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DONALD J. TRUMP,)	SUPERIOR COURT OF NEW JERSEY
)	APPELLATE DIVISION
Plaintiff/Appellant,)	DOCKET NO.: A-6141-08T3
)	
v.)	ON APPEAL FROM THE
)	SUPERIOR COURT OF NEW JERSEY
)	LAW DIVISION - CAMDEN COUNTY
TIMOTHY L. O'BRIEN; TIME)	
WARNER BOOK GROUP, INC.; and)	SAT BELOW
WARNER BOOKS, INC.,)	HONORABLE MICHELE M. FOX, J.S.C.
)	FILED
Defendants/Respondents.)	APPELLATE DIVISION

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APPENDIX TO BRIEF OF PLAINTIFF/APPELLANT DONALD J. TRUMP
 Volume I
 Pa1-Pa361

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New Jersey Judiciary
Superior Court - Appellate Division
NOTICE OF APPEAL

Type or clearly print all information. Attach additional sheets if necessary.		ATTORNEY / LAW FIRM / PRO SE LITIGANT				
TITLE IN FULL (AS CAPTIONED BELOW): Donald J. Trump, Plaintiff-Appellant v. Timothy L. O'Brien, Time Warner Book Group, Inc., and Warner Books, Inc., Defendants-Respondents.		NAME William M. Tambussi, Esq.				
		STREET ADDRESS 360 Haddon Avenue				
		CITY Westmont	STATE NJ	ZIP 08108	PHONE NUMBER 856-854-8900	
		EMAIL ADDRESS wtambussi@brownconnery.com				

ON APPEAL FROM		
TRIAL COURT JUDGE Michele M. Fox, J.S.C.	TRIAL COURT OR STATE AGENCY Law Division, Civil Part, Camden County	TRIAL COURT OR AGENCY NUMBER L-545-06

Notice is hereby given that Plaintiff-Appellant Donald J. Trump appeals to the Appellate Division from a Judgment or Order entered on July 15, 2009 in the Civil Criminal or Family Part of the Superior Court or from a State Agency decision entered on _____.

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) Yes No

If not, has the order been properly certified as final pursuant to R. 4:42-2? Yes No

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a conviction post judgment motion post-conviction relief.
If post-conviction relief, is it the 1st 2nd other _____ specify

Is defendant incarcerated? Yes No

Was bail granted or the sentence or disposition stayed? Yes No

If in custody, name the place of confinement:

Defendant was represented below by:
 Public Defender self private counsel _____ specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	Michele M. Fox, J.S.C.	August 13, 2009
Trial Court Division Manager	George P. Coan	August 13, 2009
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		
Other parties in this action:		
Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
Timothy L. O'Brien et al.	Mark S. Melodia, Reed Smith LLP, 136 Main Street, Suite 250, Princeton, NJ 08540 (609-520-6015)	August 13, 2009

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office			
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

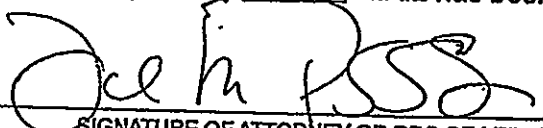
Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).
List the date(s) of the trial or hearing:
May 18, 2009 (oral argument); July 15, 2009 (oral opinion)
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

8-12-09

DATE



SIGNATURE OF ATTORNEY OR PRO SE LITIGANT



New Jersey Judiciary
Superior Court - Appellate Division
CIVIL CASE INFORMATION STATEMENT

Please type or clearly print all information.

TITLE IN FULL Donald J. Trump, Plaintiff-Appellant v. Timothy L. O'Brien, Time Warner Book Group, Inc., and Warner Books, Inc., Defendants-Respondents	TRIAL COURT OR AGENCY DOCKET NUMBER CAM-L-545-06
--	--

* Attach additional sheets as necessary for any information below.

APPELLANT'S ATTORNEY EMAIL ADDRESS: wtambussi@brownconnery.com

PLAINTIFF DEFENDANT OTHER (SPECIFY)

NAME William M. Tambussi, Esq.		CLIENT Donald J. Trump			
STREET ADDRESS 360 Haddon Avenue	CITY Westmont	STATE NJ	ZIP 08108	TELEPHONE NUMBER 856-854-8900	

RESPONDENT'S ATTORNEY * EMAIL ADDRESS: mmelodia@reedsmith.com

NAME Mark S. Melodia, Esq.		CLIENT Timothy L. O'Brien, et al.			
STREET ADDRESS 136 Main Street, Suite 250	CITY Princeton	STATE NJ	ZIP 08540	TELEPHONE NUMBER 609-520-6015	

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

On July 15, 2009, the Law Division granted summary judgment in favor of defendants-respondents on the basis that plaintiff-appellant did not produce any evidence from which a jury might infer actual malice or reckless disregard for the truth on the part of defendants-respondents.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? YES NO

If so, has the order been properly certified as final pursuant to R. 4:42-27 (If not, leave to appeal must be sought. R. 2:2-4, 2:5-6) YES NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? YES NO (R. 2:5-1(f))

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Trump is a real estate mogul and celebrity whose success in the real estate world has led to a five to six billion-dollar empire of education, publishing, entertainment, and merchandising ventures and a world-renowned brand name that is synonymous with the pinnacle of success. Facts established in discovery proved conclusively that Trump is a billionaire many times over. In a tell-all book, defendants maliciously published false statements about Trump and his net worth by relying on three unnamed confidential sources. On July 15, 2009, the trial court, on summary judgment, held that defendants did not act with actual malice.

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only):

See attached.

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? July 15, 2009 YES NO
2. Did the trial judge issue written findings or an opinion? If so, on what date? _____ YES NO
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? YES NO

Caution: Before you indicate that there were neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: _____

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal? YES NO
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? YES NO

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? YES NO

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:

Trump v. O'Brien, et al.

Trump v. O'Brien, et al.

Appellate Division Docket Number:

AM-44-06T3

A-3905-06T2

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. YES NO

Explain your answer:

A conference may aid in the disposition or handling of the appeal.

Donald J. Trump

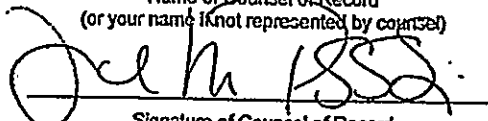
Name of Appellant or Respondent

8-12-09

Date

William M. Tambussi

Name of Counsel of Record
(or your name if not represented by counsel)



Signature of Counsel of Record
(or your signature if not represented by counsel)

Donald J. Trump v. Timothy L. O'Brien, et al
Trial Court Docket No. CAM- L-545-06

Attachment to Civil Case Information Statement

1. Despite proof that defendant Timothy L. O'Brien knowingly published falsities stating that plaintiff Donald Trump had a net worth of \$150 million to \$250 million when the facts adduced in discovery established that defendant Timothy L. O'Brien knew or should have known that Donald Trump had a net worth of multi-billion dollars, the trial court erred in granting summary judgment to defendant Timothy L. O'Brien on the issue of actual malice.
2. Despite proof that defendant Timothy L. O'Brien published and marketed the book, TrumpNation: The Art of Being the Donald, with reckless disregard for the truth by (a) purposefully ignoring information made available to him about Donald Trump's net worth; (b) failing to investigate Donald Trump's net worth; (c) failing to supervise and direct research as to Donald Trump's net worth; (d) printing the book, TrumpNation: The Art of Being the Donald, after being alerted to the falsities therein; (e) demonstrating a clear motive of hate, ill will and spite toward Donald Trump in the reporting and marketing of the book, Trump Nation: The Art of Being the Donald; and (f) relying on unnamed confidential sources (which plaintiff contends do not actually exist) of dubious and questionable credibility, the trial court erred in granting summary judgment to defendant Timothy L. O'Brien on the issue of actual malice.
3. The trial court erred in granting summary judgment to defendant Timothy L. O'Brien on the issue of actual malice disregarding the established law that, because of its fact specific nature, malice is an issue that does not readily lend itself to summary disposition.
4. Having asserted the Newsperson's Privilege to shield from discovery the alleged unnamed confidential sources, the trial court erred in permitting defendant Timothy L. O'Brien to rely upon redacted notes of alleged interviews of the unnamed confidential sources to negate actual malice.
5. The trial court erred in granting summary judgment to defendants Time Warner Book Group, Inc. and Warner Books, Inc. on the issue of actual malice given the proof of the right and obligation to control the details of the book TrumpNation: The Art of Being the Donald.

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Attorneys for Defendants

DONALD J. TRUMP,
Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

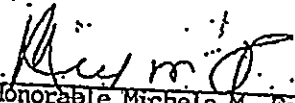
ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT ON ACTUAL MALICE

THIS MATTER having been opened to the Court by Reed Smith LLP and Debevoise & Plimpton LLP, counsel for defendants Timothy L. O'Brien, Time Warner Book Group Inc. and Warner Books Inc. (Mark S. Melodia, Esq. of Reed Smith LLP, and Andrew J. Ceresney, Esq. and Andrew M. Levine, Esq. of Debevoise & Plimpton LLP appearing on behalf of defendants); on notice to Brown & Connery, LLP and Kasowitz, Benson, Torres & Friedman LLP, counsel for Plaintiff Donald J. Trump (William M. Tambussi, Esq. and William F. Cook, Esq. of Brown & Connery, LLP, and Mark P. Ressler, Esq. of Kasowitz, Benson, Torres & Friedman LLP appearing on behalf of Plaintiff), on a Motion for Summary Judgment on Actual Malice in accordance with R. 4:46; and the Court having reviewed the moving and responding papers and the arguments of counsel; and it appearing to the Court that there are no genuine issues of

material fact and that defendants are entitled to judgment as a matter of law; and for other good cause shown; and for the reasons set forth in the Court's oral Opinion read into the record on July 15, 2009;

IT IS on this 15th day of ^{July} April 2009, ORDERED

1. Defendants' Motion for Summary Judgment on Actual Malice is GRANTED.
2. Plaintiff's Complaint is hereby DISMISSED WITH PREJUDICE.
3. Counsel for defendants shall serve a copy of this Order on all parties within 7 days of its receipt hereof.

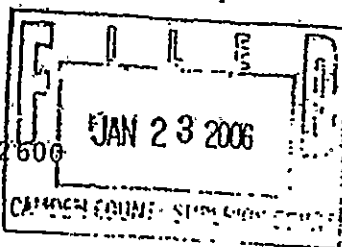

Honorable Michele M. Fox, J.S.C.

Opposed
 Unopposed

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L 545 064

Attorneys for Plaintiff Donald J. Trump

-----X
DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME
WARNER BOOK GROUP INC. and
WARNER BOOKS INC.,

Defendants.
-----X

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAMDEN COUNTY
Case No.:

COMPLAINT AND JURY DEMAND

Plaintiff Donald J. Trump ("Trump"), by his undersigned
counsel, Kasowitz, Benson, Torres & Friedman LLP, for his
complaint against Timothy L. O'Brien ("O'Brien") and Time Warner

Book Group Inc. and Warner Books Inc. (together, "Warner Books" or "Warner"), alleges:

Preliminary Statement

1. This action arises from a malicious scheme by O'Brien, a *New York Times* reporter, and Warner Books, to defame Donald Trump, a world-famous businessman, real estate developer and public personality. In furtherance of that scheme, O'Brien and Warner have knowingly made egregiously false and reprehensible statements about Trump, his family, his personal life and his business dealings, including statements grossly misrepresenting Trump's net worth, business acumen and success. Those defamatory statements have been made in a book, in a major article in the *New York Times* containing excerpts from that book, and in interviews about the book, both on camera and off, in which O'Brien derided Trump as, among other things, "the walking embodiment of financial pornography." The obvious purpose of that malicious scheme and those vile statements is to embarrass Trump, to damage him in his business and professional dealings and to create publicity in order to increase sales of O'Brien's newly released book, *TrumpNation: The Art of Being The Donald*, published by Warner in October 2005.

2. In his book, O'Brien grossly misrepresents Trump's net worth, stating -- based on three purported anonymous sources

who, O'Brien stated, had "direct knowledge" of Trump's finances -- that Trump "was not remotely close to being a billionaire," and that his "net worth was somewhere between \$150 million and \$250 million." In publishing those false statements, O'Brien and Warner deliberately chose to ignore, among other things, voluminous and comprehensive financial information made available to them prior to the publication of the book, which confirmed conclusively that Trump's net worth was many billions of dollars. Indeed, *Forbes Magazine* has rigorously analyzed the very same books and records and other financial data that O'Brien and Warner chose to ignore, and concluded that Trump's net worth is at least \$2.7 billion, and that such a valuation is "conservative."

3. O'Brien and Warner have deliberately ignored and misrepresented the fact that -- in addition to Trump's vast real estate holdings, which include extraordinarily valuable residential, commercial, casino and golf course properties -- he also holds interests in, and earns revenues from, an array of enormously successful business ventures in the entertainment, publishing, apparel, cosmetic, consumer and educational fields, among others. His Emmy-nominated television show, *The Apprentice*, is one of the most popular programs on television; he is a best-selling author; and he is one of the dominant real estate developers of his era. He also maintains large amounts

of cash and personal investments. And, on top of all that, the value of Trump's brand name alone is huge, amounting in itself to hundreds of millions, if not billions, of dollars of value.

4. O'Brien's and Warner's defamatory statements about Trump's net worth are intended to damage Trump in his reputation and business. Trump's success in his real estate ventures, on *The Apprentice* and in his other businesses depends on the accurate perception by the financial community and public that Trump is a billionaire -- a fact that has helped make the Trump brand name synonymous with extraordinary business acumen, a luxury lifestyle, and uniquely enormous success. Defendants' defamatory campaign, including their knowingly false statements dramatically understating his net worth, is clearly intended to damage Trump's business, brand and reputation by, among other things, undermining the perception of Trump as a businessman of extraordinary means and ability (which he is), deterring those in the business community from dealing with him, and influencing the consuming public to avoid his goods and services.

5. Defendants' malicious intent is apparent not only from their knowingly false and defamatory statements, but also from their aggressive efforts to disseminate those slanders as widely as possible. O'Brien arranged for among the most defamatory excerpts from his book to be published on the front

page of the *New York Times* Sunday Business Section; appeared on television business programs where he stated that Trump lies about his assets ("He adds zeros here and there"); and attended a book signing event orchestrated by Warner where he referred to Trump as a "financial pornograph[er]," among other things.

6. The defamation here is particularly egregious because even though O'Brien knew that the statements in his book about Trump's net worth were false -- and subsequently admitted on at least two occasions that those statements were erroneous and that Trump was worth considerably more than \$150 million to \$250 million -- O'Brien nonetheless refused to publicly retract or correct those statements.

7. Likewise, Warner's conduct in publishing, promoting and advertising the book is reprehensible, inasmuch as, among other things, Warner also knew that O'Brien's statements about Trump's net worth were false and knew or should have known that O'Brien was an unreliable and irresponsible reporter who had a history of using his position to pursue malicious personal vendettas against the subjects of his reporting, just as he has done against Trump.

8. Trump undertook significant efforts prior to the publication of the book to make available to O'Brien and Warner voluminous information demonstrating his true net worth --

information that led *Forbes*, a premier national weekly business magazine, to conclude that Trump is worth \$2.7 billion, "conservatively." O'Brien and Warner chose to ignore that data and, instead, purported to rely on supposed anonymous sources to publish a book filled with scandalous and outrageous statements which they knew were false.

9. As a result of such malicious and defamatory conduct, Trump has sustained injury to his reputation and to his business, and O'Brien and Warner are liable to Trump for compensatory and punitive damages in amounts to be proven at trial, but in no event less than \$2.5 billion.

PARTIES AND VENUE

10. Plaintiff Trump is a citizen of the State of New York and resides in New York City.

11. Defendant O'Brien is a citizen of the State of New Jersey and resides in Verona, New Jersey.

12. Defendant Time Warner Book Group, Inc. is a New York corporation, with its principal place of business in New York, New York.

13. Defendant Warner Books Inc. is a New York corporation, with its principal place of business in New York, New York.

14. Venue is proper in this Court pursuant to R. 4:3-2, insofar as defendants have caused the distribution and retail sale of *TrumpNation* in numerous locations throughout Camden County including, but not limited to the following retail book stores and libraries:

- (a) Borders Express of Cherry Hill;
- (b) Borders Express of Echelon;
- (c) Camden County Public Library System, Haddon Township branch;
- (d) Camden County Public Library System, Gloucester Township branch;
- (e) Camden County Public Library System, Bellmawr branch; and
- (f) Cherry Hill Public Library.

FACTS

A. *TrumpNation* Contains False and Defamatory Statements About Trump

15. *TrumpNation* was published in October 2005. Defendants have caused numerous copies of the book to be distributed throughout the United States, including New Jersey and Camden County. Defendants have also disseminated advertisements throughout the United States, including New Jersey and Camden County, falsely stating that the book is "completely true."

16. Throughout *TrumpNation's* 243 pages, O'Brien maliciously defames Trump, his family and Trump's business dealings. The thrust of the book is that Trump is an unskilled and dissembling businessman, whose wealth is a very small fraction of what Trump says it is.

17. The book falsely states (at page 154), that Trump's "net worth was somewhere between \$150 million and \$250 million" and that Trump was "not remotely close to being a billionaire" -- an assertion O'Brien states is supported by three unidentified people "with direct knowledge of [Trump's] finances." Yet O'Brien offers no facts to support those false and defamatory statements, nor does he offer any facts concerning any supposed conversations he had with any of the unidentified sources (assuming they exist). -- when or where those conversations took place, or what specifically was said. Indeed, whereas elsewhere throughout the book statements based on anonymous sources are footnoted to indicate the dates of the supposed interviews in which the statements supposedly were made, defendants furnish no such citations for any interviews with the supposed "three people with direct knowledge of [Trump's] finances."

18. O'Brien and Warner knew or recklessly disregarded that the above statements were false and that they had no

accurate or reliable information to support those statements, and they knowingly and willfully failed to take any action -- including reviewing books and records, and interviewing reliable sources -- to verify the truth of those statements. Instead, O'Brien and Warner wrote and published the statements with malicious and intentional disregard for the truth.

B. O'Brien Disregarded Comprehensive Financial Information That Proved the Falsity of the Defamatory Statements

19. Prior to publication of the book, Trump offered to substantiate his net worth to O'Brien, who had a history of maligning Trump in various *New York Times* articles over the years, as, among other things, "a figure out of a fairy-tale world of his own creation." Accordingly, aware of the harm to his reputation and business that would be caused by a book misrepresenting his net worth, Trump directed that O'Brien be given complete access to comprehensive information, including books, records, and other materials, detailing his holdings, assets and ownership thereof. Trump's employees spent substantial time compiling and assembling materials substantiating Trump's assets and proof of ownership for O'Brien's review.

20. On or about April 21, 2005, O'Brien visited Trump's New York City offices, where those books, records, and other

materials were made available to him. In addition, Trump's chief financial officer, Allen Weisselberg, and an in-house lawyer, Michelle L. Scarbrough, were present to answer any questions concerning those materials and Trump's net worth.

21. O'Brien spent approximately three hours at Trump's offices, but he scarcely glanced at any of the thousands of pages of documents made available to him. Instead, most of the time, O'Brien inappropriately tried to pressure Ms. Scarbrough to go on a date with him. Despite suggestions that his conduct was inappropriate and reminders that the purpose of the meeting was to assist O'Brien in obtaining facts for his book, O'Brien persisted in his flirting, detailing for Ms. Scarbrough his divorce, dating life and reportorial escapades, while attempting to elicit information about her own personal life.

22. O'Brien continued to harass Ms. Scarbrough after the meeting, repeatedly telephoning her and -- despite Ms. Scarbrough's protestations -- attempting to pry into her personal life. During those conversations, O'Brien admitted that Trump's ownership of Trump Place, a premier residential enclave on Manhattan's Upper West Side, was by itself worth more than \$500 million. Subsequently, on October 21, 2005, Ms. Scarbrough sent a letter to the *New York Times* business editor,

Larry Ingrassia, complaining about O'Brien's unprofessional conduct.

C. Contrary to Defendants' False and Defamatory Statements, Trump's Net Worth Is in The Billions OF Dollars, as Forbes Has Repeatedly Reported

23. In fact, Trump is worth billions of dollars. In addition to substantial cash, personal investments and various other tangible assets, he maintains substantial interests in numerous extraordinary properties in New York and around the country. His entertainment businesses include one of the most popular programs on television, *The Apprentice*; *Trumped: The Radio Program*; and the world-famous Miss Universe and Miss USA Pageants. He is also one of the best-selling authors of business books in the world. In addition, of course, is the Trump brand name, one of the most valuable in the world.

24. Since it first appeared in 1982, the annual "Forbes 400" edition has become the leading national tabulator of personal wealth. In preparing that edition over the years, Forbes has perfected its valuation methodologies to compute the net worths of the wealthiest Americans. For all but six years during that 23-year period, Trump has been on the Forbes list. Indeed, Forbes has reported that since 1997, Trump's net worth has not only steadily increased, but has substantially exceeded

\$1 billion. In the 2005 edition, *Forbes* valued Trump's net worth at \$2.7 billion.

25. After the publication of *TrumpNation* and the excerpt from the book in the *New York Times*, Trump made available to *Forbes* books, records, and other materials detailing his holdings and ownership thereof which were made available to O'Brien but which O'Brien had ignored. Unlike O'Brien, *Forbes* reviewed those materials carefully and concluded that they not only confirmed the \$2.7 billion valuation of Trump's net worth, but that the \$2.7 billion figure was conservative.

26. In reaching that conclusion, *Forbes* offered several striking illustrations of why O'Brien's statement -- as repeated in the *Times* article -- was demonstrably false:

One of several factoids offered in support of the lowball number is the suggestion that Trump's office tower at 40 Wall Street is \$55 million in the hole. The building's mortgage is \$145 million, notes the *Times*, and New York City's tax assessor values that property at \$90 million. But any property broker in New York would be fired for equating tax assessments with market value. We think the building is worth \$310 million, based on the \$260 per square foot that a buyer paid for a similar office tower at 195 Broadway earlier this year. Then there is the *Times*' claim that Trump "did not retain any ownership" of a residential development on Manhattan's West Side because "the owners merely promised to give him about 30% of the profits." Having a claim on profits is ownership. The West Side Project's recent

28. Indeed, prior to the publication of the book, Trump had invested approximately \$380 million in cash -- far more than the \$150 million to \$250 million that O'Brien absurdly claims is Trump's entire net worth -- in various real estate ventures, including, but not limited to: Trump International Hotel and Tower/Chicago; Trump International Hotel and Tower/Las Vegas; Atlantic City casinos; Trump National Golf Club and Residences/Los Angeles; Trump World Tower; Trump Park Avenue; The Mansion in Palm Beach; Trump International Golf Club in Palm Beach; Trump National Golf Club in Bedminster, New Jersey; and Trump National Golf Club and residences in Westchester, New York. Even after these investments, Trump still maintains, as of the date of the book's publication, approximately \$117 million in cash, in addition to many other assets, worth billions of dollars.

D. Defendants Have Continued to Widely Disseminate Their Knowingly False and Defamatory Statements About Trump's Net Worth

29. To promote *TrumpNation*, defendants had the *New York Times* publish a lengthy excerpt of it on the front page of the Sunday Business Section on October 23, 2005, titled "What's He Really Worth?". The portion of the book defendants chose to excerpt contained, among other things, the false and defamatory statements that Trump was not a billionaire, as he claimed, but,

sale valued Trump's 30% interest at more than \$500 million.

Forbes noted further that Trump's stake in his public casino company is worth "\$175 million all by itself".

27.. Similarly, on November 7, 2005, during a television appearance on the Fox News Channel business program, "Your World with Neil Cavuto," Peter Newcomb, a *Forbes* reporter, described his review of the materials Trump had made available:

. . . [W]e walked into the conference room and there before us were lawyers, accountants, his CFO, his controller, and [Trump's daughter] Ivanka and [Trump's son] Don Junior. He opened up his books; there were probably about 30 books out there, we looked at the contracts, we looked at leases and deeds. In fact, Donald does own quite a bit.

When asked about *Forbes'* \$2.7 billion valuation of Trump's net worth, Newcomb said it was "conservative" and that O'Brien's \$150-\$250 million figure was patently wrong:

[Trump's] stake in [the] casino company alone is worth practically that, and he's got 40 Wall Street, he's got stakes in all sorts of buildings. You know, one thing that's very hard to value, is kind of an intangible, is the Trump brand name, and if you look at the premium that Martha Stewart's getting for her company, you know, multiple over book value, you've got to figure Trump's got to be worth half a billion just the brand.

instead, was worth only \$150 million to \$250 million, based on three anonymous sources with "direct knowledge" of Trump's finances.

30. The false statements in *TrumpNation* concerning Trump's net worth are defamatory *per se* because they injure Trump in pursuing his chosen occupation, namely, operating the real estate and other business ventures in which he is engaged. Trump's businesses and projects in the real estate, gaming, entertainment, apparel, cosmetic, educational and consumer fields depend for their success on the recognition and appreciation by the public and the financial community that Trump is a skilled, successful and trustworthy businessman who has substantial financial resources totaling billions of dollars, vastly more than \$150 million to \$250 million as stated by O'Brien. By falsely stating that Trump is worth at least ten times less than his actual net worth, defendants maliciously and intentionally have undermined the public's association of Trump with the pinnacle of success in business and the luxury lifestyle, and the financial community's confidence in Trump's considerable financial resources and success. Defendants' false and defamatory statements concerning Trump's net worth have thus inflicted severe injury to Trump's reputation and his ability to successfully carry out his business.

E. O'Brien Has Repeated Slanderous Statements About Trump

31. In promoting *TrumpNation*, O'Brien and Warner Books have engaged in particular efforts to highlight and disseminate the false and defamatory statements concerning Trump's net worth. On October 31, 2005, O'Brien repeated his false and defamatory statements concerning Trump's net worth on CNBC's *Squawkbox* business program. When the program's hosts questioned O'Brien's assertion that Trump is worth only \$150 million to \$250 million -- given Trump's extensive real estate holdings and other businesses -- O'Brien falsely slandered Trump's honesty and integrity in his business dealings, stating, among other things, that Trump "adds zeros here and there."

32. On November 12, 2005, O'Brien appeared at a *TrumpNation* promotional event at Coliseum Books, one of the leading independent bookstores in New York City. Before an audience, O'Brien slandered Trump in a lengthy and malicious verbal attack, including false statements about Trump's relationship with his children. Among numerous false and defamatory statements O'Brien uttered were those concerning Trump's assets and net worth, which O'Brien once again stated were orders of magnitude lower than what they in fact are. O'Brien stated, among other things, that Trump "doesn't have much money to invest"; that Trump "is a cartoon figure . . .

he's Baby Huey with P.T. Barnum mixed in"; "He is not a good businessman . . . as a businesssman he is a train wreck"; "[Trump's] net worth is definitely inflated. *Forbes Magazine* puts his worth at \$2.7 billion, but I am almost certain that is a complete work of fiction"; "Donald represents success. Big shiny buildings, shiny wives, airplanes. And to someone outside of NY he represents the apex of business. In reality he is the walking embodiment of financial pornography. He is a comical unrealistic version of what business is about."

F. O'Brien Has a History of Anti-Trump Bias and Unprofessional Practices

33. O'Brien's malice is apparent not only from his knowledge that his statements concerning Trump were false when he made them but also from his history of anti-Trump reporting.

34. O'Brien has written about Trump repeatedly, and each of his articles reflects a strong bias against Trump. (For example, "The Midas Touch, With Spin on It," *New York Times*, September 8, 2004 (calling Trump "a figure out of a fairy-tale world of his own creation").)

35. In a previous *New York Times* article focusing on Trump's net worth ("Can Trump Afford Casino Stake?", August 12, 2004), O'Brien falsely stated, among other things, that "a cursory examination of Trump's finances suggests that his claims

of being a multibillionaire may be greatly exaggerated," and that Trump needed to borrow \$55 million in order to make a casino investment.

36. In pursuing stories about Trump, O'Brien has also resorted to unprofessional and unethical tactics, including physical and verbal harassment, to intimidate sources into providing information. Indeed, in August 2004, Trump received complaints from business associates, employees and former employees that O'Brien was using harassment and threats to try to pressure them into making false, defamatory and misleading statements about Trump for a series of anti-Trump articles.

37. Upon information and belief, similar accusations have been made against O'Brien by other targets of his grossly unprofessional behavior: various persons have filed complaints with the New York City Police Department after being stalked and threatened by O'Brien in connection with alleged stories he was writing; O'Brien has threatened sources by telling them he can "settle scores" with enemies by writing negative articles about them; O'Brien has been accused of attempting to use his position as a reporter to obtain dates, or other entanglements, with women; O'Brien was terminated by the *Wall Street Journal* for violation of company policy; O'Brien has been accused by sources and subjects alike of a volatile, uncontrollable temper he

unleashes without provocation. Further, it has been reported that O'Brien has boasted that "access to the [New York] Times pages to settle personal scores was a fringe benefit available to New York Times reporters."

38. O'Brien and Warner have engaged in a malicious scheme to defame and attack one of this country's leading businessmen with egregiously false statements about his business dealings and net worth, statements that they knew were false and would inflict severe damage on his business and reputation. O'Brien's conduct is egregious and malicious because, among other things, he refused to review the books and records showing Trump's ownership of assets worth billions of dollars and, instead -- based on a vicious and longstanding personal animus and the desire to promote sales of his defamatory book -- concocted false numbers concerning Trump's net worth supposedly attributable to anonymous, unverified sources. Warner's conduct is equally -- if not more -- egregious and malicious, because not only did it know that the statements about Trump's net worth were demonstrably false, but it knew of O'Brien's longstanding personal animus toward Trump and O'Brien's Jayson Blair-like proclivity for substituting fiction for fact in his reporting. Both O'Brien and Warner are liable in compensatory and punitive

damages for their roles in publishing these egregious falsehoods.

CLAIMS

First Cause of Action -- Libel and Libel Per Se

(Against O'Brien and Warner Books)

39. Trump repeats and realleges the allegations of paragraphs 1 through 38.

40. Defendants' false and defamatory statements published in *TrumpNation* and excerpted in the *New York Times* concerning Trump and his net worth, as described above, constitute libel and/or libel *per se*.

41. Defendants' false and defamatory statements published in *TrumpNation* and excerpted in the *New York Times*, as described above, were made and published with actual malice, as such statements were made by defendants with knowledge of their falsity or with reckless disregard for their falsity.

42. As a proximate result of defendants' publication of the false and defamatory statements in *TrumpNation* and the *New York Times* described above, Trump has suffered injury to his personal and professional reputation in an amount to be determined at trial, but in no event less than \$2.5 billion.

43. Because defendants' conduct in publishing the false and defamatory statements in *TrumpNation* and the *New York Times*, as described above, was undertaken knowingly, willfully, maliciously and in conscious disregard of Trump's rights, Trump is entitled to an award of punitive damages in an amount to be determined at trial, but in no event less than \$2.5 billion.

Second Cause of Action -- Slander and Slander Per Se
(Against O'Brien)

44. Trump repeats and realleges the allegations of paragraphs 1 through 43.

45. O'Brien's false and defamatory statements on CNBC's *Squawkbox* television program on October 31, 2005, and at Coliseum Books on December 12, 2005, as described above, constitute slander and/or slander per se.

46. O'Brien's utterance of the false and defamatory statements described above was made with actual malice as such statements were made by O'Brien with knowledge of their falsity or with reckless disregard for their falsity.

47. As a proximate result of O'Brien's utterance of the false and defamatory statements described above, Trump has suffered injury to his personal and professional reputation in

an amount to be determined at trial, but in no event less than \$2.5 billion.

48. As a proximate result of O'Brien's utterance of the false and defamatory statements described above, Trump has suffered pecuniary loss in an amount to be determined at trial.

49. Because O'Brien's conduct in uttering the false and defamatory statements described above was undertaken knowingly, willfully, maliciously and in conscious disregard of Trump's rights, Trump is entitled to an award of punitive damages in an amount to be determined at trial, but in no event less than \$2.5 billion.

PRAYER FOR RELIEF

WHEREFORE, Trump respectfully requests that the Court enter judgment in his favor awarding Trump:

(a) On the First Cause of Action, against O'Brien and Warner Books, jointly and severally, compensatory damages in an amount to be determined at trial;

(b) On the Second Cause of Action, against O'Brien, compensatory damages in an amount to be determined at trial;

(c) On Counts One and Two, against O'Brien and Warner Books, punitive damages in an amount to be determined at trial, of at least \$2.5 billion;

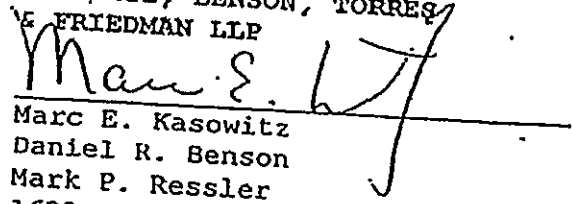
(d) His court costs, expenses and reasonable attorneys' fees;

(e) Pre-judgment and post-judgment interest at the highest rate(s) provided by law; and

(f) Such other and further relief as the Court deems just and proper.

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By:



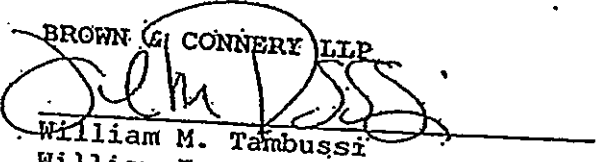
Marc E. Kasowitz
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Attorneys for Plaintiff
Donald J. Trump

Dated: January 19, 2006

BROWN & CONNERY LLP

By:



William M. Tambussi
William F. Cook
360 Haddon Avenue
Westmont, New Jersey 08108
(856) 854-8900

Local Counsel for Plaintiff
Donald J. Trump

Dated: January 19, 2006

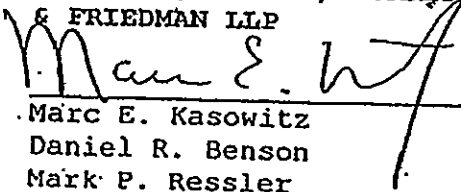
CERTIFICATION PURSUANT TO R. 4:5-1

I, Marc E. Kasowitz, Esquire, hereby certify as follows:

1. To the best of my knowledge, this matter is not the subject of any other action pending in any Court or of any pending arbitration proceeding.
2. To the best of my knowledge, no other action or arbitration proceeding is contemplated.
3. To the best of my knowledge, there are no other parties who should be joined in this litigation at this time.
4. The within Complaint will be served within the time prescribed by the Court Rules.
5. The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By:



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Daniel R. Benson
Mark P. Ressler
1633 Broadway
New York, New York 10019
(212) 506-1700

Attorneys for Plaintiff
Donald J. Trump

CERTIFICATION PURSUANT TO R. 4:5-1

I, William M. Tambussi, Esquire, hereby certifies as follows:

1. To the best of my knowledge, this matter is not the subject of any other action pending in any Court or of any pending arbitration proceeding.
2. To the best of my knowledge, no other action or arbitration proceeding is contemplated.
3. To the best of my knowledge, there are no other parties who should be joined in this litigation at this time.
4. I certify that the within Complaint will be served within the time prescribed by the Court Rules.
5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BROWN & CONNERY LLP

By: 

William M. Tambussi
William F. Cook
360 Haddon Avenue
Westmont, New Jersey 08108
(856) 854-8900

Local Counsel for Plaintiff
Donald J. Trump

Dated: January 20, 2006

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues.

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: 

Marc E. Kasowitz
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Attorneys for Plaintiff
Donald J. Trump

Dated: January 19, 2006

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Local Counsel for Plaintiff
Donald J. Trump

Dated: January 19, 2006

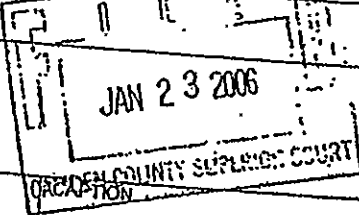


CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division - Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:6-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE:	CK	CG	CA
CHGCK NO.			
AMOUNT:			
OVERPAYMENT:			
BATCH NUMBER:			

ATTORNEY/PRO SE NAME William M Tambussi, Esq.	TELEPHONE NUMBER 856, 854-8900	COUNTY OF VENUE Camden
FIRM NAME (if applicable) Brown & Connery LLP		DOCKET NUMBER (When available) N/A
OFFICE ADDRESS 360 Haddon Avenue Westmont, NJ 08108		DOCUMENT TYPE Complaint and Jury Demand
NAME OF PARTY (e.g., John Doe, Plaintiff) Donald J. Trump, Plaintiff	JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Donald J. Trump v. Timothy L. O'Brien, Time Warner Book Group, Inc., and Warner Books, Inc.	

L 545 06

CASE TYPE NUMBER (See reverse side for listing) 608	IS THIS A PROFESSIONAL MALPRACTICE CASE? IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

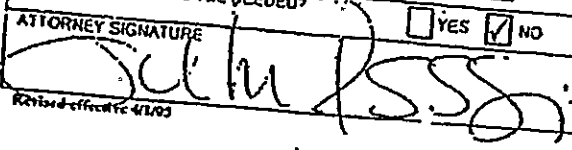
A. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? YES NO

IF YES, IS THAT RELATIONSHIP?

<input type="checkbox"/> EMPLOYER-EMPLOYEE	<input type="checkbox"/> FRIEND/NEIGHBOR	<input type="checkbox"/> OTHER (explain) _____
<input type="checkbox"/> FAMILIAL	<input type="checkbox"/> BUSINESS	

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY?
 YES NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

<input checked="" type="checkbox"/> DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION.
<input type="checkbox"/> WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES FOR WHAT LANGUAGE
ATTORNEY SIGNATURE 	

Revised effective 4/1/03

SIDE 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Track II — 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 602 ASSAULT AND BATTERY
- 603 AUTO NEGLIGENCE — PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE — PROPERTY DAMAGE
- 099 TORT — OTHER

Track III — 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV — Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Mass Tort (Track IV)

- 240 REDUX/PHEN-FEN (formerly "DIET DRUG")
- 248 CIBA GEIGY
- 264 PPA
- 601 ASBESTOS
- 619 VIOXX

999 OTHER (Briefly describe nature of action) _____

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

Verbal Threshold

Putative Class Action

Title 59

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DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

CIVIL ACTION

ANSWER OF DEFENDANTS
TIMOTHY L. O'BRIEN, TIME
WARNER BOOK GROUP INC.,
AND WARNER BOOKS INC. TO
PLAINTIFF'S COMPLAINT

Defendants Timothy L. O'Brien ("O'Brien"), Time Warner Book Group Inc., and Warner Books Inc. (collectively, "Warner Books"),¹ by their undersigned counsel, answer the Complaint of plaintiff Donald J. Trump, filed on January 23, 2006, as follows:

¹ On March 31, 2006, Time Warner Book Group, Inc. and its subsidiaries were sold to Hachette Livre, and are now known as Hachette Book Group USA.

1. Deny the allegations in paragraph 1 of the Complaint, except admit that Warner Books in October 2005 published a book written by O'Brien titled *TrumpNation: The Art of Being The Donald* (the "Book"), an article was published in *The New York Times* containing excerpts of the Book, and O'Brien participated in interviews about the Book.

2. Deny the allegations in paragraph 2 of the Complaint and respectfully refer to the Book and to the *Forbes* magazine article referred to in paragraph 2 for the complete statements contained therein.

3. Deny the allegations in the first sentence of paragraph 3 of the Complaint. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the second, third and fourth sentences of paragraph 3, except deny the allegations in those sentences to the extent they could be construed as alleging that defendants published a false or defamatory statement concerning Trump or his net worth or that defendants acted with actual malice or fault of any kind.

4. Deny the allegations in paragraph 4 of the Complaint.

5. Deny the allegations in paragraph 5 of the Complaint, except admit that *The New York Times* published an excerpt of the Book in an article on the front page of the Sunday Business section, and that O'Brien appeared on business-oriented television programs and attended a book signing event.

6. Deny the allegations in paragraph 6 of the Complaint.

7. Deny the allegations in paragraph 7 of the Complaint.
8. Deny the allegations in paragraph 8 of the Complaint and respectfully refer to the *Forbes* magazine article referred to in paragraph 8 for the complete statements contained therein.
9. State that the allegations in paragraph 9 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 9 could be construed to contain allegations for which a response is required, defendants deny the allegations in paragraph 9.
10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint.
11. Admit the allegations in paragraph 11 of the Complaint.
12. Deny the allegations in paragraph 12 of the Complaint, and state that on March 31, 2006, Time Warner Book Group, Inc. changed its name to Hachette Book Group USA, Inc. Defendants further state that Hachette Book Group USA, Inc. is a Delaware corporation with its principal place of business in New York, New York.
13. Admit the allegations in paragraph 13 of the Complaint.
14. State that the allegations in paragraph 14 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 14 could be construed to contain allegations for which a response is required, defendants deny

knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14, except to state that defendants are aware that a small number of copies of the Book were distributed in Camden County.

15. Admit the allegation in the first sentence of paragraph 15 of the Complaint. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 15, except admit that the Book was distributed in the United States and New Jersey and state that defendants are aware that a small number of copies of the Book were distributed in Camden County. Deny the allegations in the third sentence of paragraph 15, except admit that advertisements for the Book have been disseminated in the United States.

16. Deny the allegations in paragraph 16 of the Complaint.

17. Deny the allegations in paragraph 17 of the Complaint and respectfully refer to the Book for the complete statements contained therein.

18. Deny the allegations in paragraph 18 of the Complaint.

19. Deny the allegations in the first sentence of paragraph 19 of the Complaint. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of paragraph 19, except deny the allegations in those sentences to the extent they could be construed as alleging that defendants published a false or defamatory statement concerning Trump or his net worth or that defendants acted with actual malice or fault of any kind.

20. Deny the allegations in paragraph 20 of the Complaint, except admit that on or about April 21, 2005, O'Brien visited Trump's New York City offices and reviewed materials, and that Trump's chief financial officer, Allen Weisselberg, and a Trump in-house lawyer, Michelle L. Scarbrough, were in the room with O'Brien at times.
21. Deny the allegations in paragraph 21 of the Complaint, except admit that O'Brien visited Trump's offices on or about April 21, 2005.
22. Deny the allegations in paragraph 22 of the Complaint, except admit that on or about October 21, 2005, *New York Times* business editor Larry Ingrassia received a letter purporting to be from Scarbrough.
23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint.
24. Deny the allegations in paragraph 24 of the Complaint, and respectfully refer to the editions of *Forbes* magazine referred to in paragraph 24 for the complete statements contained therein.
25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint, except that defendants deny that O'Brien ignored or did not carefully review the materials made available to him by Trump on or about April 21, 2005, and respectfully refer to the *Forbes* magazine article referred to in paragraph 25 for the complete statements contained therein.

26. Deny the allegations in paragraph 26 of the Complaint and respectfully refer to the *Forbes* magazine article referred to in paragraph 26 for the complete statements contained therein.

27. Deny the allegations in paragraph 27 of the Complaint, and respectfully refer to the Fox News Channel program, "Your World with Neil Cavuto," referred to in paragraph 27 for the complete statements contained therein.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint, except deny the allegations in paragraph 28 to the extent they could be construed as alleging that defendants published a false or defamatory statement concerning Trump or his net worth, or acted with actual malice or fault of any kind.

29. Deny the allegations in paragraph 29 of the Complaint, except admit that *The New York Times* published an excerpt of the Book on the front page of the Sunday Business section on October 23, 2005, titled "What's He Really Worth?" and respectfully refer to the *New York Times* article and to the Book for the complete statements contained therein.

30. State that the allegations in paragraph 30 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 30 could be construed to contain allegations for which a response is required, defendants deny the allegations in paragraph 30 of the Complaint.

31. Deny the allegations in paragraph 31 of the Complaint except admit that on October 31, 2005, O'Brien appeared on the CNBC program *Squawkbox* and respectfully refer to that program for the complete statements contained therein.
32. Deny the allegations in paragraph 32 of the Complaint, except admit that O'Brien appeared at an event at Coliseum Books in New York City on November 12, 2005.
33. Deny the allegations in paragraph 33 of the Complaint.
34. Deny the allegations in paragraph 34 of the Complaint, except admit that O'Brien has written articles about Trump and respectfully refer to the *New York Times* article referred to in paragraph 34 for the complete statements contained therein.
35. Deny the allegations in paragraph 35 of the Complaint, and respectfully refer to the *New York Times* article "Trump Must Ante Up \$55 Million To Hold On to 25% of His Casino," published on August 11, 2004, for the complete statements contained therein. Paragraph 35 incorrectly refers to a version of the *New York Times* article that appeared the following day in the *International Herald Tribune*.
36. Deny the allegations in the first sentence of paragraph 36 of the Complaint. Defendants deny knowledge or information sufficient to form a belief as to whether business associates, employees and former employees of Trump made the complaints to Trump alleged in the second sentence of paragraph 36, and state that if such complaints were made, they are false. Defendants deny that O'Brien engaged in the

conduct alleged in the second sentence of paragraph 36 to have been the subject of the alleged complaints.

37. Deny that O'Brien engaged in the conduct, or made the statements, that are alleged in paragraph 37 of the Complaint to have been the subject of accusations. Defendants further deny that O'Brien was terminated by the *Wall Street Journal* for violation of company policy or alleged misconduct of any kind, and state that O'Brien left the *Wall Street Journal* to accept a job offer from *The New York Times*.

38. Deny the allegations in paragraph 38 of the Complaint.

ANSWERS TO CLAIMS

First Cause of Action – Libel and Libel Per Se

(Against O'Brien and Warner Books)

39. Reassert and incorporate by reference responses set forth in paragraphs 1 through 38 as if fully set forth herein.

40. State that the allegations in paragraph 40 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 40 could be construed to contain allegations for which a response is required, defendants deny the allegations.

41. State that the allegations in paragraph 41 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 41 could be

construed to contain allegations for which a response is required, defendants deny the allegations.

42. State that the allegations in paragraph 42 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 42 could be construed to contain allegations for which a response is required, defendants deny the allegations.

43. State that the allegations in paragraph 43 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 43 could be construed to contain allegations for which a response is required, defendants deny the allegations.

Second Cause of Action – Slander and Slander Per Se

(Against O'Brien)

44. Reassert and incorporate by reference responses set forth in paragraphs 1 through 43 as if fully set forth herein.

45. State that the allegations in paragraph 45 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 45 could be construed to contain allegations for which a response is required, defendants deny the allegations.

46. State that the allegations in paragraph 46 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 46 could be

construed to contain allegations for which a response is required, defendants deny the allegations.

47. State that the allegations in paragraph 47 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 47 could be construed to contain allegations for which a response is required, defendants deny the allegations.

48. State that the allegations in paragraph 48 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 48 could be construed to contain allegations for which a response is required, defendants deny the allegations.

49. State that the allegations in paragraph 49 of the Complaint are conclusions of law to which no response is required. To the extent that paragraph 49 could be construed to contain allegations for which a response is required, defendants deny the allegations.

ANSWER TO PRAYER FOR RELIEF

Defendants deny that plaintiff is entitled to the relief requested or to any relief as to any of the claims set forth in the Complaint.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Complaint fails to state a cause of action on which relief may be granted.

SECOND SEPARATE DEFENSE

At all times relevant hereto, defendants complied with all applicable laws and regulations.

THIRD SEPARATE DEFENSE

The challenged statements are not reasonably capable of defamatory meaning.

FOURTH SEPARATE DEFENSE

The challenged statements are not defamatory *per se*.

FIFTH SEPARATE DEFENSE

The challenged statements are not of and concerning plaintiff.

SIXTH SEPARATE DEFENSE

The challenged statements are substantially true.

SEVENTH SEPARATE DEFENSE

The challenged statements are protected by, and privileged under, the First and Fourteenth Amendments of the United States Constitution and Article I of the New Jersey Constitution.

EIGHTH SEPARATE DEFENSE

The challenged statements were published without actual malice or fault of any kind.

NINTH SEPARATE DEFENSE

The challenged statements are not actionable because they cannot reasonably be interpreted as stating actual facts and/or constitute opinion or hyperbole.

TENTH SEPARATE DEFENSE

The challenged statements constitute fair comment made in good faith and without actual malice on a matter of public interest or concern.

ELEVENTH SEPARATE DEFENSE

The challenged statements are protected by the fair report privilege.

TWELFTH SEPARATE DEFENSE

Plaintiff suffered no incremental harm to his reputation from the challenged statements.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's injuries and damages, if any, are *de minimis*, and plaintiff is not entitled to special damages.

FOURTEENTH SEPARATE DEFENSE

Any damages suffered by plaintiff as a result of the circumstances pled in the Complaint were the direct result of plaintiff's failure to take reasonable action to prevent damages, and by such failure, plaintiff failed to mitigate any damages in this action.

FIFTEENTH SEPARATE DEFENSE

Plaintiff is not entitled to recover punitive and/or treble damages, as such an award of punitive and/or treble damages would be arbitrary, unreasonable, excessive, not rationally related to legitimate government interests, and penal in nature, and as such, would be unconstitutional.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's injuries and damages, if any, were caused in whole or in part by plaintiff's own statements or actions and/or the statements or actions of other entities or parties over whom defendants had no control or right of control and for whose statements and actions defendants are not liable.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff is not entitled to recover pre-judgment interest in this action pursuant to any rule, statute, or other substantive law.

EIGHTEENTH SEPARATE DEFENSE

Plaintiff is not entitled to recover counsel fees in this action pursuant to any rule, statute, or other substantive law.

NINETEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitations.

TWENTIETH SEPARATE DEFENSE

Plaintiff's claims are barred by the doctrines of estoppel, laches, unclean hands, *in pari delicto*, entire controversy doctrine, and/or waiver.

TWENTY-FIRST SEPARATE DEFENSE

Defendants reserve the right to raise any and all affirmative defenses which may become apparent during the course of this action.

WHEREFORE, defendants request that this Court enter judgment in their favor and against plaintiff, dismissing the Complaint with prejudice and awarding defendants their costs, attorney's and expert's fees and expenses, and granting defendants such other and further relief as the Court deems proper.

Dated: August 28, 2006

REED SMITH LLP

By: 

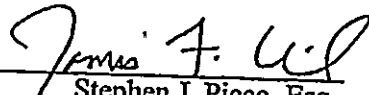
Steven J. Picco, Esq.
James F. Dial, Esq.

Mary Jo White, Esq.
Andrew J. Ceresney, Esq.
DEBEVOISE & PLIMPTON LLP

DESIGNATION OF TRIAL COUNSEL

Defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc., hereby designate Steven J. Picco, Esq. and James F. Dial, Esq. of Reed Smith LLP and Mary Jo White, Esq. and Andrew J. Ceresney, Esq. of Debevoise & Plimpton LLP as trial counsel in this matter.

REED SMITH LLP



Stephen J. Picco, Esq.
James F. Dial, Esq.


Mary Jo White, Esq.
Andrew J. Ceresney, Esq.
DEBEVOISE & PLIMPTON LLP

Dated: August 28, 2006

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify pursuant to R. 4:5-1 that to the best of my knowledge, information, and belief, this matter is not the subject of any other action pending in any Court or any pending arbitration proceeding. I further certify that I am unaware of any other party who should be joined in this action.

REED SMITH LLP


Steven J. Picco, Esq.
James F. Dial, Esq.

Mary Jo White, Esq.
Andrew J. Ceresney, Esq.
DEBEVOISE & PLIMPTON LLP

Dated: August 28, 2006

48(i)a

STATEMENT OF ITEMS SUBMITTED TO THE COURT ON THE DEFENDANTS'
SUMMARY JUDGMENT MOTION ON ACTUAL MALICE

On behalf of Defendants' Timothy L. O'Brien, Time Warner Book Group, Inc. and Warner Books, on March 20, 2009:

- Notice of Summary Judgment on Actual Malice;
- Memorandum of Law in Support of Motion for Summary Judgment on Actual Malice;
- Statement of Undisputed Material Facts in Support of Motion for Summary Judgment on Actual Malice;
- Certification of Mark S. Melodia, Esq.; and
- Exhibits to Certification of Mark S. Melodia, Esq., Volumes I and II

On behalf of Plaintiff Donald J. Trump on April 24, 2009

- Responses to Defendants' Statement of Material Facts and Plaintiff's Counterstatement of Material Facts;
- Memorandum of Law in Opposition to Defendants' Motions for Summary Judgment;
- Certification of William Tambussi, Esq.;
- Volumes I-IV of Exhibits to William Tambussi's Certification;
- Certification of Donald J. Trump;
- Certification of Donald J. Trump, Jr.;
- Certification of Ivanka Trump; and
- Certification of Rhona Graff-Riccio

On behalf of Defendants' Timothy L. O'Brien, Time Warner Book Group, Inc. and Warner Books, on May 7, 2009:

- Reply to Plaintiff's Responses to Defendants Statements of Material Facts Defendants' Responses to Plaintiff's Counterstatements of Material Facts;
- Reply Memorandum of Law in Further Support of Defendants' Motion for Summary Judgment on Actual Malice; and
- Supplemental Certification of Mark S. Melodia, Esq., with Exhibits

Defendants' Notice of
Motion for Summary Judgment
on Malice, filed 3/20/09

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Attorneys for Defendants

DONALD J. TRUMP,
Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

Docket No. CAM-L-545-06

Civil Action

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT ON
ACTUAL MALICE**

TO:

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Marc E. Kasowitz, Esq.
Mark P. Ressler, Esq.
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Kasowitz, Benson, Torres & Friedman LLP
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PLEASE TAKE NOTICE that on Friday, April 17, 2009, or as soon thereafter as
counsel may be heard, the undersigned counsel for defendants Timothy L. O'Brien, Time

Warner Book Group Inc., and Warner Books Inc. (collectively, the "defendants"), shall move before the Honorable Michele M. Fox, Camden County Hall of Justice, 101 South 5th Street, Camden, New Jersey, for an Order granting defendants' Motion for Summary Judgment on Actual Malice.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, defendants will rely upon the Memorandum of Law, Statement of Undisputed Facts, and Certification of Mark S. Melodia, Esq. submitted herewith.

PLEASE TAKE FURTHER NOTICE that in accordance with R. 1:6-2, a proposed form of Order granting defendants' Motion for Summary Judgment on Actual Malice is submitted herewith.

PLEASE TAKE FURTHER NOTICE that defendants waive oral argument and request a ruling on the papers unless opposition is timely filed and served, in which case oral argument is requested.

PLEASE TAKE FURTHER NOTICE that this matter is scheduled for trial on October 13, 2009.

REED SMITH LLP



Mark S. Melodia

DEBEVOISE & PLIMPTON LLP

/s/ Andrew J. Ceresney
Andrew J. Ceresney

Date: March 20, 2009

FILED UNDER SEAL

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT ON ACTUAL MALICE

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Of Counsel

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Pursuant to R. 4:46, defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc.¹ (collectively, the "defendants") hereby move for summary judgment on all counts of the complaint because there is a complete absence of evidence that any of the defendants published the allegedly defamatory statements with actual malice.

PRELIMINARY STATEMENT

The allegedly defamatory statements at issue in this litigation relate principally to O'Brien's reporting in a paragraph of TrumpNation: The Art of Being the Donald (the "Book" or "TrumpNation"), and orally during the promotion of the Book, that three confidential sources with direct knowledge of plaintiff Donald J. Trump's finances, who had worked closely with him for years, estimated that Trump's net worth was between \$150 million and \$250 million. O'Brien reported these estimates among many other estimates of Trump's net worth in the billions -- including Trump's own estimates -- and quoted Trump's denial that the confidential sources' estimates were accurate. As a public figure plaintiff, Trump faces a very high burden to demonstrate that these allegedly defamatory statements -- even if proven false -- were made with "actual malice." Under well-established United States Supreme Court, New Jersey, and New York precedent, Trump must prove by clear and convincing evidence that both O'Brien and his publisher

¹ Warner Books Inc. is now known as Grand Central Publishing. It is a subsidiary of Hachette Book Group USA, Inc., which was known formerly as Time Warner Book Group Inc. Throughout this brief, Time Warner Book Group Inc. and Warner Books Inc. are referred to collectively as the "Warner defendants."

knew that these net worth estimates were false or recklessly disregarded information that proved they were false.

As an initial matter, it is hard to conceive of any statement about Trump's net worth being made with actual malice, given the uncertainty that has surrounded that issue, much of it fostered by Trump himself, and the secrecy that shrouds Trump's private holdings. It has been written for years that Trump exaggerates his net worth, with numerous journalists reporting well prior to O'Brien on Trump's exaggeration of his net worth. This speculation has been fueled by the varied and contradictory estimates of Trump's net worth that Trump and others have provided over time, as the Book recounts. In fact, in attempting at his deposition to explain some of these varied estimates of his net worth claims, Trump stated: "My net worth fluctuates, and it goes up and down with markets and with attitudes and with feelings, even my own feelings Yes, even my own feelings, as to where the world is, where the world is going, and that can change rapidly from day to day," (Ex. 11 at 34:7-16 (emphasis added)).² Trump has continued this pattern even up to the present, claiming as recently as October 2008 to be worth \$10 billion (approximately twice his claimed net worth in 2005, despite the massive downturn in the real estate market and economy since then). (Ex. 38 at 2.)

Against this backdrop, it is even harder to conceive that the citation of estimates from three independent sources who worked closely with Trump and previously provided reliable information to O'Brien on Trump's finances – particularly when Trump's own

² Citations to "Ex." refer to the exhibits accompanying the Certification of Mark S. Melodia dated March 20, 2009.

estimates and his denials of those estimates are also set forth in the publication – could satisfy the actual malice standard. Ultimately, there simply is no evidence – much less clear and convincing evidence – that would enable Trump to meet this burden as to either O'Brien or the Warner defendants.

The uncontroverted evidence demonstrates that O'Brien believed the confidential sources' estimates were accurate. O'Brien confirmed the sources' backgrounds and bona fides, believed from their backgrounds that they had unique access to Trump's finances, and had received from the sources other information regarding Trump's finances that proved accurate. As reflected in interview notes that O'Brien has produced in this litigation, all three sources independently provided similar estimates of Trump's net worth, further corroborating their reliability. And, as noted, O'Brien had many reasons to disbelieve Trump's own estimates of his net worth, including the significant variance over time in these estimates, Trump's provision of inaccurate and inconsistent information on his finances to O'Brien, and Trump's prior reputation as an exaggerator. Nor can Trump prove, by clear and convincing evidence or otherwise, that O'Brien had the kind of information in his possession – despite his substantial research efforts – that would have led him to entertain serious doubts that the sources' estimates were inaccurate. Under these circumstances, O'Brien's publication and public discussion of the confidential sources' estimates, alongside many other estimates of Trump's net worth, including Trump's and those of Trump's CFO, cannot amount to actual malice as a matter of law.

With respect to the Warner defendants, Trump must establish by clear and convincing evidence that they – separate from any claim as to O'Brien – acted with actual malice. Tellingly, plaintiff did not depose a single employee of the Warner defendants with editorial responsibility for the Book. And there is absolutely no evidence that the Warner defendants knew the confidential sources' estimates were false or recklessly disregarded their falsity. To the contrary, the Warner defendants were entitled to rely on reporting by O'Brien, a highly experienced business reporter who had spent many years reporting for The New York Times ("The Times") and The Wall Street Journal. The Warner defendants' legal vetting of the Book further reinforced their belief in the accuracy of O'Brien's reporting. And as to the estimates of the confidential sources in particular, O'Brien had published an almost identical estimate of Trump's net worth based on the same three confidential sources in a September 2004 article in The Times, over which Trump never sued The Times or O'Brien, and after which Trump continued to cooperate with O'Brien. In publishing the Book, the Warner defendants were entitled under well-established law to rely on the 2004 publication in The Times as strong evidence of the sources' reliability.

Accordingly, summary judgment is appropriate as to O'Brien and the Warner defendants, and this meritless case should be dismissed.³

³ A defamation plaintiff also must establish that the allegedly defamatory statements were false and that plaintiff suffered injury as a result of these statements. See, e.g., DeAngelis v. Hill, 180 N.J. 1, 12-13 (2004); Dillon v. City of New York, 704 N.Y.S.2d 1, 5 (App. Div. 1999). The lack of any evidence of injury caused by the allegedly defamatory statements is addressed in a separate motion filed today seeking summary judgment.

STATEMENT OF FACTS

Background

In 2004, O'Brien, an experienced business reporter for publications such as The Times and The Wall Street Journal, authored numerous articles for The Times about Trump. (Ex. 1 ¶¶ 1, 4, 5.) These included a September 2004 article in which O'Brien reported three confidential sources' estimates of Trump's net worth: "[T]hree people who have had direct knowledge of [Trump's] holdings . . . estimated that Mr. Trump's wealth, presuming that it is not encumbered by heavy debt, may amount to about \$200 million to \$300 million." (Ex. 5 at TOB-PD-00003265.) Trump never sued The Times or O'Brien for publishing the 2004 article (Ex. 11 at 668:22-23, 689:7-14), and Trump continued to provide interviews to O'Brien for the Book even after the 2004 article appeared (Ex. 6; Ex. 7 at 249-63).

O'Brien decided to write a book about Trump and signed a book contract with defendant Warner Books Inc. in December 2004. (Ex. 1 ¶¶ 7-8; Ex. 10.) Over the next several months, O'Brien interviewed Trump many times for the Book. (Ex. 6; Ex. 11 at 40:21-41:9, 71:12-72:6, 246:2-247:2; Ex. 7 at 249-63.) O'Brien or his research assistant conducted approximately 100 other interviews. (Ex. 12 at 2-11; Ex. 1 ¶ 8; Ex. 7 at 242, 249-63.) O'Brien and his research assistant also conducted extensive documentary research regarding Trump. (Ex. 1 ¶ 8; Ex. 7 at 249-63; Ex. 12 at 15-38.)

In October 2005, the Warner defendants published TrumpNation. (Ex. 1 ¶ 9; Ex. 2 at 208:2-4; Ex. 7; Ex. 83 at 20:3-6.) Among the Book's eight chapters, Chapter Six described the long-running public discussion about — and the difficulty of pinpointing —

Trump's net worth. (Ex. 7 at 143-75.) The portion of Chapter Six that discussed the different valuations began with Forbes magazine, which publishes an annual list purporting to identify the nation's 400 wealthiest individuals. (Id. at 146.) As the Book pointed out, in September 2004, in its most recent list at the time of the Book's publication, Forbes stated that Trump was worth \$2.6 billion. (Id. at 152.) O'Brien also reviewed in detail the history of Trump's appearance on, disappearance from, and reappearance on the Forbes 400 list over the prior 23 years, as well as some of Trump's publicly aired disagreements with Forbes's annual estimates. (Id. at 149-52.)

The Book explained that further fueling the uncertainty over Trump's net worth were the disparate net worth estimates from Trump himself, who furnished widely varying estimates of his net worth to O'Brien within a very short time frame. The Book recounted that when Trump and O'Brien spoke in August 2004, Trump told O'Brien that his net worth was between \$4 billion and \$5 billion. (Id. at 153.) It continued: "Then, later that same day in August, [Trump] said his casino holdings represented 2 percent of his wealth, which at the time gave him a net worth of about \$1.7 billion." (Id.) About seven months later, on March 5, 2005, when O'Brien "popped the wealth question," [Trump stated,] "I would say six [billion]. Five to six. Five to six." (Id. (quoting Trump in O'Brien's interview on March 5, 2005).) But around the same time, "on the nightstand in [O'Brien's] bedroom at Donald's Palm Beach club was a glossy brochure that said he was worth \$9.5 billion." (Id. at 154.)

Just weeks after Trump gave these different estimates to O'Brien, O'Brien met with the chief financial officer of The Trump Organization, Allen Weisselberg, about

Trump's net worth. (See id.) In the Book, O'Brien detailed Weisselberg's assessment of Trump's net worth, including in the Book's only chart, which appeared directly opposite the confidential sources' estimates. (See id. at 154-55.) As the Book described, O'Brien tried to sort through these contradictory estimates, including the inconsistent values Trump himself provided directly to O'Brien, by "ask[ing] around for guidance." (Id. at 154.) In language nearly identical to his September 2004 Times article, O'Brien wrote in the Book that "[t]hree people with direct knowledge of Donald's finances, people who had worked closely with him for years, told [O'Brien] that they thought [Donald's] net worth was somewhere between \$150 million and \$250 million." (Id. at 154.) Rather than taking issue with the sources' financial analysis, when asked for his response, Trump told O'Brien: "You can go ahead and speak to guys who have four-hundred pound wives at home who are jealous of me, but the guys who really know me know I'm a great builder." (Id. (quoting Trump in O'Brien's interview on April 25, 2005).) In the Book, O'Brien did not provide any estimate of his own regarding Trump's net worth.

In short, Chapter Six of the Book portrays the challenges associated with definitively determining the extent of Trump's net worth, while citing throughout the statements from Trump himself. Indeed, the bottom line conveyed by the Chapter -- as illustrated in the chart below -- is that over the course of a year, O'Brien was furnished by Trump and others with a range of estimates of Trump's net worth that spanned over \$9 billion, driving home the point that this is an area of great uncertainty, fueled in large part by Trump himself.

Estimate Cited in the Book	Source	Date of Estimate	Book Reference
\$4 to \$5 billion	Trump	Aug. 2004	Page 153
\$1.7 billion	Trump (based on statement of percentage of wealth represented by casino holdings)	Aug. 2004	Pages 153-54
\$300 million	<u>Washington Post</u> , referring to "skeptics"	Sept. 2004	Page 227
\$2.6 billion	<u>Forbes</u> list	Sept. 2004	Page 152
\$9.5 billion	Palm Beach club brochure	Mar. 2005	Page 154
\$5 to \$6 billion	Trump	Mar. 2005	Pages 153-54
\$150 to \$250 million	Three sources with knowledge of Trump's finances ⁴	2004/2005	Page 154
\$6 billion	Trump Organization's CFO	Apr. 2005	Page 154

In October 2005, The Times published an excerpt of Chapter Six of the Book, including a similar statement regarding the sources' estimates, which was updated to reflect additional developments with Trump's Atlantic City holdings: "Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million and

⁴ In discovery, O'Brien produced notes from interviews of the three confidential sources cited in the Book on page 154 as estimating Trump's net worth at between \$150 million and \$250 million. (Ex. 15 (Source 1); Ex. 16 (Source 2); Ex. 17 (Source 3).)

\$250 million. (Donald's casino holdings have recently rebounded in value, perhaps adding as much as \$135 million to these estimates.)" (Ex. 13 at TOB-PD-00004204.)

Litigation

On January 19, 2006, plaintiff filed his complaint against O'Brien and the Warner defendants, alleging that the Book defamed him by "grossly misrepresenting [his] net worth," and seeking \$5 billion in damages. (Ex. 20 ¶¶ 1, 49.) Trump did not sue The Times, which had published the excerpt of the Book (as well as the earlier September 2004 article citing the same three confidential source estimates of Trump's net worth). (Ex. 11 at 668:22-23, 669:7-14.) The complaint focused on Chapter Six of the Book. (Id. ¶ 17.)

On May 15, 2006, pursuant to R. 4:6-2(e), defendants moved to dismiss for failure to state a claim upon which relief may be granted. (Ex. 21 at 1.) Defendants argued that the Book did not endorse the sources' estimates, but merely raised questions about Trump's net worth by citing those estimates among many others, including Trump's; and that an estimate that Trump is worth hundreds of millions of dollars – a huge sum – could not be defamatory as a matter of law. (Id. at 11-16.) The Court denied defendants' motion on August 18, 2006, but noted that it was doing so under the applicable motion-to-dismiss standards, which required the Court to assume that all of plaintiff's allegations were true, and that the ruling could be different once discovery was completed and summary judgment was sought. (Ex. 22 at 37:24-44:1; Ex. 23.) Defendants sought interlocutory review, which the Appellate Division denied on October 12, 2006. (Ex. 24.)

As part of the extensive discovery in this litigation, plaintiff sought the identities of O'Brien's three confidential sources, and other documents relating to the writing and editing of the Book. (Ex. 25 at 1; Ex. 26 at 8-14; Ex. 27 at 8-13.) Defendants asserted the newsperson's privilege in response to these requests, and then plaintiff filed a motion to compel, which the Court granted. (Ex. 28.) On October 24, 2008, the New Jersey Appellate Division reversed the trial court's ruling and held that the confidential sources' identities and the other materials Trump sought were protected under both New Jersey's newsperson privilege and New York's shield law. Trump v. O'Brien, 403 N.J. Super. 281, 298, 302 (App. Div. 2008).

In response to defendants' interrogatory seeking identification of all allegedly defamatory statements at issue in this litigation, plaintiff identified nine allegedly defamatory written and oral statements. (Ex. 39 at 1-2.) Although there is some variation in the formulation of these statements, they each focus on Trump's net worth and the confidential source estimates. For each of these statements, Trump has the burden of proving actual malice, *i.e.*, that defendants knew the sources' estimates were false or recklessly disregarded their falsity.

ARGUMENT

I. Summary Judgment Is Appropriate Where, as Here, There Does Not Exist Clear and Convincing Evidence that a Defendant Acted with Actual Malice

A. As a Public Figure, Plaintiff Must Satisfy a Heightened Standard to Overcome Summary Judgment on Actual Malice

1. Actual Malice

Under well established New Jersey and New York law, a public figure alleging defamation must establish actual malice, namely that the challenged material was published “[1] with knowledge that it was false or [2] with reckless disregard of whether it was false or not.”⁵ N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964); see, e.g., Costello v. Ocean County Observer, 136 N.J. 594, 612 (1994); Freeman v. Johnston, 84 N.Y.2d 52, 56 (1992). This standard is subjective and difficult to satisfy, focusing on “a defendant’s attitude toward the truth or falsity of the publication; on his subjective awareness of its probable falsity; and his actual doubts as to its accuracy.” Lawrence v. Bauer Publ’g & Printing Ltd., 89 N.J. 451, 467 (1982) (citations omitted) (emphasis in original); see Khan v. N.Y. Times Co., 710 N.Y.S.2d 41, 43-44 (App. Div. 2000).

To establish that a defendant had “knowledge that [a publication] was false,” a plaintiff must demonstrate that the defendant subjectively knew the information was probably false at the time of publication. Costello, 136 N.J. at 615; Khan, 710 N.Y.S.2d

⁵ In its opinion holding that the newsgatherer’s privilege protects from discovery the identities of O’Brien’s confidential sources and other newsgathering and editorial materials that plaintiff sought, the Appellate Division declined to determine whether New Jersey law or New York law applies in this case. Trump, 403 N.J. Super. at 304-05. This brief therefore applies both, either of which requires dismissal of plaintiff’s complaint.

at 43-44. Likewise, to establish that a defendant acted with "reckless disregard" for the falsity of the information requires subjective proof of a defendant's knowledge at the time of publication. "[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." St. Amant v. Thompson, 390 U.S. 727, 731 (1968). Rather, New Jersey and New York courts interpret "reckless disregard" to require that "the defendant in fact entertained serious doubts about the truth of the statement or that [the] defendant had a subjective awareness of the story's probable falsity." Costello, 136 N.J. at 615 (citation omitted); accord Sweeney v. Prisoners' Legal Servs. of N.Y., 84 N.Y.2d 786, 792-93 (1995) (plaintiff must "establish that defendants in fact 'entertained serious doubts as to the truth of [the] publication' or that they actually had a 'high degree of awareness of [its] probable falsity'" (citations omitted). Although not dispositive, a defendant's "belief in the truth of the matter published . . . is relevant in determining whether the defendant showed actual malice in regard to the truth or falsity of the publication." Lawrence, 89 N.J. at 467.

2. Clear and Convincing Evidence

On a motion for summary judgment, "[t]he movant has the burden of showing that there is no genuine issue of fact, but the plaintiff is not thereby relieved of his own burden of producing in turn evidence that would support a jury verdict." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); see also N.J. R. 4:46-2; N.Y. C.P.L.R. § 3212(b). In the context of public figure defamation, the plaintiff must "demonstrate that a reasonable jury could conclude that 'clear and convincing evidence' exists that the

defendants published the article with actual malice.” Costello, 136 N.J. at 614 (citation omitted); see also Khan, 710 N.Y.S.2d at 43-44; Anderson, 477 U.S. at 254, 257. In doing so, the plaintiff “must set forth specific facts showing that there is a genuine issue for trial.” Id. at 256.

This “clear and convincing” standard is more demanding than the usual “preponderance of the evidence” standard in civil cases and provides a high hurdle for plaintiffs on summary judgment. See Costello, 136 N.J. at 615; Farrakhan v. N.Y.P. Holdings, Inc., 638 N.Y.S.2d 1002, 1006 (Sup. Ct. 1995) (noting that the rigorous requirements of actual malice and clear and convincing proof are in place to protect First Amendment rights), aff’d, 656 N.Y.S.2d 726 (App. Div. 1997). “Clear and convincing” is “that which ‘produce[s] in the mind of the trier of fact a firm belief or conviction’ as to the truth of the allegations sought to be established,” evidence “so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.”⁶ State v. Hodge, 95 N.J. 369, 376 (1984) (quoting In re Boardwalk Regency Corp., 180 N.J. Super. 324, 339 (App. Div. 1981)); see also Farrakhan, 638 N.Y.S.2d at 1007. Consequently, the plaintiff “must produce substantial evidence to survive a motion for summary judgment.” Costello, 136 N.J. at 615. Evidence that is “merely colorable, or is not significantly probative” will not defeat summary judgment. Anderson, 477 U.S. at 249 (citations omitted).

⁶ The “clear and convincing” standard is synonymous with “convincing clarity,” see, e.g., Freeman, 84 N.Y.2d at 56, a term used by New York courts.

B. Courts Routinely Grant Summary Judgment Dismissing Libel Cases Such as This One

Both New Jersey and New York courts explicitly encourage resolving defamation cases through summary judgment. The New Jersey Supreme Court has recognized that “[t]he perpetuation of meritless actions, with their attendant costs, chills the exercise of press freedom,” and it therefore has instructed trial courts “not [to] hesitate to use summary judgment procedures where appropriate to bring such actions to a speedy end.” Maressa v. N.J. Monthly, 89 N.J. 176, 196 (1982); see also Dairy Stores, Inc. v. Sentinel Publ’g Co., 104 N.J. 125, 157 (1986) (“By discouraging frivolous defamation actions, motions for summary judgment keep open lines of communication to the public on such issues.”). Similarly, “summary judgment is particularly favored by New York courts in libel cases.” Khan, 710 N.Y.S.2d at 44.

Accordingly, New Jersey and New York courts routinely grant motions for summary judgment based on the plaintiff’s failure to demonstrate actual malice by clear and convincing evidence. See, e.g., DeAngelis, 180 N.J. at 20; Rocci v. Ecole Secondaire Macdonald-Cartier, 165 N.J. 149, 160 (2000); TurfLawnmower Repair v. Bergen Record Corp., 139 N.J. 392, 423-26 (1995); Millus v. Newsday, Inc., 89 N.Y.2d 840, 843 (1996); Freeman, 84 N.Y.2d at 58; Kipper v. N.Y.P. Holdings Co., 852 N.Y.S.2d 56, 57 (App. Div. 2008); Farrakhan, 656 N.Y.S.2d at 727.

The standard for granting summary judgment is the same where a defendant relies on undisclosed confidential sources. See, e.g., Sprewell v. NYP Holdings, Inc., 841 N.Y.S.2d 7, 10 (App. Div. 2007) (granting summary judgment where the record

established that defendant subjectively believed his confidential sources, whose information contained "indicia of reliability"); Southwell v. S. Poverty Law Center, 949 F. Supp. 1303, 1307-10 (W.D. Mich. 1996) (granting summary judgment where the defendant relied on conversations with an undisclosed confidential source, the notes of which were sufficiently consistent and detailed to justify the defendant's reliance).

II. No Reasonable Jury Could Find that O'Brien Made the Allegedly Defamatory Statements with Actual Malice

Plaintiff's claim against O'Brien fails because no reasonable jury could conclude by clear and convincing evidence that O'Brien believed at the time of the Book's publication that the confidential sources' estimates were false or entertained serious doubts about the accuracy of the estimates. To the contrary, the evidence demonstrates that O'Brien had significant reasons to trust the accuracy of the three confidential sources' estimates and to disbelieve Trump's own estimates (as he did).

A. O'Brien Believed the Three Confidential Sources' Estimates of Trump's Net Worth Were Reliable

Courts have not hesitated to grant summary judgment when a reporter relied on confidential, undisclosed sources. For example, in Sprewell, the New York Appellate Division granted summary judgment to a reporter and publisher in connection with a newspaper story about the cause of basketball player Latrell Sprewell's hand injury, in which the reporter relied upon confidential sources. Important to the court's decision were that: (1) the article cautioned that the allegedly defamatory statements were based on information from confidential sources, and noted Sprewell's denial of the accuracy of

that information; (2) the record otherwise demonstrated that the reporter subjectively believed the confidential sources based on various indicia of reliability in their accounts; (3) the reporter attempted to verify or disprove the confidential sources' accounts by seeking information from other, non-confidential sources; and (4) plaintiff's explanations for the injury continuously changed over time. Sprewell, 841 N.Y.S.2d at 10-11; accord Suson v. NYP Holdings, Inc., No. 300605TSN2006, 2008 WL 927985, at *11 (N.Y. Civ. Ct. Mar. 31, 2008) (Ex. 104) (explaining that, in Sprewell, "reliance on confidential witnesses coupled with extensive investigation efforts to confirm the information in the article shielded [the newspaper] from liability").

This case is very similar to Sprewell. First, like the reporter in the Sprewell case, O'Brien did not report the sources' information as incontrovertible fact. Instead, he described the \$150 million to \$250 million estimate as the sources' belief — not his own — across from a full-page chart of Trump's asset values as estimated by Trump's CFO, and also cited Trump's denial of the sources' estimates, Trump's own estimates over time, and the estimates of Forbes magazine over time. (Ex. 7 at 150-55); see Sprewell, 841 N.Y.S.2d at 10 ("The information was not reported as incontrovertible fact, but rather cautioned the reader that it was based on two confidential witnesses and was denied by plaintiff."). This presentation made it clear to the Book's reader that there were many views on Trump's net worth, none of which O'Brien could verify definitively.

Second, O'Brien subjectively believed the sources' estimates were likely accurate and did not entertain serious doubts about their reliability. (Ex. 2 at 215:10-13 ("I had good reason to believe they felt the numbers were accurate, and I had very, very good

reason to believe that they were.”.) In reaching this conclusion, O’Brien relied on the following:

The Sources’ Background and Access to Information on Trump’s Finances.

O’Brien verified the identity, position, and access of the sources through background research on them and interviews, concluding that each had unique and substantial access to information on Trump’s net worth. (See Ex. 29 at 8-12 (noting that O’Brien researched the sources’ identities and access by: (1) reviewing documentary evidence, including media reports, about the confidential sources and/or plaintiff; (2) interviewing persons knowledgeable about plaintiff’s and/or the sources’ backgrounds; (3) interviewing the sources themselves; and (4) verifying information provided by the sources against other information available from other sources); see also Ex. 2 at 44:10-48:25, 356:12-357:20; 670:9-20; 690:11-706:2.)

The Sources’ Separate and Independent Provision of Very Similar Net Worth Estimates. The fact that the three sources independently provided very similar estimates, as corroborated by the notes of his interviews with the sources, was a substantial factor in O’Brien’s determination that they were accurate. (See Ex. 15 (Source 1); Ex. 16 (Source 2); Ex. 17 (Source 3).)

The Sources’ Provision of Accurate Information on Other Aspects of Trump’s Finances. The three sources provided accurate information on other aspects of Trump’s business and finances. See Southwell, 949 F. Supp. at 1307-08 (finding that confidential source’s ability to provide other information that proved correct “supports defendant’s reasonable reliance on this source”). In fact, O’Brien has detailed numerous

issues on which the sources provided reliable information about plaintiff's business activities, including: (1) plaintiff's interest in the limited partnerships that owned the West Side Yards project in New York; (2) plaintiff's negotiations with Hilton in the mid-1990s regarding the potential sale of plaintiff's casino company; (3) plaintiff's business dealings with Kenneth Shapiro and Daniel Sullivan, two organized crime figures; (4) negotiations regarding the restructuring of Trump Hotels and Casino Resorts, Inc. in 2004; (5) the sale of Fred Trump's (Trump's father's) real estate portfolio in Brooklyn in 2004; (6) plaintiff's interest in 40 Wall Street in New York and the level of borrowings relating to that property; (7) plaintiff's interest in the GM Building in New York and litigation surrounding that interest; (8) plaintiff's interest in Trump International Hotel and Tower on Columbus Circle in New York; (9) plaintiff's borrowings from ULLICO in connection with Mar-a-Lago, a Palm Beach property; and (10) plaintiff's financial condition and the restructuring of plaintiff's outstanding debt during certain periods. (Ex. 29 at 6-8.)

The consistency of the sources' estimates, coupled with their access to information on Trump's finances and their supply of reliable information on other aspects of his businesses, provided very strong evidence of the sources' reliability. See St. Amant, 390 U.S. at 732-33 (finding no actual malice where record contained no evidence that source was unreliable); Clyburn v. News World Commc'ns. Inc., 705 F. Supp. 635, 642 (D.D.C. 1989) (finding no actual malice where the confidential sources gave information that was consistent with other confidential sources); see also Southwell, 949

F. Supp. at 1307-09 (finding that an author's notes of an interview with a confidential source bolstered finding of lack of actual malice).

Third, like the reporter in Sprewell, O'Brien engaged in substantial efforts to gather information on Trump's net worth. The undisputed evidence shows that O'Brien or his research assistant conducted approximately 100 interviews and attempted to interview others who declined to speak about Trump's net worth (Ex. 12 at 2-11; Ex. 1 ¶ 8; Ex. 7 at 242, 249-263; Ex. 2 at 691:14-706:2); reviewed thousands of pages of articles on Trump and available public records relating to Trump's holdings and finances (Ex. 12 at 15-38; Ex. 2 at 690:11-691:13; Ex. 1 at ¶ 8; Ex. 7 at 249-263 see, e.g., Ex. 40); and attempted to obtain financial information from Trump and his CFO (Ex. 2 at 302:8-17; Ex. 20 ¶¶ 19-20).⁷ O'Brien's diligent investigative efforts demonstrate that he "did not deliberately fail to seek confirmatory information or otherwise act with reckless disregard for the truth." Sprewell, 841 N.Y.S.2d at 11. Indeed, O'Brien's extensive research in support of the Book went well beyond what courts have found to rebut a charge of reckless disregard. See, e.g., Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 172-73 (1999) (affirming summary judgment for the defendants, even though they "doubtless could have been more careful").

⁷ While Weisselberg disputes some of the particulars in the Book, it is undisputed that Weisselberg discussed valuations with O'Brien and gave O'Brien asset valuations that appear in Chapter Six. (See Ex. 19 at 241:2-21, 257:25-258:8, 262:2-6, 265:3-8, 268:16-269:6, 274:6-25; see, e.g., Ex. 7 at 154.)

B. O'Brien Had Numerous Reasons to Disbelieve Trump

The uncontroverted evidence also shows that O'Brien had several reasons to distrust plaintiff's own estimates of his net worth and did distrust them. Even before O'Brien began to research the Book, numerous reporters had noted Trump's reputation for exaggerating his net worth. Examples include:

- "[Trump has] described himself as 'a billionaire many times over,' but who knows? There are skeptics out there who believe Trump has \$300 million, tops. And the guy has a reputation for, let's say, shading the news in a light that reflects his enthusiasms." (Ex. 32 at TOB-PD-00001452.)
- "How rich is the Donald? To interviewers, he hints that his wealth is somewhere between \$2 billion and \$6 billion. Rival developers estimate it's nowhere near even the lower figure." (Ex. 33 at 2.)
- "That difficulty is compounded by Trump's astonishing ability to prevaricate. . . . The predictable result is the steady stream of articles debunking Trump's exaggerated claims—particularly his oft-repeated assertion that he's worth \$5 billion." (Ex. 34 at TOB-PD-00002397.)
- "He puts his net worth at \$5 billion. . . . But a look at the major sources of his wealth, including the Trump Place apartment development on New York City's west side, the 70-story Trump World Tower project and the midtown General Motors Building, shows that several of his billions are based on profits that are far in the future" (Ex. 35 at TOB-PD-00002415.)

As O'Brien also noted in the Book, and as was discussed earlier and illustrated above in a chart, supra at 8, Trump's claims regarding his net worth changed substantially during O'Brien's reporting, sometimes over short periods of time. In fact, Trump testified in this litigation that his view of his net worth can change rapidly, even day to day, based on factors such as his subjective feelings: "My net worth fluctuates, and it goes up and down with markets and with attitudes and with feelings, even my own

feelings Yes, even my own feelings, as to where the world is, where the world is going, and that can change rapidly from day to day.” (Ex. 11 at 34:7-16.) He also conceded that he exaggerates and believes others do too. (Id. at 50:14-16 (“Q: Have you ever exaggerated in statements about your properties? A: I think everyone does.”).) Such fluctuations undermined Trump’s credibility and bolstered the sources’ credibility.

Similarly, O’Brien, in researching the Book, verified that Trump had misled him about several aspects of his finances. For example, Trump claimed in interviews with O’Brien to have a 50% ownership interest in the West Side Yards project. (Ex. 41 at TOB-PD-00004316; Ex. 42 at TOB-PD-00004323.) In fact, as O’Brien learned from several sources during his reporting (Ex. 7 at 165), and as Trump conceded at his deposition (Ex. 11 at 43:13-44:2, 63:2-23), Trump had a 30% interest and was a limited partner without any power to influence disposition of assets and any right to liquidate his interest for many years. Trump’s false statements to O’Brien during his reporting further undermined O’Brien’s belief in the reliability of Trump’s own net worth estimates.

Finally, O’Brien did not obtain any financial information in the course of his reporting that demonstrated that the sources’ estimates were wrong. Most significantly, it is undisputed that O’Brien did not obtain verification of Trump’s overall debts. As one of Trump’s employees (Jeffrey McConney) and his outside accountant (Donald Bender) testified, information about liabilities is necessary to determine net worth. (Ex. 30 at 135:23-136:5 (“Q. Is it possible to determine a person’s net worth without looking at the individual liabilities? A. I don’t think so. Q. Because net worth is inherently assets minus liabilities; correct? A. As I know it, yes.”); Ex. 31 at 117:3-13 (“Q. In other

words, would you need to know liability to determine his net worth? A. Would I need to know liabilities -- Q. To determine net worth. A. Yes. Q. Because liabilities are -- A. Yes. Q. In order to determine someone's net worth, you need to know their assets and their liabilities; correct? A. Yes.") Because of the private nature of Trump's holdings, O'Brien needed to rely upon Trump to obtain complete information on his outstanding liabilities. (See, e.g., Ex. 19 at 111:18-112:2 ("No one has any clue as to what someone else is worth if you're a privately held company. If you are Vornado or SL Green and you're a publicly held REIT, yeah, you can judge what the company is worth. But what is the individual behind the company worth? I don't know how any other developer can make a public statement as to what Mr. Trump's net worth is.").

Despite numerous requests, Trump never provided O'Brien with loan documents showing amounts currently outstanding, let alone information that would have allowed O'Brien to verify the full extent of Trump's outstanding liabilities. (Ex. 2 at 134:17-135:4, 248:8-15, 271:4-13 ("I asked for verifiable statements of his assets and his liabilities -- sworn statements of his assets and liabilities that I could then verify with a third party, such as IRS returns, bank statements, . . . documents that he had filed with New Jersey regulators, any personal loans he had guaranteed, things of that nature."), 705:15-23 ("In order to have a definitive view of what the value of any of [Trump's] properties were, I'd need to have documentation of both the assets and the liabilities. And I spent the better part of a year trying to get that information from [Trump] in order to reach a definitive conclusion, and I was unable to."); Ex. 18 at 55:9-18, 69:2-73:6.)

In sum, in the face of the overwhelming evidence available to O'Brien of the reliability of the sources and Trump's unreliability, no reasonable jury could conclude that O'Brien's citations of the sources' estimates – among many other estimates – amounted to actual malice.

C. Trump's Allegations of Bias Do Not Support Actual Malice as a Matter of Law

Without any evidence to demonstrate that O'Brien doubted the sources, Trump has relied upon his claim that O'Brien had a personal animus towards Trump to support actual malice. (Ex. 20 ¶¶ 33-34.) Even if this allegation were true, which it is not, the law is clear that the existence of bias or common-law malice cannot amount to actual malice. See, e.g., Greenbelt Coop. Publ'g Ass'n v. Bresler, 398 U.S. 6, 10 (1970) (holding that "spite, hostility or deliberate intention to harm" is "constitutionally insufficient" to support a finding of actual malice); DeAngelis, 180 N.J. at 14 ("Although '[s]pite, hostility, hatred, or the deliberate intent to harm demonstrate possible motives for making a statement,' only evidence demonstrating that the publication was made with knowledge of its falsity or a reckless disregard for its truth will establish the actual malice requirement.") (quoting Lynch, 161 N.J. at 166-67); Blum v. New York, 680 N.Y.S.2d 355, 357 (App. Div. 1998) ("[T]he actual malice standard is not satisfied merely through a showing of ill will or 'malice' in the ordinary sense of the term.") (citations and internal quotations omitted). In short, common-law malice cannot establish that O'Brien subjectively disbelieved or had doubts about the confidential sources' estimates at the time of publication.

III. No Reasonable Jury Could Find that the Warner Defendants Published the Allegedly Defamatory Material with Actual Malice.

A. Plaintiff Must Establish Actual Malice Separately as to the Warner Defendants

A publisher may not be held liable for the actions of an author on a theory of vicarious liability where the writer is not an employee of the publisher. See, e.g., Ortiz v. Valdescastilla, 478 N.Y.S.2d 895, 899 (App. Div. 1984) (finding no actual malice on the part of defendant newspaper where there was no "basis upon which to premise liability, such as respondeat superior"); Nelson v. Globe International, 626 F. Supp. 969, 978 (S.D.N.Y. 1986) (finding no employment relationship and granting summary judgment for publisher); McFarlane v. Esquire Magazine, 74 F.3d 1296, 1303 (D.C. Cir. 1995) ("[U]nder New York Times[,] actual malice may not be attributed [to a publisher] outside respondeat superior"). Because O'Brien clearly was never an employee of the Warner defendants,⁸ the Warner defendants cannot be vicariously liable for any of O'Brien's actions, and plaintiff has not even attempted to plead his claims under a theory of respondeat superior.

In the absence of such an employment relationship, actual malice must be proven separately as to the Warner defendants. See Secord v. Cockburn, 747 F. Supp. 779, 787

⁸ Under the contract O'Brien signed with Warner Books, O'Brien received no salary or benefits. Instead, O'Brien licensed to Warner Books the exclusive right to market the Book in exchange for a royalty on sales and a portion of the proceeds from the sale of any subsidiary rights. (See Ex. 10 ¶¶ 1, 3, 4.) In addition, O'Brien retained responsibility for the Book's accuracy. (Id. ¶ 17(a) ("The Author warrants . . . that, with respect to works of non-fiction, all statements contained [in the Book] are true or based on reasonable research for accuracy. . . ."))

(D.D.C. 1990) (citations omitted); see, e.g., Lawrence v. Bauer Publ'g & Printing Ltd., 89 N.J. 451, 466 (1982) (granting publisher's motion for summary judgment because plaintiff did not independently prove by clear and convincing evidence that the publisher acted with actual malice); Cottrell v. Berkshire Hathaway, Inc., 798 N.Y.S.2d 846, 848 (Sup. Ct. 2004) (“[A] ‘public figure’ libel plaintiff cannot constitutionally prevail against a news media publisher of an allegedly defamatory statement unless he establishes by clear and convincing evidence that the statement was made with ‘actual malice.’”) (quoting New York Times).

B. There Is No Evidence that the Warner Defendants Knew or Recklessly Disregarded the Truth of the Sources’ Estimates

It is clear from the complaint that Trump’s only claim as to the Warner defendants is the libel claim based on the written statements in the Book about the sources’ net worth estimates. (Ex. 20 ¶¶ 39-43.) But there is not a shred of evidence that the Warner defendants — whose editorial employees Trump failed even to depose — actually entertained any doubts about the truth of O’Brien’s reporting on the sources’ estimates.

The Warner defendants were justified completely in relying on O’Brien’s reporting in publishing the statements in the Book on Trump’s net worth. Where there is no substantial reason for a publisher to question the accuracy of a reporter or his work product, the publisher is under no legal duty to make further inquiries as to the accuracy of the facts. See Rinaldi v. Holt, Rinehart & Winston, 42 N.Y.2d 369, 382-83 (1977) (granting summary judgment to publisher because there was “no showing that [publisher] had, or should have had, substantial reasons to question the accuracy of the articles or

bona fides of its reporter"); James v. Gannett Co., 40 N.Y.2d 415, 424 (1976) (same); Ortiz, 478 N.Y.S.2d at 899 (same); McManus v. Doubleday & Co., 513 F. Supp. 1383, 1390 (S.D.N.Y. 1981) (granting summary judgment for publisher and stating that publisher was entitled to rely on the "proven reportorial ability" of its author). Courts have recognized that to require publishers to verify all statements in a book would impose an undue financial burden on publishers and would be incompatible with the functioning of the publishing industry. See Chalpin v. Amordian Press, 515 N.Y.S.2d 434, 439 (App. Div. 1987) (noting that the standard for publisher liability must be applied "with realistic recognition of the manner in which the publishing industry functions" and therefore that publishers may rely on authors absent a "substantial reason to question the accuracy of the information"); Weiner v. Doubleday & Co., Inc., 74 N.Y.2d 586, 595 (1989) (stating that requiring publishers "to do original research with respect to every potentially defamatory reference would impose undue financial burden").

O'Brien is an experienced reporter whose resume includes acclaimed work for premier national publications, including The Times and The Wall Street Journal. (Ex. 1 ¶ 1.) The Warner defendants had absolutely no reason to question his reliability, or the reliability of his reporting. Furthermore, the Warner defendants engaged an outside attorney to conduct a legal review of the Book prior to its publication. (See Ex. 37 at 6.) Although a publisher's independent verification of a reporter's work is not required where there is no reason to doubt the reporter's accuracy – and here there was none – that a publisher undertook a prepublication libel review provides evidence of a good faith belief in an author's truthfulness, and thus the absence of actual malice. See Goldblatt v.

Seaman, 639 N.Y.S.2d 438, 440 (App. Div. 1996) (affirming grant of summary judgment).

Further undermining any claims of actual malice as to the confidential source estimates in particular is the prior publication of the sources' net worth estimates in The Times. As discussed earlier, language nearly identical to the allegedly defamatory statements contained in TrumpNation describing the sources' net worth estimates appeared in The Times on September 8, 2004, more than a year prior to the Book's publication:

September 2004 <u>Times</u> Article	<u>TrumpNation</u> (October 2005)
<p>"[T]hree people who have had direct knowledge of [Trump's] holdings . . . estimated that Mr. Trump's wealth, presuming that it is not encumbered by heavy debt, may amount to about \$200 million to \$300 million. That is an enviably large sum of money by most people's standards but far short of the billionaire's club." (Ex. 5 at TOB-PD-00003265.)</p>	<p>"Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million to \$250 million. By anyone's standards this still qualified Donald as comfortably wealthy, but none of these people thought he was remotely close to being a billionaire." (Ex. 7 at 154.)</p>

Notwithstanding this 2004 publication, plaintiff did not sue O'Brien or The Times. (Ex. 11 at 668:22-23, 669:7-14.) To the contrary, plaintiff, fully aware that O'Brien was writing a book, continued to cooperate with O'Brien's reporting for TrumpNation; and there is no evidence suggesting that the Warner defendants possessed any information that would have undermined their reliance on The Times's prior publication.

The case law is clear that a publisher may reasonably rely upon prior publication in a reputable publication to defeat a libel claim. See, e.g., Lynch, 161 N.J. at 172 (granting summary judgment where plaintiff failed to show that the defendant

republished allegedly defamatory information "knowing that it was false or seriously doubting its truth"); Karaduman v. Newsday, Inc., 51 N.Y.2d 531, 550-51 (1980) (granting summary judgment for defendant book publisher and stating that "a republisher is qualifiedly privileged to rely upon the research of the original publisher in making its own decision whether to reprint the material in question"); Zetes v. Richman, 447 N.Y.S.2d 778, 779 (App. Div. 1982) (same); Herbert v. Lando, 781 F.2d 298, 309 n.7 (2d Cir. 1986) (granting summary judgment and dismissing libel claims against magazine publisher, in part because publisher reasonably relied upon CBS's prior determination that report was "fit for publication").

For example, the court in Karaduman held that a plaintiff may overcome the "qualified[] privilege[] [of a publisher republishing a work] to rely upon the research of the original publisher" only by showing that "the republisher 'had or should have had, substantial reasons to question the accuracy of the articles or the bonafides of [the] reporter.'" 51 N.Y.2d at 550-51 (quoting Rinaldi, 42 N.Y.2d at 383). Because the Karaduman court found that the plaintiff failed to present any evidence that the book publisher had reason to doubt the truth of the previously published material, the court dismissed the claims against the publisher.

Given the stature and circulation of The Times, the Warner defendants' reliance on the accuracy of the prior publication of nearly identical information in The Times, which plaintiff now alleges to be false, completely negates actual malice.

* * *

In sum, there is no evidence suggesting that the Warner defendants had any reason to doubt the accuracy of O'Brien's reporting on Trump's net worth, and the Warner defendants were justified in relying upon O'Brien's reporting. No reasonable jury could conclude by clear and convincing evidence that the Warner defendants acted with actual malice, and therefore summary judgment should be granted in the Warner defendants' favor.

CONCLUSION

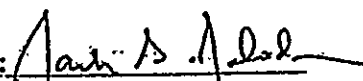
For the reasons set forth above and in the other papers submitted in support of this motion for summary judgment, the Court should issue an order entering summary judgment for all defendants and dismissing plaintiff's case with prejudice.

Date: March 20, 2009.

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FILED UNDER SEAL

DONALD J. TRUMP,
Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT ON ACTUAL MALICE

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Defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc., by and through their attorneys, Debevoise & Plimpton LLP, and Reed Smith LLP, respectfully submit the following statement of undisputed material facts in support of their Motion for Summary Judgment on Actual Malice.

DEFENDANTS

Timothy L. O'Brien

1. Defendant Timothy L. O'Brien has been a business reporter for more than 15 years at leading business publications including The New York Times ("The Times") and The Wall Street Journal. (Certification of Mark S. Melodia ("Melodia Cert."), Ex. 1 ¶ 1.)
2. O'Brien has reported and written about Wall Street, terrorism and terrorist financing, marketing and advertising, white collar fraud, the entertainment industry, and prominent business figures. (Id.)
3. O'Brien first worked for The Times from 1997 to 2000, and has worked there from 2003 until the present. (Id. Ex. 2 at 29:15-22, 32:11-17.)
4. Since 2006, O'Brien has been the editor of the Sunday Business section of The Times. (Id. Ex. 1 ¶ 1.)
5. O'Brien has graduate degrees in journalism, business, and U.S. history from Columbia University. (Id.)
6. Before he decided to write a book about plaintiff Donald J. Trump, O'Brien had interviewed Trump in connection with a different book about gambling and

also for numerous news articles that he had written about Trump. (Id. Ex. 1 ¶¶ 4, 5; see, e.g., id. Ex. 3; id. Ex. 4.)

7. In a September 2004 Times article, O'Brien reported three confidential sources' estimates of Trump's net worth. (Id. Ex. 5 at TOB-PD-00003265 ("[T]hree people who have had direct knowledge of [Trump's] holdings . . . estimated that Mr. Trump's wealth, presuming that it is not encumbered by heavy debt, may amount to about \$200 million to \$300 million.").)

8. Trump continued to provide interviews to O'Brien after the publication of the September 2004 Times article. (Id. Ex. 6; id. Ex. 7 at 249-63.)

The Warner Defendants

9. In 2006, Time Warner Book Group Inc. was renamed Hachette Book Group USA, Inc. (Id. Ex. 8 at 1; id. Ex. 9 at 1 n.1.)

10. Defendant Warner Books Inc. is now known as Grand Central Publishing. (Id. Ex. 9 at 1 n.1.)

THE BOOK

Research and Publication

11. In 2004, O'Brien decided to write a book about Trump (the "Book"). (Id. Ex. 1 ¶¶ 7-8.)

12. O'Brien signed a book contract with defendant Warner Books Inc. in December 2004. (Id. Ex. 1 ¶ 8; id. Ex. 10.)

13. As part of his research for the Book, O'Brien interviewed Trump numerous times from late 2004 through mid-2005; some of these interviews were also

tape recorded. (Id. Ex. 6; id. Ex. 11 at 40:21-41:9, 71:12-72:6, 246:2-247:2; id. Ex. 7 at 249-63.)

14. In addition, O'Brien and his research assistant, Joseph Plambeck, conducted approximately 100 other interviews. (Id. Ex. 12 at 2-11; id. Ex. 1 ¶ 8; id. Ex. 7 at 242, 249-63.)

15. O'Brien and Plambeck also conducted extensive documentary research for the Book. (Id. Ex. 12 at 15-38; id. Ex. 1 ¶ 8; id. Ex. 7 at 249-263.)

16. O'Brien relied in part on his earlier reporting when researching and drafting the Book. (Id.)

17. In October 2005, Warner Books published the Book, TrumpNation: The Art of Being the Donald. (Id. Ex. 1 ¶ 9; id. Ex. 2 at 208:2-4; id. Ex. 7; id. Ex. 83 at 20:3-6.)

18. An excerpt from the Book appeared in the Sunday Business section of The Times on October 23, 2005. (Id. Ex. 13; id. Ex. 1 ¶ 9.)

19. As of June 30, 2008, only approximately 17,000 copies of the Book had been sold. (Id. Ex. 14 at TWBG-PD-00002371.)

Reporting about Trump's Net Worth

20. In Chapter Six of the Book, O'Brien wrote about the extensive public discussion regarding Trump's net worth over the years. (Id. Ex. 7 at 143-75.)

