

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 22-cv-01129-NYW-SBP

ERIC COOMER,

Plaintiff,

v.

**MICHAEL J. LINDELL;
FRANKSPEECH, LLC; and
MY PILLOW, INC.,**

Defendants.

**REPORTER'S TRANSCRIPT
(JURY TRIAL - DAY 8 - AFTERNOON SESSION)**

Proceedings before the HONORABLE NINA Y. WANG, Judge, United States District Court, for the District of Colorado, commencing at 12:56 p.m. on the 11th day of June, 2025, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

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*DARLENE M. MARTINEZ, RMK, CRR
United States District Court
For the District of Colorado*

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1 **JUNE 11, 2025**

2 (Outside the presence of the jury.)

3 THE COURT: Thank you. Please be seated.

4 All right. Thank you, counsel, for accommodating
5 us, and welcome back, Ms. Martinez.

6 Just a few issues before we get back to the
7 testimony. We are going to rule with respect to the jury
8 instructions probably later today. I did want to ask
9 whether or not you all wanted a reference to, I believe it
10 is Exhibit 212. Let me just double check. Yes, a
11 reference to Exhibit 212 in the jury instructions and on
12 the verdict form to the statement at issue by Ms. Peters.
13 It wasn't subject to stipulation. We reference the
14 stipulations throughout, but I thought it might be helpful
15 for the jurors to understand what they were supposed to be
16 considering in terms of that alleged defamatory statement.

17 MS. MORGAN: Yes, we would, Your Honor.

18 THE COURT: Ms. DeMaster?

19 MS. DEMASTER: Is that a clarification on that?

20 THE COURT: No, just a reference to Exhibit 212.

21 MS. DEMASTER: Sure.

22 THE COURT: So we will include that.

23 And then we should be ready to give you all final
24 instructions by the close of today, or at least early
25 tomorrow, okay.

1 MS. DEMASTER: A point of clarification, 212, is
2 that one of the stipulations?

3 THE COURT: It is not a stipulation, but it has
4 been admitted in evidence.

5 MS. DEMASTER: Weren't there a couple Peters' clips
6 played.

7 MS. MORGAN: Exhibit 212 is the statement that
8 Ms. Peters made about Dr. Coomer on that interview with
9 Brannon Howse. We didn't reach a stipulation on that, but
10 that is an alleged defamatory statement. I believe it is
11 No. 9, if I am not mistaken.

12 MS. DEMASTER: Okay. That is fine then. Thank
13 you.

14 THE COURT: So just before we bring in the jury, my
15 deputy is going to make sure that I am getting realtime,
16 because I am not hooked into Ms. Martinez' computer.

17 MR. BELLER: Is it okay if I have Mr. Bania take
18 the stand?

19 THE COURT: Yes.

20 And one last thing for defense counsel. I just
21 want to confirm, I heard that the plaintiff is not
22 presenting Dr. Finkell through deposition, I assume that
23 means you also are not presenting Dr. Finkell through
24 deposition; is that right?

25 MR. KACHOUROFF: I thought my colleagues were

1 cutting it down, I didn't know you were cutting it out.

2 You are cutting it out?

3 MR. BELLER: I am sorry if I was unclear when we
4 spoke earlier. We are not presenting Dr. Finkell at this
5 time.

6 THE COURT: I assume you do not want to present
7 anything from Dr. Finkell, either. In fact, I am not even
8 sure he is on your witness list.

9 MR. KACHOUROFF: He is not.

10 THE COURT: All right. So I would assume that that
11 means that none of his deposition will be played.

12 MR. KACHOUROFF: Judge, we reserve decision on
13 bringing it up. I understand the Court's --

14 THE COURT: Well, is he a may-call on your list?

15 MR. BELLER: I don't want to speak out of turn, so
16 if we can double check if he is on their list.

17 MR. KACHOUROFF: Judge, we don't plan to call him.

18 THE COURT: So I am just going to eliminate him
19 from the list altogether.

20 All right. I think we are ready to proceed. Madam
21 deputy.

22 MS. MORGAN: If I may, before we leave the subject
23 of the jury instructions, I did send the Court a copy of
24 our proposed instruction on willful and wanton conduct.
25 Would you like a hard copy, or is the email sufficient?

1 THE COURT: You can hand it up to my law clerk. I
2 am sure he is on top of things. Thank you.

3 All right. Counsel, anything else?

4 MR. DUANE: Yes, very briefly. Earlier today you
5 asked how many more witnesses we plan to call for the
6 purpose of scheduling and planning, and we gave the name
7 of the individuals we definitely plan to call.

8 We are not asking you to make a ruling at this
9 moment, but we just wanted to alert the Court that there
10 was at least a possibility that at the end of the trial we
11 might request permission to recall Dr. Coomer to the stand
12 briefly for a few questions concerning a few things that
13 have come up along the way during the course of the trial.

14 Again, I am not asking you to make a ruling on
15 that. We might not do that, but I don't want to be in a
16 position where you thought you were misled by what we told
17 you earlier on who we definitely plan to call.

18 THE COURT: Thank you, Mr. Duane.

19 MR. DUANE: Thank you.

20 THE COURT: Ms. DeMaster, before the jury comes in,
21 can you let me know if the willful and wanton instruction
22 is stipulated or is there a dispute on that?

23 MS. DEMASTER: There is a dispute on that. We will
24 need a little more time on that.

25 (In the presence of the jury.)

1 THE COURT: Thank you. Please be seated.

2 Mr. Beller, you may proceed.

3 Mr. Bania, I remind you that you are still under
4 oath.

5 **DOUG BANIA**

6 having been previously duly sworn, testified as follows:

7 **DIRECT-EXAMINATION (Cont'd)**

8 **BY MR. BELLER:**

9 Q. Good afternoon, Mr. Bania. Mr. Bania, I am going to
10 ask you the same question you were answering when we broke
11 earlier, and that is, do you have any specific training or
12 experience in the area of defamation, the internet, and
13 social media?

14 A. Yeah, so my graduate degree, the new media production
15 aspect of it, is when I was introduced to internet
16 analytics.

17 Q. Thank you. Do you also have experience in publicity
18 disputes, and if you can describe what that would be?

19 A. So publicity disputes, yes, I do. That is typically
20 called a false endorsement, and that is when somebody uses
21 somebody's name, image, and likeness without permission to
22 promote or sell a product or service. So I have been part
23 of those types of cases, as well.

24 Q. Thank you. And how about any certifications or
25 professional affiliations, to the extent you have them, if

1 you can explain that to the jury, please.

2 A. I am a certified licensing professional. So with
3 intellectual property, where I was dealing with licenses;
4 somebody owns an asset and they want to license it to
5 somebody else to use the asset for a payment. And I am a
6 non-attorney member of the American Bar Association. I am
7 a member of the International Trademark Association. I am
8 on the Trademark Reporter Committee, that is a peer-review
9 journal, about 110 years old. So people submit articles,
10 I peer review with the team to make sure they are fit to
11 be published. I am a part of the Licensing Executives
12 Society, as well.

13 Q. And you mentioned the ABA committees that you are a
14 part of. Does that include both copyright and social
15 media committees?

16 A. That's correct.

17 Q. You talked about publishing. Have you, yourself,
18 ever published or given presentations on these topics?

19 A. Yes. So I have published and spoke, you know,
20 50-plus times on various topics related to intellectual
21 property, publicity rights, defamation, valuation, and
22 infringement, as well.

23 Q. And are they -- any of those publications
24 particularly applicable to the facts of this case?

25 A. I have had a peer-reviewed book chapter out for

1 several years, two, four, six years probably, and it is on
2 the use of internet analytics, social media analytics as
3 relates to IP cases, including defamation. And then I
4 just spoke at the American Economics Association, the
5 annual meeting in San Francisco. The title of my panel
6 was The Value of a Reputation.

7 So I do write and speak on, you know, the topic of
8 defamation as it relates to damages, as well as I can
9 provide economic damages opinions; that somebody has a
10 job, they make a thousand bucks a year, they are defamed,
11 now they make 500. Or reputational harm damages; the
12 reputation has been harmed, what is the cost to fix that
13 reputation.

14 Q. And you used a keyword there, and that is "peer
15 review." What is a peer review?

16 A. I mean, peer-reviewed journals are more rigorous. So
17 instead of me writing for WIRED magazine or People
18 magazine, it is somewhat easier to get published in those
19 types of magazines, but journals are very rigorous work.
20 My peers are actually reviewing it and fixing it or maybe
21 saying no, we're not even going to take this, but making
22 it, you know, stand up to the, you know, proper
23 methodologies, proper case law. A lot goes in to make
24 sure that it is ready, you know, for the academics. And I
25 write a lot for legal-type IP journals.

1 Q. So does that mean that when we say something has been
2 "peer reviewed," it doesn't mean you allowed your next
3 door neighbor or a family friend to simply read your work?

4 A. Right. So I do peer review, like I told you, for
5 INTA on the committee. So I will peer review their
6 articles, checking footnotes, making sure the case law is
7 correct, and so on. But then the articles that I write
8 that go into peer-reviewed journals, a group of peers does
9 that on my work, as well.

10 Q. Okay. Thank you. And obviously you have been
11 retained in the litigation for which you are now
12 testifying; right?

13 A. Yes.

14 Q. For what purpose were you retained in the Coomer v.
15 Lindell, et al., matter?

16 A. Yeah. So the purpose is twofold. The first is to
17 investigate and analyze the spread or the reach of the
18 defamatory statements. And, secondly, I was retained to
19 determine the appropriate reputation repair program, and
20 then what the cost of that program would be.

21 Q. And have you handled other cases similar, with the
22 same assignment or similar assignment, to what you have
23 been asked to do in this matter?

24 A. Yes.

25 Q. Any of those cases that are particularly relevant or

1 something that the jury may recognize as being familiar
2 with?

3 A. I mean, most of the cases I work on don't go to
4 trial, so I can't really talk about them. But, in
5 general, you will see them on my CV, as I am required to
6 put them on my CV. So I finished up one recently for
7 NetJets. Berkshire Hathaway owns this company. They were
8 involved with a defamation dispute, very similar to the
9 approaches that I took here.

10 I did work recently for Domino's Pizza, they had a
11 rogue ex-employee that was defaming them online. So, you
12 know, some similar tasks as relates to that. That one did
13 settle. Actually, it went to arbitration, but I don't
14 know what is public.

15 Then I was Johnny Depp's expert on his case against
16 Amber Hurd, that is public, and I am happy to share, you
17 know, those details if you would like me to get into that.

18 Q. Did that one, for example, require testimony in front
19 of a jury?

20 A. Yes.

21 Q. Is that to say that you have been qualified as an
22 expert in this area previously?

23 A. I absolutely have.

24 Q. Have you been qualified as an expert in both state
25 and federal courts?

1 A. Yes.

2 Q. Does that include, for example, Ohio, California, New
3 Jersey, and here in the District of Colorado?

4 A. Yes.

5 MR. BELLER: Your Honor, at this time I move for
6 the designation of Mr. Bania as an expert in the area of
7 reach, and cost related to defamation.

8 MR. KACHOUROFF: No objection to their expert.

9 THE COURT: All right. So qualified.

10 MR. BELLER: Thank you, Your Honor.

11 Q. (BY MR. BELLER) Mr. Bania, I want to start with a
12 little bit of your background in the Coomer litigation
13 process, this case in particular, okay.

14 A. Yeah.

15 Q. Do you recall when, approximately, you were
16 obtained -- or retained, I should say, in the Coomer v.
17 Lindell, et al., litigation?

18 A. I know my first report was submitted May 5th of 2023,
19 so it would be prior to that. I don't know the exact day
20 I was actually hired.

21 Q. Approximately two years ago; is that fair?

22 A. Yes.

23 Q. And who is it that retained you?

24 A. That is Cain & Skarnulis. Charlie Cain is the one
25 that actually retained me.

1 Q. One of the law firms that are representing

2 Dr. Coomer.

3 A. Correct.

4 Q. And in the 2 years since you were retained, have you
5 completed your work on this case?

6 A. Yes.

7 Q. Other than your trial testimony, of course.

8 A. Yes.

9 Q. How did you go about familiarizing yourself with the
10 details of the litigation?

11 A. Well, you know, conversations with the attorneys,
12 obviously, and then reviewing the documents that are
13 relevant to the case.

14 Q. When you say "reviewing documents," what types of
15 documents did you review?

16 A. Well, every case has a complaint. So I reviewed the
17 complaint to determine what the plaintiff is alleging. As
18 it relates to the defamation case, I need to find out what
19 they're alleging is defamatory. I don't provide those
20 types of opinions, that is legal, and I am not an
21 attorney. Other documents might be deposition
22 transcripts. I would like to review those to get an
23 understanding of what both sides are saying.

24 Q. And in this case in particular, did you have the
25 opportunity to review the transcript of Mr. Lindell?

1 A. Yes.

2 Q. How, Mr. Bania, did those documents assist you in
3 familiarizing yourself with the case?

4 A. Reviewing those documents and watching the -- reading
5 the deposition transcripts, again in a defamation case, it
6 just gives me the foundation of what plaintiff is
7 alleging, and then it gives me an idea of what defendant
8 is saying about that, so with an open mind I can just go
9 in and start my investigation.

10 Q. After having reviewed the documents and the
11 discussions with the attorneys, did you, yourself, also
12 perform your own investigation?

13 A. Yes.

14 Q. And as part of that investigation, did you also
15 prepare a report to document the investigation?

16 A. I did.

17 Q. How many reports did you do in this case, Mr. Bania?

18 A. This case actually had two reports.

19 Q. Do you recall the rough dates of those two reports?
20 I think you said the first one was in May of '23. When
21 was the second one, if you recall?

22 A. The first was May 5th of '23, and the second one was
23 May 15, '24.

24 Q. What was the reason for the two reports?

25 A. You know, the assignment was separated. The first

1 report had to do with the investigation of the spread or
2 the reach of the alleged defamatory statements. And the
3 second one was to determine the structure and the cost of
4 a reputation repair program.

5 Q. Understood. And are those two reports, or at least
6 your investigation, summarized in one of the slides?

7 A. Yes.

8 Q. Perfect. If we can advance to the next slide,
9 please. So I want to break down your role a little bit in
10 this case. How did you go about determining your
11 assignment, or perhaps it is better said, tackling the
12 assignment?

13 A. Well, remember the first report and the first
14 assignment was to investigate the reach or the spread of
15 the defamatory statements. So if you see those little
16 boxes below, that would include step one, which I am
17 calling an internet investigation, and that is really
18 investigating Frankspeech.com because they are the ones,
19 the platform that streamed the three-day Cyber Symposium.
20 So I wanted to dig in there to find out the details.

21 And then the second step you see here is a social
22 media investigation. I wanted to determine if those
23 statements that were made spilled, you know, into social
24 media.

25 Q. And is that four-step process also summarized on your

1 next slide?

2 A. Yes.

3 Q. So I would like to start with step one, which was
4 your internet investigation. What was the purpose of that
5 investigation?

6 A. Are you talking about step one now?

7 Q. That's correct. Thank you.

8 A. So as I was mentioning, you know, the defendants
9 streamed their Cyber Symposium for three days on
10 Frankspeech.com. So I wanted, you know, access to their
11 internet Google Analytics, it is a read only and analyze
12 aspect to their internet analytics to see what was going
13 on, who was watching, what they were watching, how long
14 they were watching, all those details that I typically
15 dissect to come up with my opinions.

16 Q. And were you able to obtain those Google Analytics
17 for Frankspeech and, specifically, the Cyber Symposium?

18 A. No -- I am sorry, repeat that.

19 Q. Yeah, were you able to achieve the Google Analytics
20 that you were looking for, or that you were requesting for
21 the Cyber Symposium and the specifics of the Cyber
22 Symposium?

23 A. No. So on cases like this, I ask for a read-only
24 access to Google Analytics. And, quickly, this Google
25 Analytics is something that is a tool that Google offers

1 to website owners, and you can embed their analytics on
2 each page of your website. So as a website owner, you
3 know, hey, how many people went here, what time of the
4 day, demographics, what did they click on, what search
5 words did they enter to land on the site, all of the
6 details I want to know, because what I am trying to look
7 for here is how many people viewed the defamatory
8 statements. But I was -- I did not receive that access.

9 Q. So while you may not have been able to get the
10 specific access to the specific defamatory statements,
11 were you able to get generalized access to the three-day
12 Cyber Symposium?

13 A. No.

14 Q. What information is it that you did receive from the
15 defendants?

16 A. So the next slide will show that. So what -- so this
17 is -- I received a couple screen shots off their Google
18 Analytics. So, again, we know they have analytics and
19 they wouldn't give me the read-only access, which doesn't
20 allow me to break anything, change anything, do anything,
21 it is literally just reading and analyzing. So it is a
22 very reasonable request to ask for, which I didn't get.

23 But they provided us two screen shots of
24 Frankspeech.com's homepage during the three-day Cyber
25 Symposium.

1 Q. So we are going to talk about those in just a moment.

2 MR. BELLER: For the witness and counsel only, can
3 we please show Exhibit 92.

4 Q. (BY MR. BELLER) Sir, do you have Exhibit 92 in front
5 of you? Can you see it on your screen?

6 A. Yes.

7 Q. Is this the document that you were talking about that
8 was provided by the defendants that you used in order to
9 form your opinion in this particular case?

10 A. I see that some of the numbers are different, but
11 this is one of them, yes.

12 MR. BELLER: Okay. And if we can show Exhibit 118,
13 please.

14 Q. (BY MR. BELLER) And is this the other exhibit that
15 you received from the defendants that informed your
16 opinion?

17 A. It seems -- I am looking at the pages -- oh, wait.
18 Can you go back one?

19 Q. Yes.

20 A. Okay. Yes, I see the number. So those two are
21 correct.

22 Q. Are those the two numbers -- are those the two
23 different exhibits or two different pages you used in
24 conjunction with each other to form your opinion on this
25 matter?

1 A. Yes.

2 MR. BELLER: Okay. Your Honor, at this time I move
3 for admission of Exhibits 92 and 118.

4 THE COURT: Any objection?

5 MR. KACHOUROFF: No objection.

6 THE COURT: So admitted.

7 (Exhibit Nos. 91, 118 are admitted.)

8 MR. BELLER: So if we can go back to your slide 4,
9 please, and that can be published, as well. Thank you.

10 Q. (BY MR. BELLER) If you can explain to the jury what
11 is depicted on slide 4.

12 A. So this is a screen shot of Frankspeech.com's
13 homepage. And what you are going to see here, and what
14 this was telling to me when I first looked at this is, you
15 know, the huge spike of traffic during the Cyber
16 Symposium, which is August 10th through August 12th.

