

EXHIBIT 24

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**

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

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1 you want to give them a few more minutes to get
2 back to me?

3 THE COURT: Let's do the issue now.

4 MR. BERLIN: Okay.

5 THE COURT: And this goes back -- it's
6 Plaintiff's No. 6; is that correct? I think we
7 can at least deal with the tapes that we have, and
8 then whatever information comes along later on, we
9 can deal with that later on. So the tapes that we
10 have are on the issues of the -- the FBI tapes
11 were delivered here. I reviewed three. The
12 attorneys have reviewed three.

13 And, Mr. Harder, do you just want to argue
14 your motion?

15 MR. HARDER: Yes, Your Honor.

16 And, Your Honor, the tapes themselves are
17 attorney's eyes only confidential. So can we mark
18 this or should we go in chambers, or what's the
19 best way to do it, because I would like to be able
20 to --

21 THE COURT: I don't know what you intend to
22 argue.

23 MR. HARDER: Well, the position that we're
24 taking is that these DVDs and the content on them
25 should not be evidence in the case.

1 THE COURT: I understand. But you're arguing
2 that they're not evidence in the case because
3 they're not relevant and they weren't the ones
4 that were published.

5 MR. HARDER: And they lack authentication,
6 authenticity.

7 THE COURT: One of the issues that I asked
8 Mr. Berlin was, What do you expect these tapes to
9 show that he -- I mean, I think the core of the
10 issue that you're trying to get to is whether or
11 not he knew that he was being recorded. That's
12 one of the core issues, so --

13 MR. HARDER: There has also been this ongoing
14 offensive language issue that's been festering for
15 awhile, and we didn't hear any evidence of it.
16 And we also noticed some huge audio issues with
17 these DVDs --

18 THE COURT: Okay.

19 MR. HARDER: -- which calls into question all
20 of the audio on all of the DVDs, because
21 originally these DVDs came to the FBI by way of an
22 extortionist, or an alleged extortionist. And if
23 an extortionist is manipulating the audio on the
24 DVDs -- and we didn't hear anything that they have
25 been saying is on them. But even if something

1 were to be on them, the audio problems call into
2 question all of that.

3 THE COURT: The three that you saw are the
4 three that I saw?

5 MR. HARDER: Yes. And even if there is
6 another third DVD which allegedly has the things
7 that they have been speculating might be on there,
8 it could be an extortionist manipulating the audio
9 through an impersonator, or who knows what, and
10 adding things. And there is nobody around to
11 testify about what these DVDs are.

12 THE COURT: All right. Mr. Berlin, are you
13 responding?

14 MR. BERLIN: Let me speak to the issue of the
15 DVDs, first, and then on the motions I may
16 actually turn that over to one my colleagues.

17 On the DVDs, Your Honor, I think it's fair to
18 say that this is -- let me just take the podium,
19 if I may.

20 This is quite perplexing because we have been
21 chasing these DVDs for a long time, along with
22 other materials from the FBI, some of which were
23 being delivered this afternoon. So I can't tell
24 you yet what's in them, and some of which I think
25 that we're still probably going to be chasing, if

1 history is any guide.

2 The DVDs that were described in an affidavit
3 by Mr. Hardy, who was the head of the FBI records
4 division, he described three DVDs, each one of
5 which had a sexual encounter on it between
6 Mr. Bollea and Ms. Clem, or Ms. Cole as she's now
7 known. And one of the three DVDs that we watched
8 yesterday and that you watched, I believe, was
9 very short. It was a minute and 14 seconds, and
10 it was -- I think what I can say is that it did
11 not have any people in it at all.

12 And so we have asked the FBI what's going on
13 with that. And this harkens back to -- Your
14 Honor, you remember when Mr. Stegeby was on the
15 phone with us, and he said there was a problem
16 with one of them. And we are, of course,
17 concerned that we didn't get a full production,
18 and we have been trying since we were here
19 yesterday to sort that out. I think it is fair to
20 say that Mr. Stegeby has been very helpful, but,
21 in effect, he is a middle man. He's not the
22 person who is controlling the production in any
23 meaningful way and is trying to chase down an
24 answer for us.

