

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
CAMDEN COUNTY
DOCKET NO. L-545-06

DONALD J. TRUMP,)
)
Plaintiff,) TRANSCRIPT OF
)
vs.) HEARING ON
)
TIMOTHY L. O'BRIEN, et al.,) MOTION TO COMPEL
)
Defendants.)

Place: Superior Court of New Jersey
Camden County Courthouse
101 South 5th Street
Camden, New Jersey 08103-4001

Date: December 20, 2006

BEFORE:

HONORABLE IRVIN J. SNYDER, J.S.C.

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1 THE COURT: -- on the record under L-545-06.
2 Counsel, your appearance for the record?

3 MR. TAMBUSI: Your Honor, William M.
4 Tambussi of Brown and Connery, with Mark Ressler of
5 Kasowitz -- Kasowitz, Benson, Torres and Friedman of
6 New York. Mr. Ressler will be arguing the substance --
7 substantive motion on the shield privilege.

8 MR. MELODIA: Good morning, Your Honor. Mark
9 Melodia from Reed Smith for the defendants. And with
10 me is Andrew Ceresney from the Debevoise Firm, who has
11 admitted pro hac vice. And Mr. Ceresney will also be
12 arguing on the substance of the privilege motion and we
13 can decide whether the motions Your Honor wants to hear
14 this morning, in terms of discovery issues and the
15 like.

16 THE COURT: Okay. Gentlemen, you did send me
17 quite a bit of paper and I think you focused on the
18 issues rather well. I don't know how much oral
19 argument really is needed.

20 I think the first thing we should talk about
21 and we have to talk about is the conflict of laws
22 issue. And, again, I've read everything and, quite
23 frankly -- well, it appeared that there is a conflict
24 in the laws. And we all know how strong the shield law
25 in New Jersey, it's an absolutely privilege and it's
26 rather extensive. Whereas New York, on the other hand,
27 during the absolute privilege aspect of the statute, it

Ressler - Argument

5

1 seems to be somewhat aligned with New Jersey, but a
2 little bit, I think, more liberal as far as allowing
3 for disclosures.

4 But then we have another aspect of New Jersey
5 law that talks about non-confidential sources and we'll
6 be talking a little bit about what is and is not non --
7 confidential or non-confidential, I've had the
8 opportunity to read the entirety of the book a couple
9 times in preparation for the motion.

10 So let's talk about that aspect where we're
11 talking about actual conflict. Is there actual
12 conflict between the laws of the two states? Hear from
13 the plaintiff first.

14 MR. RESSLER: Thank you, Judge.

15 THE COURT: And again, please, don't try --
16 don't rehash what you have in the papers. I -- I see
17 that there's potential conflict in the laws.

18 MR. RESSLER: Judge, I think Your Honor's
19 comment is on the mark. I mean, I think that the New
20 Jersey statute probably is more -- can be interpreted
21 as being more encompassing and more protective with
22 respect to the absolute protection.

23 Our view is that the result is the same under
24 either state's shield law, as well as the fact that we
25 just applied the restatement of the conflicts of laws,
26 which applies the most significant relationship test.
27 And we came out believing that New York actually has

1 the most significant relationship, if you apply that
2 test, based on the fact that Trump is domiciled in New
3 York, which is really the key in the defamation
4 context, as well as the fact that the defendants do
5 their business in New York, Trump's -- has a real
6 estate empire all over the globe, but, you know,
7 primarily it's in New York, Trump Plaza and Trump World
8 Tower, etcetera.

9 So we believe that under that most
10 significant relationship test, New York -- New York
11 shield law should govern. But again, we view the
12 result being the same, whether it's New Jersey -- the
13 New Jersey statute or the New York statute.

14 THE COURT: No, I'm necessarily sure that I
15 agree with you there, but there are substantial
16 contacts with New York. But -- but look where we're
17 sitting. This is pretty far from New York, about 90
18 miles southwest of New York. He picks the forum, puts
19 himself in our courts.

20 MR. RESSLER: Right.

21 THE COURT: New Jersey has a substantial
22 governmental interest in the protection of journalists,
23 in fact, one of the strongest interests in the United
24 States to protect journalists. So, if that's, in fact,
25 the interest of New Jersey, how can I possibly accept
26 New Jersey law and why should accept -- I mean, strike
27 that -- New Jersey -- New York law. Why should I

1 accept New York law? Wouldn't that go against the
2 public policy and the interest of the State of New
3 Jersey?

4 MR. RESSLER: Judge, I appreciate that.
5 You're absolutely right, Mr. Trump wanted to be in New
6 Jersey --

7 THE COURT: Isn't that one of the important
8 aspects of the conflicts, as set forth in the
9 Restatement?

10 MR. RESSLER: It is -- I mean, it -- well, in
11 the restatement, again, we -- we think that the most
12 significant relationship test is -- is the --

13 THE COURT: O'Brien lives in New Jersey, if
14 I'm not mistaken.

15 MR. RESSLER: -- is the proper test. He
16 does, but he --

17 THE COURT: Okay.

18 MR. RESSLER: -- he carries out his business
19 for the New York Times, as he says in his papers, in
20 New York. So -- and -- and I guess the key point with
21 respect to the defamation context, in terms of the
22 conflict of law is -- is where the plaintiff is harmed,
23 where the injury is sustained. Now, Mr. Trump --

24 THE COURT: Yeah, but -- but -- but you have
25 to understand New York has a dual interest and their
26 statute sets forth a dual interest, the absolute
27 privilege is accorded to protect the interests of the

1 journalist. Non-confidential source balance test, much
2 like we have in the constitutional test, deals with the
3 litigant.

4 So we're looking at the public policy of the
5 two states. New Jersey it's protect the journalist and
6 really doesn't care about who the litigant is. New
7 York has a different view. So we have, on the positive
8 side for the defendants, Mr. Trump selects New Jersey
9 to litigate the case. He has real estate holdings in
10 New Jersey.

11 MR. RESSLER: Absolutely.

12 THE COURT: Mr. O'Brien is a resident of the
13 State of New Jersey, not you -- New York. So how do we
14 overcome those three variables? And the fact, most
15 importantly he picks this as a forum for some
16 unspecified reason. I still don't know what the reason
17 is, it made no sense to me. But hey, listen, it's
18 here. The book was distributed in 50 states plus
19 probably translated into God knows how many languages.
20 He probably could have filed suit in Tokyo.

21 MR. RESSLER: Well, Mr. Trump wanted to file
22 in New Jersey, he has very important business
23 interests, as Your Honor correctly alluded to, in New
24 Jersey, he's got real estate holdings in New Jersey.
25 So there's no question that this is the -- this is the
26 forum he selected, Your Honor is absolutely right, and
27 -- and we want to be here. But, again, we -- we viewed

1 -- and the reason we said in our papers that we believe
2 New York law applies is because of the injuries
3 sustained by Mr. Trump primarily occurs in New York. I
4 mean, that's where he carries on his business, the
5 Trump Organization is based there. It's the media
6 capital of the country.

7 THE COURT: Well, we talked about another
8 aspect of the restatement, where did the tort occur,
9 where did the injury occur. The injury occurred,
10 theoretically, throughout the 50 states. Where did the
11 tort occur? The tort occurs at the time of
12 publication. Which, as we all know from the book, is
13 New York, because it tells me about the third page in.

14 All right. I understand your position. With
15 respect to New York now, when we're -- you can sit down
16 now.

17 MR. RESSLER: Thanks, Judge.

18 THE COURT: Talk about New York. I just gave
19 you the three variables for New Jersey.

20 MR. CERESNEY: And Your Honor, my usual
21 approach to these things is when --

22 THE COURT: -- quickly, I'm telling you,
23 because you're gonna make a mistake by doing that.

24 MR. CERESNEY: Yes, exactly. Well, Your
25 Honor, I mean, when you've made the point so
26 eloquently, it's hard for me to --

27 THE COURT: Okay. Well, --

1 MR. CERESNEY: -- to make it --
2 THE COURT: -- forget that, take the hip
3 waders off and start talking to me. Let's talk about
4 New York for God's sakes. You got --
5 MR. CERESNEY: Sure.
6 THE COURT: You got Gotham City, what a
7 beautiful picture of Donald Trump and all these fine
8 buildings that I just saw Saturday when I was in the
9 city. You know, this is a book that primarily deals
10 with the City of New York. Donald Trump is a resident
11 of the City of New York, despite the fact that he has
12 holdings in New Jersey, holdings in Florida and God
13 knows where else, Chicago as well. We have that.
14 We have a tort that occurs in New York,
15 publication; alleged tort that occurs in New York,
16 publication of the book. We have Mr. O'Brien, who has
17 his entire professional life in New York and his
18 credibility stems from his relationship and his
19 acceptance of his relationship with New York. I think
20 one of the notations I made -- let me just see if I can
21 find it here.
22 "It would appear that, although, in New
23 Jersey's absolute privilege purpose is to protect the
24 journalist, O'Brien is a New York journalist, his
25 professional association with the press and the
26 publications of New York is where he has gained his
27 professional reputation."

1 He says it in the back of the book. I mean,
2 yeah, I love it when we just read the dust covers when
3 you go in Borders or --
4 MR. CERESNEY: Sure.
5 THE COURT: -- Barnes and Noble and you say,
6 "Oh well, tell me a little bit about this author, I
7 don't know Tim O'Brien" -- I do, because I read the New
8 York Times -- but what -- what is it that O'Brien says
9 he is? He's a staff writer with New York Times, he's
10 written about leading business personalities, computer
11 scam, Russia, the art world, Wall Street, terrorism,
12 money, politics and Donald Trump. Prior to joining the
13 Times he was a reporter with the Wall Street Journal.
14 O'Brien has also contributed to other publications,
15 including Talk Magazine, where he was a senior feature
16 writer.
17 MR. CERESNEY: Well --
18 THE COURT: And it talks about he --
19 MR. CERESNEY: Of course, my opinion, Your
20 Honor --
21 THE COURT: He lives outside of TrumpNation.
22 MR. CERESNEY: Outside of TrumpNation.
23 THE COURT: Inferentially, New York.
24 MR. CERESNEY: That's right.
25 THE COURT: And it says also knows New York
26 City. So -- and Talk Magazine, by the way, is a
27 defunct --

1 MR. CERESNEY: It is.
2 THE COURT: -- magazine that was published
3 out of New York.
4 MR. CERESNEY: All -- all true, Your Honor.
5 But all irrelevant to the conflict of laws here.
6 Because what Your Honor put your finger on is the exact
7 issue here, which is, first of all, he brought suit
8 here and the irony, of course, is he's asking to apply
9 a law that states where he could have --
10 THE COURT: But if that --
11 MR. CERESNEY: -- filed it in any --
12 THE COURT: -- was all the -- that was all
13 the gravamen of where we apply the law, everybody would
14 file suit here, we wouldn't have any conflict of laws,
15 we wouldn't have the restatement and we wouldn't have
16 had headaches when we we're all in law school about the
17 issues.
18 MR. CERESNEY: Well, Your Honor, actually
19 there is some support -- and I am gonna get to the
20 restatement on the privilege in a moment -- but there
21 is some support that even if the significant
22 relationship test applies here -- which we would argue
23 it doesn't, because the -- the New Jersey statute;
24 which is, as Your Honor had mentioned, the strongest,
25 one of the strongest in the nation trumps that.
26 But even if it didn't, even if the
27 significant relationship --

1 THE COURT: Pardon the pun?
2 MR. CERESNEY: Exactly. The -- even if the
3 significant relationship test governed, Your Honor, I'd
4 point Your Honor to Sack on Defamation, which talks
5 about:
6 "In several cases courts have refused to
7 apply the law of the plaintiff's domicile, where the
8 plaintiff has sued in another state. The state where
9 the defendant is domiciled or where the defendant's
10 place of business is located and where another state,
11 typically the forum, has a significant relationship to
12 the parties or the issues."
13 Now, that is specifically applicable here.
14 You pointed out that Mr. O'Brien is a resident of New
15 Jersey and, in fact, the book jacket says that. Mr.
16 Trump has extensive business dealings here. As you
17 pointed out, his reputation, according to him, is
18 international and any damage allegedly that occurred
19 here, as you pointed out, could occur throughout the
20 world, in theory. And we would argue obviously no
21 damage occurred here. So, even under that test, we
22 think New Jersey applies.
23 But, Your Honor, your point about it not
24 really mattering is exactly right, because section 139
25 of the restatement specifically says you apply in a
26 privilege situation -- which this is -- you apply
27 significant relationship's test unless, quote,

1 "admission of such evidence would be contrary to the
2 strong public policy of the forum."

3 THE COURT: Sure. And that's a big --

4 MR. CERESNEY: And --

5 THE COURT: That's a -- that's a --

6 MR. CERESNEY: That's huge.

7 THE COURT: -- big aspect of what's going on
8 here.

9 MR. CERESNEY: Game over, Your Honor, I
10 think.

11 What you have going on here is you have New
12 Jersey in Maressa specifically saying that this is such
13 an important public policy, that it will overcome the
14 rights of the plaintiff to recover in a libel action if
15 the shield statute --

16 THE COURT: Now, I -- I --

17 MR. CERESNEY: -- covers it.

18 THE COURT: I know you've alleged that Mr.
19 O'Brien sometimes writes in New Jersey, but when you
20 look at the balance of the public policy aspects, the
21 way I view it -- again, I use a totality test, I can't
22 help it, my background's being a criminal judge, we all
23 know that. But I look at the totality of the
24 circumstances in a situation like this, what's the
25 public interest -- the public policy interest in New
26 Jersey? A protection of the journalist.

27 But is he a New York journalist or is he a

1 New Jersey journalist? And when we're looking at
2 that, would it really impair the public policy for the
3 State of New Jersey to apply New York law to this;
4 when, although he is a resident, he certainly is a
5 journalist in New York. As I've said, he states his
6 professional reputation, he obtained his reputation by
7 being a New York journalist and merely living across a
8 body of water would not change that.

9 And -- and, again, -- so when we're looking
10 at public policy here, we're looking at the public
11 policy of the State of New Jersey, the forum where --
12 where he selected and I'm saying to myself, "Well, wait
13 a second." Remember, yeah, I think the case law says
14 it's a totality test. So I look at the quality of the
15 elements. And by the way, if we looked at quantity,
16 New York would be applicable.

17 If we look at the quality of what's going on
18 here -- and -- and again, another factor -- and I know
19 you probably don't realize it -- when you -- when you
20 read through the entirety of the book -- and I don't
21 know if you gentlemen have done that and I'm not gonna
22 put you on the spot --

23 MR. CERESNEY: We have, Your Honor.

24 THE COURT: Okay. You have or have not?

25 MR. CERESNEY: We have. We have.

26 THE COURT: A couple times probably.

27 MR. CERESNEY: Uh-huh.

1 THE COURT: At least. If you look at the
2 number of references to where the interviews took place
3 --

4 MR. CERESNEY: Yeah.

5 THE COURT: -- or where the interview --
6 well, most of it occurred in New York City and we --
7 we're talking about the work here. I know we're -- I
8 just want to tell you what further contacts there are.

9 MR. CERESNEY: Sure and here's where I get --

10 THE COURT: Short of being in a Ferrari in
11 West Palm Beach speeding through and didn't get a
12 ticket and --

13 MR. CERESNEY: It's -- here's what we did,
14 for example, --

15 THE COURT: Go ahead.

16 MR. CERESNEY: You -- you said that the
17 policy is to protect the journalist.

18 THE COURT: Right.

19 MR. CERESNEY: I think that the -- that's too
20 narrow, with all respect, a too narrow of a conception
21 of what the policy is. It --

22 THE COURT: Well, it's to protect the
23 litigant?

24 MR. CERESNEY: It's to protect --

25 THE COURT: In New Jersey?

26 MR. CERESNEY: -- the sources. It's to
27 protect the public, who has a right to this

1 information.

