

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Civil Action No. 22-cv-01129

4 ERIC COOMER,

5 Plaintiff,

6 vs.

7 MICHAEL J. LINDELL, et al.,

8 Defendants.

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10 REPORTER'S TRANSCRIPT

11 Jury Trial, Vol. VII

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13 Proceedings before the HONORABLE NINA Y. WANG, District
14 Judge, United States District Court for the District of
15 Colorado, commencing on the 10th day of June, 2025, in
Courtroom A902, United States Courthouse, Denver, Colorado.

16 APPEARANCES

17 For the Plaintiff:

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22 For the Defendants:

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1 P R O C E E D I N G S

2 (Proceedings commenced at 8:36 a.m.)

3 THE COURT: Good morning. We're on the record in
4 22-cv-01129, Coomer v. Lindell, et al.

5 May I have appearances of counsel.

6 MR. CAIN: Good morning, your Honor. Charlie Cain, on
7 behalf of the Plaintiff, along with Bradley Kloewer, David
8 Beller and Ashley Morgan.

9 THE COURT: Good morning.

10 MR. CAIN: Good morning, your Honor. Christopher
11 Kachouroff, Jennifer DeMaster and James Duane.

12 THE COURT: Good morning.

13 I understand the parties have a couple things to
14 raise.

15 MR. CAIN: We do. I have one and then my colleague
16 may have another.

17 THE COURT: Okay.

18 MR. CAIN: This is more in the nature of flagging the
19 issue for the Court so that we don't spend too much time while
20 the jury is here.

21 It's my understanding that the Defendants are
22 intending to offer a significant amount of video evidence from
23 Absolute Proof, Scientific Proof, Absolute Interference, Kill
24 Chain, interviews from Jimmy Kimmel with Mr. Lindell,
25 et cetera. I have about 15 to 20 clips that they have cited to

1 us. And I raise it as flagging it for you because I don't know
2 what they're going to offer, ultimately. But I don't, like I
3 said, want to take up the jury's time with it.

4 Our concern is that none of these clips -- well, first
5 of all, they're hearsay -- but none of the clips are about
6 Dr. Coomer. It's largely along the lines of issues like cancel
7 culture. There's some backdoor evidence from witnesses that
8 are not before the Court, and obviously, I made a big deal of
9 it with Mr. Lindell that Dr. Frank and others -- it's primarily
10 Dr. Frank that's in these -- but you have Michael Flynn, who we
11 deposed in a different case, but people like that on these
12 videos that are giving quasi expert views and opinions on
13 evidence that is not evidence, in terms of their expert
14 opinions.

15 So when viewed in light of what Mr. Lindell has been
16 testifying to, which is that his state of mind when he was
17 making these statements was that Dr. Coomer was a blocker --
18 blocker, we used that many times -- and Dr. Coomer after he was
19 sued was engaging in lawfare and he never accused Dr. Coomer of
20 rigging the election, these videos are not certainly relevant
21 to his state of mind that he's testified to in open court.

22 And then, maybe even more concerning is the Jimmy
23 Kimmel interview that's on the list. Mr. Kimmel speculates
24 that perhaps Mike Lindell is sincere in his beliefs about this
25 election fraud stuff, but there's something going on with his

1 past crack addiction that makes him think he may be paranoid,
2 things along those lines that I find concerning.

3 And I neglected to mention there's some hearsay
4 statements by Phil Waldron in one of the videos.

5 My assumption is they're going to argue that it goes
6 to the declarant's state of mind and it's not offered for the
7 truth, which, of course, if there are statements made by
8 Mr. Lindell himself, we can discuss that aspect of it in that
9 context, but by and large, it's, in our view, improper and
10 would not be admissible under 401, 403.

11 And then, you heard reference to this HBO movie, Kill
12 Chain, which is 90 minutes long, that Dr. Halderman and
13 Mr. Hursti were involved in. It's my understanding that the
14 intent is to, under 106 issues, to play the entire 90-minute
15 movie to the jury. Counsel can correct me if I'm wrong. And
16 we don't think that would be appropriate anyway.

17 So to conclude, these are the issues. And I'm afraid
18 if we get Mr. Lindell on the stand, we're going to spend a lot
19 of time with the jury going perhaps in and out, unless we get
20 some parameters or guidelines about this evidence.

21 THE COURT: Thank you.

22 Mr. Lindell, would you like to come forward and join
23 your counsel.

24 THE DEFENDANT: Thank you, your Honor.

25 THE COURT: Mr. Duane.

1 MR. DUANE: One moment, your Honor, just to confer for
2 a moment.

3 THE COURT: All right.

4 (Conferring.)

5 MR. DUANE: Good morning.

6 THE COURT: Good morning.

7 MR. DUANE: Thank you for your patience.

8 Your Honor, addressing, first, the issue, the concern
9 he expressed with respect to hearsay, he's entirely correct.
10 We're happy to -- the exhibits that he referred to, we're happy
11 to have them admitted with an instruction that none of this is
12 being offered to prove the truth of the matter asserted, for
13 the same reason that much evidence by the Plaintiff, to show
14 just the opposite, to show, that is to say, that there was no
15 reasonable basis for anybody in their right mind to believe
16 that there could have ever been election fraud.

17 Mr. Cain introduced an exhibit yesterday of an
18 extended video from a CNN broadcast, where Anderson Cooper, a
19 reporter came on expressing their rock solid conviction that
20 all this was a hoax and a big lie and nobody could ever believe
21 such a thing and also interviewing other individuals in the
22 same video, which as I reminded the Court at the time should
23 be -- which was admitted, without objection by us, in good
24 faith, we did not object to that. I did remind the Court
25 afterwards that this video needs to be attended by an

1 appropriate limiting instruction by the Court, that this
2 evidence is not admitted to prove the truth of the matter
3 asserted, and of course, we would consent to the same
4 instruction with respect to the videos that we intend to offer.
5 So there's no problem with hearsay.

6 THE COURT: Have you met and conferred with the other
7 side about this proposed limiting instruction yet?

8 MR. DUANE: We did send it by email this morning.

9 MR. CAIN: I didn't see it.

10 MR. DUANE: Your Honor asked us to meet with them and
11 meet with them before the charging conference this afternoon,
12 so we sent them something and we'll work it out with them
13 before then.

14 THE COURT: All right.

15 MR. DUANE: The other objection Mr. Cain mentioned
16 relevance and probative value. I assure the Court that, even
17 if the Court is gracious enough to allow us to play these
18 videos, the entire cross-examination of this witness, including
19 the videos, will be less than the six hours that was devoted to
20 the direct examination of the same witness by the Plaintiff's
21 attorney. So the amount of time that we devote to this topic
22 will not be excessive.

23 THE COURT: How do these pertain to his state of mind?

24 MR. DUANE: They pertain directly, your Honor, to his
25 state of mind. Because the witness will testify that he

1 actually saw a video called Kill Chain. The witness mentioned
2 that on direct, and we will confirm again today, that were
3 brought to his attention by prominent officials in the
4 government, this was one of the very first things he saw that
5 first alerted him to the very definite possibility that there
6 was serious potential for election fraud and voting
7 irregularities, specifically with respect to the voting
8 machines.

9 THE COURT: Specifically related to Dr. Coomer and
10 Dominion?

11 MR. DUANE: Not entirely, your Honor, no.

12 THE COURT: This isn't about just general election
13 fraud and general statements. The alleged defamatory
14 statements that are at the core of this case are about whether
15 or not Dr. Coomer was on an Antifa call and said that he rigged
16 the election.

17 MR. DUANE: That is, admittedly, one of the most
18 important issues in this case. But your Honor, with all
19 respect, that is certainly not the only issue Plaintiff's
20 attorneys have focused on.

21 Again, the CNN video shown to the jury yesterday, I
22 don't believe that video even mentioned Eric Coomer. Again,
23 the video certainly wasn't focused on Eric Coomer.

24 THE COURT: But it was focused on Mr. Lindell, as the
25 Defendant. He was the one giving the central interview in

1 that.

2 MR. DUANE: True.

3 THE COURT: And to the extent that you all didn't
4 object before the admission of it, I didn't have an opportunity
5 to address with you all any 403 analysis as to whether or not
6 the clip should be shortened.

7 MR. DUANE: Your Honor, with respect to the videos we
8 would like to show to the jury that Mr. Cain has alluded to,
9 have even greater probative value than the video he showed.

10 In the video he showed and some of the items they plan
11 to enter through Dr. Halderman later in the trial, is not the
12 Defendant's statement, but instead involves various public
13 statements, for example, on the CNN broadcast by people who
14 report to be authorities on the subject who have confidently
15 assured the world that there is no evidence of any possibility
16 of tampering with the election results or with these voting
17 machines. That is an issue that the Plaintiffs have
18 interjected into this case in their pleadings, opening
19 statements, in the evidence in the case.

20 We are only requesting a little latitude to counteract
21 that evidence with absolutely critical evidence that directly
22 explains why it is that Mr. Lindell, quite justifiably, or in
23 any event, quite sincerely believed what he was being told by
24 numerous individuals, both on the video that he watched, which
25 was the Kill Chain videos, as well as several videos he helped

1 to produce, where he is showing several other people --

2 THE COURT: How is this not a back door into the fact
3 that you haven't presented or identified any expert witnesses
4 on either your final pretrial order or on any witness list?

5 MR. DUANE: We're not asking to admit this evidence as
6 expert testimony. Expert testimony, by definition, involves
7 opinions of the truth of the matter that is being offered and
8 explained by the expert. As I said, you can take care of that
9 objection as well as the hearsay objection by explaining to the
10 jury that this evidence is solely being offered to assist the
11 jury in understanding the most important issue in this entire
12 case, and that is whether in fact Mr. Lindell had a decent or a
13 good-faith basis for believing the things that he has said for
14 which he is now on trial.

15 THE COURT: Which are directly related to Dominion
16 voting systems and Dr. Coomer.

17 MR. DUANE: Yes. Yes, your Honor.

18 THE COURT: Are you intending to offer the entire Kill
19 Chain? You want to play that entire --

20 MR. DUANE: Yes, your Honor.

21 THE COURT: Under a 403 analysis, there is no way that
22 we are playing the entire 90-minute Kill Chain movie. So to
23 the extent that you have excerpts that you want the Court to
24 consider, that's certainly something that you need to alert the
25 other side to so we can have an official presentation of

1 evidence.

2 As I indicated yesterday, to the extent that you asked
3 whether or not I wanted to play the whole thing or excerpts, I
4 said, to the extent that excerpts are appropriate, then you
5 should meet-and-confer with the other side so we could
6 streamline this process and deal with any objections. I did
7 not realize by saying that you would take it as, we needed to
8 play entire videos or movies, which we are not going to do
9 under a 403 analysis.

10 MR. DUANE: Understood.

11 THE COURT: The probative value with respect to what
12 the scienter is as to these claims is not outweighed by the
13 potential prejudice or the time or the efficiency of trial.

14 MR. DUANE: Understood, your Honor. In anticipation
15 of that possibility, we have already prepared clips and
16 excerpts.

17 THE COURT: Have you shared those clips with
18 Plaintiff's counsel?

19 MR. DUANE: I believe we shared all of them or almost
20 all of them with opposing counsel. If I may have a moment to
21 confer.

22 THE COURT: You may.

23 MR. DUANE: Thank you, your Honor. Just a moment,
24 please.

25 (Conferring.)

1 MR. DUANE: Your Honor, we did furnish them with
2 timestamps for the excerpts that we would like to play for the
3 sake of efficiency.

4 THE COURT: When were those furnished?

5 MR. CAIN: 51 minutes ago, your Honor.

6 MR. DUANE: I believe that's only true for the Kill
7 Chain video. For the other videos, we gave them timestamps --

8 THE COURT: I think your co-counsel would like to
9 speak with you.

10 (Conferring.)

11 MR. DUANE: Other than the Kill Chain video, we gave
12 them the other excerpts weeks ago.

13 If I may have one more point.

14 THE COURT: Go ahead.

15 MR. DUANE: With respect to probative value, the Kill
16 Chain excerpt that we would like to show the Court, which is
17 one of the most important exhibits in this case, quite frankly,
18 is -- to the extent it relates directly to this case, it
19 contains an interview involving statements being made on the
20 video by Dr. Halderman, their own witness, and Harry Hursti, a
21 witness who also testified for the Plaintiffs in this case by
22 deposition, who gave or will give general evidence and
23 testimony and opinions about whether the system -- these voting
24 machines can be hacked, statements made by them in this
25 courtroom, your Honor, which you will see are directly

1 contradicted --

2 THE COURT: So are you trying to use extrinsic
3 evidence to impeach them?

4 MR. DUANE: Rule 613(b) of the Federal Rules of
5 Evidence does allow extrinsic evidence of a prior inconsistent
6 statement.

7 THE COURT: How are you going to establish a prior
8 inconsistent statement?

9 MR. DUANE: Because the video will be shown to you and
10 the jury that will show that these individuals made statements
11 before today that are most decidedly inconsistent with the
12 testimony that they have given and will be giving in this case.

13 Ordinarily, your Honor, if it weren't for your
14 preference, your understandable preference that each witness
15 take the stand only once, we would, at a minimum, request the
16 chance to recall Mr. Lindell to the stand, lay the foundation
17 for the admission of this exhibit after these witnesses have
18 testified to impeach them in that way. As your Honor knows,
19 according to your preference and your instruction, we're not to
20 recall him to the stand, so we need to put this evidence in
21 now. Not solely, I might remind the Court, for the purpose of
22 contradicting and impeaching these witnesses through
23 impeachment by contradiction, but also as affirmative
24 substantive evidence in support of our substantive defense
25 that, in fact, Mr. Cain was mistaken yesterday when he tried to

1 get Mr. Lindell in front of the jury on direct examination to
2 admit that he didn't have anyone that agreed with him and
3 nobody agreed with him. The Plaintiffs have tried to portray
4 this Defendant as some sort of a loan wolf crying out in the
5 wilderness, alone in the desert, trying to foster public
6 understanding of a topic which, according to the Plaintiffs and
7 their evidence, is ludicrous and indefensible, something
8 Plaintiff's counsel in opening statement -- I'm sorry, in jury
9 selection, referred to as the big lie. That was the phrase the
10 jury heard from Plaintiff's counsel in jury selection.

11 THE COURT: In order to rebut the falsity of the
12 defamatory claims, don't you have to prove truth that there was
13 some election interference by Coomer and Dominion, not just
14 generally that there is some ill defined possibility that there
15 was election fraud?

16 MR. DUANE: Yes, your Honor.

17 THE COURT: Or there may be issues with the voting
18 machines?

19 MR. DUANE: Yes. And our videos do.

20 THE COURT: With respect to that concession, then,
21 doesn't your evidence have to be then limited with respect to
22 probative value of that discrete issue?

23 MR. DUANE: Two points.

24 One, respectfully, no. For the same reason that we've
25 heard so much evidence being offered at the trial by the

1 Plaintiffs with respect to so many statements that have been
2 played for the jury and admitted in this trial --

3 THE COURT: With no objection?

4 MR. DUANE: Some was objected, some was not. That's
5 not my point.

6 Many of them videotaped experts of public statements
7 made by Mr. Lindell and, as your Honor knows, some of those
8 statements definitely did refer to Eric Coomer and to Dominion
9 specifically, not all of them, the jury has had heard a great
10 deal of evidence describing in general his insistence we've got
11 to melt down all these machines and turn them into prison bars
12 and convert the system entirely so that all the machines are
13 replaced with paper ballots, we have heard that repeatedly from
14 the Plaintiffs and their evidence. To the extent the Defendant
15 sincerely believes that that's what this nation has been doing,
16 we have to do to protect what he calls our elections, their
17 integrity, he had a good-faith basis for believing that, that
18 goes directly to his state of mind, and I submit the most
19 important issue in the case.

20 Second, I want to --

21 THE COURT: Is the standard good-faith basis,
22 Mr. Duane, for defamation?

23 MR. DUANE: Yes and no.

24 THE COURT: It is not.

25 MR. DUANE: When I say yes and no, I'm using a

1 shorthand term expressing the standard. The relevant
2 standard --

3 THE COURT: You would concede that even if he, in good
4 faith, did not do an adequate investigation, that he was
5 reckless, it would still be defamation; correct?

6 MR. DUANE: I understand, under the First Amendment, I
7 believe, your Honor, based upon your pretrial ruling, based
8 upon the contentions in this case, the Plaintiffs are required
9 to show that the Defendant's statements were knowingly false or
10 spoken with reckless disregard for their truth or falsity,
11 that's the legal standard.

12 THE COURT: That is not good faith. Good faith is the
13 something different under Colorado law. Would you concede
14 that?

15 MR. DUANE: Yes.

16 THE COURT: Okay.

17 MR. DUANE: I didn't presume that was a phrase that
18 would appear in the instruction. I used the phrase good
19 faith --

20 THE COURT: I would also expect that it would not show
21 up in closing argument, because that is not the standard.

22 MR. DUANE: Understood. I was using it as a shorthand
23 way of summarizing what I took to be the converse of what the
24 Plaintiffs are trying to prove. But you are correct, that's
25 not, strictly speaking, the right basis.

1 THE COURT: All right.

2 MR. DUANE: To show he was speaking in good faith was
3 my shorthand way of alluding somewhat indirectly to the fact
4 they have to show under their burden of proof that he spoke
5 with a reckless disregard to the truth or the falsity --

6 THE COURT: Knowingly spoke.

7 MR. DUANE: Exactly. We're trying to show just the
8 opposite. These videos do that. They do, in part, through
9 evidence about statements that were made on the record publicly
10 by Harry Hursti and by Dr. Halderman that clearly corroborate
11 and support the central thrust of what Mr. Lindell has said.

12 THE COURT: All right. So let me understand what
13 exhibits we're talking about.

14 And when was the Jimmy Kimmel interview?

15 MR. DUANE: The Court --

16 THE COURT: When was the Jimmy Kimmel interview,
17 Mr. Duane?

18 MR. DUANE: My understanding, your Honor, it was in
19 April of 2021.

20 THE COURT: What exhibit is it?

21 MR. DUANE: The exhibit number, I believe it's 248.

22 THE COURT: And how long of a clip are you intending
23 to show of that interview?

24 MR. DUANE: That clip, I believe, is only about two
25 minutes, couple of minutes, very short. Maybe three minutes,

1 at the most.

2 THE COURT: What other exhibits are we talking about?

3 MR. DUANE: There are excerpts from Kill Chain, which
4 is Exhibit 247. And that's the video that the Defendant
5 testified -- I will lay a foundation first -- that he will
6 testify he saw, which furnished the centerpiece for the
7 justification for why he believed in the things he --

8 THE COURT: What other exhibits?

9 MR. DUANE: We wanted to show video clips from the
10 three videos that Mr. Lindell has helped to produce on this
11 subject.

12 THE COURT: What exhibits are those?

13 MR. DUANE: That's 229 and -- let me check -- 230 and
14 231.

15 THE COURT: And what are the total amounts of time for
16 Absolute Proof, do you know, Exhibit 229?

17 MR. DUANE: Our best estimate, Judge, is it's no more
18 than 5 to 10 minutes. We tried to be as efficient as we could
19 in trying to identify the most important parts of these videos.

20 THE COURT: Scientific Proof?

21 MR. DUANE: Six minutes is our best estimate.

22 THE COURT: What about Absolute Interference?

23 MR. DUANE: The same, approximately 5 minutes, 5 to 10
24 at most.

25 THE COURT: How much for Kill Chain? Is that limited

1 to the interviews of Hursti and Halderman?

2 MR. DUANE: Yes.

3 THE COURT: And how long is that clip?

4 MR. DUANE: 10 to 15 minutes, your Honor.

5 THE COURT: And then what about the Jimmy Kimmel
6 interview, is that the whole thing?

7 MR. DUANE: I don't believe so. It's just a couple
8 minutes, 2 to 3 minutes.

9 THE COURT: Does the Kimmel interview discuss Dominion
10 specifically?

11 MR. DUANE: I honestly cannot say. I don't recall. I
12 don't think that it might. I don't think so. But it does
13 discuss the voting machines, the voting machines in general and
14 the general problems with election fraud that the jury has
15 heard all about in this case from the beginning of the first
16 day.

17 THE COURT: Anything else, Mr. Duane?

18 MR. DUANE: Only one, thank you.

19 In addition to what I said earlier about the probative
20 value of this evidence, I need to remind the Court, as you are
21 well aware, that the jury has heard a number of times in the
22 trial mention of these different exhibits. They heard about
23 kill chain. They heard about these other videos that were
24 produced by the Defendant. And if we are not given just a
25 little leeway, just a little latitude to play some of these

1 excerpts from these videos for the benefit of the jury, they
2 may be left with the mistaken impression that there's nothing
3 in those videos that corroborates and they may draw an adverse
4 inference from our failure to give them a chance to see what's
5 in the videos that the jury has already heard about, and that
6 goes a long way to enhancing the significance, to dispel the
7 possibility that jury might be prompted to inappropriately
8 speculate that these videos have not been produced because they
9 don't help the Defendants' case. That is not the case.

10 THE COURT: What do you mean by these videos would
11 corroborate? What is it corroborating?

12 MR. DUANE: Well, the videos show, for example,
13 Mr. Hursti and Mr. -- Dr. Halderman discussing, quite frankly,
14 and unapologetically their conviction, at the time, the
15 conviction that they then had that these machines were fraught
16 with the possibility for tampering, including but not limited
17 to the Dominion machines, which is exactly the point that
18 Mr. Lindell has been publicly campaigning about from the
19 beginning and for, again, which he is now on trial in this
20 court. The Plaintiffs have not been by any means specific in
21 limiting their evidence only to statements about the Defendant
22 to pertain to Mr. Coomer. They have offered a great deal of
23 evidence about statements being made in a wide variety of
24 settings, including, for example, the cyber symposium, about
25 statements made by Mr. Lindell expressing his general

1 misgivings about all of these voting machines. These videos
2 speak directly to that and demonstrate quite clearly that the
3 beliefs that he's been sharing publicly and at this trial here
4 with this jury have been publicly expressed by prominent
5 experts in the field and prominent political figures, just as
6 he testified yesterday. And that greatly enhances the
7 probative value of this evidence.

8 So we're not -- I'm not sure how much time we've got
9 left, your Honor, in this case, I believe your Honor gave each
10 side approximately 25 hours to try the case. I assure this
11 court, if you allow us to show this critical evidence to the
12 jury, we will not come close to using that much time.

13 I mean, the Plaintiff's counsel's concern about
14 cumulative evidence is misplaced. These videos have more
15 probative value than any other evidence we hope to offer in
16 this entire trial.

17 THE COURT: Mr. Cain, anything else?

18 MR. CAIN: I have practical concerns about Kill Chain.
19 We just got the clip lengths, but I haven't seen -- this
20 morning they sent us the periods of time, and that's going to
21 be -- we're going to have to go back and look at that and see
22 what exactly it is that they are intending to offer.

23 And then, just general 613(b), extrinsic evidence is
24 only permitted if a witness is given the opportunity to
25 explain, deny, the adverse party is given an opportunity to

1 examine the witness about it, so that I think is triggered
2 here.

3 To your broader point about voting irregularities, the
4 statements that were made related to criminal conduct by
5 Dr. Coomer related to the election, and none of these videos
6 speak to that. In terms of the clips themselves from the
7 movies, they don't address Dr. Coomer throughout any of those.
8 So from that analysis, I don't see how they get there.

9 And I'm also just concerned that they've got
10 5 minutes, 6 minutes, that sort of thing, we've got to do this
11 in an orderly fashion, and I don't see how we're going to be
12 able to do that on the fly right now, especially with respect
13 to Kill Chain.

14 And in terms of Kill Chain, there may be a reason when
15 Dr. Halderman testifies, that he could be impeached with
16 statements from that movie, if it's contradictory, but this is
17 a cart and horse issue for me, as it relates to that.

18 So I don't know if that settles anything for you, but
19 those are all problems.

20 THE COURT: It's incredibly difficult to rule without
21 actually seeing the evidence. It is not only hearsay, it is
22 probably hearsay within hearsay. There are going to be
23 significant issues, to the extent that there is a 403 analysis
24 that the Court has to engage in, I simply can't substantively
25 engage in that analysis without actually looking at the

1 evidence. It is impossible to do that.

2 MR. DUANE: I understand your concern.

3 THE COURT: So I'm not certain how we can put on this
4 evidence without the Court having an opportunity to review it.
5 So to the extent that you have these clips, you can put them on
6 a flashdrive, I can look at them at the lunch break or at a
7 break this morning. I'm willing to do so. But if these clips
8 are going to be 30 minutes, that means we're going to be
9 outside the province of the jury for 30 minutes or more as I
10 review them and make an analysis.

11 MR. DUANE: That's why, your Honor, other than the
12 Kill Chain video, we did send them more than a couple weeks
13 ago, they did have the clips, so if they had concerns, they
14 could have been raised sooner, requesting a ruling sooner than
15 this, so I'm not entirely responsible for the fact that this is
16 being raised by the Plaintiff's attorneys as an objection now.

17 And as far as Kill Chain goes, I had been under the
18 impression until today that they were going to be objecting if
19 we didn't play the whole thing or if we played only portions of
20 it, and we wanted to ameliorate that. I may have misunderstood
21 their expectations. I apologize if I did misunderstand them.

22 Your Honor, as you requested, we can put these on a
23 flashdrive to give your Honor a chance to review these things.

24 THE COURT: I would assume that none of these will be
25 introduced until the Court has an opportunity to review them.

1 MR. DUANE: If that's your desire.

2 THE COURT: I can't rule on the admissibility without
3 looking at them. I can't do a 403 analysis. I can't make a
4 determination without reviewing them. I mean, it would
5 literally be guessing, Mr. Duane.

6 MR. DUANE: I see. Would you like us to discuss this
7 then, you want to give us --

8 THE COURT: I want the excerpts so that I can review
9 them at a break outside the province of the jury and make a
10 determination that is well reasoned and educated.

11 MR. DUANE: Fair enough.

12 Before that break, your Honor, with your permission,
13 can I ask Mr. Lindell a few questions about the videos before
14 the showing of the videos to the jury, so he can explain to the
15 jury what it is that's in these videos?

16 THE COURT: Not until I make a determination. There's
17 no reason to lay the foundation, right, that's what you're
18 trying to do, lay the foundation of the videos.

19 MR. DUANE: More than that, though. It's not just to
20 lay the foundation. Even if the Court decides to exclude this
21 evidence, it would be our position, Mr. Lindell ought to be
22 allowed, irrespective of whether the exhibits are admitted, to
23 explain to the jury what it is that is in these videos that he
24 saw and shared with the world and explains why he believes the
25 things for which he's now on trial, the statements he made, and

1 why he did not act with a reckless disregard for the truth or
2 the falsity of what he was saying.

3 THE COURT: I think that's permissible as long as
4 it's, again, tied to the Dominion voting systems and
5 Dr. Coomer.

6 MR. DUANE: Certainly, your Honor.

7 THE COURT: Do we have any other issues we need to
8 raise outside the presence of the jury?

9 Yes, Mr. Kloewer.

10 MR. KLOEWER: Your Honor, this is one minor issue. I
11 wanted to alert the Court to an issue with a witness testifying
12 tomorrow, that's Jared Finkell, he will be appearing by
13 deposition testimony, he's the only witness that does not have
14 a corresponding video to go with that.

15 THE COURT: Okay.

16 MR. KLOEWER: So we wanted to alert the Court what we
17 have agreed upon, make sure that that's an acceptable format.
18 We have identified a reader for the witness portions of those.
19 I think it makes the most sense, since it could be confusing
20 for the jury to just go through the transcript with our
21 designations and the Defendants' designations in a single
22 reading, I think it would be more clear.

23 Another issue with respect to that, we provided the
24 designations to the Court. In light of the reader issue, we
25 have gone through to dedesignate some portions like objections,

1 sidebar, parenthetical, things of that nature. I don't know if
2 the Court wants a copy of those removing those references, just
3 so it reads better. We're happy to provide that if it would.

4 THE COURT: As long as both sides agree to it and
5 we're not going to get an objection in the middle of the
6 reading, for the reading, that's fine.

7 And have you all agreed that one person can -- the
8 counsel asking the questions, that you are not switching off
9 somehow?

10 MR. KLOEWER: I don't know if we have addressed that
11 specific issue. I'm seeing nods from Mr. Kachouroff. We're
12 not in disagreement. I just wanted to make sure the Court is
13 aware.

14 MR. KACHOUROFF: How much time do we have left each
15 side, just out of curiosity?

16 THE COURT: You'll need to ask the courtroom deputy
17 that. I think you probably need to ask her offline.

18 Anything else?

19 MR. DUANE: No.

20 THE COURT: We'll take a short recess while my
21 courtroom deputy checks on the jury.

22 (Recess)

23 THE COURT: I understand that we have the video clips
24 that the Plaintiff is proposing. There's a request by defense
25 counsel to be able to review them before we go forward. So

1 before I hear about that issue, let me understand, first, from
2 Mr. Duane, if you have examination of Mr. Lindell that doesn't
3 implicate these video clips so we can be as efficient with the
4 jury's time as possible.

5 MR. DUANE: Yes, I could.

6 THE COURT: And approximately how long do you think
7 you have?

8 MR. DUANE: Less than two hours.

9 THE COURT: So can we proceed with that while
10 Plaintiff's counsel is simultaneously -- one of your lawyers is
11 simultaneously reviewing the clips outside of this courtroom?

12 MR. CAIN: Yes, your Honor.

13 THE COURT: Okay. So let's do that.

14 It would be helpful for me to understand when these
15 clips were actually published, because there's not a date
16 associated with each of these exhibit numbers. And so, the
17 Absolute Proof video, which is Exhibit 229, do you know when
18 that was produced or published?

19 MR. DUANE: Yes, your Honor.

20 MR. CAIN: I'm sorry.

21 MR. DUANE: Charlie.

22 MR. CAIN: See if you agree, February 5th of 2021; is
23 that correct?

24 MR. DUANE: That is correct, sir.

25 THE COURT: And then what about Scientific Proof?

1 MR. DUANE: That was approximately March of 2021.

2 THE COURT: Okay. And then what about Absolute
3 Interference?

4 MR. DUANE: That was also approximately March of 2021.

5 THE COURT: I think you had indicated the interview
6 with Mr. Kimmel was April of 2021?

7 MR. DUANE: Yes.

8 THE COURT: And then it looks like Kill Chain was
9 2019; is that right?

10 MR. DUANE: Yes.

11 THE COURT: So let me give you some limited direction,
12 to the extent that you all will be trying to offer some of this
13 evidence with respect to these videos, we'll need an
14 opportunity to review them, as I indicated. You can ask
15 Mr. Lindell some limited questions about what he considered in
16 the context of coming to his various conclusions and
17 statements. It will be subject to objection by Plaintiff's
18 counsel, but it seems most appropriate for me to rule on those
19 objections as they go on.