17 Q. So am I correct, then, that these are individuals who
18 went to Frankspeech.com, either directly or through a
19 link, potentially, or clicking on a link, and viewed the
20 Frankspeech website, I guess in the case of the graph,
21 between June of '21 and September of '21?

22 A. That is correct.

23 Q. And we have a spike in August of '21; is that right?

24 A. Yes.

25 Q. And I think you said this, but I am going to ask

1 again. What does that spike represent?

2 A. So that is showing that, you know, over 1.8 million
3 users or visitors visited the Frankspeech.com homepage
4 during the Cyber Symposium, which ran August 10 through
5 12, 2021.

6 Q. And so for purposes of, I guess my question, so I am
7 going to summarize it as 1.8 million users. Of those 1.8
8 million users, how many of those were new users or people
9 or computers that had not previously visited
10 Frankspeech.com?

11 A. Yeah. So for the jury, on the right you are going to
12 see that 1.8 number, that is the users. To the right of
13 that you are going to see the new users, and that is 1.5
14 million new users to that homepage. So that is telling me
15 that this Cyber Symposium is bringing in a lot of new
16 traffic, a lot of new visitors.

17 Q. How does a computer or website know whether a user
18 is, in fact, a new user or somebody who has visited
19 previously?

20 A. So when you go to a website on your browser and visit
21 it, it will drop a cookie into your browser, so then when
22 you go back to that exact website, that cookie will tell
23 that website, hey, I have been here before. So it is
24 basically just a cookie that is dropped.

25 Q. Now, this also shows 5.7 million sessions. What does

1 that number represent?

2 A. So what that is saying is the 1.8 million users
3 visited the site over, you know, 5.7 million times.

4 Q. And I suppose if we were to divide that, that
5 explains the number of sessions.

6 A. Oh, yes. So, yes, the bottom right, the bottom box
7 to the right, yeah, it's the number of session 3.10. So
8 what it is telling me -- again, I didn't get access to the
9 analytics that I wanted, but just looking at what I was
10 provided, that these 1.8 million users visited the site
11 each day of the Cyber Symposium.

12 Q. And that is specifically on the Frankspeech.com
13 website.

14 A. The 3.10 sessions, yes, the homepage of the
15 Frankspeech.com website.

16 Q. And do you know, Mr. Bania, if Frankspeech's content
17 is available on other platforms in addition to the
18 Frankspeech website?

19 A. Yes. So based on when I was doing this analysis,
20 there was a link that said where else you can watch
21 Frankspeech.com, and it included others such as Apple TV,
22 Roku, Google TV, and others, where these analytics
23 wouldn't pick up that data.

24 Q. Okay. And so in other words, it is available on
25 other platforms, but the numbers you have presented to the

1 jury are only those users who accessed the -- what we are
2 calling the "defamatory statements," or at least the Cyber
3 Symposium only on Frankspeech, this doesn't take into
4 account anyone who watched it on Apple TV or Roku, for
5 example.

6 A. That's correct. This data here only shows me who
7 landed on their homepage. I didn't get into the Cyber
8 Symposium, the page is deep inside the videos, and that is
9 what I wanted to see. But then the second part of the
10 question, Roku, Apple TV, Google TV, I was not given -- I
11 asked for access to those analytics and, again, they
12 wouldn't provide them.

13 Q. How about on YouTube, for example? The jury has
14 heard that the Cyber Symposium was also posted on YouTube.
15 Did you examine YouTube?

16 A. Yeah. So this is step one, my internet
17 investigation, and I will get into more of that on the
18 social media investigation. But to say, yes, I did look
19 at YouTube, there were no videos, in my understanding,
20 during -- well, let me back up.

21 If you remember, I was hired in May of '23. All
22 this has been going on since May of '21. So there were
23 two years there before I was hired, and a lot of the
24 social media platforms I think were forced, somehow, to
25 take down anything dealing with election fraud.

1 So I was quite surprised I wasn't finding anything
2 on YouTube, until I realized, hey, that has been pulled.

3 Q. Understood. And is this data summarized on your next
4 slide?

5 A. I would have to see the next slide.

6 Q. There we go. What is the total number of users that
7 went to Frankspeech.com over the three-day Cyber
8 Symposium?

9 A. Yeah. So this is really the end of step one, this
10 internet investigation of Frankspeech.com based on the
11 limited screen shots that I received. But, you know, the
12 results of this step one is the 1,854,271 users, you know,
13 visited Frankspeech.com during the three-day Cyber
14 Symposium.

15 Q. So if this concludes step one, does this conclude
16 your analysis and your investigation completely, or did
17 you have a step two?

18 A. Yeah, I had a step two.

19 Q. Excellent. And if we can move forward. Will you
20 tell us a bit about what step two is.

21 A. Yeah. So I wanted to see if any of this spilled into
22 social media. So I am calling step two my social media
23 investigation. And during that investigation, I found out
24 that Rumble, Telegram, and Facebook were three platforms
25 that had Cyber Symposium videos.

1 Q. And how did you go about finding these videos on
2 Rumble, Telegram, and Facebook?

3 A. So I went on many different social media platforms;
4 Truth Social, Gab, Rumble, Telegram, Facebook, YouTube,
5 and I manually just searched for "Cyber Symposium," and
6 that's how I came up with these three social media
7 platforms that contained videos.

8 Q. And, again, I am going to bring you back to YouTube.
9 Did you find any videos by the time you did your
10 investigation in May of '23? Could you find Cyber
11 Symposium videos on YouTube?

12 A. No.

13 Q. So does that mean that the videos that you could find
14 of the Cyber Symposium were limited to these three social
15 media platforms?

16 A. Yeah. And I believe it is because a lot of that
17 has/had been taken down.

18 Q. Okay. And then you also said part of your social
19 media investigation included looking on Twitter; is that
20 right? I know we are going to get into it in more detail,
21 but if you can tell us about Twitter.

22 A. So I did identify -- so not the videos, but Twitter
23 posts that contained the defamatory statements.

24 Q. Okay. If we can advance your slide, I want to focus
25 a little more on the first part of your social media

1 investigation. Starting with the Cyber Symposium videos
2 that were posted on Rumble, Telegram, and Facebook, were
3 you able to find out how many videos about the Cyber
4 Symposium were posted on those three platforms?

5 A. Yes. I found 62 videos on these three social media
6 platforms.

7 Q. Do you recall how many individual channels or
8 programs?

9 A. I believe roughly 24.

10 Q. All right. Do you recall the name of any of those
11 programs? And I can give you a hint if you don't.

12 A. I believe -- I don't have those in front of me.
13 WarRoom, and a handful of others, but I don't have those
14 on me now.

15 Q. Understood. Do you remember a video on The Gateway
16 Pundit, for example?

17 A. Yes.

18 Q. And the Pete Santilli Show.

19 A. Yes.

20 Q. And then I think you mentioned Bannon's WarRoom also.

21 A. Correct.

22 Q. Fair to say there were others?

23 A. Yes.

24 Q. So of the 62 videos from the three-day Cyber
25 Symposium, were you able to determine how many of those 62

1 videos included what the plaintiff is calling "defamatory
2 statements" about Dr. Coomer specifically?

3 A. So the 62 videos had over 12 million views, but I
4 determined -- I had to go through all these videos. And
5 42 of the videos did not contain the alleged defamatory
6 statements.

7 Q. And how many did?

8 A. And 20 videos contained the statements.

9 Q. Very good. And so when you say the 42 did not
10 contain the statements, they may have contained statements
11 about election rigging or even Dominion Voting, but not
12 the key --

13 MR. KACHOUROFF: Objection, leading.

14 THE COURT: Sustained. Can you rephrase?

15 MR. BELLER: Yes.

16 Q. (BY MR. BELLER) The 42 videos that did not contain
17 any of the 10 defamatory statements, what was the general
18 content of those videos?

19 A. The ones that didn't?

20 Q. That's correct.

21 A. Yeah. So they could have been, you know, roughly
22 just, you know, what was discussed during the Cyber
23 Symposium, you know, all of the various topics that were
24 discussed during the symposium, but not the specific
25 alleged defamatory statements that are a part of this

1 case.

2 Q. When you say, the "alleged defamatory statements,"
3 did you have a copy of those statements for you to listen
4 to?

5 A. Yes.

6 Q. Okay. And so the 20 videos that contained the
7 alleged defamatory statements, were they one of the 10
8 statements that the plaintiff has alleged to be
9 defamatory?

10 A. Yes.

11 Q. Were you able to determine how many views those 20
12 videos had?

13 A. Yes. I mean, to back up a little, the 10,404,000, I
14 set aside and disregarded because they couldn't make it
15 throughout my analysis. But the 20 videos that did
16 contain the statements had 1,876,900 views.

17 Q. Okay. And did you have the opportunity, sort of
18 focusing on Rumble for just a moment, to provide the jury
19 with examples of what you were looking for in the Rumble
20 videos?

21 A. Yes.

22 Q. And if you can explain to the jury what is part of
23 your step two Rumble individual examples that they are
24 seeing on their screen?

25 A. So this is a video taken from the Cyber Symposium.

1 This is David Clements being interviewed by Joe Oltmann.
2 And you can see on the side I carved out some of the
3 statements, you know, connecting "Coomer using a toolchest
4 to murder the American people's votes." Or, you know,
5 allegedly Oltmann was on an Antifa call and heard
6 Dr. Coomer say, hey, "I made sure that Trump is not going
7 to win." And then the third example is talking about how,
8 you know, "pulling the trigger" with the vote trafficking
9 organizations.

10 So really these three sections here fall within the
11 defamatory statements I was looking for.

12 Q. Now, we've talked about 20 videos on social media
13 containing the defamatory statements. Of those 20, how
14 many of them were posted on Rumble?

15 A. I found 10 videos on Rumble.

16 Q. And how many total views of those videos did those
17 videos on Rumble receive?

18 A. So the 10 Rumble videos contained 1,075,400 views.

19 Q. And how did you go about calculating or coming up
20 with that one million, or roughly close to 1.1 million
21 views?

22 A. The nice thing about Rumble is they provide a
23 publicly available view count. I don't know if you can
24 see it in this example, kind of on the bottom left of the
25 screen shot, I believe you are going to see 341,000 views

1 of just this one video.

2 Q. And when -- what is the timeframe for you having
3 captured that?

4 A. What date did I capture this?

5 Q. Yeah, a rough timeframe.

6 A. I mean, it would be before the submittal of my
7 report, which was May 5th of '23.

8 Q. And so is it fair to say, presumably there have been
9 more views since that time?

10 A. From when I captured that to today?

11 Q. That's correct.

12 A. There could be.

13 Q. And so when we say, you know, one million views of
14 those 10 videos, that is as of one to two years ago.

15 A. Yeah.

16 Q. So we talked about you having looked at Rumble,
17 Telegram, and Facebook. So I would like to switch gears
18 to Telegram, if we can. Were you able to find examples on
19 Telegram of the defamatory statements?

20 A. Yes, I did find seven videos on the platform
21 Telegram.

22 Q. And will you explain to the jury very briefly what
23 Telegram is as a social media platform.

24 A. Telegram is another video-sharing site. You know,
25 most of these kind of offshoot sites are a bit like

1 YouTube.

2 Q. So I guess Telegram and Rumble are similar to

3 YouTube.

4 A. Yes.

5 Q. Do you know if there's sort of typically different

6 categories of content that differentiates YouTube from

7 Telegram and/or Rumble?

8 A. I mean, if you look at YouTube, YouTube, you know,

9 you have videos from your pet doing funny things, to

10 political views. But Rumble and Telegram are typically

11 more political, maybe conservative, swinging farther to

12 the right.

13 Q. What was the result of your Telegram analysis?

14 A. So Telegram, I found seven videos that had 690,300

15 views.

16 Q. And, again, how did you go about calculating the

17 total number of views of the alleged defamatory

18 statements?

19 A. So, again, the videos that I found that contain those

20 statements, the publicly available view count was

21 provided.

22 Q. And so I would like to switch gears and talk about

23 the third platform that you looked at, and that was

24 Facebook. Do you have examples, or can you explain to the

25 jury the Facebook samples that you were able to find?

1 A. Yes. So Facebook I only found three videos. They
2 are 111,200 views.

3 Q. And the 111,000 views of those three videos, again,
4 those were specific to the defamatory statements?

5 A. Those three videos?

6 Q. Yes.

7 A. Yes.

8 Q. So if we were to sum those up on the next slide, were
9 you able to then add those numbers up in order to come up
10 with this \$1.8 million figure -- the 1.8, not dollars,
11 excuse me, the 1.8 viewer figure?

12 A. Yes. So with those three platforms, 1,876,900 views.

13 Q. Okay. As of May '23.

14 A. Correct.

15 Q. You said that there was also another site that you
16 had looked at, and that was Twitter.

17 A. Yes.

18 Q. What was your process to uncover relevant Twitter
19 posts?

20 A. So the reason why I carved out Twitter from this
21 social media investigation is I had to use a different
22 tool to obtain this information, that tool is called
23 Brandwatch.

24 Q. And if you can explain to the jury briefly what
25 Brandwatch is, please.

1 A. Yeah. So to get into Twitter data you have to have
2 access to their API, and it is a little technical, but
3 that is an application programming interface, and you just
4 can't publicly get into that. It is kind of a getting
5 into the back end of Twitter. And I believe this was
6 Twitter before Elon Musk took it over and rebranded it X.

7 So Brandwatch has been grandfathered in to be able
8 to access the Twitter API. So I used Brandwatch to
9 specifically go in and look for the defamatory statements
10 by building a query. Essentially it sends a bot into the
11 back end of Twitter and pulls back the relevant
12 information, the Tweets.

13 Q. And is Brandwatch a tool commonly used in your
14 profession? Is it used by experts?

15 A. Yeah. Brandwatch is used by expert witnesses, by the
16 academic world, by scientists. It is created for people
17 that are building apps to be used in Twitter. And when
18 you build an app, you want something to interact and work
19 well within the Twitter sphere, so you need access to that
20 back end to make sure everything is running properly for
21 the programmers.

22 So, yeah, it is very commonly used in expert
23 witness work. There was a change after Elon Musk took
24 over. Before Elon Musk took over you could get access to
25 the API, and now that is a bit more difficult to get in

1 and to get that access. So using Brandwatch is one way to
2 get in.

3 Q. Now, the slide you are showing the jury says there
4 were 129 posts mentioning both Dr. Coomer, as well as
5 Mr. Lindell. What did you do in order to distill that out
6 to look for the defamatory statements?

7 A. I mean, I think one thing that is important, so you
8 build a query, and it is literally, I don't know if you
9 are familiar with querying a search, it is used like "and"
10 or "or" but is "not" typed wording. So my query was I
11 wanted it to pull "Coomer" and "Lindell" or "My Pillow,"
12 but then my "not" operator was some words related to the
13 lawsuit. I didn't want to get mixed up with the lawsuit,
14 because there is a lot going on online talking about the
15 lawsuit.

16 So I wanted to, you know, cast that net with that
17 query to bring back any Tweets that follow that. So it is
18 going to be "Coomer," it is going to be "Lindell" or "My
19 Pillow," but then I actually asked for "no re-Tweets." I
20 didn't want re-Tweets. So original tweets, but nothing
21 related to the case.

22 Q. And so we will talk about re-Tweets here in just a
23 moment, but did that require you to sift through these
24 posts manually?

25 A. Yeah. So anything I do, you can't -- I don't rely on

1 software or AI to go out there -- and I think when you
2 think of Brandwatch, think of like you are fishing with a
3 wide big old net, you set your query up, you cast that
4 net, you pull stuff back in, but there is a lot of junk
5 and a lot of stuff not relevant to these allegedly
6 defamatory statements.

7 So like always, I have to manually go through -- I
8 download everything to Excel to build some pivot tables
9 and then manually go through each Tweet to make sure that
10 it meets the criteria of these defamatory statements.

11 Q. What were your findings relating to the Twitter
12 posts?

13 A. So it did pull back 129 posts.

14 Q. And of the 129, how many of those posts contained the
15 alleged defamatory statements?

16 A. Only 10.

17 Q. So do you have examples of some of those Twitter
18 posts?

19 A. Yes.

20 Q. So will you explain to the jury what they are seeing
21 in this particular slide.

22 A. Yeah. So this slide is a Tweet by someone who
23 embedded Mr. Lindell's video talking about how Eric Coomer
24 is an "evil man."

25 Q. And what was the date of this particular post, for

1 example?

2 A. This was April 6, 2022.

3 Q. And then I am looking at some figures on the bottom
4 of that Tweet, there is a comment bubble with "312" next
5 to it. What is that?

6 A. Well, you are going to notice there are 46,300 views,
7 and 312 people made comments, is what that bubble is.

8 Q. And how about the arrow box there at the bottom with
9 the 276.

10 A. So those -- that box is shares, people sharing this.

11 Q. So what do you mean by "shares"?

12 A. It is a re-Tweet.

13 Q. So I want to just be clear for a moment, because you
14 had testified to the jury that there were 139,000 views.
15 And you also said that you were interested in looking at
16 the original posts; is that correct?

17 A. Yes.

18 Q. So what does that mean as to these re-Tweets?

19 A. Well, I did not include those in my count. So there
20 is much -- this went a bit more -- I wouldn't call it
21 viral, but the spread of this went farther than what I
22 calculated. But, you know, I wanted to be as exact as I
23 can.

24 Q. Does that mean that, for example, when we are talking
25 about the 139,000, we are talking only about views of

1 several examples; the Ron Filipkowski post, not any of the
2 repeats or reposts?

3 A. That's correct.

4 Q. Okay. If we can have the next slide, please. Is
5 this another Twitter example that you considered in
6 forming your opinion?

7 A. Yes. So here again is a video that is embedded in
8 this Tweet with an interview of Mr. Lindell, connecting,
9 you know, Eric Coomer to being "disgusting," "treasonous,"
10 "a traitor to the United States."

11 Q. And what is the date of that post?

12 A. That is May 9, '21.

13 Q. How many views did that particular post receive on
14 the date that you took this screen shot?

15 A. 92,100.

16 Q. And, again, does that include the 321 people who
17 reposted it?

18 A. No.

19 Q. And in order to determine how many times this was
20 shared across YouTube, by taking both the original post
21 and all of the reposts, would you have done -- had to have
22 done quite a bit more work?

