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CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Hearing

Date: May 20, 2022

Case: Depp, II -v- Heard

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN C. DEPP, II, :

Plaintiff and :

Counterclaim Defendant, :

v. : Civil Action No.

AMBER LAURA HEARD, : CL-2019-0002911

Defendant and :

Counterclaim Plaintiff. :

-----x

HEARING

BEFORE THE HONORABLE PENNEY AZCARATE, and jury.

Fairfax, Virginia

Friday, May 20, 2022

8:01 a.m. EDT

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Pages: 1 - 156

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Held at:

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4110 Chain Bridge Road
Courtroom 5J
Fairfax, Virginia 22030
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1 P R O C E E D I N G S

2 (The court reporter was sworn.)

3 THE COURT: All right. Are we ready to
4 do jury instructions?

5 MR. MONIZ: Yes, Your Honor.

6 THE COURT: All right. Let's go ahead.
7 What I'm going to do is I'm going to set aside the
8 ones that are agreed upon or at least not --
9 there's no objection to. Let's put it that way.
10 So, just for the record, let me go through those.

11 So the ones that the defendant does not
12 object to the plaintiff's jury instructions are
13 Plaintiff's Number 3, Number 5, Number 6, Number
14 7, Number 8, Number 9, Number 10, Number 12,
15 Number 13, Number 18 and Number 30.

16 So I'm just going to put those to the
17 side for a moment, because we have multiples and
18 there will be no objection.

19 Now, then for -- on the defendant's
20 stack the plaintiff has no objection to
21 Defendant's I, Defendant's J, L, M, N, O, P, Q, R,
22 S, T, U, V, X, BB, HH and LL. So I'll put those

1 to the side.

2 And then also the defendant has
3 withdrawn UU, VV, WW, XX, YY, ZZ, AAA and BBB.

4 All right. So those have been withdrawn. That
5 leaves us with the stacks we're going to be
6 working with to begin with. Okay? All right.

7 So we'll look to the first instructions
8 we have. Plaintiff's 1 and 2 are the first
9 instructions which are the liability issues. And
10 that correlates with Defendant's A, B -- A and B;
11 correct? All right. Everybody is with me so far?

12 MR. ROTTENBORN: That's right, Your
13 Honor.

14 THE COURT: Okay. All right. So we
15 have those two jury instructions that we oppose.
16 And I've read your objections. Since I think they
17 need to be figured out a little bit, we can do --
18 I think -- I understand what you're trying to do
19 with these instructions.

20 I think it's better if we try to follow
21 Instruction 37.000 as much as possible because
22 it's a model instruction. And this is not the

1 finding instruction. This is just an instruction
2 to tell the jury, okay, this is what the case is
3 and this is what you're going to be looking at.

4 So I don't want to get too much in the
5 weeds on this instruction. They have a finding
6 instruction which is what they're going to be
7 focusing on to decide liability. So on this one
8 we should just be looking at the thirty-seven
9 hundred; just basically going from that matter.
10 So I'd like to follow the model as much as
11 possible.

12 And Mr. Depp's Jury Number 1, it -- I do
13 agree "adopted" is not part of the evidence and
14 shouldn't be a part of it. It should just be -- I
15 understand you want to have more than number one
16 on the model instruction, did the defendant make
17 the following statement. You want to make it, did
18 the defendant make or publish any of the following
19 statements.

20 Is there any objection to that, getting
21 rid of the word "adopt"? That was your objection;
22 was the "adopt."

1 MR. MONIZ: I think we're fine dropping
2 "adopt," Your Honor.

3 THE COURT: Okay. So -- so for the
4 first instruction everything in the first part is
5 fine. Just getting rid of the word or "adopt" and
6 just make it made or published is fine.

7 And when -- there was also an objection
8 to "suggest." I --

9 MR. ROTTENBORN: That's right.

10 THE COURT: So you don't have a problem
11 with it saying, do any of Ms. Heard's statements
12 imply or insinuate anything about Mr. Depp as long
13 as we take out the "suggest" word? Okay.

14 MR. ROTTENBORN: That's right, Your
15 Honor.

16 THE COURT: So any objection now? We'll
17 just take out the "suggest" word.

18 MR. MONIZ: I -- yeah, I think that's
19 fine, Your Honor.

20 THE COURT: Okay. All right. Then so
21 number two is fine. Number three. Number four.
22 I don't think there's any issue with that. I

1 think number five -- are the implications -- again
2 take out "suggestions" -- or insinuations. So
3 we'll take out "suggestions" there. Six, take out
4 "suggestions." Seven, take out "suggested."

5 And then is there any objection then to
6 Number 1 if we do that?

7 MR. ROTTENBORN: So two -- two small
8 objections, Your Honor, or two -- two objections,
9 Your Honor, I think in light of the changes that
10 you've made.

11 THE COURT: Okay.

12 MR. ROTTENBORN: One, we think that
13 there -- there may need to be some clarifying
14 language if -- we understand the desire to keep
15 the instructions as -- as trimmed down as possible
16 and have alternative --

17 THE COURT: Right.

18 MR. ROTTENBORN: -- statements. But I
19 think that there needs to be some statement to the
20 jury that for each of the statements they need to
21 find each of --

22 THE COURT: Well, that's what the

1 finding ones are for. And each finding one has to
2 be separate. That's the law in Virginia. You
3 have to have the -- the statements separate. So I
4 can't have them together like you have them.

5 MR. ROTTENBORN: Okay. As long as --

6 THE COURT: So when we get to the
7 finding we're going to do each of them separate.

8 MR. ROTTENBORN: Got it. Okay.

9 THE COURT: Okay? Again, this is just
10 to give them a brief overview --

11 MR. ROTTENBORN: I'm sorry.

12 THE COURT: -- of what --

13 MR. ROTTENBORN: Yeah.

14 THE COURT: -- they're doing, if that's
15 okay.

16 MR. ROTTENBORN: Understood.

17 THE COURT: Okay.

18 MR. ROTTENBORN: So I -- I think with
19 that the only other -- the only other thing that
20 we'd say is I think -- our position is that his
21 claim is not a defamation per se claim because the
22 implication of potential domestic abuse, which is

1 nowhere on the face of the article, is not
2 defamation per se in the same way that our
3 counterclaim which is saying essentially
4 obstruction of justice, falsifying police reports,
5 all sorts of things that are clear crimes, that's
6 defamation per se. We don't believe that --

7 THE COURT: But --

8 MR. ROTTENBORN: -- their defamatory
9 implication is defamation per se. So we think it
10 should be 37.010.

11 THE COURT: But just in the state of the
12 case, I do believe Judge White already found
13 defamation per se for domestic assault. Correct?
14 That was in his...

15 MR. ROTTENBORN: Okay.

16 THE COURT: I -- I understand that. And
17 when I looked through everything since -- you
18 know, I don't like to go backwards. But I do
19 believe -- am I right or wrong?

20 MR. CHEW: That's correct, Your Honor.
21 I was -- I argued that and -- yes.

22 MR. ROTTENBORN: Does Your Honor -- and

1 I'm sorry for -- for not having this at the top of
2 my head. Was it in a -- was it in a dispositive
3 order, Your Honor?

4 THE COURT: Yeah. It was -- it was one
5 of --

6 MR. ROTTENBORN: My understanding was
7 that he had found that it could potentially be.

8 MR. CHEW: I think it was in the opinion
9 letter, Your Honor. I -- we --

10 THE COURT: Yeah. He found it as --

11 MR. ROTTENBORN: Okay.

12 THE COURT: -- defamation --

13 MR. ROTTENBORN: Okay.

14 THE COURT: -- per se --

15 MR. ROTTENBORN: All right.

16 THE COURT: -- in his opinion letter.

17 MR. ROTTENBORN: We -- we have that
18 here. Yeah.

19 THE COURT: Okay.

20 MR. ROTTENBORN: Okay.

21 THE COURT: So I just --

22 MR. ROTTENBORN: Okay.

1 THE COURT: Because of that -- and
2 that's the --

3 MR. ROTTENBORN: Just to make the
4 record --

5 THE COURT: -- the rule of the case.

6 MR. ROTTENBORN: -- we -- we don't
7 believe that that -- we disagree with that ruling,
8 but we understand.

9 THE COURT: That's where we are.

10 MR. ROTTENBORN: That's where we are.

11 THE COURT: Okay. All right. So as far
12 as Instruction 1 then with those corrections and
13 deletions, we'll give -- we'll give 1. Based on
14 that I won't give Instruction A of defendant
15 because that's the liability issue also. Okay?

16 MR. ROTTENBORN: Okay.

17 THE COURT: Understood?

18 MR. ROTTENBORN: Yeah.

19 THE COURT: Okay. So I'm going to try
20 to make clean stacks up here, because I will
21 forget as we go through --

22 MR. ROTTENBORN: What's in them.

1 THE COURT: -- 80 different
2 instructions. Okay. All right. Withdraw stack
3 and give.

4 So the ones that we do end up -- I'll go
5 over them in the end, but the ones that we end up
6 instructing I'm going to need clean copies without
7 any cites on them as well. Okay?

8 MR. ROTTENBORN: Yeah.

9 THE COURT: Okay. All right. So we're
10 giving that one. All right. And now for -- that
11 leaves us with the second one which is Ms. Heard's
12 claims against Mr. Depp.

13 And when I look at that I -- there's --
14 as far as Plaintiff's Number 2, there are items in
15 here that I don't believe for this particular
16 instruction should be in. I think the cleaner one
17 is Instruction B by the defendant.

18 But does any -- do you have any
19 objection to the Defendant's B being the
20 liability?

21 MR. MONIZ: Just one minute. Sorry,
22 Your Honor.

1 THE COURT: Sure. And I'll just give
2 you an example. Number six in Number 2, employee
3 or independent contractor. We'll get into that
4 later, but that's not going to be in there.

5 Also, are the statements pure
6 expressions of opinion, again, that's already been
7 decided. So none of that gets in there. So
8 that's why I think B is a cleaner...

9 MR. MONIZ: I think -- I think we're
10 okay with -- I mean, I think B is basically a
11 mirror image of what we're ending up with on --

12 THE COURT: Okay.

13 MR. MONIZ: -- 1. So I think that's
14 okay.

15 THE COURT: All right. So we'll give B.
16 And we'll withdraw then 2.

17 MR. ROTTENBORN: Thank you, Your Honor.

18 THE COURT: Okay. All right. For --
19 Plaintiff's 3 was -- there was no objection. So
20 we'll move to Plaintiff's 4, expert witnesses.

21 And I think this mirrors -- well, the --
22 the defendant has -- if you pull up their

1 Instructions T, U and V, those discuss expert
2 witnesses as well. So let's look at those
3 together. And I think there was no objection to
4 T, U and V. Correct? The plaintiffs didn't
5 object to T, U and V.

6 MR. CRAWFORD: I believe that's correct,
7 Your Honor.

8 THE COURT: All right. So based on that
9 we have T, U and V all about expert witnesses, can
10 you withdraw this one?

11 MR. CRAWFORD: We can withdraw 4, Your
12 Honor.

13 THE COURT: Perfect. So we'll withdraw
14 4. And we will use the T, U and V.

15 Then the next one that wasn't objected
16 to is Number 11 on the plaintiff's which is the
17 Allen charge. That would only be given if the --
18 if the jury is hung or something. So we'll put
19 that to the side or --

20 MR. MONIZ: Yes, Your Honor.

21 THE COURT: -- withdraw it for now.
22 Okay?

1 MR. MONIZ: All right.

2 THE COURT: And, actually, I have a
3 federal Allen charge that I think is a little
4 better than this if we -- hopefully we won't have
5 to get to it.

6 MR. MONIZ: Hopefully not, Your Honor.

7 THE COURT: But that's -- that I will
8 withdraw for the moment. All right.

9 So that leaves us with Number 14 which I
10 believe could be -- is -- defendant has C, D and E
11 as their finding instructions. And, again, the
12 reason that Number 14 can't be given is because
13 you have all of the statements together.

14 MR. MONIZ: Right.

15 THE COURT: So I can't --

16 MR. MONIZ: We can -- we can split that
17 apart.

18 THE COURT: Well, the defendant already
19 has. So why don't we just look at theirs.

20 MR. MONIZ: Okay.

21 THE COURT: Okay? All right. So let's
22 look at Defendant's C. All right. I might as

1 well start talking about this now because this --
2 and the finding instruction talks about the
3 statutory immunity. All right. You're going to
4 have to walk a path with me here.

5 MR. MONIZ: Okay.

6 THE COURT: Okay?

7 MR. MONIZ: Okay.

8 THE COURT: Because when we're going
9 through these jury instructions it's becoming
10 quite clear that there's some things we need to
11 talk about. All right.

12 So 8.01-223.2 is immunity of persons for
13 statements made at public hearings or communicated
14 to a third party. Okay. We've already had
15 pretrial motions that you have the anti-SLAPP
16 defense.

17 Now, when you get to the bottom of
18 this -- because I know in here you say that --
19 evidence that Ms. Heard has lost her statutory
20 immunity. She actually doesn't have statutory
21 immunity unless -- because it says in the last
22 sentence of Subsection A, the immunity provided by

1 this section shall not apply -- so she doesn't
2 have it -- to any statement made with -- and then
3 they give the definition of actual malice --
4 actual or constructive knowledge that they are
5 false or with reckless disregard for whether they
6 are false; which word for word is the definition
7 of actual malice.

8 So here's -- here's the path I'm
9 walking. Okay?

10 MR. ROTTENBORN: Okay.

11 THE COURT: So the -- if she has
12 immunity, she -- she does not have immunity if
13 there's actual malice. In this particular case
14 it's very unique because they're public figures.
15 The only way you find liability is with actual
16 malice.

17 So if the jury finds that there is
18 defamation in this case and actual malice, then
19 there is no immunity. And so if there's --
20 there's no way she can be -- if they don't find
21 actual malice, there is no liability. So there's
22 no defense. So I -- I don't know how this comes

1 into play.

2 MR. ROTTENBORN: Okay.

3 MS. MCCAFFERTY: The -- the statute is
4 phrased differently. Chief Judge White when he
5 was providing -- presiding held that the
6 statements were matters of public concern so that
7 the first prong was satisfied and immunity
8 attached.

9 And we would view the statute as
10 requiring an instruction on whether immunity was
11 lost because of actual malice.

12 THE COURT: It doesn't attach. This
13 statute doesn't say that. And he ruled that it
14 was a matter of public concern. And I did too.
15 Okay.

16 MR. ROTTENBORN: Okay.

17 THE COURT: But I'm not saying that
18 immunity attaches, because that's not what -- the
19 statute says it cannot attach if it's actual
20 malice. Okay? The immunity provided by this
21 section shall not apply to any statements. That
22 doesn't say that you lose your immunity. It says

1 it shall not apply if the statements are actual
2 malice.

3 MR. ROTTENBORN: Okay.

4 THE COURT: So it's not something that
5 she's lost. And also I just don't know how --
6 it's almost a moot point in this case at this
7 point because -- since you have to find actual
8 malice.

9 There's just no way -- I mean, I can
10 give an instruction about what statutory immunity
11 is. But if they find actual malice, there is no
12 immunity. And if they don't find actual malice,
13 there's no liability in this particular case.

14 I mean, it would be different if it was
15 just a reckless disregard; if somebody -- if I --
16 if I sued Samy -- I'm not going to sue you. But
17 if I sued Samy --

18 MR. ROTTENBORN: You never know.

19 THE COURT: -- and he -- he was giving
20 the defense, I would only have to show a reckless
21 disregard. I wouldn't have to show actual malice
22 in that matter. And his defense is this

1 anti-SLAPP statute.

2 Then -- then I would have to go back and
3 show that it's actual malice at that point. And
4 he might be able to get his defense in, but in
5 this particular case since we have to show actual
6 malice --

7 MR. ROTTENBORN: Understood, Your Honor.
8 And I'm just looking at the -- is the -- is the
9 standard -- I know it's very similar. I'm just
10 seeing if the standard for immunity is in any way
11 materially different from the standard for actual
12 malice, because the language is slightly different
13 which is sort of weird; because I agree with you
14 that it's almost the same.

15 MS. MCCAFFERTY: Actual malice doesn't
16 have the phrase "constructive knowledge." So it
17 could potentially be different. And we would
18 maintain it is.

19 THE COURT: But wouldn't you think that
20 would be a lower standard than actual malice?

21 MR. MONIZ: Yes.

22 MS. MCCAFFERTY: Well, it --

1 MR. ROTTENBORN: Reckless disregard.

2 MS. MCCAFFERTY: So this looks like
3 actual -- it could be actual malice or
4 constructive knowledge.

5 THE COURT: Right. But if it's
6 constructive knowledge, that's less than actual
7 malice.

8 MR. ROTTENBORN: I understand your
9 position, Your Honor. And it's -- I agree it's --
10 it's materially close enough that that's -- that's
11 fine. And I agree. If the jury finds actual
12 malice, then immunity would be lost.

