EXHIBIT 46

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ELON MUSK, et al.,	:	CASE NO.
	:	4:24-CV-04722-
Plaintiffs	:	YGR
	:	
v.	:	
	:	
SAMUEL ALTMAN, et al.,	:	
	:	
Defendants.	:	

- HIGHLY CONFIDENTIAL -

- ATTORNEYS' EYES ONLY -

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October 8, 2025

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Videotaped hybrid deposition of HELEN TONER, taken pursuant to notice, was held at the law offices of 600 New Hampshire Avenue, NW, Washington, D.C., beginning at 11:11 a.m., on the above date, before Michelle L. Ridgway, a Registered Professional Reporter, Certified Court Reporter (NJ-CCR # XI02126), Certified Realtime Reporter, Certified Shorthand Reporter (CA-CSR # 14592), and Notary Public.

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Testimony of:

HELEN TONER

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practices?
A. Yes.
Q. And we'll get into specifics momentarily.
But in general terms, did you feel that Mr. Altman provided candid and complete information to you about OpenAI's safety practices?
A. No.
Q. Do you recall an incident when Mr. Altman told the OpenAI Board of Directors that the joint safety board had approved three enhancements to GPT-4 for release, when, in fact, only one of the three had been approved?
MR. CULLERTON: Object to the form. Leading.
THE WITNESS: I would amend the question to say "three different ways of releasing GPT-4." But otherwise, yes.
BY MR. KRY:
Q. When did that incident occur?
A. To the best of my recollection, that was December of 2022.
Q. When you talk about three different ways of releasing GPT-4, can you describe in more detail what you mean?

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A. To the best of my recollection, the three under consideration were the API, what they called "super assistant," and fine tuning.
So an API release would be comparable to how they had released many of their previous models, GPT-3, GPT-3.5, where there is a -- yeah, an API, application programming interface, that other programmers can use to access the model and build tools with it. That would be the most straightforward option.
As I understand it, the idea of "super assistant," I believe that essentially they referred to something like ChatGPT as a product, so a consumer-facing product. They may have meant something more elaborate. I'm not 100 percent sure.
And then fine-tuning would be releasing the model in a way that allows outside actors to fine-tune it. So that's technical jargon for, essentially, sort of slightly modifying the model to be more well suited to some tasks than others. And at the time there was significant uncertainty, from a safety perspective, about the potential risks of, in particular, releasing the fine-tuning capability.

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Because the safety case, the argument for why it was safe to release, relied on test results about things that the model could and could not do. And once you can fine-tune a model, that changes what it -- what it can and cannot do.
Q. What did Mr. Altman tell the board about the approval status of those three products by the -- by the deployment safety board?
MR. CULLERTON: Object to form.
THE WITNESS: To the best of my recollection, he either directly said or strongly implied that all three types of release had been approved by the DSB.
BY MR. KRY:
Q. In what context did Mr. Altman communicate that information?
A. At a in-person board meeting. We called it an onsite. It was an all-day board meeting at their offices.
Q. When did that board meeting occur?
A. To the best of my recollection, in December 2022.
Q. Did you take steps to verify the information that Mr. Altman had provided to the

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board?
A. Yes. I asked for the deployment safety board materials to review what had been approved and on what basis.
Q. To whom did you make that request?
A. I don't recall.
Q. Was it to Mr. Altman or was it to somebody else in the company?
A. It would have been -- it would have been either during the board meeting or in a follow-up e-mail. And with the awareness -- with Sam's awareness but perhaps for follow-up by Chris Clark or another person who could carry out that sort of simple task of sending some materials.
Q. Did you receive the materials you had asked for?
A. Yes.
Q. What did those materials show about the approval stratus -- status of the three variants?
A. To the best of my recollection, I received materials showing that the API release had been submitted to the deployment safety board and approved.
I don't recall -- to the best of my

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recollection, I don't believe I received any materials about the other two, which -- and I drew the conclusion that they had not -- they had been neither submitted nor approved.

Q. Based on what happened in that board meeting and the materials you received in response to your inquiry, were you concerned that Mr. Altman had falsely represented the approval status of those three variants to the board?

