

Mr. Rottenborn: And if there's no actual malice, they win.

Judge Azcarate: Yes, correct. The same with this...that's why we're not giving a jury instruction on the slap defense because there's no basis for it.

Mr. Moniz: I mean, if the instruction is not being given on the understanding that it's essentially moot...

Judge Azcarate: Which I agree, I think what happened with the slap defense as well, we found out...after we went down that legal road, we found out that was moot as well. Okay? So, do you want me to deny it or withdraw it? I'll do either one.

Mr. Moniz: If you don't mind denying, Your Honor.

Judge Azcarate: Okay, that's fine. I'll deny. That's on Instruction 28 and 29. Okay, put that in the deny stack. All right, next one I have is the Republication 1. Okay. So, I see both of the dueling paragraphs for the republication...

Mr. Rottenborn: I already speak for this, Your Honor.

Judge Azcarate: Yes, sir. And I understand last time we spoke that you added, "You must determine whether any content that was added constitutes a republication," and you just would rather have just the three sentences as yours for republication. Is that correct?

Attorney 1: Correct, Your Honor.

Mr. Rottenborn: No, I think that it's flipped.

Judge Azcarate: Or do you want to add that into it? I'm not sure. I'm just not sure how I'm reading it.

Mr. Rottenborn: I think, and I don't mean to put words in their mouth, I think we want the whole thing at the top and they just want the one sentence at the bottom.

Judge Azcarate: Okay, that's correct.

Mr. Rottenborn: And, Your Honor, we talked about not going backwards. We went over this on Friday, Your Honor said that on page 92 of the transcript, "I don't have a problem with the republished jury instruction, I just think it has to be accurate with adding the language," and that language was on page 89, but you also say, "But adding content to it may establish republication." So, that's what we did in the sentence that starts with, "merely linking," it said, "Just merely linking to an article does not amount to republication, period," and then we added directly from the transcript, "But adding content to it may establish republication." So, now they're going backwards, they just want you to strike the whole thing except the first sentence and that's different from Your Honor's ruling on Friday and also doesn't fully capture...

Judge Azcarate: No, it doesn't capture the whole legal argument.

Attorney 1: And if I may just make our argument for the record here, Your Honor...

Judge Azcarate: Well, you did on Friday, but if you want to do it again, that's fine.

Attorney 1: Okay, just very quickly. So, I think the issue with republication is whether it reaches a new audience, which is what we propose...

Judge Azcarate: Well, and that's theirs...

Attorney 1: Well, it's included in their instruction and that is basically the full extent of our proposed instruction and we believe it should be limited to that. Lacava is the case that they've repeatedly cited in support of this republication issue and that's a case where there was a defamatory "New York Times" article that was hyperlinked in a more recent "New York Times" article and the Court said that that's not directed at a new audience, it's the same party tweeting to the same audience so there's no republication. And that's not the case here where Ms. Heard has retweeted a Washington Post article. So, you know, Ms. Heard's article...Ms. Heard's audience on Twitter is different than "The Washington Post," and so that's...

Judge Azcarate: But if she just retweeted a hyperlink, that's different, but in this context, and that's why I took the motion to strike under advisement, once I got it, there was more content to it and that's why I'm putting it in the jury instruction because it is accurate that hyperlink alone is not enough to reach a new audience. But I'm willing to...what I think would also add to it, though, is after "You must determine whether any content that was added constitutes republication," and...let's see.

I would say then, "You must determine whether any added content republish the op-ed to a new audience." I could say it that way. Or I could say, "But adding content to a linked article may constitute republication, you must determine whether any added content was intended to reach a new audience. If you find it was intended to reach a new audience, it constitutes a republication." I could say it and add that to the end of that paragraph.

Attorney 1: I think that's fine if that's the Court's inclination.

Judge Azcarate: Do you have any objection to that?

Mr. Rottenborn: I'm thinking, sorry.

Woman: [crosstalk 02:30:58] one more time.

Judge Azcarate: Sure, okay. Let's see. All right, let me see if I can incorporate into it. "Merely linking to an article does not amount to republication but adding content to a linked article may constitute republication. You must determine whether any added content was

intended to reach a new audience. If you find it was intended to reach a new audience, it constitutes a republication."

Mr. Rottenborn: I think we would prefer just to say just that first sentence, "Merely linking to an article does not amount to republication but adding content to a linked article may establish republication, period."

Judge Azcarate: Well, that's what you already had, this is...

Mr. Rottenborn: No, no, because we had the, "You must determine whether any added content that was added constitutes a republication." I think it'd be better to just delete the last two sentences than to add the sentence at the end.

Attorney 1: Your Honor, I just want to note, I don't think that adding content is a requirement for republication. I mean, when we found a number of cases when somebody repeats a defamatory statement, they're as liable as the original defamer.

Judge Azcarate: We're not going backwards. So, either it's his language or my language. What do you want?

Attorney 1: I prefer the Court's language.

Judge Azcarate: All right. Okay.

