Oral Argument Hacking, Justice Jennifer Schecter, May 27, 2015

I'm Roy Den Hollander the plaintiff and an attorney admitted to practice before this Court who is representing himself.

Guess I'm not running for political office any time soon.

I assume Your Honor read that document. Given the tenor of these times, would any man make such a document public—no.

Defendants or their attorney or someone hired by them criminally broke into either a remote server on which I rent space or my personal computer and stole a document—and who knows what else—that despite attorney Bolger's lies was not a media release and was never issued to the media, but was attorney work product, a talking points draft involving legal analysis and strategy.

Bolger quoted the title to the document in her Affirmation as "Media Releases" and referred to it as such nine times in her Memorandum of Law in Opposing an Immediate trial. The actual title is "Responses to Media." If deception had not been her intent, then she would have used the correct title.

Attorney Bolger submitted the hacked document to this Court as Exhibit 1 of her Affirmation in Opposition to Plaintiff's Standing Motion for a Trial on Personal Jurisdiction in which she called it a "Media Release" and referred to it as such a release nine times in her Memorandum Opposing a Trial.

For that document to remain in the Supreme Court's file accessible to the public would assist Bolger and Defendants in the commission of felonies. And such assistance would amount to hindering prosecution under Penal § 205.55 because Bolger and Defendants committed the felonies of

Computer trespass Penal § 156.10,
Unlawful duplication of computer related material § 156.30,
Criminal possession of computer related material § 156.35.

Standing Motion

Request production of communications between Bolger and her clients regarding personal jurisdiction and hacking into my digital cloud. My request is under CPLR 4503.

Disclosure may be compelled in the public interest where an attorney's assertion of the privilege is a cover for his co-operation in wrongdoing. *In re F. (Anonymous)*, 47 N.Y.2d 215, 222 (1979)

The crimes are perjury, suborning perjury and hacking.

PC-Feminism

Sounds as though the right to think and disagree are on trial here.

There's nothing sacrosanct about PC-Feminism. It's just another intolerant ideology among the many that has come down the pike like communism, Nazism and ISIS loony tunism. They all say the same thing: either believe as we do or we will destroy you—physically or professionally.

Shepherd's false statements were not the result of an innocent mistake. They were the result of a wanton journalist who was more concerned with writing an article that fulfilled her preconceived narrative about the victimization of women, and a malicious publisher who was more concerned about selling magazines to boost the economic bottom line, than they were about discovering the truth or actual facts.

The articles are an epic failure of journalism that resulted in biased, agenda-driven reporting. A purposeful avoidance of the truth, and an utter failure to investigate the accuracy of her accusations in order to portray theMale Studies courses and their creators as villains.

Recusal

Your Honor obviously believes that disagreement with Bolger and the Defendant's brand of Feminism in a greater crime than perjury, suborning perjury and submitting forged documents. Therefore, I make a standing motion that you recuse yourself for bias against men's rights activists and unfairness in violation of [Judicial ethics].

Have you gone to the authorities?

> Not yet, I was hoping to resolve the matter in this Court.

Have you contacted the remote-server?

> Yes, they said they had no way to determine who may have broken in because they do not keep access logs or lists of the IP addresses for computers that tried to access my space on their remote-server, nor can they determine whether the codes were stripped—so they say.

Procedural Argument

On the motion to withdraw the hacked document, Defendants did not challenge the existence of the attorney work product privilege for that document in their opposition to the motion.

The attorney work product privileged for that document was raised in Plaintiff's Moving Affidavit at ¶¶ 6 & 9. The function of an opposition is for the non-movant to address arguments made in the motion. Defendants failed to address the attorney work product privilege in their opposition. That denied Plaintiff of an opportunity to respond in his Reply to Defendants' argument that the hacked document was not attorney work product. Defendants, therefore,

waived their right to contest that the hacked document was not attorney work product. *See, e.g., Ambac Assur. Corp. v. DLJ Mortg. Capital, Inc.*, 92 A.D.3d 451, 452 (1st Dep't 2012).

