

FILED
11-05-2019
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

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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 EXCERPT OF JURY TRIAL PROCEEDINGS - DAY 1
commencing on the 14th day of October, 2019, at approximately
1:22 p.m. before the
HONORABLE JUDGE FRANK D. REMINGTON

APPEARANCES: LEONARD POZNER appeared with Attorneys at Law,
GENEVIEVE ZIMMERMAN and JACOB ZIMMERMAN,
Meshbeshner & 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	3	
2	Court ruling on objections from Dr. Lubit deposition	3	

1 (The following is an excerpt of the trial
2 proceedings held on October 14, 2019:)

3 * * * * *

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

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

10 (Exhibits 1 and 2 marked for identification.)

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

21 Of course, we have three members accredited from
22 the media. Sometimes the life of a judge is drawing
23 lines, and I've decided to draw the line to allow the
24 accredited media to use their electronic communication
25 devices. I don't think that doesn't -- well, that doesn't

1 extend to taking pictures in the courtroom, by the way,
2 but certainly, they can open their laptops. Now, if
3 there's anyone else in the room that is an accredited
4 person in the media, then please, let me know. Otherwise,
5 there will be no use of electronic communications, no cell
6 phones, no computers except as otherwise specifically
7 approved by the Court. And, as indicated, I did give
8 approval to the *State Journal*, the *New York Times* and
9 *University of Connecticut* or *Connecticut*. Is there anyone
10 else that seeks the approval of the Court? Okay. Hearing
11 none.

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

14 MR. ZIMMERMAN: No, Your Honor.

15 MR. BOLTON: No, Your Honor.

16 THE COURT: We're probably not going to get done
17 with the videotape. We do take a 15 minute break middle
18 of the afternoon. I don't know how long the opening
19 statements are going to last, so just bear that in mind,
20 what good breaking point would be. I apologize not being
21 able to finish it, but I often talk to jurors after their
22 service and, like I indicated earlier on, they like to try
23 to avoid the traffic. Because of the narrowing of the
24 issues, I'm not worried about not finishing, but I'd
25 rather not press them the first day into the -- past the

1 point in time. So any time you want to break between 4:00
2 and 4:30 is certainly with the approval of the Court.

3 Okay. Anything else? Mr. Bolton?

4 MR. BOLTON: No, Your Honor.

5 THE COURT: Okay. Bring the jury in.

6 THE BAILIFF: All right. Please rise for the
7 jury.

8 (Jury in.)

9 THE COURT: Please be seated.

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

21 Before the trial begins, there are certain
22 instructions you should have to better understand your
23 functions as a juror and how you should conduct yourself
24 during the trial. Your duty is to decide the case based
25 only on the evidence presented at trial and the law I give

1 you in these instructions. Anything you may see or hear
2 outside the courtroom is not evidence. Do not let any
3 personal feelings about race, religion, national origin,
4 sex, or age affect your consideration of the evidence.

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

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

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

25 In previous proceedings, the Court determined:

1 1. Plaintiff is Leonard Pozner.

2 And, 2, Mr. Pozner had a son with a birthdate of
3 November 20th, 2006 who was declared dead as a result of
4 multiple gunshot wounds at 11:00 a.m. on December 14th,
5 2012 in Sandy Hook, Connecticut.

6 Defendant is James Fetzer. Defendant Fetzer
7 published the following statements:

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

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

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

17 And finally, 4, Mr. Pozner's son's death certificate
18 "turned out to be a fabrication, with the bottom half of a
19 real death certificate and the top half of a fake, with no
20 file number and the wrong estimated time of death at
21 11:00 a.m., when 'officially' the shooting took place
22 between 9:35 and 9:30 that morning."

23 The Court concluded that Mr. Pozner did not
24 possess or circulate a fake death certificate for his son
25 or one that was a fabrication or a forgery and that these

1 statements published by Dr. Fetzner were false and defamed
2 Mr. Pozner.

3 As members of the jury, you have the job of
4 determining what, if any, compensation Mr. Pozner is
5 entitled to receive as a result of Dr. Fetzner publishing
6 these defamatory statements.

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

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

18 Do not research any information that you
19 personally think might be helpful to you in understanding
20 the issues presented. Do not investigate this case on
21 your own. Do not read any newspaper reports or listen to
22 any news reports on the radio, television about this
23 trial. Do not consult dictionaries, computers, websites
24 or other reference materials for additional information.
25 Do not seek information regarding the public records of

1 any party or witness in this case. Any information you
2 obtain outside the courtroom could be misleading,
3 inaccurate, or incomplete. Relying on the information is
4 unfair because the parties would not have an opportunity
5 to refute, explain, or correct it.

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

18 Additionally, do not communicate with anyone
19 about this trial or your experience as a juror while you
20 are serving on this jury. Do not use a computer, cell
21 phone or electronic device with communication capabilities
22 to share any information about this case. Time and time
23 again in this state and elsewhere you hear jurors who like
24 have Facebook or social media or bloggers, all of a sudden
25 they can't resist and they start blogging on their breaks

1 or at lunch or in the evening about this case or what
2 you're doing. Please take a break from your social media
3 or the computer. Do not communicate with anyone. Do not
4 do any of those things on your communication device. Do
5 not communicate by blog, e-mail, text message, Twitter,
6 Facebook, or other social networking sites in any way, on
7 or off the computer or cell phone or any other electronic
8 device.

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

20 These rules are intended to ensure jurors remain
21 impartial throughout the trial. If any juror has any
22 reason to believe that another juror has violated these
23 rules, you should report that to me by notifying the jury
24 bailiff. If jurors do not comply with the rules, it could
25 result in a new trial involving additional time and

1 significant expense to the parties and the taxpayers.

2 You are to decide the case solely on the
3 evidence offered and received at trial. Evidence is:

4 1. testimony of witnesses given in court, both on
5 direct and cross-examination, regardless of who called the
6 witness;

7 2. deposition testimony presented during trial,
8 whether by written transcript or by videotape or other
9 recording;

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

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

14 It is not necessary that every fact be proved by
15 a witness or an exhibit. A fact may be proved indirectly
16 by circumstantial evidence. Circumstantial evidence is
17 evidence from which a jury may logically find other facts
18 according to common knowledge and experience.

19 Circumstantial evidence is not necessarily better or worse
20 than direct evidence. Either type of evidence can prove a
21 fact.

22 Anything you may have heard or seen outside the
23 courtroom is not evidence. Remarks of attorneys are not
24 evidence. If any remark suggests certain facts not in
25 evidence, disregard the suggestion.

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

15 At times during the trial, objections may be
16 made to the introduction of evidence. I do not permit
17 argument on objections to evidence to be made in your
18 presence. Any ruling upon objections will be based solely
19 upon the law and are not matters which should concern you
20 at all. You may not infer from any ruling that I make or
21 from anything that I should say during the trial that I
22 hold any views for or against either party to this
23 lawsuit.

24 During the trial, I will sustain objections to
25 questions asked without permitting the witness to answer

1 or, where an answer has been made, will instruct that it
2 be stricken from the record and that you are to disregard
3 it and to dismiss it from your minds. You should not draw
4 any inference from the unanswered questions, nor may you
5 consider testimony which has been stricken in reaching
6 your decisions. This is because the law requires that
7 your decisions be made solely upon the competent evidence
8 before you.

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

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

21 You may rely on your notes to refresh your
22 memory during your deliberations. Otherwise, keep them
23 confidential. After the trial, the notes will be
24 collected and destroyed.

25 Now you will not have a copy of the written

1 transcript of the trial testimony available for use during
2 your deliberation. You may ask to have specific portions
3 of the testimony read to you. You should pay careful
4 attention to all the testimony because you must rely
5 primarily on your memory of the evidence and the testimony
6 introduced during trial.

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

16 It is the duty of the jury to scrutinize and to
17 weigh the testimony of witnesses and to determine the
18 effects of the evidence as a whole. You are the sole
19 judges of the credibility, that is, the believability, of
20 the witnesses and of the weight to be given to their
21 testimony.

22 In determining the credibility of each witness
23 and the weight you give to the testimony of each witness,
24 consider these factors:

25 whether the witness has an interest in or lack of

1 interest in the result of the trial;

2 the witness' conduct, appearance, and demeanor on the
3 witness stand;

4 the clearness or lack of clearness of the witness'
5 recollection;

6 the opportunity the witness had for observing and for
7 knowing the matters the witness testified about;

8 the reasonableness of the witness' testimony;

9 the apparent intelligence of the witness;

10 bias or prejudice, if any has been shown;

11 possible motives for falsifying testimony; and

12 all other facts and circumstances during the trial
13 which tend to either support or to -- or to discredit the
14 testimony.

15 Then give to the testimony of each witness the weight you
16 believe it should receive.

17 There's no magic way for you to evaluate the
18 testimony; instead, you should use your common sense and
19 experience. In everyday life, you determine for yourself
20 the reliability of things people say to you. You should
21 do the same thing here.

22 After all the evidence is introduced and both
23 parties have rested, the lawyers will again have an
24 opportunity to address you in closing arguments. While
25 the closing arguments are very important, they are not

1 evidence and you are not bound by the arguments of either
2 lawyer.

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

17 I do caution you, however, that under your oath
18 as jurors, you are duty bound to accept the rules of law
19 that I give you whether or not you agree with them. As
20 the sole judges of the facts in this case, you must
21 determine which of the witnesses you believe, what portion
22 of their testimony you accept, and what weight you attach
23 to it.

24 We have now reached the stage of the proceeding
25 where both lawyers have an opportunity to make an opening

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

13 Okay. Ms. Zimmerman.

14 MS. ZIMMERMAN: See if I can get this on right.
15 May it please the Court.

16 THE COURT: Thank you.

17 MS. ZIMMERMAN: Mr. Pozner, counsel, Mr. Fetzer,
18 My name is Genevieve Zimmerman, and I'm one of
19 the lawyers that has the great privilege of representing
20 Mr. Pozner here today.