Mr. Rottenborn: Do you want us to do the revisions, because if you do, we may have to just get it one more time for me?

Judge Azcarate: Okay.

Mr. Rottenborn: We're happy to or...

Judge Azcarate: Sammy, can you do it? You gave it to him in the Word format?

Mr. Rottenborn: We did.

Judge Azcarate: All right. Can you do that?

Mr. Rottenborn: The only other thing I would notice, I think the word retransmitted in the second line is misspelled.

Judge Azcarate: In the second line? Okay. All right, we'll take care of that. "But adding content." "Adding content," yeah, just like this one right here, and then just get rid of all this and add this instead. All right, and we'll clean it up. Okay, we'll get that done. All right, takes care of that one. Next one is I think Instruction FF, "Defamatory meaning, consider

the publication as a whole," and we have dueling answers here. Defendant just says "op-ed" in it, the plaintiff just has it as plain, which...I mean, it does say that it means you may not see any word, phrase, or image. So, it would appear that...so it could apply to both of them in that context.

Mr. Rottenborn: The problem, Your Honor, is that we believe that because the counterclaim statements that the jury will be presented with are redacted, so the statements are in isolation, there's a risk that as they're phrasing it, the jury may read the phrase, "You must read the statements in context as a whole," to say, "Well, we can't do that, so, therefore, there's no liability." Because it's impossible to read those statements in the context of the whole piece. So, that's number one.

Number two, the op-ed was all Amber statements. So, the whole thing is her words, the counterclaim statements were Mr. Waldman's quotes in another article that we don't believe...you know, that's not in evidence, so there's no point arguing about that other than you just have these, you know, one or two sentences from Mr. Waldman. So, we believe that the jury is going to be confused if we give their instruction and say, "We cannot read it as a whole, so, therefore, you know, we can't follow the jury's instruction."

Judge Azcarate: Okay. I can see your point with that. Yes, sir?

Attorney 1: I don't think there's anything in...I mean, there's a lot of instructions here, I don't think there's anything that would indicate they can't find liability if they're not able to take statements in their proper context, in the context of the entire article. I just thought it would be more appropriately phrased to be mutual as opposed to obviously applying only to one party.

Judge Azcarate: Well, because yours says, "You must read the statements," which is true, but you also can take the context...in the context as a whole but you can take the context of the op-ed as a whole, which is accurate. What I could do, if you want, I could keep the op-ed at the top for their claim, and then for your claim, we can, "In determining whether any of the statements attributed to Mr. Waldman are false and defamatory, you must read the statements." I could keep that in there as the second paragraph. That way, they can't just pull out...because it's accurate law also, but they just can't pull out the word "hoax" and say, "Okay, this whole statement."

Attorney 1: Agreed.

Judge Azcarate: Okay?

Ms. Vasquez: That's fine. Thanks.

Judge Azcarate: Is that okay?

Mr. Rottenborn: That's fine in concept. I guess I would ask if Your Honor does have to add a clause saying, "Disregarding any redactions on..."

Judge Azcarate: Well, it says the statements themselves, statements, "In there, you must read the statements in context as a whole."

Mr. Rottenborn: Right. So, I think, I mean, could we say, "In determining whether any of Mr. Waldman's statements or whatever are false and defamatory, you must read the text of those statements as a whole...the text of those statements in context as a whole," or something.

Judge Azcarate: "You must read the statement in context as a whole."

Mr. Rottenborn: Can we say, "You must read those statements in context as a whole?" Because I just don't want them to think that it's impossible for them to...

Judge Azcarate: Any problem if we're just putting "those" instead of "the?"

Attorney 1: I don't think we have a problem with that, Your Honor.

Judge Azcarate: Okay. "In determining whether any of the statements attributed to Mr. Waldman are false and defamatory, you must read those statements in context as a whole. This means you may not seize on any one word, phrase, or image or consider only one particular statement, phrase, or passage in isolation." Does that sound correct?

Mr. Rottenborn: Yes.

Judge Azcarate: All right, we'll add that as a second paragraph, keep Sammy busy. All right, takes care of that. All right, the next one I have is the objections in assertions of privilege.

Mr. Rottenborn: Oh, 32.

Judge Azcarate: Oh, I'm sorry, it's Depp 32.

Mr. Rottenborn: Okay.

Judge Azcarate: It's a new instruction.

Mr. Rottenborn: Right, right, right, this is the one at the end. This is the new one.

Judge Azcarate: Do you have any objection?

Mr. Rottenborn: We do.

Judge Azcarate: Okay.

Mr. Rottenborn: The objection, Your Honor, is that the objections made by counsel during the course of trial, we have no problem with something on that. But instructions that...what they're trying to do is to direct the jury what inference to draw from Mr. Waldman's instructions not to answer and...

Judge Azcarate: Well, the only legal inference they can draw...they can't draw any inferences from that.

Mr. Rottenborn: Exactly, and that's my point is that...