Document is Attorney Work Product

The U.S. Supreme Court has held that the phrase "work product" embraces such items as 'interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs" conducted, prepared or held by the attorney, *Hickman v. Taylor*, 329 U.S. 495, 511 (1947).

New York Courts have accepted the definition of work product set forth in *Hickman* in determining the scope of subsection CPLR 3101(c) (see, e.g., 3A Weinstein-Korn-Miller, NY Prac. at para. 3101.44, .47; *Warren v. New York City Trans. Auth.*, 34 A.D.2d 749 (1st Dept. 1970); *Babcock v. Jackson*, 40 Misc.2d 757 (NY Sup. 1963).

Documents within CPLR 3101(c) include mental impressions and personal beliefs held by an attorney relating to litigation, *Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 159 (N.Y.Sup. 2002).

CPLR 3101(c) recognizes the sanctity of the lawyer's mental impressions and strategic analyses. Weinstein, *NY Civil Prac. Dislcosure* ¶ 3101.42.

Not Waived

Just because the words in the hacked document were memorialized in a draft instead of memorized, does not mean they were or would have been communicated to the press or that the work product privilege was waived. In fact, the document was not presented to the press and not presented to anyone but me until Defendants stole it.

The telling question is if the "Responses to Media" document was public, meaning my remote server or personal computer were open to the public, why didn't Bolger use it in her prior papers to further her litigation by character assassination? Because it was not publicly available and they had to hack it.

Another key question is since it became obvious with Bolger's First Motion to Dismiss that she, Defendants or some Murdock private detective were trolling the Internet for anything she could manipulate to support her false allegations in her Motion to Dismiss, why didn't I protect my confidential information with access codes? Because the information was already protected by codes.

If this case was against the NY Times or Washington Post and their attorney had not submitted eight false and misleading affidavits or submitted a forged document four times, then perhaps an unlikely quantum mechanics probability had occurred. But given Bolger's track record—no way.

Even if quantum mechanics played a role, a waiver is not effected by the inadvertent disclosure of a privileged document, where counsel has taken reasonable precautions to prevent disclosure, made a prompt objection, and no prejudice would result if a protective order is granted. *John Blair Communications, Inc. v. Reliance Capital Group, L.P.*, 182 A.D.2d 578, 579 (1st Dep't 1992)(We agree with the IAS Court's finding that plaintiffs satisfied that burden by showing: (1) production of the documents in question was inadvertent, (2) an intention to retain the confidentiality of privileged materials, (3) reasonable precautions to prevent disclosure, (4) a prompt objection, (5) an absence of prejudice to defendants were a protective order to be granted).

I took precautions against disclosure by protecting my remote-server with codes,
I objected immediately as admitted by Bolger saying "The very next day [after submitting the document], Plaintiff filed an order to show cause why Defendants should not be required to withdraw the document and why Defendants' attorney should not be referred to 'the proper authorities' . . . ." Bolger Memorandum of Law Opposing Withdrawal of Document at 3.
Defendants don't need it to defend, although it does help them in their litigation by personal destruction

An "at issue waiver of privilege occurs where a party affirmatively places the subject matter of its own privileged communication at issue in litigation, so that invasion of the privilege is required to determine the validity of a claim or defense of the party asserting the privilege, and application of the privilege would deprive the adversary of vital information . . . ." *Deutsche Bank Trust Co. of Americas v. Tri-Links Inv. Trust*, 43 A.D.3d 56, 63 (App. Div. 1st Dep't 2007).

Plaintiff is not going to rely on this document to prove his claims.

"We are thus dealing with an attempt to [exploit] written statements and mental impressions contained in the files and the mind of attorney [Den Hollander] without any showing of necessity or any indication or claim that denial of such production would unduly prejudice the preparation of [Defendants'] case or cause [them] any hardship or injustice. . . ."