21 And like any case, this has a story. But in
22 this instance, there really are two stories. The first
23 part of the story is really sad, and it starts with a
24 little boy named Noah Pozner. He was six years old on
25 December 14th of 2012. Pardon me. That was the day that

1 little Noah was murdered with so many of his classmates at
2 the Sandy Hook Elementary School in Newtown, Connecticut.
3 But as we started to tell you this morning, that is not
4 the story that we are here to talk about in this trial.

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

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

21 As Judge Remington told you earlier today, just
22 a few minutes ago, this is my opportunity to forecast for
23 you what you can expect to hear during this trial, to give
24 you a little bit of a roadmap. So I want you to
25 understand right now at the outset that we are not

1 asking -- we are not asking this jury to hold Mr. Fetzter
2 responsible for what happened to Noah. We're not here
3 asking for that. But we are going to ask, at the
4 conclusion of this evidence, that you, the jury, hold him
5 responsible for the actions he chose to take and the
6 statements that he made about our client.

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

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

21 But as the judge explained to you earlier this
22 morning, our constitution and the court system that we've
23 established, it relies on people like you to serve as
24 jurors in cases like this. In fact, the Seventh Amendment
25 doesn't get a lot of -- a lot of attention, but that's one

1 of the things that the Founding Fathers did. They
2 preserved the right to a jury trial in the Bill of Rights.

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

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

15 So honor means different things to different
16 people. And at the close of this evidence, you're going
17 to be asked to evaluate and place a dollar figure on what
18 that might mean in the context of the facts of this
19 particular case.

20 So some of you may have heard about a historic
21 dispute between one of our vice presidents, Aaron Burr,
22 and Alexander Hamilton, the guy who's on the \$10 bill. I
23 know my kids love the music from *Hamilton*, the "Ten Duel
24 Commandments." And I got to thinking about that as I was
25 thinking about what I might say to you this afternoon.

1 But Alexander Hamilton and Aaron Burr, they got into a gun
2 duel, a battle, because of honor, because of what people
3 said. They took the issue of honor so seriously that they
4 engaged in a duel, and one of them died. But so today, at
5 the beginning of this trial, instead of a duel, Mr. Pozner
6 brought his dispute against Professor Fetzner to this
7 court, and ultimately, to you, the jury, to decide these
8 issues.

9 So what are you not going to be asked to decide?
10 You're not going to be asked whether or not Sandy Hook was
11 real. You're not going to be asked about whether or not
12 26 people were murdered that day. You're not going to be
13 asked whether Noah Pozner was among them. You're not even
14 going to be asked whether our client, Mr. Pozner, a
15 grieving father, forged his death certificate. The Court
16 has already concluded those issues. The Court has
17 concluded that Noah was a real, live boy; that Noah was
18 born in 2006; and that Noah lived; and that Noah died at
19 the Sandy Hook Elementary School in Newtown, Connecticut
20 on December 14th of 2012. The Court has concluded that
21 the death certificate was prepared and it was real. It
22 was not forged. And the Court has concluded that the
23 defendant, Mr. Fetzner, Professor Fetzner falsely wrote that
24 Mr. Pozner forged the death certificate, and that these
25 remarks in writing in this book, multiple editions of this

1 book, defamed Mr. Pozner.

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

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

13 One you're going to hear from today by videotape
14 deposition. He's the only expert in the case. There's no
15 dispute about the fact that he's an expert. His name is
16 Dr. Lubit. He's a psychiatrist and a medical doctor. He
17 trained at Cornell and at NYU. He finished his residency
18 at Yale. He has years of treat -- years of experience
19 treating people with PTSD, and in fact, he was completing
20 his postdoctoral work in the shadows of the Twin Towers
21 when those fell. He practiced then at St. Vincent's in
22 New York City on September 11, 2001, which was the closest
23 major medical center near Ground Zero. And as we can all
24 imagine, there was a lot of PTSD that happened that day
25 and the months and years following.

1 So Dr. Lubit, he has years of diagnosing,
2 treating, and caring for people who suffered from trauma
3 and who have been diagnosed with PTSD. You're going to
4 hear him testify this afternoon by videotape. He couldn't
5 leave his practice to be here today, but he felt it was so
6 important that he agreed to provide his testimony last
7 weekend.

8 You will hear Dr. Lubit testify that Mr. Pozner
9 was diagnosed with PTSD by his own medical doctors, and
10 that he started to improve in the months following the
11 Sandy Hook tragedy. But you'll also hear Dr. Lubit
12 explain that because of the defendant's defamation, that
13 Mr. Pozner is unable to complete the grieving process and
14 move forward with the healing. He -- you will hear him
15 testify that Professor Fetzner is the cause of that harm.

16 You're also going to hear from Mr. Pozner. He's
17 the plaintiff in this case and Noah was his son and there
18 is no doubt that Sandy Hook was a terrible event in his
19 life. He's going to tell you about the funeral. He's
20 going to tell you about his experience with some of the
21 conspiracy theorists that have come to share their
22 experiences or their opinions with people in the years
23 since then. And he's going to tell you about his
24 experience with Professor Fetzner, the defendant in this
25 case. He's going to tell you about what has happened as a

1 result of this book. He's going to tell you that he's
2 received threats. He's going to talk to you about what
3 actions he's had to take to protect himself and his family
4 and about what kind of questions he has about his safety
5 every single day he goes outside, every time he meets a
6 new person. And Mr. Pozner's going to be able to tell
7 that story better than I can.

8 The last witness we're going to call in our case
9 is going to be the defendant himself, Mr. Fetzer. And
10 I'll tell you what he's not going to say. He's not going
11 to deny he wrote this book, *Nobody Died at Sandy Hook*.
12 He's not going to deny that -- that he wrote that
13 Mr. Pozner forged his son's death certificate. He's not
14 going to deny that he published the book, he's not going
15 to deny that there was a banned additional -- edition
16 online. He's not going to deny that there's a second
17 edition as well. In fact, he won't deny that it's his
18 understanding that ten million people have accessed his
19 book online. Ten million. He's not going to admit that
20 some of the readers have taken additional action based on
21 his book.

22 Additionally, Professor Fetzer is going to --
23 he's going to testify to you, he's going to agree and
24 admit that he's violated this Court's order on
25 confidentiality in e-mailing out videos taken in this

1 case.

2 So the only expert you're going to hear from
3 during the course of this trial is Dr. Lubit, and as I
4 said, the parties agree that he's an expert. He's the
5 only one you're going to hear from.

6 Now we expect that -- that Professor Fetzer is
7 going to call -- that he may call himself back to the
8 stand for additional time and that he may call two
9 additional witnesses. Both of the other witnesses he
10 expects to call are coauthors on other chapters of the
11 book, *Nobody Died at Sandy Hook*. Both of them have said
12 vile, awful things, both about my client and about his
13 son, and we'll explore that during the testimony.

14 But as Judge Remington just explained to you,
15 I'd encourage you to pay close attention as -- as
16 witnesses are called to the stand. What is their motive
17 to testify? What is their demeanor? Is this a person
18 that you can trust?

19 I expect that Mr. Fetzer's lawyers are going to
20 attempt to convince you that our -- that, first of all,
21 that maybe the lies weren't that big of a deal. Or
22 maybe -- maybe the argument is going to be that Mr. Pozner
23 was so damaged by the death of his son that the damage
24 that Mr. Fetzer caused was minimal and perhaps ought to be
25 excused. Keep those -- keep those ideas in your mind as

1 you hear the testimony that's presented to you in the next
2 couple of days.

3 Now after hearing the evidence, we're going to
4 have another opportunity, as the Court just explained, to
5 make arguments to you about what we think the damages are
6 and how you might begin to calculate such a thing. But
7 for now, I'd just like to thank you for coming in this
8 morning, for participating in our democracy in this way.
9 It's a really important process. And I'll extend those
10 thanks on behalf of both the plaintiff and on behalf of
11 the defendant. This is the most important case for both
12 sides. It's important that you pay attention, and we
13 thank you for your service in that way.

14 We hope and expect that the evidence that you're
15 going to hear in this trial is going to be clear and
16 streamlined, and that at the end of the evidence when you
17 have all of the facts in front of you, that you're going
18 to be confident in evaluating and rendering a verdict in
19 favor of our client. And that's all I've got to say to
20 you right now.

21 THE COURT: Thank you, Ms. Zimmerman.

22 Mr. Bolton.

23 MR. BOLTON: I do this all the time at home.

24 Good afternoon. Am I being picked up? Can you
25 hear me okay?

1 MR. BAKER: I don't think so.

2 THE COURT: No. Pull it up a little.

3 MR. BAKER: Move it closer.

4 MR. BOLTON: Okay. That better? Okay.

5 I must confess at the outset, and as

6 Ms. Zimmerman notes, that we -- we threw out perhaps some
7 false teasers during the voir dire, because you're not
8 actually going to get to decide whether or not Sandy Hook
9 occurred or didn't occur. Your role in this particular
10 case is going to be very limited but very important.

11 In -- in any lawsuit there are multiple roles to
12 play in this system, and in this particular case, the
13 Court has taken the role in determining whether or not
14 certain statements were or were not false and defamatory,
15 and so that issue is not before you. And so to the extent
16 that during the voir dire there was some suggestion that
17 you were going to maybe get to decide some of these issues
18 relating to the underlying research that the Sandy Hook
19 researches rely on, that's not going to be your role.
20 Your role then is simply to determine what damages, if
21 any, flowed from particular statements that the Court has
22 determined to be the ones that offend.

23 And, when I listen to Ms. -- Ms. Zimmerman, I
24 get the impression that on trial in terms of damages is
25 everything that the Sandy Hook researchers have said about

1 why they believed that the mainstream narrative is not
2 true. And those statements are -- are much more than what
3 the Court has determined to be at issue in this case.

4 So in terms of the broader research in terms of
5 Sandy Hook, that -- and then the multiple researchers,
6 including Dr. Fetzer, who have -- have researched on that,
7 that broader issue has not had its day in court. It could
8 have had its day in court, perhaps, but Mr. Pozner made a
9 decision that he wanted to -- that he was only going to
10 claim that very narrow, specific statements were false and
11 defamatory. And that -- and I -- I -- that is perfectly
12 fine in terms of a choice that he made.