2 THE COURT: We're not gonna get there yet,
3 because we're gonna be then talking about what is and
4 isn't news.

5 MR. CERESNEY: That's right, Your Honor, and
6 we're happy to talk about that. I think that the --

7 THE COURT: Well, not right now.

8 MR. CERESNEY: Okay. And -- and --

9 THE COURT: We'll get to that.

10 MR. CERESNEY: And we will. But let's just
11 assume for the moment that this is news. They're --
12 it's not just the journalist that the statute is
13 intended to protect. I think that that, with all
14 respect, is too narrow a conception of this. What this
15 is, a desire to protect the confidential sources and
16 the news-gathering process, so that the public can
17 benefit from the information that is received through
18 that process. It's a much larger policy than simply
19 the notion of Mr. O'Brien being protected.

20 I think that's clear from Maressa, Your
21 Honor. If you read Maressa -- and I know Your Honor
22 has probably many times, I certainly have -- it comes
23 through that this is not just a policy which protects
24 Mr. O'Brien, it's a conception that the legislature has
25 made a judgment that there is a benefit in a news-
26 gathering process that is unhindered and un -- and
27 unhampered by anybody looking at the -- the -- that

1 actual process. And that people who fear retribution,
2 confidential sources, should be encouraged to come
3 forward, knowing that this broad statute would apply.

4 THE COURT: Well, if this is a category of
5 news, whether I use the New Jersey law or -- or the New
6 York law, you're still protected with an absolute
7 privilege, right?

8 MR. CERESNEY: I -- I agree.

9 THE COURT: If it's a confidential source.

10 MR. CERESNEY: I agree. And that's why the
11 first thing I was gonna say --

12 THE COURT: In fact, your adversary agrees,
13 it's -- no matter what the law is that I apply, the
14 outcome is the same. So, is it -- don't you agree with
15 that?

16 MR. CERESNEY: I actually agree with that,
17 but --

18 THE COURT: If it's news?

19 MR. CERESNEY: -- for a different reason.

20 Because I think, certainly on the confidential sources,
21 it's absolute and we don't have to even go any further.
22 And on the non-confidential sources, I don't think he
23 met his qualified -- his burden of overcoming the
24 qualified --

25 THE COURT: You just made a broad statement
26 that I don't agree with. You said it qualifies as
27 news. I forget how you just said it, but --

1 MR. CERESNEY: Confidential source.

2 THE COURT: There -- there are -- there's
3 marked differences in the languages of New Jersey
4 statute and even the absolute privilege statutes in the
5 State of New York. And actually, it's a broader view
6 of -- or a more narrow view in New York of what's the
7 news as opposed to what's defined as news in New
8 Jersey.

9 MR. CERESNEY: That's right.

10 THE COURT: But --

11 MR. CERESNEY: I agree. But my point is, the
12 result here is the same, Your Honor, because here the
13 confidential sources, at least on the confidential
14 source information, given the nature of these
15 confidential sources here, both New York and New Jersey
16 would protect those absolutely. Forget about the
17 language, the result is the same under both, under the
18 confidential sources.

19 On the non-confidential sources -- and,
20 actually, what we tried to do, Your Honor, because this
21 is obviously a little bit of a -- of confusing, as in
22 our brief we had a chart where we sort of tried to put
23 the different categories and what would be the
24 privilege that would apply under those different
25 categories, and it's on page 33 of our brief. But for
26 the non-confidential information, what we're talking
27 about in New York is a qualified privilege and what

1 we're talking about in --

2 THE COURT: Yeah, I'm not --

3 MR. CERESNEY: -- New Jersey --

4 THE COURT: -- sure I got a constitutional
5 test.

6 MR. CERESNEY: Right. And the absolute
7 privilege. And I don't think they've met the qualified
8 privilege here anyway with regard to the non-
9 confidential information. They haven't shown
10 materiality, criticality or exhaustion. And we can
11 talk about that later, to the extent Your Honor gets
12 there. I don't think he should, because I think New
13 Jersey law applies; but even if you do, don't think
14 they've met that.

15 So our -- you know, my point, Your Honor, is
16 New York law, even if it applies, you know, we still
17 are protected here and the information would still be
18 privileged. But I think it's clear that because the
19 policy of New Jersey is so broad, because it applies so
20 strongly, because the legislature has made such a
21 strong statement, as indicated in Maressa, that New
22 Jersey has to control here. And he's filed suit here,
23 so ultimately it -- if that's the ruling, it's
24 certainly not any inequity to him.

25 THE COURT: Any response?

26 MR. RESSLER: Judge, just one response with
27 respect to counsel's statement that the sources -- the

Findings by the Court

21

1 sources are ultimately among the parties who really
2 have the crucial interest here. I don't know where
3 they live. For all we know, they're New Jersey -- I
4 mean, they're New York residents and they work in New
5 York and they live in New York. If defendants want to
6 tell us where they live, that would be a start towards
7 disclosing who they are. But of course, you know,
8 we're in a catch-22, this whole hearing is about our
9 need to know who those sources are, their names, from
10 there we would find out, you know, what -- what
11 jurisdiction they live in, work in, etcetera.

12 So, I think it's difficult to say that the --
13 the statutes protect the sources and we're supposed to
14 decide which statute applies based on protecting the
15 sources, when we don't even know where the sources live
16 and where they work.

17 THE COURT: We're talking about -- when you
18 talk about sources, I categorize a source as page 154
19 sources --

20 MR. CERESNEY: Right.

21 THE COURT: -- or other confidential sources
22 that have been referred to throughout the book. And
23 there are not a lot of them, but we certainly don't
24 know where the page 154 sources live. And we'll talk
25 about whether or not they're confidential or non-
26 confidential in a moment, because I'm -- I -- I tell
27 you, in weighing everything, there's no doubt there was

1 a conflict in the laws.

2 There's no doubt about that New Jersey public
3 policy is a strict policy to protect journalists.
4 There's no doubt about it. Very little in dispute as
5 to, well, where the situs of the tort occurred and that
6 the tort occurred in New York, it was published in New
7 York. But for the publication, we wouldn't be sitting
8 here today. No question that damage was done to the
9 plaintiff in New York, as well as throughout the 50
10 states in the United States and maybe internationally.

11 There's no doubt that the plaintiff is a
12 resident of New York. There's no doubt that the
13 journalist is a New York journalist that relies upon
14 that reputation as a New York journalist in his ties to
15 New York. To not only market himself, but to -- to
16 continue to do what he does. He doesn't use the New
17 Jersey press in any way, shape or form, other than the
18 fact that the New York Times may be actually printed in
19 New Jersey and disseminated throughout the world.

20 The majority of the contracts are with the
21 state of New York. Again, but for the selection of
22 this -- the forum here -- and, again, I shake my head
23 every time I -- I look at this case, say why was it
24 even filed here, I have no idea why it was filed here.
25 The fact that O'Brien is a resident of the State of New
26 Jersey -- which is an important element, but what is it
27 that -- that New Jersey law set -- set out to do? It

1 set out to protect journalists, New Jersey journalists
2 for the most part.

3 And I know he's a resident and he happens to
4 be a journalist, but he's a journalist in New York, not
5 in New Jersey. And -- and when you -- when you see --
6 when you rely upon that, when you reach out and you
7 reach out and you associate yourself with a state, you
8 rely upon that state for your reputation and your
9 credibility. You then cannot hide by the river or a
10 bridge or a tunnel to protect yourself when you make an
11 alleged defamatory statement. And -- and that, I
12 think, gentlemen, is the gravamen of -- of what I'm --
13 you're done talking and I'm just starting.

14 MR. CERESNEY: Okay, Your Honor.

15 THE COURT: So, when I say that are more
16 contacts -- I mean, you -- essentially, you look at the
17 conflicts laws, it all boils down to a qualitative
18 analysis of who has the most contact in this particular
19 case. And -- and I recognize that New Jersey has a
20 balanced approach to things; it talks about the
21 absolute privilege; it talks about non-confidential
22 sources; it protects, to some degree, the rights of the
23 journalist, as New Jersey does.

24 But New York has a more balanced approach in
25 my view, because it also protects the litigants in
26 regard to non-confidential sources. It also has, I
27 believe -- and no disrespect intended to the

1 legislature of this great state, which had the wisdom
2 to appoint me and then reappoint me later on -- I think
3 that the more-balanced view of this particular conflict
4 rel -- would require me to rely upon New York law.
5 Again, but for the selection of the forum -- and, again
6 -- and I'm not diminishing that Mr. O'Brien lives in
7 New Jersey -- but, but for the selection of this forum,
8 we wouldn't be having this conversation. I -- I hazard
9 a guess that no one would be yelling about conflicts of
10 law in New York, they wouldn't say, "Well, New Jersey
11 law applies, because Mr. O'Brien resides in New
12 Jersey."

13 So, it would not frustrate the intent, I
14 don't believe, the public policy intent of the State of
15 New Jersey to apply New York law in this particular
16 instance. Again, well lots of the variables I referred
17 to, where the interviews took place, the book is
18 actually marketed as TrumpNation, he lives -- O'Brien
19 lives outside of TrumpNation, also known as New York
20 City. The book is marketed as a metropolitan New York
21 type of publication. So, gentlemen, when I apply what
22 I believe the law to be -- and I -- I note that this
23 will probably be reviewed by an Appellate Court and I
24 certainly encourage it. I never professed to be
25 perfect in my decisions, I only do the best job that I
26 can.

27 Gentlemen, I -- I do find that New York law

1 would be applicable when I balance everything, when I
2 balance all of the areas that I'm required to look at
3 with respect to the conflict of laws, the interest of
4 interstate comity. Would it frustrate New Jersey's
5 purpose in the shield law? No. The interest of the
6 parties certainly -- the interest of the parties is to
7 redress an alleged grievance of libel and defamation.
8 And, certainly, applying New York law would not
9 frustrate that purpose.

10 And then, that's what tort law is all about,
11 to -- it's preventative, it serves as a deterrent. The
12 tort did occur in New York. The injury occurred in New
13 York and elsewhere, granted. Allegedly. The interests
14 of judicial administration certainly that would not be
15 impaired by me utilizing New York law to determine this
16 particular issue. And the competing interests of the
17 state -- the states have a very similar interest in
18 protecting journalistic integrity and sources, as
19 counsel have said, but also New York State law, again,
20 if this is news, New York State law certainly takes
21 into consideration the interest of the litigant.

22 And by the way, now I want the Appellate
23 Court to know that when we talk about the issue of
24 news, whatever my determination is on the issue of
25 news, I want the Appellate Court to apply -- and we're
26 talking about the competing interests of the states.
27 Because in the even this Court makes a determination,

1 having heard argument, that this is not news, certainly
2 the new -- the -- counsel's -- plaintiff's counsel's
3 assertion that the -- the determination would be the
4 same no matter what state it was might, in fact, be
5 appropriate.

6 But I -- I draw counsels' attention to the
7 fact that when I read the law and I compare the
8 definition of news in New York to the definition of
9 news in New Jersey, I find separate and distinct
10 definitions. And now, I want to hear from you about
11 the -- first of all, is this news? And I'm holding up
12 the book here, Exhibit A it says on the book. Is it
13 news?

14 MR. RESSLER: Judge, this is -- this is not
15 news.

16 THE COURT: What's news?

17 MR. RESSLER: This isn't even close to news.
18 Under --

19 THE COURT: Other than Iverson got traded and
20 Trump didn't fire Miss USA, that's --

21 MR. RESSLER: Let's --

22 THE COURT: I guess that's news. It's a
23 relatively recent event, it occurred yesterday, and
24 it's being reported today.

25 MR. RESSLER: Judge, news in New York is
26 defined in the statute and Your Honor is correct, based
27 on the last comment --

1 THE COURT: Well, is it news that Marla
2 Maples had to be moved from St. Regis at the time that
3 the hotel was sold to some other location? Is that
4 news?

5 MR. RESSLER: It's not news, based on --

6 THE COURT: Happened awhile ago.

7 MR. RESSLER: It's not news, based on the
8 definition in the -- in the New York statute. Which
9 says that news shall mean, "information or
10 communication concerning local, national or world-wide
11 events or other matters of public concern or public
12 interest or affecting the public welfare."

13 The New York legislature clearly intended for
14 news to touch upon matters of public concern and public
15 intent -- or public interest, affecting the public
16 welfare. This book is a gossipy, sensationalist book.
17 It talks about things like whether Donald Trump uses
18 Viagra. You can open it up to a random page -- Do you
19 believe in God? Did you get stoned in college? Do you
20 think Lera Jing (phonetic) sucks up to you too much?
21 The book repeats the F-word --

22 THE COURT: Do you know the answers to all
23 those questions? If you do, send those responses to
24 the address in the front and you could win a prize --

25 MR. RESSLER: Exactly.

26 THE COURT: -- if Mr. O'Brien indicates in
27 his book.

1 MR. RESSLER: And -- and that's a good point.
2 You know, this -- this book contains --

3 THE COURT: And by the way, I'm -- I -- for
4 those of you that don't know that, that's what is
5 actually a section here that Mr. O'Brien invites people
6 to take the TrumpQuizzes in each and every chapter, and
7 depending on how well you do, you could win a prize. I
8 think it's something like dinner with his -- O'Brien's
9 mother or something.

10 MR. RESSLER: Correct, Judge. And these --
11 these quizzes -- and Your Honor is referring to these
12 quizzes at the end of each chapter -- and with all due
13 respect to Mr. O'Brien, this is a juvenile attempt at -
14 - at humor. Maybe some people find it funny, maybe
15 not, but the bottom line is --

16 THE COURT: I found it funny at times. I
17 mean --

18 MR. RESSLER: At times. The -- the Viagra
19 comment might have been --

20 THE COURT: I like the areas, but go ahead.

21 MR. RESSLER: But the -- but the bottom line
22 is that this isn't news. You know, news and -- and we
23 -- news doesn't have these kinds of questions. News
24 doesn't repeat the F-word and makes gynecological
25 references throughout.

26 And what -- what's actually interesting,
27 Judge, is even in the -- even in this chapter that the

1 defendants claim, you know, was printed in the New York
2 Times, this "TrumpBroke" chapter, chapter 6, you know,
3 that chapter itself is replete with scatological
4 references. You open up a page and it talks about --

5 THE COURT: Well, that's rather newsworthy,
6 it's of some -- it was the -- his net worth, it is
7 talking about net worth, because that's relatively
8 recent in conjunction with the publication of the book.

9 MR. RESSLER: But whether -- whether Donald
10 Trump is -- is worth 150 to 250 million or a billion
11 dollars is -- is not what the New York legislature had
12 in mind when it talked about local, national or
13 worldwide events, matters of public concern, public
14 interest, matters affecting the public welfare. It
15 affects Mr. Trump, it affects his reputation, his
16 ability to trans -- transact with business, there's no
17 question about that, but it doesn't affect what the New
18 York legislature was focusing -- focusing on. And even
19 --

20 THE COURT: Well, I think there's a question
21 about whether or not it affects his ability to do
22 business, that's why they're defending the case, they
23 say there's no damages, but that's beside the point.

24 MR. RESSLER: Yeah, fair enough, Judge.

25 But even in this chapter, I -- again, the
26 book -- the book is -- is replete with these references
27 to what no one would consider news. Because even in

1 this "TrumpBroke" chapter, O'Brien talks about an
2 interview; Leona Helmsley has a Playboy; referring to
3 Donald's girlfriend, Marla Maples, as Marla Meatball,
4 Marble Meatball, Marla Nipple, Meatball Marla, Maypole
5 Marla. I mean, every page of the book has this kinds
6 of -- this kind of attempt at humor.

7 This is as much comedy as anything else, but
8 under no question, especially when the New York
9 legislature has defined news, under no question can
10 this book be described as news and --

11 THE COURT: Well, you made some reference to
12 New Jersey law. Let's assume the Appellate Division
13 says Snyder, you're all wet, New Jersey law applies,
14 how about New -- under New Jersey law? It's -- does it
15 fit within the definition of news here that -- isn't
16 New Jersey law protective of even books like this, that
17 -- that have those characteristics?

18 MR. RESSLER: It doesn't, Judge, and New
19 Jersey law is clear that news is contained -- and I
20 think it's seven particular specifically enumerated
21 news media. And books is not one of those seven.
22 Newspapers, magazines, news agencies, press
23 associations, T.V., radio.

