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could only have been a somewhat fictitious gangster in a cops-and-robbers story.

Similarly, Chicago newsmen almost always call usury "the juice racket", and this terminology lets the reader believe that the activity has nothing to do with him or the safety of his community. The criminals' terminology is also apparent when the word "scam" is used to describe bankruptcy fraud. Most of us can understand the seriousness of the crimes of usury, bankruptcy fraud, and bribery, but we have a hard time realizing that it is our friends and neighbors, not "gangsters", who are, in the long run, the victims of "the juice racket", "the scam racket", or "the fix".

The other side of this picture is the crucial role played by the press in rooting out organized crime and maintaining a public spotlight on the problem, even at times when governmental activity is relatively dormant. The press has both an important responsibility and, of course, a selfish interest in pursuing this subject matter. On the one hand, the subject is an attention-grabber; it is also good for business. At the same time, it is a social evil, which responsible newsmen combat as a matter of duty and respect for their craft. Responsible, hard-fighting journalism can be highly supportive of law enforcement efforts; it is frequently deserving of our gratitude. Irresponsible, unprofessional sensationalism is not responsible journalism; it serves no significant public purpose; and it is many times

1 actually counter-productive. Such careless sensationalism
2 deserves no one's thanks, and it is not usually entitled to the
3 Constitutional protection the Supreme Court has extended to the
4 press, since it is usually not published in good faith, and it is
5 usually published with a "reckless disregard" for truth.

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7 The task before this Court is, in short, to determine
8 whether the Penthouse article was the product of responsible
9 journalism and hence constitutionally protected; or whether it
10 was cheap sensationalism, the kind of "reckless" publication
11 New York Times explicitly excluded from its protective mantle
12 of privilege. My own view, based on my reading of the article,
13 the motion papers, and my acquaintance with the vast popular and
14 serious literature of organized crime, is that the La Costa
15 article published by Penthouse is apparently a prime example of
16 the counterproductive sensationalism serious specialists abhor.
17 It may be that the defendants can demonstrate that their sup-
18 porting evidence was stronger than it presently appears. It may
19 be that they can ultimately establish a defense of truth, even
20 though they cannot establish that they originally acted in a
21 fashion consistent with responsible journalism. On the basis
22 of the present motion papers, however, it is clear to me that
23 their good faith is seriously in question and that their conduct
24 appears reckless in the extreme. Consequently, the action should
25 properly go to trial.

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28 My conclusion is based on the following considerations:

29 (1) The publication involved in this suit, Penthouse,
30 is not known or recognized for its investigative reporting, but
31 for its sensationalist and rather salacious attention to sex.
32 This does not necessarily disqualify the magazine from doing

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1 serious work, but the fact is that its prior ventures into the
2 field of organized crime have tended to establish its unrelia-
3 bility and to raise serious doubt of its good faith generally,
4 but particularly in this area. Its most extensive and highly
5 publicized series on organized crime was a series entitled "The
6 Last Testament of Lucky Luciano". That series was recognized by
7 most of us in the field to be a hoax, and it was so exposed by
8 the New York Times in December 1974, in an article by Nicholas
9 Gage, one of our nation's serious investigative reporters. The
10 series was advertised as having been written from tapes and notes
11 of conversations with Luciano himself, but when its facts were
12 challenged it developed that the author, Richard Hammer, could not
13 produce the notes and admitted that there were never any tapes,
14 blaming Penthouse for the false representation. Soon afterward,
15 Penthouse published an article entitled "Richard M. Nixon and
16 Organized Crime" that came to my attention in connection with its
17 repetition of a statement to the effect that Teamster influence
18 had succeeded in corruptly killing a Justice Department wiretap
19 in a Teamsters Union investigation. I am personally familiar
20 with the background of this matter and of the origin of the
21 allegation in a New York Times article by Denny Walsh. I knew
22 of my own knowledge that the allegation was false. Indeed, the
23 whole article was little more than an uncritical repetition
24 of every sort of conceivable allegation. By the time of its
25 republication by Penthouse, there was certainly enough informa-
26 tion publicly available to alert the responsible press to the
27 probable invalidity of the charge. Those charged with impro-
28 priety had publicly denied it and had found support in the press.
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32 Jack Nelson and Bill Hazlett in the May 31, 1973 Los Angeles

1 Times duly reported the controversy. Attached hereto as Appendix
 2 A is public testimony of one of the participants under oath
 3 setting out the true story before the National Wiretap Commis-
 4 sion, of which I am a member. Nevertheless, the Penthouse
 5 article picked it up and recirculated it, raising the same
 6 question of irresponsibility the "Luciano" series had posed.
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8 (2) The authors of the La Costa article, Jeff Gerth
 9 and Lowell Bergman, have developed no reputation in the field
 10 of organized crime reporting. I am thoroughly acquainted with
 11 the literature, make it a practice to keep current, and I am not
 12 acquainted with anything these two gentlemen have ever published
 13 in any of the more substantial newspapers or magazines. Prior
 14 to the La Costa article Messrs. Gerth and Bergman had published
 15 pieces in Ramparts, Sundance and Penthouse magazine on a single
 16 theme: the alleged connection between former President Nixon
 17 and organized crime. The three Nixon articles appear to be sub-
 18 stantially the same article, rewritten and republished three
 19 separate times. They do not appear to be investigative pieces,
 20 but a rewrite of previously published material. They do not
 21 establish Gerth and Bergman as serious investigative reporters, but
 22 as individuals who are exploiting a currently popular theme
 23 without original research or indeed serious thought. I do not
 24 know personally either Mr. Gerth or Mr. Bergman, and it may be
 25 that they are capable and principled men. At this stage (and at
 26 the stage when Penthouse accepted their La Costa article and
 27 published it) it does not appear that either of them had estab-
 28 lished the credibility that would justify a publisher in printing
 29 serious charges on their assertion alone. This is particularly
 30 true in view of Penthouse's still-fresh experience with a much
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1 more established writer, Richard Hammer, in connection with the
2 "Luciano" series, which should certainly have put the editors on
3 their guard. Penthouse had good reason to be wary in publishing
4 these serious charges by two young unknowns.

5 (3) The La Costa article itself contains internal
6 indicia which challenge the assumption that it was published in
7 good faith and not with a reckless disregard of its falseness.
8 The loaded vocabulary employed by the writers, the classic
9 vocabulary of the sensationalist style, is sufficient to raise
10 doubt of the writers' serious intent, but the article has more
11 serious flaws.
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13 (4) The Penthouse article suggests a La Costa involve-
14 ment in the "Watergate" cover-up affair, but it presents abso-
15 lutely no evidence of it. The charge appears to be based com-
16 pletely on the fact that John Dean and other members of the
17 President's staff, while still in office, stayed at La Costa
18 during the "Watergate" period, while visiting President Nixon
19 at his nearby San Clemente home. The article does not show in
20 any way that the La Costa management took part in any of the
21 activities of the Nixon staff or were privy to or remotely aware
22 of them. I am not familiar with any evidence that has appeared
23 anywhere that suggests an involvement of La Costa and its
24 principals in the "Watergate" cover-up or even that the "Water-
25 gate" cover-up was connected in any way with the issue of organ-
26 ized crime. The Penthouse article does not present any such
27 evidence. It would appear that the "Watergate" passages in the
28 La Costa article are mere vestiges of Gerth's three prior "Nixon"
29 articles, employed to flesh out the La Costa piece. There is
30 obviously no logic in the suggestion that a hotel or its manager
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