Here is simply an attempt, without purported necessity or justification, to [exploit] written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal duties. . . . Not even the most liberal of . . . theories can justify unwarranted inquiries into the files and the mental impressions of an attorney." *Hickman v. Taylor*, 329 U.S. 495, 509 (1946).

Bolger argues the document is relevant, but attorney work product does not depend on its relevance. *Bluebird Partners, L.P. v. Bank of New York*, 258 A.D.2d 373 (1st Dep't 1999).

<u>More Bolger Mendacity</u>

Bolger says they didn't do it:

Just like she says her clients never lied or omitted material facts in their affidavits on personal jurisdiction—**Addendum,** and

Just like she says she submitted a true and correct copy of one defendant's article that is in issue. (Bolger Affirm. First Motion to Dismiss ¶ 6, Ex. 5, Dkt. 9; Bolger Affirm. Second Motion to Dismiss ¶ 6, Ex. 5, Dkt. 45; Bolger Affirm. Opp. Immediate Trial ¶ 6, Ex. 5, and ¶ 10, Ex. 9, Dkt. 70). **Exhibit of article.**

Bolger argues they made mistakes. How is it that all these inadvertent errors on the part of a medium sized law firm that specializes in media law always accrue to its benefits and my detriment? Perhaps they aren't inadvertent at all.

Chronology of evidence of Bolger and Defendants trolling the Internet

8/29/14, Bolger served her Affirm. for Dismissal

Bolger Affrim. at ¶¶ 10, 11, 14 refer to a remote server from which she copied documents concerning me.

Why didn't she and the Murdock detective include the "Responses to Media" document that she filed in her Opposition to a Trial on Personal Jurisdiction as Ex. 1?

Because it required access codes to my non-public remote server or accessing my personal computer.

They likely came across the non-public remote server but saw that it was protected.

For example a search of "Roy den Hollander Columbia University" brings up the Columbia Business School Alumni Club that mentions my connection with the URL that Bolger cites to. But that connection did not make my remote server public because if you click on the link what comes up is page not found. What it did, however, was tell Bolger and the Murdock detective that there was a URL, which they most assuredly googled but found the remote server was code protected.

For the past 8 years most of my legal work has been at the law library or some other location away from my personal computer. I often needed access to information for both personal and business reasons available only on my computer, so I set up a non-public remote server to access data from the law library or elsewhere.

Also, as the men's rights cases progressed, I realized that PC-feminism would not permit the courts to enforce the rights that men allegedly have under the Constitution. So, I took a lesson from Karl Marx and planned to heighten the contradictions in this left-wing capitalist society with a website.

This was part of the remote server that was still under construction when Bolger or her clients hacked it. Once all my men's rights cases were finished, I would go back to and reconfigure and re-write the site. In the meantime, however, rather than deal with another server, such as Google or Apple iCloud, I used my remote server to store other business and personal data that I could easily access from the law library or from another location.

Why list it on Columbia?

The listing was made around January 2013 when the last of the men's rights cases was in the final stretch, and I was planning on revising the remote server and eventually making it public. But then Defendants trashed the Male Studies courses [and the Draft Registration case came up.]

When did you start thinking about the Draft Registration case?

1965 when I graduated high school and my choices were college, Vietnam or Canada.

As this Down Under case progressed, Bolger, Defendants or their Murdock detective continued to troll the Internet for information they could twist into supporting her demonizing allegations.

10/27/14, Bolger's Affrim. to her Second Motion to Dismiss submitted the "cache" remnants of an older version.

¶ 17. "Annexed hereto as Exhibit 16 is a true and correct copy of a cached screen shot of Hollander's remote server, http://www.roydenhollander.com, captured by an Internet archiving remote server. Hollander's remote server is no longer operable."

If my private remote server was public, knowing that Bolger and the Murdock man were looking for it, why would I keep it public?

11/13/14, Bolger served her Reply Mem. in her Second Motion to Dismiss, but there was no exhibit of the hacked document "Responses to Media."

