



1 MS. SAMSON: Diana Samson.

2 MS. ROTUNNO: Good morning, Donna Rotunno.

3 MR. CHERONIS: Good morning, Damon Cheronis.

4 MR. AIDALA: Good morning, Arthur Aidala.

5 MR. KAMINS: Good morning, Barry Kamins.

6 THE COURT: Thank you attorneys. We just had a  
7 bench conference about my prior written ruling from  
8 paragraph seven, my November 22nd, sorry, November 26, 2019  
9 degrees wherein starting on page nine addressing the notice  
10 of defendant's intent to illicit expert testimony.

11 On page nine I go into some of the fundamentals of  
12 expert testimony, and then on page 10 I write the Court  
13 therefore finds that the defendant has provided a  
14 sufficient foundation of general acceptance in the  
15 scientific community for a body of psychological research  
16 regarding the designation of the cognitive factors that  
17 pertain to memory.

18 Accordingly, the Court will permit expert  
19 testimony on the following subjects: The general operation  
20 of human memory, concluding how memory works, the three  
21 phases of memory: Acquisition, retention, and retrieval.  
22 Factors that are understood to influence or distort memory,  
23 including post event suggestion, acquisition error,  
24 interpretation errors, retention time, auto suggestion, and  
25 post event suggestion.

1                   The nature of motivational and suggested  
2                   influence, that can cause memory distortion, and on the  
3                   subject of whether memories of traumatic events are immune  
4                   from factors that decay or distort memories, whether  
5                   memories can be improved or enhanced over time, whether  
6                   memories that conjure up emotions are more likely to be  
7                   true and whether there exists a correlation between how  
8                   confident a person is in their memory and the accuracy of  
9                   that memory.

10                   I then go on to write in the next paragraph, on  
11                   the other hand, the defendant has failed to substantiate or  
12                   even make a preliminary showing that certain subjects and  
13                   opinions that they proffer for expert testimony regarding  
14                   memory are quote, generally accepted in the scientific  
15                   community, end quote, or supported by admission in other  
16                   courts.

17                   Of the only cases cited by defendant in support of  
18                   other areas regarding memory and perception are those that  
19                   in certain limited circumstances have permitted expert  
20                   opinion on the reliability of incriminating eyewitness  
21                   identification.

22                   The defendant has failed to cite any authority or  
23                   cases where an expert has been permitted to testify  
24                   regarding memory in a sexual assault case and failed to  
25                   provide a basis for the statement that such testimony is

1 routinely admitted in New York courts.

2 The People have in fact cited a plethora of cases  
3 which Doctor Davis, who I understand is not the expert that  
4 you are intending to call, was not permitted to testify in  
5 regard to her expert, expertise on memory usually on the  
6 grounds that such testimony would either serve to confuse  
7 the jury or that its unfair prejudice outweighed any  
8 probative value.

9 Indeed, the two proffered defense experts have  
10 themselves cast into doubt many of the subjects about which  
11 the defendant proposes that they testify in an article  
12 co-authored by Doctors Davis and Loftus.

13 They state that little memory research has  
14 directly addressed memory for sexual interactions and that  
15 we hope to provide a call to arms for memory researchers to  
16 dive into this complicated challenge yet vitally important  
17 arena.

18 Therefore, the Court will not allow testimony on  
19 the following subjects: Special issues of memories  
20 specifically for sexuality or potentially, potentially  
21 sexual interactions, including sexual consent  
22 communications, causes of original misunderstandings of  
23 sexual intentions and causes of distortion in sexual  
24 interactions.

25 The phenomena known as quote, voluntary unwanted

1 sex, end quote, responses to sexual assaults, including  
2 discussion of statistics regarding the frequency of  
3 reactions such as the failure to report, the late  
4 reporting, continuing contact with the allege perpetrator  
5 and the frequency of false reporting and methods of  
6 studying of such rates and why many rates obtained through  
7 such methods are unreliable and statistical analysis of the  
8 data upon which Dr. Ziv testimony relies.

9 Then it goes on about foundation that needs to be  
10 laid, which I am certain that you'll be able to lay with  
11 your proposed witness, Doctor Loftus.

12 So, it is my understanding you do not intend to  
13 abide by that ruling?

14 MS. SAMSON: No, I did not say that. What we are  
15 saying is that you have precluded any testimony from our  
16 experts on expertise related or opinions related to issues  
17 unique to sexual assault.

18 This expert is going to talk about memory and the  
19 operation of memory, and she's going to say that these  
20 operations of memories, these factors that cause decay and  
21 suggestion and bias, are relevant to all kinds of  
22 observations, interactions, all kinds of memory.

23 And so, I don't understand why you are  
24 specifically saying that she cannot speak to in  
25 hypotheticals or otherwise, sexual incidents like any other

1 incident, and say these incidents are vulnerable to these  
2 same factors.

3 We are not going into, you know that article that  
4 you mentioned that said this has not been looked into, I  
5 think what that article was about, was sociopsychological  
6 issues unique to sexual consent interactions, that is not  
7 something Doctor Loftus is going anywhere near.

8 She's only going to discuss the cognitive issues,  
9 and I do not understand why the jury cannot know that that  
10 is relevant to sexual assault and use of hypotheticals  
11 concerning sexual sex.

12 THE COURT: I don't understand what you are  
13 saying. You say you don't want your witness to go anywhere  
14 near the topic, and yet in the same breath, in the same  
15 sentence you say you don't understand why she should not be  
16 able to address it.

17 MS. SAMSON: I'm not going to have her talk about,  
18 you know, issues of sexual consent communications; the  
19 issues unique to sexual consent communications such as  
20 people often consent through acquiescence and not verbal  
21 cues or any of those sociological realities, you know, that  
22 experts have looked into. But she's an expert in that area  
23 she will not discuss that, she's simply going to discuss  
24 the cognitive factors that are brought to bear when one  
25 remembers events.

1                   This trial happens to be an event that involves  
2                   sexual interactions, so I do not understand why she cannot  
3                   talk about her expertise which you found to be  
4                   appropriately supported.

5                   THE COURT:     About memory.

6                   MS. SAMSON:    About memory in the context of any  
7                   kind of situation.

8                   I have a transcript here where she did just that  
9                   in a case of sexual abuse in a physical examination by a  
10                  doctor. So she has testified, you know, in that area many,  
11                  many times.

12                 THE COURT:   How is it your application right now  
13                 is not an end run around my instruction?

14                 MS. SAMSON:   Because I'm not asking her to talk  
15                 about rates, I'm not asking her to talk about  
16                 socio-psychological, you know, opinions about sexual  
17                 attraction. That is what Doctor Davis's specialty is.  
18                 Doctor Loftus's specialty is cognitive psychology, how the  
19                 brain works.

20                 THE COURT:   Let me ask this a different way since  
21                 that answer veers away from my question. What question do  
22                 you intend to ask and what answer do you plan on  
23                 eliciting?

24                 MS. SAMSON:   I wanted to ask her if the gist of a  
25                 memory.

1 THE COURT: You would actually say the gist?

2 MS. SAMSON: I was going to ask her can someone  
3 have, what is a gist memory. Can someone have a gist of  
4 something. She will explain what that is.

5 If the gist of a memory is a sexual interaction,  
6 can these factors that you have discussed influence how one  
7 remembers that interaction, that is all, that is the kind  
8 of thing.

9 THE COURT: Wait, you said that's all. Then you  
10 said that's the kind of thing, implying it is not all.

11 MS. SAMSON: I'm trying to think where else the  
12 word sex comes up. The other thing, I do want to state the  
13 objection on the record, we asked to be able to go into the  
14 data behind Dr. Ziv's testimony.

15 THE COURT: That is all preserved, why don't you  
16 focus on what we are discussing.

17 MS. SAMSON: I'm going to ask her about different  
18 hypothetical situations.

19 THE COURT: Involving sexual assault?

20 MS. SAMSON: No, if someone has a gist memory of  
21 sexual interaction, can that gist memory be informed by the  
22 factors that you discussed; time, decay over time, post  
23 event information, you know, confirmation biases, self  
24 esteem maintenance, all the thing brought to bear.

25 THE COURT: That is the question you want to ask,



1 not other questions?

2 MS. SAMSON: No.

3 THE COURT: The no seems --

4 MS. SAMSON: I'm not going to ask her about the  
5 phenomena of voluntary unwanted sex.

6 THE COURT: Lets go back a step. Name every  
7 question you intend to ask that includes the expression sex  
8 or sexual.

9 MS. SAMSON: I think there is one other area in  
10 here where I say does memory work the same way when you are  
11 remembering a robbery or a burglary or rape.

12 THE COURT: Okay, and as I told you previously,  
13 that is fine.

14 MS. SAMSON: Okay, and the other thing I said.

15 THE COURT: The gist memory.

16 MS. SAMSON: There was, I actually don't think I  
17 specified rape in here or sexual interaction, but it could  
18 be sexual, I do not think it should not be a sexual  
19 interaction. I ask her about, you know, if someone tells  
20 someone near in time to an event about the event, is the  
21 recipient of that information who then has that memory of  
22 that conversation years later also subject to the same  
23 factor.

24 THE COURT: You can certainly ask that question  
25 but not specifically in regards to a sexual assault. You

1 can then later connect it to, but --

2 MS. SAMSON: Later in the direct or later in the  
3 summation?

4 THE COURT: Well, presumably summation would be  
5 just fine. So all right, do not do an end run around my  
6 ruling.

7 MS. SAMSON: Judge, I didn't want you to think I  
8 was planning to.

9 THE COURT: You are making it like you are  
10 planning on doing exactly that. I'm just saying what you  
11 are making it sound like.

12 MS. SAMSON: I think we understand each other  
13 because you told me I can do those couple of things,  
14 correct?

15 THE COURT: Couple of things meaning two.

16 MS. SAMSON: Okay.

17 THE COURT: Because you have not told me anything  
18 else you want to do.

19 MS. SAMSON: Also there will be the issue of the  
20 prosecution opening the door if they go into matters.

21 THE COURT: Don't worry about them.

22 MS. ILLUZZI: Judge, so the term gist memory, I  
23 have not really inquired, I have not really come across  
24 within Loftus's literature. Are they talking about core  
25 memory that is stored in traumatic events, if that is what

1           it is.

2                         But a gist memory in my view that expression is  
3           making it sound like it is I guest the gist of it, like in  
4           other words, it is something I kind of sort of implied from  
5           a situation versus the core memory that you store in  
6           traumatic events.

7                         So we are objecting to that terminology, because  
8           that terminology is not a scientific expression and it is  
9           not something that is defined in the literature. So we  
10          understand and we appreciate the fact that there is  
11          literature on core memory and core memory stored and how it  
12          is stored in traumatic events, but gist memory is not  
13          something we understood this testimony to be about.

14                        MS. SAMSON: I'll ask Doctor Loftus if those are  
15          the same things if you have a problem with the word, but  
16          actually gist memory is actually in the literature.

17                        THE COURT: This witness as with all expert  
18          witnesses in this and every other case always runs the risk  
19          of the cross examination exposing the purported expert  
20          testimony to be, you know, hocus pocus, right.

21                        MS. SAMSON: I cannot imagine in this case.

22                        THE COURT: That was with regard to the so called  
23          gist memory. I'm not precluding you about eliciting gist  
24          memory, whatever it is.

25                        MS. SAMSON: May I speak to my witness for a

1 minute just so she knows the ruling.

2 THE COURT: I was going to say how did she not  
3 know.

4 MS. SAMSON: Because it is not even her area,  
5 again the area you precluded is not her area.

6 THE COURT: Kind of my point, now I'm feeling we  
7 are agreeing.

8 MS. SAMSON: I think we are on the same page, I  
9 just think her area --

10 THE COURT: Same page, different paragraphs.

11 MS. SAMSON: Maybe.

12 THE COURT: All right, I'm calling the jury in,  
13 if you want to tell her one thing or two things go ahead.

14 THE COURT: All right, jury entering.

15 COURT OFFICER: Jury entering.

16 ( Jury enters courtroom).

17 THE CLERK: Case on trial continues, all parties  
18 are present. Parties stipulate the jury is present and  
19 properly seated?

20 MS. ILLUZZI: Yes.

21 MR. AIDALA: Yes.

22 THE COURT: Welcome back jurors. Please call  
23 your next witness.

24 MS. SAMSON: The defense Doctor Elizabeth Loftus.

25 COURT OFFICER: Witness entering.

1 ( Witness enters courtroom and is sworn in).

2 COURT OFFICER: In a loud clear voice, give your  
3 full name.

4 A My name is Elizabeth Loftus, L. O. F. T. U. S.

5 COURT OFFICER: County of residence?

6 A I live in Orange County, California.

7 THE COURT: Do you want to put your bags  
8 somewhere?

9 A They are fine, your Honor.

10 THE COURT: Good morning and please listen  
11 carefully to the questions from Ms. Fabi Samson and answer  
12 her questions to the best of your ability.

13 Please answer them loudly, clearly, and slowly.  
14 Give full and complete responses to all her questions, but  
15 try not to volunteer information that goes beyond the  
16 specific questioned area.

