

1 SAN DIEGO, CALIFORNIA - APRIL 3, 2009 - 9:00 A.M.

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3 THE COURT: TWO ON CALENDAR IS STUTZ ARTIANO
4 SHINOFF AND HOLTZ VERSUS LARKINS.

5 MR. WADE: JEFFREY WADE AND RICHARD ROMERO ON
6 BEHALF OF THE PLAINTIFFS.

7 MS. LARKINS: MAURA LARKINS, DEFENDANT IN PRO PER.

8 THE COURT: ALL RIGHT. GOOD MORNING. THIS IS
9 YOUR TRIAL CALL.

10 MR. WADE: CORRECT, YOUR HONOR.

11 THE COURT: AND ARE YOU PREPARED TO PROCEED ON
12 MONDAY?

13 MR. WADE: YOUR HONOR, LAST TIME WE WERE HERE FOR
14 THE TRC WE DIDN'T HAVE A FINALIZED TRC REPORT. THE COURT
15 ORDERED US TO MEET AND REVIEW EVERYTHING. DEFENDANT HAS
16 REFUSED TO MEET WITH US TO REVIEW EXHIBITS, TURN OVER
17 DOCUMENTS, ET CETERA.

18 AS YOU KNOW, THIS CASE IS PROCEEDING ON TWO
19 SOLE ISSUES. ONE IS THE EXTENT OF DAMAGES, AND THE SECOND
20 IS SCOPE OF THE PERMANENT INJUNCTION. THE DOCUMENTS THAT WE
21 HAVE SUBPOENAED FROM MISS LARKINS RELATE DIRECTLY TO HER
22 FINANCIAL NET WORTH, AND WE HAVE NOT RECEIVED THOSE. IT IS
23 OUR POSITION SHE'S STILL IN VIOLATION OF THE COURT'S ORDER
24 TO MEET WITHIN THREE DAYS AND THE SUBPOENA TO PRODUCE THESE
25 DOCUMENTS.

26 THE COURT: AND NET WORTH DISCOVERY, THAT WOULD BE
27 GOING TOWARDS PUNITIVE DAMAGES?

28 MR. WADE: THAT IS CORRECT, YOUR HONOR. THERE WAS

1 AN ORDER BY THIS COURT THAT MALICE WAS FOUND TO DEFAMATION
2 PER SE. WE'RE PROCEEDING ALONG THE LINES OF PRESUMED
3 DAMAGES, REPUTATIONAL HARM, AND PUNITIVE DAMAGES. THAT
4 WAS -- THIS COURT DID FIND MALICE IN OUR SUMMARY
5 ADJUDICATION MOTION, AND THE ORDER WAS TO PROCEED FOR
6 COMPENSATORY, PUNITIVES, AND THE SCOPE OF THE PERMANENT
7 INJUNCTION.

8 MS. LARKINS: YOUR HONOR, WE HAVE DISCUSSED THIS
9 QUESTION ABOUT WHETHER THE COURT DID FIND MALICE BASED
10 SOLELY ON MR. SHINOFF'S DEPOSITION, AND THE COURT DIDN'T
11 GIVE A CLEARANCE ON THAT.

12 ALSO I -- THE COURT SAID THE LAST TIME WE
13 WERE HERE THAT THERE WOULD BE NO TRIAL IF THE PLAINTIFF WAS
14 ONLY ASKING FOR AN INJUNCTION. AND WE HAVE SENT EMAILS BACK
15 AND FORTH QUITE A FEW TIMES THIS PAST WEEK. I HAVE ASKED
16 AGAIN AND AGAIN WHAT DAMAGES THEY WERE ASKING FOR, AND THEY
17 DID NOT REPLY. THEY IGNORED ALL MY REQUESTS TO FIND OUT
18 WHAT DAMAGES THEY WERE ASKING FOR. SO I ASSUMED WE WERE
19 GOING ON YOUR HONOR'S STATEMENT THAT THERE WOULD BE NO TRIAL
20 IF IT WAS ONLY FOR AN INJUNCTION.

21 THE COURT: NO. IT IS NOT THAT THERE WOULD BE NO
22 TRIAL. IT IS THAT THERE IS NO JURY TRIAL. WITHOUT SPENDING
23 A LOT OF TIME GOING THROUGH AN ANALYSIS FOR YOU, THE BOTTOM
24 LINE IS THAT PEOPLE CAN ASK FOR DIFFERENT THINGS WHEN THEY
25 COME TO COURT. SOME ARE LEGAL REMEDIES. SOME ARE EQUITABLE
26 REMEDIES. SOME LEGAL REMEDIES GIVE A PARTY A RIGHT TO A
27 JURY TRIAL.

28 BUT IN ORDER TO HAVE A JURY TRIAL YOU HAVE TO

1 DO THINGS LIKE PAY JURY FEES, MAKE A JURY DEMAND IN A TIMELY
2 FASHION. SOMETIMES PEOPLE DON'T DO THAT.

3 MS. LARKINS: I DID PAY JURY FEES.

4 THE COURT: ALL RIGHT. AT THIS POINT WE'RE AT THE
5 ISSUE OF DAMAGES IN REGARD TO AN INJUNCTION WHICH IS
6 EQUITABLE RELIEF.

7 THE QUESTION I HAVE FOR YOU IS WHAT IS THE
8 DEFENDANT'S RIGHT TO A JURY TRIAL WITH REGARD TO DAMAGES,
9 SPECIFICALLY PUNITIVE DAMAGES?

10 MR. WADE: I'M NOT SURE THERE IS AN ACTUAL RIGHT.
11 I DIDN'T RESEARCH THAT ISSUE. I APOLOGIZE, YOUR HONOR. I
12 THINK PARSING IT OUT EXPANDS BEYOND WHERE WE NEED TO BE.
13 THIS CAN GET ACCOMPLISHED IN A PROVE-UP STYLE.

14 THE COURT: IF THERE IS A JURY TRIAL RIGHT AND THE
15 JURY FEES HAVE BEEN PAID, THERE IS A RIGHT TO A JURY TRIAL.

16 MR. WADE: THEY WERE NOT POSTED IN A TIMELY
17 FASHION. THERE ARE NO JURY INSTRUCTIONS. I MEAN --

18 THE COURT: I NEED TO KNOW THOSE THINGS. IF THEY
19 WEREN'T POSTED IN A TIMELY FASHION, WAS SHE GIVEN PERMISSION
20 TO POST HER JURY FEES?

21 MS. LARKINS: I AM AFRAID THAT THE PLAINTIFF IS
22 MISREPRESENTING THE FACTS, YOUR HONOR. THE LAST TIME YOU
23 WERE HERE YOUR HONOR CONSULTED WITH THE CLERK, AND YOU TOLD
24 ME I COULD PAY JURY FEES, AND I WENT IMMEDIATELY WENT
25 DOWNSTAIRS AND PAID THEM ON THAT BASIS.

26 MR. WADE: THAT WAS BEFORE WE HAD DISCUSSED THAT
27 THIS WAS ALSO SEEKING EQUITABLE RELIEF AS WELL, AND THE
28 COURT INFORMED MS. LARKINS IN OPEN COURT THERE WAS NO RIGHT

1 TO A JURY TRIAL FOR EQUITABLE RELIEF.

2 THE COURT: HERE IS WHAT WE CAN DO, BECAUSE
3 DAMAGES AREN'T EQUITABLE RELIEF.

4 MR. WADE: CORRECT.

5 THE COURT: BUT AN INJUNCTION IS. BUT I CAN HEAR
6 THE INJUNCTION PORTION OF THE CASE BEFORE I HEAR THE DAMAGES
7 PORTION OF THE CASE. I CAN DECIDE WHICH TO HEAR FIRST. SO
8 I COULD GO AHEAD AND HEAR THE PORTION OF THE CASE DEALING
9 WITH THE INJUNCTION THAT YOU'RE SPEAKING OF, AND THEN IF IT
10 IS NECESSARY AT THAT POINT, GO BACK AND REOPEN IN REGARD TO
11 DAMAGES. AND THERE MAY BE A JURY TRIAL RIGHT IN REGARD TO
12 DAMAGES.

13 DO YOU SEE WHAT I'M SAYING?

14 MR. WADE: I DO, YOUR HONOR. I GUESS I'M AT -- I
15 GUESS TO ME, I PICTURED IT AS ONE AND THE SAME IN ONE FELL
16 SWOOP. WE DID TURN IN A PROPOSED INJUNCTION THAT WE WOULD
17 BE SEEKING.

18 THE COURT: OKAY.

19 MR. WADE: THE TESTIMONY IS GOING TO BE VERY
20 SIMILAR.

21 THE COURT: HERE IS WHAT I'M THINKING. IT MAY BE
22 THAT WHEN AND IF AN INJUNCTION IS ISSUED, IF, WHEN, THAT THE
23 INJUNCTION MAY BE THE REMEDY THAT YOU ARE REALLY SEEKING,
24 AND IT MAY NOT BE NECESSARY TO GO FORWARD INTO A JURY TRIAL
25 ON THE ISSUE OF DAMAGES.

26 MR. WADE: OKAY.

27 THE COURT: I MEAN, HAVE YOU DESIGNATED AN EXPERT
28 WITNESS?

1 MR. WADE: NO, YOUR HONOR. FOR THE DAMAGES
2 THEY'RE PRESUMED. CASE LAW IS CLEAR THAT WE CAN HAVE A
3 DAMAGE TO THE REPUTATION. THERE IS NO REQUIREMENT FOR
4 EXPERT TESTIMONY REGARDING DAMAGES THAT I'M AWARE OF FROM
5 WHAT I'VE LOOKED AT. I DON'T SEE THERE IS ANY REQUIREMENT
6 WHATSOEVER. BECAUSE IT IS DEFAMATION PER SE THE DAMAGES ARE
7 PRESUMED, FLOWS FROM THE ACTUAL DEFAMATORY PUBLICATION.

8 YOU TOUCHED ON SOMETHING ABOUT WHEN AND IF AN
9 INJUNCTION IS GRANTED. JUST TO CLARIFY, AN INJUNCTION WAS
10 GRANTED. NOW WE'RE TALKING ABOUT THE SCOPE OF IT.

