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11-05-2019  
CIRCUIT COURT  
DANE COUNTY, WI  
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STATE OF WISCONSIN	CIRCUIT COURT	DANE COUNTY
* * * * *	* * * * *	* * * * *
LEONARD POZNER,	)	
	)	
	Plaintiff,	)
vs.	)	Case No. 18-CV-3122
	)	
JAMES FETZER, et al.,	)	
	)	
	Defendants.	)

\* \* \* \* \*

TRANSCRIPT OF JURY TRIAL PROCEEDINGS - DAY 2

commencing on the 15th day of October, 2019, at approximately

8:27 a.m. before the

HONORABLE JUDGE FRANK D. REMINGTON

APPEARANCES: LEONARD POZNER appeared with Attorneys at Law, GENEVIEVE ZIMMERMAN and JACOB ZIMMERMAN, Meshbeshier & Spence, Minneapolis, Minnesota, and EMILY FEINSTEIN and EMILY STEDMAN, Quarles & Brady, Madison, Wisconsin

JAMES FETZER appeared with Attorneys at Law, RICHARD BOLTON and ERIC BAKER, Boardman & Clark, Madison, Wisconsin

Reported by:  
Colleen C. Clark, RPR  
Official Court Reporter, Branch 8  
Dane County Circuit Court  
215 S. Hamilton Street Room 4109  
Madison, WI 53703-3290

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1 (Proceeding began at 8:27 a.m.)

2 THE COURT: This is 18-CV-3122, Leonard Pozner  
3 versus James Fetzer. May I have the appearances, please.

4 MS. FEINSTEIN: Good morning, Your Honor. Emily  
5 Feinstein from the law firm of Quarles and Brady. I have  
6 with me at counsel table the plaintiff, Leonard Pozner, we  
7 have Mr. Jake Zimmerman, Attorney Genevieve Zimmerman, and  
8 Attorney Emily Stedman.

9 MR. BOLTON: The defendant -- Your Honor,  
10 Attorney Rich Bolton and Eric Baker appear, and with us in  
11 person, is Professor Fetzer.

12 THE COURT: Good morning. As I indicated, we  
13 were to start at 8:30, one of the jurors is stuck in  
14 traffic, and so we'll push it back probably about 10  
15 minutes, 15 minutes or so. There's a couple of loose ends  
16 I just wanted to get a jump on.

17 Mr. Bolton, did you have some time to reflect on  
18 the jury instructions?

19 MR. BOLTON: I have, Your Honor.

20 THE COURT: And are --

21 MR. BOLTON: We'll --

22 THE COURT: Are they acceptable as is submitted  
23 by stipulation?

24 MR. BOLTON: Yes.

25 THE COURT: No further instructions sought?

1 MR. BOLTON: No, Your Honor.

2 THE COURT: Mr. Zimmerman, any other  
3 instructions?

4 MR. ZIMMERMAN: No, Your Honor.

5 THE COURT: Okay. So then by agreement, those  
6 are the jury instructions that we'll submit to the jury.

7 My practice is, and speak up if you would prefer  
8 otherwise, is to read the instructions before the closing  
9 arguments. I think I did that once when I was trying a  
10 case and as a judge, I can go both ways in terms of what  
11 people prefer. If you read the instructions before  
12 closing arguments, then the lawyers don't have to go  
13 through the cumbersome, The Judge will instruct you and he  
14 will say and here's what you will hear. Is anyone --  
15 Mr. Bolton, is that okay with you?

16 MR. BOLTON: It's fine with me, Your Honor.

17 MR. ZIMMERMAN: Yes, Your Honor.

18 THE COURT: Okay. Then last but not least, I  
19 did some thinking of, Mr. Zimmerman, about your oral  
20 motions in limine. And, of course, as any person,  
21 reflecting on how I handled that, I could have been a  
22 little bit more articulate. I don't mean to find fault  
23 with any lawyer, far from it, but it's really hard in the  
24 middle of a trial to get a grasp on a motion in limine.

25 A motion in limine is, thankfully, in civil

1 court, is supposed to be a thoughtful opportunity prior to  
2 trial to discuss in a category of evidence that is  
3 definable and discernible and either relevant or not.  
4 Middle of the trial, an oral motion in limine is not a  
5 great way to -- for me to apply the standards and give  
6 careful consideration that I ordinarily like. Obviously,  
7 in the court's scheduling order we had times and motions  
8 in limine were filed. Be that as it may, the good news is  
9 I'm satisfied with the way I handled it. The bad news is  
10 I'm not sure it's much of a solution.

11 Mr. Bolton, I agree with you, and you said  
12 something -- I forgot what you first said but then you  
13 said blinders.

14 MR. BOLTON: Yes, sir.

15 THE COURT: It's like blinders on a horse.

16 MR. BOLTON: Yeah. I think I said blinkers --

17 THE COURT: Yeah.

18 MR. BOLTON: -- and then I corrected myself.

19 THE COURT: It's the modern day version of  
20 blinders. Blinders. That's not fair to the defendant to  
21 put the euphemistic blinders on and march toward the  
22 finish line without giving the defendant an opportunity to  
23 defend the case. And, you know, from my perspective as a  
24 matter of trial strategy, the plaintiff has the burden of  
25 proof, the plaintiff has the cause of action. The

1 defendants don't -- and the defense lawyer don't  
2 necessarily have to help the plaintiff with its case.  
3 They're there to create doubt, raise issues, contradict.  
4 It's a defensive strategy.

5 So when you brought up your example, Mr. Bolton,  
6 about other areas of the law, I thought perhaps one better  
7 would be is a common motion in limine in personal injury  
8 cases, the concept or the difference between possibilities  
9 over reasonable probabilities. The plaintiff has the  
10 burden of showing in those cases to a reasonable degree of  
11 probability. The defense can ask questions on  
12 cross-examination of the expert not on what is reasonably  
13 probable but what's possible, thereby creating the  
14 inference that enough possibilities should somehow or  
15 another undermine the probability.

16 So the -- at least what we were talking about  
17 was would the defendant have the opportunity to talk or  
18 elicit testimony or evidence about the possibility that  
19 the damages that Mr. Pozner claims came or come from  
20 Mr. Fetzer's defamatory statement possibly were caused by  
21 something else. After all, the doctor did talk about  
22 taking for a moment other triggering factors. He talked  
23 about Mr. Pozner's divorce and ruled that out as a -- a  
24 substantial factor in what he opined was the consequences  
25 of the defamatory statements and the treatment Mr. Pozner

1 has received since the death of his child.

2 And to the extent that that's what you want to  
3 go into, Mr. Bolton, although you have -- you can't -- you  
4 can't do it on a videotape, I don't know what's coming on  
5 cross-examination of Mr. Pozner or the other witnesses,  
6 but I'm satisfied that I'm not going to grant a motion in  
7 limine to endeavor to try to carve out this kind of  
8 testimony that's not -- I'm not saying it's acceptable or  
9 admissible, but you'll just have to make your objections  
10 at the time, and then I'll make the call based on the  
11 objection. Because I can -- we could spend all day  
12 theorizing what would be completely appropriate  
13 cross-examination questions and then questions that bring  
14 up completely irrelevant.

15 For example, I'm -- I do not know what the  
16 relevance, Mr. Bolton, is of the comment you made in  
17 opening statement about the book being a thoughtful and  
18 well-researched or serious piece of academic research.  
19 That's more like a truth is a defense to a defamation  
20 claim. It doesn't make any difference if the book is a  
21 well-reasoned or thoughtful piece of academic research on  
22 the sole issue of the damages to Mr. Pozner, other than  
23 possibly thinking Mr. Pozner, although he took issues with  
24 the four defamatory statements, he was so impressed with  
25 the remaining work, he liked it. I doubt that would be

1 the case.

2 That was one of the issues I think as we went  
3 back and forth talking about these areas, although I think  
4 Mr. Bolton has some room to cross-examination on  
5 possibilities of other causes of the damages, the PTSD.  
6 On the other hand, Mr. Zimmerman, I don't even -- I don't  
7 have -- I don't know why we're talking about other  
8 chapters in the book and whether they are legitimate or  
9 serious academic research. Mr. Bolton, what relevance  
10 would that have on the issues remaining at trial?

11 MR. BOLTON: One of the issues that the jury  
12 will have to decide or, really, the main issue is what in  
13 their estimation is -- would -- would reasonably be  
14 sustained in terms of -- the egregiousness, I guess, of  
15 the claimed or of the defamation. So something that is  
16 found to be defamatory, but -- but in the context of an  
17 otherwise scholarly publication, I think the jury can  
18 conclude that -- that the impact -- the reputational  
19 impact is less, if you look at the context in which -- the  
20 entire context in which something is said.

21 THE COURT: And who is the witness that's going  
22 to draw that conclusion?

23 MR. BOLTON: Pardon me?

24 THE COURT: What witness -- so you're going to  
25 say that --



1 MR. BOLTON: I believe that the jury -- I  
2 believe -- I believe that's an inference that the jury can  
3 or cannot draw. But there's no question that one of the  
4 things they have to determine is, is this -- you know,  
5 implicitly, is this -- you know, how bad is it. And,  
6 certainly, the context in which something occurs, I think,  
7 impacts that evaluation.

8 Now, you asked me who's going to make that  
9 determination. I don't think that would be a proper  
10 question for a witness in any event. I think that's -- I  
11 think that's a factor that the jury has to assess in  
12 making its determination.

13 MR. ZIMMERMAN: Respectfully, Your Honor, if I  
14 can reply, that's a hundred percent wrong. Mr. Pozner's  
15 entire life, every input that could have possibly impacted  
16 his psyche his entire life is not on trial. What  
17 Mr. Bolton is doing is saying exactly that he should be  
18 able to apply the doctrine of incremental harm. We're  
19 going to look at everything that might have hurt  
20 Mr. Pozner's feelings from any source whatsoever and the  
21 jury can decide whether they think it's that piece of  
22 information that caused his injury or this.

23 Ultimately, what Dr. Lubit basically testified  
24 is very similar to a differential diagnosis. Okay? He  
25 considered multiple causes from Mr. Pozner's emotional or

1 psychological injuries. He discounted some, based on what  
2 we heard in the testimony. And what we're hearing from  
3 defense counsel is we want to redo that differential  
4 diagnosis but without an expert. I said yesterday and  
5 I'll say it again today, I have no problem with their  
6 cross-examination of Dr. Lubit, and if they want to attack  
7 his, basically, differential diagnosis through that cross,  
8 of course that's admissible.

9 But what they're asking is very different. What  
10 they're saying is we want the jury to perform its own  
11 differential diagnosis at our urging based on information  
12 we provide. And they do not have an expert who can say,  
13 for example, this other piece of information would have  
14 led to a different result in a differential diagnosis.  
15 That's what's required. That -- when I say they need an  
16 expert, that's where they need an expert. And if they  
17 can't get an expert to provide them information saying a  
18 forensic psychiatrist evaluating this piece of information  
19 would find it important to a determination of PTSD or  
20 follow-on PTSD or a secondary injury, then the information  
21 is not relevant, because the jury shouldn't do that on  
22 their own. That's the reason we have expertise. This is  
23 not within the expertise of a normal untrained individual.

24 THE COURT: Well I -- Mr. Zimmerman -- I'll give  
25 you the final word, Mr. Bolton, but I completely agree

1 with Mr. Zimmerman. I mean, we wouldn't be having this  
2 discussion if we were talking about the scope of your --  
3 if the doctor had been on the stand and you said, I intend  
4 to go in with the doctor as to the other stressors to  
5 Mr. Pozner with the hope of saying isn't it possible that  
6 his divorce, isn't it possible that his age, or all these  
7 other things that you could say which would be stressful  
8 to him in addition to the death of his child and this  
9 maelstrom of factors around him would be the cause of his  
10 PTSD, and we wouldn't -- I wouldn't be even listening to  
11 Mr. Zimmerman. But I assume since it's a videotape, you  
12 didn't go into any of these on the videotape or maybe you  
13 did. I haven't seen your cross.

14 But assuming it is what it is, I think what  
15 we'll do is we'll just see what Mr. Bolton does with the  
16 witnesses and make the objection at the time. Either I'll  
17 take a sidebar or we'll take a break. Once I understand  
18 how far he goes into this area, if it's rather benign, it  
19 might not even be objectionable. But if we spend some  
20 time and we go into these other areas, then I don't see  
21 the relevance, especially predicated, Mr. Zimmerman, on  
22 your argument, which I agree, is that the relevance would  
23 be dependent upon and a necessity for an expert witness to  
24 draw the conclusions to a reasonable degree of medical  
25 probability.

1           Mr. Bolton, I mean, I don't know if you've got  
2           your questions all written out and your plan scripted, but  
3           might not -- plan that it's not likely that we're going to  
4           spend substantial time.

5           I don't really have a -- be honest with you,  
6           Mr. Zimmerman, I don't really have a firm intellectual  
7           grasp of the doctrine of incremental harm. It's rolling  
8           around in there and it's an odd concept. On the one hand  
9           I agree with you that it's messy, it's dirty, especially  
10          when not connected to an expert testimony. It's  
11          problematic without expert testimony. With expert  
12          testimony, incremental harm happens all the time on motor  
13          vehicle collisions and all the things, especially with  
14          multiple problems people have when they come to court and  
15          say, Judge, my back is bad before the accident. Well,  
16          didn't you fall off a horse? Didn't you get kicked by a  
17          horse? Didn't you fall off your bike? These incremental  
18          factors happen all the time in personal injury cases.

19          Now, in this case, I can't -- I don't have a  
20          clear picture of where the line is, but I agree, as I said  
21          yesterday, I think that although the defense's job is to  
22          throw up roadblocks and in some sense create doubt, I  
23          don't think we're going to spend the next two days just  
24          throwing everything against the wall and leave it hanging  
25          without that expert to draw it together. Mr. Bolton, what

1 do you -- I'm going to wait, but maybe you want to educate  
2 me to help me anticipate.

3 MR. BOLTON: Well, I do -- I have a couple of  
4 points that I would like to make. Number one, the  
5 requirement -- basically their -- the element of  
6 damages -- certainly one of the element of damages is an  
7 issue of distress. Distress is something and what causes  
8 it or how people react to it is something within the  
9 common and ordinary understanding of individuals, and I  
10 disagree -- I disagree that -- that that is an area  
11 that -- I'm not saying that an expert is prohibited, but I  
12 disagree that it is an area in which an expert is  
13 required.

14 I also disagree that the defendant has any  
15 obligation to call an expert and that therefore, the  
16 plaintiff's expert carries the day. The plaintiff has --  
17 the plaintiff has the burden of proof. I do not have the  
18 burden of proof on that and I do not know, and in fact,  
19 and I believe that the instructions that the Court will  
20 give to the jury, in fact, says that you can believe or  
21 disbelieve an expert and that the defendant does not have  
22 any obligations -- such obligation.

23 THE COURT: Well, I agree with you, Mr. Bolton,  
24 up to -- with everything you just said. So if you wanted  
25 to talk about, as the doctor did, other stressors in

1 Mr. Pozner's life, and it's a short, succinct question,  
2 I'm not sure Mr. Zimmerman is going to object to -- I  
3 don't -- I'll have to hear the question.

4 But, again, I have to tell you this concept of  
5 proving that the remaining portions of the book, *Nobody*  
6 *Died at Sandy Hook*, is allegedly a serious academic --  
7 piece of academic research and should somehow or another  
8 be relevant to put in to sort of disproportion the  
9 defamatory statements that should make Mr. Pozner feel  
10 better is so far from what you're telling me in terms of  
11 your ability and right as a defendant to sow doubt as to  
12 the conclusions of the doctor.

13 So you can -- you know, we're going to hear  
14 about other stressful -- again, make your objections,  
15 Mr. Zimmerman, and if we -- if we're getting bogged down  
16 and spending too much time and I don't understand the  
17 relevance, then I'll sustain the objection. If I -- they  
18 think they're fair questions and I can, in my mind,  
19 understand where Mr. Bolton is going and how it relates to  
20 the issues and the factors the jury is going to employ in  
21 answering the question, I'll overrule the objection, and  
22 then you'll get a sense -- and any trial lawyer gets a  
23 sense if it's a string of sustained objections, then  
24 Mr. Bolton will have to decide if he keeps going at it  
25 again and again. If they're all overruled, then you'll

1 have to fallback and say, Well, I guess the Judge is going  
2 to let this stuff come in.

3 I'll just conclude with the way I began. It's  
4 not that I disagree with what you're either saying. It's  
5 just that in reflection last night, I wanted to point out  
6 as a trial judge, it's very hard in the middle of a trial  
7 to talk about this kind of theoretical concepts in the  
8 context of an oral motion in limine.

9 So that's how we'll handle it. I don't want to  
10 discourage you from making your objections and think that  
11 I've rejected the concepts, nor do I want to discourage  
12 you, Mr. Bolton, from providing a robust defense of your  
13 client in this case.

14 MR. BOLTON: I appreciate that. Recognizing  
15 though Your Honor's preliminary comments and thoughts, let  
16 me -- let me look at it -- maybe approaching it from a  
17 different perspective, and that would be --

18 THE COURT: Excuse me, just -- are they all  
19 here? Oh, we're waiting for two.

20 MR. BOLTON: I'm not holding anybody up at this  
21 point?

22 THE COURT: No.

23 MR. BOLTON: I guess to the extent people  
24 considered the book and chapter and the context to be  
25 irrelevant or potentially irrelevant, then -- then I guess

1 I would suggest then that -- that a motion by myself then  
2 to limit the plaintiff to discussing only the four  
3 statements that -- that have been found to be defamatory,  
4 and that -- and that the Court -- and that the plaintiff  
5 be prohibited from going beyond the four statements, and  
6 not providing any context and not providing any -- any  
7 discussion about --

8 THE COURT: So here's why I'm not going to  
9 accept your invitation or allow that or if you are making  
10 that, why I'm going to deny it. I no more want to tutor  
11 Mr. Zimmerman or Ms. Feinstein on her direct examination  
12 of her client than I do want to define or tutor your  
13 direct examination of Dr. Fetzer.

14 If whomever is asking Mr. Pozner the question  
15 starts talking about all the other chapters of the book or  
16 all these other aspects and then you follow up on  
17 cross-examination, I'd like to ask you a couple more  
18 questions about your comment on the other chapter, I  
19 hardly think I'm going to sustain an objection based on  
20 relevance if it's a clear, simple follow-up question with  
21 the plaintiff lawyer opening the door.

22 So rather than pretend, like, as a judge I can  
23 now tell Attorney Feinstein or Attorney Zimmermans, with  
24 an S, which one, let's see what they do. And I do pay  
25 attention. I have my transcript, and I'll keep track.



1 And if your -- if they are relevant because of the area of  
2 direct examination and an objection is made, I'll overrule  
3 the objection.

4 MR. BOLTON: Well, I'm --

5 THE COURT: If, on the other hand, the direct  
6 examination is limited to the four defamatory statements  
7 and no mention is made of any chapters of the book or any  
8 other author of the book, then your argument about them  
9 opening the door is no longer a good one. You might have  
10 other reasons. We'll just deal with it at the time the  
11 issue is raised.

12 MR. BOLTON: Okay. Okay. But what I'm alerting  
13 the Court to is that I may not necessarily just be looking  
14 for them to open the door. I may be making those  
15 objections myself as the testimony comes in.

16 But -- but one that I would like to take up real  
17 briefly, Attorney Zimmerman said Professor Fetzer's career  
18 and his research and his -- is not on trial here, it's not  
19 relevant. And along those lines, I would -- I would  
20 request that there be no questions when Mr. -- when  
21 Professor Fetzer is questioned regarding any other area in  
22 which he's researched that they inquired about in voir  
23 dire, the JFK --

24 THE COURT: I'm going to deny that.

25 MR. BOLTON: Pardon?

1           THE COURT: I'm going to deny whatever you're  
2 asking me to do. I'm not going to do it. First of all,  
3 it's not in a form of written motion. I started out by  
4 saying please don't give me oral motions in limine in the  
5 middle of a trial to try to pretend like I can then start  
6 telling you -- either of you how to try your case. I have  
7 no idea what their cross-examination is going to be nor do  
8 I know what your cross-examination is going to be.

9           Taken to its logical extreme, gentlemen, maybe I  
10 should ask the witnesses all the questions, thinking that  
11 I know what this case is about. But last time I heard, we  
12 have the adversarial system in our courts of law, and I  
13 rely on learned counsel to do the job that they've been  
14 hired to do, and I'll follow along and rule on the  
15 objections when they're made.

16           Okay. I just wanted to make those comments  
17 because, like I said, came up. One of the other things  
18 I'll tell you, as a judge --

19           MR. BOLTON: Well --

20           THE COURT: -- I don't know as a lawyer too,  
21 when things happen after eight hours of testimony at the  
22 end of the day, I like to -- you know, the human nature is  
23 you accept the invitation to talk about these things but  
24 then you think afterwards, like, I could have thought more  
25 carefully.

1 MR. BOLTON: And it's my understanding --

2 THE COURT: I just wanted to say that you should  
3 not have left the impression that I am ruling one way or  
4 the other on the admissibility of any of these questions  
5 under the rules of evidence. It's just that I did not  
6 understand the concept with sufficient degree of requisite  
7 certainty that I could grant a motion in limine to thereby  
8 instruct opposing counsel on what was appropriate and  
9 inappropriate.

10 Okay. If when the jury -- I promised you guys  
11 would get a little break before the jury came in.

12 MR. BOLTON: Okay. I just want to clarify. You  
13 folks then are prepared then to pick up with the  
14 cross-examination, correct?

