

**CONFIDENTIAL**

**EXHIBIT 4-C**

to the

**GAWKER DEFENDANTS' MOTION  
TO DETERMINE CONFIDENTIALITY OF  
TRANSCRIPTS OF CLOSED COURT PROCEEDINGS**

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

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TERRY GENE BOLLEA, professionally  
known as HULK HOGAN,

Plaintiff,

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 CAMPBELL

DATE: April 22, 2015  
TIME: 1:30 p.m. to 4:03 p.m.  
PLACE: Pinellas Count Courthouse  
545 First Avenue North  
Courtroom C  
St. Petersburg, Florida  
  
REPORTED BY: Susan C. Riesdorph, RPR, CRR  
Notary Public, State of  
Florida

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21  
22  
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1           wasn't noticed to be evidentiary, so there's some  
2           case precedence for that. So if it's going to be  
3           evidentiary, it needs to be noticed as  
4           evidentiary.

5           All right. What else can we do? Mr. Harder?

6           MR. HARDER: Your Honor, Judge Case issued a  
7           report and recommendation some time back, and I  
8           think that my office anticipated that exceptions  
9           were going to be filed and exceptions were never  
10          filed. So we wanted to give Your Honor a proposed  
11          order to make that an order of the Court. This  
12          was a report and recommendation from October 20.  
13          It pertains to an issue that we would like to go  
14          on confidential record to discuss.

15          MR. BERLIN: I'm not sure what the particular  
16          order is.

17          THE COURT: Why don't you all have a minute  
18          to talk about it.

19          MR. HARDER: Sure.

20          MR. BERLIN: Bear with me just a moment,  
21          Your Honor.

22          THE COURT: Please, take your time.

23          (Discussion off the record.)

24          THE COURT: Back on the record. Go ahead.

25          MR. HARDER: Can we be on the confidential

1 record, Seth?

2 MR. BERLIN: I don't object to that,  
3 Your Honor.

4 MR. HARDER: Your Honor, October 20, 2014,  
5 Judge Case issued a report and recommendation.  
6 There was no -- there were no exceptions that were  
7 filed. I think my office was anticipating that  
8 they would file exceptions, so we didn't prepare  
9 an order for Your Honor to sign to have that  
10 become an order. So we've prepared an order, and  
11 I've discussed it with Seth and he has a few  
12 issues. We were trying to resolve them, but I  
13 would like to give you these two documents. One  
14 is the report and recommendation. One is the  
15 proposed order. Then I would like to explain what  
16 this issue is about.

17 THE COURT: All right. Thank you.

18 MR. HARDER: Your Honor, the reason we're on  
19 the confidential record here and the reason why  
20 this issue -- if you would like, I can let you  
21 have a few minutes to review that.

22 THE COURT: Okay.

23 MR. HARDER: Shortly after Gawker posted the  
24 minute and 41 second sex video, approximately ten  
25 days later, Mr. Houston, who is Terry Bollea's

1 attorney of many years, received a call from a  
2 lawyer representing what we deem is an  
3 extortionist saying we have sex videos and we want  
4 to "sell them to you." I'm putting that in  
5 quotes. And then several months later, there was  
6 an FBI sting operation where arrests were made of  
7 that attorney and the person who had accompanied  
8 that attorney.

9 One of the issues in that what I call an  
10 extortion attempt was there were allegations being  
11 made by the extortionist and the attorney that  
12 there was an issue of race that was allegedly  
13 stated in the private bedroom during or  
14 surrounding the sexual encounter between  
15 Mr. Bollea and Ms. Clem. This allegation of a  
16 sexual -- a racial statement has never -- first,  
17 it's irrelevant to the case. Second, it's never  
18 been substantiated. Allegedly, according to the  
19 extortionist, there is a tape that contains this.  
20 No one in this room or any of the parties has ever  
21 seen this tape, has ever received this tape, knows  
22 anything about this tape other than, A, an  
23 extortionist said it occurred and I think that  
24 there was a news report from many years ago, about  
25 six months before the Gawker sex tape was posted,

1           that the extortionist may have spoken to a  
2           reporter and may have said something about this.  
3           I think it was TheDirty.com, which is a tabloid,  
4           celebrity gossip type of site that may have had  
5           some sort of report about this.

6           It was my hope and our hope that Judge Case  
7           entering this report and recommendation would have  
8           been the end of this issue. The report and  
9           recommendation says, Terry Bollea's counsel is  
10          allowed to redact out the words that are in this.  
11          It's an alleged summary of an alleged sex tape  
12          that was being used by the extortionist and/or  
13          counsel for the extortionist which has this  
14          alleged dialogue.

15          So pursuant to Judge Case's report and  
16          recommendation, the words were redacted out.  
17          Gawker's side was allowed to retain a single copy  
18          of the unredacted and it's being kept in the vault  
19          of Seth Berlin's law firm. Otherwise, Gawker is  
20          not allowed to have any unredacted copies. Then  
21          there's only redacted copies of this. Again, it's  
22          the report or alleged report allegedly summarizing  
23          this alleged sex video and some dialogue in there.

24          Again, it was my hope that this report and  
25          recommendation would have been the end of the

1 issue. Recently Gawker's counsel has been saying  
2 that they intend to make this an issue at the  
3 trial, that they intend to have it potentially be  
4 part of the public record that alleged statements  
5 relating to race were made. Mr. Bollea needs to  
6 protect himself from something like this.

7 Your Honor may recall Paula Deen and the troubles  
8 that she had when an issue relating to race came  
9 out in a trial that she was in, and it -- in some  
10 ways it can be explained that it wiped out her  
11 business. She had something of an empire that all  
12 came crumbling down over that one issue. So  
13 obviously we want to protect ourselves from any  
14 sort of allegations that come out which, A, are  
15 irrelevant to the case, B, are unsubstantiated and  
16 really have no place.

17 So we're raising this because, Your Honor,  
18 we're going to be filing a motion in limine  
19 relating to this issue so that this issue can  
20 never appear at the trial. The report and  
21 recommendation, the purpose of it is to make sure  
22 that there's no public filing by Gawker, that any  
23 filing would be done under seal so that the Court  
24 can consider whatever they have to say about this,  
25 but it's not going to be part of the public record



1 unless the Court determines it should be part of  
2 the public record. Obviously that would be a  
3 different situation.