MR. CULLERTON: Object to form. Leading.

THE WITNESS: Yes.

BY MR. KRY:

Q. Did that incident cause you to question Mr. Altman's truthfulness and candor to the board?

MR. CULLERTON: Object to form.

THE WITNESS: I would say that incident was -- was one case that contributed to my sense that Sam was not interested in the board being closely informed about the company's activities.

BY MR. KRY:

Q. Did that incident make it more

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difficult for the board to manage OpenAI safety risks?

MR. CULLERTON: Object to form.

THE WITNESS: Yes.

BY MR. KRY:

Q. And did that incident cause you concerns about the effectiveness of OpenAI's safety processes?

MR. CULLERTON: Object to form.

THE WITNESS: Yes.

BY MR. KRY:

Q. Do you recall another incident in which Microsoft launched a test of GPT-4 in India without deployment safety board approval?

MR. CULLERTON: Object to form.

THE WITNESS: Yes.

BY MR. KRY:

Q. When did that incident occur?

A. I'm not sure. I believe it was toward the end of 2022. I don't know the exact date.

Q. Do you know whether it was before

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or after the first incident you just described?

A. It must have been before, because we -- the release must have been before, because we found out about it the same day that the representations to us about DSB approvals were made.

Q. Do you know how long before that board meeting the Microsoft test launch occurred?

A. No. I'm not sure.

Q. Would you describe -- well, strike that.

How did you first learn about the fact that this launch of a test of GPT-4 by Microsoft had occurred?

A. We had adjourned for the day the meeting. I was in a break room, and Tasha McCauley came and found me in the break room and told me that she had had a conversation with an employee who had informed her about this release or who had -- I believe she had asked her if she knew about it, or asked her what she thought about it, something along those lines, and we did not know about it before then.

Q. Had Mr. Altman raised that topic with you at all during the board meeting that had

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just concluded?

A. No. Despite the fact that we had very actively discussed at the board meeting that oversight of the DSB and ensuring that it was functioning well was a core board responsibility.

Q. Can you describe in any more detail what Ms. McCauley said she had learned from this other employee about what had happened?

A. I don't recall the details. To the best of my recollection, she said that Microsoft had released a test version without DSB approval, when they should have had it. Or something along those lines.

Q. Was it your understanding when Ms. McCauley communicated this information to you that Mr. Altman would have been aware of it?

A. Yes.

MR. CULLERTON: Object to form.

BY MR. KRY:

Q. What's the -- what was the basis for that understanding?

A. To the best of my recollection, it sounded, from her description, like the employee who had informed her was assuming that we already

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knew and was treating it as a pretty big deal that the company leadership knew about.

Q. Did you confront Mr. Altman about his failure to disclose that information?

MR. CULLERTON: Object to form.

THE WITNESS: No.

BY MR. KRY:

Q. Did Mr. Altman, at any subsequent point in time, disclose that information to you?

A. Not directly.

Q. Did Microsoft's release of a test product without joint safety board approval cause you concerns about OpenAI's safety processes?

MR. CULLERTON: Objection.

THE WITNESS: Yes. It caused me concern about how well those processes were working. Yes.

BY MR. KRY:

Q. Did Mr. Altman's failure to inform you about that safety breach cause you to question Mr. Altman's truthfulness and candor to the board?

MR. CULLERTON: Object to the form.

THE WITNESS: I would say it

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further led me to believe that he was not interested in the board being closely informed about the company's activities and able to perform an oversight role.

BY MR. KRY:

Q. And did the incident cause you concerns about the effectiveness of OpenAI's safety processes?

A. I think that's essentially the same as your previous question, but yes.

Q. And just to round out the record, how long was the board meeting that Mr. Altman did not disclose the safety breach?

MR. CULLERTON: Object to form.

THE WITNESS: All day. Multiple hours.

BY MR. KRY:

Q. And Mr. Altman was there for the entire meeting?

A. To my recollection, yes.

Q. And you were there for that entire meeting?

A. To my recollection, yes.

Q. And was Ms. McCauley there for the

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entire meeting?

