

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT H

HON. ALLAN J. GOODMAN, JUDGE

BARBRA STREISAND,

)  
)  
)  
PLAINTIFF, )

**COPY**

VS.

) NO. SC 077257  
)  
)

KENNETH ADELMAN, ET AL.,

)  
)  
)  
DEFENDANTS.)

MONDAY, JULY 14, 2003  
WEDNESDAY, JULY 16, 2003  
FRIDAY, JULY 18, 2003

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FOR PLAINTIFF: JOHN M. GATTI, ATTORNEY AT LAW  
JONATHAN E. STERN, ATTORNEY AT LAW

FOR DEFENDANT ADELMAN:  
RICHARD B. KENDALL, ATTORNEY AT LAW  
LAURA A. SEIGLE, ATTORNEY AT LAW

FOR LAYER42.NET: DANIEL L. CASAS, ATTORNEY AT LAW

BUFORD J. JAMES  
OFFICIAL REPORTER 9296  
1633 PURDUE AVENUE  
WEST LOS ANGELES, CALIFORNIA 90025

I N D E X

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FOR PLAINTIFF:     JOHN M. GATTI, ATTORNEY AT LAW  
 REX D. GLENSY, ATTORNEY AT LAW  
 JONATHAN E. STERN, ATTORNEY AT LAW

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MONDAY, JULY 14, 2003; LOS ANGELES, CALIFORNIA

1:40 P.M.

THE COURT: GOOD AFTERNOON. THIS IS STREISAND  
VERSUS ADELMAN. APPEARANCES, PLEASE.

MR. STERN: GOOD AFTERNOON, YOUR HONOR,  
JONATHAN STERN FOR PLAINTIFF BARBRA STREISAND.

MR. GLENSY: GOOD AFTERNOON, YOUR HONOR, REX  
GLENSY FOR PLAINTIFF BARBRA STREISAND.

MR. GATTI: GOOD AFTERNOON, YOUR HONOR, JOHN  
GATTI ON BEHALF MRS. STREISAND.

MR. KENDALL: GOOD AFTERNOON, YOUR HONOR,  
RICHARD KENDALL OF IRELL & MANELLA ON BEHALF OF  
MR. ADELMAN.

MS. SEIGLE: LAURA SEIGLE FOR THE DEFENDANT  
KENNETH ADELMAN.

THE COURT: MY APOLOGIES FOR MISSPELLING YOUR  
NAME.

MS. SEIGLE: THAT'S ALL RIGHT. IT IS SPELLED  
SO MANY DIFFERENT WAYS SO MANY TIMES.

MR. CASAS: DANIEL CASES FOR LAYER 42 DOT NET.

THE COURT: GOOD AFTERNOON TO ALL OF YOU. WE  
HAVE TWO MEDIA REQUESTS, AND COUNSEL WERE ADVISED OF  
THIS WHEN THE TENTATIVE WAS FAXED TO YOU THIS MORNING.

DOES ANY PARTY WISH TO ADDRESS THE REQUESTS?

MR. GATTI: YOUR HONOR, I WOULD VERY BRIEFLY  
LIKE TO ADDRESS IT. WITH RESPECT TO THE MATTERS THAT  
ARE HERE BEFORE US, THESE RAISE OBVIOUSLY PRIVACY ISSUES  
AND SAFETY ISSUES THAT ARE A BIG CONCERN WITH PLAINTIFF

1 IN THIS CASE, AND I BELIEVE THAT HAVING CAMERAS IN THE  
2 COURTROOM, WHILE WE DISCUSSED THIS INFORMATION, COULD IN  
3 FACT VIOLATE THE VERY RIGHTS WE'RE TRYING TO PROTECT AND  
4 THE SAFETY ISSUES WE'RE TRYING TO PROTECT.

5 MR. KENDALL: YOUR HONOR, I DON'T THINK THERE  
6 IS ANYTHING IN THE BRIEFS THAT IS NOT AVAILABLE PUBLICLY  
7 ALREADY, AND I DON'T THINK THERE IS ANYTHING IN THE  
8 EXHIBITS THAT IS NOT AVAILABLE PUBLICLY ALREADY. I  
9 DON'T SPEAK FOR THE MEDIA ORGANIZATIONS, BUT I IMAGINE  
10 THAT'S WHAT THEY WOULD SAY.

11 THE COURT: ARE THERE REPRESENTATIVES FROM THE  
12 TWO ORGANIZATIONS IN THE COURTROOM NOW?

13 MR. NGUYEN: YES, YOUR HONOR.

14 THE COURT: IS THERE SOMEONE ELSE?

15 YOUR NAME, SIR?

16 MR. NGUYEN: JEFF NGUYEN FROM INSIDE EDITION.

17 THE COURT: COME ON UP AND STAND AT COUNSEL  
18 TABLE. IS THERE ANYONE PRESENT FROM CELEBRITY JUSTICE?

19 WHAT WOULD YOU LIKE TO SAY, SIR, WITH RESPECT  
20 TO YOUR ORGANIZATION'S REQUEST?

21 MR. NGUYEN: WELL, I MEAN, JUST TO REEMPHASIZE  
22 WHAT MR. ADELMAN SAID, EVERYTHING IS PRETTY MUCH PUBLIC  
23 INFORMATION.

24 THE COURT: ALL RIGHT. THANK YOU.

25 MR. NGUYEN: I MEAN, THE L.A. TIMES HAS  
26 PUBLISHED, I THINK, SOME OF THESE PHOTOGRAPHS AS WELL.

27 THE COURT: I DON'T KNOW THAT. I DON'T HAVE  
28 THE PAPERS BEFORE ME. MR. GATTI.

1 MR. GATTI: THE ONLY OTHER THING I WOULD POINT  
2 OUT TO YOUR HONOR IS THAT, AS WE MENTIONED IN OUR  
3 PAPERS, TO THE EXTENT SECURITY ISSUES AND SAFETY DO  
4 BECOME AN ISSUE OF DISCUSSION, WE DO HAVE SENSITIVE  
5 FILES AND DOCUMENTS THAT RELATE TO THE SAFETY ISSUES  
6 THAT WE HAVE STATED IN OUR PAPERS THAT WE WOULD BE  
7 INCLINED TO PRESENT THOSE TO YOUR HONOR IN AN IN CAMERA  
8 REVIEW.

9 THEY ARE SO SENSITIVE THAT WE, BASED ON THE  
10 PUBLICATION THROUGHOUT THIS CASE, THAT IT WAS -- IT  
11 WOULD BE A SAFETY RISK JUST TO SUBMIT THEM INTO THE  
12 PUBLIC RECORD. AND SO TO THE EXTENT THAT THAT BECOMES  
13 AN ISSUE OF DISCUSSION, I BELIEVE THAT WOULD DEFINITELY  
14 ENTAIL SECURITY AND SAFETY ISSUES THAT ARE NOT IN THE  
15 PUBLIC RECORD.

16 THE COURT: I'M UNAWARE -- IS THERE A SPECIFIC  
17 REFERENCE?

18 MR. GATTI: YES, YOUR HONOR.

19 THE COURT: WHERE?

20 MR. GATTI: BOTH IN OUR -- IN OUR PAPERS IN A  
21 FOOTNOTE WE STATE THAT TO THE EXTENT THAT THERE ARE  
22 ADDITIONAL -- WE OBVIOUSLY HAVE, IN CURSORY FORM,  
23 PRESENTED EVIDENCE TO THE COURT THAT THE COURT HAS  
24 ADMITTED HAVING TO DO WITH MRS. STREISAND'S SAFETY  
25 ISSUES AND CONCERNS AND STALKERS AND ALL OF THE REST OF  
26 THE HISTORY OF THAT.

27 WHAT WE HAVE NOW IS THE UNDERLYING  
28 DOCUMENTATION, THE DECLARATION FROM THE INVESTIGATIVE

1 INDIVIDUALS WHO --

2 THE COURT: COUNSEL, JUST ONE SECOND. IN WHAT  
3 DOCUMENT AND IN WHAT FOOTNOTE, PLEASE?

4 MR. GATTI: IT IS IN OUR PLAINTIFF'S REPLY  
5 MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION, AND YOU  
6 CAN SEE THAT AT FOOTNOTE 9, PAGE 10.

7 THE COURT: FOR SOME REASON IT DOES NOT COME  
8 READILY TO HAND. PERHAPS I LEFT IT IN CHAMBERS. COULD  
9 YOU READ ME THE SECTION OF THE FOOTNOTE, COUNSEL.

10 MR. GATTI: CERTAINLY. FOOTNOTE 9 ON PAGE 10  
11 OF THE REPLY BRIEF.

12 THE COURT: FILED WHAT DATE?

13 MR. GATTI: IT WAS FILED ON JULY 9, 2003.

14 THE COURT: OKAY. WHAT DOES IT SAY IN THAT  
15 REGARD?

16 MR. GATTI: SPECIFICLY FOOTNOTE 9 STATES  
17 STREISAND'S COUNSEL POSSESSES DOCUMENTATION OF THREATS  
18 OF VIOLENCE THAT STREISAND HAS HAD TO CONTEND WITH TO  
19 DATE.

20 THE COURT: OKAY. ALL RIGHT. WELL,  
21 NOTWITHSTANDING THAT CONCERN, WHICH IS CERTAINLY A  
22 LEGITIMATE ONE, IN LIGHT OF WHAT THE PARTIES HAVE FILED  
23 AND WHAT WILL BE IN EVIDENCE, ALTHOUGH IT ISN'T YET, BUT  
24 CERTAINLY IT'S BEEN SUBMITTED, AND THE NUMBER OF THESE  
25 PHOTOGRAPHS AND THE FACT THAT IT'S ON THE INTERNET, IT'S  
26 LIKELY TO COME IN EVIDENCE, AND THE COURT IS GOING TO  
27 GRANT THE REQUEST OF INSIDE EDITION.

28 SO IN A FEW MINUTES, VERY FEW MINUTES, WE'RE

1 GOING TO TAKE A BREAK. YOU CAN HAVE YOUR CAMERA COME IN  
2 AND SET UP IN THE CORNER. YOU SEE THE SIGN WITH THE  
3 BLACK AND WHITE LETTERING -- DID SOMEONE COME LATE FROM  
4 CELEBRITY JUSTICE OR SOMEWHERE ELSE?

5 AUDIENCE MEMBER: WE'RE WITH THE BBC.

6 THE COURT: DID YOU FILE A MEDIA REQUEST?

7 AUDIENCE MEMBER: WE HAVE NOT.

8 THE COURT: YOU'LL HAVE TO GET IT FROM INSIDE  
9 EDITION. THE RULE REQUIRES THEY BE FILED FIVE DAYS IN  
10 ADVANCE, BUT IF YOU HAD FILED ONE, I WOULD CONSIDER IT.  
11 THE ONLY THING I ASK, SIR, IS THAT YOUR CAMERAMAN -- I  
12 DON'T CARE WHETHER HE HAS THE CAMERA ON OR OFF. HE'S  
13 NOT TO DISASSEMBLE OR CAUSE ANY NOISE UNTIL THE  
14 PROCEEDING IS OVER.

15 CAMERA OPERATOR: I UNDERSTAND.

16 THE COURT: ALL RIGHT. OKAY, I'D ALSO LIKE TO  
17 ASK COUNSEL, ALL OF WHOM -- BOTH SIDES DID RECEIVE THE  
18 TENTATIVE THAT WAS FAXED THIS MORNING?

19 MR. GATTI: YES, YOUR HONOR.

20 MR. KENDALL: YES, YOUR HONOR.

21 THE COURT: IT MIGHT BE PRODUCTIVE FOR YOU TO  
22 MEET AND CONFER WITH RESPECT TO THE TENTATIVE RULING  
23 THAT'S INDICATED SO WHEN WE GET TO THAT IN A FEW MINUTES  
24 YOU MIGHT BE ABLE TO STATE WHETHER YOU AGREE OR DISAGREE  
25 WITH THE RULING, AND WE CAN JUST PROCEED ON MATTERS  
26 WHERE THERE REMAINS DISPUTE. THERE ARE A COUPLE OF  
27 ITEMS WHERE THERE ARE ASTERISKS, WHICH I CLEARLY HAVE  
28 QUESTIONS. I ALSO INDICATE ONE POSSIBLE ANOMALY AND --



1 YES, COUNSEL FOR MR. ADELMAN.

2 MR. KENDALL: YOUR HONOR, ON THAT SUBJECT,  
3 FIRST I WANTED TO BE SURE THAT THE COURT HAS RECEIVED --  
4 BECAUSE WE FILED IT WHEN WE CAME IN -- AN ADDITIONAL  
5 DECLARATION OF MR. ADELMAN THAT IS RESPONSIVE TO A  
6 COUPLE OF THE EVIDENTIARY ISSUES RAISED. NORMALLY WE  
7 WOULDN'T BE SUBMITTING A DECLARATION ON THE DAY OF  
8 HEARING, BUT AS YOU KNOW, WE OBJECTED TO THEIR  
9 OBJECTIONS AS BEING UNTIMELY. THE COURT HAS ADMITTED  
10 THOSE OBJECTIONS, SO WE THINK FOR A FULL AIRING OF THE  
11 FACTS SO THAT WE HAVE A COMPLETE RECORD, THAT  
12 DECLARATION SHOULD BE ACCEPTED.

13 SECONDLY, BECAUSE THE COURT HAS RULED THAT  
14 OBJECTIONS CAN BE MADE AT THIS LATE DATE, WE WILL MAKE  
15 SOME ORAL OBJECTIONS TO MR. GATTI'S DECLARATION. WE'LL  
16 GO OVER THOSE WITH HIM FIRST.

17 THE COURT: LET'S BACK UP A FEW STEPS. WHAT'S  
18 THE AUTHORITY FOR INQUIRING ON ANYTHING OTHER THAN A  
19 MOTION FOR SUMMARY JUDGMENT BEING FILED IN ADVANCE OF  
20 THE HEARING?

21 MR. KENDALL: I THINK, FIRST OF ALL, THE COURT  
22 IS QUITE CORRECT.

23 THE COURT: I MEAN, I WOULD PREFER IT.

24 MR. KENDALL: HERE IS THE AUTHORITY. THE  
25 SEELIG CASE STATES THAT THE STANDARD IS VERY SIMILAR.

26 THE COURT: THE EVIDENTIARY STANDARD OF PROOF.

27 MR. KENDALL: THE EVIDENTIARY STANDARD. AND  
28 THE RULE WITH RESPECT TO SUMMARY JUDGMENT MOTIONS IS

1 FIVE DAYS AHEAD OF TIME, SO IT'S JUST -- BY ANALOGY, THE  
2 COURT IS QUITE CORRECT, I DON'T THINK IT IS A HOLDING  
3 POINT, I DON'T THINK THERE IS A SPECIFIC RULE OF COURT  
4 ON POINT.

5 I THINK IN THIS PARTICULAR SITUATION, HOWEVER,  
6 THERE IS ANOTHER POINT TO BE MADE, WHICH IS THEY HAD AN  
7 OPPORTUNITY TO PUT IN AN OPPOSITION BRIEF TO OUR OPENING  
8 PAPERS. MOST OF THEIR OBJECTIONS GO TO DECLARATIONS  
9 THAT WERE OFFERED ON OUR OPENING PAPERS. THEY DIDN'T  
10 RAISE THOSE OBJECTIONS THEN. THEY DIDN'T SAY IN THEIR  
11 BRIEF THEY HAD OBJECTIONS.

12 I THINK THIS IS SANDBAGING, TO RAISE IT AT THE  
13 VERY END OF THE PROCESS. BECAUSE OTHERWISE, WE WOULD  
14 HAVE AN OPPORTUNITY IN OUR REPLY BRIEF TO ADDRESS  
15 WHATEVER THEY WERE SAYING, SO I THINK COMMON SENSE,  
16 PROFESSIONAL COURTESY, AND THE RULES THAT GOVERN  
17 OPPOSITION BRIEFS WOULD ALL BE ADDITIONAL AUTHORITY.

18 THE COURT: IS THAT TRUE IN EVERY CASE,  
19 COUNSEL? LET'S DEAL SPECIFICLY WITH THE ADDITIONAL  
20 DECLARATION OF MR. ADELMAN, WHICH WAS FILED SHORTLY  
21 AFTER 1:30 TODAY. WHAT DOES PLAINTIFF WANT TO SAY, IF  
22 ANYTHING, WITH RESPECT TO THAT DECLARATION?

23 MR. GATTI: WITH RESPECT TO THAT DECLARATION,  
24 OBVIOUSLY, THERE IS NO AUTHORITY ALLOWING THE LAST  
25 MINUTE SUBMISSION OF THIS EVIDENCE, PURPORTED EVIDENCE.  
26 AND TWO, LOOKING AT THE DECLARATION IN THE TWO MINUTES  
27 I'VE HAD TO TAKE A LOOK AT IT, IT DOESN'T ADDRESS ANY OF  
28 THE COURT'S CONCERNS REGARDING FOUNDATIONAL ISSUES AND

1 OTHER OBJECTIONS THAT IT ATTEMPTS TO ADDRESS.

2 THE COURT: WELL, I'M NOT SURE THAT'S A FAIR  
3 CHARACTERIZATION, MR. GATTI, BECAUSE IT DOES ADDRESS  
4 CONCERNS WITH RESPECT TO THE PHOTOGRAPHY AND THE LENSES.  
5 AND I DID RULE ON THOSE, AND BOTH SIDES WERE FAXED  
6 COPIES OF THE RULING THIS MORNING SHORTLY AFTER 10:00  
7 O'CLOCK. AND I MUST SAY I DON'T USE THAT PROCEDURE VERY  
8 OFTEN. THIS IS THE FIRST TIME COUNSEL HAS PROVIDED  
9 DECLARATIONS RESPONSIVE TO SOMETHING IN, WHAT, TWO AND A  
10 HALF HOURS, PERHAPS. IN ANY EVENT, I THINK THE  
11 DECLARATION IS UNTIMELY AND WON'T BE ADMITTED FOR  
12 PURPOSES OF THIS HEARING.

13 MR. GATTI: THANK YOU.

14 THE COURT: WE'RE GOING TO TAKE A BREAK. IF  
15 COUNSEL -- WE HAVE THE JURY ROOM AVAILABLE, IF YOU WOULD  
16 LIKE TO MEET TOGETHER, IF YOU WOULD LIKE TO MEET  
17 SEPARATELY -- WOULD YOU LIKE TO MEET SEPARATELY? WE  
18 HAVE ANOTHER ROOM AVAILABLE.

19 MR. KENDALL: THAT WOULD PROBABLY BE USEFUL,  
20 ESPECIALLY IF WE NEED TO TALK TO OUR CLIENT.

21 THE COURT: JUST BECAUSE PLAINTIFF IS CLOSER  
22 TO JURY ROOM, THE JURY ROOM IS THROUGH THE DOOR AND IT'S  
23 A LEFT TURN. AND, SIR, THE COURTROOM ASSISTANT WILL  
24 SHOW YOU TO THE CONFERENCE ROOM, WHICH IS AT THE OTHER  
25 END OF THIS FLOOR.

26 MR. KENDALL: ONE LAST HOUSEKEEPING MATTER ON  
27 THE SAME SUBJECT. MR. ADELMAN'S DECLARATION, THIS IS AN  
28 EVIDENTIARY HEARING. I DON'T THINK ANYTHING STOPS US

1 FROM PRESENTING EVIDENCE IN A HEARING.

2 THE COURT: EXCEPT THE RULES. LOOK AT THE  
3 CALIFORNIA RULES OF COURT, AND IF YOU WANT -- IF WE GET  
4 TO THE POINT WHERE YOU WANT TO HAVE A FURTHER HEARING,  
5 IT DOES HAPPEN SOMETIMES. IS THERE A SPECIFIC REQUEST  
6 YOU WANT TO MAKE, SIR?

7 MR. KENDALL: YOUR HONOR, WE'RE IN A UNIQUE  
8 SITUATION. WHAT MAKES IT UNIQUE IS THAT THEIR REQUEST  
9 WAS OUT OF ORDER, CERTAINLY WITH RESPECT TO THE  
10 OPPOSITION BRIEF. THEY SHOULD HAVE MADE THESE ARGUMENTS  
11 THEN. THEY SHOULD HAVE MADE THEIR ARGUMENTS THEN; THEY  
12 DIDN'T. THAT WOULD HAVE GIVEN US A CHANCE TO DO IT IN  
13 THE REPLY.

14 WHAT I SUGGEST WE CAN DO THAT MAY SIMPLIFY --  
15 BY THE WAY, I BELIEVE WE HAVE ADEQUATE FOUNDATION, AND  
16 I'LL BE ARGUING TO THAT LATER FROM WHAT IS ALREADY  
17 BEFORE THE COURT.

18 BUT IF THESE FACTS TURN OUT TO BE IMPORTANT,  
19 ANOTHER OPTION FOR THE COURT, IN LIGHT OF THEIR LATE  
20 FILING, WOULD BE TO CONTINUE THE HEARING AND PERMIT  
21 FURTHER EVIDENCE TO BE SUBMITTED, IF THE COURT THINKS  
22 THAT APPROPRIATE.

23 THE COURT: WELL, TAKE THAT UP LATER. IF YOU  
24 WANT TO MAKE THAT PARTICULAR MOTION LATER, THAT'S FINE.

25 ALL RIGHT. HOW LONG WILL IT TAKE YOU TO SET  
26 UP, SIR?

27 CAMERA OPERATOR: PROBABLY LIKE FIVE MINUTES.

28 THE COURT: WELL, YOU HAVE MORE THAN THAT.

1 DO COUNSEL WANT TO HAVE MORE THAN 15 MINUTES?  
2 ALL RIGHT. WE'LL RESUME AT 2:15.

3 MR. NGUYEN: MAY I GET A COPY OF THE SIGNED  
4 REQUEST?

5 THE COURT: AS SOON AS IT'S SIGNED YOU MAY.  
6 HOLD ON A MINUTE, I'LL DO THAT. RESUME AT 2:15.

7 (RECESS)

8

9 THE COURT: WHO WANTS TO START?

10 MR. KENDALL: YOUR HONOR, PERHAPS THE LOGICAL  
11 THING IS START WITH OUR ORAL OBJECTIONS TO CERTAIN OF  
12 THEIR DECLARATIONS. I THINK THAT WILL BE USEFUL,  
13 BECAUSE YOU FLESH OUT THE WHOLE EVIDENTIARY PICTURE,  
14 SINCE OUR POSITION IS BASICALLY WHAT IS GOOD FOR THE  
15 GOOSE IS GOOD FOR THE GANDER, AS FAR AS EVIDENCE GOES,  
16 I'M GOING TO ASK MY COLLEAGUE AND PARTNER LAURA SEIGLE  
17 TO . . .

18 MS. SEIGLE: THANK YOU. YOUR HONOR, I'D LIKE  
19 TO START FIRST WITH THE REX GLENSY DECLARATION. THIS  
20 DECLARATION WAS SUBMITTED IN CONNECTION WITH THE  
21 PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION.

22 THE COURT: GO AHEAD.

23 MS. SEIGLE: I MAY BE WRONG ABOUT THAT.

24 THE COURT: WELL, THAT RAISES AN INTERESTING  
25 QUESTION, TO WHICH THERE IS A REFERENCE MADE IN THE  
26 TENTATIVE. DO THE PARTIES HAVE ANY CONCERN OVER USING  
27 THE EVIDENCE THAT THEY HAVE OFFERED, WHICH IS ADMITTED,  
28 WITH RESPECT TO BOTH MATTERS?