24 THE COURT: How's A.M. Best in there, isn't -
25 -

26 MR. RESSLER: But not books.

27 THE COURT: The A.M. Best, I know what A.M.

1 Best is, but A.M. Best was protected by New Jersey law,
2 wasn't it?

3 MR. RESSLER: It was. Judge, A.M. Best is a
4 book only with respect to the fact that it -- that it
5 has a spine and it's, you know, hardcover binders. But
6 A.M. Best, as the court in that case -- and I think it
7 was the Burnett case -- repeatedly called it, it was a
8 trade publication. It's 100 years old, it's updated
9 annually, it goes into minute detail about, I think, 21
10 --

11 THE COURT: It's wholly statistical --
12 actually, it's a breakdown of the analysis of
13 statistical they thought that law state was claims --

14 MR. RESSLER: Right.

15 THE COURT: -- things of that nature.

16 MR. RESSLER: Correct. About 2,100 insurance
17 companies in the U.S. and Canada and courts rely on --
18 on this book -- and, again I -- I use the phrase book
19 in terms of the fact that it's bound with a hardcover
20 spine. We have it right here. The courts rely on
21 this, because this is an authoritative source, court --
22 courts use it in this state to set interest rates,
23 etcetera. This is completely different, Judge. This,
24 I'm now holding up the Best trade reports, is
25 completely different from TrumpNation.

26 (Pause)

27 THE COURT: Well, Chapter 6 did have some

1 facts in it, didn't it?

2 MR. CERESNEY: It did, Your Honor, and that's
3 where I was gonna go first. I mean, I think what we're
4 -- we have to define what we're talking about here.

5 The allegedly defamatory statements here are
6 really -- and we know that it's actually now even more
7 clearly than we knew it before, since there was some
8 ambiguity I think before -- but in the defendants' supp
9 -- in the plaintiff's supplemental interrogatory
10 responses yesterday they specifically only identified
11 the statements in -- at least the written statements,
12 as far as what is allegedly defamatory. They allege --
13 they identified really only this page 154 reference to
14 the confidential source. So that's all we're talking
15 about, Your Honor, when we're talking about is it a
16 matter of public interest. That's what we're talking
17 about, Your Honor.

18 And I -- it -- I think that's -- if what --
19 if that's what we're talking about, even if we're
20 talking about the broader book, I would say the answer
21 it's still news, but I think that's all we're talking,
22 Your Honor, because that's the allegedly libelous
23 statement. And the New --

24 THE COURT: Well, yeah, that's an allegedly
25 libelous statement, but there may be other -- there are
26 -- there are other confidential sources -- and we'll
27 talk about -- I can tell you --

1 MR. CERESNEY: But the --

2 THE COURT: -- where each and every
3 confidential source is referred to in this book. And
4 you made a statement about what page 154 is and we'll
5 talk about whether or not that's a confidential source
6 or an anonymous source or what kind of source it is;
7 because, frankly, your client never identified what
8 kind of source it was.

9 MR. CERESNEY: You -- you --

10 THE COURT: I lost you. Right?

11 MR. CERESNEY: You lost me, Your Honor. I
12 mean --

13 THE COURT: Did you read every footnote in
14 this book?

15 MR. CERESNEY: Yes.

16 THE COURT: Okay. Every time he refers to an
17 anonymous source he says it's an anonymous source, he
18 puts a footnote next to it.

19 MR. CERESNEY: That's right.

20 THE COURT: Every time he says it's a
21 confidential source, puts a footnote next to it. I
22 challenge you to find on 154 any reference to the
23 anonymity or confidentiality. None whatsoever. He
24 said "three people close to Donald Trump say."

25 MR. CERESNEY: Right.

26 THE COURT: Nothing! And this guy is really
27 precise. Mr. O'Brien is extraordinarily precise in his

1 footnotes, chapter and verse, tells me everything that
2 I want to know about where the information came from.
3 Never says -- in retrospect it's confidential, he says
4 it today, he says it in the litigation, never once does
5 he say it in the book. He doesn't -- where is it?
6 MR. CERESNEY: Well --
7 THE COURT: Counsel, you've got three people
8 --
9 MR. CERESNEY: Your Honor --
10 THE COURT: -- sitting there.
11 MR. CERESNEY: Your Honor, I don't think
12 there's any requirement for him to say in the book that
13 these are, quote, confidential --
14 THE COURT: Wait a minute!
15 MR. CERESNEY: -- report --
16 THE COURT: Listen! I love lawyers, I was
17 one of ya and I still am a lawyer, but when you have --
18 include something in there, you go to great lengths to
19 identify who's confidential and who is not and you
20 completely don't say anything -- and take a look at
21 page 154 -- but let's go through the -- the footnotes,
22 if you want. And I can tell you each in it, because I
23 -- I always find this stuff interesting. I -- page 254
24 of the book, footnote number 44, Chapter 4 "TrumpLand;"
25 "Author interview with confidential source
26 March 31, 2005."
27 Let's see what that one --

1 MR. CERESNEY: Your Honor, let me explain why
2 he didn't put them --
3 THE COURT: Wait a minute! Well, let me --
4 let's --
5 MR. CERESNEY: Well, here's why he didn't,
6 Your Honor. I think the Court --
7 THE COURT: You know that he didn't.
8 MR. CERESNEY: -- should understand.
9 THE COURT: Right?
10 MR. CERESNEY: I know that he didn't and the
11 reason why is because he didn't want to put the date of
12 the actual interviews, because he was concerned --
13 THE COURT: That's a great --
14 MR. CERESNEY: -- about put -- about somebody
15 triangulating and figuring out who the source is by
16 having the date of when the interview had. Maybe
17 somebody was looking at his --
18 THE COURT: Well, you --
19 MR. CERESNEY: -- at -- at who knows,
20 whatever information --
21 THE COURT: Maybe. You said maybe.
22 MR. CERESNEY: No, but that would be --
23 THE COURT: You don't know.
24 MR. CERESNEY: I believe that would be his
25 statement about why he didn't do that, Your Honor.
26 THE COURT: But he could have said -- what --
27 anonymous source --

1 MR. CERESNEY: And, in fact, in his --

2 THE COURT: -- not wishing to be identified,
3 like he says -- I'll tell you where he says that.
4 Where it says:

5 "Interviews in 2005" -- number 2 -- page 254,
6 footnote number 51: "Interview in 2005 with two former
7 Trump Organization executives who requested anonymity."

8 Why is it such a big problem to not have it
9 on page 154, when he has it in footnote number 51, --

10 MR. CERESNEY: But Your Honor --

11 THE COURT: -- as set forth -- wait a second!
12 I mean, you know, it's really good when you get painted
13 in a corner by your own work.

14 MR. CERESNEY: But there's no -- but there
15 was no requirement under any shield statute, New York,
16 New Jersey, any shield statute that they specifically
17 say that these sources in the book -- like, for
18 example, Your Honor, this was a newspaper report. In a
19 newspaper report he doesn't have to say that these are
20 sources who have requested confidentiality, who have --
21 who have forbidden me from revealing their identity.

22 It is obvious from this -- from this port --
23 from -- from the book and if you look at his
24 certification, Your Honor, there's no issue of fact on
25 this. Paragraph 6 of his certification submitted in
26 support of this motion says:

27 "I promised confidentiality to three

1 individuals who -- with direct knowledge" -- and it
2 goes on to say "it is my understanding that these three
3 individuals fear retribution from Trump if their
4 identities are revealed."

5 THE COURT: Yeah, but -- but you're -- you're
6 making that statement in this day and age, post-
7 litigation initiated. You know what's the truest ex --
8 the truest indicator of how the -- or what he
9 considered these people to be? Look at what he wrote
10 when he wrote it, when he published it, what he did do,
11 what he didn't do. It's the omission and the silence
12 on page 154 that causes me more concern than anything
13 else.

14 When I look at how -- your -- your author was
15 extraordinarily precise -- and, again, I went through
16 each and every -- I went through each page, I -- I
17 highlighted which were confidential sources, what the
18 confidentiality was that was talked about, including,
19 you know, in one case I think I already talked about
20 moving Maples from the St. Moritz. Let's see, one
21 other was reliance upon find -- family money to bail
22 him out. A couple others were, let's see:

23 "Donald's foray into Atlantic City and steps
24 to expedite its process with meeting with the New
25 Jersey -- by meeting with the New Jersey Attorney
26 General."

27 Stashing Marla, I have. We're talking about

1 -- and, again, anonymity? He put in the footnotes.
2 And, again, he didn't have to --
3 MR. CERESNEY: Let me just --
4 THE COURT: -- worry about triangulation had
5 he just said broadly that these people -- but you --
6 see, we got off on another tangent here.
7 MR. CERESNEY: We clearly did, Your Honor.
8 THE COURT: I was on the news, but you --
9 MR. CERESNEY: But -- but let me just read
10 you this --
11 THE COURT: You -- you saw me smile --
12 MR. CERESNEY: I did.
13 THE COURT: -- at you when you said
14 confidential.
15 MR. CERESNEY: I -- I did, Your Honor, and I
16 -- and I took your cue to --
17 THE COURT: You sure baited me.
18 MR. CERESNEY: I too your cue, Your Honor.
19 But I think if you look at the language in the New York
20 statute, you are, with all respect, importing into the
21 statute a requirement that's just not there for the
22 application of the confidential aspect of the New York
23 statute. It says -- it says:
24 "Having temporary -- refusing or failing to
25 disclose any news obtained or received in confidence or
26 the identity of the source of any such news coming into
27 the person's possession in the course of gathering or

1 obtaining news for publication."
2 It says nothing about having to identify at
3 the time of the publication that this individual has
4 requested anonymity --
5 THE COURT: I agree with you.
6 MR. CERESNEY: -- and doesn't -- and -- and
7 so, therefore --
8 THE COURT: I agree with you.
9 MR. CERESNEY: -- I think that this, it would
10 be a re --
11 THE COURT: That's what the statute says.
12 MR. CERESNEY: It is what the statute says
13 and I think it would be a -- it would indeed be going
14 very far beyond the statute to require there to be in
15 the actual publication -- forget about, you know,
16 there's -- there's really no issue of fact here, no
17 issue of fact that's -- there's nothing in the record
18 to the contrary that these people have not requested
19 anonymity. He has said it under oath, he has said it
20 in his certification, that is clear to -- to everybody
21 in this court.
22 THE COURT: Well, don't you think it's a
23 question of fact when he took the time in each and
24 every time he talked of an anonymous source or --
25 MR. CERESNEY: I -- I do not.
26 THE COURT: -- a confidential source, the
27 footnote it completely -- doesn't even say it in the

1 body of the text of the book, he has said -- and -- and
2 I spoke anonymously to three execute -- didn't even say
3 that, it just says I talked to three executives and
4 they gave me the numbers.

5 MR. CERESNEY: But there's no dispute that --

6 THE COURT: That they thought that's what --
7 again, they stated their opinion they thought --

8 MR. CERESNEY: But --

9 THE COURT: -- that's what it -- it was.

10 MR. CERESNEY: That's right. But -- but
11 there's no dispute about the fact that these
12 individuals had requested confidentiality, had a
13 confidential request, and he put in a certification to
14 that effect at the time and the statute requires --

15 THE COURT: Well, let's go back to the news
16 issue.

17 MR. CERESNEY: Let's go back to the news,
18 Your Honor.

19 THE COURT: But I'm glad I got that out on
20 the record, because if the Appellate Court looks at
21 this, I want them to know that, listen, this -- Mr.
22 O'Brien went to great lengths to make sure that he
23 footnoted everything, the interview dates, Playboy
24 magazine, whoever he -- wherever he got information
25 from, he was very careful in what he did. And he --
26 all of a sudden, he -- he had a lapse in his being
27 careful --

1 MR. CERESNEY: Well, what --

2 THE COURT: -- in this particular paragraph.

3 MR. CERESNEY: What I'm saying Your Honor is
4 it was a conscious decision not to do that. Because to
5 do that -- these three confidential sources are the --
6 you know, they -- as he says in his certification --
7 fear retribution because of their --

8 THE COURT: Yeah, but --

9 MR. CERESNEY: -- who they are.

10 THE COURT: I understand.

11 MR. CERESNEY: And so to put a footnote with
12 a date --

13 THE COURT: Okay. So let's talk about the
14 news then.

15 MR. CERESNEY: Sure.

16 THE COURT: Let's go back to the news. Is it
17 -- is this news? And -- and do I look just at page 154
18 or do I look at the totality of what I have in front of
19 me, this book, to determine whether or not the book is
20 news?

21 MR. CERESNEY: Yes. Your Honor, I think
22 actually, if you look at either it's still news. But
23 let's just focus on 154 for a minute, because I think
24 that is the clearest example of this. And one of the
25 things you said, Your Honor, actually is striking,
26 which is he did footnote very -- almost all of his
27 sources in there, with the one exception that --

1 THE COURT: Pretty much.

2 MR. CERESNEY: -- you talked about. And the
3 reason -- there's a reason for that one. But there is
4 -- this is written not as a -- as a book which is just
5 simply no sourcing to whatever -- he's done a lot of
6 research, extensive reporting. It's an extension of
7 his report that he did for the newspaper. He took his
8 files that he used for the newspaper, he took his
9 interviews that he did at the newspaper, he -- he did
10 additional interviews, merged those files and
11 essentially used the same exact methods for the book as
12 he did for the newspaper reporting.

13 And, you know, when we talk about the topics
14 at issue here, the statute -- the New York statute,
15 Your Honor, you read the -- I think you read the
16 definition before. It says, "matters of public concern
17 or -- or public interest or affecting the public
18 welfare." So you have that word -- those words public
19 interest in there between public concern and affecting
20 the public welfare. It's obviously much broader than
21 just the notion of some public -- significant public
22 event like whether we should get out of Iraq or not,
23 it's much broader than that.

24 As Your Honor pointed out when you first came
25 on the bench this morning, the types of news that's
26 been reported in the past couple of days really
27 illustrates a point that news is incredibly broad. And

1 the people who make that determination of what is news
2 and what is news are not courts, they're not Mr. Trump,
3 most certainly, they are the newspapers, they are the
4 journalists in this country who make the decision about
5 what is of interest to the public.

6 And if you look at some of the things that
7 have been of interest to the public in the past few
8 days: the Miss USA Pageant, whether article in the New
9 York Times on sperm whale vomit; Your Honor, there --
10 there are issues of much less public interest,
11 certainly, than this issue here, which is Trump's net
12 worth, which had been reported in the New York Times.
13 In fact, if you look at our brief, Your Honor --

14 THE COURT: Sort of a report about it -- look
15 in the book, it tells you every place where --

16 MR. CERESNEY: Every place. Washington Post
17 --

18 THE COURT: -- Forbes magazine, the
19 controversy as to what his net worth was in any given
20 year, as to whether or not he met the top 20 or
21 whatever number it was Forbes utilizes.

22 MR. CERESNEY: All over the place, Your
23 Honor. It is -- it is a matter -- it -- I don't know
24 how it makes any sense that it's a matter of public
25 interest, ultimately. And it's not for the Court and
26 it's not for Mr. Trump to determine it.

27 Now, what you're focused on, Your Honor, I

1 think, what it really comes down to -- and I would
2 submit, by the way, that lots of those other issues
3 that are in the book, Mr. Trump's business activities
4 over time, his involvement with casinos, the other
5 aspects of his business activities, those are also of
6 public interest. In fact, Mr. Trump himself has
7 written numerous books on these issues that people buy
8 and because they're interested and -- and they are --
9 they sell because they're public interest.

10 But what you're focused on, I think, which is
11 what -- what -- which you have sort of pointed out with
12 the quizzes and with some of the comments about the way
13 that the book is written, is the tone of the book. The
14 tone of the book, really, that's really what -- what
15 you're focused on. And I think, ultimately, the tone
16 of the book is irrelevant, it's the content of the
17 information that's being conveyed. Tone is not
18 something that enters into the equation as to whether
19 it is news or not.

20 I mean, you look at some of the articles that
21 we just talked about, about the Trump USA Pageant. I
22 mean, you know, this -- some of the articles
23 surrounding this issue are, you know, the idea of
24 people being rehabilitated, do they have the right to
25 be redeemed. Those -- obviously, those are lighter
26 articles, those are lighter tones, but those are still
27 news, those are still reporting on information to the

1 public.

2 And -- and I think that these quizzes don't
3 transform what is news, what is a matter of public
4 interest into something that is -- is not. They are --
5 if -- it's -- it's a tone that's used to make the book
6 more readable, it's a tone to make a point about Mr.
7 Trump's role in all of these activities. But it does
8 not undermine the fact that it conveys information
9 about modern matters of public interest.

