ORAL ARGUMENT BRIEFING NOTES
Defendant James Fetzer
17 June 2019

The death certificate for which I am being sued is the one published in the book, *Nobody Died at Sandy Hook: It was a FEMA Drill to Promote Gun Control*, which has appeared as Chapter 11 co-authored with Kelley Watt in both first editions (2015) and second (2016). It is an expanded and revised version of an article that I originally published on *Veterans Today* (6 August 2014), which included the death certificate for my characterization of which I have been sued. Kelley said it came from "Lenny". I published it in VT and with Mike Palecek in both editions and we made no changes to its content.

It appears that I added a border, which is not one of the things that they complain about. The circumstances of this version's publication are not in issue. The death certificate that I received from Plaintiff via Kelley Watt is not certified by Newtown's Registrar of Vital Statistics, Debbie Aurelia (now) Debbie Aurelia Halsted. Plaintiff has admitted to his conversations with Kelley and to having posted it on Noah's memorial Google Plus page. So, even though I may have added a border, for which I take responsibility, the rest came from him. The file size is immaterial and varies with compression and reproduction. What matters is what is on it—

EXHIBIT # 8
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and what is not, because it does not have the Town Registrar's certification on the side, it is therefore illegal and a fabrication, precisely as I maintain.

In his latest gambit, moreover, the Plaintiff attempts to prove too much. If the border makes a difference and the death certificate is ON THAT VERY GROUND not *bona fide*, then the certificate that I described as a fabrication In the book is in fact a fabrication by Plaintiff's own contention. How ironic that Plaintiff thereby admits that I am right and my statement truthful, in which case I cannot be found guilty of defamation for my true affirmation.

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

17. The second edition of "Nobody Died at Sandy Hook" accuses Plaintiff of issuing and/or possessing a forged copy of N.P.'s death certificate. In particular, page 183 of Nobody Died at Sandy Hook states: "Noah Pozner's death certificate is a fake, which we have proven on a dozen or more

grounds." At page 232 the book states, [Mr. Pozner] sent her a death certificate, which turned out to be a fabrication." At page 242, the book states, "As many Sandy Hook researchers are aware, the very document Pozner circulated in 2014, with its consistent tones, fonts, and clear digital manipulation, was clearly a forgery."

A comment from a contribution to the *Sandy Hook Memoranda for POTUS*, edited by Robert David Steele, has also been cited as being defamatory:

18. Mr. Fetzer's publication of this false accusation against Plaintiff was not limited to the book. He repeated that false statement on one or more blog posts, including, e.g., https://phibetaiota.net/2018/08/james-fetzer-in-solidarity-with-alex-jones-how-we-know-sandy-hook-was-a-fema-drill-nobody-died-obama-officials-confirmed-it-was-an-anti-gun-propaganda-exercise. That blog post is dated August 5, 2018. There, Defendant Fetzer made the following false statement: "It [N.P.'s death certificate] turned out to be a fabrication, with the bottom half of a real death certificate and the top half of a fake, with no file number and the wrong estimated time of death at 11 AM, when 'officially' the shooting took place between 9:35-9:40 that morning." That statement is false, both in its particular fact and in the main point, essence, or gist in the context in which it was made, because

N.P.'s death certificate is not a fabrication or forgery. That context of that statement referred specifically to Plaintiff, the previous sentence reads: "Kelley Watt had over 100 hours of conversation with 'Lenny Pozner', who purports to be his father and who sent Kelley a death certificate for 'Noah' as proof that he had died, which we included in the book."

Notice there is no denial that the death certificate published in the book is the same as the death certificate that the Plaintiff made available to Kelley Watt, who in turn shared it with me and I with my co-defendant, when we edited and published the first edition of the book using CreateSpace, a subsidiary of amazon.com, and placed in on sale on 22 October 2015 only to be banned on 19 November 2015 after selling nearly 500 copies.

