

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA CONSTAND

Plaintiff

v.

BRUCE CASTOR,

Defendant

:
:
:
:
:
:
:
:
:

CIVIL ACTION

NO. 2:15-cv-05799-ER

**PLAINTIFF'S MOTION TO MAINTAIN THE SEAL IMPOSED BY THE COURT IN
ITS ORDER AT ECF NO. 105**

Plaintiff prays this Honorable Court to continue in place the interim seal imposed by the the Court's Order of March 8, 2017 in so far as it relates to the Plaintiff's sensitive personal information and damages requested in the instant law suit. Plaintiff requests that the summary judgment motion, response thereto, any reply be filed under seal or in the alternative those portions designated as redacted in the Court's Order (ECF no. 105) concerning Plaintiff's sensitive personal information and damages requested in the instant law suit be filed in a separate document which would be filed under seal or for the Court to fashion such other remedy as the Court deems appropriate, and in support thereof incorporates herein the Memorandum of Law which is attached hereto.

Respectfully submitted,

s/ Bebe H. Kivitz

Bebe H. Kivitz, Esquire
JACOBS KIVITZ & DRAKE LLC
1525 Locust Street, 12th Floor
Philadelphia, PA 19102
(215) 732-2656
bkivitz@jacobs-kivitz-drake.com

s/ Dolores M. Troiani

Dolores M. Troiani, Esquire
TROIANI & GIBNEY LLP
1171 Lancaster Avenue, Suite 101
Berwyn, PA 19312
(610) 688-8400
dmt@tglawoffice.com

Dated: September 22, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREA CONSTAND	:	
Plaintiff	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 2:15-cv-05799-ER
	:	
BRUCE CASTOR,	:	
Defendant	:	

ORDER

AND NOW, this day of , 2017 upon
consideration of Plaintiff's Motion and any response thereto, it is hereby ORDERED and
DECREED that any summary judgment motion, response thereto, any reply be filed under seal.

AND IT IS SO ORDERED:

EDUARDO C. ROBRENO, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREA CONSTAND	:	
	:	
Plaintiff	:	
v.	:	Civil Action No. 2015-cv-05799-ER
	:	
BRUCE CASTOR	:	
	:	
Defendant	:	

PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION TO MAINTAIN
THE SEAL IMPOSED BY THE COURT IN ITS ORDER AT ECF NO. 105

Plaintiff by her undersigned counsel files this Memorandum of Law in support of her Motion to Maintain the Seal Imposed by the Court in its Order at ECF no. 105 and in support thereof states:

The issue before the Court is whether or not to unseal certain portions of Plaintiff’s deposition which were sealed as a result of Bill Cosby’s Motion to Intervene in Plaintiff’s Deposition (ECF no. 54) The information Plaintiff seeks to remain under seal has been found by this Court to be “ sensitive personal information” (ECF no. 105, ftnt. 1) and which had previously appeared in a pleading filed by Defendant which was stricken from the record by agreement of the parties.

In 2004, Plaintiff Andrea Constand alleged that she was drugged and sexually assaulted by Bill Cosby. At the time of the assault defendant herein, Bruce Castor was the District Attorney of Montgomery County. Castor declined to prosecute thus forcing Plaintiff to seek any recourse in a civil action. That action resolved in 2006. Sometime in July, 2015 then District Attorney, now Judge Risa Ferman, re-opened the criminal case. Prior to that in January, 2015 Castor decided to run for election as District Attorney. His political advisors told him that his

declination of the Cosby prosecution could be used to damage his image and that it was detrimental to him. (Exhibit A, Miles dep, N.T. p.20, 23) According to Castor's senior political advisor, Brian Miles, Castor's declination of the Cosby prosecution became the major issue in the campaign. (Exhibit A, Miles dep, N.T. p.24) Castor's opponent in the D.A.'s race was Kevin Steele who was the First Assistant District Attorney for the intervening years from the time Castor left the D.A.'s Office until Steele ran for office. Miles testified that in the Spring of 2015, he and Castor discussed a "defense" to a political attack regarding the declination and at that time Castor and Miles discussed Steele's ability to re-open the case while he was First Assistant. Castor never told Miles that he had given Cosby immunity which would prevent Steele from prosecuting. ((Exhibit A, Miles dep, N.T. p. 29-30)

Almost ten years after Plaintiff's lawsuit against Cosby was filed, a simple comic routine went viral on social media, prompting many women to come forward and publicly accuse Cosby of conduct similar to that alleged in Constand's original complaint. Castor, who was then in private practice and no longer the District Attorney, seized the opportunity to appear on multiple media outlets, both televised and on radio, and to granted multiple print interviews explaining why he did not to prosecute, and what he thought about the new accusations. In 2014, prior to his deciding to run for District Attorney, Castor made statements such as, "he thought Constand was credible and Cosby evasive in his interview with prosecutors" (CNN, November 19, 2014), and, "he felt strongly that Constand was telling the truth" (CNN, November 19, 2014).As the other women continued to reveal their stories, Castor went on CNN and on other media outlets to express his views. He was interviewed on television, and spoke to the Inquirer, Bloomberg, regional papers, and other media outlets. On July 7, 2015 defendant told MSNBC, in an internationally televised interview that he was seeking to be re-elected as District Attorney and if

re-elected he would open an investigation to determine if Cosby had perjured himself in his deposition. He stated, "I can tear that deposition apart, and anything that I can prove is a material lie would still be subject to a perjury investigation and prosecution." At the time he made the statement, Castor knew or should have known that the deposition did not take place in a location in Montgomery County and therefore, even if elected, he would not have jurisdiction to make such a review.

The election was to be held in November 2015. Defendant learned in the late summer of 2015 that Kevin Steele's predecessor, now Judge Risa Vetri Ferman, had reopened the Cosby criminal investigation. Despite having earlier sung paeans to Plaintiff's credibility, Defendant's decision not to prosecute in 2005 now became a campaign issue for him, as his opponent began to criticize Defendant for not having prosecuted the case in 2005. Defendant's campaign advisors specifically told Castor that the 2005 Cosby decision was the issue that would harm him the most in the race. Thus, Defendant changed course. Instead of stressing Plaintiff's credibility, he now needed to challenge it, in order to justify his previous decision to not prosecute Cosby.

Castor appeared on numerous local and international media outlets, claiming that the statute of limitations had run on Plaintiff's complaint because he considered the allegations to be a misdemeanor. In September, 2015 Castor learned that the Montgomery County District Attorney's Office had reopened the case because plaintiff's allegations against Cosby are a felony, which has a longer statute of limitations than a misdemeanor.