A. To my recollection, yes.

Q. When OpenAI released ChatGPT in November '22, did it provide any advance notice to the OpenAI board?

A. No.

Q. How did you learn about ChatGPT?

A. We started -- or I started seeing screen shots on Twitter.

Q. And was that because you were looking for it specifically, or you just chanced to come across it?

A. No, I have a -- my Twitter feed is AI heavy, I would say. So when there's AI news, usually it lands there.

Q. Do you remember what the first Twitter post you saw concerning ChatGPT was?

A. No. There were lots.

Q. Was it a beneficial OpenAI publication or was it some secondary source?

A. I don't recall.

Q. When you saw that on Twitter, were you surprised that no one at OpenAI had given you any advanced notice about ChatGPT's release?

MR. CULLERTON: Object to

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form.

THE WITNESS: No, I was not surprised, because I was used to the board not being very informed about things.

BY MR. KRY:

Q. Okay. Did you think it was okay that no one at OpenAI had given you advanced notice about the release of this product?

MR. CULLERTON: Object to form.

THE WITNESS: I did not think it indicated that the board was functioning as it should be.

BY MR. KRY:

Q. And is the reason that it indicated that to you that it illustrated the failure of the company to provide the board with important information?

MR. CULLERTON: Object to the form. Leading.

THE WITNESS: I thought that it indicated that the board was often not looped in on things it should have been looped in on.

I thought it also indicated

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that the company's process for making -- processes for making decisions that could have material impact on the mission were inadequate.

BY MR. KRY:

Q. Did you believe at the time that Mr. Altman should have given you advanced notice that the company was launching ChatGPT before it did so?

A. Yes.

Q. Did this incident cause you to question Mr. Altman's candor to the board?

A. Again, I will say it caused me to believe that he was not motivated to help the board perform the oversight role.

Q. Did this incident make it more difficult for the board to manage OpenAI safety risks?

A. It contributed to that, yes.

Q. Did you learn about another incident in which Mr. Altman made a false statement about whether GPT-4 Turbo had to go through joint safety board review?

MR. CULLERTON: Objection to the form.

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THE WITNESS: Yes.

BY MR. KRY:

Q. When did that incident occur?

A. I'm not sure. I believe at some point during 2023.

Q. How did you learn about the incident?

A. I forget whether it was Ilya Sutskever or Mira Murati who first described it to me, but it was one of the two of them.

Q. What did he or she describe to you?

A. Actually, it's also possible that I heard about it secondhand from them via Adam D'Angelo or Tasha McCauley.

I'm sorry. What was the question?

Q. What was communicated to you about what had happened?

MS. BENEZE: Object to form.

THE WITNESS: That Sam had claimed that Jason Kwon said that GPT-4 Turbo did not need DSB review. And that -- Sam claimed to Mira that Jason said it didn't need DSB review.

Mira then later checked with Jason and found that he had not said that,

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and Mira felt that Sam had -- had either misled her or lied to her.

BY MR. KRY:

Q. And at the time you learned about this incident, did you review any documentary record that reported on the issue?

A. Within a few weeks -- I forget the exact sequencing -- but yes. In the period where we learned about this, we were -- we had -- we were given access to screen shots of a Slack exchange between Mira and Jason.

Q. And what do you recall that Slack exchange showing?

A. That Mira asked Jason if he had, in fact, said that GPT-4 Turbo didn't need DSB review, and Jason said he had said something different and also said he was confused how Sam got that impression.

Q. And during what period of time did you learn about this incident and see these screen shots?

A. This was in the fall of 2023.

Q. Did Mr. Altman's false statement to Ms. Murati cause you to question Mr. Altman's truthfulness and candor?

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A. Yes.

MS. BENEZE: Object.

MR. CULLERTON: Objection to the form. Misstates testimony. Assumes facts.

BY MR. KRY:

Q. Did this incident cause you concerns about the effectiveness of OpenAI's safety processes?

A. Yes.

Q. Do you recall some long-running discussions on the board about whether to appoint another independent board member focused on AI safety?

MR. CULLERTON: Object to the form. Leading.

THE WITNESS: Yes.

