

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.

_____ /

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:
24

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 limine, and there is not going to be a whole lot
2 of time. So can I ask you, Do you intend to use
3 3A, the November 1982 magazine article, "My Boy,
4 Hulk."

5 MR. SULLIVAN: I don't think so, Judge, with
6 one footnote for you. The only point is there is
7 a pertinent point which is that he has used sex as
8 part of his character for a significant period of
9 time. So I can see not dwelling on it but making
10 the point that as far as back -- you know what I
11 mean? And that gives you a starting point as we
12 walk down this road. We're not going to be
13 dwelling on it. But that's the only reason. As I
14 stand before you right now, I don't think that We
15 magazine article is necessarily, you know,
16 the most --

17 THE COURT: Great. For now, the We magazine
18 article is granted for the motion in limine, so
19 that's out. A video you have taken of Mr. Bollea
20 using the toilet, do you intend to use that?

21 MR. SULLIVAN: I think so.

22 THE COURT: Well, then somebody needs to show
23 it to me, and then I can make a decision as to
24 that.

25 MR. SULLIVAN: Fair enough.

1 THE COURT: Statements to Mr. Bollea's book,
2 "My Life Outside the Ring," I think this really
3 goes to a lot of the issues of --

4 MR. TURKEL: Judge, if I could, just for
5 background on 3B.

6 THE COURT: Yes.

7 MR. TURKEL: He was in the hospital. His
8 testimony was -- they examined him about him using
9 the toilet. He was highly medicated and he was in
10 the hospital. I mean, I don't -- I don't know
11 what version of that makes him putting his life --
12 putting his sex life out in the public domain, not
13 that there is anything sexual about using a
14 toilet.

15 MR. HARDER: And in the video, he was -- he
16 had an I.V. hooked up to him, and he was obviously
17 under the influence of the medication.

18 MR. BERRY: Your Honor, I mean, that's what
19 he can argue. He took the video of himself going
20 to the bathroom and posted it on his Twitter feed
21 several years back, back in -- I think it's 2011,
22 which is around the time that this came out.

23 THE COURT: The motion in limine is granted
24 for B. I don't need to see it.

25 C, "My Life Outside the Ring," clearly that's

1 something that has been something that's been
2 talked about. It seems, though, it goes more to
3 the issue of Ms. Plante, P-l-a-n-t-e, and that
4 also goes into a lot of the stuff that's addressed
5 in No. 8, Motion in Limine on No. 8.

6 MR. TURKEL: We've made our position clear on
7 that before. These are classic other acts that
8 literally have nothing to do with the matter at
9 hand. And, I mean, for anybody who has lived in
10 the public eye, you can sit there and dissect
11 these kind of things. They're replete, frankly,
12 with hearsay stuff and opinion. And, you know,
13 the very carnival you seek to avoid is implicated
14 when that stuff becomes relevant in a case like
15 this.

16 MR. SULLIVAN: Judge, on this score, it's not
17 just -- they talk about hearsay. We're not
18 admitting any of this for hearsay purposes, to
19 prove the truth of the matter. Where this is
20 directly pertinent is they want to come in and
21 they want to have folks in this community think
22 that he was harmed to the extent he ought to get a
23 hundred million dollars, is what he's asking for.

24 The extent to which he put this sexual matter
25 out there, he writes his own autobiography, and he

1 sees fit to put that in his book, where he does
2 these various others things that we're going to
3 get to. And he goes out and he talks about this
4 stuff, right? Bold as brass. And then he comes
5 in here and says, Well, when you talk about it or
6 when you make a joke about it, I ought to get
7 \$100,000,000. Well, I think that we are entitled
8 to tell this jury, Listen, you need to understand
9 the kinds of things that he has seen fit himself
10 to share with folks. Okay?

11 THE COURT: I understand that part. That's
12 why I prefaced the whole thing in the beginning,
13 but I guess to some degree -- so the defense
14 intends to use My Life Outside the Ring. It seems
15 as though that the primary part in that -- from
16 that book that you plan to focus on is the
17 relationship, alleged relationship, with
18 Ms. Plante; is that correct?

