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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MAX ZWEIZIG,	)	
	)	
Plaintiff,	)	No. 3:15-cv-02401-HZ
	)	
vs.	)	January 16, 2018
	)	
TIMOTHY C. ROTE, a citizen of	)	Portland, Oregon
the state of Oregon, NORTHWEST	)	
DIRECT TELESERVICES, INC., an	)	
Oregon for-profit corporation,	)	
NORTHWEST DIRECT MARKETING OF	)	
OREGON, INC., an Oregon	)	
for-profit corporation,	)	
NORTHWEST DIRECT MARKETING,	)	
INC., an Oregon for-profit	)	
corporation, NORTHWEST DIRECT	)	
OF IOWA, INC., an Iowa	)	
for-profit corporation, ROTE	)	
ENTERPRISES, LLC, an Oregon	)	
limited liability company,	)	
NORTHWEST DIRECT MARKETING,	)	
INC., aka Northwest Direct	)	
Marketing (Delaware), Inc., a	)	
Delaware Corporation, and	)	
DOES 1 through 5,	)	
	)	
Defendants.	)	

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**TRIAL - DAY 1**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARCO A. HERNANDEZ  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

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FOR THE PLAINTIFF: Joel Christiansen  
Vogele & Christiansen  
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FOR THE DEFENDANT  
TIMOTHY C. ROTE: Timothy C. Rote  
Pro se  
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COURT REPORTER: Nancy M. Walker, CSR, RMR, CRR  
United States District Courthouse  
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Portland, OR 97204  
(503) 326-8186

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

(The Court, counsel, and the parties convene.)

THE COURT: We're together on Zweizig and NDT and Mr. Rote. There's some -- I said that we'd get together and just kind of wrap up some questions that you all might have.

Mr. Rote, you submitted a memo on the employment relationship issue. I read it. I don't know that we need to talk about it at this juncture. It may come up as a legal issue at some point during the course of a trial.

You did not submit anything on that issue?

MR. CHRISTIANSEN: I submitted jury instructions, Your Honor.

THE COURT REPORTER: I'm sorry. I cannot hear you.

MR. CHRISTIANSEN: I submitted jury instructions.

THE COURT: On that issue?

MR. CHRISTIANSEN: Yes.

THE COURT: Okay. I'll take a look at them.

Then, Mr. Rote, you had some questions about my rulings regarding some of the materials that -- I don't know whether you wanted in or the other side wanted in, but I can give you again an outline of what my thoughts are regarding the arbitration.

I don't want to retry the arbitration. And to the extent that exhibits from your side trigger exhibits from their side so that we're now litigating the merits of the

1 arbitration, that's what I want to avoid. It sounds like some  
2 of the things that they're going to introduce may trigger you  
3 being able to introduce some other things anyway, but  
4 generally I do not want to relitigate the arbitration. That  
5 goes for both sides.

6 So exhibits that trigger that kind of tit for tat,  
7 where, you know, this exhibit shows that there was  
8 retaliation, this exhibit shows there wasn't retaliation,  
9 that's what I want to avoid.

10 Does that make sense to you, Mr. Rote?

11 MR. ROTE: Yes. Yes, Your Honor.

12 THE COURT: I'm not asking you to agree with it.  
13 I'm just asking you whether it makes sense.

14 MR. ROTE: I'm just still trying to mold this into my  
15 mind as to -- since -- since the blog went into great detail  
16 on the evidence --

17 THE COURT: And I'm not prohibiting you from talking  
18 about it. I just don't want all the exhibits so that we're  
19 ending up with another trial.

20 MR. ROTE: I understand.

21 So, for example, when I'm talking about forensic  
22 reports, you don't want me to introduce the forensic report,  
23 but I can talk about what I wrote.

24 THE COURT: Right. If you want to talk about why it  
25 was an injustice --

1 MR. ROTE: Yeah.

2 THE COURT: Because your theory of the case, as I  
3 understand it, is that your blog was not retaliation; your  
4 blog was merely a statement on arbitration and the problems  
5 with arbitration.

6 MR. ROTE: That's correct.

7 THE COURT: And if that's your theory of the case and  
8 you want to explain that to the jury, I'm going to give you  
9 the opportunity to do that. I'm not going to get in the way  
10 of you doing that.

11 But, again, you lost the arbitration. And so we're  
12 not going to relitigate whether you -- that part of it by  
13 introducing exhibits and trying to show the jury why you  
14 should have won at arbitration.

15 MR. ROTE: Yes, I understand.

16 THE COURT: Okay. And I don't know how that affects  
17 the Kugler materials or how that affects the Jones transcript.  
18 If they start introducing that kind of stuff, you will be able  
19 to respond to it.

20 MR. ROTE: Okay.

21 THE COURT: All right?

22 MR. ROTE: Could I make one comment on that, Your  
23 Honor?

24 THE COURT: Yes, sir.

25 MR. ROTE: The Kugler transcript specifically was

1 dismissed with prejudice in New Jersey. It was the basis of a  
2 defamation complaint and introduced into the arbitration  
3 again, and the arbitrator concluded that he was not going to  
4 award anything on it. So it's been tried twice.

5 And the introduction of it, for example, in this  
6 case, it would be tantamount to me introducing the forensic  
7 reports. And so I'm just -- they're, on the one hand, arguing  
8 to not litigate, which they prevailed on. On the other hand,  
9 they're relitigating with many of their documents. And so I'm  
10 just --

11 MR. CHRISTIANSEN: Can I answer that?

12 THE COURT: Sure.

13 MR. CHRISTIANSEN: So we do intend to discuss that  
14 letter to Judge Kubler. I was going to raise it with you.  
15 But it's discussed in this website and it's misrepresented in  
16 this website and what actually was communicated to that judge.  
17 And we do want to bring that letter in on that basis.

18 Mr. Rote is representing to the public that one thing  
19 happened, and it was something completely different. And the  
20 thing that did happen was just awful. He accused my client of  
21 pedophilia with the judge's clerk.

22 THE COURT: Is somebody introducing all of the blog?  
23 Didn't we talk about that? The blog is coming in?

24 MR. CHRISTIANSEN: We did, yes. That particular  
25 chapter is marked as one exhibit, not just the whole website.

1 THE COURT: Okay. And as I understand it, the  
2 arbitration had to do with retaliation for --

3 (Mr. Christiansen and Mr. Rote speak at the same  
4 time.)

5 THE COURT REPORTER: I'm sorry. One at a time. I  
6 couldn't hear.

7 MR. ROTE: Shall I speak?

8 THE COURT: No.

9 MR. ROTE: Okay.

10 MR. CHRISTIANSEN: It was a whistle-blowing case,  
11 yes.

12 MR. ROTE: But he also sought emotional distress and  
13 other components. And the arbitrator refused to award those  
14 damages. So he considered the letter and refused to award  
15 damages for it.

16 MR. CHRISTIANSEN: We're seeking damages for  
17 something completely different. This is for representing to  
18 the public, because my client brought that case in the first  
19 place, that he was engaged in this porn ring with a judge and  
20 their staff, completely different.

21 And it's part of a bigger message here, which is  
22 Mr. Rote has taken my client's identity and smeared it all  
23 over the Internet, all because he brought an employment case  
24 against him.

25 THE COURT: Let me think about that one. I mean, I

1 think that's the basis of your claim is the problem, the --  
2 what your side claims to be untrue in the blog.

3 MR. CHRISTIANSEN: And misleading and vile and  
4 terrible about my client. It goes right to the element of  
5 would this dissuade a reasonable worker from bringing a claim.

6 THE COURT: Yeah. Yeah. All right.

7 And Mr. Rote's position is that was litigated at the  
8 arbitration?

9 MR. CHRISTIANSEN: That wasn't, though. The things  
10 that he's written on this website, that was years after this  
11 arbitration.

12 MR. ROTE: The arbitrator's opinion and award with  
13 respect to that letter specifically addresses the letter and  
14 refusing to award anything.

15 I don't introduce the letter. I describe what our  
16 time in New Jersey with Judge Kugler was about, in my opinion,  
17 but I don't reinforce the --

18 MR. CHRISTIANSEN: I mean, I'll read you the passage.

19 (Reading) In my somewhat emotional way, I fired off a  
20 letter challenging why the -- the why of dismissing our case  
21 with prejudice.

22 It goes on to say, By this time I wondered if Max  
23 was --

24 THE COURT: Slow down.

25 MR. CHRISTIANSEN: (Reading) I wondered by -- by this



1 time I wondered if Max was setting up private websites for  
2 these judges to watch their porn, how that would have worked,  
3 that a private website would be set up for the exclusive use  
4 only, content provided by the hosting person. And the only  
5 thing the judge would need to do is access the site with his  
6 login and ID. But I digress.

7 THE COURT: What -- that's a portion of the blog?

8 MR. CHRISTIANSEN: That's the blog.

9 THE COURT: Okay.

10 MR. CHRISTIANSEN: The actual letter that went to the  
11 judge -- what's misrepresented there is when the letter goes  
12 to the judge, it actually says a number of things.

13 (Reading) Note that the plaintiff has been  
14 downloading video from a pedophile site. Is it possible that  
15 plaintiff has some contact with your clerk? Plaintiff clearly  
16 received a great gift from the Court. We have to ask why.  
17 Plaintiff's girlfriend graduated from law school a few years  
18 ago and manufactured this case. Is it possible your clerk  
19 knows her and sought to assist in their effort?

20 This is all in the world now. So I think Mr. Rote's  
21 letter to the judge, the jury gets the whole picture.

22 THE COURT: The blog part comes in. I don't have any  
23 problem with that. In fact, I think he wants the blog --

24 MR. CHRISTIANSEN: Right.

25 THE COURT: -- in.

1           The question is whether the letter to the judge comes  
2 in.

3           MR. CHRISTIANSEN: Yeah, and it's not just that.

4           It's a printout from some Discovery Systems place,  
5 with "older muscled guy fucks young twink mpeg."

6           THE COURT: That's a letter to the judge?

7           MR. CHRISTIANSEN: It's attached to the letter to the  
8 judge, yes.

9           THE COURT: Hang on to the letter.

10          The blog I don't have any problem you talking about.  
11 I don't know about the letter to the judge, so I have to think  
12 about that part of it.

13          MR. ROTE: The attachment he's referring to is out of  
14 a forensic report by one of our forensic experts that  
15 discovered this on a 120-gig hard drive. So --

16          MR. CHRISTIANSEN: I mean, that goes to the heart of  
17 our case, Your Honor. There's this person who's controlling  
18 his version of reality for the public as it relates to my  
19 client, his former employee. And the jury needs to see how  
20 he's misrepresenting this.

21          THE COURT: What does the forensic report show us?

22          MR. CHRISTIANSEN: The alleged videos that are  
23 smearing -- that my client -- somehow attributing them to my  
24 client, and these are the videos that he's putting on a  
25 website for judges to view through improper contact with their

1 clerks.

2 MR. ROTE: That's a misinterpretation.

3 THE COURT: What is it from your perspective,  
4 Mr. Rote?

5 MR. ROTE: The attachment to the letter was a couple  
6 of pages from the forensic report on the 120-gig hard drive.  
7 We provided that forensic image to law enforcement. And with  
8 the letter, that forensic image or that couple of pages was  
9 provided as an attachment.

10 But, again, Mr. Zweizig filed a defamation case  
11 against us. It was -- against me. It was dismissed with  
12 prejudice. And he litigated this issue with the arbitrator,  
13 who refused specifically to award any damages.

14 So, again, to the extent the forensic reports or  
15 portions of the forensic reports they want to bring in, it's  
16 kind of consistent with what I wanted to do, but we haven't --  
17 you know, it falls within that re-litigation point, and --

18 THE COURT: Were you planning on introducing forensic  
19 reports?

20 MR. CHRISTIANSEN: No, just this letter to the judge,  
21 which included, as an attachment, one of these many forensic  
22 reports.

23 THE COURT: So will the forensic reports be -- were  
24 they part of the letter to the judge, then?

25 MR. CHRISTIANSEN: One page, a snippet from that

1 forensic report.

2 THE COURT: And you want the rest of the report in?  
3 Is that what you're telling me?

4 MR. ROTE: Well, yes. To the extent that they're  
5 going to use a snippet, then I would want the entire forensic  
6 report to come in.

7 THE COURT: Was the entire forensic report attached  
8 to the letter?

9 MR. ROTE: No, it was not.

10 THE COURT: And is your retaliation claim based on  
11 the blog or on the letter to a judge?

12 MR. CHRISTIANSEN: It's based on the website. And  
13 our argument is this website contains false, disparaging,  
14 terrible things about my client. It misrepresents what  
15 actually happened.

16 THE COURT: So why is the letter to the judge  
17 relevant to that point?

18 MR. CHRISTIANSEN: Because it shows all of the  
19 omissions and misrepresentations about what's in the website.

20 THE COURT: The letter to the judge does?

21 MR. CHRISTIANSEN: No, no -- yeah, the letter to the  
22 judge shows why that website is inaccurate, misleading, and,  
23 yeah, harmful to my client.

24 THE COURT: And what was your way of introducing the  
25 forensic report?

1 MR. ROTE: The forensic reports are discussed at  
2 length in the blog. I specifically, for example, discuss the  
3 120-gig forensic report in the blog. It's one of the  
4 chapters.

5 THE COURT: The blog is coming in, so you'll get to  
6 talk about it in the blog.

7 MR. ROTE: Yeah.

8 And I've attached links in those chapters to the  
9 forensic reports. They're part of the media. It's part of  
10 the -- part of the blog.

11 THE COURT: Okay.

12 MR. ROTE: So --

13 THE COURT: Yeah. I don't know about the reports  
14 themselves, but you get to discuss everything that's in the  
15 blog, because the blog is coming in.

16 MR. ROTE: Yeah.

17 THE COURT: Hold off on the reports themselves. I  
18 don't know that you have the right foundation to introduce the  
19 reports as a legal matter. Okay?

20 MR. ROTE: Yeah.

21 THE COURT: But you get to discuss them. If it's in  
22 the blog, you get to talk about them.

23 Do you understand?

24 MR. ROTE: I do.

25 THE COURT: Okay.

1           You subpoenaed somebody from the Oregon State Bar?

2           MR. ROTE: No. I only -- I only reached out to her,  
3 that based on correspondence between the two, Mr. Christiansen  
4 and Carol Bernick, that she should be prepared. I expected  
5 that Ms. Bernick would respond to Mr. Christiansen about that.

6           And a good chunk of the blog is about -- about the  
7 relationship between the PLF and Mr. Christiansen and Linda  
8 Marshall. And I go into great detail about, you know,  
9 attorney collusion with respect to these issues. And this was  
10 simply additional evidence that somehow she's, for some  
11 reason, wanting to be actively communicating with  
12 Mr. Christiansen on this case.

13           So there are several components that -- for example,  
14 Mr. Christiansen has added the Complaint, in his exhibits,  
15 that I filed in Clackamas County for defamation. And the PLF  
16 hired representation for Mr. Christiansen and Ms. Marshall.  
17 And in response to all of that, I subpoenaed documents from  
18 the U.S. Marshals Service.

19           So we get into this -- this big cycle of things that  
20 have been previously precluded, but yet he still is interested  
21 in -- in somehow offering a Complaint that I filed against him  
22 and Linda Marshall for defamation. This is all this Judge  
23 Jones stuff that you had --

24           THE COURT: Said no.

25           MR. ROTE: -- said no about. He still has his

1 defamation Complaint that he's going to introduce.

2 MR. CHRISTIANSEN: We'll take that out. We don't  
3 need it.

4 THE COURT: Okay. That solves that.

5 MR. CHRISTIANSEN: And, also, Your Honor, I told you  
6 we talked about that stipulated protective order. We'll take  
7 that out, too, and the Judge Jones transcript.

8 THE COURT: Okay. Does that solve your problem?

9 MR. ROTE: Yes.

10 THE COURT: Okay.

11 Then there's a bunch of other exhibits that were  
12 offered late. Honestly, exhibits were due a long time ago.  
13 I haven't looked at any new exhibits.

14 MR. CHRISTIANSEN: So I received -- in Mr. Rote's  
15 rebuttal exhibits, he sent part of an e-mail thread between he  
16 and I, suggesting he's going to say that Mr. Zweizig hasn't  
17 mitigated his damages because Mr. Rote has offered to have  
18 Mr. Zweizig edit his website.

19 And I've reached out to Mr. Rote probably a dozen  
20 times now offering to meet with a third party to do that. And  
21 if we go down that road, I intend to offer those e-mails,  
22 saying that I've made that -- that offer in response.

23 THE COURT: Yeah, I don't want to hear about  
24 negotiations between you.

25 MR. CHRISTIANSEN: Yeah.

1 THE COURT: That's not appropriate for the jury.

2 MR. ROTE: Aren't the offers to mitigate appropriate?

3 THE COURT: Offers of settlement are not  
4 appropriate --

5 MR. ROTE: No.

6 THE COURT: -- between the parties.

7 MR. ROTE: I understand. But to mitigate?

8 I mean, if I reached out and said, "What is it you  
9 want? In order to stop demanding us taking down the blog,  
10 what is it you need?," and I get no specific response, it  
11 seems to me like that is a credible point for the jury.

12 THE COURT: Yeah, I don't know about that one. This  
13 is all emotional distress and punitive damages.

14 And so you want to let the jury know that you made an  
15 offer, Mr. Rote, to take the blog down?

16 MR. ROTE: Not to take the blog down. But I asked  
17 them to tell me what it is that they needed from the blog.

18 They had earlier demanded that I take the blog down  
19 in its entirety. But, you know, only 25 percent of it is  
20 really about Mr. Zweizig and the arbitration. A good chunk of  
21 it is about things that happened afterwards or his attorney.

22 So I had offered to say, you know, "What is it you  
23 need to -- for me to -- for us to resolve this?" In response,  
24 they have offered to go through alternative dispute  
25 resolution.



1           And my argument on that is that's -- that's just  
2 litigating in a different forum. It's not -- it's not a  
3 response to "Tell me specifically what it is you need." And  
4 they haven't told me what they needed. So --

5           THE COURT: Was this made before or after the lawsuit  
6 was filed?

7           MR. ROTE: It was made about a year after the lawsuit  
8 was filed.

9           THE COURT: All right. I'll think about that one as  
10 well.

11           MR. CHRISTIANSEN: Your Honor, I'd ask, if Mr. Rote  
12 does bring that -- that e-mail in, that my client at least be  
13 allowed to say, "I offered to sit down with a third party to  
14 talk about this."

15           My client's testimony will be "I didn't want to have  
16 anything to do with him. If I did, I wanted a third party  
17 there."

18           THE COURT: I understand.

19           I mean, he doesn't just get to do it one way. The  
20 whole conversation comes in.

21           All right. So on the offer to mitigate or take down  
22 a portion of the blog, hold off on that one, Mr. Rote. Let me  
23 think about that, whether that's actual mitigation in the  
24 context of this case or not. Again, this is emotional  
25 distress and punitive damages. It might be relevant to

1 punitive damages. I have to think about that.

2 As regards everything else, we've decided we're  
3 staying away from all of the things that have to do with the  
4 arbitration.

5 The Kugler materials having to do with some salacious  
6 allegations by Mr. Rote against Mr. Zweizig in the blog --  
7 everything in the blog is coming in. We've already decided  
8 that. The question, then, is whether or not there is an  
9 additional letter that was sent to a judge. I need to -- I'll  
10 take a look at that. I'm not sure that that's coming in.

11 And whether or not there are forensic reports that --  
12 Mr. Rote's position is that helps show what was in the blog is  
13 true?

14 MR. ROTE: Correct.

15 THE COURT: But if all materials in the blog are  
16 coming in anyway, and that includes references to the forensic  
17 reports, what else do you need?

18 MR. ROTE: I don't know that I need anything else.  
19 But if they're going to -- again, if they're going to  
20 introduce -- start introducing pages from the forensic reports  
21 or from a forensic report, then I think that my argument is  
22 that whole forensic report should come in, because it's bigger  
23 than just that topic that they want to introduce. So --

24 THE COURT: Okay. Well, I will cross that bridge  
25 when we get there.

1           If you introduce the letter, I don't know what that's  
2 going to do about any additional reports or not.

3           Is there anything else that we needed to resolve this  
4 morning or do you all understand where we are?

5           From the plaintiff's perspective, Mr. Christiansen?

6           MR. CHRISTIANSEN: I understand, Your Honor.

7           THE COURT: Mr. Rote, is there anything else we need  
8 to talk about?

9           MR. ROTE: Just one other exhibit related to, I  
10 think, this conversation that we just had.

11           The -- many of the forensic reports are already  
12 public. They're -- so part of the Complaint, argument in the  
13 Complaint, and, of course, originally the proposed media order  
14 was that we didn't have a right to have those in or that he  
15 was harmed by our publishing of those forensic reports.

16           If that component of his Complaint is now gone in  
17 terms of their argument, then -- then I do understand it. To  
18 the extent that it comes in as an argument by reference, then  
19 I have an exhibit here that shows the -- that many of these  
20 forensic reports are already in the public space. They were  
21 filed with the motion to vacate in 2011, Exhibit 602.

22           THE COURT: I'll take a look at it.

23           MR. ROTE: Okay.

24           One other exhibit, Your Honor, that I had offered was  
25 Exhibit 599, which was the Secretary of State -- showing the

1 date of dissolution of Mr. Zweizig's employer, NDT. And that  
2 was -- that's Exhibit 599. And that exhibit shows that the  
3 company was administratively dissolved in April 30th, 2000 --  
4 or April of 2005.

5 The blog was -- the first blog post was started after  
6 it was suspended as a corporation, before the administrative  
7 dissolution. And all subsequent blog posts were after his  
8 employer was administratively dissolved, and so the first blog  
9 post before, but after it was suspended, and the other 95  
10 chapters all written after.

11 THE COURT: And that was in response to my point  
12 about his employment relationship?

13 MR. ROTE: That's correct.

14 THE COURT: You figured out that NDT actually was  
15 dissolved before the blog?

16 MR. ROTE: That's correct.

17 I think I represented to you at the time that I  
18 thought it was just inactive. In fact, it had been  
19 administratively dissolved.

20 THE COURT: Okay. If you want to introduce that  
21 exhibit, you can.

22 Anything else?

23 MR. CHRISTIANSEN: No.

24 THE COURT: So, Mr. Rote, you understand on those  
25 things where I said I don't want it coming in, that means you

1 don't mention it in opening statement, you don't raise it  
2 during cross-examination, unless you get permission from me  
3 because you feel that a door has been opened and you'd like to  
4 explore a particular area.

5 Do you understand?

6 MR. ROTE: I think so. Let me restate and make sure  
7 I do.

8 In my opening statement, I can talk about what I've  
9 written in the blog --

10 THE COURT: Yes.

11 MR. ROTE: -- including making reference to forensic  
12 reports, but I can't explain more than what I've talked about  
13 in the blog.

14 THE COURT: Correct.

15 MR. ROTE: I can if I, for example, talked a great  
16 deal about a forensic report. I can't, however, use the  
17 forensic report language specifically.

18 THE COURT: Anything that's in the blog, I will let  
19 you use --

20 MR. ROTE: Okay.

21 THE COURT: -- because the blog is coming in. I'm  
22 not limiting you in that way at all. But I don't want you  
23 referring to exhibits that aren't coming in, by way of  
24 example, because I've already ruled they're not coming in.

25 MR. ROTE: Right.

1           So if I were to refer to that, I would simply refer  
2 to the forensic report not as an exhibit that I discussed,  
3 but -- because some of the chapters, Your Honor, are actually  
4 the forensic reports and the 120-gig hard drive report and  
5 other things that are specific. And so if -- if during my  
6 opening statement I talk about what I discussed in detail in  
7 the blog --

8           THE COURT: That's okay.

9           MR. ROTE: -- I'll end up saying -- talking about the  
10 forensic reports.

11          THE COURT: And I'm okay with that.

12          Again, I don't want you referencing exhibits that  
13 aren't coming into evidence because I've ruled they're not  
14 coming in --

15          MR. ROTE: Okay.

16          THE COURT: -- or I've reserved ruling on that point.

17          MR. ROTE: Okay. I get it.

18          THE COURT: All right.

19          Go get the jury.

20          THE CLERK: I don't think they're ready yet.

21          THE COURT: The jury is not ready yet?

22          THE CLERK: They're going to message me when they're  
23 ready.

24          THE COURT: Oh, okay.

25          THE CLERK: Judge Mosman has a trial, too, so they're

## Voir Dire

1 seating theirs first.

2 THE COURT: Oh, okay. They're seating Mosman's case  
3 first and then seating ours?

4 (The Court and the courtroom deputy confer off the  
5 record.)

6 THE COURT: Okay. Thank you.

7 (A recess is then taken.)

8 (The Court, counsel, the parties, and the panel of  
9 prospective jurors convene.)

10 THE COURT: Good morning. Please be seated.

11 THE CLERK: Your Honor, we're here today for a jury  
12 trial in the case of Zweizig versus Northwest Direct  
13 Teleservices, Inc., et al., Case No. 15-cv-2401.

14 Do you want me to commence with calling the jury?

15 THE COURT: Members of the jury, I need eight of you  
16 today, so that means most of you are going home. And the way  
17 we do jury selection is we're going to put eight of you -- or  
18 16 of you in the jury box right now, and we need to do it in a  
19 particular order.

20 So what's going to happen is Jennifer is going to  
21 call your names, and then you're going to be seated in the  
22 jury box. You will begin being seated by going to the back  
23 row to my left is where Juror No. 1 will be, through 8. And  
24 then Juror No. 9 will be in the front row, through 16.

25 And then we're going to put those of you in the back

## Voir Dire

1 in order as well. Okay?

2 Go ahead, Jennifer.

3 THE CLERK: Juror No. 1 is Kevin Ladd, L-a-d-d.

4 THE COURT: Come on up, Mr. Ladd.

5 THE CLERK: No. 2, Renee Cameron.

6 THE COURT: You can come up along the front. It's a  
7 little easier.

8 THE CLERK: No. 3, Kenneth Kauffman, K-a-u-f-f-m-a-n.

9 No. 4 --

10 THE COURT: Mr. Kauffman, you can enter from that  
11 side.

12 THE CLERK: -- Kenneth Harwood, H-a-r-w-o-o-d.

13 No. 5, Mark Youso, Y-o-u-s-o.

14 No. 6, Cameron Thiemann, T-h-i-e-m-a-n-n.

15 No. 7, Joann Parsell, P-a-r-s-e-l-l.

16 No. 8, Bret Walker, W-a-l-k-e-r.

17 No. 9, Erin Schaefer, S-c-h-a-e-f-e-r.

18 No. 10, Ronald Rutter, R-u-t-t-e-r.

19 No. 11, Timothy Ackley, A-c-k-l-e-y.

20 No. 12, James Bolin, B-o-l-i-n.

21 No. 13, Andrea Estrada, E-s-t-r-a-d-a.

22 No. 14, Stephen Thompson, T-h-o-m-p-s-o-n.

23 No. 15, Rachael Highton, H-i-g-h-t-o-n.

24 No. 16, Rachel Friedstrom, F-r-i-e-d-s-t-r-o-m.

25 And No. 17, Robert Taylor.



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1 No. 18, David Erdt, E-r-d-t.

2 No. 19, Linda Wells, W-e-l-l-s.

3 No. 20, Brandon Fillis, F-i-l-l-i-s.

4 21, Karen Jones, J-o-n-e-s.

5 22, Michael Evans, E-v-a-n-s.

6 Actually, Ms. Jones --

7 THE COURT: That's okay, Jennifer. Let them be where  
8 they are. That will work.

9 THE CLERK: Okay.

10 Ann Hart, H-a-r-t.

11 Eric Payne, P-a-y-n-e.

12 Daniel Wagner, W-a-g-n-e-r, or Danielle.

13 Raymond Johnson, J-o-h-n-s-o-n.

14 THE COURT: Move down to the last row, towards the  
15 left side of the room.

16 THE CLERK: And No. 27, Carol Gossett, G-o-s-s-e-t-t.

17 THE COURT: Members of the jury, the parties want to  
18 get to the place in the process where we get to talk to you  
19 about your qualifications to act as jurors in this specific  
20 case. The way that works is I ask you a bunch of questions  
21 and you answer the bunch of questions, and they get to know a  
22 little bit about you and then exercise challenges.

23 But before your questions, you must take an oath to  
24 answer the questions truthfully. So I need all of the  
25 potential jurors at this time to stand up, all of you, please,

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1 raise a hand, and take an oath.

2 (The panel of prospective jurors is then sworn.)

3 THE COURT: Thank you. Please be seated.

4 We are selecting a jury for the case of Zweizig  
5 versus Northwest Direct Teleservices, Incorporated, et al.

6 My name is Marco Hernandez. This is Jennifer Paget.  
7 Jennifer is my courtroom deputy and acts as the bailiff in  
8 this case, which means she takes care of you. She swears  
9 witnesses and takes control over the exhibits which are  
10 introduced into evidence.

11 The plaintiff this morning, Mr. Zweizig, is being  
12 represented by Joel Christiansen.

13 You can introduce yourselves. Go ahead and stand up  
14 and tell everybody who you are.

15 MR. CHRISTIANSEN: Hi. I'm Joel Christiansen, and I  
16 represent Max Zweizig.

17 THE PLAINTIFF: Hi. I'm Max Zweizig.

18 THE COURT: Be seated.

19 The defendant, Mr. Rote, is representing himself.

20 MR. ROTE: My name is Tim Rote, and I am one of the  
21 defendants in this action.

22 THE COURT: Your job as jurors is to apply the facts  
23 to the law which I will give to you.

24 This is a civil case. It's not a criminal case. You  
25 may have seen criminal cases on television or in the movies.

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1 And you know that in a criminal case, the prosecutor must  
2 prove the defendant guilty beyond a reasonable doubt.

3 Civil cases are different. In civil cases the party  
4 who has to prove something only has to prove it by a  
5 preponderance of the evidence or that it's more likely true  
6 than not true.

7 In a few minutes I'm going to be asking you some  
8 questions. The purpose of the questions is not to argue the  
9 case or embarrass you, but, rather, to determine your  
10 qualifications to act as jurors in this case. Please respond  
11 to my questions honestly and sincerely. If you do not  
12 understand a question, ask me to repeat it or to ask it in  
13 another way.

14 Since you are in an unfamiliar setting among  
15 strangers, it might be a little uncomfortable for you to be  
16 completely open and honest in your answers to my questions.  
17 The process requires you to overcome that discomfort and do  
18 your best to be open, honest, and complete when you answer  
19 questions. It's extremely important, and the fairness of the  
20 trial depends on it.

21 If you're asked a question that involves something  
22 you consider very sensitive or private, please tell us so. I  
23 do not anticipate that happening during the course of my  
24 questioning this morning in this type of a case.

25 In the event that that does happen, however, I can

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1 arrange for you -- to receive your questions outside the  
2 presence of the other jurors.

3           When the questioning is completed, the lawyers or  
4 parties will be allowed to exercise challenges. If you're not  
5 selected for this jury, please do not feel that your  
6 attendance has been without value. We need a substantial pool  
7 of potential jurors so that an impartial panel can be  
8 selected. And all of you who are here today provide an  
9 important contribution to this process. Your presence assures  
10 fairness.

11           Before we get to my more specific questions, I want  
12 to provide or have each of you provide some biographical  
13 information by answering the questions that appear on the  
14 screen. For those of you that can't see the screen, we'll  
15 give you a little piece of paper that has the exact same  
16 information on it that you can look at.

17           By the time we get to those of you in the back, you  
18 will have memorized the points and you won't need the screen  
19 in any event, but we'll give you a piece of paper anyhow so  
20 you feel more comfortable.

21           After we get this biographical information, I will  
22 ask you some questions that are more specific about this case.  
23 And then after that, we will move on to taking challenges.

24           With that, if you look at the screens there in front  
25 of you on your display, there should be on there biographical

## Voir Dire

1 points. I don't know if they're really questions. And if you  
2 would -- we're just going to go down the row.

3 And we'll start with you. You happen to be in chair  
4 No. 1, Mr. Ladd, so we'll start with you. And we'll just go  
5 down the row, and just briefly, Reader's Digest version of the  
6 points that are on there, so that the parties can learn a  
7 little bit about you.

8 PROSPECTIVE JUROR NO. 1: My name is Kevin Ladd. I  
9 live in Astoria or near Astoria, Oregon. My wife and my  
10 mother-in-law lives with me.

11 My occupation is I work retail, marine and  
12 industrial. I have an associate's degree. My wife has had a  
13 little bit of college experience. My mother-in-law is  
14 retired.

15 I belong to Viking Nordic Scandia dancers. I'm one  
16 of the instructors. That's one of my hobbies. I also like to  
17 hunt. I like shooting.

18 And, yes, I have appeared as a juror about 30 years  
19 ago.

20 THE COURT: Is there anything about your experience  
21 30 years ago that left you any questions about the justice  
22 system, whether it's good, bad, neutral about it?

23 PROSPECTIVE JUROR NO. 1: No. It was interesting.

24 THE COURT: Okay. Thank you.

25 Next.

## Voir Dire

1           PROSPECTIVE JUROR NO. 2: My name is Renee Cameron.  
2 I live in Irvington with my husband. We -- let's see. I am  
3 a -- strategic planning is my occupation. He's the director  
4 of a nonprofit.

5           Let's see. I have a bachelor's and an MBA in  
6 marketing. I belong to a gym and am involved with a -- CHAP,  
7 Children's Healing Art Project, so not really something I  
8 belong to, but am involved with, that organization.

9           I enjoy travel, reading, gardening, and painting.  
10          I've been a witness, but never a juror or a party.

11          THE COURT: How long ago were you a witness?

12          PROSPECTIVE JUROR NO. 2: Fifteen years.

13          THE COURT: Do you remember what type of case it was?

14          PROSPECTIVE JUROR NO. 2: It was -- there was -- I  
15 think it was civil. There was a traffic accident, and I  
16 witnessed the traffic accident.

17          THE COURT: Okay. Anything about that experience  
18 that left you a bad taste in your mouth about the justice  
19 system?

20          PROSPECTIVE JUROR NO. 2: No.

21          THE COURT: Thank you.

22          PROSPECTIVE JUROR NO. 3: My name is Kenneth  
23 Kauffman. I live south of Canby, in Clackamas County. I live  
24 with my wife. We are both retired. She was a registered  
25 nurse. I was an environmental health specialist. I worked

## Voir Dire

1 for the State of Oregon for 40 years.

