

TRANSCRIPT OF THE POOL TV FEED FROM DEPP v HEARD

FAIRFAX COUNTY COURT Monday 18 April 2022

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Bailiff: Fairfax County is now session as. [inaudible 00:00:01] Be seated.

Judge Azcarate: All right. Good morning. All right. Are we ready for the jury today or do we have any preliminary matters?

Bailiff: We have a few exhibits.

Judge Azcarate: Okay. If you wanna approach with the exhibits. Which ones do you have for me?

Ben Rottenborn: We have the [inaudible 00:00:19].

Judge Azcarate: Okay. What number are they?

Ben Rottenborn: [inaudible 00:00:20] on Mr. Depp's side is 936.

Judge Azcarate: 9... All right. Are we ready for the jury?

Elaine: Yes.

Judge Azcarate: Okay. Thank you. All right. Good morning, ladies and gentlemen. All right. Are we ready to continue with the witness on deposition?

Elaine: Yes, Your Honor. The remaining portion of the deposition bit here of Erin Falati will include the questioning by counsel for Mr. Depp.

Judge Azcarate: All right. Thank you.

Camille: Do you have any professional responsibility to report or document suspicious physical abuse of one of your patients?

Erin: If I witness or find out information of domestic or child abuse. Yes.

Camille: And so, what is that responsibility?

Erin: Need to notify superiors of the information I was provided with.

Camille: When did you first meet Ms. Heard?

Erin: I believe it was the end of...excuse me. Hang on one sec. I have it here. I'm just looking at my nursing notes. It looks like August 27th, 2014.

Camille: Okay. So, can we please pull up the nursing notes, which I believe are Exhibit 2? Okay. I'd like to...while we have this document up, I'd like to go through this section that's called flying history. Do you see where I'm referring to?

Erin: Yes.

Camille: Was the information in this paragraph self-reported to you by Ms. Heard?

Erin: I just have a quick moment to review that and then I can answer that question.

Camille: Certainly.

Erin: Thank you. So, to answer that question, I believe this was information given to me from Ms. Heard. I'm not positive, but I can say that anytime I refer or begin a sentence with client states or client reports, those I can confirm. You know, I received that information from the client. As far as in totality, I would assume most information came from Ms. Heard, but I can't roll out that I didn't get any information from the treating physician in preparation either.

Camille: And I think you...would this information have been relayed to you at that first meeting with Ms. Heard?

Erin: This information, if it was information I received from Dr. Kipper, I would have had that information probably prior to meeting her. But any time that I said states and I can confirm that I got that information, I would assume that it was sometime within the first day or two of meeting her because I usually take a client history when I meet a client.

Camille: About a couple of more sentences, it says, "AH reports history of substance abuse, including an addiction to cocaine and liquor. CT client reports abstaining from cocaine for a couple of years, but was unable to report exact dates." Do you see that where I'm referring to?

Erin: Yes. I see that.

Camille: And that's something that you would have written?

Erin: Yes.

Camille: Okay. And this is also information that you believe Ms. Heard would have reported directly to you?

Erin: Again, I don't have specific recollection of this, but I would have to refer to my notes that says the client reports it. So, the assumption would be made that she provided me with that information.

Camille: So, it goes on to say, "CT does not smoke cigarettes. She reports consuming one to three glasses of red wine each day." Do you see that?

Erin: Yes.

Camille: And again, this is based off of your notes, something that Ms. Heard reported to you, correct?

Erin: Again, I don't recall the specifics of that. I would refer again that, in that particular sentence you're referring to, I used the verbiage of she reports, meaning Ms. Heard reports. So, I would make the assumption that she reported that information to me.

Camille: In the time that Ms. Heard was your patient, do you recall seeing her consume wine?

Erin: Yes.

Camille: Is this self-report of one to three glasses of red wine each day consistent with your recollection?

Erin: I don't recall her drinking red wine every time I saw her. So, I can't confirm that each time I saw her she would drink one to three glasses. I don't recall her drinking every time I saw her.

Camille: Did you ever see Ms. Heard appear intoxicated from drinking alcohol?

Erin: I don't recall her being intoxicated.

Camille: Okay. So, moving on to the next sentence here it says, "She reports a familial history of substance abuse, abuse, both mother and father have abused and become dependent on stimulants, methamphetamine, opiates, and alcohol." Did I read that correctly?

Erin: Yes.

Camille: And the she here it refers to Ms. Heard?

Erin: That's correct.

Camille: Okay. So, this is also something that Ms. Heard reported to you as far as your notes reflect?

Erin: Again, I don't have specific recollection of this. It appears that she did report that, but I don't remember.

Camille: So, a couple of sentences later here it says, " Client admits to history of anxiety, eating disorder, attention deficit disorder, bipolar disorder, codependence issues, and occasional insomnia." Do you see that sentence?

Erin: Yes.

Camille: And based off of this note and specifically the language that says client admits, you believe that this is something that Ms. Heard would have reported to you?

Erin: As you stated because it says client admits, I would make that assumption.

Camille: What do you recall miss Heard saying about her history of anxiety issues?

Erin: I don't recall specifics. As I stated earlier in the morning, I remember a general anxiety with many issues in her life.

Camille: What do you recall Ms. Heard telling you about her codependence issues?

Erin: I have vague memory of discussing codependence issues within previous relationships. I couldn't give you specifics on that. I just sort of have a vague memory of discussing that.

Camille: Do you have any non-specific recollections of Ms. Heard being anger or raged?

Erin: There been that time that I spoke about in London, 2014, I didn't specifically witness anger and rage. I' sorry.

Camille: The next sentence here says her mood has been labile. Is that...am I pronouncing that correct?

Erin: Yes.

Camille: So, first of all, what does that mean?

Erin: Emotional lability is typically when emotions swing on a pendulum. You know, for example, you may see someone very sad at one moment

and quickly transition to extreme happiness. It sort of swings from, like I said, sort of the pendulum.

Camille: And did you ever...in the time that you treated Ms. Heard, did you ever personally witness this type of emotional lability?

Erin: I don't recall specifically.

Camille: Okay. The next sentence says, "Client expressed concern to husband and Dr. Kipper that she's nervous about being alone while husband is working on movie set in London and express she has difficulty dealing with feelings of insecurity and jealousy when not in the presence of her husband." Did I read that right?

Erin: Yes.

Camille: Do you recall learning this during your initial meeting with Ms. Heard?

Erin: I don't recall learning this during the initial meeting, but again, when I initially met Ms. Heard and Mr. Depp, it was fairly brief because then after that we traveled to London. So, I don't recall if I learned of this instantaneously or if that was gathered throughout the next day or two spending time with her.

Camille: Is this the description of Ms. Heard having feelings of insecurity and jealousy when not in the presence of Mr. Depp? Is that consistent with your recollection when you were treating Ms. Heard?

Erin: I wouldn't say all the time that was an issue. I have a vague sense of those issues popping up throughout the years, but I wouldn't say that that was a constant theme.

Camille: But you do have recollections of that being an issue at some time while you were treating her?

Erin: I would say that's a fair statement.

Camille: Please go to the entry for August 29th, 2014. Okay. So, in this note, I'd like to direct your attention to this section that starts with 2345. And specifically, the first sentence it says, "Client RN and Debbie RN went to dinner together." You see that?

Erin: I do.

Camille: Thank you. And Debbie RN is Debbie Lloyd, is that correct?

Erin: That's correct.

Camille: I'm going down a couple of sentences here. It says, " Client verbalizes feelings of confusion as she feels fiancé would like her to decrease/eliminate acting career and stay home." Do you say that?

Erin: I do.

Camille: Do you remember having this specific conversation with Ms. Heard?

Erin: I don't remember specifically, but I do have a general recollection. No. I don't recall specifics.

Camille: Did you ever have any discussions with Mr. Depp concerning Ms. Heard's acting career?

Erin: I have a sort of vague general memory of discussing that before. As to specific details, I don't think I can provide you with specifics, but it sounds familiar.

Camille: Did you ever have the impression that Mr. Depp wanted Ms. Heard to stop or end her acting career?

Erin: I don't recall that being a sentiment.

Camille: If we could scroll down to the entry for September 2nd, 2014. Now, I'd like to direct your attention to a sentence in the middle of this entry. It says, "RN and CT discuss CT's history and current relationship. CT reports difficulty with jealousy issues and anxiety around fiancé's fame and ability to interact with females often." Did I read that correctly?

Erin: Yes.

Camille: And that's a note that you wrote, correct?

Erin: Yes.

Camille: Do you recall Ms. Heard expressing the sentiment to you?

Erin: Again, like we discussed earlier, I don't recall that specifically. I do have a general sense of jealousy, anxiety issues popping up throughout the years, but I don't remember that specific discussion to give you anything deeper than that.

Camille: Let's move on to the entry for September 4th, 2014. Now, I'd like to direct your attention to...this is also in the middle. It says, "CT ate dinner with RN at 2100 at restaurant."

Erin: Go ahead. I'm sorry.

Camille: Okay. "CT became frustrated with wait staff over miscommunication. CT calmly repeated herself to staff to resolve issue. CT expressed frustration over conflict to RN, RN reflected change in coping mechanisms as CT's previous coping skills involved impulsive anger and yelling." Did I read that correctly?

Erin: Yes.

Camille: Do you recall this incident at all?

Erin: We wouldn't have said that I remembered this. In preparation for the deposition when I was rereading through these notes, I have sort of a vague memory of this, but I think my notes here probably are more specific than what I exactly remember.

Camille: Let's actually go to the entry for September 21st, 2014. And I... Yes. Okay. Please take a moment and review this and once you're done, the question is, does this note reflect that incident in London that you just referred to?

Erin: To answer your question, yes. That is what I'm referring to.

Camille: It says down here at the bottom of the notes. "Client's fiancé offered emotional support." Is that accurate to your recollection?

Erin: I don't recall. I would have to refer to my nursing note as it's probably a lot more reliable than my current memory.

Camille: I believe you testified earlier though, that you recall that Mr. Depp was present on this occasion, is that right?

Erin: That's correct.

Camille: Okay. Now, we can move on to the entry for September 22nd. Okay. So, this note begins, is this... Strike that. This starts with 0100, is that 1:00 in the morning on September 22nd?

Erin: Yes. That's correct.

Camille: Okay. And it says, "I notified that client requires assistance. Upon arrival, client noted to appear irritable, loud, and angry. Client is screaming at times, and appears agitated. Crying and states she got into a verbal argument with fiancé after RN departure." Does this refresh your recollection at all about Ms. Heard having an outburst?

Erin: I don't know that it refreshes my memory. I would say it reflects my memory.

Camille: This the same outburst in London that you have been previously referring to?

Erin: Yes. That's correct.

Camille: Do you recall anything about what the fight between Mr. Depp and Ms. Heard was about that's reflected in this note?

Erin: I don't really recall. I remember a general sense of Ms. Heard being very upset that her phone was hacked because there was very sensitive information that was leaked from it. And I feel like there was a... She was having a difficult time calming after that. So, if there was any verbal disagreements, I would assume it's in relation to that. But I just don't remember the specifics of what that disagreement was about.

Camille: Okay. It says here "The client states she feels fiancé did not provide support to client." Did I read that right?

Erin: Yes.

Camille: Yes. Okay. Is that consistent with your recollection?

Erin: It didn't recall that, but again, I would state that my notes are much more reliable than my current memory. And I think that probably speaks to your previous question.

Camille: Let's please...those who...the entries which are from March 7th, 2015, which are on page...with the base number 16952. Now, I think we looked at these entries earlier. Do you recall that?

Erin: Yes.

Camille: Okay. Now, with respect to the entry for March 7th, 2015, it says "Client notifies RN via text of increasing anxiety, reports emotional lability." Do you recall with her reporting why she was feeling anxious at this time?

Erin: No. I don't recall the specific reason of why she is notifying me of that at this time.

Camille: So, it says here that she notified you via text, right?

Erin: Correct.

Camille: Directing your attention to the next note from March 8th, 2015. And I know you discussed this with Adam earlier, so I won't belabor this too much. But do you recall at the time of this entry on March 8th, 2015 Ms. Heard was in Australia?

Erin: I would make that assumption based upon my notes for March 8th. I state that "Client will be returning to Los Angeles accompanied by house manager, Ben." I'm paraphrasing there, but yes, I believe she was coming from Australia for this particular entry.

Camille: It says here, "RN plans to meet client upon arrival." Do you see that?

Erin: Oh, yes. Yes, I do.

Camille: And I think you testified to this earlier. You did see Ms. Heard the next day when she arrived back in Los Angeles, is that correct?

Erin: That's correct. If you look at the entry for March 9th, I refer to meeting her and her friends. So, yes, I would have met her in person, I think.

Camille: Do you recall how long you spent with Ms. Heard that following day?

Erin: I don't recall. My notes states that I met her for dinner at 2200, which military time would be 10:00 PM. I don't recall how long I was with her. So, I would assume a couple of hours, but again, I'm just making an assumption.

Camille: Do you recall observing any injuries to Ms. Heard when you saw her on March 9th, 2015?

Erin: No. I don't recall. I don't make note of it, but I don't recall either.

Camille: If Ms. Heard had had visible injuries, is that something that you would have documented in your nursing notes?

Erin: I would assume so.

Camille: Do you recall Ms. Heard seeking any medical treatment from you when you saw her on March 9th, 2015?

Erin: I don't recall.

Camille: If Ms. Heard had sought medical treatment from you on that date, is that something you would have documented in your notes?

Erin: Perhaps. If there were requests for medical treatment that differed from sort of day-to-day status, then yes, I might have put it in my notes if I hadn't discussed with Dr. Kipper, but I don't make any reference to it in this particular note.

Camille: Could we please pull up what should be in, I think I would have uploaded it as document B. It appears that base number is Falati 0134.

Erin: Number 14?

Camille: I think we covered this before, but just to confirm. Is this your email up at the top that says erinboerum@hotmail.com? I'm sorry. Did you respond?

Erin: Yes.

Camille: Oh, great. Thank you. I'm sorry. I didn't hear that. Okay. I'd like to direct your attention down to this email from David Kipper on March 9th, 2015 that's ref for Erin. "Love you too much." Do you recognize this email?

Erin: I believe I produced this in reference to the subpoena.

Camille: Do you recall receiving this email?

Erin: I don't recall, but I do remember reviewing this. I don't think I reviewed it in preparation for today. But probably at the time of the document request, I think I probably reviewed this.

Camille: Directing your attention to the middle of the email. Do you see where it says "I'm sure JD will let her know we are coming home. I want her to please not see him for a few days until we can get him organized with the hand surgeon and get his meds balanced." Do you see that?

Erin: Yes.

Camille: Okay. And JD refers to Mr. Depp in this instance?

Erin: Yes.

Camille: And the her is Ms. Heard?

Erin: Yes.

Camille: Did you have an understanding of the time as to why Dr. Kipper didn't want Ms. Heard to see Mr. Depp for a few days?

Erin: I don't recall exactly. This might have been in reference to Australia when Mr. Depp and Ms. Heard were separated. I would have to check the dates on that.

Camille: Well, turning back to your notes where Ms. Heard was returning from Australia, March 9th, 2015. Does that [inaudible 00:27:38]?

Erin: Yes. Yes. Thank you. Yeah. That would be the same time period.

Camille: Okay. And you alluded to an understanding that Dr. Kipper wanted Mr. Depp and Ms. Heard separated?

Erin: Yes.

Camille: And why didn't you...what was your understanding as to why they should be separated?

Erin: I don't recall specifics. I wasn't present in Australia at that time. I just remember a general sense of a big argument happening and the treatment team deciding that they should not be around each other. So, Ms. Heard returned to Los Angeles and Mr. Depp stayed in Australia for how long? I don't recall.

Camille: The next thing here says "Please use the excuse that Dr. Kipper insists that JD stay quiet without any distraction for the rest of the week while we get his medication organized and balanced. None of this will be accepted by her, but I will be very upset. You can tell her this. If there is any stress created by a visit, that's premature." Do you see that?

Erin: Yes.

Camille: Do you have any understanding as to why Dr. Kipper was directing you to provide this excuse to Ms. Heard?

Erin: Yeah. Just the general sense that there was a major argument in Australia, which I wasn't present for and separating because of that.

Camille: Did you have any understanding as to why Dr. Kipper stated that none of this will be accepted by Ms. Heard?

Erin: I would be speculating on that, but we used jokey [inaudible 00:29:46]

Ben Rottenborn: [inaudible 00:29:46]

Camille: Based on your experience treating Ms. Heard at this time in March of 2015, would you agree or did you agree with Dr. Kipper that Ms. Heard would not accept not seeing Mr. Depp for a period of time?

Erin: I don't know, specifically. As I think we talked about much earlier this morning, there was generally a sense of arguing, reconciling, and that sort of cycle happening frequently throughout their relationship.

Camille: If we could please go back to the nursing notes, which are Exhibit 2. Could we please go back to the entries from March 2015 that

are on the page with the base number 16952? Now, we covered this earlier, but it says in your March 9th, 2015 entry, it says "client states say she would like to discuss recent events between her and husband with RN in private tomorrow." Do you see that?

Erin: Oh, yes, I do.

Camille: Directing your attention to the entry for March 10th, 2015 it says, "RN met client at home at 1600." Does that refresh your recollection that you did meet with her the next day?

Erin: No, it doesn't refresh my recollection. However, I would refer to my nursing notes.

Camille: Do you have any reason to doubt that these notes are accurate?

Erin: No.

Camille: Do you recall whether Ms. Heard showed any injuries to you on that at that time?

Erin: No. I don't recall any knee injuries.

Camille: Okay. Can we go back to Exhibit 2, which is the nursing notes and specifically the entry for March 25th, 2015? Just go back up to the top of this entry for March 2015. And I just wanna ask you one more part of this. It says, "States she is concerned about ability to trust fiancé following argument on March 23rd, 2015." Do you have any recollection of Ms. Heard expressing concern about her ability to trust Mr. Depp?

Erin: I would say I have a generalized memory of there being, as I stated before, jealousy and anxiety issues including mistrust within a relationship.

Camille: Do you recall Ms. Heard ever telling you that she thought Mr. Depp was cheating on her?

Erin: No. I don't recall that specifically. I just, as I said, have a general sense of remembering jealousy being an issue.

Camille: If we could...Okay. Do you recall talking about visiting Ms. Heard and Mr. Depp for Thanksgiving earlier today?

Erin: Yes.

Camille: Does anything stand out in your mind as from that Thanksgiving dinner that you can recall?

Erin: Nothing really stands out other than it was...I sort of have a general sense of it being a really jovial fun time together.

Camille: Do you recall how long you stayed at the dinner?

Erin: Not specifically. I would assume a few hours.

Camille: Could we please just quickly go to the note from November? This is in Exhibit 2, and then entry for November 26th, 2015, which is on page 16954.

Erin: Please stand by.

Camille: And Ms. Falati, directing your attention to the entry for November 26th, 2015, you looked at...you do recall seeing this entry earlier today>

Erin: Yes.

Camille: And I believe you testified that this is the entry from the Thanksgiving dinner that you spent with Ms. Heard and Mr. Depp?

Erin: I believe it is.

Camille: Do you see in the middle where it says JD appeared calm and coherent?

Erin: I do.

Camille: Is that accurate to your recollection of that evening?

Erin: Again, I don't remember that specifically, but I just remember a general sense of it being a fun happy evening.

Camille: So, this is consistent with your recollection of that evening?

Erin: I would make that assumption.

Camille: And you have no reason to doubt the accuracy of your note, correct?

Erin: Correct.

Camille: Directing your attention to the December 17th, 2015 entry. Will you just take a minute and read this over and confirm whether...strike that. Do you recall going and visiting Ms. Heard on December 15, excuse me, December 17th, 2015?

Erin: I remember in so much as my nursing notes regarding this night. I can't say that I recall much more than I have here, but I do remember visiting her.

Camille: It says here that "The client had visible, bright red blood appearing at center of lower lip." Do you see that?

Erin: Yes.

Camille: Did you...other than the blood on Ms. Heard's lip, do you recall seeing any other injuries to her on that date?

Erin: I recall other than what I state.

Camille: Do you recall examining Ms. Heard's lip at all?

Erin: I don't think I examined it other than a visual examination. I didn't physically examine her lip.

Camille: Now, the note says here, "Client also stated her head is bruised and that she lost clumps of hair and altercation. RN briefly looked at client's scalp, but was unable to visualize hematomas client had described." Is that what you wrote in your note?

Erin: Yes.

Camille: If you had observed the bruises or hematomas that Ms. Heard had described, would that have been reflected in your note?

Erin: Would assume, but again, I'm not trained in looking for those types of injuries, which is why my note continues that I encouraged her to be seen by a professional that is trained to do so.

Camille: Can we drop down to the next page? And this is just the end portion of this note. It says here, "RN reminds client to hydrate with oral fluids and to limit and abstain from alcohol. Client was consuming red wine with RN left, but assured RN she would consume in moderation." Is that what you wrote in your note?

Erin: It is. And I believe I miswrote there. Probably it should say client was consuming red wine when RN left, not with, just to clarify.

Camille: Why would you advise Ms. Heard on this occasion to limit...Or why did you advise Ms. Heard to limit or abstain from alcohol on this occasion?

Erin: I don't recall why I would be speaking to limit or abstain from alcohol on this occasion.

Camille: To confirm, based on your nursing notes, you were aware that Ms. Heard claimed to have been injured by Mr. Depp in December of 2015, right?

Erin: Correct.

Camille: And you went and actually saw her shortly after that alleged incident, correct?

Erin: Not that same day, but possibly the following day, I believe.

Camille: And on that occasion, you observed that she had a bloody lip, correct?

Erin: Correct.

Camille: And she told you that that was a result of the altercation with Mr. Depp, right?

Erin: Right.

Camille: If she had had any other injuries on that occasion, would you have rec recorded them in your nursing notes?

Erin: Make that assumption based upon my other notes that referenced the blood on her lip.

Camille: And could we go back to Exhibit 2 and the nursing notes for April 21st, 2016, which is based on that which is on page number 16957, where it says, "RN socialized with JD for 45 minutes. JD appear coherent, oriented, and sociable. Thought process, logical and clear." Do you have any reason to doubt that that's an accurate description of Mr. Depp on that date?

Erin: [inaudible 00:42:18] I apologise. Can you just use your cursor to help me see the note that you were just reading?

Camille: Oh, it's...sorry. I actually don't have control of it, but it's down towards the middle. It says, "RN socialized with JD times 45 minutes. JD appeared cohering, oriented, and sociable."

Erin: Oh, yes. I see it. Thank you.

Camille: "That process, logical and clear." Yeah. Okay.

Erin: I'm sorry, what was your question regarding that?

Camille: Do you have any reason to doubt that that's an accurate description of how Mr. Depp appeared to you on April 21st, 2016?

Erin: I have no reason to doubt it. I would stand by my notes.

Camille: You knew that Mr. Depp was being treated for substance abuse issues by Dr. Kipper and Nurse Debbie Lloyd, correct?

Erin: Yes.

Camille: If Mr. Depp had appeared intoxicated on this occasion, is that something that you would've documented?

Erin: If it had been outwardly visible for either clients, I would have made reference to that.

Camille: If we could go back to the nursing notes, Exhibit 2, please. And if we could go down to the entry for May 11th. Now, Ms. Falati, we looked at this...you looked at this ex-entry earlier today, correct?

Erin: Correct.