13 THE COURT: Or never attached.

14 MR. ROTTENBORN: Never -- never
15 attached.

16 THE COURT: So that just -- so now we
17 can go back to the jury instructions, because I
18 don't know how you --

19 MR. ROTTENBORN: Right. So if we -- if
20 we go to Instruction C, then I think if we just
21 get rid of -- of paragraph 11 --

22 THE COURT: Okay.

1 MR. ROTTENBORN: -- would that -- I
2 think that would do it.

3 THE COURT: I think that satisfies it.
4 Correct.

5 MR. ROTTENBORN: Okay.

6 THE COURT: Any objection to that then?

7 MR. MONIZ: A couple of additional
8 objections, Your Honor. First of all, nine,
9 paragraph nine, the -- the requirement that
10 Mr. Depp sustained actual damage, the court has
11 found that this is defamation per se --

12 THE COURT: Right.

13 MR. MONIZ: -- so that nine should come
14 out as well.

15 THE COURT: All right.

16 MR. MONIZ: In -- in paragraph one it
17 says, Ms. Heard made the following statement.
18 Consistent with Your Honor's prior ruling, I think
19 that should say made or published.

20 THE COURT: Okay. And that's -- made or
21 published.

22 MR. ROTTENBORN: That's fine, Your

1 Honor.

2 THE COURT: All right. Made or
3 published. And then did you hear him talk about
4 number nine about the actual damages?

5 MR. ROTTENBORN: I -- I didn't. I'm
6 sorry. Can you --

7 THE COURT: Since we -- since Judge
8 White had found that it was per se.

9 MR. ROTTENBORN: Yeah. I think as long
10 as both -- it's -- it's the same for both, then
11 that's fine.

12 THE COURT: Okay. So --

13 MR. MONIZ: Just a couple -- just a
14 couple more points.

15 THE COURT: Sure. Well --

16 MR. ROTTENBORN: Just to be clear, would
17 we get rid of --

18 THE COURT: Well, we'll just --

19 MR. ROTTENBORN: -- just strike through
20 number --

21 THE COURT: Yeah, I think so. Let me
22 just find the finding instruction to make sure.

1 MR. MONIZ: And just a couple more
2 points, Your Honor.

3 THE COURT: Hold on. Yeah. I think we
4 get nine out as well as -- do you agree,
5 Mr. Rottenborn?

6 MR. ROTTENBORN: I agree.

7 THE COURT: Okay.

8 MR. ROTTENBORN: And we would just
9 renumber 10 as number nine.

10 THE COURT: Number 10 would be number
11 nine. Okay. Yes, sir. What else?

12 MR. MONIZ: Oh, I'm sorry. So three
13 and -- three, four and five are a little bit
14 problematic because it says -- three is the
15 statement is false. Four is the statement has a
16 defamatory implication.

17 The issue is whether the defamatory
18 implication is false not whether the statement
19 itself is false. A literally true statement with
20 a false defamatory implication can still sustain
21 a -- a claim for defamation. So that language I
22 think is a little bit problematic for us.

1 THE COURT: I mean, if we look at the
2 finding instruction, 37.090, defendant made the
3 following statement, which we changed to made or
4 published the following statement, and you put the
5 words, it was heard or seen by someone other than
6 plaintiff, it was about the plaintiff and it was
7 false.

8 MR. MONIZ: Right. All -- all I'm
9 saying, Your Honor, is I -- I do think that since
10 this is defamation by implication it's a little
11 bit different because the question is whether the
12 defamatory implication is false, not whether the
13 statement itself is false. I mean, a true
14 statement that carries a defamatory implication --

15 THE COURT: Well, the -- the defamatory
16 implication you're getting in this is that it's
17 about Mr. Depp.

18 MR. MONIZ: Right.

19 THE COURT: That's the only implication.

20 MR. MONIZ: Yeah. That's what we're
21 talking about, the -- the defamatory implication
22 about Mr. Depp. So I -- I just think it might be

1 a little more helpful for the jury to clarify --

2 THE COURT: Well, you still -- they
3 still have to show that the statement is false,
4 though.

5 MR. ROTTENBORN: Correct.

6 MR. MONIZ: Right. The statement about
7 Mr. Depp is false.

8 THE COURT: Right. The statement is
9 false. I mean, if you want to have in number
10 four, the statement has a defamatory
11 implication --

12 MR. MONIZ: About Mr. --

13 THE COURT: -- to -- to Mr. Depp or
14 towards Mr. Depp...

15 MR. ROTTENBORN: I -- I don't think it's
16 a defamatory -- it's up to the jury. It's up to
17 them to argue what the defamatory implication is.
18 It's up to the jury to decide if there is one.

19 THE COURT: Well, I understand. That's
20 what -- that the statement has a defamatory
21 implication, that's what this is asking. But the
22 implication -- the only implication --

1 MR. ROTTENBORN: I mean, we could say
2 the statement has a defamatory implication about
3 Mr. Depp.

4 THE COURT: Okay.

5 MR. ROTTENBORN: I don't --

6 MR. MONIZ: So --

7 MR. ROTTENBORN: -- I don't have a
8 problem with that.

9 THE COURT: Okay.

10 MR. MONIZ: Yeah. I think, Your Honor,
11 the problem --

12 THE COURT: Okay.

13 MR. MONIZ: -- that the problem is
14 actually three and seven, the interaction between
15 those two. They make it seem as if we have to
16 prove both that the statement is false and that
17 the defamatory implication of the statement is
18 false.

19 MR. ROTTENBORN: Well, I think that's
20 right. I mean, whatever implication they are
21 suggesting if the words are literally true and
22 they're saying, well, the words are literally true

1 so we're going to fall back under Pendleton to a
2 defamatory implication, then that -- whatever
3 implication they suggest to the jury has to be
4 false.

5 THE COURT: I think the only implication
6 in this case is that it's about Mr. Depp. I don't
7 think there's any other implication. On the face
8 the defamatory statements --

9 MR. ROTTENBORN: That -- that --

10 THE COURT: -- are either true or false.
11 I mean, the only implication in this case is --
12 the -- that it's Mr. Depp that she's talking
13 about.

14 MR. ROTTENBORN: And that Mr. Depp --
15 that -- that the statements --

16 THE COURT: That the statements are
17 false.

18 MR. ROTTENBORN: -- suggest that he
19 abused her.

20 THE COURT: Yeah.

21 MR. ROTTENBORN: Right.

22 THE COURT: But that goes with the

1 statements are false. I agree. I don't think you
2 need seven.

3 MR. ROTTENBORN: Okay.

4 THE COURT: So we can strike seven. So
5 that would leave us with one, two, three, four,
6 five, six and eight and then 10; which we'll
7 change the numbering around.

8 MR. ROTTENBORN: Okay.

9 MR. MONIZ: And on four, Your Honor,
10 just so I'm following, are -- are we changing that
11 to the statement has a defamatory --

12 THE COURT: The statement has a
13 defamatory implication about Mr. Depp.

14 MR. ROTTENBORN: Okay.

15 THE COURT: All right?

16 MR. ROTTENBORN: Yeah.

17 THE COURT: So if we can do that on C, D
18 and E, that should take care of those three
19 instructions.

20 MR. ROTTENBORN: Yeah. And just to --
21 just to be clear, Your Honor, so we're clear on
22 the statutory immunity, if Ms. Heard prevails,

1 then nothing --

2 THE COURT: She's --

3 MR. ROTTENBORN: -- we've said today --
4 we're -- we're entitled to seek -- and that's what
5 we --

6 THE COURT: You're entitled to seek
7 attorneys' fees.

8 MR. ROTTENBORN: Right. And that's
9 what we --

10 THE COURT: And going back to attorneys'
11 fees, that's something I should address too. For
12 some reason it was set with a jury. We don't do
13 juries with attorneys' fees in Virginia. So
14 that's wrong.

15 MR. ROTTENBORN: Right.

16 THE COURT: Also, the only person that
17 seems to be entitled to attorneys' fees is, if
18 any --

19 MR. ROTTENBORN: Correct.

20 THE COURT: -- Ms. Heard. If she wins,
21 she's entitled to attorneys' fees for the
22 anti-SLAPP. So I just want to make sure everybody

1 is on the same page with that. Understood?

2 MR. ROTTENBORN: Thank you.

3 MR. MONIZ: Understood based on the --
4 based on the rulings.

5 THE COURT: Yes.

6 MR. MONIZ: Yeah.

7 THE COURT: I mean, that's where we're
8 at. I mean, there is no other attorneys' fees
9 contractually or --

10 MR. ROTTENBORN: Correct.

11 THE COURT: -- anywhere else. Okay. So
12 I just wanted to make sure. So if we do get to
13 that stage, we'll talk about the attorneys'
14 fees --

15 MR. ROTTENBORN: Okay.

16 THE COURT: -- issue later.

17 MR. ROTTENBORN: Thank you.

18 THE COURT: Okay. So, yes, she -- she
19 still would be entitled to attorneys' fees based
20 on if she's not found liable on that. Okay? All
21 right. We'll work from there. Well, at least
22 she's able to argue attorneys' fees. Let's put it

1 that way.

2 MR. MONIZ: Yeah. The statute is
3 permissive --

4 THE COURT: It is permissive.

5 MR. MONIZ: -- not mandatory.

6 THE COURT: Yes. Exactly. So there
7 still could be an argument --

8 MR. ROTTENBORN: Correct.

9 THE COURT: -- but it would be a bench
10 trial.

11 MR. ROTTENBORN: Agreed.

12 THE COURT: Okay. So then we're going
13 to withdraw 14, Plaintiff's 14, because we've got
14 that taken care of. All right.

15 And going onto the finding instructions
16 on the counterclaim which would be 15, again,
17 that's -- 15 has them all together. So let's just
18 go to F -- F, G and H of the defendant's and see
19 where we are with those. All right.

20 Well, actually, Number 15 was your
21 defamation. I'm sorry. Well, let's do the
22 finding instructions first.

1 MR. ROTTENBORN: Okay.

2 THE COURT: And then we'll go back to
3 defamation by implication. Those -- that's a
4 different one. All right. So let's just look at
5 Defendant's F -- F, G and H. All right.

6 Is there any objection to these finding
7 instructions by the plaintiff?

8 MR. MONIZ: I'm sorry. My -- my
9 numbering is a little off because of --

10 THE COURT: Oh, it was 6, 7 and 8.

11 MR. MONIZ: Thank you, Your Honor.

12 THE COURT: No problem.

13 MR. MONIZ: I apologize.

14 THE COURT: That's okay. I just changed
15 them for the record because it's just much easier
16 this way.

17 MR. MONIZ: So there are a couple of
18 issues I -- that -- that we have on these,
19 unfortunately, as well. I -- I think that these
20 should address the agency issue because you only
21 get to liability on behalf of Mr. Depp if the jury
22 also finds that --

1 THE COURT: All right. We can address
2 that right now. Okay. An attorney and a client
3 have a principal and agency relationship. There's
4 no evidence of independent contractor. An
5 attorney has never been an independent contractor.
6 Your roofer is an independent contractor. An
7 attorney is not an independent contractor.

8 MR. MONIZ: Well, I think there is
9 actually authority, Your Honor, for --

10 THE COURT: There is no evidence of that
11 in this case. And it will not be given as an
12 instruction.

13 MR. MONIZ: Okay. Well, the other --
14 the other point that then we would make is on
15 number five. It -- it says, the statement was
16 made with actual malice.

17 I -- I guess I'm fine with that here,
18 but at some point we do have to clarify whose
19 malice that is. Whether we clarify that in this
20 instruction or a different instruction --

21 THE COURT: Well, it would have to be
22 Mr. Waldman's malice, right, because the agent?

1 MR. ROTTENBORN: I disagree, Your Honor.
2 There's -- it -- it could be Mr. Waldman's malice.
3 It could be Mr. Depp's malice. And here's why.

4 The case law that they cited only talks
5 about an employee and employer context. So it
6 makes sense in the context that if you have an
7 employee of a business, a business can't have a
8 state of mind.

9 So when a business -- when The New York
10 Times is sued or when The Sun is sued for
11 statements made by Dan Wootton it makes sense
12 that -- that Mr. Wootton must have had actual
13 malice.

14 It's different here. If -- if you apply
15 the law that they want you to apply, it creates a
16 huge loophole where a principal could get someone
17 unwittingly to go be an attack dog for them, to
18 make defamatory statements for them. And that
19 person who's making the statements doesn't have
20 malice because they're being -- you know, hey,
21 here's \$20, go make this statement. And then the
22 principal could never be held liable.

1 So if Mr. Depp knew that he had abused
2 Ms. Heard, he knew he had abused Ms. Heard and he
3 told Mr. Waldman, I didn't abuse Ms. Heard, go
4 make these statements about me, which the
5 evidence -- we don't believe the evidence is that
6 simple or shows that. But I'm just using it as a
7 hypothetical.

8 And Mr. Waldman went and made those
9 statements about Ms. Heard. It -- it does not
10 follow and there's no case law that they've cited
11 that supports the notion that if Mr. Waldman
12 lacked malice, Mr. Depp can't be held liable. Mr.
13 Depp can have a state of mind. A corporation
14 that's an employer can't have a state of mind.

15 THE COURT: But you're doing vicarious
16 liability. You're doing -- and so you have a
17 principal and an agent. You -- I don't think you
18 could show me any case law where a principal and
19 an agent has -- you know, you have to show actual
20 malice of -- of the principal. I mean, the agent
21 is stepping in the shoes -- in the shoes of the
22 principal.

1 MR. ROTTENBORN: Understood. But --

2 THE COURT: It's --

3 MR. ROTTENBORN: -- but I haven't seen
4 any case law that -- from the other standpoint
5 that addresses this situation. And you understand
6 the loophole --

7 THE COURT: I don't have any case law.
8 And they don't have any case law. So --

9 MR. ROTTENBORN: I understand. But you
10 understand the loophole that I'm talking about; is
11 it -- it can't be the case that an individual can
12 shield themselves from defamation liability just
13 by having someone else be their mouthpiece.

14 THE COURT: But I think in this case you
15 have principal and agency which you do define
16 later on. You're --

17 MR. ROTTENBORN: Correct.

18 THE COURT: He's stepping into his
19 shoes. So he is Mr. Depp.

20 MR. ROTTENBORN: Right. So Mr. --

21 THE COURT: So if you find that he has
22 actual malice -- and you can argue that. If you

1 find that he, you know, Mr. Depp actually -- I
2 don't know. He is Mr. Depp. So Mr. Waldman has
3 to have the actual malice; but, I mean, he is the
4 agent. So he is Mr. Depp. So --

5 MR. ROTTENBORN: Right. So --

6 THE COURT: -- therefore, Mr. Depp has
7 actual malice. I mean -- but I think the law is
8 pretty clear that it's the -- the agent that you
9 have to show actual malice.

10 MR. ROTTENBORN: But if he is stepping
11 into the shoes of Mr. Depp and we can show actual
12 malice on the part of Mr. Depp --

13 THE COURT: But they're one person. The
14 whole thing with principal and agent is they're
15 one person.

16 MR. ROTTENBORN: Correct. So showing
17 actual malice on the part of Mr. Depp is showing
18 actual malice on the part of Mr. Waldman if
19 they're -- if they're one person.

20 THE COURT: Well, and that's your
21 argument. But, I mean, I think it's --

22 MR. ROTTENBORN: And I -- and that's

1 all --

2 THE COURT: But when it comes to --

3 MR. ROTTENBORN: -- I'm saying.

4 THE COURT: -- actual malice it's
5 Mr. Waldman's because he's the one that made the
6 statements, but he is working as an agent. So,
7 therefore, it would be Mr. Depp's; but the
8 instruction is Mr. Waldman's.

9 MR. ROTTENBORN: Correct. But what I'm
10 saying is I don't think -- I think that if you say
11 it doesn't matter what Mr. Depp's state of mind is
12 as the principal, it only matters what
13 Mr. Waldman's state of mind is, then it creates --
14 that's illogical. It creates --

15 THE COURT: But his state of mind is the
16 state of mind of the principal.

17 MR. ROTTENBORN: Right. But --

18 THE COURT: They're one person.

19 MR. ROTTENBORN: Correct. So -- so it
20 goes both ways then. If Mr. -- if Mr. -- if Mr.
21 Depp knows that he's abused Ms. Heard and he sends
22 Mr. Waldman out there to be an attack dog, then

1 Ms. -- then -- then Mr. Waldman --

2 THE COURT: Then Mr. Waldman as an agent
3 will have actual malice.

4 MR. ROTTENBORN: Correct.

5 THE COURT: Correct. But it's
6 Mr. Waldman's actual malice because he's the
7 agent.

8 MR. ROTTENBORN: Correct. As long as --
9 as long as we're clear that we can argue Mr. Depp
10 knew that what he was saying --

11 THE COURT: Right.

12 MR. ROTTENBORN: -- was false and he --

13 THE COURT: And he -- and he -- and he
14 sent his agent. And they're --

15 MR. ROTTENBORN: Right.

16 THE COURT: -- the same person. You
17 can --

18 MR. ROTTENBORN: Correct.

19 THE COURT: -- clearly argue that. But
20 I think the law is clear that's Mr. Waldman's
21 actual malice only because he's the agent. Let me
22 know if you think something different.

