STATE OF WISCONSIN | COURT OF APPEALS

LEONARD POZNER
Plaintiff
v.
JAMES FETZER,
MIKE PALECEK,
WRONGS WITHOUT WREMEDIES,
Defendants

CASE TYPE: DEFAMATION

No. 2018-CV-17-003122

---

DEFENDANTS JAMES FETZER AND MIKE PALECEK'S AMENDED APPLICATION FOR INTERLOCUTORY APPLELLATE REVIEW PURSUANT WIS. STAT. 808.08(3)

---

Defendants, James Fetzer and Mike Palecek, pro se, submit this Application for Interlocutory Appellate Review under Wis. Stat. section 808.03(2). The order appealed from is the unwritten order granting summary judgment to the plaintiff on 17 June 2019 (Exhibit A).

**STATEMENT OF THE ISSUES**

1. Was the trial judge's refusal to permit Dr. Fetzer to present contextual facts relating to the Sandy Hook event a deprivation of his constitutional right to present truth as a defense to a claim of defamation?

2. Did the trial judge commit reversible error where he [apparently] found there was no genuine dispute that the death certificate published in *Nobody Died at Sandy Hook* was not a "fake" or "forgery," despite there being five (5) different versions of the death certificate on record in this case, four (4) of which contain a highly irregular amendment?

3. Did the trial judge impermissibly engage in the fact-finding process when he stated at page 163 of Summary Judgment Transcript (Exhibit B) that Plaintiff had provided a "plausible and acceptable" explanation for the different versions of the death certificate?

4. Did the narrow window between the time the trial judge issued his Scheduling Order and the time mandated for filing summary judgment deprive the Defendants of their due process right to reasonable discovery?

## STATEMENT OF FACTS

On 14 December 2012, the entire world was stunned at reports of the shooting at the Sandy Hook Elementary School in Newton, Connecticut. The official reports recounted the tale of brutal slaughter of society's most innocent people – including twenty (20) first-grade students aged to six (6) to seven (7), as well as four (4) teachers, the person identified as the killer, and the killer's mother. The youngest of the dead students was six (6) year old, Noah Pozner. The father of Noah Pozner is purportedly a man named Leonard ("Lenny") Pozner. He is also the Plaintiff and Counterclaim Defendant in this action.

Media reports from Newtown were laden with oddities and anomalies that many people at the time found puzzling. These anomalies were entirely inconsistent with a spontaneous and surprising shooting emergency. For instance, instead of the medical units being set up at the Sandy Hook school, they used the Firehouse as a command and control center, even though it was about a third of a mile away.

By all appearances, the Firehouse had been prepared for the shooting in advance of the event. For instance, there were portable toilets already in place; there was a prominently positioned neon-lit sign saying, "EVERYONE MUST CHECK IN"; there was pizza and bottled water; many people at the Firehouse were photographed wearing nametags on lanyards; aerial footage showed people walking in one door and out another door then back through the same door, as if following a script. Further investigation revealed that there had been no surge of EMT's into the building; that there had been no string of ambulances to rush the injured or dead

to hospitals where they could be declared dead or alive; that no Med-Evac chopper was called; and that, even though triage tarps were laid out in the school parking lot, no bodies of any injured or deceased were ever placed upon them.

**Wayne Carver, M.D. – the Accidental State Medical Examiner**

As stated on page 72 and *passim* of *Nobody Died at Sandy Hook*[1], there were many bizarre media reports and interviews of those associated with the "shooting." Many of the participants seem to be acting, such as the now infamous Connecticut State Medical Examiner, Wayne Carver, who gave a press conference the day after the "shooting" (widely available on You Tube) that can only be described as "surreal." As a public official of high standing who was charged with performing autopsies on twenty-six (26) dead bodies, including twenty (20) children, his clowning and outlandish behavior, strange grins, irrelevant comments and uninformed responses to reporters' questions is impossible to reconcile with an event of such magnitude. On page 19 of *Nobody Died at Sandy Hook*, James F. Tracy, Ph.D., describes Wayne Carver as "The Accidental Medical Examiner." Dr. Tracy excerpts certain text from Wayne Carver's infamous press conference, a sample of which is reproduced below:

Reporter #2: Doctor, can you tell us about the nature of the wounds? Were they at very close range? Were the children shot at from across the room?

Carver: Uhm, I only did seven of the autopsies. The victims I had ranged from three to eleven wounds and I only saw two of them with close range shooting. Uh, but that's uh, y'know, a sample. Uh, I really don't have detailed information on the rest of the injuries.

Reporter #4: How many bullets or fragments did you find in the autopsy? Can you tell us that?

Carver: Oh. I'm lucky I can tell you how many I found. I don't know. There were lots of them, OK? This type of weapon is not, uh . . . the bullets are designed in such a

[1] A pdf copy of *Nobody Died at Sandy Hook (*2nd ed., 2016) is attached to the Transcript of the Summary Judgment Hearing as Exhibit 10.