15 MS. FEINSTEIN: Yes. The cross is cued up.

16 MR. BOLTON: Okay. Thank you.

17 THE COURT: We'll start with hitting the play  
18 button.

19 MS. FEINSTEIN: That's right.

20 THE COURT: Okay. Well then let's wait for the  
21 jurors to show up and then we'll start promptly.

22 Oh, we do have, curiously, the Channel 3 -- the  
23 local affiliate CBS has put in a media request. I, as a  
24 routine, grant those. I guess under the local rule or  
25 practice sometimes it's appropriate to ask people.

1           Bear in mind this bear -- was relevant to your  
2 motion, Mr. Zimmerman. You'll see, and you can -- my  
3 bailiff isn't here. The -- the logistics of it, they're  
4 in that room behind the glass. So the jury won't actually  
5 see the cameras. They come in and go out completely  
6 silently and you -- you actually, with your table over  
7 there, they'll be behind your head. Mr. Pozner's actually  
8 situated in such a way that, unless he swivels around and  
9 looks right in the glass, they're not going to capture his  
10 face either. But, the media request had been faxed in  
11 this morning. Any comments or objections? As indicated,  
12 I routinely grant -- or I should say, I've never denied a  
13 media request.

14           MR. ZIMMERMAN: Just for clarification, Your  
15 Honor, is the request that they come in today and film  
16 with video --

17           THE COURT: Correct.

18           MR. ZIMMERMAN: -- from that room?

19           THE COURT: Correct.

20           MR. ZIMMERMAN: We are opposed to it. While I  
21 understand the Court's position that Mr. Halbig still has  
22 still images of Mr. Pozner and he could release those, he  
23 presumably released those to some limited circle of people  
24 that are related to him.

25           Our concern is always that Mr. Pozner is, for

1 good reason, in fear of his safety and a crime victim, and  
2 we would not -- like to not have them videotape his direct  
3 exam. We're not opposed to any other videotaping.

4 THE COURT: I understand. Any objections,  
5 Mr. Bolton?

6 MR. BOLTON: I have no position on it, Your  
7 Honor. I'm neutral.

8 THE COURT: Okay.

9 MR. ZIMMERMAN: And, Your Honor, we're fine with  
10 audio, just it's only the images of his face that we're  
11 concerned about.

12 THE COURT: Yeah. Well, I appreciate, again,  
13 renewing your objection. As I said last time, Mr. Pozner,  
14 please don't construe my comments as being unsympathetic  
15 to your situation. Far from it. I have no human  
16 experience to relate in any way to the concerns expressed  
17 by Mr. Zimmerman.

18 But in Wisconsin there has always been for the  
19 last 150-plus years this openness to the courts and the  
20 courtroom proceedings to the public, and unfettered --  
21 relatively unfettered access to the media and  
22 broadcasting and communicating to the public the operation  
23 of the court system, although, there are exceptions for  
24 victims of crimes and juveniles, certainly so.

25 One of the factors that I mentioned, of course,

1 is Mr. -- purportedly, Mr. Halbig and maybe Mr. Fetzner's  
2 belief that the individual sitting in the courtroom who  
3 bears a likeness to the picture on the videotape  
4 deposition is not, in fact, Leonard Pozner, the purported  
5 father of the child whom may never have existed. So this  
6 concept of changing identities and crisis actors and  
7 courtroom actors still perpetuates, apparently, among  
8 certain groups, and were I to do as you say,  
9 unfortunately, it would just contribute to the notion that  
10 the Court is participating in the alleged subterfuge by  
11 denying the public's access to a clear look at the face of  
12 the man who's going to testify in court before the jury.  
13 Once again, evidence of -- I can probably see it coming,  
14 evidence of the Court's complicity in the deep state to  
15 deny the truth to come out as to who the accuser is and  
16 who is, in fact, asking the jury to award the damages. I  
17 never have, probably never will as a trial judge, confront  
18 such a scenario, but that's what really we face here  
19 today, and with the utmost respect to Mr. Pozner, it's the  
20 day in which he confronts the person who's alleged to have  
21 defamed him and then plead his case to the jury, the  
22 damages that should be awarded, if any, and to do so in  
23 open court for all to see. That's really what, you know,  
24 clean government and open courts are really about, but  
25 please don't construe it as being unsympathetic to any of

1 the grounds that you've submitted and the concerns that  
2 you have.

3 MR. ZIMMERMAN: With --

4 THE COURT: No question.

5 MR. ZIMMERMAN: With respect, Your Honor, this  
6 case is not being tried to the public and Mr. Pozner's  
7 identity is not on trial. The public may have an interest  
8 in that, but the public interest also reflects his safety  
9 and well-being as a crime victim.

10 THE COURT: I understand.

11 MR. ZIMMERMAN: And Wisconsin has supported that  
12 for many years. And if this were a case where there was a  
13 sexual assault victim accusing an accuser, the -- the  
14 state does block videotaping in those instances.

15 THE COURT: Well, and I've searched,  
16 Mr. Zimmerman, for a firm foundation for what you ask.  
17 There is no precedent though under the Wisconsin  
18 Constitution for me to extend the rights of a victim of  
19 crime to the victims of crimes that occurred in other  
20 states. Now, the constitutional provision and the rights  
21 of crime victims have all been in cases where the crime  
22 was committed in Wisconsin and the defendant is prosecuted  
23 in the criminal courts. It's not to say that it -- it  
24 shouldn't, it's just that there's no precedent for a crime  
25 victim rights being extended to crimes committed -- crimes

1 committed and prosecuted elsewhere.

2 The media and the -- also has a right to  
3 participate in the court -- in the court system and report  
4 to the public what is going on. And, we have print media  
5 that can report as to what is being said, but the  
6 television stations are a media in which they rely on  
7 visual reporting, and though I never asked, I am certain  
8 that the media would prefer to not have a limitation on  
9 the pictures that they would like to take and report.

10 I've balanced off all of those and I tried to  
11 communicate then as I do now in appreciating and  
12 understanding your position. The balance comes,  
13 unfortunately for Mr. Pozner, down on the side of not  
14 limiting the access of media both in terms of its -- the  
15 print or digital media, video media, and how they report  
16 on this case. But please don't construe that as being  
17 unsympathetic, and I understand this is a once in a  
18 lifetime situation. It's just that we're going to go  
19 ahead and allow the media to report on this important  
20 case.

21 MR. ZIMMERMAN: Will the Court provide reasons  
22 to the media so that they can understand the implications  
23 for Mr. Pozner and hopefully treat this accordingly and  
24 respectfully, rather than treat this like a  
25 run-of-the-mill everyday case? The Court has done



1 balancing. I think it's important for the media to  
2 understand --

3 THE COURT: I don't have any problem with that,  
4 do you, Mr. Bolton?

5 MR. BOLTON: I have -- I don't know exactly  
6 what's being requested here.

7 THE COURT: I'll tell you what's being  
8 requested. When the media comes, usually they set up, I  
9 can see them coming, and I have no problem telling --  
10 Mr. Zimmerman is simply saying would you inform the media  
11 of the motion that has been made before the Court and the  
12 concerns that is expressed by the plaintiff and the ruling  
13 of the Court and then let the media decide how it, in its  
14 journalistic integrity, desires to report.

15 MR. BOLTON: I think there's a significant risk  
16 of prejudice to the defendant, because the implication is  
17 then that somehow there is an imminent threat posed by the  
18 defendant in this case. And so I'm concerned that we  
19 create a false impression then that somehow we are  
20 creating some sort of a risk environment here.

21 THE COURT: Well, I'll be very careful what I  
22 say, but I'll go ahead and do that. I intend to do  
23 nothing other than inform those not here today -- not here  
24 now, namely, the media, as to what the Court was asked to  
25 do and what the Court decided, and that for me to

1           communicate it has been the plaintiff's request, although  
2           not obligated by the Court, that there be no pictures  
3           taken of the plaintiff's face. I intend to do nothing  
4           other than what the media would know if they were sitting  
5           in the courtroom now, that there's no order limiting but  
6           that they should be aware of the request. I'll go ahead  
7           and do that. We'll have to take a short break when they  
8           set up.

9           MR. ZIMMERMAN: Thank you, Your Honor.

10          THE COURT: Okay. We'll wait for the jurors.

11          THE BAILIFF: They're here.

12          THE COURT: Oh, they're here. Let's take our  
13          ten minute break and then we'll bring them in.

14                   (Off the record at 9:04 a.m.)

15                   (Back on the record at 9:14 a.m.)

16          THE COURT: We'll go back on the record. Just,  
17          I have a special verdict form. Still it's the preference  
18          of the parties to ask one question?

19          MR. ZIMMERMAN: Yes, Your Honor.

20          THE COURT: Okay. We do have a caption. I  
21          should strike Palecek and Wrongs Without Wremedies.

22          MS. ZIMMERMAN: Excellent point, Your Honor.

23          THE COURT: Right?

24          MR. BOLTON: Yes.

25          MS. STEDMAN: Yes.

1 THE BAILIFF: All rise for the jury.

2 (Jury in.)

3 THE COURT: Thank you. Please be seated.

4 Good morning. Welcome, ladies and gentlemen.

5 The good news is I don't -- somebody was late this  
6 morning, but I don't know who, so you don't have to out  
7 yourself or raise your hand. If it makes any difference,  
8 I overslept this morning too, so it happens, and I can't  
9 believe the traffic on the west side of Madison this  
10 morning. It's like everyone was trying to get to work, so  
11 things happen. Don't -- whoever it was, I really don't  
12 know who, but don't beat yourself up over it. We're doing  
13 pretty good in keeping this case moving. One of the jobs  
14 of a trial court judge is to keep things moving so I can  
15 make it efficient and present the evidence to you, ladies  
16 and gentlemen, as members of the jury, but I hope -- I  
17 want to make your experience here a worthwhile one and not  
18 create an unnecessary stress as you try to get up in the  
19 morning and battle the crosstown traffic. So we're a  
20 little behind, but we'll begin this morning I guess with  
21 the cross-examination videotape deposition of the doctor.

22 As I indicated yesterday, just remember that my  
23 court reporter retires to the office to work on other  
24 things. Don't think that because she's not transcribing  
25 it, it's not a record. It is. We just use the flash

1 drive or the electronic as part of the court record.

2 Are we ready to proceed with the  
3 cross-examination?

4 MR. ZIMMERMAN: Yes, Your Honor.

5 THE COURT: Okay. Go ahead.

6 (Video deposition began at 9:16 a.m.)

7 (Video deposition paused, followed by the  
8 mid-morning break.)

9 (Back on the record at 10:39 a.m. outside the  
10 presence of the jury.)

11 THE COURT: Good morning. Please be seated.

12 May I have your name, please.

13 MS. QUINTANA: Sure. Amanda, and my last name  
14 is Quintana.

15 THE COURT: And you're with WISC TV 3?

16 MS. QUINTANA: Yes.

17 THE COURT: Welcome. I did get a copy of your  
18 media request, which I granted.

19 At the request of the plaintiff, I just wanted  
20 to let you know that the plaintiff had asked the Court not  
21 to allow the media to photograph Mr. Pozner from the  
22 shoulder up. In support of that request, Mr. Pozner had  
23 indicated that he fears for his own safety, that he is a  
24 victim of a crime in another state, a person had been  
25 convicted and sentenced to prison as a result of threats.

1 He prefers to keep his identity as protected as can be.

2 I did not grant the motion. I denied the  
3 motion, citing the fact that I felt that the courts in  
4 Wisconsin are open, and that I wasn't going to place any  
5 restriction on you or other members of the media. There  
6 are no photographs of anyone in the courtroom.

7 The plaintiff asked simply that I just let you  
8 know that, to the extent that in your journalistic  
9 discretion, whether you choose to capture Mr. Pozner's  
10 facial image. So there's no order, but just that I let  
11 you know, to the extent that you find that relevant to how  
12 you capture those images.

13 MS. QUINTANA: Okay. I understand.

14 THE COURT: Do you have any questions?

15 MS. QUINTANA: No, I understand.

16 THE COURT: Thank you for coming.

17 MS. QUINTANA: Thank you.

18 THE COURT: And we'll turn on the room.

19 MS. QUINTANA: Microphone?

20 THE COURT: Yeah.

21 MS. QUINTANA: Thank you.

22 THE CLERK: Can you ask him?

23 THE COURT: Can you hear me in the media? Okay.

24 Yeah. Ready?

25 THE BAILIFF: I don't think so.

1 THE COURT: Yeah. She came back.

2 THE BAILIFF: Did she?

3 THE COURT: Yeah.

4 THE BAILIFF: Then I guess we're ready.

5 THE COURT: Yeah. How much more time do we have  
6 on --

7 MR. BOLTON: I think we said about --

8 MS. FEINSTEIN: Emily, do you know how much time  
9 we have?

10 MS. STEDMAN: I will check right now. I think  
11 it's about 40 minutes. There are two -- there's two  
12 portions that have been cut.

13 THE COURT: Okay. So about 40 minutes?

14 MS. STEDMAN: I think so.

15 THE COURT: All right. I'll let the jury know.  
16 It's sometimes helpful to give them a heads up.

17 MS. STEDMAN: It will go until 3:32. The  
18 timestamp says 3:32.

19 THE COURT: Who's your next witness?

20 MR. ZIMMERMAN: Mr. Pozner.

21 THE COURT: You want to just take an early  
22 lunch? Because that will break really early. It's up to  
23 you. How long is your direct examination, do you think?

24 MR. ZIMMERMAN: 35, 40 minutes, tops. Brief.

25 THE COURT: Why don't you -- you just decide.

1           If you want to take an early lunch, I don't have any  
2           problem with that, otherwise, we can go ahead.

3                   MR. ZIMMERMAN:   Okay.   Thank you.

4                   THE COURT:    So there's about 35 minutes left.

5                   THE BAILIFF:   All rise for the jury.

6                           (Jury in.)

7                   THE COURT:   Thank you.   Please be seated.

8                           So in the future, despite the fact that I  
9           completely spaced out, our breaks will be a little longer  
10          to accommodate one of your fellow jurors, which I'm happy  
11          to do.   Puts us a little bit beyond, but we'll just keep  
12          plugging away.   There's about 35 minutes left on the  
13          videotape of the cross-examination, and then there's a  
14          direct -- redirect and then recross.   Depending on how  
15          that falls on the timeline, we might take an early lunch.  
16          The sun's shining, I guess, although, you guys know that  
17          because you've got windows in your jury room.   Or if we  
18          can get things keep moving, I'll just be -- Mr. Zimmerman  
19          will make the call what he prefers.

20                           So with that, we'll resume with the videotape  
21          deposition.

22                           (Video resumed at 10:45 a.m.)

23                           (Video concluded at 11:17 a.m.)

24                   THE COURT:    Is there redirect?   No recross?

25                   MR. ZIMMERMAN:   No, Your Honor.

1 THE COURT: Okay. It's only 11:15. Would you  
2 like to call your first -- next witness?

3 MR. ZIMMERMAN: Yes, please. Plaintiffs would  
4 call Mr. Leonard Pozner.

5 THE CLERK: Please raise your right hand.

6 (Witness sworn.)

7 THE BAILIFF: Watch your step. This chair just  
8 swivels around. It doesn't go back and forth.

9 THE WITNESS: Oh, okay.

10 THE BAILIFF: There's more water in the pitcher.

11 THE WITNESS: Great. Thank you.

12 THE COURT: Please.

13 LEONARD POZNER,

14 called as a witness, being first duly sworn in  
15 the above cause, testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MR. ZIMMERMAN:

18 Q Good morning, Mr. Pozner.

19 A Good morning.

20 Q I'd like to ask you just some preliminary questions before  
21 we jump in. Have you ever testified before in front of a  
22 jury?

23 A No, I have not.

24 Q How are you feeling today?

25 A Okay.



1 Q Thank you. Let me ask some background about you, please.

2 Where do you live?

3 A I live in Florida.

4 Q And how long have you lived there?

5 A Since 2013.

6 Q Where did you live before you moved to Florida?

7 A Before Florida, I lived in Sandy Hook, Connecticut.

8 Q And about how long did you live in Sandy Hook?

9 A About eight years.

10 Q Mr. Pozner, are you married?

11 A No. I'm divorced.

12 Q When were you divorced?

13 A In 2014.

14 Q And do you have any children, Mr. Pozner?

15 A I do.

16 Q How many?

17 A I have two living children and one dead son.

18 Q I'm going to ask you some questions about your son. What  
19 was his name?

20 A My son's name was Noah.

21 Q And, when did Noah pass away?

22 A In 2012.

23 Q How old was he when he died?

24 A Noah was six years old.

25 Q And in the range of siblings, is he the oldest or the

1 middle or the youngest? Where does he fall?

2 A Noah was a twin to my youngest daughter.

3 MR. ZIMMERMAN: Your Honor, may I approach the  
4 witness?

5 THE COURT: Please.

6 (Exhibit 3 marked for identification.)

7 BY MR. ZIMMERMAN:

8 Q Mr. Pozner, I've shown you what's been marked Exhibit 3.  
9 Do you recognize this?

10 A Yes.

11 Q What is it?

12 A It's a photo of Noah.

13 MR. ZIMMERMAN: Your Honor, I'd move that  
14 Plaintiff's Exhibit 3 be introduced into evidence.

15 THE COURT: Any objection?

16 MR. BOLTON: No objection.

17 THE COURT: Received.

18 (Exhibit 3 received into evidence.)

19 MR. ZIMMERMAN: And, Your Honor, I request  
20 permission to publish Exhibit 3 to the jury.

21 THE COURT: Go ahead.

22 BY MR. ZIMMERMAN:

23 Q Mr. Pozner, I'd like to ask you if you can tell us some  
24 memories you have of Noah growing up.

25 A Noah was a regular little boy. He was -- he was a twin,

1 and so that made him sensitive to others, and he -- and he  
2 loved to joke and just a six-year-old boy.

3 Q And when you say he loved to joke, what do you mean by  
4 that?

5 A Well, he would -- for instance, he would joke that he  
6 would go to work at night, while his sister slept, at a  
7 taco factory and things like that.

8 Q Mr. Pozner, what grade was Noah in when he died?

9 A Noah was in first grade when he died.

10 Q At what school?

11 A He died at the Sandy Hook Elementary School.

12 Q And how did your son die, Mr. Pozner?

13 A He was murdered in a shooting at that school.

14 Q Can you tell us what you remember about the last time you  
15 saw your son alive.

16 A The last time I saw Noah would have been the morning of  
17 December 14th. It was a regular morning. We got ready  
18 for school. I drove my three kids to school. We -- it  
19 was a regular day. We played music in the car and joked  
20 around, and I dropped my three kids off at the car line.  
21 And, I don't remember if I said I love you that day, but I  
22 said, you know, have a great day. And I remember Noah, it  
23 was cold, but he jumped out not wearing his jacket and he  
24 had one arm in one sleeve and his backpack in his other  
25 arm, and he was kind of juggling both and walking into the

1 school that way. And that's -- that's the last visual  
2 that I have of Noah.

3 Q Can you tell us what you did when you learned that Noah  
4 was one of the victims.

5 A Well, after that we had to make arrangements for his  
6 funeral.

7 Q When was Noah's funeral?

8 A Noah's funeral was one of the first funerals after the  
9 shooting, and it was just a few days after the shooting.

10 Q Can you tell us what you remember about your son's  
11 funeral.

12 A I remember that there were -- there were a lot of people  
13 outside and it was a large law enforcement presence, and  
14 the funeral home was pretty much standing room only.  
15 There were that many people there. And -- and before the  
16 funeral, we had -- we had a private viewing where we  
17 opened the coffin, and -- and I got a chance to say, you  
18 know, one last good-bye to Noah.

19 Q And how did you say one last good-bye to Noah?

20 A Well, I made contact with him. I wanted to hold his hand,  
21 but I couldn't.

22 Q Why -- I apologize. Why couldn't you hold his hand?

23 A Oh. Noah was shot in his hand and his face, so part of  
24 his body was covered.

25 Q I apologize for the interruption. Please continue telling

1 us what you remember about the private portion of the  
2 ceremony.

3 A I remember, well, saying good-bye to him and kissing him  
4 on his forehead in a familiar way that I've always done,  
5 and that was the only part of him that was not covered.  
6 And --

7 Q What did you --

8 A -- that was the last time I saw him.

9 Q What did you do after the funeral service?

10 A Oh, we -- we -- we went to the funeral -- or to bury Noah,  
11 to the cemetery.

12 Q Can you tell us, please -- Mr. Pozner, tell us, please,  
13 about your emotional condition following the loss of your  
14 son.

15 A Um, well, I was devastated. I was -- didn't feel like  
16 doing much of anything. It was just one day at a time.

17 Q Did you ever seek mental health treatment?

18 A Yeah, I did. I went into counseling quickly, and I saw a  
19 psychiatrist, and then I was diagnosed with PTSD.

20 Q How long, in your estimation, did you remain numb and  
21 devastated?

22 A For probably about a year.

23 Q And then how did your emotional condition change over  
24 time?

25 A Well, over time things got back into the -- just into the

1 pattern of regular life. I have two other daughters, and  
2 they -- you know, they need their parent. And,  
3 eventually, we left -- we left Sandy Hook. So we started  
4 a life elsewhere.

5 Q Did you start to feel better?

6 A I did.

7 Q What -- other than -- withdraw that. I'd like to talk to  
8 you about Dr. Fetzer and this lawsuit. When did you first  
9 become aware of the defendant?