10 And Your Honor talked about New Jersey law on
11 this before, and when you -- when you were talking to
12 Mr. Ressler --

13 THE COURT: So it -- the -- the tone is -- is
14 -- would it be fair for you to say it has the
15 characteristics of entertainment and news in it?

16 MR. CERESNEY: I don't know if that's -- I
17 think what -- what it is, is it makes it more readable,
18 Your Honor, or at least it's a tone that conveys in --
19 it conveys -- it's a tone that conveys some information
20 about which Mr. O'Brien is -- his views on certain
21 things are, but it does not undermine, in any respect,
22 the fact that it is an issue of public interest in the
23 -- in the matter in which it's conveyed. I -- that's
24 what I would say.

25 And the word entertainment, Your Honor, the
26 reason I don't sort of agree with that, because there's
27 no definition of what entertainment -- it could be that

1 things -- certain things that are entertainment are
2 also news. There could be a fair amount of overlap
3 between those two things. But the statute doesn't deal
4 with entertainment, it deals with news and it --

5 THE COURT: Well, what do you think the
6 primary function of the book is?

7 MR. CERESNEY: To convey information, Your
8 Honor. To convey impressions about Mr. Trump -- Mr.
9 O'Brien says it better than I can, Your Honor, in his
10 certification. He says these -- he says, and I quote:

11 "That TrumpNation evolve" -- this is
12 paragraph 7 of his certification:

13 "TrumpNation evolved from my 2004 reporting in the
14 Times about Trump. My goal in writing the book was to
15 leverage my previous reporting for Marriage Trump
16 Biography, the Wall Street Journal, Bad Bet and the
17 Times, to provide the public with extended information
18 about Trump's business career and persona, while
19 detailing how he became a social phenomenon, with
20 traction in different business and cultural realms. I
21 also wanted to use Trump's life and career to report
22 more broadly on areas of public interest on which I
23 have reported for the Times and other publications,
24 including on Wall Street and the financial world, the
25 real estate and casino businesses, the cult of business
26 figures and the broader cultural fascination with
27 wealth."

1 I mean, I think that says it better than I
2 could ever say it, Your Honor. And I think the -- it's
3 -- it's --

4 THE COURT: It's because he's a professional
5 writer.

6 MR. CERESNEY: He is a writer, Your Honor,
7 and -- and that -- those are his words. And -- and
8 ultimately that was what he was trying to do with this
9 book and I think, you know, we can all sit here and
10 talk about the tone, but it does -- that was the intent
11 and that was what it intended to accomplish. And I
12 think, clearly under New York and New Jersey, it's --

13 THE COURT: So, as I -- as I said to you when
14 I was talking to you about the confidential sources,
15 lack of confidential sources, failure to identify
16 someone as anonymous or confidential, the same could
17 hold true with how it is that Mr. O'Brien presents the
18 book, what he wish -- how he attempts to market it.
19 He's attempting to secure financial benefit from the
20 sale of the book and how it is -- what he says about
21 the book and what he does to market the book later on
22 comes back to sometimes bite him.

23 Because -- and, again, that's what my
24 observation is in retrospect. When -- so let's say,
25 "Well, now we have litigation and there's various ways
26 -- it's an ambiguous enough where I can argue now that
27 it -- it's news and not entertainment." When you

1 utilize the entertainment aspects to try to market it
2 and make money from it -- and that's where I -- and,
3 again, I'm looking -- you're -- you say a lot of things
4 that are absolutely correct about the statute and --
5 and what constitutes news and then it gets spun into,
6 well this could be news.

7 But, again, I have to look at what O'Brien
8 intended when he wrote the book. And I know what he
9 says he intended, but the book in itself speaks for
10 itself. And we'll talk about what the book says about
11 what it is in a moment. But I -- I want to hear from
12 plaintiff's counsel.

13 MR. RESSLER: Thank you, Judge.

14 First of all --

15 THE COURT: And by the way, you keep seeing -
16 - citing People versus LeGrand, I'm not so sure that
17 that's the good law.

18 MR. CERESNEY: And yeah, it's certainly not,
19 Your Honor.

20 THE COURT: No, I -- and -- and I don't know
21 why you kept citing it. I'm looking at it and saying
22 this isn't -- really is not good law any longer.

23 MR. RESSLER: Well --

24 THE COURT: Well, I mean, I recognize there's
25 lots of nice dicta in there that helps you out, --

26 MR. RESSLER: Well --

27 THE COURT: -- but doesn't help the Court.

1 MR. RESSLER: Right. I mean, Judge, I -- I
2 mean, in terms of this divide between news and
3 entertainment, I think the New York legislature, like
4 the New Jersey legislature, for that matter, they drew
5 the line by omitting books from the specifically
6 enumerated kinds of media that are protected by the
7 shield law. And -- and that's precisely why they did
8 it.

9 The -- the statute is clear, again,
10 newspapers, magazines, press associations, wire
11 services, you know, the -- the kinds of media that
12 everyone traditionally views as news media. And then
13 if you go to paragraph D of the New York shield law, it
14 specifically says that there's protection for
15 journalists:

16 "Refusing or to failing to disclose any news
17 obtained or received in confidence or the identity of
18 the source of any such news coming into such person's
19 possession in the course of gathering or obtaining news
20 for publication or to be published" -- and here's the
21 point -- "in a newspaper, magazine or for broadcast by
22 a radio or T.V. station." Not in a book.

23 THE COURT: How come you didn't finish
24 reading the good stuff?

25 MR. RESSLER: Well --

26 THE COURT: Why don't you read the rest of
27 this stuff?

1 MR. RESSLER: Well, it says --
 2 THE COURT: It's good.
 3 MR. RESSLER: -- "public dissemination by any
 4 other professional" -- that's fine, Judge -- "or any
 5 other professional media or agency which has as one of
 6 its main function a" --
 7 THE COURT: Stop! "Has as one of its main
 8 functions." Go ahead.
 9 MR. RESSLER: "The dissemination of news" --
 10 THE COURT: "To the public." You could stop
 11 there. So the main function. What's a main function
 12 in this book?
 13 MR. RESSLER: It's not disseminating news.
 14 THE COURT: Doesn't look like it to me
 15 either.
 16 MR. RESSLER: And that's why books are
 17 omitted. Because publishers, that's not their job is
 18 to disseminate news, their job is to publish books.
 19 THE COURT: I mean, even if I get past to
 20 say, well, it's -- it's -- you know, if there even were
 21 news, the might -- the main function of this book is
 22 not to disseminate news to the public. It certainly --
 23 again, some of it is news in there. The -- the
 24 relatively recent disclosure that his net worth has
 25 been puffed greatly from 150 million to 250 million,
 26 where Trump allegedly says it's 5 to 6 million is -- is
 27 it wrong? Well, that's -- that's a public interest,

1 certainly.
 2 But is the main function of this book the
 3 dissemination of news to the public? Aside from the
 4 fact that you're right, that both legislatures had the
 5 ability to include books in their shield laws, but
 6 didn't do it. Put -- easy to put that word in,
 7 wouldn't have cost the legislature too much additional
 8 to put that five-letter word, books or book -- four
 9 letters -- in -- in there. But that's the problem,
 10 it's not the main function -- this is not the
 11 dissemination of news to the public. The dust cover, I
 12 love dust covers:
 13 "So step right up, ladies and gentlemen, to
 14 the shocking, hilarious, riveting and completely true
 15 story of America's favorite billionaire bad boy, bad
 16 hair and all, from the massive egos of the New York
 17 mayors he courted or defied, to the glamour queens he
 18 loved and lost, to the talking dolls, colossal casinos,
 19 personal Oz he created out of smoke and mirrors,
 20 prepare to enter TrumpNation."
 21 He says in the prologue, also known as smooth
 22 operator. Page 9:
 23 "So, but I think it might be interesting to
 24 see what would happen if everybody in America struck it
 25 rich. So this book's a field guide to TrumpNation.
 26 It's a cookbook of sorts meant for all of those who
 27 want to make it really, really, really big and become

1 really, very, very, very rich.

2 Each chapter will include challenging book --
3 Trump -- TrumpQuizzes that are secretese" -- this is
4 the tone that defense counsel was talking about -- "of
5 becoming a billionaire just like Donald. These quizzes
6 can't be found in any other Donald -- any of Donald's
7 books, that's because he knows that if you're able to
8 unlock the recipe behind all of his highly classified
9 but surefire money making strategies, soon there would
10 be no money left."

11 And then it goes on and talks about the
12 quizzes and where you send your quiz answers to. Oh,
13 that's -- it talks about the prize. It wasn't a dinner
14 with the author's mother, but rather "free passes to
15 the final season 12 of the Apprentice and a copy of How
16 to Get Rich signed by my mom." I knew that his mother
17 had something to do it.

18 So, I mean, it's -- it's being marketed as
19 entertainment and, although, it could include some news
20 in it, the main function I see of what this work is --
21 and I call it a work, what this work is, what the book
22 is, the main function is not the dissemination of the
23 news to the public, but the marketing of something that
24 is, in and of itself, has some public interest. Nobody
25 can sell a book if it -- there wasn't public interest,
26 but the main function was -- viewed in New York's laws,
27 it focuses on the totality of what we're dealing with

1 and not merely bits and pieces. It looks at the whole
2 and not the individual parts.

3 Aside from that, I don't really find that the
4 main function was the dissemination of the news. I
5 don't necessarily agree that this book is news. And we
6 know, in -- and counsel for the defense says to me,
7 "Judge, the tone of the book is what matters" and --
8 and talked about what I started kidding around about
9 this morning, but I did so with all the truth in the
10 world -- that Iverson -- Iverson's trade is certainly
11 not tantamount to whether or not we're gonna be getting
12 out of Iraq or what happened in Iraq yesterday.
13 Certainly we, on our own scales, figure out what's
14 important in the world from what's less important in
15 the world. Certainly, if you're a sports fan Iverson's
16 trade is important, but I'm no -- it pales by
17 comparison to what happens in a war zone.

18 When we deal with cases that we have -- I
19 mean, we all know that -- that the lines between news
20 and entertainment have -- have been blurred. I mean,
21 one only has to watch the Today Show today and compare
22 it to -- and, again, to the -- I do be -- I watch that,
23 in -- in the morning I get up -- the Today Show, back
24 in the times of Tom Brokaw and Barbara Walters to see
25 what's happened to the news. Because now we have
26 entertainment that's marketed as news. You have Extra
27 Extra and these other things that follow the network

1 news. You -- you look at the news stands, you look at
2 the National Enquirer and one of the other things you
3 do when you check out your groceries.

4 What's the news anymore? I mean, the -- the
5 distinction has become blurred. Because it's
6 entertaining to read some of these things, but are they
7 traditionally what the news was? Are they the
8 traditional reasons why the shield laws were put in
9 effect? Probably not, but that certainly can be
10 utilized by the -- the press to protect their sources.

11 But New York recognized that and New York I
12 think gives broad discretion to the Court. Queen
13 County court in -- in -- In re Sullivan talked about
14 the blurring of the news and entertainment and it says:

15 "Furthermore, in this age of participatory
16 journalism, where news commentary and sensationalism
17 have become one, the role of a journalist in the
18 public's mind has become so entangled that it is often
19 difficult to distinguish between news and
20 entertainment. Although the news-gathering privilege
21 is a fundamentally-protected right, it should not be
22 considered absolute or, for that matter, the unwritten
23 eleventh commandment."

24 And that's where we find this book, because
25 it does have some alleged factual information. I think
26 the defense says that it's not even a fact it's
27 somebody's opinion in there. I guess that may have

1 been part of your application to Judge Vina in the
2 past.

3 But it certainly does not, in the totality,
4 look to be news, it doesn't -- either doesn't meet the
5 definition that I see of news. And I think when we
6 look at In re Sullivan, it gives this Court broad
7 discretion, gives a court broad discretion to make that
8 determination, based upon total -- totality and, again,
9 based upon how it's marketed and what Mr. O'Brien said
10 about the work at the time the work was published.

11 (Pause)

12 THE COURT: I'm sorry. Anything else that
13 anybody else wants to add?

14 MR. RESSLER: I'd just like to add something,
15 Judge. Following up on what Your Honor just said about
16 what the intent was by O'Brien and how it was marketed.

17 Now, defendants gave us a bunch of documents
18 that didn't really bear on any issue in this case as
19 part of the document production, but we went through
20 thousands of documents and we did find some very
21 crucial emails that O'Brien himself wrote at the time
22 he was writing this book and at the time he was
23 marketing this book. And the notion that, as O'Brien
24 says in his declaration or affidavit he submitted, that
25 he viewed this as news, is absolutely not the case.

26 Because contemporaneously with his working on
27 this book and marketing this book, him, O'Brien, said

1 in no uncertain terms, this is not news. He said that
2 to numerous people as part of his promotional campaign.
3 There's one email he sends to Bob Wright, who is the
4 head of NBC, and he tells Bob Wright this book spoofs
5 Donald Trump. And in many respects, that's what it is,
6 it's a spoof of Donald Trump. You see the picture of
7 Trump on the cover. And it's like that on page after
8 page. And he specifically makes it clear that this
9 isn't news.

10 And another email he says to someone he's
11 trying to attract interest among T.V. programs in the
12 book, so they can invite O'Brien on as a guest. And he
13 says, look, this book, it's too ootray for the New York
14 Times. That's O'Brien's word, that's not -- that's not
15 my word. But I think ootray means it's too out there.
16 In other words, it's far afield from news, because it's
17 not news.

18 And another email -- and, again, these are
19 O'Brien's words. He says what I'm trying to do is --
20 is tap into Trump's mojo. You know, again, that's not
21 news, that's entertainment, it's gossipy, it's
22 sensationalist, and these are O'Brien's words.

23 Now, with respect to the promotional campaign
24 that Your Honor mentioned. It seems to us, how unfair
25 would it be, how wrong would it be to expand the shield
26 law to encompass books, when Tim O'Brien didn't only
27 publish a book, he went out around the country

1 marketing this book, he was on more than a dozen T.V. -
2 - I'm sorry, radio stations around the country, from
3 Wichita to California to New York, talking about this
4 book. He was on a bunch of T.V. shows talking about
5 this book. He went into a bunch of bookstores and gave
6 question and answer sessions and book signings talking
7 about this book. And at each stop along the way, as
8 part of this promotional campaign, he kept repeating
9 the defamatory statements, he kept taking shots at
10 Donald Trump saying that he wasn't close to being a
11 billionaire.

12 And now he's effectively saying, hey man, I'm
13 protected under the shield law, because I'm a reporter
14 for the New York Times. That would be, it seems to us,
15 a completely improper extension of the shield law,
16 which is supposed to encourage reporters to feel
17 confident and to feel protection when they actually
18 report on news.

19 And a final point, Judge, with respect to the
20 news factor and emboldening reporters to discharge
21 their obligations to report news, it relates to
22 anonymous sources. Now, as -- in addition to these
23 emails -- and we're happy to hand these up to Your
24 Honor, because we have -- we have sets of these emails
25 that I have been referring to -- we also looked at the
26 New York Times only policy with respect to the use of
27 anonymous sources. And it's right on the internet.

1 And -- and the Times, in the wake of these
2 Jayson Blair type scandals, Judith Miller type
3 scandals, and even before that was acutely aware and
4 sensitive to the issues created by reporters who use
5 anonymous sourcing when they shouldn't or use anonymous
6 sourcing in an improper way by failing to tell the
7 reader what the motives might be for the anonymous
8 source to say something about someone in the newspaper.
9 And this is from the New York Times' integrity manual
10 about the use of anonymous sources:

11 "Our policy on anonymous sources is a good
12 one and bears repeating. We resist granting anonymity
13 except as a re-last -- as a last resort."

14 And then it continues: "Some areas of
15 coverage notably involving national security,
16 intelligence or sensitive diplomacy and stories that
17 reflect dissent within governments, companies and other
18 institutions necessarily depend on the ability to
19 protect sources. The problem is, the credibility of
20 those necessarily anonymous sources and of our work is
21 undermined by the casual use of unnamed sources where
22 no such protection is called for."