21. While researching Trump's net worth, O'Brien interviewed three sources to whom he promised confidentiality. (Id. Ex. 15; id. Ex. 16; id. Ex. 17; id. Ex. 7 at 154; id. Ex. 1 ¶ 6.)

22. The three sources had worked closely with Trump for years and had direct knowledge of his finances. (Id. Ex. 7 at 154; id. Ex. 1 ¶ 6.)

23. O'Brien interviewed the three sources several times regarding their estimates of Trump's net worth, and each of the sources gave O'Brien estimates of Trump's net worth that encompassed a range of \$150 million to \$250 million. (Id. Ex. 1 ¶ 6; id. Ex. 15 at TOB-PD-00004389 to TOB-PD-00004390, TOB-PD-00004391, TOB-PD-00004409 (Source 1); id. Ex. 16 at TOB-PD-00004410 (Source 2); id. Ex. 17 at TOB-PD-00004416, TOB-PD-00004435 (Source 3).)

24. In particular, in July 2004, Source 1 estimated Trump's net worth at \$150 to \$250 million, though added that it might be \$200 million to \$300 million. (Id. Ex. 15 at TOB-PD-00004389 to TOB-PD-00004390.)

25. In September 2004, Source 1 again estimated Trump's net worth at \$150 to \$250 million, though again added that it might be \$200 million to \$300 million. (Id. Ex. 15 at TOB-PD-00004391.)

26. In May 2005, Source 1 gave an estimate of \$150 million to \$250 million for Trump's net worth, adding again that \$200 million to \$300 million was also possible. (Id. Ex. 15 at TOB-PD-00004409.)

27. In August 2004, Source 2 estimated Trump's net worth as between \$60 million and \$250 million, adding that \$200 million to \$300 million was a good range. Source 2 added that the estimate could go up if the casino recapitalization being contemplated at the time went through, and if the casino stake was not completed, a better estimate was \$150 million to \$250 million. (Id. Ex. 16 at TOB-PD-00004410.)

28. In August 2004, Source 3 told O'Brien that Trump's net worth was approximately \$150 million to \$250 million. (Id. Ex. 16 at TOB-PD-00004416.)
29. In December 2004, Source 3 told O'Brien that because of the casino bankruptcy proceedings, Trump's net worth was approximately \$150 million to \$250 million. (Id. Ex. 16 at TOB-PD-00004435.)
30. O'Brien attempted to obtain financial information from Trump and from Allen Weisselberg, Trump's CFO. (Id. Ex. 2 at 302:8-17; id. Ex. 20 ¶¶ 19-20).
31. O'Brien met with Trump's CFO and Michelle Lokey, Trump's in-house counsel, on April 21, 2005 at Trump's offices, at which time Weisselberg estimated Trump's net worth at or about \$6 billion. (Id. Ex. 7 at 154; id. Ex. 18 at 98:9-99:1, 118:18-23; id. Ex. 19 at 198:4-199:9, 331:5-21.)
32. Weisselberg discussed valuations with O'Brien and gave O'Brien asset valuations that appear in Chapter Six. (See id. Ex. 19 at 241:2-21, 257:25-258:8, 262:2-6, 265:3-8, 268:16-269:6, 274:6-25; see, e.g., id. Ex. 7 at 154.)
33. After meeting with Trump and his employees at Trump's offices in April 2005, O'Brien spoke again with the three sources by telephone in an attempt to assess Weisselberg's estimate. Each of the three sources disputed Weisselberg's estimate and told O'Brien that their estimates of Trump's net worth were between \$150 million and \$250 million. (Id. Ex. 2 at 330:10-17, 342:24-354:11.)
34. O'Brien reported in Chapter Six of the Book that "[t]hree people with direct knowledge of Donald's finances, people who had worked closely with him for

years, told me that they thought his net worth was somewhere between \$150 million and \$250 million." (Id. Ex. 7 at 154.)

35. When asked for his response to the sources' estimates, Trump told O'Brien: "You can go ahead and speak to guys who have four-hundred pound wives at home who are jealous of me, but the guys who really know me know I'm a great builder." (Id. (quoting Trump in O'Brien's interview on April 25, 2005).)

36. A similar statement, updated to reflect additional developments with Trump's Atlantic City holdings, was published in the October 23, 2005 excerpt in The Times. (Id. Ex. 13 at TOB-PD-00004204 ("Three people with direct knowledge of Donald's finances, people who had worked closely with him for years, told me that they thought his net worth was somewhere between \$150 million and \$250 million. (Donald's casino holdings have recently rebounded in value, perhaps adding as much as \$135 million to these estimates.)"))

37. In both the Book and the excerpt, O'Brien placed the sources' estimates of Trump's net worth in the context of other estimates, including Trump's own estimates over time, the estimates of Forbes magazine over time (including an estimate of \$2.6 billion from the September 2004 "Forbes 400" list of wealthiest Americans, the most recent such list at the time of the Book's publication), Trump's CFO's estimates, and a full-page chart of Trump's asset values as estimated by Trump's CFO. (Id. Ex. 7 at 149-57; id. Ex. 13 at TOB-PD-00004199 to TOB-PD-00004206.)

38. The Book and excerpt also reviewed in detail the history of Trump's appearance on, disappearance from, and reappearance on the Forbes 400 list over the

prior 23 years, as well as some of Trump's public debates arising from his disagreement with Forbes's annual estimates. (Id. Ex. 7 at 149-52; id. Ex. 13 at TOB-PD-00004199 to TOB-PD-00004202.)

39. In both the Book and the excerpt, O'Brien printed Trump's denial of the sources estimates immediately following the confidential sources' estimates. (Id. Ex. 7 at 154 ("You can go ahead and speak to guys who have four-hundred pound wives at home who are jealous of me, but the guys who really know me know I'm a great builder.")); id. Ex. 13 at TOB-PD-00004205.)

40. Trump did not sue The Times for either the September 2004 or the October 2005 publication. (Id. Ex. 11 at 668:22-23, 669:7-14.)

RELEVANT PROCEDURAL POSTURE

41. On January 19, 2006, plaintiff filed a complaint against O'Brien and the Warner defendants, alleging that the Book defamed him by "grossly misrepresent[ing] [his] net worth," and seeking \$5 billion in damages. (Id. Ex. 20 ¶¶ 1, 43, 49.)

42. On May 15, 2006, defendants moved to dismiss for failure to state a claim upon which relief may be granted. (Id. Ex. 21 at 1.)

43. The Court denied defendants' motion on August 18, 2006. (Id. Ex. 22 at 37:24-44:1; id. Ex. 23.)

44. Defendants sought interlocutory review, which the Appellate Division denied on October 12, 2006. (Id. Ex. 24.)

45. During discovery, plaintiff sought the identities of O'Brien's three confidential sources, and other documents relating to the writing and editing of the Book. (Id. Ex. 25 at 1; id. Ex. 26 at 8-14; id. Ex. 27 at 8-13.)

46. Defendants asserted the newsmen's privilege in response to these requests, and plaintiff filed a motion to compel, which the Court granted. (Id. Ex. 28.)

47. On October 24, 2008, the New Jersey Appellate Division reversed the trial court's ruling and held that the confidential sources' identities and the other materials Trump sought were protected under both New Jersey's newsmen privilege and New York's shield law. Trump v. O'Brien, 403 N.J. Super. 281, 298, 302 (2008).

DISCOVERY RELATING TO PLAINTIFF'S ALLEGATIONS

Timothy L. O'Brien

48. O'Brien has testified that he had "very, very good reason" to believe the three confidential sources' estimates were accurate. (Melodia Cert., Ex. 2 at 215:10-13.)

49. O'Brien took the following steps to confirm the sources' reliability: (1) reviewing documentary evidence, including media reports, about the confidential sources and/or plaintiff; (2) interviewing persons knowledgeable about plaintiff's and/or the sources' backgrounds; (3) interviewing the sources themselves; and (4) verifying information provided by the sources against other information available from other sources. (Id. Ex. 29 at 8-12; id. Ex. 2 at 44:10-48:25, 356:12-357:20; 670:9-20.)

50. O'Brien also was able to confirm other information about Trump's finances that the sources gave him, including information about: (1) plaintiff's interest in the limited partnerships that owned the West Side Yards project in New York;

(2) plaintiff's negotiations with Hilton in the mid-1990s regarding the potential sale of plaintiff's casino company; (3) plaintiff's business dealings with Kenneth Shapiro and Daniel Sullivan, two organized crime figures; (4) negotiations regarding the restructuring of Trump Hotels and Casino Resorts, Inc. in 2004; (5) the sale of Fred Trump's (Trump's father's) real estate portfolio in Brooklyn in 2004; (6) plaintiff's interest in 40 Wall Street in New York and the level of borrowings relating to that property; (7) plaintiff's interest in the GM Building in New York and litigation surrounding that interest; (8) plaintiff's interest in Trump International Hotel and Tower on Columbus Circle in New York; (9) plaintiff's borrowings from ULLICO in connection with Mar-a-Lago, a Palm Beach property; and (10) plaintiff's financial condition and the restructuring of plaintiff's outstanding debt during certain periods. (Id. Ex. 29 at 6-8.)

51. O'Brien verified the identity, position, and access of the sources through background research on them and interviews, concluding that each had unique and substantial access to information on Trump's net worth; and attempted to verify their estimates of Trump's net worth through interviews and research. (Id. Ex. 29 at 8-12; id. Ex. 2 at 44:10-48:25, 356:12-357:20, 670:9-20; 690:11-706:2.)

52. It is not possible to determine a person's net worth without knowing his or her liabilities. (Id. Ex. 30 at 135:23-136:5; id. Ex. 31 at 117:3-13.)

53. Trump never provided O'Brien with documentation verifying his liabilities, such as loan documents showing outstanding balances, financial statements for properties, or tax returns. (Id. Ex. 2 at 134:17-135:4, 248:8-15, 271:4-13; 705:15-23; id. Ex. 18 at 55:9-18, 69:2-73:6.)

54. Because of the private nature of Trump's holdings, O'Brien needed to rely upon Trump to obtain complete information on his outstanding liabilities. (Id. Ex. 19 at 111:18-112:2.)

55. Trump's own estimates of his net worth varied significantly over time, ranging from \$4 to \$5 billion in August 2004 to \$1.7 billion the same day (based on his statement that his casino holdings represented two percent of his net worth) to \$5 to \$6 billion in early 2005 to \$9.5 billion in a glossy brochure on a nightstand at Mar-a-Lago to \$10 billion (as quoted in Forbes) in October 2008. (Id. Ex. 11 at 34:7-24; id. Ex. 7 at 153-54; id. Ex. 38 at 2.)

56. Media articles prior to the publication of the Book and the excerpt have suggested that Trump exaggerates his net worth. (See, e.g., id. Ex. 32 at TOB-PD-00001452; id. Ex. 33 at 2; id. Ex. 34 at TOB-PD-00002397; id. Ex. 35 at TOB-PD-00002415.)

57. Trump claimed in interviews with O'Brien to have a 50% ownership interest in the West Side Yards project. (Id. Ex. 41 at TOB-PD-00004316; id. Ex. 42 at TOB-PD-00004323.)

58. O'Brien learned from several sources during his reporting (and Trump conceded at his deposition) that Trump had a 30% interest and was a limited partner in the West Side Yards project without any power to influence disposition of assets and any right to liquidate his interest for many years. (Id. Ex. 7 at 165; id. Ex. 11 at 43:13-44:2, 63:2-23.)

The Warner Defendants

59. O'Brien is not an employee of Time Warner Book Group Inc. or Warner Books Inc., but rather is a licensor of the Book to Warner Books Inc. under the terms of the book contract between O'Brien and Warner Books Inc. (Id. Ex. 10 at ¶¶ 1, 17, 18.)

60. Under the contract O'Brien signed with Warner Books, O'Brien received no salary or benefits, but licensed to Warner Books the exclusive right to market the Book in exchange for a royalty on sales and a portion of the proceeds from the sale of any subsidiary rights. (Id. ¶¶ 1, 3, 4.)

61. Under the contract, O'Brien retained responsibility for the Book's accuracy. (Id. ¶ 17(a).)

62. Warner Books engaged an outside attorney to conduct a pre-publication legal review of the Book. (Id. Ex. 37 at 6.)

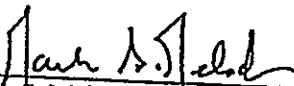
63. Plaintiff has not deposed any Warner employee who had editorial responsibility for the Book. (See id. Ex. 36 at 2-3.)

Date: March 20, 2009

DEBEVOISE & PLIMPTON LLP

Mary Jo White, Esq.
Andrew J. Ceresney, Esq.
Andrew M. Levine, Esq.

REED SMITH LLP

By: 
Mark S. Melodia, Esq.
Kellie A. Lavery, Esq.

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Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

**CERTIFICATION OF
MARK S. MELODIA**

MARK S. MELODIA, of full age, hereby certifies as follows:

1. I am an attorney licensed to practice in the State of New Jersey, and a partner with the law firm Reed Smith LLP, attorneys for defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc. (collectively "defendants") in this matter. As such, I am fully familiar with the facts set forth herein.

2. I make this Certification in further support of defendants' Motions for Summary Judgment.

3. A true and correct copy of the Certification of Timothy L. O'Brien, dated November 10, 2006, is attached hereto as Exhibit 1.

4. A true and correct copy of the transcript of the deposition of Timothy L. O'Brien, on October 15 and 16, 2007, is attached hereto as Exhibit 2.

5. A true and correct copy of the article Is Trump Headed for a Fall?, by Timothy L. O'Brien and Eric Dash, which appeared in The New York Times on March 28, 2004, is attached hereto as Exhibit 3.

6. A true and correct copy of the article Now, Reality for Trump Looks More Like 'Survivor,' by Timothy L. O'Brien and Eric Dash, which appeared in The New York Times on September 24, 2004, is attached hereto as Exhibit 4.

7. A true and correct copy of the article The Midas Touch, With Spin On It, by Timothy L. O'Brien, which appeared in The New York Times on September 8, 2004, is attached hereto as Exhibit 5.

8. A true and correct copy of Timothy L. O'Brien's notes from interviews of Donald J. Trump, from late 2004 through mid-2005, is attached hereto as Exhibit 6. These notes are ordered as follows: TOB-PD-00004325 to TOB-PD-00004332; TOB-PD-00004360 to TOB-PD-00004379; TOB-EF-00007872 to TOB-EF-00007894; TOB-EF-00007775 to TOB-EF-00007871.

9. A true and correct copy of the book, TrumpNation: The Art of Being the Donald (the "Book"), by Timothy L. O'Brien, is attached hereto as Exhibit 7.

10. A true and correct copy of the "About Us" page from the website for the Hachette Book Group is attached hereto as Exhibit 8.

11. A true and correct copy of a letter from Mark S. Melodia, Esq. and Andrew J. Ceresney, Esq. to William M. Tambussi, Esq., dated May 23, 2007, responding to Donald J. Trump's objections to the defendants' responses to plaintiff's First Set of Interrogatories is attached hereto as Exhibit 9.
12. A true and correct copy of the contract between Warner Books Inc. and Timothy L. O'Brien, dated December 6, 2004, is attached hereto as Exhibit 10.
13. A true and correct copy of the transcript of the deposition of Donald J. Trump, on December 19 and 20, 2007, is attached hereto as Exhibit 11.
14. A true and correct copy of a letter from Andrew J. Ceresney, Esq. and Mark S. Melodia, Esq. to William M. Tambussi, Esq., dated August 1, 2007, supplementing Timothy L. O'Brien's responses to Interrogatories Nos. 2, 4, 5, 7, 8, 12, 13, and 18 from plaintiff's First Set of Interrogatories, is attached hereto as Exhibit 12.
15. A true and correct copy of the article What's He Really Worth?, by Timothy L. O'Brien, which appeared in The New York Times on October 23, 2005, is attached hereto as Exhibit 13.
16. A true and correct copy of the Hachette Book Group Royalty Statement for the Book, for the period ending June 30, 2008, is attached hereto as Exhibit 14.
17. A true and correct copy of Timothy L. O'Brien's notes from interviews of the first of the three confidential sources cited on page 154 of the Book ("Source 1") is attached hereto as Exhibit 15.

18. A true and correct copy of Timothy L. O'Brien's notes from interviews of the second of the three confidential sources cited on page 154 of the Book ("Source 2") is attached hereto as Exhibit 16.

19. A true and correct copy of Timothy L. O'Brien's notes from interviews of the third of the three confidential sources cited on page 154 of the Book ("Source 3") is attached hereto as Exhibit 17.

20. A true and correct copy of excerpts from the transcript of the deposition of Leigh Michelle Lokey, on September 7, 2007, is attached hereto as Exhibit 18.

21. A true and correct copy of excerpts from the transcript of the deposition of Allen Weisselberg, on January 7, 2008, is attached hereto as Exhibit 19.

22. A true and correct copy of the Complaint and Jury Demand filed by Donald J. Trump in the Superior Court of New Jersey against Timothy L. O'Brien, and Time Warner Book Group Inc. and Warner Books Inc. (collectively the "Warner defendants") on January 23, 2006 is attached hereto as Exhibit 20.

23. A true and correct copy of defendants' Motion to Dismiss, dated May 15, 2006, is attached hereto as Exhibit 21.

24. A true and correct copy of the transcript of the hearing on defendants' Motion to Dismiss, dated on August 18, 2006, is attached hereto as Exhibit 22.

25. A true and correct copy of an order of the Honorable Faustino J. Fernandez-Vina, J.S.C., dated August 30, 2006, is attached hereto as Exhibit 23.

26. A true and correct copy of an order of the Honorable Dorothea O'C. Wefing, P.J.A.D., dated October 12, 2006, denying interlocutory review, is attached hereto as Exhibit 24.
27. A true and correct copy of plaintiff's First Set of Interrogatories to defendant Timothy L. O'Brien, dated June 2006, is attached hereto as Exhibit 25.
28. A true and correct copy of plaintiff's First Set of Document Requests to defendant Timothy L. O'Brien, dated June 2006, is attached hereto as Exhibit 26.
29. A true and correct copy of plaintiff's First Set of Document Requests to defendant Time Warner Book Group, dated June 2006, is attached hereto as Exhibit 27.
30. A true and correct copy of an order of the Honorable Irvin J. Snyder, J.S.C., dated February 13, 2007, is attached hereto as Exhibit 28.
31. A true and correct copy of Timothy L. O'Brien's Responses and Objections to plaintiff's Second Set of Interrogatories, dated January 11, 2008, is attached hereto as Exhibit 29.
32. A true and correct copy of excerpts from the transcript of the deposition of Jeffrey S. McConney, on December 5 and 6, 2007, is attached hereto as Exhibit 30.
33. A true and correct copy of excerpts from the transcript of the deposition of Donald Bender, on November 29, 2007, is attached hereto as Exhibit 31.
34. A true and correct copy of the article He's the Top: His Casino Business May Be Down, But Donald Trump Is on a Roll, by David Segal, which appeared in The Washington Post on September 9, 2004, is attached hereto as Exhibit 32.

35. A true and correct copy of the article Trump's Reality Woes: He Does the Firing, but His Battered Casino Empire Suggests He's a Better Pitchman than Manager, by Dan Kadlec, which appeared in Time on April 12, 2004, is attached hereto as Exhibit 33.

36. A true and correct copy of the article What Does Donald Trump Really Want? The Girl and the Car, Obviously. Respect, Maybe. And He Could Definitely Use a Mortgage—Soon. Whatever He's After, He's His Own Worst Enemy, by Jerry Useem, which appeared in Fortune on April 3, 2000, is attached hereto as Exhibit 34.

37. A true and correct copy of the article Donald's Wealth Estimates Trump Reality—Several Billions Are Based on Profits that Are Far in the Developer's Future, by Linda Sandler, which appeared in The Wall Street Journal on January 19, 2000, is attached hereto as Exhibit 35.

38. A true and correct copy of a letter from Andrew J. Ceresney, Esq. to William M. Tambussi, Esq., dated July 5, 2007, supplementing Timothy L. O'Brien's responses to Interrogatories Nos. 2, 12, 15, 29, and 31 from plaintiff's First Set of Interrogatories, is attached hereto as Exhibit 36.

39. A true and correct copy of a letter from Andrew J. Ceresney, Esq. to Mark P. Ressler, Esq. and William M. Tambussi, Esq., dated September 28, 2006, supplementing the responses of the Warner defendants to Interrogatories Nos. 7, 10, and 16 from plaintiff's First Set of Interrogatories and the responses of Timothy L. O'Brien's to Interrogatory Nos. 9, 19, and 36 from plaintiff's First Set of Interrogatories, is attached hereto as Exhibit 37.

40. A true and correct copy of the article Housing Honchos, by Matthew Miller and Duncan Greenberg, which appeared in Forbes on October 6, 2008, is attached hereto as Exhibit 38.
41. A true and correct copy of a letter from Mark P. Ressler, Esq. to Andrew J. Ceresney, Esq., dated December 19, 2006, supplementing plaintiff's responses to Interrogatory Nos. 1, 12, 15, 16, 17, 18, 19, 22, and 29 from defendants' First Set of Interrogatories, is attached hereto as Exhibit 39.
42. A true and correct copy of the Title Report for Trump Tower Chicago, 401 North Wabash Venture LLC, dated March 4, 2005, is attached hereto as Exhibit 40.
43. A true and correct copy of Timothy L. O'Brien's notes from an interview of Donald J. Trump, on March 22, 2004, is attached hereto as Exhibit 41.
44. A true and correct copy of Timothy L. O'Brien's notes from an interview of Donald J. Trump, on March 26, 2004, is attached hereto as Exhibit 42.
45. A true and correct copy of the article Market Place: Trump Hotels Digs Deep for Cash to Try to Prop a Teetering House, by Timothy L. O'Brien and Eric Dash, which appeared in The New York Times on May 6, 2004, is attached hereto as Exhibit 43.
46. A true and correct copy of defendants' First Set of Interrogatories, dated August 21, 2006, is attached hereto as Exhibit 44.
47. A true and correct copy of the transcript of a hearing before the Honorable Irvin J. Snyder, J.S.C., held on December 20, 2006, is attached hereto as Exhibit 45.

48. A true and correct copy of a letter from Mark P. Ressler, Esq. to Andrew J. Ceresney, Esq., dated January 10, 2007, supplementing Donald J. Trump's responses to Interrogatory Nos. 21 and 31 from defendants' First Set of Interrogatories, is attached hereto as Exhibit 46.

49. A true and correct copy of plaintiff Donald J. Trump's Objections and Responses to defendants' Second Set of Interrogatories, dated July 31, 2007, is attached hereto as Exhibit 47.

50. A true and correct copy of a letter from Mark S. Melodia, Esq. to the Honorable Irvyn J. Snyder, J.S.C., dated February 8, 2007, noting in footnote 3 the contradiction between Trump's damages claim relating to the Philadelphia project and a report issued by the Commonwealth of Pennsylvania Gaming Control Board, is attached hereto as Exhibit 48.

51. A true and correct copy of an order and report by the Commonwealth of Pennsylvania Gaming Control Board, dated February 1, 2007, is attached hereto as Exhibit 49.

52. A true and correct copy of a letter from Mark P. Ressler, Esq. to Andrew J. Ceresney, Esq., dated April 26, 2007, responding at the direction of the Court to defendants' previous requests for information, is attached hereto as Exhibit 50.

53. A true and correct copy of a letter from Mark P. Ressler, Esq. to Andrew J. Ceresney, Esq., dated December 18, 2007, supplementing Donald J. Trump's response to Interrogatory No. 21 from defendants' First Set of Interrogatories, is attached hereto as Exhibit 51.

54. A true and correct copy of a letter from Mark P. Ressler, Esq. to Andrew J. Ceresney, Esq., dated January 7, 2008, supplementing Donald J. Trump's responses to Interrogatory No. 20 from defendants' First Set of Interrogatories and Interrogatories Nos. 1, 3-9, 11, 12, 14 and 15 from defendants' Second Set of Interrogatories, is attached hereto as Exhibit 52.
55. A true and correct copy of the Certification of Maria Gorecki, Esq., dated April 26, 2007, is attached hereto as Exhibit 53.
56. A true and correct copy of a letter from Kellie A. Lavery, Esq. to William M. Tambussi, Esq., dated May 8, 2007, attaching a subpoena requesting the deposition of a representative of Donald J. Trump and/or The Trump Organization, dated May 8, 2007, is attached hereto as Exhibit 54.
57. A true and correct copy of a letter from William M. Tambussi, Esq. to Kellie A. Lavery, Esq., dated July 13, 2007, discussing deposition scheduling and identifying Tevfik Arif as Trump's representative to testify about allegedly lost business opportunities, is attached hereto as Exhibit 55.
58. A true and correct copy of a letter from Martin Domb, Esq. to Mark P. Ressler, Esq., Maria Gorecki, Esq., Andrew J. Ceresney, Esq., and Andrew M. Levine, Esq., dated January 23, 2008, informing the parties of and explaining Tevfik Arif's refusal to testify voluntarily in this action, is attached hereto as Exhibit 56.
59. A true and correct copy of the transcript of a hearing before the Honorable Michael Kassel, J.S.C., held on February 1, 2008, is attached hereto as Exhibit 57.

60. A true and correct copy of a letter from Maria Gorecki, Esq. to Andrew J. Ceresney, Esq., dated February 14, 2008, discussing deposition scheduling, is attached hereto as Exhibit 58.

61. A true and correct copy of the transcript of the deposition of Felix H. Sater, on April 1, 2008, is attached hereto as Exhibit 59.

62. A true and correct copy of the article Phoenix Council OKs Trump-Bayrock, Westcor Proposals, by Mike Padgett, which appeared in the Business Journal of Phoenix on September 22, 2005, is attached hereto as Exhibit 60.

63. A true and correct copy of the article Neighbors Feel 'Trumped' By High-Rise Approval, by Monica Alonzo-Dunsmoor, which appeared in The Arizona Republic on September 27, 2005, is attached hereto as Exhibit 61.

64. A true and correct copy of a press release issued on October 5, 2005 by People Restoring Our Totally Endangered City Trust ("PROTECT") and People Organized, Exercising Democracy ("POED") is attached hereto as Exhibit 62.

65. A true and correct copy of the article City Rejects Trump, Other Camelback High-Rises, by Monica Alonzo-Dunsmoor, which appeared in The Arizona Republic on December 22, 2005, is attached hereto as Exhibit 63.

66. A true and correct copy of the Mortgage Recording and Endorsement for 400 Fifth Realty LLC, from the New York City Department of Finance Office of the City Register, dated August 31, 2006, is attached hereto as Exhibit 64.

67. A true and correct copy of the transcript of the deposition of Howard M. Lorber, on April 14, 2008, is attached hereto as Exhibit 65.

68. A true and correct copy of a letter from Andrew J. Ceresney, Esq. to Mark P. Ressler, Esq., dated February 13, 2008, regarding deficiencies in plaintiff's responses to defendants' First and Second Set of Interrogatories, is attached hereto as Exhibit 66.
69. A true and correct copy of a letter from Maria Gorecki, Esq. to Andrew J. Ceresney, Esq., dated July 16, 2008, enclosing Donald J. Trump's supplemental production regarding his alleged efforts to mitigate damages, is attached hereto as Exhibit 67.
70. A true and correct copy of the article Trump Eyeing Sites for Dallas Tower, by Christine Perez, which appeared in The Dallas Business Journal on February 20, 2006, is attached hereto as Exhibit 68.
71. A true and correct copy of the blog posting The Trump Brand, by Donald J. Trump, which appeared on the Trump University website on February 21, 2006, is attached hereto as Exhibit 69.
72. A true and correct copy of the article Trump the Best-Known City Casino Game Player, by Suzette Parmley, which appeared The Philadelphia Inquirer on December 15, 2006, is attached hereto as Exhibit 70.
73. A true and correct copy of the article It's Trump vs. Market in Condo Project, by Alexandra Clough, which appeared in The Palm Beach Post on January 28, 2007, is attached hereto as Exhibit 71.
74. A true and correct copy of the article Trump Stays Upbeat Despite Setbacks, an interview by Chris Reiter, which appeared in Reuters News on July 6, 2007, is attached hereto as Exhibit 72.

75. A true and correct copy of defendants' Motion to Compel Plaintiff to Answer Interrogatories, dated June 6, 2007, is attached hereto as Exhibit 73.

76. A true and correct copy of an order of the Honorable Irvin J. Snyder, J.S.C., dated July 6, 2007, is attached hereto as Exhibit 74.

77. A true and correct copy of the article How Rich Is Trump? Our Guess: \$2.6B+, by Paul Wiseman, which appeared in USA Today on March 9, 1990, is attached hereto as Exhibit 75.

78. A true and correct copy of the article They Do, They Do, Already! Six Years, One Baby and a Zillion Bucks or So Later, the Trump-Maples Merger, by Roxanne Roberts, which appeared in The Washington Post on December 20, 1993, is attached hereto as Exhibit 76.

79. A true and correct copy of the blog posting Trump Good and Bad, by Paul Burns, which appeared on The Blogger News Network on July 3, 2007, is attached hereto as Exhibit 77.

80. A true and correct copy of the article Losses Increase as Cash Decreases, Straining Trump's Casinos, by Timothy L. O'Brien and Eric Dash, which appeared in The New York Times on July 30, 2004, is attached hereto as Exhibit 78.

81. A true and correct copy of the article Trump Must Ante Up \$55 Million to Hold On to 25% of His Casino, by Timothy L. O'Brien and Eric Dash, which appeared in The New York Times on August 11, 2004, is attached hereto as Exhibit 79.

82. A true and correct audio copy of an excerpt from an interview of Donald J. Trump by Timothy L. O'Brien, dated March 28, 2005, is attached hereto as Exhibit 80.

83. A true and correct audio copy of another excerpt from the same interview of Donald J. Trump by Timothy L. O'Brien, dated March 28, 2005, is attached hereto as Exhibit 81.
84. A true and correct audio copy of an excerpt from an interview of Donald J. Trump by Timothy L. O'Brien, on February 16, 2005, is attached hereto as Exhibit 82.
85. A true and correct copy of excerpts from the transcript of the deposition of Rob Nissen, on June 26, 2008, are attached hereto as Exhibit 83.
86. A true and correct copy of plaintiff's Objections and Responses to defendants' First Set of Interrogatories, dated October 20, 2006, is attached hereto as Exhibit 84.
87. A true and correct copy of plaintiff's Brief in Further Support of Plaintiff's Motion to Compel Discovery and in Opposition to Defendants' Cross-Motion to Compel Discovery, dated December 3, 2007, is attached hereto as Exhibit 85.
88. A true and correct copy of a letter from Mark P. Ressler, Esq. to Andrew J. Ceresney, Esq., dated July 20, 2007, supplementing Donald J. Trump's responses to Interrogatory Nos. 4, 10, 17, 20, 26, 35, and 38 from defendants' First Set of Interrogatories, is attached hereto as Exhibit 86.
89. A true and correct copy of the article Crisis on Wall Street: Economic Tumult Besets Trump Property Projects, by Alex Frangos, which appeared in The Wall Street Journal on March 10, 2009, is attached hereto as Exhibit 87.
90. A true and correct copy of the article Atlanta Trump Towers on Hold: Deposits Not Lost, by Bill Liss, is attached hereto as Exhibit 88.

91. A true and correct copy of the article Trump Venture Folds, Leaving Buyers Strapped, by Elliot Spagat of the Associated Press, on March 6, 2009, is attached hereto as Exhibit 89.

92. A true and correct copy of the article Lawyer: Trump High-Rise in New Orleans on Hold, by Becky Bohrer, which appeared in Business Week on February 17, 2009, is attached hereto as Exhibit 90.

93. A true and correct copy of the article Trump's Towering Troubles; Fabled Brand Looks Damaged, Dated, by Theresa Agovino, which appeared in Crain's New York Business on December 15, 2008, is attached hereto as Exhibit 91.

94. A true and correct copy of the article Trump, Lenders Suspend Legal Row, by Alex Frangos, which appeared in The Wall Street Journal on March 4, 2009, is attached hereto as Exhibit 92.

95. A true and correct copy of the article In Las Vegas, a Break in the Real Estate Action, by Steve Friess, which appeared in The New York Times on March 6, 2009, is attached hereto as Exhibit 93.

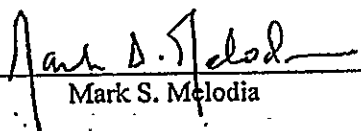
96. A true and correct copy of a spreadsheet of Trump License Fees as of June 30, 2005, produced by plaintiff in this litigation, is attached hereto as Exhibit 94.

97. A true and correct copy of a letter from Mark P. Ressler, Esq. to Andrew J. Ceresney, Esq., dated January 11, 2007, supplementing Donald J. Trump's response to Interrogatory No. 21 from defendants' First Set of Interrogatories, is attached hereto as Exhibit 95.

98. A true and correct copy of the article Gimme Shelter, by Braden Keil, which appeared in The New York Post on May 4, 2006, is attached hereto as Exhibit 96.
99. A true and correct copy of a page from the website of the architects for the proposed building at 400 Fifth Avenue, New York, New York is attached hereto as Exhibit 97.
100. A true and correct copy of excerpts from the transcript of the deposition of Gerald Rosenblum, on November 14, 2007, is attached hereto as Exhibit 98.
101. A true and correct copy of Cortland Associates, LP v. Cortland Neighborhood Condominium Association, No. SOM-C-12003-04, 2005 WL 2334364 (N.J. Super. Ch. Div. Sept. 23, 2005) is attached hereto as Exhibit 99..
102. A true and correct copy of Freemotion Fitness Financing Services v. Total Health & Fitness, L.L.C., No. L-2128-06, 2008 WL 3890444 (N.J. App. Div. Aug. 25, 2008) is attached hereto as Exhibit 100.
103. A true and correct copy of Jaliman v. Selendy, No. 12820/04, 2005 WL 818447 (N.Y. Sup. Ct. Mar. 17, 2005) is attached hereto as Exhibit 101.
104. A true and correct copy of Kearney v. Bayway Refining Co., L-365-04, 2008 WL 2388415 (N.J. App. Div. June 13, 2008) is attached hereto as Exhibit 102.
105. A true and correct copy of Sea Crest Enterprises, L.L.C. v. City of Elizabeth, No. L-4272-00, 2006 WL 2590327 (N.J. App. Div. Aug. 8, 2006) is attached hereto as Exhibit 103.

106: A true and correct copy of Suson v. NYP Holdings, Inc., No. 300605TSN2006, 2008 WL 927985 (N.Y. Civ. Ct. Mar. 31, 2008) is attached hereto as Exhibit 104.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.



Mark S. Melodia

Dated: March 20, 2009

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Attorneys for Defendants

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER
BOOK GROUP INC., and WARNER BOOKS
INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

Civil Action

CERTIFICATION OF
TIMOTHY L. O'BRIEN

TIMOTHY L. O'BRIEN, of full age, hereby certifies as follows:

1. I have been a journalist for more than 15 years. During this time, I have reported for publications including The New York Times ("The Times") and The Wall Street Journal, and I have published two books. I have graduate degrees in journalism, business, and U.S. history from Columbia University. My reporting and writing have covered many topics, including Wall Street, terrorism and terrorist financing, marketing and advertising, white collar fraud, the entertainment industry, and prominent business figures such as Donald J. Trump. Since May 2006, I have been the Editor of the Sunday Business section of The Times.
2. As a reporter and editor, I rely on the same professional methods and tools, whether I am writing for a newspaper, a magazine, or a book. Over time, these techniques have proven to be effective and indispensable for fact gathering, assessing fact patterns, and

creating a written portrait of an event or an individual that gives readers a truthful and engaging understanding of the subject matter. Those efforts and goals do not shift in different media; they are just published in different forms.

3. My ability to promise confidentiality to sources is a critical fact-gathering tool that I have used in my journalism career to obtain candid information from sources without the fear of retribution. Being precluded from protecting confidential sources while doing this work – whether as a newspaper reporter, a magazine writer, or a book author – would seriously undermine my and my colleagues' responsibility to help keep readers clearly and adequately informed about matters of public interest.

4. I have covered Trump for many years. In 1992, I provided research assistance in connection with Trump: The Deals and The Downfall, a book written by Wayne Barrett. In 1998, I published a book called Bad Bet: The Inside Story of the Glamour, Glitz, and Danger of America's Gambling Industry ("Bad Bet"), which focused on gambling in the United States. I wrote most of that book while reporting for the Wall Street Journal and then later for The Times. I interviewed Trump in reporting for this book, part of which discussed Trump's difficulties as a casino operator in Atlantic City. Some of my reporting and writing for Bad Bet subsequently informed newspaper articles that I wrote for The Times, including pieces about state lotteries, poker tournaments, and the Atlantic City and Las Vegas casino industries.

5. In 2004, I authored or co-authored a series of articles about Trump that appeared in The Times. These articles focused on efforts to recapitalize Trump's casinos – then on the brink of bankruptcy – and related issues such as Trump's net worth. Throughout this reporting, I interviewed many sources – both on and off the record – and I compiled extensive

research files about Trump, including newspaper and magazine articles, public filings, and other materials.

6. In reporting about Trump's net worth for The Times (and later TrumpNation), I promised confidentiality to three individuals with direct knowledge of Trump's finances who – given what they believed to be the extent of Trump's debt and his true ownership interest in properties that bear his name – estimated Trump's net worth to be in the range of \$200 million to \$300 million. It is my understanding that these three individuals fear retribution from Trump if their identities are revealed.

7. TrumpNation evolved from my 2004 reporting in The Times about Trump. There was enormous public interest in Trump at the time given the popularity of his television program The Apprentice, and Trump himself expressed to me his desire to cooperate with me on a book. The Times allowed me to pursue a contract for a book about Trump. My goal in writing the Book was to leverage my previous reporting from Barrett's Trump biography, The Wall Street Journal, Bad Bet, and The Times to provide the public with extended information about Trump's business career and persona, while detailing how he had become a social phenomenon with traction in different business and cultural realms. I also wanted to use Trump's life and career to report more broadly on areas of public interest on which I have reported for The Times and other publications, including on Wall Street and the financial world, the real estate and casino businesses, the cult of business figures, and the broader cultural fascination with wealth.

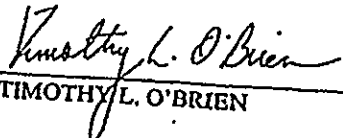
8. I signed a contract for TrumpNation in December 2004, and my principal reporting and drafting for the Book occurred from January 2005 to May 2005. It was clear during my negotiations with the publisher that TrumpNation would draw upon my earlier

reporting, including my sources and the other information I had compiled. Once I began working on TrumpNation, I merged my research files from The Times with my research files from TrumpNation. I also merged my phone lists, my digital clippings files, and other related research – all because, as a matter of thoroughness and discipline, I kept my research files integrated. In fact, I relied upon my earlier interviews in drafting the Book and also re-interviewed some of the sources from my earlier reporting. In addition, I re-interviewed and relied upon certain confidential sources from my earlier reporting, including the three individuals referenced in my September 8, 2004 article, who, in these later interviews, lowered their estimates of Trump's net worth to between \$150 million and \$250 million (because of the decreased value of Trump's casino holdings at the time I was writing the Book). Of course, in reporting for the Book, I not only delved further into the information I had compiled on Trump and related background on areas like real estate, but I also interviewed new sources and collected and analyzed additional information about Trump.

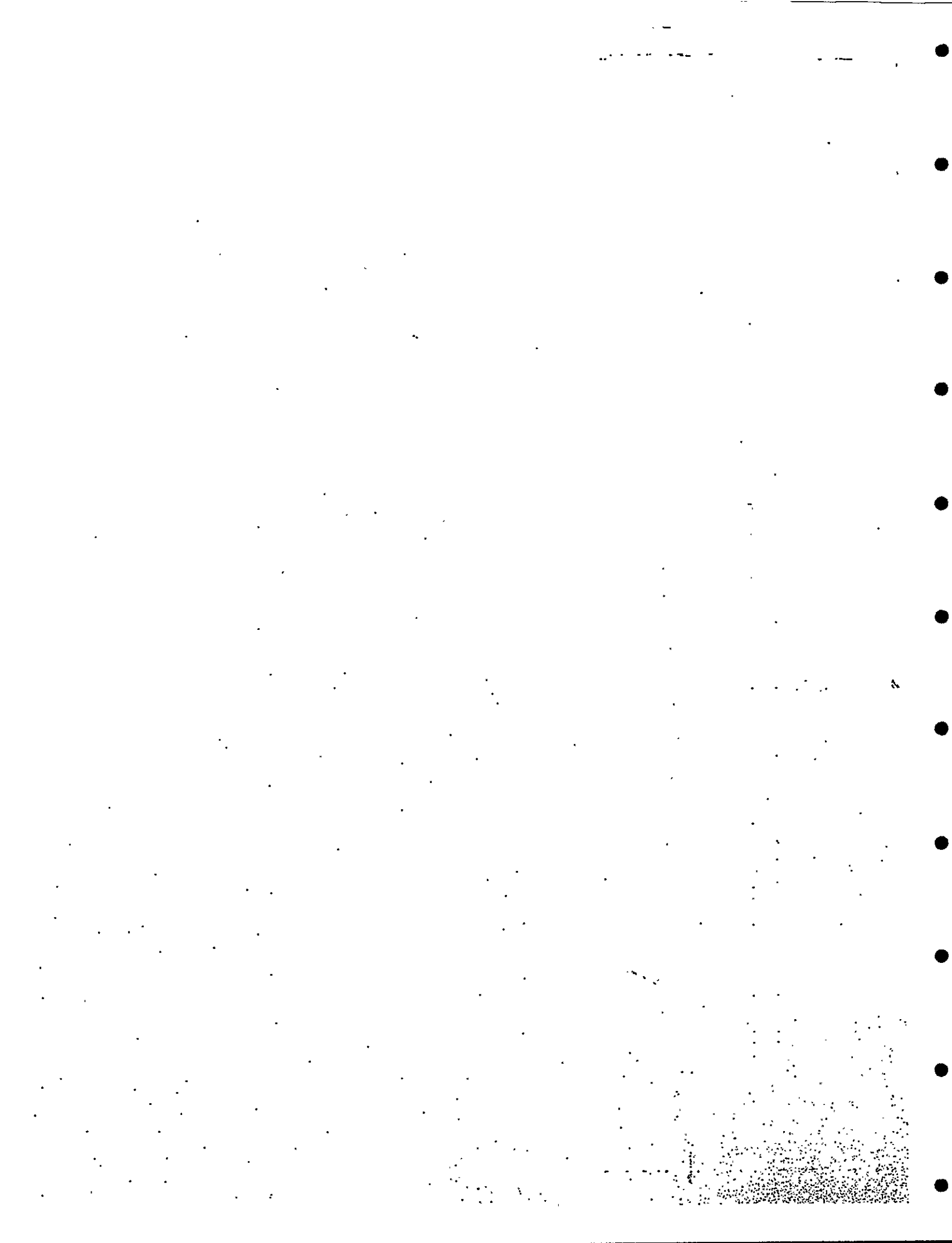
9. While reporting for and writing TrumpNation, I remained a staff reporter at The Times. I never resigned or went on a book leave, and I continued reporting and writing feature stories for the cover of the Sunday Business section and elsewhere in the newspaper. On October 23, 2005, an excerpt from the Book ran on the front page of the Sunday Business section. It was based on Chapter 6 of the Book, and it included the net worth estimates of the three confidential sources featured on page 154 of the Book – the same sources referenced in my Times article dated September 8, 2004. The Book was published in October 2005.

10. Since this litigation started, I have not written about Trump for The Times, but – as expected – I continue to report on issues explored through TrumpNation. I fully expect to continue assigning, editing, and occasionally writing about matters discussed in the Book, even if they do not deal with Trump directly. These include such areas as real estate, casino gambling, white collar crime, the legal profession, and Wall Street – all of which were examined in TrumpNation and which will rely on some of the sources I used in TrumpNation.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.


TIMOTHY L. O'BRIEN

Dated: November 10, 2006



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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

----- X

DONALD J. TRUMP,)
)
 Plaintiff,)
 -vs-)
 TIMOTHY O'BRIEN, TIME)
 WARNER BOOK GROUP INC., and)
 WARNER BOOKS INC.,)
)
 Defendants.)

----- X

DEPOSITION OF TIMOTHY L. O'BRIEN
OCTOBER 15, 2007

VOLUME I

Taken at the offices of Debevoise &
Plimpton, 919 Third Avenue, New York,
New York, pursuant to Notice, before
Hope Menaker, a Shorthand Reporter and
Notary Public of the State of New York.

2	<p>1 2 APPEARANCES 3 4 BROWN & CONNERY LLP 5 Attorneys for the Plaintiff 6 360 Haddon Avenue 7 Westmont, New Jersey 08108 8 BY: WILLIAM TAMBUSI, ESQ. 9 WILLIAM COOK, ESQ. 10 11 KASOWITZ BENSON TORRES & FRIEDMAN LLP 12 Attorneys for Plaintiffs 13 1633 Broadway 14 New York, New York 10019-6799 15 BY: MARK RESSLER, ESQ. 16 MARIA GORECKI, ESQ. 17 18 DEBEVOISE & PLIMPTON LLP 19 Attorneys for Defendants 20 919 Third Avenue 21 New York, New York 10022 22 BY: ANDREW J. CERESNEY, ESQ. 23 ANDREW M. LEVINE, ESQ. 24 MARY JO WHITE, ESQ. 25</p>	4
3	<p>1 2 APPEARANCES (Cont'd) 3 4 REED SMITH LLP 5 Attorneys for Defendants 6 Princeton Forrestal Village 7 136 Main Street 8 Suite 250 9 P.O. Box 7839 10 Princeton, New Jersey 08540 11 BY: MARK S. MELODIA, ESQ. 12 13 Also Present: 14 Deverell White 15 Carol Fein Ross, Esq. 16 17 18 19 20 21 22 23 24 25</p>	5
	<p>1 2 IT IS HEREBY STIPULATED AND 3 AGREED by and among the attorneys for 4 the respective parties hereto, that the 5 sealing and filing of the within 6 deposition be waived, that such 7 deposition may be signed and sworn to 8 before any officer authorized to 9 administer an oath with the same force 10 and effect as if signed and sworn to 11 before a Justice of this Court. 12 13 IT IS FURTHER STIPULATED AND 14 AGREED that all objections, except as 15 to the form, are reserved to the time 16 of trial. 17 18 IT IS FURTHER STIPULATED AND 19 AGREED that the within examination and 20 any corrections thereto may be signed 21 before any Notary Public with the same 22 force and effect as if signed and sworn 23 to before this Court. 24 25 -oOo-</p>	
	<p>1 2 THE VIDEOGRAPHER: Good 3 morning. We're on the record. 4 Today's date is October 15, 2007. 5 The time on the video monitor is 6 10:17 a.m. 7 This is the beginning of Tape 8 Number 1 of the videotaped 9 deposition of Timothy L. O'Brien in 10 the case of Donald Trump versus 11 Timothy L. O'Brien, Time Warner 12 Book Group Incorporated, et al. 13 Case Number CAM-L-545-06. 14 This case is filed in the 15 Supreme Court of New Jersey, Law 16 Division, Camden County. 17 Will counsel please note 18 their appearances. 19 MR. RESSLER: For Plaintiff 20 Donald Trump, Mark Ressler from the 21 Kasowitz Benson Torres & Friedman 22 law firm. With me is Maria Gorecki 23 from my firm as well. 24 MR. TAMBUSI: William 25 Tambussi, Brown & Connery, also for</p>	

2 (Pages 2 to 5)

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6

1 Plaintiff Donald Trump and we have
 2 William Cook, Brown Connery for
 3 Plaintiff.
 4 MR. CERESNEY: Andrew
 5 Ceresney, Mary Jo White, and Andrew
 6 Levine from the Debevoise &
 7 Plimpton firm in New York.
 8 With us as well is Mark
 9 Melodia from Reed Smith in New
 10 Jersey, Princeton, New Jersey and
 11 Carl Ross, general counsel of
 12 currently of the Hachette – now
 13 known as the Hachette Book Group.
 14 THE VIDEOGRAPHER: Will the
 15 court reporter please swear in the
 16 witness.
 17
 18
 19 TIMOTHY L. O'BRIEN,
 20 called as a witness, having been duly
 21 sworn on September 15, 2007, by a
 22 Notary Public, was examined and
 23 testified as follows:
 24 620 8th Avenue
 25 New York, New York 10018-1405

8

1 - TIMOTHY L. O'BRIEN -
 2 audibly. You can't just shake your
 3 head because the court reporter won't
 4 be able to pick that up.
 5 A. Okay.
 6 Q. Also -- and this is very
 7 important -- I want you to be sure that
 8 if I ask you a question today or
 9 tomorrow that you don't understand, you
 10 tell me that, because I want to avoid a
 11 situation where, down the road, when
 12 we're trying this case in a courtroom
 13 in New Jersey, I use your testimony
 14 today, and you respond by saying,
 15 "well, I didn't really understand your
 16 question, Mr. Ressler, at the
 17 deposition."
 18 So I want to make sure that
 19 if I ask you a question and you don't
 20 understand it, you tell me that and
 21 I'll make every effort to rephrase it
 22 so you do understand it.
 23 A. Okay.
 24 Q. Do you understand that?
 25 A. I do.

7

1 - TIMOTHY L. O'BRIEN -
 2 EXAMINATION BY MR. RESSLER:
 3 Q. Mr. O'Brien, good morning.
 4 A. Good morning.
 5 Q. My name is Mark Ressler. I'm
 6 with the firm Kasowitz Benson Torres &
 7 Friedman, and as you know, we represent
 8 the Plaintiff Donald Trump in this
 9 lawsuit.
 10 Today at this deposition I'm
 11 going to be asking you a series of
 12 questions and likewise tomorrow I'll be
 13 doing the same concerning allegations
 14 and facts in connection with this case.
 15 I want you to appreciate and
 16 understand that the oath you just took
 17 that was administered by the court
 18 reporter is the same as and has the
 19 same effect as the oath that you would
 20 take at a trial before a judge. So
 21 that untruthful answers here could
 22 subject you to the penalty of perjury,
 23 just as they would in a regular court.
 24 Also, I want to remind you
 25 that you have to answer my questions

9

1 - TIMOTHY L. O'BRIEN -
 2 Q. Now, during the course of my
 3 questions today and tomorrow, I'm going
 4 to be referring frequently to the book,
 5 and by "the book" I mean this book that
 6 you wrote called, TrumpNation: The Art
 7 of Being the Donald.
 8 Do you understand that?
 9 A. I do.
 10 Q. Okay, Mr. O'Brien, what's
 11 your social security number?
 12 A. 340-60-3474.
 13 Q. And what is your address?
 14 A. 65 Plymouth Street,
 15 Montclair, New Jersey 07042.
 16 Q. How old are you?
 17 A. I am -- I am 45.
 18 Q. What's your birth date?
 19 A. 12/15/61.
 20 Q. And where do you presently
 21 work?
 22 A. I work at The New York Times.
 23 Q. What's the address?
 24 A. It's -- I think it's
 25 620 Eighth Avenue.

10	<p>1 - TIMOTHY L. O'BRIEN -</p> <p>2 Q. Have you ever had your</p> <p>3 deposition taken before?</p> <p>4 A. No, I haven't.</p> <p>5 Q. Have you ever been involved</p> <p>6 in any litigation before, whether as a</p> <p>7 Plaintiff or a defendant?</p> <p>8 A. No, I have not.</p> <p>9 Q. Have you ever had to testify</p> <p>10 as a witness in litigation either in</p> <p>11 court or in some other realm?</p> <p>12 A. No, I have not.</p> <p>13 Q. Have you ever been arrested</p> <p>14 before?</p> <p>15 A. No, I have not.</p> <p>16 Q. What did you do to prepare</p> <p>17 for the deposition?</p> <p>18 A. I reviewed my notes. I</p> <p>19 reviewed the book, and I went over</p> <p>20 documents that have been submitted</p> <p>21 during the course of litigation, when I</p> <p>22 prepared for the deposition.</p> <p>23 Q. When you say you went over</p> <p>24 your notes, what notes are you</p> <p>25 referring to?</p>	12
11	<p>1 - TIMOTHY L. O'BRIEN -</p> <p>2 A. The notes that I took during</p> <p>3 my reporting on Donald Trump for The</p> <p>4 New York Times and the Trump</p> <p>5 organization for The New York Times, as</p> <p>6 well as my reporting for the book.</p> <p>7 Q. Are some of the materials</p> <p>8 that you just mentioned, the notes that</p> <p>9 you reviewed, were some of those</p> <p>10 withheld on the grounds of privilege in</p> <p>11 this case so that we haven't had the</p> <p>12 opportunity to review them?</p> <p>13 A. That's my understanding, yes.</p> <p>14 MR. CERESNEY: Actually, let</p> <p>15 me object just on that.</p> <p>16 Mr. O'Brien has not reviewed</p> <p>17 any notes that have not been --</p> <p>18 sorry. Mr. O'Brien has not</p> <p>19 reviewed notes that have been</p> <p>20 withheld on privilege.</p> <p>21 MR. RESSLER: That's what I</p> <p>22 was getting at.</p> <p>23 MR. CERESNEY: That's what</p> <p>24 you were asking in the question?</p> <p>25 MR. RESSLER: Yes.</p>	13
10	<p>1 - TIMOTHY L. O'BRIEN -</p> <p>2 Q. So you did preparation on</p> <p>3 your own, in other words, outside the</p> <p>4 presence of lawyers for the purpose of</p> <p>5 preparing for today's deposition?</p> <p>6 A. Yes.</p> <p>7 Q. And did you also meet with</p> <p>8 lawyers?</p> <p>9 A. Yes.</p> <p>10 Q. Who did you meet with?</p> <p>11 A. I met with Mr. Ceresney,</p> <p>12 Ms. White, Mr. Levine, Miss Ross,</p> <p>13 Mr. Melodia, Madelyn Schachter of the</p> <p>14 Hachette Book Group.</p> <p>15 Those are, I think, the only</p> <p>16 attorneys I've met with.</p> <p>17 Q. Have you met with any</p> <p>18 attorneys from The New York Times in</p> <p>19 connection with this deposition?</p> <p>20 A. Yes, I have.</p> <p>21 Q. Who?</p> <p>22 A. David McCraw.</p> <p>23 Q. When did you meet with Mr.</p> <p>24 McCraw?</p> <p>25 A. I spoke to David on multiple</p>	13

<p style="text-align: right;">14</p> <p>1 - TIMOTHY L. O'BRIEN - 2 deposition, with your preparation for 3 today's deposition? 4 A. Yes. 5 Q. Do you regularly update 6 Mr. McCraw of The New York Times, 7 in-house lawyer, concerning the 8 progress or developments on this case, 9 without going into any substance of any 10 communications you might have had with 11 him? 12 MR. CERESNEY: I'm going to 13 object both to form and to 14 substance and instruct him not to 15 answer. 16 MR. RESSLER: On what ground? 17 MR. CERESNEY: Because you're 18 asking him the substance of the 19 communications. 20 If you ask him if he has 21 conferred with Mr. McCraw, I'm not 22 going to object to that. If you 23 ask how many times he's conferred, 24 that's fine. 25 But if you're going into the</p>	<p style="text-align: right;">16</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Again, certainly more than 3 10, yes. 4 Q. Well, in terms of frequency, 5 is it several times a week? 6 A. No. 7 Q. Several times a month? 8 A. No. 9 Q. Has Mr. McCraw participated 10 in any meetings involving you and the 11 other lawyers you mentioned? 12 A. Yes. 13 Q. Were those in connection with 14 today's deposition preparation? 15 A. In which I also participated? 16 Q. Yes. 17 A. No. 18 Q. How many times did you meet 19 with the lawyers you mentioned 20 excluding Mr. McCraw? 21 A. The lawyers representing me 22 in this litigation? 23 Q. Correct. 24 A. Multiple occasions. 25 Q. And when was the most recent</p>
<p style="text-align: right;">15</p> <p>1 - TIMOTHY L. O'BRIEN - 2 substance of his conferences with 3 Mr. McCraw, then I'll have to 4 assert and I'll also have to seek 5 Mr. McCraw's views about the 6 privilege, because it's obviously 7 the The New York Times' privilege. 8 MR. RESSLER: No, no, I 9 specifically said that I don't want 10 to delve into the substance of your 11 communications. 12 BY MR. RESSLER: 13 Q. How many times have you 14 spoken to Mr. McCraw concerning this 15 litigation? 16 A. Multiple occasions. 17 Q. Could you give me a more 18 specific number? 19 A. I'm not really able to 20 recollect. 21 Q. Is it more than 20, would you 22 say? 23 A. Be hard for me to specify. 24 Multiple occasions. 25 Q. Would it be more than 10?</p>	<p style="text-align: right;">17</p> <p>1 - TIMOTHY L. O'BRIEN - 2 time you met with them other than this 3 morning? 4 A. Last Wednesday evening. 5 Q. How long was the meeting? 6 A. Four hours or so. 7 Q. And prior to that? 8 A. On Monday and Tuesday of last 9 week. 10 Q. How long were those meetings? 11 A. Approximately eight hours 12 each. 13 Q. And did you review certain 14 documents during those meetings? 15 A. I did. 16 Q. What documents did you 17 review? 18 MR. CERESNEY: Object, 19 privilege. 20 MR. RESSLER: I think we've 21 already dealt with this issue. 22 MR. CERESNEY: We have in the 23 context of developing a foundation 24 for asking the question, the questioning 25 through the deposition, not at the</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">18</p> <p>1 - TIMOTHY L. O'BRIEN - 2 beginning of the deposition in 3 questioning what he reviewed. 4 If you want to ask him 5 generally what he reviewed, what 6 types of documents, I'm not going 7 to object on that but if you're 8 going into the substance of the 9 particular documents he reviewed, 10 I'm going to ask you to lay a 11 foundation before I let him answer. 12 MR. RESSLER: I'll take that 13 up later. I don't want to waste 14 time on that. 15 Q. Mr. O'Brien, did you confer 16 with any nonlawyers at The New York 17 Times in connection with this 18 deposition? 19 A. No. 20 Q. Is your editor still Larry 21 Ingrassia? 22 A. Ingrassia. 23 Q. Ingrassia? 24 A. Yes, he is. He's my -- he's 25 my boss.</p>	<p style="text-align: right;">20</p> <p>1 - TIMOTHY L. O'BRIEN - 2 litigation? 3 A. I don't believe Eric knows 4 that I'm here at a deposition today. 5 Q. Do you have any understanding 6 as to whether the times publisher 7 Mr. Suizberger knows? 8 A. I don't. 9 Q. Other than scheduling, did 10 you communicate with your boss, 11 Mr. Ingrassia, about any other aspect 12 of today's deposition? 13 A. No, I don't believe that I 14 have. 15 Q. You don't believe that you 16 have, or are you certain to the extent 17 that you can be certain that you have 18 not? 19 A. I don't think I spoke to him 20 at all about the substance of today's 21 deposition. 22 Q. Have you communicated with 23 Mr. Ingrassia about status, strategy, 24 developments in connection with the 25 litigation?</p>
<p style="text-align: right;">19</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Okay. Does your boss know 3 that you're being deposed today in 4 Donald Trump's lawsuit against you? 5 A. Yes. 6 Q. So you did confer with him 7 concerning the deposition? 8 MR. CERESNEY: Objection. 9 Form. You can answer. 10 A. Okay. Only in terms of how 11 it affected my schedule at the office. 12 Q. Okay. But you did 13 communicate with your boss to the 14 effect that you were going to be here 15 at a deposition? 16 A. As it pertained to 17 scheduling. It didn't -- it didn't 18 pertain to substance. 19 Q. Okay. Anyone else at The 20 Times? 21 A. Only around scheduling 22 issues. 23 Q. Did you confer with Eric Dash 24 to the effect that you'd be at a 25 deposition today in the Trump</p>	<p style="text-align: right;">21</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Objection, 3 compound question. 4 You can answer it. 5 A. Can you repeat the question, 6 please. 7 Q. Have you communicated with 8 Mr. Ingrassia, your boss, about any 9 aspect of the Trump litigation? 10 A. I've spoken with him about 11 the status of the case and the 12 scheduling of the case as it pertains 13 to my appearance in the office. 14 Q. And when you say the "status 15 of the case," what do you mean by that? 16 A. Whether or not it had been 17 settled, whether or not it was moving 18 forward in -- in -- into litigation in 19 the courts, generalities. 20 Q. What about strategic issues 21 in connection with the litigation? 22 MR. CERESNEY: Objection. 23 Vague. 24 You can answer. 25 A. No, I don't -- I don't</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">22</p> <p>1 - TIMOTHY L. O'BRIEN - 2 believe I have. 3 Q. Have you communicated with 4 Mr. Ingrassia about any e-mails or 5 notes or other documents in connection 6 with the litigation? 7 MR. CERESNEY: Objection. 8 Form. 9 You can answer. 10 A. No, I don't believe I have. 11 Q. Mr. O'Brien, what is your 12 marital status? 13 A. I am married. I am 14 remarried. 15 Q. You were divorced? 16 A. I was. 17 Q. And your wife now is a 18 lawyer? 19 A. Yes, she is. 20 Q. Is she a litigator? 21 A. She is in the litigation 22 department, but she does not actively 23 litigate in court. 24 Q. Now, you attended Georgetown 25 University as an undergraduate; is that</p>	<p style="text-align: right;">24</p> <p>1 - TIMOTHY L. O'BRIEN - 2 schools within Columbia University; is 3 that correct? 4 A. That's correct. 5 Q. That's what I meant by three 6 different graduate schools. 7 A. Sorry. I misunderstood the 8 question. 9 Q. Okay. So you received three 10 different advanced degrees from 11 Columbia University, correct? 12 A. Correct. 13 Q. What was the first advanced 14 degree you received from Columbia after 15 graduating magna cum laude from 16 Georgetown? 17 A. I received an MA in U.S. 18 history from Columbia. 19 Q. How many years was that MA 20 program? 21 A. It was a two-year program. 22 Q. And when you say "MA," you 23 mean a master of arts degree? 24 A. Yes. 25 Q. What advanced degree did you</p>
<p style="text-align: right;">23</p> <p>1 - TIMOTHY L. O'BRIEN - 2 correct? 3 A. That's correct. 4 Q. And what degree did you 5 receive from Georgetown? 6 A. I received a BA cum laude 7 English. 8 Q. When you say "cum laude," 9 what do you mean by that? 10 A. With honors. 11 Q. And what year was that? 12 A. 1984. 13 Q. And then you went to graduate 14 school; is that correct? 15 A. That is correct. 16 Q. In fact, sir, you went to 17 three different graduate schools; is 18 that correct? 19 A. No, that's not correct. 20 Q. How many graduate schools did 21 you go to? 22 A. I went to Columbia University 23 for all of my graduate degrees, but I 24 did receive three separate degrees. 25 Q. At three separate graduate</p>	<p style="text-align: right;">25</p> <p>1 - TIMOTHY L. O'BRIEN - 2 receive after getting your MA in U.S. 3 history from Columbia? 4 A. I received a masters of 5 science in journalism from Columbia 6 University. 7 Q. Was that from the Columbia 8 University School of Journalism? 9 A. Yes, it was. 10 Q. And that's - that's an MS 11 degree? 12 A. Yes, it is. 13 Q. Okay. And with respect to 14 your MS degree from the Columbia School 15 of Journalism, how many years was that 16 program? 17 A. It was one-year. 18 Q. And after receiving your 19 second advanced degree from Columbia - 20 A. Yes. 21 Q. - you received a third one, 22 correct? 23 A. That's correct. 24 Q. And from what school did you 25 receive that third graduate degree?</p>

<p style="text-align: right;">26</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. From the Columbia University 3 graduate School of Business. 4 Q. And what degree was it that 5 you received? 6 A. A masters in business 7 administration. 8 Q. So you have an MBA degree, 9 correct? 10 A. I do. 11 Q. And how long was that 12 program, the program it took to earn 13 your MBA degree? 14 A. That was a two-year program. 15 Q. So all told, how many years 16 did you spend after college at Columbia 17 earning your three degrees? 18 A. Four. 19 Q. That was from '84 to '88? 20 A. No. Between 1984 and 1986 I 21 lived abroad. I was a volunteer worker 22 in Peru from 1984 to 1985, and then I 23 was an English teacher in Japan from 24 1985 to 1986. Then I attended Columbia 25 for the history program in 1986.</p>	<p style="text-align: right;">28</p> <p>1 - TIMOTHY L. O'BRIEN - 2 in terms of their status 3 prepublication, and I confer with my 4 team about the parameters of those 5 stories. 6 Q. And as part of your duties 7 and responsibilities, do you also have 8 occasion to apply or interpret the 9 standards that The New York Times 10 applies with respect to the reporters 11 and editors who write for the 12 newspaper? 13 A. Yes, I do. 14 Q. And what are those standards 15 and guidelines in terms of -- in terms 16 of are they codified? 17 A. Yes, they are. 18 Q. There are specific written 19 standards and guidelines that The Times 20 applies to govern the conduct of its 21 employees; is that correct? 22 A. That is correct. 23 Q. How many such standards or 24 guidelines can you describe? 25 A. I think you -- it would be</p>
<p style="text-align: right;">27</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Since 2006, Mr. O'Brien, you 3 have been the editor of the Sunday 4 business section of The New York Times 5 newspaper; is that correct? 6 A. That is correct. 7 Q. What is the Sunday business 8 section of the New York Times? 9 A. It is a weekly section that 10 is published on Sundays that explores 11 different facets of the business world. 12 Q. What are your duties and 13 responsibilities as the editor of that 14 business section, that Sunday business 15 section? 16 A. I oversee the stories that we 17 run on the page. I decide on, 18 particularly on the selection of the 19 two cover stories that run each week. 20 I edit our cover columnist, a woman 21 named Gretchen Morgansen. 22 We have a series of columns 23 that run on the inside of the page that 24 I have deputies who select those 25 columns and I oversee the final stories</p>	<p style="text-align: right;">29</p> <p>1 - TIMOTHY L. O'BRIEN - 2 useful for me if you could -- if you 3 could ask me what areas those standards 4 apply to because they're very numerous. 5 Q. What areas do they apply to? 6 A. Well, everything from the way 7 we interact with sources to the way we 8 substantiate our sources, the level of 9 disclosure that we have in the 10 newspaper around both our reporting and 11 writing and interaction with the 12 subjects of our stories, all with an 13 eye towards what we can do to better 14 serve our readers. 15 Q. Prior to being named the 16 editor of the Sunday business section 17 at The Times, you were also a Times 18 reporter; is that correct? 19 A. That's correct. 20 Q. And was that from -- the 21 second time around from 2003 to 2006? 22 A. Correct. 23 Q. And what kinds of stories did 24 you report on, both during that period 25 and during your prior work at The</p>

30

1 - TIMOTHY L. O'BRIEN -
2 Times?
3 A. A wide variety of stories. I
4 originally came to the Times as a
5 banking and finance reporter. That
6 involved substantial coverage of Wall
7 Street, domestic banking, international
8 finance.
9 Part of that work was for the
10 business desk, part of it was for the
11 foreign desk at the paper.
12 When I returned, I did work
13 for the investigations desk. I did
14 work for the International Herald
15 Tribune.
16 Q. I'm sorry. What's the
17 International Herald Tribune?
18 A. It's a publication that we
19 own that's based in Europe.
20 Q. And it's published abroad?
21 A. Yes, it is. And then when I
22 returned to Business Day, I covered
23 banking and finance, and then I was
24 appointed as a general - a dedicated
25 feature writer for the Sunday business

31

1 - TIMOTHY L. O'BRIEN -
2 section.
3 Q. Is it fair to say your
4 emphasis through your years as a
5 reporter and editor has been in the
6 business world?
7 A. Yes, it has been.
8 Q. And in that capacity, from
9 time to time, I take it that you draw
10 upon your business degree, your MBA; is
11 that correct?
12 A. Yes, that's correct.
13 Q. Now, from 2000 to 2000 -
14 A. Excuse me. When you're
15 asking me if I draw upon my business
16 degree, could you - could you refine
17 that in terms of what you mean by that?
18 Q. No. You answered the
19 question and that's fine.
20 A. Okay.
21 Q. Just moving on.
22 From 2000 to 2002, you were a
23 senior feature writer at Talk Magazine;
24 is that correct?
25 A. That is correct.

32

1 - TIMOTHY L. O'BRIEN -
2 Q. And that was a monthly
3 magazine founded by Tina Brown; is that
4 correct?
5 A. It was founded by Tina Brown
6 and the Miramax Corporation.
7 Q. And Tina Brown was the editor
8 in chief or the managing editor of that
9 publication; is that correct?
10 A. That's correct.
11 Q. And prior to your stint at
12 Talk Magazine you were with The New
13 York Times as a staff reporter; is that
14 correct?
15 A. That's correct.
16 Q. What years does that span?
17 A. 1997 to 2000.
18 Q. Now, you resigned from The
19 New York Times in the year 2000, and
20 the reason you gave was you were going
21 to work as the head of strategy and
22 research at a business to business firm
23 called Whose Army; is that correct?
24 A. That is correct.
25 Q. What is Whose Army?

33

1 - TIMOTHY L. O'BRIEN -
2 A. It no longer exists, but it
3 was a company that was a .com company
4 that was dedicated to helping small
5 businesses move their off-line
6 operations on line.
7 Q. How long did you work at
8 Whose Army?
9 A. I worked there for
10 approximately a year.
11 Q. What was your position there?
12 A. Chief operating officer.
13 Q. Now, prior to your initial
14 stint at The Times, you were a reporter
15 at the Wall Street Journal; is that
16 correct?
17 A. Correct.
18 Q. What's the Wall Street
19 Journal, for the members of our jury?
20 A. It's a leading financial
21 publication.
22 Q. You covered banking primarily
23 during your years at the Journal?
24 A. Banking, and I also did
25 general enterprise work.

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1 - TIMOTHY L. O'BRIEN -
 2 Q. You did what kind of work?
 3 A. Enterprise reporting, project
 4 work. I actually began my career there
 5 as a small-business reporter.
 6 Q. And how many years did you
 7 spend as a reporter for the Wall Street
 8 Journal?
 9 A. 1992 to 1997, so five years.
 10 Q. So you have been a
 11 journalist, whether as a reporter or an
 12 editor, from 1995 -- withdrawn.
 13 Prior to the Journal, you
 14 also worked for a publication; is that
 15 correct?
 16 A. Prior to the journal, I was a
 17 free-lancer.
 18 Q. Okay. Meaning what?
 19 A. I contributed articles on a
 20 contract basis to various publications.
 21 Q. And, again, did you emphasize
 22 business?
 23 A. Yes. Primarily business, I
 24 would say.
 25 Q. Okay. So in terms of working

35

1 - TIMOTHY L. O'BRIEN -
 2 for a newspaper or magazine, you've
 3 done that as a reporter or an editor
 4 from approximately 1995 until the
 5 present, with the one-year exception of
 6 your stint at the .com, right?
 7 A. No, that's not correct. From
 8 1992 to the present.
 9 Q. Okay. And how many years is
 10 that?
 11 A. It's about 15 years.
 12 Q. You also have written and had
 13 published books; is that correct?
 14 A. That is correct.
 15 Q. You wrote a book entitled,
 16 Bad Bet: The Inside Story of the
 17 Glamour, Glitz, and Danger of America's
 18 Gambling Industry; is that correct?
 19 A. That is correct.
 20 Q. That book came out in 1998?
 21 A. That's correct.
 22 Q. And prior to that you also
 23 worked as a research assistant on a
 24 book about Donald Trump; is that
 25 correct?

36

1 - TIMOTHY L. O'BRIEN -
 2 A. That is correct.
 3 Q. What was the name of that
 4 book?
 5 A. Trump.
 6 Q. Didn't it have a longer title
 7 than just "Trump"?
 8 A. Trump: The Deals and the
 9 Downfall.
 10 Q. I'm sorry. What was it?
 11 A. I believe it's Trump: The
 12 Deals and the Downfall.
 13 Q. "The Deals and the Downfall"?
 14 A. Yes.
 15 Q. So it was Trump: The Deals
 16 and the Downfall?
 17 A. That's correct.
 18 Q. Who is the author of that
 19 book?
 20 A. Wayne Barrett.
 21 Q. What newspaper, magazine, or
 22 publication did or does Wayne Barrett
 23 write for?
 24 A. The Village Voice.
 25 Q. Have you ever taught

37

1 - TIMOTHY L. O'BRIEN -
 2 journalism, Mr. O'Brien?
 3 A. No, although I have been
 4 invited by Columbia University to go
 5 and speak to students there.
 6 Q. Speak about what?
 7 A. My career as a journalist.
 8 Q. You were invited but you
 9 didn't take Columbia up on its offer?
 10 A. No, I did.
 11 Q. Oh, you did?
 12 A. Yeah.
 13 Q. How many times have you done
 14 that?
 15 A. Three or four, I believe --
 16 Q. Was this --
 17 A. -- at the invitation of
 18 Lynell Hancock, who is the journalism
 19 professor there, and Bruce Porter, who
 20 is also a journalism professor, and
 21 Robin Relsig, who is also a journalism
 22 professor at Columbia. Robin Relsig,
 23 R-E-I-S-I-G.
 24 Q. And your work in that regard
 25 was more or less in the manner of being

<p style="text-align: right;">38</p> <p>1 - TIMOTHY L. O'BRIEN - 2 a guest lecturer at the Columbia School 3 of Journalism? 4 A. Yes. It was -- it was 5 essentially a guest visitor at the 6 classroom to speak to them about my 7 career as a journalist. 8 Q. Have you ever given speeches 9 or appeared on panels concerning 10 journalism topics? 11 A. Yes. 12 Q. Can you explain some of 13 those, describe some of those? 14 A. Jeez, I can't. I'd have to 15 be reminded of the particular event to 16 get into any specifics but they 17 involved talking about the nature of 18 the journalism profession as a whole, 19 and then my own reporting. 20 Q. And what kind of venues did 21 you give these kinds of talks or 22 speeches? 23 A. Public venues. I think one 24 was sponsored by the Council on Foreign 25 Relations. Another was sponsored by</p>	<p style="text-align: right;">40</p> <p>1 - TIMOTHY L. O'BRIEN - 2 indicated he hadn't been involved 3 in litigation. 4 But he wishes to clarify, 5 there obviously were divorce 6 proceedings related to the divorce, 7 so the answer to your question 8 about litigation, no other 9 litigation other than divorce 10 proceedings. 11 BY MR. RESSLER: 12 Q. Okay. Following up on that, 13 Mr. O'Brien, what court were those 14 divorce proceedings in? 15 A. The Essex County Family 16 Court, I believe. 17 Q. But you were not made to 18 testify either in deposition or at 19 trial, at some kind of proceeding in 20 that case? 21 A. No, sir. 22 Q. How long did those divorce 23 proceedings last? 24 A. Well, you know, the divorce 25 was finalized in the spring of 2001.</p>
<p style="text-align: right;">39</p> <p>1 - TIMOTHY L. O'BRIEN - 2 International Monetary Fund, I believe. 3 They haven't been frequent, so they're 4 not forward in my mind. 5 MR. RESSLER: Why don't we 6 take a break now so a laptop 7 computer with Livenote could be 8 hooked up. It will be a very brief 9 break, in fact -- well, we'll find 10 out how brief it will be. 11 (Whereupon, there was a brief 12 recess in the proceedings.) 13 THE VIDEOGRAPHER: We're back 14 on the record. The time on the 15 monitor is 11:01 a.m. 16 MR. CERESNEY: Just at the 17 break, one clarification that 18 Mr. O'Brien wishes to make with 19 regard to the questions about 20 whether he'd been involved in 21 previous litigation. 22 He answered a different 23 question, that he had been 24 divorced. In response to that 25 question about litigation, he</p>	<p style="text-align: right;">41</p> <p>1 - TIMOTHY L. O'BRIEN - 2 There was -- it was -- I think that the 3 State of New Jersey requires 18 months 4 after you file the initial papers; so 5 approximately a year and a half to two 6 years. 7 Q. Okay. Mr. O'Brien where did 8 you get your idea to write this book, 9 TrumpNation: The Art of Being the 10 Donald? 11 A. It came out of my reporting 12 for The New York Times. 13 Q. And what was the concept you 14 had in mind when you began to formulate 15 the book and the book proposal? 16 A. I thought the Donald would be 17 a useful person to profile as a vehicle 18 for exploring various facets of the 19 business world and pop culture and -- 20 and the social scene in America. 21 Q. When you say "the Donald," 22 are you referring to Mr. Trump? 23 A. I am. 24 Q. You've asserted in this 25 litigation that the professional</p>

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1 - TIMOTHY L. O'BRIEN -
2 journalistic methods and techniques
3 that you used to write this book were
4 the same as the methods and techniques
5 you used for writing stories with The
6 New York Times; is that correct?
7 A. Yes, that's correct.
8 Q. So in writing this book,
9 TrumpNation, you held yourself to the
10 same standards; is that correct?
11 A. That is correct.
12 MR. RESSLER: I'd like the
13 court reporter to mark as Exhibit
14 19 this document. It doesn't bear
15 a Bates number.
16 (Whereupon, O'Brien Exhibit 19 was
17 marked for identification.)
18 Q. Mr. O'Brien, the document
19 that's been placed in front of you is
20 your own certification that was filed
21 in this case before the Judge in this
22 case.
23 Do you remember seeing this
24 document and writing this document?
25 A. I do.

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1 - TIMOTHY L. O'BRIEN -
2 Q. It's dated November 10th,
3 2006.
4 That's your signature on the
5 last page, correct?
6 A. That is correct.
7 Q. And this is sworn by you to
8 the effect that you're subject to
9 punishment of perjury if any of the
10 statements in here are false; is that
11 correct?
12 A. That is correct.
13 Q. Let me direct your attention,
14 sir, to Paragraph 2.
15 You wrote in your
16 certification, "As a reporter and
17 editor, I rely on the same professional
18 methods and tools whether I am writing
19 for a newspaper, a magazine, or a book.
20 Over time, these techniques have proven
21 to be effective and indispensable for
22 fact gathering, assessing fact
23 patterns, and creating a written
24 portrait of an event or individual that
25 gives readers a truthful and engaging

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1 - TIMOTHY L. O'BRIEN -
2 understanding of the subject matter.
3 "Those efforts and goals do
4 not shift in different media; they are
5 just published in different forms."
6 Do you see that?
7 A. I do.
8 Q. And did you write that?
9 A. I did.
10 Q. With respect to the first
11 sentence, on Paragraph 2, what are the
12 professional methods, tools, or
13 techniques that you're referring to?
14 A. That would involve extensive
15 documentary research, both in terms of
16 public records, such as securities
17 filings or corporate filings.
18 It would involve extensive
19 use of media databases. It would
20 involve interviews with individuals
21 either directly or indirectly involved
22 with reports with subjects that I'm
23 reporting or events that I'm reporting
24 on.
25 It would involve what I like

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1 - TIMOTHY L. O'BRIEN -
2 to call triangulation, which is to
3 repeatedly interview different
4 individuals about elements of a story
5 or subject in an effort to accurately
6 portray events and describe individuals.
7 Q. Why do you undertake this
8 technique, triangulation, in order to
9 accurately portray events and describe
10 individuals?
11 Why is it important to you to
12 accurately portray events and describe
13 individuals?
14 A. Because I think it's the
15 heart and soul of the work that I do.
16 I think we have an obligation to the
17 reader to portray the world around us
18 in the most accurate fashion possible.
19 And this kind of methodology,
20 given the amount of time I've spent
21 using it, is almost second nature now.
22 It's just - it's a way of assessing
23 the truth and what occurs in certain
24 events or how a certain individual or
25 subject acts in the world.

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1 - TIMOTHY L. O'BRIEN -
2 Q. So to use your words, "heart
3 and soul" of what you do as a
4 journalist --
5 A. Yes.
6 Q. -- you reference the heart
7 and soul of what you do.
8 A. Yes.
9 Q. It really comes down to
10 getting it right; is that correct?
11 A. Absolutely, yes, it does.
12 Q. It comes down to being
13 truthful with respect to what you
14 write?
15 A. Yes, it does.
16 Q. Now, what about impartiality
17 on your part as an author. Is that
18 part of the professional techniques,
19 methods, and tools that you bring to
20 bear in your reporting and writing?
21 A. Yes. I think you always want
22 to try to be as impartial as possible
23 to assess fact patterns. I think being
24 impartial is -- is an enormous tool.
25 Q. Why?

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1 - TIMOTHY L. O'BRIEN -
2 A. Because I have an obligation
3 to accurately record events so I can
4 serve the reader properly.
5 Q. So as part of your focus on
6 being impartial, you try, I take it, to
7 shed any biases that you might have
8 towards your subject?
9 A. I do.
10 Q. How do you go about doing
11 that, shedding biases that you might
12 have towards your subject?
13 A. By constantly reexamining
14 your own assumptions -- my own
15 assumptions -- about an event, about
16 information I received from third
17 parties, about even documentary
18 evidence in the public record. It's a
19 shedding that is driven by a constant
20 reassessment of the fact pattern.
21 Q. And when you say that you try
22 to shed any biases you might harbor
23 towards a subject, you said you do that
24 by constantly reexamining your own
25 assumptions?

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1 - TIMOTHY L. O'BRIEN -
2 A. Correct.
3 Q. Where would these assumptions
4 spring from?
5 A. From the fact pattern.
6 Q. And I take it, as part of
7 this effort, as you've described it,
8 being objective and neutral is all of a
9 piece with maintaining this impartial
10 approach; is that correct?
11 MR. CERESNEY: Objection to
12 form.
13 Q. Sir, is that correct?
14 MR. CERESNEY: You can answer
15 it.
16 A. Can you restate the question,
17 please.
18 Q. As part of your effort to
19 shed biases and remain impartial in
20 your writing and researching, you try
21 to be objective and neutral; isn't that
22 correct?
23 A. Yes. I think objectivity and
24 neutrality are very important aspects
25 of the work I do.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Because you, Mr. O'Brien,
3 wouldn't try to use your power and your
4 influence as a writer, who disseminates
5 information to the public, to advance
6 any personal agenda that you might
7 have; isn't that right?
8 A. That is right.
9 Q. You wouldn't use that power
10 that comes from being a reporter for
11 The New York Times, or writing a book
12 published by a major house such as
13 Warner, to settle any personal scores
14 that you might have; isn't that
15 correct?
16 A. That is correct.
17 Q. Why is that?
18 A. I think it would be an
19 abrogation of my responsibilities as a
20 journalist and the bond of trust I
21 believe I have with my readers, both as
22 an individual and as a representative
23 of The New York Times.
24 Q. Isn't it true, Mr. O'Brien,
25 that from the outset, from the time you

<p style="text-align: right;">50</p> <p>1 - TIMOTHY L. O'BRIEN - 2 conceived of this book, through its 3 publication and promotion, your 4 objective and intent was to denigrate 5 and demean Donald Trump? 6 MR. CERESNEY: Objection to 7 form. 8 You can answer the question 9 if you can. 10 A. No, that's not true. 11 Q. Isn't it true, sir, that from 12 the outset of this project, in writing 13 and researching this book, and then 14 promoting and marketing it, your 15 objective and your intent was to cause 16 damage to Donald Trump and to Trump's 17 reputation? 18 MR. CERESNEY: Objection to 19 form. 20 You can answer the question. 21 A. No, that's not correct. 22 Q. Isn't it true, Mr. O'Brien, 23 that from the outset your objective and 24 intent in writing this book was to 25 state that Donald Trump is not a</p>	<p style="text-align: right;">52</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Do you see that? 3 A. I do. 4 Q. Did you write this, sir? 5 A. I did. 6 Q. What is it? 7 A. It's a proposal for 8 TrumpWorld: A Field Guide to the 9 American Dream. 10 Q. When did you write it? 11 A. I believe I -- in the early 12 fall of 2004. 13 Q. How long did it take you to 14 write it? 15 A. Several hours; a day, 16 perhaps. 17 Q. Why did you write it? 18 A. In order to pursue a book 19 contract about Mr. Trump. 20 Q. At this point in time, were 21 there certain publishers to which you 22 were pitching a proposal? 23 A. Yes. 24 Q. Let me direct your attention 25 to 05.</p>
<p style="text-align: right;">51</p> <p>1 - TIMOTHY L. O'BRIEN - 2 billionaire? 3 MR. CERESNEY: Objection to 4 form. 5 You can answer the question. 6 A. No, that's not -- that's not 7 my intention. 8 Q. Let's take a look at some 9 documents, Mr. O'Brien. Let's have the 10 court reporter mark as -- 11 MS. GORECKI: This is already 12 Exhibit 6. It's been used before. 13 Q. Let's take a look at some 14 documents. Plaintiffs 6, it's 15 Exhibit 20 for the purposes of today's 16 deposition, previously identified in 17 discovery as AB-EF-2. 18 I'm going to ignore the 19 multiple zeros that appear before these 20 numbers and just go right to the last 21 number, so that is Exhibit 20. 22 Mr. O'Brien, Exhibit 6 is a 23 document entitled, "Proposal for 24 TrumpWorld: A Field Guide to the 25 American Dream, by Timothy L. O'Brien."</p>	<p style="text-align: right;">53</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Page 05? 3 Q. I'm referring to the Bates 4 numbers that appear in the bottom 5 right-hand corner of the document. 6 Do you see them? 7 A. Uh-huh. I do. 8 Q. On Page 5 of your proposal 9 for the book -- and, by the way, this 10 proposal was for the book that 11 ultimately became TrumpNation, right? 12 A. That is correct. 13 Q. So the title here, 14 TrumpWorld: A Field Guide to the 15 American Dream, was a working title, 16 but not the title that was ultimately 17 used for the book; is that correct? 18 A. That is correct. 19 Q. Okay. So if you could direct 20 your attention to Page 5. You set 21 forth, for prospective publishers of 22 the book, certain chapter 23 considerations; is that correct? 24 A. Uh-huh. That is correct. 25 Q. Could you read the first</p>

14 (Pages 50 to 53)

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1 - TIMOTHY L. O'BRIEN -
 2 chapter consideration called
 3 "TrumpMoney?"
 4 A. Certainly. "TrumpMoney: How
 5 you can mint riches, just like Donald.
 6 This chapter will examine how Donald
 7 made his dough and where he stands, or
 8 doesn't stand, in the pantheon of
 9 American financial grandees. The
 10 concept of wealth in America, its
 11 attractions and perversions, and Main
 12 Street's own fetish for cascading,
 13 abundant greenbacks" - "greenbacks
 14 will also be explored."
 15 Q. Now, directing your
 16 attention, sir, to the phrase, "How you
 17 can mint riches just like Donald."
 18 A. Right.
 19 Q. By "mint riches" you meant
 20 make up or fabricate; is that correct?
 21 A. What I say is "mint riches,"
 22 which I mean is to make money.
 23 Q. When you say, "This chapter
 24 will examine how Donald made his dough
 25 and where he stands, or doesn't stand,

55

1 - TIMOTHY L. O'BRIEN -
 2 in the pantheon of American financial
 3 grandees."
 4 Do you see that?
 5 A. I do.
 6 Q. This was going to be the
 7 chapter in this proposal that told
 8 readers that Donald Trump wasn't a
 9 billionaire; isn't that correct?
 10 A. No. At this point I - you
 11 know, I didn't have a - a clear
 12 chapter outline as to what form the
 13 final book took.
 14 Q. Well -
 15 A. These were broad subject
 16 areas that I believed the book was
 17 going to explore; but a chapter outline
 18 wasn't in my mind yet.
 19 Q. But didn't this chapter
 20 ultimately become Chapter 6 of the book
 21 titled, "TrumpRope"?
 22 A. I think this thought became
 23 the substance of a number of chapters
 24 in the book.
 25 Q. But wasn't - wasn't what you

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1 - TIMOTHY L. O'BRIEN -
 2 say here, "...how Donald made his dough
 3 and where he stands, or doesn't stand,
 4 in the pantheon of financial grandees,"
 5 isn't that the theme that's explored
 6 primarily in the TrumpRope chapter of
 7 the book?
 8 A. I think it's explored in that
 9 chapter and in other chapters of the
 10 book as well.
 11 Q. What led you, in your
 12 proposal to pick this chapter, the one
 13 that talks about where Donald Trump
 14 stands, or doesn't stand, as the first
 15 chapter that you wanted to bring to the
 16 attention of your prospective
 17 publishers?
 18 A. Well, I think -
 19 MR. CERESNEY: Objection to
 20 form.
 21 You can answer the question.
 22 A. I think that the Donald's
 23 position in the - in the hierarchy of
 24 American business life is one of his
 25 primary attractions - attractions in

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1 - TIMOTHY L. O'BRIEN -
 2 - in the mind of the American public.
 3 So I think it's a leading reason that
 4 - that Mr. Trump is a public figure.
 5 Q. But my question, sir, was
 6 what led you to mention this chapter as
 7 the first chapter in your book
 8 proposal?
 9 A. Well, I don't think I say
 10 here that it's - that it's the first
 11 chapter. I say it's a chapter
 12 consideration.
 13 Q. It just happens to be the
 14 first chapter in the book proposal,
 15 right?
 16 A. It's a chapter consideration.
 17 It's the first topic in the chapter
 18 considerations which addresses the
 19 primary reason I think Donald has
 20 attraction in the American imagination,
 21 which is money.
 22 Q. Could you direct your
 23 attention, please, to the next page,
 24 Paragraph 4.
 25 A. Sure.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Under "TrumpHair," do you see
3 that?
4 A. Yes.
5 Q. In the second sentence you
6 write, "Donald shows the masses how
7 faux billionaires dress, while
8 demonstrating a Howard Hughes-like
9 paranoia about germs..."
10 Do you see that?
11 A. I do.
12 Q. What does the word "faux"
13 mean, F-A-U-X, "faux billionaire"?
14 A. I think it means something
15 that conveys the appearance of, but
16 behind which there may be less reality.
17 Q. It means false, doesn't it,
18 Mr. O'Brien?
19 A. I take it to mean the
20 appearance of something that -- that
21 may be in distinct opposition to what
22 reality is.
23 Q. "Faux" means fake or not
24 real, correct?
25 A. I believe that it -- it -- it

59

1 - TIMOTHY L. O'BRIEN -
2 means something that appears to be
3 other than what the reality behind it
4 conveys.
5 Q. Now, you wrote this book
6 proposal, did you not, before you
7 started working on the book, right?
8 A. Well, I actually considered
9 that my work for the book began long
10 before this proposal through my
11 reporting for The New York Times and
12 other reporting I'd done in my career
13 about Donald Trump's business
14 activities.
15 Q. So, then, the work on the
16 book had begun by the fall of '04 when
17 you sat down and wrote this proposal,
18 correct?
19 A. The formal book -- the formal
20 work for the book, is what you're
21 viewing in this proposal, certainly
22 began in the fall of 2004. But the
23 information that I assessed in my
24 analysis of Mr. Trump's business
25 operations began long before this.

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1 - TIMOTHY L. O'BRIEN -
2 Q. But from the outset,
3 Mr. O'Brien, you were intending to
4 expose Donald Trump as a faux
5 billionaire, right? A fake
6 billionaire; isn't that correct?
7 MR. CERESNEY: Objection to
8 form.
9 You can answer the question.
10 A. No, that's not correct.
11 Q. Could you go back to Page 04,
12 please.
13 A. Sure.
14 Q. You write in your proposal,
15 "TrumpWorld will be a new kind of
16 business book, one that is
17 investigative only in the capacity that
18 it opens a window onto why and how
19 Trump himself has become a social
20 phenomenon and how he has maintained
21 traction in so many different business
22 and cultural realms."
23 Do you see that?
24 A. I do.
25 Q. Didn't you intend, sir, that

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1 - TIMOTHY L. O'BRIEN -
2 your new kind of business book was
3 going to be a book that sabotaged
4 Donald Trump and talked about his
5 reputation?
6 MR. CERESNEY: Objection to
7 form.
8 You can answer the question.
9 A. No, I did not.
10 Q. Is it your testimony today,
11 Mr. O'Brien, under oath, that you did
12 not demonstrate malice towards Trump;
13 that your intent and purpose was not to
14 demean him or denigrate -- denigrate
15 him or cause damage to his reputation?
16 MR. CERESNEY: Objection to
17 form, particularly the use of the
18 word "malice" in this context.
19 If you can answer the
20 question, you can answer.
21 Q. Sir?
22 A. Please rephrase the question.
23 Q. Is it your testimony today,
24 as you sit here under oath, that your
25 purpose and intent in writing this book

16 (Pages 58 to 61)

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1 - TIMOTHY L. O'BRIEN -
2 was not to denigrate and demean and
3 cause damage to Trump and his
4 reputation?
5 A. No, that was not my
6 intention.
7 Q. Isn't it true, though, that
8 when you were pitching your book about
9 Trump to publishers, indeed, to Warner,
10 you described the book as an exposé
11 that was going to expose Trump as a
12 fraud?
13 A. No, that's not true.
14 MR. RESSLER: Could you mark
15 this, please, as Exhibit 20.
16 (Whereupon, O'Brien Exhibit 20 was
17 marked for identification.)
18 Q. This document has been
19 previously identified in discovery as
20 TWBG-PD-916.
21 Mr. O'Brien, this document is
22 titled, "For Edit Review - Confidential,
23 Trump World, by Tim O'Brien?"
24 Who wrote this document?
25 A. It's signed here "Rick," so I

63

1 - TIMOTHY L. O'BRIEN -
2 believe that Rick Wolff did.
3 Q. Who's Rick Wolff?
4 A. He was my editor at Warner
5 Books.
6 Q. Do you know what his title is
7 at Warner Books?
8 A. I believe he's a senior
9 editor at Warner Books.
10 Q. And Warner Books ultimately
11 became the publisher that chose to
12 publish your book; is that correct?
13 A. That is correct.
14 Q. Rick Wolff writes, "I met
15 very quietly with Tim O'Brien a few
16 weeks ago."
17 Would you have any
18 understanding as to why the meeting
19 that you had with Mr. Wolff was quiet?
20 What did he mean by that, "I met very
21 quietly with Tim O'Brien"?
22 A. You know, I can't really
23 ascertain what Rick might have been
24 thinking at the time.
25 Q. Was there something about

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1 - TIMOTHY L. O'BRIEN -
2 your meeting that you did not want to
3 come to light?
4 A. I can't really ascertain what
5 Rick was thinking at the time. I
6 certainly had no problem with people
7 knowing that I had met with him.
8 Q. Did people know that you met
9 with him?
10 A. My agent was aware of it.
11 Yes.
12 Q. So you have no understanding,
13 as you sit here today, what he meant by
14 the fact that the meeting was "very
15 quiet" with you?
16 A. Yeah. I have no idea.
17 Q. Okay. The second paragraph,
18 Mr. O'Brien, Mr. Wolff writes, "When we
19 spoke, Tim made it very clear to me
20 that the public image of Trump is
21 totally different from the real world
22 version. Tim's stories about Trump, as
23 well as his interactions with him and
24 insights into The Donald's life, made
25 this book sound delicious. In short,

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1 - TIMOTHY L. O'BRIEN -
2 Tim is eager to cut through all the
3 smoke-and-mirrors of Trump's so-called
4 empire."
5 Do you see that?
6 A. I do.
7 Q. What — how did you describe
8 your book to Mr. Wolff at this meeting?
9 A. As I believe I've described
10 it to you earlier, I think that a
11 profile at length of Donald and all of
12 his facets as both a business icon and
13 as someone who occupied a center stage
14 in the American public realm, as well
15 as in the cultural world, the casino
16 world, Manhattan real estate; offered
17 an opportunity not only to explore
18 Donald's involvement in those various
19 areas but his own track record as a
20 business person as well.
21 Q. Didn't you tell Mr. Wolff at
22 this and other meetings that you were
23 going to expose Trump as a fraud?
24 A. No.
25 Q. Mr. Wolff says, "In short,

17 (Pages 62 to 65)

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1 - TIMOTHY L. O'BRIEN -
2 Tim" -- that's you, right?
3 A. Sorry. Will you tell me
4 where -- where you were?
5 Q. In the last sentence in the
6 second paragraph.
7 "In short, Tim is eager to
8 cut through all the smoke-and-mirrors
9 of Trump's so-called empire."
10 What was "Trump's so-called
11 empire"? What does "so-called" mean in
12 this context?
13 A. You'd have to ask Rick about
14 that. I'm not sure.
15 Q. In your meetings with Rick,
16 you didn't give him any indication that
17 you were going to write a book that
18 exposed Trump's empire as being bogus,
19 as being a fraud?
20 A. No.
21 Q. Because you see Mr. Wolff
22 uses the phrase "so-called."
23 A. Uh-huh. Yes. I see that he
24 says that in this.
25 Q. And there's nothing that you

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1 - TIMOTHY L. O'BRIEN -
2 said at that meeting, or any other
3 meeting, with Mr. Wolff that, as far as
4 you know, would have led him to
5 understand that your book was going to
6 state that Trump is not a billionaire?
7 MR. CERESNEY: Objection to
8 form.
9 You ask answer.
10 A. No.
11 Q. Let me direct your attention
12 to the last paragraph. Mr. Wolff
13 writes, "Comparable titles to this
14 Trump exposé would include Molly Ivin's
15 Bushwhacked...and Chris Byron's Martha
16 Inc."
17 Do you see that?
18 A. I do.
19 Q. Mr. O'Brien, you told Warner
20 Books that you were going to write an
21 exposé on Trump, right?
22 A. No, that's not correct. In
23 fact, on -- on numerous occasions I --
24 I told them that I actu- -- I actively
25 wanted to pursue something that was

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1 - TIMOTHY L. O'BRIEN -
2 perceived publicly as a balanced
3 approach to his business life.
4 That I didn't want to take a
5 Kitty Kelley approach to writing this
6 book.
7 Q. What's a Kitty Kelley
8 approach?
9 A. Sensationalistic.
10 Q. You're not a sensationalistic
11 writer, right?
12 A. No, I don't believe I am.
13 Q. You don't write tabloids,
14 right?
15 A. That's correct.
16 Q. You don't write exposés,
17 right?
18 A. That is correct.
19 Q. Now, isn't it true,
20 Mr. O'Brien, that what you said is,
21 Let's not memorialize the fact that I'm
22 going to write an exposé, a tabloid
23 account of Trump. I'm going to do it,
24 but I just don't want that word to
25 appear in any documents. Sir?

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1 - TIMOTHY L. O'BRIEN -
2 A. And your question is?
3 Q. My question is, isn't it a
4 fact that you told Warner Books you
5 were going to write an exposé, but you
6 told them not to use that word because
7 you didn't want to memorialize your
8 intent and your purpose?
9 A. No, that's not true.
10 Q. By the way, there's a
11 reference on this document, lower
12 right-hand corner, it says, "250K
13 offer."
14 Do you see that?
15 A. I do.
16 Q. Was that the agreement that
17 you ultimately struck with Warner
18 Books, \$250,000 advance?
19 A. Yes, that is. That is the
20 figure.
21 Q. Did you receive a \$250,000
22 advance from Warner?
23 A. I did.
24 MR. RESSLER: Please mark
25 this as Exhibit 21.

18 (Pages 66 to 69)

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1 - TIMOTHY L. O'BRIEN -
2 (Whereupon, O'Brien Exhibit 21 was
3 marked for identification.)
4 Q. This document has previously
5 been identified in discovery as
6 TOB-EF-149.
7 Mr. O'Brien, let me direct
8 your attention to this document. It's
9 an e-mail exchange between Rick Wolff
10 and Andy Blauner and Christofer Du
11 Bois.
12 Am I pronouncing that right?
13 A. I believe you are.
14 Q. Who's Andy Blauner?
15 A. Andrew Blauner is my agent.
16 Q. He represented you in
17 connection with the negotiations with
18 Warner Books?
19 A. That's correct.
20 Q. The e-mail on the bottom of
21 the page, it's from Andy Blauner, dated
22 December 9th of '04 to Chris Du Bois
23 and Rick Wolff.
24 Do you see that?
25 A. I do.

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1 - TIMOTHY L. O'BRIEN -
2 Q. And who's Du Bois?
3 A. It appears from this e-mail
4 that he is a member of the general and
5 administrative staff at Time Warner
6 Book Group.
7 Q. You don't know him?
8 A. I do not.
9 Q. Okay, The e-mail by Blauner,
10 Andrew Blauner, reads, "A couple of
11 things." He's telling Chris Du Bois at
12 Warner Books a couple of things about
13 the book.
14 "Change word count to 75,000-
15 80,000." And then it says, "[Rick has
16 agreed." And then it says, "Change
17 'exposé' of 'to look at' and delete
18 'his various romances.'"
19 Do you see that?
20 A. I do.
21 Q. Where did this phrase "exposé
22 of" appear?
23 A. I believe it might have
24 appeared in one of the original
25 contracts.

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1 - TIMOTHY L. O'BRIEN -
2 Q. So the book, in one of the
3 original contracts, was described as an
4 exposé; isn't that correct?
5 A. I believe Warner Books
6 described it that way.
7 Q. But you have no understanding
8 as you sit here today under oath how
9 Warner Books could have somehow viewed
10 your book as an exposé at this stage,
11 right?
12 MR. CERESNEY: Objection to
13 the form.
14 You can answer.
15 A. Well, you know, I think -- I
16 think, on a rolling basis, people are
17 always trying to hone in on exactly the
18 product that they want to publish, and
19 that comes through negotiations such as
20 this about the content and the general
21 substance of the book.
22 So I think it would have come
23 out of negotiations such as that.
24 Q. So there was nothing that you
25 could have said in your descriptions of

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1 - TIMOTHY L. O'BRIEN -
2 the book that would have led Warner
3 Books to understand that you were
4 actually going to be writing an exposé
5 of Trump, right?
6 MR. CERESNEY: Objection.
7 Objection. Form.
8 You can answer the question
9 if you can.
10 A. In fact, I think that what
11 Warner Books correctly and ultimately
12 gleaned from our discussions about the
13 book was that it was exactly not the
14 kind of book that I wanted to write.
15 MR. RESSLER: Could you
16 please mark this as Exhibit 22.
17 It's previously been identified in
18 discovery as TOB-EF-152?
19 (Whereupon, O'Brien Exhibit 22 was
20 marked for identification.)
21 Q. Mr. O'Brien, this document is
22 a series of e-mail exchanges involving
23 Wolff, Du Bois, and Blauner.
24 Do you see that?
25 A. I do.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Let me direct your attention
3 to Page 153.
4 A. Okay.
5 Q. Blauner writes to Rick
6 Wolff - actually, Mr. O'Brien, go to
7 the first page. I'm sorry.
8 Rick Wolff writes to Blauner,
9 "AB - okay, this helps to clarify. We
10 fully understand that this book is
11 meant to be serious look at Trump and
12 his life and career, not a tabloid
13 account. We know that Tim doesn't
14 write exposés - we just want him to be
15 his usual tough, investigative self."
16 Do you see that?
17 A. I do.
18 Q. And then if you could go to
19 the next page. Blauner writes,
20 "Thanks. Well, we're tinkering, here,
21 with semantics, to some extent, I
22 realize, and we're all talking about
23 the same book, the one that Tim
24 proposed to write in the proposal, the
25 one that we discussed at the meeting.