11 THE COURT: EXACTLY.

12 MR. WADE: I GUESS I'M AT A LOSS FOR THE NECESSITY
13 OF A JURY TO FURTHER COMPLICATE TESTIMONY.

14 THE COURT: HERE IS THE THING. IT IS NOT A MATTER
15 OF WHAT COMPLICATES OR WHAT DOESN'T COMPLICATE. DOESN'T
16 MATTER ABOUT THAT. IT IS A MATTER OF RIGHT. IT IS WHAT THE
17 DEFENDANT HAS IN TERMS OF A RIGHT. IF I PERMITTED HER TO
18 POST JURY FEES, SHE WENT DOWN THERE AND POSTED JURY FEES
19 RIGHT AWAY, THEN I EXCUSED HER FAILURE TO POST IN A TIMELY
20 FASHION.

21 NOW WE GET TO TO THE SECOND ISSUE, WHICH IS
22 JURY INSTRUCTIONS. THAT'S A LITTLE MORE COMPLICATED. DO
23 YOU UNDERSTAND IN ORDER TO HAVE A JURY TRIAL AT THE END OF
24 THE TRIAL I HAVE TO BE ABLE TO READ TO THE JURY THE LAW AS
25 IT APPLIES IN THIS CASE? THOSE ARE THE JURY INSTRUCTIONS.
26 AND IN ORDER TO HAVE A JURY YOU HAVE TO HAVE JURY
27 INSTRUCTIONS. NOW, THE RULE IS THAT YOU HAVE TO HAVE JURY
28 INSTRUCTIONS BEFORE WE BEGIN THE TRIAL.

1 WHY IS THAT? WELL, IN THESE RELATIVELY SHORT
2 TRIALS WE GO THROUGH THE EVIDENCE PRETTY QUICKLY, AND THEN
3 IT IS TIME TO READ THE LAW. AND I CAN'T SAY TO 14 PEOPLE
4 THAT ARE COMING IN HERE RATHER THAN GOING TO WORK, WELL,
5 EXCUSE ME, NOW WE'RE GOING TO START TALKING ABOUT THE LAW,
6 AND LET'S SEE IF WE CAN FIGURE THIS OUT. DOESN'T WORK THAT
7 WAY. BEFORE WE START A JURY TRIAL WE NEED JURY

8 INSTRUCTIONS. NO JURY INSTRUCTIONS MEANS NO JURY TRIAL.

9 SO I ASSUME, COUNSEL, WHAT YOU'RE SAYING IS
10 THAT THERE AREN'T ANY JURY INSTRUCTIONS; AM I RIGHT?

11 MR. WADE: THAT'S CORRECT.

12 MS. LARKINS: YES, YOUR HONOR.

13 THE COURT: YOU'VE GOT TO GET THOSE JURY
14 INSTRUCTIONS OR YOU'RE NOT GOING TO HAVE A JURY TRIAL.
15 THAT'S ALL THERE IS TO IT. THE RIGHT TO A JURY TRIAL IS NOT
16 DETERMINED WHETHER OR NOT IT IS COUPLED TO AN EQUITABLE
17 CAUSE OF ACTION. THAT'S NOT THE WAY IT WORKS. IF THERE IS
18 A RIGHT TO A JURY TRIAL, THEN THERE IS A RIGHT TO A JURY
19 TRIAL. IF THERE IS NO RIGHT TO A JURY TRIAL, THEN SO BE IT.

20 NOW, ALL I'M TELLING YOU IS THAT NO JURY
21 INSTRUCTIONS MEANS WHAT?

22 MS. LARKINS: NO JURY TRIAL.

23 THE COURT: NO JURY TRIAL. THAT SIMPLE. SO IF
24 YOU ALL WANT TO GO FORWARD WITH NO JURY INSTRUCTIONS THEN BE
25 AWARE OF THE FACT THAT THERE IS NO JURY TRIAL. NOW, THAT'S
26 WHY I'M SAYING.

27 IF WE HAD JURY INSTRUCTIONS, THEN WE'D BE
28 LOOKING AT MAYBE BIFURCATING SO THAT WE GET INTO A SITUATION

1 WHERE WE DO THE NONJURY OF THE PORTION CASE, AND YOU DECIDE
2 WHETHER IT IS WORTH IT TO YOU TO GO FORWARD WITH A JURY.

3 BUT AT THIS POINT I HAVE NO JURY
4 INSTRUCTIONS. AND I'M GOING TO SEE YOU ON MONDAY MORNING,
5 AND YOU'RE EITHER GOING HAVE JURY INSTRUCTIONS OR NOT.

6 YOU HAVE TO GIVE OVER TO COUNSEL DOCUMENTS
7 THAT THEY SUBPOENAED. YOU CAN'T JUST REFUSE TO DO IT,
8 UNLESS YOU BRING A MOTION FOR A PROTECTIVE ORDER, WHICH
9 MEANS YOU HAVE TO COME BACK TO COURT AND SAY THESE ARE THE
10 LEGAL REASONS WHY I'M NOT GOING TO PRODUCE WHAT THEY'RE
11 ASKING FOR. YOU CAN'T JUST SAY NO.

12 MS. LARKINS: WELL, I UNABLE TO FIND THE
13 DOCUMENTS. I CONTINUED ASKING AGAIN, AND AGAIN, AND AGAIN,
14 ARE YOU GOING TO ASK FOR DAMAGES, AND I GOT NO RESPONSE. I
15 REALLY HAVE NO IDEA WHAT THE TRIAL WOULD BE ABOUT. I
16 THOUGHT IT WAS JUST FOR AN INJUNCTION.

17 THE COURT: NO, IT IS NOT. WHAT THEY'RE LOOKING
18 FOR IS AN INJUNCTION PLUS DAMAGES, INCLUDING AN AWARD OF
19 PUNITIVE DAMAGES.

20 MS. LARKINS: HONESTLY, YOUR HONOR, I DON'T
21 UNDERSTAND WHAT MY FINANCES HAVE TO DO WITH THAT.

22 THE COURT: OKAY. LET ME GIVE YOU -- I CAN'T GIVE
23 YOU LEGAL ADVICE. ALL I CAN KIND OF DO IS GET YOU THROUGH
24 THE PROCESS.

25 PUNITIVE DAMAGES ARE JUST WHAT THEY SOUND
26 LIKE. THEY'RE PUNITIVE. THEY'RE TO PUNISH. THE REASON
27 THEY HAVE A RIGHT TO DISCOVER FINANCIAL RECORDS WITH REGARDS
28 TO PUNITIVE DAMAGES IS THAT AN AWARD OF PUNITIVE DAMAGES HAS

1 TO BE REASONABLY RELATED TO THE PARTY'S ABILITY TO PAY.

2 THAT MEANS THAT THEY HAVE A RIGHT TO LOOK AT
3 YOUR FINANCIAL WHEREWITHAL, BECAUSE IF THEY COME IN ASKING
4 FOR \$20 MILLION, WELL \$20 MILLION FROM SOMEBODY WHO MAKES
5 ABOUT \$20,000 A YEAR WOULD PERHAPS BE EXCESSIVE. SO THE LAW
6 SAYS IF YOU LOOK FOR PUNITIVE DAMAGES YOU CAN SEE HOW MUCH
7 THE OTHER PARTY, OR CORPORATION, OR WHATEVER -- LET'S
8 PRETEND YOU'RE MCDONALD'S. HOW MUCH DOES MCDONALD'S BRING
9 IN IN A YEAR? AND FROM THAT WE CAN FIGURE OUT WHAT WOULD BE
10 A REASONABLE REQUEST FOR PUNITIVE DAMAGES.

11 THAT'S WHERE THAT COMES FROM. IT IS NOT THAT
12 THEY MADE THIS UP, THAT THEY'RE TRYING TO DOING SOMETHING.
13 THEY'RE NOT. THEY'RE ENTITLED TO THAT.

14 MS. LARKINS: YOUR HONOR, ARE THEY ASKING FOR
15 GENERAL DAMAGES AND SPECIAL DAMAGES? I'M NOT GETTING ANY
16 RESPONSES FROM THEM.

17 THE COURT: THEY'RE ASKING FOR GENERAL DAMAGES AND
18 PUNITIVE DAMAGES. THAT'S USUALLY THE WAY IT GOES.

19 MS. LARKINS: ONLY THOSE TWO TYPES?

20 THE COURT: THOSE ARE USUALLY PLENTY.

21 MR. WADE: WE'VE INFORMED HER OF THAT IN WRITING
22 WHEN WE ATTEMPTED --

23 THE COURT: SHE'S ASKING HERE IN COURT. SHE HAS A
24 RIGHT TO KNOW WHAT SHE'S UP AGAINST. AT THIS POINT I CAN
25 STRAIGHTEN THAT OUT OR BE HELPFUL TO YOU IN THAT REGARD.

26 SO WHAT I'M TRYING TO DO IS DECIDE WHETHER
27 YOU ALL WANT TO GO FORWARD WITH JUST THE EQUITABLE -- LOOK,
28 HERE IS A WAY YOU CAN DO IT. I'M MAKING A SUGGESTION,

1 THROWING THIS OUT THERE. YOU SUBMIT ON YOUR INJUNCTION.
2 I'LL TAKE A LOOK AT YOUR WRITTEN DEFENSE, AND I'LL DECIDE
3 JUST THE ISSUE OF THE INJUNCTION, IF THAT IS WHAT YOU WANT
4 TO DO. THEN YOU DON'T HAVE TO SPEND MONEY TO COME BACK TO
5 COURT. WE DON'T GO THROUGH JURY TRIAL.

6 BUT, FRANKLY, IF YOU DON'T HAVE THE JURY
7 INSTRUCTIONS, THEN YOU -- YOU CAN FILL IN THAT BLANK, RIGHT?
8 YOU SUBMIT ON THE PAPERWORK. THEN THE ONLY REMEDY THAT THEY
9 CAN GET IS AN INJUNCTION IF THEY DECIDE TO FORGO ON THE
10 REQUEST FOR DAMAGES. BUT NOBODY COMES TO COURT. I RULE ON
11 IT. WE DON'T PUT ON ANOTHER HEARING. OKAY? BUT I ISSUE A
12 RULING. DO YOU UNDERSTAND THAT?

13 MS. LARKINS: THIS WOULD HAPPEN TODAY OR SOME
14 OTHER DAY?

15 THE COURT: NO. IT IS GOING TO HAPPEN ON MONDAY.
16 IT IS NOT GOING HAPPEN TODAY. LOOK IN THE BACK OF THE
17 COURTROOM.

18 SO DECIDE WHAT YOU WANT TO DO. IF YOU WANT
19 TO GO FORWARD ON DAMAGES, I'M GOING TO ORDER THAT YOU MEET
20 AND CONFER ON THE SUBJECT OF JURY INSTRUCTIONS TO SEE IF YOU
21 CAN GET A SET OF JURY INSTRUCTIONS TOGETHER.