Camille: All right. Directing your attention to just a couple of lines down, it says, " Client discussed her birthday trip to Coachella music festival. Trip was April 22nd, 2016 through April 24th, 2016. Client admits to illicit drug use during the trip and states she ingested mushrooms and MDMA's simultaneously while also consuming alcohol and state she vomited and was "high for at least 24 hours straight."" Do you see that?

Erin: Yes. I do see that.

Camille: Did I read that correctly?

Erin: Yes, you did.

Camille: Do you recall... Well, first of all, do you recall Ms. Heard relaying this to you?

Erin: I don't recall these specifics that I state here in the note, but I remember sort of a conversation talking about the trip after they had returned.

Camille: And this starts out "Client admits to illicit drug use." So, am I correct that this is based on these notes? This is something Ms. Heard reported to you directly.

Erin: Again, I don't remember these specifics. However, my usage of "client admits" refers to a client reporting something to me.

Camille: Had Ms. Heard ever admitted to illicit drug use to you before this time?

Erin: I believe in reference to my nursing notes from when I first met her, he alluded to previous substance use.

Camille: It says here, "RN reminded client that illicit drug use will not be tolerated by medical staff and that any medications or drugs that are not prescribed can interfere and cause adverse effects with her prescribed medication. Client laughed and also recorded using illicit drugs, mushrooms and MDMA on May 9th, 2016 at home with a high profile meal appointments." Did I read that correctly?

Erin: Yes. You did.

Camille: Do you recall Ms. Heard laughing in response to your reminder about illicit drug use?

Erin: No. I don't recall that.

Camille: In your time caring for Ms. Heard, did you ever see Mr. Depp physically abuse her?

Erin: [inaudible 00:47:05]

Camille: Did you ever see Ms. Heard, physically abuse Mr. Depp?

Erin: No.

Camille: Did you ever see Ms. Heard throw anything at Mr. Depp in the time that you cared for her?

Erin: No. I did not witness that.

Camille: For the time that you treated her, did you ever see Ms. Heard lose her temper?

Erin: As we talked of previously, the one incident that I can remember is in London 2014. Yes, 2014 in regards to her phone being hacked and sensitive material being leaked.

Camille: Did you ever feel that Ms. Heard was hostile towards you at any time during your treatment of her?

Erin: No.

Camille: Did you ever feel like she was ignoring attempts by you to contact her?

Erin: Yes. I have a general memory of often, not often, I should...excuse me, I misspoke of that happening on more than one occasion where I

would reach out and not get a response. I remember feeling frustrated by that.

Camille: When had you treated domestic violence victims prior to this time?

Erin: The time that I worked with them was in nursing school. I don't wanna say the specific place for confidentiality reasons, but it was for domestic violence victims. Sort of a safe house.

Camille: Ms. Falati, do you remember when you were treating Ms. Heard that at some point she had a cyst on her eyelid?

Erin: Yes. That sounds familiar.

Camille: Okay. And do you remember that you had a procedure to have that cyst removed?

Erin: Yes.

Camille: And was that a surgical procedure? Do you have a recollection?

Erin: From what I recall, that was handled at an outpatient surgical center. Other than that, I don't know the details of that specific process.

Camille: Okay. Do you recall whether Ms. Heard had any marks around her eye after having that procedure?

Erin: I don't recall. I remember a topical ointment being applied, but I don't recall if there were marks on her eye or not.

Judge Azcarate: At this point, the questioning switches back to counsel for Ms. Heard.

Camille: All right. Thank you.

Ben Rottenborn: Do you see Falati 93?

Erin: Yes.

Ben Rottenborn: Okay. And this is another picture of Amber from May 21st, 2016?

Erin: Correct. This is a picture of Ms. Heard.

Ben Rottenborn: And Amber sent you this text on May 21st, 2016?

Erin: I believe so based on the timestamp.

Ben Rottenborn: And the same for this picture on the next page Amber sent you this picture of her?

Erin: Correct.

Ben Rottenborn: And the same for this page, the next page, Amber sent you this picture of her on May 21st?

Erin: Yes.

Ben Rottenborn: When you saw Amber on December 17th, 2015 and you spoke about that. How long were you with her? Do you recall?

Erin: Don't recall. I would assume based on the fact that I stopped by briefly, maybe an hour or two.

Ben Rottenborn: Okay. Did you go inside her house or were you outside the door?

Erin: From what I recall, I was inside...

Ben Rottenborn: Okay.

Erin: ...the penthouse. Yes.

Ben Rottenborn: By the way, when you saw Amber on December 17th, was she wearing makeup or not? Do you recall?

Erin: I don't recall. Yeah. I don't recall.

Judge Azcarate: All right. Thank you. Before we get to the next witness, could I have counsel approach on the plaintiff's 46? All right. So, plaintiff's 46 is in evidence. Your next witness?

Ben Chew: Yes, Your Honor. Plaintiff calls Michael Spindler.

Judge Azcarate: All right. Mr. Spindler.

Ben Chew: Good morning, sir.

Michael: Good morning.

Ben Chew: Would you state your name for the record?

Michael. Michael Spindler.

Ben Chew: Where do you live?

Michael: I live in the Los Angeles, California area.

Ben Chew: What's your occupation?

Michael: I'm a forensic accountant.

Ben Chew: What do you mean by forensic accountant?

Michael: Well, forensic accountant does accounting work that is a bit more investigative in nature. So, it's essentially taking a look at business records and accounting records in connection with some form of business issue.

Ben Chew: How long have you worked in that field?

Michael: I've been a forensic accountant full-time since 1990.

Ben Chew: What'd you do before that?

Michael: Before that, I spent about 10 years doing auditing of financial statements.

Ben Chew: Can you describe your educational background?

Michael: Yes. I graduated in 1981 from the State University of New York at Albany with a bachelor of science degree in accounting and a minor in economics.

Ben Chew: Are you currently employed?

Michael: I am.

Ben Chew: Who's your employer?

Michael: B. Riley Advisory Services.

Ben Chew: What's B. Riley Advisory Services?

Michael: It's a national forensic accounting boutique firm that does forensic accounting, business valuations and appraisals, and bankruptcy, and restructuring work.

Ben Chew: How long have you been employed at B. Riley?

Michael: Since January of 2015.

Ben Chew: What did you do for work prior to B. Riley?

Michael: Well, it's a long career, so I'll give you the highlights. I spent about 30 years with national accounting firms as partner at two different firms, and also was involved with a couple of forensic accounting boutique firms.

Ben Chew: Okay. Do you hold any certifications?

Michael: I do.

Ben Chew: What are they?

Michael: I'm a certified public accountant with licenses from six states, New York, California, Arizona, Nevada, Utah, and Hawaii. I'm also certified in financial forensics. I'm a certified fraud examiner. I'm accredited in business valuation and a certified anti-money laundering specialist.

Ben Chew: Do you participate in any professional organizations?

Michael: I do.

Ben Chew: What are those?

Michael: Well, I've had leadership positions in a couple of them. I'll mention the Association of Certified Fraud Examiners. I was the president of the Los Angeles chapter, and I'm currently on their board. I've been actively involved with the California Society of CPAs. I was the president of the Los Angeles chapter. It had 11,000 members at the time. I was also on CalCPA Council, which is kind of their board of directors. And also a member of the board of trustees of the CalCPA Education Foundation.

Ben Chew: Have you testified as an expert before?

Michael: I have.

Ben Chew: Approximately how many times?

Michael: About a hundred times roughly about half of that in trials and arbitrations.

Ben Chew: What's your typical role in those cases?

Michael: Typically, it can take a number of forms, but commonly, I will testify with respect to damages.

Ben Chew: Have you done any film industry work?

Michael: Yes, I have.

Ben Chew: What was that?

Michael: I've done work involving all the major film studios. I've also done work on behalf of writers, directors, producers, actors, studio executives.

Ben Chew: Your Honor, I'd like to proffer Mr. Spindler as an expert in forensic accounting.

Judge Azcarate: All right. Any objection?

Ben Rottenborn: No objection.

Judge Azcarate: All right. So, move. Thank you.

Ben Chew: What work did you do in this case?

Michael: Well, in this case, I was asked to take a look at issues with respect to lost earnings for Mr. Depp.

Ben Chew: What, in particular, did you do?

Michael: I looked at accounting records that were produced by Mr. Depp's accounting firm at White & Company. I looked at trial exhibits, I looked at deposition testimony, I looked at some trial testimony, and I've looked at various other documents and exhibits in connection with the case.

Ben Chew: What specific period did you analyze with respect to lost earnings?

Michael: I looked at the period following the publication of the op-ed. So, I looked at the period from December 18th, 2018 through October 31st, 2020.

Ben Chew: What materials did you review?

Michael: I looked at the accounting records that have been produced by Mr. Depp's accountants.

Ben Chew: Any other materials?

Michael: Various deposition transcripts, trial testimony, contracts, etc.

Ben Chew: All right. What conclusions did you draw from your review?

Michael: I concluded that Mr. Depp suffered lost earnings of approximately \$40 million.

Ben Chew: How did you reach that conclusion?

Michael: Well, there are really two main components to that. The first relates to the loss of the role of Captain Jack Sparrow in the "Pirate 6" film. So, the loss relate to the loss of that role in that franchise picture

was \$22.5 million based on testimony provided by Mr. Jack Whigham. In, addition we looked at... Yes?

Ben Chew: Did you do anything else with respect to "Pirate 6?"

Michael: Well, we also calculated the net earnings that Mr. Depp would've received from that.

Ben Chew: Okay. And what did you base your analysis of "Pirate 6" on?

Michael: Based on the testimony of Mr. Jack Whigham.

Ben Chew: Okay. What else did you do with respect to the lost earning analysis that you did?

Michael: Well, the other main component to this is taking a look at all the other roles, the non-franchise films. So, those films, studio films, independent films, and endorsements that Mr. Depp realizes and enjoys. So, in connection with that, we looked at his bookings for the year 2017. And by bookings, I mean instances where Mr. Depp is hired for a project, and he receives that first money related to that project in 2017. So, in other words, you've got a deal and cash has showed up, so it's real. So, we looked at his 2017 bookings and we calculated for that year for that period his bookings were about \$17.5 million. The main components of that, Mr. Whigham testified to. We then looked at the period of time following the op-ed of December 18th, 2018 through October 31st, 2020. So, if annual earnings was \$17.5 million in what is known as a typical year, a reasonable base year. At that rate, what would we have expected Mr. Depp to have earned from that period of October 18th, 2018 through October 31st, 2020? And we then compared that to his bookings, his actual bookings for that period of time.

Ben Chew: Why did you use 2017 as a typical base year?

Michael: Well, a couple of reasons. First of all, Mr. Whigham testified that that was a typical year for Mr. Depp. And it's also the most recent clean year that was experienced. In 2018, he had the publication of the op-ed that didn't happen in 2017.

Ben Chew: Okay. Did you do anything...did you prepare anything to assist the jury with respect to the analysis that you performed?

Michael: We did prepare a chart. Yes.

Ben Chew: Okay. Your Honor. May I approach?

Judge Azcarate: All right. Yes, sir. All right.

Ben Chew: Thank you. Your Honor, I think this is plaintiff Exhibit 1240. I'm not gonna move it into evidence, I'm simply just gonna use it with your permission to publish it to the jury so that the witness can explain it.

Judge Azcarate: All right. Any objection to demonstrative 1240?

Ben Rottenborn: If he's asking this as a demonstrative, I have no objection.

Judge Azcarate: All right, demonstrative. Well, do you have electronic copy of it? Okay. That's fine.

Ben Chew: We don't. Okay. Who did this chart?

Michael: I in combination with people working under my direction from my firm.

Ben Chew: All right. Can you explain to the jury what you've done here?

Michael: Sure. I'd be happy to. So, as we discussed previously, Mr. Depp lost the role in "Pirate 6," and the effect of that was lost earnings of \$22.5 million based on Mr. Whigham's testimony. And then what we've shown here is the 10% agent commission that would have been...

Ben Chew: So, why did you deduct 10%?

Michael: Because that's the rate for Mr. Depp's agent. That's what his agent receives out of Mr. Depp's earnings in connection with setting up a project for Mr. Depp. So, we deduct that 10%, which comes to \$2, 250,000, just 10% of \$22.5 million. And the net effect of that, the amount that Mr. Depp would have received after deducting that fee would've been \$20, 250,000. And that's the first component of this.

Ben Chew: All right. What did you do in terms of the analysis of lost bookings for non-franchise films?

Michael: Okay. So, that's the next section of the chart. And as I mentioned before, his 2017 bookings were about \$17.5 million. So, that rate of earnings over the period from mid-December through the end of October 2020, or mid-December 2018 through the end of October 2020 would come to about \$32.8, \$32.9 million that we then compared that to actual bookings during that period of time of mid-December 2018 through the end of October 2020. That amount was \$10, 586,000. We deducted those bookings, the actual amounts from what we would have expected to arrive at his lost bookings for non-franchise activity. And that comes to about \$22.3 million. And once again, we've deducted the 10%

agent's commission. So, the net effect, the lost earnings to Mr. Depp after that agent's fee for non-pirate films comes to about \$20 million.

Ben Chew: Yeah. What does the figure at the bottom corner of the chart, the \$40,000,318...\$40,318, 237? What does that represent?

Michael: Well, that's your grand total. That's the sum of those two components for total lost earnings of \$40.3 million.

Ben Chew: No further questions, Your Honor.

Judge Azcarate: All right. Cross-examination.

Ben Rottenborn: Thank you, Your Honor. Good morning, Mr. Spindler.

Michael: Good morning.

Ben Rottenborn: So this lawsuit isn't the first time you've worked with Johnny Depp, is it?

Michael: It is not.

Ben Rottenborn: You've worked with him in a lawsuit that he had in the past with his old law firm, correct?

Michael: Yes. Just a little bit of work. Yes.

Ben Rottenborn: Okay. And so, in this second go-round is as a paid expert for Mr. Depp. You're making, what? \$550 an hour is what he's paying you, is that right?

Michael: That's the amount that my firm bills, I do not receive that.

Ben Rottenborn: Now, the subject matter of your opinion testimony in this case is the economic damages that Mr. Depp has allegedly suffered as a result of Ms. Heard's December 8th, 2018 op-ed, correct?

Michael: Correct. Yes.

Ben Rottenborn: And this is the first case in which you've testified as an expert relating to economic damages claimed by an actor, correct?

Michael: First time I've testified to, but I've done that work before.

Ben Rottenborn: And you understand that this case is about only whether Ms. Heard's December 18th, 2018 op-ed constitutes defamation of Mr. Depp, correct?

Michael: That's my understanding.

Ben Rottenborn: And you understand that this case isn't about anything else Ms. Heard has ever said or done, correct?

Michael: I believe that's correct.

Ben Rottenborn: And to be clear, you are testifying only as to alleged damages, right?

Michael: Correct.

Ben Rottenborn: So, you are not offering any opinion or any testimony on whether those specific damages that you just discussed were caused by the op-ed, correct?

Michael: That's correct.

Ben Rottenborn: And you're assuming for the purposes of your report that the damages that you're testifying about were caused by Amber's op-ed, correct?

Michael: Yes.

Ben Rottenborn: So, you're therefore not looking into whether anything else that's happened with Mr. Depp's life or career could have caused him economic damages, correct?

Michael: I believe that's generally correct. Yes.

Ben Rottenborn: So, you're not looking at whether the article published in the UK in June 2018 calling Mr. Depp a wife beater caused him the damages, correct?

Michael: Correct.

Ben Rottenborn: You're not looking at whether the lawsuit that he brought in the UK against the publisher of that article caused him those damages, right?

Michael: Correct.

Ben Rottenborn: You're not looking at any of the evidence that came out in that lawsuit about alleged instances of abuse against Amber, correct?

Michael: Correct.

Ben Rottenborn: You're not looking at whether the consequences of Mr. Depp's drug and alcohol use have caused him the damages you're discussing, correct?

Michael: Correct.

Ben Rottenborn: You're not looking at whether the worsening performance at the box office of Mr. Depp's movies over time has caused him the damages that you're testifying about, correct?

Michael: Correct. And I'm not acknowledging any of this being accurate, I'm just saying that that wasn't part of my calculations.

Ben Rottenborn: Sure. I understand. I just wanna make clear what you didn't look at, what you're not opining on. And so, to round that out, you're not considering even the impact of Amber obtaining a restraining order in May 2016 and whether that may have caused some damages, that's not part of your opinion, correct?

Michael: Well, since we were taking a look at lost bookings using 2017 as the base year, any activity that preceded that would have been baked into those calculations that way.

Ben Rottenborn: And we'll get to those calculations in a minute because I'd like to...I'm gonna put up the chart that you put in your expert report. But first I wanna talk about "Pirate 6" because that's basically the two components of your damages is "Pirate 6" and then this non-franchise lost bookings, right?

Michael: Correct.

Ben Rottenborn: Okay. So, for "Pirate 6" specifically, you assume that he would have made \$22.5 million on "Pirate 6," right?

Michael: Correct.

Ben Rottenborn: And you took Jack Whigham's word for it in making that assumption, correct?

Michael: I based it on his testimony. Yes.

Ben Rottenborn: And you never saw a contract that Mr. Depp had for "Pirate 6," correct?

Michael: Correct.

Ben Rottenborn: Because no contract exists to your knowledge, correct?

Michael: So far as I know, I've not seen one.

Ben Rottenborn: And you didn't take into consideration Jack Whigham's testimony that Disney was non-committal about Mr. Depp being in "Pirate 6" even before the op-ed, correct?

Michael: Correct.

Ben Rottenborn: And you didn't take into consideration the press articles that came out prior to the op-ed that suggested that Disney had made a decision not to cast Mr. Depp in "Pirate 6," correct?

Michael: Correct.

Ben Rottenborn: And you have no idea whether "Pirate 6" will ever be made, right?

Michael: I wouldn't know that.

Ben Rottenborn: And you have no idea if Disney has decided one way or the other, whether Mr. Depp would be in it or whether they'd offer him a role in it, if it is ever made, correct?

Michael: Well, my understanding is that they made a public statement that he would not.

Ben Rottenborn: Okay. And you have...if Disney decided that he wouldn't be in it, you have no idea when they decided that, correct?

Michael: I know that there was a public announcement subsequent to the publication of the op-ed.

Ben Rottenborn: What public announcement are you talking about?

Michael: I believe there was an interview of Mr. Bailey that was published several days after.

Ben Rottenborn: Oh, okay. Well, that interview of Mr. Bailey didn't say that he wasn't gonna be in it. In fact, have you looked at the article that the jury saw the headline for yesterday dated November 5th, 2020, about Mr. Depp potentially not being in "Pirate 6." Have you looked at that article? I assume not.

Michael: No.

Ben Rottenborn: And you didn't take into account Mr. Depp's statement that he wouldn't do "Pirate 6" or \$300 million in a million out pockets, correct?

Michael: That sounds like hyperbole to me. I didn't take that very seriously.

Ben Rottenborn: Okay.

Michael: It sounds like somebody who was a bit hurt or in pain as a result of the loss of the role.

Ben Rottenborn: So, if Mr. Depp didn't lose a role in "Pirate 6" because of the op-ed, but he lost it for other reasons, then your damages opinion relating to "Pirate 6" would drop to \$0, correct?

Michael: I believe that's correct. If it's not lost for that reason, if it's lost for some other independent reason, then I think that would need to be considered.

Ben Rottenborn: Okay. Thank you. Now, let's shift gears and talk about the non-franchise earnings for a moment. You claim this number is about \$21 million, right? Roughly?

Michael: 20.

Ben Rottenborn: We'll pull it up. Well, actually, we'll look at the chart here. \$20 million, about \$20 million after agent fees.

Michael: Correct.

Ben Rottenborn: Okay. And to reach that number, you looked at what his historical earnings records showed, right?

Michael: Correct.

Ben Rottenborn: And you got that information from Ed White's office?

Michael: Yes.

Ben Rottenborn: And you assumed that the information you got from Ed White's office was accurate, right?

Michael: I did. Yes.

Ben Rottenborn: Can we please pull up the chart that's in his expert report? Your Honor, this is... Mr. Spindler I'd like you to take a look at this and confirm for the court that this is the chart that's in your expert report, if you would.

Michael: It appears to be. Yes.

Ben Rottenborn: Your Honor. I'd ask for permission to publish this just as a demonstrative.

Judge Azcarate: Any objection?

Ben Chew: No objection, Your Honor.

Judge Azcarate: All right.

Ben Rottenborn: Can you just [inaudible 01:12:32] So, Mr. Spindler, this chart shows Mr. Depp's earnings by year based on the information that you received from Ed White, correct?

Michael: Correct.

Ben Rottenborn: From 2009 to 2020?

Michael: Yes.

Ben Rottenborn: And it shows that from about 2009 to 2019 and I... I didn't add these up visually, but from your report, you say that Mr. Depp made about \$459 million, correct?

Michael: Correct.

Ben Rottenborn: Now, the two highest earning years in this time period were 2010 and 2011, right?

Michael: Yes.

Ben Rottenborn: You see that made about \$70 million in 2010?

Michael: I do. Yes.

Ben Rottenborn: And then the third highest year was 2014, right?

Michael: Yes.

Ben Rottenborn: Stayed under \$60 million? And you'd agree that from the period of 2010 to 2020 his annual income on average was decreasing.

Michael: Yes. But you have to take a look at the components of this.

Ben Rottenborn: Right.

Michael: And as we...

Ben Rottenborn: And in 2000...I just wanted to get your agreement that from 2010 to 2020, his annual income was decreasing. Now, in 2020, he earned more than he did in 2016, correct?

Michael: On an overall basis, yes.

Ben Rottenborn: And in 2020, he earned more than he did in 2018, correct?

Michael: Yes. Just based on earnings.

Ben Rottenborn: After the op-ed. And in 2018 and 2019, he earned almost identical amount, correct?

Michael: Yes. Just based on earnings.

Ben Rottenborn: And 2019 and 2020 were both after the publication date of the op-ed, correct?

Michael: Yes.

Ben Rottenborn: Okay. Now, I wanna talk about some of these non-franchise earnings because when I looked at your chart that was displayed to the jury, I didn't see anything specific listed. So, can you just confirm for me that you can't name a single lost business opportunity other than "Pirate 6" that Mr. Depp lost as a result of the op-ed?

Michael: That's correct. That's not the nature of this calculation.

Ben Rottenborn: And you can't identify a single television just...if you could just answer my questions yes or no as best you can, please. You can't identify a single television project that Mr. Depp allegedly lost out on as a result of the op-ed, correct?

Michael: Correct. That's not the nature of this.

Ben Rottenborn: And you can't identify a single advertising campaign or marketing opportunity that Mr. Depp lost out on as a result of the op-ed, correct?

Michael: Right. These are the calls [crosstalk 01:15:12]

Ben Rottenborn: And so it's fair to say that for the lost opportunities that you can't name, you're assuming, as with "Pirate 6," that those opportunities were lost because of the op-ed, correct?

Michael: Correct.

Ben Rottenborn: Now, mentioned something interesting in your direct and in your report. You say that you used 2017 as the base year to calculate what you claim Mr. Depp should have earned in 2019 and '20, correct?

Michael: Correct.

Ben Rottenborn: And let's take a look at this because 2017 he made that much, correct? About \$45 million or so?

Michael: Yes.

Ben Rottenborn: But in 2016 he made just a shade over 20, correct?

Michael: Correct.

Ben Rottenborn: 2018 he made a shade under 20, right?