Judge Azcarate: Well, and what this says, "You may not draw any inferences from the fact that objection was made."

Mr. Rottenborn: Yeah, but saying, "Sometimes attorney stated objections during the course of this trial and instructed a witness...and instructed a witness not to answer a question, objections and instructions to witnesses are not evidence, and you may not consider them in reaching your verdict nor you to draw any..." So, why do they need to be told this? I mean, I think this risks confusing the jury...

Judge Azcarate: Well, because, to be fair, the depositions, you wanted to keep in all those objections. Usually, we take them out but you want to keep them in. So, I want to make sure the jury doesn't have any improper inferences from leaving those objections in. You want to leave them in to show that, "Hey, I asked the questions, they won't answer it, fine." But you can't infer from that, "Oh, well, they are hiding something then," or it's attorney-client.

Mr. Rottenborn: Understood, I mean, just like you can't infer when someone takes the Fifth in a criminal case, I get that.

Judge Azcarate: Right, which I would give an instruction...

Mr. Rottenborn: Of course, I know, I understand that. But I think that the jury is entitled to draw their own conclusions and...not inferences, they're not entitled to infer anything from that, but I just think that this risks confusing the jury in getting them to...getting the jury to think... If they set up in closing and say, "They haven't presented any evidence that Mr. Waldman was doing this," then that's using this instruction as a sword. If

they get up there and say, "They haven't..." Do you understand what I'm saying?

"They haven't proven that Mr. Waldman was acting as his attorney, they haven't proven that Mr. Waldman was authorized to make the statements," and then they rely on this to hide behind that and we're not allowed...and I'm not saying that we will but I'm not going to say, "You heard him instructed not to answer and you should infer that he was acting as his agent." I know I'm not gonna say that. But if they're going to argue in closing the converse of that, then that's prejudicial and makes this inappropriate.

Judge Azcarate: All right. Yes, sir? Mr. Moniz.

Mr. Moniz: Your Honor, this is just an accurate statement of law. They chose to play about 30 minutes of Mr. Waldman being instructed not to answer. Without this instruction, that's prejudicial.

Judge Azcarate: All right.

Mr. Rottenborn: And it would also be prejudicial if they're allowed in closing to say that we haven't presented evidence of anything about the parameters of Mr. Waldman and Depp's relationship, that's...

Mr. Moniz: That doesn't follow from this instruction. This instruction is simply saying that the jury is not to draw any inferences from the objections and instructions inserted by counsel. They can consider the evidence, they can consider whether evidence was presented or not, the instructions and objections are irrelevant to that question.

Mr. Rottenborn: No.

Judge Azcarate: All right, I understand your objections, but it is an accurate phrasing of the law and I want to make sure that the inferences aren't taken against an attorney-client privilege.

Mr. Rottenborn: Okay. Can you deny our objection?

Judge Azcarate: You get it. I mean, no, I can create it over your objection.

Mr. Rottenborn: Yes, sorry. Can we get some direction for the arguments that they're allowed to make on closing on that, Your Honor, because I don't think that's appropriate for them to point to a lack of evidence when they didn't allow Mr. Waldman to testify?

Mr. Moniz: Pointing out that instructions are not evidence, there's no connection here between these issues, Your Honor.

Judge Azcarate: No, I'm not going to do that. So, we're going to do Depp 32. I just need to clean up the top part of it. Okay. All right, "Over objection being offered." All right, then I have Instruction JJ, which is the model.

Mr. Moniz: Right.

Judge Azcarate: So, why would I not get the model?

Mr. Rottenborn: We believe you should. I think the only...it looks like the only substantial difference is that they...rather than saying...as it's written, it says, "Clear and convincing evidence that Mr. Waldman's statements," it's confusing and misleading to say that... "If you found by clear and convincing evidence that Mr. Waldman's statements were made by Mr. Depp." We already have a principal-agent instruction...

Judge Azcarate: Right, if they find principal or agent, I mean, that would be the basis for it.

Mr. Moniz: First of all, Your Honor, if liability is entirely vicarious, which I think is the position of the counterclaim plaintiff in this case, I don't think there's any evidence of direct liability. If liability is entirely vicarious, then I don't think there's a basis for punitive damages instruction at all against Mr. Depp because vicarious liability generally doesn't result in punitive damages as to the principal. Punitive damages are only applied where the person against which punitive damages are being assessed actually engaged in conduct that it was wrongful, and that's not the way they've pled and sought to prove their case. I think that's the first one.

Judge Azcarate: Okay, they're saying you're not entitled to a punitive damages instruction.

Mr. Rottenborn: Well, I disagree with that and there's no case law that they've cited in here on that and I think that's going backwards. That's an argument that we've already...

Judge Azcarate: Okay.

Mr. Rottenborn: And I just think that Mr. Waldman's statements were made by Mr. Depp. I mean, I'd be okay with something that said, "That Mr. Waldman, while acting as an agent for Mr. Depp, made statements with knowledge," I'd be okay with that.