1 MR. MONIZ: Well, by -- by definition,
2 Your Honor, if they're arguing vicarious
3 liability, literally by definition that's
4 liability for the tort of another. So Mr. Waldman
5 has to have committed the tort.

6 Holding Mr. Depp accountable for his own
7 conduct is a completely different concept. It's
8 not vicarious liability anymore. And that's the
9 whole other set of issues. If -- if the theory is
10 vicarious liability, they have to show that the
11 tort was committed by the agent and it's then
12 imputed to the principal.

13 THE COURT: Which is what you were
14 saying too.

15 MR. ROTTENBORN: Right.

16 THE COURT: Okay.

17 MR. ROTTENBORN: I mean, I think --
18 yeah. I mean, I think we're kind of saying the
19 same thing. But I think we just --

20 THE COURT: And you can argue. I mean,
21 you both can argue different --

22 MR. ROTTENBORN: Right.

1 THE COURT: -- but when it comes to the
2 law I think it -- it would say for number five Ms.
3 Heard further proved by clear and convincing
4 evidence that Mr. Waldman's -- made the statement
5 with actual malice.

6 MR. ROTTENBORN: Can we say proved by
7 clear and convincing evidence that the statements
8 by Mr. Waldman were made with actual malice?

9 THE COURT: That's fine.

10 MR. MONIZ: I think --

11 THE COURT: No?

12 MR. MONIZ: -- because -- well,
13 that's -- that's muddying the waters about
14 whose --

15 THE COURT: His statement?

16 MR. ROTTENBORN: No, it's not muddying
17 the waters. It's --

18 THE COURT: The statement made by
19 Mr. Waldman was -- what did you say? The
20 statement --

21 MR. ROTTENBORN: The statement -- the
22 statement made by Mr. Waldman -- the statement by

1 Mr. Waldman was made --

2 THE COURT: Was made --

3 MR. ROTTENBORN: -- with actual malice.

4 THE COURT: -- with actual malice.

5 MR. MONIZ: But as -- as long -- I mean,
6 are we clear that that means it's still

7 Mr. Waldman's malice, actual malice? Right?

8 THE COURT: But which will be imputed to
9 Mr. Depp.

10 MR. ROTTENBORN: Correct.

11 MR. MONIZ: Assuming it's established as
12 to Mr. Waldman, yes.

13 THE COURT: Yeah. But if he's acting
14 within his scope of principal and agent, he's
15 going to be Mr. Depp.

16 MR. MONIZ: Right. I just think the
17 jury instruction needs to be -- needs to be clear
18 that -- that the tort has to be complete with all
19 that. I think I'm okay, I think, with -- with
20 that as long as we're --

21 MR. CHEW: Excuse me.

22 MR. MONIZ: -- as long --

1 MR. CHEW: Excuse me, Your Honor. This
2 is an important point. I do think we -- we have
3 case law and we will argue it on the motion to
4 strike that it's Mr. Waldman's mens rea, that is,
5 his actual malice.

6 THE COURT: For principal and agent?

7 MR. CHEW: For principal and agent.

8 Because, I mean, they're the ones trying
9 to have it both ways. They chose not to sue
10 Mr. Waldman. And we -- we would just respectfully
11 submit we -- we do have case law that makes it
12 clear that they have to show Mr. Waldman's mens
13 rea.

14 And they clearly can't do that because
15 Mr. Waldman testified very clearly that he
16 subjectively believed that Ms. Heard was lying.
17 And he also set forth a lot of objective reasons
18 why she was lying. She cited -- he cited --

19 THE COURT: And I don't want to get into
20 the motion to strike.

21 MR. CHEW: No, I understand. But -- but
22 it's --

1 THE COURT: And there's going to be
2 evidence. But -- but it's -- when you're
3 principal and agent -- you're saying you have a
4 case that says, principal and agent, it's the mens
5 rea of the agent for actual malice.

6 MR. CHEW: We -- we have cases we'd like
7 to show Your Honor.

8 MR. MONIZ: Well --

9 MR. ROTTENBORN: They're not in here.

10 MR. MONIZ: -- I think, Your Honor -- I
11 think, Your Honor, the point is they have --

12 THE COURT: I understand that, but
13 that's -- all right. We'll -- we'll go with this,
14 but I just don't agree with you with the mens rea
15 argument at all. Okay. When you're principal and
16 agent you're stepping into the shoes of -- of your
17 principal. So -- and I think that's -- it's clear
18 in the law.

19 MR. ROTTENBORN: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. MONIZ: So -- so the jury
22 instruction then, Your Honor, is going to read --

1 THE COURT: Evidence that --

2 MR. MONIZ: That the statement by --

3 THE COURT: -- Mr. Waldman's statement
4 was made with actual malice.

5 MR. ROTTENBORN: Yeah, that's fine. I
6 said evidence that the statement by Mr. Waldman,
7 but you just --

8 THE COURT: Whichever.

9 MR. ROTTENBORN: -- yours -- yours --

10 THE COURT: Statement by Mr. Waldman.

11 MR. ROTTENBORN: -- sounds better.

12 MR. MONIZ: By Mr. Waldman. I mean,
13 I -- we would -- I mean, our position, which I
14 understand is not Your Honor's position, is that
15 it should say that Mr. Waldman made the statement
16 with actual malice.

17 THE COURT: Well, you can say the
18 statement by Mr. Waldman was made with actual
19 malice.

20 MR. ROTTENBORN: The statement by
21 Mr. Waldman. Because that --

22 THE COURT: Okay. That's fine.

1 MR. ROTTENBORN: It's Mr. Depp's
2 statement. So saying that Mr. --

3 MR. MONIZ: Well, that -- I mean, that
4 presumes --

5 MR. ROTTENBORN: And -- and up at the
6 top it says, Adam Waldman while acting as an agent
7 for Mr. Depp. So there's -- number one. So
8 there's nothing confusing about the instruction.
9 But I think if we say that the statement by
10 Mr. Waldman was made with actual malice --

11 MR. MONIZ: The -- the only additional
12 point I would make here, Your Honor, is that there
13 are two pathways they have to -- potential
14 pathways to liability.

15 I mean, Mr. Rottenborn's argument that
16 the -- that there's this huge loophole is -- is
17 not correct because if Mr. Depp sends somebody out
18 to be his mouthpiece, then that's an independently
19 tortious act and you don't even need vicarious
20 liability to get to liability.

21 THE COURT: But we're talking principal
22 and agent here.

1 MR. MONIZ: But in terms of principal
2 and agent I think the case law is -- is clear that
3 the agent commits the tort. And then because the
4 agent is an agent then it's imputed to the
5 principal.

6 If the agent doesn't commit the tort,
7 you don't get to the principal. And so that's why
8 it needs to be Mr. Waldman's actual malice in
9 order to impute the entire tort to Mr. Depp.

10 And that's a completely separate
11 question than whether -- if Mr. Depp was
12 wrongfully sending Mr. Waldman out to be his
13 mouthpiece, then you're holding Mr. Depp liable
14 for -- for direct conduct by Mr. Depp. And it's
15 no longer agency.

16 But if -- but if the theory is vicarious
17 liability, then the tort needs to be complete on
18 its own by the agent.

19 MR. ROTTENBORN: I think you understand
20 our position. And I think Your Honor --

21 THE COURT: All right. We're going to
22 keep it the way it is there. So we'll do that

1 finding instructions for F, G and H.

2 MR. ROTTENBORN: So that we'll say the
3 statement by Mr. Waldman?

4 THE COURT: Yes.

5 MR. ROTTENBORN: Okay.

6 THE COURT: All right. We're giving
7 those. All right. Moving on. All right. So
8 defamation by implication. I think we have Number
9 15 by the plaintiffs and Number Y which was
10 formerly 25 for the defendants. All right.

11 And what I propose is on -- we don't
12 really need the facts of the case in this. If
13 you're just explaining what defamation by
14 implication is, I think it should be the
15 definition of defamation by implication. And if
16 you look at Instruction Y, I think that's the
17 second paragraph, it tells you what defamation by
18 implication is.

19 MS. MCCAFFERTY: It's -- it's important
20 to us that the "designed and intended" language
21 from Pendleton be included in the instruction.

22 THE COURT: But that's just a case or --

1 I think it's much clearer if you just have the
2 definition of what defamation by implication is.
3 And that second paragraph is the definition of
4 defamation by implication.

5 And we already have finding
6 instructions. So I'm not putting more finding
7 instructions in this definition of defamation by
8 implication.

9 MR. ROTTENBORN: Okay. I think our
10 position is simply that in -- in defining
11 defamation by implication the Pendleton case says
12 that the statement must be -- the implication must
13 be designed and intended.

14 So if -- if Ms. Heard said words that
15 are literally true and they're going to argue a
16 theory of implication, she must have designed and
17 intended that implication.

18 And that comes straight out of Pendleton
19 saying at the trial the plaintiff there must prove
20 that the words were designed and -- the
21 implication was designed and intended. I think
22 those are two critical verbs that come straight --

1 THE COURT: Right. But this is not a
2 finding instruction.

3 MS. MCCAFFERTY: Did it come into the
4 finding instruction?

5 MR. ROTTENBORN: Yeah. Can we look?
6 Did it --

7 MS. MCCAFFERTY: Can we go back to the
8 finding instruction?

9 MR. ROTTENBORN: I'm sorry. I'm just
10 looking to see if that came into number six or
11 number five, I guess.

12 MS. MCCAFFERTY: Three, four and five.

13 MR. ROTTENBORN: Yes, it did. Okay. In
14 light of that I think we're fine then, Your Honor.

15 THE COURT: All right.

16 MR. ROTTENBORN: We're -- we're good
17 with just using the second paragraph.

18 THE COURT: Any objection, just -- with
19 Instruction Y, just that second paragraph, nothing
20 else?

21 MR. MONIZ: I -- I think the second
22 paragraph looks fine.

1 THE COURT: Okay.

2 MR. MONIZ: On the finding instruction
3 paragraph five that we just looked at, I mean, I
4 do think that's a little bit of an overstatement
5 because I think it's sufficient if Ms. Heard or --
6 or if either party -- for defamatory implication I
7 think the actual malice, mens rea standard
8 indicates that knowledge of the defamatory
9 implication is sufficient.

10 I don't think it needs to be designed
11 and intended. I mean, I know that language pops
12 up in a case; but I think -- I think knowledge is
13 sufficient for actual malice. And actual malice
14 is the standard.

15 MR. ROTTENBORN: It pops up in the -- in
16 the seminal case on it.

17 THE COURT: I'm -- I'm going to keep
18 that in the finding instruction, but I am going to
19 take it out of defamation by implication. We'll
20 just use that second paragraph of Y. And then
21 we'll withdraw 15. Okay.

22 MR. ROTTENBORN: Okay. So we take out

1 the first paragraph as well?

2 THE COURT: Yes.

3 MR. ROTTENBORN: Okay.

4 THE COURT: All right. Then on Number
5 16 of plaintiff's which I think is 37.10 --
6 37.105, the presumed damages. Did you have a
7 corresponding presumed damages?

8 MR. ROTTENBORN: That's -- we were
9 just -- just looking.

10 THE COURT: You have a punitive damages,
11 but I don't think you've got a presumed damages.

12 MR. ROTTENBORN: I don't -- I don't
13 believe we did, Your Honor --

14 THE COURT: Okay.

15 MR. ROTTENBORN: -- because we
16 weren't -- we weren't arguing that per se. So...

17 THE COURT: Okay. So let's -- so this
18 needs to be done for both sides --

19 MR. ROTTENBORN: Yes.

20 THE COURT: -- then. Okay. Let's see.
21 I have on the side note here, so -- just to let
22 you know when I went through it. It just says,

1 needs to be revised to remove alleged implication
2 from the instruction; should be for both parties.
3 That's what I have on the side. So let me see.

4 MR. ROTTENBORN: I think there's a model
5 instruction on this too, Your Honor. 37 --

6 THE COURT: .105.

7 MR. ROTTENBORN: -- .105.

8 MR. MONIZ: Your Honor, would it make
9 sense to just go back to the model instruction on
10 this one?

11 THE COURT: That's what I'm looking at.
12 I'm looking at the model. Is that --

13 MR. MONIZ: I think it's --

14 THE COURT: Are you making an objection?

15 MR. MONIZ: -- 37.105.

16 THE COURT: Yeah, that's what we just
17 said. But that's okay.

18 MR. MONIZ: Sorry. Sorry. Trying to do
19 too many things at once, Your Honor.

20 THE COURT: I know. I understand.

21 MR. MONIZ: I apologize.

22 THE COURT: I understand. I mean, if

1 both of you agree that we can just work the model
2 instruction for both sides...

3 MR. ROTTENBORN: I do except it's a
4 little bit unclear. It says for use where the
5 statement is defamatory per se and plaintiff has
6 established liability.

7 And so it's -- it's kind of unclear to
8 me where -- where this should be given or when it
9 should be given because I think if you -- I think
10 it's -- it's prejudicial potentially to both sides
11 to say the statement alleged in this case is
12 understood to mean.

13 That's the jury's job to decide --

14 THE COURT: Well, I mean --

15 MR. ROTTENBORN: -- if the statement is
16 understood to mean. So obviously we'd have to
17 craft language that the Court agrees with that
18 works for both sides. We certainly don't agree
19 with theirs, but I think...

20 THE COURT: I mean -- I mean, you can
21 start with, if you find your verdict for.

22 MR. ROTTENBORN: Correct. Like I would

1 just take that first sentence.

2 THE COURT: If you find your verdict for
3 the plaintiff, the plaintiff is entitled to
4 recover compensatory damages without any proof of
5 actual or pecuniary injury.

6 MR. ROTTENBORN: And then the --

7 THE COURT: Just leave it at that?

8 MR. ROTTENBORN: -- just the bolded
9 language. I think the -- and then the last
10 sentence I think is fine too.

11 THE COURT: The statement alleged in
12 this case is understood to mean that --

13 MR. ROTTENBORN: No. No.

14 THE COURT: No?

15 MR. ROTTENBORN: The "as a result."

16 THE COURT: As a result, injury to the
17 plaintiff's personal and business reputation,
18 humiliation and embarrassment is presumed. All
19 right. Any objection to that, just having that?

20 MR. MONIZ: I think that's okay, Your
21 Honor.

22 THE COURT: Okay. If we can get then --

1 I'd need two instructions for that for both sides
2 or we just have both sides in this one? Okay.
3 All right. So if we can reconstruct 16 to just be
4 off the model for both sides.

5 MR. ROTTENBORN: And so just to be
6 clear --

7 THE COURT: Or just presumed damages.

8 MR. ROTTENBORN: -- we would say, if you
9 find your verdict for the plaintiff, the plaintiff
10 is entitled to recover compensatory -- for the
11 plaintiff or the -- we -- we would make that
12 language --

13 THE COURT: Plaintiff or --

14 MR. ROTTENBORN: -- to have it --

15 THE COURT: -- counterplaintiff, yeah.

16 MR. ROTTENBORN: Right.

17 THE COURT: Or for both, yeah.

18 MR. ROTTENBORN: The plaintiff is
19 entitled to recover compensatory damages without
20 any proof of actual or pecuniary injury. As a
21 result -- or maybe we strike "as a result" and
22 just say injury to the plaintiff's --

1 THE COURT: Okay.

2 MR. ROTTENBORN: If you find --

3 THE COURT: Well, you already said that
4 up there, if you find your verdict. So then --

5 MR. ROTTENBORN: Right. So --

6 THE COURT: And you can say, as a
7 result, injury to the plaintiff's --

8 MR. ROTTENBORN: As a result, injury to
9 the plaintiff's personal --

10 THE COURT: Right.

11 MR. ROTTENBORN: -- is presumed.

12 THE COURT: Yeah.

13 MR. ROTTENBORN: Okay. Thank you.

14 THE COURT: All right. We'll get that
15 one fixed. Owed. And that will take care of
16 presumed damages. Okay. And then 17 is actual
17 damages. I think this is the same as Defendant's
18 II, if I -- which was --

19 MS. MCCAFFERTY: The -- the issue here
20 is how Mr. Depp's limitation on --

21 THE COURT: Right.

22 MS. MCCAFFERTY: -- damages will be

1 conveyed to the jury.