19 MR. SULLIVAN: I think that's the principal
20 thing. There may be other things as well,
21 personal matters that he shared in his
22 autobiography.

23 MR. TURKEL: Judge, two points. Once we
24 vetted the Ms. Plante issue on discovery, and it
25 was found to be outside the bounds of permissible

1 discovery. It goes back to a point Mr. Harder has
2 made a number of times and my second point, which
3 is they're not being sued for their words. Nobody
4 is saying the writing part of this was a problem.
5 It's the publication of the video. We've made
6 that distinction clear time and time and time
7 again to this court. It's what renders all of
8 this irrelevant, because we're not taking the
9 position that they couldn't write about it.

10 THE COURT: But I believe -- going back to my
11 earlier statement, I do believe they're entitled
12 to say why it was newsworthy or why they thought
13 that the public wanted to know about his sex life
14 by publishing it in the first sex life, is the
15 theory he had put it out there first.

16 I think the plaintiff on, at least through
17 some of the hearings, is going to be more, No,
18 this was in response to the posting back in 2012.
19 So October 2012 is the posting. I think the
20 plaintiff says, Well, some of his talk shows were
21 in response to that, is what it seems to me. And
22 I could be totally wrong, but it seems that it
23 should be the defense's ability to get into some
24 of that, some of his comments that he's made ahead
25 of that.

1 MR. TURKEL: I don't think -- I think as we
2 go through this, if we continue to do this
3 exercise, there may be certain comments that are
4 relevant. I think as to Plante and similar
5 situations, particularly 8, which goes very far
6 afield of everything in Motion No. 8, when we
7 discuss that -- I mean, it's kind of hard to
8 reconcile the fact that we found it irrelevant for
9 discovery but it would be relevant for trial, you
10 know. Again, the context of it and what we argued
11 at that point was all of this stuff was sort of
12 out of bounds, because we were being very discreet
13 and very pointed with --

14 THE COURT: But I'll let them put some of it
15 in, so it's going to be a matter of what it is
16 they are going to be able to put in.

17 Mr. Harder?

18 MR. HARDER: Your Honor, the defendants
19 didn't write anything about Christiane Plante.
20 This was something that came about during
21 litigation where they were trying to find
22 justifications for posting a sex tape with
23 somebody else, Heather Clem.

24 THE COURT: So Mr. Bollea's book doesn't
25 refer to his relationship with Ms. Plante.

1 MR. HARDER: His book relates to Ms. Plante,
2 but the defense posted -- where they posted the
3 video of him and they talk about the video of him
4 doesn't say anything about Ms. Plante. So,
5 therefore, what he says -- what Mr. Bollea says in
6 his book about Ms. Plante has nothing to do with
7 the defendant's posting at all. And, also, the
8 403 issue is off the charts, because what they're
9 trying to do is say, Well, he was cheating on his
10 wife with Ms. Plante.

11 THE COURT: So what I will have to do is see
12 Exhibit 68, and we will go from there.

13 MR. SULLIVAN: Judge, I think what you said
14 earlier about, look, we're not going to let this
15 thing get out of control, that you're going to
16 allow us to put in a reasonable amount of this
17 material to support our public concern argument,
18 to support our -- like when he talks about
19 offensiveness, let's look at what he's chosen to
20 do himself so the jury can assess, Are these
21 crocodile tears, or is he really this upset? On
22 "offensiveness," Judge, they want to seek punitive
23 damages.

24 THE COURT: So I can look at No. 68 and then
25 we'll go from there. Okay?

1 MR. HARDER: One last --

2 THE COURT: I'm sorry to cut out off, but we
3 have got so much to go through. And if we spend a
4 lot of time on every one of these things, we'll
5 never get to the trial, and we're going to start
6 the trial on Monday.

