

# **EXCERPTS FROM TRIAL TRANSCRIPTS**

In Support of Defendants' Motion for a New Trial,  
Or, In The Alternative, For Remittitur

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

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TERRY GENE BOLLEA, professionally  
known as HULK HOGAN,

Plaintiff,

No. 12-012447-CI-011

vs.

GAWKER MEDIA, LLC, aka GAWKER  
MEDIA, NICK DENTON; A.J. DAULERIO,

Defendants.  
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TRIAL PROCEEDINGS BEFORE  
THE HONORABLE PAMELA A.M. CAMPBELL  
and a jury

DATE: March 7, 2016  
TIME: 9:00 a.m. to 11:43 a.m.  
PLACE: Pinellas County Courthouse  
545 First Avenue North  
Courtroom A  
St. Petersburg, Florida  
  
REPORTED BY: Susan C. Riesdorff, RPR, CRR  
Notary Public, State of  
Florida

Volume 10  
Pages 1220 - 1316

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I N D E X

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1 MR. TURKEL: I didn't think he had run afoul  
2 of anything. Let me just check. He's not --

3 THE COURT: I don't think he's talking about  
4 their emotional state. He's talking about his.

5 MR. TURKEL: I will redirect the question.

6 THE COURT: Okay. Thanks.

7 MR. TURKEL: I will make sure he doesn't talk  
8 about how they feel as much as how he feels about  
9 them being exposed to it. Okay?

10 THE COURT: That's fine. Thank you.

11 (In open court.)

12 BY MR. TURKEL:

13 Q. Mr. Bollea, I wanted -- when you talk about  
14 this, I want you to focus on your feelings about the  
15 fact that your family was exposed to this. All right?

16 A. Yes, sir.

17 Q. If you could focus on how you feel about the  
18 fact that they were exposed to this, which is what I  
19 think you were saying.

20 A. Yes, sir, I was.

21 Q. And let me ask you this question: Were you  
22 humiliated by this?

23 A. I was completely humiliated. My family has  
24 been through so much. My feeling was "not again," you  
25 know. I had just completely cleaned my life up, you

1 know. I accepted Christ as my savior when I was 14  
2 years old. I drifted away from that. I reaffirmed my  
3 belief. My new relationship is very spiritually based.  
4 When I approach my children, I was -- I thank God that  
5 they know who I am. And as hard a hit as I knew it  
6 would be, I didn't know how they would survive. And I  
7 was worried about how it was going to affect everything  
8 with my relationship with my children. And thank God  
9 they understand who I am.

10 MR. SULLIVAN: Objection, Your Honor.

11 MR. TURKEL: Judge, I don't --

12 THE COURT: Overruled.

13 BY MR. TURKEL:

14 Q. I understand what you're saying. Were you  
15 ashamed?

16 A. I was humiliated. But the thing is, my life  
17 has changed drastically. I'm pretty hardheaded, but  
18 I've learned, you know, and I'm praying that, you know,  
19 even in this moment, I'm praying that my new marriage  
20 stays together. My --

21 MR. SULLIVAN: Objection, Your Honor. May we  
22 approach?

23 THE COURT: Is it on the same issue?

24 MR. SULLIVAN: He is --

25 THE COURT: Okay. Overruled.

1 Hulk Hogan the character, were you embarrassed of what  
2 it did to you as a person?

3 A. I was embarrassed with what it did to me as a  
4 person, but he was -- it was even embarrassing as a  
5 character. Hulk Hogan was embarrassed.

6 MR. TURKEL: Judge, if I can have a moment to  
7 confer. I think we're about done.

8 Judge, we don't have any more questions at  
9 this point in time.

10 THE COURT: All right. Why don't we go ahead  
11 and take a break, about a 10-minute comfort break,  
12 please.

13 (The jury retired from the courtroom at 3:15  
14 p.m.)

15 THE COURT: All right. Thank you.

16 MR. SULLIVAN: Can we discuss this a bit  
17 more?

18 THE COURT: Yes.

19 Mr. Turkel, do you want to approach?

20 (At the bench.)

21 MR. TURKEL: There is only one of me, Judge.

22 THE COURT: I think you can take it. Now  
23 there's four.

24 MR. TURKEL: Can I make three statements for  
25 each one of them?



1 Q. And you were giving in to Heather's  
2 persistent pressure each time, right?

3 A. I wasn't -- after the first time, it wasn't  
4 like persistent pressure. It was just I was in that  
5 situation and my guard was down. I just don't remember  
6 persistent pressure. They kind of like broke the ice  
7 with me. So the ice was broken. It's just nothing was  
8 said like persistently like it had been in the past for  
9 years and years.

10 Q. All right. So you told us your guard was  
11 down?

12 A. Yes, sir.

13 Q. How long did you go before you were able to  
14 get your guard back up? How long did that go?

15 A. Well, as far as getting my guard back up,  
16 after the last time I had sex with Heather, I would say  
17 it was a couple months before I came out of that low,  
18 you know. But then trying to get my guard up, I just  
19 have never been able to get my step back or feel like  
20 myself because, you know, even trying to get my guard  
21 back up, there's just been this overriding haunting of  
22 this sex tape that Gawker put out there. So instead of  
23 having my guard up, when I'd look at somebody and meet  
24 somebody or go out in public or I'd sign someone's  
25 kid's autograph, instead of being up with my guard, I

1 still felt like I was turning inside over this thing.  
2 I just haven't felt like myself. So just -- it changed  
3 me from -- I never got my guard back up. Like you  
4 said, when did you get your guard back up? I never  
5 have. This is still tearing me up with this whole -- I  
6 never recovered from my guard up from when I bottomed  
7 out before my marriage, through all the -- through  
8 having the sex with Heather, through this crazy sex  
9 tape being released by Gawker, you know, that I didn't  
10 know about. I haven't been able to get back up and be  
11 who I was before.

12 Q. So your guard has been down since --

13 A. Yeah. I'm not --

14 Q. -- the summer of 2007?

15 A. I would say yes, sir. I don't -- I'm not the  
16 same person I was before all this craziness happened.

17 Q. Okay. So you've been at an all-time low ever  
18 since then?

19 A. I didn't say that. I said I didn't get my  
20 guard up. I'm trying to stay what you're talking  
21 about. You asked me when did I get my guard back up.  
22 My guard is not up like Hulk Hogan's guard is usually  
23 up. I'm not that same -- I don't have the same guard  
24 up.

25 Q. Do you fear that other women are going to

1 to answer as Hulk Hogan, correct?

2 A. Yes, sir.

3 Q. Okay. Now, let's talk a bit -- you talked to  
4 us yesterday about emotional distress that you  
5 experienced. Do you recall that?

6 A. Yes.

7 Q. Now, you did not seek any medical treatment  
8 in connection with the emotional distress you  
9 experienced, did you?

10 A. No, sir.

11 Q. You didn't see a doctor in connection with  
12 your emotional distress, did you?

13 A. No, sir.

14 Q. You didn't seek psychological counseling in  
15 connection with your emotional distress, correct?

16 A. No, sir.

17 Q. You never went to a psychiatrist in  
18 connection with your emotional distress, correct?

19 A. No, sir.

20 Q. All right. Now, you also talked to us  
21 yesterday about professional wrestling.

22 Do you recall that testimony?

23 A. Yes, sir.

24 Q. All right. And you explained to us that  
25 wrestling isn't fake. It's not fake, right, it's

1 Q. The comments about retirement and --

2 A. I saw the TMZ video.

3 Q. In court today, right?

4 A. Yes, sir.

5 Q. All right. How many days before that TMZ  
6 interview did you find out that Gawker had published  
7 the sex video?

8 A. The best of my recollection, it was before I  
9 went on the publicity tour. Four or five, maybe a  
10 week. But when I found out about the sex tape, I was  
11 just despondent. It was just -- everybody was trying  
12 to talk me into not going on the tour, but I just -- it  
13 was before the tour, a week maybe, or four or five  
14 days.

15 Q. And that's what I was going to ask you. You  
16 mentioned -- and I don't know if the jury picked it up  
17 in the long answer -- that hearing about the Bubba  
18 thing was icing on the cake. Would you explain what  
19 you meant by that?

20 A. It was icing, I meant icing on the cake  
21 because when the video came out, it just totally  
22 flipped my world upside down. And, you know, I just  
23 remember going days without being able to sleep.  
24 Just -- it was a situation where all this media stuff  
25 was affecting my personal life where I -- I just had a

1           And then when this sex tape hit, my whole  
2 world went upside down and everything changed from my  
3 personal life to life on the street. And it just -- I  
4 thought I had my act together again. I was moving  
5 forward, and this tape totally sabotaged me again. It  
6 derailed me.

7           Q. Let me ask you. Mr. Sullivan asked you to  
8 tell the jury whether you went to see any doctors or  
9 counselors or sought treatment for physical ailments.  
10 But did it affect you physically?

11          A. Yes, sir, it did.

12          Q. Could you tell them how?

13          A. Well, I mean, not being able to eat, not  
14 being able to sleep, constantly thinking about it 24  
15 hours a day. It's not something you can walk away  
16 from. It's something that sticks with you. And just  
17 my demeanor, I just felt like I was turned inside.  
18 That's the only thing I can really describe it, is it  
19 felt like I was turned inside.

20                 So if I was meeting a fan or meeting a kid or  
21 whatever, I felt like -- I was so used to protecting  
22 these kids and being honest with them and telling them  
23 to do good and, you know, be cool and eat fruit or  
24 train so your proteins, your vitamins, such a positive  
25 thought, that I felt like if I tried to talk to

1 A. About the sex tape.

2 Q. But do you recall what aspect?

3 A. No.

4 Q. Like --

5 A. There were no -- there were no details. It  
6 was just he was -- we've got to figure this out. This  
7 is -- this is awful.

8 Q. How would you characterize Mr. Hogan in media  
9 appearances?

10 A. I would characterize him as the gregarious  
11 Hulk Hogan, the Hulkster, the character, when he was in  
12 doing his interviews.

13 Q. During the time period that you were in New  
14 York on a press tour for the Bound for Glory series in  
15 2012, was his personality different during that tour?

16 A. His personality was pretty much the same  
17 while doing the media, yes.

18 Q. And what about while not doing the media?  
19 Was his personality the same?

20 A. He was a little more -- he was a little more  
21 reserved and dealing with the situation.

22 Q. The situation. By that you mean the sex  
23 tape?

24 A. Yes, sir.

25 Q. And in discussing some of the specific events

1 that"?

2 A. I said I don't do that.

3 Q. But his indication to you in the context of  
4 making that statement was he didn't want to talk about  
5 the sex tape at all; is that right?

6 A. That he said he did not want to talk about  
7 it.

8 Q. And one of the things you mentioned, that  
9 when he does his interviews, he's in character. Is  
10 that right? For the Hogan --

11 A. For the Hulk Hogan character, yes. He's  
12 usually not -- he's referred to as Hulk Hogan on the  
13 screen and when they introduce him. So he's Hulk Hogan  
14 when he's doing interviews.

15 Q. You mentioned with respect to the Kathie Lee  
16 and Hoda appearance, that there was an emotional  
17 moment. What was that emotional moment?

18 A. After -- when we got off set, he went to the  
19 bathroom and was crying. And him and Kathie Lee were  
20 having a moment talking about how their life has been  
21 an open book, the public.

22 Q. Mr. Hogan was crying?

23 A. Teared up. I wouldn't say bawling crying.

24 Q. And that was in the context of talking about  
25 the sex tape?

1           A.    Talking about how life hits you, I guess,  
2 sometimes.

3           Q.    Was Kathie Lee crying?

4           A.    She always cries.

5           Q.    But was she crying at that time?

6           A.    No, not really.

7           Q.    So it was just him crying?

8           A.    (Nods affirmatively).

9           Q.    Yes?

10          A.    Oh, I'm sorry.  Yes.  It wasn't like he was  
11 crying.  He went to the restroom to compose himself, so  
12 it wouldn't be like boo-hooing.  He was just emotional.

13          Q.    Had you ever seen him do anything like that  
14 before?

15          A.    No, sir.

16          Q.    During the moment with Kathie Lee, where were  
17 you standing?  Did you hear --

18          A.    In the hallway.  I didn't hear every word,  
19 but I was in the hall.

20          Q.    And have you -- did you tell Mr. Vogt  
21 everything you recall about that conversation?

22          A.    I don't really recall all the exact words.  I  
23 just remember where there was an emotional exchange and  
24 she -- and Kathie Lee was hugging him and saying, you  
25 know, I understand when your private life gets played



1 out in public. I have been there with her husband,  
2 whatever, Frank. And that was about it. And he was  
3 emotionally -- he was, you know -- he was emotional.  
4 And then he went into the restroom. He excused himself  
5 to go into the restroom. And he was in there for a  
6 little while. I think he was on the phone. That's all  
7 I know.

8 Q. Do you know why he went into the restroom?  
9 Did you ever say to you why --

10 A. I think he went in to compose himself.

11 Q. Did he ever say that to you?

12 A. No. I'm assuming.

13 (Video deposition concluded)

14 MR. VOGT: That's it.

15 THE COURT: That's the end. All right.

16 Thank you. All right. So at this point in time,  
17 we're going to take just a brief comfort break to  
18 set up the next. Thank you.

19 (The jury retired from the courtroom at 2:54  
20 p.m.)

21 THE COURT: What's next?

22 MR. TURKEL: Reading the David Rice depo.

23 THE COURT: Any objections? Are there  
24 objections on David Rice?

25 MR. BERRY: No, no, Your Honor.

1 Q. Okay. And sex brings traffic to websites,  
2 correct?

3 A. I would assume so.

4 Q. During the time that you were working for  
5 Gawker.com, do you recall doing a story about Brett  
6 Favre?

7 A. No.

8 Q. Do you know who Brett Favre is?

9 A. I do.

10 Q. Who is he?

11 A. He's an NFL quarterback.

12 Q. Do you know what team he plays for?

13 A. He's retired.

14 Q. Do you know what team he did play for before  
15 his retirement?

16 A. He played for the Green Bay Packers, New York  
17 Jets, and the Minnesota Vikings.

18 Q. Let me show you a document that I'll ask the  
19 reporter to mark as Exhibit 2.

20 I ask you to take a look at the story and see  
21 if you recall it. So my -- my reference to you is  
22 everything above the box on the second page.

23 Do you recall seeing that story before today?

24 A. Yes.

25 Q. Did you write it?

1 A. Yes.

2 Q. Was there a reason you didn't recall it when  
3 I asked you about whether you recalled writing about  
4 Brett Favre?

5 A. You asked about Gawker.com. This was written  
6 for Deadspin.com.

7 Q. Okay. All right. So let's -- let's be clear  
8 then. I will endeavor to make clear when I'm speaking  
9 about Gawker.com as a Gawker.com website. When I use  
10 the term Gawker generically, can we have an  
11 understanding that --

12 A. It's Gawker Media.

13 Q. -- it's Gawker Media, which would include the  
14 Deadspin website?

15 A. Sure.

16 Q. Okay. So this was a story that you wrote  
17 when you were working for Deadspin, a site -- the  
18 sports site of Gawker Media, correct?

19 A. Yes.

20 Q. Let's turn to the story itself. Did Gawker  
21 pay for the photos that were available on this site?

22 A. Yes.

23 Q. How much did it pay?

24 A. Approximately \$10,000 for the photo. I  
25 believe it was around 12,000 total including travel.

1 Q. Including travel?

2 A. Yes.

3 Q. To obtain the photos?

4 A. For the third party to bring the photos to  
5 us.

6 Q. And when you say the photos, do you include  
7 the -- are you referring to the video or to just the  
8 penis photos?

9 A. I'm referring to the penis photos and the  
10 voicemail messages that made those parts of the video.  
11 The video was edited for narrative purposes.

12 Q. Did Gawker ever make any determination -- and  
13 here I'm talking about Gawker generically, including  
14 the Deadspin site.

15 Did Gawker make any determination as to  
16 whether it was invading Mr. Favre's privacy by posting  
17 what it posted?

18 A. Not that I recall.

19 Q. Do you see any distinction between the Favre  
20 posting and the Hulk Hogan sex video posting?

21 A. In terms of subject matter?

22 Q. In any way that you regard as material.

23 A. Subject matter.

24 Q. And the subject matter being -- what's the  
25 distinction?

1           A.    One is a professional wrestler and one is a  
2 football player.

3           Q.    So do you recall that during the period of  
4 time that you were editor-in-chief of Gawker.com, there  
5 was a story that was published about Kate Middleton's  
6 breasts?

7           A.    Yes.

8           Q.    Okay.  Let me ask you to take a look at a  
9 document we'll mark as Exhibit 3.

10                  Let me ask you to take a look at Exhibit 3  
11 and ask you whether that's a story you recall having  
12 published.

13           A.    Yes.

14           Q.    Did Gawker pay for these photos?

15           A.    No.

16           Q.    How did it procure them?

17           A.    That I don't recall.  I was actually in  
18 Budapest at the time this was published.  The author of  
19 this post, I don't remember exactly how he procured  
20 them.

21           Q.    When you were -- why were you in Budapest?

22           A.    That was where our work outing was that year.

23           Q.    I'm sorry.  Your work outing?

24           A.    Gawker Media had taken its site leads to  
25 Budapest.

1 Q. Okay. Is that sort of a retreat that is done  
2 on an annual basis?

3 A. I don't think it's done annually, but it was  
4 during that year.

5 Q. Okay. Who was involved in the procuring of  
6 these photos then on behalf of Gawker.com?

7 A. I believe Max Reed, the author of this post.

8 Q. Okay. Was he a staff writer at the time?

9 A. Yes.

10 Q. Is he still?

11 A. Yes. I believe his title has changed,  
12 though.

13 Q. What's his title now?

14 A. I believe it's managing editor.

15 Q. Of Gawker Media?

16 A. No; of Gawker.com.

17 Q. Did Gawker make any determination as to  
18 whether in publishing this story Gawker.com was  
19 invading Kate Middleton's privacy?

20 A. Yeah. It was, to the best of my  
21 understanding, that, no, there was no invasion of  
22 privacy.

23 Q. And did you do -- take any steps personally  
24 to determine whether you believed an invasion of  
25 privacy of Ms. Middleton arose from Exhibit 2 --

1 Exhibit 3? I'm sorry.

2 A. No.

3 Q. Do you believe that there's any distinction  
4 between the circumstances that gave rise to the photos  
5 of Ms. Middleton and the publication of the sex tape of  
6 Hulk Hogan?

7 A. Just the difference in story.

8 Q. Difference in personality?

9 A. Story itself.

10 Q. Do you think there's a difference between  
11 voluntarily appearing nude in a place that's visible to  
12 the public and being surreptitiously recorded?

13 A. Personally?

14 Q. Yes.

15 A. Yes.

16 Q. I'm sorry?

17 A. Yes. But in terms of story context, no.

18 Q. What do you mean by story context?

19 A. I'm saying she's a public figure and these  
20 photos were released elsewhere and became a news story  
21 in their own right. And however Max procured these  
22 photos, which I don't believe he went to anything  
23 real -- outside of just like the Internet to get them,  
24 no.

25 Q. Let me ask you to look at the top of page 1

1 was this something that you were excited about  
2 publishing?

3 A. This particular story?

4 Q. Uh-huh.

5 A. The original story?

6 Q. Yes.

7 A. I was very enthusiastic about writing about  
8 it, yes.

9 Q. And why was that?

10 A. I enjoyed watching the video.

11 Q. And the reason you enjoyed it?

12 A. Because I found it very amusing.

13 Q. Any other reason?

14 A. I thought it was newsworthy and it was  
15 something that was worth discussing and putting up on  
16 the site.

17 Q. Did you believe that publishing the video  
18 would generate traffic to the site?

19 A. I believed that it would be somewhat popular,  
20 yes.

21 Q. Did you give any consideration, prior to  
22 October 4, 2012, as to whether publishing the  
23 Hulk Hogan sex tape would distress Hulk Hogan?

24 A. No.

25 Q. You didn't care really, did you?



1 A. No.

2 MR. BERLIN: Objection.

3 THE WITNESS: No.

4 Q. Had you known that Hulk Hogan would be  
5 emotionally distressed by this publication, you would  
6 have still published it, correct?

7 A. Sure, yes.

8 Q. So it's fair to say whether he suffered  
9 emotional distress or not, that played no part in your  
10 decision about whether and what to publish?

11 A. Correct.

12 Q. Let's go back to the story, if you would,  
13 Exhibit 7, again, page 819. Let me ask you this  
14 initially.

15 The first two paragraphs of your story,  
16 Mr. Daulerio, speak about the greater context, if I can  
17 put it that way, of sex tapes and the public's interest  
18 in sex tapes.

19 Would you agree that that's a fair  
20 characterization?

21 A. Yes.

22 Q. Okay. The balance of the story, all of the  
23 remaining paragraphs as I read it are simply a  
24 recapitulation of what you viewed on the videotape or  
25 on the DVD.

1 testimony. These e-mails themselves will not be  
2 introduced into evidence, but we are going to read  
3 from those for the jury's benefit today.

4 THE COURT: All right. Thank you.

5 This is one of the prior depositions that  
6 we've already seen from Mr. Daulerio?

7 MR. VOGT: Yes, Your Honor. This is the 2013  
8 deposition.

9 THE COURT: All right. So, ladies and  
10 gentlemen of the jury, please consider this video  
11 deposition as you would other evidence of  
12 Mr. Daulerio.

13 (Whereupon, excerpts of the video deposition  
14 of A.J. Daulerio were played in open court as  
15 follows:)

16 Q. Can you just summarize for me this incident  
17 as you recall it?

18 A. Yeah. The -- this is a story that was a  
19 video of a girl having sex. And I believe the video  
20 was posted elsewhere prior to us actually posting the  
21 link. So we actually didn't have possession of this  
22 video by ourselves. It was from another site. And  
23 subsequently the interaction I had with both the person  
24 involved in that tape and Gaby --

25 Q. Before posting this video, did you determine

1 whether the sex had been consensual?

2 A. As far as I knew, it was consensual.

3 Q. Did you make any efforts to determine whether  
4 that was true or not before you posted it?

5 A. I don't know how I would make determination,  
6 actually.

7 Q. Did you contact the site where the video had  
8 been previously posted?

9 A. No, I did not.

10 (Video clip concluded.)

11 MR. VOGT: So the subject matter of this post  
12 was a woman who was recorded engaged in sexual  
13 activity in a semipublic place. She subsequently  
14 wrote e-mails to Mr. Daulerio as well as  
15 Gaby Darbyshire in the complaint department at  
16 Gawker. In her initial e-mail, she writes, I'm  
17 writing in regards to having a post be removed  
18 from the website. I'm asking you to cease and  
19 desist the use of that video. I am the girl in it  
20 and it was stolen from me and put up without my  
21 permission.

22 That e-mail was forwarded to the complaint  
23 department. And in an e-mail in response,  
24 Mr. Daulerio wrote, blah, blah, blah.

25 In another e-mail exchange, the subject of

1 the article, after writing to -- asking for it to  
2 be taken down, Mr. Daulerio responded, Saw your  
3 messages. Thing is, we're not going to take it  
4 down. Best advice I can give you right now, do  
5 not make a big deal out of this because, as you  
6 can tell, the footage is blurry and you are not  
7 identified by name. I'd keep it that way. Plus  
8 this is public. Not much wiggle room for any real  
9 threats. I'm sure it's embarrassing, but these  
10 things do pass. Keep your head up.

11 In response, again, the subject writes, I  
12 understand it's blurry, but people that know the  
13 people in the video can clearly see and know that  
14 it is them. I need this to be taken down.

15 In response, Mr. Daulerio writes, It's not  
16 getting taken down. I've said that. And it's not  
17 a very serious matter. It's a dumb mistake you  
18 made. Happens to the best of us.

