

EXHIBIT 32

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
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

TERRY GENE BOLLEA, professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12-012447-CI-011

HEATHER CLEM; GAWKER MEDIA, LLC,
aka GAWKER MEDIA, et al.,

Defendants.

_____ /

HEARING BEFORE THE HONORABLE PAMELA A.M. CAMPBELL

Case Management and Status Conference

DATE: July 30, 2015

TIME: 10:00 a.m. to 11:48 a.m.

PLACE: Pinellas County Courthouse
545 First Avenue North
Third Floor, Courtroom C
St. Petersburg, Florida

BEFORE: Valerie A. Hance, RPR
Notary Public, State of
Florida at Large

Pages 1 to 92

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I N D E X

PLAINTIFF'S EMERGENCY MOTION FOR CLARIFICATION ON PROTOCOL	Page 5
PLAINTIFF'S EMERGENCY MOTION FOR CLARIFICATION	Page 63
COURT RULING	Page 72
PLAINTIFF'S NOTICE THAT ACTION IS AT ISSUE AND MOTION TO SET CAUSE FOR TRIAL	Page 77
REPORTER'S CERTIFICATE	Page 92

E X H I B I T S
(None marked.)

P R O C E E D I N G S

(Court called to order at 10:00 a.m.)

1 THE COURT: So we're here in Case No.
2 12-012447, Bollea vs. Gawker and others. We're here
3 this morning for the plaintiff's emergency motion
4 for clarification and confirmation that the agreed
5 protected order and stipulated protocol govern all
6 documents, reference and materials, produced in
7 response to the Freedom of Information Act request
8 of Gawker Media, LLC, and its' attorneys request for
9 status conference. We're also here today for a case
10 management conference. I would like to be able to
11 schedule the trial in this matter.
12

13
14 And at this point in time, is there anything --
15 who is going to be arguing that motion, Mr. Turkel?

16 MR. TURKEL: Your Honor, we have three motions
17 pending. The first one you mentioned, the emergency
18 motion for clarification on the protocol.

19 And may it please the Court, Judge. And good
20 morning.

21 The plaintiffs noticed an action is at issue,
22 and motion to grant priority status and to set the
23 case for trial, and the emergency motion we filed
24 for leave to conduct discovery on a potential
25 violation of protective order in this case by the

1 defendants.

2 Mr. Vogt will be handling the set the cause for
3 trial motion and the clarification of the protocol.
4 I'm going to handle the discovery motion.

5 THE COURT: All right. Thank you. Which would
6 you like to do first?

7 MR. TURKEL: Judge, we'll take them in any
8 order which the Court deems appropriate. The
9 headiest of the three is probably the motion for
10 leave to conduct discovery. It implicates the most
11 issues.

12 It sounds to me, by noticing this for case
13 management, that we intend to walk out of here with
14 a trial date anyway, and so, really, that motion
15 seems to somewhat have been addressed by the Court
16 by that statement.

17 So if it please the Court, I think probably
18 taking that first will be the best order of things.

19 THE COURT: Go ahead.

20 MR. TURKEL: Judge, it's been a volatile few
21 weeks since we were last in front of you.
22 Understanding we were on the doorstep of trying this
23 case and the case got continued at the last minute,
24 I'm sure to no one's benefit, in the sense that we
25 were all working hard to get ready, including this

1 Court.

2 And our concern at that time was that we keep
3 this case focused on the issues. And the issues
4 have been simple. This case was filed in October of
5 2012. It's almost three years old. The issues have
6 never changed. And at the risk of being redundant
7 to the numerous times I've stood before you and
8 stated what the issues are in this case, the issues
9 are very simple.

10 My client was surreptitiously recorded in a
11 private bedroom engaged in a private act, both by
12 video and audio. That surreptitiously,
13 illegally-taken video was taken by Gawker. It was
14 published on the internet with direct and actual
15 knowledge that it was taken without our client's
16 knowledge, without his consent, and surreptitiously
17 in violation of the law.

18 The legal issues have been crystalized by this
19 Court. We assert our client has a right to privacy
20 in very general terms, and we have specific claims
21 that arise from that.

22 They assert that this video was somehow
23 newsworthy and a matter of legitimate public concern
24 and that's it. And we've worked very hard with you,
25 Judge, to make sure that when we try this case, the

1 sideshow, the circus that Gawker seems to want to
2 attempt and bait into this courtroom doesn't become
3 the focus of it, but it focuses on the assertion of
4 those rights and their defenses.

5 And, Judge, we have rules in this game. And we
6 agree, when we take the oath, to abide by those
7 rules. And we will disagree all day, until the jury
8 or judge comes back, on whether my client's privacy
9 rights supercede their asserted First Amendment
10 right. And that's what we're here to try. It's
11 never been any different. And I know the Court
12 knows that, because we spent nine hours vetting the
13 legal issues in this case on summary judgment and
14 you entered your order on that.

15 And, you know, we agree to abide by these rules
16 and we agree to play by them. And you call the
17 balls and the strikes and you make your judgments as
18 a judge and we live with them. And if we don't like
19 them, that's what we do. And then we try the case
20 and appeal it if we don't like it. And I think
21 that's a pretty succinct version of how it's
22 supposed to work in our system.

23 Judge, we have put before you -- and I don't
24 know -- we obviously filed this on an emergent
25 basis. I don't know if the Court had a chance to

1 read this motion yet on the discovery issue.

2 THE COURT: I haven't even seen it.

3 MR. TURKEL: Do we have a courtesy copy, Shane?

4 Judge, I'm going to hand you, if I may
5 approach, a courtesy copy without the voluminous
6 exhibits, which we can hand you also, but I think it
7 will be easier right now to use the motion itself
8 and the incorporated timeline as a point of
9 reference.

10 And so, Judge, I really am starting at point
11 zero. I'm going to try, because I know to the
12 extent the Court has not read that, the Court will
13 read it, because you read everything and you have
14 throughout this case.

15 Judge, to sort of cut to the chase on the
16 predicate for the motion, for the last two and a
17 half years or so, Gawker has tried throughout this
18 case, both in discovery, both in front of
19 Judge Case, your appointed discovery master, and in
20 this Court, to inject issues relating to a separate
21 tape that is at -- than the one that is at issue in
22 this case, that they've alleged contains offensive
23 language engaged in by my client. They've tried.
24 They've tried at depositions. I've sat there and watched
25 them try and watched Judge Case stop them time and

1 time again.

2 I heard you on July 1st when you ruled it
3 wasn't relevant in this case. That hasn't stopped
4 Gawker at every turn from trying to make it the
5 focus of the case that it has nothing to do with.
6 They have referred to "the offensive language tape"
7 more times than possible. They've tried to inject
8 it in no matter how many times they were stopped,
9 Judge. And if the message wasn't clear on July 1st
10 when you granted the motion to keep it out of this
11 trial, it couldn't be any clearer.

12 What our motion is based on, Judge, is Gawker's
13 advertent attempts through the media to get
14 information that by the parties' agreement, all of
15 the parties' agreement, meaning Gawker, Bollea, the
16 FBI, to get sealed court documents leaked into the
17 media so that the sideshow that this Court has
18 stopped them from engaging in, Judge Case stopped
19 them from engaging in, could get out into the media
20 ruining my client's career and potentially ruining
21 his right to a fair trial.

22 Judge, we have put together in this motion a
23 timeline of circumstances that I'm going to have to
24 walk through with you so you can understand exactly
25 where this motion and what this motion is based on.

1 But, Judge, simply stating it, that if you give
2 us discovery and we find direct evidence of what we
3 believe is supported by some direct evidence and
4 circumstantial evidence at this point, their conduct
5 would not only pass muster under Kozel and its
6 progeny, that being contumacious, arrogant, and
7 intentional disregard of the protective order in
8 this case, regarding materials that no one could
9 question, Your Honor, had been the focus of great
10 deal of work to keep within that protective order
11 you entered. It would clearly pass muster and
12 provide at least a basis for review determining
13 their pleadings in this case. It would clearly
14 provide you with ample grounds to hold somebody in
15 contempt, either civil or criminal.

16 And what this motion is seeking is our right to
17 conduct discovery on how this information was leaked
18 and Gawker's ties to that leak, direct or indirect,
19 because they've denied they had a direct leak, not
20 that I would expect them to admit.

21 By way of background, Your Honor -- and I don't
22 know if Your Honor has read these stories, but the
23 National Enquirer a few days ago, last week, wrote a
24 story premised on the sealed documents in this case.
25 And when I say premised on sealed documents, they

1 actually state that the documents upon which they
2 were basing the story were sealed under this Court's
3 protective order. It was either a transcript or an
4 actual audiotape of the separate tape that had been
5 ruled irrelevant in this case with the offensive
6 language.

7 It was published, followup stories were done.
8 They, of course, didn't name their source. But
9 when -- when we found out about it and we looked at
10 the background of what has gone on, we believe --
11 and we've set this forth in great detail on this
12 motion -- that, at the very least, Gawker was
13 indirectly involved. And given the chance to
14 conduct discovery, we want the opportunity to prove
15 that they were directly involved in this, Judge.

16 Judge, I want to start, if you would go -- I
17 think the easiest way to do this is to go to page 6,
18 because there is a timeline there.

19 Now, as the Court knows, Gawker came before
20 this Court seeking a FOIA privacy waiver as part of
21 this Court's ruling that it could go ahead. And we
22 were basically compelled to cooperate in their
23 efforts to get documents from the FBI.