20 MR. DUANE: Yes. And can I -- I apologize.

21 THE COURT: Go ahead, Mr. Duane.

22 MR. DUANE: I didn't mean to interrupt.

23 THE COURT: That's okay.

24 MR. DUANE: I just wanted to clarify your response.
25 You asked if I could proceed through the direct examination

1 without asking questions that would pertain to the videos, and
2 I said yes, which is true, no matter how you meant that. But
3 with your permission, I would like to ask him, as you said
4 earlier I could do, just a couple of general questions about
5 these videos. Is that something you --

6 THE COURT: Again, you can ask him general questions.
7 They'll be subject to objection by Plaintiff, and we'll take
8 them question by question.

9 MR. DUANE: Certainly.

10 THE COURT: So do you all have the flashdrive and the
11 ability to review?

12 MR. CAIN: We don't have the flashdrive because I
13 didn't ask for it. We have the ability to review because we
14 have -- we talked about it.

15 Do you have a copy of the flashdrive?

16 (Conferring)

17 MR. CAIN: I apologize.

18 THE COURT: All right. So let's do that so we can get
19 the technologies all in one place and get you all whatever you
20 need so we can have a more complete record of this. And once
21 that's completed, Madam Deputy, check with the jury and see if
22 they're ready to go.

23 Anything else we need to talk about without the jury
24 being present?

25 MR. CAIN: To truncate, if Kill Chain is part of what

1 he considered, we looked at part of it so far and there's
2 discussion about the premier TSX machine, which is not a
3 Dominion machine that was used, it's a paperless machine, it's
4 not analogous, it was not used in the 2020 election, is my
5 understanding, and the quote was talking to other devices
6 through this wireless connection, so that's to preview what I'm
7 going to be objecting to.

8 THE COURT: Anything else?

9 MR. DUANE: Yes. As a preview of my response, I just
10 want to alert the Court to the fact that the individual
11 speaking in that video also did speak specifically and directly
12 about Dominion machines as well.

13 THE COURT: All right. Any other issue right now?

14 MR. BELLER: Your Honor, only for permission to exit
15 and enter the well while court is in session, if possible.

16 THE COURT: You may.

17 MR. BELLER: Thank you.

18 THE COURT: We'll take a brief break and be back on
19 once the jury is ready.

20 (Recess)

21 THE COURT: Counsel, are you ready to proceed?

22 MR. DUANE: Yes, your Honor.

23 MR. CAIN: Yes, your Honor.

24 THE COURT: Mr. Lindell, if you could take the stand.

25 (Continued on next page)

1 (In open court; jury present)

2 THE COURT: Mr. Lindell, I remind you that you are
3 still under oath.

4 THE WITNESS: Okay. Thank you.

5 MICHAEL LINDELL,

6 having been duly sworn, testified as follows:

7 CROSS-EXAMINATION(continued)

8 BY MR. DUANE:

9 Q. Good morning, Mr. Lindell.

10 Mr. Lindell, you told us yesterday that you hadn't
11 read the complaint in this case until rather recently?

12 A. Yes.

13 Q. But you have read the complaint?

14 A. Yes.

15 Q. And you understand who is suing you in this case?

16 A. Yes. Dr. Coomer.

17 Q. And you understand -- is there anyone else who is suing you
18 in this case?

19 A. No.

20 Q. He's the only plaintiff?

21 A. Yes.

22 Q. And you understand that you have been charged in this
23 complaint with a claim for conspiracy?

24 A. Yes.

25 Q. One of the charges is that you conspired?

1 A. Yes.

2 Q. And you have conspired, they say, with the other defendants
3 in this case?

4 A. Yes.

5 Q. And who are those two defendants, just to clarify for the
6 jury?

7 A. It's My Pillow and Frankspeech.

8 Q. You told us a lot about those two corporations.

9 Did you conspire with My Pillow or with Frankspeech in
10 some way to deprive the Defendant of any rights?

11 A. No.

12 MR. CAIN: Objection.

13 THE COURT: Sustained.

14 Can you rephrase the question.

15 BY MR. DUANE:

16 Q. Did you enter into any kind of agreement, either in writing
17 or verbal, with My Pillow?

18 A. No.

19 Q. Did you enter into any kind of an agreement, either
20 verbally or in writing, with Frankspeech to defame --

21 A. No.

22 Q. We heard a lot earlier in the trial about a number of
23 individuals who are not parties to this case. Let me read just
24 quickly a list of some of the names that I wrote down during
25 the trial that I have heard a lot about. And some of these

1 individuals, several of these individuals we learned appear or
2 were somewhat connected with the cyber symposium. And when I
3 read these names, I just want you to tell me yes or no whether
4 you have been accused in this case of conspiring with them.

5 Josh Merrit?

6 A. No.

7 Q. Phil Waldron?

8 A. No.

9 Q. David Clements?

10 A. No.

11 Q. Joe Oltmann?

12 A. No.

13 Q. So as you understand it, in this complaint, you are not
14 accused of actually conspiring with any of those individuals?

15 A. No.

16 Q. Thank you.

17 Now, let me ask you about -- let's cut to the heart of
18 the matter and some of the statements that you have made in
19 this case we have heard so much about.

20 Do you recall the approximate date of the first
21 statement that you ever made to anyone about Mr. Coomer?

22 A. It was in May -- May 9th.

23 Q. Of what year?

24 A. 2021.

25 Q. And at that time, had you ever met Mr. Coomer?

1 A. No.

2 Q. Okay. And in that statement, you called him certain names?

3 A. Yeah, I called him a -- I called him a traitor.

4 Q. Okay. And did you -- why did you call him a traitor?

5 A. Well --

6 Q. Let me stop. Let me get to that first -- let me ask you
7 this.

8 When you made that statement, did you believe that he
9 had stolen the election?

10 A. Absolutely not.

11 Q. Did you claim that he had stolen the election?

12 A. No.

13 Q. From that date until today, have you ever publicly claimed
14 that he stole the election?

15 A. No.

16 Q. What was on your mind and the reason you called him a
17 traitor?

18 A. Up until that point, Obama deemed our elections critical
19 infrastructure, and by that point, when you got into April, I
20 had already been blocked, I call it blockers to the jury. This
21 wasn't about overturning the 2020 elections. This was going to
22 states, to secretary of states, to governors, like Brian Kemp
23 and Raffensperger, Brad Raffensperger all over this country,
24 and they were blocking me, like I'm going, why are you blocking
25 me, don't you care about our country.

1 And at this time, Eric Coomer had made this deal with
2 Newsmax, and I could never have My Pillow go on there again.
3 And I'm going, okay, more attacks, more blocks. And I just
4 did -- and that's why I had grouped him in the statement I said
5 with Brad Raffensperger and Brian Kemp, I've called them
6 traitors, I've called so many people that block me traitors,
7 call it hyperbole, but I did have concerns, why are you doing
8 this, why are you attacking My Pillow.

9 Q. You mentioned Mr. Raffensperger and Mr. Kemp, you said you
10 had also referred to them as traitors?

11 A. Right, in the same sentence I did with Dr. Coomer.

12 Q. Is that for the same reason?

13 A. Same reason. They blocked me. One was the secretary of
14 state of Georgia, one is the governor of Georgia. One of them
15 I knew personally and he is blocking me.

16 Q. What exactly did they do to block you?

17 A. I went to all the states to get information out, and
18 they -- that you can get under the Freedom of Information Act.
19 I told -- I went around and bought voter rolls. It wasn't just
20 swing states. I went to -- you name the state, I went from
21 Hawaii to Maine to Alaska. And I would get blocked by these
22 officials. These are government officials. Or the blocker
23 could be, take the Facebook fact checkers, his name is Alan
24 Duke --

25 Q. Excuse me. The court reporter needs to write all this

1 down.

2 A. Okay.

3 Q. I ask you to slow down a little.

4 A. The Facebook fact checkers, and his name is Alan Duke, it's
5 called Lead Stories, they're the ones that -- and they still do
6 it, I think, today on another scale -- they cover information
7 on Twitter, Facebook, what contains false information,
8 according to them. He has partners over in Belgium, his name
9 is Martin. Now, I got to know them very well during this time
10 because they would put everybody, not just me, anything that
11 had to do with the election, it could be that we had an
12 election and they would put it up there. So he and I got to
13 know each other. And I would call him a traitor right on my
14 show, how can you do this. And he and I would have
15 conversations going, you know, don't you care about our
16 country.

17 And we actually gave him an image that everyone -- we
18 gave him actually the Mesa County image in Colorado, we signed
19 an NDA with them, and gave it to Alan for his experts to look
20 at, and they came back and said, yes, it's true. I go, Alan,
21 tell the country about it. He goes, we only put false up. If
22 it's true, we don't put it up.

23 MR. CAIN: Objection.

24 THE COURT: Sustained.

25 MR. DUANE: I'll ask another question.

1 THE WITNESS: But I called him a traitor too. He
2 would even testify, what did I mean by that --

3 THE COURT: Mr. Lindell.

4 THE WITNESS: I'm sorry.

5 THE COURT: Thank you.

6 BY MR. DUANE:

7 Q. After you made that statement, and you said that was in May
8 of 2021?

9 A. Yup.

10 Q. That was the first time you ever spoke publicly about
11 Mr. Coomer?

12 A. The first time I heard his name.

13 Q. And you didn't accuse him of rigging the election?

14 A. No.

15 Q. How long was it before you spoke in public about Mr. Coomer
16 again after that?

17 A. Never mentioned his name again until I was in Colorado
18 here, I was doing a press conference, and they said, here, have
19 a nice day. I got served papers by Dr. Coomer, and he sued
20 myself, My Pillow and Frankspeech.

21 Q. When did that take place?

22 A. Take -- it was --

23 Q. When were you served with those papers?

24 A. It was March of 2022, I believe, a year later.

25 Q. So you --

1 A. Could have been May of -- I'm not sure of the date. It's
2 spring of 2022.

3 Q. That's fine. That's just -- so it was about a year that
4 you went without saying anything about him?

5 A. Yup.

6 Q. How did you feel about the fact that you were being served
7 like this in public on the capitol steps?

8 A. I looked, it sued My Pillow, Frankspeech, myself, I'm
9 going, what did I do to you. So I was very upset, very upset.
10 Not only are you -- you tried to block me, you cost me so much
11 money, what you did with Newsmax, and now you are attacking me
12 again. I was very upset.

13 Q. Were you upset about the fact that you had been sued or the
14 fact that the company had been sued?

15 A. Both. My Pillow and my employees, you have damaged them so
16 bad, I'm going -- I put him suing me and stuff as just, okay,
17 another blocker, I get what you're trying to do, you're like
18 all the politicians, no one wants to help secure our elections
19 and our infrastructure, and I took it as that and --

20 Q. You made some statements that same day, though, and shortly
21 afterwards, about Mr. Coomer; isn't that right?

22 A. Yes. I think I said, you move to the number one, you
23 should be behind bars when you melt down the machines. I said
24 these things.

25 Q. You have been here through the entire trial and heard all

1 the evidence?

2 A. Say that again.

3 Q. You have been here through the entire trial and heard all
4 the evidence?

5 A. Yes.

6 Q. And you heard the evidence that was admitted earlier in the
7 trial about a statement that Mr. Coomer had made before that
8 date expressing his desire to sue you, he wanted to sue that
9 clown, you remember that testimony?

10 A. Yeah. That was way back in February, the year before, that
11 was February of 2021, I believe.

12 Q. On the day that you were served on the capitol steps and
13 you say that you became angry and made some statements about
14 him, did you know on that day that he had already expressed a
15 desire to sue you?

16 A. No, I found that out here. That's what changed a little
17 perspective of Dr. Coomer.

18 Q. So when you were sued and you say you were angered, I think
19 that was your testimony, you made some statements, you said,
20 about him moving to number one.

21 What did you mean about that?

22 A. The number one blocker. He passed Raffensperger and Duke,
23 he passed them all, because you took that extra step. You are
24 blocking me. You are blocking your country from -- you'll hear
25 this in my testimony. I had so much evidence then in every

1 single state, and we have got problems in our elections. And
2 here they come with this to me, it was just out of left field,
3 a year later, and after what you did with Newsmax, I was very
4 upset. Put him as number one.

5 If you watched any of my shows, I never said he stole
6 the election. It was all about the blockers out there. Every
7 day I talked about blockers. What are these people doing, why
8 are they not wanting, all people, for us, as citizens, to get
9 the truth and to hear both sides, I want paper ballots or I
10 want machines, this has never been able to come public. And I
11 spent millions of dollars at that time, and I was tired of
12 being blocked. Okay, we're not only going to block you, but
13 sue you and your company.

14 Q. What was it that Mr. Coomer or his attorneys have done that
15 make you feel that he was trying to block you from, as you say,
16 getting the truth out?

17 A. For suing me for no reason. I hadn't talked about him in a
18 year. And he's the one who should have been sued for the
19 damage he did to My Pillow. By then, I already knew he cost My
20 Pillow about \$8 million.

21 Q. After that point in time, if I recall the evidence
22 correctly, you made some statements accusing Mr. Coomer of
23 treason; isn't that true?

24 A. A traitor.

25 Q. Traitor?

1 A. It's like all the other blockers. You can look -- they
2 call it hyperbole -- I called 50 to a hundred people traitors
3 because they were blocking. And I told them I show everything.
4 Here is the blocker of the week, here's the traitor from
5 Wisconsin, Alan Duke of the fact checkers. There was so many.
6 It wasn't just politicians. But it was things like -- like
7 Alan Duke, a capacity to block.

8 Media, there's some in this courtroom right now. I
9 called them traitors because they blocked the truth getting out
10 to the people. And not just the truth. The truth is, hey,
11 let's talk about these machines and let's talk about 132 other
12 countries. I'm trying to convince the media, you guys, don't
13 you care about your country. I have had arguments with them,
14 going, we're trying to save our country.

15 Q. Is that what you also meant when you used the word treason?

16 A. Yeah, a hundred percent.

17 Q. You made some statements expressing and maybe by way of
18 hyperbole, expressing opinions about whether Mr. Coomer should
19 go to prison, what was the reason you would make claims like
20 that, in your opinion?

21 A. Same reason, hyperbole you could call it, you could call it
22 crimes against all humanity. These are statements I made about
23 anybody that was trying to block -- there's two people in the
24 media that would testify that are in this room. They do it all
25 the time, this hyperbole, whatever, but they love my statements

1 that -- quite frankly, that, you know, they -- but they didn't
2 sue me, right.

3 Q. All right. I'm going to ask you not to make anymore
4 comments about anyone else who is exercising their right to be
5 here in court. We'll focus on Mr. Coomer, the Plaintiff in
6 this case.

7 You said you called a great number of people traitors.
8 Did you accuse any of these other people of having rigged the
9 election?

10 MR. CAIN: Objection, relevance.

11 THE COURT: Can you approach, please.

12 (Continued on next page)

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1 (At sidebar)

2 MR. DUANE: Just trying to clarify what he meant by
3 the word traitor. And I'm trying to clarify that by way of
4 contrast that he used it with others he believed had been
5 involved in election rigging or tampering.

6 THE COURT: Mr. Cain.

7 MR. CAIN: Your Honor, these are all statements the
8 Court has already ruled on.

9 MR. DUANE: I'm not trying to ask the Court to
10 reconsider its ruling. I'm trying to give the jury the best
11 possible insight as to what the Defendant meant by those words.

12 THE COURT: The objection is sustained.

13 The Court has ruled these are defamatory per se, the
14 way he used traitor in the way he did with respect to other
15 people and the Plaintiff in this case. The probative value is
16 outweighed by the potential confusion of the jury.

17 Mr. Duane, I would prefer if you refer to the
18 plaintiff as Dr. Coomer.

19 MR. CAIN: And in the questioning, give us some time
20 to add objections, if they can.

21 MR. DUANE: I can speak more slowly.

22 THE COURT: You need to slow down a little bit for our
23 court reporter, who is probably working her hardest just to
24 keep up.

25 MR. DUANE: I did ask the witness once.

1 I meant no disrespect to Dr. Coomer, I assure you. I
2 assure you both.

3 THE COURT: Thank you.

4 (Continued on next page)

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1 (In open court; jury present)

2 BY MR. DUANE:

3 Q. Mr. Lindell, I'm sorry, apologize for the brief
4 interruption.

5 Let's talk now about -- let's go back to the
6 beginning. We heard testimony about -- on your direct
7 examination, we heard some testimony, questions about the 2020
8 election and your statements that you made concerning that
9 election.

10 What was it that first drew your attention to the 2020
11 election?

12 A. First, it was deviations that -- deviations on February --
13 I mean, on November 4th of 2021. The -- I followed the
14 election very closely. And all of a sudden, everything stopped
15 in the sand, which was a deviation. It hadn't happened in any
16 other election that I knew of. All the states stopped counting
17 at the same time, that was really strange. And then, the next
18 day, I got -- we heard all kinds of things on the news that
19 were deviations.

20 Q. And what do you mean specifically by deviations?

21 A. Here would be an example. In the State of Michigan,
22 106,000 votes in the middle of the night came down for Biden
23 and 4,000 for Donald Trump, and they told us that that was the
24 mail in votes. Well, in fact, the mail in votes were counted
25 in Michigan on the morning of the 3rd. So where did they come

1 from?

2 It was just -- the numbers were just impossible
3 numbers, they were impossible numbers.

4 Another one was -- the deviations started rolling in,
5 I looked specifically at Arizona. It said they were 99 percent
6 complete, and that took almost 10 days. At that point, nobody
7 else in the country was looking at that, that was very strange.
8 I looked at the counties and looked back in time,
9 traditionally, what would be left there to be counted and how
10 would they vote, 70 percent Republican, whatever. And there
11 was -- it was impossible that -- mathematically, based on
12 previous numbers, that Arizona would not go to President Trump,
13 rather than Biden.

14 Q. What did all this information incline you to suspect?

15 A. That there was problems in the election, major problems.
16 This went on -- Pennsylvania had more votes than voters, that
17 was very public. If we left the room, say 10 of us vote, they
18 come back and say it's 15 to 5, that's weird, where is the
19 other 10. These were things that were really troubling me.

20 Q. Yesterday, you told us, you have shared your concerns with
21 a great number of individuals. Who is the first person you
22 remember talking about, as you pursued your investigation into
23 these suspicions, the first person you had --

24 A. It was mostly on my own at that time. I was just -- I
25 guess I did talk to officials in Nevada. I remember that being

1 one of the first ones. I called people I knew there that were
2 actually involved in doing the audits and checking in -- this
3 was Republicans that were checking into, you know, what was
4 going on in Nevada. And that quick study of Nevada said to be
5 a resident there, you had to be there 30 days in order to vote,
6 and they already had accounted for 3 or 4,000 -- I don't
7 remember the exact number -- 3,000 people that voted that
8 didn't live in Wisconsin -- I'm sorry, that didn't live in
9 Nevada. And I'm going, okay, well, they're going to do
10 something about it, okay. And this was what was reported, I
11 hadn't validated it, but this was calls making and going, wow,
12 I did study and say -- in my mind, I go, wow, people voted and
13 they weren't there the whole 30 days or whatever, so I took
14 everything kind of with a grain of salt.

15 But these deviations were everywhere. And so I really
16 started digging into -- like in Wisconsin, I had to call there.
17 I forget who I called. It was a --

18 Q. Was it a government official?

19 A. Yeah, yeah, most of them were government officials. And I
20 said, how could I get -- Wisconsin, I remember was one of the
21 first ones where I got rolls that said like 20,000 people had
22 voted from the same phone number, things that didn't make
23 sense. Also, outside of Wisconsin, I checked on two counties I
24 knew about from previous years because one of my relatives
25 lived there, and I checked one of the counties had come back

1 way out of whack, 25/75 Democrat/Republican, and I knew it was
2 just a reverse. Different deviations. I called numerous
3 officials to find out -- that probably went on for two, three
4 weeks, and then --

5 Q. All right. Yesterday, in response to a question from
6 Mr. Cain, you told us a little bit about a video you say you
7 watched call Kill Chain.

8 Do you remember that?

9 A. That comes up in December.

10 Q. December of the same year?

11 A. December of 2020.

12 I do want to say this, as I was watching on TV, and I
13 think everybody --

14 MR. CAIN: Objection, nonresponsive.

15 MR. DUANE: I'll rephrase.

16 THE COURT: I don't think there's a question yet.

17 MR. DUANE: I'll rephrase the question.

18 MR. CAIN: Well, he -- thank you.

19 BY MR. DUANE:

20 Q. How did you first hear about this video, Kill Chain?

21 A. That's what I was going to get to, yeah.

22 In November of 2020, I started hearing about Rudy
23 Giuliani --

24 MR. CAIN: Objection, hearsay. Started hearing
25 about --

1 THE WITNESS: Heard --

2 THE COURT: Counsel, approach.

3 (Continued on next page)

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1 (At sidebar)

2 MR. DUANE: It's not for its truth, just to explain
3 why he did what he did next. We have no objection to a
4 limiting instruction to that effect.

5 MR. CAIN: It's hearsay.

6 THE COURT: So I'm going to allow some limited
7 testimony about it. Again, I don't want him to describe in
8 detail the video. He can describe the understanding he
9 gathered from that video.

10 But again, I need you to frame the questions so he
11 understands what he's supposed to be answering.

12 MR. DUANE: I'll keep the questions at a high level of
13 generality. And keeping in with the indications I think you
14 gave earlier, can I ask him to mention the names of the two
15 individuals he saw in the video, without getting into a
16 detailed description of what they said in the video?

17 THE COURT: Rephrase the question to that effect.

18 MR. DUANE: I will.

19 THE COURT: I think we know this witness likes to
20 offer, so the more we can guide him in the questioning, I think
21 the less objections.

22 MR. DUANE: Excellent suggestion. Thank you.

23 (Continued on next page)

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1 (In open court; jury present)

2 BY MR. DUANE:

3 Q. Mr. Lindell, you were about to tell us, in answer to my
4 question, how you first heard about this movie, Kill Chain.
5 Don't tell me or us anything that they told you. I just want
6 the name.

7 Do you remember the name of the person who told you to
8 take a look at the video?

9 A. Yes. But it's very significant, this person, because --
10 it's significant to what this whole case would be.

11 Q. Well, without telling us what that person told you about
12 what's in the video --

13 A. No, it has nothing to do with in the video. She just said
14 to watch the video.

15 Q. Who told you this?

16 A. Sydney Powell.

17 Q. Who is Sydney Powell?

18 A. Sydney Powell was working with Rudy Giuliani, Mayor Rudy
19 Giuliani in New York. He was working with the campaign to try
20 to figure out what was happening in the election. I seen on
21 the news in Arizona, it was a hearing about the election, and
22 this was -- to see what happened in the election, they were
23 presenting all the evidence that happened in the election. And
24 I didn't know -- I didn't have Sydney Powell's number or Rudy
25 Giuliani's, and when they were showing this, I did know their

1 governor, his name was Doug Dussi, I knew him personally. And
2 before they got done with that hearing, Doug Dussi certified
3 Arizona. And I go, what are you doing, they're not done with
4 the hearing.

5 Q. Why did that concern you?

6 A. It concerned me because that was my first -- what would you
7 call it -- blocker. I'm going, Doug Dussi was my first
8 blocker.

9 Did I call him something?

10 Yes. I was mad. I go, Doug, why would you do this,
11 they haven't even -- I had that relation, I could call him Doug
12 and not governor.

13 Q. What did Mr. Dussi do, in your estimation?

14 A. He did not listen to 11 hours of testimony. He called it 2
15 hours into the testimony. And he called it without -- I go,
16 the whole American people were watching, why would you call it
17 early?

18 He didn't give me an answer. In fact, he hung up the
19 phone, I don't have to tell you.

20 Then, working with Sydney Powell, I had talked to her
21 about a lot of things with the election that she had already
22 investigated. And then she said, you should watch the movie
23 Kill Chain.

24 MR. CAIN: Your Honor.

25 Q. I don't want to ask you anymore questions about what she

1 told you.

2 A. Yup.

3 Q. She was the one who suggested you watch this movie, Kill
4 Chain?

5 A. Yes.

6 Q. Did you watch the movie?

7 A. Yes.

8 Q. We're not going to get into a detailed description right
9 now of everything that was in the movie. But in general terms,
10 what is it you learned from this video?

11 A. There were three things. One was that it was all about the
12 electronic voting machines, and it was Democrats. This was --
13 for me, it was going, the Democrats wanted to call them out.
14 One of them was my own senator from Minnesota, Amy Klobuchar,
15 who we had booths together at the state fair.

16 Q. Did Senator Klobuchar appear in this video, Kill Chain?

17 A. She was in it, yeah.

18 Q. And what was it that you learned?

19 A. I learned from Amy --

20 MR. CAIN: Objection, calls for hearsay.

21 THE COURT: Mr. Lindell, if you can listen to the
22 question --

23 THE WITNESS: Okay, sorry.

24 THE COURT: -- that your counsel was asking you, I
25 think we will elicit less objections.

1 THE WITNESS: Yes.

2 BY MR. DUANE:

3 Q. You mentioned, you said there were three things. You
4 mentioned the statement by Senator Klobuchar. What were the
5 two other things?

6 A. The first thing was, there was all these Democrats wanted
7 these machines gone, we had problems. That was the first
8 thing. Amy Klobuchar is in there, it kind of validates me
9 because I'm friends -- or know her, let's say. The third
10 thing, do you want to know the third thing?

11 Q. Yes, I do.

12 A. I thought that was -- the third thing was there were
13 experts in there that said we had big problems.

14 Q. Were these the first experts that you were aware of?

15 A. First experts that I relied on.

16 Q. And do you recall the names of these experts?

17 A. Yes, I do.

18 (Indiscernible crosstalk)

19 BY MR. DUANE:

20 Q. I understand you are excited and you have a story that you
21 are anxious to tell, but please listen to my questions and
22 don't interrupt me, sir. Just wait until I'm done, and then
23 you can answer. Thank you.

24 So what was the third thing you were starting to
25 explain?

1 A. What was what?

2 Q. You were starting to explain what you called the third
3 thing about the video. The experts?

4 A. The third thing, there were at least two experts, I
5 distinctly remember their names.

6 Q. Can you tell us their names?

7 A. Yeah. One was Harry Hursti and one was Dr. Alex Halderman.

8 Q. Did you see these two individuals in the video?

9 A. Say that again.

10 Q. Did you see them in the video?

11 A. Oh, yeah, a lot.

12 Q. And you mentioned the name of Harry Hursti. Was that the
13 same Harry Hursti whose testimony we saw played for us earlier
14 in this trial?

15 A. Yes.

16 Q. And the other expert you mentioned, you said, was
17 Dr. Halderman, yes?

18 A. He's over there, yes.

19 Q. The same Dr. Halderman who is seated in the courtroom
20 today?

21 A. Yes.

22 Q. And is scheduled to testify as an expert for the Plaintiff?

23 A. Yes.

24 Q. And without getting, sir, into the specifics, just in
25 general terms, what was the impression you were given by what

1 you saw in that video from the statements by --

2 A. I was so excited because the Democrat party, this whole was
3 all Democrats and experts that I assume were experts, cyber
4 experts, I didn't know what a cyber expert -- that was my first
5 time I would know what a cyber expert was. And they were all
6 saying, we've got problems with these machines, we have to get
7 rid of them. The -- I was just excited. Wow, it will get
8 looked into.

9 Because by that time, that was in December, I had
10 found my own deviations that you couldn't explain. That people
11 are generally good people, and I just couldn't imagine
12 everybody going, let's go commit crime and jump into this state
13 and this state. Because so many people had voted that didn't
14 live in those counties or states. Maybe it's computers. These
15 guys are onto something.

16 Q. You used the term cyber expert. You say they were the
17 first cyber experts that you --

18 A. I didn't even know they were cyber experts until I seen the
19 movie.

20 Q. Did you consider yourself a cyber expert?

21 A. No, absolutely not.

22 Q. Do you now consider yourself a cyber expert?

23 A. No, I'm a -- deviations, I know numbers.

24 Q. You said this video raised some concerns because of
25 expressions of opinions by, you said, Democrats. These

1 Democrats in the video, Kill Chain video that you were alluding
2 to, were they expressing disappointment with the outcome of the
3 2020 election?

4 MR. CAIN: Objection.

5 A. No.

6 MR. CAIN: I raised an objection.

7 THE WITNESS: I'm sorry.

8 MR. CAIN: If I do so, sir, please refrain from
9 answering.

10 THE COURT: Approach.

11 (Continued on next page)

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1 (At sidebar)

2 MR. CAIN: I think the question was that these
3 Democrats raised some concerns or something to that effect.

4 MR. DUANE: I can rephrase the question, your Honor.
5 All I needed to do is get the witness to -- I can do it with
6 one simple question -- to explain that this video we're talking
7 about was made before the 2020 election. If I just get an
8 answer to that, that's all I need.

9 THE COURT: Isn't the question whether or not he
10 understood it to be made before the 2020 election?

11 MR. DUANE: Yes. Yes, it is.

12 THE COURT: You have to lay a foundation as to how he
13 has that understanding.

14 MR. DUANE: Excellent. Yes, I will. Thank you.

15 (Continued on next page)

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1 (In open court; jury present)

2 BY MR. DUANE:

3 Q. At the time you watched this video we were talking about,
4 Kill Chain, did you know when the -- did you know when that
5 video was created or produced?

6 A. I know it had been a couple years earlier. I didn't -- or
7 a year earlier, I guess.

8 Q. So that would have come out before or after the 2020
9 election?

10 A. No, it was before. I think it was like 2019, because they
11 all have concerns that there was going to be problems with the
12 election -- I mean, with these machines.

13 Q. Was there specific discussion in that video about the
14 Dominion company we have been talking about in this trial?

15 A. I believe, and I haven't seen it lately, but I believe even
16 my senator, Amy Klobuchar, named the company, but with the
17 context of other companies. She didn't put them -- single them
18 out. The whole thing is machines in general. But she named
19 the -- what was four companies control our elections, we need
20 to do something.

21 Q. And did she name those four companies by name?

22 A. I believe she did.

23 Q. And was Dominion one of those companies?

24 A. Yes.

25 Q. After you watched that video, before you started making

1 additional public statements about the election, did you
2 undertake any further investigation into the accuracy of these
3 reports and the information you learned from Dr. Halderman and
4 Mr. Hursti?