On September 23, 2015, the Associated Press, an internationally syndicated news outlet reported:

Castor, the former district attorney, in announcing he would not bring charges against Cosby in 2005, said both parties could be portrayed in "a less than flattering light."

Last week, he said Constand had lodged more serious sexual-assault allegations in the civil lawsuit than she had divulged to police. He recalled investigating the complaint as a misdemeanor case. Yet the lawsuit included allegations of digital penetration, a potential felony, he said.

"If the allegations in the civil complaint were contained with that detail in her statement to the police, we might have been able to make a case out of it," said Castor, a county commissioner who's running for another term as district attorney as Ferman gives up the post to run for judge.

On September 13, 2015, the Philadelphia Inquirer printed an article which included the statement that Ms. Constand's statements to the police differed from those in her civil suit, which is why Castor only considered misdemeanor charges and erroneously stated that the two year statute of limitations had expired. On September 14, 2015 in reference to the article, Castor tweeted, "Inky: Cosby victim told police much different than she told court in her lawsuit. First I saw that in a story. Troublesome for the good guys. Not good." The tweet was posted on Castor's website.

Unable to dissuade prosecutors by casting aspersions upon Ms. Constand's credibility, Castor took a different tactic, claiming in a September 24, 2015 interview that he had signed off on a non-prosecution agreement to prevent Cosby from citing his Fifth Amendment rights not to incriminate himself during the civil litigation. Upon request by the news media and then District Attorney Ferman to produce the "written declaration", Castor stated that he was referring to the press release which he issued in 2005 when he declined prosecution. On September 25, 2015, when it appeared to Defendant that there really might be a Cosby prosecution, based on the 2005 Constand allegation, he wrote to then District Attorney Ferman, claiming—for the first time—that he had entered into a "non-prosecution agreement" back in 2005. He claimed in the attached emails sent to Judge Ferman, that he spoke to Plaintiff's counsel and they both approved the agreement. (See Exhibit B) By this time his story morphed into one that his Press Release in

2005 had constituted a binding written agreement. Without alerting Judge Ferman by copying her on the emails, Defendant was forwarding his emails and correspondence to District Attorney Ferman claiming the existence of a “non-prosecution agreement” to Cosby’s then criminal counsel, Brian McMonagle

The Cosby criminal defense team called Mr. Castor as a witness in Cosby’s February 2, 2016 Habeas Corpus proceedings, challenging any arrest in light of Defendant’s so-called “non-prosecution agreement.” In that testimony, Defendant did everything he could to convince the public that his defamatory remarks uttered in the summer of 2015 were true; in addition to testifying that Plaintiff’s statements to detectives were inconsistent and that he as the “Sovereign” had promised not to prosecute, he went off script to offer other comments gratuitously, volunteering that Plaintiff’s mother had committed a felony by illegally wiretapping Cosby and his representatives; and that Plaintiff and her mother tried to extort money from Cosby. (Exhibit C, 2/2/16, N.T. p. 54-58) Judge Ferman testified at her deposition, she had researched this issue in 2005, when she was First Assistant District Attorney, and concluded that the recordings of Mr. Cosby and his representatives were done legally in Toronto, and she had shared that result with Defendant in 2005. In a January 3, 2016 email to Cosby’s criminal defense attorney, Castor revisits the extortion claim. (Exhibit D) In 2005, Cosby had given a statement to police in which he acknowledged that all plaintiff and her mother had requested was an apology, so that even Cosby did not pursue Castor’s unsubstantiated extortion claim At the conclusion of the February, 2016 proceedings, the Honorable Steven T. O’Neill found as a “credibility determination” that no such non-prosecution existed. In later rulings the “illegal” wiretaps and deposition testimony were deemed admissible in the criminal proceedings and even Cosby did not advance Castor’s extortion theory.

Defendant's motive was clear. He wanted to convince the public that the defamatory statements he uttered in the summer of 2015 were "true." If there were to be an arrest, he hoped to sabotage any trial by his testimony about Plaintiff and bolster his own credibility. Moreover, if Defendant could convince the public that there couldn't be any prosecution at all, he wouldn't risk seeing the possibility of a trial and conviction. In addition, as is evident from his surreptitious emails forwarding his correspondence to Judge Ferman to Mr. McMonagle, as well as, his January email to McMonagle, Castor intended to aid and assist Cosby in his criminal case

Discovery and Confidentiality

This action was filed on October 26, 2016. As early as the Summer and Fall of 2016, the parties were involved in discussions concerning the confidentiality of materials which would be produced, such as Plaintiff's medical and treatment records, her tax and employment records, and her deposition testimony discussing these same topics. These were all discovery materials, which Plaintiff had a right to expect would not be disclosed to the media or to Cosby.

On November 2, 2016, in regard to Plaintiff's production of personal documents, the Court's order made clear that "Plaintiff shall produce the authorizations, subject to a confidentiality agreement that the parties shall enter into, which would limit disclosure of the documents to counsel and the parties. Counsel and Defendant are ordered not to disclose the documents to anyone else under penalty of sanctions." (ECF No. 82).

The parties entered into a Confidentiality Agreement, which provides in part:

1. The Confidential Information includes Plaintiff's medical and other treatment Records, her tax records and employment records for the time period of 2004 through the end of this litigation, including those records already provided, which Defendant intends to obtain directly from the various providers via Plaintiff's signed authorizations for the release of her records as well as subpoena pursuant to the Federal Rules of Civil Procedure.

2. The Confidential Information:

- a. Shall be used only for the purposes of this litigation involving these parties and may not be used for any purpose outside the reasonable conduct of this case; and,
- b. Shall not be disclosed to anyone (including William H. Cosby, Jr. and his counsel) other than the Plaintiff and Defendants, their respective agents or employees of their attorneys, their witnesses, insurance company representatives, experts, as defined by the Federal Rules of Civil Procedure and whether or not designated as an expert for trial, the court reporter at depositions, any hearings or trial in this action, and the Court;
- c. Shall not be appended to pleadings or reproduced in pleadings;
- d. If Plaintiff is questioned concerning these topics and/or if any of the documents are used at her deposition, and Plaintiff chooses to redact those portions of the transcript prior to Cosby's review of the deposition transcript, Plaintiff shall submit the deposition transcript to the Court, identifying those portions of the transcript that Plaintiff wishes to redact for the Court's review prior to submission of the redacted transcript to Cosby. Defendant agrees not to provide Cosby with a copy of Plaintiff's deposition transcript, and instead Plaintiff agrees to assume the responsibility for supplying the deposition to the Court in accordance with the Court's Orders and Memorandum of October 3 and November 22, 2016. (ECF Doc. 72, 73 and 85).

