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REPORTER'S RECORD
AMENDED VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 25-03-92211-D

PHI THETA KAPPA HONOR § IN THE DISTRICT COURT
SOCIETY, §
Plaintiff §
§
vs. § 135TH JUDICIAL DISTRICT
§
TONI MAREK, §
Defendant § VICTORIA COUNTY, TEXAS

HEARING ON APPLICATION FOR A TEMPORARY INJUNCTION

On the 8th day of April, 2025, the following
proceedings came on to be held in the above-titled and
numbered cause before the Honorable JUDGE KEMPER STEPHEN
WILLIAMS, Judge Presiding, held in Victoria, Victoria
County, Texas.

Proceedings reported by computerized stenotype
machine.

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMD</u>	<u>VOL</u>
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(No exhibits marked or offered.)

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

2 THE COURT: This is 25-03-92211-D,
3 PHI THETA KAPPA HONOR SOCIETY VERSUS TONI MAREK.

4 And just for the record, we have two pro
5 hac vice motions, one from Tracy Betz and one from
6 Marc --

7 Is it Randazza?

8 MR. RANDAZZA: Randazza, yes.

9 THE COURT: -- Randazza.

10 And just for the record, those are ordered
11 granted; and if you-all want to follow up with written
12 orders to confirm that, that's fine as well. So --

13 We're here on an application for a
14 temporary injunction.

15 And is it Ms. Betz? You represent the
16 movant?

17 MS. BETZ: I do, your Honor. Thank you.

18 THE COURT: All right. You may proceed.

19 MS. BETZ: Thank you, your Honor.

20 Prior to the hearing starting today, we
21 spoke with Mr. Randazza out in the hallway about the
22 possibility of stipulating to the evidence that's
23 already been placed before you, your Honor, and then
24 just really drilling down and focusing on legal
25 arguments, seeing that this is more of a question of

1 legal issue than it is a factual. If, your Honor, is
2 okay with that, then we would proceed in that manner.

3 MR. RANDAZZA: Yes, your Honor, we did
4 come to that agreement.

5 I think we didn't actually flesh out the
6 one thing, though, is that there is this e-mail that
7 neither of us had put on the record. We'd like your
8 Honor to have the benefit of looking at it in camera,
9 but we're not trying to admit it.

10 Does that sound about right?

11 MS. BETZ: We would have no objection,
12 your Honor, receiving it in camera; but we would object
13 to it being placed in the record as it is privileged.

14 THE COURT: I understand.

15 So -- all right. Well, then I guess I
16 approve that stipulation; and you may proceed.

17 MS. BETZ: Thank you, your Honor.

18 And with that stipulation, then is it fair
19 for us to assume that the materials that were attached
20 to our injunction are deemed admitted?

21 THE COURT: Yes.

22 MS. BETZ: Thank you, your Honor.

23 THE COURT: But does that also include
24 anything that was attached to the response?

25 MR. CULLEN: No.

1 THE COURT: Oh, okay.

2 MR. CULLEN: The e-mail. It doesn't
3 include the e-mail.

4 MS. BETZ: Not the e-mail.

5 THE COURT: Yeah, I understand.

6 MR. RANDAZZA: Well, we didn't attach the
7 e-mail.

8 MS. BETZ: Right. They didn't attach the
9 e-mail. That's correct.

10 THE COURT: All right. Go ahead.

11 MS. BETZ: Thank you, your Honor.

12 I want to say from the outset that no one
13 here is trying to silence -- silence an alleged victim
14 of sexual assault. That is not what why we are here.
15 PTK is not trying to silence Ms. Marek's speech in any
16 way. We're here purely on a very simple issue; and that
17 is privileged communications, attorney-client and work
18 product privileged communications.

19 And, your Honor, I -- in fact, when the
20 attorney just left this room, he said, "You're going to
21 get schooled on the First Amendment today," and you are
22 going to hear a lot of that from the other side and
23 Mr. Randazza and I believe that is his practice area.
24 We disagree that this case has anything at all to do
25 with the First Amendment.

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1 Again, this has to do with the fact that
2 there are privileged communications that have been
3 inadvertently disclosed to Ms. Marek; and Ms. Marek has
4 then produced them publicly, filed them publicly in a
5 federal case, and has made statements that she intends
6 to continue to give that information in a book that she
7 had intended to produce -- or to print prior to
8 Judge Bauknight issuing her order a couple -- a week or
9 so ago.

10 And so that is what this case is about,
11 that is what we're here about, and that's what I want to
12 focus on and talk about.