10 A I became aware of Dr. Fetzer in mid-2014.

11 Q How did you become aware of him?

12 A He had a -- he was writing about Noah and about me.

13 Q Mr. Pozner, in this case you've asserted defamation based  
14 on statements in the book, *Nobody Died at Sandy Hook*.  
15 Have you read the book?

16 A No. I've not read the book. I've -- I've read the parts  
17 that are about me, and the title pretty much tells me  
18 about the rest of it.

19 Q You've heard during the case that there are three  
20 statements from the book that were alleged to and found  
21 defamatory. I'd like to ask you about those statements.  
22 How did it feel to you when you read those statements?  
23 How did it make you feel?

24 A Well it -- it -- it said a lot of ugly things, and I felt  
25 like I needed to defend my son. He couldn't do that for

1           himself, so I needed to be his voice.

2           Q    Did you have any other feelings?

3           A    Well, it caused me -- you know, it caused me duress  
4           personally.

5           Q    How do those feelings impact you today?

6           A    Um, well, I -- I'm concerned for -- for my safety, my  
7           family's safety, my living children, what -- how they  
8           could be treated in the future and online and in their  
9           life, and how that would be viewed.

10          Q    Mr. Pozner, you also alleged one other defamatory  
11          statement in this case from an August 2018 blog post. Do  
12          you recall that?

13          A    Yeah.

14          Q    How did it make you feel when you learned about that  
15          statement?

16          A    It caused me to be concerned for my family's safety.

17          Q    In what way?

18          A    Well, I was concerned that someone would do something --  
19          do something bad.

20          Q    Mr. Pozner, in this case you've alleged two types of harm.  
21          One is harm to your reputation. I'd like to ask you some  
22          questions about that. What -- how do you think that  
23          Mr. Pozner's statements about your son's death  
24          certificate --

25                           THE COURT: Mr. Fetzer's.

1 MR. ZIMMERMAN: I apologize. Thank you, Your  
2 Honor.

3 BY MR. ZIMMERMAN:

4 Q How do you think Dr. Fetzer's statements about your son's  
5 death certificate injured your reputation?

6 MR. BOLTON: Objection. Calls for speculation.

7 THE COURT: Overruled.

8 THE WITNESS: Well, it -- he -- it causes people  
9 to believe that -- that I lied about my son's death, that  
10 my son didn't die, and that I'm somehow doing that for  
11 some -- some other reason.

12 BY MR. ZIMMERMAN:

13 Q Has that impacted the way you interact with people?

14 A It does. I'm very cautious.

15 Q In what ways?

16 A Well, meeting people for the first time, I'm very careful  
17 about what I reveal and what others may reveal about me.

18 Q Why is that, Mr. Pozner?

19 A I don't know how people might react.

20 Q And what do you mean by that, how people might react?

21 A Well, people could accuse me of being -- you know, being  
22 this villain that Mr. Fetzer portrayed me to be.

23 Q Why do you think someone might actually make that  
24 accusation?

25 A Because it constantly happens. I get a lot of -- well,



1           there was a woman who was sentenced to prison for making  
2           death threats against me.

3           Q    Is this Lucy Richards?

4           A    Yes.

5           Q    What makes you think Ms. Richards' messages have anything  
6           to do with the defendant's defamatory statements?

7           A    It was -- it's the -- the way she said what she said and  
8           the way she talked about Noah and about me.  It accused me  
9           of faking my son's death or hiding my son, that he's not  
10          really dead.

11          Q    Anything else?

12          A    Um, well part of her sentence and probation is that she is  
13          not to read Mr. Fetzer's website or any of his material.

14          Q    How did you feel when you heard Ms. Richards' messages?

15          A    I was scared.  I was -- I was taken aback.  It was pretty  
16          shocking.  My kids were with me when the voicemails began  
17          autoplaying on my phone, and I was really worried about  
18          them.

19          Q    Did you have any other emotional response?

20          A    Um, well, I was -- I mean, I was frustrated that this  
21          keeps happening.

22          Q    Can you explain why you felt frustrated?

23          A    Well, I was -- I mean, I was frustrated that I was the --  
24          the FBI agents that interviewed Lucy Richards told me that  
25          her source of information was Mr. Fetzer, and I was

1 frustrated that there was nothing I could do about this.

2 Q Mr. Pozner, did you keep these recordings?

3 A I did. I -- I saved them.

4 Q Do you have them?

5 A Yes.

6 MR. ZIMMERMAN: Your Honor, plaintiff moves to  
7 have Exhibits 4 through 7 admitted.

8 THE COURT: Any objection?

9 MR. BOLTON: No, Your Honor.

10 THE COURT: Received.

11 (Exhibits 4 through 7 marked and received into  
12 evidence.)

13 MR. ZIMMERMAN: Plaintiff moves to publish  
14 Exhibits 4 and 5 to the jury.

15 THE COURT: Approved.

16 MR. ZIMMERMAN: Your Honor, may I approach a  
17 moment?

18 THE COURT: Sure.

19 (Exhibit 4 played.)

20 MS. RICHARDS: Did you have your imaginary  
21 friend (inaudible)? Are you still fucking him? You  
22 fucking Jew bastard.

23 (Exhibit 4 concluded.)

24 MS. RICHARDS: Did you have your --

25 MR. ZIMMERMAN: I apologize.

1 (Exhibit 5 played.)

2 MS. RICHARDS: You're going to die, you  
3 motherfucking nigger. Kike. Jew bastard. Fag. Tranny.  
4 Cunt. And what are you going to do about it? You can do  
5 absolutely nothing. You're a loser. You're going to rot  
6 in hell. (Inaudible) death. You're going to die. Death  
7 is coming to you real soon, motherfucker. You're going to  
8 die.

9 (Exhibit 5 concluded.)

10 BY MR. ZIMMERMAN:

11 Q Mr. Pozner, I'd like to turn to the other aspect of  
12 compensatory damages in this case, and that's emotional  
13 harm. Why do you say that Dr. Fetzer's defamatory  
14 statements have caused you emotional harm?

15 A Because, I was -- I was doing well. I was -- I was  
16 interacting with some of the people that were denying  
17 this. I was open to speaking to people, and I had  
18 attempted to be transparent. I published on -- Noah's  
19 death certificate on -- on a social media page I used as a  
20 memorial page, and after doing that, I was accused of  
21 being a fake and a fraud, and that changed everything.

22 Q How do you feel when you think about Noah today?

23 A Well, when I think about Noah -- well, instead of thinking  
24 about Noah and remembering memories that I have with him,  
25 I am constantly reminded of all of this hate directed at

1 Noah and me and that I need to first do something about  
2 that.

3 MR. ZIMMERMAN: Thank you, Mr. Pozner. I have  
4 no further questions.

5 THE COURT: How long is your cross-examination,  
6 Mr. Bolton?

7 MR. BOLTON: I'm not sure, but it might be more  
8 tight if we -- if we took a break right now, and I can  
9 pull things together.

10 THE COURT: Okay. All right. We'll take our  
11 afternoon -- our lunch break. If it's okay with you, I --  
12 we toggle back, early lunch, come back early. Give you  
13 approximately an hour. So it's 11:45. We'll resume with  
14 the cross-examination at 12:45.

15 THE BAILIFF: All rise for the jury.

16 (Jury out.)

17 THE COURT: Anything any -- we need to take up  
18 before we take our lunch break?

19 MR. BOLTON: Not from me, Your Honor.

20 MR. ZIMMERMAN: No, Your Honor.

21 THE COURT: Okay. We'll see you back at 12:45.

22 (Off the record at 11:41 a.m.)

23 (Back on the record at 12:45 p.m.)

24 THE COURT: Mr. Pozner, I think you can come on  
25 back up and sit in your chair. There's one thing we'll

1 learn in this trial is everyone alternates randomly  
2 between Pozner and Pozner.

3 MS. POZNER: I'm okay with both.

4 THE COURT: Ready?

5 THE BAILIFF: All set?

6 THE COURT: Yeah.

7 THE BAILIFF: All rise for the jury.

8 (Jury in.)

9 THE COURT: Thank you. Please be seated.

10 Mr. Bolton.

11 MR. BOLTON: Yes, Your Honor. Ready for me to  
12 go?

13 THE COURT: Yeah.

14 MR. BOLTON: Okay.

15 CROSS-EXAMINATION

16 BY MR. BOLTON:

17 Q Mr. Pozner, you understand that in this lawsuit you have  
18 made claims that the four particular statements were  
19 defamatory; do you understand that?

20 A Yes.

21 Q And we showed them on a -- to the jury during opening  
22 arguments, but what I'd like to do is mark as an exhibit  
23 the statements that we used yesterday, so that they're  
24 part of the record.

25 MR. BOLTON: Who gets the -- who marks them?

1 THE CLERK: This will be Number 8.

2 MR. BOLTON: Number what?

3 THE CLERK: Eight.

4 MR. BOLTON: Okay.

5 (Exhibit 8 marked for identification.)

6 MR. BOLTON: Witness gets this one?

7 THE CLERK: I'm sorry?

8 MR. BOLTON: Witness gets this one?

9 THE CLERK: Yes.

10 MR. BOLTON: Okay.

11 BY MR. BOLTON:

12 Q Mr. Pozner, do you recognize this then as just a  
13 compilation of the four particular statements that you  
14 have claimed to be defamatory in this particular lawsuit?

15 A Yeah, seems to be.

16 MR. BOLTON: I'd move the admission of Exhibit  
17 8.

18 THE COURT: Any objection?

19 MR. ZIMMERMAN: No, Your Honor.

20 THE COURT: Received.

21 (Exhibit 8 received into evidence.)

22 MR. BOLTON: And can you -- can you publish it  
23 to the jury then.

24 THE COURT: Pull that microphone up nice and  
25 close. Sorry, our system --

1 MR. BOLTON: All right.

2 THE COURT: There you go.

3 BY MR. BOLTON:

4 Q Mr. Pozner, during -- during your direct examination there  
5 was considerable testimony about threats that you've  
6 received. Do you recall that testimony?

7 A Yes.

8 Q And, in fact, apparently -- there was considerable  
9 testimony by Dr. Lubit relying on statements by you about  
10 threats. Do you recall that -- his testimony?

11 A Yes.

12 Q With respect to threats, and we heard some -- some very  
13 disturbing audio recordings of threats that you received,  
14 and that was from a Lucy Richards; is that correct?

15 A Yes.

16 Q And Lucy Richards -- is it your -- is it your contention  
17 that Ms. Richards made statements to you or threats to you  
18 as a result of these -- any of these four statements that  
19 are shown in Exhibit 8?

20 A I'm not sure what motivated --

21 Q I'm sorry, I didn't --

22 A I'm not sure what motivated --

23 Q Okay.

24 A -- her.

25 Q Okay. But, previously, when you were deposed earlier in

1           this matter, you indicated though that you believed that  
2           she act of her own volition. Do you recall that?

3           A    I'm not sure what the question is.

4           Q    Let me ask you, do you believe that Ms. Richards acted of  
5           her own volition?

6           A    Yes.

7           Q    With regard to other threats, do you recall when you first  
8           received any sort of physical threat?

9           A    I received many online, so I don't know which ones came  
10          first.

11          Q    When do -- do you -- can you recall at all -- I mean, has  
12          this been going on since the -- sort of the Sandy Hook  
13          skeptics or the doubters first began publishing content on  
14          the internet?

15          A    It probably started in 2014 or that's when I started  
16          paying attention.

17          Q    Okay. Do you know -- do you attribute any threat,  
18          physical threat that you received, to any of the four  
19          statements in Exhibit 8?

20          A    Yes.

21          Q    And which one?

22          A    All of them. They're -- they're talking about the same  
23          thing.

24          Q    I'm sorry?

25          A    I said all the statements are discussing, you know, the



1 same topic.

2 Q And, you believe that someone made a threat to you as a  
3 result of reading these particular statements, one or more  
4 of them?

5 A Yes.

6 Q Do you know what motivated any particular person who made  
7 any threat to you?

8 A Um, they were motivated by believing what they read.

9 Q And that's -- that's -- you're making that assumption; is  
10 that correct?

11 A Well, the -- the information is created by Mr. Fetzer. He  
12 isn't repeating anything. He's the source of it.

13 Q Is it your contention then that -- that only this  
14 content -- that this content alone was -- that you can  
15 identify this content as that which -- which caused  
16 threats to occur to you?

17 A This is part of the content.

18 Q Pardon me?

19 A This is part of the content.

20 Q Part of his content?

21 A There's a lot more that is said about me by Mr. Fetzer.

22 Q Okay. Is there -- is there stuff on the internet that's  
23 been said about you and Sandy Hook, in general, that is by  
24 other individuals than Mr. Fetzer?

25 A Yes, there is, but not specific to -- the content that he

1 creates is unique to his theories.

2 Q And you indicated though that you would attribute  
3 people -- well, let me back up. With regard to other  
4 persons who have made threats against you, do you -- is it  
5 your -- is it your testimony also that those individuals  
6 acted of their own volition?

7 A Yes.

8 Q Do you know whether any -- any individual person who made  
9 a threat to you read the statements that are shown on  
10 Exhibit 8?

11 A Some of the threats include some of the wording here, but  
12 I don't know where they came across that.

13 Q Pardon me?

14 A Some of the threats include wording that's taken off of  
15 these statements.

16 Q And can you -- can you identify any specific one? Any  
17 specific threat? Any specific threatener?

18 A Well, saying the death certificate is a forgery, saying  
19 that it's fake, that Noah didn't die, that it's been  
20 proven that he didn't die.

21 Q And you can attribute that specifically to these four --  
22 one or more of these four statements, in your mind at  
23 least?

24 A Yes.

25 Q But you acknowledge that all -- that people who make

1 threats to you are acting of their own volition, correct?

2 A Correct.

3 Q You have no knowledge that Dr. Fetzer has ever had any  
4 contact with any threatener; is that correct?

5 A Yes. I don't know what -- what caused them to do that.

6 Q Is it fair to say that there's nothing in Exhibit 8 that  
7 calls for anyone to engage in any sort of illegal or  
8 criminal activity?

9 A No. It's not an instruction to do something to me, no.

10 Q Okay. And there's nothing -- you would not consider those  
11 four statements to be an incitement for someone to engage  
12 in some sort of imminent criminal or lawless activity,  
13 fair?

14 A Um, these statements would cause people to take action.

15 Q And -- and when you say that it would cause, is -- is  
16 that a -- have you done any study to reach that conclusion  
17 that -- that what people -- that reading this particular  
18 statement, for instance, will cause people to engage in  
19 criminal or lawless activity?

20 A No, I have not.

21 Q You also indicated that you've received -- that there has  
22 been harassment of yourself that you attribute -- is  
23 that -- is that correct?

24 A Yes.

25 Q And Dr. Lubit also indicated that harassment was a

1 significant basis for his opinion as to the -- any harm  
2 that you've experienced. Do you recall that testimony?

3 A Yes.

4 Q And did -- were you the source of information to Dr. Lubit  
5 about threats and harassment?

6 A I probably shared some of that with him, yes.

7 Q And with respect to harassment, do you know -- do you know  
8 the identity of any harasser?

9 A I do. Some -- some of them.

10 Q Were -- is the identity of any harasser Dr. Fetzer?

11 A Well, the way -- I do feel like I'm being targeted, yes.

12 Q Well, when you've -- when you told Dr. Lubit that you had  
13 experienced harassment, were you referring then simply to  
14 being a target or the subject of internet content?

15 A Well, it seems to be a constant that Mr. Fetzer  
16 specifically goes after me and Noah repeatedly, like he  
17 won't just leave it alone.

18 Q When did the harassment begin? Do you recall when you  
19 began being harassed?

20 A When I started posting photos of Noah on his -- on my  
21 social media page.

22 Q And that began in the latter part of 2014, correct?

23 A Yes.

24 Q And do you -- and you started getting harassment when you  
25 posted such photos?

1 A Yeah. There were comments posted on those photos.

2 Q Okay. And do you attribute any of that harassment then to  
3 the statements that you alleged to be defamatory in this  
4 particular lawsuit?

5 A Some of the statements include these statements, some of  
6 the comments include other things that have been said by  
7 Mr. Fetzer about Noah or me.

8 Q The harassment that you described, it began when you began  
9 posting pictures of Noah on the internet. That preceded  
10 the publication of the statements in Exhibit 8, correct?

11 A Probably, yes.

12 Q Well, do you know when -- do you know when this  
13 publication occurred for the first time?

14 A I think mid-2014, after I released the death certificate.

15 Q After you released the --

16 A Yeah.

17 Q And you began receiving what you call harassing,  
18 harassment, upon the -- that you at least pinpoint to when  
19 you began posting pictures of Noah on the internet; is  
20 that correct?

21 A It got much worse after I released the death certificate.

22 Q What -- what -- tell me what you mean then by -- what do  
23 you -- and I don't -- and I don't mean to minimize, but  
24 just so that -- so that we can understand, have sort of a  
25 common barometer. What do you classify as harassing?

1 A If someone sends me an e-mail or posts on a photo of Noah  
2 on social media, on a public photo, and leaves comments  
3 saying that I'm a fake, I'm a fraud, Noah didn't die, it's  
4 been proven, that it's all a hoax. And then references to  
5 other things that Mr. Fetzer has said, calling Noah other  
6 names, and just parts of other things.

7 Q And with regard to what motivated any -- any such  
8 individual, is it fair to say you have not talked with any  
9 of these people or have you?

10 A Oh, I've talked to some.

11 Q And have any of them identified that they acted in  
12 response to or that Exhibit 8 was an incitement for them  
13 to -- to engage you?

14 A They did not make that statement, but they may have  
15 referenced Mr. Fetzer.

16 Q Have you -- have you ever talked with Mr. Fetzer?

17 A I have not.

18 Q Now, Dr. Lubit indicated that -- that he thought that you  
19 had had conversations with him. Do you recall that  
20 testimony?

21 A Yes.

22 Q And -- and at least in that respect, his recollection or  
23 understanding was incorrect?

24 A I think so. I don't remember it exactly, but, yeah, I  
25 sent a removal demand to Dr. Fetzer, so maybe that was the

1 communication that was misunderstood.

2 Q Your counsel asked you some questions this morning, and he  
3 began with some very poignant exchange between you and he  
4 regarding your son and your relationship with your son.  
5 Do you recall that testimony?

6 A Yes.

7 Q And -- and a very endearing photo was published to the  
8 jury of your son. Do you recall that?

9 A Yes.

10 Q Am I correct that you are not contending in this lawsuit  
11 that you were injured -- that Dr. Fetzer in some respect  
12 injured you by causing the loss of your son; is that  
13 correct?

14 A No, Mr. Fetzer's not responsible for my son's death.

15 Q Okay. And you testified how the death of your son  
16 affected you and your wife, and you -- I believe you said  
17 that for approximately a year you were very severely  
18 affected by -- by the death of your son in terms of your  
19 psychological well-being; is that a fair statement?

20 A Yes. The first year was very hard.

21 Q Pardon me?

22 A The first year was very difficult.

23 Q And -- and Dr. Lubit indicated then that -- that you were  
24 actually on a progression of improvement until about 16  
25 months after Sandy Hook occurred. Do you recall that

1 testimony?

2 A Yes.

3 Q And, is that information -- I mean, did he ask you about  
4 the progression of your improvement and then any -- any  
5 change in your condition? Was that something you  
6 discussed with him?

7 A Yes.

8 Q And, as part of your discussion with him, then you told  
9 him that you had been improving until about 16 months  
10 after -- after Sandy Hook; is that correct?

11 A I don't remember the exact number of months that I would  
12 have said.

13 Q Okay.

14 A But in 2014, I started to look to see what was being  
15 written about Noah online, and I felt I was feeling good  
16 enough to be able to make myself accessible to people who  
17 wanted to communicate.

18 Q But Dr. Lubit then indicated that when you started that  
19 activity of looking on the internet for Sandy Hook content  
20 in 2014, that you began then, what he described as a  
21 decline in your condition; is that fair to say?

22 MR. ZIMMERMAN: Objection, Your Honor.

23 THE WITNESS: After I --

24 THE COURT: Hang on a second, please. Grounds?

25 MR. ZIMMERMAN: Misquotes or misstates prior



1 testimony.

2 THE COURT: Sustained.

3 MR. BOLTON: I'm sorry, Judge, I didn't hear  
4 you.

5 THE COURT: Sustained.

6 MR. BOLTON: Okay.

7 BY MR. BOLTON:

8 Q Was there -- was there anything in Dr. Lubit's testimony  
9 that you disagreed with?

10 A I don't -- I don't remember that well now to be able to  
11 say that.

12 Q Would -- do you know when -- when the statements in  
13 Exhibit 8 were first published?

14 A After I released Noah's death certificate in 2014.

15 Q If I told -- told you that the publication was in October  
16 of 2015, would that sound right to you?

17 A Um, it's possible that it was, but the threats started  
18 after I published his death certificate online.

19 Q Okay. But according to Dr. Lubit, your condition began to  
20 deteriorate in 2014 when you first began searching the  
21 internet and making postings of Noah's picture.

22 A Right. I searched Noah's name and I saw all of the stuff  
23 written about him. That was upsetting to see.

24 Q Okay. And that preceded the publication then of -- of the  
25 defamatory statements shown in Exhibit 8?

1 A Um --

2 MR. ZIMMERMAN: Objection. Assumes facts not in  
3 evidence.

4 THE WITNESS: I don't remember which came --

5 THE COURT: Hang on a second. Overruled. Can  
6 you answer the question?

7 THE WITNESS: I don't remember which came first,  
8 but in 2014 was when I started to pay attention to what's  
9 going on online.