1 MR. KENDALL: YES, YOUR HONOR. I THINK THAT  
2 YOU HAVE TO LOOK AT THE SLAPP MOTION FIRST AND CONSIDER  
3 THE EVIDENCE THAT'S BEEN PROFFERED IN CONNECTION WITH  
4 THE SLAPP MOTION BY MRS. STREISAND, AND IN --

5 THE COURT: LET ME ASK THE QUESTION  
6 DIFFERENTLY. IS THERE ANY EVIDENCE THAT WON'T COME IN  
7 ON BOTH?

8 MR. KENDALL: WELL, THE QUESTION IS WHAT WAS  
9 SUBMITTED IN CONNECTION WITH THE PI MOTION, SO THAT HAS  
10 TO BE REVIEWED.

11 THE COURT: MS. SEIGLE, GO AHEAD.

12 MS. SEIGLE: TURNING TO MR. GLENSY'S  
13 DECLARATION, THIS WAS SUBMITTED IN CONNECTION WITH THEIR  
14 REPLY BRIEF ON THE MOTION FOR PRELIMINARY INJUNCTION.  
15 EXHIBITS 20 THROUGH 26 OF THE REPLY, ATTACHED TO THE  
16 DECLARATION OF MR. GLENSY, ALL ARE OBJECTIONABLE. THESE  
17 ARE NEWSPAPER ARTICLES THAT ARE SUBMITTED BY THE  
18 PLAINTIFF IN ORDER TO PROVIDE -- SUPPOSED EVIDENCE OF  
19 THEIR ARGUMENT THAT PRIOR CALIFORNIA COURTS HAVE ISSUED  
20 PRELIMINARY INJUNCTIONS IN CASES LIKE THIS.

21 THE NEWSPAPER ARTICLES ARE HEARSAY BECAUSE  
22 THEY ARE SUBMITTED FOR THE TRUTH OF THE MATTER OF THESE  
23 PRIOR RULINGS. THEY ARE ALSO IMPROPER LEGAL AUTHORITY  
24 BECAUSE THERE IS VERY CLEAR LAW THAT YOU CAN'T CITE TO  
25 THE NEWSPAPER ARTICLE AS PRECEDENT. A NUMBER OF THESE  
26 CASES ARE PUBLISHED CASES. THEY ARE TRIAL COURT  
27 DECISIONS THAT ARE JUST NOT CITABLE AUTHORITY. THEY  
28 SHOULD ALL COME OUT FOR THAT REASON.

1 THE ACCOMPANYING STATEMENTS IN MR. GLENSY'S  
2 DECLARATION THAT ARE ATTACHED TO EACH PARAGRAPH ATTACHES  
3 EACH OF THESE EXHIBITS 20 THROUGH 26, ALSO SHOULD BE  
4 EXCLUDED BECAUSE THEY SUMMARIZE THE CONTENTS OF THE  
5 NEWSPAPER ARTICLES, SO THEY TOO ARE HEARSAY AND IMPROPER  
6 LEGAL AUTHORITY.

7 THE COURT: I PREFER TO GO THROUGH THESE ONE  
8 BY ONE. OTHERWISE, IT'S GOING TO BE VERY DIFFICULT FOR  
9 ANYBODY TO RESPOND. WHAT'S THE RESPONSE FROM THE  
10 OFFERING PARTY?

11 MR. GLENSY: YOUR HONOR, REX GLENSY ON BEHALF  
12 OF PLAINTIFF BARBRA STREISAND. I'LL ADDRESS  
13 MS. SEIGLE'S CONCERNS. I THINK, IF I HEAR RIGHT, SHE'S  
14 OBJECTING BOTH TO THE EXHIBITS THEMSELVES AND TO THE  
15 WRITING AND THE DECLARATION, SO I'LL TAKE ONE AT THE  
16 TIME.

17 AS FAR AS THE EXHIBITS THEMSELVES ARE  
18 CONCERNED, THERE ARE A COUPLE OF ISSUES. THE -- IN ONE  
19 OF THE PAPERS FILED BY -- I CAN'T REMEMBER WHETHER IT'S  
20 THE SLAPP MOTION OR THE PRELIMINARY INJUNCTION MOTION,  
21 I'M AFRAID, BUT THERE WERE CERTAIN ASSERTIONS REGARDING  
22 THE FACT OF SUCH INJUNCTION HAVING NEVER TAKEN PLACE  
23 BEFORE IN CALIFORNIA COURTS.

24 THE COURT: WELL, COUNSEL, THIS -- AS A MATTER  
25 OF FOUNDATION, YOU HAVE THE SAME PROBLEM DEFENSE HAD.  
26 WHAT YOU HAVE ATTACHED IS PRONOUNCED FROM APPARENT  
27 INTERNET SITES.

28 MR. GLENSY: THAT IS CORRECT, YOUR HONOR. WE

1 OF COURSE DID TRY TO GET THE PRIMARY AUTHORITIES, BUT  
2 FOR -- QUITE IRONICLY, THE CASE IN WHICH THESE EXHIBITS  
3 HAS BEEN SEALED, THERE ARE -- UNDER THE SECONDARY  
4 EVIDENCE RULE, WE WOULD SUBMIT THAT THERE IS NO OTHER  
5 DOCUMENT THAT WE COULD HAVE POSSIBLY CITED IN THIS CASE.  
6 WE DO --

7 THE COURT: TO WHICH EXHIBIT ARE YOU  
8 REFERRING, COUNSEL?

9 MS. SEIGLE: EXHIBIT 20 THROUGH 25, I BELIEVE.  
10 WE DO HAVE, YOUR HONOR, A PRINTOUT FROM THE SUPERIOR  
11 COURT EXPLAINING WHAT THE ACTUAL FACT OF THE RULINGS WAS  
12 TAKEN FROM THE SUPERIOR COURT'S WEBSITE.

13 THE COURT: I HAVE TO TELL YOU THAT THE  
14 INTERNET WEBSITE OF THE SUPERIOR COURT IS NOT ENTIRELY  
15 ACCURATE. THE OFFICIAL RECORD, WHICH THAT IS NOT, IS.  
16 BUT THE INTERNET SITE DOES HAVE ERRORS ON IT. SO IF YOU  
17 HAVE A CERTIFIED COPY OF A DOCKET FROM THE COURT, THAT  
18 WOULD BE ONE THING. DO YOU HAVE SUCH A DOCUMENT?

19 MS. SEIGLE: WE DO NOT, YOUR HONOR.

20 THE COURT: ALL RIGHT. OBJECTION SUSTAINED TO  
21 20 THROUGH 26 AND THE RELATED TESTIMONY IN MR. GLENSY'S  
22 DECLARATION.

23 MS. SEIGLE: JUST FOR THE RECORD, THE RELATING  
24 PARAGRAPHS THAT CONNECT TO EACH EXHIBIT 20 THROUGH 26  
25 ARE PARAGRAPHS 2 THROUGH 8 OF THE DECLARATION OF REX  
26 GLENSY.

27 THE SECOND DECLARATION I WOULD LIKE TO TURN TO  
28 IS THE DECLARATION OF JOHN GATTI THAT WAS FILED IN



1 SUPPORT OF THE PRELIMINARY INJUNCTION MOTION, AND I'LL  
2 GO THROUGH EACH OF THE PARAGRAPHS AND EXHIBITS TO WHICH  
3 WE HAVE OBJECTIONS. THE FIRST FEW PARAGRAPHS AND  
4 EXHIBITS I'LL TAKE TOGETHER BECAUSE THEY RAISE EXACTLY  
5 THE SAME EVIDENTIARY ISSUES.

6 THE COURT: COUNSEL, WAS IT FILED ON JUNE  
7 23RD?

8 MS. SEIGLE: NO, I THINK THIS WAS ON JUNE  
9 19TH. THIS WAS WITH THEIR MOVING PAPERS.

10 THE COURT: WHAT'S THE TITLE?

11 MS. SEIGLE: YES, JUNE 19 DECLARATION OF JOHN  
12 M. GATTI IN SUPPORT OF MOTION FOR PRELIMINARY  
13 INJUNCTION.

14 THE COURT: THE ONE I HAVE WITH THE SAME TITLE  
15 WAS FILED ON THE 23RD. DOES IT HAVE EXHIBIT 1 THROUGH  
16 19?

17 MS. SEIGLE: YES.

18 THE COURT: OKAY. GO AHEAD.

19 MS. SEIGLE: BEGINNING WITH PARAGRAPHS 2, 3, 4  
20 AND 5, AND THOSE PARAGRAPHS ATTACH EXHIBIT 1 THROUGH 6,  
21 EACH OF THESE EXHIBITS ARE PHOTOGRAPHS PURPORTEDLY OF  
22 THE AREAS AROUND BARBRA STREISAND'S ESTATE. THEN THE  
23 PARAGRAPHS 2 THROUGH 5 IN THE DECLARATION OF COURT TO  
24 DESCRIBE WHAT IS SEEN IN THE PHOTOGRAPHS, SO WE OBJECT  
25 TO BOTH THE PHOTOGRAPHS AND THE PARAGRAPHS AS LACKING  
26 FOUNDATION, LACKING PERSONAL KNOWLEDGE, AND HEARSAY.

27 THE COURT: COUNSEL, BACK UP. TO WHAT  
28 EXHIBITS ARE YOU NOW OBJECTING, 2 THROUGH 5?

1 MS. SEIGLE: EXHIBIT 1 THROUGH 6.

2 THE COURT: AND PARAGRAPHS 2 THROUGH 5?

3 MS. SEIGLE: THAT'S CORRECT.

4 THE COURT: GO AHEAD. STATE THE GROUNDS,  
5 PLEASE.

6 MS. SEIGLE: LACK OF FOUNDATION, LACK OF  
7 PERSONAL KNOWLEDGE, AND HEARSAY. THERE IS NO EVIDENCE  
8 SUBMITTED IN THE DECLARATION THAT MR. GATTI TOOK  
9 PHOTOGRAPHS, KNEW WHO WAS THERE WHEN THE PHOTOGRAPHS  
10 WERE TAKEN, KNOWS WHEN THEY WERE TAKEN, KNOWS WHAT THEY  
11 WERE TAKEN OF. THE PHOTOGRAPHS THEMSELVES AND THE  
12 DESCRIPTION IN THE DECLARATION, THEY ARE SUBMITTED FOR  
13 THE TRUTH OF THE MATTER, SUPPOSEDLY THAT THIS IS A VERY  
14 PRIVATE ESTATE THAT NO ONE CAN LOOK INTO. SO ON ALL  
15 THOSE GROUNDS, WE WOULD OBJECT TO THOSE.

16 THE COURT: WHO WANTS TO RESPOND?

17 MR. GLENSY: YES, YOUR HONOR. MR. GATTI  
18 STATES IN HIS DECLARATION THE FACT THAT HE HAS PERSONAL  
19 KNOWLEDGE OF ALL THE FACTS. IN FACT, THESE PHOTOS WERE  
20 TAKEN BY MR. GATTI HIMSELF ON MAKING LOCATION, AND AS AN  
21 OFFER OF PROOF HE CAN CERTAINLY TESTIFY TO THAT FACT.  
22 BUT IT IS OUR POSITION THAT THE DECLARATION IN SEVERAL  
23 RESPECTS STATES HIS PERSONAL KNOWLEDGE OF THESE FACTS.

24 THE COURT: LOOK AT PAGE 5, LINE 20 OF THE  
25 DECLARATION, COUNSEL. PAGE 5, LINE 20, DECLARATION OF  
26 JOHN GATTI.

27 MS. SEIGLE: IT'S NOT EVEN SIGNED BY  
28 MR. GATTI, WHICH I JUST NOTICED, SO THERE IS NO

1 STATEMENT HERE OF EVEN PERSONAL KNOWLEDGE SINCE HE WOULD  
2 NOT SIGN IT. ON THAT GROUND, I WOULD ACTUALLY STRIKE  
3 THE WHOLE DECLARATION AND ALL THE EXHIBITS EXCEPT THE  
4 ONES WE HAVE PREVIOUSLY STIPULATED TO, EXHIBIT 7.

5 THE COURT: DOES ANYONE WANT TO EXPLAIN THAT  
6 WHICH IS SUBMITTED?

7 MR. GATTI: EXACTLY, YOUR HONOR. WITH RESPECT  
8 TO THAT DECLARATION, THAT DECLARATION WAS PREPARED BY  
9 ME, REVIEWED BY ME, AUTHORED BY ME IN ASSOCIATION WITH  
10 MY ASSOCIATE AND WAS SIGNED IN MY ABSENCE --

11 THE COURT: MR. GATTI, IF YOU WANT TO COME AND  
12 SIGN IT NOW YOU CAN. SINCE DEFENSE DIDN'T NOTICE IT,  
13 I'M NOT GOING TO LET THEM BRING IT UP AT THIS LATE DATE.

14 HAND THIS TO MR. GATTI. BUT THEN YOUR  
15 CO-COUNSEL CAN DEAL WITH THE SUBSTANCE OF THE  
16 OBJECTIONS.

17 MR. GATTI: THANK YOU, YOUR HONOR. MAY I  
18 APPROACH.

19 THE COURT: YES.

20 MS. SEIGLE: WELL, YOUR HONOR, I'D LIKE TO --  
21 AS YOUR HONOR POINTED OUT, BOTH IN THE INITIAL  
22 PARAGRAPHS AND THE FINAL PARAGRAPH, THERE IS AN  
23 ATTESTATION TO FOUNDATION MR. GATTI HAS MADE IN THE  
24 DECLARATION OF HIS PERSONAL KNOWLEDGE REGARDING THE  
25 MATTERS ASSERTED WITHIN THE DECLARATION. AS FAR AS THE  
26 EXHIBITS THEMSELVES ARE CONCERNED, THEY DO SPEAK FOR  
27 THEMSELVES AND, THEREFORE, THE OBJECTION --

28 THE COURT: WELL, COUNSEL JUST A SECOND HERE.

1 HOW DOES THIS PHOTOGRAPH OF THE COAST LINE, WHICH IS  
2 EXHIBIT -- THERE IS A CLIFF, HOW DOES THAT SPEAK FOR  
3 ITSELF?

4 MS. SEIGLE: WELL, THROUGH ITS -- WHAT IT  
5 SHOWS, BASED ON THE TESTIMONY OF -- THROUGH THE  
6 DECLARATION OF MR. GATTI AS TO WHERE THE PICTURE WAS  
7 TAKEN. IT SHOWS THAT THE PROPERTY IN DISPUTE IN THIS  
8 CASE IS NOT VISIBLE FROM THE PUBLIC VANTAGE POINT. OF  
9 COURSE MR. GATTI TOOK THE PICTURES FROM A PUBLIC VANTAGE  
10 POINT, AS ASSERTED BY HIM THROUGH HIS PERSONAL KNOWLEDGE  
11 IN HIS DECLARATION.

12 THE COURT: WE'RE TALKING ABOUT EXHIBIT 2,  
13 COUNSEL?

14 MS. SEIGLE: YES.

15 THE COURT: THE ONLY REFERENCE TO EXHIBIT 2 IS  
16 PARAGRAPH 3 OF MR. GATTI'S DECLARATION. WHERE DOES HE  
17 TESTIFY AS TO HOW HE TOOK THE PHOTO OR FROM WHAT VANTAGE  
18 POINT? IT SAYS IT CAN BE SEEN FROM THE VANGTAGE  
19 POINT -- BY THE WAY, IT DOES NOT SAY I TOOK THE PHOTO,  
20 EITHER.

21 MS. SEIGLE: CORRECT, YOUR HONOR.

22 I'M TRYING TO SEE WHETHER WE ARE LOOKING AT  
23 THE SAME THING. I BELIEVE --

24 THE COURT: I'M LOOKING AT PAGE 2, PARAGRAPH  
25 3, LINES 12 THROUGH 16.

26 MS. SEIGLE: WELL, YOUR HONOR, WE BELIEVE THAT  
27 THE DECLARATION DOES WITH SUFFICIENCY SET UP THE  
28 FOUNDATION THROUGH BOTH HIS SIGNATURE -- HIS

1 DESCRIPTIONS AND THE PERSONAL KNOWLEDGE OF THE FACT THAT  
2 THE PHOTOGRAPHS WERE TAKEN. AND, IN FACT, MR. GATTI DID  
3 TAKE THESE PICTURES.

4 THE COURT: WAS THE DEFENSE AWARE MR. GATTI  
5 TOOK THESE PHOTOGRAPHS?

6 MS. SEIGLE: THERE IS NO EVIDENCE SUBMITTED.  
7 IN HIS DECLARATION HE STATED HE TOOK PHOTOGRAPHS; THE  
8 DATE THEY WERE TAKEN; THAT HE WAS THERE WHEN TAKEN; THAT  
9 THEY WERE ACCURATE REPRESENTATIONS OF WHAT HE SAYS THEY  
10 ARE. NO DETAILS ABOUT WHAT ANGLE, WHAT DIRECTION, WHERE  
11 HE WAS STANDING, WHAT DIRECTION HE WAS POINTING THE  
12 CAMERA, HOW FAR AWAY HE WAS. ALL OF THOSE KINDS OF  
13 DETAILS YOU WOULD WANT IN ORDER TO KNOW WHAT YOU WERE  
14 LOOKING AT.

15 MR. GLENSY: IF I MAY RESPOND TO THAT. THE --  
16 THE DATE OF THE PICTURES IS CONTAINED WITHIN THE  
17 DECLARATION, AS TO WHEN THAT WAS TAKEN, AS TO  
18 MR. GATTI'S PERSONAL KNOWLEDGE OF WHERE THESE PICTURES  
19 WERE ACTUALLY TAKEN FROM, SO WE BELIEVE THE SPECIFICITY  
20 AND THE PARTICULARITY THAT DEFENDANT COUNSEL HAS  
21 ADDRESSED IS APPROPRIATELY ADDRESSED ON EACH PARAGRAPH  
22 OF THESE DECLARATIONS.

23 MS. SEIGLE: MAKING A CONCLUSORY STATEMENT  
24 THAT HE HAS PERSONAL KNOWLEDGE OF EVERYTHING IN HERE IS  
25 NOT SUFFICIENT TO SET UP FOUNDATION TO AUTHENTICATE  
26 THESE DOCUMENTS AS SHOWING WHAT HE SAYS THEY SHOW.  
27 THEY'VE GOT TO PROVIDE EVIDENCE TO SHOW -- TO ESTABLISH  
28 THAT THESE PHOTOGRAPHS ARE ACCURATE REPRESENTATIONS OF

1 WHAT HE SAYS AND TO SHOW THAT HE IS THE PERSON WHO KNOWS  
2 THIS EVIDENCE, THAT HE WAS THE PERSON THAT TOOK THE  
3 PHOTOS.

4 THE COURT: THE COURT IS GOING TO APPLY THE  
5 SAME RULES OF EVIDENCE TO BOTH SIDES. THE OBJECTION IS  
6 SUSTAINED AS TO EXHIBIT 2 THROUGH 5 -- EXCUSE ME,  
7 PHOTOGRAPHS 2 THROUGH 5 AND EXHIBITS 1 THROUGH 6.

8 I WOULD ALSO LIKE TO SUGGEST THAT COUNSEL  
9 MIGHT WANT TO READ ROBINS (PHONETIC) ABOUT WHETHER ONE  
10 SIDE WISHES TO MAKE OR WITHDRAW CERTAIN OBJECTIONS. WE  
11 CAN GO THROUGH THIS. I'M HAPPY TO RULE ON ALL  
12 OBJECTIONS. I THINK BOTH SIDES HAVE DISCOVERED THAT  
13 THERE ARE THINGS THEY THOUGHT WERE GOING TO BE ADMITTED  
14 THAT DON'T QUITE MEET THE RULES OF EVIDENCE, AND I'M  
15 QUITE WILLING TO GO THROUGH THIS LINE BY LINE, EXHIBIT  
16 BY EXHIBIT IF THE PARTIES WANT TO DO THAT.

17 MS. SEIGLE: YOUR HONOR, WE DID GO THROUGH ALL  
18 THESE WHEN WE HELD OUR CONFERENCE.

19 THE COURT: YOU HAVE MET ALREADY.

20 OKAY. LET'S GO FORWARD.

21 MS. SEIGLE: LET'S GO ON TO PARAGRAPH 8 THEN.  
22 PARAGRAPH 8 ATTACHES AN EXHIBIT THAT WE ARE NOT  
23 OBJECTING TO, BUT WE ARE OBJECTING TO THE TEXT OF  
24 PARAGRAPH 8, STARTING AT LINE 12 OF PARAGRAPH 8 --  
25 REALLY STARTING AT LINE 11, HE'S -- MR. GATTI IS  
26 DESCRIBING A PAGE FROM KEN ADELMAN'S WEBSITE.

27 HE STATES -- THIS PAGE STARTING AT LINE 11,  
28 CONTAINS A VIEW OF THE STREISAND PROPERTY AND RESIDENCE

1 IDENTIFIED AS STREISAND ESTATE MALIBU. IT'S  
2 LONGITUDINAL AND LATITUDINAL COORDINATES -- A STATEMENT  
3 THAT CONTAINS LONGITUDINAL AND LATITUDINAL COORDINATES  
4 AND ITS LOCATION ON A MAP.

5 AS A FACTUAL MATTER, THAT'S NOT CORRECT, AS  
6 WE'VE POINTED OUT WITH OUR EVIDENCE. BUT I'M NOT -- I'M  
7 NOT OBJECTING SOLELY ON THAT. THIS STATEMENT LACKS  
8 FOUNDATION, LACK OF PERSONAL KNOWLEDGE. MR. GATTI HAS  
9 SUBMITTED NO EVIDENCE THAT HE KNOWS THAT THE COORDINATES  
10 AND THE LOCATION OF THE ESTATE ARE AS SHOWN ON THE MAP.  
11 WE WOULD STRIKE THOSE LINES.