23 A. Much more work.

24 Q. And sort of like a ripple effect; you get different
25 layers or posts and reposts?

1 A. Yeah. You would have to follow those 321 shares and
2 go through all of those manually to determine if they're
3 relevant or not to the case.

4 Q. And see if any of those re-shares also re-shared.

5 A. Yes.

6 Q. So fair to say that the numbers that you are using
7 are relatively conservative; is that accurate?

8 A. Yes, it is.

9 Q. What did you ultimately determine regarding Twitter,
10 the number of views that those 10 original videos
11 received?

12 A. I believe on the next slide -- well, here is some
13 more examples.

14 Q. Excuse me, one more example. If you can explain this
15 please.

16 A. They're really the same, it is here is somebody
17 posting -- what is interesting about this is this person
18 is saying, I agree Coomer is a criminal, because this
19 person John embedded this Newsweek.com interview that
20 Mr. Lindell did, and the topic of that interview is that
21 Mr. Lindell called Coomer a "criminal," and here we have
22 this guy John agreeing with that and saying "everybody
23 should be demanding his arrest immediately."

24 Q. Now, that one appears to be May 10, 2021; is that
25 right? Can you see that under the link?

1 A. Yes.

2 Q. Okay. So did -- once you received all of the Twitter
3 examples, did that conclude your social media
4 investigation?

5 A. Yes.

6 Q. So what was the total number of views on social
7 media?

8 A. Well --

9 Q. Excuse me, on Twitter?

10 A. Yeah. The 10 Twitter posts had 139,707 views.

11 Q. Were you then able to consider the number of views on
12 Rumble, the number of views on Telegram, the number of
13 views on Facebook, and the number of views on Twitter, and
14 come up with a total number of views of the defamatory
15 statements?

16 A. Yes.

17 Q. And what was that number -- what is that number?

18 A. Of all four social media platforms, 2,016,607 total
19 views.

20 Q. Okay. And, again, is that a conservative number?

21 A. Yes.

22 Q. Why?

23 A. Well, as I walked you through earlier, a lot of this
24 stuff has been taken down. So I was unable to, you know,
25 find the views for something that has been taken down.

1 Also, I was looking at, you know, original Tweets, as
2 well, not looking into how many views of all of the
3 re-Tweets or shares.

4 I just didn't want to come across as, like, double
5 counting. You know, I am very confident with this number,
6 and that is the way I wanted to present my opinion.

7 Q. And would you expect, in your expertise in sort of
8 internet and social media postings, would you expect a
9 user on Rumble, for example, to then go on Telegram and
10 watch literally the same videos on different platforms?

11 A. I mean, not necessarily.

12 Q. Okay. So between the internet investigation, which,
13 again, was the -- was what, remind the jury of the
14 internet investigation.

15 A. That was my investigation into Frankspeech.com, and
16 came up with 1,854,271 users visited the homepage of
17 Frankspeech.com.

18 Q. And then what was the total number for the social
19 media investigation?

20 A. So that is the 2,016,607 number, views of the
21 allegedly defamatory statements.

22 Q. When we were talking a little bit about your
23 expertise, we spoke about the fact that you have an
24 expertise in reputation repair; is that right?

25 A. Yes.

1 Q. What is your methodology, generally speaking, for
2 reputation repair?

3 A. So reputation repair, you have to find out how
4 widespread the defamatory statements have gone. I mean, I
5 deal with small cases in a small city where somebody is
6 defamed at the PTA meeting and, you know, does that go
7 very far? Is there a lot of repair to do? You know, not
8 compared to something like this.

9 So my expertise, as relates to reputational repair
10 for individuals and brands, you know, varies from small to
11 very viral.

12 Q. And within your industry, Mr. Bania, do you use
13 methods or principles that are considered to be reliable
14 within your industry?

15 A. Yes, absolutely. I mean relying on internet and
16 social media analytics, you know, Brandwatch, but
17 especially for me, by hand; going through all of that data
18 to make sure it is accurate, that's what we do. Not all
19 experts will by hand go through everything. I do it to
20 make sure, and you can see I dumped a lot of those views
21 because they didn't match exactly as relates to these
22 defendants. But very much so there is a methodology for
23 determining what I did.

24 Q. And based on what we have on our screen right now,
25 the internet investigation and the social media

1 investigation, did you have sufficient facts or data to be
2 able to apply those methods and principles to each of
3 these two categories?

4 A. Well, you know, the internet investigation, I didn't.

5 Q. When you say you didn't, what does that mean?

6 A. Well, remember I asked for the read-only and analyze
7 access, because they gave me a screen shot of the
8 homepage, and that is not good enough for me to determine
9 who watched the videos that contained the defamatory
10 statements. I just didn't get access to that.

11 Q. Okay. And so you didn't get it as to the internet
12 investigation, how about as to the social media
13 investigation, did you have sufficient facts or data?

14 A. Yes, absolutely. It was weeding through a lot of
15 stuff that didn't include the defamatory statements, but
16 it was really a manual process of going through everything
17 to determine what fit the criteria and what didn't.

18 Q. And so does that mean that you have reliably applied
19 the principles and methods of your industry to the facts
20 of your social media investigation such that you can
21 render an opinion?

22 A. Absolutely, yes.

23 Q. So let's break down what you had said to the jury.
24 What does it mean to launch a reputation repair campaign?

25 A. To launch reputation?

1 Q. To launch a reputation repair campaign, what does
2 that entail?

3 A. Well, I mean, you know, if we remember, this is the
4 third step now. So I am determining the structure of a
5 reputational repair campaign. You know, as an example,
6 maybe something happened in a small city and didn't really
7 spill online or onto social media, there has been a
8 certain -- you want to find out how many people have been
9 exposed to the false narrative, then you need to educate
10 that group of people as to what the truth really is.

11 You know, so sometimes we are putting up billboards
12 or taking ads out in the local newspapers for that ZIP
13 code or city or state. You know, just depending on the
14 extent of the, you know, the damage to the reputation.

15 So the first step is to determine the correct
16 structure, and in this case I chose a corrective website.

17 Q. Well, you said sometimes you can take out newspaper
18 ads. In your opinion, why would a newspaper ad not be
19 effective in Dr. Coomer's case?

20 A. Well, I mean, sometimes defamatory statements are
21 printed in newspaper articles so, you know, it is
22 reasonable to put ads into various newspapers to correct
23 that narrative. But as it relates to this case, this was
24 online, and this is social media. So I felt the best
25 medium was a corrective website.

1 Q. And we will break these down here in just a minute.

2 But you also suggest one other aspect of the reputational
3 repair campaign, and what is that?

4 A. So, I mean, I know we are going to get into this, but
5 the corrective website is literally building a website
6 that will tell -- that is built to take control of the
7 narrative. There has been a false narrative about
8 Mr. Coomer, so you want a website that walks a user
9 through all of that, through the court cases, through what
10 was said, why it is wrong, and all of those details.

11 You need to build that website, that is one part of
12 it, but you need to get people there, and not just
13 anybody, you want to get the audience that has been
14 exposed to the false statements to that website to educate
15 them as to what the truth is.

16 Q. So let's focus on that corrective website for just a
17 moment, because you had rattled off a couple ideas as to
18 the contents, and I am wondering if you can explain that
19 further. What content would you recommend be a part of
20 that website?

21 A. So the content, again, is telling the user the exact
22 story that we are all witnessing here. You know, there
23 have been these allegedly defamatory statements floating
24 around for years about the plaintiff in this case, and you
25 want to use that platform to educate the people that have

1 been exposed to that with the correct information.

2 So you want to provide facts, you want to talk
3 about case rulings. I don't know if there is any publicly
4 available videos from the depositions or the trial, I
5 don't know if that will become public or not but, you
6 know, you could embed those videos. And you want to
7 correct, but essentially you want to control the
8 narrative. So then the narrative starts spreading, the
9 press will pick it up, and it will correct itself over an
10 amount of time. But, you know, you need to target the
11 appropriate people, is the challenge of that.

12 Q. And which we are going to get into. So the
13 corrective website, however, would that be specific to
14 statements having been made by, or on behalf of,
15 Mr. Lindell, Frankspeech, and My Pillow?

16 A. Yes.

17 Q. In other words, would it be targeted?

18 A. Would the website be targeted to those statements?

19 Q. That's correct.

20 A. I will have to ask you what you mean by "targeted."

21 Q. Would a corrective website be trying to correct, for
22 example, Dr. Coomer's Facebook posts or, instead, would we
23 be focusing on the statements of the defendants?

24 A. Yeah, I see what you mean by "targeted." Yes, you
25 are targeting it to what is happening in this case,

1 absolutely.

2 Q. So you also mentioned Google Ads, and I want to give
3 you the opportunity to explain that a little further.

4 What do you mean by, and why would you recommend Google
5 Ads as opposed to simply an inorganic search?

6 A. Well, quickly, ads, when do you a Google search,
7 there are organic results, but there is also paid or
8 sponsored results that rise to the top and are seen very
9 clearly.

10 So with Google Ads, you want to determine what the
11 people exposed to the defamatory statements searched for,
12 understand their thinking on Google, and then use those
13 keywords to trigger an ad. I don't know if that is real
14 clear, and I can get into more of that.

15 Q. That is okay. Let me ask you this. Why do Google
16 Ads, why not just allow the website -- why not allow the
17 audience to find the website naturally?

18 A. I mean, you know, there are 8.5 billion searches a
19 day -- or a year, I am sorry, on Google -- or is it a day?
20 It is a day in the United States, and that is a lot of
21 searches. And to build a fresh website and to appear on
22 the first page of Google which, you know, 95 percent of
23 the people that click only go to the first page, it could
24 take years.

25 And it is not guaranteed that, you know -- there

1 is a -- you know, to appear on the first page of Google,
2 there is a bidding process. There is -- I am not thinking
3 of the word, there is a competition per keywords to get
4 your web page to show up first. And, I mean, it is rough
5 to get out there and get on the first page organically.
6 You know, over time it could happen.

7 Q. Now, on your slide, you have the word "SEO." What is
8 SEO?

9 A. SEO is search engine optimization. And, you know, I
10 do suggest that, you know, with its corrective website it
11 start doing that. What you do on the pages on your
12 website is you embed certain keywords you know people are
13 going to search for so they land on the site, and over
14 time you kind of trial and error optimize those pages for
15 SEO.

16 Q. Do Google Ads, for example, increase a website's
17 visibility and chance of being visited?

18 A. Yeah. I mean, research shows that 60 percent of
19 people click on Google Ads.

20 Q. And in Dr. Coomer's case, have you determined the
21 appropriate campaign settings for the Google Ads?

22 A. Yeah. So to build the Google Ads, you have to log
23 into Google and build the ad, and they have parameters you
24 need to choose from in order to meet your objectives for
25 your website.

1 Q. So we are going to go through those quickly. If you
2 can explain to the jury what they are seeing on this
3 slide.

4 A. Yeah. So when you are setting up a Google Ads, you
5 know, what is your objective? We want website traffic.
6 We are trying to drive the people that have been exposed
7 to the defamatory statements to the corrective website.
8 We are not looking to sell anything. We are not looking
9 to promote an application. We want website traffic.

10 Q. What is next after that setting?

11 A. So then we want to use search -- like I said, there
12 are 8.5 billion searches on Google in the United States.
13 We want to leverage the power of the search in order to
14 drive the correct people to our website.

15 Q. And then --

16 A. And then bidding, you know the goal is for the target
17 audience to click on the Google ad and to land on the
18 corrective website. We don't want impressions, we don't
19 want to know our ad appeared and maybe somebody saw it,
20 maybe somebody didn't. We want to know they clicked and
21 we want to know they landed on our website.

22 Q. Very good. Then is there a final part of sort of
23 choosing the Google -- the proper Google ad?

24 A. Yeah. Well, this slide here is talking about
25 campaign settings. You can have your ads appear in

1 specific newspapers or websites or blogs. I don't know if
2 you notice, if you are reading a website, a news website,
3 they embed Google Ads that kind of blend into the page.
4 But, you know, we want this to go broadly to that, as
5 well.

6 Q. And then do you also choose keywords?

7 A. Yeah. So the final step, and I think it is the most
8 important step, is what keywords do you want your ad to be
9 triggered? You know, this is the -- I think this is
10 really the most important part of Google Ads is choosing
11 those correct keywords.

12 Q. And were you able to determine in Dr. Coomer's case
13 what would be the appropriate keywords?

14 A. Yes.

15 Q. What keywords were you able to determine or do you
16 recommend Dr. Coomer use for the corrective website?

17 A. Yeah. So I need to shift with the jury a little to
18 another tool I used called Semrush. I think you can see
19 Semrush.com. What Semrush really is, is a tool that
20 allows you to spy on your competitors' websites to see how
21 much traffic they are getting. What keywords are people
22 typing in to land on their website? You know, what paid
23 keywords are they using? So what I -- the decision I made
24 at this time was trying to figure out who my audience is
25 that have been exposed to these defamatory statements, and

1 they are people that landed on Frankspeech.com. That is
2 the audience that I want to educate.

3 So I used Semrush, and I got into Frankspeech.com
4 and I determined that there were three keywords that drove
5 roughly 64 percent of the traffic to that website.

6 Q. And so does that mean that that Google ad campaign
7 would actually include the words "Frankspeech"?

8 A. Well, the three keywords are here, "Frank Speech,"
9 with a space, "Frankspeech.com" and "Frankspeech," one
10 word. Yes, when somebody types in "Frankspeech," I want
11 this ad to pop up.

12 Q. And is that geared to really making sure that you are
13 finding the people who may have read, viewed, or otherwise
14 consumed the defamatory speech?

15 A. Again, we are dealing with a large audience on
16 Google. I know the folks that type in these keywords have
17 landed on Frankspeech in the past, and as a matter of
18 fact, 64 percent of the traffic was being driven by these
19 keywords.

20 Q. And is there anything else needed to run Google Ads?
21 For example, do they have to be monitored?

22 A. When you are using Google Ads, it is trial and error.
23 You may start out with these keywords, and you may modify
24 them. You may find one drives more traffic or maybe the
25 trial ends and some other keywords are important. But,

1 yeah, you hire somebody to manage your Google Ads and your
2 website, and it's kind of game-time changes.

3 Q. Thank you.

4 MR. BELLER: Your Honor, I understand the defense
5 has an objection to this next section, if we may approach
6 briefly.

7 THE COURT: Yes.

8 (A bench conference is had.)

9 MR. KACHOUROFF: Your Honor, essentially the expert
10 has taken a commercial model of corrective advertising.
11 When you have negative advertising or false advertising in
12 a Deceptive Trade Practices Act, you take a corrective
13 advertising approach where you have pay per clicks to
14 replace that advertising. Here, there is no prior
15 advertising, one. Number two, there is no quantification
16 of harm here either.

17 With the bad advertising you can quantify the harm
18 economically and see it, but he is not purporting to give
19 an opinion to a reasonable degree of professional
20 certainty that this is the harm he's suffered. And so if
21 you can't state that, how in the world can you say, I am
22 going to remedy a harm I don't even know anything about,
23 number one.

24 Number two, he didn't take into account any
25 existing statements about Dr. Coomer clearly done by much

1 more famous people than Mr. Lindell. And so because of
2 that -- and Dr. Coomer testified that his reputation was
3 destroyed in January of 2021. That was the testimony I
4 elicited from him, and he didn't fight me on it at all,
5 and I believe that to be the case.

6 And so at that point, in May, what is the harm that
7 this expert purports to be repairing with pay per clicks,
8 commercial advertising clicks?

9 THE COURT: Mr. Beller.

10 MR. BELLER: Thank you, Your Honor. One, I would
11 note that I believe that to the extent there is an
12 objection, I believe it is untimely, and I would like to
13 preserve that, number one. Number two, my understanding
14 is that the expert is going to say that he was able to
15 access exactly what Google charges Mr. Lindell for the
16 terms "Frankspeech," "Frank Speech," with a space, and was
17 able to determine exactly what he pays for those Google
18 ads in order to be able to target, not other people or
19 other statements by individuals who are more famous but,
20 instead, the statements that were advanced by this
21 specific set of defendants.

22 Based on that, he was able to come up with a dollar
23 amount of approximately \$1.34. And so if anyone is online
24 and is typing in the words "Frankspeech" this ad would
25 show up to those individuals with the exact same dollar

1 amount for the purpose of being given to target the proper
2 audience in order to correct the false messaging that
3 these particular individuals had.

4 So what this expert is going to testify to is that
5 he took the 2 million viewers of the defamatory
6 statements, specifically attributable to the defendants,
7 he is going to multiply it times that ad, that click rate,
8 and he is going to come up with the dollar amount as to
9 what it is going to cost Dr. Coomer in order to be able to
10 launch and run the actual website.

11 So I do believe that it is based on a proper 703
12 analysis. I also believe that this was all disclosed to
13 the defense some year or so ago. And so to the extent
14 this is new information, Your Honor, I am sorry, but it is
15 not for them, and I think the opportunity to challenge it
16 was then.

17 MR. KACHOUROFF: The \$2.7 million that he is
18 proposing to fix this problem doesn't address the harm.
19 What is the harm that is being addressed for \$2.7 million,
20 just a re-education campaign of people that may not even
21 visit the website from 4 years ago? I fail to see the
22 nexus between spending \$2.7 million to fix a harm when you
23 are not even purporting to give an opinion what the harm
24 is.

25 THE COURT: Under Rule 702, "Where the expert

1 testimony is nonscientific, reliability depends heavily on
2 knowledge and experience of the expert rather than the
3 methodology or theory behind it." That is *United States*
4 *v. Medina*, 23-cr-49-PAB-3, 2025 WL 873022, at *3, District
5 of Colorado, March 20, 2025, quoting *United States v.*
6 *Hankey*, 203 F.3d 1160, 1169, Ninth Circuit, 2000.

7 The defendants did not object to Mr. Bania's
8 qualification as an expert as to damages with respect to
9 reputational repair. If an expert relies primarily on his
10 experience in forming his opinions, the expert must
11 explain how that experience leads to the conclusion
12 reached and why that experience is a sufficient basis for
13 the opinion and how that expertise is reliably applied to
14 the facts. *United States v. Medina-Copete*, 757 F.3d 1092,
15 1104, Tenth Circuit, 2014. And I will omit the citation.

16 Here, Mr. Bania has testified both to his expertise
17 and his training with respect to reputational repair and
18 his experience in terms of internet campaigns to repair
19 any such damages. Challenges to the assumptions to the
20 underlying expert's opinions or the expert opinions
21 ultimate conclusion go to the weight of the expert's
22 testimony and not to the admissibility.