13 But, it also circumscribes then what is at issue
14 in this case, because the question here then for you will
15 not be whether or not the general universe of Sandy Hook
16 researchers, and -- and the nature of the research itself
17 is damaging, but rather, the question -- the question is
18 simply that you will be asked to determine is whether or
19 not and if there was -- whether or not there was injury,
20 and if that injury was caused by the particular statements
21 at issue in this case.

22 And, what do I need to do? What I -- what I
23 want to show you, because I don't think it -- and the
24 Judge alluded to it in his introductory instructions, but
25 I think it's important that you understand what it is.

1 These are the statements. These are the statements that
2 are at issue. So the question is whether or not these
3 particular statements caused the injury or caused any
4 injury to Mr. Pozner, and the extent to which that injury
5 has damaged him.

6 Now when I say that your role is limited, it is
7 not an easy role, however, because in this case, the
8 nature of the damage that is being claimed is, basically,
9 emotional distress-type damages. And, there's no MRI for
10 that. There's no blood test for that. There's no range
11 of motion test for that. There's no mental acuity test
12 for it. The damages that Mr. Pozner is claiming are
13 basically self-reported, which doesn't mean, by the way,
14 that they're not true, but it makes your job much more
15 difficult because they may not be true or the
16 self-reporting may be influenced by subtle factors that
17 even -- that even Mr. Pozner -- and I -- I apologize. I
18 keep calling him Pozner and it's a short O. In the
19 Seventh Circuit there was a judge we all knew, Judge
20 Posner, and I -- I keep using that pronunciation, and I
21 apologize.

22 So the -- when I say that the diagnosis and the
23 injury that is claimed then is based strictly on
24 self-reporting, and that that -- and that you have to
25 determine then both the reliability and the extent to

1 which the injury occurs. And so, for instance, Dr. Lubit,
2 who is identified on a couple of occasions by Attorney
3 Zimmerman as the only expert in this case, and, quite
4 frankly, that's a decision that we made because we're
5 comfortable with that decision. These are self-reported
6 injuries, and Dr. Lubit, himself, when I talked with him,
7 identifies some of the factors that you should consider in
8 evaluating this case.

9 For instance, the concept of secondary gain is
10 something that can influence, subtly or otherwise, an
11 individual's reporting of symptoms. Secondary gain is
12 when there's some external factor that would influence
13 someone in their testimony or in their -- not in their
14 testimony, but in the description of their symptoms. What
15 is secondary gain? What is an external? And, quite
16 frankly, in my -- in my world, because I'm a lawyer, the
17 most obvious secondary gain item is litigation.
18 Litigation can influence subtly or otherwise how people
19 perceive their injuries.

20 But Dr. Lubit will also tell you -- he will also
21 acknowledge that -- that, yes, the type of injury that
22 we're dealing with or that is claimed is self-reported,
23 but he will also tell you that in terms of causation, the
24 issue of causation, whether or not the reported symptoms
25 are caused by A or B, Dr. Lubit will say that that is the

1 role of the jury. It is not his role. And the reason he
2 recognizes that is because ultimately, the question of
3 causation, from one event causing something else, is not
4 something that is a matter of his expertise.

5 So we don't really know what more would be
6 gained by an additional expert, because -- because
7 largely, Dr. Lubit agrees that in the final analysis, the
8 decision is yours. But, he does, nonetheless, reach some
9 opinions. And his opinion, I think -- I think the
10 evidence, both -- both the internal evidence within his
11 own deposition and the evidence from other witnesses,
12 including Mr. Pozner, will suggest that -- that his -- his
13 opinions are -- are, quite frankly, not well founded or at
14 least questionable in this case.

15 For instance, Dr. Lubit will say that Mr. Pozner
16 experienced traumatic stress disorder as a result of the
17 death of his son. And that would be -- that would be a
18 fairly typical sort of diagnosis for someone experiencing
19 that type of trauma, somebody who experienced a war
20 situation, somebody who was involved, witnessed some sort
21 of violent incident, but somebody that was -- that -- that
22 exposed to some -- some extraordinarily traumatic event.
23 So he acknowledges that.

24 But Dr. Lubit then goes on to say that in his
25 opinion, in his professional opinion, he says that

1 Mr. Pozner would have probably recovered from that. But
2 he goes on to say that there was a second injury. And he
3 says that the second injury was, seemingly, the result of
4 these statements. That -- that these written statements
5 were the equivalent of the traumatic event that is
6 typically associated with post-traumatic stress disorder.

7 And not only does he attribute a second incident
8 of post-traumatic stress disorder to these written words,
9 unlike the death of Mr. Pozner's son, Dr. Lubit says, and
10 these words -- and from these words, Mr. Pozner, in the
11 doctor's opinion, to a reasonable degree of professional
12 certainty, from these words Mr. Pozner will never fully
13 recover. He will recover from the death of his son,
14 but -- but these words will be affecting him forever.

15 It's not clear how he arrives at the distinction
16 that -- that even if you had two incidents of
17 post-traumatic stress disorder, why one would be
18 recoverable but the other would not be recoverable. But I
19 think from your perspective, you have to make a
20 determination whether or not these are the type -- that
21 this is the type of event that causes the injury that
22 Dr. Lubit claims and that Mr. Pozner claims.

23 But I will also say this, perhaps to his credit
24 and perhaps to his discredit, Dr. Lubit's opinion is
25 atypical in many respects. It is atypical for one -- in

1 one respect that Dr. Lubit never met Mr. Pozner. He
2 talked with him on the phone a couple of times. Most
3 recently, the last time he talked with him was the day
4 before Dr. Lubit's testimony in this case. And he will
5 tell you, when we chatted, that it's not typical that he
6 would render an opinion without having actually met the
7 individual.

8 Dr. Lubit's opinion is also somewhat atypical in
9 that he asked for and received no prior medical records.
10 There's no -- Dr. Lubit, a medical psychiatrist, rendered
11 an opinion to a reasonable degree of professional
12 certainty that Mr. Pozner will suffer from post-traumatic
13 stress disorder for the rest of his life without even
14 having asked for or looked at any prior medical records.
15 And he will tell you that that also is atypical.

16 Mr. -- or Dr. Lubit also will tell you that his
17 opinion is based, in many respects, not on these words
18 that are what the Judge has determined to be at issue, but
19 he -- he will testify that what -- what's really traumatic
20 in this event, in this -- in this circumstance, is that
21 Mr. Pozner received threats, and that he -- that he was
22 the subject of harassment.

23 I have two things to say in response to that.
24 Number one, his information is largely incorrect. Maybe
25 I've got three things.

1 Number two, none of that -- and I'm going to
2 tell you right now, there is an incident, there is one
3 well-known incident in which a woman named Lucy Richards
4 made -- made vile threats by, I believe, telephone, but
5 maybe they were e-mailed, to Mr. Pozner. But there --
6 there is absolutely no evidence that this individual at --
7 in any way, shape, or form was incited to such acts of
8 lawlessness by Professor Fetzer. There's no evidence that
9 she even read these words. There's no evidence that
10 anybody who has made any threat to Mr. Pozner has read
11 these words or in any way has been influenced by these
12 words.

13 There similarly is no evidence that anyone
14 who -- and harassed I know is a -- is kind of a difficult
15 term, because what one considers to be harassing and what
16 another considers to be harassing may be different. But
17 without quibbling, there's no evidence that anyone who
18 harassed Mr. Pozner read or was incited to lawlessness by
19 anything that Professor Fetzer wrote.

20 And, the third thing, I said there was a third
21 thing, the notion of causation I think is going to be
22 something that you -- that you need much address. That
23 is, it isn't the case that everything that happens
24 after -- people -- this is not the first time that someone
25 has made a -- has written something that has -- has

1 ultimately proven to be untrue and found to be defamatory
2 as a result. It's not the first time that this has
3 happened. It's not the first time that it has come into
4 court, and in that respect, this case is like many
5 defamation cases.

6 But what's important is that the defamation,
7 itself, does not automatically lead to damages. There has
8 to be a causal relationship between what is claimed and --
9 and the statements that are under scrutiny. And in this
10 case, basically, what the doctor and Mr. Pozner are
11 arguing is that if -- if Mr. -- or if Professor Fetzer
12 writes something or if anybody -- if anybody writes
13 something that is later proven to be false, that in that
14 instance, you become vicariously liable for the world
15 outside. That if -- if somebody else then, who may not
16 have even read it, who may -- may not have been incited at
17 all by it, that if -- if a person writes something and
18 someone else then engages in a criminal threat or in some
19 form of harassment, that -- that that somehow satisfies
20 the issue of causation, that the -- that the author
21 basically becomes liable vicariously then for whatever
22 anybody else does. And that is not I think what you will
23 find to be a proper understanding or extension of the
24 concept of causation. And, in particularly in this case,
25 there is no evidence of any relationship between any

1 harassment or threats, and Mr. -- Professor Fetzer's
2 writing. And you will also learn that certainly,
3 Professor Fetzer has never made any threats or harassed
4 Mr. Pozner.

5 So I think -- I think -- I think you're going to
6 find that the opinion of Dr. Lubit -- you need to look at
7 it and listen very carefully to what he says, and the
8 basis for which he reaches his conclusion, because he
9 also -- he also speaks very generally. He basically -- he
10 basically says that it would be -- that the entire
11 universe of skeptic literature is traumatic to Mr. Pozner,
12 but again, the entire universe is not at issue here of
13 such literature and such research. This is what is at
14 issue.

15 When I say that Mr. Lubit or Dr. Lubit's opinion
16 is atypical, he also says that what's particularly
17 upsetting in this particular case is that when someone has
18 suffered the loss of a child or a loved one, that -- that
19 it's particularly upsetting then when that person does not
20 receive validation of their grief and their loss. And in
21 this case, the doctor says that someone in the universe of
22 Sandy Hook researchers who deny that Sandy Hook occurred,
23 that they are guilty of not providing the sort of
24 validation and support of Mr. Pozner's loss.