17 On cross examination it is very likely Ms. Illuzzi  
18 will ask you questions also.

19 If and when she chooses to do so, give to her the  
20 same courtesy you're about to give to Ms. Samson.

21 If you are comfortable directing your responses  
22 directly to the jury, you may do that, otherwise, just  
23 respond to whomever is asking you questions at any given  
24 time.

25 If you are asked to handle or view or review

1 exhibit or items in evidence, you can do that upon the  
2 request of either attorney without further permission from  
3 the court, okay?

4 A Yes.

5 THE COURT: The microphone right in front of you  
6 really does not work that well, so try to speak loudly and  
7 directly into it, okay?

8 A Yes.

9 DIRECT EXAMINATION

10 BY MS. SAMSON:

11 Q Good morning Doctor Loftus?

12 A Good morning.

13 Q Can you tell the jury what your occupation is?

14 A Well, I'm a professor at the University of California,  
15 the Irvine campus. My title is distinguished professor.

16 Q Can you tell the jury what that means?

17 A When I was recruited as a distinguished professor by UC  
18 Irvine, it was a title that was given to the top professors, I  
19 think maybe one percent of the professors. I mean it is meant  
20 as an honor.

21 Q When did you begin teaching at UC Irvine?

22 A 2002.

23 Q Before that, did you teach elsewhere?

24 A Before that I was teaching at the University of  
25 Washington in Seattle.

1 Q Doctor, what do you teach at Irvine?

2 A Well, I'm a psychologist, an experimental psychologist  
3 and I teach one course called eyewitness testimony. Then I  
4 teach a graduate seminar for graduate students and law students  
5 called memory and the law. Those are my two primary courses  
6 right now.

7 Q Doctor, where did you obtain your education?

8 A Well, starting with college, I went to UCLA, I got a  
9 bachelors degree in mathematics and also in psychology, that was  
10 1966.

11 Then I went to Stanford, I received a Masters in  
12 psychology in 67. Followed by a PHD from Stanford in psychology  
13 in 1970.

14 Q Doctor, if I can mark your CV as a Defense Exhibit.

15 MR. AIDALA: Five C.

16 Q I would like to give you a copy, that might help us get  
17 through your resume.

18 ( Handed to witness).

19 Q Doctor, have you received any honorary degrees?

20 A I have received a number of honorary degrees.

21 Q Can you give the jury a couple of examples of those or  
22 would you rather me name them?

23 A No, I remember them. Well, I have received seven  
24 honorary doctorates from universities in the United States, in  
25 Norway, and England, in Israel, and I will receive my eighth

1 this year from the university in Australia.

2 Q Doctor, in particular, did you receive an honorary  
3 degree from the John J. College of Criminal Justice in New York?

4 A Yes, that was 1994, honorary doctor of laws.

5 Q Doctor, have you been retained to consult or work with  
6 various federal governments and law enforcement entities in your  
7 career?

8 A Many, yes. I consulted with the FBI, the CIA, the  
9 Secret Service, the IRS, and other government agencies.

10 Q Has your research been funded by government agencies?

11 A Well, for many, many years I received funding from  
12 mostly national agencies, the National Science Foundation or  
13 National Institute of Mental Health that funded a great deal of  
14 my scientific work.

15 Q That research, just to be clear, is in the field of  
16 memory, is that correct?

17 A Yes, human memory is my specialty within the area of  
18 psychology.

19 Q How long then have you been engaged in the study of  
20 memory?

21 A Well, I started studying memory while I was still a  
22 graduate student at Stanford. Once I finished my PHD and began  
23 my academic career, I changed my focus a little bit, but it was  
24 still the study of memory. But at least, well, since 1970,  
25 however long ago that was.



1 Q Have you written on the subject of memory recognition?

2 A Yes.

3 Q Perception?

4 A Yes.

5 Q And we will get into the specifics a little bit later.

6 But how many books and articles have you written on that subject  
7 generally or have touched on that subject?

8 A Well, I have published over 20 books, and maybe six  
9 hundred scientific articles and chapters, and the majority of  
10 them probably deal with the subject of memory.

11 Some of the books are even -- one is a text book used,  
12 that was used in college classes called human memory.

13 Q Okay doctor, also, in addition to the honorary degrees  
14 you received, you also received many honorary awards.

15 Can you give the jury an example of some of the ones  
16 you are most proud of. I know there are pages, can you  
17 highlight a few that maybe you are most proud of?

18 A Well, I suppose the one thing I'm most proud of is  
19 election to the National Academy of Sciences, which is an  
20 organization of scientists that advises the government and is a  
21 badge of honor; about the most prestigious thing that can happen  
22 to an American scientist in a field that does not have a Nobel  
23 Prize, and I was elected maybe 10 years ago.

24 But if I had to pick some of the other ones, I've got  
25 the top two awards from the Association for Psychological

1 Science, this is an organization of research and academic  
2 psychologists.

3 I've been given two awards from the American  
4 Psychological Association or American Psychological Foundation  
5 which is connected to it, one for life, I think both lifetime  
6 achievements.

7 I won the John Maddox prize for promoting sound science  
8 and evidence on a matter of public interest with perseverance  
9 and courage, that was--

10 Q That is impressive.

11 MS. ILLUZZI: Objection.

12 THE COURT: Sustained.

13 Q I see one here doctor I would like to mention, a  
14 periodical called the Review of General Psychology?

15 A Yes.

16 Q In 2002 that review had published a list of the hundred  
17 most eminent psychologists in the 20th century?

18 A Yes.

19 Q You were on that list?

20 A Yes.

21 Q You were the highest rated woman on the list?

22 A I was, yes.

23 Q Doctor, what kind of organizations do you belong to  
24 that you think the jury might be interested in knowing about?

25 A I belong to a number of professional organizations; the

1 Association for Psychological Science is one of them. That is  
2 the organization that I mentioned already that is devoted to  
3 research and academic psychology.

4 I was president of that organization one year. I'm a  
5 member of the Western Psychological Association which covers the  
6 western region of the United States; California, Oregon,  
7 Washington, probably Hawaii, maybe some other states are in that  
8 region.

9 I was president twice of that organization. I was  
10 president of a couple of other organizations like the American  
11 Psychology Law Society, I'm a member of the psychoeconomic P. S.  
12 Y. C. H. O. E. C. O. M. I. C society.

13 Q What is that doctor?

14 A That is the, that is a leading organization of research  
15 psychologists who do experimentation, study memory perception,  
16 decision making, judgment, and I'm now because of my age don't  
17 have to pay dues to that organization anymore, so.

18 Q Doctor, have you served or are you serving on editorial  
19 boards?

20 A Yes, over the years I served on many editorial boards,  
21 I'm still on a number of those editorial boards.

22 Q So doctor, I'm going to run through these quickly. You  
23 mentioned one, the psychology book already, in 76 you wrote a  
24 book on human memory, the processing of information?

25 A Yes.

1 Q In 1979 you wrote a book entitled cognitive processes  
2 which was about memory?

3 A I was a coauthor of that book. It was a text book for  
4 courses in cognitive psychology.

5 Q And in 1980 you were the author of a book on memory as  
6 well?

7 A Yes.

8 Q Was that a text book?

9 A No, that was a book called memory that was designed to  
10 communicate to a wider audience about what we know about memory.

11 Q And you have written a number of books on eyewitness  
12 testimony, is that correct?

13 A Yes.

14 Q And some of the books, you also written some books on  
15 repressed, this concept of recovered repressed memory, is that  
16 correct?

17 A One of my books is about that subject and many of the  
18 articles that, the scientific articles are about that subject.

19 Q Over the years, you've written hundreds of articles for  
20 publications and major journals in your field?

21 A Yes.

22 Q So doctor, what is your, if you could describe to the  
23 jury what is your field of study, what do you study?

24 A Well, within the field of psychology, I'm a cognitive  
25 psychologist and cognitive psychologist, study perception,

1 memory, thinking, problem solving, judgement, decision making,  
2 all the higher mental processes.

3 My specialty is human memory. Then within the field of  
4 human memory I tended to concentrate on studies of the  
5 malleability of memory, how our memories changed over time.

6 Q And did you pioneer research in this area something  
7 called the misinformation affect?

8 A I would say I'm probably best known for the work on the  
9 misinformation.

10 Q Tell the jury what that is?

11 A Yes, basically when people experience an event and  
12 later are exposed to some kind of new information about that  
13 event, particularly biased information or misleading  
14 information, that new information can become incorporated into  
15 memory and can cause a transformation of contamination of  
16 memory, and that is known as now in the text books as the  
17 misinformation affect.

18 Q So doctor, over the years, you have been called to  
19 testify in many cases regarding your expertise, is that correct?

20 A Yes.

21 Q How many times have you been qualified as an expert to  
22 testify in criminal and civil trials?

23 A I've testified in trials actually about three hundred  
24 times since the first time which was June 3, 1975.

25 Q These trials are civil and criminal, is that correct?

1           A     Yes, civil, criminal, every now and then a military  
2 court marshal.

3           Q     Have you testified in depositions as well?

4           A     Yes, but I was not referring to the depositions.

5           Q     You testified about how many times in depositions?

6           A     Oh, I would not even be able to estimate, maybe a  
7 hundred depositions, it is just an estimate.

8           Q     Can you give me an estimate of how often you have been  
9 called to consult in litigation, but not called to testify but  
10 asked to consult with one side or the other?

11          A     I've done a lot of consulting that does not lead to  
12 testimony for one reason or another.

13          Q     So doctor, although you have testified, although you  
14 testified that you worked with government agencies over the  
15 course of your career, how is it, is it true you often testify  
16 for defense rather than the prosecution in criminal cases?

17          A     In criminal cases I have been asked to consult with the  
18 prosecution about five or six times, but only actually testified  
19 at trial on one occasion.

20          Q     So in criminal cases you often testify for the defense?

21          A     That is correct.

22          Q     Why is that the case?

23                   MS. ILLUZZI:  Objection.

24                   THE COURT:  Sustained.

25          Q     Doctor, can you tell me what, so doctor, you have come

1 here today, let me go back.

2 Doctor, isn't it true that in criminal cases it is  
3 usually the prosecution that has a memory they are presenting to  
4 the jury to support their prosecution.

5 MS. ILLUZZI: Objection to that question.

6 THE COURT: Overruled. If you can answer that,  
7 or if you cannot answer it just say you cannot answer that  
8 the way she asked it.

9 A I understand the question, your Honor. So yes, it is  
10 often the prosecution that has a witness that you know, is being  
11 disputed by the defense or where the defense wants some  
12 understanding of that testimony.

13 Q And in that context, it would not be the prosecution  
14 who would be calling a memory expert to educate the jury how  
15 memory works, correct?

16 A Right.

17 Q So doctor, you are not here today to testify about the  
18 credibility or lack thereof of any witness in this case, is that  
19 correct?

20 A That is correct.

21 Q And we have not asked you to testify about that any  
22 particular memory is true or false or credible or mistaken, is  
23 that correct?

24 A That is correct.

25 Q We have simply asked you to explain to the jury how the

1 human memory operates and the factors, the nature of the process  
2 of remembering as a reconstructive process and the factors that  
3 can cause memory distortion over time, is that correct?

4 A That is correct.

5 MS. SAMSON: We ask Doctor Loftus be qualified as  
6 an expert and the factors that distort memory.

7 THE COURT: Any objection?

8 MS. ILLUZZI: I have brief voir dire.

9 THE COURT: Okay.

10 MS. ILLUZZI: Doctor Loftus, is it true you are  
11 not a medical doctor?

12 A That is correct.

13 MS. ILLUZZI: And is it also true doctor, that you  
14 do not treat victims of traumatic events; is that right?

15 A I don't treat them, I may study them but I do not treat  
16 anyone officially.

17 MS. ILLUZZI: You certainly then you don't weigh  
18 in on and evaluate options for treatment for real victims  
19 of traumatic events, right?

20 A Correct.

21 MS. ILLUZZI: Ms. Fabi just asked you about  
22 consulting. You testified in three hundred trials, is that  
23 correct?

24 A Approximately yes.

25 MS. ILLUZZI: And you consulted in a lot more than



1           that, is that correct?

2           A     Yes, because often or sometimes I don't testify.

3                     MS. ILLUZZI:  So approximately, just approximately  
4           doctor, how many times have you consulted in criminal  
5           cases?

6           A     I don't know, I can estimate, over the last 40 or more  
7           years, hundreds more times.

8                     MS. ILLUZZI:  Right.  So if you testified in three  
9           hundred, would you say maybe it was three times that amount  
10          that you consulted in criminal cases?

11          A     The reason I'm having trouble answering is sometimes I  
12          will get a call and I get these calls every week, and I might  
13          spend a half hour on the phone listening to a version of a  
14          case.  Is that consulting, or do you mean because I do that  
15          every week and then give some advice to the person about whether  
16          to pursue it with me or someone else?

17                     MS. ILLUZZI:  Have you ever got one of the calls  
18          from the Manhattan District Attorney's Office?

19          A     I may have, I just don't remember.

20                     MS. ILLUZZI:  You don't remember ever getting a  
21          call one time from the Manhattan District Attorney's  
22          Office, is that correct.