2 THE COURT: Right.

3 MS. MCCAFFERTY: But other than -- they
4 do match other than --

5 THE COURT: Right. The date.

6 MS. MCCAFFERTY: -- we have the
7 limitation in there.

8 THE COURT: All right. What's the
9 objection to putting the date? That is what was
10 agreed upon, November 2nd, 2020.

11 MR. MONIZ: It's agreed on, Your Honor.
12 I don't have a strong objection to it.

13 THE COURT: Okay.

14 MR. MONIZ: I mean, it does -- I don't
15 know that it's necessary because there's no
16 evidence of it. But if -- if you want that in the
17 instruction, that's fine.

18 THE COURT: I think it -- I think it
19 follows the ruling. So we'll use II. And we'll
20 withdraw 17. Okay.

21 I think 19 was your finding instruction.
22 So we'll just withdraw that because we took care

1 of the finding instructions already. All right.

2 Number 20 is -- oh, this is -- they had
3 an objection because you're using employee instead
4 of agent and principal. Do you have any objection
5 to using agent and principal?

6 And somewhere in here you put that, oh,
7 the next one, 21, for purposes of the instructions
8 the terms "employer" and "principal" mean the same
9 thing and "employee" and "agent" mean the same
10 thing.

11 MR. MONIZ: Yeah. I don't think it's --
12 I don't think there's any -- I mean, I think
13 there's even in the -- in the jury instruction
14 somewhere it says it's -- they can be used
15 interchangeably.

16 THE COURT: All right. So can we put
17 principal and agent since that's what this case is
18 about?

19 MR. MONIZ: I'm -- I'm fine with --

20 THE COURT: Okay.

21 MR. MONIZ: -- I'm fine with principal
22 and agent.

1 THE COURT: All right. So we can change
2 that to principal and agent in 18 and use that
3 one, is that fine, or did you have one similar?

4 MR. ROTTENBORN: I think we have 45, TT.

5 THE COURT: TT?

6 MR. ROTTENBORN: Yes, Your Honor.

7 THE COURT: Okay. It already says --

8 MR. ROTTENBORN: These come --

9 THE COURT: -- the same thing?

10 MR. ROTTENBORN: -- straight from the
11 models. I think it would be better.

12 THE COURT: All right. Let me find TT
13 which was formerly 45. Right? Okay. Well,
14 definition -- I think -- well, that's their 21.

15 MR. ROTTENBORN: Oh. Oh, you're saying
16 for 20 just --

17 THE COURT: 20.

18 MR. ROTTENBORN: -- Ms. Heard has the
19 burden of proving --

20 THE COURT: Just change agent and
21 principal.

22 MR. ROTTENBORN: Got it. That Mr.

1 Depp -- Ms. Heard has the burden of proving by the
2 greater weight of the evidence that Mr. --

3 THE COURT: Right.

4 MR. ROTTENBORN: -- Waldman was the
5 agent.

6 THE COURT: Right.

7 MR. ROTTENBORN: Yes. That's fine.

8 THE COURT: We're just going to change
9 agent and principal.

10 MR. ROTTENBORN: Sorry.

11 THE COURT: Acting in the scope of his
12 agency --

13 MR. ROTTENBORN: Yeah.

14 THE COURT: -- instead of employment.
15 So if we can change that to 20, I'll give 20. Now
16 we'll go to 21.

17 MR. ROTTENBORN: Yeah. Sorry about
18 that.

19 THE COURT: All right. And 21 --

20 MR. ROTTENBORN: This is where our 45 --

21 THE COURT: That's where TT is the
22 straight model. Any objection to the model then?

1 TT.

2 MR. MONIZ: I think it tracks ours
3 exactly except --

4 THE COURT: Okay.

5 MR. MONIZ: -- we have the definitions.
6 So, yeah, that's fine.

7 THE COURT: All right. So we'll
8 withdraw 21. All right. Then 22 is the
9 definition of an independent contractor. Based on
10 my rulings do you have any --

11 MR. MONIZ: Well, I mean, we -- we think
12 that the instruction should be given; but I
13 understand that Your Honor --

14 THE COURT: All right.

15 MR. MONIZ: -- is going to --

16 THE COURT: I'll just --

17 MR. MONIZ: -- disagree with us.

18 THE COURT: -- I'll just deny it over
19 objection. Denied stack. Okay.

20 Number 23, independent contractor. I'll
21 just do the same; denied over objection. Denied.
22 And Number 24, I'll do the same also. I'll note

1 your objection. I'll deny the instruction over
2 your objection. Okay.

3 Number 25, I think we just -- agent
4 while acting in the scope of his agency. Just
5 change them. Just take out employee and
6 employment and put agent and agency. Is there any
7 objection to that?

8 MR. ROTTENBORN: Doesn't -- doesn't 20
9 that we just addressed with changes cover -- isn't
10 it --

11 THE COURT: 25 is the same thing?

12 MR. ROTTENBORN: -- fairly duplicative?

13 MR. MONIZ: That actually might be
14 redundant.

15 THE COURT: Okay. Do you want to
16 withdraw 25 then?

17 MR. MONIZ: Yeah. I think that's --
18 just let me very quickly double-check the --

19 THE COURT: Sure.

20 MR. MONIZ: Yeah, I think it looks
21 like -- it looks like --

22 THE COURT: Okay.

1 MR. MONIZ: -- 20 covers 25.

2 THE COURT: I will withdraw 25 then.
3 Number 26, actual malice. So why don't we just
4 have the definition of what actual malice is? Do
5 you have -- do you have one? Does the defendant
6 have an actual malice?

7 MS. MCCAFFERTY: We have AA or 27.

8 THE COURT: Oh, AA, formerly 27?

9 MR. ROTTENBORN: Yeah.

10 THE COURT: Okay. Again, I guess the
11 question is why aren't we just having -- we
12 already have finding instructions. Why aren't we
13 just defining what actual malice is, the legal
14 definition of actual malice?

15 MR. ROTTENBORN: I think that makes
16 sense.

17 THE COURT: The reason we don't have a
18 model jury instruction on it is because of the
19 finding instructions in defamation. They -- they
20 lay out what actual malice is in the finding
21 instruction. But you -- you agreed just to put
22 actual malice in the finding instruction which is

1 fine, but then I think we just use what actual
2 malice is.

3 MR. ROTTENBORN: Agreed, Your Honor.

4 THE COURT: All right.

5 MR. ROTTENBORN: So -- which I think
6 is --

7 THE COURT: It's --

8 MR. ROTTENBORN: I think our -- I think
9 our AA is closer to that than 26, but...

10 THE COURT: Okay. Let's see. Let's
11 take a look at AA. Actual malice. Mr. Depp must
12 prove by clear and convincing evidence that at the
13 time the complaint statements were published Ms.
14 Heard made each statement either with knowledge --
15 or, again, made or published; right?

16 MR. MONIZ: Yes, Your Honor.

17 THE COURT: Made or published each
18 statement either with knowledge that the statement
19 was false or with serious doubt as to whether the
20 statement was true.

21 MR. MONIZ: Should we slip in the
22 language reckless disregard whether it's true?

1 Because I think that's actually the typical --

2 THE COURT: Well, the definition of
3 actual malice is making -- making or publishing
4 the statement knowing it to be false or believing
5 it to be true. Did the defendant lack reasonable
6 grounds for such belief or act negligently in
7 failing to ascertain the facts on which the
8 statement was based?

9 I'm sorry. Did the defendant make the
10 statement knowing it to be false or did the
11 defendant make it recklessly -- there you go.
12 There's your reckless -- as to amount to a willful
13 disregard for the truth, that is, with a high
14 degree of awareness that the statement was
15 probably false?

16 MR. ROTTENBORN: I'm sorry, Your Honor.

17 THE COURT: That's okay.

18 MR. ROTTENBORN: I was just -- I was --

19 THE COURT: I was just -- I was just
20 following the language in the -- in the
21 instruction for what actual malice is.

22 MR. ROTTENBORN: Okay.

1 MS. MCCAFFERTY: We can make number two
2 in both be, or with reckless disregard for the
3 truth, that is, with a high degree of awareness
4 that the statement was probably false --

5 THE COURT: Yeah. I just read --

6 MS. MCCAFFERTY: -- to track the model.

7 THE COURT: Okay.

8 MR. MONIZ: Yeah.

9 THE COURT: Because, yeah, serious doubt
10 is not in there. So I just wanted to make --

11 MR. ROTTENBORN: Yeah. I think there's
12 a case that defines it, but we don't need to go
13 with --

14 THE COURT: Okay. So if we can make
15 actual malice just making or publishing a
16 statement knowing it to be false or did the
17 defendant make it so recklessly as to amount to a
18 willful disregard for the truth, that is, with a
19 high degree of awareness that the statement was
20 probably false. Do we all agree to that?

21 MR. MONIZ: That makes sense, Your
22 Honor.

1 MR. ROTTENBORN: Could -- could we do it
2 so -- do we need to have a separate -- I don't
3 think we need to have separate paragraphs saying
4 Ms. Heard or Mr. Depp. Could we just say both
5 parties have the burden of proving actual malice
6 by the --

7 THE COURT: Clear and convincing --

8 MR. ROTTENBORN: -- clear and convincing
9 evidence --

10 THE COURT: And actual malice is.

11 MR. ROTTENBORN: And actual -- right.

12 THE COURT: Just put that in there.

13 MR. ROTTENBORN: Yes.

14 THE COURT: Does everybody agree to
15 that?

16 MR. MONIZ: I -- I think that's fine,
17 Your Honor.

18 THE COURT: Okay. All right. So we'll
19 get one. So that's owed to me too. We'll use AA
20 as amended, though. Okay?

21 MR. ROTTENBORN: Okay. Thank you.

22 THE COURT: Then we'll withdraw 26 based

1 on that. All right. Number 27 is opinions. This
2 is just -- the Court has already ordered -- the
3 Court has already made a ruling on this issue.

4 MR. MONIZ: I think -- I think we can
5 withdraw --

6 THE COURT: Okay.

7 MR. MONIZ: -- this instruction.

8 THE COURT: All right. Withdrawn.

9 MR. ROTTENBORN: And this is our 24. So
10 if Your Honor can just -- we can maybe withdraw
11 that too.

12 THE COURT: And what's -- what is it
13 now? I'm not --

14 MR. ROTTENBORN: Oh. What's --

15 MS. MCCAFFERTY: It's X or --

16 THE COURT: I'm sorry.

17 MR. ROTTENBORN: X.

18 MS. MCCAFFERTY: -- or 24.

19 MR. ROTTENBORN: I'm -- I'm going
20 backwards in the alphabet.

21 THE COURT: So 24; which I think there
22 was no objection. So let me just take it out of

1 that stack. Defendant's -- find 24. I don't know
2 where 24 is. Hold on. Okay.

3 MR. ROTTENBORN: I guess if there's --

4 THE COURT: X.

5 MR. ROTTENBORN: -- if there's no
6 objection, we would argue to keep 24. But --

7 MS. MCCAFFERTY: It's normally given
8 where you're comparing statements that are with --
9 alongside statements of opinion which --

10 THE COURT: We don't have here. So you
11 don't --

12 MS. MCCAFFERTY: We would like to keep
13 24.

14 MR. ROTTENBORN: And I think here --
15 here's why. I don't know what they're going to
16 argue. If you look at Ms. Heard's statements when
17 she says something like, you know, I saw firsthand
18 how institutions protect powerful men accused of
19 abuse, I don't know if the jury is going to think
20 that she has -- I mean, obviously the first half
21 of that is opinion; I saw firsthand how
22 institutions protect. Like that's -- that's her

1 opinion.

2 THE COURT: Well, I mean, that's --

3 MR. ROTTENBORN: It's --

4 THE COURT: -- not one of the defamation
5 statements in the finding instructions. So --

6 MR. MONIZ: Yeah. Your Honor, that's
7 really -- I apologize.

8 MS. MCCAFFERTY: Go ahead. This
9 instruction, it -- it -- I mean, it applies to
10 both parties. So it would apply to anything with
11 the counterclaim statements too. It tells the
12 jury how to -- what to do when you're looking at
13 statements that are surrounded by statements of
14 opinion that are actionable.

15 THE COURT: No. Well, it says, when a
16 challenge statement is made up of both opinion
17 parts and also parts which evaluate -- we don't
18 have that in this case.

19 MS. MCCAFFERTY: That's true.

20 MR. ROTTENBORN: Okay.

21 THE COURT: Okay. So we can withdraw
22 that?

1 MR. ROTTENBORN: Yeah.

2 THE COURT: Okay. Moving along. All
3 right. That gets us to Number 28 which is the
4 privilege of self-defense which I was a little
5 confused about. My notes are just, can you defend
6 it as agency. I mean...

7 MR. MONIZ: Well, if -- if the theory is
8 that -- I mean, if -- if their theory is that Mr.
9 Waldman is acting on Mr. Depp's behalf, I mean, I
10 think their -- I think that cuts both ways.

11 I -- I don't see how you can argue that
12 Mr. Depp can be held liable for Mr. Depp -- for
13 Mr. Waldman's actions in supposedly attacking
14 Ms. Heard without saying -- I mean, if -- if -- if
15 the wrongful act is imputed to Mr. Depp, then...

16 THE COURT: Okay.

17 MR. ROTTENBORN: Your Honor, I agree
18 with you. There's no case law that says --
19 suggesting that this applies in an agency. Second
20 of all, the -- the case law suggests -- and I
21 don't have the language in front of me, but
22 essentially that the -- that the self-defense must

1 be proportional to whatever's said.

2 So here there's a defamatory implication
3 by Ms. Heard in an op-ed. And for -- you know,
4 years later Mr. Waldman is attacking her on
5 Twitter. The -- the self-defense privilege is
6 extremely limited. And it's -- it's like if
7 you're -- someone accuses you of doing something
8 and you can say, no, I didn't do that, you can't
9 be sued for defamation for that.

10 Mr. Waldman going on Twitter is so far
11 beyond the case law that they cite for
12 self-defense privilege that it's -- it's going to
13 be confusing to the jury. It's not applicable.
14 And there's no suggestion or -- or support for the
15 idea that agency allows it.

16 MR. MONIZ: They can argue that, Your
17 Honor, but that doesn't mean the jury instruction
18 is not proper. I mean, if the question is
19 whether -- if the question is whether Mr. Waldman
20 is acting in defense of Mr. Depp -- I mean, it's
21 kind of the same conversation we were just having.

22 If -- if Mr. Waldman and Mr. Depp are

1 the same person for purposes of this analysis,
2 then I think that cuts both ways. I think that's
3 basic fairness. And also -- and also, I mean, I
4 think it's clear that, I mean, the case law
5 authorizes self-defense. The case law doesn't --
6 doesn't --

7 MR. ROTTENBORN: There's -- there's no
8 case law --

9 MR. MONIZ: And also -- and also, Your
10 Honor -- and we haven't put in our defensive case
11 on the counterclaim yet. But, you know, this
12 is -- this is not in response to the article.
13 This is in the context of litigation where Ms.
14 Heard is making allegations. And so -- and so the
15 defensive -- it is a defense of Mr. Depp.

16 MR. ROTTENBORN: No, Your Honor.
17 There's no case law that supports the idea --

18 MR. MONIZ: And it's an article.

19 MR. ROTTENBORN: -- that you make -- you
20 file legal documents responding to a lawsuit and
21 someone gets to go out on Twitter and say whatever
22 they want.

1 There's -- there's -- this is so far
2 afield from any of the case law supporting this
3 that it's -- there's no support for it. There's
4 no support for it on an agency ground.

5 THE COURT: All right.

6 MR. ROTTENBORN: There's no support for
7 it. This would take the self-defense privilege
8 far beyond where it's ever been applied, Your
9 Honor.

10 MR. MONIZ: That's not an accurate
11 statement, first of all. It's not on Twitter. It
12 was made in an article.

13 MR. ROTTENBORN: Well, in the Daily
14 Mail.

15 MR. MONIZ: And, secondly, the -- the
16 basic principle here, it's -- it's really, I
17 think, common sense. If Mr. Depp and Mr. Waldman
18 are the same person for purposes of this analysis,
19 then Mr. Waldman's actions responding on behalf of
20 Mr. Depp bring this defense into play.

21 MR. ROTTENBORN: It's not -- he wasn't
22 responding on behalf of Mr. Depp. He's going out

1 and leaking stuff to the Daily Mail and ginning up
2 press articles about this. This is not -- this is
3 not someone standing on a courthouse step saying
4 my client is innocent and the facts will prove it.