Michael: Yes.

Ben Rottenborn: Same with 2019, right?

Michael: Correct.

Ben Rottenborn: And then 2020, he actually made more than he had in the prior two years or in 2016 and made about what? \$22, \$23 million or so, is that right?

Michael: Right. But as I indicated, this is just based on earnings you need to get behind.

Ben Rottenborn: Right. So, you said...there are a couple of interesting things you said. You said that the most recent...that 2017...I wanna explore why you relied on that. Now, first of all, you said that you relied on Jack Whigham's testimony that 2017 was a reasonable year to use, correct?

Michael: Correct. Yes.

Ben Rottenborn: Despite the fact that 2017 he made more than twice as much as he's made in any year over the last five years, correct?

Michael: Yes. [crosstalk 01:17:00] But when you take a look at the...

Ben Rottenborn: And you said [inaudible 01:17:01] the most recent...

Michael: If I can finish this thought.

Ben Rottenborn: No, no. No. You answer my question. Well, I wanna get to your thoughts because you said that one of the reasons you used 2017 was because it was...you said...I wrote down, "The most recent clean year," right?

Michael: Correct.

Ben Rottenborn: And then I think you explained. You said, "Because the op-ed was written in 2018," right?

Michael: Correct.

Ben Rottenborn: But the op-ed wasn't written until December 18th, 2018, correct?

Michael: Yes.

Ben Rottenborn: So, if 2017 was clean, then the first 352 days of 2018 were also clean, weren't they, sir?

Michael: If I may explain. Mr. Whigham testified that for the first half of 2018, Mr. Depp chose to take some vacation time. Also, he chose to go touring in the summer with his band. And then he did a film towards the end of 2018. With the publication of the op-ed in December of 2018, that would have impacted the prospects for that film that was done in 2018. So, he chose to do just the one film in 2018. And then the impact of the op-ed on that film would have meant that it was not a clean period. You could not have looked at that film to get a good sense of what his earnings should have been because he didn't have the chance to earn box office bonuses with proper participations. So, that's why 2017 is a much, much better year to use than 2018. [crosstalk 01:18:38] And that's where you look at the bar...

Ben Rottenborn: Well, let's break that down. I think you...let's break that down a little bit. You said that 2017 was a much cleaner year, but isn't it also true that there were other reasons why 2018 wasn't clean? For example, the June or the April 2018 article by Dan Wootton calling Mr. Depp a wife beater, correct?

Michael: That did occur that year. Yes.

Ben Rottenborn: The June 2018 lawsuit that Mr. Depp filed in the UK against "The Sun" for calling him a wife beater, correct?

Michael: Yes.

Ben Rottenborn: And how about the October articles reporting that Disney had decided to move on from Mr. Depp and not cast him in "Pirate 6," correct?

Michael: I'm sorry. What effect would that have had?

Ben Rottenborn: Well, it came before the op-ed. So, it's another reason why 2018 isn't a clean year in your mind, correct? An article two months before the op-ed.

Michael: No. Those aren't the reasons why... [crosstalk 01:19:31]

Ben Rottenborn: An article two months before the op-ed saying that Disney had decided not to cast Mr. Depp. That would also keep 2018 from being what you would call a clean year, correct?

Michael: I've described the reasons why I believe 2018 was not a clean year.

Ben Rottenborn: Okay. Now, you're aware, as we talked about, that Amber's op-ed wasn't published till December 18th, 2018, correct?

Michael: Correct.

Ben Rottenborn: So, Mr. Depp could not have lost out on any opportunities as a result of the op-ed prior to December 18th, 2018, correct?

Michael: Correct.

Ben Rottenborn: And he couldn't have lost out on any opportunities in 2017 as a result of the op-ed, fair?

Michael: Fair.

Ben Rottenborn: And he couldn't have lost out on any opportunities in 2016 as a result of the op-ed, correct?

Michael: Correct.

Ben Rottenborn: And so, in calculating your damages, you didn't use 2016, you didn't use 2018, but you chose to use 2017, correct?

Michael: Yes. For very good reasons.

Ben Rottenborn: And Mr. Depp still made more in 2020 than he did in both 2016 and 2018 before the op-ed was published, correct?

Michael: Correct. And that's just based on earnings.

Ben Rottenborn: Nothing [inaudible 01:20:48] Thank you.

Ben Chew: All right. Redirect?

Ben Chew: Yeah. Thank you, Your Honor. You explained 2018, why didn't she use 2016?

Michael: Well, first of all, 2017 was a more recent year. 2017 was a year in which Mr. Whigham indicated that that was a typical year for Mr. Depp. He had a studio film, he had an independent film, he had an endorsement deal. 2016 is further back in time. As I understand it, his

earning capacity for that year would've been just about the same or even higher than 2017 because there was an endorsement deal that Mr. Depp passed on that would have been worth a lot of money according to Ms. Jacobs. So, 2017 made the most sense.

Ben Chew: Why did you ultimately use the method that you did to determine the lost earnings?

Michael: Because it just makes sense. It's the correct approach to take. You're taking a look at what Mr. Depp would have been expected to earn in a typical year, and then you're comparing that to the period of time where you're analyzing following the op-ed from December of 2018 through October 2020. So, you're taking a look at what you would have expected him to earn. It's very simple compared to what he actually did earn.

Ben Chew: No further questions, Your Honor.

Judge Azcarate: All right. Thank you. Is this witness subject to recall?

Ben Rottenborn: No. Thanks.

Judge Azcarate: All right. Sir, since you're subject to recall, do not discuss your testimony with anybody. But since you are giving expert testimony, you're free to stay into the courtroom. Okay, sir?

Michael: Okay.

Judge Azcarate: Thank you. You have a good day.

Michael: Thank you very much. Thank you, everyone.

Judge Azcarate: All right. Watch your step there. All right.

Ben Chew: Plaintiff rests his case.

Judge Azcarate: All right. Plaintiff rests. Ladies and gentlemen, we're gonna go ahead and take our morning recess. It may be a little longer because I have a few issues to take up with the attorneys, but then we'll proceed after that. Okay? So, please do not talk about the case and do not do any outside research. Okay? Thank you. All right. Why don't we go ahead and take our recess till 11:45 then I'll come back and entertain the motions at that time, okay? All right. Thank you.

Ben Rottenborn: The first two at this point. And because it seems like Plaintiff is proceeding under a theory of defamation by implication, under the Pendleton case 290 Virginia 162, Plaintiff bears the burden of proving that the statements at issue were designed and intended by Ms.

Heard to imply a defamatory meaning. Designed and intended to imply defamatory meaning. So, and to satisfy those first two elements, publication and falsity and defamation or defamatory nature of the statements, Mr. Depp bears the burden of proving that by a preponderance of the evidence and to satisfy the requisite intent and show that Ms. Heard acted with actual malice. He has a heightened standard of proof that he must prove by clear and convincing evidence that Ms. Heard acted with that malice.

So, just wanna talk about the two statements on domestic abuse in the op-ed. And Your Honor is well aware of the ample Virginia case law talking about how you have to view the op-ed as a whole, you have to view words in context. So, these are the statements that read, "Then two years ago, I became a public figure representing domestic abuse." And then the other statement that says "I had the rare vantage point of seeing in real-time how institutions protect men accused of abuse." Now, those statements are entirely opinion, except for, according to Mr. Depp, the discussion of domestic abuse. So, the statement "I became a public figure representing domestic abuse," and the statement in the second sentence that Mr. Depp was a man accused of abuse. The rest of those are in actionable opinion statements.

Now, the evidence adduced thus far, Your Honor shows that Mr. Depp can't sustain a claim on these for two reasons. First of all, the statements are true on their face. I don't think that there's any dispute about that. And that's been the subject of some testimony in this case. Two years before she wrote the op-ed, Ms. Heard did in fact become a public figure representing domestic abuse when she obtained a domestic violence restraining order against Mr. Depp. And Mr. Depp was indeed accused of abuse. Those are facts that are true. Now, to the extent that Mr. Depp will argue that he's proceeding on defamation by implication claim, again, the court should grant the motion to strike because the undisputed evidence is that he did in fact abuse Amber. Now, there's a dispute in this case. There's ample evidence that he physically abused Amber, but we acknowledge that there's a dispute in this case on that. But what there isn't a dispute in this case is non-physical abuse. Both Mr. Depp and his expert Shannon Curry have testified that abuse may come in many forms. It may be physical, certainly, but it may also be verbal, maybe emotional, maybe psychological.

You'll recall Mr. Depp even kind of setting the baseline for what abuse was when he talked about the non-physical abuse that he allegedly suffered at the hands of his mother. He said it was worse than the

beatings. And the example he gave was that his mom used to call him one eye, as an example because he had a lazy eye, I guess, as a child. That was something that Mr. Depp himself said was abuse. His mom calling him one eye. So, we're setting aside the evidence of physical abuse in this case, which is already overwhelming. Mr. Depp's claims relating to these two statements should be stricken because of the ample and undisputed evidence in the record of non-physical abuse by Mr. Depp toward Ms. Heard. There's evidence in the record of recordings, messages, including messages written in blood with his finger, blood and paint, vile names, shouting, menacing and threatening statements. There's the video, the kitchen video on Switzer, there's the audio of him calling Ms. Heard, like I say, numerous vile names. There's the audio of him asking her to cut him and whether she wanted to be cut.

So, there's plenty of evidence out of the words or out of the mouth of the plaintiff in this case that constitutes non-physical abuse of Ms. Heard. Again, under the standard set forth by his expert and the plaintiff himself. Those are far worse than his mother calling him one eye when he was a child. In addition to that, Your Honor, there's Travis MacGivern's testimony from yesterday in which he testified that at a minimum on the night of March 23rd, 2015, both parties were being verbally abusive to each other. Mr. McGivern also testified about Mr. Depp "rearranging her closet, throwing racks of clothing down onto the floor, and throwing at least one rack down the stairs." Now, in California, property damage alone can be a basis for getting a temporary restraining order under California law. So, further evidence of non-physical abuse or non-physical toward Ms. Heard. You saw the cupboards in the Switzer kitchen video.

And then Dr. Laurel Anderson, Your Honor, testified that she believed that the parties engaged in mutual abuse and that at least some of the time that was initiated by Mr. Depp. This is all evidence. We haven't gotten to put on our case yet. And to the extent that this case proceeds and that will start now, but this is all evidence that has come in while plaintiff controls the playing field of what evidence has come in. And he can't overcome that. In this case, Your Honor, if Mr. Depp abused Ms. Heard physically, verbally, emotionally, or psychologically even one time, then she wins on those claims. Then she wins. It's that simple. And the evidence is overwhelming and undisputed in the ways that I've just described that he did. So, for that reason, Your Honor, those claims should be stricken. And I'll just cite the *Union of Needletrades vs. Jones* case. This is 268 Virginia 512 that states, "If the plaintiff does not establish the falsity of the statement by a preponderance of the evidence

in his case-in-chief, he has not met his threshold burden and the trial court should strike the evidence and grant summary judgment to the defendant." That's exactly what should happen here.

Now, move on to the second issue, which is the headline containing the phrase sexual violence. That should be stricken for a couple of reasons. First, Your Honor, the evidence is established that Ms. Heard didn't write the headline. Mr. Dougherty from the ACLU, that's the only evidence that's come in in this case thus far. Plaintiff's controlled the...

Judge Azcarate: Well, I understand, but there's also a stipulation that Ms. Heard would not be called in the plaintiff's case because they would then use her testimony for part of their case in your case, right? I'm not...

Ben Rottenborn: And that's...

Ben Chew: That's correct, Your Honor.

Ben RottenbORN: Yeah. Agree. And that gives a different issue that I'm not arguing. I'm not arguing that the court should strike because they haven't put Ms. Heard on to testify about the headline.

Judge Azcarate: I assume part of that would be that they would... But I hope they...I guess they intend to get from Ms. Heard is that she either wrote it or republished it.

Ben Chew: Yeah. What happened the next day is Ms. Heard posted it on her Instagram account and said, "Look what I published yesterday in the Washington Post." So, she adopted the title and her name was on the article, which contained the title.

Judge Azcarate: And Mr. Rottenborn, the only reason...I'm sorry to interrupt you.

Ben Rottenborn: No. That's fine. Of course.

Judge Azcarate: The only...because I know that was a stipulation. So, it's hard for me to say that that's all the evidence for motion to strike if there's a stipulation that they're still going to get more evidence in on that particular issue.

Ben Rottenborn: I think, and I'm happy to hand the court the transcript of the April 8th hearing because one of the things that we're not arguing today is that because they haven't put in evidence of the, I think it was a tweet, but Mr. Chew says it was Instagram. I don't know. Whatever it was that because there was...

Ben Chew: It was a tweet adopting the op-ed she published a day before in the Washington Post.

Judge Azcarate: Okay.

Ben Rottenborn: All right. So, what I'm not arguing today is that because they haven't gotten that tweet into evidence or heard Ms. Heard say that she tweeted that, that we're entitled to summary judgment at this point. I'm not arguing that, but that's all that we discussed on April 8th. And I'm happy to hand the transcript up, Your Honor. And we actually never...it wasn't a stipulation, it was simply an agreement that they didn't need to call her in their case-in-chief to make that point. And then Ms. Bredehoff said, "We have to agree on the language of any stipulation and they haven't proposed anything to us and haven't gotten back to us." So, I think that that's only relevant to...we're not basing our request for motion to strike here on Ms. Heard not having testified to sending that tweet.

Judge Azcarate: But you're saying for the motion to strike, the only evidence before the court is that the Washington Post wrote that title?

Ben Rottenborn: Correct. And that's very different from what happened the next day. The stipulation didn't go toward who wrote the title. That was never part of anything. And it's undisputed and Ms. Heard will testify that she didn't write the title.

Judge Azcarate: Well, I understand that, but I think...

Ben Chew: It's not undisputed, Your Honor. I apologize for interrupting.

Judge Azcarate: Okay. But I think the issue is that whether it was re-publication.

Ben Rottenborn: Well, and I'll get to that next, but...

Judge Azcarate: I know. But you see the problem is how do I do a motion to strike when that evidence isn't before me yet?

Ben Rottenborn: Well, the re-publication isn't...so, the evidence that's before you is that the Washington Post wrote the headline or that Ms. Heard didn't. And that's the only evidence.

Judge Azcarate: Right.

Ben Rottenborn: And that's not gonna change. The tweet, which was the only subject of the discussion at the pre-trial conference where there was no stipulation, it was just an agreement that we're not gonna base a motion to strike on them not introducing evidence of the tweet. That was

what it was. And I'm happy to hand the transcript up if Your Honor would like to see that. But that is an actionable because under the Lokhova vs. Halper case 995 F 3rd 134, retweeting a link doesn't constitute re-publication. Now, that case [inaudible 01:32:35]

Judge Azcarate: Well, it does if you add something to it, but I just don't know the evidence.

Ben Chew: Your Honor, very quickly. It's a judicial admission. They admitted...in Ms. Heard's answer, she admitted to the tweet. So, that establishes that she adopted the op-ed and its entirety. And it was discussed. We talked about judicial admissions. One was the op-ed itself, the second, and this is reflected in...

Ben Rottenborn: Your Honor, if I could finish my argument I would appreciate.

Judge Azcarate: I understand.

Ben Chew: I can't wait to oppose this.

Judge Azcarate: No, that's fine. Go ahead. Go ahead. Go ahead, sir.

Ben Rottenborn: And again, we can look at the transcript.

Judge Azcarate: You understand my concern, though?

Ben Rottenborn: I do understand your concern and I guess what I'm saying is that there's two levels. One is there's no dispute and there's not gonna be a dispute that she did not write the headline. So then you look at, is the tweet actionable? And the argument here is that as a matter of law, retweeting something isn't actionable. And so, as under the Lokhova case, 995 F 3rd 134. And that case dealt with hyperlinks and how those aren't actionable. But to be very clear, nothing that was discussed on April 8th, nothing that was discussed at that pre-trial conference was in any way relating to any stipulation about who wrote the headline, it was simply that they need not call Ms. Heard in their case-in-chief to get her to say that she sent a certain tweet. And that tweet's not in evidence yet, but I assume that they'll try to put it in evidence at some point. But that's...the tweet doesn't need to be in evidence for you to strike this claim on that basis.

So, even assuming that the headline implied certain conduct by Mr. Dep, again, Mr. Depp can't meet his burden of proof on this. Third, Your Honor, he can't prove that Ms. Heard acted with actual malice. Mr. Depp hasn't introduced evidence sufficient to permit him to meet this. Now, again, this is a heightened burden of proof. He has to show actual

malice by clear and convincing evidence. And as [inaudible 01:34:27] Ms. Heard's intent on April 8th, which of course, we didn't. But the only evidence that has been presented in this case, Your Honor, by Mr. Dougherty was that the op-ed wasn't Ms. Heard's idea that the ACLU asked her to write the op-ed and indeed that they even wrote the first draft, and then that Ms. Heard vetted the finished article with her lawyers and with lawyers from the ACLU to make sure that it wasn't problematic. That is the only evidence in the record. And on that evidence, there cannot be a conclusion that Ms. Heard acted with the actual malice that's necessary, particularly when you consider the heightened burden of proof. So, reviewing the op-ed as a whole with the court acting in its appropriate function as the gatekeeper of the first amendment, we ask that the court strike plaintiff's evidence and award summary judgment to Ms. Heard either in whole or in part. Thank you.

Judge Azcarate: All right. Thank you. Yes, sir.

Ben Chew: Good morning, Your Honor. May I please the court bench you for plaintiff Johnny Depp? It's just still morning. Your Honor, if I may approach.

Judge Azcarate: All right. Thank you.

Ben Chew: Thank you, Your Honor. I've just handed to Mr. Rottenborn and Your Honor an opposition that we prepared before we had the benefit of seeing Ms. Heard's affirmative motion to strike that I think we've anticipated the arguments made such as they are. The court should deny defendant Amber Heard's motion to strike because Mr. Depp has come forward in his case-in-chief with multiple credible witnesses, documents, and authentic tape recordings of Ms. Heard herself, not only satisfying all of the requisite elements of his claim for defamation, including actual malice but also going the extra mile of showing that Ms. Heard physically abused him. She's the abuser in this courtroom. Your Honor, going back to the standard as Your Honor is well aware in considering a motion to strike, the trial court must view the evidence in all reasonable inferences drawn from the evidence in light of the most...in the light most favorable to the plaintiff. "Any reasonable doubt as to whether the plaintiff has produced sufficient evidence of the wrong alleged must be resolved in the plaintiff's favor and the motion to strike denied."

And that's the Boeing case I believe Mr. Rottenborn referred to 243 Virginia 81 at 811992. "The weight and credibility of the testimony of witnesses are solely matters for the jury. The jury may accept that part of the testimony it believes and reject that which it does not. It is also within

the exclusive province of the jury to draw any reasonable inferences from the evidence before it citing *Ray vs. Minix*, 275 Virginia 579 at 585." In deference and respect to the court's time, Mr. Depp incorporates by reference the legal analysis set forth in the court's opinion letter dated March 27th, 2020 overruling Ms. Heard's Damara to the three defamatory statements at issue. And that letter opinion is attached as Exhibit one to Mr. DE's opposition. That's where the court fulfilled its proper gatekeeping role that Mr. Rottenborn referred to. As a threshold matter, the elements of a defamation claim are the following. Publication of an actionable statement with the requisite intent citing the *Shaker vs. Bonfolt* case 290 Virginia 81 at 91.

As to damages, they are presumed here because Ms. Heard's false allegations of domestic abuse, sexual assault, and rape constitute defamation per se citing the *Tronfield* case 272 Virginia 709713, a 2006 case. As the court noted at page three of its opinion letter, typically, an editorial or op-ed column is ordinarily not actionable because it appears in a place devoted to, or in a manner usually thought of as representing personal viewpoints. However, Virginia recognizes that "a defamatory charge may be made by inference, implication, or insinuation." Citing the *Carwile* case. And a statement expressing a defamatory, meaning may not be apparent on its face, citing *Pendleton* with which the court is quite familiar, 290 Virginia at 172. Accordingly, in order to render words defamatory and actionable, it is not necessary that the defamatory charge be in direct terms but may be made indirectly. And it matters not how artful or disguised the modes in which the meaning is concealed if it is, in fact, defamatory. *Carwile*, 196 Virginia at 7.

And based on the authority and reasoning set forth in pages four through eight of the opinion letter, the three statements at issue or actionable under a theory of defamation by implication. Mr. Depp established in his case-in-chief that Ms. Heard in fact made all three of the defamatory statements at issue as the court admitted into evidence as plaintiff's Exhibit 1, the op-ed Ms. Heard published in her own name in the *Washington Post* on December 18th, 2018. And let's take the three statements in the proof that has been adduced. Statement number one, Amber Heard. "I spoke up against sexual violence and faced our culture's wrath. That has to change." Per page six of the opinion letter, the first statement could reasonably convey they allege defamatory meaning, i.e. that Mr. Depp abused Ms. Heard to its readers without extending the words beyond their ordinary and common acceptance." *C. Pendleton*, 290 Virginia at 172, also citing the *Carwile* case.

Resolving every fair inference in Mr. Depp's favor, this statement could reasonably imply that the sexual violence Ms. Heard spoke up against was in fact perpetrated by Mr. Depp. Mr. Depp produced several credible witnesses and documents proving that Ms. Heard was implying that he committed sexual violence against her. Mr. Depp himself testified to that, as did his sister Christi Dembrowski. Mr. Depp's former agent Christian Carino testified that, as did his current agent Jack Whigham. But perhaps most convincing and of all and most disgusting of all was the testimony of the ACLU's Terrence Dougherty, a lawyer, nonetheless. Mr. Dougherty testified among other things that when they were pitching the op-ed to the Washington Post, they stated, "Hey, Michael, wondering if we might interest you in a piece by Amber Heard, who, as you may recall, was beaten up during her brief marriage to Johnny Depp on what the incoming Congress can do to help protect women in similar situations."

Mr. Dougherty also testified that everybody understood as Ms. Heard in the ACLU clearly intended that this statement and the other two statements referred directly to Mr. Depp. "This is an article that was in USA Today and specifically ties Amber's statement in her op-ed piece to Johnny Depp." And when Jessica Whites, who actually wrote the op-ed that Ms. Heard later adopted, she says, "To Mr. Dougherty. So much for not mentioning JD when the USA Today made clear that they like everybody else who read the op-ed understood that is Ms. Heard clearly intended it referred to Mr. Depp." Which makes her Instagram post two days before the trial began that she didn't mention Mr. Depp all the more outrageous. Your Honor, there is Ms. Shulman also at the ACLU acknowledged that Ms. Heard's op-ed referred to Mr. Depp. So, it's very clear that the ACLU and Ms. Heard intended...that was the whole purpose of this so that they could get interest in this and it would coincide with the premiere of "Aquaman" because, otherwise, no one would have been interested in anything written by Ms. Heard.

Mr. Dougherty also testified that Ms. Heard only paid 1.3, actually, she didn't even pay all that out of the \$3.5 million that she had pledged to the ACLU. And then they helped her lie about it. And it's one thing, Your Honor for her to stiff the ACLU, which frankly played a reprehensible role in this case, it's quite another for her to fail to honor her obligation to the children's hospital of Los Angeles with sick and dying children. And that she failed to do as well. And as Your Honor has mentioned the fact that she put her name on that article means that she is responsible for all of those statements which she specifically adopted later. And I'll go through the other two statements quickly, Your Honor.