25 But I asked him, because I -- and I'm not, I'm

1 not an expert in this area, so in large measure, I was
2 learning a lot of things from Dr. Lubit as well. I asked
3 him whether in his experience that concept of validation,
4 whether -- whether someone is going to be affected because
5 they don't receive validation from somebody as remote as
6 Dr. Fetzer, someone who he doesn't even know. Is it
7 required that you receive validation from the universe in
8 order to not be injured? If someone has suffered a loss,
9 is there a psychological expectation that they will
10 receive validation for their loss from the world? And
11 while Dr. Lubit seems to think that that might be true, he
12 did concede to me that he was unaware of any case where he
13 had seen the absence of validation to be so remote.

14 Bottom line here is that I want you to listen to
15 Dr. Lubit's testimony, because I think he tells us a lot
16 about the science and how you evaluate these things, but I
17 think ultimately, if you actually listen to the principles
18 that -- that he analyzes and then look at whether or not
19 he actually applied the principles, I think you'll find
20 that the doctor, himself, has engaged in -- in what is
21 also known in, I think in his domain, as confirmation
22 bias. That is, that you begin to review all of the facts
23 and circumstances in a singular way in order to confirm a
24 particular conclusion that you're trying to arrive at.
25 And in this particular case I asked Dr. Lubit,

1 particularly given that -- that the diagnosis in his
2 opinion is based strictly on subjective self-reporting, I
3 asked him whether or not he had -- whether or not there
4 was any countervailing facts that he -- that he thought at
5 least went in the -- the other ledger. And it's somewhat
6 interesting given the concept of confirmation bias,
7 because he then went out of his way to tell me that
8 anything that pointed the other way was really not nearly
9 as relevant as the self-reporting of Dr. -- or of
10 Mr. Pozner.

11 I think the evidence will also show then from
12 Mr. Pozner that the doctor's diagnosis and his opinions
13 based on what I think is largely inaccurate information, I
14 think the evidence will also indicate from Mr. Pozner,
15 himself, that the claim -- that the -- that the claim
16 disabling PTSD from these four statements is exaggerated,
17 and -- and whether -- whether intentional or not, that
18 it's exaggerated and -- and his timeline in terms of --
19 and the timeline I think is important here in terms of
20 assessing the validity of his -- of his self-reporting.

21 As -- the concept -- the issue of people who
22 begin researching and questioning whether or not Sandy
23 Hook really occurred, and I think -- began almost --
24 almost immediately after the event, and Mr. Pozner will
25 acknowledge that, I believe. And so it's that denial that

1 Dr. Lubit says is, essentially, at the heart of
2 Mr. Pozner's damage claim here, his injury claim here.
3 And yet that began -- that began almost immediately, long
4 before these four statements were published. I think
5 these statements were published in approximately October
6 of 2014.

7 MR. FETZER: '15.

8 MR. BOLTON: Pardon?

9 MR. FETZER: 2015.

10 MR. BOLTON: 2015. And Sandy Hook, itself,
11 occurred three years earlier than that.

12 In addition, I think the -- so the question
13 begins if -- if the denial is what is so disabling, then
14 what is it then that that suggests that, according to
15 Dr. Lubit, Mr. Pozner was progressing nicely in his
16 recovery, in spite of this existing world of skeptic
17 research, that suddenly in October of 2015, all of a
18 sudden everything changed. These four words -- these four
19 items changed everything. The fact of the matter is these
20 words, in conjunction with the -- they're really far less
21 questioning of the basically, basic occurrence of the
22 event than some of the previous stuff that supposedly
23 caused no injury.

24 But as to whether or not it was disabling and
25 how it affected Mr. Pozner, one thing that we'll see --

1 hear testimony about is that Mr. Pozner has been very,
2 very focussed on trying to end the whole debate, and
3 presentation of the counter -- of the argument for what --
4 why they believe Sandy Hook did not occur. And so for
5 many years he has been working diligently to try and have
6 all the Sandy Hook skeptic literature removed from the
7 internet with great success. I think at one point he
8 attributed at least 1,500 items of material that he had
9 been responsible for having taken down from -- from the
10 internet.

11 But he also talked about sort of three stages --
12 three stages of -- that he's engaged in, in terms of
13 trying to address the Sandy Hook skeptics. Which -- which
14 he -- the testimony will be that he has undertaken not as
15 a means of addressing his own psychological distress, but
16 he has said he has done it as a means of honoring the
17 death of -- or the life of his son. But that's different
18 than saying that he's undertaken this in order to
19 alleviate any distress that he, himself, has suffered.
20 And on the contrary, Mr. Pozner seeks out diligently and
21 vigilantly the very material that he says causes him
22 distress. He goes to it. It's in -- in other areas of
23 the law we refer to this in the real estate concept as
24 coming to the nuisance. He says that this stuff is really
25 distressing to him and he seeks it out, and I think that

1 that -- you'll find that that's inconsistent with his --
2 the injury that he's claiming. But I think you'll also
3 find that it is inconsistent -- that his timeline --
4 that -- why it suddenly began or did it suddenly begin in
5 October of 2015 with the publication of these words. I
6 think his timeline -- I want you to pay attention to his
7 timeline of when things happened, because I think you'll
8 see that it's inconsistent with -- with, again, with the
9 causation that he's trying to attribute to these words.

10 But the past -- the program -- the mission that
11 he's undertaken, in his deposition earlier this year, he
12 said that there were basically three stages. The first
13 stage was when he tried to -- and this is not his words,
14 this is my words -- but basically embed himself into some
15 of the research circles of people that were Sandy Hook
16 skeptics. And, I think that was -- I think he found that
17 to be not a very successful route.

18 And so then the second stage that he's
19 identified was when he -- when he attempted and has -- and
20 continues to attempt to get anything -- any -- any Sandy
21 Hook research questioning of the occurrence taken down
22 from the internet. And -- and he's been pretty successful
23 at that.

24 But -- but perhaps not as successful overall as
25 he'd like to be, because there's a third stage, and I must

1 be honest that Mr. Pozner did not himself identify this as
2 the third stage, because he said that one can't really
3 identify a stage when you're in it. For instance, his
4 reference was, "You don't know that you're in the
5 Renaissance until after the Renaissance." But the third
6 stage that people can see occurring, at least by his
7 actions, has been a litigation phase. He's -- he has been
8 very active in suing any number of people who -- and the
9 Sandy Hook skeptics in general, but not just the Sandy
10 Hook skeptics, in general, either.

11 MS. ZIMMERMAN: May we approach?

12 THE COURT: Do you have an objection?

13 MS. ZIMMERMAN: Yes. I'd like to approach.

14 THE COURT: Sustained.

15 MS. ZIMMERMAN: Thank you.

16 THE COURT: Ladies and gentlemen, these are
17 opening statements. Later on, after the evidence, you'll
18 hear closing arguments. Objection is sustained.

19 MR. BOLTON: What I -- the evidence will be that
20 it is -- that this litigation phase is not just directed
21 at Sandy Hook skeptics, but that he's also sued --

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

23 THE COURT: You can approach.

24 (Bench conference held outside the presence of
25 the jury.)

1 MS. ZIMMERMAN: Your Honor --

2 THE COURT: Hang on just a second. Why don't --
3 do you want to take a break? Okay. Yeah. Oh, you've got
4 your microphone. Yeah. Stick it in your pocket or
5 something.

6 MS. ZIMMERMAN: Your Honor, I think that this
7 goes directly to Motion in Limine No. 2, in particular,
8 that the plaintiffs brought, and it gets into -- we talked
9 about whether or not there was going to be prohibited
10 references to other defamatory statements, and I think
11 that plaintiff's additional litigation is -- against other
12 parties is just not relevant here and has a substantial
13 risk of prejudicing this -- the proceedings here.

14 THE COURT: Well, and I mean, also, your
15 objection I discerned was timed when you were discussing
16 other lawsuits. What could possibly be the relevance to
17 this lawsuit that there are other lawsuits? You've got to
18 talk right into the microphone.

19 MR. BOLTON: I --

20 THE COURT: As close as you can get. The
21 machine --

22 MR. BOLTON: I think it's relevant in terms of
23 litigiousness and whether or not the claim in this case
24 is -- is -- is reliable or not.

25 THE COURT: I can't hear you. It's -- you think

1 he's overlitigious and what?

2 MR. BOLTON: I think it's relevant. The fact
3 that there's other litigation is relevant and who it's
4 against is relevant to the authenticity of the claims in
5 this case. For instance, the very notion that --

6 THE COURT: Okay. Here's what I'm going to do.
7 I'm going to sustain the objection. This is opening
8 statements.

9 MR. BOLTON: Yes.

10 THE COURT: I don't know if it's going to change
11 the way you put in your case, but at present, just because
12 I would like to consider the arguments more carefully and
13 I don't want you going into an area prior to a ruling on
14 this, I do believe it was covered if not in the letter in
15 the spirit of the motion in limine to confine the issues
16 in this case.

17 MR. BOLTON: Okay.

18 THE COURT: But my reasoning is even if it had
19 some limited probative value of its litigiousness, it's
20 prejudicial effect greatly outweighs, because the jury
21 might think that the impact of this defamation somehow
22 should be depreciated because of their opinions on one's
23 litigiousness-ness. But, for now, let's finish up with
24 your opening statements, and then we can make a record at
25 the next break. Thank you.

1 (Back on the record in the presence of the
2 jury.)

3 MR. BOLTON: I believe that there will be
4 evidence in this case that will suggest that -- that this
5 particular litigation has one of its objectives not
6 necessarily just to remedy any alleged damage, but that --
7 that it is directed at the broader -- the broader world of
8 Sandy Hook skeptics. I believe that there will be
9 evidence in this case that suggests that -- that this
10 litigation is intended to show what Mr. Pozner's described
11 as hoaxers, that they will be taken to court, and that it
12 will drag on for a long time. And I think that is one of
13 the objectives of this very litigation. But that's going
14 to be a decision that you have to make.