Moreover, we are all aware that arguments have two parts: *premises* (or the grounds, reasons or evidence one cites) and *conclusions*. In this case, my premises may have been mistaken or wrong—the absent file number, the differences in tone and texture, the variations in font sizes and spacing, which led me to believe that this document had been created by combining the bottom half of a real death certificate with the top half of a fake—given what I have learned in the meanwhile, do not appear to have been right. But my conclusion—that the document is a fake or a fabrication—has been borne out by subsequent research, including the forensic analysis of Larry Wickstrom, confirmed by the further review and analysis of A.P. Robertson, which leave no doubt about it. Even though my initial reasons were bad, there are abundant good reasons to arrive at the same conclusion, where my original argument had false premises but a true conclusion.

As the Complaint itself emphasizes, its foundation is the crucial claim I have made that the death certificate that Plaintiff provided to Kelley Watt is a fake, a fabrication, or a forgery. Truth is an absolute defense to defamation. This case hangs on the question of authenticity, specifically, upon the truth or falsity of my assertion that this document is not authentic as a fake, a fabrication, or a forgery. My premises or reasons for reaching that conclusion may not have been good ones, but the conclusion I reached, *which is the issue upon which this case revolves*, was true. And because I believed what I wrote at the time on the basis of (what I took to be) good reasons at the time, I cannot have acted with malice, which requires knowing what you are asserting is false but asserting it anyway with the intent to mislead your target audience, which I have not done. This means that the Complaint likewise has no basis in claiming that I acted with malice;

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

On the contrary, my conclusion was reached on the basis of collaborative research with several others, including Dennis Cimino, who was the top electronics trouble-shooter for the US Navy before he left to work for Raytheon and a contributor to the first edition of the book and who suggested that portions had been photoshopped, where I had reason to take him at his word. The additional reasons reported by Bob Simms—about the fonts, the size and spacing of words in the document—were ones I confirmed by direct observation. In combination with my own observations about dark texture of (roughly) the bottom 2/3 in contrast with the top 1/3, it was my inference that the document appeared to be fabrication combining the bottom half (or 2/3) or a real death certificate with the top half (or 1/3) of a fake, which I no longer believe is true.

My reasons regarding the top half included the absence of a file number, which it turns out can occur with documents obtained from the Town Registrar, and wrong estimated time of death as 11 AM, when, as even the Report on the Sandy Hook Shooting by Danbury State's Attorney Stephen Sedensky III states, the shooting took place between 9:30-:40 (or 9:41), which meant the estimated time of death was wildly inaccurate. Even though the Medical Examiner, Wayne Carver, II, M.D., sought to explain that away, it remains inconsistent with the official account, which was one more reason why I sincerely believed that this document is a fake, a fabrication or a forgery. Therefore, for the wrong reasons, I came to the right conclusion. Not only am I not guilty of defamation, therefore, but I did not act with malice, which is another false accusation.

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

19. The Connecticut Department of Public Heath maintains official death records for the State of Connecticut. The Connecticut Department of Public Heath, Vital Statistics Division, issued an official death certificate for N.P. A true and correct copy of that death certificate (sensitive information redacted) is attached hereto as Attachment A. The official death certificate attached hereto does not differ in any material respect from the one released publicly by Plaintiff.

The claim that the death certificate attached to the Complaint "does not differ in any material respect from the one released publicly by Plaintiff", as should be apparent already, blatantly falsifies the situation we confront, because the attached certificate has both the State certification as a true copy and the certification of the Town Registrar, in the absence of which it properly qualifies as illegal and a fabrication. It's that blatant.

They say. "The law works in mysterious ways", but I am baffled to this day how I could be sued for defamation regarding a document that I had never before seen, much less

commented upon prior to the filing of this suit. Moreover, the copy attached was so poor that it was virtually illegible and legally useless, as I explained to Mr. Zimmerman when he called me about the suit. I asked him if he knew anything about Sandy Hook or had any idea what he was getting into, adding that the copy attached was so poor as to be unreadable and legally useless. He replied that, if I wanted a better copy, I could contact the State of Connecticut to obtain one for a $20 fee. I thought that was rather strange: to provide the Defendant with an illegible copy of a document on which the case was said to be based. While I did not initially attempt to obtain a copy, eventually co-defendant, Dave Gahary, and I both obtained copies of the death certificate for "Noah Pozner". To my surprise, they were not the same. Mine had the same hand-written file number as on the copy attached to the complaint but no redaction for the burial location and the SSN box was empty rather than redacted. Dave's had a partial, printed file number that does not correspond with the others. We therefore have four different versions thereof:

Exhibit ~~A~~ 4: The copy published in the VT article (2014), in the first and second editions of *Nobody Died at Sandy Hook* (2015 and 2016) and in the *Sandy Hook Memoranda* edited by Robert David Steele (2018) also cited in the Complaint, all of which have no file number but with redactions for the location of burial of the decedent and of his SSN. And it even seems to have a fake seal at the bottom left, where no seal should appear.

