

FILED
06-20-2019
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

* * * * *
LEONARD POZNER,

)
)
Plaintiff,)

vs.)

Case No. 18-CV-3122

)
)
JAMES FETZER, et al.,)

)
)
Defendants.)

* * * * *

TRANSCRIPT OF ORAL ARGUMENTS/MOTION HEARING PROCEEDINGS

commencing on the 17th day of June, 2019, at approximately

8:35 a.m. before the

HONORABLE JUDGE FRANK D. REMINGTON

APPEARANCES: LEONARD POZNER appeared by Attorneys at Law,
JACOB ZIMMERMAN, Meshbesh & Spence,
Minneapolis, Minnesota, and EMILY FEINSTEIN
and MARISA BERLINGER, Quarles & Brady,
Madison, Wisconsin

JAMES FETZER appeared with no counsel

MIKE PALECEK appeared with no counsel

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

EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Marked</u>	<u>Received</u>
1	Plaintiff's PowerPoint slide printout	33	
2	N.P.'s death certificate	44	62
3	Blank death certificate	61	62
4	N.P.'s death certificate published version	137	150
5	N.P.'s death certificate issued 11/14/2018	138	150
6	N.P.'s death certificate obtained by Dave Gahary	139	150
7	N.P.'s death certificate issued 4/22/2019	139	150
8	Oral argument briefing notes of Defendant Fetzer	147	150
9	Packet of varying death certificates	150	150
10	Book - <i>Nobody Died at Sandy Hook</i>	170	170

1 (Proceeding began at 8:35 a.m.)

2 THE COURT: This is case 18-CV-3122, Leonard
3 Pozner versus James Fetzer, et al.

4 May I have the appearances for the Plaintiff.

5 MR. ZIMMERMAN: Good morning, Your Honor.

6 Jake Zimmerman for the Plaintiff, with me is
7 Marisa Berlinger and Emily Feinstein.

8 MR. FETZER: James Fetzer, pro se, Your Honor,
9 with Mike Palecek, co-defendant.

10 THE COURT: Good morning. I recognize your
11 voice, Mr. Fetzer.

12 Good morning, Mr. Palecek.

13 MR. PALECEK: Good morning.

14 THE COURT: Drove down from Minnesota?

15 MR. PALECEK: Yep.

16 THE COURT: Welcome to Wisconsin. I guess it
17 was sunny up in the northern climates.

18 Mr. Zimmerman, welcome to Madison.

19 We're on the Court's calendar for a lot of
20 stuff. I've got various piles here to work through.
21 Originally scheduled for today was an oral argument on the
22 motion for summary judgment. I intend to get through all
23 the motions this morning to keep this case moving. I do
24 have some questions about the various motions and then
25 I've got questions about the underlying issues and then

1 about the bigger picture of how this case is going to
2 proceed.

3 As I always say, certainly for you, Mr. Fetzner
4 and Mr. Palecek, as you know, we're on the court record.
5 The court transcript is -- my court reporter is recording,
6 so two people can't talk at the same time. Don't worry, I
7 won't decide anything until you've finished telling me
8 everything you want me to understand before I rule on a
9 motion.

10 I want to preemptively apologize. Sometimes --
11 well, not sometimes, I often interrupt people, which is
12 quite rude in social settings, but in the court, if I let
13 people talk on and on and on then, of course, we would be
14 here for days and days and days. I'd like to try to keep
15 things focussed and moving along.

16 Couple of loose ends I'd like to discuss.
17 Mr. Palecek, so welcome. I'm glad you came. I know that
18 you had initially indicated, as your usual practice, that
19 you had -- you weren't going to participate today. I
20 pointed out, well, gee, today is a date to decide a motion
21 for summary judgment, a motion for summary judgment
22 against you and Dr. Fetzner, and that if you didn't come,
23 you ought to be prepared for the possibility that judgment
24 might be entered against you by default.

25 Since then, I got a brief from you. Let me

1 spread out my piles here. Okay. It's called a Verified
2 Motion for Extension of Time to File Response to
3 Plaintiff's Motion for Summary Judgment, Out of Time. Who
4 wrote this brief, Mr. Palecek?

5 MR. PALECEK: An advisor to me, a retired
6 attorney.

7 THE COURT: Okay. So Supreme Court Rule 20:1.2,
8 the Wisconsin Supreme Court has rules, requires that
9 attorneys who assist people in drafting briefs are legally
10 required to state in that brief, and I quote, This
11 document was prepared with the assistance of a lawyer.
12 That is not stated in your brief.

13 MR. PALECEK: Okay.

14 THE COURT: Is this lawyer licensed to practice
15 law in Wisconsin?

16 MR. FETZER: No.

17 MR. PALECEK: No.

18 THE COURT: All right.

19 MR. PALECEK: No.

20 THE COURT: So here's the problem. I know you
21 did not or you -- I assume you do not intend to be,
22 essentially, a party to the crime of practicing law in
23 Wisconsin without a license. It's against the law to
24 practice law in Wisconsin without a license. It applies
25 to people who don't have licenses, it applies to people

1 who have licenses elsewhere but not in Wisconsin.

2 I can't take a brief that violates the law and
3 say, well, it's no big thing. Do you understand the
4 problem? I mean, there --

5 MR. PALECEK: Yes.

6 THE COURT: I'll make one more comment and then
7 I'll hear from you on what you'd like me to do. I
8 understand that -- well, let me ask you a couple
9 questions. Tell me a little bit about yourself,
10 Mr. Palecek. I know you come from Minnesota. Are you
11 retired? Are you employed?

12 MR. PALECEK: I work for an agency for disabled
13 adults near -- in Cloquet.

14 THE COURT: Up in Cloquet?

15 MR. PALECEK: Yes.

16 THE COURT: And I assume you're a man of modest
17 means?

18 MR. PALECEK: (Nods head in the affirmative.)

19 THE COURT: And I know -- I can take judicial
20 notice of the fact that lawyers are expensive. Can you
21 afford a lawyer?

22 MR. PALECEK: I might be able to.

23 THE COURT: Did you happen to see that the
24 Plaintiffs filed a document over the weekend saying
25 they're going to possibly ask for a judgment in -- up in

1 excess of a million dollars?

2 MR. PALECEK: No, I didn't see that.

3 THE COURT: Do you understand that if the -- if
4 the Plaintiffs prevail, they will be seeking a judgment
5 against you, joint and several with Dr. Fetzer,
6 personally, that may result in foreclosure on your home or
7 depletion of your bank account or anything else a creditor
8 can do to collect a debt?

9 So on the one hand, Mr. Palecek, I understand
10 that you sit here unrepresented. You have someone helping
11 who's not licensed to practice law, who doesn't make the
12 required disclosure under 20:1.2.

13 Here's the other problems, and I don't mean any
14 disrespect against the person, but if the person was
15 presumably -- well, the person was licensed to practice
16 law in Wisconsin, they would have probably told you we
17 need some -- there's no affidavit attached. You didn't
18 respond to the proposed findings of fact that the
19 Plaintiff -- you raised the statute of limitations
20 defense, but in all other respects, the motion is and the
21 attached response is deficient. What would you like me to
22 do for you here today?

23 MR. PALECEK: I would just like you to act on
24 the pleadings on the document that I submitted.

25 THE COURT: So, Dr. Fetzer, I know you're

1 whispering to Mr. Palecek. Maybe you're his best friend.

2 You can't --

3 MR. FETZER: Well --

4 THE COURT: That's the other thing. You can
5 represent yourself, Dr. Fetzer.

6 MR. FETZER: Yes.

7 THE COURT: But you can't -- you can't help
8 Mr. Palecek, because that, in a sense, is acting as his
9 lawyer.

10 MR. FETZER: Very well, Your Honor. I was
11 simply suggesting he affirm the content he were under oath
12 before you, Your Honor.

13 THE COURT: Well, again, I mean, Dr. Fetzer --
14 Dr. Fetzer, I -- look it, my job -- Chief Justice Roberts
15 says a judge's responsibility is like the umpire behind
16 the bench. The umpire behind the bench at a baseball game
17 doesn't tell the pitcher what balls to throw or how to
18 play or anything. You sit here and you see these come
19 across the plate and you make the call.

20 My job really isn't to help you, Mr. Palecek.
21 It might seem unfair. The Court does afford some latitude
22 to people who are unrepresented, but the Plaintiff is
23 represented and presumably paying, well, maybe even paying
24 for three lawyers at considerable cost, and often judges
25 can be faulted for appearing to be partisan in terms of

1 helping the unrepresented side to the strategic and
2 financial disadvantage of those represented.

3 Let me ask you this, because this is going to
4 get into a line of question. Let me just segue slightly,
5 Mr. Palecek. You've been very quiet in the lawsuit. I
6 mean, you've been on the phone listening along. I don't
7 know as I sit here today what Mike Palecek's position
8 really is on the underlying action. I do know from
9 Dr. Fetzer what he thinks and I've read his written
10 material. You've just raised, oh, by the way, it's a
11 statute of limitation defense.

12 So let me ask you this, because the statute of
13 limitations defense, Mr. Palecek, is this notion that you
14 waited too long, that you had a cause of action that
15 occurred at a single point in time, and even if it was
16 meritorious under the law, you've waited too long -- the
17 Plaintiff waited too long to hold you accountable for the
18 wrong. That's just a sort of generic concept of a statute
19 of limitations.

20 So if I understand what, with the assistance of
21 this lawyer you wrote, you said, Assuming even if it's
22 true that I defamed the Plaintiff, he waited too long.
23 That's what you're telling me, right?

24 MR. PALECEK: Yes.

25 THE COURT: Okay. Now, that presumes then that

1 the occurrence of defamation occurred at a single point in
2 time, as opposed to, let's say, ongoing recurrent cause of
3 actions.

4 I'll give you an example. Let's say if I was
5 your next-door neighbor and I trespassed on your yard
6 three years ago and a day. On the three year statute of
7 limitations, then you say when you did that three years
8 ago and a day, on the three year, it's too late. But if I
9 trespass then the next week and the following week and the
10 next month and even last week, then there are recurrent
11 transgressions which could give rise to an ongoing cause
12 of action that then essentially tolls the limitation
13 period because of this ongoing trespass. Do you
14 understand this hypothetical?

15 MR. PALECEK: Yes.

16 THE COURT: Okay. So as you sit here today,
17 I'll ask you some questions, just to establish what your
18 position is. You know, the Plaintiff is a man named
19 Leonard Pozner.

20 MR. PALECEK: Yes.

21 THE COURT: And, you say in your statute of
22 limitations defense, you said, Well, okay, maybe we said
23 that, maybe I said that back then that he fabricated the
24 death certificate or that he didn't have a son and that
25 his son -- that he didn't have and nobody ever died at

1 Sandy Hook, today, what's your position? Is there a
2 person named Leonard Pozner a real person?

3 MR. PALECEK: I think we don't know. I think I
4 don't know.

5 THE COURT: Did Leonard Pozner have a son named
6 Noah?

7 MR. PALECEK: I think we don't know. I think
8 it's...

9 THE COURT: Did a person named Noah Pozner die
10 at Sandy Hook?

11 MR. PALECEK: I don't believe so.

12 THE COURT: Are any of the death certificates,
13 whether we talk about the first one in its first form or
14 how it was modified or even the one maybe you've seen
15 today -- let's work our way backwards. You've seen now a
16 death certificate most recently produced in this
17 litigation, right, Mr. Palecek?

18 MR. PALECEK: Mm-hmm.

19 THE COURT: Do you agree that that death
20 certificate is accurate and truthful or not?

21 MR. PALECEK: Not.

22 THE COURT: You don't -- you think it's false
23 and a fabrication?

24 MR. PALECEK: Yes.

25 THE COURT: Okay. Do you understand then if

1 that's the case, Mr. Palecek, then how do I view a statute
2 of limitations, because if I understand, you still suggest
3 as you sit here today that Noah -- that Lenny Pozner is a
4 liar, he didn't have a son named Noah, nobody died at
5 Sandy Hook, and any document purporting to be a death
6 certificate is a fabrication. Is that what you're telling
7 me?

8 MR. PALECEK: Yes. Yes.

9 THE COURT: Mr. Zimmerman, does that take care
10 of the -- even an arguable statute of limitations defense?

11 MR. ZIMMERMAN: I -- I don't think there is an
12 arguable statute of limitations defense, but I think that
13 his agreement that there is an ongoing and repeated
14 defamation would render a statute of limitations defense
15 meaningless.

16 THE COURT: Do you agree, Mr. Zimmerman,
17 hypothetically, I guess for Mr. Palecek, that if he said
18 today, look, assuming there's no activity on his part in
19 between more than three years ago when this first all
20 came -- Well, let me ask you this. What was Mr. Palecek's
21 involvement in -- at the outset that gave rise to your
22 naming him in the lawsuit?

23 MR. ZIMMERMAN: Mr. Palecek coedited the book.
24 It has been published and printed and released under his
25 name.

1 THE COURT: Okay. And what year was that?

2 MR. ZIMMERMAN: Initially in 2015.

3 THE COURT: Okay. Let's just assume,

4 Mr. Zimmerman, that the cause of action accrues in 2015,
5 and let's just assume there's a three year statute of
6 limitations. Do you agree that if that was the sum total
7 of Mr. Palecek's involvement and he said here today, *I*
8 *thought that was true when I edited the book but now I*
9 *have come to believe by reviewing all the evidence that*
10 *Leonard Pozner did have a son, Noah, that his son was*
11 *killed at Sandy Hook and the death certificate that I've*
12 *seen is accurate and real and truthfully recognizes the*
13 *facts as I now understand them, because now I've seen*
14 *the -- I've seen it all, so I admit.* Had he done -- had
15 that been your position, Mr. Palecek, Mr. Zimmerman, don't
16 you agree that that would be a different case on the case
17 of occurrence on the cause of action?

18 MR. ZIMMERMAN: Yes, Your Honor. It would
19 certainly be a different case. There would not have been
20 a second or subsequent edition of the book that included
21 both the original defamatory language and then also
22 additional defamatory language once again published under
23 Mr. Palecek's name.

24 THE COURT: Mr. Palecek, do you understand what
25 I'm saying? I mean, essentially, if you said, to mix my

1 metaphors, if you said to me, *Judge, now I believe. I'm*
2 *getting off this train. I'm not riding it to the end.*
3 That's a different analysis than if you said to me, *No,*
4 *nothing has changed. What I believe then is what I*
5 *believe now. I'll say it -- I said it then and I'll say*
6 *it again.* Do you understand the difference between
7 those -- that two strategy?

8 MR. PALECEK: I do, yes.

9 THE COURT: What do you want to -- what's --
10 what is your position today, because that then affects,
11 even if I were to consider your statute of limitation
12 defense, how I would decide it. Do you want to stay on
13 the train, so to speak, or do you want to get off?

14 MR. PALECEK: Well I still believe what I
15 believed when we -- my thinking has not changed here.

16 THE COURT: And your thinking has not changed,
17 meaning particularly, that you still maintain today that
18 Lenny Pozner has falsified and fabricated a death
19 certificate for purportedly a son, Noah?

20 MR. FETZER: If I might, Your Honor, that's
21 incorrect. We haven't accused Mr. Pozner of doing that.
22 We have declared the death certificate is a fabrication
23 wherever it originated, Your Honor. It's been an
24 implication by --

25 THE COURT: Okay. Dr. Fetzer.

1 MR. FETZER: -- the Plaintiffs that is
2 inaccurate that we accused Mr. Pozner --

3 THE COURT: Okay.

4 MR. FETZER: -- of doing that. We have not.

5 THE COURT: I understand. You speak for
6 yourself, okay? You can't say "we" in the court of law.
7 I understand.

8 Mr. Palecek, I'll then rephrase my question.
9 Without regard to who -- who created it, is the death
10 certificate -- are any of the death certificates in any of
11 the forms that you've seen truthful and accurate?

12 MR. PALECEK: I don't believe so.

13 THE COURT: All right. What's your response in
14 terms of whether the Court should accept, if so -- if not,
15 why not; if so, your response on Mr. Palecek's statute of
16 limitation defense.

17 MR. ZIMMERMAN: Yes, Your Honor.

18 At the outset, Wisconsin has never adopted the
19 single publication rule for any defamation other than
20 defamation on the internet. As it stands today, as the
21 Wisconsin Supreme Court decided in Voit v. Madison
22 Newspapers, defamation occurs at "every sale and delivery
23 of a written or printed copy." Every one is a fresh
24 publication for statute of limitations purposes.

25 Now, it may be that a policy making court in

1 Wisconsin, if they were presented with the opportunity to
2 review this question again, would say we think the
3 restatement sets forth a reasonable rule in the single
4 publication rule, but even if they did that here, we're
5 not talking about a single publication. We have a second
6 edition that's published within three years of the date
7 that Plaintiff filed their complaint. We did that, Your
8 Honor, to make sure that in the event this case were to go
9 up and the court were to change Wisconsin law, it would
10 not impact the outcome. We have a second edition that
11 includes defamation that was not present in the 2015 book.
12 So statute of limitations would not get rid of the
13 defenses -- or the Plaintiff's complaint, the Plaintiff's
14 allegations based on the sale of the book.

15 THE COURT: Mr. Palecek, it's your motion, so
16 you get the last word.

17 MR. PALECEK: Doesn't the statute of limitation
18 go from the first publication which would be the article
19 in *Veterans Today* in 2014?

20 THE COURT: But Mr. Zimmerman is saying
21 that's --

22 MR. PALECEK: That's not --

23 THE COURT: That's when it begins, but you reset
24 the clock back to zero every time you republished the
25 alleged defamatory statement.

1 MR. PALECEK: I see. Okay. Then I don't -- I
2 don't have anything further to say.

3 THE COURT: Okay. I'm going to say this about
4 your motion. First of all, I'm going to reject the motion
5 as not complying with Supreme Court Rule 20:1.2.

6 Second, Mr. Palecek, I appreciate your candor.
7 I'm going to reject the motion because it was not only a
8 violation of 20:1.2 but it was prepared by a lawyer not
9 licensed to practice law in Wisconsin.

10 Now, alternatively, even if I had accepted the
11 motion, for the -- for the reasons I'll state, I agree
12 with Mr. Zimmerman, my review of the Wisconsin case law is
13 that it's a recurrent acts of alleged defamatory
14 statements, even including up until today, the position
15 that you are espousing to the Court, and so therefore, the
16 cause of action is well-within the applicable Wisconsin
17 statute of limitations.

18 Third, you filed a motion for extension of time
19 and you said, to file a Response to Plaintiff's Motion for
20 Summary Judgment, Out of Time. I don't even know what
21 this lawyer's meaning by that. But -- and the document
22 is -- attaches Palecek's Response to Plaintiff's Motion
23 for Summary Judgment and Cross-Motion for Summary
24 Judgment. So let's take that up.

25 You really haven't responded to the Plaintiff's

1 Motion for Summary Judgment. You did raise the statute of
2 limitations defense, which I'm going to deny your motion
3 to dismiss based on an ongoing cause of action.

4 Mr. -- the Plaintiff, am I correct,
5 Mr. Zimmerman, is -- suggests that the absence of any
6 response means the motion -- summary judgment should be
7 granted against Mr. Palecek by default. Is that what
8 you're asking?

9 MR. ZIMMERMAN: Yes, Your Honor.

10 THE COURT: Do you understand that in Wisconsin,
11 Mr. Palecek, again, even if I were to consider what this
12 lawyer said he was doing for you, or she, there is no
13 response to the merits of the Plaintiff's Motion for
14 Summary Judgment, there are no response to the findings of
15 fact that the Court ordered to be provided, and I don't
16 know really what the cross-motion for summary judgment is.
17 A cross-motion for summary judgment is a denomination of
18 suggesting you're asking for summary judgment against
19 Dr. Fetzer, because when you cross-motion, you're crossing
20 over to the guy sitting next to you, not a -- a
21 counter-motion or your own motion. Had you intended to
22 ask for summary judgment to be awarded against your
23 co-defendant by your cross-motion?

24 MR. PALECEK: No.

25 THE COURT: Do you understand that the Plaintiff

1 says by not doing any of the things that you were supposed
2 to do in response to the motion for summary judgment, I
3 should just grant summary judgment against you, basically,
4 that's -- you're done?

5 MR. PALECEK: I --

6 MR. FETZER: Mr. Palecek sought to join my
7 motion, Your Honor, as I believe is stated therein.

8 THE COURT: Where does it say that?

9 MR. FETZER: I don't have the document in front
10 of me, but is that not the case?

11 MR. PALECEK: It's in there, yes.

12 MR. FETZER: Right at the initial first few
13 sentences, I believe, Your Honor, in the first paragraph.

14 THE COURT: Where does it say that? Oh, Number
15 1. I join Fetzer's Motion for Summary Judgment and
16 Fetzer's Response to Plaintiff's Motion for Summary
17 Judgment, including the accompanied documents in support
18 of that response.

19 All right. I'll take under advisement for --
20 we'll come back to the default.

21 Let's take up, Mr. -- Dr. Fetzer, your Motion to
22 Reconsider and a Motion for Protective Order. I do note
23 that you filed something -- even this on Sunday. I did
24 get a chance to read it. Now --

25 MR. FETZER: I believe it was Friday, Your

1 Honor.

2 THE COURT: Oh, Friday night. It came in Friday
3 night. The Plaintiff's 802.08(2) disclosure came in
4 Sunday.

5 The only thing that came separate was the -- who
6 filed the Affidavit of David Gahary?

7 MR. FETZER: Oh, I submitted it, Your Honor.
8 It's -- it's presently un-notarized. He's having it
9 notarized today. It will be here today.

10 THE COURT: And what -- what is the purpose of
11 the --

12 MR. FETZER: The receipt of the death
13 certificate that had the partial printed filed number
14 which came from the office of Debbie Aurelia Halstead,
15 Your Honor.

16 THE COURT: All right. We'll put that aside for
17 now.

18 So Mr. Zimmerman, Dr. Fetzer wants me to
19 reconsider an earlier ruling I made regarding a motion to
20 compel because now he would like to assert a privilege
21 given to journalists. Now, we all know, because we were
22 all on the phone, he didn't assert that defense at the
23 time the Court considered your motion to compel.

24 My recollection of the underlying motion was
25 fairly simple, is the Plaintiff requested, Look, in order

1 for me to prove that the elements of defamation, I need to
2 know all the information you had which formed the basis of
3 your assertion that Leonard Pozner -- well, restate
4 that -- the assertion that the death certificate was
5 fabricated by someone.

6 MR. ZIMMERMAN: Your Honor, if you would indulge
7 us, my colleague has been responsible for --

8 THE COURT: Okay.

9 MR. ZIMMERMAN: -- preparing the response to
10 this.

11 THE COURT: So let's go back and then in my own
12 mind reset what it is that you were attempting to do with
13 the discovery that you submitted that I actually granted
14 your motion to compel.

15 MS. BERLINGER: I believe that your recollection
16 is correct, Your Honor. The discovery was sought in order
17 to form the basis for the underlying defamation claim. I
18 think in particular, the discovery requests that
19 Dr. Fetzer doesn't want to produce discovery too actually
20 goes to the malice element.

21 THE COURT: In other words, you want to know
22 everything he knew when he formed the belief that he
23 continues to hold today that the -- every version of the
24 death certificate is a fabrication.

25 MS. BERLINGER: That's correct.

1 THE COURT: Do you agree, Dr. Fetzner, setting
2 aside your privilege, you agree that that request is a
3 fair request, setting aside the privilege.

4 MR. FETZER: Absolutely not, Your Honor.

5 This whole case is an abuse of process. It
6 wasn't filed as a legitimate claim of defamation. The
7 death certificate is on its face a fabrication, Your
8 Honor.

9 It's a law in Connecticut that not even a parent
10 can -- can have possession of a noncertified death
11 certificate. That's a noncertified death certificate. It
12 doesn't have Debbie Aurelia's certification. It's very
13 obvious when we look at the documents, Your Honor, this
14 entire case is as fabricated as the death certificate.

15 And what they want this for was acknowledged by
16 the Plaintiff in the comment when he was asked about
17 having lost the Wolfgang Halbig lawsuit he said, Well,
18 yeah, but he actually won because he got Wolfgang to take
19 down his Sandy Hook Justice website, and he added, And to
20 show hoaxers that they're going to be dragged into court
21 and it will last for a long time.

22 Your Honor, they want more grist for their mill.
23 This man's been abusing the process again and again
24 bringing lawsuits and harassment against those who are
25 seeking to expose the truth.