23                     MS. SAMSON:  Objection.

24                     THE COURT:  Overruled.

25                     MS. ILLUZZI:  Not one single time?

1 MS. SAMSON: Objection, that misinterprets what  
2 she said.

3 THE COURT: Overruled. Doctor, if you have any  
4 trouble answering these questions, just say so or just  
5 don't answer them and look at me.

6 A Okay, I don't recall a time, but I have consulted with  
7 prosecutors on a few occasions and I just don't remember if  
8 there were any from New York.

9 MS. ILLUZZI: What percentage of all the  
10 consulting you have done have been for any prosecution  
11 entity?

12 A Well, I only remember consulting about five or six  
13 times for prosecutors.

14 MS. ILLUZZI: Out of maybe a thousand other  
15 consulting requests, is that correct?

16 A Maybe.

17 MS. ILLUZZI: Nothing further, no objection.

18 THE COURT: Doctor Loftus is qualified in the  
19 area proffered. Next question.

20 Q Doctor Loftus, you have a PHD which is a doctorate in  
21 psychology, is that correct?

22 A Yes I do.

23 Q Okay doctor, is there a commonly accepted understanding  
24 about how memory works?

25 A There is a common understanding that memory does not

1 work like a video recorder. We don't just record the event and  
2 then play it back later.

3 The process is much more complex, and we tend to divide  
4 that process into three major stages, and if I could just  
5 illustrate that, your Honor, in some way, it might be helpful to  
6 the jury.

7 Q While you are coming here to use the elmo, I want to  
8 ask you one other question. So Doctor Loftus, when you  
9 testified in this subject area, you testified the same way no  
10 matter who calls you to testify, isn't that correct?

11 A Well, the science does not change.

12 THE COURT: We are getting her the microphone.

13 A To repeat, the science does not change depending on who  
14 is asking the questions.

15 Q So Doctor Loftus, you wanted to do a visual drawing to  
16 help explain how a memory works.

17 A So, I'm not use to this but will give it a try. We  
18 divide the process into three major stages. So first some event  
19 occurs and we call this the acquisition stage; some information  
20 may be laid down in memory during this time, sorry for my back.

21 Then time passes, we call this the retention stage.  
22 Then finally somebody might tell what happened, answer questions  
23 about what happened, give testimony about what happened, in  
24 other words they are retrieving information about what happened,  
25 so we call this the retrieval stage.

1           And our job then as scientists in memory is to identify  
2 the factors that come into play at each of these three stages  
3 that affect the accuracy of what somebody is remembering or  
4 retrieving.

5           Q     Doctor Loftus, so for a single memory, can that  
6 retention retrieval, can those stages repeat themselves say over  
7 a lifetime so a memory is recalled once then dormant then  
8 recalled again, does that happen with the memory?

9           A     Yes. If they are -- in the real world people do not  
10 usually retrieve something just once. If they have seen for  
11 example a bank robbery, they might answer questions when the  
12 police come to the scene, that is an active retrieval.

13                     Later they may answer questions at a police station,  
14 that is another act of retrieval, later they may --

15           Q     Tell a friend?

16           A     Go to a line-up or testify at trial or tell friends, so  
17 things are different acts of retrieval.

18           Q     So, as you said, your job as a memory scientist is to  
19 understand what is going on at each of these stages, is that  
20 correct?

21           A     Correct.

22           Q     And just before we go into those factors that influence  
23 what happens to a memory at each of the stages, I want to be  
24 clear what we are talking about.

25                     When you say a memory, is this, does this science apply

1 to only certain kinds of memories?

2 A I hate to have my back --

3 Q Are you going to write some more?

4 MS. ILLUZZI: We can move this, one second, would  
5 that help?

6 A Yes that is excellent, thank you.

7 Q Doctor Loftus, that is better. So Doctor Loftus, I'm  
8 trying to clarify, when we talk about a memory, is this science  
9 you are going to expound upon, is it relevant to all kinds of  
10 memories?

11 A Yes.

12 Q So, does it apply to memories of conversations?

13 A Memories of events, memories of the details of events,  
14 memories of conversations that went on during events.

15 Q You studied eyewitness recollections, but this science  
16 applies to memories of events in which the remember is a part of  
17 the event too, correct?

18 A Well, sometimes they of course are watching films of  
19 crimes or films of accidents. Sometimes the research  
20 participants are actually engaging in events, then they have to,  
21 we study how they remember those events.

22 In one example of that is several studies that we  
23 published on individuals who are participating in survival  
24 school. They are learning what it is going to be like as  
25 soldiers if they are captured as prisoners of war and they go

1 through some extremely harrowing experience, those are the  
2 events, and we study their memory for the details of those  
3 events. The individual who tormented them and what he looked  
4 like, that is an example.

5 Q What did you find, what was some of the results of  
6 that?

7 A Even these trained soldiers are susceptible.

8 Q We will get into that. Their memories were  
9 disorientated, is that would you found?

10 A Or not always accurate and identifying the wrong  
11 person, misremembering details, especially when it was highly  
12 stressful.

13 Q So doctor, let's talk about each stage and the factors  
14 that come into play at each stage.

15 What are some of the factors that could influence the  
16 accuracy of the memory as you acquire it, your, the acquisition  
17 stage?

18 A Well, at this acquisition stage there are some obvious  
19 things that, you know, how good is the lighting, how far away  
20 someone is, how far away the distance.

21 The state of the witness can sometimes matter; whether  
22 they are under the influence of any substances for example.

23 Q So, can I ask the witness, let me stop you there. Are  
24 you saying specifically what specific drugs or --

25 A There has been a lot of work on alcohol.

1 Q What have you found?

2 A For some of these studies show that alcohol can impair  
3 the formation, the acquisition of information and lead to a less  
4 complete memory, or even an inaccurate memory, and can sometimes  
5 be associated with greater susceptibility to contamination.

6 There is some recent work that shows the affects of  
7 alcohol are somewhat smaller than people previously thought, but  
8 which I should mention, but alcohol would be, you know --

9 Q I was going to ask you, are there any drugs that have  
10 been found to impair memory formation?

11 A There --

12 Q Prescription drugs?

13 A A specific, well Valium for example is another one that  
14 has been found to affect acquisition.

15 Q What about marijuana, is marijuana --

16 A Yes, marijuana can affect your memory. We are going to  
17 publish a paper on this in a week or maybe this week and can  
18 lead to greater susceptibility to contamination.

19 Q Does that mean that the memory in the first instance is  
20 maybe fragile, is that why?

21 A Anything that leads to sort of a weaker original memory  
22 makes it a little more susceptible or sometimes a lot more  
23 susceptible to contamination.

24 Q So, if someone misinterprets something in the formation  
25 of a memory, could that affect the accuracy of the acquisition

1 stage?

2 A Well I guess it would depend when the misinterpretation  
3 happened; if it was right at the time we call it an acquisition  
4 factor. If it was a little bit later that the interpretation  
5 was engaged in, you might move it into the retention stage. If  
6 it is a little after the event and it is a reinterpretation --

7 Q So for example, I'm trying to think of an example. For  
8 in a, maybe a conversation, if one misunderstands the  
9 conversation, one might then have an acquisition error about the  
10 conversation?

11 A Right. Well, if you misunderstand what somebody is  
12 trying to say and then you remember your own understanding which  
13 was mistaken --

14 Q That is an --

15 THE COURT: Ms. Samson.

16 MS. SAMSON: I have to stop doing that.

17 A Then that would be an acquisition, something happening  
18 at acquisition that would affect the accuracy what is stored at  
19 the time of the event.

20 Q Okay, what about an acquisition, a misinterpretation of  
21 an event, can that occur also?

22 A Well that can occur anywhere.

23 THE COURT: Should the witness be seated?

24 Q Do you have other things you want to --

25 A Only when it comes to the retention factor, if you can



1 move to that.

2 Q I think we are almost there.

3 THE COURT: It is up on the board, it is up on  
4 there. Why don't you resume your seat. Why doesn't she  
5 continue to use that since it is working better.

6 Q One last factor that I would like to discuss with you.  
7 How does stress or emotional education affect the acquisition  
8 phase of memory?

9 A It really is going to depend on how much stress there  
10 is. If you have a little bit of arousal that might make you  
11 alert. As we go from waking up in the morning to getting a  
12 little bit more aroused, you might actually perform better from  
13 a cognitive or memory point of view.

14 But when you then get extreme levels of stress and  
15 fright, it can impair your memory, particularly for peripheral  
16 details.

17 Q Doctor, lets move to the retention phase of the memory  
18 process. When you, the memory is not being accessed by your  
19 brain, it is in there, somewhere in some state. What is the  
20 major factor that affects that phase of memory?

21 A Your Honor, this would be one point where it might be  
22 helpful to the jury if I can draw. I don't know if I can draw  
23 on this.

24 THE COURT: Go ahead.

25 A It does not take a PHD to know that memory fades over

1 time.

2           If I were to draw a typical curve where on this access  
3 I draw memory, and this is good memory, high levels of memory,  
4 down here we have poor memory, and on this horizontal access,  
5 time is passing in this retention interval, and a typical  
6 forgetting curve might look something like this, where memory is  
7 decaying at some point, it might reach a level off and that is a  
8 typical forgetting curve.

9           Not every forgetting curve has this same shape. While  
10 this is something that might be a matter of some common sense,  
11 what is not so much a matter of common sense, as time is passing  
12 and the memory is getting weaker and weaker, it becomes more  
13 vulnerable to post event information we sometimes just  
14 abbreviate PEI, post event information.

15           So if you supply somebody with some post event  
16 information soon after an event, you may get some people who are  
17 susceptible to it. But as time is passing you have more and  
18 more people susceptible to it.

19           Q     So, when we are talking about that time, the access,  
20 what kind of time will have significant impacts on that curve,  
21 would a week make a difference in terms --

22           A     It depends. Excuse me for interrupting. It depends on  
23 the detail.

24           In one study the event we showed was a traffic  
25 accident, a simulated traffic accident where a car goes through

1 an intersection with a yield sign and then we expose people to  
2 misinformation that it was a stop sign, and many of our  
3 witnesses said I remember seeing a stop sign.

4 But they are more likely to accept that misinformation  
5 when the memory has faded and a week was enough time where we  
6 found about 80 percent of our people were choosing the stop sign  
7 instead of the yield sign.

8 That is an example of how the passage of time, in that  
9 case it was a week. But for that particular detail, that was  
10 enough to make this memory week enough that it was particularly  
11 vulnerable to contamination.

12 (Continued on next page)

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1 (Continued from the previous page.)

2 Q So, Doctor, would five years be a large increment of  
3 time for a memory to enter that retention phase?

4 THE COURT: So it looks like the doctor is  
5 finished drawing for the time being.

6 MS. FABI SAMSON: Yes.

7 THE COURT: Doctor, resume the stand.

8 (Witness resumes the stand.)

9 THE WITNESS: Five years is quite a long time  
10 for -- where there would be significant memory decay.

11 Q And what about 15 years?

12 A Well, in general, the longer the period of time -- I  
13 mean, at some point -- at some point, these forgetting curves,  
14 as you can see in this drawing, might reach an asymptote. And  
15 people are, you know, remembering a story, maybe after ten  
16 years and sort of sticking with the same story after 15 years.

17 Q So then at 27 years --

18 A Well, that's -- that's an extraordinarily long period  
19 of time where there can be substantial fading of memory.

20 Q So let's talk about -- one last thing about that, this  
21 forgetting curve, this phenomenon is something that applies to  
22 everybody's memory, is that correct?

23 This is a human phenomenon that's a part of what  
24 memory is?

25 A Exactly. It would apply to virtually all of us.

1           Q     Is there any evidence that memories get stronger and  
2 go against this forgetting curve?

3           A     Well, there are examples where people can remember  
4 something that they hadn't thought about for a long time.  If  
5 you get a retrieval cue, you could be reminded of something  
6 that you haven't thought about for a long time, even something  
7 unpleasant that you haven't talked about for a long time.

8                     You just have to go to a high school reunion.  You can  
9 experience that for yourself but that's not exactly an  
10 improvement in memory, it's being reminded of something.

11          Q     So let's talk about some post event information  
12 examples, the kinds of things that will distort memory during  
13 this period.

14                     Can you explain to the jury what auto suggestion is?

15          A     Well, before that, there are other examples of  
16 suggestion that --

17          Q     You would rather do a different one first?

18          A     Which is where I thought you were going with that  
19 question because we have supplied post event information by  
20 allowing people to hear another witness's version of an event  
21 that contains mis-information.

22                     We have supplied mis-information by asking leading  
23 questions of a witness.

24                     We have supplied mis-information by exposing people to  
25 media coverage about an event.

1           These are all ways in which post event information can  
2 became available to somebody that can cause a contamination, an  
3 alteration in memory.

4           Q     And then when they are called to recount their memory,  
5 what is something else that will come to bear on their  
6 recollection, that memory?

7           A     Well, the post event mis-information, that can come in  
8 a variety of forms. Generally, it has a negative affect. It  
9 contaminates memory, transforms it, sometimes it just  
10 supplements it. You can supplement memory with post event true  
11 information.

