

EXHIBIT 7

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IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
Case No. 12012447CI-011
-----)
TERRY GENE BOLLEA professionally
known as HULK HOGAN,
Plaintiff,
vs.
HEATHER CLEM, GAWKER MEDIA, LLC a/k/a
GAWKER MEDIA, GAWKER MEDIA GROUP, INC.
a/k/a GAWKER MEDIA, GAWKER ENTERTAINMENT,
LLC, GAWKER TECHNOLOGY, LLC, GAWKER SALES,
LLC, NICK DENTON, A.J. DAULERIO,
KATE BENNERT and BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT a/k/a GAWKER MEDIA,
Defendants.
-----)

CONFIDENTIAL PORTION INCLUDED

VIDEOTAPED DEPOSITION OF
ALBERT JAMES DAULERIO
New York, New York
Monday, September 30, 2013

Reported by:
Toni Allegrucci
JOB NO. 337256

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September 30, 2013

10:58 a.m.

Videotaped Deposition of
ALBERT JAMES DAULERIO, held at the
offices of Esquire Deposition Solutions,
1384 Broadway, New York, New York 10018,
pursuant to Notice, before
Toni Allegrucci, a Notary Public of the
State of New York.

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ALSO PRESENT:

ANDREW RITCHIE, Videographer

HEATHER L. DIETRICK, Counsel, Gawker Media

1 A.J. Daulerio

2 you can recall, similar to that?

3 A. Not that I can recall, no.

4 Q. And by similar to that, I mean
5 instances where you and Mr. Denton disagreed
6 about what was publishable and what shouldn't
7 be published?

8 A. Nothing specifically, no.

9 Q. And the Hulk Hogan sex tape video
10 story was not one of those about which you
11 disagreed about publishability?

12 A. No, I don't believe we even had a
13 conversation about it until after the fact.

14 Q. Okay. When did you first hear
15 about the Hulk Hogan sex video?

16 A. I believe it was when it was a
17 story on TMZ, on TMZ.

18 Q. And when did that story appear?

19 A. That, I don't know.

20 Q. Did the story indicate that there
21 was a sex video or do you recall the
22 substance of the story on TMZ?

23 A. Yeah, I believe it was discussing
24 about the existence of a sex video.

25 Q. When -- what did you do when you

1 A.J. Daulerio

2 first heard about the existence of such a
3 video?

4 A. At the time that I had heard about
5 it, I don't remember.

6 Q. Did you take any affirmative steps
7 to try and get a copy of it?

8 A. No.

9 Q. You did not?

10 A. No.

11 Q. Why not?

12 A. It was just not of, like, immediate
13 interest to me at the time and that's it.

14 Q. There obviously came a point in
15 time when it did become of immediate interest
16 to you; is that correct?

17 MR. BERLIN: Objection.

18 You can answer.

19 A. Yes.

20 Q. What caused your mindset to change
21 in that regard?

22 A. I was e-mailed a -- from a source
23 that said that there was a client of his that
24 was interested in mailing me something and
25 it -- he asked for my P.O. box. And then we

1 A.J. Daulerio
2 had a subsequent follow-up phone call, as to
3 which he hinted that the, the contents of
4 that package that he wanted to mail to me had
5 something to do with the Hulk Hogan sex tape
6 that had been talked about on TMZ and other
7 sites.

8 Q. Okay. What happened then after
9 that?

10 A. I don't recall the exact details,
11 but there was a follow-up and I had given him
12 my address, or, the Gawker Media address at
13 work, and depending on the time frame, and I
14 don't remember exact timing of it, but I was
15 going on vacation, and I believe the package
16 arrived while I was on vacation and I had
17 asked the managing editor to view the
18 contents of that package.

19 Q. And the managing editor being?

20 A. Emma Carmichael.

21 Q. And did she do so?

22 A. Yes.

23 Q. Did she report back to you?

24 A. Yes, via text message.

25 Q. What did she say?

1 A.J. Daulerio

2 A. I don't remember the exact phrasing
3 of it but...

4 Q. What was the substance?

5 A. I believe she said thank you.

6 Q. Thank you to you?

7 A. Yes.

8 Q. For what?

9 A. For her next few minutes of viewing
10 the sex tape.

11 Q. Did she view the sex tape while you
12 were out of the office on vacation?

13 A. Yes.

14 Q. And then did she report back to you
15 about what the tape contained?

16 A. Briefly. But I mean it was, it
17 was, you know, the general gist of it. I
18 mean, I think that's what she reported back
19 was the general gist of it. I don't know how
20 long she watched the tape, or the disk,
21 sorry, I guess that's what it was at that
22 point.

23 Q. It was a DVD?

24 A. Yes.

25 Q. And where were you on vacation at

1 A.J. Daulerio

2 the time?

3 A. I was on the west coast. I was at
4 both Portland, Montana and Seattle.

5 Q. And during what time frame is that?

6 A. I believe it was the end of
7 September, it was about last year at this
8 time.

9 Q. And do you recall when you returned
10 to New York?

11 A. Not the exact date.

12 Q. Roughly?

13 A. I would say early October.

14 Q. And what did you do when you
15 returned to New York with respect to this DVD
16 that you now had in your possession?

17 A. I watched it and watched it one or
18 two times and then, then decided whether or
19 not we were going to publish some of the
20 contents of it, and was discussing how we
21 could possibly share some of the footage on
22 Gawker.com.

23 Q. Let me just stop you there. I
24 appreciate the narrative and I want to go
25 back to it but let me ask you this. With

1 A.J. Daulerio

2 A. No.

3 Q. This was not a tape that aired,
4 that was published on Deadspin?

5 A. No, it was published on Gawker.com.

6 Q. Do you know who the author of the
7 article was?

8 A. I don't.

9 Q. All right. So back to the Hulk
10 Hogan sex tape. You made the determination
11 that you wanted to publish at least some
12 portion of it?