23 Defendants will have an opportunity to
24 cross-examine Mr. Bania as to the flaws that they see in
25 his analysis and his opinion and will be permitted to do

1 so, but this opinion will be admitted over objection.

2 (In the hearing of the jury.)

3 Q. (BY MR. BELLER) So, Mr. Bania, the jury has heard
4 there is a four-step part. We have been through your
5 role. We have been through the first three steps, I would
6 now like to turn to step number four. What is step number
7 four of your process, sir?

8 A. Step four is the cost of the reputational repair
9 program.

10 Q. How did you go about calculating the cost of how much
11 it is going to, I guess, cost Dr. Coomer to try to repair
12 his reputation?

13 A. I mean, as relates to Google Ads, we haven't gotten
14 into the fact that when a Google ad is triggered, when
15 somebody clicks, the owner of that ad has to pay a pay per
16 click price. So we need to determine that cost per click
17 and multiply it by the target audience, which I did in
18 step two, and that equals a reputation repair cost.

19 Q. Okay. So let's walk through that just a little bit.
20 Were you able to determine what the cost would be per
21 click?

22 A. Yes. So, again, Frankspeech -- Semrush -- remember I
23 used that tool to determine what top three keywords drove
24 the majority of the traffic on Frankspeech.com. It also
25 tells me what the pay per click price is for each of those

1 keywords. So you are going to see the first one, "Frank"
2 space "Speech," the cost per click is \$1.22.

3 Q. And you also have something next to "cost per click"
4 called "weighted average cost per click." Can you explain
5 to the jury what that is.

6 A. Because I am determining this future cost per click,
7 I wanted to use the weighted average, which is essentially
8 you are going to pay a little bit more money for keywords
9 that draw in more traffic, and it is as simple as this
10 "Frankspeech," Semrush told me it is 1.22 per click.

11 This, out of these three keywords here, it drives
12 53.2 percent of the traffic. So simply 53.2 times the
13 \$1.22 cost per click gives you a weighted cost of \$.65.

14 Q. So if I can parrot that back, tell me if I am
15 parroting this back correctly. If a user or visitor
16 looking for "Frankspeech.com" types into Google the words
17 "Frank" space "Speech," Frankspeech then pays \$.65 because
18 that word search, "Frank" space "Speech," drives 53
19 percent of the traffic; is that correct?

20 A. Kind of.

21 Q. Perfect. Explain.

22 A. Okay. So as it relates to the example using
23 "Frankspeech.com," they were paying \$1.22 a click, okay.
24 But as it relates to my analysis, what the plaintiff would
25 pay for the reputational repair program, when using

1 "Frank" space "Speech" for the ad to trigger, the weighted
2 average cost for the plaintiff would be \$.65.

3 Q. Understood. So, in other words, what you did is you
4 added up the cost per click for the three most commonly
5 used and came up with the average cost would be \$1.37.

6 A. Let me say it this way.

7 Q. Please.

8 A. So what I did is I determined what the price was for
9 each of these keywords, but then I did a weighted average,
10 or a weighted cost, really. So the cost per click for
11 "Frank" space "Speech" is \$1.22, the weighted cost is
12 \$.65. So then I added up \$.65, \$.45, and \$.27 to get the
13 weighted average of those three keywords as it relates to
14 it's going to cost you \$1.37 as the appropriate cost per
15 click to drive the correct users, the users that have been
16 exposed to the defamatory statements, to the corrected
17 website.

18 Q. Understood. So then how did you determine the total
19 cost for this reputational repair program using that \$1.37
20 weighted average?

21 A. So I -- well, I have to explain that, you know, the
22 step one, when I looked at "Frankspeech," the 1.8 million
23 visitors, I had to drop that, as well, because I don't
24 know what they watched or if they watched things related
25 to defamatory statements. So I am only using the

1 2,016,607 visits or views in my social media analysis,
2 because I know those views are related to viewing the
3 defamatory statements.

4 Q. So, in other words, to be very conservative, you
5 completely threw out everybody who watched the Cyber
6 Symposium on Frankspeech.com.

7 A. Yeah.

8 Q. And you were left only with the social media videos
9 specific to defamatory statements about Dr. Coomer.

10 A. Correct.

11 Q. And that number was how many views again?

12 A. The 2,016,607.

13 Q. And did you then multiply that times the cost per
14 click ad costs?

15 A. That's correct.

16 Q. And what is that total amount that it would cost
17 Dr. Coomer to have a corrective website with Google Ads
18 clicks using "Frank" space "Speech" as the keywords?

19 A. I mean, this is just to drive the correct traffic to,
20 you know, the corrected website, but \$2,762,243, that is
21 the cost that is required to drive the appropriate
22 audience to the corrective website.

23 Q. When you say "drive the audience," does that mean it
24 does not include, say, viewership or listenership data
25 from podcasts; for example?

- 1 A. No, I did not analyze those.
- 2 Q. Or anyone who had previously seen defamatory
3 statements on YouTube.
- 4 A. That's correct.
- 5 Q. And does it include anyone who may have seen a repost
6 of any of the defamatory statements on Twitter?
- 7 A. This number does not include that.
- 8 Q. Does it include anyone who attended the Cyber
9 Symposium in person?
- 10 A. I did not get the ad count for that.
- 11 Q. Does it include the cost to write and set up the
12 website?
- 13 A. No. Plaintiff would have to most likely hire a PR
14 firm, and they can manage all of that. But there is an
15 expense here.
- 16 Q. So Dr. Coomer would have to hire a web builder, a
17 marketing person, and that is not included; right?
- 18 A. That's correct.
- 19 Q. How about a PR, publicity representative, to assist?
- 20 A. No. No, it will take a team to do this properly, but
21 this is merely, you know, to get the correct traffic
22 there.
- 23 Q. Would you call this, in your experience and your
24 expertise, a very conservative number?
- 25 A. Yes.

1 Q. Since we've talked about reach, did your
2 investigation look at Mr. Lindell's postings on Twitter
3 about this trial, for example?

4 A. Did I look at those?

5 Q. Yeah.

6 A. No.

7 Q. How about Mr. Lindell using this trial to fund raise,
8 did you look at that?

9 A. It wasn't part of this assignment, no.

10 Q. Did you look at any of the products that Mr. Lindell
11 was trying to market and sell and distribute as part of
12 this case and this trial?

13 A. No.

14 Q. Did you have the opportunity to investigate your
15 reach of promo code "jury" related to My Pillow products?

16 A. No.

17 Q. Mr. Bania, are you aware that Mr. Lindell was not the
18 first person to claim that Eric Coomer was part of an
19 alleged voter fraud in the 2020 election?

20 A. Was I aware Mr. Lindell was not the first person?

21 Q. Yes.

22 A. Yes.

23 Q. Or aware that Mr. Lindell made comments about
24 Dr. Coomer after others already had done so?

25 A. Yes, I am aware of that.

1 Q. How did that knowledge factor into your calculations
2 of this reputational repair program?

3 A. You know, I am not here -- I sometimes provide
4 causation opinions, something caused something else to
5 happen. That was not my assignment. You know, there are
6 several cases going on that Dr. Coomer is involved with.
7 This assignment was to very carefully, which I did,
8 identify the views of the defamatory statements, you know,
9 obviously as it relates to Frankspeech.com -- which
10 Mr. Lindell is in charge of -- Mr. Lindell, himself, or
11 anybody commenting on what Mr. Lindell said. So this was
12 a very narrowly focused assignment.

13 Q. That did not take into account any of those other
14 defendants, to the extent they also defamed Mr. Lindell --
15 or, excuse me, Dr. Coomer.

16 A. No, this did not include any other defendants but,
17 you know, the three defendants as relates to this case.

18 MR. BELLER: Very good. Thank you so much,
19 Mr. Bania.

20 I pass the witness, Your Honor.

21 THE COURT: All right. Mr. Kachouroff.

22 MR. KACHOUROFF: Thank you, Your Honor.

23 I am going to put up the very last slide,
24 Mr. Bania, so give me one second.

25 **CROSS-EXAMINATION**

1 **BY MR. KACHOUROFF:**

2 Q. So you want this jury to believe that we need
3 2,016,607 clicks to rectify what has been done.

4 A. You need that many people to go to the corrective
5 website to understand the background of this case and what
6 the actual evidence shows.

7 Q. And you get that 2,016,607 from views; is that fair
8 to say?

9 A. The target audience, yeah, views of the videos or
10 Tweets that contain the defamatory statements.

11 Q. And the videos that contain the defamatory statements
12 are, what, an hour long?

13 A. They vary from hours long to minutes long.

14 Q. We are talking statements that may occupy 30 seconds
15 of time in that hour-long slot; correct?

16 A. That's correct.

17 Q. So less than 1/360th of the time on the video is
18 devoted to a quick snippet, that you don't know if the
19 people actually even saw that part of the alleged
20 defamatory statement, do you?

21 A. I have not interviewed anyone that has watched the
22 videos.

23 Q. So the 2,016,607 views could be -- half of that could
24 be people that just watched for the first 10 seconds and
25 never watched the rest of the video.

1 A. It could be, and it could not be. We don't know. As
2 relates to websites, internet analytics, social media
3 analytics, we rely on the view count.

4 Q. But did you not say that you had to search, do a lot
5 of stuff to find the defamatory statements?

6 A. I searched through, yeah, all of the videos to make
7 sure they contain the defamatory statements.

8 Q. Were you getting paid to do that?

9 A. I do get paid for what I do.

10 Q. So for this 2,016,000, I did some quick math
11 calculation, the words that you used, the keywords, last
12 month they had a total 3,200 searches on those terms, May
13 of 2025. Are you aware of that?

14 A. I am not sure what you are talking about.

15 Q. The Google keywords, your keyword monitoring, you can
16 see how many keywords were searched the month before;
17 right?

18 A. I apologize, I am not sure what you are talking
19 about. Are you talking about the three keywords that
20 shows from the reputational repair?

21 Q. Sure. Right, you have a Keyword Planner and we can
22 look at what those keywords searches will generate in
23 terms of traffic.

24 A. I did not use a Keyword Planner, so I am not
25 following you.

1 Q. Well, there are 3,200 searches for those terms in May
2 of 2025, if that is true.

3 A. I have no idea.

4 Q. Under your regime, what do you think a fair number of
5 clicks would be on the 3,200 searches, because not every
6 search "clicks," would you agree with that?

7 MR. BELLER: Objection, foundation.

8 THE COURT: Sustained.

9 THE WITNESS: You are bringing up --

10 THE COURT: The objection was sustained.

11 Q. (BY MR. KACHOUROFF) So you don't know anything about
12 keywords and keyword searches and Keyword Planner.

13 A. I absolutely know what the Google Keyword Planner is,
14 yes.

15 Q. Okay. So the Keyword Planner is -- would you agree
16 it is a keyword analysis tool?

17 A. The Keyword Planner is a tool Google provides, you
18 know, to tell you what the price per click will be.

19 Q. It tells you how many searches were done for a
20 particular search phrase or search word.

21 A. It can give you the average monthly searches for
22 various keywords, yes.

23 Q. So if we assume there were 3,200 searches for the
24 month of May of 2025 --

25 MR. BELLER: Objection, foundation.

1 THE COURT: Counsel, approach.

2 (A bench conference is had.)

3 THE COURT: What is the foundation for this when he
4 testified he didn't use the keyword for his analysis?

5 MR. KACHOUROFF: Because it is a failure to use a
6 tool in order to come up with his 2 million -- \$2.7
7 million remedy. He failed to look at the very tool that
8 would tell him whether it would be feasible to do that
9 type of remedy.

10 THE COURT: Does he have access to that?

11 MR. KACHOUROFF: Absolutely. I know he does, I
12 deposed him before. I am glad to go ahead and ask those
13 questions, Judge, to clean it up.

14 MR. BELLER: I think the issue, Your Honor, is May
15 2025, and suggesting that somehow he has access to or
16 should know the Google search for that particular
17 timeframe. I think at the very least we should be talking
18 about the timeframe in which he has researched and based
19 his opinion, and if he used that tool or if he didn't use
20 that tool, why he didn't use that tool.

21 THE COURT: You cannot introduce evidence through
22 the back door with your question.

23 MR. KACHOUROFF: But I can give him hypotheticals,
24 Judge, because that will be the point of it, seeing how
25 his \$2.7 million figure actually plays out in the next 500

1 years, because that is what it is going to end up being.

2 THE COURT: You can pose a hypothetical based on
3 the information that he was able to consider, but with
4 respect to any searches in May of 2025, the form of the
5 question under Rule 611 can't assume that the data --
6 can't suggest to the jury that the data is actually 3,200
7 searches for May of 2025, there is no foundation for that.

8 MR. KACHOUROFF: There is no foundation for how
9 many searches?

10 THE COURT: You can't suggest that the data in May
11 2025 is a certain amount, when he hasn't been able to
12 access that or consider that. That is not the basis of
13 his opinion.

14 MR. KACHOUROFF: Okay. Okay.

15 (In the hearing of the jury.)

16 Q. (BY MR. KACHOUROFF) Mr. Bania, you didn't use the
17 Keyword Planner in this case.

18 A. No.

19 Q. Don't you think that would have been helpful in
20 knowing exactly what your pay per clicks would do?

21 A. No.

22 Q. After all, if you are back in the relevant time when
23 you did this report, if you had done a Keyword Planner
24 tool search, or whatever you want to call it, the
25 analysis, and you only came up with 320 clicks for the

1 month, that would be a failure of a campaign, wouldn't it?

2 A. No.

3 Q. So 320 clicks per month, divided by \$2 million, that
4 would be 525 years before this alleged reputational repair
5 actually worked; right?

6 A. I don't have an opinion on that.

7 Q. You are not a lawyer; correct?

8 A. Correct.

9 Q. You are not an expert in defamation law either.

10 A. That's correct.

11 Q. And you did not assess whether the statements about
12 Dr. Coomer were true or false.

13 A. That's correct.

14 Q. You did not review evidence about the accuracy of the
15 statements made during the Cyber Symposium; correct?

16 A. That's correct.

17 Q. And you made no attempt to determine whether the
18 speakers believed that the statements were true.

19 A. That is not a part of my assignment.

20 Q. You did not perform any analysis of Dr. Coomer's
21 reputation prior to May 3, 2021; correct?

22 A. Correct.

23 Q. Are you retained in the other cases?

24 A. On what other cases?

25 Q. His other cases, other defamation cases.

1 A. Dr. Coomer?

2 Q. Yes.

3 A. I am retained on other cases.

4 Q. What case are you retained on?

5 A. On the Patrick Byrne case, the Clayton Clark case,
6 and the Donald Trump case.

7 Q. So a lot of those harms would have occurred before
8 May 3, 2021; correct?

9 A. Well --

10 Q. Alleged harms, I will say.

11 A. What is important is there are other defendants, and
12 what's necessary to do is carve out only the statements
13 that Mr. Lindell is responsible for in this case, and that
14 is what I did.

15 Q. That assumes, doesn't it, that his statements had
16 some substantial impact on Dr. Coomer's reputation; right?

17 A. I'm not providing any opinions of that sort.

18 Q. I see. So you are not giving an opinion on
19 reputational harm; correct?

20 A. I'm giving an opinion as it relates to a reputational
21 harm program and the cost to drive the appropriate
22 audience to that website.

23 Q. So you don't know what the reputational harm actually
24 is, you are just looking at a program to send people to a
25 website.

1 A. Repeat that.

2 Q. You are not actually quantifying what the harm is,
3 you are just quantifying the amount of money it would take
4 to send people to a website.

5 A. Well, the way I calculate a reputational harm is what
6 is the cost to educate the audience that have been exposed
7 to the defamatory statements. So that is my damages
8 number. That's the number it is going to take, \$2.7
9 million to educate the people that have been exposed to
10 the statements, which I consider the appropriate audience,
11 to bring them to the corrective website to educate them.

12 Q. If we could turn to slide 13. Mr. Bania, are you
13 saying this is another republication of a defamatory post?

14 A. This is a Twitter example of Mr. Lindell talking
15 about how Dr. Coomer is an "evil man."

16 Q. You do not know who Ron Filipkowski is.

17 A. I don't know Ron.

18 Q. He says "Mike Lindell is griping tonight about
19 getting served at his event yesterday."

20 A. Okay.

21 Q. You do not know that his followers do not like Mike
22 Lindell.

23 A. The point is here is another example of Mr. Lindell
24 spreading the defamatory statements, he is an "evil man,"
25 related to Dr. Coomer.

1 Q. But here are 46,000 views of people that likely do
2 not like this man so, therefore, would not need to be
3 repaired.

4 MR. BELLER: Objection, foundation.

5 THE COURT: Sustained.

6 Q. (BY MR. KACHOUROFF) You didn't conduct any public
7 polling to measure reputation before and after the
8 statements that were made by Mr. Lindell.

9 A. No.

10 Q. You did not interview any third parties about their
11 changes in their views about Dr. Coomer before and after
12 the statements.

13 A. I did not.

14 Q. You don't know if people today know who Coomer even
15 is versus people four years ago; correct?

16 A. I have not interviewed people today as relates to
17 Mr. Coomer.

18 Q. And so your proposal is to advertise a reeducation
19 program of Dr. Coomer to a bunch of people online using
20 pay per clicks, that is the ultimate strategy.

21 A. No.

22 Q. You acknowledge in your report that many of the
23 statements were made by other people; correct?

24 A. Other people have made statements, but they were not
25 part of my final damages number.

1 Q. You chose to put Joe Oltmann's statements in the mix,
2 along with David Clements; correct?

3 A. That is because it was on Frankspeech.com, which is
4 Mr. Lindell's platform that he is responsible for.

5 Q. It was on Rumble and it was on Twitter, why not sue
6 them, right, too?

7 A. I am not in charge of who we are suing and who we are
8 not suing.

9 Q. The attorneys told you to put Joe Oltmann's statement
10 alongside Mr. Lindell's, didn't they?

11 A. No.

12 Q. You figured that out from the lawsuit, then?

13 A. My analysis was focused on what was said on
14 Frankspeech.com, okay, because Frankspeech is a defendant.
15 And so Frankspeech had various people mentioning the
16 defamatory statements on that platform, therefore I
17 considered those statements and those views as part of my
18 analysis and part of the repair program.

19 Q. Are you aware that Frankspeech was set up similar to
20 YouTube and Rumble?

21 MR. BELLER: Objection, foundation.

22 THE COURT: Sustained.

23 MR. KACHOUROFF: I asked about his awareness,
24 Judge, and he answered no, so it's --

25 THE COURT: All right.

1 Q. (BY MR. KACHOUROFF) At one point in your testimony
2 you said the defendants streamed their Cyber Symposium.
3 Which defendants did that?