2 We don't have any other living companions. I'm not a  
3 member of any clubs. I'm a member of our local church. I'm a  
4 hobby locksmith. I also like to build things out of steel. I  
5 weld.

6 I've been in court quite a lot because of my work  
7 with the State of Oregon, as a witness. And I actually was  
8 party to a lawsuit.

9 THE COURT: What did you do with the State of Oregon?

10 PROSPECTIVE JUROR NO. 3: I worked for the Oregon  
11 Health Authority in environmental health. We did a lot of  
12 inspection work, licensing.

13 THE COURT: And you said you were in court a lot.  
14 What type of cases were you in court a lot?

15 PROSPECTIVE JUROR NO. 3: The health division cases  
16 had to do with license suspension, license denials, those  
17 kinds of cases.

18 THE COURT: So those weren't -- not this kind of  
19 court. That's more of an administrative setting; is that  
20 correct?.

21 PROSPECTIVE JUROR NO. 3: They were often in circuit  
22 courts.

23 THE COURT: Oh, they were?

24 PROSPECTIVE JUROR NO. 3: Yes. There were  
25 administrative hearings as well.

## Voir Dire

1 THE COURT: Okay. So when was the last time you were  
2 in Circuit Court as a result of something with the Oregon  
3 Health Authority?

4 PROSPECTIVE JUROR NO. 3: Oh, my goodness. It was  
5 probably -- it would have probably been in the eighties.

6 THE COURT: Okay. Is there anything about your  
7 experiences in court, whether as a witness or as a party to a  
8 case, that would cause you difficulty in being neutral in this  
9 case?

10 PROSPECTIVE JUROR NO. 3: No.

11 THE COURT: You said you were a party in a case as  
12 well. How long ago was that?

13 PROSPECTIVE JUROR NO. 3: That would have been in the  
14 early seventies.

15 THE COURT: All right. Thank you.

16 PROSPECTIVE JUROR NO. 4: You have me listed at  
17 Kenneth Harwood, but I go by my middle name, Wesley,  
18 preferred.

19 Area of residence, I'm in Happy Valley, and I live  
20 with my wife, the only other person in our household at this  
21 time. We both work at Portland Community College. I'm an  
22 education coordinator, continuing education programs for  
23 health care. She is a job specialist at the college. We both  
24 have our master's degree in adult education.

25 The organizations I belong to, I'm affiliated with



## Voir Dire

1 the National Association of Nutrition Professionals, because  
2 that's one of my passions is food and cooking and nutrition.  
3 My other hobbies include golf. And I'm teaching myself the  
4 guitar, and so I'm a very early musician of interest.

5 Have I ever been involved in court proceedings?  
6 Well, I was a witness 40 years ago in a case in -- I believe  
7 it was Circuit Court in Oregon City. I was a grand jury  
8 member in Circuit Court a couple years ago in Clackamas County  
9 as well. And I was a successful litigant in a case, oh,  
10 probably 15 years ago against a private party.

11 THE COURT: What kind of a case was it?

12 PROSPECTIVE JUROR NO. 4: It was regarding a piece of  
13 property that it was falsely represented to us that he owned  
14 it, and we ended up in court over that. It was a non-jury  
15 situation.

16 THE COURT: Okay. Anything about your experiences  
17 with the court system that would cause you difficulty in being  
18 neutral in this case?

19 PROSPECTIVE JUROR NO. 4: Not at all.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR NO. 5: Hello. My name is Mark  
22 Youso, and I live out in Hillsboro. I'm residing with a  
23 girlfriend, and she's a medical assistant.

24 And what I do for a living is, since I was in my  
25 twenties, is owning an apartment complex, so I guess it would

## Voir Dire

1 be real estate investor, mainly in rentals. Let's see. Oh, I  
2 live with my Labrador retriever.

3 What organizations do I belong to? No organizations.  
4 I do play the guitar.

5 And I have been a juror. I was picked as a juror in  
6 Washington County around two years ago, and it was a criminal  
7 case, sexually -- sexual abuse type of a case.

8 THE COURT: Anything about your experience with the  
9 criminal justice system that would cause you difficulty being  
10 neutral in this case?

11 PROSPECTIVE JUROR NO. 5: No.

12 THE COURT: Is there anything about that experience  
13 that left a bad taste in your mouth one way or another?

14 PROSPECTIVE JUROR NO. 5: No. It was enlightening.

15 THE COURT: Okay. All right. Thank you.

16 PROSPECTIVE JUROR NO. 6: I'm Cameron Thiemann. I  
17 live in Newberg, Oregon, with my parents. I don't have a job.  
18 I'm a student at Oregon State University. My parents are an  
19 IT specialist for Providence and my dad is a salesman.

20 I do not belong to any organizations or clubs.  
21 Hobbies, I like to play sports with my free time.

22 And I have never appeared in a court before.

23 THE COURT: Are you missing school to be here?

24 PROSPECTIVE JUROR NO. 6: Yeah,

25 THE COURT: Do you have school tomorrow?

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1 PROSPECTIVE JUROR NO. 6: Yeah.

2 THE COURT: I don't want you to miss college, so I'm  
3 going to excuse you so that you can go back to school and do  
4 well.

5 PROSPECTIVE JUROR NO. 6: Okay. Thank you.

6 THE COURT: All right.

7 I take it they don't need him downstairs.

8 THE CLERK: They do want him to return.

9 THE COURT: Okay. So there is another trial  
10 downstairs. You might not find a judge that thinks as much  
11 about education as I do.

12 Go to college. Do well. Go downstairs. Return down  
13 there. There's another trial.

14 PROSPECTIVE JUROR NO. 7: Hi. I'm Joann Parsell, and  
15 I live in Oregon City with my husband. And I'm a special  
16 education instructional assistant, and my husband is a tooling  
17 technician for a local company. I have an associate's degree  
18 plus, and my husband has some college.

19 I don't -- I'm not involved in any clubs or  
20 organizations. I love to read and garden and crochet and  
21 things like that and walk.

22 I have served on a jury four times, and it's always  
23 been a positive experience.

24 THE COURT: How long ago was the last one?

25 PROSPECTIVE JUROR NO. 7: Probably five years ago.

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1 THE COURT: Do you remember what type of a case it  
2 was?

3 PROSPECTIVE JUROR NO. 7: It was a -- well, it was,  
4 I assume, a civil case. It dealt with a father being able to  
5 see his children.

6 THE COURT: Okay. All right. Thank you.

7 PROSPECTIVE JUROR NO. 8: Hi. My name is Bret  
8 Walker. I live in outer Northeast Portland. I live with my  
9 daughter. I'm a schoolteacher at David Douglas.

10 I'm a member of the United States Tennis Association.  
11 I like to play golf and all water sports, snowboard.

12 I've never appeared either as a witness, a juror, or  
13 a party.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR NO. 9: Hi. I'm Erin Schaefer. I  
16 live in Sherwood. I live with my husband, two daughters, and  
17 a son. I am -- work in food service at an elementary school.  
18 My husband is a project manager in IT for Nike. I have an  
19 associate's degree. My husband has a bachelor's degree and is  
20 an Army and National Guard veteran.

21 I don't belong to any clubs or organizations. I  
22 enjoy reading and watching my children's sports activities.

23 And I've never appeared in a court proceeding.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR NO. 10: Ron Rutter. Inner East

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1 Burnside. I live alone. I'm a carpenter. I finished high  
2 school. No organizations or clubs. I like to read and go to  
3 movies.

4 And I've been a juror a couple of different times.

5 THE COURT: When was the last time you were a juror?

6 PROSPECTIVE JUROR NO. 10: Last time was Multnomah  
7 County back in '07 or '08.

8 THE COURT: Anything about your experiences that  
9 would cause you difficulty being neutral in this case?

10 PROSPECTIVE JUROR NO. 10: No, sir.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR NO. 11: My name is Timothy Ackley.  
13 I live over by Mt. Tabor with my wife and five-year-old  
14 daughter. I have my own construction business, with four  
15 employees.

16 I don't belong to any clubs or organizations. We do  
17 a lot of family camping in the summertime.

18 I have never appeared in court.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR NO. 12: My name is James Bolin.  
21 I live in Tigard with my wife. I'm an aircraft mechanic. My  
22 wife is an administrator at a hospital. I have some college  
23 and vocational training; my wife, some college.

24 I'm a union member for my job. I belong to a car  
25 club. I enjoy car clubs and RC boats.

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1 I've been a witness in a court case.

2 THE COURT: How long ago were you a witness?

3 PROSPECTIVE JUROR NO. 12: Forty-six years ago.

4 THE COURT: All right. Anything about any of your  
5 experiences that would cause you difficulty being neutral --

6 PROSPECTIVE JUROR NO. 12: No.

7 THE COURT: -- in this case?

8 Thank you.

9 PROSPECTIVE JUROR NO. 13: I'm Andrea Estrada, and I  
10 live in Northeast Portland. I have a roommate and her son  
11 that lives with me. We both work in energy efficiency  
12 consulting. I have some college.

13 I don't belong to any clubs. I do like to run and  
14 exercise and crafts at home.

15 And I've never appeared in court.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR NO. 14: I'm Steve Thompson. I  
18 live in Lake Oswego with my wife, Vicky. She is retired, was  
19 a property manager when she retired about 20 years ago. I'm a  
20 lawyer here in Portland. I have a bachelor's degree in  
21 economics, as does my wife. And I have a J.D. degree.

22 Organizations, obviously I belong to the Oregon State  
23 Bar, the Washington State Bar, the bar of this court, the bar  
24 of the Western District of Washington and the Eastern District  
25 of Washington, the Ninth Circuit. I'm also a member of the

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1 Panner Inn of Court.

2 Hobbies, I ski, both snow and water. I ride bikes,  
3 mountain and road. I windsurf in the Gorge in the summer.  
4 And I'm a helicopter pilot.

5 I have never been a witness and I have never been a  
6 juror. I have been a party to litigation, but I have never  
7 appeared in a court proceeding in connection with my party  
8 status.

9 THE COURT: What kind of law work do you do?

10 PROSPECTIVE JUROR NO. 14: Primarily, Your Honor, I  
11 represent injured railroad workers against the railroads under  
12 the Federal Employers Liability Act. I have done some other  
13 work, including grade crossing collisions, aviation, some  
14 Jones Act work. And I've also done some business fraud cases  
15 and some medical malpractice.

16 THE COURT: Have you ever done any employment work?

17 PROSPECTIVE JUROR NO. 14: In this connection, I've  
18 tried several Railway Labor Act cases with respect to my  
19 railroad employees against the railroad, under the Railway  
20 Labor Act, which is a pretty narrow focus.

21 THE COURT: Have you ever done any whistleblower  
22 claims or anything like that?

23 PROSPECTIVE JUROR NO. 14: Yes, sir. Under the  
24 Federal Railroad Safety Act, I have done a number of  
25 whistleblower claims.

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1 THE COURT: Have you done any retaliation claims as  
2 well --

3 PROSPECTIVE JUROR NO. 14: Yes.

4 THE COURT: -- on the whistle blowing?

5 PROSPECTIVE JUROR NO. 14: Yes.

6 THE COURT: Is there anything about your experience  
7 that would cause you to be -- cause you difficulty in being  
8 neutral in this case?

9 PROSPECTIVE JUROR NO. 14: I don't know anything  
10 about the case. I don't really believe so.

11 THE COURT: Okay. We'll talk about the case and what  
12 its nature is a little bit more.

13 This is a claim of employer retaliation. So if you  
14 know that much about the case, is there anything about that?

15 PROSPECTIVE JUROR NO. 14: No.

16 I think it's -- I think it's probably important for  
17 the Court and both the parties to know that, obviously, I  
18 primarily do plaintiffs' work --

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 14: -- and I have in respect  
21 to those retaliation claims. But I don't think that that's  
22 going to impact my judgment in this case.

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR NO. 14: Thank you.

25 PROSPECTIVE JUROR NO. 15: My name is Rachael



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1 Highton. I live in Northeast Portland, and I live with my  
2 husband and 14-year-old son. I am a pharmacist, and my  
3 husband is a real estate broker. And we both have bachelor's  
4 degrees, and I have a doctor of pharmacy.

5 I don't belong to any organizations or clubs. I  
6 enjoy gardening and watching and playing soccer.

7 And I appeared as a juror in Multnomah County court  
8 a little less than two years ago.

9 THE COURT: What kind of a case was it?

10 PROSPECTIVE JUROR NO. 15: It was a criminal case, a  
11 trespassing claim.

12 THE COURT: Anything about any of your experience  
13 that would cause you difficulty being neutral in this case?

14 PROSPECTIVE JUROR NO. 15: No.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 16: My name is Rachel  
17 Friedstrom. I live in Northwest Portland. My husband and  
18 daughter reside with me. My husband is a maintenance  
19 technician. We have some college.

20 We do not belong to any clubs. I enjoy cooking and  
21 reading.

22 And I have served on a grand jury.

23 THE COURT: How long ago?

24 PROSPECTIVE JUROR NO. 16: About 10 years ago.

25 THE COURT: All right. Anything about your

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1 experiences that would cause you difficulty being neutral in  
2 this case?

3 PROSPECTIVE JUROR NO. 16: No.

4 THE COURT: All right.

5 PROSPECTIVE JUROR NO. 17: My name is Robert Taylor.  
6 I live in Southwest Portland. I am currently living with my  
7 mom, my brother, and my girlfriend. As for my occupation, I'm  
8 a test associate. My brother is a software developer. My mom  
9 is a writer, editor. And my girlfriend works at the YMCA with  
10 organizing activities for children.

11 For education, my brother and I have a bachelor of  
12 science in computer science. My mom has a master's in  
13 writing. My girlfriend has a little bit of college.

14 Organizations and clubs, none currently. Hobbies,  
15 activities, competitive gaming, streaming, and programming.

16 As far as appearing in court, have not.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NO. 18: My name is David Erdt,  
19 and I live out in Scholls, Oregon. I live with my wife and  
20 three children. My wife has a bachelor's in business and  
21 child development, and I have an associate of science. I  
22 currently work at UPS as their tech support group.

23 I don't belong to any organizations. My hobbies are  
24 Legos, computer gaming, and Facebook programming.

25 And I've never appeared in court before.

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1 THE COURT: Thank you.

2 PROSPECTIVE JUROR NO. 19: My name is Linda Wells,  
3 and I live in Southwest Portland with my husband. We are both  
4 retired. We both have bachelor's degrees, mine in social  
5 sciences, and my husband's was in mathematics. I worked for  
6 the State of Oregon in the Department -- for the Department of  
7 Human Resources. My husband was a software engineer.

8 I belong to a church. I enjoy reading, travel,  
9 walking.

10 I have been a juror in a civil case, and I also  
11 served on a grand jury in Multnomah County.

12 THE COURT: How long was your jury experience?

13 PROSPECTIVE JUROR NO. 19: Oh, probably both of them  
14 at least 20 years ago.

15 THE COURT: Okay.

16 Keep going. Anything else?

17 PROSPECTIVE JUROR NO. 19: No. I don't think so.

18 THE COURT: You said that you worked with the  
19 Department of --

20 PROSPECTIVE JUROR NO. 19: The Department of Human  
21 Services, the Oregon State Department of Human Services -- or  
22 Human Resources, excuse me. I was a vocational rehabilitation  
23 counselor.

24 THE COURT: Okay. And that job never brought you  
25 into the court system?

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1           PROSPECTIVE JUROR NO. 19: No. Only sometimes,  
2 not -- not this kind of court. I mean, they were  
3 administrative law court perhaps, but not --

4           THE COURT: How often did you go into the  
5 administrative law --

6           PROSPECTIVE JUROR NO. 19: Oh, not very many times.

7           THE COURT: Okay. Anything about your experiences  
8 that would cause you difficulty being neutral in this case?

9           PROSPECTIVE JUROR NO. 19: No.

10          THE COURT: Thank you.

11          PROSPECTIVE JUROR NO. 20: My name is Brandon Fillis.

12 I live in Tualatin. I live with my parents. I'm going to  
13 school at PCC right now and have a job at Fred Meyer.

14 My hobbies, I have a membership to LA Fitness, and I  
15 play video games and teach a class at my church.

16 And I've never been a juror, witness, or a party.

17          THE COURT: Thank you.

18 Let's stop there. Just hang on to the microphone.

19 I don't think we're going to get any deeper into the  
20 jury pool. So it's not that I don't want to hear about all of  
21 you, but I want to save a little bit of time and try to get  
22 everybody on their way as quickly as possible. So let's just  
23 stop there for the time being. If we get that deep, then I'll  
24 have you introduce yourselves.

25 We're going to move to now some more questions about

## Voir Dire

1 the case itself. So the first question I have at this point  
2 is whether any of you know any of the parties in this case, if  
3 you think you might recognize them. And, if so, please raise  
4 a hand.

5 The lawyers -- and if you wouldn't mind getting your  
6 witness lists together, I'm going to have you tell us, tell  
7 the jury who your potential witnesses are.

8 I want you to listen to the names of the potential  
9 witnesses, and I'm going to ask the same question: Do you  
10 think you might know those people or recognize their names?

11 I'll start with the plaintiff. Who are your possible  
12 witnesses?

13 MR. CHRISTIANSEN: Our possible witness is Mr. Max  
14 Zweizig.

15 THE COURT: And for the defense?

16 MR. ROTE: Just myself, Your Honor.

17 THE COURT: Oh, okay. So we've already answered that  
18 question. We can move on.

19 This case involves the following: The plaintiff in  
20 this case is Mr. Zweizig, and the defendant is Mr. Rote.

21 The following are business entities that are related  
22 to the case: Northwest Direct Teleservices, Incorporated;  
23 Northwest Direct Marketing of Oregon, Incorporated; Northwest  
24 Direct Marketing, Incorporated, a Delaware for-profit  
25 corporation; Northwest Direct of Iowa, Incorporated; Northwest

## Voir Dire

1 Direct Marketing, Incorporated, an Oregon for-profit  
2 corporation; and Rote Enterprises, LLC.

3 Have any of you heard of those entities or had any  
4 relationship with those entities? If so, please raise a hand.

5 The liability of the business entities is not a part  
6 of this trial. The plaintiff claims that the defendant,  
7 Mr. Rote, aided and abetted the business entities in  
8 retaliating against the plaintiff, in violation of state law.

9 Is there anything about the nature of the claim that  
10 would cause any of the potential jurors difficulty in being  
11 neutral in this case? If so, please raise a hand.

12 Have any of you --

13 THE COURT REPORTER: Judge, there's a hand.

14 THE COURT: I'm sorry. Sir?

15 Can you say your name first, please.

16 And pass the microphone back.

17 PROSPECTIVE JUROR NO. 22: Michael Evans.

18 THE COURT: Sure. Mr. Evans, tell me.

19 PROSPECTIVE JUROR NO. 22: Well, I mean, I just have  
20 a -- kind of a bias against employers, just straight up  
21 against employers.

22 So if it's like a -- if it's like a beef between an  
23 employer and an employee, I'm automatically siding with the  
24 employee, like, every single time, not -- you know, I'm just  
25 saying that that's what happens in my head.

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1 THE COURT: Yeah.

2 PROSPECTIVE JUROR NO. 22: When I heard it was  
3 against -- it was like an employer against an employee, then  
4 I'm already very, very biased against the employer.

5 THE COURT: Okay. Well, we don't really want a  
6 biased jury, so I'll go ahead and excuse you at this juncture.

7 PROSPECTIVE JUROR NO. 22: Okay.

8 THE COURT: You can go downstairs there where you  
9 were before on the second floor. There is another jury  
10 waiting for you. I don't think it has the same topic, so it  
11 might be a better fit for you.

12 Thank you very much for your honesty. I appreciate  
13 it.

14 Anybody else?

15 Have any of the potential jurors heard or read about  
16 this case? If so, please raise a hand.

17 This case is going to take two days to try. We  
18 should be done by tomorrow. When I say we're going to be  
19 done, that means that the jury will begin their deliberations  
20 by tomorrow. I don't control how long deliberations take.  
21 That's entirely up to the jury.

22 Does the fact that we're going until tomorrow create  
23 any particular problems for anybody? If so, please raise a  
24 hand.

25 Hang on a second. Let me start with the people in

## Voir Dire

1 the box.

2 After I tell them, now everybody is going to keep  
3 their hands down.

4 Back row. Start with the back row, please.

5 PROSPECTIVE JUROR NO. 4: Actually, I don't have  
6 tomorrow, but --

7 THE COURT: Can you say your name, please.

8 PROSPECTIVE JUROR NO. 4: Oh, I'm sorry. Kenneth  
9 Wesley Harwood.

10 I don't have tomorrow as a problem, but my wife just  
11 found out she has a surgical appointment on Thursday that I  
12 need to take her to. So if it goes any longer than tomorrow,  
13 then I have an issue.

14 THE COURT: The jury will be deliberating tomorrow.  
15 Again, I don't know how long they will deliberate for.

16 I'm going to hang on to you right now, okay?

17 PROSPECTIVE JUROR NO. 4: That's fine.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 14: Your Honor, more as a  
20 precaution -- Steve Thompson -- I have initial disclosures due  
21 in the District Court of Idaho on Friday. And, more  
22 importantly, I have an oral argument before Judge Rice in the  
23 Eastern District of Washington on Monday on a very important  
24 matter that is potentially case dispositive.

25 THE COURT: You'll be done by Monday. There's no way



## Voir Dire

1 that we'll be --

2 PROSPECTIVE JUROR NO. 14: That's what I thought, but  
3 I thought I'd, in an abundance of caution --

4 THE COURT: All right. And as far as your  
5 disclosures, I'm going to hang on to you.

6 PROSPECTIVE JUROR NO. 14: They're pretty easy in  
7 this particular matter.

8 THE COURT: Okay. Thank you.

9 PROSPECTIVE JUROR NO. 14: Thank you.

10 THE COURT: Anybody else?

11 PROSPECTIVE JUROR NO. 20: I'd be missing two days of  
12 community college to participate in this.

13 THE COURT: Oh, you're in community college? I'm  
14 sorry. I missed that.

15 PROSPECTIVE JUROR NO. 20: Yeah, Portland Community.

16 THE COURT: Yeah, we'll go ahead and excuse you.

17 PROSPECTIVE JUROR NO. 20: Thank you, sir.

18 THE COURT: Yeah. Good luck with your schooling.

19 Anybody else?

20 Although I think you'd learn a lot more here.

21 We already spoke about prior jury experience. Have  
22 any of you been involved in a lawsuit, in particular -- well,  
23 let's just start there. Anybody been involved in a lawsuit  
24 before? Some of you have raised your hands.

25 All right. In the back.

## Voir Dire

1 Any of you that raised your hands, have you ever been  
2 involved in a lawsuit that involves employment, whistle  
3 blowing, that kind of an issue? If so, please raise your  
4 hand.

5 There's a hand up here.

6 PROSPECTIVE JUROR NO. 3: This doesn't involve  
7 whistle blowing, but I was fired by the County commissioners  
8 of Lincoln County in the seventies, and I sued them in federal  
9 court because I claimed they had no cause and provided no due  
10 process.

11 THE COURT: Is there anything about that experience  
12 that would cause you difficulty being neutral in this case?

13 PROSPECTIVE JUROR NO. 3: Not that I can think of.

14 THE COURT: Okay. Thank you.

15 Anybody else?

16 There's a hand in front.

17 THE COURT REPORTER: Would you state your name first.

18 PROSPECTIVE JUROR NO. 12: James Bolin.

19 It wasn't a court case, but it was a union  
20 arbitration about employment.

21 THE COURT: Okay. Anything about that experience  
22 that causes you difficulty --

23 PROSPECTIVE JUROR NO. 12: No, sir.

24 THE COURT: -- being neutral?

25 PROSPECTIVE JUROR NO. 12: No.

## Voir Dire

1 THE COURT: All right. And I think there was a hand  
2 way in the back.

3 Yeah, we're never going to get to you. If you want  
4 to tell your story, you can feel free to let us know.

5 Say your name first.

6 PROSPECTIVE JUROR NO. 27: I'm (inaudible.)

7 THE COURT REPORTER: And I'm sorry. Wait for the  
8 microphone. I can't hear you.

9 PROSPECTIVE JUROR NO. 27: Carol Gossett.

10 I owned a business for 27 years, and I had a contract  
11 dispute with a -- with a client, and so we went to court over  
12 that.

13 THE COURT: All right. Thank you.

14 Somebody talked about arbitration, and one of the  
15 issues in this case that is going to be litigated is, in fact,  
16 about arbitration.

17 Have any of you been involved in arbitration before?  
18 I know we've already spoken to one. Anybody else been  
19 involved in arbitration before? If so, please raise a hand.

20 For those of you that raised your hand on  
21 arbitration, is there anything about your experience in  
22 arbitration that would cause you difficulty being neutral in  
23 this particular case? If so, please raise a hand.

24 This case also involves a blog. I don't blog, so I'm  
25 not really that savvy about what blogs are, other than I think

## Voir Dire

1 they're communications on social media that is available for  
2 pretty much anybody in the public to view.

3           The alleged retaliation took place on a blog. Is  
4 there anything about the fact that a blog is involved in this  
5 particular case that causes you difficulty being neutral in  
6 this case? If so, please raise a hand.

7           Have any of you ever been in a position where someone  
8 has written something unfavorable about you in a blog? If so,  
9 please raise a hand.

10           One of your jobs as jurors, should you be chosen to  
11 sit in this particular case, is that you will be required to  
12 make a decision based on the evidence and only on the  
13 evidence, not on any experience outside. This is a contained  
14 setting, and you need to decide it based on the evidence and  
15 the law that I give you.

16           Is there anybody that has difficulty with that  
17 notion? If so, please raise a hand.

18           Is there anybody that has difficulty with the notion  
19 that you must follow the law, whether you agree with it or  
20 not? If you have trouble with that idea, please raise a hand.

21           Having heard a little bit about what the case is  
22 about, kind of reflecting now, is there anybody sitting as  
23 potential jurors at this time that would have difficulty being  
24 neutral and fair in this case? And, if so, please raise a  
25 hand.

## Voir Dire

1 I'm going to take a minute just to confer with the  
2 lawyers for a minute, and then we'll get back to talking to  
3 you.

4 Come on up over here, please.

5 (The Court, counsel, and Mr. Rote confer off the  
6 record.)

7 THE COURT: Are there any challenges for cause on the  
8 part of the plaintiff?

9 MR. CHRISTIANSEN: No, Your Honor.

10 THE COURT: For the defense?

11 MR. ROTE: No, Your Honor.

12 THE COURT: Then you may exercise your peremptory  
13 challenges. Jennifer will be over to visit with you.

14 This is the part of the process where we just look at  
15 each other while they're exercising their challenges.

16 (The challenges are then taken.)

17 THE COURT: She's just going to double-check, to make  
18 sure you agree with our selection.

19 (There is a brief pause in the proceedings.)

20 THE COURT: I'm going to read eight names. If I read  
21 your name, please stand up.

22 Kevin Ladd, Renee Cameron, Wesley Harwood, Joann  
23 Parsell, Bret Walker, Ronald Rutter, James Bolin, Andrea  
24 Estrada.

25 I need for you to raise a hand and take an oath.

## Voir Dire

1 (The jury is then sworn.)

2 THE COURT: Please be seated.

3 For the rest of you, your service in this courtroom  
4 is complete. I know that there's another trial going on  
5 somewhere else, and I don't know what's going on with that  
6 one, but they still haven't selected their jury. So I need  
7 you to go ahead and go back down to the second floor jury  
8 assembly room and see what happens next.

9 Thank you for your service. Thank you so much.

10 (The remaining prospective jurors leave the  
11 courtroom.)

12 THE COURT: So those of you in the front row, slide  
13 on down. Those of you in the back row, slide on down, except  
14 for we're going to want -- yeah, come on down to the front.  
15 One of you comes up to the front row, so we have four and  
16 four. And the idea is I want you to be as close as you can to  
17 the people that are testifying.

18 Note where you are seated. We're going to take a  
19 10-minute or so, 12-minute recess at this time.

20 When you come back, I will give you what's called the  
21 preliminary precautionary instructions. We'll do opening  
22 statements, and we will begin the trial. So things are going  
23 to move quickly after now.

24 So Jennifer will escort you into the jury room.  
25 She'll show you where your home base is, and I'll see you in

## Preliminary Instructions

1 just about 10 or 15 minutes.

2 (The jury leaves the courtroom.)

3 THE COURT: We are in recess for 15 minutes. Thank  
4 you.

5 (A recess is then taken.)

6 (The Court, counsel, the parties, and the jury  
7 reconvene.)

8 THE COURT: You are now the jury in the case, and I  
9 want to take a few minutes to tell you something about your  
10 duties as jurors and give you some instructions. At the end  
11 of the trial, I will give you more detailed instructions.  
12 Those instructions will control your deliberations.

13 It's your duty to decide what the facts are from the  
14 evidence. You, and you alone, are the judges of the facts.  
15 You will hear the evidence, decide the facts, and then apply  
16 those facts to the law which I will give you. And that is how  
17 you will reach your verdict. In doing so, you must follow the  
18 law, whether you agree with it or not.

19 The evidence will consist of the testimony of  
20 witnesses, documents and other things received into evidence  
21 as exhibits and any facts on which the parties agree or which  
22 I instruct you to accept.

23 You should not take anything I say or do during the  
24 trial as indicating what I think of the evidence or what your  
25 verdict should be.

## Preliminary Instructions

1           The following things are not evidence and you must  
2 not consider them as evidence in deciding the facts in this  
3 case.

4           Statements and arguments by the parties are not  
5 evidence. Questions and objections are not evidence.  
6 Testimony that I tell you to disregard, not evidence, and  
7 anything you may have seen or heard when the Court is not in  
8 session.

9           Do not communicate any private or special knowledge  
10 about any of the facts of this case to your fellow jurors.  
11 Decide the case only on the evidence received here in court.

12           Some evidence may be admitted for a limited purpose  
13 only. When I instruct you that some evidence is admitted for  
14 a limited purpose, you must consider it only for that limited  
15 purpose.

16           Evidence may be direct or circumstantial. Direct  
17 evidence is testimony by a witness about what that witness  
18 personally saw or heard or did. Circumstantial evidence is  
19 indirect evidence; that is, it is proof of one or more facts  
20 from which one can find another fact. You are to consider  
21 both direct and circumstantial evidence. The law permits you  
22 to give equal weight to both, but it is for you to decide how  
23 much weight to give any evidence.

24           There are rules of evidence which control what can be  
25 received into evidence. When a lawyer asks a question or



## Preliminary Instructions

1 offers an exhibit into evidence and the other party or lawyer  
2 on the other side thinks that it is not permitted by the rules  
3 of evidence, the other side may object.

4           If I overrule the objection, the question may be  
5 answered or the exhibit received. If I sustain the objection,  
6 the question cannot be answered and the exhibit cannot be  
7 received. Whenever I sustain an objection to a question,  
8 ignore the question and do not guess what the answer would  
9 have been.

10           Sometime I may order that evidence be stricken from  
11 the record and that you disregard or ignore the evidence.  
12 That means when you're deciding the case, you must not  
13 consider the evidence which I told you to disregard.

14           In deciding the facts of this case, you may have to  
15 decide which testimony to believe and which testimony not to  
16 believe. You may believe everything a witness says or part of  
17 it or none of it.

18           In considering the testimony of any witness, you may  
19 take into account the opportunity and ability of the witness  
20 to see or hear or know the things testified to; the witness's  
21 memory; the witness's manner while testifying; the witness's  
22 interest in the outcome of the case, if any; the witness's  
23 bias or prejudice, if any; whether other evidence contradicted  
24 the witness's testimony; the reasonableness of the witness's  
25 testimony in light of all the evidence; and any factors

## Preliminary Instructions

1 that -- any other factors that bear on believability.

2 The weight of the evidence as to a fact does not  
3 necessarily depend on the number of witnesses who testify.  
4 You're to weigh evidence, not count witnesses.

5 From time to time during the trial, it may be  
6 necessary for me to talk to the parties outside the hearing of  
7 the jury by having a conference at the bench when you're  
8 present in the courtroom or by calling a recess.

9 Please understand that while you're waiting, we're  
10 working. The purpose of the conferences is not to keep  
11 relevant information from you, but to decide how certain  
12 evidence is to be treated under the rules of evidence and  
13 avoid confusion and error.

14 We will, of course, do what we can to keep the number  
15 and length of these conferences to a minimum. I may not  
16 always grant a request for a conference. Do not consider my  
17 granting or denying a request for a conference as any  
18 indication of my opinion of the case or what your verdict  
19 should be.

20 Regarding your conduct as jurors, keep an open mind  
21 throughout the trial. Do not decide what the verdict should  
22 be until you and your fellow jurors have completed your  
23 deliberations at the end of the trial.

24 Second, because you must decide the case based only  
25 on the evidence received in the case and on my instructions as

## Preliminary Instructions

1 to the law that applies, you must not be exposed to any other  
2 information about the case or to the issues it involves during  
3 the course of your jury deliberations.

4 Thus, until the end of the case, unless I tell you  
5 otherwise, do not communicate with anyone in any way and do  
6 not let anyone else communicate with you in any way about the  
7 merits of the case or anything to do with it.

8 This includes discussing the case in person, in  
9 writing, by phone or other electronic means, by e-mail, text  
10 message, Internet chat room, blog, website, or other feature.

11 This applies to communicating with your fellow jurors  
12 until I give you the case for deliberation and it applies to  
13 communicating with everyone else, including your family  
14 members or your employer or the media, press, and people  
15 involved in the trial.

16 Although you can tell your family and your employer  
17 that you've been selected to be seated as a juror in the case,  
18 if you are asked or approached in any way about your jury  
19 service or anything about the case, you must respond that  
20 you've been ordered not to discuss the matter and report such  
21 contact to the Court.

22 Because you will receive all of the evidence and  
23 legal instructions you properly may consider to return a  
24 verdict here in court, do not read, watch, or listen to any  
25 news or media accounts or commentary about the case or

## Preliminary Instructions

1 anything to do with it.

