

Government's Exhibit A



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VIA E-MAIL ONLY

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**In re: *United States v. Fortenberry*, C.D. Cal. case no. 2:21-cr-491-SB
Expert Notice as to Alan Castel, Ph.D.**

Dear Assistant United States Attorneys Jenkins, Har, and Buxton:

We write to provide notice of our intent to elicit at trial, under Federal Rule of Evidence 702, opinion testimony from Professor Alan Castel, Ph.D. His curriculum vitae, attached to the email by which we transmit this letter, sets forth his qualifications.

Professor Castel is an expert on the study of human memory, attention, and cognitive aging. A description of his research interests and selected publications can be found on his website.¹

Professor Castel's opinions will be based on a review of relevant audio recordings and transcripts in this case, as well as selected portions of the discovery and other material in this case. It will also be based on research conducted by Dr. Castel and other experts in his field, as well as experiments he conducted in his laboratory at the University of California Los Angeles.

Based on all the above sources, he will offer the following opinions in this case:

1. Popular perception of memory is often inaccurate

The processes of encoding and recalling memories are often less reliable than lay people tend to believe, especially for details of events. This is true for various reasons. To begin with, events and information are not necessarily stored in a literal way but are interpreted and then stored

¹ <https://www.psych.ucla.edu/faculty-page/castel/>



in light of existing memories, expectations, and schemas. Stored memories can also be malleable while they are retained after encoding and before a specific effort to recall them. And still other factors, such as stress and repeated questioning, can impede accurate retrieval of stored memories.

Relatedly, memory of details is driven in part by the *motivation to remember* them. Motivation to remember is considerably more effective when it arises before rather than after information is encoded. Yet people mistakenly tend to expect motivation to remember to be just as effective when it arises after information is encountered as when it arises beforehand.

Therefore, memory in general can be fallible in surprising and counter-intuitive ways, and a person's confidence in a memory does not necessarily correlate to accuracy of that memory.

2. Sources of encoding interference

As we get older, our memory fidelity and accuracy tend to decline, especially for details. Particularly as we gain experience and advance to middle age and beyond, we tend to perceive and remember more selectively. This helps to conserve scarce memory resources.

We also tend to retain and operate on only the simplest *gist* of information that is required to make a decision. For example, rather than recalling the details of a given conversation, we tend to recall the feeling evoked by that conversation or the conclusion reached afterward.

Memory is also *schema-driven*, meaning we tend to use background information from similar occurrences or experiences to fill in gaps in actual memory of a particular event.

Reliance on gist and schema tend to increase with experience and age. In addition, lapse of attention or divided attention can cause failure to encode even important information.

3. Memory erosion and contamination

Memory is transient; that is, it becomes less and less accessible with the passage of time and intervening events. That is true because forgetting some information is necessary to use available memory resources efficiently. In addition, recall of information previously recalled can be more heavily influenced by the content of a previous recall than by the initially stored memory.

Interference from other experiences and events calls can lead to difficulty recalling previous experiences and events. This is called "proactive interference." This can lead to forgetting, especially as we get older and have more experience to draw on.

Similarly, repeated questioning about an event can also alter or bias the memory of that event. Relatedly, we sometimes recall information but misattribute the source. For example, a person may accurately recall content of a conversation but believe it came from someone else.



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Congressman Fortenberry reserves the right to supplement this notice based on further investigation and review of discovery. He also reserves the right to elicit expert testimony regarding other matters that may arise during trial. Finally, the defense may further elicit from Prof. Castel additional opinions in rebuttal to testimony to be offered by the government.

Sincerely,

BIENERT KATZMAN LITTRELL WILLIAMS LLP

John L. Littrell
Ryan V. Fraser

A handwritten signature in black ink, appearing to be 'JL', written over the printed name of John L. Littrell.