23 Tim O'Brien's use of anonymous sources in
24 this TrumpNation book violates the New York Times
25 policy, which is further indication that this is not
26 news and that the anonymous sourcing here would never
27 have passed muster, not only under the Times' use of

1 anonymous sources and their policies governing
2 anonymous sources, but of most newspapers. And there's
3 no question, following the Times' directive as to when
4 anonymous sourcing should be used -- this isn't an
5 issue of national security, intelligence, sensitive
6 diplomacy or -- or a story that reflects dissent within
7 governments, companies and other institutions.

8 So, in every respect, Judge, the promotional
9 campaigning at issue here, the use of the anonymous
10 sources, the content of the book, most important, this
11 is not news and it's in a specific kind of media, a
12 book that's not even protected by the New York statute.

13 MR. CERESNEY: Your Honor, can I address some
14 of these points?

15 THE COURT: Yeah, absolutely.

16 MR. CERESNEY: I don't -- Let me start with
17 the last one. I don't know when this policy was
18 amended, I believe it was recently amended. But in any
19 event, you don't have to look at the policy, because
20 this did appear in the New York Times, Your Honor. In
21 2004, the same -- virtually the same identical
22 paragraph appeared in the Times. Of course, Mr. Trump
23 didn't bring suit then. One wonders how any damages
24 could flow from a later book on -- when it appeared in
25 the New York Times with a much larger circulation.

26 THE COURT: Well, that's an argument for
27 another day.

1 MR. CERESNEY: It is indeed. But in any
2 event, Your Honor, this clearly did not violate the New
3 York Times' policy at the time and I would submit it
4 still doesn't violate that policy, but -- and it's also
5 irrelevant to the resolution of this.

6 But back to the issue of the statute, Your
7 Honor. I heard what you said and I heard your view,
8 obviously, of the book, in general. But I think if you
9 -- the one thing I think that was missing from your
10 rendition of the statute is, you were talking about
11 what the main function of the book was. The statute,
12 though, doesn't say it has to be the main function, it
13 says one of the main functions is disseminating the
14 news to the public, one of. There could be multiple
15 functions. It could be -- it could also be somewhat
16 entertaining --

17 THE COURT: Well and I recognized that,
18 that's why I quoted In re Sullivan, I said the -- the -
19 - everything has become blurred.

20 MR. CERESNEY: That's right. Everything --

21 THE COURT: And you have to look at it in its
22 totality when you're reading this in totality, again,
23 taking into consideration what the author says about
24 what the work is. That's why I said to you, when you
25 look at it in its totality, you look at some of the
26 historical perspective, his relationships with women,
27 what foods he eats, what medications he takes, his

1 various and sundry business dealing, the fact that he
2 likes the whole -- he has attachment to property. For
3 example, he doesn't like to get rid of -- to keep
4 thinking that I can get another dollar for it. Either
5 that or there is an emotional attachment, I'm not
6 really sure what O'Brien was trying to tell me in that
7 paragraph.

8 MR. CERESNEY: But those are all things of
9 interest to the public. He frankly got those things in
10 his own books, Your Honor. He writes about those very
11 things that he thinks the public is interested in and
12 they -- and they are. And, in fact, if you apply that
13 standard to lots of other articles about celebrities --
14 and in People magazine as a whole would probably not
15 cover -- not be covered by the shield law, but we all I
16 think would agree it is and it clearly is under New
17 York law. Each and every thing you just mentioned, I
18 think, itself is a matter of public interest, that's
19 what it defines as news. It's not the tone --

20 THE COURT: But I didn't find that this was
21 the main function of the book or one of the main
22 functions. The main function of the book is defined by
23 -- by the author and -- and I don't -- I won't even
24 necessarily -- although O'Brien may have called it a
25 spoof, I don't necessarily see it as a spoof, this is
26 not the National Lampoon book here, but it's certainly
27 --

1 MR. CERESNEY: I mean, and the statute
2 clearly covers --

3 THE COURT: It deals with each -- other than
4 the dissemination of news in the traditional sense,
5 when we look a historical perspective of -- of where
6 the privilege came from and how it came to be.

7 MR. CERESNEY: I understand that would be the
8 historical perspective, Your Honor, but the '81
9 amendment I think changed that perspective completely.
10 And Your Honor recog --

11 THE COURT: I still think we have to look --
12 again, my decision is not based upon the history of how
13 this shield law arose, but recognition that, certainly,
14 this is not traditional application, certainly
15 plaintiff's counsel is well-founded in saying books --
16 books could have easily have been included not only in
17 New Jersey's law, but in New York's law. But, again,
18 my view of what, overall, where In re Sullivan says to
19 me look at the book, basically, look at it in its
20 totality, everything gets mixed up and you make a
21 decision based upon the totality of the evidence of
22 what it is. And I don't think that one of the main
23 functions is the dissemination of news.

24 MR. CERESNEY: It -- Your Honor, I would beg
25 to differ that that's what -- that's what --

26 THE COURT: I know that and maybe an
27 Appellate Court'll -- will agree with ya.

1 MR. CERESNEY: You know, and I think here,
2 particularly here, when we're talking about a book
3 which is a direct extension of reporting for the Times
4 -- if we were talking about, Your Honor, some book that
5 had nothing to do with earlier reporting, did not --

6 THE COURT: He didn't have any guarantees
7 when he wrote this book that it was gonna be published
8 at all, accepted for publication. He didn't have any
9 guarantees by the New York Times that they were gonna
10 be involved, that Time Warner was gonna be involved, --

11 MR. CERESNEY: Well, he had --

12 THE COURT: -- right?

13 MR. CERESNEY: He had a book contract, Your
14 Honor. He had a --

15 THE COURT: Well, he had a -- but he -- but
16 at the time he wrote it?

17 MR. CERESNEY: Yeah.

18 THE COURT: Okay.

19 MR. CERESNEY: He already had a signed book
20 contract, Your Honor. And it -- and he -- and he had
21 been, you know, -- I mean, there's obviously provisions
22 in there about you're gonna provide the book by X date
23 and that it'll be published, assuming it meets certain
24 minimal criteria. So, I mean, he had a -- he had an
25 indication it would be published. He didn't have an
26 indication it will be excerpted in the Times, but then
27 it was. And that -- you know, it -- I just worry that

1 we're losing here, Your Honor, the forest from the
2 trees here. You read the prologue a number of times
3 and --

4 THE COURT: No, I -- I -- I read that because
5 -- I could find you other sections, I'll be glad to go
6 through it.

7 MR. CERESNEY: But all those are tone issues,
8 Your Honor, I think.

9 THE COURT: You're right. The tone issues --
10 but the tone sets what the book is. You can't say I
11 speak in this tone and I'm not sarcastic!

12 MR. CERESNEY: But sarcasm doesn't take it
13 out of the First Amendment context, it doesn't take it
14 out of the shield statute. You can report on news with
15 sarcasm --

16 THE COURT: But it tells you --

17 MR. CERESNEY: -- a newscaster --

18 THE COURT: -- what it is -- what appeal is
19 it having? Where is -- what -- what audience is it
20 directing itself to?

21 MR. CERESNEY: The public.

22 THE COURT: What is it that draws interest in
23 the book?

24 MR. CERESNEY: The public.

25 THE COURT: Is -- is it really the news?

26 MR. CERESNEY: Yes.

27 THE COURT: Not really.

1 MR. CERESNEY: It's the Trump-sized
2 revelations.

3 THE COURT: It's the People aspect, the
4 People magazine aspect of the case of -- of the
5 publication that draws. It's -- oh, yes, it's in
6 public interest because people like to hear about that
7 stuff.

8 MR. CERESNEY: That's correct.

9 THE COURT: Gossip is a public interest.

10 MR. CERESNEY: National Enquirer.

11 THE COURT: I -- I -- there's very little out
12 there that's worth buying or looking at that doesn't
13 have some public interest. But does that make
14 everything -- does that give everything a protection?
15 I don't think so.

16 MR. CERESNEY: It gives -- it gives
17 everything that could be possibly characterized as a
18 matter of public interest protection, Your Honor. I
19 think that that --

20 THE COURT: Well, that's --

21 MR. CERESNEY: -- was the intent --

22 THE COURT: -- really overly broad and I
23 think it goes -- applies against the case of -- of what
24 the statute is written for. But go ahead, I'm -- I'm --
25 -- that's one of its main functions, it goes to that --
26 that's why I made for the plaintiff complete reading
27 the -- the --

1 MR. CERESNEY: That's right.

2 THE COURT: -- strike that, because that's
3 what I focused on that and the definition of news when
4 I looked at In re Sullivan.

5 MR. CERESNEY: Well, but what I focus on in
6 this book, Your Honor, is it's not somebody who went
7 out and just sat down at their computer and just wrote
8 a work of fiction or wrote a work of -- just -- just
9 off the top of their head. He interviewed many, many
10 sources --

11 THE COURT: Oh, sure, he took --

12 MR. CERESNEY: -- and there are revelations
13 in this book about Mr. Trump, which you, you know, I
14 think have recognized, there are revelations about his
15 business activities in the past, there are revelations
16 that come from interviews of him personally.

17 THE COURT: Mm-hmm.

18 MR. CERESNEY: And, in fact, those were done
19 specifically for this book. People might read this
20 just to hear what Donald Trump has to say about a
21 number of different things and that's a matter of
22 public interest. The fact that it's presented in a
23 tone that is sarcastic in some aspects of it does not
24 take away from the fact that one of its main functions
25 is to disseminate news, to disseminate issues of public
26 -- matters of public interest. And there are many in
27 here.

1 And, specifically, the allegedly libelous
2 claim, which appears on page 154 -- and that really, I
3 think, should be the only thing we're talking about --
4 but, in any event, Your Honor obviously disagrees with
5 me on that -- but that appears identically,
6 essentially, in the New York Times a year earlier and,
7 in fact, it appeared, as Your Honor indicated, in many,
8 many prominent publications.

9 I just am concerned, Your Honor, that in this
10 situation where you have a sarcastic tone in the book,
11 the Court is taking it upon itself to determine what is
12 news to the public and what is not. I think it's clear
13 that, broadly speaking, this -- these are issues of
14 public interest, the public is interested in these
15 issues. The book did not sell very well, but that
16 inevitably may -- that may go to damages, but it does
17 show that there was at least some interest in it and it
18 did -- it was bought some people.

19 And ultimately, Your Honor, I think we all
20 would agree that these are things, while you -- you and
21 I might not be interested in them very much, there are
22 many who are. And that's why magazines like the
23 National Enquirer exists, that's why People exists.
24 But even beyond that, that's why Business Week exists
25 and those are the types of things that are also
26 discussed in this. Like the transactions he engaged
27 in, like the debt on certain of his properties. Some

1 of those things are -- are talked about in there.
 2 Specific aspects of purchases and sales of properties,
 3 transactions he dealt with over time. The fact that he
 4 had dealings with the -- with the mon -- with some
 5 potentially allegedly people affiliated with the mafia
 6 early in his career.

7 I mean, all of these things are things that
 8 come out in this book and that are revealed in this
 9 book and that ultimately are matters of public
 10 interest. And so, I think even under New York law,
 11 you're dealing with issues of public interest and those
 12 -- I don't see how you can read them out of this -- of
 13 the statute.

14 THE COURT: Any response?

15 MR. RESSLER: No, Judge.

16 THE COURT: All right. As I indicated, first
 17 of all, I've made a finding that plaintiff's counsel is
 18 correct, the statute could have easily included the
 19 word books. I've already made a determination and I
 20 appreciate counsel's arguments, they really make me
 21 think there's still a question -- I never come out here
 22 with a predetermination, I listen carefully to what's
 23 said.

24 I took an enormous amount of time to read
 25 through the book, like, a couple times and -- to try to
 26 figure out exactly what it was and recognize it for
 27 what -- it -- it certainly -- as I said to you before,

1 anything worthy of -- of marketing or buying has to
 2 have some public interest in it, but that in and of
 3 itself doesn't make it news. So, containing factual
 4 information, be it historical or of recent events,
 5 certainly does not, in and of itself, if it's included
 6 in the book, make it news.

7 What's one of the main functions? And as I
 8 said, and In re Sullivan seemed to -- to be consistent
 9 with what I felt, that -- that everything got -- gets
 10 blurred lots of times, things get blurred in this day
 11 and age when you have a book like this. It contain --
 12 contains facts, contains newsworthy -- what would
 13 ordinarily be newsworthy information, if published in a
 14 newspaper, which some of it has been and there's plenty
 15 of article -- newspaper articles that are referred to.
 16 There -- again, looking in its totality, I don't find
 17 that its main function is the dissemination of news,
 18 nor do I find it to be news in the sense as defined by
 19 New York law.

20 As I said, in its totality, not only based
 21 upon what I read, what I saw, the tone of the book, to
 22 some degree you're right, has -- has a bearing on it,
 23 but the tone was put in the book by the author and the
 24 author was attempting to market it as entertainment
 25 more so than it was news. And I'm looking at his own
 26 spin, what I perceive to be a spin on the book, from
 27 what he wrote in the book. A lot of what I'm deciding

1 today is based upon what the author did and didn't do,
2 what the author said and didn't say.

3 Accordingly, I do find it to be news, but I -
4 - I want to, again, make another point so as a result -
5 - not news, rather, it is not news. It is not subject
6 to the shield law. Accordingly, based upon that
7 analysis, the shield law cannot be utilized to prevent
8 the discovery.

9 However, I still want to make an additional
10 finding and I want to go back to page 154 and go back
11 to the argument I was having with defense counsel. And
12 I say, even if a reviewing court says, "Well, Judge,
13 you know, you're all wet; that was, in fact, news.
14 You're wrong." I look at what was not said on page
15 154, going back to the argument. I invite you to argue
16 with me about it.

17 That glaring omission, the failure to
18 identify these three sources as anonymous sources --
19 and I know what you said, I heard you say it -- or
20 confidential sources, when this author has gone to
21 great lengths to articulate in his footnotes or in the
22 body of the text, who is and who is not one that would
23 be a confidential source, I reach the conclusion that
24 those sources on 154, even if this were news, are non-
25 confidential sources. That, in the alternative, if a
26 court disagreed with me, the -- and the reviewing court
27 disagrees with me, I then look at that. Again, I'm

1 relying upon what O'Brien said or didn't say in regard
2 to those three sources.

3 Is there anything else that you want to add
4 to me, because I know that you -- we got into that
5 discussion a little bit earlier than I had anticipated,
6 but it's an interesting discussion. And I'm trying to
7 ascertain why these people -- and you gave me some
8 views, say, "Well, Judge, the law does not require you
9 to footnote it, italicize it, identify it," but you
10 have to look at the intent of the parties. And all I
11 have to look at the intent of the parties is the
12 evidence that I have before me. And the evidence is
13 indicative that there's an omission of this nature,
14 that the author did not consider that to be a
15 confidential or anonymous source.

16 No, I -- I can't be left with any other
17 conclusion, because I -- again, I went through it, I
18 read through the paragraphs -- that chapter 6,
19 unfortunately, I must have read about six times to try
20 to figure out if I could throw any reasonable inference
21 of -- of confidentiality expectation, other than the
22 fact that these individuals were not named. I mean,
23 that -- that gives me some idea.

24 MR. CERESNEY: Right. Well, Your Honor, I
25 think -- I tend to think of two things. First, I don't
26 think that there's any dispute of fact on this now.
27 And if you wanted to hold a hearing, you obvious --

1 THE COURT: Well, plaintiff's -- wait! He
2 jumped on the bandwagon. Plaintiff's counsel is
3 shaking his head yeah.

4 MR. CERESNEY: Well, I don't know how he had
5 a basis to dispute that. The point is, there's a sworn
6 affidavit certification from Mr. O'Brien saying that
7 these three sources have requested confidentiality and
8 fear retribution. That's what's in the record on this.
9 You are pointing to an omission in the book, from which
10 there is a reason and we can put in the affirm -- the
11 certification of Mr. O'Brien which gives that reason.
12 But I don't think there's any basis at all to doubt
13 that under the statute these people, this information,
14 this news -- and I would emphasize this is a matter of
15 public interest -- this news was obtained or received
16 in confidence.