Judge Azcarate: Is that okay?

Mr. Moniz: I think we would maintain our objection on that on the basis previously asserted, Your Honor, and then...what's the other? I'm sorry, could I have counsel's language again one more time?

Judge Azcarate: Sure.

Mr. Rottenborn: Yeah, "If you found by clear and convincing evidence that Mr. Waldman, while acting as an agent for Mr. Depp, made the statements with knowledge that they were false or so recklessly..." I think it's, "So reckless." There's a typo there, sorry. We'd be okay with that.

Mr. Moniz: Yeah, I mean, we do maintain the same objection, Your Honor, the principle liability, and we do have case law for that...

Judge Azcarate: I'll overrule that objection. We'll go ahead and...can you take that up real quick for me and get that to me? If you email it to Sammy, we can print it out.

Mr. Rottenborn: Yep.

Judge Azcarate: Okay, you're in charge of that one. Okay. All right. That's fine. I think that was it, correct, as far as...?

Mr. Rottenborn: I think it was, other than the verdict form.

Judge Azcarate: Perfect, let's go to the verdict form. We'll get this...do you have the other one for me, Sammy?

Sammy: I'm typing now.

Judge Azcarate: Well, you can print those out. All right, let me get the verdict form. All right, I think with the verdict form, it was just the first page. Am I correct with that?

Mr. Rottenborn: And the punitive damages.

Judge Azcarate: Well, the punitive damage, you didn't have a response, right? Do we have...?

Mr. Rottenborn: I think there was a comment in what we got from them that we changed.

Judge Azcarate: Okay. All right, well, in the... oh, thank you. All right, I think it was in 1A, the statement was about Mr. Depp. I think the plaintiff wanted that out because we already have, "The statement has a defamatory implication about Mr. Depp and the defamatory implication was designed and intended by Ms. Heard," which I think is...

Mr. Rottenborn: If you look at the...I think it should track the finding instruction, which is Jury Instruction C on page four of the jury instructions, and that's what the verdict form does...

Judge Azcarate: Okay, let me take a look. And that was C? Okay.

Mr. Moniz: Yeah.

Judge Azcarate: Okay.

Mr. Rottenborn: So, the way it's been written tracks the finding instruction...

Judge Azcarate: All right, it tracks the finding instruction.

Attorney 1: Yeah, we don't have a strong objection here, Your Honor. I thought it was maybe cumulative but...

Judge Azcarate: It does match the finding instruction, which should be clear to the jury, so we'll keep that in.

Attorney 1: That's fine.

Judge Azcarate: And then the punitive.

Mr. Rottenborn: And so, that one carried through to all of that.

Judge Azcarate: Through all of those?

Mr. Rottenborn: Yes.

Attorney 1: We'll withdraw that, Your Honor, their proposed language is fine.

Judge Azcarate: All right, so the verdict forms as written are the verdict forms good to go, correct?

Mr. Rottenborn: Well, I'm sorry, did you withdraw the...did they withdraw the punitive damages? Okay.

Judge Azcarate: So, we're good with the verdict forms. What I have is the verdict forms, correct?

Mr. Moniz: Your Honor, I think yes, but I do just want to make sure...and I understand we don't go back but I just want to make sure that for the record, we do maintain that the verdict form should state that the defamatory implication was false and not that the statement was false because under the Pendleton case, that can...a factually true statement can still have a false defamatory implication.

Judge Azcarate: And I think we had that on the record on Friday but thanks for putting it again. It's fine. All right, so verdict forms are good, so we'll keep the verdict form. Did you print out the other?

Sammy: [inaudible 02:47:34]

Judge Azcarate: No, you can print out, that's how. Yeah. So, which ones are we missing then? We're missing which jury instructions? You're working on two of them, right?

Sammy: 32 and FF.

Judge Azcarate: 32 and FF, and you have one jury instruction for me, right?

Mr. Rottenborn: Yes, they're writing it in right now, it's JJ.

Judge Azcarate: Okay, JJ is coming in. And did you do the other one yet or no? Could you guys do...? On Depp 32, could you take off "disputed" and send that to us too?

Mr. Rottenborn: Yes.

Judge Azcarate: Thank you. And that would just leave us...we'll get those two printouts and then I'll tell you the order that I'm going to do them. While I'm doing that, I do have the laptop. If both sides would like to look at the jury evidence on these, they're going to...it will stay up here at the bench. But all we did was we put two files on here. There's no password for it. As soon as you open up, it doesn't have any internet and there's just two files. One's plaintiff, one's defendant, they just click on those two, and then they can watch all the audio and the video, okay?

So, if you want to take a look and make sure...it's been downloaded to everything that we put on on our website, which is all the evidence, we didn't receive any new evidence today for audio or video files, so it's everything on there. But if you want to take a look and make sure that everything is there, you can do that. Also, all the tangible exhibits. Jamie will have it, except we need to get those other ones so we can...oh, you have them? Perfect.

