

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU, LTD., a Macau corporation, DOES I-X; and ROE CORPORATIONS I-X,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE DAVID BARKER,
DISTRICT JUDGE, DEPT. 18,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

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Case Number: 69802
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Clerk of Supreme Court

District Court Case Number
A627691-B

**SUPPLEMENTAL APPENDIX
TO PETITION FOR
REHEARING OF ORDER
DENYING WRIT OF
PROHIBITION OR
MANDAMUS RE ORDERS
DENYING MOTION TO
DISQUALIFY JUDGE
ELIZABETH GONZALEZ
WITHOUT A HEARING**

**VOLUME I OF I
(SA001-030)**

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the following document: **SUPPLEMENTAL APPENDIX TO PETITION FOR REHEARING OF ORDER DENYING WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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I further certify that pursuant to Nev. R. App. P. 25, that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the aforementioned document to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

Chief Judge David Barker
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

Courtesy Copy To:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
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DATED this 23rd day of May, 2016.

By: /s/ Fiona Ingalls

**SUPPLEMENTAL APPENDIX TO PETITION FOR REHEARING OF
ORDER DENYING WRIT OF PROHIBITION OR MANDAMUS RE
ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH
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TRAN

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

LAS VEGAS SANDS CORP., et al..

Petitioners

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DAVID B. BARKER, DISTRICT
JUDGE,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest

And related cases and parties

SUPREME CT. NO. 69802
District Court No. A627691

**TRANSCRIPT OF
ORAL ARGUMENT**

BEFORE THE EN BANC COURT
CHIEF JUSTICE HARDESTY PRESIDING

TUESDAY, APRIL 5, 2016

APPEARANCES:

FOR THE PETITIONERS: ALAN M. DERSHOWITZ, ESQ.

FOR THE REAL PARTY : TODD L. BICE, ESQ.
IN INTEREST

TRANSCRIPTION BY:
FLORENCE HOYT

Proceedings recorded by audio recording, transcript produced
by transcription service.

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 5, 2016, 2:16 P.M.

2 (Court was called to order)

3 CHIEF JUSTICE HARDESTY: The next case on the
4 court's en banc calendar is Las Vegas Sands Corporation, et
5 al. versus Eighth Judicial District Court, and Steven Jacobs,
6 real party in interest, 69802.

7 Are ready to proceed?

8 MR. DERSHOWITZ: Thank you, Your Honor. And may it
9 please the Court.

10 I wanted to give you the uncontested facts in this
11 case. It was Judge Gonzalez who made initial contact with the
12 press. She approached a Las Vegas Review-Journal reporter and
13 asked him why he was in the courtroom. She then received
14 extrajudicial information which was prejudicial from the
15 reporter, quote, "The boss said I had to be here." Then she
16 voluntarily decided to recount this dialogue on the record to
17 a reporter from Time Magazine who was writing an article about
18 a litigant in a case before her, namely, Sheldon Adelson, and
19 about a subject, namely, his alleged purpose of Las Vegas
20 Review-Journal that the judge ruled may be relevant in the
21 case before her. She had to have at least reasonably
22 suspected that the article would deal critically with the
23 newspaper purchase. And yet she volunteered to give an on-
24 the-record quotation [unintelligible] the article, and you can
25 see it right there in the mockup, included "The boss said I

1 had to be here." The entire predictable result of the case --
2 of this -- of this encounter was that a major article with a
3 picture of a judge that featured her quotation and that gave
4 judicial imprimatur to the entire content of the article.

5 The article ended up being very flattering to the
6 judge and very unflattering to the litigant. And the judge
7 had to know that her interviews would give rise to a motion
8 for disqualification, and that's why she had witnesses to the
9 conversation. She said, I have witnesses to the conversations
10 for a reason. As the First Circuit said in a very similar
11 case, when a judge engages in, quote, "excessive conduct in
12 deliberately making the choice to make public comments to the
13 press regarding a pending case she invites trouble. Choosing
14 to speak to the press for an article that a litigant before
15 her in a pending case, which was the subject of the article
16 that was deemed relevant, is at least particularly unwise."

17 The judge in that case was one of the most
18 distinguished judges in the Federal Court, Judge Nancy
19 Gertner, now serving as a professor at Harvard Law School.
20 There's no criticism directed necessarily at the judge, but
21 the court ruled that the appearance of impropriety --

22 CHIEF JUSTICE HARDESTY: Mr. Dershowitz, my question
23 would be assuming for the sake of argument we agreed with you
24 on these various points, this was heard by the District Court
25 Chief Judge David Barker. He heard all this, he analyzed it,

1 and our standard of review I believe is abuse of discretion.
2 You can comment on that.

