

# 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.

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HEARING BEFORE THE HONORABLE PAMELA A.M. CAMPBELL

DATE: July 1, 2015

TIME: 1:36 p.m. to 5:10 p.m.

PLACE: Pinellas County Courthouse  
545 1st Avenue North  
Third Floor  
St. Petersburg, Florida

REPORTED BY: Aaron T. Perkins, RPR  
Notary Public, State of  
Florida at Large

Volume 2  
Pages 123 to 301

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23 ALSO PRESENT:  
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25 Heather L. Dietrick,  
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1 THE COURT: Okay. So the FBI, No. 6, we are  
2 going to wait on that one until we take our next  
3 break or maybe later in the day.

4 Number 7 was prejudicial and irrelevant and  
5 improper character evidence regarding Mr. Bollea.  
6 What I didn't understand was there was papers  
7 after that that said, Amended motions in limine,  
8 7, 8, 9, and 18. And it appears as though No. 7  
9 that I read wasn't the amended version, so I got a  
10 little lost in all that and couldn't figure it  
11 out.

12 MR. VOGT: I think they just fixed the  
13 exhibit numbers.

14 MR. TURKEL: They were just stylistic exhibit  
15 numbers changes, or something, Judge. The  
16 substance of the original, I believe, was the  
17 same --

18 THE COURT: Okay.

19 MR. TURKEL: -- as the amended.

20 These are somewhat related, Judge. We have  
21 laundry-listed these numerous tabloid and other  
22 articles tabloid that have been listed on their  
23 various lists. Seven -- Motion No. 7, starts at  
24 3A through -- basically paragraph 3A through 3K.  
25 A bunch of random shows and statements, some of

1           which are hearsay, some of which are not, that  
2           have nothing to do with the specific tape we're  
3           talking about in this case, some of which are as  
4           remote in time as the November 1982 article in We  
5           magazine shortly after or somewhat around the time  
6           that our client was in Rocky III over 30 years  
7           ago.

8           THE COURT: So can I just make this general  
9           statement? And this goes to 7, 8, and it also  
10          goes to a number of the defense's, and it really  
11          goes to a number of these, actually. There comes  
12          a point in time where the 403 analysis -- and that  
13          is whether you're saying how rotten and what a  
14          sex-deprived person Mr. Bollea is versus how  
15          rotten and terrible Gawker is. It goes to either  
16          side.

17          At some point there is a 403 analysis, and  
18          the court is going to say, It's overkill, and it's  
19          not coming in. Some of these older things, things  
20          from 1982, seems to be so irrelevant I can't even  
21          imagine it. I'm not -- I don't see it, though. I  
22          don't have the actual exhibits, so it would be  
23          easy for me to rule just on these little summaries  
24          that are outlined, especially in 7. Eight goes to  
25          some other hearsay issues. But the relevance of

1 it, I don't see how it could be relevant.

2 To some degree I understand that you want --  
3 the defense -- wants to show that Mr. Bollea put  
4 all this stuff and information out. He's the one  
5 that made it. He's the one that did this in the  
6 first place, and, therefore, you were justified in  
7 publishing what you did. But there is a point  
8 that all of this just isn't going to be coming in.  
9 So it's sort of like pick your poison for both  
10 sides, and we'll just have to see what you pick.

11 MR. SULLIVAN: May I just respond to that?

12 THE COURT: Please.

13 MR. SULLIVAN: I couldn't agree with you  
14 more. All right? And in keeping with what I said  
15 a moment ago, you have got to respect the jury.  
16 You don't want to load them up with just days and  
17 days of this stuff. They're not -- they're not  
18 going to appreciate that, and they're not stupid.  
19 They don't need to see all that. So we will try  
20 to, with some degree of the judicious choice, pick  
21 the ones that we think --

22 THE COURT: Here is the deal.

23 MR. SULLIVAN: We know you're going to call  
24 us out of bounds.

25 THE COURT: But we're here on motions in

1                   How about that?

2                   MR. SULLIVAN: All right.

3                   THE COURT: I think that covers it for No. 7.

4                   We can move along to 8. Eight is mostly  
5                   hearsay issues.

6                   MR. TURKEL: Massive hearsay within hearsay  
7                   and really much more tenuous links to our client's  
8                   direct participation. These are articles. These  
9                   are reporters writing things, filled with, you  
10                  know, hearsay within hearsay, plus opinion.