15 And as I said, the decision that you have then
16 is not an easy one, because -- because there are no -- you
17 know, if I -- if I bring a contract claim and a claim that
18 someone has breached a contract and -- and either a court
19 or jury or someone decides that, in fact, there has been a
20 breach, it is frequently relatively easy then to determine
21 what the damages were, that the cost of repair of
22 something, or he didn't pay me for the -- but in this
23 particular case, you have to determine -- you have to
24 determine the credibility of the -- of the self-reporting,
25 and -- and the significance of it. You have to determine

1 whether or not these four statements are -- are as
2 honestly damaging to Mr. Pozner as he claims.

3 You'll hear testimony as well about -- about
4 Mr. Fetzner -- or Professor Fetzner. And you will learn --
5 you will learn -- well, let me, you know, you're
6 probably -- this question came up somewhat during voir
7 dire. Who are these people? Who are the Sandy Hook
8 skeptics?

9 THE COURT: Mr. Bolton, how much more is your
10 opening?

11 MR. BOLTON: Pardon me?

12 THE COURT: How much more do you have in your
13 opening?

14 MR. BOLTON: Not much longer.

15 THE COURT: I know, ladies and gentlemen, our
16 mid-afternoon break. It's no big deal. Should we break?

17 MR. BOLTON: I'm near done.

18 THE COURT: Okay.

19 MR. BOLTON: But if anyone wants to take a
20 break, I'm certainly not --

21 THE COURT: Raise your hand if you want to take
22 our afternoon break. Okay. Then -- I was ready for the
23 afternoon break. I don't know how many cups of coffee you
24 guys had, but if you're close to being done, let's wrap
25 this up, please.

1 MR. BOLTON: As I said, the question that sort
2 of came up a little bit, certainly the thought process
3 during the voir dire, who are -- who are these people.
4 And -- and there was some questions -- some questioning
5 and some discussion of a fellow by -- now, of course, I
6 can't remember his name. The -- the fellow we talked
7 about, InfoWars.

8 MR. FETZER: Oh, Alex Jones.

9 MR. BOLTON: Alex Jones. There was some talk
10 about Alex Jones. There was talk about others. What I
11 will tell you is that I don't know the whole range of who
12 these people are. It's a varied group of people. It's a
13 varied group of people. But one thing I can tell you that
14 I think the evidence will show is that Professor Fetzer
15 has nothing to do, for instance, with Alex Jones, who in
16 abstention was -- was certainly panned during voir dire.

17 The group, as you would imagine with any group,
18 is a varied group. But you'll learn a little bit about
19 Professor Fetzer, who I won't go into a great depth now,
20 but you will learn is a -- has had a life of -- as a
21 distinguished professor and researcher. You will -- you
22 will learn that he did not, in fact, write the entire
23 book, *Nobody Died at Sandy Hook*. He was an editor on it,
24 and, in fact, one of the -- some of these statements
25 appear in a chapter authored by him, but the book, itself,

1 is a book with, I think, 13-some authors, at least 6 of
2 them PhD scholars, and so the -- who they are, and in
3 particular, who Dr. Fetzner is, is a varied group. But I
4 think the evidence will suggest to you that it is -- that
5 it is a serious group and that the book, for instance,
6 *Nobody Died at Sandy Hook*, while it may be provocative in
7 many respects, I think you'll find that it is, in fact, a
8 serious book of academic research.

9 I promised I'd get done, so I will. At the end
10 of the day the -- this case, while it teases you a little
11 bit about a world of, you know, JFK conspiracy theorists
12 and 9/11 and Sandy Hook, at the end of the day, the part
13 of the case that's been allocated to you, what the
14 Judge -- the Court referred to as your province, is really
15 not much different than many minor cases, and the
16 questions you'll have to determine is whether you believe
17 or how much do you believe by the self-reporting by
18 Mr. Pozner that he was damaged by these particular
19 statements, and that's -- that's -- it's not something
20 that the Court can do. It's not something that even
21 Dr. Lubit can do.

22 Ultimately, we're dealing in an area of
23 subjective, and you have to determine whether or not you
24 believe that these particular statements caused the
25 significant injury and damage that Mr. Pozner is claiming.

1 So you didn't get the whole case, but you got a very, very
2 important and a very difficult part of the case. Thank
3 you.

4 THE COURT: Thank you very much. We'll take our
5 afternoon break.

6 THE BAILIFF: All rise for the jury.

7 (Off the record at 2:39 p.m.)

8 (Back on the record at 2:54 p.m. outside the
9 presence of the jury.)

10 THE COURT: Okay. A couple things. No, please,
11 sit.

12 We have a new mother who's breastfeeding and, of
13 course, we all want to accommodate. That's going to take
14 a little longer as we take our breaks.

15 A couple of deals -- a couple of details.
16 Mr. Fetzer.

17 MR. FETZER: Sir.

18 THE COURT: Do not talk unless you are
19 addressed. There are two occasions during opening. It's
20 not a participatory process --

21 MR. FETZER: Yes.

22 THE COURT: -- where you help Mr. Bolton with
23 his opening. Maybe, Mr. Bolton, you can go over the
24 ground rules with your client as to what his role is.
25 It's not -- it's completely inappropriate to have sort of

1 just interjected, fill in the blank.

2 MR. FETZER: I have been so advised, Your Honor.
3 I understand it and apologize.

4 THE COURT: Okay. Do you want to be heard more
5 on my sustaining the objection during your opening
6 statement as to the relevance of other litigation?

7 MR. BOLTON: I think -- I think I -- I don't
8 have anything more to say on it at this time, I guess.
9 I'm not sure what you're asking me. I understand your
10 ruling in context.

11 My -- what I will say more generally is that I
12 think the concept of other litigation and litigiousness is
13 a very common question in plaintiff's cases where the
14 question -- it bears upon the credibility of the witness
15 in terms of the immediate case, and so the notion that --

16 THE COURT: The credibility?

17 MR. BOLTON: Yes.

18 THE COURT: In what respect?

19 MR. BOLTON: That this is -- that this is a
20 person that brings multiple -- lots of lawsuits, and that
21 the motivation is not -- and in this particular case, I
22 think there will be evidence that Mr. Pozner, himself, has
23 acknowledged that litigation is brought to for the purpose
24 of sending a message to hoaxers that they're going to be
25 dragged into long and expensive litigation.

1 THE COURT: We spent some time on the motions in
2 limine. I don't have them -- I didn't bring it up. I
3 know Ms. Zimmerman referred to them, limiting the
4 defamatory statements. I think it was actually even your
5 request that there are only four defamatory statements.
6 You put up an exhibit on the screen with the four
7 defamatory statements. If I -- I'll let you go in on your
8 theory that other litigation somehow or another bears
9 relevance on causation, do you not open the door then to
10 allow or to allow or to invite or require then we -- a
11 response in which we need to talk about the other
12 litigation and the importance and the seriousness of that
13 litigation, because once you put your toe in those waters,
14 Mr. Bolton, then maybe they are even more egregious and
15 even more offensive and harming to Mr. Pozner. How do I
16 handle that? *Judge, he said that this litigation -- he*
17 *opened it.* Your --

18 MR. BOLTON: My recollection --

19 THE COURT: Your response when they go into the
20 details.

21 MR. BOLTON: Yeah. My response is that it was
22 the other side making that argument. And my understanding
23 is that the question about other litigation and how it
24 bears -- I think it also bears upon the timing in terms of
25 when certain symptoms are alleged to have begun. That

1 if -- if other, you know, the claim in this -- in this
2 lawsuit is that he basically became symptomatic as a
3 result of these particular statements.

4 But to the extent that -- that I stuck my toes
5 in that crack, let me -- let me put my entire leg in the
6 crack then. I don't care if they want to talk about other
7 litigation. I think it bears upon this litigation as
8 well.

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

10 We totally, fundamentally, and wholeheartedly
11 disagree. They brought a counterclaim for Abuse of
12 Process. If they think he's out here abusing the process,
13 going into this litigation for their own reasons, they
14 should have pled that claim properly and not had it
15 dismissed. If they think Lenny is a faker, if that he's
16 faking his symptoms, they should have brought in an expert
17 who could provide that testimony. What we're seeing is a
18 lawyer trying to inject himself into a role of a forensic
19 psychiatrist and offer testimony to the jury to undercut
20 that psychiatrist's determination and opinions without
21 offering that expert.

22 Furthermore, we made Motion in Limine No. 2, the
23 doctrine of incremental harm, for precisely this reason.
24 The doctrine of incremental harm recognizes there may be
25 other statements out there, and what we do not want to do

1 is create a series of mini trials about the impact of
2 truthful or untruthful statements contained elsewhere in
3 the book.

4 THE COURT: Where -- where was that?
5 Plaintiff's Motion in Limine?

6 MR. ZIMMERMAN: I believe it's listed as
7 Plaintiff's Motion in Limine No. 3 in Document 253.

8 MS. ZIMMERMAN: I think it was two.

9 MR. ZIMMERMAN: Starting on page 5, I believe,
10 Your Honor.

11 THE COURT: While I'm pulling that up, how about
12 another question for you, Mr. Bolton. If we get into
13 other litigation, Mr. Pozner sued Wrongs Without Wremedies
14 and Mr. Palecek. Can they talk about that -- that lawsuit
15 and the settlements?

16 MR. BOLTON: I think your -- no, I think that
17 you're talking about different things there.

18 THE COURT: Then differentiate. That's --
19 that's prior litigation. It just happens to be litigation
20 that resulted in a resolution. So how do we say that if
21 you want to talk about all litigation, somehow or another
22 relevant to his litigiousness, that in response he should
23 talk about then, yeah, okay, let's talk about the claim
24 against Wrongs Without Wremedies and Mike Palecek. I
25 don't see the dividing line there. Can you help me?