24 Their representations to this Court was it was
25 for discovery. I think that the primary

1 representation was that they had a right to see
2 these tapes so they could see whether there was
3 evidence Mr. Bollea knew he was being recorded or
4 something like that. That was one of the grounds.
5 They may have had others.

6 Their FOIA request went through the system and
7 ultimately ended up in Gawker suing the FBI. And in
8 that respect, from June 26, 2015, to July 2nd, they
9 received documents, tapes, some of which we came
10 here to watch, edited versions of those tapes or
11 re -- I would say reprocessed versions, because
12 there were technical problems with them.

13 At a pretrial hearing on July 1st, you ruled
14 that full versions of all the illegally-recorded
15 videos of Mr. Bollea and any evidence of
16 Mr. Bollea's use of offensive language would be
17 excluded at trial.

18 We had a protocol in place. And the protocol
19 was meant to protect these documents from getting
20 out of the realm of this Court's jurisdiction. Now,
21 there was a bit of a bump in that, because when they
22 were over in front of Judge Bucklew in federal
23 court, she basically deferred to your order. And
24 she said, "I'm not going to do anything, but we
25 defer to the state court to protect that." Which

1 was one of the reasons we filed that motion to
2 clarify the protocol.

3 At the hearing, Judge, we pulled the
4 transcript. And on pages 6 and 7, you can see where
5 Mr. Berlin said to Judge Bucklew -- they premised
6 their entire FBI case on the idea that they were
7 getting these documents for discovery. That's what
8 they told you, that's what they told the government,
9 that's what they told Judge Bucklew.

10 When you see this transcript where Mr. Berlin
11 all of a sudden has a change of heart, and now the
12 argument he's making to Judge Bucklew is, "We
13 originally came to get this as discovery, but now
14 we're a news organization." And to paraphrase what
15 he says -- and, frankly, it's much more damning the
16 way he says it. But to paraphrase it, he says, Our
17 purpose has changed. Now we're here to get news
18 because Gawker is a news organization.

19 So these sensitive documents that they came
20 before this Court to compel our client to sign a
21 privacy waiver, it was limited to discovery. And
22 Your Honor granted that on that representation by
23 Gawker.

24 Now has gone to the federal court and said,
25 "Yeah, originally it was discovery, but now we want

1 to write news stories about the investigation."

2 Now, I am fairly certain, Your Honor, if their
3 argument to you when you made my client sign that
4 FOIA waiver was, "Judge, we want to write a story
5 about it," you weren't granting that motion. You
6 certainly weren't compelling Mr. Bollea at that time
7 to sign a privacy waiver if that's what they had
8 said.

9 But what they did was they bait and switch the
10 argument. And they go in front of Judge Bucklew and
11 now they say, on July 2nd, which is when the hearing
12 was, "We kind of started out with the idea that
13 we're going to do discovery, but now we want to
14 write a story."

15 In the process of that, Judge -- and this may
16 be peripheral, but it ultimately may not be --
17 Mr. Berlin accused the, quote, Hogan team or Hogan
18 and his lawyers of colluding with the federal
19 government to hide this evidence. Ms. Dietrick
20 stood on the courthouse steps of the courtroom I
21 practiced in front of for 25 years and used the
22 words, "The Hogan team has hidden evidence from
23 Gawker." Purportedly, this FBI evidence that they
24 were getting the whole time based upon their
25 representations that they needed it for discovery,

1 which ultimately became representations that they
2 were going to write a story about it.

3 The FBI, on July 10th, provides its notice of
4 production of additional video footage. And I think
5 at that point in time, Judge, if you'd see page 8,
6 they produced reprocessed versions of those DVDs we
7 originally got because there were apparent
8 manipulations or technical issues with those DVDs.
9 They were trying to redact third parties who had not
10 been compelled to sign FOIA waivers at that time.

11 Judge, on July 10th, Nick Denton, the principal
12 of Gawker, publishes a story that's entitled, "Hulk
13 and Gawker, The Story So Far." He puts it out there
14 on Kinja. He discusses the last-minute continuance
15 of the trial. And the quote right there in the
16 middle of page 8 that he puts in that story is as
17 follows: "There will be a third act which we
18 believe will center on the real story. The
19 additional recordings held by the FBI, the
20 information in them that is Hulk Hogan's real
21 secret, and irregularities in the recordings which
22 indicate some sort of coverup."

23 This is on July 10th. Mind you, Judge, our
24 protective order was counsels eyes only protective
25 order. Gawker's counsels should have seen it;

1 Hogan's counsel, Bollea's counsel should have seen
2 it; the FBI should have seen it. How Nick Denton
3 has a predicate at that point in time to broadcast
4 to the consuming public what he thinks these tapes
5 are going to say is beyond me. But that's one
6 reason why we want discovery, because we want to
7 know if Ms. Dietrick showed her client these
8 attorneys eyes only tapes or anybody else at Gawker,
9 for that matter. Not just Mr. Denton.

10 Judge, we saw the writing on the wall and we
11 filed an emergency motion on July 13th to make sure
12 that the protocol was brought to the Court's
13 attention. And the idea that Judge Bucklew had
14 said, "Listen, your confidentiality orders will have
15 to be dealt with with Judge Campbell."

16 We obviously made it clear we wanted to get in
17 front of you. And we were trying to get in front of
18 you that week, for obvious reasons. Because if you
19 start looking at the way Gawker was approaching
20 this, it became very clear it wasn't about our
21 lawsuit anymore. It became very clear they were on
22 a path to try and get this stuff out in the media.

23 Mr. Berlin sent a letter to the Court on
24 July 14th objecting to our emergency motion and
25 requesting an -- and our request for an expedited

1 hearing wanting to go October 1st. Another reason
2 that we look at and say we're entitled to discovery,
3 Gawker's advertent, intentional campaign to try and
4 put just a simple status hearing off so we could
5 protect documents which you had already ordered
6 needed to be kept under seal.

7 We sent a letter to Gawker on July 15th
8 designating all documents and records, et cetera,
9 from the United States government as confidential,
10 to make it clear again that we saw this stuff was
11 all coming within your protective order, in that
12 little gap between when the federal court ordered it
13 produced and Judge Bucklew said confidentiality
14 issues would be deferred to you.

15 We hand delivered the reprocessed DVDs on
16 July 16th. And, Judge, at or about the next day, on
17 July 16, this bizarre implosion occurs at Gawker.
18 They publish a story outing a corporate executive as
19 gay. There becomes this huge internal conflict at
20 Gawker over whether the way they've been doing
21 business is the right way. It becomes a massive
22 media focus for a few days in which Mr. Denton makes
23 comments questioning whether the way they do
24 business is the right thing.

25 Editors resign. Gawker becomes excoriated in

1 the public eye. And all of a sudden, the focus on
2 Gawker is maybe they have been doing illegal stuff
3 all this time. And you see their employees live
4 tweeting from their meetings. And their employees
5 are live tweeting things like "maybe we made
6 mistakes on these publications and those" -- I think
7 they even refer to the Hogan publication.

8 While this is going on, Judge, July 16th, you
9 gave us hearing time on July 30th. You sua sponte
10 issued an order for case management and status
11 conference because we didn't want to leave it
12 dangling.

13 On July 17th, Gawker, as part of this
14 implosion -- and we've attached the articles about
15 the implosion so the Court can get an actual feel
16 for exactly what was happening -- they take this
17 post down, this post about outing of this executive
18 that we related to their sort of internal conflict
19 over their publication philosophy.

20 And we've quoted Mr. Denton, Judge, on this
21 timeline on page 9. And you see this sort of run at
22 this thread of statements he makes that, of course,
23 are very germane to our lawsuit in the sense that
24 you see a shift in their editorial philosophy and
25 all of a sudden this stuff isn't right and it's bad.

1 And it's pertinent to our case because we think
2 what they did here is exactly what they did when
3 they outed this executive.

4 The Gawker Civil War implosion continues. They
5 say things during this point in time that the Hogan
6 case has shown that we can't escape our past and I
7 can't escape Gawker. That's Mr. Denton.

8 And why is this relevant to our motion for
9 discovery, Judge? Because we think that on the
10 heels of this, Gawker was at about its most
11 desperate time in the life of this case, that they
12 were facing huge criticism for their editorial
13 philosophies and they were heading to this trial.
14 And if you read these articles, you see their
15 executive saying this. They know what's going to
16 happen.

17 July 20th, we file our motion and our notice
18 that this case at is issue so we can have it heard
19 today.

20 July 21st, we sent -- I think Mr. Harder sent
21 or I sent -- I can't remember who signed the
22 letter -- a letter to the Gawker defendant's counsel
23 asking them to agree to treat the audio recordings
24 produced by the FBI, which contain some of the
25 offensive language that was ultimately published by

1 the National Enquirer, to treat that as confidential
2 just like the DVDs. No distinction.

3 They're still irrelevant, by the way. They're
4 still a separate tape, separate episode. But we
5 asked -- Judge, tellingly, it was July 22nd
6 Mr. Bollea responded and said he doesn't treat the
7 audio recordings the same as the DVDs.

8 So we look at that and we say there is -- he
9 says there is no basis for your request to transfer
10 copies of the audio recordings to you under the
11 protective order.

12 And so now we see, again, he's taken his
13 position the audio is not confidential, what are
14 they going to do with the audio.