4 So in submitting this report and  
5 recommendation and proposed order, Your Honor, I  
6 just wanted to submit it with that in mind and  
7 just to let you know that we will be filing a  
8 motion for protective order on this issue and we  
9 will be filing it under seal with a proper motion  
10 to have it filed under seal.

11 Mr. Berlin did point out that in the proposed  
12 order, the very last sentence of paragraph 1 is  
13 not in compliance with the court rules. And we  
14 would be agreeable to having that last sentence  
15 stricken out which would then require that anyone  
16 who wants to use this type of information would  
17 have to file a motion, kind of like the motion we  
18 had a few months ago, seeking I guess  
19 clarification or something of the confidentiality  
20 of the material, but as a precaution that it would  
21 be filed under seal rather than publicly.

22 THE COURT: Let me just make sure I  
23 understand. So apparently the video or the  
24 recording that Gawker published was maybe just a  
25 part of a bigger recording and this extortionist

1 was making some kind of a written report about the  
2 other parts? So Gawker has not seen this,  
3 correct?

4 MR. BERLIN: Let me try to answer that,  
5 Your Honor. Gawker got some footage. It  
6 published a small portion of the footage that it  
7 got. It was our understanding, piecing together  
8 the facts, that there may be more than one piece  
9 of footage. Whether they're from the same time,  
10 different times, don't know, but in an effort to  
11 understand what happened, we actually had some  
12 back and forth with Your Honor about this,  
13 including setting a procedure in place with  
14 respect to Judge Case, that sort of thing. But  
15 this is not in the footage that we have. It's our  
16 understanding that this fellow, Mr. Davidson, who  
17 is the lawyer that he was talking about, put  
18 together sort of a timeline that at this minute,  
19 this is what happened, at this minute, this is  
20 what happened, and described what was on these  
21 tapes in an effort to persuade Mr. Bollea to pay  
22 the money. So we are -- part of that deals with  
23 the issue that Mr. Harder was alluding to. I hope  
24 that answered your question.

25 THE COURT: It did. So what would be your

1 objection, then, to the order?

2 MR. BERLIN: I only -- I want to make two  
3 points, if I may, Your Honor. The first is that  
4 when this came up with Judge Case, we entered this  
5 order. There's a paragraph in Judge Case's report  
6 and recommendation noting that the report was  
7 without prejudice and that we could revisit it  
8 later. We intend to do that later, if necessary,  
9 the motion in limine stage just like Mr. Harder  
10 was addressing. I think it probably doesn't make  
11 sense to address is that relevant or is it not  
12 relevant right now. I can speak to that if  
13 Your Honor would like, but that's sort of a  
14 different topic for a later day, I think. We  
15 think that it has some -- it explains a lot of  
16 what was going on in realtime vis-à-vis Gawker and  
17 Mr. Bollea and his counsel, but that can be  
18 addressed I think later. And not knowing that  
19 this was coming up today, I'm not fully prepared  
20 to do that. I would like to get my ducks in a  
21 row.

22 THE COURT: But at least for our purposes for  
23 now, from a confidential versus public document --

24 MR. BERLIN: That was the second point I was  
25 going to address, if I may.

1 THE COURT: All right.

2 MR. BERLIN: The order -- we have in place a  
3 many-page protective order that was negotiated  
4 over many weeks and that Your Honor signed. And  
5 under that order, if you want to designate  
6 something as confidential, you stamp it  
7 confidential, and you designate the lines and  
8 pages of the deposition testimony confidential.  
9 It's all confidential for 30 days until that  
10 happens, which there is a procedure for that.

11 My concern about this order is not the  
12 concept of, hey, can we keep the stuff that we've  
13 designated as confidential on this subject  
14 confidential and file it under seal. We can. We  
15 actually had a motion object this previously that  
16 we filed, and we filed it under seal and that was  
17 an appropriate motion under the rules to do that.  
18 The concern I have was just the vagueness of the  
19 language where it says that the materials -- that  
20 any accompanying materials that the parties may  
21 wish to file that relate in any way to the matters  
22 identified. What I'm looking for is the clarity  
23 of knowing if you want something to be  
24 confidential, here's the piece of testimony that's  
25 been designated as confidential, here's the

1 document that's been designated as confidential.  
2 So what I would propose to do is -- I'm fine with  
3 the order. I don't love the order, but I can live  
4 with the order. It reflects what Judge Case  
5 did -- is to say any materials that the parties  
6 may wish to file on this issue be designated  
7 either confidential or confidential/attorneys'  
8 eyes order under the protective order may be filed  
9 under seal. When I say to a paralegal in my  
10 office, go through -- which we just did in  
11 connection with the summary judgment brief, just  
12 to give you a real life example -- and make sure  
13 that there is nothing in these pleadings that is  
14 marked confidential that's in anything that's  
15 publicly filed, they can do it with clarity  
16 because they have a bunch of letters from  
17 Mr. Harder saying here are the pages in the  
18 depositions that are confidential and the  
19 documents are stamped confidential, and then we  
20 can do it. The "in any way relates" is  
21 problematic, including The Dirty article that they  
22 mentioned. It doesn't say anything about this  
23 extortionist, but it does allude to this issue.  
24 It's a summary judgment exhibit. That's a public  
25 news report. It's not been designated

1 confidential. It probably shouldn't be marked  
2 confidential because it was on the Internet. So  
3 that got attached. It's I think the only exhibit  
4 that deals with that out of a hundred and whatever  
5 number of exhibits in the stack. But I don't want  
6 to be in a situation where later we did that and  
7 they come back and say, hey, this violates this  
8 order because it in any way relates to that. A  
9 clear way of doing this is to say, let's just do  
10 this with respect to the protective order. For  
11 what it's worth, on this issue, there are  
12 documents that have been designated confidential.  
13 There are documents that have been designated  
14 highly confidential. There were some documents  
15 that were ordered to be redacted and keep the  
16 unredacted original in your safe. We have  
17 scrupulously complied with all of that. But  
18 there's a clear -- that has clarity for us. And  
19 then we are not running the risk of inadvertently  
20 running afoul of an order.