Judge Azcarate: Well, can we stay on this one for one moment, though?

Ben Chew: Yes, Your Honor.

Judge Azcarate: Because do you agree that the only evidence before that we've heard in this trial as far as the title of the op-ed is that even Mr. Dougherty I believe testified to it that it was something that Washington Post wrote?

Ben Chew: Well...

Judge Azcarate: They went online.

Ben Chew: He's not our witness, Your Honor, that's a witness from the ACLU who's the...

Judge Azcarate: Well, I understand. But it's the only evidence I have.

Ben Chew: I respectfully disagree, Your Honor.

Judge Azcarate: All right.

Ben Chew: The only real evidence Your Honor has is plaintiff's Exhibit 1, which is Amber Heard putting her name on the entire article, including the title. That is the only evidence before you. The ACLU was a co-conspirator with Ms. Heard. And whether they say, "Oh, maybe the Washington Post wrote it," That's not the end of the story. All she has done is create an issue of fact as to whether she wrote the title or not.

Judge Azcarate: So, you're saying just having that exhibit in evidence is enough?

Ben Chew: Absolutely. Absolutely. Your Honor, her name is on the article.

Judge Azcarate: Okay.

Ben Chew: What does an average reader expect? So, that alone is sufficient to be a motion to strike. If they wanna come back later and say, "Gee, she didn't write the title." As if that were a defense. I hope they make that argument. I hope they make that argument to the jury because it's about as credible as her argument that, "Oh, I wasn't referring to Johnny Depp." She didn't have to. And the testimony of Terence Dougherty was very clear that when they took out the references to Johnny Depp, no one was interested in this article anymore. So, she said, "Put it back in. Put it back in." Make it more spicy so people would read. Otherwise, she couldn't get it in the Washington Post, it would be back in Teenage Vogue, which is the other publication

that was considering publishing it because no one was interested in what she had to say unless she was defaming Mr. Depp. But if I could go to the second statement, and I'll try to be quick, Your Honor.

"Two years ago, I became a public figure representing domestic abuse. And I felt the full force of our culture's rap for women who speak out." As for the second statement, defendant called herself a public figure representing domestic abuse, which can be read to imply that she became a representative of domestic abuse because she was abused by Mr. Depp, not just because she spoke out against alleged abuse. This inference can be drawn without extending the language beyond its ordinary common acceptation. Citing Carwile 196 Virginia at 8. Your Honor, "To constitute a publication, it is not necessary that the contents of the writing should be made known to the public generally. It is enough. It is said if they are made known to a single person," citing Snyder vs. Fatherly, 158 Virginia 335 at 350. Everybody and his grandmother testified that Ms. Heard was referring to her bogus ex-party TRO that she obtained on May 27th, 2016. And it was interesting that Mr. Depp's own lawyer said that she wasn't even provided notice. So, Ms. Heard made very sure that Mr. Depp wouldn't have notice of the ex-party TRO. And Ms. Heard herself, the evidence shows knew that Mr. Depp having just suffered the loss of his mother was already on the other side of the country. Was already in New York at the time of this TRO and was heading to Europe for several weeks.

So, she knew she didn't need any protection from him. This was just a scam for her to get the \$7 million in the divorce settlement that she said she gave to the ACLU. She swore she gave to the ACLU and the Children's Hospital of Los Angeles. And she pocketed instead. Mr. Depp, Ms. Dembrowski, Mr. Carino, Mr. Whigham, and the inevitable Mr. Dougherty of the ACLU which lent...its once respected name to Ms. Heard's defamation. So, while miss Heard may have avoided any direct mention of Mr. Depp's name, there is extensive testimony and evidence in the record showing that the implication of her op-ed could not be more clear. i.e. that Mr. Depp abused Ms. Heard during the course of their marriage. Under Virginia law, "It is not necessary that the defamatory charge be in direct terms, but it may be made indirectly. And it matters not how artful or disguise the modes in which the meaning is concealed if it is, in fact, defamatory." Citing Carwile. We can argue as to how artful it was, but the implication was very clear as the court has previously ruled or, not law of the case but as the court has persuasively written in its opinion letter.

Let's move to the falsity of Ms. Heard's ever-evolving and ever-escalating change of IPV and sexual assault. Mr. Depp's sworn denial is all he needs to survive a motion to strike, but there's a lot more than that, Your Honor. And I'll try to be brief. Three police officers, actually four, but the three who've testified already, Officer Saenz, Hadden, and Gatlin testified unequivocally that Ms. Heard did not have a mark on her on the evening of May 21st, 2016. And I could go through...I'll just go through very quickly. Officer Hadden...strike that. Officer Melissa Saenz on a jury trial day 10. Question. "Did you provide a copy of this pamphlet to Amber Heard?" Answer. "I did not. I didn't identify her as a victim of domestic abuse." The next day, Officer Melissa Saenz. "Okay. At this time, did you notice any injuries on Ms. Heard?" Officer Saenz, "I did not." Question. "Okay. Were you looking to see if she had any injuries on her at the time?" Officer Saenz, "Yes, I was." Question. "And so you were looking to see if Ms. Heard had any injuries and you determined that she did not. Is that accurate?" Officer Saenz, "Correct."

Question. "Okay. And was the lighting good enough in the hallway for you to make that determination?" Answer. "Yes. The hallway was well lit." Officer Gatlin's testimony was the same and he had the body cam. Officer Hadden's testimony was the same. The testimony of nurses Debbie Lloyd and Erin Boerum, who, like the police officers, did not work for Mr. Depp. In fact, they work for Dr. Kipper. Also, the lie Ms. Heard's false allegations of abuse. Isaac Baruch and Alejandro Romero both testified that they saw Ms. Heard repeatedly and in the clear light between May 21, 2021, which was the last time Mr. Depp saw her before leaving on the Hollywood vampires tour. The next time he was to see her was when Ms. Heard begged him to come see her in San Francisco, which is hardly the act of a domestic abuse victim.

So, we have Isaac Baruch and Mr. Romero saying that they saw Ms. Heard repeatedly in the interval of time between May 21 and May 27th when she obtained the farce ex-party TRO. And they saw no marks on her face and no swelling. Two witnesses, Mr. Baruch and Brandon Patterson saw the video of Ms. Heard and her sister Whitney pantomiming the fake punch after this alleged incident of abuse. Ms. Heard's former personal assistant, Kate James and several other witnesses, including Dr. David Kipper saw no violence by Mr. Depp and no injuries to Ms. Heard. Indeed, witness after witness has come forward to testify that "Ms. Heard, far from being a domestic figure representing domestic violence" is in fact a recidivous perpetrator of domestic violence on Mr. Depp and others. We have the testimony...the harrowing testimony of Mr. Depp himself who described several witnesses. One as, Your Honor, will recall when he was hiding in the

bathroom after escaping one of her attacks. And she claims to have heard her foot kicking the door. Mr. Depp opens the door to see if she's hurt and then she kicks the door in on him and punches him. We have the incident of December 15th, 2015 when Ms. Heard threw punches at him wildly at the back inside of his head.

Mr. Depp testified that he ducked and covered to protect his face. Eventually, he turned around to grab her and stop her arms from flailing. December 15 in The Bahamas. During an argument, Ms. Heard grabbed a can of mineral spirits and threw it at Mr. Depp's face, striking him in the forehead bridge and nose area. And the jury saw a photograph of the bridge on the bruise of his nose. We have testimony from Mr...and by the way, Tara Roberts who was the manager of the island confirmed the incident with the mineral spirits. You have Mr. Depp's testimony of what happened on April 22nd, 2016. And we've heard testimony today from Erin Boerum Falati that Mr. Depp was very responsive, was very sociable, was not in any way inebriated that day when Ms. Heard says he was. And she attacked him that night as well. And I'm getting to the end of this, Your Honor.

We have Ms. Heard's own admissions. We have her admitting to hitting Mr. Depp. And her only contention was that she wasn't punching him, she was just hitting him. We have testimony from Travis McGovern that on February 23rd, 2015, Ms. Heard threw and hit Mr. Depp with a can of Red Bull and then sucker punched him with a closed fist. Finally, we have the rather stunning testimony of Ben King, quite a credible witness who accompanied Ms. Heard on the flight back from Australia, where Ms. Heard admits to him in a rhetorical question, "Did you ever totally lose it on someone you love? Which was...we would respectfully submit an admission of her severing the top or the tip of Mr. Depp's finger. Finally, Your Honor, statement number three. "I had the rare vantage point of seeing in real-time how institutions protect men accused of abuse."

Again, quoting very briefly from page seven of the court's opinion letter. 'Drawing every fair inference in plaintiff's favor, the court can fairly conclude the defendant's statement that she saw how institutions protect men accused of abuse could reasonably convey to its recipients that she saw how Mr. Depp was protected by institutions that he abused her and spoke up against it.' Your Honor, again, we have multiple testimony from multiple people, including Jack Whigham and all the others mentioned that this was a reference to that. Your Honor, again, the lies that have already been exposed that Ms. Heard has told about the charitable contributions, the incidents in this case. And again, I'll just cite a couple

of more, the testimony of Isaac Baruch. When Mr. Baruch saw Ms. Heard on June 3 after she'd gone through with the sham ex-party TRO. And Mr. Baruch was asked, "Did she say anything in response?" And Mr. Baruch testified, "Yeah."

In response to that, she, meaning Ms. Heard looks at me and said, "I told Johnny I don't want anything. The lawyers are making me do all of this." And that's what she said. Well, the lawyers are making her do all of that, and apparently, she wanted the \$7 million for herself. She even lied about the final inset left on the marital bed after her 30th birthday party. And it was quite telling that she admitted to Starling Jenkins, a former United States marine that this was a terrible prank gone awry. Well, she lied about that too. In fact, she said Mr. Depp was crazy to even allege that she could have done such a thing. Well, she admitted it to Mr. Jenkins. Patronfield cited earlier Mr. Depp does not have to prove damages because this is defamation per se. In fact, these involve some of the most heinous crimes any man or woman can be accused of. However, he has done some. Jack Whigham testified yesterday that the impact of the op-ed was catastrophic on Mr. Depp's personal and professional life that it was a \$22.5 million loss on "Pirate 6" and another \$20 million on others.

We've had the testimony. So, we had Mr. Whigham testifying as to the \$22.5 lost on "Pirate 6" and another \$20 lost on the other films, the other studio films, the indie films, and the other ways Mr. Depp would've made income. We have Richard Marks' testimony, Douglas Stanhope testimony, and the testimony of Michael Spindler just this morning. Finally, Your Honor, none of Ms. Heard's affirmative defenses, which would include, you know, her trying to create an issue of fact on the title can support a motion to strike as to which she bears the burden of proof of her affirmative defenses, "whether the defendants have met their burden cannot be resolved when considering a motion to strike." Siva, 243 Virginia at 83.

And just to respond to Mr. Rottenborn's citation to the Lokhova case, which we hadn't seen until he mentioned it today. I would only note Your Honor, that defendant admits that she tweeted a link to the online version of the op-ed at paragraph 97 of her answer. Though again, the admission of exhibit one is more than enough to survive the motion to strike. And the Lokhova case at 995 F 3rd 134 holds that republishing a hyperlink doesn't necessarily start the statute of limitations. Not that a hyperlink cannot be defamatory. So, with that, Your Honor, we respectfully request that the court deny the motion to strike in full, and let's hear from Ms. Heard. Thank you, Your Honor.

Judge Azcarate: All right. Yes, sir. Thank you. Your motion?

Ben Rottenborn: Thank you, Your Honor. I can only assume that Mr. Chew wrote that speech for an audience outside the court because it didn't really address my arguments. I'm gonna focus on what our specific arguments are for the motion to strike, Your Honor. Mr. Chew spent almost 30 minutes of the court's time talking about the disputed evidence of physical abuse in this case, which Ms. Heard hasn't even put on her case. And I can tell you she's not the abuser. And if the case moves forward, she and her witnesses will put on even more evidence of the physical abuse she suffered at the hands of Mr. Depp. But that's not the basis for our motion right now, Your Honor. He talks about how Mr. Depp had a sworn denial, and that that should count.

We read his testimony. He claims he didn't strike her, but again, that's not the basis for our motion. The basis for our motion is the clear and undisputed evidence of non-physical abuse by his definitions, by his standards, by the standards of his expert. There is no dispute that Mr. Depp on abused Amber, and therefore if he did it even one time, there is no dispute that even under their theory of the case, the implication that they want the jury to draw from the article, which again, I'm not arguing for the purposes of today because under the legal standard, I'm not gonna argue that. I'm not gonna waste the court's time with that. But even under their standard, the undisputed evidence is that Mr. Depp did commit abuse against Ms. Heard, and therefore, that those first two statements were false. That's our argument on that.

As to the headline, it's funny. Mr. Chew, we played, you know, two or three hours of an ACLU deposition now he says, "What? That wasn't our witness." It was his witness, Your Honor. He just spent 10 minutes talking about what Mr. Dougherty said. And Mr. Dougherty testified that the Washington Post wrote the headline. That is the only evidence, Your Honor. I understand he says, "Well, Exhibit 1 has her name on it." Exhibit 1 has her name on it, but the only evidence in this case about who wrote that headline is Mr. Dougherty's testimony. It is undisputed. They could have put anyone else on. They could have called Ms. Heard for that because that was not part of the stipulation at the pre-trial conference, it was only the tweet that we talked about Your Honor, and they chose not to do that.

Now, Ms. Heard will testify she didn't write that headline, so it wouldn't have helped them, but they've had three weeks to put on their case, Your Honor, they've controlled the playing field of evidence. There is no dispute that Ms. Heard did not write that headline. No dispute. Simply

saying, well, her name is attached to it. That can't overcome the testimony of the ACLU. They call them a co-conspirator. Of course, Mr. Depp chose not to sue them. But the testimony of Terence Doty that she didn't write that headline that takes care of the sexual violence headline, Your Honor. And I'm not gonna take up anymore of the court's time addressing portions of Mr. Chew's argument that don't go to our motion, unless Your Honor has any specific questions, but I wanna be respectful. Thank you.

Judge Azcarate: Thank you, sir. All right. For this motion, I've taken the arguments of counsel and last night I reviewed all of the evidence that has been submitted in this matter. So, as to the second and third alleged defamatory statements that the motion to strike at this juncture, I viewed the evidence in the light most favorable to the plaintiff and reasonable inferences from the evidence to the plaintiff. And if there is a scintilla of evidence that a reasonable juror could weigh, then the matter survives a motion to strike. In this matter, there is evidence in the case that a jury could weigh, that the statements were made by the defendant, that the statements were about the plaintiff, that the statement was published, that the statement is false and the defendant made the statement knowing it to be false, or the defendant made it so recklessly as to amount to a willful disregard for the truth.

The weight of that evidence is up to the fact finder. So, the motion to strike is denied as to statement two and three. The motion to strike as to statement one, I'm going to take under advisement because if it's not a stipulation, I'm not sure what it is, but there seems to be an agreement that the tweet of Ms. Heard is part of the plaintiff's evidence, which is not in evidence at this point, so I can't rule on that statement, whether or not it is just a tweet or if it's some sort of republication or something. I don't know because I haven't seen it yet. So, as to the motion to strike on statement one, I'm gonna take an advisement because ruling on it now it would be premature because I just don't have that evidence in the case. Okay?

Ben Chew: Thank you very much, Your Honor.

Judge Azcarate: All right. Since it's 12:30, you wanna just take lunch, go ahead and let the jurors go to lunch and come back at 01:30? Does that sound okay?

Elaine: Yes, Your Honor. [inaudible 02:05:37].

Judge Azcarate: Okay. All right. Do you wanna do it now?

Elaine: Yes. And I [inaudible 02:05:45]

Judge Azcarate: Okay. Sure. All right. Yes. All right. Are we ready for the jury?

Elaine: Yes.

Judge Azcarate: Okay. All right. Thank you, ladies and gentlemen. Be seated. All right. The plaintiff has rested in the defense case. Your witness?

Elaine: Your Honor, I'd like to call Dr. Dawn Hughes to the stand.

Judge Azcarate: Dr. Hughes.

Elaine: Good afternoon, Your Honor.

Judge Azcarate: Good afternoon.

Elaine: Good afternoon. Thank you, Your Honor. Will you please state your name?

Dr. Hughes: Dawn Hughes.

Elaine: And what is your profession?

Dr. Hughes: I'm sorry. I am a clinical and forensic psychologist.

Elaine: And where is your practice located?

Dr. Hughes: I practice in New York City.

Elaine: What is a clinical psychologist?

Dr. Hughes: Sure. So, a clinical psychologist is somebody who assesses, evaluates and treats individuals who are suffering from a variety of ailments or problems that they have in their lives. It could be a major psychiatric disorder and it could be problems in living. Clinical psychologists also participate in training, in education and in research ventures.

Elaine: And what is a forensic psychologist?

Dr. Hughes: So, a forensic psychologist is someone who applies the science and principles of clinical psychologist to a particular legal question at hand.

Elaine: And please describe your background in terms of your education, please, for us.

Dr. Hughes: So, I received my bachelor degree in psychology from Hamilton College, which is in Upstate, New York. I then received my

master's degree and my PhD from Nova Southeastern University, which is in Florida. I then had to complete my yearlong internship, and that was at Yale University in the school of medicine, in the department of psychiatry. And there I did two full year rotations. I did a year rotation in the substance abuse treatment unit and another year rotation in the West Haven Mental Health Clinic, where we saw individuals suffering from a wide array of difficulties in psychiatric illnesses. After that, I had to complete my post-doctoral fellowship, which is another year that's required in order to get licensed. And that was back in New York at Cornell Medical College in the anxiety and traumatic stress program there.

Elaine: Please describe your training and experience in psychology and trauma.

Dr. Hughes: So, my experience in trauma has been predominantly throughout graduate school. I started at a domestic violence program that was housed within our community mental health center of the university and that program. We saw both men and women who were coming through the program. The majority of the men were court ordered for batterers intervention programs to participate in mostly group therapy because of their behavior in intimate partner violence, domestic violence. We also treated the female victims who were victims of intimate partner violence mostly in individual therapy, but we did run some groups there as well. After that practicum experience, I went to work at the veterans' administration in their outpatient psychiatry clinic. And in that clinic I treated mostly, this was Florida, so they're much older adults.

So, we saw a lot of Vietnam era veterans and actually World War II veterans in that program. And a few of veterans who served combat in the first Iraq war. Sort of overlapping in that time, I also was the research coordinator for the child sex abuse survivors program. And that was also a treatment program that was housed within that same community mental health center. And we saw individuals, both men and women who were coming for treatment to deal with the consequences, the psychological after effects of having been sexually abused as a child. After that, I completed my internship when I was at Yale at the substance abuse program because we know there's a high concordance, a high rate of trauma based disorders with substance abuse.

I put together a group, a women's group of female heroin addicts, recovering heroin addicts, who also had either domestic violence or

childhood abuse histories. So, we did a dual substance abuse harm reduction model with the healing from the traumatic effects of the violence that they experienced. On my post-doctoral fellowship, I was in the anxiety and traumatic stress program. As the name sounds, we saw individuals who were suffering from trauma based disorders and anxiety, mostly late adolescents and adults, men, and women from sexual assault, violence. Some were simple assaults on the streets being mugged and things of that nature. I also did teaching and training for victim services, which is New York City's largest victim based organization who runs a lot of services for victims of domestic violence and shelter based programs.

And I did some education and training for them, and teaching for a number of years.

Elaine: Thank you. Let's talk about your current occupation. What positions do you currently hold?

Dr. Hughes: So, I currently have a private practice in Manhattan. And I also have a faculty position at Weill Cornell Medical College. I'm a clinical assistant professor of psychology in the department of psychiatry there. This is what we call on the voluntary faculty, which means you don't get paid. But you participate in bringing in the interns, selecting the interns for that year. In that program I teach I think for the past seven, eight years, the ethics seminar to the interns and also participate in other didactics that they have. I'm also called upon to troubleshoot difficult scenarios that clinicians either trainees or full bloodclinicians might have. If there's an issue of intimate partner violence or child sex abuse, and they don't really know what to do in that situation, I get consulted to do that.

And then most recently I was part of our program's COVID response team, where in pretty much March, April, May, June, July 2020, where New York City was the epicenter. We sort of mobilized and were really doing psychological first aid and helping our hospital based workers deal with the stress and the trauma from seeing so much death and destruction because of COVID in those first months of New York City's COVID wave.

Elaine: What does your independent practice entail?

Dr. Hughes: So, my independent practice is predominantly I say three things. The bulk is I see individuals in therapy two and a half days I see people who come to my office who are mostly dealing from the traumatic effects of victimization, childhood abuse, rape, sexual assault, sexual

harassment, domestic violence. And I see these individuals in therapy. I do have a percentage of individuals who do not have a trauma history, and that's usually the anxiety disorders that I see. They may have panic disorder or generalized anxiety disorder or other difficulties and just relational difficulties or problems in living. The second big part of what I do is this, forensic psychology. Like I am doing here today. I evaluate individuals who were involved in legal matters. I consult with prosecutors and district attorneys and US attorneys on their cases and just something that has to do with the legal system. And then the other smaller percentage is the engagement in professional activities in the profession.

Elaine: Do you have any areas that you specialize in?

Dr. Hughes: Yes. I specialize in interpersonal violence and traumatic stress.

Elaine: And what is interpersonal violence?

Dr. Hughes: So, interpersonal violence is the umbrella term for when one person does something violent or abusive toward another. And that includes domestic violence, childhood sexual abuse, rape, sexual assault, sexual harassment, physical assault, all of those type of behaviors we understand as interpersonal violence. And then the traumatic stress is the consequence of that. What happens to individuals when they experience these sort of life altering events, these really adverse life events, traumatic stress is one of the outgrowths and the psychological consequences that people have when they've been exposed to these type of traumas.

Elaine: So, intimate partner violence, rape, and sexual assault are major areas of your focus of practice?

Dr. Hughes: That's correct.

Dr. Hughes: Is that fair to say?

Ben Chew: Objection, leading.

Judge Azcarate: I'll sustain the objection.

Elaine: Okay. I'll just move on. What types of patients do you treat in your private office?

Dr. Hughes: So, I treat adults mostly men and women in my practice. I sometimes will treat late adolescent 17 or 18. They'll come to me usually after a rape or sexual assault and I'll treat them in short term treatment.

But mostly adults who have sustained some kind of traumatic event in their lives.

Elaine: Approximately how many victims of interpersonal violence have you examined or personally interviewed over the course of your career?

Dr. Hughes: Hundreds upon hundreds.

Elaine: Okay. And how many years have you been practicing?

Dr. Hughes: Well, I started practicing in graduate school in 1992 and I was licensed in 1996. So, 25, 30 years.

Elaine: Okay. Are you board certified?

Dr. Hughes: Yes, I am.

Elaine: Please describe to the jury what board certification means and what you are certified in.

Dr. Hughes: Board certification is the highest degree of post-doctoral certification that a psychologist can obtain. And I am board certified in forensic psychology, and that means that I have just amassed a competency in the area of forensic psychology.

Elaine: And are you licensed to practice psychology?

Dr. Hughes: Yes, I am.

Elaine: And in how many states are you licensed?

Dr. Hughes: I'm licensed in three states in New York, North Carolina and Connecticut. And then I have some temporary licensees in other states as well.

Elaine: Okay. Have you published in the area of your specialization?