1 I would be complicit, an instrument of his abuse
2 of them were I to release these documents. Frankly, I've
3 never even seen the document attached to the Complaint
4 before the Complaint was filed. The parties to this have
5 extraordinarily limited relationship to the death
6 certificate issue, Your Honor.

7 The book is 440 pages or so that I did the index
8 myself. The number of times in which Leonard or Noah
9 Pozner are cited is about 14 pages, which is shorter than
10 the preface authored by my co-defendant, Mike Palecek.

11 I am absolutely committed to protecting those
12 who have been my resources, my sources in the past, from
13 further abuse by this man whom I have described on
14 occasion as a cyber terrorist. He has boasted of taking
15 down tens of thousands of content items from the internet,
16 Your Honor.

17 THE COURT: Okay. Time out. Time out. So I --
18 I -- we've got a bunch of specific things to talk about.
19 I know you were sort of like -- you had to get that out,
20 Dr. Fetzer, but up until this point on all the phone
21 conversations we've had, I've appreciated how you've sort
22 of stuck to the particular issue at hand. Do you
23 understand, I'll give you an opportunity to talk about
24 certainly the issues that you've just mentioned on the
25 context of the Motion for Summary Judgment. All I'm

1 talking about is your -- your Motion for a Protective
2 Order.

3 MR. FETZER: Your Honor, I have a lengthy
4 history as an investigative journalist. I've had six or
5 seven radio shows. I was a journalist for *Veterans Today*
6 from 2011 to 2014. I had --

7 THE COURT: There's no question, Dr. Fetzer,
8 that I -- I agree with you that the law has moved toward a
9 greater protection in recognizing some of the traditional
10 protections we've given the classic written newspaper
11 journalist, television journalism, to journalists of -- of
12 a different kind.

13 So but -- but this is a discovery question now.
14 Dr. Fetzer, why didn't you raise this issue when I -- we
15 were together on the motion to compel?

16 MR. FETZER: I suppose it hadn't crossed my
17 mind, Your Honor, but it's such an enveloping aspect of
18 this case. The -- the Plaintiff is seeking to identify
19 new targets for his harassment, for his lawsuits.

20 THE COURT: Okay.

21 MR. FETZER: He has a history of doing this.

22 THE COURT: Hang on. So Dr. Fetzer, there's a
23 concept in the law that when you don't raise something
24 when it was time to raise it, you waive it, so we don't
25 keep coming back and having additional hearings. You

1 agree that this should have been raised at the time I
2 considered the motion to compel.

3 You've called it a Motion to Reconsider, and
4 under 806.07, there's specific things I look at to
5 determine whether a court should reconsider. Are you
6 familiar with the statutory provisions set forth in
7 Wisconsin statutes 806.07?

8 MR. FETZER: Only -- only in a general fashion,
9 Your Honor.

10 THE COURT: Okay. Now, privileges --

11 MR. FETZER: The --

12 THE COURT: I haven't -- I don't recall that
13 I've ever actually dealt with this particular kind of
14 privilege in my career. Other privileges we require the
15 party seeking the privilege to at least disclose, in
16 what's called a privilege log, the existence of documents
17 that the person claimed to be privileged.

18 For example, I don't want to be arguing about
19 the privilege if, in fact, there's nothing responsive to
20 produce, just because one wants to litigate privilege.
21 May I assume that you have documents responsive to the
22 Plaintiff's request and that you have not yet produced
23 them?

24 MR. FETZER: Well, I have correspondence from
25 all the contributors to the book, Your Honor, but the

1 issues are well defined in the book and they would add
2 nothing of legal merit to the case. I feel I would be
3 betraying my sources by allowing them to be vulnerable to
4 ongoing attacks by the Plaintiff.

5 THE COURT: Okay. That wasn't my question,
6 Dr. Fetzer.

7 Like, I'll give you an example. If -- if, let's
8 say, you had a lawyer and Mr. Zimmerman said, I want you
9 to provide copies of your letters to your lawyer, you'd
10 say, Correspondence with my lawyer are protected by the
11 attorney-client privilege.

12 A privilege log and the obligation to disclose
13 not the contents of the documents but the existence of the
14 documents means that then the Court's time is not taken up
15 in considering just the abstract principle if the question
16 is fair or not. Because if in my hypothetical, Dr.
17 Fetzer, there were no letters to my lawyer, you'd say,
18 There are no letters to my lawyer, and we wouldn't have to
19 talk about an abstract principle of privilege.

20 The same seems to me to apply to the privilege
21 you're now asking me to recognize. But before I do that,
22 if you were to prepare a log, would that log contain
23 documents that you feel are responsive to the request? Do
24 you understand?

25 MR. FETZER: In other words, do I have any

1 correspondence where with any of the contributors we
2 discussed the death certificate and its authenticity?

3 THE COURT: I guess, yeah.

4 MR. FETZER: The answer would, of course, be
5 affirmative, Your Honor.

6 THE COURT: Okay. Is not a log the first -- the
7 first step in figuring out whether even the privilege
8 applies? Again, I have not dealt with the -- this type of
9 privilege, but we do it all the time in attorney client.

10 For example, Dr. Fetzer, let's say you have a
11 document. In the privilege log you'd say whose -- I have
12 this document, it's responsive, it's a communication
13 between me and this person or this person of --

14 MR. FETZER: The --

15 THE COURT: There might be something by defining
16 the existence of the document, the sender and the receiver
17 and the subject that would be an exception to the
18 journalist privilege. Are there not privilege logs in
19 this area of the law or no? I don't know.

20 MS. BERLINGER: I don't think a privilege log is
21 the first step here, Your Honor, and that's because
22 Wisconsin has not adopted a journalist privilege for
23 parties to a litigation.

24 MR. FETZER: If I might return to the phone
25 conversation to which Your Honor has alluded.

1 Frankly, I was stunned when you offered that
2 declaration. Even Reed Peterson wanted to comment on its
3 sweeping breadth, Your Honor, and you cut him off. You
4 cut him off short because he wasn't me. Well, he was
5 speaking on my behalf, Your Honor, and frankly, I thought
6 that decision was truly unjustifiable, unwarranted.

7 I have admired your conduct of this case in
8 every other respect. In that single one, in my opinion, I
9 had no opportunity to think through the breadth of your
10 decision on that occasion, which I thought was preemptory
11 and not sufficiently thoughtful of the rights of all of
12 those who participated in this effort with me. That's my
13 candid assessment, Your Honor.

14 I might very well have thought of the
15 journalistic privilege as an extension of it had that
16 conversation been allowed to continue, but you cut it off
17 quite abruptly, as the record will show.

18 THE COURT: I don't -- Dr. Fetzer, you get to be
19 a certain age in which I have to confess, I don't have a
20 perfect recall of the details of everything.

21 I can tell you this, Attorney Peterson has not
22 and never represented you. He always has a duty to and
23 loyalty to his client, Wrongs Without Wremedies. So if
24 what you're saying to me is I was uncharitable with
25 Mr. Peterson's gratuitous comments that may affect someone

1 other than his client, that sounds like something I would
2 do.

3 Now, in terms of my decision being precipitous,
4 I don't know how to respond to it because I usually did --
5 I usually do, as I would today, always give everyone an
6 ample opportunity to tell me everything that you wanted me
7 to consider before I decide the question. And I have a
8 recollection that -- well, first of all, by your own
9 admission, this particular privilege was never raised, and
10 so it wasn't considered. That I can confess.

11 MR. FETZER: I was --

12 THE COURT: To the extent I didn't consider
13 anything else, I'm not sure what you're alluding to.

14 MR. FETZER: I was frankly astonished by your
15 decision on that occasion, Your Honor. I wanted to start
16 to fathom what it signified in terms of its implications.
17 I believe had I had more opportunity to reflect then, I
18 would have asserted what I'm asserting now.

19 I feel very much as though I were in the
20 position of a lawyer to client in relation to the
21 contributors to the book, Your Honor. There is no merit
22 to the case. This is a complete harassment lawsuit. It's
23 an abuse of process, and I don't want them to be subjected
24 as new targets for the Plaintiff to address.

25 THE COURT: Okay. What do I -- I don't know

1 what that --

2 MR. FETZER: May I --

3 THE COURT: I don't know --

4 MR. FETZER: -- humbly request, Your Honor, that
5 after you hear the oral argument, you return to this
6 issue? In other words, defer it for the time being,
7 because the evidence in the case now that I will review
8 today is clear and decisive and leaves no doubt about it.

9 THE COURT: Doubt about what?

10 MR. FETZER: The issue of defamation. There can
11 have been no defamation because by Connecticut law not
12 even parents are allowed to possess uncertified death
13 certificates. That was an uncertified death certificate.
14 By Connecticut law, he was not entitled to possess it.

15 THE COURT: Okay. Before I either decide it or
16 come back to it, I understood then and I understand why a
17 lawyer representing Leonard Pozner on this claim would
18 want this information. I -- I do think the definition of
19 relevant information or -- is something that is either,
20 relates to the cause of action or likely to lead to the
21 discovery of some other relevance. So the discovery in
22 Wisconsin is broader than what might be just limited to
23 what you'd prove to the jury. And it makes sense to me
24 then as it does now that the Plaintiff would say, Look,
25 they say it's a fabricated, a false death certificate, I'd

1 like to know why they come to that conclusion, because if
2 there's no underlying evidence or underlying research or
3 any documentation, then that might go to you, as you say,
4 the -- the damages or the -- what was it, the element, not
5 willfulness?

6 MS. BERLINGER: Malice, Your Honor.

7 THE COURT: Malice.

8 MR. FETZER: Your Honor, if --

9 THE COURT: Do we need to -- do we need to
10 though -- on the other hand, I've looked at the documents
11 in support of the Plaintiff's Motion for Summary Judgment.
12 So you've seem to have done all right so far without it.
13 Is this evidence which is necessary to decide the motion
14 for summary judgment?

15 MS. BERLINGER: Your Honor, it seems to me that
16 there's no evidence that Plaintiff is a limited-purpose
17 public figure, and that is the only reason that we would
18 need to prove that the statements were made with malice,
19 and so it does not seem necessary for you to decide the
20 Motion for Summary Judgment.

21 THE COURT: Okay. We're going to get to that.
22 So if I -- if I have conclude that Leonard Pozner is -- I
23 had these words in my mind so I said it the right way, the
24 two different tests on defamation, a public figure and
25 then a private individual. I know that there's different

1 words. If I conclude Leonard Pozner is just a private
2 individual, then this discovery motion is -- becomes
3 academic?

4 MS. BERLINGER: I think the issue becomes moot.

5 THE COURT: Okay.

6 MR. FETZER: One further observation, Your
7 Honor. Any such correspondence would have been regarding
8 reasons for concluding --

9 THE COURT: Okay. Do you -- so let's -- let's
10 be -- so I catch this train.

11 The Plaintiff has moved for summary judgment.
12 On -- one of the issues is for me to say whether there's
13 any genuine issue on any of the facts material to whether
14 Leonard Pozner is what I'll call a private individual as
15 opposed to a public, do you understand that if I conclude
16 on summary judgment he's not a public figure, then
17 everything in your file can stay in your file, they don't
18 need it any longer. All right? You understand that?

19 MR. FETZER: I do, Your Honor.

20 THE COURT: Okay. Let's take that up. I've got
21 my notes on that. Who wants to argue the terms of that
22 underlying question? Because, that I do think is an
23 appropriate question to be resolved -- to be answered by
24 the Court in the context of a motion for summary judgment.
25 I do have some questions about the other aspects of the

1 Motion for Summary Judgment, especially as it relates to
2 then a trial for damages and the like, but setting forth
3 this element is something that should be resolved in
4 pre-trial motions.

5 I know you've filed briefs. I had affidavits.
6 I reviewed that. Who would like to tell me -- begin on
7 that issue?

8 MR. ZIMMERMAN: I'd like to do that, Your
9 Honor --

10 THE COURT: Mr. Zimmerman.

11 MR. ZIMMERMAN: -- if I may?

12 THE COURT: Okay.

13 MR. ZIMMERMAN: Your Honor, we've prepared a
14 short set of slides.

15 THE COURT: Okay.

16 MR. ZIMMERMAN: If I can approach and give you a
17 copy.

18 THE COURT: Okay. Do you have a copy for
19 Mr. Palecek and Mr. Fetzer?

20 MR. ZIMMERMAN: I do, Your Honor.

21 THE COURT: We'll mark this as Exhibit 1.

22 MR. ZIMMERMAN: Thank you.

23 (Exhibit 1 marked for identification.)

24 THE COURT: All right. Mr. Zimmerman.

25 MR. ZIMMERMAN: Thank you, Your Honor.

1 I will try to get through this quickly, and
2 obviously, have put together a series of slides, but to
3 the extent Your Honor has questions, I'm more than happy
4 to divert, to jump into a different line of questioning.

5 THE COURT: No. Please go ahead.

6 MR. ZIMMERMAN: Thank you.

7 Just a brief overview on the second page, Your
8 Honor, on what I'm going to try to cover in this short
9 argument, overview of why we're here. I'm going to cover
10 one example of a statement from the book that's false, one
11 example of a statement from the blog that's false, and
12 then talk about the rest of the elements of defamation,
13 that I don't think are seriously in dispute.

14 So as to why we're here. Obviously, Your Honor,
15 this is a defamation case, and on slide 4 I've set forth
16 the elements of defamation. The Court is well aware of
17 them. There's no need for me to go through those now.

18 On page 5, reiterating where we are today. As
19 Your Honor's aware, Plaintiff moved for summary judgment
20 against all three Defendants on the four defamatory
21 statements that are listed on Plaintiff's Complaint.
22 Three of those are from this book, the second edition of
23 *Nobody Died at Sandy Hook*. One is from a blog post that
24 Defendant Fetzer published in August of 2018.

25 Wrongs Without Wremedies, as Your Honor is

1 aware, is out of the case, so we haven't addressed
2 anything with respect to Wrongs. Defendant Palecek didn't
3 file a response, so this presentation will not discuss
4 Defendant Palecek's issue. Therefore, we're focussing on
5 the arguments raised by Defendant Fetzer and the evidence
6 he provide in response to our motion.

7 So let me start, if I may, Your Honor, with a
8 statement from the book. Wisconsin law for summary
9 judgment requires us to start at the beginning. So we
10 have to look at the Complaint and make sure that we set
11 forth a case for defamation in the Complaint. And what
12 I've done here on page 7 is to highlight a line from
13 paragraph 17 that says, "Noah Pozner's death certificate
14 is a fake, which we have proven on a dozen or more
15 grounds." We included a citation to page 183 of the book,
16 *Nobody Died at Sandy Hook*. And on page 8 we see an
17 excerpt from the book with that very statement appearing
18 in the book. This issue is not in dispute.

19 THE COURT: Can I ask a question?

20 MR. ZIMMERMAN: Yes, Your Honor.

21 THE COURT: If I -- if I was more adept and I
22 pulled up Dr. Fetzer's answer, did he admit paragraph 17?

23 MR. ZIMMERMAN: Yes, he did, Your Honor.

24 THE COURT: Okay.

25 MR. FETZER: Forgive me, Your Honor, admit --

1 oh, making those -- those statements appearing? Yes, Your
2 Honor. Yes. Yes.

3 THE COURT: Okay. You understand on a Motion
4 for Summary Judgment, the Court begins to look at the
5 Complaint and then what allegations of fact in the
6 Complaint the Defendants say are true. All right.

7 MR. ZIMMERMAN: Yes, Your Honor. That's
8 correct.

9 THE COURT: All right.

10 MR. ZIMMERMAN: And we have tried to limit the
11 scope of what's in dispute by relying on the responses to
12 the Complaint and the answers in the other pleadings. Not
13 all of them show up in the answers. Sometimes, because
14 there was initial briefing on Defendant Fetzer's Answer,
15 Plaintiff's filed a motion to strike. Some of the
16 responsive pleadings show up in that brief as opposed to
17 the Complaint -- excuse me, the answer itself.

18 THE COURT: Okay. Dr. Fetzer, turn to page 7 of
19 Mr. Zimmerman's demonstrative exhibit.

20 MR. FETZER: Yeah.

21 THE COURT: That's paragraph 17 from the
22 Complaint.

23 MR. FETZER: Right.

24 THE COURT: Two questions. Do you recall
25 whether you admitted paragraph 17, and if you don't

1 recall, do you now admit paragraph 17?

2 MR. FETZER: Oh, most certainly. I published
3 these statements, Your Honor, and also the statement in
4 the -- in the *Sandy Hook Memoranda for the President of*
5 *the United States*, edited by Robert David Steele in 2018
6 which the Plaintiff also cites. I published those
7 statements. Yes, Your Honor.

8 THE COURT: Okay. Did you notice that it says,
9 "The second edition of *Nobody Died at Sandy Hook* accuses
10 Plaintiff of issuing and/or possessing"? Not just
11 possessing, but of issuing the --

12 MR. FETZER: Well he --

13 THE COURT: -- the forged copy?

14 MR. FETZER: -- he published it on a blog, Your
15 Honor, made it available to Kelley Watt. That is what was
16 meant there. Not that he created the document.

17 THE COURT: Okay. Go ahead, Mr. Zimmerman.

18 MR. ZIMMERMAN: Thank you, Your Honor.

19 On page 9, we see the first point where the
20 parties really diverge in their positions. And this is
21 the question on how we interpret what it means to be true
22 or false. What is it that's true or false. And Wisconsin
23 law provides guidance on this issue.

24 Defendants have identified the word "fake," for
25 example, we'll talk about that this morning, and said, I

1 believe, if they can show that the death certificate is
2 fake for any reason, then their statement is true.

3 Wisconsin law says something else, Your Honor. It says we
4 have to consider the context in which the statement was
5 made to understand whether it is true or false. There is
6 two Wisconsin cases cited here, both of them treat this
7 issue the same way, saying you cannot take a word in
8 isolation and attempt to prove by some technical means
9 that word is true.

10 On page 10, Your Honor, the first page of what
11 I've identified as context for the statement, we see an
12 image of Noah Pozner's death certificate. There's no
13 dispute that this is the content of the death certificate
14 that was released by Mr. Pozner. As we'll hear a little
15 bit more later on, we don't think this is the image that
16 Mr. Pozner uploaded, which becomes important as Your Honor
17 considers expert reports and expert opinions.

18 On the next page, page 11, we see why they say
19 the death certificate is fake. In the highlighted
20 language, they say, well, the blurry ones, the blurry
21 typewritten fields "may have been done with a typewriter,
22 the clear sections were Photoshopped into the document."

23 Now, Your Honor, one of the things that's
24 happened in the course of briefing summary judgment is we
25 have identified and crystallized the dispute between the

1 parties on the issues before the Court. Through this
2 process, it has become clear that when they say "fake"
3 they mean not certified or something else, but we never
4 see a response on the question of Photoshopping. We never
5 see a response on the change to any typewritten material.
6 There's no dispute on those issues.

7 THE COURT: Is that true, Dr. Fetzer?

8 MR. FETZER: Yes, but there's something
9 misleading here, Your Honor, because --

10 THE COURT: Okay. You'll get a chance to talk.
11 I'm just --

12 MR. FETZER: Yeah.

13 THE COURT: He says there's no dispute.
14 Usually, if I do --

15 MR. FETZER: Well I -- I don't believe -- I
16 mean, that was one of the reasons I had at the time, Your
17 Honor, but I no longer believe -- my conclusion was
18 correct but many of my premises were wrong.

19 THE COURT: Do you -- you believed then and you
20 do now that portions were Photoshopped?

21 MR. FETZER: I believed then but I do not
22 believe now.

23 THE COURT: Okay. Mr. Zimmerman.

24 MR. ZIMMERMAN: I will go faster then, Your
25 Honor. As long as that issue is perfectly clear, I think

1 that may be dispositive of the question of the falsity of
2 the defamatory statement.

3 THE COURT: Mr. Palecek, do you believe -- did
4 you believe then and do you believe now that portions of
5 the death certificate were Photoshopped?

6 MR. PALECEK: I had -- I had no real opinion
7 then, I don't have any real opinion now about Photoshop.

8 MR. FETZER: May I add, Your Honor, that I'm
9 being sued for the statements in paragraph 17 and 18.
10 This is not part of it. I mean, the Plaintiff wants to
11 broaden to all the reasons I had, and many of those were
12 bad reasons which I've freely conclude, but my conclusion,
13 the core of the case that this was a fabrication remains
14 true and has been substantiated in multiple ways, as I
15 shall explain.

16 THE COURT: Okay. I'm just trying to get what's
17 in dispute or not. And, Dr. Fetzer, you're saying now as
18 you sit here today, you now retract the statement that
19 portions of the death certificate were Photoshopped? Yes
20 or no.

21 MR. FETZER: Yes. I retract them.

22 THE COURT: Okay. Mr. Zimmerman.

23 MR. ZIMMERMAN: Your Honor, then I'm going to
24 move to slide 16, if I might. Obviously, happy to address
25 any questions that Your Honor has on the others, but I

1 think at this point they're moot given that position by
2 Dr. Fetzer.

3 There is, I suppose, some theoretical underlying
4 question on whether the death certificate is fake because
5 it's not certified. Now that is not a grounds for the
6 allegation that the death certificate is fake that appears
7 in chapter 11 of the book. It is not part of the context.
8 But in the interest of addressing the issues that were
9 raised by Dr. Fetzer, we can address that one today as
10 well.

11 Plaintiff did introduce evidence that the death
12 certificate that Mr. Pozner uploaded was a certified copy
13 and the seal was visible. In fact, you can see the seal
14 in the scanned image of the document. Attached to
15 Mr. Pozner's declaration in support of Plaintiff's Motion
16 for Summary Judgment was Exhibit -- I believe, Exhibit B,
17 and Exhibit B was two scans of death certificates that
18 Mr. Pozner has stated he obtained from the Newtown clerk's
19 office. We noted in that affidavit that the seals are
20 hard to see when you scan a document. For as good as
21 technology is, it is not perfect. And we noted that those
22 documents were available for inspection. I have them here
23 today. I'd like to show them to Your Honor, if I might
24 approach.

25 THE COURT: Okay. Please.

1 MR. ZIMMERMAN: Here, we see a seal down at the
2 bottom of the document.

3 THE COURT: All right. So -- so the record is
4 clear, you've handed me a document, I have it in my hands.
5 I can feel the raised seal of the town -- it's hard for me
6 to read what's on the seal. It says seal.

7 MR. FETZER: Your --

8 THE COURT: And this is what, Mr. Zimmerman?

9 MR. ZIMMERMAN: This is one of two death
10 certificates that Mr. Pozner obtained from the Newtown
11 clerk's office in 2013.

12 THE COURT: The actual document that the
13 Plaintiff actually received from the Newtown Registrar?

14 MR. ZIMMERMAN: Registrar of Vital Records, I
15 believe is what the affidavit says.

16 THE COURT: Okay.

17 MR. ZIMMERMAN: Yes, Your Honor. That's
18 correct.

19 THE COURT: All right. Mr. Fetzer, have you
20 seen this? Dr. Fetzer?

21 MR. FETZER: I'm familiar with it, Your Honor.
22 The seal is in the wrong place. That's a sign of
23 fabrication. The seal ought to be on the left with a
24 certification by Debbie Aurelia, which is absent. This is
25 further proof of fabrication.

1 THE COURT: Okay. You've now handed me a second
2 document.

3 MR. ZIMMERMAN: That's correct, Your Honor. He
4 obtained two death certificates from the Newtown clerk's
5 office at the same time, just like if you were to go in
6 and get copies of your marriage certificate or marriage
7 license, you might choose to buy ten of them so you don't
8 have to go back into the office.

9 THE COURT: Okay. Are these two documents --
10 now are we -- am I keeping these documents or are you
11 taking them?

12 MR. ZIMMERMAN: I think we hold on to them
13 because they're originals, but obviously, we'll take
14 direction from Your Honor.

15 THE COURT: Okay. Well, I'm wondering, you
16 have -- are these two documents exactly the same?

17 MR. ZIMMERMAN: The only difference is I believe
18 that the seal is in a slightly different location on the
19 two documents.

20 THE COURT: Okay. Well, for purposes of the
21 record on appeal or for even going forward in trial, as
22 long as you have two, would not -- and it being --
23 wouldn't -- the issue is the raised seal or not.

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

25 THE COURT: Would it not be helpful to mark this

1 as an exhibit and for the Court to keep one?