10 BY MR. BOLTON:

11 Q With respect to -- when you say in 2014 you began, I can't  
12 remember -- I'm not sure just what you said, checked,  
13 finding out what was going on? What was your -- what was  
14 the statement you made?

15 A That's when I looked to see how -- what was online about  
16 Noah.

17 Q And you began -- I mean, that was -- that -- you began  
18 actively searching out information about Sandy Hook and  
19 content being published by Sandy Hook skeptics at that  
20 time in 2014, correct?

21 A I started looking at all content that was published online  
22 about Sandy Hook and there were errors in regular media  
23 also that I was addressing, not just denial content, but  
24 the way Noah was being reported on in the news.

25 Q And --

1 A There were -- there were errors.

2 Q And you -- and you continue that to this day, correct,  
3 searching out content on the internet relating to Sandy  
4 Hook and -- and the deniers?

5 A I am, and other people forward things to me.

6 Q And you spend a considerable amount of your own personal  
7 time doing that, correct?

8 A Yes, I do.

9 Q And, is it your testimony that your exposure to that  
10 content that you seek out on the internet, that that does  
11 not cause you any emotional distress?

12 A It causes some.

13 Q Pardon me?

14 A It causes some.

15 Q And yet you -- you continue to do that very actively,  
16 correct?

17 A I feel I'm strong enough to deal with it.

18 Q Is it your testimony that -- well, let me ask this. With  
19 respect to that, that content, what -- what do you do? Do  
20 you try to get content removed from the internet?

21 A Yes.

22 Q And -- and you've developed a fair amount of skill or  
23 people that work with you in accomplishing that; is that  
24 correct?

25 A Yes. I have some experience doing that now.

1 Q And at least at one point in time I think you indicated  
2 that you had had over 1,500 items of content removed from,  
3 I believe -- I believe it was YouTube; is that correct?

4 A Yes, that's correct.

5 Q Have you -- do you have any animosity, I guess, to  
6 Professor Fetzer that animates you in bringing this  
7 lawsuit?

8 MR. ZIMMERMAN: Objection, Your Honor. 904.03.

9 THE COURT: Approach.

10 (Bench conference held outside the presence of  
11 the jury.)

12 THE COURT: I had to look at the number. I  
13 don't have them committed to memory. "904.03, Exclusion  
14 of relevant evidence on grounds of prejudice, confusion,  
15 or waste of time."

16 MR. ZIMMERMAN: Our concern, Your Honor, is that  
17 it is potentially prejudicial in that it would imply that  
18 the basis for this litigation is animus toward Dr. Fetzer,  
19 which we can't rebut by providing evidence that he -- he  
20 does have a legitimate basis for animus against  
21 Dr. Fetzer, because there are no punitive damages in this  
22 case.

23 THE COURT: Your response? You've got to talk  
24 right into the microphone.

25 MR. BOLTON: I think the --

1 THE COURT: Louder.

2 MR. BOLTON: The motivation of the witness is  
3 irrelevant and it's not dependent upon there being a  
4 punitive damage claim.

5 THE COURT: Okay. Step back.

6 (Back on the record in the presence of the  
7 jury.)

8 THE COURT: Sustained.

9 BY MR. BOLTON:

10 Q Mr. Pozner, do you recall the question that I posed to  
11 you?

12 A Please repeat.

13 THE COURT: No. I sustained the objection.

14 MR. BOLTON: I thought you said -- I'm sorry. I  
15 thought you said you did not sustain it. I'm sorry.

16 THE COURT: No.

17 BY MR. BOLTON:

18 Q Have you ever -- have you ever filed a lawsuit in order to  
19 show hoaxers that they will be taken to court and it will  
20 drag on for a long time?

21 MR. ZIMMERMAN: Objection, Your Honor. 904.03.

22 THE COURT: Sustained.

23 BY MR. BOLTON:

24 Q Do you recall Dr. Lubit indicating that some of the  
25 factors that he considers in determining whether or not,

1           you know, the credibility of someone he's evaluating? Do  
2           you recall when he discussed that?

3           A    No, I don't.

4           Q    Do you recall that he indicated that whether the  
5           individual has a history of suing other people is -- is a  
6           factor that he would consider?

7           A    Okay.

8           Q    Pardon me?

9           A    Okay. I recall that.

10          Q    Did you discuss that with Dr. Lubit?

11          A    I don't recall if I discussed that.

12          Q    Have you ever created any content of your own critical of  
13          Dr. Fetzer?

14          A    No, I personally have not.

15          Q    Have you been involved with people that have created  
16          content critical of Dr. Fetzer?

17          A    Can you be more specific?

18          Q    Um, are you familiar with an organization called HONR  
19          Network?

20          A    Yes.

21          Q    And can you tell us what HONR Network is?

22          A    It is a nonprofit that I founded.

23          Q    And do you know whether the HONR Network is -- has created  
24          any content critical of Sandy Hook skeptics or doubters?

25          A    That's often -- HONR's accused of that sometimes, but the

1 purpose of HONR is -- it's to support victims.

2 Q And when you say -- when you discussed your emotional  
3 reaction to content on the internet, disputing or  
4 questioning Sandy Hook, that one of the reasons that  
5 you've become an activist is to honor the memory of your  
6 son; is that correct?

7 A Yes. Correct.

8 Q Is it fair to say that that's really the -- been one of  
9 the most overriding objectives since you became active in  
10 2014?

11 A To -- to protect his memory, his legacy.

12 Q Yes.

13 A And keep his -- keep him from being erased by saying that  
14 he wasn't real is -- is part of what I consider honoring  
15 Noah.

16 (Exhibit 9 marked for identification.)

17 MR. BOLTON: Thank you.

18 BY MR. BOLTON:

19 Q Mr. Pozner --

20 THE COURT: You've got to go.

21 MR. BOLTON: Pardon?

22 MR. BAKER: Mike.

23 BY MR. BOLTON:

24 Q I've presented for you an exhibit -- a document that's  
25 marked as Exhibit No. 9. Is that a document that you're

1 familiar with?

2 A Yes, I am.

3 Q Pardon?

4 A I am.

5 Q And can you tell us what Exhibit 9 is?

6 A It is a like a biography that's online about Dr. Fetzer.

7 Q And am I correct that it's entitled, "James Henry Fetzer -  
8 Life of Insanity"?

9 A Yes.

10 Q And is this -- is this a flattering biography of  
11 Mr. Fetzer?

12 A I don't know. I didn't read the whole thing.

13 Q Were you responsible for any of the content or having it  
14 created?

15 A I did not write it, no.

16 Q This was though created by HONR Network; is that correct?

17 A No, but someone created it in support of HONR.

18 Q Okay. And it's -- it's -- it bears the HONR logo or name  
19 on it; is that correct? Does that indicate that it's --

20 A It does --

21 Q -- a document -- Pardon me?

22 A It does, yes.

23 Q And do you know what was done with this document? How was  
24 this document used?

25 A What do you mean used?



1 Q What -- what was it -- was it posted on a website or --

2 A It's on the internet, yeah.

3 Q Okay. And, again, what was -- was the purpose of this  
4 document to show some hostility or animosity to  
5 Dr. Fetzer?

6 MR. ZIMMERMAN: Objection, Your Honor. Calls  
7 for speculation.

8 THE COURT: Sustained.

9 MR. BOLTON: Move the admission of Exhibit 9.

10 MR. ZIMMERMAN: We object to the admission of  
11 Exhibit 9.

12 THE COURT: We'll take that up outside the  
13 presence of the Court -- jury, excuse me.

14 BY MR. BOLTON:

15 Q With respect to your description this morning of how  
16 you've been affected by content relating to Sandy Hook,  
17 you indicated, and we've talked about it, that you -- that  
18 you feel fearful; is that correct?

19 A Yes.

20 Q And I think you said then that you also have become more  
21 reserved or more restrained in terms of community  
22 interactions, I guess, is that --

23 A Yes.

24 Q -- is that a fair -- Pardon?

25 A Yes, that's correct.

1 Q In -- in an earlier -- you've previously testified, as I  
2 understand it, that before Sandy Hook you were not  
3 particularly active in, for instance, in community affairs  
4 or community groups; is that correct?

5 A Correct.

6 Q And -- and that has continued then post-Sandy Hook,  
7 correct?

8 A Correct.

9 Q You're going to be really -- and I said I thought I was  
10 done. Lawyers always say that and they never really mean  
11 it, but I really mean it. I don't have any more questions  
12 for you right now.

13 THE COURT: Redirect?

14 MR. ZIMMERMAN: No, Your Honor.

15 THE COURT: Thank you. You may step down,  
16 Mr. Pozner.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: We're a little early. Do you need a  
20 break? Okay. Your next witness.

21 MR. ZIMMERMAN: Plaintiffs call Dr. James Fetzer  
22 as an adverse witness.

23 THE CLERK: Please raise your right hand.

24 (Witness sworn.)

25 THE BAILIFF: Follow me.

1 JAMES FETZER,

2 called as a witness, being first duly sworn in  
3 the above cause, testified under oath as follows:

4 ADVERSE DIRECT EXAMINATION

5 BY MS. STEDMAN:

6 Q Please state and spell your full name for the record.

7 A James H., for Henry, Fetzer, F-E-T-Z-E-R.

8 Q And you are the author of Chapter 11 of the book, *Nobody*  
9 *Died at Sandy Hook*?

10 A I am the coauthor of the chapter with Kelley Watt.

11 Q And that means you wrote that chapter?

12 A Well, Kelley and I authored it together.

13 Q So those are your words?

14 A My words and her's. There's an extensive section where  
15 her words are there verbatim in italics.

16 Q But you're not denying that at least some of those words  
17 are yours, correct?

18 A Oh, of course.

19 Q So let's talk about the first edition of the book. That  
20 was published in October of 2015, correct?

21 A 22 October 2015, yes.

22 Q And then Amazon banned the first edition, right?

23 A Less than a month after it had gone on sale and sold  
24 nearly 500 copies, it was banned by Amazon on 19 November  
25 2015.

1 Q But that didn't stop you from making it available to the  
2 public, did it?

3 A Well, Amazon had 20 books on Sandy Hook, only one of which  
4 contested the official account, where I brought together  
5 13 experts on various aspects of the case. It was obvious  
6 to me this was a political stunt, so I immediately  
7 released the book for free as a PDF.

8 Q So that didn't stop you from making it available to the  
9 public, did it?

10 A No. I had no interest in the monetary aspect. I was  
11 seeking to expose the truth of Sandy Hook for the benefit  
12 of the American people.

13 Q And so you made the first edition available to the public  
14 by PDF, correct?

15 A Yes.

16 Q Online?

17 A Yes. And it remains online available to this day.

18 Q For free?

19 A Yes.

20 Q And Chapter 11, which you wrote, is in the PDF as well,  
21 isn't it?

22 A Sure. Which I coauthored.

23 Q And you're not denying that?

24 A Of course not.

25 Q And you refer to the PDF as the banned edition, correct?

1           A    Well, Mike Palecek, my series editor, where Mike had  
2                    proposed the title for this book and I had edited by  
3                    bringing together all the contributors, organizing the  
4                    chapters, introducing the contributors page with a  
5                    biographical summary of each of the contributors, realized  
6                    after Amazon banned the book that we needed to find  
7                    another outlet, so we founded MoonRockBooks.com together,  
8                    and the banned edition was the first edition made  
9                    available by Moon Rock Books as opposed to Amazon.com.

10          Q    And the banned edition is the PDF, correct?

11          A    Well, the PDF is of the banned edition --

12          Q    Thank you.

13          A    The banned edition has a cover with a sheriff's badge on  
14                   it. That's how you would know it was the banned edition,  
15                   but the PDF is the same regardless.

16          Q    And Chapter 11 in the banned edition is identical to  
17                   Chapter 11 to the 2015 first edition, correct?

18          A    Yes.

19          Q    And the banned edition contained one of the four  
20                   statements that this Court already found to be defamatory,  
21                   correct?

22          A    Well, if you mean the first edition, since the chapters  
23                   were the same, the first three of the allegedly defamatory  
24                   statements are in that -- both the first and the second  
25                   edition of the book published in 2016.

1 Q So the banned edition says that Noah Pozner -- excuse me,  
2 Noah Pozner's death certificate is a fake, which we have  
3 proven on a dozen or more different grounds, doesn't it?

4 A Yes.

5 Q And you put the PDF on the internet?

6 A Yes.

7 Q And you made it available to the public?

8 A For free.

9 Q In December of 2015, correct?

10 A No, I made it available immediately. I mean, it was  
11 banned on -- on 19 November, so I made it available.  
12 Actually, that day I was going on the Rense show, and I  
13 realized this was political, so that there was no point in  
14 trying to negotiate with Amazon, because the book had been  
15 created using CreateSpace, which is subsidiary of Amazon,  
16 and the idea that it had violated their guidelines was  
17 ridiculous on its face. I understood this was political.  
18 If I sought to enter into negotiation, it would drag on  
19 and on and on and the public wouldn't have access. So I  
20 released it. That very day I was going on with Jeff  
21 Rense, and I announced it there, and Rense put it up on  
22 his site.

23 Q And so this is the second edition of the book, correct?

24 A That's right. It's got a red badge instead of the bronze  
25 sheriff badge.

1 Q And here on one of the first pages there's a copyright  
2 page and it says, First Edition October 2015, correct?

3 A Yes.

4 Q And it says Banned Edition December 2015, correct?

5 A Yeah. That's once we had founded Moon Rock Books and  
6 issued it as a banned edition with a sheriff's badge on  
7 it.

8 Q And it says Second Edition May of 2016, correct?

9 A Yes.

10 Q And these are your words?

11 A Well, I mean, those are part of -- you know, you have a  
12 publisher, and, you know, the -- you negotiate -- I mean,  
13 you -- you make whatever editions are appropriate to the  
14 copyright page to keep track of the various editions and  
15 identify the edition you're holding in your hand.

16 Q And so you edited this second edition, didn't you?

17 A Sure. I edited both the first and the second, yes.

18 Q So these are your words?

19 A Well, it depends which words you mean. I mean, this is  
20 trivial just to say banned edition. I mean that was  
21 really just a routine in terms of recording the copyright  
22 of the various editions.

23 Q But it says Banned Edition December 2015, correct? "Yes"  
24 or "no"?

25 A Yeah. Of course it does.

1 Q In going back to the original PDF of the banned edition,  
2 it was in black and white with no color photos, correct?

3 A Correct. Yes.

4 Q But you later put a PDF online with color photos, didn't  
5 you?

6 A Well that's the great thing about the PDF, when you get it  
7 online, though you don't have the bound book, all the  
8 images are in color. We only published the original, the  
9 first edition, in black and white. So when I released the  
10 book as -- for free as a PDF, all the readers who  
11 downloaded it had the great advantage that now they could  
12 see the images in color, which are far more vivid and  
13 informative.

14 Q And all the readers that could read it could access the  
15 colored version of the PDF after December 2015, correct?

16 A Sure.

17 Q And, in fact, in January of this year, you told people on  
18 the internet to access the PDF with -- now with colored  
19 pictures, correct?

20 A I've said it many times. I mean, the whole point in doing  
21 this research is to inform the public. If the public  
22 doesn't know the research is available, they won't take  
23 advantage of it.

24 Q And --

25 A So, obviously, I was letting the public know the book was



1 available, because I believed the American people deserved  
2 to know their own history.

3 Q And the PDF or banned edition is still online today,  
4 correct?

5 A Yes.

6 Q For people to access?

7 A Yes.

8 Q For free?

9 A Yes.

10 Q I want to go back to this, the second edition. It came  
11 out in paper --

12 A Yes.

13 Q -- correct?

14 A In both black and white and color.

15 Q And the public could buy it?

16 A I'm sorry?

17 Q The public could buy it?

18 A The public could buy it until this lawsuit led to the book  
19 being no longer available.

20 Q And you are the author of Chapter 11 in this edition,  
21 right?

22 A It's -- it's the same chapter, yes, coauthored with Kelley  
23 Watt.

24 Q So you again write that Mr. Pozner circulated a fake death  
25 certificate, correct?

1 A It has the same content, word for word as the first  
2 edition.

3 Q So this edition contains three of the four statements that  
4 this Court determined to be defamatory? "Yes" or "no"?

5 A That the Court determined to be defamatory, correct. And  
6 with all respect to the Court, I believe this was a  
7 mistake and that indeed the statements were non-defamatory  
8 because they are true.

9 Q And the second --

10 THE COURT: Excuse me. Approach.

11 (Bench conference held outside the presence of  
12 the jury.)

13 THE COURT: So Mr. Bolton, I'm not going to let  
14 Dr. Fetzer impugn the integrity of the Court and the  
15 validity of the rulings. This is the second time. He  
16 earlier said "allegedly defamatory statements," and now is  
17 going into what I can assume to be a diatribe against the  
18 Court's legal rulings.

19 You can either take a break and advise him of  
20 the fact that I expect him to respect the Court's decision  
21 and -- until you get to the Court of Appeals, or I intend  
22 to issue a curative instruction at this point making it  
23 clear to the jury that his repeated attempts to undermine  
24 this Court's earlier decision are inconsistent and they  
25 are instructed to find that the defamatory -- the

1 statements were, in fact, defamatory, and to conclude as  
2 such.

3 Would you like to take a break or what would you  
4 like to do? Talk into the microphone.

5 MR. BOLTON: I'll take the break.

6 THE COURT: Okay.

7 MR. BOLTON: And let me just -- if I used the  
8 word alleged defamatory, I didn't mean to be --

9 THE COURT: I didn't catch it from you.

10 MR. BOLTON: Okay.

11 THE COURT: I'm paying close attention.

12 MR. BOLTON: I didn't -- I certainly didn't mean  
13 any --

14 THE COURT: Okay.

15 MR. BOLTON: -- disrespect.

16 THE COURT: Is it acceptable to take a break?

17 MS. STEDMAN: Yes, Your Honor.

18 THE COURT: Okay. Thank you.

19 (Back on the record in the presence of the  
20 jury.)

21 THE COURT: Ladies and gentlemen, we'll take our  
22 afternoon break.

23 THE BAILIFF: All rise for the jury.

24 (Jury out.)

25 THE COURT: Okay. Please be seated.

1 I'd just like to make a record. I had the  
2 lawyers approach counsel table -- excuse me, the bench  
3 because Dr. Fetzer had now twice characterized the Court's  
4 legal ruling as "allegedly defamatory statements," and  
5 then second, went into a statement, which I will read. So  
6 Mr. Bolton I'm not going to let Dr. -- excuse me, no.

7 "QUESTION: So this edition contains three of the four  
8 statements that this Court determined to be defamatory?  
9 'Yes' or 'no'?

10 "DR. FETZER: That the Court determined to be  
11 defamatory, correct. And with all respect to the Court, I  
12 believe this was a mistake and that indeed the statements  
13 were non-defamatory because they are true."

14 We took a break because I -- either you're going  
15 to consult with your lawyer or I'm going to issue a  
16 curative instruction. I'm not going to allow Dr. Fetzer  
17 to impugn the integrity of the Court and undermine the  
18 legal rulings that were issued in this case. Make no  
19 mistake about it, the Court was unequivocal as a matter of  
20 law that the statements were defamatory.

21 And, Dr. Fetzer, you are admonished not to  
22 characterize them as any less than the legal rulings of  
23 the Court nor should you argue in front of the jury as to  
24 their legitimacy or validity. You can consult with your  
25 lawyer about the rights of appeal, but you won't be using

1 this court and this trial as a collateral attack on the  
2 legal rulings of the Court.

3 When the jury comes back in, I will ask them to  
4 disregard those two answers and statements, that's as to  
5 alleged defamatory statements and Dr. Fetzer's statement  
6 with regard to his belief that the Court made a mistake  
7 are stricken and should be disregarded.

8 We'll take our break.

9 (Off the record at 1:40 p.m.)

10 (Back on the record at 2:06 p.m.)

11 THE COURT: Okay. We'll go back on the record.  
12 There was an objection to 9. Grounds?

13 MR. ZIMMERMAN: Yes, Your Honor. That the --  
14 under 904.03, that the exhibit is highly prejudicial and  
15 not probative. This case is not about whether Mr. Pozner  
16 may have --

17 THE COURT: Is it even admissible as -- is it  
18 hearsay?

19 MR. ZIMMERMAN: Well --

20 THE COURT: Is it authenticated?

21 MR. ZIMMERMAN: I don't think it's  
22 authenticated. Mr. Pozner says he didn't write it, he  
23 didn't release it. There's a watermark on it, but he says  
24 it wasn't his.

25 THE COURT: Mr. Bolton.

1 MR. BOLTON: I think it's properly  
2 authenticated.

3 THE COURT: Okay. You think that. Is it  
4 hearsay?

5 MR. BOLTON: Pardon?

6 THE COURT: Is it hearsay?

7 MR. BOLTON: Um, I don't think so, because, I  
8 mean, it's basically created by an organization that he --  
9 he created. I mean, there's --

10 THE COURT: I think his testimony was he might  
11 have had some involvement in its creation, but I can look  
12 back. He testified he did not prepare this and had no  
13 role in it. So we know that it might have a watermark,  
14 although, I don't know what relevance that is, but he  
15 didn't -- he did, in fact, say he did not create it and  
16 had no role in it. It was created by someone else and  
17 apparently posted on the HONR Network website; isn't that  
18 what he said?