7 MR. HARDER: One sentence directly related to
8 that.

9 THE COURT: But why? I cut him off.

10 MR. SULLIVAN: He's a sore winner, Your
11 Honor.

12 THE COURT: I will look at 68, and then we'll
13 make -- I will make a decision.

14 All right. These Bubba the Love Sponge shows
15 from 2006, somebody tell me why that would be
16 relevant at all. And it's also in 8. The 2006
17 broadcast for Bubba the Love Sponge.

18 MR. SULLIVAN: Here is the deal, Judge. This
19 goes exactly to that point on the damages and on
20 offensiveness. The plaintiff is going to say he
21 clearly intends to suggest that the graphic and
22 coarse nature of the language that Mr. Daulerio
23 used in the report, in the commentary, this whole
24 video thing, that the language they use in their
25 own internal discussions and e-mails and stuff,

1 they want to put that in.

2 THE COURT: That Gawker's uses?

3 MR. SULLIVAN: Yes.

4 THE COURT: That Gawker employees use?

5 MR. SULLIVAN: Yes, Your Honor. And he hopes
6 to use that to support his claim for high damages
7 and punitives, and what have you. If that's the
8 case, you cannot properly shield the jury from the
9 fact that this man has publicly discussed sex in
10 his own sex life.

11 THE COURT: I'm with you. You just have to
12 pick and choose. So the specific question is,
13 What about the Bubba the Love Sponge show in 2006
14 would be relevant to any of this? I'm with you
15 that you get to do some of it.

16 MR. SULLIVAN: Exactly.

17 THE COURT: I'm trying to say I'm looking at
18 this older stuff and I'm looking at some of the
19 more recent stuff, and it's overkill, so I guess
20 I'm trying to narrow you down to the point.

21 MR. SULLIVAN: No, no, Judge. I'm not -- I'm
22 going to do some of this and some of that. It's
23 not going to be overkill, because I know I'm not
24 going to get to do it. But to pick up on
25 something that you said to me at the end of our

1 discussion on Mr. Foley, you said to me, Look,
2 you've got to weigh this; you've got to look at
3 the community. Judge, he went on a radio program
4 here in Tampa, St. Pete --

5 THE COURT: So somebody give me those shows.
6 I will watch them some other time and give you a
7 ruling.

8 MR. SULLIVAN: Okay. I think some of them
9 are addressed in our summary judgment papers, so
10 you've seen the text of some of those. But we'll
11 get those to you if you'd like.

12 THE COURT: I want to give clear rulings. So
13 I'll get Trial Exhibit 238, and I'll make a
14 specific ruling if Trial Exhibit 238 is relevant
15 or not, and I will see if it's in or out. It's
16 one thing -- and I appreciate the motions in
17 limine, because I think we need to narrow a lot of
18 these issues. And I think the parties need the
19 court to narrow some of these exhibits to narrow
20 the issues, and we're going to have the trial on
21 narrow issues. I think each side gets to attack
22 the other side to some degree, but we're not --
23 it's not going to be overkill.

24 MR. SULLIVAN: Absolutely.

25 Now, may I make one other suggestion? You

1 know, we told you this morning when we met with
2 counsel and tried to start simplifying this and
3 working together to make some progress, we said
4 we're going to exchange vastly reduced and a
5 distillation of what we actually intend to put
6 before the court. It maybe helpful, once we have
7 done that process, we share that with Your Honor.
8 You're not making -- you're not taking your time
9 to review a tape that we say that we're not going
10 to use.

11 THE COURT: Here is the problem with that:
12 If that had a been done last week and I could have
13 done all those this past weekend, that would be
14 great. But in the middle of a trial when we're
15 working late and we're coming in early, I don't
16 want to kill the lawyers or the judge.

17 So a lot of stuff I'm reviewing at night at
18 home, so I don't want to be up until one o'clock
19 in the morning reviewing all this stuff. The more
20 we can narrow it today the better off we're going
21 to be. So I don't mind going through this
22 exercise. It's too bad you didn't have the
23 time -- I know you-all have been very busy, so I'm
24 not criticizing you in any way. You haven't
25 rushed through this, and it's great to review some

1 of these, but maybe if we could get some of them
2 you'd get a helpful inclination as to, The judge
3 isn't going to let that in any way, so let's just
4 both keep it out.

