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

* * * * *

TRANSCRIPT OF JURY SELECTION AND TRIAL PROCEEDINGS - DAY 1
commencing on the 14th day of October, 2019, at approximately
8:37 a.m. before the
HONORABLE JUDGE FRANK D. REMINGTON

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

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

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

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EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Marked</u>	<u>Received</u>
1	Dr. Roy Lubit 10/5/2019 deposition transcript	122	
2	Court ruling on objections from Dr. Lubit deposition	122	

1 (Proceeding began at 8:37 a.m.)

2 THE COURT: This is 18-CV-3122, Leonard
3 Pozner -- I should get this right. Is it Pause-ner or
4 Pose-ner?

5 MR. ZIMMERMAN: Pause-ner, Your Honor.

6 THE COURT: Pozner versus James Fetzer. May I
7 have the appearances, please.

8 MR. ZIMMERMAN: Jake Zimmerman on behalf of
9 Mr. Pozner and along with me are Emily Feinstein, Emily
10 Stedman, and Genevieve Zimmerman.

11 THE COURT: Good morning.

12 MR. BOLTON: Rich Bolton, Eric Baker, and Mr. --
13 Professor Fetzer appear in person with me.

14 THE COURT: We're having some trouble last week
15 with the microphones. They don't -- still have them
16 turned up a hundred percent?

17 THE CLERK: They are.

18 THE COURT: So maybe, there's two at each table,
19 just pretend like you're a rock star, pull it right up to
20 your lips and we can all hear fairly well.

21 There were a couple of loose ends. You'll know
22 that I did get a copy, Mr. Zimmerman, of -- or
23 Ms. Feinstein, the question on the pre-trial order for the
24 media. Had I had more time, I would have penned out
25 something a little more elaborate than a marginal order

1 denying what was submitted. What I tried to explain --
2 did that get posted? Uploaded?

3 MS. FEINSTEIN: No.

4 THE COURT: Okay. Is that still in the cue,
5 Molly?

6 THE CLERK: For what?

7 THE COURT: I denied -- the defendants [sic]
8 wanted me to enter a pre-trial order on media. Must be
9 stuck in the -- once it goes to my dashboard, then I do
10 what I do, and then I hit submit and everything gets
11 reviewed coming in by the clerk and then going out by the
12 clerk.

13 THE CLERK: When was that?

14 THE COURT: That was on Thursday. Be that as it
15 may, this is what it said. Just so you know, if I decline
16 it gives me a box to cryptically explain why. A lot of
17 what you wanted is provided for in court rule practice
18 anyway. You'll see we have signs at the door. Nobody is
19 going to be using a cell phone, a camera, any kind of
20 electronic device, no laptop -- except for you guys -- in
21 the gallery. Under the local practice, there's no
22 standing. We don't assign sides like a wedding.

23 Now, we do have a media room, and that takes
24 care of some of the concerns about noise and angle. The
25 media room is accessed by a separate door and is designed

1 to have an angle that can't allow the media to capture the
2 faces of the jurors. I have not gotten a media request.
3 It doesn't mean that media doesn't show up. Most of the
4 time the TV stations do a media request, not so much on
5 print media. They just come in and out of the room.

6 The only part that I was -- it was not addressed
7 by rule or practice is photographing Mr. Pozner's face or
8 this issue from the neck down. I thought about that for a
9 while. I guess since I hadn't hit -- it hadn't gotten out
10 into your hands, I surmised the reason why, Mr. Zimmerman,
11 you wanted to do that is in keeping with the story that
12 your client has told about his concerns for his physical
13 safety and well-being, the past experience as a victim of
14 a crime coming out of Florida.

15 I had two things that I thought about. One is,
16 of course, now we know from Mr. Fetzer that Mr. Halbig is
17 not willing to give back the picture, so now we have a
18 situation where his picture is out there anyway. Second,
19 there is really a long-standing practice in Wisconsin in
20 the state courts, under the state constitution, that
21 they're open. It's true that in criminal cases with
22 victims and juveniles there's some order of the court
23 where they pixelate the picture.

24 My thought, Mr. Zimmerman, was twofold. One is,
25 of course, I was informed as a result of the distribution

1 of Mr. Pozner's likeness that kicked off another round of
2 conspiracy theories that that's not really him, it's
3 someone else. My feeling was if we pixelate the -- his
4 likeness, it's going to play into, once again, now he
5 doesn't even want to show up in court and have his face,
6 sort of, confront that who has done him allegedly wrong,
7 combined with the fact that we have a picture out there
8 anyway.

9 Did you want to -- I had intended to deny it to
10 let you know in advance, but obviously, it didn't get out.
11 So sort of the wind is out of the sails in my plan. So is
12 there anything else you want to say?

13 MR. ZIMMERMAN: Just for clarification, no one
14 will be allowed to videotape his testimony in the court,
15 although, they may take still photography. Is that the
16 gist of the Court's order?

17 THE COURT: The local rule is there are no --
18 nobody is going to be taking pictures in the courtroom,
19 period, end of story. Now what happens in the hallway, I
20 don't know. The only pictures will come from behind that
21 glass window. Now, that door's locked. We unlock it for
22 the media after a media request. Now, I haven't gotten a
23 media request.

24 You'll note from earlier proceedings, the only
25 photography was, I guess, the parties leaving the

1 courtroom. But my -- we have extra security and bailiffs.
2 There won't be any -- as the signs on the door indicate,
3 everyone turns their phones off or they're going to lose
4 them. Nobody will be raising their phone. There's going
5 to be no videotapes. There's no -- going to be media or
6 electronic communication devices by anyone in the gallery.

7 MR. ZIMMERMAN: Your Honor, I think that
8 addresses our primary concern, so we appreciate your
9 consideration on that issue and I think we're comfortable
10 with that order.

11 THE COURT: Okay. Well, I didn't really issue
12 an order. It was just going to default to practice and
13 local rule.

14 We do have the proposed versions of what the
15 parties have been struggling to put into Jury Instruction
16 50, and then anything else you guys want to talk about.

17 Mr. Bolton, do you want to talk about anything
18 other than 50?

19 MR. BOLTON: Other than what?

20 THE COURT: Jury Instruction 50? Is there
21 anything else, Mr. Zimmerman?

22 MR. ZIMMERMAN: We have a few other loose ends
23 we'd like to address with the Court.

24 THE COURT: Okay. Why don't we start with
25 those.

1 MR. ZIMMERMAN: We -- I think the Court said we
2 were going to discuss the -- Dr. Fetzner's compliance with
3 the Court's contempt and purge condition.

4 THE COURT: Okay. Correct.

5 MR. ZIMMERMAN: And I can give you an agenda and
6 decide which one you want to go first if that would be
7 helpful.

8 THE COURT: No, just rattle them off. That one
9 I did get the letter from Mr. Bolton. Where we are, I
10 guess, you've got the money. He made the payments.

11 MR. ZIMMERMAN: That's correct, Your Honor.

12 THE COURT: So the only thing left is
13 Mr. Halbig's refusal to destroy or return Mr. Pozner's
14 image.

15 MR. ZIMMERMAN: I guess our view on that is just
16 slightly different, because I think what Mr. Bolton
17 provided was a letter from Mr. Bolton saying what other
18 people did, and I think that's very different than any
19 evidence that those people actually will comply. There's
20 not an affidavit, there's no risk of a statement under the
21 penalty of perjury. This is, what we view, is a very
22 informal statement by people who have demonstrated a lack
23 of respect for the law and for courts. Alison Maynard, in
24 particular, a former lawyer has been practicing law around
25 the United States and in this jurisdiction knowing that

1 she didn't have a license. So would -- would an affidavit
2 alleviate 100 percent of our concerns? No, but it would
3 at least be a statement under penalty of perjury. So our
4 concern is this is very informal for evidence of
5 compliance.

6 THE COURT: Well, that -- that's true.
7 However -- and I'll hear from you, Mr. Bolton. When I
8 read the letter, it -- these things did not occur to me.
9 Why? I guess I didn't expect an affidavit. Mr. Bolton
10 does not have any leverage on these people. He doesn't
11 represent them. I mean, I guess, Mr. Bolton, you could
12 have tried. I mean, if they didn't sign it, then that's
13 one thing. The other thing is they're not within the
14 Court's jurisdiction anyway, so even if they signed an
15 affidavit and we found out the affidavit wasn't true, I'm
16 not sure I even have a jurisdiction to do anything about
17 it, because of no context -- context to the present forum.

18 I mean, you could -- you could remove sort of
19 the double layer of hearsay and we could have
20 Mr. Fetzer -- I mean, assuming that he contacted these
21 people and testify as to what they told him, to make sure,
22 although, Mr. -- maybe Mr. Bolton reached out and dealt
23 with these people directly. Mr. Bolton?

24 MR. BOLTON: Your Honor, what I would -- and I
25 did not anticipate or understand that an affidavit was

1 going to be required also. What I understood was that we
2 were to make the best effort that we could, and so what I
3 was responding to was the effort that we made.

4 I will speak to my own efforts, in particular.
5 I had multiple communications with Mr. Halbig, imploring
6 him to delete the face image. What -- the most I could
7 get out of him was that he was not going to be further
8 circulating it then, but he was not willing to -- after
9 multiple requests by me, to commit to delete that.

10 He did -- I will also represent, and if you --
11 if necessary, Professor Fetzer can testify that the
12 afternoon after the hearing on the contempt, that
13 afternoon or early evening, Professor Fetzer contacted
14 both Ms. Maynard and Mr. Halbig, advising them of what --
15 what was required. And I don't know if -- whether
16 imploring is too strong a word, but definitely telling
17 them what absolutely needed to be done.

18 I then have followed up on numerous occasions
19 with each of them, including individually with
20 Ms. Maynard, who advised that not only had she complied
21 but that the two individuals that she had circulated to
22 had also agreed and had deleted. One of them indicated
23 that she'd never opened it in the first place.

24 With -- with Mr. Halbig, in addition to -- he
25 also immediately advised us that he had deleted all copies

1 of the -- of the written transcript. I've -- I followed
2 up then, as I said, on the -- on the still-shot photo and
3 he would not agree on that.

4 I also, by the way, asked him to advise everyone
5 that he had circulated to, to delete, and I also asked him
6 to, if he -- to give me the contact information for those
7 people, and Mr. Halbig was not willing to do that either.

8 So those are the efforts that we made, and I --
9 I honestly -- because, because I took -- I take the
10 Court's order very seriously, and -- and worried about
11 this a great deal. So I spent a considerable time
12 thinking what else can I do, and I really couldn't think
13 of anything further than continuing to pester and cajole.

14 My last contact with Mr. Halbig was, you know,
15 this is really important to potentially keep Professor
16 Fetzer out of jail, and I didn't get any response to that
17 communication.

18 THE COURT: Well, Mr. Zimmerman, I -- I think
19 Mr. Bolton did everything that I would have expected him
20 to do and in a form that I anticipated. You're right in
21 your characterization of the informality of the response,
22 but the problem is, is I don't -- I did not intend nor do
23 I want to go down a path in which then the court -- this
24 court becomes enmeshed in a pursuit, really without a
25 discernible end.

1 I mean, I am -- have no doubt Mr. Pozner would
2 say he thinks what Mr. Bolton was told is simply not true.
3 Of course they kept it and they're going to pack --
4 sack -- put it away for a rainy day and it will pop out at
5 the most inopportune moment. Part of me says I believe
6 Mr. Bolton has honestly and genuinely did what I wanted,
7 and -- or hoped he would do and he reported, but he can't
8 vouch for or swear and be responsible for these people.

9 I believe that the contemptuous conduct came
10 from Dr. Fetzner, and Dr. Fetzner continues to be
11 responsible, and if the -- well, and that the Court's
12 instructions as a purge condition was designed to
13 ameliorate or remove the damage as a result of the
14 contempt of court. To the extent that the defendant was
15 unable to completely erase the consequences of the
16 contemptuous conduct means, I guess from the Plaintiff's
17 point of view, that the -- sort of the nightmare still
18 has -- continues to play out, was an allegation of his
19 conspiracy in the promulgation of a false or fraudulent
20 death certificate now has enmeshed into or morphed into a
21 conspiracy that the man being deposed is not the man in
22 the picture that doesn't have -- never had a son.

23 And as I indicated that these -- this event, and
24 I guess the continuing complication from Mr. Pozner, can
25 be addressed in the larger context as the Plaintiff puts

1 its case in on the compensatory damage question as to
2 flowing from the way he's been treated by Dr. Fetzer. So
3 I think it is just what it is and we'll have to leave well
4 enough alone.

5 MR. ZIMMERMAN: Thank you, Your Honor. We
6 understand.

7 THE COURT: Okay. What else?

8 MR. ZIMMERMAN: We'd like to talk a little bit
9 about witnesses and what the scope of the case is today.
10 We -- as the Court knew -- may recall from the final
11 pre-trial conference, we had a claim for punitive damages.
12 In the interest of streamlining this and avoiding a
13 circus, we have dropped our claim for punitive damages,
14 and informed Mr. Bolton that we did so. So what remains
15 in this claim -- in this case is only Mr. Pozner's claim
16 for compensatory damages, damage to his reputation, and
17 emotional harm.

18 We asked Mr. Bolton to provide us an updated
19 witness list, because at the final pre-trial conference,
20 those six witnesses were identified primarily as witnesses
21 to punitive damages. And what we heard in response was
22 that Mr. Bolton intends to call witnesses -- Dr. Fetzer as
23 a witness and two other individuals. We were surprised by
24 that, given the scope of what remains in the case, and
25 asked for some identification of the witnesses' testimony

1 so that we can ensure that it relates to the narrow issue
2 of Mr. Pozner's damages. We have not received that.
3 That's concerning to us. None of them were identified as
4 expert witnesses, so they cannot offer opinions about my
5 client's mental state, emotional state, or his damages.
6 So we're trying to make sure we don't end up in a
7 situation where testimony is before the jury that should
8 not be a part of this case.

9 THE COURT: Okay. I did hear that that might
10 develop and then this morning when I saw the proposed
11 instructions, I quickly paged through and did not see one
12 on punitive damages, which confirmed then that the
13 plaintiff had elected to withdraw that. My response was
14 that should dramatically shorten the trial.

15 As you're aware, my feeling was, is in a claim
16 for compensatory damages, the focus is on Mr. Pozner and
17 whether he was damaged, whether the plaintiffs -- excuse
18 me, the defendant's conduct caused those damages, and if
19 so, what amount. When there was a claim for punitive
20 damages, then the focus turned on, well, what about
21 Mr. Fetzer and Mr. Fetzer's reason, good or bad, for doing
22 what he did, and that I couldn't deny, essentially, in a
23 motion in limine Dr. Fetzer from describing what was in
24 his mind and what he was trying to do, even though the
25 Court had ruled on the liability question.

1 Now, Mr. Bolton, that the focus is taken off of
2 Dr. Fetzter, there's no claim for punitive damages, only
3 compensatory damages, the first question is, you agree
4 that shortens the trial?

5 MR. BOLTON: It -- it does in the sense that
6 we've already shortened our witness list.

7 THE COURT: So who are your witnesses?

8 MR. BOLTON: Pardon?

9 THE COURT: Who are your witnesses?

10 MR. BOLTON: Professor Fetzter, an individual by
11 the name of Kelley Watt, K-E-L-L-E-Y, W-A-T-T, and Tony,
12 T-O-N-Y, Mead, M-E-A-D.

13 THE COURT: And what does Kelley Watt have to
14 say relevant to Mr. Pozner's compensatory damages?

15 MR. BOLTON: She had extensive direct contact,
16 communication by phone and social e-mail -- or social
17 media with Mr. Pozner relating to the whole issue that
18 he's objecting to in terms of the Sandy Hook skeptics and
19 whatnot. So she -- she would testify in regard to her
20 communications with him, which I think are relevant to
21 assessing the damages that Mr. Pozner is claiming. And
22 similarly, Mr. Mead would testify with regard to direct
23 communications.

24 THE COURT: Who's -- I've heard the name Kelley
25 Watt. I have not heard the name Tony Mead. Who's he?

1 MR. BOLTON: He's another -- he's an
2 individual -- and he was on our witness list, and Mr. Mead
3 has also been involved in the Sandy Hook research and --

4 THE COURT: Has he had direct communication with
5 Mr. Pozner?

6 MR. BOLTON: Yes. Yes.

7 THE COURT: In what form?

8 MR. BOLTON: Um, by -- by e-mail and other
9 social media, but I'm -- I'm just --

10 THE COURT: Okay. Here's what we're going to
11 do, because it's almost 9:00, and I do want to get the
12 jump on bringing up a jury. We have a lot of people
13 coming up for this case. We're not going to hear --
14 you're not -- the plaintiffs are going first. So we have
15 a little time to readdress these two witnesses. Even if I
16 address the concerns, most likely what I would do is rule
17 on the relevance or the cumulative aspect of this line of
18 questioning at the time these people are called, but why
19 don't we take the issue of whether they should testify --
20 if what you're saying is whether they should testify at
21 all, up at a later -- maybe at lunch time today or long
22 before you intended to have them come.

23 Did you subpoena these people, Mr. Bolton?

24 MR. BOLTON: I did not subpoena them.

25 They're --

1 THE COURT: Did you ask them to come on a
2 particular day?

3 MR. BOLTON: They're certainly not anticipating
4 to testify today.

5 THE COURT: When did you --

6 MR. BOLTON: They're going to be here -- they
7 will be here tomorrow throughout the day.

8 MR. FETZER: They arrive today.

9 MR. BOLTON: Pardon me?

10 MR. FETZER: They arrive today.

11 MR. BOLTON: I understand.

12 THE COURT: Okay. The Court will enter a
13 sequestration order. All the witnesses, you know, when
14 they do come, please inform them they are not to come into
15 the courtroom.

16 MR. BOLTON: That -- and I understand that, Your
17 Honor.

18 THE COURT: Okay. What else?

19 MR. ZIMMERMAN: The last issue, Your Honor, is
20 the plaintiff's expert, Dr. Lubit, couldn't be here in
21 person. The parties arranged for and took a video
22 deposition of Dr. Lubit and have agreed that the
23 plaintiffs will formally offer him as an expert. The
24 defendant will not object to him being offered as an
25 expert. So our proposal, Your Honor, is rather than pause

1 the video after we establish his bona fides, we play the
2 thing the whole way through. We've done the designations
3 together, and that will be ready to play this afternoon.

4 THE COURT: Okay. There are no objections made
5 during the deposition that need to be ruled on?

6 MR. ZIMMERMAN: I believe we called all of those
7 out through the designation process, I believe.

8 THE COURT: Okay. Any objection to calling this
9 witness by video deposition?

10 MR. BOLTON: No, Your Honor.

11 THE COURT: Okay.

12 MR. ZIMMERMAN: Let me follow up. It's possible
13 that there might be one or two that we have to pause and
14 seek the Court's --

15 THE COURT: That's okay. As long as you've got
16 it prepared, you just have to be on the spot. Maybe you
17 can provide beforehand a copy of the transcript, and I'll
18 read it in anticipation then and can be a little more
19 fluid in front of the jury in how I react.

20 MR. ZIMMERMAN: Absolutely. We'll also provide
21 one to the court reporter as well, so that you don't have
22 to transcribe it.

23 THE COURT: Oh, that point is, the court
24 reporter, generally my practice, unless someone asks
25 otherwise, is she does not by stenographic means

1 transcribe a videotape deposition. The -- I think what I
2 prefer to do in that regard is provide me with a written
3 copy of the transcript. I'll rule on the objection in
4 advance, and then you'll redact or modify, in accordance
5 with the Court's ruling, and then that modified or
6 redacted will then comprise the official court transcript.

7 MR. ZIMMERMAN: I think that makes sense, Your
8 Honor. Our plan I believe is to play that videotape
9 deposition this afternoon.

10 THE COURT: Okay. Well then if someone can get
11 me a written copy, I'll look at it over the lunch hour.

12 MR. ZIMMERMAN: We'll do that. Thank you.

13 THE COURT: Okay. Anything else other than --
14 50. I'll be -- I'll let the parties speak on 50.
15 Here's -- they're very similar. Maybe, Mr. Bolton, what's
16 wrong with the plaintiff's proposal?

17 MR. BOLTON: I think that it goes beyond --
18 basically, the Court made a determination that the four
19 specific statements were defamatory, and I think that's --
20 I think that's the extent of the Court's ruling.

21 THE COURT: Well, I agree somewhat. Now, I'm
22 assuming what you're referring to is the single sentence
23 which precedes the blocked quotation of what Dr. Fetzer
24 published.

25 MR. BOLTON: Yes, Your Honor.

1 THE COURT: All right. All the rest is
2 unobjectionable, if I understand, correct?

3 MR. BOLTON: Yes, Your Honor.

4 THE COURT: So then you don't have an objection
5 to the sentence, Plaintiff is Leonard Pozner.

6 MR. BOLTON: I'm sorry, I --

7 THE COURT: You don't object to the first
8 sentence in the second paragraph?

9 MR. BOLTON: I -- I do not.

10 THE COURT: All right. Then we -- then we have
11 this sentence: Mr. Pozner had a son with the birthdate of
12 November 20, 2006 who is declared dead as a result of
13 multiple gunshot wounds at 11:00 a.m. on December 14th,
14 2012 in Sandy Hook, Connecticut.

15 Mr. Zimmerman, all that information is in the
16 death certificate, correct?

17 MR. ZIMMERMAN: Yes, Your Honor.

18 THE COURT: Okay. The Court, having -- having
19 previous concluded that the death certificate was not a
20 forgery or a fabrication, and in light of that, is not
21 then that statement supported by the death certificate
22 itself?

23 MR. BOLTON: I think you can draw that -- that
24 inference, Your Honor, but again, I -- as much as
25 anything, and I mentioned this when -- when the Court and

1 the parties discussed how to approach this, and in all
2 honesty, my principal concern is this. You asked us to
3 work together to come up with a proposed instruction, and
4 we have and we've worked cooperatively. I also indicated
5 though that I was reluctant to waive any objections then.
6 I don't -- I don't want to be -- for instance, in terms of
7 a potential appeal of the liability determination, I don't
8 want to, by agreeing to this instruction, then implicitly
9 somehow waive my appeal rights.

10 THE COURT: Why don't I take your objection
11 noted, and I appreciate that, because it is true. I'm
12 going to go ahead and give plaintiff's proposed version,
13 because as you have confirmed, the objectionable portion
14 is merely a reiteration of the facts as set forth in the
15 death certificate, and I appreciate that Dr. Fetzner's
16 position all along, notwithstanding the Court's earlier
17 ruling, was the death certificate was a fake, a forgery, a
18 fabrication, and therefore, if that were true, then what
19 is stated is not supported. But because of the Court's
20 earlier ruling, finding that that death certificate was
21 not a fake or forgery, it is consistent with the Court's
22 earlier ruling, and with that assumption, appropriate to
23 simply just introduce the issue by iterating these facts
24 anyway.

25 Now, this comes against the backdrop, this is

1 only the introductory instruction Number 50. This is not,
2 as instructions go, really intended to be the Court's
3 invading the province of the jury in determining what the
4 facts are, merely just a brief iteration of what the
5 plaintiff's case is about and the defense might be, so the
6 jury can fully understand its sole responsibility to
7 determine what the facts are, and even though we're going
8 one step possibly further than the Court's earlier finding
9 of liability on the defamation, I think it's consistent
10 with how I would like to frame the question in the
11 introductory instruction for the task now before the jury.

12 Okay. Anything else?

13 MR. ZIMMERMAN: Your Honor, I apologize. I have
14 one follow-up question to the contempt issue. The Court
15 said at one point, as a part of this whole ongoing process
16 of the defamation and what follows that plaintiffs would
17 be allowed to talk about the fact that there was a
18 contempt finding or something along those lines. I just
19 want to make sure we heard that properly.

20 THE COURT: I -- I had ruled that Dr. Fetzer's
21 contemptuous conduct could be raised before the jury in
22 the jury's consideration of the damages that Mr. Pozner
23 claimed and ultimately has to prove. I determined that
24 that was the only -- one of the purge conditions or the
25 relief, because at the time and now made apparent, despite

1 efforts, Dr. Fetzner was not able to -- Mr. Bolton's
2 words -- put the genie back in the bottle, and that it
3 would therefore be appropriate for the issue to come up as
4 Mr. Pozner is put to the proof as to the nature of his
5 damages and the measure that the jury would ultimately
6 determine.

7 MR. ZIMMERMAN: Thank you. That's helpful.
8 Obviously, we don't want to cross the line on that, so I
9 appreciate the clarification.

10 THE COURT: Okay.

11 MR. BOLTON: And, Your Honor, I wanted to raise
12 that -- that issue also, because as I understood it at the
13 time that you made that ruling, I indicated that -- and I
14 objected because I thought that the issue of the contempt
15 was not relevant to the issue of the damages related --
16 flowing from the defamatory statements, and that it would
17 be irrelevant and prejudicial. And Your Honor indicated,
18 and I think my memory is fairly accurate, you indicated
19 that on the punitive damages it would be relevant to the
20 type of person that Dr. Fetzner is and that the jury could
21 consider it on the issue of the type of person that he is.
22 But with the withdrawal of any claim for punitive damages
23 then, my objection that the contempt issue is not relevant
24 to the damages flowing from the defamatory statements, I
25 raise that again, and I still believe that --

1 THE COURT: Okay.

2 MR. BOLTON: -- it's irrelevant and prejudicial.

3 THE COURT: Why don't we have Mr. Zimmerman then
4 better articulate why he believes that the contemptuous
5 conduct and Mr. Halbig's refusal to return Mr. Pozner's
6 image that was subject to the Court's protective order is
7 relevant to the compensatory damages that are still being
8 sought in this case.

9 MR. ZIMMERMAN: Yes, Your Honor.

10 THE COURT: Mr. Zimmerman.

11 MR. ZIMMERMAN: Yes, Your Honor. Thank you.

12 We think this is not an instance where there was
13 a single publication of defamatory material. The
14 defamatory material continues to be published in an
15 ongoing way. Mr. Pozner continues to be harmed in an
16 ongoing way. The, for example, August 2018 blog that
17 provides one of the four statements is still available on
18 the internet today. Mr. Pozner continues to be harassed
19 by people that hear this language and the provision of an
20 additional source of conspiratory material related to the
21 question of whether Mr. Pozner's covering up the death of
22 his son as part of some overall scheme to fabricate a mass
23 casualty event at Sandy Hook is relevant to his emotional
24 state and his reputational harm. The fact that they --

25 THE COURT: Okay. I agree.

1 Okay. Anything else before we bring the jury
2 up?

3 MR. BOLTON: I guess I would follow up then and
4 ask, just so that I -- I have some understanding of when
5 it's coming and how it's coming, how will that be
6 presented?

7 THE COURT: I don't know. I think that we'll
8 wait for Mr. Zimmerman to -- I can come up and I can think
9 of two ways: Mr. Pozner or Mr. Fetzer. I don't know. I
10 think I'm not inclined to have either of you disclose your
11 trial strategy in -- at this point in time.

12 Look, I understand, Mr. Bolton, originally,
13 clearly, I thought and categorically that the issue was
14 relevant to the punitive damages. So I thought about the
15 fact that now with the withdrawal of the punitive damages
16 claim should affect the Court's earlier ruling. I do
17 agree though with Mr. Zimmerman in that, look, over the
18 next three to four days, two, three, four days, the
19 plaintiff and the defendant are going to explain to the
20 jury what happened and why it happened from their
21 respective points of view. And I agree with
22 Mr. Zimmerman, it would not be appropriate because of the
23 plaintiff's claim and theory of this concerted effort
24 of -- to disseminate the defamatory statements needs to be
25 and appropriately would be made in context, and how the

1 defendant -- excuse me, how the plaintiff lays that out
2 before the jury, with the plaintiff is having the burden
3 of proof, is for the jury -- for the plaintiff to make
4 those decisions. And, I would not -- because now of the
5 nature of the latest chapter on the use of the material
6 that Dr. Fetzer disseminated in violation of the Court's
7 order, because of its now sort of reaffirmation of the
8 underlying conspiracy theory, I would not say that's not
9 relevant and you have to ignore it.