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1 - TIMOTHY L. O'BRIEN -
2 Absolutely. All that and more.
3 "Tim does not write
4 'exposés,' per se. There will be
5 plenty of compelling and seminal
6 information in the book, but he does
7 not want it packaged as an exposé -
8 tell-all, etc. There also will be
9 material in there on the women in his
10 life, assuredly, but he just doesn't
11 want that to be salaciously peddled
12 either."
13 Do you see that?
14 A. I do.
15 MR. CERESNEY: Let me clarify
16 one thing. The e-mail you read on
17 the second page preceded the e-mail
18 on the first page. Right?
19 I just want that clear
20 because you read them in the
21 opposite order.
22 MR. RESSLER: Correct.
23 Q. Now, Mr. O'Brien, you don't
24 "write 'exposés,' per se."
25 What does that mean?

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1 - TIMOTHY L. O'BRIEN -
2 A. I'm not sure. You'd have to
3 ask Mr. Blauner.
4 Q. Well, isn't it the case that
5 you do write exposés, you just don't
6 call them exposés?
7 A. No, that's not the case.
8 Q. Well, do you have any
9 understanding what would have led your
10 agent to state that "Tim does not write
11 'exposés,' per se"?
12 A. You'd have to speak to my
13 agent about that.
14 Q. What does "per se" mean?
15 A. I'm not sure in the context
16 of this e-mail what he's referring to.
17 Q. You don't have any
18 understanding as you sit here today
19 what the word "per se" - the phrase
20 "per se" means in this context,
21 Mr. O'Brien?
22 MR. CERESNEY: Objection to
23 form.
24 You can answer the question.
25 A. No. In the context of this

77

1 - TIMOTHY L. O'BRIEN -
2 e-mail, I'm not certain what he's
3 referring to.
4 Q. What was your undergraduate
5 degree from Georgetown? In English?
6 A. Yes.
7 Q. But you have no understanding
8 what he meant here when he wrote, "Tim
9 does not write 'exposés,' per se"?
10 A. Correct. I'm not sure what
11 he meant by that.
12 Q. Do you have any understanding,
13 Mr. O'Brien, what he meant when he
14 said, "There will be plenty of
15 compelling and seminal information in
16 the book, but he" - meaning you -
17 "does not want it packaged as an
18 exposé, tell-all, etc."?
19 A. Well, I had - I had told.
20 MR. CERESNEY: Objection to
21 form.
22 You can continue.
23 A. Okay. I - I certainly
24 communicated to my agent that I - the
25 kind of work that I do is not meant to

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1 - TIMOTHY L. O'BRIEN -
 2 be salacious or exposé-like and that
 3 that's not the kind of identity I
 4 wanted in the marketplace as a
 5 journalist, and it wasn't how I'd gone
 6 about building my career.
 7 Q. That's not what you want in
 8 terms of the marketing or the peddling
 9 of the book, but that the book was an
 10 exposé, Mr. O'Brien, was it not?
 11 A. No, I don't - I don't think
 12 it was.
 13 Q. And is it your testimony that
 14 you didn't package this book in terms
 15 of the marketing and promotional
 16 efforts that you and Warner undertook
 17 as a tabloid, tell-all, exposé kind of
 18 book?
 19 A. Well, I was not primarily
 20 involved in the packaging and the
 21 marketing of the book. That was
 22 Warner's - Warner's task.
 23 But in that context, it was
 24 always something that I was aware of
 25 and vigilant about.

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1 - TIMOTHY L. O'BRIEN -
 2 Q. So you're disclaiming
 3 responsibility with respect to the
 4 marketing and promoting of the book,
 5 Mr. O'Brien?
 6 MR. CERESNEY: Objection.
 7 Mischaracterizes what he said.
 8 You ask answer.
 9 A. Please rephrase the question.
 10 Q. You're disclaiming
 11 responsibility for the way Warner Books
 12 promoted and marketed the book; Isn't
 13 that correct?
 14 MR. CERESNEY: I object again
 15 on form.
 16 You can answer.
 17 A. No, that's not correct.
 18 Q. So you were responsible for
 19 the promoting and marketing of the
 20 book, right?
 21 A. I think what I mean to say is
 22 I was not primarily or solely
 23 responsible for that, but I took part
 24 in the process, certainly.
 25 Q. Certainly, you were involved

80

1 - TIMOTHY L. O'BRIEN -
 2 in the promotion and marketing of the
 3 book, right?
 4 A. Absolutely.
 5 Q. There were e-mails that you
 6 wrote that go to the heart of promoting
 7 and marketing of the book; Isn't that
 8 correct?
 9 MR. CERESNEY: Objection.
 10 Form.
 11 You can answer.
 12 A. Yes, absolutely.
 13 Q. Okay. Now, if I could direct
 14 your attention to this phrase, "There
 15 also will be material in there,"
 16 meaning in the book, "on the women in
 17 his life," "his" meaning Trump -
 18 A. Are we at - we're on 153
 19 here?
 20 Q. Yes.
 21 A. Yes.
 22 Q. - "assuredly, but he,"
 23 meaning you, "just doesn't want that to
 24 be salaciously peddled either,"
 25 What does it mean, the phrase

81

1 - TIMOTHY L. O'BRIEN -
 2 "salaciously peddled"?
 3 A. I think promoted in a
 4 sensationalistic way and containing
 5 highly sensational information about
 6 his marriages that was in keeping with
 7 the way some of it had been covered
 8 previously in the - in the press.
 9 Q. Could you tell the jury what
 10 your understanding of the word
 11 "salaciously" means in this context, in
 12 terms of the women in Trump's life?
 13 A. To - I'm sorry. Do you want
 14 me to answer that in terms of how
 15 "salacious" would identify the women in
 16 his life or how "salacious" is
 17 identified in this paragraph as a
 18 whole?
 19 Q. I want you to tell me, based
 20 on your undergraduate degree in
 21 English, your master's degree in
 22 history, your journalism degree, and
 23 your MBA, what you understood - and as
 24 the author of the book, what you
 25 understood the phrase "salaciously

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1 - TIMOTHY L. O'BRIEN -
 2 peddled" to mean.
 3 MR. CERESNEY: Objection to
 4 form.
 5 You can answer.
 6 A. Okay. Well, again, this is
 7 my agent's phrasing, not mine. But
 8 it's in keeping with my instructions to
 9 him and my desire that the book not be
 10 packaged and promoted as a Kitty Kelley
 11 type tell-all biography.
 12 Q. Who was Kitty Kelley again?
 13 A. She was a writer who wrote
 14 exposés.
 15 Q. Of who?
 16 A. Famous people. I believe
 17 Jacqueline Onassis, Elizabeth Taylor,
 18 and others.
 19 Q. Could you go back, sir, to
 20 Exhibit 4, which is in front of you
 21 right there. Oh, I'm sorry. Exhibit 21.
 22 A. Correct.
 23 Q. Okay. This was the e-mail
 24 where your agent, Blauner, says,
 25 "change 'exposé of' to 'look at'; and

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1 - TIMOTHY L. O'BRIEN -
 2 delete 'his various romances."
 3 Do you see that?
 4 A. Yes.
 5 Q. If you direct your attention,
 6 please, to the first e-mail at the top,
 7 that's from Rick Wolff, the Warner
 8 editor, to Blauner, your agent: "AB,"
 9 for Andy Blauner, "I'm curious - why
 10 the change away from 'an exposé' and
 11 why not a look at his various romances?
 12 Those, to me, are key elements in the
 13 book."
 14 Do you see that?
 15 A. I do.
 16 Q. The "his" here, "his various
 17 romances," that refers to Trump, right?
 18 A. I would presume so. But I
 19 didn't write the e-mail, so I'm not
 20 entirely sure.
 21 Q. Well, do you have any
 22 understanding as you sit here today,
 23 Mr. O'Brien, what would have led Rick
 24 Wolff to have the view that Trump's
 25 various romances are the key elements

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1 - TIMOTHY L. O'BRIEN -
 2 in your book?
 3 MR. CERESNEY: Objection,
 4 form.
 5 You can answer.
 6 A. I can't really speak to what
 7 was behind Rick's assumptions.
 8 Q. But you spoke to Rick Wolff
 9 at Warner about the fact that you were
 10 going to cover, in your book, Trump's
 11 various romances, right?
 12 A. I believe that I - what I
 13 conveyed to Rick was that I was going
 14 to write about the women in his life,
 15 but that I did not want to write about
 16 it in a salacious way.
 17 Q. Do you think your book,
 18 Mr. O'Brien, was salaciously peddled?
 19 A. No, I don't believe it was.
 20 Q. Okay.
 21 MR. RESSLER: I'd like the
 22 court reporter to mark the next
 23 document, previously identified in
 24 discovery as TOB-EF-4549. That's
 25 going to be Exhibit 23.

85

1 - TIMOTHY L. O'BRIEN -
 2 (Whereupon, O'Brien Exhibit 23 was
 3 marked for identification.)
 4 Q. Directing your attention,
 5 sir, to this document. At the bottom
 6 of the page, the first page, this is
 7 the e-mail we saw in the previous
 8 exhibit in which Rick says, "This helps
 9 to clarify. We fully understand that
 10 this book is meant to be a serious look
 11 at Trump and his life and career, not a
 12 tabloid account. We know that Tim
 13 doesn't write 'exposés' - we just want
 14 him to be his usual tough, investigative
 15 self."
 16 Do you see that?
 17 A. I do.
 18 Q. And then you responded to
 19 this, right?
 20 A. Yes.
 21 Q. What did you say in response?
 22 A. "No holds barred!!! I
 23 promise."
 24 Q. "No holds barred," triple
 25 exclamation point, right?

<p style="text-align: right;">86</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. That's correct. 3 Q. What did you mean by "no 4 holds barred? 5 A. That I'm going to be as 6 thorough as I normally am in the course 7 of my journalist work at The New York 8 Times. That I would explore every area 9 that had been part of the proposal as 10 it involved Trump's business life and 11 his personal life, and where he was 12 situated in the public sphere. 13 That I was going to be 14 extremely thorough, both in -- in terms 15 of the documentary- -- documentation 16 work I was going to do, the 17 interviewing I was going to perform, 18 the research that I was going to use to 19 continue my reporting on Mr. Trump's 20 business activities. 21 And because there were 22 certain areas that I was shying away 23 from exploring because they were areas 24 I didn't want to get into any depth as 25 part of this book, but that didn't</p>	<p style="text-align: right;">88</p> <p>1 - TIMOTHY L. O'BRIEN - 2 into in greater depth but chose not to. 3 Q. The e-mail response that you 4 got from the Warner editor to your "No 5 holds barred!!! I promise," e-mail 6 was, "Excellent! I'm counting on it! 7 Thanks Tim." 8 Do you see that? 9 A. Uh-huh. 10 Q. And then he writes -- or you 11 wrote, "As we share the chapters you'll 12 see where we're going. I'll deliver..." 13 Do you see that? 14 A. Uh-huh. 15 Q. And then he says, "I'm 16 looking forward to it...this is going 17 to be fun!" 18 Do you see that? 19 Now, isn't it a fact, 20 Mr. O'Brien, that you promised Time 21 Warner a vicious exposé of Donald 22 Trump, and you did not want that 23 memorialized, the term "exposé" in any 24 of these documents? 25 MR. CERESNEY: Objection to</p>
<p style="text-align: right;">87</p> <p>1 - TIMOTHY L. O'BRIEN - 2 preclude me or make me hesitant to try 3 to be as dutiful and -- and as thorough 4 as I could in my other reporting. 5 Q. What were some of those 6 areas, those certain areas, that you 7 were going to shy away from exploring? 8 A. Oh, his relationship with his 9 children. You know, I didn't feel that 10 his children had brought -- brought into 11 the kind of public life that the Donald 12 had, and I think they were entitled to 13 their privacy. So I had no interest in 14 exploring his relationships with his 15 children in great depth. 16 I had no interest in 17 revisiting all the ins and outs of his 18 divorce from Ivana, which had been 19 extensively covered in the media in 20 prior years. 21 There were other areas of his 22 business life as it involved 23 intersections with construction unions 24 in the City of New York and -- and 25 other groups that I could have gone</p>	<p style="text-align: right;">89</p> <p>1 - TIMOTHY L. O'BRIEN - 2 form. 3 You can answer the question. 4 A. No, no. That's absolutely 5 not true. 6 Q. And that's because you don't 7 write exposés, right? 8 A. That's correct. 9 Q. As a business editor for The 10 New York Times, you don't write exposés 11 or tabloid tell-alls, correct? 12 A. As a business editor for the 13 Times, I -- I try to make sure that our 14 staff doesn't do that. But as a 15 reporter for The New York Times, I 16 certainly don't. 17 Q. And as a book author, you 18 wouldn't write a tabloid, tell-all, 19 exposé type book, right? 20 A. That's correct. 21 Q. Now, what is it precisely 22 that you find distasteful about exposé, 23 tell-all, tabloid type books? 24 A. I find them often to be 25 irresponsible. I find them often to be</p>

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1 - TIMOTHY L. O'BRIEN -
 2 driven more by a desire to sell books
 3 than to accurately portray the subject
 4 at hand.
 5 I find them to be overly
 6 dependent on explorations of people's
 7 personal lives that as often as not
 8 don't have direct bearing on their
 9 public lives.
 10 And I don't think they
 11 contribute to sophisticated,
 12 multifaceted dialogue about issues of
 13 public importance.
 14 Q. Because in your book on Trump
 15 you intended to contribute to
 16 sophisticated, multifaceted dialogues
 17 about issues of public importance?
 18 A. Absolutely.
 19 Q. And you believe you did that
 20 in your Trump book, right?
 21 A. I do.
 22 Q. Okay. Now, is it also true
 23 that tabloid, tell-all, exposé type
 24 books, they're sleazy, right?
 25 Is that fair to say?

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1 - TIMOTHY L. O'BRIEN -
 2 A. Yes, that's fair to say.
 3 Q. And you find that
 4 distasteful, right?
 5 A. I do.
 6 Q. Because when you write about
 7 a person, you follow the facts; isn't
 8 that correct?
 9 A. That is correct.
 10 Q. You don't develop or
 11 formulate a predetermined conclusion in
 12 advance and then make your
 13 investigation of the facts fit the
 14 predetermined conclusion; is that
 15 correct?
 16 MR. CERESNEY: Objection to
 17 form.
 18 You can answer the question.
 19 A. That's correct.
 20 Q. That kind of approach, for
 21 example, wouldn't adhere to The New
 22 York Times standards, right?
 23 A. That's definitely correct.
 24 Q. And you told our judge in
 25 this case under oath in your

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1 - TIMOTHY L. O'BRIEN -
 2 certification, which we looked at
 3 earlier this morning, that the
 4 standards, the journalistic methods and
 5 techniques that you used in writing
 6 this book were the same as the ones you
 7 adhere to as an employee of The New
 8 York Times, right?
 9 A. That's correct.
 10 Q. And it's fair to say that
 11 writers of exposés and tell-alls and
 12 tabloid accounts, they don't
 13 necessarily rely on those standards, do
 14 they?
 15 A. That's true.
 16 Q. For example, writers of
 17 exposés and tell-alls, Mr. O'Brien,
 18 they don't necessarily care about
 19 shedding their biases towards their
 20 subjects the way that you do, as you
 21 explained earlier today, right?
 22 A. Yes, that is correct.
 23 Q. That might be another reason
 24 why you didn't want the book, in
 25 writing, referred to as an exposé.

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1 - TIMOTHY L. O'BRIEN -
 2 right?
 3 Is that fair to say?
 4 MR. CERESNEY: Objection.
 5 Misstates prior testimony.
 6 You can go ahead.
 7 A. Yeah, that's -- that's
 8 incorrect.
 9 Q. Well, in any event, you would
 10 always take a source's bias toward a
 11 subject into account, right?
 12 A. Absolutely.
 13 Q. We've -- we've spoken about
 14 the need of the reporter, the writer,
 15 to shed his or her biases, right?
 16 A. Correct.
 17 Q. We spoke about that at length
 18 earlier today, right?
 19 A. Correct.
 20 Q. But you also agree it's
 21 equally important for the reporter or
 22 writer to consider the possible biases
 23 of his or her sources towards the
 24 subject, right?
 25 A. All the time, yes.

24 (Pages 90 to 93)

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1 - TIMOTHY L. O'BRIEN -
2 Q. And you would want to share
3 with your readers any possible biases
4 that your sources might harbor towards
5 your subject, correct?
6 A. Absolutely. To the extent
7 that it also, at the same time,
8 protected the sources themselves in
9 terms of their own concerns about
10 disclosure.
11 Q. Right. But my question
12 relates to why it's important for a
13 reporter or an author to share with his
14 or her readers any possible biases that
15 a source might have towards a subject.
16 And that's - that's very important,
17 right?
18 MR. CERESNEY: Objection to
19 form.
20 Q. Right?
21 A. That's very important, yes.
22 Q. Okay. And it's fair to say
23 that authors who write exposés or
24 tabloids or tell-alls, they don't
25 necessarily consider disclosing the

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1 - TIMOTHY L. O'BRIEN -
2 biases that the sources might have
3 towards the subject, right?
4 A. I think sometimes they do. I
5 mean, we'd have to talk about
6 individual works. But, generally, I
7 don't think they take as responsible of
8 an approach to it as one would want.
9 Q. Now, in writing your book,
10 you were going to analyze and consider
11 all of the facts about Trump's
12 finances, no matter what they showed,
13 right?
14 A. Correct.
15 Q. Because you didn't write this
16 book with a predetermined conclusion,
17 correct?
18 A. Correct.
19 Q. In marketing and promoting
20 the book, didn't you and Warner seek to
21 maximize the damage to Trump's
22 reputation?
23 A. No, that's not correct.
24 Q. Do you disagree that when you
25 and Warner marketed and promoted the

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1 - TIMOTHY L. O'BRIEN -
2 book, you did it in a way so as to
3 emphasize the negative things that had
4 you to say about Trump in your book?
5 MR. CERESNEY: Objection to
6 form.
7 You can answer.
8 A. No, I don't think that's
9 true.
10 Q. You don't believe that you
11 emphasized the negative aspects of your
12 book in marketing and promoting the
13 book?
14 A. No, I don't believe I did.
15 Q. In marketing and promoting
16 the book, you don't believe that you
17 specifically emphasized what you
18 considered to be the most salacious,
19 tabloid, tell-all, exposé aspects of
20 the book?
21 MR. CERESNEY: Objection.
22 Form.
23 You can answer.
24 A. No, I don't believe I did.
25 Q. Do you believe, sir, that in

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1 - TIMOTHY L. O'BRIEN -
2 marketing and promoting the book, you
3 and Warner emphasized those sections of
4 the book that were most likely to
5 damage and denigrate Trump and expose
6 him to public scorn and ridicule?
7 MR. CERESNEY: Objection to
8 form.
9 You can answer.
10 A. No, I don't believe we did.
11 MR. RESSLER: I'd like the
12 court reporter to mark as
13 Exhibit 24 a document previously
14 identified in discovery as
15 TOB-EF-7732.
16 (Whereupon, O'Brien Exhibit 24 was
17 marked for identification.)
18 Q. Mr. O'Brien, based on your
19 answer to my previous question, please
20 take a look at this document called
21 "TrumpNation Talking Points."
22 Do you see that?
23 A. I do.
24 Q. What are these talking
25 points, Mr. O'Brien?

<p style="text-align: right;">98</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. They are talking points to 3 establish guidelines for speaking in 4 interviews about the book and/or 5 Mr. Trump. 6 Q. When you were speaking about 7 the book and/or Mr. Trump, right? 8 A. Yes. 9 Q. Mr. O'Brien, this is a 10 promotional- and marketing-related 11 document, correct? 12 MR. CERESNEY: Objection to 13 form. 14 You ask answer. 15 A. Actually, no. In fact, I -- 16 I don't think it is. I think it's 17 notes to myself, possibly, about 18 talking points that might come up. 19 Q. When you -- 20 A. It's -- it's a crib sheet, 21 essentially. 22 Q. Right. A crib sheet that you 23 wrote with respect to talking points 24 that you would mention when you 25 appeared on radio or TV in marketing</p>	<p style="text-align: right;">100</p> <p>1 - TIMOTHY L. O'BRIEN - 2 TrumpNation talking point that you 3 wrote, Bullet Point 1: "The story of 4 how someone who is essentially a 5 cartoon character became the most 6 famous businessman in America. He is 7 not Bill Gates, Warren Buffett, or Jack 8 Welch. He's a cross between Baby Huey 9 and PT Barnum." 10 Do you see that? 11 A. Uh-huh. I do. 12 Q. Now, your book was 239 pages; 13 is that correct? 14 A. I believe that is correct. 15 Q. Excluding the 16 acknowledgements and the index, 239 17 pages of text, right? 18 A. Uh-huh. Yes. 19 Q. And when you decided what 20 talking points to mention during radio 21 and television appearances to market 22 and promote the book, these were the 23 talking points that you wanted to focus 24 on, correct? 25 A. Correct.</p>
<p style="text-align: right;">99</p> <p>1 - TIMOTHY L. O'BRIEN - 2 and promoting the book, correct? 3 A. Well, in anticipation of the 4 possible questions I might be asked as 5 well. 6 Q: The questions you might be 7 asked during TV appearances, correct? 8 A. Correct. 9 Q. The questions you might be 10 asked during radio appearances, 11 correct? 12 A. Correct. 13 Q. The questions you might be 14 asked during public appearances, book 15 readings, and things like that, 16 correct? 17 A. Yes. 18 Q. And you wrote this, right? 19 A. Yes. 20 Q. Where did you write it? In 21 your New York Times office or at home 22 or some other place? 23 A. I believe at my New York 24 Times office. 25 Q. So let's look at the first</p>	<p style="text-align: right;">101</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Okay. So, going back to 3 Bullet Point 1, Trump is a "cross 4 between Baby Huey and PT Barnum." 5 Who is "Baby Huey," 6 Mr. O'Brien? 7 A. "Baby Huey" is a cartoon 8 figure who is an adult duckling. 9 Q. Okay. He's a cartoon 10 character from about the '50s, right? 11 A. I believe so. 12 Q. He's a duck, right? 13 A. I believe that's correct, 14 yes. 15 Q. He's profoundly oversized; is 16 that correct? 17 A. He's an adult duck. 18 Q. He's an obese adult duck, 19 correct? 20 A. He's -- he's an adult 21 duckling. 22 Q. He's bigger than the other 23 characters in the cartoon, correct, in 24 an obese way? 25 A. He's an adult duckling with a</p>

26 (Pages 98 to 101)

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<p style="text-align: right;">102</p> <p>1 - TIMOTHY L. O'BRIEN - 2 bib. 3 Q. Okay. And a diaper, right? 4 He wears a diaper in the cartoon, 5 correct? 6 A. I'm not sure. 7 Q. But you think maybe in some 8 of the cartoons, "Baby Huey" is wearing 9 a diaper, right? 10 A. Perhaps. 11 Q. And his voice -- he seems 12 seemingly retarded, the "Baby Huey" 13 cartoon character; isn't that correct? 14 A. No, I wouldn't describe him 15 that way. 16 Q. You wouldn't? 17 A. No, I wouldn't. 18 Q. Is the voice not 19 preposterously moronic, the voice of 20 "Baby Huey," the cartoon character, 21 Mr. O'Brien? 22 A. No, I wouldn't describe it 23 that way. 24 Q. How would you describe it? 25 A. As an adult duckling; my</p>	<p style="text-align: right;">104</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Let's take a look at some of 3 the other bullet points that you wrote 4 for yourself to assist in your 5 marketing and promotional work for the 6 book. 7 Bullet 2: "History as a 8 dealmaker. Dad's money; he openly 9 acknowledges in the book that his first 10 business partners in Atlantic City had 11 organized crime ties; a key advisor to 12 him in his early years was Roy Cohn, a 13 mob lawyer; created by debt, lost real 14 estate, left with casinos that he ran 15 into the ground; now fronts other 16 people's money and resurrection on the 17 apprentice." 18 Do you see that? 19 A. I do. 20 Q. Now, Mr. O'Brien, isn't it 21 true that when you marketed and 22 promoted the book, you chose to 23 emphasize among the most negative 24 aspects of Trump that appear in your 25 book; isn't that correct?</p>
<p style="text-align: right;">103</p> <p>1 - TIMOTHY L. O'BRIEN - 2 imagination of an adult duckling. 3 That's how I would describe it. 4 Q. So you don't believe that 5 he's -- 6 A. I would describe it as -- as 7 a child grown old. 8 Q. You don't agree that "Baby 9 Huey" in the cartoon has an 10 outlandish-sounding voice? 11 A. No. That's not my first 12 thought when I think of "Baby Huey." 13 Q. I'm not asking you if it's 14 your first thought. I'm just asking 15 you if it's -- if it's your view. 16 A. No, it's not my view. 17 Q. Okay. And would you agree 18 that "Baby Huey" is an idiotic 19 character in the cartoon? 20 MR. CERESNEY: Objection. 21 Form. 22 You can answer. 23 A. I think "Baby Huey" is a -- 24 is a child grown old. That's how I 25 think of "Baby Huey."</p>	<p style="text-align: right;">105</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Objection to 3 form. 4 You can answer the question. 5 A. No, that's incorrect. And I 6 think this bullet point, the first 7 point is, is "History as a dealmaker." 8 That covers a -- a long period of years 9 in which he engaged in -- in a number 10 of deals, some of which were 11 successful. 12 And it's a very extensive 13 period of time in his life, and it's 14 one of the leading bullet points here. 15 And I -- I think there's a lot in that 16 period of time that was actually 17 positive. 18 Q. Where's the positive -- 19 where's the positive aspect in this 20 bullet point where you write, "Dad's 21 money; he openly acknowledges in the 22 book that his first business partners 23 in Atlantic City had organized crime 24 ties; a key advisor to him in his early 25 years was Roy Cohn, a mob lawyer;</p>

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1 - TIMOTHY L. O'BRIEN -
2 created by debt, lost real estate, left
3 with casinos that he ran into the
4 ground; now fronts other people's money
5 and resurrection on the apprentice."
6 A. Uh-huh.
7 Q. Tell me where the positive
8 praise in that second bullet point, if
9 you would.
10 A. I will. I think, actually,
11 it begins and ends on a positive note.
12 I think his history as a dealmaker, as
13 I mentioned earlier, covers a long
14 period of ground in which he had a
15 number of transactions, some of which
16 were successful, some that weren't.
17 And that -- the last
18 statement, "his resurrection on the
19 apprentice" speaks to Donald's own
20 strength as a survivor and someone
21 who's come back from repeated problems
22 in the business world to occupy center
23 stage once again.
24 And I also believe that all
25 of these are actual factual milestones

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1 - TIMOTHY L. O'BRIEN -
2 in his life.
3 Q. Mr. O'Brien, is it your
4 testimony before our jury that you
5 don't view this second bullet point as
6 emphasizing negative statements you
7 said about Trump in your book?
8 That's a yes-or-no question.
9 MR. CERESNEY: Object --
10 objection to form; and also
11 objection to instructing him to
12 answer yes or no. He'll answer the
13 question.
14 Q. That's a yes-or-no question,
15 sir.
16 THE WITNESS: Does that mean
17 I should answer it yes or no?
18 MR. CERESNEY: You should
19 answer the question as you see fit.
20 A. Can you ask the question
21 again, please.
22 MR. RESSLER: Could you
23 please read back the question.
24 MR. CERESNEY: Sorry.
25 THE VIDEOGRAPHER: Off the

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1 - TIMOTHY L. O'BRIEN -
2 record.
3 The time on the video monitor
4 is 11:57 a.m. This ends Tape
5 Number 1.
6 (Whereupon a brief discussion
7 was held off record.)
8 THE VIDEOGRAPHER: We're back
9 on the record. The time on the
10 monitor is 12:03 p.m. This starts
11 Tape Number 2.
12 BY MR. RESSLER:
13 Q. Mr. O'Brien, is it your
14 testimony under oath before our jury
15 that in these TrumpNation talking
16 points, you did not seek to emphasize
17 negative statements about Trump that
18 appear in your book?
19 A. Yes.
20 Q. That's a yes --
21 A. Yes.
22 Q. That's -- you did not. So
23 the an- -- you did not seek to
24 emphasize those negative statements,
25 correct?

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1 - TIMOTHY L. O'BRIEN -
2 A. I did not seek to emphasize
3 negativity; that's correct.
4 Q. Now, you describe that the
5 second bullet, in your view, was
6 positive, because you talk about
7 Donald's history a dealmaker.
8 Now, it says "History as a
9 dealmaker," and then it says colon,
10 right?
11 Do you see the colon?
12 A. Correct.
13 Q. So when you talk about
14 "History as a dealmaker," you then talk
15 about "dad's money, he," meaning Trump,
16 "openly acknowledges in the book that
17 his first business partners in Atlantic
18 City had organized crime ties."
19 By the way, do you mean the
20 mafia organized crime? Is that what
21 you meant?
22 A. I meant organized crime.
23 Q. The mafia, right?
24 A. I meant organized crime.
25 Q. What do you mean by

<p style="text-align: right;">110</p> <p>1 - TIMOTHY L. O'BRIEN - 2 "organized crime"? 3 A. The mob and other groups 4 engaged in joint activities that are 5 illegal. 6 Q. Okay. And you mentioned Roy 7 Cohn as a mob lawyer, right? 8 A. Correct. 9 Q. And - oh, by the way, the 10 "Atlantic City," "organized crime 11 ties," "Roy Cohn, "mob lawyer," that 12 appears in bold? 13 A. Uh-huh. 14 Q. What led you to bold the fact 15 that in your second TrumpNation talking 16 point -- to bold the statement about 17 Trump's ties to organized crime? 18 A. Oh, well, because this was 19 news. And I'm in the news business, 20 and I think one of the main reasons 21 for - for what I do is to try to get 22 at news that's in keeping with reality. 23 And I think that this was 24 something that Donald had never openly 25 acknowledged before, as far as I was</p>	<p style="text-align: right;">112</p> <p>1 - TIMOTHY L. O'BRIEN - 2 confirmed he had these relationships. 3 Q. Okay. Now, you said in 4 response to my question that you are in 5 the news business, right? 6 A. Correct. 7 Q. Okay. Now, the third bullet 8 says, "Still, guru of can-do. 9 Guidebook for anybody in the public 10 relations business or marketing on how 11 to spin the press, manage media, and 12 promote yourself." 13 And in the fourth bullet, 14 references, "Billionairedom; 15 TrumpBolivia; TRUMPQUIZZES; Everybody 16 in America can become a billionaire." 17 Now, you said that you were 18 in the news business. So I want to 19 follow up with respect to your 20 reference to the "TRUMPQUIZZES." 21 A. Uh-huh. 22 Q. Now, these appear at the end 23 of every chapter, right? 24 A. Correct. 25 Q. So do you recall that in one</p>
<p style="text-align: right;">111</p> <p>1 - TIMOTHY L. O'BRIEN - 2 aware. So in my view, this was part 3 and parcel of the book's vehicle as 4 disseminating news. And I thought it 5 might be important to readers to know 6 that he was acknowledging that these 7 ties had existed. 8 It wasn't commonly reported 9 or written about Donald that he had 10 organized crime ties, and so I thought 11 it was actually very newsworthy. 12 Q. By the way, your section in 13 the book concerning Trump's alleged 14 organized crime ties, is it less than a 15 page, approximately? 16 A. Perhaps. I'd have to - I'd 17 have to look at the book. 18 Q. Okay. Now, you just said in 19 response to my question, you are in the 20 news - 21 A. But he's -- go ahead. 22 Q. Well, here - but - 23 A. I mean, he's acknowledging in 24 the book that he has ties; they're not 25 alleged ties. He openly on a statement</p>	<p style="text-align: right;">113</p> <p>1 - TIMOTHY L. O'BRIEN - 2 of the Trump quizzes, I think it was 3 Trump Quiz Number 2, you wrote - 4 A. Can I refer to the book, or 5 can I have a copy of the book to look 6 at? 7 Q. I'm not going to spend a lot 8 of time so... 9 MR. CERESNEY: I would prefer 10 he has. If you're going to 11 reference the book and you have a 12 copy, I would just ask that he have 13 it in front of him. 14 Q. That's fine. Okay. So - 15 A. What page were you on? 16 Q. Well, right now I'm not on 17 any page, 'cause I just want to - I 18 just want to read you something that 19 you wrote in one of your Trump quizzes, 20 and tell me if you recall writing it. 21 A. What page are you reading 22 from? 23 Q. Well, just let me ask the 24 question. 25 Do you recall -</p>

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1 - TIMOTHY L. O'BRIEN -
2 A. But I had asked if I could
3 follow along in the book. So can you
4 tell me what page you're on?
5 Q. It's Page 38.
6 A. And where on Page 38 are you?
7 Q. Mr. O'Brien, let me ask the
8 question, and then -- and then you
9 could answer it. Okay?
10 A. I'm sorry. I'm just trying
11 to follow along so I can answer your
12 question to the best of my ability.
13 Q. Well -- well -- this is --
14 this is going to be a short question.
15 In your Trump Quiz Number 2,
16 you wrote, "To emerge victorious on The
17 Apprentice, you should: 1, let a leach
18 slither up your urethra."
19 You wrote that, right?
20 A. Correct.
21 Q. What part of the body is the
22 urethra?
23 A. I believe it's in the penis.
24 Q. Okay. Now, if you want to
25 follow along -- and you seem to want to

115

1 - TIMOTHY L. O'BRIEN -
2 follow along --
3 MR. CERESNEY: Objection.
4 Q. -- I think, on second
5 thought, that's a good idea. Go to
6 Page 191 --
7 A. Regarding Number 1 --
8 Q. Well, I didn't -- I didn't
9 ask you any other questions,
10 Mr. O'Brien. I asked you to please go
11 to Page 191 -- or you don't have to.
12 A. No, I would like to. I would
13 like to be helpful.
14 Q. Okay.
15 A. Okay.
16 Q. So on 191, this is Trump
17 Quiz -- what number Trump quiz is this?
18 This is Number 8?
19 And I take it this was an
20 interview of Trump?
21 A. It was a recorded interview.
22 Q. "What's your favorite food?
23 "Meatloaf. Oreos. Pasta."
24 Do you see that Number 17?
25 A. Yes.

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1 - TIMOTHY L. O'BRIEN -
2 Q. And then Number 18: "When
3 you're sleeping" -- this is your
4 question, right?
5 A. Correct.
6 Q. You ask Trump, "When you're
7 sleeping, what's your most frequent
8 dream?"
9 "ANSWER: Always sexual.
10 It's always fucking."
11 Right?
12 A. Correct.
13 Q. And then you ask, "Any
14 recurring nightmares?"
15 And you printed an answer:
16 "Every once in a while you have
17 something, but basically, I don't have
18 those sicko deals."
19 Right? You wrote that in
20 this Trump Quiz Number 8, correct?
21 A. This is -- yeah. These are
22 direct quotes from the tape-recorded
23 interview with Donald.
24 Q. Okay. But my question is,
25 did you write this, Mr. O'Brien?

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1 - TIMOTHY L. O'BRIEN -
2 A. Yes --
3 Q. That was my question. So
4 you've gotta listen to my question and
5 answer my question. Got it?
6 A. Got it.
7 Q. Okay.
8 MS. WHITE: Can we keep the
9 tone a little more even here.
10 MR. RESSLER: Yes.
11 Q. And then Trump Quiz 9, that's
12 Page 208.
13 A. 208. Okay.
14 Q. "Do you believe in Viagra?"
15 you ask.
16 And -- and you say that Trump
17 responds, "I'll tell you what. I
18 believe in it a hundred percent.
19 Fortunately, I never used it; I don't
20 need it, but it's always said" -- "but
21 I've always said to friends of mine,
22 "If you need Viagra, it's very possible
23 that you're with the wrong woman."
24 Right? These are all parts
25 of your Trump quizzes, right?

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1 - TIMOTHY L. O'BRIEN -
 2 A. Correct.
 3 Q. Now, you're not a tabloid
 4 writer, right?
 5 A. That's correct.
 6 Q. You don't write tell-all,
 7 exposé, sensationalist kind of books,
 8 right?
 9 A. Correct.
 10 Q. Now, what led you to include
 11 as the fourth bullet point in your
 12 promotional talking points, the
 13 reference to "TRUMPQUIZZES"?
 14 A. I think they were actually
 15 important elements of the book that
 16 described aspects of his social
 17 character and the mask of celebrity
 18 that he wears in the public sphere.
 19 And I actually think that
 20 they were useful tools for getting a
 21 sense of who he was as a person and how
 22 he operates publicly.
 23 Q. Did the "leach slithering up
 24 the urethra" you believe, fall into
 25 that category?

119

1 - TIMOTHY L. O'BRIEN -
 2 A. That was from one of the
 3 contestants on The Apprentice. That
 4 was one of the apprentice -- the
 5 contestants giving a quote.
 6 Q. Okay. 'Cause you don't
 7 attribute it to any Apprentice
 8 contestants?
 9 A. I think in the previous -- in
 10 the pre- -- in the chapter it actually
 11 cites the contestant.
 12 Q. Mr. O'Brien, did you actually
 13 go on TV and radio and talk about the
 14 Trump quizzes?
 15 A. Yes.
 16 Q. Now, you also have as the
 17 first statement in this Bullet Point 4
 18 is "Billionaireedom; TrumpBolivia."
 19 What does that refer to?
 20 A. The way in which Donald, for
 21 a number of years, has kept the issue
 22 of his net worth and his assessments of
 23 his financial deals in the public
 24 sphere.
 25 Q. Okay. So that was going to

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1 - TIMOTHY L. O'BRIEN -
 2 be the fourth bullet point. Right?
 3 That's related to Trump's finances,
 4 right?
 5 A. Correct.
 6 Q. And in your book you stated
 7 that Trump is not a billionaire,
 8 correct?
 9 A. No, I did not.
 10 Q. You didn't state that?
 11 A. No, I didn't.
 12 Q. Other people stated it in
 13 your book; is that your position?
 14 MR. CERESNEY: Objection to
 15 form.
 16 You can answer the question.
 17 A. Yes. Other people in the
 18 book have stated that.
 19 Q. And you report that --
 20 A. Yes, I do.
 21 Q. -- in the book. We'll get to
 22 that.
 23 Now, the fifth bullet
 24 references "Omarosa."
 25 Who is Omarosa?

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1 - TIMOTHY L. O'BRIEN -
 2 A. She was a contestant, a very
 3 well known contestant, on The
 4 Apprentice.
 5 Q. You reference that Trump
 6 allegedly called Hank Greenberg "scum"
 7 and a "bad guy."
 8 Do you see that?
 9 A. I do.
 10 Q. And then -- and then you
 11 reference Kelly Perdew, and that's in
 12 bold.
 13 Who is that?
 14 A. Kelly Perdew was a contestant
 15 on The Apprentice. I don't know why
 16 it's in bold.
 17 Q. But you wrote this, right?
 18 A. Correct.
 19 Q. But you do know why the
 20 reference to Trump having organized
 21 crime ties, you do know why that's in
 22 bold, right?
 23 A. That was in bold because I
 24 believe it was newsworthy, and it was
 25 an important, newsworthy element of the

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1 - TIMOTHY L. O'BRIEN -
 2 book.
 3 Q. You're in the news business,
 4 right?
 5 A. Yes.
 6 Q. Okay. So the next bullet
 7 point references, "Mike Tyson
 8 anecdotes." That's Mike Tyson, the
 9 former heavyweight champion of the
 10 world?
 11 A. Well, the next bullet point
 12 references the Donald as the "guru of
 13 can-do," and how the book is a
 14 guidebook for people in the public
 15 relations business or marketing and how
 16 to spin the press, manage the media.
 17 Q. No -- no, but sir -- I'm not
 18 on that bullet. I'm on the one after
 19 the first reference to Omarosa and Hank
 20 Greenberg being "scum," and Kelly
 21 Perdew.
 22 MR. CERESNEY: That's
 23 referring back to the organized
 24 crime ties that's in there
 25 before.

123

1 - TIMOTHY L. O'BRIEN -
 2 Q. Okay.
 3 A. And then you said the "next
 4 bullet point," so I thought you were
 5 referencing the bullet point that --
 6 Q. No. I'm up to the one about
 7 Mike Tyson.
 8 A. -- complimented his marketing
 9 abilities.
 10 Q. Right. I'm up to the one
 11 about Mike Tyson.
 12 A. Okay.
 13 Q. Right? Mike Tyson is the
 14 former heavyweight champion of the
 15 world, right?
 16 A. Correct.
 17 Q. And then the next bullet, "In
 18 addition to his current wife, Melania
 19 Knauss, and ex-wives, Ivana Trump and
 20 Maria Maples..."
 21 So this was -- one, two,
 22 three, four, five, six, seven -- this
 23 was the -- this was another important
 24 point that you wanted to make when you
 25 went on the radio and TV programs to

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1 - TIMOTHY L. O'BRIEN -
 2 promote the book, correct?
 3 MR. CERESNEY: Objection.
 4 Form.
 5 A. As I said, some of this was
 6 in anticipation of questions that I
 7 anticipated being asked, as well as
 8 things that were forward in my mind as
 9 I went on these shows, yes.
 10 Q. Okay. Now, if you go down to
 11 the next bullet, there is another
 12 reference to the "TrumpQuiz"; do you
 13 see that? The one that says,
 14 "TrumpNation chronicles..."
 15 Do you see that?
 16 A. Yes.
 17 Q. And then you write "Each
 18 chapter ends with a unique and helpful
 19 TrumpQuiz that invites readers to learn
 20 how to become a mega-billionaire, just
 21 like Donald. Readers are encouraged to
 22 submit their answers into the Trump
 23 Organization in a competition for huge,
 24 huge...prizes."
 25 This description of the

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1 - TIMOTHY L. O'BRIEN -
 2 TrumpQuiz as "unique" and "helpful,"
 3 you came up with that?
 4 A. I did.
 5 Q. Then the next bullet
 6 references Trump telling you that he
 7 was "'bored' with <his> ex-wife Maria
 8 Maples on the very day he married her,"
 9 right?
 10 A. Correct.
 11 Q. That's another point that you
 12 wanted to talk about when you appeared
 13 on radio and TV programs, right?
 14 MR. CERESNEY: Objection.
 15 Form.
 16 You can answer.
 17 A. Yes. It was something I also
 18 believed I would be asked about. I had
 19 been asked about it already.
 20 Q. And, by the way, you appeared
 21 on radio and TV programs all across the
 22 country, correct?
 23 MR. CERESNEY: Objection to
 24 form.
 25 You can answer.

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1 - TIMOTHY L. O'BRIEN -
2 A. I appeared on radio programs
3 and TV shows that were broadcast in
4 different parts of the country; that's
5 correct.
6 Q. The next bullet goes back to
7 The Apprentice and Omarosa, right?
8 Where Donald says that he didn't think
9 she was attractive.
10 Do you see that?
11 A. Yes.
12 Q. So that's the second time in
13 your TrumpNation talking points you
14 reference Trump saying that Omarosa
15 wasn't attractive, correct? 'Cause you
16 also reference that at Bullet Point 5.
17 A. Uh-huh.
18 Q. See? Right?
19 A. Uh-huh. Uh-huh. Yes.
20 Q. And then the next bullet
21 point, the last one on Page 1, goes
22 back to Kelly Perdew, right? The
23 Apprentice contestant, right?
24 A. Right.
25 Q. And then the next bullet

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1 - TIMOTHY L. O'BRIEN -
2 point -- the next bullet point
3 references Bill Rancic. He was an
4 Apprentice contestant? Right?
5 A. Uh-huh. That's a yes.
6 Sorry.
7 Q. Now, the next bullet,
8 Mr. O'Brien, you write, "Donald reveals
9 that the most painful experience of his
10 life was when his older brother, Fred
11 Trump Jr., died of alcoholism. He also
12 says that he constantly dreams about
13 sex and doesn't chomp on Viagra."
14 Do you see that?
15 A. I do.
16 Q. Now, what led you,
17 Mr. O'Brien, to choose to juxtapose the
18 most painful experience that Trump
19 related to you, the most painful
20 experience he had in his life, the
21 death of alcoholism of his older
22 brother, Fred Trump Jr., with the next
23 sentence, Trump telling you that he
24 "constantly dreams about sex" and
25 "doesn't chomp on Viagra"?

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1 - TIMOTHY L. O'BRIEN -
2 A. Well, I wouldn't consider
3 them as juxtaposed. This was not for a
4 published document that I was going to
5 write up in an article. They were
6 talking points, reminders to myself
7 what to keep forward in my mind.
8 However, I think one of the
9 things about Donald that's very
10 refreshing is that he can be very
11 candid about his personal life and
12 share elements of his life that I think
13 the public often doesn't see about him
14 that humanize him and locate him as a
15 person, just like the rest of us, who's
16 had difficult life experiences.
17 And he was very candid with
18 me about why his brother's death from
19 alcoholism led to his own concerns
20 about drinking and not drinking
21 excessively and -- and dependencies and
22 alcoholism.
23 He talked to me about his
24 brother's relationship with his father
25 in the context of his father being a

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1 - TIMOTHY L. O'BRIEN -
2 hard-driving person, and his brother
3 being unable to really maintain a sense
4 of himself in that relationship.
5 Q. Okay. But if he --
6 A. And why Donald himself felt
7 that he was able to maintain a sense of
8 himself.
9 And I found that for readers
10 who might have one impression of Trump,
11 from what they see on TV or in other
12 venues, that a discussion of his
13 feelings about the trajectory of his
14 brother's life, and what that meant in
15 the context of his own life, offered a
16 window on to someone who had more depth
17 than most people might expect.
18 Q. Okay.
19 A. On the issue --
20 MR. RESSLER: Well, he's not
21 answering my question, so I'm going
22 to move to strike the response,
23 because my question was what led
24 you to juxtapose --
25 MR. CERESNEY: I think -- I

130	<p>1 - TIMOTHY L. O'BRIEN - 2 don't think he finished his 3 response. 4 MR. RESSLER: Well, just let 5 me finish, Andrew. 6 Q. My question was, what led you 7 to juxtapose the reference to Trump 8 telling you the most painful experience 9 of his life, the death of his older 10 brother from alcoholism, and Trump 11 telling you that he constantly dreams 12 about sex but doesn't use Viagra? 13 MR. CERESNEY: I think his 14 answer was responsive for the 15 record because he was describing 16 the first part of the juxtaposition 17 you were asking about and is now to 18 go -- is about to go on to the 19 second part that. 20 So if you had let him answer 21 the question, I believe he would 22 have fully answered your question. 23 But why don't you go ahead. 24 A. Should I continue answering 25 your question, or do you not want me</p>	132	<p>1 - TIMOTHY L. O'BRIEN - 2 as elements of his public persona and I 3 think, like any complex individual, 4 he's multifaceted. 5 And I think that the 6 discussion of how he felt about his 7 brother's death as it relates to what 8 he says about his own sexuality create 9 a depth for the reader that may not 10 normally be appreciated. 11 Q. So you don't view anything as 12 heartless in putting in a sentence that 13 Donald's most painful experience was 14 the death of his older brother from 15 alcoholism, immediately followed by a 16 sentence talking about Trump constantly 17 dreaming about sex, Mr. O'Brien? 18 MR. CERESNEY: Objection to 19 form. 20 You can answer. 21 Q. Doesn't that strike you as a 22 little heartless? 23 A. No. Actually, I just -- I 24 would think of it as both sympathetic 25 and -- and observant. And --</p>
131	<p>1 - TIMOTHY L. O'BRIEN - 2 to? 3 Q. I'd like you to tell me about 4 the juxtaposition. What led you, in 5 your mind, to connect the death of 6 Trump's brother with -- with whether 7 Trump, you know, uses Viagra and dreams 8 about sex? 9 A. Can -- can I go on answering 10 that question -- 11 Q. Yes. 12 A. -- or did you want me to 13 stop? 14 Q. Answer. 15 A. Well, as I said in -- the 16 first element of this was the -- the -- 17 Donald, the individual Donald, the 18 human being, and then there's also 19 Donald, the public Donald, who wears 20 his sexual prowess and his masculinity 21 on his sleeve. 22 And I think the issue of -- 23 of how he speaks about using Viagra 24 gets at the macho Donald, the Donald 25 who uses his masculinity and machismo</p>	133	<p>1 - TIMOTHY L. O'BRIEN - 2 Can I finish, please? 3 Q. Yes. 4 A. I think it's both sympathetic 5 to who he is as a human being, but 6 observant of -- of the complexities of 7 him as a self-promoter, a businessman, 8 and a human being. 9 And I think that oftentimes 10 the individuals that I write about are 11 complex people, and I think one of my 12 responsibilities is to try to convey 13 that complexity. And I think this 14 bullet point effectively gets at that. 15 Q. And I take it that based on 16 that answer, that your position would 17 be that there's nothing about these 18 talking points that -- that's in any 19 way -- in any way smacks of malice, 20 correct? 21 MR. CERESNEY: First of all, 22 objection to form. 23 You can answer the question 24 if you can. 25 A. No, I don't believe that.</p>

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1 - TIMOTHY L. O'BRIEN -
 2 Q. Okay. The next bullet refers
 3 to Mike Tyson and the incident you
 4 relate in your book in which Tyson asks
 5 Trump if he was fucking Tyson's wife.
 6 Do you see that? I think
 7 that's the next bullet, correct?
 8 A. Correct.
 9 Q. And then, in the next bullet,
 10 you reference that TrumpNation "offers
 11 an extensive exploration of Donald's
 12 track record as a businessman and
 13 probes the exact size of his
 14 highly-touted fortune..."
 15 Do you see that?
 16 A. I do.
 17 Q. Okay. And -- and what is the
 18 exact -- the exact size of Donald's
 19 highly-touted fortune?
 20 A. Well, in order to answer that
 21 question I would need documentation of
 22 Donald's net worth, which I tried
 23 repeatedly during the course to get
 24 from him but didn't.
 25 Q. Okay. So the answer is you

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1 - TIMOTHY L. O'BRIEN -
 2 don't know, correct?
 3 A. That's correct. I don't know
 4 what the exact size is.
 5 Q. Okay. Okay.
 6 And the next bullet point you
 7 return to organized crime ties; do you
 8 see that?
 9 A. Yes.
 10 Q. You say that "Donald concedes
 11 that he believed his early business
 12 partners, Kenny Shapiro and Dan
 13 Sullivan, may have had organized crime
 14 ties."
 15 And then you reference Jimmy
 16 Hoffa.
 17 Do you see that?
 18 A. I do. But he references
 19 Jimmy Hoffa. This is a quote from
 20 Donald.
 21 Q. Right. And then --
 22 A. I'm quoting Donald here.
 23 Q. And I take it that you
 24 returned to the discussion of organized
 25 crime ties in this second-to-last

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1 - TIMOTHY L. O'BRIEN -
 2 bullet point in case you forgot to
 3 mention what you viewed as Trump's
 4 organized crime ties as referenced in
 5 your second bullet point, correct?
 6 MR. CERESNEY: Objection to
 7 form.
 8 You can answer.
 9 A. Well, I think this was
 10 because the book conveyed news, and
 11 that this was some of the news in the
 12 book that I think that was important to
 13 be in the public realm and that hadn't
 14 appeared elsewhere before.
 15 Specifically, with Donald
 16 speaking in on the record and recorded
 17 conversation about his associations
 18 with organized crime figures, I thought
 19 that, yes, that that was newsworthy and
 20 worth repeating.
 21 MR. RESSLER: I'd like the
 22 court reporter to mark the next
 23 document as Exhibit 25, previously
 24 identified in discovery as
 25 TOB-EF-881.

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1 - TIMOTHY L. O'BRIEN -
 2 (Whereupon, O'Brien Exhibit 25 was
 3 marked for identification.)
 4 Q. Mr. O'Brien, showing you this
 5 document. What is it?
 6 A. This is a press release
 7 relating to TrumpNation.
 8 Q. Who wrote it?
 9 A. This would be -- it was
 10 written by the Warner Book Group with
 11 my editing in it.
 12 Q. When you say "press release,"
 13 what do you mean by that?
 14 A. A document that would have
 15 gone out to notify the public that the
 16 book was being published.
 17 Q. So this was distributed to
 18 media outlets, for example?
 19 A. This document?
 20 Q. Yes.
 21 A. No, I don't believe it was.
 22 Q. So who was it distributed to?
 23 Who was -- who was the press release
 24 released to?
 25 MR. CERESNEY: Are you

<p style="text-align: right;">138</p> <p>1 - TIMOTHY L. O'BRIEN - 2 referring to this document or an 3 eventual press release that was 4 finalized? 5 MR. RESSLER: Was there a 6 press release that was based on 7 this? Is this just a draft? Is 8 that what you're getting at? 9 MR. CERESNEY: That's what I 10 was getting at. 11 A. Yeah. This was a draft. And 12 it has capital -- you know, it has 13 edits in it. 14 Q. Okay. Okay. 15 But, ultimately, the press 16 release was distributed or disseminated 17 to media outlets, correct? It is a 18 press release that was actually used, 19 right? 20 A. Yes. It was a press release 21 that was disseminated to the media 22 outlets. 23 Q. And was it materially the 24 same as this one? 25 A. I would have to look at</p>	<p style="text-align: right;">140</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I do. 3 Q. Now, earlier, when you say on 4 the first page that "the world of 5 Donald Trump is just as full of glitz 6 AND glamour as it is of myths and 7 exaggeration," does that sound to you 8 like a tabloid, tell-all, exposé kind 9 of book? 10 MR. CERESNEY: Objection. 11 Form. 12 You can answer the question. 13 A. That sounds to me like the 14 truth. 15 Q. So -- so this doesn't strike 16 you as being a description of an 17 exposé; "The world of Donald Trump, The 18 Apprentice's sorcerer, is just as full 19 of glitz AND glamour as it is of myths 20 and exaggeration"? 21 A. No. I -- I don't think that 22 sounds like an exposé. 23 Q. When you reference -- or use 24 the word "exaggeration," you're 25 referring to Trump exaggerating his net</p>
<p style="text-align: right;">139</p> <p>1 - TIMOTHY L. O'BRIEN - 2 whatever document you are referencing 3 to know. 4 Q. Let me direct your attention 5 to the first paragraph, the second 6 sentence. "But the world of Donald 7 Trump, The Apprentice's SORCERER, is 8 just as full of glitz AND glamour as it 9 is of myths and exaggeration--a world 10 run by a man who is far better at 11 OCCUPYING CENTER STAGE ON TELEVISION 12 AND IN THE GOSSIP PAGES than HE IS AT 13 BEING a great businessman." 14 Do you see that? 15 A. I do. 16 Q. If you could go to Page 2, 17 882, you reference or I should say 18 refer to Trump in the middle of that 19 paragraph, the paragraph that begins 20 "Donald does it all..." 21 Do you see that? 22 A. Uh-huh. Uh-huh. 23 Q. You refer to Trump as the 24 "self-described billionaire." 25 Do you see that?</p>	<p style="text-align: right;">141</p> <p>1 - TIMOTHY L. O'BRIEN - 2 worth, correct? 3 A. Well, I'm talking about 4 Donald's long track record of 5 exaggerating, he himself. And the art 6 of the -- The Art of the Deal refers to 7 himself as a devotee of what he 8 describes as "truthful hyperbole." 9 And throughout his years in 10 the media sphere, he has been routinely 11 described as an exaggerator, and he's a 12 self-described exaggerator, and so I'm 13 referring to it in that regard. 14 Q. And you describe him as a 15 "self-described billionaire" on the 16 next page, correct? 17 A. Correct. 18 Q. Meaning he's not a 19 billionaire, but he says he is, 20 correct? 21 MR. CERESNEY: Objection to 22 form. 23 You can answer the question 24 if can you. 25 A. Can you ask the question</p>

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1 - TIMOTHY L. O'BRIEN -
 2 again, please.
 3 Q. Yes.
 4 By writing the "self-described
 5 billionaire," you're conveying to the
 6 reader Trump is not a billionaire, but
 7 he describes himself as a billionaire;
 8 isn't that correct?
 9 A. I'm conveying to the reader
 10 that -- that Donald is a self-described
 11 billionaire.
 12 Q. What do you mean by
 13 "self-described billionaire"?
 14 A. That he describes himself in
 15 public as a billionaire.
 16 Q. So, as you sit here today,
 17 you do not believe that by referring to
 18 Trump as a "self-described
 19 billionaire," you're conveying to the
 20 reader your view that he's not a
 21 billionaire; is that correct?
 22 A. I believe what I'm conveying
 23 to the reader is Donald's own
 24 assessment of himself as a billionaire.
 25 Q. Okay. So -- so you believe

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1 - TIMOTHY L. O'BRIEN -
 2 that's the only message conveyed by
 3 that phrase, and this phrase doesn't
 4 convey to the reader your view that
 5 Trump is not a billionaire, correct?
 6 MR. CERESNEY: Objection to
 7 form.
 8 You can answer the question.
 9 A. I think what it conveys to
 10 the reader is how's elusive it can be
 11 to try to get an exact handle on
 12 Donald's net worth, and that he himself
 13 is -- is a guidepost to the extent that
 14 we -- we can get one publicly about his
 15 net worth and that in that regard he
 16 describes himself as a billionaire.
 17 Q. So do you believe -- yes or
 18 no -- that the phrase referring to
 19 Trump as a "self-described billionaire"
 20 does or does not convey the message
 21 that Trump is not a billionaire?
 22 A. No. I --
 23 MR. CERESNEY: Objection to
 24 form.
 25 You can answer the question.

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1 - TIMOTHY L. O'BRIEN -
 2 A. Sorry about that.
 3 No, I don't -- I don't
 4 believe it does.
 5 Q. Okay. Thank you.
 6 MR. RESSLER: I'd like the
 7 court reporter to mark the next
 8 exhibit as Exhibit 26, previously
 9 identified in discovery as
 10 TWBG-EM-22456.
 11 (Whereupon, O'Brien Exhibit 26 was
 12 marked for identification.)
 13 Q. Mr. O'Brien, this document --
 14 tell me, was this another document that
 15 was used or generated in connection
 16 with the marketing and promoting of
 17 your book TrumpNation?
 18 A. I'm not sure. This is a Time
 19 Warner document.
 20 Q. Have you seen it?
 21 A. This document?
 22 Q. Yes.
 23 A. Yes, I have.
 24 Q. And this document was sent to
 25 media outlets in the hopes that they

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1 - TIMOTHY L. O'BRIEN -
 2 would invite you on their radio or TV
 3 shows to speak about the book; is that
 4 correct?
 5 A. No, I don't believe this
 6 document was.
 7 Q. So -- so what was the purpose
 8 of the document?
 9 A. I believe this was a document
 10 that was part of the process of
 11 packaging press releases or promotion
 12 around the book.
 13 Q. To promote what was
 14 considered to be the important points
 15 of the book, correct?
 16 MR. CERESNEY: Objection.
 17 Form.
 18 You can answer.
 19 A. I think to highlight
 20 different aspects of the book, yes.
 21 Q. Okay. "TrumpWorld by Tim
 22 O'Brien of The New York Times is the
 23 first book to bring readers deeply
 24 inside the gilded but loopy joyride
 25 that is life with The Donald. From the

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1 - TIMOTHY L. O'BRIEN -
2 multi-million dollar deals and flashy
3 toys to the glamorous babes and
4 high-stakes rivalries, TrumpWorld is a
5 tour of all things Donald."
6 Do you see that?
7 A. I do.
8 Q. Okay. And then it continues,
9 "Among the revelations that are
10 included in this extraordinary book..."
11 and then there are bullet points,
12 correct?
13 A. Correct.
14 Q. So the bullet point are the
15 revelations that you uncovered in your
16 investigation for the book,
17 Mr. O'Brien?
18 A. No, I wouldn't describe them
19 that way. I think these are what a
20 person drafting some of the promotional
21 material around the book prepared in
22 relation to the book.
23 Q. Okay. But - but - I mean,
24 this is how the book was positioned to
25 be marketed and promoted as - as

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1 - TIMOTHY L. O'BRIEN -
2 reflected in this document, correct?
3 MR. CERESNEY: Objection.
4 Form.
5 Q. Sir?
6 MR. CERESNEY: Misstates
7 prior testimony.
8 MR. RESSLER: Okay.
9 Q. Sir?
10 A. Can you rephrase the
11 question, please.
12 Q. Yes.
13 This document reflects how
14 you and Warner positioned the book to
15 be marketed and promoted to the public,
16 correct?
17 MR. CERESNEY: And I'll
18 restate my objection.
19 You can answer.
20 Q. Sir?
21 A. Can you rephrase the
22 question, please.
23 Q. Yes.
24 Doesn't this document reflect
25 how the book was positioned by you and

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1 - TIMOTHY L. O'BRIEN -
2 Warner to be marketed and promoted to
3 the public?
4 MR. CERESNEY: And I'll
5 object again on form.
6 You ask answer.
7 A. Can you rephrase the
8 question, please.
9 Q. What is it about the question
10 you don't understand?
11 A. I'm just confused about right
12 now in terms of your rephrasings in
13 relation to my attorney's objections.
14 Q. But I didn't rephrase it.
15 I've now repeated the question
16 certainly twice, but possibly three
17 times.
18 A. Okay.
19 Q. So what is it about the
20 question you don't understand? Just
21 tell me what it is and I'll rephrase
22 it.
23 A. If you can just ask me the
24 question one more time, I'll answer it.
25 Q. Okay. Isn't it true that

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1 - TIMOTHY L. O'BRIEN -
2 this document reflects how you and
3 Warner marketed and promoted the book?
4 A. It's my understanding that
5 this is a working draft of the
6 document, so I think it - it reflects
7 an attempt to develop a -- a list of
8 bullet points about the book.
9 Q. For the purposes of marketing
10 and promoting the book to the public,
11 right, Mr. O'Brien?
12 A. Correct.
13 Q. Okay. So the first bullet
14 point reads "When you walk into one of
15 those flashy skyscrapers bearing Donald
16 Trump's name, remember one thing: The
17 Apprentice host owns almost none of
18 them. Donald is merely a glorified
19 landlord whose pet projects are
20 financed with other people's money."
21 Do you see that?
22 A. I do.
23 Q. By the way, would -- would
24 you agree, Mr. O'Brien, that this list
25 of bullet points emphasize the negative

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1 - TIMOTHY L. O'BRIEN -
2 aspects of the book concerning Trump?
3 MR. CERESNEY: Objection to
4 form.
5 You can answer.
6 A. No, I wouldn't agree with
7 that.
8 Q. Okay. Thanks.
9 So the second bullet states,
10 "Donald isn't a billionaire either.
11 Although he inherited a huge fortune
12 from his wealthy father, the Trumpster
13 almost went bank -- personally bankrupt
14 a decade ago and was forced to make
15 humiliating phone calls begging his
16 irritated siblings for handouts."
17 Do you see that?
18 A. I do.
19 Q. Isn't it true, Mr. O'Brien,
20 that the book was marketed and promoted
21 to tell the public that Trump is not a
22 billionaire?
23 A. No, I don't believe that's
24 true.
25 Q. Okay. You see that the

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1 - TIMOTHY L. O'BRIEN -
2 phrase that begins 'Bullet Point 2 is,
3 "Donald isn't a billionaire either."
4 You see that, correct?
5 A. I do.
6 Q. The third bullet references
7 the following: "The Apprentice host" --
8 that's Trump, by the way, right?
9 A. Correct.
10 Q. "The Apprentice host fobs
11 himself off as the master dealmaker but
12 he has a much longer track record of
13 business failures behind him --
14 bankrupted casinos, a disastrous
15 flirtation with professional football,
16 failed hotel acquisitions and an
17 airline company that nosedived."
18 Do you see that?
19 A. I do.
20 Q. Would you agree -- and you
21 could say yes or no -- that that
22 bullet, the third bullet, portrays
23 Trump in a negative light?
24 MR. CERESNEY: Objection to
25 form.

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1 - TIMOTHY L. O'BRIEN -
2 You can answer.
3 Q. It's really just a yes-or-no
4 question.
5 A. I think of this as an
6 accurate description of his history as
7 a business person.
8 Q. Okay. But my question,
9 Mr. O'Brien -- and I'm giving you
10 leeway but my question is yes or no.
11 Do you believe that this
12 bullet point is a negative portrait of
13 Trump, the third bullet point, yes or
14 no?
15 MR. CERESNEY: Objection to
16 form.
17 You can answer.
18 A. I believe that it -- it
19 speaks to his failures as a business
20 person.
21 Q. And, likewise, the second
22 bullet point; do you believe that that
23 is a negative portrait of Trump as
24 described in the second bullet point
25 that begins, "Donald isn't a

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1 - TIMOTHY L. O'BRIEN -
2 billionaire either?"
3 A. Well, other than the first
4 sentence, I believe that the second
5 sentence is an accurate portrayal of
6 the fact pattern surrounding his --
7 Q. Mr. -- Mr. O'Brien --
8 A. -- experiences.
9 Q. -- my question didn't relate
10 to accuracy. My question is very
11 clear.
12 A. Okay.
13 Q. I'm asking you if in your
14 view, this bullet point is a negative
15 portrait of Trump.
16 The bullet point that says,
17 "Donald isn't a billionaire either.
18 Although he inherited a huge fortune
19 from his wealthy father, the Trumpster
20 almost went personally bankrupt a
21 decade ago and was forced to make
22 humiliating phone calls begging his
23 irritated siblings for handouts?"
24 In your view, does that
25 portray Trump in a negative light?

154	<p>1 - TIMOTHY L. O'BRIEN - 2 A. Yes, it does. 3 Q. And what about the first 4 bullet? "Donald is merely a glorified 5 landlord whose pet projects are 6 financed with other people's money." 7 Among other statements in 8 that first bullet, in your view, does 9 that portray Trump in a negative or 10 positive light -- or neutral? 11 MR. CERESNEY: Objection to 12 form. 13 You can answer. 14 A. I think that this is an 15 accurate portrayal of Donald's 16 holdings, and I think -- 17 Q. But isn't it -- isn't it true 18 that this -- 19 MR. CERESNEY: Hold on. He 20 was about to answer, continue his 21 answer to the question. 22 MR. RESSLER: But -- but 23 my -- that's not my question, 24 Andrew. I mean, I've given -- I've 25 given Mr. O'Brien leeway --</p>	156	<p>1 - TIMOTHY L. O'BRIEN - 2 no? 3 A. Yes, I think it portrays him 4 in a negative light. 5 Q. The fourth bullet point: 6 "While Donald chases the spotlight by 7 day with his glamorous young wife, by 8 night he is a low-rent version of 9 Howard Hughes -- reclusive and paranoid 10 about germs. Instead of prowling the 11 Manhattan social circuit into the wee 12 hours, he prefers to be home early in 13 front of the TV, munching on a burger, 14 wolfing down Oreos, or spooning grub 15 from a can of Chef Boy-ar-Dee." 16 Do you see that? 17 A. I do. 18 Q. In your view, does this 19 portray Mr. Trump in a negative light, 20 Mr. O'Brien? 21 A. Again, I think it's an 22 accurate portrayal of his private, 23 social life. 24 MR. RESSLER: Okay. Move to 25 strike. No. Move to strike. That</p>
155	<p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: I think he was 3 about to -- if you would just let 4 him finish his sentence, I think he 5 would answer your question. 6 MR. RESSLER: But, Andrew, 7 I've now three or four times I've 8 asked the question, a simple 9 question about whether he viewed 10 this as portraying Trump in a 11 negative light. 12 MR. CERESNEY: I don't think 13 it's a simple question. 14 MR. RESSLER: And -- and he's 15 answered me in terms of whether or 16 not it's accurate. 17 MR. CERESNEY: I don't think 18 it's a simple question. Why don't 19 you ask a question -- 20 MR. RESSLER: Simple or no, 21 that's my question. 22 BY MR. RESSLER: 23 Q. My question is, in your view, 24 does this portray Trump in a negative 25 light, the first bullet point, yes or</p>	157	<p>1 - TIMOTHY L. O'BRIEN - 2 wasn't my question. 3 MR. CERESNEY: He's been -- 4 he's been answering that question. 5 MR. RESSLER: Okay. And I'm 6 moving to strike. 7 MS. WHITE: Let him finish it 8 and then move to strike. 9 A. Would you like me to finish? 10 Q. I'd like you to answer my 11 question. 12 Does -- in your view, does 13 this portray Trump in a negative light. 14 That's what I'd like you to do. 15 A. I think it's an accurate 16 description of the private and social 17 life, but it is negative. 18 MR. RESSLER: And I move to 19 strike the first part of that 20 response. 21 MR. CERESNEY: It should -- 22 it should stand in our view. 23 Go ahead. 24 Q. Next bullet. "At the crest 25 of his popularity in the late '80s and</p>

1 - TIMOTHY L. O'BRIEN -
 2 early '90s, Donald believed he" --
 3 A. I'm sorry. The next bullet,
 4 is that "Ever the Daddy figure...?"
 5 Q. Oh, I'm sorry. You're right.
 6 Thank you. Am I bad.
 7 "Ever the Daddy figure on The
 8 Apprentice, in his business dealings
 9 Donald is far more ruthless. He has
 10 used mob lawyers and mob associates to
 11 get things done and even made his first
 12 foray into Atlantic City with men known
 13 to have open ties to organized crime."
 14 Do you see that?
 15 A. I do.
 16 Q. In your view, does that
 17 portray Trump in a negative light?
 18 A. Well, I believe it to be
 19 accurate, but it is also negative.
 20 MR. RESSLER: I move to
 21 strike the first part of the
 22 response.
 23 MR. CERESNEY: Okay. And
 24 we'd like it to stand.
 25 Q. The next bullet reads, "At

1 - TIMOTHY L. O'BRIEN -
 2 the crest of his popularity in the late
 3 '80s and early '90s, Donald believed he
 4 was invincible and infallible -- a
 5 golden child with the Midas touch and
 6 Midas crotch. Until The Apprentice
 7 revived his sagging fortunes, he was
 8 haunted by the idea that he was a
 9 modern day Orson Welles, doomed to be
 10 remembered only for early, brief
 11 successes."
 12 Do you see that?
 13 A. I do.
 14 Q. Okay. And then the last
 15 bullet references something we spoke
 16 about earlier today, Donald stating
 17 that he was bored on his wedding day
 18 when he was getting married to his
 19 second wife Marla Maples, correct?
 20 A. Correct.
 21 Q. And then -- and then you end
 22 this bullet point, Mr. O'Brien,
 23 stating --
 24 MR. CERESNEY: This bullet
 25 point ends. Is that what you're

1 - TIMOTHY L. O'BRIEN -
 2 saying?
 3 MR. RESSLER: Please. Fine.
 4 Q. The bullet points ends,
 5 Mr. O'Brien, with the phrase, "Donald
 6 brutalized his first two spouses when
 7 they landed in divorce court," correct?
 8 A. Correct.
 9 Q. Mr. O'Brien, isn't it true
 10 that you and your publisher, Warner
 11 Books, marketed and promoted this book
 12 in such a way as to emphasize the most
 13 negative aspects of Trump that you
 14 report in your book?
 15 A. No, I don't think that's
 16 true.
 17 Q. Okay. Thank you. Finished
 18 with that document.
 19 MR. CERESNEY: When are we
 20 going to take a lunch break --
 21 sorry -- for timing purposes?
 22 MR. RESSLER: One.
 23 MR. CERESNEY: Do you need a
 24 break?
 25 THE WITNESS: I'm good.

1 - TIMOTHY L. O'BRIEN -
 2 (Whereupon a brief discussion
 3 was held off record.)
 4 Q. I take it also, Mr. O'Brien,
 5 it's your testimony today that in
 6 writing, promoting, and marketing this
 7 book, your intent was not to demean and
 8 denigrate Trump?
 9 A. Yes, that's correct.
 10 Q. And I take it it's also
 11 correct that your intent and purpose
 12 was not to cause damage to Trump and to
 13 his reputation?
 14 A. That's correct.
 15 Q. Now, this document states
 16 that "Trump is not a billionaire
 17 either," correct? The one that we just
 18 looked at, right?
 19 A. Correct. It does state that.
 20 Q. But in your legal briefs that
 21 you submitted in this case to our trial
 22 judge, isn't it true that you told our
 23 judge that when you discussed Trump's
 24 net worth in your book, you didn't take
 25 sides in what you described as more or

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1 - TIMOTHY L. O'BRIEN -
2 less a debate over what Trump's net
3 worth was, correct?
4 MR. CERESNEY: Objection to
5 the question. Mischaracterizes
6 what was said and the nature of
7 this document in connection to what
8 was said.
9 If you can answer, go ahead.
10 A. That is correct.
11 MR. RESSLER: We'll have the
12 court reporter mark for
13 identification Exhibit 27.
14 (Whereupon, O'Brien Exhibit 27 was
15 marked for identification.)
16 Q. Mr. O'Brien, if you could
17 just go to -- it's the preliminary
18 statement page of this document.
19 This is a legal brief, by the
20 way, that -- that you submitted to our
21 trial judge in New Jersey court? . . .
22 Do you see that?
23 A. I do.
24 Q. If you could go to the
25 preliminary statement page.

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1 - TIMOTHY L. O'BRIEN -
2 A. Yes.
3 Q. You state, this is in the
4 first paragraph -- I'm sorry -- the
5 second paragraph that begins "First."
6 Do you see that?
7 A. Yes.
8 Q. And then the third paragraph
9 from the end -- I'm sorry -- the third
10 sentence from the end of that paragraph
11 reads, "The book asks the nondefamatory
12 question about how much Trump is worth,
13 just as many others have asked since
14 well before the book was published, but
15 offers no definitive answer to the
16 question. It does not endorse the
17 150 million to \$250 million estimate or
18 otherwise conclude that Trump is not a
19 billionaire."
20 Do you see that?
21 A. I do.
22 Q. And do you believe that?
23 A. I do believe that.
24 Q. Okay. In marketing and
25 promoting the book, sir, isn't it true

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1 - TIMOTHY L. O'BRIEN -
2 that you marketed and promoted the book
3 to emphasize that Trump is not a
4 billionaire?
5 A. No, I don't think that's
6 right.
7 Q. Doesn't the document we just
8 looked at, another bullet point
9 document, state, "Trump is not a
10 billionaire either."
11 A. This document does state
12 that.
13 Q. And that was a promotional
14 and marketing document, correct?
15 A. This is, I believe, a draft
16 for what might become a promotional
17 document.
18 Q. Could you tell me who that
19 document was disseminated to, please?
20 A. I don't know. I would have
21 gotten it myself possibly from Time
22 Warner. But it appears that this
23 stayed within Time Warner's confines
24 at. It's a Time Warner document, not
25 one of my own.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Well, who would know, if you
3 know -- withdrawn.
4 If you know, could you tell
5 me who at Time Warner or your agent, or
6 anyone else who might know, who that
7 document was disseminated to?
8 A. No, I just -- I'm not sure
9 who it was disseminated to.
10 Q. That's not my question. My
11 question is only if you know the names
12 of any people who might know who it was
13 disseminated to.
14 A. Rick Wolff, possibly.
15 Q. Okay. Anyone else?
16 A. People in the public
17 relations side of the company. Annie
18 Bataglia, perhaps.
19 Q. And -- and what's her
20 position at Time Warner?
21 A. You know, I don't know her
22 exact position. She was a marketing
23 executive. I -- I can't recall her
24 exact position, but she would be a
25 mark -- the title, her title but she

<p style="text-align: right;">166</p> <p>1 - TIMOTHY L. O'BRIEN - 2 was a marketing executive at the 3 company. 4 Q. Anyone else? 5 A. No one else that I can 6 recall. 7 MR. RESSLER: The next 8 document will be 28. This document 9 has previously been identified in 10 discovery as TWBG-PD-987. 11 (Whereupon, O'Brien Exhibit 28 was 12 marked for identification.) 13 Q. Mr. O'Brien, this document is 14 an e-mail under where it says 15 "Redacted." 16 Do you see that? 17 A. I do. 18 Q. It's an e-mail from Nancy 19 Wiese -- I might be mispronouncing the 20 name -- to -- I'm certainly going to 21 mispronounce this name -- Mariska 22 Hooijmans. 23 Do you know who these people 24 are? 25 A. The names are not -- I don't</p>	<p style="text-align: right;">168</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Do you see that? 3 A. I do. 4 Q. Then it describes as 5 highlights the following: The fact 6 that Trump "sits at home watching 7 television and eating hamburgers." 8 Do you see that? 9 A. I do. 10 Q. And that tracks language we 11 saw in the previous document, the 12 bullet point document, correct? 13 MR. CERESNEY: Objection to 14 the form. 15 A. Yeah. I'd have to look at 16 the previous document again. 17 Q. Okay. Then the second bullet 18 point references that Trump "needed a 19 loan from his siblings to stay afloat." 20 Do you see that? 21 A. I do. 22 Q. Then the last document -- I'm 23 sorry -- the last bullet point in this 24 document states, "His name is plastered 25 on some of the most magnificent hotels</p>
<p style="text-align: right;">167</p> <p>1 - TIMOTHY L. O'BRIEN - 2 recollect either of these two 3 individuals. 4 Q. You see where Miss Wiese, her 5 job is described as "TWBG-Editorial"? 6 Do you see that? 7 A. I do. 8 Q. Does that refresh your 9 recollection? 10 A. It doesn't. 11 Q. The e-mail reads "Dear Marit, 12 As you requested, here's TRUMPNation: 13 The Art of Being the Donald (Warner 14 Business Book hardcover, October 05 15 pub) by Tim O'Brien, a New York Times 16 journalist who has been covering Trump 17 for years and has unique insider access 18 into the most personal details of his 19 life." 20 Do you see that? 21 A. I do. 22 Q. "It's not an overt hatchet 23 job but more a juicy pulling back of 24 the curtain to reveal the good, the 25 bad, and the ugly about The Donald."</p>	<p style="text-align: right;">169</p> <p>1 - TIMOTHY L. O'BRIEN - 2 and casinos in the world -- yet he's 3 \$2 billion in debt." 4 Do you see that? 5 A. I do. 6 Q. Based on your experience as a 7 book author, a newspaper reporter, and 8 a newspaper editor, would you agree 9 that this description of your book is 10 the description of a tabloid, tell-all, 11 exposé kind of book? 12 MR. CERESNEY: Objection to 13 form. 14 You can answer. 15 A. I don't really agree that 16 this is a complete description of my 17 book. 18 Q. But my question was only, do 19 you agree that this description of your 20 book is the description usually 21 associated with tabloid, tell-all, 22 exposé kind of books? 23 MR. CERESNEY: Objection to 24 form. 25 You can answer.</p>

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1 - TIMOTHY L. O'BRIEN -
2 A. No. I think it's more
3 restrained than that.
4 Q. Okay. And -- and why do you
5 think it's restrained? What's
6 restrained about the description of
7 your book as it appears in this e-mail?
8 A. Well, I believe what your
9 question was, does this comport
10 with the way that tell-all, tabloid
11 books are -- are promoted.
12 And I think what I said was
13 that this is more restrained than I
14 think most tabloid books are promoted.
15 It's not simply emphasizing salacious
16 details.
17 Q. Okay. So you don't think
18 that when the description reads O'Brien
19 "has been covering Trump for years and
20 has unique insider access into the most
21 personal details of his life," "his"
22 meaning Trump's, you don't think that's
23 salacious?
24 A. Well, that's a description of
25 me, not the book.

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1 - TIMOTHY L. O'BRIEN -
2 Q. It's the most -- no, it's not
3 the most personal details of your life,
4 Mr. O'Brien, it's the most personal
5 details of Trump's life, right?
6 A. No. She's referencing me as
7 a New York Times journalist, I believe,
8 in that sentence.
9 Q. Mr. O'Brien, it says that you
10 have "unique insider access into the
11 most personal details of his life."
12 Who does the "his" refer to?
13 A. To Trump.
14 Q. Right.
15 A. But the description is a
16 reference to me.
17 Q. Right. But "the most
18 personal details of his life" refers to
19 the most personal details of Trump's
20 life, right?
21 A. I'm sorry. I understood you
22 to be asking me a question about the
23 book. Am I mistaken?
24 Q. My question to you is, do you
25 find this phrase, "the most personal

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1 - TIMOTHY L. O'BRIEN -
2 details" of Trump's life to be
3 salacious?
4 A. In and of itself, no.
5 Q. Okay. Well, what about
6 coupled with the next sentence?
7 Do you find it to be
8 salacious when coupled with the
9 sentence I'm about to read: "It's not
10 an overt hatchet job but more a juicy
11 pulling back of the curtain to reveal
12 the good, the bad, and the ugly about
13 the Donald."
14 A. And your question is, is this
15 salacious?
16 Q. Correct.
17 A. No, I wouldn't describe this
18 as salacious.
19 Q. You wouldn't view that as a
20 salacious peddling of an exposé, right?
21 You would not view it that way?
22 A. No, I wouldn't.
23 Q. Okay. And then would you
24 agree that the three bullet points --
25 withdrawn.

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1 - TIMOTHY L. O'BRIEN -
2 The three bullet points
3 referenced here cast Trump in a
4 negative light; isn't that correct?
5 A. I believe that these are
6 attempts to convey different elements
7 of the book and that they could be
8 perceived as negative, yes.
9 Q. Okay. In fact, the last
10 bullet point, the last bullet point's
11 false, right? Yet -- yet, it says that
12 Trump is \$2 billion in debt?
13 A. That is incorrect.
14 Q. Oh, oh, and by the way, where
15 it refers to the results of your
16 research investigation as "eye-opening."
17 Do you see that?
18 A. Yes.
19 Q. Do you have any understanding
20 of what was meant by "eye-opening"?
21 A. Yes. I think eye-opening is
22 someone -- something that allows
23 readers to get a better assessment of
24 the truth and the reality around us.
25 It opens our eyes so that we can see

44 (Pages 170 to 173).

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<p style="text-align: right;">174</p> <p>1 - TIMOTHY L. O'BRIEN - 2 more clearly. 3 Q. Based on your years in 4 journalism, as an author, Columbia 5 Journalism School graduate, what's your 6 understanding of the term "hatchet job" 7 in the context of a book? 8 A. An irresponsible and 9 nonreflective effort to simply use a 10 written publication as a vehicle for 11 resolving a predetermined view of what 12 the subject matter is. 13 Q. Isn't -- isn't that precisely 14 what you did with respect to 15 TrumpNation, to Donald Trump? 16 A. That's precisely what I 17 attempted to avoid doing. 18 Q. What about an overt hatchet 19 job? Do you have any understanding of 20 when a hatchet job would be overt and 21 when it might be not overt? 22 A. In the context of this 23 letter? I really can't speak today to 24 what the author of the letter's 25 intentions were.</p>	<p style="text-align: right;">176</p> <p>1 - TIMOTHY L. O'BRIEN - 2 question, go ahead. 3 A. Well, irrespective of the 4 context of this letter, I think a 5 hatchet job is a hatchet job, and we 6 know them when we see them. 7 Q. So as far as you're 8 concerned, based on your experience, 9 there is no such thing as an overt 10 hatchet job or a hatchet job that's not 11 overt. A hatchet job is a hatchet job, 12 right? 13 A. I believe so. 14 MR. CERESNEY: Objection to 15 form. 16 You ask answer. 17 A. I believe so. 18 Q. And -- and what do you mean 19 by "we know them when we see them"? 20 A. Well, narrowly and granularly 21 speaking, I think a hatchet job, as I 22 mentioned earlier, is the product of a 23 journalist's particular endeavor that 24 doesn't try to assess fact patterns or 25 rely on documentable, heavy research in</p>
<p style="text-align: right;">175</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. What about in the context of 3 your 15 -- correct me if I'm -- 4 15 years as a reporter and editor for 5 the Wall Street Journal and The New 6 York Times and writing books and as a 7 Columbia Journalism School grad and as 8 someone who lectures from time to time 9 at the Columbia School of Journalism. 10 Do you have any view as to 11 what would constitute an overt hatchet 12 job as opposed to a hatchet job that's 13 not overt? 14 MR. CERESNEY: Objection to 15 form. Are you asking him generally 16 what he views as an overt hatchet 17 job or was the author of the 18 document, which he wasn't? 19 MR. RESSLER: No. I 20 separated it from the author of the 21 document. I was clear to do that 22 in my question, sir. 23 MR. CERESNEY: It wasn't 24 apparent to me. 25 But now that you answered the</p>	<p style="text-align: right;">177</p> <p>1 - TIMOTHY L. O'BRIEN - 2 order to reach conclusions, and is 3 merely the result of someone carrying 4 out a vendetta or a bias in -- in the 5 written or the broadcast media. 6 Q. And when you say "we know 7 them when we see them," you mean that 8 the average reader pretty much knows 9 when he or she is reading a hatchet 10 job, right? 11 MR. CERESNEY: Objection. 12 Form. 13 You can answer. 14 A. No. I meant it more as a 15 professional journalist in assessing 16 the architecture behind a published 17 book, newspaper article, etc. 18 Q. So you think you need to be a 19 professional journalist to know when 20 you're reading -- when a person's 21 reading a hatchet job, Mr. O'Brien? 22 A. Well, you asked me what my 23 definition of a hatchet job was, and in 24 my capacity as a professional 25 journalist I provided you that</p>

1 - TIMOTHY L. O'BRIEN -
 2 definition.
 3 Q. Thanks.
 4 MR. RESSLER: This is -- this
 5 is a fine time to break for -- for
 6 lunch.
 7 THE WITNESS: Thanks.
 8 MR. RESSLER: It's about four
 9 minutes to one.
 10 THE VIDEOGRAPHER: The time
 11 is 1:00 p.m. We're off the record.
 12 (Whereupon a lunch break was
 13 taken from 1:00 p.m. to 1:45 p.m.)
 14 THE VIDEOGRAPHER: We're back
 15 on the record. The time on the
 16 video monitor is 1:45 p.m. This
 17 starts Tape Number 3.
 18 BY MR. RESSLER:
 19 Q. Mr. O'Brien, let's talk about
 20 the public appearances you made in
 21 promoting this book.
 22 Isn't it true that when you
 23 made radio and television appearances
 24 to promote the book, you chose to
 25 emphasize the things that would impugn

1 - TIMOTHY L. O'BRIEN -
 2 Mr. Trump's character and subject him
 3 to public scorn and ridicule; isn't
 4 that true?
 5 A. No, that's not true.
 6 Q. Do you recall appearing on
 7 the show On the Money?
 8 A. I do recall appearing on that
 9 show, yes.
 10 Q. That's a CNBC television
 11 program; is that correct?
 12 A. Correct.
 13 Q. And CNBC, it's a channel that
 14 tends to focus on the business world;
 15 is that fair to say?
 16 A. Yes.
 17 Q. And you appeared on that show
 18 on or about October 31st of 2005?
 19 A. I can't recall the exact
 20 date, but that sounds approximately
 21 right.
 22 Q. Okay. And on that program,
 23 Mr. O'Brien, you stated in response to
 24 a question, did you not, "Well,
 25 TrumpNation, Dillon?" -- Dillon was the

1 - TIMOTHY L. O'BRIEN -
 2 host.
 3 Do you recall that?
 4 A. Dillon Radigan.
 5 Q. "Well, TrumpNation, Dillon,
 6 is the story of how someone who's
 7 essentially a cartoon character became
 8 the most famous businessman in the
 9 United States. You know Donald is not
 10 Bill Gates or Jack Welch or Warren
 11 Buffett. "He's essentially Baby Huey
 12 with a little bit of PT Barnum thrown
 13 in."
 14 Do you recall saying that on
 15 this television show?
 16 A. I do.
 17 Q. During this interview on the
 18 On the Money program, you were also
 19 asked this question and gave the
 20 following answer.
 21 But the question was, "What
 22 would you say is the most pointed
 23 criticism that your book offers?"
 24 And do you recall responding,
 25 "Well, the -- you know, the world of

1 - TIMOTHY L. O'BRIEN -
 2 Donald Trump is a world of smoke and
 3 mirrors. He doesn't have the wealth
 4 that he appears to claim he has. He --
 5 his track record as a businessman has
 6 essentially been a series of car
 7 crashes."
 8 Do you recall making that
 9 statement --
 10 A. I do.
 11 Q. -- on the TV show?
 12 A. I do.
 13 Q. Now, you also appeared, did
 14 you not, on a radio program called
 15 Higher Frequencies; correct?
 16 A. That could be correct. I
 17 don't recall the name of that
 18 particular program.
 19 Can you tell me the station,
 20 the location of the station?
 21 Q. Well, the location was in the
 22 Concord, Massachusetts, or the Boston,
 23 Massachusetts, area.
 24 Does that ring a bell?
 25 A. No, it doesn't, but you can

<p style="text-align: right;">182</p> <p>1 - TIMOTHY L. O'BRIEN - 2 go on. 3 Q. The hosts of that show were a 4 Dan and a David -- 5 A. Uh-huh. 6 Q. -- if that rings a bell? 7 A. Uh-huh. I'm sorry. Yes. 8 Q. David Abrams and Dan King; is 9 that helpful? 10 A. That's helpful. I don't 11 recall the specifics. 12 Q. Do you recall stating that 13 "Donald is -- you got a guy who has 14 had -- has squandered billions of 15 dollars during his career. He's had a 16 series of car crashes." 17 Do you recall saying that? 18 A. I don't recall the specific 19 language. That would be -- be in 20 keeping with statements I've made 21 publicly about him, certainly. 22 Q. And do you recall on that 23 radio program that you also stated that 24 Trump's original business partners in 25 Atlantic City had organized crime ties.</p>	<p style="text-align: right;">184</p> <p>1 - TIMOTHY L. O'BRIEN - 2 developer in New York, which he's not. 3 He routinely overstates his wealth and 4 he routinely overstates the success of 5 his track record." 6 Do you recall making that 7 statement or those statements on the 8 radio program Higher Frequencies? 9 A. I don't recall those 10 statements on the radiogram -- program, 11 but they're certainly in keeping 12 with -- with what I had said in other 13 public venues and what I believe to be 14 accurate. 15 Q. In -- in making the statement 16 on the radio program that Trump has, 17 quote/unquote, "created this idea 18 around him of billionairehood," in the 19 context of your other statements in the 20 passage I just read from, you were 21 stating in effect that Trump is not a 22 billionaire; is that correct? 23 A. No, that's not correct. 24 Q. Do you recall appearing on or 25 about November 17th of '05 on another</p>
<p style="text-align: right;">183</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. That would be in keeping with 3 public statements I've made, yes. 4 Q. And do you recall stating, 5 "Trump's been willing to just overstate 6 and inflate everything that he's 7 involved with, and he's been doing it 8 for decades. And, 2, the media has 9 bought into it. 10 "And it's much easier, you 11 know -- I think generally reporters 12 tend -- can tend to be lazy. And it's 13 easier just to call someone up and get 14 some information and run with a story 15 and not really check it out. 16 "On somebody like Trump who 17 has, you know, privately held wealth 18 and it's not easy to check out, so it's 19 easier to just -- to take him at face 20 value and run with that. 21 "And he's created this idea 22 around him, you know, of billionairehood 23 and success and big glittery toys. 24 And, you know, he routinely refers to 25 himself as the biggest real estate</p>	<p style="text-align: right;">185</p> <p>1 - TIMOTHY L. O'BRIEN - 2 radio program, KNDD? 3 A. I don't recall the specifics 4 of that program, no. 5 Q. The -- I think the full name 6 of the radio show is "KNDD's DeeJay No 7 Name and Jennifer White," and it 8 originates in Seattle, Washington? 9 A. It's possible. If you can 10 show me a transcript of the interview, 11 it might refresh my recollection, but I 12 don't recall the specifics of it. 13 Q. Do you recall stating on -- 14 A. Can I see a copy of the 15 transcript? 16 Q. No, you -- you can't. 17 MR. CERESNEY: Let me just 18 jump in here. Are these documents 19 that were obtained in the course of 20 discovery or are these through mass 21 other means? 22 MR. RESSLER: These -- these 23 are tapes -- 24 MR. CERESNEY: That you 25 obtained.</p>

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1 - TIMOTHY L. O'BRIEN -
2 MR. RESSLER: -- Andrew,
3 that -- well, this one is actually
4 a document in discovery. But the
5 other two were -- were tapes that
6 we listened to.
7 MR. CERESNEY: That you
8 obtained in the course of
9 discovery?
10 MR. RESSLER: Yeah. Yes.
11 MR. CERESNEY: Okay. Because
12 I don't believe that the one -- the
13 other two that we -- you just
14 referred to have been turned over
15 to us.
16 But we can take that up
17 afterwards, if you refer us to --
18 specifically to the cover letter
19 that they accompanied. That's --
20 Go ahead.
21 MR. RESSLER: I mean, at the
22 appropriate time for trial, we'll
23 exchange transcripts and hopefully
24 agree on a transcript of each of
25 these conversations.

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: No. I'm just
3 asking about if you received
4 third-party discovery. We have an
5 understanding that we're going to
6 share with each other, within a
7 certain period of time, documents
8 or other items received from other
9 third parties. So I'm just.
10 MR. RESSLER: Okay. Well,
11 we'll get -- we'll consider that.
12 MR. CERESNEY: I'm just
13 asking.
14 BY MR. RESSLER:
15 Q. In any event, the particular
16 radio program that I'm asking you about
17 now, KNDD, actually is a document that
18 was produced. It was produced from a
19 third party, and it's Bates stamped
20 KNDD 1.
21 MR. CERESNEY: I believe we
22 have this one. I don't believe --
23 MR. RESSLER: You do.
24 MR. CERESNEY: Yes. This one
25 we do.

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1 - TIMOTHY L. O'BRIEN -
2 MR. RESSLER: Okay.
3 MR. CERESNEY: I'm referring
4 to the last two.
5 Q. Sir, do you recall stating in
6 that radio program in Seattle,
7 Washington, that Trump has always
8 inflated his comings and goings?
9 A. I don't recall the specifics
10 of that statement, but it would
11 certainly be in keeping with my view of
12 Donald and statements I've made
13 elsewhere.
14 Q. Do you recall in that same
15 program stating, "By the way, speaking
16 of Trump, you know, Trump Ice, the
17 water. Do you really see Bill Gates or
18 Warren Buffet out there hawking laundry
19 detergent or pizza? How many real
20 billionaires are out there trying to
21 sell all this stuff?"
22 Do you recall making that
23 statement?
24 A. I don't recall the specifics
25 of that statement, but it's certainly

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1 - TIMOTHY L. O'BRIEN -
2 in keeping with what I wrote in the
3 book and my view of Donald, yes.
4 Q. Is it fair to say that the
5 point you were conveying when you said,
6 "How many real billionaires are out
7 there trying to sell all this stuff,"
8 is that Trump is not a real
9 billionaire?
10 A. No. That's not what I was
11 trying to convey.
12 Q. Do you believe that the
13 average listener who heard your
14 statement on that radio program could
15 infer that your point in stating, "How
16 many real billionaires are out there
17 trying to sell all this stuff," was
18 that Trump, in fact, is not a
19 billionaire?
20 MR. CERESNEY: Object to
21 form. If you can answer the
22 question, go ahead.
23 A. I can't really get into the
24 minds of the people hearing that
25 statement.

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1 - TIMOTHY L. O'BRIEN -
 2 Q. There's nothing, Mr. O'Brien,
 3 about that statement that you think
 4 conveys the point that in your view
 5 Trump is not a billionaire?
 6 A. I think it -- it conveys a
 7 degree of skepticism that I certainly
 8 had about Donald's proclamations about
 9 his business dealings and his net
 10 worth. So it conveys the high degree
 11 of skepticism I had about his
 12 statements about these matters, yes.
 13 Q. About the fact that he's a
 14 billionaire, in particular?
 15 A. Certainly.
 16 Q. So again, though, above and
 17 beyond the skepticism, do you consider
 18 any part of this statement, quote, "How
 19 many real billionaires are out there
 20 trying to sell all this stuff," do you
 21 consider any part of that statement as
 22 conveying the idea that Trump is not a
 23 billionaire?
 24 MR. CERESNEY: Objection to
 25 form. Go ahead.

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1 - TIMOTHY L. O'BRIEN -
 2 A. I think it conveys a high
 3 degree of skepticism about his
 4 statements about his net worth, which I
 5 certainly have.
 6 Q. Because you use the phrase,
 7 "real billionaire," that's what I'm
 8 trying to understand.
 9 What did you mean when you
 10 used the phrase, "How many real
 11 billionaires are out there trying to
 12 sell all this stuff"?
 13 A. I meant to convey the divide
 14 between truth and between reality and
 15 unreality, which is why I was
 16 skeptical.
 17 Q. So, when you used the phrase,
 18 "How many real billionaires are out
 19 there trying to sell all this stuff,"
 20 would that not be in keeping with your
 21 earlier phrase, "faux billionaire"?
 22 A. If we define "faux" as the
 23 difference between what is there and
 24 what isn't there, certainly would be in
 25 keeping with that.