2 MR. ZIMMERMAN: Absolutely.

3 THE COURT: Certainly --

4 MR. FETZER: May --

5 THE COURT: -- at the end, whenever the case
6 ends, you can ask for these documents to be returned.

7 We'll --

8 MR. ZIMMERMAN: Of course.

9 THE COURT: -- mark this as an exhibit.

10 THE CLERK: It will be Exhibit No. 2.

11 (Exhibit 2 marked for identification.)

12 MR. FETZER: May I see --

13 THE COURT: Exhibit No. 2 is the original with
14 the raised seal. You can --

15 MR. FETZER: This --

16 MR. ZIMMERMAN: Thank you, Your Honor.

17 MR. FETZER: Your Honor, I'm -- I'm a bit
18 baffled by this, because it --

19 THE COURT: Well why don't you look at the one
20 we've marked --

21 MR. FETZER: Yeah.

22 THE COURT: -- and now --

23 MR. FETZER: Yeah. Because -- something's
24 wrong. This is not the death certificate that he's -- he
25 posted online, Your Honor.

1 THE COURT: Okay. Let's let Mr. Zimmerman --

2 MR. FETZER: It's not --

3 THE COURT: -- tie up these loose ends.

4 MR. FETZER: All right.

5 THE COURT: I want you to hand those back to
6 him.

7 Mr. Zimmerman, as you know, let's make sure I
8 keep the copy with the green.

9 MR. ZIMMERMAN: Yes. I'm happy to leave them
10 with the clerk now, that way we don't forget.

11 THE COURT: Yes, please.

12 I want to say parenthetically, Dr. Fetzer -- and
13 when I say Dr. Fetzer, Mr. Palecek, you're in this like
14 hand in hand. So I don't mean to ignore you. If you want
15 to say something, but you're such a quiet fellow, I sort
16 of -- we focus on the guy sitting next to you, but please
17 feel free to interject if you think something needs
18 to be -- first to be said. Okay?

19 MR. PALECEK: Yeah.

20 THE COURT: Dr. Fetzer, as a lawyer, I am a
21 notary. I've got to tell you, I don't recall ever being
22 given instructions on where to make the embossed, whether
23 I put it -- sometimes it's hard because it only has a
24 reach into the document of a certain length because of the
25 squeeze on the embossed stamp. I also do have a court

1 seal as well. So I'm just saying, when you get a chance
2 to say something, I just want to let you know, because
3 unless I tell you these things, then you would not know
4 that as a government official, a notary in the State of
5 Wisconsin, I've never been told where to put it. Usually
6 I put it over my signature, but I -- but I've never to my
7 knowledge been made aware that there's a right or wrong
8 place to put these things. So keep your thoughts.

9 MR. FETZER: You got it.

10 THE COURT: Mr. Zimmerman, finish.

11 MR. ZIMMERMAN: Thank you, Your Honor.

12 We've introduced this evidence. It was part of
13 Mr. Pozner's affidavit. He has stated that this is the
14 death certificate that he scanned and that was uploaded to
15 his Google Plus site.

16 THE COURT: So to make sure the record is clear,
17 what has now been marked as Exhibit 2 corresponds to the
18 Pozner affidavit, paragraphs 11 and 13, saying that
19 Exhibit 2 is the actual document he uploaded.

20 MR. ZIMMERMAN: With one small caveat, Your
21 Honor.

22 THE COURT: Okay.

23 MR. ZIMMERMAN: He did not say which of these
24 two was the one that he uploaded.

25 THE COURT: Okay.

1 MR. ZIMMERMAN: Just so the record is clear.

2 THE COURT: Okay. But as the Court has -- will
3 indicate, I've accepted for filing the one of the two that
4 had a slightly greater raised embossed seal. The two
5 otherwise were exactly the same except for the physical
6 location of the embossment.

7 MR. ZIMMERMAN: That's correct. And the record
8 from Mr. Pozner's affidavit shows -- states that he
9 obtained them on the same day from the Newtown Registrar
10 of Vital Records.

11 THE COURT: Okay. So can I -- I said I'm not
12 helping, but Dr. Fetzer, when you say to me sort of
13 extemporaneously as an outburst, *That's not the one he*
14 *uploaded*, I just want to let you know, that's not good
15 enough, because I have to decide a motion for summary
16 judgment based on competent, admissible evidence. And so
17 if there's some evidence that you want to show me in the
18 documents, in the affidavits, in the documents you've
19 submitted, then please do that. I just want to let you
20 know, because I'm going to rule based on the evidence,
21 that as a fundamental precept of the Wisconsin Rules of
22 Civil Procedure, a party cannot just rest upon their
23 pleadings or just their extemporaneous statements. I need
24 evidence. So --

25 MR. FETZER: Your --

1 THE COURT: -- when you get to be -- your
2 chance, please keep that in mind, too.

3 MR. FETZER: Just to make the obvious point,
4 Your Honor, I was sued for the death certificate published
5 in the book. It does not have the certification that is
6 shown here. This is a misrepresentation.

7 THE COURT: Okay.

8 MR. FETZER: The -- the document published in
9 the book has many features that are not present in this
10 document. This is a cleaned-up document, Your Honor.
11 That is not the document that is the basis of the suit
12 against me.

13 THE COURT: Okay. Just so I understand,
14 Dr. Fetzer's point, when I followed the affidavit of
15 Pozner and the exhibits, it -- I thought the death
16 certificate he uploaded then made its way to and was
17 included in the book.

18 MR. ZIMMERMAN: It -- by some -- by some path,
19 the death certificate he uploaded made its way and was
20 reproduced on page 181 of the book and 242 of the book.
21 That is correct, Your Honor.

22 THE COURT: And Dr. Fetzer, when he gets his
23 chance, is -- will say that if I looked at that page of
24 the book, do you think then -- and I compared it, are
25 there material differences?

1 MR. ZIMMERMAN: The key word being material,
2 Your Honor, and the answer there is no.

3 THE COURT: What are the differences in the book
4 as opposed to Exhibit 2?

5 MR. ZIMMERMAN: Plaintiff Pozner redacted
6 several of the boxes that appear in that death certificate
7 before he uploaded the death certificate to his son's
8 social media site.

9 THE COURT: Social security number.

10 MR. ZIMMERMAN: Social security number and the
11 location of his grave.

12 THE COURT: Okay.

13 MR. ZIMMERMAN: As he said in his affidavit, he
14 was concerned that someone might go to his son's grave
15 because he had received threats that people should exhume
16 his son's body in order to prove that it was actually
17 there.

18 THE COURT: Okay. Other than those redactions,
19 the copy of the death certificate in the book is the same
20 as Exhibit 2?

21 MR. ZIMMERMAN: No, Your Honor. There's one --
22 well, let me state, there are two different -- slightly
23 different images of the death certificate in the book.
24 The one on page 181 has a thin black border around it.
25 That is not present in the version of the death

1 certificate that Mr. Pozner uploaded. So that is not
2 attributable to the Plaintiff in this case, though it was
3 described by Defendants' expert.

4 THE COURT: Okay.

5 MR. ZIMMERMAN: Somewhere along the way as they
6 gathered documents off the internet, they pulled one that
7 had a black border around it, but it's not from my client.

8 THE COURT: All right.

9 MR. ZIMMERMAN: That's different than the copy
10 of the death certificate on page 242 that does not
11 contain --

12 MR. FETZER: This --

13 MR. ZIMMERMAN: -- the black border around it.

14 In addition, both of these death certificates
15 have been cropped so that they are not on an 8
16 1/2-by-11-size sheet of paper, but instead focus on the
17 material contents of the death certificate, the typed
18 information, the clerk's signature and the seal all appear
19 on the copy of the death certificate that appears in the
20 book.

21 MR. FETZER: Your Honor, I -- I don't want to
22 accuse Mr. Zimmerman of a shell game, but that is not the
23 death certificate for which I have been sued. It is much
24 more serious than he is allowing here. That death
25 certificate has certifications. The death certificate in

1 the book has no certifications, Your Honor. None.

2 That -- that stamp on the upper left is crucial. That is
3 a certification by the -- the town custodian of vital
4 records, Debbie Aurelia. It has to have a certification
5 on the left. It is not there -- in the book, it's not
6 there. I will give you copies when my occasion occurs to
7 show you that you are being misled by Mr. Zimmerman. I
8 hate to make this allegation, but it's as serious as it
9 could be.

10 Not only that, but the document has much -- many
11 texturals differences that have been eliminated from the
12 version you've seen. It had a dark text here which turns
13 out to be because there's a dark texture in the original
14 death certificate filled out by the medical examiner, Your
15 Honor. This is a very substantial misrepresentation of
16 the evidence in this case.

17 THE COURT: Well, okay. Let me just ask you
18 another question. My bailiff will bring you Exhibit 2.
19 Dr. Fetzer, is Exhibit 2 a fake?

20 MR. FETZER: Well, it is on multiple grounds,
21 Your Honor, but the point is it has this certification on
22 the left which was not in the book. I -- I have it.

23 THE COURT: Time out. Time out. I just -- I
24 want to work through and understand the positions.

25 MR. FETZER: Yes.

1 THE COURT: I understand that Mr. Zimmerman is
2 walking me through the journey of what he says, well,
3 actually what Leonard Pozner says in his affidavit is the
4 document which he uploaded. I understand the issue of the
5 redactions and the border and the split, and the issue of
6 whether an uploading can capture an embossed, but I'm just
7 asking a simple question. You have Exhibit 2 in your
8 hand. You can feel the embossment. Is Exhibit -- yes or
9 no, is Exhibit 2 a fake?

10 MR. FETZER: Yes.

11 THE COURT: Mr. Palecek, take Exhibit 2 in your
12 hands, please. Is Exhibit 2 a fake?

13 MR. PALECEK: I have no way of knowing.

14 THE COURT: Okay. Thank you for your candor.
15 My bailiff will retrieve Exhibit 2.

16 Okay. Go ahead, Mr. Zimmerman.

17 MR. ZIMMERMAN: Thank you, Your Honor.

18 I think the critical issue here is that
19 Defendants did not introduce admissible evidence that the
20 death certificate that Mr. Pozner uploaded was a fake.
21 The experts that Defendants hired to provide testimony in
22 this case did not review the digital file that Mr. Pozner
23 uploaded. They reviewed some other copy. And as we
24 showed in our motion to strike, which we'll talk about in
25 a moment, we know from the file size that it could not

1 have been the file that Mr. Pozner uploaded.

2 Now in the context of Photoshopping, that's
3 critically important, because at some point the allegation
4 was the file or the image was digitally manipulated. That
5 may be of less import today, given that they're agreeing
6 that the image was not Photoshopped, but we can see on
7 page 181 of the book, which is reproduced in slide 10 of
8 my presentation, the death certificate from the book that
9 contains, although hazy, an image of the embossed seal in
10 the lower left-hand corner. There's no evidence in the
11 record that the document was not certified.

12 And --

13 MR. FETZER: But --

14 MR. ZIMMERMAN: -- with respect, Defendant
15 Fetzer's statements that the certification is in the wrong
16 spot or that the document wasn't certified are not
17 admissible evidence. He's offered opinion testimony for
18 which he is not competent under Wisconsin law to provide.

19 They've provided two expert reports from people
20 who claim to be forensic document examiners, experts who
21 are allowed to testify in court about whether a document
22 is real or forged. Those individuals did not offer an
23 opinion that the death certificate was fake because it
24 lacked a seal. They did not offer that opinion based on
25 the image that was uploaded, and they were never provided

1 the underlying documents.

2 We can call these originals in this case because
3 they are the certified copy obtained from the Newtown
4 clerk that bears the physical raised seal.

5 MR. FETZER: May --

6 MR. ZIMMERMAN: They are not the original death
7 certificate that's held in the Newtown file cabinet
8 somewhere, but in -- in either event, their forensic
9 document analysts did not obtain these files because they
10 didn't ask for them. In this case, with all of the
11 discovery and all of the issues that have been before your
12 court, no one has ever served a document request asking
13 for the JPEG image that Mr. Pozner uploaded or the death
14 certificates that were underlying that issue -- or that
15 image. I apologize. So what everyone is working with
16 from the Defendants' side are copies of copies of copies
17 that they found somewhere out on the internet, and they
18 are using those to say my client did something wrong or my
19 client improperly distributed or possessed a modified or
20 altered death certificate, but there's no admissible
21 evidence in the record to support that contention, even if
22 it was within the context of the statement in chapter 11,
23 and it is not.

24 Where does that leave us? We identified the --
25 I'm sorry, I'm on slide 17. We identified the defamatory

1 content in our Complaint, the defamatory statement. We
2 showed that the defamatory statement actually appears in
3 the book, just where we said it would. We evaluated the
4 context of the statement to understand why the Defendants
5 claimed that the statement was fake. Plaintiff introduced
6 evidence to show that's wrong. Defendants did not
7 introduce admissible evidence to counter Plaintiff's
8 showing. Therefore, there is no genuine issue of material
9 fact on this element of defamation, the falsity of the
10 defamatory statement.

11 Your Honor, if I might, I'd like to address
12 quickly one statement from Defendant Fetzer's blog. This
13 appears on paragraph 18 of the Complaint. It's a slightly
14 longer statement, slide 19 of my presentation.

15 Slide 20 contains an excerpt from Exhibit P to
16 my declaration -- excuse me, Affidavit in Support of
17 Plaintiff's Motion for Summary Judgment. This is a
18 screenshot or a printout of that blog page, and the false
19 statement appears in the blog. There's no dispute on this
20 point.

21 On slide 21, we've identified the context of
22 this false statement. And as I said, Your Honor, this one
23 is a little bit different. Here, Defendant Fetzer accused
24 Plaintiff of circulating or providing to Ms. Kelley Watt a
25 fabrication with the bottom half of a real death

1 certificate and the top half of a fake. The allegation
2 there, Your Honor, is that they literally -- that my
3 client or someone upstream of my client literally combined
4 two documents to result in a fabricated death certificate.
5 There's no evidence in the record to support that
6 contention.

7 They go a little bit further here, Your Honor,
8 saying that there's no file number. I believe that refers
9 to the state file number box in the upper right-hand
10 corner, which we can talk about in just a moment, and the
11 wrong estimated time of death. That's the sum total of
12 the context from the blog about my client's son's death
13 certificate. Those -- none of those are accurate. None
14 of those reflect a fabricated death certificate.

15 On page 22, we can see three boxes from Noah
16 Pozner's death certificate that identify actual or
17 presumed time of death, time pronounced, and time of
18 injury.

19 And on slide 23, we have testimony from the
20 deposition of Dr. Carver. I skipped some slides earlier,
21 Your Honor. Dr. Carver is the chief -- was the Chief
22 Medical Examiner for the State of Connecticut for almost
23 three decades who personally performed the post-mortem
24 examination of Noah Pozner. He was deposed in this case,
25 including by Dr. Fetzer, who had ample opportunity to ask

1 him questions about the time of death notations on the
2 death certificate. And as the evidence showed, Dr. Carver
3 explained that the time of death numbers, times on the
4 death certificate, have nothing to do with determining the
5 moment when Noah Pozner was shot. They have everything to
6 do with determining the time in which Noah Pozner was
7 pronounced dead. We've included deposition excerpts in
8 the presentation, I won't belabor the Court with them, on
9 slide 23 and 24.

10 The affidavit includes more. This happens, Your
11 Honor, because sometimes they find a dead body in the
12 woods and it might be there for 20 years, and then the
13 medical examiner has to figure out when did the person
14 die. When did the injury occur. And if there are years
15 intervening the presumed death and the death -- the
16 medical examiners evaluation, they have to rely on much
17 more complicated forensic techniques to make that
18 determination.

19 But Dr. Carver stated with respect to these,
20 those are the dates and times that he received information
21 from competent EMTs that Noah Pozner and the other victims
22 had been pronounced dead. And for him, that was the end
23 of the inquiry. This is an administrative function, not
24 an investigatory function.

25 Having said that, on slide 25, Defendant Fetzer

1 did attempt to introduce evidence that Noah Pozner could
2 not have been pronounced dead because he contends no EMTs
3 went into the building. Your Honor, it's important,
4 obviously, in a motion for summary judgment to attach
5 evidence, which is why Wisconsin statutes require us to do
6 that, and then also to look carefully at that evidence.
7 Because the evidence that Mr. -- Dr. Fetzer attached, does
8 not say no EMTs went into that school. It says this EMT
9 and her crew did not enter the building. But we know from
10 the Connecticut State Police report that other EMTs did.

11 On page 26 of the presentation is an excerpt --
12 oh, I apologize. I've mislabelled that. It's an excerpt
13 from my affidavit. It includes statements from the
14 Connecticut State Police report from three paramedics who
15 entered the building and are the individuals who conducted
16 the determination that the victims were deceased. They're
17 all in the police report -- state police report. They're
18 admissible. The state police report is a public record.
19 They're not hearsay within hearsay. Neither of those
20 witnesses -- none of those three witnesses are available
21 to testify in the court today. So we have admissible
22 evidence that EMTs did enter the building, they did check
23 each one of the victims using a protocol, and eventually,
24 these victims were pronounced dead.

25 This is also consistent with the time of death

1 with the medical examiner's report. On page 27, we see an
2 excerpt. That report says the victims were pronounced
3 dead at 11:00 o'clock by paramedic, and that statement is
4 repeated in the medical examiner's notes from the field,
5 from the scene investigation.

6 Finally, Your Honor, let me address the absence
7 of a state file number. This is an issue that came up in
8 the case because some death certificates in Connecticut
9 are issued by the town and other death certificates in
10 Connecticut are issued by the state. They chose in their
11 wisdom to have a two-track system to release vital
12 documents. And because of that, there is a difference
13 between a document obtained from the town and one obtained
14 from the state.

15 We introduced evidence, again, through
16 Dr. Carver's deposition -- by the way, Dr. Carver
17 testified he has completed more than 13,000 death
18 certificates in his role as chief medical examiner for the
19 State of Connecticut, which is an astoundingly high
20 number, and he was easily able to explain the absence of
21 the file number on Noah Pozner's death certificate. The
22 copy that was obtained from Newtown, won't have a state
23 file number. The copy that's obtained from the state
24 vital records office, will, and it's as simple as that.

25 Even if we identified that difference, even if

1 we had a disagreement about the basis for that difference,
2 there is no evidence in the record that a state file
3 number on one document and the absence of a file number on
4 the other is evidence that the document is a fabrication.
5 There is nothing to connect that administrative difference
6 with the underlying possession or issuance of a fake
7 public record.

8 Your Honor, I'm probably going too far and
9 beating a dead horse on this, but there's also no evidence
10 that Noah Pozner's death certificate is a combination of
11 two documents. We know this because Dr. Carver testified
12 that he entered -- and actually, let me, if I can, take a
13 moment, Your Honor. We actually have an original death
14 certificate. May I approach?

15 THE COURT: Please.

16 MR. ZIMMERMAN: This is the original death
17 certificate form that's used by the State of Connecticut.
18 We obtained a copy -- we obtained an original from the
19 office of the chief medical examiner. It says "blank
20 copy" at the top so that no one will do anything nefarious
21 with it. You can see the size, shape, and tone of that
22 document.

23 Dr. Carver testified that his job is to complete
24 the shaded boxes. The funeral home director, Mr. Green,
25 testified that his job is to fill in the nonshaded boxes,

1 the registrar cites.

2 THE COURT: Should we mark this?

3 MR. ZIMMERMAN: Yes, Your Honor, please.

4 THE COURT: Mark it as Exhibit 3.

5 (Exhibit 3 marked for identification.)

6 THE COURT: Because the document, which is
7 marked for identification purposes as Exhibit 3, has
8 shaded portions, I do note that Exhibit 2, now I can
9 discern the shaded portions on the photocopy, but
10 photocopying don't accurately reflect I think what you're
11 demonstrating here.

12 MR. ZIMMERMAN: If I might just make sure that
13 the Defendants have had an opportunity to see the
14 document.

15 THE COURT: Okay. And for purpose of
16 identification, you -- you wrote -- you modified the blank
17 form by affixing the two words, "blank copy."

18 MR. ZIMMERMAN: I did not, Your Honor. The
19 office of the chief medical examiner did that before they
20 mailed it to me.

21 THE COURT: Okay. Now let's just -- offering
22 Exhibit 3, are you?

23 MR. ZIMMERMAN: Yes, Your Honor.

24 THE COURT: Any objection to the Court receiving
25 Exhibit 3?

1 MR. FETZER: None.

2 MR. PALECEK: No.

3 MR. ZIMMERMAN: The --

4 THE COURT: Let's just clean up. Exhibit 2.

5 Offering Exhibit 2?

6 MR. ZIMMERMAN: Yes, Your Honor.

7 THE COURT: Any objection?

8 MR. FETZER: No.

9 MR. PALECEK: No.

10 THE COURT: And Exhibit 1 is demonstrative.

11 MR. ZIMMERMAN: Yes, Your Honor.

12 THE COURT: We won't offer that as an exhibit.

13 (Exhibits 2 and 3 received into evidence.)

14 THE COURT: Go ahead, Mr. Zimmerman.

15 MR. ZIMMERMAN: Thank you, Your Honor.

16 We know that this could not -- that Noah
17 Pozner's death certificate could not be the combination of
18 a fake top half and a real bottom half of the death
19 certificate because the two individuals who are
20 responsible for entering the information on that document
21 provided admissible testimony that each of them entered
22 information on both the top and the bottom.

23 We can see from the shaded boxes on the
24 document, Your Honor, that Dr. Carver included information
25 on the top two shaded boxes and also a significant number

1 of shaded boxes in the middle of the document. He signed
2 it down toward the bottom.

3 Mr. Green is the -- I should have introduced
4 him -- funeral home director. He's been the funeral home
5 director at Abraham L. Green and Sons Funeral Home for 41
6 years, and he's a third generation Green in running that
7 family business. Like Dr. Carver, Your Honor, Mr. Green
8 has filled out a tremendous number of death certificates.

9 When one looks at the shaded boxes and the
10 nonshaded boxes, there's no possibility for combining a
11 real death certificate and a fake death certificate.
12 Moreover, as I've depicted on slide 29, we actually have
13 photocopies from the medical examiner's office, which they
14 copied the document before they turned it over to
15 Mr. Green's funeral home, along with Noah Pozner's body,
16 that shows us which information was entered into the
17 medical examiner's file copy before they turned the
18 original document over to the funeral home. The funeral
19 home then entered their information with a typewriter, old
20 school typewriter in the funeral home copy, and they made
21 a photocopy of the document. Those two photocopies appear
22 on page 29 along with the death certificate that's
23 depicted in Mr. Fetzer's book. And that shows us each
24 step along the way with the original document or a
25 photocopy of the original document, the information that

1 was entered. And what it leaves us with, Your Honor, is
2 no room for combining a true document and a face -- a fake
3 document to depict what was eventually portrayed in the
4 Defendants' book.

5 So where does that leave us? Again, Plaintiff
6 identified his statement in the Complaint. We've shown
7 that the statement appears in Defendant Fetzer's blog, we
8 evaluated the context to see why they said the document
9 was a fabrication combined from two different pieces of
10 paper, and showed that there is no way their statements
11 could be true. Those statements are false. Defendants
12 did not introduce any admissible evidence showing that the
13 statements they made in that blog could be true. As such,
14 there's no genuine issue of material fact on this element.

15 Your Honor, if I might turn to the remaining
16 elements of defamation, and as I said, I'll do this
17 quickly, because there are no disputes for the most part.
18 On page 32, we identified admissible evidence that the
19 defamatory material was published to third parties, and
20 Defendant Fetzer offered no evidence in response.

21 We provided evidence that the defamatory
22 statements referred to Plaintiff, as required by Wisconsin
23 law, and Defendant Fetzer offered no admissible evidence
24 in response.

25 And finally, we introduced evidence that the

1 language had a defamatory meaning as a matter of law, and
2 the Defendant didn't respond or offer any evidence in
3 response.

4 Your Honor, the last issue that I want to cover,
5 if I might, is the constitutional conditional privilege.
6 Here, there's no evidence in the record that Plaintiff
7 injected himself into a public controversy. This is
8 outlined on slide 33, Your Honor. Plaintiff introduced
9 admissible evidence that he did not --

10 THE COURT: Before -- before he was defamed.

11 MR. ZIMMERMAN: That's correct, Your Honor.
12 Before he was defamed. And we can get into the date and
13 timing on that, although, I'm not sure that it's relevant
14 at this point given the state of the record in Plaintiff's
15 Motion for Summary Judgment.