BY MR. KRY:

Q. Over what time period did those discussions unfold?

A. I would say much of 2023.

Q. Did you favor adding another independent board member focused on AI safety?

A. Yes.

Q. Did you propose candidates?

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board for as long as possible and to return after he was done with his campaign. And Sam also suggested that he wanted to make a large, I believe, several-hundred-thousand-dollar campaign contribution to Will, while still expecting him to come back onto the board.

He did not go ahead with this donation because Tasha, Adam, and I all said it seemed very inappropriate. But to me, the fact that he was considering that, the fact that he might have discussed it with Will in advance, the fact it was an option was just a sign of total disregard for the board's independence or ability to provide meaningful oversight of the company and the CEO.

Q. And that several-hundred-thousand-dollar campaign contribution, was it -- did Mr. Altman discuss that that was going to come from him personally?

A. Yes, to the best of my recollection.

(Document marked for identification as Toner Exhibit 4.)

BY MR. KRY:

Q. So marking as Exhibit 4 the

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document Bates-stamped OPENAI_MUSK00027400.

THE WITNESS: Do you have it, Katherine?

MR. KRY: Please let us know when that shows up.

MS. PETTI: When Jacob gets the Bates, he can upload that Bates to the screen share.

THE WITNESS: It's the board resolution removing Sam.

MS. PETTI: I have it.

MR. KRY: Great.

BY MR. KRY:

Q. This is a November 16, 2023, unanimous written consent signed by you and three other directors. And at -- as the witness noted, at the bottom of Page 1, the document states: "Now, therefore, be it resolved, that the Board hereby, effective immediately, terminates Mr. Altman's employment with the Corporation."

Ms. Toner, is this the resolution by which the board formally removed Mr. Altman as CEO and board member of OpenAI?

A. Yes.

Q. Were you one of the board members

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who voted to remove Mr. Altman?

A. Yes.

Q. For how long before November 16, 2023, had the board members been discussing the prospect of removing Mr. Altman?

A. Several weeks.

Q. Do you recall approximately when those discussions began?

A. It's hard to say exactly what -- what the starting point was. Early to mid-October.

Q. How did those discussions of potentially removing Mr. Altman originate?

A. I would say the starting point was Ilya Sutskever reaching out to me to ask to talk. We then had a first conversation which was very circuitous and confusing to me. Very clearly, Ilya had some very significant concern but told me that he couldn't tell me what his concern was, essentially.

I would put that as the -- the starting point.

Q. And did you subsequently have discussions with the other board members?

A. Yes.

Q. And over the course of those

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discussions, what were the grounds for removing Mr. Altman that the board members discussed?

A. It was a number of things. A -- the phrase we used was "a pattern of behavior." So no one single cause.

The pattern of behavior related to his honesty and candor, his resistance of board oversight, as well as the concerns that two of his senior management team, Ilya Sutskever and Mira Murati, raised to the board about his management practices, his manipulation of board processes. A range of concerns in that vicinity.

Q. So when you refer to his pattern of behavior related to honesty and candor, does that include all the incidents that we've discussed during your testimony this morning?

A. Yes. I will say during the discussions -- I'll leave that.

Yes.

Q. Did those -- did those incidents reflecting negatively on Mr. Altman's honesty and candor also cause you to believe that Mr. Altman was not providing the board with the information it needed to manage OpenAI's AI safety processes?

MR. CULLERTON: Object to

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the form. Leading.
THE WITNESS: Yes.
BY MR. KRY:
Q. And the -- did you feel, as a result of those incidents we've discussed this morning, that Mr. Altman's conduct had made it more difficult for you as a board member to manage OpenAI's AI safety processes?
MR. CULLERTON: Object to the form.
THE WITNESS: Yes.
BY MR. KRY:
Q. Without disclosing any attorney-client privileged communications, during these several weeks when you were discussing removing Mr. Altman, did you communicate with legal counsel?
A. We did.
Q. Approximately how many times?
A. I don't remember. A lot.
Q. What was the law firm?
A. Am I okay to name the firm?
My mind is going entirely blank.
Wow.
Q. Was it Arnold & Porter?