10 I don't know, ultimately, how he's going to link
11 it in, but I'm satisfied that Mr. Zimmerman has made an
12 articulation that I can understand as to why it's relevant
13 to the underlying claim as Mr. Pozner -- the plaintiff
14 puts its case in on what happened and how it has affected
15 him and how it may continue to affect him as this
16 underlying conspiracy theory and the alleged falsity or
17 fabrication of the death certificate affects Mr. Pozner.

18 I mean, clearly, Mr. Bolton, from what was given
19 to me that when these other individuals got Mr. Pozner's
20 picture, disseminated around the web was an allegation
21 that the person in the deposition was not the same person
22 who appeared in the media holding Noah Pozner. And the
23 original claim the plaintiff made was, is that the
24 allegation that Noah Pozner was not Leonard Pozner's son
25 and that Noah Pozner did not die was the basis of the

1 underlying defamation claim. Now I view that the use of
2 Mr. Pozner's likeness is to be an -- essentially another
3 chapter of the continuing conduct that the plaintiff has
4 been subject to relating to underlying claims that the
5 death certificate -- that he falsified or fabricated this
6 nonexistence child's death certificate.

7 Now, having -- look it, this comes up in the
8 context, you asked me a question. I don't have a motion
9 in limine, by the way, which would be appropriate grounds.
10 The motion in limine have not been filed. I've given you
11 just my answer to the question that I think consists with
12 the Court's ruling, you are free to make an objection at
13 the time, and if it becomes redundant or repetitive, it
14 can be noted as a standing objection.

15 I will give you this, Mr. Bolton, I mean,
16 nothing that you said so far should constitute a waiver of
17 their claim of the argument that I erred in granting
18 summary judgment, so don't worry about that.

19 MR. BOLTON: Okay. Just for -- so to the extent
20 then that the evidence is deemed relevant then as evidence
21 of defamation damages then and how it affected Mr. Pozner,
22 then it would seem to me that the evidence should come in
23 factually as to that this happened, but without reference
24 to the Court having made a determination of contempt,
25 because I don't think the contempt aspect then is really

1 relevant to the distribution of the image and the
2 potential damage to it, and I think that the reference
3 then to the Court's ruling, while it may be more relevant
4 to an issue of punitive damages, is not relevant and it is
5 prejudicial in respect to just a damage determination by
6 this jury.

7 THE COURT: Okay. Before I tell you what I
8 think, Mr. Zimmerman, I guess you have to make a choice.
9 You can run through the whole litany and say that it was
10 marked confidential, I guess the person -- whoever, either
11 cross-examination or direct examination say it was not to
12 be distributed, it was distributed, and here's what
13 they're doing with the likeness that should never have
14 been released without mentioning the Court's legal
15 determination of contemptuous conduct. Is that enough or
16 do you want to go ahead and tell the jury that I -- I went
17 ahead and found him in contempt?

18 MR. ZIMMERMAN: I guess our preference is to,
19 first of all, not spend a ton of time on this issue. It
20 was not intended to be a leading argument in this case.
21 We do think it's relevant. I think it's important to
22 understand the impact on my client from an emotional
23 perspective or from a damages perspective that this was a
24 violation of a court order. For us to say it shouldn't
25 have been done or it -- I say it violated the Court's

1 order is one thing.

2 THE COURT: Let's keep moving. Let's do this.
3 I don't have a problem saying -- go ahead, you can use,
4 whomever introduced this, you can use the word a violation
5 of court order, just avoid using the word contempt,
6 because that could be viewed as a loaded comment that
7 might overexacerbate the relevant importance of this.

8 MR. ZIMMERMAN: Understood.

9 THE COURT: Which is an accurate
10 characterization of the protective order that was agreed
11 to by the parties.

12 All right. Anything else before we find our
13 bailiff and bring the jury up? Mr. Bolton?

14 MR. BOLTON: No, Your Honor.

15 THE COURT: Mr. --

16 MR. BOLTON: But could I make one 90 second trip
17 to the restroom before?

18 THE COURT: You will, because it will take about
19 20 minutes to bring them up.

20 THE CLERK: He went down already.

21 THE COURT: Okay. Let's take a break. Just be
22 about ten minutes. You'll see a big group. There will be
23 about 45 coming in.

24 For those, ladies and gentlemen, in the gallery,
25 if you want to just move to the wall end, because we are

1 overcrowded in term of jurors. You're certainly welcome
2 to stay. And then once the juries pick there will be
3 plenty of room when I send the balance off downstairs.
4 Come back in ten minutes.

5 (Off the record at 9:23 a.m.)

6 (Back on the record at 9:40 a.m.)

7 THE COURT: Let's go back on the record, because
8 obviously during the jury instructions one of the things I
9 like to tell the jurors is how long it's going to last. I
10 did have an opportunity to look through the minutes of the
11 Court's final pre-trial conference. At the time,
12 Mr. Zimmerman, you had really only three hours of direct
13 examination and that's with the punitive damages. How
14 long do you think your case-in-chief is going to take?

15 MR. ZIMMERMAN: Your Honor, I don't think it's
16 changed substantially. I think we'll be done by tomorrow
17 morning, you know, assuming that we are able to pick a
18 jury in a reasonable amount of time today, play the
19 videotape deposition today, and we'll either start
20 Mr. Pozner this afternoon or tomorrow morning.

21 THE COURT: Okay. So I think this -- what do
22 you think, Mr. Bolton, this will be submitted to the jury
23 on Wednesday?

24 MR. BOLTON: I would think so, Your Honor.

25 THE COURT: Agree, Mr. Zimmerman?

1 MR. ZIMMERMAN: Unless it's earlier, depending
2 on what happens with the other witnesses, Your Honor.

3 THE COURT: I don't tell them earlier because
4 then they hold it against me, but I would envision then
5 and we'll keep track of the time that I should tell them
6 this trial is expected to last until Wednesday -- I'm
7 going to say Thursday morning, if not possibly a little
8 sooner. That should take care of the concerns some might
9 have if I said until Friday.

10 My clerk just put together, I'd like you to look
11 at Jury Instruction 50. I put the section that we talked
12 about right in the section of -- called Parties, right
13 after the introduction of the parties and before the word
14 conduct. I also took out of 50, I had already ruled that
15 I don't ask the -- I don't allow the jurors to ask
16 questions. Any objection to the form, Mr. Zimmerman?

17 THE CLERK: They don't have it yet.

18 MR. ZIMMERMAN: I don't think we've seen it.

19 THE COURT: Okay. We'll get that to you. And
20 you want to enter an additional appearance at counsel
21 table, Mr. Zimmerman?

22 MR. ZIMMERMAN: Yes. Additional appearance is
23 Leonard Pozner, plaintiff.

24 THE COURT: Good morning, Mr. Pozner.

25 MR. POZNER: Good morning, Your Honor.

1 THE COURT: Okay. We'll get that in your hands
2 and then -- then I'll ask for objections. I don't intend
3 to talk to the jurors about the anonymous jury panel.
4 I'll just indicate that we'll be referring to them by
5 number.

6 I know, Mr. Bolton, someone from your office
7 called about getting a list and then -- because of this by
8 stipulation was a little unusual. We didn't -- I don't
9 know if you ever got a list. It would have been a list by
10 numbers anyway, no names.

11 MR. BOLTON: Yeah. Your Honor, I just wasn't
12 exactly sure whether we were going to have access to the
13 cards or not, so it eliminated one thing that I would
14 otherwise have been doing.

15 THE COURT: Happy to help. I don't think we're
16 handing out the little slips. I don't -- did not get a
17 chance to consult with the jury clerk to see what, if
18 anything -- or what they told them downstairs. Please in
19 consideration of the Court's order, as a result of the
20 stipulation, avoid asking a question or don't ask them
21 their names. Otherwise, there are no limitations to the
22 questions that you would ask, at least by court order on
23 voir dire.

24 (Off the record at 9:38 a.m.)

25 (Back on the record at 9:44 a.m.)

1 MR. ZIMMERMAN: Your Honor, one quick question.

2 THE COURT: We'll go on the record.

3 MR. ZIMMERMAN: On the verdict form we
4 understand it's possible to have a nonunanimous jury
5 verdict five-sixths. So if it's 12, I assume it's
6 ten-twelfths. Do we need signature lines for the
7 individuals?

8 THE COURT: Molly can put those in. You do need
9 signature lines. It's -- I think the last instruction
10 says a line for dissenting jurors will be provided.

11 MR. ZIMMERMAN: Thank you.

12 (Off the record at 9:44 a.m.)

13 (Back on the record at 9:49 a.m.)

14 THE BAILIFF: Are we ready?

15 THE COURT: Yep. Bring them in.

16 THE BAILIFF: All right. Come on in, folks.

17 THE COURT: Just stay standing, ladies and
18 gentlemen, please.

19 THE BAILIFF: Wow. Fits 50.

20 THE COURT: Welcome, ladies and gentlemen. I
21 appreciate you coming up so early this morning. We'll
22 begin this morning, my clerk will administer an oath as
23 jurors to the entire panel. After we administer the oath,
24 she calls -- I think she'll call 24 names. If your name
25 is called then you'll give your card to the bailiff and

1 he'll direct you to what seat in the box that you'll sit.
2 What happens then is the lawyers will ask questions and --
3 to be answered by the jurors and we'll work through the
4 process. I'll provide you with some more information in a
5 moment.

6 THE CLERK: Please raise your right hand.

7 (Prospective jury panel sworn.)

8 THE COURT: Please be seated. Well, again,
9 thank you. Well, we had room for everyone but one.
10 That's fine. Welcome again. My name is Frank Remington.
11 I'm circuit court judge in Branch 8. I appreciate you
12 coming up this morning.

13 After this is all done, I express my
14 appreciation for those that serve on the jury. There are
15 substantially more people here in the courtroom than which
16 will actually serve on the jury in this case. I do want
17 to take a brief moment to express my appreciation for all
18 of you to come down to the courthouse this morning. Of
19 course, you were legally obligated to come to the
20 courthouse, but nonetheless, I do want to express my
21 appreciation in this -- our system of civil justice and
22 criminal justice, this is a civil case, the courts
23 wouldn't work if we didn't have people like you to come
24 and give your time and attention to these serious matters
25 that are pressed before the Court. I'm an unabashed

1 cheerleader for our court system in the United States and
2 the role we have engrained in our judicial system on the
3 use of jurors and juries. So on behalf of myself, my
4 branch, and the court system, I'd like to thank you for
5 your time.

6 Now, we're going to call 24 names. Ultimately,
7 there will be 14 people chosen to sit in this case.
8 Juries in Wisconsin have in -- in civil cases have either
9 6 or 12. We call two more than we need as alternates,
10 because sometimes people get sick or family emergencies
11 cause us to lose one or more; not often, but then we
12 wouldn't have to start over by having a couple of extra
13 alternate jurors.

14 When your name is called, you'll give your slip
15 to my bailiff and then you'll be seated as he instructs.

16 The rest of you, if you're not in the first
17 round of names called, please pay attention to the lawyers
18 and the questions they ask of those that are called,
19 because if one or more jurors is excused for good reason,
20 then we'll call another name. And my first question or
21 the question the lawyer might ask you is whether you would
22 have raised your hand and answered a question asked
23 earlier in the proceeding, and that then is a lot more
24 efficient than having to reask all the questions just to
25 you individually that were asked of the earlier group. So

1 I ask and appreciate your attention, even though you're
2 not sitting in the jury box to the question, and make a
3 mental note of what you would have answered if you would
4 have raised your hand.

5 After we, the lawyers, are done with the
6 questions, then they'll begin the process of narrowing the
7 jury panel down to the 14 persons. You will then report
8 back down to the jury clerk for possible reassignment to
9 another branch this morning. The way the court system
10 works, there are multiple courts picking juries
11 simultaneous in the matters before the Court and sometimes
12 we reuse the jurors to go someplace else.

13 Let me just ask a couple questions. I could ask
14 this of the persons called, but if possible it applies to
15 you then we can deal with it right away.

16 Are all of -- is there anyone who's not a
17 resident of Dane County? Let's make sure we all have Dane
18 County residents.

19 Are any of you -- have been convicted of a
20 felony that would complicate your ability to serve as a
21 juror?

22 Okay. Then might be -- there's a couple more
23 questions I'll ask, and I'll ask those once we call the
24 names.

25 THE CLERK: When I call your pool member number,

1 please step forward. Number 302.

2 THE BAILIFF: Always the one farthest in the
3 back. I'll take your slip and you're going to sit in the
4 very back row in the top chair.

5 PROSPECTIVE JUROR 302: Got it.

6 THE CLERK: 307. 308. 309. 312. 306. 310.
7 300. 311. 301. 305. Number 9. 16. 26. 66. 5. 64.
8 63. 40. 62. 36. 24. 34. 54.

9 THE BAILIFF: All right. Last chair. The
10 microphone on the chair is live right now, so just hang on
11 to it for a minute.

12 THE COURT: Okay. Thank you.

13 I -- for reasons that are not important,
14 everyone agreed in this case to use your pool numbers.
15 Everyone's heard of 007, unfortunately, none of you got
16 that number, and if you're a little older you might
17 remember Agent 99. We don't have a 99. They're rather
18 unremarkable numbers. But it's a little bit unusual, but
19 see if you can remember your number, because the lawyers
20 will be referring to you by the number that you've been
21 assigned.

22 A quick question. Number 309, in the middle in
23 the back, you took to heart the instructions not to put
24 your name down, but there was some other information. Do
25 you live -- in what city?

1 PROSPECTIVE JUROR 309: Madison.

2 THE COURT: There's a -- at either end of the
3 line, in the -- no. Just every row has a microphone.
4 Just feel free to pass it back and forth. So what city do
5 you live in?

6 PROSPECTIVE JUROR 309: Madison.

7 THE COURT: And what is your occupation?

8 PROSPECTIVE JUROR 309: I'm a cardiovascular
9 anesthesiologist.

10 THE COURT: And how many years of education?

11 PROSPECTIVE JUROR 309: I've lost track.

12 THE COURT: Too many to --

13 PROSPECTIVE JUROR 309: Over 25.

14 THE COURT: Are you married, single?

15 PROSPECTIVE JUROR 309: Married.

16 THE COURT: And do you have children?

17 PROSPECTIVE JUROR 309: Two.

18 THE COURT: And their ages?

19 PROSPECTIVE JUROR 309: 30 and 32.

20 THE COURT: And have you previously been on a
21 jury service?

22 PROSPECTIVE JUROR 309: Yes.

23 THE COURT: When was that? What year?

24 PROSPECTIVE JUROR 309: I'd have to say it was
25 more than 20 years ago in Milwaukee.

1 THE COURT: Okay. Great. Thank you very much.

2 The plaintiff -- I'll ask the lawyers to stand
3 and introduce themselves and the lawyers that are at the
4 table and then introduce their client. And I'm then going
5 to ask, based on what little information you have, whether
6 you're related by blood or marriage or adoption to any of
7 the lawyers or the parties. I'll also ask the counsel to
8 just indicate who your witnesses would be, and similarly,
9 I'll ask if you're related to any of the witnesses that
10 are expected to be called in this case. We'll begin with
11 the plaintiff.

12 MS. FEINSTEIN: Good morning. My name is Emily
13 Feinstein. I represent the plaintiff in this case,
14 Mr. Leonard Pozner, who's sitting right here with us.
15 With me today at counsel table I have Attorney Jacob
16 Zimmerman, I have Attorney Genevieve Zimmerman, and I have
17 Attorney Emily Stedman.

18 THE COURT: And the witnesses you anticipate
19 calling in the plaintiff's case?

20 MS. FEINSTEIN: We anticipate calling Dr. Roy
21 Lubit; our client, Mr. Pozner; and the defendant, James
22 Fetzer.

23 THE COURT: And for the defendant?

24 MR. BOLTON: My name is Rich Bolton. I'm with
25 the Boardman law firm here in Madison. With me is my

1 partner, Eric Baker, and then also with me is the
2 defendant, who we represent, Professor James Fetzer.

3 And the witnesses that we anticipate calling
4 will be Professor Fetzer, and an individual by the name of
5 Kelley Watt, W-A-T-T, and a gentleman by the name of Tony
6 Mead, M-E-A-D.

7 THE COURT: Thank you.

8 Now, are any of you related by blood, marriage,
9 or adoption to any of the parties or any of the attorneys?
10 The -- Ms. Feinstein works at the Quarles and Brady firm
11 and Mr. Zimmerman is from the Zimmerman Law Offices, and
12 Mr. Bolton is from the Boardman firm. Any of you related
13 to the lawyers or any of the lawyers that are in those
14 firms?

15 Now, I always know that or I'm reminded that you
16 don't know much about the case and as the case -- if you
17 are called to serve, you'll know lot more than you do now.
18 But this is a case brought by Leonard Pozner against James
19 Fetzer for defamation. From what little do you know, do
20 you -- anyone suspect you have a financial interest in
21 this case?

22 This case, like many cases, may or may not have
23 had -- become known to people. Do any of you now think,
24 oh, by the way, I do know a little bit about this case?
25 And if you do know a little bit about this case, as you

1 sit here now, right today, has any of you formed an
2 opinion about this case? And if so, raise your hand.

3 The last question would be since none of you
4 seem to know anything about the case or formed an opinion
5 about the case, whether you have any bias or prejudice so
6 far of any kind of feeling like you shouldn't be sitting
7 here because of a bias or prejudice, maybe against the
8 plaintiff or the defendant, or that they're here in court
9 or litigation in general? Any of you think that just for
10 those reasons you're not able to sit on the jury this
11 morning? Anybody?

12 So what will happen, we're going to pick a jury
13 this morning and we anticipate at the longest we'll -- the
14 case will go for the jury deliberation on Thursday
15 morning. It might be quicker. But in terms of your
16 plans, those selected would have to report for duty today,
17 Tuesday, Wednesday, and possibly Thursday as well. Of
18 course, you would deliberate as long as necessary to reach
19 a verdict.

20 Do any of you have some kind of obligation that
21 would actually prevent you from serving on a jury if you
22 were selected? Anybody? Yeah. Number, I think --

23 PROSPECTIVE JUROR 16: 16.

24 THE COURT: -- 16?

25 PROSPECTIVE JUROR 16: I'm supposed to be at a

1 conference on Wednesday afternoon and Thursday in the
2 Wisconsin Dells. If I'm not there, it's not the end of
3 the world, but it's something that I'm supposed to be
4 doing for work.

5 THE COURT: Okay. Thank you.

6 PROSPECTIVE JUROR 16: Yeah.

7 THE COURT: You kind of helped me a little when
8 you say "not the end of the world." If you're selected,
9 of course, then you'll have to tell the folks at the
10 conference that you answered the call to jury service.

11 I will tell you as questions are asked and you
12 raise your hand, the court system wouldn't work as well as
13 it does if we only picked jurors who wanted to be jurors.
14 I readily understand you all have lives, obligations,
15 classes, things to do, but to be excused requires a really
16 good reason.

17 I think I -- Mr. 302?

18 PROSPECTIVE JUROR 302: I mean, I just have
19 school, so and we're doing a group project in one of my
20 classes that I'd like not to miss it, but again, not
21 really the end of the world if I have to, I'll just have
22 to let them know.

23 THE COURT: Okay. I will tell you this, serving
24 on a jury is not only your civil duty but --

25 PROSPECTIVE JUROR 302: Yeah, I understand.

1 THE COURT: -- a real privilege. If you are
2 selected, this will certainly be an education that will
3 maybe make you go into the law or scare you away. I'm not
4 sure.

5 Anybody else that cannot serve if called?
6 Number 9.

7 PROSPECTIVE JUROR 9: Nine. Your Honor, this
8 was a question you asked before about one of my sons --
9 both my sons are attorneys and one worked for Quarles and
10 Brady in Chicago right out of law school. He works for
11 Northwestern Mutual now, but is not employed by Quarles
12 and Brady. I don't think that will prejudice me in anyway
13 but --

14 THE COURT: That would be --

15 PROSPECTIVE JUROR 9: -- I didn't know if I had
16 to mention that.

17 THE COURT: Thank you. When in doubt, feel free
18 to mention. I don't know how to -- usually we have names.
19 I say Mr. -- Mr. 9, 009, so your son does not -- nobody
20 currently works at the firm Quarles and Brady?

21 PROSPECTIVE JUROR 9: Correct.

22 THE COURT: And does the fact that this relative
23 worked at Quarles and Brady at one time leave you with
24 some concerns or bias that would affect your deliberations
25 in this case if you were selected?

1 PROSPECTIVE JUROR 9: Absolutely not.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR 9: Totally neutral.

4 THE COURT: Anybody else who cannot serve?

5 Let's see, 310 on the end.

6 PROSPECTIVE JUROR 310: It's a tough one. It's
7 not that I cannot serve. I have a consulting business and
8 I travel quite a bit. I do have -- I was scheduled to be
9 in South Dakota tomorrow and the day after in Omaha, would
10 have been coming back Thursday night. And here's the
11 dilemma, I pay for these tickets usually a month in
12 advance so I can get a cheaper rate. So if I were to
13 cancel then I will have to eat the cost of those tickets.
14 And the hotel I can always -- and the rental car is not an
15 issue. The ticket -- the airline is going to charge you
16 \$200 change fee plus a change in fee when I reschedule the
17 ticket. So I mean, you know, I would like to do my civic
18 duty, yes, however, you know, other costs to me.

19 THE COURT: So you're a clinical consultant?

20 PROSPECTIVE JUROR 310: That's correct.

21 THE COURT: Well, I'll tell you what's going
22 through my mind. First of all, I think it's snowing in
23 North Dakota, by the way.

24 PROSPECTIVE JUROR 310: I agree. I would rather
25 skip that.

1 THE COURT: I'm sorry that there will be -- if
2 you are selected --

3 PROSPECTIVE JUROR 310: Right.

4 THE COURT: -- there would be a financial
5 impact. You know, I hear that too, people who run their
6 own business, if I'm not at work, I don't make money, if I
7 don't make money, I lose pay. So for self-employed
8 people, there's a similar kind of financial. You know,
9 what's so important is preserving the diversity and the
10 total random selection of a panel. As long as it's -- if
11 you are selected and understanding that there would be the
12 possibility -- well, you know, actually, not that I want
13 to give you hope, there might be in the very fine print of
14 your rules of carriage, some sort of special accommodation
15 the major airlines do for compulsory jury service. I tell
16 you what, if necessary, the Court can provide you with a
17 document, if you are selected, attesting to the fact that
18 you were called to jury service and perhaps we can see
19 that the possibly if the --

20 PROSPECTIVE JUROR 310: Fees are waived.

21 THE COURT: -- the airline might give you an
22 accommodation.

23 PROSPECTIVE JUROR 310: They usually would waive
24 the fees if it's death or something like that.

25 THE COURT: Jury service isn't quite like death

1 but maybe close. Anybody else? Yeah. 312.

2 PROSPECTIVE JUROR 312: I would just need to
3 ensure that I would be able to find childcare for my
4 children this afternoon and then in the mornings, because
5 of time constraints.

6 THE COURT: I hear this a lot. Of course,
7 childcare is -- this is the burden of being sometimes a
8 sole parent if not. Are you -- you will be given time to
9 arrange. Are you able to find suitable childcare?

10 PROSPECTIVE JUROR 312: Well, it's the timing of
11 the facilities, 8:30 to 4:00 facility, so I'd have to
12 enlist grandparents or try to find neighbors or something.

13 THE COURT: So your child is in at least until
14 4:00 o'clock?

15 PROSPECTIVE JUROR 312: Mm-hmm.

16 THE COURT: Now, our plan is if you were
17 selected, please let me know if you are unable to find
18 someone to pick your child up at 4:00. We ordinarily
19 shoot to finish the day with your job at around 4:30. I
20 hear that and I'm sympathetic to the jurors who come from
21 outside Madison, *Please let me get out before the rush of*
22 *the traffic on the south Beltline highway.* So if we can,
23 we would try to get you out today and tomorrow and the
24 next day by 4:30. We'll start early at 8:30 to 4:30, and
25 we can try to make an accommodation, like I say, if you

1 can't find someone and if you are selected.

2 So far you getting the notion, ladies and
3 gentlemen, nobody is leaving yet. Anybody else wants to
4 try? Okay. Thank you very much.

5 Now what you'll hear are questions from each of
6 the lawyers. They have a right and entitlement,
7 notwithstanding the fact that we don't know your names,
8 they won't be asking for your names. They are expected to
9 ask a number of questions because they get a decision to
10 strike or excuse a number of you to come up with a panel
11 that both of the sides in this lawsuit would deem
12 satisfactory to sit in judgment of this case. Again,
13 thank you very much for your attention.

14 And, remember, ladies and gentlemen in the
15 gallery, please pay attention because like I said, if we
16 do cycle through jurors, we'll be calling you up and then
17 you should be expected to answer that one general question
18 if you'd been expected to if you had raised your hand had
19 you been in the panel.

20 Mr. Zimmerman or Ms. Feinstein.

21 MS. FEINSTEIN: If you don't mind, I'll sit like
22 you are.

23 THE COURT: Yes.

24 MS. FEINSTEIN: The microphone doesn't reach up
25 when I stand. It's a little awkward. Would you please

1 raise your hand if you served in the military. Thank you.

2 Juror 310, would you tell me what your branch,
3 your rank, discharge, and the approximate date.

4 PROSPECTIVE JUROR 9: I'm Juror No. 9.

5 MS. FEINSTEIN: Behind you first.

6 PROSPECTIVE JUROR 9: I'm sorry.

7 PROSPECTIVE JUROR 310: I served from 1984
8 through 19 -- I'm sorry, 1983 until 1986. I was Army
9 National Guard my rank was E-4.

10 MS. FEINSTEIN: Thank you.

11 PROSPECTIVE JUROR 310: You're welcome.

12 THE COURT: And Juror No. 9?

13 PROSPECTIVE JUROR 9: I was a colonel in the
14 Medical Corps, and I've had over 20 years of service. My
15 last duty was the 452nd Combat Support Hospital out of
16 Milwaukee.

17 MS. FEINSTEIN: Thank you.

18 Juror No. 310, you said your occupation is as a
19 clinical consultant?

20 PROSPECTIVE JUROR 310: That is correct.

21 THE COURT: What do you consult on?

22 PROSPECTIVE JUROR 310: Currently I'm doing a
23 heart transplant study and phase 3 pancreatic cancer
24 trial.

25 MS. FEINSTEIN: Juror No. 301?

1 PROSPECTIVE JUROR 301: Yes.

2 MS. FEINSTEIN: You indicated you are retired.
3 What did you do before you retired? And let's get you a
4 microphone.

5 PROSPECTIVE JUROR 301: I worked for the DA's
6 office and also the Madison Police Department.

7 MS. FEINSTEIN: If we could go through and have,
8 starting with Juror No. 302, if you could just let us know
9 the organizations that you are a member of and where you
10 get your news to start.

11 THE COURT: Let's pass that microphone. Just
12 start with the microphones all of the way on that end and
13 then it will be lined up. Yes. Pass all the microphones
14 down to your left.

15 PROSPECTIVE JUROR 302: So organizations like
16 places I work for or places I volunteer or?

17 MS. FEINSTEIN: Volunteer, clubs, associations,
18 if you serve on a board or you volunteer, yeah.

19 PROSPECTIVE JUROR 302: I volunteer at my
20 school, one of my clubs. Do you want the specific club
21 name?

22 MS. FEINSTEIN: Or the category of club.

23 PROSPECTIVE JUROR 302: Computer repair.

24 MS. FEINSTEIN: Thank you.

25 PROSPECTIVE JUROR 302: And then I work at a

1 grocery store. Do you want the specific name of the
2 grocery store?

3 MS. FEINSTEIN: No, thank you.

4 PROSPECTIVE JUROR 302: Okay. Yeah. That's
5 really about it.

6 MS. FEINSTEIN: And where do you get your news?

7 PROSPECTIVE JUROR 302: Online usually.

8 Sometimes through Facebook. Sometimes if I hear something
9 I'll like Google search and do like fact checking it,
10 because I don't fully trust what one news organization
11 says unless it's kind of similar across various sources.

12 MS. FEINSTEIN: Is there a particular website
13 you go to for your news?

14 PROSPECTIVE JUROR 302: Not really.

15 MS. FEINSTEIN: Thank you.

16 PROSPECTIVE JUROR 307: Not really part of any
17 organizations. I don't really watch the news, PBS, maybe
18 NewsHour.

