

EXHIBIT 35

to the

**JOINT OPPOSITION OF THE GAWKER DEFENDANTS AND THEIR
COUNSEL TO PLAINTIFF'S EMERGENCY MOTION TO CONDUCT
DISCOVERY CONCERNING POTENTIAL VIOLATION OF
PROTECTIVE ORDER, TO COMPEL TURNOVER OF CONFIDENTIAL
DISCOVERY MATERIALS AND FOR ORDER TO SHOW CAUSE**

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1:52pm PT by Eriq Gardner

Hulk Hogan's Sex Tape Case Against Gawker Has a Lot of Secrets



AP Images/Invision



It's not just the sex tape. It's also [REDACTED], [REDACTED] and [REDACTED].

Will the first celebrity sex tape case to ever go to trial break Florida's reputation for judicial openness?

The state was one of the first to allow cameras in the courtroom — and even defended the presence of recording devices in 1981 to the U.S. Supreme Court. Back then, the high court agreed that

proceedings even in the wake of fair trial concerns emanating from the mid-90's broadcasting of the **O.J. Simpson** murder trial in California.

But that was before **Hulk Hogan** sued *Gawker* for publishing excerpts of a sex tape. Now, it's no longer even certain that reporters with pens and notepads will be able to be in attendance for everything.

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Specifically, a trial featuring a sex tape has, well, a sex tape to exhibit. And Hogan's attorneys are seeking a protective order excluding the public and press from certain evidence and arguments. A brief by the former professional wrestler filed earlier this month argues that withholding the juicy stuff from spectators "will preserve order and decorum in the courtroom," that the "playing of the Sex Video may legitimize its publication by *Gawker* with the jury," and that it "likely will be offensive to certain persons in the gallery."

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In an interview with *Poynter*, Hogan attorney **Charles Harder** clarifies that he doesn't want to clear the courtroom; merely, turn the monitors away from the gallery and towards the judge, jury and attorneys. Hogan's side also stresses the "limited" nature of what's to be excluded from the public.

from the public court file the offers to commercially exploit the sex tape even though tabloid outlets have already published them. Or, our personal favorite: Hogan's opposition to *Gawker's* motion to permit presentation of offensive language at trial. This, too, is pending a determination of confidentiality.

Just because Hogan is looking to button up public inspection of court documents doesn't mean the evidence included in court papers won't be aired in public court.

However, Pinellas County Judge **Pamela Campbell** will have to decide which evidence is relevant and which evidence is prejudicial. A hearing scheduled for Wednesday will likely determine what this trial looks like.

Hogan's lawyers have brought motions to exclude a wide-range of possible evidence including aspects relating to the celebrity's media appearances (like when he went on **Howard Stern's** show and talked about his sex life), allegations of adultery, information related to his character and medical history, things related to the VH1 reality show *Hogan Knows Best*, evidence in connection to the FBI's investigation of the sex tape and even his son **Nick Hogan's** car accident.

Gawker also isn't ready to allow just anything to be presented at trial. The media company wants to exclude discussion about its other privacy-invasive articles not relating to Hogan as well as *Gawker's* corporate structure, among other things.

The most unique battle, though, concerns the sex tape.

The defendant, with some expected third-party backing from other media companies, is objecting to Hogan's attempt to exclude the public and press from hearing and seeing it. *Gawker* argues that "Hogan has not made the showing necessary to



It's also argued by *Gawker* that if the judge takes the position, in front of the jury, that video excerpts can't be showed to the public, it "would send the unmistakable message to the jury that these are private matters, not fit for public disclosure."

Nearly thirty-five years ago, defendants in a criminal case argued that Florida's allowance of cameras in the courtroom sensationalized their case and interfered with their due process. Now, a defendant in a civil lawsuit contends that to limit a public viewing of materials in a court case means incurring great prejudice. How times have changed.



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