16 THE COURT: Well let's -- Mr. Palecek, do you
17 believe the Plaintiff, Leonard Pozner, injected himself
18 into this controversy before the date he was allegedly
19 defamed?

20 MR. PALECEK: Yes. I believe there was -- there
21 were -- I don't know what they are right now, but I think
22 there were letters to the president or things that he had
23 written earlier, and I think it was 2013. And I think he
24 was -- I don't have anything to -- any evidence, but I
25 think he was a public figure before our book.

1 THE COURT: Same question to you, Mr. Fetzer,
2 and then, Mr. Zimmerman can --

3 MR. FETZER: Well, on 14 January was published
4 an open letter from Leonard Pozner to the President of the
5 United States about gun control. That was one month after
6 the event, far before any allegedly defamatory publication
7 had been made. It was even before President Obama on the
8 16th of January signed no less than 23 executive orders to
9 constrain our access to weapons under the Second
10 Amendment.

11 THE COURT: Mr. Zimmerman?

12 MR. ZIMMERMAN: Yes, Your Honor.

13 There's no document in the record to support
14 that assertion. Defendant Fetzer noted his belief that
15 Plaintiff had made such a statement and provided a link to
16 an online newspaper article. That article is not
17 authenticated and is not in the record.

18 But even if it was, Your Honor, it does not talk
19 about Leonard Pozner. And on page 33, I included a
20 screenshot of it. It does talk about something it calls a
21 memorandum, and I can only assume this is what Defendant
22 Fetzer is talking about. We went and looked at that
23 memorandum in the interest of being complete, even though
24 neither it nor the article are in the record.

25 An excerpt from the memorandum appears on page

1 35 of my presentation, Your Honor, and it's interesting
2 because it's written as, "Initial Proposes by the Maternal
3 Family of Noah Pozner." And on that memorandum appear
4 names of people who purport to subscribe to the
5 memorandum's content. None of those names are Leonard
6 Pozner, for the obvious reason that he is the paternal
7 family of Noah Pozner. This information does not
8 establish that Leonard Pozner injected himself into any
9 public controversy before he was initially defamed by
10 these defendants.

11 THE COURT: Okay.

12 MR. ZIMMERMAN: So again, where does that leave
13 us, Your Honor? The Plaintiffs introduced admissible
14 evidence on each element of defamation. We established
15 that the statements are false as a matter of law. There's
16 no evidence to the contrary. There's no dispute on the
17 remaining elements of defamation, and there's no evidence
18 that Plaintiff injected himself into a public controversy
19 before this defamatory statement was initially published.

20 THE COURT: Okay.

21 MR. ZIMMERMAN: As such, Plaintiff should be
22 granted its Motion for Summary Judgment.

23 THE COURT: Thank you.

24 We'll just take our midmorning break and then
25 we'll come back with you, Dr. Fetzer.

1 (Off the record at 10:06 a.m.)

2 (Back on the record at 10:15 a.m.)

3 THE COURT: Go back on the record.

4 Mr. Zimmerman, while you were out, Mr. Fetzer
5 mentioned to me something words to the effect, he's been
6 looking for a lawyer but can't find one. Mr. Palecek is
7 doing the best he can.

8 Let me, again, I promised that I would say this
9 every time we got together, I know you might be trying,
10 but Mr. Palecek, Mr. Fetzer, you do need lawyers. I don't
11 know whether you need a lawyer -- don't -- don't suggest
12 that I'm making a suggestion you need a lawyer to win your
13 case or to lose your case, but one thing I said, and I
14 don't want to make you fret, Mr. Palecek, but I can't make
15 assumptions that people know things. You know, this in a
16 certain sense is a -- the Plaintiff is asking for a
17 judgement, a judgment for money. And if they get a
18 judgment for money, they have the rights to collect as a
19 creditor. And one option to collect is to garnish a bank
20 account, garnish your wages, foreclose on your home. If
21 you had a lawyer, the lawyer would be telling you all this
22 and weighing in terms of what you want to accomplish and
23 what are the risks of litigation and the costs of a
24 failure.

25 I do note, by the way, parenthetically, that

1 there's a counterclaim that we've bifurcated. But you do
2 understand that if the Plaintiff prevails, the
3 counterclaim is going to be dismissed because you can't be
4 guilty of malicious prosecution or abuse of process on a
5 meritorious claim.

6 Now I'm going to ask the same question again,
7 both of you, Mr. Palecek, you first, and Mr. Fetzer later,
8 after you've seen now the -- what's been marked as Exhibit
9 1, whether you've changed your mind in terms of what your
10 position is here today. Because I think it's important,
11 it might be subtle.

12 Defamation, we have the elements set forth on
13 page 2 succinctly by Mr. Zimmerman, page -- actually page
14 4, The elements of defamation of Wisconsin law are: a
15 false statement. And when I read your response, mostly
16 Dr. Fetzer's response, I didn't know -- I think I do
17 now -- I didn't know then whether the suggestion was
18 saying at the time I made the publication it -- it's what
19 I believed, which I now believe to be a false statement,
20 because I've now seen the evidence, I've probed the
21 details and nuances. So far the Defendants have taken the
22 position it was a statement allegedly was correct that
23 it's not false at the time it was published, it's not
24 false any time in between, and it's not false now. That's
25 what I'm hearing from them.

1 If, on the other hand, although they've changed
2 to say that now the part on Photoshopping was false, that
3 now they don't believe it was Photoshopped, but if you
4 come to the conclusion that now based on the new evidence
5 and the opportunity to see what the Plaintiffs have
6 proposed, that you think it is false, you should -- you
7 certainly should, if you had a lawyer, the lawyer would be
8 talking to you about that and what that position might
9 have on the issues in this case and when we go to trial.
10 Because you should understand, if I grant summary
11 judgment, we're going to trial. If I deny summary
12 judgment, we're going to trial. We're going to trial
13 regardless, except as it relates to the issues, of course,
14 of the -- with Dr. Fetzer brought some motions for summary
15 judgment too on some of the subsidiary issues that I'll
16 have to address.

17 But do you understand, Mr. Palecek, I have never
18 met you, we've been on the phone, but -- but I am
19 concerned about the challenges you both face being
20 unrepresented and the stakes that are at issue. So just
21 keep that in mind. I'm going to come back to you later on
22 before the day's end to talk about what you really want to
23 do in this case, whether you -- whether you want to step
24 aside, sort of talk to the Plaintiff, I don't know.
25 That's what lawyers would do for you.

1 Thank you, Mr. Zimmerman.

2 So I want to turn to the second part of
3 Mr. Zimmerman's presentation. It begins -- Thank you, and
4 I appreciate your PowerPoint presentation. It's the issue
5 of constitutional conditional privilege. We just touched
6 on it briefly. I want to pick up on that. When I asked
7 you, Mr. Palecek and then Mr. -- Dr. Fetzer, did the
8 Plaintiff inject himself into a public controversy, you
9 pointed out, yeah, well there was a letter you said he
10 wrote to the president. Mr. Zimmerman has responded to
11 that in two respects. First of all, just saying that is
12 so, is not evidence. You understand that it has to be
13 admissible evidence and admissible evidence is properly
14 authenticated.

15 Mr. Zimmerman has objected to even the
16 suggestion that that one thing that you mentioned should
17 be considered by the Court based on the rules of evidence,
18 but even if I were to consider it, he's gone and looked at
19 it and he says basically, but it doesn't refer to the
20 Plaintiff Leonard Pozner. His name doesn't appear. And
21 that to the extent there's an article refers to a
22 memorandum, the memorandum appears to be signed by others.

23 How do you respond to this issue? Dr. Fetzer?

24 MR. FETZER: Frankly, Your Honor, the other
25 issues are so much more fundamental, I'm not even

1 concerned about that. I don't -- and particularly, in
2 relation to his being a private person and the protection
3 of my sources, I'm willing that it be resolved on the
4 basis of his standing as a private person.

5 THE COURT: Mr. Palecek, your position on this
6 issue?

7 MR. PALECEK: Could you restate that for me,
8 please.

9 THE COURT: Okay. So here's the question.
10 There's another element or a slightly different test when
11 a plaintiff is allegedly defamed. There's a test for
12 just, let's say, this is my layperson language, ordinary
13 private individuals, and then of course there's a test for
14 public people. Like, you know, you turn on the TV,
15 President Trump says he's being defamed all the time, but
16 the test for him is different than maybe the test for you,
17 Mr. Palecek. You might just be a private individual and
18 the like, and the difference in this test depends upon to
19 what degree this individual has injected himself into the
20 controversy which was -- which involved or generated the
21 alleged defamatory statement.

22 So example, you can say all sorts of things
23 about the President of the United States that might be
24 defamatory if I said them about you, Mike Palecek, but we
25 allow that because of the nature of his office, his public

1 persona, his participation in the process.

2 Dr. Fetzer is saying that, in two respects, I
3 guess, for strategic grounds or otherwise or maybe he's
4 just convinced, he says I'm willing to concede that the
5 Plaintiff has not injected himself into the public
6 controversy such that the Plaintiff would then have to
7 prove an additional element of malice, understanding then
8 that the Plaintiffs then would then be withdrawing or
9 essentially standing down on their continuing discovery
10 objection to Dr. Fetzer's failure to produce the documents
11 submitted to him that he claims are protected by
12 journalistic privilege. Does that help explain the
13 question?

14 MR. PALECEK: No. I don't -- I don't know what
15 I'm being asked, actually.

16 THE COURT: You have to move that microphone
17 close. Just --

18 MR. PALECEK: I don't -- I'm sorry, but I -- I
19 don't really understand what I'm being asked.

20 THE COURT: Well --

21 MR. PALECEK: What are --

22 THE COURT: -- to some extent you sort of
23 hitched your wagon to Dr. Fetzer, and Dr. Fetzer just sort
24 of took off the side road, so he's kind of pulling you to
25 the side. Look it, I'll make it easy on you.

1 MR. PALECEK: Is it whether I believe
2 Mr. Pozner's a limited-purpose public figure?

3 THE COURT: Yes.

4 MR. PALECEK: Well I've heard that term and, you
5 know, and -- and I don't know. I mean, I -- I'm not a
6 legal expert. I don't -- is he a limited-purpose public
7 figure? Possibly. I don't know. I mean, does that -- is
8 that an acceptable answer?

9 THE COURT: That's a very -- any answer is
10 acceptable if it comes from you based on what you believe.

11 So here's the deal. I've reviewed the
12 Plaintiff's brief and the evidence, and I'm going to
13 conclude for two reasons that the Plaintiff has not
14 injected himself into the public controversy. First of
15 all, Dr. Fetzer has conceded the point. Either on the
16 merits or strategic, it doesn't make any difference, but a
17 point conceded then it is accepted by the Court. And then
18 to that extent, Mr. Palecek, since you kind of join in his
19 motion, coattailing on him, he's taking you with him, and
20 by nature of your strategy of sort of tucking in on what
21 he's doing, you've conceded the point as well.

22 But even if you haven't conceded the point, I'm
23 satisfied by your -- examining all the evidence that there
24 is no genuine issue on the material admissible facts that
25 are presented to the Court, and that the Plaintiff is

1 entitled to this: a ruling that he has not injected
2 himself into the public controversy.

3 Now that brings up, Mr. Zimmerman, maybe it's an
4 academic question, although it's befuddled judges, me or
5 other judges. You know, we've talked about motions for
6 summary judgment. You don't really get a judgment on this
7 issue, it's really more a pre-trial ruling that
8 admittedly -- admittedly affects how you present your
9 case. Is it a motion in limine to produce -- you know,
10 present any evidence to suggest that he is injecting
11 himself, you could frame it that way, but by agreeing on
12 this point which obviates the need for these additional
13 elements, you agree that's not a judgment, per se.

14 MR. ZIMMERMAN: I agree that this is a muddy
15 issue, Your Honor. When we look back at, for example,
16 Denny v. Mertz, they actually say in that case that the
17 issue was decided by the district court on the briefs,
18 affidavits, memoranda, etc., so they do seem to treat it
19 as if it's a summary judgment issue, but obviously, it's
20 only on one element of the defamation claim. So I'm not
21 sure from a procedural perspective how Your Honor wants to
22 document it, but I think we've received the instruction
23 and we'll, obviously, act accordingly.

24 THE COURT: This is why I entertained it and why
25 I granted it. I think motions for summary judgment are

1 sometimes overused by litigants who want to just make
2 their case simpler for trial, understanding that it
3 doesn't result in judgment -- a final order for purposes
4 of appeal. So I'm not inclined as a judge to go out on a
5 limb on a summary judgment which exposes the court and the
6 moving party to appeal on a de novo review when there's a
7 trial going to be had anyway, because if I was wrong and
8 the court of appeals says I'm wrong, then we all buy
9 ourselves a second trial.

10 I think there has to be more than just when a
11 motion for summary judgment is used as a motion to decide
12 a preliminary legal question, there has to be a reason for
13 it and you've demonstrated to me there is a reason.
14 Actually, Dr. Fetzer demonstrated a reason as well, that
15 it obviates the need and his concerns about the intrusion
16 into his claimed journalistic privilege.

17 The Plaintiff also then could rely on this
18 pre-trial ruling to materially change on how you would
19 present your case-in-chief. Obviously, if I didn't answer
20 the question, then you would have to put in evidence and
21 go to an area which would consume substantially amount of
22 the Court's time and potentially additional witnesses. So
23 to the extent that the motion for summary judgment as it's
24 used to decide a preliminary legal issue based on
25 undisputed facts, then I think it's appropriate.

1 Going forward then, so we're all on the same
2 page, we're not going to hear about this nuance in the
3 constitutional conditional privilege when we go to trial.
4 The Plaintiffs don't have to prove that the Defendants
5 acted with actual malice as which would be required in
6 that kind of scenario situation. The issue is resolved
7 and the matter is simplified, so to speak. That would be
8 the order of the Court and the law of the case.

9 Am I correct then that that then resolves the --
10 or moots Dr. Fetzer's Motion to Reconsider and his Motion
11 for Protective Order?

12 MS. BERLINGER: Yes, Your Honor.

13 MR. ZIMMERMAN: I believe that's correct. I
14 think there is the -- there may still be a question about
15 producing documents from sources that were not
16 confidential.

17 THE COURT: Okay. What we'll do -- what we'll
18 do then is we'll just clear the slate. If you want to
19 send him another set that you think then either don't
20 involve a journalistic privilege or you want to reframe
21 the issue now later -- in a new context with some new area
22 of inquiry, you can do that.

23 And if you -- Dr. Fetzer, if you get a set of
24 interrogatories or production of documents and you think
25 that this invokes the privilege, then you can invoke the

1 privilege. I'm not ruling on your privilege. I haven't
2 said anything about it. I think what we've done here is
3 mooted the issue, but it can come back before the Court,
4 but there's no current motion or matter before the Court
5 on this aspect. Does that satisfy the Plaintiff?

6 MR. ZIMMERMAN: Yes, Your Honor.

7 THE COURT: All right. Let's turn to some other
8 issues. Dr. Fetzer, you filed a Motion to Strike the
9 Friedman and S-I-N-E-L-N-I-K-O-V Affidavits. I've read
10 your brief. I've seen Plaintiff's Opposition to
11 Defendant's Motion to Strike the Friedman Affidavit. For
12 some reason I don't have a photocopy or didn't copy off to
13 the extent that you want to address this -- his Motion to
14 Strike the Sinelnikov deposition. Is there anything more
15 you want to add in addition to what you already wrote,
16 Dr. Fetzer?

17 MR. FETZER: I believe that's sufficient, Your
18 Honor.

19 THE COURT: Okay. I have some questions for
20 you.

21 I don't know what this -- when you write, you
22 say, "Defendant James Fetzer, in the first person
23 henceforth." I don't even know what that means. Does
24 that mean to exclude Mr. Palecek? Moves to strike the
25 affidavits of Friedman and Sinelnikov for foundational

1 unreliability. I'm not familiar with that term either in
2 my 30-some years of practice or under the Wisconsin Rules
3 of Civil Procedure.

4 MR. FETZER: Well the point is that the DNA
5 appears to have been obtained under improper
6 circumstances, and that it's required not to be obtained
7 directly from a medical examiner but from a center in
8 Connecticut, and that that is -- would be necessary for it
9 to be available properly, legally.

10 THE COURT: Now you didn't -- so I get -- so I
11 get this straight, you didn't submit any evidence in
12 support of your motion to strike. You're just making an
13 argument, am I correct?

14 MR. FETZER: Yes, Your Honor.

15 THE COURT: Okay. And your argument is that
16 Connecticut law -- well, that your argument is based on
17 your interpretation of Connecticut law?

18 MR. FETZER: (Nods in the affirmative.)

19 THE COURT: Okay. Yes?

20 MR. FETZER: Yes.

21 THE COURT: Okay. And this has to -- you're
22 objecting in the context of my order granting Plaintiff's
23 motion for DNA testing?

24 MR. FETZER: Yes, Your Honor. It's that we have
25 an unreliable source of obtainment. I mean, the sample is

1 alleged to have come directly from the medical examiner
2 who is not in -- that's not the proper source. He ought
3 not to have the sample, and it should have been obtained
4 from the state agency, that is the repository.

5 THE COURT: All right. Why don't we go back to
6 what the actual facts are, Mr. Zimmerman. I think I
7 understand the issue but -- or someone else is going to
8 take this one up?

9 MS. BERLINGER: I will be. Yes, Your Honor.

10 THE COURT: Okay. So what did you, so we're all
11 on the same page, tell me what you had hoped to accomplish
12 first with the Friedman affidavit. What does the Friedman
13 affidavit stand for?

14 MS. BERLINGER: To provide an independent source
15 or confirmation for the DNA test.

16 THE COURT: And Sinelnikov?

17 MS. BERLINGER: That's just to establish the
18 chain of custody of the DNA sample.

19 THE COURT: Now was -- were there one DNA test
20 or two DNA tests?

21 MS. BERLINGER: So there was the -- I believe
22 that there was the one that was done through this court.

23 THE COURT: Correct.

24 MS. BERLINGER: And then Plaintiff also obtained
25 a separate test.

1 THE COURT: Okay. And these affidavits are for
2 the separate test?

3 MS. BERLINGER: Yes.

4 THE COURT: All right. And do you -- and your
5 response to Dr. Fetzer's claim that somehow or another
6 Connecticut law makes the test inadmissible?

7 MS. BERLINGER: Even if it was a legal
8 impossibility for the ME's office to obtain a blood sample
9 for a DNA analysis, it doesn't mean that Dr. Friedman's
10 opinion is unreliable, which is the standard for expert
11 testimony. Mr. Fetzer's theory is based on his
12 interpretation of a statute.

13 THE COURT: Do you agree with his interpretation
14 as a lawyer?

15 MS. BERLINGER: What happened here -- we have
16 testimony from Dr. Carver as well that he took samples
17 from Noah Pozner's body and stored them in the toxicology
18 lab at the office of the chief medical examiner. That is
19 what happened.

20 THE COURT: And this -- and these are the
21 samples from which both the court ordered DNA test was
22 obtained and Dr. Friedman's test?

23 MS. BERLINGER: Correct.

24 THE COURT: So Dr. Fetzer, I don't see any
25 evidence that you've submitted that suggests that the

1 samples weren't taken from that location and that --

2 MR. FETZER: Well --

3 THE COURT: -- they were biological samples of
4 Noah Pozner.

5 MR. FETZER: Well, I believe they're biological
6 samples of a son of the Plaintiff, but that it's all been
7 grossly misrepresented, Your Honor, which is why I sought
8 to broaden the DNA testing to include Michael Vabner,
9 whose photographs as a child have been presented as the
10 Noah Pozner --

11 THE COURT: Okay. I'll get to that.

12 MR. FETZER: Yes.

13 THE COURT: So what evidence -- you say
14 essentially, Judge, don't believe this for a word because
15 it's not reliable. You understand that's not an objection
16 under the rules of evidence. What is your --

17 MR. FETZER: It is --

18 THE COURT: What is your --

19 MR. FETZER: It is an admissibility argument.
20 You are correct, Your Honor.

21 THE COURT: Okay.

22 MR. FETZER: That it is a matter of Connecticut
23 law that this was improper -- improper processing of a
24 sample, that it ought to have come from the center and not
25 from the medical examiner.

1 THE COURT: Do you have any evidence to dispute
2 the actual process that is described in these two
3 affidavits?

4 MR. FETZER: I believe it was a bona fide test
5 of a DNA sample, that simply there's a fraud taking place
6 here because it was not from a decedent named Noah Pozner
7 but from a living person named Michael Vabner.

8 THE COURT: Okay. What evidence do I have to --
9 if I were to agree with you, what evidence could I cite
10 that would be admissible to support that factual
11 proposition?

12 MR. FETZER: Well, this is very interesting,
13 because they would like to dispute my expert on
14 photogrammetry who did a study, not knowing the parties
15 involved, where I asked based upon his demonstrated
16 expertise in this area whether this photograph, which the
17 Plaintiff has acknowledged being a photograph of --

18 THE COURT: Okay. Time out. We'll get to that
19 photo and Michael Vabner and all. I'll get to that.

20 But, look, if I understand the issue, it's
21 fairly simple. One reason or another when this -- the
22 Plaintiff's position is that when Sandy Hook happened,
23 Noah Pozner was taken and DNA or tissue samples were
24 acquired from the child. This is what they're saying.
25 And those samples were taken from, they say Noah Pozner,

1 and those samples then and still now are in the
2 Connecticut Medical Examiner's office. And that when I
3 ordered the DNA test and that when they did the DNA test,
4 they started with those samples. Right?

5 MS. BERLINGER: Yes.

6 THE COURT: Okay. Do you have any -- I mean,
7 any evidence to contradict that portion of what they're
8 saying?

9 MR. FETZER: Your Honor precluded me from
10 offering all the evidence that Sandy Hook was in fact a
11 FEMA drill presented as a mass murder to promote gun
12 control. I have a mass of evidence to demonstrate that's
13 what happened. This is an elaborate charade involving key
14 figures in the state of Connecticut. It was a program
15 administrated by the Obama administration. He nullified
16 the Smith-Mundt Act of 1948 with the Smith-Mundt
17 Modernization Act of 2012 to bring us Sandy Hook, where
18 the Smith-Mundt Act of 1948 precluded the use of the same
19 techniques and propaganda --

20 THE COURT: Okay.

21 MR. FETZER: -- disinformation within the United
22 States --

23 THE COURT: Okay. Doctor. Doctor. Stop.

24 MR. FETZER: -- that heretofore have only been
25 used without.

1 THE COURT: Dr. Fetzer, I understand. And as
2 you know, we -- we're focussing on the Plaintiff's claim.
3 And I know you think it's -- they're using a very limited
4 and specific single cause of action to frustrate your
5 ability to relitigate whether or not Sandy Hook happened.
6 I understand all that. I'm focussing just on their
7 motion -- Excuse me, I'm focusing on your motion here and
8 you say -- I need to rule on your motion.

9 MR. FETZER: Yes.

10 THE COURT: And you say I should strike Friedman
11 and Sinelnikov's affidavits. I'm just trying to
12 understand. And I -- and to rule on your motion, I have
13 to know two things. What's -- what are the facts and what
14 is the law. And you're saying that I should strike them
15 because they're unreliable. Well, now you say it's
16 because of -- what did you say, admissibility or --

17 MR. FETZER: I believe the DNA methodology is
18 perfectly appropriate, Your Honor. The point is that the
19 samples were not obtained from the appropriate source and
20 therefore --

21 THE COURT: And that the samples you say did not
22 come from Noah Pozner but came from Michael Vabner.

23 MR. FETZER: Yes.

24 THE COURT: Okay.

25 MR. FETZER: Which -- which I would have sought

1 to prove had you allowed my expansion of DNA, this would
2 have altered the entire character of the case.

3 THE COURT: Well, what's done is done on that,
4 although, for purposes of the -- so I keep this in my
5 mind, obviously, I -- what you're saying is that you think
6 that's what it is and if you could do that then you would
7 prove it. But right now you're essentially saying that
8 the suggestion that the medical examiner's office
9 possesses DNA material from Noah Pozner is false.

10 MR. FETZER: Well, no. It's not legal. That it
11 was in violation of Connecticut law, Your Honor.

12 THE COURT: Okay. I'll rule on that. I -- I
13 disagree with you. I do not see that Connecticut law so
14 clearly states what it is that you are suggesting.