13 And your Honor knows, just as well as any
14 other attorney in this room, no one is entitled to have
15 someone else's attorney-client or work product
16 privileged communications. No one. Typically not this
17 Court, except for limited exceptions -- for example, how
18 we just made an agreement for you to review in camera --
19 not the opposing counsel, certainly not an opposing
20 party, not a witness. No one is entitled to have those
21 communications, not individuals who might want to read
22 Ms. Marek's book.

23 This is a cornerstone of the legal
24 process, the privilege; and it's fiercely protected by
25 every state, by the federal courts.

1 In fact, your Honor's probably aware that
2 many confidentiality and protective orders have clawback
3 provisions that say, "If we inadvertently produce our
4 privileged materials, we get them back. You don't get
5 to keep them. You don't get to use them." That's
6 because the privilege is so important, and we protect
7 it.

8 No one is entitled to have other people's
9 communications, not even when they're accidentally
10 disclosed; and, again, it's the only reason we're here.

11 Ms. Marek sent a number of FOIA requests
12 and when doing that, she inadvertently received PTK's
13 attorney-client work product privileged information and
14 there's no dispute that she has this information.

15 She has, again, filed a piece of it with a
16 federal filing; and she has placed on websites that
17 she's going to use materials that she received in a FOIA
18 request, she's going to put those in a book that she's
19 publishing and making available for free that she refers
20 to basically as a tell-all book about PTK. "I'm going
21 to use this FOIA received information in my tell-all
22 book."

23 Well, she can't use those privileged
24 materials because she's not allowed to possess them, not
25 allowed to possess them and not allowed to publish them

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1 or distribute them to others.

2 Now, in her response to the TRO that
3 Judge Bauknight entered, they -- they argue that this is
4 an order that is a constitutional abomination and that
5 it should only exist to teach a judge what not to do.

6 And then the response goes on and on and
7 strings cites and talks about how there's not enough
8 room to string cite about the First Amendment and
9 suggests that -- that Ms. Marek is free to publish
10 anything she has at any time no matter what and if
11 you're stopping her from doing that, if you say
12 Judge Bauknight was wrong and you can do -- if you don't
13 say that, that's a prior restraint. She's allowed to
14 say anything she wants.

15 And she says that PTK has been trying to
16 shut her up for ten years about this alleged sexual
17 assault ten years ago and she wants to tell the world
18 and she has a right to produce all this stuff. That's
19 an awful lot of noise, your Honor.

20 PTK has known about her allegations of
21 sexual assault for those ten years; and they have never
22 once, ever, done anything to try to stop her from
23 speaking about that.

24 She's published it on websites, she has a
25 change.org petition, she posts about it on social media,

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1 and they've not done anything.

2 In fact, the first time and only time that
3 they've tried to stop her from talking about PTK is when
4 she came into possession of PTK's privileged and work
5 product documents and then went ahead and published one
6 of them and told the world she was going to publish
7 more. That's the first and only time that PTK has tried
8 to stop it.

9 And they're not trying to stop her speech.
10 What they're trying to do is simply get back the
11 materials that she has no right to possess, their
12 privileged information.

13 And it's important for you to know, your
14 Honor, we actually tried to do that. We asked
15 Ms. Marek, before she had counsel, "Please give us back
16 these privileged materials. You're not entitled to have
17 them. You shouldn't have received them."

18 She ignored it at first; and then she
19 said, "No. I'm not giving them back to you. I received
20 them as part of this records request, and I'm going to
21 keep them."

22 Well, that's not how it works. When you
23 get privileged materials that were inadvertently
24 disclosed to you, that doesn't mean you have the right
25 to keep them; and it certainly doesn't mean you have the

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1 right to put them all in a book and share them with the
2 world.

3 And even the Texas Records Request Act
4 makes that clear to us, that not everything in the
5 government is something that people get access to
6 through these types of requests. There are numerous
7 exceptions, numerous exceptions that say, "But you don't
8 get this, and you don't get that." And guess what.
9 Many of those relate to privilege and work product.

10 So the fact that they were inadvertently
11 disclosed to her does not mean that she can do whatever
12 she wants to do with them.

13 Again, her whole brief and her whole
14 argument is that the First Amendment means we can't stop
15 her speech and she cites to cases that talk about
16 stopping speech, but you'll notice nothing in that brief
17 and nothing you will hear today talks about, "Whether or
18 not I received privileged information, I can publish
19 that," because those cases don't talk about publishing
20 privileged information.