15 On or about the 23rd, we learn that the
16 Enquirer was going to publish this story.

17 On the 24th, the Enquirer publishes the story
18 disclosing the contents of what they call "sealed
19 transcripts."

20 Judge, we look at that background. We look at
21 Mr. Berlin's statement that he's not treating the
22 audio as confidential. We look at the fact that
23 under your protective order, that the only parties
24 that should have had access to these FBI and
25 government materials would have been Gawker's

1 counsel, Bollea's counsel, and the FBI, or the U.S.
2 Attorney's Office in representing the FBI. That was
3 the rule. That was what we agreed to. We agreed
4 they were going to be bound by that. There was
5 perhaps a small gap there where Judge Bucklew made
6 it clear that the confidentiality issues were being
7 deferred to state court, but that didn't render the
8 information any less confidential.

9 In that respect, Judge, between Mr. Denton's
10 broadcast that there will be a, quote, third act in
11 which we will expose Mr. Hogan's real secret or
12 words to that effect, Mr. Berlin's refusal to treat
13 the audio as confidential.

14 The Enquirer, in its concession that the
15 documents or materials upon which its story were
16 based were sealed documents, sealed court documents,
17 we are left with no conclusion, Judge, at least at a
18 prima facie level, that one of the three parties
19 that had access to these materials, Gawker's
20 counsel, Bollea's counsel, or the FBI's counsel or
21 the FBI, would have had to provide it to the
22 Enquirer. And if not provide it directly, because
23 Gawker's, of course, denied it, point them in
24 directions, facilitate their obtaining it.

25 I don't know what, Judge. And that's why we've

1 asked you for discovery. Because, Judge, if we
2 engage in discovery and we establish this link, as I
3 said at the beginning, a motion for sanctions by
4 termination and striking of their pleadings will be
5 filed. We will file either a motion and order to
6 show cause or a motion for direct contempt.

7 I'm going to go through just a couple more
8 salient points of the argument, Your Honor, and then
9 I'll be finished.

10 Gawker had a clear motive to do this. The
11 rescheduling of the trial had been made clear. You
12 had set this for a status conference and a case
13 management today. We have a claim for punitive
14 damages pending. It's no secret that Gawker has
15 gone public a number of times basically saying this
16 case could destroy their company.

17 The second motive was their internal implosion
18 and the criticism that had been occurring randomly
19 in the media of Gawker after it had this very public
20 Civil War internally and a very public shift in its
21 editorial philosophy.

22 The fact they had lost summary judgment in
23 their newsworthiness defense had already been
24 determined to implicate questions of fact for a jury
25 to find.

1 Against the background of Mr. Daulerio's
2 testimony that all the reasons they're claiming this
3 was a newsworthy publication, that being the Hogan
4 sex tape, all the reasons they've tried to claim are
5 not present anywhere in the actual article that
6 describes the tape.

7 The timing of the Enquirer article, Judge, when
8 you look at it against the background of Mr. Berlin
9 telling us that he doesn't believe the audiotapes
10 are confidential and within a couple days the
11 National Enquirer is publishing an article
12 disclosing contents that would presumably be on the
13 audiotape that had been taken or extracted from
14 sealed court documents.

15 And that's the word used in the Enquirer
16 article, Judge. "We have sealed court documents."
17 And I think that's critical to this Court's inquiry
18 on whether we can obtain discovery.

19 The change of direction in the FOIA case,
20 Judge, they told you it was about discovery. They
21 told Judge Bucklew and in their federal papers that
22 it was about discovery. And then on July 2nd at a
23 hearing said, "Oh, we've changed our mind; now we
24 want to write stories about this investigation."

25 Judge Bucklew actually challenged Mr. Berlin.

1 She said, "That's not what you said in your court
2 papers."

3 "Well, that was our reason when we started."

4 I go back to the fact, Judge, that there is no
5 way you're compelling Terry Bollea to sign a FOIA
6 waiver if they tell you, "Judge, we want to write a
7 story on it."

8 Judge, what we've asked for in the way of
9 discovery, we tried to shoot fairly precisely in the
10 sense that we want, first, a forensic electronics
11 expert to examine the computer network system,
12 service tablets, and smart phones of the defendants
13 in this case, including their respective agents or
14 attorneys, for data files, e-mails, messages, texts,
15 phone records and logs, and electronic information
16 which demonstrates whether Gawker was in any
17 communication with the National Enquirer, Radar
18 Online, their sister company that published this, or
19 any other members of the media or third parties,
20 directly or indirectly, regarding these FBI
21 materials, these sealed materials referred to.

22 We want an order appointing the expert to
23 conduct electronic discovery of the computers and
24 hard drives of the Gawker defendants and their
25 prospective attorneys and agents searching the terms

1 "Hulk Hogan," "Terry Bollea," or the offensive
2 language quoted in the Enquirer piece so we can
3 filter that out and see whether they were
4 communicating with the Enquirer about these sealed
5 court documents and how to get them or where they
6 are.

7 We want a privilege log with respect to all
8 privileged communications that they may claim. We
9 want inadvertently-produced privileged documents to
10 be returned to Gawker within seven days. We have a
11 protocol there if they accidentally produce
12 privileged stuff.

13 We want the deposition of any former or current
14 Gawker defendant employees or agents revealed by the
15 computer forensic exam to have been in contact with
16 or communicated with the National Enquirer or
17 Radar Online in the relevant timeframe or otherwise
18 provided any information anyone contained in the
19 reporting. So anybody who has taken this sealed
20 information in this timeframe and provided it to any
21 third-party media outlet.

22 We want to take Nick Denton, Heather Dietrick's
23 depositions, and A.J. Daulerio's. We left him out,
24 but he would arguably be included as an employer or
25 agent or defendant -- he's certainly a defendant in

1 this case -- to verify what information they have.

2 Judge, we have a serious concern that
3 Ms. Dietrick may have shared attorneys eyes only
4 information with Mr. Denton. We are left to
5 question. We think we have the right to question
6 this man about why he was broadcasting in an article
7 that the, quote, real secret could be coming out.

8 We want an order appointing Judge Case to
9 supervise the discovery process and to make final
10 rulings so we don't get caught in their objections
11 every single time when he makes a ruling on
12 something, because we want to expedite this. I
13 think we have the right to expedite it, Judge. I
14 think our client has the right to have this
15 expedited.

16 We want an order directing Gawker to turn over
17 to Judge Case all hard electronic copies of the
18 highly-confidential attorneys eyes only transcripts
19 that would come from the FBI so that they're all in
20 his possession to prevent any further public
21 dissemination.

22 And, obviously, we want sanctions to be binding
23 in the event there is any further discovery
24 violations.

25 Judge, I'm going to end by saying this. And

1 it's where I started. We filed complaints and we
2 framed the issues for you. And we come in, as
3 you've said, we advocate. We're supposed to
4 advocate professionally, try our issues, the issues
5 that we've framed by the pleadings as narrowed by
6 the Court throughout the case.

7 My client's got literally nowhere else to go
8 right now, other than you, to control what they've
9 done. You are literally his only hope for justice
10 just to get this case tried, just to get the issues
11 that were framed by the pleadings, and not the ones
12 that you and Judge Case have historically and
13 repetitively held to be irrelevant, this offensive
14 language off a separate tape. To get the real
15 issues tried. Let them come before six people in
16 Pinellas County and tell them why the videotape that
17 they published was newsworthy. Isn't that what this
18 is about? The only place we have to go to control
19 it right now, Judge, is you. That's it.

20 Judge Bucklew deferred to you on this
21 confidentiality stuff. And so at the end of the
22 day, Judge, we felt an obligation to put this story
23 out there as much as we could for you to make an
24 educated decision on our right to conduct this
25 discovery. And we think that's the start of the

1 process with respect to these potential violations.

2 THE COURT: So let me ask you a question.

3 Two times representatives from both of your
4 office have come to deliver an envelope
5 containing -- first time, three DVDs. The second
6 time, two DVDs.

7 MR. TURKEL: Yes.

8 THE COURT: There were no papers, there was no
9 transcript. That was it.

10 So what -- if you can help educate me as to
11 what else -- I'm not saying in detail, but have
12 there been other transcripts, other things that have
13 been given for attorneys eyes only to either side?

14 MR. TURKEL: There had been various
15 transcripts -- there had been transcripts and audio
16 recordings that were part of the FBI's production.
17 They were not delivered. I think part of our
18 motion, to clarify -- and I'll let Mr. Vogt --
19 right.

20 Part of our clarification of the protocol is to
21 have this stuff taken to the Court now, because, you
22 know, Judge, just because it was covered by the
23 order didn't mean it was coming to the Court in an
24 envelope. In other words, our sealed attorneys eyes
25 only stuff, we're lawyers, we're supposed to obey

1 that. So when we get something, you know, in a case
2 where you agree the stuff is attorneys eyes only, we
3 don't always send our file list to you. So there
4 were documents, transcripts.

5 The Enquirer article appears to match up very
6 closely with the transcripts. There have been
7 versions of transcripts used in depositions in this
8 case.

9 THE COURT: That were given to -- that the
10 attorneys have seen on both sides?

11 MR. TURKEL: Yes, as far as we know. I mean,
12 Judge, one of the issues is we have actually no way
13 of knowing, without some discovery, exactly what may
14 have been communicated to the Enquirer, but they
15 refer to them as "sealed court documents." And
16 that's not -- that's not advocacy. That's in their
17 argument.

18 THE COURT: But that's not -- I'm not aware of
19 any sealed court documents in this particular case
20 that reflects any of that, so that's where my
21 concern is.

22 Are these sealed court documents that were
23 perhaps in the FBI case?

24 MR. TURKEL: No, these would be documents that
25 would be subject to and subsumed with the protective

1 order designated "Confidential Attorneys Eyes Only"
2 in this case. Okay?