5 If that's the scenario, then maybe it's
6 a different conversation. But there's absolutely
7 no case law to suggest --

8 THE COURT: Well --

9 MR. ROTTENBORN: -- that this should
10 apply in this area.

11 THE COURT: -- what I'm going to do
12 since I haven't heard the defense yet which we're
13 going to get to next week, I assume, I'm going to
14 take this one under advisement. And we'll see
15 where we are. And I'll make a ruling on it before
16 next Friday. I'll give you enough time, but I'll
17 hear the evidence first. Okay?

18 MR. ROTTENBORN: Thank you.

19 THE COURT: So that one will be a new
20 stack. Thank you for that. All right. Number 29
21 is protected speech.

22 MS. MCCAFFERTY: The same. Yeah. This

1 should be taken under advisement too.

2 THE COURT: Okay. It's the same issue.
3 All right. We'll put that under advisement. And
4 let's see. Duty to mitigate. The only question I
5 had here is how do you mitigate in a defamation
6 case.

7 MR. ROTTENBORN: Right.

8 THE COURT: I'm not sure how that --

9 MR. ROTTENBORN: Right. That's what
10 we --

11 THE COURT: I'm not sure how you do that
12 other than saying -- getting up somewhere and
13 saying I -- the statements I made were false.

14 MR. ROTTENBORN: Particularly when we're
15 in a per se scenario.

16 THE COURT: I don't --

17 MR. MONIZ: Yeah. I -- I don't know
18 that we --

19 THE COURT: Okay. So we'll withdraw
20 that one?

21 MR. MONIZ: Yeah.

22 THE COURT: Okay. So that takes care of

1 the objected ones for plaintiff. Let's see what
2 ones we have left for defendant. I have
3 Instruction K with depositions which was formerly
4 11 for you, Mr. Moniz.

5 MR. MONIZ: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 In this one it's just talking about
8 depositions. I think the plaintiff's objection as
9 to read to you -- I think is correct. I think
10 that should be taken out of there.

11 I don't have a problem with it if it
12 just said any testimony merely -- do not discount
13 any testimony merely because it was shown to you
14 by a video recording.

15 MR. ROTTENBORN: Yeah. That -- that's
16 fine. We're fine with that.

17 THE COURT: Okay. Is that okay?

18 MR. MONIZ: That's fine, Your Honor.

19 THE COURT: Okay. Then with that
20 amendment we'll go ahead and give that one.

21 MR. ROTTENBORN: Yeah. I think -- can
22 we -- I think it -- I think it's okay. I -- I

1 read --

2 THE COURT: Okay.

3 MR. ROTTENBORN: -- I read that brief
4 snippet of Kate James for a few seconds, but I --
5 I think that's --

6 THE COURT: Right.

7 MR. ROTTENBORN: We're -- we're okay.

8 THE COURT: Okay. That's good. All
9 right. Next one is W, formerly 23, which was the
10 defamation which I think we already -- did we
11 cover this? So why in a defamation case do we
12 need --

13 MR. ROTTENBORN: I think given what
14 we've already --

15 THE COURT: Okay.

16 MR. ROTTENBORN: -- ruled -- I think
17 we're okay.

18 THE COURT: Withdraw that. All right.
19 And Z, formerly 26, is -- it says falsity; but I
20 think most of this is covered in the finding
21 instruction.

22 I -- I didn't have a problem with just

1 the third paragraph saying there is no burden on
2 Ms. Heard to prove the truth of any of the
3 complaint statements and there is no burden on Mr.
4 Depp to prove the truth of any of the counterclaim
5 statements. Both parties were free to offer proof
6 of truth, but by doing so they did not assume the
7 burden of convincing you of the truth of these
8 statements.

9 The burden remains on Mr. Depp to prove
10 any implication he complains of in the complaint
11 statement is false. And the burden remains -- the
12 next page. And the burden remains on Ms. Heard to
13 prove that the counterclaim statements are false.

14 MR. ROTTENBORN: We're fine with that
15 with the limitation.

16 THE COURT: Any objection to that, just
17 making that --

18 MR. MONIZ: I think -- I think that's
19 fine, Your Honor. Just -- just what Your Honor
20 just said is the instruction?

21 THE COURT: That's it.

22 MR. MONIZ: That's fine.

1 THE COURT: Okay.

2 MR. MONIZ: I think that's fine, Your
3 Honor.

4 THE COURT: Okay. I don't know if you
5 want to title that falsity. That's more of a
6 burden of proof or something.

7 MR. ROTTENBORN: Okay.

8 MS. MCCAFFERTY: We'll -- we'll confer
9 if we --

10 THE COURT: Okay. Perfect. All right.
11 That will be given with the -- that's owed to me
12 then. Owed. Well, all of them are owed to me;
13 but I've got to make sure it looks good. All
14 right. Instruction CC, formerly 29, implication
15 and actual malice.

16 MR. ROTTENBORN: I think --

17 THE COURT: Can you withdraw this?

18 MR. ROTTENBORN: Oh, yes. No, we
19 actually -- sorry.

20 THE COURT: Go ahead.

21 MR. ROTTENBORN: Go ahead, Elaine.

22 MS. MCCAFFERTY: Yeah. This instruction

1 is supported by the weight of authority. Courts
2 that have considered how the actual malice
3 standard applies in a defamation by implication
4 case have held that it applies to two things.
5 There's actual malice to the falsity and actual
6 malice to the intent to make the implication.

7 And that gives meaning -- this is in the
8 Kendall case from the Third Circuit. And that
9 gives meaning to the fact that actual malice is a
10 subjective component. So this -- the Third
11 Circuit calls this the communicative intent
12 element.

13 THE COURT: Well, if we were in the
14 Third Circuit, maybe I'd -- I'd be interested in
15 that.

16 MS. MCCAFFERTY: I think it's important
17 to know that we've already moved past the way
18 actual malice ordinarily applies. Normally you
19 just ask if the statement on its face is false.
20 Well, here the plaintiffs are saying, I want the
21 jury to consider whether the implication is false.

22 THE COURT: The implication is Mr. Depp.

1 So we've been through this in the finding
2 instruction. And I think the finding instruction
3 covers this. And the definition of actual malice
4 covers this.

5 MR. ROTTENBORN: Okay. We -- well,
6 we -- we just wanted to make a record on it.

7 THE COURT: Okay.

8 MR. ROTTENBORN: And --

9 THE COURT: Sure.

10 MR. ROTTENBORN: -- I think -- I do
11 think that there's a -- there's sort of a gap in
12 Virginia law in this which is why we've proposed
13 the Third Circuit, that we follow that. And --

14 THE COURT: Okay. All right. Well, so
15 I can either --

16 MS. MCCAFFERTY: Refused over objection.

17 THE COURT: Denied? Okay. Denied over
18 objection. Got it. Did you want to be heard on
19 that one?

20 MR. MONIZ: We're -- we're fine with
21 that, Your Honor.

22 THE COURT: Okay. All right. And then

1 DD is republication. This one is going to need
2 some work. All right.

3 In order to find -- I understand the
4 republication. The original online opinion
5 article including the headline through a tweet.
6 You must find that she edited -- which is not
7 correct. She retransmitted -- the defamatory
8 material with a goal of reaching a new audience.
9 Stated differently, republication occurs when the
10 speaker has affirmatively reiterated the
11 statement.

12 A hyperlink directing readers to a
13 previous article in the same Web site does not
14 direct the previous article to a new audience.
15 Merely linking to an article does not amount to
16 republication. However, adding content could.

17 So if you're going to have this
18 instruction, you're going to have to put in there
19 that adding content -- we've got to find some
20 language that adding content to the -- to the
21 tweet with the hyperlink could be republication.

22 MR. ROTTENBORN: I think -- well, I

1 think a hyperlink directing readers to a previous
2 article on the same Web site would not -- I mean,
3 we want to be careful that we're not instructing
4 the jury that because she added a few words at the
5 top that that constituted --

6 THE COURT: But that's evidence that
7 they could find that that was republication. So
8 I'm just saying that a hyperlink alone isn't the
9 evidence we have in this case.

10 MR. ROTTENBORN: Correct. But to the
11 extent that -- I don't know what they're going to
12 argue. But to the extent that they say, look,
13 she -- she attached it, that's republication,
14 it's -- it's not. And so the jury has to
15 determine --

16 THE COURT: Well, that's why I can
17 say -- and -- and you're right. Just a mere link
18 to an article is not republication. I agree that
19 can stay. But you also have to say, but adding
20 content to it may --

21 MR. ROTTENBORN: Okay. Understood.

22 THE COURT: -- may establish

1 republication.

2 MR. MONIZ: Yeah. If this instruction
3 is given, Your Honor -- and I -- I don't think it
4 should be. But if it is given, that should be --
5 that should be clarified; that --

6 THE COURT: Well, in the finding
7 instruction we do have, she made or published.

8 MR. ROTTENBORN: Right.

9 THE COURT: So --

10 MR. ROTTENBORN: I think we'd be okay if
11 we say a hyperlink -- you know, something to the
12 effect of a hyperlink directing readers to a
13 previous article on the same Web site does not
14 direct the previous article to -- or merely
15 linking to an article does not amount to
16 republication but adding new content may, it is up
17 to you to decide; or something like that as long
18 as it's clear that --

19 THE COURT: Well, if you say "may." I
20 mean --

21 MR. ROTTENBORN: Right.

22 THE COURT: And you can argue that --

1 MR. ROTTENBORN: Right.

2 THE COURT: -- they --

3 MR. ROTTENBORN: I mean, I think we'd be
4 okay. I think it's important to have --

5 THE COURT: And then -- then it's just
6 the sufficiency of the evidence, how they --

7 MR. ROTTENBORN: Correct.

8 THE COURT: -- weigh the evidence. When
9 she says -- and it could be either way.

10 MR. ROTTENBORN: Right.

11 THE COURT: When she says, I just wrote
12 this article, they might find that, okay, that's a
13 republication because she's saying she wrote this
14 article and she's sending it out to everybody.

15 MR. ROTTENBORN: Correct.

16 THE COURT: So I think you have to -- if
17 you want this instruction, you're going to have to
18 add that content to it.

19 MR. ROTTENBORN: I -- I think we'd like
20 the instruction. If you -- if Your Honor would
21 like, we're happy to propose some language to the
22 other side and --

1 MR. MONIZ: If Your Honor has already
2 taken things under -- under submission, I guess if
3 they want to propose additional language, we
4 can --

5 THE COURT: Okay. Do you want me to --

6 MR. MONIZ: -- confer about that.

7 THE COURT: -- take it under advisement
8 so you can work on it?

9 MR. MONIZ: Sure. Would that work?

10 THE COURT: Okay. Yeah. That's fine.
11 Why don't we do that. But, I mean, I don't -- I
12 don't -- since we are saying made or published,
13 I -- I don't have a problem with the republished
14 jury instruction. I just think it has to be
15 accurate with adding the language.

16 MR. ROTTENBORN: Understood. Thank you.

17 THE COURT: Okay. All right.
18 Instruction EE, defamatory meaning. I think this,
19 again, is covered by other instructions.

20 MR. ROTTENBORN: We withdraw.

21 THE COURT: Okay. Withdrawn. All
22 right. FF, again defamatory meaning.

1 MR. ROTTENBORN: Well, I think this -- I
2 think this is important and for both -- both
3 sides.

4 THE COURT: Okay. Well, not really both
5 sides --

6 MR. ROTTENBORN: Well --

7 THE COURT: -- because --

8 MR. ROTTENBORN: -- yeah, not really
9 both sides. For -- I think it's important for our
10 side.

11 THE COURT: If you want it to be
12 important for both sides, I'm sure they would have
13 no problem --

14 MR. ROTTENBORN: Yeah. After I said
15 that I was thinking wait a second, it's -- it's
16 not. But I think it is important in our -- in Mr.
17 Depp's claim against Ms. Heard.

18 THE COURT: So the first paragraph only?

19 MR. ROTTENBORN: Yeah.

20 THE COURT: Any objection to that?

21 MR. MONIZ: I have a little bit --
22 little bit of a problem with opinion editorial.

1 THE COURT: Let me see. Okay. All
2 right. I understand that.

3 MR. ROTTENBORN: Can we say op-ed?

4 THE COURT: Do you want to say op-ed?

5 MS. MCCAFFERTY: We can do that.

6 THE COURT: All right. Make it op-ed.
7 And getting rid of the second paragraph. So any
8 objection to that?

9 MR. MONIZ: I mean, in light of -- in
10 light of Your Honor's rulings --

11 THE COURT: Okay.

12 MR. MONIZ: -- on that, that's --

13 THE COURT: All right.

14 MR. MONIZ: Yeah.

15 THE COURT: It will be given with the
16 changes on it. All right. Instruction GG,
17 definition of of and concerning.

18 MR. ROTTENBORN: I'm not sure that
19 that -- is that phrase in the finding
20 instructions? I'm not sure. I know it's --

21 THE COURT: I don't think so.

22 MR. ROTTENBORN: I think we can take

1 this out.

2 THE COURT: Take it out?

3 MR. ROTTENBORN: Yeah.

4 THE COURT: Okay. Withdrawn. All
5 right. And then the next two, JJ which is
6 formerly 36 and KK, formerly 37, are both on
7 punitive damages.

8 And I -- I -- I guess hope springs
9 eternal. But for -- I see that on yours on JJ you
10 put, once you have found; which I'm sure you agree
11 with me is incorrect. It should be, if you find.

12 MR. ROTTENBORN: Yeah. No, that's --
13 that's --

14 THE COURT: Yeah.

15 MR. MONIZ: We noticed that as well,
16 Your Honor.

17 THE COURT: I know. It's like...

18 MR. ROTTENBORN: I think --

19 THE COURT: But -- but for KK you got it
20 right for Mr. Depp's, if you find Mr. Depp.

21 MR. ROTTENBORN: This was -- this was
22 when -- this was when we were arguing per se and

1 not per se. So --

2 THE COURT: Oh, okay. I gotcha. So --

3 MR. ROTTENBORN: So --

4 THE COURT: -- if --

5 MR. ROTTENBORN: Yeah.

6 THE COURT: So if you found -- so if we
7 could make them both the same --

8 MR. ROTTENBORN: Yeah. And we would
9 use -- we would use 36 or J -- whatever that is,
10 JJ.

11 THE COURT: Okay.

12 MR. ROTTENBORN: That cites 37.110.

13 THE COURT: Okay. So you can just do
14 one for everybody.

15 MR. ROTTENBORN: Yeah. We'll make
16 that --

17 THE COURT: As long as they're both the
18 same --

19 MR. ROTTENBORN: That was just why we
20 have two.

21 THE COURT: -- is there any objection to
22 that --

1 MR. MONIZ: No objection as long as
2 they're both the same, Your Honor.

3 MR. ROTTENBORN: Of course.

4 THE COURT: Okay. So JJ and KK, just
5 make sure they're the same. And we will go from
6 there. All right. And then we have Jury
7 Instruction NN, formerly 39. Okay. You want to
8 define domestic abuse. Okay.

9 MR. MONIZ: Significant objection to
10 this one, Your Honor.

11 THE COURT: I understand. I understand.
12 I mean, it's not an abuse case. I understand
13 there's evidence of defamation of abuse. Your
14 experts have testified to that, of what abuse is.
15 I don't think we're codifying any expert opinions
16 by making an abuse instruction.

17 I mean, if that was the case, in all
18 defamation cases I'd have to give an instruction
19 for hoax, an instruction for sexual violence. But
20 that's not -- that's not what a defamation case
21 is.

22 So I understand why you'd want this, but

1 you had -- you can argue it to the jury. You had
2 your expert testimonies; both of you do. You can
3 argue it to the jury. I just don't think it's
4 appropriate for an instruction. But I'll deny it
5 over objection if you want me to.

6 MR. ROTTENBORN: Thank you.

7 THE COURT: Okay. Denied over
8 objection. OO, statute of limitations. Again,
9 the finding instructions just have the three
10 statements. So I -- I don't -- I guess you're
11 trying to get at that no other statement -- you
12 may not consider any other statement as a basis
13 for your verdict, but --

14 MR. ROTTENBORN: Here's the reason that
15 we wanted this. Sorry. I --

16 THE COURT: Go ahead. But, I mean, the
17 finding instructions are clear that it's just
18 those three are to find libel.

19 But to say you can't do any other
20 statement, other statements came in for damages
21 reasons. Other statements might come in for
22 intent or something like that. But I -- but to

1 find libel, the finding instructions already say
2 you have to base it on those three statements.

3 MR. ROTTENBORN: Right. The -- the
4 reason that we argue this, Your Honor, is in light
5 of Mr. Depp's testimony on the stand where he
6 basically said he couldn't identify that he was
7 suing over the three statements. He kind of
8 said --

9 THE COURT: Well, I --

10 MR. ROTTENBORN: -- well, I'm suing for
11 everything that's happened since 2016 and she
12 ruined my life.

13 THE COURT: I understand. But the jury
14 is going to be instructed very clearly that it's
15 only those three statements. So I'll deny it over
16 objection if you wish or I'll withdraw it; either
17 way.