21 That's not what those cases say. That's
22 not what we're here to talk -- that's not what they're
23 here to talk about. They're here to say, "This is
24 speech. I can say whatever we want"; but that's just
25 not true. That's not true at all.

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1 And that's why we asked for this pause.
2 That's why Judge Bauknight granted this pause.

3 Imagine if Ms. Marek had come across
4 somewhere the secret formula for Coca-Cola. Does she
5 just get to publish that and say, "First Amendment
6 right. I get to publish anything I want"; or would
7 Coca-Cola have the right to come to a court and shut it
8 down?

9 That's the same thing here. The
10 privileged communications are protected, and she's not
11 entitled to have them. That's why we're here, your
12 Honor. That is the only right -- reason why we're here.

13 Again, your Honor, PTK is making a very
14 narrow request; and Judge Bauknight was right in
15 granting it, that until we can get this issue sorted
16 out, the question of what does she have -- which she
17 won't tell us what she has -- until we know what she
18 has, until we know that it's not in her book, that the
19 book not be published. Not that it be forever barred
20 from being published, not that she doesn't get to say
21 anything about her alleged sexual assault or her other
22 grievances with PTK. We're not asking for any of that,
23 your Honor.

24 What we're asking for is the privileged
25 materials be returned to us and that she be enjoined

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1 from ever disclosing the information that was contained
2 in those privileged materials. That is narrow; it is
3 focused; and this Court has the right to enter that
4 order, just like Judge Bauknight did.

5 Again, your Honor, there's -- the single
6 question that matters today: Can she take this
7 information, information that she should never have had
8 access to, and publish it?

9 And the answer is "no."

10 This Court has the right and the power to
11 force her to return them and enjoin her from using them
12 and that is the limited issue we're here on today, your
13 Honor, and we ask that the focus remain on the issue of
14 the privileged information rather than this question of
15 Ms. Marek is being told she can't say what she wants.

16 Thank you, your Honor.

17 MR. CULLEN: Judge, let me -- let me say
18 one thing.

19 When Ms. Betz was saying
20 "Judge Bauknight's order," that was because we thought
21 the hearing was in front of Judge Bauknight.

22 It's Judge Williams' order. He signed the
23 order, but the hearing was going to be in front of
24 Judge Bauknight.

25 MS. BETZ: I'm so sorry, your Honor. My

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1 apologies on that.

2 Thank you for the correction, Counsel.

3 I apologize, your Honor. I was not aware.

4 THE COURT: I take no claim to ownership
5 on it. So --

6 MR. RANDAZZA: Your Honor, may I approach?

7 THE COURT: Yes.

8 (Paperwork handed to the judge.)

9 MR. RANDAZZA: So this is the -- it really
10 shouldn't matter what this says or who it's to or who
11 it's from; but now that your Honor has the benefit of
12 seeing it, this e-mail that is claimed to be privileged
13 doesn't have a single attorney on it. So I'm not sure
14 why it's privileged.

15 I also -- you'll note at the top that it
16 is filed in a public record on the Southern District of
17 Texas docket, which would extinguish its privilege.

18 Of course, its privilege was extinguished,
19 if it had ever existed, when it was provided to whatever
20 university provided this to her as a public record.
21 It's a public record.

22 I don't know why they're so afraid of this
23 being made public. I think if you look at it, we can
24 all agree it's somewhat dull; but this is the pretext
25 that they are before you here trying to silence a victim

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1 of sexual assault, despite their exhortations to the
2 contrary, despite saying this has nothing to do with the
3 First Amendment.

4 Well, when you ban a book, that is classic
5 First Amendment territory. There is not one case cited
6 that says, "Now, let's presume this is privileged." And
7 I do not admit that and I -- I think it's somewhat
8 absurd to say it is, but let's just -- feasibly let's,
9 for the sake of argument, say it was.

10 Not one case says she can't have it. If
11 she comes across it somehow -- they leave it on a bus.
12 They put it into a public record. They inadvertently
13 disclose it in litigation and fail to properly claw it
14 back under Texas procedure -- it becomes the property of
15 the person who has it.

16 I actually witnessed in Texas one of the
17 most embarrassing examples of that that I've ever seen.
18 In the Alex Jones trial, the -- in Austin, the attorney
19 for Mr. Jones inadvertently disclosed the contents of
20 his entire telephone, including attorney-client
21 privileged information; and on national TV, that poor
22 man was embarrassed when it was brought to his
23 attention.