19 PROSPECTIVE JUROR 308: I'm not really -- can't
20 think of any organizations either. News, it's just if it
21 comes across Facebook or something. I usually don't watch
22 the news. It's too depressing so.

23 PROSPECTIVE JUROR 309: I work for the State of
24 Wisconsin at UWSPH. I get news from the *New Yorker*, *New*
25 *York Times*, my wife who is a Reddit aficionado.

1 PROSPECTIVE JUROR 312: In terms of
2 organizations, I only participate in committees at my
3 children's schools, and I watch Fox News.

4 PROSPECTIVE JUROR 306: I volunteer with the Big
5 Brothers Big Sisters organization, and I work at the state
6 government, the Legislative Fiscal Bureau. For news, *Wall*
7 *Street Journal*, *New York Times*, *Washington Post*, *State*
8 *Journal*, *Milwaukee Sentinel*. I was a journalism major. I
9 read a lot of news.

10 PROSPECTIVE JUROR 310: Organizations include
11 the 100 Black Men of Madison, which is a philanthropic
12 organization, and also the Caribbean Association of
13 Madison. In terms of news, I spend a lot of time on the
14 road, so whatever newspaper they put underneath my door at
15 the hotel, that's what I read.

16 THE COURT: Let's go back to this end. The
17 second row.

18 PROSPECTIVE JUROR 300: I -- I watch the local
19 news occasionally when I'm home at 5:00 p.m. and I also
20 watch PBS News Hour occasionally, and I like to read the
21 local paper. No organizations.

22 MS. FEINSTEIN: Thank you.

23 PROSPECTIVE JUROR 311: No organizations and
24 just the local news in the evening.

25 MS. FEINSTEIN: Thank you.

1 PROSPECTIVE JUROR 301: I usually watch just the
2 national news in the evening, one of the major networks.

3 PROSPECTIVE JUROR 305: I work with the American
4 Heart Association and Boys and Girls Club here in Madison,
5 and no particular news.

6 PROSPECTIVE JUROR 9: Retired physician. I --
7 and surgeon. I volunteer at St. Mary's Hospital at
8 registration. I read *The New York Times*, *The Washington*
9 *Post*, my medical journals, PBS. I don't watch regular TV
10 hardly ever except the Badger football games and
11 basketball.

12 MS. FEINSTEIN: Thank you.

13 PROSPECTIVE JUROR 16: I serve on the Wisconsin
14 Cancer Council, which is essentially a hundred agencies
15 from around the state, one of them being the 100 Black Men
16 organization that you mentioned. And I work at UWSMPH.

17 And, let's see, my news source is mostly what
18 comes up on Twitter. So, you know, clicking through CNN,
19 CNBC, *New York Times*. All those things. Local news, I
20 guess I watch pretty nonchalantly in the background while
21 I'm at home.

22 THE COURT: Okay. Back all the way to the right
23 in the third row.

24 PROSPECTIVE JUROR 26: I don't have any
25 organizations, and I just think through social media and

1 the local news.

2 PROSPECTIVE JUROR 66: I'm a member of some
3 various music organizations. I don't know if you need to
4 know the names of those?

5 MS. FEINSTEIN: That's okay. You can --

6 PROSPECTIVE JUROR 66: Okay. And the news, I'm
7 an exhausted parent, so I don't watch the news very much.
8 I do listen to the radio sometimes.

9 MS. FEINSTEIN: For the news? I'm sorry?

10 PROSPECTIVE JUROR 66: Yes, for the news.

11 MS. FEINSTEIN: Okay. Thank you.

12 PROSPECTIVE JUROR 5: I'm a part of a few
13 networking groups, and I don't have a preferred news site.

14 PROSPECTIVE JUROR 64: I'm not a member of any
15 organizations, and I get my news sort of haphazardly.

16 PROSPECTIVE JUROR 63: Not a member of any
17 groups. Channel 27 strictly mornings, evening for my
18 news. A little bit of *Good Morning America* and Yahoo
19 Finance during the day on the web.

20 THE COURT: On the right.

21 PROSPECTIVE JUROR 40: No organizations and like
22 occasional local news or social media. That's about it.

23 PROSPECTIVE JUROR 62: Um, only organization
24 would be the local orchestra I participate in. And then
25 local news sometimes, radio sometimes, and then looking at

1 the online versions of the local news sometimes during my
2 break at work.

3 PROSPECTIVE JUROR 36: No organizations and
4 social -- social media.

5 PROSPECTIVE JUROR 24: I was a part of BSU,
6 which is black student union. I get my news mostly from
7 Twitter or like late night talk shows.

8 MS. FEINSTEIN: I'm sorry, are there certain
9 news organizations on Twitter that you follow?

10 PROSPECTIVE JUROR 24: Um, I'm Democratic, so
11 ones that normally steer towards that.

12 PROSPECTIVE JUROR 34: Organizations, I'm a
13 physician's assistant, so I'm a member of the American
14 Academy of PAs and the International Society of Travel
15 Medicine, and the local state organization of PAs. And I
16 get my news through the BBC app on my phone and like Apple
17 News.

18 PROSPECTIVE JUROR 54: Is this where I state all
19 of the above? I work for a regional aging office, so I
20 follow news related to older adult issues, but often times
21 *Washington Post*, *New York Times*, local news, a lot of
22 Facebook news just from friends, links and such, some
23 Twitter.

24 MS. FEINSTEIN: Would you raise your hand if
25 you've ever listened to Alex Jones?

1 Would you raise your hand if you've ever
2 listened to InfoWars?

3 Would you raise your hand if you have any bumper
4 stickers on your car? I know this is Madison. If we
5 could just go in order and let us know what your bumper
6 sticker says.

7 PROSPECTIVE JUROR 307: I have one that says, "I
8 love my wiener dog," and then another one that says,
9 "Optimism: A way of life," and that's it.

10 MS. FEINSTEIN: Thank you. Next?

11 PROSPECTIVE JUROR 16: Mine are just two
12 UW-Madison bumper stickers, one for the Terrace and one
13 Bucky.

14 But, if we're talking about bias and things, I
15 do know about InfoWars, and that would certainly bring
16 bias into things.

17 THE COURT: Okay. So let me just address that.
18 Of course, you don't know what this case is really even
19 about and things will pop up in your head about your life
20 experience. The question though is this, if you are
21 selected, can you listen to the testimony from the
22 plaintiff and the defendant, keeping an open mind until
23 you've heard the whole story? And if -- if you -- if you
24 can do that, then I will give the jury the legal
25 instructions, what the law is, and then the question is,

1 can you follow the instructions. We all have bias,
2 implicit bias or biases. What really is important for all
3 the parties in this case to pick jurors who can for the
4 moment set aside your bias and listen carefully to the
5 facts that are -- come before you as you sit in solemn
6 duty as a juror selected. Can you do that?

7 PROSPECTIVE JUROR 16: Um, I -- I'm confused a
8 little bit, because I -- you asked if we would be biased
9 by something, and I think I would be biased, knowing the
10 history of InfoWars and some of the things that that
11 particular source says. So if somebody -- if one of them
12 are somehow affiliated, I don't know that I could think
13 past. If they're not affiliated, then maybe. Again, I
14 don't know what this is going to be about so --

15 THE COURT: Right.

16 PROSPECTIVE JUROR 16: -- it's a little
17 difficult to say.

18 THE COURT: Okay. We'll let the -- thank you
19 for your candor, but right now as you sit here -- sit
20 here, do you think you can set aside what bias you might
21 have? InfoWars is not a party in this lawsuit. Again, I
22 can't tell you what the whole case is going to be about,
23 we'd be here for maybe two and a half days. The question
24 is, is this something that for now you can park on the
25 back of your mind? The lawyers might have follow-up

1 questions and say, okay, I'll reserve judgment of the
2 defendant and the plaintiff until I hear the whole story.
3 Can you do that?

4 PROSPECTIVE JUROR 16: I can certainly try.
5 Yeah.

6 THE COURT: Okay.

7 MS. FEINSTEIN: Thank you, Your Honor.

8 We were talking to people who have bumper
9 stickers on their car. Who's next? You have the
10 microphone, you can go first.

11 PROSPECTIVE JUROR 54: Thanks. I have a bumper
12 sticker on for PulsePoint. It's an app to alert people to
13 medical crises. And also for OLB. It's for Overpass
14 Light Brigade. And I have several on for Ireland and Nova
15 Scotia.

16 PROSPECTIVE JUROR 34: I've got a 56ers Soccer
17 Club bumper sticker, and I've also got a soccer mom
18 sticker on my car and for years National Park, and "I hike
19 Yellowstone."

20 MS. FEINSTEIN: Anyone else? Can we pass around
21 the microphone, please.

22 PROSPECTIVE JUROR 66: I have a bumper sticker
23 that says, "I love my family" with some rainbows on it,
24 and one that says, I forget the wording, but something
25 about pay attention to bicycles on the road.

1 MS. FEINSTEIN: Anyone else with bumper stickers
2 on their car? Thank you.

3 Would you raise your hand if you, a relative, or
4 a close friend have been a party to a lawsuit? Why don't
5 we go Juror 312.

6 PROSPECTIVE JUROR 312: I have, yes.

7 MS. FEINSTEIN: What was the nature of that
8 lawsuit generally?

9 PROSPECTIVE JUROR 312: Financial, civil.

10 MS. FEINSTEIN: Were you the plaintiff or the
11 defendant?

12 PROSPECTIVE JUROR 312: Defendant.

13 MS. FEINSTEIN: And then Juror 309?

14 PROSPECTIVE JUROR 309: Defendant in two
15 lawsuits, all settled and dismissed without prejudice.
16 Expert witness in several lawsuits. And I should have
17 asked, is Todd Weir part of Quarles and Brady in
18 Milwaukee?

19 MS. FEINSTEIN: Tod Weir?

20 PROSPECTIVE JUROR 309: Mm-hmm.

21 MS. FEINSTEIN: No. I don't believe so.

22 PROSPECTIVE JUROR 309: Okay.

23 MS. FEINSTEIN: Have --

24 PROSPECTIVE JUROR 9: Number 9. Being a
25 physician, I was involved in two as the defendant. One

1 misdiagnosis of a nasopharyngeal carcinoma. I saw the
2 patient once. They had fluid in their ear. I told them
3 to come back in a month. They never came back.

4 Nasopharynx is hard to examine with a mirror. Patient
5 never came back. They never got a lawyer. Went before
6 the compensation committee and the malpractice lawyer,
7 which was the head of the trial thing, he told him he
8 would not bring this case to a court or whatever.

9 Another one was a delayed diagnosis of
10 esophageal cancer. I'm an ear, nose, and throat doctor.
11 We don't examine the esophagus, and he was -- I had seen
12 him and treated him for tonsil carcinoma. Is this okay
13 that I talk about all this stuff here? I won't mention
14 names. But I saw -- he missed six appointments. I saw
15 him, after seeing my PA, I concurred with her that there's
16 no evidence that tonsil carcinoma. He was being followed
17 by oncology. He actually had cancer down in his
18 esophagus. His -- they brought that case before a medical
19 examining board because they couldn't find an attorney to
20 take the case, because it wasn't really my specialty.
21 And, the medical examining board issued me and the
22 oncologist, who was actually following him, a warning. It
23 was not a disciplinary thing and it's not reported to the
24 state. So after 45 years, I did the best I could, and
25 those were the two things to be honest.

1 MS. FEINSTEIN: Not bad at all. Is there
2 anything about being a defendant in those cases that
3 predisposes you in this case?

4 PROSPECTIVE JUROR 9: No. It's no fun being a
5 defendant. The cases took like -- one case took like
6 three years just to bring it but anyway, no, there wasn't.

7 MS. FEINSTEIN: Juror 309, was there anything
8 about being a defendant in those cases that you think
9 might predispose you in this case?

10 PROSPECTIVE JUROR 309: Um, yes. Yes. The --
11 there's a settlement that I requested be done on day one.
12 It took three years for the legal system to finally agree
13 that I was willing to render the entire malpractice value
14 of my -- to help the plaintiff, and despite my robust
15 attempts to settle, on numerous occasions I was
16 outmaneuvered by the legal system for three years, which I
17 found really obnoxious.

18 MS. FEINSTEIN: Thank you. Juror 312, is there
19 anything about being a defendant that predisposes you in
20 this case?

21 PROSPECTIVE JUROR 312: In the sense that -- I
22 suppose, yes, because it was an incredibly frustrating --
23 is an incredibly frustrating process. I found the
24 plaintiffs to be extremely unreasonable and a very
25 frustrating and extensive process.

1 MS. FEINSTEIN: Would you raise your hand if you
2 have any --

3 PROSPECTIVE JUROR 305: Excuse me? Sorry.

4 MS. FEINSTEIN: Oh, I'm sorry. I missed you.

5 PROSPECTIVE JUROR 305: I was a defendant with
6 my previous employer over a noncompete contract.

7 MS. FEINSTEIN: Was there anything about being a
8 defendant in that case that you think might predispose you
9 in this case?

10 PROSPECTIVE JUROR 305: Not particularly.

11 MS. FEINSTEIN: Thank you.

12 Would you please raise your hand if you have any
13 strong opinions, whether positive or negative, about
14 people who go to court to obtain relief for wrongs they
15 believe they have suffered?

16 Would you raise your hand if you believe people
17 should be held responsible for the effects of false
18 statements they make online?

19 Sure. I asked whether you would raise your hand
20 if you believe people should be held responsible for the
21 effects of false statements that they make online.

22 THE COURT: Raise your hands nice and as high as
23 you can go.

24 MS. FEINSTEIN: Thank you.

25 PROSPECTIVE JUROR 9: I did not raise my hand.

1 I would like to say if they're an elected official and a
2 public servant, then I would say I think they should be
3 held accountable for false statements, otherwise, I think
4 you're going after everyone in the country half the time.

5 MS. FEINSTEIN: Would you raise your hand if you
6 believe that 9/11 was an inside job?

7 Would you raise your hand if you do not believe
8 that American astronauts landed on the moon?

9 Would you raise your hand if you do not believe
10 that -- I'm sorry. Raise your hand if you believe that
11 the murder of almost six million Jews during World War II
12 never occurred.

13 Would you raise your hand if you do not believe
14 that 20 children and 6 adults were murdered at Sandy Hook
15 Elementary School in 2012?

16 Would you raise your hand if you've ever
17 suffered from PTSD?

18 Would you raise your hand if you know someone
19 who suffered from PTSD?

20 Would you raise your hand if you are opposed to
21 awarding money to someone whom the Court has determined
22 was defamed?

23 Would you raise your hand if you've ever been
24 bullied?

25 Would you raise your hand if you have children,

1 if they've ever been bullied?

2 Would you raise your hand if you've ever been
3 the victim of identity theft?

4 Would you raise your hand if you've ever been
5 unfairly accused of saying something hurtful and untrue
6 about someone else?

7 Would you raise your hand if you've ever been
8 accused of spreading lies online or via social media?

9 Would you raise your hand if you're a member of
10 the NRA?

11 Would you raise your hand if you own a gun? If
12 we could just go through those folks who raised their
13 hand, let us know what kind, what you use it for, if you
14 have a concealed carry permit, and how you store your
15 weapon.

16 PROSPECTIVE JUROR 309: Multiple handguns,
17 shotgun. Stored in a safe. Ammunition separately kept.
18 I will shoot and have the guns ready approximately once a
19 month, mostly for self-defense.

20 MS. FEINSTEIN: Thank you. Can pass it to the
21 next person.

22 PROSPECTIVE JUROR 312: Yeah. We have -- or I,
23 in my home, handgun, rifles, BB guns. We have a safe.
24 Hunting, shooting clay.

25 PROSPECTIVE JUROR 310: I own a shotgun,

1 Mossberg 500, and I own a Glock 19. The Mossberg 500 I
2 used for hunting in the past. I don't hunt anymore. And
3 the Glock, I'm ex-military, and just one of the things
4 that we did, and I just basically take it to the range. I
5 do have a concealed carry permit, but I usually keep it in
6 my car's trunk when I go to the range. I never carry a
7 pistol with me.

8 MS. FEINSTEIN: Thank you. Anyone else raise
9 their hand on that one? Go ahead.

10 PROSPECTIVE JUROR 63: Yep. So I've got a
11 couple shotguns, rifles, pistols, recreation as well as a
12 hunting rifle gear. I do carry a CCW.

13 MS. FEINSTEIN: How do you store your weapons?

14 PROSPECTIVE JUROR 63: They're all secured in
15 multiple safes throughout the house.

16 MS. FEINSTEIN: Thank you. Next?

17 PROSPECTIVE JUROR 34: My husband owns guns,
18 but -- so they're in our house. I don't own them. I
19 think he's got a couple rifles for deer hunting. That's
20 all. Maybe a pistol. I don't know for sure.

21 MS. FEINSTEIN: Do you know how he stores them?

22 PROSPECTIVE JUROR 34: They're locked and the
23 ammunition is separate.

24 MS. FEINSTEIN: Anyone else?

25 PROSPECTIVE JUROR 310: Oh, I didn't tell you

1 how I stored mine. I'm sorry. It's hidden in my
2 basement, locked away. If someone were to break in, I
3 would have to ask them to hold a minute while I go find
4 it.

5 MS. FEINSTEIN: Anyone else?

6 PROSPECTIVE JUROR 302: I believe my dad has a
7 couple guns that he keeps in the basement, and the ammo is
8 stored separate. I don't know much more about that. I
9 think they're rifles. I don't look at them nor do we take
10 them out ever. They're just kind of kept in the basement.

11 MS. FEINSTEIN: Thank you. Anyone else?

12 MR. BOLTON: You done?

13 MS. FEINSTEIN: Yes.

14 MR. BOLTON: Thank you. As I said, my name is
15 Rich Bolton, and, you know, the -- the purpose of the
16 questions by Attorney Feinstein and myself are, in many
17 respects, it's our opportunity to be a little bit nosy as
18 we try to find out about you folks and make selections and
19 decisions regarding the strikes that we're allowed.

20 As the judge has indicated, this case is about
21 defamation statements that were made and have been in
22 previous proceedings determined to not be true. Have
23 any -- has anybody in the panel here ever been accused of
24 making defamatory statements about someone?

25 Have any of you ever felt that you were the

1 subject of defamatory statements that someone else had
2 made?

3 PROSPECTIVE JUROR 9: Number 9.

4 MR. BOLTON: Can you -- there in the second or
5 in the second row. Number 9, can you tell us did that --
6 did that situation lead to -- did you do anything about
7 it?

8 PROSPECTIVE JUROR 9: No. It had nothing to do
9 with my career as a physician or the military. I was the
10 unlucky chosen one to be our condo president for a year,
11 which is the world's most-terriblest job. Lots of
12 complaints. There were lots of -- 1 -- 1 or 2 people out
13 of 40 made a lot of really false statements, which had
14 nothing to do. I mean, this is small beans in the world.
15 And we eventually just moved from the condo, but not
16 because of that, because my wife liked the new home that
17 we went to look at, but anyway, that's it. It was
18 defamation but no legal involvement.

19 MR. BOLTON: Okay. And then in the back row, I
20 think there was -- yeah. Number 312.

21 PROSPECTIVE JUROR 312: Yeah. The former
22 business partner of mine, and yes, there was a lot of
23 legal involved in it for approximately a year, and it
24 ended in a settlement agreement that has a bunch of
25 confidentiality clauses in it.

1 MR. BOLTON: Okay. Is that the lawsuit that you
2 previously referred to?

3 PROSPECTIVE JUROR 312: No.

4 MR. BOLTON: Okay. This case relates to a
5 tragic incident, the Sandy Hook shooting. Are -- have all
6 of you heard of that incident one time or another?

7 And, do -- do any of you think that -- that
8 we're not doing enough to try and prevent those types of
9 incidents? Raise your hands if you think we're not doing
10 enough.

11 And when you -- well, let me ask another
12 question then, somewhat related to this, and this is where
13 I'm being nosy and I don't mean to be offensive, but
14 have -- have any of you had a family member or a close
15 friend or somebody that was really within your circle of
16 people that you -- well, as part of your world, been the
17 subject of some sort of a tragic incident like that?
18 What -- what -- and, again, I guess I would ask this.
19 Yeah, Number 16.

20 PROSPECTIVE JUROR 16: That's me.

21 MR. BOLTON: What was the relationship of the
22 person that you're -- that you're -- that prompted your
23 answer?

24 PROSPECTIVE JUROR 16: Well, just to be clear,
25 it wasn't a school shooting.

1 MR. BOLTON: Pardon me?

2 PROSPECTIVE JUROR 16: It was not a school
3 shooting or a mass shooting.

4 MR. BOLTON: I understand. I wasn't limiting it
5 to that.

6 PROSPECTIVE JUROR 16: Okay. One of my best --
7 no, my best friend's brother was shot, a police officer,
8 about three years ago, shot and killed.

9 MR. BOLTON: Okay. You were asked some
10 questions by Attorney Feinstein that in terms of whether
11 there's various historical events that you believed did
12 not occur or not. Are you aware -- are any of you aware
13 that there are people that, for instance, have researched
14 and come to an -- some alternative conclusion, for
15 instance, with regard to the JFK shooting? Any? Raise
16 your hands if you're -- okay.

17 And do you -- do you think -- does anyone think
18 that there's something inherently wrong with people who
19 research these sort of events to try and determine whether
20 or not the mainstream or the main media narrative is
21 correct in all respects or in no respect? Does anybody
22 think that that type of research should not occur?

23 And, Number 16, you think that it should not?

24 PROSPECTIVE JUROR 16: I think some of the
25 things particular to InfoWars have a very --

1 MR. BOLTON: Okay.

2 PROSPECTIVE JUROR 16: -- negative effect on
3 families, and that has been researched and done.

4 MR. BOLTON: Do -- have any -- have any of you
5 folks heard of an individual by the name Alex Jones?

6 And, let's see, Number 306. In what context do
7 you know about Alex Jones?

8 PROSPECTIVE JUROR 306: In the context that he's
9 a right-wing -- he's a right-wing guy. He has a talk show
10 or something.

11 MR. BOLTON: He's a what?

12 PROSPECTIVE JUROR 306: Right-wing guy. He has
13 a talk show. That's all I know.

14 MR. BOLTON: And do you associate him with
15 any -- any particular cause or agenda?

16 PROSPECTIVE JUROR 306: Well, I just said he was
17 right wing. I think his agenda is conservative alt-right
18 stuff. I don't -- I don't know. I never listened to him.

19 MR. BOLTON: Okay. So he's a media fella?

20 PROSPECTIVE JUROR 306: If you want to call it
21 that.

22 MR. BOLTON: Okay. Okay. And then Number 312
23 then. And your -- you've heard of Alex Jones as well?

24 PROSPECTIVE JUROR 312: Yes.

25 MR. BOLTON: And do you have a favorable or a

1 negative impression of him?

2 PROSPECTIVE JUROR 312: It would be a negative
3 impression. I just think he comes up with alternative
4 theories to a lot of major events we see in mainstream
5 media. I've read some of the stuff he said on Sandy Hook.

6 MR. BOLTON: Do you think that -- that anybody
7 who researches sort of these -- these events is inherently
8 a nutcase?

9 PROSPECTIVE JUROR 312: No. I think it's good
10 to pressure the mainstream media and look for alternative
11 theories. I just might not necessarily agree with this
12 individual's.

13 MR. BOLTON: With respect to in this particular
14 case, Sandy Hook, and as it -- you know, obviously, I
15 think everybody said they were well aware of the reports
16 of that incident. Are any of you aware that there have
17 been people who have -- researchers who have questioned
18 the reliability of the mainstream reporting of that -- of
19 that incident?

20 PROSPECTIVE JUROR 309: I believe it's on "This
21 American Life" or similar discussion regarding Sandy Hook
22 and Alex Jones, and I did listen to that. And there was a
23 confrontational approach from the Alex Jones to the Sandy
24 Hook parents which resulted, I believe, in a lawsuit
25 against the Alex Jones' reporting. And it's fuzzy, but I

1 believe it's in "This American Life" that looked at the
2 whole issue and raised question of alternative reporting
3 and confrontation to the parents.

4 MR. BOLTON: Was the -- and in the piece that
5 you watched, was there --

6 PROSPECTIVE JUROR 309: Listened to. It
7 wasn't --

8 MR. BOLTON: I'm sorry.

9 PROSPECTIVE JUROR 309: It was a podcast. Yeah.

10 MR. BOLTON: Did they discuss any -- any
11 research or evidence that people were relying on for an
12 alternative view?

13 PROSPECTIVE JUROR 309: The facts in the case
14 are always subject to exactly the perspective brought to
15 the case. I also was a journalist and facts are, as we
16 all know, very suspect to mutation depending upon whose
17 eyes you're looking for the facts. So that -- yes, the
18 answer is yes it comes from where the research was done,
19 but exactly how good that research is, I --

20 MR. BOLTON: That's fine. That's fine.

21 Let's see, there were a couple others who I
22 think said they were familiar with -- and I'm going to use
23 a shorthand, and I think we may hear during the -- during
24 the evidence. People who are sometimes referred to as
25 Sandy Hook skeptics. There were others who had some

1 familiarity or had heard of that. And you, Number 16, was
2 that -- was that through Alex Jones and InfoWars as well?

3 PROSPECTIVE JUROR 16: (Nods head.)

4 MR. BOLTON: Okay. You -- is it fair to say
5 that in terms of InfoWars, you do not find that to be a
6 reliable source of information?

7 PROSPECTIVE JUROR 16: That is correct.

8 MR. BOLTON: Do you -- do you believe that
9 everyone who has an alternative view of -- of events or
10 incidents is also inherently unreliable? In other words,
11 everybody that is in that InfoWars, you know, skeptic
12 mode, do you think they're all unreliable?

13 PROSPECTIVE JUROR 16: I don't think that people
14 who listen to it are unreliable, but I think if they
15 believe and pursue other activities based off of it, then,
16 yes, they're unreliable.

17 MR. BOLTON: Who else was aware of the -- the,
18 you know, that there are, in fact, Sandy Hook skeptics out
19 there? You know what, and so that -- and I think rather
20 than ask each of you, I'm going to ask a follow-up
21 question then.

22 Do any of you believe that you could not be fair
23 in judging, and in this case just making a determinations
24 if, in fact, the defendant was a Sandy Hook skeptic? Does
25 anyone think that -- is there anyone who just couldn't be

1 fair in evaluating the evidence and listening to the
2 instructions?

3 Let's see, you're Number 309.

4 PROSPECTIVE JUROR 309: (Nods head.)

5 MR. BOLTON: And then when you -- tell me --
6 tell me what you -- can you explain your answer a little
7 bit?

8 PROSPECTIVE JUROR 309: I don't mean to be glib,
9 but crazy is crazy. I think that it's hard to judge
10 evidence from a totally unreliable source and call it
11 reliable. Once you're far enough out, I think you -- I
12 have to lose confidence in what I'm hearing and listening
13 to if it's -- if there's an unreliable source telling me
14 the sky is red when it's green, everything after that
15 becomes suspect. I begin to hold -- my judgment is
16 colored, I think.

17 MR. BOLTON: In this case the -- the issues
18 involve statements based on the defendant's research
19 involving Sandy Hook. Do you -- and they have been
20 determined already in another proceeding to not have been
21 true. Do you think then that in this proceeding you could
22 be fair and apply the law and listen to the evidence in an
23 unbiased and fair manner?

24 PROSPECTIVE JUROR 309: I would have issues with
25 fairness, I think, with a totally unreliable source

1 telling me that something's one way, trying to listen to
2 that source tell me that, again, there's -- there's a
3 pattern of unreliability that would make me suspect.

4 MR. BOLTON: Okay.

5 PROSPECTIVE JUROR 309: Whatever is coming out
6 of that mouth I go, Yeah, right. Sure. Uh-huh.

7 MR. BOLTON: Okay. Thank you, sir.

8 Were there -- were there any others who had --
9 had questioned or raised their hand in regard to whether
10 they could be fair and listen to the evidence and the
11 instructions and any value in the case involving a Sandy
12 Hook skeptic?

13 PROSPECTIVE JUROR 308: I guess I feel -- I'm a
14 teacher, and I have to do the ALICE drills on a yearly
15 basis, and I might be biassed, to be honest. I don't
16 know.

