

Exhibit C

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<p>1 Volume: I 2 Pages: 1-286 3 Exhibits: 338-349</p> <p>4 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT 5 IN AND FOR PINELLAS COUNTY, FLORIDA 6 CIVIL ACTION NO. 12012447-CI-011</p> <p>7 ***** 8 TERRY GENE BOLLEA professionally known: 9 as HULK HOGAN, : 10 PLAINTIFF : 11 v. : 12 HEATHER CLEM; GAWKER MEDIA, LLC aka : 13 GAWKER MEDIA; et al., : 14 DEFENDANTS : 15 *****</p> <p>16 AUDIO-VISUAL DEPOSITION OF LESLIE JOHN, Ph.D., a 17 witness called on behalf of the Defendants, pursuant 18 to the provisions of the Florida Rules of Civil 19 Procedure, before Lisa McDonald Valdario, (CSR 20 #130093), a Registered Professional Reporter, 21 Certified Realtime Reporter, and Notary Public in and 22 for the Commonwealth of Massachusetts, at the Offices 23 of Morgan, Lewis & Bockius, LLP, One Federal Street, 24 Boston, Massachusetts 02110, on Thursday, May 7, 2015 commencing at 9:58 a.m.</p>	<p>1 INDEX</p> <p>2 WITNESS DIRECT CROSS REDIRECT RECROSS</p> <p>3 LESLIE JOHN, Ph.D.</p> <p>4 BY MR. BERRY 5</p> <p>5 EXHIBITS</p> <table border="1"> <thead> <tr> <th>No.</th> <th>Description</th> <th>Page</th> </tr> </thead> <tbody> <tr> <td>7</td> <td>338 Doctor John's Expert Report</td> <td>12</td> </tr> <tr> <td>8</td> <td>339 Doctor John's drawing of a skew</td> <td>102</td> </tr> <tr> <td>9</td> <td>340 Document titled: Documents Relied Upon by Professor Leslie John - Updated as of March 27, 2015</td> <td>109</td> </tr> <tr> <td>11</td> <td>341 The First Amended Complaint</td> <td>110</td> </tr> <tr> <td>12</td> <td>342 Letter to Hulk Hogan from Steven Hirsch Bates BOLLEA 000779</td> <td>111</td> </tr> <tr> <td>13</td> <td>343 Affidavit of Mike Foley</td> <td>112</td> </tr> <tr> <td>14</td> <td>344 Document showing Total # of Views</td> <td>113</td> </tr> <tr> <td>15</td> <td>345 Curriculum Vitae</td> <td>124</td> </tr> <tr> <td>16</td> <td>346 Article: What Is Privacy Worth?</td> <td>161</td> </tr> <tr> <td>17</td> <td>347 Article: Strangers on a Plane: Context-Dependent Willingness to Divulge Sensitive Information</td> <td>138</td> </tr> <tr> <td>18</td> <td>348 Article: The Best of Strangers: Context-dependent willingness to divulge personal information</td> <td>148</td> </tr> <tr> <td>19</td> <td>349 Article: The Impact of Relative Standards on the Propensity to Disclose</td> <td>167</td> </tr> </tbody> </table> <p>24 ***REPORTER GIVEN EXHIBITS TO APPEND TO TRANSCRIPTS***</p>	No.	Description	Page	7	338 Doctor John's Expert Report	12	8	339 Doctor John's drawing of a skew	102	9	340 Document titled: Documents Relied Upon by Professor Leslie John - Updated as of March 27, 2015	109	11	341 The First Amended Complaint	110	12	342 Letter to Hulk Hogan from Steven Hirsch Bates BOLLEA 000779	111	13	343 Affidavit of Mike Foley	112	14	344 Document showing Total # of Views	113	15	345 Curriculum Vitae	124	16	346 Article: What Is Privacy Worth?	161	17	347 Article: Strangers on a Plane: Context-Dependent Willingness to Divulge Sensitive Information	138	18	348 Article: The Best of Strangers: Context-dependent willingness to divulge personal information	148	19	349 Article: The Impact of Relative Standards on the Propensity to Disclose	167
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<p>1 APPEARANCES:</p> <p>2 HARDER MIRELL & ABRAMS, LLP 3 1925 Century Park East, Suite 800 4 Los Angeles, California 90067 5 BY: Charles L. Harder, Esquire 6 charder@hmafirm.com 7 424.203.1600 8 Attorney for the Plaintiff</p> <p>9 LEVINE SULLIVAN KOCH & SCHULZ, LLP 10 1899 L Street, NW, Suite 200 11 Washington, DC 20036 12 BY: Michael Berry, Esquire 13 mberry@lkslaw.com 14 202.508.1122 15 Attorney for the Defendants</p> <p>16 ALSO PRESENT: Anthony Piccirilli, video operator 17 G&M Court Reporters, Ltd. 18 800.655.3663 19 www.gmcourtreporters.com</p>	<p>1 PROCEEDINGS</p> <p>2 VIDEO OPERATOR: Good morning. We are now 3 on the record. Please note that the microphones 4 are sensitive and may pick up whispering and 5 private conversations. Please turn off all cell 6 phones or place them away from the microphones, as 7 they can interfere with the deposition audio. 8 Recording will continue until all parties agree to 9 go off the record.</p> <p>10 My name is Anthony Piccirilli representing 11 G&M Court Reporters. The date today is May 7, 12 2015, and the time is approximately 9:58 a.m.</p> <p>13 This deposition is being held at Morgan, 14 Lewis & Bockius located at one Federal Street in 15 Boston, Massachusetts. The caption of this case 16 is Terry Gene Bollea versus Heather Clem, Gawker 17 Media LLC, a/k/a Gawker Media, et al. The name of 18 the witness is Leslie John.</p> <p>19 At this time, the attorneys present in the 20 room and attending remotely will identify 21 themselves and the parties they represent, after 22 which our court reporter will swear in the witness 23 and we can proceed.</p> <p>24 MR. BERRY: This is Mike Berry from Levine</p>																																							
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<p>1 Sullivan Koch & Schulz representing Gawker Media, 2 A.J. Daulerio and Nick Denton. 3 MR. HARDER: And Charles Harder representing 4 the plaintiff, Terry Bollea, professionally known 5 at Hulk Hogan. 6 LESLIE JOHN, Ph.D. 7 A witness called for examination, having been 8 duly sworn, testified as follows: 9 DIRECT EXAMINATION 10 BY MR. BERRY: 11 Q Doctor John, thank you for coming in today. I 12 appreciate it. I introduced myself before, but my 13 name is Mike Berry, and from, I guess as you 14 heard, a law firm called Levine Sullivan, and I'm 15 based down in Philadelphia. 16 Have you ever been deposed before? 17 A No. 18 Q Okay. Have you ever testified in court before? 19 A No. 20 Q All right. Well, just take a second -- I imagine 21 Charles has probably gone over some of this with 22 you, but I'll take a second and just explain how 23 the deposition works. 24 During the course of the day today, I'll be</p>	<p>1 already told you, sometimes I ask questions that 2 come out jumbled, don't make a whole lot of sense. 3 If for any reason when I'm talking today, if you 4 don't understand what I'm saying, just feel free 5 to ask me to repeat it. Just say, Mike, you know, 6 I don't get what you're talking about, you're 7 talking too fast, you're talking too quiet -- 8 whatever it is. And I'll be happy to repeat 9 myself and make sure that we're both on the same 10 page. 11 A Okay. 12 Q The other thing is that, you know, we're going to 13 be here for some time today, and this is not an 14 endurance test. You know, feel free to take a 15 break at any point. You know, go to the bathroom, 16 get some water, get coffee, whatever it is you 17 want to do. The only thing I would ask is if I've 18 asked a question, if you just go ahead and answer 19 it and then we'll take a break right afterwards. 20 A Sure. 21 Q The other thing is, you know, because we will be 22 here for sometime, sometimes it's natural in any 23 conversation when you're talking about something, 24 then we'll move on, and a little while later be</p>
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<p>1 asking you a series of questions. You'll be 2 obviously answering them. When I'm asking you 3 questions, because Lisa is taking everything down 4 on a transcript, it's important for both of us to 5 communicate orally, to say yes and no, instead of 6 uh uh or um hmm or nodding our heads. 7 Anthony is taking everything down by video 8 so we have a record too, but for Lisa's sake, it's 9 a lot easier if we both communicate orally. 10 The other thing that will kind of help Lisa 11 out, and I think help us out also, is if we try 12 not to talk over each other. You know, a lot of 13 times in conversation, people are quick to, you 14 know, for me, ask the question, or for you to kind 15 of anticipate what I'm going to say, and kind of 16 get muddled. But it gets confusing for Lisa, so 17 it's better if we do our best to take our turns. 18 Does that make sense? 19 A Um hmm. Yes. 20 Q Good practice. Lisa will remind us both, I'm 21 sure, during the course of this. The other thing 22 I should tell you is that sometimes I talk fast. 23 Sometimes I mumble. Sometimes I talk quietly or 24 am unclear. As Charles will -- or probably has</p>	<p>1 talking about something else, you might remember 2 something that you hadn't said earlier that you 3 want to go back and correct, or you might have 4 misspoken earlier and you want to clarify that. 5 At any point if that happens today, just say, 6 Mike, you know, earlier we were talking about X, 7 can we go back and talk about that. I just 8 remembered I meant to say Y also. Does that make 9 sense? 10 A Yup. 11 Q Are you taking any medications or anything else 12 that would affect your ability to understand me or 13 to testify truthfully today? 14 A No. 15 Q Is there any other reason that you can't testify 16 truthfully today? 17 A No. 18 Q Prior to today, have you reviewed any particular 19 documents between the time that you completed your 20 report and now other than what you had relied upon 21 in preparing your report? 22 A I have seen a couple of still images, which I 23 don't know whether they were from you or from -- I 24 don't know what side they were from, but I</p>

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<p>1 reviewed a couple of still images, and then I have</p> <p>2 reviewed, but not extensively, the 470 some odd</p> <p>3 page document that you sent over, maybe five days</p> <p>4 ago.</p> <p>5 Q With the different journals articles and what not?</p> <p>6 A Yes, I've read some of them, but I have not read</p> <p>7 the entire thing.</p> <p>8 Q Okay. The still images that you mention, are</p> <p>9 those still images from the sex tape?</p> <p>10 A Yes. Well, that's a good question actually. I</p> <p>11 don't know what they are from. I can show you</p> <p>12 the -- what I was given, and one of them, for</p> <p>13 example, was on The Dirty, which I think is a</p> <p>14 website, and there is an image. But where that</p> <p>15 image comes from, I don't know.</p> <p>16 Q Okay.</p> <p>17 Was the other images that you saw from The</p> <p>18 Dirty as well?</p> <p>19 A Yes. I believe so. And then there was a National</p> <p>20 Inquirer PDF of images, but as far as I recall,</p> <p>21 there was no sex images.</p> <p>22 Q Okay. And the images that you saw from The Dirty</p> <p>23 are images of Mr. Bollea and Heather Clem engaged</p> <p>24 in some sort of sexual activity in the Clem's</p>	<p>1 of the deposition, Charles may object from time to</p> <p>2 time.</p> <p>3 A Yeah.</p> <p>4 Q And generally, those objections are for the record</p> <p>5 so that ultimately when we go to court, or the</p> <p>6 judge looks at something, she can determine</p> <p>7 whether the question is proper or not. But you'll</p> <p>8 still be required to answer the question unless</p> <p>9 Charles instructs you not to answer. It's for</p> <p>10 preserving his legal objection, and otherwise,</p> <p>11 we'll move on, unless he instructs you not to</p> <p>12 answer.</p> <p>13 A Okay.</p> <p>14 Q That make sense?</p> <p>15 A Yes.</p> <p>16 Q All right. Well, why don't we just dive in here.</p> <p>17 I guess the other thing I should have</p> <p>18 explained to you is during the course of the day</p> <p>19 today, I'm going to be showing you a number of</p> <p>20 documents, and the documents are marked as</p> <p>21 Exhibits. They have Exhibit numbers. And because</p> <p>22 the case has been going on for some time, we're up</p> <p>23 to large numbers. We've been keeping them in</p> <p>24 sequence from the very first day of the case, and</p>
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<p>1 bedroom?</p> <p>2 A I don't know.</p> <p>3 Q You don't know what was in those images?</p> <p>4 A I don't know what was in those images because they</p> <p>5 are extremely grainy. It is -- I couldn't</p> <p>6 confidently make out what is in those images.</p> <p>7 Q Okay. Do you know why you were shown those?</p> <p>8 A I don't know why I was shown them. I could</p> <p>9 pontificate, but I don't know why I was shown</p> <p>10 them.</p> <p>11 Q What would you pontificate?</p> <p>12 MR. HARDER: I'm just going to object</p> <p>13 because she reviewed them yesterday when I met</p> <p>14 with her, so that's a privileged communication.</p> <p>15 MR. BERRY: Okay.</p> <p>16 MR. HARDER: And asking her to pontificate</p> <p>17 about why, what my motive may have been, I think</p> <p>18 would fall into the privilege and also be improper</p> <p>19 because it calls for speculation.</p> <p>20 Q Did seeing those images change anything in your</p> <p>21 report?</p> <p>22 A No.</p> <p>23 Q Okay. I guess I should have also mentioned, and</p> <p>24 Charles may have mentioned this, during the course</p>	<p>1 so we're going to start with Exhibit 338, and so</p> <p>2 you're coming into an ongoing case, so that's why</p> <p>3 this is happening like that.</p> <p>4 A Yes.</p> <p>5 Q So I'd like to mark as Exhibit 338 --</p> <p>6 (Document marked Exhibit No. 338 for</p> <p>7 identification.)</p> <p>8 Q So I see you have a copy of your report with you.</p> <p>9 A Yes, but I like the stapled version.</p> <p>10 Q Yeah. And so that we're all on the same page, and</p> <p>11 for official court reporting purposes, let's just</p> <p>12 work off the one that's stapled there.</p> <p>13 A Yes.</p> <p>14 Q Are you familiar with this document?</p> <p>15 A Yes.</p> <p>16 Q What is that?</p> <p>17 A This is my expert report submitted to Charles</p> <p>18 Harder, Mirell & Abrams on my assessment of the</p> <p>19 privacy invasion that Terry Bollea experienced.</p> <p>20 Q Okay. So the only thing I should tell you, as I</p> <p>21 show you documents -- and again, Charles may have</p> <p>22 told you this before, take -- I mean, this is your</p> <p>23 report, but take whatever time you need to flip</p> <p>24 through them and make sure that, you know, you</p>

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<p>1 understand what they are, and are familiar with 2 them before I start asking questions. Or as I'm 3 asking questions, feel free to look back at them. 4 So what I'm going to do is just start by 5 asking a little bit to make sure that I understand 6 the big picture with respect to the report, and 7 then later kind of talk of the specific aspects of 8 it in the survey you conducted, but I first want 9 to kind of get to the -- understand the big 10 picture.</p>	<p>1 experienced by Terry Bollea -- right? 2 MR. HARDER: Objection to the form. 3 A You don't have to correct the form? You just -- 4 Q Only if I want to. 5 So he can object. I can consider his 6 objection and change what I'm asking, or I can 7 just go with what I've asked. 8 A Okay. 9 Q So in this instance, I'll go with what I've asked. 10 A Can you repeat what you've asked, please.</p>
<p>11 If you could, turn to page 3. 12 A Oh, I even put page numbers on these. Excellent. 13 Q Yeah, at the bottom. Let me ask you real quick 14 before you turn there, what is the George F. Baker 15 Foundation? 16 A The George F. Baker Foundation is -- I don't know 17 for sure. This is my letterhead. So the standard 18 boilerplate bottom of a letterhead. I think that 19 Baker is probably a pretty big donor for Harvard 20 Business School. 21 Q Okay. But the foundation had nothing do with this 22 report? 23 A It has nothing to do with this report. 24 Q Okay. So on page 3, under the section that says</p>	<p>11 Q Again, this conclusion is only valid for a loss of 12 privacy such as the one experienced by Terry 13 Bollea -- right? 14 A Well, I wouldn't necessarily say that it is only 15 valid for that. What I will say is that it is 16 valid for the situation that Terry faced. Whether 17 and the extent to which it may apply to other 18 situations, I don't know because that wasn't part 19 of the research. It's possible, but that's not 20 what I investigated in this survey. 21 Q Right. But the -- ultimately, the conclusion is 22 valid for a loss of privacy such as the one 23 experienced by Terry Bollea. Right? I mean, 24 that's what you wrote.</p>
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<p>1 Background and Scope of the Assignment, in the 2 last sentence, it says that, "I have been asked to 3 determine a range of reasonable or fair 4 compensation for being observed naked and having 5 sex on a video published and viewed online without 6 consent." Is that right? 7 A That's what it says. 8 Q And that was your task in preparing this report? 9 A Yes. 10 Q And then to make that determination, you conducted 11 a survey -- right? 12 A Yes. 13 Q So on page 3, up at the top under Summary of 14 Opinion, it says, "I conclude with a reasonable 15 degree of certainty that: The range of money 16 deemed as fair and reasonable compensation for a 17 loss of privacy such as the one experienced by 18 Terry Bollea is approximately \$7 million to \$10 19 million. Is that right? 20 A That's what it says. 21 Q And that's what your conclusion is. 22 A Yes. 23 Q And the conclusion that you've reached is only 24 valid for a loss of privacy such as the one</p>	<p>1 A Yes, that's what I wrote. Can you -- I'm not 2 clear what your question was. 3 Q So your conclusion is valid only for a loss of 4 privacy such as the one experienced by Terry 5 Bollea -- right? 6 MR. HARDER: Asked and answered. 7 A I have to answer it anyways? Okay. 8 My answer to that question is -- I guess I 9 don't like that you're putting in the word "only." 10 Q Okay. 11 A That's what I don't like. I'm confident that it 12 applies to the situation that Terry Bollea was in. 13 That's, in fact, how the entire survey was 14 designed. But I'm not comfortable saying that it 15 only applied to that specific situation. It's 16 possible that it only applies to that situation, 17 but I don't know. 18 Q So it could apply to other situations faced by 19 people under the same circumstances. 20 A It's possible, but I don't know. 21 Q Okay. So you presented people with a specific 22 fact pattern -- right? 23 A Pardon me? 24 Q You presented people with a specific fact pattern?</p>

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<p>1 A What do you mean by "fact pattern"?</p> <p>2 Q Specific set of facts that they evaluated.</p> <p>3 A Yes.</p> <p>4 Q And the survey responses were based on the facts</p> <p>5 that were provided in the survey -- right?</p> <p>6 A Pardon me? I have to listen very carefully.</p> <p>7 Q I'm not trying to trick you.</p> <p>8 A No, I know, but I've got to be on my game.</p> <p>9 Q What?</p> <p>10 A I've got to be on my game.</p> <p>11 Q Right. But I mean, it's not a game. I'm not</p> <p>12 trying to trick you. I'm just trying to make sure</p> <p>13 that I understand.</p> <p>14 A Yes, and I'm trying to make sure I understand what</p> <p>15 you're asking me.</p> <p>16 Q The survey responses were based on the facts</p> <p>17 provided in the survey -- is that right?</p> <p>18 A That's right.</p> <p>19 Q And the valuations that respondents gave reflect</p> <p>20 only the facts provided in that survey -- right?</p> <p>21 A Can you explain what you mean by that?</p> <p>22 Q They weren't given any additional facts beyond</p> <p>23 what you presented to them in the survey -- right?</p> <p>24 A I did not give them any additional facts beyond</p>	<p>1 constrained the survey to just ask about that</p> <p>2 situation.</p> <p>3 Q So if the facts of the situation were different,</p> <p>4 if I understand what you're saying, the valuations</p> <p>5 might be different.</p> <p>6 A That's not exactly what I'm saying. That's not</p> <p>7 necessarily the case.</p> <p>8 It depends on what the facts were. What I</p> <p>9 did was I took what I thought to be a fair and</p> <p>10 reasonable representation of the facts, as I knew</p> <p>11 them, and distilled those into a survey that was</p> <p>12 easily comprehensible for survey participants to</p> <p>13 complete and provide me with valid answers to the</p> <p>14 questions.</p> <p>15 Q And so if the facts were different than what you</p> <p>16 presented, the valuations may be different.</p> <p>17 Right?</p> <p>18 A It depends on what the facts -- what these</p> <p>19 mysterious facts are.</p> <p>20 Q Right. But if we change the factual scenario,</p> <p>21 then the valuation might be different. You'd have</p> <p>22 to retest it -- right?</p> <p>23 MR. HARDER: Asked and answered about three</p> <p>24 times now.</p>
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<p>1 what I presented them in the survey.</p> <p>2 Q So their responses were based on those facts</p> <p>3 presented on the survey -- right?</p> <p>4 A Yes.</p> <p>5 Q You attempted to present a privacy violation</p> <p>6 scenario that was similar in all relevant respects</p> <p>7 to what actually happened to Mr. Bollea -- right?</p> <p>8 A I tried to present a scenario that was -- that</p> <p>9 would fairly and reasonably -- that would provide</p> <p>10 a fair and reasonable depiction of the situation</p> <p>11 that Terry Bollea faced.</p> <p>12 Q Why was that important?</p> <p>13 A Why was it important --</p> <p>14 Q Why did you want to come up -- present a scenario</p> <p>15 that was reasonably like what Mr. Bollea faced?</p> <p>16 A Because by constraining the situation to only the</p> <p>17 situation that I am interested in, it increases</p> <p>18 the validity of the responses that I get because</p> <p>19 it puts respondents all on the same page.</p> <p>20 I only want them to assess the valuation</p> <p>21 of -- for a loss of privacy such as the one Terry</p> <p>22 Bollea experienced. I'm not interested in other</p> <p>23 types of violations. I'm just interested in this</p> <p>24 specific situation, and so that's why I</p>	<p>1 A See answer I just gave.</p> <p>2 Q Your conclusion though is only valid, as far as</p> <p>3 you know, for the situation that you presented --</p> <p>4 right?</p> <p>5 MR. HARDER: I think that one's been asked</p> <p>6 and answered as well about three times.</p> <p>7 Q You can answer. I mean, he --</p> <p>8 THE WITNESS: Do I answer or do I --</p> <p>9 MR. HARDER: It's up to you. If you feel</p> <p>10 like you've answered it, then you can let him</p> <p>11 know. If you feel like you didn't fully answer</p> <p>12 it, then you can take another crack at it. Do you</p> <p>13 remember what the question was?</p> <p>14 A No. I would like to know the question again,</p> <p>15 please.</p> <p>16 Q Your conclusion is only valid for the situation</p> <p>17 that you presented -- right?</p> <p>18 MR. HARDER: Vague and ambiguous also.</p> <p>19 Objection to the form.</p> <p>20 A The spirit of the survey I conducted was to</p> <p>21 represent in a fair and reasonable way the</p> <p>22 situation that happened to Terry Bollea. In doing</p> <p>23 so, this increased the chances that respondents</p> <p>24 would be able to give valid answers to the</p>

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<p>1 question of what is a fair and compensation value</p> <p>2 for this situation. And so I distilled -- let me</p> <p>3 finish it at that. That's it. That's my answer.</p> <p>4 Q Okay, and my question is a little different</p> <p>5 though. My question was: Your conclusion --</p> <p>6 understanding what you had said in your prior</p> <p>7 answer, your conclusion is only valid for the</p> <p>8 situation that you presented -- right?</p> <p>9 MR. HARDER: It's been asked and answered</p> <p>10 five times.</p> <p>11 A I'm not sure what you're getting at.</p> <p>12 MR. HARDER: And it's also vague.</p> <p>13 Q What part don't you understand?</p> <p>14 A I guess none of it.</p> <p>15 Q You understand what your conclusion is -- right?</p> <p>16 A Yes.</p> <p>17 Q You used the word "valid." You understand what</p> <p>18 that means?</p> <p>19 A Yes.</p> <p>20 Q You understand what "the situation you presented"</p> <p>21 means -- right?</p> <p>22 A Yes.</p> <p>23 Q Okay. So your conclusion is only valid for the</p> <p>24 situation that you presented -- right?</p>	<p>1 that that Terry Bollea faced, and then to ask</p> <p>2 people what is a fair compensation value.</p> <p>3 Q So the survey asked respondents to put themselves</p> <p>4 in his place and try to figure out how much the</p> <p>5 privacy valuation was worth to them as the</p> <p>6 respondents -- right?</p> <p>7 A Yes. And by "his place," half of respondents were</p> <p>8 asked to imagine that it is them. The other half</p> <p>9 was asked to imagine that they're a famous sports</p> <p>10 figure, and answer the question as such.</p> <p>11 But to your point, they're answering the</p> <p>12 question: For you, what is a fair -- assuming</p> <p>13 you're that person -- what is a fair value. It's</p> <p>14 not: What do you think Terry Bollea thinks. That</p> <p>15 was not the question.</p> <p>16 Q Okay. And the respondents ultimately were asked</p> <p>17 how much money they would want to receive if they</p> <p>18 were in a similar situation to that experienced by</p> <p>19 Mr. Bollea -- right?</p> <p>20 MR. HARDER: Objection.</p> <p>21 MR. BERRY: To form.</p> <p>22 MR. HARDER: To form, and the report speaks</p> <p>23 for itself.</p> <p>24 MR. BERRY: Charles, you can object to form.</p>
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<p>1 MR. HARDER: Vague and ambiguous. Asked and</p> <p>2 answered.</p> <p>3 MR. BERRY: You can just object to form,</p> <p>4 counsel.</p> <p>5 A See my previous answer.</p> <p>6 Q Okay. Let me make sure that I understand, I</p> <p>7 guess, the way that the survey was structured in</p> <p>8 the broader sense.</p> <p>9 The survey asked respondents to imagine</p> <p>10 themselves in the same situation as Terry</p> <p>11 Bollea -- right?</p> <p>12 A Yes.</p> <p>13 Q And the respondents were then asked to decide how</p> <p>14 much they should be compensated as if they were</p> <p>15 injured like Mr. Bollea -- right?</p> <p>16 A Some of them were. Others were asked to imagine</p> <p>17 what would be fair compensation assuming that they</p> <p>18 were famous.</p> <p>19 Q But ultimately, even for those folks, they were</p> <p>20 asking about their own views assuming that they</p> <p>21 were the famous American sports figure -- right?</p> <p>22 A Yes. I mean, I can't get inside of Terry Bollea's</p> <p>23 mind. So the point is to describe the situation</p> <p>24 in a as reasonably similar as possible way, to</p>	<p>1 That's all we've done in all these depositions.</p> <p>2 I'm asking --</p> <p>3 MR. HARDER: No, Seth Berlin goes on for a</p> <p>4 page in his objections. I go on for half a</p> <p>5 sentence, and also, the questions that were asked</p> <p>6 of people, it's in the report word for word, and</p> <p>7 you're rephrasing it in a way that's inaccurate.</p> <p>8 So that's trickery, and I have to call you on it.</p> <p>9 MR. BERRY: All right. We're going to wind</p> <p>10 up being here all day. You sat through every one</p> <p>11 of the expert depositions.</p> <p>12 MR. HARDER: I know we're going to be here</p> <p>13 all day. We're always here all day, Mike. You've</p> <p>14 never gotten us out earlier than a day.</p> <p>15 MR. BERRY: But we could be here for</p> <p>16 multiple days then. You sat through all the</p> <p>17 expert depositions, and the most that either me,</p> <p>18 or Shane, or you have said is object to form. If</p> <p>19 you want to talk to Doctor John --</p> <p>20 MR. HARDER: That's not true. I've given</p> <p>21 slightly more objections than that, and your</p> <p>22 partner goes on for an entire page.</p> <p>23 MR. BERRY: He hasn't deposed a single</p> <p>24 expert.</p>

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<p>1 BY MR. BERRY:</p> <p>2 Q Doctor John, if you need help during this process,</p> <p>3 Charles is here to help you. If you want to talk</p> <p>4 to him outside of the room, off the record, please</p> <p>5 feel free do so.</p> <p>6 Under Florida law, all you're supposed to</p> <p>7 say is object as to form. If Charles wants to</p> <p>8 speak, he's more than welcome to, and I invite you</p> <p>9 to listen to the advice that he gives you while</p> <p>10 he's speaking.</p> <p>11 I'm going to just ask you questions, and</p> <p>12 we'll just move forward like that. Okay?</p> <p>13 MR. HARDER: I'm just going to -- forgive</p> <p>14 me -- make an objection for the record. I'm not</p> <p>15 giving her advice when I make an objection, Mike,</p> <p>16 and I think that's improper for you to say that.</p> <p>17 BY MR. BERRY:</p> <p>18 Q So returning to the question: The respondents</p> <p>19 were asked how much money they would want to</p> <p>20 receive if they were in a similar situation to</p> <p>21 that experienced by Mr. Bollea -- right?</p> <p>22 MR. HARDER: Same objections as before.</p> <p>23 A Can you say the question again?</p> <p>24 MR. BERRY: Can you read it back.</p>	<p>1 report. I'll even be specific. The words "Terry</p> <p>2 Bollea" were never even in the survey, so I don't</p> <p>3 know why you're asking a question like that. It's</p> <p>4 just highly objectionable.</p> <p>5 BY MR. BERRY:</p> <p>6 Q You can answer the question.</p> <p>7 A It also doesn't say how much they would want to</p> <p>8 receive. It asks them -- well, I'll tell you what</p> <p>9 it asks them. Let's let the report speak for</p> <p>10 itself.</p> <p>11 Q What they would deem is fair and reasonable</p> <p>12 compensation.</p> <p>13 MR. HARDER: She's going to answer your</p> <p>14 question now.</p> <p>15 A So participants were asked to imagine that,</p> <p>16 quote -- this is what participants -- "you had sex</p> <p>17 with an acquaintance of yours in a private bedroom</p> <p>18 in a private home. Unbeknownst to both of you at</p> <p>19 the time, this sexual interaction was secretly</p> <p>20 filmed. You learned of this recently when you</p> <p>21 discovered that a minute and a half long portion</p> <p>22 of the sex tape, the tape of you having sex with</p> <p>23 your acquaintance in a bedroom in a private home,</p> <p>24 had been posted on the internet."</p>
<p>1 (Question read back.)</p> <p>2 MR. HARDER: Report speaks for itself.</p> <p>3 A I mean, I can read the exact question that they</p> <p>4 were asked. I think I would feel more</p> <p>5 comfortable --</p> <p>6 Q Than explaining your report?</p> <p>7 A Well, you're being very specific on the words you</p> <p>8 use, so I think that I need to be very specific in</p> <p>9 the words -- if you want to know what we asked</p> <p>10 people, just look at the report. It says the</p> <p>11 questions that we asked them. So I'm happy to</p> <p>12 read to you the relevant questions --</p> <p>13 Q Okay.</p> <p>14 A -- that you want. Okay.</p> <p>15 Q That would be great.</p> <p>16 A Okay. So -- and your question is: How did we ask</p> <p>17 people? How did I ask people?</p> <p>18 Q My question was: The respondents were asked how</p> <p>19 much money they would want to receive if they were</p> <p>20 in a similar situation to that experienced by</p> <p>21 Mr. Bollea.</p> <p>22 A Okay.</p> <p>23 MR. HARDER: And just my objection is that</p> <p>24 what you just said is inconsistent with the</p>	<p>1 Then participants were asked to rate the</p> <p>2 extent to which, if at all, your privacy has been</p> <p>3 violated. So you can see on page 4 -- the scroll</p> <p>4 bar -- the response.</p> <p>5 Q I'm asking about a different part of the survey.</p> <p>6 A Then participants were asked --</p> <p>7 Q I'm just asking about the compensation.</p> <p>8 A Yeah. Hang on. The full text is back here.</p> <p>9 Okay. "Now, imagine that a representative</p> <p>10 from the website that put the sex video online</p> <p>11 shows up at your doorstep. This person has come</p> <p>12 to write you a check to compensate you for the</p> <p>13 situation. We would like to know how much the</p> <p>14 person should make the check out for, such that</p> <p>15 you feel adequately and fairly compensated for the</p> <p>16 secretly filmed sex video having been posted</p> <p>17 online.</p> <p>18 "We understand that it may be difficult to</p> <p>19 answer this question. Nonetheless, we would like</p> <p>20 you to take a moment to estimate what you think</p> <p>21 would be a fair amount of money to receive as</p> <p>22 compensation for the situation. In providing your</p> <p>23 estimate, please assume that this is the after tax</p> <p>24 amount of compensation.</p>

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<p>1 "For starters, we'd like you to specify what 2 the compensation should be for one person having 3 viewed the video; that is, what would the amount 4 you would deem as fair compensation for one 5 stranger on the internet to have viewed the sex 6 video on one occasion? 7 "From the options below, please select the 8 range that you think is most appropriate to 9 express the value, i.e, the amount of money you 10 would deem as fair compensation for one person to 11 have viewed the sex video. We understand that it 12 may be difficult to answer this question; 13 nonetheless, we would like you to take a moment to 14 estimate what you think would be a fair amount of 15 money to receive as compensation for the 16 situation. In providing your estimate, please 17 assume that this is the after tax amount of 18 compensation. 19 "For starters, from the options below, 20 please select the range that you think is most 21 appropriate to express the value." 22 Q Doctor John, just to save time, I mean, that's in 23 the record and we can -- I mean, if you're going 24 to read, you can just say I'm going to read the</p>	<p>1 they were in a similar situation to that 2 experienced by Mr. Bollea -- right. And you've 3 read a fair bit of the survey. 4 What portion would you like to point to that 5 we can just include in the record to save some 6 time? 7 A I would like to put everything in because that 8 is -- if the question -- you're asking me whether 9 I agree with whether we asked a certain question, 10 and I don't agree because that's not what we asked 11 people. So I read you what we actually asked 12 people. And that's my answer. My answer is, is 13 my report, the word in my -- this is what we asked 14 people. 15 Q Okay. Ultimately, what was the ultimate 16 question -- stated in layman speak -- what was the 17 ultimate thing that you were asking people to do? 18 Like if you were going to be talking to, you know, 19 the -- some grocery store clerk, some waiter or 20 waitress, what would you explain to them the 21 ultimate question you were asking people to answer 22 was? 23 A I think I've already answered that question 24 several times.</p>
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<p>1 survey through whatever point, just to save us 2 some time. I mean, if you want to read it all, 3 I'm happy to -- 4 A Okay. I wanted to be clear that you understood 5 what was actually asked. 6 Q Right. I read the survey, and I guess, as I said 7 at the beginning, what I'm trying to do is get 8 some big picture understanding of what you've 9 done. 10 A Okay. 11 Q Later, we'll go through this in some detail about 12 the particular aspects of the survey, but to 13 complete your answer to my prior question, which 14 was just: Ultimately, the respondents were asked 15 how much money they would want to receive if they 16 were in a similar situation to that experienced by 17 Mr. Bollea, you've read a portion of the survey. 18 What remaining portion would you like entered into 19 the record? 20 A To answer the question of? 21 Q What I just asked. 22 A How they were asked? 23 Q No, the question I said was: If respondents were 24 asked how much money they would want to receive if</p>	<p>1 Q Okay. 2 Did you ever ask Mr. Bollea what the 3 invasion of privacy was worth to him? 4 A No. 5 Q And the survey, based on I think what you said 6 earlier, did not seek to measure the actual 7 emotional distress that Mr. Bollea experienced -- 8 right? 9 A Can you repeat that, please? 10 (Question read back.) 11 MR. HARDER: Objection to form. The 12 document speaks for itself. 13 A So do I have to answer that? 14 Q Yes. 15 A I'm not sure how to answer that question. 16 Q Okay. Well, let me ask it a different way. 17 Did the survey describe the emotional 18 distress that Mr. Bollea suffered? 19 A No. It didn't describe that. 20 Q So your conclusion on valuation is not based on 21 any facts about how Mr. Bollea himself was 22 actually affected by Gawker's posting of the sex 23 tape excerpts -- right? 24 A So Mr. Bollea, although I have not spoken to him,</p>

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<p>1 I understand from his lawyers that he is extremely</p> <p>2 emotionally upset about this, and in designing</p> <p>3 this survey, I made every effort to make</p> <p>4 conservative decisions.</p> <p>5 By "conservative," I mean decisions that, if</p> <p>6 anything, would cause respondents to -- would</p> <p>7 exert a downward pressure on respondents'</p> <p>8 valuations. The reason I did that was because I</p> <p>9 think then it's more credible because, of course,</p> <p>10 I'm working for this side, and you know -- so</p> <p>11 that's why I chose -- I made conservative design</p> <p>12 choices.</p> <p>13 Now, based on the over eight years of</p> <p>14 research I have done on surveys, if I had put in a</p> <p>15 description of how morally and emotionally</p> <p>16 outraged Terry Bollea was, that, in my expert</p> <p>17 opinion, if anything, would have dramatically --</p> <p>18 or could have inflated the valuations that people</p> <p>19 provided, in turn making our results less</p> <p>20 credible.</p> <p>21 Q And so in your survey, you did not present any</p> <p>22 facts about how Mr. Bollea himself was actually</p> <p>23 affected by the Gawker posting -- right?</p> <p>24 A I did not deem that to be relevant, and as stated,</p>	<p>1 Q So you didn't see, like, the full sex tape. You</p> <p>2 saw excerpts of a longer tape?</p> <p>3 MR. HARDER: Objection to the word excerpts.</p> <p>4 Vague and ambiguous.</p> <p>5 Q Was the video you watched a continual scene of</p> <p>6 what transpired moment by moment?</p> <p>7 A That's what it appeared to be.</p> <p>8 Q So you saw everything that happened in the room</p> <p>9 from start to finish?</p> <p>10 A Well, I don't know what I didn't see. That's</p> <p>11 impossible to answer.</p> <p>12 Q Okay. But you didn't see, like, a tape that was</p> <p>13 30 minutes long.</p> <p>14 A I saw a one -- approximately, one minute and 40</p> <p>15 seconds videotape which included pre-sex, sex and</p> <p>16 after sex.</p> <p>17 Q Going back to something you had said when we first</p> <p>18 started talking, would the 7 to \$10 million range</p> <p>19 be the appropriate range of compensation for</p> <p>20 anyone who had excerpts from a secretly filmed sex</p> <p>21 tape posted online and viewed by 7 million people?</p> <p>22 MR. HARDER: Objection to form. Compound,</p> <p>23 vague and ambiguous. Incomplete hypothetical.</p> <p>24 A I don't know what --</p>
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<p>1 to the extent that I would have included -- I</p> <p>2 don't think it's relevant. I've encapsulated what</p> <p>3 I perceive to be the key components of the</p> <p>4 situation, and had I included extraneous</p> <p>5 components, it could have inflated the valuations.</p> <p>6 Q How did you determine what was extraneous?</p> <p>7 A Based on my over eight years of survey design</p> <p>8 experience.</p> <p>9 Q But in this particular scenario, how did you</p> <p>10 determine what was relevant and what was</p> <p>11 extraneous?</p> <p>12 A Well, I very much relied on my experience and</p> <p>13 expertise in designing surveys. In addition, I</p> <p>14 viewed the sex tape, and so my description was, in</p> <p>15 my opinion, a reasonable description of the sex</p> <p>16 tape.</p> <p>17 Q When you say you viewed the sex tape, what sex</p> <p>18 tape did you view?</p> <p>19 A I viewed a tape of Terry Bollea being secretly</p> <p>20 filmed having sex with a woman, and it was about a</p> <p>21 minute and 40 seconds long.</p> <p>22 Q And that was the video that was posted on the</p> <p>23 Gawker website, as far as you know?</p> <p>24 A That is my understanding. But I -- yeah.</p>	<p>1 Q He's given you a lot of stuff to choose from.</p> <p>2 A I don't understand what you're asking.</p> <p>3 Q Which part did you not understand?</p> <p>4 A I didn't understand any of it.</p> <p>5 Q Okay, why don't we go word by word. Can you</p> <p>6 repeat, and we'll kind of go through this step by</p> <p>7 step.</p> <p>8 You understand the 7 to \$10 million range --</p> <p>9 right?</p> <p>10 A Yes, that's the number that is in my report. Yes.</p> <p>11 Q So that's the range that you said would be</p> <p>12 appropriate compensation.</p> <p>13 A For this situation.</p> <p>14 Q Right. So my question is, would that be the</p> <p>15 appropriate range of compensation for anyone who</p> <p>16 faced this situation; that is, had a sex tape</p> <p>17 posted of them on the internet and viewed by 7</p> <p>18 million people?</p> <p>19 A For anyone?</p> <p>20 Q Right.</p> <p>21 MR. HARDER: Again, it's an incomplete</p> <p>22 hypothetical. Objection to form.</p> <p>23 A I don't know why you -- so I'm not interested in</p> <p>24 for anyone. That's not the goal of this. That's</p>