3 MR. DERSHOWITZ: It's not abuse of discretion. We
4 think there are two standards of review here. Number one,
5 there are uncontested facts here. And what we're asking for
6 is an application of the law, number one.

7 Number two, we didn't hear anything, literally
8 didn't hear anything. The statute says "hear," "heard." He
9 simply reviewed the affidavit of the judge and the pleadings
10 and said, I don't have to hear anything, and he ruled against
11 us by simply reiterating in his opinion what she had said in
12 her affidavit and accepting everything as true.

13 We then submitted briefs which argued that, no, we
14 don't think what she said was accurate, we want to have a
15 hearing. We introduced an affidavit from a distinguished
16 ethics expert and asked for an opportunity to be heard.

17 And so the two issues in this case are, number one,
18 whether the facts as they are undisputed -- you can't dispute
19 the Time Magazine article, and you can't dispute the quotes in
20 the article -- whether the facts are wrong give rise to the
21 basis for disqualification. And if not, whether the judge
22 applied the right procedure in not allowing us to have
23 counteraffidavits, not allowing us to have a hearing, not
24 allowing us to question witnesses. After all, there were
25 witnesses. She purposely created a situation where she had

1 witnesses to what she said.

2 Now, we don't know what was said back and forth.
3 There's a very important case in the Southern District of
4 Florida where the court says, conversations are not
5 monographs, they're not one way, they go both ways. And we
6 know things were said back and forth. We know she said things
7 to the journalists, because they're quoted. We know the
8 journalists said things to her, because they're quoted. We
9 don't know what else may have been said. And she received
10 extrajudicial information that she would not otherwise have
11 received, and then she transmitted that extrajudicial
12 information.

13 Now, the key point here is this. Anyone with
14 experience in the media knows that when a judge is interviewed
15 for an article everything else in the article is given an
16 judicial imprimatur, is given the [unintelligible]. It
17 doesn't matter that she said, I can't tell you whether I serve
18 M&Ms to Sheldon Adelson. That doesn't matter. The point is
19 she was quoted on the record in the article. And anyone with
20 experience in the media knows that media over and over again
21 tells people, we can't run this story unless we get a direct
22 quote from X.

23 In this case X was the judge. That story probably
24 never would have been run at all if they didn't have a direct
25 quotation from the judge. Which is why the courts have said

1 that, quote, "Even ambiguous comments may create the
2 appearance of an impropriety." Here the statements included
3 the recounting, "The boss said I had to be here." Nothing
4 ambiguous about that. And that's why also good judges know
5 that they should not say anything to the media that would
6 likely result in a motion to disqualify. And that's why Rule
7 2.10(A) provides that a judge shall not make any public
8 statement that might reasonably be expected to impair the
9 fairness of a matter pending. And this is especially so in
10 cases that the courts have described as highly idiosyncratic.
11 In the First Circuit case it said, "Newsworthy cases where
12 tensions may be high judges should be particularly cautious
13 about commenting on pending litigation." We can imagine no
14 case in this state that has been more contentious or more
15 closely watched by the media, more idiosyncratic than this
16 case. The judge herself commented over and over again that
17 this case has received massive media attention, which is why
18 she had to have special procedures when calls the jury. The
19 judge had to know that her voluntary interview with the media
20 would be regarded by the movant as the straw that broke the
21 camel's back, a final disqualifying act because prior motions
22 regarding her conduct have been made and denied. She should
23 have known that she was inviting trouble, that her decision to
24 initiate contact with the media was, quote, at the very least
25 particularly unwise in that it would give to a motion for

1 disqualification. She also had to have her known that her
2 interview risked violating Rule 2.10(A). A judge talking to
3 journalists also constitutes the taking of extrajudicial
4 sources. As the United States District Court in Florida said,
5 interviews are not merely one-way streets.

6 What are we asking this Court for? We're asking
7 this Court for an interpretation of Rule 2.10(A) that would
8 best serve the interests of justice. We're not asking for a
9 new rule, but for an interpretation consistent with practices
10 in the state of Nevada. And we're asking for a ruling of this
11 Court prohibiting a judge from making any public statement for
12 an article about a litigant in a case before her. That's a
13 simple rule, easy to apply. We believe that such a statement
14 poses too high a risk that might reasonably be expected to
15 impair fairness in a matter pending. There would be no
16 downside to such a blanket rule. Why? Because in practice it
17 would not impose a new rule. Today judges in Nevada don't
18 make public statements that they know would be included in an
19 article about litigants in cases pending before them. It's
20 just not done. And it's not done by good judges anywhere in
21 the United States.