Ms. Meyers: Yes, if I may approach I have 1301.

Judge Azcarate: Okay.

Ms. Meyers: And then, Your Honor, I just did like some clarification.

Judge Azcarate: Sure.

Ms. Meyers: I understand that Defendant's Exhibit 712 and Defendant's Exhibit 713 were initially moved into evidence in redacted format.

Judge Azcarate: Correct.

Ms. Meyers: Today, we offer them and put them in an unredacted form so that's the...

Judge Azcarate: 712A and 713A?

Ms. Meyers: 713A.

Judge Azcarate: Yeah.

Ms. Meyers: I believe Your Honor should already have those in unredacted form, I believe that's how they were provided to you all by...

Judge Azcarate: Oh, they're in the binders down here?

Ms. Meyers: I believe so. I will...

Man: They should be.

Ms. Meyers: Yes, so I believe those...you should actually have those in unredacted form from defendants.

Judge Azcarate: All right, Defendant's. We have a few binders down here, hold on.

Ms. Meyers: Yes, I think they would be in the binders, that's correct.

Woman: 711?

Judge Azcarate: 712 and 713. All right, we'll take a look at those.

Mr. Nadelhaft: [inaudible 02:50:43], Your Honor?

Judge Azcarate: Yes.

Mr. Nadelhaft: So, I can give you a copy...I want to make a proffer for the ones that...

Judge Azcarate: Do you want to go ahead and make a proffer now?

Mr. Nadelhaft: Yeah, it included 712 and 713, so I can give you copies of that.

Judge Azcarate: Oh, you can? Well, that would make Jamie happy because she's down here digging through binders.

Mr. Nadelhaft: Right, right, I can give you copies of that right now.

Judge Azcarate: Okay, perfect. All right, now we have those in evidence. Okay. So, are we missing any more from over here? Or did you find out about the one that you thought was in evidence?

Ms. Meyers: So, Your Honor, Defendant, I believe...oh, excuse me, it's Plaintiff's Exhibit 120D, I believe, actually, Sammy and I had a number of back and forth about this exhibit. I believe that defendant's counsel provided a redacted version of that exhibit to the court. But based off of our reading of the transcript, that exhibit was not actually offered into evidence.

Judge Azcarate: Okay, so it's not in evidence, then?

Mr. Nadelhaft: It's not in evidence, Your Honor. And I believe [inaudible 02:51:42] from that week.

Judge Azcarate: You can take "disputed" off.

Mr. Nadelhaft: But if you don't have it, I'm happy to bring it in tomorrow. But it's not in evidence, so we can go back to [inaudible 02:51:57].

Judge Azcarate: Okay. All right, so I just want to make sure because it was checked off on somebody's list that it was in evidence and I just want to make sure...I don't know, but it's not. We're good. We're good.

Ms. Meyers: And then I heard that Exhibits 711A and B, I'm not sure...

Judge Azcarate: Yeah, that was wrong, it was 712 and 713. So, we're good.

Ms. Meyers: All right.

Judge Azcarate: So, Jamie, are we missing anything else? Sammy, did you print out the ones that they sent you too?

Sammy: [inaudible 02:52:24]

Judge Azcarate: The email, did you email Sammy the...?

Woman: He's just double-checking right now.

Judge Azcarate: Okay, okay, we'll get that in a second. Let me just put these in the order.

[02:52:34]

[silence]

[02:52:51]

Judge Azcarate: All right.

[02:52:52]

[silence]

[02:53:09]

Judge Azcarate: Can you get that one without "disputed" on it?

Sammy: [inaudible 02:53:16]

Judge Azcarate: Okay, sure.

Sammy: On DD.

Judge Azcarate: For republication?

Sammy: This last paragraph, you double-crossed that...or you can just do it to make sure.

Judge Azcarate: It was in the one that I gave you.

Sammy: I can cross them out.

Judge Azcarate: Let me see.

[02:53:38]

[silence]

[02:54:04]

Judge Azcarate: Yeah, that stays in.

Sammy: That stays in?

Judge Azcarate: Yeah, that stays in. You want to go and take them out?

Sammy: Yes.

Judge Azcarate: All right. Just print out two copies so we can show them. The one that Sammy printed off are republication, I'm just gonna give you a copy to make sure they're right, okay?

Attorney 2: Yes. And you should receive in your email soon FF, JJ, and 32.

Judge Azcarate: Okay. So, if you can print those out too, Sammy? Let's print those out. So, you're sending FF?

Attorney 2: Mm-hmm.

Judge Azcarate: Okay. And did you take "disputed" off the top? Thank you. All right, why don't you just get this printed?

[02:54:53]

[silence]

[02:55:46]

Judge Azcarate: Could somebody...could you print me out another one of AA? There's a mark on this one. Or at least email it to...just email that one to Sammy. It's something in the paper and it just doesn't look right.

[02:56:04]

[silence]

[02:56:34]

Sammy: [inaudible 02:56:35]

Judge Azcarate: Good?