4 A. Well, Frankspeech.com is where the Cyber Symposium
5 was streamed. So Frankspeech is a defendant, and
6 Mr. Lindell owns Frankspeech.com, there is another
7 defendant.

8 Q. So those two defendants are the ones responsible for
9 the content, is that what you are saying?

10 MR. BELLER: Objection, foundation.

11 THE COURT: Sustained. Outside the scope.

12 MR. KACHOUROFF: During direct examination he
13 stated that all of the defendants streamed.

14 THE COURT: Mr. Kachouroff, if you are going to
15 make a speaking objection you need to do it at side bar.

16 MR. KACHOUROFF: I don't want to waste time, I want
17 to move forward.

18 Q. (BY MR. KACHOUROFF) This idea of using a program of
19 pay per clicks on Google to repair reputation, that is not
20 something that has been peer reviewed or scientifically
21 tested in the industry, has it?

22 A. As it relates to driving the appropriate target
23 audience to a website, it's used very well.

24 Q. It is used incorrectly by advertising; correct? It
25 is a little different than what you are doing with it.

1 A. No, I am saying even outside the context of
2 litigation, that is how you get the appropriate people to
3 your website. That is what we are trying to do here is
4 identify the audience that has most likely been exposed to
5 defamatory statements. I know what they searched for, so
6 therefore the ad is triggered with that for them to click
7 on and be educated as to the facts.

8 Q. You did not conduct a statistical analysis of the
9 error rates in your estimates, did you?

10 A. I did not.

11 Q. And you were not able to validate your findings
12 against industry benchmarks either, were you?

13 A. I did not.

14 Q. And you have not published any peer-reviewed work on
15 the forensic measurements of reputational harm from online
16 content, have you?

17 A. Say that again?

18 Q. You have not published any peer-reviewed work on
19 this -- we will call it the reputational repair program --
20 have you?

21 A. I don't know. I don't think so.

22 Q. You don't claim that your analysis here is generally
23 accepted in the community.

24 A. Sure, it is.

25 Q. The repair program using pay per clicks is generally

1 accepted in your community.

2 A. Yes.

3 Q. There has been no court case that has ever ordered
4 such a repair program to your knowledge; is that right?

5 A. I don't know.

6 Q. Your report analyzes internet and social media
7 activity, and I want to make sure I get this right, pay
8 per clicks beginning in May of 2021; correct?

9 A. Yes. May 3.

10 Q. Not before.

11 A. Correct.

12 Q. Specifically you note that May 3, 2021, was the first
13 date when Frankspeech, the platform of Frankspeech
14 published a statement you characterized as allegedly
15 defamatory.

16 A. That's correct.

17 Q. And your analysis continues through the date of your
18 report, which is May '23 -- or May of 2023; is that right?

19 A. Yes, May 5, 2023.

20 Q. You did not account for the reputational harm that
21 would have occurred before May 3, 2021, in this report?

22 A. No. My assignment was related to the dates that you
23 just said.

24 Q. And you did not attempt to measure whether
25 Dr. Coomer's reputation had already been damaged before

1 Frankspeech ever launched; correct?

2 A. That's correct.

3 Q. And you're aware that Dr. Coomer testified under oath
4 that -- or maybe you are not aware, so I won't lay that
5 foundation yet, sorry.

6 You haven't reviewed any of Dr. Coomer's trial
7 testimony from this trial.

8 A. No.

9 Q. And so you are not aware that Dr. Coomer has already
10 testified that his reputation was effectively destroyed
11 prior to May 3, 2021.

12 MR. BELLER: Objection.

13 THE COURT: Sustained.

14 Q. (BY MR. KACHOUROFF) So as you sit here today, you
15 cannot offer any opinion on whether there was any
16 additional reputational damage that occurred after January
17 of 2021.

18 A. Correct.

19 Q. You would agree, would you not, that all of your
20 calculations are based on assumptions that there was this
21 alleged defamation; correct?

22 A. Yes.

23 Q. You are not saying there was, that is the decision
24 the jury has to decide whether it actually occurred or
25 not.

1 A. That's correct.

2 Q. So none of your calculations took into consideration
3 the extensive coverage this trial is getting every day at
4 CNN and CBS and ABC; correct?

5 A. Correct.

6 Q. Did you ever consider that?

7 A. No.

8 Q. How on earth could a proposed reputational repair
9 plan compete with that kind of coverage?

10 MR. BELLER: Objection.

11 THE COURT: Approach.

12 (A bench conference is had.)

13 THE COURT: Mr. Beller.

14 MR. BELLER: Thank you. Thank you, Your Honor. I
15 believe there is both a foundation -- I think it is
16 speculation, and I also believe that the question is
17 argumentative.

18 THE COURT: Mr. Kachouroff, I mostly am focused on
19 the foundation and the speculation, since he already
20 testified he didn't consider.

21 MR. KACHOUROFF: I will move on.

22 THE COURT: Sustained.

23 (In the hearing of the jury.)

24 Q. (BY MR. KACHOUROFF) Mr. Bania, you would agree that
25 national press coverage could affect the bottom line of

1 any such calculation; correct?

2 A. No. The coverage has nothing to do with my analysis.

3 I can repeat what the assignment is; the assignment is
4 determining statements that were on Frankspeech.com or
5 stated by Mr. Lindell or people repeating what Mr. Lindell
6 said. So that is the parameter of what I did.

7 Q. And it is not the only way to repair reputation, is
8 it?

9 A. Well, that's actually not repairing the reputation,
10 that is identifying the audience that has been exposed to
11 exactly the statements that are relevant to just this
12 case.

13 Q. From 4 years ago; right?

14 A. Well, no. My report was delivered in May of '23.

15 Q. But now it is 4 years later; correct?

16 A. No, it is 2 years later.

17 Q. Four years from the alleged defamation.

18 A. The investigation period, yes.

19 Q. Right. So ultimately, if any such payment were to be
20 put into place right now, you would be looking for people
21 4 years ago; correct?

22 A. I have identified my target audience quite
23 accurately, so that is the audience I want to educate are
24 the folks who visited or visit Frankspeech.com.

25 MR. KACHOUROFF: Your Honor, I have nothing further

1 at this time.

2 THE COURT: Mr. Beller, any redirect?

3 MR. BELLER: Very briefly.

4 THE COURT: All right.

5 **REDIRECT EXAMINATION**

6 **BY MR. BELLER:**

7 Q. Mr. Bania, you are almost done, sir.

8 A. Okay.

9 Q. You were asked about Google Planner, a Google Planner
10 search. What is a Google Planner search?

11 A. It is a Google Keyword Planner. It is a tool that
12 Google provides to the people that use Google Ads, and it
13 will tell you based on keywords you type into it, what the
14 average monthly searches are and what the estimated cost
15 per click is.

16 Q. Great. And why did you not utilize a Google Planner
17 search in determining the numbers that you have provided
18 to the jury?

19 A. Well, I think it is more appropriate to actually take
20 the data from Frankspeech.com and use that data as opposed
21 to what Google is thinking it is going to be.

22 Q. You were asked why you did not go out and interview
23 people, apparently interview the public. Is that
24 something that is part of a reputational harm analysis in
25 your industry?

1 A. No. I have never done that.

2 Q. Have you ever heard of doing that in any
3 scientifically reliable evidence-based way?

4 A. I mean, there are survey experts as relates to the
5 intellectual property cases I am on, but I have never
6 heard anybody interviewing in person in a defamation case.

7 Q. Now, you testified that part of your work is
8 reputational repair in both the litigation and outside of
9 the litigation context; is that right?

10 A. Yes.

11 Q. And is this reputational repair technique that you
12 have recommended used outside, even, of the litigation
13 context?

14 A. Yes.

15 Q. And has that technique been subject to peer review?
16 In other words, is it evidence-based and is it
17 results-based?

18 A. I mean, as relates to outside of the context of
19 litigation, maybe you have a client who has a branded
20 product and they release a new product and it bombs or it
21 fails or there is a recall, you know, you have to act.
22 The brand owner has to act and build a repair program to,
23 you know, bring back consumer confidence. So that is done
24 all of the time.

25 Q. You finally were asked whether you are aware that

1 CNN, ABC, and other news station have covered this trial;
2 is that right?

3 A. Yes.

4 Q. Do you know if Mr. Lindell has also covered this
5 trial and done interviews and continued to speak publicly
6 about this trial and Dr. Coomer?

7 A. What was the question, do I know he has done that?

8 Q. Do you know if he has?

9 A. Yes, I do know.

10 Q. Have you seen any publicity at all in which
11 Dr. Coomer discusses this trial or has done interviews or
12 spoken to reporters or posted about this case?

13 A. Not that I am aware of, no.

14 MR. BELLER: Thank you, Your Honor. I am finished.

15 THE COURT: Mr. Bania, you may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Ladies and gentlemen of the jury, it is
18 about 5 until 3 o'clock, we are going to take our
19 afternoon break a little bit early in order to give you a
20 break before we go to the next witness. Just be back here
21 ready to go in 15 minutes, then we will resume testimony
22 at that time.

23 (Outside the presence of the jury.)

24 THE COURT: All right. Thank you. Please be
25 seated.

1 I am assuming the video clips are ready to go.

2 MR. KACHOUROFF: Yes, Judge.

3 THE COURT: Am I correct the next witness is
4 Mr. Lindell re-called, yes?

5 MR. CAIN: They are up, I thought.

6 THE COURT: I am just trying to get some
7 confirmation from you.

8 MR. CAIN: That is my understanding.

9 THE COURT: All right. We will resume in 15
10 minutes.

11 (A break is taken from 2:53 p.m. to 3:17 p.m.)

12 THE COURT: Thank you. Please be seated.

13 Mr. Duane.

14 MR. DUANE: May it please the Court. Your Honor,
15 when we resume the questioning of Mr. Lindell, we have got
16 the clips that they objected to and which Your Honor had
17 approved, and there was one more clip that we also planned
18 to show Mr. Lindell and the jury while he is on the stand,
19 and as a courtesy I notified opposing counsel, it is
20 Exhibit 249. It is a short clip, I believe it is less
21 than two minutes, and it is not one of the clips that we
22 furnished to the Court because it is not one of the clips
23 that the plaintiff had objected to the other day.

24 But as a courtesy, so we can -- so we can avoid any
25 possible interruption of the testimony while the jury is

1 waiting, I thought I would notify the Court that they do
2 intend to object to this so that we can perhaps get a
3 ruling right now before the jury comes back in.

4 THE COURT: Why wasn't this raised the other day,
5 Mr. Duane? On the exhibit list it looks like it is not
6 stipulated to, which means it is objected to by the
7 plaintiff.

8 MR. DUANE: That may be correct, but, Your Honor,
9 it was during the course of Mr. Lindell's testimony that
10 they specifically stood up and identified particular video
11 clips to which they wanted to make objection and with
12 respect to which they wanted you to make a preliminary
13 ruling, and those were the ones we therefore supplied to
14 you.

15 THE COURT: Right. But you identified to the Court
16 video clips that you wanted to show in whole, we had to
17 defer that because the Court hadn't had an opportunity to
18 evaluate them, so that is why Mr. Lindell's testimony
19 didn't resume on the redirect when it was originally
20 scheduled.

21 You identified clips, you said that you were going
22 to use them as a whole. Plaintiff objected to all of the
23 clips or certain portions of those -- all of the clips,
24 but then you identified key portions you were going to
25 use. And then we adjourned Mr. Lindell's testimony in

1 order to be able to evaluate them.

2 So now you are telling me that there are more?

3 MR. DUANE: My recollection, and I apologize, Your
4 Honor, if I misunderstood, but my recollection is that we
5 did not give the Court any representation or indication
6 that these are the only bits of additional evidence that
7 we plan to use. This was on our exhibit list weeks ago.

8 We only gave the Court copies of the videos to
9 which they specifically objected and requested a ruling in
10 limine in the middle of his testimony.

11 THE COURT: How would they have known, Mr. Duane?
12 This is incredibly inefficient under Rule 611.

13 MR. DUANE: Well, in the ordinary course, Your
14 Honor. In the ordinary course, examination typically
15 proceeds through presentation of the exhibits and other
16 forms of evidence, like this video clip, and opposing
17 counsel has the opportunity to object as they see fit.

18 THE COURT: Right. But there is no way to evaluate
19 the video clip, Mr. Duane, unless the video clip is played
20 to the witness and shown to the Court. So we would have
21 to necessarily do that outside the province of the jury.

22 MR. DUANE: Yes, that is exactly why I wanted to
23 bring this up now. We can play it for Your Honor right
24 now, it is less than two minutes long, while the jury is
25 not in the room.

1 When I approached Mr. Cain with this, I approached
2 him during the break and told him we wanted to use this,
3 and his response to me -- his immediate response to me
4 was, well, we can take this up with the Judge at side bar
5 when we get there, and I thought it would make more sense
6 to straighten this out before then.

7 THE COURT: All right.

8 MR. DUANE: I can play it for Your Honor right now
9 if you would like.

10 THE COURT: That's fine.

11 MR. DUANE: Thank you, Your Honor.

12 (Exhibit 249 played in open court.)

13 MR. DUANE: That is the entire clip, Your Honor.
14 Opposing counsel notified me that they intended to object
15 on possibly other grounds, on hearsay grounds. But,
16 again, our position, as with the other exhibits, is that
17 it is not being offered to prove the truth of what is
18 being said there, but Mr. Lindell can verify this is one
19 of the first pieces of widespread publicity that came to
20 his attention that served as the genesis for the beliefs
21 that he holds to this day.

22 So we think it is highly relevant. And, by the
23 way, I know how it directly contradicts the thrust of the
24 testimony given by several of plaintiff's witnesses,
25 including most obviously Mr. Crane, who testified in very

1 general terms about how it was that the public was being
2 widely misinformed by right-wing sceptics, like
3 Mr. Lindell; that there were problems with all these
4 machines, and we know there were problems with many of
5 these machines, and that anybody who was saying anything
6 to the contrary was perpetrating what opposing counsel
7 called the "big lie" during jury selection.

8 This is powerful evidence again to show that there
9 are two sides to the story, and that anyone like
10 Mr. Lindell who harbors an opposing view is not
11 necessarily out of his mind or, as Mr. Cain tried to get
12 him to admit on cross-examination, publicly espousing a
13 view that nobody can really, in their right mind, be
14 tempted to take seriously. So the probative value, Your
15 Honor, is very high.

16 THE COURT: Were these clips derived before the
17 2020 election?

18 MR. DUANE: Yes, I believe so. And they were
19 also --

20 THE COURT: As far as I can tell there was no
21 mention of Dominion Voting or Dr. Coomer in any of these
22 clips; is that right?

23 MR. DUANE: The word "Dominion" is not mentioned,
24 but they are speaking about these systems and all of the
25 machines in general, like much of the plaintiff's evidence

1 and testimony, including some allegedly defamatory
2 statements admitted into evidence and made allegedly by
3 the defendant, Mr. Lindell, also were statements made
4 quite generally about machines and the voting machines
5 generally.

6 THE COURT: All right. Let me hear from
7 plaintiff's counsel.

8 MR. CAIN: Your Honor, this appears to be a video
9 spliced together by a political organization, it is highly
10 edited, statements taken out of context, multiple
11 politicians with hearsay statements. It did not reference
12 Dominion. There was, I believe, maybe a reference to EMS
13 and involves voting machines that were used before the
14 2020 election back when there were different -- there was
15 a different type of system.

16 At that point, 30 percent, approximately, of the
17 voting machines in the country were what is called DRE
18 machines, which were digital directs. Congress then
19 funded to the tune of 380 million in new machines for
20 2020. None of these relate to the 2020 election or
21 Dr. Coomer's account, as the Court pointed out. And it
22 doesn't really fall within the parameters of the case as
23 you clearly outlined this morning in detail.

24 And so we have a 403 objection and a hearsay
25 objection. The probative value obviously substantially

1 outweighs the risk of confusing the issues. At this
2 point, the lack of context for these statements speaks to
3 that issue, and so we would object to this exhibit.

4 MR. DUANE: If I may be heard briefly on that in
5 response on the 403 objection, Your Honor, I want to
6 remind the Court I alluded a moment ago to the testimony
7 by Mr. Crane, I probably should have even drawn closer
8 attention to the admission of plaintiff's exhibit, which
9 was a brief news segment on CNN news, where the defendant,
10 Mr. Lindell, was interviewed and cross-examined and
11 interrogated mercilessly and ruthlessly by a plainly
12 skeptical Anderson Cooper, a prominent news figure with
13 which the jury is obviously well acquainted.

14 THE COURT: That was not objected to by defendants;
15 is that correct, Mr. Duane?

16 MR. DUANE: Correct, Your Honor. Correct. But
17 Mr. Cooper, and another reporter who interrogated the
18 defendant on that news segment, didn't make any mention in
19 the entire show of Dominion specifically or of the
20 plaintiff in this case by name.

21 THE COURT: And I understand that that segment or
22 that exhibit is subject to a stipulated limiting
23 instruction that I will be giving to the jury at the close
24 of evidence; is that right?

25 MR. DUANE: I have no objection to the stipulation,

1 and agree the same stipulation ought to be given with
2 respect to this video, as well. It directly contradicts
3 the entire thrust to the jurors. And the clip that they
4 entered into the evidence from CNN was definitely and
5 intentionally giving an unambiguous impression that, as
6 Anderson Cooper and other reporter clearly announced, that
7 the position being held and the views that it were
8 publicly being espoused by Mr. Lindell were plainly
9 contrary to what anyone in their right mind clearly
10 understands.

11 That was the definite impression that was
12 intentionally given to the jury about the voting industry
13 generally, not just these Dominion machines. This
14 videotape clearly shows that there was at least another
15 side to the story. We submit both videos should be
16 admitted, with a suitable explanation from the Court that
17 neither is being admitted to prove the truth of the matter
18 asserted, but merely in this case to help the jury
19 understand whether there was or was not a good-faith basis
20 to believe the things Mr. Lindell has said for which he is
21 now on trial.

22 THE COURT: All right.

23 MR. DUANE: Thank you for your attention.

24 THE COURT: Pending before the Court is an
25 objection to Exhibit 249, which is video compilation of

1 officials questioning the elections from 2010 via news and
2 public outlets. That is the description on the joint
3 stipulated exhibit list that was provided to the Court and
4 filed on the docket.

