



1 (Proceeding began at 11:10 a.m.)

2 THE COURT: Good morning. Who do I have on the  
3 phone?

4 MS. ZIMMERMAN: Good morning.

5 MR. PETERSON: Good morning.

6 MR. PETALE: Good morning, Your Honor.

7 THE COURT: All right.

8 MR. PETALE: Alexander Petale, Your Honor, for  
9 Wrongs Without Wremedies.

10 THE COURT: Can you spell your name?

11 MR. PETALE: Yes. Alexander, middle initial J.,  
12 last name Petale, P-E-T-A-L-E.

13 THE COURT: Good morning, Mr. Petale. He  
14 represents Wrongs Without Wremedies.

15 THE CLERK: Okay.

16 MR. PETALE: Good morning.

17 THE COURT: I heard Mr. Peterson, right?

18 MR. PALECEK: Mike Palecek.

19 MR. PETERSON: Yes, that's correct.

20 (Pause.)

21 THE COURT: Okay. Well let's just go through  
22 best you can. Who else is on the phone?

23 MR. FETZER: James Fetzer, Your Honor.

24 THE COURT: Defendant. Good morning,  
25 Mr. Fetzer.

1 MR. FETZER: Good morning, Judge.

2 THE COURT: Who else?

3 MR PALECEK: Mike --

4 MS. ZIMMERMAN: Good morning --

5 THE COURT: Mike -- Who else?

6 MS. ZIMMERMAN: Good morning, Your Honor. This  
7 is Genevieve Zimmerman on behalf of Leonard Pozner, the  
8 Plaintiff.

9 MR PETALE: And, Your Honor, Alexander Petale  
10 here. I believe Mike Palecek was just about to announce  
11 his presence.

12 THE COURT: Is that true? Are you on the phone,  
13 Mr. Palecek?

14 MR. PALECEK: Right. Mike Palecek,  
15 P-A-L-E-C-E-K.

16 THE COURT: All right. So we have for the  
17 Plaintiff, Genevieve Zimmerman, Attorney Zimmerman for the  
18 Plaintiff.

19 We've got for the Defendant, Mr. Palecek and  
20 Mr. Fetzer, and then we've got Mr. Petale representing  
21 Wrongs Without Wremedies; is that correct?

22 MR. PETALE: Correct, Your Honor.

23 THE COURT: And, Mr. Peterson?

24 MS. ZIMMERMAN: Correct, Your Honor.

25 THE COURT: And Reed Peterson is on the phone?

1 MR. PETALE: Yes, Mr. Peterson is the --

2 MR. PETERSON: For Wrongs Without Wremedies,  
3 Your Honor.

4 MS. ZIMMERMAN: Your Honor, this is Genevieve  
5 Zimmerman on behalf of the Plaintiff. Along with me on  
6 the telephone is my co-counsel, Mr. Jake Zimmerman, so you  
7 have two Zimmermans on the line, and also Mr. Pozner.

8 THE COURT: Good morning.

9 MR. POZNER: Good morning, Your Honor.  
10 Mr. Pozner here.

11 THE COURT: Okay. Someone else was trying to  
12 talk. Every time Mr. Peterson talks I think someone else  
13 talks at the same time.

14 MR. PETERSON: It's just like my house, Your  
15 Honor. The -- yeah, I'm for Wrongs Without Wremedies as  
16 well, Your Honor.

17 THE COURT: Okay. I knew that. And your phone  
18 is terrible. It's kind of cutting in and cutting out, so  
19 I assume Mr. Petale will do most of the talking, right,  
20 Mr. Petale?

21 MR. PETERSON: Correct.

22 MR. PETALE: Yes, Your Honor. This is  
23 Mr. Petale, I'll do the talking.

24 THE COURT: All right. Have you gotten those  
25 appearances down? Okay. So my court reporter has gotten

1 the appearances.

2 This is case 2018-CV-3122, Leonard Pozner versus  
3 James Fetzer, et al. The appearances have already been  
4 stated.

5 Good morning, ladies and gentlemen. We're on  
6 the court's calendar for a telephonic scheduling  
7 conference.

8 There are two motions having been filed. One  
9 was a Motion to Strike the Answer, filed by the  
10 Plaintiffs, pertaining to Mr. Fetzer's Answer, and then  
11 there is a Motion for Protective Order on some discovery  
12 issues.

13 I think the, although I did not get -- I did get  
14 Mr. Fetzer's response to the Motion to Strike his Answer.  
15 Ms. Zimmerman, is there anything more you'd like to say in  
16 support of your motion?

17 MS. ZIMMERMAN: Your Honor, no, we are -- I  
18 think that we're fine on the papers.

19 THE COURT: Mr. Fetzer, is there anything more  
20 you'd like to say in response to the motion?

21 MR. FETZER: I am going to submit in relation to  
22 the second motion, Your Honor, I've been working on that  
23 now. In relation to the first, I would simply reaffirm  
24 emphatically everything I presented in opposition to it.

25 THE COURT: Okay. Then I'm going to go ahead

1 and rule on the Motion to Strike the answer.

2 I'm going to deny the Motion to Strike the  
3 answer, and I'm going to deny the motion not because,  
4 Ms. Zimmerman, I disagree with your observation.  
5 Certainly, if Mr. Fetzer was an attorney licensed to  
6 practice law in the State of Wisconsin, I would reject the  
7 answer as not conforming with the applicable Rules of  
8 Wisconsin Civil Procedure.

9 Mr. Fetzer actually, interestingly enough, kind  
10 of caught the principle or at least the policies behind a  
11 Complaint and an Answer as joining the issue, even talking  
12 about the now century-old practice long since rejected,  
13 the general denial and the specific denial. But I think  
14 Mr. Fetzer accurately captured at least the concept that  
15 an Answer was required in the earliest origins of the  
16 Rules of Civil Procedure to join the issues to determine  
17 what the dispute was between the parties.

18 Certainly, Mr. Fetzer has demonstrated in that  
19 Answer that strays wildly from the four corners of the  
20 allegations set forth in the Complaint that he denies the  
21 cause of action. Therefore, in the context also of how  
22 the Answer plays out possibly on a motion for summary  
23 judgment, I'm going to look beyond the -- the formality of  
24 the pleadings and accept the Answer as joining the issues  
25 in the Complaint.

1           I do do that also giving Mr. Fetzer a little bit  
2 of an understanding as the courts are told we must under  
3 the -- by the Wisconsin State Supreme Court, that they're  
4 not to be held in some respects strictly to the Rules of  
5 Civil Procedure. And so for those reasons, I'll deny the  
6 Motion to Strike the Answer.

7           I want to keep this case moving along quickly,  
8 as, Ms. Zimmerman, you know, I went ahead and *sua sponte*  
9 and denied the Motion to Dismiss, because I think the  
10 question was accurately and fairly presented on the  
11 court's calendar this morning for scheduling, and if  
12 there's one thing that's apparent, especially having read  
13 the current discovery disputes, is we need to keep this  
14 case moving in a -- with due speed and a straight  
15 direction and on a level surface.

16           Now, Mr. Fetzer, I want to tell you though, I  
17 want to certainly admonish you, it gets harder going  
18 forward, and even though I've given you a little extra  
19 room as a *pro se* litigant on your Answer, when we get to  
20 the rules of evidence, there's no real such latitude  
21 accorded at that time. There will be no -- less so  
22 latitude on it if, in fact, your requirement to comply  
23 with the evidentiary requirements not just in trial but on  
24 the possibility of a motion for summary judgment and the  
25 requirements of an affidavit. So I know you're proceeding

1           *pro se*, as Mr. Palecek is as well, but it does get more  
2           difficult. I say to unrepresented people, the good news  
3           is you can represent yourself, the bad news is you're  
4           representing yourself. So that takes care of that.

5                         Now the Motion for Protective Order is -- I've  
6           reviewed that, Ms. Zimmerman. I thought, Mr. Fetzner, you  
7           had at least an initial response to the motion but you say  
8           you want to submit more?

9                         MR. FETZNER: Well, I do believe it's highly  
10          inappropriate, Your Honor. The -- this case, which is, of  
11          course, of extraordinary public interest, is approachable  
12          in the basis of both direct and indirect or circumstantial  
13          evidence, and in relation to the requests that have been  
14          made, it's very important to get to the heart of the  
15          matter regarding a number of key issues, in particular  
16          with regard to the identity of the plaintiff himself,  
17          which is, frankly, in dispute. So I very much hope that  
18          the Order for Protection will be denied.

19                        MR. PETALE: Your Honor, Alexander Petale,  
20          California. May I be heard?

21                        THE COURT: Yes, please.

22                        MR. PETALE: Your Honor, I believe my client, as  
23          a publisher, is very much interested in the commencing  
24          discovery with a free spirit based on certain federal  
25          Supreme Court cases, in particular, New York Times v.



1           Sullivan and Gertz v. Robert Welch Publishing. We have a  
2 right to determine Mr. Pozner's character or ability to  
3 characterize him as a quasi-public figure, and the  
4 discovery is very important regarding that aspect, Your  
5 Honor. So I think it's proper and it's according to  
6 Wisconsin statutes regarding discovery, that privilege --  
7 nonprivileged relevant matter is certainly discoverable.  
8 So I think the Court should allow a free hand at this  
9 early stage of the proceeding.

10           THE COURT: Okay.

11           MR. ZIMMERMAN: Your Honor?

12           THE COURT: Yes.

13           MR. ZIMMERMAN: This is Mr. Zimmerman. May I  
14 weigh in for just a moment?

15           THE COURT: Okay.

16           MR. ZIMMERMAN: We haven't received any  
17 discovery from Wrongs Without Wremedies or Mr. Petale, so  
18 if there's something they want to serve, we're obviously  
19 happy to work with them and make sure we're producing  
20 nonprivileged relevant information. But the protective  
21 order was focussed on a particular category of requests  
22 that don't seem to have anything to do with New York Times  
23 v. Sullivan or Gertz v. Robert Welch or Firestone or any  
24 of the other Supreme Court cases that have anything to do  
25 with defamation.

1           But, you know, I think that's outside of the  
2 four corners of our motion, because they haven't served  
3 discovery. And I'll reiterate, the Plaintiffs are more  
4 than happy to work with Mr. Petale and his client and make  
5 sure that we're providing them with information that is  
6 discoverable under the Wisconsin rules.