19 Again, the subject writes, It's pathetic that  
20 you won't consider the privacy, respect, and  
21 reputations of others. Yes, dumb mistakes happen  
22 to everyone, but it does not need to be made to be  
23 seen by the entire web. I am aware that it will  
24 pass and that people make mistakes, but this is  
25 very serious and involves a lot more than a simple

1 mistake. You should seriously consider taking  
2 this off the website because things like this can  
3 spiral out of control.

4 Mr. Daulerio responds, The privacy? It's  
5 private. You're not identified even though you  
6 are having sex in a public place. I'm sorry this  
7 is uncomfortable for you, but let's -- also let's  
8 not start throwing around words like pathetic,  
9 especially when it comes to this.

10 And then finally, Ms. Darbyshire, who was  
11 counsel for Gawker Media, responds, This is a news  
12 story and completely newsworthy. It's the truth,  
13 which can be hurtful, granted. But one's actions  
14 can have unintended consequences, especially when  
15 carried out in a public or semipublic place where  
16 clearly people were able to easily watch the  
17 activity at hand. The good news for you is that  
18 the image is so poor in quality that it is  
19 practically impossible to identify anyone in this  
20 clip. And we certainly haven't named anyone. The  
21 whole story will blow over quickly if it's not  
22 given legs, but we believe that we are publishing  
23 this legitimately and, as such, we will not remove  
24 the clip.

25 Subsequently, the clip was removed.

1 video views were processed to make sure that there were  
2 no SPAM views, bot traffic, those sorts of things, so  
3 that videos weren't artificially inflated in the  
4 popularity ranking.

5 Q. Then based on that research, did you make any  
6 determination concerning the validity of the view  
7 counts on the screenshots you had for the YouTube  
8 pages?

9 A. Yes. At the time, given the batch processing  
10 methodology that they were using, these were accurate.  
11 Any of the counts that were already displayed had  
12 already been prescrubbed by YouTube's back end system.  
13 At that time, I believe they were already owned by  
14 Google. So they were being -- they were reviewing that  
15 and only showing what they considered a trued-up view  
16 count number.

17 Q. So if we look at the chart that's in  
18 Exhibit 161 that you prepared, in your opinion, does  
19 this chart accurately reflect the number of views of  
20 the Hogan sex tape on YouTube?

21 A. In my opinion, this does accurately reflect  
22 the count. Based on the timing of the screenshot, the  
23 cease and desist, given that these were taken prior to  
24 the actual action of removing them, this actually would  
25 be a conservative view count.

1 Q. So in your opinion, the total number of views  
2 reflected in this chart of 99,149 on YouTube, within a  
3 reasonable degree of certainty, is that a valid number?

4 A. Within a reasonable degree of certainty, yes.

5 Q. And then let's talk about the other websites  
6 that you undertook to review their view counters.

7 MR. VOGT: John, if you could please bring up  
8 162.

9 BY MR. VOGT:

10 Q. Is this another chart that you prepared in  
11 connection with your work in this case?

12 A. I did. So as I mentioned earlier, I was  
13 provided a bunch of different screenshots. I separated  
14 out YouTube just given the much more information that  
15 was available on those as well as the fact that they  
16 were all through the same website using the same  
17 methodology. These were all of the ones outside of the  
18 YouTube sphere. And, again, these were numbers pulled  
19 directly from the screenshots provided to me and then  
20 summed up in this.

21 Q. And was there anything in the screenshots  
22 that were provided to you for these sites that  
23 indicated that those screenshots themselves were  
24 inaccurate in any way?

25 A. No.

1 Q. And then how did you go about validating the  
2 view counters on these websites?

3 A. These websites did not have a lot of  
4 published information in regards to their counting  
5 methodology. So what I did was I actually went and  
6 went to their current version of these websites, went  
7 to typically the most unoffensive video I could find on  
8 these sites, and then basically looked at the source  
9 code to understand how they were tagging this, looking  
10 at the web page, how they were presenting it to users  
11 just to get an understanding exactly how they were  
12 providing that information.

13 Q. Can you explain to the jury what source code  
14 is?

15 A. So source code is essentially the HTML layer  
16 with some other scripts, like Java script and a few  
17 other different programming languages that makes it so  
18 it's presentable in that front end view which you can  
19 see when you go to that website. Essentially that  
20 source code is the back end code -- or the transparent  
21 code that you can see behind there. Essentially you  
22 can access it via almost any browser just by simply  
23 right clicking and looking at a view source.

24 Q. Is this an example of one of the pages that  
25 you reviewed in connection with your work in this case?



1           A.    Yes.  I tried to show the simple methodology  
2 of exactly how I looked at this.  So in this case,  
3 right where you can see the copy box, you can see that  
4 I had highlighted the little views section.  By doing  
5 that I was able to isolate and look just at the  
6 specific code of that for the sake of the screenshot.  
7 And then you can see a view selection source which then  
8 I can bring up, review how they had labeled it, how  
9 that count was being pulled in, and what they  
10 classified that particular area as.

11           Q.    And why did you do that?

12           A.    Well, I wanted to see how they were labeling  
13 it given that this is presented to the users, but all  
14 they say is views in the actual front end view.  You  
15 can see the views 450 -- I believe that's a 35.  So  
16 what I wanted to do was look at the actual labels  
17 within the source code.  You can see that there's a  
18 views label and then there's that.  And then there is  
19 actually a -- they classify the number as the total  
20 views.

21           Q.    Did you do this for each of the websites that  
22 are listed in the chart in Exhibit 162?

23           A.    Yes.  Every single website that was -- I had  
24 a screenshot sent of, I went and reviewed them in this  
25 very similar fashion.

1 Q. When you went to those websites, each of  
2 those websites and the pages, when you clicked on a  
3 page, did the video automatically begin playing?

4 A. Not in all cases. But I did look at multiple  
5 videos on each site just to confirm that the numbers  
6 were not too similar to show that -- basically to  
7 verify that they weren't starting at a certain number  
8 count and making sure that there were variances in  
9 those numbers.

10 Q. Why did you do that?

11 A. Because when I initially looked at the source  
12 code, those fan tags, they could have -- you can hand  
13 code those. I wanted to make sure that there was  
14 variances within all of the videos -- or multiple  
15 videos -- to make sure that there was some variance  
16 there showing that these were being processed and put  
17 in for display with that, different counts.

18 Q. This, again, is the chart that you prepared  
19 in Exhibit 162; is that correct?

20 A. Yes.

21 Q. And does this chart accurately reflect the  
22 total number of views of the Hogan sex tape that was  
23 depicted in the materials that you reviewed on websites  
24 other than YouTube?

25 A. Yes. Again, this would have been sometime

1 prior to these websites removing the clip due to the  
2 cease and desist. So this number might have -- would,  
3 again, have been a conservative view number.

4 Q. And the total there is 4,452,266; is that  
5 correct?

6 A. That is. That was the exact sum of the  
7 actual views shown in the screen captures that I was  
8 sent.

9 Q. And in your opinion, is that an accurate  
10 depiction of the total number of views of the Hogan sex  
11 tape on these websites?

12 A. In my opinion, it was, based on the  
13 screenshots.

14 Q. And in your opinion, within a reasonable  
15 degree of certainty, were the view counters on the  
16 websites that you reviewed other than YouTube valid?

17 A. Yes, they were.

18 MR. VOGT: One moment, Your Honor.

19 BY MR. VOGT:

20 Q. Who provided you with the screenshots that  
21 you were given?

22 A. They came directly from Charles Harder's  
23 legal team.

24 Q. And why did those come from there; do you  
25 know?

1           A.    I believe that they had -- were the actual  
2 legal agency that had filed the cease and desist on  
3 Mr. Bollea's behalf.

4           Q.    So you weren't able to actually review the  
5 pages themselves that are the subject matter of your  
6 opinions in this case, correct?

7           A.    No. No. By the time I was engaged to review  
8 this, those had -- those cease and desists had already  
9 been acted upon and the video was not available. So  
10 the exact pages with those videos, I could not actually  
11 go see.

12          Q.    This is -- and just to be clear, the view  
13 counts that you determined were websites other than  
14 Gawker where the Hogan sex tape was displayed, correct?

15          A.    Yes. I did not do any review of Gawker's  
16 specific information.

17          Q.    And just for clarification, this is  
18 Plaintiff's Exhibit 217, which is the page depicting  
19 the analytics for the Hogan sex tape actual final  
20 count.

21               MR. VOGT: John, can you highlight the views  
22 of the video on that page.

23 BY MR. VOGT:

24          Q.    Do you see the total views there of  
25 2,505,826?

1 A. I do.

2 Q. Those would be views of the video in addition  
3 to the totals that you have in your two charts in  
4 Exhibit 161 and 162; is that correct?

5 A. Yes, I would assume so.

6 MR. VOGT: Thank you, Your Honor. No further  
7 questions.

8 THE COURT: Mr. Berry?

9 CROSS-EXAMINATION

10 BY MR. BERRY:

11 Q. Good morning, Mr. Shunn.

12 A. Good morning, Mr. Berry.

13 Q. How are you doing?

14 A. I am doing well. Yourself?

15 Q. Doing very well. Thank you.

16 Before we get going, I'm going to give you  
17 the same things that I gave there to Mr. Vogt so we can  
18 hopefully speed this along as we go.

19 A. Sounds great.

20 Perfect. Thank you.

21 Q. Mr. Shunn, I'm going to spend a little bit  
22 more time than Mr. Vogt did talking about your work  
23 this morning to unpackage a little bit about what you  
24 did here. But first I just wanted to talk to you for a  
25 moment about your experience. You went through some of

1 cases, right? It was just one case.

2 A. Yes.

3 Q. That was a little bit of an exaggeration?

4 A. No. I was just typing it out really quickly  
5 to update my LinkedIn resumé.

6 Q. Just to be clear about the scope of your work  
7 in this case, you're not offering an opinion on whether  
8 anyone who watched the Hogan video on any of these  
9 sites would have paid to watch it, are you?

10 A. No. I've not -- I'm not dealing with any  
11 valuation of anything.

12 Q. Right. And it's your understanding that all  
13 of the websites that you looked at those screenshots  
14 for other than the Gawker site that you just talked  
15 about at the end, those were places that people could  
16 come and watch the video for free, right?

17 A. Yes. Those were not a membership-based  
18 website.

19 Q. Nobody had to pay anything to watch them on  
20 any of those websites?

21 A. No.

22 Q. You don't know -- you're not offering an  
23 opinion about whether any of those people who viewed  
24 the video on those sites would have actually paid  
25 anything, right?

1           A.    No.  I would not know that without actually  
2 talking to users.

3           Q.    Right.  Yesterday in court, you were sitting  
4 over here and you saw the testimony of Kevin Blatt, the  
5 sex tape broker.

6                    Do you recall that?

7           A.    Yes.

8           Q.    Do you remember he talked about during his  
9 testimony a membership fee for Vivid?  You heard that  
10 testimony?

11          A.    Yes.

12          Q.    Now, you don't have any factual basis to  
13 believe that the people -- the 4.4 million people on  
14 the website who you say watched the video would pay any  
15 of those fees to watch it, right?  You're not offering  
16 an opinion about that, are you?

17          A.    No.  Based on the amount of search traffic  
18 that happened at that time, I can only assume that some  
19 percentage would be based on just general user conversion  
20 rates for things like that.

21          Q.    Right, some percentage.  But it would be pure  
22 speculation to say that that number of people would  
23 have paid, right?

24          A.    That would be a true statement.

25                   MR. VOGT:  Objection.  May we approach?

1 users who visit a website and then the number of those  
2 users that actually take an action that that website  
3 wants to happen. So it could be filling out a form to  
4 generate a lead for a business. It could be buying a  
5 pair of shoes, for instance. So it's the variety of  
6 that.

7 Q. So when you were at Harry & David, you would  
8 consider the conversion rate -- one of them might be  
9 how many people looked at the website and then  
10 ultimately would buy a gift basket, right?

11 A. Yes.

12 Q. And in simple math terms, that conversion  
13 rate is equal to the total number of visitors, right,  
14 to the number of people who make a purchase?

15 A. Yes.

16 Q. So in like the Harry & David example, if you  
17 have a one percent conversion rate, out of every  
18 hundred people who come to Harry & David, one person  
19 would buy a gift basket, right?

20 A. Exactly.

21 Q. In the Ecommerce industry, the standard  
22 conversion rate is around one to one and a half  
23 percent, right?

24 A. Typically, that's an average.

25 Q. That means for every hundred people that go



1 to a website, one or two actually buy the product,  
2 right?

3 A. Yes. Based on that average, yes.

4 Q. But you don't know what that conversion rate  
5 is for websites that sell celebrity sex tapes, do you?

6 A. No. Like I say, I have not worked in the  
7 industry.

8 Q. Okay. And you're not offering an opinion  
9 about that one way or the other, right?

10 A. No. Like I said, I don't have direct  
11 experience in that industry.

12 Q. Let's turn to some of the topics that you  
13 talked about with Mr. Vogt.

14 Not all websites count views the same way, do  
15 they?

16 A. Views, no. I mean, obviously there's some,  
17 like we saw yesterday, unique views versus general  
18 views. Some sites will count general views based on  
19 auto playing a video or just general page views versus  
20 video views, etcetera.

21 Q. Let's talk about all those things. Some  
22 websites count views based on the number of times that  
23 a play button is pressed on a video player, right?

24 A. Yes. Within different analytic systems, you  
25 can actually build in -- essentially it's kind of a

1 Q. And the video was long gone by then?

2 A. The video was long gone by then.

3 Q. So your conclusion about these number of  
4 views that you went over was just based on screenshots,  
5 PDFs, printouts of those web pages, right?

6 A. That were provided to me, yes.

7 Q. And those were given to you by Mr. Harder's  
8 firm, right?

9 A. Yes.

10 Q. And the number of views that you talked about  
11 in that table, which we'll go through in a moment,  
12 those were just numbers straight from the screenshots,  
13 right? That's all you could look at?

14 A. Yes. Those tables that I built essentially  
15 were summing up. These tables were essentially summing  
16 up the screenshots that I had broken out by YouTube  
17 versus others.

18 Q. Right. But all you did was look at the  
19 screenshots themselves, right? That's what the number  
20 was based on, that piece of paper or PDF file?

21 A. Exactly. To your point, the video had  
22 already been taken down. Therefore, I was not able to  
23 go to the exact page that was hosting that video live  
24 streaming.

25 Q. If I can boil down everything that you've

1 sort of artificial inflation by people or bots or  
2 something?

3 A. No.

4 Q. Bottom line, again, with this website, you  
5 don't know how many people actually watched the video  
6 on this page, do you?

7 A. No. I just received the screenshot and did  
8 my tallying and general research.

9 MR. BERRY: All right. Let's go back and  
10 look at the main table again, Plaintiff's  
11 Exhibit 162. Zoom out.

12 BY MR. BERRY:

13 Q. Kind of encapsulating our whole discussion,  
14 so we don't need to go through all of these here, you  
15 don't know where any of the numbers that you counted as  
16 views on this page actually came from, do you?

17 A. For this table, they came from my charts.  
18 But, yes, in terms of your questioning, yes, they were  
19 just in the screenshot in the general sense of the  
20 video.

21 Q. Right. So you just took those numbers from  
22 the screenshots, looked at them, put them on a table  
23 and added it up, right?

24 A. Yes.

25 Q. You don't know for any of these sites how

1 they counted views, do you?

2 A. No.

3 Q. You don't know for any of these sites whether  
4 there was artificial inflation in these numbers, do  
5 you?

6 A. I do not.

7 Q. You don't know if some person at each of  
8 these sites typed in those numbers, do you?

9 A. No. Again, without -- because I didn't have  
10 access to the exact page due to the cease and desist  
11 having already been filed, I was not able to look at  
12 the source code to determine whether these were being  
13 called in via separate ID from an analytic database,  
14 for instance.

15 Q. So in truth, you really don't know how many  
16 people watched the videos on these sites, right?

17 A. No, definitely not from these; just what's  
18 implied based on the counts on those pages.

19 Q. Right. But, I mean, just as a small  
20 technical matter, you don't know if anybody actually  
21 watched these videos, do you?

22 A. Well, I would assume by some of these numbers  
23 that some people clicked play.

24 Q. But you don't know firsthand, do you?

25 A. No. Again, it's an assumption that some

1 people might have clicked on these videos if they went  
2 to the page.

3 Q. Why don't we turn to the next part of your  
4 report, which was the YouTube video view counts, which  
5 I think was Plaintiff's Exhibit 161. And the complete  
6 set of screenshots is included in Defense Exhibit 196.

7 A. Yes.

8 Q. Do you see that?

9 A. Yes.

10 Q. So this is the table that you went through  
11 before with Mr. Vogt, right?

12 A. Yes.

13 Q. If you would, turn to tab 1. This is page 3.  
14 This -- what we're looking at now is a screenshot of a  
15 YouTube page where the Hogan video apparently was  
16 posted, right?

17 A. Yes.

18 Q. Now, again, you didn't visit this actual web  
19 page, right?

20 A. Again, it had already been removed.

21 Q. Right. So you got the screenshot from  
22 Mr. Harder's firm and that's what you were going off  
23 of, right?

24 A. Yes. I received this exact screenshot.

25 Q. I think you talked about this one -- or maybe

1 you didn't. The number on this is 18,463.

2 Do you see that?

3 A. Yes.

4 Q. You talked a little bit I think with Mr. Vogt  
5 about going back and figuring out how YouTube counted  
6 views back during this time period, the batch stuff.

7 A. Yes. YouTube had -- there's plenty of  
8 publication in view of how YouTube specifically counts  
9 its videos. And, again, when I was reviewing this,  
10 they had already made -- had three generations of  
11 counting functionality, the first being an interesting  
12 batch one where they would freeze the video at 301 and  
13 then process to see if it was inflated up to that point  
14 before they started providing view counts.

15 Then the second generation of that, which was  
16 during this time frame, was where they went with that  
17 full batch type of thing. So let's say they were  
18 refreshing it every hour. Essentially they would  
19 knock -- that view counter wouldn't change for an hour  
20 while they were processing the view counts to make sure  
21 there was no SPAM or, you know, someone clicked on it  
22 600 times, those sorts of things.

23 Q. I want to ask you about a couple of things  
24 you said there. First, you yourself, you couldn't do  
25 anything yourself to verify that number was correct,

1 right?

2 A. No. I was not able to go to this exact page  
3 and look at that exact posting of that video.

4 Q. And you don't have access to YouTube coding  
5 generally, right? YouTube doesn't make its back end  
6 analytics available?

7 A. No. Google does not share the analytics of  
8 YouTube with the public.

9 Q. Right. And then you mentioned this batching  
10 process that YouTube goes through with the view count.  
11 So the reason that they did that in 2012, was that  
12 because people sometimes tried to artificially inflate  
13 their YouTube view counts?

14 A. Yeah. That was the whole reason that they  
15 continued to -- they always had some process of a  
16 checks and balance even going back to that 301 freeze  
17 point one. It was essentially so that -- because it's  
18 used as a popularity -- I'm sure most of us have been  
19 on YouTube's home page. It's used a popularity value.  
20 They want to make sure that that's as trued up as  
21 possible so that somebody is not posting something and  
22 just floating it to the top.

23 Q. Right. So what they would do is if they  
24 noted that there was artificial inflation going on,  
25 they would freeze the view counts so they wouldn't

1 continue to run up, right?

2 A. They would freeze it and potentially remove  
3 it.

4 Q. You don't know for this view count, 18,463,  
5 if that was impacted by artificial inflation, right?

6 A. No. Just at the time, I know what  
7 functionality YouTube was using to try to keep that  
8 out of that number.

9 Q. Right. So it's possible that this video that  
10 Michelle Frye, whatever the number is there, put up was  
11 being artificially inflated and YouTube froze it,  
12 right?

13 A. Potentially, yes.

14 Q. You don't know one way --

15 A. I have no idea. Essentially all I know is  
16 the methodologies that they were using at that time.

17 Q. Okay. Why don't we turn back to the first  
18 page of Defendants' Exhibit 196. For all of these  
19 video views here, you don't know whether any of them  
20 were subject to this freezing and artificial inflation,  
21 right?

22 A. No. I don't know if any of these people or  
23 some other nefarious source was trying to figure out  
24 how to game YouTube's counting system at that time.

25 Q. Right. So you don't know one way or another



1 whether these were artificially inflated numbers,  
2 right?

3 A. No.

4 Q. You weren't able to do anything to  
5 independently verify that the number reflected on the  
6 screenshots for any of those accurately reflected the  
7 true number of views, were you?

8 A. No. Just, again, researching YouTube's  
9 methodology at the time to try to understand exactly  
10 how they were doing that and presenting it.

11 Q. Mr. Shunn, you personally don't know whether  
12 the video posted by Gawker even appeared on these  
13 YouTube pages, right? You have no personal knowledge  
14 one way or the other?

15 A. No. Again, I wasn't able to access those  
16 pages to actually see if it was the exact video.

17 Q. Okay. If you could, turn to tab 4.

18 MR. BERRY: Tim, I believe this is page 11 in  
19 Defendants' 196.

20 BY MR. BERRY:

21 Q. That's the page you're looking at there,  
22 Mr. Shunn?

23 A. Yes.

24 Q. So this, again, is another YouTube screenshot  
25 that you looked at, right?

1 Ecuador. And so we had to value the business within  
2 Ecuador and then apportion some value of that to the  
3 trademark.

4           So every job that we do -- and we've done --  
5 I don't even know -- probably hundreds of these  
6 projects that I've managed valuing intellectual  
7 property. Every single one of them has an aspect of  
8 attribution. If you're looking at an intellectual  
9 property, it is one piece of the larger puzzle of a  
10 company as a whole. And so while I don't know  
11 specifically of anybody taking one post and valuing it  
12 to a whole website, what I can tell you is that every  
13 job we do has to do with attributing value to some  
14 larger whole. That's the business that we're in.

15           Q. I understand that. I appreciate the  
16 explanation. But the bottom line is you're not aware  
17 of any situation, not even one, where your methodology  
18 has been used to assess the value of a web post, right?  
19 The bottom line, you're not aware of a single instance.

20           A. I'm not aware of a single instance.

21           MR. BERRY: Thank you. This will be a good  
22 place to break.

23           THE COURT: Thank you.

24           We're going to break for lunch. If everyone  
25 will please remember the rules not to talk to

1 defined by the IRS. It's revenue ruling 5960, so it's  
2 a standard that, while hypothetical -- and I don't want  
3 to overemphasize hypothetical -- but it is a standard  
4 that is used in nearly all reasonable valuation  
5 approaches.

6 Q. Now, Gawker.com, as we've heard about while  
7 you have been here this week, is just one of Gawker  
8 Media's eight websites, right?

9 A. Yes.

10 Q. And you just valued that one Gawker.com  
11 website; isn't that right?

12 A. That is correct.

13 Q. You didn't value Gawker Media, the company as  
14 a whole, right?

15 A. I did not.

16 Q. So you didn't consider the value of Gizmodo  
17 or Deadspin or Jezebel or any of those other websites,  
18 right?

19 A. I did not.

20 Q. Did you value just Gawker.com, just that one  
21 website, I think, in those charts to be somewhere  
22 between 92 million and \$286,000,000 in value as of  
23 April of 2013, right?

24 A. Yes, that sounds right.

25 Q. Do you know anybody who would pay

1 \$286,000,000 for the Gawker.com website, just the  
2 website?

3 A. I have not been asked to go out and shop the  
4 Gawker.com website. We do projects like that, but if I  
5 was asked to do that, I would go out and try to find  
6 someone. But I don't know off the top of my head,  
7 because I wasn't asked to do that.