Dr. Hughes: I have. I am not predominantly a researcher or somebody who writes. I'm a clinician, I'm doing direct clinical service. But over the course of my graduate school and post-doctoral time, I have published some things. Yes.

Elaine: And have you published a book chapter relating to rape and sexual assault?

Ben Chew: Objection, leading.

Judge Azcarate: Overruled.

Dr. Hughes: Yes, I have. Rape and sexual assault in adult women.

Elaine: And have you published any book chapters relating to structured or clinical assessment of risk or violence?

Dr. Hughes: Yes, I coauthored a book chapter entitled, this is a structured clinical assessment of risk in violence.

Elaine: Okay. Have you given any other trainings or presentations to mental health professionals in the area of trauma and abuse?

Dr. Hughes: Yes, I've given to many trainings at national conferences, at legal conferences for attorneys, for mental health professionals on understanding trauma and how trauma may show up in the courtroom, on understanding what a victim of intimate partner violence might look like of understanding the difficulties that a rape victim might have to come into court to testify and training just regular mental health professionals on how to understand trauma, how to look for trauma. What does it look like when it comes into your office? How do you treat it? How do you assess it? All of those factors, I've done a number of trainings on.

Elaine: Have you been invited on any occasions to train attorneys and judges on trauma and violence?

Dr. Hughes: Yes, I have. I was invited by the judicial conference to be part of the training curriculum to train our New York State Supreme Court justices on issues of intimate partner violence and traumatic stress. Some of the things that I've just been talking to here about how to understand what happens in those situations, how to understand the myths and misconceptions that may abound in these situations, and how you can more accurately understand what a victim is talking to you about and telling you when they come into your courtroom.

Elaine: Have you given any presentations to judicial symposiums on domestic violence?

Dr. Hughes: Yes, I've also been contacted by sometimes judges will have symposiums in their courtroom. They will make a decision to hold a particular symposium on particular topics. And I was asked to come to presentations for judges on numerous occasions.

Elaine: Okay. And what, if any, presentations did you do on understanding women's use of force in IPV?

Dr. Hughes: That was a recent presentation. I think that was invited by one of the judges of the office on domestic violence in New York. And the title of is When Women Use Force in Situations of Intimate Partner

Violence. And my topic was to talk about the complexities of that issue. And what does that look like and how can we differentiate? If both people are fighting, how do we know that this is intimate partner violence? So, what does the research tell us about that? How do we understand that and how can we really accurately assess that? And that was the bulk of what that training was about.

Elaine: What professional organizations do you belong to?

Dr. Hughes: I belong to a number. I belong to the American Psychological Association, which is the largest body of psychologists in the United States over here, headquarters in DC. Because it's so big, there are subdivisions of the American Psychological Association. So, I belong to the division of trauma psychology. I belong to the division of psychology and the law, the division of psychologists in private practice. I belong to other organizations. The International Society for Traumatic Stress Studies, which as the name says it's an international society where we are interdisciplinary, mostly psychiatry and psychology researchers and clinicians to really understand and further our awareness about trauma and traumatic stress. I belong to The International Society for Trauma and Dissociation. I belong to The Anxiety Disorders of Association of America. I'm a fellow in the American Board of Forensic psychology. I don't know if I'm forgetting any.

Elaine: Okay. Are any of these specific to interpersonal violence or trauma?

Dr. Hughes: Well, clearly the trauma division of the American Psychological Association, the International Society for Traumatic Stress Studies and the International Society for Trauma and Dissociation. And then also the Anxiety Disorders of Association continues to talk about trauma. Because prior to this new DSM-5, PTSD was originally categorized under the anxiety disorders. So, there are still colleagues and researchers in the anxiety disorders organizations who talk about PTSD and trauma.

Elaine: Do you hold any leadership roles in these organizations?

Dr. Hughes: Yes, I am currently the president elect of the trauma division of the American Psychological Association. That is an elected position. You have to be elected by our membership. And now I serve with the presidential trio. So, there's three of us. You serve with the immediate past president, the current president and the president elect. So, it's a three-year term. And what we try to do is continue to disseminate best practices in trauma, psychology, and also interface with the larger

American Psychological Association organization to continue to disseminate best practices and have just a voice for trauma psychology with our larger body, and policy making. I've been involved in the trauma psychology executive board since its inception, I was a founding member of that division. I served as a membership chair, a program chair, an awards chair. I was the APA council of representatives, which means I was also elected to serve a three-year term and sit on the governance board of APA representing the division of trauma psychology. So, I've been very actively involved in the trauma division.

Elaine: And what is the division of trauma psychology?

Dr. Hughes: So, the division of trauma psychology are psychologists who come together who want to disseminate best practices in trauma psychology, we wanna make sure that we have our finger on the pulse of research and evidence based interventions for people who are struggling with traumatic events that have happened to them.

Elaine: Okay. Have you served in leadership positions of other professional organizations?

Dr. Hughes: Yes, I was, there's a New York City based organization, it's called the Women's Mental Health Consortium and that's also an interdisciplinary organization. It's psychology, psychiatry, nursing, social work, and this was formed in order to give women a referral base and more information about mostly reproductive psychiatry. We know that certain difficulties and psychological difficulties that you have can erupt when you're pregnant or postpartum. So, we wanted to have a number of resources available to women in the New York City area. I was a membership chair there for a number of years. And then I was the president of that organization, I think 2009 to 2017. I don't have my CV, but I think that's about right.

Elaine: Why is participation in professional organizations important in your field?

Dr. Hughes: Well, it's important to me because I do believe very much in service. I do believe very much in giving back. I do believe that it's important as a psychologist who believe strongly in trauma psychology and helping people that I can be part of a voice at the table. Part of that push to get policy, and understanding, especially with the insurance companies to make sure that people are getting the appropriate care that they deserve. So, it's something that just has always been part of my life in varying degrees. And as a psychologist, I feel like it's a very rewarding part of my job.

Elaine: Do you attend professional conferences?

Dr. Hughes: Yes, I do. Typically, multiple times a year. Of course, COVID through a little bit of a wrench in that since some things are virtual, but yes, I routinely attend conferences.

Elaine: And why do you think that's important?

Dr. Hughes: It's important to stay abreast of developments in the field. It's important to meet with your colleagues across the country and see what they're doing and what they're hearing and what's working and what's not working. So, when you're at a conference and somebody's presenting newer novel research, then you can take that information and bring that back to your clients and bring that back to my forensic work. So, it absolutely enhances the work that I do.

Elaine: Have you ever been qualified to testify in the field of psychology as an expert witness?

Dr. Hughes: Yes, I have.

Elaine: How many times?

Dr. Hughes: I was first qualified in 1998, so since then, about 50 times.

Elaine: Okay. And how often in that 50 times has the specialty been in interpersonal violence and traumatic stress?

Dr. Hughes: Probably more than half.

Elaine: Okay. Have you ever worked for or testified for the prosecution in criminal matters? Like the District Attorney's office, US Attorney's office?

Dr. Hughes: Yes, I have. Frequently.

Elaine: Okay. Do you testify for both sides in lawsuits, plaintiffs and defendants?

Dr. Hughes: Yes, I do.

Elaine: Have you ever worked on other cases that didn't go to trial?

Dr. Hughes: Many.

Elaine: Okay. Have you ever found an individual that you evaluated did not suffer from the effects of interpersonal violence or PTSD?

Dr. Hughes: Frequently.

Elaine: Okay. Have you ever not been qualified in court where you have been proffered to qualify as an expert in the court?

Dr. Hughes: No.

Elaine: Okay. Your Honor, I would, at this time move to qualify Dr. Hughes as an expert in forensic psychology with the specialization in interpersonal violence and traumatic stress.

Judge Azcarate: All right. Any objection?

Ben Chew: No objection to qualifying her as an expert in forensic psychology.

Judge Azcarate: All right. More specifically, forensic psychology with a specialization in interpersonal violence and traumatic stress.

Ben Chew: Right.

Judge Azcarate: Any objection?

Ben Chew: No.

Judge Azcarate: All right. So, moved.

Elaine: Thank you, Your Honor. Dr. Hughes, please tell the jury what domestic violence intimate partner violence means.

Dr. Hughes: Sure. So, I'm probably going to be interchanging the language, domestic violence and interpersonal violence, and for purposes here, these are the same thing. So, intimate partner violence is a pattern of manipulation, fear and coercive control that happens within an intimate relationship. It constitutes using a variety of abusive behaviors, and that can be physical violence, sexual violence, psychological aggression, emotional abuse, stalking or surveillance behaviors, and economic abuse. The abusive behaviors occur over time, not all at once. And they're also interspersed with very normal times, times without violence, times with love and happiness. And it's this intra positioning of the violence with the love and the care that makes it very difficult for a victim to extricate herself from that situation and from that relationship.

Elaine: And what would you say is the overarching dynamic of these relationships?

Dr. Hughes: So, the overarching dynamic is the abusive power and control of one person wanting to have dominance in that relationship,

say over most things that the couple or that the victim does or does not do.

Elaine: Please tell the jury what coercive control means.

Dr. Hughes: So, coercive control is a tactic of victimization. The goal of it is to establish dominance. What coercive control does is that it imposes negative consequences for non-compliance with your partner's expectations or demands. And what that does is it erodes away at the victim's autonomy and her independence.

Elaine: What is physical violence?

Dr. Hughes: So, physical violence is when one person uses their body against the body of another, with the intent to cause injury or harm. That can be push, shove, slap, kick, punch, beat up, meaning multiple types of physicality in one instance, throw, slam into a wall, push into something hard that you could hurt yourself, clearly use of a weapon would be a physically violent act as well.

Elaine: Does size and strength matter between the parties?

Dr. Hughes: Yes, very much so. This is very well documented in the literature about violence and abuse in relationships. And that's just physics. That's just proportional force that if a 185-pound man is going to push 120-pound woman, that's gonna feel quite different than 120-pound woman pushing 185-pound man. And it's just about proportional force and the size and strength differential. And that is why specifically, if you look at wrestling or boxing, they match weight classes, and they do that for a reason because they know that it's not fair if somebody is bigger and stronger than the other. So, it's certainly not the only factor, but it is a factor that one has to consider if a relationship is violent.

Elaine: What is psychological aggression?

Dr. Hughes: So, psychological aggression is threats and the imposition of threats with the intent to control someone's behavior. So, it's doing a threat so that you will modify your behavior and do what your partner wants. Some psychological aggression techniques are intimidation, slamming your hand on a table, punching a wall, throwing something, mumbling under your mouth, cursing, screaming, sort of these high emotional balance type of activities that can cause a victim to feel afraid and feel intimidated. And then if there has been an act of physical violence where that contingency has already been established, that this person, your partner has said, "Okay, I not only have the ability to use violence against you. I also have the willingness to do it." The

intimidating tactics take on greater flavor. They take on greater salience. They mean more because you know what could be coming down the pike.

Elaine: What is emotional abuse?

Dr. Hughes: So, emotional abuse functions to denigrate a person's sense of self-worth and their self-perception. It's about name calling, being very mean-spirited, putting yourself down, using gender based language that's offensive, racial slurs, all types of behaviors to really make a person feel less than they actually should.

Elaine: And what is sexual abuse?

Dr. Hughes: So, sexual abuse in an intimate relationship functions to establish dominance and disestablish power. What it is simply in the psychological and psychiatric communities is forcing someone to do something sexual against your will when you do not want to. It can be forced sex, either forced vaginal, oral, anal sex, and be forced to engage in any other type of sexual act that you may not want to do. And when I say force, it doesn't mean it has to have physical force. There's a lot of psychologically coercive tactics that are used that many times when violence has already been established in the relationship, the victim often feels that she can't say no for fear of reprisal, for fear of retaliation for saying no to those acts. So, sexual abuse does happen in intimate partner relationships. A lot of people don't want to talk about it and they don't wanna ask about it because it makes people very uncomfortable.

Elaine: Is digital penetration of the vagina, sexual abuse?

Ben Chew: Objection, leading.

Elaine: What, if any role does digital penetration of the vagina play in sexual abuse?

Dr. Hughes: If it is non-consensual, then it is abusive.

Elaine: Okay. What, if any penetration of inanimate objects into the vagina plays a role in sexual abuse?

Dr. Hughes: Again, the operative word is consensual. If you are not consenting to those acts, then it is sexually abusive.

Elaine: Okay. Is there a distinction between sexual violence and sexual abuse?

Dr. Hughes: Not really. Sexual violence is a term of art. It is the overarching umbrella that we in the psychological and psychiatric communities talk about. So, if we are looking at our diagnostic and statistical manual and say, what are the traumas that could cause PTSD? It's listed as sexual violence. So, it's an umbrella term that allows us to understand it could be childhood sexual abuse, it could be a rape, a sexual assault. It can be sexual abuse in an intimate relationship. So, it's really just an overarching term that we use in the field.

Elaine: What are sta... I'm sorry.

Dr. Hughes: So, it doesn't mean, I think people often mistake it to mean that when you are being sexually abused, that someone's punching you or someone's hitting you, or someone's doing something like that because you hear the violent, it does not mean that that could happen, but that term does not require that, nor does it mean that.

Elaine: What are stalking or surveillance behaviors?

Dr. Hughes: So, stalking and surveillance behaviors are a common tactic of typically men who use violent behaviors in an intimate relationship. What they do is they allow the woman to know that wherever she is, wherever she goes, he's gonna know. I'm going to maybe look at your phone, see who you're talking to, track you on Find My iPhone, look at your Instagram, look at your emails. Really having a way of knowing all of the personal information about you. And what that does it again, erodes the victim's autonomy and it erodes her sense of privacy. She doesn't feel that wherever she can go that somewhere, he's not going to be part of her life in a very objectionable way. Sometimes there's the pop-ins, they'll show up at places that they're not supposed to be, and that we don't want them to be just as a way of checking.

Sometimes they'll have friends or family check up on their partners to make sure where they are. What time did you get home? But you didn't turn off your phone at this time, but you came in the door this time. All of the constant questioning and interrogation about an individual's whereabouts.

Elaine: What about economic abuse? What is that?

Dr. Hughes: So, economic abuse is a way to, again, continue to maintain control over your intimate partner. Sometimes it's withholding information about the finances, not letting you have access to the finances. If you can't have access to a credit card or a checking account, or Apple Pay on your phone, then you're rendered usually much more economically dependent on your partner. And that limits tangible options

for you. For individuals where that tangible options isn't there, we see the economic abuse or the economic restriction when one partner refuses to share any information about the funds. So, it's not like I can't go shopping because I won't have money, but I don't have any decision-making in our family money. I don't have any idea of what we're doing in our family vis-à-vis our finances. So, it's a way of definitely keeping that very separate and not in a consensual. Some couples make that choice. One person does all the money, that's fine, but when it doesn't come from a place of consensual choice-making, it can be abusive.

Elaine: So, you just described a number of these abusive behaviors, are all of them present in every domestic violence relationship?

Dr. Hughes: No, they're not all present in every one. And that's why it's very important to do a thorough assessment of a relationship that may be mired in violence to see which ones are present and which ones have a great impact in the relationship, which ones are making the structure of this relationship.

Elaine: After a sexual assault in an intimate relationship, how might a victim in those circumstances interact with her partner?

Dr. Hughes: So, this is one of the myths that people say, well, if she was sexually assaulted by her partner, she would've just left. And nothing could be further from the truth. That's not what happens. Especially when it's your husband or your boyfriend or your partner. So, what women do is they bury it, they compartmentalize it, they put it away, they avoid it because then they continue to reach out for the kind and the loving man that they got into this relationship with. The problem is that it does fester belief and causes more psychological distress in the victim.

Elaine: What, if any role, can shame or humiliation play in this coercive dynamic?

Dr. Hughes: So, that's one of the emotions that the victim is usually trying to suppress and compartmentalize and avoid and put away. One of the most frequently felt feelings after something so incredibly humiliating and violating is shame. And shame is a very difficult emotion for people to have to live with and to have to experience. And then a lot of times what we see in these relationships, especially ones where sexual assault is perpetrated, there's typically the emotional abuse as well. So, now, if you are called names like a whore and a slut, and easy, and fat, and you're feeling the shame from the sexual assault that just happened. It sort of acts as a compounding effect and it slowly deteriorates the psychological functioning of the victim and where

they're just really trying to get back to the good guy, get the good guy to come back, but they're suffering these symptoms underneath.

Elaine: What about intimidation? What role does intimidation play in the coercive control dynamic?

Dr. Hughes: Intimidation is one of the huge factors that we see in coercive control. Again, the goal is to get your partner to do what you want them to do. And if you've established that you can use violence and other sexual violence and physical violence, slamming your hands on a table, throwing a glass, breaking a door, throwing anything, causing a fit, yelling and screaming, that can rise the fear level in a victim that she may modify her behavior quicker. And he might not need to use physical violence because he's already established that that fear is there.

Elaine: What, if any role could writing obscene messages play in being considered intimidating behavior?

Ben Chew: Objection, leading.

Elaine: I said, what, if any, Your Honor.

Judge Azcarate: Overruled.

Dr. Hughes: Certainly writing obscene messages to your partner could absolutely be an intimidating behavior.

Elaine: What, if any role does emotional abuse or degradation play in the dynamics?

Dr. Hughes: So, emotional abuse and degradation, as I stated before, functions to decrease your sense of self-worth, it decreases your sense of agency. It makes you feel bad about yourself. And when you feel bad about yourself, you're less likely to actualize and see options for leaving. You're so mired in this dynamic of abuse that you come sometimes to believe the bad things that the person is telling you about. So, maybe I am not talented and fat and lazy and stupid, and it interferes with that ability to problem solve and figure out, can I get out of this relationship? And sometimes you feel you don't even deserve to get out of the relationship when the abuse is so chronic and so repetitive.

Elaine: What role does surveillance as a means of control play in that dynamic?

Dr. Hughes: So, surveillance...

Ben Chew: Objection. Leading.

Elaine: I don't think that's leading, Your Honor.

Judge Azcarate: Overruled. Go ahead.

Dr. Hughes: So, surveillance functions to let the victim know wherever you are there I am. So, it makes her feel not secure in her movement, feeling that she has to restrict her movement. Her movement is not hers alone. It usually increases hypervigilance. It increases fear. It increases the need for yourself to mark where you've been and what you've done so that you can go back and prove it to your partner, because you know that there is going to be an interrogation later when this pattern has been established, show receipts, show me your iPhone. Where were you? What's your Google location at? Those are some types of surveillance behaviors that puts the victim very much on edge and increases that level of anxiety and trepidation.

Elaine: What role does possessive jealousy play in these relationships?

Dr. Hughes: So, possessive jealousy is a very difficult dynamic in intimate partner violence. It's very common in situations of coercive control. It's rooted in possession that the gentleman feels that he can possess her and that he can have her whenever he wants is very possessive dynamic. But the problem is when you make the accusations, the woman's forced to refute the accusations. So, they're continuing in this dynamic where she's trying to prove, I didn't do what you said, this didn't happen. And then unfortunately, sometimes it escalates because the man is not taking the no for an answer because this is a perseverative, obsessive pattern that's very difficult to penetrate that often these type of conversations lend themselves to physical and sexual violence.

Elaine: Does this dynamic happen overnight?

Dr. Hughes: No, it doesn't happen overnight. It happens over time. A woman doesn't get into a relationship with a man who's beating her up and sexually assaulting her and calling her names and doing all that. She gets into the relationships for all the right reasons, just like we all get into relationships for love, for companionship, for kindness, for a future. But then slowly, all of these behaviors talk to take form. And I say it's like sucking the oxygen out of the room, and then before you know it, you're suffocating.

Elaine: And that brings me to my next question. What role do physical abuse and coercive tactics play interspersed with normalcy and positive moments?

Ben Chew: Objection, compound.

Judge Azcarate: I'll sustain the objection.

Elaine: Okay. I'll figure this out in some way. What role does love and normalcy play in these dynamics you've been describing?

Ben Chew: Objection, compound.

Judge Azcarate: Overruled.

Elaine: Thank you.

Dr. Hughes: So, love and normalcy are almost always in these relationships that when you are in a lull and the violence is not happening, you're back to the loving man that you wanted, the person who you wanted to be with. And when you pair this violent dynamic, physical violence, sexual violence with love and attachment, it creates a trauma bond. It creates a psychological bond and emotional dependency is created. So, it makes it very difficult for the victim of the abuse to extricate herself from that relationship and for her to even believe, frankly, that takes a lot of time to even believe that she can and that she should.

Elaine: And what, if any, role does that dynamic you've described have in the victim thinking they can fix the problem?

Dr. Hughes: So, what do we know from the research? The research with working with battered men who come into treatment is that the only person who can change the abuse is the abuser. So, no matter what the tactics that the woman uses, she's trying to do all these different things to fix him, to have him not be violent, to have him not be sexually violent, to have him not be obsessively jealous and all those things don't change his behavior because it's up to him to change his behavior. And this was played out a million times in the batterer's intervention groups that I led and the men would tell us, "It doesn't matter what she does. I don't care." So, the problem is that the woman continues to think that she can fix it, and yet she can't, but she's the one who's then rendered helpless and hopeless because everything that she's trying to do is failing.

Elaine: What is the cycle of violence?

Dr. Hughes: So, the cycle of violence is one way to describe this domestic violence pattern, and the cycle can be different in a variety of relationships. But typically what we see is in the first phase, there's multiple three to four phases. In the first phase, there's a tension building phase. You're starting to feel that apprehension; he may be throwing his papers on the table a little more. He may be slamming the fridge door a little more. He may be mumbling under his mouth a little more. He may grab a glass a little more forcefully than he normally would. And then there's the incident phase. Then there's the blow up where the violence, the abuse, the screaming, the sexual violence or the physical violence, all that occurs. Then we come to the contrition phase. I'm sorry. I didn't mean it. It wasn't me. I'm not gonna do it again. The promises for change.

And then we slide into the calm phase where this isn't going to happen again, I'm back to stable ground. I wanna live in this place, this sort of honeymoon place. The problem in the calm phase is we often see the rationalizations and the justifications for the behavior. It's not typically, the man is taking full responsibility for what he did, but it's calm because there's no violence and no tension at that moment. And then it recurs and then it recurs. So, you're stuck in this vicious cycle of trying to figure out how can I be with this man who hurts me, and yet I love him so much?

Elaine: And what, if anything, does the term love bomb mean?

Dr. Hughes: So, the love bombing is, it's more of the colloquial term for the younger folks here, but where you shower someone with affection and love in this contrition and calm phase where you're, "Everything about you is special. You're the best thing in the world. I'm never gonna do anything to hurt you again. I would never let anyone hurt you." And it could be sending flowers and buying gifts or going on trips or your favorite restaurant. And that is a way of where the man is trying to make those amends. And then it gets the woman hooked. So, they get hooked on the kindness. They get hooked on the love. They don't get hooked on the abuse. I've never met one woman in the hundreds and hundreds and hundreds that I've evaluated, who was not concerned about the violence. They're all concerned about the violence, but they go for the love.

Elaine: So, in your experience with these dynamics that you've described, does the victim ever yell at her partner?

Dr. Hughes: Absolutely.

Elaine: Why?

Dr. Hughes: We know from the research that women use verbal and physical acts of aggression in these relationships, that's not uncommon. This has been researched for five decades. And a woman may yell at her partner because she's angry and anger is a very normal emotion to having been abused. She can also be afraid, but they don't have to be mutually exclusive. We can absolutely, as human beings feel two or three or four different emotions at once. People do often say to me, "Oh, she would never yell at him if she knew he was gonna hit her." And that's not true, that's just patently not true. That's not supported in the research and that's not supported in my clinical practice. The problem is, is there's a classic double bind, and the violence has been so normalized in the relationship now she gets hit if she does yell, she gets hit if she doesn't yell.