5 A. I spent every day from November 4th, 18 hours a day doing
6 my -- just my own investigations in November and December, but
7 calling politicians, getting help from people that were already
8 out there. I learned about Michigan. I heard about that.
9 Basically, my own information. Just taking in 18 hours a day
10 and reposting stuff that people put out. There would be
11 evidence come out, and I would re-X it. And there was one
12 video that came out that was 20 minutes long, and that was
13 really powerful.

14 Q. Approximately, how many -- I know you can probably only
15 give us an estimate -- but approximately how many hours do you
16 think you have devoted over the last few years to the study and
17 the investigation of these suspicions? Your best guess will be
18 fine.

19 A. Back then, it was -- for 2 years, it was probably 12 to 14
20 hours every day, even on weekends, and especially in '21 and
21 '22. '23 and '24, I probably cut it back to maybe, 8 hours a
22 day, because the other 8 had to be trying to save my company.
23 I had to go back and just -- we were really hurting then, so I
24 had to split my time between my company and --

25 Q. Can you give us your best estimate of the number of cyber

1 experts that you consulted with in the course of your
2 investigation over the course of four years?

3 A. I did check that. It's over 35. Over 35.

4 Q. And did you spend any of your own money or lose any of your
5 own money as a result of this investigation? Did it cost you
6 anything financially?

7 A. I spent upwards of \$40 million. Anybody that I could hire
8 or they needed help, if they were doing canvassing or -- in all
9 50 states, the money was spread everywhere in any group that
10 needed help to try to secure our elections, to dig into, you
11 know, not just the -- this wasn't about overturning the 2021 or
12 2020 election. It was about let's get through these -- get rid
13 of these machines and get to the bottom to secure our
14 elections.

15 Q. We have heard a lot about podcasts that you have often
16 created to disseminate information that you thought you had
17 collected about the election.

18 Do you recall that testimony?

19 A. Yes.

20 Q. Did you often or ever interview other individuals on these
21 podcasts?

22 A. Yes, on my own.

23 Q. Were you ever approached by anyone who reached out to you
24 and they said, Mr. Lindell, I would like to talk to your
25 listeners and set the record straight, ever approached by

1 anyone who asked if they could appear on one of your shows or
2 podcasts?

3 A. To set the record straight, as far as what?

4 Q. Just to talk, just to give interviews.

5 Were all of your guests invited by you, or did some of
6 them volunteer?

7 A. Some come through and say, hey, can I be on your show, can
8 I be on your show, yeah.

9 Q. Did you ever say no to anyone who reached out to you?

10 A. Never said no to anyone.

11 Q. You never turned anybody down?

12 A. Never turned anybody down. They would get on my show if
13 they wanted to be. Back then, we had two hosts. Brannon Howse
14 would be on there. There would be another person on.

15 If it wasn't relevant to what it was, then they
16 wouldn't be able to get on. I'm not saying some people weren't
17 turned down, hey, I was on the street, I want to talk about the
18 weather, you know, then they wouldn't get on.

19 Q. When you put your guests on the show, when you interviewed
20 guests on your podcasts and your show, did some of them agree
21 with your suspicions that there had been electoral
22 irregularities in 2020?

23 A. On my particular show, mine was all about securing our
24 elections. I would bring on people that had to be specific to
25 election platforms. Not overturning the 2020 election. It was

1 very specific to bring evidence on showing there were problems
2 with electronic voting machines. Every single show was devoted
3 to that for probably two years straight, maybe even right up to
4 date.

5 What I mean by that, New Hampshire, you would have
6 something going on in New Hampshire that they discovered, and
7 then they would bring them on the show, and they would show the
8 evidence on my show. Okay, then maybe the main stream media
9 would show this, now that we have shown it.

10 Q. Let me ask you about the Plaintiff in this case,
11 Dr. Coomer.

12 A. Yes.

13 Q. Before the lawsuit was filed against you in this case,
14 before he sued you in this case, did Dr. Coomer ever contact
15 you or reach out to you and ask if he could be interviewed on
16 your show?

17 A. No.

18 Q. Did any representatives or attorneys acting on his behalf
19 before the lawsuit reach out to you and tell you, listen, you
20 are saying things that aren't quite right, I want to appear on
21 your show and set the record straight?

22 A. No one ever reached out to get on my show to refute the
23 evidence that any of these states were putting out, including
24 Dr. Coomer.

25 Q. Before this lawsuit was filed, did Dr. Coomer or any

1 representative acting on his behalf reach out to you and ask
2 you to make an apology or a retraction?

3 A. No.

4 Q. So this lawsuit was the first time you learned that he felt
5 that you were saying things about him that were false?

6 A. Correct.

7 Q. You have seen the --

8 A. Let me correct that. Not things, one line, one statement,
9 not -- you said say things. One line I said about him.

10 Q. That one statement you made before --

11 A. Yes, one statement.

12 Q. He never asked you to retract that --

13 A. No.

14 Q. -- before the lawsuit was filed?

15 A. No.

16 Q. You have seen the witness list in this case, yes?

17 A. Yes.

18 Q. You have seen all the witnesses who have testified so far?

19 A. Yes.

20 Q. For the Plaintiff?

21 A. Mm-hmm.

22 Q. And you have seen the names of the other individuals who
23 will still be appearing in this case for the Plaintiff?

24 A. Yes.

25 Q. Without going through that entire list, I want to ask you,

1 is there anyone on that list who will testify in this case for
2 the Plaintiff who ever contacted you before this lawsuit was
3 filed and said, we would like to appear on your show to talk to
4 your listeners?

5 A. No.

6 Q. Did any of them ever contact you just to tell you, we think
7 that you're spreading malinformation or misinformation?

8 A. No.

9 Q. Let me ask you about Dr. Crane -- or Mr. Crane, I'm sorry,
10 the Colorado election official.

11 Do you remember his testimony?

12 A. Yes.

13 Q. And you remember the testimony he gave about what he
14 thought were the impacts on election workers?

15 A. Yes.

16 Q. And how he thought that was caused in part by statements
17 made by you and other individuals about electoral
18 irregularities?

19 A. Yes.

20 Q. Did Mr. Crane ever reach out to you -- he said his efforts
21 now are primarily based in education?

22 A. Say that again.

23 Q. His efforts now he said were engaged in educating the
24 public.

25 Do you remember that testimony?

1 A. Yes.

2 Q. Did he reach out to you and contact you and ask if he could
3 appear on your show to help educate the public through your
4 news production?

5 A. No. But my team reached out to him numerous times.

6 Q. Why did you reach out to Mr. Crane?

7 A. Because we thought the stuff he was saying about us,
8 conspiracy theories and spreading misinformation, we directly
9 reached out to him, it's a group that I founded, a nonpartisan
10 group, by the way, it's called Cause of America, it's right --
11 it started right here in Colorado, and the president of that
12 has reached out to him so many times, and he could come on the
13 show and say, why are you saying this about us, why don't you
14 look at what we have. And he actually reacted negatively,
15 like, you know, you guys are this -- he's very negative
16 about -- not just on the show, but he'll shoot back out in the
17 media even worse against us just for asking, okay, why don't we
18 all get together and we will show you right through the public
19 line.

20 Q. When you say he reacted negatively, he declined your
21 invitation?

22 A. More than that. So he wrote -- saying negative things in
23 the media and stuff against our groups or the people, just call
24 it the people.

25 Q. When you invited Mr. Crane repeatedly on your show, did you

1 suspect that he would come in if he did speak and agree with
2 you or disagree?

3 A. I didn't invite him on my show. They invited him -- Cause
4 of America invited him, I don't know if it was to events, maybe
5 to the shows, different things, and he's denied it. I don't
6 know the specifics, but I did not personally ask Mr. Crane.

7 Q. Okay. But if he had accepted the invitation that you just
8 described, would he be appearing on the show with you?

9 A. I would welcome him with open arms. I would allow anyone
10 like that to come on.

11 Q. Weren't you concerned that he would come on and disagree
12 with you?

13 A. No, because of what we have. I want to have this
14 conversation. I want people to see what we have.

15 Q. In the last four years, have you or Cause of America or any
16 of the other Defendants, Frankspeech or My Pillow, ever refused
17 to host or promote the views of people because you knew they
18 would not agree with you?

19 A. We have only had one that I basically -- and we let him on
20 numerous times, his name is Clint Curtis, he told us straight
21 up, he's hardcore Democrat, he voted for Biden, and I couldn't
22 wait to have him on. And in fact, I went and met him and said,
23 you absolutely can come on. And he's been on -- he was
24 actually in the moment of truth summit. I let him have an hour
25 on stage to say whatever he wanted. And what he said was we

1 have problems with our electronic voting machine, so -- but I
2 didn't know what he was going to say when he came on board, you
3 know. And he actually said that he was a cyber expert and that
4 he actually -- they'll get into the machines. And actually, he
5 was involved in the early 2000s of machine manipulation, and he
6 went public with it. It's all in the news. And the
7 Netherlands actually got rid of their machines because of Clint
8 Curtis. So I was like, this was the one time we let someone on
9 and even asked to come on.

10 Q. Would you be willing to let Dr. Coomer appear on your show
11 after this trial if he were willing to do so?

12 A. He could come on any time. He could be on the whole day.
13 I'll have him on the whole week. Absolutely.

14 Q. Let's talk more now about the -- get back to the
15 investigation. You told us about some of the early things you
16 did and the first couple people you contacted.

17 Who were some of the other cyber experts that you
18 spoke with in the course of investigating your suspicions about
19 the possibility that there might have been election-related
20 errors?

21 A. Do you want me to start in order and tell you each one or
22 just list them?

23 Q. Start at the beginning, the first one you remember.

24 A. The first was Harry Hursti and Dr. Halderman in that movie.
25 After that, the next one would have been in January -- I'm

1 sorry, I've got to take that back. His name is Russ Ramsland.
2 They -- I hadn't met him yet, but I heard about him from my --
3 the State of Texas, I had -- I had gotten to be friends with
4 the attorney general, Ken Paxton, and I heard from that office,
5 the attorney general's office in Texas that this Russ Ramsland,
6 I think it's called ASOG, I'm not sure what it stands for, but
7 they were in Texas, and they vetted machines that -- this is in
8 November I was finding this out -- that they vetted the machine
9 companies and they did not allow Dominion in Texas, and that
10 was the ones that did the investigation or whatever it was,
11 where Texas decided to not use Dominion machines in the State
12 of Texas.

13 Q. Why did they make that decision?

14 MR. CAIN: Objection.

15 A. Because it was --

16 MR. DUANE: You have to stop when Mr. Cain objects.

17 THE WITNESS: I'm sorry.

18 MR. CAIN: Calls for speculation.

19 THE COURT: Sustained.

20 BY MR. DUANE:

21 Q. I'm not asking you to guess.

22 Did they tell you anything about why they made that
23 decision?

24 A. Yes, they did.

25 MR. CAIN: Objection.

1 THE COURT: Sustained.

2 BY MR. DUANE:

3 Q. Anyone else, you mentioned Russ, were there any other
4 individuals, cyber experts --

5 A. Yes.

6 Q. -- specifically, I'm looking for cyber experts you
7 consulted with to help you get to the bottom of this.

8 A. That's correct. Russ Ramsland's group -- I actually
9 donated to their -- to their thing after I heard that, that
10 they had -- so I got ahold of them, I donated money, I believe
11 it was a hundred thousand to -- I just -- because they do all
12 kinds of stuff for states, and they had just done, I guess, in
13 Michigan -- that was all over the news, because there were
14 deviations there that were -- it was, I think, like 90 percent
15 it got flipped. The next day it was -- but there was a lot of
16 deviation, let's just put it that way. But the people that
17 investigated there, there was, I believe -- I would have to
18 look at names, but there was three cyber experts in that, and I
19 believe Alex Halderman might have been even in that report that
20 came out or something like that, that they -- but there was
21 three experts there, one started with a P, and I didn't get to
22 work with them until a month later -- I guess, two months later
23 that they came into the -- then in December, it was kind of
24 limited to that, where I didn't deal with them directly.

25 And then January 9th, when I got the call for -- the

1 Mary Fanning call that everybody has heard about from Brannon
2 Howse, that was -- then I was introduced --

3 Q. Who is Mary Fanning?

4 A. I didn't know who she was -- oh, she's a journalist. She
5 runs the American Report, I'm sorry.

6 Q. And who introduced you to her?

7 A. Brannon Howse.

8 Q. Who is Mr. Howse?

9 A. At that time, he had been on thousands of podcasts and
10 he -- he's been doing media for, I don't know, 10 years. He's
11 a reporter. He's a journalist.

12 Q. Was Mr. Howse on your side of this whole controversy or the
13 other side?

14 A. I didn't know who he was. He -- I answered my phone, I
15 spelled Howse wrong, I thought something was happening at my
16 house. I was in a meeting. I'll never forget it. He said,
17 this is Brannon Howse.

18 Who are you?

19 He goes, you were on my podcast, please, you need to
20 hear this lady out.

21 I said, sure.

22 And she talked for 15 minutes straight and talking
23 about this government contractor named Dennis Montgomery, he
24 had this device called Hammer Scorecard, he worked for the
25 government. She did -- and that he -- he was -- this is the

1 thing that was used to monitor the -- it monitors elections.
2 Our government -- it was almost like you're hearing this space
3 age story.

4 Q. Did Mr. Montgomery give you or bring to your attention any
5 evidence one way or the other to confirm or to rule out your
6 suspicions that there might have been problems with the
7 election?

8 A. Well, this -- to finish, I hadn't met Montgomery yet. This
9 is -- when she did that, then she sent me stuff --

10 THE COURT: Mr. Lindell, I'm so sorry to interrupt,
11 you need to listen to your counsel's question and answer that
12 question.

13 THE WITNESS: Yes. I thought he asked -- Mary Fanning
14 is not a cyber expert.

15 BY MR. DUANE:

16 Q. Fair enough. Listen to my question.

17 You said you started to talk about Mr. Montgomery.
18 And I'm asking if Mr. Montgomery brought any evidence to your
19 attention that would help to confirm or maybe to rule out your
20 suspicions about the election?

21 A. Dennis Montgomery, if we're talking when I first met him, I
22 had to validate him first. And so I did that. And he was a
23 cyber -- beyond cyber expert, in my mind. I mean, this guy,
24 credentials, when we checked, he worked for the government,
25 with the CIA, everything checked out. He was on Fox News in

1 2017. I just want to tell you his credentials, which blew me
2 away. Well, this is a cyber expert.

3 And did he, at that time, yes. He gave me a piece of
4 evidence, and he published -- he had actually been published
5 out there in the public and had said -- it was four pages, I
6 believe. And Mary Fanning had published it. But on Twitter,
7 they had covered it up. And it was covered up everywhere when
8 that came out, that -- everywhere. So that's what they gave
9 me. It looked to me that, you know, this is evidence that
10 there was some China interference that showed on there. China
11 interfering in our election. And two days prior, I just heard
12 from John Ratcliffe, the head of the DNI, that there was a
13 China problem in our elections.

14 Q. You said Mr. Ratcliffe was the head of the DNI?

15 A. Yes.

16 Q. What's the DNI?

17 A. It's Department of National Intelligence.

18 Q. He worked for the government?

19 A. Yeah, he was the top, nobody top -- the top cyber. And his
20 report came out on January 7th, two days before I heard of
21 Dennis Montgomery. Nobody really heard about it on January 7th
22 because the news was all about January 6th, but I had heard
23 about it.

24 Q. Was this statement by Mr. Ratcliffe widely published?

25 A. Oh, yeah. He published it on January 7th everywhere. Like

1 I say, the news that day, they took the January 6th -- was
2 overtaken by January 6th.

3 Q. You told us yesterday about -- I think you called it your
4 concerns about -- your sense that you were being deplatformed;
5 is that the word you used?

6 A. What?

7 Q. If I recall correctly, I think you told us yesterday that
8 around this time you felt you were being deplatformed?

9 A. Yes.

10 Q. What did you mean by that?

11 A. I'll explain that. On January 7th and 8th of 2021,
12 1.2 million Americans were deplatformed off Vimeo, YouTube,
13 Facebook, Twitter. President Trump lost 100 million followers
14 that day. Anyone who had spoke out about the election, they
15 got deplatformed.

16 And another thing, there was only one competition to
17 Facebook and Twitter at that time, it had just -- up and coming
18 called Parlor. Parlor was wiped off the face of the Earth.
19 They had millions of people. They just took the platform and
20 (indicating). So that was gone.

21 So I've done many speeches where I consider, that's
22 the day we almost lost our voice forever. I describe it as
23 when I was growing up, you turn off the black and white TV, it
24 goes down to that little dot. Well, that was our voice that
25 day. They came back to life.

1 Myself, personally, they took everything from me, they
2 wiped off every voice I had on Facebook, Parlor, Vimeo,
3 YouTube. Mike Lindell did not exist that day. Gone.

4 Q. Let me ask you to clarify something.

5 A moment ago you testified that they, as you said,
6 deplatformed anyone who spoke out about the election?

7 A. Yes.

8 Q. Was it your understanding that they were doing this to
9 anyone who spoke out on either side of the issue?

10 A. Yeah, if you spoke out about the election, they didn't
11 check who you voted for or what your political affiliation was.

12 Q. What about individuals who wanted to go on YouTube or
13 Facebook to say, I think the election was perfectly fine, there
14 was no problem, were those people also being taken --

15 A. Yes, they were allowed to say that, anything from the
16 government or anybody that said election was good or there were
17 no problems, those stood out there. That's the big thing
18 that's all coming out now, that there was no let's talk about
19 this.

20 Q. Yesterday, you told us a little bit about some statements
21 or information you said you were receiving from sources in
22 other countries involving Dominion --

23 A. Yes.

24 Q. -- and other voting systems?

25 A. Yeah.

1 Q. Can you tell us more about what you learned.

2 A. Yeah, when I -- when everything got deplatformed, I didn't
3 stop talking. I didn't stop talking. I already knew too much
4 then, and I've seen too much. I'm not going to stop talking
5 about the platform, even though you took away my voice.

6 Well, by then, the media had started attacking me,
7 just viciously attacking me. So people, at least around the
8 world, must have known that I was still -- and I got called by
9 many countries, but one of them was Venezuela. And Venezuela,
10 they got machines in the early -- this is what they told me,
11 these people were crying on the phone -- I mean, on this Vimeo
12 call, and they said they'll never give up.

13 MR. CAIN: Your Honor.

14 THE COURT: Mr. Lindell, stop.

15 THE WITNESS: Okay.

16 THE COURT: Counsel, approach, please.

17 (Continued on next page)

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1 (At sidebar)

2 MR. CAIN: Your Honor, your Honor, it's another
3 hearsay objection. This is what the Venezuelans told me. He's
4 going into clear hearsay at this point.

5 MR. DUANE: His testimony before, just before the
6 objection, he was starting to say, they asked me not to give
7 up. That's a request, not an assertion. It can't be true.

8 THE COURT: How is this relevant to whether or not he
9 was reckless with respect to his statements about Dr. Coomer
10 and the American 2020 election?

11 MR. DUANE: I can rephrase the question, your Honor,
12 to limit it specifically to any reports he received about the
13 Dominion company that Mr. Coomer was working for.

14 THE COURT: So it's still hearsay.

15 MR. DUANE: It's not being offered to prove the truth.
16 Again, going to the central question about whether he spoke
17 with reckless disregard for the truth or falsity of what he was
18 disseminating to his listeners.

19 MR. CAIN: With respect to Dr. Coomer, though, your
20 Honor. His general concerns about election issues is not at
21 issue.

22 MR. DUANE: I'll limit it to Dominion, then.

23 THE COURT: Okay.

24 (Continued on next page)

25

1 (In open court; jury present)

2 BY MR. DUANE:

3 Q. Mr. Lindell, let me rephrase my last question to be more
4 specific.

5 I asked you about information and evidence you had
6 been receiving from sources in other countries. And I just
7 want to ask you to zero in on anything you learned or evidence
8 you received specifically about their experience in these other
9 countries with the Dominion voting machine.

10 A. Okay.

11 Q. Is there anything you learned specifically about Dominion?

12 A. Yes. In Venezuela is the eye opening one. I got called
13 from people, on a Zoom call, had many of them, because that was
14 kind of the birth of the machines, and that had sparked me,
15 this is where I learned of -- is where it all started.

16 So then I did -- I hired an investigator, this firm,
17 and I also contacted an expert in -- this guy named Brent, his
18 last name is hard to say, in Canada. I heard Dominion was
19 based up there, in a place right where I would go to the
20 shopping channel up there, so I did a deep dive into machines,
21 especially Dominion, because it was very intriguing that they
22 were up there and this guy -- and I talked to in the
23 investigation led to that specific -- the first one wasn't so
24 much about Dominion.

25 And then, of course, later, it was all machines. But

1 early on there, it was -- that Venezuela sparked my
2 investigation. I didn't just go out and say anything. And I
3 had also heard -- you heard stuff Smartmatic, Dominion, Sydney
4 Powell and stuff, but I took those with grains of salt.

5 We hired a firm, Kurt Olsen. I think I spent like
6 \$800,000 in places where -- like Dominion is over in Serbia, I
7 believe. It's a huge investigation we did into Dominion.

8 Q. When you paid all this money to get the independent
9 assessment of cyber experts who were working for you, did any
10 of them come to you and say, listen you have to stop making
11 these claims about Dominion and the people who work there
12 because it's not true?

13 A. I had -- at that time, I had not -- I hadn't made -- went
14 out there specifically and said anything about the -- I was
15 talking about China -- if you are talking about January, it was
16 China interfered in our election. That was my quote.

17 Q. What was it that you said about China?

18 A. That they interfered in our election. I had John
19 Ratcliffe, and that was something that was part of the stuff
20 that I got from -- that I first got from Dennis Montgomery, but
21 I heard it right from our government.

22 Q. Mr. Ratcliffe, the director of the Department of National
23 Intelligence?

24 A. Yes.

25 Q. Was he your primary source for information --

1 A. No, I --

2 (Indiscernible crosstalk)

3 THE COURT: Mr. Duane and Mr. Lindell, you need to
4 slow down and take turns. The court reporter cannot record the
5 transcript.

6 BY MR. DUANE:

7 Q. I'll point to you every time I'm done with my question.

8 Was Mr. Ratcliffe the primary source of the
9 information you relied upon when you said what you did about
10 China?

11 A. No. Up to now, there's been many, many things that point
12 to China. But the first one was John Ratcliffe on January 7th.
13 The second was when I got Dennis Montgomery, his bit of
14 evidence that he had given that I had to get to the White House
15 to get it all out there. That was China and other countries,
16 but mostly China. Since then, there's been other things in LA
17 County, and this was even in the news, that Smartmatic, they
18 have machines only one county, Smartmatic has -- and that's LA
19 County, a lot of stuff there, China evidence came out there,
20 and also in Wisconsin.

21 Q. Let's get back to, you mentioned a moment ago,
22 Mr. Montgomery.

23 In general terms, what was the evidence that
24 Mr. Montgomery brought to your attention?

25 A. His evidence is massive because he had worked for the

1 government and this computer was built actually to go steal
2 other countries' elections or to alter them. And basically,
3 what it does, it's like a giant camera that sucked the
4 information out of -- anything over -- you know, over the
5 internet, it's kind of hard to describe. Like he could be --
6 it's just pulling information. Just like if you have Verizon,
7 all this stuff that goes through space, you know, phones,
8 whatever, it pulls that information and you know...

9 Q. You said a moment ago, after you reviewed this information
10 and reports that you received from Mr. Montgomery, you said
11 that you thought you needed to bring it to the attention of the
12 White House, did I hear that correctly?

13 A. Yes. All we had was a snippet. I heard about Dennis
14 Montgomery on January 9th, and I was excited to hear this.
15 God, I prayed. God, here is an answer for our country. But it
16 did say, wow, this explains all the people that would have had
17 to go vote for all those deviations, it had to be done with
18 computers. And what I did then is I said, I have to get this
19 evidence, I said, there's only one problem, I work for the
20 government and the government put a secret protective order on
21 it, which is -- just like General Flynn, who couldn't testify
22 here because he has that same order, and he -- I had to get
23 that lifted and --

24 Q. Did you try to -- excuse me.

25 Did you try to reach out to the White House?

1 A. Yes. I went there on January 15th with that piece of
2 evidence.

3 Q. Did you travel there in person?

4 A. Yes.

5 Q. Who did you meet with while you were at the US White House?

6 A. President Donald Trump, Robert O'Brien, which was head of
7 the international -- I don't know what his -- Homeland
8 Security -- I'm not sure. He's very high up, about as high as
9 you can get. I don't know the exact title. Mark Meadows,
10 which was his chief of staff. And numerous lawyers when I went
11 upstairs, at least two. And then two other people, I had to
12 sit down with, which I don't know their names, which I spent
13 two hours with upstairs, at least seven, eight people.

14 Q. What was the reaction of this evidence that you brought to
15 their attention?

16 A. When I brought it to President Trump, he's got to have the
17 pieces, and Robert O'Brien was sitting to my right, and the
18 first thing he said to Mark Meadows is does John Ratcliffe know
19 about Dennis Montgomery and this Hammer Scorecard and he said,
20 he's well aware of Dennis Montgomery. I don't know about the
21 Hammer Scorecard.

22 And I said, sir, I said, you need to sign this. And
23 then that stuff he has will go out and save our country or save
24 the election. At that time, it was about saving the election,
25 because I felt it was stole at that time.

1 And so Mark meadows got up to go -- I think to go
2 check with John Ratcliffe. And then Robert O'Brien -- do you
3 want me to continue?

4 Q. I do, yes.

5 A. Robert O'Brien said, sir, you know, this is too --

6 MR. CAIN: Objection, your Honor.

7 THE COURT: Counsel.

8 MR. DUANE: I'll move on.

9 THE WITNESS: It did not --

10 BY MR. DUANE:

11 Q. You mentioned earlier that you -- I think you said that you
12 tried to vet or see what you could do to corroborate the
13 reliability of Mr. Montgomery's evidence.

14 Again, but you said you're not a cyber expert; is that
15 right?

16 A. No, I'm not.

17 Q. Did you vet his credentials or did you try to vet his
18 conclusions?

19 A. What is that?

20 Q. Did you try to verify the quality of his credentials or
21 were you able to independently verify the quality of his
22 information, which was it?

23 A. No, at this time, I had a slim bit of the information. So
24 I figured what better to bring it to -- President Obama deemed
25 our elections critical infrastructure, so when I brought it to

1 the president, I fully expected to get it signed so all the
2 evidence that I had seen -- I had only seen a snippet of this
3 evidence, so I brought it to -- then I got there, and it ended
4 up not getting signed. And I was devastated, going back over
5 to Virginia. And Dr. Ben Carson, that was another one that I
6 worked on this with at the White House.

7 MR. DUANE: Can we bring up Exhibit 83.

8 Q. I would like for you to look for a moment at a document
9 that has already been admitted. If you give me just a second.
10 There it is.

11 This is an exhibit that was admitted yesterday by the
12 Plaintiffs. And you remember this exhibit, this was a letter
13 written by someone named Mr. Zullo.

14 Do you remember this?

15 A. Yes.

16 Q. You looked at this together?

17 A. Yes.

18 Q. And near the top of Page 4, there's a section that's
19 entitled -- it says, verified experts refute Montgomery's
20 claim.

21 I wanted to ask you to take a look at the first
22 sentence of this, which we saw yesterday, which says, As he did
23 in 2011, Montgomery has once again utilized what this man
24 called the ruse of packet data information or PCAPS as the
25 identifying data points that contain the evidence of vote

1 flipping.

2 The next sentence says, Montgomery has convinced
3 Lindell that this information is irrefutable and cannot be
4 altered or compromised.

5 That reference there is to the same Mr. Montgomery we
6 have been talking about?

7 A. Yes.

8 Q. And the reference there to Mr. Lindell, I assume, is a
9 reference to you, of course?

10 A. Is it --

11 Q. What he says here about you, he says that Mr. Montgomery's
12 evidence -- or Mr. Montgomery, he says, convinced you that the
13 information was irrefutable and cannot be altered or
14 compromised.

15 I'm not asking you if you can verify the rest of this
16 report, of course, but is that sentence true? When Mr. Zullo
17 said Montgomery had successfully convinced you that this
18 information was reliable; is that true?

19 A. What is the date on this?

20 Q. We would have to go back to the --

21 A. I guess it doesn't matter. I'll answer the question.

22 No, it's not true. He had experts. This is -- I had
23 to have experts validate everything for months and months and
24 months and different ones validate his data.

25 Q. So you are saying it was not just Montgomery, other --

1 A. No, other people had to validate his data. And I went to
2 the White House to validate that he's real and everything --
3 it's all credentials and -- although I did see a Fox News 2017,
4 Fox News with --

5 Q. What did you see on that show?

6 A. What's that?

7 Q. What did you see on that talk show?

8 A. I seen --

9 MR. CAIN: Objection, your Honor, hearsay and
10 relevance.

11 THE COURT: Approach.

12 (Continued on next page)

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1 (At sidebar)

2 THE COURT: Mr. Duane, what's the relevance?

3 MR. DUANE: I will rephrase the question and reframe
4 it specifically to Dominion and Dr. Coomer.

5 THE COURT: And the hearsay objection?

6 MR. DUANE: Same response I gave you, not to prove the
7 truth of anything said on that show, but just to show -- just
8 yesterday, we saw the video clip shown by the Plaintiff, that
9 wasn't offered to prove there is no election fraud, they
10 couldn't use it for that purpose. It is being offered to show
11 any reasonable individual, including Mr. Lindell, should have
12 known his claims of election fraud -- this is being offered in
13 the same spirit, for the converse purpose of showing there was
14 information out there that would arguably justify Mr. Lindell
15 and others.

16 THE COURT: With respect to Coomer and Dominion, so
17 with respect to --

18 MR. DUANE: True.

19 THE COURT: So the Defendants, in order to prove
20 falsity or to rebut falsity have to prove that it was true that
21 Dr. Coomer on the Antifa call and that Dominion and Dr. Coomer
22 in the context of being vice president or Coomer perpetuated
23 election fraud. So I'm not certain how or I don't understand
24 how this Fox News report pertains to that.

25 MR. DUANE: I can rephrase the question. I do need to

1 remind the Court, it is still our position that much of the
2 evidence that we have heard, including especially Mr. Crane's
3 testimony and the CNN video clip we watched were not likewise
4 focused in any way specifically on Mr. Coomer or Dominion, but
5 generally involving the CNN video tried to suggest that no
6 reasonable observer could possibly doubt that the election
7 machines generally are perfectly satisfactory and they work
8 just fine. There was nothing in there, the CNN video clip that
9 was specifically related to Coomer or Dominion. We're trying
10 to rebut that by showing there was inconsistent information out
11 there in the public arena, with a keen interest in what
12 happened.