15 Alternatively, anyway, Dr. Fetzer, not being an
16 expert on Connecticut law, even if -- even if for some
17 reason Connecticut law did not allow for the repository of
18 the genetic material to be in the place in which it is,
19 the question is, is whether, as you say, the valid testing
20 of this genetic material yielded the acceptable conclusion
21 offered by Friedman and Sinelnikov that --

22 MR. FETZER: Your --

23 THE COURT: -- Lenny Pozner is the genetic
24 father of Noah Pozner, whose genetic material is in the
25 place that it's in. So for those reasons I'm going to

1 deny the Motion to Strike the Affidavits of Friedman and
2 Sinelnikov, and I'll deny your request for sanctions.

3 Let's turn to your Motion to Strike the Green
4 Affidavit. Dr. Fetzter, is there anything additional you
5 want to offer in support of your Motion to Strike the
6 Green Affidavit?

7 MR. FETZER: I believe it's laid out clearly,
8 Your Honor.

9 THE COURT: I have reviewed Plaintiff's
10 Opposition to Defendant's Motion to Strike Mr. Green's
11 Affidavit.

12 Dr. Fetzter, so I -- what is -- what's your --
13 what's your concern of the Green affidavit? Again, you
14 don't give me any evidence.

15 MR. FETZER: We --

16 THE COURT: You -- admissible evidence. You
17 point to some -- I think you pointed to something you
18 looked up on the internet, a license look up. First of
19 all, is there -- do you agree there is a person named
20 Samuel Green?

21 MR. FETZER: Yes.

22 THE COURT: Okay. So he exists. Is Samuel
23 Green in the funeral business?

24 MR. FETZER: He's licensed as an embalmer, Your
25 Honor.

1 THE COURT: Okay. Is there a business called
2 Abraham L. Green and Sons.

3 MR. FETZER: There is, Your Honor.

4 THE COURT: And that's the same Abraham L. Green
5 and Sons who filled out a portion of the death
6 certificate?

7 MR. FETZER: So it does appear, Your Honor, but
8 he was not licensed as a funeral director and there --
9 there are a variety of issues that are related to the
10 death certificate because it wasn't done in a timely
11 fashion, which we can address at the --

12 THE COURT: Okay. I'm just trying to rule on
13 your motion --

14 MR. FETZER: Yes, Your Honor.

15 THE COURT: -- to strike the affidavit.

16 So what are your evidentiary objections to --
17 for my looking at the Green affidavit? Let me say, when
18 you move to strike an affidavit, it's essentially then we
19 toss it aside, nothing contained therein should be
20 considered by the Court. If you deny the motion to strike
21 the affidavit, then the affidavit comes in. I -- it then
22 becomes facts from which this Court then can rely on the
23 underlying motion for summary judgment.

24 So what are your evidentiary objections to the
25 Green averments in his affidavit? What are you worried

1 about?

2 MR. FETZER: Well, that -- just creating a false
3 impression that there was actually a real body that was
4 really buried and so forth, Your Honor. I mean, it's an
5 elaborate fraud. I'm sorry to have to be so blunt about
6 it, but that's what's going on.

7 I appreciate the Court's desire to focus on the
8 death certificates. I've accepted that and I intend to
9 pursue that with all of my ability. So, you know, this is
10 a secondary but part of an elaborate charade that's being
11 perpetrated on the Court and the public.

12 THE COURT: Well, I understand your positions,
13 but my job as a judge is to sit up here, a couple feet
14 higher than everyone else, wearing a black robe, to guide
15 the parties as they litigate against each other in the
16 proper course of -- of courtroom conduct and the rules of
17 civil procedure and the rules of evidence.

18 Every party has a constitutional right to come
19 and press their case before the Court. All I know is
20 Leonard Pozner has a defamation case against the
21 Defendants, and I do acknowledge the Defendants have a
22 counterclaim against Leonard Pozner. A judge's
23 responsibility, Dr. Fetzer, is just to rule on the
24 questions that are asked of the Court as the parties
25 continue to prepare the case for the ultimate day in which

1 they will be judged by a jury of their peers. My job is
2 to rule on the evidence.

3 Now, you might say that's a rather myopic view,
4 Judge. I'd like you to sit back and consider this whole
5 issue. I have not read your book. I do not intend to
6 read your book because it would not be appropriate for me
7 to start educating myself about the larger controversy. I
8 understand your position, but that's not my function. My
9 function is, is to make sure the Plaintiff keeps the
10 preparation of his case in accordance with the rules in
11 Wisconsin and acknowledge and appreciate the defense and
12 your right to discovery and your right to file your own
13 motions and to oppose those.

14 So --

15 MR. FETZER: Where --

16 THE COURT: -- let me ask you a couple
17 questions, because once again, you say on page 3 of your
18 brief, paragraph 6, you fault Mr. Green for refers to a
19 burial permit. You say it's not been provided and you
20 say, "because the permit itself is the best evidence, his
21 reference to it must be ignored as hearsay."

22 There is this thing called the best evidence
23 rule and not reflected in the rules of civil procedure or
24 the rules of evidence, it applies. I'm not sure you
25 understand what the rule is and whether it applies here.

1 Do you know what the best evidence rule is, Dr. Fetzer?

2 MR. FETZER: I may not understand it perfectly,
3 Your Honor.

4 THE COURT: Well the best evidence rule, as I
5 understand it, is not an obligation for a party to give us
6 the best source of any particular factual proposition,
7 it's when the facts underlying a particular factual
8 proposition don't accurately reflect what is proposed and
9 that there is other maybe primary source that would be
10 better.

11 For instance, if a party would ask me to accept
12 quotations from a document the other side says are taken
13 out of context, and rather than for me to just trust the
14 contextual spin that the party puts on it, I say, you
15 know, better evidence of that is just give me a page out
16 of the book rather than you paraphrasing it.

17 That there would be better evidence does not
18 necessarily mean it's hearsay. Hearsay, Dr. Fetzer, is an
19 out-of-court statement offered for the proof.

20 Now, obviously, I don't even know,
21 Mr. Zimmerman, if you have the burial permit. Mr. Green
22 didn't see the need for the burial permit, he just
23 referred to it. Is this a red herring or a straw man?

24 MR. ZIMMERMAN: I -- I think, Your Honor,
25 Mr. Green was just describing the process of obtaining the

1 burial permit, not the contents of the permit itself.

2 But, we do have the burial permit, a sealed copy with us
3 here today, happy to introduce it into evidence.

4 THE COURT: I don't know that I need -- I don't
5 know that a burial permit is material. Are you suggesting
6 it is?

7 MR. ZIMMERMAN: It is not for that statement,
8 no.

9 THE COURT: Is it material?

10 MR. FETZER: I do not believe either of these
11 affidavits is material following the Court's observations
12 during conference calls that this -- this case revolves
13 around the death certificate and its authenticity and that
14 the Court wasn't concerned about the cause of death, the
15 nature of death, or any issues related thereto which
16 suggests to me that it may be a motion in limine to
17 exclude all of these irrelevancies is what's appropriate
18 from the Defendants.

19 THE COURT: Well, okay. I do understand, at
20 least, and, Mr. Zimmerman, correct me if I'm wrong, I did
21 understand the contents -- context of the Green affidavit,
22 acknowledging you accurately, to the Plaintiff's benefit,
23 are reiterating what I said. It didn't make much
24 difference, other extraneous circumstances. We were going
25 to focus on whether it was a false birth certificate --

1 death certificate --

2 MR. FETZER: Death certificate.

3 THE COURT: -- or not.

4 Now, I do note that by easily looking at Exhibit
5 2, there are -- is a portion of the death certificate that
6 implicates Mr. Green and the Abraham L. Green and Sons,
7 and I accepted and reviewed the affidavit of Green for the
8 context of confirming the accuracy of those portions of
9 the death certificate attributed to him and his business.
10 Is that what you were intending me to do?

11 MR. ZIMMERMAN: That's certainly part of it,
12 Your Honor. There is a defense raised in Dr. Fetzer's
13 Motion for Summary Judgment for which the burial permit is
14 relevant and material and Mr. Green's testimony about the
15 process that he used to obtain the burial permit used in
16 the death certificate becomes important information.

17 THE COURT: Okay. Is there anything more you'd
18 like to say in support of your motion to strike the Green
19 affidavit, Dr. Fetzer?

20 MR. FETZER: Simply that in accordance with the
21 Court's desire to simplify the case for trial, that these
22 issues appear to be immaterial to whether or not the death
23 certificate is authentic or not, for which there's an
24 abundance of proof, and it doesn't hinge upon these
25 considerations, the affidavits from either of the parties

1 that are on the subject of discussion here and now.

2 THE COURT: Well, not to mislead you, I don't
3 have a perfect picture of looking into the future of how
4 Mr. Green and Abraham L. Green and Sons factor into the
5 Plaintiffs as they present their case. So I can't say
6 what you're suggesting is, Fine, if this is not relevant,
7 Judge, I'm not going to be hearing about this later on.
8 I'm not saying that to you.

9 MR. FETZER: Yeah.

10 THE COURT: I'm just judging your affidavit. I
11 reviewed your -- I'm judging the affidavit. I reviewed
12 your objections. In particular, your paragraph 4;
13 paragraph 6, your reference to hearsay; paragraph 7, this
14 suggestion somehow or another that it's a friendly
15 deposition; paragraph 8 -- I went through your document,
16 Mr. Fetzer, trying to figure out what you were concerned
17 about it and then applied the rules of evidence that would
18 be attendant to a motion to strike.

19 I also did review the Dugan case, which you say
20 stands for the proposition the Court can strike an
21 affidavit as unreliable. I do not think that's really a
22 correct interpretation of the Dugan case, more so, I know
23 of no Wisconsin case that recognizes this kind of
24 pejorative unreliability. There are motions to strike,
25 but I believe they're -- they're -- they are formulaic in

1 the sense that you apply either a rule of evidence or some
2 other deficiency as set forth in state law that would
3 cause the affidavit to be rejected rather than just a
4 feeling of whether there's better evidence or unreliable.

5 For those reasons, I'm going to deny Mr. --
6 Dr. Fetzer's Motion to Strike the Green Affidavit.

7 Okay. We get to the, I think -- I think that
8 takes care of all the motions except the motions for
9 summary judgment, cross-motions for summary judgment. Did
10 I miss something?

11 MS. BERLINGER: Your Honor, we did move to
12 strike Defendants' experts as well.

13 THE COURT: That was set forth -- that was
14 argued in your brief in support of your motion for summary
15 judgment? Was there a separate -- I do recall that there
16 was sort of a truncated Daubert challenge.

17 MS. BERLINGER: It's a separate document, number
18 200.

19 THE COURT: Okay.

20 MS. BERLINGER: I'm sorry. It's number 202.

21 THE COURT: Okay. Have I taken care of all your
22 motions, except your Motion for Summary Judgment,
23 Dr. Fetzer?

24 MR. FETZER: You have, Your Honor.

25 THE COURT: All right. Now, I want to go back

1 to this issue, whoever wants to answer, if I granted the
2 Plaintiff's Motion for Summary Judgment, you're still
3 asking for a trial, are you not?

4 MR. ZIMMERMAN: Yes, Your Honor, on damages.

5 THE COURT: Right. So now I've said to you why
6 I believe the motion for partial summary judgment on the
7 conditional privilege is appropriate, because it does
8 shorten the trial, simplifies the issues, potentially
9 reduces the number of witnesses. I don't see that if I
10 then agreed with you on the underlying question, let's say
11 if I said there's no genuine issue as to any of the
12 material facts relating to the legal question of whether
13 the -- for example, whether the -- whether the death
14 certificate is false or not, I don't see -- how is it that
15 would change your trial strategy, other than now we create
16 a risk of a de novo -- a de novo review of a partial
17 motion for summary judgment?

18 It seemed to me that you're still going to have
19 to provide context, you're still going to have to -- even
20 on a trial for damages, you have to explain what the
21 issue -- what your client's position was, what happened.
22 Presumably, to give some context and some gravitas to the
23 claim for the amount of damages you apparently are
24 seeking, you'll want to introduce and probably invite
25 Dr. Fetzer to respond as to why, notwithstanding the

1 Court's order, why he thinks that it's false. Am I -- if
2 I grant summary judgment, are you going to file a motion
3 in limine to say Dr. Fetzer is precluded from even saying
4 to the jury it's false? You follow me? I don't see
5 what -- this is where the -- the motion practice bumps up
6 against the trial practice.

7 MR. ZIMMERMAN: Yes, Your Honor.

8 I think from a practical perspective, the trial
9 would be completely different. My understanding today,
10 based on what I know, is that a trial on damages in this
11 case would involve Mr. Pozner as a witness and one expert
12 who can testify about the mental impact or damage to his
13 emotional state.

14 Whereas a trial on all of the issues in this
15 case appear to involve multiple experts on both sides and
16 a handful of fact witnesses, in addition to presumably
17 playing tapes from Dr. Carver or Mr. Green if they're
18 unable to appear here in person. So I think that the
19 nature and the scope of the trial would be completely
20 different and the potential for error to arise in the case
21 in chief in the liability case is not insubstantial.

22 There are substantial risks that, for example,
23 statements are made during trial that are prejudicial or
24 are outside of the scope of the liability case. I think
25 that's substantially diminished if we're trying a case on

1 damages. It may well be, Your Honor, that we can do a
2 damages only trial in a day and that there is some context
3 required but not a, you know, fairly substantial showing
4 about the validity of the underlying documents all
5 supported by witness testimony of individuals here in a
6 trial who are then subject to cross-examination.

7 THE COURT: Well if I did what you say you're
8 entitled to, what would be Dr. Fetzer and Mr. Palecek's
9 role in such a trial?

10 MR. ZIMMERMAN: That's a great question. I --

11 THE COURT: I like to ask great questions. I
12 don't always ask great questions, but occasionally, maybe
13 I do.

14 MR. ZIMMERMAN: I can't say what they would want
15 their role to be. I'm sure that they would want to
16 cross-examine Leonard Pozner on the scope of his damages
17 or the damage to his reputation. I'm sure that they would
18 want to cross-examine Plaintiff's expert on the
19 methodology or the application of the methodology that he
20 used to this case. I'm not sure their role, Your Honor,
21 goes anywhere beyond that.

22 I think the Court can instruct the jury that the
23 underlying question of defamation has been decided by the
24 Court as a matter of law and the jury is not to consider
25 it, and we are here to hear -- we are in the court to hear

1 from Mr. Pozner about how this defamation injured him.

2 MR. FETZER: Be -- before we move too far down
3 the yellow brick road, Your Honor, am I mistaken or do I
4 have an opportunity to speak about the defamation issue
5 about the death certificate in its fraudulent character?

6 THE COURT: Oh, you will. You will.

7 MR. FETZER: Okay.

8 THE COURT: This is -- Dr. Fetzer, Mr. Palecek,
9 this is this gray area in the law that, you know,
10 traditionally, a motion for summary judgment is, I win.
11 There's no genuine issue as to fact.

12 Let's say if it was a contract dispute, you
13 didn't pay your credit card bill. Credit card company
14 says, I can prove everything I'm entitled to. I
15 liquidated damages. Summary judgment. Final order for
16 purposes of appeal. We don't have a trial.

17 The nature of this cause of action doesn't have
18 liquidated damages. They're asking for a million dollars.
19 They can't ask me to come to that conclusion. That's a
20 question only that the jury can ask -- answer.

21 So the gray area, as I alluded to, is where --
22 and this is one in which your lawyers would help you
23 figure out strategically how to maneuver is to say, well,
24 as a judge, for judicial efficiency, first of all, I want
25 to make sure nothing I say or should be construed as a

1 disinclination to deny a party a motion that's properly
2 supported under the facts of the law. I'm not saying that
3 I'm not going to decide it, but strategically, then is
4 there -- I'm asking -- I was asking the Plaintiff exactly
5 what he wanted and how it fits into the reality that we're
6 going to have a trial. And Mr. Zimmerman mentioned two
7 things I want to circle back to.

8 And, again, the context was, is for purposes of
9 reference, I granted the motion for partially summary
10 judgment on the conditional privilege, because I know now
11 that it simplified your discovery issue, you didn't oppose
12 it, it reduced the length of trial, it reduced the number
13 of issues, and potentially reduced the number of
14 witnesses. I can see the advantage to that worth taking
15 the risk -- actually, there was zero risk because you
16 conceded it, but worth doing that.

17 Here, you said two things, Mr. Zimmerman, and I
18 thought about this. First of all, I don't think there's
19 anything wrong with the Plaintiff trying to simplify their
20 case. Your witnesses have all been deposed, correct?

21 MR. ZIMMERMAN: I'm not sure that's correct,
22 Your Honor. Dr. -- Dr. Carver has been deposed and
23 Mr. Green has been deposed.

24 THE COURT: And those depositions could be their
25 trial testimony?

1 MR. ZIMMERMAN: I believe that's correct. Yes,
2 Your Honor.

3 THE COURT: All right. Depositions can be used
4 because they're -- and did Mr. -- did you participate in
5 those depositions?

6 MR. FETZER: I did in the Carver and in the
7 Pozner depositions.

8 THE COURT: And did you -- how about the third
9 one?

10 MR. FETZER: No. Green? No. I wasn't -- I was
11 not involved in that.

12 THE COURT: And why didn't you go to that one?

13 MR. FETZER: It all came up very late that I
14 even discovered I could participate by telephone. They
15 were being conducted in Connecticut, Your Honor. I had to
16 scramble, put together exhibits. I was able to ask
17 Dr. Carver a number of questions and some of his answers
18 were significant.

19 THE COURT: Okay. So I'm mindful of the cost
20 and inconvenience to witnesses to travel to Wisconsin from
21 Connecticut. But it appears that those were properly
22 noticed depositions, and the witness is otherwise
23 unavailable for trial, that that testimony could be
24 introduced without additional inconvenience to the witness
25 or cost, other than just taking the transcript -- were

1 they videotaped?

2 MR. ZIMMERMAN: They were videotaped, Your
3 Honor.

4 THE COURT: So you could create video clips to
5 get the evidence in fairly succinctly for those witnesses.

6 Similarly, now your Plaintiff's experts, have
7 those been deposed?

8 MR. ZIMMERMAN: They have not been deposed. No,
9 Your Honor.

10 THE COURT: And those are all out of state?

11 MR. ZIMMERMAN: Dr. Friedman is in Milwaukee.

12 THE COURT: All right. Okay.

13 MR. ZIMMERMAN: Dr. Baird is out of state.

14 THE COURT: Yeah, but --

15 MR. ZIMMERMAN: Yeah.

16 THE COURT: So --

17 MR. ZIMMERMAN: I --

18 THE COURT: -- I don't have a clear picture.

19 Mr. Zimmerman, if you said, for instance, if we -- if I
20 went down the road of taking up the issues you present and
21 call them motions for partial summary judgment, much like
22 the conditional privilege, if I said that simplified, I
23 understand.

24 Like, for example, if the question was, is there
25 any genuine dispute over the fact that Leonard Pozner is

1 the father of Noah Pozner based on the genetic -- the two
2 genetic tests, I could rule on that. That then would
3 simplify substantially the concept of having to prove the
4 genetic -- the results of those two experts, right? I can
5 understand that.

6 I could say there's no genuine dispute as to any
7 of the materiel facts as to the falsity of the death
8 certificate. I could see that question. But I don't know
9 quite what it is you mean when you say, Well, Judge, now
10 I'm entitled to judgment as a matter of law. What do you
11 mean -- what specifically, because I think in fairness to
12 Dr. Fetzner and Mr. Palecek and to me, we need to know what
13 is -- what I'm deciding, so we don't get in a situation
14 where they don't know what their role is at trial. Can
15 they say Sandy Hook never happened? Am I going to sort of
16 have pre-trial motions in limine to prevent them from
17 saying things?

18 I don't -- I don't have a -- knowing that
19 there's going to be a trial, I'm -- I'm concerned about
20 circumscribing anyone's right to defend themselves. I
21 will do it in a heartbeat where the law requires me to,
22 but I think I try to say that motions in limine, which
23 motions would limit the evidence and your -- things you
24 could say should be so specific as to everybody knows
25 where the lines are so no one inadvertently crosses them.

1 I don't -- your residual motion for summary judgment, I'm
2 not sure exactly what you want me to do.

3 MR. ZIMMERMAN: I think, Your Honor, and I'm
4 certain that Wisconsin law allows this, is to grant
5 summary judgment on the liability question, determine as a
6 matter of law there are no factual disputes as to any of
7 the elements of defamation and therefore, the Defendants
8 defamed the Plaintiff. The jury is not going to hear that
9 aspect in the case or try it. Wisconsin statute allows
10 for then a trial on damages. It's definitely contemplated
11 under Wisconsin law that we would be in exactly the
12 factual scenario you're describing, and at that point I
13 believe the Court is supposed to enter summary judgment.
14 If there are no disputed issues of material fact then
15 summary judgment, I believe the language is shall, be
16 granted.

17 Now I understand that there will be questions
18 about what we can and cannot say at trial. I'm sure there
19 will be motions in limine about what we can say, and I'm
20 certain there will be motions in limine about what the
21 Defendants can say. That's going to happen no matter what
22 the scope of the triable issues may be. The nature of
23 this case, the narrow scope of the claim that we've
24 asserted, made that a foregone conclusion. I think at the
25 time we filed this Complaint, what those motions in limine

1 may be is not yet certain. And as we file motions in
2 limine, I think the Court will evaluate them given the
3 issues that are to be decided by the jury.

4 So for example, we may file a motion saying
5 they're not allowed to argue that Sandy Hook was a FEMA
6 drill. That's so far outside of the scope of this case
7 that it's not properly before the jury because it doesn't
8 go to any question the jury is supposed to answer.

9 But when we --

10 THE COURT: Well I've got to tell you,
11 Mr. Zimmerman, like the little speech I gave Dr. Fetzer,
12 in his defense, my job isn't really then to -- to issue a
13 series of rulings that say you can't do this, you can't do
14 that, you can't do this, you can't do that, so basically,
15 all I want you to do is come to trial, sit there, and
16 don't open your mouth. I mean, it's a really fine line.

17 And I know -- I mean, I -- I think everybody --
18 the jury is going to want to know and the jury really has
19 to know some context to the underlying cause of action.
20 So is the word -- do you agree, the jury is going to know
21 this is a case about a boy who allegedly died at Sandy
22 Hook. Right?

23 MR. ZIMMERMAN: I suspect that's true. I
24 suspect Mr. Pozner will testify --

25 THE COURT: Yeah.

1 MR. ZIMMERMAN: -- that his son died. Where
2 that line is, I think has yet to be determined.

3 But I think, Your Honor, respectfully, that's
4 different than saying, even though we have established
5 that there are no fact disputes, we're still going to let
6 the jury evaluate that question again. I mean, that takes
7 away the potential for a plaintiff to bring a motion for
8 summary judgment if the plaintiff doesn't have a
9 liquidated damages clause, and I respectfully don't think
10 that's the scenario. That's not the statutory scheme that
11 the Wisconsin Legislature adopted. They specifically
12 state we can move for summary judgment on liability, even
13 though we have to try damages.

14 I'm not saying it doesn't put Your Honor in a
15 challenging position. We will -- no matter what we do in
16 this case, have to work with each other to try to narrow
17 the dispute that we put in front of you as motions in
18 limine. But I think to say even if we've met our burden
19 on summary judgment we can't have it, would be
20 inconsistent with the rules of civil procedure.

21 THE COURT: Okay. Well let's -- Dr. Fetzer and
22 Mr. Palecek, Mr. Zimmerman is right. The law does
23 obligate me, as much as I've said many times before, if
24 people ask me questions, I have the obligation to answer
25 the question. I can't say and I won't say here that I

1 won't answer a question, I'm just going to then take it
2 under advisement and we'll see you at trial. I think
3 there are a lot of decisions to be made.

4 But -- but let's go back at least for a moment
5 to where we started. There are four elements to
6 defamation. I'm going to start from the bottom and work
7 up, just so we're on the same page. Do you agree,
8 Dr. Fetzer, Mr. Palecek, that there's no genuine issue as
9 to the fourth element that the communication is
10 unprivileged, given the Court's now ruling based on your
11 concession of the absence of the journalistic privilege?

12 MR. FETZER: Well, it was published in the book
13 and I've asserted it on many occasions, Your Honor. So to
14 that extent, and granting now that the Plaintiff for the
15 sake of this trial is being regarded as a private person,
16 they were unprivileged.