1 MR. BOLTON: I think that -- I think that the
2 other litigation is relevant to establish that -- that, A,
3 that the type of -- the type of injury that he's claiming
4 to have originated with these publications that he --
5 similar circumstances existed well before this litigation,
6 and that he wasn't necessarily -- that he wasn't claiming
7 those symptoms at that time, and so the notion that
8 suddenly this particular event triggered all -- is
9 inconsistent with having been exposed to similar types of,
10 quote, trauma without being symptomatic --

11 THE COURT: Okay. But you didn't answer my
12 question. Can he -- Mr. Zimmerman, if I allowed the
13 defendant to go into other litigation, would you seek to
14 ask questions about the litigation involving Wrongs
15 Without Wremedies and Mike Palecek?

16 MR. ZIMMERMAN: Sure. It would open it up, not
17 only the settlements that they made but the statements
18 they made admitting they were wrong. Of course,
19 everything would have to come in if it would go to his
20 motivation, but I would say --

21 THE COURT: Let's hear Mr. Bolton's reply,
22 because if you open the door, then we do have situations
23 where at least two other aspects of litigation resulted in
24 a settlement that included but not limited to an admission
25 of wrongdoing. So you think they -- you can go in and

1 talk about what you want but they can't talk about these
2 other things?

3 MR. BOLTON: What I'm saying is this. I think
4 the other litigation is relevant to -- to establishing a
5 timeline as to when Mr. Pozner claims to -- he claims that
6 he became symptomatic as a result of a publication that
7 occurred in October of 2015, and I believe that -- I
8 believe that the other litigation is relevant to show that
9 similar sorts of exposures greatly preceded that, and he
10 was or wasn't claiming symptoms at that point.

11 What I can do, Your Honor -- but I also think --
12 but I also do think that in regard to other litigation,
13 Mr. Pozner made the statement on February 15th of 2018 in
14 regard to litigation involving Mr. Halbig, and the
15 question was asked:

16 Why did you drop the suit? And, by the way, this is a
17 social media exchange. Why did you drop your suit against
18 Halbig? What happened? What were -- were you threatened
19 by the Tin Hatters?

20 And the response was: Lost? He was sued to take down
21 SandyHookJustice.com, and he did. The rest was to show
22 other hoaxers that they will be taken to court and it will
23 drag on for a long time.

24 I think that that's relevant. I think that's
25 relevant for the jury to hear in assessing the claims that

1 are made in this case.

2 THE COURT: What claim?

3 MR. BOLTON: Pardon?

4 THE COURT: What claim? What claim? I still
5 don't see the connection.

6 MR. BOLTON: The fact --

7 THE COURT: There's only one question on the
8 verdict. What amount of money will reasonably and fairly
9 compensate Mr. Pozner for the damage done by these four
10 defamatory statements. So what's the relevance of the
11 action involving Mr. Halbig and the statements that were
12 made there?

13 MR. BOLTON: One of the things the jury has to
14 decide here is whether the self-reported symptoms in this
15 case are, in fact, true and injurious. And I think the
16 fact that a witness has made -- that the plaintiff has
17 made other -- filed other suits --

18 THE COURT: Wait a second. Whether the
19 self-reported statements are true and injurious?

20 MR. FETZER: Symptoms.

21 THE COURT: Let me just --

22 MR. ZIMMERMAN: For what it's worth --

23 THE COURT: You said, "One of the things the
24 jury has to decide here is whether the self-reported
25 symptoms in this case are, in fact, true and injurious."

1 I don't know what that means.

2 MR. BOLTON: Whether they're true and
3 descriptive of injurious, of injuries.

4 THE COURT: Okay.

5 MR. BOLTON: As I'm understanding Your Honor,
6 you're saying that -- that an attempt -- that -- that
7 unless during this lawsuit Mr. Pozner said, I don't --
8 that this lawsuit is brought for another purpose, that --
9 that anything that he has said before or after that would
10 reflect upon why he brings litigation and the credibility
11 of his -- of his claims in this case would not be
12 admissible. I -- I don't think -- I think that's -- I --
13 if we say his credibility can only be determined by what
14 he says in this courtroom, and we can't go beyond, then
15 I -- I don't think that's -- I don't think that's a proper
16 limitation on an effort to try and assess -- for the jury
17 to assess the credibility. When I say self-reporting, the
18 symptoms --

19 THE COURT: But, Mr. Bolton, here's what you
20 said when I -- when we -- you approached the bench. I
21 said -- I think the question was, is what was the
22 relevance. And you said, "I think it's relevant in terms
23 of litigiousness and whether or not the claim in this case
24 is" -- then non-discernible -- "or not."

25 I don't -- I'm going to sustain the objection to

1 litigiousness, because that's not relevant and even if it
2 had limited relevance, its prejudicial effect would be
3 clearly outweighed. We're not going to get into
4 litigiousness because then the plaintiff would be forced
5 to talk about that litigation and whether it was bona
6 fide, and it would include the litigation against Mike
7 Palecek and Wrongs Without Wremedies, including,
8 apparently, a settlement which occurred, which I don't --
9 I have not been made aware of or the terms, but including
10 Wrongs Without Wremedies' purported acceptance of the
11 truthfulness of Mr. Pozner.

12 Look, I'm not limiting your ability to
13 cross-examine the plaintiff's witnesses on causation. And
14 if there are other stimuli which caused the damages that
15 he's claiming are contributed to the false statement, then
16 you can go into that. Although, I'll pay kind of close
17 attention, since you don't have an expert, I'm not sure
18 how you're going to do that, maybe in cross-examining
19 Mr. Pozner. But this all began with your opening
20 statement in which you said on the record it was because
21 you thought litigiousness was relevant, and I don't agree.

22 Ready to bring the jury in?

23 MR. ZIMMERMAN: Yes, Your Honor.

24 THE COURT: Oh, I was going to ask, it's now a
25 little after 3:00. How long do you want to play? What's

1 a good breaking point? Have you planned that?

2 MR. ZIMMERMAN: About an hour and 15 minutes of
3 transcript. Gets us to 4:15, 4:20 or so; is that okay?

4 THE COURT: Very good.

5 MR. ZIMMERMAN: Which would get us through the
6 direct exam of Dr. Lubit.

7 THE COURT: Okay. Great.

8 THE BAILIFF: All rise for the jury.

9 (Jury in.)

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

12 Ladies and gentlemen, couple of things. Thanks
13 for waiting in the hallway. I -- trust me, when you guys
14 aren't in the room, we are, and we're working toward
15 getting this case in a shape in which the facts are and
16 the witnesses are to be presented to you. You shouldn't
17 concern yourself with the delay and what we're talking
18 about. Suffice to say that the lawyers and the Court have
19 to talk about a number of issues about the presentation of
20 the evidence in this case. I do appreciate your patience.

21 Now we're going to see a videotape deposition.
22 I just want to alert you, my court reporter does not
23 transcribe the videotape deposition, because the videotape
24 deposition was transcribed by another court reporter. So
25 don't infer anything by the fact that she'll excuse

1 herself from the room.

2 I'll dim the lights somewhat, but let me just,
3 please, beseech you. There's been a lot of discussion in
4 the legal community about whether humans have the capacity
5 to watch something for more than 30 minutes or 24 minutes.
6 Please pay particular attention. As I indicated in the
7 opening statement, you will not have a transcript for your
8 deliberation. When the lights get low and it gets to be
9 middle of the afternoon, eyes get a little heavy. There
10 are very few witnesses in this case and every witness for
11 both the plaintiff and the defendant are important. So I
12 ask that you give it your utmost attention.

13 Because of the lateness and the other issues we
14 were dealing with, we'll present or play the direct
15 examination this afternoon. Should get you out still by
16 that 4:30 to beat the traffic home, and then we'll begin
17 first thing in the morning with the cross-examination of
18 the videotape deposition. That's -- splitting it up, too,
19 will help maintain your attention. Okay.

20 MR. ZIMMERMAN: Thank you, Your Honor.

21 The plaintiffs call Dr. Roy Lubit by video
22 deposition. Plaintiffs offer Dr. Lubit as an expert and
23 the parties have stipulated to his being qualified as an
24 expert.

25 THE COURT: Is that true, Mr. Bolton?

1 MR. BOLTON: It is, Your Honor.

2 THE COURT: Thank you very much.

3 (Video deposition began at 3:12 p.m.)

4 (Vide deposition paused at 4:21 p.m.)

5 THE COURT: We'll go back on the record. Having
6 now viewed the direct examination of the plaintiff's first
7 witness, is this a good point in time to break for the
8 evening, Mr. Zimmerman?

9 MR. ZIMMERMAN: Yes, it is, Your Honor.

10 THE COURT: Anything further before we let the
11 jury go home for the night, Mr. Bolton?

12 MR. BOLTON: No, Your Honor.

13 THE COURT: Mr. Zimmerman?

14 MR. ZIMMERMAN: No, Your Honor.

15 THE COURT: Ladies and gentlemen, thank you for
16 your attention. So your homework tonight is to think
17 about anything other than your deliberations, your -- this
18 case. You can think about it but don't talk to anyone
19 about it. Please take to heart my instructions I gave
20 you, though the temptation, and please do not go online
21 and do any research. Tomorrow will be a day in which
22 you'll hear more of the story as you journey along and
23 discharge your functions as jurors in this case. So thank
24 you. Have a good evening.

25 Now, 8:30. Please, with traffic, getting

1 through security, have some time to get here and we'll try
2 to start as promptly right at 8:30 as possible. If you do
3 that, then I promise to get you out at a decent time in
4 the evening to let you get home for dinner and kids and
5 what else brings you home at night.

6 Thank you. We'll see you in the morning.

7 THE BAILIFF: All rise for the jury.

8 (Jury out.)

9 THE COURT: Okay. Please be seated. Anything
10 else, gentlemen -- ladies and gentlemen, you want to take
11 up before we retire for the day?

12 MR. ZIMMERMAN: We would like to, with respect
13 to a number of motion in limine, Your Honor.

14 THE COURT: Okay.

15 MR. ZIMMERMAN: We can do those in writing if
16 you'd prefer, but I think they'll relate to testimony
17 that's likely to occur tomorrow.