13 THE COURT: Mr. Cain.

14 MR. DUANE: If the Court overrules the objection, I'll
15 be as brief as possible.

16 MR. CAIN: As long as this relates to Dr. Coomer
17 and/or Dominion, then I agree the scope would be appropriate.

18 And the CNN video was offered for multiple purposes,
19 not just the purpose you described.

20 THE COURT: You need to reframe your question,
21 Mr. Duane.

22 In addition, I'm planning to take the break at
23 11:30 a.m. The jury has been sitting for about an hour and a
24 half at that point. We have a juror that has back issues. I
25 want to be consistent in giving her an opportunity to stand up.

1 MR. DUANE: May I propose we take a break right after
2 I ask him this next question about the Fox report.

3 THE COURT: That's fine, Mr. Duane. Thank you.

4 MR. KACHOUROFF: This is an easy one. Mr. Lindell has
5 hearing aids, and he's having trouble. He's letting me know,
6 he kept tapping his ear. When you hear him ask what, that's
7 the issue, just so the Court knows.

8 THE COURT: I appreciate that, Mr. Kachouroff.

9 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Mr. Duane.

3 BY MR. DUANE:

4 Q. Mr. Lindell just for the benefit of the jury, today, I
5 notice you had a little difficulty hearing me.

6 You wear a hearing aid; is that correct?

7 A. Yes.

8 Q. I just wanted to make sure the jury understood that.

9 Right before we stopped, you were about to tell me --

10 A. Could I add one thing to that. I normally have them hooked
11 up to my phone, that's why I'm having trouble today, that's the
12 difference.

13 Q. I'll try to speak up a little and as clearly as possible.

14 A. Thank you.

15 Q. It's not a problem. No need to thank me. If you have any
16 trouble hearing me, just let me know, don't be shy.

17 A. Okay.

18 Q. The last thing I want to ask you before we take a break for
19 the jury's benefit, right before the interruption, you were
20 going to mention something about Fox News or something you saw
21 on Fox News?

22 A. Yes.

23 Q. Before you tell me anything else about that, let me just
24 narrow the question a little bit.

25 Did this report on Fox News specifically involve

1 Mr. Coomer or the Dominion company, if you recall?

2 A. No. It involved --

3 Q. Okay. Then you can stop there.

4 THE COURT: Ladies and gentlemen of the jury, we're
5 going to take our morning break for 15 minutes. Don't talk to
6 each other about the case and what you have heard during the
7 break. We'll see you back in 15 minutes.

8 (Continued on next page)

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1 (In open court; jury not present)

2 THE COURT: Anything we need to address before we go
3 to break?

4 MR. DUANE: Yes, Judge. Just for planning purposes,
5 can the Court give us an indication, if we start again in
6 15 minutes, at what time you would like to take a break for
7 lunch, how long we're going before the next break?

8 THE COURT: We'll probably go until 12:30.

9 MR. DUANE: Thank you.

10 THE COURT: Anything on behalf of Plaintiff?

11 MR. CAIN: No, your Honor.

12 THE COURT: We'll take a brief break.

13 (Recess)

14 THE COURT: Counsel, are we ready for the jury?

15 MR. DUANE: Yes.

16 THE COURT: Mr. Lindell, if you have trouble hearing,
17 let us know. We also have headphones.

18 THE WITNESS: I just fixed it. We turned my phone
19 off. It runs through my phone. We got it fixed. If it rings,
20 it would be bizarre, but it's all turned off.

21 THE COURT: Okay.

22 MR. DUANE: We think we have it fixed so that it won't
23 ring.

24 THE WITNESS: Yes.

25 THE COURT: Doesn't that just mean turning off the

1 ringer?

2 MR. KACHOUROFF: We turned off cellular.

3 MR. DUANE: I'm not a cyber expert.

4 THE COURT: I have teenagers. I feel like I might be
5 an expert on devices.

6 MR. DUANE: I'm probably the only one in the courtroom
7 that just got his first cellphone in the recent past.

8 THE COURT: All right. Madam Deputy.

9 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Mr. Lindell, I remind you that you are
3 still under oath.

4 THE WITNESS: Yes.

5 THE COURT: Mr. Duane.

6 MR. DUANE: Thank you, your Honor.

7 BY MR. DUANE:

8 Q. Before the break, Mr. Lindell, you told us a little bit
9 about a visit you paid to the White House to present to the
10 officials there the data you received from Mr. Montgomery?

11 A. Yes.

12 Q. During that meeting -- and you spoke with approximately how
13 many people at the White House that day?

14 A. Probably six, including the President and -- I'd say six,
15 maybe seven.

16 Q. And did any of the people that you spoke with there that
17 day tell you that you've got a problem here, this data is no
18 good, it's unreliable?

19 A. No, absolutely not.

20 Q. And you mentioned something about some sort of a stay that
21 had been placed on the release of that information because of
22 national security concerns; is that right?

23 A. It's called the state's protective secret -- some -- it's
24 under protective -- it can't be released unless it's -- states
25 secrets, that's what it's called.

1 Q. Did you do what you could to try to influence them to lift
2 that stay so the information could be made public?

3 A. Yes. I showed the President that piece of the evidence and
4 he said -- he said -- told O'Brien to bring me upstairs to the
5 lawyers and see if he has something here.

6 Q. Was that stay ever fully lifted?

7 A. No. Either they didn't get time -- no, it did not get
8 lifted that day.

9 Q. Was it later lifted, as far as you know?

10 A. What's that?

11 Q. Was the stay on the release of this information, was it
12 later lifted entirely or in part?

13 A. No. In fact, six weeks ago, I brought it again. They're
14 sitting with it now. It hasn't been lifted yet. It hasn't
15 been signed.

16 Q. So the public release of this information is still
17 forbidden as a result of a national security order of some
18 sort?

19 A. It's still under seal.

20 Q. So the data and the evidence that you acquired from
21 Mr. Montgomery, you were never able -- you were never able to
22 present all of it to the attendees at the cyber symposium?

23 A. I'm sorry, go ahead.

24 Q. It's okay.

25 At the cyber symposium that you told us so much about

1 yesterday, did you present all of the data that you had
2 received or received from Mr. Montgomery?

3 A. No. Could I explain?

4 Q. Yes.

5 A. We had to bring it to -- because it had that secret act on
6 it, we had to bring to to Texas. We had to bring it to
7 different -- there's different government officials you have to
8 sign, it's called the Cyber Act of 2015. President Obama also
9 put that in during the -- when he deemed our elections critical
10 infrastructure. So the way we had to get this out was to get
11 this sealed, signed anonymously, that's why I never mentioned
12 Dennis Montgomery to anyone in this country anywhere,
13 anonymously into this -- they put it out cyberly, and then
14 everyone can look at it because it would be something that
15 would be critical to our elections. And then when I got to --
16 should I elaborate?

17 Q. Yes, please.

18 A. So when I got to to Texas with this, that's when I met Josh
19 Merrit. And you know, I had never met him before. And
20 Ramsland, I never met him before, we talked about him earlier.
21 And Kurt Olsen was also with me, and these three guys -- one
22 guy from the government, they had a sheet to sign. But then
23 this Josh asked --

24 Q. Hold on. Let me interrupt just for a moment.

25 You mentioned the name Josh Merrit. Earlier in this

1 trial, the jury heard testimony in a videotaped, pretrial
2 deposition by a witness named Josh Merrit, was that the same
3 individual?

4 A. Yes.

5 Q. You saw that video?

6 A. Yes.

7 Q. And the man who you saw on that video was the same Josh
8 Merrit that you met in person?

9 A. Correct.

10 Q. And you met him shortly before or at the -- when did you
11 first meet him? Was it shortly before or during the cyber
12 symposium?

13 A. No, I met him before. We landed in Texas two days before
14 the cyber symposium with that hard drive we got from Dennis
15 Montgomery, which that's the piece that had to be put into this
16 cyber 15 act. When we landed, it's at an airport, and I went
17 in there and I heard of Russ Ramsland, of course, I heard --
18 worked with him. And then there was this guy named Josh
19 Merrit, and I had no idea who he was or why he was even there.
20 But he went up to chalkboard after they talked about putting
21 the evidence in there, and he went up to the chalkboard for
22 15 minutes and said, quote, I have vetted Dennis Montgomery's
23 data, it's 100 percent accurate. Because he's telling this to
24 the guy that's got to okay it going in the -- he did a whole
25 presentation for at least 10 minutes.

1 I didn't know who Josh Merrit was. I sure liked him,
2 at that time. Wow, just another validation that this is going
3 to be great. And we put it in. Then we were waiting to -- he
4 was downloading a copy for the cyber symposium, Russ Ramsland
5 was, while Josh was doing that speech of his.

6 And it was taking so long, I said, how long is this
7 going to take. He goes, wow, there's a lot of stuff on this
8 hard drive, it's going to take hours. And I had to get to
9 South Dakota. I said, can we go and then bring a copy of this
10 back, send someone back to stick it in the cyber 15 act. And
11 the guy said to Kurt Olsen, he talked to them, I was very -- we
12 got to go, we've got to get things prepared.

13 And then I get to my plane and Josh Merrit is getting
14 on the plane. I remember asking Kurt Olsen, what is this.
15 He's part -- he's going to help us. He never mentioned a red
16 team. I think Colonel Waldron got on. I didn't hear the term
17 red team. It was either on the plane or when we landed.

18 I had no idea who Josh Merrit was, other than he had
19 validated Dennis Montgomery's data.

20 Now, I did think in my head, at that time, maybe he
21 worked with Sydney Powell or something. How would you validate
22 Dennis' data. But he was a cyber expert they said, so I
23 figured it was good news.

24 Q. You said that Mr. Merrit was a member of this red team?

25 A. Yes. I did find out later he -- sorry. He did work for

1 Sydney Powell, so that's where I thought the validation was
2 good.

3 Q. Can you explain to us what you mean by the red team?

4 A. I didn't know what a red team was. And when we landed in
5 South Dakota, I was setting up all the different areas at the
6 physical station, putting everyone here, these people get these
7 badge -- kind of coordinate like a big event, I had been there
8 many times before, but now it's all real and we're putting,
9 these media people can go here and I'm doing all that.

10 Well, then, a little later in the day, you know, it
11 was a little later in the day, I think Kurt Olsen called me
12 over, he goes, here, we have this red team. That's when he
13 told me what a red team was.

14 What's a red team?

15 They're going to validate as we go along. They're
16 going to help run things. As far as I knew, they were running
17 these things.

18 Well, I already had my cyber guys that was going to
19 put the data -- his name was Conan Hayes. Here's the data,
20 we're going to feed it to the -- I never even set up like that,
21 Conan wasn't there yet, because as you heard, he was still in
22 Florida getting the rest of the data from Dennis Montgomery, or
23 actually getting the -- because I bought two hundred thousand
24 dollar computers; one would be in Florida, one would be at the
25 cyber symposium, and then Dennis would be feeding stuff besides

1 the hard drive.

2 But the -- when we left there, there was -- as you
3 seen in my texts, we only had the portion that was going in
4 that cyber 15 act. We did not have the other -- another chunk
5 of it that we were being fed in. But I wanted a physical copy
6 there too, just in case something went wrong with those
7 computers. I definitely had to have -- I do backup to backup
8 to backup. And what if this happened, what if this happened,
9 what if this happened.

10 That's how I run my company. I have two of
11 everything. I don't have interruption insurance. I have two
12 buildings, two -- I used to have two buildings, but I would
13 have two of everything, two machines of everything. If
14 something went wrong, if you stop, you don't get those time
15 back. When I set up the cyber symposium, I had backup to
16 backup to backup.

17 One of the things I wanted from Dennis was a full
18 backup hard drive. We had the piece that went into the cyber
19 act.

20 Anyway, we get in this room, and they go, this is your
21 red team -- they didn't say it was a red team. There were at
22 least ten people in there I had never met. One of them I had
23 met.

24 Q. Was Mr. Merrit one of the members of the red team?

25 A. Yes, he was.

1 Q. Who selected the members of the red team?

2 A. I have no idea.

3 Q. It wasn't you?

4 A. No.

5 Q. Were they compensated for their work?

6 A. I was told -- I was told later, like maybe the next day,
7 because I asked Kurt Olsen, I said, do these guys get to get
8 paid? If they're going to do work, I pay everyone. I just
9 want everyone covered, if they're going to do work, they were
10 going to be working there. So I brought it up to Kurt, and I
11 said, well, what would be fair. And he said 30,000 a piece.

12 Q. What was your understanding of the role Mr. Merrit was
13 invited or expected to play in all of this?

14 A. I have no idea. All I know is that we gave him the
15 first -- as soon as we gave him a piece of the stuff from
16 Dennis Montgomery, it wasn't even ten minutes, he goes, this --
17 he changed his whole tune. I just seen him in Texas. He goes,
18 there's nothing here, this is no good.

19 Q. Was that after the cyber symposium?

20 A. No. It was before. The day before. After we got off the
21 plane, maybe that day. I'm going, what?

22 Q. He said there was nothing here?

23 A. He said, it's no good. And I said, is it stuff from the
24 2020 election?

25 Other cyber people on the right side said, yeah, they

1 looked and said yeah, he was looking for, I think, PCAPS,
2 whatever. I don't know the cyber stuff. All I know is all
3 this data was coming from the 2020 election.

4 Q. The first time you heard Mr. Merrit speak, you said he made
5 a presentation for 15 minutes in the --

6 A. Yup.

7 Q. Were you present in the room when he made that
8 presentation?

9 A. Absolutely. There was six people present, minimum. Kurt
10 Olsen, the two guys that were putting it in the cyber 15 act,
11 Russ Ramsland, myself, some lady and Josh. Oh, and Colonel
12 Waldron wasn't in that room, he came right after.

13 Q. That first presentation, did Mr. Merrit say anything, did
14 he give you reason to believe that you shouldn't got forward
15 with the --

16 A. No, I was so excited, I go, come on, let's go. And this
17 guy was coming with me, so I thought, that's pretty cool. When
18 he got on my plane, I'm going, wow, this is -- he said he had
19 vetted everything.

20 Now, remember, prior to the cyber symposium, Kurt
21 Olsen had been -- there were all these guys validating Dennis
22 like three weeks prior, and they were doing like computer
23 calls, Zoom calls, I found this out from Kurt about a week
24 prior to the thing. He goes, we have just got to make sure,
25 we've got to be careful. And I said, okay.

1 Q. Okay.

2 A. I don't know if Josh Merrit -- he might have been one of
3 these guys, maybe that's why he said, I validated all, a
4 hundred percent, all good.

5 Q. Was Kurt Olsen the one who hired the members of the red
6 team?

7 A. I paid them. Kurt got them all together with Colonel Phil
8 Waldron.

9 Q. Before the cyber symposium -- let's talk the dates when the
10 program was begun and got off the ground -- did Mr. Merrit or
11 anyone else approach you and say -- did any other members of
12 the red team come to you and say, this data is unreliable and
13 illegitimate, we really should cancel this?

14 A. Just Josh Merrit in that room. There was -- in the
15 beginning, there was Mark Cook. And we -- Conan had not got
16 there yet, too, because there was security or whatever because
17 they couldn't -- they were very upset they couldn't open it
18 that night. There were some pieces they couldn't open. I
19 remember Mark Cook, who I know now, he was upset.

20 They got Conan on a Zoom, he had to catch a plane
21 here, it was like 11:00 o'clock at night, which would have been
22 12:00 o'clock in Florida, and he goes, you guys, I need my
23 plane, we had to get him here, like 4 in the morning. So they
24 had him on Zoom and they were all yelling at him, we want it
25 now, we want it now. He told them then -- I think that's when

1 he told -- well, here, you can get in this layer, he gave them
2 credential codes to get in, and he said, I am going to bed, and
3 I will be there tomorrow. And then -- that's when Josh just
4 said, I can't get through this and he -- he started his first
5 thing saying, you know -- it was -- you changed.

6 Q. Did anyone -- so you received -- before the cyber symposium
7 began, did Josh Merrit or anybody else come to you and present
8 anything that looked to you like it was conclusive evidence
9 that the central point behind this whole project might be a
10 fraud?

11 A. No. They -- there's more, there needs to be more, they did
12 say that, we need more. And when Conan got there, he kept
13 giving them stuff. There needs to be more. The China stuff,
14 they found that, that was going to be dropped on the third day.
15 And but obviously, there was a big chunk, and we told them, no,
16 there's a chunk that's coming. And the next thing I hear,
17 Dennis Montgomery had a stroke.

18 Q. So before the cyber symposium came to an end, was there
19 ever a time when all of Montgomery's data was ever able to be
20 revealed?

21 A. No, not at all.

22 Q. That was not your fault?

23 A. No, that wasn't my fault.

24 Q. Was there any time, at any point, during or before the
25 cyber symposium that Josh Merrit or anyone else brought

1 evidence to your attention that gave you reason to think, we
2 will need to cancel this?

3 I know you say you received inconsistent
4 recommendations, but did you receive conclusive, hard evidence
5 that the central point behind the project might be a fraud?

6 A. No, I did not. Josh Merrit kept saying, this is wrong,
7 this is wrong, there's something wrong. And then, you know, I
8 found out later that him and his wife, we got a recorded
9 call --

10 MR. CAIN: Objection, your Honor.

11 THE COURT: Sustained.

12 THE WITNESS: Okay. Go ahead.

13 BY MR. DUANE:

14 Q. Did you have any special reason to think that what Josh was
15 telling you was trustworthy or that it wasn't, either way?

16 A. I was completely baffled after he did the presentation in
17 Texas. I'm going -- my head was spinning. Are you kidding me?

18 And especially when the Facebook fact checkers that --
19 I invited them, the one cyber expert I invited from overseas,
20 his name is Martin, he got to see video Zoom, he's the one
21 exception we made, I thought it was so important, these were
22 the ones that were covering up all the evidence, I had six
23 spinners, which the Plaintiffs have brought up, that they show
24 the spinners and two of them were from two different -- the
25 same state. The reason I found that out is because I got a

1 call from overseas right before it even started and Martin
2 says -- I said, can you see these?

3 And he went through, and he goes, Mike, they called
4 them, Alan Duke, by then -- we always argued and Martin says,
5 two of your spinners are the same, and it was sponsored in
6 Pennsylvania. And that was metadata. It was metadata, it's
7 not deep into the thing, but it shows that you have data for
8 the 2020 election.

9 And I asked him, okay, all that aside, we'll get that
10 fixed, that's cosmetics, putting it in the right state, is it
11 from the 2020 election?

12 And Martin said, yes. He said, but there's deeper
13 data that you're going to have to show if you want to show
14 states and all this other stuff.

15 And I said, but it is data from the 2020 election?

16 And he said, yes.

17 That was on top of hearing Martin -- or Josh Merrit
18 say he's vetted it all.

19 But he said it was from the 2020, that was just the
20 metadata. And now I have Josh Merrit saying that the data
21 is -- there's nothing there. So I've got two conflicting
22 things at the same time. But I actually trusted the Facebook
23 fact checkers because I've been dealing with them for six
24 months. And believe me, they would have said, bad, Mike. They
25 would have printed and put it all over the news.

1 Q. And so you are telling us you received conflicting
2 recommendations about how to proceed. Did there come a time
3 when you actually in your heart thought, what we're doing is
4 not legitimate or fraudulent?

5 A. They didn't say not to proceed. It was just them talking
6 about the data. I knew there was a lot more coming from
7 Dennis. Nobody said stop, don't do it.

8 Q. I apologize.

9 So your testimony is none of the members of the red
10 team said, you need to cancel this?

11 A. No. This is my head. I wouldn't have canceled anyway
12 about nothing. We had the -- you know, we have the data. It's
13 been six months validating it. It's Kurt that double checked,
14 double checked. So yeah, there was nothing like that.

15 Q. You testified that Harry Hursti was there at the
16 conference?

17 A. Yes.

18 Q. Was he invited?

19 A. Yes. He couldn't have gotten in without credentials, as
20 far as I know.

21 Q. Did you meet with Mr. Hursti in person --

22 A. No.

23 Q. -- at time during the conference?

24 A. No.

25 Q. At any time before the conference, did you meet with him?

1 A. No, I did not.

2 Q. Did Mr. Hursti reach out to you through representatives or
3 himself to say I need to have a meeting with you?

4 A. No.

5 Q. You saw the testimony that Mr. Hursti gave by video
6 deposition?

7 A. Yes.

8 Q. And you heard him testify about all the problems he now
9 says he thought he saw with the data?

10 A. Yes.

11 Q. He didn't bring any of that to your attention during the
12 conference?

13 A. No, he did not.

14 Q. Or before the conference?

15 A. No.

16 Q. Let's talk a little bit about the \$5 million challenge that
17 Dr. Coomer's attorneys --

18 A. Yes.

19 Q. -- told us about on direct examination.

20 A. Yes.

21 Q. Can you describe how that was supposed to work?

22 A. I wanted to get people here. By this time, I was getting
23 blocked by all the media in the country, would not let me speak
24 out about the machines and the evidence. By then, we had
25 accumulated so much from others, even other sources, so this

1 was real, hundred percent real, the media would not talk about
2 it. I think, you know what, I've got to have this piece seen,
3 so what if I pay so much money to advertise the event. And
4 then I need to get the world's attention. I thought, well,
5 I'll do a \$5 million challenge.

6 I had vetted this stuff, six months paying experts to
7 look at this, so I put this \$5 million challenge out and I went
8 to every media outlet in this country that I could find, I
9 spent probably a million dollars just on those ads, one of them
10 was Newsmax, they ran ads, those are commercials, just like My
11 Pillow commercials. They ran on NBC, ABC, everywhere.

12 Now, when you got there, if you could show -- if the
13 data was not from the 2020 election, you had to prove it
14 wasn't. You could win \$5 million. That was the challenge.
15 That was the -- the challenge. So the cyber guys had to be --
16 you had to be there and you had to have credentials.

17 We invited every cyber guy. Didn't matter their
18 political thing. As long as they had credentials. The people
19 that had put the -- the cyber guys that looked at it, so
20 someone couldn't just say, I see it here, this isn't here, they
21 had to know what they were doing. And that was the gist of the
22 challenge.

23 Q. Did Josh Merrit say anything to you about the \$5 million
24 challenge, either during the conference or after the
25 conference?

1 A. Josh Merrit was upset that he couldn't win the \$5 million.
2 He even said that. And then there was a phone call -- a taped
3 call where he and his wife said, we're going to win that
4 5 million.

5 MR. CAIN: Objection, your Honor.

6 THE COURT: Sustained.

7 BY MR. DUANE:

8 Q. How did you react when you learned that he wanted -- that
9 he was hoping to compete for the prize?

10 A. It surprised me, because he had just done the speech in
11 Texas. His behavior started to make me wonder, like what is
12 going on here, you know. And -- but I had things to do inside,
13 and I'm going -- you know what, I stayed out of that room where
14 they were all meeting and let them deal with it. That's what I
15 did.

16 Q. Yesterday, you told us about the names of various
17 individuals that were on the stage during the symposium or
18 spoke during the symposium.

19 Did you yourself make decisions about who would speak
20 and when, or did you delegate that to someone else who was
21 running it for you?

22 A. I didn't delegate any of it. When I got to the cyber
23 symposium, I was setting it up. I had a reporter on the ground
24 going to the different rooms, announcing that that was going to
25 be -- other than if I was up on stage, I was going to do -- I

1 even said, I'll talk 72 hours straight if I have to and skip --
2 that was my thing. We didn't have planned who was going to go
3 up there, zero. That was my -- my and Brannon Howse, because
4 it was going to be -- it was always going to be him going
5 around and interviewing people, that was going to be the show.
6 That all changed.

7 Q. Did you ever get angry at Josh Merrit and yell at him?

8 A. Here's the thing, Josh Merrit, I got upset with him when he
9 kept saying, there's nothing there. And I think it was the
10 second day, the only time I got upset with him really bad was
11 he went to a newspaper, he came out -- I got it noticed that he
12 came out in some newspaper, in I believe it was Washington, DC
13 on like the Washington Examiner or something like that, and
14 there was a story in there from Josh Merrit that the evidence
15 was no good or something. And I'm going, what? And -- I
16 didn't yell at him. He came by and I go, what are you doing?
17 What are you doing? And he -- I go, you told me this in Texas,
18 and I said, now we're putting this. Why are you here? Are you
19 sabotaging this?

20 Which, by the way, when I seen on that film with Harry
21 Hursti, now I kind of know some truths.

22 Q. You testified yesterday there was something about that
23 symposium that you learned for the first time during the trial.

24 What was that?

25 You didn't elaborate, you didn't explain that.

1 A. When I saw the Harry Hursti thing, one thing Josh Merrit
2 could never get ahold of the stuff we were feeding from the
3 room. I had Conan Hayes under my directive to feed from the
4 drive we had in Texas, and other information that he now had
5 into the cyber rooms. He was the lone person I put in charge
6 of that.

7 Now, Josh Merrit also had stuff, you know, in that red
8 team room. But they would also be feeding it there, I don't
9 know that, where he's looking at it, because there's nothing
10 here on the first day.

11 But then I heard yesterday that he gave two hard
12 drives to Harry Hursti at the cyber --

13 Q. What did you think when you heard that?

14 A. I'm going, Mark, there's our missing hard drive. We were
15 missing one, we thought. Now, there's two. We only had one.
16 And he's giving two hard drives to Harry Hursti, and he had no
17 authorization to do that. Those were taken from the cyber
18 symposium, we were looking for them. We actually -- that was
19 one of the things we went after Josh Merrit in court to say,
20 where is --

21 MR. CAIN: Your Honor.

22 THE COURT: Counsel, approach.

23 MR. DUANE: I'll move on, if that's satisfactory.

24 BY MR. DUANE:

25 Q. What did you learn for the first time about the data that

1 Josh Merrit gave to Harry Hursti?

2 A. Harry Hursti said it was no good. I have no idea what he
3 gave him. I have no idea what he gave him.

4 Q. You don't know what he --

5 A. No, because it's gone. We don't have it. And Josh -- I
6 had -- I had no idea.

7 Q. And you didn't know until this trial that --

8 (Indiscernible crosstalk)

9 BY MR. DUANE:

10 Q. You didn't know until this trial began and you heard the
11 testimony of Harry Hursti -- I'm sorry, the testimony of
12 Mr. Merrit that he had given information to Harry Hursti?

13 A. That's correct.

14 Q. You don't know what he gave Harry Hursti?

15 A. I have no idea.

16 Q. Do you know where he got that information he gave to
17 Mr. Hursti?

18 A. No.

19 Q. Let me ask you a few questions about a woman named Ms. Tina
20 Peters.

21 Do you remember that name?

22 A. Yes.

23 Q. We heard about her earlier in the trial?

24 A. Yes.

25 Q. And you remember that evidence and testimony?

1 A. Yes.

2 Q. We heard Josh Merrit testify that Tina spoke with him and
3 told him that you would buy her a house.

4 Do you remember that testimony?

5 A. Yes.

6 Q. Did you believe that testimony?

7 A. No, because I was very surprised that Josh said Tina said
8 that, because I have never met Tina in the world. I never knew
9 who Tina was. I hadn't talked to her. She -- nothing.

10 Q. We saw photos of Tina there on the stage, and we saw one
11 photo the Plaintiff produced and you were standing on the stage
12 at the same time.

13 A. Mm-hmm.

14 Q. Did you ever meet her before the symposium?

15 A. No.

16 Q. Did you ever speak with her before the symposium?

17 A. No.

18 Q. Before the symposium began, did you recall having any
19 conversations with her at all?

20 A. No.

21 Q. We also saw the deposition testimony played for us of the
22 pretrial deposition of Ms. Peters, where she was asked a number
23 of questions and her attorney instructed her not to answer.

24 Do you remember that?

25 A. Yes.

1 Q. So we never her heard her answer those questions?

2 A. That's right.

3 Q. We can ask you, and you can give us the answer to those
4 questions, or at least a few of them.

5 She was asked whether she had ever been paid anything
6 by you, and she wouldn't answer the question on the basis of
7 the Fifth Amendment.

8 Was she ever paid anything by you?

9 A. I gave her money. It was after the cyber symposium that I
10 heard her story, and they were after her in -- I think her
11 office had -- I don't know all the details, but she really
12 wanted to -- some protection. And so I said, you know what, I
13 said, I'll pay for you to go get a hotel. I paid for a hotel
14 and to get to Texas. She was still doing her job as the clerk,
15 but she just felt fear that she could not go back to there
16 because of what she was -- what she had disclosed on the stage.

17 Q. Was that a one-time gift?

18 A. What's that?

19 Q. Was that a one-time gift?

20 A. No, I helped her -- I helped her with lawyers, I -- I'll
21 say, a hundred to \$200,000 because she wanted -- she was in
22 fear, so she wanted to keep her job going, but she was such in
23 fear of retaliation by, I believe it was, the Secretary of
24 State of Colorado and Dominion company.

25 Q. Was she ever on your payroll as a regular employee?

1 A. No.

2 Q. Did she receive any -- the money that you say you gave her,
3 these gifts that you described, were they before or after the
4 symposium?

5 A. It was after the symposium -- I didn't give it to her. I
6 gave it to her attorneys and a card so she could get a hotel
7 room and food to eat.

8 Q. Did you or any of your companies give her money as
9 compensation for her time or whatever it was she did at the
10 symposium?

11 A. No.

12 Q. Did you know in advance, before the symposium began, that
13 she would be appearing at that symposium, before it began?

14 A. No.

15 Q. Did you know anything about what she might say?

16 A. When she got there, I did talk to her, because I -- I had
17 no idea, I didn't know anything about anything that had
18 happened in the spring. I had no knowledge. And I'm getting
19 briefed for the first time.

20 And I did say for her, I said, you need to tell your
21 story on the stage. This is scary. I said, the whole world
22 needs to hear this or they're going to come after you, like she
23 was afraid. And her lawyers were there, and they said -- they
24 all made the decision.

25 I just said what I thought. I said, I think you need

1 to tell the world. Because I had already been through it.

2 I had been through four months, I couldn't go back to
3 Minnesota, where there were death threats. And so I had been
4 through something like this trying to reveal the truth about
5 these electronic voting machines. And I told her, I said, I
6 think it would be better if you told the world about it,
7 they're all here, this is like amazing timing. And then her
8 lawyer said -- they all talked about it -- I left the room
9 then.

10 I said, all I know is that if she goes -- you know,
11 she was so scared. And I said, if -- I will promise you this,
12 which I have done to many officials in the last four years, if
13 you speak out, the only thing I can do is I said I will pay for
14 your lawyers, I will pay for -- I will help you, get you one
15 safe refuge. That's the promise I made to her. And I kept
16 that -- right after the symposium, she went to Texas.