19 MR. BOLTON: Pardon?

20 THE COURT: That he did not create it?

21 MR. BOLTON: Yeah. I agree with that.

22 THE COURT: So if that's true, it's an  
23 out-of-court statement. What are you offering it for?

24 MR. BOLTON: To show the animosity issue.

25 THE COURT: Whose animosity?

1 MR. BOLTON: Well, it -- if -- if the jury were  
2 to conclude that there's no relationship between HONR  
3 Network and Mr. Pozner, then obviously, there is no  
4 connection. But, the jury does get to evaluate and make  
5 some of its own conclusions at least on the inferences  
6 that it wants to draw from the evidence.

7 THE COURT: Okay. Anything else before I rule?

8 MR. ZIMMERMAN: I think the only other thing is  
9 to say that -- and we've covered this pretty extensively  
10 in earlier hearings, Mr. Pozner founded HONR, he's  
11 involved in HONR, but there are many other people involved  
12 in that separately incorporated entity that are not him.

13 THE COURT: I'm not going to admit Exhibit No.  
14 9. I do not believe it's been properly authenticated. I  
15 do believe it is hearsay. And, more importantly, maybe it  
16 was under your 904.03, it contains substantial amounts of  
17 irrelevant information. I don't know what you intended to  
18 do, but I note in part it goes on in some length denying  
19 the existence of 9/11, opining as to the circumstances  
20 with President Kennedy's assassination. So the document,  
21 itself, is -- as marked and offered, taken in its  
22 entirety, is not probative and very real likely to  
23 distract the jury with regard to the discussions, also  
24 going into circumstances with Senator Wellstone's death.  
25 So for those reasons, it will not be admitted.

1                   You can bring them in.

2                   THE BAILIFF: All rise for the jury.

3                   (Jury in.)

4                   THE COURT: Doctor, you may resume the witness  
5 stand.

6                   Thank you. Please be seated. Thank you, ladies  
7 and gentlemen.

8                   Ladies and gentlemen, we took a short break, and  
9 I would like to say that at the -- immediately prior to  
10 the break, Dr. Fetzer stated, and I quote, "And with all  
11 respect to the Court, I believe this was a mistake and  
12 that indeed the statements were non-defamatory because  
13 they are true." That statement is stricken, and you are  
14 hereby instructed to disregard it in its entirety.

15                   You may resume your cross -- your direct -- your  
16 direct examination.

17                   MS. STEDMAN: Thank you, Your Honor.

18 BY MS. STEDMAN:

19           Q    So back to the second edition of your book, Dr. Fetzer,  
20 Chapter 11 in this edition, which includes the statements  
21 that this Court found to be defamatory, says, "This  
22 chapter originally appeared on August 6, 2014," correct?

23           A    Yes, but I think --

24           Q    "Yes" or "no"?

25           A    -- that it was --



1 Q "Yes" or "no"?

2 A Yes. Okay. But it was a different coauthor --

3 Q You only need to answer the question I asked.

4 A All right.

5 Q So --

6 A It was --

7 Q -- in August --

8 A Let me just qualify. I don't believe --

9 Q Your attorney will --

10 A It was not verbatim.

11 Q -- give you an opportunity to qualify.

12 THE COURT: Hold on. Hold on. You can't really  
13 talk over each other in the hopes that nobody hears. If  
14 your objection is that it's being nonresponsive then your  
15 objection is sustained.

16 Doctor, you'll have an opportunity with -- when  
17 it's your time to answer whatever questions and provide  
18 information. For the moment, you should just answer the  
19 questions that are being asked of you.

20 THE WITNESS: Thank you, Your Honor.

21 BY MS. STEDMAN:

22 Q So Chapter 11 in the second edition originally appeared in  
23 an article in August of 2014, so that August 2014 article  
24 says, Noah Pozner's death certificate is a fake, which we  
25 have proven on a dozen or more different grounds, correct?

1 A There's a different coauthor, and I honestly have to look  
2 to see if it were verbatim the same. I believe it's not  
3 verbatim the same, but that that was a preliminary version  
4 of what would become the chapter.

5 Q So Chapter 11 originally appeared in August of 2014,  
6 correct?

7 A In large measure. I mean --

8 Q Thank you.

9 A -- I'm trying to be as exact as I can.

10 Q And this second edition is revised and expanded?

11 A Yes.

12 Q And expanded means you added things, right?

13 A Yes.

14 Q And revised means you changed things, yes?

15 A Well, we took out a couple chapters and we added four more  
16 and made some minor emendations --

17 Q So you --

18 A -- where we had factual corrections.

19 Q So you changed things, correct?

20 A Yes.

21 Q "Yes" or "no"? But you didn't change the three statements  
22 that the Court has found to be defamatory, did you?

23 A Correct.

24 Q And the public could buy this edition until July of this  
25 year, couldn't they?

1 A Yes.

2 Q And to your knowledge, 3,000 copies of this edition sold  
3 to the public, correct?

4 A That --

5 Q "Yes" or "no"?

6 A I'm not the product manager or the business manager, but  
7 that's my understanding, yes.

8 Q It's your understanding that 30,000 [sic] copies of this  
9 edition sold to the public, correct?

10 A What was the number?

11 Q 3,000.

12 A That sounds right.

13 Q So let's talk about blogging. You write blog posts,  
14 correct?

15 A Yes.

16 Q And in August 2018 you wrote a blog post about Noah  
17 Pozner, Mr. Pozner's son, didn't you?

18 A August 2018, I mean, I'd love to see the blog, but it  
19 wouldn't surprise me, you know.

20 Q And it's online?

21 A Well, it may or may not be. There are some blogs that  
22 have just mysteriously disappeared so.

23 Q But you wrote a blog post in August 2018 about Noah  
24 Pozner?

25 A When I went to my new blog I had to transfer 770 blogs

1 from *Veteran's Today*. So if you're referring to a  
2 specific blog, you'll have to enumerate, because I have  
3 over a thousand blogs on my website.

4 MS. STEDMAN: Okay, Your Honor, may I get -- I  
5 need to get his deposition transcript, please.

6 THE COURT: Sure. To refresh his recollection?

7 MS. STEDMAN: Yes, Your Honor.

8 THE WITNESS: Yes.

9 BY MS. STEDMAN:

10 Q So in 2018, you wrote a blog post that includes the  
11 defamatory statements, correct?

12 A I cannot answer that without seeing the blog.

13 Q But that is where the fourth defamatory statement comes  
14 from, correct?

15 A Oh, yes. The POTUS memorandum series edited by Robert  
16 David Steele, yes. The fourth appeared in 2018. That is  
17 correct.

18 Q So you wrote a blog post in 2018 that talks about Noah,  
19 Mr. Pozner's son, didn't you?

20 A I have several memoranda contributing to that collection,  
21 but yes.

22 Q And that's where the fourth defamatory statement comes  
23 from, correct?

24 A Yes.

25 Q That the death certificate is a fabrication, correct?

1 A Yes.

2 Q And that post online is still online today, isn't it?

3 A Well, the last I looked they had to restore the links. I  
4 mean, it -- it should be, but I think it may be  
5 temporarily unavailable but should be restored  
6 momentarily.

7 Q And even after the Court determined that the language you  
8 wrote was false and defamatory, that blog is still  
9 available online, correct? "Yes" or "no"?

10 A Well it's a historical document.

11 Q "Yes" or "no"?

12 A We're talking -- you don't go back and revise books just  
13 because they're no longer current.

14 MS. STEDMAN: Your Honor, I would move to --

15 THE WITNESS: Yeah, I believe it is, because it  
16 was a part of the memoranda series. Yes, just as the book  
17 is still available. Yes.

18 MS. STEDMAN: Your Honor, I would move to strike  
19 that as nonresponsive.

20 THE COURT: Sustained except for his answer,  
21 yes.

22 BY MS. STEDMAN:

23 Q And you're a party to this litigation, so in that role you  
24 agreed to a confidentiality order, didn't you? "Yes" or  
25 "no"?

1 A Several.

2 Q And that means that you agreed that some of the things you  
3 learn in this case are confidential, correct?

4 A Yes.

5 Q And you agreed that if you thought something labelled  
6 confidential was not actually confidential, you'd ask the  
7 Court about that, didn't you?

8 A I believe that's correct. Yes.

9 Q And you violated that confidentiality order, didn't you?

10 A I did.

11 Q You attended Mr. Pozner's deposition?

12 A Yes.

13 Q You got a video of that deposition?

14 A Yes.

15 Q And it was marked confidential, wasn't it?

16 A Yes.

17 Q And in violation of this Court's order, you shared that  
18 video with others, didn't you? "Yes" or "no"?

19 A Yes. Yes.

20 Q And allowing other Sandy Hook hoaxers to spread  
21 Mr. Pozner's image, correct? "Yes" or "no"?

22 A Yes.

23 Q And if we go back to the PDF, the banned edition, it's  
24 online today?

25 A Yes.

1 Q And, in fact, you heard that that PDF has been downloaded  
2 as many as ten million times, correct?

3 A I've been told that. I cannot verify it.

4 Q But you believe that to be true, don't you?

5 A It may well be. I would like if it had.

6 Q And you've bragged about those ten million downloads to  
7 other people, haven't you?

8 A Well --

9 Q "Yes" or "no"?

10 A I don't know if bragging is the right word. I mean, I --  
11 all of our research is intended to inform the public, so  
12 it's better for wider distribution.

13 Q And Anti-Media Network interviewed you on July 18, 2018,  
14 didn't they?

15 A I do hundreds of interviews. I have no idea which one  
16 you're talking about.

17 Q Well, I'm going to play a clip for that --

18 A Okay.

19 Q -- from that interview.

20 (Audio played.)

21 MR. FETZER: Storage. You could have, you know,  
22 Corona beer cartons with -- for storing stuff in it. But  
23 pushed up to the walls of even Classroom 10. Now the most  
24 important tell there is the photograph of the SWAT team  
25 vehicle present before the crime is committed. Now that's

1           how I identified it in the first edition of the book,  
2           which after Amazon banned I released for free as a PDF.  
3           So anyone can download it for themselves. A friend has  
4           estimated it's been downloaded over ten million times. So  
5           that --

6                               (Audio stopped.)

7           MS. STEDMAN: Thank you, Your Honor. No further  
8           questions.

9           THE COURT: Okay. Anything further in the  
10          plaintiff's case-in-chief?

11          MR. ZIMMERMAN: Your Honor, may we approach?

12          THE COURT: Sure.

13                               (Bench conference held outside the presence of  
14          the jury.)

15          MR. ZIMMERMAN: Your Honor, the plaintiffs would  
16          like to move to amend the pleadings to conform to the  
17          evidence.

18          THE COURT: I think we should take that  
19          outside -- let the jury go back to the room.

20          MR. ZIMMERMAN: Sure.

21          THE COURT: Okay.

22          MR. BOLTON: I didn't hear what you --

23          MR. ZIMMERMAN: We want to move to amend the  
24          pleadings to conform to the evidence.

25          THE COURT: We'll just let the jury go.



1 MR. ZIMMERMAN: Yeah.

2 THE COURT: We're just going to send the jury  
3 back to the jury room.

4 MR. ZIMMERMAN: Perfect.

5 (Back on the record in the presence of the  
6 jury.)

7 THE COURT: We're going to take a short break.  
8 You get an extra couple minutes. I want to take up a  
9 matter and rather than have you listen to that awful white  
10 noise, you can look out the window and see if anyone's  
11 waterskiing on the lake for one last time.

12 THE BAILIFF: All rise for the jury.

13 THE COURT: It shouldn't take too long, ladies  
14 and gentlemen.

15 (Jury out.)

16 THE COURT: Thank you. Please be seated.

17 Mr. Zimmerman, your motion.

18 MR. ZIMMERMAN: Thank you, Your Honor.

19 We'd like to move to amend the pleadings to  
20 conform to the evidence. In particular, the evidence  
21 shows that a PDF version of the book was released in  
22 December of 2015, that it includes the same defamatory  
23 statement that appears in Chapter 11 of the book, which  
24 the Court has already found to be defamatory.

25 THE COURT: So basically your -- same cause of

1 action, a different -- a fourth.

2 MR. ZIMMERMAN: It's the same statement as  
3 listed in Number 1 of the book. It's a different source  
4 for the same statement.

5 THE COURT: Which, even though it's the same  
6 statement but in a different source, you will be arguing  
7 that it's an additional occurrence.

8 MR. ZIMMERMAN: That's precisely correct, Your  
9 Honor.

10 THE COURT: Mr. Bolton, your response?

11 MR. BOLTON: I don't have any objection.

12 THE COURT: Okay. Granted. I'm not sure  
13 whether you -- how you follow up or how you integrate that  
14 in. Do you think that we need to tell the jury anything?

15 MR. ZIMMERMAN: I don't think there's anything  
16 for us to tell the jury. They're not receiving the  
17 Complaint in the jury room anyway.

18 THE COURT: And the, quote, four defamatory  
19 statements still --

20 MR. ZIMMERMAN: They're the same.

21 THE COURT: Okay. All right. You can bring the  
22 jury back in.

23 MR. BOLTON: Your Honor?

24 THE COURT: Yeah.

25 MR. BOLTON: I would probably just do my cross

1 right now. I don't have very much or my -- my direct.

2 THE COURT: Okay. Great. So the -- the  
3 plaintiff rests?

4 MR. ZIMMERMAN: The plaintiff will rest, yes.

5 THE COURT: All right. Okay. I just double  
6 checked, the plaintiff's exhibits have all been moved and  
7 received. Just for your use, I'm not going to -- marked  
8 Exhibit 1 is the deposition transcript. I will be  
9 receiving a flash drive or CD of what you played. Also,  
10 could I get a flash drive or a transcript of what you  
11 played on both phone calls. My court reporter, I was  
12 watching along, got most of it almost perfectly, but for  
13 sake of completeness, let's follow up with that as well.

14 MR. ZIMMERMAN: Yes, Your Honor.

15 THE COURT: Also marked as just Exhibit 2 for  
16 identification are my handwritten rulings on the  
17 objections. So I won't receive these documents on the  
18 evidence.

19 MR. BOLTON: And that's which deposition  
20 transcript then?

21 THE COURT: That's the Dr. Lubit. We'll be  
22 getting a copy of what exactly was played, because I  
23 noticed you guys skipped around. So I don't want to put  
24 in the whole and give the impression that the whole was  
25 played. The plaintiff will provide the Court with a --

1 MR. ZIMMERMAN: DVD of the designated portions  
2 that were actually played for the jury.

3 THE COURT: That were actually played.

4 MR. BOLTON: My question, am I to understand  
5 then that the transcript is being marked as an exhibit so  
6 if, for instance, if the jury asks for the exhibits, that  
7 the transcript would be --

8 THE COURT: No.

9 MR. BOLTON: Okay.

10 THE COURT: No. I just marked it for  
11 identification as the --

12 MR. BOLTON: Okay.

13 THE COURT: -- more than what was played. We'll  
14 need to get what was played as made part of the court  
15 record.

16 MR. BOLTON: Your Honor, one thing, I was just  
17 going to say, so that I don't -- and I'm not sure I'm  
18 going to bring any motion at the conclusion of their case  
19 or not, but just so that I don't waive it, I -- prior to  
20 my -- I'm not reserving, so I'm going to do the direct  
21 right now. Am I -- is this part of my case then or is it  
22 before they've rested?

23 THE COURT: Well, if they rest -- go ahead and  
24 sit down. If they're resting, do you have a motion?

25 MR. BOLTON: Pardon?

1 THE COURT: They've rested. Do you have a  
2 motion?

3 MR. BOLTON: Yeah. I'd move for insufficiency  
4 of the evidence. They haven't -- move to dismiss.

5 THE COURT: That will be denied.

6 MR. BOLTON: Okay.

7 THE COURT: Go ahead.

8 THE BAILIFF: All rise for the jury.

9 (Jury in.)

10 THE COURT: Thank you very much. Please be  
11 seated.

12 Ladies and gentlemen, the plaintiff has rested,  
13 and for the sake of the efficiency, now we'll -- what  
14 appears to be cross-examination will be Attorney Bolton's  
15 examination of the defendant, James Fetzer.

16 Mr. Bolton.

17 MR. BOLTON: Yeah.

18 DIRECT EXAMINATION

19 BY MR. BOLTON:

20 Q Dr. Fetzer, just a couple of quick questions. With regard  
21 to threats made to Mr. Pozner, have you -- have you talked  
22 with anyone or made any direction to any individual to  
23 make threats to Mr. Pozner?

24 A Absolutely not. That would be antithetical to research  
25 of --

1 Q Okay. And all I need, again, I don't --

2 A Yes.

3 Q I'm going to try to control you a little bit. With regard  
4 to this -- the woman I believed named Lucy Richards. Is  
5 that a person you're familiar with?

6 A Well, I only learned about the case after the fact, and I  
7 have no idea of the circumstances other than as they've  
8 been portrayed here today.

9 Q Have you had any communication with that person at all?

10 A No.

11 Q To your knowledge have you had any communication with any  
12 individual that -- that made threats to Mr. Pozner?

13 A No.

14 Q Have you -- aside from the -- have you ever -- is there  
15 anything in the statements that have been found to be  
16 defamatory that -- that you intended to incite people  
17 to -- or someone to act lawlessly or create a criminal  
18 act?

19 A Absolutely not.

20 Q Have you ever -- have you ever talked with Mr. Pozner?

21 A No. Well, other than during the video deposition, which  
22 lasted seven hours, I conducted one and a half hours of  
23 the video deposition --

24 Q Fair enough.

25 A -- of the plaintiff.

1 Q Prior to your contact with him during the deposition  
2 though, and in fact, at any time prior to the commencement  
3 of this lawsuit, have you ever -- have you ever talked  
4 with Mr. Pozner?

5 A No.

6 Q Have you ever harassed him in any way?

7 A No. He sent me an e-mail, and I responded to it in a  
8 somewhat caustic fashion, but that would be it.

9 Q Okay.

10 (Exhibits 10 and 11 marked for identification.)

11 THE COURT: Is this 10 and 11?

12 THE CLERK: Yes.

13 MR. BOLTON: You said 10 and 11?

14 THE CLERK: Yes.

15 BY MR. BOLTON:

16 Q Dr. Fetzer, have you had an opportunity to look at the two  
17 documents that I presented to you that are marked 10 and  
18 11, I believe?

19 A Yes.

20 Q And can you identify Exhibit No. 10?

21 A Exhibit No. 10 is a copy of Chapter 11 of both the first  
22 and second editions of the book, *Nobody Died at Sandy*  
23 *Hook*, which I edited.

24 Q And in that chapter is that where three of the statements  
25 that have been found to be defamatory are included?

1 A Yes.

2 Q Okay.

3 MR. BOLTON: Move to admit Exhibit 10.

4 THE COURT: Any objection.

5 MS. STEDMAN: No, Your Honor.

6 THE COURT: Received.

7 (Exhibit 10 received into evidence.)

8 BY MR. BOLTON:

9 Q And with respect to Exhibit 11 -- and by the way, Exhibit  
10 10 is coauthored by yourself and another person; is that  
11 correct?

12 A Kelley Watt, yes.

13 Q And do you know if Kelley Watt has ever been named as a  
14 defendant in any lawsuit by Mr. Pozner?

15 A No, to my knowledge --

16 MS. STEDMAN: Objection.

17 THE COURT: Grounds?

18 MS. STEDMAN: Foundation.

19 THE COURT: Um, overruled as to foundation.

20 Sustained as to relevance.

21 MR. BOLTON: Let's see, so you overruled the  
22 objection then?

23 THE COURT: But I made my own objection.

24 MR. BOLTON: Okay.

25 BY MR. BOLTON:



1 Q With respect to Exhibit No. 11, can you identify Exhibit  
2 No. 11?

3 A Yes. It's one of the memoranda I authored as a  
4 contribution to the memoranda series for the President of  
5 the United States edited by Robert David Steele.

6 Q And when was this document first published?

7 A 2018.

8 Q And is -- what's the significance in terms of this lawsuit  
9 with regard to Exhibit 11?

10 A Well, it's very difficult to see how --

11 Q Let me withdraw that question. Let me ask a more -- a  
12 more precise question. When was -- or with respect to  
13 Exhibit No. 11, is one of the -- is one of the statements  
14 that are found to be -- one of the statements found to be  
15 defamatory included in Exhibit No. 11?

16 A Yes, the fourth.

17 Q Okay.

18 MR. BOLTON: Move the admission of Exhibit No.  
19 11.

20 THE COURT: So is 11, you're identifying, is a  
21 copy of the blog that was identified on direct  
22 examination?

23 MR. BOLTON: Exhibit No. 5 --

24 THE COURT: 11?

25 MR. BOLTON: I'm -- I misspoke, Exhibit No. 11

1 is what I understand to be the document in which the  
2 fourth statement found to be defamatory is included.

3 THE COURT: Okay. Any objection?

4 MS. STEDMAN: No, Your Honor.

5 THE COURT: Received.

6 (Exhibit 11 received into evidence.)

7 MR. BOLTON: No further questions, Your Honor.

8 THE COURT: Any redirect?

9 MS. STEDMAN: No, Your Honor.

10 THE COURT: You may step down.

11 (Witness excused.)

12 THE COURT: Your next witness?

13 MR. BOLTON: Pardon me?

14 THE COURT: Your next witness?

15 MR. BOLTON: No further witnesses, Your Honor.

16 THE COURT: Any rebuttal?

17 MR. ZIMMERMAN: No, Your Honor.

18 THE COURT: Okay. Why don't we send you out for  
19 another break. I think we'll talk among the lawyers. As  
20 you can tell now, we ended sooner.