7           MR. PETALE: Your Honor, Alexander Petale from  
8 California.

9           THE COURT: Yes.

10          MR. PETALE: If I may be heard?

11          THE COURT: Yes.

12          MR. PETALE: Your Honor, after I was admitted  
13 *pro hac vice*, Mr. Fetzer indulged me by providing the  
14 discovery that he had sent, and it was my understanding, I  
15 may be wrong because I do not represent Mr. Fetzer, but I  
16 believe that in response to Mr. Fetzer's discovery, a  
17 motion was filed without a specific -- without specific  
18 objections to each form of discovery, and I don't think  
19 that's proper. I think each particular question or each  
20 particular request for admission should be addressed  
21 individually, and that objections made to it and the  
22 grounds for that objection stated in writing before the  
23 opposing party immediately files the motion objecting to  
24 all of the discovery en masse. I don't think that's  
25 proper procedure in Wisconsin to refuse to answer or

1 object to any of the individual questions and then just  
2 jump immediately to a motion to -- for protective order, a  
3 blanket protective order regarding discovery.

4 THE COURT: Mr. --

5 MR. PETERSON: And, Your Honor, Peterson here.

6 THE COURT: Yes, Mr. Peterson. I was actually  
7 thinking because as you know, I was thinking of you and  
8 your observations as licensed to practice law in  
9 Wisconsin. Indeed, the motion in advance of an answering  
10 to a set of admissions is provided for under the Wisconsin  
11 Rules of Civil Procedure, is not unusual, and even then  
12 under the new Rules of Civil Procedure, under 804.0 -- I'm  
13 looking at it here -- Well, under Chapter 804 which  
14 interjects into the Wisconsin Rule for the first time come  
15 this year, this proportionality concept.

16 And so, Mr. Petale, I don't -- I welcome you to  
17 the State of Wisconsin. Certainly, the weather in  
18 California has to be better than here, but I'm not sure  
19 what you say is exactly how my understanding of the  
20 practice of law has been for the last four decades.

21 Mr. Peterson?

22 MR. PETERSON: Your Honor, I do believe the  
23 local rules require -- I'm sorry -- Local rules require  
24 parties to meet and confer before a motion is before the  
25 Court on discovery disputes.

1 THE COURT: Well, that's true, Mr. -- That's  
2 true, Mr. Peterson. But Mr. Petale was suggesting that  
3 before bringing on a general motion for protective order,  
4 he believed that in Wisconsin that the Plaintiffs would  
5 have had to provide a response to the individual requests  
6 to admit or request for production of documents, interpose  
7 those objections then and then contemporaneously file a  
8 motion for protective order. I know not any rule or  
9 regulation or local rule that requires that formality, do  
10 you, Mr. Peterson?

11 MR. PETERSON: No, Your Honor. That hasn't been  
12 my experience, although, it has been my experience that --  
13 that -- I guess I haven't ever dealt with a blanket  
14 objection to discovery. Generally, my experience,  
15 actually very similar to what Attorney Petale has  
16 suggested, is that there are usually objections to  
17 specific discovery requests and -- and then the parties  
18 confer about those specific objections before a motion is  
19 brought.

20 THE COURT: Mr. -- Mr. or Ms. Zimmerman, have  
21 you attempted to negotiate with Mr. Fetzer your concerns  
22 about the scope of his request to admit?

23 MR. ZIMMERMAN: Yes, Your Honor, we did, and the  
24 affidavit that was submitted along with the Motion for  
25 Protective Order includes an e-mail string that reflects

1 our attempts to meet and confer. This is an issue I think  
2 that we're going to need some guidance from the Court on.  
3 We have attempted to do what I think's described as an  
4 informal consultation under Dane County Rule 319, and  
5 Mr. Fetzer said he would prefer to keep all communication  
6 formal and in writing through the court. So we included  
7 the e-mail string on the affidavit saying we attempted in  
8 good faith to have a meet and confer.

9 And then the Motion for Protective Order itself  
10 goes through request by request, group by group and  
11 describes the reasons that we think they are outside of  
12 the scope of Wisconsin Rules. So I don't think it's  
13 accurate to describe it as a blanket request for  
14 protective order but instead is focussed on the  
15 shortcomings of each individual group or set of requests  
16 by number.

17 In addition, we did provide responses on the  
18 first set of requests for admissions. There are answers  
19 to the ones that we found nonobjectionable. The only ones  
20 we raised in the protective order were the ones we thought  
21 were so outside of the rules that they didn't require a  
22 response at this time.

23 THE COURT: Okay.

24 MR. FETZER: Your Honor? Fetzer. If I might?  
25 This case is of such exceptional interests that I believe

1           it would be in the public interest for discovery, although  
2           it's not normally done through the e-filing system, be  
3           done so in this case so that there's a comprehensive  
4           publicly available record of the development of this case.  
5           I have already, from my first exchange with Mr. Zimmerman  
6           over the phone, had my position misrepresented by  
7           Mr. Zimmerman, because I immediately objected to him to  
8           the copy of the death certificate that had been provided  
9           with the complaint was so illegible as to be legally  
10          useless. I asked about obtaining a better copy. He told  
11          me that I could do so the same way anyone else, by writing  
12          to the State of Connecticut and submitting a fee. Now  
13          that didn't sound right to me, and I'm rather concerned,  
14          given that this is the core of his case, that he has not  
15          taken efforts to remedy that obvious defect, wherein my  
16          responses I already provided five different copies of the  
17          death certificates that are in better condition, more  
18          legible, more legally significant than the copy he  
19          submitted with his original complaint.

20                 So I'm very troubled that Mr. Zimmerman wants to  
21                 in an informal context do things that might not be  
22                 recorded and therefore escape the attention of the public.  
23                 I'm therefore very concerned to appeal, if it would be  
24                 possible, for discovery to proceed through the e-filing  
25                 system, and I will be glad to do everything I can to

1 accommodate his concerns. But as I read his many filings,  
2 basically, he wants to exclude any evidence that  
3 demonstrates that Sandy Hook was, in fact, a FEMA drill,  
4 an exercise -- a mass casualty exercise involving --

5 THE COURT: Okay. Mr. Fetzer, I'm going to cut  
6 you off just, if I might. I apologize.

7 MR. FETZER: Sure.

8 THE COURT: Let me address your concerns. First  
9 of all, you said something obliquely. Under the Wisconsin  
10 Rules of -- under the Wisconsin Constitution, all court  
11 proceedings are in public. I'm sitting in an empty  
12 courtroom but yet the doors are unlocked and anyone having  
13 an interest in this case is free to come. There is nobody  
14 here.

15 And then so in response to your question about  
16 doing discovery in the e-filing, actually, the answer is  
17 no. The Legislature has changed the rules and you are not  
18 to file your discovery requests or file your answers to  
19 discovery requests. That used to be the procedure 30  
20 years ago. It is not the procedure in Wisconsin and it is  
21 not welcomed by the court for various reasons. One is,  
22 it's inconsistent with the Rules of Civil Procedure, and  
23 second, it burdens the court system with having to keep  
24 track of those documents. And so you make a point that,  
25 well, is that outside the purview of those that might be

1 of interest? Yes, but under the Constitution's  
2 requirement the courts be open, clearly, it envisions that  
3 there are part -- processes in the prosecution and defense  
4 of a case that don't occur in open court.

5 I want to also assure you, I will neither  
6 diminish or accentuate what anyone thinks might be the  
7 public's interest in this case. The public's interest in  
8 this case is not my concern. My concern is providing for  
9 the Plaintiff and the Defendants a fair, impartial forum  
10 for the Plaintiff to prosecute its -- his cause of action,  
11 having the burden of proof, and allowing the Defendants a  
12 full, fair, and impartial opportunity to defend  
13 themselves. My job, ladies and gentlemen, is not to set  
14 precedent in the media nationally or within Wisconsin.  
15 It's to simply allow the parties to utilize the court  
16 system to adjudicate their claims. In fact, there are  
17 rules under Supreme Court Rules Chapter 20 that caution  
18 lawyers to be careful about pretrial publicity and as it  
19 might affect this case.

20 So, you know, the other problem is, here's my  
21 general observation. I don't -- Mr. or Ms. Zimmerman,  
22 there are certain of those questions -- admissions that  
23 were asked that I agreed were completely outside the scope  
24 of the issues in this case as I could envision them, that  
25 is not relevant to the issues as I understand them and not



1           likely to lead to the discovery of relevant and admissible  
2           evidence, and so therefore, an objection would be  
3           sustained.

4                       However, in some instances, as I looked through  
5           the -- the answer, the questions could have so simply been  
6           denied -- the admission could have so simply been denied,  
7           that it would have been quite easy to simply say deny and  
8           then put the -- put the Defendant back on his obligation  
9           to prove the matter.

10                      I do know that you were asking for relief from 4  
11           through 7, 9 to 23, 26 to 42, and 51 to 59. Assuming  
12           those requests for admissions have nothing whatsoever to  
13           do with the case, don't you agree though that some of them  
14           could have easily been denied or alternatively, as allowed  
15           in the Wisconsin Rules of Civil Procedure, to simply state  
16           that the Plaintiff does not have sufficient knowledge or  
17           information upon which to either admit or deny the  
18           allegation after and upon some reasonable inquiry, Mr. or  
19           Ms. Zimmerman?

20                      MR. ZIMMERMAN: Yes, Your Honor. This is  
21           Mr. Zimmerman. And, absolutely, we're happy to serve  
22           denials. I think our goal was to try to make sure that we  
23           were addressing discovery wholistically given that there  
24           were requests for admissions served and also document  
25           requests, but we're happy to serve denials on those. It

1 would be no problem. We'll do that forthwith.

2 THE COURT: Well, it just occurred to me that --  
3 that here in the structure of discovery, now more so in  
4 2019 in Wisconsin with the limitations on the number of  
5 interrogatories, I can only surmise in Wisconsin and  
6 elsewhere the legislatures or congress did not see a  
7 wisdom in imposing a numeric limitation on the request to  
8 admit, because in a sense, admissions assist the Court's  
9 function and increase judicial efficiency at least as to  
10 the issues that the parties have admit.