21 So I don't have a problem with the concept,  
22 but what I was looking for was something that says  
23 having been designated confidential or  
24 confidential/attorneys' eyes only under the  
25 protective order instead of "that in any way

1 relates to the matters identified." That seems to  
2 me to be -- there are things that could be, could  
3 not be. Is this article that we just filed yes?  
4 Is a different article not if somebody gives it  
5 out in a public way that's otherwise the  
6 subject of -- it seems clear that if we have a  
7 protective order and the protective order was, A,  
8 was negotiated and, B, that complies with the  
9 Florida rules about keeping things confidential,  
10 that seems to be the way we ought to go.

11 THE COURT: Okay. It just seems that this  
12 particular report -- you call it a report -- is  
13 different than the other items that have been  
14 designated as confidential. They've been on the  
15 Internet or they've been in a book or they've been  
16 somehow published.

17 MR. BERLIN: Yes.

18 THE COURT: Whereas this piece of paper  
19 doesn't seem -- or pieces of paper don't seem to  
20 have been published. It sounds like there's all  
21 potential hearsay, lack of trustworthiness, all  
22 kinds of other legal objections for that. I don't  
23 know if these pieces of paper have some  
24 confidential stamp across them to some degree so  
25 that they're not out there.

1 MR. BERLIN: Any documents the plaintiff, or  
2 in one case a third party, produced one of those  
3 documents that's related to this. They've all  
4 designated them either as confidential, I think in  
5 almost every case confidential/attorneys' eyes  
6 only so that only lawyers can see it. We've  
7 respected that. I think we may have views about  
8 whether that's good, bad, or whatever, but that's  
9 how -- the way the protective order works is they  
10 get to do that until and unless we come to you and  
11 say, Your Honor, you have to overrule that. We  
12 have to follow that, and we have. It's two and a  
13 half years into the case. I'm just asking that we  
14 do it that way because then there's clarity for me  
15 about, okay, we've stamped this confidential. I  
16 know, my paralegal knows, everybody knows this is  
17 covered. Whereas "in any way relates to this  
18 topic," it makes it -- I think we're on the same  
19 page about the concept. It just suffers from a  
20 potential lack of clarity, and on something that's  
21 a court order where we want to be following it and  
22 following it scrupulously, that's what we would be  
23 looking for. So I think that's where we are.

24 MR. HARDER: I would like to address this.  
25 Seth and I did talk about this. As far as a



1 published media report, I don't have a problem  
2 with this order. And I think the appropriate  
3 place would be third line from the bottom where it  
4 says, dated October 20, 2014, it could have a  
5 comma and say "other than published media  
6 reports," and that could resolve the issue because  
7 I'm not trying to address public media reports.

8 The problem that I have with narrowing this  
9 to things that we have actually stamped is that  
10 Mr. Berlin just said, well, what if we obtain this  
11 report or perhaps something similar from a third  
12 party. Well, discovery is over. Fact discovery  
13 ended. So if they're obtaining things from  
14 somebody, I don't have an opportunity to stamp it.  
15 If they obtain something from a person who they  
16 may think may have this, like an extortionist or  
17 the extortionist's attorney or somebody close to  
18 them, this order, if you have the language that  
19 they're asking for that it has to be stamped,  
20 that -- that document that they receive from an  
21 outside person wouldn't fall within the order and  
22 then they could potentially file it in court. The  
23 way it reads right now is that anything that  
24 relates to the matters that are addressed in the  
25 report and recommendation -- which we discussed

1 with you this alleged race issue -- that is  
2 something that is in all of our minds. It's a  
3 sensitive issue that the report and recommendation  
4 is speaking to, and this proposed order would say  
5 if you're planning on filing anything like that,  
6 you have to file it under seal.

7 THE COURT: Let me ask. This report and  
8 recommendation of October 20, 2014, was that the  
9 only issue that was before Judge Case for his  
10 report and recommendation?

11 MR. BERLIN: There's a second issue that's  
12 covered in paragraph 5. It had to do with  
13 telephone records, which I think Your Honor may  
14 recall you ruled on that. That actually came up  
15 to Your Honor in an exception by the plaintiff,  
16 and Your Honor overruled the exception and the  
17 phone records were ultimately produced. That's I  
18 think not the point of -- if I understand it, it's  
19 not the point of what Mr. Harder is getting at.

20 THE COURT: It sounds to me, though, that the  
21 order accepting the report and recommendation, at  
22 this point, Mr. Harder, your argument is beyond  
23 that, right? It's beyond what was considered in  
24 the report and recommendations.

25 MR. HARDER: Well, all it says is that the

1 report and recommendation is adopted. And I guess  
2 the beyond part is if a party is going to seek to  
3 file something that's identified in paragraphs 1  
4 to 4 of the attached report and recommendations  
5 dated October 20, 2014 -- I'm willing to have the  
6 "other than published medial reports" -- shall be  
7 filed under seal and not in public record just so  
8 that we have a very clear understanding that it  
9 gets filed under seal.

10 THE COURT: Yes. But I think Mr. Berlin's  
11 comment is to that second line, that relate in any  
12 way to the matters. So something new pops up is  
13 where I think your expansion comes up, right? I  
14 appreciate Mr. Berlin's dilemma in that all of a  
15 sudden they get information about it. How do you  
16 handle that in a way that he doesn't get in  
17 trouble with the Court?

18 MR. HARDER: Well, Your Honor, if they come  
19 into some sort of possession of a document that is  
20 relating to this issue and they file it in the  
21 court record, then the whole point of the report  
22 and recommendation has kind of now fallen by the  
23 wayside because they just did what Judge Case is  
24 saying you're not allowed to do. So maybe what I  
25 need to do is go to Judge Case and say, Judge

1 Case, can we get clarification that if anything  
2 relating to 1 through 4 is going to be filed in  
3 court, it has to be filed under seal? We're happy  
4 to go to Judge Case and ask him for that.