12          Q     Right. But I am asking now about, so, if someone is  
13 -- if someone has been exposed to media coverage of something  
14 that relates to an un-event in their memory, you are saying  
15 that that has a possibility to distort that person's memory?

16          A     Yes.

17          Q     And if they are exposed to an enormous amount of media  
18 coverage along that timeline, does that increase the  
19 possibility that that form of post event information can cause  
20 actual changes in the memory?

21          A     There are studies that show that repeated post event  
22 information can have an even stronger effect.

23          Q     And if, if someone then decides to interact with law  
24 enforcement, you just discussed that there are possibilities  
25 for distortions in that interaction, is that correct?

1           A     There are possibilities. I mean, sometimes in  
2 interviews or interactions with law enforcement, leading  
3 questions are asked that can have a distorting affect on a  
4 witness's memory, even if they are being asked, you know,  
5 innocently by someone maybe who has a hypothesis about what  
6 happened and might communicate that.

7                     Those are opportunities for post event information to  
8 become available and to have this kind of contaminating effect.

9           Q     And what -- so, now, to my question earlier, in that  
10 situation how does auto suggestion -- what is auto suggestion  
11 and how does that come to bear on the retrieval of the memory?

12           A     So what sometimes happens is people draw inferences  
13 about what might have happened or could have happened or  
14 possibly happened or they guess about what happened and  
15 sometimes those inferences or thoughts can act like post event  
16 information and you can distort your own memory.

17                     That is -- that is called auto suggestion. When there  
18 is no external insinuation but you are in some sense doing it  
19 to yourself.

20           Q     Because maybe -- would it happen, maybe, if you were  
21 trying to remember parts of something that you don't remember?

22           A     Well, that's one way it could happen. If you are  
23 being urged to remember more or for some reason you come to  
24 believe you have to remember more in trying to produce more to  
25 satisfy that situation, you may produce, you know, something

1 like a guess or a thought and that then can start to feel like  
2 it's a memory.

3 Q And so, for example, Doctor, if one feels that one  
4 needs to come up with a memory that is sufficient to support a  
5 criminal prosecution --

6 MS. ILLUZZI: Objection.

7 THE COURT: Finish the sentence.

8 Q If someone is trying to remember something to support  
9 a criminal prosecution, is that motivation something that could  
10 cause them to fill in the gaps of their memory in a way that  
11 causes distortion?

12 MS. ILLUZZI: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: Well, that certainly might be a  
15 motivation for some people. I have seen other situations  
16 where people are motivated to want to try to remember more  
17 and it has lead to filling in the gaps of an ambiguous or  
18 weakened memory with details that then start to feel like  
19 memories.

20 BY MS. FABI SAMSON:

21 Q And another example of auto suggestion, Dr. Loftus,  
22 can you explain to the jury what prestige enhancing memory  
23 distortion is?

24 A Well, I think these are examples -- are possibly  
25 examples of auto suggestion. We have as humans, many of us,



1 prestige enhancing memory distortions.

2           There are studies that show people remember their  
3 grades were better than they really were; they remember they  
4 gave more to charity than they really did; they remember they  
5 voted in elections that they didn't vote in; they remember  
6 their kids walked and talked at an earlier age than they really  
7 did.

8           These are prestige enhancing memory distortions that  
9 allow us to feel better about ourselves.

10         Q     So, Doctor, if someone is trying to remember an event  
11 that they were involved in, and they don't have a very good  
12 memory of it, they might want to remember it in a way that  
13 makes them feel better about themselves?

14           Is that what this prestige enhancing impulse is?

15         A     That's a good way to say it, yes.

16         Q     So another example I would like you to talk about,  
17 Doctor, is the possibility that therapy could create an  
18 environment where memory distortion can occur.

19           Can you hear me?

20         A     I was trying to get your mouth closer to the  
21 microphone.

22         Q     So does therapy create a situation where, um, people  
23 um -- if someone goes to a therapist to remember an event from  
24 long ago, does that -- does the therapeutic setting create  
25 possibilities for memory distortion?

1 MS. ILLUZZI: Objection, Judge.

2 THE COURT: Sustained as you conflated a couple  
3 of questions there.

4 You can ask all of those questions, distinctly  
5 from each other.

6 MS. FABI SAMSON: Okay.

7 Q So does the therapeutic setting create a possibility  
8 -- a situation where memory can be distorted in a case where  
9 someone is having trouble remembering something?

10 MS. ILLUZZI: Objection, Judge.

11 THE COURT: Sustained for the same reason.

12 Q Has therapy been found to cause memory distortion?

13 A Certain kinds of therapeutic processes definitely,  
14 yes.

15 Q And what kinds have definitely --

16 MS. ILLUZZI: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: Well --

19 THE COURT: Go ahead.

20 THE WITNESS: In the cases that I have written  
21 about and studied and analyzed, sometimes people go into  
22 therapy with one problem and the therapist will say  
23 something like that most people with your problem were  
24 sexually abused as a child, maybe something like that  
25 happened to you.

1 MS. ILLUZZI: Objection. Objection.

2 May we approach, Judge?

3 THE COURT: No. Sustained. Stricken.

4 BY MS. FABI SAMSON:

5 Q Um, so, Doctor, what you are saying is that if the --  
6 if a therapist provides --

7 THE COURT: Hold on. Ask her what she is saying.

8 Q Doctor, using a different example, can you describe  
9 that phenomenon?

10 A Well, what has happened in some -- there is plenty of  
11 very good therapy. But in some therapy techniques are used  
12 like guided imagination, trying to get people to imagine  
13 experiences. And then those imaginations sometimes turn into  
14 what feels like a memory; or they use dream interpretation that  
15 is misleading or they supply information to their patients that  
16 might be misleading or they pressure their patients for more  
17 and more detail and the patients feel a pressure to comply.

18 MS. ILLUZZI: Objection, Judge.

19 THE COURT: Overruled.

20 Q Is it your experience that therapy can help someone  
21 remember something better --

22 A Well --

23 Q -- or more accurately?

24 A I know that the hypnotherapists believe that hypnosis  
25 can --

1 MS. ILLUZZI: Objection.

2 THE COURT: Sustained as to hypnotherapy, Doctor.

3 Next question.

4 BY MS. FABI SAMSON:

5 Q Do you believe based upon your research and  
6 understanding of memory that therapy can make someone remember  
7 something more accurately?

8 A I would not use the term, more accurately. Pressure  
9 to produce information in therapy or in some setting can lead  
10 people to want to produce information, details to be helpful  
11 and cooperative. And those details, some of the details might  
12 be true and accurate, some of them may be false and inaccurate.

13 MS. ILLUZZI: Objection, Judge.

14 THE COURT: Overruled.

15 Q And then, Doctor, just recounting a memory with  
16 friends, is that a situation where, um, one's memory is  
17 actually exposed to possibilities for distortion?

18 A It can. Especially if you have two people who both  
19 experienced, witnessed an event and one of them in a  
20 conversation can later supply mis-information to the other,  
21 even accidentally.

22 Q If someone characterizes an event in one way at one  
23 time, say characterizes a meeting as pleasant and --

24 THE COURT: Sustained.

25 Q If someone characterizes an event, a meeting one way

1 at one time and then later much differently, is that a  
2 situation where it's possible that their memory has changed as  
3 a result of the factors that we have discussed?

4 MS. ILLUZZI: Objection, Judge.

5 THE COURT: Overruled.

6 THE WITNESS: Well, when you see a change in  
7 somebody's memory -- I mean, sometimes, of course, it might  
8 be forgotten and they remembered something later, they  
9 don't.

10 But when you see a change in somebody's memory,  
11 then one of the things that we look for is is there some  
12 post event information that could be responsible for that  
13 change.

14 Q And, um, Doctor, can you explain to the jury what rich  
15 false memories are?

16 THE COURT: I am sorry.

17 MS. FABI SAMSON: Rich false memories.

18 THE WITNESS: Yes. I mentioned an example where  
19 we can make people believe that the car went through a stop  
20 sign instead of a yield sign. We can make people believe  
21 that a thief, perpetrator, was wearing a brown jacket when  
22 it was really a green jacket.

23 Here we are changing memory for the details of an  
24 event that actually did happen, that actually was  
25 experienced and I discuss that in the context of the

1 mis-information effect -- but you can go even further with  
2 people.

3 You can plant entire events into the minds of  
4 otherwise ordinary, healthy people.

5 MS. ILLUZZI: Objection, Judge. May we approach  
6 on this, please?

7 THE COURT: Overruled. No.

8 MS. ILLUZZI: The People object.

9 BY MS. FABI SAMSON:

10 Q Can you give some examples of upsetting things that  
11 have been implanted in your research?

12 A Well, yes. The first study to demonstrate rich false  
13 memories was one where we did -- we planted a false memory in  
14 adults that as a child you were lost in a shopping mall for an  
15 extended time. You were frightened, crying and, ultimately,  
16 rescued by an elderly person and reunited with the family.

17 MS. ILLUZZI: Objection, Judge. Objection.

18 THE COURT: Overruled. Move on, though.

19 A After this, other investigators --

20 THE COURT: Hold on. She will ask a different  
21 question.

22 Q Doctor, this research you have done that it shows that  
23 people are receptive to completely false memories --

24 MS. ILLUZZI: Objection.

25 THE COURT: Sustained.

1 Q Okay, Doctor, I would like to ask you about a certain  
2 myths or common maybe misunderstandings about memory.

3 Is it true, Doctor that a traumatic event if it's  
4 really a traumatic event at the time, is indelibly imprinted in  
5 one's memory?

6 A No.

7 Q What is the -- what is true about an actually  
8 traumatic event at the time?

9 A Well, if something traumatic happens, oftentimes  
10 people will remember, you know, the core of the event and maybe  
11 some core details. The peripheral details can suffer.

12 But even traumatic events follow similar loss to  
13 non-traumatic ones. They can fade over time. They can be  
14 susceptible to post event contamination.

15 And that was illustrated even in the study that we did  
16 with the soldiers who were going to survival school where we  
17 were able to plant false information into the minds of these  
18 soldiers even though the event itself was traumatic.

19 Q And can an event be not traumatic -- can an event that  
20 is not traumatic be viewed with trauma at a later time?

21 MS. ILLUZZI: Objection.

22 Q Can an event -- I am sorry.

23 MS. FABI SAMSON: Can I ask a different question?

24 THE COURT: Yes.

25 Q Can an event that was not traumatic at the time be

1 considered traumatic later by the rememberer?

2 A I have seen situations where when you label something  
3 as -- for example, as a fight, as opposed to an incident, you  
4 can get people to remember, reconstruct the event as more fight  
5 like and more aggressive.

6 A recent study done in England shows that if you  
7 doctor photographs of an event you can get people to remember  
8 it as more hostile and aggressive.

9 So you can change people's feelings about an event by  
10 supplying post event information.

11 Q And, Doctor, you touched upon this, but is this  
12 phenomenon that you are describing, is it called relabeling or  
13 is that something else?

14 A We -- labeling is -- labeling is a word that has been  
15 used. If you label something in a particular way you can  
16 distort memory of that item.

17 One of the old classic examples from the 1930s is  
18 people saw an ambiguous figure that looked like this and if you  
19 labeled it eyeglasses and asked people to then draw it, you get  
20 something that looks like eyeglasses. But if you label it  
21 barbells you get something that looks a little different.

22 That was one of the early old studies that shows that  
23 labeling something can affect the way people remember that  
24 item.

25 Q Doctor, is it true that if a memory is vivid with lots



1 of details than it is must be true or accurate?

2 A No, that's not true because false memories, once  
3 created either through mis-information or through the  
4 suggestive processes, that lead to big false memories. They  
5 can be experienced with a great deal of emotion, a great deal  
6 of confidence and a lot of detail even though they are false.

7 And, of course, true memories have those same  
8 characteristics.

9 Q And, Doctor, is it true that a memory that is  
10 recounted with strong emotion, crying and grief, is it true or  
11 false -- is it true that that memory is more likely to be true  
12 because the person is experiencing emotion?

13 A Well, all I can say is there are several studies that  
14 show that false memory can be expressed with a great deal of  
15 emotion.

16 So that means the emotion is no guarantee that you are  
17 dealing with an authentic memory.

18 Q And then, Doctor, is there any correlation between  
19 after -- the confidence a person has in their recollection of  
20 something and the accuracy of the recollection?

21 A Well, for a long time psychologists described the  
22 relationship between confidence and accuracy as, maybe,  
23 weakish, weaker than people think.

24 There is now some new evidence that shows that under  
25 pristine conditions, perfect viewing and interviewing

1 conditions, there may be a correlation between confidence and  
2 accuracy. But you would want conditions where there wasn't a  
3 huge long delay and there wasn't a lot of post event  
4 information.

5 Really clean conditions, then you might -- you --  
6 there are at least several studies that show you can see a  
7 positive correlation between confidence and accuracy.

8 Q So are you saying that where there is post event  
9 information, that would increase confidence and that would  
10 increase confidence in an un-warranted way?

11 MS. ILLUZZI: Objection.

12 THE COURT: Sustained because I didn't understand  
13 the question.

14 Q I am asking if, um, in a case where there has been  
15 post event information over time, is -- can the confidence --  
16 can the high confidence come from the very factors that have  
17 distorted the memory?