[2] The Bushmaster .223 rifle Connecticut police claimed was used to kill the children is designed

fashion that the energy – this is very clinical. I shouldn't be saying this. But the energy is deposited in the tissue so the bullet stays [in the tissue].[2]

Reporter #6 In what shape were the bodies when the families were brought to check [inaudible]

Carver: uh, we did not bring the bodies and the family into contact. We took pictures of them, uhm, of their facial features. We have, uh, uh – it's easier on the families when you do that. Uh, there is, uh, a time and place for the up close and personal in the grieving process, but to accomplish this we thought it would be best to do it this way and uh, you can sort of, uh . . . You can control a situation depending on a photographer, and I have very good photographers.

Wayne Carver then ended the press conference with the following prescient words: "I hope, ah, the people of Newtown don't have it crash on their head later."

**Robbie Parker – The Accidentally Grieving Sandy Hook Father**

As described on page 72 of *Nobody Died at Sandy Hook*, perhaps the most infamous press conference was that of Robbie Parker, alleged father of first grade victim Emilie Parker, speaking on a CNN report the same day as Wayne Carver's press conference. Although he had just lost his young daughter to a mass shooting, he chuckled as he walked up to the camera. Then he got into character by hyperventilating, finally feigning grief as he talked about his daughter and the fund set up in her memory – all while reading from a cue card.

Discussion threads sprang up on the Internet and Sandy Hook became a subject of extensive and detailed debate as more and more anomalous details emerged. Internet exchanges on blogs and YouTube became frequent and intense, where the situation cried out for a serious investigation. Based on these inconsistencies, irregularities, and just plain sloppiness of the actors involved, when the FEMA manual for a 2-day mass casualty exercise involving children appeared on James Tracy's website—which Defendants published as Appendix A to the book—the pieces fit together: the Sandy Hook massacre was in reality a FEMA drill with a rehearsal on

[2] The Bushmaster .223 rifle Connecticut police claimed was used to kill the children is designed for long range field use with bullet velocity at 3,000 feet per second, causing such bullet to pierce through the soft tissue of a human body, not come to rest in the soft tissue.

the 13th, going LIVE on the 14th. As a former Marine Corps officer and Distinguished McKnight University Professor of the University of Minnesota, and having conducted extensive research exposing the cover-up in the assassination of JFK, I felt I had both the right and the duty to to expose frauds being perpetrated upon the American public by means of collaborative research.

**The Bizarre Earlier Photo of the Most Iconic of the Sandy Hook Photographs**

As described in Chapter 4 of *Nobody Died at Sandy Hook*, the earliest "smoking gun" that so irrefutably exposes that Sandy Hook was a staged event is the "fake" iconic photograph by Shannon Hicks of *The Newtown Bee.* This photograph purports to be of children being led out of the school in a "conga" line, single file, in what appears to be the children's escape from the emergency situation inside the school (See Photo – Attachment A hereto). This photograph was published worldwide and became the image of the Sandy Hook shooting. However, another photograph soon surfaced, which Shannon Hicks admitted having taken but minutes earlier, with the children arranged in a different order in the sequence (See Earlier Photo – Attachment B hereto). Moreover, there are parents present, casually looking on. To state the obvious, the second photograph demonstrates that the alleged "emergency" was in fact *an arranged event with parents on the scene*, where the woman leading the children rearranged the kids to get "a better shot." If Sandy Hook had it been a *bona fide* emergency, there would not be two (2) different photographs with two (2) different arrangements of children in a single line—nor would parents have been present.

**Kelley Watt, from Tulsa, Oklahoma, was Provided Noah Pozner's Death Certificate**

As explained at Chapter 11 of *Nobody Died at Sandy Hook*, several months after the "shooting", I was contacted by a woman named Kelley Watt of Tulsa, Oklahoma. She has her own residential and commercial cleaning service, which sometimes includes having to clean up

blood, which is classified under federal law as bio-hazardous material. The cleanup of blood from a mass-shooting event requires a paper trail for proper disposal of the blood. When Kelley Watt viewed scenes of the Sandy Hook school on television, she was troubled at the complete lack of blood. This was especially true, since the high-velocity rifle allegedly used in the shooting causes massive injuries akin to an explosive. When Kelley Watt sought to contact the responsible authorities to determine which contractor was awarded the cleanup contract, she received nothing but evasive answers, and thus discovered no such contract existed. See Affidavit of Kelley Watt, ¶3:

> It was I who called several state agencies without success asking the simple question, "Who cleaned up the blood?" Nobody knew. I was eventually directed to make contact with Lt. Paul Vance of the Connecticut State Police, who responded to my query with, "What blood?" This heightened my suspicions that nobody knew because there had been no blood.

There appears to have been no Sandy Hook cleanup contract, because there was no blood to clean up at Sandy Hook. As a natural corollary, if there was no blood to clean up at Sandy Hook, then there were no gaping wounds from a .223 Bushmaster rifle or from any other weapon, for that matter. If there were no gaping wounds from any weapon at Sandy Hook, then indeed the title of the book, "Nobody Died at Sandy Hook", is entirely appropriate. If nobody died at Sandy Hook then, by logical implication, the death certificate provided by Lenny Pozner to Kelley Watt was a presumptive fake and forgery. The fact that the death certificate contained several anomalies on its face reinforced my conviction that it had to be a "fabrication." Kelley Watt would later appear on my Internet show at that time, "The Real Deal", where we discussed these and other anomalies raising suspicions about what had happened at Sandy Hook.