22 JUSTICE SAITTA: Mr. Dershowitz, none of this was
23 tested, in your opinion, by the review of the chief judge?

24 MR. DERSHOWITZ: There's no review by the judge. He
25 simply ruled on what she said in her affidavit. He never

1 discussed any of these issues. All he did was say, if the
2 judge says she shouldn't be recused, there's a strong
3 presumption she couldn't be recused, if a judge issues an
4 affidavit, there's a strong presumption the affidavit should
5 be believed. He never considered the issue of what impact her
6 being quoted on the record had in giving imprimatur, in giving
7 [unintelligible] to an article and never considered whether or
8 not it would be best to have a rule prohibiting any such
9 thing.

10 Your Honors, consider the downside. What is the
11 downside of a rule that you would announce saying, simple
12 rule, if you're asked to comment about a case or a litigant
13 before you, the answer must be no comment? You can't try to
14 work around that rule by saying, well, let me tell you what
15 happened, I spoke to a journalist in the courtroom, I asked
16 the journalist, why are you here, and the journalist told me
17 something very interesting, he told me the boss sent me. You
18 know who the boss is. Obviously Time Magazine knew who the
19 boss was. What's the downside in prohibiting any judge from
20 making comments about a pending litigation or a pending
21 litigant?

22 CHIEF JUSTICE HARDESTY: You've got to apply the
23 procedural thing. Just say I walked out the door and a
24 reporter came up to me and said -- is talking about this case,
25 it happened yesterday, and said, what time is that argument on

1 the Las Vegas Sands case tomorrow or something. Can I have
2 any type of communication?

3 MR. DERSHOWITZ: First of all the best answer is
4 please talk to the court officers, please talk to the Clerk's
5 Office, they can give you all this information, if you want to
6 know about our pro bono activities, which is what Judge
7 Gonzalez said she was talking about, talk to the court clerks.
8 One thing, if they -- if you walk out of this courtroom and
9 somebody says to you, we're writing an article about this,
10 that --

11 CHIEF JUSTICE HARDESTY: Excuse me. I mean --

12 MR. DERSHOWITZ: Yes, sir.

13 CHIEF JUSTICE HARDESTY: -- what you're advocating
14 strips the court, the judge of all human conditions as you're
15 [unintelligible] the argument. I understand your argument is
16 for your client, because I'm listening to you. I'm listening
17 to what occurred and what has been occurring. A motion was
18 made to disqualify a judge. Pleadings were presented;
19 correct? You're going to disagree with that?

20 MR. DERSHOWITZ: We used an affidavit.

21 CHIEF JUSTICE HARDESTY: And then an affidavit was
22 submitted by the judge.

23 MR. DERSHOWITZ: Right.

24 CHIEF JUSTICE HARDESTY: In fact things are decided
25 quite often without a hearing you have a decision by the

1 court. So I understand your position, you should have had an
2 evidentiary hearing. But papers were submitted, a decision
3 was made. I'm listening to you talk. I want to say if we go
4 the route you're going, should we then require an affidavit by
5 the attorney that they're making it in good faith and
6 everything else, or should we look at potential rule of
7 evidence [unintelligible] make frivolous? That's the concern
8 I get when you make it so one sided.

9 MR. DERSHOWITZ: Well, Your Honor --

10 CHIEF JUSTICE HARDESTY: It disturbs me. It
11 disturbs me, the [unintelligible], and there is a
12 [unintelligible] unless you have specific comments as to the
13 pending litigation. And so the comment in terms of why you
14 should -- look around, said, okay, I've got a reporter and
15 it's a slow day, why are you here, because I've got nothing
16 motions on. I think that was the gist of what was said. And
17 the response was, "The boss sent me," not whoever the boss
18 was. And if I'd been [inaudible] the paper would say when it
19 was disclosed, who it was said -- to whom this comment was
20 made, which I don't have in front of me. I have some concerns
21 about the timing. But, nonetheless, the boss, that was the
22 end of it, except it was then published. But it did not talk
23 about the litigation.

24 MR. DERSHOWITZ: Your Honor --

25 CHIEF JUSTICE HARDESTY: [Inaudible] the only

1 comment, "the boss means," talk about the litigation, plus or
2 minus the litigation.

3 MR. DERSHOWITZ: With all due respect, Your Honor,
4 that super misunderstands how the media works.

5 CHIEF JUSTICE HARDESTY: Mr. Dershowitz, I'm saying
6 what I'm saying because I hear what you're saying.

7 MR. DERSHOWITZ: No, I understand.

8 CHIEF JUSTICE HARDESTY: And hopefully you've heard
9 what I said.

10 MR. DERSHOWITZ: I heard completely what you're
11 saying. Your Honor, I --

12 CHIEF JUSTICE HARDESTY: Because then you started to
13 categorize what I was thinking, and that I think is
14 inappropriate. [Inaudible].