13 A. Yes.

14 Q. Okay. Then what did you do?

15 A. Then I turned the tape and/or disk
16 over to our video editor and, you know,
17 selected various spots of the tape that I
18 considered both newsworthy in the context of
19 our story and had her twiddle it down to
20 whatever the time frame was, I believe it was
21 close to two minutes of footage.

22 Q. Okay. Then what?

23 A. Then there was probably a back and
24 forth about the footage, and then I was going
25 to write the commentary about both the Hogan

1 A.J. Daulerio

2 tape and celebrity sex tapes in general, and
3 using the Hogan tape as kind of the catalyst
4 for that commentary.

5 Q. All right. And then do you recall
6 there having been a -- well, let me go back.
7 You said you turned the disc over to your
8 video editor, who was that at the time?

9 A. It was Kate Bennert.

10 Q. Was Ms. Bennert involved in the
11 Eric Dane sex tape?

12 A. No, she was not employed there at
13 the time.

14 Q. She was a new hire, a relatively
15 new hire at the time?

16 A. Relatively new hire at the time.

17 Q. And do you have a recollection of
18 having had her do two sets of edits, one a
19 longer one and one a shorter one that
20 ultimately was uploaded onto the site?

21 A. Yeah, I believe there were a couple
22 different versions based on length.

23 Q. And why were there two different
24 versions?

25 A. We usually go through a simple

1 A.J. Daulerio
2 editing process of any tape, even not of a
3 sex tape nature, just based on what we think
4 the readers will, like, devote enough time to
5 and to just give a -- in regard to this it
6 was just to give a brief overview of the
7 content to both verify its existence and to
8 also just tie into the commentary.

9 Q. Okay. So what did you want to be
10 sure to include within the edited version
11 that was ultimately published?

12 A. You know, some of the innocuous
13 back and forth between Hulk and the woman in
14 the tape that was supposed to be Heather
15 Clem, his best friend's wife at the time, and
16 some of the substance of that conversation in
17 showing how not sexy it was.

18 Q. Okay. Anything else other than
19 innocuous back and forth that you wanted your
20 readers to see?

21 A. Yeah. Well, we wanted to verify
22 the fact that they were actually having sex,
23 so I believe we did small snippets of those
24 two having intercourse.

25 Q. Anything else you wanted to be sure

1 A.J. Daulerio

2 your readers saw?

3 A. That's it.

4 Q. Did you want to be sure your
5 readers saw Mr. -- I'm sorry, let me rephrase
6 that.

7 Did you want to be sure that your
8 readers saw Hulk Hogan's penis?

9 A. Yes.

10 Q. Why was that?

11 A. That's usually what happens when
12 people have sex, they are naked.

13 Q. Did you think it important to show
14 the size or other characteristics of
15 Mr. Hogan's, of Hulk Hogan's penis?

16 A. Well, when I did the article I
17 referred to the size of it so, I mean, I
18 believe the small portion of his, at the time
19 that we actually showed him there, I mean it
20 was just to back that up as it was.

21 Q. Did you think showing the size of
22 Hulk Hogan's penis was newsworthy?

23 A. In the case of this I wouldn't call
24 it exactly newsworthy, I would say it was
25 more to add some color to my commentary.

1 A.J. Daulerio

2 Q. Is the same true with respect to
3 showing the actual sex act between Heather
4 Clem and Hulk Hogan?

5 A. That, you know, as I previously
6 stated, was done to actually show that they
7 were having sex in regard to the sex tape
8 that had already been talked about publicly
9 at that point.

10 Q. Right. So it was a matter of
11 public record already prior to your
12 publication of this story that, that there
13 was a sex tape and that the two had been
14 having sex, correct?

15 A. I believe that, you know,
16 Hulk Hogan had verified that there was a sex
17 tape in existence and that it was published
18 on TMZ. Who it was with, that I found out,
19 you know, later was discussed publicly and
20 that it was just based on some of the rumors
21 about whether or not it was Bubba the
22 Love Sponge's wife, Heather Clem.

23 Q. Right. But the fact of them having
24 sex was a matter of public record. The fact
25 that he had -- that there was this sex tape

1 A.J. Daulerio
2 and that he was having sex with someone --

3 MR. BERLIN: Objection.

4 A. Yeah.

5 Q. -- was a matter of public record at
6 the time?

7 MR. BERLIN: Let me object.

8 Object, asked and answered. You can
9 answer the question.

10 A. Yes, based on my understanding of
11 public record and its news value.

12 Q. Right. But, but that fact was not
13 newsworthy, that was, that was already a
14 known fact, correct?

15 A. Well, it was --

16 MR. BERLIN: Let me object.

17 Objection, that's already been asked and
18 answered. It's argumentative and it
19 calls for a legal conclusion.

20 To the extent that you want to
21 answer based on your understanding
22 please go ahead and do so.

23 A. Yeah, based on my understanding the
24 existence of the sex tape, you know, was out
25 there, the actual contents of that sex tape

1 A.J. Daulerio
2 were not out there and this was the best way
3 of at least giving, showing some of that.

4 Q. Yeah, so that's what I'm sort of
5 getting at. I mean, what, what did you
6 regard as newsworthy about the sex tape that
7 wasn't already known and that was shown by
8 having the sex tape posted as opposed to
9 simply your description of what was --

10 A. Right.

11 Q. -- contained?

12 MR. BERLIN: Same objection.

13 Sorry, same objection. You can answer.

14 A. You know, that's really done by a
15 story by story basis. But, you know, at the
16 time I was thinking that as we can show some
17 of the sex that was taking place it would
18 give a little more insight into the stuff
19 that was already in the public record and
20 also show some inconsistencies in what Hulk
21 had stated publicly and what there was as
22 visual evidence.