17 MR. BOLTON: Okay. Do you -- do you think that
18 Alex Jones speaks for all of the alternative researchers?

19 PROSPECTIVE JUROR 308: I honestly don't know
20 even who that is. So I have no --

21 MR. BOLTON: Okay.

22 PROSPECTIVE JUROR 308: -- idea really what this
23 is going to be involved. I just know about Sandy Hook, so
24 that's all I've got.

25 MR. BOLTON: Okay. Thank you very much.

1 I think down toward the other end there were
2 some -- some hands raised as well in terms of people
3 concerned about whether or not they could look at
4 objectively the evidence and the law in this case with
5 regard to a Sandy Hook skeptic.

6 PROSPECTIVE JUROR 306: Similar to what the
7 doctor was saying, it is sort of difficult to place your
8 trust in what someone would say if they have a fundamental
9 disbelief about something that is an agreed upon fact.
10 But I think I could hopefully separate this case from that
11 aspect.

12 MR. BOLTON: Okay.

13 PROSPECTIVE JUROR 306: But just being honest, I
14 might have some bias.

15 MR. BOLTON: Okay. Thank you. And then was
16 there any -- any -- that exhausted on that issue then?
17 Pardon me?

18 PROSPECTIVE JUROR 9: I raised my hand and said
19 that I heard of people who did not believe that Sandy Hook
20 took place. My main reading is from *The New York Times*
21 and they have a huge research field, and I -- I think I --
22 to me, that's middle of the road. I think they publish
23 things both sides so.

24 MR. BOLTON: Okay.

25 PROSPECTIVE JUROR 9: So, you know, but the

1 whole category here is extremely broad in, you know, would
2 I let somebody who believes that Sandy Hook was a fake do
3 heart surgery on me? Well, I would ask around and if he's
4 the world's greatest heart surgeon, you know, I probably
5 would let him do it. You know, you have to look at -- you
6 have to be more specific about that. We all get in our
7 car and drive on the Beltline with people who have views,
8 political or crazy views, at a certain moment we'd say
9 they're nuts to say that, but we trust them to drive on
10 the Beltline safely hopefully.

11 MR. BOLTON: I've never seen any such driver on
12 the Beltline.

13 PROSPECTIVE JUROR 9: That's true.

14 MR. BOLTON: And then, I think, Number 16, you
15 also indicated that you would have issues being -- getting
16 past some of your biases and objectively reviewing this
17 case, is that -- as well?

18 PROSPECTIVE JUROR 16: Yeah. I think even more
19 so than what we talked about in the beginning.

20 MR. BOLTON: Okay.

21 PROSPECTIVE JUROR 16: Now that I know it's
22 about Sandy Hook and what I know about the theories behind
23 that, I just can't put that aside.

24 MR. BOLTON: With regard to the research and
25 reporting on -- that individuals do, even as to events

1 like Sandy Hook or the Kennedy assassination or 9/11, is
2 there -- is there anyone that thinks that -- that that
3 type of research should be prohibited from being
4 published?

5 Is there -- do we have any -- do we have any
6 journalists in the -- in our panel or family members who
7 are journalists? Yes, ma'am.

8 PROSPECTIVE JUROR 306: Well, I was a journalism
9 major in college, but I'm not actually a journalist.

10 MR. BOLTON: And do you have -- with your
11 journalism major, did you -- did you become familiar with
12 the First Amendment?

13 PROSPECTIVE JUROR 306: Yes.

14 MR. BOLTON: And do you think -- is there anyone
15 that thinks that the First Amendment does not protect at
16 least at some level the publication of research even as --
17 even as to unpopular topics?

18 Is there anyone that thinks that quite frankly,
19 that at least as a practical matter we -- we take the
20 First Amendment too far, too seriously? Okay.

21 The case that you're going to hear or some of
22 you will hear is not actually going to relate to whether
23 or not -- your task will not be to determine whether or
24 not something was defamatory or not, but simply to
25 determine whether or not statements that proved to be

1 false caused injury to somebody. Has anybody ever brought
2 any claim -- and not necessarily even a claim in a court
3 of law but a claim for disability benefits or some sort of
4 benefits relating to injury that they may have or may have
5 experienced?

6 Do any of you have -- and here I'm not -- I'm
7 not trying -- I'm not going to be overly nosy. I'm -- so
8 understand I'm asking this question at a very general
9 level. Do any of you have familiarity with the mental
10 health profession as -- and, again, whether as an
11 individual or a family member or a close family member?
12 And it -- and it doesn't -- I'm not asking anybody to tell
13 me their own personal stories, but I'm just trying to get
14 a handle on people that may have at least familiarity with
15 the mental health services that people can obtain?

16 Ma'am, right here in the front. I'm sorry, I'll
17 go -- raise you hands in the front row again then. Okay.
18 There's -- there's a number of you.

19 So let me ask to try to narrow it a little bit.
20 Well, first of all, can you raise your hands again just so
21 that we can get a sense of who has some familiarity with
22 the mental health profession and the services that are
23 available.

24 Is there anybody on the panel that -- that
25 believes one way or the other that damages claimed for

1 mental health injuries such -- and here, there is a
2 reference to post-traumatic stress disorder. Does any of
3 you think that such -- such claims should inherently be
4 believed or viewed with skepticism? Anybody who has a
5 view one way or the other about claims like that?

6 With respect to linking it then to -- well, let
7 me -- let me ask this. With regard to what people may
8 know about post-traumatic stress disorder, and I'm not --
9 I'm not limiting this question to people who may have had
10 it or had a family member who had it -- but is there
11 anybody -- are there people on the panel that are -- that
12 believe one way or the other that that is a condition that
13 is overdiagnosed or underdiagnosed?

14 No one has any preconceived -- and when I say
15 preconceived, it may very well be based on information
16 available. Nobody has any view one way or the other on
17 that -- on that question, whether it's inherently suspect
18 or not?

19 And, we probably could get this if I looked more
20 carefully at your cards. Are there -- are there any
21 people in the -- on the panel who work in the mental
22 health field? And you are Number 311? Do I have your
23 number right?

24 PROSPECTIVE JUROR 301: Me? I'm 301.

25 MR. BOLTON: Okay. And what was your -- what

1 did you do in the -- working that area?

2 PROSPECTIVE JUROR 301: I worked at a
3 psychiatric hospital.

4 MR. BOLTON: Okay.

5 PROSPECTIVE JUROR 301: Mainly at the reception
6 desk, so I had a lot of patient contact.

7 MR. BOLTON: Okay. Okay. Anybody else who's
8 worked in the field of, you know, whether it be counseling
9 or psychiatric or basically, the mental health profession?
10 Anyone else?

11 Number 64. I know when I call that it feels
12 like a game show winner, but it's -- it's... 64, you
13 indicated that you're an administrative assistant. And
14 can you tell, administrative assistant in what -- what
15 particular area?

16 PROSPECTIVE JUROR 64: Health care.

17 MR. BOLTON: Pardon?

18 PROSPECTIVE JUROR 64: Health care.

19 MR. BOLTON: In health care. Okay. Can you --
20 okay.

21 I noticed also that we had a number of people
22 who had been or currently are teachers or involved in the
23 education field, and obviously, Sandy Hook was an incident
24 at a school. Is there -- are any of the educational
25 people, teachers and administrators, who believe that

1 that -- that your particular participation in education
2 would make it difficult for you to consider a case
3 involving Sandy Hook fair and objectively? Anyone?

4 Let's see. Okay. We talked -- there are a
5 couple of you who answered my question about if you heard
6 anything about people who were Sandy Hook doubters or
7 skeptics. Is there anyone else who has read anything or
8 seen anything about Sandy Hook skepticism that hasn't
9 already talked about what -- what their background in that
10 respect would be?

11 Sometimes the -- in this area, for instance, and
12 I think as Attorney Feinstein's questions were getting at
13 with the Kennedy assassination or 9/11 or Sandy Hook or
14 whether we went to the moon or not, sometimes these such
15 people are referred to sort of generically as conspiracy
16 theorists. Are any of you familiar with that concept?

17 Can you raise your hands high so that my -- so
18 that you can -- and, it's -- it sounds like a lot of you.
19 And so my question, to try and narrow it, would be is
20 there anybody that thinks that -- that people that
21 research in this area are just inherently nutty or, you
22 know, loony people? Anybody that thinks that -- okay. Go
23 ahead, Number 16.

24 PROSPECTIVE JUROR 16: Yeah.

25 MR. BOLTON: Okay. Do you -- my sense from you

1 though is that you don't necessarily take everything that
2 you read or see at face value. How do you -- am I -- is
3 that correct? Do you -- do you view -- consider
4 everything that you read or hear from mainstream media, do
5 you accept that as inherently reliable?

6 PROSPECTIVE JUROR 16: No.

7 MR. BOLTON: Okay. So with respect to
8 conspiracy theorists, how do you make the determination or
9 how do you think one might think that such people are that --
10 that the -- the whole category of people are inherently
11 loony?

12 PROSPECTIVE JUROR 16: I think you have to be a
13 special kind of person to want to prove that the slaughter
14 of children was an inside job.

15 MR. BOLTON: Have you ever -- have you ever met
16 anybody who was a conspiracy theorist?

17 PROSPECTIVE JUROR 16: I don't think so.

18 MR. BOLTON: Um --

19 PROSPECTIVE JUROR 309: I guess I agree with 16
20 I'm 9 -- 309.

21 MR. BOLTON: Pardon me. Go ahead.

22 PROSPECTIVE JUROR 309: I -- you asked a
23 question about research.

24 MR. BOLTON: Mm-hmm.

25 PROSPECTIVE JUROR 309: And I think I'm a little

1 biassed. There's double-blind, prospective, randomized,
2 controlled stuff that's real, and there's, *I heard that*
3 *the sister of my cousin's brother-in-law's ferret was*
4 *heard to be said that maybe we didn't go to the moon.*

5 MR. BOLTON: Yeah, I heard that, too.

6 PROSPECTIVE JUROR 309: You follow what I'm
7 saying?

8 MR. BOLTON: I'm teasing.

9 PROSPECTIVE JUROR 309: Yeah, but you follow
10 my --

11 MR. BOLTON: I do follow it, yes.

12 PROSPECTIVE JUROR 309: And so when you tell me
13 that we didn't go to the moon and it's a conspiracy and I
14 look and I -- I agree with the other gentleman that says,
15 you know, when you look at what *The New York Times* puts
16 out and it's double checked and quadrupled checked and
17 it's checked with multiple sources and there's like --
18 there's pictures and there's actual -- you can touch it
19 and feel it and it's tangible, that's a different kind of
20 research than my previous sarcastic statement about the
21 ferret, and I think we have to separate those two. And
22 when I see people who are in the former category of
23 ferretologists [sic], I suspend my belief about their
24 sanity and their ability to distinguish reality and due to
25 double-blind prospective evidence-based research from

1 those that do. There's a difference.

2 MR. BOLTON: Would you -- is it a fine line
3 sometimes to draw though in terms of the -- the research
4 that is on one side of that line and research on the other
5 side?

6 PROSPECTIVE JUROR 309: The category that --
7 that Lawyer Feinstein was bringing up about six million
8 and JFK and 9/11, I don't find a fine line there. I kind
9 of watched the towers get hit. I don't -- where's the
10 fine line on that one? The fine line on the six million?
11 The fine line on JFK? I don't see the line there. I
12 think it's pretty clear. Are there situations that I
13 suspend belief? Sure. Sure.

14 MR. BOLTON: Do you think that -- that people
15 who the skeptics in this area and -- and particularly,
16 those that you would characterize as way over the line, do
17 you believe that they should be -- that there should be
18 some sort of means to -- or do you think that they should
19 be punished in our civil system for -- for making such
20 statements?

21 PROSPECTIVE JUROR 309: No. The First Amendment
22 protects them.

23 MR. BOLTON: Say that again?

24 PROSPECTIVE JUROR 309: The First Amendment
25 protects them very carefully. There's no -- if I

1 understand your question, I think they are protected. You
2 can say whatever you want or wherever you want as long as
3 it doesn't result in direct harm.

4 MR. BOLTON: Okay. And I appreciate -- I
5 appreciate that distinction that you make there.

6 PROSPECTIVE JUROR 64: Could I add to a previous
7 question?

8 MR. BOLTON: Pardon me?

9 PROSPECTIVE JUROR 64: You asked a question
10 earlier about has anybody in a shooting or had known
11 somebody who had been in a shooting that was way back?

12 MR. BOLTON: Yes.

13 PROSPECTIVE JUROR 64: And it was just so long
14 ago for me that it sort of now rolls to the top, that I
15 was in the shooting in the City County Building. It was
16 in my office in the Sheriff's Department, and people were
17 killed. So I have experienced it.

18 MR. BOLTON: Was that the one with the coroner?

19 PROSPECTIVE JUROR 64: Yep. That was it.

20 MR. BOLTON: Pardon. Yeah, I remember that.

21 PROSPECTIVE JUROR 64: I mean, it was an
22 incident. I don't think it would bias me to listen fairly
23 to a case, but I was involved.

24 MR. BOLTON: Okay. Thank you.

25 Is there anyone that thinks that basically that

1 publishing and what's permitted to be put in the public
2 content that we should basically have a uniform narrative
3 or that we should all think the same on particular events?
4 Is there anyone that holds that view?

5 And -- and I know it sounds like I'm -- I'm
6 setting up a rhetorical question, but there -- there may
7 be some people who legitimately think that -- that the
8 more -- the more consistent we become in our thinking that
9 the -- that the more -- that that is a normative thing,
10 that it actually reduces conflict and stress in society.
11 So I don't really mean it as a rhetorical question. Are
12 there those who think that we should strive from
13 uniformity of thought?

14 Is there anyone that thinks that people who
15 question authority are doing a bad thing?

16 And, I'm going -- I'm going to jump on myself
17 here. That probably was somewhat rhetorical, because I
18 didn't -- but if people have a basis for doubting an
19 official narrative, am I -- am I correctly reading all of
20 you that simply researching and questioning an official
21 narrative is -- that there's nobody who thinks that that's
22 an inherently bad thing and should be prohibited? Okay.

23 Judge, in terms of potential strikes for cause,
24 how did -- if any, how do you want to handle those?

25 THE COURT: Let's see, I'd like -- given some of

1 the questions you asked and answered, I'm going to give
2 Ms. Feinstein -- do you have any follow-up questions,
3 Ms. Feinstein?

4 MS. FEINSTEIN: Yes, Your Honor.

5 Mr. Bolton mentioned the First Amendment. Is
6 anyone here unwilling to award damages for defamation
7 based on your view of the First Amendment? Would you
8 raise your hand if you would be unwilling to do that?

9 Does anyone here believe that victims of
10 defamation are not entitled to recover damages? Would you
11 raise your hand if you believe that they are not entitled?

12 And, let me ask that question again. When I say
13 "damages" I mean money. Does anyone here believe that
14 victims of defamation are not entitled to recover damages?
15 Would you raise your hand if you believe that?

16 This case is limited to damages, meaning, money.
17 That's it. The Court previously determined that
18 statements at issue are defamatory. With that in mind, do
19 you think you'd be able to fairly decide a case with
20 witnesses who do not believe Sandy Hook happened? Would
21 you raise your hand if you would not be able to fairly
22 decide this case given those -- given those circumstances?

23 PROSPECTIVE JUROR 16: Can you repeat the
24 question?

25 MS. FEINSTEIN: Sure. No one's -- in this case

1 no one is going to ask you to decide whether Sandy Hook
2 happened. The case is limited to damages, meaning, money.
3 The Court's previously determined that certain statements
4 were defamatory. With that in mind, do you think you will
5 be able to fairly decide a case with witnesses who do not
6 believe that Sandy Hook happened? Would you raise your
7 hand if you would be unable to do that?

8 PROSPECTIVE JUROR 309: As I've said before.
9 I'm 309.

10 THE COURT: Okay. So, 309, you talked a little
11 bit about bias, which I'm sorry to tell you all, everyone,
12 we all have bias. The question is whether the bias is
13 sort of like -- sort of macular degeneration. I mean,
14 it's so big in front of you, you can't see around it.
15 It's going to cloud your ability to keep an open mind
16 until you've heard the evidence. It's going to cause
17 problems in following the instructions that I give you on
18 the law. I've got to make a decision how if that bias we
19 all have prevents you from being a juror in this case,
20 because everyone deserves a fair shake, an open mind, and
21 a juror who just says I'm just -- before I answer the
22 question, let me listen to what the evidence is. Do you
23 think your bias is such that I know you smiled when I gave
24 the analogy, that it would prevent you from doing what a
25 juror should do?

1 PROSPECTIVE JUROR 309: I have my -- my doubts
2 as to my ability to listen to someone who is a
3 dyed-in-the-wool, convinced something didn't happen and
4 speaks about other issues with that mindset that I find
5 sufficiently questionable that I would be -- I'd be
6 struggling a little bit with listening to anything
7 coming -- coming from that person and trying to make it
8 reliable.

9 THE COURT: I'm going --

10 PROSPECTIVE JUROR 309: Do you follow what I'm
11 trying to say, Judge?

12 THE COURT: Yeah. I can't finish there. We all
13 struggle. Being a juror is a difficult and important
14 task. The question is whether that bias and the ensuing
15 struggle is so great you can't keep an open mind.

16 PROSPECTIVE JUROR 309: I'm not sure. I don't
17 know the answer.

18 THE COURT: Okay. I think, look, I appreciate
19 your candor. We'll go ahead and excuse you, 309. I
20 appreciate the -- the answers and the contribution you
21 made to this process. We'll call another juror.

22 309, if you go back down to the jury clerk, it's
23 possible you'll be reassigned.

24 PROSPECTIVE JUROR 309: Thank you for your time.

25 THE COURT: Thank you.

1 (Prospective Juror 309 excused.)

2 THE CLERK: Number 11.

3 THE COURT: Good morning, Madam 11.

4 PROSPECTIVE JUROR 11: Good morning.

5 THE COURT: I know we went a little bit longer
6 than I thought we might go before calling another juror,
7 so the lawyers asked a lot of questions. Now, were you
8 paying attention, teacher?

9 PROSPECTIVE JUROR 11: I was paying attention.

10 THE COURT: Would you have raised your hand on
11 any of the question that either of the lawyers asked?

12 PROSPECTIVE JUROR 11: Which questions are you
13 referring to?

14 THE COURT: Well, any question.

15 PROSPECTIVE JUROR 11: Any question?

16 THE COURT: Any question. You know, you heard
17 people talk. Would you say, hey, I -- I would have --
18 some people haven't talked at all.

19 PROSPECTIVE JUROR 11: That's true. Well, I'm a
20 teacher, you know, so I bring to the table those biases of
21 being an educator and those kind of situations, especially
22 with the comment about the active shooting lessons and
23 things like that, because I -- I do those things too. I
24 teach those things to my class, and so I have that in the
25 back of my head as well.

1 THE COURT: Okay. Can you -- can you, for the
2 job here, if you're selected, can you set that aside at
3 least -- it is part of your job and who you are, but can
4 you still nonetheless listen to the facts in this case
5 carefully, dispassionately, and then follow the legal
6 instructions I give?

7 PROSPECTIVE JUROR 11: Yes.

8 THE COURT: Okay. Any other -- anything else
9 you want to mention? There was a question, like, bumper
10 stickers. Do you have bumper stickers?

11 PROSPECTIVE JUROR 11: Not currently. Well, I
12 do have one Madison Teachers, Incorporated sticker on my
13 car.

14 THE COURT: Okay. Have you ever been sued?

15 PROSPECTIVE JUROR 11: No.

16 THE COURT: Okay. We'll let the lawyers follow
17 up.

18 PROSPECTIVE JUROR 11: Okay.

19 THE COURT: I think, Ms. Feinstein, you were
20 doing some additional questions. Thank you.

21 PROSPECTIVE JUROR 11: You're welcome.

22 MS. FEINSTEIN: Juror No. 11, would you tell us
23 are you a member of any organizations and then also, where
24 do you get your news.

25 PROSPECTIVE JUROR 11: I'm a member of the

1 Madison Teachers, Incorporated, and I get my news from WPR
2 and NPR. I watch local news in the mornings. And,
3 occasionally, on my phone I'll read like the Apple News
4 clips or I get -- I do get e-mails from like the
5 *Huffington Post* and *Washington Post*, things like that.

6 MS. FEINSTEIN: Have you ever listened to Alex
7 Jones?

8 PROSPECTIVE JUROR 11: No.

9 MS. FEINSTEIN: How about InfoWars? Have you
10 ever listened to InfoWars?

11 PROSPECTIVE JUROR 11: Mm-mm.

12 MS. FEINSTEIN: Do you believe people should be
13 held responsible for the effects of the false statements
14 that they make?

15 PROSPECTIVE JUROR 11: Yes.

16 MS. FEINSTEIN: Do you believe 9/11 was an
17 inside job?

18 PROSPECTIVE JUROR 11: No.

19 THE COURT: Do you believe American astronauts
20 landed on the moon?

21 PROSPECTIVE JUROR 11: Yes.

22 THE COURT: Do you believe that the murder of
23 almost six million Jews during World War II never
24 occurred?

25 PROSPECTIVE JUROR 11: No.

1 THE COURT: I should have switched that around
2 so the answer would be -- sorry.

3 PROSPECTIVE JUROR 11: It's all good.

4 MS. FEINSTEIN: Do you believe that 20 children
5 and 6 adults were murdered at Sandy Hook Elementary School
6 in 2012?

7 PROSPECTIVE JUROR 11: Yes.

8 MS. FEINSTEIN: Thank you.

9 THE COURT: Mr. Bolton, any follow-up questions?

10 MR. BOLTON: I don't have anything further.

11 THE COURT: And your strikes for cause.

12 MR. BOLTON: Number 16.

13 THE COURT: Okay. 16, sometimes people --
14 lawyers challenge for cause. Don't take it personal.
15 You -- the question I'm going to ask you is similar to the
16 questions that I asked 309, but because these come at the
17 end, I'm going to just ask you about, generally, the
18 answers that you've offered during the course of this back
19 and forth.

20 What do I need to say? Well, we all acknowledge
21 biassed, but a job of a juror is to bring that random
22 experience in who you are to this courtroom and for the
23 moment, keep an open mind, listen to the evidence that's
24 given to you by the witnesses and the documents that are
25 presented. You heard that there's only one question in

1 this case for the jurors to answer, What amount of money
2 should fairly and reasonably compensate Mr. Pozner because
3 of Mr. Fetzer's defamatory statement? You won't be asked
4 to give an opinion in your verdict about organizations or
5 entities. Just that question. Do you think that if you
6 were selected, you could keep an open mind, listen to my
7 instructions and answer that question fairly to both
8 parties?

9 PROSPECTIVE JUROR 16: I don't think so.

10 THE COURT: Okay. Well then we'll let you go.
11 Thank you for your service and your candor.

12 (Prospective Juror 16 excused.)

13 THE COURT: We'll call another juror.

14 THE CLERK: 59.

15 THE COURT: Okay. Before -- Madam 59, before I
16 ask you the questions, want to -- any other objections for
17 cause, Mr. Bolton?

18 MR. BOLTON: No, Your Honor.

19 THE COURT: Okay.

20 MR. BOLTON: No.

21 THE COURT: Ms. Feinstein, any objections for
22 cause?

23 MS. FEINSTEIN: No, Your Honor.

24 THE COURT: Okay. So associate research
25 specialist. I know you were paying attention. Would you

1 have raised your hand on any of the questions that the
2 lawyers asked?

3 PROSPECTIVE JUROR 59: Yes.

4 THE COURT: Which questions were asked that you
5 would have raised your hand?

6 PROSPECTIVE JUROR 59: If I can remember them
7 all, I work -- my -- I'm a research specialist in PTSD.
8 So I research and study that at UW-Madison in the
9 psychiatric department, so I have experience with mental
10 health.

11 My husband's in the military. I don't quite
12 know how that one connected. I don't know if it was you
13 were or weren't.

14 I am a part of some nonprofit groups working
15 with kids, so Awana, things like that.

16 I listen to NPR news. I'm trying to remember
17 all the questions.

18 Me and my husband do own guns. We have a few
19 rifles, few shotguns, some handguns. I do have my
20 concealed carry. And they're stored with like a lock and
21 a bolt so.

22 THE COURT: Ever heard of Alex Jones?

23 PROSPECTIVE JUROR 59: No, or the -- none of
24 those.

25 THE COURT: And do -- Ms. Feinstein asked about

1 certain world events. Do you think they never happened?

2 PROSPECTIVE JUROR 59: I think 9/11 happened and
3 all that happened, yeah.

4 THE COURT: Okay. Any follow-up questions,
5 Ms. Feinstein, with Juror 59?

6 MS. FEINSTEIN: Do you believe people should be
7 held responsible for the effects of false statements they
8 make online?

9 PROSPECTIVE JUROR 59: Yes.

10 MS. FEINSTEIN: Are you trained as a
11 psychiatrist?

12 PROSPECTIVE JUROR 59: No. I have a bachelor's
13 degree in psychology, so I run the lab. I'm like a lab
14 manager.

15 MS. FEINSTEIN: Thank you.

16 THE COURT: Mr. Bolton?

17 MR. BOLTON: Do you think that people are --
18 that inherently, there's injury from false statements made
19 about someone?

20 PROSPECTIVE JUROR 59: I'm sorry, can you say
21 that again?

22 MR. BOLTON: Pardon me?

23 PROSPECTIVE JUROR 59: I didn't quite catch
24 that.

25 MR. BOLTON: Okay. So in this particular case

1 we're going to be talking about damages resulting, if any,
2 from false statements. And in your particular field, is
3 there -- is there any -- do you start with any bias that
4 if something is -- something false is said about someone
5 then inherently they suffer injury?

6 PROSPECTIVE JUROR 59: I don't think I have any
7 bias to begin with.

8 MR. BOLTON: Okay.

9 PROSPECTIVE JUROR 59: I think -- yeah.

10 MR. BOLTON: Okay. Thank you. I don't have any
11 other further questions, Judge.

12 THE COURT: Okay. Ms. Feinstein, Mr. Bolton,
13 please approach.

14 You guys can stand up and stretch for a moment.
15 You'll hear some white noise. I apologize. It's sort of
16 bothersome. I'll explain that later.

17 (Bench conference held outside the presence of
18 the prospective jury panel.)

19 THE COURT: Is there anything that you want to
20 raise or ask the Court before we begin the process of the
21 peremptory challenge? Mr. Bolton? Speak right into that.

22 MR. BOLTON: No.

23 THE COURT: Ms. Feinstein, anything you want
24 to -- motions, anything you want to talk about before we
25 begin the peremptory challenge?

1 MS. FEINSTEIN: No, Your Honor. Thank you very
2 much.

3 MR. BOLTON: So we get --

4 THE COURT: Talk right into it.

5 MR. BOLTON: We get five peremptories then?

6 THE COURT: No, you don't get five.

7 MS. FEINSTEIN: Three.

8 MR. BOLTON: But we've got -- we've got a
9 panel --

10 THE COURT: I think you get four. Molly, how
11 many preemptory are they given?

12 MR. BOLTON: We've got 24 and we are seating 14.

13 THE COURT: Well, no big deal. How many -- we
14 called how many? Five strikes each, I guess.

15 MR. BOLTON: Five each.

16 THE COURT: Any objection to that? I don't -- I
17 think that's one more than ordinarily given.

18 MR. BOLTON: Sure. But I think that's how we
19 get down to 14.

20 THE COURT: Right. Well, I don't worry about it
21 if you're okay with that. I think there was some concern
22 about the nature of the panel that didn't materialize that
23 might cause an additional strike. You know, it's equal on
24 both parties. Any objection to five strikes?

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

1 MS. FEINSTEIN: No.

2 THE COURT: No?

3 MS. FEINSTEIN: No, Judge.

4 THE COURT: Okay. Thank you very much.

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

7 THE COURT: So I'm sort of like the hall
8 monitor, not quite as important as the teacher, but
9 anything -- anyone need to go to the bathroom really bad?
10 Like, we're going to begin the process of peremptory
11 challenges, so my bailiff will escort or -- do you want to
12 use the public room or the jury room?

13 THE BAILIFF: The jury room.

14 THE COURT: No more questions are going to be
15 asked of you guys. The lawyers that have a sheet then now
16 they'll use their peremptory challenges, that is cross
17 names off so we get to the remaining few. So you're
18 welcome to dash out to the bathroom. Anyone else, go
19 ahead. Please come right back to your chair then here.