Exhibit ~~B~~ 5: Attached to the Complaint, has a handwritten file number, "2012-07-078033". It has changes to the last residence of the deceased (from "37 Alpine Drive" to "3 Kale Davis Road") made at the request of the father, identified as "Leonard Pozner", and with redaction to the location of the burial plot but none to his SSN, where the box is empty.

Since the box for the SSN is empty on the attached complaint, I have been puzzled that the copy published by Plaintiff was redacted as though there had been a present SSN. But notice as I have been emphasizing, the attached copy, Exhibit ~~B~~ 3, has two forms of

certification, while the Kelley copy, Exhibit A, has none. What could be more material?

Exhibit C: Obtained by Dave Gahary from the Town Registrar, which has the changes made by the father (the same as Exhibit B) but has no redaction for either burial plot or SSN, where the box is empty. Its most striking difference is a file number that is printed and partial, including only the last four digits, the first obscure but the remainder "243".

Exhibit D: Obtained by me from the State of Connecticut, it has the handwritten file number, "2012-07-078033", but in other respects appears to be the same as Exhibit C. Notice that, although the location of the authentication of Debbie Aurelia on Exhibit B and Exhibit D both appear at the upper left (close in) to the border of the form, that on Exhibit C appears at the middle (further out), which indicates more than one version.

In addition to Exhibit D, I obtained four other death certificates from the state, including for purported Sandy Hook assailant, Adam Lanza; his mother, Nancy Lanza; another of the alleged victims, Avielle Richman; and for my dear friend, William Brandon Shanley, who died (apparently of natural causes) on 6 November 2017. What is most striking in relation to the disputed death certificates is that ALL OF THEM HAVE PRINTED FILE NUMBERS. None of them has handwritten. They were all on the same form (VS4-ME) except for Shanley, which, as Wayne Carver, M.D., explained to me during questioning on the occasion of his deposition in Connecticut on 21 May 2019. When I showed him Exhibit C above (obtained by Dave Gahary from the Town of Newtown), he could not explain its partial, printed file number: "Well, first of all, this was—I have no idea what it is" (Deposition Transcript, p. 81, lines 7-8) from the State Medical Examiner.

Several significant points emerge from comparing these various versions, not least of which is that, when Plaintiff provided Kelley Watt with a copy of Exhibit A in 2014, he had already made revisions to it in 2013 and knew it was not the currently available

version. Notice Exhibit ~~B~~ S, attached to the Complaint, had been corrected by "Leonard Pozner" on 6-14-13. That raises the question of why the Plaintiff published on his son's memorial page a version of his death certificate that he knew was no longer correct. It smacks of baiting Sandy Hook skeptics into focusing on a version that he could subsequently effortlessly claim to be wrong, which he knew of his own personal knowledge—because he himself had changed it!

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

Indeed, there are at least two other anomalies—one about the death certificate, the other about the complaint—that have struck me as disturbing. On the death certificate, where it asks for first, middle and last name of the informant, only the nickname, "Lenny Pozner". Even more anomalous—and, to me, extremely peculiar—is that the decedent, who is supposed to be the man's beloved son, is only referred to by his initials, "N.P." As a father myself, I cannot imagine in my wildest dreams having lost a child and then feeling compelled to bring a lawsuit to protect his sanctity and then only referring to him by his initials. All of these oddities are more readily explicable on the hypothesis that "Noah" is a fiction made up out of photographs of his purported older step-brother, Michael Vabner, than on the hypothesis that he was real. When we consider that we

may be dealing with an illusion rather than reality, where the Sandy Hook event was a FEMA mass casualty exercise involving children to promote gun control that was then presented to the public as mass murder to promote gun control, the pieces make sense.