23 Q. Okay. Well, was there anything
24 that was added to the store of public
25 knowledge about those subjects by uploading

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A.J. Daulerio

the video itself, as opposed to what a reader could learn by reading your story?

MR. BERLIN: Same objections. You can go ahead and answer.

A. Sure. Yeah. It was, in my opinion, it was just there to add commentary, visual evidence to the commentary.

THE VIDEOGRAPHER: Counsel, two minutes.

MR. MIRELL: Okay. I think we can break at this point and resume after lunch break.

THE VIDEOGRAPHER: The time now is 1:444 p.m. This marks the end of tape No. 2. Going off the record.

(Lunch recess taken.)

1 A.J. Daulerio
2 record can be clear on this subject, I think
3 the reference to April 25 at the top and
4 bottom of page 9 is meant to be 2013 rather
5 than 2012.

6 A. Yeah.

7 MR. BERLIN: That is correct.

8 Q. Okay. All right.

9 MR. BERLIN: In fact it says it.

10 MR. MIRELL: Okay.

11 Q. That's no -- make no mind about
12 that. Just so we're clear on the record and
13 everybody is on the same page --

14 A. Okay.

15 Q. -- literally and figuratively.
16 All right. So let me ask you a
17 couple of follow-up questions about this.

18 Who at Gawker did Tony Burton
19 initially contact?

20 A. That was me.

21 Q. And how did he do that?

22 A. Via e-mail.

23 Q. And do you recall what he said in
24 that e-mail?

25 A. Not specifically other than that he

1 A.J. Daulerio
2 had a client who had wanted to send me
3 something and asked for my P.O. box.

4 MR. MIRELL: All right. I don't
5 believe we've seen that e-mail. And we
6 ask that it be produced.

7 MR. BERLIN: We have searched
8 Gawker's records for that e-mail and we
9 do not have that e-mail.

10 MR. MIRELL: Okay.

11 Q. Do you personally keep copies of
12 e-mails that you receive?

13 A. Sometimes.

14 Q. Do you recall keeping a copy of
15 that one?

16 A. Yeah, for a period of time.

17 Q. Do you still have it in your
18 possession, custody or control?

19 A. I would have to check.

20 Q. All right. Can I ask you to please
21 do that.

22 MR. BERLIN: If you would like to
23 send a request for documents to this
24 witness, to this party, you can.

25 MR. MIRELL: Can I send it to you

1 A.J. Daulerio

2 or should I --

3 MR. BERLIN: You can send it --
4 well, he's a party so you can send a,
5 you know, request for production of
6 documents. But I don't believe there's
7 been any requests for production of
8 documents directed to Mr. Daulerio.

9 MR. MIRELL: Okay.

10 MR. BERLIN: And if you do that
11 we'll be happy to go through whatever,
12 his e-mail for that one or anything else
13 that you want to request.

14 MR. MIRELL: All right. We'll
15 follow-up on that.

16 Q. So what did, what did he say in
17 this e-mail to you, as best you recall?

18 MR. BERLIN: Asked and answered.
19 You can answer the question.

20 A. That he was, he had a client who
21 had something that he wanted to send to me
22 and that he was requesting a P.O. box or
23 asked if I had a P.O. box.

24 Q. Do you know why he was asking about
25 a P.O. box as opposed to Gawker's offices?

1 A.J. Daulerio

2 A. No.

3 Q. And did you respond to him?

4 A. I did.

5 Q. And what did you say?

6 A. I believe I asked what it was about
7 or could he give me any idea what was being
8 sent.

9 Q. And what was the response from
10 Mr. Burton?

11 A. I believe then we had a phone
12 conversation after that.

13 Q. Okay. What was discussed during
14 that phone conversation?

15 A. It was discussed about whether or
16 not I was familiar with the Hulk Hogan sex
17 tape story.

18 Q. Okay. And what did you say?

19 A. I said I remember vaguely about it,
20 but nothing too specific.

21 Q. And when was this e-mail received,
22 or -- strike that.

23 When was, when was the conversation
24 you had with him?

25 A. I'd say soon after the e-mail, so I

1 A.J. Daulerio

2 would say September at some point.

3 Q. Were you on vacation at that point?

4 A. I don't remember if that was before
5 or after I went on vacation. But, you know,
6 I don't remember exactly.

7 Q. Okay. Did Gawker Media, to the
8 best of your knowledge, have any previous
9 dealings with Mr. Burton?

10 A. Not to my knowledge.

11 Q. Okay. You had specifically
12 yourself?

13 A. I couldn't remember exactly where
14 and what point we had interacted.

15 Q. But this was not the first you had
16 heard of him?

17 A. No, but just in e-mail.

18 Q. Okay. Had he ever been a source
19 for you of any other material?

20 A. I don't think so.

21 Q. Okay. Do -- did anyone else at the
22 Don Buchwald Agency ever serve as a source
23 for Gawker Media?

24 A. I don't think so.

25 Q. How about for you personally?

1 A.J. Daulerio

2 A. I don't think so. I don't know the
3 full extent of Don Buchwald's roster though.

4 Q. Do you know whether Gawker Media
5 has ever previously received a sex tape from
6 an anonymous source?

7 A. I don't.

8 Q. Did Mr. Burton or anyone else say
9 why Gawker was being contacted?

10 A. I believe initially he had said
11 something along the lines that whoever his
12 client was was a fan of mine, and that was
13 it.

14 Q. Did he ask for money in exchange
15 for providing this information or material?

16 A. No, he did not.

17 Q. Does Gawker have any policies,
18 written or unwritten, with respect to the
19 payment of a source?

20 A. Not to my knowledge.

21 Q. Did you make any attempt when you
22 were contacted by Mr. Burton to find out what
23 the motives of the source might be?

24 A. May have had that conversation
25 pretty generally, but not to my knowledge

1 A.J. Daulerio

2 specifically about that.