The Court entered its order of March 8, 2017, approving redactions to Plaintiff's deposition transcript, so that Plaintiff's confidential personal information would not be shared with Cosby, even though the remainder of her testimony was shared. (ECF No. 105).

Plaintiff requests that all personal information subject to the Confidentiality Agreement, and further evidenced by the approved redactions, remain confidential. This would include the documents themselves, testimony and motions referencing the documents or the personal subject matter contained in them, and expert reports. As a practical matter, the documents, the entire deposition transcript and the expert reports should remain under seal, so there is no possibility that the confidential materials will be released.

This Court has previously analyzed the issue of when discovery materials should remain under seal, and the need to balance any public interest with any legitimate basis for confidentiality. Constand v. Cosby, 112 F. Supp. 3d 308 (2015).

In Constand v. Cosby, the court noted:

"It is well-settled that there exists, in both criminal and civil cases, a common law public right of access to judicial proceedings and records." Goldstein v. Forbes (In re Cendant Corp.), 260 F.3d 183, 192 (3d Cir.2001). The Third Circuit has stated that "[t]he public's exercise of its common law access right in civil cases promotes public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court." Littlejohn v. BIC Corp., 851 F.2d 673, 678 (3d Cir.1988).

However, "[t]he public's common law right to access judicial records 'is not absolute.'" United States v. Wecht, 484 F.3d 194, 208 (3d Cir.2007) (quoting Littlejohn, 851 F.2d at 678). Rather, when the right attaches, "there is a 'strong presumption' that the public may view the records." *Id.* "In general, the common law right attaches to any document that is considered a 'judicial record,' which 'depends on whether [the] document has been filed with the court, or otherwise somehow incorporated or integrated into a district court's adjudicatory proceedings.'" *Id.* (alteration in original) (quoting Goldstein, 260 F.3d at 192).

Discovery, on the other hand, has traditionally been conducted by the parties in private, outside of the public's view. See Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984) ("[P]retrial depositions ... are conducted in private as a matter of modern practice."). Thus, "[w]hen discovery materials are filed with the trial court, the private nature of discovery comes into conflict with the public's right to access judicial records." Wecht, 484 F.3d at 209. The Third Circuit has resolved this conflict by holding that although "there is a presumptive [common law] right to public access to all material filed in connection with nondiscovery pretrial motions," there is "no such right as to discovery motions and their supporting documents." Leucadia, Inc. v. Applied Extrusion Techs., Inc., 998 F.2d 157, 165 (3d Cir.1993). Without such a presumption, the party seeking to prevent public access to discovery material — Defendant in this case — must show good cause under Federal Rule of Civil Procedure 26(c) to keep the material away from the public eye.

Rule 26(c) allows protective relief for "good cause" shown, "on matters relating to a deposition," and "to protect a party from annoyance, embarrassment, or endure burden or expense." The factors the Court must consider include:

- (1) whether disclosure will violate any privacy interests;

- (2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- (3) whether disclosure of the information will cause a party embarrassment;
- (4) whether confidentiality is being sought over information important to public health and safety;
- (5) whether the sharing of information among litigants will promote fairness and efficiency;
- (6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- (7) whether the case involves issues important to the public.

In Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157 (3d Cir. 1993), the United States Court of Appeals for the Third Circuit held that “there is a presumptive right to public access to all material filed in connection with non-discovery pretrial motions, . . . *but no such right as to discovery motions and their supporting documents*,” 998 F.2d at 165 (emphasis added). The court noted that “we cannot overlook the Supreme Court’s statements in Seattle Times v. [Rhinehart], 467 U.S. 20 (1984)] . . . that ‘pretrial deposition and interrogatories are not part of public components of a civil trial.’” Id. at 164. The court stated that “a holding that discovery motions and supporting materials are subject to a presumptive right of access would make raw discovery, ordinarily inaccessible to the public, accessible merely because it had to be included in motions precipitated by inadequate discovery responses or overly aggressive discovery demands. This would be a holding based more on expediency than principle.” Id. at 165.

See also, Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1312 (11th Cir. 2001) (the better rule is that material filed with discovery motions is not subject to the common law right of access); United States v. Andeo, 44 F.3d 141, 145 (2d Cir. 1995) (mere filing of a document with the court not sufficient to render that a judicial document subject to the right of public access).

Here, the evidence concerning Plaintiff's medical and psychological treatment financial information, including the deposition testimony, and discovery responses referencing same have been maintained as confidential both by the confidentiality agreement of the parties and court order. The unique factor here, not present in the original Cosby/Constand analysis, as to whether the seal should be lifted, is that Cosby now remains under arrest, subject to a criminal trial.

Sometime in the spring of 2018, there will be a criminal retrial. Cosby's previous civil counsel is now one of his criminal counsel. This lawsuit should not serve as a backdoor mechanism for Cosby and his counsel to obtain documents they would otherwise not be able to access in the criminal case.

The Rule 26 factors should be balanced in favor of maintaining Plaintiff's very personal information under seal. Plaintiff is not a public person. Plaintiff does not hold public office nor is she a celebrity. She lived a very quiet and private life in Canada for ten years. She is a private person who finds herself engaged in litigation based on Defendant's efforts to defame her by statements to the media and the phenomenon of social media. Her private testimony and records concerning her medical and emotional care as well as her financial status should remain private. Releasing it would not only violate her privacy rights, it would cause her embarrassment.

Further, this Court has already ruled that the "redactions involve Plaintiff's sensitive personal information" (ECF no. 105, Ftnt. 1) There is no great public interest in this personal information. Nor does the public stand to benefit in any way from the release of such information. Ordinarily, Defendants could file a summary judgment motion, and file the confidential documents under seal. In this case, however, given Castor's history of attempting to pass information to Cosby's criminal defense team, and convey confidential information to Cosby's counsel via publicly filing discovery responses, the entire summary judgment motion

should be filed under seal. Defendant cannot be relied upon to remove references to the confidential material from his summary judgment memorandum. As is evident from Castor's emails and testimony, his motivation appears to be to assist Cosby in his criminal case.

