



Written by [R. Cort Kirkwood](#) on February 27, 2020

Trump Campaign Sues New York Times, but Winning Won't Be Easy

The *New York Times* has added another lawsuit to the workload of its legal team.

In addition to fighting a defamation claim from former vice presidential candidate Sarah Palin, the *Times* must defend itself from the Trump campaign, [which filed a defamation lawsuit](#) yesterday.

The *Times* and former editor Max Frankel smeared the campaign in an opinion piece, the lawsuit alleges, which said the campaign hatched a “deal” with the Russian government in 2016 to defeat the *Times*’s preferred candidate, Hillary Clinton.

The *Times* knew Frankel’s absurd claim was false, the lawsuit alleges, because the *Times* itself debunked it in multiple stories.

Whether the campaign will prevail is another. A public figure such as the campaign rarely succeeds in such a lawsuit.

The Lawsuit

The *Times*’s latest legal trouble began on March 27 last year, the day it published Frankel’s hit piece, [“The Real Trump-Russia Quid Pro Quo.”](#)

[Wrote Frankel](#), who calls himself a “Democrat with a vengeance”:

There was no need for detailed electoral collusion between the Trump campaign and Vladimir Putin’s oligarchy because they had an overarching deal: the quid of help in the campaign against Hillary Clinton for the quo of a new pro-Russian foreign policy, starting with relief from the Obama administration’s burdensome economic sanctions. The Trumpites knew about the quid and held out the prospect of the quo.

Yet Frankel’s piece “does not allege or refer to any proof of its claims of a ‘quid pro quo’ or ‘deal’ between the Campaign and Russia,” the lawsuit alleges, but instead “selectively” included “previously-reported contacts between a Russian lawyer and persons connected with the Campaign.” Previous reporting in the *Times* showed “that the meetings and contacts ... did not result in any quid pro quo or deal.”

The report from Special Counsel Robert Mueller’s probe of the collusion hoax showed the story to be false weeks after the story was published, but the *Times* knew that long before Frankel’s smear appeared, the [lawsuit alleges](#).

Thus, the lawsuit alleges, the *Times*’s “own reporting, had already confirmed what Robert Mueller would eventually conclude: that there was no ‘deal’ or ‘quid pro quo’ between the Campaign and Russia. The *Times* and its writer, Mr. Frankel, consciously disregarded all such information.” That





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reporting appeared in three stories, two of them published nearly two years before Frankel went off half-cocked.

As well, the lawsuit alleges, the *Times* “decided to publish the Defamatory Article when it did, in advance of the Mueller Report, knowing that the Mueller Report was likely to exonerate the Campaign from allegations of collusion with Russia regarding the 2016 election”:

Once the Mueller Report was released, The *Times* knew that any claims of conspiracy would not be credible. Thus, by publishing the Defamatory Article in March 2019, The *Times* sought to damage the Campaign before the Mueller Report would be released debunking the conspiracy claims.

The *Times* published Frankel’s claims because of its “systematic pattern of bias against the Campaign, designed to maliciously interfere with and damage its reputation and seek to cause the organization to fail,” the [lawsuit alleges](#).

If true, the campaign has a case for malice and reckless disregard of the truth, proof of which is required for a public figure to successfully sue.

Can the Campaign Win?

“A publisher cannot be held liable for commentary based on public facts,” a lawyer for the American Civil Liberties Union [told the Times](#).

Frankel’s claim, of course, was not a “fact,” but a falsehood, but the campaign must still prove the newspaper “knew it was false before publishing, or had actual suspicion of falsity and went ahead anyway,” which is “virtually impossible,” a law professor told the *Times*. The U.S. Supreme Court invented that standard in 1964’s [New York Times vs. Sullivan decision](#).

The lawsuit’s allegations would seem self-evidently true given that the *Times*’s own reporting showed Frankel’s factual claim to be false, but again, proving that is problematic.

The campaign’s attorney is Charles Harder, [the man who put Gawker out of business](#) on behalf of professional wrestler Hulk Hogan, and, more importantly, [defeated Michael Avenatti](#), the crooked lawyer [convicted of extortion](#), when he sued Trump for defamation on behalf of porn queen Stormy Daniels.

[Palin sued](#) the *Times* over an editorial, subsequently corrected, that linked her to the shooting of Representative Gabrielle Giffords.

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R. Cort Kirkwood is a long-time contributor to The New American and a former newspaper editor.



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