15 MR. DERSHOWITZ: Your Honor, I'm not trying to
16 categorize what you're thinking. Believe me, I understand
17 what you're thinking, and I agree with the goal that you have
18 in mind. I think the best way to reach that goal is for this
19 Court to send a clear message, err on the side of never
20 talking to the press about an article that will be about a
21 litigant. That's a clear rule. If you set out that rule, you
22 won't need affidavits, you won't need hearings, because judges
23 will obey your court order. Right now --

24 CHIEF JUSTICE HARDESTY: -- made by the judge as to
25 any particular outcome or motion or activity in this -- in

1 the matter.

2 MR. DERSHOWITZ: That's not what the rule says.

3 CHIEF JUSTICE HARDESTY: That isn't my question,
4 though. Would you answer my question.

5 MR. DERSHOWITZ: Your Honor, I don't have to answer
6 the question. The question --

7 CHIEF JUSTICE HARDESTY: You don't have to answer
8 the question?

9 MR. DERSHOWITZ: The answer speaks for itself. It's
10 right there. You can read it as well as I can. She did not
11 talk about the pending litigation, but she gave an imprimatur
12 by being interviewed in an article about a litigant that
13 talked about the pending litigation. And I'm saying that's
14 should be prohibited by this Court.

15 CHIEF JUSTICE HARDESTY: You just stated that she
16 didn't talk about the litigation.

17 MR. DERSHOWITZ: Your Honor, you can not talk about
18 something -- let's assume you're interviewed about an article
19 that you know is going to be about this case and you know it's
20 going to be critical about this case and you start talking
21 about Sheldon Adelson, not about the case, but about Sheldon
22 Adelson. What you are doing, Your Honor, is contributing to
23 an atmosphere which produces an appearance of prejudice. And
24 it's so easy to stop that. All you have to do, Your Honor, is
25 to set out a rule that says clearly not only must you not talk

1 about the litigation, you must not talk about the litigant,
2 and you must not be interviewed for an article that's going to
3 be about the litigant and the litigation. Don't split hairs.
4 If you start splitting hairs, as the First Circuit said,
5 you're inviting trouble. And what I would ask -- a rhetorical
6 question, because I'm not going to ask you questions -- is
7 what's the downside, what's the harm, why should a judge ever
8 be interviewed by Time Magazine about a matter that she knows
9 and is [unintelligible], namely, the purchase of newspapers.
10 She's deemed it relevant. She threatened to debar a lawyer
11 because he said it wasn't relevant. What possible downside
12 could this Court imagine by having a clear rule that says, you
13 don't talk about the litigant, you don't talk about the
14 litigation, you don't give an interview for an article that
15 you know is going to be critical of a litigant before your
16 court, because the public might interpret that as showing
17 bias, showing that you put your own interests, getting a good
18 article, before the interests of the litigant, who is getting
19 a negative article.

20 So, Your Honor, I've used up my time, but I think
21 there's absolutely no downside in having such a rule, and it
22 will help the people and justice in the state of Nevada. And
23 other judges complied with that rule already today, and so
24 there's no downside in construing the statute to prohibit what
25 was done in this case. Thank you, Your Honors.

1 JUSTICE GIBBONS: Mr. Bice, I know you're going to
2 have a lot of issues you want to go into in response here. I
3 just have one question. Perhaps you could describe the nature
4 of the proceedings before Judge Barker. Mr. Dershowitz is
5 indicating they were abbreviated and he really didn't get to
6 delve into this with much significance. What's your
7 perspective on that?

8 MR. BICE: Good afternoon. May it please the Court.
9 And Todd Bice on behalf of Mr. Jacobs.

10 Justice Gibbons, Judge Barker followed the procedure
11 that this Court has applied historically, including in the
12 Rivera decision that this Court issued in 2009. And that is
13 that the motion was made -- and I'll get to some of the facts
14 that are contrary to what has been presented today. A motion
15 was made and notably this 210(a) argument that you're hearing
16 is you are hearing it for the first time, because it wasn't
17 presented in the motion to Judge Barker, it wasn't even argued
18 in their brief to this Court. You're hearing that for the
19 first time today.