8 Q. Right. So you don't know any real person who  
9 would pay \$286,000,000 approximately just for the  
10 website, do you?

11 A. I don't have a specific buyer that I have  
12 spoken with that says, I will pay that.

13 Q. All right. Would you advise somebody to buy  
14 the Gawker.com website for \$286,000,000?

15 A. That is the fair market value of the website,  
16 yes.

17 Q. Okay. And so you would tell them that's the  
18 fair price for Gawker.com, would be 286 million on the  
19 outside, right? Somebody who came to you and said, I  
20 want to buy Gawker.com's website, you'd say, Well, you  
21 can get it, but you're going to need to buy that  
22 website for \$92,000,000 to \$286,000,000; that's what  
23 I'm telling you is the fair price, somewhere in that  
24 range.

25 A. Yeah, I mean, at September 30th, 2013. We're

1 not talking about today or on the previous 2012 date, I  
2 assume.

3 Q. Right, just in April of 2013.

4 A. Sure, sure, yes.

5 Q. So if we went back in time -- and,  
6 essentially, that's what you're telling the jury,  
7 right? That's the value of the Gawker.com website. At  
8 that point, the fair price would be 92,000,000 to  
9 \$286,000,000?

10 A. That is correct.

11 Q. Now, if you were advising somebody who was  
12 interested in buying the website, you wouldn't tell  
13 them to buy it without looking at its revenue, would  
14 you?

15 A. I would ask them to look at the monthly  
16 unique user traffic. I would ask them to see what is  
17 the future potential that you can generate in revenue  
18 and earnings from that traffic. And so there would be  
19 no -- you may look at the financials, but it's not a  
20 necessity in valuing it.

21 Q. If you could, open up -- I just want to  
22 refresh your recollection about some of this. If you  
23 could open up that binder with your deposition  
24 transcript to page 165.

25 A. Okay. I'm there.

1 Q. Okay. So on line 10, I asked you: Would you  
2 advise a buyer without knowing what the revenue of  
3 Gawker is?

4 And your answer: I'm sure you would look at  
5 revenue, as we looked at revenue.

6 Right?

7 A. Right.

8 Q. But you didn't look at revenue, did you?

9 A. We had some historical revenue data for  
10 Gawker.

11 Q. But you didn't bake that into your analysis.  
12 You just told us that, right?

13 A. Yeah. The revenue figure that we looked at,  
14 it was not necessary for the valuation that we did.  
15 That's a completely different approach. We then -- I  
16 don't want to go back over this again, because I don't  
17 want to bore everybody. But if we're looking at the  
18 revenue and trying to do an income approach on that,  
19 that is going to significantly undervalue the website,  
20 because the value is not from the revenue; the value is  
21 from the future potential that you can get from that  
22 traffic.

23 Q. Let me ask you a slightly different question  
24 then: If you were advising somebody on buying this  
25 website, would you tell them to do it without looking

1 at the website's profit?

2 A. Again, you would look at whatever information  
3 is available. You take it all into consideration.

4 Q. Right. And one of those things would be  
5 profit. You'd want to tell the buyer what the profit  
6 of the website was, right?

7 A. Sure.

8 Q. And when you worked at Wells Fargo and Bridge  
9 Bank, you dealt with business loans, didn't you?

10 A. Yes.

11 Q. And I assume that those banks didn't make  
12 loans without looking at business's actual financials,  
13 did they?

14 A. We're talking about two different things here  
15 because we're talking about a website versus an active  
16 business. I worked in the commercial banking industry,  
17 so this is businesses that have manufacturing  
18 facilities. It's a much different type of asset than a  
19 website.

20 Q. Right. But when you worked in the commercial  
21 banking industry, to make a loan to those businesses,  
22 you would look at their financials, wouldn't you?

23 A. Yes.

24 Q. You wanted to make sure you understood the  
25 actual value of the company based on their revenues,

1           Again, these are Quantcast printouts showing  
2 that same time period for the U.S. unique users for  
3 Gawker.com, right?

4           A.    Yes.

5           Q.    And it's for that same period of October 2011  
6 through April of 2013, right? Do you see that?

7           A.    That is correct.

8           Q.    You recall looking at these at your  
9 deposition?

10          A.    I do.

11          Q.    So just to refresh where we are, May 2012,  
12 7.5 million unique users. September of 2012, 12.6  
13 million. Right?

14          A.    Yes.

15          Q.    All right. So please look at Defendants'  
16 Exhibit 139.

17          A.    Okay.

18          Q.    There were roughly 14.2 million unique users  
19 in the U.S. for Gawker.com in October of 2012, right?

20          A.    That is correct.

21          Q.    Do you mind if we put that up on this chart?

22          A.    Sure.

23          Q.    All right. So that was the month of the  
24 Hogan post, right?

25          A.    Right.



1 Q. Now, please look at Defendants' Exhibit 141,  
2 please. Do you have that in front of you?

3 A. I do.

4 Q. That's the unique users for November of 2012,  
5 right?

6 A. Right.

7 Q. How many were they? How many unique users  
8 were there that month?

9 A. 9.54 million.

10 Q. All right. Can we put that number up on the  
11 board?

12 So that's a pretty big drop there from  
13 October to November, right?

14 A. Yes.

15 Q. It's the biggest drop on this chart?

16 A. Yes.

17 Q. So in the month after the Hogan post, the  
18 number of unique users dropped by over 4.5 million,  
19 right?

20 A. Yes.

21 Q. Then you will see there was a large increase  
22 between November and December, correct?

23 A. Correct.

24 Q. Now, that increase wasn't attributable to the  
25 Hogan post, was it?

1 A. The increase itself?

2 Q. Yeah. Between November and December.

3 A. I think the increase itself was possibly  
4 attributable to some other article that was posted.

5 Q. Yeah. Because we just looked at that graph a  
6 little while ago that showed all the uniques were in  
7 October, right?

8 A. Right.

9 Q. Now, please look at Defendants' Exhibit 140,  
10 please. This document shows the number of the unique  
11 users in the U.S. for Gawker.com in April 2013.

12 Do you see that?

13 A. I do.

14 Q. That was the last month that the video  
15 appeared, the Hogan video appeared on Gawker's website,  
16 right?

17 A. That's correct.

18 Q. In that month, there were roughly a little  
19 under 12.8 million unique users, right?

20 A. Correct.

21 Q. So let's put that number up, please.

22 And that was the last month that you looked  
23 at in your analysis, correct?

24 A. Yes.

25 Q. So looking at this chart before the Hogan

1 post and after the Hogan post, before the Hogan post  
2 and then the month it went down, those numbers were  
3 pretty close to identical, aren't they?

4 A. In terms of --

5 Q. Like 12.6 and 12.7, 12.8?

6 A. Before and after? They are close.

7 Q. Pretty close to identical?

8 A. Yes, pretty close.

9 Q. Now --

10 MR. BERRY: You can take that down.

11 BY MR. BERRY:

12 Q. You explained earlier -- I will just switch  
13 gears slightly here to talk about another part of your  
14 report and analysis.

15 You talked earlier about the market approach,  
16 and I think this is what you were getting into before  
17 where I said we'll get to you. What you talked about,  
18 I think, was that in order to do the market approach,  
19 you need to look at comparable assets, right?

20 A. Correct.

21 Q. I would like to take a few minutes of time  
22 talking about the comps you used here.

23 A. Sure.

24 Q. To do that, I think it would be helpful --

25 MR. BERRY: Tim, if you could put you

1 documents to see how these valuations --

2 MR. BERRY: Tim, why don't you show the whole  
3 valuations there on that chart? Yeah, perfect.

4 BY MR. BERRY:

5 Q. So you don't know how any of those -- you  
6 haven't seen any documents to see how these valuations  
7 were actually determined, have you?

8 A. I haven't. And that wasn't necessary for the  
9 valuation, for the conclusion we were coming to on the  
10 slide. That was -- how they did that valuation?

11 Q. Right.

12 A. It did not apply, and, no, I did not look at  
13 those.

14 Q. You don't know whether any of these  
15 valuations were reached by assessing average monthly  
16 unique users, do you?

17 A. I do not know that.

18 Q. You don't know whether the valuations were  
19 determined by the income approach, do you?

20 A. I would -- I don't know that.

21 Q. And you haven't looked at any of these four  
22 companies' balance sheets or income statements, have  
23 you?

24 A. I have not.

25 Q. You don't know what their revenues and their

1 profits were at the time of those valuations, do you?

2 A. I may have looked at some of the revenues,  
3 but that has no bearing on my analysis or the ultimate  
4 conclusion.

5 Q. But you did look at the revenue?

6 A. I may have seen some of the revenues through  
7 Capital IQ, the source we used to get this information.

8 Q. But do you remember what any of them were?

9 A. I do not.

10 Q. But they -- at the bottom, the revenues and  
11 profits, you don't know what they were at the time of  
12 the valuation or how they factored into the valuation?

13 A. I do not.

14 Q. You don't know how the revenues and the  
15 profits of those four comps compared to Gawker.com, do  
16 you?

17 A. I do not.

18 Q. To kind of walk through what you explained a  
19 little bit before, to put it in context, for each of  
20 these four companies, you looked at the average number  
21 of unique users for a 12-month period before these  
22 private valuations, right?

23 A. Correct.

24 Q. And, again, you believe -- I think this is  
25 what you said several times now. You chose unique

1 Q. You've never worked in the website  
2 advertising business, have you?

3 A. Not advertising, no.

4 Q. And you've never gone to an advertiser and  
5 tried to persuade somebody to advertise on an website,  
6 have you?

7 A. No.

8 Q. You don't know how Gawker deals with its  
9 advertisers, do you?

10 A. I do not.

11 Q. Now, kind of going back to the very beginning  
12 of this, when you explained that the value of  
13 Gawker.com increased as a result of the increase in  
14 monthly unique user traffic.

15 A. Right.

16 Q. And you concluded on one of these charts we  
17 saw that the average monthly unique views of the Hogan  
18 post was 798,821, right?

19 A. Correct.

20 Q. I will take this down, because I think we're  
21 going to end up going away from it.

22 So you calculated the number, the average of  
23 monthly unique views, right, that 800,000, 798,000  
24 number. You calculated that by dividing the number of  
25 the unique views of the Hogan post by this

1 six-plus-month period where the video appeared on the  
2 website, right?

3 A. Correct.

4 Q. And I think you went through the math before  
5 with the jury and showed that those unique views  
6 accounted for roughly 28.5 percent of the increase in  
7 Gawker.com's average monthly unique users, right?

8 A. Correct.

9 Q. In your analysis, you're equating unique page  
10 views to the Hogan post to unique users to Gawker.com,  
11 right?

12 A. I am.

13 Q. I want to explain for a minute -- and you did  
14 a little bit of this, but I want to do it a little bit  
15 more detail, what the unique user means and what a  
16 unique page view means.

17 A. Sure.

18 Q. Okay. Just to simplify things down to the  
19 bare elements at this point, a monthly unique user is a  
20 single user that visits a website one or more times in  
21 a month, right?

22 A. That's correct.

23 Q. So if a person goes to a website just once in  
24 a month, that's one unique user, right?

25 A. That's correct.

1 Q. Okay. So the total number of unique page  
2 views exceeds the number of unique users, right?

3 A. In this example?

4 Q. Correct.

5 A. Absolutely.

6 Q. Now, making it slightly more concrete than  
7 the example -- and that was fairly concrete. Bring it  
8 back to what we're talking about.

9 A. Sure.

10 Q. The total number of unique views for items  
11 posted on Gawker.com far exceed the total number of  
12 unique users, right?

13 A. That is correct.

14 Q. But in your analysis, you're assuming that  
15 unique users of Gawker.com as a whole are the same as  
16 unique views of the single post, right?

17 A. For the Hulk Hogan sex tape post?

18 Q. Correct.

19 A. Yes.

20 Q. Okay. You don't know how many unique views  
21 of the Hogan post were unique users of Gawker.com for  
22 the month of October 2012, do you?

23 A. I don't. I asked for that and it wasn't  
24 available.

25 Q. Right. Let's do look at what was available.



1 Q. Now, if you go down the chart a little ways  
2 to where it identifies the Hogan post -- all right --  
3 it's No. 3 on this. I think we looked at this a little  
4 bit in testimony the other day. There it shows that  
5 there were roughly 4.8, four point --

6 MR. BERRY: Tim, can you keep that up?

7 Can you-all see where we're at?

8 A JUROR: No, I can't see it.

9 MR. BERRY: Sorry.

10 A JUROR: Blow it up a little bit.

11 BY MR. BERRY:

12 Q. Why don't we blow up this number. This is  
13 the Hogan post, right, on line 3?

14 A. Yeah.

15 Q. And over there in this column right here --  
16 all right. That shows that 4,878,002. That's the  
17 number of unique views of the Hogan post in 2012,  
18 right?

19 A. Yes.

20 Q. That's what this is showing?

21 A. Yes.

22 Q. So the Hogan post in 2012 accounted for less  
23 than .7 percent of the unique views that Gawker had in  
24 2012, right?

25 A. Yes.

1 Q. But according to your analysis on a  
2 forward-looking basis, it accounted for 28.5 percent of  
3 the growth in average monthly unique users?

4 A. That is correct.

5 Q. But you don't know whether people who are  
6 unique viewers of the Hogan post had visited Gawker  
7 before, right?

8 A. We asked for that data. It was not available  
9 or was not provided to us. You are right.

10 Q. Right.

11 You just don't know whether those unique  
12 views of Hogan were people who had been viewers of  
13 Gawker before, right?

14 A. I don't. But what I do know is that as  
15 Mr. Denton himself says, is that some page views are  
16 worth more than others. And those page views that are  
17 worth more than others are those provocative stories, I  
18 think the flames that everyone so much wants to get.

19 Q. Right.

20 A. And it's those views that have the potential  
21 to go viral, the potentially get on social media,  
22 Facebook, Twitter, and on TV. Those page views, those  
23 pages are the one that drive value. They're the ones  
24 that increase the exposure of the Gawker brand, and  
25 they're the ones that keep people coming back to

1 you?

2 A. If what was true or not?

3 Q. If each of those views was a unique user.  
4 You don't know if each unique page view of the Hogan  
5 post reflected a unique user to Gawker.com that month,  
6 do you?

7 A. I don't have the data. It was not provided.  
8 But based on everything that has been presented and  
9 everything that I reviewed, every indication is that  
10 these views, the unique views to the Hulk Hogan sex  
11 page, are just as valuable as a monthly unique user  
12 with which I based my analysis on.

13 Q. Right.

14 More importantly to Mr. Denton's quote that  
15 you wanted to talk about a minute ago, you don't know  
16 if any of those unique users came back to Gawker.com,  
17 do you?

18 A. Again, I asked for all of that data, and I  
19 have not been provided it, so I do not know. You are  
20 correct.

21 MR. BERRY: Tim, can you put back up on the  
22 screen the period that shows the whole trend?

23 There we go.

24 BY MR. BERRY:

25 Q. But we do know that from October 2012 to

1 MR. VOGT: John, can you bring up D120? Can  
2 you zoom in on the top two stories at the chart at  
3 the bottom? Can you get that bigger? Yes, that  
4 one. Thank you. Can you just zoom in for me, the  
5 top three stories? That's good right there.  
6 Thank you, Tim.

7 BY MR. VOGT:

8 Q. The top item on this is the homepage, right?

9 A. Correct.

10 Q. And what's No. 2?

11 A. The royal breasts or topless Kate Middleton  
12 story.

13 Q. And then what's No. 3?

14 A. The Hulk Hogan sex tape.

15 Q. So when you testified earlier today that some  
16 page views are worth more than others, is that what you  
17 were referring to?

18 A. Absolutely.

19 Q. And in your understanding, are those  
20 exclusives?

21 A. Yes.

22 Q. I think when you were being asked about  
23 unique page views versus unique viewers and why you  
24 used one as opposed to the other, I think you had  
25 testified that there was some data that was not

1 available; is that right?

2 A. Yeah. We asked for a lot of different data,  
3 and much of it was not provided to us.

4 MR. VOGT: Can you play the clip, please, of  
5 Mr. Kidder?

6 (Whereupon, a video clip was played in open  
7 court as follows:)

8 Q. Gawker Media maintains a lot of information  
9 about how its viewers, readers behave. And you  
10 indicated in your initial answer to this series of  
11 answers, though, you did not maintain records with  
12 sufficient granularity to permit you to quantify, I  
13 suspect, ways in which Gawker might have obtained  
14 revenue from the appearance of the Hulk Hogan sex tape  
15 video. Is that accurate?

16 A. Yes.

17 Q. Is there -- is there no resource that could  
18 be tapped to identify how many individuals who viewed  
19 the Hulk Hogan sex tape video in its original iteration  
20 clicked from that page to another page within Gawker  
21 Media?

22 A. No.

23 (Video deposition concluded.)

24 BY MR. VOGT:

25 Q. Is that the data that you were referring to?

1           A.    Absolutely.

2           Q.    And when I started off with you today, one of  
3 the things I asked you about is when you looked at that  
4 clip of Mr. Denton, when we were talking about  
5 websites, values being based on traffic.

6           A.    Right.

7           Q.    And I think one of the things Mr. Denton said  
8 in that clip was that when he invests in a site, he  
9 measures value by interest.

10          A.    That's correct.

11          Q.    What does that mean?

12          A.    Interest is what drives the traffic, and it  
13 really goes back to the first demonstrative we showed,  
14 the peak, and Google search terms for the word  
15 "Gawker," the brand Gawker. This is all about  
16 generating, ultimately some day, revenue in profits.  
17 But it's about building a brand, building a unique user  
18 base, building traffic base to then generate future  
19 earnings off of that.

20               MR. VOGT: Thank you. No further questions.

21               THE COURT: Okay. Thank you. Do any of our  
22 jurors have any questions for Mr. Anderson?

23               All right. Thank you very much,

24               Mr. Anderson. You may step down.

25               THE WITNESS: Thank you.

1 the ones that he linked to in the piece, Pamela  
2 Anderson, Tommy.

3 THE COURT: The celebrity sex tapes.

4 MR. SULLIVAN: Oh, I see. I see. That's  
5 fine.

6 THE COURT: Okay. Great. Thank you. And I  
7 will give you both an opportunity to follow up.

8 MR. SULLIVAN: Okay.

9 (In open court)

10 THE COURT: All right, sir. So,  
11 Mr. Daulerio, we have some questions from our  
12 jurors.

13 How did you benefit professionally and  
14 personally from posts of the video, such as  
15 reputation, promotions, etc.?

16 THE WITNESS: Outside of this?

17 THE COURT: Well, the question is just, How  
18 did you benefit professionally and personally from  
19 posting the video?

20 THE WITNESS: There was really no direct  
21 impact.

22 THE COURT: No direct impact.

23 Any follow-up to that, Mr. Sullivan?

24 MR. SULLIVAN: Not from me. No, Your Honor.

25 THE COURT: Mr. Vogt?

1 A. Yes.

2 Q. Okay. Did you have any role in writing that  
3 headline?

4 A. No.

5 Q. As managing -- so Mr. Daulerio wrote the  
6 headline?

7 A. I believe so.

8 Q. Okay. And as managing editor, were you  
9 comfortable with that headline?

10 A. Yeah. I thought and I still think that it  
11 reflected the kind of tongue-in-cheek tone of the post  
12 itself.

13 Q. Okay. So you took it in kind of a  
14 tongue-in-cheek context?

15 A. Yes.

16 Q. All right. Now, at the time that you were  
17 working on this particular post, did Mr. Daulerio  
18 indicate his expectations regarding the level of  
19 traffic for this story?

20 A. No, not that I can recall.

21 Q. Okay. Did Mr. Daulerio indicate what he  
22 thought of Hulk Hogan?

23 A. No.

24 Q. Okay. While working together on this story,  
25 did Mr. Daulerio indicate in any way that he harbored



1 ill will towards Hulk Hogan?

2 A. No, not at all.

3 Q. Now, as the managing editor, the news value,  
4 what did you take the news value of Mr. Daulerio's  
5 piece and the accompanying video? Did you think it was  
6 newsworthy?

7 A. I did, yeah.

8 Q. All right.

9 A. I thought it was dealing with a public  
10 figure, and it was a story that had been previously  
11 reported on for months at that point. And once we had  
12 the document itself, we felt we had the right to move  
13 forward with publishing it.

14 Q. Okay. And were you concerned -- as the  
15 managing editor, were you concerned about Gawker  
16 relying on material that been provided by an anonymous  
17 source?

18 A. I think normally that would be a concern,  
19 certainly. I think in this case the document we  
20 received in the mail was essentially  
21 self-authenticating. And by that I mean it was exactly  
22 what we were told it would be.

23 Q. Okay.

24 A. And we were comfortable with that.

25 Q. Just so we're clear, when you say "the

1 Q. All right. Let me ask you this. Did you  
2 consider that Hulk Hogan might be upset by the  
3 publication of these excerpts?

4 A. Yeah, I did.

5 Q. All right. And if you could, explain to us  
6 like how you grappled with that in your position there  
7 as a journalist.

8 A. Yeah. I think it's something journalists  
9 grapple with frequently, maybe regularly on a  
10 day-to-day basis. You consider the stories that you're  
11 publishing and how they might affect the subjects that  
12 you're writing about. It's also fair that when you're  
13 writing about public figures, you're not often or  
14 constantly writing kind of glowing profiles of them.  
15 And it's true that in this case we knew we weren't  
16 doing that either. And those are considerations you  
17 make. And if you feel like you have the full story,  
18 correct story, and you feel comfortable with what you  
19 put together, you make the decision to publish.

20 Q. Do you find -- do you personally find that to  
21 be difficult at times?

22 A. Yeah, I do.

23 Q. All right. Now, you, you left Gawker.com to  
24 go back over to Deadspin shortly after the Hulk Hogan  
25 post.

1 THE COURT: And it says, It seems like it was  
2 ready to be published. What stopped it?

3 THE WITNESS: I don't know.

4 THE COURT: Okay. Any redirect or followup,  
5 Mr. Sullivan?

6 MR. SULLIVAN: No, ma'am.

7 THE COURT: Mr. Harder?

8 MR. HARDER: No, Your Honor.

9 THE COURT: All right. The next question is,  
10 did she or do you have -- have you in the past or  
11 do you have an intimate relation with either  
12 Mr. Daulerio or Mr. Denton?

13 THE WITNESS: No.

14 THE COURT: Thank you. Any followup?

15 MR. SULLIVAN: No, ma'am.

16 THE COURT: Mr. Harder?

17 MR. HARDER: No, Your Honor.

18 THE COURT: All right. Thank you.

19 Now we'll take a real comfort break. So how  
20 about ten minutes, please.

21 (The witness retired from the stand.)

22 (The jury retired from the courtroom at 3:08  
23 p.m.)

24 THE COURT: All right. Mr. Sullivan, so who  
25 is next?

1 Q. All right. Let us now -- what we're going to  
2 do is we're going to shift our focus and we're going to  
3 talk specifically about the publication of the  
4 October 4, 2012 post that Mr. Daulerio wrote.

5 Do you have your mind focused on that?

6 A. Yes, I do.

7 Q. Now, did you personally play a role in the  
8 publication of that commentary?

9 A. No, I didn't.

10 Q. All right. And did you see it before it ran?

11 A. No, I didn't.

12 Q. Did you see the video excerpt before it ran?

13 A. No, I didn't.

14 Q. Okay. Can you explain to the folks why it  
15 would be that you as a publisher did not see a story  
16 like that before it was posted on its site?

17 A. Our properties are editorially independent  
18 and it's -- putting up a story is a question of  
19 editorial judgment. I was running four departments of  
20 Gawker, basically the editorial and the three business  
21 departments. And my role, again, in editorial was  
22 really to judge the performance of the editors-in-chief  
23 of the individual properties. So, you know, if the  
24 story hadn't worked out, if it had proven to be false,  
25 which it didn't, then I would have taken action. But

1 that wasn't the case.