25 The second question that we have is that on

1 the tapes that we did see, we watched the first
2 tape, and there was audio on the tape that matched
3 what the people were doing. Somebody was moving
4 their hands that lined up with the conversation.

5 We got to the next tape, and there was --
6 that was going on for awhile. And then round
7 about the 15-minute mark, the audio completely
8 shifted. The music shifted, and it was the same
9 audio from a portion of the first tape. And so we
10 are also trying to get to the bottom of the
11 circumstances with that, because it seemed quite
12 perplexing to us to have two DVDs with the same
13 audio and otherwise different video.

14 And this was made more complicated because we
15 obtained materials from the plaintiff, a document
16 that had -- a transcript that had been prepared by
17 Mr. Davidson. And it's true, we have no way of
18 knowing whether that was good or not, except to
19 say that, as we understand the facts, he prepared
20 the transcript believing that he was going -- if
21 he showed up with the tapes, that if they matched
22 the transcript, he was going to get money.

23 So we actually have reason to believe that
24 they might be right. And it is fair to say that
25 the transcripts match the video entirely on the

1 first one we watched, and they match on the second
2 one up until when the audio shifts. And the video
3 matches the, you know, beyond what the audio
4 shifts.

5 So there is something funny going on, Your
6 Honor, and we don't know what it is. It is
7 extraordinarily unfortunate for us that we are
8 dealing with this effectively two business days
9 before the trial. And on these grounds, Your
10 Honor, you know, I know that you have got wheels
11 in motion, and you're not going to want to hear
12 what I am going to say, but I have no choice but
13 to ask you to continue the matter so that we may
14 get to the bottom of in this.

15 There is, as I said when I spoke about this
16 on Monday, this is key documentary evidence. It
17 is documentary evidence that, in the part that we
18 were able to see, it does not appear to have been
19 in any way doctored or altered.

20 There are a number of things that speak to
21 issues that have been issues in the case,
22 including some of the things that we've talked
23 about. And they may not have been all obvious to
24 you, because you probably, happily for you, have
25 somewhat less familiarity with the details.

1 But, you know, we've had conversations about,
2 you know, what Mr. Clem was saying, and what
3 Ms. Cole or Ms. Clem would say. And some of that
4 is undercut by what's on these tapes. And so
5 getting to the bottom of "do we have good
6 documents or not" seems like a key thing.

7 And I understood Mr. Harder to say, Well, you
8 know, we have to throw them all out because there
9 is a question as to the audio. I think until we
10 get to the bottom of it, we don't know that. I
11 think that may be that's right, and it may be that
12 that's not right. But you can have a situation
13 where you have key documentary evidence, and you
14 don't -- you don't know if you have all of it, and
15 the stuff that you have appears to have a problem
16 with it.

17 I think it is fair to say -- and I don't mean
18 to cast any aspersions on our quality of the
19 officials of our federal government -- but the
20 production, I think it's fair to say, of this
21 material has been sort of, in any number of
22 respects, has been questionable. I'm told by my
23 office when I called to ask if we got any word
24 from Mr. Stegeby that we got -- we now have gotten
25 an audio disk that doesn't play. So this is

1 another issue, you know.

2 And, you know, for our parts, really, we now
3 have a situation where we are getting two days
4 before the trial things like, you know, statements
5 by, as I understand the documents that are to
6 come -- I haven't seen them; I'm here with you --
7 but from what was on the log that was produced
8 yesterday, statements by Mr. Bollea, statements by
9 Mr. Houston, audio evidence, video evidence.

10 And at least some of this, in significant
11 respects, speaks directly to what the three key
12 participants, and to the extent that Mr. Houston
13 was involved in realtime and had some information,
14 what each of them would have to say about this.
15 And this is a caldron of truth, this process. And
16 it's only as good as the stuff you put into it.
17 And if you put in half the story, you only get
18 half the story out. And that's -- we're about to
19 take two weeks out of a bunch of jurors' lives,
20 two weeks out of all ours, and we should do this
21 right. And that's why I asked for that.

22 Now, I will say to you -- I will say one more
23 thing about this, and then we can turn to the
24 specifics of the motion. But I can address the
25 DVDs. I appreciate you waiting so that I can at

1 least try to get as much up-to-date information as
2 I have or be able to get.