As per the Affidavit of Kelley Watt attached to my Motion for Summary Judgment, Lenny Pozner, Plaintiff, tracked her down using the website, Google Plus, and eventually

engaged her in conversation, which she estimated at over one hundred (100) hours. [Kelley Watt Affidavit, ¶ 11]. During these conversations, Kelley Watt continually referred to Lenny Pozner as a "liar," yet he continued to engage with her. Those conversations continued for about six months. [Kelley Watt Affidavit, ¶ 9]. At one point, she advised him that to prove Noah Pozner actually existed, she wanted: 1) a death certificate; 2) a copy of his report card, and 3) a picture of Lenny Pozner's wife, Veronique, in the hospital with Noah. [Kelley Watt Affidavit, ¶18]. The following day, however, he sent an e-mail directing her to a web site where she found (what purported to be) a copy of Noah's death certificate; a copy of Noah's kindergarten report card, and a picture of his wife, Veronique, with a baby, though she was not in the hospital with Noah.

Kelley was immediately suspicious, because the address on the report card spelled "Dickinson Drive" with an "e" as "Dickenson Drive", which caused her pause. Kelley Watt copied the death certificate from the blog and shared it with me. Together, we subsequently published and discussed it in Chapter 11 of *Nobody Died at Sandy Hook*, where she states at ¶22, "A copy of the death certificate Plaintiff [Lenny Pozner] sent to me appears on page 181 of Ch. 11 . . ."[3] During their final conversation, Kelley Watt told Lenny Pozner that she and other Sandy Hook skeptics were going to donate to his fund, which puzzled him because she didn't believe it had been real. When she told him it was because she wanted to have standing to participate in a class action suit against him, he said, "Fuck you, bitch!" Kelley thought it was strange that after so many lengthy conversations, he would take offense at this and have no further communication. [Kelley Watt Affidavit, ¶15].

On page 3 of the document entitled "Plaintiff's Response to Fetzer's Proposed Findings of Fact," Lenny Pozner admitted that the copy of the death certificate in *Nobody Died at Sandy*

[3] Lenny Pozner sent an e-mail to Kelley Watt disclosing that a copy of Noah's death certificate had been posted on the *SandyHookFacts.com* website, with his permission.

*Hook* is the same as a copy of the death certificate he released: "Plaintiff does not dispute that Exhibit B [the death certificate in *Nobody Died at Sandy Hook*] is a copy of the death certificate Plaintiff released." Although Lenny Pozner would later maintain that Kelley Watt had failed to properly authenticate the chain of custody of the death certificate from Lenny Pozner's e-mail to publication by defendants in the book, such objection is an evidentiary objection, not factual. The law does not require the nonmoving party to produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Celotex Corporation v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 2553 (1986).

**"Noah Pozner" is a Fiction Created from Photos of his Older Step-Brother Michael Vabner**

At Appendix D to *Nobody Died at Sandy Hook* (2nd ed., 2016), Kelly Watt followed up her interaction with Lenny Pozner with a reference to a letter, which someone had written to Dr. Tracy years earlier, pointing out that Lenny Pozner's purported stepson Michael Vabner, bore an uncanny resemblance to Noah Pozner. As set forth in my Motion for Summary Judgment and Brief, I engaged colleague of mine in JFK research, Larry Rivera, who has studied the principles of photogrammetry—the application of mathematics to the study of photographs. Without explaining the context or identifying the parties, I sent Larry Rivera photos of "Noah" and of Michael – which Plaintiff himself confirmed were of them respectively, during his video deposition—and Larry reported back to me (with a supporting gif) that these were indeed two photos of one and the same person. See Affidavit of James Fetzer ¶¶'s 55–59, regarding the answer that Lenny Pozner gave at his deposition to explain this resemblance:

55. I presented proof that "Noah Pozner" is a fiction made up out of photographs of his purported older step-brother, Michael Vabner, which has been demonstrated by Larry Rivera (Exhibits 23 and 24).

56. They have the same eyes, the same eyebrows, the same nose, the same ears, the same

mouth and the same shape of skull.

57. Leonard Pozner replied that this was because they have the same mother, that they have Eastern European ethnicity, and confirmation bias on the part of the observer.

1. Statement of Prior Proceedings

A. The Complaint

The Complaint was served on 28 November 2019. It identified James Fetzer and Mike Palecek, co-editors of *Nobody Died at Sandy Hook*, and the book's publisher, Wrongs Without Wremedies, as defendants. As stated in the Introduction to the Complaint, "this case focuses narrowly on one falsehood: that [Lenny Pozner] circulated a forgery of N.P.'s death certificate." The Complaint thus sought to focus exclusively on the presumption of authenticity, which attaches to a certified document. Indeed, Lenny Pozner's counsel cleverly drafted the Complaint to focus solely on authenticity of the death certificate. By so narrowing the claim, clearly Lenny Pozner sought to excise the so-called Sandy Hook from any context of the defamation claim. In other words, Lenny Pozner narrowly crafted his claim by limiting it to the authenticity of Noah Pozner's death certificate, in order to exclude the precise kind of evidence needed to establish the context of our statement. As the trial judge, Frank Remington, would later acknowledge:

> THE COURT: . . . we're focusing on the plaintiff's claim . . . they're using a very limited and single cause of action to frustrate your ability to relitigate (sic) whether or not Sandy Hook happened. [Transcript of the Summary Judgment Hearing page 85, lines 1-5].