18 THE COURT: All right. What are you talking
19 about?

20 MR. ZIMMERMAN: First, we would like to renew
21 our motion in limine on the doctrine of incremental harm,
22 specifically with regard to references to other statements
23 in -- you know, in the book that may offend or otherwise
24 be alleged to have caused injury to Mr. Pozner. Wisconsin
25 has rejected the adoption of the doctrine of incremental

1 harm.

2 THE COURT: You caught me at the end, I was
3 writing it down. Wisconsin's rejected the doctrine, but
4 you want me to apply it?

5 MR. ZIMMERMAN: No, that's the opposite. The
6 idea of doctrine of incremental harm is, yeah, maybe there
7 was a defamatory statement here, but there were ten other
8 things that were bad about a person in the book, and we
9 have to consider all of those.

10 THE COURT: So you'll remember when we talked
11 about this earlier, I found it difficult to talk -- to
12 rule on this doctrine in the abstract, and that I -- I
13 said to raise the objection at the time.

14 Now, for example, you raised the objection, at
15 least based on the doctrine relating to Mr. Bolton's foray
16 into the existence of other litigation. I understood it
17 then and I granted it, albeit on grounds included but not
18 limited to the motion in limine. I'm not sure -- my
19 concern over fully and completely understanding the motion
20 outside the context of a question or a series of questions
21 are any different now than what it was at the time of the
22 final pre-trial conference.

23 MR. ZIMMERMAN: I understand, Your Honor. At
24 the -- in the -- in the defendant's opening statements,
25 the defendant made note to the fact that there were a

1 number of other statements in the book beyond these
2 defamatory statements that may have also negatively
3 impacted Mr. Pozner. We'd like to renew the motion in
4 limine with respect to any other statements in the book
5 that they intend to rely on, introduce, talk about,
6 because those should not be considered with respect to the
7 damages that are being sought in this case.

8 THE COURT: Okay. That's an example. Any other
9 examples you want me to apply to your legal theory rooted
10 in the specifics of what you anticipate will be?

11 MR. ZIMMERMAN: No, Your Honor. That's all
12 we're aware of at this point.

13 THE COURT: Mr. Bolton.

14 MR. BOLTON: I think it goes to the question of
15 causation, Your Honor, and I do not understand that
16 there's not an issue of causation that has to be proven
17 by -- by the plaintiff in this case.

18 So, for instance, if, in fact, there were other
19 basically similar types of content to which Mr. Pozner
20 claims that he did not react to or have any reaction to, I
21 think if you're exposed to similar stimuli, but on the one
22 hand you're only claiming that you reacted to it and --

23 THE COURT: What other statements made in the
24 book do you intend to elicit at trial? Let's talk rather
25 than in generalities, the specificity of -- are we going

1 to read the whole book to the jury? Certainly not.

2 MR. BOLTON: I am not, no.

3 THE COURT: What specifically else in the book,
4 other than the four identified defamatory statements, do
5 you intend to raise in your direct or cross?

6 MR. BOLTON: What I intend to elicit, Your
7 Honor, is that not only are there other statements in the
8 book, the broader statement of the skeptics, but that --
9 that the -- that the skepticism preceded long before the
10 publication of the book, and so whether or not these
11 similar sort of statements did or did not trigger
12 symptomology in Mr. Pozner I think reflects upon whether
13 or not -- the legitimacy of his claims that these four
14 particular statements triggered symptoms.

15 THE COURT: I didn't quite understand. When I
16 asked you specifically what statements elsewhere in the
17 book you intended to bring up, when I said let's talk
18 about specifics rather than generality, you wrote down,
19 the skepticism preceded the publication of the book. So
20 I'm still -- that raises a whole other question. But what
21 else in the book, what other statements, false or
22 otherwise, in the book do you intend to bring up?

23 MR. BOLTON: I -- what I would intend to bring
24 up, and I don't know that this is -- is what counsel is
25 getting at, the concept of skepticism, in this particular

1 situation, almost inherently would discredit in one way or
2 another and reflect upon Mr. Pozner. If it -- if for
3 other reasons it was established that it didn't occur,
4 then obviously, Mr. Pozner would know that. And so the
5 general -- and, in fact, Mr. Pozner or Pozner began a very
6 active campaign to eliminate from the internet any -- any
7 reference to skepticism.

8 THE COURT: Okay. I'd like to rule on
9 Mr. Zimmerman's request. It's a simple request. Judge,
10 I'd like you to reconsider your deferral of Motion in
11 Limine No. 3 and exclude any other -- introduction of any
12 other evidence, questions regarding other statements made
13 in the book. That's the question for me.

14 Last -- last opportunity. If you oppose that
15 motion in limine as to other statements made in the book,
16 what specific statements made in the book would you like
17 to bring up at trial?

18 MR. BOLTON: In order to answer that, Your
19 Honor, if I -- if I might, I would like to confer with my
20 client in regard to that. But I'm not sure in all honesty
21 that -- and maybe I misunderstand. If -- if the
22 question -- if the question is whether or not I'm going to
23 make reference to specific -- I guess I don't understand
24 your question, Your Honor, because I could point to --

25 THE COURT: Well, we're more alike than what we

1 care to admit.

2 MR. BOLTON: Well, let me approach it this way.
3 I would make reference to -- I don't know how many
4 chapters there are in the book. How many chapters?

5 MR. FETZER: About 30 altogether.

6 MR. BOLTON: I would probably, in one fashion or
7 another, all 30 implicate whether or not Mr. Pozner's son
8 was killed at Sandy Hook, because to the extent that you
9 denied it occurred for reasons that don't refer to
10 Mr. Pozner at all, I mean, you could -- you could conclude
11 that -- and he has concluded that --

12 THE COURT: Isn't that just -- isn't that now
13 giving context to Mr. Zimmerman's greatest fear that what
14 you're essentially saying to me is, okay, Dr. Fetzer might
15 have defamed Mr. Pozner and Mr. Pozner may have been
16 harmed by Dr. Fetzer's statements, but a lot of people
17 said a lot of bad things to -- about Mr. Pozner, and that
18 should what? What should that -- why should the jury hear
19 that? What relevance?

20 MR. BOLTON: Well --

21 THE COURT: Understanding, after all, the
22 plaintiff has the burden of proof in this case, has the
23 burden of proving that the statements were defamatory,
24 which it did, he did, and I held. And now the question
25 is, is what, if any, damages were caused by those four

1 defamatory statements. I'm not inclined to let's just
2 throw all the other stuff that has been thrown at
3 Mr. Pozner against the wall in the hopes that somehow or
4 another that the jury would think that contextually these
5 four defamatory statements are so insignificant in the
6 larger question, they shouldn't award damages. That
7 actually is consistent with the current concerns and the
8 genesis of this doctrine which throws back on the
9 plaintiff, who's been the victim of defamation, the
10 untenable task of then trying to unscramble this dozen
11 eggs you've thrown against the wall.

12 MR. BOLTON: I -- if I suggested that -- that
13 there are cases -- tort cases in which defendants argue
14 that there are multiple causes and that -- and, in fact,
15 that other -- other defendants should be included on -- on
16 the verdict form, I don't think I'd be articulating a
17 novel concept here. The novel -- the concept of multiple
18 causation and trying to allocate, as a matter of
19 causation, who -- who caused what, it may be difficult,
20 but the law isn't intended to simply make it easy. I
21 didn't create the concept of causation. It's been -- it's
22 been recognized in the law and it's been recognized that
23 the plaintiff has the burden. And to -- and I'm not aware
24 that in the -- in the area of defamation that -- that it
25 is irrelevant as to whether or not there are multiple or

1 other causations.

2 THE COURT: Okay. Mr. Zimmerman?

3 MR. ZIMMERMAN: Yes, Your Honor.

4 Two responses. First, this isn't another tort
5 case, this isn't a personal injury case. It seems to
6 sound like he's saying if we all stand up in a line and
7 each kick Mr. Pozner once, none us could be liable because
8 everybody kicked him at least once and we can't say where
9 his injuries came from.

10 Beyond that, it sounds like the greater problem
11 is what he's saying is we should step in and say we, as
12 laypeople, nonexperts, have evaluated a criteria and we
13 are going to undermine the determination that the expert
14 made without offering an adverse expert opinion. If this
15 were to come up in cross-examination of Dr. Lubit, I
16 wouldn't object. But what we're hearing now is we, as
17 laypeople, are going to re-evaluate whether he suffers
18 PTSD because there was potentially some other cause or
19 symptom, and that's invading the province of an expert.

20 THE COURT: How are you going to prove,
21 Mr. Bolton, let's say if we allow you to go into these
22 extraneous areas.

23 MR. BOLTON: How am I --

24 THE COURT: How are you going to prove
25 causation? Did you go into cross-examination with Dr. --

1 the doctor about this?

2 MR. BOLTON: Well, let -- yeah, I think we did.
3 I think we did talk about the issue of other causation,
4 and we talked about the issue of whether or not threats
5 and harassment was, in fact, perpetrated by -- by
6 Mr. Fetzer.

7 But -- but let me add, what I understand
8 Attorney Zimmerman to say, when he talks about the
9 province of the jury, as I understand what he is saying is
10 that the jury has an obligation to accept the testimony
11 of -- where there's only one -- one expert. And I have
12 always thought that when we talk about provinces, that it
13 was the province of the jury to determine the facts, and
14 that the jury could, in fact, ignore --

15 THE COURT: Well, Mr. Bolton --

16 MR. BOLTON: -- disagree --

17 THE COURT: -- you bring up the issue of tort.
18 What if you had a tort case or you were the defendant in a
19 tort case, and there was a claim by the plaintiff for
20 medical malpractice and you get the plaintiff's witness
21 list and there's no doctor on the witness list. You would
22 ask me to dismiss the claim, would you not?

23 MR. BOLTON: You would ask --

24 THE COURT: You would ask me, as the judge, to
25 dismiss plaintiff's medical malpractice claim because

1 there's no witness as to testify to causation. Correct?