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<p>1 not the intention. That's not, to me, relevant.</p> <p>2 So I'm not comfortable making statements about the</p> <p>3 extent to which my report generalizes to other</p> <p>4 situations. So I'm --</p> <p>5 Q Let's say that the same exact theme happened to</p> <p>6 Tom Brady -- right? Tom Brady is a famous</p> <p>7 American sports figure. He's somebody that people</p> <p>8 recognize when he walks down the street. Would</p> <p>9 this apply to him?</p> <p>10 A I don't know because I haven't done a survey on</p> <p>11 him.</p> <p>12 Q Right. But if you just changed the plaintiff from</p> <p>13 Terry Bollea to Tom Brady, would anything about</p> <p>14 this change?</p> <p>15 A I mean, there is no mention of Terry Bollea in</p> <p>16 here.</p> <p>17 Q Right. So that's my question.</p> <p>18 A Yeah.</p> <p>19 Q For anyone facing these circumstances, would this</p> <p>20 be the appropriate range of compensation?</p> <p>21 MR. HARDER: Incomplete hypothetical and</p> <p>22 objection to form.</p> <p>23 A I'm not comfortable saying "anyone." That's -- I</p> <p>24 think that goes way beyond -- extrapolating way</p>	<p>1 times longer when he objects.</p> <p>2 MR. BERRY: I'm going to call Judge Case and</p> <p>3 ask him to make the same sort of ruling that he</p> <p>4 made against Seth in the deposition you're talking</p> <p>5 about.</p> <p>6 MR. HARDER: There was no ruling against</p> <p>7 Seth. That's the thing. Seth said, I'm going to</p> <p>8 do whatever I'm going to do, and then I said,</p> <p>9 Well, why are we even paying Judge Case to be</p> <p>10 here. That's exactly -- I was there. That's</p> <p>11 exactly -- and then Seth stormed out of the room.</p> <p>12 Q If this happened to me, and I was the plaintiff in</p> <p>13 this case, and the same exact scenario happened,</p> <p>14 right, where somebody secretly filmed me, private</p> <p>15 bedroom, private house, video was then posted</p> <p>16 online, 7 million people viewed it, would this be</p> <p>17 the appropriate range of compensation?</p> <p>18 A I don't know because I'm not doing -- my task was</p> <p>19 not to answer that question. It was to answer the</p> <p>20 question here, so I'm not comfortable speculating.</p> <p>21 Q Under your conclusion, if someone were secretly</p> <p>22 filmed having sex, and excerpts of them -- of that</p> <p>23 sex tape were then put online without their</p> <p>24 consent, then the value assigned to that privacy</p>
<p>1 beyond the data.</p> <p>2 Q Okay. Well, what if it was Tom Brady?</p> <p>3 MR. HARDER: Objection. Vague and</p> <p>4 ambiguous.</p> <p>5 Q People weren't told that Terry Bollea was the</p> <p>6 plaintiff here -- right?</p> <p>7 A Right.</p> <p>8 MR. HARDER: I just have to object. I mean,</p> <p>9 a question: What if it was Tom Brady is, like,</p> <p>10 not even a question.</p> <p>11 MR. BERRY: Charles, objection to form is</p> <p>12 sufficient.</p> <p>13 MR. HARDER: And she's already asked and</p> <p>14 answered. She already said it. She said she</p> <p>15 doesn't feel comfortable going beyond, and you</p> <p>16 keep going after her. You want to ignore</p> <p>17 everything she says and make her answer the same</p> <p>18 thing over and over. That's what's going to keep</p> <p>19 us here all day long.</p> <p>20 Objection to form. Vague and ambiguous to</p> <p>21 the question: What about Tom Brady. And it's</p> <p>22 been asked and answered.</p> <p>23 MR. BERRY: Charles --</p> <p>24 MR. HARDER: And Seth Berlin goes on for 10</p>	<p>1 violation would be between 7 and \$10 million,</p> <p>2 regardless of how the actual plaintiff was</p> <p>3 affected -- right?</p> <p>4 MR. HARDER: Objection to form. Vague and</p> <p>5 ambiguous. Incomplete hypothetical.</p> <p>6 A I don't know what you're saying.</p> <p>7 Q What part don't you understand?</p> <p>8 A I don't understand any of it. It's so muddled to</p> <p>9 me what you're trying to ask.</p> <p>10 Q Under your conclusion, if someone is secretly</p> <p>11 filmed having sex, and excerpts from the sex tape</p> <p>12 are put online without their consent, and viewed</p> <p>13 by 7 million people -- that's your scenario,</p> <p>14 correct?</p> <p>15 MR. HARDER: Objection. It misstates her</p> <p>16 expert report.</p> <p>17 A I can read to you the scenario.</p> <p>18 Q Okay.</p> <p>19 A I don't want your words to represent the scenario.</p> <p>20 I want what it actually was to be the scenario.</p> <p>21 Q Let's use this. We'll just say, for the record,</p> <p>22 there is a scenario that's put out on page 13 of</p> <p>23 the expert report that starts with: "Imagine that</p> <p>24 you are a very famous American sports figure," and</p>

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<p>1 it goes all the way through three bullet points</p> <p>2 that discusses what's depicted on the video.</p> <p>3 Let's say that that is the scenario -- right?</p> <p>4 That's the scenario that you presented to</p> <p>5 people -- correct?</p> <p>6 A Yes.</p> <p>7 Q The value assigned to the privacy violation that</p> <p>8 occurred there is 7 to \$10 million regardless of</p> <p>9 how the person that this actually happened to was</p> <p>10 affected -- right?</p> <p>11 MR. HARDER: Objection to the form.</p> <p>12 A I don't know what you mean by "affected."</p> <p>13 Q Before you mentioned that you thought that Terry</p> <p>14 Bollea was devastated by this -- right -- that</p> <p>15 this was awful for him -- right?</p> <p>16 A That is my understanding. I've never talked to</p> <p>17 him though.</p> <p>18 Q So your understanding is that he might have been</p> <p>19 affected more than 7 to \$10 million.</p> <p>20 A It's possible.</p> <p>21 Q Okay. But if somebody who personally said, eh, I</p> <p>22 don't care about this at all, would their</p> <p>23 valuation, based on your conclusion, would still</p> <p>24 be 7 to \$10 million is a reasonable compensation</p>	<p>1 beyond the data. I mean, this is the report that</p> <p>2 I've created for this situation. I'm not talking</p> <p>3 about how other people value privacy. The</p> <p>4 situation is, given the situation that Terry</p> <p>5 Bollea was in, what is a fair and reasonable</p> <p>6 valuation.</p> <p>7 Q Well, what if Terry Bollea is lying and saying</p> <p>8 this didn't affect him at all -- right -- would</p> <p>9 this still be an appropriate range?</p> <p>10 MR. HARDER: Argumentative. I'm just</p> <p>11 getting some objections in here. Argumentative,</p> <p>12 objection to form.</p> <p>13 A I actually think this helps us to -- so I</p> <p>14 understand what you're saying, that -- I think I</p> <p>15 understand what you're saying, that how can we be</p> <p>16 sure -- when Terry Bollea says whatever he thinks</p> <p>17 is fair for himself -- how can we be sure that</p> <p>18 he's actually saying what he actually thinks.</p> <p>19 Q Well, I was asking a different question.</p> <p>20 A Okay. What's the question?</p> <p>21 Q Okay. My question was: If he is lying and he</p> <p>22 wasn't affected --</p> <p>23 A Yes.</p> <p>24 Q -- would this still be fair and reasonable</p>
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<p>1 for the privacy violation -- right?</p> <p>2 A Different people have different valuations for</p> <p>3 their privacy.</p> <p>4 Q Right. But your conclusion is that a fair and</p> <p>5 appropriate compensation for this scenario would</p> <p>6 be 7 to \$10 million regardless how the individual</p> <p>7 person that this happened to valued their privacy.</p> <p>8 Right?</p> <p>9 MR. HARDER: Objection to the form. Report</p> <p>10 speaks for itself.</p> <p>11 A I mean, I can -- I can read you the conclusions</p> <p>12 that I reached. I'm not comfortable going beyond</p> <p>13 and making conclusions that aren't in this report.</p> <p>14 Q Right. But picking up on what you said, people</p> <p>15 have different valuations for their privacy.</p> <p>16 A Um hmm.</p> <p>17 Q What you're saying in this report is that this 7</p> <p>18 to \$10 million range is fair and appropriate</p> <p>19 compensation for this violation, irrespective of</p> <p>20 how any individual person values their privacy --</p> <p>21 right?</p> <p>22 MR. HARDER: Objection to form. Report</p> <p>23 speaks for itself.</p> <p>24 A Yeah. I mean again, I'm not comfortable going</p>	<p>1 compensation?</p> <p>2 MR. HARDER: Objection to form.</p> <p>3 A This validates the amount of money that Terry</p> <p>4 Bollea thinks is fair and reasonable compensation.</p> <p>5 The reason why it validates it is because the</p> <p>6 people in this survey, they have no skin in the</p> <p>7 game.</p> <p>8 Terry Bollea is in a situation where he will</p> <p>9 state what he thinks the value of his privacy is,</p> <p>10 which I believe him. That's what it is.</p> <p>11 However, one could be skeptical perhaps,</p> <p>12 which I think is what you're saying, because he</p> <p>13 stands to actually get that money. So this survey</p> <p>14 serves as like a sanity check on whether those --</p> <p>15 those numbers actually are reasonable. And the</p> <p>16 reason why they help to validate claims from</p> <p>17 Mr. Bollea is they do validate claims from</p> <p>18 Mr. Bollea to the extent that they are somewhat</p> <p>19 consistent with what he is saying because the</p> <p>20 people in this survey did not stand to actually</p> <p>21 gain money. I'm not going to actually pay them</p> <p>22 this value.</p> <p>23 So this means that it reduces the chance</p> <p>24 that people are just going to say any high number</p>

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<p>1 because they're going to get the money. These 2 people have no conflict of interest in reporting 3 their valuations. 4 So by my read, this actually supports and 5 validates what Terry Bollea is asking for, and 6 suggests that he really is telling us what his 7 compensation value is. In fact -- yeah, let me 8 just end that.</p>	<p>1 than when you do. So that's an example of 2 something that really matters when people think 3 about the value of privacy. The really important 4 thing is that in this situation, that's why I 5 describe the situation in as much detail as I 6 thought was reasonable, so that people could 7 really provide fair, and reasonable, and valid 8 values given the situation that Terry Bollea was 9 in.</p>
<p>9 Q Was your purpose in performing this report to 10 validate Terry Bollea's claim for damages?</p>	<p>10 Q When people seek to value privacy, do they do it</p>
<p>11 A That was not the explicit purpose, no.</p>	<p>11 based on the psychic harm that they would suffer</p>
<p>12 Q Was that what you set out to do in preparing this 13 report?</p>	<p>12 because of this kind of violation? 13 MR. HARDER: Calls for speculation.</p>
<p>14 A I set out to understand what is a fair and 15 reasonable compensation amount for a loss of 16 privacy such as that experienced by Terry Bollea.</p>	<p>14 Objection to form. 15 A I don't know what you mean.</p>
<p>17 Q And how do people assess how a loss of privacy 18 impacts them?</p>	<p>16 Q The emotional hurt that it caused them -- would 17 they factor that in to the privacy valuation?</p>
<p>19 MR. HARDER: Objection to form. Vague and 20 ambiguous. Calls for speculation.</p>	<p>18 MR. HARDER: Same objection. 19 A Yeah, I don't know what you're getting at. I</p>
<p>21 A Can you be clearer on the question, please?</p>	<p>20 think I've described how factor -- I've delineated 21 some things that factor into people's valuations.</p>
<p>22 Q When people answer questions about how a loss of 23 privacy should be valued, what kind of factors 24 would they take into account?</p>	<p>22 Q Okay. When you write in your report that 7 to \$10 23 million is the range of money deemed as fair and 24 reasonable compensation for a loss of privacy like</p>
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<p>1 MR. HARDER: Objection. Calls for 2 speculation. Vague and ambiguous. Incomplete 3 hypothetical. Objection to form.</p>	<p>1 the one here at issue, who deems that amount fair 2 and reasonable? 3 A Who -- what do you mean?</p>
<p>4 A Well, we know from research that there are certain 5 factors that impact people's valuations of their 6 privacy, and one of those factors -- and 7 importantly, in creating this survey, I matched 8 all of those relevant factors, insofar as I could, 9 that would impact people's valuations.</p>	<p>4 Q You wrote: "Range of money deemed as fair and 5 reasonable compensation." Who deems it fair and 6 reasonable? 7 A So this is based on the assessments from the 8 survey respondents who were designed to -- I 9 didn't design respondents -- who were chosen to be</p>
<p>10 The -- I matched them to the scenario at 11 hand. So for example, one thing that has an 12 impact on people's valuations of privacy is 13 whether they have control in sharing their 14 information or whether they don't have control.</p>	<p>10 as -- to match Hulk Hogan on income demographic 11 because that is a factor that could affect 12 valuations. So I took care to try to match that 13 demographic factor. 14 Q Right. And then ultimately, you looked at 15 medians -- right?</p>
<p>15 So the same information, if they have 16 control over sharing it, versus they -- they have 17 control over sharing it, so they decide to share 18 it, they're still losing privacy. But if they 19 lose the same information, but it's taken from 20 them, and they don't have control, then that is a 21 much more serious privacy violation.</p>	<p>16 A Yes. 17 Q You're the one who deemed it as fair and 18 reasonable compensation to be the 7 to \$10 19 million? 20 A To be the median, yes.</p>
<p>22 And so, the value that you would need to be 23 compensated to feel whole again would be much 24 greater in a scenario where you don't have control</p>	<p>21 Q And so the 7 to \$10 million range, what does that 22 actually represent? 23 A Can you be more specific? 24 Q The range of money deemed as fair and reasonable</p>

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<p>1 compensation is 7 to \$10 million.</p> <p>2 A Um hmm.</p> <p>3 Q What does that 7 to \$10 million range actually</p> <p>4 represent?</p> <p>5 A So one of the things that I did in this survey to</p> <p>6 follow best practices in trying to measure</p> <p>7 something that is hard to measure, I asked people</p> <p>8 the question in different ways. And the survey</p> <p>9 design research, the literature suggests that you</p> <p>10 will obtain more valid answers if you ask -- if</p> <p>11 you ask the same question in different ways</p> <p>12 because then when you ask the same question in</p> <p>13 different ways, they converge upon the truth, or</p> <p>14 they converge upon a much more valid answer than</p> <p>15 if you just asked people using one method.</p> <p>16 So following that spirit, what I did was I</p> <p>17 asked people in different ways to make this</p> <p>18 valuation. Some people, I asked -- I said in the</p> <p>19 scenario, imagine that one person -- I'm not</p> <p>20 quoting it, but the first -- half of the people</p> <p>21 were asked to imagine that one stranger on the</p> <p>22 internet had viewed this. Another half of people</p> <p>23 were asked up front, 7 million people had viewed</p> <p>24 this.</p>	<p>1 summary of the medians.</p> <p>2 Q If I am a juror trying to determine how much</p> <p>3 compensation is appropriate in this case for the</p> <p>4 privacy violation that Mr. Bollea's suffered, how</p> <p>5 does your conclusion help me answer that question?</p> <p>6 MR. HARDER: Objection to form.</p> <p>7 A Can you ask the question again, please.</p> <p>8 Q If I'm a juror sitting in the courtroom trying to</p> <p>9 determine, at the end of the day, how much money</p> <p>10 in compensation to award to Mr. Bollea, how does</p> <p>11 your conclusion help me answer that question?</p> <p>12 A It gives you data on what a fair and reasonable</p> <p>13 compensation amount is from people who have no</p> <p>14 direct -- they stand to gain nothing from this.</p> <p>15 So hence, this is credible.</p> <p>16 Q What is the difference between the question that</p> <p>17 the jury in the case is supposed to answer on</p> <p>18 compensation, and the question that your survey</p> <p>19 participants were asked to answer?</p> <p>20 MR. HARDER: I have to object to this one.</p> <p>21 It assumes facts that are not in evidence; namely,</p> <p>22 what a jury is going to be presented with.</p> <p>23 It's -- calls for a legal conclusion and</p> <p>24 objection to form.</p>
<p>Page 50</p> <p>1 Now, the people that I asked first, imagine</p> <p>2 one stranger had viewed it, they were then</p> <p>3 subsequently asked to indicate, supposing 7</p> <p>4 million people had viewed this. So you already</p> <p>5 told me what you think for one person. Now</p> <p>6 suppose that 7 million people had watched it. So</p> <p>7 those are two different ways of asking the</p> <p>8 question. One you're just asked straight up 7</p> <p>9 million, the other you're asked for one, and then</p> <p>10 later 7 million.</p> <p>11 And previous research suggests that that can</p> <p>12 matter. So I didn't want to rely on just one or</p> <p>13 the other. I relied on both methods. So the 7 to</p> <p>14 10 is the convergence of multiple methods.</p> <p>15 So that is -- for 7 million people to have</p> <p>16 viewed this video as described in the scenario,</p> <p>17 the median fair and reasonable amount of</p> <p>18 compensation was deemed to be 7 to 10 million.</p> <p>19 Q Okay.</p> <p>20 A Now, that doesn't mean that higher numbers are</p> <p>21 unfair. That is simply the -- a summary of the</p> <p>22 data because I used -- measures of central</p> <p>23 tendency, I used medians to summarize the data as</p> <p>24 a statistician. So that's sort of the best</p>	<p>Page 52</p> <p>1 A I don't know what the jury is going to be asked,</p> <p>2 so.</p> <p>3 Q If I told you ultimately the jury is going to be</p> <p>4 asked to award compensation based on Mr. Bollea's</p> <p>5 claim that Gawker published private facts about</p> <p>6 him.</p> <p>7 A Um hmm.</p> <p>8 Q How is that question -- how is it different than</p> <p>9 the question that you posed?</p> <p>10 A How are they the same?</p> <p>11 Q Let me ask it a different way. If a jury is</p> <p>12 ultimately asked to determine what's fair and</p> <p>13 appropriate compensation to Mr. Bollea for his</p> <p>14 invasion of privacy, how is that different than</p> <p>15 what you asked the survey participants to consider</p> <p>16 here?</p> <p>17 MR. HARDER: Objection to form.</p> <p>18 A So are you asking me what I think the jury is</p> <p>19 trying to decide?</p> <p>20 Q Well, you know what will happen at trial, right?</p> <p>21 Like Charles and his side will put on their case</p> <p>22 about Mr. Bollea. We'll put on our case, and</p> <p>23 ultimately the jury renders a verdict -- right?</p> <p>24 A Yes.</p>

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<p>1 Q And when they render a verdict, you understand</p> <p>2 that they award compensation if they find in favor</p> <p>3 of Mr. Bollea -- right?</p> <p>4 A Okay.</p> <p>5 Q Do you understand that?</p> <p>6 A Yeah.</p> <p>7 Q Okay. And so one of the things that they would be</p> <p>8 asked to award compensation for is his invasion of</p> <p>9 privacy -- right?</p> <p>10 A Um hmm.</p> <p>11 Q How is that inquiry different than the inquiry</p> <p>12 that you posed in your survey?</p> <p>13 MR. HARDER: Objection to form.</p> <p>14 Q Or is it?</p> <p>15 A So I'm still a little confused about what you're</p> <p>16 trying to ask me, frankly. The spirit of this is</p> <p>17 to provide a document that provides a valid, and</p> <p>18 reasonable, and fair estimate of the compensation</p> <p>19 that would make -- the compensation that Terry</p> <p>20 Bollea is entitled to given the loss that he has</p> <p>21 experienced, and my hope is that the jury is going</p> <p>22 to consider this and use this in coming to that</p> <p>23 conclusion, but I'm -- I mean, this is just a loss</p> <p>24 of privacy. There could be other things that --</p>	<p>1 lot of things.</p> <p>2 A Well, I don't think I can answer that question</p> <p>3 because I don't know what the jury is going to be</p> <p>4 asked to consider. I don't know that. So we</p> <p>5 can't predict the future, so --</p> <p>6 Q No, no, we can't. But the only way -- if I</p> <p>7 understand what you're saying -- the only way that</p> <p>8 your conclusion is relevant is to the jury's</p> <p>9 awarding of damages, right, in trying to value the</p> <p>10 invasion of privacy -- right?</p> <p>11 MR. HARDER: Objection to form. Vague.</p> <p>12 A I'm not comfortable with "only" -- with the</p> <p>13 absolutes there.</p> <p>14 Q You're not assessing whether there was an invasion</p> <p>15 of privacy. Your conclusion is just how much that</p> <p>16 is worth -- right?</p> <p>17 A I actually do have data on whether there was an</p> <p>18 invasion of privacy.</p> <p>19 Q Not a yes/no. You had a scroll bar -- right?</p> <p>20 A Which gives much more data than yes/no.</p> <p>21 Q Okay. But then the second part of your conclusion</p> <p>22 was that: Assuming that there was an invasion of</p> <p>23 privacy, this is what the compensation should</p> <p>24 be -- right?</p>
<p>1 Q Right.</p> <p>2 A I'm just talking about privacy loss here.</p> <p>3 Q Right. And so am I. Let me ask the question a</p> <p>4 slightly different way to make sure that we're on</p> <p>5 the same page.</p> <p>6 There will be jurors sitting in a box in the</p> <p>7 courtroom down in Florida. There will be, I</p> <p>8 think, six of them. One of those jurors is going</p> <p>9 to be -- each of the jurors -- but let's just take</p> <p>10 one juror -- is going to be asked to award</p> <p>11 compensation just for invasion of privacy.</p> <p>12 There are 200 people who took this survey --</p> <p>13 right? One of those people was also asked how</p> <p>14 to -- how much compensation to award for invasion</p> <p>15 of privacy.</p> <p>16 A You're saying in the jury, one person happened to</p> <p>17 be in the survey?</p> <p>18 Q No. No.</p> <p>19 Let's say they're different people. What's</p> <p>20 the difference between what this juror is going to</p> <p>21 be asked to consider and what the participant in</p> <p>22 your survey was asked to consider?</p> <p>23 MR. HARDER: I'm going to object. It's --</p> <p>24 I'll object to form, but it's -- it misstates a</p>	<p>1 A This is a fair and reasonable amount of</p> <p>2 compensation.</p> <p>3 Q And to get that, you asked survey participants,</p> <p>4 essentially, how they would value that invasion of</p> <p>5 privacy -- right?</p> <p>6 A I wouldn't use those exact words. I would say I</p> <p>7 asked them how much they thought would be fair</p> <p>8 compensation for the loss of privacy.</p> <p>9 Q Okay. Using that exact phrase, if that's the</p> <p>10 question to a juror sitting in the courtroom,</p> <p>11 what's the difference between what the survey</p> <p>12 participants were asked and a jury will be asked?</p> <p>13 MR. HARDER: Objection to form. Incomplete</p> <p>14 hypothetical.</p> <p>15 A I really don't know what you're getting at.</p> <p>16 Q I'm not getting at anything. I'm just asking the</p> <p>17 question.</p> <p>18 A Sorry, I'm just really confused, and it's strange</p> <p>19 for me to engage in these hypotheticals because I</p> <p>20 don't know what the jury is going to be asked.</p> <p>21 Like I don't know -- I'm like in a bubble here and</p> <p>22 this is my world.</p> <p>23 Q Is there anything about -- is there anything that</p> <p>24 your survey participants knew about the</p>

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<p>1 appropriate amount that Mr. Bollea should be 2 compensated for the loss of privacy that he 3 experienced that the jury wouldn't know? 4 MR. HARDER: Objection. Vague. 5 A Well, I can't answer that because I don't know 6 everything that the survey participants know. 7 Moreover, I don't know what the jury people are 8 going to know. So I can't answer that. 9 Q So the jury will know more about the facts of this 10 particular case than the survey participants -- 11 right? 12 A I don't know what's going to be shown to the 13 jurors. 14 Q But if they were shown more than the scenario on 15 page 13 of your report, they would know more than 16 the survey participants did -- right? 17 A I mean, it's possible to show jury -- the jury 18 more information. Whether that's valid 19 information is another question. Whether that's 20 information that actually -- that is -- it could 21 be information that is extraneous to this 22 valuation and just confuses people. 23 Q Okay. Going back to something you had said a 24 couple minutes back, if I'm a juror and I</p>	<p>1 data tell us that the vast majority of respondents 2 ascribe a number that is higher than that. So -- 3 Q Right, but if I -- if the jury sits and listens -- 4 trial is going to be a week, two weeks. They sit 5 and listen to all the evidence during the case, 6 and ultimately, a juror awards \$50,000. Is that 7 number wrong? 8 MR. HARDER: Asked and answered. She just 9 answered it, and objection to form. 10 A I already answered it. 11 Q I don't think you did. I think you referred to 12 what the use of the data was. That wasn't my 13 question. 14 A Okay. 15 Q My question is, if a juror listens to the evidence 16 and ultimately awards \$50,000, is that juror 17 wrong? 18 MR. HARDER: Asked and answered. She's 19 already answered that same exact question. 20 Objection to form as well. 21 A Given that most respondents gave valuations, 22 deemed a fair compensation value to be higher than 23 that, I think there are better answers. 24 Q Okay. So you're looking at this distribution</p>
<p>1 ultimately listen to the evidence in the case, and 2 conclude that \$50,000 is appropriate compensation 3 for Mr. Bollea, is there something that I got 4 wrong? 5 MR. HARDER: Incomplete hypothetical. 6 Objection to form. 7 A I don't know what you're saying. I'm sorry. 8 Q Before you said the jury might award more than 9 what you had come up with. What if I'm a juror 10 and I said, eh, it's only worth \$50,000. Have I 11 done something wrong? 12 MR. HARDER: Objection to form. 13 A Well, let's see -- I have a table in here. 14 So you're saying -- are you saying if the 15 juror says, oh, it's -- \$10,000 is the fair and 16 reasonable compensation, and the question is: Is 17 the juror wrong? 18 Q Yes. 19 A Well -- 20 MR. HARDER: Did you say 10,000 or 50,000? 21 Q Well, we can take 10 or 50. The point is the 22 same, either 10 or 50. 23 A Okay. Well, I think that it is not the best -- 24 probably not the best use of the data because the</p>	<p>1 table I think on, what, page 9? 2 A Yeah. 3 MR. HARDER: Mike, we've been going for over 4 an hour, so at some point in the next few minutes, 5 if we can get a break. 6 Q Yeah. Let me get back to this. 7 This distribution table on page 9 -- 8 A Yeah. 9 Q -- this shows here that 19 percent of the people 10 awarded less than a hundred thousand dollars, 11 right, or said that that would be fair 12 compensation -- something under a hundred 13 thousand. 14 A Yes. 15 Q Were those people unreasonable? 16 MR. HARDER: Objection to form. 17 A I -- when I look at evaluating my data, the value 18 of collecting a large sample is because it gives 19 us aggregated statistics, and the reason why we 20 aggregate statistics, why we take the median 21 value, for example, 7 to 10, is that that is less 22 error prone than if we take outliers. 23 So as a data scientist, I find it 24 inappropriate to comment on specific respondents'</p>

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<p>1 answers because the whole point of this is to</p> <p>2 collect valuations from a randomly-selected</p> <p>3 substantially-sized sample so that we can make</p> <p>4 valid estimates of what a fair and reasonable</p> <p>5 compensation value is.</p> <p>6 Having said that, of course people -- there</p> <p>7 are individual differences in how much people</p> <p>8 value their privacy.</p> <p>9 Q So on this same table, 33.5 percent said that fair</p> <p>10 compensation would be under a million dollars.</p> <p>11 Right?</p> <p>12 MR. HARDER: Objection to form.</p> <p>13 A You're saying -- you're referring to --</p> <p>14 Q The table on page 9?</p> <p>15 A And it's -- so it's --</p> <p>16 Q 33.5 percent said --</p> <p>17 A So a hundred minus 66.5?</p> <p>18 Q Right.</p> <p>19 A Are below --</p> <p>20 Q Below a million dollars would be fair</p> <p>21 compensation.</p> <p>22 A That's what the table says.</p> <p>23 Q That's what 33.5 of the survey respondents said --</p> <p>24 right?</p>	<p>1 something else.</p> <p>2 MR. HARDER: It's up to you.</p> <p>3 A I think I'd like to take a break now actually.</p> <p>4 VIDEO OPERATOR: The time is 11:07. We are</p> <p>5 now off the record.</p> <p>6 (Off the record.)</p> <p>7 VIDEO OPERATOR: The time is 11:21. We are</p> <p>8 now back on the record.</p> <p>9 BY MR. BERRY:</p> <p>10 Q Let's talk about a couple different aspects of the</p> <p>11 survey for a minute here.</p> <p>12 Survey respondents were drawn from a pool of</p> <p>13 American people -- right?</p> <p>14 A Yes.</p> <p>15 Q What pool were they drawn from?</p> <p>16 A I used a company called Qualtrics, and they</p> <p>17 obtained the sample for me.</p> <p>18 Q How did they do that?</p> <p>19 A They obtained a random sample.</p> <p>20 Q How?</p> <p>21 A So they have panels of people who are different</p> <p>22 members of the American population, and they</p> <p>23 randomly sample those -- from those populations,</p> <p>24 to obtain the sample size that I wanted, which was</p>
<p>Page 62</p> <p>1 MR. HARDER: Objection to form.</p> <p>2 A That's the data that are in front of us.</p> <p>3 Q Right. And so for those 33.5 percent of the</p> <p>4 respondents, you wouldn't say one way or another</p> <p>5 whether those were correct, incorrect responses --</p> <p>6 right?</p> <p>7 A As I said, I think it's inappropriate to, like,</p> <p>8 pick out certain responses and say correct or</p> <p>9 incorrect. Like I'm not comfortable discussing</p> <p>10 that in this level. I'm comfortable talking in</p> <p>11 averages, in medians, in aggregate data. That's</p> <p>12 the whole point of doing a survey where you ask</p> <p>13 many people and you randomly sample them.</p> <p>14 MR. BERRY: Charles, let me just ask like</p> <p>15 one more series of questions. It will take just</p> <p>16 two minutes here, and then we'll take a break.</p> <p>17 MR. HARDER: It's already two minutes, but I</p> <p>18 mean, we've been going for an hour and seven</p> <p>19 minutes, and it's been pretty heated, and I think</p> <p>20 we could all use a little R and R.</p> <p>21 Q Let me just ask you -- do you need a break now? I</p> <p>22 mean, if you need a break, then I'm happy to</p> <p>23 break. I just thought if we could finish this, it</p> <p>24 will be a good stopping point and we can move onto</p>	<p>Page 64</p> <p>1 200. So random sampling means that every person</p> <p>2 in the population that Qualtrics has access to has</p> <p>3 the same chance of being in the survey.</p> <p>4 Q So are these people who do surveys regularly for</p> <p>5 Qualtrics?</p> <p>6 A I don't know. You'd have to ask Qualtrics to get</p> <p>7 information on -- to get that information.</p> <p>8 Q Do you know how big the pool was?</p> <p>9 A No.</p> <p>10 Q Do you know whether the people were paid?</p> <p>11 A I believe they were paid.</p> <p>12 Q How much were they paid?</p> <p>13 A I don't know how much they were paid. I paid</p> <p>14 Qualtrics.</p> <p>15 Q How much did you pay Qualtrics?</p> <p>16 A I think I paid them \$5000, but I'm not a hundred</p> <p>17 percent sure.</p> <p>18 Q What were the survey participants told about the</p> <p>19 study before they agreed to participate?</p> <p>20 A The introduction text is in --</p> <p>21 Q Sorry, when Qualtrics got them to participate in</p> <p>22 the setting?</p> <p>23 A I don't know what Qualtrics says to them.</p> <p>24 Q All you know is you got 200 people.</p>

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<p>1 A Correct.</p> <p>2 Q What instructions were given at the outset of the</p> <p>3 survey?</p> <p>4 A The instructions that I gave them?</p> <p>5 Q Correct.</p> <p>6 A This is in the writeup.</p> <p>7 Q This is on page 11 the text starts?</p> <p>8 A Yes. So I asked Qualtrics -- I only wanted</p> <p>9 people -- because I wanted to match the income</p> <p>10 level insofar as I could to that of Terry Bollea,</p> <p>11 I obtained a sample of people from a high income</p> <p>12 population. So specifically, 200,000 and above.</p> <p>13 So Qualtrics has pools of people, and</p> <p>14 Qualtrics presumably knows their income and</p> <p>15 probably different demographics about them, and so</p> <p>16 they randomly sampled from that pool of people</p> <p>17 that their annual household income is at least</p> <p>18 \$200,000.</p> <p>19 So on the first question in my survey, I</p> <p>20 asked people that question because I just wanted</p> <p>21 to make sure that I was actually getting people</p> <p>22 that met this criterion. It was a screener</p> <p>23 question.</p> <p>24 And then I asked them similarly, what -- in</p>	<p>1 I know their marital status.</p> <p>2 What was the other demographic question.</p> <p>3 That's what I know about that.</p> <p>4 Q Age?</p> <p>5 A Age, yeah. That's what I know about them.</p> <p>6 Q Okay. But what you were looking for was just a</p> <p>7 random sample of Americans. You weren't getting a</p> <p>8 random sample of people who were privacy experts.</p> <p>9 A Correct.</p> <p>10 Q When were those surveys completed?</p> <p>11 A In March. I don't know the exact dates off the</p> <p>12 top of my head, but I did it in March, I believe.</p> <p>13 Q Do you recall when in March?</p> <p>14 A I could get you the dates, but I don't have the</p> <p>15 specific dates at my fingerprints -- at my</p> <p>16 fingertips.</p> <p>17 Q People completed the survey on a computer --</p> <p>18 right?</p> <p>19 A The survey was completed electronically. Yes.</p> <p>20 Q On computers?</p> <p>21 A So on computers. They could also -- they could</p> <p>22 not complete it on a mobile phone because it's too</p> <p>23 small. I worried that it would be too small for</p> <p>24 people to see. But they could do it on a laptop</p>
<p>Page 66</p> <p>1 which country do you reside -- again because I</p> <p>2 only wanted American people. So that was another</p> <p>3 screener question.</p> <p>4 Then here are the instructions on page 12.</p> <p>5 Q Okay. So prior to somebody, like, sitting down</p> <p>6 and answering this first question, they weren't</p> <p>7 given any instructions.</p> <p>8 A Which first question?</p> <p>9 Q About income.</p> <p>10 A Not from my survey. I don't know what</p> <p>11 Qualtrics -- again, I don't know what they use to</p> <p>12 recruit the people.</p> <p>13 Q And you don't know what instructions they were</p> <p>14 given before getting the question: What is your</p> <p>15 annual household income.</p> <p>16 A I don't know what, if any, correct.</p> <p>17 Q Okay. So the people that you surveyed were</p> <p>18 ordinary folks, as far as you know, who made over</p> <p>19 \$200,000 and were from America -- right?</p> <p>20 A I don't know what you mean by "ordinary folks."</p> <p>21 Q Well, they weren't privacy experts.</p> <p>22 A The people I surveyed, what I know about them, is</p> <p>23 that they're American, their annual household</p> <p>24 income is 200,000 and above. I know their gender.</p>	<p>Page 68</p> <p>1 or computer.</p> <p>2 Q Or a tablet?</p> <p>3 A Or a tablet.</p> <p>4 Q Where did they complete the survey?</p> <p>5 A I don't know.</p> <p>6 Q So is it something that people can complete at</p> <p>7 their home, at work?</p> <p>8 A Yes. Yes.</p> <p>9 Q So each individual person took it at some</p> <p>10 different location -- right?</p> <p>11 A They could choose where to complete it.</p> <p>12 Q Qualtrics doesn't have like a survey center.</p> <p>13 A Correct. Well, Qualtrics might have a survey</p> <p>14 center, but that was not utilized for this. And</p> <p>15 this is a very common approach in surveys, is to</p> <p>16 send surveys out electronically and people can</p> <p>17 take them in the space that they want to take them</p> <p>18 in.</p> <p>19 Q Did you record any data about how long it took</p> <p>20 people to complete the survey?</p> <p>21 A I, I might have that data. I don't know.</p> <p>22 Sometimes it's in the dataset. I mean, I didn't</p> <p>23 explicitly record it, but I may have it.</p> <p>24 Q If you have that data, we'd like to request it.</p>

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<p>1 MR. HARDER: I don't have a problem with it, 2 but didn't you give over all your raw data to 3 them? 4 A Yeah, I gave you my data. 5 Q We got the Excel spreadsheet and then some S P 6 something something. 7 A Okay. Okay. 8 Q Is that what you -- 9 A Well, I will go -- because sometimes the way you 10 download the data, you can down -- sometimes there 11 is an option to download the times. I can check 12 on that. And if I can get it, and you want it, 13 then -- and if it's legal -- 14 MR. HARDER: I don't have a problem with it. 15 Q Okay. 16 A Then I can send it to you. 17 Q Prior -- well, at any point, did you ask 18 respondents whether they knew anything about this 19 litigation? 20 A Say that again, please? 21 Q At any point, did you ask the respondents to the 22 survey whether they knew anything about this 23 litigation? 24 A And by "this litigation," you mean?</p>	<p>1 when they began the survey. 2 A What do you mean by that? 3 Q Well, I sit down at my computer, my tablet, 4 whatever it is I'm going to fill out the survey -- 5 what do I see? Do I have to go to a Qualtrics 6 website? 7 A I don't know how Qualtrics administers surveys 8 from its pool. So I don't know the full user 9 experience, when, if I'm part of Qualtrics' pool, 10 what I have -- what happens before I get to this. 11 What I do know is the survey proper is all in here 12 is what they saw. 13 Q So you don't -- prior to the screen that had: 14 What is your annual household income, you don't 15 know what was on the screen before that. 16 A Correct. 17 Q And what did the screen then look like that said: 18 What is your annual household income? 19 A It was a -- I mean, I can't remember it off the 20 top of my head, but I generally use very simple 21 interfaces for surveys with fairly large fonts and 22 no extraneous detail. 23 So it was a pretty sleek and simple-looking 24 survey interface, but I can't tell you exactly</p>
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<p>1 Q The lawsuit. 2 A No. I did not ask them that. 3 Q Do you know if Qualtrics asked them that? 4 A No, they -- Qualtrics -- because Qualtrics didn't 5 know that this is a case -- about a case, yeah. 6 Q Did you ask respondents whether they knew or were 7 familiar with Hulk Hogan? 8 A No. 9 Q Did you ask them if they knew or were familiar 10 with Heather Clem? 11 A No. 12 Q Did you ask them if they knew or whether they were 13 familiar with Bubba Clem? 14 A No. 15 Q Did you ask whether they were familiar with 16 Gawker? 17 A No. 18 Q After people completed their survey, were they 19 told why the survey was being conducted? 20 A No. 21 Q Were they told how their responses were going to 22 be used? 23 A No. 24 Q Describe for me what people saw on their screens</p>	<p>1 what it looked like because off the top of my 2 mind, I don't remember. 3 Q Okay. So on this first question, what is your 4 annual household income, it just had the text with 5 these responses and nothing else -- these 6 responses that are shown on page 11? 7 A I believe these were -- I believe these were -- 8 the format was a pull-down box. So I don't know 9 if you know what that means. 10 Q You'd press and the thing drops down and gives you 11 options. 12 A Exactly, yeah. 13 Q And so that was on screen one by itself? 14 A It looks like it was that and the country. So the 15 two screener questions appear to be on the same 16 page, and then after the screener questions, comes 17 the Welcome page. 18 Q Okay. And then on that Welcome page, all that was 19 seen was the text that starts, Welcome, and ends 20 at Press to Continue. 21 A Other than the boilerplate, whatever template I 22 used for presenting the survey. 23 Q Do you know what that template was? 24 A Not off the top of my head. It's a pretty bare</p>