Attached to the Complaint as Exhibit "A," was another copy of the death certificate. [See Transcript of the Summary Judgment Hearing, Exhibit 5]. Lenny Pozner represented the death certificate attached as Exhibit "A" to the Complaint was, in essence, the same death certificate published in *Nobody Died at Sandy Hook*. See Complaint, ¶19 ("The official death certificate attached hereto does not differ in any material respect from the one released publicly by Plaintiff.")] Lenny Pozner's claim that Exhibit "A" to the Complaint does not differ in any

"material" respect from the death certificate in *Nobody Died at Sandy Hook,* however, is a genuinely disputed fact because it contains material differences.

To state the obvious, simple examination reveals that Exhibit "A" to the Complaint contains a certification from the Town Clerk, Debbie Aurelia (on the left side), and a certification and one from the State of Connecticut. It also has a handwritten entry for the State file number. The death certificate that Lenny Pozner provided to Kelley Watt, however, has no file number or any form of certification. Conceivably, the death certificate received by Kelley Watt could have been altered to remove the certification of Debbie Aurelia (which would turn out to be the case). However, Lenny Pozner admitted in his Response to Defendant Fetzer's Proposed Findings of Fact #6, that the version of the death certificate in *Nobody Died at Sandy Hook,* with no certification from Debbie Aurelia, had been "released" to the public.[4]

Another striking difference between the copy of the death certificate in Exhibit "A" to the Complaint and the copy in *Nobody Died at Sandy Hook*, turns out to be so clear and obvious, that for Lenny Pozner's counsel to claim there are "no material differences" between the two documents is both deceptive and unethical. The death certificate attached as Exhibit "A" to the Complaint contains a typed in notation at the top stating "*boxes 12 and 22 corrected as per Father 5-14-13 Leonard Pozner.*" The information required of Box 12 is that of the decedent's "residence." Since the term "residence" implies the place where one resided or lived, and since Noah Pozner purportedly died on 14 December 2012, it is impossible for his "residence" to have changed on 5-14-13.

Notwithstanding that Lenny Pozner "corrected" the death certificate on 14 May 2013, the death certificate in *Nobody Died at Sandy Hook* was shared with Kelley Watt in 2014. This

[4] Defendants submit that a death certificate that is of such public interest and notoriety that its issuance to the public is characterized as a "release" is suspicious in and of itself.

"undisputed" fact creates a genuine dispute about the authenticity of the two (2) versions of the death certificate identified thus far. Why, after all, would Lenny Pozner change the address of his deceased son months after he died? As per his answer to my question to him during his video deposition on 28 May 2019, it was because Noah Pozner lived with him more of the time at the corrected address, and he wanted the death certificate to be accurate.

Judge Remington Stayed Counterclaim for Abuse of Process, and Issued Protective Order Against Discovery of Facts Related to Sandy Hook

I submitted a Counterclaim for Abuse of Process, because the underlying reason for this suit was not as remedy for a defamation claim, but rather to silence and suppress the voices of Sandy Hook skeptics. I also submitted document production requests that would prove the events at Sandy Hook were staged and thereby prove that Lenny Pozner truly did issue or possess a "fake" death certificate of Noah Pozner. However, Lenny Pozner sought a protective order to prevent me from requesting any discovery related to Sandy Hook or other background matters that would establish the "context" of my allegedly defamatory statements. The requested protective order prohibited me from inquiring into the "true identity" of Lenny Pozner and Noah Pozner, whom I believe, in reality, to be persons named "Reuben Vabner" and "Michael Vabner," respectively, who are likewise father and son.

When Lenny Pozner requested a DNA test for Noah Pozner, I moved to have the testing expanded to include Michael Vabner and Reuben Vabner as well as Veronique de la Rosa, who is the mother of Michael Vabner and the putative mother of Noah Pozner; but the trial judge denied the request. Indeed, each time I sought to provide proof that Sandy Hook had been a FEMA exercise where no one had died, the line of inquiry was cut off—even though such evidence provided the very contextual evidence to support the truth of my statement that Lenny

Pozner possessed or issued a fake death certificate of Noah Pozner. See Transcript of telephone conference hearing regarding Lenny Pozner's Motion for Protective Order on 11 March 2019:

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

MR. ZIMMERMAN: I can't fathom why that would happen, Your Honor. Our goal is to focus on the allegations that are before us and not go down paths where we're trying to show that kids were murdered in a school. And, I appreciate the question. We are trying not to fly in a medical examiner to show pictures of what happened in a scene because that's—that's not the case that's before the Court. [P. 26, L. 6-17].

In light of counsel for Lenny Pozner stating he could not "fathom" introducing Noah Pozner's birth certificate into evidence, it was quite startling that in his Summary Judgment Brief at page 4, he did, in fact, introduce Noah Pozner's birth certificate into evidence. On the other hand, when I sought to obtain discovery regarding Veronique De LaRosa, the mother of the boy named "Michael Vabner," I was again cut off. The trial judge's discussion of the issue with counsel for co-defendant Wrongs Without Wremedies is illustrative of this point:

MR. PETALE: I think that the—the fact that the Court is interpreting the subject matter of the Complaint so narrowly is not taking into consideration the fact that at the very beginning of the Complaint it is alleged as fact that Noah Pozner was killed at the Sandy Hook Elementary School by a mass murderer.

