

Litigator of the Week: How Gibson Dunn Helped Hit Print on Mary Trump's Best-Seller

A Gibson team led by Theodore Boutrous Jr., Matthew McGill, and Anne Champion fought off an attempt by Mary Trump's uncle Robert Trump to invoke a confidentiality provision in a decades-old settlement agreement involving various family members to block publication of her now-best seller.

By Ross Todd
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Judging from the current list of best sellers list at Amazon.com, it's likely that more than a few Lit Daily readers out there have a copy of Mary Trump's "Too Much and Never Enough: How My Family Created the World's Most Dangerous Man" sitting on the nightstand.

The fact that the president's niece's tell-all book made its way to readers this week as scheduled is thanks in large part to a team of litigators at Gibson, Dunn & Crutcher. The Gibson lawyers, led by **Theodore Boutrous Jr., Matthew McGill,** and **Anne Champion,** fought off an attempt by Mary Trump's uncle Robert Trump to invoke a confidentiality provision in a decades-old settlement agreement involving various family members to block publication of the book. Mary has been a firm client since 2018, coming to the firm after Boutrous took to Twitter to offer pro bono help to anyone being sued by President Donald Trump for exercising free speech rights under the First Amendment.

The Gibson team got a quick ruling from Surrogate's Court in Queens County—the forum of the earlier family litigation where Robert Trump's suit was originally filed—dismissing the suit for lack of jurisdiction. But Mary's uncle refiled in New York Supreme Court in Dutchess County on Friday, June 26, where Justice Hal Greenwald entered a temporary restraining order before the defense team could even file responsive briefs.

Alongside publisher Simon & Schuster, represented by counsel at **Davis Wright Tremaine,** Mary and the Gibson team appealed via a special procedure allowing ex parte TROs to be considered by a single justice of New York's Appellate Division. There, after hearing oral argument from McGill via Skype, Justice Alan Scheinkman lifted the TRO and suggested that the trial judge "reassess" the ruling once the briefs were filed. Champion led a team of associates that just two days after the TRO and one day after Scheinkman's ruling submitted a 59-page brief laying out the argument that barring publication would be an unconstitutional prior restraint on Mary Trump's free speech rights. The Gibson lawyers also argued that any confidentiality provision in the prior settlement didn't foreclose the possibility of discussing any Trump family relationships.

On July 13, Greenwald sided with Mary Trump and her publisher, ending with the quip: "Con. Law trumps Contracts."

Boutrous, McGill, and Champion gave Lit Daily a look behind the scenes at how the litigation surrounding the book unfolded.

Lit Daily: Who is your client and what was at stake?

Champion: We represent Mary Trump, the niece of the President, and what was at stake was nothing less than her ability to speak out about her family, including by publishing a book that deals with the question of her uncle's fitness for the presidency. Mary's story was not only deeply personal but intersected with core political speech protected by the First Amendment.



(Photo: Courtesy photo.)

Theodore J. Boutrous Jr., Matthew D. McGill, and Anne Champion of Gibson, Dunn & Crutcher

How did your team get involved?

Boutrous: During the 2016 presidential election, I publicly offered to represent pro bono anyone Donald Trump sued for exercising their First Amendment rights. Mary Trump first reached out to me in the summer of 2018 when she was concerned that her First Amendment rights might come under attack from President Trump and his siblings and we met in secret in Los Angeles. As she reveals in her book, at the time, Mary was acting as a confidential source for the New York Times and was concerned that the Trump family would discover this activity and try to silence her or otherwise retaliate. It was during this period that she also began to pursue writing a book, and Annie helped her find a literary agent. The Times published its blockbuster story on October 2, 2018, Trump Engaged in Suspect Tax Schemes as He Reaped Riches from His Father, exposing widespread tax fraud with respect to the Trump real estate empire, but at that time, the Trump family did not take any action against the Times or make an attempt to uncover the identities of the sources for the article, which won a Pulitzer prize.

The New York Times' efforts also exposed how Mary had been defrauded into entering the very Settlement Agreement that Robert Trump invoked here to attempt to silence Mary.

So when Robert Trump filed this case, we had the history with Mary and the knowledge of her story, but we had also just filed an amicus brief on behalf of PEN America in the [case involving John Bolton's book], and had other experience litigating prior restraints and NDAs. This allowed us to assemble a team that already had the necessary expertise in short order, including **Connor Sullivan, Russ Balikian** and **Nat Bach,** and many other associates who made key contributions.

How does this lawsuit compare with other battles you have had with the Trump Administration on freedom of speech and of the press?

Boutrous: This lawsuit is definitely part of a pattern. We have represented two reporters from whom the White House has revoked White House press credentials and prevailed both times: **Jim Acosta,** CNN's Chief White House Correspondent, and **Brian Karem,** the White House Correspondent

for Playboy. In contrast to those cases, which were defended by the Justice Department, the case against Mary was brought by a private lawyer, Charles Harder. But the cases are remarkably similar in the sense of the willingness to use specious legal arguments to silence critics, and the use of litigation for the purposes of exciting the base and raising money. During the Acosta case, the Trump campaign was literally sending out fundraising appeals based on the case while we were in the courtroom.

You represent news organizations and reporters but here you represented a news source turned book author—did that pose special issues or challenges?