3 But, you know, this is the circumstance, Your
4 Honor -- and I'm not doing this in a -- we each
5 have a case to advocate, and I'm not -- this
6 isn't -- I don't mean this be to in a
7 fingerpointing sort of way. But part of the
8 situation in which we find ourselves is as a
9 result of what I believe to be a pattern and
10 perhaps a deliberate strategy on the part of the
11 plaintiff to keep us from getting to the point
12 where we would have this evidence. We, as you
13 know, we tried to get --

14 THE COURT: I wouldn't even go down that
15 path, because then they're going to feel obliged
16 to stand up and say why it was your delay.
17 Really, I --

18 MR. BERLIN: But, Your Honor, I won't go down
19 there, if you want, but I do want to say to you
20 that we have -- we have been trying to do this
21 diligently for 18 months, and we have been
22 obstructed at every point of the way.

23 THE COURT: You made the same argument on
24 Monday.

25 MR. BERLIN: Actually, I didn't make that

1 argument, because Your Honor ruled before I could
2 make it. Now, if you don't want to hear it, I
3 won't make it. But I want you to know that when
4 you get to the point where you are two days before
5 trial and your adversaries push for a quick trial
6 and they ran out the clock, that's --

7 THE COURT: This is not a quick trial. We
8 have been talking about this trial for over year,
9 so, no, this is not a quick trial. This case was
10 filed in 2012. I'm outside my time frame that the
11 Supreme Court sets out for setting a trial. So
12 I'm not going to hear that it's a quick trial. It
13 just isn't a quick trial.

14 So I appreciate the fact that you think that
15 they have been trying to delay. I heard on Monday
16 they think you're trying to delay. So if we're
17 moving on to another argument about the DVDs, I
18 think let's just move on so everybody is not
19 pointing fingers and we're not wasting more time
20 that we don't have.

21 MR. BERLIN: All right. Then I will just
22 leave it at that.

23 THE COURT: Your objection is noted. Your
24 motion to continue is denied. And so you're going
25 to get your information tomorrow or this afternoon

1 or tonight, whenever you get back --

2 MR. BERLIN: Perhaps.

3 THE COURT: -- and you'll continue to deal
4 with it. But for now, I think I understand your
5 argument.

6 MR. BERLIN: All right. Well, then at that
7 point, I will -- if I can, I would like to just
8 turn over the specifics of some of the motions to
9 one of my colleagues who is prepared to argue it.
10 But I have been dealing with the DVDs, so I wanted
11 to speak to that. And thank you, Your Honor.

12 THE COURT: Well, thank you. And I'm
13 interpreting 6 -- or Plaintiff's Motion No. 6 to
14 be basically the FBI issues as we know them for
15 now.

16 MR. BERLIN: Well, yes and no, Your Honor.
17 There is actually some -- that's why I wanted
18 to -- I apologize for doing this in two pieces,
19 but I wanted to try to get you that information,
20 because I have been dealing with that piece of it
21 almost exclusively. But I think Mr. Berry is
22 prepared to talk about some of the issues that are
23 raised by the motion, some of which have to do
24 with the FBI DVDs and other information from the
25 FBI, and much of it does not. And perhaps he can

1 speak to the other pieces a little bit more
2 directly.

3 THE COURT: Thank you.

4 Mr. Harder, you stood up while Mr. Berlin was
5 talking. Is my impression as to what No. 6 -- you
6 want me to exclude the information from the FBI
7 that we have for now, right, that we have at this
8 point?

9 MR. HARDER: Yes, Your Honor.

10 THE COURT: Okay. I don't think you're
11 making a broader sweep to say whatever comes -- I
12 think we have to deal with whatever comes. We
13 have to deal with that at the time.

14 MR. HARDER: I agree with that, Your Honor,
15 but I also want to say that the discovery cutoff
16 in this case was nine weeks ago. We're now two
17 court days and two hours from a trial.

18 THE COURT: And your objection is noted as
19 well.

20 MR. HARDER: Thank you.

21 THE COURT: Thank you.

22 Mr. Berry, did you want to say anything about
23 the three, whatever they are, recordings that
24 everybody at this -- that counsel and I have had
25 an opportunity to review?