17 By the way, in Texas, she had her door broke into at
18 the hotel on the first night.

19 Q. Did you personally ever try to persuade her or instruct her
20 not answer questions about what she knew concerning this whole
21 matter?

22 A. I didn't have anything. I had nothing -- I didn't know
23 what she was going to say.

24 Q. You didn't advise her to take the Fifth, that was not your
25 decision?

1 A. What's that?

2 Q. You did not advise her to take the Fifth and refuse to
3 answer questions?

4 A. Oh, no, absolutely not. I didn't talk to her in a year
5 when she took that.

6 Q. Let's change the -- let's shift gears now and -- one more
7 thing about the symposium first.

8 As I understand it, the participants in the symposium,
9 they were not all gathered together in the same room all the
10 time; is that right?

11 A. The structure of the building had the main lobby and
12 audience. We had a room with cyber people specific. We had to
13 divide them for seating so they would be comfortable. I
14 believe it was three or four rooms.

15 Q. Let's shift gears now to another topic.

16 THE COURT: Mr. Duane, if you are going to shift
17 gears, it might be appropriate to take the lunch break now.

18 MR. DUANE: That would be perfectly acceptable.

19 THE COURT: Ladies and gentlemen of the jury, I'm
20 going to release you for lunch for about 45 minutes. Be back
21 here at 1:10 p.m. We would appreciate it. Have a good lunch.

22 I remind you not to talk to each other about the
23 testimony you heard and obviously no one else as well.

24 (Continued on next page)

25

1 (In open court; jury not present)

2 THE COURT: Counsel, we have some outstanding issues
3 with respect to these video designations. Plaintiff's counsel,
4 will you be prepared to address those when we get back from
5 break?

6 MR. BELLER: Yes, your Honor, we will. My
7 understanding, however, is that the Defendants are re-clipping
8 the movie. And so I have reviewed everything that we have got
9 copies of. I'm prepared to respond to that.

10 THE COURT: You don't have the re-clip?

11 MR. BELLER: No.

12 THE COURT: Ms. DeMaster.

13 MS. DEMASTER: Actually, everything that we plan to
14 raise and argue with the video clips has been provided to
15 the -- the only one you're calling a re-clip is the previous
16 one we sent to the Plaintiff that has not been yet sent to the
17 Court. It's just missing three minutes at the end.

18 THE COURT: So which exhibit does that refer to?

19 MS. DEMASTER: 231.

20 THE COURT: Just one housekeeping matter, we received
21 from Plaintiff's counsel redacted versions of Exhibit 17 and
22 37, with redactions that we had previously discussed with the
23 parties at sidebar. I just want to confirm with the Defendants
24 that there are no objections to those redactions.

25 MR. KACHOUROFF: No objection, your Honor.

1 THE COURT: So we will get those substituted in the
2 record.

3 Anything else that we need to address right now,
4 counsel?

5 MR. CAIN: Not from us.

6 MR. DUANE: Only this, as a courtesy to the Court, I
7 wanted to advise you that I expect that the remainder of this
8 cross-examination will probably be an hour, at most.

9 THE COURT: Okay.

10 MR. DUANE: And perhaps substantially less. And at
11 that point, we're hoping to have the chance to finish the
12 cross-examination by showing the videos that were the subject
13 of the objection that we were just discussing. I just wanted
14 to let you know that it would be our hope, if they can be used,
15 we would like to be able to use them within, like I said,
16 approximately an hour after the lunch break. But it's not my
17 desire to put you under the gun.

18 THE COURT: We're working as hard as we can.

19 MR. DUANE: That's not my motivation, I promise, your
20 Honor. I'm giving you a heads up on how long down the road
21 we're hoping to have the benefit of a ruling. But if it takes
22 more time for that, I want you to know now, if the defense has
23 no objection to waiting, and if we need to go ahead and put on
24 some other evidence and then recall him later in the day or
25 tomorrow, if that's necessary to give the Court the time, that

1 would be acceptable to us.

2 THE COURT: I appreciate it. I appreciate that.

3 Counsel, we will be in recess.

4 (Lunch recess)

5 (Continued on next page)

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AFTERNOON SESSION

1:16 p.m.

(In open court; jury not present)

THE COURT: Counsel, ready to go?

MR. DUANE: Your Honor, yes.

To give the Court an update, I said I would probably be done in less than an hour. I'm going to try, as a courtesy to the Court and the jury, to wrap it up in less than 30 minutes.

THE COURT: We might need to take a break to make an evaluation as to the video clips at that time. We'll see how it goes.

MR. DUANE: Whatever you -- yes. Thank you.

THE COURT: All right.

(Continued on next page)

1 (In open court; jury present)

2 THE COURT: Mr. Lindell, I remind you that you are
3 still under oath.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Duane.

6 MR. DUANE: Thank you, your Honor.

7 BY MR. DUANE:

8 Q. Mr. Lindell, for the sake of jury, I would like to try to
9 wrap this up pretty quickly, just to address your attention to
10 just a few more topics.

11 First, let me ask you a couple of things about the
12 corporations and the businesses that you have set up and run.

13 Do you understand?

14 A. Yes.

15 Q. We heard some testimony and evidence from you about
16 Frankspeech, one of the Defendants in this case, yes?

17 Are you familiar with that entity?

18 A. Yes, yes.

19 Q. Do you recall what month it was created?

20 A. I believe it was March of 2021, March, April, 2021.

21 Q. It was before May?

22 A. Yes.

23 Q. It was before Mr. Oltmann gave his statement that we heard
24 about earlier?

25 A. Correct.

1 Q. Is Frankspeech a platform for others to publish their
2 views, like YouTube, or does it actually produce original
3 content?

4 A. It's a publishing thing like YouTube, people can put stuff
5 up there. It doesn't do any content itself.

6 Q. LindellTV, was that originally set up as a corporation or
7 was it first a partnership of some sort?

8 A. The partnership was set up, I believe, in March of 2021.
9 And it became a corporation, I believe, in June or July of
10 2021.

11 Q. And was the name of that -- was the name of the corporation
12 Lindell-TV, LLC?

13 A. That's correct.

14 Q. Thank you. I just wanted to clarify a couple of those
15 things.

16 A. Thank you.

17 Q. Thank you.

18 We talked before the break about -- you gave us a lot
19 of information about Mr. Montgomery, Dennis Montgomery and his
20 data. And just so the record is clear, for the jury's benefit,
21 you talked about the efforts you made to try to corroborate or
22 verify or to vet these reports.

23 Did you vet his credentials or his data or both?

24 A. His credentials beyond belief and the data. It's --
25 there's -- it's so vast that they -- as you heard yesterday,

1 they were still validating and validating more and more data,
2 yes.

3 Q. And to the best of your understanding, did you and those
4 working for you ever do a complete validation or vetting of his
5 data or was it only partial?

6 A. It was always -- it's ongoing. There's so much. But
7 partial, I would say, yup.

8 Q. I want to talk next about the subject of what you called
9 blocking.

10 A. Yes.

11 Q. You have told us a lot about that, we don't have to go over
12 all that again. But I did want to ask you what you mean by
13 blocking and specifically how that relates to the charges you
14 have made concerning Mr. Coomer and how you believe he was
15 blocking you, what that meant in your mind.

16 A. There's a couple different ways to block; you destroy my
17 companies and my money so I quit talking.

18 There's another way, which is in this courtroom right
19 now, which is called lawfare, where you better not talk or
20 you're going to get sued. And that's what I believe is
21 happening here.

22 And I believe that the one statement I made about
23 Dr. Coomer before he sued me was a direct attack and a direct
24 attack and a block to go to Newsmax so I could never go on and
25 talk about My Pillow again.

1 Q. So that statement, in your mind, was about what you
2 perceived to be his efforts to retaliate against you for the
3 things you had said?

4 A. To silence me. Not for things I had said, because I said
5 them after he tried to silence. I had been sued by his
6 company, Dominion, just a few months prior.

7 Q. Did you ever say Mr. Coomer had rigged or stolen the
8 election?

9 A. No. Absolutely not, no.

10 Q. I would like to talk a little bit, briefly, about the
11 documentaries. We're not going to play those right now, but
12 there was some questions and answers given yesterday about
13 three documentaries that were produced by you and your company.

14 And do you remember the names of these three
15 documentaries?

16 A. Absolute Proof, Scientific Proof and Absolute Interference.

17 Q. And in those interviews -- did you appear in each of those
18 or any of those videos you saw?

19 A. All three.

20 Q. And did you speak with anybody else in those interviews?

21 A. Yes.

22 Q. Who did you speak with?

23 A. The first one, it was Patrick Colbeck -- do you want me to
24 say who they are?

25 Q. Yes.

1 A. Patrick Colbeck, he was a rocket scientist and a senator
2 from Michigan. There was a Matt DePerno, he was a lawyer from
3 Michigan -- this is in the first, Absolute Proof -- General
4 McInerney, he was a United States general, I don't know how
5 many -- a lot of stars. Colonel Waldron from the government,
6 he was a cyber -- he worked with the government in cyber. I
7 think a guy named Shi- --

8 Q. Shiva?

9 A. Shiva, Dr. Shiva, he is a -- all kinds of credentials. I
10 believe he's from Massachusetts.

11 Q. That's fair. That's enough.

12 A. That's all I can remember. That's the first one.

13 The second one was called Scientific Proof, which
14 actually when we were making Absolute Interference, when he
15 came to be interviewed by me, it was so explosive, I said this
16 has to be its own separate video. So Scientific Proof is just
17 myself and Dr. Douglas Frank.

18 Q. And what was the name of the third video you produced?

19 A. The third one is called Absolute Interference, and that one
20 was General Michael Flynn it was different people in that one.

21 Q. And these three videos --

22 A. There's a lot of people. I can't remember. I just
23 remember that general that did join. But it was different
24 people than in the first one and the second one.

25 Q. That's enough. Thanks.

1 In any of those three videos, did you or any of your
2 guests express any opinions about Mr. Coomer?

3 A. No. His name was never brought up.

4 Q. Did you yourself mention Mr. Coomer's name --

5 A. No.

6 Q. -- in any of those videos?

7 A. No.

8 Q. Let me rephrase that.

9 In any of those three documentaries, did you make any
10 claims that Mr. Coomer -- excuse me, pardon me -- Dr. Coomer
11 had participated in that Antifa call that Joe Oltmann had told
12 us about?

13 A. No.

14 Q. Did you ever endorse Joe Oltmann or his opinions in those
15 documentaries?

16 A. No.

17 Q. Have you ever made a public statement that you believe Joe
18 Oltmann about what he said --

19 A. No.

20 Q. -- concerning Dr. Coomer's participation in that notorious
21 phone call?

22 A. No.

23 Q. Next, I'd like to ask you briefly a few quick questions
24 about the Plaintiff's exhibit, I believe it was Exhibit 190, it
25 was an interview on CNN.

1 Do you remember that video?

2 A. Yes.

3 Q. That we saw together?

4 A. Yes, I do.

5 Q. And you were interviewed and questioned by a couple of
6 reporters from that network?

7 A. Yes.

8 Q. To the best of your understanding, what was the connection
9 between that evidence and that interview and Mr. Coomer? Was
10 there a connection?

11 A. Absolutely not. That was -- that CNN interview, when they
12 came to Minneapolis before the symposium was four hours long.
13 I gave them all my time. And I think now it was to make me
14 look silly that I want to -- completely separate thing, talking
15 about getting rid of electronic voting machines. And I think
16 the whole purpose of them was just to, I don't know, make me
17 look foolish or crazy or a conspiracy theorist. But it had
18 absolutely nothing to do with Dr. Coomer and some Antifa call.

19 Q. Was that even mentioned during that interview?

20 A. No.

21 Q. When the reporters on CNN confronted you with the unrelated
22 topic of how the election had turned out, did you have any
23 reason to regard them and their opinions as authoritative or
24 reliable?

25 A. What was --

1 Q. When Anderson Cooper told you on CNN that he didn't know
2 what you were talking about concerning that other subject of
3 the election, did that change your opinion on the subject?

4 A. No.

5 Q. Did you not accept his --

6 A. No, I didn't accept it. He's a reporter. I had all my
7 stuff that I believe. This is about my beliefs. And there was
8 nothing about this Eric Coomer and this phone call.

9 Q. Thank you.

10 Mr. Cain --

11 MR. CAIN: Yes.

12 MR. DUANE: My apologies. I wasn't addressing you. I
13 apologize for my imprecision.

14 BY MR. DUANE:

15 Q. Mr. Cain asked you a number of questions yesterday on the
16 fact that you were not bringing in experts to testify in this
17 case. And you said you wanted to explain why that was the
18 case, and he said, your attorney could ask you.

19 So let me ask, why are you not bringing in any experts
20 in this trial?

21 A. This isn't about -- this case is not about whether the 2020
22 election was overturned or not. This case is about my beliefs
23 and they're after me and they're trying to make it convoluted
24 like guilty of association of some call that I never knew
25 anything about and that Dr. Coomer stole the 2020 election or

1 2021 election. This is -- they have tried to convolute the two
2 and say, here's -- you know, the 2020 election and your
3 beliefs, Mike, that we need to go to paper ballots and prove
4 that we should, rather than, what this was all about. I made
5 one statement before I got sued. And I think I've given the
6 reason why I made that statement. It has nothing to do with
7 experts showing if the election was taken or not.

8 Q. Are you aware of anyone or have you ever conferred or
9 spoken with anyone -- you have told us -- let me rephrase that.

10 You have told us about a great number of cyber experts
11 that you have consulted with over the last few years; right?

12 A. Yes, I have talked to probably more than anyone.

13 Q. In all these conversations that you had with all these
14 cyber experts and other experts on elections and electoral
15 matters, have you ever met someone who could come in and
16 testify as an expert on the subject of what you thought and
17 what you personally believed and intended?

18 MR. CAIN: Objection.

19 THE COURT: Approach.

20 (Continued on next page)

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1 (At sidebar)

2 MR. CAIN: As I understand, he's calling for
3 speculation, hearsay.

4 Can you read it back.

5 THE COURT: In all the conversations that you had with
6 all these cyber experts and other experts on elections and
7 electoral matters, have you ever met someone who could come in
8 and testify as an expert on the subject of what you thought and
9 what you personally believed -- and I can't read the last --

10 MR. CAIN: He's asking for expert opinion testimony,
11 so hearsay, speculation, 702.

12 MR. DUANE: The objection would be valid, but for the
13 fact the witness' answer would be no. He's going to testify he
14 has not located any experts who could or would purport to offer
15 an opinion on the ultimate question in this case, which is his
16 motives, his understanding and his beliefs. I need to bring
17 this out to the thrust of the point by Plaintiff's yesterday,
18 when he tried to make considerable -- out of the fact that he
19 doesn't have any experts on his witness list. I'll reword the
20 question and make it more brief and succinct, if I'm allowed to
21 do so, and then I'll move on to something else.

22 THE COURT: Rephrase the question. That's sustained
23 as to form.

24 (Continued on next page)

25

1 (In open court; jury present)

2 BY MR. DUANE:

3 Q. Mr. Lindell, you have spoken with many experts on the
4 subject of cyber elections?

5 A. Yes, yes.

6 Q. And Mr. Cain asked you yesterday why you don't have any
7 experts on your witness list.

8 Do you remember that question?

9 A. Yes.

10 Q. And I just wanted to ask you, in all of your investigation
11 and preparation for this trial, have you found anyone who could
12 testify as an expert on your motives and your intentions and
13 your beliefs?

14 A. No, because --

15 MR. CAIN: Same objection, your Honor.

16 MR. DUANE: Same response.

17 THE COURT: Sustained.

18 BY MR. DUANE:

19 Q. Let's move on to just one -- I'm almost done.

20 Let me ask you, sir, we have heard a great deal during
21 this trial about a number of statements made by you over the
22 last five years.

23 You remember all that evidence?

24 A. Yes.

25 Q. Some of those statements involved Mr. Cooper -- I'm sorry,

1 Dr. Coomer, yes?

2 A. Yes.

3 Q. And many of them involve other topics surrounding the
4 election?

5 A. Yes.

6 Q. When you made those statements, did you believe them all to
7 be true at the time that you made them?

8 A. Yes.

9 Q. Did you make any of them with indifference or reckless
10 disregard for whether they were true or false?

11 A. No.

12 Q. Did you do your best every time to try to investigate both
13 sides with respect to the accuracy of everything you said
14 before you said it?

15 A. Yes.

16 Q. With all the problems that you have been through that you
17 described for us -- the expenses, the time, the money, the
18 blocking -- why didn't you stop making these statements a long
19 time ago?

20 A. Well, the media asked me two years ago, and they said, you
21 know, you have lost just about -- are you going to lose
22 everything or are you going to stop talking about our
23 elections?

24 And I said, I will never stop. I will borrow money if
25 I have to. That came to fruition.

1 I was asked before this trial, don't you wish you
2 changed your ways back then and quit talking about our
3 elections?

4 I said, no, because we lose everything.

5 So the answer is, I would never, ever, this trial, no
6 matter what happens, I would still say we have to get rid of
7 the machines and go to paper ballots. And I will never stop
8 talking about it.

9 Q. You told us that you believed everything that you said at
10 the time that you said it. With the benefit of hindsight and
11 everything you have learned in the last few years and after
12 everything you have heard at this trial, do you still believe
13 in the validity and the accuracy of everything you have said?

14 A. On the election platforms?

15 Q. On every subject that we've heard about at this trial.

16 A. Yes, yes.

17 Q. And more specifically about Mr. -- I'm sorry, I apologize
18 again, I mean no disrespect -- Dr. Coomer?

19 MR. DUANE: It was not intentional, your Honor.

20 And I apologize, Dr. Coomer.

21 Q. The statements that you have made specifically about
22 Dr. Coomer, based upon all of the evidence that we have heard
23 at this trial that any of the things that you said about him
24 were false?

25 A. I could call it hyper -- whatever that word is, but I

1 believe I've called many, many people traitors, and they have
2 tried to block me. It's probably 50 or a hundred.

3 If I can't call someone that because I believe I'm
4 being blocked and I don't understand why are you doing this,
5 why are you doing direct attacks on me, it doesn't change my
6 mind. When we leave here, I will probably still call him and
7 his team criminals for what they've done to me. I'm not going
8 to change my mind. I have free speech, First Amendment right
9 of free speech. They have attacked me personally.

10 Q. Of all the people you have called, including the Plaintiff
11 and many others, the people you called traitors, did you accuse
12 any of them of rigging the election?

13 A. Not one. Not one did I ever tell them, including the
14 media, that they ever stole the election.

15 Q. You called them criminals and traitors because of what you
16 described as blocking?

17 A. Because they're blocking and attacking me, my money, my
18 family. You name it, it's happened in every form manageable.

19 Q. Just one more quick question. Since this trial has
20 started, has the Plaintiff, Dr. Coomer, spoken with you or in
21 your presence or talked to you?

22 A. He said one thing, and this was yesterday when I was
23 standing by the bathroom waiting for my wife and the rest were
24 walking out, he was the last one, and he glanced, and he went,
25 piece of shit.

1 Q. He was talking to you when he said that?

2 A. He looked at me and I was looking at him when he said it.

3 I was the only one there. I can't say if that was meant for
4 me. I am just telling you exactly what happened.

5 Q. You said your wife was not with you?

6 A. She was right outside the bathroom.

7 Q. Is your wife in the courtroom here today?

8 A. Yes, she is.

9 MR. DUANE: Your Honor, this may be a good time to
10 take a break because I have no further questions of this
11 witness. I may, with the Court's permission, have additional
12 evidence. It's up to the Court whether you wish to take a
13 break for that purpose.

14 THE COURT: Ladies and gentlemen of the jury, there's
15 a legal issue I need to address with the parties outside the
16 province of the jury we could not resolve earlier while you
17 were on the lunch break. We need to resolve that before we can
18 move forward. So I would make you a promise about how long
19 this might take, but I might not be accurate, so I don't want
20 to get your expectations up.

21 Madam Deputy, can you escort them to the jury room,
22 please.

23 (Continued on next page)

24

25

1 (In open court; jury not present)

2 THE COURT: So I'm going to take a quick break to get
3 my notes for this issue, and then we can be back on the record
4 to hear argument from Plaintiff's counsel.

5 Yes, Mr. Duane.

6 MR. DUANE: I'm just listening.

7 THE COURT: And then, hopefully, we can resolve this
8 and move on with the examination.

9 (Recess)

10 THE COURT: Pending before the Court are some exhibits
11 that have been cut down that appear that Defendants would like
12 to proffer in their examination of Mr. Lindell. We have had an
13 opportunity to review some of the snippets, but not all of them
14 quite yet. So I wanted to hear from Plaintiff's counsel with
15 respect to the various positions.

16 Mr. Beller, it looks to me like you are going to
17 address this. So if you could address it exhibit by exhibit,
18 that would help us for organizational purposes, and it will
19 help me be able to follow along.

20 MR. BELLER: Understood. Thank you, your Honor.

21 And I'm going to be candidly quite brief on these
22 given where we are procedurally.

23 Your Honor, I will start with Exhibit 229. I would
24 note, for all of these exhibits, I believe that Defendants have
25 failed to set forth the exact evidentiary basis by which these

1 are to be admitted. I understand, to the extent that they are
2 claiming that this is an exception to hearsay under 803(3),
3 803(3), of course, is regarding specifically the individual
4 statement as to their then existing state of mind.

5 Of course, what we have at issue are what we are
6 alleging to be a series of defamatory statements. And the
7 Defendants have failed to set forth how any of these clips, and
8 specifically, as to this record, 229, actually goes to
9 establish what Mr. Lindell's then existing state of mind is.

10 Your Honor, I would note for the Court that 803(3) has
11 been examined by the Tenth Circuit. There is an unlimited,
12 candidly, number of cases in which it is analyzed. But I would
13 draw the Court's attention to United States v. Joe, that is
14 8 F.3d 1488, that's a 1993 case from the Tenth Circuit that, as
15 I said, generally examines 803(3).

16 Your Honor, I would note that Exhibit 229 is hearsay.
17 It's self-serving hearsay. I believe that it is not relevant
18 under 403.

19 And I would also note, of course, depending on which
20 individual section -- and understanding that the clip is
21 several minutes long -- that we also have hearsay within
22 hearsay as to that individual clip.

23 And for that reason, Plaintiffs would object to this
24 particular admission.

25 THE COURT: All right.

1 MR. BELLER: Your Honor, next, if the Court would like
2 me to go to the next exhibit.

3 THE COURT: Yes.

4 MR. BELLER: Thank you.

5 Your Honor, I failed to add, of course, that to the
6 extent 229 is relying on the statements of a witness, in this
7 case, it's Mr. DePerno, that that is a fact witness that was
8 not otherwise designated by the Defendants under their Rule 26
9 obligations, as well as a denial of best evidence, in terms of
10 how they could have presented these particular statements.

11 Turning gears --

12 THE COURT: Sorry, Mr. Beller, so before you move off
13 of Exhibit 229, what about the Defendants' argument that
14 they're not seeking to admit this for the purposes of the truth
15 of the matter asserted, but with respect to Mr. Lindell's state
16 of mind?

17 MR. BELLER: Thank you, your Honor.

18 And that goes to 803(3). 803(3), of course, in terms
19 of state of mind requires -- the entire purpose behind 803(3)
20 is that a witness' statements regarding their then existing
21 state of mind is inherently reliable because of the subject
22 matter that is ultimately being discussed. Here, we have
23 multiple defamatory statements alleged by the Plaintiff. The
24 Defendants have failed to set forth any specific statement that
25 would then be connected to Mr. Lindell's then existing state of

1 mind at the time that he actually made each one of the
2 defamatory statements.

3 In other words, I guess, put another way, this is
4 simply bolstering. This is them trying to say that
5 Mr. Lindell, of course, certainly believed the statements that
6 he was making at the time without being able to connect it
7 directly to what his state of mind was at the time that he
8 actually made any of the defamatory statements. Again, drawing
9 the Court's attention to US v. Joe, which otherwise examines
10 803(3), keeping in mind, of course, that 803(3) expressly
11 excludes from the operation of the rule that the exception to
12 hearsay of a statement of the individual's belief to prove the
13 underlying fact that they believed at the time. I realize that
14 that's a word salad, but nonetheless, that's the position of
15 the Plaintiffs.

16 THE COURT: What about the fact, Mr. Beller, that
17 Absolute Proof, which is Exhibit 229, was released on or about
18 February 5th, 2021 and Mr. Lindell started making these
19 statements, as I recall, in May of 2021; isn't that a
20 sufficient temporal nexus?

21 MR. BELLER: Thank you, your Honor.

22 And candidly, I would disagree. I think -- well, let
23 me back up.

24 There is a temporal nexus. I'm not naive to the fact
25 that we can discuss what Mr. Lindell's state of mind was during

1 this entire period of time. But the point is, speaking
2 specifically to the May statements of Mr. Lindell, there's
3 absolutely no indication that the information that he had from
4 Absolute Proof in fact led him to call Dr. Coomer treasonous or
5 a traitor or criminal. While we can certainly say that that
6 was Mr. Lindell's mindset, and that is, I would say, a
7 skepticism regarding the validity of the election, there has
8 been no nexus whatsoever between the information that he
9 learned in Absolute Proof and his actual statement specific to
10 Dr. Coomer.

11 THE COURT: Okay.

12 MR. BELLER: Your Honor, is the Court ready for me to
13 go to 230?

14 THE COURT: I am.

15 MR. BELLER: Thank you, your Honor.

16 And let me say, in the interest of sort of
17 shortchanging this, I think the same objections apply to 230.
18 And that is, this is in fact hearsay. In many cases, it is
19 hearsay within hearsay.

20 We also have what I imagine to be the Defendants
21 requesting the admission of the statements of Douglas Frank.
22 Of course, Douglas Frank was never designated as an expert
23 witness. I believe that there are 703 problems regarding
24 Dr. Frank or Mr. Frank.

25 We also have 705 problems, your Honor. 705 requires

1 the party to actually disclose the facts that are being relied
2 upon by the expert. We have not been given access to Mr. Frank
3 to be able to actually cross-examine Mr. Frank, nor actually
4 has the jury had the opportunity or will have the opportunity
5 to hear a cross-examination of Dr. Frank.

6 Again, this goes to best evidence, your Honor. And we
7 still have the risk of unfair prejudice and misleading the jury
8 as substantially outweighing any benefit or any probative value
9 that this particular piece of evidence has.

10 THE COURT: All right. Let's move to Exhibit 231.

11 MR. BELLER: Thank you, your Honor. If I may have
12 just a brief moment to get there in my notes.

13 Your Honor, same objection as to 231, hearsay,
14 relevance.

15 Ultimately, instead of talking about Mr. Frank, we're
16 now talking about General Flynn, where he was never designated
17 as an expert. We have no information regarding what facts
18 General Flynn is relying on. We have best evidence objections
19 there as well. And again, we have hearsay within hearsay as to
20 General Flynn.

21 THE COURT: Okay. 247.

22 MR. BELLER: Thank you, your Honor.

23 As to 247 -- and actually, to the extent I have not
24 already said this, 247 is one example, but none of the exhibits
25 actually discuss Dominion or Dr. Coomer with the exception of

1 247.

2 Your Honor, 247, I believe, Dominion specifically is
3 discussed between, by my calculation, 1230 and 1250. At the
4 1250 mark, we have a third party who then comes in and comments
5 regarding Dominion equipment and her position as to that
6 Dominion equipment.

7 We have hearsay within hearsay as to that particular
8 exhibit.

9 It is prejudicial, in the sense that there's
10 discussions from our policymakers in Washington regarding the
11 Secure Elections Act. And again, I believe will confuse the
12 jury. And we do not have the opportunity to actually go
13 through and examine any of those witnesses.

14 As importantly, we have testimony regarding the
15 ImageCast X machine, which I do not believe the jury has heard
16 evidence about Dominion's ImageCast X or its application to the
17 2020 election or any of the results of any of the elections
18 that were cast in 2020.

19 THE COURT: Okay.

20 MR. BELLER: Finally, I believe that that gets us to
21 Exhibit 248.

22 Your Honor, 248, again, is bolstering, it is also
23 hearsay within hearsay, and I do not believe has any probative
24 value. And to the extent there is probative value, it is
25 outweighed by prejudice of that particular exhibit.

1 Your Honor, if I may note, 231 is broken into two
2 parts; 231-1 and 231-2. For purposes of the Court's
3 understanding, my objections are the same as to each of the two
4 different clips.

5 THE COURT: All right. Anything else, Mr. Beller?

6 MR. BELLER: There's nothing else. Thank you, your
7 Honor.

8 THE COURT: Ms. DeMaster.

9 MS. DEMASTER: Your Honor, first, I want to go to
10 the -- to all three of the documentaries, that would be 229
11 through 231, just to their objection as to 803(3), I believe is
12 what Mr. Beller stated. The statements made by the Defendant
13 in those videos are admissible under Rule 803(3) not to show
14 that his beliefs were true, but only to show that they were
15 what he believed.

16 THE COURT: Well, isn't that limited just to his own
17 statements, the 803(3)?

18 MS. DEMASTER: We'll get to that. Most of these
19 clips -- in fact, I believe all of the clips in 229 are
20 Mr. Lindell's statements. We're certainly not offering any
21 statements -- now, to the extent that DePerno was shown,
22 Mr. DePerno was also shown briefly in the clip that Plaintiff
23 played of Mr. Coomer. In fact, it was when Mr. DePerno and
24 Mr. Lindell were sitting together, it was when the video -- the
25 YouTube clip was played that showed Dr. Coomer discussing the

1 elections or discussing -- I'm sorry, discussing the
2 connectivity of the machine in that training video that was
3 publicly available. And that was the same clip that was within
4 that same context.

5 But all of the clips in 229 and, frankly, most of them
6 in 229 and in 231 are Mr. Lindell's statements. Throughout the
7 documentary, as he's interviewing, he's making comments and
8 statements to the camera from his impressions from what he has
9 learned. So that shows that -- in fact, in 229 --

10 THE COURT: But aren't there also comments by his
11 cohosts?

12 MS. DEMASTER: His guests, you mean?

13 THE COURT: Or if you want to say -- sure, his guests.

14 MS. DEMASTER: Yes. And to the extent there's that,
15 as to the statements made by other speakers on those videos,
16 the alleged hearsay within hearsay objection, we are not
17 relying on Rule 803(3) for that, which is about statements
18 offered to show the state of mind of the speaker. We're
19 offering those -- and to the extent that there are some
20 statements mixed in, we are offering those only to show the
21 effect on the state of mind of the listener, Mr. Lindell. And
22 so it is admissible because it is not being offered to prove
23 the truth. It is therefore not within the definition of
24 hearsay under Federal Rules of Evidence 801(c).