11 Now, the consequences for not admitting  
12 something, you should come at the end of the case, that  
13 is, if the party who propounded the admission can prove  
14 that the Defendant had no factual basis to deny the  
15 allegation, then in theory, the propounding, here,  
16 Mr. Fetzer, could say I want you to -- the Plaintiff to  
17 prove the costs in proving the factual allocation --  
18 factual assertion that was in the admission.

19 I must confess that in now 40 years, 30, 40 --  
20 well, over 30 years of practice, I've never actually seen  
21 that come to fruition at the end of a trial, and in fact,  
22 I've never even heard of it being applied to a *pro se*  
23 litigant because, in theory, there are no at least  
24 attorney fee costs in proving the matter.

25 And, you know, the alternative is under

1 admissions/answers, yeah, you have to make reasonable  
2 inquiry. What that is, I'm not sure. It depends upon  
3 what's asked. But no one would expect someone who does  
4 not have the knowledge to either admit or deny to do more  
5 than that, make a reasonable inquiry, if it's not an issue  
6 that's very hard to ascertain then do so. If so -- if  
7 not, then you say -- all you need to say for my purposes  
8 is upon reasonable investigation you're neither able to  
9 admit nor deny.

10 When you do that, then it would allow me,  
11 Mr. Zimmerman, to say, well, okay, there are some facts  
12 here that are propounded, which very well may be true, but  
13 that you don't want to go out on a limb and say they're  
14 true because the exposure it might place upon you for the  
15 costs to do that. Like I said, when I looked through the  
16 admissions, it seemed to me that from what I understand,  
17 having read the allegations in the Complaint and from what  
18 I understand with regard to the motion -- the position of  
19 the parties on the motion to dismiss, it just seemed to me  
20 that setting aside the principle of the matter and the  
21 patent potential non-relevance, most, if not all, were  
22 simply -- just simply not true, at least as I surmise what  
23 Mr. Pozner's position would be.

24 How would you like to --

25 MR. ZIMMERMAN: Yes, Your Honor.

1 THE COURT: How would you like to proceed?

2 MR. ZIMMERMAN: Sorry. Yes, Your Honor. We are  
3 happy to serve formal responses that include denials or  
4 lack of information on the request for admission.

5 We would ask that the Court still evaluate the  
6 request for production. Now our goal in a protective  
7 order, Your Honor, was to make sure that there was some  
8 boundary or constraint of some kind on the scope of  
9 discovery that is exacerbated in this case by what  
10 happened immediately after we filed the case, which is,  
11 Defendant Fetzer had a blog post that included my client's  
12 social security number in it.

13 We will work with the other parties I think to  
14 find a way to produce confidential information in this  
15 case and make sure it stays confidential, but I think part  
16 of that is to make sure that rediscovery doesn't turn into  
17 a complete fishing expedition. So if Your Honor is  
18 willing to indulge us and look at the request for  
19 production and hopefully give us some guidance about what  
20 is in or out, we would appreciate that.

21 THE COURT: And which exhibit is that attached  
22 to your affidavit?

23 MR. ZIMMERMAN: Give me just a moment. I  
24 believe it's Exhibit B. I will double check. And there  
25 is a short section of the brief that addresses those.

1 THE COURT: Have you -- is one of the exhibits a  
2 draft response? Okay. No matter.

3 Mr. Fetzner, you asked for this production of  
4 documents; is that correct?

5 MR. FETZER: Yes, I did, Your Honor.

6 THE COURT: And would you like me now to rule on  
7 Mr. Pozner's request for protective order, essentially  
8 saying that for reasons he'll argue, these requests to  
9 produce documents he should be relieved of that  
10 obligation?

11 MR. FETZER: Well, I would prefer to go through  
12 them seriatim, Your Honor, and respond to each  
13 specifically to ensure that there's no significant  
14 suppression of relevant evidence here, which is a --

15 THE COURT: Okay. Mr. -- Mr. Zimmerman, I'm  
16 looking at Exhibit B. I have it on my screen. Tell me  
17 which ones you want me to rule on.

18 MR. ZIMMERMAN: Your Honor, our request is that  
19 you rule on all of them. None of these relate to the  
20 allegations of defamation in this case.

21 THE COURT: Okay. Hang on a second.

22 MR. FETZER: Well --

23 THE COURT: Hang on a second. I should stand  
24 corrected. Exhibit B is the admissions. I have to --  
25 it's Exhibit C, correct?

1 MR. ZIMMERMAN: I apologize.

2 THE COURT: Okay. Let's go through them.

3 MR. FETZER: Well --

4 THE COURT: Mr. Fetzer wants the Plaintiff to  
5 produce the original birth certificate for Noah Samuel  
6 Pozner. What's wrong with that one, Mr. Zimmerman?

7 MR. ZIMMERMAN: This case is about the question  
8 of whether the death certificate is counterfeit or  
9 forgery. The birth certificate has nothing to do with the  
10 death certificate. It is a completely unrelated document.  
11 It goes to the question of whether my client's son ever  
12 existed, which is a part of Mr. Fetzer's theory, but it  
13 does not make it more or less likely that the death  
14 certificate is an authentic duly, you know, issued  
15 document of the State of Connecticut.

16 THE COURT: Well Mr. Fetzer, apparently as I  
17 understand, maybe he, Mr. Palecek, or maybe even Wrongs  
18 Without Wremedies is trying to prove that their allegation  
19 that the child's death certificate is a forgery is based  
20 on the fact that they claim the person never existed.

21 Now, I agree, Mr. Zimmerman, for the reasons  
22 I'll go into now, that the plaintiff has carefully drafted  
23 the Complaint in such a way so as to make much of what I  
24 believe Mr. Fetzer is asking for to be not relevant and  
25 not likely to lead to the discovery of relevant and

1           admissible, and I would -- I'm going to endeavor to apply  
2           that filter to the request for production of documents.

3                       So when I look at the request for production of  
4           documents, the question then becomes does it make the  
5           claim that Noah Pozner's death certificate is a forgery  
6           more or less likely. It seems to me that if, in fact,  
7           Noah Samuel Pozner has no birth certificate then that  
8           might be relevant or likely -- likely to lead to the  
9           discovery of relevant facts the Defendants hope to present  
10          to the Court that support their claim that his death  
11          certificate was a forgery.

12                      Now you could say I don't have it, and then  
13          under the Wisconsin Rules of Civil Procedure, if you don't  
14          have something you don't have to go get it. They can go  
15          get it from whatever state the child was born. But why  
16          would that not be likely lead to the relevant and  
17          admissible to the extent that no birth certificate might  
18          make it more likely that the death certificate doesn't  
19          refer to a person, because generally feeling -- the  
20          feeling is every person has a birth certificate,  
21          Mr. Zimmerman?

22                      MR. ZIMMERMAN: I think, Your Honor, is that our  
23          concern is that there's -- there's no end to the -- to the  
24          potential downstream request. We're happy to produce a  
25          copy of the birth certificate or if he wants to see, you

1 know, an original with a stamp on it to allow him to  
2 inspect the original birth certificate. What we don't  
3 want to do though is have him then go back and say you've  
4 forged that too or the State of Connecticut has forged  
5 that too. So we would appreciate some guidance on how far  
6 down the chain of uncertainty this line of discovery would  
7 go.

8 THE COURT: Well --

9 MR. ZIMMERMAN: But --

10 THE COURT: -- Mr. Zimmerman, that's a fair  
11 question but that's outside really the scope and ability  
12 of the Court today. My job is not to look that far down  
13 the line. My job is as, I guess like Chief Justice  
14 Roberts says, is to call the pitches as they cross the  
15 home plate.

16 Mr. Fetzer, what makes you believe that the  
17 Plaintiff has the original birth certificate?

18 MR. FETZER: Well, it would be very odd, Your  
19 Honor, if he's in fact the father of the alleged decedent  
20 that he not have the original birth certificate. Of  
21 course, it's my contention that there is neither a Noah  
22 Pozner nor a Leonard Pozner.

23 THE COURT: I understand that, Mr. Fetzer, but  
24 do you have your original birth certificate, because I  
25 don't have mine. My -- the original birth certificate, I



1 believe, at one time resided in the -- with the Wisconsin  
2 Department of Health and Human Services maintained by the  
3 Bureau of Vital Records. I might have a certified copy of  
4 the original which is maintained by the state, but I know  
5 of no one that walks around today with the actual original  
6 birth certificate, do you?

7 MR. FETZER: Well, with the circumstances of the  
8 alleged decedent's death, he was only six years old. I  
9 think the probability of the parent, if this were all  
10 legitimate, having a death certificate -- I mean, a birth  
11 certificate under those circumstances would be far higher  
12 than normal. And clearly, Your Honor, if there is no  
13 birth certificate that increases the probability of the  
14 death certificate being a fabrication.

15 THE COURT: Okay. I'm going to rule on these  
16 much -- again, I mention Chief Justice Roberts, although I  
17 want to note he was, to my knowledge, never a trial court  
18 judge, so actually doing the things that I do are a little  
19 different than the things that he does.

20 Mr. Zimmerman, do you know whether or not  
21 Mr. Pozner has the original birth certificate?

22 MR. ZIMMERMAN: I do not, and I'll make that  
23 inquiry of him. I do -- I think he probably has a  
24 certified copy which under Connecticut law is treated as  
25 the original as long as it's a certified stamped copy.

1 Your Honor, I'm not sure that the original birth  
2 certificate leaves the department of vital records. I  
3 think, in my experience, every birth certificate or death  
4 certificate, frankly, that goes out the door is a  
5 certified copy.

6 THE COURT: Okay. Do you think -- look it, do  
7 you think there would come a time in this case,  
8 Mr. Zimmerman, in which you would actually introduce Noah  
9 Pozner's birth certificate as evidence?

10 MR. ZIMMERMAN: I can't fathom why that would  
11 happen, Your Honor. Our goal is to focus on the  
12 allegations that are before us and not go down paths where  
13 we're trying to show that kids were murdered in a school.  
14 And, I appreciate the question. We are trying not to fly  
15 in a medical examiner to show pictures of what happened in  
16 a scene because that's -- that's not the case that's  
17 before the Court.