Assuming Bolger and the Murdock detective engaged in a continuing search of the Internet, they would have found the "Responses to Media" had my non-public remote server been public at the time, but it was not, so they did not find it.

Although they were aware of the existence of the non-public remote server as they had become aware of the old non-public remote server, they could not access it without the codes.

Bolger, Defendants or their Murdock detective were most likely periodically searching the Internet up to 11/23/14, but could not access my non-public remote server without codes or my personal computer without hacking.

11/24/15 Oral argument on Motion to Dismiss and Discovery on P/J.

Before the argument before Justice Tingling, Bolger, Defendants or their Murdoch detective probably figured they would win on personal jurisdiction, but that all changed when Justice Tingling did two things:

1. In response to part of Bolger's argument, he said "that's a fact issue," indicating, there would at least be discovery of personal jurisdiction.

2. I had initially made a cross motion for discovery but withdrew it realizing that Bolger and Defendants would continue to lie under oath, which I told Justice Tingling. I then made a standing motion for an immediate trial so the Court could observe Defendants' demeanor and response to cross examination. Allowing a standing motion to be made is within the discretion of the Court, *See Matter of Shanty Hollow Corp. v. Poladian*, 23 A.D.2d 132 (3rd Dept. 1965), affd. 17 N.Y.2d 536 (1966), and Justice Tingling allowed me to make it. He could have denied my request but did not.

It was at that oral argument were the battle began to turn in my favor.

Defendants and Bolger were on the ropes and desperate. They knew I kept data on a non-public remote server that required access or on my personal computer. So they either hacked into my non-public remote server or my personal computer, which is connected to the Internet, to steal attorney work product, such as the "Responses to Media" document to use in this case and personal confidential information to intimidate me into withdrawing the complaint.

Not unlike what another Murdock paper in England did to a murdered 13 year old girl's cell and the computers of others.

At some point between 11/24/14 and 1/12/15, my remote server was hacked and tampered with to make it viewable to the public and/or my personal computer was broken into.

1/12/15, Bolger's Affirm. was served and filed with just a taste of the fruit they obtained from hacking either my non-public remote server or personal computer.

> ¶ 2. "A true and correct copy of the 'Media Release' available at Plaintiff's MR Legal Fund remote server, http://www.mensrightslaw.net/main/Down_Under/Press_Responses. Is attached hereto as Exhibit 1."

I now understand how those Hollywood actresses feel, and have updated the security on my personal computer and am moving my non-public remote server to a different remote server and looking for a security expert, perhaps North Korean.

<u>Request that:</u>

> The Motion for an Immediate Trial papers be sealed,
> Bolger withdraw Exhibit 1,
> She and Defendants turn over to me all the information they copied or downloaded or issue an injunction against Bolger, her firm and Defendants from revealing the stolen data or using it, and
> provide the names of everyone involved in the hacking.

It's a certainty that Bolger's client Tory Shepherd has been going through everything they hacked from my remote server or my personal computer and is just waiting to write a slew of misandry attack articles using that information.

Addendum

List of Perjuries and Omissions by Defendants

Defendant Advertiser relies on Michael Cameron, either National Editorial Counsel at News Corp Australia (doing business as News Limited)(Ex. A ¶ 2) or National Editorial Counsel at News Limited (doing business as News Corp Australia)(Ex. E ¶ 2). Cameron's confusion over who is "doing business as" and for whom simply makes the relationship among News Corp Australia, News Limited and Advertiser even murkier. Further, such uncertainty in his role and whom he actually works for raises concern as to his knowledge of jurisdictional facts.

Lie 1st Aff.:	Advertiser "does not sell any products in New York." (Ex. A ¶ 7).
Exposed:	Advertiser sells The Advertiser-Sunday Mail Messenger paper ("The Advertiser") to members of the Australian Community in New York City. (Ex. R).
Revision 2d Aff.:	Advertiser "does not directly sell any products in New York." (Ex. E ¶ 7, emphasis added).
Questions:	Aren't subscriptions over the Internet to the Australian Community in New York City direct sales? Does Advertiser sell products in New York through agents?