20 Anyone in the gallery can equally take a
21 bathroom -- yeah. Ladies and gentlemen in the gallery, we
22 no longer need you. Now, I want to just tell you that you
23 heard some of the things about the questions. We called a
24 lot more jurors than ordinarily in civil cases. You look
25 around and say, boy, there's a lot of people silting here

1 that didn't get called. I apologize for possibly making
2 you think that you did not serve as an important role had
3 you been called. It's just very difficult for me to
4 anticipate how many people are unable to serve and how
5 many we need.

6 In the lore of the law, there are occasions that
7 happen quite rarely, if we run out of jurors, the bailiff
8 goes out to the street corner and just tap people on the
9 shoulder. Elected -- elected sheriffs really hate that
10 because it doesn't give them voters come next election,
11 and it's quite disturbing to the convenience of people who
12 happen to be walking by the courthouse. And so in the
13 hope of not actually catching someone unaware that we
14 needed, we do call more people.

15 So you'll go back down to the LL1, the Jury
16 Assembly Room. It's possible that you'll be needed
17 elsewhere. If not, please accept my appreciation --
18 grateful appreciation for your coming here this morning.
19 Like I said to everyone, our system would not be what it
20 is would you not give your time and effort to come down to
21 the courthouse. Thank you very much.

22 MS. FEINSTEIN: Your Honor, can we approach?

23 (Bench conference held outside the presence of
24 the prospective jury panel.)

25 MS. FEINSTEIN: We're slightly confused on this

1 process for strikes.

2 THE COURT: Okay.

3 MS. FEINSTEIN: And what you -- how you want it
4 to go.

5 THE COURT: Okay. So Molly, where's the sheet
6 for their strikes? You'll get -- you'll actually get the
7 sheet and then we'll begin with you. You'll cross off
8 your first name.

9 MS. ZIMMERMAN: Hand it back?

10 THE COURT: You'll cross off and then write
11 Plaintiff Number 1, and then you hand it to Mr. Bolton and
12 he'll cross off Defendant Number 1, and then back to you.

13 MS. ZIMMERMAN: Do ours?

14 THE COURT: Then you'll do Number 2.

15 MS. ZIMMERMAN: And then it should stop.

16 THE COURT: What's that?

17 MS. ZIMMERMAN: At that point it stops, right?

18 THE COURT: Then you have --

19 MS. ZIMMERMAN: Then you can go through and
20 count the people that are seated --

21 THE COURT: Right. Let me just see --

22 MS. ZIMMERMAN: -- up through --

23 THE COURT: How many are seated?

24 MS. ZIMMERMAN: You don't need five strikes
25 apiece.

1 THE COURT: 24. Right. So the red line on the
2 page means number 59 is the last juror. You'll each go
3 back and forth exercising your five strikes, one at a
4 time, back and forth, and then we'll be down to 14 jurors.

5 MS. ZIMMERMAN: My question, Your Honor, and I
6 apologize, is why we would get five strikes? Why not just
7 go with two each. And then once we seat the people in
8 order and anybody who is beyond, once you have 14 seated,
9 they're just excused. That's why we keep them in order
10 that way, right?

11 THE COURT: Because we don't do it that way, for
12 one. I don't recall. We must have had a discussion about
13 adding an additional peremptory strike earlier on. I
14 mean, if we had a jury, ordinarily it's three, but there's
15 no magic number if the parties, for their each respective
16 reasons, think it's appropriate to exercise more. I mean,
17 there would be no delicate way of just now excusing a
18 couple people to say, oops, we called too many. Go ahead.
19 In the end, it just gives, by agreement of the parties,
20 one additional peremptory challenge. Now --

21 MS. ZIMMERMAN: Three additional, right?

22 THE COURT: No. You'll have a total of five.

23 MS. ZIMMERMAN: Right.

24 THE COURT: So you'll get -- actually, could be
25 four. At most, it's possible you're getting two more than

1 the Court might allow or one more than what's usual.

2 Ultimately, the important point is to have a
3 panel that both parties feel, based on the answers to the
4 questions, that are capable of doing the job. So we'll
5 just begin back and forth, exercising those until we pare
6 it down to our remaining 14. Molly will then call those
7 14 names, they'll remain seated, and then those that --
8 whose names are not called will be excused for the day.
9 Any objection to that process?

10 MS. ZIMMERMAN: If that's the way the Court
11 would prefer to do it.

12 Will the -- would the remaining 14 then also be
13 seated in the order in which they were called by the
14 bailiff today, subject the remaining two, the last two in
15 line?

16 THE COURT: No.

17 MS. ZIMMERMAN: By the --

18 THE COURT: The alternates will be -- after the
19 closing arguments, we'll randomly pull out numbers to
20 randomly select the alternate jurors.

21 MS. ZIMMERMAN: I thought the alternates were
22 the last two. So, essentially, 13 and 14.

23 THE COURT: No. We don't do that. It's totally
24 random. I have an old dice cup and the bailiff will pull
25 numbers out of the dice cup.

1 Okay. Anything else? Any other concerns or
2 matters you want to bring before the Court?

3 MS. FEINSTEIN: No, Your Honor.

4 MR. BOLTON: No, Your Honor.

5 THE COURT: Okay. Thank you.

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

8 THE COURT: Feel free to talk among yourselves.
9 The person who's now sat for the past couple hours to your
10 left or your right may never cross your path again. We've
11 got two teachers sitting next to each other. They can
12 compare notes or anyone else. Feel free to stand up and
13 stretch or just whatever makes you feel more comfortable.

14 (Pause.)

15 THE COURT: Ms. Feinstein, Mr. Bolton, come on
16 up.

17 (Bench conference held outside the presence of
18 the prospective jury panel.)

19 THE COURT: So I'm caught a little flatfooted on
20 the number of jurors that were called up. The statutes
21 provide for three or four strikes. For some reason, I
22 don't know, the bailiff called up 24, and I didn't catch
23 it. Now, he said that we -- that was what we talked
24 about. I don't recall. I have discretion, on stipulation
25 of the parties, to do exactly what we did.

1 On the other hand, the last two jurors, if we
2 had called 22, which would have yielded four strikes each,
3 we ended up -- we would not have called 34 and 54. Those
4 are, essentially, the 23rd and 24th jurors. So we have a
5 moment, if you want, to go ahead and if, in fact, I didn't
6 have a stipulation to five.

7 I do have a recollection, remember early on when
8 Mr. Palecek was a defendant, there was some talks about
9 whether he would get an additional. And, like I said, I
10 haven't reviewed the transcripts. Maybe at that time we
11 talked about, let's just do five by agreement, especially,
12 because we were unsure because of the nature.

13 MS. FEINSTEIN: My --

14 THE COURT: You've got to talk right into the
15 microphone.

16 MS. FEINSTEIN: My notes say three but --

17 THE COURT: But --

18 MS. FEINSTEIN: Yeah.

19 THE COURT: Do you -- I -- it's up to you guys.
20 If anyone wants to, we can strike 34 and 54, pare it down
21 to then -- and then you'd get another -- essentially,
22 those haven't been struck. You'd get -- those wouldn't be
23 called. Or -- no, that's not right. We'd have to -- we'd
24 take off your last number five strike and keep those
25 jurors on.

1 MS. FEINSTEIN: May I talk to my co-counsel
2 about that?

3 THE COURT: Okay.

4 MR. BOLTON: I'm fine with what we've done.

5 THE COURT: Just leave well enough alone?

6 MR. BOLTON: Yeah.

7 THE COURT: Do you want to leave well enough
8 alone, Ms. Feinstein?

9 MS. FEINSTEIN: I want to talk about it with my
10 co-counsel.

11 THE COURT: Okay. Well, let's see, you're going
12 to talk to Mr. Zimmerman? Ms. Zimmerman?

13 MS. FEINSTEIN: Ms. Zimmerman.

14 THE COURT: So I'll -- I was caught a little
15 flatfooted on the number of jurors. I don't know how --
16 my bailiff called 24 up but I didn't catch it. I don't
17 remember if it was by plan or design. The statutes allow
18 us to either three or four, it can be four. I know we had
19 a discussion, I said, when Mr. Palecek was a defendant,
20 whether it -- they got double the number of strikes. It
21 is what it is. We're down to a jury panel of 14.

22 Now, however, if there's -- if there's not a
23 stipulation to do it this way -- Mr. Bolton has stipulated
24 just to leave it this way -- then I would proceed to take
25 off the 23rd and 24th juror, and then put your number five

1 strike back on. I think we can cure the problem, but
2 right now we -- is the panel acceptable to you.

3 MS. ZIMMERMAN: Yes, Your Honor.

4 THE COURT: Mr. Bolton, is the panel acceptable
5 to you as in its present configuration?

6 MR. BOLTON: It is.

7 THE COURT: Okay. He said it is. Thank you
8 very much. We'll go -- then go with the way we've got it
9 by stipulation of the parties. Thank you.

10 (Back on the record in the presence of the
11 prospective jury panel.)

12 THE CLERK: If I call your number, please stand.
13 302. 306. 310. 300. 311. 305. 26. 5. 64. 40. 62.
14 24. 34. And 54.

15 Counsel, is this the jury that you empanelled?

16 MS. FEINSTEIN: Yes.

17 MR. BOLTON: Yes.

18 THE COURT: So you've -- if you're seated --
19 you've called the jurors.

20 THE CLERK: (Nods head.)

21 THE COURT: So make sure we got the right
22 number. It would be terrible if we let you go. Come
23 back.

24 Okay. If you've not been called, thank you very
25 much. You can go back down to LL1.

1 If you are standing, just stand there for a
2 moment and we'll give you further instructions.

3 Thank you very much, ladies and gentlemen.

4 (Remaining prospective jury panel excused.)

5 THE COURT: You'd think we'd need like -- I've
6 only got 10 fingers and 14 jurors.

7 All right. Please be seated just where most
8 comfortable. It's now ten after 12:00. Let's see, the
9 mom with kids did not get selected. Anybody else have a
10 childcare responsibility, like, this is a big problem
11 today?

12 PROSPECTIVE JUROR 306: Depends on what time.

13 THE COURT: We'll go 4:30 at the latest. Well,
14 4:30, 4:31, 4:32. It depends, if someone says I've got
15 only one more minute, I'm not going to say, Come back
16 tomorrow. We would start at 8:30 in the morning and go to
17 4:30. Like I said, this might get done, please don't hold
18 me to it, but we might get this to you for deliberations
19 on Wednesday, but at least for now plan some time
20 Thursday.

21 I've been told that we have some expectant
22 mothers and mothers that we'll make accommodations.
23 Please, be proactive. If you need a bathroom break, raise
24 your hand. We're all human, and so whatever we can do to
25 make your job more comfortable.

1 And to that regard, I don't really stand too
2 much on formality in terms of what you wear, how you
3 dress. Please dress comfortably. In the morning you can
4 bring coffee, you can bring bottle of water. Please don't
5 spill it. Of course, you can see the carpet's the
6 original carpet. I don't know when the county board would
7 pay for new carpeting and cleaning. But like I said, my
8 bailiff will give you instructions on -- he'll show you
9 the jury deliberation room for bringing a lunch or going
10 out to lunch. There is -- I'll give a shout out to the
11 food service down on LL1. It's excellent food. That's
12 open until 1:00 o'clock.

13 We'll break now for an hour, and we'll have you
14 come back at 1:15. Is that good? Anything else?

15 I think we'll swear you in as the jury pool.
16 Please stand.

17 THE CLERK: Please raise your right hand.

18 (Jury panel sworn.)

19 THE COURT: Okay. Now, Randy, the bailiff, will
20 escort you back to -- I think you're going to take them to
21 the jury room first? Please come back as promptly at 1:15
22 as you can, because in order to get you out in time, I
23 like to start on time.

24 While you are -- ladies and gentlemen, last
25 thing, you'll get this instruction, I don't know --

1 please, I hope you have other things to talk about during
2 lunch time. Please don't talk about the case or any of
3 the questions that you were asked in voir dire. I'll give
4 you an instruction later on in how you conduct yourself in
5 the evening, but for now, go ahead and enjoy your lunch.
6 I think it's a beautiful, beautiful day out there. We'll
7 see you at 1:15.

8 (Jury panel out.)

9 THE COURT: Okay. Please be seated.

10 I just have a comment on an issue and give some
11 thought to how we should address it, and anything else you
12 want to talk about before we get you an hour break.

13 There was a question, I think, Ms. Feinstein,
14 you followed up, a question offhand by a prospective juror
15 that says, Oh, by the way, the First Amendment, you can --
16 something to the effect, you can say whatever you want.
17 We don't have a jury instruction about defamation. I went
18 back to take a quick look at it. We don't have an
19 instruction. I think the juror -- I don't know this, did
20 the juror that you asked that question to, was he or she
21 selected?

22 MR. FETZER: No.

23 THE COURT: Did you say something, Mr. Fetzer?

24 MR. FETZER: I believe he was excused, Your
25 Honor.

1 THE COURT: Thinks he was excused.

2 Well, Mr. Bolton, you agree that the common law
3 defamation and the attendant right to seek damages are not
4 precluded by the First Amendment?

5 MR. BOLTON: I agree with that, Your Honor.

6 THE COURT: Okay. I don't know whether we need
7 an instruction on that, but I'll give you the opportunity,
8 Ms. Feinstein, to give that some thought.

9 MS. FEINSTEIN: Thank you, Your Honor.

10 MR. BOLTON: Your Honor, while we're thinking
11 about instructions, a thought has occurred to me as I've
12 listened to some of the -- particularly, the expert
13 testimony that we did by deposition, and a lot of the -- a
14 lot of the -- there's going to be testimony here that
15 there was harassment and threats that were not made by
16 Mr. -- by Dr. Fetzer. And the question then arises as
17 to -- the extent to which one may be liable for something
18 that someone else did, based on my speech, where -- where
19 there's no incitement to lawlessness, obviously, in
20 addition to defamation, speech that would have a tendency
21 to incite lawlessness, but that's not an issue in this
22 case. And so I'm wondering if we need to instruct the
23 jury that that is not a basis for concluding causation.

24 THE COURT: Are you challenging, my
25 recollection, is that like Erie v. Pennsylvania or

1 International -- or wasn't that the old train case that
2 the boiler exploded and then the extent to which damages
3 could be attributed to the -- is that what you're talking
4 about?

5 MR. BOLTON: Yeah. Well, yeah. I mean, the --
6 the note -- the causation issue then between someone --
7 someone makes a statement and Your Honor finds it to be
8 false, but then in terms of damages, the argument is made
9 that -- that someone else read it and then committed a
10 criminal act.

11 THE COURT: So why, in your proposed verdict,
12 and the verdict now that you've asked me to enter, we're
13 only asking one question. You did not propose in your
14 verdict a causation question. Why not?

15 MR. BOLTON: Because I think that the
16 instructions cover causation, and so I think in order to
17 answer the damage question, I would assume -- certainly,
18 my argument would be that in answering the damage
19 question, implicit is that you find causation. I think
20 that's -- but -- but if it's not implicit then I would
21 request a causation questions -- question.

22 THE COURT: I don't think we have a -- first of
23 all, I appreciate you guys working together, but, you
24 know, issues -- it's never too late to raise issues.
25 There is no instruction remaining in the packet on

1 causation.

2 Ms. Feinstein, you agree you have the burden of
3 proving causation? Or Mr. Zimmerman?

4 MR. ZIMMERMAN: To a degree, Your Honor.
5 Wisconsin law assumes causation flowing naturally from
6 defamation when it's published in writing, in this
7 instance. I think the question of how far removed from a
8 statement can you get before it's no longer considered to
9 be caused by the defamation, maybe it's an interesting
10 hypothetical, but the nature of reputational harm does not
11 lend itself to a direct connection to the original
12 speaker's statement.

13 THE COURT: What's the -- what's the number on
14 the pattern instruction for defamation? Do you have that
15 handy?

16 MS. FEINSTEIN: Give me a second.

17 THE COURT: What number?

18 MR. ZIMMERMAN: I don't have it at my
19 fingertips.

20 THE COURT: Maybe it was submitted in the first
21 packet. Defamation 2500?

22 MS. FEINSTEIN: Yeah, that's the -- that's the
23 law note.

24 THE COURT: Well, you know, it's not jumping
25 right out at me. I mean, we don't have to give the jury

1 instructions today or tomorrow anyway. Part of -- I guess
2 the ball's in your court, Mr. Bolton. If you want to now
3 at this date change the special verdict or ask another
4 instruction, you need to draft it and then argue why. I'm
5 less concerned about adding the instructions, because
6 that's not unusual to add instructions based on how the
7 evidence comes in even at a late date. It is, after all,
8 just a statement of the law.

9 I don't know, I was taking a quick look, your
10 homework should be is there a statement in -- is there a
11 clear statement in terms of the remaining job for the jury
12 to do in a defamation case where the Court has answered
13 part of the question, that is, is it defamatory. If you
14 had -- if I had not had summary judgment, I would have
15 thought a standard special verdict would be, Was the
16 statement defamatory? "Yes" or "no." If the answer is
17 yes, did the defamatory statement cause damages? If the
18 answer was yes, then what amount fairly and accurately --
19 so generally, in most tort-like claims there's a
20 causation, and I would have thought that either that was
21 built into the specific instructions on pattern for
22 defamation or submitted on a causation. So if you want to
23 ask for a causation instruction and then argue and leave
24 the one question well enough alone in terms of there were
25 only -- you're right, I mean, I don't -- I cut you off or

1 maybe you trailed off.

2 I'm not -- I mean, I would make just a general
3 statement of law, Mr. Zimmerman, that in order to get to
4 damages, you have to show causation. I'm unaware of any
5 theory of which damages are recoverable absent causation,
6 because that doesn't make sense to me. So if we stick a
7 cause instruction in and then without a specific question
8 or put a question in -- I think it's a little late to
9 start changing the questions -- it might not be late to
10 add a causation. If we add the causation question, that
11 should take care of your concern about the foreseeability
12 or, if you were, relating to the remoteness concern about
13 damages too far not to have been caused. I can't --
14 again, answer your question now.

15 MR. BOLTON: I understand. I understand. And I
16 don't think you're asking -- I will do that forthwith but
17 probably not by the time we get back from lunch.

18 THE COURT: No. Why don't we take it up in the
19 morning.

20 MR. BOLTON: Okay.

21 THE COURT: And work -- continue to work
22 together. Look, if it's as simple as just putting in a
23 causation instruction, I don't -- and I mean, that's
24 really rather simply benign, the pattern instruction on
25 causation. If that takes care of it then consider that,

1 Mr. Zimmerman, as an option. If it's something more
2 dramatic, then I don't expect you to do one way or the
3 other here having now been in the first day of the trial.

4 Anything else you want to take up before you
5 guys try to salvage the better part of your lunch hour?

6 MR. ZIMMERMAN: Your Honor mentioned that we
7 might address the witness issues during lunch rather than
8 this morning.

9 THE COURT: Okay.

10 MR. ZIMMERMAN: I'm not -- I'm not --

11 THE COURT: So your witness is going to be --
12 let's go through the chronology. Your first witness is?

13 MR. ZIMMERMAN: We'll do the video deposition of
14 Dr. Lubit first --

15 THE COURT: Okay.

16 MR. ZIMMERMAN: -- this afternoon.

17 THE COURT: That, start to finish, do you know
18 how long that lasts?

19 MR. ZIMMERMAN: I think over two and a half
20 hours.

21 THE COURT: Somewhere, you've e-mailed me or you
22 filed the original? You have it in hand. Can you tab
23 where the --

24 MR. STEDMAN: I created a little list.

25 THE COURT: Great. Boy, it's handy to have a

1 third lawyer sitting on the end -- fourth lawyer. Give
2 that to my bailiff and then I'll -- is that, Mr. Bolton,
3 did you get a chance to see -- well, shouldn't -- you have
4 a copy of the transcript?

5 MR. BOLTON: Yes.

6 THE COURT: All right. Hand that -- just take a
7 look at what she wants me to rule on. I'll do that over
8 the lunch hour.

9 Yeah. It's not a big deal. What I would do and
10 I've done on videotape depositions, I use the same process
11 as if it was a live witness in court. You know, the local
12 rule simply just says state the objection or the grounds
13 for the objection, and under local rule, we don't allow
14 for further argument anyway unless I ask. If I need
15 further argument to help me decide whether to affirm or
16 overrule -- or sustain or overrule the objection, then
17 we'll do that right when you come back at 1:15. If I
18 don't need anything further, I will just tell you what my
19 ruling is and you'll either have to speed it up or figure
20 out something on the fly depending on your technical
21 abilities.

22 Your second witness?

23 MR. ZIMMERMAN: We'll call plaintiff,
24 presumably, first thing tomorrow morning.

25 THE COURT: Well, how long is the videotape

1 deposition?

2 MR. ZIMMERMAN: I think we said two and a half
3 hours. So after closings and instructions, my assumption
4 is we're probably going to butt right up against 4:30.
5 Sorry, openings.

6 THE COURT: We have opening statements. You're
7 right. Right.

8 MR. ZIMMERMAN: And then we'll end with
9 Dr. Fetzer. I don't think that will take very long.

10 I think my question is more focussed on the
11 witnesses that the defendant has identified and what
12 process we want to use to figure out whether their
13 testimony is appropriate given the limited scope of the
14 case that remains. It was helpful to hear Mr. Bolton
15 identify this potential testimony, but we remain concerned
16 that testimony about conversations they had at some point
17 in time may not be relevant to the questions that the jury
18 is being asked to decide.

19 THE COURT: Of course, I'm not sure what --
20 there's no motion in limine presented. They were on the
21 witness list. Did you depose these people?

22 MR. ZIMMERMAN: We did not.

23 THE COURT: Well, if you had deposed them, then
24 you might know a little more than you know now. I'm not
25 sure it's fair to make Mr. Bolton tell you what his line

1 of question is. Certainly, you have every right to make
2 an objection contemporaneous with the question that he's
3 asked.

4 MR. ZIMMERMAN: Our concern, Your Honor, is that
5 Mr. Bolton's responsibility is to show that his witnesses
6 are competent to testify about a matter that's relevant to
7 the questions being asked by a jury. And if we're not
8 going to do a decision ahead of time, we would ask the
9 opportunity to voir dire the witnesses outside of the
10 scope of the jury, so that way we can determine whether
11 any conversation bears any relationship to the damages
12 question that's being decided now.

13 THE COURT: Well, certainly, if you make an
14 objection, I'll rule on it at the time the objection is
15 made. There's no provision for the ability to voir dire a
16 witness. I mean, I'm not even sure how I would do that.
17 Maybe I have the discretion. It's not in the statutes,
18 but that then means the jury wouldn't be called back in to
19 hear the opening statement. We simply don't have time for
20 that.

21 If you -- I'm not criticizing your trial
22 strategy, but we could have forestalled all of this
23 suspense had you deposed and then brought on a motion in
24 limine and said, Look it, I asked this guy all these
25 questions. He had nothing relevant to say and to limit.

1 That was not done for good reason, presumably, but I think
2 Mr. Bolton has the right to call his witnesses and not to
3 sort of pre-try his case by telling you what his questions
4 are going to be. You'll have to figure it out, and if
5 either of you have appropriate objections based on the
6 rules of evidence, I'll rule on it.

7 If we get to a point where it's so far afield
8 and I'm confused as to where exactly we're going, once
9 having heard the line of questioning, then maybe,
10 Mr. Bolton, we'll excuse the jury and at that time in the
11 context of your line of questions, I might ask you where
12 are you going here and why is this relevant to the
13 ultimate question now being presented to the jury.

14 MR. ZIMMERMAN: And, respectfully, Your Honor,
15 Mr. Bolton disclosed already what the basic substance were
16 going to be. It's going to be conversations between those
17 two witnesses and Mr. Pozner. And our focus is how could
18 a conversation that they had prior to the defamation bear
19 any relationship to the question of whether Mr. Pozner was
20 damaged by reputation or emotionally by defamation that
21 later took place.

22 THE COURT: I would have to know what the
23 conversation was about. I mean, we can talk about
24 hypotheticals, but I could spin a hypothetical that would
25 be relevant, but I'm not sure that's germane. I mean,

1 what if -- okay. I'll give you an example. What if prior
2 to the defamation your client admittedly said, You can say
3 anything you want to say, I couldn't care less, it's like
4 water off a duck's back. I'm not going to feel any bad --
5 I mean, something that might be relevant to the
6 computation of compensatory damages or the existence of
7 post-traumatic stress syndrome. I don't know. I would
8 have to hear the nature of the conversation rather than
9 simply just the timing of the conversation.

10 MR. ZIMMERMAN: Well, at minimum, Your Honor,
11 if -- then what we would ask is that any testimony that
12 they're going to provide be limited to the factual basis
13 of the conversation and not their opinion about my
14 client's emotional state. They're not disclosed as
15 witnesses. They weren't -- sorry, as expert witnesses.

16 THE COURT: Mr. Bolton, you don't intend to ask
17 these witnesses questions which would be construed as
18 expert testimony, do you?

19 MR. BOLTON: I do not intend to ask expert
20 questions of the witnesses, no.

21 THE COURT: Do you intend to ask them questions
22 eliciting their opinions of any kind, lay or expert?

23 MR. BOLTON: I may ask them to describe his
24 demeanor or, you know, the presentation.

25 THE COURT: That's not an opinion. We'll have

1 to listen to the questions.

2 Anything else?

3 MR. ZIMMERMAN: No, Your Honor.

4 THE COURT: Anything, Mr. Bolton?

5 MR. BOLTON: No, Your Honor.

6 THE COURT: Okay. So we'll be back at 1:15.

7 (Off the record at 12:32 p.m.)

8 (Back on the record at 1:22 p.m.)

9 THE COURT: Okay. Let's go on the record.

10 In your chairs you -- have been put, I think my
11 old-fashioned way, I handwrote some O's for overruled and
12 S for sustained. I marked the deposition of Roy Lubit as
13 Exhibit No. 1 and Exhibit No. 2 -- Exhibit No. 2 will be
14 my rulings. Go ahead and sit, relax.

15 (Exhibits 1 and 2 marked for identification.)

16 Also, we have some people in the gallery. The
17 Court had, at the request of the -- I would say at the
18 instance of the plaintiff, entered an order prohibiting
19 use of electronic communication devices. As the parties
20 are aware, there was an instance of inappropriate sharing
21 of a videotape deposition. So suffice to say that the
22 plaintiff's concerns -- legitimate concerns have been
23 pressed upon the Court, and so I entered in an order
24 essentially saying no electronic communications, no
25 photographs.

1 Of course, we have three members accredited from
2 the media. Sometimes the life of a judge is drawing
3 lines, and I've decided to draw the line to allow the
4 accredited media to use their electronic communication
5 devices. I don't think that doesn't -- well, that doesn't
6 extend to taking pictures in the courtroom, by the way,
7 but certainly, they can open their laptops. Now, if
8 there's anyone else in the room that is an accredited
9 person in the media, then please, let me know. Otherwise,
10 there will be no use of electronic communications, no cell
11 phones, no computers except as otherwise specifically
12 approved by the Court. And, as indicated, I did give
13 approval to the *State Journal*, *The New York Times* and
14 *University of Connecticut* or *Connecticut*. Is there anyone
15 else that seeks the approval of the Court? Okay. Hearing
16 none.

17 Anything else you want to take up before we
18 bring the jury back in for opening statements?

19 MR. ZIMMERMAN: No, Your Honor.

20 MR. BOLTON: No, Your Honor.

21 THE COURT: We're probably not going to get done
22 with the videotape. We do take a 15 minute break middle
23 of the afternoon. I don't know how long the opening
24 statements are going to last, so just bear that in mind,
25 what good breaking point would be. I apologize not being

1 able to finish it, but I often talk to jurors after their
2 service and, like I indicated earlier on, they like to try
3 to avoid the traffic. Because of the narrowing of the
4 issues, I'm not worried about not finishing, but I'd
5 rather not press them the first day into the -- past the
6 point in time. So any time you want to break between 4:00
7 and 4:30 is certainly with the approval of the Court.

8 Okay. Anything else? Mr. Bolton?

9 MR. BOLTON: No, Your Honor.

10 THE COURT: Okay. Bring the jury in.

11 THE BAILIFF: All right. Please rise for the
12 jury.

13 (Jury in.)