12 MR. GLENSY: YOUR HONOR, AS FAR AS EXHIBIT 9  
13 IS CONCERNED, THE TEXT OF THE WEBSITE SPEAKS FOR ITSELF.  
14 AND --

15 THE COURT: I THINK THAT'S EXACTLY COUNSEL'S  
16 POINT.

17 MS. SEIGLE: WE'RE NOT OBJECTING TO THE TEXT.

18 THE COURT: THE WORDS BEGINNING WITH "AND" ON  
19 LINE 11 TO THE END OF THE PARAGRAPH ON LINE 14 ARE  
20 STRICKEN.

21 MS. SEIGLE: THANK YOU, YOUR HONOR.

22 GOING ON TO PHOTOGRAPH 19, OUR OBJECTIONS --  
23 I'M SORRY, PARAGRAPH 9, OUR OBJECTIONS ARE OF THE  
24 SIMILAR SORT. WE'RE NOT OBJECTING TO THE EXHIBIT,  
25 EXHIBIT 10. WE'RE OBJECTING TO THE DESCRIPTION OF THE  
26 EXHIBIT AS LACKING FOUNDATION, LACKING PERSONAL  
27 KNOWLEDGE, HEARSAY AND ARGUMENTATIVE. THE EXHIBIT SHOWS  
28 WHAT IT SHOWS. IT IS WHAT IT IS. WE DON'T NEED ALL OF

1 THE ARGUMENT.

2 THE COURT: SO STARTING WITH THE COMMA ON LINE  
3 17 IS WHERE YOU ARE PROPOSING YOUR OBJECTION.

4 MS. SEIGLE: YES.

5 THE COURT: RESPONSE.

6 MS. SEIGLE: GIVEN YOUR HONOR'S PREVIOUS  
7 RULING . . .

8 THE COURT: OBJECTION SUSTAINED. THE EXHIBIT  
9 IS ADMITTED, BUT THAT PORTION IDENTIFIED IS STRICKEN.

10 MS. SEIGLE: PARAGRAPH 10, YOUR HONOR, WE HAVE  
11 THE SAME ARGUMENT REGARDING THE DESCRIPTION CONTAINED IN  
12 PARAGRAPH 10. WE DO NOT --

13 THE COURT: LINE 24 BEGINNING WITH THE COMMA.

14 MS. SEIGLE: YES.

15 THE COURT: RESPONSE.

16 MR. GLENSY: SORRY, YOUR HONOR.

17 THE COURT: LINE 24 FOLLOWING THE COMMA.

18 MR. GLENSY: SAME AS THE ABOVE.

19 THE COURT: SAME RULING.

20 MS. SEIGLE: MOVING ON TO PARAGRAPH 11, NO  
21 OBJECTION TO EXHIBIT 12, BUT STARTING ON LINE 28 AFTER  
22 MAY 12, 2003, WE WOULD ASK THAT THE REST OF THAT BE  
23 STRICKEN FOR THE SAME REASONS.

24 THE COURT: EXCEPT THIS IS A STATEMENT  
25 PUBLISHED BY YOUR CLIENT, ISN'T IT?

26 MS. SEIGLE: IT'S A STATEMENT THAT'S ON THE  
27 WEBSITE. BUT THIS IS MR. GATTI'S INTERPRETATION OF THE  
28 LANGUAGE ON THE WEBSITE. AND --



1 THE COURT: FAIR ENOUGH. WHAT'S THE RESPONSE,  
2 MR. GATTI. MR. GLENSY, I'M SORRY.

3 MR. GLENSY: WELL, WE BELIEVE THAT THE  
4 STATEMENTS ARE STATEMENTS AGAINST INTEREST, BUT IF I  
5 UNDERSTAND, YOUR HONOR IS NOT STRIKING THE EXHIBIT, BUT  
6 JUST --

7 THE COURT: CORRECT.

8 MR. GLENSY: SO IS IT THE SAME AS THE  
9 PREVIOUS?

10 THE COURT: ACTUALLY, THE PLAINTIFF'S  
11 CHARACTERIZATION TO THE OBJECTION IS WELL TAKEN, SO  
12 FOLLOWING THE COMMA ON LINE 28, THE BALANCE OF THE  
13 PARAGRAPH IS STRICKEN.

14 MS. SEIGLE: THAT'S CORRECT.

15 PARAGRAPH 12, STARTING ON LINE 4 AFTER MAY 12,  
16 2003, THE REST OF THE PARAGRAPH, IT SIMPLY DESCRIBES  
17 WHAT THE PHOTOGRAPH -- WHAT THE WEBSITE SHOWS, WHAT THE  
18 EXHIBIT SHOWS. THE EXHIBIT SPEAKS FOR ITSELF.

19 THE COURT: ANY DIFFERENT RESPONSE?

20 MR. GLENSY: NO, YOUR HONOR.

21 THE COURT: SAME RULING.

22 MS. SEIGLE: PARAGRAPH 13 STARTING ON LINE 7  
23 AFTER MAY 12, 2003. THE SAME REASON. THE EXHIBIT  
24 SPEAKS FOR ITSELF, DOES NOT NEED A DESCRIPTION.

25 THE COURT: ALL RIGHT. SAME RULING.

26 MS. SEIGLE: MOVING TO PARAGRAPH 16, PARAGRAPH  
27 16 -- WE DO NOT OBJECT TO EXHIBIT 17, BUT STARTING ON  
28 LINE 14 AFTER MAY 12, 2003, WE OBJECT TO MR. GATTI'S

1 CHARACTERIZATION OF WHAT IS SHOWN ON THE WEBSITE.

2 THE COURT: COMMENT FROM THE PLAINTIFF.

3 MR. GLENSY: NO, YOUR HONOR.

4 THE COURT: SAME RULING, 14 FOLLOWING THE  
5 COMMA THROUGH THE END OF LINE 18 ARE STRICKEN.

6 MS. SEIGLE: PARAGRAPH 17. THIS PARAGRAPH  
7 REFERS TO A TELEPHONE CALL BETWEEN MR. GATTI AND  
8 MR. KENDALL. WE OBJECT TO THIS PARAGRAPH AS HEARSAY, AS  
9 NOT RELEVANT, AND AS PART OF A SETTLEMENT COMMUNICATION  
10 THAT IS PRIVILEGED UNDER THE SETTLEMENT PRIVILEGE, AND  
11 ASK THAT IT BE STRICKEN FOR THOSE REASONS. I BELIEVE  
12 MR. GATTI CAN SPEAK AS TO THIS ONE.

13 MR. GATTI: YOUR HONOR, WITH RESPECT TO THIS  
14 STATEMENT, WHAT THAT WENT TO AND WHAT WE FEEL IT GOES TO  
15 EVIDENTIARYWISE, IS TO THE ISSUE OF OFFENSIVENESS AND  
16 THE FACT THAT WHAT THE DEFENDANT IS DOING HERE AND WHAT  
17 HIS INTENTIONS ARE GO DIRECTLY AND BARE ON THE  
18 OFFENSIVENESS ASPECTS OF SOME OF THE PRONGS OF THE  
19 MATTERS THAT ARE BEFORE THE COURT. SO THAT IS WHERE  
20 THAT GOES. AND THAT'S -- WE'VE SET FORTH A FOUNDATION  
21 FOR IT, AND IT'S RELEVANT INFORMATION.

22 MR. KENDALL: YOUR HONOR, FIRST OF ALL, THIS  
23 WAS PART OF SETTLEMENT COMMUNICATION, SHOULD BE EXCLUDED  
24 ON THAT GROUND. BUT, SECONDLY, THE STATEMENT ATTRIBUTED  
25 TO ME IS OFFERED FOR THE TRUTH THAT I SAID THAT. THAT'S  
26 HEARSAY AND DOES NOT HAPPEN TO BE TRUE. IT HAPPENS TO  
27 BE A VERY CONDENSED VERSION OF A LONGER CONVERSATION,  
28 WHICH IS ONE OF THE REASONS WHY HEARSAY IS NOT THE MOST

1 TRUSTWORTHY FORM OF EVIDENCE.

2 THE COURT: THIS ONE IS SUBMITTED. WE'LL SEE  
3 IF IT'S RELEVANT TO SOMETHING OTHER THAN SETTLEMENT  
4 DISCUSSIONS. IF IT IS I'LL RULE ON IT. IF NOT, IT WILL  
5 BE EXCLUDED.

6 MS. SEIGLE: THANK YOU, YOUR HONOR.

7 PARAGRAPH 18, WE OBJECT TO THE ENTIRETY OF THE  
8 PARAGRAPH. THIS PARAGRAPH IS OBJECTIONABLE BECAUSE  
9 MR. GATTI IS PURPORTING TO TESTIFY ABOUT MR. ADELMAN'S  
10 MOTIVES. IT'S HEARSAY. IT LACKS PERSONAL KNOWLEDGE.  
11 IT LACKS FOUNDATION. MR. GATTI DOES NOT HAVE PERSONAL  
12 KNOWLEDGE ABOUT WHAT MR. ADELMAN DID AFTER THE COMPLAINT  
13 WAS FILED. THERE IS SOME DISCUSSION IN THIS PARAGRAPH  
14 ABOUT AN EMAIL LINK THAT SUPPOSEDLY WAS ON THE WEBSITE  
15 THAT LINKED TO MR. GATTI'S WORK EMAIL AND THE RESULTING  
16 -- THE SUPPOSED RESULTING EMAILS THAT HE RECEIVED.

17 THERE IS NO EVIDENCE OF ANY -- OF CAUSATION  
18 THERE. MR. GATTI'S EMAIL ADDRESS IS PUBLIC, HIS WORK  
19 ADDRESS IS PUBLIC, AND THERE IS NO EVIDENCE THAT THIS --  
20 THESE EMAILS HE RECEIVED ARE ANY DIFFERENT THAN THE JUNK  
21 EMAILS THAT EVERYBODY WITH PUBLIC EMAIL ADDRESSES  
22 RECEIVE EVERY DAY. THERE'S NO FOUNDATION AS TO THE  
23 CAUSATION.

24 FINALLY, THE LAST SENTENCE OF THIS PARAGRAPH  
25 THAT INDICATES "I'VE DEMANDED THAT THAT LINK BE  
26 REMOVED," THAT IS HEARSAY. AND IT'S ALL IRRELEVANT. IT  
27 HAS NO BEARING ON ANY OF THE MATTERS HAVING TO DO WITH  
28 THE PHOTOGRAPH OF MRS. STREISAND'S ESTATE.

1 MR. GATTI: AGAIN, YOUR HONOR, UNFORTUNATELY I  
2 HAVE VERY MUCH FIRSTHAND KNOWLEDGE OF EVERYTHING THAT  
3 OCCURRED THAT I TESTIFIED TO IN THAT DECLARATION. ALSO  
4 AGAIN, IT GOES TO THE OFFENSIVENESS ASPECTS OF  
5 MR. ADELMAN'S APPROACH IN THIS CASE AND THE FACT THAT,  
6 IN LIGHT OF A MATTER THAT WAS FILED UNDER SEAL, HE WENT  
7 AND DID WHAT HE DID, WHICH WAS INCLUDING LINKING MY  
8 BUSINESS EMAIL ADDRESS ONTO HIS WEBSITE. AND IT WAS  
9 TIMED WITH THAT THAT THE BOMBARDMENT OF THESE MATTERS  
10 OCCURRED. I DON'T KNOW HOW ELSE I CAN SAY IT AND WITH  
11 ANY MORE FURTHER FIRSTHAND KNOWLEDGE THAN THAT.

12 MS. SEIGLE: THIS CASE WAS NOT FILED UNDER  
13 SEAL. NOTHING IN THIS CASE HAS BEEN FILED UNDER SEAL,  
14 SO THAT IS NOT CORRECT. IN ADDITION, THE SUPPOSED  
15 OFFENSIVENESS OF PUTTING THAT EMAIL ADDRESS, PUBLIC  
16 EMAIL ADDRESS ON A WEBSITE, IS A COMPLETELY UNRELATED  
17 BURDEN THAT THE PLAINTIFFS MUST SHOW OF THE PURPORTED  
18 OFFENSIVENESS OF PUTTING THE PHOTOGRAPH ON THE WEBSITE.  
19 THESE ARE COMPLETELY SEPARATE PIECES OF INFORMATION.  
20 THEY HAVE NOTHING TO WITH EACH OTHER. THIS PARAGRAPH IS  
21 IRRELEVANT. IT GOES TO NOTHING.

22 THE COURT: YOU WANT TO ADDRESS THE RELEVANCE  
23 ISSUES, MR. GATTI?

24 MR. GATTI: AGAIN, I REITERATE THAT IT GOES TO  
25 THE OFFENSIVENESS IN THE FACT THAT MR. ADELMAN AND HOW  
26 HE IS TREATING THE ISSUES OF PRIVACY, WHETHER IT RELATES  
27 TO MRS. STREISAND, WHETHER IT RELATES TO ISSUES RELATING  
28 TO HER COUNSEL, AND THE FACT OF THE TIMING OF IT IS WHAT

1 IS RELEVANT IN THIS CASE, AS OPPOSED TO WHETHER THE  
2 SEAL -- THE MATTER WAS FILED UNDER SEAL. BUT WHETHER  
3 IT'S SEALED OR NOT --

4 THE COURT: WELL, COUNSEL, WE HAD A DISCUSSION  
5 AT THE LAST HEARING WHEN THIS HEARING WAS SET, IT'S  
6 CLEAR THIS MATTER WAS NOT FILED UNDER SEAL. THERE WAS  
7 NO MOTION EVER FILED, SO IT WASN'T. IN ANY EVENT THE  
8 MATTER IS GOING TO BE SUBMITTED. AS FOR 17, DO YOU HAVE  
9 ANOTHER OBJECTION TO THIS DECLARATION, COUNSEL?

10 MS. SEIGLE: TWO MORE TO THIS DECLARATION, OR  
11 A COUPLE MORE. PARAGRAPH 19, THIS HAS EXHIBIT 18  
12 ATTACHED. WE DO NOT OBJECT TO EXHIBIT 18. WE DO OBJECT  
13 TO THE LINES STARTING ON 7 AFTER JUNE 4, 2003. IT  
14 PURPORTS TO DESCRIBE WHAT IS ON THE WEBSITE, AND THE  
15 WEBSITE SPEAKS FOR ITSELF, EXHIBIT SPEAKS FOR ITSELF.

16 THE COURT: RESPONSE TO THAT STARTING OFF WITH  
17 THE COMMA ON LINE 7.

18 MR. GLENSY: NO, YOUR HONOR. I BELIEVE IT'S  
19 THE SAME AS IN THE BRIEF.

20 THE COURT: IT WILL BE THE SAME AS 10, 11, 12,  
21 AND SEVERAL OTHER PARAGRAPHS.

22 MS. SEIGLE: PARAGRAPH 20 STARTING ON LINE 10  
23 AFTER JUNE 4, 2003, FOR THE SAME REASONS.

24 THE COURT: ANY COMMENT THE PLAINTIFF?

25 MR. GATTI: NO, YOUR HONOR.

26 THE COURT: SAME RULING.

27 MS. SEIGLE: PARAGRAPH 21 HAS A STATEMENT BY  
28 MR. GATTI ABOUT MRS. STREISAND'S SUPPOSED NUMEROUS

1 STALKERS AND THREATS TO HER PHYSICAL SAFETY. THIS  
2 PARAGRAPH IS ALL HEARSAY. IT LACKS FOUNDATIONS, LACKS  
3 PERSONAL KNOWLEDGE. IT'S ARGUMENTATIVE.

4 THE COURT: RESPONSE FROM THE PLAINTIFF.

5 MR. GATTI: YOUR HONOR, IF I COULD RESPOND  
6 WITH RESPECT TO THAT. THAT BASICALLY ADDRESSES WHAT I  
7 REFERENCED EARLIER. I DO HAVE PERSONAL KNOWLEDGE OF IT.  
8 I ALSO DO HAVE SIGNIFICANT BACK-UP DOCUMENTATION THAT,  
9 AS WE POINTED OUT IN OUR PAPERS, IT IS OF SUCH A  
10 SENSITIVE AND SAFETY SENSITIVE ISSUE THAT IT IS  
11 SOMETHING THAT WE HAVE BROUGHT TO THE COURT TO EXPLORE  
12 WITH YOUR HONOR IF NEED BE, BUT WE HAVE THAT INFORMATION  
13 IN GREAT DETAIL. AND IT IS DECLARED TO NOT ONLY BY  
14 MYSELF, NOT ONLY MRS. STREISAND, NOT ONLY CHIEF JUSTICE  
15 SODERBERG, BUT ALSO IN A DECLARATION FORMAT FROM  
16 SECURITY EXPERTS WHO WORK WITH MRS. STREISAND TO MONITOR  
17 THIS EXACT TYPE OF CONDUCT.

18 THE COURT: ALL RIGHT. THE LAST CATEGORY  
19 HASN'T BEEN SUBMITTED, TO MY KNOWLEDGE. I'M LOOKING AT  
20 YOUR CLIENT'S DECLARATION, COUNSEL, WHICH WAS ALSO FILED  
21 ON THE 23RD. THE BASIS FOR THE OBJECTION IS HEARSAY AND  
22 LACK OF PERSONAL KNOWLEDGE. DO I UNDERSTAND THAT  
23 CORRECTLY?

24 MS. SEIGLE: YES, THAT'S CORRECT, YOUR HONOR.

25 THE COURT: ALL RIGHT. THIS IS SUBMITTED. DO  
26 YOU HAVE ANOTHER DECLARATION TO WHICH YOU WANT TO MAKE  
27 OBJECTION?

28 MS. SEIGLE: THERE IS ONE ADDITIONAL ONE.

1 THE COURT: WHICH ONE, PLEASE.

2 MS. SEIGLE: THIS IS DECLARATION OF JONATHAN  
3 STERN SUBMITTED IN OPPOSITION TO THE DEFENDANT'S MOTION  
4 TO STRIKE. AND I DON'T HAVE THE DATE THAT IT WAS --  
5 THAT IT WAS SUBMITTED. I BELIEVE IT WAS JULY 3RD.

6 THE COURT: GO AHEAD. WHICH EXHIBITS ARE  
7 ATTACHED?

8 MR. KENDALL: EXHIBITS 1, 2, 3, 4, 5.  
9 HOPEFULLY TO MAKE THIS SIMPLE, WITH THE EXCEPTION OF  
10 EXHIBIT 4, WE DO NOT OBJECT TO THE EXHIBITS, BUT WE DO  
11 OBJECT TO ALL OF THE COMMENTARY ABOUT WHAT THE EXHIBITS  
12 SHOW. SO IN PARAGRAPHS, 2, 3, 4, 5 AND 6, AFTER THE  
13 STATEMENT THAT "ATTACHED IS AN EXHIBIT -- IS AN EXHIBIT  
14 1 OR EXHIBIT 2, THERE IS A LOT OF COMMENTARY. WE WOULD  
15 ASK THAT ALL OF THE COMMENTARY TO EACH OF THESE  
16 PHOTOGRAPHS BE STRICKEN.

17 THE COURT: ALL RIGHT. YOU HAVE NO WOULD-BE  
18 PROBLEM WITH EXHIBIT 4?

19 MS. SEIGLE: WELL, NO, I DO HAVE A PROBLEM  
20 WITH 4. I DON'T HAVE -- I HAVE NO PROBLEM WITH ONE,  
21 TWO, THREE, AND FIVE, AND I'LL GET TO 4 IN A MINUTE.

22 THE COURT: ALL RIGHT. AS TO THAT SET OF  
23 OBJECTIONS, WHAT IS THE PLAINTIFF'S --

24 MR. GLENSY: AS TO THE OBJECTIONS, I BELIEVE  
25 AS TO THE COMMENTARY ON ONE -- PARAGRAPHS TWO, THREE,  
26 FOUR, AND SIX, IT'S THE SAME AS IN THE PREVIOUS, YOUR  
27 HONOR.

28 THE COURT: SAME RULING.

1 MR. GLENSY: I WILL ADDRESS -- I'M NOT SURE IF  
2 THE DEFENDANT HAS EXHIBIT 4 YET.

3 THE COURT: LET'S TURN TO 4.

4 MS. SEIGLE: EXHIBIT 4, THIS PURPORTS TO BE A  
5 DESCRIPTION OF A VOICE MAIL MESSAGE THAT IS POSTED ON  
6 MR. ADELMAN'S WEBSITE. THIS EXHIBIT IS HEARSAY. IT'S  
7 IRRELEVANT. AND THERE IS -- IT LACKS FOUNDATION, IT  
8 SHOULD BOTH -- THE EXHIBIT ITSELF AND THE WHOLE  
9 PARAGRAPH 5 SHOULD BE STRICKEN.

10 MR. GLENSY: WELL, YOUR HONOR, LET ME ADDRESS  
11 THE VARIOUS OBJECTS AS FAR AS RELEVANCE IS CONCERNED,  
12 THIS IS CLEARLY RELEVANT TO THE OFFENSIVENESS PRONG OF  
13 THE CAUSES OF ACTION AS IT IS DIRECT EVIDENCE OF  
14 MR. ADELMAN'S BEHAVIOR, AND IT'S ALSO DIRECT EVIDENCE OF  
15 WHAT A REASONABLE -- ONE OF THE PRONGS, BEING WHAT A  
16 REASONABLE PERSON WOULD FIND OFFENSIVE. HERE'S SOMEONE  
17 OTHER THAN PLAINTIFF EXPRESSING THEIR OPINION ABOUT  
18 THIS. IT IS DERIVED FROM THE -- FROM THE WEBSITE SO IT  
19 IS DIRECT EVIDENCE.

20 AND THE TRANSCRIPTION, THERE IS -- THE  
21 DECLARANT HAS DECLARED AS TO HIS PERSONAL KNOWLEDGE OF  
22 THE ACTUAL VOICE MAIL MESSAGE THAT THIS REFERS TO, SO  
23 IT'S AN ADMISSION AGAINST INTEREST. AND FOR ALL OF THE  
24 ABOVE REASONS, ALL OF THE OBJECTIONS ARE NOT WELL TAKEN  
25 AS FAR AS THIS EXHIBIT IS CONCERNED.

26 MS. SEIGLE: AGAIN, THERE IS NOT A PROBLEM  
27 WITH THE LINK OF RELEVANCE. THIS EXHIBIT IS FROM SOME  
28 RANDOM PERSON WHO HAS NO ROLE IN THIS CASE. IT DOES NOT



1 SPEAK TO THE OFFENSIVENESS OF THE PHOTOGRAPH, THE  
2 SUPPOSED OFFENSIVENESS OF THE PHOTOGRAPH OF  
3 MRS. STREISAND'S ESTATE. IT'S NOT MRS. STREISAND  
4 SPEAKING ABOUT WHY SHE FINDS IT OFFENSIVE. THE FACT  
5 THAT SOME OTHER PERSON MIGHT FIND IT OFFENSIVE IS NOT AT  
6 ISSUE. WHAT IS AT ISSUE IS WHETHER IT'S OFFENSIVE TO  
7 MRS. STREISAND, SO THIS DOES NOT GO TO ANY EVIDENCE THAT  
8 SHOULD BE SUBMITTED IN THIS CASE.

9 THE COURT: WELL, THE OBJECTION IS SUBMITTED  
10 AT THIS POINT. ARE THERE OTHER EVIDENTIARY MATTERS FROM  
11 THE DEFENSE?

12 MR. KENDALL: YOUR HONOR, THERE ARE THE  
13 MATTERS IN THE TENTATIVE.

14 THE COURT: YES, BUT YOU ARE DONE WITH ORAL  
15 REQUESTS AT THIS POINT AND MOTIONS TO STRIKE?

16 MS. SEIGLE: YES, YOUR HONOR. THANK YOU.

17 THE COURT: OKAY. ALL RIGHT. DID YOU WANT  
18 TO -- DOES DEFENSE NOW WANT TO ADDRESS THE TENTATIVE?

19 MR. KENDALL: YOUR HONOR, WITH RESPECT TO THE  
20 EVIDENTIARY ISSUES?

21 THE COURT: YES.

22 MR. KENDALL: IF I COULD THEN BEGIN WITH  
23 THE BEGINNING OF THE TENTATIVE WHERE THE COURT EXPRESSES  
24 IT'S TENTATIVE VIEWS WITH RESPECT TO CERTAIN PARTS OF  
25 THE ADELMAN DECLARATION.