22 AND IT MAY BE THAT YOU ALL WANT TO SUBMIT IT
23 ON THE ISSUE OF THE INJUNCTION WITHOUT DAMAGES, AND THEN THE
24 ORDER CAN ISSUE. THAT MAY BE YOUR BEST COURSE OF ACTION.
25 BUT I CAN ONLY DO THAT IF EVERYBODY AGREES TO DO IT. AND WE
26 CAN DO IT IN WRITING SO NOBODY COMES BACK, AND I ISSUE AN
27 ORDER, AND THAT'S THE WAY IT IS HANDLED. BUT IT HAS TO BE
28 BY AGREEMENT.

1 SO YOU ALL NEED TO THINK ABOUT THAT FOR A FEW
2 MINUTES. BUT OTHERWISE, IF YOU ARE GOING FORWARD ON THIS
3 DAMAGES ISSUE, I HOPE I'VE CLARIFIED FOR YOU TO SOME EXTENT
4 WHAT YOU FACE. AND IT IS A FORMIDABLE OBSTACLE FROM YOUR
5 POSITION, BECAUSE YOU GET THE JURY TRIAL, BUT YOU ALSO STAND
6 AT RISK FOR GENERAL DAMAGES AND PUNITIVE DAMAGES. THEY CAN
7 BE KIND OF DIFFICULT TO DEAL WITH. OKAY?

8 MS. LARKINS: YES, YOUR HONOR.

9 THE COURT: SO --

10 MR. WADE: I'M STILL A COUPLE STEPS BEHIND THE
11 COURT. I APOLOGIZE. WE STILL DON'T HAVE -- THE JURY
12 INSTRUCTION ISSUE, THE TRC. SHE STILL REFUSED TO MEET ABOUT
13 EXHIBITS AND DOCUMENTS. I DON'T KNOW HOW A FURTHER ORDER
14 FROM THIS COURT TO COUPLE IT WITH JURY INSTRUCTIONS ARE
15 GOING TO ACCOMPLISH ANYTHING. SHE'S BASICALLY INFORMED US
16 THAT SHE'S NOT PRODUCING FINANCIAL RECORDS.

17 MS. LARKINS: YOUR HONOR, THE DEFENDANT -- THE
18 PLAINTIFF HAS ONCE AGAIN MISREPRESENTED THE FACTS. I
19 ASKED -- MAINLY MR. ROMERO, NOT MR. WADE. I ASKED HIM
20 AGAIN, AND AGAIN, AND AGAIN, ARE YOU ASKING FOR DAMAGES? IN
21 FACT, AT ONE POINT I REMEMBER I SAID, ASK OR FOREVER HOLD
22 YOUR PEACE.

23 THEY HAVE NO DOCUMENTS OF THEIR OWN. I
24 COULDN'T FIGURE OUT HOW THEY WERE GOING TO ASK FOR DAMAGES
25 WHEN ALL THEY HAVE IS FOUR LETTERS FROM MR. SHINOFF'S RABBI.

26 THE COURT: LISTEN TO ME, OKAY? THEY'RE ASKING
27 FOR DAMAGES. YOU JUST HEARD THAT IN OPEN COURT.

28 MS. LARKINS: FINALLY, BUT HE MISREPRESENTED THE

1 FACTS.

2 THE COURT: I DON'T WANT TO HEAR THE WORDS
3 "MISREPRESENTED" FOR THE REST OF THIS HEARING, BECAUSE WHAT
4 I'M TRYING TO DO IS GET YOU HANDLED IN A WAY THAT IS FAIR
5 AND EQUITABLE TO TAKE CARE OF YOUR PROBLEMS, BUT AT THE SAME
6 TIME I'VE GOT A COURTROOM FULL OF PEOPLE. WE CAN'T
7 SQUABBLE.

8 I WILL ORDER THAT YOU MEET AND CONFER RIGHT
9 NOW TO SEE IF YOU CAN GET ME A TRIAL READINESS CONFERENCE
10 FORM FILLED OUT. I'LL ORDER THAT YOU MEET AND CONFER. IF
11 IT IS YOUR DECISION TO PROCEED ON DAMAGES, CONFER IN REGARD
12 TO THE SUBJECT OF JURY INSTRUCTIONS.

13 I'LL SEE YOU BACK HERE AT 10:00 O'CLOCK TO
14 SEE WHAT PROGRESS YOU'VE MADE. AND YOU'LL SIT YOU DOWN IN A
15 ROOM. IF YOU GO THROUGH JURY INSTRUCTIONS AND YOU HAVE A
16 SET OF JURY INSTRUCTIONS FOR ME, WE'LL IMPANEL A JURY IF
17 YOU'RE GOING AFTER DAMAGES. IF YOU AREN'T, YOU MIGHT LOOK
18 AT PLAN B, BECAUSE PLAN B I THINK RESOLVES EVERYBODY'S
19 DIFFICULTY.

20 YOU KNOW WHAT PLAN B IS?

21 MS. LARKINS: YES, I DO.

22 MR. WADE: YES, YOUR HONOR.

23 THE COURT: WHY DON'T YOU GO OUTSIDE. SEE YOU AT
24 10:00 O'CLOCK. WHAT I'M TRYING TO DO IS MAKE THIS AS EASY
25 AS POSSIBLE.

26 MR. WADE: I APPRECIATE THAT.

27 (RECESS.)

28 THE COURT: TWO ON CALENDAR, STUTZ ARTIANO VERSUS

1 LARKINS.

2 SO WHERE ARE WE?

3 MS. LARKINS: YOUR HONOR, I WOULD LIKE A COUPLE OF
4 HOURS TO GO TO THE LAW LIBRARY TO GET SOME INFORMATION ABOUT
5 JURY INSTRUCTIONS. THE PLAINTIFF WAS UNABLE TO PROVIDE ANY
6 INFORMATION ABOUT JURY INSTRUCTIONS, AND I REALLY WOULD LIKE
7 TO HAVE A JURY TRIAL.

8 I'D BE WILLING TO DO PLAN B, BUT PLAINTIFF IS
9 NOT WILLING TO DO THAT. SO I REALLY WOULD LIKE TO HAVE A
10 JURY TRIAL.

11 MR. WADE: WE WOULD LIKE TO PROCEED WITH THE
12 INJUNCTION. I HAVE NOT GOTTEN THE DEFENDANT'S RESPONSE. I
13 THINK SHE WANTED TO REVIEW IT FURTHER, THE PROPOSED
14 INJUNCTION WE SUBMITTED TO THE COURT AND TO HER A FEW WEEKS
15 AGO. I'M UNCLEAR AS TO WHAT FURTHER WE NEED TO BRIEF. IT
16 IS JUST THE SCOPE. I DON'T KNOW WHAT SHE WOULD LIKE TO DO.

17 I'M FINE PROCEEDING BY WAY OF INJUNCTION.
18 ONCE THAT IS RESOLVED I WOULD LIKE TO PROCEED BY WAY OF
19 DAMAGES. IF THE COURT IS INCLINED, ONCE WE HAVE A FINANCIAL
20 PICTURE, ORDER US TO A SETTLEMENT CONFERENCE, WHICH MAY BE A
21 WAY TO AMELIORATE THAT.

22 THE COURT: YOU'RE SET FOR TRIAL. YOU HAVE TO BE
23 READY TO GO TO TRIAL. THIS IS THE TIME I SET ASIDE TO TRY
24 THIS CASE.

25 MR. WADE: THAT'S FINE, YOUR HONOR.

26 THE COURT: THIS CASE IS GOING TO GO TO TRIAL.

27 MR. WADE: THAT'S FINE, YOUR HONOR.

28 MS. LARKINS: MAY I HAVE A FEW HOURS TO WORK ON

1 JURY INSTRUCTIONS? AND THEN PERHAPS WE COULD MEET AND
2 CONFER, SAY, UNTIL 2:00 O'CLOCK, AND I COULD BRING THE JURY
3 INSTRUCTIONS TO THIS COURTROOM BY MAYBE 3:00 OR 4:00?

4 THE COURT: IT DOESN'T WORK THAT WAY, BECAUSE OUR
5 CALENDAR IS ACTUALLY SET WEEKS IN ADVANCE. I'LL LET YOU
6 COME BACK AT 1:30 WITH YOUR JURY INSTRUCTIONS AFTER YOU HAVE
7 MET AND CONFERRED ON JURY INSTRUCTIONS SO I HAVE A SET OF
8 JURY INSTRUCTIONS TO GO FORWARD.

9 OKAY? SO SEE YOU AT 1:30.

10 MR. WADE: THERE IS ALSO THE ISSUE OF THE
11 DOCUMENTS. WE STILL DON'T HAVE THE DOCUMENTS PURSUANT TO
12 THE SUBPOENA.

13 MS. LARKINS: I WILL WORK ON THAT.

14 THE COURT: ALL RIGHT. MS. LARKINS, YOU'RE
15 ORDERED TO PRODUCE YOUR DOCUMENTS BY 9:00 A.M. ON MONDAY
16 MORNING.

17 MS. LARKINS: OKAY.

18 THE COURT: IN REGARD TO FINANCIAL DOCUMENTS, IT
19 IS NOT THAT UNUSUAL TO HAVE FINANCIAL DOCUMENTS COME IN AT
20 THE LAST MINUTE. THE BOTTOM LINE IS THESE CASES WHEN
21 THEY'RE -- WHEN THEY'RE BIFURCATED YOU'RE NOT GOING TO GET
22 IT UNTIL THE END OF THE TRIAL.

23 MR. WADE: WE PUT THEM IN AS AN ABUNDANCE OF
24 CAUTION AS EXHIBITS.

25 THE COURT: SEE YOU AT 1:30, WITH YOUR
26 INSTRUCTIONS. THAT IS A SINGLE SET OF JURY INSTRUCTIONS.
27 YOU ARE ORDERED TO MEET AND CONFER ON THAT SUBJECT PRIOR TO
28 1:30.

1 MR. WADE: WHILE WE'RE ON THE RECORD, YOUR HONOR,
2 I WOULD PROPOSE MY OFFICE AS A MEETING PLACE TO REVIEW THE
3 JURY INSTRUCTIONS.