18 THE COURT: Okay.

19 MR. ZIMMERMAN: But again --

20 THE COURT: I'm going -- I'm going to grant the  
21 protective order because to the extent you don't have the  
22 original birth certificate then it doesn't have to be  
23 applied -- it doesn't have to be produced. If for a  
24 strange reason you do have the original birth certificate,  
25 then you would produce it.

1 MR. ZIMMERMAN: I will inquire --

2 THE COURT: Number 2 --

3 MR. FETZER: Your Honor? Your Honor?

4 THE COURT: Mr. --

5 MR. FETZER: I believe Leonard Pozner is  
6 actually on the phone. He was introduced earlier by name.

7 THE COURT: That's not --

8 MR. FETZER: He could --

9 THE COURT: That's not -- Mr. Fetzer, that's not  
10 the way we handle these court proceedings.

11 MR. FETZER: Oh, okay.

12 THE COURT: Parties can listen in. This is not  
13 an opportunity for me to engage in an evidentiary hearing.

14 MR. FETZER: I understand.

15 THE COURT: Look it, you wrote these out. I've  
16 read all that you've drafted so far, Mr. Fetzer. I'm not  
17 going to underestimate your ability and the command of the  
18 English language, and you simply asked for a copy of the  
19 original birth certificate.

20 MR. FETZER: Yeah.

21 THE COURT: If -- if it exists, they will  
22 produce a photocopy of the original birth certificate. If  
23 they don't have the original birth certificate then you're  
24 not going to get anything. They're simply going to say on  
25 the statement as an officer of the court, signed by

1 Attorney Zimmerman, to say that the Plaintiff does not  
2 currently possess the original birth certificate.

3 Number 2. Produce the original birth  
4 certificate for Arielle Pozner. For the same reason, if  
5 they have the original birth certificate, then they'll  
6 produce it, if they don't have the original birth  
7 certificate, then there's nothing to produce.

8 MR. PETALE: Your Honor?

9 THE COURT: Number 3 --

10 MR. PETALE: Your Honor, Alexander Petale. May  
11 I be heard?

12 THE COURT: Why would you be heard? These are  
13 not your requests.

14 MR. PETALE: Well, it would be a request that I  
15 would anticipate I would be making on behalf of Wrongs  
16 Without Wremedies, Your Honor.

17 THE COURT: That you're going to ask them to  
18 produce the original birth certificate?

19 MR. PETALE: No, Your Honor. I'm going to be  
20 asking for a certified copy --

21 THE COURT: Well that's not --

22 MR. PETALE: -- of the birth certificate.

23 THE COURT: Mr. Petale, the only way I know to  
24 do my job is to, you know, answer this particular  
25 question. I don't try to do the defense lawyer's job, the

1 plaintiff's lawyer's job. I don't give advisory opinions.  
2 Nothing I say here or do would prevent someone from asking  
3 a different question or asking for a different production.

4 Number 3. Produce the original report card of  
5 Noah Pozner for kindergarten. Mr. Fetzner, what's the  
6 relevance of that other than you think that if the person  
7 doesn't exist then he wouldn't have a report card?

8 MR. FETZER: Yes, Your Honor. I -- I can see  
9 that the request for originals was a mistake on my part.  
10 Certified copies would certainly be satisfactory in those  
11 cases where originals are unavailable or unlikely to be  
12 available. My apology for that misunderstanding on my  
13 part. I -- it was too strong a request, and I understand  
14 the Court's review here, and I appreciate it completely.

15 THE COURT: But, Mr. Fetzner, there's not going  
16 to be a time in which Mr. Zimmerman on behalf of his  
17 clients will ever produce a certified copy. If you'd like  
18 a certified copy, then that's something you're going to  
19 have to get. You may at some point in time, if you ask  
20 for it, Mr. Petale asks for it, you might get a photocopy  
21 of a birth certificate that bears the certification, but  
22 it is not under the Rules of Civil Procedure in  
23 Wisconsin --

24 MR. FETZER: Yes.

25 THE COURT: -- it's the Plaintiff's obligation

1 to go out and get things for you.

2 I'm going to go ahead --

3 MR. FETZER: I understand -- -- I understand,  
4 Your Honor.

5 THE COURT: I want to work through these. The  
6 original report card from kindergarten is so far beyond  
7 the relevance of this case in terms of the truth or  
8 falsity of the -- of the death certificate, I'm going to  
9 grant the request -- grant the protective order on -- for  
10 Number 3.

11 Number 4 asks for report cards. Again, I'm  
12 going to grant for those reasons Number 4.

13 Number -- for now some reason we jump to Number  
14 7.

15 MR. FETZER: Yeah, I don't know why, Your Honor.  
16 That was just a mistake.

17 THE COURT: Okay.

18 MR. FETZER: Let me see.

19 THE COURT: Mr. -- Number 7. He wants -- he  
20 wants -- I don't know, does -- does -- Mr. Zimmerman, does  
21 Mr. Pozner have any records relating to the burial  
22 expenses of his child?

23 MR. ZIMMERMAN: I don't know offhand, Your  
24 Honor, but I'm happy to ask for them and see if he has  
25 those.

1 THE COURT: I'm going to deny the request for  
2 protective order on question Number 7. It seems to me  
3 that that would possibly likely lead to discovery of  
4 relevant information. Again, if the Plaintiffs -- if the  
5 defense theory is that this is a fraudulent death  
6 certificate because no human existed, then in theory,  
7 possibly, if there were no expenses related to a funeral  
8 or burial, that might be consistent with their theory.

9 Number 8. Produce all records regarding the  
10 oversight of the funeral by Rabbi Shaul. I don't know  
11 what that even means. I'm going to grant the Motion for  
12 Protective Order on the grounds that this request is vague  
13 and unambiguous. All records regarding the oversight of  
14 the funeral by the rabbi.

15 Number 9. Produce all original official  
16 paperwork for the transfer of the body from Fairfield.  
17 Again, for the reasons stated in 1 and 2, I'm concerned  
18 about this concept of original. Do you know what he's  
19 talking about, Mr. Zimmerman, on Number 9?

20 MR. ZIMMERMAN: I don't, Your Honor. Though  
21 I'll say just in the interest of being helpful, to the  
22 extent there's a request for the original and counsel is  
23 willing to work with us on certified copies or inspecting  
24 an original, we'll always do that. We'll always work with  
25 them on that.

1 THE COURT: Okay. Number 9 -- Number 9.

2 Apparently, the -- Mr. Pozner's child was transferred for  
3 a funeral -- for his funeral to Seattle? Is that what I  
4 surmise, Mr. Zimmerman?

5 MR. ZIMMERMAN: I don't know, Your Honor.  
6 That's not something my client and I have ever talked  
7 about. I'm happy to ask him about that and --

8 THE COURT: Well I'm going --

9 MR. ZIMMERMAN: -- figure it out.

10 THE COURT: I'm going to deny 9. And I know  
11 Mr. Pozner is on the phone and I understand and appreciate  
12 the delicacy of the kinds of discussion we're having, that  
13 the issues in this case affect the real lives of real  
14 people, at least with regard to Mr. Pozner -- although,  
15 there may actually be a suggestion that Leonard Pozner  
16 doesn't exist either, so maybe I should hold back on that.

17 But I understand the carefully crafted cause of  
18 action in the Complaint being limited to the truth or  
19 falsity of the death certificate, and for the reasons that  
20 I stated in regard to Number 7, Number 9 seems to likely  
21 lead to the discovery of relevant and potentially  
22 admissible evidence if there was no human and therefore,  
23 no death and a fabricated death certificate, then whether  
24 or not there are records relating to the circumstances  
25 with regard to the funeral and the burial expenses do seem



1 to be relevant. So if there is some paperwork about the  
2 child's transfer from Connecticut to Washington, that  
3 should be produced.

4 Number 10. Birth certificate for Leonard Pozner  
5 who was allegedly born in Latvia. That motion for  
6 protective order is going to be denied -- excuse me,  
7 granted. The cause of action is the truth or falsity of  
8 Noah Pozner's existence not the Plaintiff, Leonard Pozner.

9 Mr. Petale?

10 MR. PETALE: Yes, Your Honor.

11 THE COURT: Do you have -- as an officer of the  
12 court and having been allowed the privilege to appear in  
13 Wisconsin, do you have or possess any facts which would  
14 support the belief or allegation that Leonard Pozner, the  
15 plaintiff in this case, is not a natural person?

16 MR. PETALE: No, Your Honor. I -- but -- I have  
17 seen photographs of the man. I've heard his voice. I,  
18 just like any other individual, I'm perceiving it from a  
19 perspective which is just out from the media.

20 THE COURT: Okay.

21 MR. PETALE: I have no personal knowledge.

22 THE COURT: I understand that, but that -- you  
23 see how I carefully framed the question.

24 MR. PETALE: Yes.

25 THE COURT: At this point I don't generally make

1 any person -- natural person who brings a case before the  
2 court prove that they actually exist in the absence of  
3 some admissible evidence to think that the plaintiff is  
4 committing a fraud upon the court. So Leonard Pozner's  
5 existence is not an issue in this case and is not likely  
6 to lead to the discovery of any relevant information with  
7 regard to the --

8 MR. FETZER: Your Honor, may -- may I address  
9 that?

10 THE COURT: Who's talking?

11 MR. FETZER: Fetzner, Your Honor.

12 THE COURT: Okay.

13 MR. FETZER: Defendant Fetzner. We have done  
14 national searches using two national search engines,  
15 there's not a Leonard Pozner in the United States by those  
16 two search engines. We don't even know the -- the legal  
17 address of Leonard Pozner. He has given interviews in  
18 which he said he was forced to move eight or nine times,  
19 but no one would even know where he lives in order to move  
20 eight or nine times. He's engaged in lawsuits before  
21 where he refused to show up when he was directed by the  
22 judge --

23 THE COURT: Okay. Mr. Fetzner, all of that is  
24 not properly and relevant before the Court. Let me just  
25 ask this to Mr. or Ms. Zimmerman. Is your client, Leonard

1 Pozner, a natural person?

2 MR. ZIMMERMAN: Yes.

3 THE COURT: All right. That's enough for me to  
4 then grant the Motion for Protective Order for Number 10  
5 and Number 11.