5 THE COURT: I think that what he's saying  
6 is -- it seems to me that Judge Case saw actual  
7 documents.

8 MR. HARDER: Yes.

9 THE COURT: I think what I'm hearing from  
10 Mr. Berlin is it isn't a document that Judge Case  
11 saw and perhaps Mr. Berlin has not seen it at this  
12 point either, but at this point in time, some  
13 point in time in the future, if Mr. Berlin or his  
14 client sees something that relates to it but it's  
15 not something that specifically Judge Case saw,  
16 Mr. Berlin's concern is your proposed order that  
17 says in any way relates expands on the limited  
18 pieces of paper that Judge Case saw. So I think  
19 that's where his concern is.

20 It sounds to me that you're making an oral  
21 motion, then, to extend anything else that  
22 pertains to these matters, you want to be  
23 designated as confidential until the Court or  
24 Judge Case have an opportunity to rule on them.

25 MR. HARDER: Correct.

1 THE COURT: Does that make sense to you?

2 MR. BERLIN: I understand the motion, the  
3 oral motion that he's making. It's sort of like  
4 buying a pig in a poke. It may be that it's  
5 something that is very much like what Judge Case  
6 saw, and I understand that. It may be something  
7 completely different. It may be something that's  
8 public like in the newspaper or the Internet.  
9 We're sort of guessing, you know. We have a whole  
10 bunch of hypotheticals. And with one exception  
11 that I want to get to in a minute that actually  
12 relate to this subject, we actually have -- other  
13 than a couple expert depositions, it's done. So  
14 if I'm getting it, it's not through any sort of  
15 compelled court process. I don't know how I'm  
16 going to get more stuff than what we have and  
17 produced. We were obliged to produce all the  
18 documents by the 10th, which was about ten days  
19 ago, so we produced them.

20 My hope is that we have clarity because  
21 there's a whole bunch of what if it's this, what  
22 if it's that, where if you knew what it is,  
23 then -- if we have it designated as confidential  
24 or confidential/attorneys' eyes only under the  
25 protective order, then everybody on my team knows

1 this is what's confidential, this is what's highly  
2 confidential, this is what's in the safe.

3 THE COURT: I think then on this order and  
4 report, I'm going to -- if something else  
5 relates -- I accept the concept that Mr. Harder  
6 says that if something else comes about that  
7 relates to that, I'm fine with that being  
8 confidential until a court rules on it, and -- but  
9 striking the last language, a separate motion  
10 seeking leave to file an extension should not be  
11 necessary. It should be necessary. Just strike  
12 the word "not," a separate motion seeking leave to  
13 file under seal as to the unrelated -- I mean as  
14 to the related shall be necessary.

15 MR. BERLIN: Any documents, if you file  
16 documents under seal, you have to file a motion.

17 THE COURT: Right. So it would read, a  
18 separate motion seeking leave to file under  
19 shall -- strike the word "not" -- be necessary.  
20 So it shall be necessary, period. Just strike the  
21 word "not."

22 MR. BERLIN: I still think that leaves some  
23 ambiguity.

24 THE COURT: It does.

25 MR. BERLIN: But the one thing I would like

1 to have exempted from that so that I'm not in  
2 violation of this order by filing a summary  
3 judgment brief is published media reports, which I  
4 understood Mr. Harder to say he had no objection  
5 to.

6 THE COURT: I'm taking this to rely on  
7 that -- this report and recommendation and this  
8 proposed order to be pertaining to racially  
9 sensitive material.

10 MR. BERLIN: And there is one article that we  
11 filed that arguably relates to that. I would like  
12 to have just a carve-out for published materials.

13 MR. HARDER: I stipulate.

14 THE COURT: Okay. So a separate motion  
15 seeking leave to file shall be necessary. Strike  
16 the word "not."

17 MR. BERLIN: Well, it wouldn't be about the  
18 motion to seal. It would be that it would be not  
19 covered by -- we wouldn't have to cover it under  
20 seal.

21 MR. HARDER: I would say after dated October  
22 20, 2014, at the bottom right, comma, other than  
23 published media reports, comma.

24 MR. BERLIN: I think that would work,  
25 Your Honor.

1 THE COURT: All right. Anything else?

2 MR. BERLIN: I mean, the only thing I would  
3 just say is can we make it like published material  
4 because published media report -- I don't want to  
5 hear argument that The Dirty is not a real media  
6 organization and they didn't publish it properly,  
7 like it's on the Internet. I assume that's  
8 covered by published media materials, something  
9 published via a website on the Internet.

10 MR. HARDER: I consider The Dirty to be a  
11 media organization.

12 MR. BERLIN: All right. If that applies --

13 THE COURT: Media is just very broad.

14 MR. HARDER: I don't consider it to be a  
15 legitimate news source, but I consider it a media  
16 organization. So it's a media communication.

17 MR. BERLIN: With that clarification that if  
18 it's on the Internet, it's therefore published  
19 media like The Dirty, we're not going to have an  
20 argument as to whether it's a real news source or  
21 it's not.

22 THE COURT: I don't know that if it's on the  
23 Internet that it's the media, but I guess for  
24 purposes of this, Mr. Harder is stipulating to --  
25 is it Being Dirty? Is that what it's called?



1 MR. HARDER: TheDirty.com.

2 THE COURT: That would be a media report as  
3 defined by this order.

4 MR. BERLIN: Okay.

5 THE COURT: Anything else?

6 MR. HARDER: One other -- nothing else on  
7 this.

8 THE COURT: Okay. Do you have copies of this  
9 that I can conform?

10 MR. HARDER: Yes. This is the order.

11 MR. BERLIN: Your Honor, I have an issue that  
12 relates to that topic. I don't know if this is a  
13 good time. Mr. Harder may have another issue.

14 MR. HARDER: I have an issue relating to this  
15 as well.

16 MR. BERLIN: I'm happy to have Mr. Harder go.

17 THE COURT: All right.

18 MR. HARDER: Your Honor, this actually just  
19 came to mind as we were having this discussion  
20 relating to Keith Davidson. I don't know if  
21 Your Honor feels that you can do anything about it  
22 or not, but fact discovery is over in the case,  
23 but Gawker is litigating a discovery issue in  
24 Los Angeles in this case against Keith Davidson,  
25 the attorney who was representing the

1 extortionist. And Gawker served a subpoena on  
2 him. He objected on grounds of Fifth Amendment  
3 privilege, which I can certainly see, and also  
4 attorney/client privilege and attorney work  
5 product. Fact discovery ended, and Gawker  
6 continues to do this litigation against Keith  
7 Davidson after discovery has closed. We're having  
8 to spend money to file papers in Los Angeles  
9 Superior Court, to show up to Los Angeles Superior  
10 Court over this. It just seems like if discovery  
11 is over, then discovery is over. Unless  
12 Your Honor has a motion for leave to reopen  
13 discovery as to this issue, it just seems like  
14 that discovery should be concluded.