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1 - TIMOTHY L. O'BRIEN -
 2 Q. Well, just in -- not plain
 3 English because faux is not an English
 4 word, but doesn't faux mean false?
 5 A. I find faux as the difference
 6 between what is there and what isn't
 7 there.
 8 Q. Doesn't faux mean fake?
 9 A. I define faux as the
 10 difference between what is there and
 11 what isn't there.
 12 Q. When you say, "How many real
 13 billionaires are out there trying to
 14 sell all this stuff," you did not mean
 15 to convey that Trump is not a
 16 billionaire?
 17 A. I meant to convey my own high
 18 degree of skepticism about his
 19 statements about his net worth.
 20 Q. Mr. O'Brien, you are taking
 21 the position in this case that you
 22 didn't adopt or endorse the valuation
 23 of Trump's net worth in the book
 24 itself; is that correct?
 25 A. That's not a position I'm

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1 - TIMOTHY L. O'BRIEN -
 2 taking. It's what I believe the truth
 3 to be.
 4 Q. We spoke earlier about your
 5 use of the phrase "faux billionaire,"
 6 and we spoke about your use of the
 7 phrase "real billionaires" in the
 8 context of the radio program we just
 9 were talking about.
 10 What about the phrase "verbal
 11 billions"? Didn't you use that phrase
 12 repeatedly in your book?
 13 A. I did.
 14 Q. And by "verbal billions,"
 15 Mr. O'Brien, you meant that Trump lies,
 16 right?
 17 That he says that he's a
 18 billionaire but he's really not a
 19 billionaire; isn't that correct?
 20 MR. CERESNEY: Objection to
 21 form. You can answer.
 22 A. I meant to convey that I
 23 believe he exaggerates his net worth,
 24 specifically as it pertains to his
 25 status as a billionaire. And that was

<p style="text-align: right;">194</p> <p>1 - TIMOTHY L. O'BRIEN - 2 what it was meant to convey. 3 Q. My question is: Yes or no, 4 by use of the phrase "verbal billions," 5 did you intend to convey that Trump is 6 not a billionaire? 7 A. What I meant to convey was 8 that Donald did not provide 9 documentation of his wealth and that he 10 relied on verbal statements of his net 11 worth; that in order to ascertain what 12 his real net worth was, irony of the 13 reporter covering him would have had to 14 have had much more extensive 15 documentation than he gave me or that 16 he gave other reporters. And, in lieu 17 of that, it amounted to simple -- 18 simple verbal statements with much -- 19 with very little else behind that to 20 substantiate them. 21 Q: So is your answer "no," 22 Mr. O'Brien? Is your answer to the 23 question, the specific question I 24 asked, is your answer "no"? 25 MR. CERESNEY: Objection.</p>	<p style="text-align: right;">196</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Trump is not a billionaire? 3 A. It was intended to convey 4 that I had a high degree of skepticism 5 about his claims to being a 6 billionaire. 7 Q. On Page 153, in the paragraph 8 that begins, "When Donald." 9 A. Yes. 10 Q. You write, "When Donald and I 11 spent time together one weekend in 12 early 2005, the subject of his verbal 13 billions inevitably came up." 14 Do you see that? 15 A. I do. 16 Q. Isn't it true that by using 17 the phrase "verbal billions" repeatedly 18 in this book, you were telling the 19 reader that the man who wrote the book, 20 How to Think Like a Billionaire, is, in 21 fact, not a billionaire? 22 A. What I meant to convey was 23 that I had a high degree of skepticism 24 about his claims to being a 25 billionaire.</p>
<p style="text-align: right;">195</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Form. 3 Q. Sir? 4 A. Can you rephrase the 5 question, please? 6 Q. By use of the phrase "verbal 7 billions," did you intend to convey 8 that Trump is not a billionaire? 9 A. No, I did not. 10 Q. On Page 152 of your book, 11 sir, you wrote, "Donald's verbal 12 billions were always a topic of 13 conversation whenever we visited." 14 Do you see that? 15 A. Yes. 16 Q. And then you go on to talk 17 about your first conversation with him 18 in 1996. You say, "In my first 19 conversation with him in '96 he brought 20 up his billions." 21 Do you see that? 22 A. Uh-huh. Yes. 23 Q. Was your use of the phrase 24 "verbal billions" in the passage that 25 we've just read intended to convey that</p>	<p style="text-align: right;">197</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. If you could go to Page 156, 3 please, second to the last paragraph, 4 "Financial turmoil, of course, didn't 5 stop Donald from spouting. The 6 all-time howler award for a publication 7 taking his verbal billions at face 8 value belonged to Playboy." 9 Do you see that? 10 A. Yes. 11 Q. And then at Page 173, you 12 wrote, "Between 2000 and 2004 Forbes 13 allowed Donald's verbal billions to 14 grow by a billion dollars, a period 15 when the stock market bubble burst, his 16 stake in his casinos, his most valuable 17 asset until The Apprentice came along, 18 had fallen in value to \$7 million, 19 around \$300 million less than 20 Bollenbach would have paid for it, and 21 despite Manhattan's red-hot real estate 22 market, Donald owned much less real 23 estate there than he let on." 24 Do you see that? 25 A. I do.</p>

<p style="text-align: right;">198</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. And again, in connection with 3 your use of "verbal billions" on this 4 page, did you not intend to convey the 5 point that Trump lies when he says he's 6 a billionaire? 7 A. No. I meant to convey that I 8 was highly skeptical about his claims 9 to being a billionaire. 10 Q. Do you believe that a reader 11 reading this book and your repeated use 12 of the phrase "verbal billions" would 13 be likely to conclude that Trump is not 14 a billionaire? 15 MR. CERESNEY: Objection. 16 Form. You can answer the question. 17 A. I can't really claim to get 18 into the head of any reader reading the 19 book, but I think any reader who came 20 away from this -- reading the book in 21 its totality would have certainly 22 believed that I was highly skeptical 23 about Donald's claims to being a 24 billionaire. 25 Q. Earlier this morning,</p>	<p style="text-align: right;">200</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Form. Vague, "strange reading." 3 Go ahead if you can answer it. 4 A. I can't really answer that 5 very clearly from your reading of the 6 book. But again, I think any reader 7 would take away from this book that I 8 was highly skeptical of Donald's claims 9 to being a billionaire. 10 Q. But not that Trump was not a 11 billionaire? 12 A. The goal of the book was to 13 convey the carnivalesque atmosphere 14 around discussions of his net worth in 15 that particular chapter and the 16 particular sections that you cited. 17 It wasn't to compel the 18 reader to judge either way because I 19 didn't have enough facts at hand in 20 order to do that. 21 Q. So you believe that your 22 writing on the topic of whether Trump 23 is a billionaire was essentially 24 neutral? 25 MR. CERESNEY: Objection.</p>
<p style="text-align: right;">199</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Mr. O'Brien, you spoke at some length 3 concerning your obligation to readers 4 whether you're writing a book like this 5 or a newspaper article. 6 Do you recall that? 7 A. I do. 8 Q. So, do you think that readers 9 of your book would be left with the 10 conclusion, based on your writing in 11 the book, that Trump is not a 12 billionaire? 13 MR. CERESNEY: Objection. 14 Form. You can answer the question. 15 A. I think someone reading my 16 book would come away from it with the 17 impression I was highly skeptical of 18 Donald's claims to being a billionaire. 19 Q. And do you think that it 20 would be a strange reading for a reader 21 to take away from this book that above 22 and beyond your skepticism you're 23 telling the reader that Trump is not a 24 billionaire? 25 MR. CERESNEY: Objection.</p>	<p style="text-align: right;">201</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Mischaracterizes his prior 3 testimony. Go ahead. 4 Q. ; is that correct? 5 A. I think in the end it wasn't 6 neutral because I think, after 7 assessing the fact pattern, I 8 considered him someone who exaggerated. 9 So skepticism, of course, isn't 10 entirely neutral but it was derived 11 from the fact pattern. 12 Q. Do you believe that he 13 exaggerated to the point that he said 14 he was a billionaire and is not a 15 billionaire? 16 MR. CERESNEY: Objection. 17 Form. 18 A. Again, I'm highly skeptical 19 of his claims to being a billionaire. 20 Q. Did you believe that in 21 October of 2005 Trump was a 22 billionaire? 23 A. I have no way of -- I -- in 24 order to know what Donald's net worth 25 was at any particular point in time, I</p>

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1 - TIMOTHY L. O'BRIEN -
2 would have had to have documented --
3 Q. It's just a yes or no -- I'm
4 sorry -- I'm sorry to interrupt you.
5 A. I just don't regard it as a
6 yes or no question.
7 Q. But it is.
8 Did you believe in 2005 that
9 Trump was a billionaire? That's the
10 question, Mr. O'Brien, yes or no?
11 MR. CERESNEY: Mark, I don't
12 think -- I think he's the one who
13 can assess whether he can answer
14 that yes or no. So I'm not going
15 to let you force him to answer a
16 question that's as complicated as
17 that with a yes or no.
18 Q. It's actually a very, very
19 uncomplicated question.
20 A. I clearly doubt it, that
21 Donald was a billionaire. But in order
22 to answer that question definitively, I
23 would have had to have verifiable
24 third-party documentation of his net
25 worth, which I didn't have, in order to

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1 - TIMOTHY L. O'BRIEN -
2 answer that question with the kind of
3 definition you're seeking.
4 Q. I'm not focusing at all in my
5 question on what led you to a
6 particular conclusion, whatever that
7 particular conclusion might be.
8 I'm just asking you if in
9 2005 you believed that Trump was a
10 billionaire.
11 MR. CERESNEY: I'm going to
12 object again. But go ahead if you
13 can answer it.
14 A. In 2005, no. I did not
15 believe that he was a billionaire.
16 Q. Let me direct your attention
17 to Page 174, sir. You write on that
18 page, these are your words, "There was,
19 of course, a method to Donald's
20 madness. His ability to float above
21 the wreckage of his financial miscues
22 and magically add zeros to his bank
23 account, ensured that he remained an
24 object of fascination."
25 Do you see that?

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1 - TIMOTHY L. O'BRIEN -
2 A. I do.
3 Q. With this passage, isn't it
4 true that you were combining the idea
5 that Trump is both a fraud and a liar,
6 Mr. O'Brien?
7 MR. CERESNEY: Objection.
8 Argumentative.
9 A. No. In fact, what
10 immediately follows this is someone
11 writing in a public sphere that he
12 believed Donald to be a billionaire.
13 Q. But I'm asking you about --
14 A. So -- I'd like to finish the
15 question, please.
16 So in the context of the
17 passage you're looking at, it is -- it
18 is, in fact, that he was perceived
19 publicly as a billionaire despite
20 problems in his business life, and that
21 here's evidence that the public
22 continued to believe such.
23 Q. Believe such incorrectly,
24 right?
25 A. I believe that he exaggerates

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1 - TIMOTHY L. O'BRIEN -
2 his net worth. So I think that
3 obviously I believe that the public had
4 an incorrect perception perhaps of his
5 net worth, but here's an individual who
6 believes Donald to be a billionaire.
7 Q. But you believe that the
8 public's perception was incorrect
9 because Trump was not a billionaire;
10 isn't that right?
11 MR. CERESNEY: Objection.
12 Form. You can answer.
13 A. I was highly skeptical of
14 Donald's claims to be a billionaire.
15 To say it with any definition or report
16 it with any definition so the public
17 would have -- with any definition, I
18 would have had to have much more
19 extensive documentation of his net
20 worth than I was provided with. But
21 based on my own reporting, I remained
22 highly skeptical of his claims.
23 Q. In fact, you wrote in this
24 passage that Donald magically added
25 zeros to his bank account, correct?

<p style="text-align: right;">206</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Yes. 3 Q. What did you mean by that, 4 that he magically added zeros to his 5 bank accounts? 6 A. Can I refer you back to the 7 page you cited earlier? Page -- I 8 think it's Page One- let's see, the 9 bottom of Page 156. I'll read it to 10 you. 11 "The all-time howler award 12 for a publication taking his verbal 13 billions at face value belonged to 14 Playboy." 15 "The all-time howler award 16 for publication taking his verbal 17 billions at face value belong to 18 Playboy. In early 1990, just a month 19 before the Taj Mahal opened in Atlantic 20 City and began a slide that would take 21 Donald's empire down with it, the 22 magazine profiled the developer and 23 said that he had masked," -- "had 24 amassed 'a fortune his father never 25 dreamed possible' including, 'a cash</p>	<p style="text-align: right;">208</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. And your book came out in 3 October of 2005; isn't that correct? 4 A. In the spring -- yes, it is. 5 Q. Okay. 6 A. In the spring of 7 two-thousand -- 8 Q. Now -- no, no. My question 9 was when your book came out. That was 10 all I asked. 11 A. I'm sorry. I thought your 12 question was to give you examples of. 13 how he magically added zeros to his 14 bank account. 15 Q. No. Sir, sir -- my question 16 right now was: Did your book come out 17 in October of 2005? And it did. 18 So I'm going to ask you, 19 please, so we don't have to get into 20 wrangling, that you just listen to the 21 question I ask, and you try to answer 22 the question I ask. Okay? 23 Let me add this. Ms. White 24 and Mr. Ceresney are your lawyers. 25 They can ask you questions at this</p>
<p style="text-align: right;">207</p> <p>1 - TIMOTHY L. O'BRIEN - 2 hoard of \$900 million' and a 'geyser of 3 \$50 million a week from his 4 hotel-casinos.' 5 "In the real world, New 6 Jersey casino auditors estimated that 7 as of September 1990, Donald was worth 8 about \$206 million -- almost all of 9 which was tied up in hotels, an 10 airline, casinos and other properties 11 that were devaluing rapidly or about to 12 be taken away from him. Donald's 13 cash-on-hand was only \$17 million and 14 that was dissolving quickly as well." 15 So that to me is a pretty 16 specific example of magically adding 17 zeros onto your net worth. In this 18 case, he added -- oh, you know, about 19 800 and -- more than \$850 million worth 20 of extra cash to his bank account. 21 Q. That was in 1990, 22 Mr. O'Brien? Correct? The passage 23 that you just read references incidents 24 that occurred in 1990; isn't that true? 25 A. That is.</p>	<p style="text-align: right;">209</p> <p>1 - TIMOTHY L. O'BRIEN - 2 deposition if you believe or they 3 believe that they need to add to the 4 answers you give me to my questions. 5 They have the right to do that. They 6 can ask you questions and they can do 7 so at the trial of this case. So, just 8 answer my questions, please. Okay? 9 MR. CERESNEY: Which I think 10 he's done. 11 A. I'm sorry. I didn't mean to 12 get you so angry. What I was 13 attempting to do was provide a full 14 response to your question, but I'm 15 sorry you got angry. 16 Q. Well, my question was only: 17 When did your book come out? Okay? 18 A. No. I don't believe that was 19 your question. 20 Q. I think here's what's going 21 to happen. We're going to bring you 22 back for multiple days, Mr. O'Brien, if 23 you don't answer the questions that I 24 ask you because I have a limited amount 25 of time with you, so I need to use the</p>

210	<p>1 - TIMOTHY L. O'BRIEN - 2 time wisely. And I can only do that if 3 you answer the specific question I ask 4 you. 5 Do you understand? 6 A. I believe I was answering 7 that question. 8 MR. CERESNEY: Yes. For the 9 record, your previous question had 10 asked for examples of how he 11 justified the comments about adding 12 zeros to his bank account. And I 13 believe Mr. O'Brien was citing one 14 example of those. 15 MR. RESSLER: Andrew, my 16 question -- my last question was: 17 When did the book come out? And 18 that -- it was an easy question. 19 I said, "Isn't it true that 20 the book came out in October '05?" 21 All Mr. O'Brien should have 22 answered to that questions was, 23 "Yes." 24 MR. CERESNEY: The clear 25 implication of your question,</p>	212	<p>1 - TIMOTHY L. O'BRIEN - 2 Q. You never did that? 3 A. A specific position to the 4 amount of his net worth in 2005? 5 Q. Yes. 6 A. That I personally took that 7 position? 8 Q. Yeah, yeah. Did you do that, 9 Mr. O'Brien? 10 A. In 2005? 11 Q. Yeah. In 2005, did you do 12 that? 13 A. No, I don't believe I did. 14 MR. RESSLER: Could we cue up 15 the tape, please? 16 Q. Mr. O'Brien, I want to play a 17 tape of you appearing at Coliseum Books 18 in New York City. 19 What is Coliseum Books? 20 A. It's a bookstore. 21 Q. Did you appear there? 22 A. I did. 23 Q. When did you appear there? 24 A. In December of 2005. 25 Q. What was your purpose in</p>
211	<p>1 - TIMOTHY L. O'BRIEN - 2 Mark -- 3 MR. RESSLER: There was no 4 question. 5 MR. CERESNEY: The clear 6 implication of your question was he 7 gave one example in 1990, and in 8 2005 was when the book came out. 9 And I believe what Mr. O'Brien was 10 trying to clarify was that that was 11 a single example among many. 12 MR. RESSLER: I think the -- 13 MR. CERESNEY: I think we can 14 move on. The record will reflect 15 what was said. 16 MR. RESSLER: The record 17 reflects exactly what happened. 18 MR. CERESNEY: Thank you. 19 MR. RESSLER: That's correct. 20 BY MR. RESSLER: 21 Q. Mr. O'Brien, didn't you take 22 a specific position with respect to the 23 amount of Donald Trump's net worth in 24 2005? 25 A. No, I did not.</p>	213	<p>1 - TIMOTHY L. O'BRIEN - 2 appearing at Coliseum Books in December 3 of 2005? 4 A. It was a bookstore and 5 writers of books commonly appear at 6 bookstores to give readings. 7 Q. So what did you give a 8 reading of? 9 A. I read various sections of my 10 book. 11 Q. Was that as part of your 12 promotional efforts with respect to the 13 book? 14 A. Yes, it was. 15 Q. And were people in attendance 16 at the bookstore event? 17 A. Yes. 18 Q. Do you remember making this 19 statement, and tell me if this is your 20 voice on the tape, Mr. O'Brien. 21 And if the answer to that is 22 "yes," then please tell me if this -- 23 if the tape recorder accurately 24 recorded your statements, sir. 25 (Recording played.)</p>

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<p style="text-align: right;">214</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Is that your voice, 3 Mr. O'Brien? 4 A. The last voice I heard was 5 not mine. 6 Q. But before that? 7 A. I believe it could have been, 8 yes. 9 Q. Okay. Let's resume listening 10 to the tape. 11 (Resumed playing of 12 recording.) 13 Q. Isn't it true, Mr. O'Brien, 14 that at that Coliseum Books event in 15 December of 2005, you stated that Trump 16 is probably worth anywhere from 300 to 17 \$500 million, based on the tape of your 18 voice that we just heard? 19 A. Well, based on -- as I said 20 in the reading, information that I 21 received from my sources I had that 22 belief. And that's what I said at the 23 reading. 24 Q. Correct. So, in fact, you 25 did take a position with respect to</p>	<p style="text-align: right;">216</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. As I said, it was probably in 3 the range, based on the information I 4 had received from my sources. And as I 5 said at the reading, for us to really 6 know what the exact number is, you 7 would have to have documentation, which 8 he didn't provide. 9 Q. Did you or did you not 10 endorse a valuation of Trump at the 11 appearance that we just listened to 12 that placed Trump's net worth as 13 between 300 to \$500 million? 14 A. No. I would not call it an 15 endorsement. 16 Q. Did you adopt that view, the 17 300 to \$500 million range in that 18 appearance? 19 A. No. I did not adopt that 20 view. I believe the view had -- there, 21 I believe the figures that they 22 provided had very good basis in reality 23 based upon their own belief in the 24 figures being accurate and my belief 25 that there was a very, very strong</p>
<p style="text-align: right;">215</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Trump's amount of net worth, correct? 3 A. It was not a personal 4 position. It was based on what my 5 sources told me. 6 Q. And you endorsed the 7 information that your sources provided, 8 correct? 9 A. No. I wouldn't call it an 10 endorsement. I had good reason to 11 believe they felt the numbers were 12 accurate, and I had very, very good 13 reason to believe that they were. 14 But in the absence of 15 documentation from Mr. Trump about what 16 were the foundations for his net worth, 17 both in the asset and liability side, I 18 couldn't definitely say. 19 Q. Just so the record before our 20 jury is perfectly clear on this, is it 21 your testimony that in the tape 22 recording of your appearance that we 23 just listened to you did not endorse a 24 valuation of Trump that placed him well 25 below billionaire status?</p>	<p style="text-align: right;">217</p> <p>1 - TIMOTHY L. O'BRIEN - 2 chance that the numbers were accurate. 3 Q. Do you believe, Mr. O'Brien, 4 that it would be likely for someone who 5 attended that appearance to leave 6 believing that you had endorsed a 7 valuation of Trump that placed him in 8 the 300 to \$500 million range? 9 MR. CERESNEY: Objection to 10 form. You can answer. 11 A. You know, I certainly can't 12 get into the heads of anyone who was 13 present at the reading. But I think 14 anyone at the reading would have taken 15 away from that that I was highly 16 skeptical of Donald's claims to being a 17 billionaire. 18 Q. But do you think that they 19 also would have taken away from that 20 reading, based on your words that we 21 just listened to, -- 22 A. Uh-huh. 23 Q. -- that you placed Trump with 24 a valuation of between 300 and 25 \$500 million?</p>

<p style="text-align: right;">218</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I think they would, based on 3 the recording you just played, take 4 away from my presence at the reading 5 that I was citing my sources as 6 believing it was in that range. 7 Q. Now, you also told the 8 audience at the Coliseum Books event 9 that Trump is a cartoon figure. He's 10 Baby Huey with PT Barnum mixed in. 11 Do you remember saying that 12 at that event? 13 A. I do. 14 Q. How many times, sir, would 15 you estimate that you went on radio or 16 television and called Mr. Trump "Baby 17 Huey"? 18 A. Several times. I don't know. 19 how many. 20 Q. More than ten? 21 A. I doubt it. 22 Q. Between five and ten? 23 A. I would probably say 24 five-ish, but I'm not quite sure. 25 Q. Five-ish is your best</p>	<p style="text-align: right;">220</p> <p>1 - TIMOTHY L. O'BRIEN - 2 have appeared under my byline in the 3 paper. And that he felt as the 4 standard editor that it -- that 5 statement could not -- the PT Barnum 6 and Baby Huey elements of it, it was 7 complicated by the fact that Donald, 8 himself, said he took PT Barnum to be a 9 compliment. And he had said such in 10 one of the newspaper articles following 11 my appearance. 12 And my response to that was 13 that it was the statement of Baby Huey 14 and PT Barnum, you know, had a strong 15 complimentary element in it, that 16 Donald himself regarded as such. And 17 that the other element of it, I think, 18 was reasonable opinion and observation. 19 Q. I wasn't talking about the 20 PT Barnum comment, though. My question 21 specifically focused on the Baby Huey 22 comment. 23 Do you remember that? 24 A. I do. 25 Q. So, what you said then was</p>
<p style="text-align: right;">219</p> <p>1 - TIMOTHY L. O'BRIEN - 2 estimate? 3 A. Several times. 4 Q. Mr. O'Brien, isn't it true 5 that you were reprimanded by New York 6 Times editors for describing Mr. Trump 7 in your public appearances as Baby 8 Huey? 9 A. I wouldn't characterize it as 10 a reprimand. I would characterize it 11 as guidance. 12 Q. What do you mean by 13 "guidance"? 14 A. Informing us -- well, me as a 15 reporter of what one of the standards 16 of the editors of the paper felt was an 17 appropriate range of commentary given 18 my statements about Mr. Trump. 19 Q. Why did the standards editor 20 believe that you had gone outside the 21 appropriate range of public comments 22 concerning Mr. Trump? 23 A. Well, I believe in his e-mail 24 the reason he gave was that I should 25 use descriptions that could reasonably</p>	<p style="text-align: right;">221</p> <p>1 - TIMOTHY L. O'BRIEN - 2 that The New York Times editors 3 believed that you would not be 4 permitted to use the phrase "Baby Huey" 5 to describe Mr. Trump in The New York 6 Times article, right? 7 A. Correct. 8 Q. Okay. But Mr. O'Brien, you 9 swore under oath to our judge in this 10 case, and indeed, to an appeals court 11 in this case, that the standards you 12 used -- the professional journalistic 13 standards and techniques and methods 14 that you used to write this book, were 15 the same as the ones you used in your 16 New York Times reporting; isn't that 17 correct? 18 MR. CERESNEY: Objection. 19 Form. You can answer. 20 A. Yes, that is correct. 21 Q. But you didn't adhere to The 22 New York Times standards, did you, 23 because in your public appearances you 24 inappropriately referred to Mr. Trump 25 as "Baby Huey," correct?</p>

<p style="text-align: right;">222</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Objection. 3 Form go ahead. 4 A. No. That's incorrect. In 5 fact, what I said was that I used my 6 methods as a reporter and as a 7 journalist that I had used in my 8 reporting career at the time and 9 elsewhere to assess the fact pattern 10 and do reporting for the book. 11 The issue that you are 12 referencing in -- is the end product, 13 what you do with that information once 14 you've brought it together. And there 15 were -- there can always be 16 disagreements about whether style or 17 form is appropriate in one venue and 18 not appropriate in another. 19 So I actually don't believe 20 that that undermines anything at all 21 about the quality of the reporting or 22 the methods I used to report the book. 23 Q. Do you believe that in 24 describing Mr. Trump as Baby Huey in 25 your public appearances you violated</p>	<p style="text-align: right;">224</p> <p>1 - TIMOTHY L. O'BRIEN - 2 senior editors asked me not to do it, 3 and I tried to remain very vigilant 4 about not doing it after that. 5 Q. But you failed in your 6 attempt to be vigilant, right? Because 7 you did call Trump "Baby Huey" after 8 that; isn't that correct? 9 A. I think I might have on one 10 occasion, perhaps. 11 Q. In fact, this was the 12 occasion, the appearance at Coliseum 13 Books; isn't that correct. Well, that 14 was one of the occasions. 15 A. It could have been, perhaps. 16 Q. Was there another occasion? 17 A. Not that I can recall. 18 Q. So just -- just so we're 19 clear, so our jury is clear, you were 20 told by editors at The New York Times 21 not to call Mr. Trump "Baby Huey" in 22 public appearances, correct? 23 A. Correct. 24 Q. And you did so despite the 25 fact that you were told not to do that,</p>
<p style="text-align: right;">223</p> <p>1 - TIMOTHY L. O'BRIEN - 2 New York Times' standards? 3 A. Well, our New York Times 4 standards are about trying to convey 5 the truth, and I think that's a 6 truthful statement. 7 Q. So you don't believe you 8 violated The Times' standards, right? 9 A. I believe there's always a 10 healthy debate inside the paper about 11 what does and what doesn't comport with 12 standards as they pertain to public 13 appearances and public statements. 14 Q. But there was no debate on 15 this issue, right? Because Al Siegal, 16 The New York Times standards editor, 17 told you not to describe Mr. Trump as 18 "Baby Huey," right? 19 A. No. In fact, there was a 20 vigorous debate about it within the 21 paper, both -- 22 Q. Which side won that debate? 23 A. Well, ultimately, I -- I 24 don't see it as a matter of winning or 25 losing. But ultimately, one of my</p>	<p style="text-align: right;">225</p> <p>1 - TIMOTHY L. O'BRIEN - 2 correct? 3 A. That is correct. 4 Q. Okay. Let's show you another 5 exhibit -- what's the exhibit number? 6 29. 7 MR. RESSLER: I'll ask the 8 court reporter to mark that. This 9 is previously been identified in 10 discovery as TOB-EF-156. 11 (Whereupon, O'Brien Exhibit 29 was 12 marked for identification.) 13 Q. Sir, this document is a 14 series of e-mails. I direct your 15 attention to Page 1, Al Siegal. 16 Now what's his position at 17 The Times, Al Siegal? 18 A. Al is no longer with the 19 paper; he retired. But at the time, he 20 was our standards editor. 21 Q. What is a standards editor, 22 Mr. O'Brien? 23 A. Well, at The New York Times 24 it's someone who helps oversee the way 25 we frame things, both publicly and</p>

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1 - TIMOTHY L. O'BRIEN -
2 within the paper itself, vis-a-vis the
3 public.
4 Q. The standards editor helps to
5 promulgate standards -- guidelines that
6 should govern how Times writers and
7 editors conduct themselves, right?
8 A. That's correct.
9 Q. Both with respect to writing
10 their stories and researching their
11 stories, right?
12 A. Correct.
13 Q. And in their use of sources,
14 right?
15 A. Yes.
16 Q. And in their public
17 appearances, right?
18 A. Correct.
19 Q. So Al Siegal wrote to Larry.
20 Larry is Larry Ingrassia;; is
21 that correct?
22 A. Correct.
23 Q. He's your boss?
24 A. Correct.
25 Q. And Mr. Siegal writes to

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1 - TIMOTHY L. O'BRIEN -
2 Larry, "Book promotion or no, O'Brien
3 has to confine his public comments to
4 things he could legitimately have
5 written beneath his byline in our
6 paper. This ad hominem comment, if
7 correctly quoted, violates our rules on
8 public appearances. Please tell Tim.
9 Thanks. Al."
10 Do you see that?
11 A. I do.
12 Q. Al.
13 Now, Mr. Ingrassia sent an
14 e-mail responding to Mr. Siegal;; is
15 that correct?
16 A. Yes, that's correct.
17 Q. Mr. Ingrassia wrote, same
18 day -- in fact, 51 minutes later, to Al
19 Siegal, "Thanks. You raise a valid
20 point. Tim asked me to clarify, as he
21 wants to make sure what;" -- it should
22 be "that," I assume -- that "whatever
23 he says in any future appearances fall
24 within our guidelines."
25 Do you see that?

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1 - TIMOTHY L. O'BRIEN -
2 A. I do.
3 Q. "The comment that Trump's
4 original partners had mob ties is based
5 on law enforcement documents that Tim
6 has, and further Trump acknowledges
7 this in Tim's book. So we presume
8 that's okay, as it could legitimately
9 be written beneath his byline in The
10 Times. The showmanship comparison to
11 PT Barnum strikes me as okay as we're
12 often comparing current execs to
13 business execs in the past. (Trump
14 himself is quoted in the Post as saying
15 the comparison is a compliment.)"
16 Do you see that?
17 A. I do.
18 Q. "But the Baby Huey stuff
19 strikes me as something that we
20 definitely wouldn't use, so it (and
21 comments like it should) be avoided.
22 Is this reading correct? Larry."
23 Do you see that?
24 A. I do.
25 Q. Then Mr. Siegal responds with

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1 - TIMOTHY L. O'BRIEN -
2 a short e-mail that says, "Correct, and
3 thanks."
4 Right? So in terms of the
5 debate within The Times on this issue,
6 Mr. O'Brien, Mr. Siegal seemed to have
7 a clear opinion that your description
8 of Trump as "Baby Huey" was
9 inappropriate and you shouldn't do it,
10 right?
11 A. Correct.
12 Q. And Mr. Ingrassia agreed that
13 it was inappropriate and you shouldn't
14 do it, correct?
15 A. Correct.
16 Q. So the debate -- the other
17 side of the debate was you,
18 Mr. O'Brien; isn't that correct?
19 You wanted to continue to be
20 able to make public appearances
21 describing Mr. Trump as "Baby Huey,"
22 correct?
23 A. Well, I think if we reread
24 the e-mail, what he said is, "Tim asked
25 me to clarify, as he wants to make sure

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1 - TIMOTHY L. O'BRIEN -
2 whatever he says in any future
3 appearances fall within our
4 guidelines."
5 So my request wasn't only
6 about Baby Huey. It was about
7 statements generally that I would make
8 in the course of promoting the book, in
9 an effort to ensure that it remained
10 within Times guidelines.
11 Q. Right. But the -- Ingrassia,
12 your boss, agreed that you should not
13 be calling Trump "Baby Huey" at public
14 appearances, right?
15 A. But agreed that other --
16 there were other comments that I'd made
17 that were fine --
18 Q. But I'm asking you -- but
19 Baby -- again, we're getting back to
20 the specific question I'm asking you,
21 Mr. O'Brien. I'm asking you only about
22 Baby Huey.
23 Do you understand that?
24 A. I do.
25 Q. Ingrassia thought it was

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1 - TIMOTHY L. O'BRIEN -
2 inappropriate and you shouldn't do it,
3 correct?
4 A. Correct.
5 Q. And Siegal, the standards
6 editor, thought it was inappropriate
7 and you shouldn't do it; is that
8 correct?
9 A. That's correct.
10 Q. And you were really concerned
11 about adhering to The Times guidelines,
12 right?
13 MR. CERESNEY: Objection to
14 form.
15 Q. ; is that correct?
16 A. Yes.
17 Q. Because you -- your world is
18 news. You said that this morning,
19 right? That's what you do.
20 MR. CERESNEY: Objection.
21 Form. You can answer.
22 A. My world is news plus -- plus
23 many other things as it pertains to The
24 New York Times, part of which we're an
25 institution that has a role to play in

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1 - TIMOTHY L. O'BRIEN -
2 the world around us. And the way we
3 comport ourselves publicly is part and
4 parcel of that so that also was
5 important to me.
6 Q. And you do not write
7 tabloids, tell-all exposé kind of
8 books; isn't that true, Mr. O'Brien?
9 A. That is true.
10 Q. But after the standards
11 editor from The Times, Mr. Siegal, told
12 you not to call Trump "Baby Huey" at
13 public appearances, and after your boss
14 Mr. Ingrassia told you not to call
15 Trump "Baby Huey" at public
16 appearances, you went out and you did
17 public appearances and you called Trump
18 "Baby Huey"; isn't that correct?
19 MR. CERESNEY: Objection.
20 Form.
21 A. That's correct.
22 Q. What is your understanding of
23 the reference to your comment calling
24 Trump "Baby Huey" an ad hominem
25 comment?

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1 - TIMOTHY L. O'BRIEN -
2 What does that mean for a
3 jury, in your view, an ad hominem
4 comment?
5 MR. CERESNEY: Objection.
6 Form. Go ahead.
7 A. Yeah. I can't -- I can't
8 really voice what a jury may or may not
9 think of that.
10 Q. Well, then I'll rephrase the
11 question.
12 What is your understanding of
13 the phrase "ad hominem comment" in the
14 context of you making public
15 appearances and calling Trump "Baby
16 Huey"?
17 A. Colloquially, I would
18 describe it as "off the cuff."
19 Q. You believe, Mr. O'Brien,
20 that the phrase "ad hominem" means
21 off the cuff?
22 A. Off the cuff or gratuitous,
23 yes.
24 Q. Well, what do you mean by
25 "gratuitous"?

<p style="text-align: right;">234</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Ill-considered or not 3 properly thought out. 4 Q. Well, doesn't it mean - 5 doesn't it mean a mean-and-attack type 6 comment? 7 Doesn't it mean -- I'm 8 sorry. If you could answer the 9 question. 10 A. Well, you have a definition 11 of it that I don't necessarily agree 12 with. 13 Q. Right. Because when you 14 answered my question you said that ad 15 hominem means off the cuff, right? 16 A. Well, I think you're thinking 17 of it in the -- it appears to me that 18 you're thinking of it in a phrasing; 19 for example, an ad hominem attack. But 20 you can have ad hominem comments that 21 aren't necessarily attacks, so I 22 disagree with your definition of it. 23 Q. And by no means would you. 24 agree that you engaged in ad hominem 25 attacks on Mr. Trump, right?</p>	<p style="text-align: right;">236</p> <p>1 - TIMOTHY L. O'BRIEN - 2 editor. 3 Q. Did Larry say anything to you 4 when he heard you use a phrase that you 5 were told not to use? 6 A. No, he did not. 7 Q. Did any other editor? 8 A. No. 9 Q. Have you ever reviewed The 10 New York Times standards and public 11 appearances? 12 A. I have. 13 Q. Do you have any understanding 14 as to why The New York Times did not 15 want you to make public appear -- 16 public appearances and describe 17 Mr. Trump with this "Baby Huey" 18 comment? 19 MR. CERESNEY: Objection to 20 the form of the question. You can 21 answer. 22 A. Well, what you just said -- 23 the first part of what you said is 24 incorrect. The Times had no issue with 25 me making public appearances.</p>
<p style="text-align: right;">235</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Objection. 3 Form. You can answer. 4 A. Of course I don't agree with 5 it. 6 Q. Did The Times -- any editors 7 at The Times learn that despite the 8 fact you had been ordered not to refer 9 to Trump as "Baby Huey" in your public 10 appearances, you did so anyway? 11 A. Well, there were people at 12 the New York -- there were editors, 13 including Larry, who was at that book 14 reading. Larry attended it. 15 And in the larger scope of 16 standards guidelines, the paper 17 promoted me to be one of the senior 18 overseers of the standards that we use 19 when putting stories into the 20 newspaper. So I think if the paper had 21 regarded this as a serious abrogation 22 of my responsibilities or the way I 23 conduct myself as a member of The New 24 York Times, I wouldn't have been 25 promoted to become Sunday business</p>	<p style="text-align: right;">237</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. I'll rephrase the question. 3 Do you have any understanding 4 why The Times did not want you to refer 5 to Baby Huey in your public 6 appearances -- why The Times did not 7 want you to refer to Mr. Trump as "Baby 8 Huey" in your public appearances? 9 A. Well, based on Al's e-mail, 10 he defined it as an ad hominem. 11 Q. Might it -- withdrawn. 12 Isn't it also the case, 13 Mr. O'Brien, that The Times' policy in 14 this regard might be based, in part, on 15 The Times' concern that that kind of a 16 comment might convey to the public that 17 the author bears some kind of malice 18 toward its subject? 19 MR. CERESNEY: Objection. 20 Form. You can answer. 21 A. No. I think in this context 22 it was that statements that we make 23 publicly comport with the kind of work 24 we do internally. 25 Q. But do you think that the</p>

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1 - TIMOTHY L. O'BRIEN -
2 reason The Times has this standard on
3 what kinds of comments reporters can
4 make in their public appearances is
5 based, in part, on The Times' concern
6 that ad hominem comments might convey
7 to readers that a Times reporter, in
8 fact, bears malice towards the subject
9 of the ad hominem comment?
10 MR. CERESNEY: Objection.
11 Form. You can answer.
12 A. I think generally this, of
13 course, was about a written document so
14 it wasn't to readers. It would have
15 been to people attending a speaking
16 engagement, that the people in
17 attendance at a speaking engagement
18 wouldn't be hearing a reporter from the
19 paper speaking in a way that didn't
20 comport with Times standards.
21 Q. Do you think that the reason
22 behind The Times' standards with
23 respect to what reporters are and are
24 not permitted to say in their public
25 appearances stems, at least in part,

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1 - TIMOTHY L. O'BRIEN -
2 from The Times' concern that
3 inappropriate ad hominem comments by
4 reporters at public events might convey
5 to readers that the reporter bears
6 malice towards the subject about whom
7 the ad hominem comment is being made?
8 MR. CERESNEY: Objection.
9 Form.
10 A. I think the reasons that The
11 Times standards exists is to provide
12 parameters around which all of us make
13 reasoned statements in public and
14 reasoned statements in print. And I
15 think that this was an observation
16 about whether or not that was a
17 reasoned statement.
18 We disagreed about that. But
19 once my supervisor felt that it wasn't
20 perhaps reasoned, I tried to be very
21 vigilant about not using it again.
22 Q. My question, Mr. O'Brien, is:
23 Do you think that the rationale behind
24 The Times standard on this issue in
25 terms of public appearances is that The

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1 - TIMOTHY L. O'BRIEN -
2 Times is concerned that a reporter who
3 goes to a public appearance and makes
4 an ad hominem comment might be viewed
5 as a reporter who harbors malice
6 towards the subject, yes or no?
7 MR. CERESNEY: Objection to
8 form.
9 Q. Yes or no --
10 MR. CERESNEY: You can
11 answer.
12 Q. -- sir?
13 A. I think the reason we have
14 these standards at The Times is in
15 order to provide guidelines around
16 which we make public appearances, or --
17 Q. I'm asking for the rationale
18 behind the standard, not the reason for
19 the standard, the rationale.
20 What rationale is there for
21 The Times having this standard,
22 governing what their reporters can and
23 cannot say at public events? What's
24 the rationale behind it?
25 A. I think the rationale behind

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1 - TIMOTHY L. O'BRIEN -
2 it is the creation of a parameter -- a
3 set of parameters around public
4 statements or our writing that convey
5 that whatever we say or that whatever
6 we write comes from a reasoned
7 position.
8 Q. So you don't think that it
9 stems, in part -- the rationale from
10 The Times' concern that a reporter who
11 makes an ad hominem comment about the
12 subject of an article or a book might
13 be viewed as a reporter who has malice
14 towards that subject?
15 MR. CERESNEY: Objection.
16 Form. You can answer.
17 A. Well, I think the rationale
18 behind it is to create a set of
19 parameters around our public statements
20 and the written word that conveys a
21 reasoned approach to a subject or a
22 person in an effort to also to try to
23 be impartial.
24 Q. Why is it important, then,
25 for a reporter when he or she speaks in

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1 - TIMOTHY L. O'BRIEN -
2 a public event to appear to be
3 impartial?
4 A. Because it comports with our
5 desire to try to be as objective as
6 possible in the nature of our work.
7 Q. Goes to the heart of what you
8 do, right?
9 A. Absolutely.
10 Q. Now, is it also the case that
11 The New York Times' policy in this
12 regard with respect to what reporters
13 can and cannot say in public
14 appearances might stem, at least in
15 part, from The Times' concern that a
16 reporter who makes ad hominem comments
17 about a subject of his or her work
18 might be conveying to the public the
19 possibility that the reporter has
20 skewed facts or misrepresented facts
21 with respect to the subject?
22 A. That could be one reason for
23 it. I don't think that's the primary
24 reason, but I think it's an important
25 reason.

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Let's take a
3 break whenever you're ready. We
4 have been going for a little over
5 an hour. Whenever you're ready.
6 MR. RESSLER: I'll take a
7 break - okay.
8 I think this is Exhibit 30,
9 the next exhibit. It's previously
10 been identified in discovery as
11 TOB-EF-139.
12 (Whereupon, O'Brien Exhibit 30 was
13 marked for identification.)
14 Q. Mr. O'Brien, this document,
15 Exhibit 30, I just want to direct your
16 attention to the first e-mail because
17 we already talked about the e-mail in
18 the middle.
19 The first e-mail on top is
20 from Larry Ingrassia dated
21 November 1st, and it's to you. And it
22 says, "Passing this on FYI from Al
23 Siegal."
24 Do you see that?
25 A. I do.

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1 - TIMOTHY L. O'BRIEN -
2 Q. So you received the view of
3 The Times' standards editor,
4 Mr. Siegal, stating that you should not
5 call Mr. Trump "Baby Huey" in public
6 events, correct?
7 A. Correct.
8 Q. And this was on November 1st
9 of '05, correct?
10 A. Correct.
11 Q. And your Colliseum book event
12 was in December of '05, correct?
13 A. Correct.
14 Q. I want you to - I appreciate
15 that this transpired a while ago, but I
16 want you to think real hard with
17 respect to how many times you might
18 have gone ahead and continued to refer
19 to Trump as "Baby Huey" in public
20 appearances notwithstanding the fact
21 that Mr. Ingrassia and Mr. Siegal told
22 you not to.
23 A. Well, I am thinking very hard
24 on it and I can't recall the exact
25 number of occasions.

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1 - TIMOTHY L. O'BRIEN -
2 MR. RESSLER: We could take a
3 break now.
4 MR. CERESNEY: Okay. It
5 doesn't have to be a long one; just
6 a biological break.
7 THE VIDEOGRAPHER: The time
8 is 2:43 p.m. We're off the record.
9 This end Tape Number 3.
10 (Whereupon, there was a brief
11 recess in the proceedings.)
12 THE VIDEOGRAPHER: Time on
13 the monitor 2:54 p.m.
14 BY MR. RESSLER:
15 Q. Sir, you had a meeting at
16 Mr. Trump's offices at Trump Tower at
17 725 Fifth Avenue on April 21st, 2005;;
18 is that correct?
19 A. That is correct.
20 Q. Prior to that
21 April 21st, '05, meeting, in connection
22 with your work on the book, how many
23 times would you say you had met with
24 Trump?
25 A. Including work on my previous

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1 - TIMOTHY L. O'BRIEN -
2 book?
3 Q. Which book is that?
4 A. Bad Bet.
5 Q. Yes.
6 A. I would imagine -
7 MR. CERESNEY: Do you have a
8 microphone?
9 THE WITNESS: I don't have it
10 on.
11 A. Six or seven times in person.
12 Q. What about phone
13 conversations with him?
14 A. Numerous occasions.
15 Frequently. Sometimes a few times a
16 week.
17 Q. Prior to your meeting on
18 April 21st, '05, at Trump's offices at
19 Trump Tower, had you ever been to his
20 offices before?
21 A. Yes, I had.
22 Q. For what purpose?
23 A. To interview him.
24 Q. For what purpose?
25 A. To interview him for my book,

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1 - TIMOTHY L. O'BRIEN -
2 Bad Bet, and again, to interview him
3 for reporting that I conducted for The
4 New York Times and to interview him in
5 connection with reporting that I was
6 doing for TrumpNation.
7 Q. With respect to reporting for
8 TrumpNation, how many times prior to
9 April 21st had you been to Trump's
10 offices?
11 A. I would estimate that I was
12 at the offices on four occasions prior
13 to the April 21st date.
14 Q. How many hours in total would
15 you estimate you spent with Trump in
16 connection with your work on this book?
17 A. You know, so many hours it
18 would be difficult for me to
19 offhandedly right now get a fixed
20 number, but I would say dozens of
21 hours. Easily, dozens of hours.
22 Q. Isn't it true that in
23 promoting your book you touted the
24 access you had to Trump?
25 A. I definitely referred to it,

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1 - TIMOTHY L. O'BRIEN -
2 yes.
3 Q. In fact, in promoting the
4 book, you and Warner emphasized, among
5 other things, that you had unique
6 access to Trump, correct?
7 A. Yes, that's correct.
8 Q. How did your
9 April 21st, 2005, meeting at Trump's
10 offices come about?
11 A. I had repeatedly, over the
12 course of the previous year, asked
13 Donald to document his net worth for me
14 and that meeting was conducted in
15 conjunction with that.
16 Q. Isn't it a fact, Mr. O'Brien,
17 that by the time of the
18 April 21st, 2005, meeting at Trump's
19 offices, Trump had already shown you a
20 document titled, "2004 Statement of
21 Financial Condition"?
22 A. No. That's not true.
23 MR. RESSLER: I'll ask the
24 court reporter to mark as the next
25 exhibit as 31, previously

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1 - TIMOTHY L. O'BRIEN -
2 identified in discovery as
3 TXT 2654.
4 (Whereupon, O'Brien Exhibit 31 was
5 marked for identification.)
6 Q. Sir, the front of this
7 document states, "Donald J. Trump
8 Statement of Financial Condition
9 June 30th, 2004." It bears the imprint
10 or logo of Weiser LLP.
11 Did you come to learn in your
12 research on Trump to the book that
13 Weiser LLP is Trump's public accounting
14 firm?
15 A. I understood that they were
16 one of his accountants. I wasn't sure
17 that they were the sole accountant.
18 Q. Let me direct your attention
19 to Bates Number 2657.
20 A. Uh-huh.
21 Q. As you can see, Mr. O'Brien,
22 this is a ledger or a list, if you
23 will, referencng Trump's assets.
24 Do you see that?
25 A. I do.

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1 - TIMOTHY L. O'BRIEN -
 2 Q. And it has a total asset
 3 valuation of, rounding off,
 4 3.9 billion.
 5 Do you see that on the
 6 bottom?
 7 A. I do.
 8 Q. And then if you flip the page
 9 to 2658, you'll see a page that's
 10 titled, "Liabilities and Net Worth."
 11 The liabilities are tallied up.
 12 Do you see it says
 13 420 million?
 14 A. Uh-huh.
 15 Q. 420,200,000, to be exact.
 16 A. I do.
 17 Q. And then below that, there's
 18 a net worth figure of three -- rounding
 19 off, 3.5 billion.
 20 Do you see that?
 21 A. I do.
 22 Q. And then, sir, if you flip
 23 the page, there are many pages of notes
 24 with respect to each asset and
 25 liability.

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1 - TIMOTHY L. O'BRIEN -
 2 Do you see that?
 3 A. I do.
 4 Q. Didn't Mr. Trump give you
 5 this document, sir, prior to the
 6 April 21st, 2005 --
 7 A. No. This is the first time
 8 I've ever seen this document.
 9 Q. -- meeting.
 10 Is it your testimony under
 11 oath today is that Trump didn't show
 12 you this document?
 13 A. Yes, it is.
 14 Q. Mr. O'Brien, is it fair to
 15 say, based on your many years covering
 16 Trump both for this book and before
 17 this book, that Mr. Trump's -- that you
 18 know that Mr. Trump's net worth is a
 19 very important issue to him?
 20 A. Yes, it is.
 21 Q. Isn't it fair to say that
 22 Mr. Trump frequently talked to you when
 23 you were writing this book about his
 24 net worth?
 25 A. That is true.

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1 - TIMOTHY L. O'BRIEN -
 2 Q. In fact, sir, isn't one of
 3 the themes of the book that Donald
 4 Trump is profoundly concerned with the
 5 public's perception of how rich he is?
 6 A. Yes.
 7 Q. And don't you, in fact,
 8 devote pages in your book to describing
 9 how much it means to Trump to make the
 10 Forbes magazine list of the 400 richest
 11 people in America?
 12 A. Yes, I do. As well as,
 13 the -- delineating what he outlined as
 14 the basis for his net worth.
 15 Q. And you know, based on your
 16 meeting with Trump for dozens of hours,
 17 as you described it, and probably more,
 18 as you described it, and based on your
 19 interviews of so many other people in
 20 Trump's life that Trump wants the world
 21 to know that he's a billionaire; isn't
 22 that correct?
 23 A. That is correct.
 24 Q. And throughout your book,
 25 sir, you wrote how frequently Trump

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1 - TIMOTHY L. O'BRIEN -
 2 offered up net worth valuations of
 3 himself; isn't that correct?
 4 A. That is correct.
 5 Q. In fact, at one point in the
 6 book, you write, quote, "Donald's
 7 verbal billions were always a topic of
 8 conversation whenever we visited."
 9 A. That is correct.
 10 Q. So that means that with
 11 respect to all of the times when you
 12 and Trump met, which you described
 13 earlier, Trump always brought up the
 14 topic of his billions, right?
 15 A. Very frequently, yes.
 16 Q. In fact, you also write in
 17 another passage that as early as 1996,
 18 in your first conversation with the
 19 man, Trump brought up his billions of
 20 dollars, right?
 21 A. Correct.
 22 Q. And based on your unique
 23 access to Trump, your word, and your
 24 frequent meetings and communications
 25 with him, you knew, of course, that

<p style="text-align: right;">254</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Trump wanted you in your book to 3 conclude that he was a billionaire, 4 right? 5 A. I believe so; also in my 6 reporting for The New York Times. 7 Q. In fact, with respect to your 8 reporting for The New York Times, you 9 write in the book that there was one 10 occasion in 2004 when Trump got very 11 upset because you were - and these are 12 your words, "curious about the true 13 size of his fortune," correct? 14 A. Correct. 15 Q. Is it fair to say that you - 16 is it fair to say that Trump is, for 17 all intents and purposes, consumed with 18 his net worth? 19 A. I think that's one of the 20 things that he's consumed with, but not 21 the only thing. 22 Q. But you wrote about that 23 focus that Trump has throughout your 24 book, correct? 25 A. I wrote about it in a</p>	<p style="text-align: right;">256</p> <p>1 - TIMOTHY L. O'BRIEN - 2 may not have given me this document was 3 because if I subjected this document to 4 a rigorous evaluation -- a valuation of 5 his assets and liabilities might have 6 been in contradiction to some of the 7 figures that are in this. 8 Q. Well, the document talks 9 about Trump's assets in one ledger or 10 page, correct? 11 A. Correct. 12 Q. And then it has a section for 13 liabilities, correct? 14 A. Correct. 15 Q. And then it has a net worth 16 valuation, correct? 17 A. Correct. 18 Q. It's a document that is 19 signed by his accounting firm, correct? 20 MR. CERESNEY: I'm going to 21 object here and just - I want this 22 document to be properly 23 characterized in the record as a 24 compilation and not an audited 25 financial statement. You can</p>
<p style="text-align: right;">255</p> <p>1 - TIMOTHY L. O'BRIEN - 2 significant part of the book, but it 3 wasn't the only focus of the book. The 4 book actually focused on many different 5 aspects of his business and personal 6 life and his net worth, but net worth 7 was a part of it. 8 Q. And it's a hugely important 9 issue to him, correct? 10 A. I believe it's a very 11 important issue to him, yes. 12 Q. Based on the importance that 13 Trump holds with respect to his net 14 worth valuation and based on his desire 15 for you to write in your book that he 16 was a billionaire, do you have any 17 understanding, Mr. O'Brien, why, as you 18 claim, Trump would not have given you 19 the Statement of Financial Condition 20 2004 that's in front of you now as an 21 exhibit? 22 MR. CERESNEY: I'm going to 23 object to the form of the question. 24 You can answer it if you can. 25 A. Well, I think one reason he</p>	<p style="text-align: right;">257</p> <p>1 - TIMOTHY L. O'BRIEN - 2 continue. 3 MR. RESSLER: You can ask 4 whatever questions you want to of 5 your client when it's your turn. 6 Q. Mr. O'Brien, it's signed by 7 his accountant, right? 8 A. Well, I would like to take a 9 moment to review this document since 10 we're discussing it at some length so 11 can I - 12 Q. I'll - I'll - 13 A. Excuse me. Can I have some 14 time to read through it, please? 15 Q. You can. But right now I'm 16 just directing you to the front page, 17 where it's at - 18 A. I think I'd like to spend 19 some time reading the document. 20 Q. Sir - sir. Just let me ask 21 the question. 22 A. I think I'd like to be 23 familiar with the document since it's 24 my first time seeing it. 25 .May I read it, please?</p>

<p style="text-align: right;">258</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. No, you may not. Because my 3 first question doesn't require that you 4 read the document at all. My first 5 question - my question - 6 A. In lieu of that, I would 7 select to read it anyway. 8 Q. Well, I'm going to give you 9 the opportunity, but right now - 10 A. I would like to take that 11 opportunity now. 12 Q. Well, I don't want to give it 13 to you now. I want you to answer this 14 question. 15 A. I understand you don't want 16 to give it to me, but I would like to 17 take the time to familiarize myself 18 with this document since it's the first 19 time I've seen it. 20 Q. Does the phrase "Weiser" 21 appear on the front page of this 22 document? 23 MR. CERESNEY: Can you answer 24 that particular question? 25 A. Yes, it does.</p>	<p style="text-align: right;">260</p> <p>1 - TIMOTHY L. O'BRIEN - 2 executives use when they deal with 3 financial institutions, lending 4 institutions, business partners, and 5 the like; is that correct? . 6 A. No. I'm not aware of that. 7 Q. You're not aware that 8 numerous financial institutions 9 regularly receive Trump's Statement of 10 Financial Condition in connection with 11 loan applications and other business 12 dealings? 13 A. I'm not aware of that. 14 Q. Sir, are you aware that this 15 document, Trump's 2004 Statement of 16 Financial Condition, was produced by 17 numerous financial institutions that 18 your lawyers subpoenaed in this case? 19 A. I'm not aware of the extent 20 to which this was produced by any 21 financial entities for my lawyers. 22 Q. Are you familiar with a bank 23 called North Fork Bank? 24 A. I am familiar with that bank. 25 Q. Are you aware, sir, that</p>
<p style="text-align: right;">259</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Thank you. 3 A. May I take some time to 4 familiarize myself with this now? 5 MR. CERESNEY: Now can he 6 read the document? 7 MR. RESSLER: Yes. 8 THE WITNESS: Thank you. 9 Okay. Thank you. 10 Q. Mr. O'Brien, having reviewed 11 the document, does it refresh your 12 recollection that Trump showed you a 13 copy of this document when you were 14 researching the book prior to the 15 April 21st, 2005, meeting? 16 A. In fact, it absolutely 17 confirms the statement I made earlier, 18 which is that I've never seen it before 19 and actually would have loved to have 20 had this document during the course of 21 my reporting. 22 Q. Mr. O'Brien, you are aware, 23 are you not, that this Statement of 24 Financial Condition is one of the 25 primary documents that Trump and his</p>	<p style="text-align: right;">261</p> <p>1 - TIMOTHY L. O'BRIEN - 2 North Fork Bank had eight copies of 3 Mr. Trump's 2004 Statement of Financial 4 Condition in its possession and 5 produced those eight copies in this 6 case pursuant to subpoenas sent out by 7 your lawyers? 8 A. I am not aware of the number 9 of copies of this document that North 10 Fork Bank had. I am aware that my 11 lawyers have come into possession of 12 an - of a statement that - of his 13 financial condition. 14 Q. Sir, are you aware - 15 withdrawn. 16 Do you know the Textron 17 Corporation? 18 A. No. I don't know Textron. 19 Q. So I take it you're not aware 20 that Textron Financial Corporation had 21 three copies of Mr. Trump's 22 2004 Statement of Financial Condition 23 in its possession and produced them in 24 this case in response to your lawyers 25 subpoenas?</p>

66 (Pages 258 to 261)

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1 - TIMOTHY L. O'BRIEN -
 2 A. No, I'm not.
 3 Q. Are you familiar with
 4 Deutsche Bank, Mr. O'Brien?
 5 A. I am.
 6 Q. Deutsche Bank is frequently
 7 covered in the pages of The New York
 8 Times, correct?
 9 A. Correct.
 10 Q. And are you aware, sir, that
 11 Deutsche Bank had a copy of Trump's
 12 2004 Statement of Financial Condition
 13 in its possession and produced it in
 14 this litigation pursuant to subpoenas
 15 sent out by your lawyers?
 16 A. No, I'm not.
 17 Q. Did you know that the City
 18 National Bank of Florida, likewise,
 19 produced a copy of the 2004 Trump
 20 Statement of Financial Condition in
 21 this case pursuant to subpoenas by your
 22 lawyers?
 23 A. No, I'm not.
 24 Q. Are you aware that the
 25 financial institution Fortress had a

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1 - TIMOTHY L. O'BRIEN -
 2 about how the basis for this statement
 3 doesn't comply with generally accepted
 4 accounting principles. So I would have
 5 taken probably greater pause with this
 6 than some of those institutions
 7 apparently did if they were using this
 8 as a basis for assessing his net worth.
 9 Q. Well, how would you describe
 10 Deutsche Bank in terms of its rank or
 11 size as a financial institution in the
 12 world?
 13 A. Major world bank.
 14 Q. Major one, right?
 15 A. Yes.
 16 Q. You covered banking for the
 17 Wall Street Journal, right?
 18 A. I did.
 19 Q. So YOU know a lot about
 20 banks, right?
 21 A. Yes.
 22 Q. Fortress, how would you
 23 describe Fortress? Are you familiar
 24 with Fortress?
 25 A. Hedge fund, primarily real

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1 - TIMOTHY L. O'BRIEN -
 2 copy of Trump's 2004 Statement of
 3 Financial Condition and, likewise,
 4 produced it in this case in response to
 5 your lawyers' subpoenas?
 6 A. No, I'm not.
 7 Q. Do you have any
 8 understanding, Mr. O'Brien, why it
 9 would be the case, based on your
 10 testimony, that Trump would furnish
 11 this Statement of Financial Condition
 12 to financial institutions on a fairly
 13 regular basis but when it came to you,
 14 the author who was writing a book about
 15 him, a book that was going to focus, at
 16 least in part, on his net worth, he
 17 chose not to give you or not to show
 18 you a copy of the document?
 19 Do you have any
 20 understanding?
 21 A. Well, I would suppose that I
 22 might have taken greater pause with
 23 this document than those institutions
 24 apparently did given that the cover
 25 letter goes to great lengths to talk

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1 - TIMOTHY L. O'BRIEN -
 2 estate mezzanine investors in the
 3 Chicago properties.
 4 Q. Major hedge fund, right?
 5 A. Mid-tier.
 6 Q. But you believe that you, Tim
 7 O'Brien, would have exercised greater
 8 scrutiny with respect to Trump's
 9 Statement of Financial Condition than,
 10 say, Deutsche Bank or Fortress did,
 11 right?
 12 A. Well, you know, given the
 13 fact that -- that -- that a number of
 14 major financial institutions in the
 15 United States lent him vast amounts of
 16 money in the early 1990's that they
 17 were then forced to write off as bad
 18 debt, and given the fact that over my
 19 course of reporting banks, I've -- I've
 20 ascertained that oftentimes they don't
 21 apply as rigorous a standard as they
 22 should to assessing both the financial
 23 viability of their client or the nature
 24 of some of the projects they loan to, I
 25 wouldn't presume that I'm better

<p style="text-align: right;">266</p> <p>1 - TIMOTHY L. O'BRIEN - 2 positioned than -- than the banks to 3 make an assessment of the statement. 4 But I am certainly skeptical that the 5 measure of caution or due diligence 6 they use is -- is complete and without 7 fault. 8 Q. Even though, Mr. O'Brien, 9 these financial institutions are being 10 asked by Trump to lend him hundreds of 11 millions of dollars? 12 A. Well, that's precisely the 13 problem and that's precisely what the 14 book lays out as an issue, is that you 15 have major institutions lending 16 Mr. TrumpMoney, sometimes on what I 17 would regard as a very flimsy basis. 18 And certainly the cover letter of this 19 document would qualify in my mind this 20 assessment as -- as flimsy. 21 Q. Because it doesn't correspond 22 to GAAP; is that right? 23 A. In fact, it says it departs 24 from GAAP. 25 Q. Now, you're not -- you're not</p>	<p style="text-align: right;">268</p> <p>1 - TIMOTHY L. O'BRIEN - 2 other things? Is that the 3 question? 4 Q. Mr. O'Brien, did you rely on 5 anonymous sources in your book, yes or 6 no? 7 A. Yes. 8 Q. Do you believe that reliance 9 on anonymous sources is a GAAP-approved 10 approach to valuing an asset or valuing 11 net worth? 12 MR. CERESNEY: Objection, 13 first of all, to the snickering in 14 the question. But second of all to 15 the form. You can answer the 16 question if you can. 17 A. No. I don't think that that 18 conforms with GAAP but I would -- I'd 19 like to finish answering the question. 20 Q. That was my question. No. 21 No. You answered the question. 22 A. No, I don't believe I have. 23 I actually don't believe I finished 24 answering the question. 25 Q. The question, sir, was</p>
<p style="text-align: right;">267</p> <p>1 - TIMOTHY L. O'BRIEN - 2 telling the jury, Mr. O'Brien, that the 3 financial analysis you undertook in 4 your book, TrumpNation The Art of Being 5 the Donald, adhered to GAAP, are you? 6 A. It would have come as close 7 to GAAP as possible if I was given the 8 kind of documents I needed to perform a 9 GAAP analysis. Yes. I would say that 10 to a jury. 11 Q. Because you relied on 12 anonymous sources in your book, right? 13 MR. CERESNEY: Objection. 14 A. I wrote -- 15 Q. Did you rely on anonymous 16 sources in your book? 17 A. I relied on my sources as 18 well as documented evidence of his 19 wealth. 20 MR. RESSLER: Move to strike. 21 Q. Did you rely on anonymous 22 sources in your book? Did you rely on 23 anonymous sources -- 24 MR. CERESNEY: You're asking 25 him, did he rely upon that among</p>	<p style="text-align: right;">269</p> <p>1 - TIMOTHY L. O'BRIEN - 2 whether you believe that reliance on 3 anonymous sources conforms to GAAP. 4 It's a yes or no. 5 A. No, of course I don't. 6 Q. It's a yes or no question. 7 A. Of course I don't. 8 Q. Okay. Thank you. That's 9 your answer. 10 Now, with respect to what you 11 recited earlier about banks 12 improvidently lending money to Trump, 13 that was in the early 1990's as you 14 stated in your answer, correct? 15 A. Well -- and apparently by the 16 nature of your question, there's a 17 measure of improvidence if people are 18 lending you based solely on this 19 document. 20 Q. Sir, my question was; you 21 referenced earlier in -- two minutes 22 ago to loans that you thought should 23 not have been extended to Trump in the 24 early 1990's, right? 25 Did you say that in an</p>

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1 - TIMOTHY L. O'BRIEN -
2 answer, yes or no?
3 A. Yes.
4 Q. Okay. That document is
5 titled, "2004 Statement of Financial
6 Condition," correct?
7 A. Correct.
8 Q. Okay. Now, isn't it true,
9 Mr. O'Brien, that the April 21st, '05
10 meeting at Trump's offices was set up
11 precisely because you, having reviewed
12 this document, Trump's Statement of
13 Financial Condition, did not believe
14 that Trump owned certain of the assets
15 that he purports to own in this
16 document?
17 A. No, that's not correct. The
18 meeting was set up as an effort to get
19 documents like this.
20 Q. Well, prior to the April 21st
21 meeting in '05, did anyone tell you the
22 kinds of materials that Trump was going
23 to make available to you at the
24 meeting?
25 A. Donald and I discussed that

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1 - TIMOTHY L. O'BRIEN -
2 on a number of occasions, yes.
3 Q. What was discussed?
4 A. I asked for verifiable
5 statements of his assets and his
6 liabilities -- sworn statements of his
7 assets and liabilities that I could
8 then verify with a third party, such as
9 IRS returns, bank statements,
10 statements of net worth, documents that
11 he had filed with New Jersey
12 regulators; any personal loans he had
13 guaranteed, things of that nature.
14 Q. This is not a sworn
15 statement, right?
16 A. Well, no, it's not.
17 Q. Right.
18 A. Although it does say in the
19 valuations in the accompanying pages
20 that some of the valuations -- for
21 example, at Page 2659, that "recent
22 sales and offers and estimates of
23 current values as determined by," --
24 "such valuation methods include, but
25 are not limited to, the use of

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1 - TIMOTHY L. O'BRIEN -
2 appraisals, capitalization of
3 anticipated earnings, recent sales and
4 offers and estimates of current values
5 as determined by Mr. Trump in
6 conjunction with his associates and, in
7 some instances, outside professionals."
8 Q. Mr. O'Brien, my question was
9 only this is not a sworn-to statement
10 by Trump; isn't that correct?
11 A. That's correct, yes. He
12 signed it.
13 Q. Thank you. That was my
14 question. Thank you.
15 A. Okay.
16 Q. Now, when you showed up at
17 Trump's offices in '05 on April 21st,
18 you were brought into a conference
19 room; is that correct?
20 A. That is correct.
21 Q. At a large table in that
22 conference room was covered with neat
23 little piles of documents, correct?
24 A. Correct.
25 Q. And a Trump in-house

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1 - TIMOTHY L. O'BRIEN -
2 attorney, Michelle Lokey, was in the
3 conference room?
4 A. That's correct.
5 Q. And you came to learn at that
6 meeting, did you not, that Miss Lokey
7 had spent a long time -- several days,
8 actually, compiling these documents for
9 your review; is that right?
10 A. As I recall, she described it
11 to me as the better part of a weekend.
12 Q. And she explained to you, did
13 she not, that the documents on the
14 table included deal books and other
15 kinds of documents that showed Trump's
16 ownership state in various properties;
17 is that correct?
18 A. That is correct.
19 Q. And when you first arrived in
20 the conference room on
21 April 21st, 2005, Trump's chief
22 financial officer, Alan Weisberg, was
23 also there, correct?
24 A. Well, actually, I met Alan
25 and Donald first, when I came into the

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1 - TIMOTHY L. O'BRIEN -
 2 office. And then Mr. Weiselberg --
 3 Miss Scarborough joined Mr. Weiselberg
 4 and Mr. Trump and I in the front of the
 5 office and we made small talk and then
 6 we went to the conference room.
 7 Q. By "Miss Scarborough," you're
 8 referring to Miss Lokey?
 9 A. Correct.
 10 Q. I think she goes by Lokey now
 11 because she's been divorced.
 12 A. Okay.
 13 Q. But you know that, right?
 14 A. I do.
 15 Q. After the small talk with
 16 Mr. Trump and Mr. Weiselberg, did you
 17 then meet just with Miss Lokey and
 18 Mr. Weiselberg?
 19 A. Correct. Donald and
 20 Mr. Weiselberg and Miss Scarborough and
 21 I went to the conference room jointly
 22 and then Mr. Trump departed.
 23 Q. And is it fair to say that
 24 Mr. Weiselberg stayed in the
 25 conferences room talking to you for

1 - TIMOTHY L. O'BRIEN -
 2 approximately 15 minutes?
 3 A. No. That's not fair to say.
 4 Q. How long is it -- how long,
 5 according to your testimony, did
 6 Mr. Weiselberg stay?
 7 A. I would say for about two and
 8 a half hours.
 9 Q. Mr. Weiselberg was in the
 10 conference room for two and a half
 11 hours?
 12 A. Yes.
 13 Q. What did you talk to
 14 Mr. Weiselberg about for two and a half
 15 hours, if anything?
 16 A. I talked to Mr. Weiselberg
 17 about Mr. Trump's assets and
 18 liabilities.
 19 Q. For two and a half hours?
 20 A. Yes. In great detail, on an
 21 asset-by-asset basis.
 22 Q. In great detail?
 23 A. Yes.
 24 Q. Say, where's the tape
 25 recording of this conversation,

1 - TIMOTHY L. O'BRIEN -
 2 Mr. O'Brien?
 3 A. There -- one doesn't exist.
 4 Q. You didn't tape the
 5 conversation of the meeting where
 6 you're actually sitting down with
 7 Trump's CFO and he's going through a
 8 valuation of Trump assets for two and a
 9 half hours?
 10 A. Well, when I went to the
 11 meeting, my understanding through my
 12 conversations with Donald was that I
 13 was going to be looking at documents
 14 primarily; that I wasn't going to be
 15 conducting an interview based on what
 16 Mr. Weiselberg had compiled on what
 17 appeared to me to be a legal -- a legal
 18 pad outlining Donald's documents --
 19 Donald's net worth.
 20 I went to the meeting
 21 anticipating a document review. And
 22 so, I hadn't gone with my tape recorder
 23 because I hadn't believed the meeting
 24 would necessitate a -- an interview
 25 drawn from handwritten notes.

1 - TIMOTHY L. O'BRIEN -
 2 Q. But you said that Weiselberg
 3 spent two and a half hours talking to
 4 you, correct?
 5 A. Yes. I believe that to be
 6 correct.
 7 Q. And you're invited into, in
 8 effect, the inner sanctum, right,
 9 Trump's offices to talk to his CFO,
 10 correct?
 11 A. Right. I had spent another
 12 occasion with Mr. Weiselberg on a trip
 13 to Palm Beach where we also spoke about
 14 Donald's business history. But this
 15 was the -- I had spent quite a bit of
 16 time asking for documentation of
 17 Mr. Trump's net worth.
 18 And it -- Donald was aware
 19 that I was at the end of when I could
 20 complete my work on the book. And this
 21 was seen as a final meeting in which he
 22 would document his -- the valuation of
 23 his net worth for me.
 24 Q. So you went to this meeting
 25 expecting to see statements of gaming

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1 - TIMOTHY L. O'BRIEN -
2 regulators, net worth statements,
3 mortgage documents?
4 A. IRS returns.
5 Q. IRS returns, right?
6 A. Bank loan agreements.
7 Q. But this is the meeting where
8 you don't even bring a tape recorder,
9 Mr. O'Brien?
10 A. I expected to bring -- there
11 were other interviews I conducted
12 during the course of the book in which
13 I didn't have my tape recorder on.
14 Q. But my question to you is
15 about this meeting on April 21st of
16 2005. Knowing or -- withdrawn.
17 Believing that you were going
18 to see IRS statements and mortgage
19 statements and these kinds of financial
20 documents, that was a meeting where you
21 decided not even to bring a tape
22 recorder, right?
23 MR. CERESNEY: Objection.
24 Asked and answered.
25 A. It was a meeting in which I

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1 - TIMOTHY L. O'BRIEN -
2 anticipated doing serious document
3 review that wouldn't involve tape
4 recording an individual who I was
5 interviewing.
6 Q. So you didn't even bring the
7 tape recorder?
8 A. No, I did not.
9 Q. Now, isn't it the case that
10 you tape recorded a lot of other
11 conversations that you had with respect
12 to your work on this book, right?
13 A. That is correct.
14 Q. In fact, you brought a tape
15 recorder to tape a conversation
16 involving Tony Bennett and Frank Sin --
17 talking about Frank Sinatra, right?
18 A. No. I brought a tape
19 recorder to record interviews that I
20 was conducting with Donald over the
21 course of a weekend where I flew with
22 him from New York to Palm Beach, and
23 then interviewed him extensively over
24 the weekend, both driving around Palm
25 Beach with him and then back at

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1 - TIMOTHY L. O'BRIEN -
2 Mar-a-Lago. And then interviewing him,
3 again extensively, at the end of the
4 weekend and on the plane back to New
5 York with -- with Donald, and Tony
6 Bennett was on the flight for that.
7 Q. Tony Bennett, the famous
8 singer, right?
9 A. Correct.
10 Q. And you tape recorded the
11 conversation with Tony Bennett, right?
12 A. Yes.
13 Q. In fact, Mr. O'Brien, you had
14 Tony Bennett say hi to your mother on
15 the tape, right?
16 A. No. That's incorrect.
17 Q. Who's Peggy O'Brien?
18 A. She's my sister.
19 Q. Okay. You had Tony Bennett
20 say hi to your sister on the tape,
21 right?
22 A. She's a fan.
23 Q. Right. And so you asked Tony
24 Bennett -- you said, "Hey, will you say
25 hello to Peggy O'Brien? Can you say,

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1 - TIMOTHY L. O'BRIEN -
2 "Hi, Peggy O'Brien"?
3 You asked Tony Bennett that,
4 right?
5 A. Correct.
6 Q. This is all on tape, right?
7 A. Correct.
8 Q. And then Tony Bennett said,
9 "Hello, Peggy O'Brien. I never met you,
10 but somebody loves you very much and
11 they want me to say hello to you, so I
12 hope we meet some day," correct?
13 A. I believe that's what he
14 said.
15 Q. And then at some point after
16 the interview, did you play the tape
17 recording of Tony Bennett and Trump for
18 your sister, Peggy, Mr. O'Brien?
19 A. She didn't have the software
20 to do it. I might have played it over
21 the telephone for her.
22 Q. And did you say something
23 along the lines of, "Hey, Peggy.
24 You're not going to believe this, but
25 I've got Tony Bennett on tape saying hi

<p style="text-align: right;">282</p> <p>1 - TIMOTHY L. O'BRIEN - 2 to you," something along those lines? 3 A. Quite possibly, yes. 4 Q. Is that a professional tool 5 that you would use to assess fact 6 patterns in the context of what you 7 stated in your certification to our 8 judge with respect to your professional 9 tools, methods and techniques to -- 10 MR. CERESNEY: Objection. 11 MR. RESSLER: Let me finish 12 the question. 13 MR. CERESNEY: Sure. 14 Q. -- to tape record a subject 15 for your sister because she's a fan? 16 MR. CERESNEY: Objection. 17 Form. 18 A. Okay. 19 MR. CERESNEY: Can you answer 20 the question? 21 A. Sure. Well, in fact you're 22 only -- you're taking that piece out of 23 context. There was actually a 24 lengthier bit of an interview with Tony 25 about his career as a singer.</p>	<p style="text-align: right;">284</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Mr. Bennett were for part and parcel of 3 my report, yeah. 4 Q. So you taped a conversation 5 concerning Tony Bennett's toupee, Regis 6 Philbin, some of the other things you 7 mentioned. 8 But you did not tape any of 9 your conversation for two and a half 10 hours with Alan Weiselberg at Trump's 11 offices where Weiselberg is talking to 12 you about Trump's assets, yes or no? 13 MR. CERESNEY: Objection. 14 Asked and answered. I think we 15 know he didn't tape it. 16 Q. Yes or no, Mr. O'Brien? 17 A. That's correct. Because -- 18 Q. Thank you. It was a yes or 19 no -- 20 A. It was a weekend -- on the 21 weekend I went to Palm Beach. 22 MR. RESSLER: I move to 23 strike. I move to strike. 24 A. I was there to record a -- 25 Q. I asked you a yes or no</p>
<p style="text-align: right;">283</p> <p>1 - TIMOTHY L. O'BRIEN - 2 He had been retained that 3 weekend at Mar-a-Lago to perform at an 4 event for Donald, which I attended. 5 And Donald started speaking with me 6 about how much he paid Tony to perform 7 at Mar-a-Lago as a singer. And he did 8 this in the presence of Tony. I wasn't 9 sure that that was information that -- 10 that Mr. Bennett wanted publicized. 11 He also talked about 12 Mr. Bennett's toupee and made fun of. 13 Mr. Bennett's toupee. And I actually 14 think that that was part of my 15 reporting, watching Mr. Trump interact 16 with people like Mr. Bennett who he 17 employed for a special occasions. 18 On the plane also with us was 19 Regis Philbin and his wife. I recorded 20 comments they made. We screened a film 21 together, Sunset Boulevard. 22 I think the observations of 23 all these individuals watching the 24 film, Donald's interaction with those 25 individuals and his interaction with</p>	<p style="text-align: right;">285</p> <p>1 - TIMOTHY L. O'BRIEN - 2 question. 3 A. -- interview so I brought the 4 tape recorder with me. 5 Q. And you've answered the 6 question. 7 MR. RESSLER: Andrew, this 8 is -- this is a farce. 9 MR. CERESNEY: This is not a 10 farce, Mark. 11 MR. RESSLER: It's a yes or 12 no question. 13 MR. CERESNEY: I -- I object 14 to that characterization. 15 MR. RESSLER: It's a yes or 16 no question. 17 MR. CERESNEY: It's a 18 question you asked about five times 19 and you know the answer to it and 20 you're still asking it and you're 21 asking it in an argumentative 22 way, -- 23 MR. RESSLER: And you -- and 24 you -- 25 MR. CERESNEY: -- in order to</p>

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1 - TIMOTHY L. O'BRIEN -
2 try to get -- in order to try to
3 get exactly the kind of phrasing
4 that you want, you're asking about
5 five different times the same
6 question.
7 You know the answer. You
8 know he did not tape it. And
9 that's what you've gotten. You got
10 your answer. This is a discovery
11 deposition and there is no reason
12 you have to ask it in that form.
13 MR. RESSLER: Andrew, first
14 of all, the witness in describing
15 the conver -- the tape recording of
16 the conversation involving Tony
17 Bennett's toupee specifically
18 attempted to suggest why that was
19 an important conversation to tape.
20 So the record will speak for itself
21 as to why I circled back to
22 juxtapose his decisions to tape
23 that conversation but not the
24 April 21st conversation.
25 -- But be that as it may, you

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1 - TIMOTHY L. O'BRIEN -
2 interposed your asked-and-answered
3 objection. This witness -- you
4 objected. This witness does not
5 need to give me speeches.
6 I move to strike every part
7 of the witness's response after the
8 word "no" -- or "yes," whatever it
9 was.
10 MR. CERESNEY: And I object
11 to the motion to strike.
12 Why don't we move on?
13 BY MR. RESSLER:
14 Q. Does The Times, Mr. O'Brien,
15 have a policy with respect to not using
16 your status as a reporter doing a story
17 to obtain something of a personal
18 nature?
19 A. Yes.
20 Q. By the way, isn't it true,
21 sir, that you did not tape record any
22 of the conversations that you had with
23 the three anonymous sources you
24 reference on Page 154 of your book?
25 MR. CERESNEY: Objection.

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1 - TIMOTHY L. O'BRIEN -
2 I'm going to instruct him not to
3 answer that question.
4 MR. RESSLER: I'm not asking
5 him for the identities of the
6 sources. I'm not asking for him --
7 him for anything about the sources
8 that would reveal their identities.
9 I'm asking him if he tape
10 recorded the conversations. So I
11 don't understand your objection.
12 MR. CERESNEY: I'm going to
13 actually ask to confer with the
14 witness outside before we answer
15 that question.
16 MR. RESSLER: You want to do
17 that?
18 MR. CERESNEY: Yes. I'd like
19 to do that, so that I can ascertain
20 whether there is a privilege
21 objection to that. Okay?
22 MR. RESSLER: That's fine.
23 MR. CERESNEY: Go off the
24 record.
25 Q. Absolutely.

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1 - TIMOTHY L. O'BRIEN -
2 THE VIDEOGRAPHER: The time
3 is 3:34 p.m. We're going off the
4 record.
5 (Whereupon, there was a brief
6 recess in the proceedings.)
7 THE VIDEOGRAPHER: We're back
8 on the record. Time on the video
9 monitor is 3:47 p.m.
10 MR. CERESNEY: Okay. We've
11 conferred with the witness. We'll
12 let him answer the question.
13 So if you want to restate it
14 or if you want it read back,
15 whichever.
16 BY MR. RESSLER:
17 Q. Mr. O'Brien, did you tape
18 record any of your conversations with
19 the anonymous sources referenced on
20 Page 154 of the your book, the three
21 anonymous sources?
22 A. No, I did not.
23 Q. Was there ever a time when
24 you were in their presence, the three
25 sources or any of them, when you had a

<p style="text-align: right;">290</p> <p>1 - TIMOTHY L. O'BRIEN - 2 tape recorder with you but didn't turn 3 it on? 4 A. No. I don't believe there 5 was. 6 Q. Why didn't you bring a tape 7 recorder to record your conversations 8 with the three anonymous sources? 9 A. Well, I think - I think 10 sometimes a tape recorder can be an 11 alienating device, and I didn't want 12 the sources to be alienated. 13 And secondly, it's not my 14 typical method to tape record all of my 15 interviews in my work. 16 Q. Well, we know that you taped 17 the one where Tony Bennett, for 18 example, was talking about his 19 toupee -- or Donald was talking about 20 Tony's toupee, right? 21 You tape recorded that one, 22 right? 23 A. I tape recorded a part of my 24 interaction with them on the plane, 25 yes.</p>	<p style="text-align: right;">292</p> <p>1 - TIMOTHY L. O'BRIEN - 2 as naysaying, quote, "You can go ahead 3 and speak to guys who have 400-pound 4 wives at home who are jealous of me. 5 But the guys who really know me know 6 I'm a great builder." 7 You didn't tape record that 8 conversation did you? 9 A. That's correct, I did not. 10 Q. So in your book, same page, 11 154, when you write that Alan 12 Weiselberg says, "I'm going to go to my 13 office and find that other billion," 14 you didn't tape record that either, 15 right? 16 A. No, I didn't. 17 Q. So Mr. O'Brien, given that 18 there is no tape recording of your 19 conversation with anyone during the 20 April 21st, 2005, meeting, we have to 21 take your word that what you say 22 happened, did happen; isn't that 23 correct? 24 MR. CERESNEY: Objection. 25 Argumentative. Form. If you can</p>
<p style="text-align: right;">291</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Right. You had Tony Bennett 3 say something to your sister on the 4 tape recorder device, right? 5 A. I had my tape recorder with 6 me, correct... 7 Q. And you made -- you turned it 8 on for that so Tony Bennett could say 9 hi to Peggy O'Brien, your sister, 10 right? 11 A. Uh-huh. 12 MR. CERESNEY: I'm going to 13 object to the he "turned it on for 14 that." But you can -- 15 Q. Okay. You tape recorded Tony 16 Bennett saying hi to your sister, 17 Peggy, right? 18 A. I did. 19 Q. Now, in your book, you 20 state -- and we'll get into this in 21 more detail later, but you state 22 that -- this is in the part after you 23 describe what you're three alleged 24 anonymous sources say. 25 You say Donald dismissed this</p>	<p style="text-align: right;">293</p> <p>1 - TIMOTHY L. O'BRIEN - 2 answer it. 3 A. Yes, that is correct; as well 4 as other participants in the meeting. 5 Q. Now, did you read the 6 transcript of Michelle Lokey that was 7 taken at her deposition in this case 8 several weeks ago? 9 A. No, I did not. 10 Q. Did you have occasion to 11 learn that Ms. Lokey at her deposition 12 gave a version of what transpired at 13 the April 21st, 2005, meeting that's 14 very much at odds with the version that 15 you've provided? 16 A. That's my understanding. 17 Q. And so is it your testimony 18 that Miss Lokey is lying when she 19 provides that different version of the 20 events? 21 MR. CERESNEY: Objection. 22 Form. You can answer. 23 A. I believe that she -- 24 MR. CERESNEY: Let me just 25 actually -- what different version</p>

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1 - TIMOTHY L. O'BRIEN -
2 of the events? Can you clarify the
3 question?
4 MR. RESSLER: The testimony
5 that Miss Lokey --
6 MR. CERESNEY: What
7 specifically is what my --
8 MR. RESSLER: Well, no. I'm
9 sorry.
10 What's your question, Andrew?
11 MR. CERESNEY: You've asked
12 him if he's aware of a different
13 version. Then you ask him is she
14 lying when she gives that different
15 version.
16 But you haven't established
17 what part of a different version,
18 what specifically --
19 MR. RESSLER: Well, I did
20 generally, initially. I -- I asked
21 the witness if he has an
22 understanding that her version of
23 what transpired at the meeting was
24 very much at odds with his version.
25 And he said he did have that

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1 - TIMOTHY L. O'BRIEN -
2 understanding.
3 MR. CERESNEY: Right.
4 MS. WHITE: But he hasn't
5 read the transcript.
6 Q. So my question to the witness
7 is: Given that her version of what
8 transpired is different -- with respect
9 to every instance where it's different,
10 is it your position that Michelle Lokey
11 is lying?
12 A. I do believe she's
13 misrepresenting what occurred at the
14 meeting, yes.
15 Q. You're not representing
16 what occurred at the meeting; is that
17 your testimony?
18 A. I am representing what
19 occurred at the meeting.
20 Q. I mean, you're not
21 misrepresenting what occurred at the
22 meeting, right?
23 A. No, I'm not.
24 Q. With respect to your failure
25 to tape record any part of the meeting

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1 - TIMOTHY L. O'BRIEN -
2 that occurred on April 21st, 2005, was
3 that sound journalistic practice, in
4 your view?
5 MR. CERESNEY: Objection.
6 You can answer.
7 A. Certainly if I had known in
8 advance that the meeting wouldn't be a
9 document-driven meeting and would rely
10 solely on a lengthy discussion with
11 Mr. Weiselberg about Mr. Trump's assets
12 and liabilities, I would have brought a
13 tape recorder with me. But that was
14 not my understanding in advance of
15 going there that that's what the nature
16 of the meeting would be.
17 Q. You didn't foresee the
18 possibility, Mr. O'Brien, that meeting
19 in Trump's offices might give rise to
20 conversations that you would want to
21 tape record?
22 A. No. In that particular
23 instance, I did not. I really believed
24 when I was going there that I was going
25 to be doing extensive document review.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Did you -- withdrawn.
3 Is it the case that you made
4 a conscious decision as you were
5 leaving your office or your home that
6 day to not bring the tape recorder?
7 A. It wasn't a conscious
8 decision. A conscious decision would
9 have been to bring it. And I would
10 have brought it if I believed that I
11 was going to have an interview-driven
12 meeting.
13 Q. But your testimony is that
14 you didn't bring it.
15 So my question is: Did you
16 make a conscious decision not to bring
17 it?
18 A. Yes. I made a conscious
19 decision not to bring it.
20 Q. Now, do you believe that it
21 would have been good journalistic
22 practice -- a good journalistic tool or
23 technique for you to have recorded the
24 April 21st, 2005, meeting?
25 A. I certainly believe in the

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1 - TIMOTHY L. O'BRIEN -
2 context of this litigation that it
3 would have been very useful for me to
4 have recorded that meeting.
5 Q. Sir, have you withheld from
6 production in this case the tape
7 recording of the conversation of the
8 April 21st, 2005, meeting at Trump's
9 offices?
10 MR. CERESNEY: I'm just going
11 to object. Asked and answered.
12 MR. RESSLER: Well, this is a
13 completely new question.
14 Q. This question is: Sir, have
15 you withheld -- have you withheld a
16 tape recording of the conversation that
17 occurred when you met with Trump and
18 the CFO and Miss Lokey on
19 April 21st, 2005?
20 Do you have a tape and have
21 you not produced it? That's my
22 question.
23 MR. CERESNEY: Hold on. I'm
24 just going to restate my objection
25 because I don't think it's a

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1 - TIMOTHY L. O'BRIEN -
2 different question: It assumes
3 that he tape recorded it, which
4 he's testified about five times he
5 didn't.
6 Q. Are you withholding a tape
7 recording of any conversation you had
8 at Trump's offices on April 21st, 2005?
9 A. No, I'm not.
10 Q. Have you destroyed a tape
11 recording of any conversation that you
12 had on April 21st, 2005, when you had a
13 meeting at Trump's offices?
14 A. No, I have not.
15 Q. Sir, do you recall that
16 during the April 21st, 2005, meeting at
17 Trump's offices, there were at least
18 four people who came into that
19 conference room where you were with the
20 documents on the table?
21 A. No. I don't recall that. I
22 recall, I believe at the most, three
23 people.
24 Q. Ms. Lokey was there, right?
25 A. Yes.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Correct? Mr. Weiselberg was
3 there, right?
4 A. Correct.
5 Q. Mr. Trump was there for part
6 of the time, right?
7 A. Very minimally, yes.
8 Q. And Jeff McConney, do you
9 know Jeff McConney?
10 A. No, I don't.
11 Q. Do you think it's possible
12 that another -- a fourth person or even
13 a fifth person might have entered the
14 room at some point in time?
15 A. No.
16 Q. So, you think it was only
17 these three?
18 A. I know it was only those
19 three.
20 Q. Okay. Now, during your
21 conversation with Mr. Weiselberg,
22 your -- what you described as a
23 two-and-a-half-hour conversation, did
24 you ask him for the forms that you've
25 described earlier, the IRS forms, bank

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1 -TIMOTHY L. O'BRIEN -
2 statements, Department of Gaming
3 enforcement documents, things like
4 that?
5 A. At the beginning of the
6 meeting.
7 Q. And what did he say?
8 A. He said they weren't there.
9 Q. And what did you say?
10 A. I'd like to look at my notes
11 from the meeting. But generally, I
12 asked him why they weren't there.
13 And I believe his response to
14 that was that he had been directed by
15 Donald to go through the -- the
16 asset -- the valuations of the assets
17 and accounting of the debts based on
18 the -- the yellow legal pad he had in
19 his hand at the time.
20 Q. When you said that you wanted
21 to look at your notes from the meeting,
22 you mean you took notes at the meeting?
23 A. Yes.
24 Q. But --
25 A. Extensive notes.

<p style="text-align: right;">302</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Extensive notes? 3 A. Yes. 4 Q. But not an extensive tape 5 recording or any tape recording, right? 6 A. No. There's no tape 7 recording. 8 Q. So after Weiselberg sat -- 9 well, did Weiselberg say to ask Trump 10 for those kinds of documents, IRS 11 forms, things like that? 12 A. I believe he did during the 13 course of that interview, yes. 14 Q. And did you ask Trump for the 15 those? 16 A. On repeated occasions, 17 including after the meeting. 18 Q. Are any of those 19 conversations on tape, Mr. O'Brien? 20 A. No. I don't believe they are 21 on tape. 22 Q. So there's not a single tape 23 recording -- recorded conversation, is 24 there, where you asked Trump for the 25 financial documents that you've</p>	<p style="text-align: right;">304</p> <p>1 - TIMOTHY L. O'BRIEN - 2 and if he, in fact, had refused to 3 provide them, isn't that precisely the 4 kind of thing you would have wanted to 5 record on tape so there would be a 6 record of Trump refusing to provide you 7 those kinds of documents? 8 MR. CERESNEY: Objection to 9 the form. You can answer. 10 A. Well, in retrospect in the 11 context of this litigation, of course 12 it would be a nice documentation to 13 have. But it had been so frequent, 14 both -- the request had been so 15 frequent over the course of the 16 previous year, our lawyers at The New 17 York Times had been in touch with his 18 lawyers and accountants on 19 documentation issues that had been a 20 subject of discussion not only with 21 Donald but with Howard Rubinstein, a 22 publicist representing Donald. 23 In Donald's own complaint he 24 said that he offered to substantiate 25 his net worth to me. That would have</p>
<p style="text-align: right;">303</p> <p>1 - TIMOTHY L. O'BRIEN - 2 described and Trump refuses to provide 3 them to you; isn't that correct? 4 A. That is correct. 5 Q. In fact, Mr. O'Brien, even in 6 your handwritten notes that were 7 produced in discovery in this case, 8 there is no reference to you asking 9 Trump for any such financial materials 10 and Trump refusing; isn't that correct? 11 A. Other than the April 21st 12 meeting, I think that is correct. 13 Q. Isn't it a fact, Mr. O'Brien, 14 that the reason no tape recording or 15 notes reflect you asking Trump for 16 those kinds of documents and Trump 17 refusing to provide them is because 18 Trump, prior to the April 21st meeting, 19 had already showed you the 20 2004 Statement of Financial Condition? 21 A. No. That's not correct at 22 all. 23 Q. But Mr. O'Brien, if you had 24 asked Mr. Trump for the kinds of 25 financial documents that you described</p>	<p style="text-align: right;">305</p> <p>1 - TIMOTHY L. O'BRIEN - 2 only, I believe, arisen if I had been 3 making the requests. So I did, in 4 fact, make repeated efforts to secure 5 documentation, but I did not record all 6 of those efforts, no. 7 Q. Well, with respect to you 8 requesting the kinds of financial 9 documents you've described from Trump 10 and Trump's alleged refusal to provide 11 them, you didn't -- you didn't record 12 anything about that, at all, either in 13 the form of a tape recording or in the 14 form of handwritten notes; isn't that 15 correct? 16 MR. CERESNEY: Objection. 17 Asked and answered. You can answer 18 it again. 19 A. Other -- other than in my 20 notes from the April 21st meeting or in 21 my exchange with the Forbes reporters, 22 who are also trying to assess his net 23 worth, I had no recordings of that 24 effort. 25 Q. I'm not talking about your</p>

<p style="text-align: right;">306</p> <p>1 - TIMOTHY L. O'BRIEN - 2 conversations with Forbes reporters. 3 A. I'm saying e-mail -- e-mail. 4 Q. I'm asking you, isn't it true 5 that there's not a single recorded 6 written document or tape recording 7 where you asked Trump for financial 8 documents of the sort you've described 9 and Trump refuses to provide them; 10 isn't that correct? 11 A. No. I don't think that's 12 correct. 13 Q. What document -- name me -- 14 A. I would refer to the 15 April 21st meeting and the notes from 16 that meeting. And I would also refer 17 to my e-mail exchange with the Forbes 18 reporters who were trying to assess 19 Mr. Trump's net worth. 20 Q. I'm talking about a 21 conversation with Trump, Mr. O'Brien, 22 with Trump. 23 A. Correct, that is correct. 24 Q. That's correct. And you met 25 with Trump at a minimum of dozens of</p>	<p style="text-align: right;">308</p> <p>1 - TIMOTHY L. O'BRIEN - 2 a minute. I'm on Page 156. I don't 3 see any reference whatsoever to your 4 conversation with Mr. Weiselberg on 5 that page, at all. 6 You would agree with me that 7 there's nothing on Page 156 concerning 8 your two-and-a-half-hour conversation 9 with Mr. Weiselberg, right? 10 A. This is correct. 11 Q. And now I've just turned to 12 Page 157. I don't see -- 13 A. Correct. 14 Q. -- anything on Page 157 at 15 all concerning your two-and-a-half-hour 16 conversation with Weiselberg on 17 April 21st, 2005. 18 A. My mistake. It's begins -- I 19 believe that it begun after the chart 20 that we put into the book that outlined 21 Mr. Trump's net worth as Mr. Weiselberg 22 portrayed it that day. But the actual 23 discussion of what Mr. Weiselberg had 24 to say began at a different point in 25 the book.</p>
<p style="text-align: right;">307</p> <p>1 - TIMOTHY L. O'BRIEN - 2 hours but, as you said, probably many 3 more than that, right? 4 A. Yes. 5 Q. And you tape recorded 6 numerous conversations that you had 7 with Trump; isn't that true? 8 A. That is true. But not all, 9 but not all. 10 Q. But hours worth of 11 conversations, right? 12 A. That is correct. 13 Q. So, tell me, what did Alan 14 Weiselberg talk about for two and a 15 half hours? 16 A. Well, we went through a 17 fairly lengthy discussion about the 18 valuations that the Trump organization 19 placed on his assets, what his -- and 20 what his debt exposure was. 21 That's contained on several 22 pages in the book, beginning at 23 Page 155 and continuing through 24 Page 158 or so. 25 Q. Actually, Mr. O'Brien -- wait</p>	<p style="text-align: right;">309</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. You are -- you talk about 3 Weisel -- what Weiselberg had to say, 4 Mr. O'Brien, on Page 154 in that 5 paragraph where you reference 6 Weiselberg, and on Page 155, which you 7 claim -- 8 A. That's incorrect. 9 Q. -- is a chart? 10 A. That's incorrect. I'm sorry. 11 Q. Right? 12 A. That's incorrect what you 13 just said. It's footnoted as to my 14 discussions about his net worth as 15 Mr. Weiselberg outlined them. 16 Q. Where? What footnote? What 17 footnote? 18 A. Well, for example, at 19 Page 172, Footnote 63. 20 Q. Oh, so you have Footnote 63 21 as a reference to your meeting with 22 Mr. Weiselberg, the two-and-a-half-hour 23 meeting, sir. 24 A. I do. 25 Q. And I'm sorry. What page is</p>

<p style="text-align: right;">310</p> <p>1 - TIMOTHY L. O'BRIEN - 2 that? 3 A. Page 172. 4 Q. And what - what page does 5 the footnote appear on, do you know? 6 A. Page 172. 7 Q. No. What page does the 8 actual footnote -- 9 A. On Page 259. 10 Q. Okay. So that's -- that's -- 11 that's the paragraph that begins, 12 "Donald's recent golf course ventures"? 13 A. No. It's the paragraph that 14 begins at the bottom of Page 171. 15 Q. "Donald does on 40 Wall 16 Street"? 17 A. Yes. 18 Q. Okay. So there's that 19 paragraph and then the next paragraph? 20 A. The next paragraph -- 21 Q. Okay. 22 A. -- as well as the next page, 23 Page 173, in the middle paragraph on 24 Page 173. 25 Q. Where on Page 173 are you</p>	<p style="text-align: right;">312</p> <p>1 - TIMOTHY L. O'BRIEN - 2 that day? 3 A. I have come to learn that, 4 yes. 5 Q. Now, with respect to your 6 conversation with Mr. Weiselberg, and 7 tell me if this is incorrect, but you 8 claim that he provided you -- 9 Weiselberg did, with values for various 10 Trump properties and that you wrote the 11 properties and the valuations down and 12 prepared the chart that appears in 13 155;; is that correct? 14 A. That is correct. 15 Q. You claim that the chart that 16 appears on Page 155 reflects the 17 valuations of Trump assets as told to 18 you by Weiselberg, right? 19 A. That is correct. 20 Q. But isn't it the case, 21 Mr. O'Brien, that the chart you set 22 forth on Page 155 is missing at least 23 five Trump New York City properties 24 alone? 25 A. No. I don't believe that to</p>
<p style="text-align: right;">311</p> <p>1 - TIMOTHY L. O'BRIEN - 2 attributing anything to what 3 Mr. Weiselberg allegedly told you? 4 A. Footnote 66 on Page 173. 5 Q. And where does that footnote 6 appear? 7 A. It appears at Page 259 of the 8 book, and it references the first 9 paragraph on Page 173. 10 Q. Okay. When did you write 11 your notes of this conversation? 12 A. With Mr. Weiselberg? 13 Q. Correct. 14 A. That day, when I was in the 15 meeting with him. 16 Q. And how long would you say 17 you spent taking notes? 18 A. With Mr. Weiselberg? 19 Q. Yes. 20 A. About two and a half hours or 21 so. 22 Q. Have you come to learn that 23 Ms. Lokey in this case testified that 24 she didn't see you take notes for more 25 than a few minutes during the course of</p>	<p style="text-align: right;">313</p> <p>1 - TIMOTHY L. O'BRIEN - 2 be the case. 3 Q. Well -- 4 A. At least not to the best of 5 my knowledge. 6 Q. 100 Central Park South, that 7 doesn't appear. 8 A. Well, he does have -- the 9 term here is "other land and condo 10 inventory." So they very well could 11 have been -- 12 Q. You think that encompasses 13 100 Central Park South? 14 A. Possibly. It's hard for me 15 to ascertain exactly how they account 16 for some of these things. 17 Q. Well, did you ask him during 18 the two-and-a-half-hour conversation? 19 A. I did. And he -- both other 20 land and condo inventory, he -- he -- 21 when I asked him for specifics on it, 22 he kept to generalities and described 23 them as assorted holdings. 24 Q. He kept to generalities for 25 the course of two and a half hours?</p>

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1 - TIMOTHY L. O'BRIEN -
2 A. I said on those specific line
3 items.
4 Q. What about Trump Plaza,
5 that's not referenced on the chart that
6 you claim you derived from Weiselberg's
7 statements, right?
8 A. This chart -- this chart is
9 derived from what Mr. Weiselberg
10 provided me at that meeting.
11 Q. And Trump Plaza is nowhere
12 mentioned, correct?
13 A. It's not on this list.
14 Q. And Trump Palace is nowhere
15 mentioned, correct?
16 A. That's correct.
17 Q. And Trump International is
18 nowhere mentioned, correct?
19 A. That's correct. Are you
20 talking now about properties he owns or
21 properties he's generated income
22 from --
23 Q. No. I'm just asking you --
24 I'm just -- I'm just -- my question
25 was: The properties I just mentioned

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1 - TIMOTHY L. O'BRIEN -
2 appear nowhere.
3 They're not mentioned on this
4 chart; isn't that correct?
5 MR. CERESNEY: Let me just
6 object to you characterizing
7 questions. Your first question was
8 there are five properties he owns
9 in New York that don't appear on
10 this. So now you're saying that
11 these just five properties.
12 Q. Mr. O'Brien, the properties I
13 just mentioned, the 100 Central Park
14 South, Trump Plaza, Trump Palace, Trump
15 International, do not appear on your
16 chart, correct?
17 A. They do not appear on this
18 chart; that's correct.
19 Q. Okay. So your testimony is
20 that in telling you about Trump's
21 assets, Weiselberg, his CFO, didn't
22 even mention at least four properties,
23 right?
24 A. Well, I assume that he was
25 talking about properties that Mr. Trump

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1 - TIMOTHY L. O'BRIEN -
2 either owned or that generated cash for
3 Mr. Trump; and, for example, Mr. Trump
4 doesn't own Trump International.
5 Q. So, again, my question to you
6 is: Weiselberg didn't mention that
7 property, right?
8 A. He did not mention that
9 property by name in our meeting.
10 Q. Okay. If you could direct
11 your attention to the exhibit that's on
12 the top of that pile.
13 A. Uh-huh.
14 Q. It's the document from
15 Textron, TXT 2657.
16 Do you see that?
17 A. Yes.
18 Q. This is Trump's
19 2004 Statement of Financial Condition.
20 A. Uh-huh.
21 Q. Let me direct your attention
22 to the ledger that says, "Assets."
23 A. Okay.
24 Q. Do you see on the bottom,
25 where it says, "Real And Operating

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1 - TIMOTHY L. O'BRIEN -
2 Properties"? See that?
3 A. I'm sorry. I don't. Oh, oh,
4 yes. Okay.
5 Q. So, at the bottom of that
6 section there's a reference to
7 "Properties Under Development
8 Westchester County, New York," and the
9 value of the assets listed here is
10 102 million.
11 Do you see that?
12 A. I do.
13 Q. Weiselberg didn't mention
14 that property to you during the
15 April 21st meeting, Mr. O'Brien?
16 A. Well, I'm not sure if this
17 reference is the golf course venture
18 that's in Westchester County or if this
19 references a White Plains project that
20 he was involved with.
21 Q. Did you ask him?
22 A. Well, we didn't discuss this.
23 Q. Well, when he mentioned the
24 golf course properties, did you ask him
25 what properties he was referring to,

<p style="text-align: right;">318</p> <p>1 - TIMOTHY L. O'BRIEN - 2 because all you wrote was four golf 3 courses? 4 A. Yes, I did. I did ask him 5 about those golf courses. 6 Q. He refused to provide that 7 information? 8 A. No. It's reflected in my 9 notes. 10 Q. But it's not in this chart, 11 right? 12 A. It is. Aggregate is four 13 golf courses and then there's 14 discussion of it. 15 Q. But you don't know if one 16 them would be the Westchester golf 17 course? 18 A. Pardon me. At Page One - 19 let's see, 172. 20 Q. But you don't know if the 21 Westchester course was one of them? 22 A. And in the second paragraph 23 there. 24 Q. Does it reference the 25 Westchester course?</p>	<p style="text-align: right;">320</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Do you see that? 3 A. I do. 4 Q. Did Weiselberg mention those 5 properties? 6 A. They may have been part of 7 Condo Inventory, which I asked him to 8 detail but he did not. 9 Q. Okay. And if you go up to 10 Trump Plaza, commercial and retained 11 residential portions, do you see that? 12 A. I do. 13 Q. And the figure of their value 14 is listed at 26.6 million. 15 Do you see that? 16 A. I do. 17 Q. And those aren't mentioned on 18 your chart, right? 19 A. Correct. 20 Q. Now, you write in your book 21 about your conversation with 22 Mr. Weiselberg, quote, "When I sat down 23 in a Trump Tower conference room one 24 afternoon with Alan Weiselberg, the 25 Trump organization's chief financial</p>
<p style="text-align: right;">319</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Reference - no. 3 Q. So, if you could go up from 4 the reference to "Properties Under 5 Development Westchester County," it 6 states, "Trump International Hotel and 7 Towers." 8 Do you see that? 9 A. I do. 10 Q. And the value of the assets 11 on this Statement of Financial 12 Condition are listed as 10.8 million. 13 Do you see that? 14 A. I do. 15 Q. And Weiselberg, Trump's CFO, 16 you claim did not mention Trump 17 International Hotel and Tower in your 18 two-and-a-half-hour conversation with 19 him on April 21st, '05? 20 A. No, he did not. 21 Q. Okay. And if you move up, 22 the previous entry is "Trump Palace, 23 Trump Park and Trump Park East 24 Condominiums," with a value of 25 8.4 million.</p>	<p style="text-align: right;">321</p> <p>1 - TIMOTHY L. O'BRIEN - 2 officer, he claimed Donald was worth 3 about \$6 billion. But the list of 4 assets Weiselberg quoted, all of which 5 were valued in very inflated and 6 optimistic terms and some of which 7 Donald didn't own, totaled only about 8 \$5 billion. Where might the rest have 9 been? 10 "Quote, 'I'm going to go to 11 my office and find that other billion,' 12 unquote, Weiselberg assured me. 13 "Did he ever return? No, he 14 never returned." 15 Do you see that? 16 A. I do. 17 Q. Then you say, "A chart 18 detailing Weiselberg's assessment of 19 Donald's riches appears opposite on 20 Page 155. This chart left me 21 confused." 22 What was so confusing? 23 A. Well, I was confused by the 24 methodology that the Trump organization 25 used for valuing its assets. I felt</p>

1 - TIMOTHY L. O'BRIEN -
 2 that there was nothing in the interview
 3 I had with him that provided real
 4 ground work for how they would value
 5 buildings based on rent rolls or condo
 6 sales.
 7 In the case of some of the
 8 buildings he owns, he doesn't own the
 9 land underneath the buildings,
 10 particularly 40 Wall Street and Trump
 11 Tower, which would seriously defray the
 12 value-- particularly Trump Tower and
 13 40 Wall Street, he doesn't own the land
 14 underneath those buildings so it would
 15 defray the value of those assets in the
 16 event of sale.
 17 There was a valuation placed
 18 on his licensing business but I was
 19 shown nothing that showed receipts that
 20 he had earned from any of his different
 21 licensing ventures.
 22 And on the debt side of the
 23 balance sheet, they had disclosed
 24 information, some of which I was
 25 already familiar with, on publicly

1 - TIMOTHY L. O'BRIEN -
 2 available debt on these properties.
 3 But based on my interviews with people
 4 who have what I would describe as an
 5 intimate understanding of his finances,
 6 his debts on these properties exceeded
 7 what was publicly disclosed. And there
 8 wasn't a lot of disclosure around that.
 9 Additionally, when I
 10 interviewed Mr. Weiselberg about how he
 11 was projecting cash flows, about the
 12 discount rates that he might use to get
 13 a net present value of those assets, he
 14 was very vague.
 15 And so based on my past
 16 practices as a financial journalist and
 17 reporting on issues such as these, I
 18 ended up feeling very confused.
 19 Q. How was he vague?
 20 A. Vague as in he didn't
 21 actually know what discount rates they
 22 were using when they were looking at
 23 cash flows. He was uncertain of the
 24 terms of some of the cash flows. And
 25 most importantly, he wasn't able to

1 - TIMOTHY L. O'BRIEN -
 2 document some of the statements he was
 3 making to me.
 4 Q. So you write that -- based on
 5 what you said, you were confused,
 6 right?
 7 And in your state of
 8 confusion you asked around for
 9 guidance, right?
 10 You write that on Page 154,
 11 "So I," -- "This chart left me confused
 12 so I asked around for guidance,"
 13 right;; is that correct?
 14 A. That is correct.
 15 Q. And then you write, "Three
 16 people with direct knowledge of
 17 Donald's finances, people who had
 18 worked closely with him for years, told
 19 me that they thought his net worth was
 20 somewhere between 150 million and
 21 250 million. By anyone's standards
 22 this still qualified Donald as
 23 comfortably wealthy but none of these
 24 people thought he was remotely close to
 25 being a billionaire."