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

COUNT ONE DEFAMATION (BY ALL DEFENDANTS).

21. The statements excerpted from "Nobody Died at Sandy Hook" are false, both in their particular facts and in the main point, essence, or gist in the context in which they were made, because N.P.'s death certificate is not a fabrication or forgery.
22. The statements excerpted from "Nobody Died at Sandy Hook" refer directly to Plaintiff by name, and the surrounding context likewise indicates that the comments implicate Plaintiff. Given the surrounding assertions, a reasonable reader would understand the statement to imply that Plaintiff knowingly possessed and distributed a fabricated death certificate.

Since truth is an absolute defense against defamation and the documents in question—not just Exhibits A and B, but Exhibits C and D as well—turn out to be fabrications, the Defendants have not committed defamation. Moreover, as A.P. Robertson has astutely observed, a reasonable person, observing the anomalies in the document published in the book, *Nobody Died at Sandy Hook: It was a FEMA Drill to Promote Gun Control* (2015; 2nd edition, 2016), including the missing file number, the wrong estimated time of death, the difference in shading between the upper and lower portions, the variations in types, fonts and spacing—would have reasonably inferred that this document was not authentic but a fabrication. And I have only recently realized that the given name of the town as "Sandy Hook" is not correct, because the death happened in Newtown, CT.

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

COUNT TWO DEFAMATION (DEFENDANT FETZER)

31. The statements excerpted from Defendant Fetzer's August 2018 blog post are false, both in their particular facts and in the main point, essence, or gist in the context in which they were made, because N.P.'s death certificate is not a fabrication or forgery. The surrounding context implies that Plaintiff knowingly distributed a falsified death certificate.

Another oddity of the Complaint is the insinuation that Defendants alleged that Plaintiff had personally fabricated the death certificate addressed in the book (Exhibit A). But, while Defendant Fetzer did express that opinion to Plaintiff in private correspondence, he has not published that allegation, which he no longer entertains, and therefore in the absence of its publication, he cannot be liable for defamation under Count Two, either.

COUNT THREE CONSPIRACY

41. With regard to the statements in "Nobody Died At Sandy Hook," Defendants acted together, as a cabal, to accomplish their defamation. Defendants had a meeting of the minds on the object or course of action underlying their recklessly defamatory publication.

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

The following has thus been established: No facts are in issue with regard to the death

certificates. The one I received from Plaintiff via Kelley Watt is not certified. Plaintiff has admitted to his conversations with Kelley and to posting it on Noah's memorial Google Plus page. Even though I added a border, the rest came from him. The size of image is immaterial and varies with its reproduction. What matters is what is on it--and what is not. It does not have the Town Registrar's seal on the left-hand side. That is decisive. These are crucial points because the Plaintiff has not mentioned these problems in his Response to my MSJ. It is confessed--which means I am entitled to summary judgment in my favor. *My statements are substantially true* and, as the Wisconsin Supreme Court has ruled in *Meier v. Meurer, 8 Wis.2d 24, 29, 98 N.W.2d 411 (1959)*: "In this state, if a statement be substantially true it cannot be the basis for a civil action for libel." *Meier*, 8 Wis. 2d at 29 (*citations omitted*).

There are also legal problems with the death certificate having been received by the town clerk more than 5 days after the death, that a burial permit could not have been issued and more in my Motion for Summary Judgment. I have also pointed out that the death was supposed to be registered in the town in which it occurred, per the law, while the Funeral Director, Samuel Green, said that it was registered in Fairfield, which would mean the Fairfield clerk's signature should appear on the death certificate, not Debbie's. We as the editors of Moon Rock Books have been doing our best to inform the public of the truth about its own history, which Plaintiff in this case has been desperately trying to suppress. The State of Wisconsin and the American people deserve better. The facts of the matter with regard to the Complaint are not in doubt. It has no merit and represents an abuse or process and a fraud upon the Court. The Court can contribute to ending this charade by rendering us the summary judgment to which we are entitled. Let it end.