Lie 1st Aff.:	Advertiser "does not publish in New York." (Ex. A ¶ 7).
Exposed:	Advertiser publishes The Advertiser in New York via its website because the site of downloading is considered the site of publication, *see Penguin Group (USA), Inc. v. American Buddha*, 16 N.Y. 3d 295, 301 (2011).
Revision 2d Aff.:	None, Advertiser continues with the falsehood. (Ex. E ¶ 7).
Questions:	How many New Yorkers are subscribers and what types of goods or services are provided them? What do News Corp Australia's partnerships with Digital First Media, located in N.Y.C., and Press Reader, a Canadian company, do for Advertiser in New York? Do they act as agents?

Lie 1st Aff.:	Advertiser "does not target any New York audience." (Ex. A ¶ 8).
Exposed:	Published 12 articles concerning New York in 2014 and many of the members of the Australian Community in New York City subscribe to The Advertiser. (Ex. R).
Revision 2d Aff.:	The Advertiser "does not target subscribers in New York." (Ex. E ¶ 8).
Questions:	What criteria does The Advertiser use in determining to publish a story concerning New York and what sources in New York does it use? How many subscribers in New York?

Lie1st Aff.:	Advertiser does not have employees in New York. (Ex. A ¶ 10).
Exposed:	Bloomberg lists the Chairman for Advertiser as Brian Leonard Sallis with a corporate address of 1211 Avenue of the Americas, N.Y., N.Y. (Ex. O).
Revision 2d Aff.:	None, Advertiser continues with the falsehood. (Ex. E ¶ 11).
Questions:	Why is the business address of the Chairman for Advertiser in New York?

Who else at Advertiser has a business address at News Corp or in New York?

Lie 1st Aff.: Advertiser "does not have any business ventures in New York." (Ex. A ¶ 9).
Exposed: On January 27, 2014, News Corp Australia, sole owner of Advertiser, entered into a partnership agreement with Digital First Media, headquartered in New York City, to provide advertising and marketing solutions for all its websites, which include The Advertiser website on which four of the five articles at issue here were published. (Ex. J).
Revision 2d Aff.: None, Advertiser continues with the falsehood. (Ex. E ¶ 10).
Question: What exactly does the partnership with Digital First Media entail?

Lie 1st Aff.: Omitted relationship between Rupert Murdock's News Corp headquartered in New York and News Corp Australia which controls Advertiser (Ex. A ¶ 3).
Exposed: News Corp Australia is considered part of News Corp's identity. (Ex. I).
Revision 2d Aff.: News Corp Australia is a wholly-owned subsidiary of News Corp in N.Y., which "make[s] broad policy decisions" for Advertiser. (Ex. E ¶¶ 4, 5).
Question: Exactly what decisions does News Corp in N.Y.C. make for Advertiser?

Defendant Tory Shepherd is the Political Editor for The Advertiser-Sunday Mail Messenger ("The Advertiser") owned and operated by Advertiser.

Lie 1st Aff.: In researching her articles, Shepherd's only contact with New York was an email and telephone conversation with Plaintiff. (Ex. B ¶¶ 9, 11).
Exposed: Shepherd had also contacted Miles Groth, Ph.D., a professor and resident in New York City, with six emails over a period of two months. (Ex. U).
Revision 2d Aff.: She "forgot." [1] (Ex. F ¶ 14).
Question: What other research contacts and sources did she have that involved New York?

Lie 1st Aff.: Shepherd emailed Plaintiff "requesting comment on the controversy . . . ." (Ex. B ¶ 9).
Exposed: The email did not request comment on any controversy. It stated, "I'm trying to get in touch for a story I'm doing on the UniSA course you're involved with, but can't find a phone number for you-could you please get in touch?" Also, at that time, there was no controversy. (Ex. V).
Revision 2d Aff.: No revision, she still claims her email was "requesting comment on the controversy . . . ." (Ex. F ¶ 11).
Question: Didn't the controversy begin with her contacting Dr. Gary Misan at the University and accusing Plaintiff of being a "member of extreme right wing groups in the USA"?