So, for women who feel at certain moments that they need to preserve some sense of their autonomy and their independence and stand up for themselves, they will yell and they will fight back even though the risk of violence is there. So, it doesn't mean that she's not afraid and that she's not concerned about the violence and it doesn't mean she doesn't also use placating and compliance strategies most of the time as well.

Elaine: In the cases that you have and in your experience, does the abuse typically take place in front of others?

Dr. Hughes: No. This is classically what we talk about behind closed doors. Most of the intimate partner violence, the domestic violence happens in the privacy of your own home. So, sometimes we see the remnants of it, the after effects, or victims talk to their friends or family about it. But very rarely are you seeing it happen, the actual blow-up phase happen in the middle of witnesses and other people.

Elaine: What does the term bystander effect mean?

Dr. Hughes: So, bystander effect means what happens when people are aware that domestic violence is happening, what happens when they're aware, even if they're not seeing it that it could be happening. And what happens is we know that it's very difficult for people to stand up and say something. It's very difficult, especially in situations where there's a larger community of folks and the person who perhaps is perpetrating the abuse is the leader of that community. It becomes very difficult to go up against that, to go up against the head honcho of the community. People are very fearful of losing their jobs. I've seen this time and time again in the cases that I've worked on, the boy scout cases or the

clergy abuse cases, all of those type of cases the USA gymnastics, where when we go back and we look, we see people knew, but the secretary doesn't wanna lose her job.

She has kids to feed. The guy who checks you in, he doesn't wanna lose his job because he has a mortgage to pay. So, people are quiet and they don't say anything. And then other people, it's a very worrisome dynamic. They don't want to put their foot out there if they're wrong and maybe I didn't see it right. Or I don't really know what happened. I certainly am not gonna jeopardize my job if I don't really know what happened behind closed doors, even if I see a trashed room or a bruise. And then people still believe it's a family matter, it's between Amber and Johnny, let them figure it out, I'm not gonna get in the middle.

Ben Chew: Objection.

Dr. Hughes: So, those are dynamics that happen.

Judge Azcarate: What's the objection?

Ben Chew: Motion to strike.

Judge Azcarate: What's the objection?

Ben Chew: We identified two names in the answer.

Judge Azcarate: Overruled. Next...

Elaine: Thank you.

Judge Azcarate: ...question.

Elaine: Did you finish your answer?

Dr. Hughes: Yes, I believe so.

Elaine: Okay. What about mutual abuse? What is that? What role does that play?

Dr. Hughes: So, mutual abuse isn't really a term of art that we use. What we look at is situational couple violence and intimate partner violence. And when we look at situational couple violence, that really does characterize the majority of types of violence and abuse that happens in relationships. That's when a couple gets outta hand, they may push, shove, slap, yell, say so things that they don't want. And it's not that those behaviors are okay, but those are what our larger scale community-based studies say happens in these relationships. That's distinguished from intimate partner violence, what I'm talking to you

about that has this consolation of symptoms and is rooted in the abuse of power and control.

Elaine: Is there research that addresses this mutual abuse?

Dr. Hughes: Yeah. There's research that addresses what does gender symmetry look like, male and female. Are they the same? And there's certainly, as I said, research on the lower end types of violent behaviors, push, shove, slap. We may see similar rates between men and women. In psychological aggression, yelling, name calling, putting down, in some of our big community scale studies we may see similar rates of perpetration in those behaviors. But then there are other situations where we don't have gender symmetry and what the research talks about very clearly is you have to examine context, you have to examine the differential of power and control and coercive control in the relationship to make a full determination.

Elaine: Do women use violence in relationships?

Dr. Hughes: Absolutely. Again, we've known this for five decades in our research. We've been studying this since the '70s. And when we look at what happens, women do report their use of violence. The majority of violence that we do see is what we call reactive violence or self-defensive violence, or sometimes violence that's perpetrated independently of an assault of something that's going on. But mostly that when the partner begins to come violent, then she may become violent and fight back. And that's not an uncommon dynamic that if somebody is being pushed or shoved or hit that a person would fight back that has been established in the research.

Elaine: And what, if any effect does that have on changing the power dynamics or the structure?

Dr. Hughes: Well, you have to find out, does it? Does her use of violence change the overarching power structure of coercive control and violence and abuse in this relationship? And you have to examine those variables to see does it, or does it not.

Elaine: Can men be victims of intimate partner violence?

Dr. Hughes: Absolutely. Certainly, we know that we have to be careful of gendered stereotypes. We can't go in and think, oh, only the woman is the victim, and only the man is the perpetrator. That just does not comport with the research. We know that the research also shows that we can have domestic violence in same-sex relationships. My very first case was a same-sex domestic violence homicide in Brooklyn. That was

in 1998. So, I've been examining and treating individuals in a variety of types of violent contexts. So, we have to be careful that that bias doesn't get in our way when we're evaluating a particular situation in a particular case. That said, we do know that there still are differences. In a heterosexual couple, in a male, female dyad, the research still is clear that there are differences. Men still perpetrate more severe acts of violence. Women are still more likely to be injured. They are much more likely to suffer sexual violence at the hands of their partner. They're more likely to be intimidated, afraid, and they're much more likely to be killed. So, we know that those differences exist, but we do examine in those individual circumstances, knowing that either one could be a perpetrator or a victim.

Elaine: So, how are you able to determine whether a relationship is a situational violence or intimate partner violence?

Dr. Hughes: So, I thoroughly examine all of those other variables. I look for the coercive control who holds the power in the situation. Who's able to say no? Who makes the decisions? What are the consequences if you don't follow the decisions of your partner? Is there sexual violence? Is there intimidation and fear? Are there statistical factors that are associated with severe and lethal domestic violence? So, there's a lot of data that we have in the field that we can use to assess a particular relationship and really find out what's going on.

Elaine: Does alcohol and substance use cause people to be violent?

Dr. Hughes: Oh, it certainly doesn't cause people to be violent. We have plenty of people who can be struggling with substance abuse and addiction, and they're not violent, but when you have a substance abuse and addiction and you perpetrate domestic violence, it does create a much more disastrous effect. It is a co-occurring variable, and we know that also from the research that the majority of the women will report that when their partner is drinking, the physical violence goes up. So, a lot of the times when he's physically violent is when he's been consuming drugs or alcohol, when he's not consuming drugs and alcohol, and he's not violent. Those other behaviors continue to persist. The coercive control, the surveillance, the obsessive jealousy, the possessiveness, the psychological abuse, those usually persist, but the alcohol can just throw lighter fluid on a flame in a situation of domestic violence.

Elaine: Is there research that looks at how women cope with the violence and abuse in their relationships?

Dr. Hughes: Yes, there is.

Elaine: Please tell me about it. What does it say?

Dr. Hughes: So, there's been a lot of research to talk about what do women do? That's the question that everyone wants to know, why doesn't she just leave? And in asking that question, why doesn't she just leave? We actually are able to say, "Well, let me tell you what she does do." And what the research shows is women do a lot of things in that relationship. So, three main categories, one of the formal responses, the formal things that she does, call the police, participate in prosecution of your partner, go see a therapist, go to a shelter, go to a hospital. These are the very formal strategies that women can use. Then there are the informal strategies. And that's talking with your best friend, talking with your mom, talking with your friends, trying to get that emotional support from your social network, but the most common one is these personal strategies and the personal strategies are really talking with your partner.

They're trying to fix the relationship from within the confines of the relationship. Trying to get him to go to counseling, try to get him to go to church, try to get him to understand his ways, try to get him to get into AA or sober counseling or harm reduction model to help with his addiction, compliance with his demands, anticipating his demands, all these coping strategies that are embedded within that intimate relationship.

Elaine: Let's talk about the calling the police. Is that a common response?

Dr. Hughes: It's not a common response. Many women do not want to call the police on their partners. Using criminal justice interventions in crimes of women and children are the least likely to be called into law enforcement. And most of the time when the police are called, it's because a particular incident has got outta hand and she feels unsafe. And the only way that she feels I can get this incident to end and stop is by calling law enforcement.

Elaine: And if police are called, does the woman typically participate in the prosecution?

Dr. Hughes: This has been a problem and a difficulty for prosecutors across the country since I've been doing this work, I'm actually frequently called by the prosecutor to testify about a fact pattern because the victim won't come in and testify. So, dropping restraining orders, not participating in the prosecution is a very common dynamic in situations of intimate partner violence, domestic violence. And what we

know and what we know from our law enforcement data and colleagues is that when you get that 911 call, they're very specifically trained to say, that's likely not the first episode, the chances are there have been more severe episodes before you get this call. So, you can't go on the scene and think that this is the first episode of violence. And that's why a thorough assessment is supposed to be done when police officers arrive on the scene.

So, usually, that episode that calls the police is just meant to stop that incident in that moment to get a sense of safety, but most women don't wanna participate and go forward with restraining orders.

Elaine: Why do women in violent relationships stay in the relationship when the man's hurting them?

Dr. Hughes: They stay for all the reasons we talked about in the cycle of violence. They stay for the loving man, they stay for the man who's kind, they stay for the man that they decided to marry and had hope and promises for their future. So, there's a lot of love and attachment is why they're connected to their partner. Some people stay because they have economic reasons and they don't have tangible resources to leave. Some people have children in common and they don't want to deprive their children of a father. So, some people fear retaliation. If I leave, I'm going to get seriously hurt. And frankly, the statistics bear it out. The most dangerous time for a woman is when she's leaving that relationship. Her likelihood of being killed grows substantially at that moment. So, leaving sometimes isn't the best strategy. Staying keeps her safe. So, there's usually a multitude of factors of why a woman decides to stay in the relationship. And again, as I said previously, it doesn't mean she's unconcerned about the violence. Just, she hasn't figured out a way out yet.

Elaine: What, if any role does emotional attachment and love play in that?

Dr. Hughes: That's probably the biggest one is that you have this, we talked about that trauma bond that has developed, that psychological attachment to your partner. You don't want to leave him, you've connected with him on so many other levels that giving that up just feels like a threat to your integrity, and a threat to his because you're just so intertwined and attached.

Elaine: What, if any role does hope and optimism play?

Dr. Hughes: Hope and optimism are really what keeps victims alive in these situations. That's what gets them going from one episode to the

next, to get up the next day, and maybe he's not gonna drink today. Maybe he's gonna be on his good side. Maybe he's gonna come home and not disappear for three days. Continuing to hope that some type of change is coming down the pike.

Elaine: Now, you mentioned lethality a little earlier. Can you please explain to us what that means?

Dr. Hughes: So, lethality means death means fatality. And we have very well-validated instruments and data that looks at what factors happen in a relationship where a woman ends up dead. And we do that through looking retrospectively saying, this person ended up dead, killed by her partner in a homicide, and let's see what factors were there so that we can work at preventing it. It's very methodologically sound over different case-controlled designs over multiple cities viewed by the FBI and law enforcement. So, these are a number of factors that tell us that somebody is in a very dangerous situation. So, some of the factors are an increased frequency and severity of the violence, threats to kill, choking behavior, sexual assault, obsessive and possessive jealousy, controlling behavior, the perpetrator's use and abuse of substances, alcohol and substances, the perpetrator's threatening of suicide himself. Those are some of the top factors. And there are more that are very, very dangerous when we hear that. And we hear a woman is in a situation where those are present, then we are moving out of a situational couple violence.

Elaine: What, if any, role does destroying property?

Dr. Hughes: And destroying property, destruction of property, personal property is also one of the risk factors for danger and fatality.

Elaine: And what, if any, role does leaving threatening messages play?

Dr. Hughes: Yeah. That's also a risk factor for lethality.

Elaine: What are the psychological and traumatic effects that such interpersonal violence has on victims?

Ben Chew: Objection, compound.

Elaine: Psychological and traumatic effects are gonna interchange.

Judge Azcarate: I'll sustain the objection.

Elaine: What are the psychological effects that such interpersonal violence has on victims?

Dr. Hughes: So, these have also been well researched and they are wide and varied. We see depression and depressive disorders sometimes with suicidality, we see anxiety and anxiety disorders, a lot of stress. We see post-traumatic stress disorder. We see substance abuse and substance abuse disorders. We see trust difficulties and difficulties in interpersonal relationships. As a result, we see a lot of shame and humiliation. We see anger and rage, sleep disruption, a whole host of difficult psychological consequences having sustained a relationship with intimate partner violence.

Elaine: What, if any, role does low self-esteem play?

Dr. Hughes: Well, low self-esteem is a very common aftereffect, and that when you're embedded in the relationship, it also makes it just very difficult for you to climb your way out.

Elaine: What is emotional dysregulation?

Dr. Hughes: Emotional dysregulation. So, it's a D-Y-S, dysregulation is when you don't feel that you have control of your emotions. You feel like you're fluctuating from one to the next, it's not the same as a bipolar disorder. Can happen in short moments that it's really because your central nervous system is so out of haywire from being exposed to so many traumatic events that you may feel things deeply and with a short trigger in a very quick time.

Elaine: In your experience, is there a particular way victims of intimate partner violence remember the violence they endured?

Dr. Hughes: Oh, memory for traumatic events is something that has been well researched. Sometimes people have what we call dissociative amnesia, where, because of the physical or psychic pain of what they're going through, a portion of the memory either gets blocked or can't get retrieved, whether it's stored or retrieval we're not really sure. But most of the times the memory is really about when you have multiple repeated events of the same type of thing. So, if you are abused multiple times and the abuse is very similar, it's very common for the victim to lose discrete details of a particular incident. They may not retain the memory for the complete incident. And that might not be the dissociative amnesia. That just might mean to forgetting because you have so many chronic events that have happened to you.

Elaine: Are there common myths or misperceptions about domestic violence?

Dr. Hughes: There are. I hope I've dispelled some of them here already, but the myths certainly are that women are meek, are passive, are just sitting there and letting the abuse happen, that women don't fight back, that women don't yell back, some old ones that they like the violence. They're not concerned about the violence, that if it was really bad, she really would've left. If it was really bad, she really would've told the police, all of those myths and misconceptions that just don't comport with the research.

Elaine: Are there also myths about trauma survivors, how trauma survivors present?

Dr. Hughes: Yes, there are. And what we say is, how lay people think someone who suffered a traumatic event is supposed to act. So, in the immediate aftermath of a trauma, people think, oh, they should be hysterical and abreacting and emotional, all over the place. And that's typically not the first reaction of a trauma survivor. The first reaction is suppression, emotional numbing, emotional constriction. How do I get through this? Women who are beaten, they get up the next morning, they get their kids dressed, they get them to school. They go to work; they do a presentation in their office. They go on with life. The most normal thing that a person does who've experienced trauma is to get up and try to be normal. They're striving for that all the time. So, sometimes if you see somebody who is more emotionally constricted, looks maybe stoic, looks like they're not feeling, it doesn't mean that they're not having internal reactions.

We say this in the field of clinical psychology all the time, the inside doesn't match the outside. What you're seeing on the outside may not match what's going on for the person inside because they have to be so controlled because the fear is that if I let out a little of this emotion, I'm not gonna be able to put the floodgates back on. It's just going to be too overwhelming. And that's true for people who are involved in litigation and also true for my private patients who are, even though they're coming to me for help, they try very, very cleverly to not wanna feel the difficult emotions of the trauma that they experienced.

Elaine: And is it also possible that they can look very friendly and smile and laugh and things like that?

Dr. Hughes: Yeah, absolutely.

Ben Chew: Objection, compound.

Judge Azcarate: Sustained.

Elaine: Please describe some of the ways that a victim can hide that as you just testified to.

Dr. Hughes: We call that the appearance of normalcy, the appearance of competency. And it doesn't mean that they're not, it doesn't mean that they're not normal and that they're not competent, but it doesn't give you a bird's eye into their inner experience. And that's what we do, we say in the rooms, in the rooms of therapy where we really help people deal with that, that they keep to themselves. But yes, someone can be smiling and happy. It doesn't mean that they're not suffering inside.

Elaine: Is there a single profile that fits all women in domestic violence situations?

Dr. Hughes: No.

Elaine: Is there a single profile of a man who perpetrates intimate partner violence?

Dr. Hughes: No.

Elaine: Your Honor, I'm at a point of moving to a new topic area. I don't know what Your Honor wants to do, because I know we switched the lunch route. I'm perfectly happy to keep going, but if this was a good stopping point, we could make that for the break.

Judge Azcarate: All right, let's go ahead and take our afternoon break for 15 minutes. Okay? Just do not discuss the case and do not do any outside research. Okay?

Ben Rottenborn: It's a little early.

Judge Azcarate: All right. And Dr. Hughes, since you are testifying, please do not discuss your testimony, including the attorneys at this point. Okay?

Dr. Hughes: Yes.

Judge Azcarate: All right. We'll come back at 3:15 then. Okay?

Elaine: Thank you, Your Honor.

Judge Azcarate: All right. Are we ready for the jury?

Elaine: Yes, Your Honor.

Judge Azcarate: Okay. All right. Be seated. All right. Your next question.

Elaine: Thank you, Your Honor. Dr. Hughes, did there come a time when you conducted a forensic psychological evaluation of Amber Heard?

Dr. Hughes: Yes.

Elaine: And please tell the jury what a forensic psychological evaluation is.

Judge Azcarate: Could you turn it on at the bottom base?

Dr. Hughes: Okay. A forensic psychological evaluation is an evaluation that is conducted for the courts to answer a particular legal question. It contains multiple parts. Ms. Heard is not a client of mine. She's never been in therapy with me. She's not under my clinical care. It is an objective evaluation to determine a particular legal question. Forensic evaluation follows a methodology that what we say is a multi-method, multi-hypothesis-driven methodology, which means I look at a variety of different documents and data using multiple hypotheses. It's not just one hypothesis, one theory of the case. You're going in looking to see what possibly could be going on here. And then you use the data to arrive at that opinion. You look for consistency across the data to arrive at that opinion. And the forensic psychological evaluation has many parts.

It has the clinical interview part, a structured or semi-structured clinical interview where I'm asking Ms. Heard lots of things about her life, both before Mr. Depp and after. It involves a psychological testing component of the evaluation, which allows me to do a good broad scan of different symptomatology that people might have in their lives, as well as to have indicators of how she approached the test. Is she defensive? Is she malingering? Is she fainting? Is she exaggerating? It gives me indications about how she approached the evaluation. I review a number of documents medical records, psychological records, the texts, the audio, all the different things that we've had in this case. And then I conduct collateral interviews.

Elaine: So, Dr. Hughes, just to be clear, do you assume everything the victim reports is true when you conduct these examinations?

Dr. Hughes: No, of course not. I always approach a forensic evaluation with a healthy dose of skepticism. With any forensic evaluation, there exists a motivation that the individual may be telling you something that is not accurate. It doesn't mean that that's there, but you have to control for that. And know that you're looking for again, what does the data tell you, the external data about what the person is also telling you?

Elaine: Did the forensic evaluation follow a standard methodology or was it specific to Ms. Heard?

Dr. Hughes: No, this was my standard methodology that I would use with any individual who's in a forensic matter and I would just call to evaluate them.

Elaine: Okay. When did you meet with Amber Heard?

Dr. Hughes: Okay. So, I met with Ms. Heard for a total of about 29 hours. I met with her for the first time in September 2019. I saw her for four visits live in my New York City office. That's about 21, 22 hours. And then I saw her twice over Zoom. One was in January 2021 and...

Ben Rottenborn: Permission to approach.

Judge Azcarate: You wanna approach? Okay.

Elaine: Dr. Curry, in answering that question, were you consulting anything?

Dr. Hughes: Dr. Hughes.

Elaine: Dr. Hughes. I'm so sorry. Dr. Hughes, were you consulting anything? Dr. Curry's here, I guess as well? That's a good confusion [inaudible 03:17:18].

Dr. Hughes: I'm consulting my cheat sheet of the dates that I saw Ms. Heard so that I could accurately report to the court. I also have my final designation in front of me so that I could give the most accurate information to what I put in that report.

Elaine: Okay. And do you wanna see that? Okay. Should we just take the break now and have him look at it, or does everybody...

Judge Azcarate: Would you like to look at it now or before cross-examination?

Elaine: It's just to post it.

Ben Chew: I'm happy to look at it before cross-examination.

Judge Azcarate: Okay. Before cross-examination.

Elaine: Okay.

Judge Azcarate: All right. That's fine. Thank you.

Elaine: Okay. Please continue. I think you were telling us when you saw Ms. Heard.

Dr. Hughes: Sure. So, the four dates in person in New York City for a total about 21 and a half hours. And then I saw her in January 18th, 2021 over Zoom for three hours, and then December 27th, 2021 for four hours over Zoom.

Elaine: Okay. And what did the evaluation consist of?

Dr. Hughes: So, as I stated, the evaluation consisted of psychological testing, a semi-structured clinical interview with Ms. Heard, a review of a whole host of documents relative to this case, and medical records and psychological records. And then three collateral interviews. Two with her treating therapist Dr. Bonnie Jacobs, Dr. Connell Cowan, and also with her mom.

Elaine: Okay. And in the semi-structured clinical interview, what were you assessing?

Dr. Hughes: Well, when someone comes in for the evaluation, you sometimes don't know what you're going to see or what you're going to get. So, you absolutely have to do a full clinical interview, have a sense of their life, their life patterns, things that have affected them in their lives, where they have worked, where they have lived, just get a full sense of their being before the incident for which they're talking about. Then I do a full intimate partner violence assessment, looking at all those characteristics that I talked to you about earlier to get a sense of the full structure of, and the dynamic of this relationship. I also did look at what were the effects, what were the psychological consequences of being in that relationship, and I also looked at the psychological consequences of some of the statements that were made by Mr. Depp through his attorney that are part of the counterclaim in this lawsuit.

Elaine: At the end of that process, considering all the data, did you arrive at any expert opinions?

Dr. Hughes: Yes, I did.

Elaine: All right. I would like to start with your main expert opinions and then go through those. Can you please tell the jury what your main opinions were?

Dr. Hughes: So, like I said, there are opinions embedded within them, but the main opinion is that Ms. Heard's report of intimate partner violence and the records that I reviewed is consistent with what we know

in the field about intimate partner violence. Characterized by physical violence, psychological aggression, sexual violence, coercive control, and surveillance behaviors.

Elaine: And what was the other main opinion that you had?

Dr. Hughes: The second main opinion was that Ms. Heard demonstrated very clear psychological and traumatic effects or the exacerbation of trauma from those statements that Mr. Depp made through his attorney, there were three statements that we evaluated to see how they affected her emotionally and psychologically. And it was my determination that they did.

Elaine: And did you arrive at any diagnostic conclusions?

Dr. Hughes: Yes, I did.

Elaine: And what were those?

Dr. Hughes: I diagnosed Ms. Heard with posttraumatic stress disorder.

Elaine: And what if any etiology was associated with the posttraumatic stress disorder?

Dr. Hughes: So, the etiology is the cause. In order to meet criteria for post-traumatic stress disorder, you have to have an actual cause. It's one of the few diagnostic entities that we have to have a cause for. And the cause was the intimate partner violence by Mr. Depp. That was what was pushing the symptoms, that was what's related to the intrusive phenomena that was related to her avoidance, that was related to differences in her mood, that was related to her avoidance efforts. So, the cause was the intimate partner of violence by Mr. Depp.