18 MR. ROTTENBORN: Over objection. Thank
19 you.

20 THE COURT: Over objection. Got it.
21 PP, absolute judicial immunity. I'm not -- I'm
22 not sure what this is about.

1 MR. ROTTENBORN: I guess that would
2 be just -- if you're not inclined to give it, we'd
3 just ask for it over objection --

4 THE COURT: Okay.

5 MR. ROTTENBORN: -- just in light of Mr.
6 Depp's testimony that --

7 THE COURT: I understand.

8 MR. ROTTENBORN: Okay.

9 THE COURT: Okay. Is -- okay. QQ. I
10 think -- we're back to of and concerning. I mean,
11 doesn't the finding instructions take care of
12 this, that they're public figures and we have to
13 do actual malice? I'm not sure what the basis of
14 this instruction would be.

15 MR. ROTTENBORN: I -- I think so, Your
16 Honor.

17 THE COURT: Okay.

18 MR. ROTTENBORN: I think that the --
19 yes, I think -- I think it does.

20 THE COURT: Okay. We'll withdraw it
21 then.

22 MR. ROTTENBORN: Yeah.

1 THE COURT: All right. RR, action on
2 the advice of counsel.

3 MR. MONIZ: Significant objection to
4 this one as well, Your Honor.

5 THE COURT: Right. How is the action on
6 the advice of counsel a defense to defamation?

7 MR. ROTTENBORN: Well, it's something
8 that the jury can consider; that she sought her
9 counsel's advice and --

10 THE COURT: Well, you can -- I guess you
11 can argue that; but it's not a defense. So if you
12 want me to over -- denied over objection or
13 withdrawn?

14 MR. ROTTENBORN: Yes, please.

15 THE COURT: Denied over objection.
16 Okay. Jury Instruction SS. This is where we get
17 back to the immunity.

18 MR. ROTTENBORN: I suppose in light of
19 Your Honor's rulings --

20 THE COURT: Okay.

21 MR. ROTTENBORN: -- we can take this
22 away from -- we can -- we can withdraw, right --

1 THE COURT: Okay.

2 MR. ROTTENBORN: -- because --

3 MS. MCCAFFERTY: Well, no; refused over
4 objection because then --

5 THE COURT: Okay.

6 MS. MCCAFFERTY: In light of the other
7 rulings I think you have to refuse this too.
8 Otherwise, I mean, if we say we don't want this,
9 then why would we have had the -- had it in the
10 liability issues in the first place?

11 MR. ROTTENBORN: Let's do -- let's
12 just -- let's do refused over objection. But I
13 understand. And we don't --

14 THE COURT: Okay.

15 MR. ROTTENBORN: -- need to spend time
16 on it in light of --

17 THE COURT: All right. I just -- I --
18 it seems to be a moot point, I think, if you --

19 MR. ROTTENBORN: I understand.

20 THE COURT: -- walk down the legal road.

21 MR. ROTTENBORN: Yeah. Yeah.

22 THE COURT: It seems like it.

1 MR. ROTTENBORN: Yeah. I agree.

2 THE COURT: Okay. All right.

3 Instruction CCC, express and implied authority.

4 All I have in notes here is is this a reliance
5 argument, question mark. So...

6 MR. ROTTENBORN: I'm sorry. Is -- are
7 you --

8 THE COURT: I just wondered --

9 MR. ROTTENBORN: I didn't know if you
10 were waiting for Mr. Moniz.

11 THE COURT: Instruction CCC.

12 MR. MONIZ: Yeah.

13 THE COURT: I just have is this a
14 reliance argument, question mark. Yes. Go ahead.

15 MR. MONIZ: Well, I -- first of all, I
16 don't -- I don't think this really applies. And
17 it's -- I mean, it's a generic instruction on -- I
18 mean, whether -- whether Mr. Waldman had express
19 or implied authority is a factual question that
20 the jury has to -- has to resolve. I mean, I -- I
21 don't think this adds anything.

22 MR. ROTTENBORN: Well, I mean, it's in

1 the -- it's in the model instructions about the
2 scope of an attorney's authority.

3 THE COURT: I'll -- I'll give it.

4 MR. ROTTENBORN: Thank you.

5 THE COURT: That's fine. And then
6 Instruction DDD, I -- this one I just didn't
7 understand who is the third party so far as third
8 parties are concerned. I'm --

9 MR. ROTTENBORN: I think we can -- we
10 can get rid of it.

11 THE COURT: Okay. Withdraw that. All
12 right. Those are all the ones that are objected
13 to. Let me go to the no objections, because I
14 think there's many that are very similar. So
15 let's just go through the plaintiff's.

16 The credibility of witnesses. Any
17 objection to giving Number 3 as the credibility of
18 witnesses? I think they're both the same.

19 MR. ROTTENBORN: No.

20 THE COURT: Okay. We'll give 3. 5 was
21 the circumstantial evidence.

22 MR. ROTTENBORN: Fine.

1 THE COURT: Okay. 6 was prior
2 inconsistent statements by a nonparty witness.

3 MR. ROTTENBORN: Fine.

4 THE COURT: 7 was prior inconsistent
5 statements by a witness. Number 8 was rejected or
6 stricken evidence.

7 MR. ROTTENBORN: I'm sorry. It was?

8 THE COURT: Rejected or -- and stricken
9 evidence.

10 MR. ROTTENBORN: Oh, right. Yeah.
11 That's fine.

12 THE COURT: Okay. Number 9, amount sued
13 is not evidence.

14 MR. ROTTENBORN: I think we already have
15 that.

16 THE COURT: You do too. I'm just going
17 through theirs.

18 MR. ROTTENBORN: Oh, yeah.

19 MS. MCCAFFERTY: We do.

20 MR. ROTTENBORN: That's right.

21 That's --

22 THE COURT: Okay. So then we can --

1 Number 10, verdict not to be based on sympathy,
2 bias, guesswork or speculation.

3 MR. ROTTENBORN: That was -- that was
4 one where we had a --

5 THE COURT: A little difference?

6 MR. ROTTENBORN: -- competing, a
7 difference.

8 THE COURT: You didn't object to it,
9 but --

10 MR. ROTTENBORN: Oh, yeah. This is
11 where they -- they didn't object to our 9 which
12 is --

13 THE COURT: The same?

14 MS. MCCAFFERTY: No.

15 MR. ROTTENBORN: -- I, I think. It's
16 slightly different.

17 THE COURT: Okay. So we don't want to
18 give both is what you're saying.

19 MR. ROTTENBORN: I don't think there's a
20 need to give both.

21 THE COURT: Okay. So Instruction I
22 which was formerly 9 was impartiality --

1 MR. ROTTENBORN: Yeah.

2 THE COURT: -- and verdict not to be
3 based on bias, guesswork or speculation.

4 MR. ROTTENBORN: And we thought that --
5 I mean, I guess you could -- you could give both.
6 There's at least a part of 9 that we'd like to
7 give even if --

8 THE COURT: Well, I mean, you can -- we
9 can give both of them if you don't have any
10 objection to that, Mr. Moniz. I mean, you do
11 have -- your Q is sympathy, bias, guesswork or
12 speculation.

13 MR. ROTTENBORN: So we can take Q out,
14 but then we also have the concept of sympathy in
15 9. But we'd --

16 THE COURT: I mean, you --

17 MR. ROTTENBORN: -- we'd like to give --

18 THE COURT: -- you didn't object to 9.
19 So do you have any objection to 9?

20 MR. MONIZ: I mean, I don't have a
21 powerful objection to it, Your Honor.

22 THE COURT: Okay.

1 MR. MONIZ: It's a little bit -- I'm not
2 sure it's necessary, but --

3 THE COURT: Okay.

4 MR. MONIZ: -- we don't have an
5 objection.

6 THE COURT: I'll give Instruction I,
7 Defendant's Instruction I. And I'll also give
8 Defendant's -- Plaintiff's Number 10.

9 MR. ROTTENBORN: Thank you.

10 THE COURT: Okay. Then we've got
11 Plaintiff's Number 12, definition of
12 preponderance -- preponderance of the evidence.
13 Any objection to that? Well, you didn't object to
14 it, but I don't know if you have a similar one
15 that you'd rather...

16 MR. ROTTENBORN: Yeah. If it's just the
17 model, that's fine.

18 THE COURT: Okay. And then definition
19 of clear and convincing evidence, Number 13.

20 MR. ROTTENBORN: Fine.

21 THE COURT: That's fine. Number 18,
22 punitive damages. I think we've already done

1 punitive damages. So do you want to withdraw
2 that?

3 MR. MONIZ: Yes, Your Honor --

4 THE COURT: We've already got punitive
5 damages --

6 MR. MONIZ: -- understanding that
7 we're --

8 THE COURT: Okay.

9 MR. MONIZ: -- going to work out that --
10 yeah.

11 THE COURT: And then reasonable proof.
12 You don't have to prove the exact amount of
13 damages. Any objection to that? Okay.

14 So those are all -- so the other ones
15 for defendant's, J is the same credibility of
16 witnesses. So we'll withdraw that.

17 MR. ROTTENBORN: Okay.

18 THE COURT: L is a party bound by his or
19 her own testimony. No objection to that one;
20 right? We'll give that.

21 MR. ROTTENBORN: Okay.

22 THE COURT: That's Instruction L,

1 formerly 12. Instruction M is circumstantial
2 evidence which we already have. So I'll withdraw
3 that.

4 MR. ROTTENBORN: Okay.

5 THE COURT: Instruction N is prior
6 inconsistent statement by a witness; already have
7 that. So --

8 MR. ROTTENBORN: Okay.

9 THE COURT: -- withdraw that. Prior
10 inconsistent -- inconsistent statement by a party.
11 Did I already do that one?

12 MR. ROTTENBORN: I believe we already --
13 already have that.

14 THE COURT: We did that one? Okay.

15 MR. MONIZ: I think we do.

16 THE COURT: All right. Withdraw that.
17 Rejected and stricken evidence, Jury Instruction
18 P, I'll withdraw that. Instruction R is greater
19 weight of the evidence. We already have that one.
20 Instruction S, clear and convincing. We already
21 have that. So I'll withdraw. Instruction T,
22 expert witnesses. There is no objection. So I'll

1 give Instruction T.

2 MR. ROTTENBORN: Thank you, Your Honor.

3 THE COURT: Instruction U where there is
4 no objection, I'll give that. Instruction V, I'll
5 give that. Instruction BB, there was no objection
6 to that. Actual malice is not ill will, hatred or
7 bias. So I'll give that. Correct? There's no
8 objection. Jury Instruction HH, reasonable proof.
9 I think we already gave that.

10 MR. ROTTENBORN: Yeah, I don't think we
11 need that.

12 THE COURT: So we can withdraw that.
13 And LL is amount sued is not evidence. So we can
14 withdraw that because I'm going to give that. All
15 right. So I've got the withdrawn stack.

16 We'll go over verdict forms here in a
17 second. I will go over -- just so everybody is on
18 the same sheet of music I'll go over the ones --
19 do you want me to go over the ones that have been
20 withdrawn and denied?

21 MR. ROTTENBORN: I think we've made a
22 record as you've gone along, but --

1 THE COURT: You've got them? You've got
2 them okay? All right.

3 MR. MONIZ: It sounds like we're okay,
4 Your Honor.

5 THE COURT: All right. So let me just
6 go over for the record the ones that I will be
7 giving not in this order, but I will tell you the
8 order prior to Friday.

9 MR. ROTTENBORN: The -- can I -- the
10 only other instruction or -- I don't know if it's
11 an instruction or not --

12 THE COURT: Okay.

13 MR. ROTTENBORN: -- is the -- the
14 jury --

15 THE COURT: The jury -- sealing the --
16 the names?

17 MR. ROTTENBORN: Sealing the names.

18 THE COURT: Right. I will -- I will --

19 MR. ROTTENBORN: Would you like us to
20 propose language?

21 THE COURT: No. I will -- I'll take
22 care of that. And I don't think it's going to be

1 an official instruction that goes back to them.
2 It's just something I'm going to say to them in my
3 preliminary instructions to them --

4 MR. ROTTENBORN: Okay.

5 THE COURT: -- at the -- at the
6 beginning of my jury instructions. Okay?

7 MR. ROTTENBORN: Okay.

8 THE COURT: And there's no objection to
9 that; right? Yes.

10 MR. MONIZ: No. I -- I was going to say
11 that the only other thing in light of the -- in
12 light of -- I think we had about 25 or 30 minutes
13 of testimony yesterday with -- that there were
14 just instructions not to answer and -- and
15 privilege objections.

16 Based on that, I mean, it occurs to me
17 that we may propose to the Court --

18 THE COURT: Okay.

19 MR. MONIZ: -- an instruction just that
20 the jury can't consider that for -- for --

21 THE COURT: Well, and I don't mind you
22 proposing more jury instructions next week as,

1 again, trials are fluid. Things happen. I
2 understand that.

3 And so any other jury instructions we
4 will take up -- we probably won't do them until
5 maybe Wednesday afternoon or Thursday when we're
6 at the completion of the evidence so we can make
7 sure we've got everything covered.

8 I don't mind that. I'm just glad we're
9 getting the bulk of these done today. All right.
10 So these are the ones that we have so far to give
11 in no particular order.

12 I've got Instruction 1, Instruction B as
13 in boy, Instruction C, Instruction D, Instruction
14 E, Instruction F, Instruction G, Instruction H,
15 Instruction Y, Instruction 16, Instruction II,
16 Instruction 20, Instruction TT, Instruction AA,
17 Instruction K, Instruction Z as in zebra,
18 Instruction FF, Instruction JJ, Instruction KK,
19 Instruction CCC, Instruction 3, Instruction 5, 6,
20 7, 8, 9, Instruction I, 10, 12, 13, 30, L, T, U,
21 V, BB.

22 And then the ones under advisement are

1 28, 29 and DD. All right. Does everybody have
2 the same score cards then? All on the same sheet
3 of music?

4 MR. ROTTENBORN: Yes, Your Honor.

5 MR. MONIZ: Yes, Your Honor.

6 THE COURT: Okay. All right. Now let's
7 turn to verdict forms for a second. And, again, I
8 know these might change a little bit depending on
9 what the testimony is next week; but if we can get
10 the bulk of it done, I'd appreciate that. Okay.
11 Let's see. Okay.

12 Again, since -- since the plaintiff's
13 jury verdict forms don't have the statements
14 separated I'm just going to work off the
15 defendant's verdict forms and see if we can come
16 to a consensus. All right.

17 So on the defendant's verdict forms the
18 only problem I have on -- like if we look at Mr.
19 Depp's claim against Ms. Heard's verdict form, on
20 page 2 I think it -- you say, if you answered
21 question 1-A. I think you meant 2-A there.

22 MR. ROTTENBORN: Oh, sorry, Your Honor.

1 THE COURT: It just needs to be changed
2 to 2-A. And the next page it has to be changed to
3 3-A.

4 And then the last page as far as the
5 damages go it's -- it's a little confusing. I
6 would suggest that you say, if you answered yes
7 to not all but to question -- well, I guess, yes.
8 Answered yes to all the questions, number one or
9 number two or number three --

10 MR. ROTTENBORN: Okay. That makes
11 sense.

12 THE COURT: -- then -- then fill out
13 seven through nine; something along those lines so
14 it's clear.

15 MR. ROTTENBORN: And I think that we
16 could -- in light of the ruling on statutory
17 immunity --

18 THE COURT: You can take out --

19 MR. ROTTENBORN: -- we can take out --

20 THE COURT: -- the statutory immunity.

21 MR. ROTTENBORN: -- four -- questions
22 four, five and six on page --

1 THE COURT: Okay.

2 MR. ROTTENBORN: -- 4 of the document.

3 THE COURT: All right. We will take out
4 the statutory immunity on four, five and six. All
5 right. Do you have any other --

6 MR. MONIZ: Well -- so, yeah, I have
7 some issues here, Your Honor.

8 THE COURT: Okay.

9 MR. MONIZ: And we'd be happy to -- I
10 mean, I -- I appreciate Your Honor is working off
11 the defense --

12 THE COURT: Right.

13 MR. MONIZ: -- verdict form. We'd be
14 happy to split these apart. I mean, I think -- I
15 think the -- it could be applied across.

16 For separating out the statements I
17 think ours actually has some benefit in kind of
18 breaking these out and -- and explaining --
19 breaking out some of the defamatory implication
20 issues in particular which aren't -- aren't
21 addressed really as fully in -- in the defendant's
22 form.