18 A Let me answer that by sticking to a series of studies  
19 that can demonstrate what happens to confidence when post event  
20 information is given. There are a number of studies that show  
21 that when, for example, somebody goes to a lineup after  
22 witnessing a robbery and tries to identify the perpetrator,  
23 perhaps picks a person in the lineup and says, that's who I  
24 think it is, if you give that witness feedback, good job, big  
25 smile, that's our suspect, some kind of feedback, it

1 artificially inflates the confidence level of the witness.

2           They got made more confident because of that new  
3 information and that can completely disrupt a relationship  
4 between confidence and accuracy that might have existed  
5 otherwise.

6           Q     So, Doctor, what happens when many of these factors  
7 that we discussed here this morning, you know, occur in  
8 confluence of one circumstance, one prosecution?

9           You have all of these factors present, what is the  
10 likelihood that the memories will be affected?

11           MS. ILLUZZI:  Objection.

12           THE COURT:  Sustained as to the many forms of  
13 that question.

14 BY MS. FABI SAMSON:

15           Q     So, Doctor, when you have many of those factors, is it  
16 more likely that the memories that result from them will be  
17 inaccurate?

18           MS. ILLUZZI:  Objection.

19           THE COURT:  Overruled.

20           THE WITNESS:  If you have multiple problematic  
21 factors in some given situation, compared to a single  
22 problematic factor, it's just going to compound the  
23 problem.

24           MS. FABI SAMSON:  One minute, please.

25           Q     And, Doctor, just one last question.

1           Are all of your opinions based on reasonable degree of  
2 medical certainty?

3           A     Well, I am not a medical doctor so I wouldn't want  
4 to --

5           Q     You would say a scientific certainty based on your  
6 expertise?

7           A     Yeah, I would say, yes.

8           Q     And your understanding of the operation of memory?

9           A     Yes.

10          Q     Thank you, Doctor.

11                   THE COURT: All right, Doctor. We are going to  
12 take about a 15 minute break.

13                   If you would be good enough to wait in the  
14 witness room and we will see you here in about 15 minutes.

15                   You may step down.

16                   THE WITNESS: Thank you.

17                   THE COURT: Thank you.

18                   (Witness is excused.)

19                   THE COURT: All right, Jurors. We will take a 15  
20 minute break. Please remain mindful of all of my prior  
21 admonitions and instructions during this or any other  
22 recess.

23                   Keep an open mind. Do not form an opinion as to  
24 the guilt or innocence of the defendant. Do not discuss  
25 this case among yourselves or with anyone else nor allow

1 anyone to discuss it in your presence.

2 See you back who here in about 15 minutes. Thank  
3 you.

4 (The jury exited the courtroom and the  
5 following occurred:)

6 THE COURT: Okay, 15 minutes. Thank you.

7 (Short recess taken.)

8 THE COURT: All right. Ready?

9 MS. ILLUZZI: Yes. Thank you.

10 THE COURT: All right. Come to order.

11 All right. Let's see if the Jury is ready.

12 COURT OFFICER: Jury entering.

13 (The jury entered the courtroom and the  
14 following occurred:)

15 THE CLERK: Case on trial continues. All parties  
16 are present.

17 Do the parties stipulate that the jury is present  
18 and properly seated? The People.

19 MS. ILLUZZI: Yes.

20 THE COURT: The defense.

21 MS. FABI SAMSON: Yes.

22 THE COURT: Welcome back, Jurors.

23 ADA Illuzzi. Yes, witness is coming.

24 COURT OFFICER: Witness entering.

25 (Witness was entered.)

1 THE COURT: All right. Welcome back, Doctor.  
2 Take your time settling in there and I just remind you that  
3 the time same rules apply and you are still under oath.

4 And, Ms. Illuzzi, once Dr. Loftus looks like she  
5 is settled in, you may begin your inquiry.

6 MS. ILLUZZI: Thank you.

7 CROSS-EXAMINATION

8 BY MS. ILLUZZI:

9 Q Dr. Loftus, when were you asked by the defense to  
10 participate in this trial?

11 A Possibly -- well, last year sometime for sure.

12 Q And do you remember who you were contacted by?

13 A It would be an attorney.

14 Q Was it one of the attorneys sitting there?

15 A Well, it was over the phone so.

16 Q Was it a man or a woman?

17 A I believe it might have been Damon and I don't want to  
18 mispronounce his last name.

19 Q Okay. And at that time were you asked to merely  
20 consult on the case at first?

21 MS. FABI SAMSON: I am going to object to this,  
22 Judge.

23 THE COURT: Overruled.

24 THE WITNESS: I don't remember what I was asked  
25 exactly.

1 Q Was that due to post mis-information, Doctor?

2 A Well, it probably was.

3 MS. FABI SAMSON: Objection.

4 A It probably was nine months ago.

5 THE COURT: Sustained.

6 Q And moving on then, was there some point when you were  
7 asked if you would provide expert testimony here at trial?

8 A I think that happened later.

9 Q When?

10 MS. FABI SAMSON: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: Maybe closer to October.

13 BY MS. ILLUZZI:

14 Q Now, you charge for your services, right?

15 A I am typically compensated for my time, yes.

16 Q What is that compensation here?

17 A Well, I typically charge \$600 an hour for my time.

18 Q Do you have a retaining agreement here?

19 A Um, I don't really have a retaining -- I mean, I have  
20 an agreement with the staff.

21 Q What staff?

22 A With Mr. Weinstein's assistant and bookkeeper. I  
23 think I have an agreement but sort of almost like an oral  
24 agreement but I don't have a retainer agreement with that  
25 staff.

1 Q Is that unusual in your practice, Doctor?

2 MS. FABI SAMSON: Objection.

3 THE COURT: Overruled.

4 Q That you don't have a retainer?

5 A I don't usually get retainers unless the lawyer wants  
6 to create one. I don't demand one. I usually just work on  
7 trust.

8 Q So then you run the risk of not getting paid?

9 A There is a risk, yes.

10 MS. FABI SAMSON: Objection.

11 THE COURT: Overruled.

12 Q With regards to how much you were going to be paid,  
13 did you speak to Mr. Weinstein directly with regards to that?

14 MS. FABI SAMSON: Objection.

15 THE COURT: Sustained.

16 Q Well, is your -- the amount of money that you are  
17 getting paid in any way contingent upon a result?

18 A Absolutely not.

19 Q And, Doctor, you are here to provide an independent  
20 opinion for this jury, correct?

21 A I was asked to provide information about memory, human  
22 memory.

23 Q Listen to my question.

24 You are here as an independent expert, correct?

25 A I am not sure what you mean by, independent.



1 MS. FABI SAMSON: Objection.

2 THE WITNESS: I am not sure what you mean by  
3 independent.

4 THE COURT: Overruled. The answer stands.

5 Q Well, in other words, you don't have an opinion for  
6 this jury about whether or not the defendant is not guilty or  
7 guilty, correct?

8 MS. FABI SAMSON: Objection.

9 A Correct.

10 THE COURT: Sustained.

11 Q Well, and as in -- what you are here to do is explain  
12 the science of memory, is that right?

13 A Yes.

14 Q So the actual facts of this case are not something  
15 that you are utilizing with regards to your opinion, correct?

16 A Well, I -- I think I have said similar things in other  
17 cases where the facts are different.

18 Q My question, Doctor, is that your opinion and the  
19 science that you have explained to this Jury are not related to  
20 your testimony here to the actual facts of this case, right?

21 A Well, I was not asked to review police reports or get  
22 other information about the specific people.

23 Q And, in fact, Doctor, that would be inappropriate,  
24 right, for you to actually be studying or researching the facts  
25 as testified to in this case, correct?

1           A     I wouldn't call it inappropriate.

2                     MS. FABI SAMSON:  Objection.

3                     THE WITNESS:  It's just a different request.

4                     THE COURT:  Overruled.  The answer stands.

5           Q     But that wasn't the request here?

6           A     Pardon.

7           Q     That wasn't the request here?

8           A     That was not a request here.

9           Q     Have you attended any part of this trial?

10          A     No.

11          Q     Have you attended any, um, portion of this case prior  
12 to witnesses being put on the stand?

13          A     I am not sure I understand your question.

14          Q     Were you here for opening statements or any pretrial  
15 discussions in this case?

16          A     I have been exposed to media coverage about the case,  
17 newspaper, television, internet.

18          Q     And you have been keeping up with that, reading about  
19 it?

20          A     I have read about it, yes.

21          Q     Have you, in any way, customized your responses in  
22 this case to what you have read in the media?

23          A     Well, I will try to answer that, there are things that  
24 I might talk about in other cases that would not be appropriate  
25 for this case.

1 Q Of course.

2 A And so, I would not talk about cross-racial  
3 identification and misidentification because that's not an  
4 issue in this case. So, I mean, to some extent the facts of  
5 this case provide some guidance as to which parts of the memory  
6 discussion I might be speaking about.

7 Q Well, what I am asking you, Doctor, is not about the  
8 subject matter of this case. What I am asking you is whether  
9 or not you have customized your responses to the testimony that  
10 has been presented in this case, that's my question?

11 MS. FABI SAMSON: Objection. I don't understand  
12 the question, Judge.

13 THE COURT: Overruled. Doctor, do you understand  
14 the question?

15 THE WITNESS: Well, I tried to answer it.

16 To the extent that certain things were not  
17 discussed because they are not particularly pertinent, to  
18 that extent there was some customizing because in another  
19 case I might talk about cross-racial identification or in  
20 another case I might talk about some other lineups and  
21 photo spreads.

22 Q Well, in particular to one question that Ms. Fabi  
23 Samson asked you and she asked you could prescription  
24 medication have an affect on memory, you said the word, Valium.

25 Do you recall that question and answer?

1           A     I do, yes.

2           Q     Okay.  And of all the prescription medications in all  
3 the world, why would you choose Valium as an example that you  
4 gave?

5           A     Because I happened to have known about a study that  
6 showed that Valium affected the acquisition of information and  
7 have testified about that before.

8           Q     Okay.  You didn't choose Valium because of anything  
9 that you saw, heard or read about in this case, right?

10          A     You have, you know -- no, I think I knew that maybe  
11 some Valium played a role in somebody's memory but I can't even  
12 tell you which person.

13          Q     Okay.  So it would be correct then to say that you  
14 customized some of your testimony here --

15                   MS. FABI SAMSON:  Objection.  Asked and answered.

16                   THE COURT:  Overruled.

17          Q     -- to comport with things that you have been exposed  
18 to in this case, is that correct?

19                   MS. FABI SAMSON:  Objection.

20                   THE COURT:  Overruled.

21          Q     That's a yes or no, Doctor.

22          A     To testify to the truth, the whole truth, I can't  
23 answer yes or no.

24                   THE COURT:  It's not just yes or no.  It's either  
25 yes or no or I cannot answer that with yes or no.

1                   Next question.

2   BY MS. ILLUZZI:

3           Q     Now, in fact, because you are not a medical doctor,  
4   you do not research the differences of medications and their  
5   biological affect on the human body, is that correct?

6           A     Well, you know, I have written articles about alcohol  
7   and memory. I have a new paper coming out on cannabis and  
8   false memories.

9                   So I have done some research on different substances  
10   that can affect memory but I am not a medical doctor and I  
11   don't specialize in those substances.

12          Q     So you wouldn't be able to tell this jury the affect  
13   of, let's say, Valium versus Xanax, on the human body and how  
14   it affects the brain, correct?

15                   MS. FABI SAMSON: Objection.

16                   THE COURT: Overruled.

17                   THE WITNESS: Not in any kind of depth, no.

18          Q     But, yet, when asked you said that Valium would affect  
19   memory, is that what you said?

20          A     Because there are studies to show that.

21          Q     But you actually don't do those studies, right?

22          A     No.

23          Q     And you don't do the science and the biology behind  
24   that, correct?

25          A     No.

1           Q     Now, Doctor, have you ever had an opportunity to study  
2     and to speak to victims of PTSD?

3                     MS. FABI SAMSON:  Objection.  Beyond the scope.

4                     THE COURT:  Overruled.  Is that where you were  
5     discussing, in any way, when you were talking about  
6     soldiers?

7                     THE WITNESS:  Well, some soldiers do get PTSD.

8                     THE COURT:  No, I am talking about your testimony  
9     on direct.

10                    THE WITNESS:  No.

11                    THE COURT:  Move on then.

12            Q     So the question is no?

13                    MS. FABI SAMSON:  No.  Objection, the Judge said  
14     move on.

15                    THE COURT:  The question is sustained.

16  BY MS. ILLUZZI:

17            Q     Isn't it true though, that the entire experiment with  
18     those soldiers, is it fair to say that they weren't really  
19     being tortured, right?

20            A     They were being aggressively, hostilely and physically  
21     interviewed.

22            Q     They weren't actually captive and being tortured,  
23     correct?  It was an experiment, right?

24            A     No, they were being studied while they were going  
25     through survival school to learn what it would be like for them

1 if they were ever captured as prisoners of war.

2 Q They weren't prisoners of war during this experiment,  
3 right?

4 A No, but they were captured after trying to evade  
5 capture. They were put in to a mock prisoner of war camp and  
6 they were treated horribly.