3 Does that make it clear, Judge? In other
4 words, we have an order in place. We stamp things.
5 Yeah, to the extent they were filed, they were filed
6 under seal, right? And this is no surprise to
7 Gawker. I mean, they have attempted at times to use
8 versions of transcripts in depositions. We have
9 dealt with those issues with Judge Case, but I
10 think, Judge, that goes to the core of our argument
11 that there is an order in place.

12 I think the Court was well aware that the
13 parties had agreed to treat this material
14 confidential attorneys eyes only. Separately, we
15 agreed to deliver videos to you in an envelope.

16 With Gawker -- I mean, with the Enquirer
17 referring to the fact that their story is based on
18 sealed court documents, I have nowhere else to go
19 but to the fact that there are sealed confidential
20 attorneys eyes only documents that only three
21 parties had access to. I can promise you we didn't
22 give them to the Enquirer. And my guess is the FBI
23 didn't, so --

24 THE COURT: Thank you, Mr. Turkel.

25 MR. TURKEL: That's all I have, Judge. Thank

1 you.

2 THE COURT: Thank you.

3 Mr. Berlin --

4 MR. HARDER: Your Honor, one other -- this is
5 Charles Harder.

6 Also, there is an audio file that was produced
7 by the FBI that was a surveillance tape that had
8 audio footage from the bedroom sex incident which
9 had offensive language on it. And that's another
10 item that came from the FBI. And it was not
11 delivered to Your Honor because it was audio and not
12 video. And part of what we asked Your Honor for was
13 to have that audio treated in the same manner as the
14 DVDs, and Mr. Berlin objected to that request.

15 THE COURT: Thank you, Mr. Harder.

16 Mr. Berlin.

17 MR. BERLIN: Good morning, Your Honor.

18 THE COURT: Good morning. Have you had an
19 opportunity to look at the motion?

20 MR. BERLIN: I haven't had an opportunity to
21 read it. I will say, Your Honor, that's -- I have
22 three points to make, if I may. The first -- that
23 question goes to the first of them, which is this
24 was a lengthy and voluminous filing that seeks all
25 sorts of relief.

1 They seek relief wanting the forensic experts
2 to rummage through the computer system of Gawker, to
3 rummage through the computer system of my firm, to
4 rummage through the computer system of Mr. Thomas's
5 firm. They seek depositions. They seek binding
6 rulings by a discovery magistrate. They seek
7 contempt; civil, criminal. Although they didn't
8 actually highlight it, it's been highlighted by them
9 in the press; they seek somebody to be incarcerated.

10 With respect, Your Honor, I will try to address
11 the motion as best I can with the very short amount
12 of time to prepare. And I think when I'm done, my
13 suspicion is that you will be able to put a pin in
14 it and deny the motion. But if we're going to go
15 down this road, I would ask for a reasonable
16 opportunity to file a proper written response that
17 Your Honor would then have an opportunity to read,
18 especially given the seriousness of what's being
19 asked for here. That's the first point, Your Honor.

20 The second point, which is somewhat longer, was
21 let me turn to the substance of what -- what's being
22 said here. And the motion itself, Your Honor,
23 really does not contain -- you haven't had a chance
24 to read it. And that --

25 THE COURT: I have now.

1 MR. BERLIN: Well, you have it, but you
2 haven't --

3 THE COURT: I've read it while Mr. Turkel was
4 talking.

5 MR. BERLIN: Very well. Well, then you will
6 see that what the -- that there is not a single rule
7 cited in the motion, there is not a single case or
8 other authority cited in the motion. And most
9 significantly, there is not a single actual fact.
10 There is a bunch of circumstantial smoke that has
11 been thrown up.

12 And even the plaintiff does not have the
13 conviction to be able to say this actually means
14 that Gawker or Gawker's counsel did something wrong.
15 What they say in their motion -- I'm quoting now
16 from page 5 -- this discovery, quote, appears to
17 have been disclosed in violation of the Court's
18 protective order.

19 At the bottom of that same page, "The timing of
20 this disclosure suggests that Gawker defendants may
21 have been the source of the leak."

22 Next page, page 6, the sequence of events.
23 This precedes that long chart of the timeline they
24 walked Your Honor through. "The sequence of events
25 which occurred over the past month make clear that

1 Gawker could be the source of the leaked information
2 published by the National Enquirer."

3 All right. So then the question becomes, what
4 is going on here. And I want to say to Your Honor,
5 I agree -- and I'm going to come back to this in my
6 remarks, but I agree with Mr. Turkel's statement
7 that we have rules in this game and that we, as
8 counsel, agree to play by the rules. I'm quoting
9 him.

10 I agree with that, Your Honor. We have a
11 protective order in place. Some of the things that
12 are covered by the protective order are
13 confidential. Many of them are designated
14 "Confidential Attorneys Eyes Only," including the
15 material that we're talking about today.

16 And I want to assure Your Honor, as I have now
17 done in writing in response to their last emergency
18 motion, the part that they left out. They tell you
19 I wanted to postpone the hearing. The reason I
20 wanted to postpone the hearing is because they
21 sought clarification that I was filing it, and I
22 said we'll file it.

23 I want to assure the Court -- and I have with
24 me my colleague, Mr. Berry, who is working on this
25 case; I have Gregg Thomas, who is the principal of

1 his firm, a Florida counsel; and I have Ms. Dietrick
2 all here. I want to assure you that we have all
3 scrupulously followed that order. All right.

4 We got this -- we got a redacted version of a
5 transcript which we have kept attorneys eyes only
6 confidential. We have not shared with our client,
7 we have not shared with anybody else.

8 We got a second transcript that reflects the
9 same content, but prepared with different words.
10 And it had language in it that Judge Case ordered
11 redacted. We've redacted it and we kept the
12 original in our safe in a sealed envelope where it
13 remains to this day. Ms. Dietrick never had an
14 unredacted transcript.

15 And so what we have here, Your Honor, is a
16 situation where we know -- we know that we have not
17 done what they are saying. But let's look at what
18 they're basing this argument on, because this is
19 really a lot of smoke.

20 The first thing, Your Honor, is this quote from
21 Mr. Denton. And part of what's important here is
22 not what they've told you, but what they haven't
23 told you.

24 They say, how does Denton have a predicate to
25 know that this stuff exists. But if you look at

1 what Mr. Denton actually said, right, and you go to
2 the source, right, the very next passage, which they
3 have left out of their brief, both of their motions,
4 and Mr. Turkel's remarks today, he says, a side
5 note, his prediction, this prediction is based on
6 court filings, existing press reports, and
7 publicly-available information; which at the time he
8 wrote this, there was a lot of.

9 Our external lawyers -- that's us -- and
10 in-house counsel -- that's Ms. Dietrick -- are
11 severely limited in what they can tell me. And he
12 says right here in the text of what he's talking
13 about that he's not basing what he's saying based on
14 any inside information. And, yet, this is a
15 centerpiece both of their last emergency motion and
16 this one.

17 Then there are quotes from me from the hearing
18 in front of Judge Bucklew, again, taken out of
19 context. Let me tell you what the context is.

20 In the FOIA area, one of the questions -- and
21 there is an exemption for privacy. And one of the
22 questions in the privacy exemption context is, is
23 the information a matter of public interest. And I
24 did not make the point. And if you go back and read
25 the transcript that's attached to the motion and we

1 filed with you, you will see it. I did not make the
2 point that Gawker wants any further reporting about
3 Mr. Hogan.

4 The point that I was making is that there were
5 curious circumstances about the FBI's investigation,
6 the FBI's production of DVDs that you watched and
7 that we watched, and there were irregularities
8 sufficiently so that they had to reproduce two of
9 the three DVDs. And I raised questions about all of
10 this and how our government was functioning. And
11 that is the proper purpose of FOIA and any FOIA
12 litigant as a plaintiff to make that claim.

13 It was not about Mr. Hogan. It was not about
14 reporting secret information about Mr. Hogan. It
15 was about scrutinizing our government.

16 And that's what -- and this notion that this is
17 somehow a bait and switch is wrong. Right? We
18 didn't know when we came to ask you for FOIA waivers
19 that the government was going to produce DVDs that
20 curiously omitted key audio content and overdubbed
21 different audio content. And we were entitled to
22 raise that question with the federal judge presiding
23 over that without being accused of somehow being
24 involved in a bait and switch.

25 But that doesn't mean, having assured both

1 Judge Bucklew and Your Honor repeatedly that we're
2 abiding by the protective order, that somehow we're
3 not. Right?

4 They wrote -- they tell you that again that
5 there is this letter from me in which I refused to
6 treat the audio footage. And let me tell you what
7 this audio footage is.

8 The audio footage is from the sting operation
9 where Mr. Bollea and Mr. Houston watched the DVDs.
10 And we -- this has been disclosed because it is the
11 exact evidence that we base our contention. This is
12 after we were last before you, Your Honor. But it's
13 what we based our contention that the DVDs were
14 flawed, because the audio that one could hear on
15 that audiotape is different than the audio that was
16 on the DVDs that you watched and that we watched.
17 And that's what caused the FBI to cough up new and
18 improved DVDs. So --

19 THE COURT: Do you have a copy of the new and
20 improved DVDs?

21 MR. BERLIN: I do not. They were provided only
22 to you, Your Honor, pursuant to the protocol that we
23 all agreed to.

24 So what we did was I wrote a letter --
25 Mr. Harder wrote me an e-mail in which he said, "I

1 want you to give that audio to Judge Case. And I
2 wrote him back and said, "We are not required by the
3 agreed-upon protocol to give audio to Judge Case."