14 THE COURT: Please be seated.

15 Okay. Welcome back. Thanks for coming back so
16 promptly. Here's what we're going to do this afternoon.
17 First, I'd like to give you your first instruction.
18 You've heard about jury instructions. This is my telling
19 you what the law is that will guide you in your role as
20 jurors. After we finish the opening instruction, each of
21 the sides will have an opportunity to make an opening
22 statement, and then after the opening statement, we're
23 going to begin our first witness with the plaintiff
24 calling a witness who will testify by videotape
25 deposition.

1 Before the trial begins, there are certain
2 instructions you should have to better understand your
3 functions as a juror and how you should conduct yourself
4 during the trial. Your duty is to decide the case based
5 only on the evidence presented at trial and the law I give
6 you in these instructions. Anything you may see or hear
7 outside the courtroom is not evidence. Do not let any
8 personal feelings about race, religion, national origin,
9 sex, or age affect your consideration of the evidence.

10 In fairness to the parties, keep an open mind
11 during the trial. Do not begin your deliberations and
12 discussion of the case until all the evidence is presented
13 and I have instructed you on the law. Do not discuss this
14 case among yourselves or with anyone else until your final
15 deliberations in the jury room. You will then be in a
16 position to intelligently and fairly exchange your views
17 with other jurors.

18 A party who brings the lawsuit is called the
19 plaintiff. In this case, the plaintiff is Leonard Pozner.
20 Mr. Pozner sues to recover damages relating to false
21 statements that the defendant published. In previous
22 proceedings, this Court already determined that the
23 defendant published untrue statements in the book, *Nobody*
24 *Died at Sandy Hook*. Mr. Pozner's claims that he has been
25 harmed as a result of the defendant's statements --

1 Mr. Pozner claims that he has been harmed as a result of
2 the defendant's statements.

3 A party against whom a claim is made is called a
4 defendant. In this case, the defendant is James Fetzer.

5 In previous proceedings, the Court determined:

6 1. Plaintiff is Leonard Pozner.

7 And, 2, Mr. Pozner had a son with a birthdate of
8 November 20th, 2006 who was declared dead as a result of
9 multiple gunshot wounds at 11:00 a.m. on December 14th,
10 2012 in Sandy Hook, Connecticut.

11 Defendant is James Fetzer. Defendant Fetzer
12 published the following statements:

13 Mr. Pozner's son's "death certificate is a fake, which
14 we have proven" on more than -- on more -- "proven on a
15 dozen or more grounds."

16 2. "Mr. Pozner sent . . . a death certificate, which
17 turned out to be a fabrication."

18 3. "As many Sandy Hook researchers are aware, the very
19 document Pozner circulated in 2014," which is -- "with its
20 inconsistent tones, fonts, and clear digital manipulation,
21 was clearly a forgery."

22 And finally, 4, Mr. Pozner's son's death certificate
23 "turned out to be a fabrication, with the bottom half of a
24 real death certificate and the top half of a fake, with no
25 file number and the wrong estimated time of death at

1 11:00 a.m., when 'officially' the shooting took place
2 between 9:35 and 9:30 that morning."

3 The Court concluded that Mr. Pozner did not
4 possess or circulate a fake death certificate for his son
5 or one that was a fabrication or a forgery and that these
6 statements published by Dr. Fetzer were false and defamed
7 Mr. Pozner.

8 As members of the jury, you have the job of
9 determining what, if any, compensation Mr. Pozner is
10 entitled to receive as a result of Dr. Fetzer publishing
11 these defamatory statements.

12 We will stop, or "recess," from time to time
13 during the trial. And as I say, if you need to take a
14 recess at any time, just, please, raise your hand or try
15 to get my attention or the bailiff's attention.
16 Otherwise, we'll take just a mid-afternoon break.

17 You may be excused from the courtroom when it is
18 necessary for me to hear legal arguments from the lawyers.
19 If you come into contact with the parties, lawyers or
20 witnesses, do not speak with them. I have ordered them
21 not to have contact with you either. Do not listen to any
22 conversations about this case.

23 Do not research any information that you
24 personally think might be helpful to you in understanding
25 the issues presented. Do not investigate this case on

1 your own. Do not read any newspaper reports or listen to
2 any news reports on the radio, television about this
3 trial. Do not consult dictionaries, computers, websites
4 or other reference materials for additional information.
5 Do not seek information regarding the public records of
6 any party or witness in this case. Any information you
7 obtain outside the courtroom could be misleading,
8 inaccurate, or incomplete. Relying on the information is
9 unfair because the parties would not have an opportunity
10 to refute, explain, or correct it.

11 Now, I know as a matter of human nature, you're
12 already thinking this is so interesting, you might be
13 tempted to, just, well, look up online, maybe do a little
14 research. Please, do not do those things. This trial is
15 relatively short. I want you to focus all your attention
16 and your information only on what evidence is presented to
17 you in trial. After this case is over, you can do
18 whatever you want, but during the pendency of this trial
19 and until the verdict is entered, do not go online, do not
20 do your own research. Do not read anything about Sandy
21 Hook or anything that happened anywhere after the event in
22 question.

23 Additionally, do not communicate with anyone
24 about this trial or your experience as a juror while you
25 are serving on this jury. Do not use a computer, cell

1 phone or electronic device with communication capabilities
2 to share any information about this case. Time and time
3 again in this state and elsewhere you hear jurors who like
4 have Facebook or social media or bloggers, all of a sudden
5 they can't resist and they start blogging on their breaks
6 or at lunch or in the evening about this case or what
7 you're doing. Please take a break from your social media
8 or the computer. Do not communicate with anyone. Do not
9 do any of those things on your communication device. Do
10 not communicate by blog, e-mail, text message, Twitter,
11 Facebook, or other social networking sites in any way, on
12 or off the computer or cell phone or any other electronic
13 device.

14 Do not permit anyone to communicate with you,
15 and if anyone does so despite your telling them not to,
16 you should report that to me. I appreciate that it's
17 tempting when you go home in the evening to discuss this
18 case with another member of your household, but you must
19 not do so. This case must be decided by you, the jurors,
20 based on the evidence presented in the courtroom. People
21 not serving on this jury and have not heard the evidence,
22 and it's improper for them to influence your deliberations
23 and decision in this case. After this trial is completed,
24 you are free to communicate with anyone in any manner.

25 These rules are intended to ensure jurors remain

1 impartial throughout the trial. If any juror has any
2 reason to believe that another juror has violated these
3 rules, you should report that to me by notifying the jury
4 bailiff. If jurors do not comply with the rules, it could
5 result in a new trial involving additional time and
6 significant expense to the parties and the taxpayers.

7 You are to decide the case solely on the
8 evidence offered and received an at trial. Evidence is:

9 1. testimony of witnesses given in court, both on
10 direct and cross-examination, regardless of who called the
11 witness;

12 2. deposition testimony presented during trial,
13 whether by written transcript or by videotape or other
14 recording;

15 3. exhibits admitted by me regardless of whether they
16 go to the jury room; and

17 4. any facts to which the lawyers have agreed or
18 stipulated or which I have directed you to find.

19 It is not necessary that every fact be proved by
20 a witness or an exhibit. A fact may be proved indirectly
21 by circumstantial evidence. Circumstantial evidence is
22 evidence from which a jury may logically find other facts
23 according to common knowledge and experience.

24 Circumstantial evidence is not necessarily better or worse
25 than direct evidence. Either type of evidence can prove a

1 fact.

2 Anything you may have heard or seen outside the
3 courtroom is not evidence. Remarks of attorneys are not
4 evidence. If any remark suggests certain facts not in
5 evidence, disregard the suggestion.

6 Now, normally, a plaintiff will produce all
7 witnesses and exhibits supporting plaintiff's claim
8 against a defendant before the defendant introduces any
9 evidence, although exceptions are sometimes made to that
10 rule to accommodate witnesses. After the plaintiff's case
11 is presented, the defendants may present witnesses and
12 exhibits to establish any defenses. There is no
13 requirement that the defendants call any witness or
14 present any evidence. If the defendants introduce
15 evidence, the plaintiff is then permitted to offer
16 additional evidence to rebut the defendant's case. Each
17 witness is first examined by the lawyer who called the
18 witness to testify and then the opposing lawyer is
19 permitted to cross-examine.

20 At times during the trial, objections may be
21 made to the introduction of evidence. I do not permit
22 argument on objections to evidence to be made in your
23 presence. Any ruling upon objections will be based solely
24 upon the law and are not matters which should concern you
25 at all. You may not infer from any ruling that I make or

1 from anything that I should say during the trial that I
2 hold any views for or against either party to this
3 lawsuit.

4 During the trial, I will sustain objections to
5 questions asked without permitting the witness to answer
6 or, where an answer has been made, will instruct that it
7 be stricken from the record and that you are to disregard
8 it and to dismiss it from your minds. You should not draw
9 any inference from the unanswered questions, nor may you
10 consider testimony which has been stricken in reaching
11 your decisions. This is because the law requires that
12 your decisions be made solely upon the competent evidence
13 before you.

14 If any member of the jury has an impression that
15 I have an opinion one way or another in this case,
16 disregard that impression entirely and decide the issues
17 solely as you view the evidence. You, the jury, are the
18 sole judges of the facts, and the Court is the judge of
19 the law only.

20 Now you are not required to but you may take
21 notes during this trial, except during opening statements
22 and closing arguments. The court will provide you with
23 materials. In taking notes, you must be careful that it
24 does not distract you from carefully listening to and
25 observing the witness.

1 You may rely on your notes to refresh your
2 memory during your deliberations. Otherwise, keep them
3 confidential. After the trial, the notes will be
4 collected and destroyed.

5 Now you will not have a copy of the written
6 transcript of the trial testimony available for use during
7 your deliberation. You may ask to have specific portions
8 of the testimony read to you. You should pay careful
9 attention to all the testimony because you must rely
10 primarily on your memory of the evidence and the testimony
11 introduced during trial.

12 During the trial, the lawyers will often refer
13 to and read from depositions. Depositions are transcripts
14 of testimony or videotapes taken before the trial. The
15 testimony may be that of a party or anybody who has
16 knowledge of the facts relating to this lawsuit.
17 Deposition testimony, just like testimony during the
18 trial, if received into evidence at the trial, may be
19 considered by you along with the other evidence in
20 reaching your verdict in this case.

21 It is the duty of the jury to scrutinize and to
22 weigh the testimony of witnesses and to determine the
23 effects of the evidence as a whole. You are the sole
24 judges of the credibility, that is, the believability, of
25 the witnesses and of the weight to be given to their

1 testimony.

2 In determining the credibility of each witness
3 and the weight you give to the testimony of each witness,
4 consider these factors:

5 whether the witness has an interest in or lack of
6 interest in the result of the trial;

7 the witness' conduct, appearance, and demeanor on the
8 witness stand;

9 the clearness or lack of clearness of the witness'
10 recollection;

11 the opportunity the witness had for observing and for
12 knowing the matters the witness testified about;

13 the reasonableness of the witness' testimony;

14 the apparent intelligence of the witness;

15 bias or prejudice, if any has been shown;

16 possible motives for falsifying testimony; and

17 all other facts and circumstances during the trial
18 which tend to either support or to -- or to discredit the
19 testimony.

20 Then give to the testimony of each witness the weight you
21 believe it should receive.

22 There's no magic way for you to evaluate the
23 testimony; instead, you should use your common sense and
24 experience. In everyday life, you determine for yourself
25 the reliability of things people say to you. You should

1 do the same thing here.

2 After all the evidence is introduced and both
3 parties have rested, the lawyers will again have an
4 opportunity to address you in closing arguments. While
5 the closing arguments are very important, they are not
6 evidence and you are not bound by the arguments of either
7 lawyer.

8 After the final arguments are concluded, I will
9 instruct you on the rules of law applicable to the case,
10 and you will then retire for your deliberations. Your
11 function as jurors is to determine what the facts are and
12 to apply the facts -- and to apply the rules of law that I
13 give you to the facts. The conclusion you reach will be
14 your verdict. You will determine what the facts are from
15 all the testimony that you hear and from the exhibits that
16 are submitted to you. You are the sole and exclusive
17 judges of the facts. In that field, neither I nor anyone
18 else may invade your province. I will try to preside
19 impartially during this trial and to not express any
20 opinion concerning the facts. Any views of mine as to
21 what the facts are, are totally irrelevant.

22 I do caution you, however, that under your oath
23 as jurors, you are duty bound to accept the rules of law
24 that I give you whether or not you agree with them. As
25 the sole judges of the facts in this case, you must

1 determine which of the witnesses you believe, what portion
2 of their testimony you accept, and what weight you attach
3 to it.

4 We have now reached the stage of the proceeding
5 where both lawyers have an opportunity to make an opening
6 statement. The purpose of an opening statement is to
7 outline for you what each side expects to prove so that
8 you will better understand the evidence as it is
9 introduced during the trial. I must caution you, however,
10 that the opening statements are not evidence. You should
11 not concern yourself about whether your answers will be
12 favorable to one party or to another nor what the final
13 result of this lawsuit may be. After counsel have
14 completed their opening statements, we will then begin the
15 trial, by the plaintiff's lawyer calling the first
16 witness. And in this case, it will be the videotape
17 deposition.

18 Okay. Ms. Zimmerman.

19 MS. ZIMMERMAN: See if I can get this on right.

20 May it please the Court.

21 THE COURT: Thank you.

22 MS. ZIMMERMAN: Mr. Pozner, counsel, Mr. Fetzer,

23 My name is Genevieve Zimmerman, and I'm one of
24 the lawyers that has the great privilege of representing
25 Mr. Pozner here today.

1 And like any case, this has a story. But in
2 this instance, there really are two stories. The first
3 part of the story is really sad, and it starts with a
4 little boy named Noah Pozner. He was six years old on
5 December 14th of 2012. Pardon me. That was the day that
6 little Noah was murdered with so many of his classmates at
7 the Sandy Hook Elementary School in Newtown, Connecticut.
8 But as we started to tell you this morning, that is not
9 the story that we are here to talk about in this trial.

10 The story that you are going to hear about this
11 week is about how Leonard Pozner, Lenny, who's sitting
12 over here at counsel table, how he tried the best he could
13 and continues to do so, to recover from that tragedy. You
14 will hear him tell you about how staying in Newtown was
15 really too much for himself and his wife and their two
16 surviving daughters, so they moved to Florida. You'll
17 hear him tell you that he spent every day putting one foot
18 in front of the other, and that he started to recover as
19 best as anybody could.

20 But you'll also hear him tell you that something
21 started to change in the summer of 2014, and that is when
22 Professor Fetzner's book came out. He published a book
23 claiming that Mr. Pozner forged Noah's death certificate.
24 He claimed that nobody died at Sandy Hook. That's the
25 title of the book, but of course that's not true.

1 As Judge Remington told you earlier today, just
2 a few minutes ago, this is my opportunity to forecast for
3 you what you can expect to hear during this trial, to give
4 you a little bit of a roadmap. So I want you to
5 understand right now at the outset that we are not
6 asking -- we are not asking this jury to hold Mr. Fetzter
7 responsible for what happened to Noah. We're not here
8 asking for that. But we are going to ask, at the
9 conclusion of this evidence, that you, the jury, hold him
10 responsible for the actions he chose to take and the
11 statements that he made about our client.

12 Now, Mr. Pozner, you'll hear that he was
13 probably more fragile than some other people may have been
14 and that that makes sense given all that he's been -- been
15 through. But you'll also hear that Mr. Fetzter knew that.
16 And at the close of the evidence we are going to ask that
17 you hold Mr. Fetzter responsible for his choices in
18 publishing untruthful statements about our client.

19 So Judge Remington has explained earlier this
20 morning that this is a civil case, and that means that the
21 only issue that's really going to be decided by you, the
22 jury, here is what amount of money, if any, should the
23 defendant be forced to pay to Mr. Pozner for his
24 defamatory statements. No one's going to jail. This is
25 not a criminal case.

1 But as the judge explained to you earlier this
2 morning, our constitution and the court system that we've
3 established, it relies on people like you to serve as
4 jurors in cases like this. In fact, the Seventh Amendment
5 doesn't get a lot of -- a lot of attention, but that's one
6 of the things that the Founding Fathers did. They
7 preserved the right to a jury trial in the Bill of Rights.

8 So today is the beginning of a trial where you
9 folks, having been called out of the community as members
10 of this jury, now are going to hear evidence and you're
11 going to resolve a dispute.

12 In our country, this is how we -- we resolve
13 disputes like this, rather than issuing or resorting to
14 tactics like violence or fear. And part of this dispute,
15 as you know already, has already been resolved by the
16 Court here, so the only real remaining question is what
17 kind of damages this caused to Mr. Pozner, and by damage,
18 we mean money, because that's all we can do. We can't put
19 the genie back in the bottle here.

20 So honor means different things to different
21 people. And at the close of this evidence, you're going
22 to be asked to evaluate and place a dollar figure on what
23 that might mean in the context of the facts of this
24 particular case.

25 So some of you may have heard about a historic

1 dispute between one of our vice presidents, Aaron Burr,
2 and Alexander Hamilton, the guy who's on the \$10 bill. I
3 know my kids love the music from *Hamilton*, the "Ten Duel
4 Commandments." And I got to thinking about that as I was
5 thinking about what I might say to you this afternoon.
6 But Alexander Hamilton and Aaron Burr, they got into a gun
7 duel, a battle, because of honor, because of what people
8 said. They took the issue of honor so seriously that they
9 engaged in a duel, and one of them died. But so today, at
10 the beginning of this trial, instead of a duel, Mr. Pozner
11 brought his dispute against Professor Fetzer to this
12 court, and ultimately, to you, the jury, to decide these
13 issues.

14 So what are you not going to be asked to decide?
15 You're not going to be asked whether or not Sandy Hook was
16 real. You're not going to be asked about whether or not
17 26 people were murdered that day. You're not going to be
18 asked whether Noah Pozner was among them. You're not even
19 going to be asked whether our client, Mr. Pozner, a
20 grieving father, forged his death certificate. The Court
21 has already concluded those issues. The Court has
22 concluded that Noah was a real, live boy; that Noah was
23 born in 2006; and that Noah lived; and that Noah died at
24 the Sandy Hook Elementary School in Newtown, Connecticut
25 on December 14th of 2012. The Court has concluded that

1 the death certificate was prepared and it was real. It
2 was not forged. And the Court has concluded that the
3 defendant, Mr. Fetzner, Professor Fetzner falsely wrote that
4 Mr. Pozner forged the death certificate, and that these
5 remarks in writing in this book, multiple editions of this
6 book, defamed Mr. Pozner.

7 The judge will instruct you on the law at the
8 close of this case, that the law does, in fact, recognize
9 a claim in a civil case like this for defamation, because
10 saying false things matter, lying about other people
11 matter, harming people matter. And you'll be asked a
12 question about whether or not that caused damage to
13 Mr. Pozner, and if so, what amount of money is fair.

14 So I'm going to tell you what I expect of -- the
15 evidence is going to show here today and the next couple
16 days. We think that this trial is going to be pretty
17 brief. We're calling three witnesses.

18 One you're going to hear from today by videotape
19 deposition. He's the only expert in the case. There's no
20 dispute about the fact that he's an expert. His name is
21 Dr. Lubit. He's a psychiatrist and a medical doctor. He
22 trained at Cornell and at NYU. He finished his residency
23 at Yale. He has years of treat -- years of experience
24 treating people with PTSD, and in fact, he was completing
25 his postdoctoral work in the shadows of the Twin Towers

1 when those fell. He practiced then at St. Vincent's in
2 New York City on September 11, 2001, which was the closest
3 major medical center near Ground Zero. And as we can all
4 imagine, there was a lot of PTSD that happened that day
5 and the months and years following.

6 So Dr. Lubit, he has years of diagnosing,
7 treating, and caring for people who suffered from trauma
8 and who have been diagnosed with PTSD. You're going to
9 hear him testify this afternoon by videotape. He couldn't
10 leave his practice to be here today, but he felt it was so
11 important that he agreed to provide his testimony last
12 weekend.

13 You will hear Dr. Lubit testify that Mr. Pozner
14 was diagnosed with PTSD by his own medical doctors, and
15 that he started to improve in the months following the
16 Sandy Hook tragedy. But you'll also hear Dr. Lubit
17 explain that because of the defendant's defamation, that
18 Mr. Pozner is unable to complete the grieving process and
19 move forward with the healing. He -- you will hear him
20 testify that Professor Fetzner is the cause of that harm.

21 You're also going to hear from Mr. Pozner. He's
22 the plaintiff in this case and Noah was his son and there
23 is no doubt that Sandy Hook was a terrible event in his
24 life. He's going to tell you about the funeral. He's
25 going to tell you about his experience with some of the

1 conspiracy theorists that have come to share their
2 experiences or their opinions with people in the years
3 since then. And he's going to tell you about his
4 experience with Professor Fetzner, the defendant in this
5 case. He's going to tell you about what has happened as a
6 result of this book. He's going to tell you that he's
7 received threats. He's going to talk to you about what
8 actions he's had to take to protect himself and his family
9 and about what kind of questions he has about his safety
10 every single day he goes outside, every time he meets a
11 new person. And Mr. Pozner's going to be able to tell
12 that story better than I can.

13 The last witness we're going to call in our case
14 is going to be the defendant himself, Mr. Fetzner. And
15 I'll tell you what he's not going to say. He's not going
16 to deny he wrote this book, *Nobody Died at Sandy Hook*.
17 He's not going to deny that -- that he wrote that
18 Mr. Pozner forged his son's death certificate. He's not
19 going to deny that he published the book, he's not going
20 to deny that there was a banned additional -- edition
21 online. He's not going to deny that there's a second
22 edition as well. In fact, he won't deny that it's his
23 understanding that ten million people have accessed his
24 book online. Ten million. He's not going to admit that
25 some of the readers have taken additional action based on

1 his book.

2 Additionally, Professor Fetzer is going to --
3 he's going to testify to you, he's going to agree and
4 admit that he's violated this Court's order on
5 confidentiality in e-mailing out videos taken in this
6 case.

7 So the only expert you're going to hear from
8 during the course of this trial is Dr. Lubit, and as I
9 said, the parties agree that he's an expert. He's the
10 only one you're going to hear from.

11 Now we expect that -- that Professor Fetzer is
12 going to call -- that he may call himself back to the
13 stand for additional time and that he may call two
14 additional witnesses. Both of the other witnesses he
15 expects to call are coauthors on other chapters of the
16 book, *Nobody Died at Sandy Hook*. Both of them have said
17 vile, awful things, both about my client and about his
18 son, and we'll explore that during the testimony.

19 But as Judge Remington just explained to you,
20 I'd encourage you to pay close attention as -- as
21 witnesses are called to the stand. What is their motive
22 to testify? What is their demeanor? Is this a person
23 that you can trust?

24 I expect that Mr. Fetzer's lawyers are going to
25 attempt to convince you that our -- that, first of all,

1 that maybe the lies weren't that big of a deal. Or
2 maybe -- maybe the argument is going to be that Mr. Pozner
3 was so damaged by the death of his son that the damage
4 that Mr. Fetzer caused was minimal and perhaps ought to be
5 excused. Keep those -- keep those ideas in your mind as
6 you hear the testimony that's presented to you in the next
7 couple of days.

8 Now after hearing the evidence, we're going to
9 have another opportunity, as the Court just explained, to
10 make arguments to you about what we think the damages are
11 and how you might begin to calculate such a thing. But
12 for now, I'd just like to thank you for coming in this
13 morning, for participating in our democracy in this way.
14 It's a really important process. And I'll extend those
15 thanks on behalf of both the plaintiff and on behalf of
16 the defendant. This is the most important case for both
17 sides. It's important that you pay attention, and we
18 thank you for your service in that way.

19 We hope and expect that the evidence that you're
20 going to hear in this trial is going to be clear and
21 streamlined, and that at the end of the evidence when you
22 have all of the facts in front of you, that you're going
23 to be confident in evaluating and rendering a verdict in
24 favor of our client. And that's all I've got to say to
25 you right now.

1 THE COURT: Thank you, Ms. Zimmerman.

2 Mr. Bolton.

3 MR. BOLTON: I do this all the time at home.

4 Good afternoon. Am I being picked up? Can you
5 hear me okay?

6 MR. BAKER: I don't think so.

7 THE COURT: No. Pull it up a little.

8 MR. BAKER: Move it closer.

9 MR. BOLTON: Okay. That better? Okay.

10 I must confess at the outset, and as
11 Ms. Zimmerman notes, that we -- we threw out perhaps some
12 false teasers during the voir dire, because you're not
13 actually going to get to decide whether or not Sandy Hook
14 occurred or didn't occur. Your role in this particular
15 case is going to be very limited but very important.

16 In -- in any lawsuit there are multiple roles to
17 play in this system, and in this particular case, the
18 Court has taken the role in determining whether or not
19 certain statements were or were not false and defamatory,
20 and so that issue is not before you. And so to the extent
21 that during the voir dire there was some suggestion that
22 you were going to maybe get to decide some of these issues
23 relating to the underlying research that the Sandy Hook
24 researches rely on, that's not going to be your role.
25 Your role then is simply to determine what damages, if

1 any, flowed from particular statements that the Court has
2 determined to be the ones that offend.

3 And, when I listen to Ms. -- Ms. Zimmerman, I
4 get the impression that on trial in terms of damages is
5 everything that the Sandy Hook researchers have said about
6 why they believed that the mainstream narrative is not
7 true. And those statements are -- are much more than what
8 the Court has determined to be at issue in this case.

9 So in terms of the broader research in terms of
10 Sandy Hook, that -- and then the multiple researchers,
11 including Dr. Fetzer, who have -- have researched on that,
12 that broader issue has not had its day in court. It could
13 have had its day in court, perhaps, but Mr. Pozner made a
14 decision that he wanted to -- that he was only going to
15 claim that very narrow, specific statements were false and
16 defamatory. And that -- and I -- I -- that is perfectly
17 fine in terms of a choice that he made.

18 But, it also circumscribes then what is at issue
19 in this case, because the question here then for you will
20 not be whether or not the general universe of Sandy Hook
21 researchers, and -- and the nature of the research itself
22 is damaging, but rather, the question -- the question is
23 simply that you will be asked to determine is whether or
24 not and if there was -- whether or not there was injury,
25 and if that injury was caused by the particular statements

1 at issue in this case.

2 And, what do I need to do? What I -- what I
3 want to show you, because I don't think it -- and the
4 Judge alluded to it in his introductory instructions, but
5 I think it's important that you understand what it is.
6 These are the statements. These are the statements that
7 are at issue. So the question is whether or not these
8 particular statements caused the injury or caused any
9 injury to Mr. Pozner, and the extent to which that injury
10 has damaged him.

11 Now when I say that your role is limited, it is
12 not an easy role, however, because in this case, the
13 nature of the damage that is being claimed is, basically,
14 emotional distress-type damages. And, there's no MRI for
15 that. There's no blood test for that. There's no range
16 of motion test for that. There's no mental acuity test
17 for it. The damages that Mr. Pozner is claiming are
18 basically self-reported, which doesn't mean, by the way,
19 that they're not true, but it makes your job much more
20 difficult because they may not be true or the
21 self-reporting may be influenced by subtle factors that
22 even -- that even Mr. Pozner -- and I -- I apologize. I
23 keep calling him Pozner and it's a short O. In the
24 Seventh Circuit there was a judge we all knew, Judge
25 Posner, and I -- I keep using that pronunciation, and I

1 apologize.

2 So the -- when I say that the diagnosis and the
3 injury that is claimed then is based strictly on
4 self-reporting, and that that -- and that you have to
5 determine then both the reliability and the extent to
6 which the injury occurs. And so, for instance, Dr. Lubit,
7 who is identified on a couple of occasions by Attorney
8 Zimmerman as the only expert in this case, and, quite
9 frankly, that's a decision that we made because we're
10 comfortable with that decision. These are self-reported
11 injuries, and Dr. Lubit, himself, when I talked with him,
12 identifies some of the factors that you should consider in
13 evaluating this case.

14 For instance, the concept of secondary gain is
15 something that can influence, subtly or otherwise, an
16 individual's reporting of symptoms. Secondary gain is
17 when there's some external factor that would influence
18 someone in their testimony or in their -- not in their
19 testimony, but in the description of their symptoms. What
20 is secondary gain? What is an external? And, quite
21 frankly, in my -- in my world, because I'm a lawyer, the
22 most obvious secondary gain item is litigation.
23 Litigation can influence subtly or otherwise how people
24 perceive their injuries.