1 - TIMOTHY L. O'BRIEN -
 2 Do you see that?
 3 A. I do.
 4 Q. And you wrote that, correct?
 5 A. I did.
 6 Q. Isn't it true, Mr. O'Brien,
 7 that by the time of this meeting on
 8 April 21st, you had written this book?
 9 A. I think I had written most of
 10 the book by that point in time. I
 11 don't think I had completed all of my
 12 work on the book at that point.
 13 Q. Isn't it true that in your
 14 contract with your publisher, Warner
 15 Books, you were required to provide a
 16 final manuscript to Warner by April 1st
 17 of '05?
 18 A. But I got an extension from
 19 my publisher into mid-April.
 20 Q. And how did you get that
 21 extension? I want to hear about the
 22 people you spoke to and describe for me
 23 any documents that reflect that.
 24 A. I contacted Rick and I told
 25 him that in order to do as thorough a

<p style="text-align: right;">326</p> <p>1 - TIMOTHY L. O'BRIEN - 2 job as I wanted to and to get as 3 complete a handle as I felt I needed to 4 on my reporting, I needed more time. 5 Q. Was this request in writing, 6 sir? 7 A. You know, I don't recall. I 8 think it was a verbal request. 9 Q. Because no documents 10 referencing any request or granting of 11 an extension have been produced to us 12 in this case. 13 MR. CERESNEY: Are you 14 representing that? 15 MR. RESSLER: Yeah. 16 MR. CERESNEY: Including 17 documents showing that he submitted 18 the manuscript later on? 19 MR. RESSLER: I'm sorry? 20 MR. CERESNEY: Including 21 documents showing that he actually 22 submitted the manuscript later on? 23 MR. RESSLER: No. I'm 24 talking about documents reflecting 25 Mr. O'Brien's purported request for</p>	<p style="text-align: right;">328</p> <p>1 - TIMOTHY L. O'BRIEN - 2 to have asked their permission to do 3 it. 4 MR. RESSLER: Move to strike. 5 Q. I asked you if you were aware 6 of any documents that reflect your 7 request. That was my question. You 8 heard my question. Can you answer my 9 question, the question I asked? 10 Are you aware of any 11 documents that reflect your request? 12 A. No, I'm not. 13 Q. Thank you. 14 Are you aware of any 15 documents -- any document that reflect 16 that Warner Books granted your request 17 for an extension? 18 A. No, I'm not. 19 Q. Thank you. 20 So you said you got an 21 extension until mid-April, Mr. O'Brien? 22 A. No. I said mid-May. 23 Q. Mid-May? Well, what 24 percentage of the book was written by 25 the time of this April 21st, '05,</p>
<p style="text-align: right;">327</p> <p>1 - TIMOTHY L. O'BRIEN - 2 an extension and Mr. Wolff's 3 purported granting of that request. 4 That's what I'm referring to. 5 Q. There are no documents that 6 reflect you requesting an extension 7 from Wolff or anyone else at Warner, 8 are there? 9 MR. CERESNEY: You're asking 10 if he's aware of any? 11 Q. Yes. 12 A. Other than the manuscript 13 itself arriving in mid-May, no. 14 Q. Right. I'm not asking you 15 about the manuscript. I'm asking you 16 about any documents that would reflect 17 that you, at any point in time, 18 requested an extension from any person 19 at Warner Books. 20 There's no such document, 21 correct? 22 A. In order for me to have 23 delivered the book in mid-May, it would 24 have put me in violation of my contract 25 with my publisher; so I would have had</p>	<p style="text-align: right;">329</p> <p>1 - TIMOTHY L. O'BRIEN - 2 meeting, sir? 3 A. A large percentage of it. I 4 would say probably -- you know, 98, 5 99 percent of it. 6 Q. Isn't it true, Mr. O'Brien, 7 that you told Michelle Lokey at this 8 April 21st, 2005, meeting, that you 9 viewed the meeting as a total waste of 10 time because you had already written 11 the book? 12 A. No. I -- I -- I don't -- I 13 definitely didn't say that to her. And 14 there would be no way that -- that -- 15 that Miss Lokey would have any 16 knowledge of where I was at all in 17 terms of the total progress on the 18 book. 19 Q. Well, have you learned that 20 Ms. Lokey's knowledge concerning your 21 finishing the book, according to 22 Ms. Lokey's testimony, came from you 23 because you told her? 24 Have you learned that that's 25 what she testified to under oath at</p>

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1 - TIMOTHY L. O'BRIEN -
2 deposition several weeks ago in this
3 case?
4 A. I'm not aware of everything
5 that she testified to but --
6 Q. Okay.
7 A. -- obviously, I'm not
8 agreeing with her statements.
9 Q. Right. I understand that.
10 How much time passed between
11 the time you had the April 21st meeting
12 in '05, which you claim left you
13 confused, and the time you contacted
14 the three people referenced in this
15 paragraph with respect to whom you
16 claim to have asked for guidance?
17 A. Oh, jeez, within days.
18 Q. So give me the sequence. You
19 have the meeting on April 21st, 2005,
20 right? It's two and a half hours with
21 Weiselberg?
22 A. Yes.
23 Q. And Lokey?
24 A. Correct.
25 Q. By the way, did you review

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1 - TIMOTHY L. O'BRIEN -
2 any of the documents that were there?
3 A. Yes, I did.
4 Q. Did you -- how much time did
5 you spend reviewing the documents?
6 A. Approximately 15 to
7 20 minutes, the documents that were on
8 the table.
9 Q. And what happened with
10 respect to the remaining two hours and
11 10 minutes, approximately?
12 A. That time was spent
13 interviewing Mr. Weiselberg. A small
14 percentage of the time I spoke with
15 Miss Lokey, after I finished
16 interviewing Mr. Weiselberg.
17 Q. By the way, when you realized
18 that you were not going to be spending
19 hours reviewing documents at this
20 meeting, according to what you've told
21 us, did you say to Weiselberg or Lokey,
22 "Hey, I now realize I'm going to be
23 interviewing Weiselberg. Let me just
24 go get my tape recorder?"
25 A. No, I didn't.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Because at some point during
3 this meeting, early on, you realized
4 that, in fact, you weren't going to be
5 spending a lot of time reviewing
6 documents at this meeting; but, in
7 fact, you were going to be interviewing
8 Mr. Weiselberg about Trump's assets,
9 right?
10 A. Correct.
11 Q. But you didn't call a halt to
12 the meeting and get a tape recorder,
13 right?
14 A. That is correct.
15 Q. Okay. Now, with respect to
16 the documents that you reviewed for
17 15 to 20 minutes, what were they?
18 A. They were largely
19 documentation of his ownership, what I
20 would describe as deal books, deeds,
21 mortgages relating to various assets he
22 has, Trump Tower, 40 Wall Street,
23 et cetera.
24 Q. And at some point at that
25 meeting, did you see Trump a second

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1 - TIMOTHY L. O'BRIEN -
2 time, because you've already testified
3 that you saw Trump at the very
4 beginning?
5 A. Yeah. He came back in at the
6 end.
7 Q. And what happened during that
8 meeting, if anything?
9 A. Well, we were with the other
10 two. He came in very briefly. As I
11 recall it, he held his arms out and he
12 said, "Am I rich or am I rich?"
13 Q. What did you say?
14 A. I don't recall. He's rich,
15 so I guess I would have said, "Yep,
16 you're rich, Donald."
17 Q. Well, why wouldn't you,
18 Mr. O'Brien, have said, "Hey, Donald, I
19 need these financial documents that I
20 thought I was coming to see, the IRS
21 forms, the Department of Gaming
22 enforcement forms, mortgage
23 information?"
24 Why didn't you say that?
25 A. Well, in fact, I did. On the

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1 - TIMOTHY L. O'BRIEN -
2 following Saturday morning, I visited
3 him at Trump Tower and -
4 Q. Well, why didn't you say it
5 at this meeting, on April 21st?
6 A. Well, I brought it up with
7 Alan, and I brought it up with Donald
8 again later.
9 Q. But my question to you is --
10 I want the record to be as clear as
11 possible.
12 A. Okay.
13 Q. You show up at this meeting.
14 This is your testimony. Okay? Tell me
15 if I've got it wrong.
16 You show up at the meeting
17 and you realize it's not the meeting
18 you had expected, true?
19 A. Correct.
20 Q. Because you thought you were
21 going to see all kinds of financial
22 documents that, alas; you were not
23 going to see, correct?
24 A. Correct.
25 Q. This is what you're claiming,

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1 - TIMOTHY L. O'BRIEN -
2 correct?
3 A. Correct.
4 Q. You say spend two and a half
5 hours meeting with Weiselberg, right?
6 And you have a conversation with him,
7 right?
8 A. I have an interview with him,
9 yes.
10 Q. I take it you're somewhat
11 disappointed that you weren't shown the
12 kinds of documents that you expected to
13 see, right?
14 A. I was not surprised because,
15 as I said, I had spent the better part
16 of a year trying to get these
17 documents. But it would have been very
18 useful and easler for me, in the course
19 of my reporting and that day, to have
20 gotten the documents I was asking for,
21 yes.
22 Q. So there's some
23 disappointment that's going on with you
24 at that meeting, right?
25 A. I don't know if I would

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1 - TIMOTHY L. O'BRIEN -
2 describe it as disappointment, no.
3 Q. So at some point towards the
4 end of your meeting, Trump comes into
5 the room, right?
6 A. Yes.
7 Q. Did he -- he extends his arms
8 and he says, "Am I rich or am I rich,"
9 right, Mr. O'Brien?
10 A. Right.
11 Q. And you don't say, "Donald,
12 it's difficult for me to answer that
13 question because you hadn't given me
14 all of the kinds of financial materials
15 that I need to determine if that's the
16 case."
17 You don't say that, do you?
18 A. Well, in fact --
19 Q. In words or substance?
20 A. That wouldn't have been the
21 only statement I would have made if I
22 had chose to bring it up on that
23 occasion. I also would have told him
24 how I felt that his CFO appeared to be
25 unreliable and unsophisticated in his

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1 - TIMOTHY L. O'BRIEN -
2 financial assessments of the Trump
3 holdings. And I wasn't prepared to do
4 that right in front of Mr. Weiselberg
5 at that moment.
6 Q. So you didn't tell Trump that
7 you were disappointed that the kinds of
8 financial documents you thought were
9 going to be there, were not there;
10 isn't that correct? It's a yes or no
11 question.
12 A. That's incorrect.
13 Q. You did tell Trump that you
14 were disappointed?
15 A. Yes.
16 Q. I asked you what you told
17 Trump.
18 A. Not in that meeting.
19 Q. I'm asking you only about the
20 April 21st, 2005, meeting.
21 Do you understand that?
22 Let me set the ground rules
23 for my question. I'm asking you only
24 about the April 21st, '05, meeting.
25 A. Okay.

<p style="text-align: right;">338</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Okay. It's a yes or no 3 question. 4 Isn't it true that when Trump 5 came in and said, "Am I rich or am I 6 rich," you did not request the 7 financial materials that you claim you 8 needed to determine his net worth; 9 isn't that true? 10 A. That is true. I had already 11 expressed that to his attorney who was 12 there at the same meeting. 13 Q. It's a yes or no question. 14 A. Actually, I don't think it's 15 a yes or no question. 16 Q. You didn't tell that to 17 Trump; isn't that true? 18 A. That is true. 19 Q. Okay. You just leave. You 20 say, "Goodbye, Donald. Thanks," and 21 you leave, right? 22 MR. CERESNEY: Objection. 23 A. No. In fact, I discussed 24 with the attorney he had there who had 25 prepared -</p>	<p style="text-align: right;">340</p> <p>1 - TIMOTHY L. O'BRIEN - 2 misrepresented the terms of that 3 transaction. 4 She expressed to me that she 5 really believed that the licensing 6 portion of their business was very 7 vibrant, and this was as I began to 8 look through the deal books and 9 property records that were on the 10 table. 11 I conveyed to her that I was 12 surprised that there was no 13 documentation here outlining his net 14 worth in -- under the terms that I had 15 been seeking, that these were ownership 16 documents but only a first step. And 17 why wasn't there anything else there 18 detailing his net worth. 19 She said she didn't know why 20 either. That she had been directed 21 over the course of a weekend to 22 assemble these documents, but she did 23 not know why those type of documents 24 weren't there. 25 And I can discuss other</p>
<p style="text-align: right;">339</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. I'm asking what you said to 3 Donald. I just want to know about your 4 conversation with Trump. 5 I'll get to what you said to 6 other people. But right now I'm 7 focusing on your conversation with 8 Trump. 9 A. That was at the very end of 10 the interaction with him on that day 11 and, yes, I said good-bye. 12 Q. Okay. 13 A. And I told him I would see 14 him on Saturday morning. 15 Q. Okay. Now, what did you talk 16 to Lokey about at the meeting, if 17 anything? 18 A. Well, I first began to go 19 through the documents with her. She 20 pointed out to me immediately after 21 Alan left the room that she believed 22 that Mr. Weiselberg had not been 23 truthful with me about the terms of 24 Daewoo's conveyance of Trump World 25 Tower to Donald, that he had</p>	<p style="text-align: right;">341</p> <p>1 - TIMOTHY L. O'BRIEN - 2 elements of my conversation with her if 3 I can refresh my recollection by 4 looking at my notes. 5 Q. You can't remember any other 6 things that you talked to Miss Lokey 7 about without looking at your notes to 8 refresh your recollection? 9 A. About Mr. Trump's finances or 10 overall? 11 Q. Overall. 12 A. After it became apparent to 13 me that nothing on the table was going 14 to help me ascertain his net worth in 15 the way that I needed to in terms of 16 documenting valuations of his assets 17 and liabilities, we made small talk for 18 approximately 15 minutes or so. 19 Q. It was only 15 minutes, your 20 small talk with Miss Lokey? 21 A. I'm sorry? 22 Q. It was only 15 minutes, your 23 small talk? 24 A. Yeah. About 15 minutes, 25 15 to 20, I would say.</p>

<p style="text-align: right;">342</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Thanks. 3 MR. RESSLER: Do you need to 4 change the tapes? 5 THE VIDEOGRAPHER: The time 6 on the video monitor is 4:29 p.m. 7 We're off the record. This ends 8 Tape Number 4. 9 (Whereupon, there was a brief 10 recess in the proceedings.) 11 THE VIDEOGRAPHER: We're back 12 on the record. The time on the 13 video monitor is 4:32 p.m. This is 14 Tape Number 5. 15 BY MR. RESSLER: 16 Q. Mr. O'Brien, we'll be 17 discussing your conversation with 18 Miss Lokey during the April 21st, 2005, 19 meeting probably tomorrow. 20 But right now I want to 21 circle back to the sources you 22 reference on Page 154 of your book. 23 Again, I want the record to be clear. 24 You leave the Trump's offices 25 in a state of confusion and you ask</p>	<p style="text-align: right;">344</p> <p>1 - TIMOTHY L. O'BRIEN - 2 identity of those sources. 3 MR. TAMBUSI: But that 4 additional inquiry is what's 5 objectionable, not the date. 6 MR. CERESNEY: No. The date 7 allows you to do the additional 8 inquiries and reach a conclusion 9 with other witnesses. And so, 10 therefore, this witness -- I'm 11 going to instruct the witness not 12 to answer as to specifics dates he 13 discussed these issues with the 14 confidential sources. He can 15 answer general dates. 16 MR. TAMBUSI: Understand 17 we're going to preserve our right 18 at this hour to contact the Court, 19 possibly before tomorrow's 20 deposition, to determine whether or 21 not we should go forward on that. 22 MR. CERESNEY: You can - 23 reserve that right, that's fine. 24 Obviously, we'll state our 25 objection.</p>
<p style="text-align: right;">343</p> <p>1 - TIMOTHY L. O'BRIEN - 2 around for guidance, right? 3 A. Correct. 4 Q. And so how much time passes 5 until you actually speak with the three 6 anonymous sources referenced on 7 Page 154? 8 MR. CERESNEY: I'm going to 9 instruct the witness answer as to 10 general terms to when he spoke to 11 these sources and not specific 12 dates. Go ahead. 13 A. Within days of this meeting. 14 Q. How many days? 15 A. I'm not going to speak with 16 any specificity to that. 17 MR. CERESNEY: I'm directing 18 him not to do that. 19 MR. TAMBUSI: How does that 20 possibly tend to reveal who the 21 sources are? 22 MR. CERESNEY: Because the 23 dates of those conversations could 24 lead to additional inquiry that 25 could potentially lead to the</p>	<p style="text-align: right;">345</p> <p>1 - TIMOTHY L. O'BRIEN - 2 BY MR. RESSLER: 3 Q. So you write, "A chart 4 detailing Weiselberg's assessment of 5 Donald's riches appears opposite on 6 Page 155. This chart left me confused 7 so I asked around for guidance." 8 And your testimony is that 9 you asked around for guidance within 10 days of walking out of Trump's offices, 11 being confused? 12 A. Yes. 13 Q. Did you meet with these three 14 people at that point in time? Or did 15 you communicate with them over the 16 phone? Or did you communicate with 17 them via e-mail? Or did you 18 communicate with them via some other 19 means? 20 MR. CERESNEY: I'm going to 21 let him answer in general terms how 22 he communicated with them. 23 A. I communicated with them over 24 the telephone. 25 MR. CERESNEY: On these --</p>

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1 - TIMOTHY L. O'BRIEN -
2 Q. Well, that was an answer to
3 my question.
4 A. Okay.
5 Q. Did you make that call from
6 your office or from your home or from
7 some other place?
8 MR. CERESNEY: I'm going to
9 object. Again, same reason as
10 before, potential disclosure of
11 identity of the sources through
12 additional information.
13 Q. Did you set up a phone call
14 with these sources and then have a more
15 in-depth conversation, or did you
16 simply call them and have your
17 conversation then and there?
18 MR. CERESNEY: Objection.
19 I'm going to state the same
20 objection and instruct him not to
21 answer.
22 Q. Did you communicate with
23 these three sources -- withdrawn.
24 Am I correct that the only
25 means of your communication with these

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1 - TIMOTHY L. O'BRIEN -
2 three sources at this point in time --
3 at some point after April 21st --
4 within days after April 21st was via
5 the telephone?
6 A. Yes, that is correct.
7 Q. Did you speak on the phone
8 with all three of these sources or with
9 only some of them?
10 A. I spoke with all three of my
11 sources.
12 Q. Approximately -- withdrawn.
13 During these phone calls with
14 all three of your sources, were all
15 three of the sources together?
16 A. No, they were not.
17 Q. Were two out of the three
18 together?
19 A. No, they were not.
20 Q. So each phone call that you
21 had with these sources, it was -- the
22 participants were only you and one of
23 the sources per call?
24 Do you understand what I
25 mean?

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1 - TIMOTHY L. O'BRIEN -
2 A. Rephrase it, please.
3 Q. With respect to each of your
4 phone calls with these three sources
5 during this period of time, it was a
6 one-on-one telephone conversation
7 between you and each of those sources,
8 right?
9 A. That's correct.
10 Q. Was anyone else listening in
11 on the line on your end?
12 A. No.
13 Q. To your knowledge, was anyone
14 else listening in on the line on the
15 sources's end?
16 A. To my knowledge, no.
17 Q. Did you advise any of these
18 sources in any of these phone
19 conversations that you had spoken to
20 the other source or sources?
21 Do you understand?
22 A. No.
23 Q. Do you understand my
24 question?
25 A. I do. No.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Did you have any
3 understanding as to whether one or more
4 of these sources had learned that you
5 had spoken to other of these sources?
6 Do you understand that
7 question?
8 A. I do. I don't think -- I
9 know that none of the three sources
10 knew that I was speaking to the others,
11 not only at this point in time but
12 throughout the course of my reporting
13 for The New York Times and for the
14 book.
15 Q. What leads you to say that?
16 A. Because the individuals
17 inquired who I was speaking with, and I
18 did not disclose the identity of other
19 people I was speaking with on this
20 topic.
21 Q. Without having disclosed the
22 identities of the other people with
23 whom you were speaking on this topic,
24 did you state or suggest in words and
25 substance that you were, in fact,

<p style="text-align: right;">350</p> <p>1 - TIMOTHY L. O'BRIEN - 2 speaking to other sources on the topic? 3 Do you understand my 4 question? 5 A. Yes. I do understand your 6 question. 7 Q. And the answer is? 8 MR. CERESNEY: Let me just 9 ask the witness. 10 Do we need to confer in order 11 to determine whether there's a 12 privilege objection? 13 THE WITNESS: Yes. 14 MR. CERESNEY: Okay. Then we 15 need to confer on that question. 16 Okay? We'll take a break. 17 THE VIDEOGRAPHER: The time 18 on the video monitor is 4:39 p.m. 19 We're off the record. 20 (Whereupon, there was a brief 21 recess in the proceedings.) 22 THE VIDEOGRAPHER: We're back 23 on the record. The time on the 24 video monitor is 4:32 -- sorry, 25 4:42 p.m.</p>	<p style="text-align: right;">352</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. And what did your sources say 3 in response? 4 A. They disputed that valuation 5 as they had repeatedly in the past. 6 Q. So take source number one, 7 what did he or she say? 8 MR. CERESNEY: I'm not -- 9 Q. In response -- 10 MR. CERESNEY: I'm going to 11 object to the substance of each one 12 of these people. You can ask him 13 generally what they said, but I'm 14 not going to let him answer to the 15 specifics of the conversations. 16 MR. RESSLER: You're 17 permitting him to answer generally? 18 MR. CERESNEY: Yes. 19 Q. So they generally disputed 20 the 5 to \$6 billion valuation? 21 A. Yes. Yes. They 22 affirmatively disputed it. 23 Q. And did each of these 24 sources, in addition to disputing that 25 valuation, advise you that the accurate</p>
<p style="text-align: right;">351</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. RESSLER: There's a 3 pending question. 4 MR. CERESNEY: Can you just 5 reread it back, please, or the 6 court reporter, either one. 7 MR. RESSLER: If she stops 8 typing, I could. 9 (The question requested was 10 read back by the reporter.) 11 A. I do understand the question. 12 What I told the sources was -- 13 uniformly was that was -- that I had 14 had a meeting with Mr. Weisberg in 15 which this number was floated and that 16 I was trying to assess whether or not 17 it was accurate. 18 Q. When you say "this number was 19 floated," what number are you referring 20 to? 21 A. Donald's net worth. 22 Q. Right. But what was the 23 number? 24 A. Five to \$6 billion; 6 billion 25 in this meeting.</p>	<p style="text-align: right;">353</p> <p>1 - TIMOTHY L. O'BRIEN - 2 valuation was 150 to \$250 million? 3 A. They believed that that was 4 what his net worth was. 5 Q. Each of them said that, in 6 words or substance? 7 A. Yes. Independently of one 8 another. 9 Q. Did you, Mr. O'Brien, mention 10 that range to them before they offered 11 their view, that that was the range, 12 150 to \$250 million. 13 Do you understand my 14 question? 15 MR. CERESNEY: Do you 16 understand the question? 17 A. I do understand your 18 question. 19 MR. CERESNEY: I'm going to 20 assert privilege as to the specific 21 substances of the conversation with 22 each of these sources. So I'm 23 going to assert an objection and 24 instruct him not to answer that 25 question.</p>

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1 - TIMOTHY L. O'BRIEN -
2 Q. Well, generally speaking, did
3 each of these sources on their own
4 respond to the valuation that you
5 shared with them, Weiselberg's
6 valuation of 5 to 6 billion, that the
7 accurate number they believed was 150
8 to 250 million, without you mentioning
9 that valuation, the 150 to \$250 million
10 valuation?
11 A. Yes.
12 Q. Was there any reason, without
13 telling me what the reason might have
14 been -- assuming there was a reason,
15 was there any reason why you decided to
16 call one of the alleged sources before
17 the other one or two?
18 MR. CERESNEY: I'm going to
19 object and instruct him not to
20 answer that question.
21 MR. RESSLER: Well, I just
22 want to know if there was a reason
23 that informed Mr. O'Brien's
24 decision as to the order in which
25 he called the sources. I'm not

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1 - TIMOTHY L. O'BRIEN -
2 asking him what the reason was. I
3 just wanted to know if there was a
4 reason.
5 Do you understand?
6 MR. CERESNEY: I understand.
7 I understand the question. I'm
8 going to have to confer with the
9 witness before he answers the
10 question. Okay?
11 MR. RESSLER: Okay.
12 THE VIDEOGRAPHER: The time
13 on the video monitor is 4:47 p.m..
14 We're going off the record.
15 (Whereupon, a brief
16 discussion was held off record.)
17 THE VIDEOGRAPHER: The time
18 on the video monitor is 4:48 p.m.
19 We're back on the record.
20 MS. GORECKI: Mr. O'Brien.
21 THE WITNESS: Thank you.
22 Sorry.
23 MR. CERESNEY: Do you want to
24 answer the question or do you want
25 the court reporter to read it back?

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1 - TIMOTHY L. O'BRIEN -
2 THE WITNESS: Yeah. Can you
3 read it back, please?
4 (The question requested was
5 read back by the reporter.)
6 MR. CERESNEY: We're going to
7 allow him to answer.
8 A. Yeah. I don't recollect the
9 order in which I called them, but there
10 would have been no reason for me to
11 call them in any certain order anyway.
12 Q. What did you do, Mr. O'Brien,
13 if anything, to determine whether these
14 three anonymous sources, or any of
15 them, had a bias against Mr. Trump?
16 A. Well, I relied on the same
17 journalistic practices that I used
18 during my reporting career in my
19 newspaper work and my magazine work,
20 which was to rely on documented
21 evidence, as well as media reports and
22 my own understanding of Trump and his
23 activities as a basis for measuring
24 their statements against what was
25 demonstrably true.

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1 - TIMOTHY L. O'BRIEN -
2 I talked to other individuals
3 who were familiar with these three, who
4 assessed their level of intimacy with
5 the Trump organization. I questioned
6 them about their own histories with
7 Mr. Trump.
8 And in one case, I would
9 describe one of the sources as a fan.
10 But I also had other information from
11 these three sources, that financial
12 information pertaining to Donald's
13 business activities and his finances
14 that I was able to verify with a great
15 deal of certainty.
16 So I used all of those
17 techniques to assess what the quality
18 of the information I received from the
19 sources, their bona fides and their
20 lack of bias.
21 Q. Who, sir, did you talk to
22 about the reliability of the three
23 anonymous sources or any of them?
24 MR. CERESNEY: Objection. I
25 direct him not to answer that

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1 - TIMOTHY L. O'BRIEN -
2 question.
3 MR. TAMBUSI: That's clearly
4 the case that was just decided by
5 the court of New Jersey that you're
6 permitted to find out who he spoke
7 to about the sources and whether he
8 disclosed the identity of the
9 sources to anyone else.
10 MR. CERESNEY: That's a
11 different question. The question
12 that was asked was: Who did he
13 discuss the reliability of these
14 sources with, not who he disclosed
15 the confidential sources to.
16 That's a different question.
17 Q. There's two questions I want
18 to explore with you, Mr. O'Brien. One,
19 it concerns the reliability -- or
20 alleged reliability of the sources; and
21 the other is the bias or possible bias
22 with respect to the sources. Okay?
23 So let me just take the bias
24 part first and the question I asked you
25 initially was related to bias.

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1 - TIMOTHY L. O'BRIEN -
2 Who did you speak to, if
3 anyone, to determine whether these
4 alleged anonymous sources harbored any
5 bias against Trump?
6 MR. CERESNEY: Let me just
7 ask whether you're asking who did
8 he speak to other than the sources?
9 MR. RESSLER: Yes.
10 MR. CERESNEY: First of all,
11 the -- I'm going to instruct him
12 not to answer specifics. If you
13 want to ask him generally did he
14 have conversations with others.
15 MR. RESSLER: Well, I do want
16 to ask him that. Yes, I do.
17 MR. CERESNEY: Okay. But I'm
18 going to instruct him not to answer
19 as to any specific conversations he
20 had with others about the
21 identity -- about these sources and
22 the issues of bias.
23 Q. Did you have conversations
24 with any other people other than the
25 three alleged anonymous sources to

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1 - TIMOTHY L. O'BRIEN -
2 determine if the three alleged
3 anonymous sources were biased in any
4 way, shape or form toward Trump?
5 A. Yes, I did.
6 Q. Did you do so with respect to
7 each of the three alleged sources?
8 A. Yes, I did.
9 Q. Who did you talk to with
10 respect -- these third people, who were
11 they?
12 MR. CERESNEY: I'm going to
13 object to that and instruct him not
14 to answer. There's a
15 distinction -- just for the record.
16 The distinction that I'm
17 drawing and objecting to that is
18 that in those conversations, you
19 have not asked him whether --
20 Mr. Tambussi was discussing before
21 waiver and disclosure of his
22 sources.
23 In these conversations,
24 you've not asked him whether he
25 disclosed the fact that these

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1 - TIMOTHY L. O'BRIEN -
2 Individuals were sources or not.
3 And that's what the issue that
4 Mr. Tambussi was getting at before.
5 MR. RESSLER: I could do that
6 now. I mean, I think this is
7 something that we'll dispute and
8 end up going to Court.
9 Q. Mr. O'Brien, to whom, if
10 anyone, did you ever reveal the
11 identities of the three alleged
12 anonymous sources?
13 MR. CERESNEY: I'm going to
14 object to that for a couple of
15 reasons. First, we answered an
16 interrogatory on that in which we
17 disclosed that he had
18 conversations -- no nonprivileged
19 conversations about it.
20 MR. TAMBUSI: If you're
21 going to make a speaking objection
22 like this, the witness needs to be
23 excused.
24 MR. CERESNEY: Okay. We can
25 excuse the witness. That's fine.

362	<p>1 - TIMOTHY L. O'BRIEN - 2 THE WITNESS: Can I just go 3 outside? 4 MR. RESSLER: Yes. That's 5 number one. You can go outside. 6 I'll hold number two. 7 (Witness leaves the room.) 8 MR. RESSLER: Andrew, the 9 fact that you've answered an 10 interrogatory has absolutely no 11 bearing on my entitlement to ask 12 the witness for the information 13 so... 14 MR. CERESNEY: Actually, it 15 does if you've moved to compel a 16 more specific answer, and the Court 17 has denied that motion. And that's 18 what happened with regards to this 19 interrogatory. 20 We answered the interrogatory 21 that there were no nonprivileged 22 discussions in which he disclosed 23 the identify of the sources. You 24 moved to compel a more specific 25 answer to that question.</p>	364	<p>1 - TIMOTHY L. O'BRIEN - 2 question that you asked in 3 deposition is that you specifically 4 moved to compel a more specific 5 answer to the interrogatory in 6 which you asked him the same 7 question and the Judge denied the 8 motion to compel. 9 MR. RESSLER: Okay. It's our 10 view that that doesn't provide any 11 grounds at all to direct the 12 witness not to answer the question. 13 That's our position. 14 MR. MELODIA: Let me just be 15 more specific, Mark. Under 16 Rule 4:14-4, "Attorneys shall not 17 instruct a witness not to answer a 18 question unless the basis is 19 privilege, a right to 20 confidentiality or a limitation 21 pursuant to a previously entered 22 court order." 23 MR. RESSLER: So you're 24 relying on the last of those three 25 things?</p>
363	<p>1 - TIMOTHY L. O'BRIEN - 2 The judge denied that motion 3 and we can get the date if you'd 4 like that denial and that's what 5 we're standing on. I understand 6 your point. 7 MR. RESSLER: I completely 8 disagree with that, but that's 9 fine. We'll fight over that when 10 we have to. 11 MR. CERESNEY: Okay. That's 12 fine. But that's the basis for my 13 referencing the interrogatory, not 14 specifically the answer to the 15 interrogatory; I agree with you. 16 If he generally just answered the 17 interrogatories, you're entitled to 18 ask more specifically now. 19 But the basis for my 20 instructing him not to answer on 21 this is the subsequent motion to 22 compel a more specific answer -- 23 the subsequent motion to compel -- 24 But the basis for my specific 25 objection to his answering the</p>	365	<p>1 - TIMOTHY L. O'BRIEN - 2 MR. MELODIA: Correct. As 3 well as privilege, obviously. 4 MR. TAMBUSI: And now with 5 the decision -- we now have a 6 decision. The Court that says that 7 if, in fact, the sources were 8 disclosed to third parties, that's 9 discoverable. 10 MR. CERESNEY: And that 11 decision actually came down before 12 you made that motion to the judge. 13 And, in fact, I recall you citing 14 that decision in your motion to the 15 judge in which you sought a more 16 complete answer on this and the 17 judge denied that. 18 In fact, I recall you 19 specifically raising Venecia, which 20 I assume is the case that you're 21 referring to. 22 MR. TAMBUSI: That's the 23 case we're talking about. 24 MR. CERESNEY: And you did 25 raise that with the Court,</p>

92 (Pages 362 to 365)

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(212) 490-3430

<p style="text-align: right;">366</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Judge Schneider, and he denied a 3 more specific answer and that's the 4 basis for our objection. It's both 5 a privilege objection as well as 6 the basis for the judge's prior 7 court order. 8 Shall we bring the witness 9 back? 10 MR. RESSLER: Well, wait. So 11 are you going to direct the witness 12 not to answer my questions seeking 13 to find out to whom, if anyone, he 14 disclosed the identities of his 15 sources? 16 MR. CERESNEY: Yes, I will. 17 MR. TAMBUSI: Why don't you 18 ask the questions and we'll put on 19 the objections? 20 MR. CERESNEY: I will not 21 object to him saying generally that 22 he's only disclosed it to people 23 with whom he's in a privileged 24 relationship; that's how we 25 answered the interrogatory but I</p>	<p style="text-align: right;">368</p> <p>1 2 CERTIFICATE 3 STATE OF NEW YORK) 4) ss. 5 COUNTY OF NEW YORK) 6 7 I, HOPE LYNN MENAKER, a Notary 8 Public Within and for the State of New 9 York, do hereby certify: 10 That TIMOTHY L. O'BRIEN, the 11 witness whose deposition is 12 hereinbefore set forth, was duly sworn 13 by me and that such deposition is a 14 true record of the testimony given by 15 the witness. 16 I further certify that I am not 17 related to any of the parties to this 18 action by blood or marriage, and that I 19 am in no way interested in the outcome 20 of this matter. 21 IN WITNESS WHEREOF, I have hereunto 22 set my hand this 18th day of October, 23 2007. 24 25 HOPE LYNN MENAKER</p>
<p style="text-align: right;">367</p> <p>1 - TIMOTHY L. O'BRIEN - 2 will instruct him not to answer 3 beyond that. 4 MR. TAMBUSI: I think we 5 need to make a record of all the 6 questions and all the instructions 7 not to answer to bring to the 8 Court. 9 MR. RESSLER: My suggestion 10 is that it's 4:55, if not 4:57. So 11 you have to make a call. You have 12 to make a call. 13 So, I would say let's call it 14 a day and we'll pick up tomorrow 15 morning. 16 MR. CERESNEY: Okay. 17 MR. RESSLER: Okay. 18 We're off the record. 19 THE VIDEOGRAPHER: The time 20 on the video monitor is 4:58 p.m. 21 We're off the record. This is the 22 end of the deposition for today. 23 (Whereupon, the deposition 24 concluded at 4:58 p.m.) 25</p>	<p style="text-align: right;">369</p> <p>1 2 ACKNOWLEDGEMENT 3 4 STATE OF NEW YORK) 5) ss. 6 COUNTY OF NEW YORK) 7 8 I, TIMOTHY L. O'BRIEN, hereby certify 9 that I have read the transcript of my 10 testimony taken under oath in my 11 deposition of October 15, 2007; that 12 the transcript is a true, complete and 13 correct record of my testimony, and 14 that the answers on the record as given 15 by me are true and correct. 16 17 18 _____ 19 TIMOTHY L. O'BRIEN 20 Subscribed and sworn to before me 21 this _____ day of _____, 2007. 22 23 24 _____ 25 Notary Public, State of New York</p>

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

----- X
DONALD J. TRUMP,)

)
)
Plaintiff,)

No:

-vs-)

CAM-OL-545-06

TIMOTHY O'BRIEN, TIME)

WARNER BOOK GROUP INC., and)

WARNER BOOKS INC.,)

)
)
Defendants.)

----- X
VIDEOTAPED DEPOSITION OF TIMOTHY L. O'BRIEN

OCTOBER 16, 2007

VOLUME II

Taken at the offices of Debevoise &
Plimpton, 919 Third Avenue, New York,
New York, pursuant to notice, before
Hope Menaker, a Shorthand Reporter and
Notary Public of the State of New York.

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1
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 22 ANDREW M. LEVINE, ESQ.
 23 MARY JO WHITE, ESQ.
 24
 25

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1
 2 IT IS HEREBY STIPULATED AND
 3 AGREED by and among the attorneys for
 4 the respective parties hereto, that the
 5 sealing and filing of the within
 6 deposition be waived, that such
 7 deposition may be signed and sworn to
 8 before any officer authorized to
 9 administer an oath with the same force
 10 and effect as if signed and sworn to
 11 before a Justice of this Court.
 12
 13 IT IS FURTHER STIPULATED AND
 14 AGREED that all objections, except as
 15 to the form, are reserved to the time
 16 of trial.
 17
 18 IT IS FURTHER STIPULATED AND
 19 AGREED that the within examination and
 20 any corrections thereto may be signed
 21 before any Notary Public with the same
 22 force and effect as if signed and sworn
 23 to before this Court.
 24
 25 o o o

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1
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 12
 13 Also Present:
 14 Deverell White, Videographer
 15 Carol Fein Ross, Esq.
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1
 2 TIMOTHY L. O'BRIEN,
 3 having been previously sworn as a
 4 witness on October 15, 2007, by a
 5 Notary Public, was examined and
 6 testified as follows:
 7 620 8th Avenue
 8 New York, New York 10018-1405
 9 (Business)
 10
 11 THE VIDEOGRAPHER: We're on
 12 the record. Today's date is
 13 October 16th, 2007. The time on
 14 the video monitor is 10:12 a.m.
 15 This is the beginning of Tape
 16 Number 1, Volume 2 of the
 17 continuing videotaped deposition of
 18 Timothy L. O'Brien.
 19
 20 EXAMINATION BY MR. RESSLER:
 21 Q. Mr. O'Brien, good morning.
 22 A. Good morning.
 23 Q. Let me remind you, sir, that
 24 you are still under oath. An oath was
 25 administered yesterday. You swore to

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1 - TIMOTHY L. O'BRIEN -
2 tell the truth during the course of
3 this deposition and we talked about how
4 the force and effect of that oath is
5 exactly the same as the force and
6 effect of the oath that you will take
7 at the trial of this case in a
8 courtroom.
9 Do you understand that?
10 A. I do.
11 Q. Did you meet with your
12 lawyers after we broke yesterday?
13 A. I did.
14 Q. For how long?
15 A. Jeez, 20 minutes or so I
16 suspect.
17 Q. And did you review any
18 documents with them at that time?
19 A. No. I don't believe we
20 looked at any documents.
21 Q. Did you meet with your
22 lawyers again this morning prior to our
23 commencement of this deposition?
24 A. I did.
25 Q. For how long?

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1 - TIMOTHY L. O'BRIEN -
2 A. Half an hour.
3 Q. Did you review any documents
4 this morning?
5 A. No, we did not.
6 Q. Earlier you testified that in
7 terms of your preparation with lawyers
8 for this deposition you met with them
9 for four hours, I think it was last
10 week, and also met with them for two
11 eight-hour days as well; is that
12 correct?
13 A. That is what I said, although
14 I actually met with them for two
15 four-hour -- three four-hour sessions
16 ultimately.
17 Q. And did you meet with them
18 prior to that time?
19 A. Yes, I did.
20 Q. For how long?
21 A. I would say the same,
22 about -- I think I believe about two
23 four-hour sessions months ago.
24 Q. And what about prior to that
25 meeting?

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1 - TIMOTHY L. O'BRIEN -
2 A. On a number of occasions we
3 had discussions about the case.
4 Q. How long did you meet with
5 Mr. McCraw, The Times general counsel,
6 in connection with your deposition?
7 A. I didn't meet with him at
8 all.
9 Q. What about meetings with the
10 Warner general counsel or any Warner
11 in-house attorney?
12 A. In preparation for my
13 deposition?
14 Q. Correct.
15 A. I met with no Warner counsel
16 in preparation for my deposition, as I
17 recall.
18 Q. I don't mean just a
19 one-on-one meeting. I mean even as
20 part of a larger group.
21 MR. CERESNEY: With the
22 exception, I assume, of today, this
23 morning?
24 MR. RESSLER: Yes.
25 MS. WHITE: And yesterday.

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1 - TIMOTHY L. O'BRIEN -
2 A. Prior to the deposition
3 actually beginning?
4 Q. Correct.
5 MR. CERESNEY: Let me just
6 clarify for the record. Miss Ross
7 was here yesterday and today and so
8 when we met yesterday evening and
9 this morning, she was present.
10 Q. Did any in-house counsel from
11 the publisher attend any meetings other
12 than the ones your counsel just
13 mentioned where you were present?
14 A. In preparation for today's
15 deposition?
16 Q. Correct.
17 A. No.
18 Q. Mr. O'Brien, your book was
19 published in October of 2005; is that
20 correct?
21 A. That's correct.
22 Q. Was it approximately
23 October 26th of 2005?
24 A. That sounds right to me.
25 Q. Before the actual

<p style="text-align: right;">381</p> <p>1 - TIMOTHY L. O'BRIEN - 2 publication, were galleys distributed? 3 A. They were. 4 Q. What's a galley? 5 A. A galley is a penultimate 6 text copy of the book that is used to 7 do fact checking and copy editing. 8 Q. What do you mean by 9 "penultimate"? 10 A. Before the book goes into a 11 bound form. 12 Are you referencing bound 13 galleys or are you referencing 14 manuscripts that - parts of the 15 manuscript that were sent around? 16 Q. What's the difference between 17 the two? 18 A. There were -- maybe they're 19 not referred to as galleys in-house. 20 They were, you know, drafts of the 21 document - of the book that we used 22 with copy editors to handle, you know, 23 copy editing issues, and then there 24 were galleys that came out in soft 25 cover prior to publication of the hard</p>	<p style="text-align: right;">383</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. In the interest of time -- 3 well, withdrawn. 4 Let's start with that. 5 A. Thank you. 6 Q. Mr. O'Brien, let me direct 7 your attention to the last page of this 8 document which reflects an e-mail 9 exchange between you and 10 Mr. Sulzberger. The last page contains 11 an e-mail from Mr. Sulzberger on the 12 bottom dated September 5th of '05. 13 Do you see that? 14 A. I do. 15 Q. The subject line is, "The 16 Donald." 17 Do you see that? 18 A. I do. 19 Q. And Mr. Sulzberger wrote to 20 you, "Tim, I hope I have your correct 21 e-mail address. Just finished reading 22 your book while trekking the Inca 23 Trail, no less, and wanted you to know 24 how much I enjoyed it. Congrats and 25 what exactly was Bennett's favorite</p>
<p style="text-align: right;">382</p> <p>1 - TIMOTHY L. O'BRIEN - 2 cover. 3 Q. Who is Arthur Sulzberger, 4 Mr. O'Brien? 5 A. He's the publisher of The New 6 York Times. 7 Q. What is the function of the 8 publisher of The New York Times? 9 A. Well, in Arthur's case, the 10 family controls the newspaper, and he 11 oversees the business side of the 12 publication as well as the editorial 13 page. 14 Q. Did you communicate with the 15 publisher of The New York Times, 16 Mr. Sulzberger, concerning the galley 17 of your book? 18 A. I did. 19 MR. RESSLER: I'm going to 20 ask the court reporter to please 21 mark this document as Exhibit 32, 22 previously identified in discovery 23 as TOB-EF-387. 24 (Whereupon, O'Brien Exhibit 32 was 25 marked for identification.)</p>	<p style="text-align: right;">384</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Sinatra story?" 3 Do you see that? 4 A. I do. 5 Q. Do you recall receiving this 6 e-mail from Mr. Sulzberger? 7 A. I do. 8 Q. You responded to that e-mail, 9 did you not? 10 A. I did. 11 Q. You responded on 12 September 5th, the same day, and you 13 said, "Arthur, What a surprise, and 14 what a kind note. I didn't even know 15 Warner Books sent you a galley. They 16 dropped them on a random assortment 17 here so Keller got one, but not Geddes. 18 Jill got one, but not Gretchen." 19 Do you see that? 20 A. I do. 21 Q. Now, Mr. O'Brien, that 22 statement in your e-mail to 23 Mr. Sulzberger, that was a lie, 24 correct? 25 A. No, no. It's not a lie.</p>

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1 - TIMOTHY L. O'BRIEN -
2 Q. You did know that a galley
3 had been sent to Mr. Sulzberger; isn't
4 that true?
5 A. No, I didn't.
6 MR. RESSLER: Let me have the
7 court reporter mark as Exhibit 33 a
8 document previously identified in
9 discovery as TOB-EF-523.
10 (Whereupon, O'Brien Exhibit 33 was
11 marked for identification.)
12 Q. Isn't it true, Mr. O'Brien,
13 that you knew that Mr. Sulzberger had
14 been sent a galley because you were the
15 person who asked that that happen?
16 A. Well, I certainly asked that
17 these individuals at the paper get
18 copies of the galley, certainly. But I
19 wasn't sure whether or not that was
20 followed up upon.
21 Q. Mr. O'Brien, let me direct
22 your attention to Exhibit 33, that's
23 the document bearing Bates number 523.
24 Do you see that?
25 A. I do.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Now, this was the previous
3 month, in August of '05.
4 Do you see that?
5 A. I do.
6 Q. You wrote an e-mail to Rob.
7 Who is Rob?
8 A. Rob Nissen was the publicist
9 for the book.
10 Q. Is he a Warner employee?
11 A. I think he's a contract
12 employee, yes.
13 Q. Okay. Because his e-mail
14 address is rob.nissen@twbg.com.
15 A. Uh-huh.
16 Q. Do you see that?
17 And you wrote to Mr. Nissen
18 at the Time Warner Book Group as
19 follows, "Rob, Will you also send
20 copies to five people here at The
21 Times? Arthur O. Sulzberger, Jr.,
22 publisher; Bill Keller, executive
23 editor; Jill Abramson, managing editor;
24 Larry Ingrassia, business editor; Jim
25 Impoco, Sunday business editor.

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1 - TIMOTHY L. O'BRIEN -
2 Address is the same for all of them."
3 And you provided The New York
4 Times address. And then you ended your
5 e-mail by stating, "Can you just send
6 the galleys as a courtesy to all of
7 them and not mention that I asked you
8 to send it to them? All of them will
9 have a keen interest in reading it."
10 Did you write this e-mail,
11 Mr. O'Brien?
12 A. Did I.
13 Q. And then when Mr. Sulzberger
14 sends you an e-mail telling you that he
15 just finished your book, you write,
16 "What a surprise and what a kind note.
17 I did not even know Warner Books sent
18 you a gallery."
19 Mr. O'Brien, that was a lie
20 to Mr. Sulzberger, was it not?
21 A. No, in fact, it's not. I
22 think if you read this in context, I
23 said, "They dropped them on a random
24 assortment here so, for example, Keller
25 got one but not Geddes. Jill got one

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1 - TIMOTHY L. O'BRIEN -
2 but not Gretchen."
3 I ultimately didn't know
4 exactly who at the paper was sent the
5 galleys. And in fact, this e-mail
6 shows that I actually didn't remember
7 the right people that I asked for the
8 galleys to be sent to because,
9 according to the earlier e-mail, I
10 didn't even ask for it be sent John
11 Geddes or Gretchen Morganson, but
12 thought I had.
13 I hadn't asked that it be
14 sent to John Geddes or to Gretchen
15 Morganson, but I believed I had, so I
16 didn't have a full recollection of this
17 earlier e-mail. And I was interested
18 in whether or not those individuals got
19 the galleys because I asked them. I
20 asked John and Gretchen both if they
21 had received them, and they hadn't. So
22 I ultimately wasn't aware of who got
23 the galleys.
24 Q. Mr. O'Brien, did you write in
25 an e-mail to Rob Nissen, "Can you just

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1 - TIMOTHY L. O'BRIEN -
2 send the galley as a courtesy to all
3 of them and not mention that I asked
4 you to send it to them?"
5 Did you write that, yes or
6 no?
7 A. Yes.
8 Q. And then -- so you knew that
9 you had requested that galley be sent
10 to these people, correct?
11 MR. CERESNEY: Objection to
12 form. You can answer.
13 A. Certainly I knew that I
14 requested those.
15 Q. Correct. And then when
16 Mr. Sulzberger writes you a note about
17 the book, you express surprise and you
18 even state to the publisher of The New
19 York Times that you didn't know Warner
20 Books had sent him a galley.
21 MR. CERESNEY: Objection to
22 form.
23 Q. Isn't that correct?
24 A. Well, actually, the statement
25 of the surprise has as much to do with

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1 - TIMOTHY L. O'BRIEN -
2 how thoughtful his note was as the fact
3 that he got a galley. So it was the --
4 what a surprise at first more than the
5 simple fact that he got the galley.
6 Q. But then you say, "I didn't
7 even know Warner Books sent you a
8 galley"; isn't that correct?
9 A. That is correct.
10 Q. That's a yes or no question.
11 Did you say that?
12 A. Yes, I did.
13 Q. Mr. O'Brien, isn't it true
14 that you knew full well that Sulzberger
15 had received a galley and were trying
16 to mask that fact because you didn't
17 want him to know that you were the one
18 who had requested it be sent to him?
19 MR. CERESNEY: Objection to
20 form. You can answer.
21 A. No, no. Not at all. I -- as
22 the context of the note suggests, I
23 wasn't exactly sure who at The Times
24 received the galley. But I -- I
25 directed -- I wanted Arthur to get one;

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1 - TIMOTHY L. O'BRIEN -
2 that's certainly why I directed one be
3 sent to him.
4 Q. Could you tell the jury, sir,
5 why you directed Rob Nissen not to
6 mention to the publisher, the executive
7 editor, the managing editor, the
8 business editor, and the Sunday
9 business editor that you had asked that
10 a galley be sent to them?
11 MR. CERESNEY: Objection to
12 form. You can answer.
13 A. Because I felt that it was
14 self-promotional and that I didn't want
15 them to sort of feel that I was
16 obligating them to engage with it.
17 Q. You don't consider yourself
18 to be a self-promotional kind of
19 reporter, right?
20 MR. CERESNEY: Objection.
21 Argumentative.
22 Q. Sir?
23 A. I think sometimes I am
24 self-promotional, yes.
25 Q. Oh, in what ways?

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection.
3 Form.. Argumentative. Go ahead.
4 A. In trying to promote the work
5 that I do in the world outside, yes.
6 Q. And your conduct, you
7 believe, is self-promotional at times?
8 A. Yes.
9 Q. And is that with respect to
10 how you write and research your books
11 or articles?
12 A. No. No. As I referenced, it
13 was in -- in the way I engage with my
14 work once it's published in terms of
15 getting it out into the world.
16 Q. So you believe that you're
17 self-promotional more in terms of the
18 marketing of your work at times?
19 MR. CERESNEY: Objection.
20 Form.
21 Q. Correct?
22 A. Yeah, correct.
23 Q. And what was your concern
24 with respect to Mr. Sulzberger possibly
25 viewing you as having been

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1 - TIMOTHY L. O'BRIEN -
2 self-promotional by requesting that a
3 galley be sent to him?
4 MR. CERESNEY: Objection.
5 Mischaracterizes his prior
6 testimony. You can answer if you
7 can.
8 A. Well, I think I've answered
9 your question.
10 Q. Well, no, you haven't,
11 Mr. O'Brien. You testified couple of
12 minutes ago that you requested that
13 Nissen not mention that you were the
14 person who asked that Sulzberger
15 receive a copy of the galley because
16 you didn't want to appear
17 self-promotional in front of him,
18 correct?
19 A. And -- and --
20 Q. Is that what you testified to
21 minutes earlier?
22 A. I don't think you correctly
23 are accounting my full answer, which
24 was that -- there were two parts to it.
25 I didn't want appear to be

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1 - TIMOTHY L. O'BRIEN -
2 self-promotional, and these are also
3 busy people -- very busy people, and I
4 didn't want them to feel obligated to
5 have to engage with the galleys. That
6 was my full response.
7 Q. Isn't it true, Mr. O'Brien,
8 that you, at this point in time, were
9 trying to get book review approval from
10 Alex Ward, The New York Times book
11 review editor, so that the book review
12 section would publish an excerpt of
13 your article?
14 MR. CERESNEY: Objection.
15 Form. You can answer.
16 A. No, that's incorrect. Alex
17 Ward doesn't oversee the book review.
18 Q. Did you ever come clean to
19 Mr. Sulzberger and say, "By the way
20 Arthur, I was the one who requested
21 that a galley be sent to you"?
22 MR. CERESNEY: Objection to
23 the form of that question. I don't
24 think he even need to answer that
25 question.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Sir?
3 A. It's fine. I can answer it.
4 I have nothing to come clean with
5 Arthur about.
6 Q. Did you ever tell
7 Mr. Sulzberger that you were, in fact,
8 the person who had requested that he
9 receive a galley?
10 MR. CERESNEY: Objection to
11 form. You can answer if you can.
12 A. No, I hadn't. But I'd be
13 very comfortable telling him that
14 today.
15 Q. With respect to your
16 self-promotional conduct that you
17 yourself described a couple of minutes
18 ago, do you consider yourself to be
19 self-promotional at times within The
20 New York Times, within the Institution
21 of The Times?
22 MR. CERESNEY: Objection to
23 form. You can answer if you can.
24 A. Well, I think to the extent
25 that my career at The Times is

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1 - TIMOTHY L. O'BRIEN -
2 important to me and that I want
3 assignments that are meaningful to me
4 and oversee things that are meaningful
5 to me, I certainly have tried to work
6 with my editors and my colleagues in
7 order to further that, yes.
8 Q. When you wrote to
9 Mr. Sulzberger, the publisher, "What a
10 surprise and what a kind note. I
11 didn't even know Warner Books sent you
12 a galley," when you were writing that,
13 did you have in your mind the fact that
14 you had the previous month requested
15 that Nissen not tell Sulzberger and the
16 others that you had requested a galley
17 be sent to them?
18 MR. CERESNEY: Objection to
19 form. You can answer it.
20 A. No, no, not at all. You
21 know, a month had passed. I wasn't
22 sure who got the books, as I mentioned
23 in that very first paragraph there.
24 And -- and I was very busy at the time.
25 It had frankly slipped my

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1 - TIMOTHY L. O'BRIEN -
2 mind that I had even asked Rob to do
3 this. And I didn't remember the exact
4 names of the people that I had asked
5 him to send it to, which is evidenced
6 by the first paragraph of this e-mail.
7 Q. You just forgot, then, that
8 you had requested that Nissen send a
9 galley copy of your book to The New
10 York Times publisher, executive editor,
11 managing editor, business editor, who
12 was also your boss at the time, and the
13 Sunday business editor?
14 A. In fact, they both -
15 Q. Sir?
16 A. - were my boss, Larry and
17 Jim.
18 Q. You just forgot that you had
19 done that the previous month?
20 A. It wasn't very forward in my
21 mind. It wasn't hugely important to
22 me. But once I got Arthur's note, I
23 actually asked around to find out who
24 got one.
25 Q. By "Arthur" you mean

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1 - TIMOTHY L. O'BRIEN -
2 Mr. Sulzberger?
3 A. I do.
4 Q. Have you spoken to
5 Mr. Sulzberger about this lawsuit,
6 Mr. O'Brien?
7 A. No, I haven't.
8 Q. To your knowledge, did the
9 publisher of The New York Times,
10 Mr. Sulzberger, come to learn that you
11 had been told by the standards editor,
12 Al Siegal at The Times, not to refer to
13 Trump as "Baby Huey" in your radio and
14 TV appearances about the book?
15 MR. CERESNEY: Objection to
16 form. Characterization. Go ahead.
17 Q. Sir?
18 A. No. As far as I know, Arthur
19 wasn't told.
20 Q. To your knowledge, based on
21 any communications that you might have
22 had with anyone at The Times, did
23 Mr. Sulzberger learn that even after
24 you had been told not to refer to
25 Mr. Trump as "Baby Huey" in your radio

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1 - TIMOTHY L. O'BRIEN -
2 and TV appearances concerning the book,
3 you did so?
4 MR. CERESNEY: Objection to
5 form. You can answer.
6 A. No. I'm not aware of that at
7 all.
8 Q. Yesterday you stated that
9 your boss, Larry Ingrassia, the editor
10 of The Times business section, attended
11 your Colliseum Books appearance.
12 Do you recall that testimony?
13 A. I do.
14 Q. Do you know why Mr. Ingrassia
15 attended?
16 A. I think Larry was very aware
17 of how hard I had worked on the book.
18 I think Larry supported my career over
19 the years because he regards me as a
20 diligent and trustworthy reporter.
21 It was Larry, ultimately, who
22 made the decision to appoint me to be
23 Sunday business editor. And I think it
24 was important to him that he appear at
25 the book reading as a show of support.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Did you invite him?
3 A. I think, you know, I probably
4 told everybody in Biz Day that the
5 reading was that night, probably in an
6 e-mail to my colleagues, but I'm not
7 sure. I certainly told Larry about it.
8 Q. So Mr. Ingrassia saw you at
9 the book event make the comment
10 referring to Trump as "Baby Huey,"
11 right?
12 A. Larry was present. My
13 assumption is he would have heard
14 everything I said that night, but I
15 don't know whether or not he heard it
16 because we never had a discussion about
17 it.
18 Q. Because less than two weeks
19 earlier than that Larry Ingrassia had
20 forwarded you the note from Al Siegal,
21 the standards editor, stating that you
22 were not to continue to refer to Trump
23 as "Baby Huey" in your public
24 appearances because that violated The
25 Times' standards on public appearances,

<p style="text-align: right;">401</p> <p>1 - TIMOTHY L. O'BRIEN - 2 correct? 3 MR. CERESNEY: Objection to 4 the time frame. It wasn't two 5 weeks earlier. 6 Q. Prior thereto -- I'll amend 7 my -- 8 MR. CERESNEY: It was 9 actually six weeks. 10 Q. Six weeks earlier. Thank 11 you. 12 THE WITNESS: Six weeks is 13 the time frame? Thank you. 14 Q. Sir? 15 MR. CERESNEY: Yes. Six 16 weeks is the time frame: 17 Q. So six weeks earlier, as you 18 testified yesterday, Mr. Ingrassia had 19 forwarded you the e-mail from Al 20 Siegal, The Times standards editor, 21 stating that you were not to continue 22 to refer to Trump as "Baby Huey" in 23 your public appearances, correct? 24 A. Correct. 25 Q. So, did Mr. Ingrassia at the</p>	<p style="text-align: right;">403</p> <p>1 - TIMOTHY L. O'BRIEN - 2 correct? 3 MR. CERESNEY: Objection. 4 Form. Argumentative. 5 A. I wouldn't -- I wouldn't at 6 all describe it that way. I think 7 perhaps -- well, I won't speculate as 8 to the reason why Larry didn't bring it 9 up to me. 10 Q. Well, not only weren't you -- 11 well, withdrawn. 12 You weren't disciplined for 13 continuing to violate The Times' 14 standards on public appearances, right? 15 A. Well, it wasn't an act that 16 would involve a disciplinary action. 17 Q. In fact, your boss -- 18 A. Actually, I think, in fact, 19 if it had been, Larry and I probably 20 would have been in conversation about 21 it. And the reason there was an 22 absence of the conversation is I don't 23 think Larry gave it the same kind of 24 gravitas you do. 25 Q. Or Mr. Siegal, the standards</p>
<p style="text-align: right;">402</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Coliseum Books event after you referred 3 to Trump as "Baby Huey," did he ever 4 speak to you about that? 5 A. No, he did not. 6 Q. Do you recall in one of the 7 e-mails we looked at yesterday, 8 Mr. Ingrassia himself agreed with 9 Mr. Siegal's statement that an 10 ad hominem comment, the Baby Huey 11 comment, violated The Times' standards? 12 Do you recall that e-mail? 13 MR. CERESNEY: Objection. 14 Characterizes what he said. You 15 can answer if you can. 16 A. I recall the e-mail you're 17 referencing. 18 Q. And then even though you made 19 the comment that you were told not to 20 make in the presence of your boss, he 21 didn't say anything to you about that? 22 A. That's correct. 23 Q. So, Mr. Ingrassia did not 24 enforce The New York Times standards 25 concerning public appearances; is that</p>	<p style="text-align: right;">404</p> <p>1 - TIMOTHY L. O'BRIEN - 2 editor, did, right? 3 A. It was guidance. 4 Q. So you think the gravitas is 5 coming from me, just a lawyer in this 6 lawsuit, as opposed to the standards 7 editor of The Times who told you not to 8 make an ad hominem comment about 9 Mr. Trump in your public appearances, 10 sir? 11 MR. CERESNEY: Objection. 12 I'm going to instruct him not to 13 answer that. That's really an 14 inappropriate question. 15 Q. Sir? 16 MR. CERESNEY: I'm 17 instructing him not to answer that. 18 Why don't you ask another question? 19 MR. RESSLER: No, Andrew. He 20 brought me into the question. This 21 witness brought me into the 22 question, so I'm going to ask him a 23 question that brings me into the 24 question. 25 MR. CERESNEY: You want to</p>

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1 - TIMOTHY L. O'BRIEN -
2 bring you into the question, again?
3 MR. RESSLER: Yeah, I do.
4 Q. Mr. O'Brien, do you think
5 that the gravitas with respect to the
6 fact that you referred to Trump making
7 a comment -- I'm sorry, that you --
8 withdrawn.
9 Do you think that the
10 gravitas concerning your referring to
11 Trump as "Baby Huey" after you were
12 told not to do so, do you think that's
13 my gravitas?
14 Or do you think that Al
15 Siegal showed a serious interest that
16 you not repeat that comment in public
17 appearances based on the e-mails we
18 looked at yesterday?
19 MR. CERESNEY: I'm going to
20 object to the form of that
21 question.
22 MR. RESSLER: That's fine.
23 Q. Sir, could you answer the
24 question, please?
25 A. I'm really not in a position

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1 - TIMOTHY L. O'BRIEN -
2 to compare Al Siegal's intentions with
3 your own.
4 Q. Okay. But you brought -- you
5 brought my intentions into it --
6 MR. CERESNEY: Objection.
7 Q. -- into the testimony, right?
8 MR. CERESNEY: Objection. He
9 was -- he was saying that you were
10 asking the question.
11 MR. RESSLER: You, Andrew,
12 are permitted to make an objection
13 to form, and nothing else. Now,
14 just let me finish before you
15 interrupt, please.
16 I've given you leeway
17 throughout the deposition yesterday
18 and this morning because you have
19 repeatedly made an objection above
20 and beyond objection to form. And
21 that's -- and that's fine in the
22 heat of a deposition.
23 But now you're actually
24 crossing the line, I think, so --
25 MR. CERESNEY: Are you

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1 - TIMOTHY L. O'BRIEN -
2 finished?
3 MR. RESSLER: -- so the
4 deposit -- the objection at the
5 deposition should be "objection to
6 form."
7 I've given you some leeway.
8 But I'm not going to permit you to
9 make a speaking objection because
10 it's improper under the rules of
11 New Jersey.
12 MR. CERESNEY: Are you
13 finished?
14 MR. RESSLER: I am.
15 MR. CERESNEY: Okay. My
16 comments yesterday were based upon
17 your inappropriate comments, and I
18 believe that I didn't cross any
19 line nor have I done it today.
20 And for the record, I am just
21 stating my objection
22 specifically -- only when you cross
23 a line in a way that I think is
24 inappropriate.
25 And that's why I say that all

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1 - TIMOTHY L. O'BRIEN -
2 my other objections have been to
3 form and I've allowed him to
4 answer. Okay? Except when it's
5 for privilege.
6 On this situation, now, you
7 have gone further than that and
8 mischaracterized certainly what he
9 said in response to your question,
10 and then injected further this
11 issue of what you have asked.
12 And I'm just -- you know, my
13 view is if you want to ask him a
14 question about what Al Siegal
15 thought, that's fine. You want to
16 ask him a question about why he
17 gave you the answer he gave before,
18 that's fine.
19 But to then set up this false
20 strawman about your gravitas versus
21 Al Siegal's gravitas, and the like,
22 is inappropriate.
23 MR. RESSLER: Well, I'll end
24 this. It's not inappropriate
25 because the witness himself brought

<p style="text-align: right;">409</p> <p>1 - TIMOTHY L. O'BRIEN - 2 up my gravitas, but I'll move on. 3 BY MR. RESSLER: 4 Q. Mr. O'Brien, did you view 5 Mr. Siegal's directive that you stop 6 referring to Trump as "Baby Huey" in 7 your public appearances to be 8 inappropriate on Mr. Siegal's part? 9 A. No, not at all. 10 Q. Not only didn't 11 Mr. Ingrassia, your boss, speak to you 12 about the fact that in his presence you 13 continued to refer to Trump as "Baby 14 Huey" in your public appearances, but 15 as you said yesterday, he promoted you, 16 right? 17 A. Correct. 18 Q. Mr. O'Brien, do you have any 19 understanding as to why you are exempt 20 from application of The New York Times' 21 standards on public appearances? 22 MR. CERESNEY: Objection. 23 Form. You can answer. 24 A. I don't think I'm exempt. If 25 I were exempt, I don't think Al Siegal</p>	<p style="text-align: right;">411</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. That's Sulzberger, Keller, 3 Abramson, Ingrassia, and Impoco? 4 A. Uh-huh. 5 Q. You told Nissen not to 6 mention that you had asked him to send 7 them the galley? 8 A. Uh-huh. 9 Q. You have to say yes, by the 10 way. 11 A. Yes. 12 Q. Did you ever tell Keller, 13 Abramson, Ingrassia, and Impoco that 14 you were surprised that they had read 15 the book because you didn't know Warner 16 had sent them a copy the way you did to 17 Mr. Sulzberger? 18 MR. CERESNEY: Objection to 19 form. You can answer. 20 A. No. I don't believe I did. 21 Q. Thank you. 22 (Whereupon, a brief 23 discussion was held off record.) 24 Mr. O'Brien, you knew that 25 Donald Trump was going to be angry over</p>
<p style="text-align: right;">410</p> <p>1 - TIMOTHY L. O'BRIEN - 2 would have raised the issue with me. 3 Q. He raised the issue with you, 4 Al Siegal did, and then you disregarded 5 what he had told you to do; is that 6 correct? And that's a yes or no 7 question. 8 MR. CERESNEY: I'm just going 9 to object to form. You can answer 10 it. 11 Q. Did you disregard 12 Mr. Siegal's directive that you not 13 refer to Trump as "Baby Huey" in your 14 public appearances, yes or no? 15 A. I would - 16 MR. CERESNEY: Objection to 17 form. 18 A. No. I wouldn't characterize 19 it that way. 20 Q. Thank you. 21 Now, with respect to the 22 other names of the senior Times 23 officials who you requested Rob Nissen 24 to send your galley to? 25 A. Uh-huh.</p>	<p style="text-align: right;">412</p> <p>1 - TIMOTHY L. O'BRIEN - 2 this book when it came out; isn't that 3 correct? 4 A. Yes, yes. That is correct. 5 Q. In fact, the words used was 6 that Trump was "going to go ballistic"; 7 isn't that right? 8 A. That's correct. 9 Q. And that, Mr. O'Brien, was 10 the whole point; isn't that true? 11 MR. CERESNEY: Objection. 12 Form. You can answer. 13 A. No, of course not. 14 Q. Of course not? 15 A. Of course not. 16 Q. Isn't it true that your and 17 Warner's strategy was to attack Trump 18 in your book, tear him apart in your 19 book, and force him to strike back at 20 you in hopes of generating PR buzz and 21 book sales? 22 MR. CERESNEY: Objection to 23 form. You can answer. 24 A. Our goal in writing the 25 book - I wouldn't define it as a</p>

<p style="text-align: right;">413</p> <p>1 - TIMOTHY L. O'BRIEN - 2 strategy at all. My goal as a writer 3 in crafting the book was to provide a 4 full and well-rounded portrait of a 5 public figure who had great attraction 6 in the public imagination and in the 7 public arena and to accurately convey 8 the arc of that person's career in the 9 context of his life and times. 10 Q. And I take it that the same 11 answer would apply to your promotional 12 and marketing efforts. 13 You would say that the point 14 of those -- the objective of those on 15 your part and on your publisher's part 16 was not to attack Trump and force him 17 to strike back at you in hopes of 18 generating PR public relations buzz and 19 book sales? 20 MR. CERESNEY: Objection. 21 Multiple parts to that. Form. 22 Q. Sir? 23 MR. CERESNEY: Go ahead. 24 A. I don't think there was any 25 strategy built around trying to get</p>	<p style="text-align: right;">415</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Okay. 3 MR. CERESNEY: Objection to 4 form. Just wait until I have a 5 chance to object. 6 THE WITNESS: Okay. 7 Q. Because we talked yesterday 8 about the fact that you are not a 9 writer of tabloid, tell-all exposés, 10 right? 11 MR. CERESNEY: Objection. 12 Form. You can answer. 13 A. That's correct. 14 MR. RESSLER: Can we have 15 this marked, please, as 34, 16 previously identified in discovery 17 as TOB-EF-260. 18 (Whereupon, O'Brien Exhibit 34 was 19 marked for identification.) 20 Q. I'd like to start, 21 Mr. O'Brien, with the e-mail that 22 appears on the bottom of the first 23 page. This is an e-mail from Andy 24 Blauner, your agent, to Rick Wolff, the 25 Time Warner Book Group editor of your</p>
<p style="text-align: right;">414</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Donald to strike back as a means of 3 promoting the book. 4 Q. Mr. O'Brien, wasn't 5 another -- withdrawn. 6 Wasn't one of your objectives 7 and intents, along with your publisher, 8 to get Trump angry once this book came 9 out? 10 MR. CERESNEY: Objection. 11 Form. You can answer. 12 A. Well, my goal in writing the 13 book was to create a well-crafted and 14 well-rounded portrait of a seminal 15 American figure as he exists on the 16 public stage and to accurately and 17 fairly place him in his life and times 18 through an analysis of the entire 19 trajectory of his career. 20 Q. So based on that testimony, 21 your objective and intent sounded lofty 22 and noble. 23 And you would agree with 24 that? 25 A. I would.</p>	<p style="text-align: right;">416</p> <p>1 - TIMOTHY L. O'BRIEN - 2 book, and Miss Battaglia, who we talked 3 about yesterday, is referenced as well. 4 Do you see that? 5 A. I do. 6 Q. It's dated July 13th, 2005. 7 Do you see that? 8 A. I do. 9 Q. Is that around the time when 10 the galleys were being generated? 11 A. It could be. I'm not -- I'm 12 not exactly sure in terms of the dates. 13 Q. Mr. Blauner writes to the 14 Warner editor -- and the subject line 15 is "Confidential Trump." 16 "Hi. Just checking in to 17 confirm something about Tim's Trump 18 book. I understand now that bound 19 galleys will be available starting 20 within about two weeks. Are we going 21 with an embargo here, per se, or not? 22 I was just consulting with Tim. I 23 wasn't sure and but he's concerned that 24 as soon as Donald sees the book in its 25 entirety, he will go ballistic. And he</p>

<p style="text-align: right;">417</p> <p>1 - TIMOTHY L. O'BRIEN - 2 raises the question of whether we want 3 to save that particular PR pop for the 4 fall." 5 Mr. O'Brien, do you have any 6 understanding of what a "PR pop" is? 7 A. I do. 8 Q. What is it? 9 A. Something that generates 10 conversation in the media. 11 Q. Why did you believe that 12 Mr. Trump would go ballistic as soon as 13 he saw the book in its entirety? 14 A. Because he threatened me 15 during the course of my reporting that 16 if I wrote anything negative, he said 17 he was going to go on television and 18 say that I sleep with little boys. 19 Q. And did you consider that you 20 had, indeed, written negative things 21 about Mr. Trump in your book? 22 A. There were certainly negative 23 elements of the book that I thought he 24 would take great exception with, yes. 25 Q. Now, Mr. Wolff responded to</p>	<p style="text-align: right;">419</p> <p>1 - TIMOTHY L. O'BRIEN - 2 references the game plan, Mr. O'Brien. 3 A. I see that. 4 Q. What was the game plan? 5 A. You'd have to ask Rick about 6 that. 7 Q. Why would I have to ask Rick 8 about that? 9 A. Well, it's Rick's note. 10 Q. But he was your editor, 11 wasn't he? 12 A. He was. 13 Q. So did you ever talk to Rick 14 about a game plan or a strategy with 15 respect to the promotional efforts 16 concerning the book? 17 A. I definitely spoke to him 18 about elements of the publicity around 19 it, yes. 20 Q. So I'm asking you, sir, what 21 was the game plan? 22 A. I think the game plan was to 23 try to get the book reviewed in as many 24 venues as possible, get the book 25 excerpted, have public appearances</p>
<p style="text-align: right;">418</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Mr. Blauner in the e-mail on the middle 3 of this page. 4 A. Uh-huh. 5 Q. "Andrew, it was decided not 6 to embargo the book because we wanted 7 to generate some excitement and buzz 8 before it pubs. Clearly, if Mr. Trump 9 takes exception to Tim's work and 10 starts making noise about the book 11 before pub time, that will only help to 12 excite the masses and that's a good 13 thing, or at least that's the game 14 plan. Rick." 15 What was the embargo 16 referenced in these two e-mails? 17 A. I believe the embargo 18 reference is the decision not to 19 release the book until very close to 20 the publishing date. 21 Q. What would the purpose of 22 having that embargo serve? 23 A. To again, generate excitement 24 about the publication. 25 Q. Mr. Wolff, the Warner editor,</p>	<p style="text-align: right;">420</p> <p>1 - TIMOTHY L. O'BRIEN - 2 around the book. There was a hope that 3 that -- that quite possibly Donald 4 would appear with me to discuss the 5 book. 6 There was the possibility 7 that if he took exception to the book, 8 that that wouldn't be viable; and that 9 if did he take exception to the book, 10 that might also generated some 11 attention in the media. 12 All of this was in 13 anticipation of the book's publication 14 and -- and ways of getting the book in 15 into the public sphere. 16 Q. Wasn't part of the game plan, 17 Mr. O'Brien, the fact that getting 18 Trump enraged was good for you and for 19 Warner because it would help you and 20 Warner promote the book? 21 MR. CERESNEY: Objection. 22 Form. You can answer. 23 A. No. I wouldn't describe that 24 as part of a game-plan, no. 25 Q. Isn't it true that the</p>

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1 - TIMOTHY L. O'BRIEN -
2 angrier Trump became, the better chance
3 you and Warner would have of selling
4 books?
5 MR. CERESNEY: Objection to
6 form. You can answer.
7 A. Well, in fact, I think, as it
8 panned out, the angriest moment he had
9 was when he filed his lawsuit. And
10 that actually didn't end up creating a
11 meaningful bump in sales for the book.
12 Q. Your game plan backfired,
13 didn't it, Mr. O'Brien?
14 MR. CERESNEY: Objection to
15 form. You can answer.
16 A. There wasn't a game plan, as
17 you've described it.
18 Q. Now, when I first asked what
19 the game plan was, you said I would
20 have to ask Rick Wolff, the Warner
21 editor. So then I followed up and you
22 told me about a game plan.
23 Why was your first reaction
24 to my question that I should go ask the
25 Warner editor?

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1 - TIMOTHY L. O'BRIEN -
2 Why couldn't you answer the
3 question the first time around, sir?
4 MR. CERESNEY: Objection to
5 the form. Go ahead.
6 A. You were asking me about a
7 note that Rick wrote.
8 Q. But ultimately, a minute
9 later, you gave me a lengthy answer
10 concerning what the game plan was, did
11 you not?
12 MR. CERESNEY: Objection to
13 form. You can answer if you can.
14 A. You know, I certainly had a
15 window onto these issues because I was
16 involved with some of them. And I'm
17 trying to give you as helpful and as
18 complete answer as I possibly can. But
19 I can't get inside Rick's mind; this is
20 a note from Rick.
21 Q. You're not disclaiming
22 responsibility for the promotional and
23 marketing efforts concerning this book,
24 are you?
25 MR. CERESNEY: Objection.

423

1 - TIMOTHY L. O'BRIEN -
2 Form.
3 A. No, I'm not.
4 Q. You were part of those
5 efforts, along with the publisher,
6 right?
7 MR. CERESNEY: Objection.
8 Form. You can go ahead.
9 A. That's correct.
10 Q. You played an active role and
11 meaningfully participated in devising a
12 promotional and marketing strategy
13 along with Warner Books, correct?
14 MR. CERESNEY: Objection to
15 form. You can answer.
16 A. That's correct.
17 Q. Now, Mr. Wolff has this
18 phrase in his e-mail, "that will only
19 help to excite the masses."
20 Do you see that?
21 A. I do.
22 Q. Do you have any understanding
23 what was meant by "to excite the
24 masses"?
25 A. I do. I think I've already

424

1 - TIMOTHY L. O'BRIEN -
2 answered that question. I'd be happy
3 to answer it again.
4 Q. Please do.
5 A. I think it's to generate
6 conversation in the media about the
7 book.
8 Q. Mr. O'Brien, wasn't your
9 objective all along to write a book
10 that impued Trump - impugned Trump as
11 a liar and a fraud and someone who's
12 not a billionaire in order to excite
13 the masses and generate sales of your
14 book?
15 MR. CERESNEY: Objection to
16 form. You can answer.
17 A. If that was my goal, I
18 wouldn't have written the book that I
19 did.
20 Q. Is that because you don't
21 believe that your book impugns Trump as
22 a liar and a fraud and states that he's
23 not a billionaire?
24 MR. CERESNEY: Objection.
25 Form.

<p style="text-align: right;">425</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. The book I wrote, I think, is 3 a well-balanced and well-rounded 4 portrait of a public figure. 5 Q. And do you believe that the 6 marketing and promotional efforts you 7 engaged in with respect to the book 8 were also well-rounded and balanced, to 9 use your words? 10 MR. CERESNEY: Objection to 11 form. You can answer. 12 A. I think, by their very 13 nature, promotional efforts often 14 involve focusing on elements of the 15 book that the public may have an 16 interest in, trying to anticipate that, 17 trying to modulate as you go on, 18 depending on the questions you 19 anticipate being asked based on the 20 different venues in which you're 21 speaking about the book. So I think - 22 I think there's a distinction between 23 marketing and promotion and the work 24 itself. 25 Q. Would you agree that, in</p>	<p style="text-align: right;">427</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Correct. 3 Q. Okay. So now I'd like you to 4 look at the e-mail above that, the 5 e-mail from Sulzberger dated 6 September 6th of 2005. 7 A. Uh-huh. Yes. 8 Q. Now, Mr. O'Brien, 9 September 6th of 2005, this is before 10 the publication, correct? 11 A. That is correct. 12 Q. Mr. Sulzberger, The Times, 13 publisher, writes, "Tim, Great story. 14 And yes, great trek. Machu Picchu is 15 all one could hope for. Arthur. 16 PS. Donald must have seen your book by 17 now. Any feedback?" 18 Do you see that? 19 A. I do. 20 Q. Had you shown a copy of the 21 book by this point in time to Trump? 22 A. I had not. 23 Q. Did you ever show Trump a 24 copy of the book before it was 25 published?</p>
<p style="text-align: right;">426</p> <p>1 - TIMOTHY L. O'BRIEN - 2 fact, the strategy was modulated by you 3 and Warner as it became clear, post 4 publication, that your book was not 5 selling well? 6 MR. CERESNEY: Objection to 7 form. You can answer. 8 A. Sure. I think it was 9 modulated in a number of ways. Yeah, 10 definitely. 11 (Whereupon, a brief 12 discussion was held off record.) 13 Q. Could you reach into the pile 14 of exhibits to your right and pull out 15 Exhibit 32, please? 16 A. The exchange with Arthur 17 Sulzberger? 18 Q. Yes. The exchange with The 19 New York Times publisher, 20 Mr. Sulzberger, correct. 21 A. Okay. 22 Q. This was the exchange where 23 you said, "What a surprise and what a 24 kind note. I didn't even know Warner 25 Books sent you a galley."</p>	<p style="text-align: right;">428</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I did. Well, I didn't 3 personally. I -- Warner Books sent 4 copies of the book to Mr. Trump. 5 Q. Did you tell Warner to do 6 that but that they shouldn't tell Trump 7 you had done that, the way you did with 8 Mr. Sulzberger? 9 MR. CERESNEY: Objection. 10 Form. You can answer. 11 A. No. 12 Q. Sir? 13 A. No. 14 Q. Okay. So if you could now go 15 to Page 1 of the document. This is 16 your e-mail. 17 A. Right. 18 Q. "Arthur, No feedback at all 19 from Donald yet. I think parts of it 20 will make him go ballistic, 21 particularly the stuff about the 22 casinos and his net worth; while other 23 parts, he'll sort of relish, like 24 raising hell in Palm Beach, The 25 Apprentice stuff and his marketing</p>

429

1 - TIMOTHY L. O'BRIEN -
2 mojo. Overall, I think he'll be
3 ticked."
4 What did you mean by
5 "ballistic" here, when you wrote that
6 you thought parts of the book would
7 make Trump go ballistic?
8 MR. CERESNEY: Objection.
9 Form. You can answer.
10 A. Angry.
11 Q. And then you said,
12 "particularly the stuff about the
13 casinos and his net worth."
14 Why did you believe that what
15 you wrote about Trump's net worth would
16 make Trump go ballistic?
17 A. Well, earlier in the year on
18 two occasions -- on one I spoke with
19 Norma Fedor, Donald's -- one of his
20 senior assistants, and she had asked me
21 at a venue about the shape of the book
22 and, you know, asked me what -- how I
23 thought he would react to the book.
24 And I told her at the time that I
25 thought these two parts of the book

430

1 - TIMOTHY L. O'BRIEN -
2 would upset him.
3 And then Donald, in one of
4 our last meetings together, I was in
5 his apartment with him. He was
6 upstairs changing; we were about to go
7 out to one of his golf courses. And we
8 were in an elevator going down and he
9 asked me about the book. And he asked
10 me what parts of the book I thought he
11 would be unhappy with.
12 And I mentioned these two
13 sections of the book to him at that
14 point in time. So it was something,
15 you know, that I assumed would get him
16 angry.
17 Our coverage in The New York
18 Times of his casino restructuring at
19 different points had made him angry, as
20 had our coverage of his net worth in
21 The New York Times.
22 Q. Isn't it true, Mr. O'Brien,
23 that you knew Trump would go ballistic
24 over the book because the book states
25 that Trump is not a billionaire?

431

1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection.
3 Form. You can answer.
4 A. My book doesn't state that.
5 Q. Has Mr. Sulzberger, The Times
6 publisher, ever made negative comments
7 about Mr. Trump in your presence?
8 A. No, he has not.
9 Q. I saw that you were thinking
10 about that.
11 A. Well, we actually had Donald
12 over for lunch to The Times -- for a
13 long lunch. And I think Arthur gets a
14 kick out of Donald.
15 And then Arthur asked him
16 very substantive questions about the
17 real estate business, Fed policy,
18 marketing deals with companies that
19 were on The Apprentice -- you know,
20 some issues revolving around the
21 television show. And I don't think --
22 I can't think of any occasion when
23 Arthur would have any reason to say
24 anything negative to me about
25 Mr. Trump.

432

1 - TIMOTHY L. O'BRIEN -
2 Q. To your knowledge, does
3 Mr. Sulzberger know that you're being
4 deposed in this case?
5 A. No. I don't -- to my
6 knowledge, I don't think he knows.
7 Q. To your knowledge, is
8 Mr. Sulzberger or Mr. Keller, the
9 managing editor, or Miss Abramson, the
10 other person referenced on that list,
11 are they updated from time to time, to
12 your knowledge, concerning the status
13 of this lawsuit?
14 MR. CERESNEY: Objection.
15 Are you talking about nonprivileged
16 conversations?
17 I'm going to ask him to limit
18 his questions to nonprivileged
19 conversations.
20 MR. RESSLER: I'm not asking
21 to pierce the privilege at all.
22 I'm just saying if he's -- if he
23 has any knowledge as to whether or
24 not those three people are updated
25 from time to time.

16 (Pages 429 to 432)

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Hold on. If
3 the conversations are with lawyers,
4 and the lawyers are the ones
5 updating them, that could be a
6 privileged conversation. So I'm -
7 MR. RESSLER: Well, the
8 actual conversation obviously would
9 be, Andrew, but I'm not asking
10 about the conversation.
11 MR. CERESNEY: Are you asking
12 him if he's aware that there are
13 conversations about the litigation
14 with them?
15 MR. RESSLER: Correct.
16 MR. CERESNEY: Okay.
17 MR. RESSLER: That's my
18 question.
19 MR. CERESNEY: You can answer
20 that question.
21 A. I have no idea.
22 Q. Have you ever spoken to
23 Mr. Keller about the lawsuit?
24 MR. CERESNEY: You can
25 answer.

434

1 - TIMOTHY L. O'BRIEN -
2 A. I have.
3 Q. Mr. Keller, what's his
4 position?
5 A. He's our executive editor.
6 Q. That's the Number 1 guy in
7 terms of editing the newspaper, right?
8 A. In the newsroom, yes.
9 Q. Tell us about your
10 conversations with Mr. Keller.
11 A. They were very limited. I
12 think we've only spoken about it on one
13 occasion, and it was shortly after the
14 lawsuit was filed, and I can't
15 recollect the details of the
16 conversation. It was a very brief.
17 Q. That was the only
18 conversation?
19 A. That's correct.
20 Q. What about any conversations
21 with Mr. Abramson? And by the way,
22 what's her position?
23 A. She's the managing - she's
24 one of two managing editors.
25 Q. Where would that place her in

435

1 - TIMOTHY L. O'BRIEN -
2 the hierarchy of The Times?
3 A. Number 2A.
4 Q. Same question.
5 Have you had conversations
6 about this lawsuit with her?
7 A. I think on one occasion, very
8 brief conversation, quite a while ago.
9 Q. What was said in that
10 conversation?
11 MR. CERESNEY: I just want to
12 clarify that counsel was not
13 present during this conversation?
14 THE WITNESS: That is
15 correct.
16 MR. CERESNEY: Okay. I'll
17 let him answer.
18 Q. What was said in that
19 conversation?
20 A. I don't recollect the
21 details. It was very brief, and it was
22 around the time the lawsuit was filed.
23 Q. Do you have any understanding
24 as to whether anyone at The New York
25 Times has been provided with the

436

1 - TIMOTHY L. O'BRIEN -
2 documents produced in this litigation,
3 which would include the documents that
4 you and I have reviewed together
5 yesterday and today?
6 MR. CERESNEY: You're asking
7 other than counsel?
8 MR. RESSLER: No. I'm
9 including counsel. I want to know
10 if he has any understanding as to
11 whether or not documents - the
12 documents in this case have been
13 provided to anyone at The New York
14 Times, including Mr. McCraw.
15 That's not - that question
16 does not call for any interference
17 with the privilege.
18 MR. CERESNEY: Well, you're
19 not asking him to identify. You're
20 asking if any - if there were a
21 compilation of documents that were
22 selected and sent over, that would
23 be work product.
24 So you're just asking him if
25 he's aware of any documents?

437	<p>1 - TIMOTHY L. O'BRIEN - 2 MR. RESSLER: Andrew, my 3 question was any documents. 4 MR. CERESNEY: Okay. That's 5 fine. 6 MR. RESSLER: I mean, I 7 appreciate that this is an 8 important area for you to be 9 vigilant about, but my question was 10 pretty clear. So -- 11 MR. CERESNEY: Any documents. 12 I understand that. 13 MR. RESSLER: That's the 14 third time we've established that 15 my question -- 16 MR. CERESNEY: Yes. I 17 understand that, and I'm making 18 sure the witness understands that. 19 Thank you, Mark. So that he 20 doesn't inadvertently waive 21 privilege. 22 THE WITNESS: I understand. 23 MR. CERESNEY: You can answer 24 the question as to whether any 25 documents have been -- if you're</p>	439	<p>1 - TIMOTHY L. O'BRIEN - 2 point. 3 I'm talking about non-Times 4 documents. I'm talking about the 5 documents that you and I reviewed. 6 Your e-mails, Wolff's e-mails, some of 7 the Warner documents, some of the 8 e-mails that we've spent time 9 discussing at this deposition. 10 A. Am I aware of whether or not 11 any of those documents have been 12 provided to people at The New York 13 Times? 14 Q. Correct. That's the 15 question. 16 A. Yes. 17 Q. And how did you gain that 18 awareness? 19 A. I've discussed them with 20 David McCraw at The New York Times. 21 Q. Are you aware whether there 22 is a joint defense agreement including 23 Warner Books and The New York Times in 24 connection with this lawsuit? 25 MR. RESSLER: Have we asked</p>
438	<p>1 - TIMOTHY L. O'BRIEN - 2 aware of any documents that 3 Mr. Ressler -- I believe you 4 referenced documents you referenced 5 in your questioning had been 6 provided to The Times. 7 Is that the question? 8 BY MR. RESSLER: 9 Q. Any documents concerning this 10 lawsuit that have been produced in 11 discovery in this lawsuit. I'm not 12 talking about the complaint or the 13 briefs. 14 MR. CERESNEY: Being provided 15 to The Times. 16 A. Okay. So I think your 17 question became more defined. 18 MR. CERESNEY: Yes. 19 Actually, the problem is some of 20 the documents that are in the 21 production are from The Times. I 22 mean, there are letters that 23 Mr. McCraw sent. I mean, that's 24 the problem. 25 Q. I'm talk -- that's a fair</p>	440	<p>1 - TIMOTHY L. O'BRIEN - 2 for -- I don't -- 3 MR. CERESNEY: You have and 4 we've objected on the privilege 5 ground. So I'm going to instruct 6 him not to answer. 7 MR. RESSLER: Okay. Your 8 position is that whether you have a 9 joint defense agreement with The 10 Times is privileged? 11 MR. CERESNEY: Yes. And you 12 haven't asserted -- you know, you 13 haven't raised -- You haven't 14 raised that until now, so I'm not 15 going to let him answer it. 16 Mark, can we take a break? 17 It's been about an hour. Request 18 we take a five-minute break or so. 19 MR. RESSLER: Yes. 20 MR. CERESNEY: Do you want to 21 finish a couple of questions? 22 MR. RESSLER: That's fine. 23 THE VIDEOGRAPHER: The time 24 on the video monitor is 11:03 a.m. 25 We're off the record. This is the</p>

<p style="text-align: right;">441</p> <p>1 - TIMOTHY L. O'BRIEN - 2 end of Tape Number 1, Volume 2. 3 (Whereupon, there was a brief 4 recess in the proceedings.) 5 THE VIDEOGRAPHER: We're back 6 on the record. The time on video 7 monitor is 11:30 a.m. This starts 8 Tape Number 2, Volume 2. 9 MR. RESSLER: I'm going to 10 ask the court reporter to please 11 mark this document as Exhibit 35, 12 previously identified in discovery, 13 TOB-EF-256. 14 (Whereupon, O'Brien Exhibit 35 was 15 marked for identification.) 16 BY MR. RESSLER: 17 Q. Mr. O'Brien, Exhibit 35 in 18 front of you now is a series of e-mail 19 exchanges involving yourself, Rick 20 Wolff, the Warner editor, Rob Nissen 21 from Warner, I think that's about it. 22 Let me direct your attention, please, 23 to 257, the second page. 24 A. Uh-huh. 25 Q. On the bottom of that page</p>	<p style="text-align: right;">443</p> <p>1 - TIMOTHY L. O'BRIEN - 2 he was more like Baby Huey than Jack 3 Welch." 4 Do you see that? 5 A. I do. 6 Q. "He's now phoning reporters 7 all over town saying something to the 8 effect of, 'I am not a mobster. I am 9 not Baby Huey.' The New York Post is 10 planning a big story for tomorrow. 11 I'll let you know as I hear from 12 others. The London Sunday Telegraph 13 ran a big piece yesterday. Let me know 14 what you want to do proactively off of 15 the CNBC appearance." 16 What did you mean by "do 17 proactively off of the CNBC 18 appearance"? 19 MR. CERESNEY: Objection. 20 Form. You can answer. 21 A. The extent to which Rick and 22 the marketing people in advertising the 23 promotion at Warner Books wanted me to 24 participate in any of the marketing 25 efforts around the book off of this</p>
<p style="text-align: right;">442</p> <p>1 - TIMOTHY L. O'BRIEN - 2 you write to Rick Wolff and Rob Nissen 3 at Warner cc'ing your agent 4 Mr. Blauner, and this is dated 5 October 31st of '05. 6 "Gents, Am getting lots of 7 calls from people off of the CNBC gig 8 this morning. Trump tried to get the 9 appearance killed. On the show, I 10 spoke about how he openly acknowledges 11 in the book that he suspected that his 12 early casino partners in AC," - 13 Atlantic City? 14 A. Are you asking for 15 clarification? 16 Q. Yes. 17 A. Atlantic City, yes. 18 Q. "...how he openly 19 acknowledges in the book that he 20 suspected that his early casino 21 partners in [Atlantic City] had 22 organized crime ties. I also said that 23 the book is the story of how a cartoon 24 character became the most famous 25 businessman in the U.S., and said that</p>	<p style="text-align: right;">444</p> <p>1 - TIMOTHY L. O'BRIEN - 2 appearance. 3 Q. What do you mean "off of this 4 appearance," though? What does that 5 mean? 6 A. Well, because the appearance 7 had generated interest in the media, I 8 had received calls from reporters about 9 it. And I didn't know how the Time 10 Warner people wanted me to handle those 11 calls or what they wanted me to do 12 proactively in that regard. 13 Q. And what you told Wolff and 14 Nissen that you had specifically spoken 15 about on the business show was Trump's 16 organized crime contacts and that Trump 17 was more like Baby Huey than Jack 18 Welch; is that correct? 19 A. Those were the elements of 20 what I spoke about on the show that I 21 was getting the most phone calls about. 22 Q. And that's what you mention 23 in this e-mail, correct? That's a yes 24 or no question. 25 A. Correct.</p>

19 (Pages 441 to 444)

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231a

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1 - TIMOTHY L. O'BRIEN -
2 Q. Then you wrote another
3 e-mail.
4 If you go to Page 1 of this
5 document?
6 A. Uh-huh.
7 Q. Same date, October 31st of
8 2005, to Wolff and Nissen at Warner.
9 You say in the third
10 paragraph, the last paragraph on this
11 page -- this is you writing, "We should
12 get this in front of as many radio and
13 TV people as possible. The CNBC stuff,
14 organized crime ties, et cetera. I
15 don't think we want this stuck in the
16 inside edition extra turf, though.
17 These new developments take the story
18 in a different direction."
19 Now, Mr. O'Brien, what was
20 the reason why you wanted to get -- and
21 I'm not asking you -- I'm just asking
22 you about the organized crime
23 reference.
24 What was the reason why you
25 specifically wanted to get the

446

1 - TIMOTHY L. O'BRIEN -
2 organized crime ties that you had
3 written Trump has in front of as many
4 radio and TV people as possible?
5 A. I believe that the book
6 conveyed news about Mr. Trump. I think
7 this was one of the specific elements
8 that related to news that was in the
9 book.
10 And prior to this, some of
11 the marketing with Rob was directed at
12 television shows that focused on
13 gossip, and that wasn't really where I
14 was keying the book to be positioned.
15 And in that context, I felt
16 that this allowed us an opportunity to
17 properly focus on the news elements of
18 the book that I felt were newsworthy
19 and that were unique to the news
20 content of the book.
21 Q. Why didn't you want the
22 gossip-type TV shows to focus on the
23 book?
24 MR. CERESNEY: Objection to
25 form. You can answer.

447

1 - TIMOTHY L. O'BRIEN -
2 Q. Well -- withdrawn.
3 You said that marketing with
4 Rob was directed at television shows
5 that focused on gossip.
6 You didn't want that, right?
7 A. Correct. I was uncomfortable
8 with it.
9 Q. Why -- why were you
10 uncomfortable?
11 A. Because I don't think it was
12 the character of the book and that
13 wasn't a venue in which I was
14 comfortable promoting the book. And as
15 I had said to the Time Warner people
16 earlier, I didn't want to promote the
17 book as an exposé or as a Kitty Kelly
18 type tell-all. So I was wary of
19 promoting the book in venues that might
20 emphasize that.
21 Q. Didn't you emphasize in your
22 promotional appearances, sir, precisely
23 those parts of the book that you
24 believe would denigrate Donald Trump
25 the most?

448

1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection to
3 form. You can answer.
4 A. No, absolutely not.
5 Q. Now, Rick Wolff sends an
6 e-mail to you at the top of Page 1,
7 same date, October 31st of 2005.
8 And the Warner editor writes,
9 "At some point, we're going to reach a
10 tipping point on this book, and Trump
11 is going to either do something or say
12 something that will add jet fuel to
13 this book. Just keep up all of the
14 good work you've done so far and keep
15 battling."
16 What was your understanding
17 of this reference to "tipping point"?
18 MR. CERESNEY: Objection to
19 form. You can answer.
20 A. My understanding was that it
21 would -- it would take on a larger
22 presence in -- in the media than it had
23 up to that point.
24 Q. And what do you believe might
25 cause it to do that?