Elaine: Okay. Now, let's first go back to the forensic evaluation. You mentioned you reviewed documents. What documents did you review?

Dr. Hughes: So, I'm going to refer to my list of documents so that I can be clear for you all. It is a four-page...

Ben Rottenborn: Your Honor.

Judge Azcarate: All right. If you wanna approach.

Elaine: Dr. Curry, if you... I mean, Dr. Hughes.

Dr. Hughes: Dr. Hughes.

Elaine: I don't know why I keep saying that. My apologies. My apologies. Dr. Hughes. I think is the confusion of having her in the courtroom. Dr.

Hughes, if you need to consult your notes to answer something, let us know that you need to consult your notes. Otherwise, try to answer to the best of your ability. And then if you need to do that, just let us know you're consulting your notes. Okay? The concern is that you not read from them that you consult them as you need to. Okay?

Dr. Hughes: Correct. I just don't want this to be a memory test of having conducted many documents, 80 pages of notes, 12 psychological testings to...

Judge Azcarate: You can reference your notes, just don't read from them. Okay?

Dr. Hughes: Yeah. No problem.

Judge Azcarate: Okay.

Elaine: Okay, great. So, please tell us what documents you reviewed. Please tell the jury.

Dr. Hughes: Okay. So, I reviewed a number of documents, a plethora of documents, and I obviously won't read them all. But I reviewed certainly all of Ms. Heard's testimony that she gave in her deposition testimony, her deposition testimony in this case, her deposition or her trial testimony in the UK case. I did the same thing from Mr. Depp. I reviewed his deposition testimony as well as his trial testimony in the UK as well. I reviewed a number of the depositions that were put forth in this case. I reviewed the psychological treatment notes for Dr. Bonnie Jacobs, Dr. Connell Cowan, Dr. Laurel Anderson, and Dr. Amy Banks, although she did not have treatment records. So, I reviewed not only their records, did collateral interviews with some of them and also read their deposition testimony and also read other medical records in this case, nursing notes in this case, and the highlights. And I also listened to the audios that were put forth in this case and read the text messages and emails.

Elaine: And what, if anything, did you do with respect to any videos?

Dr. Hughes: And I also saw the video in the kitchen. Yes.

Elaine: Okay. Now, the collateral interviews that you conducted, why did you conduct those?

Dr. Hughes: Well, collateral interviews is a standard part of a forensic evaluation. It's an opportunity to hear from another treating clinician, the person who's actually treating the individual you're evaluating and get a better sense from that person of what they saw, what they knew, how they experienced this person. Sometimes our clinical notes don't give

the full breadth of what really was going on in that therapy, because the notes are meant to be shortened to the point of what happened, who was there, and what was the plan. So, it was really helpful to talk to these two clinicians who really were with Ms. Heard throughout the duration of her relationship with Mr. Depp. So, they give us a contemporaneous look at what was going on for her emotionally. And then what was she reporting? What was she saying about the relationship to her therapist?

Elaine: And you mentioned the name Dr. Bonnie Jacobs, please tell the jury who Dr. Bonnie Jacobs is.

Dr. Hughes: So, Dr. Bonnie Jacobs was Ms. Heard's therapist, and may I refresh my recollection with my notes, Your Honor?

Judge Azcarate: She's allowed to consult her notes.

Dr. Hughes: For the dates, if you would like me to tell the dates.

Judge Azcarate: If she's asking me a question I'm not gonna answer.

Elaine: You're right, Your Honor. Yes.

Dr. Hughes: May I?

Elaine: Yes. You may consult your notes. Yes.

Ben Chew: Objection, Your Honor. Can we [inaudible 03:26:20]?

Judge Azcarate: That's fine.

Elaine: Go ahead.

Dr. Hughes: Thank you. So, she treated with Dr. Bonnie Jacobs, who was a psychologist from October 2011 through August 2014. She actually was seeing Dr. Jacobs somewhat earlier, before she got in the relationship with Mr. Depp. And then she transferred care to Dr. Connell Cowan, who was referred by Dr. Kipper, who was the treating physician for Mr. Depp and then later for Ms. Heard. And she treated with Dr. Cowan from after she left Dr. Bonnie Jacobs in September 2014 to June 7th, 2016.

Elaine: Okay, thank you. And so, I guess you got ahead of me there. So, you also talked to Dr. Connell Cowan, correct?

Dr. Hughes: That's correct.

Elaine: Okay. And you also spoke with Paige Heard, did you say?

Dr. Hughes: That's correct.

Elaine: And who is Paige Heard?

Dr. Hughes: Paige is Amber Heard's mother.

Elaine: Okay. And when did you speak with Paige Heard?

Dr. Hughes: I spoke with all of these individuals at the end of 2019. Again, I can check my notes and let you know the exact date if you'd like.

Elaine: I think the end of 2019 is fine.

Dr. Hughes: Yes. They all were in the end of '19. Yes.

Elaine: All right. And are you aware that Paige Heard has since died? She died two years ago.

Dr. Hughes: Yes, I am aware sadly.

Elaine: Okay. Now, let's talk about the psychological testing. You stated that you conducted psychological testing, is that correct?

Dr. Hughes: That is correct.

Ben Chew: Objection, misleading.

Judge Azcarate: Overruled. I'll allow.

Elaine: Can you please tell the jury how many psychological assessments you administered to Amber Heard?

Dr. Hughes: I administered 12.

Elaine: Can you please tell the jury which ones you administered?

Dr. Hughes: So, I am going to refer to my designation that has the list so that I don't forget anything.

Elaine: Okay.

Dr. Hughes: So, I administered...

Ben Chew: Objection. Hearsay, Your Honor.

Elaine: She can refresh her recollection.

Judge Azcarate: As long as she's not reading it.

Elaine: Right. You just can't read. You're not supposed to read from it, but you can refresh your recollection as you're speaking.

Dr. Hughes: So, I can look and just look up and that's refreshing my recollection? Okay.

Elaine: All right. If we could approach for a moment. Dr. Hughes, can you tell the jury the tests that you administered, please?

Dr. Hughes: Yes, I can. I administered the personality assessment inventory, which is a broadband instrument to scan for psychopathology and psychological symptoms that people have. I administered the trauma symptom inventory too, which is an instrument to scan for common traumatic effects that people have. I administered the Miller Forensic Assessment of Symptoms Tests, which is a measure of malingering. I administered the post-traumatic stress disorder checklist for the fifth edition for the DSM-5. I administered the clinician-administered PTSD scale for DSM-5. I administered the beck depression inventory, the back anxiety inventory, the mood disorders questionnaire, I did three intimate partner violence measures, the conflict tactic scale, the abusive behavior observation checklist and the danger assessment scale. And then I also did the life events checklist, which scans and gets us to ask about a lot of traumatic events that an individual may have experienced. And we administer that typically before either doing the PCL or doing the CAPS.

Elaine: Thank you. Were there any tests you administered to Amber Heard that were designed to reveal malingering or feigning?

Dr. Hughes: Yes, there were.

Elaine: Okay. Can you please tell the jury about those?

Dr. Hughes: So, malingering is the false production of psychological symptomatology for the purpose of some external material gain. Feigning is the false projection of psychological symptomatology be with no identification of what that gain may be. So, basically feigning is saying your mental health is worse than it actually is. So, I administered three of the tests had validity indices built in that could allow us to address that question. The Miller Forensic Assessment of Symptoms Test is a specific malingering instrument. It looks at malingering psychopathology. Is this someone malingering psychopathology? She scored a zero on that scale. on that test, sorry, not the scale, that test. So, on that test, there was no evidence of malingering. On the TSI, there are two validity indices, and she scored within the normal range on those scores as well.

One was slightly elevated, but when in testing the limits because it has rare symptoms and over endured symptoms I determined that that also was a valid measure. And then finally, the PAI, the large scale 344 question instrument has very robust validity scales on it to test for exaggeration or feigning or malingering. And she did not score in any of those scores and those scales at all, those were not elevated. So, the combined results between those three tests suggest to me that Ms. Heard is not malingering her psychological symptomatology.

Elaine: Now, Dr. Curry testified that one test showed "intentional exaggeration in the 98th percentile, meaning that she engaged in extreme levels of exaggeration." Do you agree with that?

Dr. Hughes: I do not.

Elaine: Why?

Dr. Hughes: Because that test, the scale that she is referring to, it's called ATR. It's the atypical response scale. As I said, that combines rare symptoms and over endured symptoms, it's very frequently elevated and people who have high levels of distress. And then importantly, on this test specifically, it says, do not use the percentile rank. It is in the manual. It is in italics because the way that this test was normed, it was normed on people who have trauma. So, it's what we call negatively skewed. That means it falls on the tail end of the continuum. It is not a normal curve where we would normally think of how a percentile would work. So, you would not use the percentile rank on this test.

Ben Chew: [inaudible 03:33:11].

Judge Azcarate: You want to approach?

Ben Chew: Yes, please.

Judge Azcarate: Okay. No objection.

Elaine: Dr. Hughes, please continue.

Dr. Hughes: So, that is a very inaccurate way to describe that scale and that test. And so, the ATR scale on this test is probably the least robust of our validity scale. So, you would never make a comment like that based on one scale, if you don't have consistency across data. And when you look at the consistency across the testing with the PAI, the TSI, and the M-FAST and there's research to support that, that when they go together, you have a higher degree of likelihood that this is not feigned PTSD, that this is not feigned symptomatology. And then actually, if I look at the validity scores on the MMPI-2 that Dr. Curry

administered, those scales are not elevated for exaggeration or malingering either. So, if I add that now I have really robust data that Ms. Heard is not malingering or faking her psychological symptomatology.

Elaine: Thank you. Did you administer any tests that are specific to domestic violence?

Dr. Hughes: Yes, I did.

Elaine: Which ones?

Dr. Hughes: So, that was the conflict tactic scale, the abusive behavior observation checklist, and the danger assessment scale.

Elaine: And what did they show?

Dr. Hughes: I would like to refer to the testing.

Elaine: To refresh your recollection?

Dr. Hughes: To refresh my recollection, just to glance so I can...

Elaine: Yes, you may do that.

Dr. Hughes: ...be clear with the jury. So, what the overall gist of the testing was, was that and then the benefit of these tests is that they allow me to ask for what Mr. Depp did to Ms. Heard. And then also what Ms. Heard did to Mr. Depp. So, it was asking about both sets of behavior and what...

Ben Chew: Objection, Your Honor. We're back to reading.

Elaine: She wasn't even looking down. She was looking at the jury.

Judge Azcarate: Go ahead.

Elaine: Please continue.

Dr. Hughes: So, what these tests show was that there was a high degree of serious violence perpetrated by Mr. Depp toward Ms. Heard. There was violence more on the mild level perpetrated by Ms. Heard toward Mr. Depp with one severe indicator, which was the punching that she indicated to me. There were scales about negotiation, about how much this couple tries to figure out their problems. They both scored, again, this is Ms. Heard reporting that, but they both scored in the high range where they're both saying that, yes, we're trying to figure this out. We're trying to work out this relationship. There were scores on the psychological aggression scale where Mr. Depp engaged in more severe acts of psychological aggression.

Whereas Ms. Heard did engage in also some mild and severe acts of psychological aggression. The amount of injury that was reported was significantly higher and more severe by Ms. Heard what she was subjected to. And then she was subjected to sexual violence where Mr. Depp based on her report was subjected to none. And then on the danger assessment scale, that there were a number of factors that were related to severity in violent relationships and a risk factor when we look, as I said earlier, when behaviors come up on this scale, they're very worrisome, very scary, and we have to take them seriously. So, there were a number of behaviors that came up on this scale, such as Mr. Depp's threatens to kill her, the increase in severity of the abuse the forced sexual activity, the choking behavior, his obsessive jealousy.

Ben Chew: Objection, foundation.

Elaine: She's talking about the test results.

Judge Azcarate: Overruled. Go ahead.

Elaine: Please continue.

Dr. Hughes: The obsessive jealousy, the control aspect, and his threatening to suicide to kill himself. So, those were risk factors that placed her in the increased danger range. And this is a range that says that we certainly have to advise women of their risk and consult with law enforcement if they're involved, or judges if they're involved because this means that a woman is at risk for more serious or lethal domestic violence.

Elaine: So, did the results of the psychological tests you administered to Amber Heard support a diagnosis of PTSD?

Ben Chew: Objection, leading.

Elaine: What, if any, psychological tests did you administer that supported a diagnosis of PTSD for Amber Heard?

Dr. Hughes: Sure. So, there were four tests that supported that diagnosis. One was the PAI which was that 344-question large-scale personality inventory. On that test, her largest subscale, her highest subscale was the one that measures traumatic stress. So, that was clinically significant. On the TSI, two of her scales were the intrusive experiences, dimension, and the defense of avoidance I mentioned two of the classic scales of trauma and PTSD. On the PCL, which is the post-traumatic stress disorder checklist five that she scored in all four domains of PTSD. And that's an instrument that says how much are you

bothered by these symptoms. And in all four clusters, which would be the intrusive experiencing when things about the abuse of the trauma enter your mind when you did not want them to, sometimes they're cued, sometimes they're uncued.

She answered in the avoidance category, which is a second category of PTSD that, "I do things to try not to think about this, to try not to feel this, to try not to get upset. Sometimes I avoid certain people because they become a trigger for me." She scored in the, what we call the negative alterations and cognition and mood changes in her thoughts and feelings as a result of the abuse and trauma, and also in the physiological hyperactivity, the hyperarousal, the hyper-vigilance, the startle response. So, on the PCL, she endorsed symptoms in all four of those categories saying, some of these symptoms are bothering me a lot. And then finally the clinician-administered PTSD scale for the DSM-5. And what that allows me to do unlike the PCL is really look at symptom severity and symptom frequency. How is this really playing out for this individual?

And similarly, she scored in all four categories of trauma and of having intrusive experiences and nightmares and avoidance efforts and physiological hyperactivity, and changes in her mood and her thoughts. And her total score was a 28, which falls in the moderate range. So, that means that she has experienced a moderate degree of posttraumatic stress disorder symptomatology, and those tests allow me to make that definitive diagnosis that she suffers from PTSD.

Elaine: Thank you. What, if any, consideration did you give to Amber Heard's history of childhood abuse in making your diagnosis?

Dr. Hughes: That was a significant consideration given that we know that childhood... Well, first of all, we know that people can experience multiple traumas across their lifespan. And we wanted to make sure that the symptoms that she was experiencing were related to what she experienced with Mr. Depp and not her childhood. And certainly, earlier on in the evaluation and when I evaluate and spoke with her, that was true. And that was also true on the latest measure. The clinician-administered PTSD scale for DSM-5, the CAPS-5. And that's because the content, you have to look at what is the content of the symptoms. So, it's not that someone says, "Oh yeah, something traumatic comes into my mind." No, what is it, what comes into your mind? What bothers you? What are the triggers? And those were all specific to Ms. Heard's relationship with Mr. Depp.

The reason the childhood is also significant is that we know that if somebody suffers childhood abuse as a child, they are much more likely to have an adult re-victimization. And they're much more likely then to be more vulnerable to obtaining a PTSD, to getting PTSD if they've had that prior vulnerability. So, it's a very strong vulnerability characteristic to obtaining PTSD when you have a subsequent trauma. The other aspect about her childhood abuse is that she was raised in a family of violence. She was physically abused by her father. She saw her father abuse her mother, her father was very explosive and had violent outbursts. And both her parents also struggled with substance abuse very significantly. So, she had learned from a very early age, how to caretake, how to live in a situation that is mired in chaos.

How do I take care of a parent who's passed out, nodded out from heroin? And how do I get up and get my sister to school? She learned at a very early age that she had to figure out how to do this in this scenario. And I would say, lastly, what that environment taught her was that she learned that she could love someone who hurts her. She knew that people who hurt her also can love her. And she learned how to have this tolerance for cognitive inconsistency. This tolerance for two should be diametrically opposed emotions, but she grew up knowing or believing perhaps that this could happen. And she also believed that she could fix him just like she tried to fix her father and just like she tried to fix her mother. She truly, truly believed that she could fix Mr. Depp and rid him of his substance abuse problems, but that did not work.

Elaine: Did you review Dr. Curry's CAPS-5 that she administered to Amber Heard?

Dr. Hughes: Yes, I did.

Elaine: And what, if any agreement did you have with Dr. Curry's interpretation of the CAPS-5?

Dr. Hughes: I didn't agree with her interpretation having been a trauma psychologist for over 25 years and administered hundreds of these. I found that there were flaws in how she chose to administer it. And then some of the coding Ms. Heard on that CAPS-5 to Dr. Curry certainly reported trauma-based symptomatology related to the abuse by Mr. Depp, but somehow that was not coded as such.

Elaine: And did you review Dr. Curry's MMPI-2 that she administered on Amber Heard?

Dr. Hughes: Yes, I did.

Elaine: And do you agree with her interpretations on that test?

Dr. Hughes: No, I do not.

Elaine: Why not?

Dr. Hughes: Because this profile is a normal profile. There are no clinical scores elevated above 65, which is one and a half standard deviations of the mean, which is what we use to determine clinical significance. And if none of those scales are elevated, it becomes very difficult for us to make assumptions about a person's psychology and their functioning. Now, remember the psychological testing generates hypothesis about a person that we then using our clinical judgment have to make a decision about. We have to make an assessment about it. And if none of those scales are elevated, it just doesn't give us rich information to make those determinations. The one scale which is accurate, that was elevated was one that measures defensive, responding, a protective responding, an unwillingness to admit minor fault. That was elevated. And that was true. But the result of that is you have a defensive profile.

You have somebody who's not giving you a lot of information, so the scales are all low. So, there's no way you can take that MMPI and then say it's consistent with borderline personality disorder. You just don't have the symptom expression on it in order to do that.

Elaine: And that's my next question here. What, if any diagnoses, did you make of personality disorders for Amber Heard based on your testing?

Dr. Hughes: I did not make a personality disorder of Ms. Heard.

Elaine: Why not?

Dr. Hughes: For a number of reasons. Number one, a personality disorder requires a pervasive pattern in a variety of context. Two keywords, pervasive pattern, variety of context. That means if her emotional instability, her affect dysregulation, or her fear of abandonment is only occurring in the relationship with Mr. Depp and we don't have evidence of it before, and we don't have evidence of it after, it is not...

Ben Chew: Objection, Your Honor.

Judge Azcarate: All right. Wanna approach?

Elaine: Dr. Hughes, what, if anything, did Dr. Cowan say to you about any type of diagnoses of personality disorders?

Dr. Hughes: Dr. Cowan did not diagnose Ms. Heard with any personality disorder.

Elaine: And what if anything, did Dr. Bonnie Jacobs say about diagnosing Amber Heard with any personality disorders?

Dr. Hughes: And Dr. Jacobs similarly did not diagnose Ms. Heard with any personality disorder.

Elaine: Thank you. Now, let's turn back to intimate partner violence. What types of physical violence were reported to you?

Dr. Hughes: So, there were a number of physically violent behaviors that were reported that Ms. Heard reported that Mr. Depp perpetrated. He pushed her, he shoved her, he slapped her with the front of his hand and the back of his hand, he choked her, he slammed her into the wall, he pushed her and she fell down. He kicked her in the back. Again, without looking at my notes, that's what I can recall.

Elaine: Okay. And what type of injuries did Amber Heard report to you?

Dr. Hughes: She reported mostly bruising, pain, some cuts. She reported vaginal pain from some of the sexual assaults. She reported that she did have some scratches and cuts on her from broken glass. She reported that she believed she may have lost consciousness two times once in the Australia incident and once in the December 15th, 2015 incident.

Elaine: Okay. What type of coercive control was reported or did you find?

Ben Chew: Objection, leading.

Judge Azcarate: Sustained.

Elaine: What, if any, coercive control was reported to you?

Dr. Hughes: So, the coercive control that was determined in this relationship, I found to be quite significant. There were many, many instances where Mr. Depp tried to control how Ms. Heard went about her career. He didn't want her to show nudity, he didn't want her to show boob, he didn't want her to act with certain actors because of this obsessive jealousy. He criticized her ambition. He'd rather she not work. He called the ambition as something as a negative thing. It made her very fearful to have to look at scripts or talk about scripts or talk about movie roles, because he persistently put those down and told her she didn't need to work, and she didn't need to do that. And she didn't need

to show her tits and ass. He didn't necessarily support her work. The way this manifested as well is that he called almost every actor that she had to work with, males and female.

So, no matter what show she was filming or shooting, he would call the leading actor. He would call the director. He would tell you, "I got eyes down there. I got eyes down on the set." So, she never felt safe to be herself and be an actress in these films or productions because she'd have to come home and then endure his anger at her for doing something or for not doing something. When she was filming and he was in the same town, she feared that he would show up on the set to know what she was filming that day. She even told her assistant, "Don't give it to him, don't let him see it." So that he won't show up. And sometimes he did. So, it was very trepidacious for her and very anxiety provoking that he continued to do this. He tried to control what she wore when she was going out with him, things were fine, but he told her often, "No woman like mine is gonna dress like a whore."

And didn't want her to wear revealing clothing, or revealing clothing, according to him. She recalled an incident when she was going on a job audition and he said, "You're gonna go out with those tits and ass?" And she had her go in and put on what she said, mom jeans, so that she didn't look sexy, so she didn't look revealing and continue to try to plead with him about what jobs she could take and she could not take. This made her be very restrictive and try to conceal things. She would hide her scripts because she couldn't read them in front of him because he would put them down or wanna see where there might be nudity, where there might be something where she's doing a love scene. And then almost every person that she was in a film with there would be those barrages of the consistent accusations of infidelity. And we saw that on the Australia pictures, the Billy Bob.

He was one person that he continued to berate her about having an affair with. That's what obsessive control looks like, those messages on the mirror. When you look at how he wanted her to be, there was some interference with the family, with her sister, when some things were leaked. He was obsessed believing that it was Whitney who did it and eventually Ms. Heard had to succumb and say, "Okay, yes, it was." And then alienate herself from her sister because she just couldn't take the fights anymore. She just couldn't take the constant barrage of criticism. So, there were many instances when in terms of their interactions of, she would have to text him right back, but when she would text him, he could not answer for days. And it's this, when we talk about the ghosting, but your husband doesn't ghost you, your partner doesn't ghost you.

And there were so many times of this withdrawal of affection, which was on his terms and when he wanted to do it. I'm aware that there is testimony in this case that Mr. Depp decided to leave because he didn't wanna be violent. And I do think that's true sometimes. I think he did leave in times where he didn't want an altercation. He did leave after an altercation. He did leave and then came back and continued the altercation. So, leaving wasn't the defining variable. The problem was that with this obsessiveness and this perseveration that he had, the fight would always come back. So, leaving might end the argument for that moment, but Ms. Heard knew he was always gonna come back and he was going to start the interrogation once again.

Elaine: And what is the effect of the coercive control on Amber Heard?

Dr. Hughes: The effect was drastic. She talked to me that her roles consistently dropped over the time that she was in the relationship with Mr. Depp, just because it was so difficult to go on auditions, to wanna be in a different location with him. Whenever she was not on location with him, it was very stressful, it was very anxiety provoking because of the accusations of infidelity. We heard that through Isaac Baruch's testimony when she called and was saying, "Babe, there's no one here. There's no one here." That was something that she had to do repeatedly and constantly over the course of the relationship. So, it caused a significant amount of anxiety, of distress, of having to try to conceal and maneuver around him to try to have the career that she wanted to have. It made her hyper vigilant and definitely contributed to her psychological symptomatology getting worse over time.