1 THE COURT: Well, I mean, the verdict
2 forms aren't to explain any law. The verdict
3 forms are just --

4 MR. MONIZ: No, I --

5 THE COURT: -- just to get your verdict.
6 So it would make sense that it would follow the
7 statute.

8 MR. MONIZ: Okay.

9 THE COURT: Okay.

10 MR. MONIZ: In that case, on the first
11 page, Your Honor, there -- there's a redundant
12 question here.

13 THE COURT: Okay.

14 MR. MONIZ: It says, the statement was
15 false. And then down below that it says, any such
16 defamatory implication is false. I think
17 consistent with --

18 THE COURT: Okay. The statement has --

19 MR. ROTTENBORN: We -- we can take out,
20 any such defamatory implication is false.

21 THE COURT: Okay. So that -- strike
22 that one?

1 MR. MONIZ: And then I think consistent,
2 Your Honor, with the rulings on the jury
3 instructions --

4 THE COURT: Yes.

5 MR. MONIZ: I think "made" should be
6 changed to made or published.

7 THE COURT: Okay.

8 MR. ROTTENBORN: That's fine.

9 THE COURT: Made or published. We'll
10 change those. All right. Anything else on here?

11 MR. MONIZ: The first page is probably
12 okay.

13 THE COURT: And then on the second page
14 take out -- you're going to take them -- for each
15 one of them you'll take off --

16 MR. MONIZ: We're taking out four;
17 right?

18 THE COURT: False --

19 MR. ROTTENBORN: The statutory immunity.

20 THE COURT: Yes.

21 MR. ROTTENBORN: Yeah. Four, five and
22 six.

1 THE COURT: Four, five and six are gone.

2 MR. MONIZ: Four, five and six are gone.

3 Right.

4 THE COURT: So on each page, made or
5 published. And we'll take off defamatory
6 implication is false. Okay.

7 MR. ROTTENBORN: We'll make those
8 changes to each one.

9 THE COURT: All right.

10 MR. MONIZ: Seven, eight and nine I
11 think should be okay.

12 THE COURT: All right.

13 MR. MONIZ: I think that's probably
14 fine, Your Honor. I apologize. I'm just trying
15 to make sure --

16 THE COURT: Okay.

17 MR. MONIZ: -- I'm not missing anything.

18 THE COURT: And you have the damages as
19 per se damages here in the verdict form. I just
20 want to make sure.

21 MR. MONIZ: Oh, we should probably
22 add --

1 MR. ROTTENBORN: Yes.

2 MR. MONIZ: -- damages per se on -- for
3 both.

4 MR. ROTTENBORN: No. I mean, I think
5 it -- it just says, state the amount of
6 compensatory damages, if -- if any, you believe
7 either party has proven.

8 THE COURT: Is that what we're saying on
9 the other...

10 MR. ROTTENBORN: So we didn't --

11 THE COURT: You didn't parse it out
12 between the two.

13 MR. ROTTENBORN: We made them exactly
14 the same.

15 THE COURT: Okay.

16 MR. MONIZ: They are exactly the same.
17 But, I -- I mean, the damages per se are different
18 than compensatory damages; right? You don't have
19 to prove --

20 THE COURT: Right. And they have a jury
21 instruction saying they don't have to prove the
22 damages.

1 MS. MCCAFFERTY: But so the amount of
2 damages still has to be proven. You don't have to
3 prove --

4 MR. MONIZ: Right.

5 MS. MCCAFFERTY: -- damages to recover,
6 but the amount still needs to be proven by both
7 parties.

8 MR. MONIZ: As -- as long as the -- as
9 long as the instructions are consistent I think
10 that's probably fine.

11 MR. ROTTENBORN: Yeah.

12 THE COURT: Okay. All right. Is that
13 good?

14 MR. ROTTENBORN: Yes, Your Honor.

15 MR. MONIZ: I think so, Your Honor.

16 MR. ROTTENBORN: So we'll -- we'll --
17 the parties will prepare the next draft of this --

18 THE COURT: That would be fantastic --

19 MR. ROTTENBORN: -- Your Honor's
20 rulings. Okay.

21 THE COURT: -- if we can do that. And
22 I'll have those three under advisement. And I'll

1 get that back to you as soon as we hear the
2 evidence on that. And we can go from there. All
3 right.

4 We finished early. I want to thank you
5 for writing your objections down. Obviously being
6 able to look at everything ahead of time and being
7 able to go through everything saved a lot of time
8 today. Okay. So what else do you have for me?

9 MR. ROTTENBORN: We have --

10 THE COURT: Yes.

11 MR. ROTTENBORN: -- we have one thing
12 that we'd like to discuss, Your Honor.

13 THE COURT: Okay.

14 MR. ROTTENBORN: We would like to -- we
15 have one more very, very limited -- one more
16 deposition that we'd like to play a part of.

17 THE COURT: What's my favorite line in
18 this trial?

19 MR. ROTTENBORN: I was --

20 MR. CHEW: You don't go backwards.

21 MR. ROTTENBORN: -- I was -- I was
22 prepared for that. And I will explain why we're

1 not going backwards.

2 THE COURT: Okay.

3 MR. ROTTENBORN: This is -- this is
4 Stephen Deuters. It's -- it's, honestly, less
5 than -- fewer than 10 minutes or so. And the
6 reason that it's not going backwards is because
7 when we last did the -- the -- the long day
8 that -- I know others had a longer day than I did.
9 So I -- I can't complain about that.

10 THE COURT: I was here.

11 MR. ROTTENBORN: But you were here. And
12 we did all of them. The plaintiffs hadn't
13 finished their case at that point. They still had
14 a couple days left. They had a witness on their
15 witness list, Stephen Deuters, that they were --
16 said that they could call live. We didn't want to
17 take up the Court's time doing a limited
18 deposition designation of someone that they might
19 call.

20 He has since -- we know they're not
21 going to call him in rebuttal because he's all
22 over social media about the case. So that's -- so

1 we know they're not going to call him now.

2 And it would be prejudicial -- it's --
3 it's very short. It would be prejudicial to not
4 allow us to do that or -- or at a minimum to -- to
5 read his testimony if Your Honor admits it;
6 although we think it would be more efficient to
7 play the video.

8 It would be prejudicial because
9 essentially if -- if we're bound by what happened
10 three weeks ago, three -- I think it was three
11 Fridays ago. You know, Your Honor said many times
12 in addition to not going backwards that trials are
13 fluid.

14 And, you know, the defendant didn't have
15 to identify their witnesses three weeks in
16 advance. And that would essentially be imposing a
17 burden on the -- or, sorry, the plaintiff didn't
18 have to do that. And that would essentially be
19 imposing a burden on the defense to identify all
20 of their witnesses --

21 THE COURT: Okay.

22 MR. ROTTENBORN: -- three weeks in

1 advance. And so --

2 THE COURT: All right.

3 MR. ROTTENBORN: -- this would take 10
4 minutes. And it -- it turns on an evidentiary
5 ruling that I'm going to ask Your Honor to make
6 that we have prepared a short brief for. That is,
7 we're asking the Court to admit and -- based on
8 Mr. Deuters' testimony admit some of the texts
9 that he had with Ms. Heard as party-opponent
10 admissions of Mr. Depp.

11 And I'll -- I can point you to the
12 testimony where he says, Mr. Depp told me to text
13 Ms. Heard whatever she needs to hear. He -- he
14 very clearly gave Mr. Deuters the agency to do
15 that.

16 If Your Honor rules that that's not
17 coming in, then we're not going to call
18 Mr. Deuters. So it's all related to this one
19 evidentiary issue.

20 THE COURT: All right. Well, can we
21 just do that one motion then? We've got time
22 today or do -- do you want to address that today?

1 MS. VASQUEZ: Well, Your Honor, if I may
2 be heard. You've already ruled on this, if you'll
3 recall, through Ms. Heard's direct examination.

4 THE COURT: About the agency --

5 MS. VASQUEZ: Correct. And then -- and,
6 actually, you struck the testimony when
7 Ms. Heard -- you sustained the objection --

8 THE COURT: Are these the same texts?

9 MS. VASQUEZ: Yes.

10 MR. ROTTENBORN: Yeah. But Your Honor
11 ruled on it at the time because Ms. Heard wasn't
12 competent to testify to Mr. Deuters' --

13 MS. VASQUEZ: No.

14 MR. ROTTENBORN: -- agency as to Mr.
15 Depp. Mr. Deuters is. He testifies, Depp told me
16 to -- told me to send whatever texts I need to
17 send. So it's -- I think that's -- was the basis
18 for Your Honor's --

19 THE COURT: Well, told me to send any
20 texts I need to send. But did he tell him --

21 MR. ROTTENBORN: And we can look at
22 the --

1 THE COURT: -- what to send? I just
2 want to make sure --

3 MR. ROTTENBORN: We can look at the
4 transcript. I mean, I can read it. Maybe it
5 would be -- let's see if I can pull up the -- I'm
6 sorry for not having the transcript out.

7 MS. VASQUEZ: Your Honor, Mr. Deuters
8 was Mr. Depp's employee. He's now a partner.
9 But, nevertheless, placating your employer's
10 girlfriend is very -- it's not within the scope of
11 an employment relationship. And that was Your
12 Honor's ruling.

13 THE COURT: Okay.

14 MS. VASQUEZ: So on that basis we
15 object.

16 MR. ROTTENBORN: May I approach with the
17 brief --

18 THE COURT: Okay.

19 MR. ROTTENBORN: -- that has the
20 relevant portion?

21 THE COURT: Sure.

22 MR. ROTTENBORN: And I'll give you a

1 copy of the texts as well.

2 THE COURT: I've seen the texts, I
3 believe.

4 MR. ROTTENBORN: Okay. So -- and this
5 would be -- basically we'd have him testify very
6 shortly at the beginning what his job duties were
7 for Mr. Depp, that he was on the Boston plane
8 flight.

9 And then he -- he says -- on page 3, the
10 day after the Boston plane incident Depp told
11 Deuters. He said, I want to smooth whatever issue
12 exists. Depp specifically asked Deuters to write
13 a text to Amber. And Depp said to tell her --
14 write whatever she needs to hear.

15 So -- and -- and I understand that they
16 can put Mr. Depp on the stand and say, I didn't
17 tell him that, I didn't authorize him to do that.
18 But under -- under Rule 2.8 --

19 THE COURT: 03.

20 MR. ROTTENBORN: Yeah, 2.803. But I
21 think it's -- it's -- is it paragraph --
22 subparagraph zero -- zero, (C) and (D). Those

1 very clearly say, a statement offered against a
2 party that is, (C) a statement by a person
3 authorized by the party to make a statement
4 concerning the subject.

5 So after the Boston plane flight Mr.
6 Depp tells Mr. Deuters, tell her whatever she
7 needs to hear about the flight; in -- under
8 Mr. Deuters' testimony.

9 Now, obviously we don't -- you know, I
10 think he's -- what he texted -- texted in those
11 texts is, you know, what happened on the flight.
12 But he testified Mr. Depp told him, say whatever
13 she needs to hear, smooth it over.

14 And that very clearly in giving
15 Mr. Deuters who is his personal assistant at the
16 time the direction to do that, that's an admission
17 by a party-opponent under (C) or (D), a statement
18 by the party's employee made during the terms of
19 the agency or employment. So we believe that
20 comes in.

21 If -- if -- their objections go to the
22 weight of the evidence. If they want to put

1 Mr. -- if they want to designate other portions of
2 Mr. Deuters' testimony, if they want to put Mr.
3 Depp on the stand to say, I never did that, that's
4 their prerogative.

5 But we believe that that should come in.
6 It's very, very clear. And I could pull up the
7 transcript if Your Honor would like.

8 THE COURT: No, that's fine. All right.
9 Yes.

10 MR. ROTTENBORN: But we believe those
11 are -- and -- and Ms. Heard obviously couldn't
12 testify as to Mr. Deuters' agency, but Mr. Deuters
13 can.

14 THE COURT: Okay.

15 MS. VASQUEZ: Your Honor, he didn't
16 direct him to make that statement. Mr.
17 Rottenborn's characterization of the evidence is
18 false. It wasn't about the Boston plane incident.
19 It was about, and the evidence shows, Ms. Heard's
20 haranguing of -- of Mr. Depp.

21 So -- besides, it's hearsay, Your Honor,
22 double hearsay actually on two levels. And she's

1 repeated -- you've repeatedly ruled, Your Honor,
2 that hearsay doesn't come in.

3 MR. ROTTENBORN: That's -- that's the
4 reason why 803 exists, Your Honor. It's an
5 exception to the hearsay --

6 MS. VASQUEZ: But it doesn't qualify as
7 an exception.

8 MR. ROTTENBORN: And it's not double
9 hearsay. It's an admission to -- it's a -- it's
10 an admission by the party-opponent under --

11 MS. VASQUEZ: It's not.

12 THE COURT: All right.

13 MR. ROTTENBORN: And it's --

14 MS. VASQUEZ: It's Stephen Deuters'
15 statement, Your Honor.

16 MR. ROTTENBORN: As -- as -- we just
17 spent time arguing about agency. This is --

18 THE COURT: Get closer to the microphone
19 for the --

20 MR. ROTTENBORN: I'm sorry.

21 THE COURT: -- court reporter.

22 MR. ROTTENBORN: It's -- it's Mr. Depp's

1 statement through his agent that he
2 specifically -- and -- and, look, Ms. Vasquez can
3 argue to the jury that he didn't --

4 MS. VASQUEZ: No.

5 MR. ROTTENBORN: -- he didn't mean to
6 tell him that he could speak as this. But he said
7 after the plane flight, tell her -- write whatever
8 she needs to hear.

9 THE COURT: Okay. All right. I
10 understand your argument. But the foundation of
11 it, he -- he didn't tell him what to write; just
12 tell her whatever she needs to hear. I just don't
13 find that as the exception. So I'm going to deny
14 your motion.

15 MR. ROTTENBORN: Okay. And just for the
16 record I will argue --

17 THE COURT: Sure.

18 MR. ROTTENBORN: -- that the foundation
19 would be proven by Mr. Deuters' testimony; which I
20 understand Your Honor's ruling, but that
21 foundation would be laid by that. And under
22 Subsection (C) Mr. Depp clearly authorized Mr.

1 Deuters to make a statement concerning the
2 subject. And --

3 THE COURT: But he didn't say what the
4 statement -- okay. I deny -- deny your motion.
5 Okay.

6 MR. ROTTENBORN: Thank you. Well, in
7 light of that then we don't have a deposition --

8 THE COURT: No deposition issue. Okay.
9 Any other matters?

10 MS. VASQUEZ: Yes, Your Honor.

11 THE COURT: Yes.

12 MS. VASQUEZ: Just one more --

13 THE COURT: Okay. That's fine.

14 MS. VASQUEZ: -- minor matter.

15 THE COURT: We're -- we're ahead of
16 schedule by 30 minutes. You've got 30 minutes.

17 MR. ROTTENBORN: That's dangerous.

18 MS. VASQUEZ: This one is not going to
19 be 30 minutes, I hope.

20 THE COURT: Okay.

21 MS. VASQUEZ: Your Honor, this is in
22 relation to Plaintiff's Trial Exhibit 1246.

1 THE COURT: 1246.

2 MS. VASQUEZ: And just as a reminder, it
3 is the Dr. Hughes background information intake
4 form. If you'll recall, we were moving to admit
5 the first page. Correct. And Ms. Bredehoft
6 insisted that the entire document be admitted.

7 THE COURT: Okay.

8 MS. VASQUEZ: So we agreed.

9 THE COURT: Okay.

10 MS. VASQUEZ: Nevertheless, after the
11 entire document was admitted we realized -- the
12 parties realized that on page -- I think it's 6,
13 Your Honor --

14 THE COURT: There's something --

15 MS. VASQUEZ: -- of the document.

16 THE COURT: And -- and I don't -- and
17 medical records we haven't been uploading.

18 MS. VASQUEZ: Correct.

19 THE COURT: So --

20 MS. VASQUEZ: Correct.

21 THE COURT: -- any medical records or
22 any --

1 MR. NADELHAFT: May I approach, Your
2 Honor?

3 THE COURT: -- tax records I haven't
4 been --

5 MR. NADELHAFT: It might be easier for
6 you --

7 THE COURT: Okay.

8 MR. NADELHAFT: -- if I give you copies.
9 But we have the -- our redactions are -- it's
10 going to be what's redacted. It's just --

11 THE COURT: Okay. What's redacted.

12 MR. NADELHAFT: -- our redactions versus
13 theirs --

14 THE COURT: Thank you.

15 MR. NADELHAFT: -- so you can see what
16 they --

17 MS. VASQUEZ: May I approach as well,
18 Your Honor?

19 THE COURT: Sure. Sure. That's fine.
20 Okay.

21 MS. VASQUEZ: We just have competing
22 redactions.

1 THE COURT: All right. So you both
2 agree that it has to be redacted in some form.

3 MS. VASQUEZ: Yes.

4 MR. NADELHAFT: Yeah. We -- I mean,
5 we're just saying the whole page. And they're
6 saying --

7 THE COURT: All right. But you're the
8 one that wanted everything in; right?

9 MS. VASQUEZ: Correct.

10 MR. NADELHAFT: Well --

11 THE COURT: I just want to make sure I
12 get that correct.

13 MS. VASQUEZ: That's right.

14 MR. NADELHAFT: Well, and then, Your
15 Honor --

16 MS. VASQUEZ: Okay. Here's --

17 MR. NADELHAFT: And then, Your Honor,
18 this is the transcript where they go into the rest
19 of it where -- and then Ms. Bredehoft asked for
20 the whole page to be redacted. And, if you
21 recall --

22 MS. VASQUEZ: Should we go back and

1 argue?