5 As the Court explained this morning, the
6 defendants' burden to prove their defense of truth is not
7 entirely symmetrical to the plaintiff to present
8 admissible evidence about voting systems, how they
9 operate, and whether they are susceptible to the actions
10 by Dr. Coomer or Dominion Voting Systems.

11 As I explained this morning, the defendants' burden
12 in order to prove truth is to prove that Dr. Coomer stated
13 on an Antifa call that he had "made F'ing sure that Trump
14 is not going to win," that Dominion and Dr. Coomer did not
15 "take this country through China," and they did not make
16 sure that Trump's not going to win by manipulating the
17 Dominion Voting Systems.

18 To the extent that defendants wish to present
19 evidence that Dominion Voting Machines were used by
20 Dr. Coomer or others to steal or interfere with the 2020
21 election, that evidence remains relevant and admissible
22 subject to the other Rules of Evidence.

23 With respect to what is not relevant and probative
24 or is outweighed by the potential confusion to the jury
25 and prejudicial value, is that there was some other

1 election fraud outside of Dominion and Dr. Coomer as it
2 relates to the 2020 election.

3 This is clearly described as statements by election
4 officials from 2020 on that has been spliced together. It
5 is unclear what the foundation of these statements are.
6 It is entirely unclear what voting systems or what
7 evidence these legislators are saying these statements or
8 within what context.

9 Accordingly, pursuant to Rule 403 of the Federal
10 Rules of Evidence, I find that the probative value is
11 outweighed by the potential unfair prejudice and confusion
12 to the jury. This exhibit will be excluded.

13 (Exhibit No. 249 is refused.)

14 THE COURT: All right. Anything further before we
15 bring the jury in, because I have one issue to raise to
16 the parties.

17 MR. DUANE: As a quick --

18 THE COURT: Mr. Duane, your objection is preserved
19 for the record, so do you have another issue, because I am
20 just trying to move this along efficiently.

21 MR. DUANE: I am, too. Your Honor, just as a quick
22 another proposal, would Your Honor let us show just the
23 portion of the clip that shows Senator Klobuchar speaking?

24 THE COURT: No.

25 MR. DUANE: I have nothing further, Your Honor.

1 THE COURT: All right. Anything on plaintiff's
2 behalf?

3 MR. CAIN: Just quickly, my intent is they are
4 going to play the videos, Exhibit 229, 230, 231, 247. The
5 Court has already ruled on those. I don't intend to
6 object to preserve, and I just want to make it clear that
7 we want to preserve it.

8 THE COURT: I assume that you are preserving. And
9 as I understand it, there is a clip of Senator Klobuchar
10 in the *Kill Chain* video that has already been admitted.

11 All right. So there is just one issue that I want
12 to raise for you all to think about as we finalize jury
13 instructions. We got inquiry from some jurors to our
14 courtroom deputy about certain meanings of terms, those
15 terms include the word "arbitration" and the word "doxing"
16 or "dox." So I have pulled definitions that courts within
17 the Tenth Circuit have used for both of them derived from
18 the Merriam Webster Dictionary, as well as Black's Law
19 Dictionary.

20 And so to the extent that the parties do not have a
21 proposal with respect to that, I think it would be
22 appropriate to include an instruction with a glossary of
23 those two terms, because we know that there are questions
24 that are arising from the jurors.

25 I am happy to put that together and send it out to

1 the parties for consideration, and happy for you all to
2 meet and confer and come up with your own instruction, but
3 I have already pulled some definitions from cases, again,
4 from district courts within the Tenth Circuit.

5 MR. CAIN: I am betting yours are going to be fine.

6 THE COURT: Mr. Duane?

7 MR. DUANE: Our position is the same.

8 THE COURT: So I will pull that together, then we
9 will send that out to you for consideration, and we will
10 take that up if you have any objections tomorrow morning.

11 All right. Are you ready for the jury?

12 MR. DUANE: Yes. I want to notify the Court, as a
13 courtesy, that right after we play those short video
14 clips, with the Court's permission, I wanted to touch on a
15 short list of a couple other topics. The whole
16 examination will take less than a half hour.

17 THE COURT: That is fine.

18 All right. Madam deputy.

19 COURTROOM DEPUTY: Yes, Your Honor.

20 MR. DUANE: Thank you.

21 (In the presence of the jury.)

22 THE COURT: Thank you. Please be seated.

23 Mr. Lindell, if you can take the stand, I remind
24 you, you are still under oath.

25 **MICHAEL LINDELL**

1 having been previously duly sworn, testified as follows:

2 **REDIRECT-EXAMINATION**

3 **BY MR. DUANE:**

4 Q. Good afternoon, Mr. Lindell.

5 A. Hello.

6 Q. I'd just like to ask you a few questions about a few
7 topics that came up the last time you were on the witness
8 stand, and a couple of things I would like to clear up.

9 First I would like to talk a little bit about the
10 Frankspeech platform that we heard about.

11 A. Yes.

12 Q. I just wanted to clarify, is that platform still
13 active?

14 A. No.

15 Q. Do you know how long it has been inactive?

16 A. Deactivated last year.

17 Q. Do you recall approximately when?

18 A. I believe December, could have been November.

19 Q. And that was in 2024.

20 A. Yes.

21 Q. All right. We will move on to another topic. I want
22 to clear up a few things about some of the evidence and
23 testimony we have heard about Mr. Brannon Howse. Do you
24 remember that testimony?

25 A. Yes.

1 Q. And we heard about a show that he produces.

2 A. Yes.

3 Q. Do you recall the name of that show?

4 A. He has got two, one is WVW, which is kind of his
5 platform for one show. And the other one I believe is
6 called the Brannon House Show.

7 Q. WVW, that is Worldview Weekend.

8 A. That's correct.

9 Q. He has also done some work for Frankspeech; is that
10 right?

11 A. Yes.

12 Q. And you paid him for work he did for Frankspeech.

13 A. Correct.

14 Q. That work involved what sort of things? What did
15 Mr. Brannon Howse do for Frankspeech when he was under
16 your employment?

17 A. He had a partner called Howse to House. So he was a
18 50/50 partner, and it was all of the back end of
19 Frankspeech, and not just the back end, but they also were
20 all inclusive. So they hired out -- one department did
21 customer service, one department did if things would
22 break. It was pretty exclusive.

23 Q. Would it be fair to say he was helping you with
24 customer service?

25 A. Oh, they did everything, even the marketing.

1 Everything was done by Howse to House.

2 Q. Did he help you to set up the Frankspeech platform?

3 A. No. He did it all. They did it all.

4 Q. Now, the work he was doing -- I want to clarify, the
5 work that he was being paid to do for Frankspeech and for
6 you, was that related in any way to the show that he was
7 producing and hosting on Worldview Weekend?

8 A. No, not at all.

9 Q. Okay. And the shows that he produced and distributed
10 to the public, were they done under your direction or
11 under your supervision?

12 A. No. And he didn't get anything for them, either. He
13 had those shows before I came into the picture.

14 Q. He started those shows before he met you.

15 A. Oh, yeah. He had those shows for years.

16 Q. And even after he met you, those shows were still
17 entirely his own projects independent of you.

18 A. They are still going to this day, and I am not
19 affiliated with him at all.

20 Q. Thank you. The next topic I wanted to touch upon
21 briefly is the Twitter post that came up. Mr. Cain shared
22 with us something that was posted, I believe it was on
23 Twitter just in the very recent past that had a picture of
24 you. Do you remember that?

25 A. Yes.

1 Q. And talked about this lawsuit.

2 A. Yes.

3 Q. And there was some words printed under there
4 expressing apparently being sued, this lawsuit, or being
5 sued or this trial was what you wanted or exactly what you
6 wanted.

7 A. Yes.

8 Q. Do you remember that?

9 A. Yes.

10 Q. Okay. Do you want to explain to us, were those words
11 that were written by you or somebody wrote for you, or how
12 did that happen?

13 A. They wrote those words, but it goes back to my
14 statement in -- I've got to bring you back to January of
15 '21.

16 Q. I am sorry, let me interrupt, I apologize. You said
17 "they wrote those words." Let me ask you, who you mean by
18 "they wrote those words"?

19 A. Social media. The social media post for me, either
20 Jessica or, well, there are a lot of different ones.

21 Q. This is somebody who was working for you.

22 A. Yes.

23 Q. But it wasn't you who wrote those words.

24 A. No.

25 Q. Okay. Before I interrupted, you were about to tell

1 us why they wrote those words.

2 A. Because they know my words from 4 years ago were very
3 famous and went nationwide. And what it was, to give you
4 a little background, in January, when I got my evidence on
5 January 9th, and everybody in the country, 2.2 million
6 Americans got de-platformed [sic] on the 7th and 8th,
7 everything that happened in January started, and you kept
8 hearing this word "Dominion," and 150 people got sent
9 threatening letters, including me, whether they were poll
10 watchers or whatever they were.

11 And when they did that, we actually got a lawsuit
12 against them. Later there were people all over the
13 country, Michigan and everywhere. And I considered
14 going -- well, these are big blockers. But at that time,
15 Dominion, I heard they started suing people.

16 And I actually reached out publicly, as I kept
17 getting hits in my Twitter box, "Sue me Dominion. Why
18 don't you sue me, I have all the evidence?" And I
19 actually heard from lawyers that it is better maybe that
20 it would come out in court then. And so I requested them,
21 that is -- it went nationwide, Mike Lindell wants Dominion
22 to sue them. Of course they didn't sue just me, they sued
23 My Pillow, and I was sad.

24 Q. So you were welcoming the possibility of having the
25 chance to present your evidence in a court of law.

1 A. Correct. That is what I did, and because everybody
2 else was getting attacked and they didn't have a voice.
3 And I am going, why were they suing everybody? And I got
4 one of the threatening letters. It looked like the
5 letters I had when I used to bet sports and they come to
6 your door with a pay today or things are going to get very
7 physical.

8 They were very threatening letters, and many of
9 those people had to go get security systems. They were
10 very afraid of getting sued. It was Dominion directly,
11 Dominion, not other machine companies.

12 Q. Good. Let me move on to another topic. We heard
13 some testimony from you yesterday about Newsmax, and we
14 saw the deposition of the testimony, the pretrial
15 testimony by Mr. Ruddy.

16 A. Yes.

17 Q. And he gave an explanation, as the jury saw, about
18 the relationship between you and Newsmax.

19 A. Yes.

20 Q. We saw his explanation.

21 A. Yes.

22 Q. Was his explanation entirely or substantially
23 accurate?

24 A. No. There are a couple things with that video. That
25 video was in 2023, and he is trying to recall all of the

1 conversations that we had where I asked him all of the
2 time to come back on. There was quite a few things left
3 out of that video, one of them was Newsmax, if I bring you
4 back to the actual -- you all have seen where I pulled the
5 thing off and left, which made the news.

6 Q. You are talking about the microphone?

7 A. The microphone, yes. When I had done over 20
8 interviews that day, because it was big news, My Pillow
9 got their Twitter banned for doing nothing, they had
10 nothing to do with it, of anything. And so all of the
11 news stations were having me on.

12 Well, when I went to go on Newsmax, you all seen
13 what happened, I wasn't forewarned or anything, every
14 station I went on was, hey, My Pillow lost their Twitter,
15 come out and tell us why. And more cancellations. It was
16 big news because no company had been banned like that.

17 So when I went on Newsmax, I was very -- I am
18 going, what is going on here? I was taken by surprise, as
19 you have seen on the tape. And right afterwards I called
20 up Chris Ruddy immediately. I was sitting in the
21 airport -- I did it from the airport, and I said, Chris,
22 what is going on, they all went after me or whatever, and
23 he got mad and left and read some statement. And Chris
24 goes, let me check, Mike.

25 MR. CAIN: Your Honor, he is getting into hearsay.

1 THE COURT: Sustained.

2 Q. (BY MR. DUANE) All right. So were you allowed to
3 come back and appear on the show later that day.

4 A. Yes. That same day, that same night, Chris called me
5 back and he said, I found out what happened. We can't
6 have anybody talking about electronic voting machines or
7 the election. And he said but, Mike, would you please
8 come on in an hour.

9 MR. CAIN: Objection.

10 THE COURT: Sustained.

11 Q. (BY MR. DUANE) Stop there, sir. Don't tell us
12 anything else he said. But did he make -- did he give you
13 any further invitation or requests?

14 A. Yeah. That night I got to come on and talk about My
15 Pillow, all of the way up to April.

16 Q. And since then, you have not been allowed to appear
17 on the show.

18 A. No. No more appearances on, except for there was one
19 where he had me on and he said, I will make an exception
20 if you come on, because he has a competitor, FOX News, and
21 he let me come on and basically advertise for him for
22 Newsmax. It was kind of like an advertisement appearance.

23 And I thought, well, maybe he would let me
24 advertise My Pillow after if I did that for him. But, no,
25 not to this day have I ever been able to go on there

1 again, period.

2 Q. So you told us what you were allowed to talk about on
3 the show. Since that date, what topics were you no longer
4 allowed to speak about?

5 A. From February 2nd of 2021, once that happened with
6 the microphone and he made announcements to everybody that
7 you could not talk about -- he told everyone and anyone
8 that comes on, you can't talk about machines or Dominion
9 because he was sued in this case.

10 And then once I was sued here, once he made the
11 settlement in his case with Dr. Coomer, from that point on
12 I could not talk about pillows.

13 And there was one more thing that I seen that was
14 disturbing.

15 Q. What was that?

16 A. Newsmax was sued by Dominion. So this is Dominion,
17 on August 10th of 2021, the first day of the Cyber
18 Symposium. Newsmax wouldn't even air anything after that
19 for the Cyber Symposium. They were sued the first day.
20 It was just kind of suspicious, Dominion sues you, now you
21 have the 2023 video here, and they didn't appear to
22 mention how scared he is right now. That lawsuit is still
23 going on by these people.

24 Q. Was there anything that changed about your
25 relationship with Newsmax or Mr. Ruddy after they were

1 sued by Dominion, or is it essentially the same since
2 then?

3 A. We are still friends. Every time I call him he
4 apologizes that he can't have me on to talk about pillows.

5 Q. In a moment we are going to play some videos for the
6 jurors, but before I do, I only have one more topic I want
7 to touch on very briefly. When you were -- when I
8 questioned you yesterday, you told us about a statement
9 that the defendant, Dr. Coomer, made -- I am sorry, the
10 plaintiff, Dr. Coomer, spoke in your presence to you when
11 you passed each other in the hallway, and then you were
12 asked about it again by Mr. Cain.

13 According to my notes, which are not always
14 accurate, but according to my notes, the quotation that
15 you gave me on cross-examination was slightly different
16 than the words that you quoted on redirect, so I wanted to
17 give you a chance to clarify.

18 Do you know exactly, and take your time and relax.
19 Do you know exactly what words you heard him speak?

20 A. It was "piece of shit."

21 Q. Any doubts about that in your mind? Are you sure
22 those are the words spoken?

23 A. One thousand percent. He looked at me and said
24 "piece of shit" out in this hallway.

25 Q. Good. Last thing I want to do is just take you

1 through and give the jurors a chance to see a couple of
2 the videos that you began to tell us about last time you
3 were on the stand.

4 MR. DUANE: Your Honor, we would like to start with
5 Exhibit 247.

6 THE COURT: All right.

7 Q. (BY MR. DUANE) These are some excerpts from 247, to
8 set this up for the jury, so we can know what we are about
9 to see. This is a clip from a video that was called *Kill*
10 *Chain*. Are you familiar with that video?

11 A. Yes.

12 Q. What is it you know about this video? When did you
13 first see it, and have you seen this video before this
14 trial began?

15 A. I seen it in December 2020, about 30 to 40 days after
16 the 2020 election.

17 Q. So this would have been months before the first time
18 you allegedly made any defamatory statements that are
19 involved in this case.

20 A. Yes.

21 Q. Okay. Can we play that video now for the jury. And
22 this was an HBO production, as I understand it.

23 A. Yes.

24 Q. I will just advise the jury, in the interest of time,
25 we're not showing you the entire production. We heard it

1 was 90 minutes. This is a much shorter excerpt.

2 (Exhibit 247 played in open court.)

3 Q. (BY MR. DUANE) I will pause the video there. Do you
4 see the man that is being shown in the video right there?

5 A. Yes, I do.

6 Q. Do you know who that is?

7 A. Harri Hursti. He testified.

8 Q. The same one who testified in this trial earlier by
9 deposition for the plaintiff.

10 A. Yes.

11 MR. DUANE: All right. Good. Let's resume.

12 (Exhibit 247 played in open court.)

13 Q. (BY MR. DUANE) As I said, that was not the entire
14 video; am I right?

15 A. No.

16 Q. The entire video was approximately 90 minutes.

17 A. It just keeps going and going.

18 MR. CAIN: Your Honor, can we approach?

19 THE COURT: Yes.

20 (A bench conference is had.)

21 MR. CAIN: Your Honor, counsel has represented to
22 the jury that in the interest of time they are not playing
23 the entire video, suggesting they have more evidence. You
24 have already ruled on these matters, and so I think the
25 statements in front of the jury are completely improper to

1 suggest that there is more evidence that they are not
2 allowed to show.

3 MR. DUANE: On the contrary, I took pains to try to
4 avoid saying anything that might create the impression
5 that I was being precluded from showing things by virtue
6 of your ruling, even though that is true. I would not
7 want to give the jury the opinion we were complaining
8 about that or that I was of the view they were being
9 denied a chance for a fair trial. That is nothing I
10 wanted the jury to think. That is why I chose the words I
11 did and said we were only showing an excerpt. There is
12 nothing misleading or inaccurate about that or prejudicial
13 to the plaintiff.

14 THE COURT: You can certainly say there is more.
15 You can certainly elicit the testimony that you have done,
16 but I do not want you to characterize why the video is
17 being clipped the way it is being clipped. There are
18 clear rulings on admissibility, and I don't think it is
19 accurate, and I don't think it is appropriate for the
20 attorneys to be commenting on why the video might be
21 presented in evidence the way it is, it just leads to jury
22 speculation.

23 So, again, you need to stay away from the
24 characterization of the clip.

25 MR. DUANE: That is easily done.

1 MR. CAIN: I'm not clear, is he planning on asking
2 the witness to describe what is in the rest of the video
3 that is not going to be admitted into evidence?

4 THE COURT: Let me be clear, he should not do that.

5 MR. DUANE: Okay. That was not my intention.

6 (In the hearing of the jury.)