26 THE COURT: GO AHEAD.

27 MR. KENDALL: THE DECLARATION WHERE  
28 MR. ADELMAN STATES THAT THE LENS DOES NOT EXTEND PAST 70

1 MILLIMETERS, I THINK SINCE HE'S TESTIFIED THAT HE HAS  
2 PERSONAL KNOWLEDGE AND THIS IS HIS CAMERA, ANYONE WHO  
3 HAS A CAMERA AND HAS A LENS WOULD KNOW HOW FAR IT WOULD  
4 EXTEND, SO I THINK THE PROPER INFERENCE TO BE DRAWN BY  
5 HIS STATEMENT THAT HE HAS PERSONAL KNOWLEDGE, BY THE  
6 EVIDENCE THAT'S OTHERWISE IN THE CASE, THAT THIS IS THE  
7 CAMERA USED BY HIM TO TAKE THESE PICTURES, THE  
8 DECLARATION IN LINE 6 SAYS THAT THIS IS WHAT HE USED, I  
9 BELIEVE HE'S QUALIFIED TO SAY HOW FAR THE LENS GOES, AND  
10 HE'S QUALIFIED TO TESTIFY THAT IT CAN'T FUNCTION  
11 TELESCOPICLY. BECAUSE ANYBODY WHO LOOKS THROUGH A  
12 CAMERA TO TAKE A PICTURE AND THEN SEES THE PICTURE WILL  
13 KNOW WHETHER THE LENS PRODUCED AN IMAGE THAT'S LARGER TO  
14 THE HUMAN EYE THAN WHAT WAS SEEN THROUGH THE CAMERA OR  
15 SEEN --

16 THE COURT: OKAY, COUNSEL, YOU HAVE JUST  
17 DEFINED "TELESCOPIC," WHICH IS NOWHERE ELSE DEFINED IN  
18 HIS DECLARATION, AND THE OTHER --

19 MR. KENDALL: I THINK IT HAS A COMMON MEANING,  
20 WHICH IS MAKING SOMETHING LARGER TO THE HUMAN EYE.

21 THE COURT: COULD IT ALSO MEAN BRINGING  
22 SOMETHING CLOSER AS OPPOSED TO MAKING IT LARGER?

23 MR. KENDALL: WELL, THE WAY -- NO, BECAUSE  
24 WHEN YOU LOOK AT A STAR WITH A TELESCOPE IT DOES NOT  
25 MOVE THE STAR. IT ENLARGES THE VIEW OF THE STAR. AND  
26 IT'S THE SAME THING, ONLY LOOKING AT THE COAST LINE. IF  
27 YOU LOOK THROUGH A LENS, THAT DOESN'T ENLARGE THE VIEW.  
28 YOU SEE IT AS YOUR NAKED EYE WOULD SEE IT.

1 THE COURT: IS THERE ANYTHING ELSE ABOUT THAT  
2 PARAGRAPH?

3 MR. KENDALL: YOUR HONOR, AGAIN, AND WE REALLY  
4 GET INTO THIS QUESTION OF SPECIFICITY OF PERSONAL  
5 KNOWLEDGE. MR. ADELMAN IS TESTIFYING THAT THE CAMERA  
6 AND LENS PRODUCES PHOTOGRAPHS OF LOWER RESOLUTION THAN A  
7 STANDARD 35 MILLIMETER CAMERA. EVEN WITHOUT HIS  
8 SUPPLEMENTAL DECLARATION, THE FACT THAT HE SAYS HE HAS  
9 PERSONAL KNOWLEDGE OF THAT AT LEAST IMPLIES THAT HE  
10 KNOWS WHAT A 35 MILLIMETER CAMERA DOES, ALTHOUGH I WOULD  
11 SAY THAT, BASED ON THE COURT'S RULING WE'VE JUST GONE  
12 OVER, THE COURT MAY FEEL THERE'S NOT ENOUGH SPECIFIC  
13 PERSONAL KNOWLEDGE STATED.

14 THE COURT: THAT IS HOW THIS COURT FEELS. IS  
15 THERE ANY RESPONSE THAT THE PLAINTIFF WANTS TO MAKE?

16 MR. GATTI: I THINK THAT AS LAID OUT IN THE  
17 TENTATIVE. I HAVE NOTHING FURTHER TO ADD.

18 THE COURT: THE TENTATIVE WILL STAND ON THAT.  
19 WHAT IS YOUR NEXT --

20 MR. KENDALL: THE NEXT ONE, YOUR HONOR, IS  
21 THAT IN PARAGRAPH 3 MR. ADELMAN STATES THAT HE COMPUTED  
22 THE DISTANCE FROM HIS HELICOPTER TO THE STREISAND  
23 ESTATE.

24 THE COURT: I WAS IMPRESSED.

25 MR. KENDALL: PARDON.

26 THE COURT: I WAS IMPRESSED.

27 MR. KENDALL: IT'S SIMPLE TRIGONOMETRY  
28 THAT -- USING A GREAT CIRCLE ALGORITHM, I'M INFORMED.

1 THE COURT: I'M DOUBLY IMPRESSED. I THOUGHT  
2 YOU WERE GOING TO PROCEED TO THE BLACK BOARD AND EXPLAIN  
3 HOW IT'S DONE. SERIOUSLY, COUNSEL, I APPRECIATE THE  
4 SIMPLICITY WITH WHICH IT MIGHT BE DONE. BUT HE DOESN'T  
5 SAY ANYTHING IN HIS DECLARATION ABOUT HOW HE DERIVED THE  
6 COMPETENCE WHICH HE APPARENTLY HAS -- HE HAS NOT  
7 TESTIFIED TO IN THIS DECLARATION, SO THE TENTATIVE IS  
8 GOING TO STAND ON THAT.

9 MR. KENDALL: OKAY. THEN THE NEXT ONE, YOUR  
10 HONOR, IS IN PARAGRAPH 4 IN THE LAST LINE OF THE COURT'S  
11 COMMENTS ON THIS PARAGRAPH, THE COURT SAYS "SUSTAINED AS  
12 TO EXHIBIT R ON THE GROUNDS OF HEARSAY, IF THE EMAILS  
13 ARE NOT OFFERED FOR THE TRUTH, HOW ARE THEY RELEVANT?"

14 THEY ARE JUST OFFERED FOR THE FACT THAT THESE  
15 INDIVIDUALS SENT THEM, WHICH -- FROM WHICH ONE CAN  
16 DEDUCE THE FACT THAT THEY HAD SEEN THE WEBSITE, OTHER  
17 THAN AN INDIVIDUAL FROM THAT ORGANIZATION HAD SEEN THE  
18 WEBSITE, BECAUSE OTHERWISE THEY WOULDN'T BE SENDING THE  
19 EMAIL, SO IT JUST CONTACTS WITH A MEMBER OF THIS  
20 SPECIFIC ORGANIZATION. I RECOGNIZE THAT THE COURT'S --

21 THE COURT: HOW DO YOU KNOW THAT THEY WERE, IN  
22 FACT, FROM THAT PARTICULAR ORGANIZATION?

23 MR. KENDALL: THAT'S AN AUTHENTICATION ISSUE;  
24 NOT A HEARSAY ISSUE. AND THE WAY WE KNOW WHERE THEY ARE  
25 FROM IS FROM THE CONTEXT OF WHAT THEY SAY.

26 THE COURT: ONLY IF IT'S TRUE.

27 MR. KENDALL: ONLY IF IT'S TRUE. THEN WHAT WE  
28 WOULD HAVE IS PEOPLE MASQUERADING AS PEOPLE WORKING WITH

1 THE DISABLED WHO FOUND THE WEBSITE RELEVANT TO  
2 DISABILITY --

3 THE COURT: OR PEOPLE WHO DID ALL THESE OTHER  
4 THINGS THAT ARE SET OUT AT THE OTHER PAGES IN EXHIBIT R.

5 MR. KENDALL: YOUR HONOR, I THINK THAT THE  
6 EXHIBITS ARE SELF-AUTHENTICATING. THERE IS, AFTER ALL,  
7 THE CATCH-ALL RULE OF HEARSAY, AND I DON'T THINK THERE  
8 IS ANY BASIS WHATSOEVER AND THERE HAS CERTAINLY BEEN NO  
9 ARGUMENT FROM THE OTHER SIDE TO DOUBT THE AUTHENTICITY  
10 THAT -- OF THESE EMAILS.

11 THE COURT: RESPONSE --

12 MR. KENDALL: MR. ADELMAN OBVIOUSLY RECEIVED  
13 THEM, WHICH IS EVIDENCE ON THEIR FACE.

14 THE COURT: RESPONSE.

15 MR. GATTI: THEY'RE DEFINITELY IS A QUESTION.  
16 THOSE EMAILS ARE REDACTED, IN REDACTED FORM. WE DON'T  
17 KNOW NECESSARILY WHERE THEY ARE COMING FROM. ALSO WITH  
18 RESPECT TO ON THE HEARSAY ISSUE, AS YOUR HONOR STATED IN  
19 THE TENTATIVE, THESE WOULD BE OBJECTIONABLE ON THE  
20 GROUNDS OF HEARSAY BECAUSE THEY REALLY ARE BEING  
21 SUBMITTED, AS COUNSEL JUST STATED, FOR THE TRUTH OF WHAT  
22 THEY ARE TRYING TO SAY. AND THROUGH THEIR REDACTION OF  
23 THOSE EMAILS, WE DON'T HAVE EMAIL ADDRESSES, WE DON'T  
24 HAVE VARIOUS IDENTIFICATION INFORMATION, SO THERE IS  
25 NO -- REALLY NO WAY TO LOOK AT THAT INFORMATION.

26 THE COURT: IF THEY WERE DECLARATIONS, THEY  
27 WOULD BE ADMISSIBLE, BUT THEY AREN'T. THE TENTATIVE IS  
28 GOING TO STAND ON THIS.

1 MR. KENDALL: JUST SO THE RECORD IS CLEAR,  
2 THERE ARE EMAIL ADDRESSES.

3 THE COURT: ON SOME THERE ARE, BUT I NOTICE ON  
4 THE FIRST ONE, WHICH ONE MIGHT SURMISE IS FROM SOMEONE  
5 IN THE COAST GUARD, OR AT LEAST THAT'S THE  
6 REPRESENTATION, THE EMAIL ADDRESS IS REMOVED, AND THAT'S  
7 A PUBLIC ADDRESS.

8 GO ON TO THE NEXT ONE, PLEASE.

9 MR. KENDALL: YOUR HONOR, ONE LAST POINT FOR  
10 THE RECORD, WHICH IS, THE COURT TOOK UNDER SUBMISSION A  
11 NUMBER OF HEARSAY ISSUES ON OUR OBJECTIONS, AND I JUST  
12 WANT TO REMIND THE COURT OF ITS OWN COMMENT, WHICH IS WE  
13 NEED TO APPLY THE SAME RULES.

14 THE COURT: YES. INDEED.

15 MR. KENDALL: WITH RESPECT TO HEARSAY.

16 THE COURT: THEY CLEARLY RELATE TO THE  
17 OFFENSIVENESS ISSUE, WHICH MAY OR MAY NOT TURN OUT TO BE  
18 RELEVANT.

19 MR. KENDALL: ONE LAST ONE, YOUR HONOR. AND  
20 THAT IS WITH RESPECT TO PARAGRAPH 8 OF MR. ADELMAN'S  
21 DECLARATION AND EXHIBIT L ATTACHED TO IT. EXHIBIT L IS  
22 THE BARBRATIMELESS DOT COM WEBSITE. THE TEXT IS INDEED  
23 SELF-AUTHENTICATING BY ITS VERY NATURE OF THE  
24 PHOTOGRAPH. AS THE COURT HAS POINTED OUT, ONE CAN  
25 SIMPLY LOOK AT THE HOUSE PICTURED ON THE THREE BOTTOM  
26 PAGES, BOTTOM PHOTOGRAPHS ON THE FIRST PAGE OF EXHIBIT L  
27 AND SEE THAT WE'RE TALKING ABOUT THE SAME HOUSE. AND  
28 INDEED THE RIGHTHAND PICTURE IS, EXCEPT FOR THE FACT IT

1 SHOWS ONLY THE HOUSE AS OPPOSED TO MR. ADELMAN'S  
2 PICTURE, WHICH SHOWS THE CLIFF AND BEACH, IT IS A VERY  
3 SIMILAR PICTURE --

4 THE COURT: ACTUALLY, COUNSEL, WHY DON'T YOU  
5 WAIT AND LET ME HEAR FROM THE PLAINTIFF ON THIS. I'M  
6 INCLINED TO ADMIT EXHIBIT -- THE PHOTOGRAPHS OF EXHIBIT  
7 L, BUT WE ARE GOING TO TALK ABOUT THE TEXT.

8 MR. GATTI: WITH RESPECT TO THE PHOTOGRAPHS  
9 ONLY, AGAIN, AS WAS STATED IN THE TENTATIVE, AND I  
10 BELIEVE BASED ON OUR OBJECTION, THERE IS NO BASIS FOR  
11 DECLARANT'S ASSERTION AS TO -- CERTAINLY AT THOSE  
12 PHOTOGRAPHS AS TO WHERE THEY WERE -- HOW THEY APPLIED.

13 SOME OF THE PICTURES DON'T SHOW NECESSARILY  
14 ANYTHING AS FAR AS ANY VISUAL INDICATION OF WHERE IT'S  
15 BEEN TAKEN, SO TO THE STATEMENT AND DESCRIPTION --  
16 OBVIOUSLY THAT'S ANOTHER ISSUE, BUT THE STATEMENTS AND  
17 DESCRIPTION ABOUT THE PHOTOGRAPHS, THERE IS NO BASIS FOR  
18 IT.

19 BUT ALSO THE PHOTOGRAPHS THEMSELVES, IT'S  
20 DIFFICULT TO DETERMINE, IN FACT, WHERE THEY ARE, AND  
21 THERE IS NO EVIDENCE TO STATE WHERE THEY ARE FROM.

22 THE COURT: OKAY. YOU CAN'T TELL THAT FROM  
23 THE AERIAL PHOTOGRAPH WHICH IS IN EVIDENCE --

24 MR. GATTI: I THINK CERTAIN OF THOSE --

25 THE COURT: -- THAT THE EXTERIOR SHOTS ARE OF  
26 THE SAME PREMISES?

27 MR. GATTI: CERTAIN OF THOSE PHOTOGRAPHS, I  
28 THINK YOU CAN, BUT A BLANKET STATEMENT REGARDING ALL OF

1 THOSE PHOTOGRAPHS, I DON'T THINK THAT'S CORRECT.

2 THE COURT: SO TO WHICH PHOTOGRAPH DOES THE  
3 PLAINTIFF OBJECT? I'M LOOKING AT EXHIBIT L, PAGES 35  
4 THROUGH 38.

5 MR. GATTI: WITH RESPECT TO THE -- LOOKING AT  
6 PAGE 36 OF THAT EXHIBIT, ALL OF THOSE --

7 THE COURT: WEDDING PHOTOGRAPHS.

8 MR. GATTI: YEAH, THE WEDDING PHOTOGRAPHS.

9 THE COURT: THE TOP ROW? DOES DEFENSE HAVE  
10 ANY DESIRE TO HAVE THE WEDDING PHOTOGRAPHS IN EVIDENCE?

11 MR. KENDALL: WE CAN LIVE WITHOUT THE WEDDING  
12 PHOTOGRAPHS.

13 THE COURT: OKAY. THE WEDDING PHOTOGRAPHS AT  
14 THE TOP BAND, THE TOP ROW OF PAGE 36, ARE EXCLUDED. I  
15 TAKE IT BY ADMITTING PAGE 35 IT'S AN AGREEMENT THAT THE  
16 PHOTOGRAPHS ON PAGE 35 ARE NOT OBJECTED TO.

17 MR. GATTI: WELL, I THINK WITH RESPECT TO PAGE  
18 35, I THINK THOSE ARE -- I HAD SOME DOUBT ABOUT THE  
19 FIRST ONE AS FAR AS THE SPECIFICITY OF IT --

20 THE COURT: WHEN YOU SAY "FIRST ONE," ARE YOU  
21 TALKING ABOUT THE TOP ONE, COUNSEL?

22 MR. GATTI: VERY TOP PHOTO ON PAGE 35. BUT I  
23 UNDERSTAND YOUR HONOR --

24 THE COURT: THE COURT WILL ADMIT THE FOUR  
25 PHOTOS ON PAGE 35 -- OR, EXCLUDE THE PHOTOS ON THE TOP  
26 BAND ON 36, WHICH ARE APPARENTLY OF THE WEDDING. LET'S  
27 DEAL WITH THE BALANCE, INCLUDING THE ROSES.

28 MR. GATTI: THAT'S WHERE I WAS GOING NEXT,



1 YOUR HONOR, THE FOUR PICTURES ON THE RIGHT OF THE ROSES.  
2 AGAIN, I DON'T THINK THERE IS ANY INDICATION OF WHERE  
3 THAT IS.

4 MR. KENDALL: THE ROSES ARE NOT RELEVANT, YOUR  
5 HONOR. WE DON'T OBJECT TO HAVING THEM STRICKEN.

6 THE COURT: SO THE FOUR PICTURES OF ROSES ON  
7 THE RIGHT SIDE OF THE PAGE 36 ARE EXCLUDED. THERE ARE  
8 TWO PHOTOGRAPHS OF WHAT APPEAR TO BE THE REAR POOL AREA  
9 OF THE RESIDENCE. IS THERE ANY OBJECTION TO THOSE TWO  
10 PHOTOS?

11 MR. GATTI: THE OBJECTION WE WOULD HAVE, YOUR  
12 HONOR, IS JUST AGAIN WITH THE SPECIFICITY AS TO WHERE  
13 IT'S BEING TAKEN FROM --

14 THE COURT: I DON'T QUITE UNDERSTAND.

15 MR. GATTI: FROM THE POSITIONING OF WHO IT  
16 IS -- WHOEVER IT IS THAT'S TAKING THESE PHOTOS.

17 MR. KENDALL: THE PROBLEM IS NOT THE ISSUE --  
18 NOT WHO TOOK THEM. THE ISSUE IS THAT THEY WERE IN THIS  
19 MAGAZINE AND THERE ARE A MUCH CLOSER OF THE REAR AND  
20 PARASOL AND DECK CHAIRS THAN ANYTHING MR. ADELMAN  
21 FEATURED ON HIS PHOTOGRAPH.

22 THE COURT: WELL, FOR RIGHT NOW THE QUESTION  
23 IS ARE THE PICTURES OF THIS RESIDENCE AND ARE THEY  
24 PROPERLY ADMITTED.

25 MR. GATTI: AND I THINK, YOUR HONOR, AS WE  
26 STATED EARLIER -- I BELIEVE WE DID, THAT WITH RESPECT TO  
27 OUR OBJECTIONS THAT THEY -- THESE PICTURES ALSO  
28 REPRESENT HEARSAY AS A HEARSAY EXCEPTION. IT'S A

1 HEARSAY OBJECTION. AND --

2 THE COURT: HOW WOULD -- WHICH HEARSAY  
3 OBJECTION IS IT? IS IT THE FACT THEY ARE PHOTOGRAPHS?  
4 BECAUSE IF THAT WERE THE CASE, ONE COULD NEVER INTRODUCE  
5 A PHOTOGRAPH IN COURT. SO WHAT OBJECTION IS IT?

6 MR. GATTI: WELL, I THINK THE USE OF THE  
7 PHOTOGRAPH BY THE DEFENDANTS IS WHAT TRIGGERS THE  
8 HEARSAY. I THINK --

9 THE COURT: OVERRULED. THESE TWO PHOTOGRAPHS,  
10 THE LEFT SIDE BOTTOM ON PAGE 36 ARE ADMITTED. WE DON'T  
11 NEED THE ONE ON TOP, 37 DO WE, OF MR. AND MRS. BROLIN?

12 I TAKE IT THERE IS NO REQUEST THAT COME IN.  
13 THAT ONE IS EXCLUDED.

14 MR. KENDALL: NO.

15 THE COURT: WHAT ABOUT THE PHOTOGRAPHS THAT  
16 APPEAR ON THE BOTTOM HALF OF PAGE 37?

17 MR. KENDALL: YOUR HONOR, THE -- I WOULD AGREE  
18 THAT THE TEXT OF THE PEOPLE MAGAZINE ARTICLE --

19 THE COURT: THIS ISN'T PEOPLE YET, IS IT?

20 MR. KENDALL: I'M SORRY. BARBRATIMELESS.

21 THE COURT: RIGHT.

22 MR. KENDALL: I WOULD AGREE THAT THE TEXT IS  
23 HEARSAY. AND I THINK THAT ALL ONE CAN DO WITH RESPECT  
24 TO THE PICTURES, THE LAST TWO PICTURES ON THE LAST PAGE,  
25 IS --

26 THE COURT: COUNSEL, JUST A SECOND. THERE IS  
27 ANOTHER PAGE? YOU WANT TO INCLUDE 38 IN YOUR  
28 DISCUSSION? I'M TALKING ABOUT 37.

1 MR. KENDALL: 37, YOUR HONOR. I DON'T THINK  
2 THERE IS ANYTHING TO REALLY BE SAID ABOUT 37 IF THE  
3 COURT IS NOT GOING TO ADMIT THE TEXT OF BARBRATIMELESS  
4 DOT COM. I WOULD ONLY SAY THIS --

5 THE COURT: EXCUSE ME, COUNSEL. I UNDERSTAND  
6 YOU DO NOT SEEK ADMISSION OF THE FIVE PICTURES AT THE  
7 BOTTOM OF PAGE 37.

8 MR. KENDALL: HERE IS MY BASIS FOR SEEKING IT,  
9 THAT ALTHOUGH IT IS HEARSAY, WHAT IS IN THE EXHIBIT.  
10 THE FACT IS THAT THIS WAS AN EXHIBIT THAT WAS AVAILABLE  
11 TO THE PUBLIC WITH A REPRESENTATION THAT IT WAS BARBRA  
12 STREISAND'S HOUSE. AND IT WAS IN CONJUNCTION WITH OTHER  
13 PICTURES WHICH ARE QUITE OBVIOUSLY BARBRA STREISAND'S  
14 HOUSE. AND THE QUESTION IS WHETHER THE PUBLIC KNEW AND  
15 HAD AVAILABLE PICTURES THAT ARE REPRESENTED AS BEING THE  
16 INTERIOR OF HER HOUSE. AND IT'S ALSO THE CASE THAT SHE  
17 IS FEATURED IN THEM.

18 IT'S OBVIOUS THAT THE INTERIOR PHOTOS WERE  
19 TAKEN BY SOMEONE WHO WAS IN THE INTERIOR OF THE HOUSE.  
20 THIS WOULD LEAVE SOMEONE IN MR. ADELMAN'S POSITION, FOR  
21 THAT MATTER, ANY OTHER MEMBER OF THE PUBLIC, TO HAVE A  
22 REASONABLE BELIEF THAT THE INTERIOR OF BARBRA  
23 STREISAND'S HOUSE WAS ALSO AVAILABLE TO THE PUBLIC --

24 THE COURT: WELL, COUNSEL, WE'LL COME LATER TO  
25 THE DISCUSSION OF WHAT IS RELEVANT -- WHETHER A  
26 CELEBRITY CAN RESTRICT ACCESS TO WHAT OTHERWISE WOULD BE  
27 PRIVATE QUARTERS. LET'S DEAL WITH THE EVIDENTIARY --

28 MR. KENDALL: MY POINT IS THAT IT GOES TO THE

1 STATE OF MIND OF MR. ADELMAN, THAT TAKING AND PUBLISHING  
2 THESE PHOTOGRAPHS, THAT THEY WERE ALREADY AVAILABLE TO  
3 THE PUBLIC, AND THAT HE, AS HE POINTS OUT IN HIS  
4 DECLARATION, WAS AWARE OF THE SAME.