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<p>1 bones one, but I can look it up.</p> <p>2 Q Do you have, like, a screenshot of what people</p> <p>3 actually saw as people went through the survey?</p> <p>4 A Not on me, but I can get that.</p> <p>5 MR. BERRY: Could we request that also?</p> <p>6 MR. HARDER: Sure.</p> <p>7 A Should I be writing this down, or is there going</p> <p>8 to be a list?</p> <p>9 Q I can come up with a list as we go here.</p> <p>10 A Okay.</p> <p>11 Q And what I'll do is then email Charles when we get</p> <p>12 through to remind him.</p> <p>13 A Okay.</p> <p>14 Q So the first thing was data on time for</p> <p>15 completion. And the second was screenshots with a</p> <p>16 template for the survey.</p> <p>17 A Yup.</p> <p>18 Q Why did you select 200 people?</p> <p>19 A I selected 200 people because I thought that would</p> <p>20 produce sufficiently reliable answers to the</p> <p>21 questions. The more important thing than the size</p> <p>22 of a sample, with respect to the validity of the</p> <p>23 answers you get, is actually not the size of the</p> <p>24 sample but the way the sample is obtained; that it</p>	<p>1 Do the people who are in the Qualtrics pool</p> <p>2 know that they're in a company's pool to</p> <p>3 participate in surveys?</p> <p>4 A I don't know. You'd have to ask Qualtrics or the</p> <p>5 people in the pool.</p> <p>6 Q Well, how long have you worked with Qualtrics?</p> <p>7 A I -- so I worked with -- I run -- I use Qualtrics</p> <p>8 a lot. The Qualtrics has different things that</p> <p>9 Qualtrics will let you do.</p> <p>10 I use Qualtrics for designing surveys, so</p> <p>11 they have a survey interface thing that you can</p> <p>12 design surveys and administer them online.</p> <p>13 Another thing that Qualtrics does is you get --</p> <p>14 you can hire them to get samples for you. In</p> <p>15 fact, this is the only time I've done them for</p> <p>16 that. So I use them a lot, but not -- but I get</p> <p>17 my own respondents from other places.</p> <p>18 Q So you never asked them what respondents know</p> <p>19 about their -- what their -- what Qualtrics is</p> <p>20 or what it does.</p> <p>21 A I didn't deem that to be relevant to this.</p> <p>22 Q In the survey, going back to this first question</p> <p>23 about income -- have you ever started any other</p> <p>24 survey with a question about income?</p>
<p>1 was randomly selected.</p> <p>2 So that -- the random selection is really</p> <p>3 the key thing for validity so that we can make</p> <p>4 claims that the data that I've collected are</p> <p>5 representative of the population that they are</p> <p>6 drawn from.</p> <p>7 Q And ultimately, when you say the "validity," you</p> <p>8 mean like statistically valid once you run the</p> <p>9 analysis?</p> <p>10 A Valid means that it's picking up on people's true</p> <p>11 answers to the questions. There is not -- it's</p> <p>12 not error. It's not sort of people randomly</p> <p>13 pulling numbers out of a hat.</p> <p>14 Q But the way you measure that is through</p> <p>15 statistics, and you need to have something that is</p> <p>16 statistically meaningful?</p> <p>17 A Well, statistics and validity are different</p> <p>18 things. Something can be statistically</p> <p>19 significant but not valid. Validity is whether</p> <p>20 what you're measuring is a true reflection of the</p> <p>21 true underlying thing that you're measuring.</p> <p>22 That's validity.</p> <p>23 Q Let me ask you just one more question about</p> <p>24 Qualtrics.</p>	<p>1 A Yes.</p> <p>2 Q As the first question?</p> <p>3 A Yes.</p> <p>4 Q What other kinds of surveys?</p> <p>5 A Surveys where -- sometimes I like to put the</p> <p>6 demographics up front in surveys to get them out</p> <p>7 of the way. So I mean -- one reason for having</p> <p>8 income up front is when you need to -- is when you</p> <p>9 need to screen people in or out. And so you don't</p> <p>10 want people to take the whole survey and then have</p> <p>11 to pay them if they don't meet your exclusion</p> <p>12 criteria. So one reason why I sometimes put it in</p> <p>13 the front, as I did here, is to screen out people</p> <p>14 that do not meet the criteria for being in the</p> <p>15 study.</p> <p>16 Q Right. I guess -- sorry, my question -- and you</p> <p>17 may -- this may be implicit in your answer, but</p> <p>18 have you ever had a survey where you literally ask</p> <p>19 as a first question what somebody's income is?</p> <p>20 A I think I probably have. I've done -- I've done</p> <p>21 many -- I've probably done at least 500 surveys,</p> <p>22 so -- and I've moved around demographic, so I</p> <p>23 probably have.</p> <p>24 Q Okay. Why did you break it out by \$50,000</p>

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<p>1 intervals?</p> <p>2 A Why not?</p> <p>3 Q I mean, you designed the survey. Why did you do</p> <p>4 that?</p> <p>5 A So it's nice to be able to get -- so this</p> <p>6 wasn't -- this isn't a key -- I would say this is</p> <p>7 not a key -- this is not a key design choice;</p> <p>8 whether the buckets are a hundred or 50 grand. So</p> <p>9 there is a trade-off typically in designing</p> <p>10 buckets like this. If you have -- if the buckets</p> <p>11 are larger, then you get less precise information</p> <p>12 on people, but they're probably more comfortable</p> <p>13 telling you.</p> <p>14 If you get smaller buckets, you have more</p> <p>15 information on people. And so this is sort of a</p> <p>16 trade-off between those two factors. But the most</p> <p>17 important thing of this question is that you have</p> <p>18 an income of at least \$200,000.</p> <p>19 Q And how do you know that people answered that</p> <p>20 question accurately?</p> <p>21 A By "accurately," you mean truthfully.</p> <p>22 Q Like they told you what their actual income is.</p> <p>23 A Truthfully. I don't know. This is -- first of</p> <p>24 all, I think that -- so to the extent that people</p>	<p>1 Q Do you know whether folks who completed that</p> <p>2 survey, how many prior surveys they've completed</p> <p>3 for Qualtrics?</p> <p>4 A I don't know.</p> <p>5 Q Why did you limit the survey to people making more</p> <p>6 than \$200,000?</p> <p>7 A Because it is reasonable to think that a person's</p> <p>8 valuation of a fair and reasonable compensation</p> <p>9 for a privacy loss such as the one experienced by</p> <p>10 Terry Bollea, it's reasonable to think that that</p> <p>11 could depend on a person's income.</p> <p>12 And so I wanted -- because of that, I wanted</p> <p>13 to match, insofar as possible, that demographic</p> <p>14 factor to that of Terry Bollea.</p> <p>15 Q Why would the valuation be affected by a person's</p> <p>16 income?</p> <p>17 A Standard economics.</p> <p>18 Q What do you mean?</p> <p>19 A So if you earn more money, then you typically</p> <p>20 demand more compensation. And so based on this</p> <p>21 standard economic income effect, I thought that</p> <p>22 this could reasonably affect valuations, and so</p> <p>23 that's why I chose to try to match this factor to</p> <p>24 that of Terry Bollea.</p>
<p>1 were lying -- so suppose -- because I don't know</p> <p>2 for sure. I was not able to validate people's</p> <p>3 income levels, but to the extent that people may</p> <p>4 have slipped in and lied about their income, I</p> <p>5 don't think that that would have a substantive</p> <p>6 impact on the results.</p> <p>7 In fact, in some exploratory analyses,</p> <p>8 income wasn't statistically significantly</p> <p>9 different -- valuations were not statistically</p> <p>10 significantly different as a function of income.</p> <p>11 And moreover, it's not just my -- we're not just</p> <p>12 relying on my screening here. This screening is</p> <p>13 actually a double check.</p> <p>14 So Qualtrics has its own pools where</p> <p>15 Qualtrics knows their income -- the people in the</p> <p>16 pools. And so Qualtrics is already taking --</p> <p>17 randomly sampling from its pool that it knows to</p> <p>18 be 200,000 and more income.</p> <p>19 Now, how Qualtrics knows that, I don't know.</p> <p>20 But it's a two-step process, so psychologically,</p> <p>21 if people are lying, we know that it's much harder</p> <p>22 to lie twice.</p> <p>23 Q Twice.</p> <p>24 A Yeah, exactly, so --</p>	<p>1 Q Do you know how much annual income Mr. Bollea</p> <p>2 actually makes?</p> <p>3 A No.</p> <p>4 Q Why didn't you limit the respondents to whatever</p> <p>5 his actual income is?</p> <p>6 A Because that would not have been feasible.</p> <p>7 Q How do you know?</p> <p>8 A Well, I asked -- before deciding to go with</p> <p>9 Qualtrics, I got information from several</p> <p>10 different survey firms, asking them what is the</p> <p>11 highest income bracket I can get. And the highest</p> <p>12 income bracket -- this is the highest income</p> <p>13 bracket that I could get.</p> <p>14 So yeah, I would have loved to have Terry</p> <p>15 Bollea clones and randomly sampled from a</p> <p>16 population of Terry Bollea clones, but obviously,</p> <p>17 that's not possible. And so here, this is like a</p> <p>18 reasonable effort to match, insofar as it's</p> <p>19 possible, the income of these people -- the</p> <p>20 respondents -- to that of Terry Bollea.</p> <p>21 Q Who presumably makes --</p> <p>22 A A lot more, agreed.</p> <p>23 Q Did you make any other attempts to limit the pool</p> <p>24 so that they would more closely resemble</p>

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<p>1 Mr. Bollea's demographics?</p> <p>2 A So the trade-off is if you constrict it more and</p> <p>3 more, it becomes much harder to actually get the</p> <p>4 number of people that you need to do the survey.</p> <p>5 On top of that, factors like gender, in my</p> <p>6 research, generally do not impact people's</p> <p>7 attitudes towards gender to a great degree, and in</p> <p>8 fact, in these surveys, there is no gender effect.</p> <p>9 That is, women and men -- there's no statistically</p> <p>10 significant difference between the values that</p> <p>11 women versus men place on their privacy in</p> <p>12 general.</p> <p>13 Now, if anything -- I will have to look back</p> <p>14 at the statistics to speak confidently to this,</p> <p>15 but if anything, women value it more, so again, it</p> <p>16 sort of suggests that -- well, I guess what I'm</p> <p>17 trying to say is I didn't include gender in</p> <p>18 analyzing these data in this report because I</p> <p>19 didn't think that it had a really substantive</p> <p>20 impact on the results, and when you ask me if I,</p> <p>21 you know, tried to match the sample to other</p> <p>22 factors that Terry Bollea shares, there is this</p> <p>23 trade-off between sample size and constraining it,</p> <p>24 and this is sort of the sweet spot that I</p>	<p>1 Q Professional wrestlers?</p> <p>2 A No. Now, it's possible that some of those people</p> <p>3 are in my samples. I can't say that they are not</p> <p>4 in my sample. I don't know everything about the</p> <p>5 people that I've surveyed, but I have not</p> <p>6 explicitly -- I've not explicitly surveyed</p> <p>7 celebrities.</p> <p>8 Now, I will say, in designing this survey, I</p> <p>9 was interested in surveying only celebrities. And</p> <p>10 I tried -- I investigated that option, but I</p> <p>11 couldn't -- there was no survey pool that I could</p> <p>12 find that had -- where I could survey celebrities</p> <p>13 like Terry Bollea.</p> <p>14 Q If there were data available about what</p> <p>15 celebrities have paid for sex tapes not to have</p> <p>16 been released, would that have been helpful?</p> <p>17 MR. HARDER: Objection to the form.</p> <p>18 A It's hard to say because there are just so --</p> <p>19 because whatever those situations are, they could</p> <p>20 be very different from that faced by Terry Bollea.</p> <p>21 So without actually seeing those, I'm</p> <p>22 uncomfortable saying that they're informative.</p> <p>23 Q If you had data about how much celebrities had</p> <p>24 been paid to have sex tapes released by them,</p>
<p>1 determined.</p> <p>2 Q What about profession, what folk's profession was?</p> <p>3 A Profession-wise?</p> <p>4 Q Yeah, did you think about limiting it to --</p> <p>5 A I didn't limit it to that. Again, in my previous</p> <p>6 surveys, when I have collected data on profession,</p> <p>7 I have found that there's typically no systematic</p> <p>8 differences between professions and participants'</p> <p>9 responses to my experimental manipulations.</p> <p>10 Q Have you ever done any other surveys dealing with</p> <p>11 violations of sexual privacy?</p> <p>12 A I have done surveys in which I have asked people</p> <p>13 how sensitive it is to reveal different pieces of</p> <p>14 information, including sexual, sexual activities.</p> <p>15 I've asked questions about that. I've asked</p> <p>16 people whether they would be willing to share</p> <p>17 different pieces of intimate information as a</p> <p>18 function of different experimental manipulations.</p> <p>19 Q Have you asked that of a sample of celebrities?</p> <p>20 A I have not asked it of a sample of celebrities.</p> <p>21 Q What about movie stars?</p> <p>22 A No.</p> <p>23 Q Reality television stars?</p> <p>24 A No.</p>	<p>1 would that have been useful?</p> <p>2 MR. HARDER: Objection to the form.</p> <p>3 Incomplete hypothetical.</p> <p>4 A Well, to me, that -- I don't know that that would</p> <p>5 be helpful because the way you're posing the</p> <p>6 question makes it seem like it's sort of a market</p> <p>7 good that you're selling sex tapes, which is not</p> <p>8 the same thing as a privacy loss, which is what</p> <p>9 Terry Bollea experienced.</p> <p>10 So I guess I'm very sceptical as to whether</p> <p>11 that would be informative.</p> <p>12 Q Why were the other demographic questions asked at</p> <p>13 the end?</p> <p>14 A Because they were not screening questions.</p> <p>15 Q Do you know what the demographic distribution was</p> <p>16 by gender?</p> <p>17 A I believe that it was -- I believe that it was 120</p> <p>18 men and 80 women approximately.</p> <p>19 Q Do you know what the distribution was by age?</p> <p>20 A Not off the top of my head.</p> <p>21 Q Was the survey limited to people 18 or over?</p> <p>22 A Yes. I believe so.</p> <p>23 Q Do you know how many people there were who</p> <p>24 answered the survey under the age of 21?</p>

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<p>1 A I do not know off the top of my head.</p> <p>2 Q I think you may have said this before, and -- in</p> <p>3 answering one of the other questions, but in these</p> <p>4 demographic distributions that you looked at -</p> <p>5 income, gender, age, relationship status - were</p> <p>6 there any statistical differences in how those</p> <p>7 different demographics valued the scenario</p> <p>8 presented?</p> <p>9 A So I would want to do a rigorous analysis of that.</p> <p>10 It's not at the top of my mind. So before telling</p> <p>11 you conclusively on what is and is not</p> <p>12 statistically significant, I would want to take a</p> <p>13 look at the data again.</p> <p>14 Q But you didn't do that analysis already.</p> <p>15 A I have looked at the data, yes.</p> <p>16 Q No, but did you run the kind of analysis that</p> <p>17 talked about looking at whether there were</p> <p>18 statistical differences between the demographics?</p> <p>19 A Yes, I have.</p> <p>20 Q I guess, can we add that to the list then?</p> <p>21 Whatever you've already done. If you want</p> <p>22 to do more, you can, but I'm interested in what's</p> <p>23 already been done.</p> <p>24 A Okay.</p>	<p>1 Q Okay. So you didn't ask how many sexual partners</p> <p>2 they'd had.</p> <p>3 A Correct.</p> <p>4 Q Whether they've ever cheated on their spouse.</p> <p>5 A Correct.</p> <p>6 Q Whether they've been a victim of a crime.</p> <p>7 A Correct.</p> <p>8 Q Whether they've been a victim of a privacy</p> <p>9 violation.</p> <p>10 A The only questions that I asked them about their</p> <p>11 demographics are the ones that are in the report.</p> <p>12 Q Did you ask folks whether they tend to disclose</p> <p>13 personal information in various contexts?</p> <p>14 A All of the questions I asked them are in the</p> <p>15 report, so I'm not sure why we have to go through</p> <p>16 this.</p> <p>17 Q Okay. So you didn't ask --</p> <p>18 A I'm not hiding anything.</p> <p>19 Q But you didn't ask people whether they had</p> <p>20 Facebook pages, for example.</p> <p>21 A Is it in the report?</p> <p>22 MR. HARDER: Asked and answered. It's</p> <p>23 argumentative. She's told you what she asked</p> <p>24 demographic-wise in the report.</p>
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<p>1 MR. BERRY: Could we?</p> <p>2 MR. HARDER: Do you mean if she has done</p> <p>3 some sort of analysis and then put it to paper?</p> <p>4 A I haven't put it to paper. So no, there is no,</p> <p>5 like, alternate report that has all these -- no,</p> <p>6 I -- when I get data, I do a lot -- this is a</p> <p>7 standard thing for researchers to do, is you do a</p> <p>8 the lot of exploratory data analysis. And those</p> <p>9 analyses, I didn't save.</p> <p>10 Q Okay.</p> <p>11 A Yeah.</p> <p>12 Q So you didn't, like, keep notes of --</p> <p>13 A No.</p> <p>14 Q You know --</p> <p>15 A That's why I'm not totally clear on what is and is</p> <p>16 not statistically significant.</p> <p>17 Q So just to be clear, you didn't ask for any other</p> <p>18 aspects of the respondents' background.</p> <p>19 A What do you mean by any other aspects?</p> <p>20 Q Religious affiliation.</p> <p>21 A No.</p> <p>22 Q Education.</p> <p>23 A Everything that I asked them about for</p> <p>24 demographics is in the report.</p>	<p>1 MR. BERRY: I don't mean to be</p> <p>2 argumentative.</p> <p>3 MR. HARDER: If it's not in the report, she</p> <p>4 didn't ask it.</p> <p>5 Q Why didn't you ask for that kind of information?</p> <p>6 MR. HARDER: Objection to "that kind of</p> <p>7 information." You just rattled off like 20</p> <p>8 different things.</p> <p>9 Q Whether they'd been a victim of a crime.</p> <p>10 A Because I didn't think that that would have a</p> <p>11 substantial impact on the results.</p> <p>12 Q Why didn't you ask them whether they tend to</p> <p>13 disclose personal information in various contexts?</p> <p>14 A Because I didn't think that that would have a</p> <p>15 substantial impact on the results.</p> <p>16 Q Can those --</p> <p>17 A Because it's -- it's -- there are individual</p> <p>18 differences in how much people care about their</p> <p>19 privacy, but a really strong predictor of how</p> <p>20 people -- how much or how little they care about</p> <p>21 their privacy is actually not necessarily their</p> <p>22 internal disposition, but rather, features of the</p> <p>23 context.</p> <p>24 And so the really important thing in this</p>

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<p>1 report was nailing, really specifying those key 2 features. And that's why some of these extraneous 3 possibilities that you're coming up with, in my 4 opinion, they wouldn't have had a substantive 5 impact on the results. And at the same time, they 6 could have introduced confusion to survey 7 respondents.</p> <p>8 So in designing surveys, you have to be very 9 careful to use clear wording and to not use too 10 many words, to not over-specify scenarios because 11 if do you that, you're going to make people 12 confused, and that increases the chances that they 13 give you inaccurate answers.</p> <p>14 If you have a really long survey with tons 15 and tons of questions, then we see survey fatigue 16 setting in, which again, decreases the quality of 17 the data that you get. And so -- these are the -- 18 these are why I made these choices; because I face 19 trade-offs, and in my expert opinion, the choices 20 I made represent a reasonable way of assessing the 21 answer to this question.</p> <p>22 Q So you asked people to rate the scenario two 23 different ways; one qualitative and one 24 quantitative -- right?</p>	<p>1 saying, hey, it's inappropriate that you're asking 2 me this. It's kind of tabu.</p> <p>3 Research also suggests that to avoid these 4 protest responses, they can be avoided or reduced 5 by first giving people an outlet to express the 6 sort of more psychologically intuitive way of 7 expressing their feelings on an issue.</p> <p>8 And so that's what this is designed to do. 9 It's designed to satisfy that natural tendency to 10 want to do that in order to reduce things like 11 protest responses, in turn, increasing the 12 validity of the subsequent valuations.</p> <p>13 In addition, I thought it was important to 14 first have -- have people to say whether this is a 15 privacy violation. So "rate the extent to which, 16 if at all, your privacy has been violated." So I 17 didn't want to lead people and say that this is a 18 violation. I wanted to ask them whether they 19 thought.</p> <p>20 So if people said no, then it wouldn't be 21 right to ask them for -- what they think is a fair 22 and reasonable compensation value because if they 23 don't there is a violation, then you could argue 24 it's kind of a leading question then to ask them</p>
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<p>1 A Yes.</p> <p>2 Q Why did you include the qualitative measure?</p> <p>3 A Can you -- what do you mean by "the qualitative"?</p> <p>4 Q The little scrolly.</p> <p>5 A The scrolly, yeah. Very scientific.</p> <p>6 So you're referring to -- on page 4, "rate 7 the extent to which, if at all, your privacy has 8 been violated."</p> <p>9 Q Right. So yeah, why did you include that?</p> <p>10 A So the reason I included that was because, for 11 one, I wanted to prevent protest responses. I 12 wanted to increase -- the inclusion of this was to 13 increase the validity of the valuations.</p> <p>14 So previous research suggests that when you 15 ask people to value things that they don't 16 normally value, like if you ask people to put a 17 price tag on the environment, like how much would 18 you pay to save an endangered species, sometimes 19 people answer -- instead of answering how much 20 they think the environment is worth to them in 21 monetary terms, they'll give protest answers. So 22 they'll just say zero dollars.</p> <p>23 That doesn't mean that they don't value the 24 environment. They're just protesting. They're</p>	<p>1 what the compensation value should be for this 2 non-violation.</p> <p>3 So those are the two reasons why I did that. 4 And as you can see in the results, no one said 5 it's no violation of privacy. Everyone said it's 6 a violation of privacy, and the average placement 7 of this dot is very far to the right, so -- 8 indicating that people think it's a pretty big 9 violation of privacy.</p> <p>10 Q On page 7 of your report, this goes through the 11 scenario that you talked with before: One person 12 watches it, and then you kind of build up to 7 13 million people.</p> <p>14 A Yeah.</p> <p>15 Q Okay. So under The fair and adequate compensation 16 screenshot I guess, or from the survey --</p> <p>17 A Yeah.</p> <p>18 Q -- it says, "Upon clicking on the 'Unit' drop down 19 menus, the following choices appeared: 20 "tens of dollars, hundreds of dollars, 21 millions of dollars, billions of dollars"?</p> <p>22 A Yeah.</p> <p>23 Q Was there a thousand dollar option?</p> <p>24 MR. HARDER: What page?</p>

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<p>1 MR. BERRY: Seven.</p> <p>2 A So I will have to check on that. I'll have to</p> <p>3 check whether that is a typo or whether -- or</p> <p>4 whether there was no thousand dollar option.</p> <p>5 Q Do you know -- I mean, if that is just a mistake</p> <p>6 in the report, are there other mistakes in the</p> <p>7 report?</p> <p>8 A Not as far as I know.</p> <p>9 Q Do you know if there were any mistakes in coding</p> <p>10 the survey responses?</p> <p>11 A Not as far as I know.</p> <p>12 Q Do you know if there were any mistakes in</p> <p>13 recording those responses in that statistical</p> <p>14 software, the S P --</p> <p>15 A S S?</p> <p>16 Q Yeah.</p> <p>17 A Not as far as I know.</p> <p>18 Q What about in transferring that into the Excel</p> <p>19 data, the spreadsheet that we got.</p> <p>20 A Not as far as I know.</p> <p>21 Q Okay.</p> <p>22 Earlier you had mentioned that you had</p> <p>23 varied the scenario by asking half the people to</p> <p>24 imagine themselves as themselves, and half to ask</p>	<p>1 reasonable compensation might depend on whether a</p> <p>2 person is famous, I also varied the perspective,"</p> <p>3 -- and then it continues: "This factor -</p> <p>4 perspective - did not impact participants'</p> <p>5 responses; hence in the results section below, I</p> <p>6 collapse across that factor."</p> <p>7 A Right.</p> <p>8 Q So there was no meaningful difference between</p> <p>9 responses based on that scenario.</p> <p>10 A Correct.</p> <p>11 MR. HARDER: Objection to form.</p> <p>12 Q You write, I believe it's on page 8, that 61</p> <p>13 percent of the people were comfortable giving a</p> <p>14 specific compensation amount?</p> <p>15 A Yes.</p> <p>16 Q You say "willing to specify."</p> <p>17 A Where does it say. 61 percent "were willing to</p> <p>18 specify a compensation amount (as opposed to</p> <p>19 merely a range)," yes.</p> <p>20 Q Why do you think everyone wouldn't give a specific</p> <p>21 amount?</p> <p>22 A I don't know. Because they didn't tell me why.</p> <p>23 Q Just based on your experience -- why?</p> <p>24 MR. HARDER: Asked and answered.</p>
<p>1 consider them as a famous American sports figure.</p> <p>2 It is my understanding from this report, there was</p> <p>3 no difference in how people valued the ultimate</p> <p>4 compensation question as between those two</p> <p>5 scenarios -- right?</p> <p>6 MR. HARDER: Objection as to form.</p> <p>7 A Yeah. Can you be a little more precise? The</p> <p>8 ultimate -- I'm not sure what --</p> <p>9 Q I mean ultimately, when you asked people to</p> <p>10 value -- just for the rest of the deposition, when</p> <p>11 we talk about valuation, the fair and reasonable</p> <p>12 or appropriate compensation, which is the question</p> <p>13 that you ultimately asked people, it's my</p> <p>14 understanding that in the two scenarios, one where</p> <p>15 people imagine this happening to themselves, and one</p> <p>16 imagining it happening to themselves as a famous</p> <p>17 American sports figure, that those valuations were</p> <p>18 not statistically different.</p> <p>19 MR. HARDER: Objection to form.</p> <p>20 A Let me -- is there -- can you refer me to the part</p> <p>21 in the report where it says this?</p> <p>22 Q Sorry, I was looking right at it. On page 7.</p> <p>23 Number 3.</p> <p>24 "In addition, to test whether the fair and</p>	<p>1 A I mean, I can't get in their head, so I don't know</p> <p>2 why.</p> <p>3 Q Was the distribution of values given by people who</p> <p>4 would not give that specific amount the same as</p> <p>5 the distribution of values by people who would</p> <p>6 give a specific amount?</p> <p>7 A No.</p> <p>8 MR. HARDER: Objection to the form.</p> <p>9 A So I think you're asking, if we -- so everyone</p> <p>10 gave us a range.</p> <p>11 Q Right.</p> <p>12 A And some people, 61 percent were then willing to</p> <p>13 go on and dig deeper and give a more specific</p> <p>14 amount. The rest of the people were not willing</p> <p>15 to go beyond that range.</p> <p>16 So I tested whether there was a</p> <p>17 statistically significant difference in the range</p> <p>18 that people give, and actually, the people who say</p> <p>19 that they don't want to go further, they actually</p> <p>20 specify -- on average, the range is higher what</p> <p>21 they specify, and I believe -- I would want to</p> <p>22 double check with the analysis in case my memory</p> <p>23 is failing me -- but I believe it was</p> <p>24 statistically significantly higher. If that's the</p>
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<p>1 case, it suggests that, if anything, we're</p> <p>2 dropping people who actually, had they moved on,</p> <p>3 would have ended up with a higher valuation.</p> <p>4 So I don't think that this -- well, does</p> <p>5 that answer your question?</p> <p>6 Q Yeah. Were the demographics of those two groups</p> <p>7 the same?</p> <p>8 A I don't know.</p> <p>9 Q On page 9, there's two paragraphs at the top of</p> <p>10 the page that deal with this question of fair and</p> <p>11 reasonable compensation for two classes of the</p> <p>12 survey. The first paragraph deals with folks who</p> <p>13 are asked from the outset of the survey to imagine</p> <p>14 that 7 million people had viewed the sex tape, and</p> <p>15 then you say, "the median amount of money deemed</p> <p>16 to be fair and reasonable compensation was \$7</p> <p>17 million." Do you see that?</p> <p>18 A Um hmm.</p> <p>19 Q What was the range for those people?</p> <p>20 What was the range of compensation that</p> <p>21 those folks --</p> <p>22 A Which folks?</p> <p>23 Q Just in the first paragraph, those people who were</p> <p>24 asked to imagine that 7 million people viewed the</p>	<p>1 A Nonparametric means -- so there's parametric</p> <p>2 statistical tests, and there are nonparametric</p> <p>3 statistical tests. Parametric statistical tests</p> <p>4 generally have higher power. So that is, they are</p> <p>5 more able to detect differences when true</p> <p>6 differences exist; but the down side is that they</p> <p>7 require some assumptions to be met. Otherwise,</p> <p>8 they render invalid output. And one of those</p> <p>9 assumptions is that the data are normally</p> <p>10 distributed, like a bell curve, and that's not the</p> <p>11 case with these data. They're highly rightly</p> <p>12 skewed. So they've got a long tail on the right.</p> <p>13 So if you have -- do I start drawing with --</p> <p>14 Q That's what I was going to ask you, could you</p> <p>15 draw --</p> <p>16 A Okay.</p> <p>17 Q And we'll mark this as an Exhibit, 339.</p> <p>18 VIDEO OPERATOR: There are five minutes</p> <p>19 remaining on the videotape.</p> <p>20 Q After we do this, why don't we switch up the tape.</p> <p>21 A Okay.</p> <p>22 So yeah, I mean, this is just a very simple</p> <p>23 thing I'm going to draw, which is that if you --</p> <p>24 the data are skewed --</p>
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<p>1 sex tape.</p> <p>2 A Okay.</p> <p>3 Q What was range of dollar amounts that they gave?</p> <p>4 A I do not know off the top of my head, unless it's</p> <p>5 in the report.</p> <p>6 Q Okay. Do you know what the mode was?</p> <p>7 A Not off the top of my head, unless it's in the</p> <p>8 report.</p> <p>9 Q Why did you use the median rather than the mode?</p> <p>10 A So I wanted to use a statistic of central</p> <p>11 tendency, and typically, what would be done would</p> <p>12 be to provide an average. But the problem with</p> <p>13 providing an average is that the data are very</p> <p>14 skewed. So that would artifactually (sic) or</p> <p>15 artificially inflate the average.</p> <p>16 So I decided to use the nonparametric</p> <p>17 version of the average -- so the closest thing,</p> <p>18 the next best thing to the average, which is the</p> <p>19 median. That's why I chose the median; the middle</p> <p>20 value.</p> <p>21 Q And the mode, just so we're on the same page, is</p> <p>22 the number that comes up the most?</p> <p>23 A Correct.</p> <p>24 Q What does nonparametric mean?</p>	<p>1 Q So this is the skew of the data for this set.</p> <p>2 A Yeah, I mean --</p> <p>3 Q More or less.</p> <p>4 A -- this is what skew looks like. So this is --</p> <p>5 Q Billions.</p> <p>6 A This is a frequency distribution, so this is the</p> <p>7 number, the dollar value, and then this is like</p> <p>8 the number of respondents.</p> <p>9 Q Okay, the north/south axis is the number of</p> <p>10 respondents in the --</p> <p>11 A Approximately. So a right skew would be like --</p> <p>12 I'm not saying -- this is not the exact</p> <p>13 representation of the data.</p> <p>14 Q Right.</p> <p>15 A I'm describing what right skew means. Right skew</p> <p>16 means that there is a long tail. It's not even a</p> <p>17 great drawing of right screw. I'm a bad drawer.</p> <p>18 Q A second drawing.</p> <p>19 A It means that there is a skew -- there's a lot of</p> <p>20 data out down there. Whereas, a normal</p> <p>21 distribution would be something that looks like</p> <p>22 this that's like a bell curve. And so when you</p> <p>23 have data that look like that, if you use an</p> <p>24 average to try to describe the data, the average</p>

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<p>1 is going to be pulled upward by everything that's</p> <p>2 out in the tail here.</p> <p>3 That's why I used a median because a median</p> <p>4 doesn't have that problem of being sort of</p> <p>5 artificially inflated by these -- by the right</p> <p>6 skew.</p> <p>7 Q Okay. Just for the paper record here, could you</p> <p>8 mark the normal distribution with a 1, and then</p> <p>9 the skewed that you did the second time, as a 2.</p> <p>10 A And these are not perfect drawings.</p> <p>11 Q Right. Nor does it reflect exactly, I understand,</p> <p>12 what the data --</p> <p>13 A Correct.</p> <p>14 MR. HARDER: I'm just going to have an</p> <p>15 objection to this whole thing as to form. I</p> <p>16 didn't know where we were going with it, so</p> <p>17 objection as to form.</p> <p>18 MR. BERRY: Okay. If I have just a minute</p> <p>19 left.</p> <p>20 VIDEO OPERATOR: Three minutes.</p> <p>21 Q So the same -- there is now a second paragraph on</p> <p>22 page 9 that talks about a different group of</p> <p>23 people who were asked, starting with the</p> <p>24 hypothetical of one stranger and then working up</p>	<p>1 actually contacted about being served as an expert</p> <p>2 in this case?</p> <p>3 A It was this year. I couldn't tell you the date.</p> <p>4 Maybe not even the month. I mean, I could look it</p> <p>5 up, but I don't really remember exactly when.</p> <p>6 Q How far in advance to the time you actually</p> <p>7 conducted the survey were you contacted about</p> <p>8 being retained?</p> <p>9 A I couldn't -- I couldn't tell you specifically. I</p> <p>10 don't know. I know -- I can -- this is obtainable</p> <p>11 information, but I just don't want to rely on my</p> <p>12 head right now because my memory is foggy on</p> <p>13 timeline.</p> <p>14 Q Do you recall who contacted you?</p> <p>15 A Charles contacted me.</p> <p>16 Q And you're being paid to be an expert?</p> <p>17 A Yes.</p> <p>18 Q How much are you being paid?</p> <p>19 A \$450 an hour.</p> <p>20 Q How much time have you spent before today working</p> <p>21 on this case?</p> <p>22 A Off the top of my head, I don't know. But I have</p> <p>23 it written down. I keep track of my hours.</p> <p>24 Q Do you have a rough ballpark?</p>
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<p>1 to 7 million, and then it says, "the median amount</p> <p>2 of money deemed to be fair and reasonable</p> <p>3 compensation was \$10 million."</p> <p>4 A Yes.</p> <p>5 Q We go through the same set of circumstances of why</p> <p>6 you chose the median instead of the average; the</p> <p>7 right tail, all of that applies to this data as</p> <p>8 well.</p> <p>9 A Correct.</p> <p>10 Q Okay. Why don't we take a break there.</p> <p>11 VIDEO OPERATOR: The time is 12:12. This is</p> <p>12 the end of tape number one and we are now off the</p> <p>13 record.</p> <p>14 (Witness' drawing marked Exhibit No. 339</p> <p>15 for identification.)</p> <p>16 (Off the record.)</p> <p>17 VIDEO OPERATOR: The time is 12:22. This is</p> <p>18 the beginning of tape number 2 and we are now back</p> <p>19 on the record.</p> <p>20 BY MR. BERRY:</p> <p>21 Q Doctor John, do you recall being asked to serve as</p> <p>22 an expert in this case?</p> <p>23 A What do you mean, do I recall?</p> <p>24 Q What do you remember, like -- when were you</p>	<p>1 A You know, I'm not even comfortable giving a rough</p> <p>2 ballpark because I'm so bad with numbers.</p> <p>3 MR. HARDER: You're a statistician.</p> <p>4 THE WITNESS: I know.</p> <p>5 MR. HARDER: Clarify that, please.</p> <p>6 Q How much total have you billed to date?</p> <p>7 A I'd like to clarify that. I am not great at</p> <p>8 keeping track in my memory of the hours that I've</p> <p>9 spent on this task.</p> <p>10 Q Understood. Do you know how much you've billed to</p> <p>11 date?</p> <p>12 A Today?</p> <p>13 Q To date.</p> <p>14 A To date. No, I do not. I received initially a</p> <p>15 check for \$10,000 to cover until that runs out. I</p> <p>16 have been recording my hours, but I have not yet</p> <p>17 figured out whether I have -- I owe them or they</p> <p>18 owe me beyond that 10.</p> <p>19 Q Do you know if it's more than 50 hours that you</p> <p>20 spent?</p> <p>21 A Again, I don't want to -- I'm not comfortable</p> <p>22 estimating because it's not fresh in my mind, but</p> <p>23 it's all written down. It's just not in my mind</p> <p>24 right now. So I don't want to speculate.</p>

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<p>1 Q Why did you agree to be retained as an expert in 2 this case? 3 A Because this is an area of my expertise. 4 Q So anybody who has -- anybody who wants to value a 5 privacy, you would be an expert for? 6 MR. HARDER: Objection. As to form. 7 Q Like why specifically? Like why specifically do 8 you agree to be retained as an expert in this 9 case? 10 A Well, I was contacted, and the situation was 11 described to me, and I thought that because I have 12 expertise in this area and I have the time, and I 13 have interest in having my research be used for 14 real world problems, I thought that this would be 15 a good thing to do. 16 Q Have you served as an expert witness in any other 17 case? 18 A No. 19 Q Prior to being contacted by Charles about being an 20 expert in this case, were you aware of it? 21 A No. 22 Q Prior to being contacted about being an expert in 23 this case, were you familiar with Hulk Hogan? 24 A Yes.</p>	<p>1 your work for this case? 2 A I had some help with a research assistant who 3 helped me with a little bit of coding of the 4 survey. 5 Q What was that person's name? 6 A That person's name is Marina Burke. 7 Q Is Ms. Burke a student of yours? 8 A No, she is a research assistant of mine. 9 Q Is she a student at Harvard? 10 A No. 11 Q She's a full-time employee? 12 A She is an employee of mine. 13 Q Does she work full time for you? 14 A No. 15 Q What does she do the rest of her time? 16 A She works for other professors. 17 Q Who pays her salary? 18 A It comes out of my research budget. 19 Q Is that budget provided to you by Harvard? 20 A Yes. 21 Q For her work on this case, who paid her? 22 A She is paid her usual salary. 23 Q From Harvard. 24 A Yes. From my research budget.</p>
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<p>1 Q What did you know about him? 2 A I knew that he was a wrestler in the '80s. I 3 knew -- when I was growing up in the '80s, Hulk 4 Hogan and Muscle Man Randy Savage were the 5 wrestlers that we used to watch on TV, but I 6 didn't really know -- I knew he was a wrestler. I 7 didn't really know much about him. 8 Q Prior to being contacted about being -- 9 A I think it's Macho Man Randy Savage I think 10 actually. 11 Q I take it you haven't been a wrestling fan since 12 the '80s? 13 A I have or have not? 14 Q Have you been a wrestling fan? 15 A I wouldn't say I'm a wrestling fan, no. 16 Q Prior to being contacted about being an expert in 17 this case, were you familiar with the website, 18 Gawker.com? 19 A Vaguely, I'd heard of it. 20 Q What did you hear about it? 21 A That it exists. I've heard the name, Gawker. 22 Q Have you ever gone to the website? 23 A I don't know actually. 24 Q Okay. Did -- did any other people assist you in</p>	<p>1 Q And her work was limited to coding the survey? 2 A She did not code all of the survey. She helped 3 with a little bit of it. 4 Q Did she do anything else for this? 5 A No. 6 Q Did anybody else do anything else for this? 7 A No. 8 Q So you wrote this report yourself? 9 A Yes. 10 Q And it reflects your opinions? 11 A Yes. 12 Q All right. 13 MR. HARDER: She also had a clarification -- 14 when you were asking her about that typo. 15 A Oh, yeah. Clarification. I looked it up and 16 that's just a typo. In the actual survey -- 17 Q It did include thousands? 18 A It did include thousands. 19 Q That is an example of if you remember something 20 afterwards. 21 A Yeah. 22 Q All right. On page 3 -- 23 MR. HARDER: And Mike, just real briefly, 24 we're probably going to do a revised version of</p>

