

January 8, 2018

**VIA E-MAIL & FEDERAL EXPRESS**

Charles J. Harder, Esq.  
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**Re: President Donald J. Trump**

Dear Mr. Harder:

I write as counsel to Henry Holt and Company, Inc. (“Henry Holt”) and Mr. Michael Wolff in response to your letter dated January 4, 2018, concerning your client, President Donald J. Trump. Without identifying a single false statement, your letter broadly challenges Mr. Wolff’s book titled *Fire and Fury: Inside the Trump White House* published Friday, and an excerpt from the book published in a January 3, 2018 *New York* magazine article, as containing “false/baseless statements” about President Trump that give rise to a host of legal claims. As a result, you demand that my clients cease publication of the book and “issue a full and complete retraction and apology.” My clients do not intend to cease publication, no such retraction will occur, and no apology is warranted.

As President Trump knows, Mr. Wolff was permitted extraordinary access to the Trump administration and campaign from May 2016 to this past October, and he conducted more than 200 interviews with President Trump, most members of his senior staff, and with many people they in turn talked to. These interviews served as the basis for the reporting in Mr. Wolff’s book. We have no reason to doubt – and your letter provides no reason to change this conclusion – that Mr. Wolff’s book is an accurate report on events of vital public importance. Mr. Trump is the President of the United States, with the “bully pulpit” at his disposal. To the extent he disputes any statement in the book, he has the largest platform in the world to challenge it. Generalized and abstract threats of libel do not provide any basis for President Trump’s demand that Henry Holt and Mr. Wolff withdraw the book from public discourse. Though your letter provides a basic summary of New York libel law, tellingly, it stops short of identifying a single statement in the book that is factually false or defamatory. Instead, the letter appears to be designed to silence legitimate criticism. This is the antithesis of an actionable libel claim.

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Your letter does not resolve this key omission when it argues that actual malice can be proven because the book “admits in the Introduction that it contains untrue statements.” It does no such thing. Instead, Mr. Wolff responsibly tells his readers his approach to confronting the well-established reality that many in this administration, most prominently the President, routinely traffic in verifiably false statements. Thus, Mr. Wolff explains how he attempted to reconcile conflicting accounts. Surely you are not contending that Mr. Wolff, in reporting on a falsehood told him by, e.g., a member of the administration, is therefore necessarily reporting that it is true.

To briefly address a few of the additional substantive claims identified in your letter, we note that you understandably cite to New York as the governing law, yet we were surprised to see that President Trump plans on asserting a claim for “false light invasion of privacy.” As you are no doubt aware, New York does not recognize such a cause of action. *Messenger ex rel. Messenger v. Gruner + Jahr Printing and Pub.*, 94 N.Y.2d 436, 448 (2000); *Hurwitz v. U.S.*, 884 F.2d 684, 685 (2d Cir. 1989). Not only is this claim meritless; it is non-existent. In any event, it is patently ridiculous to claim that the privacy of the *President of the United States* has been violated by a book reporting on his campaign and his actions in office.

Next, your letter focuses on alleged claims for tortious interference with contractual relations and inducement of breach of contract. Yet, as your client will no doubt appreciate, timing is everything when it comes to these claims. And there is no dispute that Mr. Bannon had already communicated with Mr. Wolff freely and voluntarily well before the “notice” you have provided. Mr. Bannon plainly needed no cajoling or inducement to speak candidly with Mr. Wolff. And an after-the-fact lawyer’s letter putting my clients “on notice” does not put the genie back in the bottle, much less subject Henry Holt or Mr. Wolff to liability. The law treats sources like Mr. Bannon as adults, and it is Mr. Bannon’s responsibility – not Henry Holt’s or Mr. Wolff’s – to honor any contractual obligations. Indeed, your attempt to use private contracts to act as a blanket restriction on members of the government speaking to the press is a perversion of contract law and a gross violation of the First Amendment. No court would support such an attempt to silence public servants and the press.

Nor are these the only clear infirmities with this threatened claim. For a tortious interference with contractual relations action to be sustained, President Trump must prove that Henry Holt and Mr. Wolff actively and intentionally procured the breach for the *sole* purpose of harming Mr. Trump, his family, or businesses. *Jacobs v. Continuum Health Partners, Inc.*, 7 A.D.3d 312, 313, 776 N.Y.S.2d 279, 280 (1st Dep’t 2004). This he cannot do. A reporter, like Mr. Wolff, “whose motive and conduct is intended to foster public awareness or debate cannot be found to have engaged in the wrongful or improper conduct required” to state such a claim. *See, e.g., Huggins v. Povitch*, No. 131164/94, 1996 WL 515498, at \*9 (N.Y. Sup. Ct. Apr. 19, 1996). Put simply, the book’s purpose is news reporting and nothing more.

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Lastly, the majority of your letter – indeed, seven full pages – is devoted to instructing Henry Holt and Mr. Wolff in meticulous detail about their obligations to preserve documents that relate in any way to the book, the article, President Trump, his family members, their businesses, and his Presidential campaign. While my clients do not adopt or subscribe to your description of their legal obligations, Henry Holt and Mr. Wolff will comply with any and all document preservation obligations that the law imposes upon them. At the same time, we must remind you that President Trump, in his personal and governmental capacity, must comply with the same legal obligations regarding himself, his family members, their businesses, the Trump campaign, and his administration, and must ensure all appropriate measures to preserve such documents are in place. This would include any and all documents pertaining to any of the matters about which the book reports. Should you pursue litigation against Henry Holt or Mr. Wolff, we are quite confident that documents related to the contents of the book in the possession of President Trump, his family members, his businesses, his campaign, and his administration will prove particularly relevant to our defense.

This letter is without waiver of any of Henry Holt's or Mr. Wolff's rights, remedies or defenses, all of which are expressly reserved.

Respectfully submitted,

Davis Wright Tremaine LLP



Elizabeth A. McNamara

cc: Stephen Rubin  
Michael Wolff  
Paul J. Sleven, Esq.