Sammy: [inaudible 02:56:38]

Judge Azcarate: Pardon me? Pardon me?

Sammy: I'm not gonna give you this one.

Judge Azcarate: Huh?

Sammy: I'm not gonna give you this one.

Judge Azcarate: I'm sorry, I can't hear you.

Sammy: I'm not gonna give you this one, [inaudible 02:56:49].

Judge Azcarate: Can you send it to Jamie so she can print them out?

Sammy: Okay.

[02:56:54]

[silence]

[02:58:51]

Mr. Rottenborn: Your Honor, will we be getting just a paper printout or an electronic copy from the Court?

Judge Azcarate: All I have is a paper printout.

Mr. Rottenborn: Okay, so we can scan it and...

Judge Azcarate: You can scan it, if you want to do electronic, that's fine.

Mr. Rottenborn: And then will these be posted on the...?

Judge Azcarate: Not until after I gave them.

Mr. Rottenborn: Not till after, okay. And then they're read before closing?

Judge Azcarate: They're read before closing. All right. So, we have that now?

Mr. Rottenborn: Okay, and then I guess we have to replace.

Judge Azcarate: Thank you.

Mr. Rottenborn: Okay.

Judge Azcarate: If you want to take a look at that instruction and make sure it looks okay before I add it to the stack. Do you have the actual malice one? Was it sent to you? Michelle, you sent the actual malice one?

Mr. Rottenborn: Yes.

Judge Azcarate: Okay. Oh, nevermind. Jamie, are you getting this? Sorry, Jamie.

Mr. Rottenborn: Your Honor, was it...

Judge Azcarate: Is there...?

Mr. Rottenborn: No, I think it's fine, does the court want to leave, you know, Heard C, Depp 7 sort of things in there? Because, like, otherwise we could...

Judge Azcarate: Well, the numbers at the top can stay. I just don't want to say disputed.

Mr. Rottenborn: I don't think any of them say disputed.

Judge Azcarate: Okay. No, the numbers...I tell the jurors to disregard the numbers in the heading. That's better for the record if we keep it that way. Okay, so any...I should rename it to republication. Okay.

Mr. Rottenborn: Your Honor, can we get...sorry to bother Sammy, could we get one more printout of the actual malice instruction?

Judge Azcarate: Sure.

Mr. Rottenborn: Thank you.

Judge Azcarate: Jamie, can we get another actual malice?

Mr. Rottenborn: AA. These are our only copies?

[03:01:20]

[silence]

[03:01:50]

Judge Azcarate: All right, any objection to the republication then? As typed?

Attorney 1: No, Your Honor.

Judge Azcarate: Okay. Let me get that in there as well.

Mr. Rottenborn: Hold on.

Judge Azcarate: Is there type bound?

Mr. Rottenborn: Nope. It's okay.

Judge Azcarate: It's okay?

Mr. Rottenborn: Yep.

Judge Azcarate: All right.

Ms. Vasquez: Your Honor, I just have a very quick question regarding closing, if we may?

Judge Azcarate: Okay, sure.

Ms. Vasquez: Does the Court have any objection to us playing very small clips of...

Judge Azcarate: As long as they're in evidence, you can play anything, show any picture.

Ms. Vasquez: Well, that's my question. So, obviously, depositions were by video, many witnesses, especially from Ms. Heard, do you have any objection to his playing video depositions portions of...

Judge Azcarate: If it's not in evidence, it doesn't...

Ms. Vasquez: No, of course, just what's in evidence.

Judge Azcarate: There's no video depositions in evidence.

Ms. Vasquez: Oh, I see what you mean. Okay, so...

Judge Azcarate: The only thing that can be played to them is what is in evidence.

Ms. Vasquez: But they're testimony, it's witness testimony.

Judge Azcarate: [inaudible 03:03:06], but depositions or witness testimony that you have during trial that doesn't go back to the jury as evidence and video deposition are the same. That would give more weight to video depositions than witness testimony.

Ms. Vasquez: Well, so my question is...it's a follow-up question to that. Obviously, this trial was televised, so there are videos of witnesses testifying, so...

Judge Azcarate: No, none of that comes in.

Ms. Vasquez: Okay.

Judge Azcarate: The four walls of this courtroom is what the jury decides this case in, period.

Ms. Vasquez: Okay.

Ms. Bredehoff: And just so we don't have a problem tomorrow, also we can't put in front of the jury written deposition or testimony.

Judge Azcarate: That's correct. Only things that are in evidence.

Ms. Vasquez: I understood that.

Judge Azcarate: But you can show pictures in evidence, you can show video that's in evidence...

Ms. Vasquez: Or audio that's in evidence?

Judge Azcarate: Or audio that's in evidence, all that is fair game.

Mr. Rottenborn: No display of written transcripts either.

Judge Azcarate: No written transcripts, just only items in evidence and...

Mr. Rottenborn: No, I was on the same page.