25 But Dr. Lubit will also tell you -- he will also

1 acknowledge that -- that, yes, the type of injury that
2 we're dealing with or that is claimed is self-reported,
3 but he will also tell you that in terms of causation, the
4 issue of causation, whether or not the reported symptoms
5 are caused by A or B, Dr. Lubit will say that that is the
6 role of the jury. It is not his role. And the reason he
7 recognizes that is because ultimately, the question of
8 causation, from one event causing something else, is not
9 something that is a matter of his expertise.

10 So we don't really know what more would be
11 gained by an additional expert, because -- because
12 largely, Dr. Lubit agrees that in the final analysis, the
13 decision is yours. But, he does, nonetheless, reach some
14 opinions. And his opinion, I think -- I think the
15 evidence, both -- both the internal evidence within his
16 own deposition and the evidence from other witnesses,
17 including Mr. Pozner, will suggest that -- that his -- his
18 opinions are -- are, quite frankly, not well founded or at
19 least questionable in this case.

20 For instance, Dr. Lubit will say that Mr. Pozner
21 experienced traumatic stress disorder as a result of the
22 death of his son. And that would be -- that would be a
23 fairly typical sort of diagnosis for someone experiencing
24 that type of trauma, somebody who experienced a war
25 situation, somebody who was involved, witnessed some sort

1 of violent incident, but somebody that was -- that -- that
2 exposed to some -- some extraordinarily traumatic event.
3 So he acknowledges that.

4 But Dr. Lubit then goes on to say that in his
5 opinion, in his professional opinion, he says that
6 Mr. Pozner would have probably recovered from that. But
7 he goes on to say that there was a second injury. And he
8 says that the second injury was, seemingly, the result of
9 these statements. That -- that these written statements
10 were the equivalent of the traumatic event that is
11 typically associated with post-traumatic stress disorder.

12 And not only does he attribute a second incident
13 of post-traumatic stress disorder to these written words,
14 unlike the death of Mr. Pozner's son, Dr. Lubit says, and
15 these words -- and from these words, Mr. Pozner, in the
16 doctor's opinion, to a reasonable degree of professional
17 certainty, from these words Mr. Pozner will never fully
18 recover. He will recover from the death of his son,
19 but -- but these words will be affecting him forever.

20 It's not clear how he arrives at the distinction
21 that -- that even if you had two incidents of
22 post-traumatic stress disorder, why one would be
23 recoverable but the other would not be recoverable. But I
24 think from your perspective, you have to make a
25 determination whether or not these are the type -- that

1 this is the type of event that causes the injury that
2 Dr. Lubit claims and that Mr. Pozner claims.

3 But I will also say this, perhaps to his credit
4 and perhaps to his discredit, Dr. Lubit's opinion is
5 atypical in many respects. It is atypical for one -- in
6 one respect that Dr. Lubit never met Mr. Pozner. He
7 talked with him on the phone a couple of times. Most
8 recently, the last time he talked with him was the day
9 before Dr. Lubit's testimony in this case. And he will
10 tell you, when we chatted, that it's not typical that he
11 would render an opinion without having actually met the
12 individual.

13 Dr. Lubit's opinion is also somewhat atypical in
14 that he asked for and received no prior medical records.
15 There's no -- Dr. Lubit, a medical psychiatrist, rendered
16 an opinion to a reasonable degree of professional
17 certainty that Mr. Pozner will suffer from post-traumatic
18 stress disorder for the rest of his life without even
19 having asked for or looked at any prior medical records.
20 And he will tell you that that also is atypical.

21 Mr. -- or Dr. Lubit also will tell you that his
22 opinion is based, in many respects, not on these words
23 that are what the Judge has determined to be at issue, but
24 he -- he will testify that what -- what's really traumatic
25 in this event, in this -- in this circumstance, is that

1 Mr. Pozner received threats, and that he -- that he was
2 the subject of harassment.

3 I have two things to say in response to that.
4 Number one, his information is largely incorrect. Maybe
5 I've got three things.

6 Number two, none of that -- and I'm going to
7 tell you right now, there is an incident, there is one
8 well-known incident in which a woman named Lucy Richards
9 made -- made vile threats by, I believe, telephone, but
10 maybe they were e-mailed, to Mr. Pozner. But there --
11 there is absolutely no evidence that this individual at --
12 in any way, shape, or form was incited to such acts of
13 lawlessness by Professor Fetzer. There's no evidence that
14 she even read these words. There's no evidence that
15 anybody who has made any threat to Mr. Pozner has read
16 these words or in any way has been influenced by these
17 words.

18 There similarly is no evidence that anyone
19 who -- and harassed I know is a -- is kind of a difficult
20 term, because what one considers to be harassing and what
21 another considers to be harassing may be different. But
22 without quibbling, there's no evidence that anyone who
23 harassed Mr. Pozner read or was incited to lawlessness by
24 anything that Professor Fetzer wrote.

25 And, the third thing, I said there was a third

1 thing, the notion of causation I think is going to be
2 something that you -- that you need much address. That
3 is, it isn't the case that everything that happens
4 after -- people -- this is not the first time that someone
5 has made a -- has written something that has -- has
6 ultimately proven to be untrue and found to be defamatory
7 as a result. It's not the first time that this has
8 happened. It's not the first time that it has come into
9 court, and in that respect, this case is like many
10 defamation cases.

11 But what's important is that the defamation,
12 itself, does not automatically lead to damages. There has
13 to be a causal relationship between what is claimed and --
14 and the statements that are under scrutiny. And in this
15 case, basically, what the doctor and Mr. Pozner are
16 arguing is that if -- if Mr. -- or if Professor Fetzer
17 writes something or if anybody -- if anybody writes
18 something that is later proven to be false, that in that
19 instance, you become vicariously liable for the world
20 outside. That if -- if somebody else then, who may not
21 have even read it, who may -- may not have been incited at
22 all by it, that if -- if a person writes something and
23 someone else then engages in a criminal threat or in some
24 form of harassment, that -- that that somehow satisfies
25 the issue of causation, that the -- that the author

1 basically becomes liable vicariously then for whatever
2 anybody else does. And that is not I think what you will
3 find to be a proper understanding or extension of the
4 concept of causation. And, in particularly in this case,
5 there is no evidence of any relationship between any
6 harassment or threats, and Mr. -- Professor Fetzer's
7 writing. And you will also learn that certainly,
8 Professor Fetzer has never made any threats or harassed
9 Mr. Pozner.

10 So I think -- I think -- I think you're going to
11 find that the opinion of Dr. Lubit -- you need to look at
12 it and listen very carefully to what he says, and the
13 basis for which he reaches his conclusion, because he
14 also -- he also speaks very generally. He basically -- he
15 basically says that it would be -- that the entire
16 universe of skeptic literature is traumatic to Mr. Pozner,
17 but again, the entire universe is not at issue here of
18 such literature and such research. This is what is at
19 issue.

20 When I say that Mr. Lubit or Dr. Lubit's opinion
21 is atypical, he also says that what's particularly
22 upsetting in this particular case is that when someone has
23 suffered the loss of a child or a loved one, that -- that
24 it's particularly upsetting then when that person does not
25 receive validation of their grief and their loss. And in

1 this case, the doctor says that someone in the universe of
2 Sandy Hook researchers who deny that Sandy Hook occurred,
3 that they are guilty of not providing the sort of
4 validation and support of Mr. Pozner's loss.

5 But I asked him, because I -- and I'm not, I'm
6 not an expert in this area, so in large measure, I was
7 learning a lot of things from Dr. Lubit as well. I asked
8 him whether in his experience that concept of validation,
9 whether -- whether someone is going to be affected because
10 they don't receive validation from somebody as remote as
11 Dr. Fetzer, someone who he doesn't even know. Is it
12 required that you receive validation from the universe in
13 order to not be injured? If someone has suffered a loss,
14 is there a psychological expectation that they will
15 receive validation for their loss from the world? And
16 while Dr. Lubit seems to think that that might be true, he
17 did concede to me that he was unaware of any case where he
18 had seen the absence of validation to be so remote.

19 Bottom line here is that I want you to listen to
20 Dr. Lubit's testimony, because I think he tells us a lot
21 about the science and how you evaluate these things, but I
22 think ultimately, if you actually listen to the principles
23 that -- that he analyzes and then look at whether or not
24 he actually applied the principles, I think you'll find
25 that the doctor, himself, has engaged in -- in what is

1 also known in, I think in his domain, as confirmation
2 bias. That is, that you begin to review all of the facts
3 and circumstances in a singular way in order to confirm a
4 particular conclusion that you're trying to arrive at.
5 And in this particular case I asked Dr. Lubit,
6 particularly given that -- that the diagnosis in his
7 opinion is based strictly on subjective self-reporting, I
8 asked him whether or not he had -- whether or not there
9 was any countervailing facts that he -- that he thought at
10 least went in the -- the other ledger. And it's somewhat
11 interesting given the concept of confirmation bias,
12 because he then went out of his way to tell me that
13 anything that pointed the other way was really not nearly
14 as relevant as the self-reporting of Dr. -- or of
15 Mr. Pozner.

16 I think the evidence will also show then from
17 Mr. Pozner that the doctor's diagnosis and his opinions
18 based on what I think is largely inaccurate information, I
19 think the evidence will also indicate from Mr. Pozner,
20 himself, that the claim -- that the -- that the claim
21 disabling PTSD from these four statements is exaggerated,
22 and -- and whether -- whether intentional or not, that
23 it's exaggerated and -- and his timeline in terms of --
24 and the timeline I think is important here in terms of
25 assessing the validity of his -- of his self-reporting.

1 As -- the concept -- the issue of people who
2 begin researching and questioning whether or not Sandy
3 Hook really occurred, and I think -- began almost --
4 almost immediately after the event, and Mr. Pozner will
5 acknowledge that, I believe. And so it's that denial that
6 Dr. Lubit says is, essentially, at the heart of
7 Mr. Pozner's damage claim here, his injury claim here.
8 And yet that began -- that began almost immediately, long
9 before these four statements were published. I think
10 these statements were published in approximately October
11 of 2014.

12 MR. FETZER: '15.

13 MR. BOLTON: Pardon?

14 MR. FETZER: 2015.

15 MR. BOLTON: 2015. And Sandy Hook, itself,
16 occurred three years earlier than that.

17 In addition, I think the -- so the question
18 begins if -- if the denial is what is so disabling, then
19 what is it then that that suggests that, according to
20 Dr. Lubit, Mr. Pozner was progressing nicely in his
21 recovery, in spite of this existing world of skeptic
22 research, that suddenly in October of 2015, all of a
23 sudden everything changed. These four words -- these four
24 items changed everything. The fact of the matter is these
25 words, in conjunction with the -- they're really far less

1 questioning of the basically, basic occurrence of the
2 event than some of the previous stuff that supposedly
3 caused no injury.

4 But as to whether or not it was disabling and
5 how it affected Mr. Pozner, one thing that we'll see --
6 hear testimony about is that Mr. Pozner has been very,
7 very focussed on trying to end the whole debate, and
8 presentation of the counter -- of the argument for what --
9 why they believe Sandy Hook did not occur. And so for
10 many years he has been working diligently to try and have
11 all the Sandy Hook skeptic literature removed from the
12 internet with great success. I think at one point he
13 attributed at least 1,500 items of material that he had
14 been responsible for having taken down from -- from the
15 internet.

16 But he also talked about sort of three stages --
17 three stages of -- that he's engaged in, in terms of
18 trying to address the Sandy Hook skeptics. Which -- which
19 he -- the testimony will be that he has undertaken not as
20 a means of addressing his own psychological distress, but
21 he has said he has done it as a means of honoring the
22 death of -- or the life of his son. But that's different
23 than saying that he's undertaken this in order to
24 alleviate any distress that he, himself, has suffered.
25 And on the contrary, Mr. Pozner seeks out diligently and

1 vigilantly the very material that he says causes him
2 distress. He goes to it. It's in -- in other areas of
3 the law we refer to this in the real estate concept as
4 coming to the nuisance. He says that this stuff is really
5 distressing to him and he seeks it out, and I think that
6 that -- you'll find that that's inconsistent with his --
7 the injury that he's claiming. But I think you'll also
8 find that it is inconsistent -- that his timeline --
9 that -- why it suddenly began or did it suddenly begin in
10 October of 2015 with the publication of these words. I
11 think his timeline -- I want you to pay attention to his
12 timeline of when things happened, because I think you'll
13 see that it's inconsistent with -- with, again, with the
14 causation that he's trying to attribute to these words.

15 But the past -- the program -- the mission that
16 he's undertaken, in his deposition earlier this year, he
17 said that there were basically three stages. The first
18 stage was when he tried to -- and this is not his words,
19 this is my words -- but basically embed himself into some
20 of the research circles of people that were Sandy Hook
21 skeptics. And, I think that was -- I think he found that
22 to be not a very successful route.

23 And so then the second stage that he's
24 identified was when he -- when he attempted and has -- and
25 continues to attempt to get anything -- any -- any Sandy

1 Hook research questioning of the occurrence taken down
2 from the internet. And -- and he's been pretty successful
3 at that.

4 But -- but perhaps not as successful overall as
5 he'd like to be, because there's a third stage, and I must
6 be honest that Mr. Pozner did not himself identify this as
7 the third stage, because he said that one can't really
8 identify a stage when you're in it. For instance, his
9 reference was, "You don't know that you're in the
10 Renaissance until after the Renaissance." But the third
11 stage that people can see occurring, at least by his
12 actions, has been a litigation phase. He's -- he has been
13 very active in suing any number of people who -- and the
14 Sandy Hook skeptics in general, but not just the Sandy
15 Hook skeptics, in general, either.

16 MS. ZIMMERMAN: May we approach?

17 THE COURT: Do you have an objection?

18 MS. ZIMMERMAN: Yes. I'd like to approach.

19 THE COURT: Sustained.

20 MS. ZIMMERMAN: Thank you.

21 THE COURT: Ladies and gentlemen, these are
22 opening statements. Later on, after the evidence, you'll
23 hear closing arguments. Objection is sustained.

24 MR. BOLTON: What I -- the evidence will be that
25 it is -- that this litigation phase is not just directed

1 at Sandy Hook skeptics, but that he's also sued --

2 MS. ZIMMERMAN: Your Honor, can we approach?

3 THE COURT: You can approach.

4 (Bench conference held outside the presence of
5 the jury.)

6 MS. ZIMMERMAN: Your Honor --

7 THE COURT: Hang on just a second. Why don't --
8 do you want to take a break? Okay. Yeah. Oh, you've got
9 your microphone. Yeah. Stick it in your pocket or
10 something.

11 MS. ZIMMERMAN: Your Honor, I think that this
12 goes directly to Motion in Limine No. 2, in particular,
13 that the plaintiffs brought, and it gets into -- we talked
14 about whether or not there was going to be prohibited
15 references to other defamatory statements, and I think
16 that plaintiff's additional litigation is -- against other
17 parties is just not relevant here and has a substantial
18 risk of prejudicing this -- the proceedings here.

19 THE COURT: Well, and I mean, also, your
20 objection I discerned was timed when you were discussing
21 other lawsuits. What could possibly be the relevance to
22 this lawsuit that there are other lawsuits? You've got to
23 talk right into the microphone.

24 MR. BOLTON: I --

25 THE COURT: As close as you can get. The

1 machine --

2 MR. BOLTON: I think it's relevant in terms of
3 litigiousness and whether or not the claim in this case
4 is -- is -- is reliable or not.

5 THE COURT: I can't hear you. It's -- you think
6 he's overlitigious and what?

7 MR. BOLTON: I think it's relevant. The fact
8 that there's other litigation is relevant and who it's
9 against is relevant to the authenticity of the claims in
10 this case. For instance, the very notion that --

11 THE COURT: Okay. Here's what I'm going to do.
12 I'm going to sustain the objection. This is opening
13 statements.

14 MR. BOLTON: Yes.

15 THE COURT: I don't know if it's going to change
16 the way you put in your case, but at present, just because
17 I would like to consider the arguments more carefully and
18 I don't want you going into an area prior to a ruling on
19 this, I do believe it was covered if not in the letter in
20 the spirit of the motion in limine to confine the issues
21 in this case.

22 MR. BOLTON: Okay.

23 THE COURT: But my reasoning is even if it had
24 some limited probative value of its litigiousness, it's
25 prejudicial effect greatly outweighs, because the jury

1 might think that the impact of this defamation somehow
2 should be depreciated because of their opinions on one's
3 litigiousness-ness. But, for now, let's finish up with
4 your opening statements, and then we can make a record at
5 the next break. Thank you.

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

8 MR. BOLTON: I believe that there will be
9 evidence in this case that will suggest that -- that this
10 particular litigation has one of its objectives not
11 necessarily just to remedy any alleged damage, but that --
12 that it is directed at the broader -- the broader world of
13 Sandy Hook skeptics. I believe that there will be
14 evidence in this case that suggests that -- that this
15 litigation is intended to show what Mr. Pozner's described
16 as hoaxers, that they will be taken to court, and that it
17 will drag on for a long time. And I think that is one of
18 the objectives of this very litigation. But that's going
19 to be a decision that you have to make.

20 And as I said, the decision that you have then
21 is not an easy one, because -- because there are no -- you
22 know, if I -- if I bring a contract claim and a claim that
23 someone has breached a contract and -- and either a court
24 or jury or someone decides that, in fact, there has been a
25 breach, it is frequently relatively easy then to determine

1 what the damages were, that the cost of repair of
2 something, or he didn't pay me for the -- but in this
3 particular case, you have to determine -- you have to
4 determine the credibility of the -- of the self-reporting,
5 and -- and the significance of it. You have to determine
6 whether or not these four statements are -- are as
7 honestly damaging to Mr. Pozner as he claims.

8 You'll hear testimony as well about -- about
9 Mr. Fetzer -- or Professor Fetzer. And you will learn --
10 you will learn -- well, let me, you know, you're
11 probably -- this question came up somewhat during voir
12 dire. Who are these people? Who are the Sandy Hook
13 skeptics?

14 THE COURT: Mr. Bolton, how much more is your
15 opening?

16 MR. BOLTON: Pardon me?

17 THE COURT: How much more do you have in your
18 opening?

19 MR. BOLTON: Not much longer.

20 THE COURT: I know, ladies and gentlemen, our
21 mid-afternoon break. It's no big deal. Should we break?

22 MR. BOLTON: I'm near done.

23 THE COURT: Okay.

24 MR. BOLTON: But if anyone wants to take a
25 break, I'm certainly not --

1 THE COURT: Raise your hand if you want to take
2 our afternoon break. Okay. Then -- I was ready for the
3 afternoon break. I don't know how many cups of coffee you
4 guys had, but if you're close to being done, let's wrap
5 this up, please.

6 MR. BOLTON: As I said, the question that sort
7 of came up a little bit, certainly the thought process
8 during the voir dire, who are -- who are these people.
9 And -- and there was some questions -- some questioning
10 and some discussion of a fellow by -- now, of course, I
11 can't remember his name. The -- the fellow we talked
12 about, InfoWars.

13 MR. FETZER: Oh, Alex Jones.

14 MR. BOLTON: Alex Jones. There was some talk
15 about Alex Jones. There was talk about others. What I
16 will tell you is that I don't know the whole range of who
17 these people are. It's a varied group of people. It's a
18 varied group of people. But one thing I can tell you that
19 I think the evidence will show is that Professor Fetzer
20 has nothing to do, for instance, with Alex Jones, who in
21 abstention was -- was certainly panned during voir dire.

22 The group, as you would imagine with any group,
23 is a varied group. But you'll learn a little bit about
24 Professor Fetzer, who I won't go into a great depth now,
25 but you will learn is a -- has had a life of -- as a

1 distinguished professor and researcher. You will -- you
2 will learn that he did not, in fact, write the entire
3 book, *Nobody Died at Sandy Hook*. He was an editor on it,
4 and, in fact, one of the -- some of these statements
5 appear in a chapter authored by him, but the book, itself,
6 is a book with, I think, 13-some authors, at least 6 of
7 them PhD scholars, and so the -- who they are, and in
8 particular, who Dr. Fetzer is, is a varied group. But I
9 think the evidence will suggest to you that it is -- that
10 it is a serious group and that the book, for instance,
11 *Nobody Died at Sandy Hook*, while it may be provocative in
12 many respects, I think you'll find that it is, in fact, a
13 serious book of academic research.

14 I promised I'd get done, so I will. At the end
15 of the day the -- this case, while it teases you a little
16 bit about a world of, you know, JFK conspiracy theorists
17 and 9/11 and Sandy Hook, at the end of the day, the part
18 of the case that's been allocated to you, what the
19 Judge -- the Court referred to as your province, is really
20 not much different than many minor cases, and the
21 questions you'll have to determine is whether you believe
22 or how much do you believe by the self-reporting by
23 Mr. Pozner that he was damaged by these particular
24 statements, and that's -- that's -- it's not something
25 that the Court can do. It's not something that even

1 Dr. Lubit can do.

2 Ultimately, we're dealing in an area of
3 subjective, and you have to determine whether or not you
4 believe that these particular statements caused the
5 significant injury and damage that Mr. Pozner is claiming.
6 So you didn't get the whole case, but you got a very, very
7 important and a very difficult part of the case. Thank
8 you.

9 THE COURT: Thank you very much. We'll take our
10 afternoon break.

11 THE BAILIFF: All rise for the jury.

12 (Off the record at 2:39 p.m.)

13 (Back on the record at 2:54 p.m. outside the
14 presence of the jury.)

15 THE COURT: Okay. A couple things. No, please,
16 sit.

17 We have a new mother who's breastfeeding and, of
18 course, we all want to accommodate. That's going to take
19 a little longer as we take our breaks.

20 A couple of deals -- a couple of details.
21 Mr. Fetzer.

22 MR. FETZER: Sir.

23 THE COURT: Do not talk unless you are
24 addressed. There are two occasions during opening. It's
25 not a participatory process --

1 MR. FETZER: Yes.

2 THE COURT: -- where you help Mr. Bolton with
3 his opening. Maybe, Mr. Bolton, you can go over the
4 ground rules with your client as to what his role is.
5 It's not -- it's completely inappropriate to have sort of
6 just interjected, fill in the blank.

7 MR. FETZER: I have been so advised, Your Honor.
8 I understand it and apologize.

9 THE COURT: Okay. Do you want to be heard more
10 on my sustaining the objection during your opening
11 statement as to the relevance of other litigation?

12 MR. BOLTON: I think -- I think I -- I don't
13 have anything more to say on it at this time, I guess.
14 I'm not sure what you're asking me. I understand your
15 ruling in context.

16 My -- what I will say more generally is that I
17 think the concept of other litigation and litigiousness is
18 a very common question in plaintiff's cases where the
19 question -- it bears upon the credibility of the witness
20 in terms of the immediate case, and so the notion that --

21 THE COURT: The credibility?

22 MR. BOLTON: Yes.

23 THE COURT: In what respect?

24 MR. BOLTON: That this is -- that this is a
25 person that brings multiple -- lots of lawsuits, and that

1 the motivation is not -- and in this particular case, I
2 think there will be evidence that Mr. Pozner, himself, has
3 acknowledged that litigation is brought to for the purpose
4 of sending a message to hoaxers that they're going to be
5 dragged into long and expensive litigation.

6 THE COURT: We spent some time on the motions in
7 limine. I don't have them -- I didn't bring it up. I
8 know Ms. Zimmerman referred to them, limiting the
9 defamatory statements. I think it was actually even your
10 request that there are only four defamatory statements.
11 You put up an exhibit on the screen with the four
12 defamatory statements. If I -- I'll let you go in on your
13 theory that other litigation somehow or another bears
14 relevance on causation, do you not open the door then to
15 allow or to allow or to invite or require then we -- a
16 response in which we need to talk about the other
17 litigation and the importance and the seriousness of that
18 litigation, because once you put your toe in those waters,
19 Mr. Bolton, then maybe they are even more egregious and
20 even more offensive and harming to Mr. Pozner. How do I
21 handle that? *Judge, he said that this litigation -- he*
22 *opened it.* Your --

23 MR. BOLTON: My recollection --

24 THE COURT: Your response when they go into the
25 details.

1 MR. BOLTON: Yeah. My response is that it was
2 the other side making that argument. And my understanding
3 is that the question about other litigation and how it
4 bears -- I think it also bears upon the timing in terms of
5 when certain symptoms are alleged to have begun. That
6 if -- if other, you know, the claim in this -- in this
7 lawsuit is that he basically became symptomatic as a
8 result of these particular statements.

9 But to the extent that -- that I stuck my toes
10 in that crack, let me -- let me put my entire leg in the
11 crack then. I don't care if they want to talk about other
12 litigation. I think it bears upon this litigation as
13 well.

14 MR. ZIMMERMAN: Yes, Your Honor. Thank you.

15 We totally, fundamentally, and wholeheartedly
16 disagree. They brought a counterclaim for Abuse of
17 Process. If they think he's out here abusing the process,
18 going into this litigation for their own reasons, they
19 should have pled that claim properly and not had it
20 dismissed. If they think Lenny is a faker, if that he's
21 faking his symptoms, they should have brought in an expert
22 who could provide that testimony. What we're seeing is a
23 lawyer trying to inject himself into a role of a forensic
24 psychiatrist and offer testimony to the jury to undercut
25 that psychiatrist's determination and opinions without

1 offering that expert.

2 Furthermore, we made Motion in Limine No. 2, the
3 doctrine of incremental harm, for precisely this reason.
4 The doctrine of incremental harm recognizes there may be
5 other statements out there, and what we do not want to do
6 is create a series of mini trials about the impact of
7 truthful or untruthful statements contained elsewhere in
8 the book.

9 THE COURT: Where -- where was that?

10 Plaintiff's Motion in Limine?

11 MR. ZIMMERMAN: I believe it's listed as
12 Plaintiff's Motion in Limine No. 3 in Document 253.

13 MS. ZIMMERMAN: I think it was two.

14 MR. ZIMMERMAN: Starting on page 5, I believe,
15 Your Honor.

16 THE COURT: While I'm pulling that up, how about
17 another question for you, Mr. Bolton. If we get into
18 other litigation, Mr. Pozner sued Wrongs Without Wremedies
19 and Mr. Palecek. Can they talk about that -- that lawsuit
20 and the settlements?

21 MR. BOLTON: I think your -- no, I think that
22 you're talking about different things there.

23 THE COURT: Then differentiate. That's --
24 that's prior litigation. It just happens to be litigation
25 that resulted in a resolution. So how do we say that if

1 you want to talk about all litigation, somehow or another
2 relevant to his litigiousness, that in response he should
3 talk about then, yeah, okay, let's talk about the claim
4 against Wrongs Without Wremedies and Mike Palecek. I
5 don't see the dividing line there. Can you help me?

6 MR. BOLTON: I think that -- I think that the
7 other litigation is relevant to establish that -- that, A,
8 that the type of -- the type of injury that he's claiming
9 to have originated with these publications that he --
10 similar circumstances existed well before this litigation,
11 and that he wasn't necessarily -- that he wasn't claiming
12 those symptoms at that time, and so the notion that
13 suddenly this particular event triggered all -- is
14 inconsistent with having been exposed to similar types of,
15 quote, trauma without being symptomatic --

16 THE COURT: Okay. But you didn't answer my
17 question. Can he -- Mr. Zimmerman, if I allowed the
18 defendant to go into other litigation, would you seek to
19 ask questions about the litigation involving Wrongs
20 Without Wremedies and Mike Palecek?

21 MR. ZIMMERMAN: Sure. It would open it up, not
22 only the settlements that they made but the statements
23 they made admitting they were wrong. Of course,
24 everything would have to come in if it would go to his
25 motivation, but I would say --

1 THE COURT: Let's hear Mr. Bolton's reply,
2 because if you open the door, then we do have situations
3 where at least two other aspects of litigation resulted in
4 a settlement that included but not limited to an admission
5 of wrongdoing. So you think they -- you can go in and
6 talk about what you want but they can't talk about these
7 other things?

8 MR. BOLTON: What I'm saying is this. I think
9 the other litigation is relevant to -- to establishing a
10 timeline as to when Mr. Pozner claims to -- he claims that
11 he became symptomatic as a result of a publication that
12 occurred in October of 2015, and I believe that -- I
13 believe that the other litigation is relevant to show that
14 similar sorts of exposures greatly preceded that, and he
15 was or wasn't claiming symptoms at that point.