21 I don't want to give the impression that all  
22 judges run their courts in a democratic fashion, but for  
23 me, since you are participants, who would like to just  
24 keep going through and finish up today? It might mean  
25 that you'd be deliberating -- you deliberate until you can

1 no longer come to a verdict or you come to a verdict. So  
2 it might mean you need -- you'd be staying late. I don't  
3 know. That's up to you for the 12 that are selected. Or  
4 first -- or come back first thing in the morning and hear  
5 closing arguments and then have the light of day to  
6 deliberate. Who would like to finish today? I've got  
7 five, six-ish hands. Five and a half hands.

8 THE BAILIFF: Five and an iffy.

9 THE COURT: Who would like to come back in the  
10 morning? Okay. Five. You voted twice.

11 JUROR 26: I don't care.

12 THE COURT: Oh, that's right. You had a half  
13 vote. You're the perfect member of any committee. You  
14 agree with everyone.

15 Let me just get a sense for how long -- the  
16 length of closing arguments, what the lawyers want to do.  
17 Obviously, we'll do one or two. Just give me a moment.  
18 We'll bring you back in for my decision.

19 THE BAILIFF: All rise for the jury.

20 (Jury out.)

21 THE COURT: Okay. Please be seated.

22 Well, thanks to your hard work and cooperation,  
23 the jury instructions are done by stipulation and  
24 agreement. They're drafted. The special verdict is done.  
25 So we don't need a conference on jury instructions, we

1 don't need to talk anything more about it, we can move  
2 right to the closing statements.

3 What -- I guess, not -- maybe I'll ask  
4 Ms. Zimmerman. What do you prefer? Give her a chance to  
5 answer. What do any of you prefer? Ms. Feinstein?  
6 Mr. Zimmerman? Do you want to finish today?

7 MS. ZIMMERMAN: I would. I think we can make  
8 closing arguments very brief.

9 THE COURT: How long do you -- who's going to  
10 make the close?

11 MS. ZIMMERMAN: If it's today, I'll do it.  
12 Fifteen minutes, no more.

13 THE COURT: What do you want to do, Mr. Bolton?

14 MR. BOLTON: Let's get it done.

15 THE COURT: Okay. Tell the jury we're going to  
16 finish today.

17 THE BAILIFF: Okay.

18 MR. BOLTON: But, Your Honor, having said that,  
19 can we at least have a couple of minutes to prepare --

20 THE COURT: Yeah. That's fine. Why don't we  
21 take -- what do you want, ten minutes?

22 MR. BAKER: Are we going to need longer for our  
23 mother?

24 THE BAILIFF: This is their last break, correct?

25 THE COURT: This is their last break. Well, ask

1 if they -- if she needs a break. If so, we'll give her a  
2 break.

3 THE BAILIFF: I was speaking in communication  
4 purposes.

5 THE COURT: We would go --

6 THE BAILIFF: Right back to delib. This is  
7 their last break right before delib?

8 THE COURT: Correct. Ask the nursing mother if  
9 she needs to do that. Otherwise, tell her we'll come in  
10 and then the jury will probably retire for deliberations,  
11 you know, within the hour.

12 THE BAILIFF: Okay.

13 THE COURT: All right. Is there anything that  
14 the parties would like to take up before we bring the jury  
15 back in for closing arguments?

16 MR. BOLTON: Your Honor's intending to instruct  
17 before we argue, correct?

18 THE COURT: I think you both agreed to that.

19 MR. BOLTON: And then we probably have  
20 everything, but are you going to give us then a copy of  
21 the official instructions as you're reading them or should  
22 we go from our own?

23 THE COURT: No. I like to -- in fact, I'll go  
24 back and we'll make a copy. Look over the copy. I like  
25 to double, double, double check to make sure I'm reading

1 from the document that you guys stipulated. So I'll make  
2 a copy of that, I'll give you a copy of the special  
3 verdict. I'll ask you once again if these are the  
4 instructions you'd like me to give and whether this is a  
5 copy of the verdict you'd like the jury to receive. So  
6 that will take about ten minutes.

7 (Off the record at 2:40 p.m.)

8 (Back on the record at 2:50 p.m.)

9 THE COURT: Okay. We're all back in. Go back  
10 on the record.

11 I'd like to make a record on my somewhat  
12 succinct ruling, Mr. Bolton, on your motion at the close  
13 of plaintiff's case. As you're well aware, the statutory  
14 test after considering -- statutory test for such motion  
15 is as follows: After considering all credible evidence  
16 and reasonable inferences in the light most favorable to  
17 the party against whom the motion was made, the Court must  
18 be satisfied that there is no credible evidence to sustain  
19 a finding in favor of that party. The motion to dismiss  
20 must be denied unless no jury could disagree on facts or  
21 inferences to be drawn and no credible evidence exists to  
22 support the verdict for the plaintiff. Do you agree that  
23 that's the standard that I would apply on your motion,  
24 Mr. Bolton?

25 MR. BOLTON: I think that's fine. I'm agreeable

1 to that. I don't disagree with you.

2 THE COURT: And I don't think I can come to that  
3 conclusion. I believe that when considering all the  
4 credible evidence and the reasonable inferences in the  
5 light most favorable to the party, I'm satisfied that a  
6 jury could come to that conclusion. So for those reasons,  
7 I would deny the motion to dismiss.

8 Ladies and gentlemen, you have a copy of the  
9 jury instructions before you. I would propose that I  
10 would not reread, obviously, number 50, which has already  
11 been read at the beginning of this case. We jump into  
12 exhibit -- or excuse me, Instruction 260.

13 I'm going to read the numbers off and just for  
14 purposes of the record, just state your concurrences, no  
15 objection.

16 Any objection to 260 as drafted in the document  
17 that's been provided to you?

18 MS. ZIMMERMAN: No, Your Honor.

19 MR. BOLTON: I'm fine.

20 THE COURT: 265?

21 MS. ZIMMERMAN: No objection.

22 MR. BOLTON: No objection. I'm not sure that  
23 there was any hypotheticals.

24 MS. ZIMMERMAN: I'm not sure there was either.

25 THE COURT: Well, I'm not sure you used the word

1 hypothetical, but I know you talked about a number of  
2 things in an attempt to get the doctor --

3 MR. BOLTON: That's fine. Right.

4 THE COURT: -- to readdress his ultimate  
5 conclusion.

6 MR. BOLTON: No objection.

7 THE COURT: I did order stricken testimony.  
8 180, Five-Sixths Verdict. Standard.

9 Damages: General. Any objection?

10 MS. ZIMMERMAN: No, Your Honor.

11 MR. BOLTON: To be consistent with I think where  
12 we've said, like in the verdict form, I'm just wondering  
13 whether or not in the third paragraph, if we -- if we add  
14 at the very end after injuries if -- if any.

15 THE COURT: Any objection? I will tell you  
16 this. I'll go ahead and do that. Well, I do know on the  
17 special verdict form, which was stipulated by the parties,  
18 we don't have the word, if any. But I think that's not an  
19 unreasonable -- I'm going to go ahead and change the  
20 special verdict to say, What sum of money, if any, will  
21 fairly and reasonably compensate Mr. Pozner because of  
22 Mr. Fetzer's defamatory statements. We'll take the  
23 parentheses out.

24 And also, I will change the damage -- because  
25 there's only a question, strike the plural on Damage:



1 Question, and it's your answer to the damage question.

2 MS. ZIMMERMAN: Yes, Your Honor.

3 THE COURT: 202. I'll change to say in answer  
4 to --

5 MS. ZIMMERMAN: The damage question.

6 THE COURT: -- the damage question. Also, I'm  
7 going to take out -- because these go back, we'll take out  
8 the footnotes -- in both, well, in 202.

9 2516. Any objection?

10 MS. ZIMMERMAN: No objection.

11 THE COURT: Mr. Bolton, any objection to any of  
12 the ones that I've gone over so far?

13 MS. ZIMMERMAN: Your Honor, you may want to take  
14 the footnote out for that one as well. If you're making  
15 an edit.

16 MR. BOLTON: No objection.

17 THE COURT: The footnote?

18 MS. ZIMMERMAN: Yes, the citation.

19 THE COURT: I'll take that out.

20 And then I assume that 191 is just the standard  
21 closing form. Any objection?

22 MS. ZIMMERMAN: No, Your Honor.

23 THE COURT: And then 197 is the instruction  
24 after the verdict is received, which is just standard I  
25 usually give.

1           So now I moved very quickly. Some people --  
2           Ms. Zimmerman was excellent on her saying no. I didn't  
3           hear for each and every one of it, but that's no matter.

4           Mr. Bolton, are these the instructions you'd  
5           like the Court to give?

6           MR. BOLTON: They are.

7           THE COURT: Ms. Zimmerman?

8           MS. ZIMMERMAN: Yes.

9           THE COURT: Okay.

10          MR. BOLTON: I do have one other. I had -- I  
11          thought we were going to basically use our submitted  
12          special verdict question, and we -- we were going to send  
13          you a Word, but counsel said that they had taken care of  
14          it. But the one that they submitted, again, it raises the  
15          same issue we just talked about. We had included in ours  
16          the special verdict question, if any, where --

17          THE COURT: I put if any.

18          MR. BOLTON: You did?

19          THE COURT: I will now insert it.

20          MR. BOLTON: Okay. Great.

21          THE COURT: And I had a signature for the  
22          foreperson and then lines for dissenting jurors.

23          MR. BOLTON: Great. That's fine.

24          THE COURT: And I will say, if any, on that.

25          MS. ZIMMERMAN: Thank you, Judge.

1           There's also a footer on the bottom of all the  
2 jury instructions that I believe comes from the Quarles  
3 and Brady firm, a document number. I don't know if the  
4 Court would like to remove that or not. We leave it to  
5 your discretion.

6           THE COURT: We can -- Molly can take that out.  
7 I'll go ahead and keep things moving, read from my copy,  
8 and we'll have her type up the one to send to the jury.

9           Anything else before we bring the jury back in?

10          MR. ZIMMERMAN: No, Your Honor.

11          MR. BOLTON: No, Your Honor.

12          THE COURT: Okay. While we're waiting, is  
13 anyone going to be asking to send any exhibits into the  
14 jury room? Mr. Zimmerman?

15          MR. ZIMMERMAN: Yes, Your Honor. We would like  
16 to send Exhibit 3 back to the jury room.

17          THE COURT: So let me just interject before I  
18 ask Mr. Bolton. Generally, if we send one, we send all.  
19 I don't ordinarily like to send exhibits back unless the  
20 jury asks for them. I do that for principally a reason,  
21 once in law school I was on a jury and we had the exhibits  
22 and then what happens is the jury starts studying the  
23 exhibits and placing what I believe to be a  
24 disproportionate emphasis on that aspect of the testimony.  
25 Obviously, most people generally agree that the oral

1 testimony is more important in relation. We don't send  
2 the oral testimony and we don't send the transcript in.  
3 We tell the jury, you'll have to rely on your memory.

4 There were also, as to those exhibits,  
5 especially the last two offered, there was a lot of stuff  
6 in there that wasn't talked about. So my predilection is,  
7 but I could be swayed, if both parties feel strongly, is  
8 to not send any in.

9 MR. ZIMMERMAN: We're okay to not send them  
10 back, Your Honor.

11 THE COURT: Mr. Bolton?

12 MR. BOLTON: I am fine with your predilection.

13 THE COURT: Thank you very much, Mr. Bolton.  
14 Bring them in.

15 THE BAILIFF: All rise for the jury.

16 (Jury in.)

17 THE COURT: Please be seated.

18 Welcome back, ladies and gentlemen. Thank you  
19 for coming back in. Of course, I had the bailiff to  
20 escort you in, so nobody ran.

21 Here's what we'll do. I'm going to give the  
22 closing instructions and then you'll hear closing  
23 arguments. Then after that, we're going to draw two names  
24 out of the dice cup for our alternates.

25 For the alternates, you'll be excused, but you

1 can come back in and give a name and number, because a lot  
2 of times people say, Can you give me a call and tell me  
3 what happened, what did my colleagues do in the verdict,  
4 which I'm happy to do that. And then we'll send you to  
5 the jury room for deliberations today.

6 Before I read the instructions, on behalf of the  
7 lawyers and the parties and the Court, I want to express  
8 my appreciation for your time and careful attention to  
9 this very important case. I do it now because it seems to  
10 be fair to everyone before the verdict comes in, I don't  
11 know what your verdict is going to be. That is your  
12 responsibility.

13 But as I said in the opening, I'll conclude, our  
14 system wouldn't operate but for the generous time. I know  
15 that -- if I'd memorized names because you were numbers,  
16 but I know that somebody is not off to North Dakota or  
17 South Dakota in the snowstorms, and I really realize that  
18 not only is there a financial impact from your civic duty  
19 to serve on juries but there's a toll on your families and  
20 your personal life, missed work, jobs that pile up,  
21 laundry that needs to be done. That's no question. But  
22 your service is a great contribution to our system of  
23 government and the operation of the court system. So on  
24 behalf of the lawyers and the clients and my staff, thank  
25 you very much for your service.

1           What I'm going to read to you now are the jury  
2 instructions. These are the law that I am to give you and  
3 you are to follow. Please don't believe that simply  
4 because I'm reading them to you they're any less important  
5 than if I had memorized them and maintained eye contact to  
6 tell you what the law is. These are important legal  
7 instructions.

8           Usually, witnesses can testify only to facts  
9 they know. But, a witness with expertise in a specialty  
10 might may give an opinion in that specialty. In  
11 determining the weight to be given an opinion, you should  
12 consider the qualifications and credibility of the expert  
13 and whether reasons for the opinion are based on facts in  
14 this case. Opinion evidence was admitted in this case to  
15 help you reach a conclusion. You are not bound by any  
16 expert's opinion.

17           During the trial, an expert witness was told to  
18 assume certain facts and asked for an opinion based upon  
19 the assumed facts. This is called a hypothetical  
20 question. Consider the opinion in answer to the question  
21 only if you believe the assumed facts upon which it is  
22 based. If you find that the assumed facts in the  
23 hypothetical question have not been proven, do not give  
24 any weight to the opinion.

25           I ordered certain testimony to be stricken

1 during the trial. Disregard all stricken testimony and do  
2 not let it affect your answers to the verdict questions.

3 Agreements -- agreement by ten or more jurors is  
4 sufficient to become your verdict. Jurors have a duty to  
5 consult with one another and deliberate for the purpose of  
6 reaching an agreement. If you can do so consistently with  
7 your duty as a juror, at least the same ten jurors should  
8 agree in all the -- in all the answers.

9 Well, let me jump to the special verdict  
10 question, and I'll read the special verdict. There's only  
11 one question. And so the same ten jurors should agree in  
12 that answer as opposed to you might on television, this is  
13 not a criminal case where a unanimous verdict it's a  
14 five-sixths or ten-twelfths requirement.

15 At the bottom of the verdict, you will find a  
16 place provided where dissenting jurors, if there be any,  
17 will sign their names and state the answer or answers --  
18 the number on the verdict questions which they do not  
19 agree. Either the blank lines or the space below them may  
20 be used for that purpose.

21 The special verdict question, which will be  
22 given to you, has one question and it is as follows:

23 What sum of money, if any, will fairly and reasonably  
24 compensate Mr. Pozner because of Mr. Fetzer's defamatory  
25 statements?

1           Answer: A dollar sign and a blank line.

2           That will be signed by the foreperson and then if there  
3 are any dissenting jurors, there's a signature line for  
4 them.

5           You must answer the damage question no matter  
6 how -- well, you must answer the damage question, because  
7 there's only one question.

8           The amount of damages, if any, found by you  
9 should in no way be influenced or affected by any of your  
10 other answers -- well, these are written because of --  
11 most instructions have -- most verdicts have more than one  
12 question.

13           Your answer to the damage question should not be  
14 affected by sympathy or resentment; nor should you make  
15 any deductions because of a doubt in your mind as to the  
16 liability of any party to this action.

17           Determining damages for mental stress and  
18 anguish, and harm to Mr. Pozner's reputation and image  
19 cannot always be made exactly or with mathematical  
20 precision; you should award as damages amounts which will  
21 fairly compensate Mr. Pozner for his injuries, if any.

22           The amount you insert in answer to each damage  
23 question is for you to determine from the evidence. What  
24 the attorneys ask for in their arguments is not a measure  
25 of damages. The opinion or conclusions of counsel as to



1           what the damages should be awarded should not influence  
2           you unless it's sustained by the evidence. Examine the  
3           evidence carefully and dispassionately and determine your  
4           answers from the evidence.

5                        In considering the amount to be inserted by you  
6           in answer to the damage question, the burden rests upon  
7           Mr. Pozner to convince you by the greater weight of the  
8           credible evidence, to a reasonable certainty, of the  
9           amount of damages. The greater weight of credible  
10          evidence means that the evidence in favor of an answer has  
11          more convincing power than the evidence opposed to it.  
12          "Credible evidence" means evidence you believe in light of  
13          reason and common sense. "Reasonable certainty" means  
14          that you are persuaded based upon the rational  
15          consideration of the evidence. Absolute certainty is not  
16          required, but a guess is not enough to meet the burden of  
17          proof. The amount you insert should reasonably compensate  
18          Mr. Pozner for the damages from the defendant's  
19          statements.

20                       A person wronged by a defamatory statement is  
21          entitled to recover money damages. The measure of  
22          recovery is such sum as will compensate the person for the  
23          damages suffered as a result of the statements.

24                       In arriving at your answer, you should consider  
25          whether Mr. Pozner has suffered any humiliation, mental

1           anguish, physical injury, and damage to his reputation in  
2           the community where his reputation is known. You should  
3           presume that Mr. Pozner had a good reputation at the time  
4           the statements were published. However, in determining  
5           damages, you should consider all evidence that has been  
6           offered bearing on his reputation in the community.

7                     Mr. Pozner is not required to prove damages by  
8           any financial yardstick measuring in dollars and cents.  
9           Injury to reputation, good name, and feelings are not  
10          subject to mathematical calculations or certainty.  
11          Further, it is not necessary for Mr. Pozner to prove an  
12          actual out-of-pocket loss.

13                    Now, members of the jury, this case is -- will  
14          be ready for your deliberation after the closing  
15          arguments. You are free to deliberate in any way you wish  
16          consistent with your oath as jurors, but these suggestions  
17          may help you in proceed -- to proceed in a smooth and  
18          timely way.

19                    I would remind you to follow the instructions  
20          about the law. Respect each other's opinions and value  
21          the different viewpoints you each bring to the case.  
22          Listen to one another and be respectful of each other's  
23          opinions. Do not be afraid to change your opinion if you  
24          are convinced by the reasoning of your fellow jurors. Be  
25          thoughtful and do not rush. The parties to this case

1           deserve your complete attention and consideration.

2                       When you retire to the jury room, select one of  
3           your members to preside over your deliberations. That  
4           person's vote is entitled to no greater weight than the  
5           vote of any other juror. The presiding juror should:

6                       Encourage discussions that includes all jurors.

7                       Keep the deliberations focussed on the evidence and the  
8           law.

9                       Let the Court know when there are any questions or  
10          problems.

11                      And tell the Court when a verdict has been reached.

12                      I will send written copies of these instructions  
13          to the jury room for you to refer to during your  
14          deliberations. It is a violation of the juror's oath not  
15          to follow the instructions, to refuse to deliberate, or to  
16          rely on any information outside of the evidence.

17                      I remind you that you may not bring into the  
18          jury room any research materials or additional  
19          information; this includes dictionaries, computers  
20          electronic communication devices, or other reference  
21          materials. You may not communicate in any way with anyone  
22          other than the jurors until you have reached your verdict.

23                      Now, you will not have a copy of the written  
24          transcript of the trial testimony available for your use  
25          during your deliberations. You must rely primarily on

1 your memory of the evidence and testimony introduced  
2 during the trial.

3 You may ask to have a specific portion of the  
4 testimony read to you, but you may not receive everything  
5 you asked for or you may receive more than you ask for.  
6 You may rely on your notes to refresh your memory during  
7 deliberations.

8 If you wish to see an exhibit, you may ask for  
9 it. I will respond by either sending the exhibit to you  
10 or by sending back a note that I cannot send you that  
11 particular exhibit. If I do not send you the exhibit, do  
12 not concern yourself about the reason why I have not done  
13 so.

14 If you need to communicate with me while you are  
15 deliberating, send a note through the bailiff, signed by  
16 the presiding jury. To have a complete record of this  
17 trial, it is important that you not communicate with me  
18 except by a written note.

19 If you have questions, I will talk to the  
20 attorneys before I answer it so it may take some time.  
21 You should continue your deliberations while you wait for  
22 my answer. I will answer any questions in writing or  
23 orally here in open court.

24 Do not reveal to me or anyone else how the vote  
25 stands on the issue -- on the issues in this case unless I

1 ask you to do so.

2 Agreement by ten or more jurors is sufficient to  
3 become the verdict of the jury. Juries have a duty --  
4 jurors have a duty to consult with one another and to  
5 deliberate for the purpose of reaching an agreement. If  
6 you can do so consistently with your duty as a juror, at  
7 least the same ten jurors should agree in -- agree in  
8 their answer. I ask you to be unanimous if you can.

9 At the bottom of the verdict, you will find a  
10 place provided where dissenting jurors, if there be any,  
11 would sign their names and state the answer to which they  
12 do not agree. Either the blank lines or the space below  
13 them may be used for that purpose.