4 The point of giving video to Judge Case was
5 that it depicted images of sexual content, which the
6 audio does not, frankly. And I said we would abide
7 by the protocol.

8 And the very next paragraph, which again they
9 omit, says, "We will, as required, comply with the
10 protective order."

11 Then I went on and said in the next paragraph,
12 "In response to Mr. Turkel's recent correspondence,
13 this will confirm that we will maintain all
14 materials produced by the FBI and U.S. Attorney's
15 Office confidential attorneys eyes only. Right?

16 So coming to you and saying, well, Mr. Berlin
17 wrote a letter in which he refused to abide and
18 treat this as confidential, that's not what that
19 says at all.

20 And so then we get further afield and we get
21 to -- you know, there is another news story about a
22 different person who happens to be a private figure.
23 And correctly, Mr. Turkel's absolutely correct,
24 Gawker published the story. It concluded
25 Mr. Denton, as the chief editorial personality at

1 the company, made the determination that it was
2 published in error and they took that down. That's
3 not a secret. That's been the subject of widespread
4 news coverage. I'm not sure what it has to do with
5 this case. That episode, although it was -- it did,
6 in fact, cause some turmoil at the company for a
7 couple weeks, is largely now behind them.

8 So I want -- so that's the issue. That's the
9 evidence. Right?

10 So you say, well, if they had told you both
11 pieces of the story, it really wouldn't be much
12 evidence.

13 One of the things that Mr. Turkel said is that
14 if the National Enquirer knew this, right -- and
15 let's look at what the National Enquirer says. It
16 doesn't actually say we got sealed documents from
17 this court. It says we have learned that there were
18 transcripts that were filed under seal. That's a
19 different thing. Right? So it's not saying they
20 got sealed transcripts from the court. It's saying
21 we learned there was sealed transcripts filed. I
22 realize that's a subtle distinction, but it's
23 significant.

24 So -- but Mr. Turkel says one of these parties,
25 Gawker, Gawker's counsel, must have provided --

1 that's his words -- must have been the person who
2 provided, because we're the only people who knew
3 about this use of racist language.

4 Now, first of all, the National Enquirer
5 reported that it had five different sources. That's
6 what their reports say. I don't know who they are.
7 I'm not privy to that. But there are, Your Honor, a
8 long list, a long list of people who knew about
9 Mr. Bollea's use of racist language long before
10 Gawker learned about it, long before even Gawker
11 published its story.

12 And to say to Your Honor, it must have been
13 Ms. Dietrick, Mr. Thomas, Mr. Berry, myself, you
14 know, when there is all this -- and it must have
15 been, when there is all these other sources, that
16 makes no sense.

17 In addition to the plaintiff who obviously knew
18 about this, Bubba Clem knew, Heather Clem knew, the
19 plaintiff's lawyers knew. They all have assistants.
20 The extortionist, Mr. Davidson, remember him? He
21 was the one who prepared one of these transcripts as
22 part of the extortion operation. He has two sets of
23 lawyers; one in Tampa, one in California. He had an
24 assistant. He had a client who -- the client has a
25 set of lawyers. His client didn't actually come to

1 the sting operation and sent another person, and she
2 also watched the transcripts.

3 Then there was a whole series -- then there was
4 a second transcript, which remember I said there was
5 a second one we got in discovery that came to us
6 from a third party and we were ordered by Judge Case
7 to redact that transcript. That transcript's
8 problems comes from March of 2012. That's seven
9 months before Gawker published anything. We have
10 kept that transcript under lock and key in our safe
11 in a sealed envelope. But that transcript was being
12 passed around by people in the radio community in
13 Tampa.

14 It made its way to one of their agents in
15 New York. We had subpoenaed that agent. That's how
16 we got it. We got it from them in New York. And
17 that agent, of course, had a lawyer representing him
18 in connection with the -- that company's response to
19 our subpoena and his deposition. Right? Then you
20 got a whole bunch of press coverage.

21 So you may remember from our summary judgment
22 argument, there was a publication called
23 thedirty.com. Because it has a memorable name, you
24 may remember that. They published screen shots of
25 the sex tape or one of the sex tapes something like

1 six months before Gawker published its publication.
2 And they wrote when they published it, "Sorry,
3 Hulkster, what you going to do, white brother, when
4 this sex tape comes out on you? Terry, do you
5 remember what you said about black people in this
6 sex tape?" So somebody at The Dirty knew and they
7 obviously had some source.

8 Then Philadelphia -- or sorry -- philly.com,
9 which is a -- the website of the Philadelphia
10 Inquirer and the Philadelphia Daily News, they wrote
11 a piece entitled "Hulk Hogan Said to Have More Sex
12 Tapes." "Another source" -- the report says,
13 "Another source says he saw footage on one of the
14 surreptitious recordings of Hogan using the "N" word
15 and making other derogatory remarks about black
16 people."

17 This goes on. Then there is the Daily Beast,
18 which is a mainstream internet publication, in an
19 article in October of 2012, saying, "Here are the
20 nine craziest things about Hulk Hogan's sex tape
21 scandal." No. 9 being, "There may be more tapes,
22 one of which reportedly shows him going on a racist
23 rant that includes "N" bombs."

24 And so there is another publication from -- a
25 publication called Hollyscoop in October of 2012.

1 Again, just days after Gawker published, that says
2 there are reports that they have a source that had
3 seen the tapes and that shows the plaintiff using
4 the "N" word and other racist expressions. And it
5 confirms the report by The Dirty.

6 Then there is TMZ. You may remember from the
7 summary judgment hearing that TMZ did a series of
8 reports about this, one of which they had a
9 statement from Bubba Clem. They confronted
10 Mr. Bollea with the statement from Bubba Clem in
11 which he said, if -- from the tape in which
12 Bubba Clem says, "Look, if all we ever wanted to
13 do -- if we ever wanted to retire, all we'd have to
14 do is use this footage." All right. Remember this?

15 So they confirmed they had seen the footage
16 then. And they confirmed last week again that they
17 had seen the footage with the racist language.

18 So we have all these other people who have seen
19 it. And that's not included. Okay? People at the
20 FBI, people at the Tampa Police Department, people
21 at the Pinellas County Sheriff's Office, people at
22 the U.S. Attorney's Office, the personnel of the
23 federal court, the personnel of the state court,
24 people who were on a grand jury that were allegedly
25 convened, it cannot be seriously maintained that if

1 this leaked to the National Enquirer, that it came
2 from us. There are a whole list of people, many of
3 whom have no obligation of secrecy not to disclose
4 any of this information.

5 Then there is the problem of the actual thing
6 that what the National Enquirer published. We took
7 out the redacted transcript that we got and we
8 compared it to what the National Enquirer actually
9 published. And while the gist of it is basically
10 the same; i.e., that Mr. Bollea used racist and
11 homophobic language, the specifics -- the specific
12 language is actually different. And if someone were
13 using our -- meaning the one that was in our
14 possession or the one that was in our safe --
15 transcript, they would not be using it with the
16 language that is published, because it has different
17 language.

18 And then, lastly, Your Honor, perhaps the most
19 important source of information about who the
20 National Enquirer's sources are are the reporters
21 who wrote the National Enquirer piece.

22 And last Friday, right, after that post was
23 published, but long before the plaintiff brought
24 this motion seeking computer forensics and
25 incarceration and sanctions and contempt, the

1 reporter in that case -- just let me pick this up,
2 if I can.

3 The reporter in that case is a gentleman named
4 Lachlan Cartwright. That's L-a-c-h-l-a-n.
5 Cartwright is C-a-r-t-w-r-i-g-h-t. And another
6 journalist, fellow named Peter Sterne who reports
7 for Capital New York, wrote -- let me, if I can.
8 May I hand this up?

9 THE COURT: Yes.

10 MR. BERLIN: Mr. Sterne was commenting about
11 the National Enquirer story. And he said, "Just for
12 the record, I Highly" -- and that's capitalized --
13 "I Highly doubt that Gawker had anything to do with
14 the racist Hulk Hogan transcript link."

15 And Mr. Cartwright writes back at -- directed
16 to @petersterne, "They didn't." Right. "An
17 exhaustive investigation uncovered multiple sources
18 who provided us with transcript."

19 Now, I would say, Your Honor, before Mr. Turkel
20 and his colleagues come to this Court and accuse
21 Mr. Thomas, who has been a pillar of this community
22 for approximately 40 years and practiced law here;
23 or me, who has practiced law for 25 years in good
24 standing before a whole number of courts; or
25 Ms. Dietrick; of leaking this to our client in

1 violation of a clear order from your court which we
2 have repeatedly confirmed we complied with, they
3 should do their homework and find out that the
4 actual author of the story is saying it was somebody
5 else.

6 So let me, if I could then, move to my third
7 point. The question I'm asking myself,
8 Your Honor -- and I will admittedly say have not had
9 a huge amount of time to think about this, as I've
10 already indicated.

11 I asked myself, what's this about. Right? One
12 version of this is -- and I'll give Mr. Turkel the
13 benefit of the doubt and assume he believes in good
14 faith that there was this smoke meant there was
15 fire. And I think that we've now adequately, you
16 know, made a show that that's just nothing more than
17 conjecture and speculation that's actually rebutted
18 by the actual evidence if you look at not half the
19 evidence but all the evidence.

20 But I asked myself why it is that you would
21 file such a motion. And I think, Your Honor, with
22 respect, that this is the last refuge of a desperate
23 litigant. And this really falls into the category
24 of the best defense is a good offense. Right? Here
25 is what's happened.