17 "Or the identity of the source of any such
18 news coming in such" -- that -- because these -- the
19 identity of the source and this -- not the news, but
20 the identity of the source was received in confidence.
21 And the point being, the omission from the book of a
22 footnote cannot be what this statute turns on, it must
23 -- what -- what you're effectively importing into this
24 is a requirement that when a writer specifically wants
25 something protected by this particular aspect in the
26 statute, that writer has to specifically say that this
27 particular source has requested anonymity for the

1 following reasons and here's why. And that is nowhere
2 in the statute and would impose a great burden. What
3 about -- what about a newscaster? Does a newscaster,
4 when the newscaster says -- does he have to footnote
5 what he says in the news -- in -- in the news report?
6 No. I mean, absolutely not. Newspapers don't have
7 footnotes, Your Honor.

8 The point is that there is no dispute that
9 these people have asked for confidentiality, that is --
10 there's a certification to that effect, we can -- if
11 Your Honor wants to hear testimony on it, obviously
12 that's possible. I don't -- I don't see any reason for
13 that. And the point is, just simply having -- not
14 having a footnote doesn't take it out of the scope of
15 the statute. I don't -- and I don't see how it could
16 be read --

17 THE COURT: No, I just recon -- I'm just
18 pointing out to you what I -- what was glaring to me.

19 MR. CERESNEY: And I understand that, Judge,
20 and --

21 THE COURT: And -- and, again, you're talking
22 about an author who was enormously careful in -- in
23 making sure he identified people where there was
24 confidentiality or anonymity expected from anyone. And
25 -- and, again, I --

26 MR. CERESNEY: But we can put in the
27 certification as to the reason, Your Honor, if that

1 would help. I mean, I -- I've made a proffer that --
2 THE COURT: No, I'm just telling you that
3 that's not -- that's not the basis for my
4 determination, I already told you the basis for my
5 determination. I'm just making arg -- I -- I was
6 talking about an alternate finding, because I have a
7 situation where, despite the fact that I do have a
8 certification, it would appear, based upon what I read
9 and what I didn't read, that -- that these individuals
10 had not been identified as confidential sources.
11

12 Now, I know that you have a certification you
13 have provided me with.

14 MR. CERESNEY: Yeah. Now --

15 THE COURT: But I'm -- I'm concerned about
16 the veracity of it, in light of what was written and
17 what wasn't written in this book. That's what my
18 concern was. And if it was -- certainly, if it's a
19 non-confidential source, when you talk about the
20 constitutional test or the test for non-confidential
21 sources, the -- there's no doubt in my mind that if
22 these people were not considered to be confidential
23 sources, that certainly the -- the information is
24 highly material and relevant, because this is the
25 gravamen of the cause of action.

26 We know that Donald Trump's a public figure,
27 which has to prove clearly and convincingly actual

1 malice, a huge burden that he's gonna have to overcome
2 to be able to prevail in this case. This is critical
3 and necessary to maintenance of his claim? Absolutely.
4 And is it obtainable from some alternate source? I
5 don't think that there is any alternate sources, but --

6 MR. CERESNEY: Although he hasn't tried yet,
7 Your Honor, obviously. He hasn't deposed anybody,
8 including any -- my understanding is he -- he thinks he
9 knows who they are, so he hasn't tried to depose
10 anybody, though. I mean, and that -- that clearly is
11 not worked up and I think one of the courts, Judge -- a
12 decision -- and he hasn't worked up a sweat, so to
13 speak.

14 But going back, Your Honor, to -- to one
15 thing that you said. And I -- I think ultimately here
16 what we're talking about is -- and I know what you said
17 about the veracity of Mr. O'Brien, I just don't see any
18 basis for doubting that. We didn't put in the
19 certification the reason why it wasn't footnoted, that
20 wasn't an issue that was certainly briefed at all by --
21 by plaintiff's counsel and not something that was
22 raised as an issue. If that concerns Your Honor, we
23 could certainly put in the certification on that. But
24 I think, ultimately, that the certification that you
25 have, which is under oath and there's no basis to -- to
26 deny that.

27 I mean, I guess -- I guess I'm just wondering

1 why it would be that Mr. O'Brien, at the time of the
2 publication, would -- would put in a paragraph talking
3 about three sources and not identify them if they
4 didn't ask for conf -- confidentiality. I mean, he did
5 identify all other sources who did not request such
6 confidentiality through footnotes. And we've
7 identified those in our privilege log and we've made
8 those clear. I think -- you know, I -- I just don't
9 think your point about how careful he was, actually I
10 think supports this notion. Because he made a specific
11 determination not to include that for a specific
12 reason.

13 The other question I have for Your Honor is -
14 - is, obviously, I understand Your Honor's ruling on
15 this.

16 THE COURT: I'm not done, I want to just hear
17 from them about the one issue and then we'll --

18 MR. CERESNEY: Okay.

19 THE COURT: -- you could ask me for
20 clarification. Go ahead.

21 MR. CERESNEY: Yeah.

22 THE COURT: Anything you'd like to say about
23 that?

24 MR. RESSLER: No, Judge. I mean, I think
25 Your Honor's point is well-taken. I opened up to
26 thought -- footnotes on page 254, "author interviewed
27 confidential source" is reference in footnote 44 --

1 THE COURT: Oh, just -- and just looking at
2 it, I said that's so -- I mean, there just is something
3 that was glaring to me as I run through the -- the
4 entire book a couple times. And why didn't he just
5 simply say these people wanted anonymity, could have
6 put one word in there. Not three anonymous sources.
7 Didn't even mention it, but. All right. Well, my
8 ruling is not based upon that, but I'm just making that
9 observations.

10 Go ahead, what did you want to ask me for
11 clarification?

12 By the way, I wanted to make one other point
13 before you ask me for clarification. There's another
14 difference between New York and New Jersey law. New
15 York law does not protect the editorial process and,
16 accordingly, is gonna be -- there's some discovery
17 requests. And we look at Green Law Associates versus
18 New York Post, it was a 1980 case. It's not protected
19 by the shield statute. It wouldn't be in any event,
20 based upon my determinations today, but I just wanted
21 to make that clear as well.

22 But what -- what do you need for
23 clarification?

24 MR. CERESNEY: Yes, Your Honor. Obviously,
25 as you indicated, we do intend, obviously, to seek
26 appellate review of this decision, which I think --

27 THE COURT: Yeah, I know you're gonna.

1 MR. CERESNEY: -- you invited.

2 THE COURT: And I don't -- well, listen. I'm
3 not -- I'm never offended by that, I would -- I would
4 hope that you would. I want to make sure I got it
5 right.

6 MR. CERESNEY: Okay. And I guess there's two
7 issues on that. One is, I wondered whether Your Honor
8 was intending to make an alternative finding, if New
9 Jersey law applied, in which case we could, in theory,
10 raise that issue on appeal as well, because I do think
11 that the choice of law issue, if New Jersey law does
12 apply in this case, I do think that there is --

13 THE COURT: You win if New Jersey law
14 applies.

15 MR. CERESNEY: Yes.

16 THE COURT: And there's no doubt about it and
17 --

18 MR. CERESNEY: That's correct. Although, I
19 think we win --

20 THE COURT: -- the New Jersey law is so
21 strict, despite the fact that may even consider this to
22 be part entertainment, part news, I think the fact that
23 it's -- it's -- it is, in fact, part news, I think
24 that's enough to save the day, because New Jersey's law
25 is written so strictly, I couldn't -- it -- I can't
26 make a finding that's consistent with new -- the
27 finding under New York law. There's no doubt about it.

1 That's why it's so important to make the
2 threshold determinations as to conflict, as to the
3 applicability of New York law. I don't want to back
4 into the decision, I'm just saying that's ultimately
5 where I came to and I looked at -- I -- I did analyze
6 it from both perspectives.

7 MR. CERESNEY: And I figured that. I
8 appreciate you making that finding.

9 THE COURT: There's no question about it. I
10 mean, New York -- New Jersey law would prevent the
11 disclosure of the confidential sources or alleged
12 confidential sources.

13 MR. CERESNEY: And just to be clear. I think
14 our view is in light of that, which I agree with,
15 obviously completely, the choice of law analysis would
16 require the application of New Jersey law, since I
17 think to admit that evidence before a jury here in New
18 Jersey, would violate the public policy of the state
19 under Maressa and under the statute. I know you've
20 ruled to the contrary, --

21 THE COURT: I know it --

22 MR. CERESNEY: -- but I want to just --

23 THE COURT: Look, I know what your position
24 was.

25 MR. CERESNEY: I want to make our record on
26 that.

27 THE COURT: And I appreciate that.

1 MR. CERESNEY: And second, I would ask that
2 Your Honor stay this order pending our -- the appellate
3 review, to allow us to seek review.

4 THE COURT: Well, you have to have an order
5 signed in order to take the appellate review, but stay
6 the execution of the order.

7 MR. CERESNEY: Stay the execution.

8 THE COURT: So, certainly, I'll stay the
9 requirement that you have to -- you're compelled to
10 give that discovery until you've had an opportunity to
11 present the application for interlocutory review. And
12 I -- I suggest that they probably may take it, because
13 it's a --

14 MR. CERESNEY: Until they --

15 THE COURT: It has a constitutional dimension
16 to it. By the way, the findings that I made with
17 respect to the non-confidential source would also apply
18 with respect to constitutional aspects of the -- of the
19 law. So if we're looking at it from a constitutional
20 perspective, based upon what I said about the -- the
21 necessity for the information -- I know you made a
22 point of saying, "Well, he hasn't really tried to find
23 an alternate source," I still find that -- that
24 constitutional shield would not prevent -- that's
25 qualified privilege in this particular instance --
26 would not prevent a disclosure.

27 MR. CERESNEY: Okay.

1 THE COURT: Is there anything else further
2 from counsel?

3 MR. CERESNEY: One other thing on that --

4 THE COURT: Yeah.

5 MR. CERESNEY: -- one last point.

6 THE COURT: Sure.

7 MR. CERESNEY: Just to clarify. On the
8 qualified privilege, because I know Your Honor wants to
9 make the complete findings here. I know you -- on the
10 qualified privilege, if it applies -- I'm sorry, Your
11 Honor --

12 THE COURT: That's okay.

13 MR. CERESNEY: On the --

14 THE COURT: You're right, I do.

15 MR. CERESNEY: On the qualified privilege, if
16 it applies, I think you've ruled that the confidential
17 -- quote, confidential sources, the page 154 sources,
18 would be critical material and exhaust -- and that
19 they've exhausted. I know you've ruled on that.
20 There's just another aspect to it. I know you've also
21 ruled editorial processes are not protected by the
22 qualified --

23 THE COURT: Correct.

24 MR. CERESNEY: -- privilege. I understand
25 that. There's sort of a -- a middle --

26 THE COURT: And by the way, they would be
27 under New Jersey law as well.

1 MR. CERESNEY: That's right. And so but then
2 there's a middle ground of non-confidential sources,
3 that is things that we -- you know, are cited in the
4 book in the footnotes or for which, you know, didn't
5 request anonymity, interview notes and other things
6 related to those sources. Our view is that's actually
7 different from the confidential -- confidential
8 sources, because he knows who those sources are and can
9 seek the information that those sources provided from
10 other sources. And so we don't believe he's exhausted
11 or that those are critical, that category, that is the
12 non-confidential source, the documents that relate to
13 that non-confidential source informations and drafts,
14 those types of things we just don't think would -- it
15 would apply to.

16 And I think, Your Honor, I -- I assume would
17 have to make further findings on each of those
18 documents to determine whether, in fact, there's been
19 criticality or exhaustion or materiality.

20 MR. RESSLER: Judge, I don't think that's
21 accurate, I think -- I think to the extent that counsel
22 is suggesting the editorial process is protected, I
23 don't think that's the case.

24 THE COURT: Editorial process is not
25 protected.

26 MR. RESSLER: It's not protected. So that --

27 MR. CERESNEY: I'm not referring to -- just

1 to clarify. I'm referring to interview notes, with
2 interviews with non-confidential sources.

3 MR. RESSLER: No, the -- no. No, those --
4 those should be produced, based on Your Honor's ruling
5 under New York law.

6 THE COURT: Yeah, that's -- I -- I expected
7 those to be produced. Yeah.

8 MR. CERESNEY: Those aren't editorial
9 processes, Your Honor, those are when you're actual --
10 I mean, I think -- as I understand editorial process --
11 I mean, it may be -- I -- a misunderstanding, but I
12 think editorial process is communications between the
13 writer and the editor about decisions about how to edit
14 -- edit to the --

15 THE COURT: Your internal works of -- of Mr.
16 O'Brien.

17 MR. CERESNEY: Right. But I think -- no, I -
18 - no, I think it's -- it's drafts of the book, edits to
19 the drafts of the book. Whereas, as I understand it,
20 interview notes --

21 THE COURT: Going between the author, his
22 agent and the --

23 MR. CERESNEY: Editor.

24 THE COURT: Yeah.

25 MR. CERESNEY: Right. I think this is a
26 different category. This is the author interviewing a
27 non-confidential source, taking notes on that

1 interview. That's a separate category, that's not
2 editorial process, Your Honor, that's the interview --
3 that's -- that's information obtained from the -- the
4 non-confidential source and then memorialized in
5 interview notes. That's different --

6 THE COURT: Right.

7 MR. CERESNEY: -- as I understand it, under
8 the statute, that would fall into C in this. In other
9 words, an editorial processes is not covered, I think
10 you've ruled, at all by the statute. In the New York
11 statute, subsection C covers non-confidential
12 information. I would argue that's non-confidential
13 information. And I guess the point I'm making is, he
14 is --

15 THE COURT: It is not confidential, there's
16 no doubt about it.

17 MR. CERESNEY: Right.

18 THE COURT: Nobody disputes that.

19 MR. CERESNEY: And he needs to overcome the
20 qualified privilege as to each of those documents and
21 he needs to show materiality, criticality and
22 exhaustion. And I understand what you're saying about
23 the confidential sources, and I disagree on that,
24 obviously, but --

25 THE COURT: I know.

26 MR. CERESNEY: -- the non-confidential
27 sources, I think he knows their identity and can go to

1 them and ask them what they told Mr. O'Brien. He
2 doesn't need our notes for that. And it's certainly
3 crit -- he hasn't shown it's critical to his case,
4 particularly the --

5 THE COURT: Let me ask you a question. I
6 could interview you and you could give me an interview
7 and I take down the information and put my own spin on
8 it. And you get conflicting information. He deposes
9 you and then he gets my notes and your deposition is in
10 conflict with my notes. You don't think that's
11 material?

12 MR. CERESNEY: Well, we would have to see
13 when it -- what happens in the deposition first. You
14 wouldn't know that until he said it. If he -- if at
15 the deposition he says something, you know, completely
16 --

17 THE COURT: It wouldn't matter, he can't --

18 MR. CERESNEY: -- consistent.

19 THE COURT: -- there's no template to -- even
20 if it's consistent.

21 MR. CERESNEY: Well, but he has to try to --

22 THE COURT: He still has the right to the
23 information.

24 MR. CERESNEY: But he hasn't even said he's
25 gonna depose these people. In other words, you're
26 hypothesizing things --

27 THE COURT: I'm -- I'm just -- I'm trying to

1 put a real-life example on what we're talking about
2 here.

3 MR. CERESNEY: And if -- if we were to use
4 that example --

5 THE COURT: Say, you want his -- he wants
6 O'Brien's notes about an interview with a non-
7 confidential source.

8 MR. CERESNEY: Right.

9 THE COURT: And you're saying, Judge, I still
10 want to -- I -- I still want there to be a protective
11 order and can't get it.

12 MR. CERESNEY: Right. And I'm saying that
13 the reason --

14 THE COURT: Without showing that he's had an
15 opportunity to first talk to the person that was
16 interviewed.

17 MR. CERESNEY: Exactly. And certainly with
18 regard to interviews that don't relate to net worth.
19 They have nothing to do with anything in this case.