25 So as to the rest of these, that's the clip that they

1 showed, and it's relevant to the context of the statements and
2 how the public would have seen that.

3 So for example, two of the clips in 229, there are two
4 times -- yes, in 229, there are several statements that
5 Mr. Lindell makes and specifically says the term traitors and
6 suppressors, and he talks about this concept of blocking that
7 has been raised here and what Mr. Lindell meant. So within the
8 context of what Dr. Coomer has shown, what the Plaintiff is
9 arguing in this case, is that these -- is that the public
10 certainly believed what Mr. Lindell meant when he stated that
11 Dr. Coomer was a traitor and all these other people were
12 traitors, and that's been central at this issue. And in 229,
13 he is stating exactly what traitor means to him. Those are
14 people that suppress. And this came out again, your Honor, in
15 February of 2021.

16 Further, the Plaintiff has also argued that the public
17 certainly would have known that any time Mr. Lindell was
18 talking about who stole the election, they knew that he was
19 talking about Dr. Coomer. Again, 229 has clips where
20 Mr. Lindell is talking about China and other foreign countries.
21 And I think, at least to the extent Plaintiff did already offer
22 a clip from Absolute Proof, if by any reason for an implication
23 that Absolute Proof, this little clip of Dr. Coomer was to
24 suggest that he was the one that stole the elections or that
25 was engaging in fraud, that's simply not true. We would ask

1 that more clips from this be shown, at least to provide context
2 that the purpose of Absolute Proof had nothing to do with
3 Dr. Coomer, but rather just a Dominion employee stating that
4 the machines could be logged into the internet and the network.

5 As for 230, we raise the same arguments to that point,
6 that it is about the effect on the listener, who, at that time,
7 was Mr. Lindell. And so, then, again, of course, it would be
8 admissible under 801(c).

9 And as to 231, again, the same thing goes for General
10 Flynn. Again, the clips in 231 with General Flynn and with
11 Mr. Lindell, again, most of those statements are made by
12 Mr. Lindell -- by Mr. Lindell that are relevant to who he
13 believed was stealing the election. So again, this goes to the
14 context of any statement that was made about -- or that is at
15 issue in this case would have very clearly and very publicly
16 been obviously having nothing to do with Dr. Coomer and the
17 public would know what he was talking about, specifically with
18 the mention of suppression of First Amendment rights, and that
19 that's who Mr. Lindell considered to be domestic traitors or
20 traitors. That would go to show the context.

21 Now, as far as --

22 THE COURT: How does that go to his mindset about
23 whether he made these statements about Dr. Coomer on these
24 various dates starting in May 2021, he was actually -- he knew
25 the falsity or was reckless with respect to whether or not the

1 statements he was making were false?

2 MS. DEMASTER: We're not saying whether it goes
3 directly -- well, first of all, the other information in these
4 documentaries goes to show the recklessness. I don't think in
5 the history of the First Amendment, there's been a time where
6 someone interviewed the due diligence and investigation they
7 did into information that they were providing. This is what
8 these documentaries are, are him conducting due diligence that
9 goes right to the heart of reckless disregard and that
10 standard.

11 THE COURT: The reckless disregard of saying things
12 about Dr. Coomer and Dominion if these clips are not
13 specifically related to Dr. Coomer or Dominion, didn't you just
14 tell me that these clips are not related to Dr. Coomer and your
15 client has repeatedly testified here that he's never accused
16 Dr. Coomer of rigging the 2020 election?

17 MS. DEMASTER: Correct, your Honor.

18 And as we stated, that much has been brought up,
19 mostly by the Plaintiff in the case, all by the Plaintiff in
20 this case, all this information about what Mr. Lindell was
21 saying about voting machines and hacking and infiltration into
22 the voting machines, that includes Dominion, which by its
23 extension would include Dr. Coomer. We're not saying these did
24 that, but the state of mind matters. It goes to further
25 justify that the public would have known that these statements

1 were not -- that the definition described of the word traitor
2 is not what the Plaintiff is saying it is, which goes to the
3 very heart of this case.

4 THE COURT: How does that go to the very heart of this
5 case if the Court has already determined that those statements
6 were defamatory per se, as opposed to defamatory per quod?

7 MS. DEMASTER: Your Honor, we do believe that the
8 First Amendment does require that there has been a
9 determination as to defamation per se because there should be
10 actual malice before a per se defamation should be made and --

11 THE COURT: So under Colorado law, as I understand it,
12 the Court as a question of law determines whether or not the
13 statements are defamatory per se or defamatory per quod, and
14 you don't give both sets of instructions. Do you disagree with
15 that or do you have different authority with respect to that
16 issue?

17 MS. DEMASTER: Your Honor, I was prepared to argue the
18 issue of the video clips specifically. But as far as that,
19 there is other authority. And I think the First Amendment has
20 been very clear that there can be no finding as to any
21 defamation at all without actual malice when it concerns a
22 matter of public concern. I know this court has made a
23 determination as to the public concern nature of this, so the
24 First Amendment is implicated. I do believe that making an
25 actual finding -- and there has been authority, I don't have

1 that before me now, I can find that for the Court and provide
2 it, but there has been authority throughout the United States
3 that a determination of defamation in any sense, including
4 actual malice or per quod is -- cannot happen without a finding
5 of actual malice. So by the Court arguing on actual malice --
6 which, again, is an argument we were prepared to raise at the
7 conference and at another time -- but without a finding of
8 actual malice, there cannot be any finding as to defamation per
9 se or quod and that is the purpose of the First Amendment. The
10 heart is that there is no defamation regarding a matter of
11 public concern or a public official unless there is a finding
12 of actual malice. And that has not been made yet in this case,
13 which has made it very difficult for us, because we need to --
14 the Defendants are still trying to prove and continue to prove
15 that the state of mind not only of the speaker, but of the
16 listener, who was Mr. Lindell at the time, and the speaker as
17 to what he meant when he used these terms.

18 THE COURT: Ms. DeMaster, the Court has already made a
19 determination as a matter of law that it's defamation per se.
20 You have certainly reserved and preserved your objection to
21 that and the propriety of that, but to the extent that that
22 determination has already been made, the context of what the
23 listener might believe or the public might believe, is that
24 relevant to defamation per se?

25 MS. DEMASTER: Yes, it absolutely is, your Honor, what

1 the public would believe. Defamation, whether it's per se, per
2 quod, whether the statement is defamatory per se is not the
3 same as the question as to the Defendants' motive and malice,
4 which is what the jury still must be allowed to decide. And
5 motive and malice -- again, your Honor, there is still an
6 intentional infliction or extreme and outrageous conduct,
7 there's still claims being brought in, asserted by the
8 Plaintiff as to the recklessness of Mr. Lindell, the
9 carelessness and the malice and intent to hurt Dr. Coomer.

10 These statements, all of these clips specifically go
11 to that. Mr. Lindell had no intention of hurting Dr. Coomer.
12 He didn't target Dr. Coomer. He didn't go out of his way to
13 cause him severe and extreme distress.

14 He was making statements of something he believed very
15 strongly in and was very concerned as to the First Amendment,
16 suppression of free speech, what he has stated and testified to
17 here are called blockers.

18 THE COURT: All right. Do you have anything else --

19 MS. DEMASTER: Yes.

20 THE COURT: -- with respect to Exhibits 247 or 248?

21 MS. DEMASTER: Yes, your Honor.

22 First, I'll take Exhibit 248. As to Exhibit 248, this
23 is a short interview. The clips are no more than -- I think
24 they're less than two minutes or maybe about two minutes long,
25 this again goes to show Mr. Lindell and only Mr. Lindell's

1 state of mind. There were no other statements made besides by
2 the host of the show that added anything. We're certainly not
3 trying to prove the truth of that. But it goes, again, to the
4 malice -- not to the malice -- but to the intentional,
5 reckless, extreme conduct the Plaintiffs have argued in this
6 case and to the jury, that Mr. Lindell made all of his
7 statements, and he went after election fraud specifically not
8 only to destroy Dominion, who is not a party here, but to
9 destroy Dr. Coomer, to go out of their way to engage in extreme
10 and outrageous conduct and in this video -- and to do that
11 because of his, you know, allegiance with President Trump and
12 with that side, and so to counteract that, in this one very
13 short clip, he is discussing that this is his passion and he's
14 very concerned about this regardless of who had won that
15 election.

16 And your Honor, we -- as for 247, again, 247 has
17 been -- we have discussed this very much, with all due
18 respect -- well, respectfully, we haven't been able to -- we
19 have talked about cross-examinations and there has been
20 something made of the fact that there are certain depositions
21 that might not have been designated and part of that reason is
22 because for -- at least for Mr. Hursti, whose deposition was
23 designated, has been entered and shown in this case, we already
24 had very public statements, prior inconsistent statements of
25 Mr. Hursti that go to what Mr. Lindell saw.

1 He has testified that this is what he saw, this
2 launched him on this, that led to the statements at issue here.
3 And this is a witness that they have offered.

4 So of course, taking the argument of Plaintiff's
5 counsel that we should be allowed to cross-examine, we don't
6 need to. We have video clips. We have the statements of
7 Mr. Hursti, who is the star of Kill Chain, along with
8 Dr. Halderman.

9 And one of the reasons that we've decided to put some
10 of these clips together is based on the Court's rule, to make
11 sure all of this is in the same -- all of this is in the same
12 exhibit so we can refer back to that. But we haven't been
13 allowed to do that.

14 And your Honor, we must be able to counteract and
15 rebut all of the extensive evidence that the Plaintiff has
16 offered to suggest that Mr. Lindell was wrong on his views
17 about election machines. There has been evidence after
18 evidence. There have been testimonies that Mr. Lindell must
19 have known that he was wrong, he had to have believed he was
20 wrong. And yesterday -- even yesterday, during his
21 cross-examination by the Plaintiff, just showing email, after
22 email, telling him that he's wrong and these statements, you're
23 wrong. These would show his statements were right, and they
24 all relate to voting machines, which includes Dominion.

25 And in 247, there are specific -- in some places that

1 Dominion isn't named in there, but it is stated very clearly
2 there that their testing was done on all machines that would be
3 used in the 2020 election. Of course, that's not being offered
4 for the truth of that.

5 But as to the part about Dominion machines, again, we
6 have seen Mr. Crane come up here and talking about machines and
7 how secure they are. Dr. Coomer himself doing that, his
8 technology. They have shown graphs, giant charts of the
9 Dominion voting machine process and how it works.

10 Kill Chain came out in 2019. It's something that the
11 Defendant relied on when he started looking into this. All the
12 statements that were made about Dominion and about voting
13 machines is very probative, it's very relevant.

14 And remember, one of the requirements, the Plaintiff
15 in this matter is seeking punitive damages, which is a beyond a
16 reasonable doubt standard. And it requires consideration of
17 the Defendants to show that malice -- that there is a lack of
18 malice. They are required to show malice by Mr. Lindell to
19 show punitive damages, and so his lack of malice against
20 Dr. Coomer is very, very probative to every claim in this case.
21 That includes both conspiracy, intentional infliction of
22 emotional distress or extreme and outrageous conduct, as well
23 as defamation.

24 THE COURT: What about 248?

25 MS. DEMASTER: I thought I addressed that first. That

1 was the Kimmel clip. I was addressing the -- that was --
2 again, that also went to the malice part. It goes to all of
3 them, yes.

4 As to the statements, again, about confusing the jury
5 or prejudicial, I don't see how statements about concerns about
6 Dominion machines are in any way prejudicial to Dr. Coomer, who
7 is no longer employed or -- certainly no more prejudicial than
8 the statements that have been made that there was nothing wrong
9 in elections and there was nothing wrong with voting machines
10 and anyone who is stating that is spreading intentional
11 malinformation, I believe was the term used.

12 I don't think this is confusing to the jury. I think
13 this is going to show a legitimate basis for this, and that we
14 are allowed to argue that.

15 THE COURT: Can you plainly identify the elements of
16 the claims that you believe are impacted if the statements made
17 do not specifically relate to Dominion or Dr. Coomer.

18 So I understand your argument with respect to
19 statements that may have been made in these videos about
20 Dominion voting systems or Dr. Coomer. But how does it relate
21 and what elements are you trying to address with evidence from
22 these videos that don't mention either Dominion or Dr. Coomer?

23 MS. DEMASTER: Yes, your Honor. I think it goes to
24 all the elements in all the claims in some respect, but as to
25 elements about ones that don't relate to Dr. Coomer or to the

1 claimed -- or to the alleged statements is what you're saying,
2 that would be, of course, extreme and outrageous conduct,
3 that's the argument we made earlier. Part of the element, at
4 least not only under Colorado law and the pattern jury
5 instructions, some that we used and this court has suggested go
6 to show recklessness, but it's intentional, intentional desire
7 to cause the Plaintiff extreme distress, extreme emotional
8 distress, which means that the Plaintiff is required to show
9 Mr. Lindell sought out to harm and to injure Dr. Coomer with
10 his statements. And so these videos go directly to show what
11 Mr. Lindell was saying, that all of the public knew that. And
12 as part of that intentional infliction, the extreme and
13 outrageous conduct that the Plaintiff has asserted and is being
14 argued in this case is Mr. Lindell's statements about
15 elections, voting systems and how that connection to Dr. Coomer
16 is what caused him that injury. Ad they have made that
17 argument, that Mr. Lindell's, according to them, what they
18 allege is his reckless and intentional conduct, his extreme and
19 outrageous conduct is very probative. It's very relevant to
20 show where he was at, where Mr. Lindell was at, what he was
21 saying and what he was listening, believing that on what his
22 statements were, at least to rebut that extreme and outrageous
23 conduct with the targets being, as Plaintiff asserts, Dominion
24 and Dr. Coomer.

25 Also, we just mentioned punitive damages, that showing

1 of malice and of trying to engage in malice and -- or engage in
2 malice or acting with malice and -- against Dr. Coomer. But I
3 think the recklessness standard, of course -- we still think
4 that the defamation elements and the element of reckless
5 disregard -- reckless disregard shows a complete lack of
6 engaging in any sort of investigation about claims specifically
7 of voting machines used in the 2020 election, which, on its
8 face, includes Dominion voting machines. And so whether
9 Mr. Lindell conducted an investigation or had -- or that
10 information, again, the state of the mind of the listener,
11 under the rules, had a reaction, he has a reaction to that, and
12 that's what he's stating as he's conducting his due diligence
13 and his investigation into these.

14 And so I think those elements are very important. And
15 we should be allowed to rebut. Again, there has been mountains
16 of evidence raised and proffered by the Plaintiff in this case,
17 not just through testimony of Matt Crane, but that nobody
18 should believe this, it's certainly false and that Mr. Lindell
19 had no basis to believe this, I think that, while we would
20 contend that's irrelevant, that does go -- or we had -- that
21 does go to the state of mind and the reasonableness of
22 Mr. Lindell's investigation and his due diligence.

23 THE COURT: Anything further, Mr. Beller?

24 MR. BELLER: I'll be brief.

25 Your Honor, I failed to draw the Court's attention to

1 Rule 613(b), which of course is extraneous evidence and the
2 admissibility of extraneous evidence. Earlier, Defendants
3 were --

4 THE COURT: Extrinsic evidence, not extraneous?

5 MR. BELLER: It's extrinsic, excuse me. Thank you.
6 It's been a long day already.

7 Earlier, the Defendants made an argument of Plaintiffs
8 have been allowed to admit this extrinsic evidence and, of
9 course, 613(b) states that extrinsic evidence is admissible and
10 the witness be given an opportunity to either explain or deny,
11 and then there's a provision at the end of the rule that says,
12 when offered by an adverse party. Here, what the Defendants
13 are doing is trying to introduce statements of their own
14 witnesses and undisclosed experts.

15 As to the Court's question regarding which elements, I
16 would draw the Court's attention to, Colorado Revised
17 Statute 13-21-102(1)(a), which of course is not simply malice,
18 but includes fraud, malice or willful and wanton conduct. This
19 statute further defines willful and wanton conduct as the
20 defendant must have realized it is dangerous, done heedlessly
21 and recklessly without regard to the consequences or the rights
22 and safety of others, particularly the defendant.

23 I would ultimately end with all of this, of course, is
24 still reliant on the Court doing a relevance analysis. This
25 still has to be more probative than prejudicial. And I would

1 draw the Court's attention to Mr. Lindell's statement in the
2 conclusion of his cross-examination, in which he specifically
3 stated to the jury that election rigging and election fraud has
4 nothing to do with the experts' beliefs of whether the election
5 was stolen or not, which I believe is telling when the Court
6 does a 403 analysis.

7 Thank you.

8 THE COURT: Thank you.

9 Counsel, I want to talk to you about just a logistical
10 issue.

11 So one, it's going to take us a little bit of time to
12 make a final ruling on this, so we can take a break and do
13 that. But to the extent that some of -- some portions of these
14 videos may be excluded and some may be admitted, logistically,
15 I would assume that you all need some time to make new clips;
16 is that accurate?

17 MS. DEMASTER: Your Honor, we would not need that much
18 time. We had the clips actually together. What was taking
19 more time was putting them together, pursuant to the Court's --
20 yesterday about making them --

21 THE COURT: Okay.

22 MS. DEMASTER: It won't take too much time.

23 THE COURT: When you say not too much time?

24 MS. DEMASTER: It will not take longer than a few
25 hours.

1 THE COURT: So I don't want the jury waiting for a few
2 hours, so that's my first question.

3 My second question was we had talked about getting to
4 a charge conference this afternoon and releasing the jury early
5 for that, and so let me ask you, Mr. Cain, I'm going to put you
6 on the spot, now, how much longer or how long do you think that
7 you need for your redirect/cross of Mr. Lindell?

8 And let me just tell you what I'm thinking. I'm
9 thinking that, potentially, you do that. And then, given the
10 Court's rulings, because Mr. Lindell is also on the Defendants'
11 witness list as Defendants' witness, then he would be able to
12 be put back on. We would have the ability to make these
13 rulings. I would assume that would mean that Mr. Lindell would
14 go on again tomorrow morning, and we would break early today to
15 allow us to make these rulings on the video clips and also get
16 to the charge conference.

17 MR. CAIN: 20 to 30 minutes.

18 THE COURT: Okay. That's not very long. Let me think
19 about this. We'll take a brief recess, and then I'll be right
20 back.

21 (Recess)

22 THE COURT: Counsel, before we bring the jury back in,
23 let me propose to you what I think will be the most efficient,
24 in terms of ruling on these exhibits and the rest of the
25 progress of today and tomorrow.

1 So I think that it's probably most appropriate to get
2 to the charge conference this afternoon, just because I'm not
3 exactly sure how much time we still have for various
4 examinations, and I want to make sure that you all and we have
5 an opportunity to be thoughtful about the jury instructions as
6 we rule on them.

7 I would be inclined to do the following: Mr. Cain,
8 you will do an examination of Mr. Lindell. You say that you
9 have 20 to 30 minutes. Then we either take -- if you have a
10 short deposition clip that you can play for the jurors, we put
11 that on. Otherwise, we simply adjourn for the day and do the
12 charge conference. That gives us an opportunity to make a
13 ruling on these exhibits.

14 And then Mr. Lindell would be put on first thing
15 tomorrow morning with the knowledge of the rulings with respect
16 to the exhibits at issue. Because he's on the Defendants'
17 witness list as well, they would have an opportunity to examine
18 him after you examine him.

19 I hate to burden Mr. Lindell for a third day on the
20 stand, but I think, given the fact that we only found out this
21 morning that these clips were at issue, we need time to make a
22 ruling on them and to make any edits that are appropriate.

23 MR. CAIN: So that sounds perfectly acceptable. For
24 purposes of the cohesiveness of our presentation, our plan was
25 to play, after the testimony of Mr. Lindell, the deposition of

1 Chris Ruddy, the CEO of Newscast, which I understand is 20 to
2 25 minutes.

3 THE COURT: Okay.

4 MR. CAIN: So I would suggest that we get through
5 that, and then take our charge conference break.

6 THE COURT: Any objection to that schedule from
7 defense counsel?

8 MR. KACHOUROFF: No, your Honor.

9 THE COURT: So let's do that. I'll explain to the
10 jury that we need to put a little bookmark in Mr. Lindell to
11 make some legal rulings. And then, that way, we're being
12 efficient with our time, but we're also getting you all the
13 answers that you have requested.

14 Are you ready for the jurors?

15 Mr. Lindell, could you please retake the stand. Thank
16 you.

17 Mr. Lindell, are you having any trouble hearing?

18 THE WITNESS: No, your Honor. It's working.

19 THE COURT: Okay. Madam Deputy.

20 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Mr. Lindell, I remind you that you are
3 still under oath.

4 Mr. Cain.

5 MR. CAIN: Thank you, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. CAIN:

8 Q. Mr. Lindell, you made statements in your testimony that --
9 to the effect of you believed everything you said about
10 Dr. Coomer was true.

11 Do you remember saying that?

12 A. Yes.

13 Q. Yeah, I mean, you said that you believed everything that
14 you said about Dr. Coomer was true?

15 A. At the time I said them, yes, and -- I guess, yes. I
16 still -- yes.

17 Q. And you also said that you weren't acting with reckless
18 disregard as it relates to your statements about Dr. Coomer?

19 A. No.

20 Q. Was my statement true?

21 Your testimony is: You were not acting with reckless
22 disregard when you were making statements about Dr. Coomer?

23 A. And I said no, I was not making reckless.

24 Q. Okay. And when you were making those statements in your
25 testimony, you were referring to this issue of the blocking and

1 the lawfare, were you not?

2 A. Yes. And one other thing, the attack on My Pillow. It was
3 a combination.

4 Q. But that's --

5 A. The blocking, yes, yes, I'm sorry.

6 Q. That's in the blocking --

7 A. Yes.

8 Q. And you also had made statements in your testimony to the
9 effect of, who is this guy, I don't even know this Dr. Coomer.

10 Do you remember saying that?

11 A. Yes.

12 Q. All right. So let's just -- let's narrow this down to
13 Dr. Coomer. You have testified at length about various
14 investigations that you made with the Venezuelas and with
15 Ratcliffe, the DNI director, and Sydney Powell and others.
16 With respect to Dr. Coomer, you did not conduct your own
17 investigation as to whether or not he was involved in
18 committing election crimes; is that right?

19 A. That's because I never said he did commit election crime.

20 Q. Can you answer my question, sir.

21 Isn't it true that you did not conduct any
22 investigation specific to Dr. Coomer and whether he committed
23 election crimes?

24 A. I think you need to -- at the time I said the things or
25 now, since then?

1 Q. At the time you said the things?

2 A. No.

3 Q. So when you were talking to the Venezuelas and when you
4 were talking to DNI Ratcliffe and when with you were talking to
5 Sydney Powell and to Dennis Montgomery and to ASOG and to all
6 of these experts you say you consulted with, none of those
7 discussions or investigations related to whether or not this
8 man committed an election crime, that's fair; right?

9 A. His name did not come up.

10 Q. And in terms of your statement about blocking and lawfare,
11 you would agree with me that Dr. Coomer never asked you to stop
12 talking about elections and election security issues himself;
13 right?

14 A. His company did that he was related to, absolutely. They
15 did. I got letters, threatening letters in the mail.

16 Q. But this lawsuit is brought by Dr. Coomer?

17 A. That's correct.

18 Q. I don't want to confuse the jury on what this case is
19 about.

20 Dr. Coomer never asked you to stop talking about
21 elections, did he?

22 A. No, Dominion did, that's correct.

23 Q. All right. He did demand in his lawsuit that you stop
24 making defamatory statements about him, though?

25 A. Yes.

1 Q. All right. I think the timeline got a little bit muddled.

2 You had said --

3 A. I didn't see in the -- in the thing that you just asked me,
4 it didn't say defamatory statements. It said don't make any
5 statements about him.

6 Q. Fair enough.

7 A. Yes. I didn't make any defamatory.

8 Q. And the jury heard you say, when you were focusing on
9 lawfare, that you just made one statement about Dr. Coomer
10 before you got sued; right?

11 A. That's correct.

12 Q. That's the May 9th, 2021 statement?

13 A. That's correct.

14 Q. But then you didn't actually read the lawsuit until just
15 before your deposition in March of 2023?

16 A. I read parts of it. But the full thing was read the night
17 before the deposition you took in Minneapolis.

18 Q. Okay. So from a timeline perspective, let's look at
19 stipulation 26.

20 MR. CAIN: Can we bring that up, please.

21 Q. So before this initial lawsuit was filed, this occurred on
22 May 3rd of 2021. This was something that aired on Frankspeech.
23 We don't need to go back through it, but you would agree with
24 me, from a timeline perspective, this had already occurred
25 before the lawsuit was filed?

1 A. Yeah, there was -- on Frankspeech, as I said, I never said
2 anything about Dr. Coomer.

3 Q. Right.

4 A. Ever, from that point until I got sued, that's correct.

5 Q. This event occurred on your platform, Frankspeech, before
6 you got sued?

7 A. This event did. But you asked me if I had ever said
8 anything of him except that one statement, which is correct.

9 Q. And the jury may get questions about other statements made
10 by others on your platform, this is one of those statement's,
11 isn't it?

12 A. Yes. You're trying to say guilty by association, I
13 understand, yes.

14 Q. I'm not trying to say anything. I'm just trying to --

15 A. I never said anything.

16 Q. Stipulation 28.

17 Now, this is the statement that you made on May the
18 9th; right?

19 A. Yes.

20 Q. And that occurred, obviously, before you were served on
21 April of --

22 A. That's the statement I made when he attacked My Pillow.
23 This is the one I'm talking about that I made.

24 Q. And to be clear, because the jury is going to hear evidence
25 from Chris Ruddy, who is the CEO of Newscast, the statement or

1 the agreement that you said that happened prevented you from
2 going onto Newsmax to talk about My Pillow, that's exactly what
3 you said in your --

4 A. Hundred percent, that's it, haven't been on in four years.

5 Q. Let's go to stipulation 35.

6 And we don't need to see it all, but this is in this
7 case as a claim for defamation. This is a statement that the
8 jury heard from August 12th of 2021.

9 So that's the back and forth about the Antifa call
10 that was on your stage; right?

11 A. I wasn't there for that.

12 Q. Right. You didn't even know --

13 A. I didn't say anything, that's correct.

14 Q. And if you didn't say it, I take it, it's your position
15 that it's not attributable to you and you don't take
16 responsibility?

17 A. No, I never said anything about him for four years after he
18 attacked me, that's correct.

19 Q. Stipulation 36.

20 This is the statement that was made during your cyber
21 symposium on August 12th of 2021. This is the one about
22 murdering the American people's vote and the man that pulled
23 the trigger, referring to Dr. Coomer. That occurred prior to
24 the lawsuit being served on you; correct?

25 A. Yeah. I guess there were a lot of people in the country

1 saying stuff about him, but it wasn't me.

2 Q. And you don't take responsibility for this?

3 A. Absolutely not. I didn't say this.

4 Q. Okay.

5 A. I didn't say one word about him. Once he attacked me, I'm
6 going, okay, unless he does it again, I'm not going to say
7 anything about him.

8 Q. The Court is going to instruct the jury on what the law is,
9 and you are not obviously here to testify about that?

10 A. You're a lawyer and she's the judge, you are correct.

11 Q. Now, you have made statements about this case that we
12 looked at in Exhibit 261, so let's touch on that quickly.

13 This is the fund raiser relating to this trial; right?

14 A. Yes, that's correct.

15 MR. CAIN: Let's go to -- yes, that section, Hank,
16 blow that up.

17 Q. And I know you have talked about lawfare as being
18 justification for your statements. I want to direct your
19 attention to the last part of it, where it says, in all caps,
20 It's all coming down to this, that paragraph.

21 And you made the statement to your potential donors
22 that, I'm getting exactly what I wanted when I asked these
23 companies to sue me.

24 You made that statement?

25 A. Yes.

1 Q. Okay. And you don't -- well, you also say that you would
2 never settle, including this case; right?

3 A. Yes.

4 Q. And you don't begrudge Dr. Coomer from exercising his right
5 to appear in this court in front of this jury for them to make
6 a determination, do you?

7 A. Absolutely not.

8 Q. Now, you mentioned this, this was yesterday -- and you have
9 been on the stand a long time -- but you talked about your
10 customer service and you gave the example, I think, early on at
11 My Pillow of driving to Green Bay, I think it was?

12 A. That is correct.

13 Q. And My Pillow receives customer service calls all the time?

14 A. Yup.

15 Q. All right. Let's look at Exhibit 56.

16 Now, this is an email to ML@MyPillow.com, it was
17 produced by you as part of this litigation?

18 A. Yes.

19 MR. CAIN: Offer Exhibit 56.

20 THE COURT: Any objection?

21 MR. DUANE: This appears to be very clearly beyond the
22 scope of cross-examination.

23 THE COURT: Approach.

24 (Continued on next page)

25

1 (At sidebar)

2 MR. DUANE: Before Mr. Cain speaks, I would like to
3 express doubts about relevance, an alternative objection.

4 MR. CAIN: So this is -- I've got one exhibit. He
5 mentioned customer service. This is a customer service email
6 relating to Dr. Coomer.

7 THE COURT: Could I see the exhibit.

8 MR. CAIN: Yes.

9 THE COURT: So I'm sorry, Mr. Cain, what is the
10 relevance to this?

11 MR. CAIN: Customer service received contact, and he's
12 just testified that My Pillow had no knowledge of Dr. Coomer.
13 This is evidence that there was contact and had knowledge
14 regarding the Antifa --

15 THE COURT: Mr. Duane.

16 MR. KACHOUROFF: One second, your Honor.

17 MR. DUANE: Our position is that the controversy and
18 the testimony surrounding the Better Business Bureau had
19 nothing to do with subject or notice of the existence of this
20 suit.

21 THE COURT: Overruled. He testified yesterday he was
22 responsive to the customer service.

23 You may proceed, Mr. Cain.

24 (Continued on next page)

25

1 (In open court; jury present

2 MR. CAIN: Your Honor, we offer Exhibit 56.

3 THE COURT: So admitted.

4 (Plaintiff's Exhibit 56 received in evidence)

5 BY MR. CAIN:

6 Q. Mr. Lindell, yesterday, you had talked about that you read
7 the customer service request, all of them and responded to
8 those requests.

9 Do you remember that testimony?

10 A. I don't anymore, but this is not a customer service email
11 I'm looking at right here.

12 Q. Well, let's look at it, and the jury can determine that.

13 The first two paragraphs -- and this was to -- it went
14 to ML@MyPillow.com, those are your initials; right?

15 A. Yes.

16 Q. And it says, Hi, Mike. You are a little difficult to make
17 contact, but I called customer service and waited 20 minutes.
18 I am not a client -- it does say that -- but I have very
19 important information regarding your lawsuit with Dominion.