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<p>1 this that corrects the typo, just so you know.</p> <p>2 MR. BERRY: Thank you.</p> <p>3 Q And page 3 under Background and Scope of</p> <p>4 Assessment (sic) in the report -- under Background</p> <p>5 and Scope of Assessment, there is a --</p> <p>6 MR. HARDER: Assignment?</p> <p>7 Q Scope of the Assignment.</p> <p>8 A Yeah, Scope of the Assignment.</p> <p>9 Q Second paragraph says, "My opinions are based on</p> <p>10 the following." And the first thing is:</p> <p>11 "Information and documents produced in this case</p> <p>12 by HMA," which is Charles' law firm -- right?</p> <p>13 A Um hmm. That was a yes.</p> <p>14 MR. BERRY: I'd like to mark as Exhibit 340,</p> <p>15 a document that is titled: Documents Relied Upon</p> <p>16 by Professor Leslie John, Updated as of March 27,</p> <p>17 2015.</p> <p>18 Q Are you familiar with this document?</p> <p>19 A No.</p> <p>20 Q Okay. I'm going to just go through a couple</p> <p>21 things on here -- okay?</p> <p>22 A Okay.</p> <p>23 Q Do you recall -- are these -- well, let me -- do</p> <p>24 it this way. The first document that's listed on</p>	<p>1 Q Okay. I'm going to show you one of those</p> <p>2 documents, and we'll mark it as Exhibit 342.</p> <p>3 (Document marked Exhibit No. 342 for</p> <p>4 identification.)</p> <p>5 Q This document, on the bottom of the page, has</p> <p>6 BOLLEA 000779, which corresponds with the number</p> <p>7 of one of the documents listed here on Exhibit</p> <p>8 340.</p> <p>9 A Yes.</p> <p>10 Q Have you seen this document before?</p> <p>11 A Yes.</p> <p>12 Q Sorry, this document being --</p> <p>13 A The 000779.</p> <p>14 Q Yes. This is a letter from Steven Hirsch to Hulk</p> <p>15 Hogan -- right?</p> <p>16 A So I was presented with a bunch of background</p> <p>17 stuff that I'm presuming is listed here, and I did</p> <p>18 not read it extremely carefully. I skimmed</p> <p>19 through it.</p> <p>20 Q Okay. So did this letter in particular have any</p> <p>21 role in your report?</p> <p>22 A What do you mean by "in particular"?</p> <p>23 Like do I use actual wording from this</p> <p>24 letter? No.</p>
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<p>1 here is The First Amended Complaint; do you see</p> <p>2 that?</p> <p>3 A Yes.</p> <p>4 Q Did you review the First Amended Complaint in this</p> <p>5 case?</p> <p>6 A What does that mean? What is a First Amended</p> <p>7 Complaint? Was that the document that summarizes</p> <p>8 the Complaint -- if I see it, I'll --</p> <p>9 Q Right.</p> <p>10 MR. BERRY: So why don't we mark as Exhibit</p> <p>11 341, the First Amended Complaint.</p> <p>12 (The First Amended Complaint marked Exhibit</p> <p>13 No. 341 for identification.)</p> <p>14 A It looks familiar.</p> <p>15 Q So what did you use this document for?</p> <p>16 A Just background information on the case.</p> <p>17 Q In putting together the factual scenario?</p> <p>18 A Background information on the case.</p> <p>19 Q To develop the factual scenario that you used?</p> <p>20 A So that I could understand the case.</p> <p>21 Q Under Documents Produced by the Parties, there is</p> <p>22 a long list of BOLLEA with a bunch of numbers</p> <p>23 behind it -- do you see that?</p> <p>24 A Yes.</p>	<p>1 Q Okay. Did anything in it inform your work for</p> <p>2 this assignment?</p> <p>3 A Not explicitly, I don't think.</p> <p>4 Q Okay. Do you recall reading an affidavit from a</p> <p>5 Professor Mike Foley?</p> <p>6 A Can you remind me what that might be?</p> <p>7 MR. BERRY: We'll mark this as Exhibit 343.</p> <p>8 (Affidavit marked Exhibit No. 343 for</p> <p>9 identification.)</p> <p>10 Q Do you recall reviewing that?</p> <p>11 A Yes, I recall reviewing it.</p> <p>12 Q What role did this document play in your work for</p> <p>13 this assignment?</p> <p>14 A Can you be more specific?</p> <p>15 Q Well, in here -- in your report, you write, "My</p> <p>16 opinions are based on the following: Information</p> <p>17 and documents produced in this case by HMA."</p> <p>18 Was this one of the documents that helped</p> <p>19 form the basis of your opinion?</p> <p>20 A Let me just read it.</p> <p>21 So I did read this. It didn't have a direct</p> <p>22 impact on my survey design.</p> <p>23 Q Or your opinions expressed in the report?</p> <p>24 A Yeah. My -- the opinions in my report do not</p>

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<p>1 encompass -- do not speak to the issue of whether</p> <p>2 this is journalism or not. My report speaks to</p> <p>3 what is a fair and reasonable compensation for the</p> <p>4 loss of privacy such as the one experienced by</p> <p>5 Terry Bollea.</p> <p>6 Q Okay. There is another document that's listed on</p> <p>7 Exhibit 340 that's referred to as: "Summary of</p> <p>8 data available from preservations of third party</p> <p>9 websites." Do you see that, number 8 on Exhibit</p> <p>10 340?</p> <p>11 A Yes.</p> <p>12 (Document marked Exhibit No. 344 for</p> <p>13 identification.)</p> <p>14 Q I'm going to mark as Exhibit No. 344, a document</p> <p>15 that shows Total Number of Views: 4,275,143. Are</p> <p>16 you familiar with this document?</p> <p>17 A Maybe. I mean, there were a lot of documents that</p> <p>18 I skimmed over, and this could be one of them, but</p> <p>19 it doesn't have any really distinctive features,</p> <p>20 so I'm not a hundred percent sure that I've seen</p> <p>21 this.</p> <p>22 Q Was --</p> <p>23 A It's possible though.</p> <p>24 Q Did you use this document in helping to determine</p>	<p>1 the wording of the scenario.</p> <p>2 And then finally, the number 2 is really, I</p> <p>3 would say, the, if not one of the most primary</p> <p>4 sources of my opinion.</p> <p>5 Q Okay. And I'll ask you about that in a moment.</p> <p>6 When you mention the video, you're talking about</p> <p>7 the minute 40 video that we were talking about</p> <p>8 earlier?</p> <p>9 A The minute 40 second -- yeah, exactly.</p> <p>10 Q Okay. So just going forward, when we talk about</p> <p>11 video going forward, that's what we'll mean unless</p> <p>12 we talk otherwise.</p> <p>13 A Okay.</p> <p>14 THE WITNESS: Is that okay?</p> <p>15 MR. HARDER: Um hmm.</p> <p>16 Q Did you read any transcripts of depositions taken</p> <p>17 in this case?</p> <p>18 A I don't know. I don't know if I was -- are there</p> <p>19 any depositions in here?</p> <p>20 Q No.</p> <p>21 A Okay. Then no.</p> <p>22 Q You didn't read transcripts of people asking</p> <p>23 questions and answers like we're doing today.</p> <p>24 A No. Unless they're in here and I skimmed it, and</p>
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<p>1 how many people viewed the sex tape?</p> <p>2 A So my role was not to determine how many people</p> <p>3 viewed the sex tape. That's not my area of</p> <p>4 expertise. My understanding was that 7 -- is that</p> <p>5 the reasonable estimate is 7 million, and that is</p> <p>6 why in my report I focus on 7 million.</p> <p>7 Q Okay. What other information that HMA provided to</p> <p>8 you was your opinion based on?</p> <p>9 A My opinion? My opinion is based on the data in my</p> <p>10 survey in my report.</p> <p>11 Q When it says, "My opinions are based on the</p> <p>12 following," and it refers to "information," what</p> <p>13 information is that referring to?</p> <p>14 A What are you looking at.</p> <p>15 Q The same on page 3, right after number one.</p> <p>16 A "My opinions are based on the following." Okay.</p> <p>17 So the opinions being based on the following, the</p> <p>18 first, "Information and documents produced in this</p> <p>19 case by HMA," much of the documents presented to</p> <p>20 me were -- I skimmed them to become familiar with</p> <p>21 the situation at hand. So in that sense, they</p> <p>22 provide a basis.</p> <p>23 Something that provided more input to me was</p> <p>24 the video because the video helped me to create</p>	<p>1 didn't notice.</p> <p>2 Q Despite what Charles says, I'm not trying to trick</p> <p>3 you.</p> <p>4 A I'm sure you are.</p> <p>5 Q But I'm not. Have you ever talked to Mr. Bollea?</p> <p>6 A No.</p> <p>7 Q Have you ever met him?</p> <p>8 A No.</p> <p>9 Q Have you ever met his wife?</p> <p>10 A No.</p> <p>11 Q Have you ever talked to her?</p> <p>12 A Not as far as I know. I mean, I guess it's</p> <p>13 possible, I guess, but not as far as I know.</p> <p>14 Q Have you talked to Mr. Bollea's ex-wife?</p> <p>15 A Not as far as I know.</p> <p>16 Q Have you ever talked to Heather Clem?</p> <p>17 A Not as far as I know.</p> <p>18 Q Have you ever talked to Bubba Clem?</p> <p>19 A Not as far as I know.</p> <p>20 Q Did you have a hypothesis before performing your</p> <p>21 survey?</p> <p>22 A With respect to what?</p> <p>23 Q Anything. Did you have any sort of hypothesis</p> <p>24 prior to performing your survey?</p>

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<p>1 A Well, I did not know what the valuations would be.</p> <p>2 I did not have an hypothesis that the valuation</p> <p>3 would be -- that the median that -- I did not have</p> <p>4 a hypothesis going in, that the medians would be,</p> <p>5 or the fair and reasonable compensation for loss</p> <p>6 of privacy, such as the one experienced by Terry</p> <p>7 Bollea is approximately 7 to 10 million -- I</p> <p>8 didn't have that hypothesis going in.</p> <p>9 My goal in designing the survey was not to</p> <p>10 come in with a certain hypothesis and confirm it.</p> <p>11 Instead, it was to design a survey such that we</p> <p>12 could, with a reasonable degree of credibility,</p> <p>13 assess the fair and reasonable amount of</p> <p>14 compensation that Terry Bollea is entitled to as a</p> <p>15 compensation for the loss of privacy he's</p> <p>16 experienced.</p> <p>17 Q In your opinion, what specific factors --</p> <p>18 actually, let me ask a different -- in your</p> <p>19 opinion, what specific facts in this sex tape</p> <p>20 scenario that you presented to people were their</p> <p>21 answers responsive to?</p> <p>22 MR. HARDER: Objection to form. Calls for</p> <p>23 speculation.</p> <p>24 A I'm not sure what you're asking.</p>	<p>1 way down through the three bullets that ends with</p> <p>2 "being viewed by the general public."</p> <p>3 A Okay. Sorry, it's a really broad question so I'm</p> <p>4 not exactly sure what --</p> <p>5 Q How did you develop this scenario?</p> <p>6 A So I watched the video, and I had information</p> <p>7 about the situation, and then I wrote up a</p> <p>8 description of that. That's what I did.</p> <p>9 Q Okay. So when you say you had information on the</p> <p>10 situation, that's the information that was</p> <p>11 provided by Charles' law firm -- right?</p> <p>12 A I think so. I mean I haven't -- yeah. I mean, I</p> <p>13 can't tell you where -- which document pertains to</p> <p>14 each exact statement in this. But I didn't know</p> <p>15 anything about the case before reviewing this</p> <p>16 stuff, so --</p> <p>17 Q So everything that was into here was stuff that</p> <p>18 came from Charles' law firm -- right?</p> <p>19 A Yeah. I don't see why not -- I mean I didn't</p> <p>20 google stuff and --</p> <p>21 Q Okay. How did you choose which facts to include</p> <p>22 in here?</p> <p>23 A Out of which facts?</p> <p>24 Q Well, I imagine that you know more about the case</p>
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<p>1 Q In your opinion, what specific facts in the</p> <p>2 scenario you presented to people were their</p> <p>3 valuations based on?</p> <p>4 MR. HARDER: Calls for speculation.</p> <p>5 Objection to form.</p> <p>6 A I couldn't tell you because I -- in order to</p> <p>7 answer that question, I'd have to break down the</p> <p>8 scenario into its component parts and measure</p> <p>9 valuations of its components parts, and I didn't</p> <p>10 do that. Because that wasn't the point.</p> <p>11 Q So you don't know whether it was responsive to the</p> <p>12 number of people who viewed the tape?</p> <p>13 A I don't know if having the word "the" in there</p> <p>14 impacted things. I don't -- like I'm not willing</p> <p>15 to make statements about what constituent part of</p> <p>16 the scenario cause is responsible for which aspect</p> <p>17 of the resulting variants.</p> <p>18 Q Turn to page -- if you could just please turn to</p> <p>19 page 13 of the report. This is where the scenario</p> <p>20 is laid out.</p> <p>21 How did you develop this version of events?</p> <p>22 A Which version of events?</p> <p>23 Q Well, on page 13, starting at: "Imagine that you</p> <p>24 are a very famous American sports figure," all the</p>	<p>1 than what's in this scenario -- right? How did</p> <p>2 you decide what were the salient facts to present</p> <p>3 to the survey respondents?</p> <p>4 A Okay. So the -- I took what I thought to be -- I</p> <p>5 distilled the aspects of the sex tape that I</p> <p>6 thought were most relevant in my opinion, and I</p> <p>7 created this scenario; keeping in mind that I</p> <p>8 didn't want to over -- I just wanted to have</p> <p>9 the -- distill the key pieces of information to</p> <p>10 describe the sex tape. I did not want to include</p> <p>11 extraneous information because if I got much</p> <p>12 longer than this, I'd be very worried that I would</p> <p>13 confuse respondents, that respondents wouldn't</p> <p>14 read or pay attention.</p> <p>15 In my many years of survey experience, when</p> <p>16 people do surveys, they do not tolerate long</p> <p>17 surveys; you can very quickly lose their</p> <p>18 attention, which would dramatically -- which could</p> <p>19 decrease the validity of the resulting data.</p> <p>20 So that's why I set it up this way.</p> <p>21 Q Did Charles or anyone else from his law firm</p> <p>22 review the scenario before you performed the</p> <p>23 survey?</p> <p>24 MR. HARDER: I'm going to object. I think</p>

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<p>1 that's within privilege. We have an agreement on 2 that. We don't, you know, so I'm -- 3 MR. BERRY: And I guess the same privilege 4 objection if I say: Did you help write it or 5 approve it? 6 MR. HARDER: It's all communications between 7 my firm and the witness. We have an agreement 8 that these are privileged communications, so I 9 think that both of those questions fall within the 10 privilege.</p>	<p>1 MR. BERRY: Okay. Yeah, just if there's any 2 other documents that she has, then that's all I 3 would ask, but if there is not, there's not. 4 MR. HARDER: I'll have Sarah take another 5 look because I didn't make the list, and I didn't 6 assemble the documents to send to her. So I'd 7 have somebody who was, you know, on the ground and 8 did that to take another look, and make sure that 9 we gave you a complete -- but I think it's 10 complete.</p>
<p>11 MR. BERRY: Okay. 12 BY MR. BERRY: 13 Q Doctor John, how do you know the situation 14 presented on page 13 of your report was like the 15 one experienced by Mr. Bollea? 16 A I don't know what you're asking. 17 Q How do you know that the situation that's 18 presented on page 13 is like the one that was 19 experienced by Mr. Bollea? 20 A Well, when I looked at the tape, I tried to 21 describe what I saw on the tape in this writeup. 22 Q And what about in the three paragraphs before 23 what's depicted on the tape? 24 A Yeah. So honestly, I don't know how I got that</p>	<p>11 A So I just want to add one thing in case what I 12 stated was not correct before; that is, I remember 13 that after -- because I hadn't heard of this case, 14 after I got a voicemail from Charles about the 15 case -- but I don't really think it said -- it 16 just said something about Hulk Hogan -- then I 17 googled it because I wanted to prepare for my call 18 with him. And so I probably saw something -- I 19 mean, there was something on the internet that 20 described Gawker and Hulk Hogan. But -- so 21 that -- so I did probably -- I know that I googled 22 at that point in time, but I -- in terms of, like, 23 what I directly used as input, in creating the 24 survey, I wasn't googling, and looking online, and</p>
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<p>1 information. I've been presented with -- it's 2 like drinking from a fire hose. So I couldn't 3 tell you the exact document that this is in. 4 MR. BERRY: Charles, I would request that if 5 there is other documents other than those listed 6 on this Exhibit 340, which is the Documents Relied 7 Upon that built on this scenario, if they'd be 8 produced to us. If there were. I mean, I'm not 9 saying that there were, but I'm just saying, like 10 -- it just seems like she doesn't have a firm 11 knowledge or recollection, but if there were other 12 things that she relied upon in coming up with the 13 scenario, that they be provided. 14 MR. HARDER: Yeah, here is my answer, is 15 that it's my understanding that we gave you a full 16 list of the documents that went to her and then -- 17 what, you're giving me a grimace. 18 MR. BERRY: That may be the case. That may 19 be the case. 20 MR. HARDER: In addition to that, she had 21 conversations with people in my office. 22 MR. BERRY: Right. 23 MR. HARDER: I can't get into the specifics 24 because that's getting into the privilege.</p>	<p>1 finding stuff to put in. 2 Q Yeah, some of this is -- some of this just 3 clearing up legal obligations that Charles and I 4 have to each other. 5 A Okay. 6 Q And so -- yeah. I mean, I understand what your 7 answer is. 8 So earlier, just to kind of get back to 9 where we were here, you had mentioned that the 10 more important sort of part of what your opinions 11 were based on, was your professional background 12 here on page 3 of the report. 13 A Um hmm. 14 Q So what I'd like to do is just talk to you about 15 your background here, and we'll mark this as 16 Exhibit 345. 17 (Document marked Exhibit No. 345 for 18 identification.) 19 Q So Exhibit 345, is this your CV? 20 A Yes. 21 Q Did you prepare it? 22 A Yes. A research assistant of mine, a different 23 one, helped me prepare it. 24 Q But you approved it -- what's in there.</p>

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<p>1 A Yeah.</p> <p>2 Q You're a professor at Harvard Business School --</p> <p>3 right?</p> <p>4 A Yes.</p> <p>5 Q Do you have a tenured track position?</p> <p>6 A Yes.</p> <p>7 Q When did you begin teaching at Harvard?</p> <p>8 A So I started at Harvard, July 2011. My first</p> <p>9 teaching started in August of 2011.</p> <p>10 Q Okay. And then on page 5, there is a list of</p> <p>11 teaching, and then there is sort of two sections</p> <p>12 there, Primary Teaching Assignments and Secondary</p> <p>13 Teaching Assignments.</p> <p>14 Are these all of the classes that you've</p> <p>15 taught while at Harvard?</p> <p>16 A Are you asking: Is it exhaustive?</p> <p>17 Q Yeah. Are there other courses that you've taught</p> <p>18 since being at Harvard?</p> <p>19 A I don't think so. I think that's -- I think</p> <p>20 that's everything at HBS. But before I came to</p> <p>21 HBS, I did do some other teaching, as I was when I</p> <p>22 was a graduate student.</p> <p>23 Q And you were a graduate student at Carnegie</p> <p>24 Mellon?</p>	<p>1 behavioral economics, we show that standard</p> <p>2 economic theories are not a descriptively accurate</p> <p>3 picture of human behavior, including how people</p> <p>4 make decisions.</p> <p>5 Yeah. So behavioral decision research has</p> <p>6 identified certain ways people make decisions that</p> <p>7 are -- that stand in contrast to how standard</p> <p>8 economic theorists would say people should and do</p> <p>9 make decisions. It's a very broad field.</p> <p>10 Q I get that you did course work in economics.</p> <p>11 A Yes. And psychology.</p> <p>12 Q And psychology. So those are the two principal</p> <p>13 fields that it would draw from, behavioral</p> <p>14 decision research would draw from.</p> <p>15 A Two principal fields would be psychology and</p> <p>16 economics.</p> <p>17 Q And then on your CV, your dissertation was titled:</p> <p>18 A behavioral Economics Perspective on Privacy and</p> <p>19 Self-Disclosure: Three Essays.</p> <p>20 A Yes.</p> <p>21 Q George Loewenstein chaired your dissertation</p> <p>22 committee?</p> <p>23 A Yes.</p> <p>24 Q What does that mean?</p>
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<p>1 A Correct.</p> <p>2 Q Is that where the teaching was?</p> <p>3 A Correct.</p> <p>4 Q Currently at Harvard, do you advise Ph.D.</p> <p>5 students?</p> <p>6 A Yes.</p> <p>7 Q What departments are those folks in?</p> <p>8 A They are in marketing, and I also work with</p> <p>9 students that -- a student in organizational</p> <p>10 behavior, and I work with a student who is -- she</p> <p>11 has a joint appointment partly with the legal</p> <p>12 school -- the law school, and partly with maybe</p> <p>13 the Kennedy School, or Harvard Business School.</p> <p>14 I'm not exactly sure.</p> <p>15 Q And your Ph.D. is in behavioral decision research.</p> <p>16 A Correct.</p> <p>17 Q What is behavioral decision research?</p> <p>18 A It is how people make decisions, fundamentally.</p> <p>19 And it is -- it's hard to explain in a nutshell,</p> <p>20 but whereas, standard economic theory describes</p> <p>21 how people should make decisions, and says that</p> <p>22 how people should make decisions is generally how</p> <p>23 they do make decisions, the field of behavioral</p> <p>24 decision research, and allied fields such as</p>	<p>1 A What does it mean?</p> <p>2 Q Yes.</p> <p>3 A For someone to be a chair of a dissertation</p> <p>4 committee?</p> <p>5 Q Yes.</p> <p>6 A They are the ones that decide whether you pass and</p> <p>7 get a Ph.D.; whether your -- whether your work is</p> <p>8 above bar.</p> <p>9 Q Was he one of your -- was he your thesis advisor?</p> <p>10 A That's what a dissertation chair is -- in my</p> <p>11 discipline.</p> <p>12 Q And so he helped you with your research and</p> <p>13 dissertation?</p> <p>14 A What do you mean by help?</p> <p>15 Q He kind of oversaw the research you were doing,</p> <p>16 your writing of the dissertation, and then</p> <p>17 ultimately chaired it to decide whether you got</p> <p>18 your Ph.D.?</p> <p>19 A And ultimately what?</p> <p>20 Q Chaired the committee that decided whether you got</p> <p>21 your Ph.D.</p> <p>22 A Yeah.</p> <p>23 Q And so Alessandro Acquisti --</p> <p>24 A Acquisti.</p>

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<p>1 Q -- Acquisti. He was also on the dissertation 2 committee? 3 A Correct. 4 Q What was his role? 5 A He didn't really do that much. Not that -- 6 MR. HARDER: We're going to mark this 7 confidential. 8 THE WITNESS: Yeah, exactly. 9 A Hmm. 10 Q It sounds like Professor Loewenstein was the 11 primary person working with you on the 12 dissertation and research, overseeing that work? 13 A He's the chair. 14 Q He was the chair. 15 A The role of Alessandro and Joachim, as great as 16 they are, as great as they have been to me, they 17 did not have a huge role. I mean, the 18 dissertation is my baby, and George Loewenstein 19 provided guidance, as did the others, but the 20 others less so. 21 Q Did you take classes from those three folks? 22 A Yes. All three. 23 Q So in the report here, on page 3 in that same 24 number 2, says that you have more than eight</p>	<p>1 that I find interesting. 2 Q Have you started any privacy studies since joining 3 Harvard? 4 A Yes. 5 Q What studies? 6 A One of the studies, it's called: What Hiding 7 Reveals. Another study is called: Transparency 8 in Targeting. Another study is about disclosing 9 conflicts of interest. When I say "privacy," I 10 mean like privacy and disclosure. It's a bit of a 11 broad topic. 12 So to answer your question -- oh, here is 13 another one: Cost Transparency. So I've started 14 several. And this is just -- my CV also doesn't 15 list all of the projects that I'm working on. My 16 CV lists the ones that are sort of furthest along, 17 but I have many, many projects that are early 18 stage that are not on here. 19 Q Are you an expert in the law of privacy? 20 A What do you mean by that? 21 Q Do you have any expertise in the law of privacy? 22 A I have some knowledge of it. So when I was 23 trained at -- when I took Alessandro Acquisti's 24 course, I remember there was a module on privacy</p>
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<p>1 years' experience in survey design and conducting 2 research on privacy. Is privacy the only thing 3 that you research? 4 A No. 5 Q What else do you research? 6 A Well, I study decision biases generally. I study 7 health behaviors. I study health behavior change. 8 I study how to design incentive systems and 9 interventions to help people be healthier. I 10 mean, this is -- I'm just spouting off some things 11 I study. I study a lot of things. If you have 12 specific questions about different areas, I can 13 answer them. 14 Q Well, since you started working at Harvard, what 15 percentage of your time has been spent on doc 16 research relating to privacy? 17 A It's very hard to estimate time. Let's see. 18 Well, I probably spend about -- probably spend 19 about 70 percent of my time -- I mean I'm just 20 estimating. I'd estimate that I spend about 70 21 percent of my time on research, and of that 70 22 percent, I would say I spend probably 35 percent 23 on privacy; 20 percent on -- where am I at -- on 24 health, and then 15 percent on many other things</p>	<p>1 and the law, so I have some familiarity which it. 2 Yes. 3 Q Would you consider yourself to be an expert in the 4 law on the tort of publication of private facts? 5 A Expert in the law -- the tort law on the 6 publication of private facts? That is not my 7 single area of expertise. 8 Q What about the law on intrusion to seclusion? 9 A I'm not -- that's not my -- 10 MR. HARDER: Wait. Just let her finish. 11 Q Sorry, I thought you were done. 12 A So I guess what do you mean -- can you ask the 13 question again, please? 14 Q Do you consider yourself to be an expert on the 15 tort of intrusion to seclusion? 16 A I don't consider myself to be an expert on those 17 legal words that you just mentioned. However, I 18 am an expert on understanding when and why people 19 react to violations of privacy, when and why 20 people are more or less concerned about their 21 privacy. So if I had to sort of counter what 22 you're saying, I would say I'm expert in the 23 behavioral economics of privacy. 24 Q Are you an expert in --</p>

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<p>1 A I'm not a trained lawyer, although I'm familiar 2 with these things that you're saying because I've 3 read -- when I was being educated. But I'm not a 4 lawyer.</p>	<p>1 saying, you're an expert in what factors people 2 might consider in deciding whether something 3 should or should not be private -- in making 4 decisions about what should or shouldn't be 5 private.</p>
<p>5 Q Are you an expert in what should and should not be 6 private?</p>	<p>6 MR. HARDER: Objection to form.</p>
<p>7 A I'm not sure I understand.</p>	<p>7 A Privacy is something that is context dependent and 8 varies by individual. So I can't tell people what 9 is right and wrong, but I can -- I am an expert in 10 figuring out how to figure out what is right and 11 wrong given a certain context, given a certain 12 person or population.</p>
<p>8 Q Well, it sounds like -- let me ask you a different 9 question. From what you had said, it sounds like 10 you're an expert in people's privacy making 11 decisions, or people's privacy decision-making.</p>	<p>13 Q This might be a good place to break for lunch.</p>
<p>12 MR. HARDER: Objection to form. Misstates 13 prior testimony.</p>	<p>14 MR. HARDER: Okay, great.</p>
<p>14 Q Sorry, would you say you're an expert in people's 15 privacy decision-making?</p>	<p>15 VIDEO OPERATOR: The time is 1:07. We are 16 now off the record.</p>
<p>16 A I think I already described what I'm an expert in.</p>	<p>17 (Lunch recess taken.)</p>
<p>17 Q Are you an expert in people's valuation of their 18 privacy?</p>	<p>18 VIDEO OPERATOR: The time is now 2 p.m. We 19 are now back on the record.</p>
<p>19 A I think I already described what I'm an expert in.</p>	<p>20 BY MR. BERRY:</p>
<p>20 Q Does that include valuation?</p>	<p>21 Q Doctor John, Charles just asked how long we're 22 going to be here, and I do have quite a bit of 23 ground to cover, and I will do my best to get it 24 done today by 6 p.m.</p>
<p>21 A It includes -- yes. My expertise is in how people 22 think about their privacy, how they value it, when 23 they judge intrusions to be intrusions and so on. 24 So yes, it's all captured underneath what I</p>	
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<p>1 would consider to be the area of behavioral 2 economics of privacy.</p>	<p>1 If I'm not able to, we may have to go later, 2 go into tomorrow, but you know, I'm trying to move 3 as quickly as I possibly can, but with the breaks 4 and stuff, we need to kind of keep it moving.</p>
<p>3 Q So stepping back to the question I asked earlier, 4 are you an expert in -- normatively -- what should 5 and should not be private?</p>	<p>5 MR. HARDER: I don't know about going into 6 tomorrow.</p>
<p>6 MR. HARDER: Objection to form.</p>	<p>7 MR. BERRY: We can take it up. Hopefully 8 we'll move along quickly.</p>
<p>7 A I am an expert in assessing -- can you ask the 8 question again, please?</p>	<p>9 MR. HARDER: All right.</p>
<p>9 MR. BERRY: Would you mind repeating. 10 (Question read back.)</p>	<p>10 BY MR. BERRY:</p>
<p>11 A My answer to that question is -- so that question 12 to me seems to imply that there is a universal 13 rule that, across contexts, we can make 14 generalizations of what should and should not be 15 private. However, in my area of expertise, that's 16 not quite right.</p>	<p>11 Q So Doctor John, you have authored articles in your 12 research that have concluded that people do not 13 have stable internally consistent preferences 14 about privacy -- right?</p>
<p>17 My area of expertise is in understanding the 18 factors that dictate when something is an invasion 19 and when something is not an invasion. So I guess 20 that's why I had trouble answering your question 21 because science tells us that it's not a blanket 22 black and white what is right and what is wrong 23 across all contexts.</p>	<p>15 MR. HARDER: Objection to the form.</p>
<p>24 Q And so you're -- if I understand what you're</p>	<p>16 A Can you refer me to the article that you're 17 talking about? 18 Q Yes, we can talk about it specifically, but in 19 your research, have you found that people do not 20 have stable internally consistent preferences 21 about privacy? 22 MR. HARDER: Objection to the form. 23 Incomplete hypothetical. Vague and ambiguous. 24 A I would like to see -- so I would like to see</p>

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<p>1 where you're taking that quote from because I want</p> <p>2 to be able to understand it within the context of</p> <p>3 the work in which it was written.</p> <p>4 Q Do people have stable, internally consistent</p> <p>5 preferences about privacy?</p> <p>6 MR. HARDER: I'm going to object to the form</p> <p>7 of the question. Incomplete hypothetical. Vague</p> <p>8 and ambiguous.</p> <p>9 A Question is?</p> <p>10 (Question read back.)</p> <p>11 THE WITNESS: Should I answer it?</p> <p>12 MR. HARDER: Yes, if you can.</p> <p>13 A So people -- what I -- people care about privacy,</p> <p>14 generally speaking. However, their preferences</p> <p>15 for privacy can be affected by certain contextual</p> <p>16 factors. So that's why it's hard to say that a</p> <p>17 person cares about their privacy this much because</p> <p>18 the answer to that question is that it depends.</p> <p>19 It depends on many factors; for one, the context</p> <p>20 in which the privacy invasion took place. And</p> <p>21 importantly, in my survey, I'm not making general</p> <p>22 statements about the value of privacy. I am</p> <p>23 valuing -- discovering what is a fair and</p> <p>24 reasonable compensation for the loss of privacy</p>	<p>1 identification.)</p> <p>2 MR. BERRY: I'm going to mark -- sorry,</p> <p>3 we'll go out of order because I want to do this</p> <p>4 slightly differently -- but we'll mark as Exhibit</p> <p>5 347, an article. It's titled: Strangers on a</p> <p>6 Plane: Context-Dependent Willingness to Divulge</p> <p>7 Sensitive Information.</p> <p>8 BY MR. BERRY:</p> <p>9 Q You're familiar with this article?</p> <p>10 A Yes.</p> <p>11 Q You're the lead author on it?</p> <p>12 A Yes.</p> <p>13 Q Did this article come out of your research for</p> <p>14 your dissertation?</p> <p>15 A Yes.</p> <p>16 Q Do you stand by the conclusions in this article?</p> <p>17 A Do you have a specific conclusion?</p> <p>18 Q Do you stand by what is written in this article?</p> <p>19 A What do you mean by stand by?</p> <p>20 Q Well, sitting here today, is there anything in</p> <p>21 this article that you would rewrite?</p> <p>22 A Hmm. Well, I'd have to read the whole thing very</p> <p>23 carefully to tell you that. It's common for</p> <p>24 academics, because we are in the business of</p>
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<p>1 that Terry Bollea experienced, and I've</p> <p>2 constrained in a very constrained setting -- so</p> <p>3 the people's preferences can vary depending on</p> <p>4 contexts, but importantly, in my survey, I</p> <p>5 constrain those, and I'm not making statements --</p> <p>6 generalizations beyond the context in which I am</p> <p>7 talking about.</p> <p>8 Q Is one of the contextual factors that you have</p> <p>9 found in your research that affects people's</p> <p>10 privacy valuations, contextual cues in the surveys</p> <p>11 that are conducted?</p> <p>12 MR. HARDER: I'm going to object to the form</p> <p>13 of the question. Vague, ambiguous. Incomplete</p> <p>14 hypothetical.</p> <p>15 A Can you be more specific?</p> <p>16 Q Have you found, in any of your research, that one</p> <p>17 of the contextual factors that affect people's</p> <p>18 privacy valuations are contextual cues within the</p> <p>19 survey or question itself?</p> <p>20 A What do you mean by contextual cues? It's hard</p> <p>21 for me to answer unless you're specific on the</p> <p>22 contextual cues you're talking about.</p> <p>23 Q Sure. Why don't we do it this way.</p> <p>24 (Article marked Exhibit No. 347 for</p>	<p>1 learning things, and as we discover new</p> <p>2 information, we learn new things and sometimes we</p> <p>3 revise things.</p> <p>4 So your question: Do I stand by every</p> <p>5 single thing that I state here? It's possible</p> <p>6 that my opinion on some of the things has changed</p> <p>7 over time. Without going very deeply into this, I</p> <p>8 find it hard to answer that question.</p> <p>9 Q All right. Well, let's turn to page -- what on</p> <p>10 here -- it's not numbered -- this page 7, which</p> <p>11 has a section at the top on the left-hand column:</p> <p>12 Affirmative Admission Rates.</p> <p>13 A Yes.</p> <p>14 Q Then Privacy Concern.</p> <p>15 A Yes.</p> <p>16 Q Then Truthfulness of Responses.</p> <p>17 Under Truthfulness of Responses, it says,</p> <p>18 "The results of experiment 2 are consistent --</p> <p>19 MR. HARDER: What page are you on?</p> <p>20 MR. BERRY: Seven.</p> <p>21 MR. HARDER: Mine says 0.</p> <p>22 MR. BERRY: Yeah, they're not marked.</p> <p>23 That's why I described it. Affirmative Admission</p> <p>24 Rates.</p>

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<p>1 A 27432 is the Gawker number.</p> <p>2 Q At the very end of the left-hand column, it says,</p> <p>3 "The results of experiment 2 are consistent with</p> <p>4 the theory that privacy concerns can be either</p> <p>5 roused or, in this case, downplayed by contextual</p> <p>6 cues, e.g., the Web interface, thereby affecting</p> <p>7 disclosure."</p> <p>8 Do you still agree with that conclusion?</p> <p>9 MR. HARDER: Object to form.</p> <p>10 A Yes.</p> <p>11 Q Turning to Gawker 27436, at the top of the page,</p> <p>12 there is a carryover paragraph, and the very last</p> <p>13 sentence says, "By contrast, when privacy concerns</p> <p>14 were cued from the outset of the experiment,"</p> <p>15 through a phishing condition, in parenthesis,</p> <p>16 "there was no difference in AARs between</p> <p>17 unprofessional and professional conditions.</p> <p>18 Do you see that?</p> <p>19 A Um hmm. Yes. That's a yes, I see that.</p> <p>20 Q And what is AAR?</p> <p>21 A Affirmative admission rates.</p> <p>22 Q Do you stand by that conclusion?</p> <p>23 MR. HARDER: Object to form.</p> <p>24 A The sentence, "By contrast, when privacy concerns</p>	<p>1 describe the specific result than what you've just</p> <p>2 said, but are you asking me -- are you asking me</p> <p>3 whether I think in general, when you, when you cue</p> <p>4 a privacy concern, is that going to -- how it is</p> <p>5 going to impact people's behavior?</p> <p>6 Q Correct.</p> <p>7 A So this is what we found in this study. However,</p> <p>8 it is -- how do I say this. So this study found</p> <p>9 that -- let me just -- one of the findings of the</p> <p>10 study was that when the interface looks</p> <p>11 unprofessional, people are more likely to divulge</p> <p>12 sensitive information than when it doesn't look</p> <p>13 unprofessional.</p> <p>14 Q Correct.</p> <p>15 A And then, when we cue people to think about</p> <p>16 privacy at the outset of the experiment, the</p> <p>17 ability for the unprofessional side to elicit</p> <p>18 disclosure is dampened.</p> <p>19 Q You mean people would disclose less.</p> <p>20 A Correct. Yes.</p> <p>21 Q So by providing contextual cues concerning privacy</p> <p>22 at the outset, that affected people's willingness</p> <p>23 to disclose when they -- they completed the</p> <p>24 survey -- right?</p>
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<p>1 were cued from the outset of the experiment,"</p> <p>2 there were no differences -- "there was no</p> <p>3 difference in affirmative admission rates between</p> <p>4 unprofessional and professional conditions," that</p> <p>5 is a sentence that's -- I'm not really clear what</p> <p>6 you're asking me.</p> <p>7 Q In this Strangers on a Plane, you did four</p> <p>8 different experiments -- right?</p> <p>9 A Yes.</p> <p>10 Q In the third experiment, you looked to see -- I</p> <p>11 believe it's the third experiment, you looked to</p> <p>12 see -- sorry, apologize. I think it was actually</p> <p>13 the fourth experiment -- you looked to see whether</p> <p>14 cuing people to think about privacy at the outset</p> <p>15 of the survey affected their willingness to</p> <p>16 disclose information during the survey -- right?</p> <p>17 A Correct.</p> <p>18 Q And your conclusion was that by cuing privacy</p> <p>19 concerns at the outset of the survey, that</p> <p>20 people's willingness to disclose was suppressed --</p> <p>21 correct?</p> <p>22 MR. HARDER: Document speaks for itself.</p> <p>23 Object to form.</p> <p>24 A So I would trust more what this says on -- to</p>	<p>1 MR. HARDER: Objection to form.</p> <p>2 A Well, it's a little bit more nuanced than that</p> <p>3 because it's not simply a main effect. A main</p> <p>4 effect would be if you cue privacy from the</p> <p>5 outset, then everyone is quashed. It's</p> <p>6 interaction such that you -- when your privacy was</p> <p>7 cued at the outset, you then are less sensitive to</p> <p>8 being sort of lured into disclosing information in</p> <p>9 the unprofessional condition. It's little bit</p> <p>10 different than I think how you were characterizing</p> <p>11 it.</p> <p>12 Q Right. So if people might otherwise have a</p> <p>13 propensity to disclose, that propensity would be</p> <p>14 dampened by contextual cues at the outset alerting</p> <p>15 them to privacy concerns -- right?</p> <p>16 A Well, not in general. Not if you're -- it's not a</p> <p>17 general -- it's not a main effect. It's an</p> <p>18 interaction. So this -- so half of people, in</p> <p>19 this particular experiment, half of people saw the</p> <p>20 professional interface. The other half of people</p> <p>21 were asked the questions on the unprofessional</p> <p>22 interface. And then the -- also, before they were</p> <p>23 asked the questions on these interfaces, half of</p> <p>24 people were first primed to think of privacy and</p>