1 Through some other source, it was disclosed
2 that Mr. Bollea engaged in horribly racist rants on
3 this tape. There is other reporting since then that
4 it's happened in other context as well. And I
5 understand that that's damaging to a public figure.
6 I understand that. I get that. And maybe the
7 natural tendency is to sort of look for ways to
8 deflect by blaming Gawker for that problem, but that
9 is not on us.

10 But the other thing -- that's sort of known.
11 But the other thing is sort of what's coming. And I
12 think that the plaintiff's camp understands this,
13 Your Honor, because the day after -- the afternoon,
14 actually, after we were last together, the FBI
15 produced it's 1100 and some odd pages of documents,
16 its audio files. It has since produced, although we
17 haven't seen it, two corrected DVDs.

18 And what we learned from that, Your Honor, is
19 that what the plaintiff has told you and what is
20 being told to the FBI are two very different things.

21 Just to give you an example, Your Honor, so --
22 you know, Mr. Turkel alluded repeatedly to the fact
23 that Your Honor had ruled and Judge Case had ruled
24 about the contents of this tape. The truth is,
25 those rulings -- that you did rule, although you

1 ruled without prejudice because you were convinced,
2 I believe in error, that that tape didn't exist and
3 that the transcript that reflected the contents of
4 that tape was a fabrication by an extortionist. But
5 we now know that's not right. Mr. Bollea has
6 admitted as much in a nationally-published apology.

7 And so when you denied that without prejudice,
8 that was on Wednesday, July 1st. We learned that
9 evening that we did not think that this tape was a
10 fabrication because, among other things, we could
11 hear the contents of it on the audio, of Mr. Bollea
12 and Mr. Houston watching that tape at the sting
13 operation. So when they told you we don't know,
14 this is a fabrication, that was false.

15 And so the next day, we went to court in
16 federal court with Judge Bucklew, and Judge Bucklew
17 asked me, "Mr. Berlin, why it is that you need
18 unredacted copies of these documents?" Because I
19 said, "Look, we got a lot of documents, but there is
20 a lot of redactions in them. Mostly of individuals
21 who are well known. She said, "You already know who
22 the people are. Why do you need them?"

23 And I explained to her on July 2nd,
24 "Your Honor, my review of the documents demonstrates
25 that what the plaintiff in our case told the federal

1 court -- sorry -- told the FBI is different,
2 materially so, than what he told us and what he told
3 Judge Campbell and what he told Judge Case and what
4 he told the DCA."

5 And then on July 6, we provided a copy of the
6 documents to them, as we were required to do under
7 the protocol. And we sent them over. And they're
8 not -- they're not dumb. They, I'm sure, reviewed
9 these documents and concluded the same thing.

10 And then on the 17th of July, we amended our
11 answer in this case to add an affirmative defense
12 for fraud on the Court.

13 And then on July 24th, we submitted a detailed
14 declaration in the FOIA case, which they are now
15 party to as intervenors, in which we had to submit
16 under seal because the specifics of how this
17 testimony differed from what was going on in our
18 case, the testimony and the representations, and
19 what was going on in the federal investigation is
20 all designated as confidential. And, again,
21 consistent with Your Honor's protective order, we
22 have not disclosed the substance of that and we have
23 filed that under seal.

24 But what I can hand up -- and I'll file it this
25 afternoon with the appropriate motions -- a copy of

1 that confidential declaration from Mr. Thomas that
2 answers Judge Bucklew's question why do you need
3 this stuff. And it doesn't give every last answer.
4 Judge Bucklew wasn't the judge presiding over this
5 dispute. She just wanted to -- we just wanted to
6 give her an understanding of why it was that we were
7 requesting these materials.

8 But they know that this is coming. And the
9 last refuge of a desperate litigant is to take your
10 defense and go on the offense and point fingers
11 without any -- anything other than speculation and
12 conjecture at your opponent.

13 So I would say to you, Your Honor -- and let me
14 hand this up, if I may.

15 Your Honor, the top document is the declaration
16 for Mr. Thomas. The rest of it are the exhibits. I
17 think all of those exhibits have been designated as
18 "Confidential." And we are, therefore, giving it to
19 you. Hopefully, you'll read it, take it
20 provisionally under seal, and then we will file it
21 with the -- on the Court's ECF system this afternoon
22 with --

23 THE COURT: Let's get that clear. I don't file
24 things through that system. We have no access to
25 that.

1 MR. BERLIN: We would file it and we would file
2 it with the appropriate sealing motion, which we
3 will deliver to Your Honor this afternoon or
4 tomorrow.

5 But the idea is, Your Honor, that this is what
6 is coming. And the plaintiff is basically, I think,
7 attempting to deflect the public focus caused by
8 somebody, not us, on his conduct, both in terms of
9 what's on this tape and other tapes and the
10 representations that he and his lawyers have made to
11 this Court. And I would submit to you, Your Honor,
12 that that is serious business and we will come back
13 to you at another occasion with a more wholesome
14 discussion of those issues.

15 But I think that that explains this. And when
16 you have a situation where you take a comment from
17 Mr. Denton out of context where he says "I don't
18 know what my lawyers know," you have people
19 repeatedly saying we are abiding by the protective
20 order, you have multiple other sources of this
21 information, dozens literally, many of whom were not
22 under any obligation either professionally or by
23 court order or otherwise not to disclose it, and
24 then you have the author of the story saying it was
25 not Gawker, that there is no basis.

1 And, look, if you want to have more briefing on
2 this, we'll be happy to file a brief in some
3 reasonable amount of time and have another hearing
4 about it, but there is no basis to go forward with a
5 motion that seeks extraordinarily intrusive
6 electronic discovery into a law firm's computer
7 system, to Gawker's computer system; seeks
8 depositions, seeks sanctions, seeks binding rulings
9 by a magistrate judge, seeks contempt, seeks
10 incarceration. We don't need to go down that road,
11 Your Honor, with respect that I think that there is
12 no data there.

13 And I understand why they are upset about the
14 circumstances in which they find themselves, but it
15 is not on us.

16 Unless Your Honor has any questions, I will sit
17 down.

18 THE COURT: Thank you, Mr. Berlin.

19 Mr. Turkel.

20 MR. TURKEL: Yes, Judge.

21 What jumps out at me as a lawyer, for Gawker
22 claiming that we're seeking something intrusive.

23 You know, it's funny when someone starts their
24 argument with "We have nothing to hide" and then
25 spends 30 minutes telling you why you should let

1 them hide it. It always strikes me as odd.

2 I'm going to go through a couple of points.
3 First of all, this last point, the last acts of a
4 desperate man. Judge, we have been trying to get
5 this case tried since the first day we talked about
6 it. And I remember that day because I --
7 Mr. Sullivan got up here and talked about an
8 October trial. And I said, "No, Judge, we all play
9 by the rules, we can try it in July."

10 And from the day we tried to set this thing,
11 they've been trying to avoid a trial of this case.

12 Desperate man. They've ruined -- his career is
13 done. He's been fired from WWE. There is no motive
14 for this motion. It's already over. That would
15 have been a good theory if we had filed something
16 before.

17 At this point, Judge, we're just going -- we
18 want to find out what happened here. And as to that
19 point, I'm going to look at a couple of the big
20 pieces of evidence Mr. Berlin just referred to.

21 Call me a sceptic, but when the guy from the
22 Enquirer tweets out that an exhaustive National
23 Enquirer investigation uncovered multiple sources
24 who provided us with the transcript, call me a
25 little cynical, but he's not the guy I'm going to

1 believe. Okay?

2 There are two transcripts, Judge; the FBI
3 transcript and the extortionist transcript. We have
4 compared them to the Enquirer article. There are
5 quotes that match up from the sealed transcripts,
6 that everybody, including Mr. Berlin and his team,
7 knew were sealed. You didn't hear an argument that
8 these transcripts weren't sealed. We want to know
9 where they got the sealed transcripts from.

10 It's not an issue, Judge, of whether people can
11 anecdotally talk about this issue of offensive
12 language that was originally reported years ago and
13 say, well, Bubba would know or Heather would know.
14 The question is, when the National Enquirer writes a
15 story about it quoting language from sealed court
16 documents that they only could have gotten from one
17 of three sources, how did they get them? Simple
18 inquiry. You're not rummaging through someone's
19 e-mail. A simple, simple inquiry.

20 They keep saying Gawker had nothing to do with
21 it. One of the defendants in this case is
22 A.J. Daulerio. He doesn't work for Gawker anymore
23 and didn't work for Gawker the date the Enquirer
24 published. He works for Ratter, another company
25 that Denton set him up in, I think, to the tune of a

1 half million dollars stake, which presumably, giving
2 Gawker's shift of not doing these things anymore, is
3 going to be the new Gawker.

4 I didn't hear any representations about Ratter
5 or about Daulerio, but he doesn't work for Gawker.
6 So, again, call me a sceptic. But I'd like to see
7 what really happened, whether they communicated.
8 And if it's as simple as the deniability that
9 Mr. Berlin just argued to you, it should be easy,
10 Judge. There should be nothing to produce. There
11 should be no e-mails from Gawker to the Enquirer or
12 Ms. Dietrick to the Enquirer or Ms. Dietrick to
13 Mr. Daulerio to the Enquirer. There should be
14 nothing. It should be simple. What are we
15 entreating on? I don't know, I mean, if it's that
16 clear.

17 Judge, if you look -- and, really, I think the
18 exhibits -- and I hate to do this to you because
19 there is so much paper. But if you look at Denton
20 in this quote we're talking about, there is no out
21 of context. It's not an issue of whether he can
22 talk about something that other people are talking
23 about from, quote, public sources. It's this simple
24 comment. "There will be a third act which we
25 believe will center on the real story."