3 Q. What do you recall generally about
4 the conversation, the phone conversation you
5 had?

6 A. I asked him who was sending it, who
7 his client was, but Mr. Burton claimed that
8 he didn't know either.

9 Q. Okay. And he never told you then
10 at any point who the actual source of this,
11 the tape was?

12 A. No, he didn't.

13 Q. Okay. Did you report to Mr. Denton
14 about the e-mails or phone calls that you
15 received?

16 A. No.

17 Q. Did you report to Mr. Kidder about,
18 about either the e-mails or the phone call?

19 A. No.

20 Q. Now, it's your belief that the
21 package that you received did not come from
22 Mr. Burton; is that correct?

23 A. That's correct.

24 Q. Why do you reach that conclusion?

25 A. Just based off of the conversation

1 A.J. Daulerio
2 that we had. And he gave me no indication
3 that he had any idea where it was coming
4 from. And if it was coming from him I assume
5 that he didn't want us to know it was coming
6 from him, so I just accepted what he was
7 telling me.

8 Q. How soon after -- well, strike
9 that.

10 You had the phone conversation with
11 him how many days after the e-mail arrived?

12 A. I couldn't say exactly. But, you
13 know, it depends on when the time of the
14 conversation was, and then when I went on
15 vacation, but I don't remember the exact --

16 Q. Right. You don't recall --

17 A. -- duration.

18 Q. You don't recall speaking to him
19 while you were on vacation?

20 A. I don't recall that.

21 Q. And how soon after -- strike that.

22 Did you have any communications
23 with him either telephonically or via e-mail
24 or any other way subsequent to your phone
25 conversation?

1 A.J. Daulerio

2 A. I believe so, we had some e-mails
3 and some phone conversations, but I don't
4 remember the exact subjects of those e-mails.

5 Q. Well, it was the Hulk Hogan sex
6 tape though, correct?

7 A. Possibly.

8 Q. Do you recall discussing other
9 topics with him other than that?

10 A. May have discussed the Howard Stern
11 show at some point.

12 Q. And what about the Howard Stern
13 show?

14 A. How was the Howard Stern show.

15 Q. What about the Howard Stern show?

16 A. I think that was it, how was the
17 Howard Stern show.

18 Q. Any particular ep -- episode or
19 segment of the Howard Stern show you were
20 discussing?

21 A. I believe it had something to do
22 with Baba Booney, but I don't remember exactly
23 what it was.

24 Q. But it had nothing to do with
25 Hulk Hogan?

1 A.J. Daulerio

2 A. I don't believe so.

3 Q. Okay. How soon after your last
4 conversation with Mr. Burton where the
5 Hulk Hogan tape was discussed did the package
6 arrive at Gawker Media?

7 A. I don't remember it exactly.

8 Q. Matter of days, weeks?

9 A. It could have been either one to be
10 honest with you. I would say probably days.

11 Q. Okay. Was any attempt made to
12 determine where that envelope -- strike that.

13 The envelope that arrived at
14 Gawker Media did not have a return address on
15 it, correct?

16 A. No, it did not.

17 Q. And was any attempt made to find
18 out where the package actually came from?

19 A. No.

20 Q. Do you still have that envelope?

21 A. No.

22 Q. Do you know if it still exists in,
23 in anyone's records at Gawker Media?

24 A. I don't think so.

25 MR. BERLIN: I just want to clarify

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A.J. Daulerio

one thing about your question. You asked him if he still had the envelope, I think he previously testified that the package arrived when he was on vacation, so I'm not sure that he ever had the envelope.

MR. MIRELL: Right. Well --

MR. BERLIN: I just don't want there to be misunderstanding.

MR. MIRELL: No, I appreciate that. But, you know, in light of the fact that the witness may have documents and other materials that may be relevant to this case.

Q. So my question, still the question is you don't, you don't have a copy of, you don't have the actual envelope?

A. I do not.

Q. And, and you are unaware of whether anyone else does at Gawker Media?

A. I'm not aware, no.

Q. Do you know what the postmark on the envelope was?

A. The postmark?

1 A.J. Daulerio

2 Q. Uh-huh.

3 A. Like where it was addressed to?

4 Q. Where it was sent from, the
5 postmark typically on an envelope would
6 typically indicate where the envelope was
7 mailed from --

8 A. No.

9 Q. -- at least what city?

10 A. I don't remember. I never really
11 saw it or looked at it too long.

12 Q. Okay. How did you hear that
13 Cowhead Calta was Mr. Burton's client?

14 A. I didn't --

15 MR. BERLIN: Objection, assumes
16 facts not in evidence. Go ahead and
17 answer.

18 A. I didn't hear that until this,
19 reading this.

20 Q. You were unaware -- that name was
21 unfamiliar to you?

22 A. It was unfamiliar to me.

23 Q. Okay. Were you at all concerned
24 when the DVD arrived that Gawker was being
25 used in any way as an instrument to pursue a

1 A.J. Daulerio

2 personal vendetta against Hulk Hogan?

3 A. That thought didn't cross my mind,
4 no.

5 Q. Thought did not?

6 A. Did not cross my mind.

7 Q. Did you ever directly ask
8 Mr. Burton who his client was?

9 A. I, I must have at some point, but I
10 don't remember exactly when.

11 Q. But he, he refused to tell you?

12 A. He didn't tell me anything.

13 Q. Okay. And you never had any
14 communications with Mr. Calta, right?

15 A. Never, not to my knowledge.

16 Q. Okay. To the best of your
17 knowledge, did anyone ever shop the video to
18 Gawker Media?

19 A. Not to my knowledge.

20 Q. And when the TMZ story first broke
21 about this, I believe you testified earlier,
22 but let me just be clear, you did not at that
23 time seek to ascertain how the Hulk Hogan
24 videotape might become available to you?