11                  THE COURT: So let me just give this guidance  
12                  to Mr. Sullivan. So Mr. Sullivan, I'm looking at  
13                  Motion 8 -- or Plaintiff's Exhibit -- Plaintiff's  
14                  Motion in Limine No. 8, here again starting at 3.  
15                  So I would imagine any 1996 articles would be out.  
16                  So the motion in limine would be granted.

17                  MR. SULLIVAN: Judge --

18                  THE COURT: That's all because I haven't seen  
19                  any of these. So you can come back later on and  
20                  tell me what you think.

21                  MR. SULLIVAN: Okay. This goes to my broader  
22                  point about we're not going to, you know, overload  
23                  this record, but we do have to show -- we have an  
24                  obligation to show that these matters were matters  
25                  of public concern, that press of all types,



1 national media, tabloids, local press, you name  
2 it, were following this fellow's sex life, his  
3 marital fidelity. These issues were something of  
4 public interest.

5 THE COURT: You know, I'm sure he will --  
6 when you ask him on cross-examination, he will  
7 probably even tell you about some of them.  
8 But some of this is just going to be overkill, so  
9 unless I see it -- I'm granting the motion in  
10 limine to this old stuff. So from 1996, that  
11 would be A, B, and C, would be granted. E would  
12 be granted. F would be granted.

13 There is a 2006, D, St. Petersburg Times  
14 article about Kate Kennedy's allegations. I  
15 imagine someone wants to specifically refer to  
16 that, because there are a number of Kate Kennedy  
17 allegations.

18 MR. TURKEL: What I would say, Judge, is that  
19 at no point in this case have they contended that  
20 they published this video because of marital --  
21 past fidelity being newsworthy. What they have  
22 said is his general sex life. So a bunch of the  
23 papers decide to write about unsubstantiated  
24 allegations that --

25 MR. SULLIVAN: It's not a matter --

1 MR. TURKEL: Excuse me.

2 MR. SULLIVAN: Sorry.

3 MR. TURKEL: And now what you run into there,  
4 Judge, is what we belief would be completely  
5 prohibited by the character evidence rule. What  
6 you're saying is he's a bad person, and he's a bad  
7 person because somebody made unsubstantiated  
8 allegations against him, that a reporter decided  
9 to write about. They all relate to Kate Kennedy,  
10 which were never substantiated or proven.

11 So what are we going to do? Hey, Jury, look,  
12 some random person back in '96 through '06 decides  
13 to accuse Mr. Bollea of these horrible things, and  
14 a bunch of reporters thought it was interesting  
15 that she accused him, but it was never proven or  
16 substantiated; that's why we published the video  
17 in 2012. They have never even argued that in this  
18 case, Judge. Their own witnesses haven't argued  
19 that, you know.

20 And that's the kind of, A, because of the  
21 hearsay dangers and the opinion dangers, and, B  
22 the character -- that's exactly why we have  
23 character evidence rules. You don't want to say,  
24 He was a bad guy then, so we were able to show he  
25 is a bad guy now, if these things were even

1 proven. They are unsubstantiated.

2 THE COURT: I'm just trying to give you-all  
3 some guidelines so when you meet and confer, you  
4 know where to go.

5 MR. SULLIVAN: I hear you, Your Honor. The  
6 thing here is this isn't a matter of what our  
7 motivation was or whatever when we published.  
8 This is the simple legal issue that show that  
9 prior reports about his sex life, they're relevant  
10 to establish that his sex life has been the  
11 subject of ongoing media attention for roughly two  
12 decades. The jury is entitled to know that. If  
13 you present this in a vacuum, all they see is like  
14 Gawker took it upon itself to publish this post  
15 about him in this brief excerpt from the sex tape.  
16 They go, Jeez, oh, Pete, that seems kind of harsh.