1 14 days later, the Enquirer published its
2 story.

3 His statement indicates that he knew of the
4 imminence of the publication of these leaked
5 documents. We want to ask him about it. I think we
6 have the right. I don't think it's that clear.

7 And, you know, as to Mr. Berlin's sort of
8 offense, the document we filed, we did the complete
9 adverse of what they did. We didn't seek sanctions
10 yet. What we told you, Judge, in the motion, is if
11 we prove what we think we can prove and get the
12 opportunity to do the discovery, it would merit
13 sanctions.

14 I'm not going to cite Kozel in there yet,
15 because I know what the standard is. We want to do
16 the discovery, the responsible thing, under your
17 guidance with your -- you setting the rules, as
18 opposed to Gawker who hopped out on the courthouse
19 steps in front of the federal courthouse and accused
20 me of colluding with the FBI, accused Mr. Vogt of
21 colluding with the FBI, while his 11-year-old
22 daughter watched Ms. Dietrick pop off on the
23 courthouse steps.

24 I'll ratchet it back, Judge. The point being,
25 Judge, we didn't say and we didn't make the ultimate

1 accusation seeking the contempt, the criminal
2 incarceration for criminal contempt, or the striking
3 the pleadings, because what we're saying is we want
4 the discovery first, before we go hard on this
5 evidence and say they did it and here's what they
6 did.

7 Now, you look at the story that's told and you
8 look at the timing of their quotes and you look at
9 the timing of how the information got in their
10 hands, and what I didn't hear Mr. Berlin talk a lot
11 about was him telling Mr. Harder he didn't think the
12 audiotapes were confidential. Interesting sort of
13 omission from his argument.

14 Again, Judge, there is two transcripts. They
15 match up. I think it probably would be
16 constructive, Your Honor, to look at some of the
17 exhibits and make your own conclusions on some of
18 the things we filed. I don't want to get into
19 another one of these brief and rebriefing things. I
20 think we're just asking for discovery right now.
21 You're not issuing any dispositive ruling on
22 anything. You're giving us a right to talk to
23 people about a very specific issue.

24 Finally, Judge, as to the Gawker shift in its
25 purpose for seeking the information from the FBI,

1 Mr. Berlin used the language, "We thought there were
2 curious circumstances about the FBI's production.
3 It wasn't about Hogan."

4 And that's just completely untrue. Their quote
5 "curious circumstances" that made them change the
6 focus of why they wanted the FOIA documents resulted
7 in their accusations, which Mr. Berlin just spent a
8 lot of time on and has become this allegation we've
9 somehow committed fraud on the Court. I'm not even
10 going to dignify with a response other than to say
11 it was all about Hogan. Everything they did in
12 federal court was shifting gears to write a news
13 story because now they wanted to say that Mr. Bollea
14 and his counsel somehow or another colluded with the
15 FBI.

16 You can read the transcript and watch
17 Judge Bucklew's somewhat indignant response, "I
18 doubt the FBI did that, Mr. Berlin."

19 Really, when you talk about reaching, those
20 comments are reaching.

21 Judge, lastly, I'm going to show you this.
22 We'll put this on. It didn't make the -- I don't
23 think this made our exhibits, did it?

24 You know, we went back and looked just to see
25 how Gawker likes to talk about leaks.

1 On August 1st, 2014, obviously during the
2 pendency of this case, "How to leak to Gawker
3 anonymously." So they wrote a long article telling
4 people how to leak anonymously, certainly indicating
5 that they know how to leak anonymously.

6 Judge, there is enough there. And we want to
7 do our discovery. And you know something, at the
8 end of the day, if Mr. Berlin is right, there is
9 nothing there, then we don't file the ultimate
10 motions. But if we're right, then certainly under
11 Kozel and its progeny, there will be a question of
12 whether their pleadings should be stricken. So --

13 Thank you.

14 THE COURT: Thank you.

15 MR. BERLIN: Your Honor, may I just very
16 briefly?

17 THE COURT: Is it really necessary?

18 MR. BERLIN: 90 seconds.

19 THE COURT: 90 seconds?

20 MR. BERLIN: I can do it in 90 seconds.

21 THE COURT: We have several other things to get
22 to.

23 MR. BERLIN: Your Honor, they did not speak to
24 Mr. Daulerio at all in their papers, but just for
25 the avoidance of doubt, I want to represent that not

1 only did we not share this with anybody else, when I
2 said we didn't share with anybody, including
3 Mr. Denton, Mr. Daulerio being somebody that
4 counted, a person that counted as that.

5 The other circumstances about what I said to
6 Judge Bucklew are addressed in the confidential
7 declaration I just handed you.

8 And, lastly, I just want to state that what
9 they're asking for, which is incredibly-intrusive
10 electronic discovery, is unprecedented and there is
11 no authority for that.

12 Thank you.

13 THE COURT: Thank you.

14 Is anywhere in all these materials a copy of
15 the transcript of the Judge Bucklew hearing?

16 MR. BERLIN: Your Honor, I believe there is an
17 excerpt of it and there are also excerpts in the
18 exhibits that I just gave you. If it would be
19 helpful, we could provide a copy of the full
20 transcript to you.

21 THE COURT: Mr. Vogt may have that right there.

22 MR. TURKEL: We may have a copy here.

23 Judge, we have one copy. If I may approach.
24 It is tagged. I'll just, for the record, so
25 opposing counsel knows where it's tagged and

1 highlighted, page --

2 MR. BERLIN: There is no page numbers.

3 MR. TURKEL: Yeah, there is no page numbers on
4 it.

5 MR. VOGT: It was what was highlighted in the
6 motion.

7 MR. TURKEL: It's been in the motion, so the
8 portions that are highlighted are excerpted in our
9 motion.

10 MR. BERLIN: I might actually have a clean copy
11 if that would be helpful, Your Honor.

12 THE COURT: I think this will be fine if
13 they're the same ones that are being represented in
14 the motion.

15 Okay. Thank you.

16 So now let's go on to the next motion.

17 Mr. Vogt:

18 MR. VOGT: Your Honor, would that be the motion
19 to set the case for trial or the motion for
20 clarification?

21 THE COURT: Let's do the motion for
22 clarification.

23 MR. VOGT: May it please the Court.

24 Your Honor, we actually -- a lot of this Mr. Turkel
25 has already addressed in what he talked about.

1 THE COURT: And I have read that motion.

2 MR. VOGT: So what happened was the Monday
3 following Mr. Denton making this very cryptic
4 comment about what was going to come out from
5 documents we believed were already supposed to be
6 sealed and confidential, we filed that emergency
7 motion for the Court basically asking, because Judge
8 Bucklew said I'm not in a position to tell a state
9 court judge what to do, for the Court to just
10 reaffirm that these documents were, in fact, highly
11 confidential, attorneys eyes only, and subject to
12 the protocol that the parties agreed to.

13 Number two, for the recordings, including the
14 audio recording as well as the DVDs that because
15 Judge Case was unavailable had been sent to the
16 Court would now be sent to Judge Case so that the
17 parties' protocol that they agreed to could be
18 followed, including both DVDs and the audio
19 recording, which we think should be treated the same
20 way as the DVDs.

21 THE COURT: Which I don't have.

22 MR. VOGT: Which you don't have.

23 And that all copies go to Judge Case so that he
24 can follow that protocol.

25 And then the third thing we wanted to do,

1 Your Honor -- and we asked Judge Bucklew to do this.
2 Again, she said I'm not in a position to do that --
3 was make it abundantly clear that the FOIA waiver
4 Mr. Bollea signed applied only to this case, to
5 discovery in this case, because when it was issued,
6 it was with the understanding it was subject to your
7 protective orders, that this would not get out to
8 anyone else.

9 So we would still ask that that order be
10 entered, Your Honor, subject to the additional
11 protections we've now asked for from the Court.

12 THE COURT: Thank you, Mr. Vogt.

13 Mr. Berlin.

14 MR. BERLIN: Your Honor, I don't actually think
15 this motion is all that controversial, which is why
16 we wrote to you and said we did not think it merited
17 emergency treatment, because the primary relief that
18 is sought was a confirmation that the defendants
19 were abiding by both the protocol and by the
20 protective order. And we wrote to say, which I now
21 said again on the record this morning, that we are
22 and we have. So, Your Honor, that part of it really
23 was not controversial.

24 There are a few pieces of it that we were -- we
25 did object to and that we, I think, probably could

1 have been worked out had we bothered to hear from
2 the plaintiff about it.

3 One was that the protective order itself -- let
4 me talk about documents for a moment.

5 The protective order itself presumptively
6 treats documents that are designated by a party as
7 confidential or, as was later added, confidential
8 attorneys eyes only. We have no -- and we have been
9 treating them -- and we have confirmed this every
10 which way we know how to that the documents we
11 received from the FBI and the U.S. Attorney's Office
12 pursuant to our FOIA request are being treated as
13 confidential.

14 What we objected to was there would be a ruling
15 in place that all of those documents would for all
16 time be treated as confidential rather than leaving
17 in place a mechanism to challenge that, including
18 that some of the designations in ours really made no
19 sense.

20 For example, something like the fifth page of
21 the FBI's production as a newspaper article, you
22 know, I don't know that a newspaper article becomes
23 confidential simply because it was in an FBI file.
24 And there are a number of other things that reflect
25 information that has long been widely known and need

1 not be treated as confidential. That's not
2 something we need to address today, but we did not
3 want an order in place that precluded that.