2 Do not do any research, such as consulting  
3 dictionaries, searching the Internet, or using other reference  
4 materials. Do not make any investigation or in any other way  
5 try to learn about the case on your own.

6 The law requires these restrictions to ensure that  
7 the parties have a fair trial based on the same evidence that  
8 each party has had an opportunity to address. And if you  
9 violate these restrictions, that jeopardizes the fairness of  
10 these proceedings. If any juror is exposed to outside  
11 information, please notify the Court.

12 At the end of the trial, you will have to make your  
13 decision based on what you recall of the evidence. Although  
14 you will have all the exhibits which have been admitted with  
15 you in the jury room, you will not have a written transcript  
16 to refer to, so I urge you to pay close attention to testimony  
17 as it's given.

18 If you wish, you may take notes to help you remember  
19 what a witness said. If you do take notes, keep them to  
20 yourself until you and your fellow jurors go to the jury room  
21 to decide the case. Do not let your note-taking distract you  
22 from hearing answers or watching witnesses. It's important  
23 that you watch witnesses, as their appearance may assist you  
24 in deciding whether you believe their testimony and how much  
25 weight to give their testimony.

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1           When you leave at night, your notes should be left in  
2 the jury room.

3           If you do not take notes, you should rely on your own  
4 memory of what was said and not be overly influenced by the  
5 notes of other jurors.

6           If at any time you cannot clearly hear what the  
7 witness or a lawyer or party says or you can't see the  
8 documents that are on the evidence presentation system, please  
9 speak up and let the Court know that.

10          If you need to communicate with me in other  
11 circumstances, you simply give a signed note to Jennifer, and  
12 she'll give it to me.

13          In a few moments we're going to have -- start the  
14 trial. Each side may make an opening statement. An opening  
15 statement is not evidence. It's simply an outline to help you  
16 understand what that party expects the evidence will show. By  
17 the way, a party is not required to give an opening statement.

18          The plaintiff will then present his evidence, and  
19 counsel for the defendant may cross-examine -- or the  
20 defendant may cross-examine. Following plaintiff's case, the  
21 defendant may present evidence and the plaintiff's counsel may  
22 cross-examine.

23          After all the evidence has been presented, the  
24 attorneys are going to make closing arguments to summarize and  
25 interpret the evidence for you. I'll then instruct you on the

## Preliminary Instructions

1 law, and you'll return to deliberate.

2 The plaintiff in this case is Max Zweizig. The  
3 defendant is Timothy Rote. We've talked about the business  
4 entities involved in this particular case. The liability of  
5 the business entities is not part of this case.

6 The plaintiff claims that the defendant aided and  
7 abetted the business entities in retaliating against the  
8 plaintiff in violation of state law, by publishing disparaging  
9 statements about the plaintiff on the Internet because the  
10 plaintiff previously enforced his employment-related rights.

11 The plaintiff has the burden of proving these claims  
12 by preponderance of the evidence. The defendant denies those  
13 claims and contends that the publications at issue in this  
14 case were not retaliatory, but rather were a private citizen's  
15 account of the justice system.

16 The plaintiff seeks damages against the defendant for  
17 aiding and abetting the business entities in retaliating  
18 against the plaintiff. To prove retaliation, the plaintiff  
19 has the burden of proving each of the following elements by a  
20 preponderance of the evidence: one, that the plaintiff  
21 engaged in or was engaging in an activity protected under  
22 state law; two, that the business entity subjected the  
23 plaintiff to an adverse employment action; and, three, that  
24 the plaintiff was subjected to the adverse employment action  
25 because of his participation in the protected activity.

## Preliminary Instructions

1           An action is an adverse employment action if a  
2 reasonable employee would have found the action materially  
3 adverse, which means it might have dissuaded a reasonable  
4 worker from making or supporting a charge of whistleblower  
5 retaliation.

6           A plaintiff is subjected to an adverse employment  
7 action because of his participation in protected activity if  
8 he knows that an unlawful motive was a substantial factor in  
9 the adverse employment action or, in other words, that the  
10 plaintiff would have been treated differently in the absence  
11 of an unlawful motive.

12           The plaintiff seeks damages against defendant for  
13 aiding and abetting an unlawful employment practice. The  
14 plaintiff has the burden of proving each of the following  
15 elements by a preponderance of the evidence in addition to  
16 proving the retaliation claim: one, that the defendant aided,  
17 abetted, incited, compelled, or coerced retaliation by the  
18 business entities against the plaintiff; and, two, the  
19 defendant acted outside the scope of his employment with any  
20 of the business entities, i.e., not for the benefit of the  
21 businesses.

22           In determining whether a defendant acted outside the  
23 scope of his employment, relevant factors include whether the  
24 act occurred substantially within the time and space limits  
25 authorized by employment and whether the acts -- the act is of

## Opening Statement - Plaintiff

1 a kind which the employee was hired to perform.

2 I will give you copies of those last couple of jury  
3 instructions, because it kind of tells you what it is you need  
4 to be listening for during the course of this trial. I'll  
5 give them to you during the break.

6 Please understand that the instructions may change a  
7 little bit at the end of the trial, and it is the instructions  
8 at the end of the trial which will control your deliberations.

9 With that, opening statement for the plaintiff.

10 MR. CHRISTIANSEN: Thank you, Your Honor.

11 Good morning, ladies and gentlemen.

12 Fourteen years. It's been 14 years. And my client,  
13 Mr. Zweizig, wants to move on with his life.

14 As the judge has instructed you, this is an  
15 employment retaliation case. And what you'll learn today is  
16 that the employer involved in this case is a business called  
17 Northwest Direct -- it's a series of businesses, but I'll call  
18 them Northwest Direct today -- and its owner, Mr. Timothy  
19 Rote. Mr. Rote, you'll hear, owned Northwest Direct and was  
20 actively involved in running the business. It was his  
21 business.

22 Northwest Direct was in the business of  
23 telemarketing. They ran call centers in Beaverton, Eugene,  
24 Iowa. And they had plans to outsource to call centers in the  
25 Dominican Republic. And they employed about 150 to 175



## Opening Statement - Plaintiff

1 employees, who made outbound telemarketing calls. These are  
2 folks who sit at the desk, pick up the call when it tells them  
3 to make the call, and make sales.

4 You'll hear that the company made millions of dollars  
5 and, on the testimony here from Mr. Rote and what he's  
6 written, a \$100,000-per-week business.

7 Mr. Zweizig worked for Northwest Direct. He's the  
8 plaintiff in this case. And he worked for them a long time  
9 ago. He started -- Mr. Zweizig is from New Jersey, just  
10 across the Delaware River from Philadelphia. And he found the  
11 job through a friend, who connected him, and he went to work  
12 as their director of IT. He was in charge of all of their  
13 computers and writing the scripts that would import some of  
14 the call logs and get the business to do what it needed to do.  
15 And he went to work in 2001 and worked there until November of  
16 2003.

17 And what you'll find out is that toward the end of  
18 his employment, Mr. Zweizig came across some information that  
19 suggested that Northwest Direct was fraudulently overbilling  
20 clients. And after consulting with an attorney, he made a  
21 report to the Oregon Department of Justice and to the Lane  
22 County District Attorney's Office. And because of that, he  
23 was -- he lost his job.

24 Now, that, what I just told you, is not going to be a  
25 dispute in this case. And as you'll hear, this case -- that

## Opening Statement - Plaintiff

1 part of it is already done. Mr. Zweizig filed a Complaint in  
2 New Jersey; and as a result of an arbitration agreement he  
3 signed in his employment contract, that case came back here to  
4 Oregon in a private arbitration.

5 At that arbitration, Mr. Zweizig was represented by a  
6 different attorney. Her name is Ms. Linda Marshall. And an  
7 arbitrator named Bill Crow, whose name you'll see on some of  
8 the things we'll go over, issued a decision in that case.

9 And as part of that, Northwest Direct, after  
10 Mr. Zweizig brought his claims, asserted a whole laundry list  
11 of its own claims against Mr. Zweizig. They accused him of  
12 destroying computers, withholding code, altering software  
13 applications, shutting down their business, putting people out  
14 of work for a week, a whole laundry list of things. And the  
15 arbitrator also ruled on that.

16 And what you'll see is that the arbitrator found in  
17 Mr. Zweizig's favor on that claim, on both his claim and all  
18 of those things that Northwest Direct had accused him of.

19 And after that, you'll hear that Mr. Rote and his  
20 company challenged that result. They took it to court. And  
21 the Court looked at that, at all the materials, and they  
22 confirmed it. They said, This is final. This is it. And  
23 they issued a judgment in Mr. Zweizig's favor for \$75,000.

24 And what you'll find out next is that Mr. Zweizig  
25 wasn't paid. And to this day, he's still trying to collect

## Opening Statement - Plaintiff

1 his judgment in that case.

2 And in the midst of collecting that judgment, that  
3 brings us to what our case is about today. What you're going  
4 to see happened is Mr. Rote, on behalf of the corporate  
5 entities, signed over the rights to all of his business --  
6 businesses's information to himself and took it upon himself  
7 to write a blog. And we'll see that blog today, and that blog  
8 is what we're here about, and what he's done with that blog  
9 and how he's used it.

10 And I'm not going to go into all of the details of  
11 that. In fact, even in Mr. Zweizig's testimony, he's not  
12 going to go into all of the details of that. But over the  
13 last two years -- this blog was first published in February of  
14 2015, and Mr. Rote has been consistently publishing on that  
15 blog up until today -- or not today, but last week. And that  
16 blog has some awful, vile allegations about Mr. Zweizig.

17 And what you'll see today is that Mr. Rote has,  
18 because that case -- because that earlier case his company  
19 lost, he's now publishing all this stuff about Mr. Zweizig.  
20 And it's the same stuff that he's already lost; namely, that  
21 Mr. Zweizig destroyed all the computers and shut down the  
22 company. It uses extensively Mr. Zweizig's name, and you'll  
23 see that.

24 What's worse is you'll see that Mr. Zweizig actually  
25 discovered this blog when he Googled his own name. And so

## Opening Statement - Plaintiff

1 what this thing has done now is assumed an identity for  
2 Mr. Zweizig on the Internet that he -- he never wanted.

3 And so it's been 14 years. And when Mr. Zweizig  
4 Googles his name now, he is being accused of being a criminal.  
5 He's being accused of downloading and sharing pornography.  
6 We'll go through it, but it's some of the most vile things  
7 that you can imagine.

8 And it doesn't stop there. It's also his family.  
9 You'll learn that Mr. Zweizig is engaged to an attorney -- has  
10 been for a long time -- in New Jersey. Her name is Sandra  
11 Ware. So what you'll hear today is that Mr. Rote and this  
12 information on the Internet also focuses on Ms. Ware. And so  
13 not only does Mr. Zweizig have to live with the horror of  
14 finding this and knowing that this is out there about himself,  
15 it's also his fiancée.

16 You'll also see that this website also disparages  
17 anyone who has tried to help Mr. Zweizig with his claims. And  
18 we'll go through it, but the sheer content of this thing and  
19 the breadth of how long this has gone on, that's the reason  
20 Mr. Zweizig is here today. He's here today to get a ruling in  
21 this case and to reclaim his identity. And at the end of this  
22 case, I'll stand up and ask you to help us with that.

23 Thank you.

24 THE COURT: Opening statement for the defense.

25 Mr. Rote.

## Opening Statement - Defendant Rote

1 MR. ROTE: Thank you, Your Honor.

2 Ladies and gentlemen of the jury, the blog was  
3 written. It's a personal product of mine, and I've maintained  
4 that from the very beginning. I did license information from  
5 my former employer. Only one of the corporate entities that  
6 they've identified was Mr. Zweizig's employer, only one. And  
7 after that company was out of business, I began the blog.

8 I began the blog because we were subjected to very  
9 unacceptable behaviors by an arbitrator and an attorney who  
10 represented Mr. Zweizig. The arbitrator worked with  
11 Mr. Zweizig's attorney for 14 years, seven years as a partner.  
12 Neither one of them disclosed that during the course of the  
13 arbitration.

14 We discovered that during the course of the  
15 arbitration. And, ultimately, when we brought that to the  
16 attention of the arbitrator, he resigned. He recused himself.  
17 He was convinced by Mr. Zweizig's attorney to reverse that  
18 recusal, which he did. And when he returned to the case, he  
19 summarily dismissed all of our evidence.

20 Eight witnesses testified. We had three forensic  
21 experts testify, thousands of pages of evidence, all dismissed  
22 in retaliation for having brought up the fact that he did not  
23 raise this issue of independence, and it is an issue that he  
24 is required to raise on an ongoing basis.

25 We have a long history. This may -- this has not

## Opening Statement - Defendant Rote

1 been going on for 14 years. Mr. Zweizig was terminated in  
2 2003, and there was a great deal of question argued with the  
3 arbitrator as to whether or not he was terminated before his  
4 complaint to the Department of Justice or after.

5 But, most importantly, the issue for the employer and  
6 one of the key issues that I raise in this blog is that  
7 Mr. Zweizig withheld key evidence, key programming code, that  
8 resulted in the company shutting down after his last day for  
9 10 days, as we hired and recreated the programming. 150  
10 people were laid off a week before Thanksgiving.

11 And part of this blog -- part of this blog addresses  
12 the fact that I don't think he should be able to hide behind a  
13 whistleblower claim and avoid that issue. None of that issue,  
14 though, would raise what had been risen had we not had this  
15 difficulty with the arbitrator.

16 I'm going to show you evidence of the fact that his  
17 retaliation claim, while serious in his mind, was addressed in  
18 48 hours. It was open and closed by the Oregon Department of  
19 Justice in a week. And that even a day before his last day,  
20 I had reached out to him and said, "Let's put together a  
21 public statement. Let's put together something that you find  
22 compatible, that we find compatible." This was all before.  
23 I was happy to help him with his career. I didn't want him in  
24 the company.

25 After the shutdown, obviously that didn't happen

## Opening Statement - Defendant Rote

1 anymore. He hurt a lot of people. He cost us a great deal of  
2 money.

3 We spent two years in New Jersey, eventually got back  
4 here in 2005 to an arbitration. The arbitration went on and  
5 on and on, for five years. An arbitrator charges a great deal  
6 of money, charged Mr. Zweizig a great deal of money. It was  
7 unfair to both of us.

8 But an issue today is whether or not his employer,  
9 the corporations, did this. And I can assure you that I did  
10 this. Using the material and my experience from it, I did it,  
11 I wrote it, because I don't think that perjury and destruction  
12 of evidence should be looked the other way just because he  
13 prevailed with an arbitrator who didn't disclose his  
14 relationship with the attorney that he worked with, who didn't  
15 disclose his lack of independence, and then became angry when  
16 we brought it to his attention. He became so angry that he  
17 took independent forensic reports confirming our positions and  
18 rejected them out of hand.

19 Now, the blog goes into a great deal of detail,  
20 meaning I examine the forensic reports in great detail. I  
21 examine Mr. Zweizig's lack of evidence in great detail. I go  
22 through and talk about the evidence that we provided and the  
23 evidence that he did not. I go through the arbitrator's  
24 actions, his retaliation, and the lack of disclosure.

25 It's difficult to summarize what a blog is about in

## Opening Statement - Defendant Rote

1 a single word, a paragraph, or even a page, because it's 96  
2 chapters, 96,000 words. Only about 25 relate to this,  
3 Mr. Zweizig's time with us, and what happened in the  
4 arbitration.

5 The rest is an evolutionary component of behavior  
6 that -- that was caused in part by his attorneys. I certainly  
7 attacked his attorneys for their honesty.

8 An attorney has a duty to a tribunal, to you, to this  
9 Court, to be honest under a code of ethics even when it's not  
10 favorable to his or her client's position. And his attorney,  
11 Linda Marshall, in the arbitration, perpetrated a fraud on  
12 that arbitration.

13 I published 17 counts of perjury and destruction of  
14 evidence. I outline in great detail what happened.

15 At the end of the day -- at the end of the day, this  
16 issue, in part, spins off not just what I outline in the blog,  
17 because that's my representation of the truth. Not every blog  
18 post is going to be polite to Mr. Zweizig. Much of it is just  
19 an evaluation of the evidence. Some of it, though, is an  
20 attack on him personally. I don't deny that.

21 But at end of the day, the sum of the blog is about  
22 evaluating the risk of being in an arbitration where an  
23 arbitrator doesn't disclose his relationship with the attorney  
24 that represents Mr. Zweizig, and all that follows when that  
25 happens. It compromises justice, and I set out to expose



## Opening Statement - Defendant Rote

1 that.

2 I will testify that I met with the arbitrator a year  
3 ago, and he conveyed to me what was in his mind, what was on  
4 his mind at the time. And I will convey to you now that he  
5 confirmed many of my concerns about his ability to comprehend  
6 the evidence, his ability to -- his ability to reread the  
7 evidence and understand it.

8 And so he followed the path. He followed the path  
9 that was outlined for him by his former partner, someone he  
10 trusted, someone who misled him. And that is a substantial  
11 part of what this analysis is about, this blog is about.

12 I consider it a risk to the public to be involved in  
13 an arbitration when the arbitrator and the attorney both do  
14 not disclose that they worked together for 14 years.

15 Again, at the end of the day you have to consider  
16 whether or not I was acting by myself or I was acting on  
17 behalf of an employer. The employers are out of business,  
18 long gone, having suffered three cybercrime attacks. After  
19 the last and after the last litigation on that in 2014, these  
20 companies were shut down systematically. I shut those  
21 companies down because I couldn't protect them.

22 Mr. Zweizig was the second of those cybercrime  
23 attacks, and he hurt us a great deal. What we didn't care  
24 about what his complaint to the Department of Justice. It's  
25 not that we didn't take it seriously. It's just that we dealt

## Opening Statement - Defendant Rote

1 with it very quickly. No evidence was provided, and I'll show  
2 you that.

3 So our position -- my position today is that it is,  
4 in fact, just a product of my own doing, not of the employers  
5 that were out of business. It is, in fact, a position that it  
6 is about arbitration and the compromise and the perjury and  
7 the decision by his attorney, Linda Marshall, knowing that she  
8 could put that information on, that evidence on, that perjury  
9 on, and not be hurt by it.

10 The arbitrator is -- was, at the time of the  
11 arbitration, 79 years old, 85 or so today. And he -- his  
12 cognitive skills were deteriorating at the time. And  
13 ultimately it is a critique of the failure of the system  
14 to -- to remove him even from offering his services at  
15 arbitration.

16 That's my story, and I'll put on evidence to support  
17 all of those positions.

18 Thank you.

19 THE COURT: Thank you.

20 Jen, can you move the lectern.

21 (There is a brief pause in the proceedings.)

22 THE COURT: Call your first witness.

23 MR. CHRISTIANSEN: Call Max Zweizig.

24 THE COURT: Step forward and be sworn.

25 THE CLERK: Go up the stairs here. Raise your right

Zweizig - D

1 hand.

2

3

MAX ZWEIZIG

4 called as a witness in his own behalf, having been first duly  
5 sworn, is examined and testifies as follows:

6

7 THE CLERK: Please have a seat. State your name and  
8 spell it.

9 THE WITNESS: Max Zweizig. M-a-x, first name; last  
10 name is Z-w-e-i-z-i-g.

11 THE COURT: Thank you.

12 You may inquire.

13

14

DIRECT EXAMINATION

15 BY MR. CHRISTIANSEN:

16 Q. Mr. Zweizig, where do you live?

17 A. I live in Woodbury, New Jersey.

18 Q. Can you describe for the jury just a little bit about  
19 Woodbury. Where is it?

20 A. Woodbury, New Jersey is about, depending on traffic, about  
21 15 minutes from Philadelphia, over a -- over one of the  
22 bridges. You have to go over a bridge to get there.

23 But other places near me that you might have heard  
24 about, Cherry Hill, maybe, New Jersey. It's a long way from  
25 here.

Zweizig - D

1 Q. How long have you lived in Woodbury?

2 A. Well, since I was 15.

3 Q. All right. And who do you live with?

4 A. I live with Sandra Ware, my fiancée.

5 Q. How long have you been with Ms. Ware?

6 A. Twenty-six years.

7 Q. Okay. What do you like to do for hobbies or fun,  
8 Mr. Zweizig?

9 A. Computer stuff, almost anything computers, computer  
10 programming for sure, also very big into music. I've been  
11 playing guitar for -- it's about 30 or 32 years now, at least  
12 that. I've played out, been with bands, and done some  
13 recording, things like that, and also have taught guitar for  
14 many years.

15 Q. And what's your profession?

16 A. IT specialist.

17 Q. How long have you been doing IT?

18 A. I'd say about 30 years, 30, a little less.

19 Q. How did you get into technology?

20 A. I was working -- I was much younger. I was working in a  
21 machine shop, and we built flatbed trailers that would haul,  
22 like, heavy equipment down the road, you know. That's what  
23 you would put it on and it would go. If you've ever seen  
24 something that says "Eager Beaver" on the side of it --

25 THE COURT REPORTER: I'm sorry. I'm going to have

1 you slow down. "If you see something that says" -- and I  
2 couldn't hear you.

3 THE WITNESS: The model name of the trailer is -- I  
4 think the name of the company was Eager Beaver. And some of  
5 them are still around. Once in a while I still see one, so we  
6 must have done a good job on some of them.

7 But that company closed down at my location. And it  
8 was in Thorofare, which is very, very close to Woodbury, one  
9 town over. And it was a union job, and they tried to find a  
10 lot of us work. They were unable to find me work. And when  
11 they were unable to find me work and unemployment ran out, I  
12 took a job telemarketing. That was also in Woodbury, New  
13 Jersey.

14 And this was before companies -- call companies,  
15 anyway, had computers. And we did our job off of labels and  
16 made calls, and it was very old school. And the scripts we  
17 had were kind of to sell the product on the phone. It was  
18 kind of on the fly. And I felt more comfortable if I put that  
19 together into something.

20 And I had what was called a Sharp Wizard organizer.  
21 I don't know if anybody is going to know what that is, but  
22 it's a little kind of organizer that you could do things. It  
23 also had basic programming in it. I started my programming,  
24 actually, on that.

25 But I kept my scripts in there. I found it easier to

1 just read the same thing every time, practice the inflection,  
2 get it right, and not really have to think about, you know,  
3 the job.

4           So I did that. And then we got computers into place,  
5 the old, like, monotone -- these were these gold screen  
6 computers, not the green, but the orange. And somebody said,  
7 you know, "Well, Max is always playing with that computer  
8 thing he has" -- which is totally not really a computer,  
9 but -- "Maybe he could do the computer stuff."

10           I asked if it was more money. It was a little more  
11 money, so I took the job. And that then -- I took a job as a  
12 data processor. I wasn't a programmer. I was running  
13 primarily other people's programs to process data. And that's  
14 where I got into the field of computer technologies.

15 BY MR. CHRISTIANSEN: (continuing)

16 Q. And what was your job with Northwest Direct?

17 A. I was director of IT.

18 Q. And at that point, how long had you been in information  
19 technology?

20 A. I guess that would be around 20 years or so.

21 Q. Can you describe for the jury what -- what Northwest  
22 Direct did for their business?

23 A. Northwest Direct set up call centers for the purpose of  
24 telemarketing and accomplished telemarketing, a telemarketing  
25 company.

Zweizig - D

1 Q. What were your duties as IT director?

2 A. My duties were to manage myself and one -- I think two  
3 other people were all they had there. There were other jobs I  
4 had a larger staff, but this one, just two people at a  
5 maximum, usually one. And so I managed that person and his  
6 job.

7 My personal job, my daily duties, were import and  
8 export of data from our clients, the call data that would be  
9 accomplished at the end of the day, to produce that into  
10 reports, and to produce that into client files that they would  
11 then put into their system to accomplish the sales, remove  
12 people from the list, decide who is not interested, those  
13 kinds of things.

14 Q. How many call centers did Northwest Direct have while you  
15 were employed there?

16 A. When I started there, I believe they had three. I think  
17 they still had one -- I think it was in Beaverton. I'm not  
18 sure. That closed down shortly after I worked there. And I  
19 don't believe I was ever at that call center. So most of the  
20 time they had two: one in Eugene, Oregon; and one in  
21 Dyersville, Iowa.

22 Q. How many employees did Northwest Direct have?

23 A. It fluctuated. That type of industry generally does. But  
24 I would say between 150 and 175 I would say is about accurate.

25 Q. Okay. And can you turn to Exhibit --

1 A. Support staff included, not just telemarketers.

2 Q. Sure.

3 Would you turn to Exhibit 1 in the binder. Do you  
4 have a binder?

5 A. No.

6 MR. CHRISTIANSEN: Approach the witness with a  
7 binder?

8 THE COURT: Sure.

9 MR. CHRISTIANSEN: (Handing).

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. Can you turn to Exhibit 1.

12 A. I have it.

13 Q. Do you recognize that document?

14 A. Yes, sir.

15 Q. What is that?

16 A. This is my employment agreement.

17 Q. Is that an accurate copy of your employment agreement?

18 A. It is.

19 MR. CHRISTIANSEN: We'd offer Exhibit 1 into  
20 evidence.

21 THE COURT: Any objection?

22 MR. ROTE: No objection.

23 THE COURT: Received.

24 BY MR. CHRISTIANSEN: (continuing)

25 Q. When you -- when your employment at Northwest Direct



1 ended, to whom did you report? Who was your boss?

2 A. I'm sorry. Would you restate the question?

3 Q. When your employment at Northwest Direct ended, who was  
4 your boss?

5 A. Oh, I'm sorry. Tim Rote.

6 Q. All right. And where was Mr. Rote?

7 You don't need the exhibit anymore.

8 Where did Mr. Rote work?

9 A. Mr. Rote worked at an office away from the call centers.  
10 It was in Oregon. I'm not sure. I don't remember the city  
11 that it was in.

12 Q. But in Oregon?

13 A. Yes.

14 Q. Okay. What were Mr. Rote's roles for the company at that  
15 point?

16 A. Day to day?

17 Q. And generally.

18 A. I mean, he managed the business. It was, you know,  
19 definitely his company. He was the only one that, you know,  
20 did any of the business. There was no board of directors or  
21 anything. He was president, listed as CEO. Any top-level  
22 title was his.

23 I'm not familiar what his daily duties were. I know  
24 what, you know, mine were and the people that I worked with,  
25 but as far as up at that level, I -- I can't answer that.

1 Q. Did you have any relationship whatsoever with Mr. Rote  
2 outside of work?

3 A. No, none at all.

4 Q. Let's turn to the end of your employment. Can you tell  
5 the jury how your employment ended?

6 A. I was terminated for -- for whistle blowing. I had found  
7 a report that -- that was e-mailed to me inadvertently. And I  
8 found it, and it in fact showed that we were overbilling  
9 clients. I looked into it to make sure it was true and real  
10 as to the data. And I informed Mr. Rote of that via a letter  
11 to him from me, an e-mail to him. And I, in fact, found that  
12 we were doing that.

13 And I was very concerned because whoever was making  
14 those decisions was not only implicating themselves, but was  
15 implicating other people in the company and me, and -- because  
16 I'm sending the reports, I'm sending the data, I'm sending  
17 everything to the client. So if they're going to get  
18 something that's not right, you know, my name is going to be  
19 attached to it somewhere.

20 And I did call an attorney and find out how I  
21 separate myself from that, from that activity, what am I  
22 supposed to do. I didn't know what to do. And he said that I  
23 need to file a complaint with the Department of Justice, which  
24 I did.

25 And at the same time, or before that -- I'm not -- I

1 don't remember the events exactly, but -- as far as the  
2 timeline, but I did inform Mr. Rote that, you know, I had  
3 found this and I believed it to be true.

4 And shortly after that -- some things happened at  
5 work, but shortly after that I was terminated, definitely for  
6 that.

7 Q. What did you do after you were terminated?

8 A. I filed a wrong suit for -- a lawsuit, I'm sorry -- a  
9 lawsuit for wrongful termination.

10 Q. Where?

11 A. In Oregon.

12 Q. You filed a lawsuit in Oregon?

13 A. Oh, no. I'm sorry. I filed a lawsuit in New Jersey. We  
14 ended up trying it in Oregon.

15 Q. Okay. Can you turn to Exhibit 2 in that binder.

16 Do you recognize that document?

17 A. Yes, sir.

18 Q. What is it?

19 A. Yes. This is the New Jersey lawsuit that I filed.

20 Q. Is that an accurate copy of the Complaint you filed?

21 A. Yes.

22 Q. All right.

23 MR. CHRISTIANSEN: We'll offer Exhibit 2.

24 MR. ROTE: No objection.

25 THE COURT: Received.

1 BY MR. CHRISTIANSEN: (continuing)

2 Q. Can you just briefly -- you don't have to get into the  
3 details, but describe for the jury what your lawsuit was  
4 about.

5 A. I was -- I was let go for, you know, filing this  
6 complaint. I had, you know, done nothing in my job duties  
7 that I was let go for. I had good reviews. There was really  
8 no problem with my work.

9 I, you know, worked, I'd say -- I'm not kidding  
10 you -- 60 to 80 hours a week there, which was okay. I knew  
11 what I signed on for. I knew what my position was going to be  
12 and that I was going to be doing most of the work, and that  
13 was fine.

14 But I didn't do anything to warrant my termination,  
15 with the exception of filing that report to the DOJ. And  
16 Mr. Rote had some conversation with me about that, and it was  
17 clear I was fired for that.

18 Q. So that lawsuit you filed, did that case stay in New  
19 Jersey after you filed it?

20 A. No, it didn't. It was moved to Oregon.

21 Q. Why?

22 A. In my contract -- a large part of my contract is dedicated  
23 to dispute resolution, which I did fight. I did not want to  
24 have to travel all the way to Oregon to handle this. And it  
25 stood up, you know. I had to -- I fought it, but, you know,

1 it was found that I did have to come to Oregon and I did have  
2 to follow the arbitration clause in the contract.

3 Q. Northwest Direct also has made legal claims against you,  
4 right?

5 A. Yes, sir.

6 Q. Can you describe those?

7 A. I'm not going to remember all of them, but --

8 Q. Just generally.

9 A. Destruction of property, failure to turn over, you know,  
10 programs.

11 Without looking, I'm not going to -- there was three  
12 or four of those things filed against me.

13 Q. Did they file those claims against you before you started  
14 your lawsuit or after?

15 A. After.

16 Q. Can you describe for the jury what arbitration is.

17 A. Arbitration is -- it's a -- it's a dispute resolution, you  
18 know, vehicle. It's not -- nothing like this. You know, it's  
19 in a single room, you know, table, a conference table, a  
20 conference room like you would see at work. And the  
21 arbitrator sits at one end. The parties sit on either side of  
22 the table with their attorneys, if they have attorneys.

23 And you go through everything pretty much like I  
24 believe we're going to do here. And you put on your case, you  
25 put on evidence, you have witnesses; and the arbitrator makes

1 a decision and makes a ruling.

2 Q. Before you went to that arbitration, did you provide  
3 documents to the other side?

4 A. Yes.

5 Q. And did you provide testimony before the arbitration  
6 itself, like a deposition?

7 A. Oh, yes. Sorry, yes. Yes, there was a deposition process  
8 before that.

9 Q. Who were the -- who was the attorney that represented you  
10 at that arbitration?

11 A. That was Linda Marshall.

12 Q. And what was the name of the arbitrator?

13 A. Bill or William Crow, Bill Crow.

14 Q. And can you describe for the jury the outcome of that  
15 arbitration?

16 A. I won all my claims against Northwest Direct, and  
17 Northwest Direct lost all of their claims against me.

18 We put on evidence. I did not destroy any property,  
19 and none of that did I do. And, you know, all my claims were  
20 found for me and all the claims against me were thrown out,  
21 dismissed.

22 Q. Can you turn to Exhibit 3, please.

23 Do you recognize that document?

24 A. Yes. Sorry. This is the order, yeah, at the end of that.

25 Q. So this is the order that the arbitrator issued?

1 A. Yes, sir.

2 Q. Okay. And is that an accurate copy of that order?

3 A. It is.

4 MR. CHRISTIANSEN: We'll offer Exhibit 3.

5 THE COURT: Any objection?

6 MR. ROTE: No objection.

7 THE COURT: Received.

8 BY MR. CHRISTIANSEN: (continuing)

9 Q. So what happened after you found out you -- you had won  
10 that arbitration?

11 A. NDT fought the ruling.

12 THE COURT REPORTER: I'm sorry. Repeat.

13 THE WITNESS: Northwest Direct Teleservices fought  
14 the ruling.

15 BY MR. CHRISTIANSEN: (continuing)

16 Q. Where did they fight the ruling?

17 A. They fought that in Oregon, I believe.

18 Q. Was that in the court?

19 A. I believe it was.

20 Q. And what was the outcome of that challenge?

21 A. It -- you know, they were not allowed to fight the ruling.  
22 Eventually the opinion and order, that was, I believe, called  
23 confirmed and, you know, it stuck.

24 Q. Okay. Have you been able -- how much did you -- how much  
25 were you awarded in that arbitration?

1 A. It was for a few things. It was somewhere around \$75,000  
2 total.

3 Q. When you say "a few things," can you describe what you  
4 mean?

5 A. Yes.

6 I'd have to look at them. Is that okay?

7 Q. That's fine.

8 A. Okay.

9 (Pause) I'm sorry. I had to get to the right spot.  
10 \$67,500 for a period of nine months of employment. That would  
11 have been equivalent to what I would have made in nine months  
12 at ND -- Northwest Direct. And also included -- I had two  
13 weeks' vacation. That also included one week vacation pay for  
14 that period of 1,875.

15 Also, during all this -- or before this, actually,  
16 sorry -- Mr. Rote fought my unemployment. He claimed at that  
17 time that I was fired for fraud, a different reason. And I  
18 had to go to an unemployment hearing, with which to recover my  
19 unemployment. He lost that hearing as well, and I was able to  
20 receive unemployment. For expenses to do with that, the  
21 arbitrator also awarded me a thousand dollars for that.

22 There was, I believe, one other -- yeah, and then I  
23 mentioned there were some things right before the end of the  
24 actual end of my employment. Tim Rote had sent letters to  
25 coworkers and, as the arbitrator puts it, was done solely in



1 an effort to embarrass respondent, me.

2 He said (reading), Such actions were done in  
3 retaliation for claimant's perceived misconduct by respondent,  
4 by Mr. Rote, and his apparent anger.