14 After you reach the verdict, the following steps  
15 will be followed:

16 The presiding juror tells the bailiff the verdict has  
17 been reached.

18 The judge calls everyone, including you, back into the  
19 courtroom.

20 The verdict is read into the record in open court.

21 I may ask for an individual to poll each of you to  
22 agree with the verdict. You'll only answer "yes" or "no"  
23 to that question.

24 Members of the jury, after you hear the closing  
25 arguments, you will consider the case fairly, honestly,

1           impartially, and in the light of reason and common sense.  
2           Give the question on the verdict your careful and  
3           conscientious consideration. In answering the question,  
4           free your mind from all feelings of sympathy, bias, or  
5           prejudice. Let the verdict speak the truth, whatever the  
6           truth may be.

7                        After the closing arguments, I'll have the clerk  
8           swear the bailiffs.

9                        From the plaintiff, Ms. Zimmerman. Please.

10                      MS. ZIMMERMAN: May it please the Court,  
11           Mr. Pozner, counsel.

12                      THE COURT: I'm not sure your mike is working  
13           too loud.

14                      MS. ZIMMERMAN: That I don't get very often.  
15           Usually -- better?

16                      THE COURT: That's better.

17                      MS. ZIMMERMAN: My voice usually carries pretty  
18           well.

19                      May it please the Court, Mr. Pozner, Dr. Fetzer,  
20           counsel, ladies and gentlemen of the jury,

21                      Thank you for your careful attention during this  
22           case, which was a pretty emotional case, and a little bit  
23           faster I guess than we even expected, but we really  
24           appreciate that you sat through this testimony and heard  
25           the evidence. Some of the testimony was difficult to sit

1 through, but we're not here to ask for your verdict out of  
2 sympathy, as the judge just instructed you. We are here,  
3 as I said at the beginning of the day yesterday, asking  
4 that you hold the defendant, Professor Fetzer, responsible  
5 for the conduct that he chose to do, the statements that  
6 he chose to make over and over and over again about my  
7 client, Mr. Pozner.

8 Now you've already been instructed at the  
9 beginning of the case and then again just now, those were  
10 defamatory statements. So that's not something that you  
11 need to worry about. The Court has already concluded they  
12 were false, they were defamatory, they were reproduced  
13 over and over again. On his cross-examination, just a few  
14 minutes ago, Professor Fetzer agreed he thinks it may be  
15 ten million times -- ten million times that these false  
16 accusations were disseminated to people. And that's his  
17 goal. That's been his goal. He wants to get his message  
18 out. His message -- his message is that my client didn't  
19 have a son; that he forged a death certificate; that he  
20 distributed a forged death certificate. None of that's in  
21 dispute.

22 And so as the Judge said, what you're going to  
23 have is a special verdict form, and it's really simple.  
24 It's one line. It's one question. What sum of money, if  
25 any, will fairly and reasonably compensate Mr. Pozner

1           because of Professor Fetzter's defamatory statements?

2                         And that's a hard question. So some -- some of  
3 the instructions that the Judge just read to you say that  
4 Mr. Pozner, well, he has the burden of proof. He had to  
5 bring you evidence to explain that he has been harmed, and  
6 he did that. We'll walk through that a little bit.

7                         But Mr. Pozner, he's not required to prove a  
8 dollar figure or a specific financial number, because we  
9 don't have a receipt for something like this. You can't  
10 go to a store and say, What's the price of riding home  
11 with your children in the car and hitting play on your  
12 voicemail and hearing a stranger threaten you or your  
13 family? What's the price for that? I have to tell you,  
14 you have a hard job here, because I can't tell you what  
15 that price is. You're going to have to use your common  
16 sense, your good -- your good common sense and your minds  
17 and your collective discussions to say what is fair.

18                         You can look at the jury instructions and you  
19 can say, well, a person who's wronged by defamatory  
20 statement, they're entitled to recover money damages.  
21 Because that's the best we can do in a civil case. We  
22 can't put any of this back in the bottle. We can't -- we  
23 can't erase the statements that Mr. -- that Professor  
24 Fetzter made that still sit out on the internet today.

25                         Instead, what we can do is we can say the law



1           says this shouldn't happen. That's what the law says.  
2           The law says you don't get to lie about people. And if  
3           you do, there's a responsible -- there's a responsibility  
4           that attaches to that. There's damages, and you're going  
5           to have to be responsible for it. It's what we teach our  
6           kids, right? You break it, you bought it.

7                        So what did the evidence show? There was only  
8           one expert that came to testify, and he didn't come live,  
9           but he came by videotape. Professor Fetzer's lawyers  
10          agreed, they stipulated on the record he's an expert.  
11          He's a medical doctor. He's a psychiatrist. He  
12          specializes in the treatment of people with PTSD. And he  
13          explained by videotape how what Mr. Pozner has gone  
14          through is really, fortunately, very atypical and  
15          hopefully nobody else goes through what he's gone through,  
16          the murder of his son.

17                       And he told you a little bit about what that  
18          first year was like. I imagine time stood still. But he  
19          started to get better. He had two daughters that needed  
20          him, and he started to do the things you're supposed to  
21          do; go about your life, do your laundry, get the kids to  
22          school. He started to get better. And Dr. Lubit  
23          explained to you that that's, unfortunately, to the extent  
24          that there is a normal course for people to follow when  
25          their kids are murdered, that he was having a normal

1 response, and something changed.

2 Professor Fetzter decided to accuse him of  
3 circulating a forged death certificate. And that false  
4 defamatory statement, it went around the internet like a  
5 virus. This kind of alt-right fact that they want to  
6 believe is fact, well, we're in a court where there are  
7 rules about what you can prove. There are such things as  
8 facts. The Court's already established that what  
9 Professor Fetzter did was wrong. He's still doing it  
10 today, still on his website, and it gets picked up by  
11 other people and carried around, spread all across the  
12 country. And it's -- it's as if it's addictive.

13 You heard today on the witness stand even --  
14 even today Professor Fetzter wants to argue with the Court  
15 about what the Court's already decided as a matter of law.  
16 He testified to you today he promised to follow the  
17 protective order of this Court, the laws of this country.  
18 He violated it. He told you right from the stand. Yep.  
19 He took that deposition clip. He knew it was  
20 confidential, and what did he do? He spread that around  
21 too in violation of this Court's order.

22 Now you people all showed up for jury service,  
23 because that's a huge part of how our government continues  
24 to run, how this society continues to work. We enforce  
25 the laws. Professor Fetzter has evidenced an ongoing

1 continuous systematic rejection of that system.

2 MR. BOLTON: Objection, Your Honor.

3 THE COURT: Overruled.

4 MS. ZIMMERMAN: And so when you consider the  
5 evidence that's been presented to you, it's only been a  
6 day and a half. You've heard from one expert that they  
7 agree is an expert, and he said, Well, Mr. Pozner, he  
8 started to get better, and then these statements start to  
9 circulate and people start to pick them up and they start  
10 to call him, they start to harass him, and that made it  
11 worse. And you heard Dr. Lubit talk about how this is a  
12 secondary PTSD. A death threat like the one he told you  
13 about, the one that you heard, the voicemail message from  
14 Lucy Richards, that's the kind of thing that this false  
15 defamatory statement encourages. And, sure, it doesn't  
16 say, *Kill somebody*, but it says untrue things about  
17 somebody, and there's consequences to that. And you, the  
18 jury, are going to get to be the voice of this community  
19 to decide what kind of behavior will be tolerated. What  
20 are -- what is reasonable compensation in Dane County for  
21 repeatedly intentionally defaming a person? And with  
22 what -- and with such disdain.

23 There's no denial that Professor Fetzer wrote  
24 these books, that he wrote the web blogs. He doesn't deny  
25 that he made these accusations. He seems to deny that

1           they were defamatory, still thinks that the Court has it  
2           wrong. But he doesn't have anybody coming in here as an  
3           expert to tell you that the -- that the damages that  
4           Mr. Pozner suffered, the ones that Dr. Lubit told you  
5           about, Professor Fetzer doesn't have anybody to say that  
6           was wrong, that was incorrect. Why is that? Why didn't  
7           he bring an expert to you to explain that this is all  
8           fine?

9                        I'll submit to you it's because he can't get  
10           one. We expected also to hear from some additional  
11           coauthors on his book. They're not here to testify  
12           either.

13                       And so what you're left with -- what you're left  
14           with is an expert from New York who studied 9/11, treated  
15           9/11 victims, who has a specialty in this area -- who they  
16           agree is an expert -- and he's the only expert testimony  
17           that you've got.

18                       And you've got Mr. Pozner's testimony on the  
19           stand. He's as nervous as could be to take this on. He's  
20           as nervous as he could be. And it's not hard to imagine  
21           why that might be, given what kind of response people have  
22           had in the past. But he thinks it's important. He told  
23           you that he thought he was doing this to try and honor his  
24           son, to make sure that his -- his legacy was not erased by  
25           somebody who denies that he ever lived. And that's just

1 an outrageous thing for a father to have to do. But, it's  
2 brave. To try to hold people accountable for their false  
3 statements, it's a brave thing to do, and I certainly, and  
4 the rest of my co-counsel are privileged to represent him.

5 We believe that the evidence that you've heard  
6 is clear. We heard -- we believe that it's convincing.  
7 And we're going to trust you with determining what sum of  
8 money, if any, is going to reasonably compensate  
9 Mr. Pozner for these defamatory statements.

10 The Judge has provided you instruction on  
11 assessing credibility. We think that you know who the  
12 credible witnesses are here. And we'd ask that you stop  
13 Dr. Fetzer from succeeding in his goal to make sure that  
14 this kind of alt-right opium goes viral across the  
15 country.

16 Thank you for your time and attention these last  
17 two days.

18 THE COURT: Thank you, Ms. Zimmerman. The  
19 plaintiffs will have a brief opportunity for a rebuttal  
20 closing argument. For now, we'll hear from the defendant.  
21 Mr. Bolton.

22 MR. BOLTON: And you want me connected again, I  
23 bet.

24 THE COURT: What's that?

25 MR. BOLTON: I said I bet you want me connected

1           again.

2                   THE COURT:   That would be nice.

3                   MR. BOLTON:   I am probably the wrong person for  
4           this job, and when I say this job, making closing  
5           arguments, because closing arguments you're supposed to  
6           be, you know, razzle-dazzle and very emotional, and I've  
7           never been that way.  And, you know, I view the case and  
8           as I asked you folks to view the case as basically one  
9           that we're just going to -- we're going to talk about the  
10          evidence and you're going to make a decision based on the  
11          evidence.

12                   The question then is -- the issue before you  
13          folks is not whether or not you like Professor Fetzer or  
14          not.  And the -- and the instructions will tell you that  
15          this is not -- this is not a case in which you are  
16          assessing some sort of punitive determination.  It's a  
17          really -- I told you we teased you a little bit yesterday,  
18          and I apologize for that, but at the end it's -- it's a  
19          fairly -- the part of the case that's for you is really  
20          one that arises in almost any sort of personal injury  
21          case, and that isn't -- that isn't, do we like the  
22          defendant or not.  The question is simply based on what  
23          the Court has determined -- and can we show the -- it's --  
24          we're not awarding some sort of punitive award.  We are  
25          trying to assess in this case what is -- what is a

1 reasonable amount, if any, for the -- for the damage  
2 caused to Mr. Pozner from these particular statements.  
3 These are the statements that have to be connected to the  
4 claim for damages.

5 Now, I'm criticized at length and implicitly by  
6 Ms. Zimmerman for not having an expert. We were told  
7 there's only one expert. And you'll also read in the  
8 instructions that there's no obligation. The expectation  
9 that I -- there is no expectation that I have to have an  
10 expert.

11 And as I told you yesterday, one of the reasons  
12 why I think an expert is unnecessary in this case is  
13 because, basically, Dr. Lubit -- Dr. Lubit said there's  
14 really no test to measure post-traumatic stress disorder  
15 other than the self-reporting by the patient or the  
16 individual being evaluated. And so he attempts to  
17 evaluate whether or not the person is telling the truth or  
18 not. But what's interesting in this particular case isn't  
19 even whether or not he accurately assessed Mr. Pozner,  
20 whom he never met and whose records he never reviewed, but  
21 what was -- what's significant is -- is how the dots from  
22 his testimony were never connected by Mr. Pozner.

23 For instance, the connection to -- the  
24 connection of these defamatory statements, these  
25 defamatory statements to -- that these caused a second

1 incident of post-traumatic stress disorder, when pressed  
2 on that he'd say, Well, certainly threats would constitute  
3 a second triggering event. And when you -- when you think  
4 back on his testimony, when we first talked about what is  
5 post-traumatic stress disorder. Post-traumatic stress  
6 disorder is caused in the first instance, the first  
7 criteria by exposure to something like the death of  
8 someone or a war situation. And he acknowledges that  
9 these statements do not rise to the level of anything that  
10 would cause post-traumatic stress disorder. So  
11 immediately he then -- he then says, but -- but he  
12 receives threats and harassment, not by Professor Fetzer,  
13 however, but by complete -- people that are complete  
14 strangers to Professor Fetzer.

15 The doctor says, well, these actors acted  
16 because they were -- they were set in motion by these four  
17 statements, but there's no evidence. And when I say the  
18 dots are not connected, there's no evidence. There's not  
19 even any evidence in the first instance that any of the  
20 individuals even read these statements.

21 But the second -- the second shortcoming is  
22 that -- the jump, the causal connection from these  
23 statements to causing other people to engage in criminal  
24 or lawless activity, there's no evidence that that is an  
25 appropriate reasonable connection. And I think if we --



1 if we talk about it, if we think about it, the reason I  
2 think that's not an appropriate or reasonable connection  
3 is if this is a defamation case -- and it's interesting  
4 how little has actually been said about what we think  
5 about if its defamation. Defamation is basically damage  
6 to someone's reputation. But what we're hearing mostly is  
7 that Mr. Pozner has been motivated to honor the memory of  
8 his son and that that somehow -- these statements, as they  
9 try -- try to connect it, that somehow these statements  
10 are responsible for the criminal activity, the harassment  
11 activities of complete strangers.

12 If you think about what -- what might or might  
13 not constitute a defamatory statement, I think it's a  
14 dangerous road that they urge upon us when they say that  
15 if you -- if you make a false statement, and it -- and  
16 there's nothing -- there's nothing inherent in this  
17 statement that says commit a lawless act or do anything to  
18 Mr. Pozner or anyone. If we say that simply being  
19 wrong -- simply being wrong, if anybody reads it or not  
20 and then goes out and does something, that they then --  
21 that the -- that being wrong then becomes liable, that you  
22 become the insurer for everybody else, whether they --  
23 actually, in this case, whether they read it or not.  
24 Think again about causation. I don't think causation is  
25 there, even if they read any of these statements, but in

1           this particular case, the dots are not connected, because  
2           as Mr. Pozner testified, he said he doesn't know whether  
3           anybody read these statements or what they were motivated  
4           by. He does admit that they were acting on their own  
5           volition.

6                         So the most important -- the most important  
7           element of Dr. Lubit's testimony really didn't -- did not  
8           factor at all upon Mr. Pozner's mental condition. It  
9           really focussed on, well, being threatened, and harassment  
10          is really -- that's what he based his conclusion on,  
11          essentially, and the fact of the matter is that the  
12          premise of his conclusion is simply not there.

13                        And at the end of the day, he admit -- he  
14          acknowledges that he is not -- he is not the person to  
15          assess credibility of Mr. Pozner or anyone, that  
16          ultimately, that is your responsibility, and I agree with  
17          him on that. But his conclusion nonetheless that somehow  
18          these statements cause post-traumatic stress disorder from  
19          which Mr. Pozner will never, ever recover, whereas his  
20          conclusion that he would have recovered from the death of  
21          his child, itself, I think his conclusion not only is not  
22          supported by -- by the evidence that he -- that actually  
23          was presented to you, but it doesn't -- it doesn't even  
24          smack of a reasonable conclusion that -- that these  
25          statements are more significant than -- than the death of

1 his son, which he said is really what has bothered him  
2 about the Sandy Hook skeptics, the fact that they feel  
3 that he is not really honoring -- or that they are not  
4 really honoring the memory of his son.

5 But that may be laudable -- it is laudable, but  
6 that's not -- but that's not what he's here suing for.  
7 He's suing for defamation damages, not because someone was  
8 disrespectful. That's not what -- that's -- this is not a  
9 form in which to determine propriety. This is a form,  
10 right now, this particular proceeding to determine in a  
11 cold mechanical way, what is -- what is the consequence,  
12 the real consequence of these particular statements. And  
13 I don't think that Mr. Pozner established that there's  
14 really any consequence to these particular statements  
15 themselves.

16 I want to go back real quick too, to also note  
17 with regard to Dr. Lubit. Dr. Lubit, on the one hand,  
18 they want to confine this case to these four statements.  
19 That's what they sued upon. That that's -- these are the  
20 statements that you have to connect in your mind from  
21 statements to causation to a dollar amount. Anything else  
22 is outside the realm of the causation. So they want to  
23 limit it. But at the same time, they don't want to limit  
24 it. They want to have their cake and eat it too,  
25 because -- and it started with Dr. Lubit. He talks about

1 the general concept of the Sandy Hook deniers or the  
2 skeptics. He doesn't talk about these particular  
3 statements. And so -- but at the same time, this case  
4 isn't about that either. It isn't about whether or not  
5 the Sandy Hook skeptics are -- are on a broad -- more  
6 broad -- on their broader premise whether there's merit or  
7 not. That's not what this case is about.

8 But they want to -- they want to indict based on  
9 the entire premise, and yet they are the ones that made  
10 the limitation. They limited this lawsuit to these  
11 particular four statements, and yet if you look at -- if  
12 you think about what Dr. Lubit said, he kept -- he kept  
13 wandering well beyond these, and that, I think, is what is  
14 devastating to their causation argument. You can argue  
15 that the gentleman is an expert, but you don't have to  
16 accept his conclusion in this particular case, which is a  
17 little more than evaluating the credibility of the  
18 reporting by Mr. Pozner. But the other thing that I want  
19 to emphasize is that his conclusions are based upon  
20 conclusions that are not supported by the testimony of  
21 Mr. Pozner.

22 I also thought when you get past then the  
23 strongly emotive testimony of Mr. Pozner this afternoon or  
24 this morning about the death of his son, if you get past  
25 that, then the focus of his testimony and they tried to

1 tie it to some damages, those -- what was the concept of  
2 threat. And as I said, the concept of threat I don't  
3 think gets them anywhere, because -- because these --  
4 these statements are not in and of themselves threatening  
5 and there's nothing about them that -- that would incite  
6 someone to commit the crime of threatening someone or  
7 other some type of lawless activity. That -- that was  
8 really the bulk of his testimony as well.

9 So then they asked him a little bit about, you  
10 know, mental distress and mental condition, and there  
11 was -- there was -- virtually, he said he doesn't interact  
12 or he's -- he's more reserved than he used to be. On the  
13 other hand, I asked him whether or not he was outgoing and  
14 engaged in community activities and groups before -- even  
15 before Sandy Hook, and he said that he wasn't. So in many  
16 respects, that hasn't changed.

17 But I thought it was intriguing to listen to how  
18 little he had to say about his present and emotional -- or  
19 his emotional makeup after the publication of these.  
20 There was -- this is a person who is said to be suffering  
21 from post-traumatic stress disorder caused by these four  
22 statements. But think about how little -- think about how  
23 little testimony there was from Mr. Pozner as to what does  
24 that mean. There was virtually -- he basically --  
25 basically said that he's -- that he's afraid because other

1 people have threatened him, but that's not -- that's not  
2 an element or a symptom of PTSD. The conclusion that he  
3 has PTSD caused by these four statements certainly --  
4 certainly was not supported by the testimony of  
5 Mr. Pozner.

6 So -- and, again, you know, and sometimes  
7 lawyers make too much out of the absence of things, and  
8 so, for instance, I think as I -- as I indicated, I think  
9 Attorney Zimmerman tries to make more out of that they  
10 have -- that they have an expert who believed the  
11 statements that were given to him over the phone by  
12 Mr. Pozner, but I would also argue that there is some --  
13 there's some -- some evidence that's missing that you  
14 would expect to see also that would support -- potentially  
15 support the credibility and the authenticity of a claim  
16 for PTSD.

17 For instance, there's no claim for wage loss. I  
18 found this to be most interesting. There's not even any  
19 claim for medical expense. I thought this was interesting  
20 also. Not only did Dr. Lubit have no -- know of no  
21 treatment records for a man who -- who was said to be  
22 suffering from his second post-traumatic stress incident,  
23 no -- no treatment records were ever requested or seen by  
24 Dr. Lubit, but more importantly, there's no -- no such  
25 records provided to you as well. There's no -- there's no

1           corroboration of anything that he's said.

2                       They will have you say that, well, Dr. Lubit is  
3           corroboration because he said these things were true, but  
4           he's not corroborating. He said this is what Mr. Pozner  
5           told me. He's not corroboration. So there was -- there  
6           was not a single witness brought forth by Dr. -- or by  
7           Mr. Pozner to corroborate any of his claims. So you've  
8           got no wage loss, you've got no medical records, you've  
9           got no medical expense, you've got no corroboration. And  
10          they're trying to backdoor it by saying, We do have  
11          corroboration though. *Don't believe me. I told somebody*  
12          *else, so believe him.* That doesn't -- that doesn't get  
13          them where they want to.

