CONFIDENTIAL EXHIBIT A

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

TERRY GENE BOLLEA,
professionally known as HULK
HOGAN,

Plaintiff, Case No.
12-012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC, aka GAWKER MEDIA, et
al.,

Defendants.
_____/

CONFIDENTIAL -- ATTORNEY'S EYES ONLY

HEARING BEFORE THE HONORABLE JAMES R. CASE

DATE: July 18, 2014

TIME: 9:10 a.m. to 12:50 p.m.

PLACE: Riesdorph Reporting Group
601 Cleveland Street
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Clearwater, Florida

REPORTED BY: Aaron T. Perkins, RPR
Notary Public, State of
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Pages 1 to 168

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I N D E X

P R O C E E D I N G S

(Hearing proceedings called to order at 9:10 a.m.)

JUDGE CASE: Well, welcome back.

MR. HARDER: Thank you. And thanks for scheduling and fitting us all in.

JUDGE CASE: It worked out absolutely fine.

On the amended notice of the hearing, I have got a motion for sanctions by the defendants, in which I think you want to take first; is that right?

MR. BERLIN: Yes.

JUDGE CASE: Okay.

MR. HARDER: They filed it first.

JUDGE CASE: And then subsequent to that is the protective -- the motion for protective order?

MR. HARDER: Right.

JUDGE CASE: Okay.

MR. HARDER: There may be some overlap when we talk about them, so --

JUDGE CASE: That's fine.

MR. BERLIN: And we thought --

MR. BERRY: And time permitting at the end -- Charles and I had talked last week about developing a schedule, perhaps, for discovery and

moving forward with an eye towards the possibility of a trial. And I don't know that we can hash that all here, but it may be helpful to talk a little bit about that and the possibility of perhaps setting a case management conference.

JUDGE CASE: That's fine.

MR. HARDER: Sure. I think that's a great idea.

Mr. Bollea may -- he needs to leave around noon, so if we finish up with the motions, he may just exit out just because he has a work commitment, and then we'll proceed without him on the housekeeping matters.

JUDGE CASE: Okay.

MR. HARDER: And just one other kind of preliminary thing. We were hoping that David Houston would be available to join us. David was at the depositions.

JUDGE CASE: Right.

MR. HARDER: He's in trial today. He has a very full trial schedule, and so trying to get everybody here in Florida at one time, we weren't able to do it and include him too because of his schedule and our schedules, so I'm sorry he couldn't be here, but --

JUDGE CASE: That's all right.

MR. HARDER: -- he's with us in spirit.

JUDGE CASE: We're good.

Well, you're in the front chair, so I assume you're speaking first.

MR. BERLIN: I will handle the motion for sanctions.

JUDGE CASE: Okay. On.

MR. BERLIN: And Mike will handle the motion for protective order. And I will try -- and although there is some overlap, I'll try to defer on that subject to Mike.

On our motion for sanctions, Your Honor, when this case began, Mr. Bollea and his counsel advanced a version of events both in the lawsuit and in many public statements that they made, including on a media tour that we talked about at Mr. Bollea's deposition.

In response to the case, Gawker has advanced both legal arguments and factual arguments. As to the former, Gawker believes that the publication at issue is protected speech and can't be punished consistent with the First Amendment. We're continuing to litigate that issue at the moment in the Second DCA.

As to the latter issue, the factual claims that Mr. Bollea has made, we've sought to understand the facts, including how this sex tape was made, whether plaintiff knew about it, sought to capitalize on its distribution, who else knew about it, and even how the tape came to be sent to Gawker, which is something in the last hearing we had in front of Judge Campbell she thought was a key to the case.

So a year ago, at this point, we served written discovery. And to that end, that discovery asks for information and documents about the sexual relationship between Mr. Bollea and Heather Clem. That discovery asks when that relationship occurred. That discovery asked how many times Mr. Bollea had been videotaped having sex. That discovery asked for information and documents referring or reflecting communications about that sexual relationship. And that discovery asks for information and documents related to plaintiff's media appearances, basic stuff.

In response, Mr. Bollea and his counsel argued that discovery should be limited. In particular, they contended that the only thing

relevant here was this one tape and this one encounter depicted on that one tape. We argued in response that plaintiff's view of what was relevant was too narrow. And the parties litigated that issue back in October of 2013 at the first of many discovery hearings that we've had in this case. And Mr. Bollea lost.

As Your Honor knows, Judge Campbell held that the discovery in the case properly extended to the entirety of the sexual relationship between Mr. Bollea and Heather Clem. She emphasized that point by making the time period applicable at that point, now a little longer. But if you take what the period was when that order was issued, it was some 11 years, so it was clearly not limited to just one encounter or one tape.

That order -- the order that Judge Campbell issued made clear that Mr. Bollea needed to supplement his discovery responses on that point and expressly referenced -- and I'm quoting from the order -- Terry Bollea's obligations to provide supplemental responses to the interrogatories and request for production for documents in a manner consistent with the foregoing ruling, i.e., the full relationship between Mr. Bollea and Ms. Clem.

That issue came up again a couple hearings later on January 17th of this year. And the question was what to do if there were other tapes involving Mr. Bollea and Ms. Clem. And Judge Campbell, again, found that those other tapes were properly within the scope of discovery. She directed that they be preserved and that they be provided. If either the plaintiff had them or if Mr. Clem had them, they would be provided to Your Honor to be viewed and, as appropriate, transcribed by an official court reporter.

Now, it seems clear now why Mr. Bollea and his counsel were trying to limit discovery to just this one tape and the one encounter, but they lost that issue.

Now, in addition to litigating that issue, first in October of last year and then in January, the next thing that the plaintiff and his counsel did -- I think here is where things get interesting, Your Honor -- despite that ruling, they engaged in a series of misrepresentations to us and, more importantly, to you and to Judge Campbell, Your Honor, that were designed to conceal the existence of information and documents that Judge Campbell had plainly found to be

relevant and properly within the scope of discovery.

They don't really address that point in their papers, but that's really the heart of the issue. And they started, in some respects, back at the October 29th hearing. So one of the things we argued at that hearing was that we had received no privilege log at all. And in response to that argument, Mr. Harder represented to Judge Campbell, quote, There are no privileged communications that I'm aware of, and I have asked for them, and I have done everything I can to find them, end quote.

Later, of course, the plaintiff would assert privilege as to the entire set of FBI documents, even though those documents unquestionably related to the sexual relationship between Mr. Bollea and Ms. Clem and the video recordings of it.

Indeed, if you accepted even the plaintiff's version of events, which is that this case -- that the discovery in this case was limited to just this one encounter and this one tape, that stuff would have been discoverable because it pertains, in part, to the tape that's at issue that was published by Gawker and the excerpts described in

the Gawker publication.

The plaintiff would later assert privileges to a number of communications with the -- with the New York publicist. Again, those are directly responsive to statements made to the public and media appearances. And instead of listing them in a privilege log or the asserting privilege, they told the court, We don't have any documents, and we don't keep those documents with respect to media-appearance-related documents.

That was particularly troubling, because it now appears that some of the communications were directly with counsel, with Mr. Harder. And they have never been put on in a privilege log in this case. The only time they have been asserted as being privileged is when we subpoenaed those documents in New York, and the publicist, now being represented by Mr. Harder's firm, asserted that they were privileged.

So we have a situation where back in October we had a hearing. We said, What about assertions of privilege? And this is important, because we could have if we had -- if the privilege had been asserted, we could have litigated and we could have been literally been months and months ahead

of where we are now in litigating the case.

And then if we go back to the January 17th hearing, there is a question as to the other footage, right? So we say, we have a whole colloquy request with Judge Campbell about what to do about with this other footage and how it should be handled and whether it should be produced. And is it relevant?

And all throughout this hearing, even though what we now know -- and we found this out after the fact -- that by that point they knew that the FBI had three DVDs, and knew there was a sting operation, and so forth.

Mr. Harder, on behalf of the plaintiff, repeatedly suggested to the court that he was unaware of any other footage. At one point, he says, If there happens to be more video, if there happens to be more footage. And this is perhaps the best example. He says, quote, Now, I think what Mr. Berlin is saying, if I understand him -- and I don't even -- I'm operating in the dark here because he's talking about certain things that happened on the video, and yet they've never produced any evidence of that to me, and this is the first time I have ever heard of it.

Following the hearing, and the earlier hearing at which they were ordered to provide supplemental discovery related to the sexual relationship between the plaintiff and the Ms. Clem, they didn't identify or disclose the FBI documents even though they were plainly responsive. They did not amend their sworn interrogatory answers. And there is an answer in which Mr. Bollea says he does not know of any other recordings that exist. Even though he knew from having personally signed the agreement detailing three tapes, he says he doesn't know.

He didn't identify in response to an interrogatory the date of the tapes, even though they're dated on these documents, even if it's as to say, I'm not sure of the right dates, but here's some information about the date. He did not disclose that two of the tapes were labeled Hootie, Bubba Clem's nickname for Mr. Bollea, as we later learned at Mr. Clem's deposition.

And then we have another hearing before Your Honor on February 24th at which two motions were heard. And with respect, Your Honor, the misrepresentations continued even more significantly at that point.

First, we brought a motion to compel, again, information related to the sexual relationship between Mr. Bollea and Ms. Clem. And Mr. Harder represented repeatedly that they had nothing else to provide.

Here is what he told Your Honor: Quote, I don't know how we could provide more information beyond what is -- what is in Mr. Bollea's brain or beyond the documents we've already produced.

Another one: Quote, Our responses are pretty much full and complete. I can't see how we can give any more information than we've already given. Quote: We've actually been forthcoming with the information we have.

Lest there be no suggestion that perhaps that was, you know, a series of careless, off-the-cuff comments, the written response, which one obviously prepares with a little more precision and the exact wording, says, quote -- this is the opposition to that position -- Mr. Bollea has provided all of the information that Gawker has asked for, including all of the documents within his possession, custody, and control that fall within Gawker's document demands and all of the information requested in Gawker's interrogatories.

Now, as Your Honor knows, you denied that motion to compel, and here is what you said, Your Honor: Quote, Mr. Harder, I'm taking you at your word the plaintiff does not have any of the information. And he represented that he does not and that he doesn't have access to it and that he's incapable of furnishing any of the discovery you've represented.

Your Honor then went on to add what is described as a very strong caveat; namely, If it is determined that he has been less than candid or honest in these proceedings and with the Court, sanctions would follow, including likely a preclusion order.

Now, on that same day, on February 24th -- at the February 24th hearing, Your Honor heard our motion to compel discovery on three additional sets of the requests. I think it totals about five requests. And they sought three categories of information of documents: one, law enforcement communications; two, telephone records; and, three, media appearances.

Now, it's our position that we had already asked for requests that would have encompassed this. But so that there is no misunderstanding,

we brought a second set of requests.

With respect to the law enforcement records, Bollea and his counsel asserted that the government was involved in an active investigation, an active law enforcement investigation, and that Gawker was attempting to interfere with that investigation in which it was likely a target or a subject.

Now, we've since unravelled that and learned that Gawker was not a target or a subject. We learned in the investigation that they had already months before declined prosecution and that it was not a problem with the government if either of those documents were produced or if any of the witnesses that were identified in the documents could be consulted. But the upshot of it was by telling Your Honor that they were trying to avoid producing these documents and, in our view, making up a story to do so.

We then have a series of, related to the FBI investigation -- and this happened over several hearings, but let me pause in this now. We have a series of flip-flops on what this investigation is about.

The first time comes up at a hearing a few

weeks earlier at the end of January where we were talking about whether or not to compel the plaintiff and his lawyers to provide authorizations to get documents directly from the FBI. And they said, It's, quote, pure speculation that the FBI investigation is in any way related to the civil lawsuit.

And they did that even though they knew it included significant information about the sexual relationship between Mr. Bollea and Ms. Clem, the recordings of those encounters, and the dissemination of those recordings, all topics that Judge Campbell had already determined were, in fact, relevant to this lawsuit.

In a later affidavit submitted to Judge Campbell, they reversed course and said that the FBI investigation focused on, quote, the source and distribution of the secretly recorded sex tape that is the subject of this lawsuit. So they admit that it relates.

And then when we get to April -- and I'm going to come back to April in a minute, but when we get to the April hearing, they reverse course again and told Judge Campbell that the FBI documents were not relevant. She, of course,

disagreed and ordered them produced, affirming your order on that subject. But I just wanted to pause on this back and forth about these FBI documents.