5 He awarded me \$5,000 for that.

6 Q. So does the total number of \$75,375 sound about right to  
7 you?

8 A. Yes.

9 Q. All right. Have you been able to collect any of that  
10 money?

11 A. No, sir.

12 Q. And have you taken any efforts to try and collect that?

13 A. Yes, I have.

14 Q. What?

15 A. My attorney tried to collect that money. I'm not sure  
16 specifically, you know, what you do to do that. But, you  
17 know, we entered, you know, requests, judgment requests. I  
18 believe we sent things to Mr. Rote to try and collect that.

19 Q. Are you still trying to collect that today?

20 A. Yes, sir.

21 Q. How?

22 A. Well, we have a case for that. We -- you did open a case  
23 for that, and that is a fraudulent transfer case, and -- to  
24 try and collect the money. Tim had done something with the  
25 corporations and himself -- I don't understand at all -- to

1 not pay this.

2 Q. Okay. And that case is not what we're here about today,  
3 right?

4 A. No, not at all.

5 Q. All right. So what are we here about today?

6 A. A couple years ago I -- like you said, I Googled my name,  
7 and I found an incredibly disparaging website was put up about  
8 me and clearly about the arbitration that I had already gone  
9 through.

10 Q. Approximately when did you discover that website?

11 A. A couple of years ago now.

12 Q. Can you turn to Exhibit 534, please -- or, sorry. Let me  
13 get you a copy of that. It's a defense exhibit (handing).

14 A. Okay.

15 Q. What is that document, Mr. Zweizig?

16 A. This is a letter from my attorney, Linda Marshall.

17 Q. What's the date on that letter?

18 A. October 3rd, 2015.

19 Q. Is that an accurate copy of the letter?

20 A. It is.

21 MR. CHRISTIANSEN: Move to offer Defense Exhibit 534.

22 THE COURT: Any objection to 534?

23 MR. ROTE: No objection.

24 THE COURT: It's received.

25 MR. CHRISTIANSEN: Okay. Permission to publish a

1 demonstrative of this, this exhibit to the jury?

2 THE COURT: You may.

3 (Defendant's Exhibit No. 534 is then published to the  
4 jury.)

5 THE WITNESS: I see it here.

6 MR. CHRISTIANSEN: Oh, you do?

7 THE WITNESS: I do.

8 THE CLERK: I think we're toggling each other. Give  
9 it a second.

10 THE COURT: Do the jurors have it on their screen  
11 yet?

12 (There is a pause in the proceedings.)

13 MR. CHRISTIANSEN: I see it on my screen.

14 THE CLERK: There it is.

15 MR. CHRISTIANSEN: Oh, there we go.

16 BY MR. CHRISTIANSEN: (continuing)

17 Q. Can you describe for the jury what -- what this letter is  
18 about.

19 A. This letter is from my attorney, Linda Marshall, to  
20 take -- to Mr. Rote, asking him to please take the website  
21 down.

22 Q. And what's the name of the website?

23 A. This website is called Sitting Duck Portland.

24 Q. Do you know who is writing that website?

25 A. Yes, sir: Tim Rote.

1 Q. And what, generally, was that website about?

2 A. That website was about the arbitration that we went  
3 through and considerably, you know, about me.

4 Q. Okay. What was your reaction when you discovered this  
5 website about you?

6 A. I -- I was -- you know, angry, of course, confused. I  
7 didn't think anybody could possibly do this. I had already  
8 gone through, you know -- we're all in agreement that this was  
9 a very lengthy arbitration, not an easy process for somebody  
10 to go through, cost a lot of money. And, you know, I won. I  
11 thought it was over.

12 I thought that my -- it was horrible. It was a -- it  
13 was not a good process. It was not something that, you know,  
14 felt like you think it would. It was very convoluted,  
15 confusing. Awful things said during that as well.

16 And the biggest thing I wanted out of that was to be  
17 done with Tim Rote, and I thought that I was. And, you know,  
18 this was a job that I had for a year and a half, and it was  
19 over. And I filed a lawsuit for that. It was terrible. That  
20 was over. I thought this was done.

21 And here it is, and it's coming up again, and not  
22 just for me to see, but with a great bunch of revisionist  
23 history for anyone to see.

24 Q. After this letter on October 3rd, Mr. Zweizig, did the  
25 website come down?

1 A. No, sir.

2 Q. I'd like you to turn to Exhibit 9, please. Do you  
3 recognize this document?

4 A. Yes, sir, I do.

5 Q. What is it?

6 A. This is a Google search I did for my name October 4th,  
7 2015.

8 Q. And that exhibit that you're looking at, is that an  
9 accurate representation of what you saw when you Googled your  
10 name on October 4th?

11 A. Yes, it is.

12 MR. CHRISTIANSEN: I'd offer Exhibit 9 into evidence.

13 THE COURT: Any objection to 9?

14 MR. ROTE: No objection.

15 THE COURT: Received.

16 MR. CHRISTIANSEN: Publish to the jury?

17 THE COURT: You may.

18 THE WITNESS: After you're up, I think you hit the  
19 clicker.

20 MR. CHRISTIANSEN: I'm just going to give it a  
21 second.

22 THE WITNESS: Okay. I'm guessing, too.

23 (Plaintiff's Exhibit No. 9 is then published to the  
24 jury.)

25 THE WITNESS: Again, I see it. It's here.

1 BY MR. CHRISTIANSEN: (continuing)

2 Q. Can you describe for the jury what you saw when you  
3 Googled your name on October 4th?

4 A. I saw that the first, you know, result was this Sitting  
5 Duck Portland website.

6 And, you know, it says right there, (reading) It's a  
7 story about an arbitration involving one of my companies and a  
8 former IT manager by the name of Max Zweizig.

9 Q. And what was your reaction when you saw this?

10 A. That it just -- absolute distress. I mean, you know, I --  
11 you know, after I clicked on it, I saw it was a bunch of  
12 revisionist history.

13 You had asked me what was my reaction when I saw  
14 this. I already said that. Sorry.

15 When I saw this -- you know, when we went through the  
16 arbitration, there was a lot of talk about confidentiality and  
17 things of that nature and that that would be -- you know, that  
18 things were only supposed to be used at the arbitration. When  
19 the arbitration was over, it was over.

20 And I couldn't believe that somebody could just go  
21 ahead and -- just go ahead and publish all that stuff, you  
22 know, to the Internet, when I've already been through this and  
23 won. It was over.

24 Q. I see a date, February 27th, 2015. Did you know, until  
25 you came across this, that someone had been writing about you

1 on the Internet?

2 A. I'm sorry. I don't see that date.

3 Q. It's in the --

4 A. Oh, yes, I see it. Sorry.

5 No. No. I mean, I believe this is when I found it  
6 and printed it out.

7 Q. Okay. I'll have you now turn to Exhibit 4, please.

8 A. I have it.

9 Q. Do you recognize this document?

10 A. Yes, I do.

11 Q. What is this?

12 A. This is the -- this is the website. This is the first, it  
13 looks like, three chapters of the website.

14 Q. And when you say "chapters," what do you mean by that?

15 A. The website is organized into these chapters. There's a  
16 chapter, a chapter number, and then Tim talks about what he  
17 wants to talk about on that page or for that group of pages  
18 for that chapter.

19 Q. And how many chapters are you seeing here?

20 A. Did I say three? Four.

21 Q. And what date did you print this?

22 A. This was October 2nd, 2015.

23 Q. And is this an accurate copy of what you saw on that date?

24 A. Yes, it is.

25 MR. CHRISTIANSEN: We'll offer this as Plaintiff's

1 Exhibit 4.

2 THE COURT: Any objection to 4?

3 MR. ROTE: No objection.

4 THE COURT: Received.

5 THE CLERK: Go ahead and hit "publish."

6 MR. CHRISTIANSEN: Publish? Yeah.

7 What's that?

8 THE CLERK: Do you have 4 up?

9 MR. CHRISTIANSEN: No, not yet. I'm going to.

10 Sorry. I misunderstood.

11 BY MR. CHRISTIANSEN: (continuing)

12 Q. All right. So I'd like to go through kind of the dates of  
13 these and what you saw at which date, without going through  
14 all the content at this point.

15 So you just said on Exhibit 4, printed on  
16 October 2nd, 2015, that there are four chapters. Based on  
17 what you see, are these -- these dates of publication correct  
18 in Exhibit 4?

19 A. Yes, sir.

20 Q. All right. I'm going to have you turn to Exhibit 5. Do  
21 you recognize this?

22 A. Yes, I do.

23 Q. What is it?

24 A. This is a chapter. It's called Chapter 5, and it says  
25 "Our History With Max Zweizig." And now not only my name is



Zweizig - D

1 on here, but there's a picture of me on here as well.

2 Q. And what date did you print this?

3 A. This was November 6th, 2015.

4 Q. Can you take a second look at that date?

5 A. I'm sorry. October 6th, 10-6. Sorry. A couple days  
6 later, a few days later.

7 Q. And is this an accurate copy of what you saw on the  
8 Internet when you printed it?

9 A. It is.

10 MR. CHRISTIANSEN: All right. We're going to offer  
11 Exhibit 5.

12 MR. ROTE: No objection.

13 THE COURT: Received.

14 BY MR. CHRISTIANSEN: (continuing)

15 Q. So on Exhibit 5, Mr. Zweizig, it's just that one chapter  
16 on October 5th, right?

17 A. Yes, sir.

18 Q. All right. Turn to Exhibit 6. What's this?

19 A. This is Chapter 6. This one is titled "So Why Am I  
20 Blogging?"

21 Q. And what date did you print this one?

22 A. I printed this one on the 6th.

23 Q. And this is what you saw --

24 A. Yes.

25 Q. -- when you printed it?

Zweizig - D

1 A. Yeah. October -- sorry, October 6th, yes.

2 Q. Chapter 6 -- I'm sorry.

3 MR. CHRISTIANSEN: We'll offer No. 6.

4 MR. ROTE: No objection.

5 THE COURT: Received.

6 BY MR. CHRISTIANSEN: (continuing)

7 Q. So is this accurate, Mr. Zweizig, on October 6th, you see  
8 a new chapter published on October 6th --

9 A. Yes, sir.

10 Q. -- that same day?

11 A. Yes, sir.

12 Q. Can you turn to Exhibit 7, please. What date -- or what  
13 is this document?

14 A. This is -- these are more chapters on the website now.

15 Q. And what date did you print this?

16 A. This was printed October 12th, 2015.

17 Q. Okay. And that's what you saw on the Internet when you  
18 printed it?

19 A. Yes, sir.

20 MR. CHRISTIANSEN: We'll offer Exhibit 7.

21 MR. ROTE: No objection.

22 THE COURT: Received.

23 BY MR. CHRISTIANSEN: (continuing)

24 Q. Mr. Zweizig, is this a correct summary of the chapters  
25 that you saw published on October 12th?

1 A. Yes, sir.

2 Q. Just one more for you. Can you turn to Exhibit 8?

3 A. I have it.

4 Q. All right. What's this document?

5 A. This is the website as I printed it out on October 23rd,  
6 2015. Again, two more chapters are up.

7 MR. CHRISTIANSEN: All right. I'll offer that  
8 exhibit, Exhibit 8.

9 MR. ROTE: No objection.

10 THE COURT: Received.

11 BY MR. CHRISTIANSEN: (continuing)

12 Q. So, Mr. Zweizig, this summary shows that from October 2nd  
13 to October 23rd, you had printed this website five times, and  
14 in that time you had seen 15 chapters appear; is that correct?

15 A. Yes, sir.

16 Q. Can you turn to Exhibit 10, please.

17 A. I have it.

18 Q. And what is this document?

19 A. This is a Google web search for my name again on  
20 November 9th, 2015.

21 Q. Is this an accurate copy of what you saw when you Googled  
22 your own name on November 9th?

23 A. It is.

24 MR. CHRISTIANSEN: We'll offer Exhibit 10.

25 THE COURT: I'm sorry. Is that --

1 THE CLERK: 10.

2 THE COURT: Any objection to 10?

3 MR. ROTE: No objection.

4 THE COURT: It's received.

5 MR. CHRISTIANSEN: Permission to publish this to the  
6 jury?

7 THE COURT: Sure.

8 (Plaintiff's Exhibit No. 10 is then published to the  
9 jury.)

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. So, Mr. Zweizig, can you describe for the jury, using this  
12 demonstrative, what you saw when you Googled your name on  
13 November 9th?

14 A. Yeah. I'm sorry for turning away, but it's much easier if  
15 I read it here. It's small.

16 Yeah. This is a representation of my Google search.  
17 And this shows that the top two -- not just one now, the top  
18 two results for my name come up. And in the top result now  
19 my, yes, girlfriend, but my fiancée, Sandra Ware, is also  
20 coming up in the search results.

21 Q. That first result uses the word "profiteer." What's that  
22 about?

23 A. I don't know. It's alleging something, you know, horrible  
24 that I'm not. I'm not a profiteer. I was his employee.

25 Q. Okay. And I'd like to fast-forward, Mr. Zweizig, to

1 today. As you sit here today, to the best of your knowledge,  
2 how many chapters are written on the Internet on this website?

3 A. There are now 97 chapters and one other document.

4 Q. Mr. Zweizig, I'd like to go through and offer some  
5 documents.

6 MR. CHRISTIANSEN: And I guess to expedite things,  
7 we'd offer Exhibits 11, 12, 18, 19, and 20 into evidence.

8 Mr. Rote, any objection to that?

9 MR. ROTE: Perhaps.

10 MR. CHRISTIANSEN: That's 11, 12, 18, 19, 20.

11 MR. ROTE: No objection.

12 THE COURT: Received.

13 BY MR. CHRISTIANSEN: (continuing)

14 Q. Mr. Zweizig, without going through all of this material,  
15 I'd like to talk generally with the jury about what you saw on  
16 these websites. And I'd like to go through it by categories.

17 A. Okay.

18 Q. So the first question I have for you is: What did you see  
19 on this website that related to your identity?

20 A. I'm sorry. Just in general?

21 Q. In general.

22 A. Yeah. Well, the website talks about -- first of all, like  
23 I said, you know, I was employed by Mr. Rote. There were  
24 events that happened. We went through those events at the  
25 arbitration, and that's what we did.

Zweizig - D

1           What was on this website was something very different  
2 than that, also peppered in a bunch of personal attacks on me  
3 of some pretty bad nature.

4           I feel, you know, clearly a lot of the things that  
5 were on the website were of an employment nature, which should  
6 be in an employee file and should not be published out to the  
7 Internet. I believe he should have maintained his  
8 responsibility for any confidentiality to that.

9           I'm not afraid of anything in my employment file. I  
10 just don't think people want it out on the Internet. I know I  
11 don't need it out on the Internet for somebody to do --  
12 especially when they have their opportunity to use their voice  
13 to make their commentary and I have not.

14           And, you know, I mean, there's a lot that I saw on  
15 that website. I'm sure we're going to go through some of it.

16 Q. What did you see that related to your family, Mr. Zweizig?

17 A. Well, my fiancée, Sandra Ware, you know, is mentioned in  
18 this website. In a lot of ways, some very disparaging remarks  
19 towards Sandra were, you know, alleged on this website. You  
20 know, if people believe these remarks about her, it could  
21 affect her, it could affect her career.

22           Her chosen vocation, she's an attorney. You know,  
23 any attorney that's caught in any improper acts, you  
24 know, they're going to get called on it, you know, greater  
25 than any other individual would, you know, by -- there's

1 different mechanisms to do that than for you and I.

2           You know, so I watched it really affect my family.  
3 You know, Sandra Ware never worked for Tim Rote. There was no  
4 reason for him to be publishing anything about her on the  
5 Internet.

6 Q. How about your profession, Mr. Zweizig? What does this  
7 website contain with respect to your profession?

8 A. It -- it speaks to, you know, again, things that are  
9 completely untrue, saying that I'm willing to hold on to work  
10 product, you know, that I'm not going to turn over work  
11 product.

12           And, again, this is so unfair. We went through a  
13 proceeding about this. Evidence was offered. You know,  
14 there's e-mails that clearly show that not only did I turn  
15 over that work product, that work product was received and  
16 someone said, "Thank you." I mean, this is complete  
17 revisionist history. That's just an example of that.

18           I certainly was never doing anything bad at work,  
19 like downloading porn. This pornography stuff that he's  
20 alleging, I don't know where he got it. He says it's on one  
21 of the hard drives. When we wanted to analyze one of the hard  
22 drives, instead of providing us with that hard drive, he  
23 provided us with an empty CD-ROM drive. We never got a  
24 chance -- my experts never got a chance to look at that, you  
25 know, evidence that he says that stuff was on.

Zweizig - D

1           And, of course, in 97 chapters of this, all that  
2 stuff is left out. He gets to just try this with whoever,  
3 with the public, in any way he wants to, after we had done a  
4 proceeding that was structured, where I did have a voice,  
5 where, you know, I could have some degree of parity. And  
6 during that process, it was found that all of his claims were  
7 baseless and mine were not.

8           MR. ROTE: Your Honor, I just wanted to --

9           THE COURT: Your objection is sustained.

10          You need to just answer the question.

11          You may go ahead and ask your next question.

12 BY MR. CHRISTIANSEN: (continuing)

13 Q. Mr. Zweizig, what did you see on that website, just  
14 generally, what kinds of content that related to your morals?

15 A. Well, he said, you know, I was downloading pornography.  
16 He said that I was distributing pornography. He said that I  
17 was doing that with other people in the world. He said I was  
18 bad at my job, you know.

19           I'm sorry. Morality?

20 Q. Morality.

21 A. Yeah. I mean, that's the worst of it, I think.

22 Q. Okay. How about publicity for this website, Mr. Zweizig?  
23 What did you come to learn about -- you know, was it -- was it  
24 just the website or was it more?

25 A. No, it wasn't just the website. Tim was reaching out to



1 coworkers, you know, about this. He was proliferating this  
2 through LinkedIn, through some other, you know, different  
3 places, you know, telling people to go to this site and to  
4 look at this material.

5 He was -- he recently had, you know, a press release.  
6 I'm talking like a week ago. You know, I mean, I don't know  
7 if he was here with us, but, you know, maybe reporters. I  
8 don't know. But he had a press release, you know,  
9 saying -- where he sent this out to about 40 people. There  
10 were senators in there. There were news agencies in there.  
11 There were -- you know, there's all kinds of things like this.

12 On this blog at some point he said that he was going  
13 to send out a million e-mails about this to try and drive  
14 people to this site to take a look, you know, and would be  
15 able to look at these things that he's said about me.

16 I may have missed some.

17 Q. And the last thing I want to ask about is the volume --  
18 the sheer volume of the content on this website. And we'll  
19 give the jury some exhibits to look at it, but can you  
20 describe generally how much was there?

21 A. I don't remember the number that Mr. Rote said in his  
22 opening of words or pages or whatever this was. But this is  
23 voluminous. It's huge, you know. And, you know, one of my  
24 concerns is, you know, what part of this is somebody going to  
25 read? Are they going to read something this huge and then

1 make a determination for themselves whether it has any merit  
2 or not, or are they going to just read some horrible part  
3 somewhere and go, "Oh, wow, that person is a horrible person,"  
4 and just move on.

5 We're not in an attention-span society where we're  
6 going to read 97 chapters of something and then determine  
7 what's true.

8 Q. Mr. Zweizig, would you turn back to Exhibit 4, page 7.  
9 And what I'd like to do is put up an excerpt from this.

10 Let me know when you're there.

11 A. I'm sorry.

12 (Pause) Okay.

13 Q. So, again, this is Exhibit 4, page 7, paragraph 2.

14 A. Yes, sir.

15 Q. What -- do you recognize this passage from there?

16 A. Yeah. After I went to the Google page to Google my -- or  
17 went to Google to Google my name, this is in the first chapter  
18 that came up after I clicked on that link.

19 Q. What jumped out at you about this?

20 A. Well, that my name is, you know, prominently bolded there.  
21 It's the only thing bold in the chapter. That's not added for  
22 here. That's the way that it looked.

23 Q. Okay. And down at the bottom there -- so each of these,  
24 as we go through them, the bottom has a block that looks  
25 similar to this. Can you describe for the jury what -- what

1 that is?

2 A. That -- at the bottom, that is an actual -- sorry. I'm  
3 too close to this.

4 The bottom of that is an actual link that will link  
5 you back to that page. In this case it has a path and then  
6 the file name of Chapter 1, "The Seven-Year Bitch or  
7 Arbitrators in Action." It's actually a folder name. So I  
8 don't know what was trying to go on there. And that was not  
9 the title of this chapter. Maybe it was the title of a  
10 chapter and then he revised it. I don't know. I don't know  
11 why that's down there, really.

12 You asked me what jumped out at me about this. In  
13 addition to my name being bolded, it said that I was  
14 terminated for a variety of job performance reasons. By this  
15 time, you know, it's not only me that's saying I wasn't  
16 terminated for that reason, but, you know, an arbitrator said  
17 I wasn't terminated for that reason.

18 And then he goes on to say -- and this was -- this  
19 was right away. This was first, you know. He goes on to say  
20 my fiancée practiced as an attorney for a time.

21 (Reading) During his employment with us, they lived  
22 together in a small town in New Jersey.

23 That's true.

24 (Reading) A year or so before my false complaint --  
25 which was not false -- he was caught conspiring with another

1 employee of ours to set up a competing company.

2 That's not true. That, of course, was a violation of  
3 our noncompete agreement, so none of the -- none of this stuff  
4 is true.

5 Q. On the third line there, it says, "During his employment  
6 with us." Who is "us" in this context?

7 A. "Us" would be Tim Rote and all of his companies. It  
8 wasn't just Northwest Direct Teleservices. There were a  
9 number of other companies.

10 Q. Throughout this blog, did you notice Mr. Rote using the  
11 term "us," or is he representing that he's writing on his own?

12 A. No. It's usually "us," "we," all those -- that kind of  
13 terminology, maybe exclusively. I'd have to look through it.

14 Q. Okay. Can you turn to Exhibit 5.

15 A. I have it.

16 Q. Okay. I'm looking at the -- it's going to be the first  
17 page.

18 A. Okay.

19 Q. I'm going to put up a demonstrative for you here.

20 Do you remember seeing this?

21 A. Yes.

22 Q. What jumped out at you about this when you saw it?

23 A. Well, like I said before, you know, here's Chapter 5, "Our  
24 History With Max Zweizig." My name is up there again.

25 You know, as I read through it, it's a bunch of,

1 again, revisionist history of what happened. But now also my  
2 picture is up there, you know, on this.

3 Q. And did you have any particular concerns with him using  
4 your name in the title of a chapter like that?

5 A. Certainly, because I had -- you know, by what I looked at  
6 so far, I knew it was probably going to follow that it wasn't  
7 going to be anything flattering, for sure. It was going to  
8 be, you know, again, a bunch of lies about me. I was  
9 concerned, you know, also that my picture is there.

10 You know, in dealing with Mr. Rote, unfortunately,  
11 the only way I can mitigate -- my thing is to keep a low  
12 profile. And in seven or eight years or more, the only  
13 picture I've ever put up on the Internet is that picture. And  
14 that was on my biography to -- you know, to get guitar  
15 students out on the Internet. It's called PrivateLessons.com.  
16 And I put that picture on that, and he took that and put that  
17 on this website.

18 Q. And I want to ask you about that, Mr. Zweizig.

19 Prior to this whole thing, how much of an Internet  
20 presence did you have?

21 A. I had a little bit of an Internet presence for, you know,  
22 guitar students, but also a pretty decent Internet presence in  
23 the IT field.

24 Anybody who is in computers or has ever had a problem  
25 with a computer -- you don't necessarily need to be in them --

1 is probably going to be familiar with tech support forums and  
2 things like that. You have a problem; you go up and see if  
3 somebody else has had it so, you know, you're not beating your  
4 own head against the wall for the first time, you know, ever  
5 with this problem. And usually there is.

6 And I was involved, you know, pretty decently in the  
7 community with not only looking for stuff when I'm having  
8 problems, but also helping others. If they had an issue, you  
9 know, I would post up there.

10 And when I was doing that posting, I was using my  
11 real name, you know, before, you know, the stuff with Tim Rote  
12 started. And then from then, not so much.

13 Q. Okay.

14 A. In fact, on my Private Lesson site, I had taken my last  
15 name, Zweizig, off and just had Max after that.

16 Q. Did you take any other efforts to not use your name?

17 A. Oh, sure. Not -- I mean, not just on the Internet, but,  
18 you know, I mean, this is out there about me. If somebody  
19 Googles my name -- and I have a unique name, unfortunately,  
20 for this. If somebody Googles my name, they're going to run  
21 into this stuff.

22 So not only that, but also at work. You know,  
23 sometimes whatever job I was -- you know, I had at the time,  
24 you know, you come in, and they say, "We're going to set you  
25 up with an e-mail address." And a lot of times the

1 nomenclature is your first name, dot, last name, at whatever  
2 company it is.

3           And I would try and do some finagling, you know, "Is  
4 it okay? I'm kind of known out there as just Max. Is that  
5 okay? Do you mind if it's Max at whatever company, you know,  
6 we're at?" And I was able to get that done in all cases.

7           But, you know, I did that for my signatures. On  
8 e-mails I would send out, I would -- a lot of times I would  
9 not put my name. I'd put my address and, you know, where I'm  
10 at. But, you know, trying -- the only way for me to combat  
11 this was to anonymize myself.

12 Q. Okay. I'd like to move on.

13           I'm going to show you a demonstrative of the same  
14 chapter, but I made it really small, and I don't expect you or  
15 anyone to be able to read that. But I want to do something  
16 here. And I've highlighted all the times your name is used on  
17 this.

18 A. Uh-huh.

19 Q. Did that show up on your screen?

20 A. Yes, it did.

21 Q. All right. So what was your reaction to seeing your name  
22 in an article like this so many times?

23 A. You know, through -- you know, my reaction to a lot of  
24 this stuff is, you know, what you usually hear in the world is  
25 that if somebody wants to talk about something or do whatever

1 they want to do, they don't use people's real names to do that  
2 stuff, you know, especially if they're going to editorialize,  
3 you know, what they're doing.

4           So, you know, I really took it as a personal attack  
5 with my name being used there. And this being used so many  
6 times like this, this is going to very easily cause a search  
7 engine to find me when anybody searches for me. And it's  
8 going to -- it's not going to find me, but it's going to find  
9 this content associated with me, not anything else that I  
10 might be on the Internet for.

11 Q. I'd like to move forward and have you turn to Exhibit 18.

12 A. Empty.

13 Q. I have a copy for you (handing).

14 A. Thank you.

15 Q. Thank you.

16           So I prepared another blowup of this Exhibit 18 that  
17 shows the pertinent dates. But up there on the top of page 1  
18 of the exhibit, is this correct, it's published on  
19 August 30th, 2017?

20 A. Right.

21 Q. That's just a few months ago --

22 A. Right.

23 Q. -- or six months ago, I guess now.

24           And, again, that's your name on there, right?

25 A. Yes, sir.



1 Q. And so this is going to come up later. At some point --  
2 or I guess was there any point where there wasn't your full  
3 name on there?

4 A. Yeah. There were times where there would be "MZ" or "Max  
5 Z" or "M" or my first name spelled wrong. And then, you know,  
6 if I would go back two days later, my full name would be back  
7 in the same place where those things were, or then taken off  
8 and put back.

9 Q. So how often was this thing being changed?

10 A. It felt like it was being changed quite a bit, you know,  
11 sometimes daily, sometimes, you know, a couple weeks. Then  
12 I'd go back to a chapter that I had, you know, looked at  
13 before and it was different, saying different things.

14 Q. Okay. Turn to Exhibit 12, please. And this is a big one.  
15 It's page 341.

16 A. Okay. I believe everything that we've looked at so far  
17 has been the second website.

18 Q. Oh, let's talk about that. So --

19 A. I just wanted to --

20 Q. Yeah. When you said "second website," what do you mean?

21 A. Yeah. This started -- actually, I guess that's -- I guess  
22 that's not so. The first exhibits you looked at were the  
23 first website. He had one at Sitting Duck Portland. And then  
24 at some point Tim Rote had taken that entire website down, and  
25 it was gone. I was very happy about that.

1           And then a short time later, he started up another  
2 website called The First Duty Portland at WordPress.com.

3 Q.   And do you know where the name for The First Duty Portland  
4 came from?

5 A.   I'm not sure. I saw it downstairs when I walked in, on  
6 the wall. I'm not sure what that relates to.

7 Q.   Okay. So Exhibit 12 that you're looking at, is this --  
8 this is The First Duty Portland website?

9 A.   Yes, sir.

10 Q.   All right. I'll put up a blowup of the first paragraph of  
11 that. So it says (reading), As noted in many preceding  
12 chapters, our IT managers' withholding of our programs caused  
13 us to shut down.

14 A.   Yes, sir.

15 Q.   Do you know who the IT manager here is?

16 A.   I believe he's talking about me. He has that plural. I  
17 don't know why.

18 Q.   It says (reading), It cost us dearly. It cost our  
19 employees, some 175 of whom had to be laid off for part of the  
20 week just before Thanksgiving.

21 A.   Yes.

22 Q.   To the best of your knowledge, is that true?

23 A.   No, I don't think that's true.

24 Q.   Can you turn to Exhibit 13, please.

25 A.   I have it.

1 Q. Do you recognize this document?

2 A. I do.

3 Q. Without going into its contents, what is it?

4 A. Well, this is an e-mail from Chris Cox. That was -- when  
5 I said I had one gentleman working for me most of the time,  
6 that was Chris Cox. And this is an e-mail from him to me on  
7 April 25th, 2017.

8 Q. Is that an accurate copy of the e-mail you received from  
9 Mr. Cox?

10 A. It is.

11 MR. CHRISTIANSEN: Offer Exhibit 13.

12 THE COURT: Any objection?

13 MR. ROTE: No objection, Your Honor.

14 THE COURT: Received.

15 BY MR. CHRISTIANSEN: (continuing)

16 Q. Mr. Zweizig, I'd like to put up a copy of this for you.  
17 Do you recall receiving this e-mail?

18 A. I do.

19 Q. And what -- what is this about?

20 A. This is an e-mail from Chris to me, like I said. It says  
21 (reading), Have you been hearing from Tim at all?

22 It says, He called me at work about a month ago. He  
23 went on and on about how there was a complete shutdown of the  
24 company after you left -- meaning me.

25 He claims I lied during the questioning at the

1 arbitration. He's claiming Chris is lying, too.

2 Then he said some dude had to fly out of Chicago --

3 THE COURT REPORTER: I'm sorry. I really need you to  
4 slow down when you read and in general.

5 THE WITNESS: I apologize. I will. I'll do my best.

6 (Reading) He said he had some dude had to fly out of  
7 Chicago to save the company.

8 And then he tells me, It gets even crazier. He says  
9 he is writing a play about the whole situation and wants to  
10 meet with me.

11 I do not -- Chris says he doesn't remember a shutdown  
12 at all.

13 (Reading) Then he texts me that he needs a deposition  
14 and that he is going to subpoena me. I am not sure what the  
15 hell he is going to subpoena. I received a registered mail  
16 the other day. The post office left me a notice. Unless they  
17 bring it to my door and put it into my hand, I am not going to  
18 bother. I know it is probably from him. I think he has lost  
19 his final screw. Chris.

20 BY MR. CHRISTIANSEN: (continuing)

21 Q. Did you -- did you respond to Chris about this?

22 A. I don't believe I responded to him at all.

23 Q. Why not?

24 A. If I did, it was to tell him I couldn't respond to him  
25 because there is ongoing litigation about this and I can't

1 talk to people about this.

2 Q. I'm going to have you turn to Exhibit 12, page 26. Are  
3 you there?

4 A. I think so.

5 No. One moment.

6 (Pause) Yes, sir.

7 Q. All right. And I'm going to put up a blowup of -- there's  
8 a box in the middle there called -- with a title "Gay Older  
9 Men."

10 A. I see it.

11 Q. What's this?

12 A. This is -- this was on the website. Tim had this on the  
13 website. And he's referencing this -- I don't know even know  
14 what that means. I know what "gay older men" means. I don't  
15 know what that next word means.

16 And then he's talking to my fiancée and saying,  
17 "Sandra Ware, I thought you were engaged to Max."

18 Q. What -- how did you feel to see this?

19 A. Very upset, very, very upset, because this is terrible.  
20 There is -- there is no reason to be doing this. Somebody  
21 says they're mad at arbitrators or something. This has  
22 nothing to do with that. This is a direct attack on me  
23 instead. This is a direct attack on my family. This is just  
24 awful.

25 Q. Did you talk with Sandra about what you saw on this

1 website?

2 A. Yeah, sure.

3 Q. And, like, what happened when you talked with her about  
4 that?

5 A. She was beside herself. She's like, I can't believe that  
6 somebody keeps getting to do this, you know.

7 This is -- how hard I worked for this. This is  
8 disgusting. It's shocking and it's, you know -- you know, why  
9 attack my family? Why?

10 Q. I'm going to have you turn to Exhibit 11. We're going to  
11 go to page 2.

12 A. Yeah, I'm there.

13 Q. And I'm going to look at the second paragraph here, blow  
14 this up for the jury.

15 A. I have it. I'm sorry.

16 Q. All right. Can you describe -- or I guess read through  
17 this and tell us what this is.

18 A. What you have on the screen?

19 Q. The paragraph, yeah.

20 A. Tim says (reading), I received a call from an investigator  
21 that told me Sandra Ware, Max's girlfriend, went to law school  
22 with one of the federal judge's law clerk, and he suspected  
23 they had met and discussed this matter. He further concluded  
24 that the law clerk was assigned to this case specifically,  
25 would likely have written the order, and may have even slipped

1 this by the judge. Sometime later Max admitted to me that  
2 they had met this judge many times at Rutgers Law School  
3 events. I rather doubted that, but it is what he said.

4 Q. And I'd like to go through this in order. "I received a  
5 call from an investigator." Do you know what that's talking  
6 about?

7 A. I don't. But I -- you know, when I saw that, of course I  
8 became very concerned, you know. Is he having people follow  
9 me?

10 You know, he's clearly saying that he has an  
11 investigator that told him something about my girlfriend.  
12 What he's saying here I know isn't true, but I don't -- you  
13 know, I mean, what would you think about this? This is --  
14 that's terrifying. That's frightening.