24 And the fact was he had sent an e-mail
25 saying, "I sent it inadvertently. Please disregard,"

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1 and that wasn't enough. There are very specific
2 procedures under Texas law in order to claw back an
3 inadvertent disclosure in litigation.

4 They seem to be treating her as if she's
5 an attorney in a case where there's been an inadvertent
6 disclosure. She's not. She's a journalist; and if a
7 journalist comes into possession of privileged
8 information or trade secrets or, yes, even the recipe
9 for Coca-Cola, there is a reason that recipe is so
10 strongly guarded. It's not because they can simply put
11 it out there anywhere they like, put it into a public
12 record but say no one can publish it. That's just --
13 that's not the case in any legal system I've ever
14 studied, much less the United States.

15 So with all respect to my sister, yes, the
16 secret recipe for Coca-Cola can be published. Yes, this
17 e-mail can be published. And if they looked at my cases
18 instead of simply complaining that I cited too many of
19 them, they would look at NEW YORK TIMES VERSUS UNITED
20 STATES.

21 State secrets, secret war plans, Pentagon,
22 the Pentagon Papers came into the possession of the
23 NEW YORK TIMES and the WASHINGTON POST. That was not
24 ennobled with enough magic that it could supersede those
25 papers' rights to publish that information. Not enough.

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1 But this, this extremely dull e-mail, is
2 enough to not just stop this e-mail from being published
3 but an entire book that has been suppressed now for a
4 week. That's simply not tolerable under the First
5 Amendment.

6 Not only does NEW YORK TIMES VERSUS UNITED
7 STATES say this but KINNEY VERSUS BARNES is the
8 controlling case here in Texas. And KINNEY VERSUS
9 BARNES, much to my delight, cites Walter Sobchak in
10 THE BIG LEBOWSKI, who says, "The Supreme Court has
11 roundly rejected prior restraints." So you don't even
12 need to go to law school. You just need to have seen
13 THE BIG LEBOWSKI to know that this is intolerable, but I
14 will not require you to cite the Book of Dude.

15 Once she has this information lawfully --
16 now, if she had perhaps -- well, I don't even want to go
17 into hypotheticals because it doesn't matter.

18 Once a citizen comes into possession of
19 information lawfully, whether you go all the way back to
20 1931, NEAR VERSUS MINNESOTA, NEW YORK TIMES VERSUS
21 UNITED STATES, KINNEY VERSUS BARNES -- like I said in my
22 brief, yes, I could have overwhelmed the page limits
23 with a string cite that says, "This cannot be done in
24 this country, much less in this state."

25 Now, I want to also point something else

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1 out, is that just as a matter of -- the underpinnings of
2 their brief, your Honor, if I had to switch sides and
3 take over their argument, the most compelling part of
4 their argument is the fact that there was an order out
5 of the Southern District of Mississippi that was
6 somewhat similar.

7 Your Honor, I have some supplemental
8 authority, if I could approach as well?

9 THE COURT: Yes.

10 (Paperwork handed to the judge.)

11 MR. RANDAZZA: I'm sure they have it.

12 I'm -- I may have neglected to cite it;
13 but this did issue yesterday, washing away that entire
14 order upon which they rely for findings of fact and
15 conclusions of law, not that it was controlling on this
16 Court.

17 But what's really interesting about this
18 case is not only its elegance and its language talking
19 about prior restraints but this case was argued on
20 Thursday at the Fifth Circuit Court of Appeals and they
21 issued their order yesterday. I don't think I've ever
22 seen the Fifth Circuit do anything that quickly.

23 So to the extent that their argument in
24 favor of a prior restraint ever had any underpinnings at
25 all, I can't even find a hypothetical to rely on now

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1 that everything they relied on there is vacated.

2 So what do you have before you now?

3 You have my client, the victim of sexual
4 assault, and we're not introducing this exhibit, but
5 their Exhibit A3 details that in painstaking --
6 painstaking terms, some that's quite shocking.

7 Now I understand why they don't want this
8 published in a book and why they didn't want this
9 published in a book the day that their national
10 convention started on April 3rd. It was very, very
11 clever timing on their part; but they cannot suppress an
12 entire book because of one supposed e-mail that isn't
13 even privileged.

14 And then, your Honor, this is -- this is
15 such a rare species of prior restraint. I mean, I first
16 learned about NEAR VERSUS MINNESOTA when I was a
17 journalism major at the University of Massachusetts in
18 1987. I spent 14 years in academia studying this and
19 I've been practicing First Amendment law for 22 years
20 and I've never seen even a hypothetical of a double
21 prior restraint.