2 Q. Okay. So as the publisher sitting at the top  
3 of this whole publishing operation, I take it you would  
4 not be able -- even if you wished, you would not be  
5 able to review every single piece that was going to be  
6 posted on your various sites?

7 A. No. It wouldn't have been appropriate and it  
8 wouldn't have been possible. At the time we were  
9 publishing on the order of 250 articles a day, and so  
10 it wouldn't have been physically possible even if --

11 Q. Even if you wished, the whole operation would  
12 grind to a halt, right?

13 A. Yes.

14 Q. I take it when you were in more traditional  
15 publishing back when you were working at the Financial  
16 Times, to your knowledge, did the publisher of the  
17 Financial Times read every single piece that was  
18 published?

19 A. You know, I didn't even know the publisher at  
20 the Financial Times when I was working there as a  
21 journalist. The publisher wouldn't have had anything  
22 to do with stories on a regular basis.

23 Q. Okay. So you really can't speak to that?

24 A. To the involvement of the publisher? There  
25 was no involvement of the publisher in individual

1 stories at the Financial Times.

2 Q. Right. Right.

3 Now, did you -- as you sit here with us  
4 today, do you recall whether you talked to Mr. Daulerio  
5 at any point before the publication of the October 4th  
6 post?

7 A. As I've said, my memory is pretty hazy of the  
8 circumstances around the story. I may have, but it's  
9 probably more likely that I spoke to him afterwards.

10 Q. Okay. We saw some video, again,  
11 deposition -- video depositions where you mentioned a  
12 conversation that you may have had.

13 As you sit here, can you be sure whether that  
14 was before or after the post?

15 A. No, I can't be sure.

16 Q. Okay. All right. Now, to some who listened  
17 to this about how the publication occurred, how the  
18 business of Gawker works, how other publishers operate,  
19 to some it might sound that the publisher is rather  
20 disinterested. All right? And let's focus in on this  
21 particular story.

22 So you didn't read it. He doesn't come to  
23 you beforehand. You don't clear it. He's the  
24 editor-in-chief and you trust his judgment, right?

25 A. Yes.

1 MR. TURKEL: Judge, let me object as to the  
2 narrative as misstating his testimony and also  
3 being --

4 THE COURT: One or two words.

5 MR. TURKEL: Narrative.

6 THE COURT: Sustained.

7 MR. TURKEL: Move to strike, please, Judge.

8 BY MR. SULLIVAN:

9 Q. All right. Let's focus on this particular  
10 story. To some it might sound like you are a  
11 disinterested publisher. Can you understand that?

12 A. I can understand that, yes.

13 Q. Okay. And if you -- given an opportunity to  
14 explain to them, what would you say? What would you  
15 say to them?

16 A. I mean, I would say that the individual sites  
17 of Gawker are run by the editors-in-chief. I would  
18 evaluate their performance in its entirety and I  
19 wouldn't involve myself typically in the editorial  
20 process around an individual story.

21 Q. Mr. Denton, how many journalists have you  
22 worked with in your 25-year career in publishing?

23 A. At the time of the publication of this piece,  
24 we had about 60 journalists at Gawker Media. Now we  
25 have on the order of a hundred. I would say probably

1 Q. All right. I want to talk about your  
2 philosophy. You've talked a lot -- one thing I found  
3 interesting was you actually talked to this jury about  
4 newsworthiness of this story, but you hadn't read it  
5 before it was published, right?

6 A. I'm giving you my view in retrospect.

7 Q. You're giving me your view on the witness  
8 stand in a trial in which you're being sued for money,  
9 right?

10 A. That is the situation we're in, yes.

11 Q. But back in October of 2012, you hadn't  
12 watched it, right?

13 A. I had seen screenshots, but I hadn't watched  
14 the full video.

15 Q. You'd seen screenshots before it was  
16 published?

17 A. Sorry. No; after.

18 Q. Okay. You didn't read it before it was  
19 published, right?

20 A. No.

21 Q. You read it like a week before your  
22 deposition. Isn't that a fact?

23 A. I read the whole piece a week before the  
24 deposition, yes.

25 Q. And so let's talk a little bit about, for



1 MR. TURKEL: Actually, Judge, I have one  
2 follow-up on that one.

3 BY MR. TURKEL:

4 Q. Just to be clear, Mr. Denton, the Adam Lanza  
5 story that was shown, there was some confusion. That  
6 was republished from another journalist, right?

7 A. Yes.

8 Q. It wasn't original Gawker content, was it?

9 A. No. We republished it.

10 MR. TURKEL: All right. That's all I have.

11 THE COURT: All right. On the next group of  
12 questions, there are some clarifications that the  
13 Court would like to give the jury that have been  
14 stipulated by the attorneys. One is to clarify  
15 that Gawker did not receive a second DVD and that  
16 Gawker did not run a second version of the  
17 excerpts for reasons unrelated to this lawsuit.

18 The question, Mr. Denton, for you is,  
19 knowing -- knowing of the Mr. Hogan/Mr. Houston  
20 cease and desist letter, why did you not ask your  
21 staff to remove the A.J. Daulerio Hogan video?

22 THE WITNESS: I believe that the post  
23 remained -- there was no new information in the  
24 cease and desist letter. A.J. was already aware  
25 of the fact that Hulk Hogan was maintaining that

1 he had been secretly recorded. And we consulted  
2 and evaluated and we believed, and I believe now,  
3 that the piece had value, that it was true. It  
4 was honestly -- it was a story honestly told. And  
5 it was interesting to millions of people.

6 THE COURT: Any follow-up, Mr. Sullivan?

7 MR. SULLIVAN: No, Your Honor.

8 THE COURT: Mr. Turkel?

9 MR. TURKEL: Yes.

10 BY MR. TURKEL:

11 Q. To be clear and hopefully not too redundant,  
12 at the time this was posted, you had not either watched  
13 the video or read the text, right?

14 A. No.

15 THE COURT: All right. Mr. Denton --

16 BY MR. TURKEL:

17 Q. And to be clear for our time frame, that was  
18 as of the time of the cease and desist, which was a day  
19 after the post, right?

20 A. I can't remember exactly when the cease and  
21 desist came in. But, yes, at the time of the cease and  
22 desist, I had not read the post.

23 THE COURT: Didn't you know that Mr. Hogan's  
24 sex tape topic was controversial prior to Gawker  
25 releasing the sex video post?

1 THE WITNESS: I'm sorry?

2 THE COURT: Didn't you know that Mr. Hogan's  
3 sex tape topic was controversial prior to Gawker  
4 releasing the sex video post?

5 THE WITNESS: I personally was not aware of  
6 how much had been discussed about the sex tape. I  
7 don't tend to go to TMZ and The Dirty, certainly  
8 not as often as A.J. Daulerio and people writing  
9 on Gawker. A.J. Daulerio was aware of the fact  
10 that this was already in the news and there was  
11 already a conversation around the topic.

12 THE COURT: Follow-up, Mr. Sullivan?

13 MR. SULLIVAN: No, Your Honor.

14 MR. TURKEL: No, Judge.

15 THE COURT: As president and publisher of  
16 Gawker, why did you not view the video and make  
17 absolutely sure that your counsel was involved  
18 prior to the video post released by A.J. Daulerio?

19 THE WITNESS: Business standards practice  
20 here. A.J. Daulerio was the editor-in-chief of  
21 the site. He had autonomy as far as choosing what  
22 to publish and how to publish. He was  
23 accountable, absolutely. But I feel like he made  
24 the right call here. He used a sparing amount of  
25 video. He used an extremely sparing amount of

1 sexual content in the video. And so I wouldn't  
2 second-guess him on the publication of the story  
3 as he published it.

4 THE COURT: Mr. Sullivan?

5 MR. SULLIVAN: No follow-up.

6 THE COURT: Mr. Turkel?

7 MR. TURKEL: No, Your Honor.

8 THE COURT: Do you believe that  
9 noncelebrities have the right to privacy in their  
10 own bedrooms?

11 THE WITNESS: Yes. I don't think it's  
12 newsworthy to do a story about a private  
13 individual with their partner in the privacy of  
14 their own home.

15 THE COURT: Would you say that sex is part of  
16 your branding of Gawker?

17 THE WITNESS: I think we write about what  
18 people are interested in, and sex is an important  
19 part of people's lives. It's an important part of  
20 celebrities' lives. And, yes, we write about sex.  
21 And it's probably one of the half dozen or dozen  
22 topics that Gawker.com mainly writes about.

23 MR. SULLIVAN: Nothing further.

24 MR. TURKEL: No, Judge.

25 THE COURT: As the publisher, do you separate

1 MR. VOGT: That's fine. That's fine.

2 You asked if she read the post, and she said  
3 she did go there.

4 THE COURT: What about this one?

5 MR. VOGT: That's fine.

6 THE COURT: Okay. Thank you.

7 (In open court).

8 THE COURT: Ms. Libby, did you watch the  
9 video?

10 THE WITNESS: I did.

11 THE COURT: Any follow-up?

12 MR. SULLIVAN: Pardon me, Your Honor?

13 THE COURT: Any follow-up?

14 MR. BERRY: No.

15 MR. SULLIVAN: No.

16 THE COURT: Okay. And the second question  
17 is, did you raise the CPM rate from 2012 to 2013?

18 THE WITNESS: We did, yes. The average CPM  
19 did go up. I believe it was -- we raised them  
20 probably, roughly, ten percent year over year.

21 THE COURT: Any follow-up number?

22 FURTHER REDIRECT EXAMINATION

23 BY MR. BERRY:

24 Q. Why did you raise the CPM between 2012 and  
25 2013?

1 called Fiddler.

2 Q. And so Fiddler is the one who actually hosted  
3 this video?

4 A. Yes. So when you hit play, the video is  
5 coming from Fiddler, and then Gawker had uploaded that  
6 you video to Fiddler.

7 Q. And the experience for the reader, if  
8 somebody goes to the page, and it looks -- everything  
9 is the same, it appears it's all on Gawker's servers.  
10 But if I understand what you're saying, the content of  
11 the text is on your servers, the video is run through a  
12 separate company?

13 A. Yeah. To the user it's a seamless  
14 experience. It's really just a technical decision made  
15 on Gawker's end.

16 Q. And the editorial folks are the ones who give  
17 Fiddler the video. Fiddler then just uploads whatever  
18 the editorial people say, right?

19 A. Correct.

20 Q. So we've heard some testimony earlier in the  
21 trial about the video appearing on websites other than  
22 Gawker.com. Did Gawker Media authorize the Hulk Hogan  
23 video to be published on any other site?

24 A. No, it did not.

25 Q. Did you-all give permission for it to be

1 posted on any other site?

2 A. No, the company did not.

3 Q. Did you-all seek to have the video show up on  
4 other sites?

5 A. No.

6 Q. Did you distribute the video at all?

7 A. Onto other sites other than Gawker.com? No.

8 Q. Did you make it available for downloading?

9 A. No. There was -- there's not a download  
10 button.

11 Q. So in 2012, part of your job was in charge of  
12 finance, right?

13 A. That's correct.

14 Q. What was the primary way that Gawker Media  
15 made money back in 2012?

16 A. The primary revenue source was display  
17 advertising.

18 Q. And if you recall, what percentage of Gawker  
19 Media's revenue was from display advertising?

20 A. Something like 90 percent.

21 Q. Okay. So then, again, we're talking about in  
22 2012, correct?

23 A. Correct.

24 Q. If we could just look back at Defendants'  
25 Exhibit 77. There has been quite a bit discussion

1           A.    October 4th of 2012 to, I think, July of  
2           2013.

3           Q.    All right.  Now, you understand the video  
4           came down in April of 2013, correct?

5           A.    Correct.

6           Q.    This just goes on a little bit longer?

7           A.    Yes.

8           Q.    Is that -- why is that?

9           A.    I guess the document -- whoever was accessing  
10          this report had put in those dates as the parameters.

11          Q.    Okay.  Now, looking at this document --

12                MR. BERRY:  If you could focus, Tim, on the  
13          bottom right quarter of the page.

14          BY MR. BERRY:

15          Q.    Looking at this document, how many times was  
16          the video viewed?

17          A.    Yeah.  It's a little confusing.  On the  
18          broader page, I think it rounds to the nearest million  
19          up top or something.  But down here it shows a more  
20          precise number of video views, which is 2.5 million.

21          Q.    And what does that mean?  Does that mean that  
22          2.5 million people have watched this?

23          A.    So that means the play button was clicked 2.5  
24          million times.  That doesn't mean that they watched the  
25          whole video.



1 Q. Looking back, thinking back to the Google  
2 Analytics where we talked about total page views and  
3 unique page views, with this number of views, are we  
4 talking total views or unique views?

5 A. This is total views. So it corresponds to  
6 the page views number roughly.

7 Q. So we don't know how many unique views there  
8 were of the video?

9 A. Correct.

10 Q. Some of these could have been repeat views?

11 A. Correct.

12 Q. Somebody could have clicked play more than  
13 once?

14 A. Yes.

15 Q. How does this 2.5 million number compare to  
16 the 8.6 million page views that we just looked at?

17 A. It's less than half. It's smaller.

18 Q. I mean, it's about a third of the number?

19 A. Something like that.

20 Q. So what does that -- looking just at this  
21 document, what does -- else does this document tell us  
22 about plays of the video?

23 A. So towards the bottom it tells you the number  
24 of -- I'm sorry. It tells you what percentage of those  
25 views and how far they got to certain benchmarks. So

1 played that deposition testimony earlier.

2 MR. VOGT: I think that's fine.

3 THE COURT: Okay. And I think this  
4 handwriting, I'm not sure if that goes with  
5 question 3. Does anyone know?

6 MR. BERRY: I don't think it does.

7 MR. SULLIVAN: That's different.

8 THE COURT: Who is this, then?

9 MR. VOGT: That one's okay.

10 THE COURT: This one's okay?

11 MR. BERRY: I think so, too. My concern is  
12 with this one. I'm happy to ask him the question.  
13 It seemed like there was more to the question.  
14 But I'm fine to ask him the question.

15 THE COURT: Okay? How about No. 2?

16 MR. BERRY: I'm fine with it.

17 MR. VOGT: I'm fine with it also. I'm fine  
18 asking that. I'm not sure what they want.

19 THE COURT: Thank you.

20 (In open court)

21 THE COURT: All right. Mr. Horan, some of  
22 our jurors have some questions.

23 How do you associate the value and awareness  
24 benefit that Gawker earned by gaining mass general  
25 public exposure to the Gawker site and brand

1 derived from the viral Hogan article/video posted  
2 by Gawker?

3 THE WITNESS: Okay. I looked relatively  
4 specifically at the traffic of the site and how  
5 that's turned into revenue, because if -- so first  
6 of all, again, in my opinion, Gawker was an  
7 ongoing business. They published 10,000 articles  
8 a year. They had traffic. So it wasn't -- the  
9 site had been around for ten years.

10 So the thing I was trying to figure out was,  
11 did -- whether just awareness or links as a result  
12 of this post changed the traffic to the site and  
13 then translated into revenue.

14 So I didn't have any way to say, oh, you  
15 know, the overall awareness increased for longer  
16 term, but I also didn't have any reason to think  
17 that there had been a change in that awareness.

18 THE COURT: Any follow-up?

19 BY MR. VOGT:

20 Q. So kind of distilling that down, you didn't  
21 really have an opinion as to whether or not the brand  
22 awareness changed, right?

23 A. No, sir.

24 Q. Right?

25 A. Correct.

1           October 1st. Then you say if you chop it there  
2           and look October 1st forward, then it's in that  
3           kind of flat range.

4           MR. BERRY: No questions.

5 BY MR. VOGT:

6           Q. Do you know whether or not prior to the Hogan  
7           post the Kate Middleton post had anything to do with  
8           that increase?

9           A. I know the Kate Middleton post, which was in  
10          September, was quite successful as well.

11          THE COURT: You said Gawker is a spike-driven  
12          business. So that means they need to generate  
13          those spikes, correct?

14          THE WITNESS: Yes, that is correct.

15          THE COURT: How do you value brand awareness,  
16          recognition, reputation, and "buzz" in media from  
17          article spikes?

18          THE WITNESS: To some extent, like when I  
19          think about investing in a company or buying a  
20          company, if a company is very popular or  
21          well-known, everybody is talking about it, you'll  
22          pay a little bit more for it, absolutely. But to  
23          some extent, what has to happen is that awareness  
24          and interest, it has to turn up into traffic, turn  
25          up into revenue. It's not just, oh, people are

1 the post went up. The second spike is when Mr. Bollea  
2 would have filed the lawsuit on October 15th.

3 Q. And your numbers on revenue would include any  
4 traffic that's drawn from Google, right?

5 A. Certainly.

6 THE COURT: Isn't it likely that after the  
7 post, companies were more apt to buy ads on Gawker  
8 Media due to growth in traffic, especially during  
9 the holidays?

10 THE WITNESS: No, for three reasons. First  
11 reason is that this post went up in the middle of  
12 October. By that point, all of the holiday ad  
13 budgets had been long spent. So there was -- the  
14 next period where they would have been sort of in  
15 the time window would have been Q1, which is  
16 historically a very soft market for ads. So there  
17 really was very little opportunity.

18 Second thing is that, frankly, this is the  
19 type of post that scares off more advertisers than  
20 it attracts. Advertisers are very, very sensitive  
21 to being around not suitable for work content  
22 because they want their brands to be in a certain  
23 type of environment. So, if anything, I think  
24 this would have kind of scared folks away.

25 And then a third thing is, again, I never saw

1 follows:)

2 (Oath administered and identifying information  
3 obtained by reporter.)

4 Q. Who is your employer?

5 A. MindGeek Enterprises.

6 (Video deposition was paused.)

7 (Discussion off the record at the bench.)

8 THE COURT: Apparently, because of the  
9 technology used in the deposition, there may be  
10 some kind of an echo or delay. We'll just have to  
11 wait and see.

12 (The videotaped deposition continued as  
13 follows:)

14 A. 9219-1568 Canada, Inc. -- sorry, Excuse me,  
15 Quebec, Inc.

16 Q. Is that the address or the name of the  
17 company?

18 A. That's the name of the company.

19 Q. And what is your -- for short, can we just  
20 call it MindGeek Canada?

21 A. Mind Geek Canada, yeah.

22 Q. And what is your title with MindGeek Canada?

23 A. My title is director of product management.

24 Q. And what are your responsibilities as  
25 director of product management?

1           A.    So my responsibilities are I manage a team of  
2 product managers that implement features into websites.  
3 I manage the marketing teams as well as data and  
4 [inaudible].

5           Q.    Does MindGeek Canada operate the website  
6 called PornHub?

7           A.    No. We provide services to the company that  
8 does.

9           Q.    What services do you provide?

10          A.    So similar to what I just -- just explained.  
11 So product management services, marketing services,  
12 data analytics. Those are the ones that I'm familiar  
13 with.

14          Q.    What is PornHub?

15          A.    So PornHub is a video sharing platform,  
16 specializing in adult content.

17          Q.    And by adult content, you mean pornography?

18          A.    Yes.

19          Q.    Can somebody -- from your responsibilities  
20 with MindGeek Canada, that you are familiar with the  
21 content on PornHub; is that right?

22          A.    I do not directly oversee the content, but I  
23 am familiar with it.

24          Q.    Can somebody watch pornography for free at  
25 PornHub?

1 A. Yes.

2 Q. How much pornography can somebody watch for  
3 free on PornHub?

4 A. As much as they want.

5 Q. Are you familiar with the video that's posted  
6 on PornHub that's titled Kim Kardashian sex tape with  
7 Ray J?

8 A. Yes, I am.

9 Q. Is that video posted on PornHub?

10 A. Yes.

11 Q. I would like to go ahead and mark Defendants'  
12 Trial Exhibit 574, which is a screen shot from the  
13 web page.

14 Would you mind showing the witness  
15 Defendants' Exhibit 574? It's a screen shot that at  
16 the top says Kim Kardashian sex tape with Ray J, dash,  
17 PornHub.com.

18 A. All right. I have it.

19 Q. Are you familiar with this web page?

20 A. Yes.

21 Q. Okay. What is it?

22 A. This is a video page, and the video would be  
23 Kim Kardashian's sex tape with Ray J, as it's titled  
24 there.

25 Q. And this is a web page that is on PornHub,



1 correct?

2 A. Correct.

3 Q. Is there a video that's posted on this  
4 web page?

5 A. It's not visible in the screen shot, but yes,  
6 there would be a video there.

7 Q. So if I understand what you're saying, if a  
8 person went to this web page, there would be a video  
9 posted on the page?

10 A. Correct.

11 Q. What is that video?

12 A. So that is the Kim Kardashian sex tape with  
13 Ray J.

14 Q. Are you familiar with the video that's posted  
15 on this page?

16 A. Yes, I'm familiar with it.

17 Q. How long is the video that's posted on this  
18 page?

19 A. I don't know the exact length.

20 Q. Can you approximate?

21 A. Five minutes long.

22 Q. What is contained on that video?

23 A. There would be sexual acts with Kim  
24 Kardashian and Ray J.

25 Q. Does the video include graphic sexual

1 content?

2 A. Yes.

3 Q. Does the video show Kim Kardashian performing  
4 oral sex?

5 A. Yes.

6 Q. Does the video show Kim Kardashian receiving  
7 oral sex?

8 A. Yes.

9 Q. Does the video show Kim Kardashian having  
10 sexual intercourse?

11 A. Yes.

12 Q. Is the video in public?

13 A. Yes.

14 Q. Does it include close-up images of Ms.  
15 Kardashian's vagina?

16 A. I don't know.

17 Q. Does it include close-up images of Ray J's  
18 penis?

19 A. Yes.

20 Q. Does it include close-up images of Ray J and  
21 Ms. Kardashian engaging in oral sex?

22 A. Yes.

23 Q. Did does include close-up images of Ray J and  
24 Ms. Kardashian during sexual intercourse?

25 A. Yes.

1 Q. How much does PornHub charge people to watch  
2 the video that's posted on the web page that's marked  
3 as Defendant's Trial Exhibit 574?

4 A. Nothing.

5 Q. I'd like to mark as Defendants' Trial Exhibit  
6 272 a video that is approximately five minutes long.

7 Mr. Goldenberg, have you had an opportunity  
8 to review the video of Defendants' Trial Exhibit 272?

9 A. Yes.

10 Q. What was on that video?

11 A. There were sexual acts between Kim Kardashian  
12 and Ray J.

13 Q. Did it appear to be substantially similar to  
14 the video that's posted on the web page that we looked  
15 at previously?

16 A. Yes, to my knowledge.

17 Q. Did you notice any differences?

18 A. To my knowledge, no.

19 Q. Looking at the video, does it refresh your  
20 recollection of whether there were close-up images of  
21 Ms. Kardashian's vagina?

22 A. Yes, there were.

23 Q. There were images of her vagina?

24 A. Yes.

25 Q. On the -- going back to the screen shot of

1 the web page that's been marked as Defendants' 574.

2 A. Yes.

3 Q. Looking at that screen shot, there is a line  
4 midway through the first page that says "views." Do  
5 you see that?

6 A. Yes, I do.

7 Q. What does "views" mean on this web page?

8 A. That means how many times the page was  
9 loaded.

10 Q. How many times the web page was loaded or the  
11 video?

12 A. The web page.

13 Q. I will represent to you that this screen shot  
14 was made on or about March 18th, 2015. How many views  
15 of this web page were there as of that date?

16 A. 105,771,119.

17 Q. Do you know how many people actually watched  
18 the video?

19 A. I don't know how many would be unique views.

20 Q. Do you know how many of those people of those  
21 views would have actually watched the video?

22 A. The full video?

23 Q. Or any aspect of it.

24 A. I would -- I don't know the exact amount.

25 Someone could have loaded the page and left without

1 watching it.