20 What Judge Barker did is Judge Barker got the
21 motion, we filed our motion to strike because it was based
22 upon an affidavit under the statute, which was inappropriate,
23 because they then used the statute to then claim that the case
24 was frozen and that the District Court -- despite the District
25 Court had been presiding on this case for five-plus years,

1 that the case is frozen. And they did it again after the
2 reconsideration issue. And they have effectively frozen the
3 case again through this maneuvering. So what Judge Barker did
4 was the motion was filed, we filed our motion to strike, he
5 considered that motion, the judge had filed a declaration in
6 response to the declaration of Counsel that was submitted, and
7 he decided the motion. There was absolutely no disqualifying
8 facts ever alleged in that motion.

9 JUSTICE: Was there a hearing on this, or was it
10 done as a submitted --

11 MR. BICE: It was done as a submitted matter. But,
12 as this Court said in Rivera, that these sorts of motions
13 should be summarily disposed of if in fact there is no
14 disqualification -- basis for disqualification set forth on
15 the face of the motion. And that, by the way, Judge Barker
16 didn't even treat it as that way, but he certainly could have,
17 and in my opinion should have, because it was frivolous on its
18 face.

19 JUSTICE DOUGLAS: Mr. Bice --

20 MR. BICE: Yes.

21 JUSTICE DOUGLAS: -- was a hearing requested in
22 this, and would it have been a better practice to allow them
23 to at least request and the court can grant or deny a hearing
24 [inaudible]?

25 MR. BICE: Justice Douglas, the answer to that is

1 no. Well, let me qualify. I believe that they did request --
2 in their reconsideration they requested a, quote, "oral
3 hearing," all right. But the answer, Justice Douglas, is
4 would it be better practice; no. And it wouldn't be. Because
5 this case exemplifies why it wouldn't be better practice.
6 Because then you have the litigants who have an agenda of
7 delay and obstruction to use this as a tool to accomplish
8 those ends. And that is exactly what they have done, and that
9 is exactly what they intended it to do. And it has been
10 successful. Just like all the other bad conduct, unethical
11 conduct that has transpired in this case that the District
12 Judge has found and that you have sustained findings on were
13 successful, because this case is now on -- it's nearly six
14 years old, and there has been no trial. And you know why that
15 has happened? It has happened because this litigant -- we
16 have a litigant with unlimited resources.

17 So in their brief they say to you that the public's
18 confidence of the fairness of the judicial process is at issue
19 in this case. And they're right. On that point I will agree
20 with them. That is exactly what is at issue in this case.
21 Because we have a litigant that is so belligerent and will
22 make any argument and will engage in conduct that has been
23 outlined in multiple findings by the District Court to
24 obstruct the search for the truth. And that is all that has
25 been going on.

1 And this argument about this article I find so
2 amusing, because, interestingly, this article wasn't the basis
3 for their motion for disqualification on the District Court
4 proceedings. If it was, they would have first been required
5 to file a motion in response to this article. Their motion
6 wasn't in response to this article. They in fact, my
7 recollection is -- and I wish I'd had the time, because I'm
8 really only hearing this for the first time, because it's not
9 in their briefs. I believe they sought affirmative relief
10 from the District Court after this article issued. I'll have
11 to go back and double check the record, but I'm pretty sure
12 they did.

13 JUSTICE SAITTA: Mr. Bice, I have a simple question.

14 MR. BICE: Yes.

15 JUSTICE SAITTA: The rule regarding judicial
16 comments --

17 MR. BICE: Yes.

18 JUSTICE SAITTA: -- says that no judge shall comment
19 on a pending or impending case.

20 MR. BICE: Yes.

21 JUSTICE SAITTA: Does that in your mind -- strike
22 that. Does that in your legal analysis include commentary
23 regarding litigants to a pending or impending case?

24 MR. BICE: No. What the case -- what the case --
25 what the rule says -- it's Rule 210, and [unintelligible] is

1 that a judge shall not make public statements that might
2 reasonably be expected to affect the outcome or impair the
3 fairness of a matter pending or impending in any court or make
4 any non-public statement that might substantially interfere
5 with a fair trial or hearing. That's sub (a), all right.
6 [Unintelligible], Justice Saitta. The issue here is in fact
7 the judge pointed out and all the articles pointed out when
8 the judge was asked about this particular or the litigants
9 involved the judge declined any comment. That's exactly what
10 the judge is supposed to do. And, by the way, sub (e) of our
11 Rule 210 says, subject to the requirements of paragraph (a) a
12 judge may respond directly [unintelligible] to allegations in
13 the media or elsewhere concerning the judge's conduct in a
14 matter. And that, by the way, I think is somewhat relevant,
15 as all of you will certainly recall, when questions were --
16 surfaced over some allegation that surfaced in a newspaper
17 article about a federal investigation members of this Court
18 responded to those allegations. There's nothing inappropriate
19 whatsoever about what the District Judge did in this case in
20 response.