22 This isn't just enjoining the publication
23 of a book but it's enjoining it so that the plaintiff
24 can review it, decide what else they don't want in it,
25 and then come back for another prior restraint. It is

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1 truly just a remarkable species of prior restraint that
2 should meet its extinction here today.

3 Your Honor, if you have any questions.
4 Other than that, I'll rely on that and on our written
5 papers.

6 MS. BETZ: Thank you, your Honor.

7 It's always so hard to figure out where to
8 begin in reply.

9 So I would say, your Honor, that as far as
10 the timing of the filing goes, it had nothing to do with
11 the convention. The timing of the filing had to do with
12 the fact that we found out less than a week before we
13 filed this that she had the privileged materials. We
14 didn't know that before then. Until she made that
15 filing in federal court, we had no idea that she had
16 received inadvertently that information. That's why we
17 made the filing.

18 Again, we've known about her allegations
19 of sexual assault and other alleged wrongdoings for
20 quite some time. We knew this book was allegedly going
21 to come out. If we were trying to stop it before the
22 convention on those reasons, we would have filed
23 something much sooner; but when we saw the privileged
24 information, that is what drove the filing.

25 And I want to drill down, because you have

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1 the e-mail in front of you, and explain why that is
2 privileged.

3 What we're dealing with here are
4 communications between individuals that serve on the
5 board of PTK; and some of those individuals that you'll
6 see on that e-mail communication also work at state
7 entities, community colleges that are state colleges.

8 They're using their e-mail addresses to
9 communicate with our client, who's the CEO of PTK; and
10 in that e-mail, they are discussing what is taking place
11 in a deposition.

12 Now, that is an example of an e-mail where
13 there's not a lot of information disclosed; but that is
14 a work product e-mail. It is work product to say, "Here
15 is what my lawyer is going to do. Here's what our
16 lawyer is going to do." You're part of this board.
17 That's work product.

18 And we don't know what else the other
19 e-mails say because, despite having asked many times,
20 we've not been given access to them by Ms. Marek. So we
21 just don't know what else and how deep it goes. Only
22 she does, and she's refused to give us access to that.

23 So we had to file a motion to strike and
24 to claw it back in the federal court because that was
25 the best way to protect it and get that communication

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1 off the docket; and then, your Honor, what we did was
2 file this TRO to stop it from being produced first and
3 to stop for the dissemination.

4 No one is trying to ban a book here. This
5 isn't about banning a book. This book can go forward
6 and be published. What our concern is, making sure
7 there's nothing in it that she should have never had
8 access to.

9 And I disagree with what Mr. Randazza is
10 saying, that anyone can publish anything, basically.
11 He's saying, "It's a free-for-all. You can publish
12 anything you want; and this Court doesn't really have
13 the power to stop it, ever." Well, that's just not
14 true.

15 The courts have the power to stop speech,
16 even if this was considered speech; but this is her
17 using something that isn't hers. This isn't her speech.
18 These aren't her thoughts. They're not her opinions.
19 It's PTK's legal strategy, attorney-client privileged
20 communications.

21 And under his argument, basically any
22 paralegal in America could print off some internal
23 communications and go publish it; and there's nothing
24 the Court can do to stop that?

25 Well, that's just not true. This Court,

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1 of course, can stop that; and if not, wouldn't that be
2 what just happens, everybody just goes and sells
3 privileged communications on sensitive cases and the
4 Court says, "Well, sorry. You got it. You can publish
5 it"? That's just not how it works.

6 All we're asking for, your Honor, is a
7 reasonable and narrow solution to a problem that PTK
8 didn't cause. All we're asking for is time to make sure
9 these communications are not in there. She won't even
10 say that they're not. So we have to come here to you,
11 your Honor.

12 And we think there's a couple different
13 ways you can slice this. One is the order as written,
14 where we have the opportunity to review and make sure
15 they're not in there. Another, your Honor, would be to
16 require her to return them all to us and then the order
17 say that it's not to be published containing any of the
18 information.

19 We could review them here, your Honor, in
20 this room together, not taking photographs. Your Honor,
21 could review them in camera. There are a number of ways
22 to do this to protect her rights because, again, we are
23 not here trying to silence Ms. Marek.

24 What we are trying to do is protect what
25 is our client's privilege, which is fundamentally one of

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1 the most important things an attorney is charged with
2 when representing a client.

3 Thank you, your Honor.

4 MR. RANDAZZA: If I may briefly, your
5 Honor.

6 Unequivocally, they will never get access.

7 Could you imagine if they had come in
8 here -- I mean, I understand she's not as prestigious as
9 the NEW YORK TIMES or the WASHINGTON POST or whatever
10 newspaper you like.