7 Q And they knew ahead of time that they were going to be  
8 part of this experiment, correct?

9 A Well, they knew ahead of time that they were part of  
10 survival school. It was a learning experience for them.

11 Q So it wasn't a real captive and torture situation, is  
12 that correct?

13 A Yes.

14 Q And they weren't ever actually put in fear for their  
15 life?

16 In other words, they never were under a pressure of  
17 thinking that they weren't going to survive, correct?

18 A I would assume that they did not have that fear.

19 Q So it wasn't an actually real situation, is that  
20 right? It was a pretend situation in school, right?

21 A Well, you can call it pretend but these were extremely  
22 aroused, upset people who ended up sobbing when they were  
23 rescued.

24 Q Were any of them diagnosed with PTSD as a result of  
25 have this experiment?

1           A     Of the survival school, I don't know.  The experiment  
2 was one small piece --

3                         MS. FABI SAMSON:  Objection.

4                         THE COURT:  Overruled.

5           A     -- one small piece of the survival school.

6           Q     So you wouldn't know whether or not somebody who, in  
7 the aftermath of that, was diagnosed with post-traumatic stress  
8 disorder, correct?

9           A     I would ask the lead author who is a psychiatrist.

10          Q     By the way, Doctor, you said you are an author as  
11 well, right?

12          A     Yes.

13          Q     And isn't it true in 1991, that the name of your book  
14 was, Witness for the Defense?

15          A     I -- one of my books is called Witness for the  
16 Defense.

17          Q     Do you have a book called Witness for the Prosecution?

18          A     No.

19          Q     Now, um, you indicate that there is a great deal of  
20 studies on memory, is that correct?

21          A     Yes.

22          Q     But not all memory is wired and retained and retrieved  
23 equally, is that right?

24          A     Right.

25          Q     In fact, Doctor I have a very small diagram --



1                   MS. ILLUZZI: Judge, I am going to ask the Doctor  
2                   to look at it.

3                   Q     Doctor, I would ask you to look at this very small --  
4                   I don't know if there is away we can --

5                   MS. HAST: You can zoom on that.

6                   MS. FABI SAMSON: I will object to this. This is  
7                   a biological cross-examination of a witness who is a  
8                   psychologist.

9                   I mean, are we going to do gross anatomy?

10                  THE COURT: Let's see where it goes.

11 BY MS. ILLUZZI:

12                  Q     So, Doctor, if you can direct your attention to the  
13                  photograph and this is marked People's Exhibit Number 290.

14                  It's, obviously, a sort of diagram or drawing of the  
15                  human brain.

16                  MS. FABI SAMSON: I am going to object to the  
17                  demonstrative evidence. It has words. I have no idea  
18                  whether it's accurate.

19                  THE COURT: Sustained.

20                  Doctor, you see the diagram there? Does that  
21                  fall within your field of expertise?

22                  THE WITNESS: I would defer to the  
23                  neuroscientists who study the brain.

24                  THE COURT: Doctor, listen to my question.

25                  Does that fall within your area of expertise?

1 THE WITNESS: Not particularly, no.

2 THE COURT: What do you mean, particularly?

3 THE WITNESS: Well, I --

4 THE COURT: Doctor, Doctor --

5 THE WITNESS: I am not an expert in brain  
6 regions.

7 THE COURT: So let me just ask the same question  
8 a third time:

9 Doctor, does that fall within your area of  
10 expertise?

11 THE WITNESS: I know a little bit but I am not an  
12 expert. That's a more complete answer.

13 THE COURT: Field of expertise?

14 THE WITNESS: I will say, no.

15 THE COURT: All right. Take it down. Next  
16 question. Move on.

17 BY MS. ILLUZZI:

18 Q Doctor, didn't you testify about the brain and how it  
19 remembers and retrieves information?

20 A Well, yes.

21 Q And that you spoke about the emotions, correct?

22 A Yes.

23 Q And you spoke about different aspects of memory,  
24 right, like a sound and smell and vision, right?

25 A Yes.

1 Q And that is something that you certainly do write  
2 about a lot, correct?

3 A Yes.

4 Q Okay. So when I showed you People's Exhibit Number  
5 290, are you familiar with what parts of the brain store  
6 that --

7 MS. FABI SAMSON: Objection.

8 Q -- store that information?

9 THE COURT: Sustained.

10 Q Would you agree with me that not all memories are  
11 stored in the same place in the brain?

12 MS. FABI SAMSON: Objection.

13 THE COURT: Overruled.

14 So, Doctor --

15 THE WITNESS: I can't agree with that, no.

16 THE COURT: So one of the possible answers to the  
17 questions, and only you know this answer is, I really  
18 cannot answer that question. Okay?

19 THE WITNESS: I really cannot answer that  
20 question.

21 THE COURT: Because I am not qualified to do it  
22 within my field of expertise.

23 MR. CHERONIS: Can we approach, Your Honor?

24 Can we approach?

25 THE COURT: Otherwise, if you feel you can, I am

1 going to allow you to.

2 MR. CHERONIS: May we approach, please?

3 THE COURT: Not yet.

4 BY MS. ILLUZZI:

5 Q When you talked about the decline -- can we have your  
6 diagram?

7 MS. ILLUZZI: May I have her diagram, please?

8 MS. FABI SAMSON: Uh-hum. We didn't mark it.

9 MS. ILLUZZI: I think we will remember that this  
10 was a demonstrative exhibit that was used by Dr. Loftus.

11 THE COURT: Why don't we mark it as 5D but nobody  
12 wants it in evidence, is that correct?

13 MS. FABI SAMSON: We can move it into evidence,  
14 Your Honor.

15 THE COURT: Both sides want it in evidence?

16 MS. ILLUZZI: No, I think it's a Defense Exhibit.

17 THE COURT: It's 5D, whether it is in evidence or  
18 not.

19 MS. ILLUZZI: We don't -- I don't mind it going  
20 into evidence. We can mark it into evidence, yes.

21 MS. FABI SAMSON: Yes, thank you.

22 THE COURT: It's received into evidence.

23 BY MS. ILLUZZI:

24 Q Doctor, if you can direct your attention to the screen  
25 that I think is in front of you too, you indicated that memory

1 declined over time and that's the sort of curved line on this  
2 graph that you drew, right?

3 A Yes.

4 Q And the memory that declined over time depends upon  
5 what kind of memory it is, right?

6 A The shape of that forgetting curve could be different  
7 for different details or different aspects of an event.

8 Q Like, for example, if there was an event like the  
9 birth of your first child, you are not going to forget that  
10 over time, is that correct?

11 A I wouldn't think so, although, occasionally, some  
12 people have. But I would think it would be very rare.

13 Q The people who have, would you say that those people  
14 have some sort of disorder like dementia or Alzheimer's or  
15 something like that?

16 A That's beyond my expertise.

17 Q And what about memory for trauma and the core memory  
18 for trauma, would you say that that doesn't decrease along this  
19 curve either?

20 A No, I would expect even some fading of that kind of  
21 information, even if it might fade more slowly.

22 (Continued on the following page.)

23

24

25

1           Q     You would agree then that memory and trauma, and the  
2     core memory of trauma actually is much stronger than other types  
3     of memory, is that correct?

4           A     I would agree with that.

5           Q     You have written a paper on that, it was part of a  
6     paper you wrote?

7           A     That is why I agreed with it probably.

8           Q     And that, is it also correct to say that after time  
9     passes from a traumatic event, that some of the peripheral  
10    details may be lost, but the core memory will remain strong, is  
11    that correct?

12          A     Generally it will remain stronger. I don't know -- it  
13    should fade to some extent even if more slowly, and potentially  
14    be susceptible to some contamination.

15          Q     But much less, right?

16          A     I agree, much less.

17          Q     Like you won't forget being a hostage versus something  
18    you learned on your history test, correct?

19          A     I would think those will be different experiences.

20          Q     The studies you conduct, is it correct to say overall,  
21    they are simulated situations, not actual traumatic experiences?

22          A     For the most part, people are in the experiments  
23    opposed to some event, it might be a highly arousing event.

24          Q     Sorry?

25          A     A few other studies like the survival school studies or

1 some others, they do study people who are exposed to highly  
2 arousing actual events.

3 Q So, those studies, let's confine ourselves to those  
4 studies.

5 What percentage of those studies have you yourself  
6 conducted where you exposed individuals without their knowledge  
7 ahead of time, to actual traumatic events?

8 A I don't think that is what we have done, that was not  
9 even done in the survival school work. They basically agreed to  
10 go to survival school.

11 Q So, all your studies and all your articles have to do  
12 with simulated situations in experimental arenas?

13 A The studies of planting false memories are primarily  
14 like that, but other studies are survey studies of people's  
15 experiences, either their medical visits, whether they were  
16 sexually abused, or other kinds of things they are reporting  
17 about from their past.

18 Q You did answer a question about that study right from  
19 Ms. Samson Fabi, you are talking about in that instance  
20 implanting a childhood memory, correct?

21 A That is what we did in that study.

22 Q It was not adults, right?

23 A The subjects were adults, but we planted a childhood  
24 memory.

25 Q But you didn't try to implant a memory that somebody

1 would have past the age of 18 or 21, correct?

2 A Not in that study, no.

3 Q Any study that you implanted a traumatic event and  
4 people endorsed it after the age of 18 or 21 that they have  
5 experienced after 18 or 21?

6 A Well, there are studies where they planted a false  
7 memory that you committed a crime as a teenager. That was  
8 serious enough, the police came to investigate, that is a known  
9 study in the literature in my field, that is a Canadian study.

10 Q What I'm asking you, doctor, is that have you done a  
11 study where people experience an implanting memory of a  
12 personally traumatic event for them after the age of 18?

13 A I think most of my studies involve planting a child,  
14 more of a childhood memory for traumatic events.

15 Q Because you would agree that is wholly different from  
16 suggesting to somebody that they have experienced a traumatic  
17 event after 18 years old that they didn't experience, correct?

18 A I'm not sure I would say, particularly the ones that  
19 others have done where they planted a false memory that you  
20 committed a crime as a teenager, I'm not sure that is so  
21 different than you had something happen to you as over the age  
22 of 18 versus when you were 17.

23 Q Doctor, tell us about how traumatic experiences  
24 strength that memory in the core of the brain versus the  
25 details, peripheral details of the event, explain that to us?



1           A     It is a common finding in the literature when you show  
2     somebody something highly arousing, in one example that I  
3     coauthored, they see a boy being hit by a car, a simulation  
4     looks like he's been hit by a car, and they will remember it is  
5     a car accident, a car hit a boy, and maybe the color of the car,  
6     but what suffers particularly in memory is a lot of the  
7     peripheral details.

8           Q     So for example, let's say somebody, a bank worker was  
9     taken hostage during a robbery and locked in a safe over the  
10    weekend. Bear with me. Let me give you that example.

11                    It would be very, very unlikely that that person would  
12    forget being taken hostage against their will and being stuck in  
13    the safe, correct?

14           A     I don't know if I would use the word -- I'm sure that  
15    person would remember that for a long time something that  
16    traumatic.

17           Q     And that the core of information regarding that they  
18    were taken hostage, put into a safe, and remained there for a  
19    while, would remain and would remain strong throughout their  
20    entire lifetime, you agree with that, right?

21           A     I don't agree with that.

22           Q     You may disagree that it may be right, the person over  
23    time says I screamed for four hours straight, when in fact maybe  
24    they only screamed for three hours, right. That is the sort of  
25    peripheral memory that might be lost over time?

1           A     That might be an example, yes.

2           Q     But the core memory being taken hostage and being  
3     thrown into the safe, that they will not forget, right?

4           A     There are studies of people who have been in an  
5     accident where someone was injured who within a few years seemed  
6     to not remember the accident, that is why I can't agree with the  
7     idea it would never be forgotten, because I know of other  
8     studies where something pretty traumatic, you know, was  
9     forgotten after a few years.

10          Q     But you had just said and you wrote an article that  
11     said traumatic and stressful memories, the core memory of that  
12     will remain with a person, and remain strong for a very long  
13     period of time?

14          A     I never said forever.

15          Q     Well, did you say for a very long time?

16          A     I don't know if I used those words.

17          Q     They are stronger than other memories?

18          A     Yes, the core and some core details and the gist of the  
19     event is often what is retained from a traumatic event.

20          Q     It is much different for somebody, is it not,  
21     witnessing an event versus being the subject of the trauma,  
22     right? There is a difference in what is going on, memory wise  
23     for that, correct?

24          A     Well, there is at least one study that shows if you  
25     participate in an activity, your memory is a little bit better

1 than if you are watching somebody participate.

2 Even watching something can be exceedingly traumatic if  
3 it is your child being hit by a car even if it is not happening  
4 to you.

5 Q So, doctor, we just talked about the fact that  
6 psychological experimentation has a completely, well has a  
7 different retention in the mind than does a traumatic event,  
8 correct, a real life event, would you say that?

9 A I would say the two events they may have different time  
10 courses, but they would be expected to follow similar laws, be  
11 susceptible to some contamination for example.

12 Q What I'm asking you doctor, is all your studies and all  
13 your research in situations that are merely experimental, are  
14 not necessary applicable to real life situations?