6 MR. PETALE: Your Honor, may I be heard,  
7 however, Your Honor?

8 THE COURT: Who's talking?

9 MR. PETALE: Alexander Petale, Your Honor.

10 THE COURT: Okay, Mr. Petale.

11 MR. PETALE: Yes. The fact that Leonard Pozner  
12 is a natural person does not preclude the possibility that  
13 he has a different name or is proceeding pursuant to an  
14 identity different from his original identity at the time  
15 of his birth, Your Honor, and I think that is Defendant  
16 Fetzer -- Fetzer's point of that particular discovery.

17 THE COURT: Well --

18 MR. FETZER: Your Honor --

19 MR. PETALE: Numerous -- There are many, many  
20 cases in the law where people are proceeding under an  
21 assumed name, whether it is for nefarious or for a lawful  
22 purpose, and I --

23 THE COURT: Okay. Mr. Zimmerman, do you know  
24 what they're talking about?

25 MR. ZIMMERMAN: I -- I may, Your Honor. I'm not

1           sure. My client was born with the name Eliezer  
2           (phonetic). He went through a legal name change in the  
3           United States after he moved here. I don't know whether  
4           that's what they're going after. That's not something  
5           that anyone's ever raised with us before.

6                    THE COURT: Mr. Zimmerman, as an officer of the  
7           court and having assisted Leonard Pozner prepare and file  
8           a complaint in this court, to the best of your knowledge,  
9           is Leonard Pozner the Plaintiff's legal name?

10                   MR. ZIMMERMAN: Yes, Your Honor.

11                   THE COURT: Okay. Then based on that  
12           representation to the Court in the absence of some other  
13           evidence to the contrary, I'm granting the Motion for  
14           Protective Order.

15                   We're not getting into the birth certificates of  
16           the Plaintiff, we're not getting into the birth  
17           certificates of Veronique Haller.

18                   We're not getting into the official nursing  
19           license of Veronique Haller Pozner. I'm granting the  
20           protective order with regard to 12.

21                   I'm not getting into the marriage license of  
22           Veronique Pozner and Leonard Pozner. I'm granting it as  
23           to Number 13.

24                   I'm not getting into whether or not Veronique  
25           Haller or Leonard Pozner had fertility treatments. That

1 is so far beyond the scope and of anything relevant in  
2 this case. Even though it theoretically might go to the  
3 existence of the individual, I think it is objectionable  
4 on a court's balancing test and it's a grotesque invasion  
5 of the Plaintiff's privacy.

6 As to 15, I'm going to grant it. I don't even  
7 know who -- Well, let's see, is Reuben Vabner Leonard  
8 Pozner's original name, Mr. Zimmerman?

9 MR. ZIMMERMAN: No, Your Honor.

10 THE COURT: Who's --

11 MR. ZIMMERMAN: That is Veronique Haller's  
12 ex-husband.

13 THE COURT: Okay. That's -- Why is that  
14 relevant, Mr. Fetzer?

15 MR. FETZER: Because we have proof that, in  
16 fact, Noah Pozner is a fiction made out of photographs of  
17 Michael Vabner. We have many photographs of the man who  
18 calls himself Lenny Pozner with the person we have  
19 determined to be Michael Vabner, who has been presented  
20 falsely as the decedent, Noah Pozner, which has led to the  
21 inference that the reason those many photographs exist,  
22 and they've been widely published around the world, is  
23 because he is the actual father --

24 THE COURT: Okay.

25 MR. FETZER: -- of --

1 THE COURT: Okay. Mr. Zimmerman, now this  
2 appears -- Mr. -- I don't even know this, Mr. Pozner is no  
3 longer married to Veronique Pozner?

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

5 THE COURT: Does -- does -- I assume Mr. Pozner  
6 would not have Reuben Vabner's birth certificate, would  
7 he?

8 MR. ZIMMERMAN: I can ask. I can't fathom a  
9 situation where that would be the case, Your Honor.

10 THE COURT: I think --

11 MR. ZIMMERMAN: It's not his child.

12 THE COURT: I think that's the pragmatic  
13 approach to Number 15. I don't -- I guess --

14 MR. FETZER: May I just ask one caveat, Your  
15 Honor?

16 THE COURT: Who's talking?

17 MR. FETZER: Fetzer again, Your Honor. If -- if  
18 we are able to establish that Noah Pozner actually is a  
19 fiction made of photographs of Michael Vabner, may we  
20 return to the question of the identity of the plaintiff in  
21 this case, because --

22 THE COURT: Well, Mr. -- Mr. Fetzer, I assume  
23 you -- your position is there is a Reuben Vabner, correct?

24 MR. FETZER: Yeah. Yes.

25 THE COURT: Okay. So as I -- what would be the

1 possible relevance of Reuben Vabner's birth certificate?

2 MR. FETZER: Oh, just to establish his existence  
3 as Reuben Vabner. That's --

4 THE COURT: Well --

5 MR. FETZER: -- I agree that in this -- in this  
6 first effort of mine for these demands for the production  
7 of documents, I'm agreeing with your judgments, Your  
8 Honor, with the sole consideration that I would hope that  
9 it would be possible to return to the question of the  
10 identity of the Plaintiff. There's a whole history  
11 here --

12 THE COURT: I understand, Mr. --

13 MR. FETZER: -- of --

14 THE COURT: I understand, Mr. Fetzer. And I  
15 apologize for cutting you off. One of the things judges  
16 have to do is keep things moving along.

17 MR. FETZER: Yeah.

18 THE COURT: And I apologize for the rudeness of  
19 interrupting people.

20 MR. FETZER: No problem.

21 THE COURT: I'm going to go ahead and grant the  
22 Motion for Protective Order. I mean, in the future,  
23 Mr. Zimmerman, on these kinds of things it's just a lot  
24 easier, you make your objection and then state  
25 affirmatively that he doesn't even possess it. I can't

1 see the possible relevance of Reuben Vabner's birth  
2 certificate on the -- on the question of whether Leonard  
3 Pozner is a natural person or not.

4 More importantly, I don't see the relevance of  
5 the marriage license between Veronique Vabner and Reuben  
6 Vabner. I'm going to grant it as to 16.

7 If it's not apparent to you right now,  
8 Mr. Zimmerman, I'd like you to draft the order for the  
9 Court's signature as I work through these -- these  
10 objections.

11 Number 17. The original official paperwork  
12 related to Veronique's alleged conversion to Judaism. I  
13 don't see the possible relevance of that. Im going to  
14 grant a protective order on 17.

15 18. The divorce decree between Veronique and  
16 Reuben Vabner, not relevant. Granted.

17 19. The birth certificate of Sophie Pozner,  
18 born 22 months before Noah and Arielle. Granted. Motion  
19 for Protective Order granted.

20 20. Produce the original text message allegedly  
21 received on December 14, 2012 by Veronique Pozner,  
22 informing her of a purported shooting of Sandy Hook.

23 Mr. Fetzer, why would -- why do you believe  
24 Leonard Pozner would have Veronique Pozner's text  
25 messages, especially since he appears not to even be



1 married to her anymore?

2 MR. FETZER: Well these are all related to, you  
3 know, the factuality of the alleged narrative of the  
4 shooting, Your Honor. I agree with the -- what Your Honor  
5 is doing here, because I see and I agree completely that  
6 many of these were far too specific and invasive.

7 THE COURT: I'm granting as to -- I'm  
8 granting -- at this point in time I agree with the  
9 Plaintiff's characterization that whether or not there was  
10 a shooting at Sandy Hook, whether it was a conspiracy  
11 contrived by politicians or government agencies is not  
12 relevant in this case and not likely to lead to the  
13 discovery of relevant. I mean, whether it was a  
14 fabrication or not, the sole question before the Court in  
15 the context of the Complaint in this case is whether the  
16 allegation that Noah Pozner's birth certificate was  
17 fabricated, whether that's true or not. And certainly --

18 MR. FETZER: But -- but --

19 THE COURT: -- I am -- I am going to endeavor to  
20 allow the Defendants to try to prove the truth of their  
21 assertion that the birth certificate was fabricated. The  
22 circumstances regarding --

23 MR. PETALE: Your Honor, if --

24 THE COURT: The circumstances regarding the  
25 events are so far beyond the scope of the Court's inquiry

1 in this matter, the Court will grant the Motion for  
2 Protective Order onto 20.

3 The Court will grant 21 -- protective order on  
4 21 regarding the original paperwork for the hiring and  
5 staffing of Veronique Pozner as an oncology nurse where  
6 she was working.

7 22. The original paperwork from changing  
8 Veronique Pozner's name is completely irrelevant.

9 23. Producing the original paperwork for the  
10 divorce of Veronique Pozner to Leonard Pozner is not  
11 relevant.

12 I mean, I think there is some paperwork, I don't  
13 know where Mr. Pozner was divorced, but generally  
14 speaking, in Wisconsin, all that record and paperwork is  
15 actually available -- some of it is available online on  
16 the CCAP but available by the court.

17 I don't believe Leonard Pozner has to produce  
18 his divorce documents that he had with regard to his wife  
19 in a case proving the existence of his child and the  
20 truthfulness of the birth -- of the death certificate.

21 25. Records related to any real estate  
22 transactions. Again, that's going to be granted.

23 MR. FETZER: Sure.

24 THE COURT: We're not getting into, based on the  
25 facts of this case and the allegations currently before

1 the Court, as to whether Leonard Pozner is a natural  
2 person.

3 Now, you raised the issue, Mr. Petale, and I  
4 asked you the question. If you come back to me as an  
5 officer of the court after having some consultation with  
6 Mr. Peterson as your local counsel and you can prove to me  
7 that the -- or show me some evidence, which if true, and  
8 submitted as an officer of the court that the Plaintiff's  
9 lawyers are -- are committing a fraud on the court by  
10 presenting a cause of action in Dane County Circuit Court  
11 purportedly on behalf of a fictional person that does not  
12 exist, then I might as a counterclaim allow you to go into  
13 that.

14 But this case, from what -- from what I know at  
15 this point, is no different than any other case, and I've  
16 never *sua sponte* or entertain simply just a suggestion  
17 that it's the Plaintiff's burden to prove that he actually  
18 exists. In the absence of any counterclaim and any  
19 evidence to that extent, then I'm not going to allow the  
20 parties to stray wildly into that direction.