Lie 1st Aff.: Shepherd wrote only "two" articles regarding the Male Studies courses. (Ex. B ¶ 4).

[1] When Plaintiff worked for Eyewitness TV News and Metromedia TV News in N.Y.C. he kept a list of everyone interviewed for stories he produced, which is common in the media.

Exposed: She wrote four articles. (Ex. W).
Revision 2d Aff.: She wrote "articles" and lists the four. (Ex. F ¶¶ 4-8).
Questions: How could she have forgotten about an article she wrote after being served with the complaint, which was just two months prior to her first affidavit, or the second of two articles that she wrote on January 14, 2014?
What other writings has she written and published on the Male Studies courses?

Lie 1st Aff.: Shepherd implies that the two articles were only published in print in Australia by failing to mention they were published on The Advertiser website. (Ex. B ¶¶ 7, 8).
Exposed: All four known articles appeared on the The Advertiser website. (Ex. W).
Revision 2d Aff.: The four articles appeared on The Advertiser website. (Ex. F ¶¶ 5-8).
Questions: Does her contract with Advertiser address the publication of her articles on The Advertiser website?
Is she paid extra for such?
Where else have the articles appeared?

Lie 1st Aff.: The two articles "were intended for publication in Australia and were directed at an Australian audience." (Ex. B ¶ 7).
Exposed: All four known articles were published in New York via The Advertiser website.
Revision 2d Aff.: All of the four articles "were intended for publication in Australia and were directed at an Australian audience." (Ex. F ¶ 9).
Questions: Why publish on the Internet if the articles were only intended for Australians?
Were print copies of the four articles published or circulated in New York?
Did she expect the publication of her articles to have consequences in New York?

Defendant Fairfax Media Publications Pty. Ltd. ("Fairfax") relies on Richard Coleman who in his first affidavit lists himself as solicitor for Fairfax Media Limited (Ex. C ¶ 1), the parent of Fairfax. In his second affidavit, he is the solicitor for Fairfax (Ex. F ¶ 1). Perhaps he's the lawyer for both, but in both affidavits he states he is responsible for pre-publication advice. This role raises the question that he may not have firsthand knowledge of jurisdictional facts.

Lie 1st Aff.: Fairfax and the Sydney Morning Herald do not have any business ventures or bank accounts in New York. (Ex. C ¶¶ 9, 10).
Exposed: Fairfax does have a "representative" in New York City, World Media, Inc., for selling advertisements in its Sunday newspaper edition. (Ex. M).
Revision 2d Aff.: None. (Ex. G ¶¶ 7, 8).
Questions: What exactly does World Media, Inc. do for Fairfax and the Sydney Morning Herald?
Is World Media, Inc. an agent or part of a joint venture or partnership with Fairfax?
How does Fairfax pay for World Media, Inc.'s services?

Lie 1st Aff.:	Fairfax and The Sydney Morning Herald do not have office facilities, locations, employees, telephone listings and/or bank accounts in New York, which infers they never had such in New York because the market is unimportant to them. (Ex. C ¶ 10).
Exposed:	Fairfax had at least two correspondents and a New York office. (Exs. P, Q).
Revision 2d Aff.:	Fairfax did have correspondents in New York City until 2012. (Ex. G ¶ 8).
Questions:	Why did it have correspondents and an office in New York? Who or what does it rely on now for news from New York or office facilities? How long did it have a New York office?

Lie 1st Aff.:	Fairfax and The Sydney Morning Herald do not target "any New York audience." (Ex. C ¶ 8).
Exposed:	Fairfax published 13 articles in 2014 concerning New York and many of the members of the Australian Community in New York City subscribe to The Sydney Morning Herald. (Ex. R).
Revision 2d Aff.:	None. (Ex. G ¶ 6).
Question:	What criteria does The Sydney Morning Herald use in determining to publish a story concerning New York and what sources in New York does it use? How many subscribers in New York?