17 THE COURT: Okay. Do you agree with that,
18 Mr. Palecek?

19 MR. PALECEK: Yes.

20 THE COURT: All right. Third element. The
21 communication tends to harm one's reputation lowering him
22 or her in the estimation of the community or deterring
23 third persons from associating or dealing with him or her.
24 Now that's sort of an abstract principle, but the
25 allegation that you've made against Mr. Pozner, if you're

1 wrong, which I know you guys say you're not, but
2 academically speaking, Professor Fetzer, you agree that
3 the accusations that you've made are ones in which if
4 untrue, would harm one's reputation?

5 MR. FETZER: You mean if -- oh, the accusations
6 if untrue?

7 THE COURT: Right.

8 MR. FETZER: Presumably, Your Honor, yes,
9 speaking to the hypothetical where, indeed, I do not
10 believe there's been any harm to this man's reputation
11 because he's been a participant -- a willing participant
12 in an elaborate charade.

13 THE COURT: Okay. But --

14 MR. FETZER: I understand the hypothetical. If
15 we are wrong, I'm willing to concede that it would
16 ostensibly harm his reputation and standing.

17 THE COURT: Do you agree with that, Mr. Palecek?

18 MR. PALECEK: Yes, I do.

19 THE COURT: Okay. Number 2, the communicated by
20 speech, conduct, or in writing to the person other than
21 the one defamed. Dr. Fetzer, you've said that there's no
22 dispute as to that element?

23 MR. FETZER: Yes, Your Honor.

24 THE COURT: And you agree with that,
25 Mr. Palecek?

1 MR. PALECEK: I do, yes.

2 THE COURT: All right. So this really comes
3 down to whether it's a false statement, right,
4 Mr. Zimmerman?

5 MR. ZIMMERMAN: Yes, Your Honor. That's
6 correct.

7 THE COURT: Motions for summary judgment are
8 that when there's no genuine issue as to any of the
9 material facts then the Plaintiff is asking for judgment
10 as a matter of law on the first element.

11 Plaintiff asserts that all the evidence that
12 they've submitted, which is not genuinely disputed or not
13 disputed or not rebutted by admissible evidence or not
14 rebutted by admissible authenticated evidence entitles the
15 Plaintiff to judgment as a matter of law, that the
16 accusation as set forth in Defendants' book and --
17 Defendants' book and Defendant Fetzer's blog are false.

18 Just so I make a record, I have reviewed the
19 Plaintiff's Proposed Findings of Fact. I've reviewed each
20 individually all of, Dr. Fetzer's, your response to the
21 Plaintiff's Proposed Undisputed Facts. I also reviewed
22 all the other filings with regard to all the other facts
23 that have been submitted and the briefs that have been
24 filed.

25 What I ordinarily do is I go through all the

1 proposed findings of fact, because on a motion for summary
2 judgment, if there's no genuine issue of those facts, then
3 those facts will be accepted for purposes of summary
4 judgment. It provides, albeit a rather meticulous and
5 laborious process, a factual underpinning of whether then
6 the moving party's entitled to judgment as a matter of
7 law.

8 The difficulty though is some of these -- and I
9 have notes overruling or sustaining your objections,
10 Dr. Fetzer, but I got to the point where it was difficult
11 because you were making recurrent mistakes. For example,
12 right off the bat on number 1, the proposition is that
13 Plaintiff and Veronique De La Rosa were married in 2003,
14 but divorced in 2014. That is exactly what Mr. Pozner
15 says at paragraph 21 in his affidavit. You say that's
16 inadmissible, and you say that the statement by the
17 Plaintiff is not the best evidence of marriage. We should
18 look at his certified copy of the marriage license. You
19 understand, that's -- that's not an appropriate response
20 to what the Plaintiff is proposing?

21 Now this is a rather actually somewhat
22 immaterial fact anyway, but if you thought that they were
23 not married or they were not married in 2003 or they were
24 not divorced in 2014, then to dispute that you would say,
25 Judge, that is disputed because I -- I took a deposition

1 of Veronique De La Rosa and she said she never married him
2 or I went down to the place where the marriage licenses
3 are kept, and I -- here's an affidavit from the record
4 custodian. There's no marriage license on file. You have
5 an obligation of actually coming forward with evidence.
6 You can't just say, I don't like that. Denied.

7 So your motion your -- your -- to that extent
8 then your objection is overruled.

9 Number 2. Noah Samuel Pozner was born at 8:34
10 a.m. on November 28, 2006, so on and so forth, citing the
11 Zimmerman affidavit, Exhibit C and Exhibit D. You say
12 irrelevant. Irrelevance is not an objection to a proposed
13 finding of fact on a motion for summary judgment. The
14 appropriate nomenclature, Dr. Fetzer, would be it's not
15 material. I don't care whether these details are
16 immaterial to really the question of whether the death
17 certificate is false or not.

18 Now, I would ignore immaterial or relevance
19 objection because if it's not relevant then you just say,
20 well, I don't want to fight about it. It's not material
21 to the motion for summary judgment.

22 But then you object on hearsay. Now, an
23 objection to the hearsay, a government records exception.
24 The exhibits are -- are not hearsay.

25 More importantly, you know, I don't -- if you

1 think that -- I don't know quite what you were saying,
2 other than you're trying to say, seemed to me,
3 methodically not to make any concession to any of the
4 details that would create an impression you're going to
5 admit that there ever was a human being called Noah
6 Pozner. Is that what you were -- your strategy?

7 MR. FETZER: Well there's someone called Noah
8 Pozner, but he appears to be a fiction, Your Honor. And
9 that's -- that's been an elaborate process here of
10 fabricating documents and creating a fake case that is
11 mind boggling, but I agree, the point that there's
12 immateriality here virtually throughout this list of
13 proposed findings of fact because the issue is the
14 authenticity of the death certificate. And I'm perfectly
15 happy that the case rises or falls on that basis
16 exclusively, Your Honor.

17 THE COURT: Well, but I understand the
18 Plaintiffs -- Plaintiff has to methodically, Dr. Fetzer
19 and Mr. Palecek, they have to methodically put their case
20 in. And, you're right, the issue is the falsity of the
21 statement that the death certificate was a fabrication or
22 not. The Plaintiffs are laying out a case of saying,
23 well, you need to start where a man and woman got married
24 and they had a child and that certified copy of the birth
25 certificate shows the child was born in this place at that

1 time with this weight, I assume, and with the name Noah
2 Pozner.

3 MR. FETZER: It's --

4 THE COURT: Obviously, it's relevant, because a
5 death certificate has to be, presumably, a death
6 certificate for a human being, and they're establishing
7 that there was this human being born.

8 MR. FETZER: Well, they're presenting a case,
9 Your Honor, most certainly, but it's a fabricated case,
10 just as the death certificate is a fabrication.

11 THE COURT: But what evidence -- what evidence
12 do you have for me that the birth certificate, which
13 purports to record Noah Pozner's death, is not --

14 MR. FETZER: Birth, Your Honor.

15 THE COURT: Birth certificate is not real?

16 MR. FETZER: Your Honor, I've been focussing on
17 the death certificate as the Court directed in seeking to,
18 you know -- I grant that I'm making many mistakes by
19 virtue of being a nonlawyer. I grant that, Your Honor.
20 But the case that the death certificate is a fabrication
21 is overwhelming and decisive, in my opinion, and I'm
22 hoping that the Court will recognize, when I review the
23 evidence later this morning.

24 THE COURT: Well, you are making -- I mean, I'll
25 be blunt. You are making mistakes, both of you, and this

1 is why you should have lawyers. Because if your position
2 was that there never was a person named Noah Pozner and
3 that the death certificate of this nonperson is a
4 fabrication, much as if this birth certificate is not --
5 because you can't -- you can't have -- if a person isn't
6 real and they never died because they never existed, then
7 presumably, you take the position that this paper trail,
8 including the birth certificate, is equally false and
9 fabricated. This was just this plan by the, as you say,
10 the deep state --

11 MR. FETZER: Yes.

12 THE COURT: -- and the Obama administration.

13 But now when the Plaintiffs are suggesting,
14 Judge, here's the certified copy of the birth certificate,
15 and you don't respond, you understand that there's no
16 genuine issue as to the fact that I'm obligated to
17 conclude that on that time or date by these two people a
18 human being called Noah Pozner was born, and if he was
19 born --

20 MR. FETZER: And --

21 THE COURT: -- whether he died at Sandy Hook,
22 every -- I can take judicial notice of the fact that every
23 human being dies at some point, and every person when they
24 die has a death certificate. So --

25 MR. FETZER: But --

1 THE COURT: -- you understand that the
2 Plaintiffs are methodically laying out a claim to prove
3 the legitimacy of the death certificate and all the
4 information in it.

5 MR. FETZER: But the fact of the matter is
6 nobody died at Sandy Hook, Your Honor.

7 THE COURT: Well --

8 MR. FETZER: Which means any death certificate
9 for an alleged decedent from Sandy Hook is a fabrication.

10 THE COURT: Well --

11 MR. FETZER: And I have ample proof here that
12 indeed that's the case in this instance, which leads me to
13 appreciate the wisdom of the Court's counsel that we were
14 going to focus on the death certificates and not the
15 circumstances, whether there were or were not a Noah
16 Pozner or not. It's whether or not this death certificate
17 is authentic, and I guarantee it is not.

18 THE COURT: All right. Well, I'll just make a
19 record. I don't -- as much as I hate to say it, I think I
20 need to -- if we're going to rule on these, I need to make
21 a record of all his objections to your proposed findings
22 of fact to give due course, even though you're kind of
23 sliding each way, I think I need to take care to consider
24 all that you wrote, Dr. Fetzer. So let's just go through
25 them quickly. I'll make a record.

1 Number 3. The attending physician was Donald
2 Goldstein. You say, Same objection for 2. That objection
3 is overruled.

4 4. Noah Pozner's mother, Ms. De La Rosa,
5 delivered twins. You say, Same response as No. 2. That's
6 overruled. I'm not reading every rule on the proposed
7 finding of fact.

8 MR. FETZER: Yeah.

9 THE COURT: Number 5. Until he was named, Noah
10 Pozner was referred to in his medical records as "Baby A."
11 Again, you're reiterating your objection, Dr. Fetzer, as
12 No. 2 and now No. 4. Those are overruled.

13 You also want me to review an interview linked
14 to in response to No. 4. The problem with that, in No.
15 4 --

16 MR. FETZER: May I simply observe, Your Honor,
17 that we made efforts to obtain counsel. It's a hot
18 potato. Nobody wants to deal with it. We have made many
19 efforts to obtain counsel, Your Honor. I completely agree
20 that we'd be better off with counsel, but no one wants to
21 touch it.

22 THE COURT: I understand. And that's what you
23 said before Mr. Zimmerman came in, but -- but why do I
24 keep saying this to you? I don't want to make you feel
25 worse and worse and worse. I think it's going to help

1 explain why some -- I have to make a ruling and I can't --
2 I can't be your counsel. I can't help you. You're going
3 to -- you might have had some arguments that aren't being
4 made because you're not trained in the law. I'm trying to
5 be fair, but the -- but we have an adversarial system in
6 our courtroom -- in these United States, and when people
7 are unrepresented, it -- it presents some challenges.

8 MR. FETZER: You're at a clear disadvantage.
9 Your Honor, Mr. Palecek and I have a certain character.
10 We are committed to social justice. We are committed to
11 the truth. We are doing our best to pursue it.

12 This whole case was an abuse of process, Your
13 Honor. It's obvious it wasn't a legitimate case. It's
14 intended to silence critics of Sandy Hook, just as
15 happened in the case of Wolfgang Halbig where the
16 Plaintiff explained on a blog where he was asked how he
17 lost the Halbig case, he acknowledged, yes, he had, but he
18 succeeded because Halbig had taken down his Sandy Hook
19 Justice blog, and that the point was to show hoaxers that
20 they're going to be taken to court and it will drag out a
21 long time. That's from the Plaintiff, Your Honor. That's
22 what's going on here.

23 THE COURT: Okay. I've gone through all your
24 proposed findings of fact, Dr. Fetzer, and except for one,
25 I'm overruling all your objections.

1 I'm going to sustain your objection, for the
2 life of me, Mr. Zimmerman, on response to No. 9, Exhibit
3 D, I think Dr. Fetzer is right. You cite page 32 for the
4 proposition that Noah Pozner's birth certificate records
5 indicated he was a healthy baby by noting he passed urine
6 and stool. I can't find that on page 32.

7 MR. ZIMMERMAN: I'm sure I miscited it, Your
8 Honor. It was on one page, but it's an immaterial fact
9 for purposes of --

10 THE COURT: Okay.

11 MR. FETZER: Your Honor, their findings of fact
12 even claimed that Mike Palecek edited the book. I mean,
13 Pozner admitted he's never read the book.

14 THE COURT: Time out.

15 MR. FETZER: They don't even --

16 THE COURT: Time out. So I have to make a
17 record on your evidentiary objections, Dr. Fetzer. I've
18 gone through. I'll sustain your objection on -- and I
19 will disregard Proposed Finding of Fact No. 9.

20 Now, the Plaintiffs are suggesting, based on the
21 undisputed facts, I should come to the conclusion today
22 that your statement in the book, and I say that your, this
23 includes now you, Mr. Palecek, that your statement in the
24 book that, Noah Pozner's death certificate is a fake,
25 which we have proven a dozen or more grounds -- on a dozen

1 or more grounds, that I should make a conclusion as a
2 matter of law based on the undisputed evidence that that
3 is a false statement.

4 The Plaintiffs are also asking me to conclude
5 that from your blog -- well, it's the quote. Where is the
6 blog quote, Mr. Zimmerman, on your --

7 MR. FETZER: Paragraph 18 --

8 MR. ZIMMERMAN: It's paragraph --

9 MR. FETZER: -- of the Complaint, Your Honor.

10 MR. ZIMMERMAN: That's right. Paragraph 18 of
11 the Complaint. In the slideshow, Your Honor --

12 THE COURT: Nine.

13 MR. ZIMMERMAN: -- it is on slide 19.

14 THE COURT: That in your blog was a false
15 statement. That's what they say the evidence lead me to
16 conclude. What is your response, Dr. Fetzer?

17 MR. FETZER: Having offered courses in logic,
18 critical thinking, and scientific reasoning for 35 years,
19 I know a straw man when I see it. The Plaintiff has
20 presented a straw man, including death certificates that
21 are not the subject of this lawsuit. This lawsuit
22 revolves around a death certificate that was published in
23 the book, *Nobody Died at Sandy Hook*, of which the
24 Plaintiff has a copy. I wish to present this into
25 evidence.

1 THE BAILIFF: Here. Here. You can hand it to
2 me. Thank you.

3 MR. FETZER: Page 181, Your Honor, to which
4 Plaintiff has repeatedly referred.

5 THE COURT: Okay. Now I've been handed a book.
6 You've tabbed page 181. What do you want me to look at in
7 this book?

8 MR. FETZER: The death certificate, Your Honor.

9 THE COURT: Okay. Just so I get this, is that
10 the same -- is that an image of Exhibit 2?

11 MR. FETZER: No.

12 THE COURT: Okay. Tell me what --

13 MR. FETZER: Well, look at -- it's missing the
14 certification on the left side, Your Honor. This is where
15 there's a shell game going on here. This is totally
16 fraudulent by the attorneys for the Plaintiff.

17 THE COURT: Okay. I should have asked this
18 better question. Is -- other than the redaction, and I
19 can appear to see the faint remanence of a seal to the
20 left, and maybe a border line, except for those three
21 aspects, I'm holding in my right hand Exhibit 2, is that
22 the image now set forth on page 181 of the book?

23 MR. FETZER: It is not, Your Honor. And
24 Mr. Zimmerman said I should have obtained from the
25 Plaintiff a copy of what he obtained from Debbie Aurelia,

1 but that's ridiculous, Your Honor. Who knows where that
2 death certificate came from. I'm being sued for the death
3 certificate in the book. The book does not have the
4 certification, Your Honor. It's vertical on the side, on
5 the left-hand side. That's the most important element
6 that's missing here. It does not have the file number.
7 That's the same as what Mr. Zimmerman gave you. It has
8 the wrong estimated time of death. And what does
9 estimated time of death if it -- mean if it doesn't mean
10 estimated time of death. Even if the official account has
11 the shooting allegedly taking --

12 THE COURT: Okay. Dr. Fetzer.

13 MR. FETZER: I -- I've read --

14 THE COURT: Let me just sort of reorient you to
15 really sort of the real issue. Okay. You've reiterated
16 all the points that you've made so far. Okay.

17 MR. FETZER: I --

18 THE COURT: I followed along. The Plaintiffs
19 have responded point by point to all those. I'd like you
20 to reply. For example --

21 MR. FETZER: Here. Here.

22 THE COURT: For example -- for example, he says,
23 that, yes, some of the copies don't have the state file
24 number. That's easily explained. The town doesn't have
25 the state file number. When the state gets it, it does.

1 Some copies have a barely imperceptible embossed seal, but
2 that's because the photocopiers don't pick up on it.

3 MR. FETZER: It's --

4 THE COURT: I want you to -- I will tell you
5 this, Dr. Fetzer, I understand all of their explanations,
6 and their explanations --

7 MR. FETZER: Here --

8 THE COURT: -- in my opinion, seem legitimate
9 and plausible and persuasive. I'll give you the
10 opportunity to focus in on those aspects that you think I
11 should rely to come to the conclusion there's a genuine
12 issue as to the --

13 MR. FETZER: Your --

14 THE COURT: -- question of whether it's -- a
15 statement was true or not and the statement being whether
16 it's a false or fabrication, because I've got to tell you,
17 all their answers seem to me to make sense. What is your
18 response?

19 MR. FETZER: My response is as follows, Your
20 Honor.

21 The death certificate for which I am being sued
22 is the one published in the book, *Nobody Died at Sandy*
23 *Hook: It was a FEMA Drill to Promote Gun Control*, which
24 has appeared as Chapter 11 coauthored with Kelley Watt in
25 both first editions, 2015, and second, 2016. It is an

1 expanded and revised version of an article that I
2 originally published on *Veterans Today* on 6 August 2014,
3 which included the death certificate for my
4 characterization of which I have been sued. Kelley said
5 it came from "Lenny." I published in *VT* and with Mike
6 Palecek in both editions and we made no changes to its
7 content.

8 It appears that I added a border, which is not
9 one of the things that they complain about. The
10 circumstances of this version's publication are not in
11 issue. The death certificate that I received from
12 Plaintiff via Kelley Watt is not certified by Newtown's
13 Registrar of Vital Statistics, Debbie Aurelia, now Debbie
14 Aurelia Halstead. Plaintiff has admitted to his
15 conversations with Kelley and to having posted it on
16 Noah's memorial page, Google Plus. So even though I may
17 have added a border, for which I take responsibility, the
18 rest came from him.

19 The file size is immaterial and varies with
20 compression and reproduction. What matters is what is on
21 it and what is not. Because it does not have the town
22 registrar's certification on the side, it is therefore
23 illegal and a fabrication, precisely as I maintain.

24 In his latest gambit, moreover, the Plaintiff
25 attempts to prove too much. If the border makes a

1 difference and the death certificate is on that very
2 ground not bona fide, then the certificate that I
3 described as a fabrication in the book is, in fact, a
4 fabrication by Plaintiff's own contention. How ironic
5 that Plaintiff thereby admits that I am right and my
6 statement truthful, in which case I cannot be found guilty
7 of defamation for my true affirmation.

8 If the death certificate published in the book
9 were not the same as the one that Lenny published on his
10 website, then the suit filed against me and my
11 co-defendant, Mike Palecek, on 27 November 2018, would
12 have had an entirely different character. The Complaint
13 does not deny this is the same document that Lenny
14 provided to Kelley Watt but instead attacks me for
15 declaring it to be a fake and a fabrication. The
16 appropriate passage is from the Complaint read:

17 Paragraph 17. The second edition of *Nobody Died at*
18 *Sandy Hook* accuses Plaintiff of issuing and/or possessing
19 a forged copy of N.P.'s death certificate. In particular,
20 page 183, of *Nobody Died at Sandy Hook* states: "Noah
21 Pozner's death certificate is a fake, which we have proven
22 on a dozen or more grounds." At page 232, the book
23 states, "Mr. Pozner sent her a death certificate, which
24 turned out to be a fabrication." At page 242, the book
25 states, "As many Sandy Hook researches are aware, the very

1 document Pozner circulated in 2014, with its inconsistent
2 tones, fonts, and clear digital manipulation, was clearly
3 a forgery."

4 A comment from a contribution to the *Sandy Hook*
5 *Memoranda for the President of the United States*, edited
6 by Robert David Steele, has also been cited as being
7 defamatory:

8 18. Mr. Fetzer's publication of this false accusation
9 against Plaintiff was not limited to the book. He
10 repeated that false statement on one or more blog posts,
11 including, for example, phibetaiota.net/2018 --

12 THE COURT: I'm going -- Dr. Fetzer, I know
13 you're reading. Just if you read a little slower. My
14 court reporter is the best reporter you'll ever see,
15 but --

16 MR. FETZER: Yes. I'll slow down.

17 THE COURT: If you could just slow down, please.

18 MR. FETZER: Certainly.

19 THE COURT: I want to make sure the record gets
20 everything --

21 MR. FETZER: Thank you.

22 THE COURT: -- that you're saying.

23 MR. FETZER: Thank you, Your Honor. Shall I
24 back up a sentence?

25 THE COURT: No. No.

1 MR. FETZER: Okay.

2 Phibetaiota.net/2018/08/james-fetzer-in-solidarity-with-
3 alex-jones-how-we-know-sandy-hook-was-a-fema-drill-nobody-
4 died-obama-officials-confirmed-it-was-an-anti-gun-
5 propaganda-exercise. That blog is dated August 5, 2018.

6 There, Defendant Fetzer made the following false
7 statement: "It [N.P.'s death certificate] turned out to
8 be a fabrication, with the bottom half of a real death
9 certificate and the top half of a fake, with no file
10 number and the wrong estimated time of death at 11:00
11 a.m., when officially the shooting took place between 9:35
12 and 9:40 that morning." That statement is false,
13 Plaintiff continues, both in its particular fact and in
14 the main point, essence, or gist in the context in which
15 it was made, because N.P.'s death certificate is not a
16 fabrication or forgery. The context of that statement
17 referred -- referred specifically to Plaintiff, the
18 previous sentence reads: "Kelley Watt had over 100 hours
19 of conversation with 'Lenny Pozner', who purports to be
20 the father and who sent Kelley a death certificate for
21 'Noah' as proof that he had died, which we included in the
22 book."

23 Notice there is no denial that the death
24 certificate published in the book is the same as the death
25 certificate that the Plaintiff made available to Kelley

1 Watt, who in turn shared it with me and with my
2 co-defendant, when we edited and published the first
3 edition of the book using CreateSpace, a subsidiary of
4 amazon.com, and placed it on sale on 22 October 2018 [sic]
5 only to be banned on 19 November 2015 after selling nearly
6 500 copies.

7 There were, incidentally, 13 contributors to the
8 book, including six current or retired PhD professors, who
9 determined that school had been closed by 2008, that there
10 were no students there, and that it was done to promote
11 gun control.

12 One of the contributors to the book, Paul
13 Preston, who is himself a school administrator from the
14 Los Angeles area, who has supervised drills of this kind,
15 was so disturbed by what he saw being broadcast from
16 Newtown that day that he reached out to his contacts in
17 the Obama Department of Education, all of whom confirmed
18 to him that it had been a drill, that no children had
19 died, and that it was done to promote gun control.

20 Moreover, we are all aware that arguments have
21 two parts: Premises, or the grounds, reasons, or evidence
22 one cites; and conclusions. In this case, my premises may
23 have been mistaken or wrong -- the absent file number, the
24 differences in tone and texture, the variations in font
25 sizes and spacing, which led me to believe that this

1 document had been created by combining the bottom half of
2 a real death certificate with the top half of a fake --
3 given what I have learned in the meanwhile, do not appear
4 to have been right. But my conclusion --

5 THE COURT: Okay. Hang on. So that seemed to
6 be important. So now -- are you admitting now that you
7 were wrong?

8 MR. FETZER: That I had bad reasons for a
9 truthful conclusion, Your Honor.

10 THE COURT: Okay. So you said you no longer
11 believe or you're changing your mind on the accusation it
12 was Photoshopped?