1 MR. BERRY: Well, I guess it depends on what
2 exactly -- what relief they're seeking at this
3 point. My understanding --

4 THE COURT: They want to keep them out and
5 say they're not relevant and that they shouldn't
6 come into the trial.

7 MR. BERRY: Right. My understanding is their
8 Motion in Limine No. 4 and the Motion in Limine 6,
9 which I think was offensive language, and then our
10 motion in limine concerning admissions that the
11 plaintiff made --

12 THE COURT: I'm not on 6. So you think this
13 also deals with 4, the motivation for filing the
14 lawsuit?

15 MR. BERRY: I think all these issue are the
16 same.

17 MR. HARDER: Well, Your Honor, No. 6 was to
18 prohibit evidence or argument during any portion
19 of the trial referencing alleged additional
20 videos, which is talking about the FBI materials
21 and alleged language.

22 MR. BERRY: Right. So it's that other piece
23 that I don't think -- I think what --

24 THE COURT: The language?

25 MR. BERRY: Yes, ma'am.

1 THE COURT: Okay. So now when we get to the
2 language, we're on defendant's --

3 MR. BERRY: It's our motion in limine
4 concerning admissions, concerning the belief of
5 statements that have been marked.

6 THE COURT: Tab 23?

7 MR. SAFIER: I think that's right, Your
8 Honor.

9 THE COURT: Thank you.

10 MR. BERRY: Yes. And this one, their motion
11 and our motion have been marked as confidential
12 based on designations by the plaintiff. And so I
13 can go through some of the legal argument without
14 waiving any confidential stuff, but I think you
15 need to understand the factual predicate.

16 THE COURT: I think I understand the factual
17 predicate, because they're, one, in your papers,
18 and, two, I have seen the DVDs.

19 MR. BERRY: But the DVDs, I don't think,
20 speaks to plaintiff's admissions and other
21 evidence.

22 THE COURT: You're referring to them as
23 admissions. I don't know that the plaintiff
24 categorizes them as admissions.

25 MR. BERRY: They are his text messages.

1 THE COURT: Right.

2 MR. HARDER: I'm not sure what admissions
3 they're talking about.

4 THE COURT: Tab 23.

5 MR. HARDER: Is that publisher defendant's
6 motion in limine on evidence relating to admission
7 that he believed --

8 MR. BERRY: Marked as confidential.

9 MR. HARDER: We aren't making any such
10 admissions.

11 THE COURT: Right.

12 MR. BERRY: But that's what we get -- that's
13 what we would like to talk about, is whether that
14 evidence comes in.

15 THE COURT: Okay. I mean, I have read -- I
16 have seen what you have all put in your papers.
17 Do you have any additional arguments that you
18 would like to make?

19 MR. BERRY: The additional argument that I
20 would make --

21 THE COURT: Additional legal argument.

22 MR. BERRY: Yes, Your Honor.

23 They cited a couple cases in their motion
24 concerning motivation, which is No. 4, which in
25 some respect mirrors this. And they said that

1 motivation is not evidence that's admissible at
2 trial, the motivation for filing suit.

3 And, Your Honor, that's just not correct.
4 The case that they cite primarily is a case called
5 Corey vs. Clearwater Channel Outdoors, which is
6 case from Georgia. And what the court held there
7 is that evidence of plaintiff's possible ulterior
8 motive in filing that suit was irrelevant because
9 it was based on specific claims in that case, a
10 breach of contract and fraud.

11 But what the court said is that the
12 motivation could be relevant under different
13 circumstances and cited multiple cases in which it
14 was, including a case much like this one, where it
15 allowed evidence of motive, quote, which rebutted
16 the plaintiff's claims of psychological damages,
17 which is exactly our theory here. The plaintiff
18 was not distressed about sex but was distressed
19 about something else, and that was the reason that
20 he filed suit.

21 The Long John Silvers case that they cited
22 from Kentucky is the same. In that case the
23 motive wasn't relevant, because the damages were
24 solely economic. Here the motive is relevant in
25 two respects: First, dealing with what the

1 distress was and, second, the plaintiff's
2 credibility with respect to all of the testimony
3 that we're going to be hearing from him.