The confidential material in this case is contained in interrogatory responses, document productions, expert reports, and deposition testimony. Plaintiff has a legitimate interest in information relating to her medical treatment, counseling, history, and other personal information remaining private. All of the factors favor plaintiff. Disclosure will violate her privacy interests and cause embarrassment because the information sought to be disclosed has already been determined to be sensitive personal information. There is a questions as to whether the information is being sought for a legitimate purpose or for an improper purpose of transmitting the information to Plaintiff's assailant for his use in the criminal trial. This motive may be surmised not only by the cited emails, but also the Court's Order of June 2, (ECF no. 119). As a result of a letter written to the Court by Plaintiff's counsel and upon agreement of the parties, a pleading filed by defendant (ECF No. 118) has been withdrawn and stricken because it contained information redacted by this Court. The information over which confidentiality is being sought is not important to the public health and safety and although the case itself may involve issues important to the public, i.e. the trouncing of innocent person's reputation to further a political objections. The information has been shared among litigants but its publication to the general public will not promote fairness and efficiency and the party benefiting from the order is a private citizen.

Wherefore, Plaintiff requests that the summary judgment motion, response thereto, any reply be filed under seal or in the alternative those portions designated as redacted in the Court's Order (ECF no. 105) concerning Plaintiff's sensitive personal information and damages

requested in the instant law suit be filed in a separate document which would be filed under seal.

Respectfully submitted,

s/ Bebe H. Kivitz

Bebe H. Kivitz, Esquire
JACOBS KIVITZ & DRAKE LLC
1525 Locust Street, 12th Floor
Philadelphia, PA 19102
(215) 732-2656
bkivitz@jacobs-kivitz-drake.com

s/ Dolores M. Troiani

Dolores M. Troiani, Esquire
TROIANI & GIBNEY LLP
1171 Lancaster Avenue, Suite 101
Berwyn, PA 19312
(610) 688-8400
dmt@tglawoffice.com

Dated: September 22, 2017

Exhibit “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREA CONSTAND :
vs. : CIVIL ACTION
: NO. 2015-CV-05799-ER
BRUCE CASTOR : JURY TRIAL DEMANDED

ORAL DEPOSITION OF BRIAN P. MILES, taken
before Susan K. MacSorley, Registered Professional
Reporter and Notary Public, held at Troiani & Gibney,
L.L.P., 1171 Lancaster Avenue, Berwyn, Pennsylvania
19312, on Monday, July 24, 2017, at 11:02 A.M.

Susan K. MacSorley, R.P.R.
211 Kleyona Avenue
Phoenixville, Pennsylvania 19460
(610) 917-0221

E X H I B I T S

NUMBER	MARKED
Miles 1 July 27, 2015, polling information	37
Miles 2 October 26, 2015, polling information	37

3

1 COUNSEL APPEARED AS FOLLOWS:

TROIANI & GIBNEY, L.L.P.
BY: DOLORES M. TROIANI, ESQUIRE
1171 Lancaster Avenue
Berwyn, Pennsylvania 19312
For Plaintiff

(VIA PHONE:) JACOBS, KIVITZ & DRAKE, L.L.C.
BY: BEBE H. KIVITZ, ESQUIRE
12th Floor
1525 Locust Street
Philadelphia, Pennsylvania 19102
For Plaintiff

KANE, PUGH, KNOELL, TROY & KRAMER, L.L.P.
BY: JUSTIN A. BAYER, ESQUIRE
510 Swede Street
Norristown, Pennsylvania 19401
For Defendant

ROBERT ADSHEAD, ESQUIRE
Suite 200
1494 Old York Road
Abington, Pennsylvania 19001
For this witness, Brian Miles

I N D E X

WITNESS

BRIAN P. MILES

By Ms. Troiani

PAGE

4

(It is hereby stipulated and agreed by
2 and amongst counsel for the respective parties that
3 signing, sealing, and certification are waived and that
4 all objections, except as to the form of the question,
5 are reserved to the time of trial.)

BRIAN MILES, having been duly sworn, was
8 examined as follows:

9 BY MS. TROIANI:

Q. We've just been introduced. I'm Dolores
11 Troiani. I represent Andrea Constand. On the phone is
12 Bebe Kivitz, who is my co-counsel in this matter.

Have you ever had your deposition taken
14 before?

A. Yes.

Q. So you're familiar with some of the
17 rules, and I'm sure you've gone over them with your
18 counsel?

A. Yes.

Q. But just to be clear, I'm going to say a
21 few -- give you a few instructions, one that everyone
22 always forgets, which is we'll try not to speak over
23 one another. So please don't answer until I'm done my
24 question, and I'll try not to ask another question
25 until you're done your answer. Okay?

4

17

1 Q. Was there any other Republican candidate
2 who had been mentioned for D.A. at that point?
3 A. Not specifically. Just speculation.
4 Q. So when would you say that the decision
5 was made that he was actually going to run for D.A.?
6 A. Not until Risa Ferman announced that she
7 wouldn't run for re-election for District Attorney.
8 Q. Do you have any idea when that was?
9 A. It was the first week of January.
10 Q. So the first week of January Risa
11 announced that she was going to run for judge instead?
12 A. Correct.
13 Q. Did anyone else come forward at that
14 point in the Republican party indicating they had
15 interest in the D.A.'s Office?
16 A. Nothing formal.
17 Q. Wasn't Steele a Republican also?
18 A. Had not been for several years.
19 Q. Had you ever worked with him?
20 A. Not directly.
21 Q. Did you know him?
22 A. I did.
23 Q. So when Risa announced she was not going
24 to run for D.A., what was the next thing that happened
25 in Bruce Castor's campaign?

18

1 A. He announced the same day that he would
2 run for District Attorney.
3 Q. When you say, "He announced," was there a
4 press release or something?
5 A. I don't know if there was a release. I
6 know he spoke to the press.
7 Q. Were you aware that he was speaking to
8 the press about Bill Cosby in this time period?
9 A. Not that I recall.
10 Q. Did you ever see him on television
11 discussing Bill Cosby?
12 A. At some point, yes.
13 Q. Do you remember when that was?
14 A. I don't.
15 Q. Did you have any discussions with him
16 about whether or not he should be talking about the
17 case?
18 MR. BAYER: Objection to the form.
19 THE WITNESS: At some point. Yes.
20 BY MS. TROIANI:
21 Q. When was that?
22 A. Several weeks before the 2015 general
23 election.
24 Q. So he announces in January. So now you
25 have to put together a campaign team; is that correct?