15 THE COURT: What is the litigation about?

16 MR. BERLIN: This is actually the same issue.  
17 So that actually works out. You got a two-for on  
18 this one, Your Honor.

19 Because there is a potential -- I have  
20 testimony, Your Honor, from Mr. Houston who was  
21 actually involved with the thing at his deposition  
22 a couple weeks ago -- that there is some arguable  
23 connection -- we don't think there is, but there  
24 is a claim -- there is some claimed connection  
25 between this extortionist and Gawker that -- what

1 we have done is back in December, we issued a  
2 subpoena that finally got served in January. We  
3 had some informal discussions. We also served a  
4 subpoena on his law firm, not just him personally.

5 THE COURT: Mr. Davidson is the attorney?

6 MR. BERLIN: He is the attorney, yes. It's  
7 his law firm as well in part because the law firm  
8 does not enjoy a Fifth Amendment privilege.  
9 That's reserved for people. So we were trying to  
10 get documents relating to this very subject  
11 because it relates to what's on our tape, what's  
12 on the Bollea tapes, when were they made, who's on  
13 them, what are the circumstances of the recording,  
14 what were the circumstances of the distribution.  
15 Is he the source? We don't actually know that.  
16 And so forth.

17 As Your Honor will recall, we've been trying  
18 to get information about this subject since early  
19 in the case. There was a subpoena to the -- I  
20 mean, there was a FOIA request to the FBI where we  
21 asked for a records authorization. That got  
22 litigated first with Judge Case. That finally  
23 went out, but it took about a year to do that. We  
24 also sent the subpoena to Mr. Davidson. And then  
25 after it was served, there was informal

1 discussion. Then in March we filed a motion to  
2 enforce the subpoena against his law firm only.  
3 We sort of accepted his own implication of the  
4 Fifth Amendment, but the law firm we served a  
5 subpoena. Mr. Harder's firm on behalf of  
6 plaintiff objected to the judge, which delayed the  
7 thing a little bit because they had to assign it  
8 to a new judge. That went a couple weeks. Then  
9 we saw an ex parte, which in California speak is  
10 not meaning what we would think it means as  
11 ex parte, but an effort to try to get it heard  
12 quickly. That was also opposed by both  
13 Mr. Davidson and plaintiff, Mr. Harder's law firm.

14 Now they're taking the position that having  
15 done all these things to sort of run out the  
16 clock, discovery is over and you can't get that.  
17 It's our understanding of Florida law that where  
18 we have been diligently trying to get this for a  
19 number of months -- we have a hearing on the 1st  
20 or 2nd of May, which is next week, with the  
21 California judge on the substance of the subpoena,  
22 with Mr. Davidson's lawyer. And if the court  
23 allows the subpoena to go forward, we can get  
24 those documents, and we would actually ask -- if  
25 it's an oral motion, we would ask that the Court

1 clarify that although discovery is otherwise over,  
2 we can -- if we get these documents or testimony  
3 from Mr. Davidson that that would be something  
4 that we could do. Given that and just -- I'm  
5 reminded in this instance, there was an issue  
6 earlier in March about whether the plaintiff had  
7 timely designated one of his experts. And we had  
8 a hearing about it in front of Judge Case. Judge  
9 Case said, look, you set a schedule. We have to  
10 follow it, but -- this is the but part. He said  
11 there's this case called either Binger or Binger.  
12 I think he said it was Binger.

13 MR. TURKEL: It's Binger.

14 MR. BERLIN: Binger, thank you. And he said  
15 Binger vs. King Pest Control, that case resides in  
16 every trial judge's bench notebook in the State of  
17 Florida and that it's part of the case law and  
18 that it's been enforced and followed by every  
19 district court in the state, including the Supreme  
20 Court, and it makes our efforts to keep -- trial  
21 judges' efforts to keep deadlines timely and turns  
22 them into more of an aspirational mode of trying  
23 to deal with them. Because that language in  
24 Binger is so oriented in terms of allowing  
25 witnesses, allowing evidence, allowing testimony,

1 unless it turns on intentional bad faith or  
2 noncompliance with a direct order or disrupts the  
3 process of the court, you're basically told you  
4 have to bend over and figure out a way to cure any  
5 prejudice. This is what Judge Case told us when  
6 it was their witness. I think under these  
7 circumstances, discovery ended recently, and if we  
8 get these documents in early May, we'll still have  
9 two months until trial. They're obviously on a  
10 subject that Your Honor has previously adjudicated  
11 as relevant. When we sought documents from the  
12 FBI, we were allowed to do that. When we asked  
13 the plaintiff for documents relating to those and  
14 his communications with the FBI, those were  
15 ordered produced. Now we're trying to get  
16 Mr. Davidson's side of the story so we know what's  
17 what. This seems like -- it may turn out that  
18 there's not -- it's not useful testimony, but it  
19 may turn out that it's very useful and that's the  
20 purpose of discovery. We've been trying to do  
21 that, and we should not be precluded from doing  
22 that just because the litigation of a third party  
23 sort of -- with the plaintiff's participation has  
24 run out the clock on this. So that's where we are  
25 on this Keith Davidson thing. We would like this

1 clarification that if we get these documents that  
2 we can still finish that part of the discovery.  
3 So that's really the Keith Davidson timing issue.

4 THE COURT: It sounds like it's sort of the  
5 cart before the horse. So it seems like you have  
6 to go to California. Let's see what that judge  
7 says.

8 MR. BERLIN: But the argument they're making  
9 in California is you can't get this discovery  
10 because you're out of time under the Florida court  
11 schedule. We would like to have clarification  
12 that if we're otherwise entitled to these  
13 documents that that should not by itself preclude  
14 us from getting them. The substance of it is  
15 obviously up to the Court out there.