2 Q. Does the video automatically play when the  
3 page is loaded?

4 A. Yes, it does.

5 Q. Next to the portion of the web page that says  
6 "views," right next to it, it has the word "from"? Do  
7 you see that?

8 A. Yes.

9 Q. And next to the word "from" it says "Vivid  
10 Celebs"?

11 A. Yes.

12 Q. So you see that?

13 A. Yes.

14 Q. What does that mean?

15 A. That means the user name or the channel that  
16 uploaded the video.

17 Q. Can you explain what you mean by that?

18 A. So when a video is uploaded to PornHub, the  
19 user name is displayed there.

20 Q. As --

21 A. Sorry. If it's an official channel, then it  
22 will say the channel name instead, which in this case  
23 it is.

24 Q. What is the Vivid Celebs official channel?

25 A. That would be the channel that Vivid uploads

1 videos to.

2 Q. So on this page, as I understand what you're  
3 saying correctly --

4 I apologize. Does this mean that Vivid  
5 Celebs uploaded the video that appears on this  
6 web page?

7 A. Yes.

8 Q. On the video itself, does Vivid's name  
9 appear?

10 A. Yes. There is a watermark.

11 Q. And that watermark appears throughout the  
12 video, right?

13 A. Right.

14 Q. Somebody can watch -- somebody can watch this  
15 video on PornHub's web page without paying any money,  
16 correct?

17 A. Yes, correct.

18 Q. And I think you said MindGeek Canada does not  
19 operate the website PornHub; is that correct?

20 A. No. We provide services.

21 Q. Do you know which company operates PornHub?

22 A. MG Freesites.

23 Q. If you look underneath the video box, there  
24 is a subscribe button.

25 A. Yes.

1 Q. What does that subscribe button do?

2 A. So if you're going to make a free account on  
3 PornHub, you can sign up with an e-mail and user name  
4 and password, and then you could subscribe to channels  
5 or users. And then you will be -- you will see future  
6 uploads in their screen when you log in.

7 Q. And does that cost anything to subscribe to  
8 user channels?

9 A. No.

10 Q. And in the boxes of videos that are down on  
11 the bottom of the page --

12 A. Yes.

13 Q. -- what are those?

14 A. Those are related videos.

15 Q. And are those related videos that have been  
16 posted by the same user?

17 A. Some of them could be, but they're not all.  
18 I have no way to tell if they're all from that same  
19 user.

20 Q. And what would happen if a visitor clicked on  
21 one those videos down under the video box we were  
22 talking about?

23 A. It would go to another video page like the  
24 one we're looking at.

25 Q. It would be another video page on PornHub?

1 A. Correct.

2 Q. Mr. Vogt asked you about the subscribe  
3 button.

4 A. Yes.

5 Q. On Defendants' 574, do you see the subscribe  
6 button that he asked you about?

7 A. Yes.

8 Q. Next to that there is a number. What is that  
9 number?

10 A. That number is the total subscribers that  
11 Vivid Celebs have.

12 Q. And what is that number on this page?

13 A. Oh, sorry. It's 15,099.

14 Q. So -- so -- and that's the number of  
15 subscribers to the Vivid Celeb page on Pornhub?

16 A. Correct. The channel, not the page. The  
17 Vivid Celeb channel.

18 Q. Mr. Vogt asked you about the videos under the  
19 Kim Kardashian sex tape.

20 A. Yes.

21 Q. On Defendants' Exhibit 574, if somebody were  
22 to click on the first video, they would see the Kendra  
23 Wilkinson sex tape; is that right?

24 A. Based on what I see here, that's the title.  
25 They would see the Kendra Wilkinson exposed sex tape.



1 Q. What would happen if they pressed the video  
2 next to that?

3 A. They would be taken to a video titled Tila  
4 Tequila lesbian sex tape.

5 Q. And the one next to that?

6 A. Tila Tequila lesbian raw sex tape.

7 Q. And then there is a video underneath the  
8 Kendra Wilkinson sex tape. Where would they be taken  
9 to if they clicked on that?

10 A. I believe you're referring to China's new  
11 partner.

12 Q. And each of those videos could be viewed on  
13 the PornHub website?

14 A. Correct.

15 Q. Could each of those four videos that we just  
16 discussed be viewed on the PornHub website?

17 A. Yes. As far as my knowledge at the time of  
18 this screen shot, yes.

19 Q. Would anybody pay -- would anybody have to  
20 pay to watch those four videos on PornHub?

21 A. No.

22 Q. And on that screen shot, it also has a  
23 Montana Fishburne exposed sex tape. Do you see that?

24 A. Yes.

25 Q. Is that a Vivid video as well?

1 A. Yes. I can see the watermark there.

2 Q. Is that something that's available on  
3 PornHub's website?

4 A. Right now, I can't tell you for certain, but  
5 at the time of this screen shot, definitely.

6 Q. And somebody could watch that Montana  
7 Fishburne video for free on PornHub; is that right?

8 A. Correct.

9 Q. You believe that Vivid has the right to post  
10 the Kim Kardashian video on PornHub; is that correct?

11 A. Yes. I mean, to my knowledge, I believe that  
12 they would have the right to post that.

13 Q. Okay.

14 (The videotaped deposition was paused.)

15 MR. VOGT: We're just going to play a brief  
16 clip in rebuttal, Your Honor, in the interest of  
17 time.

18 THE COURT: All right. Thank you.

19 (The videotaped deposition continued to be  
20 played as follows:)

21 Q. Now, PornHub and 28, are those -- what are  
22 those? Hosting sites?

23 A. I have heard them referred to that in the  
24 past, yes.

25 Q. And if you look at the exhibit -- the first

1 deciding this case.

2 The attorneys for the parties will now  
3 present their final arguments to you. When they  
4 are through, I will have a few final instructions  
5 about your deliberations.

6 Remember, what the attorneys say is not  
7 evidence. The arguments are a final opportunity  
8 for the attorney to discuss the case and to  
9 persuade you to reach a verdict in favor of their  
10 clients. Each side has an equal amount of time.  
11 Mr. Turkel will go first. Mr. Sullivan will then  
12 make his argument. And finally Mr. Turkel may  
13 make a rebuttal argument.

14 Please now pay close attention to their  
15 presentations. Thank you.

16 Mr. Turkel.

17 MR. TURKEL: Yes, Your Honor. If it may  
18 please the Court, counsel, members of the jury.

19 I want to start our discussion this morning  
20 with a simple thought, a simple premise for you.  
21 And that is that Mr. Bollea didn't create this  
22 world. He didn't consent to being recorded. He  
23 didn't consent to this posting. The more extreme  
24 level of that is, he wasn't even called before  
25 this was put up.

1           We talked about journalism a lot in this  
2 case, and I'm going to get deep into some of these  
3 journalistic standards where lines are supposed to  
4 be drawn between journalism and privacy. But I'll  
5 give you the simple thought that most of the time  
6 in a news story, you see that little part where it  
7 says, so and so was contacted and had no comment,  
8 or, so and so was contacted and said this.

9           The idea that in September of 2012 this video  
10 was sent to Gawker and they didn't have the common  
11 decency to call one person that was involved in it  
12 before they posted the story probably tells you as  
13 much as you need to know about Gawker and whether  
14 that company and Mr. Daulerio and Mr. Denton  
15 deserve protection under our First Amendment.

16           That being said, I want to take you back to  
17 September 2012. And I want you to think about  
18 this for a little bit as a background on  
19 everything I'm going to talk about. Think about  
20 where this starts, when Mr. Daulerio gets this  
21 e-mail from Tony Burton, the agent who represents  
22 Mike Calta, a DJ who lives in this town.

23           You know, when these trials go on, you get  
24 sort of all this stuff around the real core of it.  
25 The fact that it's Michael Calta, who Mr. Burton

1 testified had some radio battles with Bubba The  
2 Love Sponge may add some flavor to it or  
3 atmosphere. But the truth is, all you really need  
4 to know is A.J. Daulerio gets an e-mail from this  
5 guy telling him he has a "significant DVD." You  
6 may remember the e-mail. It wasn't a long one.  
7 It talked about a significant DVD. They go back  
8 and forth. They tell him it's anonymous, right?

9 Now, this is a reporter. This is a reporter  
10 who is supposed to be doing a news story. That's  
11 how this all starts. Right? They exchange  
12 e-mails. He gives him a P.O. box. He gets a  
13 package and the package is this "significant DVD."  
14 Now, what's significant in the world of Gawker is  
15 a tape of my client in a private bedroom with a  
16 friend at the lowest point in his life, in a  
17 private act -- and we can just call it that. I  
18 think there's been enough language in the case  
19 that we know what private act means.

20 They know at the time -- at least what they  
21 know at the time is that it was secretly recorded.  
22 Whether they believed it is irrelevant -- because  
23 in the article Daulerio even says, Hogan claims it  
24 was secretly recorded -- they do nothing by way of  
25 trying to find anything out. They don't even call

1 my client.

2 And then they spend the next two or three  
3 days joking about it, making fun of him, of how he  
4 looks, of his anatomy. They were making jokes  
5 about his character and whether he's wearing a  
6 do-rag on his sexual organs, you know, a bunch  
7 of -- frankly, let's call it for what it is, a  
8 bunch of young kids sitting there in what they  
9 call a campfire chat taking a private, private act  
10 in a private, private place and using it to joke.  
11 That's the background against which this serious  
12 journalism that's supposed to be protected by the  
13 First Amendment starts.

14 I'm going -- Mr. Vogt used the word "power"  
15 if you remember in opening. I'm going to try to  
16 link these things up so all this makes some kind  
17 of sense to you. And Professor Foley used, it  
18 too, in something he said on the witness stand.  
19 The media has the ability or the power to do great  
20 good and the power to do great harm.

21 Against this idea, this mocking of  
22 Mr. Bollea, a defense is Mr. Bollea -- and by the  
23 way, they don't call him. He's not there. They  
24 don't know anything about the background of what's  
25 going on. They have no idea he's in the lowest

1 point in his life. His wife has left him. And  
2 we're going to talk more about this idea of  
3 Mr. Bollea the person versus the character he's  
4 played for 35 plus years.

5 Mr. Daulerio sits down at the computer with  
6 his friends joking, laughing, mocking, recklessly,  
7 you know, consuming this content and with a  
8 click -- with a click uploads this thing onto the  
9 Internet and turns this man's life upside down.  
10 And there is not one thing about that that  
11 Terry Bollea created, not one thing. Not even the  
12 simple idea of calling him to say, we are going to  
13 do this whether you like it or not. Do you have a  
14 comment? What's this about? Did you know? Did  
15 you not know? We've heard you didn't know.  
16 That's the background against this case.

17 Now, what happens after he clicks it?  
18 Traffic soars on Gawker. I don't care -- I'm  
19 going to talk to you about all the experts and the  
20 traffic issues and the various ideas of why they  
21 did this. But we can agree on one thing. I don't  
22 care how many Peter Horans they put on the witness  
23 stand to say this didn't matter. Their traffic  
24 soars. It becomes what they have described as a  
25 defining story. Do you remember that? Defining

1 story. This is Gawker, the Gawker network. Eight  
2 different websites, Gizmodo, IO9, all of this  
3 content going out under the Gawker umbrella, and  
4 this is what defines it. We're going to talk in  
5 great detail when we get to the damages part about  
6 what that means and what they try and say it  
7 means. But we know they called it defining  
8 realtime, before the lawyers got involved, before  
9 there was a lawsuit, realtime people talking about  
10 realtime things. And that's another thing we'll  
11 talk about.

12 They did this all at the expense of a man  
13 they didn't know. They thought they knew him  
14 because he's played a character for 35 plus years.  
15 And I'm going to talk about that now.

16 If you could pull up 119, John. It should be  
17 49, the cease and desist e-mail. If you can  
18 highlight the part I think -- go down, right here.

19 I did not want you to think I was attempting  
20 to bully you or make demands that were not  
21 warranted. I am asking you to remove the same. I  
22 am simply advising what our next steps would be.  
23 It is not meant to threaten, but rather as an  
24 advisory as to what we must do to protect the  
25 image of Hulk Hogan and his privacy rights.



1           They made this an issue. It says Hulk Hogan.  
2           The first paragraph says Terry Bollea. This is  
3           really what I want you to focus on. We're going  
4           to talk about it an awful lot this morning.

5           I am sure you must understand as a human  
6           being exactly how offensive this thing would be.  
7           Despite the fact this would have been presented to  
8           you anonymously, it is difficult to believe you  
9           were not aware this was done without his consent  
10          and/or knowledge.

11          And if you go down, Mr. Houston finishes this  
12          and says, I have no intention of attempting to  
13          harm you or your business, but I have to protect  
14          my client.

15          The letter he sent was more like a legal  
16          letter. And at the end, it just says, take it  
17          down. When Mr. Houston testified, he said, I was  
18          just trying to be decent. I was asking them to do  
19          the decent thing. This wasn't about a lawsuit.  
20          Just take it down. You have realtime methods of  
21          that. And so when I talk about that this, that  
22          this isn't a world Terry Bollea created, at the  
23          start of when this began with the anonymous DVD up  
24          until Mr. Houston's letter, all that was ever  
25          asked is Gawker be decent. We know Gawker and

1 Denton and Daulerio weren't decent because  
2 basically they're just not. And they're proud of  
3 it. They boast about it. They boast about  
4 breaking rules and about doing indecent things  
5 because, you know, the philosophy -- the place is  
6 run by a guy who literally believes we don't have  
7 privacy rights. I mean, he said that. And we're  
8 going to go back through that evidence.

9 I want to talk to you about Mr. Bollea. You  
10 know, this concept of the Hulk Hogan character and  
11 Mr. Bollea and where that starts and ends, I know  
12 you've heard a lot about it. And at times it must  
13 have seemed strange to you or over the top and  
14 other times it must have made a lot of sense to  
15 you. It should make sense to you, because I want  
16 you to imagine the fact that for 35 plus years, he  
17 is essentially an actor, an entertainer who has  
18 played the same role. I want you to apply that.  
19 Think of all the movie stars you've ever heard of  
20 and imagine if they were fortunate or unfortunate  
21 enough to have one role they played for 35 plus  
22 years. Think of Captain Kangaroo. Do you think  
23 Captain Kangaroo -- I may be a little dated here.  
24 I'm sorry. It's what popped into my mind anyway.

25 Do you think Captain Kangaroo -- anyone

1 thought of what his real name was? Or Dr. Seuss,  
2 to the extent he was recognizable in public. He  
3 has a real name, right? They have real names.  
4 It's the difference when you're one of these  
5 characters -- and I'm not going to make excuses.  
6 And Mr. Bollea never did. He never said he was  
7 upset about being Hulk Hogan. He was fortunate to  
8 have that opportunity. But imagine for 35 plus  
9 years the same role of an actor or a character.  
10 That's why you hear this so much. It's hard for  
11 him to explain sometimes. You know it would be  
12 hard for anybody to explain, because when he  
13 leaves his house, because he's been the same  
14 character for 35 years, nobody cares who  
15 Terry Bollea is. They just don't. Terry Bollea  
16 is the kid who grew up in a pretty nasty working  
17 class area in Tampa, okay, you know, who was  
18 really more of a musician than an athlete.  
19 Fortunately or unfortunately, because he was so  
20 big, he fell into sports because the coaches  
21 wouldn't leave him alone.

22 I think they're going to send back his  
23 autobiography with you. Okay? I want you to look  
24 at it, because he talked about how self conscious  
25 he is and why he wears a bandana. See, you know

1 Hulk Hogan, he wears the yellow bandana and rips  
2 it off on the stage. It's a big deal, right?  
3 It's part of his act. He wears it because he's  
4 self conscious about the size of his head. And if  
5 you look in there, there's a picture of him in  
6 Little League baseball with a comment underneath  
7 it about how he couldn't get a helmet to fit his  
8 head. This is the truth. This is what he is.

9 So he sought a better life for himself and he  
10 hawked a bunch of wrestlers and followed them  
11 around like a fan. You know, until he got this  
12 opportunity -- and you know something? It wasn't  
13 handed to him. He broke his leg training to be a  
14 wrestler. This is a guy that worked for  
15 everything he got.

16 But Terry Bollea the person, you know, he's a  
17 regular family guy who grew up with a pretty  
18 simple background, who has been lucky to have some  
19 success in his life. But even when his wife left  
20 him, he was so sad that he hadn't had a  
21 home-cooked meal that Heather Clem in all of that  
22 dramatic testimony she gave, one thing she  
23 remembered was how he was sad because he hadn't  
24 had a home-cooked meal. That's the person. And,  
25 you know, the person has every right -- every

1 right to keep whatever precious private moments  
2 they have in their life, which for this gentleman  
3 are very few. He can't trust a lot of people. He  
4 can't have a lot of friends because everybody  
5 wants the actor. They want the character. They  
6 want Hulk Hogan. And behind closed doors, he's  
7 just a guy who was sad he hadn't had a home-cooked  
8 lunch.

9 That's not his testimony. You didn't hear  
10 him. He wasn't trying to grandstand for you about  
11 that difference. But sometimes in these trials,  
12 what happens is these little organic facts come  
13 out. If you don't see that distinction right  
14 there from that testimony, look at Jules Wortman.

15 Can you pull up 17.

16 I found this e-mail to be somewhat  
17 illustrative of this point. By the way,  
18 Ms. Wortman is not his publicist. She works for  
19 TNA. She works for the corporation. This is her.  
20 If you look down there, she sends an e-mail to  
21 Mr. Bollea about the Bound for Glory Tour. And it  
22 says, To Terry Bollea, Here you go, Champ. Please  
23 note the attachment accompanying the itinerary.  
24 Look at the attachment. What does it say?  
25 Hulk Hogan NYC media tour, talking about the

1 character in the third person. This is  
2 Ms. Wortman. You heard her testimony. When he  
3 goes on the show, he's always in character. When  
4 he goes on Stern, he has no control. You play the  
5 game as it's played. We're going to talk more  
6 about some of the shock jock stuff.

7 But, you know, the bigger point here is you  
8 have to grasp that fact for a moment that there is  
9 a true difference between an entertainer that's  
10 played a role for 35 plus years and having privacy  
11 in one or two places as Terry Bollea did, because  
12 he doesn't have very many. And obviously one of  
13 the places he thought he had privacy was in a  
14 private bedroom in his best friend's house in  
15 2007.

16 He's never complained about his anonymity.  
17 He's never complained about sacrificing that. He  
18 knows if he walks on the street, selfies are  
19 coming, autographs are coming. Hey, Hogan. Hey,  
20 Hulkster. He has to show a muscle shot or  
21 something. He's embraced that. This case has  
22 nothing to do with that. It has to do with those  
23 little areas that we all agreed in jury selection  
24 that even a celebrity gets to have. And I think  
25 you all remember that. We talked about it. I

1 asked a really broad question. How many believe  
2 celebrities waive their privacy rights? Right?  
3 We all agreed that people generally agree that  
4 celebrities still have some privacy rights. Even  
5 Mr. Denton with his thoughts about privacy agreed  
6 to that. How about that?

7 The defense -- I want to talk about Gawker  
8 and Nick Denton a little bit. Actually, I want to  
9 talk about it a lot.

10 You know -- pull up No. 37 if you could,  
11 John.

12 This idea of the First Amendment has limits.  
13 You just heard the law. And the judge talked to  
14 you about the balancing test between privacy  
15 rights. When does it stop being information in  
16 which the public is entitled and when does it  
17 become a morbid prying into somebody's life? I  
18 don't know if you remember that. You'll take  
19 those back there. You'll see this long  
20 instruction on what newsworthiness means. And it  
21 will tell you in balancing privacy versus  
22 newsworthiness, here is what you do.

23 I want to start about Gawker with what  
24 Nick Denton says the theory is, the philosophy.  
25 If you remember when I had him up on the stand, I

1 asked him, your philosophy about journalism is  
2 reflected in the company. I don't know if you all  
3 remember that particular question. But he was  
4 very proud. Then I got kind of testy with him.  
5 You founded it. You're the owner. That's your  
6 philosophy. You created this world.

7 We don't seek to do good, says Denton. We  
8 may inadvertently do good. We may inadvertently  
9 commit journalism, as if it's a crime to commit  
10 journalism, because he's so proud of being the guy  
11 who ruins lives with these cutting edge things  
12 like a private sex video.

13 That is not the institutional intention. Do  
14 we all know what that means, the institutional  
15 intention? That is not what I have made the  
16 institution desire to do, desire to be. We don't  
17 want to commit journalism. Now, maybe by mistake  
18 every now and again we do that.

19 What's funny about that is then they come  
20 back later in the trial and put up this Adam Lanza  
21 article and boast about how great it is when they  
22 didn't even write it. I don't know if you all  
23 remember that. We had a big lawyer thing going on  
24 there. It's been republished. They didn't write  
25 it. But they testify, we're proud of that



1 article.

2 So we go into this idea that Gawker is the  
3 reflection of its owner and founder, Nick Denton.  
4 That's what they have chosen to be at Gawker. We  
5 hear his signature, test the line. The test.

6 John, would you put up 375.

7 You know, this is another piece of evidence  
8 that -- you know, you're in here for two weeks. I  
9 don't know what you really pick up on and don't.  
10 Part of closing is to try and talk with you all  
11 about that. But this was his tweet, the line, the  
12 test. The story should be true and it should be  
13 interesting. And I said, there's nothing in there  
14 about it should reflect privacy rights or do the  
15 balancing test that Judge Campbell just read to  
16 you, right? And we talked about that back in jury  
17 selection. You know, there were questions -- I  
18 don't know if you all remember -- kind of in the  
19 dialogue about where does it start and where does  
20 it end. The judge is going to tell you, you've  
21 been told the story. Where does it start and  
22 where does it end? I asked him that. And  
23 remember he adds this thing in, and check with  
24 legal.

25 Now, in his career, this is like his

1 signature line. Okay? It's in other articles as  
2 you can see and you've heard it in the case. He  
3 has never said, and check with legal. He's never  
4 said -- he said it to A.J. Daulerio on the fire  
5 escape when A.J. was about to turn Mr. Bollea's  
6 life upside down, right? That was the one thing  
7 he remembered when we talked about the fire escape  
8 discussion. A.J. says it doesn't happen. Denton  
9 says, I have a hazy recollection. I think it  
10 happened. It may have happened. I remember him  
11 being excited. No, I don't remember him being  
12 excited. We had to go to the deposition. I don't  
13 know if you remember. I remember talking -- wait.  
14 I don't know if I talked to him. It may have been  
15 before. It may have been after.

16 The truth of the matter is they're going to  
17 circle the wagons around Denton, and Daulerio is  
18 going to get on the stand and say, I never talked  
19 to him. Denton swore under oath he talked to him.  
20 Because the one thing he remembered was what? I  
21 told him to go talk to legal.

22 He talks to legal. We ask him, what did they  
23 say? Objection, don't answer the question. You  
24 all draw your own conclusions from that.

25 You know, you may wonder -- you may not, but

1           you may be wondering why. Why would somebody  
2           create a company that's supposed to be a media  
3           company to do this? What is the kind of goal?  
4           Obviously we think one of the goals is to make a  
5           ton of money. All right? To go move your offices  
6           to Fifth Avenue where you're paying three million  
7           dollars a year in rent, \$280,000 a month, because  
8           you're bursting at the seams, that's obviously a  
9           reason.

10           But the bigger reason, kind of Nick Denton's  
11           reason, you know, that the machinery working under  
12           it, it's this idea that this guy has that society  
13           somehow has changed and nobody has privacy  
14           anymore.