25 A. No.

1 A.J. Daulerio

2 Q. I just ask the reporter to mark as
3 Exhibit 8 a single page document bearing
4 Gawker Bates No. 61.

5 (Exhibit 8, document, marked for
6 identification, as of this date.)

7 Q. I ask you if you've seen that
8 e-mail before either as an e-mail or online?

9 A. Seen the e-mail?

10 Q. If you've seen the story either as
11 an e-mail or online?

12 A. I believe I saw it online, but it's
13 only after our story was published.

14 Q. Oh, you did not see it in or about
15 March of 2012?

16 A. I wasn't at Gawker at the time. I
17 was at Deadspin.

18 Q. Okay. All right. But in your
19 travels you didn't, you don't recall seeing
20 it at or about that time?

21 A. No.

22 Q. Do you know who Cameron Stracher
23 is?

24 A. Yes.

25 Q. Who is that?

1 A.J. Daulerio

2 A. I believe he was working with
3 Gawker in the legal team.

4 Q. Okay. Let me ask you to take a
5 look at a document I'll ask the reporter to
6 mark as Exhibit 9.

7 (Exhibit 9, document, marked for
8 identification, as of this date.)

9 Q. Have you seen this document before
10 today?

11 A. I have not seen this document.

12 Q. As of October 9, 2012, did you know
13 who the source of the Hulk Hogan sex tape
14 was?

15 A. No.

16 Q. Is there any reason that you are
17 aware of why Mr. Houston would have been told
18 by Mr. Stracher that they did not know who
19 the identity, the identity of the individual?

20 A. No.

21 MR. BERLIN: If I can object. I
22 believe that the witness has testified
23 that he didn't know then and he still
24 doesn't know who the source of the video
25 is.

1 A.J. Daulerio

2 MR. MIRELL: Right. And my
3 question to the witness was is he aware
4 of any reason why Mr. Houston wasn't
5 simply informed of the fact that we
6 don't know the identity of the source of
7 the, the video.

8 Q. You don't know of any reason why?

9 A. I don't know. I don't know who
10 Mr. Houston is.

11 Q. Okay. Let me ask you about a
12 document I'll have the reporter mark as
13 Exhibit, as Exhibit 10.

14 (Exhibit 10, document, marked for
15 identification, as of this date.)

16 Q. This is a single page document
17 bearing Gawker 228 Bates No. And it appears
18 to be an e-mail from you to Mr. Cook.

19 Do you recognize this e-mail?

20 A. Yes.

21 Q. First, who is Mr. Cook?

22 A. He was the art director at
23 Gawker Media, I believe that's his title.

24 Q. Okay. And what did you -- why
25 did you send this e-mail to Mr. Cook?

1 A.J. Daulerio

2 A. Usually before we have a story that
3 requires additional images that are done
4 inhouse we send along a draft of what the
5 content is. So in this case Jim can get a
6 better idea of what type of art he'd like to
7 use for that particular story.

8 Q. Who is Jim Janerro?

9 A. Who is Jim Janerro?

10 Q. Uh-huh.

11 A. Oh, Jim Janerro was this individual
12 who contacted me over Twitter about some of
13 the subject matter involved in this post. I
14 do not believe that's his real name.

15 Q. Okay. Can you tell me about the
16 communications you had with Mr. Janerro?

17 A. They were direct message
18 conversations. And he had reached out to me
19 after our initial story was published on
20 Gawker and then asked if -- he said something
21 along the lines of that he has more
22 information in regard to the post. And that
23 if he could contact me and he asked for my
24 phone number.

25 Q. Okay. And did you speak to him?

1 A.J. Daulerio

2 A. I did speak to him on the phone,
3 yes.

4 Q. And what was the substance of that
5 conversation?

6 A. The substance of that conversation
7 was that he claimed to have been in
8 possession of other tapes of post Ms. Clem,
9 Mrs. Clem and other people having sex.

10 Q. And what, if any, follow-up was
11 there to that conversation?

12 A. I believe we had a couple other
13 direct messages, conversations on Twitter and
14 then he disappeared.

15 Q. And did he ever supply you with any
16 other tapes or other videos?

17 A. No, he did not.

18 Q. Okay. Did he -- to the best of
19 your knowledge, did this Mr. Janerro have
20 anything to do with getting the Hulk Hogan
21 sex tape to Gawker Media?

22 A. Not to my knowledge.

23 Q. Okay. Do you know if he had any
24 involvement with Mr. Burton?

25 A. No, not to my knowledge.

1 A.J. Daulerio

2 Q. Okay. How about with Cowhead
3 Calta?

4 A. No.

5 Q. Did you make any attempts to
6 determine who he was? You said you
7 thought --

8 A. Who Jim Janerro was?

9 Q. Yeah. You thought that was not his
10 real name?

11 A. Yeah. When we initially had a
12 conversation and he told me about some of the
13 tapes that he had in his possession, we were
14 talking about me going to his -- wherever he
15 was, and I believe it was in Florida, and
16 down to view some of the tapes that he
17 claimed to have had in his possession.

18 Q. Okay. Was -- did you ultimately
19 decide that he wasn't serious and that it
20 wasn't worth following up on further?

21 A. He had completely disappeared. I
22 mean, he was not, no longer responding to the
23 direct messages at that Twitter handle and
24 when he eventually contacted me he contacted
25 me through a blocked number.

1 A.J. Daulerio

2 Q. Okay. Did you ever try
3 independently to locate any other videos such
4 as the ones that are described in this e-mail
5 or any other sex tapes?

6 A. Not to my knowledge. No, not that
7 I recall.

8 Q. Did this e-mail become a story that
9 was actually published on Gawker.com?

10 A. Yeah, I believe soon after this
11 e-mail there was a story similar to this that
12 went up.

13 Q. And at the time that story was
14 published were you aware of whether or not
15 there was any truth to any of the claims
16 made?