13 MR. FETZER: Oh, yes.

14 THE COURT: Okay. What -- what else are you --
15 now are you conceding you were wrong?

16 MR. FETZER: Well, the texture difference, for
17 example, Your Honor. When you saw that --

18 THE COURT: Okay. I understand. So the point
19 that the different fonts -- you accept the Plaintiff's
20 explanation that when other people who were doing their
21 job put it in their typewriter, if you had a different
22 typewriter, that would be different fonts --

23 MR. FETZER: Yes.

24 THE COURT: -- and sizes. So you find that to
25 be a plausible explanation for the different font size?

1 MR. FETZER: I do.

2 THE COURT: Okay. What else? What else have
3 you changed your mind?

4 MR. FETZER: Well, I'm -- I'm going to lay it
5 out, Your Honor.

6 THE COURT: All right. I thought you just did
7 but you went so fast that I --

8 MR. FETZER: Well, I'm -- I'm returning to
9 address it further, Your Honor.

10 THE COURT: Okay. Okay. Thank you.

11 MR. FETZER: But I shall slow down.

12 But my conclusion that the document is a fake or
13 a fabrication has been borne out by subsequent research,
14 including the forensic analysis by Larry Wickstrom,
15 confirmed by the further review and analysis of A.P.
16 Robertson, which leave no doubt about it. Even though my
17 initial reasons were bad, there are abundant good reasons
18 to arrive at the same conclusion where my original
19 argument --

20 THE COURT: Can I -- can I interrupt just a
21 moment, because I'm hanging on every word. So you say,
22 well, even though I might have been wrong on the things
23 that I was criticizing, you're relying on Wickstrom and
24 others.

25 MR. FETZER: Well, they have provide rather

1 powerful additional evidence. It was --

2 THE COURT: Well, but Wickstrom -- Wickstrom
3 seems to be hung up on the dark black border which now you
4 say possibly you put on.

5 MR. FETZER: That's correct, Your Honor. But
6 the content of the document is correct, and the -- the
7 document that is published in the book is clearly
8 fraudulent, Your Honor, and that the --

9 THE COURT: I'm just -- I'm just following
10 along.

11 MR. FETZER: Yes. Yes.

12 THE COURT: So you say, Judge, even though I
13 might have been wrong, I've got these experts. But these
14 experts seem to be relying on the exact same things you
15 pointed out in the first instance.

16 MR. FETZER: No, that's -- that's not correct,
17 Your Honor. There's more to it here, and I'm seeking to
18 lay it out --

19 THE COURT: Okay. Go ahead.

20 MR. FETZER: -- because -- Thank you.

21 Even though my initial reasons were bad, there
22 are abundant good reasons to arrive at the same
23 conclusion, where my original argument had false premises
24 but a true conclusion. And we all know every argument can
25 have true premises, a true conclusion; true premises, a

1 false conclusion; false premises, a true conclusion; or a
2 false premises and a false conclusion.

3 As the Complaint itself emphasizes, its
4 foundation is a crucial claim I have made that the death
5 certificate that Plaintiff provided to Kelley Watt is a
6 fake, a fabrication, or a forgery. Truth is an absolute
7 defense to defamation. This case hangs on the question of
8 authenticity, specifically, on the truth or falsity of my
9 assertion that this document is not authentic as a fake, a
10 fabrication, or a forgery. My premises or reasons for
11 reaching that conclusion originally may not have been good
12 ones, but the conclusion I reached, which is the issue
13 upon which this case revolves, was true. And because I
14 believed what I wrote at the time on the basis of -- of
15 what I took to be good reasons at the time, I cannot have
16 acted with malice, which requires knowing what you're
17 asserting is false but asserting it anyway with the intent
18 to mislead your target audience, which I have not done.

19 THE COURT: Okay. Mr. -- I apologize for
20 interrupting. But, Dr. Fetzner, you now understand that
21 your malice aspect has been brushed aside because of
22 the -- your -- the concession that --

23 MR. FETZER: I -- I do, Your Honor, but it's
24 rather indispensable that the Court understand that I and
25 Mr. Palecek were acting with complete sincerity --

1 THE COURT: Okay.

2 MR. FETZER: -- and a well-founded belief based
3 upon -- which Mr. Robertson, by the way, in his
4 declaration, now affidavit, has observed that a reasonable
5 person looking at the evidence I was citing in the book,
6 being nonexpert on death certificates, noticing the
7 absence of a file number, the wrong estimated time of
8 death, the variations in the fonts which were the result
9 of three different persons entering data, the texture and
10 so forth were good reasons, to have concluded on that
11 basis that this was a fabrication. He -- he, of course,
12 explains that there are -- those are -- turn out not to
13 have been good reasons ultimately, but they were the
14 reasons I had at the time and they were reasonable reasons
15 and I was sincere in my belief.

16 THE COURT: Okay. What are you telling me? Are
17 you telling me that you were sincere at the time that you
18 made the conclusion because you believed it was supported
19 by the observations you made, that you now understand are
20 not true?

21 MR. FETZER: Yes.

22 THE COURT: But --

23 MR. FETZER: But there are better reasons, Your
24 Honor, that I'm going to explain.

25 THE COURT: Are these --

1 MR. FETZER: I mean, this is addressing the
2 Complaint, Your Honor, which is the basis of this lawsuit.
3 It says, "Defendant Fetzer has a long history of harassing
4 Plaintiff and other Sandy Hook parents with defamatory
5 lies, and has slandered Plaintiff repeatedly in the years
6 since the tragedy at Sandy Hook." That's completely
7 absurd, Your Honor.

8 I'm -- I'm a former Marine Corps officer, Your
9 Honor. I'm a Distinguished McKnight Professor, Your
10 Honor. I've been devoting myself since my retirement to
11 exposing these charades perpetrated by the government in
12 collaborative research. We are trying to find out the
13 truth in those cases where the government has a motive to
14 lie to the American people.

15 We have discovered in part because of my
16 background as an expert in epistemology, methodology, and
17 the philosophy of science, again and again the government
18 has perpetrated lies on the American people.

19 THE COURT: So what evidence should I rely on
20 either to find in support of your Motion for Summary
21 Judgment or to conclude there's a genuine issue on the --
22 any fact that's material to the falsity of the death
23 certificate? I'm not --

24 MR. FETZER: It's coming, Your Honor.

25 THE COURT: Okay. Okay. I'm sorry. Go ahead.

1 MR. FETZER: This meant that the Complaint
2 likewise has no basis in claiming that I acted with
3 malice, as in paragraph 39 [sic]:

4 Defendant Fetzer acted with actual malice. In
5 particular, Defendant Fetzer published his statements
6 knowing that his statements were false or with reckless
7 disregard for the truth or falsity of his statements.

8 On the contrary, my conclusion was reached on
9 the basis of collaborative research with several others,
10 including Dennis Cimino, who is a top electronics
11 troubleshooter for the U.S. Navy before he left to work
12 for Raytheon and a contributor to the first edition of the
13 book who suggested that portions had been Photoshopped,
14 where I had reason to take him at his word. The
15 additional reasons reported by Bob Simms about the fonts,
16 the size, and spacing of words in the document were ones I
17 confirmed by direct observation. In combination with my
18 own observations about the dark texture of roughly the
19 bottom two-thirds in contrast with the top one-third, it
20 was my inference that the document appeared to be a
21 fabrication, combining the bottom half or two-thirds of a
22 real death certificate with the top half or one-third of a
23 fake, which I no longer believe is true.

24 My reasons regarding the top half included the
25 absence of a file number, which it turns out can occur

1 with documents obtained from the town registrar, and wrong
2 estimated time of death at 11:00 a.m., when it -- which as
3 even the report on the Sandy Hook shooting by Danbury
4 State's Attorney Stephen Sedensky III states the shooting
5 took place between 9:30 and 9:40 or 9:41, which meant the
6 estimated time of death was wildly inaccurate. Even
7 though the Medical Examiner Wayne Carver II, M.D., sought
8 to explain that away, it remains inconsistent with the
9 official account, which was one more reason why I
10 sincerely believe that this document is a fake, a
11 fabrication, or a forgery. Therefore, for the wrong
12 reasons, I came to the right conclusion. Not only am I
13 not guilty of defamation, therefore, but I did not act
14 with malice, which is another false accusation.

15 Appended to the Complaint was a copy of a death
16 certificate that I had never before laid eyes upon, which
17 the Complaint alleged to be the same in every material
18 respect:

19 Paragraph 19. The Connecticut Department of Public
20 Health maintains official death records for the State of
21 Connecticut. The Connecticut Department of Public Health,
22 Vital Statistics Division, issued an official death
23 certificate for N.P. A true and correct copy of that
24 death certificate, sensitive information redacted, is
25 attached hereto as Attachment A. The official death

1 certificate attached hereto does not differ in any
2 material respect from the one released publicly by
3 Plaintiff.

4 The claim that the death certificate attached to
5 the Complaint does not differ in any material respect
6 released publicly by Plaintiff, as should be apparent
7 already, blatantly falsifies the situation we confront,
8 because the attached certificate has both a state
9 certification as a true copy and the certification of the
10 town registrar, in the absence of which it properly
11 qualifies as illegal and a fabrication. By Connecticut
12 law, not even parents can have uncertified copies. It's
13 that blatant.

14 They say, "The law works in mysterious ways,"
15 but I'm baffled to this day how I could be sued for
16 defamation regarding a document that I had never before
17 seen much less commented upon prior to the filing of this
18 suit. Moreover, the copy attached was so poor that it was
19 virtually illegible and legally useless, as I explained to
20 Mr. Zimmerman when he called me about the suit. I asked
21 him if he knew anything about Sandy Hook or had any idea
22 what he was getting into, adding that the copy attached
23 was so poor as to be unreadable and legally useless. He
24 replied that if I wanted a better copy, I could contact
25 the State of Connecticut and obtain one for a \$20 fee. I

1 thought that was rather strange to provide the Defendant
2 with an illegible copy of a document on which the case was
3 said to be based.

4 While I did not initially attempt to obtain a
5 copy, eventually Co-Defendant Dave Gahary and I both
6 obtained copies of the death certificate for Noah Pozner.
7 To my surprise, they were not the same. Mine had the same
8 handwritten file number as on the copy attached to the
9 Complaint but no redaction for the burial location and the
10 social security box was empty rather than redacted.
11 Dave's had a partial printed file number that does not
12 correspond with the others. We therefore have four
13 different versions thereof:

14 Exhibit A.

15 THE BAILIFF: Do you have copies?

16 MR. FETZER: Yeah. One for each.

17 THE COURT: We'll mark that as Exhibit 4.

18 (Exhibit 4 marked for identification.)

19 MR. FETZER: Exhibit A: The copy published in
20 the VT article, 2014, in the first and second editions --

21 THE COURT: Dr. -- Dr. Fetzer.

22 MR. FETZER: Yes?

23 THE COURT: So now, just so the record's clear,
24 refer to it as Exhibit 4.

25 MR. FETZER: Yes. All right, Your Honor.

1 Exhibit 4: The copy -- Exhibit 4: The copy published
2 in the VT article, 2014, in the first and second editions
3 of *Nobody Died at Sandy Hook*, 2015 and 2016, and in the
4 *Sandy Hook Memoranda* edited by Robert David Steele, 2018,
5 also cited in the Complaint, all of which have no file
6 number but with redactions of the -- for the location of
7 burial of the decedent and of a social security number,
8 and even seems to have a fake seal at the bottom left,
9 where no seal should appear.

10 Exhibit 5.

11 (Exhibit 5 marked for identification.)

12 MR. FETZER: Exhibit 5: Attached to the
13 Complaint has a handwritten file number 2012-07-07833. It
14 has changes to the last residence of the decedent from 37
15 Alpine Drive to 3 Kale Davis Road made at the request of
16 the father, identified as Leonard Pozner, and with
17 redaction to the location of the burial plot but none to
18 his social security number, where the box is empty.

19 Since the box for the SSN is empty on the
20 attached Complaint, I have been puzzled that the copy
21 provided by Plaintiff was redacted as though there had
22 been a present social security number. But notice as I
23 have been emphasizing, the attached copy, Exhibit B, has
24 two forms of certification, while the Kelley copy, Exhibit
25 A -- I have the numbers now wrong. Exhibit 5 has two

1 forms of certification, while the Kelley copy, Exhibit 4,
2 has none. What could be more material?

3 Now Exhibit 6.

4 (Exhibit 6 marked for identification.)

5 Exhibit 6: Obtained by Dave Gahary from the
6 town registrar, which has the changes made by the father,
7 the same as Exhibit 4, but has no redaction for either
8 burial plot or social security number, where the box is
9 empty. Its most striking differences is a file number
10 that is printed and partial, including only the last four
11 digits, the first obscured but the remainder 243.

12 Exhibit 7.

13 (Exhibit 7 marked for identification.)

14 Exhibit 7: Obtained by me from the State of
15 Connecticut, it has a handwritten file number,
16 2012-07-078033, but in other respects appears to be the
17 same as Exhibit 6. Notice that, although the
18 authentication of Debbie Aurelia on Exhibit 5 and Exhibit
19 6 both appear at the upper left, close in, to the border,
20 that on Exhibit 4 appears at the middle, further out,
21 which indicates more than one version.

22 In addition to Exhibit 7, I obtained four other
23 death certificates from the state, including for purported
24 Sandy Hook assailant, Adam Lanza; his mother, Nancy Lanza;
25 another of the alleged victims, Avielle Richmond; and for

1 my dear friend, William Brandon Shanley, who died
2 apparently of natural causes on 6 November 2017. What is
3 most striking in relation to the disputed death
4 certificates is that all of them have printed file
5 numbers. None of them has handwritten. They were all on
6 the same form VS4-ME, except for Shanley, which as Wayne
7 Carver, M.D. explained to me during questioning on the
8 occasion of his deposition in Connecticut on 21 May 2019,
9 when I showed to him Exhibit 6 above, obtained by Dave
10 Gahary from the Town of Newtown, he could not explain its
11 partial printed file number. Quoting, "Well, first of
12 all, this was -- I have no idea what it is." Deposition
13 Transcript, lines 7-8 from the State Medical Examiner.

14 Several significant points emerge from comparing
15 these various versions, not least of which is that when
16 Plaintiff provided Kelley Watt with a copy of Exhibit 4 in
17 2014, he had already made revisions to it in 2013 and knew
18 it was not the currently available version. Notice
19 Exhibit 5 attached to the Complaint had been corrected by
20 Leonard Pozner on 6/14/13. That raises a question of why
21 the Plaintiff published on his son's memorial page a
22 version of his death certificate that he knew was no
23 longer correct. It smacks of baiting Sandy Hook skeptics
24 into focussing on a version that he could subsequently
25 effortlessly claim to be wrong, which he knew of his own

1 personal knowledge because he himself had changed it.

2 Another anomaly with Exhibit 5, which was
3 attached to the Complaint, is that the father changed the
4 address of the decedent. That struck me as at least
5 faintly absurd because no one changes their last residence
6 after they are dead. During his video deposition, I asked
7 the Plaintiff why he had made this change, to which he
8 replied that Noah had only resided at that address with
9 his mother for a brief period of time and he wanted his
10 death certificate to reflect the location where he had
11 longer resided, which I regarded as highly implausible. A
12 more reasonable explanation for this change has come from
13 the forensic document expert, A.P. Robertson, who
14 suggested they made -- this may have been an effort by
15 Plaintiff to ensure that donations from the public would
16 flow to him at 3 Kale Davis Road rather than to his
17 ex-wife at 37 Alpine Drive, which, if true, would explain
18 it.

19 Indeed, there are at least two other anomalies,
20 one about the death certificate, the other about the
21 Complaint, that have struck me as disturbing. On the
22 death certificate, where it asks for first, middle, and
23 last name of the informant, only the nickname, Lenny
24 Pozner, appears.

25 Even more anomalous, and, to me, extremely

1 peculiar, is that the decedent, who is supposed to be the
2 man's beloved son, is only referred to by his initials,
3 N.P. As a father myself, I cannot imagine in my wildest
4 dreams having lost a child and then feeling compelled to
5 bring a lawsuit to protect his sanctity and then only
6 referring to him by his initials.

7 All of these oddities are more readily
8 explicable on the hypothesis that Noah is a fiction made
9 up out of photographs of his purported older step-brother,
10 Michael Vabner, than on the hypothesis that he was real.
11 When we consider that we may be dealing with an illusion
12 rather than reality, where the Sandy Hook event was a FEMA
13 mass casualty exercise involving children to promote gun
14 control that was then presented to the public as mass
15 murder, the pieces make sense.

16 Where we have even incidentally obtained the
17 FEMA manual for the exercise on 13 December 2012, the
18 rehearsal ending at 11:59 to be evaluated the following
19 day as a real-time event, where some of the participants
20 became confused and even put up donation pages on the web
21 the day before, and where the alleged assailant Adam
22 Lanza's death was initially recorded as having occurred on
23 the 13th of December 2012, making his feat in shooting 20
24 children and 6 adults the following day all the more
25 remarkable.

1 Insofar as the Complaint was narrowly crafted to
2 focus upon the solitary issue of the authenticity of the
3 death certificate and my observations about it, we find
4 the situation now copiously documented, including the
5 studies of two document examiners, to be as follows with
6 respect to the charges therein made:

7 Count 1. Defamation by all Defendants.

8 Paragraph 21. The statements excerpted from *Nobody*
9 *Died at Sandy Hook* are false, both in their particular
10 facts and in the main point, essence, or gist in the
11 context in which they were made, because N.P.'s death
12 certificate is not a fabrication or forgery.

13 22. The statements excerpted from *Nobody Died at Sandy*
14 *Hook* refer directly to Plaintiff by name, and giving the
15 surrounding context likewise indicates that the comments
16 implicate Plaintiff. Given the surrounding assertions, a
17 reasonable reader would understand the statement to imply
18 that Plaintiff knowingly possessed and distributed a
19 fabricated death certificate.

20 Since truth is an absolute defense against
21 defamation and the documents in question, not just
22 Exhibits 4 and 5, but Exhibit 6 and 7 as well, turn out to
23 be fabrications, the Defendants have not committed
24 defamation. Moreover, as A.P. Robertson has astutely
25 observed, a reasonable person, observing the anomalies in

1 the document published in the book, *Nobody Died at Sandy*
2 *Hook: It was a FEMA Drill to Promote Gun Control*, 2015;
3 2nd edition, 2016, including the missing file numbers, the
4 wrong estimated time of death, the difference in shading
5 between the upper and lower portions, the variations in
6 types, fonts, and spacings would have reasonably inferred
7 that this document was not authentic but a fabrication.
8 And I have only recently realized that the given name of
9 the town as Sandy Hook in the death certificates is not
10 correct because the death happened in Newtown,
11 Connecticut.

12 Even if I, the Defendant, was mistaken about
13 some of the reasons I concluded that the document was
14 fake, it was a reasonable inference at the time. Now,
15 supported by two document expert examiner reports, there
16 are no good reasons to doubt that I was right. Exhibit 4,
17 the document he addressed, is in fact and indeed, a
18 fabrication, as claimed. The allegedly defamatory
19 statements are true, which means Count 1 is refuted.

20 Count 2. Defamation Defendant Fetzer.

21 Paragraph 31. The statements excerpted from Defendant
22 Fetzer's August 2018 blog post are false, both in their
23 particular facts and in the main point, essence, or gist
24 in the context in which they were made, because N.P.'s
25 death certificate is not a fabrication or forgery. The

1 surrounding context implies that Plaintiff knowingly
2 distributed a falsified death certificate.

3 Another oddity of the Complaint is -- is the
4 insinuation that Defendants allege that Plaintiff had
5 personally fabricated the death certificate addressed in
6 the book, which again, is Exhibit 4. But, while Defendant
7 Fetzer did express that opinion to Plaintiff in private
8 correspondence, he has not published that allegation,
9 which he no longer entertains, and therefore in the
10 absence of publication, he cannot be liable for defamation
11 under Count 2, either.

12 Count 3. Conspiracy

13 Paragraph 41. With regard to the statements in *Nobody*
14 *Died at Sandy Hook*, Defendants acted together, as a cabal,
15 to accomplish their defamation. Defendants had a meeting
16 of the minds on the object or course of action underlying
17 their recklessly defamatory publication.

18 There being no defamation, there can be no
19 conspiracy between us to commit defamation.

20 The following has thus been established: No
21 facts are in issue with regard to the death certificate.
22 The one I received from Plaintiff via Kelley Watt is not
23 certified. Plaintiff has admitted to his conversations
24 with Kelley and to posting it on Noah's memorial Google
25 Plus page. Even though I added a border, the rest came

1 from him. The size of image is immaterial and varies with
2 its reproduction. What matters is what is on it and what
3 is not. It does not have the town registrar's seal on the
4 left-hand side. That is decisive. These are crucial
5 points because the Plaintiff has not mentioned these
6 problems in his Response to my Motion for Summary
7 Judgment. It is confessed, which means I am entitled to
8 summary judgment in my favor. My statements are
9 substantially true and, as the Wisconsin Supreme Court has
10 ruled in Meier v. Meurer, 8 Wis.3d 24, 29 -- 29, 98 N.W.2d
11 411, 1959: "In this state, if a statement be
12 substantially true, it cannot be the basis for a civil
13 action for libel," Meier, 8 Wis.2d 29, citations omitted.

14 There are also legal problems with the death
15 certificate having been received by the town clerk more
16 than five days after the death, that a burial could not
17 have been issued and more in my Motion for Summary
18 Judgment. I have also pointed out that the death was
19 supposed to be registered in the town in which it
20 occurred, per the law, while the funeral director, Samuel
21 Green, said that it was registered in Fairfield, which
22 would mean the Fairfield clerk's signature should appear
23 on the death certificate, not Debbie's.

24 We are the editors of Moon Rock Books. As
25 editors, have been doing our best to inform the public of

1 the truth about its own history, which Plaintiff in this
2 case has been desperately trying to suppress. The State
3 of Wisconsin and the American people deserve better. The
4 facts of this matter with regard to the Complaint are not
5 in doubt. It has no merit and represents an abuse of
6 process and a fraud upon the Court. The Court can
7 contribute to ending this charade by it rendering us the
8 summary judgment to which we are entitled. Let it end.

9 Thank you.

10 THE COURT: Thank you, Dr. Fetzer.

11 Dr. Fetzer, because you -- you did read fairly
12 quickly, I notice you were reading from something. I
13 don't want to sort of steal your work product. Can I use
14 that and mark that as an exhibit and --

15 MR. FETZER: You may.

16 THE COURT: -- make that part of the record?

17 MR. FETZER: You may indeed, Your Honor.

18 THE COURT: Thank you.

19 MR. FETZER: Let me make sure we have the right
20 pages in the right order.

21 THE COURT: We'll mark it as an exhibit.

22 (Exhibit 8 marked for identification.)

23 MR. ZIMMERMAN: Your Honor, while we're doing
24 that, can I ask a minor administrative question?

25 THE COURT: Okay.

1 MR. ZIMMERMAN: The original document that we
2 provided as I believe Exhibit 2, the death certificate,
3 has a social security number in the bottom right-hand
4 corner. It's the one with the raised seal on it.

5 THE COURT: Correct.

6 MR. ZIMMERMAN: It's an original, so obviously,
7 we can't redact it.

8 THE COURT: We'll file this under seal.

9 MR. ZIMMERMAN: Thank you, Your Honor. I
10 appreciate that.

11 THE COURT: Under -- under the new rules, which
12 automatically recognize the confidentiality of social
13 security numbers. Do we need anything further on that?

14 THE CLERK: No.

15 THE COURT: No. That will be taken care of.

16 MR. ZIMMERMAN: Thank you, Your Honor.

17 MR. FETZER: Your Honor, regarding the statement
18 I just provided, I added extemporaneous additional
19 explanatory remarks in three cases.

20 THE COURT: I understand. What this will help
21 is my court reporter, if she has a question about words
22 then she'll refer to it, and obviously, of preeminent
23 importance is to get in the official record all that you
24 said. It does not supplant what you've said but augments
25 it.

1 MR. FETZER: Thank you, Your Honor.

2 I do have one question too about this business
3 of a million dollars. I have never been notified that the
4 Plaintiff was seeking a million dollars, Your Honor. I
5 question whether it was done in a timely fashion. I'm not
6 an attorney, but I have been advised that there's a point
7 at which that must be done or it's nullified. I have
8 never been notified of a million dollar seek for --
9 punishment for damages in this case, Your Honor. I find
10 that quite bewildering.