21 Number 25 fails for the same reason as to any  
22 legal transactions that he or his ex-wife may have had.

23 26. Records related to the use of a photo of  
24 the purported victim of the alleged Taliban massacre in  
25 Pakistan. I have no idea what that is about. That will

1 be granted.

2 MR. FETZER: Well --

3 THE COURT: 27.

4 MR. FETZER: Well --

5 MR. PETALE: Your Honor?

6 MR. FETZER: Your Honor, there's -- there's a --  
7 Fetzer here again. There's a history here, Your Honor,  
8 that this photograph showed up two years later. In other  
9 words, Noah Pozner's a most unusual little boy because he  
10 was not only reported to have died on 14 December 2012 in  
11 Sandy Hook, Connecticut but again in Peshawar, Pakistan a  
12 year -- two years and two days later his photograph shows  
13 up again.

14 THE COURT: Well, Mr. Fetzer --

15 MR. FETZER: So I --

16 THE COURT: Mr. Fetzer. Mr. Fetzer. Discovery  
17 is not your only avenue to gather the facts that you think  
18 support your defense of the case. If you have a --  
19 presumably, since you're asking for it, you have a copy of  
20 some photograph, and the burden is on you or your  
21 co-defendants to try to admit that document. You can't  
22 sort of upend the rules of evidence by saying that I know  
23 that this document that appeared in a Pakistani newspaper  
24 somewhere or some newspaper regarding a massacre in  
25 Pakistan I'm going to try to get from Mr. Pozner.

1 I mean, I envision there's going to be a lot of  
2 things you'll try to do to defend yourself and that's  
3 fine. That's not why I'm here. I'm not saying these  
4 things -- I'm not making rulings here on the rules of  
5 evidence. I'm trying to do that I'm required to do on a  
6 request for a protective order to balance off the issues  
7 in the Complaint as I understand it today and to put the  
8 context of the discovery in its reasonable position based  
9 on the facts of the case.

10 So if there is some point that you want to make,  
11 you can go ahead and make the paper. It is simply, I  
12 think, irrelevant and unduly burdensome for you to ask  
13 Mr. Pozner to give a photograph of something that happened  
14 allegedly and fraudulently with regard to a massacre that  
15 may or may not have existed.

16 Number --

17 MR. FETZER: Well --

18 THE COURT: -- 27 regarding all complaints by  
19 H-O-N-R. What is that, Mr. Fetzer?

20 MR. ZIMMERMAN: Your Honor --

21 MR. FETZER: That's an organization created by  
22 the Plaintiff in this case that he has used to take down  
23 websites and photographs and anything related to Sandy  
24 Hook, in my opinion, in an effort to suppress information  
25 that would expose what happened there as having been an

1 elaborate charade. This is highly relevant, Your Honor,  
2 that 27, 28, and 29, I believe, are much more significant  
3 than the previous, where I agree, and it was my  
4 inexperience that I was -- those were crafted improperly  
5 and my mistake, for which I apologize, and I am in  
6 agreement, basically, with all the determinations you've  
7 made to this point.

8 THE COURT: Well let me read it carefully and  
9 try to understand it. You're asking the plaintiff,  
10 Leonard Pozner, to produce all records relating to any and  
11 all complaints by H-O-N-R. Now that's an acronym.  
12 Mr. Fetzner, do you know what it stands for?

13 MR. FETZER: Well, it's the name he chose to  
14 give his -- his own organization where --

15 THE COURT: Okay. So it's not -- you don't know  
16 if it's an acronym or not?

17 MR. FETZER: Well, it's supposed to mean honor,  
18 no doubt, Your Honor. It's just a contraction of supposed  
19 to be honor because he's supposed to be standing up for  
20 the honor of the Sandy Hook victims, but --

21 THE COURT: Okay.

22 MR. FETZER: -- in my judgment.

23 THE COURT: And is this a -- is this just a name  
24 given to something or does this something have a -- is  
25 this a legal entity, HONR?

1 MR. FETZER: Well, exact legal status is very  
2 interesting and that's what this seeks to obtain is  
3 records regarding it, because we have evidence that he  
4 actually has 26 websites that he uses to attack those who  
5 are pursuing Sandy Hook through -- just to put it in the  
6 most simple language. There's a whole lot going on here,  
7 Your Honor.

8 THE COURT: Well how do I know that Mr. Pozner  
9 has any relationship to H-O-N-R?

10 MR. FETZER: Oh, he won't deny it nor will his  
11 attorney. I mean, that's straight forward, Your Honor.  
12 Just ask.

13 THE COURT: Mr. Zimmerman.

14 MR. ZIMMERMAN: Yes, Your Honor. The HONR  
15 Network is a 501.c.3 non-profit that Mr. Pozner founded  
16 after the Sandy Hook incident.

17 THE COURT: Okay. Mr. Fetzer, you're going to  
18 have to get documents directly from the 501.c.3 entity,  
19 and I say that for two reasons. One is, when you're  
20 asking for documents from the entity, which you are,  
21 because you're asking for complaints filed by H-O-N-R, the  
22 advantage down the line of the rules of evidence is if you  
23 get them from H-O-N-R directly in discovery, that then  
24 assists if, in fact, you want to make them admissible  
25 later on. Whether or not Mr. Pozner has any role in

1 H-O-N-R is immaterial, at least to the extent that it's a  
2 duly promulgated registered 501.c.3.

3 MR. FETZER: Thank you, Your Honor. I  
4 understand.

5 THE COURT: Number 28. Produce all court  
6 records of any lawsuits by Pozner has brought against  
7 Sandy Hook skeptics. What's the relevance of that,  
8 Mr. Fetzer?

9 MR. FETZER: Well it's further evidence that his  
10 role here is really to conceal the truth about Sandy Hook.  
11 He's brought a series of lawsuits against quite a few  
12 individuals. I think the record of his role as a litigant  
13 is highly relevant to understanding who this man really  
14 is.

15 THE COURT: And for the reason you just stated,  
16 I'm granting the Motion for Protective Order.

17 Mr. Fetzer, I want to -- the reason I'm going  
18 through this somewhat lengthy exchange on the Motion for  
19 Protective Order on the -- on the request for production  
20 of documents is, it was because Mr. Zimmerman I think was  
21 suggesting that through this court's rulings you would get  
22 a sense of what I think is the appropriate course of  
23 discovery.

24 I'm not going -- this case is not going to be a  
25 lawsuit over the circumstances or alleged fabrication of



1 the Sandy Hook event. Whether or not Mr. Pozner -- or  
2 what he's doing with regard to Sandy Hook is not relevant  
3 or germane to the issues in this case. So let me right  
4 now disabuse you of any notion that I expect Mr. Pozner  
5 either to take the bait and try to prove the existence of  
6 Sandy Hook or not.

7 The Plaintiff, I understand, has drafted a very  
8 carefully, discreet, and narrow cause of action. The only  
9 issue in this case is whether Noah Pozner's birth  
10 certificate is real or not and if it's real --

11 MR. PETALE: Your Honor --

12 THE COURT: -- the --

13 MR. PETALE: -- death certificate.

14 THE COURT: I'm sorry. Death certificate. I'm  
15 sorry. Thank you for correcting me. His death  
16 certificate.

17 Whether or not Sandy Hook ever happened or not  
18 is not relevant to this -- the -- the truthfulness or the  
19 accuracy of the death certificate. Now, I understand  
20 the -- the Defendants' overall theory in believing that it  
21 never happened, and I'm not going to take the bait and let  
22 this case go down that -- that path and into that rabbit  
23 hole.

24 Whether or not Sandy Hook ever happened is for  
25 another day in another place. The only question for me is

1 to guide the parties into engaging in discovery that  
2 either proves the death certificate was -- was true, was  
3 real, was accurate and legitimate or not. So I'm not  
4 concerned with Mr. Pozner's litigation against, quote,  
5 Sandy Hook skeptics. That's not relevant and not likely  
6 to lead to the discovery of anything relevant that will be  
7 admitted in this court.

8 Number 29. As to any records of donations  
9 solicited or collected by Alexis Haller. Don't know who  
10 that is. It's never been mentioned. I don't really --  
11 concerned over whether someone is -- someone else is  
12 collecting money for the Pozner family because of the  
13 alleged death of Noah Pozner.

14 Nothing I say here or do prevents you from  
15 engaging in discovery to Alexis Haller, and unless until  
16 such time Alexis Haller comes in for protective order,  
17 what Alexis Haller may or may not have done, that's up to  
18 you to inquire of him or her.

19 Number 30. All records or donations received by  
20 Pozner and Veronique Pozner in sympathy for alleged death  
21 of Pozner. I believe that's unduly burdensome.

22 I mean, I understand a loose theory that if they  
23 received donations or didn't receive donations, I mean,  
24 you could have -- a real person could die and not get any  
25 donations or a fake person could die and it could be so

1 fake that even they got donations. Whether or not there  
2 were donations by others over the death of this either  
3 real or fabricated person is simply not relevant.

4 For those reasons, I have granted in part and  
5 denied in part for the Motion for Protective Order.  
6 Mr. Zimmerman will draft an order for the Court's  
7 signature.

8 THE CLERK: You skipped 24.

9 THE COURT: 24, my clerk says I missed. 24.  
10 Produce the original text message that was originally sent  
11 to Alexis Haller by Veronique Pozner informing him that  
12 there had been a shooting. So Alexis Haller. Who's that,  
13 Mr. Fetzer?

14 MR. FETZER: Alexis? Alexis?

15 THE COURT: Yeah.

16 MR. FETZER: Well it's an attempt to disentangle  
17 what appears to be a synthetic family. Your Honor, I  
18 agree with all of your rulings in relation to this thus  
19 far.

20 If we're turning to the second -- the other  
21 exhibit, the Second Request for Admissions, those I regard  
22 as far more important and relevant to the case as you are  
23 characterizing it here. So I -- I'm willing to withdraw  
24 those requests that you have so specified --

25 THE COURT: Okay.

1 MR. FETZER: -- as problematical to the case. I  
2 have no problem withdrawing that.

3 THE COURT: Okay. I'll grant the Motion for  
4 Protective Order on 24.

5 You should still, notwithstanding the  
6 withdrawal, Mr. Zimmerman, you should for the Court's  
7 record grant them -- draft the order for the Court's  
8 signature.