20 MR. RESSLER: Judge, I'm not --

21 MR. CERESNEY: And my -- my -- I'd like to
22 finish. My -- my point is just, there's a specific --

23 THE COURT: Now you've raised another issue.
24 Is it relevant to this particular inquiry? The answer
25 is, well, listen, if it doesn't talk about net worth,
26 the gravamen of the complaint is what's the net worth,
27 certainly it's not relevant, so on -- on those grounds,

1 under 401 it would be --

2 MR. CERESNEY: Right.

3 THE COURT: I'm not applying the Rules of
4 Evidence of New York, I'm using New Jersey.

5 MR. CERESNEY: And all I'm trying to say is,
6 these are nuance determinations. You don't have to
7 make these decisions today, I guess is what I'm saying.
8 All I guess we -- we want Your Honor to do is to focus
9 on the fact that you're not making that -- that
10 category of decisions today. You're saying
11 confidential --

12 THE COURT: I'll be glad to give you some
13 direction. I'm saying to you, if it's not relevant,
14 the likelihood of me allowing the discovery is limited.

15 MR. CERESNEY: Okay.

16 THE COURT: If it is relevant to net worth,
17 if it's an interview with somebody not a confidential
18 source that deals with the worth of an individual, the
19 likelihood is I'm gonna make you produce those notes of
20 Mr. O'Brien, because not only will Mr. O'Brien's notes
21 and the correctness of those notes be in question, also
22 whether or not there's an inconsistency from what was
23 said and what was written as to whether or not actual
24 malice took place, whether or not he was re -- he -- he
25 published in reckless disregard to the truth.

26 And the reckless disregard may be provable by
27 obtaining the notes of what was said and by comparison

1 of what those -- what the interviewee stated to Mr.
2 O'Brien. So, he -- the interviewee says, "I think that
3 that's what his net worth is, I'm not really sure."
4 And then O'Brien writes his net worth is so and so, he
5 writes it as a fact when -- when the interviewee was --
6 was hedging, for example. Again, I don't know what
7 transpired, so you -- you're right in some instances
8 and -- and you're not so right.

9 MR. CERESNEY: Right.

10 THE COURT: I'm just trying to give you
11 guidance so I don't have to deal with -- and it --

12 MR. CERESNEY: It -- and I think that's all
13 we --

14 THE COURT: My ruling will be relatively
15 consistent with that; but, again, I remain open to the
16 arguments, if you show me that --

17 MR. RESSLER: Judge, I -- I --

18 THE COURT: -- wait a second -- it's not
19 relevant or it's --

20 MR. RESSLER: I certainly hope and we're
21 certainly gonna try to work these kinds of issues out,
22 based on Your Honor's ruling. It seems clear to me
23 and, obviously, if Tim O'Brien has notes of an
24 interviewee that deal with our claim, then obviously
25 those are notes that we're gonna want. So when we
26 depose Tim O'Brien, we're gonna say, "It's funny that
27 you wrote XYZ in your book, but that's not what the

1 notes reflect." I mean -- and I think Your Honor was --
2 -- was driving to that point. But, you know, hopefully
3 we'll be able to work some of this out.

4 The only other point I wanted to mention --

5 THE COURT: Well, I hope you meet and confer
6 about that stuff, I mean --

7 MR. RESSLER: There's no question about it.

8 THE COURT: But I'm just trying to give you
9 guidance as to where I'm likely to go at that time and
10 --

11 MR. RESSLER: No, and that's not -- and
12 that's --

13 THE COURT: I don't like to prejudge
14 anything, but I'm gonna try to give you some guidance,
15 because I don't want to micro-manage this case, I've
16 got enough cases I micro-manage.

17 MR. RESSLER: No, we appreciate that.

18 THE COURT: Some from Mr. Tambussi's firm.

19 MR. RESSLER: The guidance is helpful and
20 hopefully is gonna shorten meeting for sessions.

21 I just want to make one final point. And
22 that is, Your Honor's comments and counsel's comments
23 with respect to how this would unfold under New Jersey
24 law. Obviously, as we state in our papers, we view the
25 result being the same. We think that --

26 THE COURT: I know you do.

27 MR. RESSLER: We think that these sources

1 would have to be disclosed under New Jersey shield law,
2 that New Jersey shield law doesn't apply, because only
3 books are covered. There are various other arguments
4 that I could make now. I don't think it's necessary to
5 do so, based on Your Honor's ruling. We make them in
6 our papers. I could expand upon them.

7 But I -- I just wanted the record to be clear
8 that, obviously, from Trump's perspective we believe
9 that the New Jersey shield law would -- would
10 absolutely apply here and that the rationale that the
11 Supreme Court of this state used in Maressa, where it
12 emphatically endorsed the shield law, wouldn't apply
13 here at all. That -- that to apply that rationale here
14 would really make a mockery of what the Supreme Court
15 was talking about in Maressa, for a variety of reasons,
16 including the fact that the Maressa court was really
17 focused on the pressure of deadlines, that reporters in
18 those seven specifically-enumerated news media operate
19 under, that doesn't apply here at all. O'Brien had all
20 the time in the world to write this book and -- and
21 verify the statements that we claim are defamatory
22 about what Trump's net worth is.

23 I could go on, but I don't think I need to,
24 Judge. I just wanted to make that clear for the
25 record.

26 THE COURT: No, I see one -- I did look very
27 carefully at the New Jersey law, because I did

1 recognize that that would be the subject in the event I
2 did find that New York law did apply, that certainly
3 you'd like me to make the record clear and complete.
4 And I even looked at the fact that, well, O'Brien
5 wasn't really as an employee of the New York Times when
6 he did this, he was -- well, we'll call it a freelance.
7 When I looked at that, even to try to see if he would
8 fall outside the shield law, well even that satisfied
9 me that that would be covered as well.

10 I looked at a number of cases and the
11 conclusion I came to is if New Jersey law applied in
12 this particular instance, there would no -- be no doubt
13 in my mind the shield law would apply. And the
14 editorial process would likewise be protected. So,
15 does that help you?

16 MR. CERESNEY: Yes. It does, Your Honor.

17 THE COURT: It helps him. And note that the
18 Appellate Court, when they review this, should look at
19 the -- the papers that plaintiff has filed with respect
20 to the applicability and their argument that the
21 outcome would have been the same.

22 MR. RESSLER: Yeah and we based it primarily
23 on the fact that when -- when the statute requires
24 somebody to be a professional journalist, they have to
25 be a professional journalist for the part --

26 THE COURT: Well, that's the New York statute
27 that used professional journalist. We don't have that

1 same law here in New Jersey.

2 MR. RESSLER: The -- good point, Judge. The
3 -- the New Jersey statute requires that some --

4 THE COURT: Someone connected to -- I mean --

5 MR. RESSLER: That somebody be employed by --
6 one -- one of the specific news media. So what O'Brien
7 is basic -

8 THE COURT: Yeah, but In re Knapp, by the
9 way, that person wasn't employed by the news media, it
10 was like a --

11 (Tape change malfunction)

12 MR. RESSLER: Under -- under the defendants'
13 theory, so long as they're employed by one of the
14 enumerated kinds of news media, you could go out and
15 write a book and gain protection of the shield law.
16 That means I could be a photo editor at a golf magazine
17 or a porno magazine or a professional wrestling
18 magazine, go out and write a book about a public
19 figure, rely on anonymous sources and then, when I'm
20 sued, say, "I don't have to reveal my sources, because
21 I'm protected by the shield law, because I'm a photo
22 editor at a porno magazine or a golf magazine or a
23 professional wrestling magazine." That's not what the
24 legislature, in our view, intended.

25 So, we view the statute as clearly saying you
26 have to be employed by the news media that actually
27 publishes or broadcasts the particular work in dispute.

1 So here, O'Brien -- of course he's employed by the New
2 York Times, but the work in dispute in this case, it
3 wasn't published in the New York Times, it was a book.
4 This -- this is what's in dispute. This was a Warner
5 Books book. So, and that -- and that's our position as
6 to why we would still be protected under the New Jersey
7 law.

8 MR. CERESNEY: And we obviously disagree,
9 Your Honor. We --

10 THE COURT: All right.

11 MR. CERESNEY: And agree with Your Honor.
12 One additional thing, Your Honor. We actually have,
13 obviously, a number of other discovery issues,
14 including the tax return issue.

15 THE COURT: Oh, by the way, I had -- I had a
16 motion to quash a subpoena, I believe.

17 MR. CERESNEY: That's another issue, Your
18 Honor, that we want to raise today.

19 THE COURT: Well, let me do this. Let me
20 take a break, because now we're -- we're done this
21 aspect of the case. And at this point, it's really
22 case management, it's no longer dealing with this
23 particular aspect of the case.

24 MR. CERESNEY: Okay.

25 THE COURT: We'll take a break and then tell
26 me what you want to talk about, so I could just get
27 different parts of the filing documents that I might

1 have a need --

2 MR. CERESNEY: Yeah. Your Honor, we sent a
3 letter yesterday which I think identifies the four or
4 five issues and I'll just enumerate them. One is the
5 tax return issue. And we have the tax return with us
6 and I think, you know, Your Honor --

7 THE COURT: The over-redaction?

8 MR. CERESNEY: Yes. And this -- this goes
9 beyond case management, I think, Your Honor, this is
10 actually, in our view, a violation of Your Honor's
11 court order. In some respects our view is that, you
12 know, the plaintiffs come to you with unclean hands
13 with regard to their motion to compel on the privilege
14 and then their non-compliance with the court's order.
15 I think when -- we should talk about that, I think;
16 and, obviously, you -- you've stayed the motion to
17 compel now until we start appellate review, so there's
18 not obviously immediate enforcement, but --

19 THE COURT: Okay. So you got over-redaction
20 tax returns.

21 MR. CERESNEY: We've got the tax returns.
22 We've got issues with the Weiser production and the
23 redaction log. Which didn't have any specificity at
24 all to challenge the basis for the redaction. You've
25 got --

26 THE COURT: You're saying that the privilege
27 log wasn't specific enough?

1 MR. CERESNEY: Not at all.

2 THE COURT: Okay.

3 MR. CERESNEY: The redaction log, rather.
4 And then we're missing a fair amount of the production.
5 We were told that we were gonna get a second batch of
6 Weiser documents and we don't -- we've actually asked
7 when you expect that and we haven't been told. And so
8 we're awaiting that and that was supposed to be
9 produced December 1st.

10 The third issue is the motion to quash you
11 mentioned. Which is currently returnable January 19th,
12 though our --

13 THE COURT: I think since you are here, maybe
14 I'd help you get rid of that.

15 MR. CERESNEY: That's right. Exactly.
16 Fourth, the - the issue of plaintiff's own production
17 and the time frame issue. Your Honor had expanded the
18 time frame at our last appearance to include an
19 additional two-year -- I'm sorry, a three-year period.
20 In response to that we got two documents. And that
21 seemed to us to be highly questionable, since it was
22 the plaintiff who claims those were extremely
23 burdensome to expand the time frame. And that was, you
24 know, one of the main bases for the objection. And so
25 we sought clarification from them and we haven't gotten
26 it and we would ask Your Honor to seek clarification on
27 that.

1 And finally on the interrogatories. We had
 2 tried to meet and confer on this, Your Honor. We had a
 3 meet and confer November 15th. We agreed they would
 4 come back by December 4th to supplement their responses
 5 on December -- and we actually gave them that two-and-
 6 a-half weeks because of the holiday and they asked for
 7 it, we wanted it earlier, we thought we were being
 8 correctly understanding and the like. On December 4th
 9 we get a letter that says that we'll get them in the
 10 immediate future. We did get the responses yesterday,
 11 it just so happens, coincidentally, in advance of
 12 appearing before Your Honor.

13 We're not gonna raise the issues that we
 14 still have in the interrogatories today, we'll leave
 15 that for another day, but there's one issue --

16 THE COURT: You have to look at what you got.

17 MR. CERESNEY: That's right. Exactly.
 18 There's one issue that I think is blare -- is glaring
 19 that I think we do want to raise, and it's an issue
 20 Your Honor has focused on before. It's the lost
 21 corporate opportunities or lost corporate deals, which
 22 are the crux of their claim of damage --

23 THE COURT: Yeah, I said -- before I said
 24 specify what they were, because I had specif -- I said,
 25 well, listen. The allegation was, was damage to the
 26 brand -- the Trump brand and I was kidding around with
 27 you, I said, "What are you gonna show, that the Nielsen

1 ratings dropped two months after the book was published
 2 in the Apprentice?"

3 MR. CERESNEY: Or no one's watching the Miss
 4 USA Pageant.

5 THE COURT: And looking at the book, you
 6 know, the -- what happened on the Apprentice was pretty
 7 important in his career.

8 MR. CERESNEY: That's right.

9 THE COURT: But --

10 MR. CERESNEY: Yeah. And we still have
 11 gotten that and there was an interrogatory on that, we
 12 were told we were gonna get supplements on that, it was
 13 not included in the letter. We were told in the letter
 14 they need to --

15 THE COURT: Yeah, because I said --

16 MR. CERESNEY: -- confer with their client.

17 THE COURT: -- they could specify it -- they
 18 could --

19 MR. CERESNEY: Right.

20 THE COURT: -- be specific about what
 21 contracts or lost opportunities --

22 MR. CERESNEY: It seems to us that should be
 23 obvious. I mean, you should know that by now. You
 24 should have known that when you filed the suit, is our
 25 view. And so we would like Your Honor to, you know, --

26 THE COURT: I guess, by the way, one of the
 27 reasons I limited some of the provisions of the income

1 tax returns -- because if you remember -- again, I'll
2 go back into this in a minute, but the income tax
3 returns, I -- I said to them, "Well, how -- how is it
4 that the -- that the plaintiff will prove damages? The
5 only way he can prove damages is a reduction" -- that's
6 when I got into the sarcastic remark, pardon my tone,
7 about the -- the damage to the -- the Trump brand with
8 the Apprentice Nielsen ratings dropping.

9 And I said, "How are you gonna prove damages,
10 if you don't prove a diminishment of income?" And I
11 said, if I'm not mistaken, there's standard deviations
12 in income every year no matter if you're -- especially
13 if you're in business and that you needed a wide range
14 of tax returns to try to ascertain what the income was,
15 what the standard deviation would be and then to see
16 whether or not there was something that would be a loss
17 outside the standard deviation that potentially could
18 be attributable to the publication of the book.

19 And to that, the plaintiff responded, "Wait a
20 sec -- wait a second, Judge. We can identify the lost
21 opportunities." So --

22 MR. CERESNEY: Right. That was the mid-
23 October phone call, Your Honor, that --

24 THE COURT: And that may be in regard to the
25 -- the other issue of expansion of tax returns. So you
26 haven't gotten anything yet. But while -- what -- what
27 I'm gonna ask you to do when I take a break here for

1 about 10 or 15 minutes, is -- is if -- and you've got
2 counsel here, I guess some of the people from both
3 firms are probably here that have a good idea of what's
4 going on in discovery. If you -- you folks could talk,
5 see if you could resolve some of these issues.

6 Any other issues?

7 MR. CERESNEY: No, those are the issues we
8 wanted to raise today.

9 THE COURT: Anything the plaintiff has? For
10 the good of the order, other than what we've taken care
11 of today?

12 MR. TAMBUSI: Well, a lot of it, Judge, has
13 to do with the -- the motion today and what their
14 privilege log said and how we don't believe that that
15 privilege log was complete. But a lot of that depends
16 on what the Appellate Division does in this case.

17 THE COURT: All right. Well --

18 MR. TAMBUSI: If they take a motion for
19 leave to appeal, then, you know, all of this is moot.
20 If they do not, then we're back. And rather than beat
21 a dead horse -- and then there's also the aspect,
22 Judge, as we're taking this break, that we need to
23 think about.

24 When Your Honor left the issue of what we,
25 the plaintiff, had to produce by way of personal
26 information, the Court also recognized that some of
27 this required -- or may require expert testimony.

1 Plain -- the defendants have put up some financial
2 person from affiliate of a law firm in some --

3 THE COURT: I think they told me they had an
4 expert already.

5 MR. TAMBUSSI: Correct. And -- and we will
6 be prepared to, also, Judge. Because when we think
7 about this issue of the tax return, I mean what really
8 bears on net worth is a technical question that's far
9 above my level of understanding of the tax --

10 THE COURT: Well, Mr. Tambussi, the tax
11 return is two -- a twofold reason. I ordered tax
12 returns disclosed for a couple reasons. Number one --
13 and that's why I expanded it. Number one, because it -
14 - there are aspects of the tax return that would
15 indicate the acquisition of assets of sale, assets of
16 depreciation, things of that nature; whereby at least
17 there could be some verification as to the assets and
18 liabilities.