Turning back to the February 24th hearing, the second topic we took up was plaintiff's media appearances to discuss the video, the Gawker story. And Mr. Harder represented that the plaintiff had no such documents. He didn't disclose at that time that he had documents in his own files that were communications with plaintiff's public relations consultant, including the press conference that Mr. Bollea had with his counsel announcing the filing of this action when it was first filed in federal court. And, instead, as I mentioned earlier, we learned about that through a subpoena to the publicist herself.

And then the third topic at that February hearing was the telephone records, and you ruled that they needed to be produced. And in so doing, we had an argument, again, about the scope of what needed to be produced. And the plaintiff took the position that they should only have to produce telephone records and telephone information related to calls with people that they deem to be

relevant witnesses to this case and, otherwise, they shouldn't do so.

We, of course, took the position that that's not how discovery works, and that we don't typically do it based on the plaintiff determining, you know, what witnesses they think are relevant. And you agreed with us and directed that they all be produced, as Your Honor knows. That was then affirmed by Judge Campbell.

But that then brings us a couple weeks later to the plaintiff's deposition, which we had here in this room. And with respect, those misrepresentations continued in his sworn testimony. First, Mr. Bollea denied any knowledge of any other recordings. Second, he denied any knowledge of the dates of the recordings.

His testimony is, I'm not good with dates.

So we said, Are there documents that would help you refresh or pin down what the dates of these recordings were?

And he said there weren't any.

Then there were a series of questions about the FBI investigation, which drew a bunch of objections from Mr. Harder and instructions to Mr. Bollea to say, If you learned this information

from your counsel, it's privileged.

Now, Your Honor, we've had some opportunity to go back and look at that privilege question. And with respect, we actually think that -- we had to do it on the fly, but we actually think that the information that you learn from your lawyer, facts that you learn from your lawyer, are, in fact, not privileged. But we're not here today to debate that. The question is, Is it a factual question? When Mr. Bollea testified that he learned these facts solely from his lawyer, was that truthful?

And we now know from the FBI documents and from their supplemental sworn interrogatory answers that he had a series of meetings personally with the FBI in advance of the sting operation, that he had a meeting the day before the sting operation, that he personally participated in the sting operation, and that he personally signed an agreement that was, at the heart of the sting operation, attempting to obtain the tapes from Mr. Davidson and Mr. Davidson's client.

And then despite Mr. Harder's repeated representations a couple weeks earlier at the

hearing that they had exhaustively searched for responsive records and didn't have anything else, plaintiff testified at the deposition that he hadn't searched his e-mail; that he hadn't preserved his texts, including having sent them and then destroyed them, so that when you hit the "load more messages" button to see if there was anything else, we couldn't do that anymore; and that he had discarded his calendars. He also had no explanation why the media itinerary that we got literally the day before the deposition, which on its face shows that it was e-mailed directly to Mr. Bollea, just days before this lawsuit began, wasn't preserved.

And, Your Honor, when the issue of the N word came up -- and this was at Mr. Clem's deposition first -- the plaintiff and his counsel, once again, concealed knowledge of multiple tapes, saying, you know, there was only one tape from which the excerpts were made, and that that tape doesn't have any of the language on it, so we shouldn't be able to ask the questions, even though at the time they would have known that there were, you know, transcript -- there was a transcript of two other tapes, which included this

language, and explains that Mr. Clem's pivotal, We can get rich off of this comment, was on its face, not about the fact that Mr. Bollea had had an affair with Ms. Clem and sex depicted on this tape, but was about his use of racist language on the tape.

And that testimony -- I'm sorry, that information, had we been able to get it and get at it, would have substantially undercut Mr. Clem's testimony and the plaintiff's testimony about what a great role model he is and what a great father he is, while he's depicted on this tape using racist language to talk about his daughter and her boyfriend.

And, you know, as I said, most of the question on whether to produce that document, we'll reserve on it until we get to the next motion. But just in terms of being part of a pattern of not being candid with Your Honor and with Judge Campbell, I do feel that I wanted to mention that.

Then we get to April 23rd. We have a hearing in front of Judge Campbell, the primary purpose of which is a dispositive motion, a motion to dismiss by the Gawker defendants, but we also take up

discovery motions. And the court, Judge Campbell, affirmed Your Honor's report and recommendation directing the production of the FBI records, producing media appearance information, producing the phone records, which rejects the argument that the phone records need to be limited to just people they just deem to be witnesses.

And then the plaintiff, in our judgment, Your Honor, continues to thumb its nose at those orders. We're now three months past that date. I think it's within a couple days shy of three months past that date. And we still don't have all of the documents. We're still waiting on some phone records. And the phone records that we do have have all been redacted except for two or three callers. Now, they would tell you, Well, we filed the motion for protective order, which we'll get to next, but in the meantime, there is an existing court order that has not been complied with.

And the protective order motion raises an issue, which is this involves the privacy of other people who are relevant to this case. That's already been adjudicated both by you and by Judge Campbell.

The next thing we have, is we have a supplementary interrogatory response about the FBI investigation and communications about that investigation. And we have a bunch of written communications, which speak for themselves. But we asked for the oral communications. And we have an interrogatory response that says, Well, in this month there were approximately two or three motions, and in that month there were approximately two or three conversations. And the description of the conversations all use the same basic, boilerplate language, that it relates to the criminal investigation being conducted and doesn't tell you anything about the substance of the conversations.

And we pressed on that issue. We were told that none of the three law firms involved, Mr. Harder, Mr. Turkel, and Mr. Houston, had any notes of any of these conversations to be able to give us any information and that memories have faded.

Well, some of these conversations go back to October of 2012, but many of these conversations go back to earlier this year and are not that old. And we don't have any information about what they

are about.

Then we said, Well, look, can you pin down how many conversations there were by looking at your billing records to figure out, you know, on such-and-such a date, I billed my client for -- or I recorded time in some fashion for, you know, three-tenths of an hour. I talked to Sarah Sweeney at the U.S. Attorney's office. And we don't have that information.

And then what happens is that we get these FBI documents. And then those documents, essentially, confirm that what we have been told for many months and what, more importantly, what you have been told and what Judge Campbell has been told was, in fact, not candid.

And what we learned was that there were at least three recordings depicting Mr. Bollea and Ms. Clem having sexual relations on three separate instances. We learned that two of those recordings have precise dates on them of July of 2007. Two of the recordings were labeled Hootie, a nickname bestowed on Mr. Bollea by Mr. Clem; that on one of the recordings Mr. Clem tells his wife that they could, quote, unquote, retire off the tape, not because it depicts Mr. Bollea having

sex, but because it depicts him repeatedly using racist language about black people, including specific people; that Bollea had personally participated in the FBI investigation, including a meeting directly with Davidson, his client representative; that the FBI declined prosecution; and that the government had actually retained possession of the three video recordings of Bollea having sexual relations with Ms. Clem, specifically in connection with this case.

And I would say, Your Honor, that the -- taken together, that series of facts that we learn now -- I mean, I look back at all of the work that our whole team has done trying to unravel factually what happened here and think to myself, If I had known this back in October or November when Judge Campbell ordered it, we would have saved -- I can't tell you how much -- energy and effort trying to prepare this case and move it forward.

And we don't think that -- you know, where does that leave us? If a party has a disagreement about the scope of discovery or whether documents were privileged, the proper thing to do is to raise the issue, have it adjudicated and, unless

you appeal, to abide by the ruling.

Here what we have instead is that we have the plaintiff and his counsel that clearly wanted to avoid producing these documents. And I'm not an idiot. I understand why they wanted to avoid producing them. But these documents were already adjudicated to be relevant, and they had a couple of pages that they thought were sensitive.

And they could have confronted that issue head on a year ago. They could have addressed it with an attorney's eyes proviso, which is what we now have in place, or in some other way. But what you don't get to do, Your Honor, is to litigate the scope of the discovery, lose, then decide for yourself that you're simply not going to comply, not going to provide the information you have, not going to produce documents you have, not going to assert a privilege as to those documents, and, more importantly, you don't get to make statement after statement and representation after representation to the judicial officer who is presiding over the case in an effort to conceal information and documents that you've already been ordered to produce. That's, plain and simple, a violation of the core principles of the

adversarial process and blatant contempt for the Court's authority, plain and simple.

Now, that brings us, I think, to their -- the plaintiff's opposition papers. And I'm mostly going to focus on the second set. The first set really -- you know, the first set focuses on, you know, that the April 23rd order was entered, you know, without an opportunity to review the thing at the last minute. And that's just demonstrably wrong. And it's a little bit of a sort, in my judgment, like a "dog ate my homework" sort of tale, that we did not know. There is an order in place, but you have to comply with the order as best you can. So I'm going to focus on the bigger picture stuff, if I can.

And I think that the arguments that they have made really break down into four arguments. And I will sort of address them, and then I will stop and reserve for rebuttal.

First, there is what I would like to call the bob and weave. They say, Well, we didn't know there were other tapes because we hadn't seen them, right?

Well, they just decided not to disclose any of the information that they did have. I would

respectfully suggest, Your Honor, that if you have information, including documents from an FBI investigation, that you've gone back and forth over with for months, that the appropriate response -- if you want to say I have not seen the tapes, then you say -- instead of saying, I don't know anything, you say -- or I'm not aware of any other tapes, you say, I haven't seen any other tapes other than the one Gawker supplied, but I understand from documents I have seen that there may be others. That's a truthful response. That's a candid response. That's a response that when Your Honor says, Have you told me -- have you told them everything you can, that's what you would say.

And, instead, the plaintiff and his counsel concealed that information by selectively deciding what they knew and what they didn't know. And I would suspect -- I would submit, Your Honor, that that's really quite troubling.

The second thing that we see in the response is what I would like to call the scarecrow -- like the scarecrow in the Wizard of Oz. The scarecrow is pointing in all different directions, right?

So they say that they are excused from things

like changing the dates of the encounters three times from 2006 to 2008 to 2007, first, because they use the word in and about, but they -- but the reality is, Your Honor, that they ignore that they offered two detailed explanations to the court, one to Judge Campbell about the first change from 2006 to 2008, and then one to you, Your Honor, from 2008 back to 2007, both of which leave out the fact that they actually have documents that pin this down and that they could have consulted and should have consulted.

So that brings us to the documents. And so they say, Well -- they have an affidavit that they have submitted from Mr. Houston, who is, unfortunately, not here. But the gist is essentially to say, I, Mr. Houston, was dealing with the FBI, and Mr. Harder and Mr. Turkel really did not know anything about these until there was a specific request of the FBI documents in December of 2013.

And I would respectfully suggest that that's a problem for basically three reasons.

First, Mr. Houston was counsel of record in this case starting in April of 2013, so the notion that we can -- that we can be excused from

providing key information by saying, Well, one set of lawyers knew it but the other ones didn't, is really not right, and it's not fair to us as the defendants trying to defend the case.

The second is that Mr. Harder himself, according to the interrogatory answer that we've since gotten, personally spoke with the FBI about the investigation in January of 2013, at a minimum before he represented to Your Honor that he had nothing else to provide in February.

And, lastly, Mr. Bollea, the actual party, personally participated in meetings, signing agreements in a sting operation all before Gawker was even named a defendant in this case. And so the notion that this is somehow excused because Mr. Houston was theoretically the only person who knew about it just doesn't seem right.

And then the third argument that they make is that they -- and this is perhaps, to me, the one that's the most remarkable. They say there should be no sanctions, because all of this stuff is collateral and it's not relevant to the issues in the case. Well, Your Honor, with respect, that ship has sailed. The court has already determined that these things are not collateral and that they

are relevant.

We've litigated that issue repeatedly, and the court has determined that the sexual relationship between Mr. Bollea and Heather Clem, all of it, not just this one encounter or this one tape, are relevant, that other video recordings are relevant, that the FBI investigation is relevant, that plaintiff's media appearances are relevant. In fact, the DCA relied on them in its opinion. The plaintiff's telephone records, all of them, not just the ones that they determine are relevant, are relevant.

And you don't get to disregard a series of court orders, conceal evidence, misrepresent things to the court, and then when you get called on it to say, Well, it turns out that the things that they are complaining about aren't really material to the case, that they're not really relevant, that they're collateral, that they're not admissible.

We're not here having a conversation at trial about whether these things were admissible; we're having a conversation about discovery and whether when you're, you know, pursuing things that may be likely to lead to the discovery of admissible

evidence, that these things are discoverable.

And then, finally, the plaintiff challenges the sanctions that Gawker and Mr. Bollea were seeking as being out of proportion to the conduct that's at issue. So I would like to address those.