16 What I can do, Your Honor -- but I also think --
17 but I also do think that in regard to other litigation,
18 Mr. Pozner made the statement on February 15th of 2018 in
19 regard to litigation involving Mr. Halbig, and the
20 question was asked:

21 Why did you drop the suit? And, by the way, this is a
22 social media exchange. Why did you drop your suit against
23 Halbig? What happened? What were -- were you threatened
24 by the Tin Hatters?

25 And the response was: Lost? He was sued to take down

1 SandyHookJustice.com, and he did. The rest was to show
2 other hoaxers that they will be taken to court and it will
3 drag on for a long time.

4 I think that that's relevant. I think that's
5 relevant for the jury to hear in assessing the claims that
6 are made in this case.

7 THE COURT: What claim?

8 MR. BOLTON: Pardon?

9 THE COURT: What claim? What claim? I still
10 don't see the connection.

11 MR. BOLTON: The fact --

12 THE COURT: There's only one question on the
13 verdict. What amount of money will reasonably and fairly
14 compensate Mr. Pozner for the damage done by these four
15 defamatory statements. So what's the relevance of the
16 action involving Mr. Halbig and the statements that were
17 made there?

18 MR. BOLTON: One of the things the jury has to
19 decide here is whether the self-reported symptoms in this
20 case are, in fact, true and injurious. And I think the
21 fact that a witness has made -- that the plaintiff has
22 made other -- filed other suits --

23 THE COURT: Wait a second. Whether the
24 self-reported statements are true and injurious?

25 MR. FETZER: Symptoms.

1 THE COURT: Let me just --

2 MR. ZIMMERMAN: For what it's worth --

3 THE COURT: You said, "One of the things the
4 jury has to decide here is whether the self-reported
5 symptoms in this case are, in fact, true and injurious."
6 I don't know what that means.

7 MR. BOLTON: Whether they're true and
8 descriptive of injurious, of injuries.

9 THE COURT: Okay.

10 MR. BOLTON: As I'm understanding Your Honor,
11 you're saying that -- that an attempt -- that -- that
12 unless during this lawsuit Mr. Pozner said, I don't --
13 that this lawsuit is brought for another purpose, that --
14 that anything that he has said before or after that would
15 reflect upon why he brings litigation and the credibility
16 of his -- of his claims in this case would not be
17 admissible. I -- I don't think -- I think that's -- I --
18 if we say his credibility can only be determined by what
19 he says in this courtroom, and we can't go beyond, then
20 I -- I don't think that's -- I don't think that's a proper
21 limitation on an effort to try and assess -- for the jury
22 to assess the credibility. When I say self-reporting, the
23 symptoms --

24 THE COURT: But, Mr. Bolton, here's what you
25 said when I -- when we -- you approached the bench. I

1 said -- I think the question was, is what was the
2 relevance. And you said, "I think it's relevant in terms
3 of litigiousness and whether or not the claim in this case
4 is" -- then non-discernible -- "or not."

5 I don't -- I'm going to sustain the objection to
6 litigiousness, because that's not relevant and even if it
7 had limited relevance, its prejudicial effect would be
8 clearly outweighed. We're not going to get into
9 litigiousness because then the plaintiff would be forced
10 to talk about that litigation and whether it was bona
11 fide, and it would include the litigation against Mike
12 Palecek and Wrongs Without Wremedies, including,
13 apparently, a settlement which occurred, which I don't --
14 I have not been made aware of or the terms, but including
15 Wrongs Without Wremedies' purported acceptance of the
16 truthfulness of Mr. Pozner.

17 Look, I'm not limiting your ability to
18 cross-examine the plaintiff's witnesses on causation. And
19 if there are other stimuli which caused the damages that
20 he's claiming are contributed to the false statement, then
21 you can go into that. Although, I'll pay kind of close
22 attention, since you don't have an expert, I'm not sure
23 how you're going to do that, maybe in cross-examining
24 Mr. Pozner. But this all began with your opening
25 statement in which you said on the record it was because

1 you thought litigiousness was relevant, and I don't agree.

2 Ready to bring the jury in?

3 MR. ZIMMERMAN: Yes, Your Honor.

4 THE COURT: Oh, I was going to ask, it's now a
5 little after 3:00. How long do you want to play? What's
6 a good breaking point? Have you planned that?

7 MR. ZIMMERMAN: About an hour and 15 minutes of
8 transcript. Gets us to 4:15, 4:20 or so; is that okay?

9 THE COURT: Very good.

10 MR. ZIMMERMAN: Which would get us through the
11 direct exam of Dr. Lubit.

12 THE COURT: Okay. Great.

13 THE BAILIFF: All rise for the jury.

14 (Jury in.)

15 THE COURT: Thank you very much. Please be
16 seated.

17 Ladies and gentlemen, couple of things. Thanks
18 for waiting in the hallway. I -- trust me, when you guys
19 aren't in the room, we are, and we're working toward
20 getting this case in a shape in which the facts are and
21 the witnesses are to be presented to you. You shouldn't
22 concern yourself with the delay and what we're talking
23 about. Suffice to say that the lawyers and the Court have
24 to talk about a number of issues about the presentation of
25 the evidence in this case. I do appreciate your patience.

1 Now we're going to see a videotape deposition.
2 I just want to alert you, my court reporter does not
3 transcribe the videotape deposition, because the videotape
4 deposition was transcribed by another court reporter. So
5 don't infer anything by the fact that she'll excuse
6 herself from the room.

7 I'll dim the lights somewhat, but let me just,
8 please, beseech you. There's been a lot of discussion in
9 the legal community about whether humans have the capacity
10 to watch something for more than 30 minutes or 24 minutes.
11 Please pay particular attention. As I indicated in the
12 opening statement, you will not have a transcript for your
13 deliberation. When the lights get low and it gets to be
14 middle of the afternoon, eyes get a little heavy. There
15 are very few witnesses in this case and every witness for
16 both the plaintiff and the defendant are important. So I
17 ask that you give it your utmost attention.

18 Because of the lateness and the other issues we
19 were dealing with, we'll present or play the direct
20 examination this afternoon. Should get you out still by
21 that 4:30 to beat the traffic home, and then we'll begin
22 first thing in the morning with the cross-examination of
23 the videotape deposition. That's -- splitting it up, too,
24 will help maintain your attention. Okay.

25 MR. ZIMMERMAN: Thank you, Your Honor.

1 The plaintiffs call Dr. Roy Lubit by video
2 deposition. Plaintiffs offer Dr. Lubit as an expert and
3 the parties have stipulated to his being qualified as an
4 expert.

5 THE COURT: Is that true, Mr. Bolton?

6 MR. BOLTON: It is, Your Honor.

7 THE COURT: Thank you very much.

8 (Video deposition began at 3:12 p.m.)

9 (Vide deposition paused at 4:21 p.m.)

10 THE COURT: We'll go back on the record. Having
11 now viewed the direct examination of the plaintiff's first
12 witness, is this a good point in time to break for the
13 evening, Mr. Zimmerman?

14 MR. ZIMMERMAN: Yes, it is, Your Honor.

15 THE COURT: Anything further before we let the
16 jury go home for the night, Mr. Bolton?

17 MR. BOLTON: No, Your Honor.

18 THE COURT: Mr. Zimmerman?

19 MR. ZIMMERMAN: No, Your Honor.

20 THE COURT: Ladies and gentlemen, thank you for
21 your attention. So your homework tonight is to think
22 about anything other than your deliberations, your -- this
23 case. You can think about it but don't talk to anyone
24 about it. Please take to heart my instructions I gave
25 you, though the temptation, and please do not go online

1 and do any research. Tomorrow will be a day in which
2 you'll hear more of the story as you journey along and
3 discharge your functions as jurors in this case. So thank
4 you. Have a good evening.

5 Now, 8:30. Please, with traffic, getting
6 through security, have some time to get here and we'll try
7 to start as promptly right at 8:30 as possible. If you do
8 that, then I promise to get you out at a decent time in
9 the evening to let you get home for dinner and kids and
10 what else brings you home at night.

11 Thank you. We'll see you in the morning.

12 THE BAILIFF: All rise for the jury.

13 (Jury out.)

14 THE COURT: Okay. Please be seated. Anything
15 else, gentlemen -- ladies and gentlemen, you want to take
16 up before we retire for the day?

17 MR. ZIMMERMAN: We would like to, with respect
18 to a number of motion in limine, Your Honor.

19 THE COURT: Okay.

20 MR. ZIMMERMAN: We can do those in writing if
21 you'd prefer, but I think they'll relate to testimony
22 that's likely to occur tomorrow.

23 THE COURT: All right. What are you talking
24 about?

25 MR. ZIMMERMAN: First, we would like to renew

1 our motion in limine on the doctrine of incremental harm,
2 specifically with regard to references to other statements
3 in -- you know, in the book that may offend or otherwise
4 be alleged to have caused injury to Mr. Pozner. Wisconsin
5 has rejected the adoption of the doctrine of incremental
6 harm.

7 THE COURT: You caught me at the end, I was
8 writing it down. Wisconsin's rejected the doctrine, but
9 you want me to apply it?

10 MR. ZIMMERMAN: No, that's the opposite. The
11 idea of doctrine of incremental harm is, yeah, maybe there
12 was a defamatory statement here, but there were ten other
13 things that were bad about a person in the book, and we
14 have to consider all of those.

15 THE COURT: So you'll remember when we talked
16 about this earlier, I found it difficult to talk -- to
17 rule on this doctrine in the abstract, and that I -- I
18 said to raise the objection at the time.

19 Now, for example, you raised the objection, at
20 least based on the doctrine relating to Mr. Bolton's foray
21 into the existence of other litigation. I understood it
22 then and I granted it, albeit on grounds included but not
23 limited to the motion in limine. I'm not sure -- my
24 concern over fully and completely understanding the motion
25 outside the context of a question or a series of questions

1 are any different now than what it was at the time of the
2 final pre-trial conference.

3 MR. ZIMMERMAN: I understand, Your Honor. At
4 the -- in the -- in the defendant's opening statements,
5 the defendant made note to the fact that there were a
6 number of other statements in the book beyond these
7 defamatory statements that may have also negatively
8 impacted Mr. Pozner. We'd like to renew the motion in
9 limine with respect to any other statements in the book
10 that they intend to rely on, introduce, talk about,
11 because those should not be considered with respect to the
12 damages that are being sought in this case.

13 THE COURT: Okay. That's an example. Any other
14 examples you want me to apply to your legal theory rooted
15 in the specifics of what you anticipate will be?

16 MR. ZIMMERMAN: No, Your Honor. That's all
17 we're aware of at this point.

18 THE COURT: Mr. Bolton.

19 MR. BOLTON: I think it goes to the question of
20 causation, Your Honor, and I do not understand that
21 there's not an issue of causation that has to be proven
22 by -- by the plaintiff in this case.

23 So, for instance, if, in fact, there were other
24 basically similar types of content to which Mr. Pozner
25 claims that he did not react to or have any reaction to, I

1 think if you're exposed to similar stimuli, but on the one
2 hand you're only claiming that you reacted to it and --

3 THE COURT: What other statements made in the
4 book do you intend to elicit at trial? Let's talk rather
5 than in generalities, the specificity of -- are we going
6 to read the whole book to the jury? Certainly not.

7 MR. BOLTON: I am not, no.

8 THE COURT: What specifically else in the book,
9 other than the four identified defamatory statements, do
10 you intend to raise in your direct or cross?

11 MR. BOLTON: What I intend to elicit, Your
12 Honor, is that not only are there other statements in the
13 book, the broader statement of the skeptics, but that --
14 that the -- that the skepticism preceded long before the
15 publication of the book, and so whether or not these
16 similar sort of statements did or did not trigger
17 symptomology in Mr. Pozner I think reflects upon whether
18 or not -- the legitimacy of his claims that these four
19 particular statements triggered symptoms.

20 THE COURT: I didn't quite understand. When I
21 asked you specifically what statements elsewhere in the
22 book you intended to bring up, when I said let's talk
23 about specifics rather than generality, you wrote down,
24 the skepticism preceded the publication of the book. So
25 I'm still -- that raises a whole other question. But what

1 else in the book, what other statements, false or
2 otherwise, in the book do you intend to bring up?

3 MR. BOLTON: I -- what I would intend to bring
4 up, and I don't know that this is -- is what counsel is
5 getting at, the concept of skepticism, in this particular
6 situation, almost inherently would discredit in one way or
7 another and reflect upon Mr. Pozner. If it -- if for
8 other reasons it was established that it didn't occur,
9 then obviously, Mr. Pozner would know that. And so the
10 general -- and, in fact, Mr. Pozner or Pozner began a very
11 active campaign to eliminate from the internet any -- any
12 reference to skepticism.

13 THE COURT: Okay. I'd like to rule on
14 Mr. Zimmerman's request. It's a simple request. Judge,
15 I'd like you to reconsider your deferral of Motion in
16 Limine No. 3 and exclude any other -- introduction of any
17 other evidence, questions regarding other statements made
18 in the book. That's the question for me.

19 Last -- last opportunity. If you oppose that
20 motion in limine as to other statements made in the book,
21 what specific statements made in the book would you like
22 to bring up at trial?

23 MR. BOLTON: In order to answer that, Your
24 Honor, if I -- if I might, I would like to confer with my
25 client in regard to that. But I'm not sure in all honesty

1 that -- and maybe I misunderstand. If -- if the
2 question -- if the question is whether or not I'm going to
3 make reference to specific -- I guess I don't understand
4 your question, Your Honor, because I could point to --

5 THE COURT: Well, we're more alike than what we
6 care to admit.

7 MR. BOLTON: Well, let me approach it this way.
8 I would make reference to -- I don't know how many
9 chapters there are in the book. How many chapters?

10 MR. FETZER: About 30 altogether.

11 MR. BOLTON: I would probably, in one fashion or
12 another, all 30 implicate whether or not Mr. Pozner's son
13 was killed at Sandy Hook, because to the extent that you
14 denied it occurred for reasons that don't refer to
15 Mr. Pozner at all, I mean, you could -- you could conclude
16 that -- and he has concluded that --

17 THE COURT: Isn't that just -- isn't that now
18 giving context to Mr. Zimmerman's greatest fear that what
19 you're essentially saying to me is, okay, Dr. Fetzer might
20 have defamed Mr. Pozner and Mr. Pozner may have been
21 harmed by Dr. Fetzer's statements, but a lot of people
22 said a lot of bad things to -- about Mr. Pozner, and that
23 should what? What should that -- why should the jury hear
24 that? What relevance?

25 MR. BOLTON: Well --

1 THE COURT: Understanding, after all, the
2 plaintiff has the burden of proof in this case, has the
3 burden of proving that the statements were defamatory,
4 which it did, he did, and I held. And now the question
5 is, is what, if any, damages were caused by those four
6 defamatory statements. I'm not inclined to let's just
7 throw all the other stuff that has been thrown at
8 Mr. Pozner against the wall in the hopes that somehow or
9 another that the jury would think that contextually these
10 four defamatory statements are so insignificant in the
11 larger question, they shouldn't award damages. That
12 actually is consistent with the current concerns and the
13 genesis of this doctrine which throws back on the
14 plaintiff, who's been the victim of defamation, the
15 untenable task of then trying to unscramble this dozen
16 eggs you've thrown against the wall.

17 MR. BOLTON: I -- if I suggested that -- that
18 there are cases -- tort cases in which defendants argue
19 that there are multiple causes and that -- and, in fact,
20 that other -- other defendants should be included on -- on
21 the verdict form, I don't think I'd be articulating a
22 novel concept here. The novel -- the concept of multiple
23 causation and trying to allocate, as a matter of
24 causation, who -- who caused what, it may be difficult,
25 but the law isn't intended to simply make it easy. I

1 didn't create the concept of causation. It's been -- it's
2 been recognized in the law and it's been recognized that
3 the plaintiff has the burden. And to -- and I'm not aware
4 that in the -- in the area of defamation that -- that it
5 is irrelevant as to whether or not there are multiple or
6 other causations.

7 THE COURT: Okay. Mr. Zimmerman?

8 MR. ZIMMERMAN: Yes, Your Honor.

9 Two responses. First, this isn't another tort
10 case, this isn't a personal injury case. It seems to
11 sound like he's saying if we all stand up in a line and
12 each kick Mr. Pozner once, none us could be liable because
13 everybody kicked him at least once and we can't say where
14 his injuries came from.

15 Beyond that, it sounds like the greater problem
16 is what he's saying is we should step in and say we, as
17 laypeople, nonexperts, have evaluated a criteria and we
18 are going to undermine the determination that the expert
19 made without offering an adverse expert opinion. If this
20 were to come up in cross-examination of Dr. Lubit, I
21 wouldn't object. But what we're hearing now is we, as
22 laypeople, are going to re-evaluate whether he suffers
23 PTSD because there was potentially some other cause or
24 symptom, and that's invading the province of an expert.

25 THE COURT: How are you going to prove,

1 Mr. Bolton, let's say if we allow you to go into these
2 extraneous areas.

3 MR. BOLTON: How am I --

4 THE COURT: How are you going to prove
5 causation? Did you go into cross-examination with Dr. --
6 the doctor about this?

7 MR. BOLTON: Well, let -- yeah, I think we did.
8 I think we did talk about the issue of other causation,
9 and we talked about the issue of whether or not threats
10 and harassment was, in fact, perpetrated by -- by
11 Mr. Fetzer.

12 But -- but let me add, what I understand
13 Attorney Zimmerman to say, when he talks about the
14 province of the jury, as I understand what he is saying is
15 that the jury has an obligation to accept the testimony
16 of -- where there's only one -- one expert. And I have
17 always thought that when we talk about provinces, that it
18 was the province of the jury to determine the facts, and
19 that the jury could, in fact, ignore --

20 THE COURT: Well, Mr. Bolton --

21 MR. BOLTON: -- disagree --

22 THE COURT: -- you bring up the issue of tort.
23 What if you had a tort case or you were the defendant in a
24 tort case, and there was a claim by the plaintiff for
25 medical malpractice and you get the plaintiff's witness

1 list and there's no doctor on the witness list. You would
2 ask me to dismiss the claim, would you not?

3 MR. BOLTON: You would ask --

4 THE COURT: You would ask me, as the judge, to
5 dismiss plaintiff's medical malpractice claim because
6 there's no witness as to testify to causation. Correct?

7 MR. BOLTON: I don't know if I would. I'd have
8 to think about it, Your Honor. But what I will also say
9 is this. In this particular case, this witness,
10 Mr. Lubit, when offered the opportunity to speak to the
11 question of causation said, That is a question for the
12 jury, and I do not -- I'm not speaking to that question.
13 So...

14 MR. ZIMMERMAN: Respectfully, that was -- that
15 was in an entirely different context. That was not in the
16 context of symptoms that give rise to PTSD, which is the
17 opinion that he -- that he offered. That was in the
18 context of saying did Dr. Fetzer's statement cause someone
19 to go out and do something. And as I've said, we are not
20 opposed to Mr. -- or to Mr. Bolton's cross-examination of
21 the expert.

22 What we're concerned about is, and your -- maybe
23 Your Honor's example is a good one, if this is a case
24 where a radiologist stood up and said, I see cancer in
25 this person's lungs, surely, we wouldn't have Mr. Bolton

1 stand up and say, I think, as lawyer, that looks like
2 something else and I want you to disregard the expert's
3 opinion, outside of the cross-examination.

4 Within the cross of the expert, surely, he can
5 go after these topics, but outside of the cross, who in
6 this courtroom could say, I think as a forensic
7 psychologist it's appropriate to say PTSD doesn't arise
8 because Sandy Hook as a whole would not trigger PTSD. We
9 lack, under 703, the competency to render that -- to
10 render that decision. And the fact that they don't have
11 an expert doing it but instead are trying to bring it in
12 through lay witnesses, doesn't make it less inappropriate.

13 MR. BOLTON: Your Honor, I think that -- for
14 instance, this is the type of testimony that I anticipate.
15 I anticipate asking Mr. Pozner whether or not there were
16 other stressors to which he responded or did not respond
17 to prior to the publication of the statements that are at
18 issue in this book. Now I think if he -- if his answer is
19 that I was not -- I did not have a symptomatic response to
20 different stressors, and -- -- and Dr. Lubit talked about
21 the importance of considering other stressors, and I -- at
22 least as I heard it. And so I think -- I think -- I think
23 asking the witness how he reacted in other circumstances
24 with -- with at least similar stressors bears upon his
25 credibility as to whether or not he says that he was

1 uniquely symptomatic to these particular statements.

2 MR. ZIMMERMAN: And the risk is when he says
3 similar stressors, that is a layperson's view of a similar
4 stressor. It may not be what a forensic psychiatrist with
5 that degree of training who studied PTSD would think is at
6 all relevant, and that's the danger of admitting this kind
7 of testimony. We're going to substitute the lack of
8 knowledge about what a similar stressor might be for that
9 of the only expert that's admitted in the case. And I
10 think it would be error to allow that.

11 THE COURT: Well, again, I mean, I don't -- I
12 thought it was -- it's kind of shifting sands. I mean,
13 part of -- well, I mean, in the abstract, Mr. Bolton's
14 seemingly benign cross-examine question about other
15 stressors, I mean, the doctor did talk about other
16 stressors, so the concept has been interjected, and so if
17 Mr. Bolton just simply wants to ask a question about
18 whether there are other stressors, I mean, in and of
19 itself, I guess the answer is probably going to be yes,
20 but then I don't know, Mr. Bolton, what do you do with
21 that? Is that all you need? Is that -- so, yes, I can
22 probably anticipate his answer is going to be yes. So
23 then are there follow-up questions or is that it? You
24 just want to establish that this guy had a lot of
25 stressors in his life from things in addition to and other

1 than the defamatory statements.

2 MR. BOLTON: I still think it goes to the
3 question of causation, because --

4 THE COURT: Okay. I'm with you. Is that it
5 though? Is that the extent of the questions that you tend
6 to elicit from the plaintiff in this case?

7 MR. BOLTON: I think it would -- I can
8 anticipate that it would also -- that there would also be
9 testimony as to whether or not the plaintiff perceived
10 those then to be something that implicated his own mental
11 condition or whether or not he -- he viewed those as
12 simply implicating the honor of his -- of his deceased
13 son.

14 THE COURT: Okay.

15 MR. BOLTON: I think there will be testimony.

16 THE COURT: I've heard enough now. Here's what
17 we're going to do. I think, pretty much, I'm going to
18 have to wait until the question. If this is all about, I
19 just want to ask him does he have other stress in life and
20 then -- I would have no problem with that. But then when
21 I ask you the follow-up questions, Mr. Bolton, are
22 completely troublesome and problematic. I think I will
23 have to wait. I will probably sustain an objection. If
24 then you go into the issue of whether he can self-diagnose
25 himself under the DSM-V guidelines to say, well, these

1 stressors produced PTSD and these stressors didn't. Most
2 patients completely are unable to self-diagnose. But I'll
3 have to listen to the question and how he frames it. I do
4 not think Mr. Pozner is either competent or that it's fair
5 to have him opine as to the causation question that
6 ultimately rests and relies on expert testimony.

7 For that, I'll incrementally -- it doesn't sound
8 like we're going to talk about specific other chapters in
9 the book, and so I'll grant your amended motion in limine
10 to exclude other chapters in the book.

11 MR. FETZER: Your Honor, if I may say so, the
12 diagnosis --

13 THE COURT: Okay. No. You can't say so.

14 MR. FETZER: Okay.

15 THE COURT: You have two lawyers sitting next to
16 you, Mr. Fetzer.

17 You said other motions?

18 MR. ZIMMERMAN: Yes, Your Honor. I'll try to be
19 brief on this one.

20 In the defendant's introductory statements they
21 started going into this book being well researched and
22 scholarly and some of Dr. Fetzer's background. None of
23 that can be relevant to compensatory damages. While it
24 may have been to punitives, that has nothing to do whether
25 he believed it, whether he meant it in good faith, has

1 nothing to do with compensatory damages in this case. So
2 we'd like any testimony about the process that went into
3 it, the number of PhDs who wrote chapters, their study
4 methods, what research --

5 THE COURT: I heard that. I heard that in the
6 opening statement. Certainly, the concept that it was a
7 scholarly, well-researched article, researched in light of
8 the Court's ruling on the defamatory nature of the four
9 statements is a little perplexing, but I don't know where
10 you're going to go with that. Are you going to try to
11 defend the integrity of the entire book?

12 MR. BOLTON: The integrity of the entire book is
13 attacked. I mean, when we talk about --

14 THE COURT: So the answer is yes?

15 MR. BOLTON: Pardon?

16 THE COURT: Was the answer yes or no?

17 MR. BOLTON: I -- I would intend to offer some
18 preliminary testimony regarding just the background of
19 Professor Fetzer and the background of the book.

20 The book -- and, when Mr. Zimmerman says we
21 should put blinkers on -- we should put blinders on and we
22 should only look at these four statements because those
23 are the only things that are relevant. But I sat here and
24 I listened to Mr. Lubit talk not about these four
25 statements but -- but talk about the general world of

1 Sandy Hook skepticism. So I find it hard to believe
2 that --

3 THE COURT: Okay. I'm not going to be -- I'm
4 not going to be able to rule on this in the abstract. I
5 don't know what questions he's going to ask. Maybe
6 they're benign, contextual questions. I'm not sure how
7 they relate to the issue in this case on the compensatory
8 damages to Mr. Pozner, but once again, I mean, your
9 motions in limine, as I told you, ladies and gentlemen,
10 are really -- should be reserved for areas that are so
11 clearly demark -- have clear demarcation that we're all on
12 the same page that we can say in/out. This is a rather
13 fluid concept. This is not a trial to defend the academic
14 excellence of the book, *Nobody Died at Sandy Hook*. This
15 is a trial with a single question, what are the
16 compensatory damages that come from the defamatory
17 statements. Just make your objection at the time.

18 Anything else, Mr. Zimmerman?

19 MR. ZIMMERMAN: No, Your Honor.

20 THE COURT: Anything?

21 MR. BOLTON: No, Your Honor.

22 THE COURT: Okay. Once again, Mr. -- or,
23 Dr. Fetzer, I don't -- well, I say I don't mean to
24 interrupt, but that's what judges do. They interrupt
25 people. Once again, you have two lawyers sitting next to

1 you. When you were representing yourself, I welcomed your
2 extraneous, contemporaneous concept, but these are really
3 important for you. I know I told you time and time again
4 to hire lawyers. You've got two lawyers sitting next to
5 you. You need to work with them, and they control what,
6 you know, is presented to the Court.

7 MR. FETZER: My concern, Your Honor, is that the
8 diagnosis is based on hearsay, false statements, such as
9 that I claimed that Mr. Pozner had faked the death
10 certificate, which I have never done. I said the death
11 certificate was fake, not that he had faked it.

12 THE COURT: Mr. Bolton.

13 MR. FETZER: The -- the --

14 MR. BOLTON: Jim.

15 THE COURT: Okay. We'll see you all at 8:00 --
16 come back at 8:30 in the morning. You -- I've looked
17 through the jury instructions that have been submitted.
18 There are instructions in the pack about defamation. Once
19 again, I appreciate you agreeing to it. If you intend to
20 suggest another suggestion instruction, that was the one
21 you said you couldn't do over the lunch hour, I didn't
22 blame you for that, but if -- I'd like to know, last call
23 for any additional instructions, no later than we'll take
24 it up 8:30 in the morning.

25 Finally, I'm going to go ahead and seal the jury

1 list that contains the names of the jurors. That's
2 consistent with the stipulation. I need to, under the
3 court's guidelines on sealing documents, state that on the
4 record. As to that, consistent with the parties' joint
5 stipulation, any objection?

6 MR. ZIMMERMAN: No, Your Honor.

7 MR. BOLTON: I'm fine with that, Your Honor.

8 THE COURT: Okay. We'll go ahead and do that.
9 Thank you very much. We'll see you in the morning.

10 (Proceeding concluded at 4:48 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 14th 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 11th day of November, 2019.

12
 13 Electronically signed by:

14 Colleen C. Clark
 15 COLLEEN C. CLARK, RPR
 16 OFFICIAL COURT REPORTER

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