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A. It was Arnold & Porter. Thank you.
Q. At one point during those discussions, did Mr. Sutskever send the other board members a self-destructing e-mail that catalogued examples of Mr. Altman's misconduct?
MR. CULLERTON: Object to form.
THE WITNESS: Yes.
BY MR. KRY:
Q. And approximately when did Mr. Sutskever send you that e-mail?
A. I believe early November.
Q. So that would have been how far through the overall multi-week process of these discussions?
A. Roughly halfway. Maybe towards the end a little.
Q. Did you review the contents of that e-mail?
A. Yes.
Q. Did it, in fact, self-destruct after you read it?
A. I believe it was on a timer. Maybe 24 hours.
Q. So you no longer have a copy of it?

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A. Correct.
Q. What types of misconduct did that e-mail describe?
MR. CULLERTON: Object to the form.
THE WITNESS: It described -- I haven't seen it in two years.
So to the best of my recollection, it had various instances of Sam making conflicting promises to team members in ways that seemed very misleading. Putting words in other people's mouth.
So, for example, the GPT-4 Turbo DSB review with Mira and Jason was in there. The Slack exchange between Mira and Jason.
Yeah. Examples of -- many examples, most of which were not glaring or egregious on their own but which were intended to, again, illustrate a pattern of behavior.
BY MR. KRY:
Q. And did the contents of that e-mail

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include -- include multiple examples of the issues that you testified about this morning?
MR. CULLERTON: Object to the form of the question.
THE WITNESS: I would say that Ilya's gloss on what types of behavior Sam was exhibiting was somewhat different to what we have discussed so far and would relate -- yeah -- would cover some of the same ground but also, perhaps, relate more to making conflicting promises, talking out both sides of his mouth, pitting team members against each other. So not -- not exactly the same as the conduct we've discussed so far.
BY MR. KRY:
Q. Did Mr. Sutskever also send the board members a second self-destructing e-mail that concerned allegations about Mr. Brockman?
A. Yes.
Q. Did you read that second self-destructing e-mail?
A. Yes.
Q. And did that e-mail, in fact, destruct itself?

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reflect your views at the time?
A. I would say it is an accurate statement and, again, is an incomplete summarization that is for the purpose of this message.
Q. And the behavior and lack of transparency you're referencing there, is that the same pattern of conduct that we discussed earlier today?
A. Yes.
Q. Did the OpenAI board ultimately decide to reinstate Mr. Altman as a board member?
A. As CEO, but not as a board member. But -- and then later, much later, the board decided to reinstate him, yes. A different board.
Q. Correct. I'm sorry.
So the board --
Okay. When did the board decide to reinstate Mr. Altman as CEO?
A. Tuesday night, the 21st of November.
Q. How did that come about?
A. There had been, over the course of the weekend, a lot of back-and-forth over different possible futures of the company, with a recurring

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theme being employees threatening to leave if certain demands were not met.
Over the course of the few days following our firing, those demands became gradually more reasonable and the threat of mass resignations continued.
Q. Who were the demands being made by?
A. Some combination of Sam, Greg, the executive team, typically conveyed to us via Mira. And employees directly.
Q. And did you observe that Microsoft was involved in those discussions at all?
A. Microsoft became clearly involved on Sunday night when, after we announced that Emmett would be interim CEO, Microsoft announced that Sam and Greg would be joining Microsoft. And over the subsequent hours -- I don't recall how I came to learn this -- but over the subsequent hours I came to the understanding that Microsoft was offering to hire away the entire OpenAI team and would have jobs for anyone who wanted them at Microsoft.
Q. So what impact did Microsoft's announcement that it was hiring Mr. Altman and Mr. Brockman, an open offer to hire anyone from

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OpenAI that wanted to come over, impact the board's ability to carry out its duties as the board of OpenAI?
MS. BENEZE: Object to form.
THE WITNESS: It -- it created a threat of Microsoft destroying the company in a way that changed the calculus for us about what the best way to pursue the nonprofit mission was.
BY MR. KRY:
Q. In what sense?
A. In the sense that it significantly increased the credibility of employees' threats that they would leave en masse and gave Sam significantly more leverage to demand his own reinstatement to avoid the company falling apart.
Q. What did the board do in response to this change to the circumstances?
A. In response to the totality of the circumstances on Tuesday, which includes Microsoft's involvement, as well as other factors, we were able to reach an agreement on Tuesday that was amenable to all sides, which involved Sam being reinstated as CEO but not reappointed to the board; most of the existing board members resigning, but