Well, the first thing that happens is that when you read the opposition papers, they break them down into the individual pieces and say, Well, this is a small violation. And, you know, Your Honor, I think if any one of these things had happened, we probably would have just tried to work this out. But like when you -- when you realize that everything you've done for a nine-month period has basically, you know, been artificially narrowed because your adversary hasn't given you information, you take them all altogether. The point that this is not that significant, I think, is really not well taken.

And so let me talk about the sanctions themselves. We've asked for the case to be dismissed, and we realize -- you know, I have read the cases, and I'm sure Your Honor is familiar with the cases -- that that is, obviously, the most extreme sanction that we could ask for. And

if you read the cases, the cases make clear and they draw a line.

They say, Look, if it's foot dragging or if it's sort of normal muss and fuss of discovery, of course you shouldn't dismiss the case. And I would respectfully submit, Your Honor, that that's not what we have here. In the cases that they have cited, most of the cases involve one order, not a series of orders. Here we have a series of orders.

Some of the cases involve things that are imprecise, either because they're oral rulings -- and here we have a series of written rulings -- or because there is a general order that says, I want you to just comply with all of the discovery requests. And that's not what we have here. Here we have a series of orders that address specific topics saying, Discovery on this topic is proper.

And if you look at those cases, those cases including a couple of the cases where there is actually an affirmance of the dismissal order of conduct that's a lot less egregious than what we have just described, it says, Look, where there is a, quote, refusal to obey as opposed to just not following the court's order through either some

inadvertence or routine delay that we don't like to see but realize happens, that that is enough to dismiss the case.

And, you know, in response to that, Mr. Bollea and Mr. Harder, acting on his behalf, says, Look, he has a legitimate invasion of privacy claim here. He has a constitutional, due process right to press that claim, and so forth and so on.

And, look, whatever the factual and legal merits of Mr. Bollea's claims, it's not the case that he's absolved from playing by the rules just because he thinks he has a valid claim and suffered an injury. You still have to play by the rules. And when you don't do it and you don't do it to this extent, dismissal is proper.

And we really would strongly urge the Court and Your Honor to do that here, because this -- and I will just say, look, I have been practicing law the better part of 25 years, and in my experience I have not -- I have been in a case where there has been hard-fought issues like this case, but I have never been in a case where key facts have been concealed and misrepresented to this extent. And I have to say, it's just very

troubling.

So that we're not going back and forth, back and forth, let me try to address the alternative sanctions that we've also asked for. And I do that without intending to suggest to you that dismissal is in any way improper, because we really think that's the appropriate response.

If the case is not dismissed, here is what we think should happen. First, this one is a no-brainer, but Mr. Bollea should be required to promptly provide full and complete responses. I think in our papers we ask for five days. I'm not wedded to the period, but the notion that we are still not having complete responses is not right.

Second, Gawker should be able to recall Mr. Bollea and Mr. Clem for additional deposition testimony, because we were basically asking them questions and unable to examine them properly based on what we were not told.

And if Mr. Clem and his lawyer, Mr. Diaco, object to being re-called because of the expense involved, if there is an expense, Mr. Bollea should be required to reimburse his reasonable expenses. It's not our money, but we realize that could be an issue.

Third, we think that the conduct that we've described here displays an ongoing contempt for the court and its orders. Just to use the most recent example, after the Court -- well, after Your Honor rejected the plaintiff's argument that he could be able to cull his phone records, after the Court then rejected that argument, he basically has refused to comply, and we are still getting records that are, in effect, meaningless because they have not given the information that's been directed.

That's a blatant disregard of a court order, and we think that there should be a finding of contempt. It doesn't necessarily mean anything. We're not asking for a daily sanction or anything like that; we're just asking for a finding that the conduct, both past and current, is displaying a contempt of court.

Fourth, we would request that the Court give an adverse inference instruction to the jury with respect to the categories of documents that Bollea and his counsel failed to preserve. This includes his texts, his e-mail, his calendars, and the substance of his and his counselor's oral communications with law enforcement officials.

MR. HARDER: Seth, will you mind repeating what you just said? I missed the first few words of it. I'm sorry to interrupt.

MR. BERLIN: We would -- I will just do the whole thing.

We would request that the Court give an adverse inference instruction with respect to each category of documents that Mr. Bollea and his counsel failed to preserve. This includes his texts, his e-mail, his calendars, and the substance of his and his counsel's oral communications with the law enforcement officials.

These are documents and information that we should have and we don't have. And the proper remedy for that -- I think it's been well established in the cases -- is that the party fails to preserve that information, you're entitled to draw an adverse inference from that.

Fifth, as a sanction for improperly concealing documents and information, we would ask for a preclusion order. Now, in a case a preclusion order limits the scope of what the jury hears. You're precluded from bringing up certain things, right? And in so doing, it sort of artificially truncates the truth. And this case

is a little bit odd, because what's really going on here is that the plaintiff, through his discovery conduct, has artificially tried to truncate the truth. And the defendant is trying to have the full truth come in.

So, for example, when the plaintiff says -- which is a tale that he's told publicly many times -- that, you know, in a moment of weakness, he gave in to Mr. Clem and Mrs. Clem and had sex with Mrs. Clem. And, in fact, we now know that that happened four times. It makes it a little less believable that it was sort of in just one moment of weakness.

So what we're asking for is sort of what I'd like to describe as a reverse preclusion order, which is to say instead of saying that the facts would be artificially truncated, that, instead, Mr. Bollea would be precluded from arguing that the things that he concealed did not happen.

And, look, when we were here in February before Your Honor, you had indicated that if it turned out that the plaintiff had been, quote, less than candid with the Court, which is clearly the case, a preclusion order would issue. And we thought a lot about what that should be. And we

think that the appropriate thing would be a preclusion that, essentially, precludes him from benefitting from concealing these things by then being able to argue that they don't come in or that they are -- they're not right.

So, you know, he alleges in his complaint that he had a particular public persona. But then he wants public statements that he's made to be prohibited and to conceal his public relations efforts, the thing I mentioned about succumbing to Mr. Clem and Mrs. Clem in a moment of weakness.

So this is -- so the things that we're talking about that we would be, you know, that precluded from arguing against is that there were four encounters, that the FBI has three tapes, that there was an alleged extortion attempt and an FBI sting operation, which is obviously about whether this is newsworthy and who gave this tape to Gawker and so forth. And that's because we don't think that the plaintiff should be rewarded for having concealed that information for a year and then misrepresented it to you and to Judge Campbell. And that seems like the proper kind of preclusion order.

And for what it's worth, Your Honor, Gawker,

for whatever everyone thinks about it, is really -- it's about -- it's about the truth. And so, you know, part of this is consistent with what Gawker is about, which is to say, Look, the truth is sometimes embarrassing, sometimes it's uncomfortable, sometimes it's unpleasant. But if we're going to have a trial, we shouldn't have a trial where the version of what's going on is some artificially truncated story. And so that is, I think, a key piece of this.

And then, last, I want to say that unravelling this misconduct had prejudiced Gawker and the other defendants in a very real -- in a very additional real way. Gawker has incurred substantial sums over the last year trying to unravel all of this; litigating motion after motion after motion; seeking to enforce court orders, trying to learn the facts when the plaintiff and his counsel had them all along but concealed them, preparing for and taking depositions of Mr. Clem and Mr. Bollea without information that would have been directly relevant to the questions we were asking and the testimony we were getting; and then, you know, claiming privileges as to information at the deposition

when Mr. Bollea knew it directly, even though they said it was only through counsel.

Now, look, while there is certainly some amount of abnormal discovery tussling in an average case -- and I'm familiar with all of that; that happens in many cases -- I don't think that this is the normal case. And as a result, Gawker requests that the Court award the reasonable fees and costs attributed to plaintiff's and his counsel's misconduct over the past year.

And even the plaintiff's supplemental opposition, although they would say it should be modest, appears to concede that that might be justified at least in part. And if Your Honor would find that we are entitled to such an award, and perhaps we would then request that we submit a statement of those fees and costs. And if there are particular -- any particular guidance about the kinds of things you think should and should not be included in that, we would -- we would do that.

At the end of the day, Your Honor, this is not one or even two or even three isolated incidents but, instead, we think reflects a persistent pattern of concealing evidence,

fabricating reasons for doing so, and in making repeated misrepresentations to you and to Judge Campbell, and although less important, also to us. And this conduct to us strikes at the heart of the adversarial process, and we think it should be dealt with accordingly.

Thank you.

JUDGE CASE: All right. Thank you.

MR. HARDER: Thank you, Judge Case, for having this hearing.

There is so much that's not true about what Mr. Berlin just said, I don't know where to begin. There is so much half truth and misrepresentation to you, sir, that it's tremendous. And I believe that this whole proceeding is a waste of our resources because so much of it is turning the facts on their head.

What a lot of this boils down to is communications with law enforcement. Mr. Berlin's premise is that those communications were asked for and concealed, that there was a court order, and that we refused the court order. And none of that is the case.

We were first asked for FBI communications when they propounded discovery asking for FBI

communication. And we immediately provided them with a privilege log as to those communications. We had a hearing before Your Honor about those communications, which was on -- I'm trying to remember the date of the hearing. It was part of their February 12 and February 13 motions. I think it was maybe late February or early March.

And Your Honor ruled that your recommendation was that we had to provide FBI communications. We took the issue to Judge Campbell, and we agreed with Your Honor, and we promptly produced the FBI communications. We did not conceal them. We produced them. We redacted out five words, and they repeated a few times. They were located on three pages, two pages from one source and one page from another source.

We've produced over 2,000 pages of documents in this case, so redacting out five words -- and these are words, Your Honor, they are racial words, and Your Honor had previously ruled that they were off limits in the case.

But the point is that we did not conceal that. They had never asked for those documents before. One of the documents that they've presented in there motion was, if I have it here,

it was a story from TMZ from October of 2012. October 14th, 2012, Hulk Hogan contacts FBI over leaked sex tape. This is from -- I think it's the day before this lawsuit was filed, one day before. It was public information that we were seeking FBI assistance with this. They didn't ever propound discovery about this FBI investigation until about six months ago. I think maybe it was right before Christmas, December 19th. I may have my dates slightly off.

That's what prompted us to provide a privilege log and to resist that discovery. Your Honor heard it. You ruled with them. We took it to Judge Campbell. She agreed with you. And we promptly produced the FBI communications. Every FBI and AUSA communication that we had, we produced to them. There was no concealment, none.

The premise is they think that they asked for these FBI communications a year ago, and they didn't. And they haven't presented to you anything about that to show that they asked for it before they really asked for it.

They keep saying over and over again that Judge Campbell made a ruling on October 29th compelling us to produce FBI communications.

That's not true. Look at the February 29 -- actually, she put it into writing, I think, in March, and it's been produced in the case as part of the records here.

Take a look at Judge Campbell's ruling on that. It doesn't say anywhere that we are compelled to do anything except two things. We're compelled to provide a further response to interrogatory No. 12, which we did promptly after she said on October 29th that we had to. And the second thing was that we were required to produce a privilege log as to communications preceding the filing of this lawsuit with the implication that the privilege log would apply to responsive documents that have been asked of us.

The AUSA and FBI communications had never been asked of us as of October 29. There was nothing to put on a privilege log. And all of those communications were after the filing of this lawsuit, in any event. So I just wanted to address that issue.

Mr. Berlin says that we have disregarded court orders. There is not a single court order that we have disregarded.

When he talks about how we were ordered to

produce phone records, we have produced all the phone records except for the three digits of the prefix, so they have -- as to nonparties and nonwitnesses, because nonparties and nonwitnesses have a privacy right in the state of Florida. They have a privacy right that their phone communications should not be disclosed.

Nevertheless, we disclosed it except for a three-digit prefix, and we have brought a motion for protective order with Your Honor as to that. If you rule against us, we will provide you -- we'll provide them with all the prefixes. I believe it's an invasion of the privacy of nonparties and nonwitnesses. I also believe that it is a reasonable middle ground so that they can see all of the phone calls that were made to or from Mr. Bollea using the area code and the last four digits.

And if the area code and the last four digits matches up with anyone who they determine to be a witness, I will be happy to immediately unredact the prefix so they will have that full information. It's been about a month now. They have not identified a single phone call of a redacted prefix where they say this is a witness.

But I will get to that when we get to the motion for protective order.

I do not believe that is disregarding a court order. I believe that that is protecting the privacy rights of people who are not parties and not witnesses. And we brought a motion. If Your Honor disagrees with us, we will be happy to comply with the order. But I feel that I have to do my job to uphold Florida's privacy laws as to nonparties and nonwitnesses.