11 THE COURT: Well, very timely, Dr. Fetzer, if
12 you might have turned the television on, consuming much of
13 the news over the weekend was an, I don't know, I think it
14 was like a \$10 million lawsuit against law enforcement in
15 some other town. In Wisconsin, the law precludes for the
16 very reason of pre-trial publicity and sensationalizing
17 parties from putting and specifying in the Complaint.

18 Plaintiff cites 802.08(2) for the proposition
19 that he's required to disclose the amount. 802.08(2)
20 says, "Prior to a hearing on the motion, any party who was
21 prohibited under 802.02(1m) from specifying the amount of
22 money sought in the demand for judgment shall specify that
23 amount to the court and to the other parties." So it
24 says, "Prior to the hearing on the motion," and this was
25 filed on Sunday morning prior to the hearing. I haven't

1 seen this very often, but in answer to your question,
2 Dr. Fetzer, apparently what Wisconsin statutes require.

3 Mr. Zimmerman, it's your motion --

4 MR. FETZER: Incidentally, Your Honor, I have
5 those death certificates I obtained from the state, if the
6 Court would like to review them. They all have the
7 printed file number, they all have the embossed imprint,
8 and, you know, they're available for the Court's review.

9 THE COURT: Well I'll -- you have the right
10 to -- you've given me a lot of exhibits. Is there
11 anything else you want to offer?

12 Any objection to any of these exhibits that
13 Dr. Fetzer has offered?

14 MR. ZIMMERMAN: Not -- no objection to admitting
15 them into the record, no, Your Honor.

16 THE COURT: They'll be received.

17 (Exhibits 4 through 9 received into evidence.)

18 THE COURT: Is there anything else, Dr. Fetzer
19 or Mr. Palecek, you want me to receive?

20 MR. PALECEK: No. No.

21 MR. FETZER: These are scans, Your Honor, rather
22 than the original documents, which I do have and which
23 arrived in an envelope I have here, Your Honor.

24 THE COURT: We'll mark that as a group exhibit.

25 (Exhibit 9 marked for identification.)

1 THE COURT: Okay. Mr. Zimmerman, it's your
2 motion. As to your Motion for Summary Judgment, you get
3 the last word.

4 MR. ZIMMERMAN: Yes, Your Honor.

5 None of the issues that Dr. Fetzer raised in his
6 presentation change the underlying facts of this case.
7 This case is about Noah Pozner's death certificate as it
8 was reproduced in the book. Very few of the arguments
9 that Defendant Fetzer raised spoke to that death
10 certificate in particular. I think he's admitted that the
11 statements that he made in the book were false and he no
12 longer subscribes to them; that he may have other reasons
13 today for making that accusation, do not excuse his
14 publication in the book. As a matter of law in Wisconsin,
15 his belief is irrelevant to the publication of a
16 defamatory statement. I think for that reason, Your
17 Honor, the Court should grant Plaintiff's Motion for
18 Summary Judgment.

19 THE COURT: Okay. Mr. Palecek, they're asking
20 for summary judgment against you as well. Is there
21 anything you'd like to say?

22 MR. PALECEK: Nothing I -- I just think that we
23 were -- we are trying to find the truth out, and I think
24 it's an important -- Jim's work is important and the book
25 is important. I think it's important for the history of

1 this country. And I -- I -- I just think that I believe
2 in what we were -- we've been doing, and that's all I have
3 to say.

4 THE COURT: Okay. Anything more from any of the
5 parties before I do my job and rule on the Motions for
6 Summary Judgment? Anybody? I --

7 MR. FETZER: Your --

8 THE COURT: -- I do this because sometimes I
9 hear later on, well, he didn't -- I hadn't -- he didn't
10 let me finish or there's one more issue. I don't want you
11 to be repetitive. I've listened. I've read everything.
12 Is there anything else?

13 MR. PALECEK: If we are to go to trial, I wish
14 it would -- the jury would be able to hear the evidence
15 rather than just have -- just the -- about money, just
16 talk about the amount of money.

17 THE COURT: I'm not going to make any decisions
18 today about what evidence is admitted or prohibited at
19 trial. Obviously, depending upon how I rule, that will be
20 a factor. But it's very important that everyone gets a
21 chance, notwithstanding the Court's ruling, to give the
22 jury some context and some background. I don't know what
23 I'll decide on that. I'll have to wait to see what the
24 parties ask.

25 Anything else?

1 MR. ZIMMERMAN: Nothing from the Plaintiffs,
2 Your Honor.

3 MR. FETZER: There are now four death
4 certificates in this case, Your Honor, where there ought
5 only to be one. That's prima facie proof of fabrication
6 and fakery. The seal of --

7 THE COURT: Okay. You're being -- that's
8 repetitive.

9 But I'll -- Look it, I think this case is
10 fairly -- very simple. I'm going to ask you another
11 question, and I -- because I want you to address just the
12 question I'm going to ask you, Dr. Fetzer. I don't think
13 there's any genuine issue over any of the material facts.
14 I think the last question that both parties are asking me
15 to decide is the legal question.

16 As Mr. Zimmerman has said, Dr. Fetzer, he's seen
17 no objection to receiving all the various copies with all
18 the various differences into evidence. Neither -- Both
19 parties say that is the fabric of the underlying
20 government records. I understand all that. I -- I start
21 with the blank form, and then I start with Exhibit 2, and
22 I work all the way up until -- considering the various
23 iterations that the Plaintiff has presented, including
24 now, Dr. Fetzer, those as well. I understand that. Those
25 are not in dispute. What they are, they speak for

1 themselves. Dr. Fetzer, you have correctly pointed out on
2 more than one occasion the differences between the various
3 copies. That does not alone indicate that any one of them
4 are false, it only demonstrates a difference.

5 For example, some copies have a state file
6 number, some don't. There's no genuine issue as to the
7 fact that some have a file number and some don't.

8 Whether the Defendants' original publications
9 are a false statement is a legal question that the Court
10 applies based on the undisputed facts. To say it in plain
11 English, Mr. Palecek or Mr. -- Dr. Fetzer, juries decide
12 facts, judges apply the law to those facts. But
13 sometimes, when there's no genuine issue about the facts,
14 the rules of civil procedure says, Well, we don't need the
15 time and expense of a jury, let the parties lay out those
16 facts, and then, Judge, you do your job and apply the law.

17 I know, actually, both parties have moved for
18 summary judgment, and there is precedent in Wisconsin that
19 when both parties move for summary judgment, that's an
20 acquiescence or even a concession there's no genuine issue
21 as to the underlying facts. Each of the parties look at
22 the facts and come to different conclusions or so they
23 suggest to the Court.

24 So Dr. Fetzer -- well, do you agree that there's
25 no genuine dispute on the underlying facts? The only

1 question is that you'd like me to conclude is based on
2 those facts, come to the legal conclusion that you and
3 Mr. Palecek did not at the time the statement was made,
4 make a false statement. Is that the question?

5 MR. FETZER: We did not make a false statement,
6 Your Honor, because our statement was substantially true.

7 THE COURT: Okay. Stop.

8 MR. FETZER: And if --

9 THE COURT: I'm putting in the context of the
10 legal question. Do you agree that there's no dispute
11 between the Plaintiff and Defendants about the facts? The
12 only dispute is whether those facts would cause me to make
13 the legal conclusion that it is or is not a false
14 statement.

15 MR. FETZER: As I called him out for it earlier
16 this morning, Your Honor, Mr. Zimmerman presented you with
17 not just one but two copies of the purported death
18 certificate, which is not the death certificate that was
19 posted by Leonard Pozner or was transmitted to Kelley Watt
20 or I published in the book. That's a very significant
21 fundamental question here. I described it then as a shell
22 game. I reaffirm that, Your Honor. There's a fraud being
23 perpetrated on the Court. As I understand it, counsel, as
24 officers of the court, have an obligation to act
25 consistent with the truth. That has not happened here in

1 this courtroom this morning.

2 THE COURT: Okay. At a certain level,
3 Dr. Fetzer, I understand your and Mr. Palecek's position,
4 having listened to your rather lengthy closing argument.
5 At a certain level, Dr. Fetzer, you say all of these death
6 certificates are a fabrication because there never was a
7 death at Sandy Hook and Noah Pozner never died; is that
8 right?

9 MR. FETZER: I'm not making that argument here
10 and now, Your Honor. In fact, the document examiners have
11 given so many good reasons. There are boxes in these
12 death certificates that were drawn in by hand, Your Honor.
13 I cannot imagine you would want to make a decision without
14 reviewing the experts' testimony.

15 THE COURT: Well I --

16 MR. FETZER: Boxes in the death certificate were
17 even drawn in by hand. That's the finding of -- of the
18 first death examiner, Wickstrom, that was reenforced by
19 Robertson. These are formidable individuals, Your Honor.
20 They have staked their representations on their reports,
21 their declarations and their affidavits that these are all
22 four fraudulent. Mr. Wickstrom, in fact, was dumbfounded
23 that the State of Connecticut was not only issuing
24 fabricated death certificates --

25 THE COURT: Hang on.

1 MR. FETZER: -- but giving different fabricated
2 death certificates to different parties to a litigation.

3 THE COURT: I think you said in there, all of
4 the death certificates are false and fraudulent.

5 MR. FETZER: Yes.

6 THE COURT: Okay. Including, all of the death
7 certificates marked as your Exhibit No. 9?

8 MR. FETZER: I'm not -- those, Your Honor, I got
9 for comparison purposes. The Shanley is obviously
10 authentic. This was a dear friend of mine.

11 But, Your Honor, this is to create a straw man.
12 I -- you asked me not to address Sandy Hook, only to
13 address the question of the Noah Pozner death certificate.
14 I obtained others --

15 THE COURT: I'm only -- You're right. It's --
16 Exhibit No. 9 is a group exhibit. The first page is Noah
17 Pozner's death certificate. Is that false or fraudulent?

18 MR. FETZER: Yeah, it's fraudulent.

19 THE COURT: Okay. Okay. So then you agree --
20 do you agree that, you know, when I say the facts are not
21 genuinely disputed, if it was a traffic accident, you'd
22 say the light was Green when I went through it and the
23 defendant -- the plaintiff would say, no, you went through
24 a red light. Whether it was Green or red, that's a
25 question of fact. Do you agree that there's no dispute

1 about the facts, you want me to conclude based on my
2 review of all the evidence that Noah Pozner's death
3 certificates were false in fabrication?

4 MR. FETZER: The Plaintiff would have you make
5 this decision on the basis of death certificates not in
6 question, that weren't published in the book, that I never
7 even saw before. I find it completely absurd, Your Honor,
8 that I should be sued for a death certificate that I've
9 never even seen prior to publication, prior to the falling
10 of the lawsuit. If that isn't a manifest legal absurdity,
11 I can't imagine what would be.

12 THE COURT: Well --

13 MR. FETZER: I've never even seen that death
14 certificate.

15 THE COURT: Okay.

16 MR. FETZER: Yes. The one in the book, that is
17 the object of the lawsuit, Your Honor. That is the
18 object. Not this other stuff that Zimmerman is bringing
19 in which is intended to mislead the Court, frankly.

20 THE COURT: Okay.

21 MR. FETZER: That's what's going on.

22 THE COURT: Okay. Dr. Fetzer, I have always
23 tried -- have I tried to treat you with the dignity and
24 respect a man of your education deserves?

25 MR. FETZER: You have, Your Honor.

1 THE COURT: So I'd only ask the same that you
2 address counsel. It's -- I try to refer to Mr. Palecek
3 and Dr. Fetzner.

4 MR. FETZER: You're right.

5 THE COURT: I would --

6 MR. FETZER: Mr. Zimmerman, indeed.

7 THE COURT: Okay. Well --

8 MR. FETZER: Your Honor --

9 THE COURT: I think --

10 MR. FETZER: -- the Court --

11 THE COURT: -- to some extent this is a
12 belabored point, but Mr. Zimmerman, just so I can sort
13 of -- to create a record, let me ask you this question.
14 It really doesn't make any difference which particular
15 iteration I look at, including the one appearing on page
16 181. The Plaintiff's position is none of them are a false
17 or fabrication. They reflect the document in its various
18 forms -- in its various forms.

19 MR. ZIMMERMAN: Yes, Your Honor.

20 There are times when we want to make sure we're
21 looking at the right version of a document to understand,
22 for example, an expert's opinion that derive from a
23 document, but its Plaintiff's position that they all have
24 the same content. The one in the book is the one we've
25 been talking about.

1 THE COURT: Okay. So Dr. Fetzer, so just so
2 you're not feeling like you're being accused of -- about
3 something you've never seen, that would not be right.
4 Let's just talk about the one in your book.

5 MR. FETZER: Yes.

6 THE COURT: I'm holding your book.

7 MR. FETZER: Yes.

8 THE COURT: The Plaintiff has responded to all
9 the aspects of this document, where it came from, how it
10 was uploaded --

11 MR. FETZER: No.

12 THE COURT: -- what -- its modifications. Are
13 there any dispute about those facts?

14 MR. FETZER: Your Honor, it's missing the state
15 certification --

16 THE COURT: No. No.

17 MR. FETZER: -- that would have been on the left
18 side.

19 THE COURT: Stop. Stop.

20 MR. FETZER: It's missing the state
21 certification at the bottom.

22 THE COURT: Dr. Fetzer.

23 MR. FETZER: It is on its face a fraudulent --

24 THE COURT: Dr. Fetzer, you've -- it's 12:30.
25 We started at 8:30. You've said on more than one occasion

1 what you want to comment about it. Well, okay.

2 This is -- there is no dispute about the facts.
3 Dr. Fetzer, I've heard loud and clear every time you've
4 said what you believe is missing or changed, what you
5 believe should cause me to conclude that it's a false
6 statement or fabrication.

7 MR. FETZER: It's a matter of Connecticut law,
8 Your Honor.

9 THE COURT: I --

10 MR. FETZER: Not even parents are allowed to
11 possess uncertified death certificates. That is an
12 uncertified death certificate. By Connecticut law, the --
13 even Pozner is not allowed to possess.

14 THE COURT: Okay.

15 MR. FETZER: It is clear on its face.

16 THE COURT: All right. Now it's my turn to
17 talk.

18 I do have some same concerns about the propriety
19 of a motion for partial summary judgment. I'm satisfied,
20 Mr. Zimmerman, you're right, the law does obligate me and
21 especially when you're talking about liability, that is a
22 conclusion that's appropriate for a motion for partial
23 summary judgment. Having concluded there's no genuine
24 issue as to the material facts, then really the only
25 question is for me to look at every aspect of the

1 criticisms that the Defendants have made -- well, let's
2 not say criticisms -- to look at every one of the
3 observations that the Defendants have made to judge
4 whether the statements made in the book and in the blog
5 are false.

6 And in that regard, although I haven't directly
7 addressed it here due to the length of the hearing, I have
8 been mindful of the Plaintiff's critiques of the
9 admissibility of certain factual propositions offered by
10 the Defendants, and the absence of authenticity of some of
11 the documents.

12 Quite honestly, Mr. Zimmerman, much of that
13 is -- those objections should be sustained, but much of
14 that is really subsidiary to the underlying question, and
15 although I understand the relevance, for purposes of
16 summary judgment, they're immaterial. This is a very
17 simple case, I think.

18 As someone who is -- although I have my own
19 opinions, those are not relevant today. The function of
20 the Court is to examine the evidence submitted by the
21 parties to determine whether there's any genuine dispute
22 and then decide what the conclusion of law should be.
23 Nothing I say here or do should give anyone the impression
24 I have any opinions on anything that's not before the
25 Court. There's been -- much has been said about maybe

1 your comment, Mr. Palecek, about search for truth and the
2 like. That's not my function today is to be the final
3 word on any of this. To the contrary, my function as a
4 circuit court judge is to address the question before the
5 court properly presented and supported by the evidence.
6 Having concluded there's no genuine dispute as to any of
7 the material facts, I conclude that the Plaintiff is
8 entitled to judgment on liability as a matter of law.

9 I've looked at the exhibits. I follow and track
10 all of the explanations that have been provided by the
11 Plaintiff as to explaining the differences between the
12 various forms and copies of the death certificates. All
13 of that makes sense to me and provide a plausible and
14 acceptable explanation for those differences. Ultimately
15 and cumulatively, they all point back to the proposition
16 that an accusation then as apparently is iterated now,
17 that the death certificate is false and fabricated, is not
18 supported by the evidence that's been presented in the
19 context of a motion for summary judgment.

20 I will also, although I did not do it before,
21 have read the Plaintiff's Motion to Strike the Expert
22 Opinions. I actually think the expert opinions, even,
23 Mr. Zimmerman, if they weren't struck, are just that,
24 someone else's opinions. Ultimately, I've made the
25 decision based on the facts.

1 I do share the Court's concern -- excuse me, the
2 Plaintiff's concerns about the various challenges to those
3 experts under the Daubert case and the Seifert case. I'm
4 not sure I need, in the context of today's proceeding, to
5 rule on them. It may be very well that that would be
6 reiterated on a motion in limine. Are you asking that I
7 rule on your motion to strike those reports?

8 MR. ZIMMERMAN: No, Your Honor. I don't think
9 it's required given the bases that you've provided today.

10 THE COURT: Okay.

11 MR. FETZER: Your Honor, for the sake of an
12 appeal, do I need to make an objection now to the Court's
13 ruling?

14 THE COURT: No. I'll tell you -- I don't give
15 advice, but I'll tell you what your options are,
16 Mr. Palecek and Dr. Fetzer.

17 Although the Plaintiffs have held on their
18 motion to strike the experts, I -- I would grant the
19 motion to strike those reports for the reasons -- those
20 opinions. I do think that under the Daubert v. Merrell
21 Dow Pharmaceutical cases, the Plaintiffs have made a
22 showing as to the propriety.

23 Why do I say that? Well, I don't want to have
24 someone come back and say, well, if the judge would have
25 reviewed the expert opinion reports -- expert opinions,

1 then that creates a genuine issue as to fact. I just
2 don't think they were helpful and I don't think they were
3 persuasive even above all the evidentiary problems they
4 present.

5 I also agree, Mr. Zimmerman, they come late and
6 provide a post hoc rationale perhaps of a justification
7 that doesn't directly address the falsity of the statement
8 at the time it was made. So for those reasons, I'm going
9 to grant the Plaintiff's Motion for Summary Judgment as to
10 liability.

11 What have we done today? In addition to the
12 ruling on the other motions, I've concluded two things,
13 that Leonard Pozner is not a public person for purposes of
14 applying the different standard that implicates the
15 concept of malice. I did that based on the facts and the
16 concession of the parties acquiescing to that. And
17 second, I've granted summary judgment on liability. The
18 case will now proceed to trial on damages.

19 I'll make such rulings as presented before the
20 Court. Pay particular attention to the Court's scheduling
21 order. Pre-trial motions are due two weeks before the
22 final pre-trial conference. Motions in limine are Latin
23 for motions to limit testimony, but if you'd like to bring
24 on a motion to seek clarification on the propriety of
25 admitting testimony, you can do that. We'll use the final

1 pre-trial conference to talk about the length of trial,
2 the issues at trial, the witnesses to be called. Keep in
3 mind also there are other requirements, if they haven't
4 come and gone, on witness lists and disclosure of expert
5 witnesses.

6 Now, Dr. Fetzner, this is not a final order for
7 purposes of appeal, because further proceedings are to be
8 had in this case. So you don't have an appeal, in my
9 opinion, as a matter of right. You do have a right to
10 what is called a permissive appeal. You can provide
11 information and fairly easily online. There's internal
12 operating procedures for Wisconsin Court of Appeals, and
13 in fact, there are some forms that you could use. The
14 decisions you have to make is whether you take what is
15 called an interlocutory appeal, what issues you'd like the
16 Court of Appeals to address.

17 You'll have to provide a notice of appeal. I
18 believe you're still required to do a docking statement.
19 And you'll also then have to fill out a statement on
20 transcript, and the statement on transcript will disclose
21 whether a transcript and what transcripts are necessary
22 for purposes of your interlocutory appeal.

23 Suffice to say that today's argument did stray
24 off into substantial factual assertions in which you've
25 asked the Court to consider and oral concessions and

1 acquiescence and do articulate the basis of this Court's
2 ruling. I believe a transcript would be required for
3 purposes of appeal, but that's in a statement that you'd
4 have to make and attest that necessary arrangements have
5 been made with the court reporter to prepare that. That
6 would be your option.

7 The only question sometimes people ask the
8 circuit court judge is, Judge, while we're doing that, can
9 we stay the proceeding in the circuit court? No request
10 has been made. We have some time. I think we're not in
11 trial until October?

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

13 THE COURT: There's enough time for the Court of
14 Appeals usually act fairly quickly on interlocutory
15 appeals. We're just going to keep moving forward. The
16 case is set. Beyond that, I'm not sure what other options
17 or information you need.

18 Do you have any questions? Mr. Palecek, do you
19 have any questions?

20 MR. PALECEK: No, I don't.

21 THE COURT: Dr. Fetzer?

22 MR. FETZER: You're suggesting, Your Honor,
23 there's an opportunity to make an appeal to stay the
24 process at this point; is that my understanding?

25 THE COURT: I'm not -- I'm not suggesting

1 anything. I'm just saying that --

2 MR. FETZER: No, that -- that there is the
3 option.

4 THE COURT: There is.

5 MR. FETZER: And that is, again, known as?

6 THE COURT: Well, it was a motion to stay
7 pending appeal. Of course, the Plaintiff has a right to
8 weigh in on that. There are various factors that you'd
9 have to satisfy to get a stay. Because of the time
10 between today and the trial and there's -- if this was
11 going to be tried next week, that might be different.
12 You'd have to demonstrate those factors and then you would
13 also have the ability if you were unsatisfied --
14 dissatisfied with my answer, you can ask the Court of
15 Appeals to stay proceedings in the circuit court as well.
16 Those are your options, that's true, if you decide to take
17 an interlocutory appeal.

18 I would say to you both that interlocutory
19 appeals are generally disfavored and not commonly granted.

20 Any other questions?

21 Well, hearing none, then Mr. Zimmerman or
22 somebody will prepare a simple just marginal order for the
23 reasons stated by the Court from the record, you probably
24 should memorialize my other rulings on the other motions
25 that have been presented.

1 Thank you very much for coming.

2 MR. ZIMMERMAN: Thank you, Your Honor.

3 THE COURT: We won't see you then until, if not
4 before for some matter brought to the Court, at the final
5 pre-trial conference.

6 My bailiff will bring the book back. And before
7 you leave, don't -- don't let anyone leave until we make
8 sure we have all the exhibits.

9 MR. FETZER: Wasn't this -- wasn't this
10 accepted, Your Honor? This is the most important evidence
11 in the entire case. It's the actual publication of the
12 death certificate in the book.

13 THE COURT: I did not know that you were asking
14 for it to be marked as an exhibit.

15 MR. FETZER: I did so, Your Honor.

16 THE COURT: Okay.

17 MR. ZIMMERMAN: No objection.

18 THE COURT: Okay. I'll have to figure out how
19 we scan in. In the new world, we don't actually keep
20 things but --

21 THE CLERK: It won't be scanned. It will be
22 treated like a CD.

23 THE COURT: Okay. We'll keep it in the record.
24 We'll mark it as an exhibit with -- what number are we on?

25 THE CLERK: This will be 10.

1 THE COURT: Ten.

2 (Exhibit 10 marked for identification and
3 received into evidence.)

4 THE COURT: Thank you very much.

5 (Proceeding concluded at 12:45 p.m.)
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1 STATE OF WISCONSIN)
 ss.)
2 COUNTY OF DANE)

3 I, COLLEEN C. CLARK, Registered Professional
4 Reporter, Official Court Reporter, Branch 8, Dane County
5 Circuit Court, hereby certify that I reported in Stenographic
6 shorthand the proceedings had before the Court on this 17th day
7 of June, 2019, and that the foregoing transcript is a true and
8 correct copy of the said Stenographic notes thereof.

9 On this day the original and one copy of the
10 transcript were prepared by pursuant to Statute.

11 Dated this 20th day of June, 2019.

12
13 Electronically signed by:

14 *Colleen C. Clark*
15 _____
16 COLLEEN C. CLARK, RPR
17 OFFICIAL COURT REPORTER
18
19

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21 does not apply to any reproduction of the same by
22 any means unless under the direct control and/or
23 direction of the certifying reporter.
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