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not all; and a thorough, independent investigation being carried out into Sam's conduct in the events of the previous few days.
Q. Were you one of the board members that was removed as part of this deal?
MR. CULLERTON: Object to the form.
THE WITNESS: Yes.
MR. CULLERTON: Removed.
THE WITNESS: Yes.
BY MR. KRY:
Q. And was Ms. McCauley one of the board members that was removed pursuant to this compromise?
MR. CULLERTON: Same objection.
THE WITNESS: Yes.
BY MR. KRY:
Q. Did Mr. D'Angelo stay on the board after this agreement?
A. Yes.
Q. Was an interim board appointed in connection with this agreement?
MR. CULLERTON: Object to the form and characterization, on board.

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THE WITNESS: I would not describe it as an interim board. I would say a -- two new board appointments were made, with the intention of making additional appointments in the future.

BY MR. KRY:

Q. Who were the two new appointments that were made?

A. Larry Summers and Bret -- my mind is blank --

Q. Taylor?

A. Thank you. Bret Taylor.

Q. What was your role in selecting Mr. Summers and Mr. Taylor for the board?

A. There were many rounds of back-and-forth over the previous few days with potential names for a new board, attempting to find names that were acceptable both to Sam and to the existing board.

And I was in close communication with Tasha and Adam about which names were acceptable to us as the existing board.

Q. Who originally had proposed them, if you know?

A. I don't know.

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Q. Do you know if Microsoft was involved in proposing those individuals as board members for OpenAI?

A. I don't know.

Q. Do you know whether Microsoft approved the slate of board members that were being put up as part of this deal?

A. Implicitly, I believe they did, yes. I don't know what -- what exact approval process was involved.

Q. Did WilmerHale ultimately conduct the investigation into the circumstances of Mr. Altman's removal?

A. Yes.

Q. Did you read OpenAI's summary of the results of that investigation?

A. I did.

Q. Did you agree with it?

A. I'm not sure how to answer that question.

Q. What do you understand OpenAI concluded?

MR. CULLERTON: Object to the form.

BY MR. KRY:

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Q. Yeah. So strike that.

What do you -- what did Open -- how did OpenAI describe WilmerHale's conclusion?

A. I recall that they said something along the lines of the board acted its -- in its best judgment, but Sam's conduct did not mandate removal, or something along those lines.

Q. What was your reaction to the first half of that?

A. I agree that the board acted according to its best judgment.

Q. And what was your reaction to the second half?

A. I think the standard of mandating removal is a strange one, and I didn't know how to interpret it, unless it meant that his conduct was not illegal. In which case I agree that, as far as I know, his conduct was not illegal, but that didn't seem like the right question.

Q. In your judgment, did Mr. Altman's conduct warrant his removal as a board member of OpenAI?

A. Yes.

(Document marked for identification as Toner Exhibit 9.)

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BY MR. KRY:

Q. This is a -- marked as Exhibit 9, document stamped MSFT_MUSK 85635. It's a post on X, I gather, from you, that's captioned, "A statement from Helen Toner and Tasha McCauley."

Do you remember publishing this post?

A. Yes.

Q. Did you co-author this post with Ms. McCauley?

A. Yes.

Q. Why did you decide to publish the post?

A. We -- so this post was published shortly after, maybe the same day, maybe the day after, the OpenAI announcement of the findings of the WilmerHale investigation. And -- I believe it was the same day.

And we wanted to -- we considered many potential things that we might say publicly in reaction to the OpenAI announcement, and this short statement is what we were able to agree on quickly.