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<p>1 the other half were not primed to think of</p> <p>2 privacy. So there are four different conditions.</p> <p>3 So there is a quarter of people first were</p> <p>4 primed to think of privacy, and then saw the --</p> <p>5 were asked the questions on the professional site.</p> <p>6 A quarter of people were primed to think of</p> <p>7 privacy, and then were asked the questions on the</p> <p>8 unprofessional site. A quarter of people were not</p> <p>9 primed to think of privacy from the outset and</p> <p>10 then were asked the questions on the professional</p> <p>11 site, and finally, a quarter of people were not</p> <p>12 primed to think of privacy and then were asked the</p> <p>13 questions on the unprofessional site. And so we</p> <p>14 found an interaction. That means that the effect</p> <p>15 of cuing people to think of privacy on the</p> <p>16 tendency to disclose information depended on the</p> <p>17 interface.</p> <p>18 And specifically, the interpretation is that</p> <p>19 when we primed people to think of privacy from the</p> <p>20 outset, it made them less susceptible to being</p> <p>21 lured into divulging information by the</p> <p>22 unprofessional site. It sort of dampened the</p> <p>23 unprofessional site's ability to elicit</p> <p>24 information.</p>	<p>1 normative basis."</p> <p>2 Now, "normative" is a very strong word, and</p> <p>3 normative is what -- that word is based from</p> <p>4 standard economic theory whereby standard economic</p> <p>5 theorists -- the standard economic model</p> <p>6 identifies what is right; how people should</p> <p>7 behave. And the standard economic model thinks</p> <p>8 that what is normative -- by definition</p> <p>9 "normative" means it's the right way to behave --</p> <p>10 is how people actually behave. Is descriptively</p> <p>11 accurate.</p> <p>12 The field of behavioral decision research</p> <p>13 has shown that standard economic theory is not</p> <p>14 descriptively accurate. It's not how people</p> <p>15 actually behave. Moreover, the basis for what --</p> <p>16 what is normative from standard economic theory</p> <p>17 has been questioned.</p> <p>18 So standard economic theory makes a variety</p> <p>19 of assumptions about how people should behave, and</p> <p>20 it's unclear that those assumptions are actually</p> <p>21 how they should behave.</p> <p>22 Q Right. People aren't professional actors all the</p> <p>23 time.</p> <p>24 A Well, what my point is, that the quote -- air</p>
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<p>1 Q On Gawker page 27427 -- it's the second page.</p> <p>2 A Okay. 27 --</p> <p>3 Q It's the second page of the article, okay.</p> <p>4 A 27427, yeah.</p> <p>5 Q In the top right column, there is a line that</p> <p>6 says, "the field of behavioral decision theory has</p> <p>7 documented that preferences are often influenced</p> <p>8 by factors that are difficult to justify under</p> <p>9 normative basis, for example, by elicitation</p> <p>10 method and by the framing of alternatives."</p> <p>11 Do you see that?</p> <p>12 A Um hmm. Yes.</p> <p>13 Q Is that generally accepted?</p> <p>14 A Well, what is -- so framing effects are generally</p> <p>15 accepted, as in there are framing effects in the</p> <p>16 world.</p> <p>17 Q What does that mean?</p> <p>18 A Framing effects means that you can -- that</p> <p>19 people's answers to questions can depend on the</p> <p>20 way in which you frame it.</p> <p>21 Q And what's an elicitation method?</p> <p>22 A An elicitation method is the way you ask</p> <p>23 questions. Now, I want to say though, part of the</p> <p>24 sentence you read was "difficult to justify on a</p>	<p>1 quote "gold standard" of being a rational actor,</p> <p>2 scholars are questioning whether that is, in fact,</p> <p>3 the gold standard; whether what standard economic</p> <p>4 theorists have said is the gold standard -- how we</p> <p>5 should behave; what is normative -- whether that</p> <p>6 is actually normative.</p> <p>7 Q Okay. Let me mark as Exhibit 348 another article.</p> <p>8 (Document marked Exhibit No. 348 for</p> <p>9 identification.)</p> <p>10 A Okay. So this is --</p> <p>11 Q This is titled: The Best of strangers:</p> <p>12 Context-dependent willingness to divulge personal</p> <p>13 information.</p> <p>14 A Yeah. This is the same --</p> <p>15 Q This is the manuscript that --</p> <p>16 A This is on SSRN -- this paper.</p> <p>17 Q Right. What's SSRN?</p> <p>18 A It's a repository for academic papers that are not</p> <p>19 completed. So this looks like it was obtained</p> <p>20 from SSRN. Whereas, this is the published</p> <p>21 version. So this is an earlier draft.</p> <p>22 Q Okay. It's still available to people.</p> <p>23 A Apparently.</p> <p>24 Q I just want to ask you a couple things in here.</p>

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<p>1 On page -- these ones are actually marked.</p> <p>2 Page 4.</p> <p>3 A Yes.</p> <p>4 Q In that first full paragraph, after there is a</p> <p>5 cite to Tversky at 1990, it says, "Research has</p> <p>6 further identified a range of mechanisms through</p> <p>7 which contextual factors influence decision</p> <p>8 making, including altering the salience of</p> <p>9 information, the types of comparisons evoked, and</p> <p>10 the types of memories brought to mind."</p> <p>11 What is "salience of information"?</p> <p>12 A How -- salience. Well, what's a synonym for the</p> <p>13 word salience. How much information stands out to</p> <p>14 you. If you put something in big letters or not,</p> <p>15 that would be an example of a salience</p> <p>16 manipulation.</p> <p>17 Q Okay. "The types of comparisons evoked" -- what</p> <p>18 does that mean?</p> <p>19 A So this is looking within this paper within this</p> <p>20 sentence. Types of comparisons evoked -- well,</p> <p>21 the Chris Hsee paper in 1999 describes what I mean</p> <p>22 by that, which is that sometimes people make</p> <p>23 different choices according to what other options</p> <p>24 are in the choice set.</p>	<p>1 about the "privacy paradox"?</p> <p>2 A Yes.</p> <p>3 Q What is the privacy paradox?</p> <p>4 A "For example, in a phenomenon dubbed the 'privacy</p> <p>5 paradox,' people report that privacy is important</p> <p>6 to them, yet engage in behaviors that indicate a</p> <p>7 remarkable lack of concern."</p> <p>8 Q So that describes a privacy paradox?</p> <p>9 A Yes.</p> <p>10 Q Is that something that you found in your research?</p> <p>11 MR. HARDER: Objection to form.</p> <p>12 A Well, actually, the citation is from Norberg.</p> <p>13 That paper -- in fact, I think it has that in the</p> <p>14 title. They dubbed coined the term, so it's not</p> <p>15 my finding; the privacy paradox personal</p> <p>16 information disclosure intentions versus behavior.</p> <p>17 Q Right. Has your research shown that people report</p> <p>18 that privacy is important, but then engage in</p> <p>19 behaviors that indicate less concern than</p> <p>20 expressed?</p> <p>21 MR. HARDER: Objection to form.</p> <p>22 A Can you ask the question again, please.</p> <p>23 MR. BERRY: Read back.</p> <p>24 (Question read back.)</p>
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<p>1 Q Then what's the last -- it says: "The types of</p> <p>2 memories brought to mind." What does that mean?</p> <p>3 A That is not a -- that's actually a much older and</p> <p>4 not well-known paper: Constructing preferences</p> <p>5 from memories. Off the top of my head, I'm not</p> <p>6 exactly sure. I'd have to reread this paper.</p> <p>7 Q This is the one by Weber in 2006?</p> <p>8 A Weber and Johnson, yeah.</p> <p>9 Q Could it be saying that people's individual</p> <p>10 memories that they think of when reading</p> <p>11 something, that might affect -- that's a</p> <p>12 contextual factor that might affect their</p> <p>13 valuations?</p> <p>14 A I don't want to -- I don't want to guess what it's</p> <p>15 about without reading it.</p> <p>16 Q Okay. In your expertise, would the kinds of</p> <p>17 memories that are brought to mind, based on</p> <p>18 information that is presented, affect people's</p> <p>19 views on disclosure?</p> <p>20 MR. HARDER: Objection to form.</p> <p>21 A I don't study memory in decision -- like I --</p> <p>22 that's -- I'm not comfortable answering that</p> <p>23 question.</p> <p>24 Q Okay. At the bottom of that same page, you talk</p>	<p>1 A So I -- I have run -- I've done many, many</p> <p>2 studies. Off the top of my head, I am having a</p> <p>3 hard time thinking of a study in which I have</p> <p>4 directly asked people: How much do you care about</p> <p>5 privacy, and then directly given them an</p> <p>6 opportunity to share information and shown that</p> <p>7 those two don't match.</p> <p>8 So in my -- I can't say that I've documented</p> <p>9 it in my own research. But you know, I've done a</p> <p>10 the lot of studies.</p> <p>11 Q In behavioral decision-making research generally,</p> <p>12 is it fair to say that people often say one thing</p> <p>13 but do another; they express one preference, but</p> <p>14 then act in a different way that's inconsistent</p> <p>15 with that preference?</p> <p>16 MR. HARDER: Objection form. Sometimes</p> <p>17 people do that.</p> <p>18 Q Right.</p> <p>19 Are you familiar with the concept of "stated</p> <p>20 preferences"?</p> <p>21 A Yes.</p> <p>22 Q Are stated preferences deemed to be reliable in</p> <p>23 behavioral decision-making research?</p> <p>24 MR. HARDER: Objection to form.</p>

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<p>1 A It depends. Sometimes they are, and sometimes 2 they're less reliable.</p> <p>3 Q When are they less reliable?</p> <p>4 MR. HARDER: Objection to form.</p> <p>5 A When are stated preferences less reliable?</p> <p>6 They're less reliable, for example -- here is a 7 situation when they would be less reliable. If 8 you're asking people to -- suppose you're a market 9 researcher, and you have some new product, and you 10 have, say, a focus group, and you're asking 11 people: How much would you be willing to pay for 12 this product. So people state how much they'd be 13 willing to pay for the product. And the research 14 has generally found that these stated preferences 15 of willingness to pay are not good predictors of 16 people's actual behavior, actual willingness to 17 buy in the marketplace.</p> <p>18 And so why is this unreliable? Well, 19 willingness to pay in this situation -- talk is 20 cheap. So you are not actually having to fork 21 over the money. And so because of that situation 22 in which the preference is elicited, it tends 23 to -- that method tends to elicit information that 24 isn't really very valid. So that's a situation</p>	<p>1 measures is one that has been -- that is respected 2 in the literature.</p> <p>3 Q But your survey asked for stated preferences -- 4 right?</p> <p>5 A My survey, I ask for -- I ask people -- so the 6 focal question is the fair and reasonable 7 compensation value.</p> <p>8 Q But it's their stated preference. It's different 9 than --</p> <p>10 A Than inferring -- right. I'm not making 11 inferences from their -- I'm not making inferences 12 about their preferences based on their behavior.</p> <p>13 Q Right. That would be revealed preferences.</p> <p>14 A Correct.</p> <p>15 Q Are you familiar with the concept of hypothetical 16 bias?</p> <p>17 A I am, but can you define it for me, please; 18 because I want to make sure we're on the same 19 page, when you say hypothetical bias, that we're 20 talking about the same thing.</p> <p>21 Q When people are asked hypothetical questions about 22 stated preferences, do they have a bias to 23 overstate value on whatever it is they're being 24 asked about?</p>
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<p>1 where a stated preference would be not so 2 reliable.</p> <p>3 Q And that's why in behavioral decision making, 4 there's a preference for revealed preferences.</p> <p>5 A Well, I wouldn't say there's a preference for 6 revealed preferences actually. The problem is 7 that it's hard to measure preferences. And so 8 stated preferences have their problems. Revealed 9 preferences also have problems.</p> <p>10 The approach I take in my survey is I try to 11 obtain -- I try to ask questions -- which I did. 12 I asked people in different ways. So for example, 13 some people were asked if one person, and others 14 were asked if 7 million people had viewed this. 15 The reason is there isn't -- that -- it's hard to 16 ask about preferences. And so you can make your 17 data more reliable, more trustworthy if you ask in 18 different ways, and there may be little flaws with 19 the different ways of asking, but importantly, 20 each way doesn't have the same flaw.</p> <p>21 So flaws offset each other, and in the end, 22 you can get converging evidence, reliable valid 23 evidence, some signal in what you're measuring. 24 And in fact, this approach of using multiple</p>	<p>1 A It depends.</p> <p>2 Q On?</p> <p>3 MR. HARDER: Objection. Form.</p> <p>4 A Well -- say that again? It's important -- the 5 details are important here. Can you please ask 6 again or --</p> <p>7 (Question read back.)</p> <p>8 A It depends. One of the things it depends on is 9 whether you're asking someone how much they'd be 10 willing to pay versus how much they'd be willing 11 to accept.</p> <p>12 So when I say -- when you asked me: What's 13 a problem with stated preference, I gave you the 14 example of willingness to pay. Willingness to 15 pay -- one of the weaknesses of that method, when 16 it's not conducted in an incentive compatible 17 elicitation method -- so when you're just a 18 group -- you say like how much would you be 19 willing to pay for this, and you don't have to 20 actually buy it -- that is where I would be 21 concerned about people overstating their 22 willingness to pay because they don't actually 23 have to pay, and they may want to please the 24 experimenter. It might insult them if they say 'I</p>

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<p>1 don't want to pay a penny for your product.'</p> <p>2 So that's why in those situations, I'm</p> <p>3 concerned that willingness to pay doesn't really</p> <p>4 do a good job at reflecting people's true</p> <p>5 preferences.</p> <p>6 Now, on the other hand, in my survey, I</p> <p>7 asked for willingness to accept as compensation.</p> <p>8 So when we think about hypothetical bias, we have</p> <p>9 to think about -- like specifically as it pertains</p> <p>10 to the question context at hand. And so within</p> <p>11 the survey I conducted, I'm asking people: What</p> <p>12 would you think would be -- I'm not going to</p> <p>13 repeat the wording because it's in -- but there,</p> <p>14 the fact that it's hypothetical, in my experience,</p> <p>15 in my opinion, actually increases the validity of</p> <p>16 the findings. It increases my faith in these</p> <p>17 findings because -- precisely because people don't</p> <p>18 have skin in the game.</p> <p>19 If I was doing this survey and saying, Hey,</p> <p>20 how much money -- and people actually stood to get</p> <p>21 as compensation whatever amount they said, then I</p> <p>22 would be -- I could be concerned that people may</p> <p>23 inflate their true values. But because this is a</p> <p>24 hypothetical scenario, I actually, in my opinion,</p>	<p>1 hypothetical question about an involuntary private</p> <p>2 disclosure and asked about willingness to accept?</p> <p>3 A Hmm. Nothing pops out off the top of my head, but</p> <p>4 I will say I've done hundreds of surveys, so --</p> <p>5 Q Are you familiar with any peer review published</p> <p>6 article that has done that kind of study?</p> <p>7 MR. HARDER: Objection to form.</p> <p>8 A Which kind of study?</p> <p>9 Q Asking a hypothetical question about an</p> <p>10 involuntary privacy disclosure and asking what the</p> <p>11 willingness to accept would be.</p> <p>12 A An invol -- a paper that is about an involuntary</p> <p>13 disclosure and what people would be willing to</p> <p>14 accept.</p> <p>15 So one paper that comes to mind is a paper</p> <p>16 by -- it's Laura Brandimarte, Alessandro Acquisti,</p> <p>17 and George Loewenstein where they look at control,</p> <p>18 and so one of the factors they vary is whether the</p> <p>19 person has control or not over their information</p> <p>20 being divulged.</p> <p>21 So without having that paper at my</p> <p>22 fingertips, I don't want to comment on the results</p> <p>23 because they're not at the forefront of my mind,</p> <p>24 but --</p>
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<p>1 the hypothetical bias -- the fact that it's</p> <p>2 hypothetical increases the credibility of the</p> <p>3 results as opposed to decreasing them.</p> <p>4 Q What other studies have you done where you've</p> <p>5 asked for a hypothetical question involving a</p> <p>6 privacy violation and asked people what they would</p> <p>7 accept after the fact for that violation?</p> <p>8 A So I've done a study that looks at -- it's not --</p> <p>9 you know, it's -- I'm always careful to -- not to</p> <p>10 over-generalize the findings of one paper into</p> <p>11 another because that's getting into tricky</p> <p>12 territory, but I have done a study that seems</p> <p>13 relevant, which is about -- I asked shoppers</p> <p>14 essentially -- I presented them with a trade-off.</p> <p>15 So -- let me just describe this.</p> <p>16 I gave shoppers the choice of two different</p> <p>17 gift cards.</p> <p>18 Q This is the: What is Privacy?</p> <p>19 A Yes.</p> <p>20 Q We'll talk about that in a second. But that</p> <p>21 doesn't deal with involuntary disclosure of</p> <p>22 voluntary information, does it.</p> <p>23 My question was: Have you done any surveys,</p> <p>24 other than this, in which you've asked a</p>	<p>1 Q Is that a hypothetical situation?</p> <p>2 A I don't know. I would want to read the paper</p> <p>3 before commenting on it anymore.</p> <p>4 Q Do you know when that was published?</p> <p>5 A It was published in a journal called SPPS. I</p> <p>6 forget what that stands for. And it was published</p> <p>7 in either -- this the last three years I'm</p> <p>8 guessing.</p> <p>9 Q Other than that, do any come to mind?</p> <p>10 A You want a study that looks at whether -- tries to</p> <p>11 see how much people at the -- tell me what you're</p> <p>12 looking for.</p> <p>13 Q A hypothetical involuntary disclosure that asks</p> <p>14 for people's willingness to accept after the fact.</p> <p>15 A Off the top of my head, no, but I don't want to</p> <p>16 say that they don't exist. I also want to add</p> <p>17 that in my survey, I used the best practices in</p> <p>18 generating reasonable estimates evaluations. So</p> <p>19 it's informed by a wealth of research in survey</p> <p>20 design, in understanding preferences for privacy,</p> <p>21 and understanding basic psychology and economics.</p> <p>22 So there's sort of already a wealth of science --</p> <p>23 my background that goes into that.</p> <p>24 MR. BERRY: And I'd like to mark as Exhibit</p>

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<p>1 346: What Is Privacy Worth?</p> <p>2 (Article marked Exhibit No. 346 for</p> <p>3 identification.)</p> <p>4 BY MR. BERRY:</p> <p>5 Q So this is an article that you wrote with</p> <p>6 Professor Acquisti and Loewenstein -- right?</p> <p>7 A Yup.</p> <p>8 Q And this article was also published?</p> <p>9 A Yes.</p> <p>10 Q You provided a copy of this article with your</p> <p>11 expert report -- do you recall that?</p> <p>12 A I guess I did.</p> <p>13 Q This also, I guess, was drawn from the research</p> <p>14 that you did for your dissertation?</p> <p>15 A That was not actually in my dissertation, but I</p> <p>16 was doing it around the same time.</p> <p>17 Q Okay.</p> <p>18 Do you continue to stand behind this paper?</p> <p>19 MR. HARDER: Objection to form.</p> <p>20 A If you take -- if you ask me specific questions, I</p> <p>21 can tell you whether I still agree or not.</p> <p>22 Q Well, all right. In theory -- if I understand</p> <p>23 this paper, in theory, willingness to accept and</p> <p>24 willingness to pay should be two sides of the same</p>	<p>1 A Yeah.</p> <p>2 Q Says, "there are reasons to believe that</p> <p>3 individuals' preferences for privacy may not be as</p> <p>4 stable or internally consistent as the standard</p> <p>5 economic perspective assumes." Right?</p> <p>6 A Um hmm.</p> <p>7 Q So it's fair to say then that privacy preferences</p> <p>8 are not stable or internally consistent.</p> <p>9 Is that right?</p> <p>10 MR. HARDER: Objection to form.</p> <p>11 A That's not what this says. This says, "there are</p> <p>12 reasons to believe individuals' preferences for</p> <p>13 privacy may not be as stable or as internally</p> <p>14 consistent as the standard economic perspective</p> <p>15 assumes."</p> <p>16 Q Do you believe that privacy preferences are stable</p> <p>17 and internally consistent?</p> <p>18 MR. HARDER: Objection to form. Incomplete</p> <p>19 hypothetical, vague and ambiguous.</p> <p>20 BY MR. BERRY:</p> <p>21 Q I didn't ask a hypothetical, but the rest, you can</p> <p>22 still answer.</p> <p>23 A Now I've forgotten the question.</p> <p>24 Q Do you believe that privacy preferences are stable</p>
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<p>1 coin, right? Like in standard economic theory,</p> <p>2 they should be equal.</p> <p>3 MR. HARDER: Objection to form.</p> <p>4 A So standard economic theory says that whether you</p> <p>5 frame something is willing to accept or</p> <p>6 willingness to pay -- should be the same.</p> <p>7 However, it's debatable as to whether that is</p> <p>8 actually the ideal.</p> <p>9 Q Right. And so what you say in this article is</p> <p>10 that turns out not to be the case, at least with</p> <p>11 respect to the study that you did here -- right?</p> <p>12 A What turns out not to be the case?</p> <p>13 Q That willingness to accept and willingness to pay</p> <p>14 are not equal.</p> <p>15 A In this case, yes.</p> <p>16 MR. HARDER: Just clarify, "this case"</p> <p>17 meaning the, What Is the Privacy Worth?</p> <p>18 A Yes.</p> <p>19 MR. BERRY: Yes. In this article.</p> <p>20 BY MR. BERRY:</p> <p>21 Q So going back to, I guess, where we first started</p> <p>22 this conversation, on page 251, in the</p> <p>23 Introduction of the article, there is a paragraph</p> <p>24 that starts, "However."</p>	<p>1 and consistent --</p> <p>2 MR. HARDER: Objection to form.</p> <p>3 Q -- and internally consistent?</p> <p>4 A I think --</p> <p>5 MR. HARDER: Let me just get in my objection</p> <p>6 because I have to re-say them every time he asks</p> <p>7 the question.</p> <p>8 MR. BERRY: Let me ask a better question.</p> <p>9 MR. HARDER: Okay. Go for it.</p> <p>10 Q Do you believe that privacy preferences are stable</p> <p>11 and internally consistent?</p> <p>12 MR. HARDER: Incomplete hypothetical, vague</p> <p>13 and ambiguous, object to form.</p> <p>14 A So I think that people generally do care about</p> <p>15 their privacy, and I think that different people</p> <p>16 care about their privacy to different degrees. I</p> <p>17 think there are individual differences in privacy</p> <p>18 concern. However, I think that privacy concern</p> <p>19 can also depend on different contextual factors.</p> <p>20 Q Okay. And so then on page 268, in the second</p> <p>21 paragraph that starts, "At an empirical level" --</p> <p>22 you see that?</p> <p>23 A Yeah.</p> <p>24 Q All right. So the last sentence says, "The</p>

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<p>1 answers to questions such as What is privacy 2 worth? and Do people really care for privacy? 3 depend not just on whom, but how, you ask," that's 4 one of the conclusions you draw from the research 5 you did here -- right? 6 MR. HARDER: Objection to form. 7 A So the spirit of this comment is a criticism of 8 the standard economic perspective that a person's 9 preference for privacy -- that a person has one 10 and only one valuation of all things private that 11 applies across all contexts and all domains. 12 The spirit of this statement is criticizing 13 that and saying, although -- let me just reiterate 14 my perspective, which is people care about their 15 privacy. However, the degree to which they sense 16 things to be violations depends upon: One, 17 individual differences. Another thing it depends 18 upon is contextual factors. Like if they're in a 19 situation where they're losing privacy versus a 20 situation where they stand to gain privacy, people 21 think of it in different ways. 22 So the point of this -- the spirit of this 23 statement is, is that criticism of the standard 24 economic perspective, that there is like only one</p>	<p>1 Q So that's an example of loss aversion in the 2 privacy context? 3 A Yes. Right. 4 Q Do you find that generally, that people -- 5 A That's what this paper finds. 6 Q Right. Okay. And you stand behind that 7 conclusion? 8 A The conclusion that there are willingness to pay 9 and willingness to accept gaps with respect to 10 privacy -- yes. 11 MR. BERRY: Okay. I'd like to mark as 12 Exhibit 349, an article titled: The Impact of 13 Relative Standards on the Propensity to Disclose. 14 (Article marked Exhibit No. 349 for 15 identification.) 16 BY MR. BERRY: 17 Q Are you familiar with this document? 18 A Um hmm. 19 Q This also was written with Professors Acquisti and 20 Loewenstein? 21 A Yes. 22 Q Was this published anywhere? 23 A Yes. It's published in the Journal of Marketing 24 Research. It's on my CV.</p>
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<p>1 single valuation that applies across all contexts, 2 and therefore, if we see that someone has two 3 different valuations in two different contexts, it 4 means that there's no -- that both are worthless, 5 that's not -- that's not right. 6 Q Okay. You referred to this I think in your answer 7 sort of just now; the concept of loss aversion? 8 A Yes. 9 Q What is that? 10 A Loss aversion means the pain of losing something 11 is subjectively more poignant than is the pleasure 12 associated with an objectively equivalently-sized 13 gain. 14 Q Right. And so does that apply in the privacy 15 context? 16 A Can you be more specific? 17 Q Well, in general, do you see loss aversion in the 18 privacy context? 19 MR. HARDER: Object to form. 20 A So in general, do I see loss aversion in the 21 privacy context? 22 Q Right. Like in this study, willingness to accept 23 is harder than willingness to pay -- right? 24 A Um hmm.</p>	<p>1 Q Okay. And that publication is drawn from this 2 manuscript. 3 A So the final version is the publication. 4 Q Right. 5 A Yeah, this is a pre-version. So it's probably not 6 identical to the final publication version. 7 Q Did you submit this for publication? 8 A I don't know whether -- I have many, many drafts. 9 I don't know whether I submitted this exact draft 10 for publication. 11 Q If this is on SSRN, would it have been what you 12 submitted? 13 A Not necessarily. It could have been a slightly 14 different version. 15 Q Was this also drawn from the research that you did 16 for your Ph.D. dissertation? 17 A This is not one of my dissertation papers, but it 18 was -- I was doing it at the same time. 19 Q In the abstract, in the middle of the abstract, 20 the lines starts with a parenthesis (Study 1C) and 21 then says, "The second set of studies suggests 22 that divulgence is anchored by the initial 23 questions in a survey" -- do you see that? 24 A Yes.</p>

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<p>1 Q Did that continue to be a conclusion that you 2 reached in the published version of this article? 3 A The published version of the article -- so I'm not 4 going to -- unless you want me to, I can sit and 5 read this. The main point of the published 6 version of the article is that when privacy 7 intrusions are made in an increasing order of 8 intrusiveness, then the intrusions -- the net 9 effect is that the intrusions are perceived as 10 worse than if you start with the most egregious 11 intrusion, and then over time, you decrease the 12 severity of the intrusion. 13 So in other words, the sequence of 14 intrusions with respect to their severity impacts 15 people's assessments of the degree to which their 16 privacy has been violated. 17 Q And that's what you mean by "anchored by initial 18 questions in a survey." The first question frames 19 people's thoughts about subsequent questions. 20 A I like how I said it better just now. 21 Q What about the way it's said here, "Divulgence is 22 anchored by the initial questions in a survey." 23 A So in this study, we found that the order of the 24 questions with respect to intrusiveness affected</p>	<p>1 Q Sorry, the very bottom of the page says -- 2 MR. HARDER: The sentence that starts, 3 "Beyond replicating." 4 A Yes. Okay. 5 Q Correct. It says, "Study 2C suggests that cueing 6 people to think" -- 7 MR. HARDER: Why don't you just read the 8 whole sentence because if you're taking half a 9 sentence, you're leaving out the other half. 10 MR. BERRY: Happy to read the whole 11 sentence. 12 Q "Beyond replicating the results of Study 2A, Study 13 2C suggests that cueing people to think about 14 privacy from the outset of the experiment 15 decreases their propensity to admit: once cued to 16 think about privacy, participants in Decreasing 17 condition are no longer more likely to respond 18 affirmatively than participants in the Increasing 19 condition whose privacy concerns had not been 20 roused." 21 Do you see that sentence? 22 A I'm thinking. 23 Q Well, the first question is: Did you see the 24 sentence.</p>
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<p>1 how egregious or not people perceived privacy 2 violations to be. 3 Q Okay. And you found that cueing people to think 4 about privacy from the outset of the experiment 5 decreases their propensity to admit later on. 6 A To what? 7 Q To admit later on. 8 MR. HARDER: Object to form. 9 A Now I'm getting confused about what you're 10 referring to. 11 Q Well, I'll show -- 12 A Are you talking about this paper, or now are you 13 talking about another paper? 14 Q This paper. On page 28 on the bottom. 15 A Okay. 16 Q It says, "cueing people to think about privacy 17 from the outset of the experiment decreases their 18 propensity to admit." See the very last line? 19 A Yeah. I don't know whether this ended up in the 20 paper actually. 21 Q But that's not my question. Do you agree with 22 that statement? 23 MR. HARDER: Objection to form. 24 A Which statement? Decreasing -- sorry.</p>	<p>1 A Oh, yes, I did see the sentence. 2 Q The next question is: Is that what Study 2C 3 found? 4 MR. HARDER: Object to form. 5 A Well, according to this paper. But since it's not 6 the most recent version, that's why I'm a little 7 bit tentative here. Cueing people to think 8 (reading to self.) 9 So this is an accurate -- I believe that 10 this is an accurate reflection of the data 11 reported in this experiment. I'm not sure whether 12 it made the final paper or not. 13 The reason I say that is because sometimes 14 when we can't replicate results, we don't include 15 them in the final paper because if we can't 16 replicate them, sometimes we're not confident that 17 they're robust. So that's the caveat on that. 18 Q Do you recall whether this was -- you attempted to 19 replicate this? 20 A Lots of things we tried to replicate in this, and 21 I -- we replicate again and again the order 22 effect. We probably tried to replicate this, and 23 I'm not remembering whether -- I want to see the 24 final paper before I sort of sign off that this</p>

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<p>1 result is robust.</p> <p>2 Q Okay. But you allowed your name to be put on this</p> <p>3 draft that's available on SSRN?</p> <p>4 A Right. Because it's a -- academics -- it's</p> <p>5 understood that SSRN, people post papers that are</p> <p>6 working papers, and as we learn more, as we</p> <p>7 discover more through science, we sometimes adjust</p> <p>8 our previous things.</p> <p>9 And that's how science works and that's</p> <p>10 totally accepted among scientists.</p> <p>11 Q So you ran this experiment again and again?</p> <p>12 A I have rerun parts of it, yes.</p> <p>13 Q Who would you identify as some of the leading</p> <p>14 people in your field?</p> <p>15 A In which -- the privacy side of my work, or</p> <p>16 behavioral decision research, behavioral</p> <p>17 economics? There's a lot of people.</p> <p>18 Q Yeah, behavioral decision research.</p> <p>19 A Not specifically privacy?</p> <p>20 Q Right.</p> <p>21 A Okay.</p> <p>22 Q I assume professor Loewenstein and Acquisti?</p> <p>23 A So I actually wouldn't put Alessandro on that.</p> <p>24 George Loewenstein, yes. Dick Thaler; Dan Ariely,</p>	<p>1 of his.</p> <p>2 Q Joe Kabel at Penn?</p> <p>3 A Name sounds familiar. It's possible I've read his</p> <p>4 work.</p> <p>5 Q Dan Benjamin at Cornell?</p> <p>6 A Same answer.</p> <p>7 Q Martin Dufwenberg at Arizona?</p> <p>8 A Same answer.</p> <p>9 Q Jeremy Tobacman at Wharton?</p> <p>10 A Same answer. Yeah, and I think I've also met him.</p> <p>11 So yeah.</p> <p>12 Q But you're not familiar with his work?</p> <p>13 A Well, same answer. I couldn't summarize to you in</p> <p>14 a nutshell what his work is right now, but the</p> <p>15 name sounds familiar, and it's quite possible that</p> <p>16 I've read some of his work.</p> <p>17 Q Would you consider him to be an expert in the</p> <p>18 field?</p> <p>19 A Of behavioral decision research? He doesn't come</p> <p>20 to mind as -- he doesn't spontaneously come to</p> <p>21 mind, but I would have to -- I don't know</p> <p>22 everybody in the field, so I would have to read</p> <p>23 his work before assessing whether or not I think</p> <p>24 he is a leader in the field.</p>
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<p>1 Gal Zauberman; Leif Nelson; Uri Simonsohn; Nathan</p> <p>2 Novemsky. I mean, there's a lot of people that I</p> <p>3 think are good. I don't agree with everything</p> <p>4 they say, but they're prominent.</p> <p>5 Q What about -- what would Professor Acquisti be a</p> <p>6 leader -- what field would he be a leader in?</p> <p>7 A I don't know. You'd have to ask him.</p> <p>8 Q In your view.</p> <p>9 A I think he -- privacy. Economics of privacy.</p> <p>10 Possibly even the behavioral economics of privacy,</p> <p>11 but the reason why I hesitate in calling him a</p> <p>12 behavioral decision research expert is that he's</p> <p>13 trained as an economist. So he's -- it's the</p> <p>14 influence of myself and George that have given him</p> <p>15 the sort of behavioral flare.</p> <p>16 So that's why I don't think of him when I</p> <p>17 think of who are the top behavioral economists;</p> <p>18 who are the top behavioral decision researchers.</p> <p>19 Alessandro isn't on that list.</p> <p>20 Q Do you know a person named Gullaume Frechette at</p> <p>21 NYU?</p> <p>22 A The name sounds vaguely familiar.</p> <p>23 Q Not familiar with his work?</p> <p>24 A I may have -- it's possible that I've read a paper</p>	<p>1 Q What about Alec Smith?</p> <p>2 A I don't know Alec Smith.</p> <p>3 Q Are you familiar with Mark Dean at Brown?</p> <p>4 A No.</p> <p>5 Q Tess Wilkinson-Ryan, Penn Law School?</p> <p>6 A Name sounds familiar. But --</p> <p>7 Q Why don't we turn back to your survey and talk</p> <p>8 about that for a bit.</p> <p>9 Prior to performing the survey, did you</p> <p>10 consider other ways to answer the question you</p> <p>11 tried to answer?</p> <p>12 A Yes.</p> <p>13 Q What other ways did you consider?</p> <p>14 A Well, I don't remember all the ways I considered</p> <p>15 because I didn't write down all the ways I</p> <p>16 considered, but I spent a lot -- a lot of time</p> <p>17 thinking about how to do this survey because it's</p> <p>18 a really hard question -- it's a hard question to</p> <p>19 answer, and so I took a lot of care to design the</p> <p>20 survey to choose the methodology in such a way</p> <p>21 that it would produce the most valid, the most</p> <p>22 trustworthy data. But you're asking me for -- to</p> <p>23 articulate a way I rejected?</p> <p>24 So -- well, one of the ways I rejected was</p>

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<p>1 a -- what's called a Becker DeGroot Marshak 2 Procedure. It is used to assess people's 3 valuations of goods, and so I decided not to use 4 that. 5 Q What does that mean? 6 A So what happens is -- I guess I can describe it 7 with just a simple good -- like, say, a mug. So 8 what you do is you have -- you present a person 9 with like a sheet of paper with a number of rows 10 on the sheet of paper, and on each row, the person 11 needs to make a choice. And so row one, for 12 example, will be: Would you -- what do you 13 choose, this mug or a dollar. Make your choice. 14 Second row: Mug or two dollars, and so on. And 15 then what happens is that one row is randomly 16 chosen -- sorry, one number is randomly drawn; a 17 number from -- suppose the rows go from one to 18 ten, like \$1 to \$10 valuation, then the 19 experimenter pulls a number from the hat, and 20 whatever row number it corresponds to, is what is 21 played. 22 So suppose for row number one, it's a dollar 23 or the mug, and I make the choice that I would 24 rather have the dollar than the mug, and one is</p>	<p>1 survey, I included features to diagnose whether 2 the data are credible. And one of the ways -- I 3 did lots of things to do that. 4 One of the ways that I -- one of the things 5 I included so that I could diagnose whether the 6 data are credible is I had a control scenario. So 7 I asked people for their valuations, and how much, 8 if anything, of a privacy violation it would be 9 if -- the exact text is in the report -- but if 10 someone secretly filmed you having coffee, and 11 that ended up online. So it's -- in my opinion, 12 it's still a privacy violation, but it's much less 13 severe than the sex tape scenario. 14 And so if people are just randomly giving 15 numbers, if there's no credibility to what people 16 are saying, then you wouldn't expect a 17 difference -- based on the control or coffee 18 scenario on the sex tape. But because there was a 19 statistically significant valuation as a function 20 of these two scenarios, that is one cue that tells 21 me: I can trust these data, that they're a signal 22 that I'm picking up on. 23 Q Since you mentioned that, why don't we talk about 24 the control scenarios for a moment.</p>
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<p>1 pulled, then that would mean that in that 2 situation, I would get a dollar and I would not 3 get the mug. So the idea is if I misstated my 4 valuation of the mug, then I miss out on getting 5 it potentially. 6 So it's an incentive-compatible elicitation 7 method, but I decided not to do that. 8 Q Were there any others that you -- 9 A I mean, there's different ways -- I entertained 10 many different ways of asking the question. I 11 entertained not asking the first violation of 12 private -- the qualitative question. In the end, 13 I decided to include it because I thought it was 14 really important, based on previous research, to 15 enable people to first express the feeling, and 16 then go into the valuations because I thought that 17 would produce more valid valuations. 18 I mean, the spirit of all these decisions 19 guiding them was: How do I get the most 20 trustworthy valid data possible, and as you can 21 see in survey design, there's tons and tons of 22 choices you have to make. And it's easy -- well, 23 it's not easy, but like, every method can be 24 criticized on a grounds. But importantly in my</p>	<p>1 A Okay. 2 MR. HARDER: Been another hour. 3 MR. BERRY: It hasn't though. 4 MR. HARDER: I thought we started at 2. 5 VIDEO OPERATOR: I'm not sure what time we 6 went on, but it hasn't been an hour. 7 MR. HARDER: We started at 2 though. Well, 8 you changed the tape. 9 VIDEO OPERATOR: We've been on for three 10 hours and 43 minutes. 11 MR. BERRY: If you want to take a break, we 12 can take a break. 13 MR. HARDER: I just have to use the 14 restroom. 15 THE WITNESS: I do too. 16 VIDEO OPERATOR: The time is 3:00. This is 17 the end of tape number 2 and we are now off the 18 record. 19 (Off the record.) 20 VIDEO OPERATOR: The time is 3:08. This is 21 the beginning of tape number 3, and we are now 22 back on the record. 23 BY MR. BERRY: 24 Q Before we were talking about other alternatives</p>