15 A Well, in some of these studies these are real life  
16 situations.

17 Q How many studies were real life situations?

18 A I can give you a few more examples if you would like to  
19 hear them.

20 Q Well, how many times have you done a study and sat down  
21 with somebody who say was a survivor of a kidnapping and because  
22 of the kidnapping had PTSD, something akin to that?

23 A I don't know if I ever spoke to somebody who was  
24 kidnapped.

25 Q Some other truly traumatic personal event in real live?

1           A     We have surveyed people about various medical  
2 procedures, about sexual abuse, for example, and those are  
3 sometimes pretty upsetting for people.

4           Q     When you say survey people, what do you mean?

5           A     Interviewed them about their experiences and gathered  
6 information about the way they remember those experiences.

7           Q     Did you go back and ascertain the actual facts of those  
8 situations?

9           A     No, these are people reporting sexual abuse.

10          Q     So, you would not be able to tell whether or not their  
11 core memory of these real life experiences comport with what  
12 they told you?

13          A     Correct.

14          Q     Isn't it true, you yourself had said in your book,  
15 subjects in a psychological experiment do not have the same  
16 experience as an actual eyewitness to a true life crime?

17          A     You'll have to show me that so I could see the context.

18          Q     Sorry, you are saying you didn't say that?

19          A     The context --

20                   MS. ILLUZZI: I have a page from your book, I  
21 don't have the book.

22                   THE COURT: Show her what is in your hand.

23          Q     Called witness for the defense, the book we discussed  
24 earlier. It is, I have markings on it. My marks are only the  
25 name of the book and year.

1           With that understanding, maybe you can look at it and  
2 see if you recognize it.

3                       ( Handed to witness).

4           A       Well, I see you have a sentence but I just don't know  
5 the context which I wrote the sentence, it is a 1991.

6                       THE COURT:   Okay.

7           Q       All right, we will suspend that question for the  
8 moment.

9                       Would you also agree that there are many facets of our  
10 perception, meaning there are many senses that we experience  
11 when we are experiencing a real life event?

12          A       Yes.

13          Q       Color, correct, color, looking at color?

14          A       Well, we would call the sense visual, auditory.

15          Q       Tactile?

16          A       Yes.

17          Q       Explain what tactile is?

18          A       Touch, another sense.

19          Q       Olfactory factory, smell?

20          A       Yes.

21          Q       And would you agree with me that the more of those  
22 senses that are aroused in an event, the more and the stronger  
23 the memory is implanted?

24          A       I don't know whether that is true or not.  It sounds  
25 plausible, but I do not know of any study.

1 Q You have not done a study about that?

2 A No.

3 Q And would you agree with me, that in an actual  
4 traumatic event, a person might be focused on their immediate  
5 safety concerns?

6 A People have reported that, yes.

7 Q So, therefore, their experience in that situation is  
8 heightened when they are trying to determine whether or not  
9 their survival will be impacted by the experience?

10 A I just don't know whether that is true or not.

11 Q You never done a study on that?

12 A No.

13 Q But you have agreed memory in stressful situations is  
14 different than ordinary memories?

15 A Well then, the less stressful, the one difference is  
16 when it is more upsetting and traumatic, if it is truly  
17 traumatic, there is evidence people who remember the gist and  
18 the core and the peripheral details especially suffer.

19 MS. ILLUZZI: I think I'm almost done, if I can  
20 have one moment. I think that is it, thank you.

21 THE COURT: Anything, Ms. Samson?

22 MS. SAMSON: Yes.

23 REDIRECT EXAMINATION

24 BY MS. SAMSON:

25 Q Doctor, you were asked many questions about whether you

1 customized your testimony. And so assuming the prosecutor meant  
2 something like did you change your testimony based on this case,  
3 did you give, did you do that, did you change the substance of  
4 your testimony, of what you would say about the things you  
5 talked about to conform to something in this case?

6 A No, this is testimony that I have commonly given. But  
7 customized could mean did I leave out things that seemed --

8 Q Of course?

9 A Totally irrelevant. I mentioned cross racial  
10 identification, because it is not at all an issue here.

11 So if customized means that, maybe a little. But no, I  
12 didn't change anything.

13 Q So, when I asked you about the factors that affect  
14 memory and we talked about the various factors, you explained  
15 how they worked the same way you would have explained them if  
16 you had been asked about them in any other case?

17 A Correct.

18 Q And so, when you mentioned certain medications that  
19 affect the formation of memory, you mentioned them because you  
20 actually are an expert in this area and you read research about  
21 this sort of thing, and you happen to know about the research,  
22 is that correct?

23 A Right, that is part of being a scientist, knowing other  
24 people's work in the field related to what you are interested  
25 in.

1 Q And so doctor, concerning the large part of Ms.  
2 Illuzzi's questions that deal with the formation of the  
3 traumatic memory and how that traumatic memory fades or does not  
4 fade or is stronger or not stronger over time, that, those  
5 questions presume that the event is traumatic at the time of the  
6 event, is that correct?

7 A I think the question presumes that.

8 Q Yes?

9 A Sometimes events are traumatic at the time, and  
10 sometimes they get remembered as being more traumatic later.

11 Q So, in the event that the event was not traumatic at  
12 the time but relabeled later as a traumatic event, would those  
13 characteristics of a traumatic event apply to that memory?

14 MS. ILLUZZI: Objection Judge.

15 THE COURT: Doctor, did you understand the  
16 question?

17 A I did, your Honor.

18 THE COURT: Then you can answer it.

19 A Now I'm not sure that I did.

20 THE COURT: All right, next question.

21 Q I'm asking you doctor, if the event is relabeled as a  
22 traumatic event by the rememberer at some later time, what  
23 impact does that have on the operation of that memory and the  
24 distortions of that memory from the memory's inception?

25 MS. ILLUZZI: Objection Judge.



1                   THE COURT:    Overruled.  Doctor, if you are  
2                   certain that you understand the question and can give an  
3                   answer appropriate to your expertise, you may do so.

4           A       Well, if it is relabeled, that is an example of the  
5           malleability of memory that I was talking about before.  It can  
6           be, it can be remembered as being more upsetting or more  
7           traumatic than it actually was at the time.

8                   But the findings on traumatic versus less traumatic  
9           events really apply when it is a genuine trauma at the time.

10          Q       Correct.  So the fact that it would be relabeled as a  
11          traumatic event by the person later, actually is some evidence  
12          that that memory has been contaminated?

13                   MS. ILLUZZI:  Objection Judge.

14                   THE COURT:  Overruled.

15          Q       Is that correct? .

16          A       Well, I mean it could be that.  I mean it could be a  
17          person is completely lying.

18                   But if it is a person who is not lying, it could be  
19          their memory has been distorted by some of these processes I  
20          have talked about.

21                   MS. SAMSON:  Thank you.

22          RE CROSS EXAMINATION

23          BY MS. ILLUZZI:

24          Q       Doctor, you said Valium instead of Xanax or Adderall or  
25          any other drug, because you were tailoring your testimony to

1 this case and for this jury based upon what you knew about the  
2 facts here, correct?

3 MS. SAMSON: Objection, asked and answered.

4 THE COURT: Overruled.

5 A Well, I have testified before about Valium and I do  
6 believe somewhere I have learned Valium might have been  
7 something that was involved in this case. So that made it more  
8 relevant than cross racial identification.

9 MS. ILLUZZI: Thank you.

10 THE COURT: Anything else?

11 MS. SAMSON: Yes. Doctor, you knew, you know  
12 about a study regarding Valium and its impact on the  
13 formation of memory?

14 A I testified about it before long ago because it is an  
15 old study, but yes.

16 MS. ILLUZZI: But Valium not versus cross racial  
17 identification, that is a completely different subject.  
18 I'm talking Valium versus Xanax, versus heroin, versus  
19 cocaine, you chose Valium because you tailored your  
20 testimony?

21 MS. SAMSON: Objection Judge.

22 MS. ILLUZZI: In that respect to this case.

23 THE COURT: Overruled.

24 A I already said I remember something about Valium in  
25 this case.

1 MS. ILLUZZI: Thank you.

2 THE COURT: Thank you for your testimony doctor.

3 You may step down, you are excused.

4 A Thank you.

5 THE COURT: Defense, I believe you have one

6 further witness?

7 MR. CHERONIS: Yes.

8 THE COURT: Please call your witness.

9 MR. CHERONIS: Jeffery Luber.

10 COURT OFFICER: Witness entering.

11 ( Witness enters courtroom and is sworn in).

12 COURT OFFICER: State your full name, spell your

13 last name.

14 A Jeffrey Luber, L. U. B. E. R.

15 COURT OFFICER: County of residence?

16 A Suffolk County.

17 THE COURT: All right, good afternoon Mr. Luber.

18 Listen carefully to the questions from Mr. Cheronis and

19 answer his questions to the best of your ability.

20 Please answer them loudly, clearly, and slowly.

21 Please give full and complete responses to all his

22 questions, but try not to volunteer any information that

23 goes beyond his specific questioned area.

24 On cross examination, one of the ADA's may choose

25 to ask you questions also. Should one of them choose to do

1           so, give to them the same courtesy you're about to give to  
2           Mr. Cheronis.

3                        If and when you're asked to handle any exhibit or  
4           any items in evidence or can be put into evidence, you may  
5           do that upon the request of either of the attorneys without  
6           further permission from the Court.

7                        And if you are comfortable addressing the jury  
8           directly in response to any of the attorney's questions,  
9           you may also do that, otherwise just respond to whomever is  
10          asking you questions at any given time.

11                       Try to speak loudly and directly into the  
12          microphone. You can adjust it to your satisfaction because  
13          it does not work that well, okay.

14          A        Understood.

15                       THE COURT:    Please inquire.

16   DIRECT EXAMINATION

17   BY MR. CHERONIS:

18           Q        Good morning.  Could you tell the members of the jury  
19          how you are employed?

20           A        I'm employed as a forensic document examiner in this  
21          case.

22           Q        Where do you work?

23           A        I work self employed as a forensic document examiner,  
24          also a forensic document examiner with the Suffolk County Crime  
25          Laboratory in Hauppauge, New York.

1           Q     Working for the Suffolk County Crime Lab, do you ever  
2 work with law enforcement?

3           A     Yes.

4           Q     What is your position at that laboratory?

5           A     I'm a forensic document examiner with the laboratory.

6           Q     How long have you been employed as at that laboratory?

7           A     Next month it will be 36 years.

8           Q     Where were you employed before that period of time?

9           A     Prior to Suffolk County, I was employed from 1980 to  
10 1984 with the Illinois State Police Crime Lab System.

11          Q     How much of your work time is spent on document  
12 examination?

13          A     It is about 85 percent of my work time.

14          Q     Can you tell the members of the jury what your training  
15 consisted of at the laboratory?

16          A     So, my training consisted of in Illinois three year  
17 training program in questioned documents, doing supervised case  
18 work and learning the theory of questioned document examination.

19          Q     Do you have a college degree?

20          A     Yes, a Bachelor's degree from the University of  
21 Maryland.

22          Q     Any post graduate degrees?

23          A     Masters of forensic science degree from the George  
24 Washington University in Washington D.C.

25          Q     Subsequent to your graduation, had you attended any

1 training seminars dealing with questioned documents and digital  
2 imaging processing?

3 A Yes. So while I was in graduate school, I interned at  
4 the United States Secret Service questioned document  
5 laboratory.

6 Then after starting my employment with Illinois State  
7 Police Crime Lab System, I attended training seminars and just  
8 recently I attended a digital imaging processing seminar  
9 training program, that was January of 2018.

10 Q Are you currently a member of any professional  
11 organizations?

12 A Yes, American Academy of Forensic Sciences, the  
13 American Board of Forensic Document Examiners, and the American  
14 Society of Questioned Document Examiners.

15 Q Any board certifications?

16 A Board certified by the American Board of Forensic  
17 Document Examiners.

18 Q What does Board certification mean?

19 A Entails being current in the field by attaining, by  
20 attending various training seminars and technical sessions as  
21 well as the initial process is completing a proficiency test  
22 that took about three months to complete various problems as  
23 well as written examinations and presentations as well.

24 Q Did there come a time where you were retained by my  
25 office to look at some documents?

1 A Yes.

2 Q Are you being paid for your time?

3 A Yes, I am.

4 MR. CHERONIS: If I could approach and hand him  
5 what has been received into evidence as People's 77.

6 ( Handed to witness).

7 Q Does that appear to be at least part of the calendar  
8 that you reviewed in this case?

9 A Yes it is.

10 Q If I could have that back for a second. Did you in  
11 fact review a 2006 Mulberry calendar in this case?

12 A Yes.

13 Q Tell the members of the jury where it was you reviewed  
14 that?

15 A That was reviewed at the Manhattan D.A's Office here.

16 Q Either in this building or right next door?

17 A Yes, that is right.

18 Q Do you remember when that was, if I tell you that was  
19 in August of 2019, would you agree with that?

20 A Yes.

21 Q You came here to the Manhattan District Attorney?

22 A Yes.

23 Q Did you examine portions of that calendar?

24 A Yes.

25 Q Did there come a time, can you tell us what you were

1 asked to examine?