5 Is that helpful?

6 MR. TURKEL: Yes, Judge. I would think, like
7 most 403 inquiries, 402 inquiries, things that are
8 very remote that predate the incident, digging
9 back --

10 THE COURT: They need to have some predate.

11 MR. TURKEL: Right. But this isn't all we
12 have. We cherry-picked the ones we thought were
13 more remote and less relevant, including these,
14 you know. Admittedly, Judge -- and I know the
15 Court knows this, but these Bubba the Love Sponge,
16 the shock radio shows are entertainment, they're
17 parody; they're theater of the life.

18 THE COURT: I have never watched them so I
19 don't know.

20 MR. TURKEL: They are meant to be the
21 hyperbolic and they're not -- it's not like
22 interviewed by Barbara Walters. I mean, this is,
23 by its nature, hyperbole. And what they have done
24 is try to string these together and make them seem
25 like they're actual, you know, intentional

1 decisions to discuss intentionally serious things,
2 and they're not. And the risk of a jury -- giving
3 them the capability to say to a jury, Oh, he put
4 his sex life out there by appearing on the
5 hyperbolic, shock jock radio show and goofing
6 around and joking that he doesn't control --

7 THE COURT: Here is what I'm going to say.
8 On these 2006 Bubba the Love Sponge shows that are
9 identified in Plaintiff's Motion in Limine
10 No. 7 -- and that is 3D through J -- I'm sorry, 3D
11 through I, generally, I'm going to say they're
12 probably -- I'm probably going to grant the motion
13 in limine on those. But I won't make a definitive
14 ruling. And, one, you're going to see it, or,
15 two, you show it to me. Okay?

16 MR. SULLIVAN: Judge --

17 THE COURT: But just so you know my
18 inclination is it would be out.

19 Okay. That brings us to the Howard Stern
20 show in 2006. I don't know that that is
21 necessary. And 2010, Howard Stern, yes, I think
22 that would be pertinent. That would probably be
23 denied. But all those rulings are without
24 prejudice. So you can bring them up again if you
25 decide you want to use those things.

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 Bubba Raw Show. I mean, it goes back to an 1985
2 media appearance. So I think that if the
3 defendants could just decide whether if they plan
4 on using it, and then I'll make a ruling. Most of
5 it is just going to stay out, would be my thought.

6 MR. TURKEL: Okay.

7 THE COURT: But I will give you an
8 opportunity.

9 So let's go to No. 10. So somebody tell me
10 in No. 10 -- this is the evidence or argument
11 related to Hogan Knows Best and Brooke Knows Best.
12 So what is the time frame of when these shows
13 aired? Anybody know?

14 MR. SAFIER: Your Honor, I think it's
15 something like 2006 through 2009, 2010.

16 THE COURT: Okay.

17 MR. HARDER: Your Honor, the Hogan Knows Best
18 show, is the question when it was being produced
19 and aired?

20 THE COURT: (Nods affirmatively).

21 MR. HARDER: The Hogan Knows Best show
22 wrapped and finished entirely in early 2007. Now,
23 it's possible that there were still episodes that
24 were airing after that, but it stopped filming in
25 early 2007. And weeks or possibly months after is

1 REPORTER'S CERTIFICATE

2
3
4 STATE OF FLORIDA
COUNTY OF HILLSBOROUGH5
6
7 I, Aaron T. Perkins, Registered Professional
Reporter, certify that I was authorized to and did
8 stenographically report the above hearing and that
the transcript is a true and complete record of my
9 stenographic notes.10
11 I further certify that I am not a relative,
employee, attorney, or counsel of any of the
12 parties, nor am I a relative or employee of any of
the parties' attorney or counsel connected with
13 the action, nor am I financially interested in the
action.
1415
16 Dated this 2nd day of July, 2015.
1718
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20
21
22 _____
23 Aaron T. Perkins, RPR
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