Lie 1st Aff.:	Fairfax and The Sydney Morning Herald "do not directly publish in New York" but The Sydney Morning Herald is available online at its website. (Ex. C ¶¶ 6, 8).
Exposed:	By making The Sydney Morning Herald available on its website, Fairfax is publishing in New York, *Penguin Group (USA), Inc. v. American Buddha*, 16 N.Y. 3d 295, 301 (2011).
Revision 2d Aff.:	None. (Ex. G ¶¶ 4, 6).
Questions:	How many New Yorkers subscribe? Does Fairfax's joint venture with the New York company News Alert LLC involve publication of The Sydney Morning Herald in New York? (Ex. L). Fairfax has a "representative," World Media Inc., in New York City for selling advertisements in its Sunday newspaper edition. (Ex. M). Why sell advertising space in New York if the advertisements are not going to appear in the New York market? Does Fairfax's partnership with the Canadian company Press Reader include publishing The Sydney Morning Herald in New York? (Ex. K).

Lie 1st Aff.:	Fairfax and The Sydney Morning Herald "do not directly sell any products in New York." (Ex. C ¶ 6).
Exposed:	Fairfax sells The Sydney Morning Herald to the Australian Community in New York City. (Ex. R). The Sydney Morning Herald's website provides "access to exclusive discounts, events and competitions, unlimited access to our award-winning tablet apps, interactive quizzes, crosswords, Sudoku free in the iPad app." (First Am. Cmplnt. ¶ 30). The website offers an interactive photographer section called "Clique" where readers can publish their photographs, win prizes and receive advice; an online Sydney Morning Herald

Shop where readers can purchase art and other gifts; it offered a cruise trip for two from Spain to Italy; accounts for readers to receive "tweets," and the "goodfood" section provides recipes; investment research; and investment advice. (www.smh.com.au/).

Revision 2d Aff.: "[D]o not sell any products in New York." (Ex. G ¶ 4).

Questions: Aren't subscriptions to The Sydney Morning Herald sales?
To what extent are The Sydney Morning Herald website offers taken up by persons in New York?

Lie 1st Aff.: Fairfax disturbs a print edition of The Sydney Morning Herald in the U.S. via Press Reader but has no "control" as to whether its U.S. edition is distributed in New York. Omitted to say whether it was or was not circulated in New York. (Ex. C ¶ 7).

Exposed: Press Reader allows its 30 million users to digitally download The Sydney Morning Herald and The Sydney Morning Herald even advertises an "app" for doing that. (Exs. K, X). Downloading in New York means publishing here. *Penguin Group (USA), Inc. v. American Buddha*, 16 N.Y. 3d 295, 301 (2011).
"Press Reader has developed major partnerships . . . [with] Fairfax Media [and] News Corp [Australia] . . . [that gives] publishers the ability to target audiences . . . [and] allow publishers to use [its] technology and adapt it to their market." Fairfax is using Press Reader to "grow global circulation and revenues, and increase brand awareness and exposure of their publications in new international markets." (Ex. K).

Revision 2d Aff.: None. (Ex. G ¶ 5).

Questions: Does Press Reader have an exclusive distributorship with Fairfax?
Is Press Reader an agent of Fairfax and where are the printed editions printed?
How many customers does Press Reader have in New York?
How many of them download The Sydney Morning Herald?
What markets is Fairfax targeting?

Lie 1st Aff.: "Fairfax Media and The Sydney Morning Herald do not have any business ventures in New York." (Ex. C ¶ 9).

Exposed: In 2000, Fairfax entered into a joint venture with the New York company News Alert LLC. The joint venture agreement with News Alert is apparently to create News Alert Asia-Pacific, a subsidiary company that would create a number of web sites aimed at providing financial and business information on the Asia-Pacific region and for investors and business people in the United States interested in researching opportunities in the Pacific. (Ex. L).