15 Q. Had you ever met this judge at a Rutgers Law School event?

16 A. I have never met Judge Kugler, no.

17 Q. Did you ever --

18 A. To answer your question directly, no. And, no, I've never  
19 met him at any event.

20 Q. Did you ever admit to Mr. Rote that you had met this judge  
21 at a Rutgers Law School event?

22 A. Not at all.

23 Q. I'd like to turn to paragraph 4 of the same page.

24 A. Okay.

25 Q. At this point Mr. Rote is speaking about a letter he sent.

1 What is this about?

2 A. Well, here he's saying that, you know, he has an emotional  
3 way about him, that, you know, causes him to do things; in  
4 this case fire off a letter challenging the why of dismissing  
5 his case with prejudice, and brought to his attention the  
6 conclusions reached -- again, we have the investigator in  
7 here. I have no idea what the investigator has to do with the  
8 judge. I don't know how that ties together, but I'm just  
9 saying the investigator is mentioned again.

10 (Reading) Judge Kugler was not very happy with me,  
11 and what was to follow became one of the most entertaining  
12 period -- periods of my life, in the courtroom anyway.

13 (Reading) Judge Kugler ordered me to New Jersey to  
14 stand trial for contempt -- to be clear, he's talking about  
15 himself -- and interference of the court. He demanded that I  
16 be -- he be there in person some 30 days after his notice. So  
17 I hired yet another attorney, paid him \$10,000, and he went  
18 about the business of what he claimed was trying to keep me  
19 out of jail -- meaning keep Tim out of jail.

20 Q. And how did it make you feel -- well, let me back up.  
21 Were you present at that hearing when that happened?

22 A. Yes, I was.

23 Q. And what happened?

24 A. Mr. Tim Rote very nearly went to jail, in my opinion.

25 Q. Did he appear entertained to you at that point?



1 A. Oh, no, not at all. He appeared quite frightened.

2 Q. And what about this was troubling to you?

3 A. Well, the investigator thing mentioned again, the fact  
4 that he would consider something like this entertaining.  
5 There's -- you know, that's -- that's not a theme or anything  
6 that I would ascribe to, you know, what this was going on.

7 Also, his willingness to do something like this to a  
8 judge. He's publishing his website about me. I'm trying to  
9 do everything I can to anonymize myself, to get the website  
10 taken down. If he's willing to do these things to a judge and  
11 a law clerk as, you know, it comes up in here, if he's willing  
12 to do, you know, things like that, what protection do I  
13 possibly have against this individual if, you know, he's  
14 willing to do things like this?

15 The judge can call him in front of him and say, "Hey,  
16 why shouldn't you go to jail," and he hires an attorney to get  
17 him out of that. I don't have that option. So this is -- you  
18 know, this is his behavior escalating and definitely causing  
19 me a lot more fear at this point.

20 Q. Turning now to paragraph 5, this same exhibit, same page,  
21 can you read this out loud for the jury.

22 A. (Reading) By this time I wondered if Max was setting up  
23 private websites for these judges to watch their porn. How  
24 that would have worked is that a private website would be set  
25 up for the exclusive use only, content provided by the hosting

1 person, and the only thing the judge would need to do is  
2 access the site with his login ID and password. But I  
3 digress.

4 Q. Did you ever set up private websites for judges to watch  
5 porn?

6 A. Of course not.

7 MR. CHRISTIANSEN: Your Honor, I have a matter for  
8 the Court.

9 THE COURT: Over here.

10 (The Court, counsel, and Mr. Rote confer off the  
11 record.)

12 THE COURT: You may proceed.

13 BY MR. CHRISTIANSEN: (continuing)

14 Q. Turn to paragraph -- I'm sorry, Exhibit 18.

15 MR. ROTE: Say that again.

16 MR. CHRISTIANSEN: Exhibit 18.

17 THE WITNESS: Oh, that's the one you handed me,  
18 right?

19 BY MR. CHRISTIANSEN: (continuing)

20 Q. Go to page 7.

21 A. Chapter 90 is Exhibit 18?

22 Q. 18, yes.

23 A. Okay. I'm going to put it in the book.

24 Q. Page 7. Are you there?

25 A. Yes, sir.

1 Q. A demonstrative of this. This is the first paragraph,  
2 first sentence.

3 (Reading) The first act of perjury was, as just  
4 noted, that he now admits but first denied that he was, in  
5 fact, the person who downloaded the porn.

6 Do you know what this is about?

7 A. I don't know what this is about. I do want to mention  
8 this is from the website that we're still on. It's from the  
9 website. This is out there for people to see.

10 No, I never downloaded any porn. Mr. Rote has a  
11 better description of how to do things like this than I do,  
12 which I just read.

13 You know, he's saying now -- and this is, you know,  
14 the most major problem I have with this website that's out  
15 there. He's saying that I now admit that I downloaded porn.

16 I did not download any porn working for him. I did  
17 his work for him. That's what I did. And I did the work of  
18 our company for him. I never downloaded any porn. I  
19 certainly did not admit to anyone that I downloaded porn.

20 And these are the kind of things that he's able to do  
21 on this website. And this is the recourse I have. Out in the  
22 world, I don't have any.

23 Q. Turn now to Exhibit 12, page 184. I'm going to put up a  
24 blowup of the second paragraph here.

25 It says that (reading) Since M is not the only one

1 who would benefit from contacting Judge Jones, I attempted to  
2 add to the lawsuit the other parties that also benefit;  
3 namely, Linda Marshall, Chester Marshall, Sandra Ware, and  
4 Joel Christiansen.

5 Do you know what lawsuit he's talking about here?

6 A. He had filed a lawsuit against myself, in addition to  
7 these people: Linda; her husband, Chester; Sandy, my fiancée;  
8 and Joel Christiansen, for defamation, I believe.

9 Q. And just to clarify, who is Linda Marshall?

10 A. Linda Marshall is my attorney that represented me in the  
11 arbitration.

12 Q. And who is Chester Marshall?

13 A. Chester Marshall is Linda's husband.

14 Q. And who is Joel Christiansen?

15 A. You are Joel Christiansen. You're my attorney.

16 Q. At the bottom here, it says it probably -- well,  
17 (reading) Judge H quickly denied the motion to add the parties  
18 under diversity arguments, meaning that some of the parties  
19 are residents of Oregon and should not be added. However,  
20 insofar as the matter itself is properly in the federal court,  
21 it probably could have been allowed with respect to Sandra  
22 Ware.

23 What did that mean to you?

24 A. Legally, I have no idea. But what it looks like it means  
25 is that he came pretty close to being able to file a lawsuit

1 against Sandra Ware, my fiancée.

2 Q. Turn to page 258. I'm going to put up a portion of the  
3 first paragraph.

4 This reads (reading), I am now on the watch list.  
5 The efforts to have the U.S. Marshals Service tell me why I'm  
6 on the watch list have been met with great resistance. It's  
7 the kind of silent, let's not talk about it behavior you'd  
8 expect of child molesters, not the U.S. marshals.

9 What is this about?

10 MR. ROTE: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. CHRISTIANSEN: (continuing)

13 Q. How did you feel when you read this?

14 A. Even more scared than before.

15 Q. Why?

16 A. According to Tim Rote, this is something that he put out  
17 on the Internet, that he is now on a watch list with the  
18 U.S. Marshals Service for some conduct that he has done out in  
19 the world. This makes him feel much more dangerous to me.

20 Q. Go to page 85, the same exhibit. And I'm going to put up  
21 a portion from paragraph 4.

22 A. Okay.

23 Q. I'll read this. It says (reading), Weeks pass. One  
24 workday your children's school is closed because of snow.

25 They are at home playing outside with your best friend's

1 children, having a great time. Your friend comes by and asks  
2 if you can watch her children while she runs to the store, and  
3 of course you agree to do so. Happy to do so. But soon after  
4 your friend heads to the store, the weather turns worse, and  
5 it is the best if the children come inside. You get them  
6 inside, and they are all soaked and cold and freezing. You  
7 get some warm towels and get the wet clothes off them as best  
8 you can, being a mom to all four children.

9 Your ex-employee notifies you the next day that she  
10 observed you inappropriately touching your neighbor's children  
11 and calls on you to cease and desist from such behavior,  
12 attaching a photograph of you wrapping a towel and giving a  
13 hug to one of the children. You immediately notify your  
14 neighbor and share the e-mail. You also immediately notify  
15 the police.

16 Do you know what this is about?

17 A. This is a passage, again, from Tim Rote's website that he  
18 wrote.

19 What I believe this is trying to do is make some  
20 analogy to the process of the arbitration that we went  
21 through. As far as its content, this is an analogy he chose  
22 from an endless amount of analogies that a person could  
23 choose; and, you know, he chose something like this. He's  
24 back to this theme of this kind of subject matter, which I  
25 find a bit disgusting.

1 Q. Do you know why he used the term, "inappropriately  
2 touching your neighbor's children"?

3 A. I have no idea why he would say something like that.

4 MR. CHRISTIANSEN: Your Honor, I have a matter for  
5 the Court.

6 THE COURT: Members of the jury, we're going to take  
7 our midday recess at this time. We'll be in recess -- let's  
8 say until 1:15.

9 Remember the instruction telling you not to talk  
10 about the case, et cetera. And don't look up information  
11 about the case, those kinds of things.

12 Jennifer will escort you out and tell you how to get  
13 back into our jury room and space after lunch.

14 So I'll see you in about 55 minutes. Thank you.

15 Go ahead and finish exiting the courtroom, please.

16 (The jury leaves the courtroom.)

17 THE COURT: What's your matter for the Court?

18 MR. CHRISTIANSEN: The "inappropriate touching your  
19 children" gets to that letter, that same topic. That's why my  
20 client is afraid of what he's seeing on the Internet.

21 The letter discusses pedophilia, I mean, specifically  
22 touching children. It's a message to my client. It's a  
23 threat.

24 THE COURT: When you're talking about "the letter,"  
25 you're talking about Exhibit 22?

1 MR. CHRISTIANSEN: 22.

2 THE COURT: So that's not just the letter. It  
3 actually has an order to show cause.

4 MR. CHRISTIANSEN: Yeah. I mean, we could just --  
5 just 2 and 3?

6 THE COURT: I'm sorry?

7 MR. CHRISTIANSEN: We could do pages 2 and 3, just  
8 that one letter. And, in fact, I'd be fine redacting all but  
9 that one paragraph.

10 THE COURT: Which paragraph?

11 MR. CHRISTIANSEN: The one, two, three, four -- fifth  
12 paragraph on the first page.

13 THE COURT: The one that begins with "This, of  
14 course"?

15 MR. CHRISTIANSEN: No. "Our diagnostic review."

16 And I'd actually like the attachment, too. It's  
17 referenced in this paragraph.

18 THE COURT: Do you care about the fifth paragraph?

19 MR. ROTE: I think it's consistent with what we've  
20 represented in the blog, Your Honor, so no.

21 THE COURT: I'm sorry?

22 MR. ROTE: It's consistent with what we represented  
23 in the blog, notwithstanding any reference to a pedophile  
24 site. But no, I don't care.

25 THE COURT: Okay. So if you're going to redact



1 everything except for paragraph No. 5, the defense has no  
2 objection.

3 Is that correct?

4 MR. ROTE: Correct.

5 THE COURT: You've got it.

6 MR. CHRISTIANSEN: Great.

7 THE COURT: Thank you. I'll see you in about 50  
8 minutes.

9 We are in recess.

10 THE WITNESS: I just --

11 THE COURT: You may step down.

12 THE WITNESS: Sorry.

13 THE COURT: No problem.

14 (A lunch recess is then taken.)

15 (The Court, counsel, the parties, and the jury  
16 reconvene. The witness retakes the witness stand.)

17 THE COURT: You may proceed.

18 BY MR. CHRISTIANSEN: (continuing)

19 Q. Mr. Zweizig, we left off with the sentence,  
20 "inappropriately touching your neighbor's children."

21 Can you -- can you turn to Exhibit 22. It's actually  
22 the version I gave you -- the version I gave you.

23 A. I don't have it here.

24 Q. Here (handing).

25 A. Thanks.

Zweizig - D

1 Q. Do you recognize that document, Mr. Zweizig?

2 A. Yes, sir.

3 Q. And without getting into the -- the contents of it, what  
4 is it?

5 A. It is a letter from Tim Rote to Judge Kugler.

6 Q. What's the date on that letter?

7 A. It's May 22nd, 2005.

8 Q. And are you familiar with that letter?

9 A. I am familiar with this letter.

10 Q. And other than the redactions on there, is that an  
11 accurate copy of the letter that you're familiar with?

12 A. It is.

13 MR. CHRISTIANSEN: And we'd offer Exhibit 22,  
14 redacted.

15 MR. ROTE: No objection.

16 THE COURT: Received.

17 BY MR. CHRISTIANSEN: (continuing)

18 Q. Can you please read the unredacted paragraph from that  
19 letter for the jury.

20 A. It says (reading), Our diagnostic review -- sorry. Our  
21 diagnostic review of the computer plaintiff used in New Jersey  
22 provides a history of information on what plaintiff may have  
23 been doing with his time. One page follows. The information  
24 was recovered from a hard drive plaintiff attempted to destroy  
25 by reformatting it prior to returning it to us. Note that

Zweizig - D

1 plaintiff had been downloading video from a --

2 THE COURT REPORTER: I'm sorry. I couldn't hear you.  
3 "Note that plaintiff" -- and I couldn't hear the word.

4 THE WITNESS: Pardon me.

5 (Reading) Note that plaintiff had been downloading  
6 video from a pedophile site. Is it possible that plaintiff  
7 had some contact with your clerk?

8 He's talking about my contact with a judge's clerk  
9 somewhere on a pedophile website.

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. Mr. Zweizig, I'd like to turn back to this screen here,  
12 Exhibit 12, page 175. Do you have a hard copy exhibit in  
13 front of you? Can you get that in front of you?

14 A. 170?

15 Q. Yeah.

16 Page 174 I actually want you to look at.

17 A. Okay.

18 Q. What date was this published?

19 A. February 6th, 2016.

20 Q. Okay. Moving on, turn to page 85, please.

21 A. I have it.

22 Q. Okay. We're going to look at paragraph 4, the last  
23 paragraph there.

24 A. I'm sorry. Can you repeat that?

25 Q. Paragraph 4, the final paragraph.

1 A. Right.

2 Q. Let me get this to --

3 A. I'm sorry. Did you want me to read it?

4 Q. No, I'm sorry. I'm going to put it on the blowup for the  
5 jury.

6 (Reading) My blog is examining the abuse of civil  
7 procedure, arbitration, and even litigation itself, which may  
8 taint the legacy of all involved, including me. It's the road  
9 we are on, and it affects Bill Crow, Linda Marshall, M, and  
10 Robert E. Jones.

11 Who is "M" here?

12 A. That's me.

13 Q. And for the jury, who is Bill Crow?

14 A. Bill Crow is the arbitrator at the arbitration.

15 Q. And why did this -- reading this bother you?

16 A. Well, because it's just more indication that -- you know,  
17 of what he's going to do. You know, he's going to --

18 Q. What's that?

19 A. Well, which is, you know, tarnish people's reputation,  
20 make their legacy, their -- you know, what's your legacy?  
21 It's your -- you know, it's what you've done. It's your  
22 meaning in life. It's, you know, the kind of person you've  
23 been able to represent yourself to the world to be. And he's  
24 going to take control of that for myself.

25 And what this is showing here, you know, anybody that

1 ever gets in contact with me or tries to help me, he's going  
2 to do that to them, too.

3 Q. Turn to page -- page 2 of 4, please. I'm looking at the  
4 paragraph -- that top paragraph of that page.

5 A. I see it, yes.

6 Q. (Reading) What are we going to do, question mark. Well,  
7 we are going to publish, disseminate, write our Congressional  
8 delegation, challenge our media to critically evaluate this  
9 issue, raise the awareness, and send out one million e-mails.

10 What jumped out at you when you read that?

11 A. Sending out a million e-mails. You know, also writing our  
12 Congressman. Challenging the media to critically evaluate the  
13 issue, I imagine that means news stories.

14 You know, it's just a -- it's just a campaign. This  
15 guy is never going to stop. You know, it's just a campaign  
16 that he's going to have against me for the rest of my life.  
17 This thing has been over my head for a while now, and it --  
18 he's just going to keep going, and he's going to escalate it.

19 Q. Turn to page 101.

20 A. (Pause) Yes. I'm sorry. I have it.

21 Q. Top paragraph (reading): I am happy to announce that the  
22 screenplay based on this arbitration is in its final stage of  
23 editing. Soon this will have a larger voice. And as of right  
24 now, there is both a fiction version and one based on a true  
25 story with no hedging on names, places, and process.

1           How did you feel when you read this?

2   A.   You know, I think how anybody would feel.  Yeah, I mean,  
3   this is -- you know, I'm being stalked and terrorized at a  
4   pretty high level here.  And, you know, he's saying no hedging  
5   on names.  So names will be wherever he publishes this stuff.  
6   It will have a larger voice.  He's just -- it's hard to put  
7   into words.  I mean, it's really -- you know, I can't live  
8   like this.  You know, seriously, I can't -- I can't live like  
9   this.

10           You know, imagine you had -- you've asked me how I  
11   feel, right?  I don't want to mess up again.  You know -- you  
12   know, you have a life.  You know, imagine you leave a job,  
13   which is what happened, you know.  And then that job just  
14   follows you around forever.  Your boss follows you around  
15   forever and wants to say whatever he wants to say, and now he  
16   wants to publish whatever he wants to publish about you.

17           And there's just no peace, I mean, just not at all.  
18   Every -- every day in my life I deal with -- if there's not a  
19   new edit to it, if there's not a new thing coming up, you  
20   know, I'm always thinking about it.  I'm thinking if somebody  
21   is going to find it, you know, and then I'm going to have to  
22   deal with that.  Then I'm going to have to answer for this  
23   stuff that I never did.

24           And, you know, human nature, right?  You know, as  
25   soon as something is said, well, you have to do something to

1 turn that around, to do something with that. You know,  
2 it's -- you know, whoever speaks first, the next person  
3 speaking has to challenge that.

4 I should not have to challenge any of this. I've  
5 been through this. I've been through an arbitration. I won.  
6 I'm done. I don't work for that gentleman anymore, and I  
7 don't want anything to do with him. Tim Rote and I should not  
8 know each other. I should be able to go through days of my  
9 life without thinking about the name "Tim Rote."

10 This has been, you know, 13, 14 years now. You know,  
11 there's no reason that he and I should have contact anymore,  
12 you know, especially since we had a contract that said what  
13 our dispute resolution process was. And whatever he wants to  
14 say about that or however he wants to twist it, it certainly  
15 wasn't this.

16 Q. Can you turn to Exhibit 38, please.

17 A. 38?

18 Q. Yes.

19 A. Sorry. I got it.

20 Q. Do you recognize this document?

21 A. Yes. This is a Google search for my name again.

22 Q. And what's the date of that printout?

23 A. That's 1-11 this year, 2018.

24 Q. And is this an accurate representation of what you saw on  
25 the Internet when you Googled your name?

1 A. It is.

2 MR. CHRISTIANSEN: Offer Exhibit 38 into evidence.

3 THE COURT: Any objection?

4 MR. ROTE: I don't have Exhibit 38, I don't think.

5 (Pause) No objection, Your Honor.

6 THE COURT: Received.

7 MR. CHRISTIANSEN: I'll publish this for the jury.

8 BY MR. CHRISTIANSEN: (continuing)

9 Q. Can you describe for the jury what you see here.

10 A. There's a Google search here on this page that has a lot  
11 of results, and this is three of the results taken out of that  
12 page that you have here. They do appear on this page as they  
13 appear here, one right next to the other.

14 And what this is showing, the first one, is a -- when  
15 we talked about those user forums for problem resolution, this  
16 is something posted by me. I don't -- I don't think I'm  
17 helping anybody in these; I think I'm trying to get help in  
18 both of these. And then, you know, they're posted by me. And  
19 they're findable in a Google search by my name because I used  
20 my name, you know, in those forums.

21 Then right after that, there's this Chapter 90, you  
22 know, (reading) Employees desperate for a \$1 million payday  
23 can be enticed by an unscrupulous attorney to lie, cheat,  
24 steal, and destroy in an effort to prevail -- prevail on a  
25 claim. Sorry.



1           (Reading) This blog has spent an extraordinary amount  
2 of time weighing the evidence and exposing the lies. Let's  
3 use this time to bring it all together.

4           And then it goes on, and my name is, you know, down  
5 there. My name is in bold on this page because of the Google  
6 search. It's not because of anything else, to be clear.

7           You know, the top two results is how I used to be  
8 able to live on the Internet, you know, with my name. You  
9 know, now I don't do that anymore. I use an alias for forums  
10 or, you know, things like that. And I used to like not to do  
11 that because, you know, people could seek me out in other  
12 areas and, you know, there's contact there, there's  
13 networking. And I don't dare do that now.

14 Q. Can you turn to Exhibit 40, please. Do you recognize that  
15 document?

16 A. I do.

17 Q. What is it?

18 A. This is also a Google search for my name, but with the  
19 word "programming" added, so if someone were to look for me  
20 and then put the word "programming" after that.

21 Q. And what's the date of this?

22 A. This is January 9th of this year, 2018.

23 Q. And is that an accurate copy of what you found on the  
24 Internet when you Google searched your name?

25 A. It is, yes, sir.

1 Q. All right.

2 MR. CHRISTIANSEN: Offer Exhibit 40 into evidence.

3 MR. ROTE: No objection, Your Honor.

4 THE COURT: Received.

5 BY MR. CHRISTIANSEN: (continuing)

6 Q. I'll publish this for you, Mr. Zweizig.

7 Can you describe for the jury here, briefly, what you  
8 see.

9 A. This is one of the chapters from the website again. And  
10 this is talking about -- Tim Rote, at some point during the  
11 arbitration, accused me and on his website accuses me of  
12 trying to start a competing company. That was, in fact,  
13 another employee of Northwest Direct; and he's ascribing those  
14 actions to me here.

15 Q. And Chapter 90 -- can you do me a favor and turn back to  
16 Exhibit 18? What's the title of that chapter?

17 A. "The Summary of Evidence, Perjury, and Cybercrime."

18 Q. And what date was that published?

19 A. Um --

20 Q. Not printed, but published.

21 A. August 30th, 2017.

22 Q. Okay. Can you turn to Exhibit 14, please.

23 A. I just noticed something about this. Should I comment on  
24 this?

25 Q. Please do.

1 A. Okay. It also -- it also says that I was demoted. I was  
2 never demoted at work.

3 Q. Okay. I actually also want to -- the word "programs," it  
4 appears as though that's in bold font. Can you explain why  
5 you think that is?

6 A. The search word used was "programming." That may be in  
7 bold because of Google, or it may be in bold because that's on  
8 the website like that. I believe Google might do what's  
9 called kind of a Soundex search, where close words that may be  
10 close to that -- I don't know. I'd have to look at the  
11 website and see if that was bolded.

12 Q. Turn to Exhibit 14, please.

13 A. Okay. I've got it.

14 Q. What is this document?

15 A. The print is small.

16 This is Timothy Rote's LinkedIn page.

17 Q. And can you tell what date that was printed?

18 A. That was printed June 13th, 2017.

19 Q. Is this an accurate copy of Mr. Rote's LinkedIn profile  
20 when -- when you saw it?

21 A. Yes, it is.

22 MR. CHRISTIANSEN: Offer Exhibit 14.

23 MR. ROTE: No objections.

24 THE COURT: Received.

25

1 BY MR. CHRISTIANSEN: (continuing)

2 Q. How many connections are listed with Mr. Timothy Rote on  
3 that LinkedIn profile, at the top right, next to his name?

4 A. It's very small. Sorry.

5 It just says 500 plus.

6 Q. And in the middle of that, where it says "experience," can  
7 you tell the jury what experience it lists for his current  
8 job?

9 A. Yes.

10 Q. Sorry. It's small print.

11 A. That's all right. As I get older -- novelist;  
12 screenwriter; owner, Rote Enterprises; owner, Rote & Company.

13 Q. Does it say where that business is located? Can you tell?

14 A. It says Los Angeles for novelist, screenwriter.

15 Q. Okay. Turn to Exhibit 15, please.

16 A. Okay.

17 Q. Do you recognize this?

18 A. Yes.

19 Q. What is it?

20 A. This is also a LinkedIn page.

21 Q. And what date was that printed?

22 A. This was June 13th, 2017.

23 Q. And is that an accurate copy of what you saw when you  
24 visited that site?

25 A. It is.

1 MR. CHRISTIANSEN: Offer Exhibit 15.

2 MR. ROTE: No objection.

3 THE COURT: Received.

4 BY MR. CHRISTIANSEN: (continuing)

5 Q. Mr. Zweizig, can you just describe briefly for the jury  
6 what we're looking at.

7 A. On the LinkedIn page Mr. Rote is promoting the -- some of  
8 the chapters out of the website that he put up that we've been  
9 talking about, First Duty Portland website, I believe. I  
10 think this was the second website.

11 Q. And can you turn to Exhibit 16, please.

12 A. 1-6?

13 Q. 1-6.

14 A. Got it.

15 Q. Do you recognize that?

16 A. I do.

17 Q. What is it?

18 A. This looks like one of the chapters. It's not listed as a  
19 chapter, but it says "Arbitration Be Damned."

20 Q. And what date was that printed?

21 A. This was printed June 13th, 2017.

22 Q. Is that an accurate copy of what you saw on the Internet  
23 that day?

24 A. It is.

25 MR. CHRISTIANSEN: Offer Exhibit 16.

Zweizig - D

1 MR. ROTE: No objection.

2 THE COURT: Received.

3 BY MR. CHRISTIANSEN: (continuing)

4 Q. What is concerning to you about this, Mr. Zweizig?

5 A. I'm going to need to read it a little bit.

6 Q. Go ahead.

7 A. Pause) Most concerning to me is that he's, you know,  
8 going to re-talk about the arbitration. He's saying it's a  
9 cautionary story.

10 (Pause) I'm sorry. It's tough to see. I'm sorry to  
11 take the time to do this.

12 (Pause) And he's making a -- you know, a claim here  
13 that the arbitration was, you know, invalid in some way.

14 Q. Does that link -- or does that article contain a link to  
15 the -- the website he's been publishing?

16 A. Yeah. Actually, I'm sorry. I didn't see the bottom here.  
17 This is -- yeah, this is one of the printouts from the  
18 LinkedIn page, not the -- it looks like one of the chapters,  
19 but it's printed from the LinkedIn -- his LinkedIn site.

20 Q. And can you turn to Exhibit 42, please.

21 A. I'm there.

22 Q. Do you recognize this?

23 A. Yes. This is a Twitter account.

24 Q. And what's the --

25 A. Tim Rote's Twitter account.

Zweizig - D

1 Q. And what's the date on that?

2 A. That's January 9th, 2018, this year.

3 Q. Okay. And this is what you saw when you visited this  
4 website on that date?

5 A. Yes, it is.

6 MR. CHRISTIANSEN: All right. We'd offer Exhibit 42.  
7 It's the Twitter account.

8 MR. ROTE: No objection.

9 THE COURT: Received.

10 BY MR. CHRISTIANSEN: (continuing)

11 Q. Mr. Zweizig, does this account also link to the website  
12 Mr. Rote was writing about you?

13 A. Yes, sir.

14 Q. Turn to Exhibit 43.

15 A. Got it.

16 Q. Do you recognize this?

17 A. Yes.

18 Q. What is it?

19 A. It's a Facebook page for Tim Rote, and it references  
20 Sitting Duck Denver. It's listed as Sitting Duck Denver. It  
21 says that all over it, which is a different website that also  
22 references --

23 Q. I'll get into that.

24 A. Okay.

25 Q. What's the date on this?

Zweizig - D

1 A. January 9th, again this year, 2018.

2 Q. And is this what you saw when you visited the Facebook  
3 page --

4 A. Yes, sir.

5 Q. -- on that date?

6 MR. CHRISTIANSEN: All right. Offer Exhibit 43.

7 MR. ROTE: No objections.

8 THE COURT: Received.

9 BY MR. CHRISTIANSEN: (continuing)

10 Q. Mr. Zweizig, does Exhibit 43 link to the website as well?

11 A. Yes. Um, yes. Yes, it does.

12 Q. Turn to Exhibit 37.

13 A. Got it.

14 Q. Do you recognize this document?

15 A. I do.

16 Q. What is it?

17 A. This is the -- I had said before that there was 97  
18 chapters on the page and one other page. This is the one  
19 other page. There's a press release, what Tim Rote called a  
20 press release, that he posted on the site. He --

21 Q. Mr. Zweizig?

22 A. Yes.

23 Q. Actually, take a closer look.

24 A. What's that?

25 Q. This is a different exhibit. This looks like an e-mail.



1 A. Okay. Yes, you're right. I saw all the -- I thought this  
2 was that.

3 Okay. Yes, this is an e-mail.

4 Q. And do you recognize it?

5 A. Hold on a second. Let me make sure I do.

6 (Pause) Yes, I do. Sorry.

7 Q. What's the date of this e-mail?

8 A. This is January 6th, 2018.

9 Q. Is this an accurate copy of the e-mail?

10 A. It is.

11 MR. CHRISTIANSEN: Offer Exhibit 37.

12 THE WITNESS: Do you want me to clarify what this  
13 was, since I said it was a press release? It's not.

14 MR. CHRISTIANSEN: We'll get into it.

15 THE WITNESS: Okay.

16 MR. ROTE: I have some objection to this, Your Honor,  
17 because --

18 THE COURT: That's okay. Hang on to your objection.

19 I don't have the exhibit in front of me. I don't  
20 have a copy of it. We'll take it up later when we're in  
21 recess.

22 MR. ROTE: Okay.

23 THE COURT: Thank you.

24 BY MR. CHRISTIANSEN: (continuing)

25 Q. So what -- how did you feel when you saw this?

1 A. Can I say what it is?

2 Q. Yeah, please.

3 A. Okay. Yeah. This is an e-mail sent out to -- you know,  
4 it looks like about 40 people here. I didn't count them. It  
5 looks like about 40. This is sent to senators; news agencies;  
6 and the Oregon State Bar; USDOJ, Department of Justice, dot  
7 gov, sent out to a lot of different agencies. And this is an  
8 e-mail about the arbitration that we went through.

9 Q. And what's the subject of the e-mail?

10 A. "Pending trial on cybercrime and the fraud triangle."

11 It's about this proceeding. The subject is about  
12 this proceeding.

13 Q. So, Mr. Zweizig, as you've seen this website go up and  
14 Google search results, social media and all of this, can you  
15 describe for the jury, what -- what harm this has caused you.

16 A. Yeah. I touched on it a little bit before. You know, I  
17 can't get out from under this thing. You know, I can't be  
18 myself. I can't just live my life. You know, I don't have  
19 the easiest life in the world. Everybody's got challenges,  
20 you know, and that's fine. You know, I'm pretty good at  
21 taking care of my own challenges and everything.

22 But, you know, this is one I can't control. Somebody  
23 has taken my identity. They're saying whatever they want.  
24 They're saying, you know, horrible things, not nice things,  
25 you know, at all, not something I would want to have to

1 explain to anybody for any reason and shouldn't have to.

2           And this -- you know, it's like a dark cloud that  
3 just follows me all the time. You know, I'll be, you know,  
4 sitting somewhere, just trying to relax, and it's here. I  
5 don't know where it's going to go. I worry about how big it's  
6 going to get. There's -- you know, he keeps escalating and  
7 escalating, saying he's going to do more and more things and  
8 publicize it more and more places. So I worry about that on  
9 one level.

10           You know, on another one, just what's already out  
11 there -- there's 97 chapters of this out there on a second  
12 website. I believe the first one went to 89 or 90 chapters  
13 before he took that down. You know, I -- while I'm doing my  
14 workday, when I go out to lunch, if, you know, it looks like  
15 he's putting up more chapters, you know, I'm not going out  
16 with people, you know, to lunch like I would like to do maybe.

17           And I'm, you know, sitting somewhere in like  
18 a Wendy's out here -- do you have Wendy's? Okay. I'll be  
19 sitting in a Wendy's or something like that and I'm looking at  
20 my iPad and I'm hitting "refresh." And sometimes it will come  
21 down, and then I'm happy. Okay. Maybe he's come to his  
22 senses. Maybe, you know, he's not going to do this to me  
23 any more. And then, of course, it goes right back up. It was  
24 down because there was revisions being made.

25           And it's just constant, all the time. I watch this

1 affect my family. You know, sometimes I, you know, will ask  
2 Sandy what's wrong, and she's like, you know, just -- you  
3 know, she just has to say the word "just," and I know what's  
4 wrong. You know, it's this stuff hanging over both of our  
5 heads. There's no reason for this, you know. And it's -- it  
6 just invades everything. It invades my entire quality of  
7 everything.

8           And, you know, I'm a strong personality. I have good  
9 ego. I love people. I love interacting with people. I like  
10 helping people. I would help anybody with anything in the  
11 world. It's just the kind of person I want to be.

12           And I have to be guarded. You know, I have to -- how  
13 much can I share about myself? You know, how much -- I can't  
14 say, "Go to the Internet," you know. I can't put up, you  
15 know, web pages about my music, you know, or anything like  
16 that because I can't have that presence. You know, I can't  
17 have it.

18           In my -- in the world that we live in today, a very  
19 large piece of that has been taken away from that. And in the  
20 real world, off of the computers, as I'm walking around with  
21 people, I've got to worry about, you know, if they're going to  
22 Google my name or did Google my name and find this stuff. And  
23 I never know what they're thinking, you know, or what they  
24 saw, or what I have to answer for or never get the chance to  
25 answer for. And that could be anybody. And it -- it's just

1 out there. And, you know, I want to be done with it. I want  
2 to be done with this -- this man.

3 You know, go live your life, you know. We had a  
4 case. You made a bad business decision to let me go. There  
5 was a dispute resolution process in that, and I won, and it's  
6 over. Let it be over. You know, go be whoever you want to  
7 be. Let your former employee be whoever he wants to be. You  
8 know, you were my employer. You had some, you know, specific  
9 duties to keep my, you know, things confidential, certainly be  
10 truthful to my actions in your company. You've done none of  
11 that. Go away. You know, what you've done to me is awful.