5 THE COURT: LET ME ASK YOU, COUNSEL. THERE  
6 ARE TWO PHOTOGRAPHS AT THE BOTTOM OF PAGE 37, ONE  
7 APPEARS TO BE A PHOTOGRAPH OF SOMEONE THAT PEOPLE MIGHT  
8 RECOGNIZE AS ROSIE O'DONNELL. THE OTHER IS REPRESENTED  
9 TO BE A PHOTOGRAPH OF A BATHROOM IN A CERTAIN LOCATION.

10 DO YOU WANT THOSE PHOTOGRAPHS IN?

11 MR. KENDALL: WELL, YOUR HONOR, IF THE  
12 PHOTOGRAPHS OF THE BATHROOM ARE AVAILABLE TO THE PUBLIC,  
13 IT MIGHT BE REASONABLE FOR SOMEONE IN MR. ADELMAN'S  
14 POSITION TO BELIEVE IT MIGHT NOT BE PERCEIVED AS  
15 OFFENSIVE TO --

16 THE COURT: SO THE ANSWER IS "YES" YOU WOULD  
17 LIKE TO SEEK THEIR ADMISSION. THAT GOES ALSO FOR THE  
18 PICTURES ON 38, WHICH DO APPEAR TO CONTAIN THE  
19 PLAINTIFF?

20 MR. KENDALL: YES.

21 THE COURT: WHAT'S PLAINTIFF'S PERSPECTIVE?

22 MR. GATTI: OUR POSITION ON BOTH 37 AND 38 AND  
23 THE ENTIRETY OF THESE PICTURES IS THAT, BASED ON THE  
24 PICTURES, THERE IS NO INDICATION AND NO WAY TO TELL IF  
25 IT'S AT THE RESIDENCE, IF IT HAS TO DO WITH THE SAME  
26 RESIDENCE THAT IS THE SUBJECT OF THIS LITIGATION.

27 IT'S -- THERE IS NO DESCRIPTION WHATSOEVER.  
28 THERE IS NO INDICATION AT ALL. IT JUST LEADS TO

1 GUESSWORK FOR THE COURT AND -- AS TO WHAT THESE PICTURES  
2 ARE OF AND HOW THEY WOULD EVEN TIE INTO THIS MATTER.

3 THE COURT: WITH THE EXCEPTION OF THE BOTTOM  
4 TWO PHOTOGRAPHS ON PAGE 37, THAT IS A CLOSE CALL, THE  
5 COURT IS GOING TO ADMIT THE OTHER PHOTOGRAPHS, BUT NOT  
6 THE TWO I JUST REFERRED TO AS BEING A CLOSE CALL. I  
7 THINK THEY ARE SELF-AUTHENTICATING. IT MAY BE THE OTHER  
8 TWO ARE AS WELL, BUT MAYBE THEY AREN'T.

9 MR. GATTI: YOUR HONOR, JUST TO ADDRESS THAT.

10 THE COURT: YES, SIR.

11 MR. GATTI: APOLOGIZE FOR THE INTERRUPTION.  
12 THE ISSUE IS THAT THERE ARE DIFFERENT RESIDENCES AND  
13 THERE IS NO INDICATION THAT THESE PHOTOGRAPHS WERE TAKEN  
14 AT THE RESIDENCE THAT IS THE SUBJECT OF THIS LITIGATION.

15 THE COURT: WELL, THE DECLARATION OF YOUR  
16 CLIENT SURE GOES A LONG WAY TOWARD THAT, AND BASED ON  
17 THE CONTEXT IN WHICH THEY ARE DISPLAYED, THE COURT IS  
18 NOT GOING TO ACCEPT THAT. THE OBJECTION -- THE RULING  
19 STANDS. WHAT'S NEXT?

20 MR. KENDALL: YOUR HONOR, THE NEXT WOULD BE  
21 CERTAIN EXHIBITS TO THE LAURA SEIGLE DECLARATION,  
22 NEWSPAPER ARTICLES.

23 THE COURT: YES.

24 MR. KENDALL: NOW, THESE NEWSPAPER ARTICLES  
25 ARE NOT --

26 THE COURT: COUNSEL, THEY ARE NOT THAT, ARE  
27 THEY? THEY ARE DOWNLOADED FROM THE INTERNET.

28 MR. KENDALL: YES. THAT'S TRUE. THEY ARE

1 DOWNLOADED FROM THE INTERNET.

2 THE COURT: IF YOU WOULD CONTINUE WITH  
3 NEWSPAPER ARTICLE. WE'LL GET TO PEOPLE IN A COUPLE  
4 MINUTES. AS YOU COPIED PEOPLE, I THINK WE WOULD BE ON  
5 FIRMER GROUND.

6 MR. KENDALL: UNDERSTOOD, YOUR HONOR. IF I  
7 COULD GO THROUGH THEM FOR A MINUTE. THE FACT THAT IT'S  
8 ON THE INTERNET, THERE IS AN ARTICLE REVEALING THAT  
9 THERE IS A DEBATE GOING ON CONCERNING THE LAWFULNESS AND  
10 THE APPROPRIATENESS OF MRS. STREISAND'S DEVELOPMENT AT  
11 HER HOUSE AND SHOWS THAT IT'S NEWSWORTHY. THE FACT THAT  
12 LEXIS NEXIS OR WEST LAW CHOOSES TO REPUBLISH AN ARTICLE  
13 IN THE LOS ANGELES TIMES, EVEN --

14 THE COURT: LET ALONE THE JEFFERSON CITY NEWS,  
15 EXHIBIT N. WITH ALL DUE DEFERENCE TO JEFFERSON CITY, I  
16 DON'T KNOW WHAT STATE THAT'S LOCATED IN.

17 MR. KENDALL: WELL, THAT -- FIRST OF ALL --

18 THE COURT: COULD BE MISSOURI.

19 MR. KENDALL: THAT'S THE ONLINE EDITION.  
20 THAT'S A DIRECT DOWNLOAD OF THEIR ONLINE PAPER. I'M NOT  
21 SURE THAT IT'S NECESSARY FOR ME TO ESTABLISH WHAT STATE  
22 THEY ARE IN.

23 THE COURT: NO. SOMEWHERE IN THE UNITED  
24 STATES. I SEE AN AREA CODE, AND IT PROBABLY IS THE  
25 CAPITAL OF MISSOURI.

26 MR. KENDALL: BUT THE POINT, YOUR HONOR, IS  
27 THAT IT SHOWS PUBLIC DISCUSSION IN THE NEWS. I WOULD  
28 ALSO ADD THAT WEST LAW AND LEXIS NEXIS ARE THE WAY THAT

1 WE SUBMIT CASES TO THE COURT.

2 THE COURT: YES. BUT THERE IS AN EVIDENCE  
3 CODE EXCEPTION, AT LEAST, THERE IS FOR BOOKS, WHICH SAYS  
4 THE WAY YOU SUBMIT CASES IN COURT --

5 MR. KENDALL: IN OTHER WORDS, IF WE HAVE TO  
6 SUBMIT AUTHORITIES FROM OTHER JURISDICTIONS, I BELIEVE  
7 THAT IT IS CONSIDERED APPROPRIATE TO SUBMIT A WEST LAW  
8 DOWNLOAD OF A CASE.

9 THE COURT: WELL, I DON'T THINK ANYBODY IS  
10 OFFERING THEM FOR THE TRUTH OF THE CONTENT. THE  
11 ASSUMPTION IS THAT IT IS AN ACCURATE REPRODUCTION OF THE  
12 CASE. BUT AS WE ALL HAVE SEEN, THERE ARE TYPOGRAPHICAL  
13 ERRORS THAT ARE NOT UNCOMMON IN THOSE. IT'S NOT  
14 TECHNICALLY ACCURATE.

15 MR. KENDALL: WHAT I MEAN IS THE COURTS,  
16 SUBJECT TO THOSE CONCERNS, ADMIT WEST LAW AND LEXIS  
17 PRINTOUTS.

18 THE COURT: WE DON'T ADMIT IN EVIDENCE. WE  
19 TAKE THEM AS CORRECT STATEMENTS OF THE LEGAL PROPOSITION  
20 FOR WHICH THEY ARE OFFERED, SUBJECT TO VERIFICATION.

21 MR. KENDALL: BUT THE ISSUE IS ONE OF  
22 AUTHENTICATION, REALLY. THE QUESTION IS IS WEST LAW  
23 CONSIDERED BY THE COURT TO BE A SUFFICIENTLY ACCURATE  
24 REGURGITATOR OF THE CONTENTS THEREIN THAT COURTS ARE  
25 CONFIDENT ENOUGH TO USE IT FOR CASES. I THINK THAT  
26 SUGGESTS THAT THEIR REPUBLISHING THE L.A. TIMES FALLS IN  
27 THE SAME CATEGORY. I DON'T HAVE TO GO THAT FAR. AS  
28 LONG AS IT'S ON THE NET AND OUT FOR PEOPLE TO READ WHEN

1       THEY PUT IN THE SEARCH FOR BARBRA STREISAND SHOWS IT'S  
2       NEWSWORTHY.

3               THE COURT:   SO YOU ARE NOT OFFERING THESE FOR  
4       THE TRUTH OF THEIR CONTENTS, BUT ONLY FOR THE FACT THERE  
5       IS A PUBLIC CONTROVERSY ABOUT --

6               MR. KENDALL:   THAT'S CORRECT, YOUR HONOR.

7               THE COURT:   -- CERTAIN ISSUES.

8               MR. KENDALL:   I CAN'T -- I -- OBVIOUSLY THEY  
9       CONTAIN SOME HEARSAY, SO IT'S A FACT THAT PEOPLE ARE  
10      DEBATING THESE PARTICULAR ISSUES AND THAT THOSE INCLUDE  
11      BARBRA STREISAND'S ESTATE.  WE PUT, IN ONCE WE COULD GET  
12      IT, THE BEST EVIDENCE OF EXACTLY WHAT IS GOING ON BEFORE  
13      THE CITY COUNCIL IN SOME OTHER EXHIBITS.

14              MR. GLENSY:   MAY I RESPOND.

15              THE COURT:   YES, SIR.

16              MR. GLENSY:   IT'S VERY DIFFICULT TO IMAGINE  
17      HOW THIS NEWSPAPER ARTICLE IS NOT SUBMITTED FOR THE  
18      TRUTH CONTAINED THEREIN.  IF MR. KENDALL IS TO BE  
19      BELIEVED, AND I CERTAINLY I DO BELIEVE IT, THE ONLY WAY  
20      THAT YOU COULD GO INTO THAT, IT MIGHT NOT BE A  
21      CONTROVERSY SURROUNDING THIS PROPERTY, IS TO LEAVE THE  
22      TEXT THAT IS INCLUDED THEREIN, SO THAT IS CLEARLY  
23      HEARSAY.

24              MOREOVER, AS YOUR HONOR SPECIFIED IN THE  
25      TENTATIVE, THERE IS NO FOUNDATIONAL SUPPORT BY DECLARANT  
26      FOR THE ADMISSION.  WE WOULD SUBMIT THAT THE COURT  
27      SHOULD STAND BY HIS TENTATIVE RULING.

28              THE COURT:   SO THE DEFENSE IS DISCUSSING



1. EXHIBITS --

2. MR. KENDALL: H.

3. THE COURT: H AND J?

4. MR. KENDALL: THAT'S --

5. THE COURT: THERE IS ONE OTHER.

6. MR. KENDALL: H AND J AND N.

7. MR. GLENSY: WE WOULD SUBMIT, YOUR HONOR, THIS  
8. IS AN IDENTICAL SITUATION TO THE DOCUMENTS THAT YOUR  
9. HONOR EXCLUDED PERTAINING TO THE SUPERIOR COURT --

10. THE COURT: OH, IT'S NOT THAT AT ALL, COUNSEL.  
11. IT'S VERY DIFFERENT. H, J AND N FOR THE LIMITED PURPOSE  
12. THAT THE MATTER IS SUBJECT TO PUBLIC DISCUSSION ARE  
13. ADMITTED.

14. MR. KENDALL: AND MS. SEIGLE HAS DONE ME A  
15. FAVOR REMINDING ME THAT THE SAME IS TRUE OF EXHIBIT P.  
16. IT FALLS IN THE SAME CLASS.

17. MR. GLENSY: IF I MAY, YOUR HONOR.

18. THE COURT: WELL, WITH RESPECT -- YOU MAY  
19. COUNSEL, GO AHEAD.

20. MR. GLENSY: THANK YOU --

21. THE COURT: BUT WHAT ON EARTH DOES THIS HAVE  
22. TO DO WITH THE DISCUSSION OF THE COASTAL ZONE. IT'S --

23. MR. GLENSY: THANK YOU, YOUR HONOR.

24. THE COURT: OH, THAT WAS YOUR QUESTION.

25. MR. GLENSY: YES.

26. THE COURT: OKAY.

27. MR. KENDALL: YOUR HONOR, WHAT IT HAS TO DO IS  
28. THAT THAT'S WHERE THE PRESIDENT WAS -- HOSTED, IN THE

1 COASTAL ZONE.

2 THE COURT: I'M SURE IT'S NOT THE ONLY EVENT  
3 THE PRESIDENT HAS HOSTED IN THE COURSE OF EIGHT YEARS IN  
4 OFFICE AND TWO YEARS OF RUNNING AND SINCE.

5 MR. KENDALL: THAT'S RIGHT, YOUR HONOR, BUT  
6 IT'S IN THE NEWSPAPER AS A DISCUSSION OF THE FACT OF  
7 THIS PARTY. AND AGAIN, THAT SHOWS THAT COVERAGE OF WHAT  
8 HAPPENS AT THE HOUSE IS NEWSWORTHY.

9 THE COURT: FOR THAT PURPOSE, IT'S ADMITTED.

10 OKAY. DO YOU HAVE OTHERS?

11 MR. KENDALL: YOUR HONOR, EXHIBIT M.

12 THE COURT: YES.

13 MR. KENDALL: AND THE PAGE OF EXHIBIT M THAT  
14 IS THE LAST PAGE. I BELIEVE IT'S 46.

15 THE COURT: THIS IS A PAGE THAT FOLLOWS, BUT  
16 THIS IS THE ONE THAT HAS --

17 MR. KENDALL: AND THE PAGE THAT FOLLOWS, BOTH  
18 OF THEM.

19 THE COURT: IT HAPPENS TO BE UNNUMBERED.

20 MR. KENDALL: YOUR HONOR, THE POINT HERE IS  
21 THAT THE ADDRESS COORDINATES ARE AVAILABLE ON THE  
22 INTERNET. NOW, THESE ADDRESS COORDINATES MAY NOT BE  
23 EXACTLY RIGHT. IT MAY BE THAT GEOCODE DOT COM IS WRONG,  
24 AND THAT WOULD MAKE THEM HEARSAY. AND I THINK THE --  
25 WHAT THE COURT IS SAYING IN THE COURT'S TENTATIVE IS  
26 THAT THEY CAN'T BE ADMITTED FOR THEIR TRUTH, BUT THE  
27 POINT FOR WHICH WE OFFER THEM IS THAT THERE ARE -- THERE  
28 IS A WEBSITE THAT PUBLICLY -- THAT PUBLISHES WHAT

1 PURPORTS TO BE THE COORDINATES.

2 IN FACT, IF YOU COMPARE THESE COORDINATES WITH  
3 THE COORDINATES OF THE HELICOPTER, YOU CAN SEE THEY ARE  
4 DIFFERENT. AND IF YOU HAD HAD TRIGONOMETRY, YOU COULD  
5 EVEN CALCULATE THEY ARE 2700 FEET AWAY, BUT THEY ARE  
6 OFFERED FOR THE FACTS.

7 THE COURT: ALL RIGHT. WHAT'S THE PLAINTIFF'S  
8 RESPONSE?

9 MR. GLENSY: OUR RESPONSE, YOUR HONOR, IS,  
10 FIRST OF ALL, THE FOUNDATIONAL SUPPORT IS LACKING AS IN  
11 THE DECLARATION, THE ADELMAN'S -- COUNSEL FOR ADELMAN  
12 DOES NOT ACTUALLY IDENTIFY THE CORRECT WEBSITE. THERE  
13 IS A DISCREPANCY BETWEEN THAT AS IDENTIFIED IN THE  
14 DECLARATION.

15 AND THE OTHER OBJECTIONS ARE THE ONES WHICH  
16 WERE PREVIOUSLY STATED IN OUR OBJECTIONS; HEARSAY  
17 OBJECTION THAT IT'S SUBMITTED FOR THE TRUTH. AND IF I  
18 UNDERSTAND MR. KENDALL'S ASSERTION, THERE IS AN  
19 ADMISSION THAT THAT MIGHT NOT BE THE TRUTH. MOREOVER,  
20 THERE WAS ALSO NO FOUNDATIONAL SUPPORT FOR THE EXHIBIT  
21 AS SUBMITTED IN DECLARATION.

22 MR. KENDALL: WELL, IT IS TRUE THAT THERE WAS  
23 AN EXTRA PERIOD IN GEOCODE, WHICH IS A TYPOGRAPHICAL  
24 ERROR. I SUBMIT IT'S SLIGHTLY LESS SERIOUS THAN FAILING  
25 TO SIGN A DECLARATION AT ALL. AND THE FACT IS THAT  
26 ANYONE WHO WANTS TO CAN FIND OUT THE LATITUDE AND  
27 LONGITUDE OF THIS ADDRESS, OR AT LEAST SOMETHING THAT  
28 THEY THINK IS THAT, AND THE SAME CAN BE SAID ABOUT GOING

1 TO THE WEBSITE AND FINDING OUT THE LATITUDE AND  
2 LONGITUDE OF THE HELICOPTER. SO THAT LATITUDE AND  
3 LONGITUDE ARE NOT SO OFFENSIVE TO PEOPLE, REASONABLE  
4 PEOPLE. THEY ARE NOT AVAILABLE WIDELY. AND TOLERATED  
5 AS SUCH IT SHOWS NO GREAT INJURY BEING DONE HERE BY THE  
6 LATITUDE AND LONGITUDE OF THE HELICOPTER.

7 MR. GLENSY: FOR MR. KENDALL'S -- WE BELIEVE  
8 THEY WOULD HAVE TO MAKE ASSERTION THAT THESE ARE THE  
9 CORRECT LONGITUDE AND LATITUDE, WHICH MR. KENDALL HAS  
10 HIMSELF CONCEDED MIGHT NOT BE THE CASE, THE ASSERTION  
11 THAT ANYONE CAN GO AND FIND THE CORRECT LONGITUDINAL AND  
12 LATITUDINAL COORDINATES; WHICH I BELIEVE THAT THE TRUTH  
13 OF WHAT THE EXHIBIT IS SUPPOSED TO PORTRAY IS ACTUALLY  
14 NOT THE CASE.

15 MR. KENDALL: YOUR HONOR, WE ARE HERE ON AN  
16 ANTI-SLAPP MOTION. IT'S TRUE WE HAVEN'T HAD SURVEYORS  
17 OUT ONTO THIS PROPERTY TO CHECK WHETHER GEOCODE'S GPS  
18 SYSTEM IS ACCURATE, AND WE HAVE NO WAY OF GETTING THERE  
19 UNLESS THIS CASE CONTINUES, WHICH IT SHOULDN'T, IN WHICH  
20 CASE THERE WILL BE DISCOVERY. BUT THE FACT IS THAT ON  
21 THE INTERNET ON GEOCODE YOU CAN PUT IN COORDINATES AND  
22 GET LATITUDE AND LONGITUDE. WE OFFER IT FOR THAT  
23 PURPOSE.

24 THE COURT: SUBMITTED. WHAT'S NEXT?

25 MR. KENDALL: ONE MOMENT, YOUR HONOR.

26 YOUR HONOR, PER THE TENTATIVE, THE COURT SAID  
27 OTHERWISE THE EXHIBIT IS ADMITTED EXCEPT FOR THE --

28 THE COURT: THE "EXHIBITS," PLURAL.

1 MR. KENDALL: NO, I MEAN --

2 THE COURT: OH, YES. IN THE DISCUSSION OF  
3 THIS EXHIBIT M. YES.

4 MR. KENDALL: SO IT'S -- I DON'T THINK THAT,  
5 YOU KNOW, THAT MOST -- THE WHOLE PAGE SHOULDN'T BE  
6 EXCLUDED. IT SHOULD JUST BE THE PORTION OF THE PAGE  
7 THAT ACTUALLY HAS THE NUMBERS OF THE LATITUDE AND  
8 LONGITUDE. BUT I STILL URGE THOSE SHOULD COME OUT.

9 THE COURT: ARE THERE ANY OTHER COMMENTS YOU  
10 WISH TO MAKE THROUGH PAGE 7 OF THE TENTATIVE?

11 MR. KENDALL: JUST AS TO THE SEIGLE  
12 SUPPLEMENTAL DECLARATION. I WILL LET MS. SEIGLE SPEAK  
13 TO THAT.

14 MS. SEIGLE: YOUR HONOR, TURNING TO THE FIRST  
15 PART OF THE TENTATIVE, UNDER THE SECTION PARAGRAPH 2,  
16 PARAGRAPH 2 REFERS TO EXHIBIT T, AND IT DOES NOT REFER  
17 DIRECTLY TO EXHIBIT U. THE TENTATIVE HERE STATES  
18 "EXHIBIT T AND EXHIBIT U ARE EXCLUDED." BUT THEN ON THE  
19 NEXT PAGE OF THE TENTATIVE IT REFERS TO PARAGRAPH 3 AND  
20 EXHIBIT U, SO I WANT TO CLARIFY THAT PARAGRAPH 2 REFERS  
21 ONLY TO EXHIBIT T, AND THE DISCUSSION SHOULD BE LIMITED  
22 TO EXHIBIT T AT THIS POINT. AND WE'LL GET TO EXHIBIT U  
23 SHORTLY.

24 EXHIBIT -- AS I STATE IN THE DECLARATION --

25 THE COURT: COUNSEL ONE SECOND. ON PAGE 1,  
26 PARAGRAPH 2, LINE 10 OF YOUR SUPPLEMENTAL DECLARATION --

27 MS. SEIGLE: YES.

28 THE COURT: -- YOU SAY AS A SEPARATE SENTENCE

1 "SEE EXHIBIT U." IT WAS NOT YOUR INTENTION TO INCLUDE  
2 IT AT THAT TIME?

3 MS. SEIGLE: IT WAS REALLY REFERENCE. WE CAN  
4 TAKE OUT THERE THE REFERENCE TO EXHIBIT U IN THE  
5 PARAGRAPH. THE EXHIBIT U IS --

6 THE COURT: FINE. WE'LL COME BACK TO IT THEN.

7 MS. SEIGLE: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MS. SEIGLE: LET'S FOCUS JUST ON EXHIBIT T AT  
10 THIS POINT. AS I STATE IN THE DECLARATION, EXHIBIT T  
11 WAS OBTAINED --

12 THE COURT: REALLY SHOULD HAVE HAD THEM  
13 CERTIFIED.

14 MS. SEIGLE: THESE ARE DOCUMENTS --

15 THE COURT: THEY COULD HAVE -- I CREDIT FULLY  
16 WHAT YOU SAID, BUT IF YOU WANT TO INTRODUCE RECORDS FROM  
17 A GOVERNMENT AGENCY, YOU NEED TO HAVE THEM CERTIFIED. I  
18 NOTE THE ANOMALY WITH WHAT COMES NEXT, BECAUSE THE  
19 PRESUMPTION THAT ARISES UNDER 1552 (A) DOES APPLY HERE.