17 A. I was aware that these were the
18 people that other parties close to, close to
19 the situation had discussed.

20 Q. Does Gawker have a process for
21 vetting cases, vetting stories for
22 defamation?

23 MR. BERLIN: Objection, relevance.
24 You can go ahead and answer including to
25 not testify about any conversations with

1 A.J. Daulerio

2 MR. BERLIN: Objection.

3 You can answer.

4 A. No.

5 Q. Do you believe that Heather Clem
6 played any part in releasing the Hulk Hogan
7 sex tape to Gawker?

8 A. Not to my knowledge.

9 Q. And why do you believe that?

10 A. No particular reason. I just
11 didn't really consider her one of the
12 potential sources at the time in direct
13 relation to us.

14 Q. Do you have any information about
15 whether the Hulk Hogan sex video was stolen?

16 A. No.

17 Q. Did you subsequently have any
18 communications with anyone -- strike that.

19 Subsequent to your receipt of the
20 Hulk Hogan sex tape, did you have any
21 communications with anyone who claimed to be
22 the anonymous source of that tape?

23 A. No.

24 Q. So I take it that to the best of
25 your knowledge, no promises were made in

1 A.J. Daulerio

2 exchange for publishing the videotape?

3 A. No.

4 Q. Did you feel obligated in any way
5 to the source of this sex tape?

6 A. Not knowing who the source was
7 exactly, no.

8 Q. Had they -- had you known who the
9 source was would you have felt any sort of
10 obligation toward that individual?

11 A. No.

12 Q. By publishing the story that you
13 did, we previously discussed this part of
14 Exhibit 7, did you -- was this something that
15 you were excited about publishing?

16 A. This particular story?

17 Q. Um-hm.

18 A. The original story?

19 Q. Yes.

20 A. I was very enthusiastic about
21 writing about it, yes.

22 Q. And why was that?

23 A. Because I enjoyed watching the
24 video.

25 Q. Okay. And the reason you enjoyed

1 A.J. Daulerio

2 it?

3 A. Because I found it very amusing.

4 Q. Any other reason?

5 A. I thought it was newsworthy and it
6 was something that was worth discussing and
7 putting up on the site.

8 Q. Did you believe that publishing the
9 video would generate traffic to the site?

10 A. I believed that it would be
11 somewhat popular, yes.

12 Q. Was it?

13 A. Eventually.

14 Q. I'm sorry, your answer eventually?

15 A. Eventually, yes.

16 Q. Why do you say eventually?

17 A. Because initially I don't think it
18 was one of the top stories on the site. And
19 I was curious as to actually why that was the
20 case and then it became a lot more popular a
21 couple days afterwards.

22 Q. Do you know what caused that?

23 A. I believe it became national news
24 at that point. And Hulk Hogan was doing a
25 very good job promoting it.

1 A.J. Daulerio

2 A. I have not.

3 Q. Do you have any understanding about
4 what may have transpired with respect to
5 take-down notices that were sent to Akamai in
6 connection with the Hulk Hogan sex tape video
7 pursuant to the Digital Millennium Copyright
8 Act?

9 A. No.

10 Q. Do you have any recollection of
11 there being a period of time during which the
12 Hulk Hogan sex tape was unavailable on
13 Gawker.com?

14 A. During what period of time?

15 Q. Between its first posting and
16 November the 7th of 2012?

17 A. No, I don't.

18 Q. Okay. So if you look at the second
19 sentence of the e-mail here, "upon first
20 receipt of this notice the video in question
21 was not available," you don't know what that
22 is a reference to?

23 A. I have no idea.

24 Q. Okay. Is there anyone other than
25 you who worked on the Hulk Hogan sex tape

1 A.J. Daulerio
2 story other than the editing work that was
3 done with respect to the video by
4 Ms. Bennert?

5 A. I believe there was some copy
6 editing done by both Emma Carmichael and
7 Leah Beckmann.

8 Q. Leah, L-e-a-h, B-e-c-k-m-a-n?

9 A. N-n, two Ns.

10 Q. And can you describe for me more
11 specifically what each of them did?

12 A. Not exactly, but it's more kind of
13 grammatical errors than anything else.

14 Q. This would have -- so they would
15 have been editing your copy?

16 A. Yes.

17 Q. And did either Ms. Carmichael or
18 Ms. Beckmann have any, play any role in
19 editing the excerpts or creating the excerpts
20 of the video?

21 A. Not to my knowledge.

22 Q. Okay. The only individuals who
23 worked on that were yourself and Ms. Bennert?

24 A. Yes.

25 Q. All right. If you could turn back

1 A.J. Daulerio
2 briefly to the Exhibit 6, the
3 interrogatories, and page 8.

4 A. Okay.

5 Q. Under number 2 on that page, the
6 second sentence reads: At Gawker between
7 approximately September 27, 2012 and
8 October 4, 2012 the video was edited, edited
9 from roughly 30 minutes in length to
10 approximately 3 minutes. And then further
11 edited to 1 minute and 14 -- 41 seconds to
12 become the excerpt.

13 Was the, why was the three-minute
14 version created?

15 MR. BERLIN: Objection, asked and
16 answered. You can answer.

17 A. The three-minute version was done
18 for length and narrative. And also just
19 quality of the video.

20 Q. Was the three-minute version posted
21 anywhere or used in any way?

22 A. Used any way how?

23 Q. Was it --

24 A. Did it ever see the -- become
25 public at all?

1 A.J. Daulerio

2 Q. Yeah.

3 A. I don't believe, no, I don't
4 believe so.

5 Q. Was it ever used internally?

6 A. Used internally?

7 Q. At Gawker?

8 A. To look at?

9 Q. To, to exhibit to anyone, any
10 employees of Gawker Media?

11 A. No, not to my knowledge.

12 Q. Was it used in any other way?

13 A. No.

14 Q. The three-minute version became
15 though the basis for creating the shorter
16 1 minute 41 second version?

17 A. Yes, I believe so.

18 Q. Okay. And who made the decision to
19 create the 1 minute 41 second version after
20 the three-minute version had been created?