Champion: The overriding principle is the same—protecting the free flow of information to the public—but when you represent individuals you are always conscious of how personal a win or a loss is. Here, we were literally advocating for Mary's right to speak for herself and tell her own life story, and to publish a book we knew she had worked on around the clock for months. Given the fast timetable of the litigation, we were very lucky that over two years of counseling Mary, we already had a strong sense of the facts and history here. That was crucial to being able to react quickly and with credibility.

How did the timing of this lawsuit, coming so close as it did to the planned publication date for your client's book, complicate the litigation?

Boutros: Any TRO to enjoin a book or silence someone is a First Amendment emergency. But this case was made even more dramatic, because it was filed so close to the publication date that copies were being printed and shipped. An injunction literally required stopping the printing presses. This increased the urgency significantly. An injunction here would not just have harmed the First Amendment freedoms of Mary and the public and squelched important information of public concern, it would have scuttled over a year's worth of work by Mary and carried with it enormous financial costs for Mary, the publisher, and others.

Who was representing the publisher and what was your working relationship like with Simon & Schuster's lawyers?

McGill: Simon & Schuster was represented by **Liz McNamara** and **Kate Bolger** of **Davis Wright Tremaine**—both very highly regarded First Amendment lawyers. They were fabulous. They had great papers, made compelling arguments in court and were completely on top of the procedures for our emergency appeal of the TRO, which was absolutely critical to our effort to get immediate appellate relief. They were just terrific partners throughout this process.

Robert Trump, your client's uncle, initially succeeding in obtaining a temporary restraining order against your client before she had the opportunity to file a brief in the trial court. How did that ruling complicate your effort to keep the book moving towards publication? How did you regroup after the TRO was entered?

McGill: The TRO came at noon on Tuesday. It was jarring. It commanded Simon & Schuster literally to stop the presses printing Mary's book. We knew we had strong arguments on appeal; a government order to stop the presses is about as clear an example of an impermissible prior restraint as one can imagine. But speed was absolutely critical, because if Simon & Schuster had to stop printing the book, that would have been tremendously costly and thrown off the publication schedule by weeks or more. We needed to get to the Appellate Division as fast as humanly possible, and with lots of help from Liz and Kate, we did. We filed in the Appellate Division within an hour of the TRO's issuance, and at 3:15 that same afternoon, we were set for a 4:00 p.m. hearing before Presiding Justice Scheinkman. Fortunately, at the hearing, we were able to persuade Justice Scheinkman to reconsider the TRO as to Mary, and Liz convinced him to vacate the TRO entirely as to Simon & Schuster. That kept printing presses running while we completed briefing on the preliminary injunction motion in the trial court.

What was your strategy for attacking the confidentiality provision in Mary's prior settlement agreement with the Trumps?

Champion: We started from first principles. What did the plain language of the contract mean? How was the meaning informed by the context? Robert Trump filed a heavily redacted version of the contract, which made the confidentiality provision seem paramount. One thing we did was file an unredacted version, and when viewed in context, it became much more clear that what the parties intended the confidentiality provision to protect were the financial details relating to the settlement. But the confidentiality provision contained broad language purporting to bar Mary from talking about her "relationships" with her aunts and uncles—this extraordinarily broad language gave both the trial and appellate justices pause. So we had to identify the relevant legal principles for limiting that overbroad language, which included the First Amendment, the reasonableness principles for restrictive covenants identified by Justice Scheinkman in his order limiting the TRO, and caselaw that says that New York courts will not interpret contracts to impose perpetual obligations unless they clearly state such an intention.

Besides the obvious—that your client was able to move forward with publication and to speak publicly about the book—what was important in this week's decision?

Boutros: Justice Greenwald's decision vacating the TRO against Mary and denying a preliminary injunction reaffirmed that prior restraints violate the First Amendment, which overrides contracts. The public demand for Mary's book speaks for itself. What she has to say is important and needs to be heard—and she is the only one who can and will deliver her message. I can't think of a better outcome than her freedom to speak and the public's freedom to hear what she has to say.

What kind of special challenges did the fast pace and high stakes pose during a pandemic?

McGill: The emergency nature of the litigation meant that we didn't have the luxury of scheduling hearings for the convenience of the litigators involved. Hearings were set and we just had to adapt. Turns out that 4:00 p.m. on June 30 was not the optimal time for our team for an appellate argument on 45 minutes notice. Ted was in the middle of another appellate argument. Annie was somewhere west of Columbus, careening down I-80 with her husband and boys en route to visit her parents in Iowa City. And it was my son's 10th birthday, and he had two friends coming over for a socially-distanced birthday party. But certainly, I was the most available of the three of us, so I grabbed a tie and frantically began to prepare. No sooner had I logged into the Skype hearing than I heard the first shrieks of delight from my son, who had just unleashed an apocalyptic Nerf gun battle with his buddies in the backyard. This went on for just about all of the 80-minute hearing. The record does not reveal whether Justice Scheinkman heard the racket.

Have you read the book, yet? If so, what did you take away from it? If not, what are you looking forward to about it?

Champion: (For the record, while I was listening from a car with two children in it, I did not notice the Nerf war raging in the background while Matt argued). And yes, I have read Mary's book and loved it. It's clear to me why this book is already a bestseller, on its fourteenth printing just days after it was officially published. Mary's message of how our families shape us is universal and explains something we've all been trying to figure out since 2016—how President Trump ascended to the Oval Office and why he is unfit to occupy it. It's a rare gift to be able to apply your field of scholarship so effectively and with such clarity to your own traumatic family history. I think she needs to write more books, the world needs her voice.

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