12 Believe me, whatever you've wanted to do, I guarantee  
13 you've accomplished way more than you thought you possibly  
14 could. You've hurt me. You've hurt my fiancée. You've hurt  
15 my attorneys. You've hurt everybody you wanted to. I don't  
16 know if there is anybody left for you to hurt. And I  
17 certainly don't want you to know anybody new in my life,  
18 because I know what you're capable of.

19 So I don't know if that gets it across. It's bad.  
20 It's bad. I wouldn't -- I wouldn't wish this on anybody, you  
21 know. I -- I just -- I really wouldn't. This is -- it sucks.

22 Sorry. I don't know what else to say about it.

23 MR. CHRISTIANSEN: No further questions.

24 THE COURT: Cross-exam.  
25

CROSS-EXAMINATION

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BY MR. ROTE:

Q. Mr. Zweizig, I would like you to turn to Exhibit 1, Plaintiff's Exhibit 1.

A. I have it.

Q. Can you tell us the name at the top of that page, your employer?

A. Northwest Direct Teleservices.

Q. Northwest Direct Teleservices only, not the names of any of the other corporate entities?

A. This page says "Northwest Direct Teleservices, Inc." only.

Q. You agree that was your employer?

A. You had many companies.

Q. That's not what I asked.

A. There was a lot of legal talk back and forth. You're having me answer something I don't understand. You mentioned through a lot of these processes that there are umbrella companies to other companies. So I can't answer that question.

Q. You can answer who your employer was.

A. My employer, via this contract, says "Northwest Direct Teleservices, Inc." I don't know if that's inclusive of everything that you had.

Q. Thank you.

You looked to the -- Hold on. Please turn to

1 Plaintiff's Exhibit 3.

2 A. I have it.

3 Q. Can you please describe the name of the claimant at the  
4 top.

5 A. Northwest Direct Teleservices, Inc.

6 Q. No other corporate entity has been identified besides  
7 that?

8 A. Not listed on this document, no.

9 Q. They are the employer that you sued in this case, in the  
10 arbitration?

11 A. I remember a lot of the people, and there were a lot of  
12 your companies on there.

13 You're asking me something that I don't understand.  
14 I'm telling you that I agree with you that it says "Northwest  
15 Direct Teleservices, Inc." on this page. I agree with that.

16 Q. This is the plaintiff's exhibit, and it is the Opinion and  
17 Order of the arbitration, and there are two parties  
18 identified, Northwest Direct Teleservices and Max Zweizig,  
19 correct?

20 A. I agree with that, yes.

21 MR. ROTE: Your Honor, we have a couple of  
22 impeachment exhibits that I feel like we need to do a sidebar  
23 on.

24 THE COURT: Do you have other questions that you can  
25 ask before we get to those exhibits?

Zweizig - X

1 MR. ROTE: Certainly.

2 THE COURT: Why don't we go through that. And then  
3 at the end, we can take a break and talk about those.

4 MR. ROTE: Okay.

5 BY MR. ROTE: (continuing)

6 Q. Mr. Zweizig, you testified that -- that you provided a  
7 spreadsheet during the course of your complaint to me via  
8 e-mail. Is that consistent with what you remember?

9 A. I don't think I said -- Today?

10 Q. Today.

11 A. We can see what I said. I said I informed you about it.

12 Q. You informed me about it via e-mail, claiming that you  
13 received a spreadsheet via e-mail. Is that what your  
14 testimony was?

15 A. Yeah. I think I said I sent you a letter. I don't know  
16 if I said I sent you a letter or e-mail.

17 Q. And in that letter you claimed to have received that  
18 spreadsheet evidence in an e-mail from an employee?

19 A. Yeah.

20 We talked about this at the arbitration. This is  
21 something we've already gone through.

22 Q. You agree, don't you, that you never turned over that  
23 e-mail?

24 A. I don't remember.

25 Q. You don't remember?



1 A. No. It was 10 years ago. And we've already gone through  
2 that, and the case is over.

3 Q. Nonetheless, I have an opportunity to cross-examine you on  
4 your testimony today.

5 A. I don't remember.

6 Q. In the course of -- in the course of your evaluation of  
7 the blog, were you ever offered the opportunity to -- to --  
8 Did I ever offer you the opportunity to modify any component,  
9 anything that was written by me on the blog, to modify any  
10 representation made by the blog.

11 A. Outside of a couple of communications that you found a way  
12 to make to me, since I worked for you, I have not spoken with  
13 you.

14 Q. Did I offer to your attorney, Mr. Christiansen, an  
15 opportunity to tell me precisely what you wanted to modify  
16 from the blog?

17 A. I believe you did.

18 Q. I'd like to have you turn to --

19 A. I have no interest in working on this thing with you.  
20 That's abusive. Why would you have me work on this website  
21 that you put up about me with you? I shouldn't know you, sir.

22 MR. ROTE: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. ROTE: (continuing)

25 Q. Mr. Zweizig, I'd like you to turn to Defendant's Exhibit

1 595.

2 MR. ROTE: Do you have that?

3 MR. CHRISTIANSEN: No.

4 THE COURT: He does not have your exhibits up there.

5 MR. ROTE: I'm going to have to turn to the clerk.

6 MR. CHRISTIANSEN: He doesn't have it.

7 MR. ROTE: He doesn't have it? Okay.

8 Attorney 2.

9 MR. CHRISTIANSEN: Your Honor, objection. He's  
10 publishing it.

11 THE COURT: Yeah. Can you take that down?

12 BY MR. ROTE: (continuing)

13 Q. So, Mr. Zweizig, let's focus on some of your testimony.

14 Did you testify that you did not, in fact, destroy  
15 any computer programming at your -- at your last day? Is that  
16 what you testified today?

17 A. I didn't destroy anything. I sent you all of the  
18 programming in a zip file in an e-mail. This was already  
19 covered. And you said, "Thanks."

20 Q. When the -- when the blog was rebranded and --

21 A. Can you explain to me what that means?

22 Q. Sure. When the blog was -- Sitting Duck Denver was taken  
23 offline and it was relabeled, there was a period of time in  
24 which your name was redacted from the blog. Do you recall  
25 that?

1 A. No. It's not redacted today.

2 Q. It was redacted from the blog. And when it was redacted  
3 from the blog, your search results did not show any activity  
4 with respect to the blog?

5 A. Sometimes they did; sometimes they didn't. That's how it  
6 goes. You can take a page down; it's still going to stay. Or  
7 you can make edits to the page, and it will still stay for a  
8 while.

9 Q. But it won't link to anything, will it, Mr. Zweizig?

10 A. Yes, it could. It's called caching.

11 Q. But you admit that when it was rebranded to a different  
12 blog name and your name was redacted, that you didn't show up  
13 in the Google results?

14 A. I think I already answered that.

15 Q. What was your answer?

16 A. Sometimes it did; sometimes it didn't.

17 Q. So let's talk about a couple of Google searches on the  
18 defendant's exhibits.

19 First I want to go to, I think, Exhibit 25,  
20 Plaintiff's Exhibit 25.

21 Excuse me, no. Plaintiff's Exhibit 546 --  
22 Defendant's Exhibit 546. Excuse me.

23 THE COURT: Has that been received already?

24 THE CLERK: No.

25 THE COURT: It has not?

1           How about if I give him my copies of the exhibits, so  
2 that he has them.

3           MR. ROTE:   Okay.  Thank you, Your Honor.

4           THE COURT:  (Handing).

5           THE WITNESS:  Were you finished with plaintiff's  
6 exhibits?

7 BY MR. ROTE:  (continuing)

8 Q.  No, we're not finished, but --

9           THE COURT:  You can just set them aside there.  I  
10 think you have some room on the side.

11          THE WITNESS:  Is it okay to put them on the floor?

12          THE COURT:  Yes.  That's your space right now.

13          THE WITNESS:  Okay.

14          THE COURT:  Which exhibit did you want him to refer  
15 to?

16          MR. ROTE:  Defendant's Exhibit 546, which I think is  
17 the same as Plaintiff's Exhibit 25.

18          THE WITNESS:  On the listing on the outside of these  
19 books, I do not see 546.

20 BY MR. ROTE:  (continuing)

21 Q.  I have it now published.

22          THE CLERK:  It hasn't been received.

23          MR. ROTE:  I'd like to offer this.

24 BY MR. ROTE:  (continuing)

25 Q.  I'd like to examine you on this document.  This is the

1 source by which you referred to the other corporate entities  
2 in your Complaint.

3 A. Okay.

4 Q. Is it? Do you know?

5 A. I see one --

6 Q. Do you see the corporate entities down below?

7 A. It's not up there. It's up here.

8 I see two -- I see a very small part of something.  
9 It says "License Agreement" at the top.

10 Q. Okay. Let's go back down to --

11 A. I'm not trying to be difficult. I can't answer your  
12 questions.

13 Q. -- down to page 5.

14 A. Okay.

15 Q. Do you see all the entities that signed that agreement?

16 A. Okay.

17 Q. Is it your contention that all of these entities were your  
18 employer?

19 A. Like I said, you had a lot of corporations with umbrella  
20 corporations. I don't remember the specific names -- specific  
21 names, sorry. It's in my document. It's in my Complaint.

22 You had a myriad of them. They're all your companies.

23 They're all you.

24 Q. Well, they're not all me.

25 A. Okay.

1 Q. The Northwest Direct Teleservices Corporation is  
2 identified on page 5 as one of the entities signing this  
3 agreement. Do you see that?

4 A. I see that.

5 Q. Okay. And you are not yet -- or you don't understand that  
6 your Complaint is based, in part, on this representation from  
7 your side that all of these entities were your employer?

8 A. Yeah, I believe that we listed every entity that you had  
9 as my employer.

10 Q. But again, you agree that your employer in the contract  
11 and your employer in the arbitration opinion was Northwest  
12 Direct Teleservices?

13 MR. CHRISTIANSEN: Asked and answered.

14 THE COURT: Overruled.

15 You can answer the question.

16 THE WITNESS: Can you repeat the question?

17 BY MR. ROTE: (continuing)

18 Q. But you agree that the entity that was your employer in  
19 your employment agreement and in the arbitration opinion and  
20 award was Northwest Direct Teleservices only?

21 A. It's right there on the page.

22 Q. That's a yes?

23 A. Yes. Except I don't understand your umbrella corporation  
24 strategy, sir, so I don't know if it's a subsidiary on the  
25 page. I don't understand whether it's a parent corporation on

1 the page. I agree with you completely as to what is on the  
2 page.

3 Again, I'm not trying to be difficult. I think  
4 you're trying to lead me somewhere. I don't know. I don't  
5 understand what you're trying to do.

6 MR. ROTE: I'd like to offer Defendant's Exhibit 546.

7 THE COURT: Any objection to 546?

8 MR. CHRISTIANSEN: No objection.

9 THE COURT: Received.

10 BY MR. ROTE: (continuing)

11 Q. In your testimony, you indicated that you were under the  
12 impression that the arbitration was confidential somehow or  
13 there was some confidentiality associated with it?

14 A. Yeah.

15 Q. Can you tell me about that?

16 A. Yeah. Before we could even begin, there were what were  
17 called protective orders that were thrown back and forth by  
18 both sides, mainly you. You were the one worried about  
19 keeping that confidential, from my recollection of that. And  
20 we couldn't even get started. We couldn't even get started  
21 with depositions or anything until that was all nailed down.

22 And absolutely I thought that was confidential and  
23 absolutely I thought that was an employment proceeding, which  
24 would make it part of my employee record.

25 Q. Which part of it was confidential?

1 A. I thought the whole thing was confidential.

2 Q. The whole thing?

3 A. Why would it not be? Yeah.

4 Q. Do you believe you have a right to confidentiality with  
5 respect to everything that happened in the arbitration?

6 A. I had an expectation of confidentiality with respect to  
7 everything that happened in the arbitration. I'm not a  
8 lawyer.

9 Q. You have indicated that -- that the social media --  
10 LinkedIn, Facebook, other social media accounts -- have in the  
11 last two years compromised your ability to engage in social  
12 media interactions? Is that a fair statement?

13 A. Sure it is.

14 Q. What about prior to the time the blog was written?  
15 Would -- no LinkedIn account, no Facebook account, nothing in  
16 evidence that you had anything of that nature prior to the  
17 time the blog was written?

18 A. As I say, I think I've spoken to some of the things. I  
19 used to use my real name in multiple forums. And, yes, I did  
20 use my real name on the Internet, and I used real e-mail  
21 addresses out in the world that reflected my real name. I no  
22 longer do that is what I said.

23 So, yes, it has -- I'm not sure what you're asking  
24 there, but it changed my behavior.

25 Q. Let me make it more specific. Do you have a LinkedIn



1 account now?

2 A. No, I don't.

3 Q. Have you ever, at any time, had a LinkedIn account?

4 A. Yes, I have.

5 Q. When did you stop?

6 A. I don't remember exactly when it was. It was a --

7 somewhere around a couple years ago.

8 Q. Somewhere around a couple years ago?

9 A. Contemporaneous, yes, with you putting up the blog, I took  
10 down --

11 Q. You took down your LinkedIn account?

12 A. Yes, sir.

13 Q. Did you have a Facebook account?

14 A. I think I still do have a Facebook account. I keep no  
15 content on it.

16 Q. No content.

17 Any other social media accounts?

18 A. Not that I'm aware of, no.

19 Q. You -- The computer that you used while an employee,  
20 returned on your last day, was that a 60-gig hard drive, do  
21 you recall?

22 A. I don't remember.

23 Q. There was also one that crashed in May 2003. Was that the  
24 120-gig hard drive?

25 A. I don't remember.

1 Q. You don't remember that either?

2 A. No, sir.

3 Q. You had mentioned to -- in your cross -- in your direct  
4 examination that there were 96 chapters, 97 chapters of the  
5 blog. I did the same thing, I think, in my opening. But what  
6 of these chapters were directly related to the arbitration?

7 A. Many of them. I don't have a calculation of that.

8 Q. You don't know how many?

9 A. I don't know how many. But I know that you have a chapter  
10 that clearly says, "Why Am I Blogging?" And it pretty clearly  
11 states that you're doing this because of the arbitration.

12 Q. In your direct testimony you indicated that you were  
13 not -- did not organize a competing company. Do you recall  
14 the name of that company?

15 A. That was a company that Paul tried to organize, and it was  
16 called something Results. It was S Results.

17 Q. Superior Results Marketing perhaps?

18 A. Sure.

19 Q. And it's your testimony that you were not a -- you were  
20 not an organizer of that company?

21 A. No. It was Paul Bauer (ph).

22 Q. It was Paul Bauer?

23 A. Uh-huh.

24                   Again, this is -- this is arbitration, things that  
25 have already been decided.

1 Q. Nonetheless, if --

2 A. And this is -- are you -- so you're speaking about the  
3 company. This is company business, right?

4 Q. Well, Superior Results Marketing is what you testified  
5 about. I'm just curious as to what your testimony was.

6 A. Okay.

7 Q. On your Exhibit 18, Chapter 90, with respect to perjury,  
8 Plaintiff's Exhibit 18 --

9 A. (Pause) Got it.

10 Q. You refute committing any acts of perjury in and during  
11 the arbitration?

12 A. Sir, I don't remember my testimony during the arbitration.

13 Q. You --

14 A. I'm not going to knowingly commit perjury anywhere.

15 Q. You indicated in an exhibit raised here, with respect to  
16 Chris Cox, an e-mail you received. Do you recall -- and he  
17 made a specific reference in that e-mail. You have that now  
18 in evidence about the fact of a shutdown that happened after  
19 your last day with the company.

20 A. Do you have a question?

21 Q. The question is: Do you recall a shutdown of the company  
22 after the last day?

23 A. After my last day --

24 Q. Yes.

25 A. -- do I recall a shutdown of the company?

1 Q. Yes.

2 THE COURT: You have to make sure that you let him  
3 finish his question before you start responding.

4 Similarly, if he starts responding, you need to stop  
5 speaking. Otherwise my reporter can't make an accurate record  
6 of what's happening.

7 Can you ask your question again, please.

8 MR. ROTE: Sure.

9 I'm going to -- I'd like to get Chapter 86, "The  
10 Shutdown," in right now, Your Honor.

11 MR. CHRISTIANSEN: Objection, Your Honor. This is  
12 published again.

13 THE COURT: You shouldn't publish it until it's been  
14 received into evidence.

15 And you were asking a question about whether he  
16 recalls the shutdown. Do you want to ask that question again?

17 MR. ROTE: I do.

18 BY MR. ROTE: (continuing)

19 Q. In the blog, I write quite a bit about the shutdown. Do  
20 you recall a shutdown post-employment, after your last day of  
21 employment in 2003?

22 A. Sir, I did not keep tabs on your company after my last day  
23 of employment. I don't recall anything one way or the other  
24 about it.

25 Q. There were a lot -- excuse me. There were a lot of this

1 type of data discussed in the arbitration itself. You don't  
2 recall any evidence being put on about the shutdown?

3 A. Okay. You didn't ask me that.

4 Yeah, I recall evidence being put on about the  
5 shutdown. I believe at one point you mentioned it was a  
6 week-long shutdown. At another point you mentioned it was a  
7 10-day shutdown. Somewhere you mentioned that it was for a  
8 few days. You've been all over the map on this shutdown.

9 Q. Can you tell me -- You are a FoxPro programmer expert.  
10 You are doing other than that today?

11 A. Yes.

12 Q. And tell us -- tell me a little bit more about what you're  
13 doing in terms of your programming skills.

14 A. I'm a systems analyst and a programmer.

15 Q. What database programming are you using today?

16 A. JavaScript, FoxPro.

17 Q. FoxPro still?

18 A. Sure.

19 Q. Are you offering your services as an independent  
20 consultant or are you an employee?

21 A. I'm an employee.

22 Q. Can you identify the employer?

23 MR. CHRISTIANSEN: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: Everybody that you come in contact with

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1 that I know, you hurt. I am not asking you for economic  
2 damages. And I am going to ask you, sir -- You have mentioned  
3 on your website that you have emotional control issues. So  
4 I'm going to ask you --

5 MR. ROTE: Objection.

6 THE COURT: Sustained.

7 THE WITNESS: Please withdraw the -- would you please  
8 withdraw the question?

9 THE COURT: Just a minute. Just a minute.

10 When I say "sustained," you must stop talking.

11 THE WITNESS: I apologize.

12 THE COURT: We'll just leave it at that.

13 You can ask your question.

14 BY MR. ROTE: (continuing)

15 Q. Please identify your employer.

16 THE WITNESS: It's my belief that if I do that, that  
17 Mr. Rote is going to do something to interfere with that  
18 employment, Your Honor.

19 THE COURT: Okay. We'll take that up during the  
20 recess.

21 You can go on to another area.

22 THE WITNESS: Thank you.

23 BY MR. ROTE: (continuing)

24 Q. During the course of the arbitration, there was a lot of  
25 forensic reports provided and forensic testimony. I'm not

1 attempting to get that in. I just want to ask if that is your  
2 recollection.

3 A. It's my recollection, along with the component that I did  
4 not get to examine everything you got to examine.

5 Q. That's not what I asked.

6 A. That's my recollection.

7 Q. You hired a forensic expert by the name of Justin McCann  
8 (ph)?

9 A. Yeah. I do -- I feel like we're relitigating the  
10 arbitration.

11 THE COURT REPORTER: I'm sorry. I couldn't hear you.

12 THE WITNESS: I feel like we're relitigating the  
13 arbitration with the company, Northwest.

14 BY MR. ROTE: (continuing)

15 Q. Your attorney can object for you.

16 A. Okay.

17 Q. So there was a lot of testimony about that, correct?

18 A. There was testimony about that. The amount, I don't know.  
19 There was a lot of testimony about a lot of things, sure. I  
20 mean, okay.

21 Q. Did the arbitrator, in his opinion and award, contemplate  
22 the forensic evidence?

23 MR. CHRISTIANSEN: Objection.

24 THE COURT: Sustained.

25

1 BY MR. ROTE: (continuing)

2 Q. The arbitrator's opinion and award is one of the issues  
3 that I raise significantly here in this blog. And can you  
4 tell me -- I want to focus on -- let me just focus on  
5 components of the arbitration after the evidence was issued  
6 and considered.

7 Do you recall Arbitrator Crow recusing himself?

8 A. Yeah. There was definitely something that happened with  
9 that, yes.

10 Q. Do you recall that he was -- he was challenged because he  
11 didn't disclose his relationship with Linda Marshall?

12 A. Yeah. You did that. I think people professionally work  
13 together. But you chose to do that, sure.

14 Q. And after the recusal, then he re -- he agreed to continue  
15 as the arbitrator. Is that also accurate?

16 A. He did. He consulted the rules, consulted the law, and  
17 found there were no grounds for what you were saying and  
18 continued.

19 MR. ROTE: Your Honor, I'm struggling with the  
20 arbitration opinion and how I can cross-examine on this.

21 THE COURT: The opinion is in evidence.

22 MR. ROTE: Yeah.

23 THE COURT: Trying to figure out why an arbitrator  
24 ruled, beyond what's in an opinion, he's not going to be able  
25 to tell you that.



1 MR. ROTE: I'm trying to direct a specific piece.

2 BY MR. ROTE: (continuing)

3 Q. The arbitrator, in the opinion and award, for example,  
4 decided not to admit that evidence, not to consider that  
5 evidence. Is that your memory?

6 A. I don't know how to answer that.

7 Look, there's an opinion and award. We had a case.  
8 It's done. It's many years ago. What he wanted to consider  
9 in there or what he did -- I agree with the judge.

10 Q. Over the last 10, 12 years, have you been actively engaged  
11 in IT services, employment services?

12 A. Yes, sir.

13 Q. You've worked for multiple employers? Even though you  
14 don't want to tell us who they are, you've worked for multiple  
15 employers?

16 A. I've worked for multiple employers. I don't want to tell  
17 you who they are.

18 Q. The industries in which these employers exist?

19 A. Teleservices, some.

20 Q. Teleservices?

21 A. Uh-huh.

22 Q. What else besides teleservices?

23 A. Health care.

24 Q. Okay. We have -- I'd like to refer you to an exhibit.

25 MR. ROTE: I don't know if I offered 86 as an

1 exhibit, Your Honor.

2 THE COURT: 86?

3 MR. ROTE: 86.

4 Excuse me, 593, "The Shutdown," Defendant's  
5 Exhibit 593.

6 THE COURT: You did not offer that. That's part of  
7 the blog?

8 MR. ROTE: That is part of the blog.

9 THE COURT: Any objection?

10 MR. CHRISTIANSEN: No.

11 THE COURT: Received.

12 You can now publish it to the jury.

13 MR. ROTE: Exhibit -- Defendant's Exhibit 595, is  
14 that accidentally published already?

15 THE COURT: That has not been received yet.

16 MR. ROTE: Okay.

17 THE COURT: Are you offering 595?

18 MR. ROTE: I'd like to just cross him first on it,  
19 Your Honor.

20 BY MR. ROTE: (continuing)

21 Q. I'd like you to refer to the Defendant's Exhibit 595. Do  
22 you have it?

23 A. I have it in front of me. I have part of it in front of  
24 me here.

25 Q. Can you tell us what that says, what -- the first

1 paragraph from me to you.

2 THE WITNESS: Okay. I don't know the rule on this.  
3 Am I allowed to see the whole exhibit or -- as he shows me a  
4 piece of that? When do I address that?

5 THE COURT: You're allowed to look at the whole  
6 thing.

7 THE WITNESS: Okay. I would like to see the whole  
8 exhibit if we're going to present -- Can everybody see the  
9 whole exhibit?

10 THE COURT: No. You get to see the whole exhibit.

11 THE WITNESS: Okay.

12 THE COURT: I assume you have it in your notebook  
13 there. That will make it easier for you.

14 THE WITNESS: Yes. Sorry. I forgot about this.

15 (Pause) I do not see 595 listed in the books. What  
16 I have on my screen is a small part. It says 595.

17 THE COURT: It's apparently in a notebook. It's kind  
18 of hard to navigate. Look through there and see if you can  
19 find it.

20 Can you help him, Jen? He's looking for 595.

21 THE CLERK: (Indicating).

22 THE WITNESS: Thank you.

23 May I have a minute to look at it?

24 THE COURT: Yes.

25 THE WITNESS: I'm sorry. I thought it was more

1 pages.

2 Okay. I see it. It's a piece of an e-mail. It's  
3 incomplete. It's an incomplete e-mail exchange.

4 BY MR. ROTE: (continuing)

5 Q. Would you please describe what -- First of all, let's  
6 confirm, this is an e-mail between -- from me to you?

7 A. It is. This is also talking about -- this is discussing  
8 reasons for termination. It's in here.

9 I mean, that's something that's been decided.

10 Q. I'm asking a specific question.

11 A. I understand that. But you're giving me evidence that we,  
12 I believe, have already gone over in the arbitration; and  
13 these matters have been decided.

14 THE COURT: Mr. Zweizig, I want you just to listen to  
15 his question and answer his question and trust that your  
16 lawyer will do his job.

17 THE WITNESS: Okay. Thank you. Sorry.

18 BY MR. ROTE: (continuing)

19 Q. The e-mail from me to you, this is document 595. You see  
20 that, the top of 595?

21 A. I see it, yes.

22 Q. Do you see that it's representing that "I'm sure that we  
23 can work out some kind of public statement for public  
24 consumption"?

25 MR. CHRISTIANSEN: Objection, relevance. It's an

1 e-mail from 2003.

2 THE COURT: The objection is sustained.

3 BY MR. ROTE: (continuing)

4 Q. All right. This particular document was after you filed a  
5 complaint with the Department of Justice?

6 MR. CHRISTIANSEN: Objection, relevance.

7 THE COURT: Sustained.

8 This was way before the blog ever took place,  
9 correct?

10 MR. ROTE: Way before the blog, but after he had  
11 already filed his complaint with the Department of Justice.

12 THE COURT: The objection is sustained.

13 BY MR. ROTE: (continuing)

14 Q. I want to ask you about one of the chapters in the blog  
15 that is in evidence here, Plaintiff's Exhibit -- I believe  
16 Plaintiff's Exhibit 12. This would have been on page --  
17 starting at page 25, Chapter 7, "The 120-Gig Hard Drive."

18 MR. CHRISTIANSEN: What page?

19 MR. ROTE: I have it as page 25.

20 THE WITNESS: I see it.

21 BY MR. ROTE: (continuing)

22 Q. Are you there?

23 A. Yes.

24 Q. So "The 120-Gig Hard Drive" goes into great detail about a  
25 hard drive recovered from you in 2003, right after your

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1 termination, right after your last day, just before your last  
2 day. "The 120-Gig Hard Drive," does this refresh your  
3 recollection as to the hard drive that crashed in May 2003?

4 A. I don't remember which hard drive crashed. I know that  
5 you didn't produce one of these hard drives, so if you're  
6 about to go talking about the content of this hard drive --

7 Q. That's not what I asked you. I --

8 A. -- that's --

9 THE COURT REPORTER: I'm sorry. One at a time,  
10 please.

11 THE WITNESS: I spoke out of turn. I'm sorry.

12 THE COURT: Go ahead and ask your question.

13 BY MR. ROTE: (continuing)

14 Q. You referenced during your examination that the  
15 information in this hard drive was -- that you did not, in  
16 fact, download porn; you did not, in fact, engage in any of  
17 these activities?

18 A. I did not download porn.

19 Q. This hard drive was cross-referenced through a forensic  
20 report that identified you as only -- the only user.

21 MR. CHRISTIANSEN: Objection.

22 THE COURT: Sustained.

23 BY MR. ROTE: (continuing)

24 Q. Can you tell me, Mr. Zweizig, why the 120-gig hard drive  
25 would have had all of this information on it? Is it your

1 position that you didn't have exclusive possession?

2 MR. CHRISTIANSEN: Objection.

3 THE COURT: Sustained.

4 BY MR. ROTE: (continuing)

5 Q. Are you taking issue in your plaintiff's -- in your  
6 testimony with the content of this blog chapter, "The 120-Gig  
7 Hard Drive," in its entirety?

8 A. Can you say that question again?

9 Q. Are you taking issue with the content of the blog post in  
10 its entirety?

11 A. Anything disgusting that you found on any hard drive that  
12 you go and post on the Internet, I am taking issue with.

13 Q. Every one?

14 A. Yes. Any disgusting thing, yes.

15 Q. The 120-gig hard drive -- Let me just ask you this  
16 question. There were some 1900 Fox profiles found that had  
17 been reformatted. Do you recall reformatting?

18 MR. CHRISTIANSEN: Objection.

19 THE COURT: Overruled.

20 You can answer the question, the last part of the  
21 question.

22 THE WITNESS: It was our -- okay. I need to -- I  
23 will answer that question. But I don't remember which hard  
24 drive you didn't turn over, which means I also don't remember  
25 which hard drive was reformatted.

1           It was the policy of our company, if a hard drive  
2 crashed, you did something to reformat or destroy it or  
3 something. It had client data on it.

4           So, yes, there was a reformatted hard drive. When  
5 you picked it up at my house, I told you it was reformatted.  
6 A hard drive was reformatted. I don't know if that refers to  
7 this hard drive.

8 BY MR. ROTE: (continuing)

9 Q. You don't know if it was a 120-gig hard drive or a 60-gig  
10 hard drive?

11 A. No. I don't remember.

12 Q. But you do agree that you reformatted it?

13 A. You keep saying "it." There was a hard drive reformatted.

14 Q. That's -- The hard drive was reformatted. You reformatted  
15 a hard drive?

16 A. I reformatted a hard drive, yes.

17 Q. And it's your -- Why did you do so?

18 A. Because the hard drive crashed, as far as being able to be  
19 used. And I reformatted it. You knew -- it was our policy.  
20 You reformat something so that the credit card information --  
21 we didn't keep numbers. If we did, they were encrypted. But  
22 any credit cards or personal information on a hard drive would  
23 not be available to anyone.

24 Q. On that reformatted hard drive, there were, as you just  
25 indicated, some 500,000 --



1 A. No, I did not indicate that.

2 Q. Did you indicate that --

3 THE COURT: Wait. Wait. Wait for the question.

4 THE WITNESS: Sorry, sir.

5 THE COURT: Go ahead.

6 BY MR. ROTE: (continuing)

7 Q. Did you just testify that there was confidential customer  
8 information on that hard drive?

9 A. No, I did not. I said that it was our policy to do that,  
10 and I gave you the reasons why.

11 Q. You had mentioned in your testimony now that there was  
12 data that was -- or files that were unencrypted, and that  
13 was -- did I misunderstand?

14 A. I said if we got credit card numbers, they were encrypted  
15 is what I said. I don't know if any of that information was  
16 on any of your hard drives.

17 Q. The programming that you did for the company, can you  
18 describe it in any detail?

19 A. Today? Not really.

20 Q. You would agree that programming was necessary to process  
21 the amount of data that we had daily?

22 A. Yes.

23 Q. And that in the -- in the absence of that programming, the  
24 company might have to shut down until it recreated it?

25 A. I gave you your programming. You sent me back an e-mail

1 that said, "Thanks." You got it.

2 This was -- we've been through this.

3 Q. I'm asking you a direct question. You agree that if that  
4 programming was not there, that the company would have to shut  
5 down to re-create it?

6 A. I absolutely do not agree.

7 Q. You do not?

8 A. No, I don't. I was in a similar situation when I started  
9 for your company. There was nothing. There was not a thing.  
10 It was a running train. We were doing calls, we were doing  
11 everything. And I used my skill, without programming, to get  
12 your files out and get everything done. It depends on the  
13 skill of your workers.

14 Q. Tell me how you did that.

15 A. Tell you how I got your files out?

16 Q. Tell me how you did that, yes.

17 A. Okay. Your data was there. I'm familiar with data.  
18 There is an incoming layout. There is our dialer layout that  
19 we had at the time, at Northwest. And then there is a  
20 fulfillment layout back to the client and perhaps some  
21 reporting files necessary.

22 I came to your Dyersville facility, and I worked  
23 nonstop for two days to make sure that you had no slowdown,  
24 that you were able to do work, and telemarketers were able to  
25 come to work. As I was going through that, while I was

1 looking at the state that everything was in -- Again, this is  
2 when I started. This is kind of the same situation you're  
3 talking about, but this is when I started. I want to be clear  
4 about when this was.

5           You know, it was hard. It wasn't easy. You had  
6 nothing. You had no programming. Whoever left -- the person  
7 I didn't meet was a friend of yours. You said that. I never  
8 met that person. They're gone. They left no programming.  
9 They left no way to do anything. It was up to me to get it  
10 done.

11           And I'm telling you, at one time I pushed back in my  
12 chair for a minute, and I asked your center coordinator, I  
13 said, "What was your plan B if I didn't come aboard?" And she  
14 said you had already had a meeting with them, and Dyersville  
15 would have shut down.

16           So can it shut down? It can. But I'm not going to  
17 agree that it has to. It depends on the skill of the people  
18 you bring on board.

19 Q. Again, you were using Visual FoxPro?

20 A. I'm sorry?

21 Q. Visual FoxPro was the database reporting program?

22 A. Yes. Yes, that's what I used to do that job, yeah.

23 Q. The servers for the dialers and switch, that was a  
24 Unix-based system, do you recall?

25 A. Yeah, I think it was. I think everything was.

1 Q. So that data had to be imported into tables in order to be  
2 processed; is that an accurate statement?

3 A. The data needed to come from the Windows environment and  
4 then be in -- yeah, and the dialer had an import feature that  
5 you would import.

6 Q. The data had to be imported to a Windows-based system; is  
7 that accurate?

8 A. Well, you asked me about the dialers. Dialers are Unix,  
9 so it had to be imported into Unix for that process.

10 Q. So the FoxPro programming was not taking the -- was not  
11 importing the data from the dialer to a Windows-based server  
12 or computer?

13 A. I believe you asked me about putting the records on the  
14 dialer. For that, for later, after the dialing, sure, it  
15 needs to come off of there, and the opposite of that happens.

16 Q. It would be more accurate to call that exporting, then, as  
17 opposed to importing, then, right?

18 A. Sure. Importing, exporting, right.

19 Q. So exporting from the Unix dialer to a Windows-based  
20 machine so that FoxPro can be used to generate those reports?

21 A. Or anything, sure, yeah.

22 Q. Anything.

23 A. Excel.

24 Q. Excel, yeah, anything at all.

25 And so those programs, then -- Do you recall where

1 you would have done that work?