21 A. I believe myself.

22 Q. If I could direct your attention to
23 page 6 of the same document, again Exhibit 6,
24 the interrogatory responses.

25 A. Okay.

1 A.J. Daulerio

2 Q. Under Scott Kidder, the column to
3 the right of his name says: A.J. Daulerio
4 discussed with this witness the publication
5 of the excerpts from the video.

6 Is that an accurate statement?

7 A. It depends on what time this
8 discussion actually took place.

9 Q. That was actually my next
10 discussion. Do you recall having had any
11 discussions with Scott Kidder about the
12 publication of the excerpts from the video?

13 A. Nothing substantial when it came
14 into like the, the length or the content of
15 video, no, I don't.

16 Q. Do you recall having any
17 discussions with Mr. Kidder at all prior to
18 publication of the video on the Gawker.com
19 website?

20 A. No, I don't recall.

21 Q. Do you have a recollection of
22 having spoken to Mr. Kidder about the, the
23 Hulk Hogan sex tape or any excerpts of it
24 subsequent to publication on the website?

25 A. Yes, but I don't remember the exact

1 A.J. Daulerio

2 nature of those conversations.

3 Q. Okay. Do you recall anything about
4 the conversations?

5 A. Nothing at all.

6 Q. You'll see above that box that we
7 were just looking at, in the box to the right
8 of Mr. Denton's name it reads: Scott Kidder,
9 paren, see below, closed paren, discussed
10 with Nick Denton the publication of the
11 excerpts from the video.

12 Did either Mr. Kidder or Mr. Denton
13 talk to you about any conversations that they
14 had concerning the excerpts from the video?

15 A. No.

16 Q. All right. And then finally on
17 that page in the box to the right of Emma
18 Carmichael's name on the same page, page 6,
19 the second sentence is, reads: In addition
20 she reviewed the video when it arrived at
21 Gawker and discussed the Gawker story with
22 A.J. Daulerio.

23 Do you recall specifically what you
24 and Ms. Carmichael discussed about the video
25 and your story?

1 A.J. Daulerio

2 A. About the video, I think that was
3 length and content of the video. And then
4 the content of the video as it pertained to
5 my story, my written story, but nothing
6 specifically. It was more kind of a general
7 editorial conversations that happened between
8 editors all the time.

9 Q. All right. Let's go back to the
10 story, if you would, Exhibit 7, again
11 page 819. Let me ask you this initially.

12 The first two paragraphs of your
13 story, Mr. Daulerio, speak about the greater
14 context, if I can put it that way, of sex
15 tapes and the public's interest in sex tapes.
16 Would you agree that that's a fair
17 characterization?

18 A. Yes.

19 Q. Okay. The balance of the story,
20 the -- all the remaining paragraphs as I read
21 it are simply a re-capitulation of what you
22 viewed on the videotape --

23 MR. BERLIN: Object to the form of
24 the question.

25 Q. -- or on the DVD?

1 A.J. Daulerio

2 MR. BERLIN: Objection.

3 Q. Is that correct?

4 MR. BERLIN: I'm sorry. Objection.

5 You can answer the question.

6 A. Yes.

7 Q. All right. We talked earlier about
8 NSFW and what that means. Can you tell me
9 why in light of that discussion your headline
10 for this story includes the words "not safe
11 for work but watch it anyway"?

12 A. Tell you why I used that headline?

13 Q. Why you use that phraseology in
14 that headline?

15 A. Because I was trying to
16 editorialize a little bit in the headline,
17 and we do make our headlines a little more
18 interesting, and I'm offering an opinion on
19 that particular matter because I was so
20 enthusiastic about this particular tape.

21 Q. Were you encouraging people to
22 watch the tape at work?

23 A. Sure.

24 Q. Regardless of what their employers
25 might think or say about that?

1 A.J. Daulerio

2 A. It was -- I was telling them it was
3 my opinion that it was worth the risk.

4 Q. This was so good that they had,
5 that they really ought to?

6 A. In my opinion, yes.

7 Q. Okay. What made it so good?

8 A. The back and forth between
9 Mr. Hogan and Ms. Clem, and that was pretty
10 much it.

11 Q. Have you ever spoken to any
12 advertisers about whether they are
13 comfortable or uncomfortable having their ads
14 posted on a web page that contains NSFW
15 content?

16 A. I haven't spoken to any
17 advertisers, no.

18 Q. Do you recall whether the Kate
19 Middleton breasts story included any
20 advertising?

21 A. I don't recall.

22 Q. Okay. Aside from NSFW tags, are
23 there any other circumstance under which
24 Gawker has any sort of policy that you've
25 ever heard of concerning no running of ads on

1 A.J. Daulerio

2 Q. In reference to stories posted on
3 the internet?

4 A. Not specifically, no.

5 Q. Okay. Well, let's put it this way.
6 What would be the opposite of an NSFW story,
7 would you have a term for it or have you ever
8 coined or used a term for it?

9 A. Not to my knowledge.

10 Q. Was any consideration ever given to
11 running a story about the Hulk Hogan sex tape
12 without using any of the video footage?

13 MR. BERLIN: Objection.

14 You can answer.

15 A. Without any of the video footage?

16 Q. Correct?

17 A. Not to my knowledge.

18 Q. Why not?

19 A. Just first time writing about the
20 story was when we received the tape so the
21 tape was actually part of the story.

22 Q. That's what made the story an
23 exclusive for you, right?

24 A. Yes.

25 Q. And nobody had aired the tape

1 A.J. Daulerio
2 itself before your story, correct?

3 A. Not to my knowledge.

4 Q. And so what you wanted to do is to
5 run the NSFW footage, that was the whole
6 point of the story, correct?

7 MR. BERLIN: Objection.

8 You can go ahead and answer.

9 A. Okay. No, the whole point of the
10 story was to, A, prove its existence and, B,
11 for me to commentate on what I witnessed of
12 that tape.