4 MS. LARKINS: WELL, IT WOULD SEEM TO ME THE TIME
5 IS SO LIMITED. I WAS PLANNING TO GO OVER TO THE LAW LIBRARY
6 AND COME TO THE COURTHOUSE AND STAY IN THIS NEIGHBORHOOD.
7 IT SEEMS LIKE IT WOULD BE AN EXTRA HOUR TO DRIVE --

8 MR. WADE: CAN WE REQUEST JUDGE BARTON'S ANTEROOM?

9 THE COURT: I'LL GET A JURY ROOM. SHOW UP AT 1:00
10 O'CLOCK, AND I'LL FIND YOU A PLACE. SHOW UP AT 1:30 BECAUSE
11 YOU'LL NEED THE TIME. THEN I'LL PUT YOU IN YOUR ROOM, AND
12 WE'LL GO FROM THERE.

13 (RECESS.)

14 THE COURT: YOU PUT TOGETHER THE JURY
15 INSTRUCTIONS?

16 MR. WADE: WE HAVE.

17 THE COURT: PLEASE HAND THOSE TO THE BAILIFF.

18 MS. LARKINS: MAY I SPEAK, YOUR HONOR?

19 THE COURT: YES.

20 MS. LARKINS: AS YOU KNOW, I'VE BEEN WONDERING
21 ABOUT THE MALICE ISSUE. AND ABOUT 50 MINUTES AGO I WAS
22 SERVED BY MR. WADE WITH YOUR -- APPARENTLY WHAT IS YOUR
23 ORDER AND NO PROOF OF SERVICE, BUT HE JUST GAVE THIS TO ME
24 TODAY. AND I'M WONDERING IF YOU DIDN'T INDEED SIGN THIS. I
25 DON'T KNOW WHY I WASN'T SERVED WITH A COPY OF THIS PROPOSED
26 ORDER UNTIL TODAY.

27 MR. WADE: I DON'T KNOW IF I'M BEING ACCUSED OF
28 FALSIFYING A COURT'S ORDER.

1 THE COURT: I DON'T THINK YOU'RE BEING ACCUSED OF
2 ANYTHING. THERE IS NO QUESTION BEFORE THE COURT. IF THAT
3 IS THE ORDER, YOU CAN CHECK WITH THE CLERK TO SEE IF IT WAS
4 SENT TO YOU. AND IF IT WASN'T, YOU CAN FIND OUT WHY NOT.
5 AND THAT'S IT. THERE ARE NO SECRETS IN THIS COURT.

6 MS. LARKINS: THIS DOES APPLY?

7 THE COURT: I DON'T KNOW WHAT YOU'RE TALKING
8 ABOUT.

9 MS. LARKINS: PROPOSED ORDER ON SUMMARY
10 ADJUDICATION.

11 THE COURT: PROPOSED ORDER MEANS --

12 MS. LARKINS: "PROPOSED" CROSSED OUT.

13 THE COURT: DID I SIGN IT? ALL RIGHT. THEN IT
14 APPLIES.

15 MS. LARKINS: I DON'T KNOW IF YOU SIGNED IT.

16 THE COURT: DOES IT HAVE MY SIGNATURE?

17 MS. LARKINS: IT HAS A STAMP.

18 THE COURT: LET ME TAKE A LOOK AT IT.

19 (PAUSE IN THE PROCEEDINGS.)

20 THE COURT: ALL RIGHT. LET ME TELL YOU WHAT WE GO
21 THROUGH BEFORE A STAMP IS ATTACHED TO A DOCUMENT. WHEN A
22 PROPOSED ORDER IS SUBMITTED, WHAT WE DO IS TAKE OUT THE
23 RULING FROM THE COURT FILE AND COMPARE IT TO THE PROPOSED
24 ORDER TO MAKE SURE THE CONCEPT IS THE SAME.

25 I DON'T HAVE THE FILE IN FRONT OF ME. I
26 CAN'T TELL YOU SITTING HERE THAT RIGHT NOW I HAVE COMPARED
27 THEM, BUT THAT IS MY HABIT AND PRACTICE IN TERMS OF AFFIXING
28 A SIGNATURE STAMP TO ANY DOCUMENT. I DON'T STAMP IT. THE

1 CLERK DOES. ALL RIGHT.

2 SO THAT IS THE ORDER. IT HAS THE FILE STAMP
3 OF THE SUPERIOR COURT, STAMPED BY CARMEN CAULKER, DEPUTY,
4 AND THAT'S THE CLERK HERE. YES, IT IS. THAT IS THE LAW IN
5 THIS CASE.

6 MS. LARKINS: JUST ONE WORD IN THERE THAT
7 SURPRISED ME, AND THAT'S THE WORD "MALICE." THE WORD
8 "MALICE" WAS NOT ON THE TENTATIVE RULING, AND I WASN'T UNDER
9 THE IMPRESSION THAT YOUR HONOR HAD FOUND MALICE.

10 THE COURT: LET ME GO BACK AND TAKE A LOOK AT THE
11 TENTATIVE AGAIN. I DON'T HAVE THE FILE IN FRONT OF ME.

12 THAT'S WHERE WE ARE. YOU'RE HERE TO SEE IF
13 YOU'VE GOTTEN TOGETHER WITH JURY INSTRUCTIONS THAT CAN BE
14 READ TO THE JURY.

15 YOU ARE SURE YOU WANT TO GO FORWARD WITH
16 THIS, RIGHT?

17 MR. WADE: AT THIS TIME, YOUR HONOR. WE'LL TAKE
18 THE COURT'S SUGGESTION AND DO THE INJUNCTION PORTION FIRST.
19 WE STILL HAVEN'T HEARD --

20 THE COURT: AND THEN DO A JURY TRIAL?

21 MR. WADE: YES, YOUR HONOR.

22 THE COURT: NO. IF WE'RE GOING TO DO A JURY TRIAL
23 WE'RE GOING TO DO ONE TRIAL AND PRESENTATION OF EVIDENCE,
24 AND THEN AFTERWARDS THE INJUNCTION WILL FOLLOW. OKAY? NOW,
25 IF YOU DECIDE TO PROCEED ONLY ON THE INJUNCTION, THEN WE
26 WOULD PROCEED ON THE INJUNCTION.

27 MR. WADE: OKAY. I MISUNDERSTOOD. I APOLOGIZE.
28 I THOUGHT WE'D DO THE INJUNCTION FIRST AND THEN IMPANEL A

1 JURY, AND, IF NECESSARY, AFTER THE SCOPE OF THE INJUNCTION
2 IS DECIDED, WHETHER OR NOT IT IS NECESSARY TO GO FORWARD
3 AFTER THAT POINT IN TIME.

4 THE COURT: WELL, HERE'S WHERE WE ARE. IT DEPENDS
5 ON WHAT YOU'RE LOOKING TO DO.

6 CAN I ASK YOU A QUESTION, MS. LARKINS?

7 MS. LARKINS: YES.

8 THE COURT: THIS IS GOING TO BE PERSONAL, AND IT
9 HAS TO DO WITH FINANCIAL ABILITY TO PAY.

10 ARE YOU PRESENTLY UNEMPLOYED?

11 MS. LARKINS: I'M UNEMPLOYED. ACTUALLY, I'M
12 RETIRED. I GET \$1,800 A MONTH FROM STATE TEACHER'S
13 RETIREMENT.

14 THE COURT: WHERE ARE WE GOING WITH THIS? I KNOW
15 YOU WOULD LIKE TO HAVE -- I WON'T GET INTO SETTLEMENT AND
16 WON'T HOLD IT AGAINST ANYBODY. BUT WHAT YOU'RE LOOKING FOR
17 HERE IS INJUNCTIVE RELIEF. IF THERE ARE ASSETS OR WHAT YOU
18 BELIEVE ARE ASSETS THAT ARE SUBJECT TO A JUDGMENT, THAT'S
19 ONE THING. BUT IT MAY JUST BE THAT THE INJUNCTION MAY
20 PROVIDE YOU WITH THE RELIEF THAT YOU'RE LOOKING FOR.

21 MR. WADE: I UNDERSTAND WHERE THE COURT IS COMING
22 FROM. THERE ARE ASSETS THAT WE BELIEVE EXIST. WHEN WE
23 DIDN'T RECEIVE INFORMATION WE DID SEARCHES, TITLE SEARCHES
24 AND THINGS OF THAT NATURE, AND WERE ABLE TO LOCATE
25 PROPERTIES OWNED BY MS. LARKINS.

26 THE COURT: YOU HAVE A RIGHT TO A JURY TRIAL.

27 MR. WADE: I DON'T WANT A JURY TRIAL. SHE'S
28 REQUESTED THE JURY TRIAL.

1 THE COURT: ALL RIGHT. YOU HAVE A RIGHT TO A JURY
2 TRIAL.

3 MS. LARKINS: THANK YOU, YOUR HONOR.

4 YOUR HONOR, WE HAD JUST FOUR PAGES ON THE
5 JURY INSTRUCTIONS AND SPECIAL VERDICT FORM THAT WE HAD
6 DISAGREEMENT ON. AND MAYBE WE'RE STILL NOT READY TO
7 DETERMINE IT, THAT WHOLE QUESTION OF MALICE. THAT IS THE
8 ONE THAT STOPPED ME. I THOUGHT THAT THE MALICE WOULD BE
9 DETERMINED BY THE JURY. SO I WANTED THAT QUESTION ON THE
10 SPECIAL VERDICT FORM, AND PLAINTIFF DOES NOT.

11 THE COURT: WHAT IS THIS VERDICT FORM?

12 MR. WADE: WHICH ONE? I APOLOGIZE, YOUR HONOR.

13 IF I MAY, YOUR HONOR, FOR THE RECORD, I
14 DIDN'T MAKE MY APPEARANCE. JEFFREY WADE AND CHRIS CAMERON
15 ON BEHALF OF STUTZ ARTIANO AND HOLTZ.

16 WE WENT AHEAD AND PURSUED A STATEMENT OF THE
17 CASE AND A SPECIAL VERDICT FORM. MS. LARKINS PRODUCED A
18 SPECIAL VERDICT FORM ONLY. SO WE WENT OVER THE PRELIMINARY
19 JURY INSTRUCTIONS AND WENT THROUGH THAT.

20 MS. LARKINS THEN, I BELIEVE, WROTE ON OUR
21 SPECIAL VERDICT FORM, AND THAT'S HOW --

22 THE COURT: OKAY. ALL RIGHT.

23 MR. WADE: THAT WAS HER VERSION OF IT, I BELIEVE.

24 WE ALSO PROVIDED A STATEMENT OF THE CASE THAT
25 WE HAD TYPEWRITTEN UP. THERE WAS NOT ONE FOR MS. LARKINS.
26 SO SHE TOOK OUR -- I GAVE HER A COPY, AND SHE MADE
27 HANDWRITTEN NOTES ON THAT ONE. AND I DID NOT TURN THOSE IN
28 AS OF YET WHEN JURY INSTRUCTIONS WERE REQUESTED, BUT IT IS

1 THE SAME.

2 THE COURT: OKAY. WHAT YOU NEED YOU TO DO,
3 MS. LARKINS -- PAY ATTENTION, OKAY? PLEASE? IF YOU WANT TO
4 GO TO JURY YOU HAVE TO BE READY FOR A JURY TRIAL, AND THAT
5 MEANS THAT IN REGARD TO A STATEMENT OF THE CASE -- DO YOU
6 KNOW WHAT A STATEMENT OF THE CASE IS USED FOR?