16 MR. HARDER: Your Honor, I would like to  
17 address this because there was a massive amount of  
18 delay by Gawker. They received documents that had  
19 Keith Davidson's name all over them in May of last  
20 year. They sat on the issue until the end of the  
21 year, late December. They issued a subpoena to  
22 Davidson. He very promptly said, I'm asserting  
23 the Fifth Amendment privilege as to everything.  
24 This is an attorney who was arrested by the FBI  
25 for being part of an alleged extortion attempt.

1           Also, he was representing a client in the process,  
2           and he says, all of my communications were with my  
3           client, and that's attorney/client privilege and  
4           attorney work product privilege. So he promptly  
5           asserted all of his objections on that basis.  
6           Then Gawker waits several more months and files a  
7           motion to compel literally on the eve of the  
8           discovery cutoff in March with the discovery  
9           cutoff in mid April. They passed the discovery  
10          cutoff and they're continuing to litigate this  
11          issue in Los Angeles. Mr. Davidson is having to  
12          spend money on his counsel to oppose their motion.  
13          We're having to spend money to present to the  
14          Court a full picture of what's going on, and we're  
15          mentioning the fact that they waited and waited  
16          and waited and then the discovery cuts off and  
17          they're continuing to seek discovery. The Binger  
18          case is about expert discovery. It's not about  
19          fact witnesses.

20                 I just feel like Gawker is pressing everyone  
21          to stay within the deadlines and yet they want to  
22          continue discovery without any restrictions in  
23          other states. What Mr. Berlin is essentially  
24          saying is they want to try to documents from him  
25          and then if and when they get them, then they want



1 to take his deposition. We don't have a whole lot  
2 of time before the trial. We're opposing two  
3 summary judgment motions as well as all these  
4 other issues. I just feel like if we're going to  
5 be complying with the discovery cutoff, they  
6 should be complying with it. If they're not going  
7 to comply with it, maybe there's some additional  
8 discovery we want to take, and we can cite to  
9 Binger and say we think it's important and we're  
10 going to blow off all the deadlines of the court.  
11 I don't think anyone should be blowing off the  
12 deadlines of the court, which is why I mention  
13 this issue to you.

14 THE COURT: Well, this trial, just like every  
15 other trial, things are always popping up on the  
16 eve of the trial. So I think we're going to let  
17 the California court see what they do, and then  
18 someone's going to -- if that information is  
19 allowed to be produced or discovery allowed to be  
20 performed, then I'll make a ruling based on those  
21 issues. Then that's when you're both going to  
22 bring to me your timeliness argument and we'll go  
23 from there. We'll add one more thing to May 29th.  
24 Just remember the courthouse closes at five  
25 o'clock.

1 MR. BERLIN: Your Honor, on that subject,  
2 there is -- I appreciate what Your Honor is  
3 saying. There is -- there's currently a motion  
4 pending in New York by the plaintiff, right,  
5 just -- this falls in the goose and gander part of  
6 the program. There is currently a motion pending  
7 in New York. You may remember when we were here  
8 in March, there was a fellow named John Cook who  
9 was a reporter for Gawker and the plaintiff wanted  
10 to take a corporate designee deposition of Gawker  
11 and have Mr. Cook be the corporate designee about  
12 some topics. We opposed that motion. Your Honor  
13 overruled us. We asked for a brief stay to figure  
14 out with Ms. Dietrick and the client whether they  
15 wanted to take an appeal. We elected instead to  
16 say, no, we'll just produce him.

17 (Mr. Houston left the courtroom.)

18 MR BERLIN: We called them and said we  
19 scheduled the deposition. He was deposed for  
20 three and a half hours last week. Despite that --  
21 you may remember the New York court had quashed  
22 the subpoena on service grounds. Despite that,  
23 they have now gone -- and despite the fact that  
24 discovery cutoff has passed and despite the fact  
25 that the subpoena for this witness was served

1 several months after the subpoena to Mr. Davidson  
2 that we're talking about, they've gone back to the  
3 New York court to ask for reargument on the  
4 subpoena in New York so that they can get broader  
5 discovery than what Your Honor authorized under  
6 the multiple topics that were set forth in the  
7 deposition notice.

8 So I wanted to bring this up for two reasons.  
9 One is I want to let you know that the plaintiff  
10 is also making efforts to pursue discovery past  
11 the discovery cutoff with respect to witnesses on  
12 our side of the table, number one. And I would  
13 submit that Mr. Cook is sort of much more  
14 tangential witness than Mr. Davidson. I'll come  
15 back to that in a minute.

16 The second thing is because Your Honor had  
17 already ruled, these are the topics on which this  
18 fellow can be deposed, and he was deposed on that  
19 those topics. We would respectfully request that  
20 Your Honor advise the plaintiff that further  
21 efforts to expand the scope of that discovery --  
22 which the New York subpoena was a subpoena that's  
23 ultimately issued based on a Florida subpoena --  
24 stop because we're now going to spend money in New  
25 York opposing efforts for reargument on a subpoena

1 to a witness that we've already agreed to produce  
2 and he's already testified. We don't think that's  
3 proper. We -- they went to New York. They didn't  
4 like the result there. They came to Florida.  
5 Your Honor says depose the guy. The guy was  
6 deposed. Then you go back to New York and say you  
7 want to depose the guy again on broader topics.  
8 It doesn't seem right to us.

9 And maybe we can pause on that issue and see  
10 if we can get some clarification from Your Honor  
11 on that.

12 THE COURT: Would you like to respond?

13 MR. HARDER: I actually thought that we were  
14 withdrawing that motion, but I have to talk to my  
15 staff because we had discussions and I thought  
16 that I had said I think we're just going to pull  
17 that. It was actually their motion. They were  
18 the ones who filed the motion in New York. We  
19 didn't. The whole concept of this -- John Cook  
20 showed up. We deposed him on the three topics,  
21 but if they had not opposed the New York subpoena,  
22 we wouldn't have been limited to three topics. We  
23 would have been allowed to ask questions about  
24 anything that is relevant or reasonably  
25 calculated. To the extent that they limited us

1 during that deposition to subjects that were not  
2 in the three topics that we deemed to be within  
3 the proper scope of discovery, it's possible that  
4 my staff said, okay, we're going to not foreclose  
5 the ability to finish up the discovery as to John  
6 Cook.