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

**Mr. Zimmerman, did you intend in the Complaint to make a question of fact the circumstances surrounding Noah Pozner's death relevant to the defamation claim?** [Emphasis added].

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

## APPLICATION FOR INTERLOCUTORY REVIEW

This Application for Interlocutory Review is made pursuant to Wis. Stat. ¶808.03(2), which states:

> A judgment or order not appealable as a matter of right under subsection (1) may be appealed to the court of appeals in advance of a final judgment or order upon leave granted by the court if it determines that an appeal will:
>
> (a) Materially advance the termination of the litigation or clarify further proceedings in the litigation;
>
> (b) Protect the petitioner from substantial or irreparable injury; or
>
> (c) Clarify an issue of general importance in the administration of justice.

The Summary Judgment Decision qualifies as a decision subject to review under Wis. Stat. 808(2)(3), because it terminates the Defendants' opportunity to defend themselves against Lenny Pozner's defamation claim, yet still subjects them to a jury trial on damages.

II. INTERLOCUTORY REVIEW UNDER WIS. STAT. 808(2)(3) IS PROPER

1. Interlocutory Review Will Clarify Further Proceedings

As set forth herein, the acceptance by the Appeals Court of this Application for Interlocutory Review would serve to materially clarify further proceedings in this litigation. One such reason is that having already granted summary judgment to the effect that the disputed death certificate is authentic as a matter of law, the trial judge has created a significant issue as to what information can and cannot be presented at trial. See Transcript of Summary Judgment Hearing Page 70, lines 10-16:

> The COURT: Because you should understand, if I grant summary judgment, we're going to trial. If I deny summary judgment, we're going to trial. We're going to trial regardless, except as it relates to the issues, of course, of the – [the Judge did not finish his statement].

Clearly the Judge and counsel for Lenny Pozner are nervous that even by granting summary judgment to Lenny Pozner on the liability portion of the case, the Defendants would still have the right to present evidence about the context of the statement that the death certificate is a fake. Furthermore, the context of the statement that the death certificate is a fake revolves around a vast array of photos, videos, public records, affidavits, news clips, and expert testimony proving that Sandy Hook was a staged event.

Indeed, so fully scripted does this case appear, that the Judge even queried counsel for Noah Pozner as to what "role" Defendants would have in the damages trial. Plaintiff's counsel asserted that we would have no "role" that involved disclosure of the circumstances of Noah Pozner's death. Indeed, the following colloquy between the trial judge and counsel for Lenny Pozner reflects not just a lack of clarity for the remainder of this case; it shows how the trial judge had already decided I was liable for defaming Lenny Pozner, *before* I was permitted to present any argument in our defense. See Transcript of the Summary Judgment hearing, P. 96, L. 5-9:

THE COURT: So now I've said to you why I believe the motion for partial summary judgment on the conditional privilege is appropriate, because it does shorten the trial, simplifies the issues, potentially reduces the number of witnesses. [P. 98, L. 7-9].

THE COURT: Well if I did what you say you're entitled to, what would be Dr. Fetzer and Mr. Palecek's **role** in such a trial? [Emphasis added]. [P. 98, L. 7-9].

MR. ZIMMERMAN: I can't say what they would want their **role** to be. I'm sure that they would want to cross-examine Leonard Pozner on the scope of his damages or the damage to his reputation. I'm sure that they would want to cross-examine Plaintiff's expert on the methodology or the application of the methodology that he used to this case. I'm not sure their **role**, Your Honor, goes anywhere beyond that. [Emphasis added].

I think the Court can instruct the jury that the underlying question of defamation has been decided by the Court as a matter of law and the jury

is not to consider it, and we are here to hear—we are in the court to hear from Mr. Pozner about how this defamation injured him. [P. 98-99].

MR. FETZER: Be—before we move too far down the yellow brick road, Your Honor, am I mistaken or do I have an opportunity to speak about the defamation issue about the death certificate in its fraudulent character? [P. 99, L. 2-5].

MR. ZIMMERMAN: I think, Your Honor, and I'm certain that Wisconsin law allows this, is to grant summary judgment on the liability question, determine as a matter of law there are no factual disputes as to any of the elements of defamation and therefore, the Defendants defamed the Plaintiff. The jury is not going to hear that aspect in the case [Noah Pozner purportedly died at Sandy Hook] or try it. [P. 104, L 3-9].

2. Interlocutory Review Will Protect Defendants from Substantial or Irreparable Injury

A. With No Opportunity to Defend against the Defamation Claim at a Jury Trial, Defendants Will Be Subject to Substantial and Irreparable injury

Wis. Stat. 808(2)(3)(b) provides for acceptance of an application for interlocutory review in order to "Protect the petitioner from substantial or irreparable injury". In direct contradiction to the general rule that truth is a complete defense to a defamation claim, and that the truth of the alleged defamatory statement is a matter to be determined by the jury, we now have to face a jury in connection with a defamation charge; and, if Lenny Pozner has his way, we will be unable to defend ourselves. In essence, Lenny Pozner will be able to takes swings and punches at us while our hands are tied behind our backs.