2 MR. NADELHAFT: If -- if you recall, we
3 were getting it. And Ms. Bredehoft was looking
4 rather quickly and then realized that the last
5 page is all about -- is all about legal issues.

6 And, as you can see, she says the last
7 page; which then you say, if you keep going -- and
8 then you say you agree. So that's why we're
9 having the last page --

10 MS. VASQUEZ: It's not the whole page,
11 though.

12 MR. NADELHAFT: But no one -- no one
13 says anything about, well, it's the rest of it,
14 you know, this comes in and this doesn't.

15 MS. VASQUEZ: Well, okay. So --

16 THE COURT: Okay. So this is -- you
17 want to get rid of the whole page?

18 MR. NADELHAFT: Yeah.

19 THE COURT: And this is yours? This is
20 his or this is yours?

21 MS. VASQUEZ: That's ours --

22 THE COURT: This is yours.

1 MS. VASQUEZ: -- our proposed
2 redactions. So if I may go back.

3 THE COURT: Okay. Sure.

4 MS. VASQUEZ: Thank you, Your Honor.

5 MR. NADELHAFT: And, Your Honor, the
6 last page is -- I mean, it's the whole -- it's
7 legal issues --

8 THE COURT: All right.

9 MS. VASQUEZ: So, Your Honor, if I may
10 just be heard very briefly --

11 THE COURT: Sure.

12 MS. VASQUEZ: -- to explain what's going
13 on here. In light of Your Honor's ruling when
14 cross-examining Ms. Heard on the incident with
15 Tasya Van Ree, her ex-partner, we have -- since
16 that evidence is already in and this was a
17 self-report by Ms. Heard we have gone and redacted
18 any mentions of arrest and police.

19 But we believe that since there's
20 evidence of this incident it needs to be -- it --
21 it should be reflected in the self-report that
22 Ms. Heard made to her psychologist who relied on

1 this when making her evaluation and diagnoses of
2 Ms. Heard.

3 Again, consistent with Your Honor's
4 ruling, the dog issue in Australia Your Honor
5 ruled against us. We have since redacted that.
6 And those are the only redactions that we believe
7 are consistent with Your Honor's rulings and
8 should be applied to this page.

9 THE COURT: Okay.

10 MR. NADELHAFT: Your Honor, the --
11 the -- the -- she didn't -- Dr. -- this is from
12 Dr. Hughes. She didn't testify to anything on
13 this, on the last page. Again, we were shown --

14 THE COURT: She testified to a lot --

15 MR. NADELHAFT: She testified to a lot,
16 but in -- in terms of the document -- in terms of
17 the document itself the only questions were about
18 the first page. There --

19 THE COURT: Well -- well, to be fair, I
20 wouldn't let them cross-examine her --

21 MS. VASQUEZ: Correct, Your Honor.

22 THE COURT: -- on some of these issues.

1 MS. VASQUEZ: You -- yeah. You
2 sustained that objection.

3 MR. NADELHAFT: Right. But then you --
4 and then -- but then there is no testimony because
5 you were agreeing that the last page could be
6 redacted. You agreed in the -- in the transcript
7 that the last page would be redacted. So that's
8 why we redacted the last page.

9 THE COURT: Well, there had to be
10 redactions. I understand that, but -- okay.
11 Anything further on this?

12 MS. VASQUEZ: No, Your Honor. I just
13 believe our redactions are consistent with Your
14 Honor's rulings.

15 THE COURT: Okay.

16 MS. VASQUEZ: And in light of Ms.
17 Bredehoft's no objection to this whole document,
18 in fact, insisting that the entire document be
19 admitted, I -- I just think that that's --

20 MR. NADELHAFT: The insisting, it was --
21 it's an overstatement. But then there was a
22 discussion. It was being shown. She was looking

1 through it quickly. Then they -- they talked
2 about the last page.

3 She came up. There was a discussion at
4 side bar about the last page in which you said, I
5 want the last page redacted. And that -- and
6 that's what you ruled on. So that's why we had
7 the last page redacted.

8 THE COURT: Well, the transcript says we
9 need redactions for the last page; but I don't
10 know --

11 MS. VASQUEZ: And personal identifiers,
12 actually, is what Ms. Bredehoft was actually
13 arguing; that any personal identifiers --

14 THE COURT: There are -- there were
15 personal identifiers.

16 MS. VASQUEZ: And also, Your Honor, not
17 to state the obvious; but this is Dr. Hughes's
18 documents. I mean, for Ms. Bredehoft to act like
19 she doesn't know what's in these documents, you
20 know, I --

21 THE COURT: I'm going to accept the
22 plaintiff's redactions in this matter --

1 MS. VASQUEZ: Thank you, Your Honor.

2 THE COURT: -- for this exhibit. And
3 that's Plaintiff's Exhibit 1246. Is this my copy
4 of that then?

5 MS. VASQUEZ: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. VASQUEZ: Sorry. Yes, Your Honor.

8 THE COURT: All right.

9 MR. ROTTENBORN: Your Honor, if -- if I
10 may just raise one more possibility --

11 THE COURT: Sure.

12 MR. ROTTENBORN: -- of -- of something
13 we'd like to do next week. If -- Your Honor, if
14 we could have just a brief amount of time one day
15 either before or after court just to make a few
16 proffers for the record like about what, for
17 example, Mr. Bercovici would have testified
18 about --

19 THE COURT: Okay.

20 MR. ROTTENBORN: -- and just a few other
21 things that -- I think the parties have done a
22 pretty good job as --

1 THE COURT: Sure.

2 MR. ROTTENBORN: -- Your Honor has made
3 rulings over the trial in -- in preserving issues,
4 but there are some things --

5 THE COURT: Yeah. You want to preserve
6 for the record. That's fine. Absolutely. We
7 can --

8 MR. ROTTENBORN: Is there a certain time
9 or -- we obviously want to be --

10 THE COURT: I'm pretty tapped out. Are
11 you prepared to do it now or no?

12 MR. ROTTENBORN: No.

13 THE COURT: No.

14 MR. ROTTENBORN: I'm sorry.

15 THE COURT: Okay.

16 MR. ROTTENBORN: We can do it after
17 court or before court.

18 THE COURT: Yeah. Maybe we'll figure a
19 time to do it --

20 MR. ROTTENBORN: Maybe like Tuesday or
21 Wednesday or something?

22 THE COURT: Maybe -- maybe there will be

1 a day when we end at 5:00 or --

2 MR. ROTTENBORN: Sure.

3 THE COURT: And we could do a little
4 proffer at that time --

5 MR. ROTTENBORN: Okay.

6 THE COURT: -- or whatever you need to.
7 I don't know if you have any proffers you want to
8 have done as well. We can just set a time for
9 that.

10 MR. ROTTENBORN: I think we can go
11 through them pretty quickly.

12 THE COURT: Okay. That's fine.
13 We'll -- we'll figure it out; whichever day we end
14 up -- if you would be prepared to do it as early
15 as Monday just --

16 MR. ROTTENBORN: Sure.

17 THE COURT: -- in case we get an
18 extra --

19 MR. ROTTENBORN: Sure.

20 THE COURT: Do you think you can do it
21 in 10 minutes or so or...

22 MR. ROTTENBORN: It might take a little

1 longer.

2 THE COURT: Okay.

3 MR. ROTTENBORN: But I --

4 THE COURT: 15 minutes?

5 MR. ROTTENBORN: Yeah.

6 THE COURT: Okay. All right. So, yeah,
7 we'll figure it out. We have -- I think we have
8 an hour and 15 minute buffer for next week if we
9 go 9:00 to 5:30 every day. So --

10 MS. VASQUEZ: And, Your Honor --

11 THE COURT: -- there's excitement.

12 MS. VASQUEZ: That is exciting.

13 Your Honor, if I -- I just have a
14 question of logistics.

15 THE COURT: Sure.

16 MS. VASQUEZ: In terms of jury
17 deliberations, I know you've promised to this jury
18 and we all have tried really hard to say that
19 they're going to be done --

20 THE COURT: Yeah.

21 MS. VASQUEZ: -- before the long
22 weekend.

1 THE COURT: Well, they're going to be --
2 the case is going to be to them by the weekend. I
3 think we all decided that.

4 MS. VASQUEZ: Yes, Your Honor.

5 THE COURT: Correct?

6 MS. VASQUEZ: That's correct. So in
7 terms of should they not be able to reach a
8 verdict on Friday after --

9 THE COURT: Which I don't think they
10 will, but yes.

11 MS. VASQUEZ: Right. Then for Tuesday,
12 because it's a long holiday, do you expect or do
13 you want the parties here and the attorneys --

14 THE COURT: What I --

15 MS. VASQUEZ: -- in the courtroom?

16 THE COURT: -- what I plan to do is
17 if -- whenever the jury does come back with their
18 verdict I'm going to make it at least a full hour.
19 But -- so if they come back at 12:15 in the
20 afternoon, I would say we'll announce the verdict
21 at 2:00.

22 MS. VASQUEZ: Okay.

1 THE COURT: Does that make sense?

2 MS. VASQUEZ: Yes.

3 THE COURT: That would give time for
4 your clients to get from wherever they're at. I'd
5 rather -- I'd -- I'd prefer they wouldn't be here.

6 MS. VASQUEZ: Really? Okay.

7 THE COURT: Well, only -- during
8 deliberations, only because it's already a circus
9 everywhere.

10 MS. VASQUEZ: Right.

11 THE COURT: So, I mean, they can be here
12 if they want to be; but that means that the
13 deputies have to be involved watching them all
14 day.

15 MS. VASQUEZ: Okay.

16 THE COURT: I think the only way we can
17 do it as far as the public is -- because they're
18 going to line up because they're going to want to
19 try to be here for the verdict and maybe just get
20 randomly lucky. I think we're still going to do a
21 hundred, a hundred tags a day.

22 So those people can have access to the

1 courtroom. However, I'm going to be doing my
2 other dockets. So they get to watch me do really
3 exciting things. So I've got a full docket to
4 continue working. So I'll be working the whole
5 time.

6 And then if we get a verdict, I'll just
7 stop whatever I'm doing; announce when we will
8 have the verdict. And it will be at least an
9 hour, more than an hour. And I'll give everybody
10 plenty of time to get here as long as you're
11 locally in the area.

12 MR. ROTTENBORN: Okay.

13 THE COURT: I'll let them go as long as
14 they want at night. I always tell them, I don't
15 serve dinner. So it's up to them how long they
16 want to go. Okay? I -- I let them take their own
17 breaks and things.

18 I usually let them just be released at
19 the end of the day, but I'll -- since the style of
20 this case, I'll probably bring them into the
21 courtroom to release them at the end of the day.
22 Obviously your clients won't be here, but if you

1 could be available for that --

2 MR. ROTTENBORN: Sure.

3 THE COURT: -- at the end of the day --

4 MS. VASQUEZ: Absolutely, Your Honor.

5 THE COURT: -- just so I can make sure
6 they understand not to watch anything.

7 I'm going to release the two alternates
8 right before deliberations, but I'm going to keep
9 them on notice and stand-by just in case there's
10 an issue with any of the jurors during
11 deliberations.

12 Is there anything else I'm missing,
13 Jamie?

14 MR. ROTTENBORN: I assume they're not
15 deliberating over the weekend.

16 THE COURT: They're not deliberating
17 over the weekend.

18 MR. ROTTENBORN: Okay.

19 THE COURT: I couldn't do that to them.
20 I've disrupted their lives enough.

21 MR. ROTTENBORN: And the -- the -- could
22 the parties waive appearances for questions if the

1 attorneys are present?

2 THE COURT: Yeah. I -- I think that's a
3 good idea. If they have questions, if I could
4 just have the attorneys available.

5 MS. VASQUEZ: Absolutely, Your Honor.

6 THE COURT: And we can deal with the
7 questions as they come.

8 MR. ROTTENBORN: And then for closings,
9 would those start at 9:00 on Friday?

10 THE COURT: Yeah. I would like to start
11 at 9:00 on Friday.

12 MR. ROTTENBORN: And two hours a piece?

13 THE COURT: Two hours a piece. That
14 includes your rebuttal and --

15 MR. ROTTENBORN: So the goal would be by
16 lunch we'd go --

17 THE COURT: Right.

18 MR. ROTTENBORN: Okay.

19 THE COURT: Right. You get two hours
20 for your whole --

21 MR. ROTTENBORN: The whole thing.

22 THE COURT: -- your whole thing.

1 MR. ROTTENBORN: Yeah.

2 THE COURT: And remember our schedule.
3 We did that in the very beginning. Right?

4 MR. ROTTENBORN: Um-hum.

5 THE COURT: You go first for your -- for
6 your first closing. You get to go. And you
7 address their case and your case. And then you
8 get to do rebuttal for your case and their case.
9 And then they get surrebuttal only for their
10 counterclaim.

11 MR. ROTTENBORN: Correct.

12 THE COURT: And you have to limit it to
13 the counterclaim arguments.

14 MR. ROTTENBORN: Correct.

15 THE COURT: Right? That's what we had
16 said before.

17 MR. ROTTENBORN: That's right.

18 MR. CHEW: Yes, Your Honor. And, just
19 to clarify, is Your Honor okay with our --

20 THE COURT: Two people again?

21 MR. CHEW: -- our splitting it --

22 THE COURT: We're doing tag team?

1 MS. VASQUEZ: Yes.

2 MR. CHEW: -- as we did the opening?

3 THE COURT: I -- again, I don't care.

4 As long as we stay within those two hours --

5 MS. VASQUEZ: Thank you, Your Honor.

6 THE COURT: -- that's fine.

7 MR. CHEW: Thank you, Your Honor.

8 THE COURT: Okay.

9 MR. CHEW: I think it's more interesting
10 for the jury.

11 MS. VASQUEZ: And then finally --

12 THE COURT: Sure, Mr. Chew. Yes.

13 MS. VASQUEZ: Do you expect the parties
14 to be here for the verdict?

15 THE COURT: I don't. It doesn't matter
16 to me. I assume they'd want to be here for the
17 verdict, but that's up to them.

18 MS. VASQUEZ: Okay.

19 THE COURT: Okay?

20 MS. VASQUEZ: Thank you, Your Honor.

21 THE COURT: That's fine. And I will
22 give you enough time to have them here if you wish

1 to have them here.

2 MS. VASQUEZ: Understood.

3 THE COURT: Okay?

4 MR. NADELHAFT: Your Honor, one -- one
5 last thing. And I don't want to -- I know you
6 don't want to go backwards, but I -- I'm going to
7 go in reverse for a minute.

8 THE COURT: Okay.

9 MR. NADELHAFT: On the -- on the --
10 Plaintiff's 1246, the one about the -- there's the
11 redactions about the dogs here. I think, you
12 know, there's a point that says, Johnny had the
13 audacity to send bill to my lawyers.

14 I think that that -- I thought that's
15 sort of suggesting -- they're suggesting something
16 about an illegal issue with the dogs. So that's
17 why I would ask for --

18 THE COURT: I don't get that from that
19 statement --

20 MR. NADELHAFT: Okay.

21 THE COURT: -- not being -- I mean, I
22 don't think the jury would either because we had

1 zero --

2 MR. NADELHAFT: Okay.

3 THE COURT: -- evidence on it. So I
4 think that's --

5 MR. NADELHAFT: That's -- that's fine.

6 THE COURT: I don't think that's --

7 MR. NADELHAFT: Thank you, Your Honor.

8 THE COURT: -- going to be an issue.

9 MR. NADELHAFT: Okay.

10 MS. VASQUEZ: That's fine, Your Honor.

11 THE COURT: Anything further?

12 MS. VASQUEZ: I don't believe so.

13 THE COURT: Last chance. All right.

14 (Off the record at 9:45 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, CAROL A. LOWE, the court reporter before whom the foregoing hearing was taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Carol A. Lowe, RPR