17 THE COURT: Okay. So here is the deal, I  
18 guess, you know, the old rule, what's good for the  
19 goose is good for gander. So the defense gets to  
20 bring in all the old stuff about Mr. Bollea, and  
21 the plaintiff gets to bring in all the old smutty  
22 stuff that Gawker has published. That's the good  
23 for the goose, good for the gander rule, you know.

24 I think it's over -- all of it is overkill.  
25 I don't think all of it is relevant. This is why

1 we're going through this exercise, so I can tell  
2 you right now where all of that on either side is  
3 just not coming in. I'm trying to sit here and  
4 narrow some of these issues. I have not seen all  
5 of these things. I don't know. While I have seen  
6 lots, I don't know what specific exhibit number  
7 pertains to which specific thing I have seen in  
8 the past. So I'm not going to put the jury  
9 through it, because it's not relevant, all of  
10 everybody's trash.

11 So we're going to narrow these issues. I'm  
12 fine to give you guidelines. And then if there is  
13 something specific that when you go back and you  
14 look at it it's just burning that you've got to  
15 show this to the jury, then you can give it to me  
16 specifically. But I think the stuff regarding  
17 Kate -- well, we're not on Kate yet.

18 MR. HARDER: Kennedy.

19 THE COURT: Yeah, Kate Kennedy is irrelevant.  
20 Anybody else have anything else to say?

21 MR. TURKEL: No, Judge. I mean, we could  
22 continue to go down these. I think one point I  
23 would like to make based on what Mr. Sullivan just  
24 argued was I think I heard him say that this is  
25 not about our motivation in publishing. And my

1           understanding was the only reason that they were  
2           going to try and make any of this relevant was  
3           that they thought it showed, as tenuous as it  
4           maybe, that our client made his sex life, quote,  
5           unquote, relevant. I thought that was the only  
6           reason. Now, if that's not the reason, then this  
7           stuff is absolutely irrelevant.

8           THE COURT: Yes. But you --

9           MR. SULLIVAN: You misunderstood.

10          MR. TURKEL: Yeah, maybe I misunderstood it.

11          THE COURT: You want to show that it's  
12          relevant to their -- to generate profit, so --

13          MR. TURKEL: Judge, I think what we can we  
14          show in ours -- and we'll get to ours -- is, in  
15          the absence of this good faith defense, is really  
16          a specific hardline policy as to what they publish  
17          and don't. We relied on how they have talked  
18          about similar situations to get guidance as to  
19          what their standards are for publishing, because,  
20          remember -- and I argued this is in punitive  
21          damages -- when we asked them, your good faith  
22          was -- remember in Toffoloni they talked to the  
23          lawyers, and the lawyers said, Publish it.

24          THE COURT: Toffoloni.

25          MR. TURKEL: Toffoloni. We'll get it.

1           When we asked them that to try and discover  
2 purely what happened inside of Gawker vis-à-vis  
3 their purported good faith, they objected. They  
4 said it was privileged. We were left with no  
5 mechanism but their other statements, which are  
6 admissions and are not hearsay about how they  
7 guided themselves or saw others guide themselves  
8 in what was right and wrong.

9           I think you're going to find a much more  
10 direct link than the stuff that we have put out  
11 there than the free-for-all on anything that's  
12 happened to a professional wrestler over his  
13 38-year career. So that's where I would draw the  
14 distinction as far as trying to guide the Court's  
15 analysis on this stuff.

16           MR. SULLIVAN: Judge, I have one other point  
17 that I think you should be aware of, as you do  
18 your analysis. And, that is, that to the extent  
19 the plaintiff is seeking damages for harm to his  
20 reputation -- you probably haven't had a chance to  
21 go through the jury instructions and look at them  
22 closely. But one of the things they have in their  
23 instructions is they seek harm to reputation for  
24 the plaintiff. If you seek harm to the  
25 reputation -- all right -- fine.