4 There is number of cases that make this
5 point. And I will just hand you up one that's
6 relatively recent. It's Wink vs. Ott. But there
7 are legions of these, similar cases, that say that
8 motivation can be relevant. This is a Fair Labor
9 Standards Act case.

10 Normally, a motivation for filing suit has
11 nothing to do with whether you have been paid a
12 proper wage or paid a proper amount. But the
13 court, in the highlighted section that I have
14 given you, says, "Accordingly, the Court will deny
15 plaintiff's second motion in limine on the basis
16 that, unlike the typical FLSA action in which a
17 plaintiff's termination would likely be irrelevant
18 to whether his employer violated the Fair Labor
19 Standards Act, the circumstances surrounding
20 plaintiff's termination and his motivations for
21 filing suit against defendants are relevant to his
22 credibility."

23 There are legions of cases that say the
24 plaintiff's motivation is relevant when it bears
25 on distress and credibility. And those are the

1 two reasons that we would like to use this. The
2 time line that we laid out in part in that motion
3 explains exactly how this went down. For numerous
4 days --

5 THE COURT: Your interpretation, what you're
6 alleging.

7 MR. BERRY: But we're allowed to make that
8 argument to the jury, because it's a fact
9 question. For numerous days he did nothing. He
10 only came to court after making the statements
11 that we referred to and at that point, started
12 seeking an injunction. And in our experience --
13 all our firm does is First Amendment work. And
14 when people are concerned about something that's
15 been published or about to be published, they run
16 to the court immediately.

17 In this case that didn't you happen. The
18 plaintiff didn't go to court for almost two weeks.
19 And the reason that he waited was because he
20 wasn't concerned. And they can argue that he was,
21 but we believe that he was not. And when he came
22 into court and he did it so quickly, there was one
23 reason, and that reason is the one that we should
24 be able to argue to the jury.

25 THE COURT: Okay. Thank you. So the Court

1 is going to grant Plaintiff's No. 4, grant
2 Plaintiff's No. 6, deny publisher's contained at
3 tab 23.

4 MR. BERRY: Can that be without prejudice
5 based on what we learn from the FBI?

6 THE COURT: Yeah. If you learn something
7 else from the FBI -- and that's why I was saying
8 this is based on what we know now.

9 MR. BERRY: Thank you, Your Honor.

10 THE COURT: I appreciate Mr. Harder is going
11 to argue as to the timeliness of this discovery,
12 and we'll deal with whatever happens and whatever
13 comes at this point. Ms. Steele wants to know
14 what about the motion to determine confidentiality
15 contained under Plaintiff's Tab 6. And I'm going
16 to grant them. The FBI information that I have
17 seen, I think -- were you here on Monday --

18 MS. STEELE: I was.

19 THE COURT: -- when we got the three DVDs?
20 So since then I have the reviewed the three DVDs.
21 The authenticity -- there are so many other issues
22 that are problematic with it that I think they
23 should just remain sealed.

24 MS. STEELE: And I understand the Court has
25 received materials for in camera review. I'm

1 wondering if it's possible to open the full
2 arguments that are being made in writing?

3 THE COURT: Defendant's No. 23 is going to
4 remain sealed.

5 MS. STEELE: All right.

6 MR. HARDER: We would request that our papers
7 remain sealed as well, Your Honor.

8 THE COURT: In No. 6?

9 MS. STEELE: Plaintiff's 6.

10 THE COURT: Plaintiff's 6, yes, because it's
11 really the FBI stuff. So I'm just going to say
12 yes to that part. The motion to determine
13 confidentiality of Plaintiff's No. 6 shall remain
14 confidential.

15 MS. STEELE: All right. Thank you, Your
16 Honor.

17 THE COURT: Thank you.

18 MR. BERRY: Your Honor, may I ask one
19 question concerning your ruling? I understand
20 it's without prejudice as to what we learned from
21 the FBI. In part, what we're asking in our motion
22 is to be permitted --

23 THE COURT: In 23?

24 MR. BERRY: Yeah. The motion has escaped me.
25 In our motion what we're asking -- tab 23 -- one

1 of the things that we were asking to be able to do
2 is to lay the evidentiary foundation for the
3 admissibility of this evidence, which we were not
4 permitted to do throughout discovery. And there
5 are fact witnesses who could lay a proper
6 foundation. We were never permitted to even ask
7 the questions. And we would ask that once this
8 case be in front of a jury, that we be allowed, as
9 the rules of evidence permit, to lay a proper
10 foundation.