15           Pull up 115.

16           One of you all questioned him. I was  
17           sometimes amazed at the questions you guys asked,  
18           because one of you guys questioned him -- and we  
19           don't know whose question is whose when you send  
20           them up there -- and said, do you think --  
21           actually, I want to read it because I don't want  
22           to mess it up. Here we go.

23           Do you believe that noncelebrities have a  
24           right to privacy in their own bedrooms?

25           THE WITNESS: Yes. I don't think it's

1 newsworthy to do a story about a private  
2 individual with their partner in the privacy of  
3 their own home.

4 I don't know if you all remember that. I'm  
5 sure one of you does because someone on the jury  
6 asked the question. And he said, I don't think  
7 that that's newsworthy. Right?

8 And I didn't know at the time if anybody  
9 remembered this, which I had already put it in on  
10 his cross. One of the legal issues, that reporter  
11 asked, that's always coming up with Gawker again  
12 and again and again is privacy issues. Do you  
13 have a larger philosophy on privacy?

14 I think the world, he says, is coming around  
15 to our presumption on privacy, which is that when  
16 somebody becomes a publisher, as people do at  
17 quite a young age on FaceBook, to the extent that  
18 they are published and they are viewed, they  
19 become some sort of public figure. That blurs the  
20 line between public and private in a way that has  
21 never been done before.

22 They ask him a question. You've been accused  
23 of invading people's privacy from George Clooney  
24 complaining about Gawker Stalker to the Hulk Hogan  
25 sex tape.

1           Just once in a while, Denton said, I think  
2           it's worthwhile to take stock and recognize that  
3           this supposed invasion of privacy has incredibly  
4           positive effects on society.

5           So when he answered that question from one of  
6           the jurors and said, oh, no, private people,  
7           that's not what he's telling the rest of the  
8           world. Trust me. It's right up there. You go on  
9           FaceBook, you're some sort of a public figure.  
10          And he's said other things like that. Because of  
11          social media, everybody is some sort of public  
12          figure.

13          Privacy invasion has a positive effect on  
14          society. Who thinks like that? What kind of  
15          engineering is going on in the mind of somebody  
16          who thinks it's a good thing to invade people's  
17          privacy?

18                 If we look -- No. 30, John.

19          I mean, this isn't just a casual thought. It  
20          defines the whole reason why we're here. Because  
21          it answers for you why he would do what he did to  
22          Mr. Bollea. I mean, it's not -- this isn't just  
23          like Nick Denton -- the guy likes to talk. I get  
24          it. But he gets a direct question when he's  
25          interviewed by Playboy. Is it possible you set a

1 lower value on privacy than most people do?

2 We get this answer -- I'm not going to read  
3 it again. You guys see it. I'm kind of sick of  
4 all the language. But I don't think people give a  
5 blank about it actually, you know. And he talks  
6 about something where he thought it was going to  
7 happen to him. He says -- and Playboy asked him,  
8 You weren't freaked out?

9 And he says, It would have been mortifying,  
10 admitting that he kind of understands what it does  
11 to people. But his thought, every infringement of  
12 privacy is sort of liberating. Afterward you have  
13 less to lose. You're a freer person. Shouldn't  
14 we all want to own our own story?

15 I am certain that everyone in their private  
16 lives wants to decide what they get to make public  
17 and private. And notwithstanding the fact that  
18 Terry Bollea is an entertainer who plays the role  
19 of Hulk Hogan, I am pretty sure that everybody  
20 here can agree that the simple thought of being  
21 private in the bedroom of your best friend's house  
22 is something he should want to own on his own  
23 terms.

24 I don't think that the idea that Nick Denton  
25 puts into Gawker what he gets to choose when

1 people are private and when they're not is  
2 something the First Amendment protects in this  
3 case or any case. This is Nick Denton on privacy.  
4 This is Nick Denton, who believes that once you --  
5 because somebody has exposed your private life,  
6 you are now free. You cannot worry about anything  
7 else because your life has hit rock bottom because  
8 somebody has taken your private facts and put it  
9 out there.

10 Look at No. 9, if you could, John.

11 This was another sort of snippet of  
12 Nick Denton on privacy, another quote to another  
13 reporter. After that Hulk Hogan tape -- sex tape  
14 on Gawker, I can hardly complain about intrusion  
15 into my private life. Yeah, love is messy.

16 You see, that's as much an admission of  
17 Denton knowing that they intruded into  
18 Terry Bollea's private life as anything. That  
19 phrase, how he states it, it's not, I'm sorry  
20 about it. It's, in Nick Denton's world, I'm not  
21 going to complain about it now, except, you know,  
22 we kind of talked about that hypocrisy is a sin.  
23 And I know it's kind of sin. But it's kind of  
24 funny that when he gets married, nobody is allowed  
25 to bring cameras in or tweet on social media. And

1 he kind of responded with flippant things like,  
2 oh, we didn't sue them. That's not the point.  
3 The point is this guy is up in New York sitting  
4 behind a computer playing God with other people's  
5 lives. And when he gets to control it, even in  
6 some things as simple as a wedding, a public  
7 event, nobody is going to tweet. Nobody is going  
8 to take pictures. Hypocrisy being his sin.

9 So, you know, how do they get this done?  
10 What are the rules of the game for Gawker? I  
11 mean, we talked a lot in this case about the idea  
12 that there are rules. You know, I don't know if  
13 you all remember, but a long time ago when we had  
14 voir dire, I did warn you that was the only time  
15 we could talk back and forth. So when we were  
16 doing that, I asked you all one point. Do you  
17 think the media can do anything they want? I  
18 don't know if you remember it. It was like three  
19 weeks ago. But we had a discussion about whether  
20 there were some rules, you know, whether there  
21 were some guidelines. One of them was the  
22 balancing test that Judge Campbell read you. That  
23 tells you the newsworthiness test.

24 Another one are Gawker's internal guidelines,  
25 at least to the extent they say they follow them.



1 They don't, but it's interesting to show them.

2 If you look at 233, we saw these content  
3 guidelines which Gawker puts on its website  
4 telling its users, don't publish a porn site,  
5 respect privacy, make sure you own the rights.  
6 And this has been applied to Gawker and they've  
7 acknowledged that these guidelines are in place.  
8 Of course they don't follow any of it.

9 You heard in response to a jury question that  
10 I think one of you all asked him, do you think  
11 gratuitous content is protected by the First  
12 Amendment? And he said no. I think that was a  
13 jury question. And he's admitted, Denton did,  
14 that the Bollea sex tape actually was pornography,  
15 if you remember that. NSFW, watch it anyway. Why  
16 do you put that up there? This is Denton. And he  
17 says, look, because it's pornography, you can get  
18 fired at work for watching pornography.

19 Respect the privacy of others, make sure you  
20 own the rights to anything you post, this is  
21 purportedly what happens inside of Gawker,  
22 although they don't follow one of those mandates.  
23 We've shown you other examples of this and how  
24 they do this. And the reason why they don't  
25 follow them is because they've admitted, you know,

1           being rule breakers. They love being rule  
2           breakers. He loves A.J. Daulerio. Denton praised  
3           this guy because Daulerio is a rule breaker.  
4           That's the whole premise of how they do things  
5           there. We're going to break the rules. We're not  
6           going to commit journalism.

7           If you pull up G9.

8           This is three or four different pieces we had  
9           into evidence here. This came Professor Foley.  
10          You know, if you want to distill Professor Foley,  
11          a highly decorated, respected, award-winning  
12          journalist who teaches at Florida, distill it down  
13          to this simple concept: Be decent. Be decent.  
14          Think about the effect of what you do on the  
15          subject of your stories. Don't do things that  
16          harm other people unless you have to, which is  
17          what the question will tell us, was it something  
18          gratuitous? Was it mean? Gratuitous means  
19          unnecessary. It's the same word. Denton  
20          acknowledges gratuitous is not protected by the  
21          First Amendment.

22          But then when we look at what Daulerio posts,  
23          which Denton has described as sympathetic and  
24          sweet, humanizing, Daulerio says, because the  
25          Internet has made it easier for all of us to be

1 shameless voyeurs and deviants. I'm not so sure  
2 all of us are shameless voyeurs and deviants.  
3 They may be up on Fifth Avenue at Gawker, but  
4 that's a little bit of an assumption for the rest  
5 of the world. And they say we watch this footage  
6 because it's something we're not supposed to do.  
7 What could be a better admission that it was  
8 gratuitous than that?

9 So you have Daulerio admitting that this  
10 shouldn't be protected by the First. And then you  
11 have this idea that they have these guidelines,  
12 and it all matches up with what Professor Foley  
13 said. Look, this doesn't belong, these standards  
14 you put up there. We're not claiming that is the  
15 First Amendment. It's just standards of practice  
16 that the responsible world of the media is  
17 supposed to adhere to.

18 So you want to distill it to some of the  
19 things Professor Foley said, avoid pandering to  
20 lurid curiosity even if others do, right? And,  
21 you know, for as much time as they spent  
22 cross-examining that man to prove to you what, the  
23 Demi Moore art short on the cover of Vanity Fair  
24 was fair game under the First Amendment? I mean,  
25 let's be honest. I mean, that was on the cover of

1 Vanity Fair. She's covered up. It has nothing to  
2 do with this case, people who have consented or  
3 were paid actually for the shot, you know. And  
4 then they attacked Foley because he wrote an  
5 article saying, hey, I know it's a little edgy. I  
6 mean, think about that compared to what happened  
7 with this sex tape.

8 Pull up if you could -- pull up, if you  
9 could, No. 60.

10 I want to talk about Daulerio right now. I  
11 want to wrap up that last point with this simple  
12 premise.

13 Whether it comes out of Professor Foley's  
14 mouth, all right, whether it comes out of basic  
15 journalism practices or the law that  
16 Judge Campbell read you, the simple premise is, be  
17 decent. Be a reasonable person living within a  
18 civilized society. And reasonable people in a  
19 civilized society don't take secretly recorded sex  
20 tapes from a private bedroom and send it out to  
21 the world. That all comes together in these jury  
22 instructions as well as the evidence.

23 We talked about Daulerio and this idea of  
24 being a rule breaker and we look at what he said,  
25 why he's a rule breaker. And we look at

1 Exhibit 60 that came in. He's getting  
2 interviewed, like he was a lot at various times.  
3 It becomes so commonplace, he says, to criticize  
4 what we do and focus on the ethics when the  
5 reality is I work for Nick Denton, the founder of  
6 the parent company Gawker, who doesn't adhere to  
7 those rules. If I worked somewhere else, would I  
8 do that? Probably not. But people want me to  
9 adhere to the rules of their job instead of what  
10 I'm asked to do here. We don't adhere to the  
11 rules. If I went somewhere else, I would. But I  
12 work for Nick Denton. He breaks rules. That's  
13 what I do. That's what this is. It's not like  
14 this is confusing to them. They wear it. They're  
15 proud of this idea that they don't adhere to the  
16 rules, because ultimately what we're going to talk  
17 about is it drives traffic and it makes money.

18 If you pull up 138.

19 Denton is so proud of his protege, so proud  
20 of him. He's brilliant. He's oftentimes  
21 infuriating. He's bold. I think he called him a  
22 leader of men at one point in time. This memo,  
23 and I don't think he understands. A.J. breaks the  
24 usual rules of orthodox management and has still  
25 been the most successful editor at Gawker.com.

1           You talk about a proud mentor. This guy is  
2           the epitome of what Denton wants. He could care  
3           less about whether he's doing anything responsibly  
4           under the First Amendment. He is Denton's golden  
5           child, his creation that does everything the way  
6           he wants and is bold but infuriating.

7           What we know about him is that he's someone  
8           that sets the standard of newsworthiness at the  
9           publication of sex tapes of five-year-old  
10          children. That's what we know. And you know  
11          something? They can say he was joking or being  
12          flippant. I don't care. He had 30 days to  
13          correct that deposition. It was under oath. He  
14          knew it was under oath. And the question he was  
15          asked was, When is a sex tape not newsworthy? And  
16          he knew -- Mr. Vogt got him to concede that he  
17          knew newsworthiness was a main issue in the trial.  
18          So this I was being flippant, I was being -- you  
19          know, I don't know the other words -- I was  
20          joking, it's not like he was asking a background  
21          question about where did you grow up. This was a  
22          central issue in this trial. A.J. Daulerio draws  
23          newsworthiness with the publication of a  
24          five-year-old sex video because it's a celebrity  
25          and they want to talk about First Amendment and

1 wrapping the Constitution around this guy?

2 Please. Please.

3 Later on in the same depo, should you have  
4 any doubt about the seriousness of this guy's  
5 mindset, to call it that, Mr. Mirell asked him --  
6 this was part of it all -- or I think Mr. Vogt may  
7 have asked him on cross, Would you publish a  
8 Miley Cyrus sex video?

9 His response was, Is she over four at the  
10 time -- or, Is she over five at the time? This is  
11 not a joke to this guy. Okay? If it was a joke,  
12 he had 30 days after that deposition to correct  
13 it, swear to it, and change it.

14 You know, the truth of the matter is he  
15 doesn't care. And you saw that. You're  
16 reasonable people. You come in here with your  
17 common sense, and you saw this guy trying to dance  
18 around his testimony. You know, that's one thing  
19 you do bring in here. We talk about the fact that  
20 we want your life experiences, but not the life  
21 experiences related to this case. That was a jury  
22 selection thing. We want you to be able to look  
23 at this impartially, but you are allowed to use  
24 your common sense.

25 Judge Campbell instructed you on the

1 believability of witnesses. One of the things  
2 you're allowed to take into account is, were they  
3 frank on the stand? What was their demeanor? Was  
4 their testimony jiving with other stuff? How did  
5 they act? You know, common sense, the way in your  
6 daily lives you view people in whether they're  
7 telling the truth.

8 You know, the case in some respects can  
9 literally end with Mr. Daulerio's testimony as  
10 relates to newsworthiness.

11 John, can you get the clip up. Don't put it  
12 up until I put the board up.

13 Because at the end of the day --

14 John, do you have the clip? Okay. Don't hit  
15 play yet.

16 This is a list of every reason Gawker gave  
17 for why this tape was newsworthy. If you  
18 remember, he said he talked about it on the shock  
19 jock shows. He had the books and he talked about  
20 his sex life. And that's why we wanted to publish  
21 it. Okay?

22 So we went ahead and asked A.J. about every  
23 single one of these topics because was he was the  
24 guy writing it and he was the guy publishing it.  
25 And we wanted to see what he had to say.



1           John, go ahead and play it.

2           (Video clip played in open court as follows:)

3           Q.   As of October 2012, a sex tape existed,  
4 correct?

5           Your answer, correct.

6           And so the existence of the tape, then, was  
7 not news as of that date?

8           And your answer was, correct, right?

9           A.   Correct.

10          Q.   And, in fact, Mr. Bollea had actually  
11 verified the existence of the tape before you posted  
12 it, hadn't he?

13          A.   He verified the existence of the tape?

14          Q.   Yes.

15          A.   Yes, he had.

16          MR. TURKEL: Stop one second, John.

17          (The videotape excerpt was concluded.)

18          MR. TURKEL: Just a simple point there.

19          Terry Bollea never denied that this tape existed.  
20 Okay? This idea that they were trying to show  
21 that there was proof of the tape, he's admitted  
22 it. I don't know if you all picked that little  
23 issue up. But Daulerio knew that at the time he  
24 wrote it.

25          Go back.

1 (Video excerpt played in open court as  
2 follows:)

3 Q. The story was to commentate on what was on  
4 the tape, wasn't it?

5 A. Yeah, because --

6 (The video excerpt was concluded.)

7 MR. TURKEL: We're going to show you that.

8 (Video excerpt played in open court as  
9 follows:)

10 Q. It was not a question as of October --  
11 Bollea's penis had no news value, did it?

12 A. Mr. Bollea's penis had no news value; is that  
13 what you just said?

14 Q. Yes.

15 A. No.

16 Q. His penis wasn't newsworthy, right?

17 A. No.

18 Q. And you also wanted to be sure your readers  
19 saw Mr. Bollea and Heather Clem having sex, right?

20 A. I did.

21 Q. But there was no news value to the positions  
22 that they had sex in, right?

23 A. No, not necessarily.

24 Q. And you also intentionally included their  
25 conversations they were having in that private bedroom,

1 right?

2 A. Yeah. I included in the conversations to  
3 match up with the stuff I was speaking about in my  
4 piece.

5 Q. And the fact that Mr. Bollea was taped having  
6 sex with his best friend's wife, that wasn't the news  
7 hook for your piece, was it?

8 A. I'm sorry? Can you --

9 Q. The fact that Mr. Bollea was taped having sex  
10 with his best friend's wife wasn't the news hook for  
11 your piece, was it?

12 A. No, not necessarily.

13 Q. I believe you were asked some questions  
14 earlier about some public statements that you had heard  
15 that Mr. Bollea had said prior to the posting, right?

16 A. Correct.

17 Q. And you talked about you had followed  
18 Mr. Bollea's wrestling career?

19 A. Yes.

20 Q. Your article doesn't make any mention about  
21 his wrestling career, does it?

22 A. No.

23 Q. It doesn't make any mention of any statements  
24 that Mr. Bollea had made on the Howard Stern show, does  
25 it?

1 A. No, it does not.

2 Q. It doesn't make any mention of Mr. Bollea's  
3 autobiography, does it?

4 A. It does not.

5 Q. It doesn't make any mention of Mr. Bollea's  
6 wife's autobiography, does it?

7 A. It does not.

8 Q. It doesn't make any mention of any things  
9 that Mr. Bollea had said or images that had been shown  
10 about his reality show, does it?

11 A. It does not.

12 Q. In fact, you weren't even aware of statements  
13 that Mr. Bollea had made publicly about most of those  
14 things when you posted the story, were you?

15 A. In terms of what?

16 Q. Things that he had said about his sex life.  
17 You weren't aware of statements that like, right?

18 A. Not necessarily, no. I mean, I had heard him  
19 on the Howard Stern show after the fact.

20 Q. But you weren't trying to disprove anything  
21 that he had said publicly in your piece, right?

22 A. I wasn't trying to disprove anything he had  
23 said publicly. All I was trying to do was show the  
24 portions of the tape that I thought were interesting  
25 and then write about the tape that I watched.

1 (The video excerpt was concluded.)

2 MR. TURKEL: Show the portions of the tape  
3 that I thought were interesting and write about  
4 what I watched. Gratuitous, not protected.

5 What is that, ten reasons? That's what we  
6 have heard in this case. This is why it was  
7 newsworthy. The best one was this idea -- because  
8 they showed you all these clips of my client going  
9 on the Howard Stern show or they played from The  
10 Bubba Show and this idea it's hypocritical, he  
11 talks about his sex life, we're going to expose  
12 it. Right? That's not what they did. That's not  
13 what he's doing. Literally the guy just said, the  
14 only reason I did this was to put the tape there  
15 and write about it.

16 You know, I understand the fact that  
17 listening to these shock jock shows isn't fun. It  
18 was raunchy. But you heard the rules of the game.  
19 You heard it from Wortman. You heard it from  
20 Heather Clem, from anybody who talks about it.  
21 It's all scripted or lies. It's there for shock  
22 value. And if you're the guest on the show, you  
23 play by the rules. I'm not making excuses for  
24 him. He knows every time he walks in the studio  
25 of a shock jock show as Hulk Hogan what the game

1 is. But it doesn't matter. They want to play  
2 that stuff for you because they want you to hear  
3 Hulk Hogan on a radio show doing a skit that has  
4 to do with something that's kind of raunchy in  
5 hopes that you go back there and you judge him  
6 morally. Just look at the board. The only reason  
7 they're actually showing that to you is because  
8 they're saying that's why they wrote the story.  
9 And it's not. Daulerio admitted to you under oath  
10 it had nothing to do with it.

11 We talked about the fact in jury selection  
12 that the moral misgivings that may have occurred  
13 in Mr. Bollea's private life were not going to be  
14 something you judged him by. I talked to you all  
15 a lot about that. Because he's an imperfect human  
16 being, like most persons are. Hulk Hogan, he body  
17 slams elephants. Okay? He is a larger-than-life  
18 icon internationally. There's a difference. The  
19 truth of the matter is all the shock jock stuff  
20 doesn't matter because Daulerio told you it didn't  
21 matter.

22 Denton admits that -- you know, this whole  
23 idea that Denton talks about NSFW, but watch it  
24 anyway. We talked about, you know, this idea of  
25 what does it mean from a privacy perspective? Is

1           it a morbid and sensational prying into someone's  
2           life? And that's the jury instruction that you  
3           get on how to balance privacy versus First  
4           Amendment. They tell you that's what you do.  
5           They've admitted it. Denton admitted it.  
6           Daulerio admitted it. He has said the only reason  
7           I did it was to put the video out there and then  
8           commentate on it. We know what the commentary  
9           said. As painful as it may have been at times to  
10          listen to Denton read that trash into the record,  
11          the reason I had him do it was simple. He  
12          described it as sweet and sympathetic and  
13          humanizing. That's how he described that. You  
14          could have at your disposal the entire English  
15          language and choose any word that has ever existed  
16          since words were created and not find a more  
17          inappropriate word for that trash than humanizing.  
18          If anything, it may be the most dehumanizing and  
19          insulting content that you could possibly have  
20          written. And he's proud of it. He boasted about  
21          it. That's why I made him read it, to illustrate  
22          for you what hypocrisy is. Because you're  
23          entitled to see that as a jury.

24                 You know, at the end of the day, we're not  
25          suing on the words because Hulk, his radio shows

1           that he was on, newspaper articles that wrote  
2           about him, he owns it. He said, write about the  
3           tape. Okay, fine. Write about the tape and that  
4           it exists. That's why TMZ was okay. The Dirty  
5           puts a screenshot. It's not like this guy has  
6           this thin skin. He was okay with the idea that  
7           there was a discussion out there about the tape.  
8           But this, that humanizing text, that sympathetic  
9           text, are you kidding me? Come on.

10           I mean, what's disturbing about Gawker isn't  
11           what they do in a vacuum. It's how proud they are  
12           of it. And that this guy, who is like an  
13           executive of this gigantic media company, would  
14           tell anybody that that is sweet and sympathetic  
15           and humanizing -- I mean, that's the mindset.

16           Pull up the line if you would.

17           We put up there for you all to look at just a  
18           little snippet. Mr. Vogt showed you all this on  
19           opening statement. Morbid and sensational, prying  
20           into private lives for its own sake, which a  
21           reasonable member of the public with decent  
22           standards, right? Now, balance those three  
23           things. That's the law. Underneath the law is  
24           the Denton test, which we've talked about. And to  
25           the right of it is shameless voyeurs and deviants



1 watching something they're not supposed to watch.  
2 Think about that. It's not Gawker's audience.  
3 It's a reasonable person of the public with decent  
4 standards and where decency shows up everywhere.  
5 It's just decency. It's common decency. It's  
6 what we used to try to do. Just be decent.

7 So the response on all this from Gawker is  
8 this mishmash of sort of misleading stuff starting  
9 with the fire escape. You know, it happened; it  
10 didn't happen. I mean, at the end of the day, you  
11 can assess the credibility. But what's important  
12 about that is Denton remembers it. I asked him  
13 like five times questions to get him to admit at  
14 least he told him. Well, the one thing he  
15 definitely remembered was sending A.J. to legal.  
16 This idea, you know, that they're trying to dance  
17 around that conversation is kind of circling the  
18 wagons around the boss so he's not responsible.  
19 You know, he builds the house. He builds this  
20 boat. All of a sudden when it's sinking, he wants  
21 to jump off into a lifeboat. That's what it is.  
22 The truth is it happened. He knew it was going to  
23 get published. A.J. was excited about it.