1           But if you want to claim harm to your  
2           reputation and say you were just fine and dandy  
3           until our Gawker came down the pike, the law  
4           provides that the defendant is able to say, Well,  
5           really? Did this article harm your reputation?  
6           Yes, no, maybe so. Did this article harm your  
7           reputation? Did it harm your reputation when you  
8           went on Bubba's show and you said this? Did it  
9           harm your reputation when you did this and this  
10          and this and this? Judge, I have tried these  
11          libel cases for years. Juries find that  
12          persuasive.

13           MR. HARDER: Your Honor, I think about two  
14          years ago we told Your Honor we were not seeking  
15          damages for harm to career, harm to reputation,  
16          any of that. I think what he's referencing is  
17          that we took a standard jury instruction and  
18          popped it in. And we can remove the word  
19          "reputation" and that's the quick fix to that.

20           MR. SULLIVAN: There you go.

21           THE COURT: Okay. Wonderful.

22           MR. SULLIVAN: Thank you.

23           MR. TURKEL: Judge, where does that leave us  
24          on 7 and 8? Do you want us to take your direction  
25          and perhaps narrow -- get to you what we think you

1 need to look at?

2 THE COURT: Mr. Sullivan says that what  
3 you're going to be doing.

4 MR. TURKEL: I'm happy to do it. We just --  
5 we said -- we went through a couple more, so --

6 THE COURT: I don't have any more ideas.

7 MR. TURKEL: I think you have given us a  
8 clear message, Your Honor. There are plenty more  
9 to handle.

10 THE COURT: I don't know. Is Mr. Sullivan  
11 clear on the message?

12 MR. TURKEL: I don't know.

13 THE COURT: It's his motions in limine.

14 MR. SULLIVAN: Yeah, we would like to work  
15 this out, Your Honor.

16 THE COURT: You want more guidance?

17 MR. SULLIVAN: Yes.

18 THE COURT: Okay. So it seems to me that  
19 Kate Kennedy allegations are remote. I am  
20 concerned about the hearsay articles that are in a  
21 number of -- No. 8, really seems like a lot of  
22 hearsay. And so unless I can really see it and  
23 see that it was something -- it's one thing if  
24 Mr. Bollea is telling about it in his own words.  
25 If it's somebody else's words about his affair



1 with somebody else, that's just too much hearsay  
2 to be allowed in.

3 MR. BERRY: Your Honor, if I may, none of  
4 this stuff is being admitted for the truth of the  
5 matter asserted. This goes, I think, to something  
6 that we talked about earlier with Mr. Foley. If  
7 he's allowed to get on the stand and talk about  
8 what the appropriate mores are of the community  
9 and what's appropriate in the news, then we should  
10 be permitted to put on evidence about what news  
11 coverage and what news reports are out there about  
12 Mr. Bollea, whether they are true, false, or  
13 indifferent. It's fact that the media has covered  
14 him.

15 And with respect to this matter of legitimate  
16 public concern, the question isn't the state of  
17 mind of Gawker. The question is, Was it a matter  
18 of legitimate public concern? And the fact of the  
19 matter is, that given the laundry list of the  
20 stuff that is here, you know, going back as long  
21 as it has, shows in our minds that it is. But  
22 we're not offering this to show that any of these  
23 things are necessarily true but, rather, that  
24 there has been reporting on it.

25 THE COURT: That's what I'm saying. I don't

1 know how you intend to use any of it. Is it a  
2 collage of headlines and it's one piece of paper?  
3 Is it each every single article that you plan on  
4 going through and saying, Well, isn't it true you  
5 had an affair with this person and that person and  
6 that person? Well, what about this person? I  
7 don't know how you plan on presenting that.

8 MR. TURKEL: Judge --

9 MR. BERRY: I think what we would do -- to  
10 answer your question, I think what we would do is  
11 twofold. One, we might use with him and we might  
12 use with other people, you know, Isn't it a fact  
13 that there were reports about this at this time?  
14 That's true. That is a fact. Going into the  
15 allegations doesn't really matter. There was  
16 reporting on this.