11 THE COURT: So the request would be denied.

12 MR. BERRY: Thank you.

13 THE COURT: Thank you.

14 MR. BERLIN: Your Honor, if I could, just one
15 other thing, just so the record is clear: On the
16 motion to determine confidentiality, in our motion
17 we filed it because the plaintiff had designated
18 certain things as confidential, and I just wanted
19 the record to be clear that we have no objection
20 to unsealing that motion.

21 THE COURT: Okay. Thank you.

22 So I believe at this point we're still on
23 Plaintiff's -- wait, Plaintiff's 12.

24 MR. SAFIER: Thirteen, Your Honor.

25 MR. TURKEL: Thirteen.

1 the record of events just because you want to
2 portray yourself in this favorable fashion as --

3 THE COURT: Here is what I'm going to do:
4 I'm going to grant the motion that use of those
5 kinds of words will be hindered.

6 MR. SULLIVAN: Will be what?

7 THE COURT: Hindered.

8 MR. SULLIVAN: Hindered.

9 THE COURT: The defense won't be using those
10 words the best they can. If there is some reason
11 you need to call it out like that, then you will
12 let me know.

13 MR. SULLIVAN: All right. Fair enough.

14 THE COURT: Okay.

15 MR. BERRY: Your Honor, I hate to jump back
16 to the prior motion, again, but in looking back --

17 THE COURT: Which one?

18 MR. BERRY: The motion that we were talking
19 about, their No. 6.

20 THE COURT: We were talking about a lot.

21 MR. BERRY: Sorry. Their No. 6.

22 I realized, as we were sitting here, that it
23 covers -- in addition to the things that I was
24 alluding to with the plaintiff's text messages, it
25 refers to a number of things that were public

1 reports, the public reports that are out there.
2 And, again, their whole thing is marked
3 confidential, so I can't go through it. There are
4 a litany of things that are out there. But I do
5 want some clarification from the ruling if we
6 can't use information that's already publicly
7 accessible that didn't come from the parties that
8 has been in public reports.

9 MR. HARDER: Your Honor, it's not actually
10 information. It was speculation in one or a few
11 tabloid stories that were speculating about a
12 rumor. And the rumor may have been coming from
13 the extortionist. And there will be an article
14 about a possible sex tape or an actual sex tape,
15 and then there will be maybe about five words that
16 will have this speculation. And I think that they
17 marked as trial exhibits one or two of these
18 tabloid articles that are hearsay. There is no
19 foundation for any of this. It's all kind of --
20 it's all kind of rumor mill speculation.

21 THE COURT: If there are some specific things
22 that you're trying to move in, you're going to
23 show them to me, and then I will deal specifically
24 with those, or whatever those specific issues are.
25 My point is the DVDs are out.

1 MR. BERRY: And his text messages are out?

2 THE COURT: From your 23, yes.

3 MR. BERRY: Okay.

4 THE COURT: Thank you.

5 MR. BERRY: Thank you. But with the public
6 stuff, we should show it to you, as we would this
7 other stuff that we talked about before the break,
8 before we move it in?

9 THE COURT: Mr. Harder says there is two
10 public tabloids that are out there.

11 MR. BERRY: It's more than that.

12 THE COURT: Then you'll have to show it to
13 me.

14 MR. HARDER: Typically, what happens is one
15 tabloid reports a speculation, and then others
16 say, According to this tabloid, there is
17 speculation about this issue. So I don't know the
18 number of --

19 MR. BERRY: Not just tabloids, Your Honor.
20 Again, this goes to Bubba Clem's statements on the
21 radio.

22 THE COURT: Well, let's go back to Bubba
23 Clem. I hate going back there, but let's do it.
24 So just like all these other motions, I'm giving
25 you general guidelines. These motions are written

1 in broad form. I'm giving you general guidelines,
2 and I am sure they will come up again.