19

1 A. Yes.
2 Q. Whose job was it to do that?
3 A. I guess mine.
4 Q. Who did you put together?
5 A. Tom Stoner to act as the Manager and
6 Donald Raymond to act as our political consultant,
7 design our mail, et cetera.
8 Q. Both of them are paid?
9 A. That's correct.
10 Q. And tell me Don Raymond's role.
11 A. He's a professional political consultant;
12 so he designs mail pieces, television commercials, and
13 offers general strategy, interprets polling data. That
14 kind of stuff.
15 Q. Whose idea was it to start polling?
16 A. My recollection is it was Tom Stoner.
17 Q. Had you done that in other campaigns of
18 Castor's?
19 A. Yes.
20 Q. Which campaigns?
21 A. All them that I recall.
22 Q. Did you poll the issue of his declining
23 to prosecute Bill Cosby?
24 A. No.
25 Q. And why not?

20

1 A. In which campaign?
2 Q. Was it discussed ever before?
3 A. Well, no. That's why I'm asking.
4 Q. Okay. All right. So we're talking about
5 the 2015 D.A.'s race.
6 A. No, we didn't. We didn't poll it.
7 Q. Why not?
8 A. I didn't need a poll to tell me that it
9 was a damaging issue.
10 Q. So in the e-mail that was sent to you by
11 Mr. Castor's attorneys, they asked you if there had
12 been a poll, and you said, "We never polled the Cosby
13 question. We discussed it and decided that a poll
14 would only show us what we already knew, that the issue
15 could be used to damage Bruce's image."
16 MR. ADSHEAD: What are you reading from,
17 Dolores? Can you tell us?
18 MS. TROIANI: I'm sorry. This is the
19 emails. I'll hand them to you. It's been marked D-54.
20 I assume that you have that.
21 MR. ADSHEAD: Okay. So it's D-54 in the
22 record already. It's an email dated June 14, 2017.
23 It's from Kathleen Clem to Mr. Miles; right?
24 MS. TROIANI: Right.
25 MR. ADSHEAD: Okay.

21

1 BY MS. TROIANI:

2 Q. Do you remember that email?

3 A. I do.

4 Q. So in that email in response to a
5 question by Mr. Castor's attorneys, you said that "We
6 discussed this issue." Who did you discuss it with?

7 A. Tom Stoner and Don Raymond.

8 Q. How often did you meet with them during
9 the campaign?

10 A. We tried to meet every week for lunch,
11 and I saw Tom pretty regularly.

12 Q. Why is that?

13 A. I would go down during my lunch hour
14 usually and have lunch at the campaign office several
15 days a week.

16 Q. Do you remember when the first discussion
17 of Cosby was?

18 A. Not specifically.

19 Q. Was it before Stoner came on or after?

20 A. It was after.

21 Q. He believes that he came on sometime
22 around July. Is that your recollection?

23 A. That's my recollection that he came on
24 full time sometime in July.

25 Q. Did he ever participate by phone in any

22

1 of your discussions with Don Raymond and yourself?

2 A. We had some phone conferences. Yes.

3 Q. Do you remember that Mr. Stoner was in
4 Illinois at some point?

5 A. Yes. He was working on summaries up
6 there, and we were waiting for him to finish to come
7 and start for us.

8 Q. So in terms of a political campaign,
9 starting this campaign in July for a November race was
10 not -- was acceptable? Or was that enough time?

11 A. Yes. Bruce didn't have a primary
12 opponent; so there was no need to mount a primary
13 campaign.

14 Q. Now, earlier you had said that you felt
15 that there was an issue with the party. But am I to
16 understand now that the party did not oppose him?

17 A. They did not successfully recruit a
18 candidate against him. That's correct.

19 Q. So the issue was they couldn't get anyone
20 to run against him?

21 A. That's correct.

22 Q. So again I'm going to try to get to the
23 point of where you can first recollect a discussion
24 about Cosby being a liability to his campaign. Was
25 that while Stoner was still in Illinois, or was it

23

1 after?

2 A. That was while he was still in Illinois.

3 I should clarify that. Discussion with
4 who?

5 Q. With anyone.

6 A. Yeah, that was while Tom was still in
7 Illinois.

8 Q. Did you have that discussion about Cosby
9 with Bruce Castor at any point?

10 A. At some point.

11 Q. Do you remember when that was?

12 A. I do not.

13 Q. Was that before you talked to Stoner and
14 Don about it?

15 A. I don't remember. I think so.

16 Q. Am I correct you had some private
17 conversations with Castor that -- just between the two
18 of you?

19 A. Yes.

20 Q. And in any of those private
21 conversations, did you tell him that you thought his
22 declination of the Cosby prosecution would be
23 detrimental?

24 A. Yes.

25 Q. Was there anything else in his background

24

1 that would be detrimental in this campaign?

2 MR. BAYER: Objection to the form.

3 MR. ADSHEAD: Bruce's?

4 MS. TROIANI: Bruce's.

5 MR. BAYER: Just note my objection.

6 THE WITNESS: I'm sure there was.

7 BY MR. TROIANI:

8 Q. Do you recall discussing anything else?

9 A. Not specifically.

10 Q. Would you consider the issue of his
11 declining to prosecute Bill Cosby the major problem he
12 would face in this campaign?

13 A. That was not my anticipation.

14 Q. Did it become that major issue?

15 A. Yes.

16 Q. When you talked to Bruce Castor initially
17 about the Cosby case, what was said by you, and what
18 was said by him as best you can remember?

19 A. When?

20 MR. ADSHEAD: You talking the first
21 conversation that he ever had?

22 MS. TROIANI: Right.

23 BY MS. TROIANI:

24 Q. The first time?

25 MR. ADSHEAD: If you can remember.

29

1 instituted?

2 A. I don't recall that. I recall asking the
3 question of him, and he said, "Maybe," something along
4 those lines. It was a discussion as to whether or not
5 that was a possible defense to a political attack on
6 this particular issue.

7 Q. Okay. I think I lost you a little bit
8 there.

9 A. Okay.

10 Q. All right. So why don't we try to
11 clarify that a little bit. I asked you if Castor had
12 mentioned the statute of limitations, and you then said
13 -- I'm not sure.

14 A. Okay. So my recollection is that I
15 asked, "Couldn't Kevin have prosecuted him at some
16 point in the last eight years?"

17 Q. All right.

18 A. And Bruce said -- my recollection is that
19 there was some discussion back and forth. I'm not a
20 lawyer.

21 Q. Right.

22 A. So in simplified terms what we came away
23 from the table with is I'm not sure.

24 Q. Okay. So again in that discussion he
25 didn't say, "No, Kevin couldn't prosecute him because I

30

1 gave him immunity?"