17 The other thing you might do is have a stack  
18 of these things and say, Well, this is all the  
19 reports that were about you in 2007, 2008, 2009,  
20 2010. All of these dealt with your sex life.  
21 We're not going through each one.

22 THE COURT: Well, how would he be able to  
23 answer that?

24 MR. BERRY: Flip through it.

25 THE COURT: If it's a pile of things, I don't

1 know that he would be able to answer that.

2 MR. TURKEL: I have got two comments.

3 THE COURT: I don't think he's done.

4 MR. TURKEL: I'm sorry. He's doing a  
5 consult.

6 Okay. Judge, we raised the motion --

7 THE COURT: He's not done.

8 MR. TURKEL: I'm sorry.

9 MR. BERLIN: I'm sorry. He did say he was  
10 done, Your Honor.

11 THE COURT: So he did. I'm sorry.

12 MR. BERLIN: He said Mr. Turkel could go.

13 MR. TURKEL: We raised the motion that it's  
14 an 805 problem, hearsay within hearsay.

15 Assuming -- and, you know, again, I don't know  
16 which portions of this they actually want to use.  
17 But assuming that the statement, whatever that  
18 statement may be -- let's call it a third-party  
19 statement in a National Enquirer article. That's  
20 not being offered for the truth. They're still  
21 not taking care of the other layer of hearsay,  
22 which is the report of getting this statement.  
23 You've got it here to here, and you've got two  
24 layers to deal with, and then you've got all the  
25 opinion and other fluff that comes with it.

1           Judge, I'm going to go back to something,  
2           because I want to try and keep it focused on  
3           something that we're obviously going to focus on  
4           and we focused on when we discussed summary  
5           judgment in the punitive damages issue, which is  
6           when we asked the editor of this piece, the one at  
7           issue in this case, the one we're actually trying  
8           the case over, what the newsworthiness was, we had  
9           two answers from him.

10           And he said both times variants of this: The  
11           hook was the video; the news was the video. He  
12           didn't say, Well, Hulk Hogan has 20 years of being  
13           harassed by the National Enquirer, and, therefore,  
14           we felt that anything he did sexually was fair  
15           game.

16           And so you have a 104 conditional relevance  
17           issue, which is if they are not using it for that,  
18           it's completely irrelevant. If they want to take  
19           the risk of saying it's conditionally relevant,  
20           because they will tie it back, then they're going  
21           to be subject to a sworn answer that the editor of  
22           the piece has already put -- we put it in the  
23           record. Maybe he will dance. I don't know.  
24           Maybe he'll jump on the witness stand. But one  
25           way or the other, that's coming in, either through

1 impeachment or his deposition.

2 And so, really, it's kind of a 104 argument  
3 on top of an 805 argument. It's about as  
4 dangerous a variety of evidence, unless you're  
5 going to cherry pick: One person said this, and  
6 that's an admission and it's relevant because...  
7 That's my position on this stuff. So maybe with  
8 some more direction and maybe they refine it a  
9 little bit, we'll get there.

10 MR. BERRY: Your Honor, again, it's two  
11 separate questions. What Gawker thought when they  
12 were publishing the piece goes to good faith and  
13 goes the scienter requirements under each of the  
14 reports. The separate question and the  
15 constitutional question is, Was this related to a  
16 matter of public concern?

17 And there is no hearsay issue with the fact  
18 of publication. We are not going to get into the,  
19 you know, whether Christiane Plante and  
20 Terry Bollea had an affair. We're not going to  
21 get into what happened in this place or that place  
22 or with this person or with that person. It  
23 doesn't matter.

24 Under the First Amendment, the question is,  
25 Does this publication relate to a matter of

1 legitimate public concern? It doesn't matter what  
2 Gawker thought. That's a separate element related  
3 to the these claims. It's a separate element with  
4 respect to the defense of good faith and all goes  
5 to punitive damages.

6 But the question of whether it related to  
7 matter of public concern is an element that stands  
8 on whether there was public concern on this  
9 laundry list of stuff, as evidenced by these  
10 numerous reports. And that's the -- this is not  
11 hearsay; this isn't an 104 problem; it isn't 805.  
12 There is no question that these things were  
13 published. That's all we want to prove.