With no opportunity to defend ourselves at a jury trial limited solely to money damages, we will be subject to a potentially huge and unjust jury award. Indeed, defamation cases of the kind at issue here present serious Constitutional concerns, which do not arise in the typical summary judgment cases. That is because in a defamation case, a defendant having been found liable for making a defamatory statement faces "the possibility that a jury will use the cloak of a general verdict to punish unpopular ideas or speakers," thus creating a potential chilling effect on

the freedom of speech. Torgerson v. Journal/Sentinel, Inc., 210 Wis. 2d 524, 539-40, 563 N.W.2d 472 (1997). As a result, Wisconsin courts have a constitutional duty to scrutinize the summary judgment record. Torgerson, 210 Wis. 2d at 539-40. Biskupic v. Cicero, 2008 WI App 117, ¶28, 313 Wis. 2d 225, 245, 756 N.W.2d 649, 658. *See also* Gertz v. Robert Welch, 418 U.S. 323, 350, 94 S. Ct. 2997, 3012 (1974) ("Juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused . . . and they remain free to use their discretion selectively to punish expressions of unpopular views.") That is why in Wisconsin defamation cases, it is the defendant, not the plaintiff who is given a presumption of non-liability. See Biskupic v. Cicero, *supra* ("summary judgment [in favor of the defendant] is an important and favored method for adjudicating public figure defamation actions.")

B. I Should Have the Right to Defend Myself at Trial because I Submitted Evidence that Established a Genuine Dispute of Material Facts as to Whether the Death Certificate Was a "Fake" or "Forgery"

As set forth below, it is my position that the trial judge's exclusion of all evidence regarding the alleged Sandy Hook shooting deprived me of my right to present the context in which the allegedly defamatory statement was made and thereby establish the "truth" of my statement. However, even if it were not unlawful for the trial judge to so limit my evidence, and the case could lawfully proceed on one simple issue – the validity of "the" death certificate – the question then becomes, *which one?* There are five (5) different versions of the death certificate in the summary judgment record. If the death certificate were authentic, there would be only one (1) version, with or without State certification.

The first version—ostensibly, the subject of this case—is the one Lenny Pozner made available to Kelley Watt in 2014, which appeared in both editions of *Nobody Died at Sandy*

*Hook*. This "first" version of the death certificate [Exhibit "2" to Transcript of Summary Judgment hearing] had no file number, redactions to the location of the burial site and to the decedent's Social Security number, but no Town or State certifications. The second version, including changes to Noah Pozner's residence made by Lenny Pozner, was attached as Exhibit "A" to the Complaint [Exhibit "5" to Transcript of Summary Judgment hearing]. Unlike the death certificate published in *Nobody Died at Sandy Hook,* the one attached as Exhibit "A" to the Complaint *does* have certifications from both the Town and the State. Other differences include 1) a hand-written State file number 2012-07-078033; 2) redaction to the burial location; and 3) an empty box for the Social Security number, which was crossed out with a Sharpie pen on the version published in *Nobody Died at Sandy Hook*.

While these "differences" on their face would surely support a dispute as to whether the death certificate published in the book was "fake" or "forged," to borrow a line from Paul McCartney—*Please, Please, Please*—just consider for one moment the explanation given by Lenny Pozner as to why he changed the residence of his purported son after he died. To whom is this information relevant? At the time of the Sandy Hook event, death certificates in Connecticut were a public record as a matter of law. According to Lenny Pozner, he wanted to make sure the public knew that Noah Pozner had lived with him more than with his mother. However, at the time Lenny Pozner "corrected" the copy of Noah Pozner's death certificate on Exhibit "A" to the Complaint, the Newton registrar, Debbie Aurelia, was refusing to issue death certificates to the public for any of the persons declared to have died at Sandy Hook. [See page 318, *Nobody Died at Sandy Hook*; see also Hartford Courant, 22 May 2013 located at *https://www.courant.com/opinion/editorials/hc-ed-newtown-town-clerk-ignores-law-on-death-cert-20130522-story.html* ("Ms. Aurelia is refusing to honor requests to see death certificates of

those who were murdered by Adam Lanza—even though death certificates by law or custom have always been open records.")] Furthermore, if Lenny Pozner had "corrected" the death certificate on 5 May 2013, then why did he post a copy on the *SandyHookFacts.com* website without those corrections? Such irregularity, in turn, creates a genuine dispute as to whether the death certificate is a "fake." *See e.g.,* Schuster v. Germantown Mutual Insurance Co., 40 Wis. 2d 447, 452, 162 N.W.2d 129, 131 (1968), which states:

> If the party opposing the motion for summary judgment submits sufficient facts which show there is a real controversy and takes the matter challenged by the motion out of the **category of being a sham and unmeritorious suit or defense**, that party is normally entitled to a trial on the merits.

Insofar as we had called the death certificate a fake before we even knew that it had been supplanted by another (equally suspicious) version, it can hardly be said that our position is a "sham" or an "unmeritorious" defense. Furthermore, to the extent there is any question as to whether such circumstances create a genuine factual dispute as to whether "the" death certificate is fake, all doubt must be resolved in favor of the Defendants. *See* Miller v. Minority Bhd. of Fire Prot., 158 Wis. 2d 589, 597, 463 N.W.2d 690, 693 (Ct. App. 1990) ("The court determines only whether a factual issue exists, resolving doubts in that regard against the party moving for summary judgment.")