20 And then it goes to identify himself, and says, I want
21 to draw your attention to the following excerpt.

22 And then it repeats some of the testimony that we have
23 heard about the allegations about Dr. Coomer.

24 Do you see that?

25 A. Yes.

1 Q. And you don't doubt or dispute that this came in to My
2 Pillow on February 25th of 2021?

3 A. Correct.

4 Q. But you didn't read this one; right?

5 A. I did not read this one.

6 The month of February, I didn't read any customer
7 service emails. That's why they were put under the designation
8 ML@MyPillow, we had to make a whole other section to go into a
9 team of mine because I was so busy. And everything changed in
10 January and February. This is -- that ML@MyPillow, that is
11 something that would have come to me, something personally,
12 never read them in January or February. They all went to this
13 group of a different team of people. There were thousands
14 coming in.

15 Q. Including ones about Dr. Coomer, like this?

16 A. It looks like one came in about him. It never got to me.

17 Q. Well, this was February 25th of 2021, it was about a month
18 before -- excuse me, a couple months -- I think May was when
19 Mr. Oltmann appeared on the podcast -- excuse me, not
20 podcast -- but the Frankspeech interview with Brannon Howse for
21 the first time?

22 A. Yes.

23 Q. So someone at My Pillow was aware of these allegations in
24 February of 2021?

25 MR. DUANE: Objection, speculation, Judge. The

1 witness can't --

2 THE COURT: I'm going to sustain as to form. Can you
3 rephrase.

4 BY MR. CAIN:

5 Q. You would agree that this email was received by this email
6 address at MyPillow.com on February 25th; right?

7 A. It would have come into My Pillow. I don't know if anybody
8 read it, because I wasn't -- like I said, there was a team.

9 Q. Well, someone must have read it, because if you go up to
10 the top of it, it was actually forwarded internally to
11 KimRasmussen@MyPillow.

12 A. Okay.

13 Q. Do you see that?

14 A. Yes.

15 Q. And she was also someone who worked for you at the time?

16 A. No, she didn't work for My Pillow at the time. She had a
17 My Pillow email.

18 Q. So she was one of the ones working for one of your other
19 companies?

20 A. No, she didn't work for any company. She left My Pillow
21 three years prior. And a lot of people keep their email. She
22 was working with My Pillow almost from the beginning. And they
23 use it for their personal emails, everything. Many, many of my
24 employees get to keep their My Pillow email, like a Gmail.

25 Q. So this just got lost within that morass?

1 A. What's that?

2 Q. This email just got lost within that morass that you just
3 said?

4 Kim Rasmussen was already gone from My Pillow at the
5 time?

6 A. Kim Rasmussen was gone for three years.

7 Q. Who was receiving her emails?

8 A. Kim, it looks like.

9 Q. So she had a My Pillow email account, even though she was
10 no longer employed there?

11 A. Yes. Many, many employees did. I don't know why they
12 would have sent it to her.

13 Q. I don't either. That's why I was asking.

14 A. Yeah, I don't know.

15 Q. So in some of the questioning that you had, kind of turning
16 to today, you were asked about Tina Peters again. I want to
17 revisit that briefly.

18 I have noted that you said, you gave her money after,
19 quote, they broke into her office, close quote.

20 Do you remember that?

21 A. I gave her money after the cyber symposium, when I met her
22 and she said she was so afraid. And I -- and she didn't want
23 to go back to Colorado. I didn't give her money. I charged
24 her hotel, I flew her there, and I gave her a credit card to
25 eat.

1 Q. But you used the term, they broke into her office.

2 You remember saying that, don't you?

3 A. That's what I heard, that they put things on her office and
4 broke in. It could have been when -- there was two different
5 break in things that she said she had. One was in Texas after
6 the cyber symposium. I think I tried to correct that at the
7 end of my statement.

8 They broke into her hotel room. There's a police
9 report. And she left for like two hours. It's almost the day
10 she got there. And they completely wrecked the hotel door that
11 was locked.

12 Q. But you know, sir, what you're talking about when you say
13 "they," that's law enforcement?

14 A. Say that again.

15 Q. You are referring to law enforcement?

16 A. No. The law enforcement didn't break in there.

17 Q. Okay. That's what -- you don't recall that her office was
18 raided?

19 A. Her office was raided. When I'm talking about break in,
20 nobody caught the people that broke into her hotel room. And I
21 tried to correct it at the end of my statement.

22 When I sent her to Texas, she got broke into on the
23 very first day. I got pictures of it, if you'd like me to show
24 you, her door and everything, in the hotel. And it was law
25 enforcement that did come, and there was a report.

1 Q. Okay. You know, sir, that law enforcement executed a
2 warrant and went out to her office, don't you?

3 A. When? I know that she's had many things with -- in the
4 last three years or four years with law enforcement. And I'm
5 aware of some and not others.

6 Q. Well, I'm not going to testify as to that.

7 Do you know it or not?

8 A. I don't know specific dates that she was -- that she was,
9 like you say, raided.

10 Q. Well, irrespective of law enforcement activities relating
11 to her conviction, you did tell her, with respect to the cyber
12 symposium, that you need to tell your story, remember?

13 A. I advised her to go on the stage, because she was very
14 scared. And I didn't have much time with her, maybe 15,
15 20 minutes. She was meeting with lawyers and everything, and
16 all the people that came from Colorado that I didn't know them
17 either. And I stood back and I said, you know, once I heard
18 her story and what she had uncovered, because what was called
19 the trusted bill and what she discovered, and I said, whatever
20 is happening to you, you should tell the public or it's going
21 to -- you'll end up having to hide like I did for three months.
22 I did tell her that.

23 Q. But you didn't know -- I think you just testified that you
24 didn't know what she was going to say up on the stage?

25 A. The story that she told, I figured that's what she would

1 tell on that stage, of her being a clerk, she was -- and her
2 story -- she told me her whole story. She was a county clerk,
3 gold star mom, and that the county had come to her and said,
4 hey, there's problems in our elections. And she's going, oh,
5 there's no problems. But she listened to them and looked into
6 it and found all kinds of deviations. And she was ordered to
7 do the trusted bill in Colorado here, which -- by the way,
8 that's when they deleted the evidence that I needed, but she
9 had took her backup, and she told me a story. She took a
10 backup, I guess, of the computer and she was very afraid that
11 they were coming after her.

12 And I said, you should tell the public, if you've got
13 evidence like that of what Jena Griswold and the State of
14 Colorado did. She would just listen to everybody's opinion,
15 and then she had her attorneys there, and she -- I think she
16 listened to them, and then they made the final decision.

17 Q. And you approved of it?

18 A. Oh, yeah, absolutely. Whatever they decided, I wanted her
19 safety to go up and tell the world so they couldn't go after
20 her, silence her.

21 Q. But you didn't know exactly what she was going to say when
22 she got on stage?

23 A. I knew her story, and that was enough for me. I went, wow,
24 that's -- absolutely.

25 Q. But you didn't know the story of Joe Oltmann when he got on

1 the stage?

2 A. I didn't know Joe Oltmann was there. I didn't know Joe
3 Oltmann.

4 Q. And you didn't know the story of David Clements when he got
5 up on the stage?

6 A. No, didn't know David Clements either.

7 Q. And you talked a lot about the silencing of your voice and
8 the information, as you just said, that you wanted to put out.
9 You have made the statement publicly multiple times that
10 President Trump won the 2020 election, and you even gave us a
11 figure of 80 million votes to 68 million votes?

12 A. That is correct.

13 Q. And you have made the public statement that the election
14 was stolen from President Trump in 2020?

15 MR. DUANE: Objection, relevance, in light of your
16 ruling.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MR. CAIN:

20 Q. And then you gave us some examples of your corporate
21 structure with respect to Frankspeech itself. But you don't
22 dispute the fact that Frankspeech streamed the content of the
23 cyber symposium?

24 A. No, that was on LindellTV. Frankspeech, you can't -- that
25 platform isn't built to stream. That platform is built for

1 people to upload videos.

2 And then you had LindellTV, like all the other
3 podcasters, just like YouTube, you're up there on YouTube, and
4 then, when you stream something, like they -- you put stuff on
5 YouTube. So I'll give you an example, would be, like right
6 now, LindellTV is -- we're on Frankspeech -- well, now it's
7 combined with our public company. But before, we would be on
8 Frankspeech, but we were also on Rumble, we were on YouTube --
9 I mean, we're not on YouTube, because they don't allow us to
10 be. But that's the answer there, basically.

11 Q. Let's look at the stipulation you made, stipulation 34.

12 The cyber symposium was live streamed on Frankspeech.

13 Do you see that?

14 A. Yes.

15 Q. You have stipulated to that?

16 A. Yeah, Frankspeech is a platform. That is very correct.

17 It's a platform.

18 LindellTV streamed the event. You had -- you pay to
19 go on a platform, so like Rumble, you have ads running on
20 Rumble and stuff, you pay for those, or if they're free, they
21 put you up --

22 Q. I didn't ask you about LindellTV.

23 I need you to confirm that's your stipulation.

24 A. It is, but it isn't. I mean, my -- this was streamed
25 through LindellTV, separate entity. And like LindellTV, you

1 have to pay for all of the streaming -- everything that goes
2 with it. LindellTV has different costs than Frankspeech.

3 It was embedded on Frankspeech, you're correct there,
4 embedded.

5 Q. Sure. And you approved of that, and you had the ability to
6 approve of that?

7 A. No, this was back in March, when you have these two
8 entities, because there's different ownerships of each one.
9 LindellTV had to pay Frankspeech to be part of their platform.

10 Q. Well, back in August, when the cyber symposium -- you
11 approved of the live streaming of this event on Frankspeech?

12 A. No, on LindellTV. It streamed on LindellTV.

13 Q. Okay. And as you said, embedded on Frankspeech?

14 A. Yeah, Frankspeech, anybody can upload stuff to Frankspeech.
15 It's like YouTube, if you understand what YouTube is. You put
16 stuff there, and now you live stream through there.

17 Q. So you, as being associated with LindellTV, approved the
18 live streaming of that content onto Frankspeech?

19 A. Frankspeech, anybody can upload stuff on Frankspeech.

20 Q. But this was you?

21 A. LindellTV had two -- it was a partnership. Both of us had
22 to decide on LindellTV what we were going to stream, if that's
23 your question.

24 Q. And you were one of those two people?

25 A. LindellTV was going to stream. We didn't need permission

1 on Frankspeech. We paid Frankspeech, just like many other
2 podcasters, Salem Media podcasters. Frankspeech had over
3 300 --

4 Q. I didn't ask you about how many --

5 A. They're all the same.

6 Q. Right. You were associated with LindellTV, and you
7 approved the Frankspeech aspect of streaming their content,
8 didn't you?

9 A. I approved the LindellTV content. We didn't need
10 permission to be on Frankspeech that we put with -- what we
11 were streaming on LindellTV. I'm not sure what you're asking
12 me.

13 Q. Let me see if I can break it down.

14 I understand you didn't need the approval of
15 Frankspeech, based on your --

16 A. You're just the --

17 Q. Let me finish my question.

18 A. I'm sorry.

19 Q. Irrespective of that aspect, LindellTV decided to post the
20 live stream on the Frankspeech website, did it not?

21 A. Yes.

22 Q. Okay.

23 A. We streamed from that platform, yes.

24 Q. Thank you.

25 Now, you talked a lot about hyperbolic speech. You

1 used that term, and you have used hyperbolic speech in the
2 past, you have called me names, you have called Dr. Coomer
3 names, disgusting and -- I think you remember what you called
4 me?

5 A. Oh, yes, I do.

6 Q. Yeah. But we're not here about hyperbolic speech, are we?
7 We're here about defamation?

8 A. First time I heard the term hyperbolic speech, I seen all
9 the stuff about Dr. Coomer. You guys said that stuff was
10 hyperbolic speech. Yes, first time I heard it really.

11 Q. You and I can agree calling someone -- I'm not going to use
12 the terms that you used with me -- but there is name calling in
13 public discourse?

14 A. Yes.

15 Q. Right?

16 A. Yes.

17 Q. And that's not what we're here talking about. We're
18 talking about allegations of criminal activity. It's a
19 different thing, isn't it?

20 A. No. The traitor -- the traitor term I used, I made it very
21 clear, it's blockers. And I have used it -- everyone in the
22 public, you could ask. If I called you a traitor, you were
23 blocking evidence from getting out. It was -- that's all it
24 was. You're a blocker. Every single person in this country
25 that I have said that to -- and I have said it to a lot --

1 those movies I made, it says right on there, I said, when I
2 call someone a traitor, why are they doing this, they got to be
3 a traitor, they're a traitor, why would they not want this out,
4 because it's all about blocking.

5 Q. It's all about blocking?

6 A. Yes.

7 Q. And you even said that Dr. Coomer used a swear word with
8 you out in the hall?

9 A. Yes, he did.

10 Q. And you know, sir, that Dr. Coomer has been accompanied by
11 his lawyers out in the hall every time?

12 A. Yes, you guys were right in front of him. It was about
13 this space, and he looked at me and he goes, you're full of
14 shit.

15 Q. And that was hyperbolic speech?

16 A. It was just a little jab on me, I guess.

17 MR. CAIN: Okay. Nothing further, your Honor.

18 THE COURT: Mr. Lindell, you may step down for now.

19 THE WITNESS: Okay.

20 THE COURT: Ladies and gentlemen of the jury, we're
21 going to put a bookmark in Mr. Lindell's testimony, because I
22 need to make some rulings. I wasn't quite fast enough when the
23 issues came up this morning to make them in time to continue
24 Mr. Lindell's examination now.

25 So as not to waste your time, the Plaintiff is going

1 to put on their next witness by deposition. And then we will
2 release you after that so that we can take care of a few
3 additional things, all right.

4 Mr. Cain or Ms. Morgan.

5 MS. MORGAN: Thank you, your Honor.

6 Plaintiff calls Christopher Ruddy.

7 THE COURT: And that will be by video?

8 MS. MORGAN: Yes, by video deposition.

9 (Christopher Ruddy deposition played)

10 THE COURT: Ladies and gentlemen of the jury, I am
11 going to release you now for the evening. Please be back here
12 by 8:45. I remind you again not to do any research or read
13 any media about this case. I remind you not to speak to
14 anyone, including within yourselves, about what you're hearing
15 with respect to testimony.

16 Have a good evening. We will see you back here
17 tomorrow morning.

18 (Continued on next page)

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1 (In open court; jury not present)

2 THE COURT: Counsel, I propose we take a five-minute
3 break to give everyone a chance to stretch their legs, use the
4 restroom, and then we will come back for our charging
5 conference.

6 (Recess)

7 THE COURT: Counsel, we are back on the record for our
8 charge conference. My understanding is that you all were going
9 to email a limiting instruction to chambers, has that been
10 done?

11 MR. BELLER: I don't believe so, but by the end of
12 this conference, your Honor, we should have it worked out
13 between us.

14 THE COURT: Great.

15 MR. DUANE: Your Honor, I took the liberty during the
16 break of telling Mr. Lindell and his wife that they would
17 probably be free to leave for the rest of the afternoon, but I
18 wanted to make sure that would be all right with you.

19 THE COURT: That's fine.

20 MR. DUANE: Thank you.

21 THE COURT: Unless you all have a different idea, I
22 have the working draft of the final instructions in front of
23 me, what I would be inclined to do is just go through each of
24 the instructions. If they are stipulated, then we would just
25 note for the record that they are stipulated. And then I would

1 take limited argument with respect to the ones that are not
2 stipulated, we'll make a ruling on those, and obviously,
3 evaluate any limiting instruction that comes to chambers this
4 afternoon.

5 How does that sound?

6 MS. MORGAN: Sounds good, your Honor.

7 MS. DEMASTER: Sounds good, your Honor.

8 THE COURT: Who on behalf of Plaintiffs is taking the
9 lead with respect to the arguments as to the instructions?

10 MS. MORGAN: I will, your Honor.

11 THE COURT: And who on behalf of the Defendants is
12 taking the lead with respect to the instructions?

13 MS. DEMASTER: I will, your Honor.

14 THE COURT: Great.

15 So as you can probably see, we have not, except for
16 the first instruction, numbered the instructions yet. So to
17 the extent that there are also issues with respect to how these
18 instructions are ordered, we also want to hear from you with
19 respect to that.

20 Let's start with the easy one. Instruction Number 1,
21 which is introduction to the final instructions, I understand
22 that that is stipulated; is that correct?

23 MS. MORGAN: Yes, your Honor.

24 MS. DEMASTER: It is, your Honor.

25 THE COURT: Then, the next instruction that I have is

1 entitled General Final Instructions. That's also stipulated?

2 MS. MORGAN: Yes, your Honor.

3 MS. DEMASTER: Yes.

4 THE COURT: You are welcome to stand and sit as you
5 please for exercise, but you do not have to do so.

6 The next instruction we have is entitled Summary of
7 Closing Instructions. That's also stipulated?

8 MS. MORGAN: That's correct, your Honor.

9 MS. DEMASTER: Yes, your Honor.

10 THE COURT: Next instruction is entitled No
11 Speculation. That is also stipulated; is that right?

12 MS. MORGAN: That's correct.

13 MS. DEMASTER: Yes.

14 THE COURT: The next one we have is the instruction
15 entitled Evidence in the Case. And that one is also
16 stipulated; is that right?

17 MS. MORGAN: Yes, that's correct, your Honor.

18 THE COURT: And I believe that we have taken out all
19 facts and events which had been judicially noticed because
20 there aren't any facts that are currently judicially noticed.
21 So to the extent that there might be some by the time we get to
22 closing arguments, we can add that back in, as stipulated. But
23 right now, it does not actually appear that anything has been
24 judicially noticed; is that right?

25 MS. MORGAN: I think that's correct. The conviction

1 for Ms. Peters was entered in evidence and not as a judicial
2 notice.

3 THE COURT: That was an actual judgment we entered.

4 MS. MORGAN: Yes, that's correct.

5 THE COURT: Ms. DeMaster, is that accurate?

6 MS. DEMASTER: That is accurate at this moment.

7 THE COURT: The next one is the instruction as we gave
8 in preliminary instructions, which is also stipulated facts.

9 Any objection with respect to the stipulated facts?
10 This is the same instruction, I believe, that was given in
11 preliminary instructions.

12 MS. MORGAN: The only issue, your Honor, is one of --
13 a mistake by the parties, so when we edited Paragraph 39 to
14 correct the date.

15 THE COURT: Yes.

16 MS. MORGAN: We failed to do so with Paragraph 38. I
17 just don't want that to be confusing to the jury. So
18 Paragraph 38 should say April 5th.

19 THE COURT: Any objection to that, Ms. DeMaster?

20 MS. DEMASTER: No objection, your Honor.

21 THE COURT: So we'll make that correction to 38 as to
22 the typographical error, and it will now simply state,
23 Paragraph 38, Mr. Lindell was served with this lawsuit on
24 April 5th, 2022.

25 Moving on to the next instruction entitled Direct and

1 Indirect Evidence. I understand that this one is also
2 stipulated; is that correct?

3 MS. MORGAN: Yes, your Honor.

4 THE COURT: Ms. DeMaster?

5 MS. DEMASTER: Yes, your Honor.

6 THE COURT: The next one is entitled Deposition as
7 Evidence. Also stipulated to; is that right?

8 MS. MORGAN: Yes, your Honor.

9 THE COURT: Ms. DeMaster?

10 MS. DEMASTER: Yes, your Honor.

11 THE COURT: The next one is Determining Credibility of
12 Witnesses. This one is also stipulated to; is that right?

13 MS. MORGAN: Yes, that's correct.

14 MS. DEMASTER: Yes.

15 THE COURT: The next one is Expert Witnesses. It's
16 also stipulated to; is that right?

17 MS. MORGAN: Yes.

18 MS. DEMASTER: Yes, your Honor.

19 THE COURT: The next one is disputed. There is an
20 instruction for an inference arising from an indication of the
21 Fifth Amendment privilege, which relates to Ms. Peters. As I
22 understand it, the dispute between the parties is whether or
23 not Ms. Peters would be specifically referenced or if it would
24 simply say any party or witness; is that right?

25 MR. DUANE: Your Honor, may I be heard on this, just

1 this one instruction and nothing else.

2 THE COURT: Is there any reason Ms. DeMaster can't
3 handle this argument?

4 MR. DUANE: No.

5 THE COURT: Can Ms. DeMaster just make the argument on
6 behalf of Defendants.

7 MR. DUANE: Yes. May I confer with her.

8 THE COURT: You may.

9 (Conferring.)

10 MS. DEMASTER: Your Honor, if we could be heard on
11 this. While we had made some changes, we did continue to
12 maintain our objection wholly to this. This kind of
13 instruction is generally given only when the statement concerns
14 either the wife of the party or somebody as an employee or
15 under the control of a party. But to provide this instruction
16 just with -- knowing that Ms. Peters was not working for
17 Mr. Lindell, she's not his spouse, she's not a family member,
18 and having this to create a negative inference as to the
19 Defendants' guilt in this is not generally applicable as
20 opposed to the Plaintiff, it's not -- there's really no logic
21 or reason to assume that her answer -- there's no logical
22 reason here to assume that any of her answers in the deposition
23 would be adverse to the Defendant and not to the Plaintiff as
24 well. And that was one of the reasons we had asked for the
25 change as to any party or witness, so -- or just to not give it

1 at all would be easier. Again, no logical reason to assume her
2 answer would be more applicable to the Defendant, or adverse,
3 than to the Plaintiff.

4 THE COURT: 370 P.3d 295, 302 Colorado Appellate Court
5 sets forth factors that are drawn from LiButti v. United
6 States, 107 F.3d 110, Seventh Circuit 1997. I don't read that
7 case to limit it to simply individuals who are related or
8 employees. The factors that the Court considers are:

9 One, the nature of the relevant relationships between
10 the nonparty and the party the inference is to be drawn
11 against;

12 Two, the degree of control of the party over the
13 nonparty witness;

14 Three, the compatibility of the interest of the party
15 and nonparty in the outcome of the litigation; and

16 Four, the role of the nonparty in the litigation.

17 So Ms. DeMaster, would you mind addressing those
18 specific factors.

19 MS. DEMASTER: Absolutely, yes, your Honor. And you
20 mentioned one, McGillis, it discusses, I think, with respect to
21 number two, the degree of control, it's come out in this case
22 that Mr. Lindell, it really can't be argued, that there's no
23 evidence that Mr. Lindell had any control over Ms. Peters. He
24 didn't know her any time prior to the symposium, he hadn't met
25 her, she didn't work for his company, she was not an employee

1 or an agent of any of Mr. Lindell's ventures or enterprises or
2 businesses or himself.

3 The most he stated that he did was provide her
4 attorneys or representatives with cards and motel room later
5 on, but that is not an agent or under control. We think there
6 is no degree of control under the factors that would
7 substantiate including this instruction.

8 THE COURT: Thank you.

9 Ms. Morgan.

10 MS. MORGAN: Thank you, your Honor.

11 We believe that the Defendants' proposed instruction
12 is defective. The instruction needs to be specific as to the
13 witness. Ms. Peters is the only witness that has asserted here
14 Fifth Amendment privilege in this case.

15 The instruction also needs to be specific as to the
16 party against whom the negative inference may be taken. The
17 Defendants' proposed instruction would confuse the jury and is
18 defective because it does not include the essential components
19 necessary for the Court to weigh the LiButti, McGillis factors.

20 With respect to Tina Peters, the factors weigh in
21 favor of providing this instruction.

22 First, loyalty to the Defendants. As the jury and the
23 Court heard, Tina Peters refers to Lindell as a beloved
24 patriot. She starred in his movie, the Selection Code. She
25 was also a speaker at the cyber symposium. And he has

1 contributed to her legal defense fund.

2 Second, the degree of control factor weighs in favor
3 as well. We heard from Mr. Lindell that he approved of
4 Ms. Peters going on stage. He's also flown her around the
5 country related to her criminal investigation.

6 The third issue is that the assertion of privilege by
7 Peters protects the interest of both she and the Defendants.
8 Among other items, Ms. Peters asserts the privilege in response
9 to questions about, A, threats and harassment of Dr. Coomer; B,
10 whether she has evidence to support the claim that Dr. Coomer
11 rigged the election; and C, her conversations with Mr. Lindell
12 about election fraud and how he monetizes his theories of
13 election fraud.

14 The fourth factor also weighs in favor of providing
15 the instruction. She is a key figure in this litigation. One
16 of the defamatory statements published by the Defendants was
17 made by Ms. Peters.

18 So we believe our instruction is appropriate, your
19 Honor.

20 THE COURT: I'll take that under advisement.

21 MS. DEMASTER: Your Honor, can we respond just to a
22 couple of those points.

23 THE COURT: All right.

24 MS. DEMASTER: Just a couple of points. To the
25 Plaintiff's argument that this could confuse the jury, I think

1 that striking this instruction altogether would be far less
2 confusing to the jury, specifically since none of the claims
3 really relate to Ms. Peters, her conduct or her conviction.

4 THE COURT: It's not with respect to her conviction.
5 It's with respect to her invocation of the Fifth Amendment with
6 respect to the first day of her deposition.

7 MS. DEMASTER: Yes. And what the Plaintiff mentioned,
8 his movie, Selection Code, or that he was doing all this, none
9 of this is in evidence in this case, your Honor. Mr. Lindell
10 does not produce the movie Selection Code. So in bringing up
11 some of these evidentiary things that they are trying to claim
12 have a negative inference against the Defendant is unfair,
13 because this has not come out in evidence.

14 And this can all be the subject of -- and this can
15 all, to the Plaintiff's sake, this can all be the subject of
16 closing argument, without the need for a one-sided instruction
17 from the Court that puts in the jury's mind that Ms. Peters'
18 conviction or something related to Mr. Lindell should because
19 of her statements about this or invoking the Fifth Amendment
20 privilege be taken as a negative inference.

21 THE COURT: Why would it be one-sided if it says you
22 may, but are not required to, draw an inference.

23 MS. DEMASTER: Because it only refers to the Defendant
24 rather than the Plaintiff, privilege against self-incrimination
25 would have been unfavorable to one or more Defendants as

1 opposed to one or more parties, as we had requested, if there
2 was going to be this instruction at all.

3 MS. MORGAN: If I may, briefly, your Honor. It's a
4 negative inference, it's not a positive inference. The
5 argument that the inference not be specific to a party does not
6 make any sense and is not supported by Colorado jury
7 instructions 35(a) or McGillis.

8 THE COURT: Thank you.

9 So then the next issue -- the next instruction, I'm
10 sorry, is Burden of Proof. That one is stipulated to by the
11 parties; is that correct?

12 MS. MORGAN: Yes, your Honor.

13 MS. DEMASTER: Yes, your Honor.

14 THE COURT: The next one is Preponderance of the
15 Evidence. That's also stipulated to by the parties; is that
16 right?

17 MS. MORGAN: That's right.

18 MS. DEMASTER: Yes.

19 THE COURT: Then the next instruction is Clear and
20 Convincing Evidence. We have provided our proposed
21 instruction. So I want to hear tailored arguments that are to
22 the proposed instruction by the Court.

23 MS. MORGAN: We agree with the Court's proposed
24 instruction.

25 THE COURT: Okay.

1 MS. DEMASTER: We have no objection to the Court's
2 instruction.

3 THE COURT: So the parties, I'll note for the record,
4 have stipulated to the Court's proposed instruction with
5 respect to clear and convincing evidence.

6 The next is Reasonable Doubt Defined. This is
7 stipulated to; is that right?

8 MS. MORGAN: Yes, your Honor.

9 MS. DEMASTER: Yes, your Honor.

10 THE COURT: The next one, again, I want you to focus
11 on the Court's proposed instruction starting on Page 29. This
12 one was disputed by the parties, so I want you to focus your
13 arguments with respect to the Court's proposed instruction.

14 MS. MORGAN: We agree with the Court's proposed
15 instruction, with the caveat that we would ask that the
16 reference to the, quote, statement I read earlier, be specific
17 as to the instruction or where that statement is derived.

18 THE COURT: So if I refer back to the stipulated
19 facts, Paragraphs 26, 28, 35, 36, 39, 40, 41, 42 and 43, is
20 that what you are suggesting, Ms. Morgan?

21 MS. MORGAN: Yes, your Honor.

22 THE COURT: Ms. DeMaster?

23 MS. DEMASTER: Is this whether we have any opposition
24 to the Court's instruction and statements?

25 THE COURT: Yes, as modified by Ms. Morgan's proposal

1 that, instead of it saying publish the statements I read
2 earlier, say publish the statements I read earlier in
3 instruction whatever the number is, and then the paragraphs
4 that I recited.

5 MS. DEMASTER: Your Honor, we have no objection.

6 THE COURT: So the Court will note that this one is
7 stipulated to by the parties, with the modification as
8 discussed on the record.

9 The next instruction that we have is Defamation Per Se
10 as to Defendant Frankspeech LLC. As we have done with the
11 verdict forms, we have broken it out per individual defendant.

12 Any objection with respect to the Court's proposed
13 defamation per se as to defendant, Frankspeech LLC?

14 MS. MORGAN: So long as we make the same modification
15 that we just discussed for the defamation per se instruction as
16 to Mr. Lindell, we have no objection, your Honor.

17 THE COURT: Okay.

18 MS. DEMASTER: No objection for Defendants, your
19 Honor.

20 THE COURT: The Court will note that this is
21 stipulated to by the parties, as modified to reflect the
22 stipulated facts in the particular paragraphs that the Court
23 read out before.

24 Same thing with respect to defamation per se as to
25 defendant, My Pillow, Inc., any objections, subject to the

1 modification that we discussed about the statement published,
2 the statements I read earlier?

3 MS. MORGAN: No, your Honor.

4 MS. DEMASTER: No, your Honor. No objection.

5 THE COURT: The Court will note that this also has
6 been stipulated to by the parties, subject to the modification
7 that we have discussed in this charging conference.

8 The next one is an instruction with respect -- that
9 was proposed by the Court -- with respect to corporate
10 liability, liability arising from employment relationship and
11 scope of employment. This one is really directed at the two
12 organizational defendants.

13 Any objection with respect to this instruction?

14 MS. MORGAN: No, your Honor. We believe the Court
15 made this a lot easier for the jury by proposing this form of
16 instruction, so thank you.

17 THE COURT: Anything on behalf of Defendants?

18 MS. DEMASTER: No, your Honor.

19 THE COURT: So the Court will note that the parties
20 have stipulated to this instruction.

21 Then, we will move to Agency Relationship Defined.
22 This one is stipulated to by the parties; is that right?

23 MS. MORGAN: Yes, your Honor.

24 MS. DEMASTER: Yes, your Honor.

25 THE COURT: Then the next one is disputed, which is

1 the Scope of Authority of Agent Defined.