20 MS. SEIGLE: THERE IS A DIFFERENCE BETWEEN  
21 EXHIBIT T AND U.

22 THE COURT: YES, THERE IS. U CAME OFF THE  
23 INTERNET.

24 MS. SEIGLE: THAT'S CORRECT.

25 THE COURT: THAT'S WHAT IS SO ANOMALOUS ABOUT  
26 THE WHOLE THING.

27 MS. SEIGLE: LET'S FOCUS ON EXHIBIT T. IT WAS  
28 OBTAINED FROM THE FILES. THE EXCEPTION TO THE

1 GOVERNMENT RECORDS IS HEARSAY EXCEPTION. WE DO NOT  
2 SUBMIT THESE DOCUMENTS FOR THE TRUTH OF THE MATTER  
3 ASSERTED. WE'RE NOT SUBMITTING THEM --

4 THE COURT: THEY STILL HAVE TO BE  
5 AUTHENTICATED, COUNSEL. ONE WAY TO AUTHENTICATE IS TO  
6 HAVE THE LITTLE GOVERNMENT AGENCY PUT IT'S PURPLE STAMP  
7 ON IT. WHAT IS THE AUTHENTICATION?

8 MS. SEIGLE: THAT -- THE AUTHENTICATION,  
9 SEPARATE FROM THE HEARSAY ISSUE, IS THAT I SENT SOMEBODY  
10 TO THE MALIBU PUBLIC FILES --

11 THE COURT: GREAT. THAT PERSON SHOULD HAVE  
12 GIVEN YOU A DECLARATION. LET'S MOVE ON. T IS EXCLUDED.

13 MS. SEIGLE: LET'S GO TO EXHIBIT U. EXHIBIT  
14 U --

15 THE COURT: IT'S IN. TELL ME WHY YOU WANT IT.

16 MS. SEIGLE: EXHIBIT U INCLUDES INFORMATION  
17 ABOUT THE ADDRESS FOR THE STREISAND ESTATE. ON  
18 PARAGRAPH 4 -- ON PAGE 4 OF EXHIBIT U IT STATES THAT,  
19 THE APPELLANT HERE, BARBRA STREISAND, AND HER PROPERTY,  
20 IS LOCATED AT HER ADDRESS. SO THIS DOCUMENT SHOWS THAT  
21 INFORMATION ABOUT HER ADDRESS IS PUBLICLY AVAILABLE.  
22 IT'S IN THE PUBLIC RECORDS WHICH IS ACCESSIBLE TO  
23 ANYBODY WHO CAN GET ON THE INTERNET.

24 THE COURT: ALL RIGHT. WHAT'S PLAINTIFF'S  
25 POSITION WITH RESPECT TO EXHIBIT U?

26 MR. GLENSY: OUR POSITION IS, YOUR HONOR, AS  
27 EXPLAINED IN THE TENTATIVE, THERE IS NO FOUNDATION HERE.  
28 AS YOUR HONOR REPRESENTED TO PLAINTIFF --

1 THE COURT: COUNSEL, TAKE A LOOK, THOUGH,  
2 THEY'VE MADE EVERYTHING EXCEPT THE EXPLANATION, AND  
3 THEY'VE NOW GIVEN ME WHY THEY WANT IT IN. IF YOU DID A  
4 REBUTTAL DECLARATION YOU COULD OVERCOME THE PRESUMPTION  
5 OF 1552 (A), BUT I DON'T SEE THAT ANYWHERE.

6 MR. GLENSY: I'M SORRY, YOUR HONOR. I MUST  
7 HAVE MISSED THE REASON FOR HOW THEY OVERCAME THE PROPER  
8 AUTHENTICATION.

9 THE COURT: 1552 (A). IT'S THE TOP OF PAGE 7  
10 OF THE TENTATIVE.

11 MR. GLENSY: SO I SEE, YOUR HONOR. WELL,  
12 OTHER THAN OUR LACK OF FOUNDATION, WE ALSO BELIEVE IT'S  
13 HEARSAY BECAUSE IT IS USED TO GIVE THE TRUTH -- THEY ARE  
14 FOR THE TRUTH OF THE MATTER CONTAINED THEREIN. THAT  
15 WOULD BE OUR OBJECTION IF YOUR HONOR DEEMS THAT THE  
16 FOUNDATIONAL OBJECTION HAS BEEN OVERCOME.

17 THE COURT: ALL RIGHT. WELL, AN ADDRESS IS IN  
18 THE PUBLIC RECORD, TRUE OR FALSE? THERE IS AN ADDRESS  
19 THERE. WHAT'S THE NEXT ONE?

20 MS. SEIGLE: EXHIBIT V, YOUR HONOR, IS THE  
21 VERY LAST EXHIBIT.

22 THE COURT: B AS IN BOY.

23 MS. SEIGLE: V AS IN VICTOR, COMING AFTER U.  
24 EXHIBIT V IS ALSO A DOCUMENT THAT, PER MY DECLARATION, I  
25 OBTAINED FROM THE INTERNET, PRINTED OFF THE INTERNET  
26 FROM THE CITY OF MALIBU WEBSITE. IT IS RELEVANT, AND IT  
27 WILL BE OFFERED FOR THE SAME PURPOSES AS EXHIBIT U,  
28 WHICH IS TO SHOW THAT THERE IS PUBLICLY AVAILABLE



1 INFORMATION --

2 THE COURT: COUNSEL, HOLD ON A MINUTE. I  
3 THINK YOU MISPERCEIVED THE TENTATIVE, BECAUSE THE ONLY  
4 THING THAT'S NOT ADMITTED IS YOUR CHARACTERIZATION OF  
5 THE CONTENTS. IT'S IN.

6 MS. SEIGLE: THANK YOU, YOUR HONOR.

7 THE COURT: OKAY. THAT TAKES CARE OF THE  
8 DEFENSE OBJECTIONS.

9 MR. KENDALL: YES.

10 THE COURT: WHAT'S THE DEFENSE POSITION WITH  
11 RESPECT TO THE COURT TAKING JUDICIAL NOTICE OF THE  
12 BOUNDARIES OF THE COASTAL ZONE IN MALIBU AS INDICATED  
13 EARLIER IN THE TENTATIVE?

14 MR. KENDALL: ENTHUSIASTIC AGREEMENT.

15 THE COURT: ALL RIGHT. LET ME START WITH THE  
16 PLAINTIFF ON THIS QUESTION. WHAT IS PLAINTIFF'S VIEW?  
17 IT'S ON PAGE 2. BY THE WAY, IS THERE ANY OBJECTION TO  
18 THE COURT'S TAKING JUDICIAL NOTICE OF THE BOUNDARIES OF  
19 THE COASTAL ZONE?

20 MR. KENDALL: YES, WE DO OBJECT TO IT, YOUR  
21 HONOR, ON THE GROUNDS THAT, AGAIN, HAVING LOOKED AT IT  
22 AND INTERPRETING IT, HOW IT MAY OR MAY NOT APPLY TO THIS  
23 CASE IS --

24 THE COURT: WELL, WE KNOW FROM PHOTOGRAPHS  
25 WHICH ARE IN EVIDENCE THE HOUSE IS ADJACENT TO THE  
26 SHORE.

27 MR. GATTI: YES.

28 THE COURT: WE KNOW FROM 30103 THAT THE

1 SEAWARD BOUNDARY IS AT THE MEAN HIGH TIDE LINE. AND WE  
2 KNOW FROM THE 30103 (A) THAT THE COASTAL ZONE HAS TO  
3 EXTEND AT LEAST BEYOND PACIFIC COAST HIGHWAY, WHICH IS  
4 INLAND OF THE RESIDENCE.

5 NOW, WHETHER YOU AGREE IT EXTENDS TO THE RIDGE  
6 LINE CLOSEST TO THE WATER OR TO A POINT FIVE MILES  
7 INLAND, IT CLEARLY EXTENDS BEYOND THE HIGH TIDE LINE, SO  
8 SHOULD THE COURT TAKE JUDICIAL NOTICE OF THAT FACT OR  
9 NOT?

10 MR. GATTI: WELL, WE OBJECT TO IT --

11 THE COURT: WELL, OBJECTION IS OVERRULED.  
12 IT'S A MATTER OF STATUTES OF THE STATE OF CALIFORNIA,  
13 AND THEIR IMPORT IS VERY CLEAR. SO MOVE ON -- DO YOU  
14 HAVE ANY OTHER OBJECTIONS?

15 NONE? ALL THE OTHER EVIDENCE WILL BE  
16 ADMITTED.

17 NOW, THIS IS ALL VERY IMPORTANT; THERE IS NO  
18 DOUBT ABOUT IT. AND IF ANYBODY WANTS TO TAKE A  
19 10-MINUTE BREAK, WE CAN DO THAT. I DON'T KNOW WHETHER  
20 WE'RE GOING TO FINISH TODAY; HOWEVER, SO MAYBE YOU WANT  
21 TO CONSIDER -- WE CAN GO TILL 4:30.

22 MR. KENDALL: I'D APPRECIATE IT IF WE JUST  
23 KEEP GOING IF EVERYONE ELSE -- AND THE COURT REPORTER.

24 THE REPORTER: JUST FIVE MINUTES, YOUR HONOR.

25 THE COURT: WE'LL TAKE FIVE MINUTES. WE'LL  
26 RESUME IN FIVE MINUTES. I DON'T KNOW WE'RE GOING TO  
27 FINISH TODAY. WHY DON'T YOU THINK ABOUT -- WE COULD  
28 RESUME TOMORROW AFTERNOON UNLESS YOU HAVE NOTHING TO SAY

1 ABOUT ANY OF THE LEGAL ISSUES.

2 WE'LL SEE YOU IN FIVE MINUTES.

3 MS. SEIGLE: THANK YOU, YOUR HONOR.

4 (RECESS)

5  
6 THE COURT: ALL PRESENT AS BEFORE. LET'S  
7 BEGIN WITH THE MOTION TO STRIKE UNDER 425.16.

8 MR. GATTI: YOUR HONOR, JUST BRIEFLY, JUST  
9 LOOKING AT THE -- JUST PICKING UP ON THE COURT'S  
10 STATEMENT BEFORE THE BREAK, I'M SURE IT'S EXTREMELY  
11 UNLIKELY THAT WE WOULD FINISH TODAY. OUR PROPOSAL WOULD  
12 BE TO, IN AN EFFORT TO GET THINGS ADDRESSED IN A  
13 COMPLETE MANNER, RATHER THAN HAVING SOMEBODY BREAK AND  
14 NOT CHOOSE TO BREAK AND HAVE IT HELD OVER TILL TOMORROW,  
15 WE WOULD REQUEST THAT WE BREAK AND HAVE THE ABILITY THEN  
16 TO HAVE A NEW DISCUSSION AT ONE PARTICULAR TIME SO THAT  
17 WE MAY ADDRESS EVERYTHING IN ONE SESSION AS OPPOSED TO  
18 HOLDING OVER AND COMING BACK.

19 THE COURT: WELL, I APPRECIATE THE COMMENT, I  
20 THINK WE NEED TO FORGE AHEAD, AND WE WILL BREAK AT 4:30.

21 MR. GATTI: THANK YOU.

22 THE COURT: AND WE NEED TO WORK OUT A TIME TO  
23 RESUME. IT MAY TAKE US TWO TO FOUR ADDITIONAL HOURS  
24 AFTER TODAY. I DON'T WANT TO DEPRIVE ANYBODY OF HIS OR  
25 HER RIGHT TO ADVOCATE THIS MATTER. THERE ARE A NUMBER  
26 OF REALLY INTERESTING ISSUES AND, CLEARLY, VERY  
27 IMPORTANT TO YOUR CLIENTS.

28 SO WITH THAT, IF THE MOVING PARTY ON THE

1 425.16 MOTION WANTS TO ADDRESS SOME POINTS, I WOULD BE  
2 HAPPY TO HEAR.

3 MR. KENDALL: YOUR HONOR, THANK YOU VERY MUCH.

4 MY FIRST POINT GOES TO THE QUESTION THAT THE  
5 COURT ADDRESSED IN THE TENTATIVE, WHICH IS THE  
6 APPLICABILITY OF THE ANTI-SLAPP STATUTE, CODE OF CIVIL  
7 PROCEDURE 425.16. I THINK THAT THERE'S BEEN NO EVIDENCE  
8 SUBMITTED BY BARBRA STREISAND TO SUGGEST THAT THESE  
9 PHOTOGRAPHS ARE NOT SPEECH AND NO EVIDENCE THAT THEY ARE  
10 NOT SPEECH IN CONNECTION WITH THE COAST AND NO EVIDENCE  
11 THAT THEY ARE NOT SPEECH IN CONNECTION WITH THE  
12 PROTECTION OF THE COAST, WHICH IS SOMETHING THAT THE  
13 LEGISLATURE HAS SPOKEN DIRECTLY TO AS BEING A PUBLIC  
14 ISSUE.

15 AND I FURTHER THINK WE NEED TO POINT OUT AT  
16 THE START THAT THE BURDEN IS ON MRS. STREISAND TO  
17 ESTABLISH WITH ADMISSIBLE EVIDENCE THAT SHE IS  
18 REASONABLY PROBABLE --

19 THE COURT: JUST A SECOND, COUNSEL. I  
20 UNDERSTAND WHAT YOU ARE ABOUT TO SAY, BUT CAN WE FOCUS  
21 ON DEFENDANT'S INITIAL BURDEN AT THIS STAGE, UNLESS YOU  
22 VIEW THESE AS PRELIMINARY COMMENTS. I DO WANT TO GIVE  
23 YOU THE OPPORTUNITY WITH RESPECT TO THE FIRST PRONG, AND  
24 I THINK IT WOULD BE APPROPRIATE AT THAT POINT TO LET THE  
25 PLAINTIFF RESPOND WITH RESPECT TO THE ASPECTS THAT DEAL  
26 WITH THE SECOND PRONG.

27 MR. KENDALL: VERY WELL.

28 THE COURT: THANK YOU.

1 MR. KENDALL: SO WE'VE PUT IN, FOR THAT MATTER  
2 AS THE OTHER SIDE, EVIDENCE OF THE WEBSITE ITSELF. THE  
3 WEBSITE EXPLAINS ITS PURPOSE. THE WEBSITE IS THERE FOR  
4 THE PARTIES AND THE COURT TO SEE. THE WEBSITE IS VERY  
5 CLEARLY DIRECTED AT PROVIDING A PHOTOGRAPHIC RECORD OF  
6 THE ENTIRE COASTLINE, EXCEPT FOR, SO FAR, VANDENBERG AIR  
7 FORCE BASE HASN'T GRANTED FLY BY ACCESS. THAT'S THE ONE  
8 SECTION NOT DONE. WE'RE 12,200 PHOTOGRAPHS ON THIS  
9 WEBSITE OF THE COASTLINE. THE COASTLINE IS, AS I SAID,  
10 UNDER THE SPECIAL PROTECTION AND FOCUS OF THE  
11 LEGISLATURE, WHICH HAS STATED THAT IT IS A MATTER OF  
12 PUBLIC CONCERN. AND I COULD GO ON AND ON ON THAT POINT.  
13 BUT I DON'T THINK IT'S NECESSARY TO DO IT.

14 THE ANSWER AND THE ARGUMENT MADE BY THE OTHER  
15 SIDE WITH RESPECT TO OUR EVIDENCE IS THAT MR. ADELMAN IS  
16 NOT DOING SOMETHING IN THE PUBLIC INTEREST BY TAKING  
17 12,200 PICTURES OF THE COASTLINE, PUTTING THEM ON THE  
18 WEBSITE. WHAT HE'S DOING IS STALKING. AND THERE IS NO  
19 EVIDENCE THAT THEY HAVE OFFERED THAT HE IS STALKING.  
20 THERE IS NO EVIDENCE THAT THEY HAVE OFFERED THAT  
21 MR. ADELMAN EVEN KNOWS THAT THIS WAS BARBRA STREISAND'S  
22 HOUSE. THERE IS NO EVIDENCE THAT HE EVER ATTEMPTED TO  
23 GET A PHOTOGRAPH OF BARBRA STREISAND. THERE IS NO  
24 EVIDENCE HE EVER ATTEMPTED TO DO ANYTHING OTHER THAN --  
25 THAN WHAT IS STATED ON THE FACE OF THE WEBSITE, AND THAT  
26 IS EVIDENCED IN THE WEBSITE'S OWN MATERIALS.

27 FOR AN EXAMPLE OF HOW THIS IS USED, YOUR  
28 HONOR, I WOULD ASK THE COURT TO JUST TAKE JUDICIAL

1 NOTICE OF THE L.A. TIMES LAST THURSDAY, NOT FOR THE  
2 TRUTH OF WHAT IS ASSERTED, BUT SIMPLY IF YOU LOOK AT THE  
3 FRONT PAGE OF LAST THURSDAY'S EDITION, THERE IS A  
4 STORY --

5 THE COURT: FIRST OF ALL, WHAT IS YOUR NEXT  
6 EXHIBIT NUMBER, COUNSEL?

7 MS. SEIGLE: W.

8 THE COURT: ALL RIGHT. EXHIBIT W FOR  
9 IDENTIFICATION.

10 MR. KENDALL: YES. AND THE COURT CAN SEE DOWN  
11 JUST BELOW THE FOLD --

12 THE COURT: FIRST OF ALL, IS THERE ANY  
13 OBJECTION?

14 MR. GATTI: THERE IS AN OBJECTION, YOUR HONOR.  
15 AGAIN, I DON'T THINK THIS HAS BEEN SUBMITTED. IF -- I  
16 COULD STAND CORRECTED, BUT I DON'T BELIEVE THIS HAS BEEN  
17 SUBMITTED AS PART OF ANY EVIDENCE BEFORE THE COURT.

18 THE COURT: I THINK THAT'S A FAIR STATEMENT AT  
19 THE MOMENT, UNTIL THIS MOMENT.

20 MR. KENDALL: RIGHT. IT'S JUST FOR  
21 IDENTIFICATION AT THIS POINT, YOUR HONOR.

22 THE COURT: YOU WANT TO MAKE AN OFFER OF  
23 PROOF?

24 MR. KENDALL: OFFER OF PROOF THAT IT'S A  
25 DOCUMENT THAT IS IN THE FAMILIAR TYPEFACE OF THE LOS  
26 ANGELES TIMES WITH THE FAMILIAR DATE UP IN THE TOP OF  
27 THURSDAY JULY 10, 2003. I CAN PERSONALLY STATE THAT I  
28 SAW IT ON MY KITCHEN TABLE ON THAT MORNING. AND THE

1 REASON FOR ITS RELEVANCE, YOUR HONOR, IS THAT JUST BELOW  
2 THE FOLD THE LOS ANGELES TIMES WAS PROVIDING A STORY  
3 ABOUT A MALIBU PROPERTY OWNER, JERRY PERENCHIO, WHO PUT  
4 IN A PITCH-AND-PUTT COURSE, WHICH APPARENTLY NOBODY HAD  
5 APPRISED THE COASTAL COMMISSION OF THE MATTER, OF COURSE  
6 WITH THE CONCERN OF THE COASTAL COMMISSION AND THE  
7 SPECIAL PROTECTION OF THE CITY, THE COASTAL ZONE,  
8 SPECIAL SUPERVISION OF THE COASTAL ZONE.

9 AND THE AUTHOR OF THE STORY, KENNETH R. RICE,  
10 AND THE EDITORS OF THE LOS ANGELES TIMES HAVE  
11 ILLUSTRATED THE STORY WITH A PHOTOGRAPH TAKEN FROM THE  
12 WEBSITE, FROM KENNETH ADELMAN WWW CALIFORNIA COASTLINE  
13 DOT ORG, WHICH HAS GOT PHOTOGRAPH --

14 MR. GLENSY: C.

15 THE COURT: MR. GATTI, YOUR OBJECTION.

16 MR. GATTI: OBJECTION; LACK OF FOUNDATION,  
17 RELEVANCE, AND HEARSAY. AND -- WELL --

18 THE COURT: YOU KNOW, IF THERE WERE A  
19 DECLARATION ATTACHED TO IT, IT MIGHT BE ADMISSIBLE  
20 SUBJECT TO THE OTHER ISSUE WHICH WE HAD, WHICH WAS THE  
21 TIMELINESS OBJECTION SUSTAINED. BUT YOU SHOULD SUBMIT  
22 IT TO THE CLERK. IT WILL BE MARKED FOR IDENTIFICATION  
23 AS W.

24 MR. KENDALL: YES. YOUR HONOR, THE WEBSITE  
25 ITSELF IN WHAT IT DISCLOSES EVIDENCES MATTERS OF PUBLIC  
26 CONCERN. PHOTOGRAPHY, AS THE CASE LAW RECITES POINTS  
27 OUT, IS SPEECH. IT'S A FORM OF COMMUNICATION. THERE  
28 ARE MANY WORDS ON THE WEBSITE AS WELL. AND IT'S CLEAR

1 THAT THE WEBSITE IS DIRECTED AT MATTERS OF PUBLIC  
2 INTERESTS, AND ON THAT GROUND FALLS CLEARLY WITHIN THE  
3 COVERAGE OF THE ANTI-SLAPP STATUTE.

4 AND I DON'T BELIEVE THERE IS ANY AUTHORITY  
5 WHATSOEVER OR EVEN ANY ARGUMENT FROM THE OTHER SIDE THAT  
6 DISPUTES ANY OF THAT. IT'S JUST A MATTER OF THEIR  
7 CHARACTERIZING THE ACTIVITIES WITH THEIR RELATING OF  
8 CLAIMING THERE IS VOYERISM AND SPYING AND VARIOUS OTHER  
9 OVERHEATED STATEMENTS.

10 THE COURT: LET ME ASK YOU THIS, COUNSEL.  
11 WHAT ABOUT THE PUBLICATION, OR I SHOULD SAY PRINTING AND  
12 SALE, OF THE PHOTOGRAPHS FROM THE WEBSITE? HOW IS THAT  
13 VIEWED? IS THAT MERELY INCIDENTAL, OR DOES IT REQUIRE  
14 ITS OWN ANALYSIS?

15 MR. KENDALL: WELL, UNDER THE -- UNDER THE  
16 CASE LAW I THINK WHAT ONE HAS TO DO IS LOOK AT THE  
17 COMPLAINT. AND WHAT THE COMPLAINT ALLEGES, DETERMINES  
18 WHETHER ANYTHING IN THE COMPLAINT FALLS WITHIN THE  
19 COVERAGE OF THE ANTI-SLAPP STATUTE. SO THAT WOULD BE MY  
20 FIRST POINT, THAT ONE HAS TO LOOK AT THE COMPLAINT.