9 My understanding --

10 MR. ZIMMERMAN: Yes, Your Honor.

11 THE COURT: My understanding on the  
12 admissions --

13 MR. PETALE: Your Honor, may I be heard?

14 THE COURT: Hang on.

15 MR. PETALE: May --

16 THE COURT: Hang on. Mr. Zimmerman, I  
17 understand as to the admissions, you're going to go back  
18 and revise your answers to the admissions in that if there  
19 is an objection I think to how you have responded to the  
20 admissions, then you'll either bring on a second motion  
21 for protective order or the defendant will bring on a  
22 motion to compel. Is my understanding correct, was that  
23 the plan, Mr. Zimmerman?

24 MR. ZIMMERMAN: Absolutely, Your Honor.

25 THE COURT: Okay. Mr. Petale?

1 MR. PETALE: Your Honor, may I be heard?

2 THE COURT: Mr. Petale?

3 MR. PETALE: Yes. Your Honor, I believe the  
4 Court denied the protective order as to the funeral  
5 expenses, the burial expenses, and denied as to Number 9  
6 as well. So I believe there were documents which  
7 Mr. Fetzer did request that the Court agreed should be  
8 produced.

9 THE COURT: Yeah, that's why I said I granted it  
10 in part and denied it in part. Mr. Zimmerman will draft  
11 the order and your characterization is correct. There  
12 were a piece of -- of what Mr. Fetzer had asked for that I  
13 understood the relevance and as such I denied the Motion  
14 for Protective Order, notwithstanding Mr. Fetzer's seeming  
15 withdrawal of the request in its entirety.

16 MR. PETALE: Well --

17 MR. FETZER: I agree with Mr. Petale, Your  
18 Honor, that I did not mean to --

19 THE COURT: No problem.

20 MR. FETZER: -- exclude those that you had  
21 granted to me.

22 THE COURT: I didn't --

23 MR. FETZER: So we're good. I understand.

24 THE COURT: I didn't construe it that way.

25 Mr. Petale, anything final you want to say to

1 the Court?

2 MR. PETALE: Yes, Your Honor. I think that  
3 the -- the fact that the Court is interpreting the subject  
4 matter of the Complaint so narrowly is not taking into  
5 consideration the fact that at the very beginning of the  
6 Complaint it is alleged as fact that Noah Pozner was  
7 killed at the Sandy Hook Elementary School by a mass  
8 murderer. So I think that is a subject matter of this  
9 Complaint.

10 And if -- I think if you narrow the scope of the  
11 action as to whether or not Leonard Pozner produced a  
12 death certificate which was a forgery, it's a little bit  
13 too narrow, Your Honor, because the scope of the Complaint  
14 is somewhat bigger than that. I mean, if there's an  
15 official in the State of Connecticut that is producing  
16 fake certificates, that's really not within the control of  
17 Mr. Pozner. So I think the subject matter of the  
18 Complaint is actually whether the Defendants defamed  
19 Leonard Pozner by claiming that the death of Noah Pozner  
20 was a staged event.

21 THE COURT: No, I don't --

22 MR. PETALE: So --

23 THE COURT: Mr. -- Mr. Petale, I'll let  
24 Mr. Zimmerman --

25 MR. PETALE: Yes.

1 THE COURT: -- I do not construe the cause of  
2 action set forth in Count 1, paragraph 21 through 30, and  
3 Count 2, paragraph 31 through 39, and then Count 3,  
4 Conspiracy, 40 to 43, as having a factual basis, the  
5 circumstances regarding Noah Pozner's death, but that  
6 those three counts simply are focussed on the proposition  
7 that the assertion by the Defendants that the birth --  
8 excuse me, the death certificate was a forgery, was a  
9 fabrication, was a lie are defamation.

10 So I am not concerned with necessarily the  
11 circumstances and the larger issue with regard to the  
12 things that these -- that the Defendants might want to get  
13 into, but I am construing the cause of action as set forth  
14 in the three counts in the Complaint in that fashion.

15 Mr. Zimmerman, did you intend in the Complaint  
16 to make a question of fact the circumstances surrounding  
17 Noah Pozner's death relevant to the defamation claim?

18 MR. ZIMMERMAN: No, Your Honor, we did not.  
19 Your read of the Complaint is exactly correct. The only  
20 question here is whether the death certificate is a  
21 forgery, fabrication, counterfeit. It's not the  
22 circumstances of Mr. Pozner's son's death.

23 THE COURT: And Mr. Petale, I understand that  
24 your Defendants' defense as with regard to -- and  
25 certainly Mr. Fetzer's and Mr. Palecek's defense is that

1 the -- their claim that the birth certificate is false as  
2 predicated on the Defendants' claim that Noah Pozner never  
3 existed, is not a natural person, and therefore, if you  
4 can prove that the truthfulness of the statement, then  
5 that's an ultimate defense to the defamation.

6 Now I know there's also an underlying issue as  
7 to intent and state of mind under the Sullivan case, but,  
8 Mr. Petale, I am taking what I believe to be an  
9 appropriate interpretation giving due credence to the care  
10 in which the Plaintiff drafted this civil complaint.

11 MR. PETALE: But it -- but, Your Honor, may I be  
12 heard?

13 THE COURT: Heard on -- on what motion? What is  
14 before the Court?

15 MR. PETALE: The issue of the scope of the  
16 Complaint, Your Honor.

17 THE COURT: There's no motion --

18 MR. PETALE: The Court has --

19 THE COURT: There's no motion now before the  
20 Court. I've ruled on the Motion to Dismiss, I've ruled on  
21 the -- on the Motion for Protective Order, and I ruled on  
22 the -- the Motion to Strike the answer. There's no other  
23 pending motion before the Court.

24 We've also discussed the --

25 MR. PETALE: Well there was the --



1 THE COURT: We -- What?

2 MR. PETALE: There was quite a discussion on the  
3 issue of the scope of the allegations so that we could  
4 refine our discussion regarding what is -- what is and is  
5 not relevant within the scope of the discovery, Your  
6 Honor.

7 THE COURT: Okay.

8 MR. PETALE: So --

9 THE COURT: So Mr. Petale -- Mr. Petale the --

10 MR. PETALE: Yes.

11 THE COURT: -- reason why I engaged in that  
12 discovery is there's no other way for me to rule on a  
13 Motion for Protective Order than to climbing out on a  
14 limb, a branch of a tree which purports to understand what  
15 the Plaintiff's cause of action is and what the defense.  
16 Now to the extent that these issues come up at the earlier  
17 stages of the case then the Court has sufficient knowledge  
18 if they come up later.

19 I've ruled on the Motion for Protective Order as  
20 I best understand the facts of the case and for large part  
21 I believe that the requests are either not relevant or  
22 that they're overburdensome, they're unduly burdensome and  
23 not likely to lead to the discovery of relevant and  
24 admissible evidence.

25 Your client, Mr. Petale, neither you nor

1 Mr. Peterson have submitted any requests. I advise you to  
2 give some thought to my comments as to how I view this  
3 case, but if you think that you want to engage in  
4 discovery and Mr. Zimmerman wants to answer, then I don't  
5 need to get involved any further.

6 I rule on pending motions. I don't give a lot  
7 of advice to guide the parties on what they're going to do  
8 tomorrow.

9 Having dispensed with all the motions, I'd like  
10 to then go off the record and schedule this case to  
11 completion. Is there anything else anyone wants to put on  
12 the record before I discharge --

13 MR. FETZER: Yes.

14 THE COURT: -- my court reporter?

15 MR. FETZER: Yes, Your Honor. Your Honor, this  
16 is Defendant Fetzer. May I understand the clarification  
17 between two different issues then.

18 The line of argument I've introduced that Sandy  
19 Hook was an elaborate hoax in which no one died and  
20 therefore any death certificate for any alleged decedent  
21 is a fabrication is not relevant, as I understand, but  
22 proof that Noah Pozner himself is a fiction, for example,  
23 manufactured out of photographs of Michael Vabner, his  
24 purported older stepbrother, is a relevant matter?

25 THE COURT: I don't know what to say,

1 Mr. Fetzer. You know, again, look, this case is -- is not  
2 that complicated. Mr. Leonard Pozner has sued you,  
3 Mr. Fetzer, sued you, Mr. Palecek, and sued Wrongs Without  
4 Wremedies because he says he can meet his burden of proof  
5 in proving that your statement that the death certificate  
6 of Noah Pozner was a fabrication was not true. And that  
7 under the common law or the claim of defamation in  
8 Wisconsin that he's entitled to damages. The Plaintiff  
9 has a burden of proof on the defamation claim. All the  
10 circumstances --

11 MR. FETZER: Which was --

12 THE COURT: All the circumstances with regard to  
13 what else happened with regard to other people and  
14 elsewhere --

15 MR. FETZER: Your Honor --

16 THE COURT: -- are --

17 MR. FETZER: Your Honor, that's not -- Go ahead.  
18 My -- my apologies.

19 THE COURT: Are issues I know you guys all  
20 sincerely and earnestly, except Mr. Pozner, perhaps not,  
21 all the Defendants want to get into and make this case be  
22 about --

23 MR. FETZER: Your Honor --

24 THE COURT: -- but that's not how I view the  
25 case.

1 MR. FETZER: Your Honor, does the Plaintiff not  
2 have the obligation to prove that his son actually died,  
3 in other words, that this death certificate is authentic?  
4 In the absence of which it seems to me he has no case.  
5 That he bears the burden of proof that he had a son  
6 claimed Noah Pozner who died at Sandy Hook for which --

7 THE COURT: No.

8 MR. FETZER: -- that death certificate is  
9 authentic?

10 THE COURT: You were close, Mr. Fetzer. You  
11 were close. I agree, and, Mr. Zimmerman, you correct me  
12 if I'm wrong, the Plaintiff has the burden in proving the  
13 defamation, the truth of the facts as set forth in the  
14 death certificate, that is, it was not a false -- falsity  
15 and fabrication, that there was a person who lived named  
16 Noah Pozner and that Noah Pozner died. You agree with  
17 that, Mr. Zimmerman?