Having stated a compelling argument above why these two (2) versions of the death certificate create a genuine dispute whether the death certificate is "fake," along came a third version. After being served with the Complaint in November 2018, my co-defendant, Dave Gahary, publisher and co-defendant Wrongs Without Wremedies, obtained his own certified copy from the Newtown Registrar, Debbie Aurelia. [See Exhibit "6" to Transcript of Summary Judgment hearing]. The version he obtained has Debbie Aurelia's Town certification, but it has only a partial printed file number with four digits, the first of which is obscure; but the other

numbers are 243. Notably, these digits do not correspond to the handwritten file number of the death certificate attached as Exhibit "A" to the Complaint. It also had no redactions and an empty box for the Social Security number. The fourth distinct version of the death certificate is one I myself obtained from the Connecticut Department of Public Health. [See Exhibit "7" to Transcript of Summary Judgment hearing]. This fourth version has the same hand-written file number as the version attached as Exhibit "A to the Complaint - 2012-07-078033. However unlike Exhibit "A" to the Complaint, Exhibit "7" contains no REDACTED mark for Box #'s 29 and 30 for input of information regarding disposition of the body and location of the burial.

The fifth version of the death certificate on record in this case is the one introduced on the day of the Summary Judgment hearing by counsel for Lenny Pozner. With no advance notice, counsel introduced two death certificates, each bearing the original embossed seal of Debbie Aurelia, Town Registrar, which he represented contained no "material differences" with the death certificate he had provided to Kelley Watt. Indeed, upon close inspection of Exhibit 2 and Exhibit 4, there are "punch holes" on the left side of each death certificate that appear to exactly align with one another. However, where the death certificates *do not align* is such a key piece of evidence that it is determinative of this matter – and there is no certification on Exhibit 4 from the Town Registrar, Debbie Aurelia. As set forth below, any death certificate in the State of Connecticut without certification from the Town Registrar is invalid and inauthentic. Knowing full well that we would discern the death certificate provided by Lenny Pozner to Kelley Watt to be a fake because of its lack of certification from the Town Registrar, he knew that we would take the bait and call it "fake."

A. Connecticut Law Requires Death Certificates to Be Certified by Town Registrars

In Connecticut, a certified copy of a death certificate may be issued at either the town or

the state level. Conn. Gen. Stat. Sec. 7-36(5). The Town Clerk is the Registrar of Vital Statistics within the town, Sec. 7-37(a), and in Newtown, it is Debbie Aurelia. The Town Registrar registers the original death record and submits a certified copy to the State Department of Public Health and Vital Statistics, which then can also issue certified copies itself. Conn. Gen. Stat. Sec. 7-40 says, "The registrar of vital statistics in each town shall have an **official seal** that shall be provided by the town and **shall be used to authenticate certificates and copies of record** . . . " [Emphasis added]. Debbie Aurelia's signature at the bottom of the document is not the required certification, but rather is her statement of when the certificate was received by her for recording, as required by Conn. Gen. Stat. Sec. 7-42. However, there is *no* certification by Debbie Aurelia of the version at Exhibit 4. Moreover, under Connecticut law, only a person who is an approved genealogical researcher or employee of a state or federal agency can obtain an uncertified copy of a death certificate. See Conn. Gen. Stat. Sec. 7-51a (2012). Lenny Pozner is no genealogical researcher.

2) The Trial Judge Committed Reversible Error by Engaging in The Fact-Finding Process to Resolve Issues Of Disputed Material Fact

Summary judgment methodology prohibits the Court from deciding an issue of fact. The Court determines only whether a factual issue exists, resolving all doubts in that regard against the party moving for summary judgment. Miller v. Minority Bhd. of Fire Prot., 158 Wis. 2d 589, 597, 463 N.W.2d 690, 693 (Ct. App. 1990). Moreover, the truth or falsity of an allegedly defamatory statement is a question of fact for the factfinder. See Fields Foundation, Ltd. v. Christensen, 103 Wis. 2d 465, 484, 309 N.W.2d 125, 135 (Ct. App. 1981) (Whether a defamatory statement is or is not substantially true is a question of fact.) Indeed, the great Oliver Wendell Holmes once warned against a single judge determining the truth or falsity of an allegedly defamatory statement: "**No central arbiter can pretend to unerringly detect**

**objective reality**." *See* Abrams v. United States, 250 U.S. 616, 630, 40 S. Ct. 17, 63 L. Ed. 1173 (1919) (Holmes, J., dissenting). [Emphasis added].