21 SPEECH IS OFTEN SOLD. NEWSPAPERS ARE A GOOD  
22 EXAMPLE OF THAT. PEOPLE MAGAZINE WOULD BE ANOTHER. AND  
23 FURTHERMORE, THE FACT IS THAT BARBRA STREISAND'S  
24 PARTICULAR -- THE IMAGE THAT INCLUDES BARBRA STREISAND'S  
25 HOUSE, THE IMAGE 3850, THERE SEEM TO HAVE BEEN THREE  
26 PURCHASES. ONE BY THE NEIGHBORS WHO ARE IN NEWSWORTHY  
27 CONTROVERSY WITH HER, THE JACOBSONS; AND THE OTHER TWO  
28 BY MR. GATTI'S FIRM.



1           SO I THINK, ACTUALLY, IT TURNS OUT THE SALE OF  
2 THESE THREE PHOTOGRAPHS AND THE DONATION TO A  
3 NONPROFIT -- I SHOULD SAY, AN ENVIRONMENTAL FOUNDATION,  
4 WHICH IS ALSO REVEALED ON THE WEBSITE, SHOWS NOTHING OF  
5 PRIVATE INTEREST AND ONLY, IN FACT, ESTABLISHES THAT THE  
6 ATTORNEYS BOUGHT TWO PICTURES TO USE FOR THIS LAWSUIT,  
7 AND THE JACOBSONS, WHO ARE IN THE MATTER OF PUBLIC  
8 INTEREST, HAVE BEEN FOUGHT IN THE PRESS AND THE CITY  
9 COUNCIL.

10           THE COURT: WITH RESPECT TO THE FIRST PRONG OF  
11 THE ANTI-SLAPP STATUTE, WHAT DOES PLAINTIFF WANT TO SAY?

12           MR. GATTI: WITH RESPECT TO THE FIRST PRONG,  
13 AS YOUR HONOR POINTED OUT, THAT IT'S THE DEFENDANT'S  
14 BURDEN TO ESTABLISH THAT, INITIALLY, CODE OF CIVIL  
15 PROCEDURE SECTION 425.16 ACTUALLY APPLIES.

16           THE COURT: YOU CONTEND, RATHER, IT DOESN'T.

17           MR. GATTI: OF COURSE.

18           THE COURT: ALL RIGHT. WHAT DO YOU MEAN?  
19 REMEMBER FIRST FRONTLINE VIDEO? THAT WAS A SURFING  
20 DOCUMENTARY, BUT IF SURFING IS OF PUBLIC INTEREST, WHY  
21 ISN'T COASTAL PROTECTION?

22           MR. GATTI: WELL, YOUR HONOR, THEN IF YOU LOOK  
23 AT THAT SITUATION, THE -- LOOKING AT THE BASIS FOR  
24 425.16, EXACTLY THE BASIS OF IT, IT'S AS WE KNOW AND THE  
25 STATED REASON FOR THE STATUTE IS THAT IT EXISTS TO  
26 COUNTER LAWSUITS BROUGHT PRIMARILY TO CHILL FREE SPEECH  
27 RIGHTS OR RIGHTS TO PETITION.

28           HERE THIS LAWSUIT BROUGHT BY MRS. STREISAND

1 WAS NOT BROUGHT TO CHILL ANYONE'S FREE SPEECH. IT WAS  
2 BROUGHT TO PROTECT HER OWN SEPARATE RIGHT TO PRIVACY,  
3 AND THAT IS THE PRIMARY FUNCTION OF THIS LAWSUIT. THAT  
4 WAS THE PRIMARY REASON. IT WAS NOT MEANT -- SO FROM  
5 THAT INITIAL POLICY OF LOOKING AT WHAT IS THE BASIS FOR  
6 A SLAPP SUIT, IT WOULD NOT APPLY IN THIS PARTICULAR  
7 SITUATION.

8 THE COURT: ISN'T THERE A SUPREME COURT CASE  
9 THAT SAYS MOTIVATION ISN'T RELEVANT?

10 MR. GATTI: WHAT YOU HAVE THERE IS, ALSO AS A  
11 MATTER OF LAW IN CALIFORNIA IN THE CASES WE'VE CITED,  
12 YOU HAVE TO LOOK AT EACH OF THE CAUSES OF ACTION IN  
13 MRS. STREISAND'S COMPLAINT AS IT RELATES TO THE SLAPP  
14 MOTION.

15 THE MILLER CASE AND ALSO THE PAUL VERSUS  
16 FRIEDMAN CASE, WHICH WAS AT 95 CAL AP. 4 853, CITE 861,  
17 IT'S A 2002 CASE, THE COURT FOUND THAT PLAINTIFF'S  
18 CLAIMS FOR PRIVACY DO NOT FALL, QUOTE, WITHIN THE AMBIT  
19 OF THE ANTI-SLAPP STATUTE WITH RESPECT TO THE CAUSE OF  
20 ACTION FOR INTRUSION INTO SECLUSION IN CONNECTION WITH  
21 THE CAUSE OF ACTION FOR PUBLICATION OF PRIVATE FACTS  
22 WITH RESPECT TO THE MISAPPROPRIATION CLAIM. WITH  
23 RESPECT TO PRIVACY IS CONSTITUTIONALLY PROTECTED, A  
24 CALIFORNIA PROTECTED -- PROTECTED RIGHT TO PRIVACY AS  
25 WELL AS A FEDERALLY PROTECTED RIGHT TO PRIVACY. AS A  
26 MATTER OF LAW, THOSE DO NOT FALL WITHIN THE AMBIT OF THE  
27 ANTI-SLAPP STATUTE. SO WHEN YOU ARE LOOKING AT A CASE  
28 BY CASE BASIS, THOSE CLAIMS BY THEMSELVES FALL BY THE

1 WAYSIDE.

2 WITH RESPECT TO -- NOW, AS YOU GO THROUGH THE  
3 TEST AND YOU LOOK AT THE FIRST PRONG AND YOU SAY DOES IT  
4 EVEN APPLY, WE SUBMIT TO YOUR HONOR THAT BASED ON THE  
5 CASES, BASED ON -- THAT WE'VE CITED TO AND BASED ON THE  
6 PRIMARY PRINCIPLE BEHIND THE ANTI-SLAPP, THAT IT DOESN'T  
7 APPLY IN THIS PARTICULAR CASE.

8 IT DOES NOT APPLY TO STOP SOMEBODY FROM  
9 LEGITIMATELY FILING AN ACTION TO PROTECT THEIR OWN  
10 FUNDAMENTAL RIGHT TO PRIVACY. THIS IS NOT A CASE WHICH  
11 IS THE SITUATION WHERE YOU DO FIND WHERE A SLAPP MOTION  
12 IS GRANTED WHERE YOU HAVE A SITUATION WHERE YOU HAVE THE  
13 SLAPP SUIT IS BROUGHT TO OBTAIN ECONOMIC ADVANTAGE OVER  
14 THE OTHER PARTY OR THE DEFENDANT IN THE CASE, AND NOT TO  
15 VINDICATE A LEGALLY COGNIZABLE CLAIM. THAT IS WHAT WE  
16 HAVE HERE, WHICH IS COMPLETELY DIFFERENT.

17 WITH RESPECT TO THE ISSUE ON THE FIRST PRONG,  
18 WE DON'T EVEN BELIEVE YOU GET TO THE SECOND PRONG IN  
19 THIS, THE DEFENDANTS HAVE NOT SATISFIED THEIR INITIAL  
20 BURDEN --

21 THE COURT: COULD YOU DISTINGUISH DORA FOR ME,  
22 THEN.

23 MR. GATTI: WITH --

24 THE COURT: WASN'T THAT A PRIVACY SUIT?

25 MR. GATTI: AND THAT IS -- SIMILAR TO A  
26 SITUATION WHERE YOU HAVE -- WHERE YOU HAVE -- WHAT YOU  
27 WOULD BE -- WHAT THE DEFENDANT WOULD BE -- WHAT THE  
28 COURT TRIED TO FIND IN THAT PARTICULAR CASE IS THAT YOU

1 APPLY A SLAPP SUIT ANY TIME THAT THERE IS -- YOU WOULD  
2 DISREGARD EVERYONE'S PRIVACY RIGHTS, YOU WOULD DISREGARD  
3 ANYTHING THAT HAD TO DO WITH THE ISSUE OF BALANCING,  
4 SAFETY. BALANCING RIGHT TO PRIVACY WOULD BE --

5 THE COURT: ISN'T THAT THE SECOND PRONG,  
6 COUNSEL?

7 MR. GATTI: THAT DOES GO TO THE SECOND PRONG,  
8 BUT WITH RESPECT TO THE FIRST PRONG, WE THEN HAVE TO GO,  
9 YOUR HONOR, TO EVEN THE DEFENDANT HAS TO MAKE A PRIMA  
10 FACIE SHOWING THAT MRS. STREISAND'S CLAIMS AROSE FROM  
11 ACTS IMPLICATING ADELMAN'S FIRST AMENDMENT SPEECH --

12 THE COURT: HE TOOK 12,000 PARAGRAPHS WHICH HE  
13 PUTS ON THIS WEBSITE, APPARENTLY FOR USE BY ANYBODY WHO  
14 CARES TO USE THEM, BUT IN PARTICULAR GOVERNMENTAL  
15 AGENCIES IN FURTHERANCE OF THEIR STATUTORY DUTY TO  
16 PROTECT THE COAST. IF THAT ISN'T A PUBLIC PURPOSE, WHAT  
17 IS?

18 MR. GATTI: WELL, THE STATUTE ITSELF OUTLINES  
19 AT 425.16 (E) 1 THROUGH 4 VARIOUS ASPECTS OF WHAT WILL  
20 BE DEEMED THE TYPE OF PUBLIC ISSUE OR PUBLIC CONCERN  
21 THAT WOULD BE ADDRESSED. AND I WOULD -- I DON'T THINK  
22 THERE'S BEEN ANY ARGUMENT FROM THE DEFENDANTS IN THIS  
23 CASE THAT (E) 1 WOULD APPLY. I DON'T THINK THERE IS ANY  
24 ARGUMENTS THAT (E) 2 WOULD APPLY. THAT HAS TO DO --  
25 BOTH OF THOSE HAVE TO DO WITH ANY WRITTEN OR ORAL  
26 STATEMENT OR WRITING MADE BEFORE A LEGISLATIVE,  
27 EXECUTIVE, OR JUDICIAL PROCEEDING.

28 THE COURT: WELL, JUST A SECOND. IT SAYS "IN

1 CONNECTION WITH, " NOT NECESSARILY "BEFORE." IN  
2 CONNECTION WITH SOMETHING THAT IS BEFORE ONE OF THOSE  
3 DESCRIBED BODIES. THIS COURT HAS ELEVEN CASES INVOLVING  
4 THE CALIFORNIA COASTAL COMMISSION'S NARRATIVE RIGHT.  
5 TEN AT LEAST HAVE BEEN CONSOLIDATED, BUT THEY RELATE TO  
6 THE COASTAL ZONE; IN FACT, THE LOCAL COASTAL PLAN THE  
7 CITY OF MALIBU ADOPTED -- EXCUSE ME, THE COMMISSION  
8 ADOPTED, TO WHICH THE CITY OBJECTS.

9 THERE ARE OTHER COURTS THAT CLEARLY HAVE THAT  
10 ISSUE BEFORE THEM. SO AREN'T THOSE PHOTOGRAPHS IN  
11 CONNECTION WITH ISSUES UNDER CONSIDERATION OR REVIEW?  
12 AND IT GOES ON, "OR ANY OTHER OFFICIAL PROCEEDING  
13 AUTHORIZED BY LAW." AND ISN'T THE COMMISSION ITSELF AN  
14 EXECUTIVE BODY? SO WHY DOES NOT 2 APPLY?

15 MR. GATTI: THESE PHOTOGRAPHS, THE PHOTOGRAPHS  
16 THAT ARE AT ISSUE -- AND ALSO WHAT WE'RE TALKING ABOUT  
17 HERE IS THE LABELING AND THE DESCRIPTION OF THE EXACT  
18 LOCATION OF ONE'S HOME. THOSE HAVE THE PICTURES. THE  
19 ISSUE HAS NOTHING TO DO WITH THE COASTAL COMMISSION OR  
20 ANY ISSUE THAT HAS BEEN ADDRESSED.

21 THE COURT: WELL, LET ME ASK YOU THE SAME  
22 QUESTION I ASKED DEFENSE COUNSEL, MR. KENDALL, A FEW  
23 MINUTES AGO. OUGHT WE TO SEPARATE THE PUBLICATION AND  
24 SALE OF THE PHOTOGRAPHS FROM THEIR PLACEMENT ON THE  
25 WEBSITE? IS THERE A DIFFERENT ANALYSIS THAT HAS TO BE  
26 GONE THROUGH WITH RESPECT TO THE SALE? THE RESPONSE OF  
27 THE DEFENSE WAS THAT EVEN IF NONE ARE SOLD AND THEY ARE  
28 PROTECTED BY THE FIRST AMENDMENT. WHAT IS YOUR REPLY?

1 MR. GATTI: MY REPLY IS THAT WHAT WE DO IS IN  
2 CONNECTION WITH THE SLAPP SUIT IS LOOK AT EACH  
3 INDIVIDUAL CAUSE OF ACTION. YOU MUST LOOK AT EACH  
4 INDIVIDUAL CAUSE OF ACTION. AND IN THE CASES THAT WE  
5 HAVE CITED TO YOUR HONOR, THAT THE CASES POINT OUT THAT  
6 THE INVASION OF PRIVACY CLAIMS AS A MATTER OF LAW ARE  
7 NOT SUBJECT TO THE ANTI-SLAPP OR SLAPP SUIT.

8 THE COURT: GO BACK TO DORA, PLEASE. I  
9 INTERRUPTED YOU BEFORE YOU WERE ABLE TO COMPLETE YOUR  
10 DISCUSSION. IN THE NINETEEN FIFTIES THE APPELLANT  
11 SURFED AT MALIBU BEACH, OF ALL PLACES. AND THAT'S JUST  
12 THE OPENING PARAGRAPH OF THE FACTUAL STATEMENT, AND HIS  
13 CONTENTION WAS THAT IT WAS AN INVASION OF HIS PRIVACY.  
14 DIDN'T THE COURT HOLD THAT THE SLAPP STATUTE APPLIED?  
15 SO WHAT IS DIFFERENT HERE?

16 MR. GATTI: WHAT IS DIFFERENT HERE IS THAT YOU  
17 ARE TALKING ABOUT WHAT IS AT ISSUE ARE SPHERES OF  
18 PRIVACY MISAPPROPRIATION CLAIMS, THAT WOULD BE SAYING AS  
19 IF THE SLAPP MOTION WOULD PROTECT SOMEBODY FROM TAKING  
20 ONE'S NAME, PUTTING IT ON THE WEBSITE, LOCATING ONE'S  
21 HOME, TAKING A PICTURE OF SOMEONE'S PRIVATE RESIDENCE  
22 INTRUDING UPON THAT PRIVACY, PUTTING IT UP FOR SALE, AND  
23 THEN THE COURT WOULD COME IN AND SAY THAT THAT IS  
24 PROTECTED SPEECH.

25 WHAT -- THE PRIMARY PURPOSE OF THE SLAPP  
26 MOTION IS TO CHILL, TO STOP -- STOP LAWSUITS THAT CHILL  
27 FREE SPEECH OR PETITION. THERE IS NOTHING OF THE SORT  
28 BEING APPLIED HERE. WHAT WE HAVE HERE IS SOMEBODY WHO

1 IS TRYING TO INVOKE THEIR FUNDAMENTAL RIGHT TO PRIVACY.  
2 IT HAS NOTHING TO DO WITH A CHILLING EFFECT, AND IT  
3 CLEARLY IS NOT THE PRIMARY PURPOSE OF THIS TO CHILL  
4 ANYONE'S FREE SPEECH OR PETITION.

5 THE COURT: YOU WERE GOING THROUGH THE  
6 SUBSECTION 425.16 (E). YOU WERE TALKING ABOUT 2. YOU  
7 DIDN'T HAVE A CHANCE TO DISCUSS THREE AND FOUR.

8 MR. GATTI: WITH RESPECT TO 3 AND 4, OF THOSE  
9 ISSUES I WOULD AGAIN SAY ON (E) 3 IT STATES THAT ANY  
10 WRITTEN OR ORAL STATEMENT OR WRITING MADE IN A PLACE  
11 OPEN TO THE PUBLIC OR AT A PUBLIC FORUM IN CONNECTION  
12 WITH AN ISSUE OF PUBLIC INTEREST.

13 TO FIND THAT WOULD APPLY, YOU WOULD HAVE TO  
14 SAY THAT IT'S A PUBLIC INTEREST OR CONCERN TO SELL  
15 PHOTOGRAPHS OF MRS. STREISAND'S HOME USING HER NAME ON  
16 THE INTERNET. THAT'S NOT WHAT WE'RE TALKING ABOUT HERE.  
17 THAT'S NOT THE TYPE OF FREE SPEECH. THAT'S NOT THE TYPE  
18 OF PETITION THAT THE SLAPP SUIT WAS MEANT TO PREVENT.

19 THE COURT: OKAY. NOW, COUNSEL, COMPLETE --  
20 GO BACK TO DORA AGAIN. IT WAS A COMPLAINT, AMONG OTHER  
21 THINGS, FOR APPROPRIATION UNDER COMMON LAW FOR USE OF  
22 THE PLAINTIFF'S LIKENESS AND HIS VOICE, WAS IT NOT?

23 MR. GATTI: I THINK, YOUR HONOR, IF I RECALL  
24 THE FACTS OF THAT CORRECTLY, I BELIEVE IT WAS A  
25 MISAPPROPRIATION CASE ONLY; NOT A PRIVACY CASE. WITH  
26 RESPECT TO THE MISAPPROPRIATION OF ONE'S LIKENESS, WE  
27 HAVE CITED YOUR HONOR AND THE COURT TO THE MILLER VERSUS  
28 NBC CASE, AGAIN FOR THE PROPOSITION THAT THE INVASION OF

1 THE PRIVACY, INTRUSION DOES NOT INVOLVE THE FIRST  
2 AMENDMENT RIGHTS BECAUSE BY IT'S NATURE INTRUSION DOES  
3 NOT INVOLVE SPEECH BY ITS OWN NATURE. WE'RE TALKING  
4 THERE ABOUT THE MEANS OF INTRUSION.

5 THE USING OF OPTICAL AIDS, THE USE OF THINGS  
6 OF THE LIKE THAT PENETRATE ONE'S RIGHT TO PRIVACY, AND  
7 THOSE, AS IN MILLER VERSUS NBC STATES, DOES NOT INVOLVE  
8 SPEECH THAT WOULD TRIGGER THE ANTI-SLAPP --

9 THE COURT: CAN YOU GIVE THE CITATION.

10 MR. GATTI: IT'S 187 CAL AP. 3 1463.

11 THE COURT: THANK YOU.

12 MR. GATTI: AND I BELIEVE THE CITE WITH  
13 REFERENCE IS -- I BELIEVE IT'S AT 1491 CITING, AND I'M  
14 QUOTING THEM HERE. AND IN THAT SAME QUOTE IN MILLER,  
15 THE COURT GOES ON TO STATE THAT MISAPPROPRIATION OF THE  
16 LIKENESS -- AND THIS IS A QUOTE, PROBABLY DOES NOT  
17 INVOLVE FIRST AMENDMENT RIGHTS AS WELL.

18 THE MORE RECENT CASE THAT WE CITE TO IN OUR  
19 PAPERS HAVING TO DO WITH THIS SPECIFIC ISSUE IS THE  
20 CONSUMER JUSTICE CENTER VERSUS TRIMETICA CASE THAT WAS  
21 AT 107 CAL AP. 4 595. IT'S A 2003 CASE, YOUR HONOR, AND  
22 THAT HAD TO DO -- THE ISSUES WERE QUITE SIMILAR TO THE  
23 SITUATION THAT IS BEING PRESENTED BY THE DEFENSE IN THIS  
24 CASE. THAT INVOLVED A SITUATION WHERE IT HAD TO DO WITH  
25 HERBAL SUPPLEMENTS AND STATEMENTS MADE IN THE PUBLIC  
26 ABOUT HOW THIS PARTICULAR HERBAL SUPPLEMENT COULD DO  
27 VARIOUS THINGS, BENEFICIAL THINGS, IF TAKEN.

28 THE DEFENDANT FILED A SLAPP MOTION. THE



1 DEFENDANT ARGUED THAT THE STATEMENTS WERE ABOUT EARLY --  
2 OR DIETARY SUPPLEMENT PRODUCTS AND DID THAT IN THE  
3 CONTEXT OF THE PRESENT CASES, AND THE PRESENT SITUATION  
4 IN THIS SOCIETY, THAT HERBAL SUPPLEMENTS HAVE BECOME  
5 SUCH A BIG PHENOMENON, THAT IT CLEARLY RAISED ISSUES  
6 THAT HAD TO DO WITH PUBLIC CONCERNS.

7 AND SPECIFICLY THE DEFENDANTS IN THAT CASE  
8 CITED TO ACTIONS OF CONGRESS THAT ADDRESSED THE ISSUE OF  
9 SUPPLEMENTS, THE TREATMENT OF SUPPLEMENTS, HOW THEY  
10 SHOULD BE TAKEN, AND DIFFERENT MONITORING OF THOSE  
11 SUPPLEMENTS. THE APPELLATE COURT RULES THAT YOU MUST  
12 LOOK AT THE NATURE OF SPEECH IN SPECIFICS, NOT IN  
13 GENERALITIES. BECAUSE IF YOU LOOK AT THINGS -- AND  
14 SPEECH IN GENERALITIES COULD ALMOST MAKE ANYTHING APPLY  
15 TO A SLAPP MOTION AND YOU COULD MAKE IT, IN GENERAL,  
16 APPLY TO ANYTHING OF PUBLIC CONCERN.

17 AND IT'S SPECIFICLY CITED IN THAT CASE VARIOUS  
18 DIFFERENT HYPOTHETICALS THAT ILLUSTRATE THAT POSITION  
19 AND SHOW HOW OBVIOUSLY WRONG IT WOULD BE TO GO DOWN THAT  
20 ROAD. AND THE SPECIFIC CITE I WAS REFERRING TO AT  
21 TRIMETICA WAS AT PAGE 601 OF THAT PARTICULAR CASE. HERE  
22 THE DEFENDANTS WANT TO TALK IN GENERALITIES.

23 THEY WANT TO TALK ABOUT IT, THE PICTURES OR  
24 THE CAPTIONING OF MRS. STREISAND'S NAME TO A PICTURE  
25 LABELING THE LOCATION OF THE HOME, TURNING AROUND AND  
26 SELLING THAT PHOTOGRAPH, WOULD THEN HAVE SOME SORT OF  
27 PUBLIC CONCERN BECAUSE MRS. STREISAND HAPPENS TO LIVE  
28 NEAR THE COAST.

1 THE DEFENDANTS WOULD HAVE THE COURT BELIEVE  
2 THAT IF YOU LIVE ON THE COAST, YOU GIVE UP YOUR RIGHT TO  
3 PRIVACY, YOU GIVE UP YOUR RIGHT TO PROTECT YOUR FAMILY,  
4 YOU GIVE UP YOUR RIGHT TO PROTECT YOUR PERSON. AND  
5 SPECIFICLY IN THIS CASE WE HAVE A SITUATION WHERE  
6 SOMEBODY HAS TRUE RELEVANCE, ABSOLUTE ISSUES WITH  
7 SAFETY, PROTECTION, STALKERS, THAT ARE ONGOING AND HAVE  
8 BEEN ONGOING FOR YEARS.