24 The next thing is this idea they're trying to  
25 push by you -- pull up D541. Go to the last page.

1           This is the Adam Lanza story. I know it may  
2           be a small thing, but this is Gawker trying to  
3           pretend they're real. So they say, oh, we wrote  
4           this brilliant story about this mental health  
5           issue. And they're bragging to you to about it.  
6           This was written by someone else, a different  
7           journalist, but they like cut and paste. They get  
8           permission and put it out there like they're some  
9           kind of pioneers of cutting edge journalism.

10           The Gizmodo thing. I'm sorry. You know, at  
11           the end of the day, they're bragging all about the  
12           fact that they bought a stolen iPhone from  
13           somebody and they knew it was stolen and they go  
14           ahead and write this, you know, exposé on it like  
15           they did some cutting edge investigative  
16           journalism.

17           Then the other thing that really sort of  
18           should tell you the straws they grasped at in this  
19           case is Denton and Fleshbot. I've lived in  
20           Europe. I was educated at Oxford. I wrote for  
21           all these brilliant financial things. And he  
22           leaves out the part that he was a porn king, like  
23           just conveniently, and sold that company the exact  
24           same year that they decide to start putting up  
25           uncensored sex tapes on Gawker. Did you get that

1 coincidence there? He sells it in February 2012.  
2 And by October 2012, Gawker all of a sudden is  
3 getting uncensored sex tapes that used to go over  
4 to Fleshbot.

5 The whole thing with Sandy, we'll look at  
6 some of those graphs. But at the end of the day,  
7 you know, this idea -- they talk about there was a  
8 spike and October wasn't good. But all of a  
9 sudden they conveniently leave out the fact that  
10 this gigantic storm put their servers out of  
11 commission for like five days or three days or  
12 whatever it was.

13 Then the other thing -- I don't know if you  
14 picked up on this either -- was they challenged  
15 Anderson about this data. You can't tell exactly  
16 how many uniques came from this. Well, leave out  
17 the part where Anderson asks for the data and they  
18 don't have it. We asked their own witness. He  
19 says they don't have it. They try and create this  
20 idea that somehow Anderson was dodging the issue.

21 So all of that comes down to damages and why  
22 did they do this. You know, why? Why all this  
23 filth and this charade and this ridiculous  
24 journalistic ethic? Why would somebody do this?

25 The issue is very clear. Traffic. It's

1 traffic. It's traffic. If you didn't get the  
2 point no matter who was talking up there that  
3 traffic was important, then we did a horrible job  
4 in this case, because every single one of them  
5 said the same thing. Denton said it. Horan,  
6 their own expert, said it. Certainly Anderson  
7 said it. You don't get ads without traffic. You  
8 have to go to the advertisers and package up how  
9 many hits you get, your unique views, your page  
10 views, so they can get advertisers. It's simple.  
11 Advertisers don't want to buy ad space on  
12 publications or Internet sites that don't have  
13 readers. So they want to drive traffic. Real  
14 simple.

15 If you can pull up 127.

16 You know, what's interesting, for a company  
17 that said -- you know, and for a defense that  
18 they've done nothing wrong, they've spent a large  
19 part of this trial trying to talk about the fact  
20 that there was no value to this defining post.  
21 Okay? But we know realtime, before the lawsuit,  
22 five days after or six days after, we get this  
23 e-mail from Denton where he talks about the fact  
24 that the news had been dead for months. Remember  
25 that? Five months, no news. Then all of a

1 sudden, we hit the jackpot. Gawker scored with  
2 royal breasts and, this month, Hulk sex. Right?

3 We looked at No. 122, and Denton asks his  
4 editorial team. October 13, 2012 -- and  
5 2012 October is the month to talk about traffic,  
6 because he's got Hogan and Middleton up there on  
7 the site. Have a thought. If there were three  
8 stories over the year that defined your site, what  
9 would they be? A.J. Daulerio, editor-in-chief of  
10 Gawker, says, Hogan initial post. \$10,000, right?  
11 I am sure that they did this with the defining  
12 post of their website for \$10,000 like Horan said.

13 Look at No. 448 and 449. We're so excited  
14 about it that Nick is going to tweet to his  
15 followers. This is October 2012, six days after  
16 my client's private moment up on the Internet for  
17 the world to see. In the last month, Gawker.com  
18 has had its two biggest days ever, each with over  
19 one million people from the U.S. alone. Six days  
20 after, we're excited. I'm sure that Denton didn't  
21 know that the Hulk Hogan sex tape was going up.  
22 Look at the graph. Spikes are important.  
23 Everybody has said it. They set a new line.

24 When they talk about the dip after the spike,  
25 imagine the dip if there was no spike. That's

1 kind of the point we make. This is the day after  
2 the tape was posted, right? That's attached to  
3 his tweet.

4 If we look at No. 61, a year later, he does  
5 the same thing including in the timeline the month  
6 of October 2012 with royal breasts and Hogan sex.

7 Then we can look at No. 130. This one --  
8 yeah, we'll go to 130 now. The one hundred most  
9 popular Gawker stories in 2012, Hogan's listed as  
10 I think No. 3 there, but in between Hogan and  
11 Middleton is the Adam Lanza story.

12 So from there, where do we go? We go to  
13 No. 81, which is Nick Denton on Gawker moving to  
14 uniques. We've shown this a lot. You all have  
15 seen this a dozen times probably in this trial.  
16 The point of it is this is him actually saying  
17 that unique views is how we're going to measure  
18 it, certainly how he measured his investment in  
19 other companies. I look at traffic. The idea  
20 that he doesn't look at traffic and that traffic  
21 isn't the defining metric, for lack of a better  
22 word, is just sort of absurd. It builds brands.  
23 They're building a brand. That's what Anderson  
24 talked about here was that the idea that part of  
25 this was the growth of the company. Then you saw

1 the financials. I don't know if you remember  
2 that. Some of this stuff may have gotten a little  
3 boring, but the revenues are going up every year.  
4 They're moving into their new space, their  
5 \$3 million a year space on Fifth Avenue.

6 So I want to talk to you a little bit about  
7 Anderson's testimony at this point and some of the  
8 damages issues in this case. What Mr. Anderson  
9 did was a valuation, in other words, just like  
10 maybe applying in the real estate world for  
11 something, you use comps. And he takes the comps  
12 and he says, what are the monthly unique users?  
13 Right? And then the company value. And then  
14 basically it's a multiple. He doesn't take the  
15 high or the low. He takes the average at 19.34.  
16 That's the multiple between the monthly unique  
17 users to these sites and the correlation to the  
18 value of the company. What he's doing is he's  
19 valuing the business. What is Gawker worth? And  
20 then from there he's telling you, how do you  
21 attribute that, relate that back to this event,  
22 this tape? Right? And this posting and the  
23 traffic generated from that.

24 So from that, if you see that, he takes this  
25 19.34, before you put this down right there, the

1 middle, that's the multiple he used. He didn't  
2 use the high or low. He took the average.  
3 Then -- excuse me. From that he does his  
4 valuation, does the trailing 12-month average --  
5 the trailing 12-month average monthly uniques. He  
6 uses the valuation multiple here, the 19.34, and  
7 then takes the value, just like he did on the  
8 board with the comps, and uses that to get a value  
9 of Gawker.com from before the posting to after.  
10 Right? And you see this change, \$54 million.  
11 Okay? The total unique page views of the video  
12 count in the months it was posted. So he used  
13 that to extrapolate basically over 6.71 months how  
14 many times it was posted of unique views, then the  
15 change in the trailing 12 months average monthly  
16 uniques to Gawker and the average monthly views  
17 and takes a percentage.

18 So what he's trying to do is take this and  
19 see the change in benefit to Gawker and then the  
20 change in the value of Gawker, this 54 million  
21 that the company is worth, 281 million  
22 September 30th, 2012, to 285 million on  
23 April 30th, 2013, after this six-month period.  
24 Right? He takes that change and he says, okay,  
25 this is the percentage attributable to this.



1 We're going to multiply it by the change in value  
2 and we get that \$15.4 million. That's a huge  
3 number. But it only sounds like a huge number  
4 until you understand the fact that their own  
5 expert tells you probably as much as anybody in  
6 that world of website traffic and advertising it's  
7 really not.

8 If you can pull up -- I think it's No. 100.  
9 We see this No. 100. Right? And this was  
10 Peter Horan's own company, their expert, not our  
11 expert. And I want to use this to illustrate to  
12 you why a \$15 million number change can be  
13 attributed to just one defining post.

14 They recorded a drop -- this is About.com.  
15 This is the company he purportedly turned  
16 around -- from 61 million unique users to 52. So  
17 they lose 9 million unique users at About.com.  
18 This resulted in the New York Times, who purchased  
19 the company, having to adjust the value, make a  
20 goodwill write-down of \$195 million. Nine million  
21 less viewers, \$195 million. So when you take that  
22 and you look at Mr. Anderson's number of  
23 15 million attributable to a post that was called  
24 a defining post to the website and you see this  
25 change of about five million unique users, it

1 makes sense. And although the number's a large  
2 number, you look at it and say, well, that's a lot  
3 of money -- not so big. Not so big. Nine million  
4 unique users ends up being \$200 million in  
5 valuation at About.com. That's the world these  
6 guys live in. It's the world of their economics  
7 and what they've created.

8           Interestingly enough -- if you pull up D365,  
9 John -- in the month of October when this goes  
10 up -- and this was Horan -- it was 20 percent of  
11 the revenue. Remember he was trying to go through  
12 the Sandy thing again. The revenues were down,  
13 obviously. The servers were down. But this is  
14 20 percent of the revenue from that month arising  
15 from the video they posted of my client.

16           So we're going to go through the verdict form  
17 in a second and I'm going to take you through  
18 this. But I want you to remember Anderson's  
19 testimony and what he considered. It was just the  
20 impact and the spikes in the traffic but the  
21 greater value to the brand. I asked Denton about  
22 it. You want to build your brand. That's what  
23 they want to do. And when you put something like  
24 this out there, what it does is get everybody  
25 looking. And now they've heard a little bit about

1 Gawker and the throw off to the advertisers, the  
2 value is exactly what Anderson talked to you  
3 about. And that's how we get to that 15 million.

4 If you look at our second category of  
5 damages -- if you can pull up 161, 162 and 217. I  
6 thought we had them on one board, John. But we'll  
7 do them one at a time. All right.

8 This was Shanti Shunn. What he did -- so the  
9 five million that you get from Anderson are just  
10 off Gawker. That's Gawker, the views on Gawker.  
11 I don't know if you all got that. Then we bring  
12 Shanti Shunn on to talk about -- there we go --  
13 the other places they went because it got linked  
14 to all these porn sites and stuff. So who else  
15 saw it, right? Who else linked off of it?  
16 Because these claims for using Mr. Bollea's  
17 likeness and stuff have value. It's kind of a  
18 hard thing to help figure out because we're here  
19 and we're upset about this privacy issue. But  
20 once it's out there, this is what the law tells  
21 you --

22 THE COURT: Mr. Turkel, ten more. You've  
23 been one hour.

24 MR. TURKEL: Thank you.

25 So I don't know if you all remember this, but

1           these are all the different websites, right? He  
2           just did a gross count as much as he can -- he was  
3           very open about this. He conceded the fact that  
4           we caught what we could because he had the  
5           screenshot. We'll live with this number. This is  
6           everything they could catch off that data and what  
7           he could get at the time. But YouTube counts of  
8           99,000 and change. All these porn sites that took  
9           it, 4.4 million and change. And then this -- I  
10          think this was a Google Analytics thing with  
11          another 2.5 million views right there. We add  
12          these up and we get this number. Those are the  
13          views.

14                 Remember, Gawker views are over here, one  
15          category, branding, the change in value to Gawker  
16          from the views it got, the hits it got. Second  
17          category of damages, 7 million hits outside of  
18          that. All right?

19                 Where does that lead? What do you do with  
20          that 7 million number?

21                 Could you bring up the Blatt on -- do you  
22          have the full page? If we can't find it, I'll  
23          just talk about it. You remember the fact that we  
24          put this testimony up of this guy Kevin Blatt. I  
25          keep having to walk around my board. He showed

1           you what the minimal cost would be on a celebrity  
2           website to view this, right, celebrity.com or  
3           something like that. I think it was 4.95. That's  
4           what he could find for a four-day trial  
5           membership. We have to use that to judge. It's  
6           the best we can do because it was the only  
7           evidence we could find of what somebody would have  
8           to pay to see this on paid sites where somebody  
9           actually has control of their image. Right? What  
10          would they do? What barometer could we use to tie  
11          into that 7 million we just had up there? Here we  
12          go. Right there. Remember that? That's just a  
13          way of tying up the number. When you go back  
14          there, you can -- ultimately you have the right to  
15          find less or more. I mean, the bottom line is  
16          this is the only barometer that we could use, the  
17          only measure of what it costs when somebody puts  
18          something out there that they actually have  
19          control of and they want it to be put up and they  
20          want to make money off of it.

21                 Listen, again, this is Mr. Bollea and us  
22                 basically playing the cards that they dealt us in  
23                 the sense that they put this out there and all  
24                 these porn sites got it for free. But he's  
25                 entitled to compensation for that. It's his

1 image.

2 The other thing I'm going to talk to you  
3 about with respect to this video, talking about  
4 Gawker and them driving traffic shows you the  
5 benefit they got from it. That \$15 million is the  
6 benefit Gawker got from this. Mr. Anderson was  
7 very clear about it. Shanti Shunn, seven million  
8 hits times 4.95 is what he was -- the opportunity  
9 that was taken from him if he had been one of  
10 these people who had chosen to actually sell this  
11 thing out there on the market.

12 The last category you're going to see on the  
13 verdict form, you're going to hear about emotional  
14 distress. I'm going to tell you right now as we  
15 go through the verdict form, you know, that's --  
16 I'm not going to give you guidance. I'm going to  
17 let you all consume the evidence that you've seen  
18 and if you think my client is ultimately entitled  
19 to emotional distress damages, you're going to  
20 pick that number. I'm going to tell you to  
21 reflect on this one thing. This icon, this  
22 all-American character who surfs on tiger sharks  
23 and has changed the industry was the same man that  
24 Jules Wortman saw crying on Kathie Lee Gifford's  
25 shoulder backstage when he found out about this.

1 I can't tell you that he's the kind of guy that is  
2 going to crack on the witness stand and start  
3 crying, but I can tell you that we can get you  
4 realtime evidence of what this did to him. If you  
5 have any doubts about it -- if you have any doubts  
6 about it, look at his face on the Howard Stern  
7 show before he found out about the whole Bubba  
8 part on TMZ. I'm talking about the Howard Stern  
9 interview he did on the Bound for Glory tour.  
10 Look at his face. Look at him. I don't care if  
11 you don't want to hear it, but maybe you remember  
12 the image from trial and how beaten down this man  
13 was.

14 I want to go through this verdict form with  
15 you and try and explain it to you, which it's I  
16 don't think nearly as lengthy as the jury  
17 instructions. I'm going to go a little over.

18 THE COURT: We'll be done shortly.

19 MR. TURKEL: You good? I'm going to wait for  
20 you.

21 JUROR YOUNG: I have a cold.

22 MR. TURKEL: Okay. You're going to go back  
23 there when you're done. I'm going to get to talk  
24 to you again. I get to do a rebuttal. So I'm  
25 going to try to wrap up now.

1           When you get back there, you're going to get  
2           this verdict form. It tells you basically the  
3           questions that you're asked to answer. It matches  
4           up with the jury instructions. It's kind of an  
5           interesting process. The judge instructs you on  
6           the law.

7           Did plaintiff prove that by posting the  
8           video -- this is question 1 -- publication of  
9           private facts -- did plaintiff prove that by  
10          posting the video, defendants publicly disclosed  
11          private facts about plaintiff in a manner that a  
12          reasonable person would find offensive? Yes.  
13          I've argued to you why. I don't want to go back  
14          through it all again. But the standard is whether  
15          a reasonable person would find it offensive. We  
16          know the facts are private. There is not a shred  
17          of evidence that these acts were not private in  
18          this case. They knew they weren't.

19          Did plaintiff prove the video was not a  
20          matter of legitimate public concern? This one  
21          gets tricky because this is us proving it's not  
22          legitimate public concern. So we'll -- it's a yes  
23          answer. I'd go back to the board I showed you  
24          over here. I don't know what better evidence we  
25          can give you than A.J. Daulerio admitting that the



1           ten reasons they said this was a matter of public  
2           concern and, therefore, newsworthy -- it's the  
3           same thing. Legitimate public concern and  
4           newsworthiness are the same jury instruction,  
5           right? Just different terms. I don't know what  
6           better we can do than having the guy who actually  
7           wrote it admit to you he had not one of the  
8           reasons that they said it was newsworthy in his  
9           mind. You can't get better than that. You can  
10          see every single one of those highlighted. So the  
11          answer to that is yes.

12                 Did Nick Denton participate in posting the  
13          video? I will tell you this. From the culture he  
14          set to the ethics he required, to the rule  
15          breaking he demanded, to the conversation on the  
16          fire escape and the mystifying attorney/client  
17          conversation we'll never know about, he  
18          participated and, man, did he brag. If you want  
19          evidence that he participated, look at his  
20          reaction afterwards realtime, not what you heard  
21          in court, the realtime tweets and e-mails, the  
22          defining the story. The answer is yes.

23                 Then you proceed to question 4. This is our  
24          invasion of privacy count. Did plaintiff prove  
25          that defendants wrongfully intruded into a place

1 where he had a reasonable expectation of privacy?  
2 I don't think there are a lot of places in the  
3 world that Terry Bollea testified he could be  
4 private, but a bedroom in a friend's house was one  
5 of them. And there is no evidence that he had no  
6 reasonable expectation of privacy there.

7 Did plaintiff prove that the video was posted  
8 in such a manner as to outrage or cause mental  
9 suffering, shame, or humiliation to a person of  
10 ordinary sensibilities? A reasonable person, a  
11 decent person of ordinary sensibilities. The  
12 answer is yes.

13 John, leave those all up together.

14 Did plaintiff prove the defendants used  
15 plaintiff's name or likeness for a commercial  
16 advertising purpose? This is where they're going  
17 to say, no, we didn't prove that, because they  
18 didn't actually put an ad on the page,  
19 notwithstanding the fact that Denton and every  
20 other witness conceded that you have to have  
21 unique views to get advertising dollars. You've  
22 seen all of that and appreciate it, I'm sure. The  
23 idea of this is not whether they put just an ad on  
24 that page. The evidence is clear on that. The  
25 answer is yes.

1           Did plaintiff prove that he did not authorize  
2           the use of his name or likeness? Of course.  
3           There is no evidence to the contrary in this case.

4           We go to our fourth claim, intentional  
5           infliction of emotional distress. Did plaintiff  
6           prove that posting the video was extreme and  
7           outrageous to a person or ordinary sensibilities?

8           Did plaintiff prove that defendants intended  
9           to cause him severe emotional distress or acted  
10          with reckless disregard? Reckless disregard is  
11          what you heard in jury instructions and you'll see  
12          on the verdict form. Reckless disregard, people  
13          joking about it, people not calling like a  
14          responsible journalist would, or people making fun  
15          and writing that disgusting, disgusting narrative  
16          that Daulerio wrote. This is reckless disregard.  
17          This case defines reckless disregard. Their  
18          conduct is reckless disregard. It couldn't be any  
19          more reckless. If you knew it would cause him  
20          severe emotional distress, would you have done it  
21          anyway? Every one of the witnesses said yes.

22          Let's go to the fifth -- the bottom of that.  
23          And, then again, this goes to what I was just  
24          talking about. You be the judge of that. You saw  
25          Mr. Bollea on the witness stand. You saw some

1 video. You gauge how severe the emotional  
2 distress was. We can tell you that we told you it  
3 turned his life upside down. You saw him. You  
4 heard about him crying.

5 If we move on, John, to the next page. This  
6 is an interesting claim. It's our fifth claim.  
7 This relates to the fact that they knew there were  
8 verbal communications on the video and they knew  
9 it was recorded secretly and did it anyway.

10 Used or disclosed the video. Did he have a  
11 reasonable expectation of privacy and had reason  
12 to know that he was recorded on the video without  
13 his knowledge or consent? There is no evidence  
14 that he knew or had reason to know. They talk  
15 about the security cameras. But it's very clear  
16 that the camera was hidden. You heard Heather  
17 Clem's testimony that there was no discussion  
18 about it. And you heard plaintiff say he had  
19 already asked Bubba about it and Bubba said no.  
20 There is no evidence that he knew or had reason to  
21 know. There is no evidence about the camera being  
22 in his vision.

23 David White is the guy who installed the  
24 camera and he testified. I don't know if you all  
25 remember. We did a deposition -- or a reading

1           thing with the guy standing and he read the guy's  
2           answers. He told you that the camera was behind  
3           this motion detector. We showed you a picture of  
4           it hidden behind this motion detector.

5           Move on to the next one. That's 110. I'm  
6           going to go over.

7           Did defendants prove they acted in good  
8           faith? I mean, of course not. They told you they  
9           didn't care and they told you they didn't call  
10          anybody. They knew that Mr. Bollea had actually  
11          claimed -- whether they believed it or not, it  
12          doesn't matter. Daulerio puts it in his article.  
13          He claims he was secretly recorded. They never  
14          called anybody -- anybody on the video to ask  
15          them. So that would be their failure. They've  
16          admitted they didn't do that.

17          If we go to the next page on this, our  
18          damages number, what you see here, \$50,378,342.95  
19          combined the two numbers I just talked to you  
20          about, the 15 million from Mr. Anderson which was  
21          the change in value to Gawker and the 4.95 times  
22          the other views that Mr. Shunn talked about. The  
23          number is obviously a big number. When you  
24          compare it to the world that this is in and these  
25          numbers and the values of these companies --

1           remember Horan's testimony when Mr. Vogt asked him  
2           on cross. He set a hundred million dollars on an  
3           advertising campaign for I think About.com that  
4           did not generate one view. I don't know if you  
5           all remember that testimony. So when you see this  
6           number and you compare it to the numbers that have  
7           been thrown around in the big Internet business  
8           world, it's really not that big of a number. It  
9           seems big, but in their world, we're dealing with  
10          200 million -- a hundred million dollar  
11          advertising campaign that didn't generate a dime  
12          of collateral revenue.

13                 And so the 15 million I've walked you  
14          through, this 4.95 is the only measure we really  
15          have and that is, what do people pay to see this  
16          kind of stuff? And so you see that number right  
17          there.

18                 And if you pull up the second category, John.  
19          There you go.

20                 I'm not putting a number up there. That's  
21          for you all to determine at your discretion as  
22          jurors. You can make it very similar if you want  
23          to -- to anything. It's really your view on how  
24          my client was distressed, on what this did to him.  
25          It's your view of what it meant for a guy like

1           this, an icon of American culture, to be crying  
2           backstage at the Today Show with Kathie Lee.

3                   I'm going to talk to you about punitive  
4           damages real quickly. And I'm just going to tell  
5           you all this. You don't talk about a number for  
6           punitive damages until you get to a point where  
7           you think that Gawker and A.J. and Nick Denton  
8           need to be punished for their conduct.

9                   We've told the story as good as we can. I've  
10          told you as much as I can in the hour and ten or  
11          hour and 15 minutes that I've had. Okay? I can't  
12          do any more justice to it. I can't do any more  
13          justice for what it did to this guy. At the core,  
14          this case has never ever, ever been about anything  
15          more than the fact that Gawker took a secretly  
16          recorded sex tape of my client in a private  
17          bedroom performing a private act and put it on the  
18          Internet. It's never been about more than that.  
19          It's been about that direct absolute violation of  
20          privacy that was carved out of one area where it  
21          becomes a morbid and sensational prying into his  
22          life. The one place this guy hasn't given up is  
23          this -- these little areas he's carved out. It  
24          can't get worse than this. And we will tell you  
25          that punitive damages are warranted, that you

1 should check this box and give us the opportunity  
2 to get to the next stage of the case.