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<p>1 that you had considered.</p> <p>2 A Um hmm.</p> <p>3 Q Were there any other -- any other surveys or other</p> <p>4 experiments that you started, but then didn't</p> <p>5 complete, or did nothing get that far?</p> <p>6 A With respect to this?</p> <p>7 Q Yes.</p> <p>8 A No.</p> <p>9 Q No, there were not any other surveys or</p> <p>10 experiments that you --</p> <p>11 A So I -- everything that I said in the report is</p> <p>12 what I did. Like I didn't do other surveys.</p> <p>13 Q Okay.</p> <p>14 A For this specific case.</p> <p>15 Q When you were considering how to approach this</p> <p>16 assignment, whether by survey or the other things</p> <p>17 you were talking about, did you consult with</p> <p>18 anybody else?</p> <p>19 A I think I talked with my husband about it.</p> <p>20 MR. HARDER: Spousal privilege.</p> <p>21 Q Is your husband a professor?</p> <p>22 A No, but he's smart. I mean I -- I did this</p> <p>23 myself. Yeah.</p> <p>24 Q Did you seek Harvard's permission to be engaged as</p>	<p>1 So I'm always nervous about taking too much</p> <p>2 of my time away from the core thing that's going</p> <p>3 to keep me in my job, which I love, so I consulted</p> <p>4 some trusted colleagues to see whether, you know,</p> <p>5 what they thought on that issue.</p> <p>6 Q Would this analysis be appropriate for you to</p> <p>7 submit to a peer reviewed journal?</p> <p>8 MR. HARDER: I'm going to object to form.</p> <p>9 A What do you mean by "appropriate"?</p> <p>10 Q Would you -- do you feel confident enough in your</p> <p>11 conclusions here to submit something that used</p> <p>12 this same conclusion and statistical analysis?</p> <p>13 A Yes. This is the same high standards I keep to</p> <p>14 when I'm submitting stuff -- publishing stuff for</p> <p>15 journals. The reason why I don't think -- I don't</p> <p>16 know whether this could be published is because I</p> <p>17 don't know how the legal system works, and I don't</p> <p>18 know if it's okay. That's sort of main reason.</p> <p>19 But in terms of the rigger with which I</p> <p>20 approach this, this is something that is the same</p> <p>21 rigger that all of my research that is in peer</p> <p>22 reviewed journals -- I apply the same degree of</p> <p>23 rigger.</p> <p>24 Q So you would stand by this conclusion to the same</p>
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<p>1 an expert in this case?</p> <p>2 A I did. So I have to get approval from my Dean in</p> <p>3 participating in expert cases, and I did get</p> <p>4 approval from him, and I also consulted some of my</p> <p>5 trusted colleagues about doing this kind of thing,</p> <p>6 and got some good advice and decided to do it.</p> <p>7 Q About these kind of things, being like serving as</p> <p>8 a expert generally --</p> <p>9 A Yes.</p> <p>10 Q -- or about this case in particular?</p> <p>11 A No, serving as an expert generally, and then about</p> <p>12 the case, and sort of my thoughts on -- yeah, the</p> <p>13 case, whether I should --</p> <p>14 Q Who were those colleagues?</p> <p>15 A I got input on -- I don't think I was clear in my</p> <p>16 previous answer. I got input on whether it is a</p> <p>17 good idea to do expert testimony witness stuff</p> <p>18 because I've never done it before. And my primary</p> <p>19 job as an academic is to do primary research; that</p> <p>20 is, research that's -- that could be published in</p> <p>21 peer reviewed journals. This research, I don't</p> <p>22 think -- the research that I'm doing -- that I did</p> <p>23 for this case, I don't anticipate it being ever</p> <p>24 published.</p>	<p>1 degree that you stood behind the conclusion of the</p> <p>2 things that wound up being published.</p> <p>3 A What's "this conclusion"?</p> <p>4 Q The conclusion in your report that you reached --</p> <p>5 that the range of money deemed as fair and</p> <p>6 reasonable compensation for a loss of privacy,</p> <p>7 such as the one experienced by Terry Bollea, is</p> <p>8 approximately \$7 million to \$10 million, you stand</p> <p>9 behind that conclusion to the same degree that you</p> <p>10 standard behind the conclusions that we talked</p> <p>11 about earlier in the published articles that you</p> <p>12 have.</p> <p>13 MR. HARDER: Objection to form.</p> <p>14 A So I -- yeah. I mean, I wrote it. I stand by</p> <p>15 that conclusion. I think that when it comes to a</p> <p>16 peer reviewed journal article, I think that</p> <p>17 because I wrote it, I made this report for a very</p> <p>18 specific situation. I think that makes the --</p> <p>19 makes it less viable as a publication in a peer</p> <p>20 reviewed research journal because it's on a very,</p> <p>21 very specific situation. So that sort of, I</p> <p>22 think, decreases the chances. Not because -- let</p> <p>23 me just end my answer there.</p> <p>24 Q Does the compensation question that you asked</p>

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<p>1 survey participants in this survey resemble any</p> <p>2 kind of market transaction that you're aware of?</p> <p>3 MR. HARDER: Object to form.</p> <p>4 A What do you mean?</p> <p>5 Q Is the question that you're asking people in this</p> <p>6 case, asking people what is fair and reasonable</p> <p>7 compensation, does it resemble any kind of actual</p> <p>8 transaction you would see in the real world?</p> <p>9 MR. HARDER: Object to form.</p> <p>10 A I don't know what the transaction is you're</p> <p>11 talking about.</p> <p>12 Q What situation -- is there a comparable situation</p> <p>13 that you would see in the world that this</p> <p>14 compensation question would be similar to?</p> <p>15 MR. HARDER: Object to form. Go ahead.</p> <p>16 A Did you get that? Okay.</p> <p>17 Is the -- now I'm confused on what the</p> <p>18 question is.</p> <p>19 MR. HARDER: You should ask a better</p> <p>20 question, Mike. It's a disaster.</p> <p>21 BY MR. BERRY:</p> <p>22 Q You're asking people in this survey what they'd be</p> <p>23 willing to accept as fair and reasonable</p> <p>24 compensation for this situation -- right? Does</p>	<p>1 law -- what happens, so I -- if that happens in</p> <p>2 the law.</p> <p>3 Q Well, are you familiar with settlements?</p> <p>4 A Well, I'm scared to say yes because I don't know</p> <p>5 legal words.</p> <p>6 Q Resolving a lawsuit.</p> <p>7 A Resolving a lawsuit. Right.</p> <p>8 Q Right. Where, like, a settlement payment is made.</p> <p>9 One side is done wrong by the other. They want to</p> <p>10 resolve the litigation for whatever reason. One</p> <p>11 can negotiate out and say, Well, I'm willing to</p> <p>12 pay this much. The other person says, I'm willing</p> <p>13 to accept that much. Would that be the same sort</p> <p>14 of transaction?</p> <p>15 MR. HARDER: Object to form.</p> <p>16 Q This is what I think would be fair and reasonable</p> <p>17 compensation for the harm you caused me?</p> <p>18 Is that --</p> <p>19 MR. HARDER: Object to form.</p> <p>20 A I mean, I guess it's hard for me to answer that</p> <p>21 because I'm not a lawyer, and I'm talking about</p> <p>22 that scenario. I'm talking about what happened</p> <p>23 here.</p> <p>24 Q Okay. Is there anything about this kind of</p>
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<p>1 that question correspond with any transaction that</p> <p>2 you would see in the outside world?</p> <p>3 MR. HARDER: Object to form. Asked and</p> <p>4 answered.</p> <p>5 MR. BERRY: Well, she didn't answer it,</p> <p>6 but --</p> <p>7 A I don't really think of this as a transaction per</p> <p>8 se as, like, I'm buying something and exchanging</p> <p>9 something. This is a -- these are like -- this is</p> <p>10 what you -- something happens that you don't have</p> <p>11 control over, and now you're being asked what's a</p> <p>12 fair and reasonable compensation amount.</p> <p>13 And are you asking me if in the real world,</p> <p>14 this happens? Well, what about within the law</p> <p>15 when, you know, if people are -- if you lose an</p> <p>16 arm because of an accident and you're given</p> <p>17 compensation for that. That's an example of an</p> <p>18 analogue. I'm not -- still not --</p> <p>19 Q That makes sense. So -- again, settlement</p> <p>20 negotiation; you might say: I demand this amount</p> <p>21 for fair and reasonable compensation for this</p> <p>22 injury -- right?</p> <p>23 MR. HARDER: Object to form.</p> <p>24 A I mean, you're the lawyer. I don't know the</p>	<p>1 survey -- sorry, I'll ask a better question.</p> <p>2 Is there anything about the kind of survey</p> <p>3 that you did that would make it inapplicable to</p> <p>4 other kinds of lawsuits that didn't involve</p> <p>5 privacy violations?</p> <p>6 MR. HARDER: Object to form.</p> <p>7 A That's a lot of negatives in that question. I'm</p> <p>8 not quite -- it's confusing to me what you're</p> <p>9 trying to ask me.</p> <p>10 Q Could this kind of survey be used in other kinds</p> <p>11 of lawsuits that don't involve privacy?</p> <p>12 MR. HARDER: Object to form.</p> <p>13 A I mean, I would want to know what the details of</p> <p>14 the suit and the situation is. I mean, in theory,</p> <p>15 I suppose it's possible, but I mean, you couldn't</p> <p>16 just take this and dump it in another lawsuit.</p> <p>17 Like I would want to understand what that was for,</p> <p>18 and the situation, and take just as much care in</p> <p>19 designing the survey if I was going to use it for</p> <p>20 a different -- use a similar methodology.</p> <p>21 Q Well, could you, for example, describe a situation</p> <p>22 in which somebody was defamed on the internet.</p> <p>23 A Defamed means?</p> <p>24 Q Say something that's false and hurts your</p>

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<p>1 reputation.</p> <p>2 A Okay.</p> <p>3 Q You come up with a scenario, describe it like --</p> <p>4 as you would, and then ask people what they would</p> <p>5 want as compensation, fair and reasonable</p> <p>6 compensation for being defamed on the internet.</p> <p>7 Could you do that kind of survey?</p> <p>8 MR. HARDER: Object to form. Incomplete</p> <p>9 hypothetical.</p> <p>10 A Well, my expertise is not in, like, being defamed,</p> <p>11 I guess. It's -- I guess I'm talking about</p> <p>12 privacy violations, so I'm not comfortable</p> <p>13 speaking to that.</p> <p>14 Q Right. I guess my question is, though, is there</p> <p>15 anything about this that has to do with privacy as</p> <p>16 opposed to any other kind of injury?</p> <p>17 MR. HARDER: Objection.</p> <p>18 Q Right. The survey -- this kind of survey could be</p> <p>19 done for any sort of injury. There's nothing</p> <p>20 unique to privacy -- is there?</p> <p>21 MR. HARDER: Object to form. Asked and</p> <p>22 answered.</p> <p>23 A I guess, see my previous response.</p> <p>24 Q Is there anything in particular -- other than the</p>	<p>1 Q What about privacy informed your design of this</p> <p>2 survey? Separate from your knowledge about survey</p> <p>3 design, what about privacy informed your design of</p> <p>4 this?</p> <p>5 MR. HARDER: Object to form.</p> <p>6 A So I will say that coming back to this now, and</p> <p>7 not being in the mindset of actually designing it,</p> <p>8 I can't possibly remember -- I can't remember all</p> <p>9 of my privacy knowledge that went into this.</p> <p>10 If I was to look at this and tell you what</p> <p>11 is maybe -- clearly jumps out to me as being</p> <p>12 driven by what I know about privacy, would be to</p> <p>13 first ask the qualitative question about the</p> <p>14 extent to which this is a privacy violation</p> <p>15 because it is a hard thing to do -- to value</p> <p>16 privacy -- and so my understanding of privacy,</p> <p>17 along with my understanding of survey design, told</p> <p>18 me that it would behoove me to first ask a</p> <p>19 qualitative question about the degree of a privacy</p> <p>20 invasion, and to then get into the valuation</p> <p>21 questions.</p> <p>22 Yeah, I mean, that's one example, but I</p> <p>23 don't really feel comfortable speaking more to</p> <p>24 that as I am not in the mindset in which I</p>
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<p>1 factual scenario -- in your survey that deals with</p> <p>2 privacy?</p> <p>3 MR. HARDER: Object to form. And the survey</p> <p>4 report speaks for itself.</p> <p>5 A As a whole, the survey is about articulating a</p> <p>6 fair and reasonable compensation value for the</p> <p>7 loss of privacy.</p> <p>8 Q Right. And my question is: Could you conduct a</p> <p>9 survey to ask somebody what the fair and</p> <p>10 reasonable compensation is for some other tort?</p> <p>11 MR. HARDER: Object to form. Incomplete</p> <p>12 hypothetical.</p> <p>13 A In theory, one could. I don't know what it would</p> <p>14 look like.</p> <p>15 Q Is there anything about privacy that makes this</p> <p>16 survey different than one that -- dealing with</p> <p>17 another tort?</p> <p>18 MR. HARDER: Object to form.</p> <p>19 A It's hard for me to answer that question because I</p> <p>20 don't know what the -- you are trying to get me to</p> <p>21 make a comparison, but if I don't know what I'm</p> <p>22 comparing it to, what the survey for the tort</p> <p>23 looks like, then I can't really say that. I can't</p> <p>24 answer it. But I --</p>	<p>1 actually created the survey.</p> <p>2 Q That's fine. Why don't we switch gears then and</p> <p>3 turn to page 9 of the report. Look at this</p> <p>4 Frequency Distribution Table. I should have asked</p> <p>5 this earlier, and I apologize.</p> <p>6 Under the heading: Frequency distribution,</p> <p>7 the first line says, "Using the range data plus</p> <p>8 the specific compensation amount data, I produced</p> <p>9 the following table," and it continues.</p> <p>10 A Yeah.</p> <p>11 Q How did you incorporate the range data?</p> <p>12 A Yeah. So this means that -- remember that some</p> <p>13 people were not comfortable specifying -- going</p> <p>14 beyond specifying a range. So what I did was I</p> <p>15 didn't want -- nonetheless, these people still</p> <p>16 provided meaningful data, so I didn't want to drop</p> <p>17 them, I didn't want to exclude them. I wanted to</p> <p>18 use their data when I could.</p> <p>19 So the way I used their data here was, if</p> <p>20 you specified -- what were the ranges -- I don't</p> <p>21 want to misspeak. The ranges -- so suppose you</p> <p>22 specified at least a million dollars but less than</p> <p>23 a billion dollars, but then you didn't want --</p> <p>24 then you weren't comfortable specifying a more</p>

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<p>1 specific number.</p> <p>2 Q Right.</p> <p>3 A So then you would be included in this as saying</p> <p>4 that you -- you are willing to go so far as to say</p> <p>5 you specified a fair compensation value of at</p> <p>6 least a million dollars.</p> <p>7 Q So that's the bucket it got dropped in, not in 10</p> <p>8 million, a hundred million.</p> <p>9 A Correct. Yeah.</p> <p>10 Q All right. Now going to the control scenario, the</p> <p>11 coffee that we were going to talk about before.</p> <p>12 A Yeah.</p> <p>13 Q On page 6, this second paragraph under number one,</p> <p>14 after the colon, it says, "if respondents</p> <p>15 generally indicate that the sex-tape scenario of a</p> <p>16 greater violation of privacy both in qualitative</p> <p>17 and quantitative terms, this means that the</p> <p>18 respondents are taking the task seriously, and</p> <p>19 hence, suggests that the data are reliable and</p> <p>20 trustworthy." You kind of made that point</p> <p>21 earlier.</p> <p>22 A That's what it says, yeah.</p> <p>23 Q What if people rated the privacy invasion higher</p> <p>24 in the coffee scenario?</p>	<p>1 invasion than the sex-tape scenario?</p> <p>2 A I don't know. I mean that -- that's also -- you</p> <p>3 could flip that and say that means that 80 -- 87</p> <p>4 percent of people think that the sex tape scenario</p> <p>5 is higher than the control scenario, which is the</p> <p>6 vast majority of participants. So that tells me</p> <p>7 the vast majority of participants are giving a</p> <p>8 really sensible answer to that question.</p> <p>9 Q So the 13 percent who stated it differently, did</p> <p>10 they take this seriously?</p> <p>11 A I can't get in their heads. I would want to</p> <p>12 know -- before I answer that question, I would</p> <p>13 want to know the magnitude of the difference that</p> <p>14 these people gave.</p> <p>15 Q What if one person said 37 for sex and 62 for</p> <p>16 coffee.</p> <p>17 A 37 what?</p> <p>18 Q On the qualitative bar. They rate it as 37 for</p> <p>19 sex tape and 62 for coffee.</p> <p>20 A Um hmm.</p> <p>21 Q Did that person take it seriously?</p> <p>22 A So I can't get in their heads. The thing --</p> <p>23 there's always a danger in trying to interpret</p> <p>24 individual data. There are error in individual</p>
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<p>1 A Well, they didn't.</p> <p>2 Q Well, what if people did? What if some</p> <p>3 respondents did?</p> <p>4 A But that's not what they did, so --</p> <p>5 Q Are you sure?</p> <p>6 A On average -- okay, maybe I'm not understanding</p> <p>7 you. Can you rephrase the question?</p> <p>8 Q Well, what if somebody rated the privacy invasion</p> <p>9 higher in the coffee scenario -- would they be</p> <p>10 taking this seriously?</p> <p>11 A So these are the data, and this is the average</p> <p>12 positioning of the scroller bar, and this is</p> <p>13 saying that on average, people think that the</p> <p>14 sex-tape scenario is a statistically significantly</p> <p>15 bigger violation of your privacy than in the</p> <p>16 coffee control scenario.</p> <p>17 Q Right. But do you know how many people rated</p> <p>18 coffee as a greater violation than sex tape?</p> <p>19 A No, that is -- I don't know. When I analyze data,</p> <p>20 I use the aggregates to depict -- it's like sort</p> <p>21 of my best guess of what the population true value</p> <p>22 is -- is the average value.</p> <p>23 Q Would it surprise you to know that 13 percent of</p> <p>24 the people rated the coffee scenario as a greater</p>	<p>1 data points. People are not robots.</p> <p>2 It's normal, in a dataset of -- in my</p> <p>3 experience -- of real people answering -- it's</p> <p>4 normal for there to be some, maybe, surprising</p> <p>5 data points. But that's why, when I make my</p> <p>6 conclusions, I don't -- I don't make my</p> <p>7 conclusions based on two data points. I make my</p> <p>8 conclusions based on the data as a whole insofar</p> <p>9 as I can. And that's based on basic survey</p> <p>10 methods, basic statistical inference, that there</p> <p>11 are going to be errors. But we randomly sample to</p> <p>12 reduce error, and we sample a pretty -- a</p> <p>13 decent -- we get a decent sample size. And those</p> <p>14 things increase the probability that the</p> <p>15 conclusions that we're making reflect something</p> <p>16 robust and reliable. So I'm really not</p> <p>17 comfortable commenting on, like, data points here</p> <p>18 and there.</p> <p>19 Q If you would please turn to page 9. We've talked</p> <p>20 about -- these first two paragraphs, you talk</p> <p>21 about what the reasonable compensation was for the</p> <p>22 sex-tape scenario. We talked about the 7 million</p> <p>23 number and the \$10 million number in the second</p> <p>24 paragraph.</p>

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<p>1 A Um hmm.</p> <p>2 Q Those paragraphs also say that for the coffee tape</p> <p>3 scenario, it ranged from roughly a \$100,000 to</p> <p>4 \$206,000 -- right? Right? People's valuations.</p> <p>5 It's the last part of each of those paragraphs.</p> <p>6 A Okay. That's what it says.</p> <p>7 Q Why is there a hundred percent difference between</p> <p>8 the two groups for the coffee scenario, but then</p> <p>9 less than a 50 percent difference for the sex tape</p> <p>10 scenario?</p> <p>11 A I don't know.</p> <p>12 Q For the coffee scenario, why was the value for the</p> <p>13 people who were told that 7 million folks watched</p> <p>14 the coffee tape higher than the value for the</p> <p>15 scenario where it started off with one individual</p> <p>16 and worked up to 7 million?</p> <p>17 A Can you say that again, please?</p> <p>18 Q Yeah, for the coffee scenario --</p> <p>19 A Yes.</p> <p>20 Q -- why was the value higher for those folks who</p> <p>21 are first asked flatly that 7 million people had</p> <p>22 viewed the tape than for the group who worked from</p> <p>23 one stranger all the way up to 7 million?</p> <p>24 A Um hmm.</p>	<p>1 The reason why I'm reasonably confident</p> <p>2 about that is that I designed the survey to give</p> <p>3 myself -- I designed the survey to provide cues of</p> <p>4 the validity, and one was, on average, people</p> <p>5 think that a more egregious violation, that is,</p> <p>6 the sex tape, they say, appropriately, on average,</p> <p>7 that that is a more egregious violation than the</p> <p>8 control scenario.</p> <p>9 Another thing I did to try to increase the</p> <p>10 validity of the answers was to let people first</p> <p>11 express their feeling about it, and not force</p> <p>12 people to say a compensation value from the get-go</p> <p>13 because it's possible -- it didn't happen, but</p> <p>14 it's possible that people would say: No, this</p> <p>15 isn't a privacy violation. In which case, it</p> <p>16 wouldn't be sound survey methodology to then ask</p> <p>17 them to make a value. There's other -- so I -- I</p> <p>18 also didn't force people to specify an exact</p> <p>19 number.</p> <p>20 Again, that was designed in the spirit --</p> <p>21 used in the spirit of reducing error; that is,</p> <p>22 increasing the validity of my responses because if</p> <p>23 I force people who are uncomfortable, if I force</p> <p>24 them to give me an exact number, then that type of</p>
<p>Page 198</p> <p>1 MR. HARDER: Object to form. Calls for</p> <p>2 speculation.</p> <p>3 A And you're saying that the sex tape appears to</p> <p>4 have the opposite pattern.</p> <p>5 Q Right. Why is that?</p> <p>6 A Yeah, I don't know why that is.</p> <p>7 Q Do you know -- you don't know what's its</p> <p>8 significance?</p> <p>9 A People are not robots. Yeah, it's totally normal</p> <p>10 in my experience to have -- this is not concerning</p> <p>11 me at all.</p> <p>12 Q Is this a reflection of privacy preferences not</p> <p>13 being stable and internally consistent?</p> <p>14 MR. HARDER: Objection to form.</p> <p>15 Argumentative.</p> <p>16 A I don't think that's what's driving this.</p> <p>17 Q What do you think is driving this?</p> <p>18 A I think it's random error, which is --</p> <p>19 Q Could the same random error be driving the</p> <p>20 valuation for the sex tape?</p> <p>21 MR. HARDER: Argumentative. Object to form.</p> <p>22 A I'm reasonably confident that the estimates I've</p> <p>23 given have signal. They are not random numbers</p> <p>24 drawn out of hats.</p>	<p>Page 200</p> <p>1 person would be prone to just saying any number,</p> <p>2 which isn't what I want, and so that's why I let</p> <p>3 some people stop at just a range if they weren't</p> <p>4 comfortable.</p> <p>5 Moreover, once the people that were</p> <p>6 comfortable specifying a number, I then asked, I</p> <p>7 said: Does this feel about right. If not, you</p> <p>8 can adjust it.</p> <p>9 So I gave people lots of opportunity to</p> <p>10 really reflect on this and think it through, and I</p> <p>11 wasn't forcing them into doing things because when</p> <p>12 you force people to answer questions, for example,</p> <p>13 it can -- it can cause them to just not answer in</p> <p>14 a way that is valid.</p> <p>15 And finally, I had comprehension check</p> <p>16 questions to further increase the validity of the</p> <p>17 data because I -- people couldn't answer the</p> <p>18 questions, the key questions, until they answered</p> <p>19 the comprehension check questions and --</p> <p>20 correctly, so -- until they had proven to me that</p> <p>21 they did understand the scenario.</p> <p>22 Q Did you ask people whether there should be</p> <p>23 compensation?</p> <p>24 A I asked people -- so I didn't ask it in those</p>

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<p>1 words, but that -- if a person, if a respondent 2 believed that -- so nobody -- no respondents, to 3 the best of my knowledge -- although I would want 4 the data in front of me to say a hundred percent 5 certain -- I don't think that anyone said this is 6 not a privacy violation. I believe that all 7 respondents said something that it's -- on the 8 first, the scroll thing, how much of a violation 9 is this.</p>	<p>1 same airtime as the other buckets. And then, I 2 believe, on the subsequent slider bars, when it 3 says: If you said zero to 10, then -- and you 4 were willing to be more specific, it would say: 5 Approximately how many tens, and then you can say 6 zero. So yes, people could say zero. 7 MR. BERRY: Charles, I guess this would be 8 the third thing, is to see what those slider bars 9 look like for each of the denominations.</p>
<p>10 Then, for the compensation questions, people 11 were totally free to specify zero dollars. That 12 was important. I needed to have a zero option. 13 So if they didn't think that you -- that 14 compensation was relevant, they could have 15 specified -- right?</p>	<p>10 Q So let me ask you about these buckets. What if 11 you had asked the question -- in this same thing 12 on page 16 that you were just pointing to here 13 with the zero to 99 dollars -- what if you had 14 asked it, and instead of the denominations, you 15 had zero to a thousand, 1000 to 10,000, 10,000 to 16 50 thousand, 51 thousand to 99 thousand, a hundred 17 thousand to a 199 thousand, did it up to a 18 million, and then said more than a million -- do 19 you think that that would have changed answers?</p>
<p>16 Q Well, turn to page 16. 17 A Okay. Let's see. Ten of dollars, i.e., zero 18 dollars to \$99. 19 Q So that was signaling to somebody to say whether 20 they should be -- 21 A That encapsulates zero. Actually, another thing I 22 should say that I think is a conservative force in 23 this elicitation method, that is -- by 24 "conservative" in this situation, I mean would</p>	<p>20 MR. HARDER: Objection to form. 21 A I don't think that would be a fair representation. 22 Q Well, based on what? 23 A Well, I think -- when I'm designing the survey, 24 I'm trying to come up with the most -- with the</p>
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<p>1 tend to have a downward influence on valuations. 2 You can see the buckets here. The buckets are not 3 the same size. 4 If I was to do the buckets by the same size, 5 we would have many, many, many buckets that 6 represent in the millions and many, many, many 7 buckets that represent in the billions, which 8 could suggest to participants that the appropriate 9 amount is in the millions. But we didn't do that. 10 Instead I used this -- I use "we" a lot because in 11 my research, I collaborate, and so that's why -- 12 it's just a habit.</p>	<p>1 reasonable and conservative way of doing this. 2 And this is what I arrived upon after entertaining 3 various ways of showing these numbers. It would 4 be extremely unusual for a scale -- no, let me 5 just -- let me just end at that. 6 Q Well, why give billions as an option? 7 A Why not give trillions as an option? 8 Q Are you aware of anybody ever receiving a billion 9 dollars for a privacy violation? 10 MR. HARDER: Objection. Argumentative. 11 Object to form. Calls for speculation. 12 A I don't see how that's relevant.</p>
<p>13 So this is an example of a very conservative 14 design choice that, if anything, would lower the 15 values that I got. 16 Q Let me ask you about that. 17 MR. HARDER: Wait, she's not -- 18 Q I'm sorry. 19 A Yeah, I'm not quite done. There was another thing 20 I wanted to say about the zeros. 21 Q I apologize. 22 A So zero in this case -- you know, it's actually 23 given even more limelight than the others because 24 it's -- this bucket from zero to 99 is given the</p>	<p>13 Q Are you aware of anybody ever receiving \$500 14 million for a privacy violation? 15 A I don't see how this is relevant. 16 Q Are you aware of anybody ever receiving a hundred 17 million dollars? 18 A I don't see how this is relevant. 19 Q I'm just asking, like why give the billions? 20 A So when I did this, I didn't know what people's 21 answers would be, and so I wanted to give them 22 sufficient flexibility to tell me what they 23 thought the fair and reasonable compensation 24 amount is.</p>

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<p>1 I did not include a trillion because I</p> <p>2 thought -- that feels over the top. And if I</p> <p>3 include trillion, then I'm going to be sitting at</p> <p>4 a deposition with a lawyer saying: Why did you</p> <p>5 include trillion.</p> <p>6 So it's this trade-off between, I want</p> <p>7 people to be free to give me their true preference</p> <p>8 because I don't know their preference, but yet, I</p> <p>9 want to produce a defensible instrument that is</p> <p>10 conservative, and this is my best -- what I think</p> <p>11 is a reasonable representation of that.</p> <p>12 Q Why not ask the open-ended question?</p> <p>13 MR. HARDER: Objection to form. I don't</p> <p>14 even understand the question.</p> <p>15 Q Why not ask the compensation question as</p> <p>16 open-ended: What would be fair and appropriate</p> <p>17 compensation for this situation?</p> <p>18 A In my experience, when I use open-ended questions</p> <p>19 to ask people about valuations, it opens a big</p> <p>20 problem, which is interpreting what they write.</p> <p>21 Because people aren't robots and they don't</p> <p>22 follow -- they don't write in -- it's hard to</p> <p>23 interpret open-ended responses because sometimes</p> <p>24 people put in -- infer that there is -- are</p>	<p>1 Q And it gets greater as it goes on.</p> <p>2 A Yes.</p> <p>3 Q Why is that not problematic?</p> <p>4 MR. HARDER: Object to form.</p> <p>5 A So I thought about doing it that way, but I</p> <p>6 thought I had already answered this question.</p> <p>7 Maybe my response wasn't clear.</p> <p>8 I didn't do it that way because that would</p> <p>9 have, in my opinion, it could have biased the</p> <p>10 results in a liberal way; that is, it could have</p> <p>11 inflated people's valuations because it would have</p> <p>12 given more -- what's the word -- like real estate</p> <p>13 to higher numbers. Because if you unpack</p> <p>14 everything in constant \$50 intervals, you want to</p> <p>15 keep the intervals constant -- if you're going to</p> <p>16 unpack. And so then what would we have. We'd</p> <p>17 have two buckets for zero to 99. And then we'd</p> <p>18 have a hundred, 150, 200, 250 for the second, and</p> <p>19 then the third would be unpacked even more, and</p> <p>20 then the million would be, would be way unpacked,</p> <p>21 and so people may infer that because there are so</p> <p>22 many buckets for this million to billion, that</p> <p>23 that's appropriate, and I'm going to check it off,</p> <p>24 and then we would be sitting here and you would be</p>
<p>1 thinking that there should be two zeros at the end</p> <p>2 to represent the pennies, but then they don't put</p> <p>3 the -- they don't put the decimal place.</p> <p>4 Sometimes they write numbers. What if they</p> <p>5 misspell them.</p> <p>6 So you're left with all these ambiguities in</p> <p>7 how you interpret open-ended responses. And</p> <p>8 whenever there is ambiguities, that is problematic</p> <p>9 in terms of analyzing the data because then the</p> <p>10 researcher can -- the researcher's own bias can be</p> <p>11 particularly prone to making those calls of what</p> <p>12 those numbers mean. So that's why I used</p> <p>13 closed-ended.</p> <p>14 Q In this range here, again looking at the survey on</p> <p>15 page 16, the same buckets that we were talking</p> <p>16 about. Earlier we talked about the ranges that</p> <p>17 you did for income, and you talked about why those</p> <p>18 were equal and had equal choices within each.</p> <p>19 Here in each of these options, there is different</p> <p>20 number of available responses.</p> <p>21 A Exactly.</p> <p>22 Q So in tens, there's 99 options. In hundred</p> <p>23 dollars, you're talking 900 different options.</p> <p>24 A Right.</p>	<p>1 criticizing me on those grounds.</p> <p>2 So that's why I chose to do it this way</p> <p>3 because I wanted to really design a conservative</p> <p>4 instrument. Now, importantly, once people have</p> <p>5 specified the range, they can specify whatever</p> <p>6 number they think is appropriate within -- if you</p> <p>7 said tens of dollars and you wanted to -- you were</p> <p>8 comfortable providing a more specific estimate,</p> <p>9 then you would be shown a scroller that says</p> <p>10 approximately how many tens of dollars, and you</p> <p>11 could scroll that from any number, any whole</p> <p>12 number, from zero to 99. Or possibly hundred. I</p> <p>13 have to see the exact endpoint of the sliders --</p> <p>14 which I can send to you.</p> <p>15 Q In this survey -- we touched on this earlier --</p> <p>16 you used 7 million viewers as the 7 million people</p> <p>17 viewed the tape as one of the facts in the</p> <p>18 scenario. If that number were inaccurate, would</p> <p>19 that affect the valuation?</p> <p>20 A That is hard for me to say because -- so the</p> <p>21 reason I chose 7 million is because that was based</p> <p>22 on someone who is an expert in seeing how many</p> <p>23 people have seen this thing. That's the best</p> <p>24 estimate, is 7 million. So that's why I focused</p>

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<p>1 on 7 million.</p> <p>2 Now, the extent to which these results</p> <p>3 extend to different numbers, I mean, we have some</p> <p>4 clues about that when I asked people, you know,</p> <p>5 for different fair and adequate compensation</p> <p>6 values depending on different assumptions about</p> <p>7 the numbers of people. So there's some data in</p> <p>8 there.</p> <p>9 Q So if less people viewed the video, would you</p> <p>10 expect the valuations to be less?</p> <p>11 A Well, I would want to look at the data to answer</p> <p>12 that question.</p> <p>13 Q How about if all we know is that the video was</p> <p>14 played 7 million times. We don't know how many</p> <p>15 people saw it.</p> <p>16 MR. HARDER: Object to form.</p> <p>17 Q Would that change the valuation?</p> <p>18 A I don't know because I didn't ask those questions.</p> <p>19 Q Do you know if respondents' valuations would</p> <p>20 change if they were told that of the people who</p> <p>21 watched the video, most watched only half of it?</p> <p>22 A I don't know.</p> <p>23 Q Do you know if the respondents' valuations would</p> <p>24 change if they were told that a significant</p>	<p>1 not in evidence.</p> <p>2 A So I think the answer is no. But the question is</p> <p>3 confusing.</p> <p>4 Q Well, if the person who compiled the 7 million</p> <p>5 number said he couldn't be certain that that</p> <p>6 number was accurate, would it cast doubt on the</p> <p>7 reliability of your conclusion?</p> <p>8 MR. HARDER: Same objections.</p> <p>9 A I don't think so.</p> <p>10 Q Would it cast doubt on the -- well --</p> <p>11 A But this, I mean, in general, I find this</p> <p>12 particular line of question confusing. It's hard</p> <p>13 for me to answer questions about hypothetical</p> <p>14 things. So I'm having a bit of a hard time with</p> <p>15 those.</p> <p>16 Q Okay. Would you have used the 7 million number if</p> <p>17 you knew that the person who compiled the data on</p> <p>18 which that 7 million number was based, testified</p> <p>19 they had no way to verify what the numbers that he</p> <p>20 used actually meant?</p> <p>21 MR. HARDER: Objection to form. Assumes</p> <p>22 facts not in evidence.</p> <p>23 A So again, I don't know in this alternate universe</p> <p>24 what I would have done. I don't want to speculate</p>
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<p>1 percentage of the people watched less than 15</p> <p>2 seconds of the video?</p> <p>3 A I don't know.</p> <p>4 MR. HARDER: I have to object to the</p> <p>5 "significant" word. It's vague and ambiguous.</p> <p>6 Assumes facts not in evidence. Object to form.</p> <p>7 Q Would it change respondents' valuations if they</p> <p>8 were told that less than 60 percent of people</p> <p>9 watched the whole video?</p> <p>10 A I don't know. I mean, I'm not comfortable</p> <p>11 answering these questions because I don't have</p> <p>12 data on them, so I would have to do another</p> <p>13 survey.</p> <p>14 Q Would the research you have performed in this case</p> <p>15 have been affected if the person who compiled the</p> <p>16 data, that that 7 million number was built on,</p> <p>17 testified he could not be certain that the number</p> <p>18 was accurate?</p> <p>19 A What's your question?</p> <p>20 Q Would the research you performed for this case</p> <p>21 have been affected if the person who compiled the</p> <p>22 data for the 7 million number testified that he</p> <p>23 cannot be certain that the number was accurate?</p> <p>24 MR. HARDER: Object to form. Assumes facts</p>	<p>1 on hypotheticals.</p> <p>2 Q If the 7 million number though weren't solid,</p> <p>3 would you have used it?</p> <p>4 MR. HARDER: Objection. Assumes facts not</p> <p>5 in evidence. Object to form.</p> <p>6 A So if there is doubt about the 7 million, I also</p> <p>7 asked about different numbers of people. So</p> <p>8 there's sort of like a comprehensive look at this</p> <p>9 question by including different assumptions about</p> <p>10 the number of people that have viewed. I mean,</p> <p>11 even when people say -- even people that are asked</p> <p>12 to assume that one person has seen it, they're</p> <p>13 still giving -- I can't off the top of my head say</p> <p>14 what the value is, but I suspect that they're</p> <p>15 still giving reasonably high, like, high numbers.</p> <p>16 Q But sitting here today, you don't know that.</p> <p>17 MR. HARDER: Objection. It's argumentative.</p> <p>18 Q I don't mean to be argumentative, and I apologize.</p> <p>19 I mean sitting here today, you don't know what</p> <p>20 those values are.</p> <p>21 A I don't have the data in front me, so I'm not</p> <p>22 comfortable make -- drawing conclusions making</p> <p>23 statements about data that I don't have in front</p> <p>24 of me.</p>