11 Could you imagine newspapers about to
12 write an expose and a lawyer comes in here before you
13 and says, "We need to review that expose first to see if
14 there's anything in there we don't want you to have"?
15 That would just be shockingly chilling on the practice
16 on journalism.

17 Now, if the Court does have the power to
18 do this, I still am at a loss as to which case says so.
19 There is no case that says so because it is not true,
20 that there is a legion of cases. I could bury this
21 Court in paper printing out the cases that say that no
22 court in America has the power to do this.

23 Remember, it's not even a state secret
24 stolen in violation of the espionage laws, was what the
25 NEW YORK TIMES VERSUS UNITED STATES case was about. The

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1 source broke the espionage laws, but this is more
2 important.

3 I'm sorry if they think that this is
4 privileged. Again, it's not. These are on government
5 e-mails. When you use a government e-mail -- when I was
6 a graduate student at the University of Florida, they
7 told me, "Be careful. Anything you send on this e-mail
8 is a public record." Everyone knows that.

9 There's not even a lawyer on here. First,
10 it was privileged. Now it's work product because it's
11 between people who are at different universities sending
12 e-mails to one other.

13 It doesn't even have the nobility that
14 they're trying to enshrine it with; but even if it had
15 that nobility, would it rise above violating the
16 espionage laws?

17 And for the hypothetical, could any
18 paralegal steal information and go publish it?

19 Yeah, they could. They don't. There may
20 be NDAs in place. Just as they've argued here, there
21 are NDAs in place.

22 You know who hasn't signed those NDAs?

23 Her.

24 So if somebody wants to talk to her, if a
25 source wants to talk to a reporter, if a reporter,

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1 through just shoe-leather reporting, gets information,
2 nobody gets to say, "This embarrasses us. So we don't
3 want it published"; and they certainly don't get to
4 suppress -- not just the one e-mail. I mean, if they'd
5 asked for that, I'd still be here and I'd still be
6 arguing the same First Amendment principles, but they
7 want to review the whole book?

8 This is -- the only legal system I can
9 think of where you can do that is I know in China they
10 have the Obscene Articles Tribunal, where they can
11 request to see a pornography movie before it gets
12 published to see if it's obscene. That just doesn't
13 exist in American jurisprudence. This would be the
14 first time it was ever upheld in a forum like this.

15 So with respect to my sister saying, "This
16 is not how it works," this is how it works. We have a
17 profound national commitment to wide-open and robust
18 debate. We have a profound commitment to protecting
19 freedom of the press. We have a profound commitment to
20 protecting freedom to petition.

21 And once you are in possession of
22 information lawfully -- in fact, even unlawfully -- I
23 cited a recent First Circuit case, just because that one
24 was off the top of my head, *BERGE VERSUS CITY OF*
25 *GLOUCESTER, MASSACHUSETTS*, where Mr. Berge was accused

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1 of illegally videotaping government officials and then
2 published it; and the First Circuit not only said he can
3 publish that information, legal or not, but the First
4 Circuit wiped away qualified immunity for the government
5 officials who sought to suppress that publication.

6 I am very sorry for my sister's position,
7 as she's in an unenviable one, where there's an
8 unassailable wall of First Amendment precedent saying
9 that this book can be published and this book should be
10 published immediately.

11 In fact, again, going back to the First
12 Circuit, IN RE PROVIDENCE JOURNAL even said that she can
13 violate the order and then just challenge it
14 collaterally; but she chose to have respect for the
15 court.

16 But today, your Honor, I cannot see that
17 flag next to you meaning anything if you're going to
18 leave this prior restraint in place once your gavel
19 comes down today.

20 MR. CULLEN: Judge, could I say something
21 briefly?

22 The -- let's assume that Ms. Marek sent a
23 public information request to Citizens Medical Center,
24 which is a county hospital -- government hospital here,
25 and asked for some records, some of which were -- maybe

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1 she asked for some open meeting stuff or the board of
2 managers, maybe she asked for the CEO's contract, things
3 that she could get, but that the hospital inadvertently
4 published the medical records of its patients and now
5 she says, "I've got this. I've got your patients'
6 medical records and I'm going to put it in a book and
7 I'm going to publish it to the world and violate the
8 HIPAA laws by disclosing your patients' inadvertently
9 disclosed medical records."