14 THE COURT: So here is what you-all can do.  
15 You can get me copies of those exhibits. I will  
16 review them and give you a ruling on each one  
17 specifically. And that's after you decide if you  
18 want them in or not.

19 MR. BERRY: Thank you, Your Honor.

20 THE COURT: Thanks.

21 Let's just go to 9.

22 MR. TURKEL: More of the same, Judge.

23 THE COURT: I don't necessarily think so. I  
24 mean, really, the -- the Bubba Raw Show, we're now  
25 No. 9. Here again, we go to 2A. We have got

1 find out whether he's telling the truth or not.  
2 He did testify this way in the deposition, but we  
3 don't believe that was truthful testimony.

4 THE COURT: Well, here is what I'm going to  
5 do. One, we can reserve until we hear from  
6 Mr. Clem's attorney. Two, before anybody calls  
7 him, we'll get these issues resolved, and we'll  
8 see where the trial is at that point in time.  
9 Maybe it will be over in two weeks without  
10 Mr. Clem.

11 Okay. So let's talk about No. 12, which I  
12 think I pretty much excluded any prejudicial,  
13 irrelevant, improper character evidence regarding  
14 Mr. Bollea's sexual relationship.

15 MR. VOGT: I don't know that this one will be  
16 an issue, Your Honor. I think it was maybe  
17 preemptory. But this relates to the sexual  
18 relationships with anyone other than Heather Clem.

19 THE COURT: Well, I think I have pretty much  
20 ruled on that. I mean, is there other information  
21 that somebody plans on bringing in during the  
22 course of the trial?

23 MR. SULLIVAN: Your Honor, to the only  
24 extent, again, just so you know, in his book, in  
25 his autobiography, he himself talks about his

1 relationships with various people. That's the  
2 only extent that, you know, it goes to those  
3 issues that we have already talked about. So it's  
4 just -- it's kind of related to what you have  
5 already spoken to.

6 MR. VOGT: And you already made a ruling in  
7 discovery in this case that there will be no  
8 discovery because it wasn't relevant, sexual  
9 relationships with anyone other than Heather Clem.

10 THE COURT: Well, if he's talked about it in  
11 his book, it's probably fair game.

12 MR. SULLIVAN: It's a broad land; it's not us  
13 going and taking depositions.

14 MR. VOGT: And I assume it would be limited,  
15 or we would be able to object at the time if it  
16 starts going too far afield.

17 THE COURT: You can object all along the way.

18 MR. SULLIVAN: There we go.

19 THE COURT: Okay.

20 MR. VOGT: Just not a speaking objection.

21 THE COURT: Exactly, not speaking. Thank you  
22 for remembering.

23 Okay. And this one, then, I don't know how  
24 to actually to rule. But as long as everybody  
25 understands if it's something that he wrote, he



1           said, that's one thing. Do we need to take a  
2           break?

3           MR. SULLIVAN: That would be super.

4           THE COURT: Okay. Great. How about a  
5           ten-minute break. Do you need longer? Do you  
6           want to call somebody?

7           MR. BERLIN: I will try him now, and  
8           hopefully ten minutes should be enough. I may not  
9           get him, but I will do my best.

10          THE COURT: If you don't, we can wait for a  
11          few minutes.

12          Thank you. When we come back, we'll go to  
13          13.

14          (A recess was taken at 2:52 p.m.)

15          (Court called to order at 3:15 p.m.)

16          THE COURT: Mr. Berlin, were you able to talk  
17          anybody?

18          MR. BERLIN: Sadly, no, Your Honor. I got  
19          voicemail several times, but I will continue to  
20          try. And I left somebody in my office with  
21          instructions to try while we're in session.

22          THE COURT: Great. Okay. Will somebody let  
23          you know if they do?

24          MR. BERLIN: Yes. And if it's all right with  
25          Your Honor, I normally would turn my cell phone

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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 2nd day of July, 2015.

\_\_\_\_\_  
Aaron T. Perkins, RPR