Elaine: What about sexual violence?

Dr. Hughes: So, there was a number of incidents of sexual violence reported in this relationship. Those are documented early on in Dr. Bonnie Jacobs's notes where, when Mr. Depp was drunk or high, he threw her on the bed, ripped off her nightgown and tried to have sex with her. There were times when he forced her to give him oral sex when he was angry. These weren't in loving moments, these were angry moments, moments of dominance, moments of him trying to get control over her. There was a time when they were in Hicksville in the trailer. I don't wanna say trailer park, but I guess it's trailer park, it is a trailer park where he was accusing her of a woman hitting on Amber. And that was the problem. Amber got accused of women hitting on her and got accused of men hitting on her. So, there were so many targets that came through in his obsessive jealousy.

But on that incident, when Kelly Sue was accused of hitting on Ms. Heard and they went back into the trailer, Mr. Depp performed a cavity search and ostensibly was looking for drugs and felt it acceptable to rip off her nightgown and stick his fingers up her vagina to look for cocaine. Felt that maybe she was hiding them there. And again, these incidents often happened in a drug-fueled rage. There was another incident in The Bahamas where, when he got angry he took his fingers and he put him in her vagina and moved her around violently in the closet. Again, an act of sexual violence. And of course, the incident in Australia was one of the most severe instances of sexual violence that Ms. Heard had to endure in which when he was beating her and choking her and telling her, "I'm going to fucking kill you. I hate you. I hate you. I'm gonna fucking kill you."

When he grabs a bottle that was on the bar and penetrated her with that bottle and Ms. Heard reported to me of dissociating and going outside of her body. And the only thing she was thinking is, "Oh, God, I hope it's not the broken one."

Elaine: What, if any psychological abuse did you find?

Dr. Hughes: There was a number of psychologically abusive behaviors, as I stated Ms. Heard admitted to me and reported that she engaged in those behaviors as well. She reported that she did call him names and offensive comments and said things to him that were horrible and that she was incredibly saddened and horrified by her behavior. And looking back, she, at this point, not being in the constant barrage of abuse does not recognize her. The abuse by Mr. Depp, he called her a number of names frequently, whore, slut, cunt, lesbian camp counselor, easy, ambition. Ambition was a weaponized term in that relationship. So, he called her a lot of names, and humiliated her. And of course, I think we talked about the intimidation tactics that Mr. Depp was often banging and throwing and hitting things in the household, which got the tension to rise up very significantly very quickly.

Elaine: Can you tell me how you conducted your analysis to arrive at these conclusions?

Dr. Hughes: Sure. So, what I did was look at the incidents that were reported and look at the corroborating data around it. So, as we stated, most of these incidents of intimate partner violence happened behind closed doors. Not everyone is gonna witness what the parties are reporting behind closed doors. So, you look at what is the data that surrounds it? Is there any data before it, is there any data after it, is the person telling, is the victims telling somebody in real time about what's

happening? Are there therapy notes? Are there pictures? Are there text messages that allow us to fill in the pieces of the picture, even though we don't have exactly what happened at that moment? The more collateral that we have and the consistency across those data points, it gives us greater confidence in our results.

Elaine: Can you give us some examples?

Dr. Hughes: Sure. So...

Ben Chew: Objection, vague.

Judge Azcarate: Overruled. I'll allow it.

Dr. Hughes: So, for example, the Boston plane incident, I believe without looking, I know May 24th, 2014, this is the incident where Ms. Heard and Mr. Depp were going to fly back to LA and spend the weekend together. There was shooting at different sites. Ms. Heard is on the plane waiting for Mr. Depp to come on in the tarmac. He's reportedly sitting in the SUV, smoking and drinking, smoking weed and drinking. She is filming with James Franco at this point. And she gets on the plane and he starts talking about James Franco, making a lot of derogatory comments about her. "And I hope you had fun with your escapades." And some more inflammatory language. And then in an argument when she got up to leave, he kicked her in the back and she went forward on the plane to the front of the plane because he sat in the back of the plane. So, if I look at what is the corresponding data to this?

There's a therapy note, several notes in Bonnie Jacobs's records that talk about Mr. Depp's increasing use of alcohol and his obsessive jealousy around James Franco before this Boston plane incident. After the incident, Ms. Heard told her friend iO, she told her friend, Savannah, she told her friend, Rocky. Ms. Heard did not go home. She was afraid to go home. So, she went to a hotel because when Johnny was in these states, he would often show up because he's still in that drinking and drugging phase, and he talked about that. That was the Roxycodone before he detoxed. He was still in that high substance abuse phase that he would often show up at night, and that did not feel safe. There was a text from Stephen Deuters, Mr. Depp's assistant.

Ben Chew: Objection, Your Honor.

Judge Azcarate: All right. You wanna approach?

Elaine: All right. So, Dr. Hughes, let's go past that text and talk about... Go past that text and continue after that text.

Dr. Hughes: Sure. So, Mr. Depp apologized to Ms. Heard for that incident. Mr. Depp said in his UK testimony, "Well, I only maybe playfully tapped her on the back with my foot." Mr. Depp texted Paul Bettany and talked about how he was so drunk and outta control and engaged in bad behavior. He texted his friend, Patti Smith, a very similar type of text about how drunk and outta control he was. And then finally, Amber Heard wrote an email talking about how distressed and heartbroken she was.

Ben Chew: Objection, hearsay.

Elaine: I don't agree.

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

Elaine: All right. Can you give another example?

Dr. Hughes: I think those are all I can remember at this point.

Elaine: Okay. What, if any... Sorry, I'm gonna have to go a little bit further here. So, you concluded that Amber Heard used psychological abuse and some reactive physical violence, I think I heard you say, is that correct?

Ben Chew: Objection, leading.

Judge Azcarate: Overruled.

Elaine: Can you please explain to the jury what you meant by that?

Dr. Hughes: Yes, that is correct. That Amber Heard reported to me some of the behaviors that she used that were psychologically aggressive. The name-calling, the putting him down, and calling him very bad names and insulting his fatherhood. And she was very shamed and remorseful about that. She also indicated using, and as some of the testing showed minor forms of violence, pushing, shoving, throwing objects, we see that a lot with some women when there's not proportional force, women are more likely to throw objects. And then the more severe act of punching him, which a punch falls in the more severe category and the context as she explained, it was that he was coming after Whitney her sister and she stood in the way, and she punched him.

Elaine: Now, does that make Amber Heard a perpetrator of intimate partner violence?

Ben Chew: Objection, leading.

Judge Azcarate: Overruled.

Dr. Hughes: So, that was one of the tasks that I had to consider. That was one of the hypotheses that I had to consider and given all of the other data that was not my opinion.

Elaine: Okay. Thank you. Now, you stated that you read a number of therapy records, please tell the jury, why are therapy records important?

Dr. Hughes: Therapy records are critical for a forensic psychologist. When we have the opportunity to go back in time and see what a person was dealing with, what the content of their distress was, and what the symptoms of their distress was. It really gives us a snapshot in time. So, they become very critical as part of the overall forensic psychological evaluation, because we as psychologists understand how people treat in therapy and what to look for. So, in looking back at Ms. Heard's therapy records, we see real time unfolding of this dynamic in this relationship, we see early on in her report with Bonnie Jacobs and in Dr. Bonnie Jacobs's notes, reports of constant concerns about Mr. Depp's substance abuse, constant concerns about him passing out and vomiting, constant concerns about not wanting...

Ben Chew: Objection, Your Honor. Hearsay.

Elaine: She can characterize that and say, she relied on that.

Judge Azcarate: Overruled.

Elaine: Thank you. Please continue.

Dr. Hughes: Constant concerns about how do I get him into treatment, how do I get him help. Ms. Heard starts going to Al-Anon at this point, early 2012 in the beginning of the relationship because she has to figure out and wants to figure out a way to support the man that she's dating right now. And the man who she's falling madly in love with. The reports in Dr. Jacobs's notes early on about his controlling behavior, about his jealousy behavior, of not wanting to do certain jobs, of not wanting her to wear certain clothes. So, this is going back to 2012 with no indication of why would she be saying that, but for the sole purpose of trying to get help and trying to get guidance in this relationship that she finds so difficult. There are indications, as I mentioned before, of the sexual assault and the sexual abuse, and how he would...

When he was angry and when he was drunk, it was mostly drug and alcohol-fueled rage when he would throw her on the bed and try to have sex with her. And then, if he was not able to perform, he would get more angry at her and blame her. So, we have this dynamic of blaming her for

his inability to take responsibility for his behavior. Those themes were throughout Dr. Jacobs's notes.

Elaine: Did Dr. Jacobs assign any diagnoses to Amber Heard?

Dr. Hughes: She did.

Elaine: Which one?

Dr. Hughes: Early on, she diagnosed her with panic disorder and then later with post-traumatic stress disorder.

Elaine: All right. And did Dr. Jacobs diagnose Amber Heard with borderline personality disorder?

Dr. Hughes: No, she did not.

Elaine: Histrionic personality disorder?

Dr. Hughes: No, she did not.

Elaine: And is that important?

Dr. Hughes: That's very important when we're trying to figure out the course of somebody's illness, the course of somebody's psychiatric difficulties. As I stated, well, I don't think I got to state, personality disorders usually start in adolescence early.

Ben Rottenborn: Objection.

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

Elaine: Okay. You also stated that you reviewed Dr. Connell Cowan's treatment notes, correct?

Dr. Hughes: Correct.

Elaine: And you also read his deposition testimony?

Dr. Hughes: Correct.

Elaine: And you had how long of a collateral interview with him?

Dr. Hughes: I believe it was two hours.

Elaine: Okay. And what did you get from all of that data?

Dr. Hughes: So, by the time that she gets to Dr. Connell Cowan, which is 2014, I believe September 2014 is when Dr. Kipper comes on the scene. Ms. Heard's psychological functioning is significantly deteriorated. She's

suffering more anxiety, more sleeplessness, more agitation, more emotional dysregulation, this fluctuation in moods. And when you look at the records of what happened in those first two years from Dr. Jacobs, and now we have up to Dr. Connell Cowan and we see all of the incidents that she was exposed to, including the sexual violence and the coercive control. It makes sense to me that her status, her psychological functioning has deteriorated. And in Dr. Connell Cowan's notes, that's what he's always trying to do. He's trying to help her help Mr. Depp. Help her act in a way so that Mr. Depp does not hurt her.

Pardon me, Dr. Connell Cowan was very concerned for Amber Heard's safety as was Dr. Bonnie Jacobs. Dr. Jacobs was very concerned for her safety, and she continued to talk about safety aspects for Ms. Heard as was Connell Cowan. They did both of them, both therapists understood and Ms. Heard talked to them about it, that there were times that she fought back and she used violence and times that she screamed, and she said things that she didn't want to. But nevertheless, that did not change the balance for them either. And they were very concerned that because of Mr. Depp's significant substance abuse and his poorly controlled anger, that at some point he was going to seriously hurt her.

Elaine: Did Dr. Cowan provide Ms. Heard with a diagnosis of borderline personality disorder?

Dr. Hughes: No, he did not.

Elaine: Did he diagnose Amber Heard with histrionic personality disorder?

Dr. Hughes: No, he did not.

Elaine: Is that important?

Dr. Hughes: It's important that you have an individual, Ms. Heard who's in therapy for over two years with one therapist and over two years with another therapist. And you're not seeing those characteristics of a personality disorder. If the manifestation of a person's difficulties and illness and symptomatology is better explained by another disorder, then you don't qualify for the personality disorder. You can't get the diagnosis and that's part of the criteria. So, if it's not a pervasive pattern, a variety of context, and it can't be better explained by her trauma experience and the exposure and the symptoms as a result of that trauma, then you don't get a personality disorder and that's why they didn't diagnose it.

Elaine: Did you read Dr. Amy Banks's deposition testimony?

Dr. Hughes: Yes, I did.

Elaine: And what were her findings?

Dr. Hughes: So, Dr. Banks had one session, one couple session with Mr. Depp and Ms. Heard. Dr. Banks is very reputable. She works up at the Harvard Medical School, Cambridge, Victims of Violence program, which is a very well-known program for understanding the...

Ben Chew: Objection, Your Honor.

Judge Azcarate: What's the objection?

Ben Chew: It's non-responsive to the question. The question was what was the findings?

Judge Azcarate: All right.

Elaine: Tell the jury who Dr. Amy Banks is.

Dr. Hughes: And just like I said, so she's somebody who has a wealth of experience in understanding intimate partner violence and the dynamics of violent relationships, but she only had one session with the couple and it was her determination when they were both there and the violence was talked about that Mr. Depp did not to deny the violence that he perpetrated toward Ms. Heard. She also did, as everybody has all of our other therapists, because Ms. Heard admitted as such that she also used low levels of violence as well. So, Dr. Amy Banks had that opinion.

Elaine: Did you review Dr. Laurel Anderson's treatment notes and read her deposition?

Dr. Hughes: Yes, I did.

Elaine: Okay. And what was the significance of what you learned from Dr. Anderson?

Dr. Hughes: So, Dr. Anderson similarly thought that there was violence and abuse in this relationship. She was the one therapist out of the four who qualified it as mutual abuse which the termination I've talked to you about, I don't necessarily agree with but she did see and did understand that there was violence and abuse by Mr. Depp. What was most notable was that after the December 15th, 2015 episode, Ms. Heard called her in addition to calling Connell Cowan and reached out to a number of people, but she saw Dr. Anderson in her office. And Dr. Anderson saw two bruises on her face and told me, "My husband kicked me and he

pushed me and he punched me in the head. And should I call the police?"

Ben Chew: Objection, Your Honor. Hearsay.

Dr. Hughes: What should I do?

Elaine: She's not reading, Your Honor. She's just saying the significance...

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

Elaine: All right. What conclusions did you make as a result of what you reviewed for Dr. Laurel Anderson?

Dr. Hughes: My take of reading Dr. Laurel Anderson's deposition and seeing her redacted notes was that, from my professional opinion, this was a very serious incident and a very serious allegation of intimate partner violence by Mr. Depp. If a patient comes into my office with two bruises and alleges being pushed, shoved, and kicked by her partner, I'm going to be very concerned and I'm gonna mobilize a lot more resources to help that individual. And for some reason that did not happen for Ms. Heard.

Elaine: Okay. What are your overall clinical impressions from reading these notes from Amber Heard's treatment providers and their couples therapists?

Ben Chew: Objection, compound.

Judge Azcarate: All right. Sustained.

Elaine: What are your overall clinical impressions from reading what you told everybody you read?

Ben Chew: Objection, compound.

Elaine: I don't know how to get it less compound, Your Honor.

Judge Azcarate: Overruled, go ahead.

Elaine: Thank you.

Dr. Hughes: So, my overall impression of the treatment notes was, there's significant support for the fact that there was intimate partner violence in this relationship. It was consistently reported over time. And there were couples' therapists who saw and understood that. So, Mr. Depp also attended a session with Dr. Connell Cowan with Ms. Heard. And in that session he was very belligerent and mean and yelling and

intimidating and even got up and stormed out, rolled a joint and then came back later. Dr. Connell Cowan's impression was this is somebody who's poorly controlled. That's the same thing that Dr. Laurel Anderson said about him. And he stormed out of one of those sessions, too. So, there were a total of six sessions, couple of sessions, but Mr. Depp stormed out of two of them.

So, there were only four couple sessions for these two individuals in this just highly volatile, highly damaging relationship that was punctuated by the coercive control and the intimate partner violence.

Elaine: What, if any observations did you make about Amber Heard's psychological status over that period?

Dr. Hughes: The record was very clear that her psychological status deteriorated as she was in the relationship with Mr. Depp. She kept getting worse. She was losing weight. By the end, she was down to it, I think 105 pounds from about a 125, 130, she was taking significantly more medication than she's ever taken in her life. She was having more panic, more anxiety, more distress, more affect dysregulation, just really an inability to regulate her mood, more anger outbursts. So, it can significantly deteriorate over time.

Elaine: You talked about weight. What if any diagnoses did Bonnie Jacobs make about Amber Heard having an eating disorder?

Dr. Hughes: There was no evidence in the record that Ms. Heard had an eating disorder.

Elaine: What, if any observations did you make about whether Dr. Cowan Connell thought she had an eating disorder?

Dr. Hughes: There was no indication in his record that she had an eating disorder.

Elaine: Okay. Now, what, if any observations did you make about the impact of Mr. Depp's substance abuse?

Dr. Hughes: So, the substance abuse was a very relevant, and complicating factor to this relationship. When you pair that level of substance abuse with the level of intimate partner violence and coercive control, it's a very, very disastrous mix. And one of the things that happens with the substance abuse is a very similar dynamic that happens with the intimate partner violence. That there's the lying, there's the hiding, there's the cheating, there's the obfuscation, the rationalization about the drinking, the rationalization about the violence,

the trying to promise I'm going to do better. I'm going to get clean and sober. I'm not going to hit you anymore.

Ben Chew: Objection, Your Honor. Can I be heard?

Judge Azcarate: You're gonna approach.

Elaine: What, if any, dynamics and coping styles are connected to the substance abuse by Mr. Depp?

Dr. Hughes: So, they share similarities. There's a lot of lying when somebody's a substance abuser, there's a lot of hiding. There's a lot of concealment, there's a lot of rationalization. There's a lot of blame. Blaming your partner for your inability to stay clean and sober. There's a lot of the promises to change and the promises to get better. So, a lot of these dynamics co-occur in a situation of substance abuse and domestic violence, they're very similar. The difficulty in this relationship was that the majority of the violent episodes and the sexually violent episodes were in these alcohol and drug-fueled rages. That was predominantly when those happened, when he wasn't in those stages, we still saw the obsessive jealousy and the coercive control and the possessiveness. That still persisted, but when the alcohol and the drugs came together is when Amber Heard was more in danger of being hurt by him.

Elaine: Why didn't Amber Heard leave the relationship sooner?

Dr. Hughes: Well, you know why she...

Ben Chew: Objection. Speculation, Your Honor.

Elaine: Based on your experience and based on your 29 hours of clinical evaluation of Amber Heard, what is your understanding of why Amber Heard didn't leave the relationship earlier?

Ben Chew: Objection, beyond the scope of the disclosure.

Elaine: It clearly is not. It's clearly in the disclosure. Point to where you say it's not. Point to where you say it's not. Your Honor, can we come forward? Now, you indicated that your main opinion was that Amber Heard's report of violence and abuse in her relationship with Mr. Depp is consistent with what is known as intimate partner violence, correct?

Dr. Hughes: That's correct.

Elaine: Okay. And why did you believe that Amber Heard, what formed your basis of that opinion in a nutshell?

Ben Chew: Asked and answered, Your Honor.

Judge Azcarate: Overruled. I'll allow it.

Dr. Hughes: The basis of the opinion was looking at all the dynamics in this relationship. Looking at not just the hitting and the yelling but looking at how much more hitting was done, looking at the coercive control, the obsessive jealousy, the possessiveness, the sexual violence, the choking behavior, the threats to kill. Those are all, as I stated, very significant and often found in cases of lethal domestic violence. Those were significant severity factors and looking at all those, that's what tipped the scales that even though she yelled and said some horrible things and hit him, it never was able to shift the balance of power and control in that relationship.

Elaine: Now, you have discussed with Amber Heard and you have reviewed and evaluated the emotional impact on Amber Heard as a result of emotional distress, as a result of the three counterclaim statements, correct? The three alleged defamatory statements made by Mr. Depp through Mr. Waldman, correct?

Dr. Hughes: That is correct.

Elaine: Okay.

Ben Chew: Objection, compound, leading.

Elaine: I just...

Judge Azcarate: Overruled. I'll allow it. Go ahead.

Elaine: Thank you. Could you please tell the jury what psychological impact these statements had on Amber Heard?

Dr. Hughes: Yes. So, there were three statements that I evaluated. May I check my notes to give you the dates and my recollection so that I can be clear?

Elaine: Since I couldn't put it in. This might be the fastest way, Your Honor. I just...

Judge Azcarate: I'd rather she not address the court.

Elaine: I'm sorry. I'm sorry. Yes, you can.

Dr. Hughes: Okay.

Elaine: Yes.

Dr. Hughes: So, there were three statements on April 8th, 2020, April 27th, 2020, and June 24th, 2020 that I queried her about and asked her

about. The one that what happens is if somebody who like Ms. Heard has trauma-based symptoms and PTSD, we say that PTSD is a Q-based disorder. There are things that happen in the environment that trigger it and make it worse and having to have to refute that your report of violence and abuse is a hoax makes that trauma activated. So, it makes the PTSD symptoms at that time become more intense and more severe. So, she would have more intrusive thoughts, more nightmares, more sleeplessness, more difficulty engaging with other people, depression, sadness, stress, all of that would happen when one of these statements came out. The one that was the most difficult was the one where they said that her sexual violence...

Ben Chew: Objection, Your Honor.

Dr. Hughes: ...was a hoax.

Judge Azcarate: What's the objection?

Ben Rottenborn: I think she's going to...

Judge Azcarate: I'll overrule the objection. Go ahead.

Elaine: Please continue.

Dr. Hughes: The one that was most difficult for Ms. Heard was the statement about calling her sexual violence a hoax. As I stated earlier, most women try very diligently to put that sexual violence in a box, bury it down, not wanna talk about it, not wanna have anything related to it come up and she's done, by my estimation in her coping, although she suffers from post-traumatic stress disorder, she also has a high degree of coping strategies. But when this would happen, everything would deteriorate. And this is the one thing that women are always afraid of that no one's going to believe them. No one's going to take them seriously. And when somebody comes out in the popular media and calls your experience a hoax, that lended itself to more severe psychological and traumatic symptomatology for her.

Elaine: Dr. Hughes, are all of your opinions that you have provided today within a reasonable degree of psychological probability or certainty?

Dr. Hughes: Yes, they are.

Elaine: Thank you. I have no further questions.

Judge Azcarate: All right. Ladies and gentlemen, I think this is a good time to go ahead and break for the day. We can have cross-examination and redirect tomorrow of this witness, Dr. Hughes. So, if you could have

a good evening do not discuss the case with anybody and don't do any outside research. Okay? And we'll see you in the morning. Thank you. Okay. All right. Dr. Hughes, since you're still in the middle of your testimony, please don't discuss your testimony with anybody, including the attorneys. Okay?

Dr. Hughes: Okay.

Judge Azcarate: And anything that you looked at reference during your direct examination, if you could just turn that over so they can review that before cross-examination. Okay? All right. Thank you, ma'am.

Elaine: Your Honor, may I just... I presume she wants to be able to take that back with her and review overnight.

Judge Azcarate: We can get copies of it. We'll get whatever it is.

Elaine: Okay. Great.

Judge Azcarate: We'll make sure you get copies of it, so you make sure you get copies of it so she can keep her originals. Okay?

Elaine: Yes. Thank you.

Judge Azcarate: All right.

Elaine: I have copies of everything that I want.

Ben Chew: [inaudible 04:25:26].

Elaine: Although that might...

Judge Azcarate: Well, no, no, no, no, no, no. We're not talking right now. Court is in session.

Elaine: Other than my question...

Judge Azcarate: Thank you.

Elaine: All right.

Judge Azcarate: So, anything else then? So, we'll see you tomorrow at 10:00 AM, correct? All right. Thank you. Have a good evening.