7 I actually just sent an e-mail to my staff to  
8 ask them what's going on with this. I apologize  
9 that I don't have the answer.

10 Your Honor, if your last ruling was let's see  
11 what Los Angeles has to say, perhaps the what's  
12 good for the gander ruling would be let's see what  
13 New York has to say. We may end up resolving this  
14 one.

15 MR. BERLIN: It's a little bit different,  
16 Your Honor, because in the Cook situation, Your  
17 Honor has already delineated here's what the  
18 topics are, and the guy's already been deposed.  
19 To have further efforts -- the motion was their  
20 motion. It's a motion for reargument that they  
21 filed. We were forced to file an opposition,  
22 which we did. We went back, look, why are we even  
23 having this motion practice? We've already agreed  
24 to produce the guy. He's coming and he's going to  
25 testify about the topics you asked the Florida

1 court to have him testify about. Mr. Harder wrote  
2 and said, I would like to be able to ask Mr. Cook  
3 any question that I want even beyond those topics.  
4 We said, well, the Florida court has said these  
5 are the topics that are appropriate for this case.  
6 I will say there were some other questions that we  
7 thought probably weren't directly within the  
8 topics about some of the other things that he's  
9 published, but we let him answer. It wasn't  
10 vastly expansive. We tried to be reasonable about  
11 it.

12 We would ask the Court -- I would like not to  
13 go away from this case management conference and  
14 then have Mr. Harder call me tomorrow and say, I  
15 changed my mind. I'm going to pursue this and  
16 then we have to litigate this in New York. I  
17 would like some guidance from the Court here that  
18 says, hey, to the extent that you're pursuing a  
19 subpoena in New York that's ultimately based on a  
20 subpoena that was issued out of my court, you've  
21 already had your day with this witness and you  
22 should move on.

23 THE COURT: Since I've not seen the  
24 transcript of the deposition -- I'm not inviting  
25 it. I'm just saying I haven't seen it. I don't

1 know if the three topics were met with objections.  
2 There's too much that I don't know about whatever  
3 happened at the deposition last week. So at this  
4 point in time, it's hard for me to rule in a  
5 vacuum on that.

6 MR. BERLIN: What I'm asking is not that you  
7 rule in a vacuum, Your Honor. If they have an  
8 issue with what he answered and they want to come  
9 back to Your Honor, that's fine. That's -- that's  
10 because that's a Florida process that you set a  
11 motion for. What I don't want to do is having had  
12 Your Honor assume responsibility for what happens  
13 with Mr. Cook and having a war on two fronts where  
14 I'm litigating on something where we've already  
15 done what Your Honor asked. There is a relief for  
16 that. And also having some judge in New York have  
17 to weigh in on all this, it seems like a big waste  
18 of everybody's time.

19 THE COURT: Well, I don't know. Mr. Harder  
20 may have instructed his client. Let's take a  
21 little break. Mr. Harder, why don't you call your  
22 office and see what the status is. We could use a  
23 little break anyway.

24 MR. HARDER: Fair enough.

25 MR. BERLIN: Thank you, Your Honor.

1 THE COURT: Thanks.

2 (Recess taken from 3:43 p.m. to 3:53 p.m.)

3 THE COURT: Mr. Harder, did you find anything  
4 out?

5 MR. HARDER: Unfortunately, I couldn't find  
6 the right person, Your Honor, because it's  
7 administrative day and everyone is at lunch and I  
8 couldn't get a phone call. So I'll have to  
9 connect with the proper person. And if we're  
10 going to withdraw this, I will communicate that  
11 Mr. Berlin. If we're not going to, I will  
12 communicate that to Mr. Berlin as well.

13 THE COURT: Thank you. But otherwise we'll  
14 let New York see what they're going to do about  
15 it. I'm not in the direct loop of that.

16 MR. BERLIN: If I may, Your Honor, when we  
17 were here the last time, I made that exact  
18 argument, let New York deal with it. And  
19 Your Honor said, no, I'm going to have this guy  
20 come. We said, okay, fine.

21 THE COURT: But now the process has started.

22 MR. BERLIN: The process had already not only  
23 started, the subpoena had been quashed in New  
24 York. What I'm asking is that if there are issues  
25 related to Mr. Cook's deposition that we not



1 litigate them on two fronts. If the plaintiff  
2 wants to come back to Your Honor and say he didn't  
3 answer the right question or we need more, that's  
4 a proper argument, but don't do it in two places.

5 THE COURT: I don't know what the pending  
6 motion is in New York, other than you said for  
7 reargument.

8 MR. BERLIN: If I can give you 30 more  
9 seconds of background. So what happens  
10 procedurally, as I think Your Honor knows, the  
11 Florida court issues a subpoena. It goes to New  
12 York, and we attach it to a New York subpoena. It  
13 gets served on the guy. There was already a  
14 motion to quash which was granted. So they've now  
15 gone back and said, we would like to reargue that  
16 notion. So it's a motion for reconsideration  
17 essentially. But it's based on the Florida  
18 subpoena. And the arguments in New York are  
19 basically, hey, if the Florida court says it's  
20 okay, then the New York court is supposed to  
21 follow along. We don't want to get in the middle  
22 of somebody else's dispute.

23 So what I'm saying to you is that the issue  
24 in court and the presiding judge that remain in  
25 dispute is you have some say over whether we get

1 to continue under the subpoena in New York or if  
2 we're going to depose John Cook, it's going to be  
3 based on the deposition that Your Honor already  
4 ordered. That's what makes sense to us. That's  
5 what I'm asking for.

6 If Your Honor is not inclined to do that, we  
7 can see what happens in New York. Hopefully  
8 Mr. Harder will withdraw the motion and it won't  
9 be necessary. I'm a little bit concerned if we go  
10 away today and we're not coming back until late  
11 May, we're going to end up fighting this battle on  
12 a second front in New York.