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<p>1 Q Would you expect that the valuation got higher as</p> <p>2 the number of viewers increased?</p> <p>3 MR. HARDER: Objection.</p> <p>4 Q Let me ask you a different way. Do you recall</p> <p>5 that when you looked at the data, whether the</p> <p>6 valuations increased as the number of viewers</p> <p>7 increased?</p> <p>8 A I don't recall the specific increases. I would</p> <p>9 not expect it to be linear, that's for sure. I</p> <p>10 wouldn't expect the increase in valuations to be a</p> <p>11 linear function of the increase in viewership. I</p> <p>12 don't know what the specific pattern is because I</p> <p>13 don't have the data in front of me.</p> <p>14 Q But you would expect the compensation number would</p> <p>15 be higher at 2.5 million viewers than at 1 million</p> <p>16 views, right?</p> <p>17 A I would want to look at the data.</p> <p>18 Q Right. Would you expect the medians to</p> <p>19 progressively get higher?</p> <p>20 A I would want to look at the data.</p> <p>21 Q Would it be a problem, as far as reliability of</p> <p>22 the survey results, if the medians didn't</p> <p>23 increase?</p> <p>24 MR. HARDER: I'm going to object to the</p>	<p>1 Q And 2.5 million -- right?</p> <p>2 A Yes.</p> <p>3 Q And then 7 million?</p> <p>4 A Yes.</p> <p>5 Q And that was half of the survey respondents</p> <p>6 answered that.</p> <p>7 A No. I believe that that was -- excuse me, to get</p> <p>8 to this point, you had to have been willing to</p> <p>9 drill down on the range. So the people in -- that</p> <p>10 were asked with the first question -- the opening</p> <p>11 scenario were asked to provide their assessment of</p> <p>12 the degree of privacy invasion and the valuation</p> <p>13 assuming one stranger had watched it, and then I</p> <p>14 asked them for the range, and then remember how</p> <p>15 you didn't have to go deeper --</p> <p>16 Q Right.</p> <p>17 A -- and so the people that said no, I don't want to</p> <p>18 drill down further, they then went to the end of</p> <p>19 the survey or to the next scenario as appropriate.</p> <p>20 So they didn't get to this, and the thinking</p> <p>21 was that, well, if people are not comfortable</p> <p>22 specifying more than the range, I'm not going to</p> <p>23 force them to do it for a thousand, a hundred</p> <p>24 thousand, million viewers.</p>
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<p>1 form.</p> <p>2 Q Sorry. Would it be a problem as far as the</p> <p>3 reliability of the survey results if the median of</p> <p>4 the valuations as viewership increased did not</p> <p>5 also increase?</p> <p>6 MR. HARDER: Object to form.</p> <p>7 A I don't think it necessarily would be a problem.</p> <p>8 Q Do you know what the valuation -- let me ask you</p> <p>9 this. The survey only asked for valuations at</p> <p>10 certain viewership levels for a portion of the</p> <p>11 respondents -- right?</p> <p>12 A Can you rephrase that?</p> <p>13 Q Half the respondents were asked to provide</p> <p>14 valuations starting with one stranger watching --</p> <p>15 right?</p> <p>16 A Um hmm.</p> <p>17 Q And then they were asked a thousand -- right?</p> <p>18 A Later on.</p> <p>19 Q Yeah.</p> <p>20 A Yes.</p> <p>21 Q And then for a hundred thousand people viewing it?</p> <p>22 A Yes.</p> <p>23 Q Then one million people viewing it?</p> <p>24 A Yes.</p>	<p>1 Q And we don't -- for those people who did</p> <p>2 ultimately move onto those series of questions,</p> <p>3 there was no question asking about valuation for 3</p> <p>4 million, 4 million or 5 million people -- right?</p> <p>5 A What you see is what there was.</p> <p>6 Q Why don't we turn -- why don't we turn to page 13,</p> <p>7 with the factual scenario. And I just want to</p> <p>8 walk through it with you. Are you on page 13?</p> <p>9 A Yeah.</p> <p>10 Q So this is the page that starts with, "Imagine you</p> <p>11 are a very famous American sports figure," and</p> <p>12 goes through those three bullets about what's</p> <p>13 depicted on the video.</p> <p>14 A Yes.</p> <p>15 Q So the scenario starts: "Imagine that you are a</p> <p>16 very famous American sports figure. For example,</p> <p>17 when you walk out in public, many people instantly</p> <p>18 recognize you."</p> <p>19 Did you ask people who they thought the</p> <p>20 sports figure was?</p> <p>21 A No.</p> <p>22 Q So they might have been thinking about Tom</p> <p>23 Brady -- right?</p> <p>24 A I don't know what they were thinking about.</p>

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<p>1 Q They might have been thinking about Tiger Woods?</p> <p>2 A Do you really like Tom Brady? You keep bringing</p> <p>3 him up.</p> <p>4 MR. HARDER: Look, I have to say something</p> <p>5 for the record, Mike. I mean, she told you about</p> <p>6 six times that the report says exactly what people</p> <p>7 were asked, and she didn't ask anything of these</p> <p>8 survey people other than what's in the report.</p> <p>9 And you keep asking questions: Did you ask this</p> <p>10 and did you ask that, and it's eating up all this</p> <p>11 time, and then you're asking: Well, what was</p> <p>12 going to on in everyone's heads, and she's</p> <p>13 answered probably 20 times, she can't get inside</p> <p>14 everybody's heads, and you keep asking these</p> <p>15 questions, and you're telling me you want to go</p> <p>16 into tomorrow with a bunch of more questions, and</p> <p>17 there's not going to be a tomorrow because this is</p> <p>18 ridiculous. You're wasting everyone's time.</p> <p>19 Q Is professional wrestling a sport?</p> <p>20 MR. HARDER: Object to form.</p> <p>21 A I am not an expert in what constitutes a sport and</p> <p>22 what doesn't constitute a sport.</p> <p>23 Q Do you know whether Americans think professional</p> <p>24 wrestling is a sport?</p>	<p>1 person." Why did you include that information?</p> <p>2 A Off the top of my head, I'm having a hard time</p> <p>3 remembering why.</p> <p>4 Well, I think that whether a person is</p> <p>5 having sex with their spouse or having sex with a</p> <p>6 casual partner, and that video goes online, that</p> <p>7 could be a relevant factor in people's assessments</p> <p>8 what a fair and reasonable amount of compensation</p> <p>9 is. And so that is, I'm guessing, why I included</p> <p>10 the part about that the person in this situation</p> <p>11 was not married, and was not married to the person</p> <p>12 he was having sex with -- that it was an</p> <p>13 acquaintance.</p> <p>14 MR. HARDER: I'm just going to object that</p> <p>15 the document speaks for itself. I think there may</p> <p>16 have been a misstatement in there.</p> <p>17 Q Right. You watched the video itself -- right?</p> <p>18 A Yes.</p> <p>19 Q And on the video, Mr. Bollea suggests that he's</p> <p>20 not divorced -- right?</p> <p>21 A Okay. So yeah, then I -- I don't know when he got</p> <p>22 divorced. So I probably misspoke just now. So</p> <p>23 maybe I could just take that back.</p> <p>24 Q Okay. Do you want to take a break?</p>
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<p>1 MR. HARDER: Calls for speculation.</p> <p>2 A I don't have data on that point.</p> <p>3 Q Would the results of this survey have been</p> <p>4 different if you had asked people to imagine if</p> <p>5 they were a professional wrestler?</p> <p>6 MR. HARDER: Objection. Calls for</p> <p>7 speculation.</p> <p>8 A It's possible, but I don't think the results would</p> <p>9 be substantively different.</p> <p>10 Q Would it have been different if it had asked</p> <p>11 people to imagine that they were a star of a</p> <p>12 reality television show?</p> <p>13 MR. HARDER: Objection to form.</p> <p>14 A I don't know.</p> <p>15 Q Would the results of that survey have been</p> <p>16 different if it asked people to imagine that they</p> <p>17 were a person who regularly appears in celebrity</p> <p>18 tabloids?</p> <p>19 MR. HARDER: Okay. I mean, Mike, this is</p> <p>20 ridiculous. Objection to form. And it's</p> <p>21 argumentative and it's ridiculous.</p> <p>22 Q The next passage says: "Five years ago your</p> <p>23 spouse left you. You eventually divorced each</p> <p>24 other. You recently got married again to a new</p>	<p>1 A Yeah, that will be great.</p> <p>2 VIDEO OPERATOR: The time is now 3:57. We</p> <p>3 are off the record.</p> <p>4 (Off the record.)</p> <p>5 VIDEO OPERATOR: The time is now 4:09. This</p> <p>6 is the beginning of tape number 4. We are back on</p> <p>7 the record.</p> <p>8 BY MR. BERRY:</p> <p>9 Q I want to just pick back up where we left off here</p> <p>10 with the scenario on page 13.</p> <p>11 A Um hmm.</p> <p>12 Q In the third paragraph, says, "you had sex with an</p> <p>13 acquaintance of yours in a private bedroom in a</p> <p>14 private home" -- do you see that?</p> <p>15 A Yes.</p> <p>16 Q Do you know whether the results of the survey</p> <p>17 would have been different if respondents were told</p> <p>18 that the acquaintance was married?</p> <p>19 A I don't know because I didn't do that survey.</p> <p>20 Q Do you know whether the results would have been</p> <p>21 different if respondents were told that the</p> <p>22 acquaintance was a wife of your best friend?</p> <p>23 A I don't know.</p> <p>24 Q Do you know if the results would have been</p>

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<p>1 different if respondents were told that your best 2 friend and his wife had an open marriage? 3 A I don't know. 4 Q Do you know whether the results would have been 5 different if respondents were told that the 6 acquaintance with whom you had sex talks about her 7 sex life on the radio? 8 A I don't know. 9 Q Do you know if the responses would have been 10 different if respondents knew that the person 11 whose wife you're having sex with records people 12 engaging in sex acts as part of his work? 13 A I don't know. 14 Q Do you know whether the results would have been 15 different if respondents were told that your 16 friend whose wife you were having sex with 17 regularly features women who star in pornography 18 in a syndicated radio show? 19 A I don't know. 20 Q Do you know whether the results would have been 21 different if respondents were told that your best 22 friend, whose wife you were having sex with, sells 23 video of people engaging in sex acts? 24 A I don't know.</p>	<p>1 thoughtful responses. 2 Q In that sentence you talk about a private bedroom 3 in a private home? 4 A Which sentence? 5 Q That we were talking about here: "You had sex 6 with an acquaintance of yours in a private bedroom 7 in a private home" -- in the first sentence in 8 paragraph three. 9 A Yes. 10 Q Why did you describe the bedroom and home as 11 private? 12 A I don't remember particularly. It was awhile ago 13 when I designed this, but when I designed this, I 14 designed it in keeping with the spirit of 15 describing this situation in a reasonable way to 16 provide reasonable -- to provide data that are 17 valid. So I can't tell you why every single word 18 is in here because it's so long ago that I wrote 19 the survey. But -- yeah. 20 Q Are any bedrooms public? 21 A I don't know. 22 MR. HARDER: He had a sleep-in. He invited 23 the press into his bedroom. 24 Q Do you know whether the results would have been</p>
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<p>1 Q Do you know whether the results would have been 2 different if respondents were told that the person 3 whose bedroom you were having sex in was a voyeur? 4 A I don't know. 5 Q Why didn't you include any of that information in 6 this survey? 7 MR. HARDER: I'm just going to object. Form 8 of the question. 9 A Are you asking me why I didn't include any of 10 those things you just chimed off? 11 Q Yes. 12 A As I stated before, in designing a survey, you 13 want to distill the scenario into a compact 14 scenario that is easy to read, and so if you add 15 extraneous -- if you add more detail, the danger 16 in doing so is that people are going to perhaps 17 not read it carefully. They may get confused. 18 And to the extent these kinds of things happen, it 19 would -- it could decrease the validity of the 20 results. And I was concerned about that. 21 So in my experience, the length of the 22 survey is about the amount that is sort of 23 tolerable by people's mental capacity and mental 24 stamina to be able to complete while giving</p>	<p>1 different if respondents were told that the 2 encounter occurred in the bed that your married 3 partner shares with her husband? 4 MR. HARDER: Object to form. 5 A I don't know. 6 Q Do you know whether the responses -- sorry, do you 7 know whether the results would have been different 8 if respondents were told that another person was 9 in the bedroom at the beginning of the sexual 10 encounter? 11 A I don't know. 12 Q Do you know whether the results would have been 13 different if respondents were told that a person 14 was watching you perform oral sex? 15 A I don't know. 16 Q The next sentence then starts: "Unbeknownst to 17 both of you at the time" -- do you see that? 18 A Yes. 19 Q Do you know whether the results would have been 20 different if respondents were told that you knew 21 that inside the house where the encounter 22 occurred, there were security cameras? 23 A I don't know. 24 Q Did you know that information before you created</p>

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<p>1 this survey?</p> <p>2 A Which information?</p> <p>3 Q That the person in the hypothetical knew that</p> <p>4 there were security cameras inside the house?</p> <p>5 MR. HARDER: Wait, I'm just going to object.</p> <p>6 Assumes facts not in evidence. It's</p> <p>7 argumentative. Object to the form.</p> <p>8 A Well, I'm confused because if a person is in a</p> <p>9 hypothetical, how can a hypothetical person know</p> <p>10 something.</p> <p>11 Q Right. You wanted to make the scenario as close</p> <p>12 to possible.</p> <p>13 A Right. Did I know that Terry Bollea --</p> <p>14 Q Whether Mr. Bollea knew whether there were cameras</p> <p>15 inside Mr. Clem's house?</p> <p>16 MR. HARDER: Wait. So the house or the</p> <p>17 bedroom?</p> <p>18 Q I'm asking about the house.</p> <p>19 MR. HARDER: Okay. I'm objecting to the</p> <p>20 question.</p> <p>21 A Can you repeat the question, please.</p> <p>22 (Question read back.)</p> <p>23 A Do I know whether Terry Bollea knew that there</p> <p>24 were cameras ostensibly in the house.</p>	<p>1 the person who filmed you as you slept with his</p> <p>2 wife?</p> <p>3 A So you're saying -- now I've got to find the</p> <p>4 "unbeknownst to you" part.</p> <p>5 Unbeknownst to you, both of you at the time,</p> <p>6 the secret -- "this sexual interaction was</p> <p>7 secretly filmed." And you are asking me?</p> <p>8 Q Why did you not say that the partner's husband is</p> <p>9 the person who filmed you as you slept with his</p> <p>10 wife?</p> <p>11 MR. HARDER: Objection to the form.</p> <p>12 A I don't know that I knew that when I created this.</p> <p>13 Moreover, even if I did know that, I don't know</p> <p>14 whether I would have included it in here any ways.</p> <p>15 Q Do you know whether that would have affected</p> <p>16 respondents' answers on what the appropriate</p> <p>17 compensation for a privacy violation would be?</p> <p>18 A I don't know.</p> <p>19 Q Then continues on: "You learned of this recently,</p> <p>20 when you discovered that a minute-and-a-half long</p> <p>21 portion of the sex tape" -- and kind of goes on</p> <p>22 from there. You see that?</p> <p>23 A Yes.</p> <p>24 Q Why did you include the fact that the person only</p>
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<p>1 Q Correct.</p> <p>2 A I don't know.</p> <p>3 Q Do you know whether the results would have been</p> <p>4 different if the respondents were told that the</p> <p>5 woman in the encounter knew that there was a</p> <p>6 camera in the bedroom?</p> <p>7 A I don't know.</p> <p>8 Q Did you know that the woman knew that there was a</p> <p>9 camera in the bedroom?</p> <p>10 A I don't think I knew that.</p> <p>11 Q Do you know whether it would have been different</p> <p>12 if respondents were told that the woman with whom</p> <p>13 you were having sex knows that she films herself</p> <p>14 having sex with other people?</p> <p>15 A I don't know.</p> <p>16 You're killing me with all these</p> <p>17 hypotheticals.</p> <p>18 Q It then continues, and says that the -- "this</p> <p>19 sexual interaction was secretly filmed." Do you</p> <p>20 see that? "Unbeknownst to both of you at the</p> <p>21 time, this sexual interaction was secretly</p> <p>22 filmed"?</p> <p>23 A Yes.</p> <p>24 Q Why did you not say that the partner's husband is</p>	<p>1 learned of this recently?</p> <p>2 A Because I must have had -- I don't know off the</p> <p>3 top of my head. It's really hard for me to answer</p> <p>4 these questions about why I included these words</p> <p>5 or these words because I created this survey</p> <p>6 months ago.</p> <p>7 So in my opinion, I think these are kind of</p> <p>8 unreasonable questions because I can't remember</p> <p>9 everything -- because when you make a survey, you</p> <p>10 have a lot of design decisions to make. So I</p> <p>11 can't -- I can't remember the rationale for</p> <p>12 everything.</p> <p>13 I will say that my goal in creating this</p> <p>14 survey was to reasonably represent the situation</p> <p>15 at hand so that I could get -- elicit reasonable,</p> <p>16 reasonably valid assessments of the value -- of</p> <p>17 the compensation that Terry Bollea -- the fair</p> <p>18 and -- the fair and reasonable compensation value</p> <p>19 for a privacy loss such as the one experienced</p> <p>20 here.</p> <p>21 Q Do you know whether it would have made a</p> <p>22 difference if that statement was false?</p> <p>23 MR. HARDER: Objection to form.</p> <p>24 Argumentative.</p>

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<p>1 A I don't know.</p> <p>2 Q Do you know if the results would have been</p> <p>3 different if respondents were told that you</p> <p>4 learned of this existence of the sex tape more</p> <p>5 than six months earlier?</p> <p>6 A I don't know.</p> <p>7 MR. HARDER: Objection to the form. And</p> <p>8 it's not true.</p> <p>9 Q Do you know whether the results would have been</p> <p>10 different if respondents were told that when you</p> <p>11 learned about the sex tape, you discussed it for</p> <p>12 more than five minutes on a nationally televised</p> <p>13 show?</p> <p>14 A I don't know.</p> <p>15 Q Do you know whether the results would have been</p> <p>16 different if respondents were told that when you</p> <p>17 learned about the sex tape, you joked on a</p> <p>18 celebrity gossip television show about how you</p> <p>19 didn't know who the woman in the tape was because</p> <p>20 you slept with so many brunettes during that</p> <p>21 period?</p> <p>22 MR. HARDER: Argumentative.</p> <p>23 A I don't know.</p> <p>24 MR. HARDER: You're harassing the witness at</p>	<p>1 Q Do you know how respondents view sex?</p> <p>2 A I can't read their minds.</p> <p>3 Q Did you ask respondents whether they thought that</p> <p>4 the tape showed a minute and a half of actual</p> <p>5 sexual activity, be it penetration, oral sex or</p> <p>6 anything else?</p> <p>7 MR. HARDER: Asked and answered 40 times</p> <p>8 what was asked of the respondents.</p> <p>9 A I'm sorry, what was the question?</p> <p>10 Q Did you ask the respondents whether they thought</p> <p>11 the tape showed a minute and a half of actual</p> <p>12 sexual activity, be it sexual penetration or oral</p> <p>13 sex?</p> <p>14 A No.</p> <p>15 Q That was basically left to their imagination --</p> <p>16 right?</p> <p>17 MR. HARDER: Objection. It's argumentative.</p> <p>18 It's improper.</p> <p>19 A Everything that I asked the respondents is in the</p> <p>20 report.</p> <p>21 Q Do you know whether it would have affected</p> <p>22 respondents' valuations if they thought the video</p> <p>23 showed a full minute and a half of actual sexual</p> <p>24 activity?</p>
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<p>1 this point. I mean, it's just -- you know exactly</p> <p>2 what her answer is going to be, but you just keep</p> <p>3 going after her, going after her. I don't get it.</p> <p>4 That's my objection.</p> <p>5 Q Why did you include the phrase, "minute-and-a-half</p> <p>6 long portion of the sex tape"?</p> <p>7 A As opposed to?</p> <p>8 Q I'm asking you: Why did you include that phrase?</p> <p>9 A Well, my understanding at the time was that there</p> <p>10 was an approximately minute-and-a-half long sex</p> <p>11 tape of Hulk Hogan posted online on Gawker, and so</p> <p>12 that is why I put that -- what I presume to be</p> <p>13 fact -- in there.</p> <p>14 Q Time-wise, how much actual sexual activity was</p> <p>15 depicted on the video you watched?</p> <p>16 MR. HARDER: Calls for speculation.</p> <p>17 A Well, it depends how you define sexual activity.</p> <p>18 Q How do you define it?</p> <p>19 A I mean, I think sex is -- it's not just -- sorry.</p> <p>20 This is really blunt. It's not just penetration.</p> <p>21 It's the preamble, it's the denouement. It's the</p> <p>22 whole sexual interaction.</p> <p>23 Q And that's your view -- right?</p> <p>24 A That's my view.</p>	<p>1 MR. HARDER: Could you please repeat the</p> <p>2 question.</p> <p>3 (Question read back.)</p> <p>4 MR. HARDER: Object to the word "actual</p> <p>5 sexual activity." She already testified what her</p> <p>6 view of actual sexual activity is.</p> <p>7 A So what's your question?</p> <p>8 Q Do you know whether it would have affected</p> <p>9 respondents' valuations if they thought the video</p> <p>10 showed a full minute and a half of sexual</p> <p>11 activity?</p> <p>12 MR. HARDER: Object to the form.</p> <p>13 A Well, that's what I say in the survey, that it's</p> <p>14 an minute-and-a-half long portion of the sex tape.</p> <p>15 Q Do you know if it would have affected respondents'</p> <p>16 valuations if they were told the video showed 60</p> <p>17 seconds of intercourse or oral sex?</p> <p>18 A I don't know.</p> <p>19 Q Do you know if it would have affected valuations</p> <p>20 if respondents were told that the video showed</p> <p>21 less than 15 seconds of intercourse and oral sex?</p> <p>22 A I don't know.</p> <p>23 Q Do you know if it would have affected respondents'</p> <p>24 valuations if they were told that the video showed</p>

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<p>1 less than 10 seconds of the sexual intercourse or</p> <p>2 oral sex?</p> <p>3 A I don't know.</p> <p>4 Q Why did you choose not to tell them the amount of</p> <p>5 time that the person in the scenario was actually</p> <p>6 engaged in sexual intercourse or oral sex?</p> <p>7 MR. HARDER: Argumentative. Object to the</p> <p>8 form.</p> <p>9 A Are you asking me why I didn't put like a -- no</p> <p>10 pun intended -- blow by blow description of every</p> <p>11 second of what happened in the tape? Is that,</p> <p>12 like, kind of along what you're trying to get at?</p> <p>13 Q No, what I'm trying to get at is: If instead of</p> <p>14 saying a minute-and-half long portion of the sex</p> <p>15 tape, you had said: Discovered that a video</p> <p>16 showing less than 10 seconds of sexual intercourse</p> <p>17 or oral sex was posted on the internet.</p> <p>18 MR. HARDER: Argumentative. Object to the</p> <p>19 form. It's assuming that the rest of it is</p> <p>20 perfectly okay, and it's not.</p> <p>21 A So in my best judgment, for the purpose of this</p> <p>22 survey, the goal of which was to provide valid</p> <p>23 responses, a reasonable way of describing the</p> <p>24 videotape is the wording I used here.</p>	<p>1 various sexual activities. I've asked them</p> <p>2 whether they've done things, and I've also asked</p> <p>3 them: How sensitive do you think these behaviors</p> <p>4 are; how sensitive would it be for me to ask you</p> <p>5 these questions even.</p> <p>6 So in that capacity, I've studied, you know,</p> <p>7 what people think is sensitive, and when and why</p> <p>8 people are willing to reveal information.</p> <p>9 Q In those situations, do you describe sex acts?</p> <p>10 A I have had -- I mean, I don't have all of the</p> <p>11 items that I've tested in front of me, but I have</p> <p>12 asked people about, you know, explicit -- or</p> <p>13 specific, I should say, acts.</p> <p>14 Q And that affects people's answers about whether</p> <p>15 they're sensitive to disclosing or not</p> <p>16 disclosing -- right?</p> <p>17 MR. HARDER: Calls for speculation.</p> <p>18 A I am not sure what you're saying. It's a vague --</p> <p>19 Q Well, in the research that you've done, I think</p> <p>20 what you were saying is when you asked these kind</p> <p>21 of sensitive questions about specific sex acts,</p> <p>22 that affects whether people are willing to</p> <p>23 disclose it or not -- right?</p> <p>24 MR. HARDER: Let me object. It's an</p>
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<p>1 I think there is a danger if you break down</p> <p>2 everything that happened. One of the dangers of</p> <p>3 that is then people may not take it seriously</p> <p>4 because they could -- they could perhaps be</p> <p>5 giggling or -- at the different things that</p> <p>6 happened. And that could actually distract people</p> <p>7 from giving reliable, valid assessments. And so</p> <p>8 in my mind, these are the things that I think</p> <p>9 about when I design surveys. And what I chose</p> <p>10 here represents, in my experience, a reasonable</p> <p>11 representation of what happened so that people</p> <p>12 could provide reliable and valid estimates of the</p> <p>13 reasonable and fair compensation.</p> <p>14 Q Have you ever done any other surveys or research</p> <p>15 involving sex tapes?</p> <p>16 A What -- I mean, what do you define as research</p> <p>17 involving sex tapes?</p> <p>18 Q Other than this, have you ever done any research</p> <p>19 involving sex tapes in any way?</p> <p>20 A So I have done research in which I ask people how</p> <p>21 sensitive various behaviors are, and a lot of the</p> <p>22 behaviors that people find most sensitive are</p> <p>23 sexual behaviors.</p> <p>24 So I've asked people various -- about</p>	<p>1 incomplete hypothetical, vague and ambiguous.</p> <p>2 Calls for speculation. Object to form.</p> <p>3 Q I'm not asking about a hypothetical. I'm asking</p> <p>4 about your research, just to be clear.</p> <p>5 A So when I've asked people -- one of the primary</p> <p>6 reasons why, in my past research, I've asked</p> <p>7 people about the sensitivity of different</p> <p>8 behaviors, and the sensitivity of different</p> <p>9 questions, is to come up with a bank of questions</p> <p>10 where I know how sensitive the questions are.</p> <p>11 Because then in studies, what I can do is I</p> <p>12 vary the sensitivity of the questions.</p> <p>13 For example, I use my set of questions which</p> <p>14 I pretested by doing research to assess the</p> <p>15 sensitivity of questions, to then, in the JMR</p> <p>16 paper, the relative standards paper, to then be</p> <p>17 able to order them in increasing or decreasing</p> <p>18 order of intrusiveness.</p> <p>19 Q So in the scale of intrusiveness, some of the most</p> <p>20 intrusive things that I assume you could ask</p> <p>21 somebody is about specific sex acts they</p> <p>22 performed.</p> <p>23 MR. HARDER: Objection to the form.</p> <p>24 A So those tend to be sensitive, but without -- like</p>

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<p>1 without having my list of questions, and the mean</p> <p>2 sensitivity ratings and standards deviations in</p> <p>3 front of me, I'm not really comfortable.</p> <p>4 Q Do people consider it among the most sensitive</p> <p>5 information to describe their private body parts?</p> <p>6 MR. HARDER: Same objection. Objection to</p> <p>7 form.</p> <p>8 A Same answer as what you just asked me.</p> <p>9 Q Do you know whether it would have affected</p> <p>10 respondents' valuations if they were told that the</p> <p>11 video had been filmed with a security camera?</p> <p>12 A I don't know.</p> <p>13 Q Do you know whether it would have affected</p> <p>14 respondents' valuations if they were told the</p> <p>15 video were filmed in a dark bedroom?</p> <p>16 A I don't know.</p> <p>17 Q Why didn't you describe the quality of the video?</p> <p>18 A It's hard for me to answer that question because I</p> <p>19 designed the survey so long ago. So I'm afraid my</p> <p>20 memory is imperfect.</p> <p>21 Q But respondents could read this and think that the</p> <p>22 video was in high def -- right?</p> <p>23 MR. HARDER: Objection.</p> <p>24 A I don't know what possible inferences respondents</p>	<p>1 the tape was of because that's an important aspect</p> <p>2 of this scenario; that it's a sex tape.</p> <p>3 Q Do you know whether repeating that information had</p> <p>4 any affect on people's valuations?</p> <p>5 A I don't know.</p> <p>6 MR. HARDER: I'm just -- I'm going to object</p> <p>7 to the characterization that it's repeating, and I</p> <p>8 think it's an argumentative question.</p> <p>9 A I don't know.</p> <p>10 Q Would it have affected respondents' valuations if</p> <p>11 they thought that the sexual activity depicted on</p> <p>12 the tape involved something unusual?</p> <p>13 MR. HARDER: Objection to form.</p> <p>14 A I don't know.</p> <p>15 Q What about if it was something degrading?</p> <p>16 MR. HARDER: Objection to form.</p> <p>17 A I don't know.</p> <p>18 Q What about if it revealed some sort of strange</p> <p>19 fetish?</p> <p>20 MR. HARDER: Objection to form.</p> <p>21 A I don't know.</p> <p>22 Q Did you tell respondents that the person who</p> <p>23 posted the tape was not the same person who filmed</p> <p>24 it?</p>
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<p>1 were or were not making about the quality of the</p> <p>2 video.</p> <p>3 Q They could think it was in color?</p> <p>4 MR. HARDER: Objection.</p> <p>5 A I don't know -- same answer as what I just gave</p> <p>6 you.</p> <p>7 Q They might think the quality of the video is</p> <p>8 either crystal clear or incredibly blurry, right?</p> <p>9 A Same answer as what I just gave you.</p> <p>10 Q Do you know whether those things would have</p> <p>11 affected the valuations?</p> <p>12 A I don't know.</p> <p>13 Q Looking back at the scenario here on page 13, we</p> <p>14 had talked up to this point about: "You learned</p> <p>15 this recently when you discovered that a</p> <p>16 minute-and-a-half long portion of the sex tape" --</p> <p>17 talked about that first part.</p> <p>18 It then continues and says, "the tape of you</p> <p>19 having sex with your acquaintance in a bedroom in</p> <p>20 a private home." Why did you repeat what the sex</p> <p>21 tape was there?</p> <p>22 A I'm guessing because I wanted to make sure that</p> <p>23 participants -- respondents -- knew what I was</p> <p>24 talking about with -- what sex tape was -- what</p>	<p>1 MR. HARDER: This has been asked and</p> <p>2 answered 25 times.</p> <p>3 MR. BERRY: If you could point to the</p> <p>4 question, I'd love to see it.</p> <p>5 MR. HARDER: Yeah, it's when you ask her</p> <p>6 over and over again: Did you ask the respondents</p> <p>7 this, did you ask the respondents that, and the</p> <p>8 answer over and over and over again is: The</p> <p>9 questions that I asked are in the report. So if</p> <p>10 it's not in the report, that's -- I didn't ask it.</p> <p>11 But you keep doing it. Wasting everyone's</p> <p>12 time.</p> <p>13 Q Did you tell respondents that the person who</p> <p>14 posted the tape did not film it?</p> <p>15 A The questions that I asked are in the report.</p> <p>16 Q So the answer is no?</p> <p>17 A If it's not in the report, then I didn't ask them.</p> <p>18 Q Did you ask that question?</p> <p>19 MR. HARDER: Seriously, Mike? You're</p> <p>20 harassing her now. You're just trying to make it</p> <p>21 difficult. You're trying to rattle her. I'm</p> <p>22 objecting to this.</p> <p>23 It's like a game to you. This whole case is</p> <p>24 a game to everyone on your side. It's just a</p>

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<p>1 game. I'm going to ask that you please stop</p> <p>2 playing the game and you ask her questions that</p> <p>3 are reasonable, and she will give you reasonable</p> <p>4 answers.</p> <p>5 MR. BERRY: Doctor John does not appear</p> <p>6 rattled to me.</p> <p>7 MR. HARDER: Well, she has more composure</p> <p>8 than most.</p> <p>9 MR. BERRY: And to me, this is not a game,</p> <p>10 but your client is seeking a hundred million</p> <p>11 dollars, \$10 million of which apparently is based</p> <p>12 on this report, and so I'm going to continue to</p> <p>13 ask questions about the case, and I apologize if</p> <p>14 it makes you uncomfortable, Charles.</p> <p>15 MR. HARDER: You're just wasting our time.</p> <p>16 Q How would respondents know that different people</p> <p>17 filmed the video and posted the video?</p> <p>18 MR. HARDER: Objection to form.</p> <p>19 A I didn't say they know -- they knew that.</p> <p>20 Q Moving down then, there is three bullets here that</p> <p>21 talks about what the video depicts of you and your</p> <p>22 acquaintance -- specifically video. And the first</p> <p>23 thing you say is: Depicts full frontal footage of</p> <p>24 you, naked and visibly aroused; do you see that?</p>	<p>1 did?</p> <p>2 A I don't know.</p> <p>3 Q Do you know whether that would have affected their</p> <p>4 valuations?</p> <p>5 A I don't know.</p> <p>6 MR. HARDER: I'm just going to object to</p> <p>7 this whole line of questioning as being utterly</p> <p>8 ridiculous and to the form.</p> <p>9 Q The next bullet point: "Depicts you participating</p> <p>10 in sexual intercourse." Do you see that?</p> <p>11 A Yes. I see that.</p> <p>12 Q Again, you didn't ask people what they thought</p> <p>13 what the tape actually showed of sexual</p> <p>14 intercourse -- right?</p> <p>15 MR. HARDER: Asked and answered 20 something</p> <p>16 times. Maybe 30 at this point.</p> <p>17 A What was the question, did I explicitly ask --</p> <p>18 Q Yeah, I mean, I'm sorry if this is funny, but I</p> <p>19 mean, this is again our -- \$10 million.</p> <p>20 MR. HARDER: You're the one who's funny,</p> <p>21 Mike. You're the one who's funny because you keep</p> <p>22 asking the same silliness. You're making a joke</p> <p>23 out of this.</p> <p>24 Q Did you ask people -- repeat the question.</p>
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<p>1 A Yes.</p> <p>2 Q How long did the tape show full frontal of</p> <p>3 Mr. Bollea?</p> <p>4 MR. HARDER: Objection to the form.</p> <p>5 A I don't remember.</p> <p>6 Q 30 seconds?</p> <p>7 A I don't remember.</p> <p>8 Q Less than five seconds?</p> <p>9 A I don't remember.</p> <p>10 Q Do you think it would have affected the valuations</p> <p>11 if that information was in here?</p> <p>12 A I don't know.</p> <p>13 Q How much detail of Mr. Bollea's full frontal did</p> <p>14 the tape show?</p> <p>15 MR. HARDER: Same question.</p> <p>16 A I don't remember.</p> <p>17 Q Do you know -- did it show a closeup?</p> <p>18 A I don't remember.</p> <p>19 Q Do you know whether respondents thought it showed</p> <p>20 a closeup?</p> <p>21 A I don't know.</p> <p>22 Q Do you recall whether it showed his testicles?</p> <p>23 A I don't remember.</p> <p>24 Q Do you know whether respondents thought that it</p>	<p>1 (Question read back.)</p> <p>2 A I did not explicitly ask respondents what they</p> <p>3 thought sexual intercourse meant. Is that what</p> <p>4 you're asking me?</p> <p>5 Q What the tape actually showed.</p> <p>6 A All of the questions that I asked people are in</p> <p>7 here.</p> <p>8 Q It was left to their imagination about what they</p> <p>9 thought it depicted, as far as participating</p> <p>10 sexual intercourse -- right?</p> <p>11 MR. HARDER: Objection. Argumentative and</p> <p>12 objection to the form.</p> <p>13 A I don't know what respondents were thinking.</p> <p>14 Q After this section, you asked a series of</p> <p>15 comprehension questions on page 14 -- right?</p> <p>16 A Yes.</p> <p>17 Q And I take it that you did that to make sure that</p> <p>18 folks understood the survey scenario?</p> <p>19 MR. HARDER: Objection to form.</p> <p>20 A I -- one of the reasons why I asked the</p> <p>21 comprehension check questions was to try to ensure</p> <p>22 that they -- that respondents understood key</p> <p>23 elements of the scenario.</p> <p>24 Q So the key elements I guess -- sorry, the key</p>

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<p>1 elements, according to each of these three</p> <p>2 questions, would be: Very famous American sports</p> <p>3 figure, secretly filmed having sex, and asked to</p> <p>4 imagine a minute and 30 second video that showed</p> <p>5 you having sex with an acquaintance was posted</p> <p>6 online. Those were the three key facts?</p> <p>7 MR. HARDER: Objection to the form. Report</p> <p>8 speaks for itself.</p> <p>9 A Those are the three comprehension check questions,</p> <p>10 and I should say that they -- the footnotes</p> <p>11 indicate that they differed depending on condition</p> <p>12 scenario.</p> <p>13 Q But for those particular scenarios, were those the</p> <p>14 three key facts you wanted to make sure people</p> <p>15 understood?</p> <p>16 A I wanted to make sure people understood those</p> <p>17 facts. It also represents a sampling of their</p> <p>18 understanding of the survey as a whole because if</p> <p>19 they fail one of these, then it's more probable</p> <p>20 that there are other aspects of the survey that</p> <p>21 they didn't understand.</p> <p>22 So these serve not just to verify the</p> <p>23 specific correct answers here, but they also</p> <p>24 provide a holistic assessment; if you answer all</p>	<p>1 Q What's a standard fail rate for a survey -- sorry.</p> <p>2 Let me ask it differently. What is a standard</p> <p>3 fail rate for comprehension questions on a survey</p> <p>4 that requires folks to answer those kind of</p> <p>5 comprehension questions?</p> <p>6 A So, I think it would be hard to talk about a</p> <p>7 standard failure rate because it's so dependent on</p> <p>8 the difficulty of the questions you're asking</p> <p>9 people; the number of questions you're asking</p> <p>10 people; the people that you're surveying; the</p> <p>11 topic of the survey.</p> <p>12 So to say like -- so I don't know of a</p> <p>13 standard rate. But moreover, if there was a</p> <p>14 standard rate, I don't know that it would be that</p> <p>15 trustworthy because it just depends on the survey</p> <p>16 in interpreting. But the important thing is that</p> <p>17 if you answered a question incorrectly, you</p> <p>18 couldn't continue on until you actually rectified</p> <p>19 it.</p> <p>20 So the reason I did that was to try to</p> <p>21 increase the trustworthiness of the results</p> <p>22 because basically, respondents had to prove to me</p> <p>23 that they understood before I gave them the</p> <p>24 opportunity to answer the questions.</p>
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<p>1 three correctly, I can be more confident that you</p> <p>2 understood the details of the scenario as a whole,</p> <p>3 not simply these three factoids.</p> <p>4 Q So if folks couldn't answer these three questions,</p> <p>5 they had to reread the survey and then took these</p> <p>6 questions again.</p> <p>7 A If they did not answer them correctly, then the</p> <p>8 survey took them back -- the -- there was a page</p> <p>9 that said: "Unfortunately, one or more of your</p> <p>10 answers was incorrect. When you press next, we'll</p> <p>11 take you back to the description of the situation.</p> <p>12 Then, you'll be asked the comprehension questions</p> <p>13 again. Thanks for your patience and attention to</p> <p>14 detail."</p> <p>15 So then they were looped back to the</p> <p>16 scenario description page.</p> <p>17 Q And how many times could they do that loop?</p> <p>18 A I believe they could do that until they answered</p> <p>19 the questions correctly.</p> <p>20 Q Do you know what a standard fail rate is for a</p> <p>21 survey that requires this kind of comprehension</p> <p>22 question?</p> <p>23 A Can you be more -- can you -- I'm not sure I</p> <p>24 understand your question.</p>	<p>1 Q Do you know how many people couldn't answer these</p> <p>2 comprehension questions right?</p> <p>3 A I don't know off the top of my head, but I think</p> <p>4 that is in the dataset.</p> <p>5 Q Right. Would it surprise you to learn that 49</p> <p>6 people couldn't answer the comprehension question</p> <p>7 correctly?</p> <p>8 MR. HARDER: Object to the form.</p> <p>9 A 49 -- what does that mean? Does that mean that</p> <p>10 they answered -- can you tell me what 49 means?</p> <p>11 Q The number of people who failed and had to go back</p> <p>12 and repeat.</p> <p>13 A That failed at least -- that incorrectly answered</p> <p>14 at least one of questions.</p> <p>15 Q Correct.</p> <p>16 A That tells me that I am glad that I had</p> <p>17 comprehension questions.</p> <p>18 Q Did you take that on how many times people failed?</p> <p>19 A No. I -- that is an annoying feature of this</p> <p>20 survey. I was actually on the phone with</p> <p>21 technical support to see if they could record</p> <p>22 that, and they -- I don't have data of that</p> <p>23 information.</p> <p>24 Q If almost 25 percent of the people didn't</p>