7 MS. LARKINS: IT IS READ TO THE JURY TO
8 UNDERSTAND --

9 THE COURT: AT THE BEGINNING OF THE TRIAL THERE
10 HAS TO BE SOMETHING TO TELL THE JURY ABOUT WHAT THE CASE IS
11 ABOUT. OTHERWISE, WE'D IMPANEL A JURY AND START THE
12 EVIDENCE, AND SOMEBODY WOULD RAISE THEIR HAND AND SAY I JUST
13 HAD A CASE LIKE THIS. I DON'T THINK I CAN BE FAIR. THEN WE
14 HAVE TO START ALL OVER AGAIN, WHICH IS PROBABLY NOT A GOOD
15 IDEA.

16 THE ONLY ISSUE ON WHICH WE DISAGREE IS THE
17 MALICE. WE CAN COME UP WITH A STATEMENT OF THE CASE, AND
18 ONCE WE GET THAT FIGURED OUT WE'LL KNOW WHETHER THE JURY
19 WILL BE DETERMINING MALICE.

20 LET ME SEE THE STATEMENT OF THE CASE, PLEASE.

21 THE ORDER THAT I SIGNED REFERS TO A FINDING
22 OF MALICE. THAT'S WHERE WE ARE. THAT'S WHAT WE HAVE TO
23 LIVE WITH.

24 MS. LARKINS: THEN WE CAN JUST TAKE OUT WHAT I
25 WROTE ABOUT MALICE.

26 THE COURT: LET'S TALK ABOUT THIS FOR A MINUTE
27 BECAUSE --

28 ARE THERE DEFAMATORY STATEMENTS OTHER THAN

1 THE WEBSITE?

2 MR. WADE: NOT THAT WE'VE CONTAINED IN OUR
3 COMPLAINT, YOUR HONOR.

4 THE COURT: OKAY. THIS CASE INVOLVES A WEBSITE
5 MAINTAINED BY DEFENDANT THAT HAS ALREADY BEEN FOUND TO HAVE
6 PUBLISHED DEFAMATORY STATEMENTS ABOUT PLAINTIFF LAW FIRM.
7 THE QUESTION YOU ARE ASKED TO ANSWER IS WHAT DAMAGES, IF
8 ANY, HAVE BEEN SUFFERED BY PLAINTIFF AS A RESULT OF THIS
9 DEFAMATION, AND WHETHER OR NOT PUNITIVE DAMAGES SHOULD BE
10 ASSESSED AGAINST DEFENDANT, AND, IF SO, IN WHAT AMOUNT.

11 MR. WADE: IF I MAY. THE DIFFICULTY I WITH HAVE
12 WITH THAT IS THAT DAMAGES ARE PRESUMED. SO I THINK THE
13 STATEMENT "IF ANY" WOULD BE MISLEADING IN ONE SENSE OR
14 MISCHARACTERIZES THE EVIDENCE.

15 ALSO, AS FAR AS I THINK THAT MALICE HAS BEEN
16 FOUND --

17 THE COURT: IT IS NOT A CONCLUSIVE PRESUMPTION.

18 MR. WADE: THE ASSUMED DAMAGES? I WOULD
19 RESPECTFULLY DISAGREE WITH THE COURT THAT THEY ARE. THE
20 ASSUMED DAMAGES IN THE JURY INSTRUCTIONS TALKED ABOUT
21 DEFAMATION PER SE.

22 THE COURT: IN WHAT AMOUNT?

23 MR. WADE: IT SAYS ANY AMOUNT TO BE DETERMINED.

24 THE COURT: AGAIN, IT CAN'T BE A PRESUMPTION. IT
25 CAN BE NOMINAL DAMAGES?

26 MR. WADE: CORRECT. BUT THE TERM "IF ANY" I THINK
27 THEY ARE REQUIRED TO AWARD.

28 THE COURT: OKAY.

1 MR. WADE: AS FAR AS THE "IF ANY" ON THE PUNITIVE
2 DAMAGES, I THINK THIS COURT'S ORDER IS THAT WE WOULD PROCEED
3 BY WAY OF PUNITIVE DAMAGES AND DETERMINE THE AMOUNT, BECAUSE
4 IF WE GET INTO WHETHER OR NOT THEY SHOULD BE AWARDED IT
5 WOULD BE A QUESTION OF MALICE, AND THE ISSUE OF MALICE HAS
6 BEEN DETERMINED.

7 THE COURT: NO. JUST BECAUSE THERE'S A FINDING OF
8 MALICE, DOES THAT MEAN THAT THE JURY HAS TO AWARD PUNITIVE
9 DAMAGES? I DON'T THINK SO.

10 MR. WADE: THE WAY I READ I BELIEVE IT'S 3942,
11 YOUR HONOR, WHEN IT TALKS ABOUT ASSESSING DAMAGES IN THE
12 CACI'S, THE QUESTIONS WENT YOU MUST NOW DECIDE THE AMOUNT --
13 THE QUESTION IS IF MALICE IS FOUND, DO YOU FIND THAT THERE
14 IS MALICE, AND YOU CHECK THE YES OR NO BOX, AND THEN I
15 BELIEVE THE NEXT QUESTION WOULD BE YOU MUST NOW DECIDE THE
16 AMOUNT, IF ANY, YOU WOULD AWARD STUTZ.

17 THE COURT: AWARD, IF ANY. RIGHT? OKAY.

18 *"THE QUESTION YOU ARE ASKED TO ANSWER IS WHAT*
19 *DAMAGES HAVE BEEN SUFFERED BY PLAINTIFF AS A RESULT OF*
20 *THIS DEFINITION. YOU MAY BUT ARE NOT REQUIRED TO AWARD*
21 *DAMAGES IN A NOMINAL AMOUNT. YOU WILL DECIDE WHETHER*
22 *OR NOT PUNITIVE DAMAGES SHOULD BE ASSESSED AGAINST*
23 *DEFENDANT AND, IF SO, IN WHAT AMOUNT."*

24 MR. WADE: I THINK THE JURY IS REQUIRED TO ORDER
25 NOMINAL DAMAGES. I THINK THE WAY YOU READ IT, IT MAY OR MAY
26 NOT. I THINK THEY'RE REQUIRED TO ASSESS NOMINAL DAMAGES.
27 THE QUESTION IS CAN THEY ASSESS MORE.

28 THE COURT: RIGHT. OKAY. LET'S TRY THIS AGAIN.

1 AND WHY DON'T WE JUST TAKE THAT OUT AND SAY:

2 "THE QUESTION YOU ARE ASKED TO ANSWER IS WHAT
3 DAMAGES HAVE BEEN SUFFERED BY PLAINTIFF AS A RESULT OF
4 THIS DEFAMATION. YOU WILL DECIDE WHETHER OR NOT
5 PUNITIVE DAMAGES SHOULD BE ASSESSED AGAINST DEFENDANT,
6 AND IF SO, IN WHAT AMOUNT."

7 THEN YOU'RE FREE TO GO AHEAD IN YOUR ARGUMENT
8 AND SAY REQUIRED TO AWARD DAMAGES, BUT YOU CAN AWARD NOMINAL
9 DAMAGES. I'LL COVER IT IN JURY INSTRUCTIONS AND GO FROM
10 THERE.

11 MR. WADE: CAN I HAVE IT READ BACK SO I CAN SEE IT
12 IN WRITING?

13 THE COURT: SURE.

14 "THE QUESTION YOU ARE ASKED TO ANSWER IS WHAT
15 DAMAGES HAVE BEEN SUFFERED BY PLAINTIFF AS A RESULT OF
16 THIS DEFAMATION. YOU WILL DECIDE WHETHER OR NOT
17 PUNITIVE DAMAGES SHOULD BE ASSESSED AGAINST DEFENDANT
18 AND, IF SO, IN WHAT AMOUNT."

19 OR WE CAN SAY -- I LIKE THIS BETTER.

20 "THE QUESTION YOU ARE ASKED TO ANSWER IS WHAT
21 DAMAGES HAVE BEEN SUFFERED BY PLAINTIFF AS A RESULT OF
22 THIS DEFAMATION, AND WHAT PUNITIVE DAMAGES, IF ANY,
23 SHOULD BE ASSESSED AGAINST DEFENDANT."

24 THE "IF ANY" LANGUAGE THAT YOU LIKE.

25 MR. WADE: THAT SHE LIKES?

26 THE COURT: THAT YOU LIKE.

27 MR. WADE: I DON'T LIKE THE "IF ANY" PORTION. I
28 WAS READING THE CACI AS PRINTED.

1 THE COURT: IF THAT IS WHAT CACI SAYS, WE'RE GOING
2 TO USE THAT. IT SEEMS FAIR IF THAT IS WHAT THE INSTRUCTION
3 SAYS --

4 MR. WADE: I GUESS I'M FUNDAMENTALLY HAVING A
5 DIFFICULTY UNDERSTANDING IF MALICE HAS ALREADY BEEN FOUND.
6 I GUESS, FOR ME THE ONLY QUESTION IS IF WE DO THE "IF ANY,"
7 IT SEEMS LIKE I HAVE TO PUT ON EVIDENCE ABOUT THE
8 REPREHENSIBILITY OF THE CONDUCT FOR THE JURY TO UNDERSTAND.

9 THE COURT: NO -- WELL, TO THIS EXTENT. YOU'LL
10 HAVE TO SHOW THAT PUNITIVE DAMAGES ARE REQUIRED TO DISSUADE
11 THE DEFENDANT FROM ENGAGING IN THAT CONDUCT IN THE FUTURE.