2 A So, I was asked to examine the calendar. There were  
3 certain areas that were obliterated or crossed off, and I was  
4 asked to examine those areas and try to decipher what those  
5 original entries were on the calendar.

6 Q Is it fair to say you did not look at every single  
7 crossed off in the entire calendar?

8 A That is true.

9 Q You are not an ink dating expert, are you?

10 A No I'm not.

11 Q You are not here to give any opinion as to when those  
12 crossoffs occurred?

13 A That is correct.

14 Q Can you tell the members of the jury what techniques  
15 were used for this examination?

16 A So, the techniques used were visual examinations,  
17 macroscopic, encompasses about four times enlargement to about  
18 20 times enlargement, and going up to 60 times enlargement.  
19 Infrared examination, infrared luminous examinations, oblique  
20 lighting, very oblique or side lighting, and scanning and using  
21 a digital graphic image processor as well.

22 Q Did you use the photo shop program?

23 A Yes I did.

24 Q Tell the members of the jury what features were used in  
25 the photo shop program?



1           A     So, the photo shop program is a graphic digital image  
2 program, and the specific features I used were hue and  
3 saturation and black and white in the adjustment layer of that  
4 program.

5           Q     Through the course of your examination, about how long  
6 did the examination take?

7           A     Approximately six hours.

8           Q     Through the course of your examination using those  
9 tools you talked about, were you able to determine what was  
10 under certain crossoffs?

11          A     Yes, I was.

12                   MR. CHERONIS: I'm going to ask to use the elmo,  
13 it might be a little easier, we can switch back and forth.

14          Q     I'm going to show you what already has been received in  
15 evidence.

16                   Do you see that as a portion of the calendar you looked  
17 at with the date May 22nd through May 24th?

18          A     Yes it is.

19          Q     Now I'm going to approach and mark this as Exhibit  
20 Number Five E and I already showed this to the District  
21 Attorney.

22                   MS. ILLUZZI: Yes.

23                   ( Handed to witness).

24          Q     Does that appear to be a document that you put together  
25 that shows the cross-off and what you found under it?

1 A Yes it is.

2 Q I'm going to point to this specific entry, is that the  
3 one we are referring to?

4 A Yes.

5 Q Does that appear to be a true and accurate picture or  
6 document not only of the cross-off, but what you found under it?

7 A Yes.

8 MR. CHERONIS: I ask the identification be  
9 stricken and that be admitted into evidence.

10 MS. ILLUZZI: No objection.

11 THE COURT: Quintuple E is received into  
12 evidence.

13 Q I'm going to show you Five F what is easier for me.

14 ( Handed to witness).

15 Q I'm going to turn to another page of that exhibit. You  
16 see where it says Charles Meech at Weinstein Company, then under  
17 that?

18 A Yes, I do.

19 Q Was that one of the crossoffs you were asked to look  
20 at?

21 A Yes.

22 Q You see the document in front of you?

23 A Yes.

24 Q Is that a true and accurate depiction not only of a  
25 photograph of the document I'm looking at, but what you found

1 under it?

2 A Yes.

3 MR. CHERONIS: I ask the identification be  
4 stricken and that be received into evidence.

5 THE COURT: Any objection?

6 MS. HAST: No objection.

7 THE COURT: All right that is received into  
8 evidence.

9 Q I have one more I would like to talk to you about. If  
10 we look at this one, this is August 31st, you see that?

11 A Yes, I do.

12 Q If I could show you Five G.

13 ( Handed to witness).

14 Q Does that appear to be a photograph that you took of  
15 that cross-off then what you then found to be under it?

16 A Yes.

17 Q Is that a true and accurate depiction of not only the  
18 cross-off but what you were able to see under?

19 A Yes.

20 MR. CHERONIS: I ask the identification be  
21 stricken and that be received into evidence.

22 MS. ILLUZZI: No objection.

23 THE COURT: That is received into evidence.

24 Q Now Mr. Luber, in preparation for your testimony today,  
25 did you put together a brief power point or some slides?

1           A     Yes I did.

2           Q     The slides you put together essentially track the  
3 documents I just showed you?

4           A     Yes they do.

5           Q     You think it would be helpful for the jury to use those  
6 as a demonstrative?

7           A     Yes.

8                     MR. CHERONIS: I ask we be allowed to use the  
9 slides for a demonstrative.

10                    THE COURT: Okay, any objection?

11                    MS. HAST: No objection.

12                    THE COURT: Okay.

13                    THE COURT: Why don't we mark it as Five H.

14                    MR. CHERONIS: Sure.

15           Q     Tell the members of the jury what we are looking at?

16           A     So, this first slide is titled, the numerals are 001  
17 dash 0077, a depiction of page May 22nd through May 24th on the  
18 left hand side.

19                     Within the red circle is the area that I adjusted the  
20 hue and saturation and color balance. On the right-hand side  
21 the first top line is the actual entry without any adjustments  
22 at all. Then below that is the area that was adjusted with  
23 photo shop using various features.

24           Q     That appears in the adjusted portion to say call Harvey  
25 and Emily?

1 A Call Harvey something Emily.

2 Q Thank you. I would like to go to the next slide now.

3 That is the same similar setup what you just described?

4 A Yes it is.

5 Q Then on the top is the original, on the bottom is your  
6 sort of infrared view of that?

7 A It is a color adjusted view, hue and saturation view.

8 Q Go to the third slide. This has to do with the August  
9 31st entry?

10 A That is correct.

11 Q On the right top there is the cross-off right?

12 A Correct.

13 Q The bottom it seems that it says call Dan and see if I  
14 can go?

15 A That is correct.

16 Q Now again, as you sit here today looking at those  
17 crossoffs, you have no clue when those were made?

18 A Correct.

19 Q Don't know if they were made in 2006 or 2015?

20 A That is correct.

21 Q And if there are other similar crossoffs on the  
22 calendar, would it be similar to say you would not know when  
23 those were made either?

24 A Correct.

25 MR. CHERONIS: Thank you, no further questions.

1 MS. HAST: Just a few questions.

2 MR. CHERONIS: You have been qualified as an  
3 expert before?

4 A Correct.

5 MR. CHERONIS: Is all your testimony in based on  
6 your qualification of an expert in the area of forensic  
7 document identification?

8 A Yes it is.

9 MS. HAST: I have questions.

10 CROSS EXAMINATION. BY MS. HAST:

11 Q I'm going to hand you up the rest of the calendar that  
12 was not entered into evidence. I'll mark it as People's Exhibit  
13 291 for identification. I'll not seek to admit it though.

14 If you could flip through those pages quickly. Are  
15 there numerous entries throughout that diary that are crossed  
16 out in various ways?

17 A Yes.

18 Q Using various different colored inks?

19 A Yes.

20 Q Are some of those entries are just sort of crossed out  
21 with like a line straight through it?

22 A Yes.

23 Q Are some of those entries crossed out with circular  
24 scribbles?

25 A Yes.

1 Q Are some of those entries entirely blocked out?

2 A Yes.

3 Q I'm just going to focus your attention on some of the  
4 entries that we just looked at.

5 This entry dated May 23rd, this is one of the entries  
6 that you were able to see what was underneath, correct, at the  
7 top of that, May 23rd?

8 A That is correct.

9 Q And on that same page under May 22nd, is there an entry  
10 that says Barbara, then a name scratched out with a telephone  
11 number?

12 A I cannot see from the screen.

13 ( Handed to witness ).

14 A I'm not sure what is underneath, but there is something  
15 underneath there.

16 Q You were not asked to see what was underneath that  
17 particular --

18 A Right, certain entries were blocked out and I was told  
19 not to spend anytime on those entries, redacted.

20 Q This particular entry was not redacted, did you look to  
21 see what was underneath that?

22 A If it was not redacted and scratched out, I probably  
23 did look at that, maybe not, I honestly don't know.

24 Q Also, on that same page on Wednesday the 24th of May,  
25 you see an entry there that is not crossed out that says PM

1 Harvey Weinstein Majestic?

2 A I do.

3 Q Looking at one of the other entries you testified  
4 respect to this is May 29th, sorry, May 29th, at the very bottom  
5 there, that was one of the entries that you were asked to see  
6 what was underneath?

7 A That is right.

8 Q That had, when we looked at the power point that said  
9 Harvey's assistant under there?

10 A Right.

11 Q Right above that not crossed out it says Charles Meech  
12 at Weinstein Co dot com?

13 A Right.

14 Q Right above that on Monday the 29th of May it says call  
15 Harvey's office about Runway project of Barbara?

16 A That is right.

17 Q Then this last entry you had on August 31st, you see  
18 that entry?

19 A Yes.

20 Q That is something about calling Dan, correct?

21 A That is right.

22 Q I'm going to look at the page before a few days prior  
23 on July 27th, do you see that entry, the one line through that  
24 says call Dan about TIX?

25 A Yes.



1 MS. HAST: No further questions.

2 THE COURT: Any redirect?

3 MR. CHERONIS: I would like to look at the  
4 document they showed. The calendar that was not introduced  
5 to see if I have any follow-up questions.

6 REDIRECT EXAMINATION

7 BY MR. CHERONIS:

8 Q Just so we are clear, the redactions that you were  
9 talking about, those were not redactions that we made, right?

10 A That is my understanding.

11 Q It was made by the prosecution, correct?

12 A That is correct.

13 MR. CHERONIS: No further questions.

14 THE COURT: Anything on that?

15 MS. HAST: No questions.

16 THE COURT: Thank you very much, you may step  
17 down, you are excused.

18 ( Witness exits courtroom).

19 THE COURT: That is it for today, Mr. Cheronis?

20 MR. CHERONIS: Yes.

21 THE COURT: All right jurors, we will break until  
22 Monday morning 9:30. And on Monday we do have a very full  
23 day, so see you here 9:30.

24 Remain mindful of all my prior admonitions and  
25 instructions. During this or any other recess, keep an

1 open mind, do not form an opinion as to the guilt or  
2 innocence of the defendant, and most certainly refrain from  
3 any and all communications or research on the internet or  
4 social media or otherwise about anything whatsoever to do  
5 with this case.

6 Have a great weekend, have a great afternoon, see  
7 you Monday morning 9:30, thank you. This coming Wednesday  
8 is a court holiday, unless you work in the court system you  
9 probably do not have Lincoln's Birthday off, so just a  
10 reminder of that, we will not be in session on Wednesday.

11 ( Jury exits courtroom).

12 MS. ILLUZZI: I have an issue to raise with the  
13 Court.

14 THE COURT: Okay.

15 MS. ILLUZZI: Apparently this morning Ms. Rotunno  
16 went on a live broadcast for the New York Times, I think it  
17 is called the daily.

18 MS. ROTUNNO: That was taped a long time ago.

19 MS. ILLUZZI: She's calling our witnesses liars  
20 and celebrity victim-hood status, and it is completely in  
21 contradiction to your order.

22 So Judge, we are asking for you to order the  
23 defense to cease and desist any discussion about this case  
24 in public.

25 MS. ROTUNNO: I have not spoke to anyone in the

1 media. Have not spoke to anyone since we started this  
2 case.

3 That was taped a while ago, and I did not speak  
4 about any witness individually. I talked about a multitude  
5 of issues with regard to questions that were asked of me.  
6 It was done, it was really me going into the lion's den not  
7 the other way around.

8 MS. ILLUZZI: She knew it was going to be  
9 broadcast today.

10 MS. ROTUNNO: I had no idea. I got a call this  
11 morning from a friend who heard it, I was not told by them,  
12 I have no idea.

13 THE COURT: Come up and tell me what witnesses  
14 you have Monday.

15 (Conversation held off the record).

16 THE COURT: 9:30 Monday.

17 MR. AIDALA: Before we go, I would like to put one  
18 thing on the record.

19 Monday is going to be the corpus of the defense  
20 case and we are asking as a team on behalf of Mr.  
21 Weinstein, that the Court be cognizant of the affect the  
22 Court's body language, tone and treatment of the witness  
23 and the questioner has on this jury.

24 Obviously the Court has a tremendous amount of  
25 influence on how the Court's body language is, the Court's

1           tone towards the questioner and towards the witness.

2                         We do take umbrage to the way the Court treated 75  
3           year old Doctor Loftus who has the highest award in her  
4           field.

5                         We thought the Court could have been at the very  
6           least a little nicer and kinder to her.

7                         THE COURT:    I was assisting her.

8                         MR. AIDALA:   That is your opinion, that is not our  
9           team's opinion.

10                        THE COURT:    Thank you.

11                        MR. AIDALA:   If you afford us the same courtesies  
12           you afforded the People in defense case --

13                        MS. ILLUZZI:   I have to say you have been so  
14           stoic.  I could not believe when witnesses were crying on  
15           the stand, I couldn't believe how completely stoic you were  
16           with regards to what was happening on the stand.

17                        THE COURT:    Well, I take your statement of a  
18           moment ago as inaccurate.

19                        MR. AIDALA:    I assumed you would.

20                        THE COURT:    See you 9:30.

21                        MR. AIDALA:    Have a good weekend Judge.

22                        ( Trial adjourned to February 10, 2020 ).

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