2 Again, focused on the Court's proposed instruction to
3 you all, any objections to the Court's proposed instruction?

4 MS. MORGAN: No, your Honor.

5 THE COURT: What about for Defendants?

6 MS. DEMASTER: No, your Honor.

7 THE COURT: The parties have stipulated to this one.

8 The next one is Apparent Authority Defined, Definition
9 and Effect. This is stipulated to by the parties; is that
10 correct?

11 MS. MORGAN: Yes, your Honor.

12 MS. DEMASTER: Yes, your Honor.

13 THE COURT: The next one, Express Authority Defined,
14 is also stipulated to by the parties; is that right?

15 MS. MORGAN: There's a court proposed --

16 THE COURT: The Court has a proposed instruction.

17 MS. MORGAN: We agree with the Court's proposed
18 instruction.

19 MS. DEMASTER: That's fine, your Honor.

20 THE COURT: The next one is Inherent -- I'm sorry,
21 Incidental Authority Defined.

22 Focused on the Court's proposed instruction to you
23 all, any objection on behalf of Plaintiff?

24 MS. MORGAN: No, your Honor.

25 THE COURT: On behalf of Defendants?

1 MS. DEMASTER: No, your Honor.

2 THE COURT: Okay. The next one is Implied Authority
3 Defined.

4 Again, focused on the Court's proposed instruction,
5 any objection on behalf of Plaintiff?

6 MS. MORGAN: No, your Honor.

7 THE COURT: What about for Defendants?

8 MS. DEMASTER: No, your Honor.

9 THE COURT: Okay. The next one is Ratification. This
10 one is stipulated to by the parties; is that right?

11 MS. MORGAN: That's correct.

12 MS. DEMASTER: Yes.

13 THE COURT: The next one is Scope of Authority or
14 Employment Departure. That's also stipulated to by the
15 parties; is that right?

16 MS. MORGAN: That's correct.

17 MS. DEMASTER: Yes.

18 THE COURT: The next one is Defamation Elements,
19 Frankspeech LLC. We've tried to capture this by giving a
20 separate instruction with respect to Frankspeech.

21 Any objections?

22 MS. MORGAN: No, your Honor.

23 MS. DEMASTER: No, your Honor.

24 THE COURT: And then the same would be with Defamation
25 Elements, Michael Lindell individually, we have also tried to

1 capture those with respect to the instruction about Defendant
2 Lindell individually.

3 Any objection?

4 MS. MORGAN: No objection.

5 MS. DEMASTER: Yes, no, your Honor, no objection.

6 THE COURT: So that one is also then out, and that's
7 stipulated to that it's out.

8 So the next instruction is an instruction about
9 defamation per quod. The Court has already indicated that the
10 Court has found, based on the record, that the statements are
11 defamatory per se. Traditionally, defamation per se includes
12 statements alleging, one, a criminal offense; two, an illness
13 or disease; three, a matter incompatible to the business trade,
14 profession or office; or four, serious sexual misconduct.
15 That's 99 P. 3d 75, 79, Colorado Appellate Court 2004. Whether
16 the statement is defamatory per se is a question of law for the
17 Court. That's McGettigan v. Di Mare, 173 F.Supp. 3d 1114,
18 1126, District of Colorado 2016, citing Interstate Detective
19 Bureau, Inc. v. Denver Post, Inc. , 464 P. 2d 131, 133,
20 Colorado App 1971.

21 So to the extent, Ms. DeMaster, you want to make a
22 record with respect to not giving this instruction, the time is
23 now.

24 MS. DEMASTER: Yes, your Honor. We don't want to
25 waive our objection on the ruling. Without waiving our

1 objection to the pretrial ruling, we'll consent to this without
2 waiving our objection to the pretrial ruling.

3 THE COURT: Anything else on that issue for Plaintiff?

4 MS. MORGAN: No, your Honor.

5 THE COURT: The next one, the next proposed
6 instruction is with respect to public concern. This court is
7 disinclined to also give that instruction, because I think it's
8 captured in other instructions.

9 Any objection?

10 MS. MORGAN: No, your Honor.

11 MS. DEMASTER: No objection, your Honor.

12 THE COURT: So the record will reflect that the
13 parties have stipulated that an instruction with respect to
14 public concern will not be given.

15 Again, the next instruction is a proposal on actual
16 malice and actual meaning -- I'm sorry, actual malice meaning.
17 The Court has proposed taking these out, because the
18 requirements for finding actual malice are defined in other
19 earlier instructions.

20 Any objection?

21 MS. MORGAN: No objection, your Honor.

22 MS. DEMASTER: Yes, your Honor. We object. We just
23 don't know which instruction actual malice was set out in or
24 the requirements for a finding of actual malice was set out in.

25 THE COURT: So we believe that they're in each of the

1 individual substantive instructions with respect to defamation
2 per se as to the individual, Michael Lindell, that's on
3 Page 29, as to Frankspeech, which -- and as to My Pillow, but
4 focus on Page 29.

5 MS. DEMASTER: It doesn't say what the definition of
6 malice is here, your Honor. Respectfully, it states only that
7 you must further find the substance or statements published was
8 or were false at the time they were published. That's our
9 proposed. This is the Court's proposed.

10 THE COURT: The Court will note that the Supreme
11 Court, Masson v. New Yorker Magazine, 501 US 496, 511, 1991, in
12 place of the term actual malice, it is a better practice the
13 jury instructions refer to the publication of a statement with
14 knowledge of falsity or reckless disregard as to the truth or
15 falsity to set out the requirements for actual malice in
16 defamation per se without the term of art.

17 So is your objection continuing, Ms. DeMaster?

18 MS. DEMASTER: Give us one second, your Honor.

19 THE COURT: All right.

20 (Conferring.)

21 MS. DEMASTER: That's fine, your Honor. We'll
22 withdraw our objection.

23 THE COURT: The Court will note that the Defendants
24 have withdrawn their objection as to the omission of
25 instructions for actual malice introduction and actual malice

1 meaning.

2 Moving on to Reckless Disregard Defined. Again,
3 focused on the Court's proposal.

4 Any objections on behalf of Plaintiff with respect to
5 the Court's proposal?

6 MS. MORGAN: Yes, your Honor we do have an objection
7 on this one.

8 THE COURT: Okay.

9 MS. MORGAN: We would ask that the language from our
10 proposed instruction be included, specifically the language
11 that indicates circumstantial evidence of actual malice can
12 include when a story is fabricated by a defendant or is the
13 product of his imagination, when a defendant relies on an
14 anonymous source, when a defendant has reason to know that a
15 source is unreliable, when the allegations made are inherently
16 improbable, that only a reckless person would publish them,
17 when a defendant intentionally avoids the truth, when a
18 defendant's allegations conform to a preconceived story line,
19 when a defendant has an incentive or motive to make the
20 defamatory statements, when a defendant disregards reliable
21 sources, or when a defendant fails to investigate obvious
22 sources of reputation or corroboration of statements,
23 especially when there is no time pressure on their publication.
24 We believe that our proposed instruction will be of
25 assistance, and this is more importantly an accurate statement

1 of law. As the Court has set forth, this would be the Court of
2 Appeals Colorado in the Coomer v. Donald J. Trump for President
3 Inc. case, 552 P.3d 562 at -- I believe this is 592, let me
4 make sure I'm right about my cite here -- 591 to 592, this is a
5 2024 case. The court indicates that because actual malice can
6 very rarely be proven by direct evidence, it must be proved by
7 circumstantial evidence. The Court goes on to describe and
8 list the types of circumstantial evidence by which actual
9 malice may be ascertained and includes many of those specific
10 types of circumstantial evidence of actual malice that we have
11 requested in our instruction.

12 Without this instruction, we believe that the previous
13 stipulated instruction that defines circumstantial evidence is
14 insufficiently descriptive of what type of circumstantial
15 evidence the jury may consider. So we ask that our proposed
16 instruction be adopted, your Honor.

17 THE COURT: Let me hear from Defendants.

18 MS. DEMASTER: Your Honor, we oppose that completely.
19 We think the Court's proposed instruction is more than
20 sufficient to cover this. The Court used the Colorado jury
21 instructions. It's civil section 22:3. And it was a fourth
22 edition in 2025, the most recent updated version. We think
23 that is sufficient to comport not only with Colorado law, but
24 also federal law, First Amendment jurisprudence as far as the
25 reckless disregard standard, and so we object. There's

1 absolutely no need. It's highly prejudicial, what Plaintiff
2 has proposed, and it does not comport with what Colorado
3 pattern jury instructions suggest.

4 And again, much of my colleague's arguments here can
5 all be subject to closing argument without the need for such a
6 prejudicial instruction. This court's instruction was
7 sufficient. We believe that that should stand.

8 THE COURT: This is a point of clarification. Anyone
9 have an objection if I change the title of this instruction to
10 Defamation State of Mind?

11 MS. MORGAN: No, your Honor.

12 MS. DEMASTER: No, your Honor.

13 THE COURT: Okay. So we'll take that one under
14 advisement as well.

15 MS. MORGAN: Your Honor, may I add one argument that
16 Mr. Kloewer has reminded me of.

17 THE COURT: All right.

18 MS. MORGAN: Circumstantial evidence has a unique
19 meaning within the context of defamation, and certainly, in
20 cases such as this that involve matters of public concern, so I
21 just wanted to make sure I put that on the record as part of
22 our argument.

23 THE COURT: Okay. Again, focused on the Court's
24 proposed instruction, any objection to the Court's proposed
25 instruction with respect to Published Defined?

1 MS. MORGAN: No, your Honor.

2 MS. DEMASTER: It's fine, your Honor.

3 THE COURT: Okay. I'll note that it's stipulated to
4 by the parties.

5 The next one, Defamatory, is stipulated; is that
6 right?

7 MS. MORGAN: Yes, your Honor.

8 MS. DEMASTER: Yes.

9 THE COURT: And the next one is about the Plaintiff
10 defined. We proposed taking that out.

11 MS. MORGAN: No objection.

12 MS. DEMASTER: Without waiving our objection to the
13 pretrial ruling, your Honor, we have no objection.

14 THE COURT: Okay. The next one is Determination of
15 Meaning How Understood by Others, this is also subject to the
16 Court's ruling on defamation per se.

17 Any additional argument with respect to taking it out?

18 MS. MORGAN: No, your Honor.

19 MS. DEMASTER: Without waiving our objection to the
20 pretrial ruling, we're fine with it.

21 THE COURT: Okay. The next one I think is the same,
22 Determination of Meaning, Publication to be Considered as a
23 Whole. Again, with respect to the Court's determination that
24 this is defamation per se instead of defamation per quod, the
25 Court declines to give this.

1 Any additional objections?

2 MS. MORGAN: No, your Honor.

3 THE COURT: Ms. DeMaster?

4 MS. DEMASTER: Point of clarification, your Honor,
5 does defamation per se just mean presumed damages?

6 THE COURT: It just means that it's defamatory per se.
7 It means that we don't analyze the context, so there's
8 defamation per se or defamation per quod, Colorado jury
9 instructions 22:11, Fourth Edition April 2025 update advises
10 that the instruction that was proposed should only be given in
11 conjunction with defamation per quod instructions.

12 So having now determined, as a matter of law, that the
13 statements at issue are defamation per se, I think, based on
14 the Colorado jury instructions, these last instructions are not
15 appropriate to give.

16 MS. DEMASTER: Again, your Honor, without waiving our
17 objection to the pretrial ruling, we're okay with this.

18 THE COURT: All right. The next one is Determination
19 of Meaning Publication Considered in Light of the Surrounding
20 Circumstances. This is the same issue with respect to
21 defamation per quod versus defamation per se. I'm assuming
22 that, without waiving any objections that you all have --

23 MS. DEMASTER: Yes.

24 THE COURT: -- that we can proceed.

25 All right. The next one is Falsity Defined. Again,

1 focused on the Court's proposed instruction, any continuing
2 objections?

3 MS. MORGAN: No.

4 MS. DEMASTER: Your Honor, we do -- we do believe that
5 it's -- the Court's instruction is good. We do take issue with
6 the term "true facts" and that it would be more beneficial, at
7 least according to Philadelphia Newspapers v. Hepps, 475 US
8 767, Page 779, 1986, as well as the restatement second of
9 torts, section 581(a) from 1977, to include in there that it is
10 not the defendant's burden to prove that the challenged
11 statements are true, but it is the plaintiff's burden to prove
12 they are false, as well as addressing the concept of minor
13 inaccuracies regarding factual information that does not make
14 the publication untrue.

15 THE COURT: Well, doesn't the Court's proposed
16 instruction set that out? The fact that the statement may have
17 contained some false information or minor factual inaccuracies,
18 does not make the substance or gist --

19 MS. DEMASTER: I did not read that part, your Honor.
20 Strike that. We agree with the Court's instruction.

21 THE COURT: So am I accurate to understand that this
22 instruction is now stipulated to?

23 Because the burdens of proof are addressed in other
24 instructions.

25 MS. DEMASTER: That's fine, your Honor.

1 THE COURT: All right. The next one is the
2 elements -- and again, we have broken this out for each
3 defendant -- the elements of the intentional infliction of
4 emotional distress claims.

5 Any objection to the Court's proposed instruction?

6 MS. DEMASTER: No, your Honor.

7 MS. MORGAN: No, your Honor.

8 THE COURT: So the Court will notes that that's
9 stipulated to.

10 What about the Intentional Infliction of Emotional
11 Distress as to Defendant, Frankspeech, any objection?

12 MS. MORGAN: No objection.

13 MS. DEMASTER: No objection, your Honor.

14 THE COURT: Okay. And then the last one is the
15 Intentional Infliction of Emotional Distress as to Defendant,
16 My Pillow, any objection?

17 MS. MORGAN: No, your Honor.

18 MS. DEMASTER: No, your Honor.

19 THE COURT: The next one is Extreme and Outrageous
20 Conduct. The Court has a proposed instruction starting on
21 Page 70, I believe.

22 Any objection with respect to that?

23 MS. MORGAN: No, your Honor.

24 MS. DEMASTER: Your Honor, we have no objection.

25 THE COURT: The next one is the Definition of

1 Recklessly or With Intent. That one is stipulated to; is that
2 right, counsel?

3 MS. DEMASTER: That's correct, your Honor.

4 THE COURT: The next one is Definition of Severe
5 Emotional Distress. That one is disputed.

6 So let me hear any continuing dispute over the Court's
7 proposed instruction.

8 MS. MORGAN: We have no dispute with the Court's
9 proposed instruction.

10 THE COURT: Okay.

11 MS. DEMASTER: We don't oppose the Court's, we have no
12 objection to the Court's proposed instruction.

13 THE COURT: I'll note it's stipulated.

14 The next instruction, again, focused on the Court's
15 proposed instruction, is to the Elements of Civil Conspiracy.

16 MS. MORGAN: No objection.

17 MS. DEMASTER: No objection, your Honor.

18 THE COURT: So the Court will note that that's
19 stipulated to.

20 The next one is Unlawful Means Defined. With respect
21 to the Court's proposed instruction, any continuing disputes?

22 MS. MORGAN: No objection to the Court's proposed
23 instruction.

24 MS. DEMASTER: No objection, your Honor.

25 THE COURT: The next one is Unlawful Goal. The Court

1 proposes not to give this instruction.

2 Any objection to omitting it?

3 MS. MORGAN: No, your Honor.

4 MS. DEMASTER: No objection, your Honor.

5 THE COURT: The next one is Vicarious Liability, My
6 Pillow Defamation. And the next -- well, I'll just say the
7 next four are all Vicarious Liability, Frankspeech; Vicarious
8 Liability, My Pillow; Intentional Infliction of Emotional
9 Distress, Extreme and Outrageous Conduct, Frankspeech LLC. We
10 have tried to capture these in terms of the specific
11 substantive instructions that are directed at each individual
12 defendant.

13 Any objections?

14 MS. MORGAN: No, your Honor.

15 MS. DEMASTER: No objection.

16 THE COURT: The next one is Scope of Employment. The
17 Court declines to give this one.

18 Any objection?

19 MS. MORGAN: No objection.

20 MS. DEMASTER: No objection.

21 THE COURT: The next is a defense, Substantial Truth.
22 This one is stipulated to; is that right?

23 MS. MORGAN: That's correct.

24 THE COURT: Ms. DeMaster?

25 MS. DEMASTER: No, that's fine, no objection.

1 THE COURT: So that one is stipulated to.

2 The next one is Affirmative Defense Consent. This
3 court declines to give this one. I don't think there's been
4 any evidence that there's consent in this case. Is that right?

5 MR. KACHOUROFF: Correct, your Honor.

6 MS. DEMASTER: Yes, your Honor.

7 THE COURT: So I'll note for the record that it's
8 stipulated to that the parties -- that the Court will not give
9 this instruction.

10 The next one is Affirmative Defense Failure to
11 Mitigate. So again, focused on the Court's proposed
12 instruction, any objection to the Court's proposed instruction?

13 MS. MORGAN: Yes, your Honor.

14 THE COURT: All right.

15 MS. MORGAN: Dr. Coomer is not seeking damages for
16 lost wages or loss of earning capacity at this point, and so we
17 believe that the failure to mitigate instruction is no longer
18 appropriate, because the only failure to mitigate defense would
19 be that he failed to spend sufficient time to search for
20 comparable employment. So we ask that this instruction not be
21 given, your Honor.

22 THE COURT: All right. Let me hear from Defendants.

23 MR. DUANE: Just one moment.

24 (Conferring.)

25 MS. DEMASTER: Your Honor, we're not opposed to taking

1 out -- we're okay with the Court's instruction. We're not
2 opposed to taking out the sentence in the second paragraph
3 about the Plaintiff failing to spend sufficient time searching
4 for comparable employment. There has been sufficient evidence,
5 and we're going to -- I think the jury is entitled to consider
6 that the other damages that are at issue here, mental anguish,
7 distress, all that, that too there was a failure to mitigate,
8 based on his own conduct and actions, and I think that's more
9 than sufficient. So we are okay with perhaps changing or
10 removing that part about searching for comparable employment,
11 but maintaining the Court's proposed instruction.

12 THE COURT: All right. I will take that one under
13 advisement.

14 Next instruction is Damages, Recovery Of. Again,
15 focused on the Court's proposed instruction, any continuing
16 dispute?

17 MS. MORGAN: Very minor one, your Honor.

18 THE COURT: Okay.

19 MS. MORGAN: In Paragraph Number 2.

20 THE COURT: Yes.

21 MS. MORGAN: There's a reference to loss of earnings
22 or income. We would request that be stricken.

23 THE COURT: All right.

24 Defense?

25 MS. DEMASTER: Your Honor, we'll agree to take out the

1 loss of earnings, or we would agree with the Plaintiff about
2 loss of earnings, but we also request to strike line, ability
3 to earn money in the future. That should be out as well,
4 especially since the loss of earnings or income is no longer at
5 issue.

6 THE COURT: Ms. Morgan?

7 MS. MORGAN: That's fine. No objection.

8 THE COURT: So with those strikings, this is
9 stipulated.

10 MS. DEMASTER: Okay.

11 THE COURT: Yes?

12 MS. DEMASTER: Yes.

13 THE COURT: Okay. So the Court will note that this
14 one is stipulated to.

15 MS. DEMASTER: With those two out.

16 THE COURT: With the modifications as discussed on the
17 record.

18 The next one is Special Damages.

19 MS. DEMASTER: Your Honor.

20 THE COURT: Yes.

21 MS. DEMASTER: I apologize, your Honor. One thing.

22 We do just want to note for the record, whether
23 this -- but there's been no evidence in this case whatsoever of
24 any economic losses, in terms of medical or hospital bills, and
25 the jury can't speculate as to that, so we just think the

1 sentence should be stricken altogether.

2 THE COURT: Well, I mean it would be reputational
3 repair, and then -- I mean, there was evidence of therapy and
4 Dr. Finkell is coming up to testify by deposition.

5 MS. MORGAN: That's correct, your Honor. And
6 Dr. Coomer did put on testimony about his inability to afford
7 therapy. We discussed his need for therapy at length during
8 his testimony, and we will be putting on Dr. Finkell, as the
9 Court noted.

10 THE COURT: So why don't I do this. We'll take that
11 one under advisement, and we'll make it conform to what the
12 Court understands the evidence is with respect to his damages.

13 I understand the Defendants' position. For instance,
14 it may not be appropriate to instruct on hospital expenses,
15 because I don't think there are any hospital expenses. And
16 then other reasonable and necessary medical expenses, mental
17 health can fall within medical expenses. But as I understand
18 it, Dr. Coomer is not suggesting that he has any other medical
19 expenses.

20 So we'll take that under advisement and just make sure
21 it conforms with the evidence as it comes out.

22 MS. MORGAN: Thank you, your Honor.

23 THE COURT: Special Damages, the Court proposes not to
24 give this because it's associated with defamation per quod.
25 Subject to your continuing objections --

1 MS. DEMASTER: Thank you.

2 THE COURT: -- can we move on?

3 MS. DEMASTER: Yes.

4 THE COURT: Then Repetition by Third Persons as an
5 Element of Damages. So any disputes with respect to the
6 Court's proposed instruction?

7 MS. MORGAN: Not from Plaintiff, your Honor.

8 MS. DEMASTER: Your Honor, that's fine. No objection.

9 THE COURT: So I'll mark that one stipulated.
10 The next one, Actual Damages Defined, is stipulated;
11 is that correct?

12 MS. MORGAN: With the caveat, as per our prior
13 discussion that we are striking the loss of income, your Honor,
14 and then hospital is also fine to be stricken.

15 THE COURT: Okay. I'm assuming that there's no
16 objection to striking those two categories.

17 MS. DEMASTER: No objections to those.

18 Just with the same kind of notes for the two times ago
19 regarding necessary medical and the cost of restoring
20 reputational harm. There's been no evidence of that presented
21 here.

22 THE COURT: Ms. Morgan.

23 MS. MORGAN: There will be evidence of that, your
24 Honor. We have an expert, Mr. Doug Bania, who will be
25 testifying as to the cost for repairing reputational harm.

1 THE COURT: We will make sure that conforms with the
2 evidence when we're finalizing these instructions.

3 The next one is Circumstances That Mitigate Damages.
4 Again, focused on the Court's proposed instruction, any
5 objection?

6 MS. MORGAN: Just one moment, your Honor.

7 MS. DEMASTER: No objection, your Honor. No objection
8 to the Court's.

9 MS. MORGAN: No objection.

10 THE COURT: All right. That one is stipulated.

11 The next one is stipulated, uncertainty as to the
12 amount of damages; is that correct?

13 MS. MORGAN: That's correct.

14 MS. DEMASTER: Yes, your Honor.

15 THE COURT: Any objection to the next one, which is
16 the Court's proposed instruction on Multiple Recovery
17 Prohibited?

18 MS. MORGAN: No issue with the Court's instruction.

19 MS. DEMASTER: No objection to the Court's
20 instruction.

21 THE COURT: The next one is Exemplary or Punitive
22 Damages. Again, disputes with respect to the Court's proposed
23 instruction?

24 MS. MORGAN: No, your Honor.

25 MS. DEMASTER: No objection, your Honor.

1 THE COURT: The next one is the Court proposes taking
2 out the First Amendment introductory note because it's captured
3 by the substantive instructions with respect to defamation.

4 Any objection?

5 MS. DEMASTER: No.

6 MS. MORGAN: No.

7 THE COURT: The next one is -- I hope you don't have
8 objections to these -- Election of a Foreperson or Presiding
9 Juror, any objections to the Court's proposed instruction?

10 MS. DEMASTER: None.

11 MS. MORGAN: No, your Honor.

12 THE COURT: The next one is the Verdict Form, Jury's
13 Responsibility, any objection?

14 MS. DEMASTER: No objection.

15 MS. MORGAN: No.

16 THE COURT: The next one is also proposed by the
17 Court, Communications Between the Court and the Jury During
18 Deliberations, any objection?

19 MS. DEMASTER: No objection, your Honor.

20 MS. MORGAN: No objection.

21 THE COURT: The next one is Use of Notes, any
22 objection?

23 MS. MORGAN: No.

24 MS. DEMASTER: No objection, your Honor.

25 THE COURT: The next one is also court proposed, Use

1 of Electronic Communication Technologies During Deliberations,
2 any objections?

3 MS. MORGAN: No objection.

4 MS. DEMASTER: No objection, your Honor.

5 THE COURT: The next one is Evidence in Electronic
6 Format, any objections?

7 MS. MORGAN: No objection.

8 MS. DEMASTER: Your Honor, excuse me one second. It
9 appears our printer did not print the rest of this. Let me
10 pull this up.

11 No objection, your Honor.

12 THE COURT: So we also proposed putting this one, the
13 electronic exhibit ones, a little bit earlier in the
14 instructions, only because they will pertain to the stipulated
15 facts instruction. Given the fact that the stipulated facts
16 talk about these statements that are captured by evidence in
17 electronic format, I think I would propose moving this
18 instruction up to right before the stipulated facts
19 instruction.

20 Any objection to that?

21 MS. MORGAN: No, your Honor.

22 MS. DEMASTER: No, no objection.

23 THE COURT: Okay. And then the next one is Questions
24 During Deliberation, that's also proposed by the Court, any
25 objections?

1 MS. MORGAN: No, your Honor.

2 MS. DEMASTER: No objection.

3 THE COURT: Finally, the last one is Duties Upon
4 Retiring, any objection?

5 MS. MORGAN: No objection, your Honor.

6 MS. DEMASTER: No objection.

7 THE COURT: Okay. That takes me to the end of the
8 proposed jury instructions.

9 Let me ask you all this, do you all have substantive
10 arguments with respect to the verdict forms?

11 MS. MORGAN: I'm sorry, your Honor, can we back up for
12 a minute to the instructions.

13 THE COURT: Yes.

14 MS. MORGAN: We have come to the realization that we
15 made an instruction on the definition of willful and wanton
16 conduct, and so we are requesting that the jury be instructed
17 as to the definition of willful and wanton conduct under
18 Colorado Revised Statute 13-21-102.

19 THE COURT: Do you have a proposed model jury
20 instruction?

21 If you don't, I would suggest you meet-and-confer with
22 the other side, and I'll take it up with respect to the
23 limiting instruction. We can talk about it tomorrow morning.

24 MS. MORGAN: Thank you, your Honor.

25 THE COURT: Any substantive arguments with respect to

1 the proposed verdict forms?

2 We broke them out to each defendant because one
3 verdict form seemed to get unwieldy.

4 MS. MORGAN: My only issue is it looks like there's a
5 typographical error with respect to the reference to the
6 paragraph of the August 12th, 2021 statement, specifically, in
7 looking at the verdict form for Defendant Lindell.

8 THE COURT: Yes.

9 MS. MORGAN: In Paragraph 1(c) and 1(d), they both
10 refer to Paragraph Number 28.

11 THE COURT: Okay. We will make that adjustment, which
12 ever one needs to be.

13 MS. MORGAN: And it looks like that's on each of the
14 Defendants' verdict forms.

15 THE COURT: Yes.

16 MS. MORGAN: There were quite a few, I understand
17 that, that was a Herculean effort to include all of those.

18 THE COURT: Counsel for defense.

19 MS. DEMASTER: Your Honor, we just have an objection
20 to just some of the language in Claim 1. I think it's the same
21 for all three. In 1(a) where -- we would just ask to delete
22 the first sentence, that Plaintiff proved, as set forth, that
23 Defendant Lindell defamed him. Wouldn't it just be that
24 Defendant Lindell released one of the statements listed below?
25 It seems like it's telling them that Defendant Lindell defamed

1 him.

2 THE COURT: I think it would have to be defamed,
3 because it's not just the publication of the statements. We
4 tried to avoid saying the defamatory statements so that they
5 could make that determination as to whether or not the
6 statements were defamatory.

7 MS. DEMASTER: It's also articulated in the second
8 sentence for the statement. The first sentence is cumulative.
9 And the second sentence subsumes that overarching premise.

10 THE COURT: We'll note that objection.

11 Anything else with respect to the verdict forms?

12 MS. DEMASTER: As a point of clarification, in the
13 section for damages, Paragraph 4(b), where it says, if any, for
14 economic losses, I guess we're just unclear on which economic
15 losses might be shown, if they're -- if there has been evidence
16 of other economic losses besides reputational injuries or if we
17 should substitute economic losses for reputational injuries.

18 THE COURT: Ms. Morgan.

19 MS. MORGAN: We believe that the reputational repair
20 program that the jury will hear about constitutes an economic
21 injury, as well as the therapy expenses. So we believe it's
22 proper to keep the language as is.

23 THE COURT: Anything further, Defendants, on verdict
24 forms?

25 MS. DEMASTER: We just note that we don't see any

1 reputational recovery repair program in Mr. Bania's report.

2 THE COURT: Well, we'll take that up when Mr. Bania
3 actually testifies, any objections, we'll take it up.

4 Anything else with respect to the verdict forms?

5 MS. DEMASTER: No, your Honor, not for Defendants.

6 THE COURT: Anything else for Plaintiff?

7 MS. MORGAN: No, your Honor.

8 I would note, just to get ahead of the issue we may
9 have, that it's in his supplemental report.

10 THE COURT: All right.

11 MS. DEMASTER: One more thing. The Defendants would
12 just like the Court not to put a blank before 2025. We don't
13 want the jury writing in July or August. If we can stick with
14 June for when this will be done.

15 THE COURT: I'm sorry, where?

16 MS. DEMASTER: At the very end, there's a blank with
17 the date before 2025. We don't want them to have the option to
18 write in July or August.

19 THE COURT: So you just want me to write in June?

20 MS. DEMASTER: We don't want to encourage them.

21 THE COURT: We can add in June.

22 Anything else?

23 MS. DEMASTER: No.

24 THE COURT: I'm just going to release my courtroom
25 deputy because she needs to leave for the day.

1 Anything else that you guys anticipate for tomorrow
2 morning?

3 MS. MORGAN: No, your Honor.

4 THE COURT: So as you know, let us know as soon as
5 possible if there are issues. Otherwise, we will be in recess,
6 and we will see you in the morning.

7 (Adjourned to June 11, 2025 at 8:30 a.m.)

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1 INDEX OF EXAMINATION

2 Examination of: Page

3 MICHAEL LINDELL

4 Cross By Mr. Duane1110

5 Redirect By Mr. Cain1243

6 PLAINTIFF EXHIBITS

7 Exhibit No. Received

8 561252

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I hereby certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes.

Sadie L. Herbert
Official Court Reporter
U.S. District Court