12 MR. WADE: I THOUGHT THEY WERE DESIRED TO PUNISH
13 FOR THE CONDUCT THAT HAS OCCURRED.

14 THE COURT: THAT IS WHAT YOU'RE GOING TO SHOW, IF
15 YOU CAN.

16 MR. WADE: I GUESS -- I'M SO SORRY, YOUR HONOR.
17 FUNDAMENTALLY I'M HAVING A HARD TIME UNDERSTANDING AS TO WHY
18 IF WE'VE ESTABLISHED MALICE WE HAVE TO GO THROUGH THE
19 EXERCISE OF SAYING IF YOU WANT TO YOU CAN WHEN THE
20 INSTRUCTION IS IF YOU FIND MALICE THEN YOU NEED TO GO TO THE
21 QUESTION OF PUNITIVE DAMAGES.

22 THE COURT: SO THEY GO TO THE QUESTION OF PUNITIVE
23 DAMAGES, AND THEN WHAT DO THEY DO?

24 MR. WADE: THEN THEY MAKE THE DETERMINE OF THE
25 AMOUNT.

26 THE COURT: OF WHAT AMOUNT?

27 MR. WADE: OF PUNITIVE DAMAGES AS WELL AS THE
28 GENERAL DAMAGES.

1 THE COURT: WHAT ARE THE OPTIONS AVAILABLE?

2 MR. WADE: THEY CAN FIND THEM FOR REPREHENSIBLE
3 CONDUCT, DESPICABLE CONDUCT, FRAUD.

4 THE COURT: WHAT ARE THE RANGES -- WHAT IS THE
5 DOLLAR AMOUNT? WHAT IS THE RANGE THAT IS AVAILABLE?

6 MR. WADE: BASED ON MS. LARKINS' NET WORTH.

7 THE COURT: WHAT IS THE RANGE THAT'S AVAILABLE?

8 MR. WADE: A CERTAIN PERCENTAGE OF HER NET WORTH.
9 I'M SORRY.

10 THE COURT: IT CAN BE A PERCENTAGE OF NET WORTH.
11 DOES IT HAVE TO BE A PERCENTAGE OF NET WORTH?

12 MR. WADE: APPARENTLY, I'VE LEARNED THERE IS A NEW
13 CASE, THE TOBACCO CASE, THAT HAS NOTHING TO DO WITH NET
14 WORTH.

15 THE COURT: IT CAN BE. IT ISN'T NECESSARILY. SO
16 THE RANGE THAT IS AVAILABLE IN TERMS OF PUNITIVE DAMAGES IS
17 FROM?

18 MR. WADE: A DOLLAR TO --

19 THE COURT: FROM ZERO TO A MILLION DOLLARS,
20 20 MILLION. RIGHT?

21 MR. WADE: I GUESS I HAVE A PROBLEM WITH THE ZERO.

22 THE COURT: I KNOW.

23 MR. WADE: I THINK -- I THOUGHT WE WERE STARTING
24 WITH THE FACT THAT -- THE WAY I UNDERSTOOD THE ORDER AND THE
25 WAY IT WAS CRAFTED IS THAT WE'RE HERE TO DISCUSS THE
26 EXTENT -- THE TRIAL ON THE COMPENSATORY AND THE PUNITIVE
27 DAMAGES, AND SUBSEQUENTLY --

28 THE COURT: YOU DON'T HAVE TO PROVE FRAUD, MALICE,

1 OR OPPRESSION. THAT HAS BEEN ESTABLISHED. YOU DO HAVE TO
2 PROVE THE AMOUNT OF PUNITIVE DAMAGES THAT ARE REQUIRED TO
3 ACCOMPLISH THE LAWFUL PURPOSE FOR PUNITIVE DAMAGES. THE
4 QUESTION WE'RE TALKING ABOUT IS THE DIFFERENCE BETWEEN ZERO
5 AND ONE, RIGHT?

6 MR. WADE: YES.

7 THE COURT: YOU SAY IT HAS TO BE AT LEAST A
8 DOLLAR.

9 MR. WADE: THAT'S FOR THE FIRST PART.

10 THE COURT: IN TERMS OF PUNITIVE DAMAGES -- THAT'S
11 WHY I ASKED YOU OVER AND OVER AGAIN, WHAT IS THE RANGE,
12 BECAUSE IT IS NOT AS IF YOU MUST AWARD A HUNDRED DOLLARS OR
13 A THOUSAND DOLLARS. THEY HAVE DISCRETION. IF THEY HAVE
14 DISCRETION, WHAT'S THE LIMITATION ON THE DISCRETION?

15 MR. WADE: AND I THINK ANSWERING THAT QUESTION, I
16 THINK THE LIMITATION ON THE DISCRETION IS THE FINDING OF
17 MALICE.

18 THE COURT: NO. YOU'RE CONFUSING THE ELEMENTS OF
19 THE REMEDY, WHICH IS PUNITIVE DAMAGES. YOU HAVE TO FIND
20 FRAUD, MALICE OR OPPRESSION. NOW WE HAVE THAT FINDING.
21 THAT'S DONE. NOW WE GO TO THE AMOUNT OF PUNITIVE DAMAGES.

22 MR. WADE: CORRECT.

23 THE COURT: AND THAT IS THE AMOUNT REQUIRED -- AND
24 I'M SURE THERE IS A JURY INSTRUCTION ON THIS. I CAN TURN
25 THE COMPUTER ON AND FIND IT -- THAT IS REQUIRED TO -- HOW
26 DOES THE JURY DETERMINE PUNITIVE DAMAGES? YOU'VE GOT IT
27 THERE. WHAT'S IT SAY?

28 MR. WADE: NO FIXED FORMULA.

1 THE COURT: THERE IS NO FIXED FORMULA.

2 MR. WADE: YOUR HONOR, IN THE STATEMENT OF THE
3 CASE, HOWEVER, WAS THERE ANY MENTION OF THE FACT THAT THE
4 FINDING OF MALICE HAD ALREADY BEEN DETERMINED BY THE COURT?

5 THE COURT: NO. WHY DOES THE JURY NEED TO HEAR
6 THAT?

7 MR. WADE: I THINK JUST SO THAT THERE ISN'T
8 CONFUSION ABOUT WHAT MATTERS ARE BEING PUT BEFORE THEM AS
9 MATTERS THAT THEY DECIDE.

10 THE COURT: I DON'T THINK THAT'S NECESSARY.
11 THAT'S WHY I TRIED TO TAKE OUT -- YOU HAVE LANGUAGE IN THERE
12 ABOUT DEFAMATION PER SE.

13 YOU KNOW, THIS IS A VERY SIMPLE EXERCISE.
14 WHAT WE'RE TRYING TO DO IS IDENTIFY PEOPLE THAT SHOULDN'T BE
15 SITTING ON THE JURY BECAUSE THEY HAVE A BIAS OR PREJUDICE.
16 THAT'S THE PURPOSE OF DOING THIS. THERE WILL BE LOTS OF
17 TIMES TO GET INTO WHATEVER ELSE YOU DESIRE TO HAVE EXPLAINED
18 TO THEM IN TERMS OF THE LAW IN THE COURSE OF THE JURY
19 INSTRUCTIONS.

20 MR. WADE: I'M SORRY, YOUR HONOR. WAS THERE
21 MENTION THAT THE STATEMENTS WERE FOUND TO BE DEFAMATORY,
22 THAT WE'RE NOT ADDRESSING THAT ISSUE, THAT IT IS ONLY THE
23 SCOPE OF DAMAGES?

24 THE COURT: YES.

25 "THIS CASE INVOLVES A WEBSITE MAINTAINED BY
26 DEFENDANT THAT HAS ALREADY BEEN FOUND TO HAVE PUBLISHED
27 DEFAMATORY STATEMENTS ABOUT PLAINTIFF'S LAW FIRM."

28 OKAY?

1 MR. WADE: OKAY.

2 THE COURT: I KNOW WHAT YOU'D LIKE TO DO IN THE
3 STATEMENT OF THE CASE. YOU'D LIKE ME TO READ THAT WHOLE
4 DECISION THAT I GAVE YOU BEFORE. BUT I DON'T THINK IT IS
5 GOING TO BE, A, HELPFUL TO THE JURY IN UNDERSTANDING THE
6 CASE. AND I THINK IT IS GOING TO RAISE MORE QUESTIONS THAN
7 IT IS GOING TO ANSWER.

8 WHAT DO I MEAN BY THAT? WELL, WE'RE GOING TO
9 BE VOIR DIRING A JURY, AND THEY'RE GOING TO SAY WHAT DO YOU
10 MEAN BY DEFAMATION PER SE? WHAT IS THAT SUPPOSED TO BE?
11 AND YOU AS AN ATTORNEY WITHOUT REFERENCE TO ANYTHING OTHER
12 THAN YOUR ABILITY TO EXTEMPORANEOUSLY DESCRIBE THE LAW ARE
13 GOING TO DO WHAT? YOU'RE GOING LOOK AT ME AND SAY, JUDGE,
14 WOULD YOU LIKE TO HELP ME OUT? AND I'LL SAY NO, YOU'RE ON
15 YOUR OWN. OKAY?

16 MR. WADE: YOU MENTIONED VOIR DIRE, YOUR HONOR. I
17 WAS -- I'M NOT SURE WHAT THE COURT'S PRESENTATION IS WITH
18 QUESTIONS OR -- I DIDN'T HAVE A CHANCE TO DRAFT ANY THAT --
19 PRELIMINARY QUESTIONS OR ANYTHING. I'M NOT SURE HOW THE
20 COURT HANDLES THAT. I CAN SPEAK WITH MR. SLEETH IN MY
21 OFFICE WHEN HE'S NOT ON VACATION.

22 THE COURT: WHEN DOES HE COME BACK?

23 MR. WADE: HE STARTED TODAY, YOUR HONOR.

24 THE COURT: OKAY. THIS WAS A PLANNED VACATION,
25 WAS IT?

26 MR. WADE: HE'S NOT TRYING THE CASE.

27 I WANTED TO KNOW WHAT YOUR PREFERENCE IS. DO
28 WE PRE-SUBMIT QUESTIONS FOR VOIR DIRE?

1 THE COURT: OKAY. LET'S TALK ABOUT THINGS LIKE
2 JURY SELECTION. FOR JURY SELECTION WE DO A MODIFIED SIX
3 PACK, WHICH MEANS WE SEAT 14 JURORS IN THE FIRST 14 SEATS IN
4 THE JURY BOX AND SEVEN ADDITIONAL PROSPECTIVE JURORS IN THE
5 FIRST SEVEN SEATS OF THE SPECTATOR SECTION. YOUR STRIKES GO
6 TO ONLY THOSE IN THE FIRST 12 SEATS IN THE JURY BOX. YOUR
7 QUESTIONS GO TO ALL 21.