21 And let's be clear about who it is that is
22 [unintelligible] this media coverage. This litigant has been
23 engaged in a campaign to smear my client for years. And the
24 reason is that he needs to try and discredit my client on the
25 claims that he has made and the federal investigations, three

1 of them, that were launched as a result, federal
2 investigations which, by the way, in his most recent
3 deposition which Mr. Adelson tried to get this Court to halt
4 he won't stand behind many of his public pronouncements about
5 how there would be no fire under the smoke that Mr. Jacobs was
6 blowing and how he would [unintelligible] a million to one.
7 So anybody could win a billion dollars but up a million
8 dollars on Mr. Jacobs's allegations. Mr. Adelson now says he
9 won't stand behind those statements anymore after he also
10 testified in front of a District Court at the jurisdictional
11 hearing how the Department of Justice was going to exonerate
12 him in the very near future. That was over a year ago.

13 CHIEF JUSTICE HARDESTY: Mr. Bice --

14 MR. BICE: My point --

15 CHIEF JUSTICE HARDESTY: -- we're getting far afield
16 from the issue that's in front of us. I'd like to focus on
17 the sole question, that is, whether or not this Court should
18 entertain the writ and, if so, what order should enter as a
19 result. Your description of discovery responses and a whole
20 bunch of other stuff is really far afield. And while I
21 appreciate the advocacy, I think we should focus on the issue.
22 So let me pose my question.

23 MR. BICE: All right, Justice Hardesty.

24 CHIEF JUSTICE HARDESTY: Paragraph 16 of the judge's
25 statement says -- and this is in reference to a reporter's

1 inquiry from the Time --

2 MR. BICE: Yes.

3 CHIEF JUSTICE HARDESTY: -- to interview the judge.
4 She says, "Since this did not deal with a case-specific issue,
5 I returned his call, told him I could not discuss any litigant
6 or case, and answered his questions about my background, my
7 view of the public nature of proceedings, and the long history
8 of reporters from the R-J being present in my courtroom.
9 During the telephonic interview my judicial executive
10 assistant, Dan Kutinac, the court public information officer,
11 Mary Ann Price, and court staff counsel Andre Moses were
12 present."

13 MR. BICE: Yes.

14 CHIEF JUSTICE HARDESTY: "When Mr. Sanburn asked
15 questions about Mr. Adelson I advised him I could not answer
16 and discontinued the interview."

17 Now, there's at least an acknowledgement on the part
18 of the judge that she has engaged in an interview with a
19 reporter, the interview of which was precipitated as a result
20 of her conversation with the reporter in the courtroom on the
21 subject matter. Doesn't this give rise to a disqualification
22 motion at least a hearing in front of a District Court judge
23 where -- Judge Barker in this case, Chief Judge Barker --
24 where the parties can fully examine the identified witnesses,
25 the judge in question about what the contents of the

1 conversation was? Now, from my former practice if they
2 brought in the reporter the newspaper would probably tell him,
3 assert the privilege and don't respond. But that aside, there
4 does appear to at least be a potential contest on the question
5 of what was discussed and what was the [unintelligible]
6 information that led up to that.

7 My concern is this. When dealing with claims of
8 disqualification against the judiciary the test is whether or
9 not the judge's behavior creates an appearance of impropriety.
10 And so it is important for a transparent judiciary that this
11 be fairly vetted and tested. Did Judge Barker abuse his
12 discretion in not conducting a hearing over exactly what the
13 conversations took place, and should he have made findings
14 concerning that issue?

15 MR. BICE: The answer to your question is no. In
16 fact, Judge Barker did exactly what he should have done on
17 this matter. And, Justice Hardesty, the reason for that is
18 very simple. Accepting even the statement in the article as
19 absolutely true, which is -- we cite the Monsanto decision
20 from the Alabama Supreme Court which chronicles a lot of
21 different cases, both in Federal Appellate Courts and State
22 Appellate Courts on this issue, probably most comprehensive in
23 terms of the number of the caselaw addressing it. And what
24 the court there pointed out is, even accepting that statement
25 in the article as true, there's nothing on the face of that

1 that could give rise to a claim for disqualification, because
2 the judge specifically said, if you're asking me about a
3 particular case or a particular litigant, I'm not going to
4 answer any questions about that. That was the end of it.

5 And think about the consequences of the rule they
6 are advocating and the question that you just posed. This
7 will become the excuse du jour of every litigant who is now
8 not getting their way in the District Court, either by
9 argument or trickery in this particular case, to sabotage the
10 District Court proceedings. Because now I'll just allege that
11 there's bias, I'll make an allegation, I'll submit a
12 declaration, and now I'm entitled to a hearing, I'm entitled
13 to examine court staff, I'm entitled to examine the judge, and
14 I'm entitled to bring the judicial machinery to a standstill
15 so that I might try and smear the very person that is supposed
16 to be deciding the case. And that is exactly what has been going
17 on in this case.