Mr. Bollea -- I'm sorry. Mr. Berlin said over and over again, concealed evidence, concealed evidence, concealed evidence. We have not concealed anything. When they gave us a document request or a request for information, we provided it. And when Judge Campbell, the one time she compelled, she compelled a further response to interrogatory 12 and we provided it.

And when Your Honor said we had to provide certain information and Judge Campbell entered the order, we provided it. What's interesting is that Mr. Berlin did not put up an order, point to an order and say, Here is the order; it says we have to do X, Y and Z and we never did it, because that doesn't exist. That scenario doesn't exist.

There is a lot of half truth here. There is lot of innuendo. There is a lot of things that just aren't accurate. And I will go through it. These are just some preliminary things here.

Here is just an example. Mr. Berlin said, The sting operation all happened before Gawker was a named defendant in this case. You heard him. Gawker was named in a lawsuit that was a federal court case, and we ended up dismissing the matter, the federal court case, and that same day naming them as a party to the state court case, because there were two actions that were pending.

The sting operation happened after Gawker had been a named defendant in the same exact causes of action. So for him to say, All of this happened before Gawker was ever named in the case, that's just a half truth. And there is so many examples of that.

All of the examples about how we supposedly flaunted court orders, we've never flaunted a court order. All of the discovery that he's talking about was when they asked for it. And when it was ordered, we gave it. And now I'm going to go through some additional things here.

One of the things -- the first thing I want

to point out is the similarity of this motion with their February 12th motion. They brought a motion to compel compliance with the Court's October 29 order and for sanctions. Your Honor heard it and Your Honor denied it. The things that are in their motion now, it's a lot of the same stuff that was in that prior motion that you denied. It was things that, We never got the date right. We initially said that the sexual encounters happened in or about 2006 and then later we said in or about 2008 and then later on we said mid 2007.

They already brought a motion for sanctions on that. It was denied. There is no reason for sanctions for something like that. If somebody makes an estimate and then they revise their estimate, you don't sanction them because they revised their estimate. And it was certainly not concealing anything. We did not have the dates quite right. We did not have records about the dates.

He talks about a letter from the AUSA which identified communications that came from an extortionist. He talks about how there exists certain other tapes. I have never seen any of those tapes. They have never seen any of those

tapes. Mr. Bollea has never seen any of those tapes. Nobody on either side of this table or Your Honor or Judge Campbell has ever seen any of these supposed tapes. We don't know if they exist or not. Nobody has seen them. Maybe they exist and maybe they don't.

An extortionist said they exist, an extortionist who wanted money and wanted to make certain representations of what was in the supposed tapes, that there is racial comments, that there is all kinds of other comments in there, nobody has seen any of these things.

But yet Mr. Berlin says these tape exist. He told you that about ten times. These tapes exist, and I concealed that. Nobody has seen them. I haven't concealed anything. I don't know if they exist. When he asked for communications with the FBI, we produced it. Those communications had in there communications from an extortionist saying, These are the -- these tapes exist, and these are what's on them. We produced them. They have it.

I think the only potential prejudice here is that -- it's not even a prejudice. If they had wanted the FBI communications sooner -- they knew that we were talking to the FBI. They waited a

year and four months to ask for the FBI communications. And then we had some proceedings that lasted maybe two or three months. Judge Campbell said, You have to turn it over, and we turned it over. Nothing was concealed, though.

Again, back to my point, this motion has a whole lot of stuff in it that is a mirror image of the last of their February 12 motion to compel compliance with the October 29 order and for sanctions. And you denied that. And for the same reasons, of all the same things that were in that motion, you should deny this motion as well, just outright, because it's just a rehash of a lot of the same things.

The only thing it's not a rehash of is when you had a hearing on that motion to compel compliance with the Court's order and for sanctions, that same day you had a hearing on their motion to compel us to produce the FBI documents. Ultimately, we fully complied with that, with the exception of redacting out five words that were irrelevant and inflammatory and have already been ruled upon. Otherwise, we have fully complied.

There has been no concealment. There has

been no misconduct. And I will go through some other things. I'm happy to answer questions at the end of my presentation as well, in case I may have missed something that, Your Honor, that you think is worthy of further discussion.

What Gawker does over and over again is they like to wait until the last second to hit us with stuff. So when they brought this motion, it did not have any specifics in it at all. They filed an opposition, and then they lowered the boom and they had this tremendously gigantic reply that went on and on and on and on, hoping that we would be unable to respond to it, except here. And we had to ask for more time and we got more time. I think that Mr. Berlin even said, If you want more take, take more time. That's just not the right way of doing things. And the courts have said that over and over again.

We cited to two cases, one that says it's a due process violation to consider arguments raised for the first time in a reply brief. Well, almost everything that he talked about today was in the reply brief. It was not in their motion.

And another case says, An argument raised for the first time in reply is deemed abandoned.

Almost everything that they raised was in the reply. I know that this is a procedural issue, but, still, I think it's improper to file a motion, get our opposition, and then lower the boom in the reply, and then we have to file yet another opposition on top of that.

It's part of an ongoing practice. They have done it over and over to us. When they asked for the phone records, they waited until their reply to cite to the law. They cited to two cases that were completely off point, and it was filed on the same day as the hearing, and we couldn't respond to it. And it turns out that there was a lot of the law that was completely the opposite of what they had said. But, again, it was -- it was responding to things on reply.

And I think it's worth mentioning that when Mr. Bollea was deposed, they held back on about 12 different documents that were responsive to discovery. And you remember, we brought our own motion for sanctions on this. They had held back on 12 different -- 12 or maybe there were more -- documents that were 100 percent responsive, and we had a dialogue before -- Alia Smith?

MR. BERRY: Alia.

MR. HARDER: Alia Smith. I keep mispronouncing her name.

I had communications with her. I said -- she said, Well, we don't want to produce documents until after the deposition.

I said, That's fine, but if you're going to give something at the deposition, you need to give it to us now so that we can use it to prepare for the deposition.

She said, We don't agree with that.

And so they proceeded to take his deposition, show a whole bunch of stuff was 100 responsive to our discovery. It was documents that pertained to Hulk Hogan, documents that pertained to media appearances. I mean, all these things were 100 percent responsive. They held back. They surprised him. They sabotaged him at his deposition. And it was embarrassing. It's things like him going to the bathroom in the hospital. I assume you remember some of these things.

JUDGE CASE: I do.

MR. HARDER: There was a lot of them, though, a lot of these things from them. They sabotaged us. So here they keep talking about how we conceal evidence, that we disregard court orders,

that we engage in misconduct. I mean, that was an outright sabotage of us. And it's just -- it's a bit two-faced for them to be saying the things they are saying, which are total misrepresentations, and to be engaged in the conduct that they were engaged in.

There were actually other examples, though. We asked for documents about their internal communications regarding the sex tape, the sex tape that they posted. Notice that everything they talked about had nothing to do with their sex tape; it's other tapes that may or may not exist. It's so far afield what they're talking about. But we asked for the communications in discovery, their internal communications and external communications regarding the actual sex tape. They withheld that from us for eight months. We took their deposition.

Yes, 32 pages of the IMs between all of your employees making fun of Hulk Hogan. They withheld that from us for eight months. And it was not -- we didn't even -- and they concealed it from us, if you want to use that term that Mr. Berlin loves to use, because they never told us about those things until we were taking depositions, and their

employees said that they had internal communications. And they had a specific term for it.

They eventually produced those communications. It was a lot. And it was embarrassing stuff. It was their employees making fun of Hulk Hogan in this actual sex tape that they posted up to the Internet. Did we file a motion for sanctions over that? No, we did not. Why? Well, we eventually got it. It was somewhat prejudicial because we had asked their employees about this, and we never were able to actually get the documents to ask them about specific comments. We eventually got it.

Everything that they are complaining about, they have in their possession. They have got it from us. We haven't withheld anything. If there is anything that they are entitled to, let me know what they're entitled to and we'll get it to them. That's always been my policy.

But if they don't ask and they assume that there is a court order that says that I have to give them something -- and there is not -- and then they finally ask for it and then they ask you for it and then Judge Campbell says, Yes, give it

to them, and I give it to them, that's not sanctionable. That's not wrong. I haven't -- we haven't done anything wrong in that respect.

In order for there to be sanctions, there has to be a court order that we violated. They haven't identified a court order that we violated, with the possible exception of redacting the prefixes and redacting the five words that's on a motion for protective order.

He mentioned the April 23rd -- okay. That's the day, an April 23rd order. Just a little bit of background on that. Every time Judge Campbell has entered an order, she's always said, This is my order, meet and confer on a final order, and then I will sign it.

On April 23rd she didn't do that. She said -- because we had five motions to dismiss from all of the five or most of the five defendants. As you can imagine, that occupied about two and a half hours of oral argument, and all of their motions were denied.

And then in the last few minutes of this hearing that she had scheduled for, she said, Does anyone have any further comments on what was our exceptions to Your Honor's order regarding the FBI

documents and the phone orders? And she said, I have already read the papers. I don't want to hear anything more that's beyond the papers. Is there anything more?

I think there was very, very little that was beyond what the papers said, and she said, Okay, I'm going to overrule the exceptions; I'm going to sign the order. Mr. Berlin, do you have an order?

He said, Yes, Your Honor.

He handed it to her, she signed it, and I don't even know if I got a copy of it for the first five days. They say that they handed it to me. I didn't have any materials in my file showing it. The court didn't put it up on the system, the E-discovery system.

They had not supplied me a copy until they said, Are you guys going to comply? You have three days to comply.

And I said, Can you supply me with a copy of the order, please? Because I did not even know what it said.

And they say, The dog ate my homework. It's not that. It's that if there is going to be an order, we're entitled to notice of what that order is. So we got the order, and it said we had to

comply in three days. We immediately started producing things to them. I think it took a couple of extra days. And Mr. Berlin -- and that kind of leads me to the meet and confer process, the so-called meet-and-confer process before this motion. Mr. Berlin sent me a letter saying, You need to comply with that X, Y, Z. And I sent him a letter right back, probably within 24 hours or two days at the absolute most, but it's probably one day, saying we are absolutely complying with this, and it's going to take us a few days.

And I explained that the phone orders are not in our -- the phone logs are not in our possession. They're in the possession of the telephone carrier, and we're in the process of gathering up the different communications with law enforcement. And part of the order was we had to provide them with a summary of all the communications with law enforcement that had happened over the past year and a half or so, year and couple of months.

So I had to contact -- my office had to contact Mr. Turkel and David Houston to get the summaries, and then I had to go back and -- they had to probably go back into their records. I had

to go back into my records. I think I had one or maybe two phone calls with the FBI a year before that. So I had to go look to see -- I couldn't remember what I had talked to the guy about. It had been so long. I think maybe it was a five-, ten-minute conversation about, What's the status of this?

So I had to go back in my records, and I -- we put it together as fast as we could, and then we provided them with a very lengthy interrogatory response, very lengthy. He didn't provide that to you, but it was very lengthy. He characterizes it as being boilerplate, but that was what everybody could remember, was there were communications.

Now, David Houston had a lot of communications with the FBI, because it was part of the sting operation, and the sting operation was related to an extortionist.

JUDGE CASE: Yes.

MR. HARDER: It was not related to Gawker, the sting operation.

JUDGE CASE: Uh-huh (Indicates affirmatively).

MR. HARDER: Now, after the sting operation, we don't know what the FBI -- where their

investigations went. We don't know if it led to Gawker. It's possible. Maybe not. We did not know. We didn't know if it led to other people. Mike Cowhead Calta or Tony Burton and his agency, Buchwald Agency. We didn't know where all that went, but we provided a summary of the communications from David Houston to the FBI that led to the FBI sting.

And, again, they had never asked us for that until they propounded their discovery regarding FBI communications. They had known for over a year that there were FBI communications, and when they asked, we were giving it to them.

But as far as the so-called meet and confer process, I told them that we were in the process of complying with the order, and they immediately filed their motion. As fast as they could, they filed their motion. In fact, it was so fast it appeared to me that they had already been preparing their motion simultaneously with preparing their meet and confer, because they were pretty convinced that they were going to bring this motion.

And it was -- the initial motion was anemic. It had very little facts. It was simply, We have

failed to comply with court orders; we have flaunted the judicial process; we engaged in misconduct without giving any specifics; we disregarded what the court has said; we've concealed evidence, that key facts have been concealed, all this kind of generic stuff, but no facts. And then we had to file an opposition saying, We're not quite sure what you're talking about, but we haven't done that at all; we have been forthcoming. And then I explained how the reply came in, and that was very large.