18 MR. ZIMMERMAN: Yes, Your Honor. I think that's  
19 an accurate description of what we understand our burden  
20 to be.

21 THE COURT: But, Mr. Fetzer, you went one step  
22 further. You felt -- you said that Mr. Zimmerman, on  
23 behalf of his client, had to prove that his child died at  
24 Sandy Hook. I don't care where -- I mean, I don't want to  
25 say I'm cruel, but it's not really the Court's concern the

1 circumstances of his death or anything that anyone thinks  
2 about Sandy Hook or not. Mr. --

3 MR. FETZER: And -- and --

4 THE COURT: Mr. Pozner has to prove that his  
5 child died and that the birth certificate was legitimate.  
6 I don't want to --

7 MR. FETZER: But, Your Honor --

8 THE COURT: -- keep going on. The Court's --  
9 we're into the -- now we're well into the court's lunch  
10 hour. My staff is still here. I'd only like to attend to  
11 the issues that are currently before the Court.

12 MR. FETZER: May I just add one point, Your  
13 Honor? Frankly --

14 THE COURT: Mr. Fetzer?

15 MR. FETZER: -- the Defendant is going to argue  
16 the birth certificate is a fabrication -- the death  
17 certificate is a fabrication, that Noah Pozner is a  
18 fiction that was made out of photographs of another child  
19 when he was younger, and explain the context within which  
20 this took place just in order for the Court -- for the  
21 jury to understand, for it to make it intelligible what's  
22 going on here.

23 THE COURT: Well, Mr. Fetzer, I'm not ruling on  
24 motions in limine. I'm not telling you what the trial is  
25 about. I'm ruling on the Motion for Protective Order as I

1 understand it today having carefully considered the  
2 precise words you chose in your request for production of  
3 documents. You do what you think you need to do and  
4 certainly so will Mr. Petale, and then I'll rule on the  
5 motions as they're filed at the time.

6 Is there anything else anyone wants to put on  
7 the Court's record?

8 MR. PETALE: Yes, Your Honor. I don't want a  
9 ruling on the initial discovery to have an effect that the  
10 Court has -- has already ruled on these issues if we're  
11 attempting discovery that is relevant and material to the  
12 issues of the case based on a prior ruling that, in my  
13 opinion, in some situations may have been too broad, Your  
14 Honor. I think that the discovery -- that the framing of  
15 the issue in the Complaint is just beyond whether Noah  
16 Pozner died and the birth certificate is -- is genuine.  
17 It's -- the introduction of the Complaint specifically  
18 says this is "a parent's worst nightmare" that on --

19 THE COURT: Okay. Mr. --

20 MR. PETALE: -- December 14th --

21 THE COURT: Mr. -- Mr. Petale, your -- your  
22 admonishment is duly noted.

23 I'm going to go off the record now. We've  
24 spent --

25 MR. PETALE: Thank you.

1 THE COURT: -- more than enough time on the  
2 pending motions. I want to schedule this case.

3 MR. PETERSON: Your Honor? I'm sorry, Peterson  
4 here, and I know the Court wants to get off the record.  
5 Are we still on the record, Your Honor?

6 THE COURT: Yeah, we are. But, Mr. Peterson,  
7 what are -- I mean --

8 MR. PETERSON: Okay. Very briefly, Your Honor.

9 THE COURT: Well, no. No. I mean, I've turned  
10 to Mr. Petale. Who's arguing on behalf of Wrongs Without  
11 Wremedies? You are, Mr. Petale?

12 MR. PETALE: I am Your Honor.

13 MR. PETERSON: Well, Wrongs Without Wremedies  
14 has two attorneys.

15 THE COURT: No, Mr. Petale has. I mean, this  
16 is -- a local practice is two lawyers representing one. I  
17 mean, I've asked you some questions. Is this point that  
18 you need to make so incredibly important, Mr. Peterson,  
19 that we should continue?

20 MR. PETERSON: I was going to suggest that in  
21 the order, if the Court is narrowing the issue to simply  
22 the issue of the death certificate, that that be stated in  
23 the order.

24 THE COURT: Okay. We're going to go off the  
25 record for scheduling.

1 (Off-the-record discussion.)

2 THE COURT: Let's go back on the record. Go  
3 back on the record. We've scheduled this case.

4 Mr. Palecek brings up an issue of whether I  
5 should allow the Defendant leave to amend the answer to a  
6 suit or counterclaim for abuse of process. Your response  
7 to that, Mr. Zimmerman?

8 MR. ZIMMERMAN: Your Honor, I honestly have no  
9 idea what the basis for that would be.

10 THE COURT: Well, let's do this. Originally I  
11 was going to -- I expected something different. I think I  
12 can tell you what the basis is. If he thinks he can  
13 get -- if the jury finds that Noah Pozner never existed  
14 and the birth certificate -- excuse me, the death  
15 certificate is a fabrication, then -- then obviously,  
16 without a counterclaim, the case is over. You don't get  
17 any damages. You're done.

18 He's going to say that they want damages,  
19 because they can -- I don't know if there's an additional  
20 element to abuse based on intent, probably so, that  
21 Mr. Pozner knew the birth certificate -- excuse me, I  
22 always say that -- death certificate was a fabrication and  
23 brought this action knowing it was false in the  
24 fabrication solely for the purpose of harassing the  
25 Defendants, causing them damages. That doesn't seem to me



1 to add any additional witnesses, no additional time, just  
2 gives an argument of whether if the defense can meet that  
3 burden, whether they're entitled to some remuneration.  
4 Does that accurately describe, Mr. Petale, what you're  
5 thinking?

6 MR. PETALE: Yes, Your Honor. There's an abuse  
7 of process. It's essentially a fraud upon the court that  
8 this claim that Mr. Pozner is being defamed and that the  
9 death certificate is genuine is -- it is the purpose of  
10 the abuse of process is that these facts were put forth,  
11 the fact of a genuine death certificate was put forth as a  
12 part of a misrepresentation to the Court.

13 THE COURT: Okay.

14 MR. PETALE: And we are --

15 THE COURT: I understand it.

16 MR. PETALE: -- on behalf of the Defendants --

17 THE COURT: I'm going to give you ten -- I'm  
18 going -- Here's what I'm going to do to keep this thing  
19 moving along. I'm going to give you ten days -- I'll give  
20 the Defendants -- all of the Defendants ten days to  
21 finalize their answers and assert whatever counterclaims  
22 they deem fit or cross-claims, if you want to sue each  
23 other.

24 Mr. Zimmerman, go ahead and look at what the  
25 amended complaint asserts against Mr. Pozner. Honestly,

1 if it is just a counterclaim within the same kind of  
2 transaction and occurrence as set forth in the Complaint,  
3 adding no witnesses, really sticking close to the central  
4 issue of whether the death certificate is a falsity or a  
5 fraud, then I'm inclined to allow it and you don't then  
6 need to do anything. If you think that it's not relevant  
7 somehow or another or a problem or not recognizes the  
8 statutory common law then you can move to strike it and  
9 then I'll brief it and we'll decide it then.

10 MR. ZIMMERMAN: Yes, Your Honor. We'll take a  
11 look at whatever they send and go from there. Presumably,  
12 we'll have a responsive pleading due if it's a  
13 counterclaim, but we'll endeavor to turn that around as  
14 quickly as we possibly can so we can keep discovery moving  
15 and keep the Court's schedule.

16 THE COURT: All right. Anything else anyone  
17 wants to bring to the Court's attention before we finish  
18 up for this afternoon?

19 MR. ZIMMERMAN: Your Honor, just one small piece  
20 of housekeeping.

21 THE COURT: Is that you, Mr. Zimmerman?  
22 Mr. Zimmerman?

23 MR. ZIMMERMAN: Yes, Your Honor. I apologize.  
24 I should have announced myself. Yes, it is, Your Honor.  
25 On the draft order to be submitted, would you like that

1 submitted as a Word document and do we e-mail that to your  
2 clerk?

3 THE COURT: You submit it -- go ahead and file  
4 it under the e-filing as a Word document. I hold it for  
5 ten days under the court's local rule. If I get -- if I  
6 get an objection as to its form then I might go into the  
7 Word document and make what are the changes I think are  
8 appropriate or have such further proceeding as I think is  
9 necessary considering what objections there might be.

10 I would only ask that -- Mr. Zimmerman, you  
11 consult with Mr. Petale. Send a copy maybe as a courtesy  
12 to Mr. Fetzer and Mr. Palecek. And, Mr. Petale, you  
13 should get back if you think Mr. Zimmerman has not  
14 accurately transcribed in the Court's order what my exact  
15 ruling is then you can certainly let the Court -- let him  
16 know and hope to come to an agreed draft, redraft, or let  
17 me know.

18 Now remember, Mr. Fetzer, Mr. Palecek, the order  
19 itself is nothing more than a memorialization of what I  
20 ruled. I've got a pretty good memory if it comes in, but  
21 if we get into an argument about the accuracy of the order  
22 drafted by Mr. Zimmerman, I often and likely require the  
23 objecting party then to purchase the transcript from my  
24 court reporter so we can all read and hear what exactly I  
25 said in determining whether what Mr. Zimmerman writes is

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accurate.

MR. PETALE: Understood, Your Honor. Alexander Petale.

THE COURT: All right. Anything further from any of the parties?

MR. PETALE: Nothing further, Your Honor, from Alexander Petale.

MR. FETZER: Thank you very much for your time, Your Honor.

MR. ZIMMERMAN: Nothing from the plaintiffs, Your Honor.

THE COURT: All right. Thank you very much. I'm going to hang up on you. Have a good rest of your day.

MS. ZIMMERMAN: Thank you, Judge.

(Proceeding concluded at.

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 11th day  
7 of March, 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 15th day of March, 2019.

12  
13 Electronically signed by:

14 Colleen C. Clark  
15 COLLEEN C. CLARK, RPR  
16 OFFICIAL COURT REPORTER  
17  
18  
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20 The foregoing certification of this transcript  
21 does not apply to any reproduction of the same by  
22 any means unless under the direct control and/or  
23 direction of the certifying reporter.  
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