14                   And I think at the end of the day then, what you  
15          need to do in assessing this case then is it's not a  
16          case -- as much as they -- as much as they want -- as much  
17          as they want you to treat it as such, they say -- they  
18          would tell you that this is just a cold calculation as  
19          well, in a sense, is a damage calculation, and that you're  
20          not supposed -- we're not concerned about good and bad and  
21          who we like or whatnot, but they go on and on and on about  
22          he wants to get his message out and he's not a law-abiding  
23          fellow. And, I'm not saying that any -- if any of those  
24          things are true. I'm not saying that that's good, but  
25          that's not -- that's -- we're not here right now to

1 determine whether or not we like Professor Fetzner or  
2 whether we agree with him or whether he's a good guy or  
3 whether he's a law-abiding guy.

4 What's been presented to you is -- and it may  
5 seem unfair, because you've heard tidbits of stuff that  
6 seemed more interesting, a bigger question of, you know,  
7 this whole concept of conspiracy theorists and whatnot,  
8 but at the end of the day, they made the decision to limit  
9 their case to these four statements, and at the end of the  
10 day, they can't connect any significant, if any, harm to  
11 these four statements. And that's what -- that's what  
12 it's all about at the end of the day.

13 It's not -- we're not making -- we're not making  
14 determinations about how the internet should operate.  
15 We're not making determinations about what should be  
16 permitted to be put -- what people should be permitted to  
17 post or not. This is not -- we're not in a policy making  
18 forum here. What we're determining is simply whether or  
19 not there is damage, and damage does no -- it's not  
20 special. It arises in almost any -- in many personal  
21 injury cases. Whether that damage, whether damage has  
22 been tied to a particular source, in this particular case,  
23 these four -- these four statements.

24 I don't think -- I don't think they've  
25 established the causal connection. And without the causal



1 connection -- without the causal connection, when you read  
2 the instructions you will see that that's a dot they have  
3 to -- they have to connect and they have not.

4 At the end of the day though, if you -- if you  
5 believe that the dots have been connected, you still have  
6 the difficult task, because you have to then try and  
7 assess in your best judgment what is the effect of making  
8 these four statements. What is the -- what is the value  
9 of that, and that's a difficult determination. There's no  
10 math to it.

11 But I think if -- I think if you -- if you -- I  
12 want you particularly to think about what Mr. Pozner  
13 testified today to in regard to his distress, his  
14 emotional symptoms and whatnot, and -- and there's  
15 virtually nothing. And to -- and then to say that it's --  
16 it supports a diagnosis of post-traumatic stress disorder  
17 caused by these four statements, I think you'll find to be  
18 unreasonable.

19 And so that's all I have to say for you. I  
20 appreciate it, and I really do appreciate the hard work  
21 that you guys do, and I know that I can be ungodly  
22 tedious, so I better just sit down and let you get to  
23 work. Thank you very much.

24 THE COURT: Thank you, Mr. Bolton.

25 Ms. Zimmerman.

1 MS. ZIMMERMAN: Can I get the microphone,  
2 please.

3 MR. BOLTON: Pardon me?

4 MS. ZIMMERMAN: You have the microphone on  
5 still.

6 MR. BOLTON: You just can't get this thing off  
7 me. I went out in the hallway the other day.

8 MS. ZIMMERMAN: Good thing you didn't go any  
9 further.

10 So as predicted yesterday, when I first spoke  
11 with you in the opening, Mr. -- Professor Fetzer's lawyers  
12 are now arguing, essentially, that those four statements  
13 really didn't harm Lenny Pozner all that much, but that's  
14 not what Dr. Lubit testified to and that's not what Lenny  
15 Pozner testified to today.

16 Yes, there was information presented to you in  
17 voicemail messages from individuals who made threats  
18 against Mr. Pozner. And that was -- that was offered to  
19 show you the kind of emotional anguish that Mr. Pozner has  
20 suffered. How it's caused him to retreat socially, to be  
21 nervous every time that he meets a new person. Those are  
22 all things that Dr. Lubit testified to that are part of  
23 the damage that was caused to him.

24 So when you look at the jury instructions, and  
25 the one you want to look at is 2516. Mr. Bolton wants to

1 talk to you about causation. That word's not in here.  
2 The instruction says, A person wronged by a defamatory  
3 statement is entitled to recover money damages. The  
4 measure of recovery is such sum as will compensate the  
5 person for the damages suffered as a result of the  
6 statements. For the damages suffered.

7 The Judge goes on to instruct that, You should  
8 presume that Mr. Pozner had a good reputation at the time  
9 that these statements were published. And you've heard no  
10 evidence to the contrary on that. And the -- the  
11 instruction then goes further and says he's not required  
12 to prove to you damages by a specific financial yardstick.  
13 Like I said earlier, if I could bring you a receipt and  
14 tell you this is how much it cost, that \$1 should be paid  
15 for every one of the ten million people that accessed it,  
16 I'd bring that to you. I don't have a receipt like that,  
17 and I'm going to have to place in your care and trust that  
18 kind of determination. What is the value for that kind of  
19 harm?

20 Mr. Pozner testified to you about the  
21 reputational harm that he's suffered. The concern that  
22 he's got every time he meets a new person. Every time  
23 that he's worried that they've read that he's part of some  
24 vast conspiracy or a fraud.

25 And it -- apparently now, Dr. Fetzer's attorney

1 doesn't approve of the way that Mr. Pozner's PTSD  
2 evidences itself. He's not suffering right. He says that  
3 maybe if he was really suffering, he would -- he would  
4 have asked you to give him wage loss or he would have  
5 brought in claims for medical expenses. And he's trying  
6 to do that to undermine the kind of suffering that has  
7 been presented here.

8           You heard Dr. Lubit talk about how more than  
9 half the people who have PTSD don't ever seek treatment  
10 for it. That's part of the avoidance that he talked  
11 about. But at any rate, Lenny had PTSD and he started to  
12 get better, and as Dr. Lubit explained to you, he had a  
13 second case of PTSD, a second round of it because of these  
14 defamatory statements. So you, the jury, are here to  
15 decide what kind of damages Professor Fetzer has caused to  
16 Mr. Pozner, what kind of damages he's still causing today.

17           I don't think I've ever been called  
18 razzle-dazzle anywhere, but it's right that I definitely  
19 care about this case and I sometimes get emotional about  
20 it. So to the extent that I've done something that's  
21 offended anybody in the jury box right now, I apologize,  
22 and I ask that you please don't hold that against my  
23 client.

24           We appreciate your service and your attention  
25 today. Thank you.

1 THE COURT: Thank you, Ms. Zimmerman.

2 Ladies and gentlemen, we've come to the point  
3 where two of you get to go home, make dinner, or do what  
4 else you want a little earlier. In the abundance of  
5 caution to make it completely transparent, my bailiff will  
6 come forward, since everyone trusts him, to select two  
7 names out of the dice box. Select two slips of paper and  
8 read the numbers. These will be the alternates and the  
9 alternates will be excused from having to deliberate.

10 THE BAILIFF: Which number do you want me to  
11 read?

12 THE COURT: He doesn't have his glasses on. So  
13 305. Who's 305? Sir, thank you very much for your  
14 service. And number 26.

15 JUROR 26: Oh, come on.

16 THE COURT: Thank you very much.

17 So would you like -- just hang back in the jury  
18 room briefly and I'll come see you and answer any  
19 questions. I usually, for the whole jury after your  
20 deliberations -- or actually, gather your stuff and come  
21 into my office if you have any questions. That's  
22 something we do for everyone, and I'll get your names if  
23 you'd like to be called.

24 I'll have the clerk swear in the bailiff.

25 THE CLERK: Please raise your right hand.

1 (Bailiff sworn.)

2 THE COURT: Thank you. So sort of like, not  
3 that I ever watch like the *Bachelor* or anything, but you  
4 can say your good-byes to the alternates and then the  
5 bailiff will be taking charge. We're working on the jury  
6 instructions and we'll send in -- you can send in the  
7 special verdict. We'll send in the jury instructions  
8 momentarily.

9 THE BAILIFF: All rise for the jury.

10 (Jury out.)

11 THE COURT: Okay. Please be seated.

12 We'll just give your numbers and contact  
13 information to my clerk.

14 Two -- there are two loose ends. Mr. Bolton, I  
15 think before you came on board, the Court entered an order  
16 bifurcating this case. The defendant did have a  
17 counterclaim for I think it was malicious prosecution or  
18 something, and it was the agreement of the parties that  
19 we'd see how the liability phase went -- or, excuse me,  
20 the damages. I did rule that they were defamatory  
21 statements, and then we'll see what the verdict is here.  
22 I would anticipate -- well, I'll ask you the question  
23 whether that then resolves the counterclaim for a  
24 malicious prosecution. I think that's what he called it,  
25 wasn't it?

1 MR. FETZER: Abuse of Process, Your Honor.

2 THE COURT: Abuse of Process. I would say, one  
3 might wonder how you abuse the process if I already  
4 determined liability, and if --

5 MR. FETZER: There were two additional  
6 counterclaims, Your Honor.

7 THE COURT: I'll ask whether there are any loose  
8 ends in that regard.

9 The second is, I do note from my review of the  
10 Complaint, there was a prayer for relief as and for such  
11 other further relief as the Court deemed just under the  
12 circumstances. I'm going to ask the plaintiff the  
13 question, given the fact that the testimony is unrebutted  
14 that the statement still exists are being public --  
15 continue to be published, whether the plaintiff is asking,  
16 as set forth in the prayer for such injunctive relief,  
17 that might be appropriate concerning the defamatory  
18 statements. We'll take that up maybe at a later date.  
19 We'll just see what the jury comes -- when it comes back  
20 and how it comes back.

21 MS. ZIMMERMAN: Thank you, Your Honor.

22 THE COURT: Anything to take up before we all  
23 adjourn?

24 MR. BOLTON: No, Your Honor.

25 MR. ZIMMERMAN: No, Your Honor.

1 THE COURT: Okay. Thank you very much.

2 (Off the record at 4:00 p.m.)

3 (Back on the record at 4:37 p.m.)

4 (Exhibit 12 marked for identification.)

5 THE COURT: We'll go back on the record.

6 Juror 62 has sent a note and the note is asking  
7 for four exhibits: Exhibit 8, the defamatory statements;  
8 Exhibit 10, which -- oh, excuse me, Exhibit 9, which is  
9 the HONR Network packet; Exhibit 10 and 11, which is  
10 the -- the two -- or one is the blog and 11 is the  
11 chapter.

12 Mr. Zimmerman, or whoever, Ms. Feinstein,  
13 your -- send these in, send some of these in, none of them  
14 in, these and all of them in?

15 MR. ZIMMERMAN: I believe Exhibit 9 was not  
16 admitted, Your Honor.

17 MS. FEINSTEIN: Correct.

18 THE COURT: This is true.

19 MR. ZIMMERMAN: The remainder were admitted.

20 THE COURT: That's correct. Exhibit 9 was not  
21 admitted.

22 Defendant's position on the -- what should I  
23 send in? These exhibits? Not 9, because it wasn't  
24 admitted, obviously. None of them? All of them?

25 Mr. Baker? Or Mr. Bolton?



1 MR. BOLTON: I think -- I think my position  
2 would be -- I think they're going to get bogged down on  
3 things. I guess my position would be none.

4 THE COURT: Mr. Zimmerman?

5 MR. ZIMMERMAN: We're not opposed to the  
6 exhibits going back. I don't want them to get bogged down  
7 either. I guess our preference is if the exhibits are  
8 going to go back, then the admitted exhibits should  
9 probably all go back, if for no other reason than we're  
10 less likely to end up back with another question.

11 THE COURT: Well let's see the other exhibits.  
12 Well --

13 MR. ZIMMERMAN: And there's -- and maybe one --

14 THE COURT: Mr. Bolton, you agree that Exhibit  
15 9, not having been received into evidence, under no  
16 circumstances would it go back to the jury room?

17 MR. BOLTON: That almost sounds rhetorical, Your  
18 Honor.

19 THE COURT: It may be leading but not  
20 rhetorical.

21 MR. BOLTON: Okay. I do agree with you, and I  
22 agree with Mr. Zimmerman on that one.

23 THE COURT: The only other exhibit is Noah  
24 Pozner's photograph.

25 MR. ZIMMERMAN: That's correct, Your Honor. The

1 others are either in electronic format, so they would be  
2 on a disk, which we have not yet provided, or the  
3 transcript which, as you noted, is not an exhibit that  
4 would go back to the jury, and we're waiting for the  
5 version that actually reflects only the testimony that was  
6 presented to the jurors.

7 THE COURT: Okay. Can I have the exhibit list.

8 THE CLERK: Mm-hmm.

9 THE COURT: This is what we're going to do.  
10 Four -- well, 1 is the -- is the deposition of Dr. Lubit  
11 that was greater than what was played. That's not going  
12 to go. 2 is my rulings on the objections, which is not  
13 really -- I marked for identification purposes Exhibit 2,  
14 but it is not an exhibit as to the evidence. 3 is the  
15 photo. 4, 5, 6, and 7 are audios. I think -- do you  
16 remember what -- what audio are they?

17 MR. ZIMMERMAN: Those are the messages that  
18 Mr. Pozner received from Lucy Richards, and we have not  
19 yet provided the Court with a DVD or CD or thumb drive  
20 with those files on them.

21 THE COURT: Okay.

22 MR. BOLTON: Your Honor, if -- as I said, I  
23 think my -- my preference would be none, but just given  
24 some of the logistics and the request, if -- if the Court  
25 is of a mind to send anything back, I would just say the

1 three that they requested. I know that obviously you can,  
2 but 8, 10, and 11.

3 THE COURT: I'm going to write this response. I  
4 wrote, Exhibit 8, 10, and 11 are attached. Exhibit 9 is  
5 not because it was not received by the Court into  
6 evidence. Okay. I'll hand those to the bailiff.

7 MR. BOLTON: Thanks, Judge.

8 THE COURT: Thank you.

9 MR. ZIMMERMAN: Thank you, Your Honor.

10 (Off the record at 4:43 p.m.)

11 (Back on the record at 7:45 p.m.)

12 THE COURT: Get your calendars out. I want to  
13 schedule in for next week a status conference. By that  
14 time you can tell me what the -- whether you're pursuing  
15 counterclaims in light of the -- what happens.

16 MR. BOLTON: Okay.

17 THE COURT: Whether you're pursuing other and  
18 for such other and further relief as appropriate and just  
19 under the circumstances, and then we can set appropriate  
20 time for post-trial motions. I always have to reread the  
21 statutes because they're written kind of odd about you  
22 can -- 20 days but agree to more but not more than. It's  
23 good to just get together and get some dates on the  
24 calendars. So Molly?

25 THE CLERK: The computer just says loading.

1 Monday at 2:00.

2 THE COURT: Monday at 2:00 o'clock we can do by  
3 phone. Monday at 2:00 by phone. Maybe, Mr. Zimmerman,  
4 someone from your side can set up the call.

5 MR. ZIMMERMAN: Yes. We can do that, Your  
6 Honor.

7 THE COURT: Okay. Are we ready to bring the  
8 jury in?

9 I overheard -- my hearing is slightly better  
10 than Mr. Bolton's but not as good as some other people's.  
11 I heard he's not around or he went too far away or what's  
12 up?

13 MR. BOLTON: Eric, you talked to him.

14 MR. BAKER: He's en route here but he said he  
15 was in Verona and he said he was hightailing it. And we  
16 were discussing --

17 MR. BOLTON: And I said I'm okay with just --  
18 we'll proceed.

19 THE COURT: Okay. And are we waiting for anyone  
20 from your end?

21 MR. ZIMMERMAN: No, Your Honor.

22 THE COURT: We'll bring the jury in. That's  
23 really too far away to make everyone wait.

24 MR. BAKER: Understood.

25 MR. BOLTON: I'm fine.

1           THE COURT: Also, my usual practice is, I --  
2           after the jury goes to the room, I go into the jury room  
3           and ask if they have any questions. We don't talk about  
4           the case, the verdict, but sometimes they have questions  
5           about process, noise machine. I always say after my first  
6           trial when I went back in I thought they would ask  
7           insightful question, this interesting nuance of the law,  
8           and instead the first question was, is they -- why was the  
9           seal behind my head cocked 5 degrees off-center. I said I  
10          had no idea. Any other questions? No. So it's not --  
11          don't worry that we're getting into some weighty  
12          discussion over legal, but I like to give them an  
13          opportunity to talk about the process, you know, what --  
14          what we talk about in general when they go into the room  
15          and why couldn't they hear, just to give a fuller  
16          understanding of the judicial process.

17                 MR. BAKER: Did you get the seal fixed after  
18                 that or is it just a matter of perspective?

19                 THE COURT: I did. It moves. Or maybe that was  
20                 when I was in the A courtroom.

21                 Is either side going to ask to poll the jury?

22                 MR. BOLTON: Pardon?

23                 THE COURT: Poll the jury?

24                 MR. BOLTON: Yeah.

25                 THE COURT: You want to poll the jury?

1 MR. BOLTON: Yeah.

2 THE COURT: Do I do that?

3 MR. BOLTON: Yeah. Judge, I've got to tell you,  
4 Eric told me I should do that. I just wanted you to know.

5 MR. BAKER: He's been waiting to throw me under  
6 the bus the whole trial.

7 THE COURT: You do or you don't?

8 MR. BOLTON: We do, yeah.

9 THE COURT: Okay.

10 THE BAILIFF: All rise for the jury.

11 (Jury in.)

12 THE COURT: Please be seated. Hand that to me  
13 here.

14 THE BAILIFF: These are exhibits.

15 THE COURT: I know. I want them. Thank you.

16 Okay. I understand Juror 62 is the foreperson.  
17 Ladies and gentlemen of the jury, have you reached a  
18 verdict?

19 JUROR 62: Yes.

20 THE COURT: Would you hand the verdict to the  
21 bailiff, please.

22 Special Verdict Form. Damages.

23 What sum of money, if any, will fairly and reasonably  
24 compensate Mr. Pozner because of Mr. Fetzer's defamatory  
25 statements?

1 Answer: \$450,000.

2 Dated the 15th day of October, signed by Number 62,  
3 foreperson. No dissenting jurors.

4 There is a procedure, ladies and gentlemen, to  
5 have the jury polled. The defense would like to poll the  
6 jury. We'll just start in the back left corner, sir. And  
7 would you just answer -- all of you answer this question.  
8 Ladies and gentlemen, is this your verdict?

9 JUROR 302: Yes.

10 THE COURT: Next.

11 JUROR 311: Yes.

12 JUROR 300: Yes.

13 JUROR 310: Yes, Your Honor.

14 JUROR 306: Yes.

15 JUROR 5: Yes.

16 JUROR 40: Yes.

17 JUROR 64: Yes.

18 JUROR 54: Yes.

19 JUROR 34: Yes.

20 JUROR 24: Yes.

21 JUROR 62: Yes.

22 THE COURT: Thank you, much.

23 Ladies and gentlemen, your service in this case  
24 is completed. Many jurors ask if they are allowed to  
25 discuss the case with others after receipt of the verdict.

1           Because your role in this case is over, you are not  
2           prohibited from discussing the case with anyone. However,  
3           you should know that you do not have to discuss the case  
4           with anyone or answer any questions about it from anyone  
5           other than the Court. This includes the parties, lawyers,  
6           the media, or anyone else.

7                     If you do decide to discuss the case with  
8           anyone, I would suggest you treat any discussion with a  
9           degree of solemnity such that whatever you do say, you  
10          would be willing to say in the presence of your fellow  
11          jurors or under oath here in open court in the presence of  
12          the parties. It is in the public interest that there be  
13          the utmost freedom of debate in the jury room and that  
14          jurors be permitted to express their views without fear of  
15          incurring the anger of any litigants or criticism of any  
16          person. Please respect the privacy or the views of your  
17          fellow jurors.

18                    Finally, should any of you have any questions  
19          for the Court before leaving today, please let the bailiff  
20          know before you leave the jury room. You may confer with  
21          me at any time before you answer any questions asked by  
22          anyone.

23                    After we go in and you can just chat for a  
24          minute if you have any questions. Thank you very much. I  
25          appreciate your service.



1 THE BAILIFF: All rise for the jury.

2 (Jury out.)

3 THE COURT: Anything else to take up before we  
4 adjourn for the evening?

5 MR. ZIMMERMAN: No, Your Honor.

6 MR. BOLTON: Not here, Your Honor. Thank you.

7 THE COURT: Okay. Then we'll reconvene.

8 MR. BOLTON: 2:00 o'clock.

9 THE COURT: Monday at 2:00 o'clock. Have a good  
10 evening.

11 (Off the record at 7:53 p.m.)

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1 STATE OF WISCONSIN )  
 ss. )  
 2 COUNTY OF DANE )

3 I, COLLEEN C. CLARK, Registered Professional  
 4 Reporter, Official Court Reporter, Branch 8, Dane County  
 5 Circuit Court, hereby certify that I reported in Stenographic  
 6 shorthand the proceedings had before the Court on this 15th day  
 7 of October, 2019, and that the foregoing transcript is a true  
 8 and correct copy of the said Stenographic notes thereof.

9 On this day the original and one copy of the  
 10 transcript were prepared by pursuant to Statute.

11 Dated this 31st day of October, 2019.

12  
 13 Electronically signed by:

14 Colleen C. Clark  
 15 COLLEEN C. CLARK, RPR  
 16 OFFICIAL COURT REPORTER

17  
 18  
 19  
 20 The foregoing certification of this transcript  
 21 does not apply to any reproduction of the same by  
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