2 MR. BOLTON: I don't know if I would. I'd have
3 to think about it, Your Honor. But what I will also say
4 is this. In this particular case, this witness,
5 Mr. Lubit, when offered the opportunity to speak to the
6 question of causation said, That is a question for the
7 jury, and I do not -- I'm not speaking to that question.
8 So...

9 MR. ZIMMERMAN: Respectfully, that was -- that
10 was in an entirely different context. That was not in the
11 context of symptoms that give rise to PTSD, which is the
12 opinion that he -- that he offered. That was in the
13 context of saying did Dr. Fetzer's statement cause someone
14 to go out and do something. And as I've said, we are not
15 opposed to Mr. -- or to Mr. Bolton's cross-examination of
16 the expert.

17 What we're concerned about is, and your -- maybe
18 Your Honor's example is a good one, if this is a case
19 where a radiologist stood up and said, I see cancer in
20 this person's lungs, surely, we wouldn't have Mr. Bolton
21 stand up and say, I think, as lawyer, that looks like
22 something else and I want you to disregard the expert's
23 opinion, outside of the cross-examination.

24 Within the cross of the expert, surely, he can
25 go after these topics, but outside of the cross, who in

1 this courtroom could say, I think as a forensic
2 psychologist it's appropriate to say PTSD doesn't arise
3 because Sandy Hook as a whole would not trigger PTSD. We
4 lack, under 703, the competency to render that -- to
5 render that decision. And the fact that they don't have
6 an expert doing it but instead are trying to bring it in
7 through lay witnesses, doesn't make it less inappropriate.

8 MR. BOLTON: Your Honor, I think that -- for
9 instance, this is the type of testimony that I anticipate.
10 I anticipate asking Mr. Pozner whether or not there were
11 other stressors to which he responded or did not respond
12 to prior to the publication of the statements that are at
13 issue in this book. Now I think if he -- if his answer is
14 that I was not -- I did not have a symptomatic response to
15 different stressors, and -- -- and Dr. Lubit talked about
16 the importance of considering other stressors, and I -- at
17 least as I heard it. And so I think -- I think -- I think
18 asking the witness how he reacted in other circumstances
19 with -- with at least similar stressors bears upon his
20 credibility as to whether or not he says that he was
21 uniquely symptomatic to these particular statements.

22 MR. ZIMMERMAN: And the risk is when he says
23 similar stressors, that is a layperson's view of a similar
24 stressor. It may not be what a forensic psychiatrist with
25 that degree of training who studied PTSD would think is at

1 all relevant, and that's the danger of admitting this kind
2 of testimony. We're going to substitute the lack of
3 knowledge about what a similar stressor might be for that
4 of the only expert that's admitted in the case. And I
5 think it would be error to allow that.

6 THE COURT: Well, again, I mean, I don't -- I
7 thought it was -- it's kind of shifting sands. I mean,
8 part of -- well, I mean, in the abstract, Mr. Bolton's
9 seemingly benign cross-examine question about other
10 stressors, I mean, the doctor did talk about other
11 stressors, so the concept has been interjected, and so if
12 Mr. Bolton just simply wants to ask a question about
13 whether there are other stressors, I mean, in and of
14 itself, I guess the answer is probably going to be yes,
15 but then I don't know, Mr. Bolton, what do you do with
16 that? Is that all you need? Is that -- so, yes, I can
17 probably anticipate his answer is going to be yes. So
18 then are there follow-up questions or is that it? You
19 just want to establish that this guy had a lot of
20 stressors in his life from things in addition to and other
21 than the defamatory statements.

22 MR. BOLTON: I still think it goes to the
23 question of causation, because --

24 THE COURT: Okay. I'm with you. Is that it
25 though? Is that the extent of the questions that you tend

1 to elicit from the plaintiff in this case?

2 MR. BOLTON: I think it would -- I can
3 anticipate that it would also -- that there would also be
4 testimony as to whether or not the plaintiff perceived
5 those then to be something that implicated his own mental
6 condition or whether or not he -- he viewed those as
7 simply implicating the honor of his -- of his deceased
8 son.

9 THE COURT: Okay.

10 MR. BOLTON: I think there will be testimony.

11 THE COURT: I've heard enough now. Here's what
12 we're going to do. I think, pretty much, I'm going to
13 have to wait until the question. If this is all about, I
14 just want to ask him does he have other stress in life and
15 then -- I would have no problem with that. But then when
16 I ask you the follow-up questions, Mr. Bolton, are
17 completely troublesome and problematic. I think I will
18 have to wait. I will probably sustain an objection. If
19 then you go into the issue of whether he can self-diagnose
20 himself under the DSM-V guidelines to say, well, these
21 stressors produced PTSD and these stressors didn't. Most
22 patients completely are unable to self-diagnose. But I'll
23 have to listen to the question and how he frames it. I do
24 not think Mr. Pozner is either competent or that it's fair
25 to have him opine as to the causation question that

1 ultimately rests and relies on expert testimony.

2 For that, I'll incrementally -- it doesn't sound
3 like we're going to talk about specific other chapters in
4 the book, and so I'll grant your amended motion in limine
5 to exclude other chapters in the book.

6 MR. FETZER: Your Honor, if I may say so, the
7 diagnosis --

8 THE COURT: Okay. No. You can't say so.

9 MR. FETZER: Okay.

10 THE COURT: You have two lawyers sitting next to
11 you, Mr. Fetzer.

12 You said other motions?

13 MR. ZIMMERMAN: Yes, Your Honor. I'll try to be
14 brief on this one.

15 In the defendant's introductory statements they
16 started going into this book being well researched and
17 scholarly and some of Dr. Fetzer's background. None of
18 that can be relevant to compensatory damages. While it
19 may have been to punitives, that has nothing to do whether
20 he believed it, whether he meant it in good faith, has
21 nothing to do with compensatory damages in this case. So
22 we'd like any testimony about the process that went into
23 it, the number of PhDs who wrote chapters, their study
24 methods, what research --

25 THE COURT: I heard that. I heard that in the

1 opening statement. Certainly, the concept that it was a
2 scholarly, well-researched article, researched in light of
3 the Court's ruling on the defamatory nature of the four
4 statements is a little perplexing, but I don't know where
5 you're going to go with that. Are you going to try to
6 defend the integrity of the entire book?

7 MR. BOLTON: The integrity of the entire book is
8 attacked. I mean, when we talk about --

9 THE COURT: So the answer is yes?

10 MR. BOLTON: Pardon?

11 THE COURT: Was the answer yes or no?

12 MR. BOLTON: I -- I would intend to offer some
13 preliminary testimony regarding just the background of
14 Professor Fetzer and the background of the book.

15 The book -- and, when Mr. Zimmerman says we
16 should put blinkers on -- we should put blinders on and we
17 should only look at these four statements because those
18 are the only things that are relevant. But I sat here and
19 I listened to Mr. Lubit talk not about these four
20 statements but -- but talk about the general world of
21 Sandy Hook skepticism. So I find it hard to believe
22 that --

23 THE COURT: Okay. I'm not going to be -- I'm
24 not going to be able to rule on this in the abstract. I
25 don't know what questions he's going to ask. Maybe

1 they're benign, contextual questions. I'm not sure how
2 they relate to the issue in this case on the compensatory
3 damages to Mr. Pozner, but once again, I mean, your
4 motions in limine, as I told you, ladies and gentlemen,
5 are really -- should be reserved for areas that are so
6 clearly demark -- have clear demarcation that we're all on
7 the same page that we can say in/out. This is a rather
8 fluid concept. This is not a trial to defend the academic
9 excellence of the book, *Nobody Died at Sandy Hook*. This
10 is a trial with a single question, what are the
11 compensatory damages that come from the defamatory
12 statements. Just make your objection at the time.

13 Anything else, Mr. Zimmerman?

14 MR. ZIMMERMAN: No, Your Honor.

15 THE COURT: Anything?

16 MR. BOLTON: No, Your Honor.

17 THE COURT: Okay. Once again, Mr. -- or,
18 Dr. Fetzer, I don't -- well, I say I don't mean to
19 interrupt, but that's what judges do. They interrupt
20 people. Once again, you have two lawyers sitting next to
21 you. When you were representing yourself, I welcomed your
22 extraneous, contemporaneous concept, but these are really
23 important for you. I know I told you time and time again
24 to hire lawyers. You've got two lawyers sitting next to
25 you. You need to work with them, and they control what,

1 you know, is presented to the Court.

2 MR. FETZER: My concern, Your Honor, is that the
3 diagnosis is based on hearsay, false statements, such as
4 that I claimed that Mr. Pozner had faked the death
5 certificate, which I have never done. I said the death
6 certificate was fake, not that he had faked it.

7 THE COURT: Mr. Bolton.

8 MR. FETZER: The -- the --

9 MR. BOLTON: Jim.

10 THE COURT: Okay. We'll see you all at 8:00 --
11 come back at 8:30 in the morning. You -- I've looked
12 through the jury instructions that have been submitted.
13 There are instructions in the pack about defamation. Once
14 again, I appreciate you agreeing to it. If you intend to
15 suggest another suggestion instruction, that was the one
16 you said you couldn't do over the lunch hour, I didn't
17 blame you for that, but if -- I'd like to know, last call
18 for any additional instructions, no later than we'll take
19 it up 8:30 in the morning.

20 Finally, I'm going to go ahead and seal the jury
21 list that contains the names of the jurors. That's
22 consistent with the stipulation. I need to, under the
23 court's guidelines on sealing documents, state that on the
24 record. As to that, consistent with the parties' joint
25 stipulation, any objection?

1 MR. ZIMMERMAN: No, Your Honor.

2 MR. BOLTON: I'm fine with that, Your Honor.

3 THE COURT: Okay. We'll go ahead and do that.

4 Thank you very much. We'll see you in the morning.

5 (Proceeding concluded at 4:48 p.m.)

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7 (End of excerpt.)

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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 EXCERPT were prepared by pursuant to Statute.

11 Dated this 29th day of October, 2019.

12
 13 Electronically signed by:

14 Colleen C. Clark
 15 COLLEEN C. CLARK, RPR
 16 OFFICIAL COURT REPORTER

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