3 MR. BERRY: Okay. Thank you. And I just
4 wanted to raise that because I had forgotten that
5 part of the motion.

6 THE COURT: Okay. Thank you.

7 Number 14, medical history, let me -- and let
8 me just ask this: I know a lot of -- I think at
9 one point some earlier hearing -- someone has got
10 to transcript, I'm sure -- that says you weren't
11 seeking any doctors. The defense weren't -- I'm
12 sorry -- weren't able to inquire into doctors or
13 to get a medical history.

14 Does the defense even have any medical
15 history that they would want to bring in?

16 MR. SAFIER: We do not, Your Honor. I think
17 the only thing we have that's referenced in their
18 motion is shortly after this suit was filed,
19 Mr. Bollea filed a medical malpractice action,
20 which he's seeking \$50,000,000. We were able to
21 get deposition testimony from that case, which we
22 might use because of the prior sworn statements
23 for impeachment, but we have no medical --

24 THE COURT: That's the Laser Spine case that
25 I read about?

1 THE COURT: They have already given it to
2 you. Very generous.

3 MR. SAFIER: All that was produced in
4 discovery.

5 MR. TURKEL: I'm not saying it wasn't. What
6 I'm trying to do is figure out whether you guys
7 did Exhibit 20 and it's 20A through Z, and it's
8 got a pleading from the case in every -- it's
9 just --

10 THE COURT: It's specific. They're being
11 generous. No gotchas. That's good. Thank you.

12 All right. So No. 17, criminal, this is sort
13 of the FBI issue, right? Is there anything
14 specific that I needed to rule on this? Number
15 17, FBI, continuing to --

16 MR. HARDER: One moment, Your Honor.

17 THE COURT: Are you guys getting tired?

18 MR. BERLIN: The hardest part of the job is
19 keeping track of who is supposed to speak to which
20 motion.

21 THE COURT: This is way too early in the game
22 to be getting tired.

23 MR. TURKEL: I'm not tired necessarily,
24 Judge. That's the wrong word for it.

25 THE COURT: Seventeen.

1 MR. TURKEL: Yes.

2 THE COURT: Criminal investigation, I think
3 this is more of the FBI.

4 MR. TURKEL: Yeah. I mean, I don't know how
5 far they intend to go with references to it or
6 what those references would be. I mean, now the
7 tapes have been given and have shown to be what
8 they are. I probably need to hear from how far
9 they intend to go with this, and then I can frame
10 it better. I think as a general proposition,
11 talking about the investigation in and of itself
12 and --

13 THE COURT: Well, maybe we just need to wait
14 and see what happens in the trial.

15 MR. TURKEL: I don't know. I don't know what
16 their intentions are with it. Maybe they can
17 clarify, because I haven't read the opposition, to
18 be honest with you.

19 THE COURT: There is not one.

20 MR. BERRY: Yeah.

21 MR. TURKEL: Yes. So you can see --

22 MR. BERRY: One, I think some of this is
23 premature, because we don't know what's in the
24 papers. But what I understood the motion to do
25 was to seek to preclude any mention or argument

1 concerning the investigation. And we think that
2 this is relevant, potentially, for a couple
3 reasons.

4 First, beginning in March of 2012, when the
5 news of the sex tape first came out, plaintiff and
6 counsel, David Houston, went public, starting with
7 TMZ on the very first day, saying, We're going to
8 the authorities; we're going to the authorities.
9 And you'll see evidence come up at trial that at
10 each stage they're: We're going to the
11 authorities; we're going to the authorities; we're
12 going to the authorities. And the evidence will
13 show, again, tying back to the last person, that
14 they didn't go to the authorities. They didn't
15 file suit until that time of the text message that
16 we alluded to earlier.

17 What we have with respect to the FBI
18 investigation, we should -- to the extent that
19 they're going to put on that testimony and it's
20 replete in all the documents and all the audio
21 visuals that we are going to see at trial, we
22 should be able to say, again, with respect to
23 damages, they didn't do anything when this came
24 up. And it shows that he was not harmed
25 emotionally.