13 THE COURT: You could come back in earlier  
14 May.

15 MR. BERLIN: Fair enough.

16 THE COURT: Mr. Harder, do you agree with his  
17 representations as to what's being heard in New  
18 York?

19 MR. HARDER: Honestly, Your Honor, I just saw  
20 the motion for the first time. We have counsel in  
21 New York who filed it I think a couple days ago.  
22 I've been buried with depositions, flying out  
23 here. We just got hit with a colossal summary  
24 judgment motion, which we're dealing with, and a  
25 whole lot of other things. I also have other

1 clients in other cases, believe it or not.

2 So I have to admit that I'm not fully -- kind  
3 of like you, I'm not fully in the loop on  
4 everything that's going on in New York. I wasn't  
5 at that John Cook deposition. It's my  
6 understanding that questions -- there may have  
7 been some that were not allowed to be asked of him  
8 because they were not within the four corners of  
9 the corporate designee deposition. What we were  
10 trying to do is have a deposition of him that was  
11 limited to nothing other than what's relevant or  
12 reasonably calculated and that is not what was  
13 given to us. The subpoena in New York originally  
14 would have provided that. There was an error that  
15 was done by the clerk, which I believe Your Honor  
16 heard from both of us that they assumed he was not  
17 an employee and he really was. They determined  
18 that he was not properly served, which was an  
19 error. And both counsel got on the phone with the  
20 clerk and explained that. So that's what's going  
21 on in New York.

22 I'm going to take another look at this when I  
23 get back. I'm going to ask everybody, do we  
24 really need this? If we don't, then I'll let them  
25 know.

1 THE COURT: Here's my concern with it. If  
2 he's designated as a corporate representative,  
3 that's one.

4 MR. HARDER: Yes.

5 THE COURT: And I think the three categories  
6 were for a corporate representative deposition.  
7 If the deposition was going beyond corporate  
8 representative and just let's talk to us as a fact  
9 witness, then I can see why there would have been  
10 limits or objections during the deposition.

11 MR. HARDER: Correct, but the original  
12 subpoena that was served on him had no limits to  
13 it.

14 THE COURT: Yes, but that was not my ruling.

15 MR. HARDER: I understand. I think we're on  
16 the same page here. The clerk in New York --

17 THE COURT: I'm not sure --

18 MR. HARDER: The clerk in New York made an  
19 error.

20 THE COURT: I understand that.

21 MR. HARDER: Because of that error, we ended  
22 up being limited in our questioning.

23 THE COURT: Because of me.

24 MR. HARDER: No.

25 THE COURT: Yes, because of the order that I

1 put on the three limits as a corporate rep.

2 MR. HARDER: Correct, but the original  
3 subpoena, which is still a live issue in New York,  
4 had no limits.

5 THE COURT: Yes, but I put limits on it. So  
6 we'll stick with the limits. So here's what I  
7 think. You don't get two bites at the apple. I  
8 don't think you get to ask him questions and you  
9 go to a different judge in New York and say, okay,  
10 but we don't want the corporate representative.  
11 So Judge Campbell is the corporate representative.  
12 We want corporate representative. Judge Campbell  
13 agreed with us, but she limited it to three  
14 topics. So you don't also get to go to New York  
15 and say, well, we want a corporate rep, but we  
16 don't really want it limited at all. The case  
17 stems out of here. So since the case is out of  
18 here -- we've taken lots of time on this. I think  
19 it's done.

20 MR. HARDER: Your Honor, I will withdraw  
21 whatever motion was filed. We'll end it in New  
22 York as to John Cook.

23 THE COURT: If there's something else that  
24 you think is an objection or something else that e  
25 didn't say or one line of questioning led to

1 something else that somebody determined that  
2 wasn't as a corporate representative, I think the  
3 proper thing is to bring it back to me. Then I'll  
4 either expand it or not.

5 MR. HARDER: That's fine.

6 THE COURT: Okay. Thank you. What else?  
7 Let's just try the whole case right now. We'll  
8 proffer each other's testimony.

9 MR. BERLIN: We have a few more minutes. We  
10 move things very quickly in this case, so it  
11 shouldn't be a problem.

12 Your Honor, I just wanted to -- if you don't  
13 want to hear this, I'll leave it for another time.  
14 I was going to give you just a little bit more  
15 information. I diverted from Keith Davidson to  
16 talk about John Cook, but I was actually going to  
17 talk about Keith Davidson. If you don't want to  
18 hear any more about that, I'll --

19 THE COURT: About what Davidson?

20 MR. BERLIN: Yes.

21 THE COURT: We're letting the California  
22 court -- they've already started down that path.  
23 I've not ruled already on anything on  
24 Mr. Davidson. So let's see what California has to  
25 say.

1 MR. BERLIN: So Just so I'm clear, you're not  
2 ruling that we can't do it; you're not ruling that  
3 we can do it; you're letting the court in  
4 California decide.

5 THE COURT: The court in California can  
6 decide. Whether or not it's admissible in this  
7 court or whether or not it's in any way near  
8 permissible, we'll deal with that at a later time  
9 because somebody is going to make the argument  
10 that it's way past the discovery cutoff.

11 MR. BERLIN: I think I know who's going to  
12 make that argument.

13 THE COURT: Mr. Turkel?

14 MR. BERLIN: All I'm saying is that's  
15 reserved for a later date?

16 THE COURT: Yes.

17 MR. BERLIN: Perfect. I don't have anything  
18 else, Your Honor.

19 MR. HARDER: Nor do we.

20 MR. TURKEL: Nothing, Judge. Thank you.

21 THE COURT: All right. Thank you.

22 MS. FUGATE: Thank you, Your Honor.

23 MS. DIETRICK: Nice to meet you, Your Honor.

24 (Proceedings concluded at 4:03 p.m.)  
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REPORTER'S CERTIFICATE

STATE OF FLORIDA :  
COUNTY OF HILLSBOROUGH :

I, Susan C. Riesdorph, RPR, CRR certify that I was authorized to and did stenographically report the foregoing proceedings 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 outcome of the foregoing action.

Dated this 23rd day of April, 2015, IN THE CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

Susan C. Riesdorph, RPR, CRR, CLSP