Judge Azcarate: Okay, I just want to make sure.

Ms. Vasquez: Thank you, Your Honor, for clarification.

Judge Azcarate: And you have two hours, right? Two hours each, and two people over here and two people over there, is that what's going to happen?

Ms. Bredehoff: Yes, Your Honor, we're going to split our closing, and then only one of us will do the rebuttal.

Judge Azcarate: Okay. And that has to just be on the rebuttal case, correct?

Ms. Bredehoff: Right.

Judge Azcarate: We have that down, right? We've gone through that a few times. Mr. Chew, do you have something on that?

Mr. Chew: Yes, I just wanted to make sure we were on the same page. So, plaintiff goes first, then the defendant, counter claim plaintiff...

Judge Azcarate: Right, they do their defense to your claim and also, they do their offense to their claim.

Mr. Chew: And then plaintiff?

Judge Azcarate: Plaintiff gets to do their defense to their claim and rebuttal.

Mr. Chew: And they respond only with respect to the...

Judge Azcarate: Rebuttal.

Mr. Chew: To the rebuttal.

Judge Azcarate: Rebuttal to their counterclaim only.

Mr. Chew: To the counterclaim. And so, it goes one, two, one, two, and plaintiff gets two hours, they get two hours.

Judge Azcarate: Total.

Mr. Chew: Is it fine if it's not exactly one hour for each...?

Judge Azcarate: That doesn't matter to me.

Mr. Chew: That's up to us? Okay, thank you, Your Honor.

Judge Azcarate: As long as your time is just two hours, it doesn't matter how much anybody does.

Mr. Chew: Thank you, Your Honor.

Judge Azcarate: Okay?

Mr. Rottenborn: If you wanted to shorten that to about 15 minutes apiece...

Judge Azcarate: I would want to shorten it to two minutes, but, you know, that's not my take. I gave you two hours, I thought that was good.

Ms. Bredehoft: We got pretty efficient at the end.

Judge Azcarate: Well, you know, it's amazing how that happens, you know? It's kind of like the physics, you know, you make a circle and people will fill that circle, and that's what happens. I made a circle. Okay, so let's go ahead...let me just go ahead and read into the record the order that I'm going to give the jury instructions. I will also read in the record the instructions that were denied, and I will read the instructions that were withdrawn just so we have a complete record, okay? All right, here we go. All right, so, for the jury instructions, I'll read them in the following order.

Heard I, number 3, number 10, 1, B as in boy, C as in Charlie, D as in delta, E as an echo, F, G, H, 12, 13, Y, FF, AA, BB, DD, that's David David, DD, TT, CCC, 20, Z as in zebra, T, U, V as in Victor, K, L, 5, 6, 7, 32, 8, 9, 16, II, 30, KK, and JJ. All right, those are the ones that will be read to the jury in that order. Okay? The ones that were denied was instruction 22, 23, 24, CC, NN both as in Nancy, OO, PP, RR, SS, S as in Sam, SS, 28, and 29 are the ones that were denied. The ones that were withdrawn for the record was instruction A, 2, 4, 11, 14, 15, 17, 19, 21, 25, 26, 27, X as in X-ray, 31, W, EE, GG, QQ, DDD, Q, 18, J, M, N, O, P, R, S, HH, LL, UU, VV, WW, XX, YY, ZZ, AAA, and BBB.

All right. So, I will get you copies now...I'll get your hand copies of the jury instructions I'm going to read in that order so you have copies when you leave here, okay? And I'll give you copies of the verdict form as well and you can have those while you prepare for your closing arguments. Other than that, if you could come up to see Jamie after I leave the bench just to make sure you go through the exhibits and everybody okays the exhibits so we don't have to do that tomorrow? And also, if you can have a look at the laptop with Sammy just to make sure all your exhibits are there that are gonna go back to the jury, okay?

Mr. Rottenborn: Your Honor, one quick question about closing to make sure we don't have any issues tomorrow. I understand the jury only sees evidence that they've seen in the trial. If that evidence is displayed through like a PowerPoint or whatever, like are headings allowed, or do

you not want the jury to see any written texts or anything other than just evidence?

Judge Azcarate: I mean, I've seen PowerPoints in cases before and analysis where they have their other items up there. But I think in this particular case, I'd rather just have no real writing and just have your arguments orally.

Mr. Rottenborn: That's fine, I just wanted to, yeah, make sure that there wasn't...

Judge Azcarate: Just try to keep it clean.

Mr. Rottenborn: Or paraphrasing of witnesses or anything like that.

Judge Azcarate: Okay, that sounds fine with everybody? Does anybody...

Mr. Rottenborn: That's fine with me.

Judge Azcarate: That's a good question, though. Are you going to have a PowerPoint?

Mr. Rottenborn: Probably with evidence.

Judge Azcarate: Okay. Do you want me to have the big screen up as well?

Mr. Rottenborn: I think so. Yeah, I think that would be great.

Ms. Vasquez: Thank you, Your Honor.