18 CHIEF JUSTICE HARDESTY: I acknowledge that that's a
19 legitimate concern, but it begins with a judge who themselves
20 engages in a communication that at least on the surface
21 appeared to be prohibited. And the judge can prevent this if
22 they just don't talk to reporters.

23 MR. BICE: Well, Justice Hardesty, that's true.
24 Except the rules specifically allow a judge to respond to a
25 reporter's inquiry, number one. And number two, the judge

1 here didn't say anything that could be viewed as a violation
2 of the rule. Which is exactly Judge Barker's point, is on the
3 face of their own allegations, accepting those allegations as
4 true, there is nothing there. And that being the case, you're
5 not entitled to try and derail the District Court proceedings,
6 which this litigant has been doing for years. This litigant
7 had the audacity to call the District Court, Judge Barker.
8 They didn't -- they sought to avoid this disqualification
9 motion. They have been seeking a reassignment of this case
10 for -- I have lost track of how many years they have been at
11 this, trying to derail this case because they do not want a
12 public trial and a public airing of what they did and what was
13 really going on in Macau. And that is the problem here. They
14 are not allowed to now try and gin up news media coverage on
15 their own and smear people in the process, just like they
16 smeared Mr. Jacobs. And, Justice Hardesty, that's why I
17 brought this point up about Mr. Adelson's own comments. I
18 think they are highly pertinent to the conduct of this
19 litigant and what brings us to where we are at today. They
20 have brought this -- they have tried to gin this up to create
21 the grounds for disqualification themselves and then turn
22 around and say, well, now, because we were out maligning
23 litigants, we want to now accuse the District Court of some
24 sort of bias because the District Court responded to an
25 inquiry from the media. And that inquiry was limited to

1 general handling her background and general handling of cases.
2 And when a specific case was raised the judge said, I can't
3 comment on that. Which is exactly what the judge should have
4 done. And that's exact what she did, too.

5 So, no, I think Judge Barker handled this absolutely
6 correctly. On the face of their pleading there was no basis
7 for any form of evidentiary hearing of any sort; because, even
8 accepting the allegations that they claim as truthful about
9 what was in the article would not give rise to
10 disqualification. And that's why under the abuse of
11 discretion standard he did not abuse his discretion in his
12 handling of this matter.

13 And I'm running out of time. I'd ask the Court for
14 another minute to just make one additional point about this
15 matter. Members of the Court, this case is going to be six
16 years old in very short order. There has been no trial. This
17 litigant has bogged this case down again through deception, a
18 finding of the District Court that the judiciary was deceived
19 by this litigant, and trickery and false claims of privilege.
20 And I understand that those are harsh words, Members of the
21 Court. I understand that. But they're also true words.

22 So when this litigant tells us how the public
23 confidence in the judicial process is at stake here, that's
24 the one [unintelligible] I'll have to agree with them.
25 Because this process has been ground to a standstill by this

1 intransigent litigant with unlimited resources who is now
2 simply -- because he's not getting his way has now turned his
3 fire on the District Court judge and using his resources to
4 try and derail the case through that mechanism because his
5 prior requests of this Court for recusal were denied. And I
6 ask that that be denied again, because this case is currently
7 frozen again because of this conduct. I thank the Court.

8 CHIEF JUSTICE HARDESTY: Mr. Dershowitz, I'll give
9 you two minutes.

10 MR. DERSHOWITZ: Thank you. Three points to make.

11 First, the other side says that we didn't raise this
12 issue. If you look at PA 1990, we specifically raised the
13 issue, cited all of the articles, and asked the court to,
14 quote, "abide by the NCJC's rules and not provide any comments
15 about a case, et cetera, et cetera. So it's clearly protected
16 by the record.

17 As far as a hearing is concerned, not only did he
18 deny us a hearing, he didn't even give us time to file a reply
19 brief, he didn't give us an opportunity to even respond to the
20 judge's affidavit. Normally you get a chance to file a reply.
21 So not only was there no evidentiary hearing, no oral
22 argument, but he cut us off at the pass. We didn't even have
23 a chance to respond to the judge's affidavit. We then
24 submitted it after his judgment, specifically again asked for
25 a hearing.

1 Talk about witnesses. Of course the journalist may
2 invoke privilege and of course the judge may not want to --
3 there are third-party witnesses here. She herself created the
4 witnesses. She put witnesses in the room. We're entitled to
5 examine those witnesses and find out about the extent of the
6 conversation that went both ways.