Clearly, the trial judge utilized his own personal opinions and experience to resolve the dispute over the several different versions of the death certificate. The trial judge even offered his own testimony:

> The COURT: Dr. Fetzer, as a lawyer, I am a notary. I've got to tell you, I don't recall ever being given instructions on where to make the embossed, whether I put it—sometimes it's hard because it only has a reach into the document of a certain length because of the squeeze on the embossed stamp. I also do have a court seal as well. So I'm just saying, when you get a chance to say something, I just want to let you know, because unless I tell you these things, then you would not know that as a government official, a notary in the State of Wisconsin, I've never been told where to put it. Usually I put it over my signature, but I—but I've never to my knowledge been made aware that there's a right or wrong place to put these things. So keep your thoughts. [P. 46, L. 1-8]
>
> I want you to—I will tell you Fetzer, I understand all of their explanations, explanations. . . . in my opinion, seem legitimate and plausible and persuasive. [P. 122, L. 4-9].
>
> Dr. Fetzer, you have correctly pointed out on more than one occasion the differences between the various copies. That does not alone indicate that any one of them are false, it only demonstrates a difference. [P. 154, L 14]
>
> I've looked at the exhibits. I follow and track all of the explanations that have been provided by the Plaintiff as to explaining the differences between the various forms and copies of the death certificates. All of that makes sense to me and provide a **plausible** and acceptable explanation for those differences. [Emphasis added]. [P. 163, L 9-14].

3. Interlocutory Review Should Be Granted Because It Will Clarify an Issue of General Importance in the Administration of Justice as the Denial of My Right to Present the Context of the Allegedly Defamatory Statements Violated My Constitutional Right to Due Process

The United States Supreme Court has held that the States may constitutionally allow private individuals to recover damages for defamation on the basis of any standard of care except liability without fault. Gertz v. Robert Welch, 418 U.S. 323, 339, 94 S. Ct. 2997, 3006 (1974).

Applying such standard to the law of Wisconsin, if one establishes that an allegedly defamatory statement is true, it is a complete defense to a defamation claim. It is not necessary that the article or statement in question be true in every particular. All that is required is that the statement be substantially true. Smith v. Journal Co. (1955), 271 Wis. 384, 389, 73 N. W. (2d) 429. Moreover, the truth or falsity of an allegedly defamatory statement is strictly within the province of the jury. *See* Fields Found., Ltd. v. Christensen, 103 Wis. 2d 465, 484, 309 N.W.2d 125, 135 (Wis. Ct. App. 1981). *See also* Restatement 2d of Torts, § 617(b) (Subject to the control of the court whenever the issue arises, the jury determines whether the matter was true or false). By bifurcating my abuse of process claim and granting a protective order on discovery relating to the Sandy Hook event, I have been prevented from presenting the context in which I claimed that the death certificate produced by Lenny Pozner was "fake." Such actions are a clear abrogation of the law of natural justice that every person shall "have their day in court." As stated in Harris v. Hardeman, 55 U.S. 334, 341, 14 L. Ed. 444 (1852): "No man is to be condemned without the opportunity of making a defence, or to have his property taken from him by a judicial sentence, without the privilege of showing, if he can, the claim against him to be unfounded." The complete excise of the context from the truth of our allegedly defamatory statement did, in essence, deprive the defendants of "their day in court."

### B. The Failure of the Judge to Provide Adequate Time for Discovery Was a Violation of Due Process

From the beginning, the trial judge acted with reckless disregard for the rights of Defendants, adopting a rigid and fixed schedule for the trial to proceed, independent of what discovery might yield along the way. Summary Judgment Motions were due on 30 April 2019, and oral argument on 17 June 2019. Discovery, however, was permitted until 9 September 2019. Consider that the Scheduling Order was issued on 15 March 2019, and the deadline for Summary

Judgment was only six (6) week-days later. It was a practical impossibility for me to perform the necessary depositions and discovery to prepare my objections, especially when crucial witnesses are in the State of Connecticut, and I am a thousand miles away in the State of Wisconsin. Notwithstanding the short window provided for depositions and the far distance required for travel, the trial judge *scolded me for not taking depositions quick enough*. See the trial judge's admonition below, regarding my objection to Lenny Pozner's Proposed Finding that he was married to a woman named Veronique De LaRosa:

> [i]f you thought that they were not married or they were not married in 2003 or they were not divorced in 2014, then to dispute that you would say, Judge, that is disputed because I -- I took a deposition of Veronique De La Rosa and she said she never married him [Protective Order Hearing Transcript P. 110 -111, L. 22-1].

It is well established that summary judgment is appropriate only when sufficient time for discovery has passed. Chase Manhattan Bank v. Banks, 2005 WI App 1, 277 Wis. 2d 875, 690 N.W.2d 885. The trial judge established a summary judgment deadline with such a short discovery window that the Scheduling Order does not withstand Constitutional scrutiny. Such deprivation of the undersigned's due process rights demands corrective guidance to set a proper precedent for the courts of Wisconsin in the administration of justice.

**WHEREFORE**, for the foregoing reasons, Defendants respectfully request that their Application for Interlocutory review be granted.

Dated: 6 July 2019 Signed: */s/ James Fetzer*

James Fetzer, Pro Se

Dated: 6 July 2019 Signed: */s/ Mike Palecek*

Mike Palecek, Pro Se

**NOTE:** This petition was prepared with the assistance of a lawyer whose license is not active, Alison Maynard, Colorado Bar Registration No. 16561.

I James Fetzer certify that this Application for Interlocutory Review in *serif* contains 7,981 words (exclusive of this page)

Dated: 6 July 2019 Signed: */s/ James Fetzer*

James Fetzer, Pro Se

Shannon Hicks—Newtown Bee/AP

*The following photos were taken on Dec. 14, 2012.*
Connecticut State Police lead a line of children from the Sandy Hook Elementary School in Newtown, Conn.


USA