10 I don't think the First Amendment gets in
11 the way of that at all. I think the Court says, "Hey,
12 you shouldn't have had that. It was a mistake. You've
13 got to send it back." And that's all that we're asking
14 for here.

15 We don't need to see this book. We don't
16 need to read this book. Judge, I don't want to make you
17 read the book; but I don't know how else we get it to
18 find out are there attorney-client work product
19 privileged information in this book that -- before it
20 gets published.

21 And if it's going to be a book about what
22 a bad hospital Citizens is and, "Here, we're going to
23 show you because we're going to broadcast to the world
24 the private medical records of a patient," I think the
25 Court would need to step in; and it in no way gets in

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1 way of the violation of the First Amendment.

2 That's what we've got here is
3 attorney-client privilege information we believe she has
4 that she won't turn back over to us that is in the book
5 presumably; and if it wasn't in the book, we wouldn't be
6 here.

7 And -- and so I don't know of any way
8 other than the Court looking at it in -- the book
9 in camera and deciding whether there is attorney-client
10 privilege information in there or not or letting us look
11 at it without making copies, without photographing it,
12 without making notes in their presence. Those would be
13 ways to do this with -- and let her publish the heck out
14 of that book as soon as that's done.

15 MR. RANDAZZA: Your Honor --

16 THE COURT: Y'all --

17 MR. RANDAZZA: -- I enjoy teaching the
18 First Amendment.

19 THE COURT: Y'all are here. So I'm
20 going -- I'm going to let you --

21 MR. RANDAZZA: So a great hypothetical
22 you've raised here, a great -- I'm sorry. I'll address
23 the judge, but I feel like I'm in class again.

24 Yeah. If a hospital inadvertently
25 discloses medical records, a journalist gets ahold of

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1 them, they can publish them.

2 Now, there may be an invasion-of-privacy
3 suit separately -- I don't know -- but there is nothing
4 that would impede her publishing that. HIPAA doesn't
5 apply to her. HIPAA applies to health care providers.
6 If she's got that information, she can publish it; and,
7 again --

8 THE COURT: Well, I assume that the way a
9 journalist would handle it is, you know, not disclose
10 names or whatever but give the information --

11 MR. RANDAZZA: State gold, your Honor.
12 Yes, depending on --

13 THE COURT: But it would be up to the
14 discretion of the journalist, you know --

15 MR. RANDAZZA: Precisely.

16 THE COURT: -- and that's one of the
17 things I'm struggling with here, is let's say I order
18 this to be clawed back or whatever -- which apparently
19 the federal court has already done; is that correct?

20 MR. RANDAZZA: No, it is not, your Honor.

21 THE COURT: Okay.

22 MR. RANDAZZA: It remains on the Southern
23 District of Texas docket to this day. It is a public
24 record two times over.

25 THE COURT: Okay.

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1 In any event, the thing I'm struggling
2 with is, without going specifically to the document,
3 your client could refer to it in some, you know, vague,
4 obscure matter -- manner to make the point that she's
5 trying to make.

6 You understand what I'm saying?

7 MR. RANDAZZA: I do, your Honor, and if
8 these are editorial suggestions for her, perhaps she'll
9 take them, but I would help --

10 THE COURT: I'm not saying -- I'm not
11 saying I would order that. I'm just saying that that's
12 one of the ways that this thing could go. So --

13 MR. RANDAZZA: It could; but, you know,
14 again --

15 THE COURT: And the other thing that
16 hasn't been mentioned is that, at this stage in the
17 proceeding, I have to make a finding, don't I, that the
18 plaintiff doesn't have any other remedies at law other
19 than this temporary injunction?

20 MR. RANDAZZA: Yes, your Honor; but I --
21 they may not.

22 THE COURT: I mean --

23 MR. RANDAZZA: It may be just too bad. I
24 mean, in FLORIDA STAR VERSUS B.J.F., a more extreme
25 example -- his example of hospital records, I'm going to

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1 give you a much more extreme example, a minor victim of
2 rape, B.J.F.

3 Their name was inadvertently disclosed to
4 the FLORIDA STAR and the FLORIDA STAR published it in
5 violation of a specific state statute that did not allow
6 publication of a rape victim's identity, and the Supreme
7 Court struck down that statute.

8 There's nothing here, absolutely nothing.
9 They may not have -- I don't know what remedy they may
10 think they have to get this back, but they don't have
11 one. It's not that they don't have any other remedy.
12 Any remedy that you could try to fashion here today will
13 be wildly unconstitutional. It's a public record that
14 she possesses legally.