7 Q. (BY MR. DUANE) When was it that you first saw this
8 video we just saw?

9 A. December of 2020, about 40 days after the election,
10 or 35 days after the election of 2020.

11 Q. And you told us you are not an expert in cyber
12 elections -- cyber --

13 A. No.

14 Q. So I am not asking you, and I won't ask you to
15 evaluate for us the accuracy of anything we saw in that
16 video, but what was the effect this video had on you and
17 your impressions and your beliefs?

18 A. The effect it had on me was I had already done over
19 35 days of 18 hours a day, until I had to go to sleep.
20 Every day I am looking for a deviation of the 2020
21 election. And I remember when I told the jury, I said I
22 believe people are generally good people, and this thing
23 showed, hey, we have got problems with machines. And you
24 even heard Harri Hursti, and Mr. Halderman was in there,
25 too. And I was going, wow.

1 So that triggered me to, I have got to get the word
2 out and see if there were any problems with machines.
3 When I started asking something, this is what my whole
4 thing was about. When I started asking and questioning,
5 Dominion was the first one, they came and started suing
6 people just for asking.

7 And I want to say this, if someone said My
8 Pillow -- all around the country -- had rocks and knives
9 in them --

10 MR. CAIN: Objection, Your Honor.

11 THE COURT: Counsel, approach.

12 (A bench conference is had.)

13 MR. CAIN: Your Honor, you know what I am going to
14 say, this is more of the same nonresponsive rambling
15 testimony from this witness. So I'd ask, first of all,
16 I'd ask that you keep your questions more specific. And I
17 would like the Court to advise Mr. Lindell again, to
18 admonish him to not do what he continues to do throughout
19 this trial.

20 MR. DUANE: I understand his concern. I will
21 admonish him in front of the jury, it will sound less
22 threatening if it comes from me. I will remind him to
23 listen to my questions and just answer my questions. If
24 Your Honor would prefer to give such an instruction, that
25 is fine with us, but I will move on to another question.

1 He was about to get into something that Mr. Cain
2 correctly says I hadn't asked him about, and that wasn't
3 my desire. We will move on to something else, if Your
4 Honor pleases, and I will begin by reminding him he has to
5 listen to my questions.

6 THE COURT: So I am not here to try to attempt to
7 prejudice the jury against Mr. Lindell. I will allow you
8 to admonish him, as you have requested. But to the extent
9 his conduct continues, I am going to have to intervene and
10 remind him of his obligation to listen to the questions
11 and answer only the question.

12 This is, frankly, the basis of the Court giving the
13 plaintiff additional time to present their case, because
14 this has gone on for multiple hours. Again, I do not want
15 to have to admonish him, but I will have to intervene to
16 keep this trial moving efficiently.

17 MR. DUANE: Yes, Your Honor. For the record, I
18 will personally give him reminders, and as counsel said, I
19 will try to keep it to the questions I ask.

20 (In the hearing of the jury.)

21 Q. (BY MR. DUANE) Thank you, Mr. Lindell. I am sorry I
22 had to cut you off, you were about to get into something I
23 hasn't asked you about. Just listen to my questions. We
24 understand you are excited and have a lot you want to
25 share. Listen to my questions and answer my questions so

1 we can get through this more quickly. Thank you.

2 All right. One more question I want to ask you
3 about is that video that we just watched together, there
4 was, as we saw, a segment of what I think looked like some
5 sort of a room for, I think, hackers to get together and
6 try working on these machines.

7 A. Yes.

8 Q. Was there anything just like that going on at your
9 Cyber Symposium that you later hosted?

10 A. It was exactly the same thing, because I remembered
11 this. I remembered this in *Kill Chain*, and I also
12 remembered that they had said there that the machine
13 companies deny their offer to come on. So what I wanted
14 to do was almost identical, very identical. And one was
15 hacked as soon as we had the room set up.

16 Q. All right. Good. I want to show you another clip
17 now, this is Exhibit 229.

18 MR. DUANE: If we can bring this one up. And I
19 will just --

20 THE COURT: Mr. Duane, before you move on, I think
21 you formally need to admit 247. What I would suggest is
22 admitting it as Exhibit 247A.

23 MR. DUANE: With leave of the Court, we would like
24 to offer Exhibit 247A into evidence.

25 THE COURT: All right. And if you can follow that

1 convention for the following exhibit, that would be
2 appreciated.

3 MR. DUANE: Understandably. Of course, Your Honor.

4 (Exhibit No. 247A is admitted.)

5 Q. (BY MR. DUANE) We will call this 229A. This is a
6 segment from the show called *Absolute Proof*, as I
7 understand.

8 A. Yes.

9 Q. What was your connection to this show *Absolute Proof*?

10 A. I was one of the three producers.

11 Q. Do you recall when this was published?

12 A. It went live at 9:00 a.m., February 5th of 2021.

13 Q. That was a surprisingly accurate answer.

14 A. I will never forget it.

15 (Exhibit 247A played in open court.)

16 Q. (BY MR. DUANE) Let me pause it there for a second.
17 Dana Nessel, the one being quoted in this Tweet on your
18 production, could you tell us who she is?

19 A. The Attorney General of Michigan.

20 Q. And who is that other individual speaking with you on
21 this clip?

22 A. He is a lawyer from Michigan that was involved
23 with -- his name is Matt DePerno. He is an attorney.

24 (Exhibit 247A played in open court.)

25 MR. DUANE: Let me just ask you -- let's stop

1 there. Can we pause that.

2 Q. (BY MR. DUANE) One quick question about that video
3 clip, sir, that we just saw. Briefly, what was the
4 message you were trying to convey to your listeners with
5 this segment we just watched come together?

6 A. Complete blocking everywhere we turned. You either
7 got sued or you got law changes. Anybody that was
8 speaking out against these machine companies, especially
9 Dominion, you just got attacked, all out attacked. And
10 believe me, I have called a lot more people traitors and
11 criminals than are in this room, because that is what I
12 feel they are, blockers.

13 Q. You say you have referred to a great number of other
14 people as traitors. Did you mean that in every one of
15 those as an accusation? They were accusations of what you
16 call blockers.

17 A. Hundreds of them. And that is -- when I say it, the
18 public knows I am calling them blockers. And you will see
19 when our country, what I believe was breached by China,
20 which I said many times, and you are not letting us get to
21 the truth. You won't let us. If there is something wrong
22 with your bank statement, you go to the bank and they open
23 up the computer and show you. These companies don't do
24 that.

25 MR. DUANE: Your Honor, so the record is clear, I

1 am not sure if we offered into evidence Defendants'
2 Exhibit 229A at this point.

3 THE COURT: So admitted.

4 (Exhibit No. 229A is admitted.)

5 MR. DUANE: And also we would like to offer into
6 evidence Exhibit 231A, as I will designate it, which is
7 the other -- the last video clip I would like to play for
8 the jurors.

9 THE COURT: So admitted.

10 (Exhibit No. 231A is admitted.)

11 (Exhibit 231A played in open court.)

12 MR. DUANE: If I can have just a moment, Your
13 Honor. And with my apologies, I was confused. There is
14 just a few more seconds yet to play for this last exhibit
15 that we just saw from *Absolute Proof*. There was a break
16 in the video and I stopped it before we saw the end. So
17 we will play the rest of it now.

18 (Exhibit 231A played in open court.)

19 MR. DUANE: Okay. Good. Finally, we are going to
20 watch a clip now from *Absolute Interference*.

21 A. That guy was Terry Turchie. He is with the FBI that
22 I was interviewing. That is why I asked him that.

23 Q. He was with the FBI.

24 A. Yeah.

25 Q. And his name was?

1 A. Terry Turchie.

2 Q. Next we will take finally one more look at one more
3 clip. This is from Exhibit 231A. This is from *Absolute*
4 *Interference*. Can you tell us when you released this
5 production? When did you make this next video we are
6 about to see, *Absolute Interference*?

7 A. *Absolute Interference* was made 30 to 35, maybe 40
8 days later, yes.

9 Q. All right.

10 A. So it would have been probably March of 2021.

11 Q. Before we start the video, taking a look now at the
12 beginning of this clip, there is a picture there. Can you
13 tell us what picture that was designed to reflect?

14 A. Made by the evidence I got -- that I originally got
15 that shows the China interference that had all these lines
16 and stuff from computers. So I had this design that shows
17 that China attacked the U.S. in the 2020 election.

18 Q. And before we resume and watch this clip, this is a
19 clip of an interview that you did on that show with a
20 guest of yours. Do you recall who that was?

21 A. With what?

22 Q. Who was -- we are about to see a portion of an
23 interview with a guest.

24 A. I believe it is General Mike Flynn. He was the
25 Director of the Defense Intelligence Agency, the DIA,

1 under Obama. He also worked for the next administration,
2 but that is what he is.

3 Q. You called him "General" Flynn.

4 A. He is a General, but plus the Director of the Defense
5 Intelligence Agency. There is nobody higher for the DIA.

6 Q. Okay. Thanks.

7 MR. DUANE: Let's play that now.

8 (Exhibit 231A played in open court.)

9 Q. (BY MR. DUANE) Who is the gentleman we just saw on
10 the video?

11 A. Harri Hursti, the guy that testified here.

12 MR. DUANE: All right. Please resume. There is
13 not much left.

14 (Exhibit 231A played in open court.)

15 Q. (BY MR. DUANE) Good. I won't ask you, Mr. Lindell,
16 to repeat or summarize anything that General Flynn said on
17 that little video clip just now because we heard it and it
18 speaks for itself, but I do want to ask you this. When
19 you heard former Director of Defense General Flynn make
20 those statements in that production we just saw, and when
21 you chose to disseminate this on a widespread basis to the
22 general public, did you believe what he was saying was
23 true?

24 A. Did I believe General Flynn?

25 Q. Yes.

1 A. Yes.

2 Q. Did you believe you had any good reason to doubt what
3 he was saying?

4 A. No. He is the highest official there was that I
5 could go to. I went everywhere for my due diligence.

6 Q. Were you aware of any reason to doubt his credentials
7 or his opinion or conclusions?

8 A. No. He had worked for both parties for decades, and
9 for a decade was in charge of our national intelligence.

10 Q. In the 4 years since *Absolute Interference* was
11 created and produced and released, on the basis of this
12 investigation that you have personally committed your life
13 to and all this research that you had done, all of the
14 money you have spent, have you ever come into possession
15 of any evidence, any substantial evidence to cause you
16 personally to doubt the accuracy of what General Flynn
17 said on that video?

18 A. Are you asking me what General Flynn -- General Flynn
19 I brought to Dennis Montgomery to validate it. Is that
20 your question?

21 Q. That is not my question. Do you still believe today,
22 as you sit here today, after all of the evidence you have
23 seen in the last 4 years, after all of the evidence we
24 have heard at this trial for the last couple of weeks, do
25 you still personally believe in the accuracy of anything

1 that former Director of National Intelligence Flynn said
2 on the video?

3 A. One hundred percent.

4 MR. DUANE: No further questions.

5 THE WITNESS: Everything he said about our country
6 being in peril --

7 THE COURT: Mr. Lindell, you answered the question.

8 MR. CAIN: Briefly, Your Honor.

9 **RECROSS EXAMINATION**

10 **BY MR. CAIN:**

11 Q. You still believe General Flynn, knowing that he pled
12 guilty to a federal felony for the offense of making false
13 statements to the FBI.

14 A. Yeah. He was pardoned on that, sir. You should tell
15 the whole story.

16 Q. Answer my question, please.

17 A. Yes. I believe a hundred percent General Mike Flynn.

18 Q. Knowing that he pled guilty to that felony.

19 A. Yes.

20 Q. *Absolute Proof*, we saw the attorney Matt DePerno --

21 A. Yes.

22 Q. -- was with you on stage. And like General Flynn,
23 you find him to be credible on the topic election security
24 issues.

25 A. No. He was talking about how they were

1 suppressing -- if you watch -- I think the jury has seen
2 the same thing, he was talking about how the Attorney
3 General of Michigan --

4 MR. CAIN: That wasn't my question.

5 THE WITNESS: -- was suppressing. He wasn't an
6 expert.

7 THE COURT: Mr. Lindell. Mr. Lindell, I need you
8 to listen to the question and answer the question.

9 THE WITNESS: Say the question again.

10 Q. (BY MR. CAIN) The question was, did you find him to
11 be credible on the topic of election security issues?

12 A. That wasn't what he was talking about, so I don't
13 know about election, that is not the topic he was talking
14 about.

15 Q. Are you aware that the attorney Matt DePerno has been
16 indicted in Michigan for illegal access and tampering with
17 voting machines? Were you aware of that?

18 A. I heard that they attacked him, too, yes.

19 Q. So you know that.

20 A. As of right now, yes, I know that.

21 Q. All right. Now, while we were watching your movies,
22 I went to Frankspeech.com. You are aware, sir, that
23 Frankspeech.com redirects to Lindell TV.

24 A. Yeah. Yes.

25 Q. So to Mr. Bania's testimony, if someone were to type

1 in Frankspeech.com, they would get to your current
2 platform, Lindell TV.

3 A. That is correct.

4 Q. Lastly, when counsel was questioning you about the
5 statement in your fund raiser, "I am getting exactly what
6 I wanted," you said that some folks that you identified
7 had put that statement in the fundraising.

8 A. Yeah, that's correct.

9 MR. CAIN: Bring up 261, and I have one question on
10 this. Just let's look at the top. Blow the very top up.

11 Q. (BY MR. CAIN) What is the name that is at the top of
12 this Document 261. I request that you read that to the
13 jury.

14 A. Mike Lindell Legal Defense Fund.

15 Q. Okay. Thank you.

16 THE COURT: Mr. Lindell, you may step down.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Counsel, we have about 35
19 minutes left. Are you ready to call your next witness.

20 MS. MORGAN: We are. Plaintiff calls Dr. Alex
21 Halderman.

22 **DR. ALEX HALDERMAN**

23 having been first duly sworn, testified as follows:

24 THE WITNESS: I do.

25 COURTROOM DEPUTY: Please be seated.

1 Please state your name, and spell your first and
2 last name for the record.

3 THE WITNESS: My name is Alex Halderman, A-L-E-X
4 H-A-L-D-E-R-M-A-N.

5 DIRECT EXAMINATION

6 BY MS. MORGAN:

7 Q. Good afternoon. What is your occupation, sir?

8 A. I am a professor at the University of Michigan.

9 Q. And specifically what are you a professor of?

10 A. I am a professor of computer science and engineering.
11 My title is the Bredt Family Professor of Computer Science
12 and Engineering.

13 Q. Can you please tell the jury a little bit about your
14 educational background.

15 A. Okay, sure. I have three degrees from Princeton, all
16 in computer science, including my Ph.D. in computer
17 science from Princeton, where my focus was computer
18 security, and a large part of my work was about the
19 security of elections.

20 Q. Do you think that the use of a demonstrative aid
21 would assist the jury today in understanding your
22 testimony?

23 A. Well, I like to teach with slides. If that's what
24 you mean, yes, I do.

25 Q. Okay.

1 MS. MORGAN: At this time I request permission to
2 publish our slides.

3 THE COURT: You may proceed.

4 Q. (BY MS. MORGAN) How long have you been on the
5 faculty for the University of Michigan?

6 A. Almost 15 years now.

7 Q. And do you serve as the director of any programs at
8 the University of Michigan?

9 A. I am the director of something called the Center for
10 Computer Security and Society, and I am the director of
11 the systems laboratory within the computer science
12 department.

13 Q. You mentioned teaching with slides. What kind of
14 courses do you teach?

15 A. Well, I created and I regularly teach the University
16 of Michigan's computer security course for undergraduates.
17 It is one of our most popular courses. I also teach
18 computer and network security at the graduate level. And
19 when I get enough students every 2 or 4 years, I get to
20 teach an election security focused course, too, which is
21 always a lot of fun.

22 Q. Would it be fair to say that the coursework you teach
23 aligns with your research interests?

24 A. Oh, yes, yes. My research is primarily about
25 computer security problems and solutions for problems of

1 societal importance. I work on things like how do we
2 secure connections from people's web browsers. But
3 probably about half of my work over the last 15 years has
4 been about the security of elections. Specifically, what
5 are the problems, and what are ways to overcome those
6 problems.

7 Q. Have you formed any companies that relate to your
8 research interests?

9 A. Yes. I've started three companies out of the
10 University of Michigan.

11 Q. Can you tell us a little bit more about those
12 companies, please.

13 A. Sure. One of them is a for-profit company that tries
14 to help organizations find vulnerabilities in their
15 internet-facing sites and services, it is called Censys.
16 The technology we built is used by about half of the
17 Fortune 500s.

18 Another company is called ISRG, and it operates
19 something called Let's Encrypt, which provides a free
20 service to websites in order to help secure their
21 communications. And Let's Encrypt, I am really proud of
22 it. We started it as a not-for-profit just to improve the
23 security of the internet for people around the world, and
24 right now that technology is helping secure about almost
25 400 million websites, including whitehouse.gov and

1 Wikipedia.

2 Q. Can you tell us about the third company you
3 mentioned.

4 A. The third company, at this point it is just a
5 three-person startup, but it is trying to take ideas out
6 of our research at the university for ways to improve
7 election administration and election security and to
8 translate them into services that states can use to make
9 their elections run more smoothly and more securely.

10 Q. Have you ever served as an expert in election
11 cybersecurity?

12 A. Yes, I have.

13 Q. Can you tell us more about that, please.

14 A. I have been -- I have served as an expert to
15 multiple, multiple state governments for election
16 cybersecurity. I was hired by the Secretary of the State
17 of California, actually while I was still a graduate
18 student to do a top-to-bottom review of their equipment
19 and its security. I was appointed, I think in 2018, to
20 co-chair the State of Michigan's Election Security
21 Advisory Commission, that was an appointment by the
22 Secretary of State.

23 Q. Have you ever testified about cybersecurity and
24 elections in Congress?

25 A. I have. I testified to the U.S. Senate Intelligence

1 Committee on threats to U.S. elections in 2017, I think.

2 And I have also testified to the House Appropriations

3 Committee on the same subject.

4 Q. Have you ever testified in court before about

5 election cybersecurity?

6 A. I have, yes.

7 Q. Briefly can you tell us a little bit about that case.

8 A. About the -- which case do you mean?

9 Q. That is a great question. Let's start with *Curling*
10 *v. Raffensperger*.

11 A. *Curling v. Raffensperger*, this is a very long-running
12 case in Georgia, in federal court. I think it started in
13 2017, and finally went to trial last year. And this case
14 was brought by a group of individual voters, and I think a
15 voter -- voting integrity organization, and they alleged
16 that the way that Georgia ran its elections was insecure
17 and violating the voters' constitutional rights. And I
18 served as an expert witness for the Curling plaintiffs.