8 SEE, THE JURY BOX HAS 14 SEATS, AND PROBABLY
9 15, BUT WE ONLY USE 14. 14 PEOPLE SEATED THERE. THERE WILL
10 BE SEVEN PEOPLE SEATED IN THE FIRST SEVEN SEATS OF THE
11 SPECTATOR SECTION.

12 NOW, THE QUESTIONING THAT YOU'RE GOING TO DO
13 IN VOIR DIRE IS TO DETERMINE THE QUALIFICATIONS OF THE
14 PROSPECTIVE JURORS TO BE FAIR AND IMPARTIAL JURORS IN YOUR
15 CASE. IF YOU HAVE A JUROR, A PROSPECTIVE JUROR, WHO STATES
16 THAT CAN HE CANNOT BE FAIR OR ANY REASON UPON WHICH YOU
17 BELIEVE THEY CAN'T BE FAIR, I'LL GIVE YOU A CHANCE TO TELL
18 ME WHY YOU THINK THEY WON'T BE FAIR AND CHALLENGE THOSE
19 JURORS FOR CAUSE. OTHERWISE, EACH SIDE HAS SIX PEREMPTORY
20 CHALLENGES.

21 "PEREMPTORY CHALLENGES" MEAN FOR ANY REASON
22 YOU THINK IS APPROPRIATE AS LONG AS IT IS NOT WITH ANY
23 IMPROPER MOTIVE, SUCH AS RACE, ETHNICITY, OR RELIGION, OR
24 ANYTHING LIKE THAT.

25 IS THAT CLEAR?

26 MR. WADE: YES, YOUR HONOR.

27 THE COURT: YOU ARE SURE YOU WANT A JURY TRIAL,
28 RIGHT?

1 MS. LARKINS: YES, YOUR HONOR.

2 THE COURT: OKAY.

3 MS. LARKINS: I WAS JUST THINKING THAT RELIGION
4 WAS BROUGHT UP BY PLAINTIFF AS THE BASIS FOR MALICE.

5 THE COURT: OKAY. SO IT MAY BE SOMETHING THAT YOU
6 WANT TO COVER IN YOUR QUESTIONING WITH JURORS. BUT IT WOULD
7 BE IMPROPER, FOR EXAMPLE, TO DISMISS JURORS FOR NO OTHER
8 REASON THAN THEY ARE OF THE JEWISH FAITH. THAT WOULD BE
9 IMPROPER.

10 MS. LARKINS: OF COURSE.

11 THE COURT: BUT IF SOMEONE WERE TO SAY IN RESPONSE
12 TO YOUR QUESTIONING THAT THEY FEEL THAT BECAUSE OF THEIR
13 JEWISH FAITH THEY WOULD FEEL AN AFFINITY TO THE PLAINTIFF
14 AND THEY FEEL THEY COULDN'T BE FAIR TO DEFENDANT, THEN THAT
15 MIGHT BE A PROPER GROUND FOR DISMISSING THAT JUROR.

16 MR. WADE: JUST FOR POINT OF CLARIFICATION. THAT
17 IS A DANGEROUS ROAD WE'RE GOING DOWN. THERE WAS NO
18 INFORMATION THAT HER ATTACKS WERE RELIGIOUSLY BASED.

19 MS. LARKINS: ON THE CONTRARY.

20 MR. WADE: IT WAS JUST THAT SHE HAD CONTACTED A
21 RABBI. IT COULD HAVE BEEN A PRIEST.

22 THE COURT: BUT THERE WILL BE EVIDENCE ABOUT THE
23 RABBI?

24 MR. WADE: I DON'T PLAN ON PUTTING IT ON. I DON'T
25 NEED TO GO INTO THE MALICE ISSUE. I HAD THAT OUT OF AN
26 ABUNDANCE OF CAUTION.

27 THE COURT: HOW ARE YOU GOING TO GET PUNITIVE
28 DAMAGES IF YOU DON'T ESTABLISH THE NATURE OF THE CONDUCT?

1 MR. WADE: I WANTED TO BRIEFLY GET INTO -- I GUESS
2 IT WASN'T THAT WE WERE SAYING IT WAS RACIALLY MOTIVATED OR
3 RELIGIOUSLY MOTIVATED.

4 THE COURT: ALL I'M SAYING TO YOU IS IF YOU WERE
5 TO HAVE A JUROR WHO SAID BECAUSE I FEEL SO STRONGLY ABOUT
6 THE PERSONAL RELATIONSHIP BETWEEN A RABBI AND A PARISHIONER,
7 THAT ANY INTERFERENCE WITH THAT WOULD CAUSE ME TO BE -- TO
8 WANT TO COME DOWN HARD AGAINST THE PARTY WHO DID THAT, THEN
9 WHAT THEY'RE SAYING IS THEY MIGHT BE DECIDING CASE ON A
10 FACTOR THAT IS NOT ON EVIDENCE PRESENTED IN THE COURTROOM
11 BUT ON A PERSONAL EXPERIENCE.

12 WHEN I WAS GROWING UP I HAD A VERY DEEP
13 PERSONAL RELATIONSHIP WITH MY RABBI. I HAVE THE GREATEST
14 RESPECT FOR RABBIS. I WOULD NEVER REPROACH A RABBI OR THINK
15 ANYONE WHO WOULD REPROACH A RABBI CERTAINLY WOULD BE JUST
16 TERRIBLE BASED ON MY KNOWLEDGE OF THE FAITH.

17 I THINK THAT'S GOING A LITTLE TOO FAR. THAT
18 MIGHT BE A CHALLENGE FOR CAUSE IF THEY SAY I CAN'T BE FAIR
19 BECAUSE I'M GOING TO BASE IT ON WHAT HAPPENED TO ME AS A
20 CHILD. OKAY?

21 MR. WADE: OKAY.

22 THE COURT: IS IT DANGEROUS TERRITORY? OF COURSE
23 IT IS. IS IT SOMETHING WE MAY NEED TO DEAL WITH? IT MAY
24 BE. I DON'T KNOW.

25 MR. WADE: KIND OF GOES BACK TO MY EARLIER
26 STATEMENT THIS MORNING ABOUT GENERALLY FOR A JURY TRIAL WE'D
27 HAVE MOTIONS IN LIMINE AND FLESH OUT SOME OF THESE ISSUES.

28 THE COURT: YOU HAVE A JURY TRIAL AND DIDN'T FILE

1 ANY.

2 MR. WADE: I DIDN'T FIND OUT I HAD A JURY TRIAL
3 UNTIL THIS MORNING.

4 THE COURT: WHO IS PRESUMED TO KNOW THE LAW?

5 MR. WADE: I AM, YOUR HONOR.

6 THE COURT: IN REGARD TO DAMAGES ON A LEGAL CAUSE
7 OF ACTION ARE YOU ENTITLED TO A JURY TRIAL?

8 MR. WADE: HAD IT BEEN REQUESTED AND BEEN TIMELY,
9 YES. I DON'T THINK THERE IS A RIGHT BUT A REQUIREMENT THAT
10 THEY POST -- THERE ARE RULES AND OBLIGATIONS.

11 THE COURT: AT LEAST AS OF OUR LAST HEARING YOU
12 KNEW THAT JURY FEES WERE BEING POSTED.

13 MR. WADE: NO. THAT'S THE FUNDAMENTAL
14 MISUNDERSTANDING, YOUR HONOR, IS THAT WHEN YOU HAD GONE
15 THROUGH THE EXERCISE OF HAVING CARMEN -- OR THE CLERK
16 TELEPHONING TO FIND OUT ABOUT IT, IT CAME BACK TO THE
17 QUESTION, AND I SAID, YOUR HONOR, THIS IS ABOUT DAMAGES AND
18 AN INJUNCTION. AND YOU INDICATED IT IS AN INJUNCTION. YOU
19 DON'T GET A JURY TRIAL. AND THE COURT MENTIONED THAT AGAIN
20 THIS MORNING.

21 IT WAS ONLY THIS MORNING WHEN THE COURT
22 RETRACTED THAT AND SAID YOU GET A RIGHT TO A JURY TRIAL, AND
23 I, AGAIN, SAID I DON'T KNOW THAT -- YOU ASKED ME TO FIND A
24 CASE OR SOME AUTHORITY THAT SAID SHE'S NOT ENTITLED, AND I
25 FALL BACK ON THE POSITION THAT THERE IS NO, QUOTE UNQUOTE,
26 "RIGHT" TO A JURY TRIAL IN A CIVIL CONTEXT. AND YOU SAID
27 I'VE MADE MY ORDER, AND I APPRECIATE THAT.

28 MS. LARKINS: I SERVED HIM WITH MY RECEIPT ON THE

1 VERY SAME DATE THAT WE SPOKE HERE IN COURT. HE WOULD HAVE
2 RECEIVED IT THE NEXT DAY.

3 MR. WADE: BUT IT DIDN'T MATTER TO ME, YOUR HONOR,
4 BECAUSE YOU HAD ALREADY SAID WE WEREN'T PROCEEDING WITH A
5 JURY TRIAL.

6 THE COURT: LET'S GO BACK AND TALK ABOUT RIGHT TO
7 A JURY TRIAL. NOW, ON A CALENDAR DAY I CAN SAY ON AN
8 INJUNCTION THERE ISN'T A RIGHT TO A JURY TRIAL. THAT'S
9 ABSOLUTELY CORRECT. BUT THERE'S ALSO THE DAMAGES ISSUE.

10 NOW, TO THE EXTENT THAT YOU WERE MADE AWARE
11 OF THE FACT THAT JURY FEES WERE POSTED, YOU CERTAINLY COULD
12 HAVE COME BACK TO COURT AND SAID, WAIT A MINUTE, ARE WE
13 HAVING A JURY TRIAL OR COURT TRIAL? I CAN'T REMOVE A JURY
14 TRIAL RIGHT. I CAN'T SAY TO SOMEONE, WELL, YOU KNOW, I SAID
15 THERE WOULDN'T BE A JURY TRIAL, SO I GUESS THERE WON'T BE.
16 I CAN'T SAY THAT. IF THERE'S A JURY TRIAL RIGHT -- THAT'S
17 WHAT I TOLD YOU THIS MORNING. IF THERE IS A JURY TRIAL
18 RIGHT, THERE'S A JURY TRIAL RIGHT.

19 NOW, I CAN SUGGEST TO YOU THAT IF THERE WAS
20 CONFUSION ON THE ISSUE -- AND THAT'S WHAT YOU'RE SAYING TO
21 ME, THAT YOU DIDN'T UNDERSTAND THAT WE REALLY WERE GOING TO
22 HAVE A JURY TRIAL BECAUSE I HAD TALKED ABOUT A COURT TRIAL,
23 CORRECT?