2 A. No. That was not the discussion.

3 Q. Okay. And he never said, "Oh, Kevin
4 could prosecute him today because the statute of
5 limitations hasn't run?"

6 A. That was not the discussion. Usually it
7 centered on him having not been in the prosecutor's
8 office for almost eight years at that point. He didn't
9 know what evidence they had and what they didn't have.

10 Q. Okay. So what, if anything, did the two
11 of you decide to do in case Kevin followed through on
12 what you had heard?

13 A. There were no decisions made at that
14 time.

15 Q. Was there any discussion about that same
16 topic between you and Tom Stoner and Don Raymond?

17 A. Not until Kevin began running his
18 campaign on the Cosby issue.

19 Q. When was that? Do you know?

20 A. September maybe.

21 Q. Did there ever come a point in time where
22 Bruce told you that he had heard that Risa was
23 re-opening the investigation?

24 A. No. Not to my knowledge.

25 Q. Did you ever advise Bruce Castor not to

31

1 give interviews or talk about it or go on television

2 about Cosby?

3 A. Yes.

4 Q. When was that?

5 A. The final two weeks of the campaign after
6 the civil suit was filed.

7 Q. Were you in agreement that he was -- that
8 it was acceptable for him to go on television and talk
9 about the Cosby case?

10 MR. BAYER: Objection to the form.

11 THE WITNESS: I don't decide what's
12 acceptable for Bruce.

13 BY MS. TROIANI:

14 Q. Okay. Did you express an opinion as a
15 political consultant?

16 A. Yes.

17 Q. And what did you tell him?

18 A. I told him from a political standpoint I
19 thought that there was nothing to gain from him being
20 on TV.

21 Q. And it's true he had more name
22 recognition than Kevin Steele?

23 A. Yes.

24 Q. At any point in time did you read any
25 articles that quoted Bruce Castor about the Cosby case?

32

1 A. Yes.

2 Q. Do you remember when you first started
3 reading that?

4 A. No.

5 Q. Did you ever call him up after reading
6 one of those articles and say, "Hey, maybe you should
7 keep your mouth shut"?

8 A. No.

9 Q. Did you ever call him up after reading
10 one of those articles and say, "Oh, that's a good
11 article"?

12 A. No.

13 Q. Okay. So at some point -- am I correct
14 that I get the impression that Bruce did his own thing
15 in these campaigns? He was the final decision maker?

16 A. Yes.

17 Q. Other than yourself was there anyone who
18 advised him about what they -- that person believed was
19 best for the campaign?

20 A. I don't know.

21 Q. Would you consider yourself to be his
22 only confidant in the campaign?

23 A. No.

24 Q. Who was it who arranged the speaking
25 engagements for him?

Exhibit “B”



From: Bruce Castor [REDACTED]
Sent: Friday, September 25, 2015 3:42 PM
To: Ferman, Risa
Cc: Cullen, Sharon
Subject: Fwd: Cosby Speculation
Attachments: Cosbypr rev.doc; ATT00001.htm

I did not realize it was a Holiday when I sent the below on September 23, 2015. In case you don't get emails from me. I will ask Sharon to print all this out and hand deliver it to you. I am emailing now because your letter seeks this information with some urgency and I am not in my county office.

The attached Press Release is the written determination that we would not prosecute Cosby. That was what the lawyers for the plaintiff wanted and I agreed. The reason I agreed and the plaintiff's lawyers wanted it in writing was so that Cosby could not take the 5th Amendment to avoid being deposed or testifying. A sound strategy to employ. That meant to all involved, including Cosby's lawyer at the time, Mr. Phillips, that what Cosby said in the civil litigation could not be used against him in a criminal prosecution for the event we had him under investigation for in early 2005. I signed the press release for precisely this reason, at the request of the Plaintiff's counsel, and with the acquiescence of Cosby's counsel, with full and complete intent to bind the Commonwealth that anything Cosby said in the civil case could not be used against him, thereby forcing him to be deposed and perhaps testify in a civil trial without him having the ability to "take the 5th." I decided to create the best possible environment for the Plaintiff to prevail and be compensated. By signing my name as District Attorney and issuing the attached, I was "signing off" on the Commonwealth not being able to use anything Cosby said in the civil case against him in a criminal prosecution, because I was stating the Commonwealth will not bring a case against Cosby for this incident based on the then-available evidence in order to help the Plaintiff prevail in her civil action. Evidently, that strategy worked.

The attached, which was on letterhead and signed by me as District Attorney, the concept approved by the Plaintiff's lawyers was a "written declaration" from the Attorney for the Commonwealth there would be no prosecution based on anything Cosby *said* in the civil action. Naturally, if a prosecution could be made out without using what Cosby said, or anything derived from what Cosby said, I believed then and continue to believe that a prosecution is not precluded. It is this statement to which Peggy refers in her story. I thought you had a copy since I had sent it to you two days ago before I talked to her.

Bruce L. Castor, Jr.
Commissioner
Montgomery County, PA.

Begin forwarded message:

From: Bruce Castor [REDACTED]
Subject: Cosby Speculation
Date: September 23, 2015 at 1:30:22 PM EDT
To: Ferman Risa Vetri [REDACTED]

September 23, 2015

Dear Risa,

I certainly know better than to believe what I read in the newspaper, and I have witnessed first hand your legal acumen. So you almost certainly know this already. I'm writing to you just in case you might have forgotten what we did with Cosby back in 2005. Attached is my opinion from then.

Once we decided that the chances of prevailing in a criminal case were too remote to make an arrest, I concluded that the best way to achieve justice was to create an atmosphere where Andrea would have the best chance of prevailing in a civil suit against Cosby. With the agreement of Wally Phillips and Andrea's lawyers, I wrote the attached as the ONLY comment I would make while the civil case was pending. Again, with the agreement of the defense lawyer and Andrea's lawyers, I intentionally and specifically bound the Commonwealth that there would be no state prosecution of Cosby in order to remove from him the ability to claim his Fifth Amendment protection against self-incrimination, thus forcing him to sit for a deposition under oath. Wally was speaking for Cosby's side at the time, but he was in contact with Cosby's civil lawyers who did not deal with me directly that I recall. I only discovered today that Wally had died. But those lawyers representing Andrea civilly, whose names I did not remember until I saw them in recent media accounts, were part of this agreement because they wanted to make Cosby testify. I believed at the time that they thought making him testify would solidify their civil case, but the only way to do that was for us (the Commonwealth) to promise not to prosecute him. So in effect, that is what I did. I never made an important decision without discussing it with you during your tenure as First Assistant.