1 Second, the stuff that they're trying to keep
2 out pertains to e-mail communications that
3 Mr. Houston had with people prior to and
4 immediately following the lawsuit, which we
5 believe is relevant to show what they knew and
6 when they knew it. And, again, it bears on why
7 they brought this lawsuit.

8 I'm not -- they make an argument in the paper
9 concerning prejudice, and it's not clear to me
10 what the prejudice is of saying that they did,
11 ultimately, go to the authorities. In my mind, it
12 casts Mr. Bollea in a more sympathetic light.
13 But, again, we think that the reason they went to
14 the authorities had nothing to do with the reason
15 that we're standing in this courtroom and no
16 reason that he filed the suit. It was different
17 than what he's been telling us.

18 The materials that we're going to be using
19 also would not be hearsay, because they are
20 statements that either Mr. Houston wrote or
21 dictated or that were communications to him that
22 show what he knew and when he knew it. Those are
23 the three things that I would like to say, and
24 that's why it's admissible to mention the FBI
25 investigation and why various components of this

1 would be admissible as evidence.

2 MR. TURKEL: Okay. Well, I'm glad I asked,
3 because the absence of that in the response, I
4 would have never thought in a million years that
5 is what they were going to try to do.

6 Judge, I don't even know where to start, but
7 I can start with the premise that after this tape
8 was published -- I think Mr. Harder's dates were
9 correct -- we filed a lawsuit within seven days.

10 MR. HARDER: The Gawker tape was published.
11 The next day, two cease-and-desist letters went
12 out. About three days later, the response came
13 back that they were not going to take it down.
14 And about eight days later we filed two lawsuits
15 and a TRO application and a preliminary injunction
16 motion.

17 THE COURT: I think Mr. Berry's comments go
18 back to TMZ.

19 MR. TURKEL: Right.

20 MR. HARDER: Right, when there was no tape.
21 TMZ published nothing but words.

22 THE COURT: Okay. Well, this is about the
23 FBI. So let's just look at the words on the
24 motion. So for the motion at this point in time,
25 I think I just need to reserve, and let's see

1 where we go according to the --

2 MR. TURKEL: I just have one comment, and
3 it's not -- I think what I'm hearing is this: I
4 think they're tying this into the idea that there
5 was this thought on behalf of Mr. Bollea relating
6 to these allegations of what was supposed to be on
7 these tapes, and that's what motivated all of
8 this, which you have already -- you have already
9 dealt with it, Judge.

10 And the point is, you know, we have already
11 vetted that, the idea that the motivation for
12 filing a lawsuit is, you know, legally irrelevant.
13 But beyond that, I don't know whether you open up,
14 you know, every trial now to the work product of
15 attorney-client communications between a lawyer
16 and his client about why they would have -- might
17 have waited to file something, anyway. The bigger
18 point, Judge, is all of these things they have
19 contended motivated the filing that were supposed
20 to be on these tapes.

21 These tapes -- and I will be a little bit
22 more pointed than Mr. Harder was vis-à-vis their
23 technical constitution. There is literally no
24 way. I think Mr. Berlin dressed it up a little
25 bit: The audio changes. It doesn't look like

1 it's changed. It looks like these things were
2 manipulated. Okay? And they don't say what they
3 said they were going to say, anyway.

4 And now we're going to talk about an FBI
5 investigation that's predicated on these tapes
6 purportedly saying something they don't say that
7 we can't authenticate, anyway, even though we
8 filed a lawsuit within, like, ten days after these
9 tapes went up. I mean, it's just irrelevant.

10 So I'm done. And I don't think -- they
11 certainly shouldn't be able to talk about this in
12 opening statement. So if they want to try to
13 bring it up later on in the case --

14 THE COURT: So at this point in time no one
15 can mention those things in opening statement
16 based on my rulings today. If something happens
17 over the weekend, tomorrow with Judge Bucklew,
18 then somebody will bring it to my attention, but,
19 otherwise, it's not coming into evidence.

20 Okay. So No. 18, this is evidence or
21 argument related to undisclosed exhibits used to
22 ambush plaintiff at his deposition, you know. I
23 have to tell you, these are very difficult to
24 follow along.

25 MR. BERLIN: Your Honor, can I try and give

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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