449

1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection.
3 Form. Go ahead.
4 A. I think any number of
5 elements of the book could have. It
6 was a multifaceted book. And I
7 believed it had the possibility of
8 having traction in a number of
9 different realms, so I wouldn't limit
10 that to any one specific area of the
11 book.
12 Q. Isn't it true, Mr. O'Brien,
13 that the track -- the realms that you
14 focused on in all of your marketing
15 promotional appearances were the most
16 negative aspects about Trump that you
17 wrote in your book?
18 MR. CERESNEY: Objection to
19 form. You can answer.
20 A. Well, in the context of the
21 e-mail that we're examining here, it
22 pertains to my appearance on CNBC in
23 which I distinctly complimented Donald
24 on his marketing prowess, on the fact
25 that he had been a survivor for so long

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1 - TIMOTHY L. O'BRIEN -
2 through a number of business setbacks.
3 And I actually think the CNBC
4 appearance related to a number of
5 issues about his career that go well
6 beyond just the content of this e-mail.
7 So in answer to your
8 question, I think the CNBC appearance
9 itself, which is referenced in the
10 e-mails we're discussing here,
11 portrayed effectively the
12 multidimensional aspect of what the
13 book was about and what I wanted to say
14 about it.
15 Q. Do you believe that a viewer
16 of your appearance on that program
17 would infer from your comments that you
18 were saying positive things about
19 Mr. Trump?
20 MR. CERESNEY: Objection to
21 form. You can answer.
22 A. I can't really get into the
23 mind of a viewer; however, I certainly
24 said a number of positive things about
25 Mr. Trump on that show. And one of the

451

1 - TIMOTHY L. O'BRIEN -
2 hosts went out of her way to point out
3 she thought the book had many positive
4 elements.
5 Q. Now, yesterday -- well,
6 withdrawn.
7 Do you believe, Mr. O'Brien,
8 that a reader of your book would infer
9 that you were portraying Trump in a
10 positive light?
11 MR. CERESNEY: Objection.
12 Form. You can answer.
13 A. I can't get into the mind of
14 any reader that you're speaking of on
15 sort of a nebulous basis. But I
16 certainly heard from a number of
17 readers who felt it was a well-rounded
18 book, and they came away with a belief
19 I liked Donald.
20 Q. Now, Mr. O'Brien, just now
21 and several times yesterday you used
22 the phrase, "I can't get into the mind
23 of a reader."
24 Mr. O'Brien, isn't that
25 precisely what you are required to do

452

1 - TIMOTHY L. O'BRIEN -
2 as a Times reporter and as a book
3 author who you've testified applies
4 standards to your work, researching and
5 writing?
6 MR. CERESNEY: Objection.
7 Form. You can answer.
8 A. My responses are to your
9 statement about a hypothetical reader.
10 This reader is unknown to me, and I
11 can't provide any definition about what
12 this hypothetical reader may or may not
13 believe.
14 Q. Mr. O'Brien, you have
15 testified and you swore under oath to a
16 judge that you applied specific
17 journalistic standards when you write
18 articles for The Times and write books,
19 correct?
20 A. Correct.
21 Q. And The Times has written
22 standards that you claim you follow;
23 isn't that correct?
24 MR. CERESNEY: Objection.
25 Form. You can answer.

453

1 - TIMOTHY L. O'BRIEN -
2 A. I don't claim to follow them.
3 I - I very much try to follow them as
4 best I can.
5 Q. Even better.
6 Now, those standards include
7 requirements, for example, that a
8 writer be fair and impartial and
9 attempt to shed biases, correct?
10 A. That is --
11 MR. CERESNEY: Objection to
12 form.
13 Q. Those are some of the
14 standards; isn't that correct?
15 MR. CERESNEY: Objection to
16 form. You can answer.
17 A. That is correct.
18 Q. And the reason why those
19 standards exist is out of a concern
20 that a reader might infer a certain
21 message or point being conveyed if
22 there's bias or partiality; isn't that
23 true?
24 MR. CERESNEY: Objection.
25 Form. You can answer.

454

1 - TIMOTHY L. O'BRIEN -
2 A. I think you're providing a
3 very limited definition of it. It's
4 not only the reader that we have in
5 mind; it's the subjects that we write
6 about. And the goal is to bear both
7 the reader in mind and the subject
8 we're writing about, so it's -- it
9 seemed broader than you stated.
10 Q. But the reader is one of the
11 important parts of the equation when it
12 comes to applying journalistic
13 standards, right?
14 MR. CERESNEY: Objection.
15 Form. You can answer.
16 A. I think the subject is the
17 first -- is --
18 MR. CERESNEY: I'm going to
19 let him continue his answer. But
20 Mark, just the snickering in
21 response to the answers, I'd ask
22 you to not do that.
23 MR. RESSLER: I wasn't -- I
24 wasn't snickering, Andrew.
25 That's -- the record will speak for

455

1 - TIMOTHY L. O'BRIEN -
2 itself, if there's any audio that's
3 picked up.
4 MR. CERESNEY: Okay. I would
5 appreciate it, though, if you not
6 do that. Okay?
7 Q. Continue, Mr. O'Brien.
8 A. Please rephrase the question.
9 Q. The reader is one part of the
10 equation when it comes to applying
11 particular journalistic standards;
12 isn't that true?
13 A. The reader is one part of the
14 equation, yes.
15 Q. In fact, don't reporters and
16 writers constantly have to view their
17 work, researching and writing from the
18 perspective of how a reader might view
19 what they've written?
20 MR. CERESNEY: Objection.
21 Form. You can answer.
22 A. I think the first standard is
23 whether or not the subject will feel
24 fairly treated.
25 Q. But I'm putting the subject

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1 - TIMOTHY L. O'BRIEN -
2 to one side. I'm talking about the
3 reader.
4 Don't writers and reporters
5 constantly have to evaluate how a
6 reader might interpret what they're
7 writing?
8 A. Certainly. I think that's an
9 element of it. Absolutely, yes.
10 Q. That's why standards exist in
11 part, because a writer has to consider
12 how a reader might interpret what the
13 author has written; isn't that true?
14 MR. CERESNEY: Objection.
15 Form. You can answer.
16 A. Yes. I think that's true.
17 Q. So when you've said today and
18 several times yesterday that you can't
19 put yourself into the mind of a reader,
20 isn't that what you are required to do
21 as a journalist?
22 MR. CERESNEY: Objection.
23 Q. Put yourself into the mind of
24 a reader to decide how a reader might
25 interpret what you're writing?

457

1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection.
3 Mischaracterizes prior testimony.
4 Go ahead.
5 A. Yeah. I don't believe I
6 actually said what you just stated.
7 Q. The record, sir, will speak
8 for itself on that point.
9 Do you agree with that?
10 A. Oh, I certainly do.
11 Q. Now, turning your attention
12 back to this document. Jet fuel,
13 Mr. O'Brien.
14 "At some point we're going to
15 reach a tipping point on this book and
16 Trump is going to either do something
17 or say something that will add jet fuel
18 to this book?"
19 Do you see that?
20 A. I do.
21 Q. Do you have any understanding
22 what Mr. Wolff was referring to when he
23 said, "Trump is going to either do
24 something or say something that will
25 add jet fuel to this book"?

458

1 - TIMOTHY L. O'BRIEN -
2 A. In this context, I'm not
3 exactly certain what he's referring to.
4 Q. You have no idea, as you sit
5 here today, what Mr. Wolff meant when
6 he said, "Trump is going to either do
7 something or say something that will
8 add jet fuel to this book"?
9 MR. CERESNEY: Objection to
10 form. Mischaracterize --
11 Q. Is that -- is that your
12 testimony?
13 MR. CERESNEY: Objection to
14 form. Mischaracterizes testimony.
15 Go ahead.
16 A. Reading this today and
17 interpreting what I'm seeing today, my
18 assumption is that what Rick is saying
19 is that in word or action Donald will
20 respond to the book in a way that will
21 create media attention for it.
22 Q. What is meant by "jet fuel,"
23 adding jet fuel to the book?
24 MR. CERESNEY: Objection to
25 form. You can answer.

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1 - TIMOTHY L. O'BRIEN -
2 A. Akin to some of the other
3 phrases I think we've discussed, media
4 buzz, conversation in the media.
5 Q. And you believed and Warner
6 believed -- withdrawn.
7 You believed that in order to
8 create that media buzz and that
9 conversation in the media you had to do
10 something to get Trump angry; isn't
11 that correct?
12 MR. CERESNEY: Objection.
13 Form. You can answer.
14 A. No, that's not correct. I
15 think one of the very relevant things
16 about Donald is that he is constantly
17 in the public eye.
18 I believe that there was, you
19 know, a lot of different elements that
20 would contribute to a conversation
21 about this book. And certainly getting
22 him angry, as you phrase it, wasn't --
23 didn't have to be a key component of
24 any strategy to promote the book.
25 Q. Didn't have to be, but it

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1 - TIMOTHY L. O'BRIEN -
2 was, correct?
3 MR. CERESNEY: Objection.
4 Form.
5 Q. That was a key strategy to
6 promote the book, wasn't it; getting
7 Trump to go ballistic?
8 A. No. I've just said I don't
9 believe it was a key strategy. I think
10 it was anticipated that he might and
11 that would generate attention in the
12 media. But I would not say that was a
13 key strategy, no.
14 MR. RESSLER: Please mark the
15 following document as Exhibit 36,
16 previously identified in discovery
17 as TWBG-EM-5982.
18 (Whereupon, O'Brien Exhibit 36 was
19 marked for identification.)
20 Q. Directing your attention to
21 the top of this document. It's an
22 e-mail from Mr. Wolff at Time Warner to
23 your agent.
24 And Mr. Wolff writes,
25 "Andrew, See below for the official

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1 - TIMOTHY L. O'BRIEN -
2 statement that we're sending out about
3 TrumpNation. Tim is getting calls from
4 all over, but we feel strongly that he
5 should do nothing today. Let's allow
6 the furor to build. Maybe even sell
7 some books."
8 Do you see that?
9 A. I do.
10 Q. Do you have any understanding
11 of what was meant in this e-mail by
12 allowing "the furor to build"?
13 A. I do.
14 Q. What was meant?
15 A. I believe this is in
16 reference to the response to his
17 lawsuit which was filed, I believe,
18 that morning or the day before.
19 Q. What was "the furor"?
20 A. The reaction to the filing of
21 the lawsuit.
22 Q. And the reference to "maybe
23 even sell some books," is it fair to
24 say that your book was not selling
25 well?

462

1 - TIMOTHY L. O'BRIEN -
2 A. That's very fair to say.
3 Q. Explain why that's fair to
4 say.
5 A. Because the book did not sell
6 well.
7 Q. Can you quantify that to some
8 extent for the jury, when you say it
9 didn't sell well?
10 MR. CERESNEY: Objection.
11 Form. You can answer.
12 Q. In terms of numbers of copies
13 sold?
14 A. Yeah. I don't know the exact
15 number of copies sold, but I know it
16 was a very low number.
17 Q. How low? And I appreciate
18 that you can't give me a precise
19 number, but how low is low?
20 A. Low enough that I don't
21 believe it had -- ended up having much
22 of a role in the public conversation
23 about Mr. Trump or perceptions of
24 Mr. Trump.
25 Q. Did you have expectations

463

1 - TIMOTHY L. O'BRIEN -
2 that the book would do better than it
3 did?
4 A. I certainly did.
5 Q. Did you have expectations
6 that the book would do much better than
7 it did?
8 A. I did.
9 Q. In addition to the \$250,000
10 advance you received from Warner Books,
11 what other money did you make, if any,
12 in connection with this book?
13 A. I believe I made \$2,500 for
14 recording a -- what is described as a
15 VidLit, within the Warner Books
16 terminology.
17 Q. Anything else?
18 A. No.
19 Q. And it's true, is it not,
20 Mr. O'Brien, that as it became clear to
21 you that your book was not doing well,
22 you began to resort to increasingly
23 desperate tactics to sell the book,
24 right?
25 MR. CERESNEY: Objection.

464

1 - TIMOTHY L. O'BRIEN -
2 Form. You can answer.
3 A. No. I wouldn't characterize
4 it that way at all. I was deeply
5 unhappy with the way in which I felt
6 Rob Nissen was promoting the book. I
7 felt that he was limiting the audience
8 to a narrow business readership.
9 And I felt and still feel
10 that the book was much more than that.
11 That it was a cultural exploration that
12 could have great traction with the
13 general reader interested not only in
14 Donald but the worlds in which he
15 inhabited -- casinos, real estate,
16 politics, celebrity, reality TV, all
17 the many different areas that the book
18 covered.
19 And I felt that marketing it
20 was built around only channelling it
21 through business conduits that reached
22 the business reader limited both the
23 scope of the book's content and what
24 the book aspired to achieve and,
25 therefore, limited sales. And in that

<p style="text-align: right;">465</p> <p>1 - TIMOTHY L. O'BRIEN - 2 regard, I was deeply unhappy with how 3 it was marketed. 4 Q. And isn't it true that the 5 more your unhappiness with your book 6 sales deepened, the more aggressive you 7 became in emphasizing negative aspects 8 about Trump? 9 MR. CERESNEY: Objection. 10 Form. You can answer. 11 A. No. In fact, I think I 12 consciously moved away from some of the 13 venues I mentioned to you earlier that 14 I didn't want the book to appear in. 15 Q. My question didn't concern 16 the venues, sir. 17 My question concerned the 18 fact that as your unhappiness with your 19 book sales deepened, you became more 20 aggressive in emphasizing the negative 21 aspects about Trump to the public; 22 isn't that true? 23 MR. CERESNEY: Objection. 24 Form. Asked and answer. 25 A. No. I think that's</p>	<p style="text-align: right;">467</p> <p>1 - TIMOTHY L. O'BRIEN - 2 negative. 3 Q. Do you believe that that 4 message is reflected in the documents 5 we have been looking at yesterday and 6 today? 7 A. Yes, I do. 8 Q. Thank you. 9 Now, with respect to your 10 appearances, you very much wanted to 11 appear on the Don Imus morning radio 12 show, correct? 13 A. I did, yes. 14 Q. And Imus was the broadcaster 15 who was fired earlier this year; is 16 that correct? 17 A. That's correct. 18 Q. And you couldn't get on Imus, 19 right? 20 A. That is correct. 21 Q. You were also unable to get 22 on the Larry King show; is that 23 correct? 24 A. I wasn't on the show. I 25 can't recall the efforts made to get on</p>
<p style="text-align: right;">466</p> <p>1 - TIMOTHY L. O'BRIEN - 2 incorrect. I think the pattern of 3 my -- 4 Q. Okay. Sir, the answer -- 5 it's a yes or no question. 6 A. May I finish? 7 Q. Is it true -- 8 MR. CERESNEY: Mark, you can 9 move to strike the rest of his 10 answer, but please let him finish 11 his answer. 12 A. May I finish? 13 Q. Well, no. It was a yes or no 14 question. 15 MR. CERESNEY: He can answer 16 the question. You can move to 17 strike everything after yes or no 18 if you think it's a yes or no 19 answer. 20 A. I think a review of the 21 totality of my appearances on behalf of 22 the book, there's a pretty constant 23 message about how I see the book and 24 what I wanted the book to achieve that 25 isn't about only focusing on the</p>	<p style="text-align: right;">468</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Larry King, though. 3 Q. The New York Times Magazine 4 passed on your book? 5 A. On excerpting it, yes. 6 Q. Some other publications, 7 Vanity Fair, passed on it, correct? 8 A. Correct. 9 Q. Do you have any understanding 10 as to why your book didn't do well? 11 MR. CERESNEY: Objection to 12 form. You can answer. 13 A. Well, you know, I personally 14 believe that the marketing played a 15 role in that. But I think, you know, 16 there's an alchemy to the sale of a 17 book, and I think it's hard to predict. 18 Q. An alchemy to the sale of a 19 book. 20 What do you mean by -- what 21 was the word? Alchemy? 22 A. Alchemy. 23 Q. What do you mean by "alchemy 24 to the sale of the book"? 25 A. I think any creative endeavor</p>

<p style="text-align: right;">469</p> <p>1 - TIMOTHY L. O'BRIEN - 2 it's always hard to predict how people 3 might respond to it. And I think there 4 is a -- it's hard to predict what 5 artistic or creative product will 6 capture people's attention. 7 Q. To increase sagging book 8 sales you tried to pass out fliers for 9 the book, Mr. O'Brien; is that correct? 10 MR. CERESNEY: Objection. 11 Form. You can answer. 12 A. No. I personally did not. 13 Q. But people you were working 14 with in connection with the marketing 15 and promotion of the book did; isn't it 16 that true, sir? 17 A. No, that's incorrect. 18 Q. Did they try to do that? 19 A. No, they didn't. Not the 20 people that I was working with 21 marketing the book. 22 Q. Oh, other people? 23 A. Yes. 24 Q. Could we take a look 25 at Exhibit -- it will be 37, previously</p>	<p style="text-align: right;">471</p> <p>1 - TIMOTHY L. O'BRIEN - 2 the marketing team at Warner Books, 3 yes. 4 Q. Now, you're aware, are you 5 not, that most of the people who attend 6 Trump's appearances at the Learning 7 Annex are inclined to view Trump 8 favorably? 9 Do you have any understanding 10 if that's a correct statement? 11 MR. CERESNEY: Objection to 12 form. You can answer. 13 A. I couldn't really 14 characterize why those people are 15 attending those events. 16 Q. Are you familiar with those 17 events? 18 A. Generally, yes. 19 Q. When you say "generally," 20 what do you mean by that? 21 A. I've never attended one, but 22 I've seen publicity for them. 23 Q. So what was the idea under 24 consideration with respect to 25 promotional postcards at a Trump speech</p>
<p style="text-align: right;">470</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Identified in discovery, TOB-EF-118. 3 (Whereupon, O'Brien Exhibit 37 was 4 marked for identification.) 5 Q. You had nothing to do with 6 that plan, correct? 7 A. No, I didn't. 8 Q. Okay. We'll take a look at 9 the documents. 10 A. Okay. 11 Q. Directing your attention to 12 the last page. On this page there's an 13 e-mail exchange between your agent and 14 your editor concerning what your agent 15 describes as "a golden opportunity to 16 have promotional postcards at a Trump 17 event." 18 Do you see that? 19 A. I do. 20 Q. So they were discussing 21 having your book, TrumpNation, 22 available at Trump's speeches at the 23 Learning Annex; is that correct? 24 A. This was an idea that Andrew 25 thought of, that he was presenting to</p>	<p style="text-align: right;">472</p> <p>1 - TIMOTHY L. O'BRIEN - 2 at the Learning Annex? 3 A. To make -- to put the book in 4 front of people who were followers of 5 Trump. This was obviously a type of 6 venue in which people who, for whatever 7 reason, might be following Mr. Trump 8 could be made to be aware of the book. 9 Q. So when you say "following 10 Mr. Trump," what do you mean by that? 11 A. Had an interest in hearing 12 what he had to say. 13 Q. If you could look at Page 1. 14 There's an e-mail from Rob Nissen at 15 Warner to your agent. "I've gone 16 straight to the top with the Learning 17 Annex about this and they told me, flat 18 out, no." 19 Do you see that? 20 A. I do. 21 Q. Was it your understanding 22 that the Learning Annex said that 23 promotional postcards could not be 24 distributed at their Trump event? 25 A. I don't know if that's</p>

26 (Pages 469 to 472)

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1 - TIMOTHY L. O'BRIEN -
2 precisely what Rob is referencing here,
3 is just the distribution of postcards
4 at the event.
5 Q. Was it also having the book
6 present at the event?
7 A. And it might have possibly,
8 at this point, had me attending with
9 Donald. I can't remember all the
10 specifics.
11 Q. Well, Mr. Nissen writes in
12 the second paragraph, "I did make up
13 1,000 postcards for the Chicago event
14 which one of Tim's friends somehow
15 distributed outside the book."
16 Did you see that?
17 A. That's not what it says.
18 MR. CERESNEY: Venue.
19 Q. I'm sorry. "...which one of
20 Tim's friends distributed outside the
21 venue."
22 Do you see that?
23 A. I do.
24 Q. And then if I could direct
25 your attention to the top e-mail on

475

1 - TIMOTHY L. O'BRIEN -
2 were that Mr. Wolff wanted Trump to
3 have to answer on the major TV shows?
4 MR. CERESNEY: Objection.
5 Form. You can answer.
6 A. Well, this is Rick's e-mail.
7 I can't really speak to what he was
8 thinking about at the time.
9 Q. Well, not exact -- I'm not
10 asking you exactly. I'm just -- I'm
11 just asking you if you have any
12 understanding based on the fact that he
13 was your editor and you had worked
14 closely with the Time Warner people.
15 Do you have any understanding
16 of what he meant when he said that
17 "what we have been grappling with is
18 trying to find that major TV show in
19 which Trump has to answer to all of the
20 accusations in Tim's book?"
21 MR. CERESNEY: Objection.
22 Form. You can answer.
23 A. You know, I really can't
24 speak to what was in his mind at this
25 time.

474

1 - TIMOTHY L. O'BRIEN -
2 Page 1?
3 A. Uh-huh.
4 Q. From Mr. Wolff to Rob Nissen
5 and another Time Warner person.
6 "Thanks, Rob, for responding on this,
7 also," Mr. Wolff writes. "Andrew, the
8 book has received wonderful reviews,
9 which is no surprise. What we have
10 been grappling with is trying to find
11 that major TV show in which Trump has
12 to answer to all of the accusations in
13 Tim's book. So far, besides the gossip
14 shows and some stuff on CNBC, we really
15 haven't found much traction yet on the
16 major TV shows and it's quite vexing
17 for all of us. But as Rob points out,
18 more reviews are coming in," -- "more
19 reviews are coming. In any event,
20 we're still fighting the good fight in
21 a big way."
22 Do you see that?
23 A. I do.
24 Q. Do you have any understanding
25 of what the accusations in your book

476

1 - TIMOTHY L. O'BRIEN -
2 Q. Were there accusations
3 against Trump in your book,
4 Mr. O'Brien?
5 A. Are you asking me that
6 independently of this e-mail?
7 Q. My question is: Were there
8 accusations against Mr. Trump in your
9 book? That's my question.
10 A. I would not characterize them
11 as accusations.
12 Q. But your Warner editor did,
13 correct, in this e-mail?
14 A. That is correct.
15 Q. As you sit here today, you
16 have no understanding as to why he
17 would have stated that your book has
18 accusations against Mr. Trump; is that
19 correct?
20 MR. CERESNEY: Objection.
21 Form. You can answer.
22 A. I can't really get into
23 Rick's head on this one.
24 Q. Yesterday, Mr. O'Brien, and I
25 think this morning as well, I asked you

1 - TIMOTHY L. O'BRIEN -
 2 whether you promoted you're book in
 3 such a way as to cause Trump damage.
 4 Do you recall that?
 5 MR. CERESNEY: Objection to
 6 the form. You can answer.
 7 A. I actually don't remember
 8 that specific question.
 9 Q. Didn't I ask you numerous
 10 times yesterday if you marketed and
 11 promoted the book in such a way as to
 12 cause damage to Trump's reputation and
 13 to subject him to public scorn and
 14 ridicule?
 15 A. I do recall that question,
 16 yes.
 17 Q. And you answered "no" each
 18 time I asked you the question, correct?
 19 A. That is correct.
 20 Q. And I take it that continues
 21 to be your testimony?
 22 A. It is.
 23 Q. And you continue to maintain,
 24 I take it, that in writing and
 25 promoting the book, you did not act

1 - TIMOTHY L. O'BRIEN -
 2 with bias toward Trump, correct?
 3 MR. CERESNEY: Objection.
 4 Form. You can answer.
 5 A. No. I don't believe I acted
 6 with bias towards Trump.
 7 Q. Likewise, I take it you
 8 continue to maintain that in writing
 9 and promoting your book you were
 10 impartial toward Trump?
 11 MR. CERESNEY: Objection to
 12 form. You can answer.
 13 A. I very much believe that,
 14 yes.
 15 Q. And I take it, likewise, that
 16 you very much believe, and you
 17 testified that you were not determined
 18 and did not attempt, to cause injury to
 19 Trump's reputation, right?
 20 MR. CERESNEY: Objection.
 21 Form. You can answer.
 22 A. Yeah. I had no need to do
 23 that it.
 24 Q. And I take it that you,
 25 likewise, continue to maintain that you

1 - TIMOTHY L. O'BRIEN -
 2 did not seek to make Trump an object of
 3 public scorn and ridicule, correct?
 4 MR. CERESNEY: Objection.
 5 Form. You can answer.
 6 A. I agree.
 7 Q. And, likewise, you continue
 8 to maintain and agree that you did not
 9 act with malice toward Donald Trump,
 10 correct?
 11 MR. CERESNEY: Objection.
 12 Form. You can answer.
 13 A. Could you define malice for
 14 me?
 15 Q. Well, you were an English
 16 major at Georgetown.
 17 What does malice mean to you?
 18 MR. CERESNEY: Objection to
 19 the form. You can answer the
 20 question.
 21 Q. Do you not know what the word
 22 "malice" means?
 23 MR. CERESNEY: Mark, you know
 24 as well as I do there are several
 25 different definitions of malice in

1 - TIMOTHY L. O'BRIEN -
 2 this context of libel case, so...
 3 Q. Sir, what does malice mean to
 4 you?
 5 A. Can you tell me the context
 6 in which you're asking me that
 7 question?
 8 Q. No. I'm just asking you to
 9 define the word "malice"?
 10 A. Do you mean in the context of
 11 this case?
 12 Q. No. I mean for you to define
 13 the word "malice" as a reporter and
 14 editor and writer and English major --
 15 A. Uh-huh.
 16 Q. -- and history --
 17 MR. CERESNEY: Objection.
 18 Form..
 19 Q. -- graduate student -- and
 20 journalism graduate student and MBA.
 21 MR. CERESNEY: Objection to
 22 form. If you can answer.
 23 A. Well, in the -- I'd like to
 24 define it in the context of this case,
 25 which I think is the demonstration of

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1 - TIMOTHY L. O'BRIEN -
 2 reckless disregard for the truth.
 3 Q. Well, my question is: What
 4 does malice mean to you in any other
 5 context?
 6 A. I think reckless disregard
 7 for the truth is a good standard.
 8 Q. And you don't believe that
 9 you acted towards Trump with reckless
 10 disregard for the truth?
 11 MR. CERESNEY: Objection to
 12 form. You can answer.
 13 A. No. I don't believe I did at
 14 all.
 15 Q. Do you think you acted
 16 vindictively towards Trump?
 17 MR. CERESNEY: Objection.
 18 Form. You can answer.
 19 A. No. In fact, I believe I
 20 acted generously towards him.
 21 Q. You believe you acted
 22 generously towards Trump?
 23 MR. CERESNEY: Objection.
 24 Form. You can answer.
 25 A. Yes.

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1 - TIMOTHY L. O'BRIEN -
 2 Q. Mr. O'Brien, who is David
 3 Dillon?
 4 A. David Dillon is a childhood
 5 friend of mine from Illinois.
 6 Q. Where does he live in -- does
 7 he still live in Illinois?
 8 A. Yes, he does.
 9 Q. Where?
 10 A. In Lake Forest, Illinois.
 11 Q. What's his address?
 12 A. I could --
 13 Q. Yes, please. Please do.
 14 MR. CERESNEY: We'll provide
 15 it separately to you. I don't
 16 think it's appropriate to put it on
 17 the record here.
 18 MR. RESSLER: It's absolutely
 19 appropriate to put it on the
 20 record.
 21 MR. CERESNEY: Put this
 22 gentleman's home address on the
 23 record?
 24 MR. RESSLER: Why? I mean,
 25 if Mr. O'Brien has the address.

483

1 - TIMOTHY L. O'BRIEN -
 2 Q. Do you have the address on
 3 your person now? Is it in your pocket
 4 or something?
 5 MR. CERESNEY: Do you have
 6 the address on your person?
 7 A. I do. Okay.
 8 Q. What is it?
 9 A. Can I?
 10 MR. MELODIA: Is this being
 11 handled under a confidentiality
 12 order? I mean, there are rules
 13 against putting personal
 14 information into the public record.
 15 MR. RESSLER: Fine, Mark.
 16 I'll -- I'll take the -- we'll take
 17 the address at the first break.
 18 But I would like it at the first
 19 break --
 20 MR. CERESNEY: That's fine.
 21 MR. RESSLER: -- not to wait,
 22 you know, to send you guys a
 23 letter.
 24 MR. CERESNEY: That's fine.
 25 Q. Mr. O'Brien, what's his phone

484

1 - TIMOTHY L. O'BRIEN -
 2 number? Do you have that as well? You
 3 can give that to us during a break?
 4 A. I can.
 5 Q. What does he do for a living,
 6 Dave Dillon?
 7 A. He builds homes.
 8 Q. Meaning what? Does he have a
 9 company?
 10 A. He has his own partnership
 11 with an architect.
 12 Q. What's the company called,
 13 the partnership?
 14 A. I don't know. I don't know
 15 the name of it.
 16 Q. Where is he based?
 17 A. In Lake Forest, Illinois.
 18 Q. Do you have that address, as
 19 well?
 20 A. I don't have the corporate
 21 address.
 22 Q. Do you know the architect?
 23 A. I don't recall his name.
 24 Q. How often do you speak to
 25 David Dillon?

485

1 - TIMOTHY L. O'BRIEN -
2 A. I would say frequently, but
3 not -- not monthly, you know, maybe
4 once a month at the most.
5 Q. Frequently but not monthly,
6 once a month at the most.
7 Isn't that monthly?
8 MR. CERESNEY: Objection.
9 Form. You can answer.
10 A. You know, I'm -- I -- you
11 know, I -- I -- a lot of my childhood
12 friends I don't keep in frequent touch
13 with; but I keep in touch with him more
14 frequently than others that I do, like,
15 consider friends as well.
16 Q. Are you familiar with an
17 e-mail address tob3000@comcast.net?
18 A. Yes, I am.
19 Q. What is it?
20 A. That's my personal e-mail
21 address.
22 Q. Did you engage in any efforts
23 to produce discovery in this case?
24 A. I did.
25 Q. And did that include

486

1 - TIMOTHY L. O'BRIEN -
2 searching for e-mails on your -- at
3 your personal address?
4 A. It did.
5 Q. And did you do that?
6 A. I provided everything in my
7 e-mail correspondence to my attorneys,
8 yes.
9 Q. You did that yourself?
10 A. I did.
11 Q. You did not provide a laptop
12 or home computer to your attorneys so
13 that they could search to look for
14 e-mails that would be responsive to our
15 discovery requests in this case?
16 A. No, I did not.
17 Q. Have you deleted anything off
18 of your personal e-mail address?
19 A. As it pertains to this case?
20 Q. Correct.
21 A. During the course of
22 reporting for the book I have. Since
23 the litigation arisen -- has arisen,
24 no, I haven't. But I've provided
25 everything to my attorneys that would

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1 - TIMOTHY L. O'BRIEN -
2 have come off of that address.
3 Q. What did you delete during
4 the course of working on the book?
5 A. Well, I often forwarded
6 e-mails from that account to my Times
7 computer, as well as drafts of the
8 book.
9 Q. So you made the decision when
10 you were searching your personal e-mail
11 account as to what was responsive in
12 this case and what wasn't; isn't that
13 correct?
14 MR. CERESNEY: Let me object.
15 I need to consult with -- this may
16 be a privileged response. I'd like
17 to consult with him before he
18 answers the question.
19 THE VIDEOGRAPHER: The time
20 on the video monitor is 11:51 a.m.
21 We're off the record.
22 (Whereupon, a brief
23 discussion was held off record.)
24 THE VIDEOGRAPHER: We're back
25 on the record. The time on the

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1 - TIMOTHY L. O'BRIEN -
2 video monitor is 11:58 a.m.
3 MR. RESSLER: Andrew, I just
4 want to make a comment for the
5 record. You-all, the legal team
6 and the witness, were out meeting
7 in a conference room -- different
8 conference room, we counted six
9 minutes.
10 And it strikes me as a long
11 time to meet, given that there is a
12 question pending.
13 MR. CERESNEY: Uh-huh.
14 MR. RESSLER: And given that
15 the issue on the table was you
16 claimed a privilege issue
17 concerning whether -- a privilege
18 issue in connection with my
19 question to the witness regarding
20 whether he, on his own, decided
21 what to produce off his personal
22 e-mail account.
23 MR. CERESNEY: Uh-huh.
24 MR. RESSLER: And I think
25 that's inappropriate with a

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1 - TIMOTHY L. O'BRIEN -
2 question pending when I was led to
3 believe this was going to be a
4 pretty short meeting. And I'm --
5 just want to make the record clear.
6 I'm saying that not because I
7 begrudge you time to confer, but I
8 do begrudge you time to confer with
9 a question pending.
10 And my concern is that this
11 witness was prepped concerning
12 matters above and beyond the issue
13 on the table for which you
14 requested a break.
15 Now, I'm obviously not going
16 to ask the witness or you --
17 MR. CERESNEY: Uh-huh.
18 MR. RESSLER: -- what you
19 discussed with your client.
20 MR. CERESNEY: Uh-huh.
21 MR. RESSLER: But I think
22 it's inappropriate.
23 MR. CERESNEY: Okay. Well, I
24 appreciate that you view it as
25 inappropriate. I don't think so.

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1 - TIMOTHY L. O'BRIEN -
2 We were conferring about the
3 answer to the question in order to
4 ascertain whether the witness's
5 response was privileged or not.
6 And we were conferring about this
7 particular answer.
8 The question actually
9 involves a little bit more than
10 just -- in other words, the
11 question was a pretty broad
12 question about what he did to --
13 oh, my God, we've now passed -- the
14 screen has gone up.
15 But I believe the question
16 was essentially what he did to
17 identify what's responsive. And
18 that touches upon potential
19 conversations with counsel that we
20 wanted to make sure that we
21 understood whether his response
22 would cover.
23 It's not a very narrow
24 question because that could have
25 been a number of conversations and

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1 - TIMOTHY L. O'BRIEN -
2 that's what we were discussing.
3 And we understand the rules. We
4 understand there was a question
5 pending.
6 And we understand the sole
7 purpose for the discussion was to
8 ensure that the witness understood
9 and we understood the scope of the
10 privilege and that his response not
11 pierce it.
12 And we've actually instructed
13 him to answer the question, so
14 he'll do that now.
15 MR. RESSLER: That's fine.
16 I'll obviously accept your
17 representation that you limited
18 your conference with the witness to
19 that issue and not to any other
20 matters.
21 I'm sorry. Could you,
22 please, Miss Court Reporter, reread
23 the question?
24 You know something? It's
25 fine. I think I remember the

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1 - TIMOTHY L. O'BRIEN -
2 question.
3 BY MR. RESSLER:
4 Q. And that was when you
5 searched for e-mails through your home
6 account or with -- withdrawn.
7 When you searched for e-mails
8 on your home e-mail account -- your
9 personal e-mail account I should say,
10 you did that on your own and you made
11 the decisions as to what was responsive
12 and what wasn't responsive with respect
13 to our document request in this case;
14 is that correct.
15 A. I made all decisions about
16 what was responsive to your document
17 request in consultation with my
18 attorneys.
19 Q. But did you provide your
20 attorneys with a home laptop -- a
21 personal laptop, a personal computer,
22 home computer, et cetera?
23 A. No -- no, I did not.
24 Q. So when you were going
25 through the data documents -- e-mails

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1 - TIMOTHY L. O'BRIEN -
2 on your personal computers, you
3 decided, for example, this is
4 responsive and I'll give it to my
5 attorneys.
6 This isn't responsive and I
7 won't give it to my attorneys; isn't
8 that correct?
9 A. Under guidance from my
10 attorneys, I -- there was nothing on my
11 home computer that was responsive.
12 Q. But did your -- did your
13 attorneys review what was on your
14 personal computers?
15 A. No, they did not.
16 Q. So you made the decision what
17 to give them, and then they ultimately
18 made the decision whether or not to
19 produce it, right? I guess that --
20 that's what I'm getting at.
21 A. Yes, that's correct.
22 Q. So, you -- you decided that
23 there was a universe of documents or a
24 universe of data on your personal
25 computers that you should give to your

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1 - TIMOTHY L. O'BRIEN -
2 attorneys. And then they made the
3 decision, once they had the universe
4 that you had culled out, as to whether
5 or not that data should in turn be
6 produced to Mr. Trump and his counsel;
7 is that correct?
8 A. No, that's not correct. It
9 was in consultation with my attorneys.
10 Q. What do you mean by that,
11 without going into the substance of
12 your conversations? I just don't
13 understand how it could be in
14 consultation if they weren't there
15 looking --
16 A. Privileged?
17 MR. CERESNEY: Without going
18 into the substance, can you respond
19 to Mr. Ressler's question?
20 A. Well, on a rolling basis
21 during the reporting and writing of the
22 book; I forwarded parts of the
23 manuscript in e-mails that I received
24 from -- on my home computer to my Times
25 account and to my editor at Warner

495

1 - TIMOTHY L. O'BRIEN -
2 Books, and routinely deleted them from
3 the home computer so that I could keep
4 all of my work as centralized as
5 possible at The New York Times -- on my
6 New York Times computer.
7 Q. But Mr. O'Brien, what did you
8 do with respect to -- what did you do
9 with respect to communications you
10 might have had with friends, personal
11 e-mails that concerned the book or
12 concerned Mr. Trump?
13 Did you include that in the
14 universe of documents you gave your
15 attorneys?
16 A. They would have been. I
17 didn't have, as I recall, substantial
18 e-mails with friends on my personal
19 account -- a substantial number, as I
20 recall. And most of the time I
21 accessed that account, I accessed it on
22 the Web from work and deleted e-mails
23 on a rolling basis from that account.
24 Almost all of my -- the entirety --
25 almost all of my e-mail correspondence

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1 - TIMOTHY L. O'BRIEN -
2 came to my New York Times account.
3 Q. Almost all, but not all,
4 correct?
5 A. That is correct.
6 Q. So my question is: Did you
7 provide to your lawyers personal
8 e-mails that related in any way, shape
9 or form to the book, your work on the
10 book, to Donald Trump, to your
11 marketing and promotion of the book,
12 anything pertaining to Trump?
13 MR. CERESNEY: From his
14 personal account?
15 Q. Yes.
16 MR. CERESNEY: So you're
17 limiting it to that?
18 MR. RESSLER: I'm limiting it
19 to any -- to any computer -- to any
20 computer anywhere. How about that?
21 So I'm not limiting it.
22 MR. CERESNEY: Including The
23 Times computer?
24 Q. No. Forget The Times
25 computer. Personal laptop, home

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1 - TIMOTHY L. O'BRIEN -
 2 computer, any computer you might have
 3 in any personal area that's not a New
 4 York Times account.
 5 A. I channeled all of my e-mail
 6 and my work product through The Times
 7 account and routinely deleted it on a
 8 rolling basis from my personal account.
 9 And I provided to my -
 10 Q. I'm not talking about your
 11 work product. I'm just talking about
 12 personal e-mails, Mr. O'Brien.
 13 MR. CERESNEY: I believe
 14 that's what he was referring to, if
 15 you let him finish.
 16 A. Yeah. On personal e-mails
 17 that I forwarded into The Times account
 18 would have been provided to my
 19 attorneys, yes.
 20 Q. So if you communicated about
 21 Trump with Peggy O'Brien, your sister,
 22 who was the subject of testimony
 23 yesterday, that would have been
 24 provided to your attorneys for their
 25 review and their decision as to whether

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1 - TIMOTHY L. O'BRIEN -
 2 or not it was responsive, or no?
 3 A. If I had, but I don't think I
 4 did. I don't think -- I don't think
 5 those -- for example, e-mails with my
 6 sister, is that what you're asking?
 7 Q. I'm asking you for e-mails
 8 with family and friends in which you
 9 made any statement whatsoever about
 10 Donald Trump, that's what I'm asking
 11 you about.
 12 Did you provide those kinds
 13 of e-mails to your attorneys for their
 14 review?
 15 A. Yes. As they transited
 16 through my New York Times account, yes.
 17 Q. Well, what if they didn't
 18 transit through your New York Times
 19 account?
 20 A. I don't believe they existed
 21 anywhere else as a -- as a repository.
 22 Q. Did you communicate with
 23 family and friends and acquaintances
 24 concerning Donald Trump?
 25 A. Yes.

499

1 - TIMOTHY L. O'BRIEN -
 2 Q. Separate and apart from your
 3 work at The New York Times or you're
 4 work with Warner?
 5 MR. CERESNEY: Objection to
 6 the question. Form. You can
 7 answer if you can.
 8 A. Yes, I did, certainly.
 9 Q. Did you produce all e-mails
 10 concerning Donald Trump to your
 11 attorneys?
 12 Did you provide them to your
 13 attorneys?
 14 A. Yes, I did.
 15 Q. Including e-mails to or from
 16 family members?
 17 A. Yes.
 18 MR. CERESNEY: Let me just
 19 clarify. That are in exist -- that
 20 were in existence at the time the
 21 lawsuit was begun; in other words,
 22 that hadn't been deleted?
 23 MR. RESSLER: Yeah. But
 24 we're going to add -- no. I mean,
 25 have you -- have you swept this

500

1 - TIMOTHY L. O'BRIEN -
 2 witness's personal computers to
 3 find -- to find e-mails?
 4 MR. CERESNEY: Have we
 5 swept --
 6 MR. RESSLER: Yeah. Exactly.
 7 MR. CERESNEY: -- this
 8 witness's personal computers?
 9 MR. RESSLER: Yeah. Did you
 10 search his personal computer?
 11 Apparently not. So that's my
 12 concern, because he said you
 13 didn't.
 14 MR. CERESNEY: I understand
 15 what he said. But I'm not going to
 16 engage in a debate about production
 17 on the record now. If you have a
 18 question about the production, you
 19 can address correspondence to us
 20 and we can address it accordingly.
 21 But on the record in front of
 22 this witness, I'm not going to
 23 respond.
 24 MR. RESSLER: Okay. I'll
 25 move on.

<p style="text-align: right;">501</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Let's have the court reporter 3 mark the next document. What is 4 it? Thirty-what? 5 MS. GORECKI: 38. 6 MR. RESSLER: 38, identified 7 in discovery as TOB-EF-381. 8 (Whereupon, O'Brien Exhibit 38 was 9 marked for identification.) 10 MR. RESSLER: I'm sorry. 11 Once more thing. 12 Let me just add, Andrew, that 13 the same goes for letters. It 14 doesn't necessarily -- I'm not 15 limiting it to e-mail 16 correspondence. 17 BY MR. RESSLER: 18 Q. Mr. O'Brien, did you, 19 likewise, produce or provide your 20 lawyers with all written documents, 21 putting to one side computer-generated 22 documents, relating to Trump in this 23 case that you might have had at home or 24 in a weekend home or somewhere outside 25 The New York Times office?</p>	<p style="text-align: right;">503</p> <p>1 - TIMOTHY L. O'BRIEN - 2 the book? 3 A. Actually, David Dillon 4 independently was -- as a close friend, 5 he wanted to see the book gain greater 6 traction. He enjoyed the book quite a 7 book. 8 Q. And you wanted the book to 9 gain greater traction as well; isn't 10 that correct? 11 A. Certainly. 12 Q. You wanted book sales to 13 increase; isn't that true? 14 A. I did. 15 Q. And it was clear that as of 16 December 2005, book sales were not 17 doing well, right? 18 A. As of what date? 19 Q. As of -- I'm sorry. As of 20 November 2005, book sales were not 21 doing well; isn't that correct? 22 A. That is correct. 23 Q. And you were deeply 24 disappointed in the book sales, 25 correct?</p>
<p style="text-align: right;">502</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Yes, I did. 3 Q. All of those documents -- 4 A. Yes. 5 Q. -- were provided, including 6 letters that you might have written or 7 received? 8 A. Yes. 9 Q. You have been shown a 10 document which includes an e-mail 11 exchange between you and David Dillon 12 dated November 3rd, 2005. 13 Do you see that? 14 A. I do. 15 Q. Mr. O'Brien, the fact of the 16 matter is there really was a game plan 17 with respect to promoting this book; 18 isn't that correct? 19 A. No, that's not correct. 20 Q. Didn't you discuss with David 21 Dillon the fact that your book sales 22 were not doing well? 23 A. I did. 24 Q. And weren't you thinking of 25 ways to generate public attention to</p>	<p style="text-align: right;">504</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Yeah, definitely. 3 Q. And as part of your 4 disappointed (sic) you began to 5 entertain a different approach to 6 marketing and promoting your book; 7 isn't that correct, a more aggressive 8 approach? 9 MR. CERESNEY: Objection. 10 Form. You can answer. 11 A. No. I wouldn't characterize 12 it that way. 13 Q. You wanted to now include all 14 options on the table with respect to 15 marketing and promoting your book on 16 Trump to generate book sales; isn't 17 that correct? 18 MR. CERESNEY: Objection. 19 Form. You can answer if you can. 20 A. I wanted to book -- to 21 promote the book in its totality in as 22 many venues in which those venues would 23 reflect what the book was about. 24 Q. You wanted to continue a 25 campaign to vilify Trump in public</p>

505

1 - TIMOTHY L. O'BRIEN -
 2 opinion; isn't that true, Mr. O'Brien?
 3 MR. CERESNEY: Objection.
 4 Form. Argumentative. You can
 5 answer if you can.
 6 Q. Sir?
 7 A. I believe that the book is
 8 a -- is a very well-rounded portrait of
 9 Mr. Trump. I don't believe it vilifies
 10 him. And in that context, I wanted the
 11 promotion to reflect what the book is
 12 about.
 13 Q. Indeed, you said earlier
 14 today that you believe you acted very
 15 generously towards Mr. Trump with
 16 respect to both the book and the
 17 marketing of the book, right?
 18 MR. CERESNEY: Objection to
 19 form. You can answer.
 20 A. I think the substance of the
 21 book shows an open-mindedness towards
 22 him that I would equate with
 23 generosity. I think it's important for
 24 a journalist to have a generosity of
 25 spirit when they approach profiling

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1 - TIMOTHY L. O'BRIEN -
 2 anyone.
 3 And I think the book reflects
 4 a -- an open-mindedness towards every
 5 aspect of Donald's business activities,
 6 Donald's own self-promotion and --
 7 while also trying to maintain the
 8 distance one need as a journalist to
 9 accurately and effectively portray the
 10 reality of those things.
 11 Q. Mr. O'Brien, let me read with
 12 you the e-mail that David Dillon writes
 13 you dated November 3rd, 2005. There's
 14 other people who were sent this e-mail.
 15 Who is Michael -- I don't
 16 know if it's Abandob or Obandob.
 17 A. That's my brother Michael.
 18 Q. What does the obandob refer
 19 to?
 20 A. It is O-B and O-B. He is a
 21 partner in O'Brien and O'Brien. It's a
 22 law firm.
 23 Q. Where is it located?
 24 A. Glenview, Illinois.
 25 Q. And do you have your

507

1 - TIMOTHY L. O'BRIEN -
 2 brother's address with you today, as
 3 well?
 4 A. Um --
 5 MR. CERESNEY: Are you asking
 6 for his address?
 7 MR. RESSLER: I'm asking the
 8 witness if he has his brother's
 9 address with him to today.
 10 Q. Do you have your brother's
 11 address with you today, Mr. O'Brien?
 12 Do you know your brother's address?
 13 A. I do.
 14 Q. Okay. So you'll be providing
 15 that to your attorneys and they'll give
 16 it to me during a break as well?
 17 MS. WHITE: I think that's a
 18 question for Andrew, but the answer
 19 is yes.
 20 A. Yes.
 21 Q. Mr. O'Brien, O'Brien and
 22 O'Brien, who's the other O'Brien in
 23 addition to Michael?
 24 A. My father, Arthur.
 25 Q. Where does he live?

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1 - TIMOTHY L. O'BRIEN -
 2 A. He's dead.
 3 Q. Are there any other O'Briens
 4 in that law firm?
 5 A. No, there aren't. Oh,
 6 actually my -- sorry, my brother
 7 Patrick.
 8 Q. So there is another O'Brien
 9 in the O'Brien and O'Brien law firm.
 10 It's Michael, you're brother,
 11 right?
 12 A. Michael and Patrick.
 13 Q. Okay.
 14 A. I'm not exactly sure of
 15 Patrick's -- the nature of Patrick's --
 16 he's also an attorney and they could
 17 co-counsel on different issues. But
 18 I'm not sure of the exact nature of his
 19 contractual relationship to the firm.
 20 That would be an issue my brothers
 21 could describe better than I.
 22 Q. Okay. And where does Patrick
 23 live? You have his address as well?
 24 A. Yes. He's in Chevy Chase,
 25 Maryland.

509	<p>1 - TIMOTHY L. O'BRIEN - 2 Q. Who is Michael White? 3 A. Michael White is a childhood 4 friend of mine. 5 Q. Where does he live? 6 A. He lives in New York. 7 Q. Do you have his address as 8 well? You can provide that to your 9 counsel who will then provide it to me 10 during a break. 11 A. I do. 12 Q. It states, 13 "Michael.White@countrywide.com." 14 What's Countrywide? 15 A. Countrywide is a bank. 16 Q. Is that where he works? 17 A. He did work. He left 18 recently. 19 Q. Was that in New York or 20 somewhere else? 21 A. Both Chicago and New York. 22 At the time of this e-mail, he was in 23 Chicago. 24 Q. But now he lives in New York? 25 A. That's correct.</p>	511	<p>1 - TIMOTHY L. O'BRIEN - 2 Q. Dillon writes, "The Palm 3 Beach article was the kind of summary 4 people need to hear. Bravo! Only, 5 more people need to 'hear' it on talk 6 radio stations. I hope Warner follows 7 through with their vow to contact the 8 stations. I suggested not only in 9 Chicago but in the top ten markets 10 nationwide. 11 "Anything we do, we'll do 12 with class and sophistication, because 13 if Tim is perceived as a whack job, it 14 will only discredit the book as tabloid 15 journalism. I know it seems like a 16 great idea to pass out some fliers, but 17 in a best case scenario, you would only 18 get a few dozen people who would run 19 out and buy the book. The bitter truth 20 is direct mail "flyers" (sic) and 21 "postcards" have a 2 percent response 22 rate. Most just get tossed. 23 Ironically, if you wanted to increase 24 the response rate at the seminar this 25 weekend, we would have to position the</p>
510	<p>1 - TIMOTHY L. O'BRIEN - 2 Q. Where does he work? 3 A. He's an independent mortgage 4 broker now. 5 Q. Where's his office? Do you 6 have that information as well? 7 A. He's working from his home. 8 Q. Okay. So that would be 9 included in his home address. 10 Here's what Mr. Dillon writes 11 to you -- and this is going to your New 12 York Times account? 13 A. Yes. 14 Q. And to your brother Michael, 15 and to Mr. White. "Fellow soldiers for 16 the cause." 17 What did that refer to, 18 Mr. O'Brien? 19 A. Um -- 20 MR. CERESNEY: Objection to 21 form. You can answer. 22 Q. Do you have any understanding 23 of what that referred to? 24 A. It's -- it's very typical of 25 David. He's -- he's very gung-ho.</p>	512	<p>1 - TIMOTHY L. O'BRIEN - 2 flyers (sic) as notification about a 3 great book about a great businessman. 4 Otherwise, the stupid sheep who just 5 plunked down \$100 to hear him might be 6 offended at the suggestion that their 7 idol is a fraud. 8 "PS: I'm not sure what the 9 legal permit requirement is to pass out 10 advertising flyers (sic) on their 11 premises," -- it should be premises, 12 "as well. I'd hate to get arrested for 13 a technicality and give Donald 14 something to ridicule Tim about. Maybe 15 the brain trust at Warner can chase 16 this detail down and secure permission 17 before they whimsically dump these 18 flyers (sic) on us. They don't strike 19 me as buttoned up and overly worried 20 about Michael White and myself being 21 charged for distributing an advertising 22 without permission. 23 "Call me nuts, but I want to 24 concentrate our efforts to move 100,000 25 books, not just 100. This is a war and</p>

<p style="text-align: right;">513</p> <p>1 - TIMOTHY L. O'BRIEN - 2 we need to annihilate the enemy, not 3 just irritate him. I say talk radio 4 today can lead to more talk television 5 tomorrow and let's hope for Donald to 6 file a law suit (sic) so we can really 7 blow the cover off sales. Tim's 8 strategy is perfect if this happens. 9 If Donald gets rattled in the national 10 news by this, he will look guilty if he 11 does nothing and if he sues, it's game 12 over. Tim has a plan that will turn 13 his lights out instantly. It's 14 checkmate. 15 "Let's play to win and win 16 big time. I want Tim to have two 17 Ferrari's (sic) by Christmas...because 18 he can only drive one at a 19 time...leaving the other one for me. 20 Cool! 21 "At Ease...Smoke 'em if ya 22 got 'em." 23 Let me direct your attention, 24 Mr. O'Brien, to the beginning of this 25 e-mail,</p>	<p style="text-align: right;">515</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I do see that. 3 Q. Are you familiar with a 4 Warner vow to contact stations that 5 Mr. Dillon had suggested? 6 A. No, I'm not. 7 Q. Well, did you ask David where 8 he came up with this statement, that 9 Warner had vowed to contact stations he 10 had suggested? 11 A. In fact, my response to this 12 entire e-mail was to tell David that I 13 didn't -- 14 Q. That's not -- that's not 15 responsive -- 16 A. -- agree with -- 17 Q. It's not responsive to my 18 question. 19 MR. CERESNEY: You asked 20 him -- let him answer. You can 21 move to strike. 22 Go ahead. Finish your 23 answer. 24 A. My response to the language 25 in this paragraph and throughout the</p>
<p style="text-align: right;">514</p> <p>1 - TIMOTHY L. O'BRIEN - 2 What was the Palm Beach 3 article that's referred to in here, if 4 you know? 5 A. I believe he's referring to a 6 newspaper article in Palm -- in the 7 Palm Beach Post; but I'm not entirely 8 sure. 9 Q. Well, what leads you to 10 believe that? 11 A. Because he references it as a 12 Palm Beach article. 13 Q. Did you read that article? 14 A. I read an article in the Palm 15 Beach Post, yes. 16 Q. About Trump? 17 A. Yes. 18 Q. Was it about your book? 19 A. Yes. 20 Q. Then he writes, "I hope 21 Warner follows through with their vow 22 to contact the stations I suggested not 23 only in Chicago, but in the top ten 24 markets nationwide." 25 Do you see that?</p>	<p style="text-align: right;">516</p> <p>1 - TIMOTHY L. O'BRIEN - 2 e-mail was to ask David not to send me 3 anymore e-mails like this. I don't 4 believe it reflected my intentions for 5 the book, and -- and I also believe 6 that it was legally unwise. 7 MR. RESSLER: Move to strike 8 as completely not responsive. 9 Q. My question, sir -- 10 MR. CERESNEY: And I oppose 11 the motion to strike. 12 Q. -- my question, sir, is if 13 you have any understanding based on 14 your conversations with Dillon as to 15 whether Dillon had heard from Warner 16 that they had vowed to contact stations 17 he had suggested as part of the 18 marketing for the book. 19 A. I know that David and Rob 20 Nissen had a conversation about -- or 21 e-mails perhaps, regarding radio shows 22 that might be useful to target 23 demographically. David used to be in 24 radio. 25 Q. What radio station?</p>

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1 - TIMOTHY L. O'BRIEN -
2 A. You know, I don't know. I
3 don't recall the name.
4 Q. Was he with a station?
5 A. Yes. He was with a number of
6 stations.
7 Q. In what capacity?
8 A. In sales.
9 Q. Okay. Please continue your
10 answer.
11 A. But I don't -- you know, I
12 don't -- I'm not familiar with the
13 exact nature of what they spoke about,
14 other than I believe Rob Nissen asked
15 David to -- if there was a list of
16 radio stations and contact people at
17 radio stations nationwide who could be
18 contacted to promote the book.
19 And that Rob was interested
20 in trying to reach some those people
21 independently.
22 Q. And you were aware that Rob
23 Nissen was having these kinds of
24 communications with Mr. Dillon,
25 correct?

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1 - TIMOTHY L. O'BRIEN -
2 A. Yes.
3 MR. RESSLER: Now, earlier
4 you mentioned e-mails -- possibly
5 e-mails between Nissen and Dillon.
6 We haven't received any e-mails at
7 all between Nissen and Dillon so
8 I'm going to ask counsel to please
9 produce any such e-mails that might
10 be in Warner's possession or anyone
11 else's possession, at least with
12 respect to the clients that you all
13 represent. We'd like those e-mails
14 to be produced.
15 MR. CERESNEY: We're unaware
16 of any, but we'll check again.
17 MR. RESSLER: I'm sure that's
18 a topic we'll be taking up within
19 the next couple of weeks.
20 Q. Why -- do you have any
21 understanding of why your brother was
22 on this e-mail?
23 A. David's known my family for a
24 long time, and he and my brother have a
25 friendly relationship.

519

1 - TIMOTHY L. O'BRIEN -
2 Q. Did you communicate with your
3 brother by e-mail with respect to
4 Donald Trump in any way? Anything
5 about Trump?
6 A. Yes. I certainly did at
7 different points in time.
8 Q. And have you provided those
9 e-mails to your lawyers so that they
10 can review them for responsiveness?
11 A. I believe I have, whatever
12 exists.
13 Q. Do you have any understanding
14 as to why Michael White was on this
15 e-mail?
16 A. Childhood friend. He and
17 David and I all went to high school
18 together.
19 Q. And you and your brother and
20 Mr. White and Mr. Dillon had talked
21 about how unfortunate it was that your
22 book was not selling well; isn't that
23 correct?
24 A. Um --
25 MR. CERESNEY: Objection to

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1 - TIMOTHY L. O'BRIEN -
2 form. You can answer.
3 A. I think -- you know, I think
4 the conversations revolved around the
5 marketing efforts. They knew I was
6 unsatisfied with the way that Time
7 Warner was marketing this.
8 Q. So there were discussions,
9 including you and the people who also
10 received this e-mail, as to changing
11 the marketing strategy.
12 Is that what happened?
13 A. Changing it? No. I wouldn't
14 say changing it. I think it was --
15 enhancing it.
16 Q. And you enlisted the
17 assistance of Mr. White, Mr. Dillon and
18 your brother to enhance the marketing
19 strategy, correct?
20 A. I didn't enlist them. In
21 fact, most of what the discussion here
22 came up either through -- am I entitled
23 to -- yeah, through Andrew Blauner or
24 through David's own -- they were
25 David's ideas.

<p style="text-align: right;">521</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. So you're disclaiming 3 responsibility for what's in this 4 e-mail; is that correct, Mr. O'Brien? 5 MR. CERESNEY: Objection to 6 form. If you can answer. 7 A. I didn't write this e-mail. 8 Q. So you're disclaiming 9 responsibility for what's in this 10 e-mail, right? 11 MR. CERESNEY: Objection to 12 form. 13 Q. For the activities described 14 in this e-mail, correct? 15 MR. CERESNEY: Objection to 16 form. 17 A. No. I would disagree with 18 that. 19 Q. You were involved in the -- 20 some of the activities described in 21 this e-mail; isn't that correct? 22 MR. CERESNEY: Objection to 23 form. 24 A. I was involved in the 25 discussions that are reflected in this</p>	<p style="text-align: right;">523</p> <p>1 - TIMOTHY L. O'BRIEN - 2 is you have no understanding as to why 3 Dillon referenced the possibility that 4 you would -- you might be receive -- 5 perceived -- that you might be 6 perceived as a whack job? 7 MR. CERESNEY: Objection. 8 Form. You can answer. 9 A. Well, the statement, "whack 10 job," was first introduced by Mr. Trump 11 on an appearance on The Today Show 12 during the course of my reporting for 13 The New York Times. And that was a 14 statement Donald made about me. 15 Q. My question is: Do you 16 have -- 17 MR. CERESNEY: I believe that 18 was responsive to your question 19 actually. 20 Q. My question was: Do you have 21 any understanding as to why Dillon 22 referenced the possibility that you 23 would be perceived as a whack job? 24 MR. CERESNEY: Objection. 25 You can answer.</p>
<p style="text-align: right;">522</p> <p>1 - TIMOTHY L. O'BRIEN - 2 e-mail, certainly. 3 Q. Okay. My question is not the 4 activities, but we'll get to that. 5 We'll take them -- we'll take them one 6 at a time, Mr. O'Brien. 7 A. Okay. 8 MR. CERESNEY: Objection. 9 Q. The second paragraph reads, 10 "Anything we do, we'll do with class 11 and sophistication because, if Tim is 12 perceived as a whack job, it will only 13 discredit the book as tabloid 14 journalism." 15 Do you see that, Mr. O'Brien? 16 A. I do, certainly. 17 Q. Do you have any understanding 18 as to what would have led Mr. Dillon to 19 reference the possibility that you 20 would be perceived as a whack job? 21 MR. CERESNEY: Objection to 22 form. You can answer. 23 A. This is David's statement. I 24 can't really get inside his head. 25 Q. So your answer to my question</p>	<p style="text-align: right;">524</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. My understanding is that he 3 is using language that Donald Trump 4 used in an appearance on The Today Show 5 in 2004 in the course of my reporting 6 for The New York Times to characterize 7 me as such. 8 Q. Well, weren't you engaging in 9 conduct toward Trump that might have 10 given the public the perception that 11 you were, indeed, a whack job? 12 MR. CERESNEY: Objection. 13 Form. You can answer. 14 A. No. I don't believe I was. 15 Q. Doesn't this refer to the 16 fact that you were concerned that your 17 campaign to damage Trump's reputation 18 might end up damaging your own 19 reputation as a New York Times 20 reporter, Mr. O'Brien? 21 MR. CERESNEY: Objection to 22 form. You can answer. 23 A. No, I don't. 24 Q. Dillon writes, "I know it 25 seems like a good idea to pass out some</p>

<p style="text-align: right;">525</p> <p>1 - TIMOTHY L. O'BRIEN - 2 fliers, but in the best case scenario, 3 you would only get a few dozen people 4 who would run out and buy the book." 5 Do you understand what he's 6 talking about here? 7 A. He's talking about passing 8 out fliers. 9 Q. And tell us about that. 10 Was there a plan to pass out 11 fliers? 12 A. There was discussions about 13 passing out postcards -- promotional 14 postcards that Time Warner had prepared 15 about the book. 16 Q. Where were those postcards 17 going to be passed out? 18 A. At a Learning Annex event in 19 Chicago. 20 Q. Were these postcards actually 21 prepared? 22 A. Yes, they were. 23 MR. CERESNEY: I don't believe 24 that we've received any such 25 postcards so we'll have ask for the</p>	<p style="text-align: right;">527</p> <p>1 - TIMOTHY L. O'BRIEN - 2 displayed in The New York Times 3 newsroom? 4 MR. CERESNEY: Objection. 5 Form. You can answer. 6 A. I put them on a file case in 7 The New York Times. 8 Q. When you say -- like, you 9 taped them to a file case, like, one of 10 these metal file cases? 11 A. No. I put them on top, a 12 small stack of them. 13 Q. For Times people to take and 14 read them? 15 A. Yeah. 16 Q. And was that to generate 17 sales of your book? 18 A. No. It was to make my 19 colleagues aware of the presence of the 20 book. 21 Q. Were they the subject of 22 comment among you and your Times 23 colleagues? 24 A. Yes, they were. 25 Q. Did you tell your Times</p>
<p style="text-align: right;">526</p> <p>1 - TIMOTHY L. O'BRIEN - 2 production of the Time Warner 3 postcards. 4 MR. CERESNEY: If they exist, 5 they would have been produced. 6 Q. Have you seen these 7 postcards? 8 A. I have. 9 Q. Where did you see them? 10 A. Rob and -- Rob and Rick, I 11 think, sent some to me at The New York 12 Times at one point. 13 Q. Did you provide them to your 14 attorneys for their review? 15 A. I don't -- I don't believe I 16 had any in my possession. 17 Q. Do you have any now? 18 A. No. 19 Q. Did you discard them? 20 A. No. I think -- 21 Q. Did you pass them out? 22 A. No. I think that I put them 23 on a -- a file case at The New York 24 Times in the newsroom. 25 Q. So it's -- the postcards are</p>	<p style="text-align: right;">528</p> <p>1 - TIMOTHY L. O'BRIEN - 2 colleagues that there was a plan 3 discussed to distribute those fliers to 4 people attending the Trump Learning 5 Annex event? 6 MR. CERESNEY: Objection. 7 Form. You can answer. 8 A. No. I don't believe there 9 was. 10 Q. Were the fliers actually 11 distributed? 12 A. You know, I -- I know that 13 two of these guys, Michael and David, I 14 believe went to the Chicago event. But 15 I don't -- I remember it as not being 16 effective. Certainly I believe some 17 were distributed, but it wasn't a 18 very -- as I recall in conversation 19 with them, it wasn't very effective. 20 Q. Why not? 21 A. Because not many people had 22 an interest in getting the fliers. 23 Q. What did the fliers say? 24 A. I think the front of the 25 postcard had a picture of the jacket of</p>

529

1 - TIMOTHY L. O'BRIEN -
 2 the book, and the back of the postcard
 3 had some blurbs about what the book was
 4 about.
 5 Q. What were the blurbs?
 6 A. I don't recall.
 7 Q. You have no recollection, as
 8 you sit here today, what the blurbs on
 9 the back of the flier said?
 10 A. No, I don't.
 11 Q. Do you know who might have
 12 some of those fliers now, Mr. O'Brien,
 13 so that Mr. Trump and his attorneys can
 14 see them?
 15 MR. CERESNEY: Objection to
 16 form. Go ahead.
 17 A. At this point, I believe the
 18 only people that would have them would
 19 be Time Warner -- would be Warner
 20 Books.
 21 Q. Who at Time Warner Books
 22 should we ask whether they have those
 23 fliers?
 24 A. I have no idea.
 25 Q. What about your brother and

530

1 - TIMOTHY L. O'BRIEN -
 2 Mr. White and Mr. Dillon, would they
 3 have the fliers?
 4 A. I don't believe any of them
 5 have the fliers. I certainly don't
 6 believe my brother does.
 7 Q. Are there any other people
 8 above and beyond Mr. White and your
 9 brother and Mr. Dillon who were
 10 involved in any communications
 11 concerning the marketing and promotion
 12 of the book, other than the people at
 13 Time Warner and your agent?
 14 A. My wife.
 15 Q. What role did she play?
 16 A. She played no role. I
 17 believe what you asked me -- if I heard
 18 you incorrectly perhaps, but I thought
 19 you said was involved in communication
 20 about it.
 21 Q. That's fair. Okay.
 22 Who else?
 23 A. Is that what the question
 24 was?
 25 Q. It was.

531

1 - TIMOTHY L. O'BRIEN -
 2 A. My wife. Right now, she's
 3 the only one that I can recall.
 4 Q. Any other childhood friends
 5 along the lines of Mr. White and
 6 Mr. Dillon who might have been involved
 7 in those communications?
 8 A. No, not that I recall.
 9 Q. Any other family members,
 10 other than your wife and Michael
 11 O'Brien?
 12 A. My brother Patrick. And I
 13 think that it would be limited to those
 14 two.
 15 Q. The e-mail continues
 16 concerning the fliers, "Most just get
 17 tossed. Ironically, if you wanted to
 18 increase the response rate at the
 19 seminar this weekend, we would have to
 20 position the flyers (sic) as
 21 notification about a great book about a
 22 great businessman. Otherwise, the
 23 stupid sheep who just plunked down \$100
 24 to hear him might be offended at the
 25 suggestion that their idol is a fraud."

532

1 - TIMOTHY L. O'BRIEN -
 2 Do you have any understanding
 3 of what the "stupid sheep" reference
 4 refers to?
 5 MR. CERESNEY: Objection to
 6 form. You can answer.
 7 A. You know, I would have to get
 8 inside David's head. This is his
 9 e-mail, so I'm not entirely certain of
 10 what he meant with any exactness.
 11 Q. You've known David Dillon
 12 since he was how old?
 13 A. One.
 14 Q. So try to get inside his head
 15 and tell me if you have any
 16 understanding as to what Dillon meant
 17 when he referenced "the stupid sheep
 18 who just plunked down \$100 to hear
 19 him."
 20 MR. CERESNEY: Objection to
 21 form. You can answer.
 22 A. I can't really characterize
 23 David's statements other than I was
 24 uncomfortable with this kind of
 25 language and asked him not to

533

1 - TIMOTHY L. O'BRIEN -
2 communicate it further.
3 Q. You were uncomfortable with
4 this kind of language, but my question
5 is: What was your understanding of
6 what Dillon meant by "the stupid sheep
7 who just plunked down \$100 to hear
8 him"?
9 MR. CERESNEY: Objection to
10 form. You ask answer.
11 A. I think it's a reference to
12 people who attend get-rich seminars.
13 Q. Well, when it says "to hear
14 him," the "him" is Trump, right?
15 A. That is correct.
16 Q. Isn't what Dillon is saying
17 here that the people who go to the
18 Trump Learning Annex events like Trump
19 and that they wouldn't like your book
20 because your book is critical of Trump?
21 Isn't that the gist of what
22 Dillon is saying here, Mr. O'Brien?
23 MR. CERESNEY: Objection to
24 form. You can answer.
25 A. I can't really characterize

534

1 - TIMOTHY L. O'BRIEN -
2 what his intent was.
3 Q. So as you sit here today, do
4 you have any understanding what he
5 meant when he said, "We would have to
6 position the fliers (sic) as
7 notification about a great book about a
8 great businessman"?
9 MR. CERESNEY: Objection to
10 form. You can answer.
11 A. Well, he's saying that he -
12 we would have to position the fliers as
13 notification about a great book about a
14 great businessman. That's what he
15 states.
16 Q. Do you have any understanding
17 of what he meant by that, Mr. O'Brien?
18 A. That it was a great book
19 about a great businessman.
20 Q. Isn't he saying that we would
21 have to position the fliers as
22 notification?
23 What did he mean by "position
24 the fliers"?
25 MR. CERESNEY: Objection.

535

1 - TIMOTHY L. O'BRIEN -
2 Form. You can answer.
3 A. You know, I can't really get
4 inside his head. It's really not for
5 me to say.
6 Q. Because your book certainly
7 didn't describe Mr. Trump as a great
8 businessman, right?
9 MR. CERESNEY: Objection to
10 form. You can answer.
11 A. That's correct. I think the
12 book did not describe him as a great
13 businessman.
14 Q. I mean, when you read this
15 e-mail, what do you think the author
16 meant?
17 MR. CERESNEY: Objection to
18 form.
19 Q. The e-mail that was sent to
20 you, what do you think it meant, this
21 section?
22 A. I'd really have to get inside
23 David's head, which I can't - I can't
24 do. This is his statement, and it -
25 there was enough of it that didn't

536

1 - TIMOTHY L. O'BRIEN -
2 comport with my feelings about what the
3 book was about or my intentions for
4 marketing the book so I asked him to
5 stop.
6 Q. We understand that, but the
7 question is: You have no
8 understanding, as you sit here today,
9 what Dave Dillon, your childhood
10 friend, meant in this paragraph; is
11 that right?
12 MR. CERESNEY: Objection to
13 form. You can answer.
14 A. I think the gist of this
15 paragraph was an attempt by David to
16 get attention for the book.
17 Q. And how did he intend to do
18 that?
19 A. By passing out fliers at a
20 Learning Annex event.
21 Q. And what did he mean by "the
22 stupid sheep who just plunked down \$100
23 to hear him," - meaning Trump, "might
24 be offended at the suggestion that
25 their idol is a fraud."

537

1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection.
3 Q. Do you have any understanding
4 of what he meant by that?
5 MR. CERESNEY: Objection.
6 Form.
7 A. Well, in the totality of what
8 he said, I think he believed that
9 people who attended get-rich seminars
10 were stupid sheep plunking down \$100,
11 and he says they might be offended at
12 the suggestion that their idol is a
13 fraud.
14 Q. Their idol here refers to
15 Trump, doesn't it?
16 A. It would appear to be the
17 case, yes. But I'm not --
18 Q. So what he's saying, is he
19 not, is that people who go to hear
20 Trump speak might be offended at the
21 suggestion in your book that Trump is a
22 fraud; isn't that correct?
23 A. You know, I'm not really
24 comfortable characterizing the totality
25 of what David is saying in this e-mail.

538

1 - TIMOTHY L. O'BRIEN -
2 because I'm not the author of it.
3 Q. But as part of your job as a
4 reporter and editor, don't you
5 frequently interpret e-mails,
6 documents, all manner of materials to
7 engage in the fact pattern -- the fact
8 gathering and to assess fact patterns
9 that you described yesterday in your
10 certification to our judge, right?
11 MR. CERESNEY: Objection to
12 form.
13 A. I certainly do, to the best
14 of my abilities.
15 Q. Even when you're not the
16 author, right?
17 A. Correct.
18 Q. In fact, that's a relatively
19 important part of your job as a Times
20 reporter and editor, isn't it?
21 A. Yes.
22 MR. CERESNEY: Objection to
23 form.
24 Q. Let me direct your attention
25 to the next paragraph.

539

1 - TIMOTHY L. O'BRIEN -
2 "PS: I'm not sure what the
3 legal permit requirement is to pass out
4 advertising flyers (sic) on their
5 premise as well. I'd hate to get
6 arrested for a technicality and give
7 Donald something to ridicule Tim about.
8 Maybe the brain trust at Warner can
9 chase this detail down and secure
10 permission before they whimsically dump
11 these flyers (sic) on us. They don't
12 strike me as buttoned up and overly
13 worried about Michael White and myself
14 being charged for distributing
15 advertising without permission."
16 Do you see that?
17 A. I do.
18 Q. Do you have any understanding
19 what David Dillon is talking about here
20 in this paragraph?
21 MR. CERESNEY: Objection to
22 form. You can answer.
23 A. He's talking about permission
24 that he would need in order to pass out
25 the flier on the premises.

540

1 - TIMOTHY L. O'BRIEN -
2 Q. Are you familiar with a legal
3 permit requirement with respect to
4 passing out fliers?
5 A. I have no knowledge of that.
6 Q. Did you ever confer with
7 David Dillon about the legal permit?
8 A. No. I don't believe I did.
9 Q. Did you ever confer with
10 anyone about any legal issues with
11 respect to passing out fliers in
12 connection with your book?
13 A. No.
14 Q. Their premises -- it says
15 premise but I think you'd agree it
16 should be -- I'm doing a little editing
17 myself, "their premises," correct?
18 A. Correct.
19 Q. "Their premises" means the
20 Learning Annex's premises?
21 MR. CERESNEY: Objection to
22 form.
23 Q. Is that correct? Is that
24 your understanding?
25 A. I would assume that's what

43 (Pages 537 to 540)

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541

1 - TIMOTHY L. O'BRIEN -
2 he's referencing, yes.
3 Q. Your drawing that inference
4 based on the words on the page, right?
5 MR. CERESNEY: Objection to
6 form. You can answer.
7 A. Yes.
8 Q. Dillon writes, "I'd hate to
9 get arrested for a technicality and
10 give Donald something to ridicule Tim
11 about."
12 Do you have any understanding
13 of what Dillon meant by that statement?
14 MR. CERESNEY: Objection.
15 Form. You can answer.
16 A. I think what he means is he
17 he'd hate to get arrested for a
18 technicality and give Donald something
19 to ridicule me about.
20 Q. You just - you just read
21 verbatim what the sentence says.
22 But I'm asking you if you
23 have any understanding as to what he
24 was talking about.
25 MR. CERESNEY: Objection.

542

1 - TIMOTHY L. O'BRIEN -
2 Form. You can answer.
3 A. Well, I think it's - to me
4 it's a very clear statement, what he
5 says.
6 Q. So what's your understanding
7 of what he's saying?
8 MR. CERESNEY: Objection.
9 Form. Asked and answered. Go
10 ahead.
11 A. My understanding of what he
12 says is that he'd hate to get arrested
13 for a technicality and give Donald
14 something to ridicule me about.
15 Q. What kind of technicality?
16 What is he talking about, if you know?
17 MR. CERESNEY: Objection to
18 form.
19 Q. What does the technicality
20 refer to?
21 A. I'm not certain.
22 Q. Well, wouldn't it have
23 something to do with the legal permit
24 requirement, do you think?
25 A. Perhaps.

543

1 - TIMOTHY L. O'BRIEN -
2 Q. That - that - that's
3 something that you're able to infer
4 from this paragraph -
5 MR. CERESNEY: Objection.
6 Q. - is that correct,
7 Mr. O'Brien?
8 MR. CERESNEY: Objection.
9 Form.
10 A. Again, I said perhaps. It's
11 hard for me to get inside his head and
12 characterize what he's saying here.
13 Q. Did you ever take courses at
14 the Columbia School of Journalism about
15 interpreting documents and drawing
16 inferences?
17 MR. CERESNEY: Objection.
18 Q. Is this a new undertaking for
19 you?
20 MR. CERESNEY: Objection to
21 form.
22 A. No, it's not.
23 Q. So - so this is something
24 you do. You read a document that you
25 didn't author, and you interpret it.

544

1 - TIMOTHY L. O'BRIEN -
2 You glean meaning from it; is
3 that right?
4 MR. CERESNEY: Objection.
5 Form.
6 Q. Do you do that in your job?
7 A. You make your best effort to,
8 but oftentimes you can't.
9 Q. And here you just can't,
10 right?
11 MR. CERESNEY: Objection.
12 That's not his answer.
13 Q. Is that correct? Is it true
14 that you can't glean the meaning of
15 this e-mail, Mr. O'Brien?
16 A. I'm uncertain of elements of
17 it as it pertains to what David's
18 intentions were in the way that he's
19 written the e-mail.
20 Q. With respect to his phrase
21 "technicality," would that be a
22 technicality called "the law,"
23 Mr. O'Brien?
24 MR. CERESNEY: Objection.
25 Q. "I'd hate to get arrested for

545

1 - TIMOTHY L. O'BRIEN -
2 a technicality and give Donald
3 something as to ridicule Tim about."
4 MR. CERESNEY: Objection.
5 Form. You can answer.
6 Q. Do you have any understanding
7 as to the technicality that Dillon is
8 referring to is the legal requirement?
9 Do you have any understanding
10 as to whether the technicality that
11 Dillon references is the legal permit
12 requirement?
13 A. That would appear to be the
14 case.
15 Q. Do you have any understanding
16 of who "the brain trust at Warner"
17 were?
18 MR. CERESNEY: Objection.
19 Form. You can answer.
20 A. I'm not certain of who he's
21 referencing exactly in that statement.
22 Q. You can't hazard any idea as
23 to who he might be referring to, "the
24 brain trust at Warner"?
25 MR. CERESNEY: Objection.

546

1 - TIMOTHY L. O'BRIEN -
2 Form. You can answer.
3 A. Again, I could interpret it,
4 but I don't know specifically who he's
5 referencng.
6 Q. Well, please interpret it.
7 A. I'm not entirely sure,
8 frankly.
9 (Whereupon, a brief
10 discussion was held off record.)
11 MR. RESSLER: Yes. Tape?
12 THE VIDEOGRAPHER: Yes.
13 MR. RESSLER: Okay.
14 THE VIDEOGRAPHER: The time
15 on the video monitor is 12:41 p.m.
16 We're off the record. This ends
17 Tape Number 2, Volume 2.
18 (Whereupon, there was a brief
19 recess in the proceedings.)
20 THE VIDEOGRAPHER: We're back
21 on the record. The time on the
22 video monitor is 12:43 p.m. This
23 starts Tape Number 3, Volume 3.
24 I'm sorry. Volume 2.
25 BY MR. RESSLER:

547

1 - TIMOTHY L. O'BRIEN -
2 Q. Do you have any understanding
3 as to whether David Dillon had
4 communications with people at Time
5 Warner, your publisher?
6 A. I believe he had
7 communication with Rob Nissen.
8 Q. How about with anyone else?
9 A. I don't believe so.
10 Q. The phrase "brain trust,"
11 what does that mean to you outside the
12 context of this e-mail, in common
13 parlance?
14 A. A gathering of intelligent
15 people.
16 Q. But a brain trust at a
17 company would be the senior people at
18 the company.
19 Would you agree with that?
20 MR. CERESNEY: Objection.
21 Form. You can answer.
22 A. No, not necessarily.
23 Q. Well, who are the senior
24 people at Warner Books, if you know, at
25 this point in time, November of '05?

548

1 - TIMOTHY L. O'BRIEN -
2 A. Through my own interaction
3 with people at the firm, I would say
4 Jamie Raab, and Rick, primarily, I
5 would see as senior people.
6 Q. Who was the CEO at the time,
7 if you know?
8 A. You know, I cannot recall his
9 name. The CEO departed at -- at one
10 point, and then David Young was brought
11 in. I don't know that David was -- I
12 don't believe David was the CEO at this
13 point in time.
14 Q. He came in later?
15 A. I believe so, but I'm not --
16 I'm not exactly sure of the chronology.
17 Q. Who else did you communicate
18 with at Warner?
19 A. In what capacity?
20 Q. Executives at work?
21 A. At this point in time? Are
22 you asking at this point in time, or
23 are you asking this generally?
24 Q. Well, first -- first, at
25 the -- no. I'm sorry. Generally.

549

1 - TIMOTHY L. O'BRIEN -
2 A. Primarily -- at the executive
3 level?
4 Q. Correct.
5 A. Jamie. I think Rick may have
6 an executive title, which would tech --
7 make him an executive.
8 Q. Uh-huh.
9 A. Other than those two, I don't
10 believe any other executives during
11 this time frame.
12 Q. Who did Rick report to, if
13 you know?
14 A. I believe Rick reported to
15 Jamie.
16 Q. Who did Jamie report to?
17 A. To the CEO.
18 Q. Who is that? That's the
19 person's name who you can't remember?
20 A. Correct.
21 Q. You can't remember the name?
22 Okay.
23 A. I can't remember the name of
24 the person who departed.
25 Q. Okay. Have you ever

550

1 - TIMOTHY L. O'BRIEN --
2 communicated with David Young, Warner's
3 current CEO?
4 A. Yes.
5 Q. How recently? When was the
6 last time you communicated with him?
7 A. Approximately three weeks, I
8 guess, to a month ago.
9 Q. What did you talk about?
10 MR. CERESNEY: You can talk
11 about general topics. I'm going to
12 instruct him only general topics, a
13 general topic.
14 A. The settlement discussions.
15 MR. RESSLER: Is that
16 instruction based on the fact that
17 lawyers were present?
18 MR. CERESNEY: That
19 instruction is based on privilege;
20 those were privileged discussions.
21 MR. RESSLER: Because lawyers
22 were present?
23 MR. CERESNEY: Were any
24 lawyers present during that
25 discussion?

551

1 - TIMOTHY L. O'BRIEN -
2 THE WITNESS: Yes.
3 Q. Okay. How many times have
4 you been present at a meeting involving
5 lawyers and David Young?
6 A. Twice.
7 Q. Okay. One time was the time
8 you just mentioned, right?
9 A. Correct.
10 Q. What was the other time?
11 A. Carol Ross and David and I
12 had lunch together at -- I guess, at
13 that point it was the Hachette
14 headquarters.
15 Q. When was that?
16 A. June -- am allowed to ask
17 Carol for guidance here?
18 MR. CERESNEY: No. Just your
19 best recollection.
20 Q. Best recollection is fine.
21 MR. CERESNEY: Give your best
22 recollection.
23 A. I think May, June.
24 Q. I appreciate that Carol --
25 MR. RESSLER: And I'm sorry.

552

1 - TIMOTHY L. O'BRIEN -
2 I forgot your last name.
3 A. Ross.
4 Q. I appreciate Miss Ross is a
5 lawyer, but was it the case that during
6 the course of lunch topics were
7 discussed among you and Miss Ross and
8 Mr. Young concerning your book and
9 concerning Donald Trump that did not
10 relate to the seeking by you of legal
11 advice or the providing by Miss Ross of
12 legal advice?
13 MR. CERESNEY: I'm not going
14 to allow him to answer that. We're
15 going to need to -- we know what
16 the discussion was, and we're going
17 to assert privilege on that
18 discussion. It's not for him to
19 make privilege call, which is what
20 you're asking him to do.
21 Q. Well, during the course --
22 MR. CERESNEY: His --
23 necessarily -- his perception is
24 not necessarily what governs here.
25 Q. Well, let me ask a follow-up

<p style="text-align: right;">553</p> <p>1 - TIMOTHY L. O'BRIEN - 2 question. 3 Mr. O'Brien, in the course of 4 that lunch, did you or Ms. Ross or 5 Mr. Young make any negative comments 6 about Donald Trump? 7 MR. CERESNEY: I'm not 8 going -- I'm going to instruct him 9 not to answer that question. 10 Q. Then let me -- let me alter 11 the question. 12 Did any of them or you make 13 negative comments about Donald Trump 14 having nothing to do with the 15 litigation in this case? 16 MR. CERESNEY: I'm going to 17 instruct him not to answer that 18 question. 19 MR. RESSLER: So you're 20 basically telling him not to answer 21 any questions concerning any 22 nonlegal topics that might have 23 been -- 24 MR. CERESNEY: I'm -- I'm 25 instructing him --</p>	<p style="text-align: right;">555</p> <p>1 - TIMOTHY L. O'BRIEN - 2 tell -- tell us if you have a joint 3 defense agreement. 4 MR. CERESNEY: We -- 5 MR. RESSLER: Did you not -- 6 did you not refuse -- 7 MR. CERESNEY: I'm asserting 8 privilege. You can -- you can -- 9 MR. RESSLER: Did you -- did 10 you not refuse to tell us if you 11 have a joint defense agreement, 12 Andrew? 13 MR. CERESNEY: I am -- you 14 haven't asked us if we have a joint 15 defense agreement. You haven't 16 asserted any kind of motion to 17 compel or otherwise requested that 18 we identify that. 19 MR. RESSLER: You asserted 20 the privilege, so as far as I'm 21 concerned, there's no joint defense 22 agreement in place because you 23 haven't told me that there is. 24 (Whereupon, a brief 25 discussion was held off record.)</p>
<p style="text-align: right;">554</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. RESSLER; -- brought up 3 at that lunch concerning Trump? 4 MR. CERESNEY: I'm 5 instructing -- 6 MR. RESSLER: -- concerning 7 Trump? 8 MR. CERESNEY: I'm 9 instructing him not to answer the 10 question you asked. 11 Q. Okay. Were there negative 12 comments made about Trump during the 13 lunch, Mr. O'Brien? 14 MR. CERESNEY: I'm going to 15 instruct him not to answer that. 16 MR. RESSLER: On what basis? 17 MR. CERESNEY: Privilege. 18 MR. RESSLER: Why -- 19 MR. CERESNEY: First of all, 20 the idea that you're getting into 21 discussions between two clients in 22 this case in a room where there's 23 an attorney regarding specifics 24 without talking about -- 25 MR. RESSLER: You refuse to</p>	<p style="text-align: right;">556</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Let me put it 3 this way. We're asserting a 4 privilege with regard to this 5 discussion. 6 BY MR. RESSLER: 7 Q. Do you -- have you 8 communicated with Mr. Young apart from 9 face-to-face meetings? 10 A. Yes. 11 Q. By e-mail? 12 A. I don't recall. 13 Q. Well, you answered the 14 question "yes," so what did you have in 15 your mind when you said, "yes"? 16 A. I had a phone call with him. 17 Q. When was that? 18 A. I would say about a month to 19 six weeks ago, maybe two months ago. 20 Q. What did that relate to? 21 A. The settlement. 22 Q. Do you have -- were you aware 23 as to whether any people at Warner were 24 looking into the legal permit 25 requirement with respect to securing</p>

1 - TIMOTHY L. O'BRIEN -
 2 permission for people to pass out
 3 fliers of your book at Trump's Learning
 4 Annex event?
 5 A. I have no knowledge of that.
 6 Q. Did you follow up and ask any
 7 questions upon reading this reference
 8 to Warner people in this e-mail?
 9 A. No.
 10 Q. Did you ask anyone at Warner?
 11 MR. CERESNEY: Objection to
 12 form. You can answer.
 13 Q. Did you ask anyone at Warner
 14 any question about the legal permit
 15 requirement with respect to passing out
 16 fliers at the Learning Annex event?
 17 A. No. I don't believe I did.
 18 Q. Do you have any understanding
 19 what Dillon meant when he referred to
 20 the Warner people not striking him as
 21 buttoned up or being overly worried
 22 about Michael White and Dillon being
 23 charged for distributing advertising
 24 without permission?
 25 A. And your question is what is

1 - TIMOTHY L. O'BRIEN -
 2 he referencing here?
 3 Q. Do you have any understanding
 4 of what he's referencing, correct?
 5 That's my question.
 6 A. What he refers to as the
 7 brain trust at Warner.
 8 Q. Do you have any understanding
 9 of what he's talking about with respect
 10 to Michael White and him being charged
 11 for distributing advertising without
 12 permission?
 13 MR. CERESNEY: Objection.
 14 Form. You can answer.
 15 A. Well, I think what he's
 16 referencing is -- is whether or not the
 17 brain trust is buttoned up and overly
 18 worried about Michael White and David
 19 being charged for distributing
 20 advertising without permission.
 21 Q. So you just read the sentence
 22 verbatim again?
 23 MR. CERESNEY: Objection.
 24 Form. You can answer.
 25 Q. Do you have any understanding

1 - TIMOTHY L. O'BRIEN -
 2 of what they -- of what in Dillon's --
 3 Dillon thinks he might be charged with?
 4 MR. CERESNEY: Objection.
 5 Form. You can answer.
 6 A. Again, my best interpretation
 7 is what the sentence says.
 8 Q. Okay. The next paragraph
 9 states, "Call me nuts, but I want to
 10 concentrate on efforts to move 100,000
 11 books, not just 100."
 12 How many books had been sold
 13 by this point in time, if you know?
 14 A. I have no idea. The sales
 15 were very, very low.
 16 Q. But 100?
 17 A. I have no idea.
 18 Q. Do you think that they were
 19 100 or more than 100?
 20 A. They felt like well less than
 21 100, but I assume they probably were in
 22 the thousands at this point.
 23 Q. Why did they feel like they
 24 were less than 100?
 25 A. Because the book had gained

1 - TIMOTHY L. O'BRIEN -
 2 no traction in the marketplace, and it
 3 wasn't circulating widely in bookstores
 4 or on sales, you know. And my
 5 understanding of the general sales of
 6 the book were lagging.
 7 Q. The next sentence states,
 8 "This is a war and we need to
 9 annihilate the enemy, not just irritate
 10 him."
 11 What was the war,
 12 Mr. O'Brien?
 13 MR. CERESNEY: Objection to
 14 form. You can answer.
 15 A. Again, it's inside David's
 16 head. I'm not quite sure exactly what
 17 he meant by "this is a war."
 18 Q. Who was the enemy? Do you
 19 have any understanding of who the enemy
 20 was that Dillon refers to?
 21 MR. CERESNEY: Objection.
 22 Form. You can answer.
 23 A. I think you'd have to ask
 24 David that.
 25 Q. So as you sit here today, you

<p style="text-align: right;">561</p> <p>1 - TIMOTHY L. O'BRIEN - 2 don't know if the "enemy" refers to 3 Trump? 4 A. As I sit here today, I'm not 5 in a position to describe exactly who 6 David is referencing throughout this 7 e-mail. I think that's for David to 8 answer. 9 Q. So Mr. O'Brien, your 10 testimony under oath, as you sit here 11 today, is that when Dillon writes, 12 "This is a war and we need to 13 annihilate the enemy, not just irritate 14 him," you have no idea as to whether 15 the "enemy" and "him" in this sentence 16 refers to Donald Trump? 17 MR. CERESNEY: Objection. 18 Form. You can answer. 19 A. What I'm saying, as I sit 20 here today, is that I think David is in 21 the best position to describe to you 22 what he meant by his own e-mail and by 23 his own words, not me. 24 Q. But I'm asking you to provide 25 me and the jury with any understanding</p>	<p style="text-align: right;">563</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Dillon says, "I say talk radio today 3 can lead to more talk television 4 tomorrow and let's hope for Donald to 5 file a law suit (sic), so we can really 6 below the cover off sales." 7 Do you have any 8 understanding, as you sit here today, 9 as to what Dillon meant by that? 10 MR. CERESNEY: Objection. 11 Form. You can answer. 12 A. Well, I think what he means 13 is that talk radio today can lead to 14 more talk television tomorrow and let's 15 hope for Donald to file a lawsuit so we 16 can really blow the cover off of sales, 17 that's my understanding. 18 Q. So you're just rereading the 19 sentences verbatim? 20 MR. CERESNEY: Objection. 21 Form. Go ahead. 22 A. My best interpretation of 23 this is what David states in his own 24 words. 25 Q. Why didn't you read the</p>
<p style="text-align: right;">562</p> <p>1 - TIMOTHY L. O'BRIEN - 2 you might have as to whether the 3 reference to the "enemy" refers to 4 Trump, and "not just irritate him," the 5 "him" refers to Trump. 6 Are you able to do that, to 7 provide me with your understanding if 8 that refers to Trump? 9 A. I'm -- 10 MR. CERESNEY: Objection to 11 form. 12 A. I'm most comfortable letting 13 David speak to his own e-mails. 14 Q. Dillon continues -- 15 withdrawn. 16 Do you have any understand of 17 what -- do you have any understanding 18 of what Dillon meant when he said, "We 19 need to annihilate the enemy"? 20 MR. CERESNEY: Objection. 21 Form. You can answer. 22 A. I think it's -- I'm most 23 comfortable having David speak to the 24 content of his own e-mails. 25 Q. You say -- I'm sorry. David</p>	<p style="text-align: right;">564</p> <p>1 - TIMOTHY L. O'BRIEN - 2 previous sentence verbatim? "This is a 3 war and we need to annihilate the 4 enemy, not just irritate him." 5 MR. CERESNEY: Objection. 6 Form. And I believe he did. 7 A. I think I did read that, but 8 I'm happy to read it again. 9 Q. You read that sentence? 10 Well, the record -- the record will 11 speak for itself. 12 Then Dillon continues, "Tim's 13 strategy is perfect if that happens." 14 What was your strategy, 15 Mr. O'Brien? 16 MR. CERESNEY: Objection to 17 form. You can answer. 18 A. Yeah. I don't know what he's 19 really referencing here. I hadn't 20 discussed strategy at all with David. 21 Q. You have no idea what he 22 refers to when he writes, "Tim's 23 strategy is perfect if that happens"? 24 MR. CERESNEY: Objection. 25 Form. You can answer.</p>

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1 - TIMOTHY L. O'BRIEN -
2 A. No, I don't.
3 Q. Then he continues, "If Donald
4 gets rattled in the national news by
5 this, he will look guilty if he does
6 nothing and if he sues, it's game over.
7 Tim has a plan that will turn his
8 lights out instantly. It's checkmate."
9 Do you see that?
10 A. I do.
11 Q. Do you know if "Donald"
12 refers to Trump here?
13 A. I'm -- I would presume it
14 does, yes.
15 Q. What leads you presume that
16 it refers to Donald Trump?
17 MR. CERESNEY: Objection.
18 Form. Go ahead.
19 A. Because I was working on a
20 book about Donald Trump, and this is in
21 the context of my book.
22 Q. So you're able to draw that
23 inference?
24 MR. CERESNEY: Objection.
25 Form. You can answer.

566

1 - TIMOTHY L. O'BRIEN -
2 A. Yes, I am.
3 Q. And when Mr. Dillon writes,
4 "Tim has a plan that will turn his
5 lights out instantly. It's checkmate,"
6 do you have any understanding as to who
7 the pronoun "his" refers to?
8 MR. CERESNEY: Objection.
9 Form. You can answer.
10 A. You'd have to ask David.
11 Q. You don't know if that refers
12 to Trump?
13 A. It could, but I don't know.
14 Q. You're not sure?
15 A. Yeah.
16 Q. Okay.
17 A. And I don't know what "plan"
18 references to, either.
19 Q. Yeah. I was going to ask
20 you. Thank you.
21 --What was your plan?
22 A. I -- I'm not aware of a plan.
23 I don't think I had a plan. And I
24 certainly didn't discuss a plan with
25 David.

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1 - TIMOTHY L. O'BRIEN -
2 Q. And you didn't have a
3 strategy, either, right?
4 A. That is correct.
5 Q. I take it you have an
6 understanding of what Dillon meant when
7 he said, "It's checkmate"?
8 MR. CERESNEY: Objection.
9 Form. Go ahead.
10 A. No. I'm not entirely certain
11 what he means here.
12 Q. What does "checkmate" mean in
13 the common parlance?
14 MR. CERESNEY: Objection.
15 Form. Go ahead.
16 A. Game over in chess.
17 Q. Dillon continues, "Let's play
18 to win and win big time. I want Tim to
19 have two Ferrari's (sic) by
20 Christmas...because he can only drive
21 one at a time...leaving the other one
22 for me. Cool! At Ease...Smoke 'em if
23 ya got 'em."
24 Do you have any understanding
25 of what Mr. Dillon meant when he said,

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1 - TIMOTHY L. O'BRIEN -
2 "Let's play to win and win big time"?
3 MR. CERESNEY: Objection to
4 form. Go ahead.
5 A. David and I played football
6 together, and David often reverts to
7 football analogies. And he likes the
8 idea of playing to win and win big time
9 in many of his endeavors.
10 Q. Do you have any understanding
11 of what endeavor he was referring to
12 with this statement, or do you believe
13 he was referring to winning a football
14 game?
15 MR. CERESNEY: Objection.
16 Form. You can answer.
17 A. You'd have to really ask him.
18 Q. So as you sit here today, you
19 have no understanding as to whether
20 when David Dillon said in the
21 penultimate paragraph of this e-mail,
22 "Let's play to win and win big time,"
23 he was referring to football.
24 MR. CERESNEY: Objection.
25 Form. Go ahead,

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1 - TIMOTHY L. O'BRIEN -
2 A. I think you'd really have to
3 ask him about what he meant by his
4 statements.
5 Q. You have no idea as you sit
6 here today, right?
7 MR. CERESNEY: Objection to
8 form.
9 A. I think he was very concerned
10 about the book being marketed
11 effectively.
12 Q. So you don't think he was
13 referring to football here, right?
14 MR. CERESNEY: Objection.
15 Form. Go ahead.
16 A. My best guess is that he --
17 is that he was referring to marketing
18 the book.
19 Q. But you're not sure?
20 A. I'm not entirely sure.
21 Q. Now, your response,
22 Mr. O'Brien, it appears at the top of
23 the page. You state, "In all
24 seriousness, please don't send any more
25 e-mails to me that contain language

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1 - TIMOTHY L. O'BRIEN -
2 like this. It's very, very unwise
3 legally."
4 Do you see that?
5 A. I do.
6 Q. Now, in this e-mail you don't
7 tell Mr. Dillon that you disapprove of
8 the content of what he's saying; isn't
9 that correct?
10 MR. CERESNEY: Objection to
11 form. Go ahead.
12 A. No. I think I do -- I do
13 convey that.
14 Q. Well, I'm not saying what you
15 convey. I'm saying that's -- I'm
16 asking you: Isn't it true that you
17 don't say, "I disagree with what you've
18 stated. I disagree with the tone and
19 the content of this e-mail?"
20 You don't state that; isn't
21 that correct?
22 MR. CERESNEY: Objection to
23 form. Go ahead.
24 A. I think David is a -- is
25 someone who likes to joke around so I

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1 - TIMOTHY L. O'BRIEN -
2 prefaced the opening of the sentences
3 to say, "In all seriousness," to convey
4 to him that I didn't see this as a
5 laughing matter or something to be
6 taken lightly.
7 I took issues around the
8 marketing of the book with a sense of
9 purpose, and I didn't want him to send
10 e-mails to me that contained language
11 that didn't reflect my own intentions
12 for the book.
13 Q. Isn't it true that nowhere in
14 your e-mail response do you say that
15 you disapprove of the contents of his
16 e-mail? That's a yes or no question.
17 MR. CERESNEY: Objection.
18 Form.
19 A. I don't specifically say
20 that, that's correct.
21 Q. Thank you.
22 Why was it very, very unwise
23 legally for David Dillon to send this
24 e-mail to you, --
25 MR. CERESNEY: Objection.

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1 - TIMOTHY L. O'BRIEN -
2 Q. -- using your words.
3 MR. CERESNEY: Objection to
4 form. Go ahead.
5 Q. Well, I'll rephrase it. You
6 wrote, "It's very, very unwise
7 legally."
8 What did you mean by that?
9 A. That it's very, very unwise
10 legally.
11 Q. What did you mean by that?
12 A. That it's very, very unwise
13 legally.
14 Q. And what did you mean by the
15 words, "It's very, very unwise
16 legally." Explain what your -- what
17 your point was.
18 A. That it's very, very unwise
19 legally.
20 Q. Are you unable, as you sit
21 here today, Mr. O'Brien, to explain to
22 the jury why you think it was legally
23 unwise for Mr. Dillon to send you this
24 e-mail?
25 MR. CERESNEY: Objection.