Revision 2d Aff.: None. (Ex. G ¶ 7).

Questions: What websites has the joint venture created?
Are persons or entities in New York customers of the joint venture?
Does the joint venture publish articles from The Sydney Morning Herald?

Attorney Work Product

The material protected under CPLR 3101(c) is "the mental impressions, conclusions, opinions, or legal theories of a party's attorney. *Id.* at ¶ 3101.44(a). "[I]n performing his various duties ... it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel." *Hickman v. Taylor*, 329 U.S. 495, 510-511 (1946). CPLR 3101(c) protects legal work; that is, work uniquely associated with an attorney's professional skills.

Mahoney v. Staffa, 178 A.D.2d 875, 876 (3d Dep't 1991)(plaintiff did not have to comply with defendant's discovery demands, where plaintiff established a rebuttable presumption of qualified privilege regarding statements he made in conversations with police officers and town officials concerning the action since the meetings were requested by his attorney, his attorney was present, and trial strategy and legal theory were discussed).

Attorney work product is defined as including only materials prepared by an attorney, acting as an attorney, that contain his or her analysis and trial strategy. *Doe v. Poe*, 244 A.D.2d 450 (2d Dep't 1997), *order aff'd*, 92 N.Y.2d 864. Materials or documents that could be prepared by a non-attorney/layperson do not fall within the "attorney work product" exception to disclosure.

An attorney must be allowed to assemble information, sift the relevant from the irrelevant facts, prepare legal theories and plan a strategy, all with a certain degree of privacy, especially from intrusion by opposing parties and their counsel otherwise much of what is now put down in writing would remain unwritten. *Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 159 (N.Y.Sup. 2002).

When a party voluntarily gives to its adversary documents that share the thought processes of counsel, the work-product privilege disappears. *Salomon Brothers Treasury Litigation v. Steinhardt Partners, L.P.*, 9 F.3d 230, 235 (2d Cir.1993). Courts recognize that any determinations related to waiving the work product privilege are fact specific to each case. See *Spectrum Systems Intl. Corp. v. Chemical Bank*, 78 N.Y.2d 371, 381 (1991); *Salomon Brothers* 9 F.3d at 236.
However, even if an attorney-client privilege existed, its waiver would be irrelevant to the guiding considerations affording a lawyer a measure of protection against the intrusion of an adversary into his files. *Vilastor-Kent Theatre Corp. v. Bra*ndt, 19 F.R.D. 522, 525 (S.D.N.Y. 1956).

The disclosure of a document protected by the work product rule does not result in a waiver of the privilege as to other documents (Weinstein–Korn–Miller, 3A N.Y.Civ.Prac.sec. 3101.45).

It is immaterial to the determination of privilege under the attorney work product exemption from disclosure whether the item sought falls within another express privilege. *Charter One Bank, F.S.B. v. Midtown Rochester, L.L.C.*, 191 Misc. 2d 154, 159 (N.Y.Sup. 2002).

Documents for which a party wishes to claim the attorney work product privilege must be specifically identified when the objection to disclosure is raised. *McCarthy v. Klein*, 238 A.D.2d 552, 554 (2d Dep't 1997).

[If not legal work, than protected by CPLR 3101(d)(2) because prepared only because there existed litigation. *Albano v. Schwab Bros. Trucking, Inc*., 27 A.D.2d 901 (4th Dep't 1967)(statements made after consultation with counsel and upon his advice should be protected from discovery as materials prepared for litigation).]

Miscellaneous

McCarthyism is the practice of making opprobrious accusations in order to restrict dissent or political criticism. It was characterized by reckless, unsubstantiated accusations, as well as demagogic attacks on the character of left leaning persons.

It is the use of the big lie and the unfounded accusation against any citizen.

It is the rise to power of the demagogue who lives on untruth; it is the spreading of fear.