2 A. I worked for you for about a year and a half. The  
3 situation we were just talking about, I flew to Dyersville,  
4 Iowa to accomplish that work.

5 Q. You worked from your home remotely in New Jersey?

6 A. I did.

7 Q. For -- it was about a year or so?

8 A. I'll take your word for that. I don't remember. But  
9 fine.

10 Q. You would process -- You were the lead programmer; is that  
11 accurate?

12 A. I was IT director for your company.

13 Q. And would you say you were the lead programmer as well?

14 A. Yeah.

15 Q. And based on the document we see with respect to your  
16 contract, you were making \$90,000 back then?

17 A. That's correct.

18 Q. And today's dollars, it's maybe \$150,000?

19 A. I don't know.

20 Q. Would you agree with that?

21 A. I would have to look that up. I don't know. I would not  
22 agree that \$90,000 ten years ago is \$150,000 today. I don't  
23 think that's the case.

24 Q. So if we had correspondence that said there was no  
25 transfer of programs, you would disagree with that conclusion,

1 that you hadn't --

2 A. We went through this, had an arbitration. During that  
3 arbitration, there was evidence. Part of the evidence was I  
4 sent you an e-mail with a zip file of your programs. You  
5 acknowledged it and said, "Thanks."

6 You didn't acknowledge it and say, "Hey, there's no  
7 programming here" or "What do I do with this?" or anything.  
8 You knew that those were your programs.

9 Q. No such evidence here today.

10 A. I don't know. I don't know what you're talking about. I  
11 know I gave you your programs. I know you asked me for  
12 programming on certain other things, and I told you, "I just  
13 do the work."

14 It's not all -- you know, you seem to have this  
15 mind -- and again, we're going back into another case here.  
16 But you seem to have a mind-set that, you know, there's a  
17 button to push and a program, you know, and it just does  
18 everything. There's -- you know, if that were true, you  
19 wouldn't have to hire skilled and specialized people to do  
20 these tasks.

21 Q. The reporting programs back then were not automated?

22 A. I don't remember.

23 Q. The references you made to my LinkedIn account, most of  
24 those are -- Tell me what concerns you about the chapters that  
25 are disputing issues with respect to the bar. How does that

1 affect you?

2 A. Well, one of the ways it does affect me is if people look  
3 up things regarding those chapters, subject matter in those  
4 chapters, is yet another way where they're going to find the  
5 chapters about me. So there are non-targeted things also out  
6 there on your website that might bring people there, and  
7 there's my name; and, you know, it's going to be smeared up.

8 Q. Do you agree that your name is not included in most of  
9 those chapters?

10 A. I don't know if it's most.

11 Q. The chapters that I referred to in the LinkedIn account  
12 your attorney brought up, those chapters were about attorneys  
13 as opposed to you.

14 A. Okay. Great. You're delineating your website as some  
15 chapters are this, some chapters are that. I don't know if  
16 I'm going to join you in that, because as people go to a  
17 website, they go to a website and they go to the whole thing.  
18 You know, I mean, that's our computer experience. You know, I  
19 might Google something about programming, and then I know way  
20 more than I want to know about koala bears in 10 minutes  
21 because it takes you somewhere else.

22 So, I mean, you're trying to make this separation  
23 that, you know, okay, they're only going to see this. That's  
24 part of my concern. Look at what I'm sitting with  
25 (indicating). This is a lot of volume, you know. So I don't

1 know what part that somebody is going to go to. I don't know,  
2 you know, the bottom of that thing. It would go to random  
3 chapters. It wouldn't go to sequential chapters. I don't  
4 know how you set that up, but it would go to random chapters.

5 So when they're done reading whatever they want to  
6 read about the bar, PLF, you know, "Arbiters Be Damned," or  
7 whatever you have up there, you know, then the chapter, "Our  
8 History With Max Zweizig," pops up, and then there is  
9 something prominently for them to click for.

10 So, yeah, I do have a problem with how your LinkedIn  
11 chapter is related to chapters not related to me. I think  
12 there's a pretty small path between -- you know, how that  
13 could affect me.

14 MR. ROTE: Your Honor, I'm kind of at that point  
15 when --

16 THE COURT: You don't have anything else other than  
17 the things we need to talk about?

18 All right. Members of the jury, we'll call this our  
19 afternoon recess. We'll be in recess for about 15 minutes.  
20 The lawyers and I will do some work while you're in your room,  
21 okay?

22 (The jury leaves the courtroom.)

23 THE COURT: Mr. Zweizig, you can step down.

24 THE WITNESS: I guess I'll just leave this.

25 THE COURT: Yeah. You're not done testifying yet,



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1 but you can step down for now. It's okay. Step down.

2 Okay. Mr. Rote, I have some notes down here, but why  
3 don't you remind me of those things that you wanted to  
4 introduce and I said we need to talk about this outside the  
5 presence of the jury.

6 MR. ROTE: Yeah. I think we're at -- we'll soon be  
7 at a point here where I have some impeachment testimony with  
8 respect to Mr. Zweizig, but one of those -- multiple of those  
9 are still forensic reports, so we're -- like the 120-gig  
10 forensic report, they've introduced evidence that I have  
11 submitted components of that or discussed components of that,  
12 for which he has denied any existence of, but that forensic  
13 report was, in fact -- is, in fact, impeachment evidence.

14 So I'm just asking this question, whether or not we  
15 have at this stage --

16 THE COURT: Is your notion that you can simply  
17 introduce as an exhibit a forensic report?

18 MR. ROTE: No. I would do it in conjunction with my  
19 blog, which the plaintiff has examined him on.

20 THE COURT: So when you testify, that would be your  
21 exhibit when you testify?

22 MR. ROTE: It is correct, although he has refuted the  
23 existence of that information on a chapter.

24 THE COURT: But he's not someone that can  
25 authenticate that forensic report. I don't even know if you

1 can, but -- I don't know if you can, but he can't. It doesn't  
2 come in through him. It might come in through you.

3 Do you understand?

4 MR. ROTE: Yeah, I think I understand. But some of  
5 this was -- Well, okay. So --

6 THE COURT: Let me interrupt you for just a moment,  
7 if I might. If it's something that's in the blog, the whole  
8 blog is in. But if it's something that is not part of the  
9 blog, then I need to look at it separately.

10 If it's not part of the blog, you're saying you want  
11 him to identify and authenticate a forensic report. I'm just  
12 guessing here, but I'm thinking that's not his -- that's not  
13 his -- he's not a forensic expert. He doesn't get to do that.

14 MR. ROTE: Yeah. So -- so the issue is he's denied  
15 the existence of this material that I've included in my blog.  
16 And the source of that material, even the attachment from the  
17 Judge Kugler letter and the reference in that paragraph, comes  
18 from that forensic report.

19 THE COURT: I know. Again, if you want to get into  
20 evidence the rest of Judge Kugler's letter, I will consider  
21 that, because part of the letter is in. You want the rest of  
22 it. I will consider letting the rest of it in. That's  
23 different, however, than a forensic report itself.

24 Do you understand what I'm saying?

25 MR. ROTE: Yeah, okay.

1           So if I'm kind of following this correctly, at some  
2 point in time during my direct testimony on Chapter 7, on "The  
3 120-Gig Hard Drive," I'm going to be outlining all of this  
4 evidence, the source of which I'm going to reference to a  
5 forensic report.

6           THE COURT: Yeah. I told you that you get to explain  
7 why you wrote things on the blog, and I will let you explain  
8 why you wrote things on the blog.

9           Does that mean you get to automatically introduce a  
10 forensic report? No. There's more to it than that, and you  
11 know that.

12          MR. ROTE: Yeah. I'm trying to understand how I  
13 accomplish that, I guess.

14          THE COURT: Yeah. You may not be able to do that.  
15 Sometimes that happens.

16          MR. ROTE: Yeah.

17          THE COURT: Sometimes what happens is you don't have  
18 a forensic expert that can authenticate this report and what  
19 it means because you weren't particularly offering it for what  
20 it says, and that is that "Our report shows that he did  
21 certain things." You may not be able to do that. I don't  
22 know, but you may not be able to do that.

23          On the other hand, if you want to say, "This is what  
24 my blog said, and this is why I said it," have at it. I told  
25 you you would be able to do that.

1 MR. ROTE: Yeah.

2 THE COURT: Okay? Do we understand each other?

3 MR. ROTE: We do. I'm still struggling with how to  
4 impeach some of his testimony in the absence of getting that  
5 in.

6 THE COURT: Sometimes the impeachment is your  
7 testimony.

8 MR. ROTE: Yeah, okay.

9 THE COURT: And then the jury is left with trying to  
10 figure out how to weigh witness testimony. That's their job.  
11 That's what they do.

12 There was another exhibit I think that you had  
13 referenced that we had put on hold, and I don't want to forget  
14 that. I want to make sure you had an opportunity to be heard  
15 about that one as well.

16 MR. ROTE: I think there was an Exhibit 5 --

17 THE COURT: 540? No?

18 MR. ROTE: 560, maybe, e-mail to modify.

19 THE CLERK: You said you were going to take up 37  
20 later, and 594.

21 THE COURT: I'm sorry. Say it again, Jennifer.

22 THE CLERK: Exhibit 37 you said you'd take up later,  
23 and then 594 is what I wrote down later.

24 THE COURT: So 37 would be a plaintiff's exhibit.

25 THE CLERK: Right. You started going there and said

1 you'd take it up later.

2 THE COURT: And 594 would be a defense exhibit.

3 THE CLERK: Correct.

4 THE COURT: So let's talk about defense exhibits.

5 594, is that the document that showed all the  
6 different entities?

7 MR. ROTE: No. That was 525.

8 THE COURT: Okay. So what's 594?

9 MR. ROTE: I think it was 595. I think it was 560  
10 and 595, Your Honor.

11 THE COURT: I don't have those exhibits anymore,  
12 Jennifer.

13 MR. ROTE: But I think you ruled on 595. It was an  
14 e-mail that was sent to him, to Mr. Zweizig, in November 2003,  
15 offering --

16 THE COURT: Oh, yeah. So what was the other one you  
17 wanted?

18 MR. ROTE: 560.

19 THE COURT: (Pause) Oh, my goodness.

20 MR. CHRISTIANSEN: I have no objection to this.  
21 That's fine.

22 THE COURT: So 560 you don't have any objection to?

23 MR. CHRISTIANSEN: The letter, no, I don't. E-mails,  
24 two e-mails, no objection.

25 THE COURT: Is that the one we were waiting on was

1 560, Mr. Rote?

2 MR. CHRISTIANSEN: I don't have copies of exhibits.  
3 Can you pull it up, so we can make sure we're looking at the  
4 same thing?

5 I think it's 595, right?

6 MR. ROTE: 595 was ruled on.

7 560 has to do with the offer to compromise the --  
8 modify the blog.

9 MR. CHRISTIANSEN: Can you pull it up so I can see  
10 it?

11 THE COURT: This one is from December 16th of 2016.

12 MR. CHRISTIANSEN: 560? No objection.

13 THE COURT: Does that resolve your problem, Mr. Rote?

14 MR. ROTE: It resolves the problems I can think about  
15 at this time.

16 THE COURT: Okay. So 560 will be received.

17 MR. ROTE: Excuse me, Your Honor. Did we make a  
18 decision about 590 --

19 THE COURT: 594?

20 THE CLERK: 594 was prior to the blog, you said, and  
21 then you didn't rule.

22 THE COURT: Yeah. No. I told him that wasn't coming  
23 in, the one prior to the blog.

24 THE CLERK: Okay.

25 MR. ROTE: 599, did we previously discuss that, the

1 Secretary of State? It was part of my direct.

2 THE COURT: I don't think you offered 599.

3 MR. ROTE: 599, I did not, during Mr. Zweizig's. I  
4 think we touched on it this morning. I just want to make sure  
5 I can --

6 THE COURT: You can offer it in your case in chief.  
7 He's not going to be able to identify this. That's outside  
8 his testimony.

9 MR. ROTE: Right. I think that is, by and large, it.

10 I think 602 has to do with forensic reports already  
11 in the public domain, but I think that is a neutralized point,  
12 since they're not now going to argue that the media protective  
13 order is -- they're not arguing now that the media protective  
14 order precludes the publishing of forensic reports, so -- at  
15 least, I think that's correct, is it not?

16 MR. CHRISTIANSEN: We have not offered that exhibit.

17 THE COURT: The exhibit would be the protective  
18 order. That was not offered into evidence.

19 MR. ROTE: Right.

20 THE COURT: Okay.

21 MR. ROTE: Yeah.

22 THE COURT: Does that solve all of the issues that  
23 you were worried about and I said, "Let's take a break and  
24 we'll take them up at that point"?

25 MR. ROTE: Yes.

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1 THE COURT: Okay. Do you have any other --

2 (The Court and the clerk confer off the record.)

3 THE COURT: So 37 has not been offered yet?

4 MR. ROTE: 37 is the e-mail to Carol Bernick.

5 MR. CHRISTIANSEN: It's your e-mail to 50 people with  
6 a long description.

7 MR. ROTE: So the issue there, in my mind, is that  
8 the e-mail itself was an exhibit that I wanted to put on with  
9 respect to -- or --

10 THE COURT: Hang on a second.

11 MR. ROTE: Yeah.

12 THE COURT: I think we're talking about your 37. Do  
13 you have any objection to your 37?

14 MR. CHRISTIANSEN: What's that?

15 THE CLERK: We don't have it. We never got it from  
16 you.

17 THE COURT: That's okay. My question is: Do you  
18 have an objection to your 37 coming in?

19 MR. CHRISTIANSEN: My own?

20 THE COURT: Yes.

21 MR. CHRISTIANSEN: No.

22 THE CLERK: We do not have them.

23 THE COURT: That's another issue.

24 Were you offering 37?

25 MR. ROTE: No. I was objecting to it because it was



1 correspondence from Carol Bernick sent over to  
2 Mr. Christiansen. That's a line of -- a topic that you had  
3 already ruled that we were not going to --

4 THE COURT: All right. So now let me take a look at  
5 it.

6 (Pause) Had you offered this?

7 MR. CHRISTIANSEN: Yes.

8 THE COURT: (Pause) Mr. Rote, you're objecting to  
9 this? Have you seen it?

10 MR. ROTE: Yeah. I wrote it.

11 So my objection is only that -- I withdraw my  
12 objection.

13 THE COURT: Okay. 37 will be received.

14 Do you have further questions in your  
15 cross-examination or are you finished?

16 MR. ROTE: I think I'm done, Your Honor.

17 THE COURT: All right. So when the jury comes back,  
18 just say, "I have no further questions."

19 I'll give you an opportunity for redirect. And then  
20 we'll be done with plaintiff's case. All right?

21 Let's take a break. How about -- let's give  
22 ourselves about 10 minutes.

23 (A recess is then taken.)

24 (The Court, counsel, and the parties reconvene.)

25 THE CLERK: Court is back in session.

1           THE COURT: Mr. Rote, I want to remind you about  
2 something that we began to talk about, and you forgot and I  
3 forgot to mention; and that is you wanted to cross-examine  
4 about who the plaintiff's present employers were, and that was  
5 one of the things I said we would take up during the break.  
6 And I forgot to give you a chance to talk about that and for  
7 me to think about it.

8           But I've now thought about it. Is there anything  
9 else you want to tell me about that?

10           Do you remember the question?

11           MR. ROTE: Yeah, I think I remember the question.  
12 He didn't want to answer the question, who the employers were,  
13 who the employers were over the last 12 years. And I  
14 understand his concern. But by the same token, to the extent  
15 he's going to argue that it's interrupted his business life, I  
16 think we have a right to know who those employers are.

17           THE COURT: So here's what I'm thinking about that.

18           But before I tell you that, is there anything,  
19 Mr. Christiansen, you want to tell me on on that?

20           MR. CHRISTIANSEN: He's not going to say directly  
21 that it's impacted his -- this particular job, no.

22           THE COURT: And you're not asking for economic  
23 damages. I get that. You're only asking for pain and  
24 suffering damages.

25           So to the extent that you want to ask about former

1 employers, I'm not going to let you ask him to identify them  
2 for you.

3           On the other hand, if you want to explore, "How long  
4 have you worked there?," you know, "Were you by and large  
5 successful at working there? You got to go to work each day?  
6 You were successful with that particular employer?," I think  
7 that is relevant to whether or not there was emotional  
8 distress, because somebody who is incapable of getting to work  
9 each day is in a different position than someone who is able  
10 to go to work each day, notwithstanding this blog that was  
11 deeply troubling to the plaintiff as an employee or as an  
12 independent contractor.

13           So I will let you ask those kinds of questions if  
14 you're interested, but I will not let you ask questions  
15 identifying who the employer was or anything around the edges  
16 that would lead you to know who the employer was.

17           MR. ROTE: Got it.

18           THE COURT: Do you understand?

19           MR. ROTE: I do.

20           THE COURT: And with that, do you want to ask those  
21 kinds of questions?

22           MR. ROTE: I do.

23           THE COURT: So then I'll let you finish up with that.  
24 Then we'll do redirect, and then we'll proceed.

25           Go ahead, Mr. Zweizig.

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1 (The witness retakes the witness stand.)

2 (The jury enters the courtroom.)

3 THE COURT: Mr. Rote, you may proceed.

4 BY MR. ROTE: (continuing)

5 Q. Mr. Zweizig, I want to go back to this question of your  
6 employment, and I want to have you explain to us how many  
7 employers you've had in the last -- let's just call it the  
8 last five or six years.

9 A. That would be two.

10 Q. Two employers?

11 A. Yes.

12 Q. And your -- Do you go to work every day? Is it a remote  
13 job? What is it?

14 A. One was a combination. One wasn't.

15 Q. Currently your employment is which one?

16 A. Go to work.

17 Q. It is go to work.

18 And you're able to continue to work through the  
19 blogging activity, the blog posts, without any difficulty?

20 A. It affects my concentration, and it affects, like I said,  
21 how I set up e-mail addresses and things like that. But I'm  
22 able to do my job, yes.

23 Q. You haven't lost work because of it?

24 A. I've not lost any wages because of it.

25 MR. ROTE: That's all, Your Honor.

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1 THE COURT: Redirect?

2 MR. CHRISTIANSEN: No, Your Honor.

3 THE COURT: You may step down.

4 THE WITNESS: Do I take these?

5 THE COURT: No. Thank you.

6 THE WITNESS: Thanks.

7 THE COURT: Call your next witness.

8 MR. CHRISTIANSEN: We rest.

9 THE COURT: Mr. Rote, you're up.

10 MR. ROTE: Up there?

11 THE COURT: Yes. If you're ready to testify, step on  
12 up, raise a hand and be sworn.

13 You're welcome to take whatever documents with you  
14 that you think you may need to help your testimony, so you  
15 don't have to kind of be going back and forth.

16

17 TIMOTHY ROTE

18 called as a witness in his own behalf, having been first duly  
19 sworn, is examined and testifies as follows:

20

21 THE CLERK: Please have a seat and state your name  
22 and spell it.

23 THE WITNESS: My name is Timothy Rote, R-o-t-e.

24 THE COURT: Mr. Rote, you don't need to ask yourself  
25 questions and then answer them. You can simply make a

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1 statement about the evidence that you want to share with the  
2 jury.

3 MR. ROTE: Okay. Thank you, Your Honor.

4 So I wrote this blog because we had been so  
5 significantly harmed by an arbitration that went sour. The  
6 first part of being able to analyze that and to showcase that  
7 was to do a deep dive in the evidence, and I've done precisely  
8 that. And so I dove into the testimony. I dove into the  
9 forensics work. And so, for example, I'm going to start  
10 diving into some of it right now and explaining why I wrote  
11 that particular chapter.

12 With reference, however -- the chapters, even though  
13 there are 96 of them, there's only a small number -- maybe 25  
14 percent of these actually have to do with the arbitration.  
15 And so with that, I think, though, I want to jump right in and  
16 start talking about some of that evidence.

17 Do I have a --

18 THE COURT: I don't think so. I don't think you can  
19 control the video system from there.

20 MR. ROTE: How do I bring up an exhibit?

21 THE COURT: If you want to go back, you can just  
22 testify from there. You can -- I don't know how else to do  
23 it.

24 Can you bring it up for him, an exhibit for him?

25 THE CLERK: No. It's on his laptop.

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1 THE COURT: Yeah, you're going to have to go back and  
2 testify from there. I apologize.

3 MR. ROTE: It's okay.

4 (There is a brief pause in the proceedings.)

5 MR. ROTE: So at various stages of the blog -- it's  
6 an evolutionary piece. At various stages of the blog, I  
7 changed what I was writing. But in -- in essence, the first  
8 part, the first page of the blog is called "About." And when  
9 I reference "About," I talk about the fact that -- that  
10 this -- this arbitration was an event that ended up being in  
11 front of an arbitrator who was compromised in many respects,  
12 who was losing his cognitive skills. And I address some of  
13 that and how he was exploited, in that page about the blog.

14 Page 2 is called "The Sting," and in that I reference  
15 precisely what I believe this whole con was by Mr. Zweizig and  
16 attribute it to his -- his fiancée's attorney -- his fiancée,  
17 who is also an attorney.

18 But in that, I make it very clear that the components  
19 of what I'm addressing are that there is an element of -- of  
20 belief that he made a knowingly fake complaint to the  
21 Department of Justice, that the evidence of that is  
22 substantially provided in this blog, and that he used that to  
23 hide behind his ultimate intention, which was to not provide  
24 the programs that we needed to survive.

25 He claimed, as you saw in his testimony -- we have

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1 FoxPro programs that we needed in order to process data. And  
2 those FoxPro programs were nowhere to be found after his  
3 termination.

4 We hired forensic experts ad nauseam. We had two.  
5 He had one. We looked for the data. We evaluated and  
6 examined him during the arbitration. And the point  
7 consistently was he simply did not turn that material over,  
8 those FoxPro programs.

9 The forensic experts that dealt with those issues  
10 were specifically hired to find evidence that the forensic  
11 programs, the FoxPro programs, were put -- were on the hard  
12 drive that he returned to us on his last day of employment,  
13 which was a 60-gig hard drive.

14 In addition, he maintains we had taken a position in  
15 the arbitration that he was fired beforehand, before he even  
16 filed his complaint, and that we provided that evidence, which  
17 was my computer, and the Outlook Express e-mail account by  
18 which I sent that termination e-mail.

19 Forensic experts looked at that, and I represented in  
20 the blog what those conclusions were. I'm not going to  
21 restate them now. Even though I've written them, I think that  
22 may be beyond the scope. But the issue was that we were doing  
23 a deep dive into this various evidence that we put on in the  
24 arbitration and had been summarily dismissed by the  
25 arbitrator.



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1           If you refer to or see the arbitrator's opinion,  
2           which I think is Plaintiff's Exhibit -- Defendant's  
3           Exhibit 505 --

4           THE COURT: Mr. Rote, until you offer an exhibit,  
5           they don't get to see it. It's not being published.

6           MR. ROTE: But if I reference a plaintiff's exhibit  
7           that's already in --

8           THE COURT: If it's already in, they get to see it  
9           and you can publish it to them. If it's not yet been  
10          received, they cannot see it. And if you don't offer it, they  
11          will not be able to consider it in closing arguments.

12          MR. ROTE: I understand.

13          THE CLERK: It's 3.

14          MR. ROTE: 3.

15          So Plaintiff's Exhibit 3 --

16          THE COURT: I think that's been received.

17          MR. CHRISTIANSEN: Yes.

18          THE COURT: You can go ahead and publish that to the  
19          jury.

20          MR. ROTE: When you evaluate and look at the  
21          arbitrator's opinion on that exhibit, you're going to see that  
22          he took a great deal of time and effort to identify why he  
23          reached certain conclusions. But in that opinion he  
24          specifically noted that the forensic evidence -- that the  
25          opinions between them conflicted; and, therefore, he was not

1 going to consider that evidence.

2 He therefore concluded that because Mr. Zweizig --  
3 because I had sent Mr. Zweizig an e-mail inquiring about how  
4 he was doing right before he filed a complaint, that that  
5 somehow was an indication that I hadn't fired him, in spite of  
6 the testimony of three people with the company, in spite of  
7 the forensic evidence by our experts, our two experts, and his  
8 single expert, who all concluded that he had, in fact, been  
9 fired.

10 So we get back to even if that were not the case,  
11 even if he hadn't been fired before he had filed his  
12 complaint, even if he had filed a legitimate complaint in good  
13 faith, at the end of the day, on his last day no programming  
14 could be found, and we shut down.

15 It should have ended his complaint. It should have  
16 ended his damages. You can't burn down the barn on your way  
17 out and expect that the employer doesn't cut off your damages.  
18 That's the whole point. And we incurred a substantial amount  
19 of money losses, \$100,000 in lost revenue, \$25,000 to replace  
20 the -- to replace the programming.

21 And even in Mr. Zweizig's testimony, he confirmed  
22 that he did not -- he did not transfer programs over to the  
23 employer.

24 That being the case -- that's what I've written in  
25 the blog -- there was no justification for the arbitrator to

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1 decide that we didn't preserve evidence, because there was  
2 nothing there to preserve. When your IT programmer, head of  
3 the IT department, puts on evidence that he did not transfer  
4 programs, then very clearly there was nothing that we  
5 destroyed, nothing that should have precluded the arbitrator  
6 from finding that he was the cause of the shutdown.

7           There was no dispute by the arbitrator that -- that  
8 we had shut down. He had only decided to dismiss all of our  
9 evidence. And he had decided that -- and I think if you look  
10 at the tone of his writing in the opinion and award in this  
11 exhibit, you're going to see him poking at me and making  
12 statements that I think were out of character.

13           I want to address a couple of very specific items,  
14 the 120-gig hard drive, which I have written in this -- in  
15 this blog. And the exhibit is Exhibit 12, starting at page  
16 25.

17           The significance of what Mr. Zweizig provided to us  
18 on his last day is he gave us a computer, a Sony VAOI  
19 computer, had a 60-gig hard drive in it. And he returned to  
20 us a hard drive that he claimed had been -- that crashed in  
21 May 2003. That hard drive is the 120-gig hard drive, and it  
22 was used exclusively by him. No one else ever used it.

23           After the shutdown and we had forensic examiners take  
24 a look at this hard drive, that's where we discovered the  
25 porn, the FoxPro programs, 1,900 FoxPro programs that he did

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1 not transfer over to us on his last day, 500,000 records,  
2 customer confidential information unencrypted in his hard  
3 drive, on his hard drive, and a reformat date on the day  
4 before he was terminated.

5 He represented to us that he had reformatted this  
6 hard drive after it had crashed to protect it. But, in fact,  
7 we did have forensic evaluation done on that. And, as I've  
8 written, he did not reformat that until the day that he  
9 returned it to us.

10 So all of that information -- his e-mail account was  
11 there for e-mails prior to about May 6th, 2003. His -- the  
12 FoxPro programming files, 1,900 of them, were there, and he  
13 destroyed those. Obviously the evidence of the porn was all  
14 there. But in addition to all of that, there was programming  
15 that we found in a file-sharing arrangement, which was  
16 peer-to-peer, which meant that he was sharing files at a site  
17 or with people directly; and while he was doing so, his  
18 computer was wide open.

19 Now, he was the IT director of the company and  
20 responsible for maintaining and protecting our data, wherever  
21 it is. And yet he was opening up his computer to upload files  
22 and download files from a number of different sources. It  
23 could have been between individuals. It could have been to a  
24 site.

25 So that was a very material component. But mostly it

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1 was material with respect to the FoxPro programs and the  
2 existence of an e-mail; and that I discussed extensively in  
3 Chapter 7 here, "The 120-Gig Hard Drive."

4 Now, in addition -- let me get us to Chapter 11.  
5 Chapter 11 addresses what happened to M's e-mail. When he  
6 returned the computer to us with the 60-gig hard drive, he  
7 maintained in testimony that the e-mail, all of his e-mails,  
8 sent and received e-mails from May -- middle of May 2003 until  
9 November 13th, 14th, 2003, were on that hard drive in an  
10 Outlook Express account. But we found no evidence that he  
11 used that e-mail -- he used that computer for e-mail.

12 So from May 2003 to November 2003, he was sending and  
13 receiving e-mail from another hard drive altogether, which he  
14 did not turn over for forensic evaluation during the  
15 arbitration.

16 It was key, because as you may recall in the  
17 testimony, he provided to me an e-mail and -- with his  
18 Complaint, and with his Complaint had a letter attached  
19 claiming that he had received the spreadsheet of evidence of  
20 our overbilling from another employee. He never turned that  
21 e-mail over at that time, nor did he turn that e-mail over  
22 during the course of the arbitration in discovery.

23 At no time did he corroborate the existence of this  
24 spreadsheet, at no time. Nobody from our company knew  
25 anything about it, and that's what we testified to. Only

1 via this e-mail would he be able to corroborate the fact that  
2 that spreadsheet was ours, and he chose not to provide that  
3 e-mail.

4 Now, he provided hundreds of others in hard copy  
5 form, not that e-mail. And he didn't provide the -- the  
6 Outlook Express PST account. So a very material point. And  
7 with respect to what he decided to keep and what he decided to  
8 provide, that was key evidence.

9 My e-mail is discussed on -- what happened to my  
10 e-mail is discussed in Chapter 12. It starts on -- it starts  
11 on Chapter -- it starts on page 41 of Exhibit 12. It was our  
12 position that he had been terminated on October 2nd, 2003, via  
13 e-mail, and then a letter was sent to him.

14 Obviously he wanted to do forensic examinations of my  
15 computer, and we had two of our experts do the same. I turned  
16 over my computer with the Outlook Express PST account that had  
17 the e-mail terminating him, didn't hide it. We didn't destroy  
18 it. None of that evidence was destroyed.

19 Forensic evaluations -- the forensic experts had  
20 every opportunity to determine and refute whether or not that  
21 e-mail was sent. And they confirmed that the e-mail was sent  
22 October 2nd, 2003, three weeks before he filed his Complaint.

23 Now, even though the arbitrator didn't like the fact  
24 that that was true and eliminated his claims, to summarily  
25 dismiss his forensic expert, which agreed with our forensic

1 expert, just because it went against us, was a good chunk of  
2 why I wrote this entire blog.

3 Not only was it our evidence that he dismissed when  
4 our experts presented it, he also dismissed evidence contrary  
5 to Mr. Zweizig if it was his expert that actually said it.  
6 And in this case -- this is an example where the experts  
7 agreed that he had been terminated prior to the time that he  
8 had filed his Complaint.

9 And so a good chunk of putting down the evidence for  
10 what happened to the e-mail, what was the spreadsheet about,  
11 we dove in -- I dove in to what the spreadsheet represented in  
12 another element of the blog, in another chapter.

13 And the bottom line is that the spreadsheet  
14 represented about \$400 of adjustments a month in which we --  
15 we invoiced \$400,000. That's roughly claiming that -- that we  
16 were committing racketeering for going 55.05 miles per hour in  
17 a 55-mile-per-hour zone, not 55 miles per hour, not 60, but,  
18 you know, 55.05 miles per hour. That was his representation  
19 of evidence that we were racketeering.

20 We also discuss in the blog the fact that  
21 Mr. Zweizig's Albany, Oregon attorney filed a Complaint on his  
22 behalf, and that Complaint was filed without any review of  
23 evidence whatsoever. He filed that Complaint based on his  
24 conversation with Mr. Zweizig's New Jersey attorney. And  
25 after the Oregon Department of Justice requested evidence and

1 no evidence was provided and the investigation was shut down,  
2 he found out that Mr. Zweizig's New Jersey attorney was  
3 Mr. Zweizig's fiancée, Sandra Ware.

4 So no evidence provided to the Oregon Department of  
5 Justice, a spreadsheet that represents \$400 in adjustments in  
6 a month in which we billed \$400,000, an arbitrator who didn't  
7 disclose his relationship with Linda Marshall, his former  
8 partner.

9 I go into a great deal of detail in the early stages  
10 of this blog. We're very critical of the arbitrator. And  
11 he's a man who lives in my community. I've known him a while,  
12 not intimately, not strongly, but I've known him a while. I  
13 met with him a year ago to talk to him about the status of the  
14 blog and what I've written and to get some idea from him on  
15 what was actually going on in his mind at the time.

16 I recorded that conversation, I had a witness there,  
17 and we openly spoke about this. And the bottom line was that  
18 he didn't have what he would describe as the energy to go  
19 through the evidence. He was angry that I had challenged his  
20 efficacy, his -- his position, his credibility.

21 But what -- what you need to understand, in part, is  
22 that in order for us to challenge whether or not this  
23 arbitration could be appealed by virtue of his failure to  
24 disclose that he was a prior partner with Linda Marshall,  
25 which is considered an issue, a potential conflict -- he has a



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1 duty to disclose that. In order for us to challenge that  
2 issue on appeal, we had to raise it with him during the  
3 arbitration. And it upset him.

4 So in spite of the fact that his cognitive skills  
5 weren't up to snuff, his temper was still strong; and he  
6 responded very strongly by coming back into the case and  
7 dismissing all of our evidence.

8 I think it would be helpful to talk a little bit  
9 about the fact that Linda Marshall came into this case, the  
10 arbitration, just about a year before we went to the hearing.  
11 And so from 2003 to 2005, we were in New Jersey. 2005, we --  
12 we started the arbitration. And we were the plaintiff seeking  
13 damages. Mr. Zweizig was the defendant. And his  
14 counterclaims were for retaliation and past compensation,  
15 et cetera.

16 That went on -- this arbitration went on a really  
17 long time. And we -- we pay the arbitrator by the hour to do  
18 this. It wasn't fair to us. It wasn't fair to Mr. Zweizig.  
19 It cost both of us money to have this arbitrator engaged, and  
20 it went on and on and on.

21 Mr. Zweizig's attorneys he replaced three times. I  
22 think Linda Marshall was the fourth attorney since starting  
23 this in Portland. We talk about that.

24 The significance of it is that Mr. Zweizig wrote a  
25 letter to the arbitrator and asked for an extension of time

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1 and -- and a referral. And it's my belief now, based on my  
2 conversation with Mr. Crow, that he did, in fact, refer the  
3 case to Linda Marshall.

