

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>WITNESS</u>	<u>Page</u>
LEONARD POZNER	
Direct Examination by Mr. Zimmerman	32
Cross-Examination by Mr. Bolton	45
JAMES FETZER	
Adverse Direct Examination by Ms. Stedman	67
Direct Examination by Mr. Bolton	93

EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Marked</u>	<u>Received</u>
3	Photo - Noah Pozner	34	34
4	Audio file	42	42
5	Audio file	42	42
6	Audio file	42	42
7	Audio file	42	42
8	Defamatory statements	46	46
9	James Henry Fetzer - A Life Of Insanity	63	
10	Chapter 11	95	96
11	Sandy Hook Truth blog	95	98
12	Jury Question	144	

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 Fetzer'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 Fetzer 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 Fetzner'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. Fetzner'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
 22 any means unless under the direct control and/or
 23 direction of the certifying reporter.
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