Q. The second paragraph, last sentence, you say: "As we told the investigators, deception, manipulation, and resistance to thorough

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'summoning the demon.'"
Do you agree with Mr. Thiel's prediction that AI safety people would destroy OpenAI?
MR. CULLERTON: Object to form. No foundation.
THE WITNESS: No.
BY MR. KRY:
Q. And do you think many AI safety people raised legitimate concerns about AI safety?
A. Yes.
Q. Do you think that you raised legitimate AI concerns about AI safety while you were at OpenAI?
A. Yes, though most of my concerns were more about governance than about AI safety, per se.
Q. What was the connection between the governance concerns you raised and AI safety?
MR. CULLERTON: Object to the form.
THE WITNESS: The -- it was important that the company be governed well in order to be able to manage increasingly severe AI safety risks over time.

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BY MR. KRY:
Q. Do you believe that Mr. Altman tried to remove you from the OpenAI board based, at least in part, on your views related to AI safety?
MR. CULLERTON: Object to the form. Basis of her knowledge, no foundation.
THE WITNESS: Yes, to the best of my understanding.
BY MR. KRY:
Q. To your knowledge, has Elon Musk raised concerns about AI safety?
A. Yes.
Q. What concerns has Mr. Musk raised that you're aware of?
A. He has referred to it as "summoning the demon."
Q. Were you aware of that before you read this article?
A. Yes.
Q. When did he make that statement?
A. Somewhere in the 2015 to 2017 timeframe.
Q. How did that statement strike you at the time?

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A. Seemed unhelpfully extreme.
Q. Was there a kernel of truth to it?
A. I believed it was gesturing in a direction that seemed right to me but phrased in a way that would get a lot of people offside.
Q. Do you think it is a -- important for warnings about AI safety be -- to be expressed publicly by people that are in a position to express them?
A. Yes.
Q. Do you think it's a positive development for OpenAI that -- and AI safety that Mr. Altman got rid of Elon?
MR. CULLERTON: Object to the form. No foundation.
THE WITNESS: I don't know.
MR. KRY: We have no further questions at this time, but we'll reserve the balance for redirect.
MR. CULLERTON: Let's take five minutes here.
THE VIDEOGRAPHER: Off the record at 3:10.
(Short break.)
THE VIDEOGRAPHER: On the

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record at 3:26.
- - -
EXAMINATION
- - -
BY MR. CULLERTON:
Q. All right. Good afternoon, Ms. Toner.
Since Mr. Altman was reinstated as CEO, you have spoken to the press a number of times about the events leading up to his termination, correct?
A. Yes.
Q. Okay. You recall you did an interview with the Wall Street Journal at the end of December 2023?
A. Yes.
Q. Okay. And you wrote a piece in The Economist with Ms. McCauley that we just looked at, correct?
A. Yes.
Q. And you provided an interview on the TED AI show -- or TED AI podcast that we looked at briefly, correct?
A. Yes.
Q. And you spoke with Ms. Hagey for

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because we were freaked out about the pace of AI development.

But that is a more specific thing than to say that the decision had nothing to do with the pace of development.

BY MR. CULLERTON:

Q. Okay. But fair, then, that Mr. Altman was not removed because the board wanted to slow down the pace of AI development, right?

A. Correct.

Q. Okay. And Mr. Altman was not terminated because the board wanted to slow down OpenAI's pace of development, correct?

A. Correct.

Q. Did the board make any findings of any financial impropriety in advance of terminating Mr. Altman?

A. I don't believe so, depending on what exactly counsel's financial -- to the best of my understanding, no.

Q. And is it true that Mr. Altman's removal as CEO also was not about OpenAI's relationship with any of its investors?

MR. KRY: Objection to form.

THE WITNESS: I would say

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that the issues that we were concerned about -- some of the issues that contributed to our decision to fire Sam were exacerbated by relationships with investors.

BY MR. CULLERTON:

Q. In what way?

A. Primarily, the extreme pressure for the company to release products rapidly and to prioritize public product releases over well-thought-through determinations of how given decisions affected the mission.

Q. Okay. But to be very clear, and I believe you testified to this earlier, you don't believe, ultimately, that any of the products that had been released as of the date of this e-mail were unsafe to the public?

A. Not in ways that give me significant concern, no.

Q. You testified earlier about the hiring of Emmett Shear.

Do you recall that?

A. Yes.

Q. Okay. And did you know Mr. Shear before hiring him?

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A. I had had conversations with him before hiring him.