<p style="text-align: right;">573</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Form. Go ahead. 3 A. Because I believe that it was 4 very, very unwise. 5 Q. Why? 6 A. Because I think colorful 7 demonstrative language, as such, in 8 this e-mail wasn't something that I was 9 comfortable with. 10 Q. And were you concerned that 11 it would give rise to legal problems? 12 A. I believe that it was very, 13 very unwise legally. 14 Q. What kind of legal problems 15 do you think Dillon's e-mail might have 16 given rise to? 17 MR. CERESNEY: Objection. 18 Form. Go ahead. 19 A. Legal problems. 20 Q. Of what sort? 21 A. Claims of bias, perhaps. 22 Q. Bias claims by who? 23 A. By individuals who would be 24 reading this e-mail. 25 Q. But who would bring the</p>	<p style="text-align: right;">575</p> <p>1 - TIMOTHY L. O'BRIEN - 2 unwise? What was the legal issue that 3 you were concerned about? 4 MR. CERESNEY: Objection. 5 Form. You can answer. 6 A. Well, Donald is a very, very 7 litigious individual. And I think it 8 would be hard to predict, with any 9 specificity, what he might want to 10 litigate over, other than I am 11 well-aware that he has a long track 12 record of being litigious, so I was 13 trying to be circumspect. 14 Q. Were your concerns that 15 Dillon's e-mail might be legally unwise 16 in the context of a defamation claim by 17 Mr. Trump? 18 MR. CERESNEY: Objection. 19 Form. You can answer. 20 A. I was concerned that his 21 e-mail might be unwise in - in the 22 context of a number of possible 23 litigations. 24 Q. Would defamation be one such 25 possible litigation?</p>
<p style="text-align: right;">574</p> <p>1 - TIMOTHY L. O'BRIEN - 2 claims? 3 A. Individuals who felt offended 4 by the language in this e-mail. 5 Q. Can you think of any of those 6 individuals now as you sit here? 7 MR. CERESNEY: Objection to 8 form. You can answer. 9 A. Sure. Donald Trump, for 10 example. 11 Q. And when you say "claims of 12 bias," what do you mean by that? 13 MR. CERESNEY: Objection. 14 Form. Go ahead. 15 A. That this language reflected 16 something that the book does not - 17 something that the book is not. 18 Q. And why would that be a legal 19 issue? 20 MR. CERESNEY: Objection. 21 Form. Go ahead. 22 A. Because it would reflect an 23 intention for the book that I don't 24 think existed. 25 Q. But why would that be legally</p>	<p style="text-align: right;">576</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Certainly, certainly. 3 Q. Were you concerned that the 4 contents of Dillon's e-mail might 5 reflect malice on your part in the 6 context of a defamation lawsuit? 7 MR. CERESNEY: Objection to 8 form. You can answer. 9 A. I - I'm concerned that an 10 e-mail like this may reflect malice on 11 the part of David Dillon. 12 Q. But were you - did you say 13 it was very, very unwise legally to 14 protect David Dillon? 15 MR. CERESNEY: Objection. 16 Form. Go ahead. 17 A. I believe it was very, very 18 unwise because it's not the type of 19 communication I wanted to have about my 20 books. It's not a reflection of what I 21 was trying to do with the book or what 22 the book contains. 23 Q. Did you believe that David 24 Dillon's e-mail might constitute 25 evidence against you in a defamation</p>

<p style="text-align: right;">577</p> <p>1 - TIMOTHY L. O'BRIEN - 2 lawsuit by Mr. Trump? 3 MR. CERESNEY: Objection. 4 Form. You can answer the question. 5 A. Well, I suppose if I had, I 6 would have destroyed the e-mail. And I 7 kept the e-mail because my response to 8 him indicated that I was trying to be 9 extremely cautious about how I 10 approached the subject. 11 Q. Have you destroyed any 12 e-mails, Mr. O'Brien, that you viewed 13 as constituting evidence against you in 14 a defamation lawsuit? 15 MR. CERESNEY: Objection. 16 Form. Go ahead. 17 A. No, I haven't. And, in fact, 18 I would have been better off 19 destroying - you know, or deleting 20 more e-mails in the course of my 21 reporting than probably I have. 22 Q. Why would you have been 23 better off destroying or deleting more 24 of your e-mails in the course of your 25 reporting than you did?</p>	<p style="text-align: right;">579</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Soldier, smoke 'em if you got 3 'em. 4 Q. What does that refer to, by 5 the way? Thanks. "Smoke 'em if you 6 got 'em." 7 Why is that a militaristic 8 term? 9 A. My understanding is it refers 10 to soldiers who light up cigarette or 11 cigar in the course of battle. 12 Q. When Rick Wolff, the Time 13 Warner editor, used the phrase "jet 14 fuel," did that concern you? 15 MR. CERESNEY: Objection. 16 Form. 17 A. No. No, it did not. 18 Q. He also used the phrase in 19 that e-mail, I think, "battle." 20 Do you consider "battle" to 21 be a militaristic term? 22 A. I do. 23 Q. Did it concern you when 24 Mr. Wolff referenced the battle 25 surrounding the marketing of your book?</p>
<p style="text-align: right;">578</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Objection. 3 Form. Go ahead. 4 A. Because I think it involved 5 other people in these communications 6 that - that I didn't choose to partake 7 in this. 8 MR. CERESNEY: Mark, whenever 9 you're ready to break. It's been a 10 while. 11 Q. What was the language in 12 Dillon's e-mail that concerned you? 13 Because you said, "Please don't send 14 any more e-mails to me that contain 15 language like this." 16 Was it the e-mail in its 17 entirety? 18 MR. CERESNEY: Objection. 19 Form. You can answer. 20 Q. Or were there certain parts 21 of the e-mail that concerned you? 22 A. I would say the militaristic 23 tone of the e-mail. 24 Q. What do you mean by 25 "militaristic"?</p>	<p style="text-align: right;">580</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. You know, I don't -- 3 MR. CERESNEY: Objection to 4 form. Go ahead. 5 A. I don't recall at the time. 6 It was Rick's statement. 7 Q. Did you communicate with your 8 brother about this e-mail? 9 A. I don't recall. I don't 10 believe I did because I didn't want to 11 embarrass David. But I wanted him to 12 not send me more e-mails like this. 13 Q. Did you confer with Michael 14 White about this e-mail? 15 A. No. I don't believe I did. 16 Q. To your knowledge, was 17 Mr. Siegal, The New York Times 18 standards editor, aware of this e-mail? 19 A. I'm trying - Al retired from 20 the paper - well, I don't believe he 21 was aware of this e-mail, no. 22 Q. Based on what? 23 A. He wouldn't have been 24 involved in the communications around 25 this e-mail.</p>

581	<p>1 - TIMOTHY L. O'BRIEN -</p> <p>2 Q. To your knowledge, was your</p> <p>3 boss, Mr. Ingrassia, aware of this</p> <p>4 e-mail?</p> <p>5 A. No. I don't think Larry was.</p> <p>6 Q. To your knowledge, was The</p> <p>7 New York Times publisher,</p> <p>8 Mr. Sulzberger, aware of this e-mail?</p> <p>9 A. No.</p> <p>10 Q. Same question for Bill</p> <p>11 Keller.</p> <p>12 Do you know if he was aware</p> <p>13 of this e-mail?</p> <p>14 A. No. I don't think he was.</p> <p>15 Q. Do you know if Jill Abramson</p> <p>16 was aware of this e-mail?</p> <p>17 A. I don't believe she was.</p> <p>18 Q. Do you know if anyone at The</p> <p>19 New York Times was aware of this</p> <p>20 e-mail?</p> <p>21 A. I don't believe anyone at The</p> <p>22 New York Times was.</p> <p>23 Q. Where does Mr. Sjegal live?</p> <p>24 A. I don't know.</p> <p>25 Q. Do you know what state he</p>	583	<p>1 - TIMOTHY L. O'BRIEN -</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Did you confer with a lawyer?</p> <p>5 A. No.</p> <p>6 Q. Did you confer with anyone at</p> <p>7 The New York Times about the e-mail to</p> <p>8 express your concern?</p> <p>9 A. This didn't relate to my New</p> <p>10 York Times work.</p> <p>11 Q. Does The New York Times have</p> <p>12 a public editor?</p> <p>13 A. Yes.</p> <p>14 Q. What's the function of The</p> <p>15 New York Times' public editor?</p> <p>16 A. To review and respond to</p> <p>17 reader concerns about the newspaper.</p> <p>18 Q. And who is the current New</p> <p>19 York Times public editor?</p> <p>20 A. Clark Hoyt.</p> <p>21 Q. And who was The New York</p> <p>22 Times public editor during the time</p> <p>23 period when this e-mail was sent, in</p> <p>24 and around November, the fall of '05?</p> <p>25 A. I believe Dan Okrent.</p>
582	<p>1 - TIMOTHY L. O'BRIEN -</p> <p>2 lives in?</p> <p>3 A. I don't know.</p> <p>4 Q. Where did he used to live</p> <p>5 when he was with The Times?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know if he got another</p> <p>8 job after he retired from The Times?</p> <p>9 A. I have no knowledge of that.</p> <p>10 Q. As an editor of The New York</p> <p>11 Times, do you believe that the plan by</p> <p>12 Mr. Dillon set forth in this e-mail</p> <p>13 conformed to The New York Times'</p> <p>14 standards for appropriate conduct on</p> <p>15 the part of New York Times newspeople?</p> <p>16 MR. CERESNEY: Objection.</p> <p>17 Form.</p> <p>18 A. No, I don't.</p> <p>19 Q. You were -- were you</p> <p>20 concerned about this e-mail that</p> <p>21 Mr. Dillon had sent you?</p> <p>22 A. In what capacity are you</p> <p>23 asking me that?</p> <p>24 Q. Well, you said it was very,</p> <p>25 very unwise legally.</p>	584	<p>1 - TIMOTHY L. O'BRIEN -</p> <p>2 Q. If a member of the public</p> <p>3 wanted to lodge a complaint against</p> <p>4 you, Mr. O'Brien, with The New York</p> <p>5 Times public editor, what would that</p> <p>6 member of the public do? What's the</p> <p>7 procedure for that?</p> <p>8 MR. CERESNEY: Objection.</p> <p>9 A. They would e-mail the public</p> <p>10 editor.</p> <p>11 Q. Then what happens? Do you</p> <p>12 know the process?</p> <p>13 A. You know, I don't know how</p> <p>14 the public editor's office itself</p> <p>15 handles them, if they come through the</p> <p>16 public editor's office. The concern</p> <p>17 would get forwarded to the parties at</p> <p>18 issue in hand as it relates to a</p> <p>19 particular story.</p> <p>20 Q. Is there any other --</p> <p>21 MR. CERESNEY: Mark, we</p> <p>22 talked about breaking after the</p> <p>23 e-mail.</p> <p>24 MR. RESSLER: I'm almost</p> <p>25 done.</p>

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1 - TIMOTHY L. O'BRIEN -
2 Q. Is there any other means by
3 which a member of the public can lodge
4 a complaint against a reporter or
5 editor who works for The New York
6 Times?
7 MR. CERESNEY: Objection.
8 Form. Go ahead.
9 A. Certainly by letter to our
10 legal counsel or through the public
11 editor or by direct correspondence with
12 senior editors of the paper.
13 Q. And is there a process in
14 place at The Times to handle such
15 letters or correspondence raising
16 complaints about reporters or editors?
17 A. Yes, there is.
18 Q. What's the process?
19 A. Depending on the venue
20 through which the communication occurs,
21 it gets forwarded to the parties
22 involved for consideration.
23 Q. Consideration by who?
24 A. Generally, by -- at the
25 first -- at the first take, the editor

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1 - TIMOTHY L. O'BRIEN -
2 and the reporter involved with the
3 particular story. If the public editor
4 is contacted, the public editor can
5 make an independent decision about to
6 pursue it or not to pursue it based on
7 what the public editor perceives the
8 merits of the claim to be.
9 Q. Prior to this litigation, do
10 you know if the Time Warner Book Group
11 was aware of this David Dillon e-mail?
12 A. Prior to publication?
13 Q. Prior to this litigation.
14 A. I don't know the answer to
15 that.
16 Q. Did you send this e-mail to
17 the Time Warner Book Group?
18 A. No, I did not.
19 Q. Why not?
20 MR. CERESNEY: Objection.
21 A. It didn't occur to me to.
22 Q. Did you think that because it
23 raised legal issues for you, it might
24 be appropriate to share your concerns
25 with your publisher, Time Warner?

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1 - TIMOTHY L. O'BRIEN -
2 A. It didn't.
3 MR. CERESNEY: Objection.
4 Form. Go ahead.
5 A. It really didn't rise to that
6 level of concern for me.
7 Q. Do you have any understanding
8 as to the first time that anyone at
9 Time Warner saw this e-mail?
10 Was it in connection with
11 this litigation, to your knowledge?
12 A. I really can't answer that
13 question. I don't know.
14 Q. Have you ever communicated
15 with anyone at the Time Warner Book
16 Group as to whether or not you have
17 violated the indemnity provision in
18 your contract?
19 MR. CERESNEY: Mark, you're
20 going into a new area now. And I
21 think -- we have been going, I
22 think, for about an hour and a
23 half, maybe even more. I think
24 it's appropriate to break.
25 MR. RESSLER: That's fine.

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: I don't want
3 to cut you off.
4 MR. RESSLER: Because there's
5 a pending question, why don't we
6 just get the answer to the
7 question?
8 Q. Have you -- well, can you
9 answer the question?
10 A. Can you ask it again, please?
11 Q. Have you ever communicated
12 with anyone at the Time Warner Book
13 Group as to whether you have violated
14 the indemnity provision in your
15 contract with Time Warner?
16 MR. CERESNEY: I'm going to
17 object on form. I'm also going to
18 instruct the witness not to discuss
19 any privileged conversations and to
20 limit his answer to nonprivileged
21 conversations.
22 With that limitation, you can
23 answer the question.
24 A. I don't think I've had
25 nonprivileged conversations with anyone

<p style="text-align: right;">589</p> <p>1 - TIMOTHY L. O'BRIEN - 2 at Time Warner about this issue. 3 Q. The conversations have only 4 been with lawyers? 5 MS. WHITE: Objection. 6 MR. CERESNEY: Objection to 7 the form. Go ahead. 8 (Whereupon, a brief 9 discussion was held off record.) 10 A. Yeah. I don't believe I've 11 had nonprivileged conversations with 12 anyone at Time Warner about this. 13 Q. Do you believe that the Time 14 Warner Book Group engaged in any 15 misconduct with respect to the 16 marketing and promoting of this book? 17 MS. WHITE: Mark, you said 18 you were going to ask the one 19 question pending. 20 MR. CERESNEY: You said the 21 pending question. 22 MS. WHITE: You keep asking 23 questions pending so we can't eat. 24 MR. RESSLER: Okay. I'm 25 sorry. This is the last one.</p>	<p style="text-align: right;">591</p> <p>1 - TIMOTHY L. O'BRIEN - 2 book. Not a material error, but I 3 just wanted to correct that. 4 Second, I just want to make 5 the record clear. You asked a 6 series of questions to which I 7 objected, the privilege part of the 8 question, which is whether there 9 had been discussions regarding the 10 violation of the indemnity. 11 And I instructed the witness 12 to answer just about nonprivileged 13 discussions. I just want the 14 record to be clear. I was not 15 implying that there are privileged 16 discussions. In fact, my 17 understanding is there are no 18 privileged discussions about that, 19 as well. I just want the record to 20 be clear about that. 21 In other words, I just want 22 the record to reflect that my 23 objection on the privilege part 24 doesn't imply that there are such 25 discussions. Okay? Because there</p>
<p style="text-align: right;">590</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MS. WHITE: Okay. 3 MR. RESSLER: Because I'm 4 sure it will be a short one. 5 Q. Do you believe that the Time 6 Warner Book Group engaged in any 7 misconduct with respect to marketing 8 and promoting your book? 9 A. No, I don't. 10 Q. Okay. 11 THE VIDEOGRAPHER: The time 12 on the video monitor is 1:16 p.m. 13 We're off the record. 14 (Whereupon, a lunch break was 15 taken from 1:16 p.m. to 2:12 p.m.) 16 THE VIDEOGRAPHER: We're back 17 on the record. The time on the 18 video monitor is 2:12 p.m. 19 MR. CERESNEY: Before we pick 20 up, just a couple of things to put 21 on the record. 22 One is Mr. O'Brien stated 23 before the break that the 2, -- 24 \$2,500 payment was for the VidLet. 25 He misspoke. It was for the audio</p>	<p style="text-align: right;">592</p> <p>1 - TIMOTHY L. O'BRIEN - 2 are not. 3 MR. RESSLER: I'm not sure 4 what the response was, actually. 5 MR. CERESNEY: It was that 6 there were no nonprivileged. 7 MS. WHITE: It was kind of 8 murky. It might -- to you -- I 9 mean, it might because of the 10 question -- the way the sequence 11 went, we wanted to make sure you 12 understood. 13 MR. CERESNEY: Yeah -- 14 MR. RESSLER: So would you 15 permit the witness to answer the 16 question? Did you have 17 communications with anyone at 18 Warner concerning indemn -- 19 concerning your possible violation 20 of the indemnity? 21 MR. CERESNEY: Violation of 22 the indemnity, I'll permit him to 23 answer that question about whether 24 he's had discussions with anyone. 25 MR. RESSLER: It's not really</p>

<p style="text-align: right;">593</p> <p>1 - TIMOTHY L. O'BRIEN - 2 a violation. It's the indemnity 3 agreement in the context of this 4 litigation. 5 MR. CERESNEY: Okay. That's 6 a different question. 7 MS. WHITE: Your question was 8 a violation. And to that, the 9 answer is factually no. There were 10 no such discussions. 11 MR. RESSLER: Well, what I'd 12 want is the more general question. 13 MS. WHITE: Well, then you've 14 got them, then. 15 MR. CERESNEY: Then you can 16 start asking those questions -- 17 MS. WHITE: Yes. 18 MR. CERESNEY: -- and we'll 19 -- we'll react in all. 20 MR. RESSLER: Okay. 21 (Whereupon, a brief 22 discussion was held off record.) 23 MR. CERESNEY: Yeah. There's 24 a third one, which is the postcard 25 that was distributed in Chicago.</p>	<p style="text-align: right;">595</p> <p>1 - TIMOTHY L. O'BRIEN - 2 context of this litigation? 3 MR. CERESNEY: That's a yes 4 or no question. 5 A. Yes. 6 Q. Did those conversations -- 7 did any of those communications involve 8 nonlawyers? 9 A. No, they did not. 10 Q. So I take it those 11 communications solely involved lawyers? 12 A. Correct. 13 Q. Which lawyers? 14 MR. CERESNEY: You can answer 15 that question. 16 A. Madeline Schachter. Madeline 17 Schachter, S-C-H-A-C-T-E-R. I'm sure I 18 just butchered that. 19 MR. CERESNEY: I think 20 there's another C-H in the middle, 21 S-C-H-A-C-H-T-E-R. 22 Q. Was she the only person with 23 whom you had a communication concerning 24 the indemnity provision in your 25 contract with Warner in the context of</p>
<p style="text-align: right;">594</p> <p>1 - TIMOTHY L. O'BRIEN - 2 We have produced and we're getting 3 a copy of it for you. It's in the 4 production. You have it. 5 MR. RESSLER: I have a fourth 6 issue and that was the addresses 7 that I'd requested. 8 MR. CERESNEY: Yeah. And we 9 e-mailed them to Ms. Gorecki. 10 MS. WHITE: We e-mailed them 11 to Ms. Gorecki. 12 MR. RESSLER: Excellent. 13 Thank you. Okay. 14 MR. CERESNEY: So that we 15 have a record of the receipt. 16 MR. RESSLER: Thank you. 17 Okay. 18 MR. CERESNEY: No problem. I 19 hope we've accommodated all of your 20 requests. 21 BY MR. RESSLER: 22 Q. Mr. O'Brien, have you had any 23 communications with anyone from Warner 24 concerning the indemnity provision in 25 your contract with Warner in the</p>	<p style="text-align: right;">596</p> <p>1 - TIMOTHY L. O'BRIEN - 2 this litigation? 3 A. No. 4 Q. Who else? 5 A. My agent, Andrew Blauner. 6 Q. When was your communication 7 with Miss Schachter from Warner? 8 A. Subsequent to the lawsuit 9 being filed, but I can't remember 10 precisely when. 11 Q. What about with Mr. Blauner? 12 A. Around the same time. 13 Q. Do you know how it is that 14 the Debevoise & Plimpton and the Reed 15 Smith law firms came to represent you 16 in this case? 17 A. Generally, but not 18 specifically. 19 Q. Answer it as best you can 20 generally, then. 21 MR. CERESNEY: Let me just 22 instruct you not to give the 23 substance of what you learned from 24 attorneys in a privileged capacity. 25 So if you can answer the question</p>

597	<p>1 - TIMOTHY L. O'BRIEN - 2 about how you learned or what you 3 learned about the -- how Debevoise 4 and Reed Smith came to represent 5 you without revealing a privileged 6 communication, then you can do so. 7 If you can't do that, then 8 let me know and we'll -- 9 THE WITNESS: No. I only 10 learned about it through privileged 11 communications. 12 MR. CERESNEY: Okay. 13 Q. Do you have an engagement 14 letter with the Debevoise firm and/or 15 the Reed Smith firm? 16 MR. CERESNEY: You can 17 indicate whether there is one or 18 not. You can indicate that. 19 A: I don't know. I have not 20 seen such a document. 21 Q. You never signed any kind of 22 letter concerning the fact that the 23 Reed Smith firm and/or the Debevoise 24 firm would be representing you in this 25 case; a letter or a contract or some</p>	599	<p>1 - TIMOTHY L. O'BRIEN - 2 question is: Are they being paid 3 by Time Warner, if he knows? 4 That's my question. 5 THE WITNESS: Well, to what 6 extent is this privileged or not? 7 I'm a little unclear. 8 MR. CERESNEY: Again, he came 9 in -- 10 MR. RESSLER: It's not 11 privileged, Andrew. 12 MR. CERESNEY: The fact 13 that -- if he's paying fees or not, 14 that is -- that's a nonprivileged 15 answer. As to who might else be 16 paying the fees -- 17 MR. RESSLER: That's not 18 privileged. 19 MR. CERESNEY: Do you know 20 who ultimately is paying the fees? 21 THE WITNESS: I'm not certain 22 who is ultimately paying the fees, 23 no. 24 Q. Are you paying the fees for 25 the law firms representing you in this</p>
598	<p>1 - TIMOTHY L. O'BRIEN - 2 kind of document of that nature? 3 MR. CERESNEY: I'm going to 4 represent that one does exist and 5 that Mr. O'Brien signed that. 6 Q. Okay. Do you recall signing 7 that? 8 A. I recall signing a document 9 related to our retention of counsel in 10 this case. I don't recall the 11 document -- a document described as per 12 your previous question. I can't 13 remember exactly how you described it, 14 retention letter I believe you said, or 15 something like that. 16 Q. Is it the case that the legal 17 fees for the Debevoise and Reed Smith 18 firms' representation of you in this 19 case are being paid by the Time Warner 20 Book Group? 21 MR. CERESNEY: I'm going to 22 object. I'll allow you to ask him 23 if he's paying them. I have no 24 objection to that. 25 MR. RESSLER: No. My</p>	600	<p>1 - TIMOTHY L. O'BRIEN - 2 case? 3 A. No, I'm not. 4 Q. Do you know who is? 5 A. I -- not with exact 6 certainty, no. 7 Q. With -- do you have any idea, 8 short of exact certainty? 9 A. I believe it's -- it's 10 possibly -- 11 MR. CERESNEY: Hold on. I'm 12 going to need to confer with him 13 before he answers that question 14 because there may be some 15 privileged information in that 16 response. 17 THE VIDEOGRAPHER: The time 18 on the video monitor is 2:19 p.m. 19 We're off the record. 20 (Whereupon, a brief 21 discussion was held off record.) 22 THE VIDEOGRAPHER: We're back 23 on the record. Time on the video 24 monitor is 2:21 p.m. 25 MR. CERESNEY: We disclosed</p>

58 (Pages 597 to 600)

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<p style="text-align: right;">601</p> <p>1 - TIMOTHY L. O'BRIEN - 2 obviously the insurance 3 arrangements in this case through 4 discovery. As for what this 5 witness knows, it's all through 6 discussions with counsel; that's 7 what I was clarifying with him. 8 So I'm going to instruct him 9 not to answer about what he's 10 learned through discussions with 11 counsel. 12 MR. RESSLER: Andrew, the 13 jury in this case -- the jury in 14 this case has the right to know who 15 is paying the defendant's legal 16 fees. 17 MR. CERESNEY: Right. They 18 have a right to know whether he's 19 paying them, I would argue. 20 MR. RESSLER: Well, no. They 21 have a right to know if he's not 22 paying -- just let me finish -- if 23 he's not paying and somebody is 24 paying for him, the jury has a 25 right to know that.</p>	<p style="text-align: right;">603</p> <p>1 - TIMOTHY L. O'BRIEN - 2 answer what I view to be a 3 straightforward question. 4 MR. CERESNEY: Sure. Let me 5 be clear. The reason -- the reason 6 why I'm instructing him not to 7 answer this question is because 8 discussions through which he formed 9 his understanding of this issue 10 were discussions with counsel, and, 11 therefore, I'm instructing him -- 12 plus that counsel was actually a 13 New York Times counsel. 14 So I'm not in a position to 15 make a determination with regard to 16 those discussions, certainly at 17 this point, and so we're asserting 18 the privilege. 19 BY MR. RESSLER: 20 Q. Have you spoken to -- 21 withdrawn. 22 MR. RESSLER: What you're 23 going to make us do and, I mean, 24 it's fine, we'll do it, is depose 25 people at Warner, people at The</p>
<p style="text-align: right;">602</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: You can make 3 that argument to whoever you want 4 to make that argument to but for 5 now, we're asserting the privilege. 6 MR. RESSLER: You're 7 asserting the privilege with 8 respect to this witness answering 9 my question, "Who is paying his 10 fees"? 11 MR. CERESNEY: About -- about 12 discussions that he had with 13 counsel through which he learned 14 who was paying his fees. 15 MR. RESSLER: I'm just asking 16 him who is paying his fees and 17 you're instructing him not to 18 answer the question because you 19 believe that implicates the 20 privilege. 21 Is that -- just so I'm clear 22 what your objection is -- 23 MR. CERESNEY: And let me -- 24 MR. RESSLER: -- why you're 25 directing this witness not to</p>	<p style="text-align: right;">604</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Times to get what's really a simple 3 question. 4 MR. CERESNEY: We can discuss 5 off-line -- 6 MR. RESSLER: You can 7 appreciate -- 8 MR. CERESNEY: We can discuss 9 off-line this issue. I'm talking 10 about this witness; right now. 11 MR. RESSLER: Maybe you can 12 advise us -- maybe you could tell 13 what the answer is and we won't 14 have to do that because, otherwise, 15 I'm just saying we'll -- 16 MR. CERESNEY: I understand, 17 and I -- 18 MR. RESSLER: -- we'll be 19 spending time deposing people. 20 MR. CERESNEY: I don't want 21 to -- trust me. I have no desire 22 to spend a lot of time and energy 23 on this issue. 24 I'm only asserting it with 25 regard to the question to this</p>

<p style="text-align: right;">605</p> <p>1 - TIMOTHY L. O'BRIEN - 2 witness. We can discuss after this 3 deposition whether and how this 4 information can be obtained. 5 And that's a separate 6 question from the question you 7 posed to this witness. I'm not 8 foreclosing that discussion - 9 MR. RESSLER: Okay. In the 10 interest of time with the hour 11 drawing near, let me move on. 12 MR. CERESNEY: Okay. 13 MR. RESSLER: I understand 14 your position. We'll talk about it 15 later. 16 BY MR. RESSLER: 17 Q. Earlier today, Mr. O'Brien, 18 you mentioned -- withdrawn. 19 Let me just circle back one. 20 more time to the issue of legal fees. 21 Do you have any idea of how 22 much money has been incurred by the 23 Debevoise firm and the Reed Smith firm 24 in connection with their representation 25 of you in this litigation?</p>	<p style="text-align: right;">607</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I did. 3 Q. And it's a video -- you were 4 videotaped reading the VidLit? 5 MR. CERESNEY: Objection to 6 form. Go ahead. 7 A. No. I was not videotaped 8 reading it. 9 Q. So, just explain what the 10 VidLit entails with respect to your 11 reading a Trump quiz. 12 A. I read a Trump quiz that was 13 recorded as an audio. 14 Q. Then where was this VidLit 15 that you recorded distributed? 16 A. I believe online. 17 Q. What do you have to type in 18 to get to the VidLit video? 19 A. I don't know. 20 Q. Is it like www.vidlit? 21 A. I don't know. 22 Q. Okay. And you said several 23 times yesterday and today that you did 24 not write the Trump book as an exposé, 25 correct?</p>
<p style="text-align: right;">606</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Do you have 3 any knowledge of that separate and 4 apart from discussions with an 5 attorney? 6 THE WITNESS: No, I do not. 7 MR. CERESNEY: Thank you. 8 BY MR. RESSLER: 9 Q. Earlier today you referred to 10 the VidLit. 11 What's VidLit? V-I-D-L-I-T. 12 A. A VidLit is a promotional 13 video. 14 Q. Is it a company that -- is 15 there a VidLit company? 16 A. No. It's a product. 17 Q. And what is the product 18 intended to do? 19 A. To promote the book. 20 Q. And did you use VidLit to 21 promote TrumpNation? 22 A. Yes. 23 Q. In fact, you recorded a Trump 24 quiz as part of your VidLit promotional 25 effort?</p>	<p style="text-align: right;">608</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Objection to 3 form. You can answer. 4 A. Correct. 5 Q. And that in writing or 6 promoting the book, you didn't have any 7 bias -- you didn't act out of any bias 8 towards Trump, correct? 9 MR. CERESNEY: Objection. 10 Form. You can answer. 11 A. Correct. 12 Q. Didn't you want the VidLit 13 audio recording that you recorded to 14 have some kind of a circus music 15 introduction? 16 MR. CERESNEY: Objection. 17 Form. You can answer. 18 A. I don't recall. 19 MR. RESSLER: Can we have 20 this marked as 39, please? It's 21 previously been identified in 22 discovery as TOB-EF-4624. 23 (Whereupon, O'Brien Exhibit 39 was 24 marked for identification.) 25 (Whereupon, a brief</p>

<p style="text-align: right;">609</p> <p>1 - TIMOTHY L. O'BRIEN - 2 discussion was held off record.) 3 Q. Mr. O'Brien, the exhibit in 4 front of you contains an e-mail on 5 Page 1 from you to Rick Wolff. And 6 it's dated October 31st, 2005, and you 7 write, "If they can speed my voice up a 8 tad, that would be great. I'm sure 9 it's my fault but the tone of my voice 10 is sort of somnolent (sic), and I 11 think the pace needs to be crisper. 12 Otherwise, great. And we need some 13 kind of music for the intro and 14 background. Circus music perhaps?" 15 Do you see that? 16 A. I do. 17 Q. Does that refresh your 18 recollection that you wanted some kind 19 of circus music for the intro and 20 background to the VidLit? 21 A. It certainly does. 22 Q. And was the circus music that 23 you had in mind something like, "da da 24 da." 25 MR. RESSLER: The audio part</p>	<p style="text-align: right;">611</p> <p>1 - TIMOTHY L. O'BRIEN - 2 little string that one could pull? 3 A. No. It has a little button 4 in the back. 5 Q. And it's a doll of Donald 6 Trump, right? 7 A. It is. 8 Q. And you considered using the 9 doll as part of the VidLit promotional 10 effort? 11 A. My idea. 12 Q. Did you come up with that 13 idea all by yourself, Mr. O'Brien? 14 A. I did. 15 MR. CERESNEY: Objection. 16 Form. You can answer the question. 17 A. I did. 18 Q. And is it the case that you 19 were unable to use the doll in your 20 promotional appearance? 21 A. Yes. I believe that was the 22 case ultimately. I can't recall 23 exactly. I know we checked in with 24 the -- with the maker of the doll. 25 Q. Were you able to juggle your</p>
<p style="text-align: right;">610</p> <p>1 - TIMOTHY L. O'BRIEN - 2 of the deposition will speak for 3 itself. 4 MR. CERESNEY: Or you could 5 write in brackets, "Mr. Ressler 6 sings." 7 Q. But was that the kind of 8 circus music that you had in mind? 9 A. I think something more upbeat 10 than that, Mr. Ressler; something that 11 would be perhaps carnivalesque, I would 12 say. 13 Q. And wasn't there some kind of 14 doll that you used in the VidLit piece 15 or wanted to use? 16 A. There was the Trump doll. 17 Q. Tell us about the doll that 18 you wanted to use it in the VidLit 19 piece, right? 20 A. I did. 21 Q. Tell us about that. 22 A. About what? Why I wanted to 23 use the doll? 24 Q. Well, we -- we -- you wanted 25 to use the -- did the doll have a</p>	<p style="text-align: right;">612</p> <p>1 - TIMOTHY L. O'BRIEN - 2 consideration of issues like the circus 3 music and the doll with your 4 responsibilities at The New York Times 5 during this period? 6 A. I was. 7 Q. Do you know if using a doll 8 during a promotional appearance for 9 your book would violate The New York 10 Times' standards governing public 11 appearances by Times employees? 12 MR. CERESNEY: Objection. 13 Form. You can answer. 14 A. I don't. It never became an 15 issue with the paper. 16 Q. Did you intend to go to Al 17 Siegal or some similarly situated Times 18 editor and ask him or her if using the 19 doll under VidLit promotional effort 20 would adhere to The Times' standards? 21 MR. CERESNEY: Objection. 22 Form. You can answer. 23 A. No. It didn't occur to me 24 to. It didn't rise to that level in my 25 estimation.</p>

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1 - TIMOTHY L. O'BRIEN -
2 MR. RESSLER: Could we have
3 this marked as Exhibit 40, please,
4 previously identified in discovery
5 TOB-EF-543.
6 (Whereupon, O'Brien Exhibit 40 was
7 marked for identification.)
8 Q. Mr. O'Brien, if I could
9 direct your attention to this exhibit,
10 specifically to the e-mail that appears
11 in the middle of the page from Liz
12 Dubelman to you.
13 Do you see that?
14 A. I do.
15 Q. Then there's an e-mail under
16 that. I want to focus on the one from
17 you where you say, "Liz, that's find
18 and thanks."
19 Do you see that?
20 A. Yes.
21 Q. You wrote -- who's Liz
22 Dubelman? Is she an employee at
23 VidLit? Because I see that her e-mail
24 address is vidlit.com.
25 A. Then I assume she is, yes.

614

1 - TIMOTHY L. O'BRIEN -
2 Q. And you write, "Are you
3 planning on using the Trump doll in any
4 of this? The doll is one of the
5 funniest things around. It says
6 outrageous little Trumpisms, and we
7 could," -- in quote, "interview it."
8 Do you recall sending that
9 e-mail?
10 A. I do.
11 Q. When you were developing the
12 strategy for the funny things you were
13 going to do with the Trump doll,
14 Mr. O'Brien, did you feel like you were
15 hitting a new low?
16 MR. CERESNEY: Objection.
17 Form. You can answer.
18 A. I felt that I was being
19 funny.
20 Q. Did you have a Trump doll?
21 A. I did have a Trump doll.
22 Q. Where did you keep it?
23 A. I don't recall.
24 Q. Did you keep it at home?
25 A. No. I think I probably kept

615

1 - TIMOTHY L. O'BRIEN -
2 it at my desk -- on my desk at the
3 office.
4 Q. Did people come in and laugh
5 about the Trump doll from time to time?
6 A. I can't recall.
7 Q. Did you carry the Trump doll
8 around on occasion?
9 A. No, I did not.
10 Q. Were there any other things
11 that you wanted to do with the Trump
12 doll in the video in addition to
13 interviewing it?
14 A. No.
15 (Whereupon, a brief
16 discussion was held off record.)
17 Q. Who is Lisa Dallas?
18 A. She is a publicist.
19 Q. Who does she work for?
20 A. Freud and Company.
21 Q. Did you communicate with her
22 concerning marketing and promotional
23 efforts for the book?
24 A. I did.
25 Q. To what end?

616

1 - TIMOTHY L. O'BRIEN -
2 A. Her employer, Matthew
3 Hiltzik, who is a principal at Freud
4 and Company, arranged some radio
5 interviews for me.
6 Q. Did you pay that company,
7 Freud, for its efforts?
8 A. No.
9 Q. It was a freebie, if you
10 will?
11 A. Yes.
12 Q. Yesterday you testified that
13 you did not tape record your telephone
14 conversations with the three anonymous
15 sources referenced on Page 154 of your
16 book.
17 Do you recall that?
18 A. I do.
19 Q. Did you take notes of those
20 conversations?
21 A. Yes, I did.
22 Q. Did you take notes of the
23 conversations you had with each of the
24 three alleged sources?
25 A. Yes, I did.

<p style="text-align: right;">617</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. And are they listed -- do you 3 know if they're listed on the privilege 4 log that your lawyers have produced to 5 Mr. Trump and his attorneys in this 6 litigation? 7 MR. CERESNEY: If you know. 8 A. I believe -- I believe they 9 are on the privilege log. 10 Q. Where do you keep the 11 notes -- withdrawn. 12 Do you still have the notes? 13 The original copies of the notes? 14 MR. CERESNEY: You can answer 15 that question. 16 A. No, I do not. 17 Q. What happened to them? 18 A. My counsel has them. 19 Q. Do you have any copies of the 20 notes? 21 A. No, I do not. 22 Q. Do the three anonymous 23 sources know each other, or does any 24 two of them know each other? 25 MR. CERESNEY: I'm going to</p>	<p style="text-align: right;">619</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MS. WHITE: Whether or not 3 they know. 4 MR. CERESNEY: Whether or not 5 they know -- does he have 6 information which will allow him to 7 determine that? 8 MR. RESSLER: If he knows 9 whether the sources know each 10 other. 11 MR. CERESNEY: I'm going to 12 allow him to answer that question. 13 MR. RESSLER: Okay. 14 MR. CERESNEY: Unless you 15 want to confer about that issue. 16 THE WITNESS: Sure. 17 MR. CERESNEY: Okay. 18 MR. RESSLER: That -- I'm 19 stating this for the record. 20 That can't possibly be 21 protected by the news person's 22 privilege even if it applies in 23 this case. 24 MS. WHITE: Anything that 25 could lead to the identification of</p>
<p style="text-align: right;">618</p> <p>1 - TIMOTHY L. O'BRIEN - 2 object and instruct him not to 3 answer. 4 MR. RESSLER: Ground? 5 MR. CERESNEY: It could 6 potentially reveal the identity of 7 the sources. 8 Q. Do you know if the three 9 anonymous sources know each other -- or 10 rather, any two of them might know each 11 other? 12 MR. CERESNEY: Let me just 13 make sure I understand the 14 question. 15 MR. RESSLER: It was pretty 16 clear. 17 MR. CERESNEY: It seems very 18 similar to the prior question I 19 objected to. 20 MR. RESSLER: No, it's not, 21 Andrew. It's -- I'm asking him -- 22 I'm not asking him to give me the 23 answer as to whether they know each 24 other. I'm asking him to tell me 25 if he knows whether or not.</p>	<p style="text-align: right;">620</p> <p>1 - TIMOTHY L. O'BRIEN - 2 would be covered, but we're trying 3 to help you by consulting so -- 4 MR. RESSLER: I agree -- I 5 don't necessarily disagree with 6 that, Mary Jo, but I don't agree 7 that the question -- his response 8 to the question could possibly 9 enable us to discover the anonymous 10 sources. 11 The question is if he has any 12 knowledge as to whether these three 13 people know each other or whether 14 any two of them know each other. 15 MR. CERESNEY: Understood. 16 We're being extra cautious on this 17 issue for obvious reasons. 18 MR. RESSLER: Is this going 19 to be a short break, do you think? 20 MR. CERESNEY: It will be, 21 but I think -- it will be a very 22 short break. It will be a 23 10-second to 20-second break. 24 MR. RESSLER: That's 25 appreciated.</p>

63 (Pages 617 to 620)

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1 - TIMOTHY L. O'BRIEN -
2 THE VIDEOGRAPHER: The time
3 on the video monitor is 2:37 p.m.
4 We're off the record. This ends
5 Tape 3, Volume 2.
6 (Whereupon, there was a brief
7 recess in the proceedings.)
8 THE WITNESS: Do you want to
9 restate the question?
10 MR. CERESNEY: Hold on.
11 THE WITNESS: Sorry.
12 THE VIDEOGRAPHER: We're back
13 on the record. The time on the
14 video monitor is 2:38 p.m. This
15 begins Tape 4, Volume 2.
16 BY MR. RESSLER:
17 Q. Do you know whether the three
18 anonymous sources knew each other or
19 whether any two of them knew each
20 other?
21 A. Yes.
22 Q. And did you find that out
23 because they told you?
24 THE WITNESS: Can we confer?
25 MR. RESSLER: That couldn't

622

1 - TIMOTHY L. O'BRIEN -
2 possibly disclose to us the
3 identities of the sources or even
4 give us any leads to discover those
5 identities.
6 MR. CERESNEY: It does get
7 into the --
8 MR. RESSLER: No matter how
9 good we might be at tracking down
10 leads.
11 MR. CERESNEY: I understand.
12 It does get into, though, the
13 substance of the discussion with
14 the particular sources, which is an
15 issue that I think Mr. O'Brien
16 would like to briefly confer about
17 before he answers this because it
18 could -- because we're also
19 concerned about identity sources,
20 waiver issues and all kinds of
21 other issues related to this.
22 So I just want to -- we're
23 just being extra cautious on this.
24 I know you appreciate and we'll
25 take 10 seconds, 20 seconds on this

623

1 - TIMOTHY L. O'BRIEN -
2 as well.
3 THE VIDEOGRAPHER: The time
4 on the video monitor is 2:40 p.m.
5 We're off the record.
6 (Whereupon, a brief
7 discussion was held off record.)
8 THE VIDEOGRAPHER: We're back
9 on the record. Time on the video
10 monitor is 2:43 p.m.
11 MR. CERESNEY: He can answer
12 the question. Why don't you --
13 Q. The question was: Did you
14 find out because they told you?
15 A. I knew from them and from
16 independent research.
17 Q. You described the sources in
18 your book as three people with direct
19 knowledge of Donald's finances.
20 What did you mean by "direct
21 knowledge"?
22 MR. CERESNEY: If you can
23 answer that question without
24 revealing anything about the
25 identity of the sources, you

624

1 - TIMOTHY L. O'BRIEN -
2 should.
3 A. I meant that they had
4 firsthand knowledge.
5 Q. So, just so it's clear,
6 because this is important,
7 By "direct," you meant
8 firsthand?
9 A. I do.
10 Q. How would you describe,
11 generally, firsthand knowledge in the
12 context of a person's net worth?
13 MR. CERESNEY: I'm going to
14 instruct him not to answer that
15 question.
16 MR. RESSLER: That's fine.
17 Then I'll --
18 MR. CERESNEY: Yeah. You're
19 making your record. I understand.
20 MR. RESSLER: Okay.
21 Q. Given that a net --
22 withdrawn.
23 You agree that net worth
24 means, in effect, assets minus
25 liabilities, correct?

<p style="text-align: right;">625</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I do. 3 Q. And that Trump has various 4 assets and various liabilities, 5 correct? 6 A. Correct. 7 Q. So, by direct -- or as you've 8 defined it, firsthand knowledge, was it 9 the case that the three sources, or any 10 of them, had firsthand knowledge with 11 respect to each of Trump's assets and 12 each of Trump's liabilities? 13 MR. CERESNEY: I'm going to 14 instruct him not to answer the 15 question. 16 Q. Was the firsthand knowledge 17 that you allege the anonymous sources 18 had based on their own review of 19 documents? 20 MR. CERESNEY: I'm going to 21 instruct him not to answer the 22 question. 23 Q. Was the firsthand or direct 24 knowledge that you claim the anonymous 25 sources had based on their</p>	<p style="text-align: right;">627</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Was it the case that the 3 sources had, as you allege, direct or 4 firsthand knowledge with respect to 5 certain aspects of Trump's finances or 6 all aspects of Trump's finances? 7 MR. CERESNEY: I'm going to 8 instruct him not to answer that 9 question. 10 Q. How long did the sources have 11 direct knowledge of Trump's finances, 12 as you allege? 13 MR. CERESNEY: I'm going 14 instruct him not to answer that 15 question. 16 Q. Did the three alleged 17 anonymous sources have what you 18 describe as their direct knowledge of 19 Trump's finances for the same amount of 20 time, or did any two of them have their 21 alleged direct knowledge for the same 22 amount of time? 23 MR. CERESNEY: I'm going to 24 instruct him not to answer that 25 question.</p>
<p style="text-align: right;">626</p> <p>1 - TIMOTHY L. O'BRIEN - 2 communications with Trump? 3 MR. CERESNEY: I'm going to 4 instruct him not to answer the 5 question. 6 Q. Same question with respect to 7 any Trump organization employees. 8 MR. CERESNEY: I'm going to 9 instruct him not to answer the 10 question. 11 Q. Same question with respect to 12 any other people. 13 MR. CERESNEY: That was -- 14 Q. In other words, the question 15 is: By direct or firsthand 16 knowledge, -- 17 A. Right. 18 Q. --do you mean that the 19 anonymous sources had firsthand or 20 direct knowledge based on their 21 communications with people as opposed 22 to reviewing materials? 23 MR. CERESNEY: I'm going to 24 instruct him not to answer that 25 question.</p>	<p style="text-align: right;">628</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Did these three alleged 3 anonymous sources, or any of them, have 4 knowledge of Trump's finances as of 5 2005? 6 MR. CERESNEY: Same 7 objection. I'll instruct him not 8 to answer. 9 Q. Did these three alleged 10 anonymous sources, or any of them, 11 provide any valuations of specific 12 assets of Trump? 13 MR. CERESNEY: I'm going to 14 instruct him not to answer that 15 question. 16 Q. Same question with respect to 17 these three anonymous sources providing 18 any information concerning specific 19 liabilities of Trump, including 20 mortgages, loans, et cetera? 21 MS. WHITE: So did these 22 three alleged anonymous sources, or 23 any of them -- 24 MR. CERESNEY: Provide 25 valuations.</p>

629	<p>1 - TIMOTHY L. O'BRIEN - 2 MS. WHITE: -- valuations 3 concerning -- 4 MR. CERESNEY: We need a 5 moment to confer on that last 6 question -- last two questions 7 actually. Just a moment. 8 MR. RESSLER: Okay. Maybe in 9 the interest of time -- 10 MR. CERESNEY: We'll assert 11 and then -- 12 MS. WHITE: Well -- 13 MR. RESSLER: Well, now, I 14 was just going to say maybe it -- 15 maybe it makes sense for me to ask 16 my next question and you can confer 17 on both. 18 MR. CERESNEY: That's -- 19 MS. WHITE: Okay. Sure. 20 Good. 21 Q. When you refer to the 22 anonymous sources, quote/unquote, 23 "direct knowledge of Donald's 24 finances," unquote, what do you mean by 25 "finances"?</p>	631	<p>1 - TIMOTHY L. O'BRIEN - 2 going to invoke the privilege and 3 direct him not to answer on the 4 question regarding valuations of 5 assets and liabilities. 6 On the final question, which 7 was the question of how he defines 8 finances, I believe, it was -- 9 MR. RESSLER: Uh-huh. Yes. 10 MR. CERESNEY: We'll allow 11 him to answer that. 12 A. I define finances as assets 13 and liabilities. 14 MR. CERESNEY: And one other 15 issue just that I forgot to 16 mention. If we could break in 17 15 or 20 minutes, the witness just 18 needs to make a quick phone call. 19 Okay? 20 Q. By assets and liabilities, do 21 you mean all of Trump's assets and 22 liabilities? 23 MR. CERESNEY: Does the word 24 "finances" mean all of Trump's 25 assets and liabilities, is that</p>
630	<p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Okay. You'll 3 let us confer on those three 4 questions? 5 MR. RESSLER: I think there 6 were two, but I could be wrong. 7 MR. CERESNEY: I think he's 8 going to go back -- both on the 9 valuation, as well. 10 MR. RESSLER: Okay. 11 MR. CERESNEY: I want to just 12 discuss the valuation and the 13 liabilities in your last question 14 just to make sure that our -- we 15 understand the parameters; So just 16 give us a few seconds. 17 THE VIDEOGRAPHER: The time 18 on the video monitor is 2:49 p.m. 19 We're off the record. 20 (Whereupon, a brief 21 discussion was held off record.) 22 THE VIDEOGRAPHER: We're back 23 on the record. The time on the 24 video monitor is 2:51 p.m. 25 MR. CERESNEY: Okay. We're</p>	632	<p>1 - TIMOTHY L. O'BRIEN - 2 what you're asking? 3 MR. RESSLER: Well, I asked 4 the witness to tell me what he 5 means by "finances." And he said 6 he meant assets and liabilities. 7 So the critical question -- 8 one critical question as far as 9 we're concerned is do "finances" 10 encompass all of Trump's assets and 11 liabilities. So that's the 12 question. 13 MR. CERESNEY: I understand. 14 I'm going to have to invoke -- 15 we're going to invoke and instruct 16 him not to answer on that question. 17 Q. You continue in your 18 description of the three alleged 19 anonymous sources, "people who had 20 worked closely with him for years." 21 Meaning -- "him" meaning 22 Donald Trump? 23 A. Correct. You're at Page 154? 24 Q. Correct. For how many years 25 did the three alleged sources work</p>

<p style="text-align: right;">633</p> <p>1 - TIMOTHY L. O'BRIEN - 2 closely with Trump? 3 MR. CERESNEY: I'm going to 4 invoke the privilege and ask -- 5 instruct him not to answer. 6 Q. What do you mean by the word 7 "closely" in this passage? 8 MR. CERESNEY: I'm going to 9 invoke the privilege and instruct 10 him not to answer. 11 Q. Did these anonymous sources, 12 or any of them, ever work for Trump, or 13 the Trump organization? 14 MR. CERESNEY: I'm going to 15 invoke the privilege and ask him 16 not to answer -- instruct him not 17 to answer. 18 Q. What city did these three 19 anonymous sources, or any of them, live 20 in when they allegedly worked closely 21 with Trump? 22 MR. CERESNEY: I'm going to 23 invoke the privilege and instruct 24 him not to answer. 25 Q. Did you show the three</p>	<p style="text-align: right;">635</p> <p>1 - TIMOTHY L. O'BRIEN - 2 him not to answer. 3 Q. Same question with respect to 4 any portion of a manuscript or draft. 5 MR. CERESNEY: Same answer. 6 Q. Have you ever met any of 7 these three sources in person? 8 MR. CERESNEY: Yes. 9 A. Yes, I have. 10 Q. Take Source Number 1, how 11 many times, whatever you want to use as 12 Source Number 1. 13 In other words, I want to 14 know how many times you've met each of 15 the three sources? 16 THE WITNESS: Can we confer? 17 MR. CERESNEY: Yes. We'll be 18 quick, Mark. 19 THE VIDEOGRAPHER: The time 20 on the video monitor is 2:55 p.m. 21 We're off the record. 22 (Whereupon, a brief 23 discussion was held off record.) 24 THE VIDEOGRAPHER: We're back 25 on the record. The time on the</p>
<p style="text-align: right;">634</p> <p>1 - TIMOTHY L. O'BRIEN - 2 anonymous sources, or any of them, any 3 documents or any materials? 4 MR. CERESNEY: I'm going to 5 invoke the privilege and instruct 6 him not to answer. 7 Q. Did any of these three 8 anonymous sources show you any 9 documents or materials of any kind? 10 MR. CERESNEY: Again, I'm 11 going to assert the same privilege. 12 Q. Did you show any of these 13 three alleged anonymous sources any 14 drafts of any articles that you wrote 15 in any point in time for The New York 16 Times? 17 MR. CERESNEY: I'm going to 18 invoke the privilege and instruct 19 him not to answer. 20 Q. Did you ever show any of 21 these three alleged anonymous sources a 22 draft of the book in manuscript form or 23 some other form? 24 MR. CERESNEY: I'm going to 25 invoke the privilege and instruct</p>	<p style="text-align: right;">636</p> <p>1 - TIMOTHY L. O'BRIEN - 2 video monitor is 2:57 p.m. 3 MR. CERESNEY: He can answer 4 the question. 5 A. Let's see, with Source 6 Number 1, I met with that source once. 7 With Source Number 2, on multiple 8 occasions. And with Source Number 3, 9 on three occasions. 10 Q. With respect to Source 11 Number 1, the one meeting, where did it 12 take place? 13 MR. CERESNEY: I'm going to 14 instruct him not to answer, assert 15 the privilege. 16 Q. Can you answer without 17 identifying -- for example, if it was a 18 place of business without obviously 19 identifying the place of business? 20 So I guess what I'm referring 21 to restaurant, home, street, place of 22 business. 23 MR. CERESNEY: I'm going to 24 instruct him not to answer and 25 assert the privilege.</p>

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1 - TIMOTHY L. O'BRIEN -
2 MR. RESSLER: I would ask the
3 same questions obviously with
4 respect to Source 2 and 3.
5 And I take it that you're
6 going to interpose the same
7 objections?
8 MR. CERESNEY: That's
9 correct.
10 Q. Have you ever met any members
11 of any of the sources' families?
12 MR. CERESNEY: I'm going to
13 assert the privilege and instruct
14 the witness not to answer.
15 Q. Have you ever been --
16 withdrawn.
17 Have you ever communicated
18 with any of the sources concerning
19 matters other than Trump or the Trump
20 organization?
21 MR. CERESNEY: Can we confer?
22 THE WITNESS: Yes.
23 MR. CERESNEY: Okay. We'll
24 be back.
25 MR. RESSLER: This is really

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1 - TIMOTHY L. O'BRIEN -
2 like Privilege 101 in law school.
3 MS. WHITE: Even harder.
4 THE VIDEOGRAPHER: The time
5 on the video monitor is 2:59 p.m.
6 We're off the record.
7 (Whereupon, a brief
8 discussion was held off record.)
9 A. So the answer --
10 MULTIPLE ATTORNEYS: Hold on.
11 THE VIDEOGRAPHER: Time on
12 the video monitor is 3:02 p.m.
13 We're back on the record.
14 THE WITNESS: Do you want to
15 rephrase the question?
16 MS. WHITE: Repeat the
17 question.
18 BY MR. RESSLER:
19 Q. Have you ever communicated
20 with any of the sources concerning
21 matters other than Trump or the Trump
22 organization?
23 A. With -- for two of the three,
24 the answer to that is yes.
25 Q. And with respect -- and the

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1 - TIMOTHY L. O'BRIEN -
2 third one, the communications only
3 related to Trump and the Trump
4 organization?
5 A. That is correct.
6 Q. With respect to the first
7 two, did the matters you discussed with
8 them relate to your work as a book
9 author or a New York Times reporter or
10 a Wall Street Journal reporter or any
11 kind of reporter?
12 A. Yes.
13 Q. Have you ever used any of the
14 sources as a anonymous or confidential
15 source with respect to any story
16 unconnected to Trump or the Trump
17 organization?
18 MR. CERESNEY: I'm going to
19 assert the privilege and instruct
20 him not to answer.
21 Q. Have you ever used any of the
22 sources as an on-the-record named
23 source with respect to any story
24 unconnected to Trump or the Trump
25 organization?

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: I assert the
3 privilege and instruct him not to
4 answer.
5 Q. To your knowledge, have any
6 of your Times colleagues used any of
7 these sources on any story unconnected
8 to Trump or the Trump organization,
9 whether as a named source or unnamed
10 source, background source, confidential
11 source?
12 MR. CERESNEY: I'm going to
13 assert the privilege, instruct him
14 not to answer.
15 Q. Earlier I asked you about
16 face-to-face meetings that you've had
17 with these sources and you told me once
18 with respect to Number 1, et cetera.
19 I have the same question with
20 respect to telephone conversations
21 which each of the three sources. Let's
22 take Source 1.
23 Approximately how many times
24 have you communicated with Source 1 by
25 phone?

68 (Pages 637 to 640)

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<p style="text-align: right;">641</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Multiple occasions. 3 Q. More than ten? 4 A. Multiple occasions. 5 Q. Are you able to tell me if it 6 was more than 50? 7 THE WITNESS: Should we 8 confer? 9 Q. No. It - 10 MR. CERESNEY: No. I think 11 you can. 12 MR. RESSLER: It's not a 13 privilege issue. 14 MR. CERESNEY: Hold on. 15 MS. WHITE: It could be. We 16 just want to make sure. 17 MR. CERESNEY: Do you need to 18 confer? 19 THE WITNESS: Yeah. I would 20 like to. 21 MR. RESSLER: Before we waste 22 more time, though -- and I'm not 23 suggesting that what you're doing 24 is wasting time, but I do have a 25 limited amount of time.</p>	<p style="text-align: right;">643</p> <p>1 - TIMOTHY L. O'BRIEN - 2 the -- with the question of 3 connections and the like. And so I 4 think it's appropriate if he -- 5 MR. RESSLER: Okay. 6 MR. CERESNEY: -- has any 7 concern to just alleviate that 8 concern with a brief conversation. 9 MR. RESSLER: Let me -- then 10 to make this more efficient, with 11 respect to the witness -- I hear 12 what you're saying. You'll 13 convene -- confer. 14 BY MR. RESSLER: 15 Q. With respect to Witness 16 Number 2 (sic), is the answer, 17 likewise, multiple occasions with 18 respect to phone calls? 19 A. Yes. 20 Q. Likewise, with respect to 21 Witness Number 3 (sic)? 22 A. Yes. 23 Q. Okay. Now, let's talk about 24 e-mail communications. 25 Have you ever communicated</p>
<p style="text-align: right;">642</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: I understand 3 that, and we're trying to be as 4 quick as we can. 5 MR. RESSLER: I just want to 6 know if it's more than a certain 7 number of times. So I can't 8 fathom, quite frankly -- 9 MS. WHITE: We don't know 10 without consulting him, either. I 11 mean, we're trying to help you here 12 get the maximum information. 13 MR. RESSLER: No. I think we 14 can all agree that if he spoke to 15 them more than 20 or less than 20, 16 nothing in that answer would give 17 me any leads to track down the 18 identities of the reporters. 19 Now, you've already said he 20 could respond. 21 MR. CERESNEY: But the 22 witness obviously knows about what 23 his response will be greater than 24 what I know his response will be, 25 and also is more familiar with</p>	<p style="text-align: right;">644</p> <p>1 - TIMOTHY L. O'BRIEN - 2 via e-mail with Witness Number 1 (sic)? 3 A. No. 4 Q. Same question with respect to 5 Witness Number 2. 6 I'm sorry. I keep saying 7 "witness." I mean, of course, 8 "source." 9 THE WITNESS: We have to 10 confer. 11 MR. CERESNEY: We have to 12 confer on that. 13 MR. RESSLER: Okay. With -- 14 MR. CERESNEY: You want to 15 ask about Number 3? 16 MR. RESSLER: Right. 17 Q. Likewise, have you ever 18 communicated via e-mail with Source 19 Number 3? 20 THE WITNESS: I'd like to 21 confer. 22 MR. CERESNEY: Okay. 23 Q. So the answer -- just so I'm 24 clear. 25 The answer with respect to</p>

<p style="text-align: right;">645</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Number 1 was no? 3 MR. CERESNEY: That's 4 correct. 5 MR. RESSLER: Okay. 6 MR. CERESNEY: Okay. Shall 7 we confer on those three issues? 8 The question of numbers and then 9 the two issues in terms of e-mail. 10 And then the witness will also make 11 his phone call and then we'll 12 return. We'll be quick. 13 MR. RESSLER: But if he's 14 calling the source, does that mean 15 that we have to add that to the 16 tally? 17 MR. CERESNEY: Let me say for 18 the record - 19 THE WITNESS: I'm returning a 20 call from my office. 21 MR. RESSLER: I was just 22 joking. 23 MR. CERESNEY: Okay. 24 THE VIDEOGRAPHER: The time 25 on the video monitor is 3:07 p.m.</p>	<p style="text-align: right;">647</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. I said of any sort. 3 By way of letter or any 4 written communication other than 5 e-mail? 6 A. No, there was not. 7 Q. So then the communications 8 would be limited to -- with respect to 9 Number 2 and Number 3 in-person 10 meetings and phone calls, correct? 11 A. That's correct. 12 MR. CERESNEY: And Number 1 13 as well. 14 MS. WHITE: And 1 as well. 15 Q. And 1 as well. 16 Now, I might have already 17 asked you this question but I forget. 18 How many years did the three 19 sources, or any of them, work, in your 20 words, closely with Trump? 21 MR. CERESNEY: I think you 22 did ask that and I invoked the 23 privilege and instructed him not to 24 answer. 25 MR. RESSLER: I wasn't sure</p>
<p style="text-align: right;">646</p> <p>1 - TIMOTHY L. O'BRIEN - 2 We're off the record. 3 (Whereupon, there was a brief 4 recess in the proceedings.) 5 THE VIDEOGRAPHER: We're back 6 on the record. The time on the 7 video monitor is 3:16 p.m. 8 MR. CERESNEY: We're going to 9 continue to assert the privilege 10 with regard to the questions 11 regarding specificity in the number 12 of calls on the multiple occasions, 13 but we are going to allow him to 14 answer the questions about e-mails 15 with regard to sources. 16 I believe he answered with 17 regard to Source 1, there was no 18 e-mail communication. And now 19 we'll allow him to answer with 20 regard to Sources 2 and 3. 21 A. There was no e-mail 22 communication with 2 or 3, either. 23 Q. Same question with respect to 24 any kind of written communication. 25 MS. WHITE: I'm sorry?</p>	<p style="text-align: right;">648</p> <p>1 - TIMOTHY L. O'BRIEN - 2 if I also - 3 MR. CERESNEY: No. That's 4 fine. 5 MR. RESSLER: -- if I also 6 asked the same question with 7 respect to the direct knowledge 8 aspect. 9 Q. How many years do you 10 allege -- or do you claim that the 11 three sources, or any of them, had 12 direct knowledge of Donald's finances? 13 MR. CERESNEY: I'm going to 14 assert the privilege and instruct 15 him not to answer. 16 Q. Have you ever been with any 17 of the three anonymous sources as part 18 of any social occasion? 19 MR. CERESNEY: I'm going to 20 assert the privilege and instruct 21 him not to answer. 22 Q. Did you communicate, whether 23 by phone, in person or in writing, with 24 any people from the New Jersey 25 Department of Gaming Enforcement in</p>

<p style="text-align: right;">649</p> <p>1 - TIMOTHY L. O'BRIEN - 2 connection with your research and 3 writing of this book. 4 MR. CERESNEY: I'm going to 5 assert the privilege and instruct 6 him not to answer. 7 MS. WHITE: Repeat the 8 question if you would, Mark. 9 Q. Did you communicate, whether 10 by phone, in person or in writing, with 11 any people from the New Jersey 12 Department of Gaming Enforcement in 13 connection with researching and writing 14 this book? 15 MR. CERESNEY: Do we need to 16 confer? 17 THE WITNESS: No. We don't 18 need to confer. 19 MR. CERESNEY: Okay. 20 A. No, I did not. 21 Q. Same question with respect to 22 people from any gaming enforcement or 23 comparable casino control entity? 24 THE WITNESS: We need to 25 confer.</p>	<p style="text-align: right;">651</p> <p>1 - TIMOTHY L. O'BRIEN - 2 from the various organizations is 3 that could tend, depending upon my 4 answer and assertion of privilege, 5 to potentially identify 6 confidential sources. 7 And, therefore, I'm going to 8 assert a standing objection to any 9 questions in regard to this issue 10 of net worth and conversations as 11 to whether Mr. O'Brien spoke with 12 persons from a particular 13 organization or from a particular 14 origination or some category of 15 individuals that would tend, 16 depending upon whether I assert the 17 privilege or not, if I were to 18 assert it for a particular 19 organization, to potentially 20 identify confidential sources. 21 Do you understand my 22 position? 23 MR. RESSLER: I do and I 24 disagree with it. But in the 25 interest of time, I don't want to</p>
<p style="text-align: right;">650</p> <p>1 -TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: Can we confer 3 on that? 4 THE VIDEOGRAPHER: The time 5 on the video monitor is 3:19 p.m. 6 We're off the record. 7 (Whereupon, a brief 8 discussion was held off record.) 9 THE VIDEOGRAPHER: We're back 10 on the record. The time on the 11 video monitor is 3:23 p.m. 12 MR. CERESNEY: Okay. Here's 13 our position. We have prior, to 14 this deposition, produced to you a 15 number of ways the identities of 16 nonconfidential sources, as well as 17 the identities of documents that 18 Mr. O'Brien and documents 19 themselves that Mr. O'Brien 20 collected in the course of his 21 research. 22 The concern I have about 23 going down this road of you asking 24 him whether he had conversations on 25 the topic of net worth with people</p>	<p style="text-align: right;">652</p> <p>1 - TIMOTHY L. O'BRIEN - 2 share the reasons why I disagree 3 with it now. 4 MR. CERESNEY: I understand. 5 MR. RESSLER: So we'll tee it 6 up for a later date -- 7 MR. CERESNEY: That's fine. 8 MR. RESSLER: -- with Court 9 intervention, if necessary, 10 obviously. 11 MR. CERESNEY: Yeah. 12 BY MR. RESSLER: 13 Q. Mr. O'Brien, who is Nick 14 Ribbis? 15 A. Nick Ribbis is an executive at 16 Colony Capital. 17 Q. What's Colony Capital? 18 A. A holding company based in 19 Los Angeles, I believe. 20 Q. Did you ever talk to Nick 21 Ribbis about Donald Trump? 22 A. I did. 23 Q. When? 24 A. In 1996, I quote him in my 25 book, Bad Bet.</p>

653	<p>1 - TIMOTHY L. O'BRIEN - 2 Q. Is that the only time you've 3 ever talked to him? 4 MR. CERESNEY: We need to 5 confer. I'm going to ask to confer 6 with the witness. Okay? 7 THE WITNESS: Okay. 8 THE VIDEOGRAPHER: The time 9 on the video monitor is 3:26 p.m. 10 We're off the record. 11 (Whereupon, a brief 12 discussion was held off record.) 13 THE VIDEOGRAPHER: We're back 14 on the record. The time on the 15 video monitor is 3:29 p.m. 16 MR. CERESNEY: Yeah. The 17 reason why I stopped it was because 18 it was the same issue of going 19 through individuals who we've not 20 disclosed as nonconfidential 21 sources in our interrogatories. 22 It's for the same issue as 23 organizations. 24 If you're going to go 25 through, now, particular</p>	655	<p>1 - TIMOTHY L. O'BRIEN - 2 communications with specific 3 individuals who are not on the list 4 of nonconfidential sources you've 5 served in discovery? 6 MR. CERESNEY: That's 7 correct. That's correct. And the 8 basis for the objection - same 9 basis for the objection with regard 10 to the organizations. 11 This is an exercise where 12 there are concerns about process of 13 elimination, going through lists of 14 people and, through that, the 15 disclosure. And I'm not going to 16 put the witness in a situation 17 where he has to assert an answer to 18 you that would not be truthful or 19 whatever. 20 I'm just - we're not going 21 to go down this road with regard to 22 organizations or with regard to 23 people. 24 MR. RESSLER: I'll just note 25 for the record that Nick Ribis is a</p>
654	<p>1 - TIMOTHY L. O'BRIEN - 2 individuals and ask whether he's 3 met with them or not, I'm going to 4 assert a privilege broadly - a 5 blanket objection to you going 6 through individuals who are not on 7 our interrogatories being disclosed 8 as - 9 I'm going to assert a 10 privilege with regard to 11 individuals who are not on our 12 interrogatories as nonconfidential 13 sources. 14 I don't think - we're 15 checking now, but I don't think 16 Mr. Ribis is on there. But in any 17 event, I'm going to - I mean, 18 that's my blanket objection. Same 19 issue with organizations as with 20 individuals. 21 MR. RESSLER: So just so I 22 understand so the record is clear, 23 you're not going to permit your 24 client to answer any questions that 25 ask him if he had any</p>	656	<p>1 - TIMOTHY L. O'BRIEN - 2 person specifically mentioned and 3 described in the book. 4 MR. CERESNEY: I understand 5 that. Is he a person on our 6 interrogatory list? 7 I haven't - I believe he's 8 not, but I'm not 100 percent sure. 9 MR. LEVINE: I'll find out. 10 MR. CERESNEY: So, if you 11 want to go through the 12 interrogatory list, that's a 13 different - 14 MR. RESSLER: No, I don't. 15 MR. CERESNEY: Okay. 16 MR. RESSLER: I don't. I 17 know that he spoke to those people 18 because you put them on your list. 19 MR. CERESNEY: Right. 20 MR. RESSLER: So there would 21 be no purpose for me to go through 22 that list. 23 MR. CERESNEY: Exactly. 24 That's your choice. 25 MR. RESSLER: Let me just</p>

<p style="text-align: right;">657</p> <p>1 - TIMOTHY L. O'BRIEN - 2 move on in the interest of time. 3 This is something that we'll bring 4 up at the appropriate time with the 5 Court. 6 MR. CERESNEY: That's fine. 7 BY MR. RESSLER: 8 Q. Did you obtain any documents 9 or other materials in connection with 10 this book from the New Jersey 11 Department of Gaming Enforcement or any 12 other gaming or casino or betting or 13 gambling entity? 14 A. Yes. 15 Q. What kinds of documents? 16 A. Regulatory documents, minutes 17 of casino control commission meetings, 18 and a DGE analysis of Mr. Trump's 19 finances in the 1990's. 20 Q. Were - did any of these 21 documents relate to the period 22 2004-2005? 23 A. No, they did not. 24 Q. Did any of these documents 25 relate to the period 2000 - 2000 to</p>	<p style="text-align: right;">659</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I don't want to speculate. 3 Q. Well, this is important. I'd 4 like you to really think hard and tell 5 me how many times, keeping in mind that 6 you've said it's a very limited number 7 of times. 8 A. I would say a few. 9 Q. Well, how many is a few, 10 Mr. O'Brien? 11 A. I'm not going to - 12 MR. CERESNEY: It's the same 13 issue as the multiple occasions. 14 MR. RESSLER: No, it's not. 15 No, it's not. 16 MR. CERESNEY: It is. It is, 17 Mark. 18 MR. RESSLER: No, it's not. 19 Because now he's actually been 20 specific with respect to the number 21 of times. 22 Q. Is a few less than five? 23 A. I'm not going speculate. 24 Q. Is a few less than two? 25 A. I'm not going to -</p>
<p style="text-align: right;">658</p> <p>1 - TIMOTHY L. O'BRIEN - 2 2004? 3 A. No, they did not. 4 Q. All of those documents, 5 materials that you just described, 6 dealt with an earlier period of time? 7 A. That's correct. 8 Q. Have you communicated with 9 the three alleged anonymous sources 10 since your phone calls with them in the 11 days following your April 21st, 2005 - 12 have you communicated with the alleged 13 anonymous sources since your phone 14 calls with them in the days following 15 your April 21st, 2005, meeting at the 16 Trump organization offices? 17 MR. CERESNEY: You can 18 answer - you can answer yes or no. 19 A. Yes. 20 Q. Approximately how many times? 21 MR. CERESNEY: You can 22 answer. 23 A. A very limited number of 24 times. 25 Q. How many?</p>	<p style="text-align: right;">660</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: I'm going to 3 instruct him not to answer that. 4 I'm going to instruct not to answer 5 and assert the privilege. 6 MR. RESSLER: Okay. That's 7 fine. 8 Q. Did you ever communicate with 9 any of the alleged anonymous sources 10 about this litigation? 11 MR. CERESNEY: I'm going 12 assert the privilege and instruct 13 him not to answer. 14 MR. RESSLER: What's the 15 basis for that? It can't possibly 16 yield any identifiable information. 17 MR. CERESNEY: The basis is 18 that it's a conversation with a 19 confidential source. And it 20 potentially is in the news 21 gathering process, and so, 22 therefore, we're going to assert 23 the privilege as to it. 24 Q. To your knowledge, do any of 25 three anonymous sources know that</p>

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1 - TIMOTHY L. O'BRIEN -
2 you're testifying today?
3 A. To my knowledge, no.
4 Q. Did you communicate with any
5 of the three alleged anonymous sources
6 after Judge Snyder issued an order in
7 this case directing that you disclose
8 their identities to Mr. Trump and his
9 lawyers?
10 A. No. I don't believe I did.
11 Q. Have you spoken to any of the
12 anonymous sources subsequent to the
13 filing of Mr. Trump's lawsuit against
14 you in this case?
15 THE WITNESS: Confer.
16 MR. CERESNEY: We're going to
17 need a couple of seconds.
18 THE VIDEOGRAPHER: The time
19 on the video monitor is 3:35 p.m.
20 We're off the record.
21 (Whereupon, a brief
22 discussion was held off record.)
23 THE VIDEOGRAPHER: Time on
24 the video monitor is 3:37 p.m.
25 We're back on the record.

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: He can answer
3 the question.
4 A. Do you want to restate the
5 question, or --
6 Q. Have you spoken to any of the
7 anonymous sources subsequent to the
8 filing of Mr. Trump's lawsuit against
9 you in this case?
10 A. I've spoken to one of the
11 three.
12 Q. Approximately when was that?
13 A. Subsequent to the filing of
14 the case.
15 Q. Right. But that was about --
16 that period of time spans about a year
17 and a half, so could you tell me
18 approximately when -- when?
19 MR. CERESNEY: I'm going to
20 instruct him not to answer that;
21 invoke the privilege and instruct
22 him not to answer.
23 Q. At any point in time did any
24 of these three alleged anonymous
25 sources waive their request for

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1 - TIMOTHY L. O'BRIEN -
2 confidentiality?
3 A. No.
4 Q. Did you ever ask them to?
5 MR. CERESNEY: I'm going to
6 instruct the witness not -- assert
7 the privilege and instruct the
8 witness not to answer.
9 Q. Did any of these three
10 alleged anonymous sources ask to remain
11 confidential?
12 MR. CERESNEY: I'm going to
13 object to the question, and form.
14 I just, if --
15 MR. RESSLER: Well, I'll
16 rephrase it.
17 MR. CERESNEY: Yeah. I
18 just --
19 Q. Did any of these three
20 alleged anonymous sources ever request
21 confidentiality?
22 A. Yes.
23 Q. How did they request it?
24 A. Through communications with
25 me.

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1 - TIMOTHY L. O'BRIEN -
2 Q. In-person communications or
3 written -- or written communications or
4 phone communications?
5 THE WITNESS: I'd like to
6 confer.
7 MR. RESSLER: There is no
8 reason to confer about that, I'm
9 sorry. There is no reason to
10 confer about that.
11 MS. WHITE: We have to confer
12 if he has a question of privilege
13 to hear what he has to say.
14 MR. RESSLER: But Mary Jo --
15 I mean, to ask to confer on that
16 question leads me to conclude that
17 the witness is attempting to burn
18 up the clock, to use a sports
19 metaphor.
20 MS. WHITE: It's not a game
21 of "got you." We're trying to be
22 as very careful and trying to be as
23 quick as we can.
24 MR. RESSLER: I completely
25 agree. But this question -- it's

<p style="text-align: right;">665</p> <p>1 - TIMOTHY L. O'BRIEN - 2 impossible. 3 MS. WHITE: He's asked to 4 consult with counsel so we're going 5 to be quick and consult with him. 6 We can't not consult when he's 7 asked for that in this area. 8 MR. RESSLER: I appreciate 9 it. But -- but -- 10 MS. WHITE: So we'll be as 11 fast as we can. 12 MR. RESSLER: I'll note -- 13 I'll note strictly for the record, 14 then, that this question can't 15 possibly implicate any privilege 16 issues. 17 MS. WHITE: That's okay. 18 That's your opinion, Mark. We have 19 a different opinion. 20 MR. RESSLER: Okay. 21 THE VIDEOGRAPHER: The time 22 on the video monitor is 3:40 p.m. 23 We're off the record. 24 (Whereupon, a brief 25 discussion was held off record.)</p>	<p style="text-align: right;">667</p> <p>1 - TIMOTHY L. O'BRIEN - 2 confidentiality because they were 3 concerned about retribution by 4 Mr. Trump in the form of a lawsuit. 5 Q. Did they tell you that? 6 A. Yes. 7 Q. Were any of these sources 8 ever involved in litigation with 9 Mr. Trump? 10 MR. CERESNEY: Objection. 11 I'm instructing him not to answer. 12 Q. Did any of these sources ever 13 pay for any meal or drink that you had? 14 A. No. 15 Q. Did you pay any of these 16 sources any money? 17 A. No. 18 Q. Did you pay for any of their 19 meals or drinks? 20 A. Not that I recall. 21 Q. But you're not sure? 22 A. That's correct. 23 Q. Did you make any promises or 24 statements to any of the three sources 25 to the effect that you would or might</p>
<p style="text-align: right;">666</p> <p>1 - TIMOTHY L. O'BRIEN - 2 THE VIDEOGRAPHER: We're on 3 the record. The time on the video 4 monitor is 3:42 p.m. 5 MR. CERESNEY: We conferred 6 quickly. And we will allow the 7 witness to answer that question. 8 A. As regarding Source Number 1, 9 that was on the telephone; and 10 Sources 2 and 3 were both in person and 11 on the telephone. 12 Q. I don't understand the "and." 13 They were both in person and on the 14 telephone? 15 In other words, they 16 requested confidentiality on more than 17 one occasion? 18 A. We vigorously discussed this 19 issue in terms of both confidentiality 20 and how I would describe them in the 21 book. 22 Q. Why did any of these sources 23 request confidentiality, starting with 24 Source Number 1? 25 A. All three of them requested</p>	<p style="text-align: right;">668</p> <p>1 - TIMOTHY L. O'BRIEN - 2 or would consider writing stories that 3 might benefit their interests? 4 A. No, I did not. 5 Q. Do you have any understanding 6 of why these three people provided you 7 with the information you claim they did 8 provide you with, yet didn't want their 9 identities to be disclosed? 10 MR. CERESNEY: Need to 11 confer? 12 THE WITNESS: Yes. 13 MR. CERESNEY: We'll be 14 quick. 15 THE VIDEOGRAPHER: The time 16 on the video monitor is 3:44 p.m. 17 We're off the record. 18 (Whereupon, a brief 19 discussion was held off record.) 20 THE VIDEOGRAPHER: We're back 21 on the record. The time on the 22 video monitor is 3:46 p.m. 23 MR. CERESNEY: Okay. We'll 24 allow him to answer that question. 25 A. In substance, all three</p>

1 - TIMOTHY L. O'BRIEN -
 2 sources believed that Mr. Trump
 3 routinely misrepresented his finances,
 4 and they had an interest in the truth
 5 being told.
 6 Q. And you know that because
 7 they told you that?
 8 A. That's correct.
 9 Q. Did they actually use the
 10 phrase, "they wanted the truth to be
 11 told"?
 12 A. In substance, that's what
 13 each of them said.
 14 Q. Do you know if any -
 15 withdrawn.
 16 Were any of these sources
 17 business competitors of Trump?
 18 MR. CERESNEY: Objection.
 19 Instruct the witness not to answer.
 20 Q. Were any of -- do any of
 21 these sources -- or have any of these
 22 sources in the past ever worked in the
 23 real estate field?
 24 MR. CERESNEY: Objection.
 25 Instruct the witness not to answer.

1 - TIMOTHY L. O'BRIEN -
 2 Q. Do you know if any of these
 3 sources have any grudge or antipathy or
 4 bias against Trump?
 5 A. I don't believe my sources
 6 were biased against -- against
 7 Mr. Trump. And in fact, I would
 8 describe one of them as a fan.
 9 Q. What did you do to ascertain
 10 whether these three alleged sources had
 11 any bias or grudge or antipathy toward
 12 Trump, if anything?
 13 A. I deployed the same
 14 journalistic tools I use and have used
 15 as a newspaper and magazine journalist
 16 and editor, which was to background
 17 them and their bona fides independently
 18 and to do research to corroborate
 19 statements that they made to me about
 20 various subjects.
 21 Q. But did you ask any of these
 22 sources if they have any grudge or bias
 23 against Trump?
 24 A. Yes, I did.
 25 Q. And what did they respond?

1 - TIMOTHY L. O'BRIEN -
 2 A. They said that they had known
 3 him a long time.
 4 MR. CERESNEY: Let me just
 5 instruct the witness to speak
 6 generally in a way that obviously
 7 does not disclose any sources.
 8 THE WITNESS: We should
 9 confer.
 10 MR. RESSLER: Well, you can
 11 confer, but what you're doing here
 12 is selectively asserting the
 13 privilege. You're -- you're
 14 engaging now in a classic
 15 sword-shield problem.
 16 You're using the privilege to
 17 protect information that you don't
 18 want to disclose because,
 19 presumably, you don't think it's
 20 favorable to your case but you're
 21 disclosing information as a sword
 22 that you deem to be favorable to
 23 your case, such as, for example,
 24 the witness's statement several
 25 times during this deposition that

1 - TIMOTHY L. O'BRIEN -
 2 one of the witnesses told him that
 3 he or she was a fan of Trump. So
 4 it's classic sword-shield.
 5 You can confer. You can
 6 confer. I'd ask that you make it
 7 really quick.
 8 MR. CERESNEY: And my
 9 response is it's not classic
 10 sword-shield. In fact, I believe
 11 we've asserted the privilege in the
 12 appropriate manner while walking
 13 the line of not waiving that
 14 privilege but giving you
 15 information that would not
 16 reveal -- would not reveal identity
 17 of the sources.
 18 MR. RESSLER: We'll let a
 19 judge --
 20 MR. CERESNEY: And you can --
 21 to the extent --
 22 MR. RESSLER: -- we'll let
 23 the Court decide.
 24 MR. CERESNEY: To the extent
 25 you have an issue with a particular

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1 - TIMOTHY L. O'BRIEN -
 2 answer, you can make whatever
 3 relief motion you'd like to make.
 4 But I -- we do not believe that
 5 that's the case.
 6 And in fact, we've been
 7 particularly careful today to
 8 assert it in only appropriate
 9 circumstances.
 10 MR. RESSLER: I think the
 11 record -- I think the record
 12 refutes that. But again, we can --
 13 we'll tee that up in our respective
 14 motions.
 15 Are you going to instruct him
 16 not to answer my question? Because
 17 I can't --
 18 MS. WHITE: The witness had
 19 asked to confer.
 20 MR. RESSLER: I can't have
 21 another conference, because then --
 22 unless we agree to bring
 23 Mr. O'Brien back. That's fine.
 24 I mean, that's -- that's --
 25 I'm requesting that you do give me

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1 - TIMOTHY L. O'BRIEN -
 2 more time with Mr. O'Brien some
 3 other day. And if you don't agree
 4 to do that, then we'll obviously go
 5 to the Court based on the amount of
 6 time -- I'm not saying improperly,
 7 but based on the amount of time
 8 that was chewed up because of the
 9 need to confer on these issues.
 10 MS. WHITE: Mark, Mark, you
 11 know, nobody is gratuitously
 12 chewing up time, as you phrase it,
 13 on issues of privilege.
 14 MR. RESSLER: I didn't mean
 15 to -- I didn't mean it to be
 16 pejorative.
 17 MS. WHITE: We're trying to
 18 be as -- as we said, as quick as we
 19 can, as responsive as we can and
 20 we'll continue to do that.
 21 MR. RESSLER: That's fair.
 22 And I didn't mean to be pejorative
 23 or -- I used a term that's
 24 freighted with a meaning I didn't
 25 intend.

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1 - TIMOTHY L. O'BRIEN -
 2 I meant a lot of time was
 3 spent in conferences. I appreciate
 4 why you need to be careful with
 5 respect to this important issue.
 6 But it is going to mean that I'm
 7 going to run out of time with
 8 respect to other matters that I
 9 wanted to ask Mr. O'Brien about.
 10 MR. CERESNEY: And we'll
 11 confer about that issue of
 12 scheduling after the deposition
 13 today.
 14 MS. WHITE: And we'll try to
 15 keep the colloquy as short as we
 16 can, but -- and the consultation as
 17 short as we can.
 18 MR. RESSLER: I understand.
 19 THE VIDEOGRAPHER: The time
 20 on the video monitor is 3:51 p.m.
 21 We're off the record.
 22 (Whereupon, a brief
 23 discussion was held off record.)
 24 THE VIDEOGRAPHER: We're back
 25 on the record. The time on the

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1 - TIMOTHY L. O'BRIEN -
 2 video monitor is 3:52 p.m.
 3 MR. CERESNEY: Okay. Let the
 4 record reflect I think we conferred
 5 for under a minute. And we're
 6 going to instruct the witness not
 7 to answer the question.
 8 BY MR. RESSLER:
 9 Q. When you stated that one of
 10 the alleged sources was a fan because
 11 that source told you that, did that
 12 source use the term "fan"?
 13 MR. CERESNEY: You can
 14 answer:
 15 A. To my recollection, the
 16 individual said, "I am a Donald Trump
 17 fan."
 18 Q. Were the other sources Donald
 19 Trump fans, to your knowledge?
 20 MR. CERESNEY: Objection.
 21 I'm going to direct him not to
 22 answer.
 23 Q. Were the other sources --
 24 withdrawn.
 25 .. Did the other sources ever

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1 - TIMOTHY L. O'BRIEN -
2 make any comments about Trump that were
3 critical?
4 MR. CERESNEY: I'm going to
5 object and instruct him not to
6 answer.
7 Q. Did the source who described
8 him or herself as a Trump fan ever make
9 negative comments about Trump to you?
10 MR. CERESNEY: I'm going to
11 object and instruct him not to
12 answer.
13 Q. Did they ever make comments
14 that were critical of Trump to you?
15 MR. CERESNEY: I'm going
16 object and instruct him not to
17 answer.
18 Q. Did any of the sources ever
19 make negative or critical comments
20 about Trump to anyone else to which you
21 are aware -- or of which you're aware,
22 I should say.
23 MR. CERESNEY: I'm going to
24 object and instruct him not to
25 answer.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Did any of the three alleged
3 sources ever make critical or negative
4 comments about Trump in the media of
5 which you are aware?
6 MR. CERESNEY: Object and
7 instruct him not to answer.
8 Q. Earlier your counsel
9 interposed an objection based on the
10 news person's privilege when I asked
11 you if any of the sources were involved
12 in litigation with Trump.
13 My question now is: To your
14 knowledge, were any of the sources ever
15 involved in any kind of dispute with
16 Trump?
17 MR. CERESNEY: I'm going to
18 object and instruct him not to
19 answer.
20 Q. Did you ask any of the
21 alleged sources if they were ever
22 involved in any kind of dispute with
23 Trump?
24 MR. CERESNEY: I'm going
25 object and ask him not to answer --

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1 - TIMOTHY L. O'BRIEN -
2 instruct him not to answer.
3 Q. Were any -- were any of the
4 three alleged sources ever fired by
5 Trump?
6 MR. CERESNEY: I'm going to
7 object and instruct him not to
8 answer.
9 Q. Were every -- were any of the
10 three alleged sources the subject of
11 the comments by Trump in the media?
12 MR. CERESNEY: I'm going to
13 object and instruct him not answer.
14 Q. To your knowledge, were any
15 of the three alleged sources ever the
16 subject of negative comments or
17 critical comments by Trump to any other
18 people?
19 MR. CERESNEY: I'm going to
20 object and instruct him not to
21 answer.
22 Q. Do any of the three sources
23 have any background in real estate?
24 MR. CERESNEY: And I believe
25 that you had asked that question.

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1 - TIMOTHY L. O'BRIEN -
2 before. And I object again and
3 instruct him not to answer.
4 Q. Do any of the three alleged
5 sources have any background in
6 branding --
7 MR. CERESNEY: Object --
8 Q. -- brand name evaluation?
9 MR. CERESNEY: Object and
10 instruct him not to answer.
11 Q. Do any of the three alleged
12 sources have any background in real
13 estate evaluation?
14 MR. CERESNEY: Object and
15 instruct him not to answer.
16 Q. Do any of the three alleged
17 sources have any background in
18 accounting?
19 MR. CERESNEY: Same
20 objection.
21 Q. What was the educational
22 background of the three alleged
23 sources?
24 MR. CERESNEY: Same
25 objection.

<p style="text-align: right;">681</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Do any persons employed by 3 The New York Times know the identities 4 of your three alleged sources? 5 MR. CERESNEY: Same 6 objection. 7 Q. Do your lawyers know the 8 identity, to your knowledge, of the 9 three alleged sources? 10 MR. CERESNEY: And this goes 11 back to the issue that we ended 12 yesterday on. 13 Q. Have you told any of your 14 lawyers the names of the three alleged 15 sources? 16 MR. CERESNEY: I'm going to 17 object and instruct him not to 18 answer. 19 Q. Have you told anyone the 20 identities of the three sources, other 21 than lawyers and people at The Times? 22 MR. RESSLER: I'm not 23 suggesting he's done so. I'm just 24 saying -- 25 MR. CERESNEY: Without --</p>	<p style="text-align: right;">683</p> <p>1 - TIMOTHY L. O'BRIEN - 2 clashes and conflicts with competitors, 3 critics, former employees, and the 4 like, true? 5 A. That is correct. 6 Q. Isn't that, Mr. O'Brien, 7 precisely why it was critical for you 8 to determine if the anonymous sources 9 you rely on in this book had biases 10 against Trump? 11 A. Yes. 12 Q. And that's why it was 13 important for those sources to share 14 those biases with you, correct? 15 A. That is correct. 16 Q. To tell you if there was 17 something about Trump that they found 18 distasteful or that they didn't like, 19 correct? 20 MR. CERESNEY: The 21 question -- 22 THE WITNESS: That's a . 23 different question? 24 MR. CERESNEY: Yeah. 25 Q. That's why it was important</p>
<p style="text-align: right;">682</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. RESSLER: -- putting 3 those two categories of people to 4 one side. 5 Q. Have you disclosed the 6 identities of the sources to anyone 7 else -- I mean, to anyone? 8 A. No. 9 MR. CERESNEY: Yeah. Just 10 for the record, putting aside 11 lawyers and New York Times, which 12 there is no implication in the 13 question that he has disclosed to 14 these people. 15 MR. RESSLER: Correct. 16 Q. Now, would you agree, would 17 you not, that Mr. Trump, with the 18 unique public persona that you 19 described in your book, tends to 20 inspire strong feelings amongst some 21 people? 22 A. Yes. I would agree with 23 that. 24 Q. And in fact, as you write in 25 your book, Trump has been involved in</p>	<p style="text-align: right;">684</p> <p>1 - TIMOTHY L. O'BRIEN - 2 for -- 3 MR. CERESNEY: Can you just 4 rephrase the question, Mark? I 5 just thought -- 6 Q. That's why it was so 7 important for you to learn from these 8 alleged sources whether there was 9 something about Trump they didn't like 10 or found distasteful, correct? 11 A. That is correct. 12 Q. Did you have conversations 13 with them in which you asked them, "Is 14 there anything about Trump that you 15 don't like or found distasteful -- find 16 distasteful." 17 MS. WHITE: In substance? 18 MR. CERESNEY: Yes or no is 19 the -- 20 A. Yes. 21 Q. And what did they say? 22 MR. CERESNEY: I'm going to 23 object and instruct him not to 24 answer. 25 Q. Will you tell me if they said</p>

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1 - TIMOTHY L. O'BRIEN -
 2 yes to the question without going into
 3 the details; that yes, there are things
 4 about Trump we don't like or find
 5 distasteful?
 6 MR. CERESNEY: I'm going to
 7 object and instruct him not to
 8 answer.
 9 Q. Now, you claim, Mr. O'Brien,
 10 that the alleged three sources feared
 11 retribution from Trump if their
 12 identities were revealed, correct?
 13 A. That is correct.
 14 Q. You said that the specific
 15 form of the retribution they feared was
 16 a lawsuit, correct?
 17 A. That is correct.
 18 Q. But isn't it true that there
 19 have been instances in the past where
 20 you've identified your sources,
 21 notwithstanding their statements to you
 22 that they had a fear of retribution if
 23 you disclosed their identities?
 24 A. Please restate that question.
 25 Q. Isn't it true that in the

1 - TIMOTHY L. O'BRIEN -
 2 past there have been instances where
 3 you have identified your sources,
 4 notwithstanding that they told you if
 5 you did that, retribution might ensue?
 6 MR. CERESNEY: Just to
 7 clarify "in other instances," other
 8 than this -- this case, that's what
 9 your question is?
 10 MR. RESSLER: I said in the
 11 past, yes.
 12 MR. CERESNEY: Go ahead.
 13 A. Yes. On one instance.
 14 Q. Isn't it true that when you
 15 were reporting on a Russian bank money
 16 laundering scandal in '99 and 2000, you
 17 disclosed information about certain
 18 sources even after they told you that
 19 by doing so you could be exposing them
 20 and their families to physical harm and
 21 possibly death?
 22 A. Yes. That's the case.
 23 (Whereupon, a brief
 24 discussion was held off record.)
 25 Q. Now, Mr. O'Brien, on Page 154

1 - TIMOTHY L. O'BRIEN -
 2 of your book, you refer to asking
 3 around for guidance.
 4 Remember when you said that
 5 the chart Mr. Weiselberg described left
 6 you confused?
 7 A. Yes.
 8 Q. So you asked around for
 9 guidance?
 10 A. Yes.
 11 Q. And you wanted the guidance
 12 because you were trying to get to the
 13 bottom of Trump's net worth was; is
 14 that correct?
 15 A. That is correct.
 16 Q. You wanted to know what the
 17 value of his assets were minus his
 18 liabilities, correct?
 19 A. That is correct.
 20 Q. You were frustrated because
 21 Mr. Trump hadn't provided you with the
 22 documents that you requested, right?
 23 A. Frustrated, I don't think
 24 correctly characterizes it. I was left
 25 confused and without a definitive

1 - TIMOTHY L. O'BRIEN -
 2 answer.
 3 Q. And to get that guidance you
 4 claim to have gone to three people
 5 whose identities you don't disclose in
 6 your book, correct?
 7 A. That's correct.
 8 Q. If you were really so
 9 confused, Mr. O'Brien, did it ever
 10 occur to you to take these Trump
 11 assets, listed on Page 155 of your
 12 book, and get the mortgage and the
 13 asset valuation yourself, or have your
 14 research assistant, Joseph Planbeck, do
 15 that?
 16 A. Yes, it did.
 17 Q. You have been a business
 18 reporter for how many years?
 19 A. Fifteen.
 20 Q. So you know how to get
 21 mortgage information for properties in
 22 New York; isn't that true?
 23 A. That is true.
 24 Q. Did you do that in this -- in
 25 connection with these properties?

<p style="text-align: right;">689</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I did. 3 Q. You got all the mortgage 4 information for the Trump properties? 5 A. I got as much mortgage 6 information as I believe we could get, 7 yes. 8 Q. And have you produced that 9 mortgage information to your attorneys 10 so that they could produce it to us on 11 grounds of responsiveness? 12 A. Yes. I believe we have. 13 Q. Or is that information being 14 withheld on the ground of privilege? 15 A. No. I don't believe it's 16 being withheld. 17 Q. So you produced all the 18 mortgage information you obtained with 19 respect to Trump's liabilities? 20 A. Yes. 21 Q. And what was the total amount 22 of mortgages that Trump had outstanding 23 at the time you were writing this book 24 in '05? 25 A. I'd have to review the</p>	<p style="text-align: right;">691</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I think he spent quite a bit 3 of time. 4 Q. How much time do you think do 5 you think he spent doing that? 6 A. As much time as he needed to 7 complete the task. 8 Q. Well, estimate for me how 9 much time that might have been, if you 10 could? 11 A. I'm not certain. I didn't 12 monitor all -- all of Joe's uses of his 13 time. 14 Q. With respect to the asset 15 side of the ledger, if you wanted 16 guidance as you say you did, isn't it 17 true that you didn't call any real 18 estate valuation experts, any real 19 estate brokers and ask them for their 20 views as to the value of Trump assets? 21 A. No, that's not correct. 22 Q. Name a single real estate 23 broker or real estate executive who you 24 contacted to find out their view of any 25 Trump asset?</p>
<p style="text-align: right;">690</p> <p>1 - TIMOTHY L. O'BRIEN - 2 primary documents. 3 Q. Do you recall a round -- a 4 rough number, rather? 5 A. No, I don't. 6 Q. You can't even estimate? 7 A. I could try to do a 8 back-of-the-envelope estimate right 9 now; but not off the top of my head, I 10 don't know the round figure. 11 Q. How did you get the mortgage 12 information? 13 A. Through publicly available 14 resources. 15 Q. Name one? 16 A. The New York Department of 17 Finance. 18 Q. Did you go down there 19 yourself? 20 A. I had my research assistant 21 do it. 22 Q. Who? 23 A. Joseph Planbeck. 24 Q. How much time do you think he 25 spent doing that?</p>	<p style="text-align: right;">692</p> <p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: I will 3 instruct him to limit his answer to 4 those that are in the Interrogatory 5 responses that are in -- that have 6 been provided to plaintiff's 7 counsel. 8 MR. RESSLER: And that's 9 because you're interposing an 10 objection based on the news 11 person's privilege, correct? 12 MR. CERESNEY: The same 13 objection that I interposed earlier 14 about any requests for him to 15 identify specific individuals that 16 are not on this log, because 17 otherwise, there could be a 18 question of -- 19 MR. RESSLER: Thank you. 20 Okay. Thanks. I got it. 21 Q. Sir? 22 A. Yes. 23 Q. Name for me a single real 24 estate broker or valuation expert who 25 you contacted in connection with this</p>

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1 - TIMOTHY L. O'BRIEN -
2 book to find out their view of the
3 value of any Trump asset?
4 MR. CERESNEY: Would you like
5 to -- I would like to put in front
6 of him the interrogatory responses
7 so he could consult with them
8 before answering.
9 A. Benjamin Lambert.
10 Q. Where does he work?
11 A. He's a principal at Eastdil
12 Realty.
13 Q. Where is that?
14 A. In New York.
15 Q. Okay.
16 A. Barbara Corcoran.
17 Q. I'm sorry. What did you ask
18 Benjamin Lambert about, what specific
19 Trump property?
20 A. I asked him to discuss with
21 me valuation of as many of the Trump
22 properties as he could.
23 Q. And which ones could he?
24 A. He declined to discuss
25 valuations on any.

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1 - TIMOTHY L. O'BRIEN -
2 Q. So the answer -- withdrawn.
3 Okay.
4 So you contacted him but he
5 declined?
6 A. That's correct.
7 Q. Okay. Who else?
8 A. Barbara Corcoran.
9 Q. Okay. She's a real estate
10 broker, correct?
11 A. She's the namesake and
12 founder of the Corcoran Group.
13 Q. The Corcoran Group.
14 A. And they're, I believe,
15 Donald's primary broker for condo
16 units.
17 Q. Right. And she also had a
18 litigation with Mr. Trump; isn't that
19 correct?
20 A. That is correct.
21 Q. Okay. And did you ask
22 Miss Corcoran to provide you with her
23 view as to the value of any specific
24 Trump assets?
25 A. I believe that my research

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1 - TIMOTHY L. O'BRIEN -
2 assistant asked her to discuss
3 valuations on condo units.
4 Q. Condo units, which condo
5 units?
6 A. Condo unit sales in Trump --
7 Q. Which --
8 A. Any Trump properties that she
9 had knowledge of.
10 Q. And what information did she
11 provide, if any?
12 A. She did not want to disclose
13 that.
14 Q. So she declined?
15 A. That is correct. That's my
16 understanding.
17 Q. Okay. Who else? Who else?
18 A. Granite Partners.
19 Q. Who at Granite Partners?
20 A. My research assistant
21 contacted them. They did not want to
22 discuss it.
23 Q. Who at Granite Partners did
24 your research assistant contact?
25 A. I'd have to refer to his

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1 - TIMOTHY L. O'BRIEN -
2 notes.
3 Q. Have you produced those
4 notes?
5 A. I believe --
6 Q. No. You haven't produced
7 those notes, have you?
8 MR. CERESNEY: No. He hasn't
9 produced them because of privilege.
10 MR. RESSLER: Correct.
11 Q. Who else --
12 MR. CERESNEY: He doesn't
13 know what he's produced or not, so
14 you should direct that question to
15 me.
16 Q. Who else? Who else?
17 A. Real Capital Analytics.
18 Q. Okay. Where are they based?
19 A. They're also based in New
20 York.
21 Q. Did you contact anyone at
22 that company or did your research
23 assistant?
24 A. My research assistant
25 contacted them.

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1 - TIMOTHY L. O'BRIEN -
2 Q. Who did he contact?
3 A. I'm not sure of the
4 individual he spoke with at the firm.
5 Q. Did that person provide any
6 information about any specific Trump
7 property?
8 A. No. They declined to -- to
9 discuss it.
10 Q. And you might have already
11 answered this. If not, it's my fault
12 because I didn't ask you.
13 Did anyone at Granite
14 Partners provide any information?
15 A. No. My understanding is they
16 did not.
17 Q. They declined as well?
18 A. That's true.
19 Q. Do you know how your research
20 assistant went about seeking this
21 information?
22 A. In a very straightforward
23 manner is my understanding.
24 Q. Any other real estate
25 professional?

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1 - TIMOTHY L. O'BRIEN -
2 A. The Fortress Group.
3 Q. Who did you speak to at the
4 Fortress Group?
5 A. My research assistant reached
6 out to them. And you'd have to discuss
7 with him the -- or we'd have to look at
8 his records to understand who he
9 contacted there.
10 Q. And did anyone at the
11 Fortress Group supply any information?
12 A. No. They did not want to be
13 interviewed.
14 Q. Anyone else?
15 A. Are you limiting it to
16 brokers or to real estate
17 professionals?
18 Q. No. I'm including brokers,
19 real estate professionals, valuation
20 specialists.
21 A. I spoke with Jerome Belson.
22 Q. Who is he?
23 A. He is a real estate developer
24 in the City of New York. He's a
25 longtime acquaintance of the Trump

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1 - TIMOTHY L. O'BRIEN -
2 family. He knew both Fred Trump and he
3 maintains contact with Donald.
4 Q. Did he decline to provide any
5 information?
6 A. He declined to provide
7 valuations.
8 Q. Anyone else?
9 A. Let me think. I'd like to go
10 through this list to refresh my
11 recollection.
12 Stephen Bollenbach.
13 Q. Where does he work?
14 A. I'm not sure where he works
15 right now, but he was the former CFO of
16 the Trump organization. He later was
17 at Disney, and I believe he's still at
18 the Hilton Hotel company.
19 Q. Did he supply any
20 information?
21 A. No. His talk with me was
22 limited to the bankruptcy proceedings
23 in the early '90s and the casino
24 companies.
25 Q. Anyone else?