I mean, I feel that -- I don't know, maybe I'm old school. I feel that there should be a meet-and-confer process before there is a motion as opposed to a motion and a meet and confer all happening at the same time and then race to the court so that it's like a game of gotcha. Ah ha, we brought a motion. Oh, and now you're complying with the order, now that we filed the motion.

But within that ten-day period, we were already complying with that order. And there were a few more documents that we had to get. We had to get some answers from David Houston, who is a busy guy, and from Mr. Turkel, who is a busy guy. We had to go back into our archives to remember

what our communications were and to whom, and then we provided them.

Now, if they didn't like the extent of our interrogatory responses, if they felt that they were not specific enough, they could have brought a motion to compel further response to this interrogatory, or they could have presented it to Your Honor and said, This isn't enough; there has got to be more.

But they did not do that. They just -- they just wanted to -- they want to end the case is what they want. They don't -- it's not about discovery; it's about ending the case, because they lost their five motions to dismiss. And this thing came right on the heels of that, right after. They are hell-bent on eliminating this case and making sure that Mr. Bollea cannot proceed to court, will not have his day in court.

So that's what this is all about. And that's why they keep bringing these motions for sanctions and motions for sanctions. They are more interested in litigating about the litigation than they are litigating about their own conduct.

Notice that none of this has anything to do with their actual conduct. This case -- let me

remind everybody what this case is about. They received an anonymous DVD that was 30 minutes long of Mr. Bollea having sex with somebody in a private bedroom. And it was not something that they had created, like a private sex tape. This was something where -- and you heard Mr. Clem testify. It was like that little motion detector that's way up in the corner of the room that's painted the same color as the wall. It was a surreptitious tape. It was a hidden tape, a hidden camera.

They received a copy of it. They didn't make any inquiries with Mr. Bollea about whether he approved this, whether this was something that he wanted to be out there. They simply immediately edited it down into, in the words of their own editor-in-chief, a highlight reel. That's the words of their editor-in-chief. They created a highlight reel, a minute and 41 seconds of the greatest sexual events that happened on that 30-minute tape. That's what they posted up to the Internet.

David Houston, who unfortunately is not here today, immediately sent them a cease and desist letter and said, Take this down. It was illegally

recorded; it's illegally up on the Internet; you have no rights to do this; it is an invasion of our privacy. And then he didn't get a response in 24 hours or 48 hours, and he immediately sent an e-mail directly to the CEO of their company, Nick Denton, and said the same thing. You have to take this down; it's illegal; it's unauthorized; take it down immediately. He got a letter a couple days later saying, We're not taking it down.

That's what this case is about. Notice in the 45 minutes that Mr. Berlin spoke, you didn't hear anything about what the case is actually about. It's all about the extortionist and what the extortionist was trying to do.

So this lawsuit filed -- was filed maybe a week or so. Then I got a call to get involved, and then we filed a lawsuit. And we've been off and running ever since.

I alluded to it earlier, but in order for there to be sanctions, you have to have a violation of a court order. I still haven't seen the court order that we supposedly have violated. The only potential here -- and if you disagree, Judge Case, I'm happy to discuss that with you.

Mr. Berlin talked about media appearances.

We have gone over and over and over with you about media appearances. The first thing is -- and he didn't mention this -- in October of 2012 at the time that they posted this sex tape, Mr. Bollea happened to be on a preplanned media tour for a wrestling event, the TNA wrestling event. He testified in his deposition -- maybe you recall, because their position is he was trying to promote this sex tape. Well, nothing is further from the truth, nothing. And they put that in court papers. Nothing is further from the truth.

But you heard Mr. Bollea testify. He said the sex tape came out, and I wasn't going to hide from it. I don't hide from things. I was there in the media to promote my wrestling event and that's what I was doing. There is not a single shred of evidence. In fact, all the evidence is against them on this.

We didn't have -- Mr. Bollea didn't have anything about his media itinerary, because he testified about this. He said usually they hand something to me, and after the media tour is over, I hand it back or I toss it out. I have no use for this stuff.

The day before they -- when they started to

make an issue about this, we made an inquiry to the TNA Wrestling to see if we could get -- to put an end to this issue, because it was so silly to us that he was supposedly promoting the sex tape. I mean, just -- it was so far from the truth, we just wanted to put an end to it. So we contacted TNA Wrestling to say, Do you guys have a copy of the itinerary as it existed before the sex tape so that we can show them? All of the same appearances that he made were all listed as appearances that he was going to make anyway.

Then they started changing their outlook on it, and they said, Well, he never could have gotten onto Howard Stern if it wasn't for the sex tape. He never could've gotten on the Today Show without the sex tape.

Well, you know what, TNA, the person who was the publicist at the time, had left TNA and so we had to track her down. And she said, Oh, I happen to have one of those old e-mails. And she sent it over to us. It was dated before the date of the sex tape, and it shows, Howard Stern appearance on this date, Today Show on this date. Everything had already been laid out for the wrestling promotion. And so I sent it over to them just to

say, Here you go; we happened to track this down for you, not that we were concealing anything. We didn't have it.

This happened to be an -- and it showed that this had been an e-mail that had been sent over to an account of Mr. Bollea. Now, Mr. Bollea testified he doesn't use the computer. He doesn't. He texts. He doesn't use computers.

So they happened to send it over to an e-mail account, and then perhaps somebody who monitors that e-mail account printed it out for them. And after the media tour, it wasn't -- it wasn't around anymore. It wasn't like anyone was spoliating evidence in the case regarding their sex tape. This was just something that had nothing to do with their sex tape. It was a preplanned media tour. And as always happens after a media tour, you get rid of the old stuff, unless you want to track it down from the publicist. So there is nothing that we haven't given them about the media tour.

Let me -- there is nothing that they have asked for that we haven't given them that we have in our possession. And nobody destroyed anything. Now, they have sent a subpoena to the publicist,

who we got that information from, because her name is on the e-mail. And we sent it over to them. They want two years' worth of all of her communications of every kind that has to do with Hulk Hogan. Okay. Well, we'll probably be litigating over that.

But as far as the media tour, there is nothing that we have to hide, zero. And there is nothing that we have hidden, and there is nothing that we have spoliated. They're trying to make it sound like we have all this innuendo and cloak and dagger and words like "concealed evidence" and "destroyed" and all this stuff. I mean, it's just -- it's just not true.

Let's talk about the contents of the extortionist's communications, because there is a lot of talk about that. And Mr. Berlin, I'm glad you reminded me of this, because he said that at one of the hearings -- and he reminded me. This is true.

At one of the hearings -- and I don't remember which one it was, but it was a while ago -- there was a discussion about whether there might exist other tapes. I did not know if any other tapes existed. I never said they do not. I

never said they do. I didn't know. But there was a discussion if other tapes existed -- and we were going with the premise that there might exist other tapes. And we discussed that if there are other tapes in existence and if they have ever come to any of our possession, Gawker was concerned that they could become destroyed or concealed or something like that.

And I did make the decision that I don't see how other tapes are relevant to this case, because this case is about the one tape that they got, not any other tapes that might exist of other incidents and encounters between Mr. Bollea and Ms. Clem, because they did not publish those. They didn't have them in their possession. They don't have them in their possession now. We don't have them. We have never seen them. Maybe they exist. Maybe they don't exist.

But we had a conversation with Judge Campbell about if there are tapes. And Judge Campbell said, Well, if there are tapes, preserve them, and they are going to go to Judge Case, and Judge Case will review these tapes to determine if there is relevant dialogue, such as Mr. Clem allegedly saying, Now we can get rich. And, apparently, if

he ever said it, I believe that he testified that he doesn't recall it or never said it. But there is no actual competent evidence that he ever said it, but who knows, maybe it exists on a tape somewhere. I don't know.

But going with the premise that maybe he said that, the premise is that he said that to Heather, and Mr. Bollea certainly was not in the room. Just so if there was any innuendo about anything like that.

But the concept was Your Honor would get the tape. Your Honor would review the tape, because there would be a lot of the oohs and aahs on the tape, right? I mean, there would be a lot of, Oh, that feels so good, and stuff like that, which is not -- and that was one of my concerns to Judge Campbell.

I said, Well, Your Honor, they have already posted a tape to the world that millions of people have watched, and that's why we're all here in a lawsuit. We're concerned that they, being a media organization, could get ahold of one of these tapes and then post that, that new tape to the Internet. We want to -- we want to put a lid on this, because the events never should have been

taped, right? I mean, if people -- two people are in a bedroom having sex and they are not giving their consent to be taped or at least one of them is not giving their consent to be taped, there shouldn't be any taping at all.

And if there is a taping and it falls into the hands of a media organization, that media organization certainly should not be posting that up to the Internet with full frontal nudity and erections and oral sex vividly being portrayed and sexual intercourse vividly being portrayed. That should not posted to the Internet.

And so our concern was, Your Honor, we don't want Gawker -- if there is another tape, we don't want Gawker getting it.

She said, Okay. If there is another, Gawker doesn't get it. Judge Case gets it. Judge Case will review it to determine if there is any dialogue, any words that people are saying that is relevant to this lawsuit, to the claims and defenses in this lawsuit. And if there is, then Judge Case would get a court reporter to transcribe only those portions of the dialogue that's relevant, not the oohs and aahs and the "feels so good" and that sort of thing, just the

dialogue. If somebody says, We'll get rich, or somebody says, I approve of this message, you know, if there is a dialogue that's relevant.

So let's take a look. And this is not something that I put into my opposition paper, but it's something that came to me recently and, certainly, when Mr. Berlin mentioned it. So if you take a look at -- this is the redacted version. Well, this is -- this is part of it, anyway. I'm looking at the thing that the extortionist sent. Somewhere, we have --

MR. BERLIN: If it's helpful, Your Honor, it's attached to our confidential statement at tab 3.

MR. HARDER: Tab 3, 4?

MR. BERLIN: Three, I believe.

MR. HARDER: Oh, okay. I was passing over it, because it has this so-called settlement agreement in it.

Okay. Just to give perspective, tab 3 is -- this was part of the sting operation. When Mr. Houston was contacted by the extortionist, Mr. Houston went immediately to the FBI and said, We're being extorted. And stuff like this happens to celebrities. If you read the news a few years

back, Dave Letterman was being shaken down by somebody who was, I think, the spouse of somebody, and said, I know that you had an extramarital affair. I will sell you the literary rights that I possess to the story of you having an extramarital affair. The price is $2,000,000.

David Letterman went to the FBI. That man is sitting in jail now because that's extortion. You can't do that.

Celine Dion's husband was part of an extortion. The woman who was extorting him, her husband, are sitting in jail right now, because she alleged that he had raped her and he didn't, and she wanted $2,000,000 or something. And so when something like this happened to Mr. Bollea and Mr. Houston was fielding the calls, he immediately sent this over to the FBI. And he was following the FBI's instructions on how to deal with this extortionist.

So what this is, it's a dummy settlement agreement, the purpose of which is to get the extortionist into a room and to make certain statements that are being recorded by the FBI in the next-door room. And that's exactly what happened. And then there was a sting that

happened.

And so the -- and just to carry that out, at a certain opportune time, about 10 or so federal agents storm into a room with the extortionist's lawyer and the extortionist's agent, but the actual Mr. X, is what they call the person, never actually showed up. So they had a sting without Mr. X but with the other two people. And that's when the FBI took over and the AUSA got involved and all that.

Well, tab 3 is this dummy settlement agreement between Mr. Bollea and the extortionist. And it has certain communications from the extortionist to Mr. Bollea's team. It's really David Houston who is handling it. And it was describing -- alleging that there were three tapes, alleging that the first tape is dated July 3rd; the second one is dated July 13th; and the third one is undated. But when you compare that with what the assistant U.S. attorney has, the first tape is July 13, and the second tape is July 13.

JUDGE CASE: I saw that.

MR. HARDER: So we've got an -- either the extortionist is not telling -- is not giving

accurate information, or the AUSA made a typo. I don't know. And then the third one has no date on it.

And so it's possible that these were all from July 13 and that maybe it's a first part, a second part, and a third part. Maybe it's three copies of the same thing. We don't know. We've never seen it. But in the extortionist's effort to try to get money and as much money as possible and to scare Mr. Bollea into thinking that his life is going to come to a screeching halt if he doesn't pay them off, it makes all these allegations about what are in these various tapes. And, again, we redacted out a few words out of here based upon the prior ruling.

This actually falls within Judge Campbell's protocol that these things actually should be going to you, to determine if any of these words are relevant to the case, because -- I mean, there is a lot of graphic words here. I'm about to read it, but he's typing this in. Can we go off the record one second so I can say some of these words.

JUDGE CASE: I think the record can stand it. Judge Campbell may not like it, though.