Judge Azcarate: Okay, good.

Mr. Rottenborn: Thank you.

Judge Azcarate: We'll do that as well.

Mr. Rottenborn: And starts at 9:00?

Judge Azcarate: Starts at 9:00, closings start at 9:00.

Ms. Bredehoff: So, Your Honor, Mr. Nadelhaft has a proffer still on some things. Do you want to do that now before we leave?

Judge Azcarate: Sure. Everybody wants to hear your [inaudible 03:10:51].

Ms. Vasquez: As does Ms. Meyers at the end of Ms. Nadelhaft.

Judge Azcarate: Okay. All right, they have one too. Go ahead.

Mr. Nadelhaft: This will be shorter...

Judge Azcarate: And if you can just get to the microphone so I can hear you better. Or the court reporter can hear you better.

Mr. Nadelhaft: This will be shorter than the other day.

Judge Azcarate: Oh, good.

Mr. Nadelhaft: Okay, this is for metadata on May 16th and May 17th, 2022. The defendant attempted to introduce into evidence photographs from May 21st, 2016 that included metadata on the photographs. Ms. Heard testified that the metadata was included on the photos by pressing a button on her phone. The metadata demonstrated the pictures were taken on May 21st, 2016 along with the times they were taken. The exhibits, or Defendant's Exhibit 700 through 726 and our exhibits A through AA of the proffer. Tabs N and O of the proffer are now blank as Defendant's 712 and 713 were admitted with the metadata on May 26th, 2022.

Mr. Depp objected to the metadata on the document stating that the metadata was hearsay and there was no foundation for the hearsay. The Court sustained the objection on the ground that the metadata was hearsay and that there was no foundation and admitted the exhibits, but redacted the metadata. And then separately, we have a proffer for Stephen Deuters. On May 28th, 2022, Ms. Heard moved to designate certain portions of the deposition testimony for trial of Stephen Deuters who was Mr. Depp's personal assistant. Mr. Deuters testified that he was on the Boston flight and sat in a seat facing Ms. Heard and Mr. Depp. He further testified that the day after the flight, Mr. Depp told him he wanted to "smooth whatever issue" existed with Ms. Heard.

Mr. Depp asked Mr. Deuters to "write a text" to Ms. Heard and to say "whatever she needs to hear." Mr. Deuters then sent a text message to Ms. Heard about Mr. Depp, stating "when I told him he kicked you, he cried." The testimony is contained in Exhibit A of Mr. Deuters' deposition. Ms. Heard moved to admit the text message into evidence, arguing it was not hearsay under Rule 2:803, which provides for the admission of statements of a party opponent and its agents. Ms. Heard argued Mr. Deuters was acting as Mr. Depp's agent when he sent the text and the text message was therefore not hearsay.

The text message is Exhibit B to the proffer. Mr. Depp objected to the text message as hearsay, arguing that although Mr. Deuters was Mr.

Depp's employee, sending text messages to Ms. Heard was not within the scope of the employment. The Court denied the motion to admit the text message into testimony, finding that Mr. Deuters was not acting as Mr. Depp's agent when he sent the text message. And I'll provide...I have copies to provide.

Judge Azcarate: All right, fine, we can add it to...

Mr. Nadelhaft: The list? Yeah.

Judge Azcarate: We have a box for you. All right, we will add that.

Mr. Nadelhaft: Oh, sorry.

Judge Azcarate: He needs it more.

Mr. Nadelhaft: And this is the other one.

Judge Azcarate: All right, we'll make them part of the record. Thank you, sir. All right, yes, Ms. Meyers.

Ms. Meyers: Thank you, Your Honor. On May 25th, 2022, plaintiff intended to call Dr. Kim Collins as an expert witness in forensics pathology. Defendants objected on the basis that Dr. Collins had not been designated as a defensive witness and was designated only to rebut Dr. Jordan, which was defendant's forensic pathologist who had not been put up at this trial. Dr. Collins intended to testify as to whether Ms. Heard's descriptions of violence and injuries allegedly sustained by Mr. Depp were consistent with the photographic evidence at issue in this trial.

Also for incidents where there was no photographic evidence, she would have testified as to what injury she would have expected to see based off of the violence that Ms. Heard testified to. And finally, she would have testified as to her opinion as to the cause...or as to Mr. Depp's finger injury and what she observed consistent, which was similar to what Dr. Gilbert testified to today.

Judge Azcarate: All right. Thank you. Any other proffers? Okay. All right. All right, so just don't leave here until you check the laptop and you check all your evidence and make sure we get your checkbox on that and everybody's happy with it, okay? Anything else for the Court?

Ms. Vasquez: Thank you.

Judge Azcarate: Really?

Ms. Meyers: No, thank you very much.

Ms. Vasquez: Thank you very much.

Judge Azcarate: Thank you. Okay.

Mr. Rottenborn: Thank you, Your Honor.

Judge Azcarate: We'll see you in the morning.

Bailiff: All rise.