19 Q. And you mentioned there was another case. Can you
20 tell us briefly about that matter?

21 A. I earlier, I guess in 2016, served as an expert for,
22 I think it was the Jill Stein recount initiative that was
23 asking for recounts in various states in order to confirm
24 or reduce doubt about the results of the election.

25 Q. Turning very briefly back to the *Curling* case, the

1 jury has already heard Dr. Coomer had some involvement in
2 that case as an expert, as well. Did you have the chance
3 to interact with him at all?

4 A. I did. Dominion wasn't a party to the case, but
5 Dr. Coomer was called as a witness by the State of Georgia
6 at a hearing -- when would it have been, 2020, before the
7 election, I think, and we interacted during that hearing.

8 Q. So from your testimony, I understand you were on
9 opposite sides of the aisle in that case.

10 A. That's right.

11 Q. Have you authored any articles or books related to
12 cybersecurity and elections?

13 A. I have authored more than 90 technical publications,
14 at this point I would say maybe a quarter to a third
15 relate to election security.

16 Q. And the articles that you have authored, are those
17 peer-reviewed articles?

18 A. Most of the 90 would be. I am not sure exactly how
19 many of the 90, but a great majority of them.

20 Q. Okay. And the jury just heard from Mr. Bania about
21 what peer reviewed means, so I won't belabor the point
22 there. But when you were not here yet, Mr. Oltmann
23 testified that he authored a white paper. What is the
24 difference between a peer-reviewed article and a white
25 paper?

1 A. A white paper could be anything. A peer-reviewed
2 article in science means that there is a formal
3 publication that someone has written and submitted to a
4 group of other scientists to essentially vet it, to read
5 and understand it, and assess whether it is likely to be
6 correct, whether it is relevant, whether it is impactful.
7 And publications in science generally go through a
8 peer-reviewed process just to preserve the high standards
9 for work that appears in scientific venues.

10 Q. On a related note, have you ever served as the peer
11 that performed that peer review?

12 A. Oh, yes, 30 some of our top venues.

13 Q. Has anyone cited your work in their publications?

14 A. My papers collectively now have been cited a little
15 over 19,000 times in other scientific works.

16 Q. And specific to elections, have you received any
17 awards for your work?

18 A. Yes. Specific to elections, several of my papers on
19 election security have received what are called "Best
20 Paper" awards. This is recognizing them as the most
21 significant or well-done work at the venue where they are
22 published.

23 I received the University of Michigan President's
24 Award for National and State Leadership, in large part
25 because of my works on elections.

1 And I received the -- I am trying to think which
2 are election specific. Well, those are some awards I have
3 received.

4 Q. Have you received any awards from the Election
5 Verification Network?

6 A. Oh, yes. From the Election Verification Network, I
7 received their -- essentially their Lifetime Achievement
8 Award.

9 Q. How did you get involved in elections?

10 A. Well, it is a funny story, but back when I was a
11 graduate student at Princeton in the early 2000s, the
12 field of elections security was, I suppose, in its
13 infancy, and my research group at Princeton, where we were
14 focused on computer security, we were -- we had an
15 opportunity to do one of the first hands-on studies of a
16 U.S. voting machine.

17 And up to that point, academic security researchers
18 hadn't had access to equipment, but we were approached by
19 a source that had one that wanted to see that it got
20 studied, and we brought it into the lab and found out how
21 it worked and assessed its security.

22 So that was my introduction to the field, and that
23 would have been in 2006. And then we published it the
24 next year.

25 Q. Moving on to this case specifically, broadly

1 speaking, what type of analysis did you perform in this
2 case?

3 A. In this case, I -- several things. So I reviewed the
4 statements at issue. I reviewed the deposition testimony
5 of Mr. Oltmann and Mr. Lindell. And I reviewed and
6 analyzed data from Mr. Lindell's Cyber Symposium, the
7 purported evidence.

8 Q. And as I understand it, you reviewed the data from
9 the Cyber Symposium before this case was even filed; is
10 that accurate?

11 A. I had familiarity with it. I did a deeper analysis
12 of it for the purposes of this case.

13 Q. Were you one of the experts that CNN had look into
14 the "appetizer" data, as Harri Hursti called it?

15 A. Yes.

16 Q. Okay. And I want to make sure -- did you formulate
17 your opinions in this case based on the data you reviewed,
18 as well as your education, experience, and training in the
19 field of election cybersecurity?

20 A. Yes.

21 Q. And unless you state otherwise, can we assume that
22 the opinions you will offer in your testimony are to a
23 reasonable degree of scientific probability?

24 A. Yes.

25 Q. Do you think your opinions would be helpful to the

1 jury in understanding the issues in this matter?

2 A. Well, I would like to help the jury understand.

3 These matters do get quite technical, and I will do what I
4 can.

5 Q. Okay. Well, we will go through them in more detail.

6 But at a high level, just generally, what are the opinions
7 that you formed related to this case?

8 A. Well, at a high level -- at a high level, there is --
9 first, the 2020 election was -- there is no credible
10 evidence whatsoever that the 2020 election was hacked.
11 There is just no credible evidence whatsoever.

12 Second, that although there are flaws, there are
13 serious security flaws in voting system components, that
14 doesn't mean that the election was hacked, and it
15 certainly does not mean that it was hacked by Dr. Coomer;
16 you just can't conclude that on the basis of the existence
17 of vulnerabilities. There is a world of difference
18 between a problem that could potentially be exploited
19 under some circumstances and absolute proof that the
20 election was hacked.

21 Saying that Dr. Coomer personally stole the
22 election or was the mastermind of such a scheme, I think
23 that's just implausible. And we can go into the reasons
24 why. The allegations that Mr. Lindell was making were
25 generally implausible. They were based on wild

1 speculation. They were readily debunked, and many of them
2 were technically incoherent. Lindell's so-called
3 evidence, I examined it, it's fake.

4 Q. Before we get into the specifics about your opinions
5 and how you formed them, I do want to make sure -- I don't
6 think I need to do this, but I would move to offer him as
7 an expert. It should be obvious at this point.

8 THE COURT: Any objection to the tender?

9 MR. KACHOUROFF: No objection to him being offered
10 as an expert in the field of computer science.

11 THE COURT: Do you want a different field?

12 MS. MORGAN: Election cybersecurity would be my
13 preference.

14 MR. KACHOUROFF: Sure, that is fine.

15 THE COURT: Without objection, he will be so
16 qualified as an expert in the field of computer science,
17 with specific expertise in election cybersecurity.

18 Q. (BY MS. MORGAN) Have you ever warned of security
19 weakness in voting systems?

20 A. I certainly have. I think you saw some clips,
21 although they were taken out of context, of me giving some
22 of those warnings, just a few minutes ago. I, and other
23 scientists, have been -- who study election security, have
24 been discussing problems for a number of years now. And,
25 in fact, it is not just me, by any stretch.

1 So you see here on the screen on the left, this is
2 the cover of what is called a Consensus Report, a study
3 issued by the National Academies. And the National
4 Academies, if you don't know what that is, it is an
5 organization of scientists chartered by Congress in the
6 nineteenth century in order to find some of the leading
7 scientists in the country to advise government and policy
8 on technical matters.

9 But the National Academies does what are called
10 Consensus Reports of this form, and that means they
11 charter a group of distinguished scientists to spend 9
12 months, a year sometimes, studying an issue, bringing in
13 panels of other experts to testify, and formally give
14 their views and evidence. And then the National Academies
15 writes one of these reports representing what science
16 thinks on the topic.

17 And in 2018, the National Academies produced this
18 report, and among the conclusions of the report are that
19 that technology cannot fully secure electronic voting
20 systems by itself, we can't fully secure computer RS
21 voting systems against cyber threats.

22 And that for those reasons, we should be calling on
23 all states to implement essentially paper ballots and
24 risk-limiting audits, which are a way of going in later by
25 hand and making sure that those paper ballots agree with

1 the announced election result; basically checking the
2 election result to make sure it is right by using the
3 paper ballots and going back and looking at enough of them
4 by hand.

5 So those are the scientific views that I -- and I
6 guess I was one of the people testifying to this National
7 Academies Consensus Report Committee. And these views
8 reflect what the scientific view on elections has been for
9 quite some time; that there are vulnerabilities, there are
10 serious risks, and we should address them by using paper
11 ballots and performing rigorous audits of those paper
12 ballots to make sure that the computers involved counted
13 things correctly.

14 Q. How would you compare your work, and that work you
15 were just describing at the National Academies, with
16 Mr. Lindell's and the other defendants' claims at issue in
17 this case?

18 A. Well, you will notice when I was reviewing the
19 scientific perspective, that I didn't mention anything
20 about evidence of elections having been hacked, because
21 the scientific -- essentially every credible scientist you
22 can find who has studied problems of elections, will tell
23 you that there are real vulnerabilities, but we don't have
24 any evidence that any U.S. election result has ever been
25 changed by hacking.

1 So there are potential problems. These are
2 prospective forward-looking problems that are important
3 for policy makers to address, but we have no evidence that
4 we can point to that they have changed the result of any
5 election.

6 Mr. Lindell's view -- and I think I have heard him
7 -- I was here for his testimony, and I got to hear
8 Mr. Lindell's views about that he also would like to see
9 paper ballots, but his views in his films go well beyond
10 that. His view is I have absolute proof, I have evidence
11 that will prove to the Supreme Court that the 2020
12 election result was changed by hacking. And there is no
13 credible evidence, there is no credible scientist who
14 agrees with that. That is science fiction.

15 So I think it was H.G. Wells, right, the great
16 science fiction author, who said, "The recipe for really
17 good science fiction is you take the world exactly as it
18 is and just change one key fact." And the one key fact
19 that Mr. Lindell has changed is whether there is any
20 credible evidence at all that the 2020 election was
21 hacked, and there is not. And that is what separates the
22 science fiction on this topic that you have seen in
23 Mr. Lindell's films from the science that we see from the
24 National Academies.

25 Q. The jury just saw some films that Mr. Lindell

1 produced, and I don't want to go clip by clip, but could
2 you explain what has changed between 2016 and the 2020
3 elections?

4 A. Well, sure. So 2016 -- during the 2016 election, we
5 had something happen in this country that we really hadn't
6 ever seen before, which is that there were attempts by a
7 foreign government to infiltrate election-related computer
8 systems, and these were coming from the Russian
9 government, and they were publicized at the time. Then
10 after, the 2016 election was investigated by the
11 intelligence community, by the Senate Intelligence
12 Committee and others.

13 And this was a major wake-up call for election
14 security in this country, that for too many years we had
15 under-appreciated the mechanics of our elections, a lot of
16 equipment was very out of date, states were not often
17 performing enough audits of the results, and the clips
18 that you saw, one of them was an excerpt of me testifying
19 to the Senate, and the core of my Senate testimony was,
20 there are real threats here, we have to get more serious
21 about making sure that we have paper ballots and rigorous
22 risk-limiting audits.

23 Some of those other presentations that you saw were
24 me explaining that we have real vulnerabilities, but those
25 presentations I gave always ended up with what we need are

1 paper ballots and risk-limiting audits, and we can get
2 there by 2020 if we have action by the states and the
3 federal government.

4 As a result of these policy moves in the period of
5 2016 to 2020, we did have some very significant
6 improvements. So Congress, in 2018 or 2019, gave the
7 states \$380 million in funding for new equipment, and many
8 states used that money to replace equipment that was at
9 that point 10, 15 years old, with new voting equipment,
10 many of them -- almost all of the states replaced the
11 equipment that was most dangerous, that is equipment that
12 had no paper at all, with equipment that had a paper
13 record.

14 And a number of states improved their post-election
15 audits or started to implement risk-limiting audits, at
16 least for certain contests and high-profile elections like
17 the presidential contest. And so there was certain
18 progress along all of those fronts between 2016 and 2020.
19 And frankly a lot of it was concentrated in the states
20 that were predicted to be key swing states once again in
21 2020, because those were the most likely to face threats.

22 Q. Approximately what percentage of states in the 2020
23 election had some kind of paper record?

24 A. I think it went from in 2016, there were probably 30
25 percent of U.S. voters that didn't have any paper record

1 of their vote, and that dropped to 10 percent by 2020. So
2 it was 90 percent of votes were recorded on some form of
3 paper.

4 Q. Did that approximate 90 percent of some states that
5 had a paper trail for the votes, did that include the key
6 swing states?

7 A. That did include all of the -- I think by 2020, the
8 only state that was fully paperless, I think, was
9 Louisiana, and there was some smaller parts of other
10 states, but every state that you would consider a swing
11 state had a full paper trail by 2020.

12 MS. MORGAN: I am mindful of my time, Your Honor,
13 so I will make this my last question for the day.

14 Q. (BY MS. MORGAN) If there are indeed vulnerabilities,
15 as you have testified to, wouldn't it be reasonable for
16 someone to assume that hacking had happened and changed
17 the outcome of the 2020 election?

18 A. Well, no, and, look, for several reasons. So one, we
19 have never found evidence of hacking in a past election.
20 Two, it is not binary, right. It is not -- you don't have
21 to choose between believing the election is a hundred
22 percent trustworthy and the election is zero percent
23 trustworthy. There is room, perhaps, based on the
24 vulnerabilities that exist, for some doubt, but that is
25 not enough to conclude absolutely, oh, it must have been

1 hacked.

2 And that is what it might have looked like, and I
3 am saying that that is what it looked like perhaps to a
4 reasonable observer in the days after, the immediate
5 aftermath of the 2020 election. In the time since then,
6 over the days, the weeks, the months that followed the
7 election, the election result has been studied and has
8 been tested in so many different ways, without any
9 evidence, any credible evidence of tampering having
10 emerged.

11 And, moreover, the election has been audited. And
12 it has been audited in -- by having people in each of the
13 closest swing states, each of the six states that
14 Mr. Trump most closely lost, I suppose, conducted an audit
15 of at least part of their results by going back and having
16 people look at the paper ballots.

17 None of those audits turned up any evidence, any
18 evidence that the machines were wrong, the outcome was
19 wrong. Those audits provide affirmative evidence that the
20 result was almost certainly right. So the 2020 election
21 at this point, I think it is the most studied contest in
22 American history, and as much as from a scientific
23 curiosity point of view I would love to see some evidence
24 that convinces me, oh, there was some problem, we have to
25 study it, let's get the scientists out there, nothing has

1 emerged, no credible evidence whatsoever that the election
2 was interfered with by hacking voting machines, by hackers
3 changing votes. There is none.

4 MS. MORGAN: Thank you, Your Honor.

5 THE COURT: So, ladies and gentlemen of the jury,
6 it is 4:55. Counsel has reached a break for today. I am
7 going to release you for the evening, with the normal
8 admonitions, do not talk to anyone or each other about
9 what you are hearing at trial, and do not do any research.
10 Do not expose yourself to any media or any other form of
11 information with respect to this case.

12 Thank you so much. We will see you back here at
13 8:45 tomorrow, with a start time hopefully as close to
14 9:00 a.m. as we can.

15 (Outside the presence of the jury.)

16 THE COURT: All right. Thank you.

17 Counsel, please be seated. Anything you want to
18 bring to the Court's attention now?

19 MS. MORGAN: Yes, Your Honor. Very briefly, we
20 will be proposing a limiting instruction for the videos
21 247, 229, and 231, and those are A, I apologize.

22 THE COURT: All right. Ms. DeMaster.

23 MS. DEMASTER: Your Honor, we want to address,
24 unless the Court wants to do this perhaps tomorrow,
25 address the instructions, willful and wanton conduct

1 and -- well, would you like to do that tomorrow?

2 THE COURT: I think we do need to, but given the
3 time limitations, let's just make sure we are here by 8:30
4 so we can address that and finalize the jury instructions.

5 MR. KACHOUROFF: Thank you. I will have argument
6 about them.

7 THE COURT: I note that they are drawn, it appears,
8 from the Colorado Model Jury Instructions.

9 MS. DEMASTER: Yes, but there are no scenarios
10 pertaining to other information when it comes to a First
11 Amendment or a speech or conduct-related matter, and it
12 does draw them to that. So I think there are some changes
13 that need to be done.

14 THE COURT: So I would anticipate that you would
15 meet and confer with opposing counsel and see if you can
16 reach resolution or stipulation as to that instruction.
17 And then we will also send you the Court's proposed
18 glossary. We would propose that we put that right after
19 the instruction with respect to stipulated facts, it seems
20 to fit there, and so you all can consider that, and we
21 will address it first thing tomorrow morning.

22 MS. DEMASTER: Thank you, Your Honor.

23 THE COURT: All right.

24 MR. CAIN: I am sorry, the schedule. So we --
25 after Dr. Halderman testifies, that will conclude our

1 evidence.

2 THE COURT: All right.

3 MR. CAIN: Then we will have, I guess, Peter Kent.
4 I guess my point is I am trying to figure out how hard I
5 have to work on closings tonight.

6 THE COURT: I assume we will have Mr. Kent
7 immediately after Dr. Halderman is completed.

8 MR. KACHOUROFF: That is the plan.

9 THE COURT: And then depending on how long that
10 takes, we will need to figure out if there is anything
11 else we need to address outside the province of the jury.
12 I mean, the extent of these instructions is going to take
13 me a while just to read them. And so unless somehow we
14 are very quick in all of that and we are reading them by,
15 I would say, 1 o'clock tomorrow, actually reading the
16 instructions, because given the length of the
17 instructions, I think it might take me a good 30 to 45
18 minutes just to read the instructions. And it doesn't
19 make sense to me to instruct the jury and then have you
20 all recess for the day and not do closings.

21 You all know closings need to be limited to an
22 hour, but if we can get done in time to accommodate about
23 3 hours tomorrow afternoon, we will proceed.

24 MR. KACHOUROFF: We won't need that long, Your
25 Honor.

1 THE COURT: So it sounds like we may proceed to
2 closings tomorrow.

3 All right. We will be in recess. Thank you.

4 (Proceedings conclude at 4:58 p.m.)

5

6 **R E P O R T E R ' S C E R T I F I C A T E**

7

8 I, Darlene M. Martinez, Official Certified
9 Shorthand Reporter for the United States District Court,
10 District of Colorado, do hereby certify that the foregoing
11 is a true and accurate transcript of the proceedings had
12 as taken stenographically by me at the time and place
13 aforementioned.

14

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16 Dated this 3rd day of August, 2025.

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21 _____
s/Darlene M. Martinez

22 RMR, CRR

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*DARLENE M. MARTINEZ, RMR, CRR
United States District Court
For the District of Colorado*