Knowing the above, I can see no possibility that Cosby's deposition could be used in a state criminal case, because I would have to testify as to what happened, and the deposition would be subject to suppression. I cannot believe any state court judge would allow that deposition into evidence, nor anything derived therefrom. In fact, that was the specific intent of all parties involved including the Commonwealth and the plaintiff's lawyers. Knowing this, unless you can make out a case without that deposition and without anything the deposition led you to, I think Cosby would have an action against the County and maybe even against you personally. That is why I have publicly suggested looking for lies in the deposition as an alternative now that we have learned of all these other victims we did not know about at the time we had to make the go, no-go decision on arresting Cosby. I publicly suggested that the DA in California might try a common plan scheme or design case using Andrea's case as part of the *res gestae* in their case. Because I knew Montgomery County could not prosecute Cosby for a sexual offense, if the deposition was needed to do so. But I thought the DA in California might have a shot because I would not have the power to bind another state's prosecutor.

Some of this, of course, is my opinion and using Cosby's deposition in the CA case, might be a stretch, but one thing is fact: the Commonwealth, defense and civil plaintiff's lawyers were all in agreement that the attached decision from me stripped Cosby of his Fifth Amendment privilege against self-incrimination, forcing him to be deposed. That led to Cosby paying Andrea a lot of money, a large percentage of which went to her lawyers on a contingent fee basis. In my opinion, those facts will render Cosby's deposition inadmissible in any prosecution in Montgomery County for the incident that occurred in January 2004 in Cheltenham Township.

Bruce

Bruce L. Castor, Jr.
Commissioner
Montgomery County, PA



From: Bruce Castor [REDACTED]
Sent: Friday, September 25, 2015 3:53 PM
To: Ferman, Risa
Cc: Cullen, Sharon
Subject: Cosby

One other thing. I don't know if this is important or not, but when I served on the Judicial Reform Commission with Wally Phillips, he told me that in the civil settlement agreement in the Constead/Cosby case it was ³baked in² that there would be no prosecution for that incident. ³Baked-in² was his term. I don't know what he meant by that which is what led me to try to call him on Wednesday only to find out he had died.

Anyway, there might be a writing someplace that alludes to the parties intent at the time of the settlement. I was not privy to that and it could be nonsense. I never agreed we would not prosecute Cosby. I only agreed along with the plaintiff's lawyers and Phillips that anything he said would not be used to advance a prosecution in order to force his testimony in the civil proceeding.

Like I said, might be nothing, but I thought I'd better mention it.

Bruce

Bruce L. Castor, Jr.
Commissioner
Montgomery County, PA.

Exhibit “C”

IN THE COURT OF COMMON PLEAS
IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA:

vs.

: NO. MD-3156-15

WILLIAM H. COSBY, JR.

PETITION FOR WRIT OF HABEAS CORPUS/MOTION TO
DISQUALIFY MONTGOMERY COUNTY DISTRICT ATTORNEY'S
OFFICE

Courtroom A
Tuesday, February 2, 2016
Commencing at 9:45 a.m.

Virginia M. Womelsdorf, RPR
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

BEFORE: THE HONORABLE STEVEN T. O'NEILL, JUDGE

COUNSEL APPEARED AS FOLLOWS:

KEVIN R. STEELE, ESQUIRE
District Attorney
M. STEWART RYAN, ESQUIRE
KRISTEN M. GIBBONS-FEDEN, ESQUIRE
Assistant District Attorneys
for the Commonwealth

BRIAN J. MCMONAGLE, ESQUIRE
CHRISTOPHER TAYBACK, ESQUIRE
MONIQUE PRESSLEY, ESQUIRE
JOSEPH SARLES, ESQUIRE
for the Defendant

I N D E XDEFENDANT'S EVIDENCE

<u>Witness</u>	<u>VDire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
BRUCE L. CASTOR, JR.		12	111	239	

- - -

E X H I B I T SCOMMONWEALTH'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
C-1	ABC News "New Developments in Cosby Fondling Investigation"	130	
C-2	Pottstown Mercury article "Cosby meets with authorities over sex assault allegations"	138	
C-3	Bloomberg.com article dated November 26th, 2014 "Why Did Bruce Castor Pass on a Chance to Lock Up Bill Cosby?"	147	
C-4	Southeast Missourian article dated January 27, 2005 "Prosecutor calls case against Bill Cosby weak"	152	
C-5	Daily Mail article published November 18, 2014, "I wanted to arrest Bill Cosby"	158	
C-6	Washington Post article dated November 19, 2014 "Prosecutor who declined to charge Bill Cosby in 2005: 'I didn't say that he didn't commit the crime'"	165	
C-7	CNN video	169	
C-8	WNPV audio	173	

BRUCE L. CASTOR, JR. - DIRECT

time that he believed were efforts to obtain
incriminating recordings of Mr. Cosby.

He told me that there were two
types of telephone records. And the explanation for
the first set of records were a series of continuing
banter back and forth between two people that he said
were friends.

And that -- later he said that
if we investigated and recovered phone records and
possibly wiretaps that were conducted by non-law
enforcement personnel, that we would conclude from
that that Ms. Constand and, I believe, her mother were
involved in a -- an effort to convince Mr. Cosby to
pay them money in order that he would not go to the
police or that she would not go to the police and
report him for the incident that allegedly occurred in
Cheltenham in January of 2004.

Q All right. So let me take them kind of one at a
time. With respect to -- did you actually go about
trying to confirm whether what Mr. Phillips told you
was true?

A Yes. Mr. Phillips is -- there was -- in my mind,
there was no chance at all that Mr. Phillips was lying
to me about the existence of records. I had known the

BRUCE L. CASTOR, JR. - DIRECT

man for 20 years. He was a former prosecutor of a generation before me, a man that did high level corruption cases and important government work. He's not going to lie to the District Attorney.

So I was pretty well convinced that if I directed the detectives to go look for those records, that they would be found. What I would conclude from that -- I did not necessarily agree that Mr. Phillips would know the conclusions I would draw, but I did think the records must have existed and I did tell the police to go find them.

Q And did they?

A They did, yes.

Q And so were you able to confirm with respect to what Mr. Phillips told you that, in fact, there was evidence of extensive phone conversations that occurred between Ms. Constand and Mr. Cosby after a time period in which he said she was sexually assaulted?