9 THE DEFENDANTS WOULD SAY THAT IF YOU LIVE BY  
10 THE COAST YOU LOSE YOUR RIGHT TO PRIVACY, YOU LOSE YOUR  
11 RIGHT TO PROTECT YOUR SAFETY, AND ANYBODY CAN COME IN  
12 AND JUST INTRUDE ON YOUR SITUATION. WHAT THE DEFENDANTS  
13 WANT TO DO IN THIS CASE IS THEY WANT TO DIFFERENTIATE.  
14 THE SUPREME COURT HAS FOUND THAT THERE IS NO MORE SACRED  
15 OR PRIVATE PLACE THAN THE HOME. THAT HAS COME THROUGH  
16 IN MANY CASES, THE LATEST WAS THE LAWRENCE V TEXAS. THE  
17 PRIVACY IN THE HOME, IT CANNOT GET MORE PRIVATE AND MORE  
18 PROTECTED THAN THAT.

19 AND WHAT THE DEFENDANTS WOULD LIKE THE COURT  
20 TO DO IS SAY THAT CERTAIN INDIVIDUALS HAVE MORE PRIVACY  
21 IN THEIR HOME THAN OTHERS. THERE IS A DIFFERENCE IN HOW  
22 THIS PERSON IN THEIR HOME SHOULD BE TREATED VERSUS  
23 SOMEBODY IN A HOME -- THAT'S NOT WHAT THE PROTECTION IS.  
24 THAT'S NOT WHAT INVASION OF PRIVACY IS. THAT'S NOT WHAT  
25 THE RIGHT TO PRIVACY IS ABOUT. AND IN THIS PARTICULAR  
26 CASE WE HAVE VARIOUS SITUATIONS THAT INVOLVE SAFETY  
27 CONCERNS THAT HAVE TO BE TAKEN INTO ACCOUNT, AND THEY  
28 ARE TAKEN INTO ACCOUNT IN CASES THAT WE'VE CITED TO THE

1 COURT.

2 WITH RESPECT TO THE SPECIFIC PRONG OF THE  
3 PETITION WHICH WE'VE STATED THE DEFENDANTS HAVE NOT  
4 SATISFIED THEIR INITIAL BURDEN TO EVEN STATE THAT THE  
5 SLAPP MOTION APPLIES IN THIS PARTICULAR CASE, APPLIES TO  
6 THESE PARTICULAR FACTS, APPLIES TO THE USE THAT IS BEING  
7 MADE OF THE NAME OF MRS. STREISAND, THE LOCATION OF HER  
8 HOME, THE INTRUSION.

9 AND THE CASES THAT WE'VE CITED AND THE -- AS I  
10 STATED PREVIOUSLY, ONE NEEDS TO LOOK AT EACH CAUSE OF  
11 ACTION. YOU CANNOT LOOK AT THE SLAPP MOTION AND APPLY  
12 IT ACROSS THE BOARD. ONE LOOKS AT EACH PARTICULAR CAUSE  
13 OF ACTION. AND IN THE CASES WE HAVE CITED, THOSE  
14 PARTICULAR CAUSES OF ACTION FALL OUTSIDE OF THE AMBIT OF  
15 THE SLAPP MOTION.

16 THE COURT: WELL, DO YOU REALLY MEAN TO SPEAK  
17 SO GLOBALLY, COUNSEL, IF YOU ARE -- RIGHT TO PRIVACY,  
18 ISN'T IT YOUR THIRD CAUSE OF ACTION?

19 MR. GATTI: YES, IT IS.

20 THE COURT: WOULDN'T YOU -- AREN'T YOU REALLY  
21 ARGUING THAT IT'S THE DIFFERENT -- ACTIVITIES OF THE  
22 DEFENDANT THAT ARE ALLEGED TO HAVE OCCURRED? FOR  
23 EXAMPLE, NOT JUST THE TAKING OF PHOTOGRAPHS, BUT THE  
24 PUBLICATION ON THE WEBSITE AND THEN THE FEATURE ON THE  
25 WEBSITE THAT ALLOWS PEOPLE TO TAKE PHOTOGRAPHS WITH A  
26 DESCRIPTION OF, IN THIS CASE, YOUR CLIENT'S  
27 IDENTIFICATION OF THAT PHOTO AS BEING ONE OF YOUR  
28 CLIENT'S RESIDENCES, AND IN THE SALE OF THOSE

1 PHOTOGRAPHS? AREN'T THOSE INDEPENDENT BASES THAT, FOR  
2 EXAMPLE, YOU WOULD ARGUE WITHIN THE THIRD CAUSE OF  
3 ACTION?

4 MR. GATTI: THOSE ARE CAUSES -- WITHIN THE  
5 CONSTITUTIONAL RIGHT TO PRIVACY, WE'RE TALKING ABOUT A  
6 GENERAL INTRUSION WHICH, WITH THE FACTS THAT YOU HAVE  
7 ADDRESSED, ENCOMPASS THOSE INTRUSIONS, BUT ALSO THERE IS  
8 A SEPARATE CAUSE OF ACTION, THE MISAPPROPRIATION, WHICH  
9 GOES DIRECTLY TO SOME -- AND LOOK AT 3344 OF THE CIVIL  
10 CODE.

11 THE COURT: BUT EVEN WITH RESPECT TO THAT, IS  
12 IT YOUR CONTENTION THAT THE MISAPPROPRIATION OCCURRED BY  
13 REASON OF THE TAKING OF THE PHOTOGRAPH, THEN BY REASON  
14 OF PUBLICATION OF THE PHOTOGRAPH, AND THEN BY REASON OF  
15 THE TAGGING, AND THEN BY REASONING OF THE AVAILABILITY  
16 AND SALE OF THE PHOTOGRAPHS?

17 MR. GATTI: THERE -- THERE IS A DISCUSSION OF  
18 ALL OF THOSE ASPECTS WITHIN THE COMPLAINT AND WITHIN THE  
19 DIFFERENT CAUSES OF ACTION. THEY DON'T NECESSARILY --  
20 ALL OF THOSE ISSUES AND ALL THOSE FACTS DO NOT  
21 NECESSARILY HAVE TO BE FOUND ON EACH CAUSE OF ACTION FOR  
22 THE PLAINTIFF TO PREVAIL.

23 THE COURT: YOUR ARGUMENT IS THAT IN ANALYZING  
24 THE FIRST PRONG OF THE ANTI-SLAPP STATUTE THAT THE COURT  
25 NEEDS TO SEPARATE THESE OUT. DO I UNDERSTAND THAT  
26 CORRECTLY?

27 MR. GATTI: THE COURT NEEDS TO SEPARATE THE  
28 CAUSES OF ACTION AND APPLY THE SLAPP --

1 THE COURT: OKAY. THAT'S WHERE -- IT'S ONE  
2 THING TO SEPARATE CAUSES OF ACTION. MY QUESTION IS: IS  
3 IT YOUR CONTENTION THAT EACH OF THE ACTS WHICH WOULD BE  
4 ASSUMEDLY, OR FOR SAKE OF ARGUMENT, SUFFICIENT TO  
5 SUPPORT ANY PARTICULAR CAUSE OF ACTION, SHOULD BE  
6 SEPARATED OR THE COURT CONSIDER WHETHER SOMETHING IS,  
7 FOR EXAMPLE, DEMINIMUS IN THE, QUOTE, CONTENTIONS THAT  
8 ARE MADE, THAT ONLY A FEW PHOTOGRAPHS HAVE BEEN SOLD?  
9 DOES THAT MAKE IT DEMINIMUS OR, BY CONTRAST, JUST AN  
10 EXAMPLE OF HOW LARGE THE PROBLEM MIGHT BE?

11 MR. GATTI: THAT GOES TO, YOUR HONOR -- YOU  
12 WOULD NOT VIEW THAT AS DIMINIMUS IN THAT WOULD BE GOING  
13 POTENTIALLY TO A DAMAGE ISSUE AS OPPOSED TO THE CAUSE OF  
14 ACTION AND THE VIOLATION ITSELF.

15 THE COURT: SO IN THE PLAINTIFF'S VIEW ANY  
16 ABILITY FOR SOMEONE TO PAY FOR AND DOWNLOAD AND OBTAIN A  
17 PHOTOGRAPH OF THE RESIDENCE WOULD GIVE RISE TO A CAUSE  
18 OF ACTION IN WHICH YOU'RE NOT SUBJECT TO 425.16 BECAUSE  
19 THAT'S SOMETHING THAT IS NOT CONSTITUTIONALLY PROTECTED.  
20 THAT'S PLAINTIFF'S POSITION.

21 MR. GATTI: THE POSITION IS THAT THAT WOULD  
22 FALL INTO A MISAPPROPRIATION AND THAT WOULD NOT FALL --  
23 THAT WOULD FALL OUTSIDE THE AMBIT OF THE SLAPP MOTION.

24 THE COURT: ARE THERE OTHER THINGS YOU WANT TO  
25 SAY WITH RESPECT TO THE FIRST PRONG?

26 MR. GATTI: NOT AT THIS TIME, YOUR HONOR.

27 THE COURT: WELL, THIS IS THE TIME.

28 MR. GATTI: OKAY. NOTHING FURTHER.

1 THE COURT: OKAY. WHAT IS YOUR RESPONSE TO  
2 ALL THAT, COUNSEL?

3 MR. KENDALL: WELL, STARTING AT THE BACK,  
4 BECAUSE IT WAS THE LAST THING HE SAID, 3344 (E) (S)  
5 NEWSWORTHINESS EXCEPTION --

6 THE COURT: I REALLY FRANKLY DON'T WANT TO GET  
7 INTO 3344. WE'LL COME BACK TO THAT IF IT RELATES TO.  
8 THE --

9 MR. KENDALL: THAT'S THE PUBLIC AFFAIRS  
10 EXCEPTION TO THE MISAPPROPRIATION STATUTE. OUR  
11 CONTENTION IS IT'S EVIDENT ON THE WEBSITE, EVIDENT FROM  
12 THE LEGISLATURE'S COMMENTS THAT THIS IS A MATTER OF  
13 PUBLIC AFFAIRS. THIS IS A MATTER OF PUBLIC CONCERN.  
14 AND THAT IS WHY THE 3344 (A) CLAIM UNDER 3344 FOR  
15 SELLING THE PHOTOGRAPHS, JUST LIKE NEWSPAPERS SELL THEIR  
16 SPEECH, IS STILL WITHIN THE AMBIT OF THE ANTI-SLAPP  
17 STATUTE.

18 NOW, THERE ARE A NUMBER OF THINGS I BELIEVE  
19 THAT MY LEARNED FRIEND GOT WRONG. ONE IS HE SEEMS TO BE  
20 OF THE VIEW THAT CALIFORNIA COURTS HAVE NOT HELD THIS  
21 ANTI-SLAPP STATUTE APPLICABLE TO PRIVACY CLAIMS. BUT ON  
22 PAGE 2 OF OUR REPLY BRIEF AND ELSEWHERE IN OUR MOVING  
23 PAPERS WE POINTED OUT THE SEELIG AGAINST INFINITY  
24 BROADCASTING CASE AND THE MATSON CASE, BOTH OF WHICH  
25 WERE PRIVACY CASES AND BOTH OF WHICH HAVE APPLIED TO THE  
26 ANTI-SLAPP STATUTE, SO MY LEARNED FRIEND IS SIMPLY WRONG  
27 ABOUT THAT.

28 AND THE SUPREME COURT CASE THAT THE COURT

1 REFERRED TO, THE EQUILON CASE, STATES -- AND THIS IS  
2 GOING TO POINTS THAT THEY MADE THAT THERE IS AN INTENT  
3 TO CHILL REQUIREMENT. EQUILON ON PAGE 66 SAYS - THE  
4 COURT SAYS, CONTRARY TO EQUILON, WHICH IS A PARTY'S  
5 SUGGESTION, THEREFORE IT IS NOT NECESSARY, WE IMPOSE AN  
6 ADDITIONAL INTENT TO CHILL LIMITATION IN ORDER TO AVOID  
7 JEOPARDIZING MERITORIOUS LAWSUITS."

8           THEY REJECTED THE INTENT TO CHILL ARGUMENT.  
9 THE QUESTION IS WHAT IS THIS LAWSUIT ABOUT, AND IS IT  
10 ABOUT SPEECH. AND IT UNQUESTIONABLY IS BECAUSE OF WHAT  
11 THEY ARE CLAIMING DAMAGES FOR. AND WHAT THEY ARE  
12 SEEKING TO RESTRAIN WITH THEIR INJUNCTION IS SPEECH, AND  
13 IT IS SPEECH ABOUT THE COAST. AND IT IS SPEECH ABOUT A  
14 MATTER THAT IS WITHIN THE PUBLIC'S CONCERN. AND BASED  
15 ON THAT, IT IS WITHIN THE FIRST PRONG OF THE SLAPP  
16 STATUTE.

17           NOW, THERE IS A LOT OF ARGUMENT ABOUT THE  
18 SECOND PRONG, WHICH I'D LOVE TO RESPOND TO --

19           THE COURT: I'LL GIVE YOU A CHANCE TOMORROW.

20           MR. KENDALL: I'M GUESSING THAT'S TOMORROW'S  
21 ACTIVITY, BUT I THINK WHAT WE SHOULD LEAVE HERE WITH  
22 TODAY IS THAT THIS CLEARLY SATISFIES THE FIRST PRONG  
23 BECAUSE THERE IS NO QUESTION THAT WHAT THEY ARE  
24 ATTEMPTING TO RESTRAIN AND WHAT THEY ARE ATTEMPTING TO  
25 GET DAMAGES FOR IS SPEECH, SPEECH COMMUNICATED BY TAKING  
26 THE PICTURES, SPEECH BY COMMUNICATING THE PICTURES,  
27 SPEECH BY PROVIDING DOWNLOADS OF THE PICTURES, SPEECH BY  
28 PROVIDING REPRINTS OF THE PICTURES. ALL OF THAT IS

1 SPEECH. SPEECH BY CAPTIONING OF THE PICTURES OR  
2 PUBLISHING THE THIRD PARTY'S CHARACTERIZING OF THE  
3 PICTURES, TO BE MORE SPECIFIC.

4 THE PAUL AGAINST FRIEDMAN CASE THAT MY LEARNED  
5 FRIEND CITED SAYS YOU ARE SUPPOSE TO LOOK AT THE ACTS  
6 THAT THE PARTY IS ACCUSED OF. WELL, THE ACTS ARE THE  
7 ONES I JUST LISTED. THE ACTS ARE THOSE OF SPEECH. SO I  
8 THINK IT'S CLEAR THAT THE FIRST PRONG IS SATISFIED, AND  
9 LET'S NOT GET THE CART BEFORE THE HORSE IN ARGUING ABOUT  
10 WHETHER THERE'S BEEN A SHOWING ON THE EVIDENCE BEFORE  
11 THE COURT TO ESTABLISH THE MERITS OF PLAINTIFF'S CLAIMS  
12 BECAUSE THAT'S TOMORROW'S WORK.

13 THE COURT: IT'S AN APPROPRIATE TIME TO BREAK  
14 FOR THE DAY. IS TOMORROW A GOOD DAY TO RESUME?

15 MR. KENDALL: YOUR HONOR, JUST ONE POINT.

16 THE COURT: LET ME SUGGEST THAT WE'RE NOT IN  
17 TRIAL THIS WEEK, AND ASIDE FROM THE LAW AND MOTION  
18 CALENDAR, I'M GENERALLY AVAILABLE.

19 YES, MR. GATTI.

20 MR. GATTI: IF --

21 THE COURT: WHILE COUNSEL POWERS UP, GO AHEAD.

22 MR. GATTI: WE COULD DO TOMORROW AFTERNOON OR  
23 IF THE COURT PREFERS THE NEXT -- I HAVE A COURT  
24 APPEARANCE TOMORROW MORNING WHICH WILL TAKE UP MOST OF  
25 THE OF -- IF NOT THE FULL MORNING.

26 THE COURT: WELL, ARE BOTH SIDES AND ALL  
27 PERSONS WHO NEED TO BE PRESENT AVAILABLE 1:30 TOMORROW.

28 MR. CASAS: YOUR HONOR, I WOULD -- I DON'T



1 KNOW WHAT THE CHANCES ARE OF ADDRESSING LAYER42 -- THE  
2 INTERNET --

3 THE COURT: WE MIGHT BE ABLE TO DO IT VERY  
4 SHORTLY. I MUST HAVE MISSED ALL THE EVIDENCE WITH  
5 RESPECT TO LAYER42. ASIDE FROM ONE REFERENCE IN THE  
6 COMPLAINT, I DIDN'T SEE ANYTHING.

7 MR. KENDALL: IT WASN'T IN THE EVIDENCE.  
8 THERE WAS JUST AN ALLEGATION, AND IT SEEMS TO ME THAT --  
9 AND BY THE WAY, I BELIEVE THAT'S TRUE IS PICTOPIA --

10 THE COURT: WELL, PICTOPIA --

11 MR. KENDALL: ON THE -- BUT I REPRESENT  
12 PICTOPIA IT'S A NON ISSUE.

13 THE COURT: THEY FILED A DECLARATION, COUNSEL.  
14 NO ONE HAS OFFERED ANY EVIDENCE THAT I'M AWARE OF, AND  
15 PLEASE CORRECT ME IF I AM WRONG, WITH RESPECT TO LAYER42  
16 I REALLY DON'T KNOW WHAT IT DOES, ASIDE IT'S THE TOP  
17 PAGE IN THE COMPLAINT IT'S AN ALLEGATION SO I DON'T  
18 KNOW.

19 MR. CASAS: THAT IS IT, YOUR HONOR.

20 THE COURT: WHAT WOULD YOU LIKE TO DO, SIR.

21 MR. CASAS: I WOULD LIKE TO HAVE MY CLIENT BE  
22 DISMISSED.

23 THE COURT: WELL, THAT YOU WOULD HAVE TO MAKE  
24 A MOTION FOR, BUT IF YOU WANT TO SUBMIT THE STATE OF  
25 EVIDENCE, THAT'S UP TO YOU.

26 MS. CASAS: I WILL, YOUR HONOR.

27 THE COURT: IT'S UP TO YOU WHETHER YOU COME  
28 BACK. YOU ARE ALWAYS WELCOME.

1 MR. CASAS: THANK YOU. I WOULD LIKE TO POINT  
2 OUT ONE ITEM, YOUR HONOR, THE STATUTE THAT PROTECTS MY  
3 CLIENT GRANTS IMMUNITY TO COMMUNICATION DECENCY ACT.

4 THE COURT: THAT'S SOMETHING WE'RE GOING TO  
5 NEED TO TALK ABOUT. I WILL TELL YOU THAT I DON'T KNOW  
6 WHAT YOUR CLIENT DOES, I DON'T KNOW HOW I'M GOING TO  
7 EVALUATE THAT OBJECTION WITH THE APPLICATION OF SECTION  
8 230 TITLE 47 UNITED STATES CODE. THAT IS WHAT YOU ARE  
9 DISCUSSING?

10 MR. CASAS: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. YOU MAY NEED TO COME  
12 BACK. I WOULD HOPE WE WOULD FINISH TOMORROW AFTERNOON  
13 IF WE DO START 1:30. BUT, MR. KENDALL --

14 MR. KENDALL: I'M AVAILABLE IN THE MORNING,  
15 BUT UNFORTUNATELY I HAVE A CLIENT COMING FOR A MEETING  
16 THE WHOLE AFTERNOON OUT OF TOWN FROM THE EAST COAST. I  
17 CAN'T DO IT TOMORROW AFTERNOON. I'M FREE ANY TIME ON  
18 WEDNESDAY.

19 THE COURT: WHAT ABOUT OTHER COUNSEL ON  
20 WEDNESDAY?

21 MR. GATTI: WEDNESDAY I'M AVAILABLE.

22 THE COURT: SHOULD WE START, FOR EXAMPLE, AT  
23 10 JUST TO MAKE SURE WE FINISH ON THE NEXT DAY.

24 MR. KENDALL: THAT WORKS FOR ME, YOUR HONOR.  
25 MAY I JUST CONFER WITH MY CLIENT.

26 THE COURT: YOU CERTAINLY CAN. WHILE YOU ARE  
27 DOING THAT, LET ME MENTION -- THE LAWYER FOR LAYER42,  
28 IT'S UP TO YOU. WE COULD WAIT UNTIL THE END OF THE DAY

1 TOMORROW TO TAKE UP SECTION 230, BUT IT PROBABLY MAKES  
2 NO DIFFERECNE TO YOU. YOU ARE FROM OUT OF TOWN.

3 MR. CASAS: YES, YOUR HONOR, NORTHERN  
4 CALIFORNIA. I WOULD BE WILLING TO STIPULATE TO SUBMIT  
5 THE MATTER BASED ON THE LACK OF EVIDENCE OR NO EVIDENCE  
6 HAS BEEN PRESENTED RATHER THAN MAKE AN ADDITIONAL  
7 APPEARANCE.

8 MR. KENDALL: MAY I CONFER WITH COUNSEL,  
9 PLEASE.

10 THE COURT: YES.

11 MR. CASAS: I'LL LEAVE IT OPEN, YOUR HONOR,  
12 AND APPEAR.

13 THE COURT: OKAY. SO WE'RE SET, THEN, FOR  
14 WEDNESDAY, WHICH IS THE 16TH, AND CAN YOU START AT 10.

15 MR. GATTI: THAT WOULD BE FINE, YOUR HONOR.

16 MR. KENDALL: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. THEN WE'LL RECESS FOR  
18 THE DAY. RESUME WEDNESDAY AT 10:00 A.M. ONE COMMENT TO  
19 THE MEDIA PEOPLE, THAT ORDER EXPIRED TODAY, BUT IF YOU  
20 HAVE A REQUEST FOR THE SAME COVERAGE WEDNESDAY, IT'S  
21 GRANTED.

22 THE WITNESS: OKAY.

23 MR. GATTI: THANK YOU, YOUR HONOR.

24 MR. KENDALL: THANK YOU, YOUR HONOR.

25 MS. SEIGLE: THANK YOU, YOUR HONOR.

26 (PROCEEDINGS ADJOURNED AT 4:25 P.M.)

27

28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3

4 DEPARTMENT H HON. ALLAN J. GOODMAN, JUDGE  
5 BARBRA STREISAND, )  
6 )  
6 PLAINTIFF, )  
7 )  
7 VS. ) NO. SC 077257  
8 )  
8 KENNETH ADELMAN, ET AL., ) REPORTER'S  
9 ) CERTIFICATE  
9 DEFENDANTS.)

10  
11  
12  
13 I, BUFORD J. JAMES, CSR 9296, OFFICIAL  
14 REPORTER OF THE SUPERIOR COURT OF THE STATE OF  
15 CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY  
16 CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 80,  
17 INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT  
18 OF THE TESTIMONY AND PROCEEDINGS HELD IN THE  
19 ABOVE-ENTITLED MATTER ON MONDAY, JULY 14, 2003.

20  
21 DATED THIS 21ST DAY OF AUGUST, 2003.

22   
23 BUFORD J. JAMES, CERTIFIED SHORTHAND REPORTER  
24  
25  
26  
27  
28