13 Q. But you never considered running a
14 story with just your commentary?

15 MR. BERLIN: Objection, asked and
16 answered.

17 You can answer.

18 A. The story as it pertains to this
19 tape, no.

20 Q. Okay. And if you had done that the
21 number of page views and unique visitors
22 would have been far less than what it
23 actually was, correct?

24 MR. BERLIN: Objection, calls for
25 speculation. You can answer if you can.

1 A.J. Daulerio

2 A. I can speculate and probably say
3 yes.

4 Q. Okay. You'd get ignored basically,
5 right, if that's all you did if it was just
6 your commentary on the tape?

7 MR. BERLIN: Objection, same
8 objection. You can answer.

9 A. No, I thought my commentary was
10 very good.

11 Q. Not commenting on the quality of
12 the commentary, just commenting on how
13 readers would have reacted if you had not
14 posted the actual excerpts from the video
15 that you actually did?

16 MR. BERLIN: Same objection.
17 You can answer the question.

18 A. So probably would have been less.

19 Q. Significantly less, right?

20 MR. BERLIN: Same objection.
21 You can answer the question.

22 A. I would hope not.

23 Q. What do you expect?

24 A. I don't know, a little less.

25 Q. Okay. You understood when you

1 A.J. Daulerio
2 watched the video that it was recorded from a
3 hidden camera, correct?

4 A. Yes.

5 Q. And you never saw any footage where
6 Hulk Hogan acknowledged that the camera was
7 there or that the session was being taped,
8 correct?

9 A. Where he directly stated that, that
10 fact, no, I did not.

11 Q. And you've never seen any evidence
12 that he knew at the time that the encounter
13 was being taped?

14 MR. BERLIN: Objection to the
15 extent it calls for him to speculate
16 what he knew, but you can answer the
17 question.

18 A. At the time of it being taped, no.
19 But I did know that after I had received the
20 tape that he knew of its existence and where
21 he was staying at the time when it was taped.

22 Q. Okay. Have you ever seen any
23 evidence that Hulk Hogan knew at the time of
24 the encounter that that encounter was being
25 videotaped?

1 A.J. Daulerio

2 A. No.

3 Q. Did you ever take any steps to
4 determine if a camera was visible to him or
5 to anyone else in the room?

6 A. Well, I did take steps to the
7 location where it was taped and whether or
8 not that location was known to be, known to
9 have security cameras or cameras for that
10 matter.

11 Q. All right. And what did you learn
12 in that regard?

13 A. That it seemed to be something that
14 Bubba the Love Sponge had discussed actively
15 on his radio show that he was a big fan of
16 having his rooms wired with cameras.

17 Q. Did you become aware of that before
18 or after this story was published?

19 A. I can't recall exactly when.

20 Q. Do you have a specific recollection
21 of knowing that fact at the -- prior to the
22 publication of the story on the 4 of
23 October 2012?

24 MR. BERLIN: Objection, sorry,
25 objection, asked and answered.

1 A.J. Daulerio

2 You can answer.

3 A. No.

4 Q. Did you take any steps to determine
5 whether even if Hulk Hogan was aware of the
6 camera that he knew it was operating and that
7 there would be a video generated from it?

8 MR. BERLIN: Objection to the
9 extent that it calls for what Hulk Hogan
10 knew or didn't know. You can answer the
11 question if you can.

12 A. I'm sorry, can you repeat the
13 question?

14 MR. MIRELL: Sure. Do you want to
15 read it back.

16 (Record read.)

17 A. Prior to publishing?

18 Q. Yes.

19 A. No.

20 Q. Is it your experience that if you
21 have sex in a place where security cameras
22 are located that those tapes somehow have a
23 tendency to become public?

24 MR. BERLIN: Objection, calls for
25 all sorts of speculation, but you can go

1 A.J. Daulerio

2 the right word, but I'm sure there is a risk
3 involved.

4 Q. Was there a reason why you asked
5 Kate Bennert to edit the video given how new
6 an employee she was?

7 A. Was there a reason?

8 Q. Yes.

9 A. She was our video editor.

10 Q. Okay. There was nobody else who
11 was, who had the ability to do what you
12 needed her to do?

13 A. Well, she worked for our site so
14 that was part of her job was to edit videos
15 of this nature and of many other natures.

16 Q. In your response, in the response
17 to interrogatory No. 5 turning to Exhibit 6,
18 page number No. 8.

19 A. Exhibit 6, page what?

20 Q. It's page 8.

21 A. Okay.

22 Q. The response, part of the response
23 reads, and I'm reading from the last sentence
24 of item No. 2 on that page, the editing of
25 the video was deliberately designed to create

1 A.J. Daulerio
2 excerpts that would show only enough sexual
3 activity to establish to readers that the
4 video from which the excerpts was derived was
5 a sex tape and otherwise include only
6 conversation; is that correct?

7 A. That's correct.

8 Q. And why did you need as a result of
9 that to show anything explicit?

10 A. Explicit in terms of?

11 Q. Of genitalia let's say, for
12 instance, or breasts?

13 A. Those are usually things that
14 happen people when people, those are things
15 that are exposed when people have sex.

16 Q. True. Are you familiar with the
17 use of pixelization or blurring?

18 A. Yes.

19 Q. And was that ever considered by you
20 with respect to the excerpts that you
21 created?

22 A. I don't think so.

23 Q. Why?

24 A. Mainly because I don't necessarily
25 like to employ those things on certain

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Toni Allegrucci, a Notary Public within and for the State of New York, do hereby certify:

That ALBERT JAMES DAULERIO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of October, 2013.



TONI ALLEGRUCCI