4 We were told about that time that his cognitive  
5 skills weren't up to speed by his -- his legal secretary, who  
6 told one of my attorneys, a gentleman by the name of Jeff  
7 Edelson. We took issue with that, because we probably should  
8 have strongly thought about removing him as an arbitrator at  
9 that point.

10 He's a man of -- he's an elder statesman. He's a man  
11 of, I think, great integrity. And even when I challenged the  
12 fact that he did not disclose this critical issue to us, it  
13 wasn't with the intent of trying to suggest that he was a bad  
14 person. It was an intent to get on the record that he didn't  
15 do something that he should have known, that he should have  
16 done. He should have known it. He was the chairman of this  
17 region's disciplinary board for the Oregon State Bar, and he  
18 was ascending to the chairmanship of the entire state.

19 So we have a gentleman who is an elder statesman,  
20 whose skills were not as good as they used to be. He had  
21 trouble discerning some of the truth from the fiction, some of  
22 the lies and the perjury from the truth. And we had Linda  
23 Marshall, his former partner, who came into this arbitration  
24 and did not disclose to us either about the extent of her  
25 relationship with Mr. Crow.

1           At some point in time -- and I cover this pretty  
2 extensively in the blog, that an attorney who wants to put on  
3 dishonest evidence does so at a significant risk. An attorney  
4 could be disbarred for that. And so the significance of that  
5 is that -- that she had a consciousness, I think, of where  
6 Mr. Crow was in terms of his skill sets, in terms of his  
7 cognitive skills. I think that she knew that she was going to  
8 run a lot of things past him. And, in fact, she introduced  
9 evidence that had to do with litigation 10 years earlier.

10           And so we did not -- and so we had to make this  
11 challenge. But at the essence of this blog is about the fact  
12 that this arbitration gets compromised.

13           Arbitrations are more difficult to appeal than a case  
14 like this. There are very limited circumstances in which an  
15 arbitration can successfully be appealed, displays of absolute  
16 bias and a few other reasons. But that is very difficult  
17 evidence to put on, even though we thought we had an extremely  
18 good case for that.

19           So we did put on that evidence. We tried to set the  
20 arbitration aside, to vacate the judgment. And we talk about  
21 the evidence that we put on in the blog.

22           Most significantly was that after his recusal, that  
23 he came in and again dismissed everything from our side,  
24 dismissed the forensics, dismissed the testimony of eight  
25 people, citing instead that -- deciding instead that

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1 Mr. Zweizig had been retaliated against.

2 So -- so the critical nature of all of this is that  
3 I decided, after Mr. Zweizig's employer was no longer in  
4 business, that I was going to write this story.

5 We've been subjected to cybercrime three times, and  
6 the last time in 2009, went to a trial in 2014. And  
7 ultimately we just haven't been able to protect the company.  
8 So I decided to shut down the company altogether after 2014.

9 Mr. Zweizig's former employer, NDT, was dissolved in  
10 2015, February 2015. The evidence I'm going to put on that,  
11 I'm going to start putting on some of that right now.

12 If we could look to the Defendant's Exhibit -- I  
13 think it's 599.

14 THE CLERK: It hasn't been received.

15 MR. ROTE: It hasn't been received.

16 This is a document that is from -- a copy of a  
17 document from the Oregon Secretary of State showing the  
18 dissolution date for Northwest Direct Teleservices,  
19 Mr. Zweizig's employer.

20 THE COURT: Any objection to 599?

21 MR. CHRISTIANSEN: No objection, Your Honor.

22 THE COURT: It's received. You may publish it.

23 MR. ROTE: Okay.

24 So the significance of that is that I wanted to avoid  
25 circumstances precisely like we're in right now. I wanted to

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1 talk about this case. I wanted to talk about the arbitration.  
2 I wanted to write about it. But I wanted to do it. And if  
3 Mr. Zweizig was going to challenge it, I wanted him to -- if  
4 he was going to sue for it, sue me for defamation. And then  
5 we could present the evidence, all of it, as it came into the  
6 arbitration.

7 This is not the case here, where he's choosing to now  
8 sue me as assisting a corporation or a group of corporations  
9 that are now out of business. And it's an incredibly  
10 important point in terms of -- in terms of his ability to do  
11 so.

12 His employer, Northwest Direct Teleservices, as he  
13 already testified, both when he was examined on the opinion of  
14 the arbitrator, as well as on his employment agreement, he was  
15 employed by Northwest Direct Teleservices. The opinion and  
16 order from the arbitrator was with respect to Northwest Direct  
17 Teleservices and Mr. Zweizig. No other corporations have been  
18 involved.

19 Excuse me. Did the plaintiff put on his Exhibit 25,  
20 license agreement?

21 MR. CHRISTIANSEN: No, but no objection.

22 MR. ROTE: No objection?

23 THE COURT: 25 is received.

24 MR. ROTE: Thank you, Your Honor.

25 The license agreement is a document of my doing. I

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1 wrote -- I wanted to be able to access litigation material for  
2 each of these corporations. So Mr. Zweizig's former employer,  
3 Northwest Direct Teleservices, wasn't the only active business  
4 that we had. And each of those active businesses, at one time  
5 or another, had litigation; and they had unique litigation,  
6 and none of it applied to Mr. Zweizig. Only Northwest Direct  
7 Teleservices applied to Mr. Zweizig.

8 So we entered into an agreement with these entities,  
9 where I was going to be able to use material from litigation  
10 associated with any of these entities.

11 Now, Mr. Zweizig's litigation is associated with  
12 Northwest Direct Teleservices. The last cybercrime event we  
13 had was with Northwest Direct Marketing and Northwest Direct  
14 Teleservices both, and it included a cybercrime case that was  
15 against Silicon Valley Bank. That was the last of our events.

16 But it is material to know that these are not the  
17 same entities. They are unique entities. They have separate  
18 obligations. They have separate contracts. And only  
19 Northwest Direct Teleservices was Mr. Zweizig's employer, and  
20 they were the only party that owned the e-mail evidence and  
21 other element -- other evidence in the arbitration. So no  
22 other entity owned that evidence with respect to Mr. Zweizig.  
23 And they licensed it to me for a percentage of whatever  
24 revenue I generate from this activity.

25 In the beginning I anticipated that the blog could be

1 used to generate revenue. I decided not to generate revenue  
2 from the blog. To do that, I would have needed to simply make  
3 it a private blog associated with a particular website, go out  
4 to the marketplace and find people that wanted to advertise on  
5 it. And I decided not to do that. I've used it instead to  
6 help me develop some of my material for my novel and other  
7 things that I have written.

8           The novel is a fictionalized version of my  
9 experience. It's not -- it has no individuals identified in  
10 it that in any way, shape, or form are associated with  
11 Mr. Zweizig or my company. It is a John Grisham-esque type of  
12 novel. I also generated -- still in the process of generating  
13 a screenplay, but that's decidedly more difficult than I  
14 thought it would be.

15           So we do not -- this license agreement doesn't  
16 pretend to provide -- it's intended to provide e-mail evidence  
17 and other transcript evidence, information that I had, that we  
18 had generated that was property owned by those companies.

19           Blog -- blog 86 deals with the shutdown.

20           I think that -- is that a unique exhibit of yours or  
21 is it in Exhibit 12?

22           MR. CHRISTIANSEN: Exhibit 12.

23           MR. ROTE: So blog Chapter 86 again goes back to the  
24 shutdown, but it is a longer chapter than I typically write.  
25 And in that chapter I go to great detail to identify the

1 program extensions, the programming, the material, the FoxPro  
2 programs that we expected to find on our servers in Eugene and  
3 Dyersville, Iowa, and on Mr. Zweizig's computer that we did  
4 not find. They're the same programs, six months earlier, that  
5 we found on the 120-gig hard drive that was reformatted, the  
6 same extensions.

7           They included 1900 FoxPro programs on that destroyed  
8 hard drive, and probably would have expected to see 40 or 50  
9 of these on his 60-gig hard drive, which he returned to us his  
10 last day. And because of that -- I've written extensively in  
11 this blog post that because of that, we shut down. But in  
12 arguing that, I wanted to make sure I identified all of the  
13 programs that we would have expected to find and didn't find.

14           Now, we have an extraordinary amount of forensic  
15 evidence on this. It can't come into this trial as yet. But  
16 I did identify forensic reports that we had. So by reference,  
17 in Chapter 4 of the blog, where I identify the forensic  
18 reports, and each time I talk about this category,  
19 Chapters 11, Chapters 12, this chapter, I identify forensic  
20 reports that were issued in order to identify the source of  
21 our materials.

22           I did that because, for credibility purposes, I  
23 wanted to make sure it was clear that we had that evidence,  
24 that we put that evidence on, and that the arbitrator's  
25 dismissal of that evidence was -- was why we have this blog,



1 was why I talk about these issues, which is why it is so risky  
2 to arbitrate against a bar association that does not appear to  
3 want to make these disclosures, even though they're required  
4 to do so.

5 Much of my analysis and how I went by analyzing a lot  
6 of this I refer to in Chapter 13 of the blog.

7 And I have -- I have a JPEG on that, Your Honor.  
8 Can I bring that up? It's not offered as an exhibit, just as  
9 testimony support.

10 THE COURT: I'm not sure what it is that you're  
11 trying to show, so I can't --

12 MR. ROTE: It's -- it's a visual of the fraud  
13 triangle. It's just a JPEG of the fraud triangle.

14 THE COURT: You can use it during closing argument.  
15 If it's not evidence, you shouldn't be using it.

16 MR. ROTE: Okay.

17 So in computer forensics, in computer fraud, the  
18 elements that are discussed in Chapter 13 about the fraud  
19 triangle, there are three points to the fraud triangle. The  
20 first, at the top, is that an individual must feel like he or  
21 she is in extreme financial need or emotional need that can't  
22 be satisfied by some other means, they can't find a way to  
23 solve their problem.

24 The second point of the triangle, down below and to  
25 the left, is the opportunity to do something and get away with

1 it, the opportunity to get away with stealing something or  
2 destroying something that satisfies the first top prong of  
3 opportunity.

4 The third point to the fraud triangle is  
5 justification that -- that the party engaged in the fraud has  
6 the opportunity, has -- has the need, and then justifies their  
7 behavior in the third point.

8 My position in this blog is that Mr. Zweizig had some  
9 need, emotional need, financial need; I'm not sure what. He  
10 had the opportunity to hurt his employer by shutting it down  
11 in retaliation. And the third prong is that he justified it  
12 through his complaint that he was somehow -- that the company  
13 was overbilling.

14 He justified it, and so he did it. His justification  
15 came before he shut us down. But the analysis as to why he  
16 did it is first addressed, in my mind, from an analysis  
17 perspective, in Chapter 13 of the blog.

18 I also have the same analysis for Linda Marshall, who  
19 is the attorney who represented him. Remember that they were  
20 pursuing a million dollars in damages. She had an opportunity  
21 to get away with something because Bill Crow, the arbitrator,  
22 wasn't on his game. He was 79 years old. He wasn't on his  
23 game.

24 Now, that doesn't mean that all 79-year-olds aren't  
25 on the game. We know that Judge Jones here is 90 years old

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1 and still going strong. But it all happens to us at some  
2 point in time and differently.

3 He wasn't on his game. So she had the opportunity to  
4 put on testimony that she know to be -- she knew to be a lie,  
5 perjurious testimony. And she knew that Mr. Zweizig had  
6 destroyed evidence.

7 And the third part of that triangle, the  
8 justification is the same as his, which is that we're a bad  
9 person, I'm a bad person, the company is a bad person, because  
10 we -- even though they provided no corroborated evidence,  
11 because we had overbilled clients by, according to them, \$400  
12 in a month in which we billed \$400,000. The spreadsheet  
13 evidence had no clients identified, and we only billed once a  
14 month.

15 So no invoices, no other evidence, \$400 versus  
16 \$400,000, but we were bad people; and so that was their  
17 justification, aside from the economic gain that she expected  
18 to have from the litigation.

19 Mr. Crow's analysis is entirely different, and his  
20 analysis is really just about his -- his inability to go back  
21 through and spend a lot of time with the evidence and so  
22 forth. He -- after he was reinstated, after he joined again,  
23 he spent maybe a day looking at 10 days of evidence and just  
24 didn't have the stamina to do it, so he decided to come back  
25 in and find in favor of Mr. Zweizig.

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1           In -- in the blog, I do add some transcripts. I did  
2 redact Mr. Zweizig's name substantially and sought to do so a  
3 number of times.

4           I did want to now refer to an exhibit. I believe  
5 this has already been offered in, Your Honor.

6           THE COURT: Has it been received?

7           THE CLERK: What's the number?

8           MR. ROTE: 560.

9           THE CLERK: It was offered. I don't have it noted as  
10 received.

11          THE COURT: Do you have any objection to 560?

12          MR. CHRISTIANSEN: No objection.

13          THE COURT: It's received.

14          MR. ROTE: Exhibit -- Defendant's Exhibit 560 is  
15 about, oh, December 16th, 2016. So Mr. Zweizig filed his  
16 lawsuit here against me and the corporations on Christmas Eve,  
17 2015. So this is just about a year later.

18                 And I'm reaching out to counsel, saying, "If there's  
19 something that you want me to change about the blog, engage me  
20 with specificity. Tell me precisely what you want. Is it  
21 redacting Max's -- Mr. Zweizig's name? Is it something else?  
22 I don't want to take down the blog in its entirety, but I am  
23 more than interested in talking to you about what you might be  
24 interested in, in terms of mitigation any of your concerns --  
25 mitigating any of your concerns."

Rote - D

1           Up until the time of this trial a couple weeks ago,  
2 I had actually never met Mr. Christiansen in person. This has  
3 been going on two years. It was always my hope that we would  
4 come to a point where we could agree on what would be in and  
5 what would be out, understanding that I wanted to,  
6 nonetheless, critically analyze the evidence and, nonetheless,  
7 critically evaluate the arbitration itself.

8           Mr. Zweizig, as -- as a component of this, is not  
9 that important. It's not that important. It's more  
10 important to analyze the problem with the arbitration, the  
11 evidence that was dismissed, what we put on, and to get to the  
12 bottom line of a critical analysis of arbitration. That never  
13 happened.

14           So I feel like that, as an individual responsible for  
15 writing this product and reaching out to them, to do this,  
16 that I took steps to showcase what would happen. I did a  
17 couple of things. I took the blog in its form at that time  
18 and I rebranded it. That means I shut down the Sitting Duck  
19 Portland site and I reopened a different site, the First Duty  
20 of Portland, First Duty Portland, which -- and when I did  
21 that, I redacted Mr. Zweizig's name from the blog posts, all  
22 of them. I redacted his name from the transcripts and  
23 forensic evidence that we attached. I took all of it out to  
24 see if that would meet their need.

25           They didn't demand that. They didn't ask for it.

Rote - D

1 But I did it to show them that I'm willing to act in good  
2 faith to do this. But you still need to come to the table  
3 and tell me with specificity if that's going to meet your  
4 needs.

5 They did not, so I stopped doing that after a while.  
6 And Mr. Zweizig has pointed out in his direct testimony and  
7 through their exhibits, his name now appears on Google search.  
8 But for a period of time, for a long period of time, it did  
9 not. And I want to go to those exhibits right now.

10 (Pause) Excuse me. I'm just trying to find my place  
11 here, Your Honor.

12 Defense Exhibit 578.

13 THE COURT: Is there any objection to 578?

14 MR. CHRISTIANSEN: No objection.

15 THE COURT: It's received. You may publish it.

16 MR. ROTE: So the first page of 578 shows, as the  
17 plaintiff has shown, through Google search, that  
18 Mr. Zweizig -- I need to publish this -- that Mr. Zweizig does  
19 show up on Google search; in fact, in first position. But  
20 later -- but later he does not. The -- what shows up when you  
21 search his name is that he is -- provides guitar lessons, he  
22 is engaged in the IT community.

23 And what else shows up is the case histories, the  
24 case with -- against his former employer. All of that  
25 litigation shows up. But the reference to the blog goes away.

Rote - D

1 And why that's significant is that if he, with his -- in all  
2 sincerity, if he wanted to engage me to eliminate his name  
3 from association with this blog or any blog, that is something  
4 that we could have come to an agreement on. I had already  
5 done so. The fact that they will not, with specificity,  
6 however, communicate that need is an issue of mitigation.  
7 Pages 2 through 8 of that blog showcase that -- of the Google  
8 search showcase that.

9 Now, Google and other search engines are slow to  
10 publish information about blogs.

11 MR. CHRISTIANSEN: Objection.

12 (Pause).

13 THE CLERK: Objection.

14 THE COURT: I know. I'm thinking.

15 Your objection is overruled.

16 You may proceed.

17 MR. ROTE: The Google and other search engines  
18 don't -- what they often grab will be chapter names,  
19 et cetera. They don't do a good job of searching contents of  
20 the chapter itself. And so when we redact his name or when we  
21 remove his name from a chapter or when we don't identify him  
22 as a tag, then if we don't tag his name, then search engines  
23 have a difficult time associating him in any way, shape, or  
24 form with this blog.

25 And so we have not tagged his name, even as we

Rote - D

1 removed certain redactions. There is still a lot that have  
2 been redacted. We haven't tagged his -- his name in  
3 association with any particular chapter, all the chapters.  
4 But he is right now -- for example, as they provided, Chapter  
5 90, the perjury, has his name prominently presented throughout  
6 this document; and a search engine will pick up on that  
7 eventually.

8           The only way to eliminate that is for that blog to  
9 shut down, to rebrand. And that's why we rebranded in the  
10 first place. That's why we shut down Sitting Duck Portland  
11 and went to the First Duty Portland, was to eliminate any  
12 association. And even if they showed up on Google search, if  
13 you were to click it, it would go nowhere. It would not go to  
14 the blog because the blog was shut down.

15           So it is a misrepresentation to say that we have  
16 shown no concern for Mr. Zweizig. But we have a greater  
17 concern for the issues that arose in the arbitration, all of  
18 the perjury, all the forensics, all of the compromise.

19           It took seven years and \$300,000 in legal fees for us  
20 to litigate this. And, in the end, an arbitrator decided to  
21 dismiss our case, dismiss our facts, dismiss our evidence,  
22 because he trusted solely the representations of Linda  
23 Marshall, Mr. Zweizig's attorney, and he was angry that we had  
24 challenged the fact that he didn't disclose this.

25           That is -- represents a chunk of the blog, 30, 35



1 chapters of the blog. It's about that. The rest of the blog  
2 is what happened in kind of a consternation relationship  
3 between Mr. Zweizig's attorney -- attorneys and me. I think  
4 they raised the fact in their exhibit that there was a  
5 defamation claim. I filed it in Clackamas County and -- based  
6 on statements that they made. Those statements aren't getting  
7 into this case.

8           But litigation is kind of a fluid, disastrous thing,  
9 as Mr. Zweizig has testified. It's not just fluid and painful  
10 to him. It is painful to all of us involved. And it can't be  
11 discounted as something that is unrelated, because what I  
12 wrote with respect to the arbitration soon became issues that  
13 I wrote about even in this trial -- not this trial per se, in  
14 this litigation, in a defamation claim in Clackamas County, in  
15 the bar association's involvement.

16           You recall that the LinkedIn exhibit that Mr. Zweizig  
17 brought on, there were three of those that were published  
18 about when the bar lies. And I'm critical of what the bar  
19 association does. I'm critical of the fact that we have  
20 ethical canons of behavior by attorneys that are abused  
21 consistently without punishment.

22           One of those that I talk about in Chapter 90  
23 specifically is Linda Marshall's duty to be honest with the  
24 tribunal, to be honest with the arbitrator.

25           Under canon 3.3, an attorney is not supposed to lie

Rote - D

1 on behalf of his or her client. Advocacy is not lying.  
2 Advocacy is something different. An attorney owes a duty, in  
3 Chapter 90 -- and I think we should probably go to that at  
4 this stage.

5 Is that also Exhibit 12? Did you find it?

6 MR. CHRISTIANSEN: Which chapter?

7 MR. ROTE: 90.

8 THE CLERK: Exhibit 18.

9 MR. ROTE: Exhibit 18?

10 And this has already been accepted, I think, right?

11 THE COURT: I think so, too.

12 MR. ROTE: (Pause) So on page 12 of Exhibit 18,  
13 Plaintiff's Exhibit 18, it specifically includes Rule 3.3,  
14 candor towards the tribunal. And when you evaluate, look at  
15 that evidence, you'll see that an attorney has a duty of  
16 honesty to the Court, a duty of honesty to the arbitrator, to  
17 not put on false evidence, to not engage in testimony that she  
18 knows to be perjurious. She has a duty of care for the  
19 credibility of the justice system. And she breached that.  
20 Linda Marshall breached that. She has a duty of honesty even  
21 if it's not in her best -- even if it's not in her client's  
22 best interests.

23 And so a substantial part of not disclosing her  
24 relationship with the arbitrator to us, putting on evidence  
25 which she knew to be dishonest, putting on testimony which she

1 knew to be dishonest and inconsistent with her own forensic  
2 expert's conclusions, was something that I focused on  
3 seriously in the blog.

4 All in all, our detail of evidence that we outline in  
5 the blog, we had some six forensic reports, three forensic  
6 experts providing most of these. Two of those forensic  
7 experts were for my company, Northwest Direct Teleservices.  
8 One was for Mr. Zweizig. And they evaluated my computer, my  
9 e-mail. They evaluated Mr. Zweizig's 60-gig hard drive that  
10 he returned to us. They evaluated the 120-gig hard drive that  
11 had been reformatted by Mr. Zweizig.

12 All of this I discuss in great detail in the blog.  
13 The forensics starts on Chapter 4 of the blog, the 120-gig  
14 hard drive on Chapter 7, a detail of the analysis for  
15 Mr. Zweizig's e-mail account in Chapter 11. Chapter 12 is an  
16 evaluation of the forensics in my e-mail and my computer. And  
17 throughout, this blog is peppered the analysis from the  
18 forensics and from the testimony.

19 We had -- we had a client testify. We had three  
20 executives testify. We had two other employees testify.  
21 There was no dispute by the arbitrator that we shut down.  
22 What was at issue in the opinion was whether or not we  
23 preserved evidence to show that. The preservation question  
24 was one I think I addressed already in part, which was that at  
25 least with respect to the FoxPro programs that Mr. Zweizig had

Rote - D

1 in his possession on his last day, he testified that he  
2 had -- he transferred no programs over. Nothing came over, so  
3 nothing was found.

4 And, again, on his e-mail that he used from May 2003  
5 to November 2003, on the 60-gig hard drive, his e-mail account  
6 was installed the day before he returned the computer. And  
7 none of his e-mail from May to November 2003, none of it was  
8 found on his computer. He did produce a lot of hard copies of  
9 it. But the account itself was not -- the PST account, the  
10 digital form of that was not.

11 So I -- I am sensitive to the fact that -- I should  
12 say that I am compelled, in part, by the fact that cybercrime  
13 is such a significant issue these days and that it ultimately  
14 shut us down, that we had to suffer it three times. The  
15 second time was Mr. Zweizig, the third time another IT person  
16 from outside the company that broke into our network and  
17 destroyed software. And the first time we suffered, it was an  
18 IT manager who reset the passwords on our servers to try to  
19 extort a raise.

20 So we've suffered through this cybercrime multiple  
21 times. And the fact that we invested so much time and money  
22 and ran into an arbitration that was so compromised was the  
23 ultimate stimulation to beginning the blog.

24 Again, the blog took on a life and on topics that  
25 we're not discussing here today, not relevant to this case. A

Rote - D

1 lot of cybercrime material has been published in there, a lot  
2 of ethical mandates of attorneys, a lot of evidence of  
3 wrongdoing. But that is the essence of why I wrote the blog.

4 The companies, again, that -- that were part of this  
5 affiliated group of companies, the Northwest Direct companies  
6 that the plaintiff has referred to, are each unique and  
7 separate companies. I was the president for these companies.  
8 Most of them dissolved well before the blog started. Only  
9 one -- only two were alive at the time the blog was started.  
10 And that company, Northwest Direct Marketing, shut down  
11 afterwards. Rote Enterprises is an LLC that is not in the  
12 business of BPO, business processing outsourcing, or  
13 teleservices, as they would call it. Rather, it was a holding  
14 company that held these -- these shares in these corporations.

15 So I think that's my direct, Your Honor.

16 THE COURT: Thank you.

17 Cross-exam.

18 MR. CHRISTIANSEN: Please.

19 Could I have you on the stand for it?

20 MR. ROTE: Oh, of course.

21 (Defendant Rote takes the witness stand.)

22 MR. CHRISTIANSEN: One second.

23 (There is a brief pause in the proceedings.)  
24  
25

CROSS-EXAMINATION

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BY MR. CHRISTIANSEN:

Q. Mr. Rote, can you turn to Exhibit 3 in the plaintiff's exhibit binder. It's a white binder up there.

THE CLERK: (Handing).

THE WITNESS: Got it.

BY MR. CHRISTIANSEN: (continuing)

Q. This is the opinion and order from the arbitrator deciding the case?

A. Yes.

Q. Your company appealed that order, correct?

A. The company did appeal this order.

Q. And that went to the federal court?

A. It went to this U.S. District Court, to Judge Papak.

Q. And in support of that motion, you submitted a declaration, right?

A. I probably did. I don't recall.

Q. Do you recall attaching or filing a large number of documents in support of that motion?

A. I believe I did prior to the time counsel entered, and then the relevant ones were then refiled by counsel.

Q. Okay. And Mr. Zweizig also contested the arbitration award as well, right?

A. Yes, he did.

Q. And he contested it because this award declined to provide

Rote - X

1 any clause for attorney's fees; isn't that correct?

2 A. Any award for attorney's fees, yes.

3 Q. So the company was not obligated to pay any attorney's  
4 fees?

5 A. That's correct.

6 Q. You said he had three attorneys on the case during  
7 that -- that arbitration?

8 A. I think I testified that he had three before Linda  
9 Marshall. He may have had four while in Oregon.

10 Q. In your Exhibit 560 -- and this is the e-mail exchange  
11 where you offered to invite Mr. Zweizig to identify his  
12 concerns with your blog -- you put a line at the bottom of  
13 that, that e-mail, that said, "As you know, allegations of  
14 crime follow you for a lifetime."

15 Isn't that correct?

16 A. They followed me, yes.

17 Q. You referred to tags, Mr. Rote. I want to ask you a few  
18 questions about that.

19 This website is published on WordPress, right?

20 A. Correct.

21 Q. And that's -- that's a site you can log into to post this  
22 content?

23 A. Yes.

24 Q. You don't pay for this website, do you? You don't pay  
25 WordPress?

Rote - X

1 A. No. It's free.

2 Q. And when you log in -- you mentioned tags in the context  
3 of how this website shows up on Google. And you said that if  
4 you put a tag for something, it's more likely to show up on  
5 Google, right?

6 A. I believe that's accurate, that I have -- I believe that  
7 the search engines will pick up the tag lines.

8 Q. Can you turn to Exhibit 4, please. And I'd like you to  
9 turn to page 9. This is the end of the first chapter on this  
10 website.

11 A. I'm there.

12 Q. Do you see at the bottom, there's a tag for Max Zweizig?

13 A. I sure do.

14 Q. And there's a tag for Sandra Ware?

15 A. I do.

16 Q. Mr. Rote, you said you took steps to eliminate the  
17 association with Mr. Zweizig's name so it didn't appear on  
18 Google, correct?

19 A. No. I said that I rebranded the blog to disconnect the  
20 search engine component with the Sitting Duck Portland blog.  
21 And when I rebranded it, I redacted Mr. Zweizig's name from  
22 the content.

23 Q. And what date did you do that? When?

24 A. I don't recall. I would guess it was a year ago or so.

25 Q. Okay. Can you turn to Exhibit 18. I'd like you to turn



1 to page 3.

2 A. Which page?

3 Q. 3.

4 A. I'm there.

5 Q. Mr. Zweizig's name is all over that, isn't it?

6 A. Yes. I no longer redacted as of this time.

7 Q. Can you turn to Exhibit 40, please.

8 And this is a Google search result for Mr. Zweizig's  
9 name, isn't it?

10 A. That is correct, for Chapter 90.

11 Q. And so the fourth result down there, that's Chapter 90,  
12 isn't it?

13 A. Chapter 90, the exhibit we just looked at.

14 Q. And that provides a link to the First Duty Portland,  
15 correct?

16 A. Yes, it does.

17 Q. Mr. Rote, you said that Rote Enterprises is a company that  
18 has nothing to do with -- with Mr. Zweizig's employment,  
19 right?

20 A. Only Northwest Direct Teleservices has anything to do with  
21 Mr. Zweizig's employment.

22 Q. Can you turn to Exhibit 47.

23 THE CLERK: That has not been --

24 MR. CHRISTIANSEN: It has not?  
25

Rote - X

1 BY MR. CHRISTIANSEN: (continuing)

2 Q. Mr. Rote, do you have that in front of you?

3 A. I do.

4 Q. This is a press release, isn't it, Mr. Rote?

5 A. It is.

6 Q. And you published this on the website?

7 A. Multiple websites.

8 Q. And you published this on January 12th, 2018?

9 A. Correct.

10 Q. And the title of this press release is "Civil Trial of  
11 Author Exposing Attorney and Arbitrator Corruption."

12 A. Correct.

13 THE COURT REPORTER: I'm sorry. Repeat it again.  
14 "Civil Trial" --

15 MR. CHRISTIANSEN: Sorry. "Civil Trial of Author  
16 Exposing Attorney and Arbitrator Corruption."

17 THE COURT REPORTER: Thank you.

18 THE WITNESS: Correct.

19 BY MR. CHRISTIANSEN: (continuing)

20 Q. Is this an accurate printout of what you put on your  
21 website?

22 A. I think it is.

23 MR. CHRISTIANSEN: Offer Exhibit 47.

24 THE COURT: Any objection?

25 MR. ROTE: None.

Rote - X

1 THE COURT: I'm sorry. I didn't hear you.

2 MR. ROTE: No. Sorry.

3 THE COURT: Thank you. That's all right.

4 Received.

5 BY MR. CHRISTIANSEN: (continuing)

6 Q. Please turn to page 3, Mr. Rote.

7 At the bottom of this press release, you put contact  
8 information, right?

9 A. Yes.

10 Q. Is that your e-mail there, where it says  
11 "Tim@roteenterprises.com"?

12 A. It is.

13 MR. CHRISTIANSEN: Nothing further.

14 THE COURT: Mr. Rote, do you have anything else you  
15 want to add?

16 MR. ROTE: I don't think so, Your Honor.

17 THE COURT: You may step down.

18 Does the plaintiff wish to offer any evidence in  
19 rebuttal?

20 MR. CHRISTIANSEN: No.

21 THE COURT: Members of the jury, you've heard all the  
22 evidence that you're going to hear in this case. It's 4:30.  
23 I think that if we get into closing arguments and  
24 instructions, it will be probably around 6:00 by the time  
25 we're done. And I try just to work business hours, so I'm

1 going to let you go home for the evening. We will begin at  
2 9:00 with closing arguments. I will then instruct you, and  
3 you will begin your deliberations.

4 With that, I'm going to send you home. Please  
5 remember the precautionary instruction that directs you not to  
6 talk about the case with anybody until you begin your  
7 deliberations at the end of the trial.

8 Jennifer will escort you into your room, answer any  
9 of your questions. I will see you tomorrow at 9:00.

10 Thank you very much.

11 (The jury leaves the courtroom.)

12 THE COURT: Elisabeth, my clerk, I believe provided  
13 you with copies of the proposed jury instructions. I don't  
14 know whether you've had an opportunity to review those  
15 instructions or not. It's my intent to give those  
16 instructions as they have been provided to you. That's point  
17 1.

18 Point 2, I am dubious about whether or not punitive  
19 damages are available for this type of a case. I will cite to  
20 you *Wheeler v. Green*; it is found at 286 Or 99; *Paul v. May*  
21 *Department Stores*, 292 Or 131. You may also want to look at  
22 *Lewis v. Oregon Beauty Supply*, 302 Or 616.

23 And those cases together, in my mind, call into  
24 question whether or not punitive damages are available in this  
25 type of a case. It doesn't mean the case doesn't -- that the

1 jury doesn't deliberate. I just think we may be taking  
2 punitive damages off the table as part of what they can do in  
3 this case.

4 And basically what those cases are talking about --  
5 the first one talks about defamation. I recognize this isn't  
6 a defamation case. But if you look at the other cases, they  
7 talk about cases that are like defamation cases, where the  
8 allegation of misconduct is speech, and whether or not you can  
9 get punitive damages where the alleged misconduct is speech.

10 And in this case the alleged misconduct is the blog,  
11 which equals speech. So that's why I am very dubious that  
12 punitive damages are available in this context.

13 Anything else from the plaintiff before we depart  
14 this evening?

15 MR. CHRISTIANSEN: No. But I will talk about that  
16 tomorrow, because we might also want to amend our prayer,  
17 so I'll --

18 THE COURT: Yeah. What would happen is I would just  
19 take punitive damages off the table, you all argue about  
20 emotional distress damages, and that's all the jury would  
21 deliberate on.

22 MR. CHRISTIANSEN: And we would just want to amend  
23 our Complaint to conform with the evidence then.

24 THE COURT: Okay.

25 Anything else from your side, Mr. Rote, that we need

1 to talk about before tomorrow morning?

2 MR. ROTE: I don't think so, Your Honor.

3 THE COURT: Okay. Then that's all for now. I'll see  
4 you tomorrow.

5 Why don't you get together at 8:30, so that we can  
6 wrap up this issue about whether or not punitive damages are  
7 in or out of this case -- I think they're out -- and then  
8 anything else that we need to talk about before we bring the  
9 jury in at 9:00 for closing arguments.

10 Have a pleasant evening.

11 MR. ROTE: Thank you.

12 MR. CHRISTIANSEN: Thank you.

13 (The proceedings are adjourned on January 16, 2018  
14 and reconvened on January 17, 2018.)  
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3 I certify, by signing below, that the  
4 foregoing is a correct transcript of the record  
5 of proceedings in the above-titled cause. A  
6 transcript without an original signature,  
7 conformed signature or digitally signed signature  
8 is not certified.  
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12 /s/ Nancy M. Walker

2-22-19

13 NANCY M. WALKER, CSR, RMR, CRR  
14 Official Court Reporter  
15 Oregon CSR No. 90-0091

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