7 And finally, they make a point that this would allow
8 -- and Your Honor of course responded fairly -- that it would
9 allow every litigant to control the situation. It's just the
10 opposite. The control is entirely in the hands of the judge.
11 If the judge had not (a) gone over and started a conversation
12 with a journalist in the courtroom, (b) recounted that
13 conversation, (c) gone on the record in an interview about a
14 litigant that was going to be negative they -- would result in
15 an article, we would not be here today.

16 And what we're asking this Court to do is to say to
17 judges a simple order -- it may be a little unclear now -- you
18 can't talk about the litigation but you can talk about the
19 litigant. No. You cannot talk about the litigation, you
20 cannot talk about the litigant, and you cannot do the
21 interview that you know is going to pad an article about the
22 litigant, particularly if you know the article is going to
23 deal with the litigant in a negative way. That creates far
24 too much of a danger that the public will perceive that the
25 judges become an advocate and the judge is on one side of this

1 litigation, rather than objective. So a simple blanket rule
2 that says no interviews would comport with what's being done
3 now by the vast, vast majority of judges in this great state.
4 And all you have to do is say, no judge should ever give an
5 interview. That will avoid the problems. You won't have
6 hearings, you won't have affidavits, because judges will
7 comply. Right now judges are confused. They think they can
8 speak about cases in which they're not -- which they have the
9 usual [unintelligible], and we're not talking about the case,
10 we're not going to talk about the issue [inaudible].

11 CHIEF JUSTICE HARDESTY: You've exhausted your time,
12 Mr. Dershowitz.

13 MR. DERSHOWITZ: Thank you. And I apologize, Your
14 Honor, if I in any way --

15 CHIEF JUSTICE HARDESTY: Justice Gibbons has a
16 question.

17 JUSTICE GIBBONS: Just one question, Mr. Dershowitz.
18 I'm looking at Judge Gonzalez's declaration. She indicated
19 that on January 6, 2016, she received a request from Josh
20 Sanburn from Time for information on her background. I don't
21 know from that if she knew if he was calling about some
22 innocuous information, but nothing to do with the Las Vegas
23 Sands case. Is anything -- are we missing something here
24 about how this came to pass? Because, I mean, that sounds
25 like a question all of us get [inaudible].

1 MR. DERSHOWITZ: Sure. And your answer is very
2 obvious, talk to the court officers, talk to the court clerks,
3 they'll give you any information, there's a resume online, you
4 can look us all up. But then she starts the interview by
5 saying, wow, let me tell you what happened in my courtroom.

6 JUSTICE GIBBONS: When did she know -- I mean, you
7 may not know. But my curiosity is when did she know that the
8 subject matter of the interview was this case or Mr. Adelson?

9 MR. DERSHOWITZ: The moment she told Time Magazine
10 about the interview in her courtroom. She determined what the
11 article was going to be about, because she said that. If she
12 had just said -- this would be a harder case if she had just
13 said, let me tell you, I grew up here, I grew up here, I do
14 pro bono work. But no. She said in the interview, I want to
15 tell you something that you should put in your article and I'm
16 telling you on the record "the boss, Adelson," instructed
17 journalists to be in my courtroom. That made the article
18 newsworthy. That made it at Time Magazine. Do you think that
19 Time Magazine was going to rewrite an article about the
20 background of a judge in Nevada? It's a national magazine.
21 No. The national interest was what Sheldon Adelson may have
22 told journalists in a newspaper that he was preparing to buy.
23 So even if she didn't know, she determined the content of the
24 article by giving them that on-the-record quote. And by any
25 standard that violates the rule in this state.

1 Thank you, Your Honors. And again I apologize if I
2 tried to --

3 CHIEF JUSTICE HARDESTY: Any further questions? I
4 just want to --

5 You may sit down. Thank you.

6 I know this has been hotly contested matter and that
7 there have been a number of pleadings filed, but I want to
8 admonish counsel we just recently engaged in a series of
9 motions and pleadings about whether our orders meant what they
10 said. I caution you to file -- against filing documents -- we
11 entered an order that denied a stay, we set this for argument,
12 case closed. We don't need motions being filed up here asking
13 us did we really mean what we said about our stay order. Am I
14 clear about this?

15 MR. BICE: Yes, Your Honor.

16 CHIEF JUSTICE HARDESTY: Thank you. Case will stand
17 submitted.

18 THE PROCEEDINGS CONCLUDED

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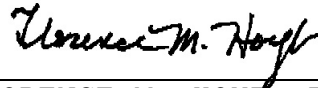
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