Q. Did you trust his judgment?

A. I believe he was the best candidate for interim CEO that we had available.

Q. Did you trust his judgment?

A. I don't really know what that means.

Q. Did you trust -- did you believe him to be a person of integrity?

A. To my best judgment, based on limited interactions, yes.

MR. CULLERTON: Tab 43.

(Document marked for identification as Toner Exhibit 15.)

BY MR. CULLERTON:

Q. I'm showing you what's been marked as Exhibit 15, the document Bates-numbered 2024MUSK0014175, which is a tweet from Mr. Shear, posted on November 20, 2023.

Do you recognize this, Ms. Toner?

A. Yes.

Q. Okay. And this was a tweet from Mr. Shear the day -- on his first day as interim CEO of OpenAI, right?

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A. I believe so.

Q. And this was the first public statement that Mr. Shear made as OpenAI's new interim CEO?

A. I believe so.

Q. And if you look down at Paragraph 2, he writes, "OpenAI's employees are extremely impressive, as you might have guessed, and mission-driven in the extreme."

Do you see that?

A. Yes.

Q. Do you agree with Mr. Shear's characterization of OpenAI's employees?

A. There are a large number of employees. It's difficult to characterize all of them at once.

Q. Okay. He goes on to write: "It's clear that the process and communications around Sam's removal has been handled very badly, which has seriously damaged our trust."

Do you see that?

A. Yes.

Q. And did you understand Mr. Shear to be referring to the process by which the board had removed Mr. Altman?

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significant concerns about the safety review processes at OpenAI and how they were being handled?

A. I would say that it primarily served to me as a further example cementing the perception that we discussed at the board level, that Sam had a habit of putting words in other people's mouths to get people where he wanted them to go, which was of concern for many reasons, including the integrity of OpenAI's safety review processes but also more generally.

Q. And I think you testified earlier that you took some screen shots of these particular screen shots in the document?

A. That's right.

Q. Why was that?

A. This seemed like a particularly important and clear example of a pattern we were concerned about.

MR. KRY: Great. I don't have any further questions on this document.

MR. CULLERTON: Just following up on that. And, Anika -- well, one second.

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EXAMINATION

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BY MR. CULLERTON:

Q. I think we already established this, but you didn't ask Mr. Altman what had happened in this interaction with Mr. Kwon and Ms. Murati, correct?

A. Correct.

MR. CULLERTON: I think that's it.

You could -- Anika, thank you.

THE WITNESS: I'm going to take this home and get it framed. Famous document.

MR. KRY: Pretty sure that's not allowed in the stipulation.

THE WITNESS: I know. I know.

BY MR. CULLERTON:

Q. So turning back to your interactions with Mr. Musk.

Are you aware -- and I know you testified that you couldn't recall any other

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communications with him other than what was reflected in the text message.

Are you aware of anyone else on the board having any communications with Mr. Musk during the time period in which -- you know, these events that we've been discussing?

A. I'm pretty sure Ilya did. I'm not sure about others.

Q. Okay. Did Ilya ever tell you what he and Mr. Musk discussed?

A. I don't recall.

Q. Okay. So other than the communication or the conversation that you think Ilya may have had with Mr. Musk, you are not aware of any other communications or conversations involving anyone else on the board and Mr. Musk; is that correct?

A. Not that I recall.

Q. Do you recall anyone suggesting that Mr. Musk was trying to become CEO of OpenAI during that time?

A. That sounds vaguely familiar.

Q. Do you recall where you heard that suggestion?

A. No.

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Q. It's not something you discussed with Mr. Musk?

A. No.

Q. Are you aware of whether anyone on the board discussed that with Mr. Musk?

A. I'm not sure.

Q. Okay. We were talking about the DSB review process relating to the test release of GPT-4 in India.

Do you recall that?

And I believe that you testified that Tasha had found out about that from an employee following a board meeting.

Do I have that correct?

A. Yes.

Q. Okay. Who was that employee?

A. Jan Leike.

Q. Okay. You also testified earlier regarding the board service and ultimate departure from the board of Shivon Zilis.

You remember that?

A. Yes.

Q. And I think you said that statements that Mr. Altman had made during the deliberations around whether Ms. Zilis should leave