A Yes. And I remember it was in -- I remember thinking it was an inordinate number of contacts. And sometimes, in sex crimes prosecutions especially, we will -- we'll generate the contact using a wiretap to try to gather evidence. But there was no police

BRUCE L. CASTOR, JR. - DIRECT

involvement in that, so this was not a
police-initiated investigation over the telephone.

I also believe that we were able
to confirm face-to-face meetings between the two after
the alleged incident.

And I believe that I was made
aware from the detectives of at least two wire
interceptions, what we would call here in Pennsylvania
hard wires where the people on the telephone are --
hard wires that would require approval of the Superior
Court upon application of the District Attorney or the
Attorney General, and that the information contained
in those wiretaps could be construed as incriminating
if I wanted to try to make them parts of evidence.

The reason I remember this so
clearly is I had a great deal of experience with the
Wiretap Act here in Pennsylvania because I held the
position in the office that approved and applied for
the wiretaps and I was one of the people who helped
revise the act when it needed to be updated, so I had
a great knowledge of that.

And what concerned me was if we
were going to be able to use anything from these
wiretaps, what law was going to be applied because my

BRUCE L. CASTOR, JR. - DIRECT

recollection was the wiretaps were over the telephone. They were not conducted by police officers and they were not -- neither party was in Pennsylvania at the time the interceptions occurred.

Some states allow only -- allow one-party consent. Some require two-party consent. Pennsylvania is a two-party consent state, and I was trying to figure what law a court here would apply.

And I ultimately determined that there were cases in Pennsylvania that said that the wiretap law is to be construed strictly against the Commonwealth because of its inherent importance and reliability.

And I thought that the Court in Pennsylvania would use Pennsylvania law and, therefore, if no law enforcement was involved in intercepting those calls, that meant that the Wiretap Act was not complied with and the people that had committed the -- had done those would potentially have engaged in felonious behavior under Pennsylvania law.

And certainly if we used them, we would be violating the statute that says that you can't use illegally intercepted wire communications when you -- and make them public without yourself

BRUCE L. CASTOR, JR. - DIRECT

committing a felony.

Q So just to summarize then, as I understand it, Mr. Phillips gave you the information, you followed up on it and you confirmed the fact that the complainant in the case had extensive phone contact with the defendant after a time period in which there was an alleged assault. And you were concerned about the fact that maybe either she or her mother had committed a felony?

A That was what I was concerned about.

Q Okay.

A Yes.

Q All right. As a result of all that, did you also take steps at that point in time to look at other allegations as it related to Mr. Cosby?

A Yes. The publicity then, as now, was worldwide, and anyone who had access to television or newspapers or radio media would hear about it. And some people came forward and said to -- contacted us and said that Mr. Cosby had done similar things to them that he is alleged to have done to Ms. Constand.

Q And as the District Attorney of Montgomery County, did you endeavor to investigate those allegations?

Exhibit “D”

REDACTED

From: Bruce Castor [REDACTED]
Subject: Of Interest
Date: January 3, 2016 at 10:20:19 AM EST
To: Brian McMonagle [REDACTED]

This is the press release I issued. I signed it and it was printed on DA's Office letterhead. Someplace that original still exists. I took an inordinate amount of time writing it and it should be read with a lawyer's eye. It was meant as a *final determination never to be revisited in order that the civil case could proceed without the 5th Amendment becoming an issue*. Notice the mention of "phone records." They were records of calls between the time of the incident and the

D00004

complaint to police detailing contacts between Cosby and the alleged victim and her mother, some of which were illegally recorded, as I recall. It was during this time the women were attempting to "extort" money from Cosby in exchange for *not* going to the police. Notice, too, the statements from other persons which is a reference to whatever other past "victims" we knew of, none of whom had gone to the police or given statements and were all decades old.

Lastly (for now, anyway), the news media, I believe at Kevin's urging, has clapped onto the phrase that I would "reconsider" my decision as indicative that the decision was NOT final, laying the ground work for saying that Cosby's deposition testimony is admissible. However, that phrase is taken way out of context. In its correct context, I am saying that I would reconsider my decision not to expound on my reasoning further in public and possibly affect jurors in any civil case. I specifically told Wally Phillips that this was a final decision and that Cosby could not exercise his 5th Amendment rights. Pat O'Conner confirmed to me that he knew this and thus permitted Cosby to testify. I expect that Pat would say he trusted me and that was why he did not advise Cosby to invoke the 5th Amendment.

When I saw the media repeatedly pointing to the phrase saying I would reconsider my decision, I was dumbfounded because I knew the decision not to charge was meant to be final. So I dug out the attached only to see that the phrase was taken out of context. Of all the important lines in that PR, to have that one pulled out can only mean the DA's Office is holding out the hope it can use it to suggest the decision not to charge was not a final decision.

I am appalled at what is happening. I checked and found out that Steele's "Bruce messed up on Cosby" campaign began in October, 2015. That means it was *after* I had written to Risa reminding her what the plan was from back then which I wrote before I could have known Cosby would become a campaign issue. An important fact: in August and September 2015 BOTH our polling and Kevin's polling was showing me with a 10+ point lead. I believe Kevin threw the Cosby "Hail Mary" pass and connected with the Gloria Allred PR machine in full swing and a lazy press not reading what I wrote, nor caring about the truth.

Bruce L. Castor, Jr.

REDACTED

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREA CONSTAND	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	NO: 2:15-CV-05799-ER
BRUCE CASTOR	:	
Defendant	:	

CERTIFICATE OF SERVICE

We, Dolores M. Troiani, Esquire and Bebe H. Kivitz, Esquire hereby certify that on September 22, 2017, we caused a true and correct copy of the foregoing Plaintiff's Motion to Maintain the Seal Imposed by the Court in its Order at ECF No. 105 and accompanying Memorandum of Law via the court's electronic filing system and/or United States First Class Mail as follows:

Robert Connell Pugh, Esquire
Justin A. Bayer, Esquire
Kane, Pugh, Knoell & Driscoll, LLP
510 Swede Street
Norristown, PA 19401
rcpugh@kanepugh.com
jbayer@kanepugh.com
Attorneys for Defendant, Bruce Castor

/s/ Dolores M. Troiani
Dolores M. Troiani, Esquire
Troiani & Gibney, LPP
1171 Lancaster Avenue, Suite 101
Berwyn, PA 19312

/s/ Bebe H. Kivitz
Bebe H. Kivitz, Esquire
Jacobs Kivitz & Drake LLC
1525 Locust Street, 12th Floor
Philadelphia, PA 19102

Attorneys for Plaintiff

Dated: September 22, 2017