15 And the enjoining even that -- even this
16 one document would be unconstitutional, much less an
17 order that says that they get to be the editorial board
18 for her publication.

19 Sure, she could say that she's just going
20 to refer to it obliquely; but we don't let the
21 government, any branch of government, enter into that
22 decision when a journalist or an author wants to publish
23 something.

24 I mean, that's -- the entire existence of
25 some of perhaps our least -- our least shining examples

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1 of our commitment to freedom of expression prove that
2 out: The Gawker website, NATIONAL INQUIRER. I mean,
3 people sit and take long-range photos of celebrities
4 naked on beaches in Ibiza and can publish them.

5 Yeah, we have to put up with some things
6 that really annoy us, that are distasteful, that are
7 troubling; but that's the contract that we as American
8 citizens have with our government, that it will not
9 infringe on that. They're simply asking you to tear
10 that contract up here, and I'm pretty confident that
11 you're not going to do it.

12 THE COURT: Well, I've been through the
13 file; but obviously I need to do it again.

14 So, Ms. Betz, you have the last word.

15 MS. BETZ: Thank you, sir. Appreciate it.

16 This isn't naked photos on a beach in
17 Ibiza. We're not just embarrassed. This is our
18 privilege and we go to trial, your Honor, in Mississippi
19 in 60 days and these e-mails discuss our trial strategy
20 potentially. They discuss what we're planning to talk
21 about in depositions, things of that nature.

22 This is a real problem, and there is no
23 other remedy for us. Once that toothpaste is out of the
24 tube, it cannot go back in.

25 What are we supposed to do if we have our

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1 entire trial strategy published before our trial? What
2 does that do for us?

3 There is no remedy for us. There is
4 absolutely no remedy.

5 This is privilege. This isn't a vague,
6 you know, idea or picture. This is attorney-client
7 privilege, which is an important thing for this judicial
8 system to protect; and if this Court allows her to
9 retain and publish our privilege materials, that is open
10 game for anybody to try and go get attorney-client
11 privilege.

12 And we know that that's not how it works
13 because of the clawback provisions we see, because of
14 the way the courts require the return of privilege.

15 And, your Honor, we acted immediately. We
16 acted immediately and we asked her to act in good faith
17 and she refused, which is why we cannot trust that that
18 book doesn't disclose trial strategy.

19 Thank you, your Honor.

20 THE COURT: Anything y'all want to leave
21 me with to look at, I'll take it. I have plenty of
22 notebooks, but I'll take some more. So --

23 And I'll look at it today and try to get
24 something out today.

25 If y'all have proposed orders you want to

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1 leave with me also, that's fine as well.

2 MR. RANDAZZA: I do not, your Honor. I
3 would just say that if -- so procedurally if this
4 continues, it becomes a preliminary injunction; and
5 there we will be findings of fact and conclusions of law
6 in that for the appellate record?

7 THE COURT: Right. I would grant a
8 temporary injunction, which we would have a -- you know,
9 a final hearing for the permanent injunction at some
10 point.

11 MR. CULLEN: Yeah. I think it would make
12 more sense, Judge, for you to make your decision, tell
13 us what it is, tell me and David. We'll get it to
14 everybody else; and then we'll fashion the orders that
15 match up with what your ruling is, because there's lots
16 of different things you could do.

17 THE COURT: Yeah.

18 MR. RANDAZZA: Your Honor, if your
19 decision is anything other than striking this down, we
20 prefer just an (inaudible) so we can file an emergency
21 appeal.

22 THE REPORTER: A what?

23 I'm sorry. A what?

24 MR. RANDAZZA: Ore tenus, an oral order,
25 so that we can file an emergency appeal.

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1 There is a book being suppressed from
2 publication right now.

3 THE COURT: No, I understand. Yeah.
4 That's why I'm going to try to get something out to
5 y'all today.

6 MR. RANDAZZA: Thank you, your Honor.

7 THE COURT: Okay.

8 MS. BETZ: Thank you, your Honor.

9 (Hearing concluded.)

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1 STATE OF TEXAS

2 COUNTY OF VICTORIA

3 I, Kimberly K. Koetter, Official Court Reporter in
4 and for the Judicial District Courts of VICTORIA, State
5 of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred in open court
11 or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits,
14 if any, admitted, tendered in an offer of proof or
15 offered into evidence.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$420.00 and was
18 paid by RANDAZZA LEGAL GROUP PLLC.

19 WITNESS MY OFFICIAL HAND on this, the 9th day of
20 April, 2025.

21 /s/Kimberly K. Koetter
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