3 The last thing I want to end with is No. 49.  
4 It's where we started. That's the cease and  
5 desist letter.

6 The e-mail, too. Just put them side by side.

7 I just want to visually kind of remind you  
8 all of that and just say one thing to you. Back  
9 in October of 2012, when Nick Denton said this  
10 wasn't persuasive, this cease and desist -- right?  
11 That was his word, it wasn't persuasive -- all of  
12 this could have ended. It could have been done.  
13 All right? All these guys had to do was the  
14 decent, decent thing, and none of this happened.  
15 So to the extent they want to come up and here and  
16 say, 55 million, oh my God, Mr. Bollea, I just  
17 want you to go back to this. It's what we started  
18 this with and it was a common theme throughout,  
19 and that is the power of the media to do great,  
20 great harm and the profits that come from it. And  
21 there was nothing more at play in this case on  
22 Gawker's behalf. It was how much money can we  
23 make playing this private act.

24 So when you go back there, it's a lot. I  
25 know you all have been here for a while. We've



1           been together on this journey for three weeks. Go  
2           through the judge's instructions. Please render a  
3           verdict for Mr. Bollea. We've walked you through  
4           the events. Let's get to the punitive stage and  
5           let's get some justice done. Okay?

6           Thank you for your time.

7           THE COURT: Thank you, Mr. Turkel.

8           All right. Before we get to the defense  
9           closing argument, we're going to take about a  
10          ten-minute comfort break, please. Thank you.

11          (The jury exited the courtroom at 10:46 a.m.)

12          (Recess taken from 10:47a.m. to 11:04 a.m.)

13          THE COURT: Thank you. You can all be  
14          seated.

15          So just FYI, the order that I entered earlier  
16          this morning has now been sent to you all.

17          MR. BERRY: Thank you.

18          MR. VOGT: Thank you.

19          THE COURT: You ready?

20          MR. SULLIVAN: Yes, ma'am.

21          THE COURT: Okay. Let's go ahead and bring  
22          the jury in.

23          (The jury entered the courtroom at 11:05  
24          a.m.)

25          THE COURT: Thank you. Everyone else can be

1 of judgment. They're going to put you in the  
2 editor's chair. But that was never, never how it  
3 was meant to work.

4 What we ask you to do is hard. It's very  
5 hard, but ultimately it is right. We ask you to  
6 protect something that some among you may find  
7 unpopular. We ask you to put aside passion and  
8 prejudice and sympathy and follow the law, the law  
9 that has served our country well since our  
10 founding, law that allows our citizens to write,  
11 to speak, to think about all topics, to hold  
12 public figures accountable as people who warrant  
13 the privileges we've bestowed upon them. I  
14 realize this may be hard, but it is right in the  
15 long run for our freedoms.

16 Shortly we will come to the point where the  
17 voices of the attorneys will finally be still.  
18 After listening to all the witnesses and  
19 considering the evidence, your voices -- your  
20 voices will be heard. We await your verdict. And  
21 I have to tell you, we appreciate your diligence  
22 and your attention. Thank you.

23 THE COURT: Thank you, Mr. Sullivan.

24 Now we will hear from Mr. Turkel.

25 MR. TURKEL: Judge, may it please the Court.

1 Counsel.

2 Exactly what you want after three hours of  
3 hearing lawyers is 15 more minutes of a lawyer,  
4 but I do get the last chance because we do have  
5 the burden of proof. And we accept it. We've  
6 accepted it from the day we got together to  
7 determine who could actually sit here for three  
8 weeks when we did the hardships.

9 The burden of proof by the way is greater  
10 weight of the evidence. I'm going to disagree, as  
11 much as I respect my partner, with Mr. Vogt. It's  
12 not 51/49. Literally -- the example generally  
13 used is scales. If you had a hundred beans or  
14 anything on one side and a hundred on the other,  
15 if you were to take one and move it, that's  
16 greater weight. It's that simple. That's our  
17 burden that we've accepted from day one.

18 Do not give him sympathy. We're not here for  
19 sympathy. This isn't about sympathy. If you find  
20 that they victimized him as part of the facts  
21 here, that's part of the drama of a case. Okay?  
22 But we don't want sympathy because the law is why  
23 Mr. Bollea has been here since day one.

24 And what I found remarkably interesting, as  
25 noble as Mr. Sullivan's discussion of civics and

1           our government and the protection of speech was,  
2           what he left out was the fact that this case is  
3           not about the protection of political speech or  
4           someone's right to be a neo-Nazi or burn a flag.  
5           That's a different part of the First Amendment.

6           This case and what makes it unique for you as  
7           the fact finders is because it's a balancing case  
8           between another right that he didn't talk to about  
9           in his hour and a half, which was the right to  
10          privacy. When he talked to you about what he  
11          would like to call this legitimate business  
12          concern, newsworthy business as he said, he left  
13          that part out. Because at the end of the day,  
14          what you're doing here is not saying, we hate the  
15          First Amendment or like the First Amendment. And  
16          you're not condemning someone's right to engage in  
17          politically-charged speech or speech that may be  
18          unpopular. We all get that. What you're doing in  
19          this case is balancing someone's right to make  
20          that speech with a right to privacy. That's what  
21          it's always been about.

22          They don't talk about that because his client  
23          doesn't think the right to privacy exists, which  
24          is why we're here to begin with.

25          So let's get it back to point one and the

1 whole idea that the reason why Gawker exists is to  
2 do things that aren't First Amendment protected,  
3 but fail this balancing test. So I want to take  
4 you back to this, because this is the end of your  
5 instruction on legitimate public concern. In  
6 weighing this issue, you should take into account  
7 the content, context, and form -- by the way,  
8 parenthetically when Mr. Sullivan talked about  
9 this, he left out content and talked about  
10 context -- of the material at the time of  
11 publication to determine whether it relates to a  
12 matter of public concern. The line between the  
13 right to privacy and the freedom of the press is  
14 drawn where the publication ceases to be giving of  
15 information to which the public is entitled and  
16 becomes a morbid and sensational prying into  
17 private lives for its own sake with which a  
18 reasonable member of the public -- by the way, he  
19 also misspoke about that. It's not what a  
20 celebrity deals with day to day. It's what a  
21 reasonable member of the public could tolerate.  
22 That's you -- with decent standards would say that  
23 he or she had no concern, which goes back to the  
24 simple premise that the fact that a celebrity,  
25 whether it be Mr. Bollea or Jennifer Garner or Ben

1 Affleck or Matt Damon or Captain Kangaroo or an  
2 athlete, whether they talk about their sex life in  
3 interviews does not give anyone the right to go  
4 into a bedroom with a camera, take pictures of  
5 them having sex and then put it on the Internet  
6 under the guise of newsworthy. That's the issue.

7 If you're offended by the fact that  
8 Mr. Bollea went on these shock jock shows, look,  
9 we've gone over it time and time again. It's a  
10 demographic that wrestling audiences listen to.  
11 You go on the show at your own risk. Yes, it's  
12 raunchy. It does not open the door to putting a  
13 camera in a bedroom and putting that on the  
14 Internet. And I found it interesting that they  
15 made this argument.

16 You know, by the way, this whole idea of this  
17 First Amendment thing that Mr. Berry --  
18 Mr. Sullivan just went through as sort of a  
19 reminder of our civics lessons in high school  
20 loses the sight of the fact that his own client  
21 has said, we aren't journalists. I think what he  
22 said at one point is journalism is good. They  
23 have to do this. But then his client has said  
24 under oath and in articles, we're not journalists.  
25 If we inadvertently commit journalism, that may

1           happen. We may do good, but we don't seek to do  
2           good. So they don't even fall under the category  
3           that he's trying to protect.

4                    But what I found amazing was this idea that  
5           because nine seconds were put up there, it wasn't  
6           bad enough. For instance, we broke the law, but  
7           we didn't break it bad enough or we could have  
8           broken it worse. We hurt him, but we didn't hurt  
9           him as badly as we could have if we had put all 30  
10          minutes up.

11                   What I find hilarious is that he started his  
12          argument with the idea that we didn't put the sex  
13          tape on in evidence. We've been enforcing a  
14          privacy right for three and a half years. The  
15          whole premise of this is not to publish this  
16          thing. The whole idea is we don't think people  
17          have the right to see Mr. Bollea in a private  
18          bedroom. That's it. So you need to question as  
19          the fact finder, in quote, editor according to  
20          Mr. Sullivan when you go back there, why didn't  
21          the guy who's protecting the First Amendment play  
22          the video they're so proud of in court? They're  
23          the ones who say, free information, everybody find  
24          out. Go back to civics. They could have played  
25          it. It would be completely inconsistent with

1 everything we've been trying to tell you for us to  
2 play it. If you want to watch it, watch it. He  
3 described, you're right, there's nine seconds that  
4 according to Mr. Denton will stand the test of  
5 time. Remember that? Because they're out there  
6 forever.

7 We did some very remedial math on that. If I  
8 can find the sheet on it, it was like the nine  
9 seconds times the number of hits. Here we go.  
10 Nine seconds times 7,057,241 views equals 63,515,  
11 169 seconds, 17,143 hours, and 735 or 75 days that  
12 Mr. Bollea was seen naked on the Internet in this  
13 excerpt. So if you buy the we hurt him but not  
14 enough argument, you know, try and quantify it.  
15 It's still out there forever. The reason why the  
16 PornHub guy by the way goes out there and says  
17 it's available for free is because those  
18 celebrities like Kim Kardashian, they controlled  
19 it. They sold it. It was licensed. It's  
20 different. They got paid money for it and it just  
21 goes out there.

22 This one was out there because of Gawker. It  
23 wasn't knowingly made or consented to. By the  
24 way, Anderson's testimony, just while we're on  
25 that, he said unique viewers. Denton says unique



1 views and page views go hand in hand. They're  
2 like the same thing. The reason why he's never  
3 valued a business like this before is it's pretty  
4 unique when one thing drives that much traffic.

5 If you go to Mia Libby, she conceded on cross  
6 the same thing every one of them said, which was  
7 this idea that they have to have traffic to get  
8 ads.

9 Pull up the FaceBook shot -- because this is  
10 another thing they've done throughout this case.  
11 Look at the date on this FaceBook screenshot.  
12 Look at the date. October -- this is the date it  
13 was posted. This is when the screenshot is from.  
14 It's not out there the 735 days that the nine  
15 seconds cumulatively it was published. They tell  
16 you this. They, go, oh, look at their viral  
17 marketing. This is what they mean. Who knows  
18 what time? There is no time stamp on it.

19 By the way, while we're at it, Hulk Hogan's  
20 sex tape is the heavyweight's champion of sex  
21 tapes, Daulerio's words.

22 I'm not going to get into the first 30  
23 minutes of his closing. If we have the board  
24 again -- you get it. You have to get it at this  
25 point. Everything they say that made this

1 newsworthy was not discussed in the article.

2 You don't have to do it. They've seen it. I  
3 can grab it.

4 Let me see it. Well, if you would get up,  
5 actually stand.

6 Look at this. I mean, this is sort of the  
7 ultimate in sort of, you know, well, yeah, the  
8 lawyers got involved and we said this is why it's  
9 newsworthy. We weren't nit-picking. I don't even  
10 know how he could say that. Mr. Vogt wrote down  
11 these are the reasons they gave. That's what you  
12 do in law. You say, okay, you say it's newsworthy  
13 because there's a direct reference to the  
14 existence of the tape. He never denied the tape  
15 existed. The hypocrisy. None of this -- every  
16 single one, that's what you do. You ask them,  
17 well, here's what your defense is. You say it's  
18 newsworthy for these reasons. Was it newsworthy  
19 for that, Mr. Daulerio? You were the editor. You  
20 wrote it. No. I mean, it's a very transparent  
21 exercise. You don't get to come back after the  
22 fact and say, well, it was just newsworthy then.  
23 That's what -- you don't do that. It doesn't work  
24 that way.

25 The idea about the words, I thought I made

1 this clear. Maybe Mr. Sullivan was trying to  
2 disagree with me but didn't. We're not suing on  
3 the words. The law tells you, you have to look at  
4 the content and the context and the form of the  
5 video, which takes me to if -- 59.

6 The reason you look at the words is because  
7 it tells you what he was thinking. That tells you  
8 why he was publishing the tape, the content and  
9 the context. So what does it tell you? Does it  
10 tell you he wanted to talk about Terry Bollea  
11 going on about his sex life on a shock jock show?  
12 No. It's just porn.

13 The First Amendment may protect the right for  
14 pornographers to put porn out there, but not when  
15 you balance it against the right to privacy.  
16 That's the difference here that they don't want  
17 you to think about because his client doesn't  
18 think anybody's private anywhere ever. You're on  
19 FaceBook, you're not private. That's Nick Denton.

20 This is something we got in on Denton's  
21 cross, right? Make the story support the image,  
22 gratuitous. Like one of you asked him, you didn't  
23 need the video for him to say, well, I watched the  
24 video and here's what it said. It was gratuitous.  
25 It wasn't needed. There was no denial that the

1 tape existed. He just put it out there because  
2 more people click on it when it happens. So  
3 that's the point about the words.

4 I'm going to go through a few more of these.  
5 You talk about the hail Mary of hail Marys, this  
6 was a five-year scheme or three-and-a-half-year  
7 scheme. A lawsuit was filed in 2012 because it's  
8 a "work" and the whole thing is a scheme. You  
9 want to go back and listen to Heather Clem. The  
10 one thing Heather Clem said -- and by the way,  
11 Mr. Sullivan didn't say this either. Two people  
12 didn't know about it, three people. That's what  
13 Berry said on opening. Mr. Berry said that. Of  
14 those three, you heard from two. You heard from  
15 Mr. Bollea and you heard from Ms. Clem. Ms. Clem  
16 said Mr. Bollea did not know he was being  
17 recorded. That's it. That's what we have. He  
18 also said Mr. Bollea said he knew there was a  
19 secret camera in the bedroom. That is nowhere in  
20 the evidence in this case. That like to me was  
21 just almost like made up. It's just not there.

22 The Dirty, the TMZ, we've been through this.  
23 This is kind of funny, because at one point, they  
24 say he seeks your sympathy and wants you to feel  
25 bad for him and he doesn't have thin -- or has

1 thin skin. The Dirty and TMZ never -- how much do  
2 I have, Judge? Five minutes?

3 The Dirty and TMZ never put the tape out.  
4 Doesn't that tell you something? They never even  
5 published the nine-second excerpt or minute 41.  
6 Doesn't that tell you something? Don't forget the  
7 fact also that the screenshots they put up were  
8 taken down. Don't forget the fact also that  
9 that's all they put up in a story about the  
10 existence of the sex tape, which Mr. Bollea always  
11 acknowledged and we've never contended somebody  
12 couldn't write about its existence.

13 I think surprisingly that may be all I have  
14 to talk to you all about.

15 What's that?

16 Oh, the press conference. There was a press  
17 conference. I'm not going -- I don't know what  
18 the deal was with the press conference and their  
19 problems with it. They got out there,  
20 Mr. Houston, Mr. Harder, and they announced there  
21 was a lawsuit. They were out there to seek -- to  
22 let everybody else know about it. The -- I don't  
23 know why they made a big deal about it. I think  
24 their theory there is that once he found out his  
25 rights got violated to try and stop other people

1 from doing it was a bad thing. Ms. Traub sent it  
2 to entertainment shows. Those are the kind of  
3 people that follow professional wrestlers.

4 I guess at the end of the day, you know, when  
5 we look at this and we try and figure out  
6 together, you know, how this all fits, I go back  
7 to sort of the simple concept that we started  
8 with. It's funny how lawyers like to say that, we  
9 start where we end, and all these things we say.  
10 But their motive in this was profit. I mean,  
11 plain and simple, it was traffic. It was to put  
12 something out there that no one else had so they  
13 could get traffic and then they could use that  
14 traffic to better their brand. And it's so easy  
15 to see that common thread through every single  
16 thing that they talked about in this case because  
17 it always came back to somebody conceding that  
18 traffic is what they wanted. And this got them  
19 traffic. You know, you look at the numbers and --  
20 they didn't talk a lot about the numbers -- that  
21 was kind of interesting -- in their closing as  
22 much as they did during the case.

23 If you look at the numbers in the realm of  
24 what their benefit was to their brand and to their  
25 growth -- I don't know why they're denying the

1 brand here because they had these three years of  
2 increasing revenues after and, you know, things  
3 like their new space and all that. If you look at  
4 the numbers in terms of what the value would have  
5 been to Mr. Bollea vis-à-vis other sources and the  
6 Gawker actual watches of the video, the seven  
7 million dollar number, in their world, it's  
8 reasonable in their world that that's what they  
9 bought back in 2012, when they were refused to  
10 respond to Mr. Houston's cease and desist letter  
11 and found it not persuasive.

12 That's really all I have vis-à-vis rebuttal.  
13 I want to thank you all for your time. This is  
14 going to go back with you. If I can remind you  
15 one simple premise and one simple idea, we didn't  
16 create this world. This could have ended when  
17 Mr. Houston sent that cease and desist. But don't  
18 lose sight of the fact that this isn't a civics  
19 lesson and a popular speech. This is a balancing  
20 act between two separate right, the right of  
21 privacy and the First Amendment right. The judge  
22 has instructed you on the law. It's not the law  
23 of the land or what we all want to do. It's what  
24 she gave you, what she read to you in that  
25 balancing test.

1           So, please, when you go back there, go  
2           through that and please enter a verdict on behalf  
3           of Mr. Bollea. Thank you.

4           THE COURT: Thank you, Mr. Turkel. All  
5           right.

6           Members of the jury, you have now heard all  
7           of the evidence, my instructions on the law that  
8           you must apply in reaching your verdict, and the  
9           closing arguments of the attorneys. You will  
10          shortly retire to the jury room to decide this  
11          case. Before you do so, I have a few last  
12          instructions for you.

13          During deliberations, jurors must communicate  
14          about the case only with one another and only when  
15          all the jurors are present in the jury room. You  
16          will have in the jury room all of the evidence  
17          that was received during the trial. In reaching  
18          your decision, do not do any research on your own  
19          or as a group. Do not use dictionaries, the  
20          Internet, or any other reference material. Do not  
21          investigate the case or conduct of any  
22          experiments. Do not visit or view the scene of  
23          any event involved in this case or look at any  
24          maps or pictures on the Internet. Jurors must see  
25          or hear the same evidence at the same time.



1 defendants for any injury it may have inflicted  
2 upon anyone than the plaintiff.

3 The amount of punitive damages you award, if  
4 any, must not be unreasonably large when  
5 considered in relation to the amount of  
6 compensatory damages that you have already awarded  
7 the plaintiff.

8 If you decide to award punitive damages  
9 against the defendant, the award should be no  
10 greater than the amount that you find necessary to  
11 punish defendants for the conduct you have  
12 concluded caused harm to plaintiff and to deter  
13 defendants and others similarly situated from  
14 engaging in such conduct in the future.

15 You should also take into consideration any  
16 mitigating evidence. Mitigating evidence is  
17 evidence that may demonstrate that there is no  
18 need for punitive damages or that a reduced amount  
19 of punitive damage should be imposed against  
20 defendants. You may not award an amount of  
21 punitive damages that would financially destroy or  
22 bankrupt any of the defendants.

23 So that is the -- that is the instruction  
24 that you have for this. So at this point in time,  
25 we're going to go ahead and you will hear the

1 evidence from both parties, and then I will give  
2 you your final closing instruction at the end.

3 Mr. Turkel.

4 MR. TURKEL: Yes, Your Honor.

5 THE COURT: Oh, I do have one more -- I'm  
6 sorry -- before you get to that.

7 MR. TURKEL: I'm sorry.

8 THE COURT: I'm sorry. There was one  
9 additional thing I need to read to you.

10 So to streamline the remaining issues in this  
11 case, the parties stipulate to the following  
12 solely for the purpose of punitive damages phase  
13 of the trial.

14 Solely for the purposes of present net worth  
15 as it relates to punitive damages in this  
16 litigation, the defendant Gawker Media, LLC, has a  
17 prejudgment present value of \$83,000,000. Gawker  
18 Media, LLC's gross revenues -- i.e., before  
19 expenses -- for 2015 were approximately \$48.7  
20 million.

21 Number 2. The defendant Nick Denton's  
22 principal assets, the shares he owns in Gawker  
23 Media Group Incorporated -- GMGI is what they  
24 refer to it as -- the privately held parent  
25 company of Gawker Media, LLC, for the purposes of

1 present net worth solely for determining punitive  
2 damages in this litigation, GMGI, Gawker Media  
3 Group Incorporated, has a prejudgment present  
4 value of \$276,000,000, and GMGI's gross revenues  
5 in 2015 were \$49,951,750.

6 The present value of the portion of GMGI  
7 owned by Mr. Denton solely for purposes of  
8 punitive damages in this litigation is  
9 \$117,000,000.

10 Mr. Denton's assets, other than his shares of  
11 GMGI, total approximately \$3.6 million. These  
12 assets include the equity in his New York City  
13 condominium, the contents of his home, bank and  
14 retirement accounts, and shares in Box, B-O-X,  
15 Incorporated. Thus, Mr. Denton's total  
16 prejudgment present net worth solely for purposes  
17 of punitive damages in this litigation is  
18 \$121,000,000.

19 And the defendant A.J. Daulerio has no  
20 material assets, and his student loan debt in the  
21 amount of \$27,000.

22 All right. Thank you. Mr. Turkel, now. I'm  
23 sorry.

24 MR. TURKEL: Yes, Your Honor. Plaintiffs  
25 offer Plaintiff's 563 into evidence.

1 THE COURT: It's my understanding that the  
2 jury has a question. Would you please write it  
3 down and given it to the deputy?

4 (A document was handed to the judge.)

5 (At the bench)

6 (The document was handed to Mr. Turkel.)

7 MR. TURKEL: Wouldn't that be nice. You can  
8 answer that.

9 THE COURT: Do you mind me answering it? Do  
10 you want me to just give the answer, or do you  
11 want me --

12 MR. SULLIVAN: What's your answer?

13 THE COURT: I think it's not this type of a  
14 case.

15 MR. SULLIVAN: Right.

16 THE COURT: Yeah.

17 MR. TURKEL: I'm fine with that answer.

18 THE COURT: Anything else?

19 MR. SULLIVAN: No.

20 (In open court)

21 THE COURT: So our jurors wanted to know, Is  
22 community service an option in punitive damages?  
23 And the answer is, no, not in this type of a case.

24 All right. We'll start again.

25 Members of the jury, you have now heard and

1 JUROR NO. 5: We have.

2 THE COURT: Okay. Then if you could please  
3 give the verdict form to our deputy.

4 Thank you. And will our clerk please publish  
5 the verdict.

6 THE CLERK: In the Circuit Court of the Sixth  
7 Judicial Circuit, in and for Pinellas County,  
8 Florida, Case No. 12-12447CI, Terry Gene Bollea,  
9 professionally known as Hulk Hogan, vs. Gawker  
10 Media, LLC, a/k/a, Gawker Media, Nick Denton,  
11 A.J. Daulerio.

12 What is the total amount of punitive damages,  
13 if any, which you find by the greater weight of  
14 the evidence should be assessed against the  
15 defendants?

16 Gawker Media, LLC, \$15,000,000.

17 Nick Denton, \$10,000,000.

18 A.J. Daulerio, \$100,000.

19 So say we all this 21st day of March 2016,  
20 foreperson of the jury.

21 THE COURT: Thank you very much. Would any  
22 of our counsel like the jury polled?

23 MR. TURKEL: It's not necessary from the  
24 plaintiff, Judge.

25 MR. SULLIVAN: No, Your Honor.