19 Additionally, because I was unsure as to what
20 the damages were that were being asserted, as I already
21 said about the -- the years of the tax returns,
22 standard deviation, whether or not any loss is
23 attributable to this, that's why I had ordered the tax
24 returns to be disclosed as well. Again, that's
25 integrated in the -- the requirement.

26 You're saying to -- if you want to -- if your
27 client's willing to be bound by the notion that I'm not

1 alleging any diminishment of income that will show on a
2 tax return, but the loss of prospective profits as a
3 result of contracts not being entered into because of
4 the -- my questionable net worth now, that --

5 MR. TAMBUSSI: And value of the brand.

6 THE COURT: See, that affects the amount of
7 redaction that has to be done to the return.

8 MR. TAMBUSSI: Absolutely, Judge. And, with
9 all due respect, we've produced 100,000 page -- over
10 100,000 pages of documents thus far. This production
11 has taken far greater time than we anticipated.
12 There's 70,000 additional pages that are going -- that
13 we're going through now. 70,000 were produced
14 yesterday? December 1st.

15 THE COURT: Okay.

16 MR. TAMBUSSI: Then we have additional pages
17 that we're doing now. We are producing those documents
18 on a rolling basis. Rather than take this piecemeal --
19 and people come in and suggest that the plaintiff is
20 acting with unclean hands when, in fact, the plaintiff
21 waited months and months and months and months for the
22 defendants to initially respond to any discovery
23 request -- maybe we should take the time and allow us
24 to produce the entirety of these documents, which we
25 are doing with all diligence, have them review those
26 documents, those working papers from the accountants,
27 and then determine whether or not we have or have not

1 produced enough information for someone to determine
2 Donald Trump's net worth at a particular time.

3 That seems to me to be the better approach,
4 rather than to micro-manage each and every document
5 that comes through.

6 THE COURT: Well, that's out there now, so
7 what I'm gonna do is, I -- like I said, I'm gonna take
8 about a 15-minute break and then maybe you guys can
9 confer. If you need more time, I've got the time to
10 give you today.

11 MR. CERESNEY: That's --

12 THE COURT: As long as your office doesn't --

13 MR. CERESNEY: I --

14 THE COURT: -- get me involved in some other
15 mess that's going on out there. I have depositions
16 taking place in the -- in the --

17 MR. TAMBUSSI: Maaco case, Judge?

18 THE COURT: Yeah. And HMO versus a drug
19 company.

20 MR. CERESNEY: And that's fine, Your Honor.
21 I guess the one thing I'd say in response to that is
22 the order was clear on the tax return. It said the
23 only thing that could be redacted was personal
24 information.

25 THE COURT: Yes, charitable --

26 MR. CERESNEY: I think Your Honor --

27 THE COURT: -- contributions, alimony

1 payments, whether or not we -- being, again, the -- the
2 tone, the sarcastic tone was used as to whether or not
3 he contributed a dollar or two dollars to the --

4 MR. CERESNEY: Contained in the order.

5 THE COURT: -- presidential campaign fund.

6 MR. CERESNEY: Doesn't mean it doesn't have
7 legal authority, Your Honor, even if it's sarcastic.

8 THE COURT: I know, I agree, I agree with
9 you.

10 MR. CERESNEY: And your letter to us, where
11 you actually indicated that you had -- you were gonna
12 charge us in the order, that also had legal authority,
13 obviously. But the point I'm making is Your Honor has
14 decided the --

15 THE COURT: I didn't charge you, did I?

16 MR. CERESNEY: You did not and we're waiting
17 for the bill.

18 THE COURT: You're not getting it.

19 MR. CERESNEY: The point is, Your Honor, this
20 has been decided, we have stood here and I think we
21 actually stood before Your Honor and said we were
22 concerned about any broad allowance of redaction here,
23 because we assumed that they were gonna do just what
24 they did. We certainly didn't assume that there would
25 be eight numbers that they would leave on the return.
26 So we have these --

27 THE COURT: That was it?

1 MR. CERESNEY: Do you want to take the
2 return, Your Honor? We have it. You can take it back
3 with you and peruse, it won't --
4 THE COURT: Sure, okay.
5 MR. CERESNEY: It won't take you long --
6 THE COURT: Did you -- do you have a copy --
7 obviously, you have a copy of it, you gave it to them.
8 MR. CERESNEY: It won't take long, Your
9 Honor, because there's hardly any numbers in there that
10 are --
11 THE COURT: He didn't leave a Social Security
12 number did he?
13 MR. CERESNEY: He did not, he redacted that
14 as well, Your Honor.
15 THE COURT: All right.
16 MR. TAMBUSI: Judge -- Judge, just so the
17 record is clear, the plaintiff has used the advice of
18 tax counsel to determine that which is relevant
19 according to the parameters of Your Honor's order. In
20 making the determination what to redact --
21 THE COURT: You had an accountant try to
22 figure what I said?
23 MR. TAMBUSI: No, we had a tax --
24 THE COURT: I mean, the Appellate Division --
25 MR. TAMBUSI: A tax lawyer.
26 THE COURT: -- sometimes shakes their heads,
27 "What the heck did he say?"

1 MR. TAMBUSI: Former counsel for the IRS.
2 MR. CERESNEY: Your Honor, the order says
3 personal information. It doesn't say relevant to net
4 worth. That's the whole point. The --
5 MR. TAMBUSI: The whole point of the
6 argument, Judge, was did it apply to net worth or not.
7 This is the problem that we have in each and every meet
8 and confer. Your Honor's order gets reargued at time
9 and time and time again.
10 MR. CERESNEY: We agree with that, Your
11 Honor. And that's not our -- us rearguing it. You
12 issued an order, it seems pretty clear to me, personal
13 information is not, as they -- they submitted in their
14 proposed order, relevant to net worth. And that's was
15 what we were concerned about and that's why your order
16 -- Your Honor ordered this broad -- this limited,
17 narrow category of information be redacted, because so
18 that they couldn't make those -- that -- that's a
19 judgment that our experts should be making after
20 getting this information, Your Honor. And there
21 shouldn't be a confidentiality concern here, because we
22 have this confidentiality order that --
23 MR. TAMBUSI: We're -- we're gonna --
24 THE COURT: I think I'm gonna hire his
25 accountant, because he only paid \$38,000 in tax.
26 MR. CERESNEY: Actually, the 38 -- well, 38
27 million, I think, Your Honor.

1 THE COURT: Oh, thanks. I missed that --
2 MR. RESSLER: So did Mr. O'Brien, Judge.
3 MR. TAMBUSI: That's exactly the type of
4 information that, when it gets published on the
5 internet, the barn door is left open. If it's not
6 relevant to net worth, it's not something that needs to
7 be disclosed.
8 MR. CERESNEY: And I think --
9 THE COURT: All right. Well, look. I'll --
10 MR. TAMBUSI: If the 10-1s are there, Judge,
11 all the identification, well -- the companies, the
12 partnerships are there, they have all the information
13 that they need.
14 MR. CERESNEY: And I guess on that, the name
15 of the corporation doesn't help us do anything. We
16 don't know what his interest in that is, what the
17 income or expenses from that corporation during the
18 year are, what his tax basis would be. All that
19 information is important to value that outfit and --
20 MR. TAMBUSI: It doesn't matter.
21 THE COURT: All right. Well, look. Let me
22 take a break. There is --
23 MR. CERESNEY: Pretty funny.
24 THE COURT: Not much on here.
25 MR. CERESNEY: Exactly. We thought you would
26 see that, Your Honor.
27 THE COURT: Okay.

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1 MR. CERESNEY: Okay? Thank you, Your Honor.
2 THE COURT: See you in a bit. But that still
3 doesn't mean that you shouldn't talk.
4 MR. CERESNEY: Okay. We will, Your Honor.
5 (Brief recess)
6 THE COURT: -- the Trump case. Defense has
7 raised some very serious issues that deal with the
8 failure of the plaintiff to comply with the discovery
9 that I had previously ordered. I did go through this
10 tax return. It's pretty easy to go through when you
11 have all these redactions here. And as I said before I
12 left the bench, that it was so important to know what
13 his missed business opportunities were, because they --
14 they -- the relevancy of the documents contained -- or
15 the information contained in the tax return are
16 associated with that. Because if the damages are not a
17 loss of income, but rather a loss of specific contract
18 opportunities, certainly the information contained with
19 respect to income is not germane.
20 But I'm gonna suggest this to the plaintiffs.
21 You have to produce that -- that information and you --
22 you should do so well in advance of the January 19th
23 date that I have given you in chambers. I said you'll
24 come back here January 19th, I'll deal with the motion
25 to quash at that point. I want to know what's been
26 produced as far as the provision of the information
27 with respect to damages. Because without that -- if

1 you get here on the 19th and you haven't given them
2 that information, guess what? The tax return, all
3 these white papers across the income information that
4 are all across Schedule C, they're all gonna have to be
5 removed, you're gonna have to give them a full
6 disclosure of the income. It's as simple as that.

7 Because I'm not gonna go on with the
8 presumption that -- that Mr. Trump lost business
9 opportunities and have to have them delay further their
10 analysis of their exposure in the case. And why am I
11 doing this? Because I -- I suggested to both of you
12 that I thought there was some way to resolve this case
13 in some meaningful fashion without it being a dollars
14 and cents issue.

15 I really -- and I'm ordering and directing
16 you to meet prior well in advance of January 19th,
17 representatives of each side, if not the parties
18 themselves, to -- to try to come up with a resolution
19 in this particular case. I think it behooves both of
20 you to do that. The amount of the discovery is gonna
21 be enormous, this case is gonna probably end up getting
22 delayed because of what I perceive to be -- I really
23 believe the Appellate Division is gonna take the issue,
24 because it has -- well, it doesn't have constitutional
25 dimensions, it certainly has important dimensions that
26 deal with the rights of the press.

27 So, in the interim, Mr. Tambussi, please

1 press your client. I know that the holidays are upon
2 us, so we're gonna -- I'm gonna -- I am gonna expect
3 within 15 days that you provide them with the specific
4 information that I had heretofore ordered. And I'm not
5 gonna rule on the redactions at the present time until
6 I get that information. Like I said to defense, if you
7 don't get the information, you're gonna have to rely
8 upon income information with respect to the damages and
9 you're gonna get the information that you need to
10 calculate your damages. It's as simple as that. And
11 so, a later point in time, if they come up with the
12 information, oh well, you got what you need.

13 The Weiser documents, I understand that
14 you're gonna continue to produce that information?

15 MR. TAMBUSSI: Yes, Your Honor.

16 THE COURT: And you'll continue to do so --
17 please, have it to them well in advance, at least nine
18 days in advance of the return date of the motion, so I
19 could deal with it. The mot -- again, I recognize that
20 the appellate review may delay this case, ultimately,
21 and I don't want you to have to spend money that you
22 ordinarily wouldn't have to spend. But eventually,
23 whether -- whether or not the Appellate Division
24 upholds my determination or returns it to me for
25 further hearing, this case is still apparently gonna
26 proceed and you're gonna have to produce the
27 information.

1 As far as the interrogatories. Additional
2 information has just been provided and we give the
3 defense the opportunity to review it carefully so that
4 at least if they have some requests for more specific
5 answers or to compel additional information, they can
6 do so in some meaningful fashion, as opposed to having
7 to do this in the dark. It's unfair to the defense to
8 have to do it in the dark.

9 But again, from the perspective of
10 settlement, I know that you've talked about some emails
11 that are in existence, Mr. Tambussi, and that I -- I
12 don't -- I'm assuming you got -- you got them through
13 the ordinary course of discovery, so the defense is
14 aware of them?

15 MR. RESSLER: They were all produced by the
16 defense, Your Honor.

17 THE COURT: Okay. Well, there's a lot of
18 documents that had been produced and maybe if you could
19 highlight some of those documents and provide some
20 motivation to the defense to look at it from a
21 different perspective for settlement, please do so.
22 Please also know that Mr. Trump -- let Mr. Trump know
23 that he may be in a position of having to disclose a
24 lot of financial information that previously he had not
25 been required to provide, and maybe that will serve
26 some motivation on his part to try to resolve this
27 case, again, in some meaningful non-economic way.

Colloquy

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1 Because I think that there's enough latitude on both
2 sides of this fence to be able to resolve this case in
3 some meaningful fashion.

4 MR. MELODIA: Your Honor, may I --

5 THE COURT: Sure.

6 MR. MELODIA: -- make one suggestion, in
7 keeping with I think what Your Honor has been
8 suggesting, in terms of where the Court is leaning or
9 likely to rule on certain issues.

10 THE COURT: I'll likely --

11 MR. MELODIA: But -- but --

12 THE COURT: I'm likely to order that
13 additional information be provided in tax returns.

14 MR. MELODIA: But -- but not formally making
15 that ruling today, not --

16 THE COURT: No.

17 MR. MELODIA: And I'd suggest that we take
18 that same approach for the issues that we've also
19 argued here today, that is plaintiff's motion to compel
20 and the privilege issues also be held in abeyance until
21 January 19th, to see whether or not the parties can
22 resolve these issues prior to that date. While that
23 would result in some small delay over the holidays, it
24 is over the holidays and why not have all issues
25 resolved on the 19th or at least have all parties
26 believe that all issues will be resolved on the 19th,
27 if they cannot conclude this case in settlement.

1 MR. TAMBUSI: We're trying to understand,
2 does that mean you're just asking for a delay of time
3 before you have to file your notice -- notice of motion
4 for leave to appeal?

5 MR. MELODIA: I'm asking for a delay in the
6 actual entry of an order in the same way --

7 THE COURT: Well, I'll tell you what --

8 MR. MELODIA: -- if Your Honor's not --

9 THE COURT: -- somebody's got to draft the
10 order and send it to me and guess what? Come Friday,
11 if that order sits here, it's gonna sit here until at
12 least January the 8th, when I come back from Pasadena.
13 So -- and then it will end up being on my desk and I'll
14 have to hold it probably under the five-day rule;
15 which, liberally interpreted, takes me to the 18th of
16 January and I --

17 MR. TAMBUSI: Understood, Your Honor.

18 THE COURT: -- won't execute that order until
19 at least January 19th, as a practical matter.

20 MR. TAMBUSI: Understood, Your Honor.

21 THE COURT: And you could put that in your
22 cover letter to me that we understand Your Honor will
23 not be entertaining the execution of this order until
24 January the 22nd, a Monday. And I'll be glad to hold
25 it until then, because I won't get the time to really
26 fully read it and understand it until that time anyhow.
27 And I don't want to do anything half-baked.

1 MR. TAMBUSI: Understood, Your Honor.

2 THE COURT: Okay? Does that help you?

3 MR. MELODIA: Yes, Your Honor. Thank you.

4 THE COURT: Okay. That'll save you the have
5 -- having to get the transcripts, file costs -- pay the
6 costs of appeal and maybe you'll come back here and
7 tell me that you resolved the case. Nothing would be -
8 - that would be a great Kwanza present.

9 MR. TAMBUSI: Thank you, Your Honor.

10 MR. CERESNEY: Festivus, Your Honor.

11 THE COURT: Thanks, everybody. Hey, have a
12 happy holiday. I appreciate the great lawyering that I
13 get in cases like this, it really makes my -- my
14 decision to come back to civil a great one. No, I'm
15 serious. I mean, if anything is a benefit, it's
16 getting -- having fine lawyering and I really get -- a
17 lot of good lawyers appear in front of me and you guys,
18 collectively -- guys, in the politically correct sense,
19 for all the rest of you that do the work -- you really
20 do an excellent job for your clients. Thanks!

21 MR. CERESNEY: Thank you, Your Honor.

22 MR. TAMBUSI: Thank you, Judge.

23 MR. RESSLER: Thank you, Your Honor.

24 MR. MELODIA: Thank you, Your Honor.

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CERTIFICATION

I, TERRY L. DeMARCO, the assigned transcribers, do hereby certify the foregoing transcript of proceedings on copy of tape number 1, index number from 0037 to END; and tape number 2, index number from 0000 to 1245, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

_____	_____
Terry L. DeMarco	AD/T 566 AOC Number
_____	_____
Diana Doman Transcribing	12/29/06

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Agency Name

Date