MR. HARDER: Okay.

JUDGE CASE: All right. We'll go over the record.

(Discussion off the record.)

MR. HARDER: So according to Judge Campbell's protocol, this document actually should be going to you, because it relates to so-called other tapes, for you to determine whether any of this is relevant, if there is something that might be relevant and discoverable. But, otherwise, the things that I just read are things that shouldn't be part of the record.

So when we redacted out five words, we actually, according to Judge Campbell's protocol, we probably should have submitted the whole thing to Your Honor without sending it over to them, let Your Honor decide what's relevant and what's not, and then produce to all parties those things that are relevant. We would submit that the five words that we removed that pertain to race, that those things are not relevant to the case and should be redacted out and Gawker should not have that.

Just to follow that through, Your Honor, we would request that Gawker not have possession of what they have and, instead, have possession of

what you determine from that to be relevant to the case.

And my staff has reviewed the 30-minute tape that came from Gawker to us, which is what they received from an anonymous source. And my staff reports back to me that they believe that Tape No. 2 is what is, in relative general terms, appears to be described as Tape No. 2, not to say that tape -- not to say that the extortionist's representations are accurate of the tape that we received from Gawker, but just to say that of the so-called Tape 1, Tape 2, and Tape 3, what Gawker provided to us, appears to be along the lines of Tape 2, and not of Tape 1 and 3.

So, therefore, the description of Tape 1 and the description of Tape 3 would fall within that protocol that Your Honor should receive, should redact out things that are not relevant to the case, the oohs and aahs and the F words and all of that and the racial terms, we would submit, and then provide the parties with a redacted version so that -- because our concern was that Gawker could end up posting this and getting some mileage out of it. And Judge Campbell was sensitive to that issue and that's why that protocol came

about.

So I think I may have covered this, but just to make sure that I have fully covered it, Mr. Berlin wanted there to be certain determinations made by a court as to certain of what he calls facts. He wants there to be a determination that there exists three tapes. Well, I would submit, Your Honor, until we have seen three tapes, there should not be a determination that there are three tapes.

Mr. Berlin also asked for there to be a determination that there were, in fact, four encounters with Mr. Bollea and Ms. Clem and no different than four encounters. Well, my understanding of the evidence as it's been presented so far is that there were between three and four, but I don't see why there should be a determination that there was four and not three to four.

But I guess my main point is I don't see why there should be a determination as to factual issues when the actual evidence that's presented at the trial, that will bear out the facts. I don't think Your Honor should be deciding what the facts are or are not based upon a preclusion order

or reverse preclusion order, however it was described.

The whole concept of a trial is that you let everyone present the competent evidence that is relevant to the claims and defenses, and you let the jury decide what the facts are, and then you apply the law that the judge says, that this is the law, and then the jury makes a decision. So I don't see any reason why there should be any change of the normal course of business for a court. There certainly, in my view, has not been any showing that would warrant anything like that.

I don't mean to beat a dead horse, but Mr. Berlin was talking about this scarecrow way of presenting the facts, where we point to one way and then we point to another and we point to another. And the example he gave -- or the factual scenario that he connected that to was that we made an estimate when we first filed the case, which was just a few days after the sex tape came out, that it was in or about 2006. And then later on, the facts as best they could be recollected was that it was in or about 2008. And it turns out we were not fully accurate because it turns out that it was in mid 2007.

And the letter from the AUSA that identified the extortionist's label of the tape, which said July of 2007, that came out much later on in the case. Mr. Berlin is making it sound like we had that evidence sitting there at the time we were drafting the complaint, and we were intentionally trying to mislead them as to the date of the encounter.

It's wrong on both levels. First, we never intentionally tried to mislead anybody. We were not actually inaccurate when we said in or about, because 2007 is pretty close to 2006 when you're going back five or six years. I mean, it's not far off. And we didn't have the AUSA's letter, and we didn't have the evidence that the AUSA had at the time of drafting the complaint.

One thing about the AUSA's letter is that it went to David Houston, and David Houston -- David Houston is Mr. Bollea's personal attorney, and he handled the FBI issue, and that was kind of his role in this.

Technically, he's counsel of record so that he can receive E-filings and so that he can stay up to speed on what's happening. But he is not -- he is not assisting me in the litigation. He is

not -- I mean, maybe except for maybe small things. He was at the deposition. We did talk before the deposition and during breaks in the deposition, after the deposition. So he's not completely out of the loop, and I don't mean to imply that he is. But he is -- he is a criminal defense attorney, and so he's not involved in the civil aspects of it. And he's not involved in a great deal of things.

But when there is information that we think he may have that's responsive to discovery, then we go to him. So if they ask, Provide us with FBI communications, he's the guy that I go to. If they don't ask for communications with law enforcement, then I don't necessarily go to him and say, Give me all your law enforcement communications, because they're not in the discovery. Once they were in the discovery, I absolutely did that.

Prior to them asking for the law enforcement communication, they just said, All documents regarding the sex video. Well, from our perspective, the sex video was the thing that they posted up to the Internet and maybe also, if you take it a step further, it's the 30-minute version

that they didn't post, but that's the source from where they got the smaller version. But they did not propound a request for FBI communications. And that's why we didn't provide FBI communications.

And although he quoted numerous things from me and from others, I do not believe that any of that shows that I was being not forthcoming with the Court with regard to information that we had in our possession, certainly not with regard to information that they had asked for in discovery, certainly not -- there is certainly not any court order that we have violated, in my opinion, with the only possible exception of the matters where we have a motion for protective order set for this hearing. And if Your Honor has any thought on what I just said, I'm happy to address that.

One other thing. When the FBI got involved, they told Mr. Bollea and Mr. Houston, Under no circumstances can you talk about this to anyone. And we had to follow that, because it could jeopardize the investigation.

And the investigation was very important to Mr. Bollea. He wanted the extortionist in jail for what that extortionist was doing. And the

last thing that we wanted to do was go against what the FBI had said. And that's why, in part, we were resisting the discovery as to the FBI, because we were trying to comply with the FBI's instruction. And when we researched the law and it showed that there was a law enforcement privilege out there and that it directly applied to this situation, we were trying to follow the FBI's instructions to us.

It wasn't until after they propounded their discovery regarding law enforcement communications that some of the things that Mr. Berlin mentioned became apparent. It was never apparent to us before we propounded discovery regarding law enforcement that Gawker was absolutely not being investigated by the FBI. We didn't know that. We didn't know if they were, we didn't know if they weren't.

Apparently, Mr. Berlin received a communication well after all of this discovery, FBI discovery issue was out, from somebody -- it might have been the AUSA -- saying, Gawker is not part of our investigation.

Okay. At that point we learned it. When Mr. Berlin was making his presentation and he was

giving all kind of quotes, he made it sound as if we already knew that back at the October 29th hearing. He was quoting heavily from me from the October 29th hearing. Well, I didn't have any of the information law enforcement from February or March or April, whenever these things -- of this year when these things were happening. So a lot of it is just taking things completely out of context, particularly when it comes to the years of everything.

My next point is that there has been no prejudice to Gawker here. They've received -- one thing that they say is they spent a whole year litigating and trying to uncover the facts and all this stuff. When they asked us for all documents relating to the sex tape that they posted, we provided it. Among the things that we produced were Mr. Bollea's texts. Everything that he had, we produced.

They propounded interrogatories, and we responded to all of it. They brought a motion to compel on all kinds of things, everything that they -- everything -- virtually everything that they had propounded to us, they brought a motion to compel, and it was heard on October 29th.

Judge Campbell, if you take a look at that order -- and I think it's right here -- Judge Campbell ordered two things.

Well, she ordered a few things, but in terms of the motion to compel, she ordered a further response to Interrogatory No. 12. That's number -- item No. 5. And she ordered a privilege log of all document as to which he claims privilege other than those documents created after this litigation was filed.

And we didn't have anything. The law enforcement thing came in. They were not responsive to prior discovery. And, also, when we sent them a privilege log as to law enforcement, those communications, I believe they were either all or almost all after the lawsuit was filed. The lawsuit was filed October 15th. And I don't have the privilege log in front of me. It would really surprise me if there is anything that's on there from prior -- I mean, it would maybe be one thing or two things. But I'm pretty sure all of the communications were after October 15th of 2012.

But, again, you give a privilege log as to responsive categories. You don't give a privilege

log as to everything under the sun. If they ask you for certain things, then you give a privilege log as to what they are asking for. So we've fully complied with this order, and with all other orders.

But in terms of the prejudice, they talk about how they have had to spend so much time and so much energy and so much resources and all of that. When they gave us requests as to the law enforcement, we first resisted it based on the privilege. Your Honor disagreed. They also asked for sanctions, and you denied their request for sanctions. That was as to their motion to compel and for sanctions. They didn't get it.

It went to the judge. Judge Campbell agreed with Your Honor. It was pretty much just to submit everything to Judge Campbell that had already been litigated. And then we produced it. There was -- they didn't have to do anything other than maybe send a meet-and-confer letter saying, When are we going to get this stuff? We promptly gave them the law enforcement communications. The only exception is the five words and the prefixes, and we have a motion for Your Honor as to that. I believe it's a meritorious motion.

But otherwise, all of the money that they have spent on the litigation, that's on their own dime. It has nothing to do with concealment of evidence or failure to follow court orders. That's all drummed up. It's fictitious. There is -- there is no basis, in my view, for monetary sanctions.

I mentioned that these issues go to collateral issues. And Mr. Berlin kind of scoffed at that. But the issues that all of this motion that's before Your Honor deals with are the number of sex tapes. And we don't know the answer, but we produced the information that we had, which is the extortionist's claim that there is more than one sex tape. Maybe it's true, maybe it's not. We don't know. It's collateral to the issues of what they did, though, because they only had one sex tape, and they edited it, and they posted it up to the Internet. They didn't edit Tape No. 1 and they did not edit Tape No. 3, if those tapes exist. So, again, collateral.

The date of the encounters, we've given them all information that we have regarding the date of the encounters. Mr. Bollea testified for two days where they drilled him with questions. Did it

happen before this or after this? Was there -- was it two weeks between the first and the second or was it three weeks?

I don't recall; I don't recall. He did not recall sexual encounters and the dates of them. He even made a statement.

And they asked him, What about your calendars, would your calendars reflect it?

He said, Well, I don't put a star on my calendar every time I had an encounter with Heather Clem. That's virtually what he said.

So when they're saying, He destroyed his calendar; he's trying to spoliate evidence, that's not the case. His calendar from 2007 doesn't have anything about Heather, and he gets rid of his calendars every year. So by 2008, he had gotten rid of it. This case was filed October of 2012, so he didn't have calendars from those prior years. And they didn't propound a document request in 2012 or early 2013 asking for his calendars for 2012. They waited an entire year.

Even so, I don't think his calendar would have anything that would be relevant to it. But in any event, they already have the media tour. A lot of these things are just repeats. I'm trying

to move through it here.

There is no trial date in this case, which actually is an issue that I'm concerned with, because we would like to get the case on for trial. But if Gawker is saying that they are somehow prejudiced because they're learning of the FBI communications late in the game, well, part of that is because they waited more than a year to ask us for the FBI communications, and then it took about two or three months to go through the litigation process. And then we provided them to them. But there is still no trial date. So the fact that they have the FBI communications as of May, which is when we produced them, as opposed to as of a month or two or three or six months prior to that, part of it is because they didn't ask for them sooner. And there is no prejudice as to any so-called delay in this, because there is no trial date. They still can conduct discovery regarding these things.

One of the things that they ask is for Mr. Bollea to show up for another deposition. You know what, Judge, if you think that's appropriate, that's fine with me, just to answer questions about the discovery issues that were pending at

the time of his deposition, not anything new. If they propounded something after his deposition, I don't think he should have to come and answer questions about that stuff, because they waited too long. They chose to take his deposition before they were finished.

But as to the FBI communications, as to the phone records, those were the two pending issues which have now been resolved. I don't think it should take more than two hours for them to ask him about these things. But I'm not opposed to that. We're not trying to hide anything. And if they feel that they have to get to the bottom of something and he comes back for a couple of hours to answer questions, then okay.

A concern that I would have -- and maybe we can have a dialogue about this. If you were inclined to do that, what would be the scope? Do they get to ask him anything about the extortion attempt? Do they get to ask him anything about their meetings with the FBI to try to get at the extortionist? I would say that's kind of beyond the scope of the case.