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<p>1 understand the factual situation, does it suggest</p> <p>2 that the situation wasn't clearly presented in</p> <p>3 this scenario?</p> <p>4 MR. HARDER: Object to the form. It's</p> <p>5 argumentative also.</p> <p>6 A No. It could suggest, for example that the</p> <p>7 questions are tricky. It doesn't necessarily mean</p> <p>8 that the scenario is hard to understand. More</p> <p>9 importantly, however, because they had to answer</p> <p>10 the questions correctly before moving on, I can be</p> <p>11 reasonably confident that they understood the</p> <p>12 scenario when it came time to answer the key</p> <p>13 questions.</p> <p>14 Q Did you do anything to make sure that people</p> <p>15 understood the rest of the survey?</p> <p>16 A I -- so one of the things I did was I would -- so</p> <p>17 when people gave an evaluation, I said -- I piped</p> <p>18 in on the next page. I said okay, you said that</p> <p>19 this -- I mean, I'm paraphrasing, but the spirit</p> <p>20 of it is, I piped in what their response is, and I</p> <p>21 said, okay, you said that the fair and reasonable</p> <p>22 compensation value is -- and then it said what</p> <p>23 their answer was. Does this sound about right.</p> <p>24 And then they had to either say yes or they would</p>	<p>1 describing about the qualitative.</p> <p>2 A Right, and you can see the scroller. There's a</p> <p>3 screen shot of it earlier, right, in this --</p> <p>4 that's the scrolly.</p> <p>5 Q What page is that?</p> <p>6 A Four.</p> <p>7 Q Okay. At that point, what were the respondents</p> <p>8 supposed to be rating as a violation?</p> <p>9 A They're supposed to be rating the situation of</p> <p>10 being secretly filmed having sex with your</p> <p>11 acquaintance in their private home.</p> <p>12 Q So that didn't mention -- that's not the</p> <p>13 valuation, the qualitative valuation of the</p> <p>14 violation of the posting the video -- right? It's</p> <p>15 the filming.</p> <p>16 A Secretly filmed.</p> <p>17 MR. HARDER: Objection to form.</p> <p>18 A So -- okay. Now that I'm reading -- when I</p> <p>19 previously answered your question, I didn't read</p> <p>20 the first line of that page which says: "Now, we</p> <p>21 will ask you some questions about your opinions</p> <p>22 with respect to the situation described."</p> <p>23 So I'd like to revise my answer to the</p> <p>24 previous question. The intention is that the</p>
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<p>1 say no. And if they said no, then they would be</p> <p>2 taken back to the previous page where they can</p> <p>3 change it. They can revise it.</p> <p>4 So I did that in an effort to increase the</p> <p>5 validity of the responses and to make sure they</p> <p>6 really understood the number that they were</p> <p>7 giving, and that they put in the number that they</p> <p>8 intended to put in.</p> <p>9 Q Let's turn to the next page. So once people got</p> <p>10 through the comprehension questions, answered</p> <p>11 those correctly, they then got taken to a page.</p> <p>12 It said, "Now, we'll ask you some questions about</p> <p>13 your opinions with respect to the situation</p> <p>14 described." Right? You see that on the page?</p> <p>15 A Yes.</p> <p>16 Q It then says, "Again, imagine that you were the</p> <p>17 person in the situation, i.e. imagine that you are</p> <p>18 the famous person who has been secretly filmed</p> <p>19 having sex with your acquaintance in their private</p> <p>20 home. Please rate the extent to which, if at all,</p> <p>21 your privacy has been violated."</p> <p>22 You see where I'm at?</p> <p>23 A Yes.</p> <p>24 Q And that point, that's the scroller that you were</p>	<p>1 question on this page is with respect to the</p> <p>2 situation described.</p> <p>3 Q How do you know the respondents were rating that</p> <p>4 situation as opposed to the situation you said</p> <p>5 first, which was the filming?</p> <p>6 A I don't know. I can't get in their minds.</p> <p>7 Q Then the survey goes on to these -- on page 15</p> <p>8 here. After they do the qualitative thing, it</p> <p>9 says: Again, imagine that representation -- "that</p> <p>10 a representative from the website that put the sex</p> <p>11 video online shows up at your doorstep. This</p> <p>12 person has come to write you a check to compensate</p> <p>13 you for the situation."</p> <p>14 What situation is that referring to?</p> <p>15 A It refers to the situation that starts on page 12</p> <p>16 that says: "Please imagine the following."</p> <p>17 That's the situation it refers to.</p> <p>18 And I should add that on the Intro screen</p> <p>19 where it says: Welcome. It says to people that</p> <p>20 they're going to be asked to complete a series of</p> <p>21 questions or tasks "for each of two different</p> <p>22 situations. You will be presented" -- and the</p> <p>23 sequence says, "you will first be presented with a</p> <p>24 description the situation." Okay. So that's the</p>

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<p>1 first thing that's going to happen, is what</p> <p>2 they're told. Then they click next, and then</p> <p>3 they're shown a situation.</p> <p>4 So then it is -- the next page after the</p> <p>5 situation says: "Answer the following questions</p> <p>6 about the situation that was described to you on</p> <p>7 the previous page."</p> <p>8 So there is sufficient -- there's reference</p> <p>9 to the scenario on that page as the situation</p> <p>10 throughout the survey. So that is the intention,</p> <p>11 is to answer the question with respect to the</p> <p>12 situation.</p> <p>13 Q And how do you know if people think that they're</p> <p>14 supposed to be getting compensated for the</p> <p>15 filming, or the posting, or both?</p> <p>16 A I don't know about the inferences participants are</p> <p>17 making; what they may or may not have made.</p> <p>18 Q It continues on and says that -- "We understand</p> <p>19 that it may be difficult to answer this question."</p> <p>20 But ultimately, the survey did require an</p> <p>21 answer to that question. People -- did you have</p> <p>22 anybody drop out?</p> <p>23 A I don't think we did. I think that that was</p> <p>24 required, but I would have to check back to be a</p>	<p>1 A There are better and worse ways of doing that.</p> <p>2 But the bottom line is, it's still more</p> <p>3 complicated and has the potential to confuse</p> <p>4 relative to a more simple scenario.</p> <p>5 Q Then in these next three paragraphs here on page</p> <p>6 16, they say -- I understand it starts with the</p> <p>7 scenario of one person having viewed it, but the</p> <p>8 questions from the footnotes, I understand also</p> <p>9 were generally the same except for with 7 million</p> <p>10 in the other scenario. So the rest of the text</p> <p>11 were the same -- correct?</p> <p>12 MR. HARDER: Objection to the form.</p> <p>13 Q This says, "For starters, we'd like you to specify</p> <p>14 what the compensation should be for one person</p> <p>15 having viewed the video. That is" -- you know,</p> <p>16 and then it continues on. Then there is a</p> <p>17 footnote, 16, that says, "In the viewership, 7</p> <p>18 million versions, all mentions" -- it was</p> <p>19 replaced, right?</p> <p>20 A Um hmm. Yes.</p> <p>21 Q So otherwise though, the text is the same.</p> <p>22 MR. HARDER: Objection to the form.</p> <p>23 Q Right. "For starters, we'd like you to specify</p> <p>24 what compensation should be for 7 million people</p>
<p>1 hundred percent certain. At any rate, they can</p> <p>2 still specify zero.</p> <p>3 Q Why didn't you ask people to apportion</p> <p>4 compensation between filming and posting?</p> <p>5 MR. HARDER: Objection to the form. Vague</p> <p>6 and ambiguous, the word "portion" or "apportion."</p> <p>7 A I don't know.</p> <p>8 Q All right. Going on down on page 16.</p> <p>9 A I can see off the top -- I can see a danger in</p> <p>10 doing that, which would be confusing to people,</p> <p>11 and my error alarm bells go off when I think of</p> <p>12 that. I don't know why I made that specific</p> <p>13 choice, but that would, in my opinion, add</p> <p>14 complexity and possibly confusion, increasing</p> <p>15 error.</p> <p>16 Q How.</p> <p>17 A How? So if people are confused about what</p> <p>18 apportioning means, that is confusing; then that</p> <p>19 can cause them to give numbers that are not</p> <p>20 meaningful, that don't reflect their true</p> <p>21 valuations or true preferences.</p> <p>22 Q What if you had said -- asked for fair</p> <p>23 compensation for filming, and then separately</p> <p>24 asked for fair compensation for posting?</p>	<p>1 having viewed the video."</p> <p>2 A For starters -- where is this "for starters"?</p> <p>3 Q On 16. Very top.</p> <p>4 A At the very top, okay. "For starters, we'd like</p> <p>5 you to specify what the compensation should be for</p> <p>6 one person having viewed the video."</p> <p>7 Q For the one that -- for the set of respondents who</p> <p>8 dealt with 7 million from the start, it would have</p> <p>9 said something similar, but instead of saying one</p> <p>10 person, said 7 million.</p> <p>11 A Yes.</p> <p>12 MR. HARDER: Just for clarification, the</p> <p>13 footnote says: "One stranger" was replaced with</p> <p>14 "approximately 7 million people."</p> <p>15 MR. BERRY: Thank you. Appreciate you</p> <p>16 pointing that out.</p> <p>17 BY MR. BERRY:</p> <p>18 Q That is what my question intended to be.</p> <p>19 A Okay.</p> <p>20 Q But otherwise, the survey questions and text is</p> <p>21 the same -- correct?</p> <p>22 A Now I'm confused.</p> <p>23 MR. HARDER: Just explain to him how you did</p> <p>24 the survey with respect to page 16,</p>
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<p>1 differentiating the one person versus the 7 2 million. 3 A Um hmm. So one person -- instead of it saying 4 "one person" in the 7 million version, it would 5 say, "approximately 7 million people." 6 Q Okay. But otherwise, the text was the same. 7 A Yeah. I mean the number -- the key difference is 8 the one versus 7 million. 9 Q Okay. So then in the next sentence, it asks, 10 "what would be the amount you would deem as fair 11 compensation" -- it continues on. The next 12 paragraph again mentions the word "fair 13 compensation." 14 A Um hmm. 15 Q The following paragraph talks about "fair amount 16 of money," and then the last one, "the most 17 appropriate" -- right? Do you see those? So it 18 says fair compensation, fair compensation, fair 19 amount, most appropriate. 20 A Um hmm. 21 Q In those phrases, what does "fair" mean? 22 A The sum of money such that you would feel 23 adequately compensated. 24 Q Okay. And it was up to the respondents to</p>	<p>1 I think that that would actually make people more 2 likely to think of this as -- to factor in 3 extraneous constructs like punishment. 4 Q Would respondents' valuations have changed if they 5 were told that the person in the scenario had 6 accepted under \$10,000 as fair compensation from 7 the individual who secretly did the filming? 8 A I don't know. 9 Q Would the respondents' valuations have changed if 10 they were told that the person who did the filming 11 kept a video in an unlocked desk? 12 A I don't know. 13 Q Would their valuations have changed if they were 14 told that the person who did the filming did 15 nothing to secure the video? 16 A I don't know. 17 Q Why didn't you include that information? 18 MR. HARDER: Object to the form. 19 A My intention in creating this survey was to come 20 up with -- describe the scenario in a 21 reasonable -- to be a reasonable depiction of what 22 happened, balancing the trade-offs of survey 23 design, one of which being not introducing too 24 much information that would have, in my opinion,</p>
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<p>1 determine what factors to consider and what was 2 fair -- right? 3 A So I asked the respondents what they thought is a 4 fair and reasonable compensation if they were in 5 the situation, and that's what they answered. 6 Q Okay. Could respondents have considered their 7 sense of justice in determining what was fair? 8 MR. HARDER: Objection to the form. 9 A I don't know what respondents -- what was going on 10 in their mind. 11 Q Okay. Could respondents have considered the need 12 to punish the person who posted the video in 13 determining what was fair? 14 MR. HARDER: Objection to form. 15 A I don't know what was going on in their mind. 16 Q You didn't tell them to not factor in punishment 17 though -- right? 18 MR. HARDER: Objection to form, and asked 19 and answered many times. 20 A There is actually potentially a danger if you say 21 to someone, don't think of a white elephant -- 22 they're going to think of a white elephant. 23 So similarly, if I had said -- explicitly 24 drawn attention to the things you're asking about,</p>	<p>1 reduced the validity of the data. 2 Q Would it have affected people's valuation -- 3 sorry. Would it have affected respondents' 4 valuations if they had been told the person in the 5 video had the opportunity to buy this video for 6 \$300,000 so that more footage would not be 7 disseminated? 8 A I don't know. 9 Q Would -- your prior research and experience in the 10 field of behavioral decision-making say -- suggest 11 that people's valuations would have been changed 12 knowing that the person in the scenario had 13 accepted under \$10,000 as compensation from the 14 individual who secretly filmed him? 15 MR. HARDER: Asked and answered. 16 A I don't know. 17 Q From your prior research and study in this field, 18 you wouldn't know? 19 A Say the question again, please. 20 Q Based on your expertise, your prior experience, 21 surveys, research, studies you've done on 22 behavioral decision-making, would it have affected 23 respondents' valuations if they were told that the 24 person in the scenario had accepted less than</p>

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<p>1 \$10,000 as compensation from the individual who</p> <p>2 secretly filmed him?</p> <p>3 MR. HARDER: Objection to form.</p> <p>4 A Yeah, I don't know. It's a pretty specific</p> <p>5 scenario, so I'm not comfortable pontificating</p> <p>6 what might or might not happen. I don't know.</p> <p>7 Q In general, when people are told about how much</p> <p>8 something has cost, or what they've been willing</p> <p>9 to accept, does that affect what they're willing</p> <p>10 to accept in other scenarios?</p> <p>11 MR. HARDER: Calls for speculation.</p> <p>12 Objection to form.</p> <p>13 A It's so broad that I don't feel comfortable</p> <p>14 answering it.</p> <p>15 Q All right.</p> <p>16 Let's go back to the comprehension questions</p> <p>17 for a second. And this is on page 14 of the</p> <p>18 report -- right?</p> <p>19 A Yup.</p> <p>20 Q So the first questions says: "Which, if any, of</p> <p>21 the following statements is true?</p> <p>22 "You're asked to imagine that you are a very</p> <p>23 famous American sports figure" is the right</p> <p>24 answer -- right?</p>	<p>1 are used in a video that is sold online by the</p> <p>2 country's leading celebrity pornography website?</p> <p>3 A I don't know.</p> <p>4 Q Question number two: "Which, if any, of the</p> <p>5 following statements is true?</p> <p>6 "You were asked to imagine that you are</p> <p>7 secretly filmed having sex" -- right? That's the</p> <p>8 correct answer, A -- right?</p> <p>9 A Yes.</p> <p>10 Q B. "You were asked to imagine that you posted an</p> <p>11 illicit video online." That's incorrect, right?</p> <p>12 A Yes.</p> <p>13 Q Okay.</p> <p>14 A It's incorrect because according to the scenario,</p> <p>15 this is not -- this information is not what</p> <p>16 happened. Or this is not in the scenario.</p> <p>17 Q Okay. Would it have affected respondents'</p> <p>18 valuations if they were told that the person in</p> <p>19 the scenario discussed on national radio how long</p> <p>20 his penis was?</p> <p>21 MR. HARDER: Argumentative.</p> <p>22 A I don't know.</p> <p>23 MR. HARDER: It's harassing the witness.</p> <p>24 It's argumentative.</p>
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<p>1 A Correct.</p> <p>2 Q So --</p> <p>3 A For certain scenarios.</p> <p>4 Q For this particular scenario.</p> <p>5 A Yeah.</p> <p>6 Q Okay. So it would not be correct to say you were</p> <p>7 asked to imagine that you sell pornography for a</p> <p>8 living -- right? That was an incorrect answer?</p> <p>9 A That was incorrect.</p> <p>10 Q Would it have affected respondents' valuations if</p> <p>11 the scenario had said that the person did sell</p> <p>12 pornography for a living?</p> <p>13 A I don't know.</p> <p>14 Q Well, would it have affected respondents'</p> <p>15 valuations if they were told that the person in</p> <p>16 the scenario had appeared in a pornographic</p> <p>17 magazine before?</p> <p>18 A I don't know.</p> <p>19 Q Would it have affected their valuations if people</p> <p>20 knew that he had appeared on a pornographic</p> <p>21 magazine fondling women's naked breasts?</p> <p>22 A I don't know.</p> <p>23 Q Would it have affected respondents' valuations if</p> <p>24 they were told that the person's voice and image</p>	<p>1 Q Did you know that before the deposition?</p> <p>2 A Did I know --</p> <p>3 Q Whether Terry Bollea discussed the length of his</p> <p>4 penis on national radio?</p> <p>5 MR. HARDER: It's harassing. It's</p> <p>6 unprofessional. It assumes facts not in evidence.</p> <p>7 It assumes irrelevant things. It's just -- come</p> <p>8 on, Mike. Really?</p> <p>9 A I don't know.</p> <p>10 Q Is it --</p> <p>11 MR. HARDER: If you're out of real</p> <p>12 questions, I mean, can we just wrap it up?</p> <p>13 Q As far as sensitive information that people are</p> <p>14 willing to disclose, would it be among highly</p> <p>15 sensitive information to disclose where somebody</p> <p>16 likes to ejaculate when they have sex?</p> <p>17 MR. HARDER: Stop. I'd like to take a</p> <p>18 break, and I'd like you to write a check for her</p> <p>19 right now, and then your second check could be at</p> <p>20 the end of this, but I'd like you to write her a</p> <p>21 check right now.</p> <p>22 MR. BERRY: I'm happy to write her a check,</p> <p>23 Charles.</p> <p>24 MR. HARDER: Fine. Let's go off the record</p>

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<p>1 and write a check right now, and you can write her</p> <p>2 the second check at the end of this.</p> <p>3 MR. BERRY: We're getting towards the end,</p> <p>4 and I'm happy to write you a check now or when</p> <p>5 we're done in a half hour.</p> <p>6 MR. HARDER: I'd like it now.</p> <p>7 VIDEO OPERATOR: The time is now 5:05. We</p> <p>8 are off the record.</p> <p>9 (Off the record.)</p> <p>10 VIDEO OPERATOR: The time is 5:14. We are</p> <p>11 now back on the record.</p> <p>12 BY MR. BERRY:</p> <p>13 Q We're almost done. I want to jump again to the</p> <p>14 end of your actual report here on page 9. Kind of</p> <p>15 end where we began in some respects.</p> <p>16 There's these two paragraphs here where you</p> <p>17 mention the \$7 million number and the \$10 million</p> <p>18 number. Do you see those two paragraphs?</p> <p>19 A Yes.</p> <p>20 Q The 7 million compensation value and the 10</p> <p>21 million compensation value were answers to the</p> <p>22 same questions -- right?</p> <p>23 A So they, they were -- in both cases, participants</p> <p>24 were asked to provide a fair and reasonable</p>	<p>1 Q The questions that they were asked in between</p> <p>2 differed also. One group had a series of</p> <p>3 questions in between. One of the group did not.</p> <p>4 Right?</p> <p>5 A So the group that was just asked 7 million only</p> <p>6 was first asked about that, and the group that was</p> <p>7 asked for -- the group that supplied the 10</p> <p>8 million number was first asked to assume one</p> <p>9 person, and then later on -- and then other --</p> <p>10 assuming different numbers of people, and then</p> <p>11 finally 7 million. So that 10 million</p> <p>12 represents -- it's my understanding that it</p> <p>13 represents the -- those people, what they think a</p> <p>14 fair -- the median amount of money deemed to be</p> <p>15 fair and reasonable compensation, assuming 7</p> <p>16 million people had seen it, to be 10 million.</p> <p>17 Q And the difference in these two values, the 7</p> <p>18 million median and the 10 million is roughly 40</p> <p>19 percent, right, give or take a few percent?</p> <p>20 A So --</p> <p>21 Q 10 million is roughly 40 percent more than 7</p> <p>22 million, more or less?</p> <p>23 MR. HARDER: Objection to form.</p> <p>24 A 10 million is roughly 40 percent more than 7</p>
<p>1 compensation, what they believe to be the fair and</p> <p>2 reasonable compensation value assuming that 7</p> <p>3 million people had seen the video.</p> <p>4 Q Right. So both the \$7 million number and the \$10</p> <p>5 million came from that same basic question.</p> <p>6 Right?</p> <p>7 A Yes.</p> <p>8 Q The only difference in the valuation -- the only</p> <p>9 difference in the scenarios was the order in which</p> <p>10 the question was asked -- right? For one group of</p> <p>11 people, it was asked first. The second group of</p> <p>12 people, it was asked after going through the</p> <p>13 different levels of people.</p> <p>14 A I wouldn't say that's the only thing that differed</p> <p>15 because one group was first asked if one person,</p> <p>16 and then later on they were asked to specify,</p> <p>17 assuming different numbers of people, and then 7</p> <p>18 million.</p> <p>19 Whereas, the group, I believe, that is</p> <p>20 providing the 7 million estimate was asked up</p> <p>21 front what 7 million people were -- so there</p> <p>22 was -- it's not just the ordering. There were</p> <p>23 slightly different things that happened in</p> <p>24 between.</p>	<p>1 million?</p> <p>2 Q Yes.</p> <p>3 A Okay. If that's true. Sure.</p> <p>4 Q If you were measuring stable privacy valuations,</p> <p>5 wouldn't the question of what the fair and</p> <p>6 reasonable compensation value of the 7 million</p> <p>7 view scenario be the same regardless of the</p> <p>8 different ways that the surveys were taken?</p> <p>9 MR. HARDER: Objection to form.</p> <p>10 A As I said earlier, there is no one valuation of</p> <p>11 privacy that pertains to all situations and all</p> <p>12 people. In this survey, what I did was I</p> <p>13 constrained the situation, constrained all the</p> <p>14 contextual factors that can affect people's</p> <p>15 valuations, constrained it to be -- to reflect the</p> <p>16 situation that Terry Bollea faced. Once within</p> <p>17 that situation, I am reasonably -- you know, I</p> <p>18 think there are suggestions in the data that the</p> <p>19 numbers that we've been given that have come out</p> <p>20 of this data analysis are reasonably valid.</p> <p>21 Q Do you have any doubt in them whatsoever?</p> <p>22 MR. HARDER: Objection to form.</p> <p>23 A I don't know what you mean by "any doubt in them</p> <p>24 whatsoever."</p>

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<p>1 Q Well, in What is Privacy Worth, you point out that 2 different people accepted these different shopping 3 cards based on the order of presentment, and 4 basically said that you couldn't take a whole lot 5 out of the actual valuation decisions because it 6 seemed to be affected by the order of the 7 questions and whatnot, and that there weren't 8 stable or internally-consistent privacy 9 preferences -- right?</p>	<p>1 object to the hypothetical, I understand. Yes, it 2 is a jury that's not a real jury. It's something 3 that lawyers use to evaluate their cases. It's 4 kind of like a focus group?</p>
<p>10 MR. HARDER: Objection to form.</p>	<p>5 A Kind of like a what? Focus group.</p>
<p>11 A So I already stated what the conclusion of that 12 paper is. So I don't know if I need to repeat it 13 now, but so it's -- the gist is that there's not 14 one single valuation of privacy that pertains to 15 all contexts, and all people, and all things. 16 It's -- I defer to my previous statement because I 17 was much fresher at the time.</p>	<p>6 Q Focus group where you pull together a group of 7 people, present the facts of a case, ask the jury 8 whether they would find for the plaintiff or the 9 defendant, and if it's for the plaintiff, how much 10 they would award in damages. Other than what 11 you've done, being a survey, rather than an 12 in-person focus group like that, what's the 13 difference between what you've done and what I 14 just described as a mock jury?</p>
<p>18 Q In the first group that's mentioned on this page, 19 with the 7 million -- I just want to make sure I 20 understand the scenarios here. On page 9 of the 21 report, that first paragraph, those folks were not 22 asked about different ranges of people who viewed 23 it -- right? That was only on this second group 24 in the next paragraph? So you didn't ask 7</p>	<p>15 MR. HARDER: Objection to the form.</p>
<p>Page 270</p>	<p>16 A What's the similarity?</p>
<p>1 million people and then descend down.</p>	<p>17 Q Present the facts of the case, ask whether they 18 would find for the plaintiff or the defendant, and 19 what the compensation should be. What's the 20 difference?</p>
<p>2 MR. HARDER: Objection to form.</p>	<p>21 MR. HARDER: Objection to the form.</p>
<p>3 Q 7 million, 2.5 million, 1 million?</p>	<p>22 A It's -- I mean they're different -- they're 23 different methodologies. They're different --</p>
<p>4 MR. HARDER: Objection to the form.</p>	<p>24 Q Right. Other than it being a survey and another</p>
<p>5 A Correct.</p>	<p>Page 272</p>
<p>6 Q I just wanted to make sure that I understand the</p>	<p>1 being in person, what's the difference?</p>
<p>7 scenarios.</p>	<p>2 MR. HARDER: Objection to form.</p>
<p>8 MR. BERRY: Can we take just a two minutes</p>	<p>3 Argumentative.</p>
<p>9 break?</p>	<p>4 A There are lots of differences. I mean, what is 5 the difference between -- can you restate the 6 question, please?</p>
<p>10 MR. HARDER: Sure.</p>	<p>7 Q What's the difference between what I described to 8 you as a mock jury and what you've done, other 9 than that one is a survey and the other one is 10 perhaps an in-person presentation?</p>
<p>11 VIDEO OPERATOR: The time is now 5:22. We</p>	<p>11 A Yeah.</p>
<p>12 are now off the record.</p>	<p>12 MR. HARDER: Object to the form.</p>
<p>13 (Off the record.)</p>	<p>13 A I guess it's -- I don't really feel comfortable 14 answering that question because it's, like, 15 asking, like, what are the differences and 16 similarities between socialism and a piano. Like 17 it's -- like I don't know how to answer that.</p>
<p>14 VIDEO OPERATOR: The time is 5:23. We are</p>	<p>18 Sorry.</p>
<p>15 now back on the record.</p>	<p>19 Q I'm impressed you came up with that so quickly.</p>
<p>16 BY MR. BERRY:</p>	<p>20 MR. HARDER: You see now why they gave her a</p>
<p>17 Q Do you know what a mock jury is?</p>	<p>21 Ph.D.</p>
<p>18 A I have an impression, but why don't you tell me</p>	<p>22 MR. BERRY: She's smarter than I am.</p>
<p>19 what it is.</p>	<p>23 Q If I sat in a room with a hundred people who</p>
<p>20 Q Tell me your impression and I'll let you know if</p>	<p>24 answered the scenario just about imagining 7</p>
<p>21 I'm thinking of something different.</p>	
<p>22 A It would be a jury that is not a real jury.</p>	
<p>23 Q Right. Okay. Yes. So that's generally right.</p>	
<p>24 Given in a nutshell -- and Charles, if you want to</p>	

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<p>1 million people viewed this, right -- I sat in the</p> <p>2 room and I read to them the scenario that I read.</p> <p>3 A You read to them what?</p> <p>4 Q Read to them the scenario that's on page 13 of</p> <p>5 your report.</p> <p>6 A Who is "them"?</p> <p>7 Q The hundred people sitting in a room.</p> <p>8 A Is that a mock jury?</p> <p>9 Q I'm just -- forget --</p> <p>10 A We're off the mock jury.</p> <p>11 Q Don't want to talk about pianos or socialism. I</p> <p>12 want to talk about the survey for a minute.</p> <p>13 A That will be drinks later.</p> <p>14 Q Right. Right. So I'm trying to find a connection</p> <p>15 between the two. I'll get there. So in one of</p> <p>16 your scenarios, the hundred people were asked from</p> <p>17 the outset: 7 million people viewed the sex tape.</p> <p>18 Just considering that portion of the survey -- if</p> <p>19 I had a hundred people in a room -- let's say we</p> <p>20 went to Harvard's business school and sat in one</p> <p>21 of the large classrooms, and I had a hundred</p> <p>22 randomly-selected people, and they came in, and I</p> <p>23 said to them exactly what you wrote on page 13:</p> <p>24 "Imagine that you are a very famous American</p>	<p>1 like you did here, that would eliminate part of</p> <p>2 the problem, but there would still be in person --</p> <p>3 right?</p> <p>4 A What's the problem?</p> <p>5 Q Well, the difference --</p> <p>6 A I don't understand what problems.</p> <p>7 Q Sorry, the difference -- one of the differences.</p> <p>8 I misspoke -- when you mentioned administration.</p> <p>9 What would some of the other differences be?</p> <p>10 MR. HARDER: Objection to form.</p> <p>11 A They can see you asking the questions. The</p> <p>12 questions are said verbally. Yeah. Those are --</p> <p>13 there are different ways of conducting research</p> <p>14 and collecting data.</p> <p>15 Q Right. Other than that administrative aspect of</p> <p>16 it, what's different?</p> <p>17 A I mean, my -- I don't know that it's even possible</p> <p>18 to exhaustively state all of the differences</p> <p>19 between those, so if you -- like, how about if you</p> <p>20 come up with a dimension, and you can ask me if I</p> <p>21 think that they're similar on that dimension or</p> <p>22 not. But like --</p> <p>23 Q Right. I mean, the dimension is, hundred people</p> <p>24 in a room.</p>
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<p>1 sports figure. For example, when you walk out in</p> <p>2 public, many people instantly recognize you," and</p> <p>3 I run through your survey, through that scenario,</p> <p>4 ending with, "please make sure you understand the</p> <p>5 situation," and then I ask them to assess the</p> <p>6 valuation of -- the qualitative valuation of the</p> <p>7 privacy invasion, and then I ask them what would</p> <p>8 be fair and appropriate compensation, what would</p> <p>9 the difference be between that exercise and what</p> <p>10 you've done?</p> <p>11 MR. HARDER: Objection to the form of the</p> <p>12 question.</p> <p>13 A I mean, there are lots of differences.</p> <p>14 Q What?</p> <p>15 A Administration method. I mean, I -- I can't</p> <p>16 delineate all of the -- like I -- I don't know how</p> <p>17 to answer that question. It's -- it's -- like why</p> <p>18 is the onus on saying how they are different and</p> <p>19 not saying how they are similar? I don't --</p> <p>20 Q I'm just asking from your perspective.</p> <p>21 Administration method -- so in one, people are in</p> <p>22 person and somebody's talking -- right?</p> <p>23 A Yes.</p> <p>24 Q If I gave folks computers to do their responses</p>	<p>1 A Okay.</p> <p>2 Q I read the scenario, and rather than clicking</p> <p>3 through on the computer, I read the questions to</p> <p>4 them. They're the same questions that you've</p> <p>5 asked. What's the difference?</p> <p>6 MR. HARDER: Objection to form. Also --</p> <p>7 leave it at that.</p> <p>8 A I've already attempted to answer the question.</p> <p>9 Q Right. And I mean, you mentioned administrative</p> <p>10 differences. You said there might be others. I'm</p> <p>11 asking: Are there others? Can you think of any?</p> <p>12 A Off the top of my mind, I can't delineate all the</p> <p>13 ways that they're different. So what I propose is</p> <p>14 if there is a certain attribute that you are</p> <p>15 interested in knowing about whether they're the</p> <p>16 same or different in your mind, you could ask it</p> <p>17 to me and I could tell you what my opinion is,</p> <p>18 but --</p> <p>19 Q But if I asked those people sitting there, you</p> <p>20 know, after I read through the scenario, and I</p> <p>21 asked them the question: First please rate the</p> <p>22 extent to which, if at all, your privacy has been</p> <p>23 violated, and they have a computer in front of</p> <p>24 them, and the same scroll bar, what's the</p>

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<p>1 difference then?</p> <p>2 A I don't know what the -- I'm not sure what you're</p> <p>3 saying. Can you ask the question again, please.</p> <p>4 Q Well, you asked me to point to different</p> <p>5 attributes.</p> <p>6 A Yes, okay.</p> <p>7 Q So say that I've gone through this. We have the</p> <p>8 hundred people sitting there.</p> <p>9 A Yes.</p> <p>10 Q I read through the scenario.</p> <p>11 A Yes.</p> <p>12 Q I read the same stuff that is in the text of your</p> <p>13 survey, and I get to the question, and I say:</p> <p>14 Please rate the extent to which, if at all, your</p> <p>15 privacy had been violated, and there is a scroll</p> <p>16 bar on the screen just like your scroll bar, and</p> <p>17 people can adjust it however they think is</p> <p>18 appropriate -- what's the difference at that</p> <p>19 point?</p> <p>20 MR. HARDER: Objection to form.</p> <p>21 A So if you had a hundred people here, you could</p> <p>22 have them each sitting in front of a computer, and</p> <p>23 they could indicate on a scroll bar, which is --</p> <p>24 which you could have the same sort of scroll bar.</p>	<p>1 Q Right, but other than that, can you think of any</p> <p>2 differences?</p> <p>3 MR. HARDER: Objection to form.</p> <p>4 A Well, the lighting might be different. There's</p> <p>5 any -- there's all kinds of ways in which that</p> <p>6 could be different from the situation. And</p> <p>7 there's ways in which it's similar at the same</p> <p>8 time.</p> <p>9 Q Okay. Because again, going back again to, I</p> <p>10 guess, where we started: The Qualtrics scenario.</p> <p>11 People took the survey wherever they had a</p> <p>12 computer or laptop or tablet. In my scenario, the</p> <p>13 people would just be sitting in the room and would</p> <p>14 have whatever lighting was there as opposed to</p> <p>15 wherever they happened to be taking the Qualtrics</p> <p>16 survey -- right? That's what you're talking</p> <p>17 about; whatever physical environmental differences</p> <p>18 there are.</p> <p>19 MR. HARDER: Objection to form. Misstates</p> <p>20 her prior testimony.</p> <p>21 A I don't think -- did you just ask me a new</p> <p>22 question?</p> <p>23 Q Yeah, I'm just trying to understand -- you said,</p> <p>24 like ,the lighting might be different. There</p>
<p data-bbox="769 1045 885 1081">Page 278</p> <p>1 You could just have one that's similar looking and</p> <p>2 have people on computers, but there is other ways</p> <p>3 you could do it too.</p> <p>4 Q No, but I'm just asking the difference between</p> <p>5 what I've described and the survey. Would there</p> <p>6 be any other difference other than the in-person</p> <p>7 description?</p> <p>8 MR. HARDER: Objection to form.</p> <p>9 A I bet there are. Yeah.</p> <p>10 Q Okay. What about the -- same question. Let's say</p> <p>11 the people are comfortable doing the drill-down.</p> <p>12 It then asked them the question that you have</p> <p>13 here: "What's the fair and adequate compensation</p> <p>14 if 7 million people viewed the sex video?" I</p> <p>15 would do it the same way and have the same scroll</p> <p>16 bar.</p> <p>17 A Okay.</p> <p>18 Q What would the difference be then for that aspect?</p> <p>19 A So you're asking me if you have a hundred people</p> <p>20 sitting here, and each person is at a computer</p> <p>21 terminal, and you say verbally the question, and</p> <p>22 they do their answer -- I mean, it's not the same</p> <p>23 administration as the way it was done on</p> <p>24 Qualtrics.</p>	<p data-bbox="1354 1045 1469 1081">Page 280</p> <p>1 might be other differences, and I'm asking: The</p> <p>2 differences you're talking about are the</p> <p>3 environmental conditions in which you're</p> <p>4 completing the -- giving your responses to the</p> <p>5 questions.</p> <p>6 A Um hmm.</p> <p>7 Q One, in the Qualtrics, people are wherever they</p> <p>8 happened to be when they were taking the survey --</p> <p>9 right?</p> <p>10 A Yeah.</p> <p>11 Q And in my scenario, they are sitting in the room</p> <p>12 that holds a hundred people -- right?</p> <p>13 MR. HARDER: In Boston, Massachusetts.</p> <p>14 Q Wherever they happen to be.</p> <p>15 A Wherever they are, okay.</p> <p>16 Q So you had mentioned lighting as a difference.</p> <p>17 I'm saying, like: What you're getting at there is</p> <p>18 environmental differences where the people are</p> <p>19 taking the survey.</p> <p>20 A Yeah.</p> <p>21 Q Right?</p> <p>22 A Yeah, but there's -- like, I wouldn't feel</p> <p>23 confident in my ability to exhaustively list all</p> <p>24 of the differences, and all of the similarities,</p>

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<p>1 and all the categories of differences and</p> <p>2 similarities right here. Like I don't have</p> <p>3 anything else to say about that.</p> <p>4 Q Okay. Has anything that we have discussed today</p> <p>5 changed the opinions that were offered in your</p> <p>6 report?</p> <p>7 A Hmm. Well, I want to correct the typo.</p> <p>8 Q With the thousands.</p> <p>9 A Yes. I mean, I would have to think about it, but</p> <p>10 off the top of my head, off the top of my head,</p> <p>11 no. But I would want to think about it because</p> <p>12 you said "anything." And this has been a really</p> <p>13 intense day.</p> <p>14 Q Do you plan to do any additional work on this</p> <p>15 case?</p> <p>16 A Well, I don't think so. I mean -- what do you</p> <p>17 mean by work?</p> <p>18 Q Anything that you would spend time working on your</p> <p>19 opinion in this case or, you know --</p> <p>20 A Pontificating.</p> <p>21 Q Right.</p> <p>22 A So --</p> <p>23 Q Anything that you would bill Charles for doing.</p> <p>24 MR. HARDER: Are you including trial or</p>	<p>1 Q Right. But sitting here today, you don't intend</p> <p>2 to express any other opinions at trial other than</p> <p>3 what's in your report and what we've already</p> <p>4 talked about here today.</p> <p>5 A Well, if I was asked the same questions, then I</p> <p>6 don't think I would give different -- I don't</p> <p>7 think I would have different opinions, but I can't</p> <p>8 predict the future.</p> <p>9 MR. BERRY: I have no further questions.</p> <p>10 VIDEO OPERATOR: The time is 5:38. This is</p> <p>11 the end of tape number 4 as well as the</p> <p>12 deposition. We are now off the record.</p> <p>13 (Whereupon the deposition concluded at</p> <p>14 5:38 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 excluding trial?</p> <p>2 MR. BERRY: Yeah, anything.</p> <p>3 Q That's why I said, do you plan on doing any</p> <p>4 additional work on this case.</p> <p>5 A If I'm called to trial, then I intend to go to</p> <p>6 trial.</p> <p>7 Q Okay.</p> <p>8 Other than that, sitting here right now, do</p> <p>9 you plan to do anything else?</p> <p>10 A I'm going to make this change to the report. I'm</p> <p>11 going to send you the stuff that I need to send</p> <p>12 you. Other than that, I can't -- I don't</p> <p>13 anticipate anything else. But there could be</p> <p>14 phone calls I need to have or --</p> <p>15 Q Other than what's in your report, and what we've</p> <p>16 discussed today, do you have any other opinions</p> <p>17 about this litigation?</p> <p>18 A No. My report captures my opinion.</p> <p>19 Q Other than what's in your report and what we've</p> <p>20 discussed today, do you intend to express any</p> <p>21 other opinions if called to testify at trial?</p> <p>22 A I guess it depends on the questions I am asked.</p> <p>23 Like my opinions are going to be consistent with</p> <p>24 my report.</p>	<p>1 CERTIFICATE</p> <p>2 COMMONWEALTH OF MASSACHUSETTS</p> <p>3 MIDDLESEX, SS.</p> <p>4</p> <p>5 I, Lisa McDonald Valdario, Registered</p> <p>6 Professional Reporter and Notary Public, in</p> <p>7 and for the Commonwealth of Massachusetts, do</p> <p>8 hereby certify that:</p> <p>9 LESLIE JOHN, Ph.D., the witness whose deposition</p> <p>10 is hereinbefore set forth, was duly sworn by me,</p> <p>11 that I saw a picture identification for her</p> <p>12 in the form of her website picture identification,</p> <p>13 and that the foregoing transcript is a true and</p> <p>14 accurate transcription of my stenotype notes to the</p> <p>15 best of my knowledge, skill and ability.</p> <p>16 I further certify that I am not related to</p> <p>17 any of the parties in this matter by blood or</p> <p>18 marriage and that I am in no way interested in</p> <p>19 the outcome of this matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto set my</p> <p>21 hand and notarial seal this 9th day of May,</p> <p>22 2015.</p> <p>23</p> <p>24</p> <p>18 Lisa McDonald Valdario, RPR, RMR</p> <p>19 Notary Public</p> <p>20 My commission expires: June 15, 2018</p> <p>21</p> <p>22 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT</p> <p>23 DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME</p> <p>24 BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL</p> <p>AND/OR DIRECTION OF THE CERTIFYING REPORTER.</p>

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25 I have read the foregoing transcript of my
26 deposition, and except for any corrections or
27 changes noted above, I hereby subscribe to the
28 transcript as an accurate record of the
29 statements made by me.

30 -----
31 LESLIE JOHN, Ph.D.