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1 - TIMOTHY L. O'BRIEN -
2 A. I'm going to refresh my
3 recollection. Peter Calico.
4 Q. Did he supply any
5 information?
6 A. He and I discussed
7 Mr. Trump's claim as being the biggest
8 real estate developer in New York.
9 Q. But my question was: Did you
10 ask people for specific valuations of
11 specific Trump properties?
12 A. My mistake. I did not ask
13 that of Mr. Calico.
14 Q. Thanks. Who else? Anyone?
15 A. Conrad Stevenson.
16 Q. Did you ask that person for
17 information as to his view of
18 valuations of specific Trump
19 properties?
20 A. I did.
21 Q. Did he provide you any such
22 information?
23 A. Yes, he did.
24 Q. What did he say?
25 A. I'd have to review my notes

701	<p>1 - TIMOTHY L. O'BRIEN - 2 to refresh my recollection. 3 Q. What property? 4 A. I believe it was limited to 5 the West Side Yards. He was 6 Mr. Trump's primary banker for a period 7 of years at the Chase Manhattan 8 corporation. 9 Q. And he gave you valuation 10 information concerning the West Side 11 Yards, as in what they're worth? 12 A. We discussed financial 13 issues. 14 Am I -- 15 MR. CERESNEY: You can answer 16 generally. 17 A. We generally discussed 18 financial issues related to the West 19 Side Yards. 20 Q. Did you request that he 21 provide you with a valuation -- an 22 estimate or his view as to the value of 23 the West Side Yards? 24 MR. CERESNEY: Do we need to 25 confer?</p>	703	<p>1 - TIMOTHY L. O'BRIEN - 2 now as a mortgage broker. At the time, 3 he was with Wells Fargo in Chicago. 4 Q. What particular property did 5 you ask him about? 6 A. I asked him about the Chicago 7 property. 8 Q. And you -- did you ask him, 9 in substance, what his view -- if he 10 had a view as to the value of that 11 property? 12 A. I asked him to get 13 documentation relating to the financing 14 and ownership of the property. 15 Q. So that -- my question, 16 though, as you know, was strictly what 17 the value of the property was, right? 18 MR. CERESNEY: Objection to 19 the form of the question. 20 Q. Do you think those documents 21 would have helped you come up with a 22 value? 23 A. Yes. 24 Q. Okay. Did he provide you 25 with that documentation?</p>
702	<p>1 - TIMOTHY L. O'BRIEN - 2 THE WITNESS: I think we do. 3 MR. CERESNEY: Okay. 4 MR. RESSLER: No. 5 MR. CERESNEY: There may be a 6 privilege issue there, Mark. 7 MR. RESSLER: I'll hold it in 8 abeyance then -- hold that one in 9 abeyance. 10 MR. CERESNEY: Okay. 11 MR. RESSLER: We'll do that 12 at the end. 13 MR. CERESNEY: Sure. 14 Q. Anyone else? And the 15 question is: Any people you contacted, 16 real estate professionals, real estate 17 brokers, real estate executives, 18 valuation experts, who you asked to 19 provide their view of the value of any 20 specific Trump property -- the value as 21 Trump sets forth values on his asset 22 side of the ledger? 23 A. Michael White. 24 Q. Where does he work? 25 A. At the -- he's self-employed</p>	704	<p>1 - TIMOTHY L. O'BRIEN - 2 A. He provided me with a limited 3 amount of documentation. 4 Q. Was it helpful? 5 A. It was. 6 Q. It was helpful for you to 7 come up with a value of the property? 8 A. It was helpful in my pursuit 9 reportorially in order to come up with 10 a valuation, yes. 11 Q. Reportorially, what does that 12 mean? 13 A. In the course of my 14 reporting. 15 Q. What was the value -- what 16 value do you believe Trump's Chicago 17 property had in 2005? 18 A. In order to be certain of 19 that, I would need to get documentation 20 both of unit sales in the project, 21 anticipated unit sales in the project, 22 all outstanding debt related to the 23 project, so I'm not comfortable 24 actually making a definitive statement 25 about that.</p>

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1 - TIMOTHY L. O'BRIEN -
2 Q. So you don't have a view?
3 A. I don't have a view as to the
4 definitive value of that property.
5 Q. What about any value?
6 Because definitive was your alteration
7 of my question. I didn't ask you for a
8 definitive.
9 MS. WHITE: Objection to the
10 form.
11 Q. I just asked you for your
12 view.
13 Can you supply with me your
14 view?
15 A. In order to have a definitive
16 view of what the value of any of his
17 properties were, I'd need to have
18 documentation of both the assets and
19 the liabilities. And I spent the
20 better part of a year trying to get
21 that information from Donald in order
22 to reach a definitive conclusion, and I
23 was unable to.
24 Q. He refused to give you the
25 information, right?

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1 - TIMOTHY L. O'BRIEN -
2 A. That is correct.
3 Q. But nowhere in your book do
4 you say anywhere that you asked Trump
5 for specific kinds of information and
6 he refused to provide it; isn't that
7 true?
8 A. I believe that's true.
9 Q. Now, Mr. O'Brien, are you
10 familiar with a company called Cushman
11 & Wakefield?
12 A. I am.
13 Q. It's a big real estate
14 company in New York, right?
15 A. Yes.
16 Q. One of the biggest, right?
17 A. Yes.
18 Q. So is CBRE Richard Ellis,
19 right?
20 A. Yes.
21 Q. Did you contact anyone from
22 Cushman & Wakefield to get their view
23 as to the value of a particular Trump
24 property?
25 A. No, I did not.

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1 - TIMOTHY L. O'BRIEN -
2 Q. What about anyone at CBRE
3 Richard Ellis?
4 A. No, I did not.
5 Q. What about anyone at Tishman
6 and Speyer (sic)?
7 MR. CERESNEY: We need to
8 confer?
9 THE WITNESS: Uh-huh.
10 MR. CERESNEY: Can we confer?
11 MS. WHITE: You want to hold
12 that, Mark, or do you want us to go
13 consult?
14 MR. RESSLER: No. You can
15 consult on that one.
16 MS. WHITE: Thank you.
17 MR. RESSLER: And while
18 you're at it, you can consult on
19 the other one.
20 THE VIDEOGRAPHER: The time
21 on the video monitor is 4:15 p.m.
22 This ends of Tape Number 4,
23 Volume 2.
24 (Whereupon, there was a brief
25 recess in the proceedings.)

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1 - TIMOTHY L. O'BRIEN -
2 THE VIDEOGRAPHER: We're back
3 on the record. The time on the
4 video monitor is 4:28 p.m. This
5 starts Tape Number 5, Volume 2.
6 MR. CERESNEY: We're going to
7 instruct the witness not to answer
8 that question.
9 I'm also going to put on the
10 record that he's now disclosed all
11 on-the-record sources in connection
12 with this. And any further - any
13 further questions with regard to
14 who he contacted, we'll invoke the
15 privilege with regard to those.
16 MR. RESSLER: Okay. So I'm
17 going to ask the questions and
18 let's just have an understanding
19 that you have a standing objection
20 based on the news person's
21 privilege.
22 MR. CERESNEY: Fine.
23 Q. Okay. So Mr. O'Brien, did
24 you speak to anyone to obtain their
25 views concerning valuations of specific

85 (Pages 705 to 708)

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709	<p>1 - TIMOTHY L. O'BRIEN - 2 Trump assets from the Vornado company? 3 MR. CERESNEY: I'll assert 4 the same objection. 5 MR. RESSLER: You don't have 6 to. 7 MR. CERESNEY: Yeah, okay. 8 MR. RESSLER: I understand 9 that, or you can just say 10 "objection." 11 Q. Do you know what the Vornado 12 company is? 13 A. I do know what the Vornado 14 company is. 15 Q. How about Douglas Elliman, 16 same question. 17 Do you know what Douglas 18 Elliman is? 19 A. I do know what Douglas 20 Elliman is. 21 Q. It's a big real estate 22 brokerage firm. 23 Did you contact anyone from 24 Douglas Elliman to seek their view to 25 the valuation of a specific Trump</p>	711	<p>1 - TIMOTHY L. O'BRIEN - 2 A. Yes. 3 Q. Have you ever heard of Equity 4 Office Properties, which is now part of 5 the Blackstone Group, or was? 6 A. Yes. 7 Q. Did you speak to anyone at 8 Equity Office Properties to obtain 9 information -- or at least to obtain 10 their view of a valuation for a 11 specific Trump property or properties? 12 MR. CERESNEY: Same 13 objection. 14 Q. Same question with respect to 15 the Rudin Group. 16 Are you familiar with Rudin? 17 A. Yes, I am. 18 MR. RESSLER: You're 19 objecting? 20 MR. CERESNEY: Same 21 objection. 22 Q. Same question with respect to 23 Larry Silverstein's real estate 24 company. 25 MR. CERESNEY: Same</p>
710	<p>1 - TIMOTHY L. O'BRIEN - 2 property or properties? 3 MR. CERESNEY: Same 4 objection. 5 Q. Did you confer with anyone at 6 the Macwell Company with respect to 7 that information? 8 MR. CERESNEY: Same 9 objection. 10 Q. Do you know what the Macwell 11 Company is? 12 A. I do. 13 Q. Did you confer with anybody 14 at SL Green to get the information? 15 MR. CERESNEY: Same 16 objection. 17 Q. Do you know what SL Green is? 18 A. No. I don't know what 19 SL Green is. 20 Q. You never heard of the 21 SL Green company? 22 A. I don't know what SL Green 23 is. 24 Q. Okay. Have you ever heard of 25 Stephen Green?</p>	712	<p>1 - TIMOTHY L. O'BRIEN - 2 objection. 3 Q. Same question with respect to 4 the Kushner Company. 5 Are you familiar with the 6 Kushner Company? 7 A. Yes, I am. 8 MR. CERESNEY: Same 9 objection. 10 Q. Same question with respect to 11 the MacCally Company. 12 Are you familiar with that 13 company? 14 MR. CERESNEY: Same 15 objection. 16 Can you answer the question 17 yes? 18 A. I am familiar with that 19 company. 20 Q. Now, isn't it true that The 21 New York Times has a real estate 22 section? 23 A. Yes. 24 Q. Every Sunday The Times has a 25 real estate section, correct?</p>

86 (Pages 709 to 712)

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<p style="text-align: right;">713</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. That is correct. 3 Q. And during the week, The 4 Times, within the business section, 5 devotes a page, and sometimes more, 6 sometimes less, to real estate issues, 7 right? 8 A. That is correct. 9 Q. The Times aggressively covers 10 the real estate industry in New York 11 and around the country, correct? 12 A. I think that's correct. 13 Q. Who are some of The Times 14 reporters who have the real estate 15 beat? 16 A. Charlie Bagli is our primary 17 real estate reporter, and Trish Hall 18 oversees editing of our real estate 19 reporting. 20 Q. And from time to time other 21 Times business reporters also cover 22 real estate companies and issues, 23 correct? 24 A. That's correct, although I 25 think Charlie is our main dedicated</p>	<p style="text-align: right;">715</p> <p>1 - TIMOTHY L. O'BRIEN - 2 same objection. 3 Q. Did you confer with Mr. Bagli 4 or any other Times reporters with 5 respect to the book? 6 MR. CERESNEY: You can answer 7 yes or no. 8 A. Yes. 9 Q. With who? 10 MR. CERESNEY: You can give 11 the names of people you conferred 12 with about the book. 13 Q. Reporters or editors at The 14 Times. 15 A. Charlie Bagli, Larry 16 Ingrassia, Jim Impoco, Bill Keller, 17 Glen Kramon, Al Siegal, Jill Abramson, 18 Eric Dash, Joseph Planbeck. 19 Q. How old he is, by the way? 20 He was your research assistant. 21 How old is he? 22 A. I believe he's in his early. 23 30s. 24 Q. Early 30s or early 20s at the 25 time that this book came out?</p>
<p style="text-align: right;">714</p> <p>1 - TIMOTHY L. O'BRIEN - 2 person. 3 Q. And it's fair to say that 4 Charlie Bagli has sources at various 5 real estate companies that he from time 6 to time relies upon in researching and 7 writing stories, correct? 8 A. I think that's a safe 9 assumption. 10 Q. Did you ever ask Charlie 11 Bagli or anyone else at The Times if 12 they could direct you to any source who 13 might have information concerning the 14 value of a specific Trump property? 15 MR. CERESNEY: I'm going to 16 invoke the privilege and instruct 17 him not to answer. 18 Q. To your knowledge, have the 19 three alleged anonymous sources you 20 reference in your book been used as 21 sources by any other Times reporter or 22 editor? 23 MR. CERESNEY: I believe you 24 asked that question before. I'm 25 going to continue to assert the</p>	<p style="text-align: right;">716</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. Joseph Planbeck? 3 Q. Yeah. Yes. 4 A. I think Joe is in his early 5 30s. 6 Q. Is he a recent or - 7 withdrawn. 8 In 2005, was he a recent 9 graduate from journalism school? 10 A. I'm not sure exactly of the 11 status at that point in time. 12 Q. Okay. Did you know anything 13 about his educational or professional 14 background? 15 A. I certainly looked at his 16 resume at one point in time. 17 Q. Okay. 18 MR. CERESNEY: What? 19 Q. He was listing - you were 20 listing people. 21 A. I'm sorry. I thought you 22 were talking to Andrew. 23 MS. WHITE: So did Andrew. 24 A. I can't recollect others at 25 this point.</p>

717	<p>1 - TIMOTHY L. O'BRIEN - 2 Q. What did you talk to Keller 3 about? 4 MR. CERESNEY: Objection. 5 Asked and answered. You can answer 6 the question. 7 A. We had minimal conversations 8 about it. I can't recall the 9 substance. 10 MR. RESSLER: Counsel, will 11 you be asserting the same privilege 12 with respect to my questions asking 13 the witness if he contacted any 14 persons for information as to their 15 views of specific Trump assets who 16 were outside of the companies I 17 mentioned today and, indeed, 18 outside of New York; for example, 19 real estate developers and 20 brokerage firms in Chicago, 21 Las Vegas, California, and the 22 like? 23 MR. CERESNEY: Other than the 24 ones he mentioned? 25 MR. RESSLER: Correct.</p>	719	<p>1 - TIMOTHY L. O'BRIEN - 2 course specialists or any other 3 kind of field, entertainment field, 4 anything, right? 5 MR. CERESNEY: Yes. 6 Q. Okay. Mr. O'Brien, who is 7 Mary Ann Trump Barry? 8 A. She is Donald Trump's sister 9 and a Federal judge. 10 Q. She's a Federal judge for the 11 U.S. Court of Appeals for the Third 12 Circuit; is that correct? 13 A. I believe that is correct. 14 Q. Appointed to that court by 15 President Clinton, correct? 16 A. I believe that is correct. 17 Q. And before being promoted to 18 the U.S. Court of Appeals for the Third 19 Circuit, she was a judge for 17 years 20 on the Federal District Court bench for 21 the District of New Jersey; is that 22 correct? 23 A. I believe that to be correct. 24 Q. And she was nominated to the 25 District Court bench by</p>
718	<p>1 - TIMOTHY L. O'BRIEN - 2 MR. CERESNEY: I believe the 3 answer to that question is that 4 there are no other nonconfidential 5 sources that he will -- and so, 6 therefore, there being no other 7 nonconfidential sources, I will 8 assert privilege as to anybody 9 else -- any other organizations you 10 ask about or any individuals you 11 ask about. 12 MR. RESSLER: And I take it 13 that, in fact, you would assert the 14 same objection with respect to any 15 question I ask this witness as to 16 anyone he contacted in connection 17 with this book who is not on the 18 list of nonconfidential sources, 19 right? 20 MR. CERESNEY: In connection 21 with the book, that's correct. 22 MR. RESSLER: Correct? 23 MR. CERESNEY: Yes. 24 MR. RESSLER: Whether they're 25 real estate specialists or golf</p>	720	<p>1 - TIMOTHY L. O'BRIEN - 2 President Reagan; is that correct? 3 A. I believe that to be correct. 4 Q. And in writing this book, you 5 interviewed Judge Barry, Donald Trump's 6 sister; is that correct? 7 A. That is correct. 8 Q. Was that interview by phone 9 or in person? 10 A. It was by phone. 11 Q. And isn't it true that you 12 called Mr. Trump's sister, a sitting 13 Federal judge, to try to get her to 14 give you what you thought was damaging 15 and embarrassing information about 16 Trump? 17 MR. CERESNEY: Objection to 18 form. 19 Q. Isn't that true, Mr. O'Brien? 20 A. I called Ms. Trump Barry at 21 Donald's suggestion, per a list of 22 people he provided to me that he asked 23 me to contact who he thought had had 24 favorable views of him. And those were 25 people whose views I was very</p>

1 - TIMOTHY L. O'BRIEN -
 2 interested in including in the book.
 3 Q. Isn't it true that you called
 4 Judge Trump Barry to obtain information
 5 that Donald Trump had sought a loan
 6 from Judge Trump Barry and other Trump
 7 siblings without which Donald, you
 8 allege, couldn't remain in business;
 9 isn't that true?
 10 A. That was one of the questions
 11 I asked her. That was not the sole
 12 reason I called her.
 13 I asked her, as well, about
 14 her personal feelings about him as a
 15 brother, their lives together, things
 16 that she admired about him. I also
 17 asked her about that event, yes.
 18 Q. What was the event that you
 19 asked her about?
 20 A. An event in the mid-1990s
 21 when Donald needed funds from his
 22 siblings in order to have operating
 23 capital for his business.
 24 Q. In fact, that incident that
 25 you allege occurred in your book --

1 - TIMOTHY L. O'BRIEN -
 2 that you claim occurred in your book,
 3 was an incident that we saw on some of
 4 those talking points -- bullet points
 5 yesterday, correct?
 6 A. That is correct.
 7 Q. Now, isn't it true,
 8 Mr. O'Brien, that you were told by
 9 Mr. Trump's sister, a sitting Federal
 10 judge, that the story you wrote in your
 11 book about Trump requesting and getting
 12 money from his siblings never happened?
 13 Didn't she tell you that?
 14 A. No, she did not.
 15 Q. Did you tape record your
 16 conversation with Mary Ann Trump Barry?
 17 A. I did not.
 18 Q. You say in your book in a
 19 footnote on Page 257, quote, "Mary Ann
 20 Trump Barry, Donald's sister and
 21 Barry's widow, said she could not
 22 recollect the incident."
 23 Do you recall writing that?
 24 A. I do.
 25 Q. Isn't it true that she told

1 - TIMOTHY L. O'BRIEN -
 2 you that the incident never happened,
 3 Mr. O'Brien?
 4 A. No. That is not true.
 5 Q. Why didn't you tape record
 6 your conversation with Judge Trump
 7 Barry?
 8 A. I don't routinely tape record
 9 telephone conversations.
 10 Q. What if they involve Tony
 11 Bennett's toupee? Would you tape --
 12 would you --
 13 MR. CERESNEY: Objection.
 14 That was not a telephone
 15 conversation.
 16 Q. Would you tape the
 17 conversation?
 18 A. Tony Bennett's conversation
 19 only got taped pursuant to interviewing
 20 I was doing of Donald in which I was in
 21 the presence of Donald and had my tape
 22 recorder with me.
 23 Q. So you draw a distinction
 24 between taping someone when you're
 25 meeting with them in person versus

1 - TIMOTHY L. O'BRIEN -
 2 taping them when you're talking to them
 3 on the phone?
 4 A. No. I'm just explaining to
 5 you the context in which I interviewed
 6 Tony Bennett on tape.
 7 Q. Okay. But you said that you
 8 don't routinely tape record phone
 9 conversations.
 10 Why not?
 11 A. It's cumbersome. And it
 12 involves, you know, setting up a phone
 13 recording system. And it's just not
 14 something I'm in the habit of doing.
 15 Q. Did Judge Trump Barry tell
 16 you that she would give you an
 17 affidavit swearing that the event you
 18 describe in your book was false?
 19 A. No, she did not.
 20 Q. If Judge Mary Ann Trump Barry
 21 testified at this trial that the event
 22 you described in your book about Trump
 23 requesting and getting a loan from his
 24 siblings was false, then she would be
 25 lying in your view?

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection.
3 Form.
4 Q. Sir?
5 A. Yes. She would be lying in
6 my view.
7 Q. Who was Fred Trump,
8 Mr. O'Brien?
9 A. Fred Trump, Jr. or Sr.?
10 Q. Senior.
11 A. He was Donald Trump's father.
12 Q. He's deceased, correct?
13 A. That is correct.
14 Q. As is Fred Trump, Jr.,
15 correct?
16 A. That is correct.
17 Q. Now, isn't it fair to say,
18 based on your time with Trump and your
19 work on this book, that you came to
20 learn that Donald Trump holds his
21 deceased father, Fred, in very high
22 esteem?
23 A. I would say based on my
24 reporting for this book Donald has a
25 complicated relation -- had a

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1 - TIMOTHY L. O'BRIEN -
2 complicated relationship with his
3 father.
4 Q. Did he not tell you that he
5 viewed his father as one of, if not
6 the most important people in his life?
7 A. Yes, he did.
8 Q. And isn't it true that you
9 saw fit in your book to be critical
10 even about Mr. Trump's deceased father?
11 MR. CERESNEY: Objection.
12 Form.
13 Q. Sir?
14 A. I think the totality of what
15 I wrote about Fred Trump over the arc
16 of his career is -- actually, in sum, I
17 would describe it as flattering. And
18 in some parts, it's distinct to the arc
19 of Donald's own career.
20 Q. So you don't believe that it
21 was -- it was critical in any respect?
22 A. No, I do. I do believe it
23 had critical elements.
24 Q. Didn't you write about
25 Mr. Trump's father, Fred, that --

727

1 - TIMOTHY L. O'BRIEN -
2 A. Can tell me where in the book
3 you are?
4 Q. No. I'm going to ask my
5 questions and you answer them.
6 MR. CERESNEY: Come on, Mark.
7 A. I would appreciate your
8 telling me where in the book you are.
9 Q. Isn't it -- isn't it -- isn't
10 it true that in your book --
11 A. Excuse me. Can you tell me
12 where in the book --
13 MR. CERESNEY: Hold on, Tim.
14 Let him ask the question.
15 Q. Isn't it true -- isn't it
16 true that you wrote in your book about
17 Donald Trump's deceased father, Fred,
18 concerning Trump Village, quote, "After
19 just two of Trump Village's seven
20 buildings were underway, Fred became
21 overwhelmed by the project's logistics.
22 He only managed to complete the project
23 after securing help from one of New
24 York's premiere builders, the
25 HRH Corporation. In the end, Trump

728

1 - TIMOTHY L. O'BRIEN -
2 Village bore Fred's name and he reaped
3 most of the profits from the site, but
4 he didn't build it."
5 Did you write those words?
6 A. I believe I did, yes.
7 Q. Now, isn't it true -- by the
8 way, you're aware that dead people
9 can't sue for defamation, that a cause
10 of action under the law for defamation
11 does not belong to a dead person.
12 Are you aware of that?
13 A. I'm aware of that.
14 Q. Isn't it true that you were
15 told, Mr. O'Brien, before this book
16 came out that the allegation in your
17 book about Trump's father not building
18 Trump Village was completely false?
19 A. No, that's not true.
20 Q. Isn't it true that in your
21 description of that so-called event you
22 don't attribute any source whatsoever?
23 MR. CERESNEY: Can you tell
24 him which page that appears on?
25 MR. RESSLER: Sure. 46 to

90 (Pages 725 to 728)

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<p style="text-align: right;">729</p> <p>1 - TIMOTHY L. O'BRIEN - 2 47. I'm at the bottom of Page 46, 3 that paragraph that begins, "Fred's 4 last large development was Trump 5 Village," to the end of that 6 paragraph which reads, "Trump 7 Village bore Fred's name and he 8 reaped most of the profits from the 9 site, but he didn't build it." 10 That's the paragraph I'm referring 11 to. 12 Do you see it? 13 A. I do. 14 Q. Isn't it true that you 15 attribute no source to that 16 information? 17 A. No, that's not true. It's 18 attributed at the bottom of the 19 following paragraph at Footnote 17. 20 Q. Let's go to Footnote 17. 21 What page is it on? 22 A. Page 251. 23 Q. Is this the footnote 24 attributed to Wayne Barrett? 25 A. It is.</p>	<p style="text-align: right;">731</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Barrett and only Wayne Barrett, 3 correct? 4 A. That is correct. 5 MR. CERESNEY: Let me object 6 to the form of the question. There 7 were two questions there. 8 Object to form, but you've 9 answered them. 10 THE WITNESS: Okay. 11 Q. Mr. O'Brien, the chapter of 12 the book titled, "TrumpBroke" -- 13 "TrumpBroke," Chapter 6, was excerpted 14 in The New York Times, correct? 15 A. It was adapted for 16 publication in The New York Times, 17 that's correct. 18 Q. And it appeared on the front 19 page of The Times business section, 20 correct? 21 A. That is correct. 22 Q. And that came out several 23 days before the book was actually 24 published, correct? 25 A. That is correct.</p>
<p style="text-align: right;">730</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. And who is Wayne Barrett? 3 A. Wayne Barrett -- Barrett is a 4 reporter with the Village Voice. 5 Q. He wrote a book about Trump, 6 right? 7 A. He did. 8 Q. You were an intern for that 9 book, right? 10 A. I was a research assistant. 11 MR. RESSLER: Can I have the 12 book, Maria, please? 13 Q. Is this the book, Trump, The 14 Deals and the Downfall? 15 A. It is. 16 Q. Would you agree that Wayne 17 Barrett's book, Trump, The Deals and 18 the Downfall, was a highly critical 19 portrayal of Donald Trump? 20 A. I would. 21 Q. The only source for your 22 information about Fred Trump, as you 23 claim, not building Trump Village is 24 Wayne Barrett, correct? 25 That footnote refers to Wayne</p>	<p style="text-align: right;">732</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. And in the article that 3 was -- appeared in The Times, you 4 inserted a parenthetical regarding a 5 rebound in casino values. And you 6 stated, "Donald's casino holdings have 7 recently rebounded in value, perhaps 8 adding as much as \$135 million to these 9 estimates," correct? 10 A. That is correct. 11 Q. And it's also correct that 12 that parenthetical -- the information 13 in that parenthetical was not 14 incorporated into the book, right? 15 A. That is correct. 16 (Whereupon, a brief 17 discussion was held off record.) 18 Q. Mr. O'Brien, in August of 19 1999, you and Raymond Bonner wrote a 20 front page article in The New York 21 Times in which you reported the Bank of 22 New York was complicit in a money 23 laundering -- money laundering 24 operation set up by a corrupt Russian 25 bank -- or several corrupt Russian</p>

1 - TIMOTHY L. O'BRIEN -
 2 banks; is that correct?
 3 A. I wouldn't characterize it
 4 that way.
 5 Q. What was the article about?
 6 A. It was about an investigation
 7 of the possibility that the Bank of New
 8 York was involved in such activities.
 9 Q. And that was a major scandal,
 10 you would agree?
 11 MR. CERESNEY: Objection to
 12 form. You can answer.
 13 A. Yes.
 14 Q. Was that a big news story?
 15 A. Yes.
 16 Q. And did you break the news
 17 story?
 18 A. The New York Times did, yes.
 19 Q. Who was the author at The
 20 Times of the story?
 21 A. Ray Bonner and myself.
 22 Q. So you helped break the story
 23 as the reporter, right?
 24 A. Yes.
 25 Q. And you wrote subsequent

1 - TIMOTHY L. O'BRIEN -
 2 articles about this story in addition
 3 to that first story, correct?
 4 A. That is correct.
 5 Q. And one of your sources on
 6 the story was a man named Emanuel
 7 Zeltser?
 8 A. Incorrect.
 9 Q. Zeltser was not a source for
 10 you?
 11 A. For the first story, no, he
 12 was not.
 13 Q. For any story concerning the
 14 Russian bank money laundering scandal?
 15 A. He was cited as an observer
 16 in a follow-up story. And after that,
 17 he was never used as a source for any
 18 story we wrote.
 19 Q. You used Mr. Zeltser to get
 20 information and documents that you used
 21 to report on the story, correct?
 22 MR. CERESNEY: Objection to
 23 form.
 24 A. No, that's incorrect.
 25 Q. Did you receive documents

1 - TIMOTHY L. O'BRIEN -
 2 from Mr. Zeltser?
 3 A. I went to Mr. Zeltser's
 4 office a day or two after the second
 5 story to look at documents he had in
 6 his office.
 7 Q. So you obtained documents --
 8 MR. CERESNEY: Hold on. I
 9 don't think he's finished.
 10 Q. So you obtained documents --
 11 MR. CERESNEY: Hold on. Are
 12 you finished, Mr. O'Brien?
 13 THE WITNESS: No, I'm not.
 14 MR. CERESNEY: Okay. Please
 15 let him answer his question.
 16 A. And I -- I looked at a box of
 17 documents that he had that were
 18 gibberish, and we never made use of
 19 them.
 20 Q. And he -- but he made
 21 available the documents to you, right?
 22 A. That is correct.
 23 Q. Did you rely on any other
 24 information that Zeltser had given you?
 25 MR. CERESNEY: Objection to

1 - TIMOTHY L. O'BRIEN -
 2 form.
 3 Q. Did you rely on any other
 4 information in connection with your
 5 stories on this Russian money
 6 laundering scandal that you obtained
 7 from Zeltser, either for leads or for
 8 any other purpose?
 9 MR. CERESNEY: Objection to
 10 the form.
 11 A. I used documentation from him.
 12 for a -- a story about him. I never
 13 used documentation from him for any
 14 other stories that we wrote.
 15 Q. Isn't it true that you
 16 threatened to run a bad piece on
 17 Mr. Zeltser in retaliation for him
 18 giving information to reporters at
 19 other newspapers and not giving you the
 20 information exclusively?
 21 MR. CERESNEY: Objection to
 22 form. You can answer.
 23 A. No, that's not true. It's --
 24 it's not atypical in the course of
 25 writing a story about an individual who

737

1 - TIMOTHY L. O'BRIEN -
 2 has something to hide or may be lying
 3 for them to attack back by engaging in
 4 a series of lies or misrepresentations
 5 themselves. And that was the case with
 6 Mr. Zeltser.
 7 Q. You wrote a story ultimately
 8 about Mr. Zeltser, correct?
 9 A. That is correct.
 10 Q. And he requested you not do
 11 so because he told you he feared
 12 retribution and, indeed, physical harm
 13 if you ran that story; isn't that
 14 correct?
 15 A. That wasn't the first reason
 16 he gave. That was a reason he gave --
 17 Q. Did he give you that --
 18 MR. CERESNEY: Objection.
 19 Hold on.
 20 Q. Did he give you that as
 21 reason?
 22 MR. CERESNEY: Hold on. Hold
 23 on.
 24 MR. RESSLER: I'm not holding
 25 on.

738

1 - TIMOTHY L. O'BRIEN -
 2 MR. CERESNEY: Let him answer
 3 the question. You asked the
 4 question --
 5 Q. Did he --
 6 MR. CERESNEY: -- and he's
 7 answering the question.
 8 MR. RESSLER: I didn't ask
 9 for the order of the reason.
 10 Q. Answer my question, yes or
 11 no. I don't care about the order.
 12 MR. CERESNEY: You asked,
 13 "Did he give," and he's answering
 14 the question.
 15 MR. RESSLER: It's a yes or
 16 no.
 17 MR. CERESNEY: It's not a yes
 18 or no.
 19 MR. RESSLER: Yes, it is.
 20 MR. CERESNEY: Can you answer
 21 that yes or no?
 22 THE WITNESS: No, I can't.
 23 MR. CERESNEY: Next question.
 24 BY MR. RESSLER:
 25 Q. Did -- did Mr. -- did

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1 - TIMOTHY L. O'BRIEN -
 2 Mr. Zeltser request that you not
 3 disclose his identity because he
 4 believed such disclosure would expose
 5 him to physical harm, yes or no?
 6 A. Yes. He did ask that among
 7 other things --
 8 Q. Thank you. Thank you.
 9 A. -- that is correct. And when
 10 he asked that question --
 11 Q. Thank you, Mr. O'Brien.
 12 MR. CERESNEY: You can move
 13 to strike everything after yes, if
 14 you want.
 15 MR. RESSLER: It's completely
 16 improper.
 17 MR. CERESNEY: It's not
 18 improper.
 19 MR. RESSLER: Yes, it is.
 20 MR. CERESNEY: It's not.
 21 MR. RESSLER: We'll let the
 22 Judge decide.
 23 MR. CERESNEY: Finish your
 24 answer.
 25 A. And when he made this

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1 - TIMOTHY L. O'BRIEN -
 2 request, we considered it at great
 3 length within the paper, in conjunction
 4 with Bill Keller and with my editor,
 5 Stephen Engelberg, who was the
 6 investigations editor at the time, and
 7 it was a measured decision.
 8 It was taken relative to the
 9 contract we'd entered into with him
 10 about his desire to be held as an
 11 anonymous source, and it was based on
 12 his veracity. And in our view, there
 13 was a breach of that contract.
 14 Q. Isn't it true that three
 15 separate people filed police complaints
 16 against you for harassing them in
 17 connection with your reporting on that
 18 story; isn't that true?
 19 A. I don't know that to be true.
 20 Q. Okay. Who is Peter Shacker?
 21 Is that a name that's familiar to you?
 22 A. I'd have to refresh my
 23 recollection. I believe he was a
 24 business associate of Mr. Zeltser's.
 25 Q. In fact, he was Mr. Zeltser's

741

1 - TIMOTHY L. O'BRIEN -
2 physician; isn't that true,
3 Mr. O'Brien?
4 A. That is true.
5 Q. Isn't it true that you
6 repeatedly attempted to contact
7 Mr. Zeltser's physician to get
8 information from him as to any
9 medications that Mr. Zeltser took?
10 MR. CERESNEY: Objection to
11 form.
12 A. In the course of my reporting
13 about Mr. Zeltser -
14 Q. Is that true?
15 A. I'm trying to answer your
16 question.
17 Q. You're not answering my
18 question, but go ahead.
19 A. I'm making my very best
20 effort to answer your question, the
21 best ability I can.
22 MR. CERESNEY: Why don't you
23 just answer it, Tim? Go ahead.
24 A. Okay. In the course of my
25 reporting for Mr. Zeltser, I had to

742

1 - TIMOTHY L. O'BRIEN -
2 interview a number of individuals.
3 Mr. Zeltser was a person with a long
4 track record in the course of fraud.
5 His bar - his bona fides as a
6 lawyer -
7 MR. RESSLER: Move to strike
8 as nonresponsive.
9 A: I believe I'm responding to
10 the question.
11 Q. My question was - my
12 question was: Did you -
13 MR. CERESNEY: Hold on. Hold
14 on.
15 MR. RESSLER: Stop.
16 My question to this witness
17 was did he repeatedly contact
18 Zeltser's physician, Peter Shacker,
19 to obtain information about the
20 medications that Zeltser might have
21 been taking.
22 This witness is giving his
23 whole -
24 MR. CERESNEY: Just -
25 MR. RESSLER: Just stop,

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1 - TIMOTHY L. O'BRIEN -
2 Andrew. Let me finish. I'm
3 putting this on the record.
4 This witness is giving his
5 whole explanation, not answering my
6 question. It's completely
7 improper.
8 You can ask this witness as
9 many questions as you want. You
10 could have reserved time at this
11 deposition. You could ask this
12 witness any questions you want at
13 trial.
14 But what this witness can't
15 do with my limited amount of time
16 remaining is to go off on speeches.
17 It's completely improper.
18 MR. CERESNEY: Are you
19 finished?
20 MR. RESSLER: I am finished.
21 MR. CERESNEY: Okay. I
22 disagree. He's trying to answer
23 your question. And let's see if he
24 can answer your question yes or no.
25 That's what you're asking

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1 - TIMOTHY L. O'BRIEN -
2 for?
3 MR. RESSLER: Correct.
4 MR. CERESNEY: You're asking
5 for a yes or no answer?
6 MR. RESSLER: Correct.
7 MR. CERESNEY: Can you answer
8 the question yes or no?
9 THE WITNESS: No, I can't.
10 MR. CERESNEY: Okay. Next
11 question.
12 BY MR. RESSLER:
13 Q. Did you attempt to contact
14 Zeltser's physician, Dr. Peter Shacker,
15 to obtain information about medications
16 that Zeltser might have been taking,
17 yes or no?
18 A. I can't answer that as a yes
19 or no basis.
20 Q. Isn't it true that you called
21 Dr. Shacker at home?
22 A. That's quite possibly true.
23 Q. Repeatedly, right?
24 A. That's quite possibly true.
25 Q. And at night, right?

<p style="text-align: right;">745</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. I don't recall. I 3 probably -- day -- sometimes in the 4 day, sometimes in the night. 5 Q. And Mr. Shacker (sic) went to 6 the police and filed a police complaint 7 against you for harassing him; isn't 8 that true? 9 A. I don't know that to be true. 10 Q. Do you know a woman named 11 Oxana Berkounova, Mr. O'Brien? 12 A. I don't know her personally. 13 I met her through the course of my 14 reporting on Emanuel Zeltser. 15 Q. Isn't it true that she wrote 16 a letter to The New York Times to 17 complain that you had harassed her and 18 punished her for rejecting your sexual 19 advances toward her when you repeatedly 20 demanded information from her about 21 what hotel room she was in? 22 MR. CERESNEY: Objection to 23 form. Go ahead. 24 A. During the course of my 25 reporting on a story about Mr. Zeltser</p>	<p style="text-align: right;">747</p> <p>1 - TIMOTHY L. O'BRIEN - 2 lying, right, when she said that you 3 made inappropriate sexual advances 4 toward her, correct? 5 A. She was lying. 6 Q. Just as you believe that 7 Michelle Lokey was lying when she 8 testified that you spent two and a half 9 hours flirting with her -- 10 MR. CERESNEY: Objection -- 11 Q. -- on April 21st, 2005; isn't 12 that correct? 13 MR. CERESNEY: Objection. 14 Form. 15 A. That is correct. 16 Q. Isn't it true that Anna Reid 17 was another person in connection with 18 the Russian bank money laundering story 19 who went to the police and filed a 20 complaint against you for harassing 21 her? 22 A. Specifically, Anna Reid -- 23 Q. Is that -- 24 A. I'm answering your question. 25 Q. Can you answer that yes or</p>
<p style="text-align: right;">746</p> <p>1 - TIMOTHY L. O'BRIEN - 2 in which we were examining whether or 3 not he had tried to smear the 4 reputation of an economist at the World 5 Bank, who was a colleague of 6 Ms. Berkounova's, and documents that we 7 were looking at had originated from 8 Ms. Berkounova's e-mails that were part 9 and parcel of the smear campaign of 10 this individual, I contacted 11 Ms. Berkounova in order to substantiate 12 that line of reporting. 13 During the course of my 14 reporting about her, she alleged that I 15 had made sexual advances towards her. 16 This was part and parcel of a series of 17 accusations Mr. Zeltser made during the 18 course of my reporting about him, which 19 generally fell under the categories of 20 harassing individuals I was trying to 21 interview, making sexual advantages -- 22 advances towards women in his 23 entourage, and the like. Similar to 24 claims in this case. 25 Q. And you believe that she was</p>	<p style="text-align: right;">748</p> <p>1 - TIMOTHY L. O'BRIEN - 2 no? 3 A. Specifically -- 4 MR. CERESNEY: Can you answer 5 it yes or no. 6 Q. Can you say, "Yes, Anna Reid 7 filed a --" 8 A. No. I cannot answer that 9 question yes or no. 10 Q. -- filed a police complaint 11 against you? 12 A. No. I can't answer that 13 question yes or no. 14 Q. Did she not write a letter to 15 The New York Times complaining that you 16 had harassed her? 17 A. In the course of my 18 reporting, Anna Reid, who is Emanuel 19 Zeltser's law partner and spouse, were 20 both who alleged to have laundered 21 money, about \$6 million through 22 Imkombank into a Caribbean bank. And 23 during the course of my reporting in 24 trying to reach Ms. Reid in connection 25 with that line of reporting, she</p>

<p style="text-align: right;">749</p> <p>1 -- TIMOTHY L. O'BRIEN - 2 claimed that I was harassing her. She 3 wrote -- 4 MR. RESSLER: I move to 5 strike. 6 A. She wrote a letter to The New 7 York Times pertaining to such. The 8 Times made -- editors of The Times made 9 a judgment that my attempts to contact 10 her were in keeping with my reporting 11 for the story and that I should 12 continue to do so. 13 Q. Do you believe that it's 14 appropriate for you to harass witnesses 15 if you believe they engaged in money 16 laundering or some other improper 17 conduct? 18 MR. CERESNEY: Objection. 19 Q. Do you believe that justifies 20 harassing behavior -- 21 MR. CERESNEY: Objection. 22 Q. -- on your part as a New York 23 Times reporter? 24 MR. CERESNEY: Objection. 25 Form.</p>	<p style="text-align: right;">751</p> <p>1 -- TIMOTHY L. O'BRIEN - 2 not to answer that question. 3 Q. Okay. Isn't it true that 4 Svetlana Moysavich is another person 5 who complained about your behavior 6 covering the Russian bank money 7 laundering scandal? 8 A. I don't even -- I don't 9 recollect that name. 10 Q. Didn't she state in a letter 11 to The New York Times, "if he," -- 12 meaning you, "gets off by calling 13 married women at night looking for men 14 other than their husbands, perhaps he 15 should not do that under the auspices 16 of The New York Times"? 17 A. I have no recollection that 18 she did; but if she did, my editors and 19 lawyers at The New York Times placed no 20 credibility on it in terms of it 21 affecting my course of my reporting for 22 that story. 23 Q. Isn't it true that Emily 24 Topol was another person who complained 25 to The New York Times about your</p>
<p style="text-align: right;">750</p> <p>1 -- TIMOTHY L. O'BRIEN - 2 A. I wouldn't describe a 3 desire -- I have no desire in any of my 4 reporting to be someone who harasses 5 people. I do desire in the course of 6 my reporting to try to be thorough and 7 aggressive and pursue the fact pattern. 8 And that I do believe that 9 that is part and parcel of my role as a 10 journalist. I try to maintain that 11 balance with respect for people's 12 privacy and their own sense of 13 themselves. 14 But it is one of my 15 professional responsibilities to be 16 aggressive and thorough in pursuit of 17 the fact pattern. And I believe that 18 that's served me well in my 19 journalistic career. 20 Q. What about being aggressive 21 in pursuit of romance or sex from 22 women who you meet in the course of 23 covering stories? 24 MR. CERESNEY: Objection. 25 Form. I'm going to instruct him</p>	<p style="text-align: right;">752</p> <p>1 -- TIMOTHY L. O'BRIEN - 2 misconduct in connection with your work 3 on the Russian bank money laundering 4 story? 5 MR. CERESNEY: Objection. 6 Form. You can answer. 7 A. My understanding is that she 8 was a paid employee of Emanuel Zeltser 9 who ran a bogus newswire on his website 10 called Mos News, I believe. 11 Q. Didn't you tell Emily Topol 12 that access to The Times' pages to 13 settle scores is a fringe benefit 14 available to New York Times reporters? 15 A. No. I never said that. 16 Q. Isn't it true, Mr. O'Brien, 17 that as a result of your conduct in 18 covering the Russian bank money 19 laundering stories, you were forced to 20 resign from The New York Times? 21 A. No, that's not true. 22 Q. Was there an internal 23 investigation at The New York Times 24 concerning your conduct in connection 25 with covering this story?</p>

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1 - TIMOTHY L. O'BRIEN -
2 MR. CERESNEY: Objection to
3 form. Characterization of internal
4 investigation. Go ahead.
5 A. No. In fact, there were
6 e-mail exchanges about how well
7 disciplined they felt I was during a
8 complicated reporting assignment, that
9 they felt that I maintained the
10 standards of the paper. And that the
11 story that resulted from that was a
12 model -- I believe, in the words of
13 Anthony Lewis in a note that he
14 conveyed to Joe Lelyveld who then --
15 In an e-mail from Anthony
16 Lewis who -- and to Joseph Lelyveld,
17 who was our executive editor at the
18 time, he described the story that
19 resulted from -- resulted from all of
20 the interactions you're citing as a
21 model, I believe, of both reportorial
22 integrity and the proper way to handle
23 a source who is disseminating lies in
24 the media.
25 Q. Do you have those e-mails?

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1 - TIMOTHY L. O'BRIEN -
2 A. I may. I'm not certain. But
3 I think Joe Lelyveld would recollect
4 them. Steve Engelberg would recollect
5 them, I believe, Stephen Engelberg.
6 Q. What was the time frame with
7 respect to the time when these people
8 were writing letters complaining about
9 you to The New York Times and the time
10 you left The Times to go work at a
11 dot-com company called "Whose Army Was
12 it"?
13 A. Uh-huh.
14 Q. What was the time frame?
15 A. A few months, I would
16 believe.
17 Q. You viewed -- withdrawn.
18 And you were at that dot-com
19 for a year?
20 A. Only several months, I
21 believe.
22 Q. How many months?
23 A. Jeez, let me think. I
24 believe I started in May of 2000 and
25 left in October of 2000.

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1 - TIMOTHY L. O'BRIEN -
2 Q. So, you left The New York
3 Times after working there how many
4 years?
5 A. For three years.
6 Q. And before that, how many
7 years did you work at the Wall Street
8 Journal?
9 A. For five years.
10 Q. So by the time you left The
11 Times in 2000, how long had you been a
12 journalist?
13 A. Eight years.
14 Q. You left an eight-year career
15 in journalism to go work for a dot-com
16 that you stayed at for about five
17 months?
18 A. I left --
19 Q. Is that correct?
20 A. I left The New York Times to
21 partake in what I saw at the time as
22 one of the most significant business
23 revolutions of my time at that point.
24 Q. Do you believe that you have
25 an uncontrollable temper, Mr. O'Brien?

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1 - TIMOTHY L. O'BRIEN -
2 A. No. I don't believe that.
3 Q. Have you ever been on
4 medication for anger management-related
5 issues?
6 A. No, I have not.
7 Q. Have there ever been
8 occasions when you have become angry
9 with sources or other people with whom
10 you've interacted in covering stories?
11 MR. CERESNEY: Objection.
12 Form. You can answer.
13 A. From time to time, sure. I
14 expect so.
15 Q. And some of those instances
16 have led to complaints, whether by
17 letter or by e-mail, to you or to The
18 Times, correct?
19 A. You know, I don't recollect
20 any.
21 Q. You don't recollect any
22 instances in which you received an
23 e-mail or other correspondence from
24 anyone with whom you had communicated
25 in connection with a story or a book in

1 - TIMOTHY L. O'BRIEN -
 2 which they complained about your
 3 temper?
 4 MR. CERESNEY: Objection.
 5 Form. Different question.
 6 A. No. Right now I don't
 7 recollect that. Other than in
 8 connection with this Zeltser issue that
 9 we just spoke about, no, I don't.
 10 MR. CERESNEY: Mark, we're
 11 going to give you, obviously, some
 12 extra time after 5:00, but we can't
 13 go too much after 5:00. It's after
 14 5:00 now, just for the record, in
 15 light of the conferring.
 16 (Whereupon, a brief
 17 discussion was held off record.)
 18 MR. RESSLER: Let me have the
 19 court reporter mark as the next,
 20 Exhibit 41, previously identify --
 21 it's not previously identified in
 22 discovery, 41.
 23 (Whereupon, O'Brien Exhibit 41 was
 24 marked for identification.)
 25 Q. Directing your attention to

1 - TIMOTHY L. O'BRIEN -
 2 the exhibit in front of you, this is a
 3 Times article that you wrote about
 4 Mr. Trump along with Eric Dash, another
 5 Times reporter, correct?
 6 A. Correct.
 7 Q. And this appeared in the
 8 newspaper on September 8th, 2004?
 9 A. That is correct.
 10 Q. And directing your attention
 11 to the paragraph that begins on Page 2,
 12 the third column, the last paragraph,
 13 "The largest portion of Mr. Trump's
 14 fortune."
 15 Do you see that?
 16 A. The last -- no. Where is it
 17 on the second page?
 18 Q. Third column?
 19 A. Yes.
 20 Q. Last paragraph?
 21 A. Yes, yes.
 22 Q. Okay. You or Mr. Dash -- who
 23 wrote this?
 24 Was it mostly you or
 25 Mr. Dash?

1 - TIMOTHY L. O'BRIEN -
 2 A. It was -- it was in
 3 conjunction with both of us. But are
 4 you referencing this one paragraph?
 5 Q. Yes.
 6 A. This would be entirely mine.
 7 Q. Okay. It states, "The
 8 largest portion of Mr. Trump's fortune,
 9 according to three people who have had
 10 direct knowledge of his holdings,
 11 apparently comes from his lucrative
 12 inheritance. These people estimated
 13 that Mr. Trump's wealth, presuming that
 14 it is not encumbered by heavy debt, may
 15 amount to about 200 million to
 16 \$300 million. That is an enviably
 17 large sum of money by most people's
 18 standards, but far short of the
 19 Billionaires' Club."
 20 Do you see that?
 21 A. I do.
 22 Q. You have sworn under oath in
 23 this case in a certification to the
 24 Court that the three sources -- or the
 25 three people you reference in this

1 - TIMOTHY L. O'BRIEN -
 2 newspaper article are the same as the
 3 three sources who you reference on
 4 Page 154 of your book; is that correct?
 5 A. That is correct.
 6 Q. Now, in the 2004 article, the
 7 exhibit in front of you, you state that
 8 the three people -- when you describe
 9 them, you state, "three people who have
 10 had direct knowledge of his holdings."
 11 Do you see that?
 12 A. I do.
 13 Q. And then in the book, on
 14 Page 154, you state, "So I asked around
 15 for guidance, three people with direct
 16 knowledge of Donald's finances, people
 17 who had worked closely with him for
 18 years."
 19 Could you tell the jury what
 20 the difference is between three people
 21 who have had direct knowledge of
 22 Trump's holdings, as you state in the
 23 article, with the phrase, "people who
 24 had worked closely with him for years"
 25 and "three people with direct knowledge

1 - TIMOTHY L. O'BRIEN -
 2 of Donald's finances."
 3 Do you see the difference in
 4 tense that I'm focusing on?
 5 A. I do.
 6 Q. Can you explain why there's a
 7 different tense that's used in the
 8 article as opposed to the book?
 9 A. I don't think it amounts to a
 10 substantive difference by my reading of
 11 the two.
 12 Q. Well, isn't it true that the
 13 phrase you use in the article, "people
 14 who have had direct knowledge of
 15 Trump's holdings," suggests knowledge
 16 that they had in the past; in other
 17 words, at some point prior to your
 18 article? People who have had
 19 knowledge.
 20 A. Should we -- okay. I'm happy
 21 to discuss this. I'm happy to discuss
 22 this.
 23 Please ask your question
 24 again.
 25 Q. When you wrote, "people who

1 - TIMOTHY L. O'BRIEN -
 2 have had direct knowledge," you would
 3 agree that that's different from
 4 saying, as you do in the book, "three
 5 people with direct knowledge," correct?
 6 A. It's a difference of tense,
 7 correct?
 8 A. No. I think the tense is
 9 modified in the second reference you're
 10 making by "had worked."
 11 Q. Right. But I'm talking now
 12 about knowledge.
 13 You say "three people with
 14 direct knowledge" in the book. Yet you
 15 say, "three people who have had direct
 16 knowledge" in the article, correct?
 17 A. I do.
 18 Q. Isn't it true that by using
 19 the tense "with direct knowledge" in
 20 the book, Mr. O'Brien, you were
 21 attempting to bolster these anonymous
 22 sources' credibility for the reader by
 23 making it seem that their knowledge
 24 about Trump's finances was not stale?
 25 MR. CERESNEY: Objection to

1 - TIMOTHY L. O'BRIEN -
 2 form. You can answer.
 3 A. My goal -- no, that's not
 4 correct. My goal in describing these
 5 sources was to try to give the reader
 6 as clear assessment as possible of the
 7 authority of these sources to comment
 8 on the issue at hand.
 9 Q. Well, tell the jurors, if you
 10 would, Mr. O'Brien, which is accurate.
 11 Is it "three people with
 12 direct knowledge of Trump's finances,"
 13 as stated in the book?
 14 Or is it "people who have had
 15 direct knowledge of Trump's holdings,"
 16 as stated in your 2004 article?
 17 Which is accurate?
 18 A. I think they both are
 19 accurate.
 20 Q. So you don't view any
 21 difference between -- any meaningful
 22 difference between your use of the term
 23 "three people with direct knowledge" in
 24 the book as opposed to "three people
 25 who have had direct knowledge" in the

1 - TIMOTHY L. O'BRIEN -
 2 newspaper article?
 3 A. What -- in the context in
 4 which it's written in the book is three
 5 people with direct knowledge so -- on
 6 who had worked closely, so I believe it
 7 to be substantively the same.
 8 Q. Notwithstanding that you say
 9 "three people with direct knowledge" in
 10 the book as opposed to "three people
 11 who have had direct knowledge" in the
 12 article?
 13 MR. CERESNEY: Objection.
 14 Asked and answered. You can
 15 answer.
 16 Q. Is that correct, Mr. O'Brien?
 17 A. Restate your question,
 18 please.
 19 Q. You don't view there to be a
 20 meaningful difference in the way you
 21 phrased it in the book, "three people
 22 with direct knowledge," as opposed to
 23 the way you phrased it in the article,
 24 "three people who have had direct
 25 knowledge"?

<p style="text-align: right;">765</p> <p>1 - TIMOTHY L. O'BRIEN - 2 A. In the context of the book 3 saying, "three people with direct 4 knowledge who had worked closely with 5 him," no, I don't see a substantive 6 difference. 7 Q. You think that a reader would 8 draw the same conclusion based on the 9 description you wrote in the article 10 and the description you wrote in the 11 book; is that correct? 12 MR. CERESNEY: Objection to 13 form. You can answer. 14 A. It's hard for me to get into 15 the mind of these hypothetical readers, 16 but the reason behind the disclosure 17 was to try to give a hypothetical 18 reader as clear a sense as possible of 19 the authority of the people being 20 cited. 21 Q. And you don't find anything 22 misleading about the way you described 23 the people's knowledge in the book as 24 opposed to the way you described the 25 people's knowledge in the article,</p>	<p style="text-align: right;">767</p> <p>1 - TIMOTHY L. O'BRIEN - 2 knowledge prong; not about working 3 closely, the knowledge prong. 4 Would you agree that "three 5 people with direct knowledge," - it's 6 really yes or no. And it's a yes or no 7 question. 8 Would you agree that "three 9 people with direct knowledge" suggests 10 that the people at the time you're 11 writing this presently have direct 12 knowledge? 13 "Three people with direct 14 knowledge," would you agree with that? 15 MR. CERESNEY: Objection. 16 Form. You've now asked it three 17 times. You can answer it again, if 18 you can. 19 A. I clearly don't agree with 20 the formulation of your question as you 21 continue to phrase it. I think it 22 overlooks the context of the sentence 23 here. 24 Q. Do you agree - I'm sorry. 25 Do you agree that the phrase</p>
<p style="text-align: right;">766</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Mr. O'Brien? 3 MR. CERESNEY: Objection. 4 Form. Asked and answered. You can 5 answer. 6 A. In fact, what I take from 7 this is a -- is an effort to be as 8 descriptive as possible, to serve the 9 reader in the best possible way. 10 Q. And you feel that you did 11 that by using a different tense in the 12 article as opposed to the book? 13 A. I don't believe I used 14 different tenses. 15 Q. You don't believe that "three 16 people with direct knowledge" is 17 different in terms of its tense than 18 "three people who have had direct 19 knowledge"? 20 A. I believe "three people with 21 direct knowledge who had worked closely - 22 with him" is substantively the same 23 according to -- as according to "three 24 people who have had direct knowledge." 25 Q. I'm talking just about the</p>	<p style="text-align: right;">768</p> <p>1 - TIMOTHY L. O'BRIEN - 2 "three people with direct knowledge" 3 connotes present tense knowledge, yes 4 or no? 5 A. I believe that the - 6 Q. Yes or no? Are you able to 7 answer - if you're not able to answer 8 yes or no, that's fine. 9 A. I believe the statement in 10 the book - the sentence in the book, 11 "three people with direct knowledge of 12 Donald's finances, people who had 13 worked closely with him for years," 14 connotes past tense. 15 Q. Do you - connotes past 16 tense? 17 A. "Had worked." 18 Q. But what about the knowledge? 19 It says "three people had direct 20 knowledge of Donald's finances." 21 Doesn't that suggest they had 22 knowledge of Trump's finances as of 23 2005 - October 2005? 24 A. "People who had worked." 25 Q. But do you believe that when</p>

<p style="text-align: right;">769</p> <p>1 - TIMOTHY L. O'BRIEN - 2 you wrote "three people with direct 3 knowledge" suggests that the people had 4 knowledge of Trump's finances in 2005? 5 MR. CERESNEY: Objection. 6 Form. Asked and answered. You can 7 answer the question if you can. 8 A. I believe I've answered your 9 question. 10 Q. So you can't answer the 11 question? 12 A. I believe -- 13 MS. WHITE: He has answered 14 the question. 15 A. -- I have on multiple times 16 now. 17 Q. Well, let's look at how you 18 told our judge and the judges on the 19 Court of Appeals what you stated 20 concerning the knowledge on the part of 21 the sources. 22 MR. RESSLER: Let's have the 23 brief submitted to our court -- the 24 Superior Court of New Jersey, 25 marked as Exhibit 42. This doesn't</p>	<p style="text-align: right;">771</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. Now, in the left side of the 3 chart which describes -- withdrawn. 4 On the left side of the 5 chart, which describes how you 6 described the sources in the article, 7 it reads, "According to three people 8 who have direct knowledge of Trump's 9 holdings, Mr. Trump's wealth, presuming 10 that it is not encumbered by heavy 11 debt, may amount about to 200 million 12 to 300 million. That is an enviably 13 large sum of money by most people's 14 standards, but far short of the 15 Billionaire's Club." 16 Do you see that? 17 A. I do. 18 Q. Now, isn't it true that's an 19 inaccurate description of -- it's an 20 inaccurate quote of what actually 21 appeared in the September '04 Times 22 article? Sir? 23 A. Yes. This appears to be an 24 incorrect transcription of what was in 25 The Times article.</p>
<p style="text-align: right;">770</p> <p>1 - TIMOTHY L. O'BRIEN - 2 have a Bates number because it's a 3 brief that you filed as part of 4 this litigation in connection with 5 the news person's privilege issue. 6 (Whereupon, O'Brien Exhibit 42 was 7 marked for identification.) 8 (Whereupon, a brief 9 discussion was held off record.) 10 Q. Let me direct your 11 attention -- by the way, this brief was 12 filed, as the cover page makes clear, 13 with the Superior Court of New Jersey. 14 Let me direct your attention 15 to Page 8. There's a chart on Page 8. 16 Do you see that? 17 A. I do. 18 Q. And it compares the 19 description of the three anonymous 20 sources that appeared in The New York 21 Times' September 8th, 2004, article 22 with the description of the sources 23 that appeared in your book. 24 Do you see that? 25 A. I do.</p>	<p style="text-align: right;">772</p> <p>1 - TIMOTHY L. O'BRIEN - 2 Q. And it's incorrect because in 3 the legal document filed with the 4 Court, you stated, "according to three 5 people who have direct knowledge of 6 Trump's holdings," but in the article 7 that this section of the legal document 8 purports to quote it actually says, 9 "three people who have had direct 10 knowledge"; is that correct? 11 MR. CERESNEY: Objection. 12 You said, "You stated." 13 This is a brief that was 14 filed by his lawyers. You haven't 15 asked him whether he either filed 16 this document or was aware of this 17 at the time. 18 MR. RESSLER: It's completely 19 irrelevant. A party is attributed 20 with the contents of legal 21 briefs -- legal filings. My 22 question stands. 23 Q. Is that why the -- withdrawn. 24 Can you please answer my 25 question?</p>

1 - TIMOTHY L. O'BRIEN -
 2 A. I'm not sure what your
 3 question is.
 4 Q. Why is the quote that appears
 5 in the legal brief wrong?
 6 A. I can't answer that question.
 7 Q. Well, you just did. You just
 8 said it appears to be misquoted.
 9 A. No. That's a different
 10 question.
 11 Q. In what way does it appear to
 12 be misquoted?
 13 A. I didn't describe it that
 14 way. I said the transcription, from
 15 what was in the original article, is
 16 incorrect.
 17 Q. And it's incorrect because
 18 the legal brief transcription says,
 19 "people who have direct knowledge," but
 20 the description in the actual article
 21 said, "people who have had direct
 22 knowledge"; is that correct?
 23 A. That is correct.
 24 Q. Now, you're aware, are you
 25 not, that a brief was filed on this

1 - TIMOTHY L. O'BRIEN -
 2 news person's privilege issue with the
 3 New Jersey Appellate Court, correct?
 4 A. That is correct.
 5 Q. You received a ruling from
 6 the trial judge and you took an appeal
 7 to the Appellate Division; is that
 8 correct?
 9 A. My attorneys did.
 10 Q. Well, did they do it without
 11 your authorization, Mr. O'Brien?
 12 A. Of course not. But they were
 13 the ones responsible for moving it
 14 along in the courts. I don't have the
 15 authority to do so.
 16 Q. But you knew that they were
 17 doing it, right?
 18 A. Yes.
 19 Q. Right. So they filed an
 20 appeal.
 21 MR. RESSLER: And I'd like
 22 the court reporter to mark this
 23 document as Exhibit 43, which is
 24 the Memorandum of Law that you
 25 filed with the Superior Court of

1 - TIMOTHY L. O'BRIEN -
 2 New Jersey, Appellate Division,
 3 concerning the news person's
 4 privilege.
 5 (Whereupon, O'Brien Exhibit 43 was
 6 marked for identification.)
 7 Q. Let me direct your attention
 8 to Page 7.
 9 Isn't it true, Mr. O'Brien,
 10 that the quote from your newspaper
 11 article as it appears in this Appellate
 12 Division brief is incorrect because it,
 13 too, states, "according to three people
 14 who have direct knowledge of Trump's
 15 holdings," when, in fact, the article
 16 that you actually wrote in September of
 17 2004 said, "three people who have had
 18 direct knowledge," correct?
 19 A. Correct.
 20 Q. Thank you. I'm finished with
 21 that document.
 22 MR. CERESNEY: It's 5:20. I
 23 believe we're 20 minutes over. I
 24 gave you additional time,
 25 obviously, because of some of the

1 - TIMOTHY L. O'BRIEN -
 2 conferring.
 3 MR. RESSLER: Well, I mean, I
 4 think, Andrew, that I will request
 5 from you that we convene another
 6 session with this witness. I've
 7 told you I was going to do that.
 8 We'll communicate about that --
 9 MR. CERESNEY: Okay.
 10 MR. RESSLER: -- in the next
 11 couple of days.
 12 MR. CERESNEY: We have a busy
 13 deposition schedule, obviously, in
 14 the next few months, so...
 15 Q. We do. But I'm pretty sure
 16 we could squeeze it in. Certainly we
 17 could try to squeeze it in.
 18 MR. CERESNEY: We'll have to
 19 see. I'm not sure about that.
 20 We'll see.
 21 MR. RESSLER: And the basis
 22 for that would be what I completely
 23 appreciate were necessary
 24 conferences that you had with your
 25 client to be careful of the news

777

1 - TIMOTHY L. O'BRIEN -
 2 person's privilege issue with
 3 respect to your objections on that
 4 ground.
 5 MR. CERESNEY: Yeah. And I
 6 would just add that you spent, I
 7 believe, almost two hours today on
 8 one e-mail, as well as lengthy
 9 periods of time on particular
 10 issues in going over same issues
 11 again.
 12 I'm not blaming you. You did
 13 what you thought you needed to do.
 14 We did what we thought we needed to
 15 do in terms of conferring. So
 16 there was a fair amount -- a fair
 17 amount of issues that led this to
 18 take longer than you had
 19 anticipated, I would assume.
 20 We will take your request
 21 under advisement. I'm not saying
 22 that we won't agree to it, but we
 23 need to consider that. And also,
 24 obviously, consider the schedule
 25 that we have over the next few

778

1 - TIMOTHY L. O'BRIEN -
 2 months. Okay?
 3 MR. RESSLER: Thank you.
 4 MR. CERESNEY: Okay. Good.
 5 THE WITNESS: All right.
 6 Thank you.
 7 THE VIDEOGRAPHER: The time
 8 is 5:24 p.m. We're going off the
 9 record. This ends the deposition.
 10 (Whereupon, the deposition
 11 concluded at 5:24 p.m.)
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 24
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1
 2 CERTIFICATE
 3 STATE OF NEW YORK)
 4) ss.
 5 COUNTY OF NEW YORK)
 6
 7 I, HOPE LYNN MENAKER, a Notary
 8 Public Within and for the State of New
 9 York, do hereby certify:
 10 That TIMOTHY L. O'BRIEN, the
 11 witness whose deposition is
 12 hereinbefore set forth, was duly sworn
 13 by me and that such deposition is a
 14 true record of the testimony given by
 15 the witness.
 16 I further certify that I am not
 17 related to any of the parties to this
 18 action by blood or marriage, and that I
 19 am in no way interested in the outcome
 20 of this matter.
 21 IN WITNESS WHEREOF, I have
 22 hereunto set my hand this 22nd day of
 23 October, 2007.
 24
 25 HOPE LYNN MENAKER

780

1
 2 ACKNOWLEDGEMENT
 3
 4 STATE OF NEW YORK)
 5) ss.
 6 COUNTY OF NEW YORK)
 7
 8 I, TIMOTHY L. O'BRIEN, hereby certify
 9 that I have read the transcript of my
 10 testimony taken under oath in my
 11 deposition of October 16, 2007; that
 12 the transcript is a true, complete and
 13 correct record of my testimony, and
 14 that the answers on the record as given
 15 by me are true and correct.
 16
 17
 18 _____
 19 TIMOTHY L. O'BRIEN
 20 Subscribed and sworn to before me
 21 this _____ day of _____, 2007.
 22
 23
 24 _____
 25 Notary Public, State of New York

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March 28, 2004, Sunday Late Edition - Final

Section 3 Page 1 Column 5 Desk: Money and Business/Financial Desk

Length: 2622 words

Is Trump Headed for a Fall?

By TIMOTHY L. O'BRIEN and ERIC DASH

IT was another stupendous week for that pop culture sensation, Donald J. Trump. On Thursday, his hit reality television show, "The Apprentice," continued to rack up huge ratings as it neared its nail-biting conclusion. Two days earlier, immediately after its release, his slight new book, "How to Get Rich," popped up to 10th place on the best-seller list of Amazon.com, offering students of wealth invaluable nuggets like Business Rule No. 1: "If you don't tell people about your success, they probably won't know about it."

Mr. Trump, of course, has never been shy about discussing his own success. In an interview, he boasted that "in prime-time television, I'm the highest-paid person."

More than Oprah? "Oprah's not prime time," he shot back.

More than Larry King? "Yeah, and Larry King is cable."

More than the "Friends" cast? Well, collectively, no, he acknowledged. But individually, yes.

Mr. Trump's young television apprentices spent last Thursday evening in what he described then as "the No. 1 hotel" in Atlantic City, the Trump Taj Mahal, vying to lure gamblers into the casino.

In reality, the Taj Mahal needs all the help it can get — as does the rest of Mr. Trump's increasingly troubled gambling empire. His casino holdings are mired in

nearly \$2 billion of bond debt that they are struggling to repay. They are aging and overshadowed by flashier competitors, and their revenue and profits have been slumping over the last year.

While the winner of "The Apprentice" will get the "dream job of a lifetime" -- a year at Mr. Trump's feet, absorbing even more of his business expertise -- the master himself now faces an unwieldy group of investors who are muttering a word that has repeatedly hounded him during his career as a real estate developer and casino mogul: bankruptcy.

Trump Hotels recently began talks with major creditors to address its suffocating debt burden. Asked about the possibility that bondholders may force Trump Hotels and Casino Resorts into a prepackaged bankruptcy proceeding, which some of them privately say they are considering if other efforts fail to corral the debt, Mr. Trump is quick to distance himself from any personal financial liability.

"This has nothing to do with me," he said, even though he is chairman and chief executive of the company that bears his name and uses his initials, DJT, as its ticker symbol. "This has to do with a company in which I'm a major shareholder."

Trump Hotels has a market capitalization of about \$102 million, so Mr. Trump's 49 percent equity stake is worth about \$50 million. But should that leaning tower of bond debt tip the entire enterprise into bankruptcy court, Mr. Trump's stock could be worth much less. Nothing, perhaps.

To be sure, Mr. Trump's representatives could reach a deal with bondholders and avert a bankruptcy filing. Last month, Trump Hotels announced that Credit Suisse First Boston was willing to inject \$400 million in fresh funds into the company in exchange for a controlling stake. Although bondholders would have to swallow a significant discount on their investment, some say they take comfort in the fact that a bank, and not Mr. Trump, would be overseeing the company's coffers.

Should bondholders accept that deal, it would eliminate a hefty portion of the debt, leave Mr. Trump with only a 20 percent stake in the new company -- which would be called Trump International even though it currently has no overseas operations -- and flick Mr. Trump from the chief executive's perch. He would retain the title of chairman and would continue promoting his namesake operation.

"There is more of a gun to his head" now than when Mr. Trump dealt with creditors in past years, said one bondholder.

Although Mr. Trump has long had contentious relations with his creditors, sometimes threatening to withhold interest payments, both sides say tempers have cooled in recent weeks. Mr. Trump and New Jersey gambling regulators said they were confident that the company would be able to make two interest payments of about \$73.1 million each that come due in May and November, though Trump Hotels has indicated in public filings that it will need to take advantage of a 30-day grace period to make the May payment on time.

Even so, it will continue to be a tight squeeze. The company, which has published only unaudited financial statements for last year, carries \$1.8 billion worth of debt on its balance sheet. Its bond payments are so burdensome that its annual interest expense of \$228.5 million last year wiped out its operating income of \$139.4 million, contributing to a \$87.3 million loss for the year.

Losses are not new to Mr. Trump's company. It has not posted an annual profit since it went public in 1995. It also ran afoul of the Securities and Exchange Commission in 2002, when the regulatory agency slapped Trump Hotels with a cease-and-desist order for producing "misleading" financial statements in an earlier quarter. And Trump Hotels' cash flow is so anemic that Mr. Trump, who has routinely extracted millions of dollars in management fees and other perks like a corporate jet from the struggling enterprise, did not take home a bonus last year.

Bond rating agencies downgraded Trump Hotels' debt last month. If a debt restructuring does not happen soon, analysts say, the company's financial picture may become bleaker. "You have to understand The Donald's psyche. He is really giving up total control here for a serious infusion of cash," said Marvin Roffman, a casino analyst who has had a long history of heated disputes with Mr. Trump. "The company has real problems. For him to let go is a sign that he is throwing in the towel."

Of course, Mr. Trump is known to wage war when he negotiates, and he said last week that he was prepared to counterattack if bondholders became combative about a restructuring. "We're talking about a fight that takes years," Mr. Trump warned, noting that such a financial battle "would ruin the business."

"I don't think anybody would want that to happen," he added.

PEOPLE close to the debt negotiations said Mr. Trump had not been leading the talks. That task, they said, has fallen to Scott C. Butera, Trump Hotels' executive vice president. In an interview last week, Mr. Butera said the company had no plans to file for bankruptcy protection, but he acknowledged the hazards of navigating a clear course in negotiations that involve about 20 important groups of bondholders, among them Oak Tree Capital, Putnam Investments, Trust Company of the West and Loews.

"Talking to bondholders is like herding cats, but I think that they're finally speaking with one voice," Mr. Butera said. "I think we'll always be able to make our debt payments but I'm concerned about more than that. You don't want to be sitting around clipping coupons and watching the property deteriorate."

Some bondholders, none of whom would speak for attribution, describe the Trump Hotels situation as more dire. They say the company is desperate for cash and needs to get its house in order as quickly as possible.

"It's not really a question of 'Why now?'" one bondholder said. "It's 'How much longer can you afford to wait?' Every day that passes, Trump falls further behind the competition."

Mr. Trump said his casino holdings amounted to only about 3 percent of his net worth, which, using his estimate, would thus be about \$1.6 billion. But Mr. Trump's overall holdings are hard to assess and possibly are worth much less than that. Since the mid-1980's, the twin pillars of his wealth have been real estate, largely concentrated in New York, and casinos, largely concentrated in Atlantic City.

His real estate holdings, which are not threatened by any casino bankruptcy, are privately held. Most press accounts of their value have relied on Mr. Trump's own estimates. Asked to list properties in New York in which he has a 100 percent stake, Mr. Trump mentioned 40 Wall Street and "many things," but declined to be more specific. He has developed new high-rise buildings elsewhere in the city, most notably in the West Side yards. But many of those deals involved other people -- particularly a well-heeled group of Chinese investors -- who back Mr. Trump in exchange for his management of the property, complex profit-sharing arrangements and his name on the door.

Still, last week, Mr. Trump called himself the "biggest real estate developer in New York," a description some competitors have disputed.

"He's a dear friend of mine, but it wouldn't be accurate for him to say that," said Richard S. LeFrak, scion of one of New York's most active real estate families. Mr. LeFrak said his family owns the most residential units in New York. He said that if Manhattan was viewed in isolation from New York's other four boroughs and the yardstick was the value of property sold, then Mr. Trump might be "up there" in the top ranks of developers, though he was still hesitant to label him the biggest.

Mr. Trump's real estate and casino holdings came under their first wrenching restructuring several years ago, when they were buried under \$3.2 billion of debt, about \$1 billion of which the developer had personally guaranteed. In the end, Mr. Trump narrowly averted personal bankruptcy proceedings by playing hardball with bank lenders too deeply enmeshed with him to cut him loose. But he was forced to sell several prized properties, like the Plaza Hotel and half of the land beneath the West Side yards.

"It's not bad to sell things. I owned them, and I sold them," Mr. Trump said. "That's why the banks like me. They love my reputation."

MR. TRUMP's three Atlantic City casinos -- the Taj Mahal, Trump Plaza and Trump Marina -- were ensnared in that earlier debt mess. He avoided losing them by taking them public and cutting his ownership stake to 25 percent from 100 percent. (He has since nearly doubled his stake.) Now he faces another diminution of his involvement in a casino business he built from scratch starting in the mid-1980's.

Atlantic City's gambling fortunes rebounded when Mr. Trump began his building binge there, and that city's modern face bore his stamp until the opening last summer of the Borgata Hotel Casino and Spa, a high-end enterprise.

The Borgata, a \$1.1 billion joint venture of Boyd Gaming and MGM Mirage, has already lured customers away from the Trump casinos and other rivals by offering more popular nightclubs and headline entertainment. The Borgata's "win" -- a measure of the money gamblers lose in a casino -- was \$266.8 million in just six months of operation last year, more than the \$259.6 million win at the Trump Marina for the entire year. The Taj Mahal's 2003 win was \$517 million, down about 4 percent from 2002; and Trump Plaza's was \$318.2 million, a 7 percent drop from 2002.

The bitter weather of last winter also took a toll on the top line of Trump Hotels, but analysts say its ballooning interest payments are still the real problem. They also say that nearby properties have siphoned business from Trump Hotels by remodeling and expanding their facilities -- something that Mr. Trump's casinos are unable to do. While Trump Hotels has recently bolstered its management team, its options are limited. The company has been forced to cut costs and plow excess cash into hefty interest payments rather than the casinos.

Barbara Cappaert, an analyst at KDP Investment Advisors, said Trump Hotels had barely enough cash to support day-to-day maintenance and refurbishment and could not afford expansions like the new hotel tower the Taj Mahal needs to accommodate more guests.

Mr. Trump, meanwhile, stands to lose even more market share if neighboring states approve proposals on gambling. Pennsylvania officials are considering allowing slot machines at local racetracks, and New York legislators are reviewing several proposals.

MR. TRUMP'S negotiations with his bondholders are expected to intensify this week if investors receive a formal restructuring proposal. Bondholders seem to be "more comfortable with the idea of Mr. Trump there for his brand name" and Credit Suisse "for a corporate governance check," said a Banc of America Securities analyst, Andrew M. Susser. Some bondholders and analysts go as far as suggesting that reducing Mr. Trump's role could lower the cost of borrowing for the company.

Even so, bondholders say that reaching an agreement could be difficult, because the deal is contingent on two sets of creditors accepting a discount on their bonds. The largest and most important group comprises major institutional investors who hold notes that have a face value of \$1.3 billion and are backed by the Trump Plaza and Trump Taj Mahal properties. Those notes carry an 11.25 percent interest rate and mature in just two years. The other bonds have a face

value of \$490 million, come due in 2010 and carry interest rates of 12.625 percent to 18.625 percent.

Many bondholders and Wall Street analysts say that a bankruptcy filing is inevitable if the deal is to succeed. "I think it is very likely that he will end up with a prepackaged or other bankruptcy," Mr. Susser said. "It's hard to make the numbers work even if the bondholders take less than what they're owed."

After peaking at \$34 in 1996, Trump Hotels stock plunged to a low of \$1.51 late last year. This year, largely on the back of the popularity of "The Apprentice," the stock has climbed -- even though a bankruptcy filing could make the company's equity worthless. Since Mr. Trump started promoting the show, the stock price has risen 62 percent, to \$3.40. "If anything, the brand has gotten more valuable because of the show," Mr. Trump said. "I think the name has helped the casinos in terms of the drawing of the crowds."

While he said that "Atlantic City has been a great place for me," he showed few signs of remorse over his diminishing role there. And he said he was optimistic that "How to Get Rich" might offer some valuable lessons for his bondholders.

"A bondholder could read 'How to Get Rich' and say: 'You know what? This is a good time to make a deal,'" he said.

Bondholders seem to be more pragmatic about what they can learn from Mr. Trump, including what value he brings to the casino enterprise to which they remain tethered. "There is some value to having him there as the showman," one bondholder said. "I am not sure if there's any benefit of having him C.E.O."

Images: Photo: Donald Trump presided over the opening of the Taj Mahal in Atlantic City in April 1990. His once-lucrative casinos now are battling debt. (Photo by Associated Press)(pg. 8)

Drawing (Drawing by Daniel Adel)(pg. 1)

Chart: "Trump's Struggling Casinos"

Trump Hotels and Casino Resorts has many problems. It is \$1.8 billion in debt. Interest on its bonds exceeds its operating income, contributing to net losses at the company. And its casino's share of the "win" -- how much gamblers lose at casinos -- has been declining in Atlantic City. These problems have depressed the company's stock price.

Graph tracks weekly stock price of Trump Hotels and Casino Resorts since 1998.

Graph tracks operating income from 1998 to 2003.

Graph tracks net interest expense from 1998 to 2003.

Graph tracks net loss from 1998 to 2003.

2003 figures are unaudited

SHARE OF ATLANTIC CITY'S "WIN"

Graph tracks share of atlantic city's "win" for following casinos from 1999 to 2003:

Sands

Resorts Casino

Borgata*

Tropicana

Harrah's -- Harrah's, Showboat

Caesar's -- Bally's, Caesar's, Hilton

Trump -- Taj Mahal, Plaza, Marina

*Opened in July 2003, partial-year data

(Sources by Bloomberg Financial Markets; company reports; New Jersey Casino Control Commission)(pg. 8)

May 1, 2004, Saturday Late Edition - Final

Section C Page 2 Column 1 Desk: Business/Financial Desk Length: 800 words

Trump Hotels Reports Loss of \$49 Million for First Quarter

By TIMOTHY L. O'BRIEN and ERIC DASH

Trump Hotels and Casino Resorts, the centerpiece of Donald J. Trump's struggling casino empire, reported a quarterly loss of nearly \$49 million yesterday, further undermining the company's tenuous financial position and complicating its ability to meet hefty debt payments due at the end of this month and in the fall.

Trump Hotels has about \$1.8 billion in debt that has drained the company of the cash it needs to maintain its properties and compete effectively in the Atlantic City gambling market. Over the last few months, the company and its bondholders have been considering options to deal with the debt burden, including a prepackaged bankruptcy or a recapitalization that would cede control of the company to a major investment bank.

Either option would result in a sharply decreased role at Trump Hotels for Mr. Trump, the chief executive, who has been accused by analysts and bondholders of ineffective management and slipshod financial practices.

was negotiating with several banks for a \$500 million line of credit that would be used to finance an overhaul of the casinos and add new hotel rooms.

The bank loans would be secured by a first lien on all of the company's assets, meaning that if Trump Hotels collapses in the future, the banks, and not the bondholders, would be first in line to recover their losses.

But bondholders, who have had a seesaw relationship with Mr. Trump over the years, are apparently willing to roll the dice in the current round of negotiations with him, betting that their equity stake will remain sound.

One person involved in the recent talks between Mr. Trump and his investors described them as a "lovefest."

Trump Hotels has not been profitable for the last nine years, and its shares, which once traded as high as \$34 on the New York Stock Exchange, now sell over the counter for 52 cents.

September 24, 2004, Friday Late Edition - Final

Section C Page 1 Column 3 Desk: Business/Financial Desk Length:
1009 words

Now, Reality for Trump Looks More Like 'Survivor'

By TIMOTHY L. O'BRIEN and ERIC DASH

The collapse of talks to secure financing for the struggling casinos of Donald J. Trump left him -- the largest shareholder -- scrambling to find alternate solutions,

casino analysts said yesterday, and facing the possibility of the company's filing for bankruptcy protection.

When Mr. Trump and his partner in that potential reorganization, Credit Suisse First Boston, announced late Wednesday night that their talks had collapsed, the future of Trump Hotels and Casino Resorts Inc. was again thrown into doubt.

"I think this could get ugly because we're about to see a very high-level game of chicken," said Dennis J. Drebsky, a New York bankruptcy lawyer who has been involved in the restructuring of other Atlantic City casinos. "Your guess is as good as mine as to what happens next."

To help Trump Hotels dig out from beneath \$1.8 billion in debt that has hurt the company's operations, Credit Suisse was planning to inject \$345 million into the company, with Mr. Trump on board to invest \$55 million.

All of that hinged on getting bondholders in Trump Hotels to accept a discount on their debt holdings, something no one involved in the talks was able to do, according to two people briefed on the negotiations.

Without unified support from the bondholders, the deal fell apart. Analysts said that Trump Hotels now has to look for new investors, or restructure its debt and its relationship with bondholders without the help of a third party, or sell itself to a rival.

Indeed, during the last week, a possible sale of Mr. Trump's flagship casino, the

Trump Taj Mahal Hotel Casino and Resort in Atlantic City, was considered but never pursued.

Mr. Trump, who is the chief executive and owns about 56 percent of the company, confirmed yesterday in an interview that talks about a possible sale of the Taj Mahal had taken place.

"Some people were looking at it but it was of no interest to us," he said.

Mr. Trump said that he expected a quick resolution of the financing problem for Trump Hotels.

"I'm very energized about the future of the company," he said. "I believe that our lenders are very excited about it, and I look forward to doing something in the not too distant future. I may be talking to you about it next week."

A Credit Suisse spokeswoman said yesterday that the firm was "disappointed we will not be partnering with Trump Hotels and Casino Resorts as we had planned."

Although Mr. Trump said that he would consider taking his company private, a move that would invite close scrutiny from securities regulators, some analysts said that was not a realistic option.

Jane Padreira, an analyst at Lehman Brothers, said the possibility of taking the company private was "Donaldspeak."

She said one option for Mr. Trump was to put part of his casino company, the part that included the Taj Mahal and had a \$73.1 million debt payment due in November, into a bankruptcy proceeding.

Ms. Padeira said: "He can save face now, saying, 'It wasn't my fault; I had someone to buy the company, the bondholders were unreasonable and wouldn't allow it to happen.'"

Restructuring talks began in earnest earlier this year and gained momentum after Trump Hotels announced in August that it would file for bankruptcy protection as part of a reorganization with Credit Suisse and seek concessions from its bondholders. Those involved in the talks said that the bondholders were largely, but not entirely, unified, a situation that ultimately helped make restructuring negotiations untenable.

Mr. Trump did not lead the talks with Credit Suisse for Trump Hotels. That task fell to Scott Butera, executive vice president of Trump Hotels, who, along with Credit Suisse bankers, spent most of the time negotiating with the casino company's bondholders.

"It's always a tough thing to pull together, all these constituencies," said a Trump Hotels' bondholder with direct knowledge of the negotiations. "We still have our properties. It could be back to Square 1 or it could be that they will approach us again."

The overall stock valuation of Trump Hotels is \$14 million, with slightly more than

half of the company owned by Mr. Trump. Given the company's financial prospects and its unwieldy structure, some analysts say outsiders may be hesitant to become involved.

"Trump Hotels is a very risky proposition because they're midlevel casinos in a market with far more upscale casinos that have more money and better management," Mr. Drebsky, the bankruptcy lawyer, said.

"Trump's casinos haven't made any money since 1995 during a time when the casino business was very good. There's got to be a reason for that and it's not going to go away. The management hasn't been particularly sparkling."

Whatever the outcome of Mr. Trump's current travails, some people who follow the industry say the next few weeks offer the prospect of first-rate theatrics.

"We should have 'The Bondholder Restructuring Show' -- forget 'The Apprentice,'" said Barbara Cappaert, a financial analyst with KDP Investment Advisors.

"We should have the restructuring negotiations live on television."

September 23, 2004, Thursday Late Edition - Final
Section C Page 8 Column 5 Desk: Business/Financial Desk Length: 655
words

Credit Suisse and Trump Hotels Break Off Investment Talks

September 8, 2004, Wednesday Late Edition - Final
Section C Page 1 Column 2 Desk: Business/Financial Desk Length:
2090 words

Correction Appended

The Midas Touch, With Spin on It

By TIMOTHY L. O'BRIEN and ERIC DASH

When Donald J. Trump kicks off the second season of his hit reality television show "The Apprentice" this Thursday evening, reality may be in short supply.

In a business career long protected by the safety cushion of a multimillion-dollar inheritance from his father, Mr. Trump has completed some well-publicized successful projects, like Trump Tower at 5th Avenue and 56th Street in Manhattan. But he has also had repeated failures that pushed him to the edge of personal and corporate bankruptcy.

Within the next month or so, the Trump casinos are expected to file for bankruptcy protection. And Mr. Trump, a self-proclaimed billionaire "many times over," must pay \$55 million to maintain a minority stake in a gambling franchise he once owned outright.

But none of this concerns Bill Rancic, last season's victorious apprentice and now an employee in Mr. Trump's real estate operation.

"I'm sure it will all work out with Mr. Trump," Mr. Rancic said in a telephone interview. "It always does."

Indeed.

For more than two decades, Mr. Trump has weathered personal and professional vicissitudes by combining an acute marketing sensibility with unvarnished chutzpah. As the P.T. Barnum of the business world, Mr. Trump is a showman who has emerged as television's most popular guru for aspiring entrepreneurs and has managed to burnish a gilded reputation.

"He's got a very fertile and creative imagination about how to spin issues, and he's brilliant at turning lemons into lemonade," said Alan Marcus, a business and political consultant who oversaw Mr. Trump's public relations from 1994 to 2000. "If I ever had a weak company that I wanted to make look strong, I'd hire Donald."

However mixed his record as an entrepreneur, Mr. Trump has retained center stage, Trump-watchers say, by deftly massaging the news media, distracting attention from his business setbacks and doing just about anything to keep himself in the spotlight.

"He's like a kid, and he's got that brash, narcissistic thing that works for him," said Liz Smith, doyenne of Manhattan's gossip columnists and a longtime chronicler of Mr. Trump's ups and downs. "He has enormous appeal to the masses because of that."

For his part, Mr. Trump explains his marketing prowess as something that comes naturally.

"If you asked Babe Ruth how he hit home runs, he was unable to tell you," Mr. Trump said in an interview. "I do things by instinct."

Consider how Mr. Trump has handled his most recent financial problems.

In February, with his casinos hemorrhaging cash and teetering on the edge of bankruptcy, Mr. Trump issued a news release announcing that brighter days lay ahead. He trumpeted a possible investment bank bailout of Trump Hotels and Casino Resorts as a "recapitalization plan" and pointed out that bankers, despite planning to force him aside as chief executive, retained global aspirations for the company. In July, as Trump Hotels reported ever-worsening financial results, Mr. Trump issued another news release saying that he planned to build a \$300 million, 64-story hotel and condominium, the Trump International Hotel, in Las Vegas. Only a few newspapers analyzed the mounting financial problems of Mr. Trump's casinos the next day; many more ran upbeat articles about the proposed Las Vegas skyscraper.

Mr. Trump said he was not consciously aware of issuing the news about his Las Vegas project in tandem with a poor corporate earnings announcement.

"I think I'm lots less aware of things like that," he said. "But people found that Las Vegas story great, that's true."

When Trump Hotels disclosed in early August that it planned to file for Chapter 11 bankruptcy protection, effectively proclaiming that the company's shareholders were about to see their equity stakes evaporate, Mr. Trump announced another innovative product: a signature line of retro, 1980's-style power suits selling for \$575 to \$650.

Jeffrey Brody, president of Marcraft Apparel, the company manufacturing Mr. Trump's suits, said the prospect of corporate bankruptcy did not undermine the glow of the Trump name. "With Donald Trump, you get one day of bad press and then 20 good days," he said. "People can identify with someone who has been through ups and downs."

Mr. Trump's financial woes are not new. A decade ago, he was forced to sell off or lose control of prized assets in New York like the Plaza Hotel and the West Side rail yards because he had saddled his real estate holdings with more debt than they could bear. Although he stated he had never personally guaranteed any of that debt, it later turned out that he had -- thereby exposing himself to the prospect of personal bankruptcy.

Mr. Trump narrowly avoided that fate in the mid-1990's by tapping into his father's fortune and by receiving a financial lifeline from banks that needed his participation to bail out his sagging real estate empire. But he emerged with a greatly diminished set of properties.

Even so, he penned a popular 1997 memoir, "Trump: The Art of the Comeback," that portrayed his meltdown as a resurrection.

When pressed to offer some insight into the alchemy of remaining at center stage, Mr. Trump attributes his longevity to two things: "No.1, you have to love what you're doing, and I love what I'm doing. And No.2, you can never, ever give up."

Mr. Trump's showcasing of his wealth is at the heart of his appeal. He has said that he is worth anywhere from \$2 billion to \$5 billion, and he is routinely described on television and in news accounts as a billionaire. Yet there is very little evidence to support that notion.

Mr. Trump's stake in his casino holdings was worth \$34.5 million before his company said it intended to file for bankruptcy protection. Now the value of that stake is difficult to determine.

Another leg of Mr. Trump's apparent wealth, real estate, is impossible to assess accurately because it is privately held and Mr. Trump has never offered a complete public accounting of its value.

The largest portion of Mr. Trump's fortune, according to three people who have had direct knowledge of his holdings, apparently comes from his lucrative inheritance. These people estimated that Mr. Trump's wealth, presuming that it is not encumbered by heavy debt, may amount to about \$200 million to \$300 million. That is an enviably large sum of money by most people's standards but far short of the billionaire's club.

Mr. Trump said that because his assets were privately held he did not have to offer proof of their value.

"What my father left me is relatively small compared to what I've done," he said. "It's tiny compared to what I've done. I'm a billionaire many times over."

Mr. Trump has also made an art of calling all of his real estate holdings the biggest and the best, though his financial travails have left him in control of very few of them. He said questions about the worth of his real estate empire came from critics who were envious of what he had.

"They're all jealous people," he said. "They don't have the No.1 show on television."

But for every critic, Mr. Trump has many more acolytes. Even in his darkest days, he has rarely attracted much negative publicity, which some observers say is due to his marketing discipline and an unwavering ability to stay "on message."

"In his world he's not the most successful, he's not the richest, he doesn't have the most clout in the real estate world, but ever since he came out of Queens he successfully controlled the communications process," said John V. Allen, an admirer of Mr. Trump's marketing skills who serves as senior partner at Lippincott Mercer, a brand management consulting firm in New York. "He's very rarely defined by other people because he defines himself. He's out there talking so people have to respond to what he's saying."

Mr. Trump, of course, has never been shy about self-promotion. He has plastered his gold-plated name on real estate and casino holdings financed with other people's money, and his picture adorns Manhattan bus shelters and billboards advertising "The Apprentice." He offers nuggets of wisdom in best-selling business books, in 90-second radio commentaries and -- beginning this month -- in the pages of Trump World magazine.

On television, Mr. Trump pitches credit cards, telephone service and affordable women's clothing; on the tops of New York taxi cabs, his image endorses an employment Web site operated by Yahoo. He recently applied to the federal government for trademark protection for "Trump University," the name of an institution that will offer, according to the application, "online instruction in the fields of business and real estate." Mr. Trump even has his own brand of bottled water, Trump Ice.

As for free publicity, he will do just about anything to be sure people remember his name. In early April, he frolicked in a bright yellow polyester suit to promote a fictional restaurant, Trump's House of Wings, in a "Saturday Night Live" television skit. The following week, to drum up business at his Palm Springs casino, Mr. Trump matched wits with a chicken in a game of tic-tac-toe. (Mr. Trump won.)

While most marketing experts believe that too much exposure can be a bad thing, Mr. Trump has managed to make ubiquity a plus.

"He's consistent, he's simple to understand, and he's heavily marketed," Mr.

Allen said. "He's never had to reinvent himself. Who he was in 1986 is who he is in 2004."

The Donald Trump of 2004 is a figure out of a fairy-tale world of his own creation. It is a universe defined by buildings outlined in marble, logos embossed with gold and blond girlfriends and wives with striking figures. And best of all, it is all open to view.

"He's one of the greatest choreographers of business and image that the business world has ever seen," said Peter Arnell, a New York advertising and marketing consultant. Like a handful of other business figures who have also captured the public's imagination, Mr. Trump has managed to "share his dreams in the public arena," Mr. Arnell said, which "allows for an infinite number of people to also revel in that dream."

That facet of his appeal is something Mr. Trump embraces fully. "I think sharing dreams is a positive thing," Mr. Trump said. "There is something crazy, hot, a phenomenon out there about me but I'm not sure I can define it and I'm not sure I want to."

"How do you think 'The Apprentice' would have done if I wasn't a part of it?" he asked before answering his own question. "There are a lot of imitators now and we'll see how they'll do, but I think they'll crash and burn."

Mr. Trump, through all of his business travails, has also displayed an estimable resilience. Jeffrey A. Sonnenfeld, an associate dean of the Yale School of

Management, is a frequent critic of Mr. Trump's business practices, but lauds his durability.

"He doesn't retreat," Mr. Sonnenfeld said. "He doesn't acknowledge defeat in what would normally be considered a defeat.

"There is always a new quest," Mr. Sonnenfeld added, "that gets people excited about the future."

That sense of excitement has certainly greeted the second season of "The Apprentice." On the NBC Web site promoting the coming show, last season's contestants are asked to pick three words to describe Mr. Trump. Mr. Rancic said his mentor was "Smart. Driven. Likable."

Another aspiring mogul, Jessie Connors, offered a different assessment of Mr. Trump's talents. Her three-word description: "Smoke and mirrors."

Images: Photos: Donald Trump in 2002 on the future site of the Trump Park Avenue condominiums. He says his marketing savvy is instinctive. (Photo by Frances Roberts)(pg. C1); Donald Trump at the casting call last month for the second season of "The Apprentice," the reality show that has broadened his fame. (Photo by Ruby Washington/The New York Times)(pg. C2)

Correction: September 9, 2004, Thursday

A picture caption in Business Day yesterday with an article about Donald J. Trump misstated the timing of a casting call for the second season of his hit reality television show "The Apprentice." It was in March, not last month.

Donald Trump, 9/2/04

- Said 27. to me a couple of weeks ago. Still 27.? "Absolutely"

↳ 27. 37. "it doesn't really matter." "It's a small part of it, do you understand? a small part."

- 59th & Park showed prices ↑ on East Side.

- "The thing I do best is develop."

↳ But what @ Ben; a marketer? "In theory, that's an honor, but one of the things I do best is develop."

- "How do you think the Apprentice would have done if I wasn't a part of it? There are a lot of imitators and we'll see how they do, but I think

that they'll crash and burn."

- Market. tools: "I think one of the things is that I find projects that are really good."

↳ "I think I stay on message as to quality." ↳ "Both in terms of the project and in terms of what I say @ the project."

↳ "People really believe, and it's part, that if I'm building it's going to be a great building. People from Europe, from all over the world, will buy who even seeing it."

- His persona: "I'm not that aware of it, to be honest with you." But then tells anecdote @ how he can get reys. at expensive restaurants.
"I'm not that necessarily aware of what I've become."

- This show is "crazy, hot, a phenomenon. There is something @ me out there @ me but I'm not sure I can define it and I'm not sure I want to."
- Worried, he says, @ appearing "bragadocious." (!). Esquire cover w/ fling all over: "I thought @ it and I said you know what? It's different. It's cool. Why not?"

- Not sure if he did LV town to town in 20 earnings.
"I think I'm lots less aware of things like that. But people found that LV story great, that's true."

* → "If you asked Babe Ruth how he hit home runs, he was unable to tell you. I do things by instinct. I think sharing dreams is a positive

thing.

- Controlling the dialogue = "I don't think I'm aware of it."

- Will make casinos happen.

- Re wealth: 2% is target.

"That's part of being private, you don't have to tell people."

- 30% of WSYards but profits participation will be much, much higher.

"Do you want to have 100% and all of the risk or 30% and none of the risk."

- Re losing WSYards during debt crisis: "I'd have to put it a little differently. Would I rather have half of the job and put up none of the

or have all of the job
and put up all of the #? I'd
rather have 50%. I make
an unbelievable deal there."

- Re ? @ size of wealth. "They're
all jealous people. They don't
watch the #1 show on
television." People who think I'm
↳ not a billionaire?
↳ "you can go ahead and
speak to group who have 400-
pound wives at home who are
jealous of me, but the group
who really know me know
I'm a great builder."

- "Unfair" of me to ask @
the size of Fred's wealth. "What
my father left to me is
relatively small compared to
what I've done. It's tiny
compared to what I've done.
I'm a billionaire many times

over.

Key to 20 years on center
stage: "Never, ever
give up."

↳ "#1, you have to love
what you're doing. And I love
what I'm doing. And #2
you can never, never give
up."

REDACTED

Donald Trump, 6/1/05

- OTR: - Built 7 hotels. 2 under construction.

* [a debt, as financing, on project.

- #1.8B: Sliding scale starts at 30%, and goes up to 50% of the profits.

- #50M is wrong. #900M is what has cleared. the #1.8B is net.

- Flew into a rage. If I print #50M will "fuck me over"

- said he was taping the conversation. ended the conversation abruptly.

12/1/04

DT

- Told him @ the book. He'll cooperate.
- Tells me how well his books are doing. Says that Random has told him that the sales of "Billionaire" and "How to Get Rich" will make him the all-time best-selling business author.

↳ "They told me - this is ^{Rob} Rob
Just me I - they told
me - that I'm ^{now}
probably the best-selling
business author of all
time."

2/1/05 Donald Trump

Marla
~~at the~~
wedding

- "Bored? I was bored when she was walking down the aisle. I kept thinking, 'what the hell am I doing here?' I was so deep in my business stuff I couldn't think of anything else."

- People surprised that Wynne and Tina were there why did he invite them?

- "That piece of suit. That fat slot." re: Brenner "I was coming back and I know I was coming back and Tina took me at breakfast that she wants to do a great piece on me and then she took a horrible piece."

- "People think I'm the power of positive thinking and I'm not. I'm the power of negative thinking. I always expect the worst and I'm not surprised."

That's one of the reasons I'm a success

- #250M on Park Avenue 157th floor
- #300M on W Tower
- #400-450M on Chicago City

"I know Tony goes to the
bad book. I think you
gonna kill me I didn't that"

he owns
100% of
both

- AC: "From an entrepreneurial standpoint, I made a lot of \$ - AC."

- "Angelina Jolie? I don't get her at all. She's like a dirty toilet bowl. Everybody's all over her. She had Billy Bob's name on her ass and her tits, on her forehead. And ~~did you~~ see those pictures of her kissing her brother? Forget it."

Steve: "Over the years, we had good years and bad years w/ Steve. Now we're in a good year."

They may do something in Vegas

- "Jana Ben called me so many times begging to come to the wedding. I can't tell you how many times. Finally, I took the call. And I told her no. She was devastated. The a friend of mine had a

heart attack and couldn't make it
so I invited her and she wrote a
very nice article."

- He loved how admirably the
wedding was covered. Very
different from the way Marla's
wedding was covered. That
was "O. circus", everybody made
fun of it."

2/3 /05

Donald Trump

- "you never know. She may bomb
she may be huge. I'll tell
you her first show ~~will be~~
will be through the
roof."

↳ "But look it's a great idea
and her personality is very
different from mine"
It expands ~~the~~
The Apprentice franchise."

Re
Martin

2/16/05 : We meet at 1370 6th 16F,
w/ Trump. Miss Universe Board
offices. Intro me to the
Board and invites me in.
They discuss venues where they
will have it (Baltimore). It
Baltimore fig enough. (OT keeps
point to photos of last year's
Miss Universe on the wall.
Hubba-nubba arch to his
eyebrow. "Unbelievably beautiful"
he whispers.) Points out that
Miss Universe was completely
dead when he bought it. How
it makes @ \$2M to \$4M a
year. Intro me to Miss Teen
USA a very pretty young
woman. OT says he plans
to set up w/ his son. He
tells her this looking over
her like Daddy Warbucks. Whether
or not the young woman
feels pleased by having her boss
say he wants to set her up

with his son, she smiles politely
in response. ~~Shelley~~ Shelley Hennig
Miss Teen USA 2008
(Frequently makes asides
@ woman) the occasional "nice
piece of ass" ~~falling from~~
his lips).

- Going down in the elevator
with his body guard. DT says that
before he was married he loved
to hang out in the dressing
rooms for the parents.

- We drive in his black
Mercedes. He drives. Rainy.
He and me. Driving
unwinds him. Cold rainy
day. We take the W side
Highway (talk @ Zackentof
as we cruise along) to
Henry Hudson to Memphis to
Faronic Pkwy.

- Greg Cuno and Carolyn
Kepcher are at the site

- Finds up the black granite
was quarried at the site. (Handsome
cut).

↳ DT knows intricate
details. In his element.
height of stairways. Brass
inlays. The marble
floors. The views. Preserving
the trees!

REDACTED

- Drive back he pulls
over to show sites
down new holes. how
this. In his element

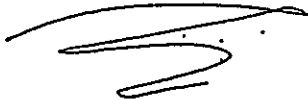
- hang out in the car
that he will make me
if negative. We go to
Tower, cutting across

Milton from WS Highway
in the 50s. Drop off at
his family and a driver gives
me a ride back to the
~~Times~~ Times.

~~Donald Trump~~

Donald Trump, 3/1/05

- Wynn's account of the post-Etess Hyde crash is accurate.
- Went to Oscars and people went nuts when he got out of the car.
- Chicago is "through the roof"
- Random House wants him to do novels. He wants to do something like "The Carpetbaggers" @ Howard Hughes.
- Mentions the "sexual harassment suit" against me from the Zeltser website



Donald Trump, 3/2/05

- "I am an owner, you understand I don't just franchise my name."
- * - "I'm not just some 15 minute guy. I've been around a long time."
- * Kicker! - "Have you heard @ my suits? Have you? They're through the roof through... the... roof."
- He's going to Suag's birthday on Friday night.
- He did a 60 cover in '86 or so and Sy called him. The cover was his photo and was a "Success." Sy asked him to do the cover. So then he called DT up

to his office and convinced him
to write the book. Offered
him a huge sum (@ \$2M) to
write it.

* - Esquire. "The King's cover."
* he says knowingly.

* - "Look, my wedding - Palm
Beach was not your typical
Palm Beach event. I had
Russell Simmons and Shaq
there. They freaked out
at my ballroom. They
freaked out. The black
community loves my
ballroom. Normally they would
never think of Palm Beach
nor would Palm Beach
think of them, unfortunately.
Russell's going to have a very
big event in my ballroom