If they want to ask about, What do you know about other sex tapes -- he may have already

answered that in his deposition, but if they want to ask him again in light of what they have seen in the extortionist's report about Tape 1 and Tape 3, if they exist, I don't have a problem with that. I would imagine that he would say the truth, of course, but that he's never seen them and that he doesn't know anything about them and he doesn't know if they exist and doesn't know if they don't exist, and that he was -- everything that he had testified before, I would expect him to be consistent with that. But if they want a couple more hours of asking about that, I'm not going to oppose that.

There is a lot of cases -- and I'm sure Your Honor is familiar with them. Discovery sanctions have to be appropriately tailored and proportionate. I don't believe that there is any reason to order a sanction. I have done my utmost and my co-counsel has done their utmost and Mr. Bollea has done his utmost to answer their questions when they ask their questions. Nobody is concealing anything. But if it takes them a year and three months to ask for FBI communications, then they can't expect to have received them before that time.

Dismissal. They're asking for dismissal. And that's why I wanted to have an in-person hearing, because when somebody is asking for the dismissal of a case based upon a whole lot of what I view is misrepresentations and taking things out of context and trying to build a big thing out of what is very little, if anything at all -- that's why I wanted to have an in-person hearing, because I think it warrants that.

And there is case law, and we cited to it. For there to be an order of dismissal, you have to show willfulness. You have to show personal involvement by the client in the violations. You have to show that lesser sanctions were tried and did not work. You have to show prejudice to the parties serving discovery. You have to show prejudice to the judicial system, you have to show that there is no reasonable explanation for the parties' conduct.

I would submit to you, Your Honor, that they don't win on any of those, and they have to win on all of them. I believe that we have a reasonable explanation for everything that we've done, and I stand by it. And taking things out of context may make things sound juicy, but if you really look at

the record, there has been no order that we have failed to comply with.

There has been no concealment. There has been no obfuscation.

Showing that lesser sanctions were tried and did not work, there haven't been any.

Showing of a willfulness, I don't believe that they have shown that. I certainly don't believe that anything that happened ever was willfully -- trying to keep information that's relevant to this case and responsive to their discovery, we never willfully or unwillfully tried to keep information from them.

Personal involvement from the client, they have absolutely not shown that.

Prejudice to them, there has been no prejudice to them. If it takes a little longer for them to get information because they wait a year and three months to propound it, that's on them. If they have to bring a motion to get FBI communications that we legitimately opposed based upon the case law and Your Honor heard that motion, sided with them, but did not side on sanctions, that issue has already been decided.

We've produced the FBI communications. They

can't say that we haven't produced it. We redacted out five words.

As far as the phone records, I don't know if you've seen the phone records, but it's pages and pages and pages of phone numbers with the area code and the last four digits, because these are people that were not parties to the case and they are not witnesses of the case. And if -- and their whole basis for seeking the phone records was because they said, We want to know when he had communications with key witnesses in this case such as Bubba Clem and Heather Clem.

Well, we went through every single name that's ever been mentioned in this case, including Tony Burton and the Buchwald Agency and Gawker itself and everybody else we can think of, and we put all those phone numbers together and we unredacted -- we didn't redact those. We kept those intact. And everybody else, from our best determination, is a nonwitness and certainly a nonparty. And if they want to say, No, there is a phone number that matches up with a witness, I'm happy to unredact that. Like that, I will do it.

But there is law in the state of Florida that communications with nonwitnesses and nonparties is

private and it needs to be preserved and it's not discoverable. And we have a lot of cases on that where the court of appeals has sided with us.

And, Your Honor, if you ever made a phone call to somebody and then their phone records were requested and you had absolutely zero to do with the case -- you were not a witness; you were not a party; you had zero to do with the case -- I would think that you would think, Gee, I don't see why my phone records have to be produced in discovery. And if it's a media organization that likes to post juicy, lurid things about people, I would think that you'd say, You know what, if I have a privacy right, I'd prefer to have it preserved. You're a nonparty; you're a nonwitness; there is no reason for that.

So I think that -- and now I'm kind of getting into my motion for protective order. But an appropriate middle ground is what we did, which was to give them all of the numbers except for three digits. If they could match that up to a witness, I'm happy to give it to them.

It's been over a month now. They haven't matched anything up to anybody. Just look at the last four digits. Look at the area code and last

four digits. You can match it up.

If Your Honor denies the motion for the protective order and says, No, I want the whole thing, fine, we'll do it. But I'm trying to be reasonable here. I'm trying to do what's right. That's what drives me. That's what gets me up in the morning. And I believe that what we did was right and bringing the matter to you for -- as a motion for protective order was the right thing to do. But we'll follow your order, just as we've always followed your orders, as we've always followed Judge Campbell's orders.

One of the sanctions that they asked for in their papers, but Mr. Berlin did not mention -- and maybe he mentioned it kind of in a roundabout way -- they want to be able to call Mr. Bollea a racist to the jury. They want to be able to parade around the "N" word to the jury. Just so it's clear, there is no competent evidence that he ever said the "N" word. All we have is an extortionist who writes in a document summarizing a tape that may or may not exist saying that in that tape the "N" word is used in some other words that are right around, you know, other racial types of words that are within the same context.

It's inappropriate on so many levels for them to be able to parade the "N" word and other types of words in front of a jury. I mean, what they want is to win the case in a roundabout way. They want to be able to poison the jury of Mr. Bollea. They want a finding. I believe that he said, unless I wrote it down wrong, they want a finding, that he used these words. Well, there is no evidence that -- if I'm misstating --

MR. BERLIN: I'm sorry. Just because it may save us some time. I'm sorry to interrupt. I want to be clear, that although I have asked for a reverse preclusion order on other things, that on this subject --

MR. HARDER: Okay.

MR. BERLIN: -- what we're asking for today is the discovery of the unredacted document in opposition to the motion for the protective order, and then reserving for a later date whether that issue is to be before the jury or part of the case.

MR. HARDER: I appreciate it.

MR. BERLIN: And I want to be clear that I'm asking for a reverse preclusion on other stuff. But on that, I understand that that's a sensitive

issue, and our requesting on that today is more limited and to live for another day on whether that becomes --

JUDGE CASE: Okay.

MR. HARDER: I appreciate it. I appreciate it.

MR. BERLIN: Rather than have you -- rather than having you go on about that, I thought I would clarify our position.

MR. HARDER: Okay. I appreciate it.

I probably did not cover everything that Mr. Berlin talked about today. I mean, he went on for 45 minutes. I took notes. I was reviewing, when I was talking, some other notes and just a few items in here. I feel like I should go over just to make sure that I covered everything.

But if I didn't cover something, Judge Case, that you feel needs to be covered and I inadvertently or accidentally did not cover it, please flag me to that, and I'm happy to discuss it.

I mean, the New York publicist, it's interesting because they wanted documents of the New York publicist. They chose to go to New York to get those documents when they probably could

have gone to Your Honor to get those documents.

But whatever the case may be, the New York publicist produced a privilege log as to -- I think you said that my firm represents the publicist. The publicist -- is that what you said, because the publicist has an attorney? The publicist has a separate attorney.

MR. BERLIN: My understanding is the publicist has both a New York lawyer and that your firm has also appeared in the proceedings.

MR. BERRY: Matthew Blackett filed papers.

MR. HARDER: Oh, he filed papers. Okay.

MR. BERRY: I may be mistaken, but he's --

MS. DIETRICK: Yeah, that's right.

MR. HARDER: Well, my understanding is that the publicist has a separate counsel, and I don't know if Matthew Blackett may have sent you some documents, but --

MR. BERRY: He's on the pleadings.

MR. HARDER: He's on the pleadings on behalf of the publicist?

MR. BERRY: (Nods affirmatively).

MR. BERLIN: That's correct. That's my understanding.

MR. HARDER: That's news to me.

In any event, the publicist issues are being litigated in New York. There was a ruling by the lower court, and there is an appeal as to privileged issues, because there is a lot of law that shows that communications between myself and the publicist -- and these are communications. Just so we have an understanding of what these communications are, these are communications between myself and the publicist that happened the day we filed the lawsuit. And there may be some communications when a story came out about Hulk Hogan that's relevant to this lawsuit, and she and I had some communications that were pertinent to the litigation.

And there is law in New York that says those are privileged, and the lower court made a decision that the publicist -- and we also believe is not following the law and so that's on appeal before the appellate division of the lower court. And it's basically just communications between the publicist and counsel about the litigation itself.

But it's not about media appearances from the TNA Wrestling media tour, because that publicist was not involved in the TNA wrestling tour. That publicist is Mr. Bollea's personal publicist, but

she was not dealing with the TNA media tour. TNA had its own publicist that was being used. So there is a separate list there. And we've had a lot of communications over that, so there is no misunderstanding.

I mean, some of these things are minor. But Mr. Berlin mentioned a few times that the AUSA's letter refers to Hootie on a label on one of the disks that the FBI and the AUSA obtained from the extortionist. I don't see how that has anything to do with anything.

I mean, first, he doesn't even know that he was called Hootie until Bubba Clem testified in the case and said, I call him Hootie. And, second of all, the AUSA letter came well into the loss, and we had our mini litigation over whether communications with law enforcement are the proper scope of discovery, and we fully complied with what the ruling has been.

So it's just -- I don't even know why that issue is being brought up. I felt like I had to address it.

Mr. Berlin used the term the flip-flop, that we flip-flop on our position. There hasn't been any flip-flops with respect to whether Gawker is

or is not the subject of the FBI's investigation. I have never known one way or the other until way late in the game after Mr. Berlin talked to the AUSA and obtained a letter from her saying Gawker is not a target of the investigation. Then I learned that Gawker was not a target. Before then, I didn't know.

And so if I ever said Gawker might or might not be a target, because they were going out -- I was trying to understand, Why are they going after the FBI documents? Because if Gawker was a target, then that would be a potential interference of investigation of them. So that was kind of one of the issues that we flagged.

I don't know one way or the other. I don't talk to the AUSA. Until all this came down, I had never spoken to the AUSA about that and don't know one way or the other if Gawker was or wasn't.

So if he's trying to say that I'm a flip-flopper, that I said that they were and then I said they weren't and then I said that they were, that's not accurate as far as my recollection. I believe that I have been accurate that they potentially could be.

And then once -- once the AUSA made it clear,

then I said to Judge Campbell, in a recent hearing, the AUSA or law enforcement said that they are not a target to it. And that was one of the reasons why I thought, well, why is it that they need to get all this investigation stuff? And that's when I disclosed to Judge Campbell that this is an extortion situation, and that's why -- that's the nature of these documents.

I thought that she might say, Okay, well, maybe it needs another look. She actually followed Your Honor's ruling, and then we immediately produced them. But we didn't do anything wrong. We didn't obfuscate. We didn't conceal. We didn't violate any court orders. Once we received that order to produce, we produced.

Mr. Berlin made it sound like I was heavily involved in the FBI things and Mr. Turkel was heavily involved. I mean, that was the kind of innuendo that I got. It was really David Houston who was involved. I think I had one or two very short communications with the FBI a long time ago. And I disclosed that to them in the interrogatories. To be honest with you, I don't remember what I talked to them about. It was just

the status. It was probably five minutes. What's the status?

Ken Turkel had communications, and they were extremely short. I don't know if it was with the -- I think he talked to the FBI and the AUSA for just a couple of minutes on what's their position with regard to these documents. And it was the same time that Mr. Berlin was getting what their position was, which is -- and it was a changed position. The FBI originally said, Do not talk to anyone about this. And just so you know, that's not why we didn't produce these documents. We didn't produce these documents because they never asked for them.

But we certainly weren't volunteering information about the FBI just to volunteer, because they had said, Keep a lid on this. Don't talk to anyone about this, certainly not -- certainly not media. Well, they are media, so the FBI didn't want some big media storm over this and then cause their whole investigation to look embarrassing to them. And so they were trying to avoid a situation like that, I assume. And they were trying to avoid anyone interfering with their investigation while they were conducting it.

But towards the end of the process, Mr. Berlin was able to get them to confirm that they -- I think he said there was a closed investigation. I don't think I have ever heard that it was a closed investigation. We've always been told that it was still open but that they had decided that they, based on the present evidence, they were not going to prosecute.

Now, if it closed at some point, then it closed at some point, but I don't believe that I or David or Ken ever made any misrepresentations of any kind regarding the status of the FBI investigation and the AUSA's desire or lack of desire to prosecute.

Law enforcement changed its mind over the course of time, and so if there was a flip-flop, it was really by law enforcement, and it certainly wasn't by us. And if we were ever reporting what our understanding was, it was just based upon what our present knowledge was, and it was not intended to mislead anyone.

And even so, I mean, this whole extortion thing, we always have thought of that as being separate and apart from what Gawker did. Gawker took a tape, edited it down, and posted that tape.