24 MR. WADE: CORRECT. IT WASN'T CONFUSION. I WAS
25 CLEAR. WHEN I LEFT I SPOKE TO MY ASSOCIATE, AND WE WERE
26 CLEAR THAT IT WAS A BENCH TRIAL. WE PROCEEDED ALL ALONG AS
27 BENCH TRIAL.

28 THE COURT: LET'S GO BACK THEN AND TALK ABOUT THE

1 DAMAGES ISSUE. BECAUSE IF THERE IS A DAMAGES ISSUE, AND
2 THERE IS A LEGAL ISSUE, THEN I CAN'T BY JUDICIAL FIAT SAY,
3 OKAY, NOW, WE'RE NOT GOING TO HAVE THAT JURY TRIAL. WE'LL
4 JUST HAVE A COURT TRIAL INSTEAD. I CAN'T WAIVE A JURY. ALL
5 RIGHT?

6 WHAT THAT MEANS, YOU STILL HAVE OPTIONS. YOU
7 ALWAYS HAVE OPTIONS. YOUR OPTIONS ARE TO SAY, LISTEN, THIS
8 WAS A SURPRISE TO ME. I DIDN'T KNOW THERE WAS GOING TO BE A
9 JURY TRIAL. THESE ARE THE THINGS I NEED TO DO THAT I'M NOT
10 NOW ABLE TO DO SHOWING PREJUDICE.

11 IF YOU'RE ABLE TO DO THAT, THEN PERHAPS A
12 CONTINUANCE IS IN ORDER TO GIVE YOU AN OPPORTUNITY TO
13 PREPARE. NOBODY WANTS TO PUT ANYBODY BEHIND THE EIGHTBALL.
14 THAT MEANS THAT I DON'T WANT YOU TO BE IN THE SITUATION
15 WHERE YOU'RE SAYING I DIDN'T HAVE TIME TO GET READY FOR THIS
16 AND WHAT YOU JUST SAID TO ME, THAT I WOULD HAVE FILED
17 MOTIONS IN LIMINE. WELL, OKAY. LET'S NOT PUT YOU IN A
18 POSITION WHERE YOU CAN'T FILE YOUR MOTIONS IN LIMINE.

19 I TRIED TO GIVE MS. LARKINS LEEWAY IN REGARD
20 TO POSTING JURY FEES. I'M TRYING TO GIVE YOU LEEWAY. IF
21 YOU CAN DEMONSTRATE PREJUDICE, I CAN PUT IT OVER FOR A
22 COUPLE WEEKS AND LET YOU GET READY. BUT THAT'S WHERE WE
23 ARE.

24 I CAN'T DO AWAY -- LET ME SAY THE THIRD AND
25 FINAL TIME. I CAN'T DO AWAY WITH A JURY TRIAL RIGHT,
26 WHETHER I WAS MISTAKEN IN ANALYZING WHAT THE QUESTIONS WERE
27 THAT WE WERE GOING TO BE FACING AT TRIAL OR NOT.

28 THERE ARE A COUPLE THINGS WE CAN SAY ABOUT

1 THAT. ONE IS THAT SOMEBODY SHOULD HAVE FIGURED THAT OUT.
2 THE OTHER IS WE HAVE TO DEAL WITH THIS, AND WE'LL DEAL WITH
3 IT. IT IS NOT TO MAKE LIFE UNPLEASANT FOR ANYBODY BUT TO
4 SIMPLY GET BOTH SIDES TO TRIAL IN A WAY THEY'RE COMFORTABLE
5 WITH SO THAT THEY FEEL LIKE THEY'RE GETTING A FAIR TRIAL.

6 MS. LARKINS: YOUR HONOR, I WAS REALLY SURPRISED
7 TODAY WHEN THEY SAID THEY WANTED DAMAGES BECAUSE YOUR HONOR
8 SAT THERE AND SAID THE LAST TIME WE WERE HERE IF THERE ARE
9 NO DAMAGES IF IT IS JUST FOR AN INJUNCTION, THEN WE WON'T
10 HAVE A JURY TRIAL. AND THE TWO GENTLEMEN STOOD THERE
11 SILENT.

12 THE COURT: HERE'S WHERE WE ARE, OKAY? YOU HAVE A
13 RIGHT TO A JURY TRIAL.

14 MS. LARKINS: THANK YOU.

15 THE COURT: THEY HAVE A RIGHT TO DAMAGES. I CAN'T
16 LOOK AT THEM AND SAY, WELL, WE'RE NOT GOING TO HAVE DAMAGES
17 TODAY BECAUSE THIS WON'T BE THE DAMAGES DEPARTMENT. ANYMORE
18 THAN I CAN LOOK AT YOU AND SAY WE CAN'T HAVE A JURY TRIAL
19 BECAUSE THIS ISN'T A JURY TRIAL DEPARTMENT. IF I HAD MY WAY
20 I WOULD CHANGE A LOT OF THINGS BUT NOT THINGS THAT ARE
21 CONTRARY TO LAW.

22 SO BE QUIET FOR A MINUTE. OKAY? THEY'RE
23 GOING TO DAMAGES. THEY WANT DAMAGES. THEY HAVE A RIGHT TO
24 SEEK THEM. YOU WANTED A JURY TRIAL. I CUT YOU A LITTLE
25 SLACK, LET YOU FILE A LITTLE BIT LATE.

26 IF YOU'RE NOT PREPARED, WE'LL SET IT TO A
27 TIME YOU ARE PREPARED, AND WE'LL HAVE THE TRIAL, AND IT WILL
28 BE ALL OVER WITH.

1 MR. WADE: IF I CAN HAVE A SHORT RECESS, I NEED TO
2 MAKE A TELEPHONE CALL, BECAUSE I THINK ONE OF MY WITNESSES
3 IS TRAILING TO START TRIAL IN JUDGE TAYLOR'S DEPARTMENT.
4 MAY I PLEASE CONFER WITH HIM TO FIND OUT HIS AVAILABILITY,
5 UNLESS YOU WANT TO PROCEED ON MONDAY.

6 THE COURT: GO FOR IT. LET'S TAKE A BREAK AND SEE
7 YOU BACK HERE IN TEN MINUTES.

8 MR. WADE: 9:00 A.M. START ON MONDAY?

9 THE COURT: YES.

10 MS. LARKINS: WE JUST HAD A PROBLEM WITH ONE WORD
11 HERE.

12 THE COURT: NO. THE JURY WILL NOT BE HERE AT 9:00
13 A.M. ON MONDAY. THE JURY GOES THROUGH AN INDOCTRINATION
14 PERIOD. THEY WON'T BE HERE UNTIL ABOUT 10:00 O'CLOCK.

15 MR. WADE: OKAY. THANK YOU, YOUR HONOR.

16 THE COURT: DON'T ASK ME ANY QUESTIONS WHILE
17 COUNSEL IS NOT IN THE ROOM. TAKE A BREAK.

18 (RECESS.)

19 THE COURT: ALL RIGHT. GOOD AFTERNOON AGAIN.
20 WHAT ARE WE DOING?

21 MR. WADE: I'VE BEEN ADVISED THAT I WILL BE READY
22 ON MONDAY MORNING.

23 THE COURT: ALL RIGHT.

24 MS. LARKINS: WE HAVE SWITCHED SIDES NOW, AND I
25 FEEL THAT I NEED A COUPLE WEEKS TO DO MOTIONS.

26 THE COURT: NO. THE PROBLEM IS THIS. WE HAD A
27 CLAIM OF PREJUDICE BY THE PLAINTIFF'S SIDE, BECAUSE THEY
28 SAID THEY WEREN'T AWARE OF THE FACT THAT YOU WERE GOING TO

1 REQUEST A JURY, EVEN THOUGH I KNOW YOU SAID YOU GAVE THEM A
2 PAPER SAYING YOU WERE. I KNOW. I UNDERSTAND THAT.

3 TO AVOID THE CLAIM THAT THEY WERE UNFAIRLY
4 PREJUDICED BECAUSE THEY DIDN'T KNOW, I WAS WILLING TO GIVE
5 THEM A COUPLE OF WEEKS. YOU CAN'T SAY THE SAME THING
6 BECAUSE YOU'RE THE ONE WHO PAID THE JURY FEES.

7 MS. LARKINS: I HAVE A DIFFERENT CLAIM THOUGH.
8 YOUR HONOR, AS I WAS SAYING, BEFORE YOU SAID THAT THERE
9 WOULD BE NO JURY TRIAL IF THERE ARE NO DAMAGES, AND
10 MR. ROMERO AND MR. WADE STOOD THERE SILENTLY, AND I
11 HONESTLY -- JUST TO BE SAFE I PAID THE JURY FEES. BUT I
12 REALLY THOUGHT THEY WERE ON NOT GOING TO ASK FOR DAMAGES.

13 THE COURT: OKAY, WAIT A MINUTE. HERE'S WHERE WE
14 ARE. THE PROBLEM IS THIS. YOU PAID THE JURY FEES. YOU'RE
15 SET UP FOR A JURY. YOU WANT DAMAGES. YOU'RE SET UP FOR
16 DAMAGES. THIS WHOLE THING IS GOING START MONDAY MORNING.
17 MONDAY MORNING I WILL SEE YOU HERE AT 9:30. 9:30.

18 MR. WADE: YOUR HONOR --

19 THE COURT: JURY SHOULD BE ON WILL CALL, NOT ON
20 SEND.

21 YES?

22 MR. WADE: I APOLOGIZE FOR INTERRUPTING. I
23 APOLOGIZE. MIGHT I PROPOSE THAT THIS COURT ORDER US TO A
24 SETTLEMENT CONFERENCE, AND MAYBE WE CAN HAVE A MEANINGFUL
25 DISCUSSION AT THAT TIME?

26 THE COURT: IT WOULD BE IMPOSSIBLE FOR ME AT 20
27 MINUTES AFTER 4:00 ON A FRIDAY AFTERNOON TO FIND A HOME FOR
28 YOU TO HAVE A SETTLEMENT DISCUSSION.

1 MR. WADE: MAYBE THAT COULD BE SOMETHING WE COULD
2 ADDRESS FIRST THING MONDAY MORNING.

3 THE COURT: YOU CAN TRY. BE READY TO GO TO TRIAL
4 MONDAY MORNING AT 9:30.

5 MS. LARKINS: THANK YOU, YOUR HONOR.

6 MR. WADE: THANK YOU, YOUR HONOR.

7 (PROCEEDINGS CONCLUDED.)

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