We sued over that. And the fact that there is an extortion happening, I think that that is somewhat far afield. But they have the documents to take a look at it and make whatever determinations they want.

But I think if they do -- it sounds like they want to proceed with discovery on the extortion attempt and what was going on with law enforcement as the extortion. And if you are going to allow them to engage in that discovery, I don't think that it's going to end up yielding admissible evidence.

They're complaining about how expensive this is. They're the ones driving the boat on the expense. They're the ones who are going after all kinds of things that are beyond what they did and beyond what their defenses are to what they did and what our claims are. But if they want to spend a lot of money on uncovering every stone and turning over every stone and uncovering everything that has anything to do with anything, then I suppose that's their prerogative within the scope of whatever the courts are going to order. But if they are complaining that that's expensive, I mean, that's on them. We're not -- we're not

causing that expense.

I hate to repeat myself, but one of the statements that Mr. Berlin said was that we failed to produce documents that were already adjudicated to be relevant. And that's -- and he was citing to the October 29 oral order, and then it was reduced in writing on February 6th, 2014. If you read it, what he said is absolutely not in there, and we have not violated this order at all.

I think I have covered my issues, Your Honor. If you have any questions, I'm happy to answer them.

JUDGE CASE: I think I'm good.

Short reply?

MR. BERLIN: I can give you a short reply.

JUDGE CASE: Okay.

MR. BERLIN: Let me start by asking Your Honor if you have any questions for me.

JUDGE CASE: No, sir.

MR. BERLIN: Let me start by saying that my favorite quote of the case is that Mr. Harder cited in his supplemental opposition from a judge in one of these cases who said that litigation is not a fact-free zone. And so I want to sort of focus on the facts. I think there has been a

significant -- the argument that Mr. Harder just gave reflects a significant misapprehension of what it is that we're here about. We are not here because there was a delay in producing FBI documents by itself. We are here because, first, we believe that the initial set of discovery requests and the order to produce documents that relate to the sexual relationship between the plaintiff and Heather Clem encompassed documents about a tape or multiple tapes involving a sexual relationship between the plaintiff and Heather Clem.

And we think that those document requests, you know, any and all documents related to the video, any and all documents related to the communications you had about the video, any and all documents relating to sexual relations you had with Heather Clem, any and all documents concerning any videotape made of you involving -- I'm sorry, engaged in sexual relations, these are all documents that -- document requests that were the initial batch of documents requested last June that should have been answered and should have been provided.

Now, even if you were to take the argument

that says that you didn't specifically ask us for law enforcement records and, therefore, we do not have to produce them, I don't think that makes a lot of sense, because in the documents themselves there is -- just in one of the documents itself, there is a passage that says that in this agreement with Mr. Davidson that his client agrees that the party that possessed the videos -- sorry. His client agrees that they are the party that possessed the videos given or provided to Gawker, TMZ and other media for publication.

Now, he may say that's not true. I wouldn't trust the word of an extortionist, but it's clearly a relevant document because it clearly relates to Gawker and what was posted by Gawker. And we didn't get those documents.

But even if you assumed that these documents didn't have to be produced, that we didn't ask for them, we didn't make the skill shot of actually saying, Give us the law enforcement documents, instead of more broad requests, and even if you assume that you don't have to identify them as privileged -- and there are documents that start on the 9th of October which is about a week before this lawsuit got filed.

And our position is that things that were exempted from the privilege log were things that related to attorney client and attorney work product privileges because of the burden involved. And for our part, we've asserted other privilege, journalist privilege and the like for things that postdate the filing of the first lawsuit in federal court. So we've played by that rule.

But even if you assume -- so we don't -- even if you assume they don't have to be produced and even if you assume that the prelitigation documents don't have to logged, the information that's in those documents is still relevant and germane to the answers of the questions that we're getting. So when the answer to the interrogatory sworn under oath is, I have no information about any other sex tapes involving me other than the one that Gawker posted, that's just -- that's wrong. And it's not a question of just there was a delay in giving us the FBI documents; it's that there is affirmative representations under oath that are wrong.

And then we come to hearings and we say, Look, we don't think we have all of the information. And we assure you up and down we

have given you everything, right? We assure you we have given you everything, all of the media appearances. We're in New York litigating against the publicist, because we were in a hearing in front of Your Honor where Mr. Harder represented that he didn't have any documents.

And then we litigate there, and we come to find out that he has documents in his own file back and forth with the publicist which he's now described. And we find this out. So this is not a motion about a delay in getting discovery or the alleged prejudice that results from the delay in getting discovery. If that's what this was about, we would not be here.

What this is about is that we have litigated since last June trying to get these facts, and we're not getting these facts. We're getting different facts. We're getting told, you know, I don't know anything about any other tapes, right?

And on this question of tapes, again, it's, I don't know if there are these tapes, right? Well, first of all, we have another transcript from another source that also describes two of three tapes and largely matches.

Second, the one tape that we do have

Mr. Harder admits lines up pretty nicely with the transcript there, so that suggests that maybe the transcripts that are there are not complete fabrications.

And, No. 3, for tapes they don't believe exist, they have spent an awful lot of time trying to get them back from the FBI. That's what our submission shows, that they are up in arms. Don't hold them; we want you to give them back to us, presumably so they can destroy them, which is why we asked for a preservation order.

So that's what this motion is about. The second thing is they say, We haven't violated any court order. Well, I think in addition to violating the court orders, you have some basic duty of candor to the tribunal, and so when Mr. Harder comes and says, We don't have any of these documents; I don't have any privilege documents; I don't have any media appearance documents; I don't have any other documents about any other tapes, when those statements get made, those are misrepresentations, and they lead to the entry of the orders that are problematic.

Mr. Harder wants to now have us interpret Judge Campbell's order from the January 17th

hearing about the provision of video to you, which he made based on the argument that actually seeing Mr. Bollea and Ms. Clem engaging in additional acts of sexual intercourse and sexual relations shouldn't be produced to Gawker even under attorney's eyes only or a confidentiality order.

That was not about the text of those things. And to the extent that we now want to interpret that order to apply to the text of documents, we weren't able to litigate that issue in front of Judge Campbell properly because we didn't know that there were these transcripts that existed because they had been withheld with us. So to sit there and say, We now need to interpret an order that was issued based on neither Judge Campbell nor the other side knowing what was what doesn't seem right at all.

But there have been -- the first order from October 29th said documents and information, both, pertaining to the sexual relationship between Mr. Bollea and Heather Clem need to be provided, and the order itself specifically calls for supplementing interrogatories and providing documents. So that's a first violation.

Then we come to the second order, which is

your order from February, which was not challenged and, therefore, is the order, in which you say, I'm denying the motion for sanctions, but I'm doing it based on a representation that you've provided everything that you can and that you have on this subject. And then if that turns out to be wrong, then you can -- you know, basically you're in trouble. So that's a second violation.

And then the third violation is a violation that's been conceded, which is from the April 23rd order which says, I was ordered to produce phone records; I was ordered to produce FBI documents; and I haven't done that. I haven't -- they're still -- there are still records that -- the FBI records have been produced. They were produced, you know, in that sort of rolling fashion. But they have been produced. But the phone records and the media appearances, we haven't gotten those documents, right? So when we have a series of these orders, that's the problem.

And when you look at -- and so the response to all this, again, is rather striking to me, is that this stuff is collateral. It's not relevant. It's not going to yield any admissible evidence. We've heard that over and over again, right?

That's not relevant to this case. I mean, Mr. Harder probably made -- this is a tape, you know -- this is a case about this tape. He went on at some length about, Let me remind you what this case is about.

We have a different view about what the case is about, and we're entitled to that. But we've litigated that, and we have umpires, two of them in this case, who have already called those balls and strikes and made that ruling. And we don't -- it's like if you were on the baseball field and, you know, umpire says, you know, that's three strikes and you're out, and you turn to the ump and you argue and say no, it's not; I'm going to substitute my judgment about what's relevant and what's not for you, you know, that's not how -- that's now how this game is played.

And then, you know, speaking just to the dismissal point, I think that this showing that we have made shows that over time that these misrepresentations were willfully made. They included the personal involvement of the client who testified about them at some length during his deposition, that you considered lesser sanctions in the earlier sanction motion and you denied it

with the caveat that if they did it again, that there would be a further sanction; that there has been clear prejudice to us as a party.

I mean, there are a number of things that we have -- we have had to chase down. So, for example, just on the date, Mr. Harder says, That's a silly thing; who cares whether it's 2006, 2007, 2008. Well, during that time period, Mr. Bollea was married, then separated, then divorced, right? During that time period, we don't -- you know, there is video broadcasts which we played during the deposition where Mr. Clem talks about having cameras in his house, right? Did these encounters happen before or after that?

There is radio broadcasts. There is a period where Mr. Bollea lives with Mr. Clem. Was that before or after these encounters? We're just trying to square out what happened, and we spent -- I mean, we've got documents here that tell us the answer to this question, which they had and they have had since any discovery, you know, before any discovery was answered in this case that answered these questions. And, look, if they want to say, Look, here is a document; we're not sure this is the right answer, they're free to

do that. But to say, We have this information but we're not going to give it to you, that's just not right.

It's obviously prejudiced the judicial system in the sense that there have been misrepresentations to you and to Judge Campbell and that you have made rulings based on those misrepresentations and that you have taken up your time, which by the way Gawker is prejudiced in because we pay half of that. And that is a direct affront to the administration of the judicial system.

And the last is that I would submit that the explanation that Mr. Harder has given is basically to reargue the point that these things are relevant -- that these things are not relevant to the case. And that's already been determined that we don't get to do that. We don't get to litigate a motion on phone records, litigated it in front of Judge Campbell, and then turn around and say, We are not going to comply with that order because we think -- we want to again assert that there is a privacy interest. That issue has already been adjudicated. How many times are we going to do this, Your Honor? And I don't view these things

having a reasonable explanation when taken in toto.

And I think I will stop there. I think there is a, you know, as I said earlier -- let me just stop here, which is to say to the extent that these FBI documents -- there is no evidence that anybody went back to the FBI and said, You know, we have a discovery request that calls for some of this information. Even if we don't produce the documents, we have a discovery request that calls for some of this information. Do you now have concerns about us doing that?

All right. They didn't come to you or to Judge Campbell and say, Look, we're between a rock and a hard place. What would you have us do? They just arrogated it to themselves, the decision to say we're not going to disclose this information. And I would respectfully submit that that's just wrong. And that if you get to do that, this whole process completely falls apart. And that's why we're here today, Your Honor. And with that, I think I will stop.

JUDGE CASE: Anything else?

MR. HARDER: Do you have any questions?

JUDGE CASE: No.

MR. HARDER: You've heard a lot; you've read a lot.

JUDGE CASE: I have.

MR. HARDER: I don't want to repeat myself.

JUDGE CASE: I have. All right. Let's take five minutes.

(A recess was taken at 11:32 a.m.)

JUDGE CASE: All right. I have had the opportunity to review all the materials that have been furnished to me prior to the hearing here today. I have also had the opportunity to listen carefully to the arguments which have been propounded to me, and on both sides you have represented your clients very capably. And I have thoroughly enjoyed hearing these arguments. I know you get to make them, but I get to hear them. And after all those years on the bench, I used to dread these kinds of hearings, because most of the time the lawyers are not as competent you are, and you do a good job, so I appreciate that.

But in the final analysis, any analysis with respect to sanctions in the Florida courts are still governed by the case of Kozel versus Ostendorf, which is an old Supreme Court decision which is still good and still followed. And the

tenets of that and the analysis of that case still control.

And applying that analysis, I come to the conclusion that the defendants' motion is -- will be denied in its entirety. I will take advantage of Mr. Harder's offer to have Mr. Bollea submit for limited issues on another deposition with respect to the matters that may have been raised by the release of the FBI records. But other than that, I think that's about as far as it ought to go.

MR. HARDER: Thank you.

JUDGE CASE: Next motion.

MR. BERLIN: Your Honor, if I can make a point for the record.

JUDGE CASE: Yes, sir.

MR. BERLIN: It's my understanding that that case applies to where there is a dismissal sanction requested but that the factors that are outlined there are not limiting for other sorts of lesser sanctions. And I just want to make that on the record.

JUDGE CASE: The case instructs the trial court to apply the least offensive sanction to accomplish the goal, and it goes through the whole

REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Aaron T. Perkins, Registered Professional Reporter, certify that I was authorized to and did stenographically report the above hearing and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 22nd day of July, 2014.

_____
Aaron T. Perkins, RPR