4 The second was that they sought to limit the
5 use of the documents to Mr. Thomas, as opposed to
6 other members of the Gawker defense team, as he was
7 the party who happened to be listed at the bottom of
8 the FOIA waiver. And that, obviously, is both
9 unworkable and I don't think was consistent with
10 what Your Honor intended when ordering the waiver to
11 begin with.

12 It also conflicts with the protocol that the
13 parties agreed to, which was that we as a group of
14 lawyers will have them and keep them confidential.

15 Third, it sought to change the definition of
16 the attorneys eyes only to exclude Ms. Dietrick and
17 limit it to the counsel of record in the case.

18 It has been, as you might imagine, Your Honor,
19 somewhat difficult to litigate a case where large
20 swaths of it are things that we haven't shared with
21 two of our three clients. And they have been
22 willing to let Ms. Dietrick be their proxy in these
23 matters, but it is -- would be untenable for us to
24 have a situation where documents that got produced
25 were not able to be shared with any of our clients

1 with respect to making decisions about what to do in
2 the case.

3 Here, what to do with the FOIA case in federal
4 court, and that's just untenable, so we dealt with
5 that.

6 And then, lastly, although this is not -- this
7 is not actually addressed in the motion at all, they
8 have not sought to have in this motion the audiotape
9 submitted to -- to Judge Case. But the audiotape,
10 as I said earlier in my earlier remarks, the
11 original genesis of this procedure where Judge Case
12 would get video was Mr. Harder stood up at a hearing
13 back in January of 2014 and said, "If there are
14 other tapes out there." And he did that, of course,
15 after his client and Mr. Houston had watched the
16 other tapes.

17 He said, "If there are other tapes out there,
18 Mr. Berlin should be able to see my client having
19 sex even if he is representing Gawker. It's really
20 about the sexual content."

21 And with respect, Your Honor, what's on these
22 audio tapes is not really that, but -- but other
23 content that we believe demonstrates, first, things
24 that we need in the FOIA case to be able to
25 demonstrate to Judge Bucklew why it is that we're

1 asking for additional production from the FBI. And
2 second, in this case, to be able to demonstrate that
3 what they told Your Honor is different than what
4 they told the FBI.

5 And we are, therefore -- you know, would not
6 want to be in a position to -- that's not covered by
7 the protocol they asked to clarify. That's covered
8 by the protocol. I think if you read the protocol,
9 it's quite clear that it's not covered by it, number
10 one.

11 And number two, when they asked us about it,
12 they said, "Look, if you wanted the audio to be
13 covered, you could have and should have included
14 that and didn't." And so it really shouldn't be.

15 But, most importantly, Your Honor, we feel like
16 we need to retain that piece of evidence, and that
17 the interest that we proffered in providing it to --
18 providing the video footage to Judge Case are really
19 not present for this audio and we ought to be able
20 to maintain it on a confidential attorneys eyes only
21 basis; which, just for the record, is also being
22 kept in a sealed envelope in our firm's safe for
23 safekeeping.

24 I think that's it, unless Your Honor has any
25 questions on that.

1 THE COURT: I don't have any questions. Thank
2 you.

3 Mr. Vogt, anything additional?

4 MR. VOGT: Just a couple brief comments,
5 Your Honor.

6 We did try to limit in this motion the
7 definition of highly confidential attorneys eyes
8 only. And, again, this was filed before we had this
9 public disclosure of sealed documents in this case
10 to exclude Ms. Dietrick. And we did that for a
11 couple of very important reasons.

12 Number one, that Ms. Dietrick was lockstep and
13 publicly going to the press and discussing this case
14 with Mr. Denton. The other reason is, that back at
15 the time when that original definition was included
16 in the protective order in this case, Ms. Dietrick
17 was only in-house counsel. She's now the president,
18 she's now an officer, she now meets with them on a
19 regular basis. That's why we think that it needs to
20 be clarified that these highly-confidential
21 documents that -- in a case in which she is now an
22 officer of the company that's being sued and
23 publicly discussing on a regular basis being
24 limited.

25 They can always come back to Your Honor if they

1 need to discuss a specific piece of this evidence
2 with her in the case, file a simple motion, say,
3 Judge, we need to discuss this and here's the reason
4 why. The orders always contemplate that.

5 Number two, their steadfast refusal to let
6 Judge Case have the audio recordings, which no one
7 really contemplated at the time were in existence,
8 is why they're not addressed in the original
9 protocol, Your Honor.

10 But what Mr. Berlin didn't tell you is he wants
11 to keep these audio recordings which are, in
12 essence, the same thing as the DVDs. Is that they
13 have transcripts of them. The FBI transcribed them.
14 In fact, they're in the documents that he just
15 handed you. He has transcripts of these audio
16 recordings.

17 They just want the recordings. And under the
18 circumstances under which we are here today, when
19 there has been a public dissemination of those
20 highly-confidential materials up and to the point on
21 the information from transcripts, not actual audio
22 recordings, we think that's very, very suspect.
23 There is absolutely no harm in following the
24 protocol that the parties agreed to, that these
25 recordings will be provided to Judge Case. He would

1 review them for relevancy and a transcript would be
2 prepared if anything on them was relevant to this
3 case. That does them absolutely no harm whatsoever.

4 Whereas, on the converse side, as we have seen
5 what has transpired over the past few days, there is
6 an extreme prejudice to Mr. Bollea if they're
7 allowed to continue to keep these items. And that
8 prejudice far outweighs what we're asking the Court
9 to do with respect to these recordings.

10 THE COURT: Thank you. So as far as --

11 MR. BERLIN: Can I clarify just two things?
12 I'm sorry, but this is not right. I'm sorry to --
13 we have to get this right.

14 One is, I don't think a lawyer should have to
15 come to the Court and share with his adversary.

16 THE COURT: Why don't we do this. Let me make
17 my ruling. And then at that point in time, if you
18 have some question or a point, then you can -- I'll
19 give you an opportunity to ask your question at that
20 point.

21 MR. BERLIN: Happily, Your Honor.

22 THE COURT: Thank you.

23 All right. So at this point in time, the
24 plaintiff's motion for clarification is denied in
25 part and granted in part, in the fact that at this

1 point in time, the material that has been provided,
2 not only to the Court, but also to the parties, from
3 the FBI is to be considered confidential and under
4 attorneys eyes only as had been provided under the
5 prior agreement between the attorneys.

6 At this point, I would agree with the
7 plaintiffs to exclude Ms. Dietrick. I would like
8 the audios provided to Judge Case as part of the
9 discovery. The part that I'm not sure about is for
10 Judge Case to have some transcript made, that I'm
11 going to defer to Judge Case as to whether or not
12 that's appropriate with all the circumstances. And
13 that all of this material be treated confidential.

14 The Court has been concerned with the how would
15 these DVDs that were delivered to the Court be
16 treated. They're not exactly evidence. It's not
17 like someone has asked me to receive these into
18 evidence. So the Court has viewed them as a neutral
19 place for them to be maintained until Judge Case
20 returned.

21 Judge Case returns this weekend to Florida.
22 And at such time, all of the DVDs that I have
23 received, which are five, will be delivered to
24 Judge Case. And at that point in time, when you all
25 have an opportunity to get before Judge Case on some

1 of the various issues as to how to handle these
2 materials, which would include dealing with
3 Ms. Dietrick in those, I think they should be
4 addressed first to Judge Case who will have the
5 opportunity to see and review all of them, and then
6 you all can take the time with him to go through all
7 these individual things.

8 Some of these rulings are in a vacuum. I
9 haven't seen the 1100 pages. I haven't seen the
10 audio. I'm handed five inches of paper this morning
11 to review and I've not reviewed it. And nor is
12 there time on the Court's calendar to be doing that.
13 So while I will certainly take the opportunity to
14 review these materials before I make a ruling on the
15 plaintiff's request for additional discovery, so
16 I'll reserve on that motion. But at that point in
17 time, I think all of this is considered discovery.
18 Whether or not you're going to use it in trial or
19 not will be determined some other day.

20 And so at this thing, I'm going to appoint it
21 then to send it over to Judge Case as the discovery
22 magistrate to make those rulings.

23 Anybody have any questions on that aspect of
24 it? Mr. Berlin?

25 MR. TURKEL: Judge, I just have one question on

1 your last statement.

2 You're reserving on the emergency motion to
3 conduct discovery. Are you sending that one over to
4 Judge Case for --

5 THE COURT: No.

6 MR. TURKEL: Okay. I didn't know if that last
7 statement covered --

8 THE COURT: I think I needed to read all this
9 material. And then at that point in time, I'll make
10 my ruling.

11 MR. TURKEL: I understand.

12 THE COURT: No, I'm referring the motion for
13 clarification, all those things.

14 MR. TURKEL: Got it.

15 THE COURT: The denial aspect of the motion
16 under the protocol is, should there be some court
17 reporter to come and make a transcript of an audio
18 recording that I'm hearing, it sounds like there's
19 already transcripts available. Yeah, I don't know
20 that that's really appropriate.

21 MR. TURKEL: I just wanted to make sure.
22 That's how I understood your statement.

23 THE COURT: Thank you.

24 Mr. Berlin.

25 MR. TURKEL: I'm fine. Thank you.

1 MR. BERLIN: Your Honor, two things. Let me
2 start with the audio file first.

3 Mr. Vogt represented to you that there was a
4 transcript of the audio file, and that is not
5 correct. There is a partial transcript of the audio
6 file. Some of it is not on there.

7 We are highly concerned about, while we're
8 continuing to litigate a FOIA case, having to part
9 with evidence that we need for the FOIA case and
10 give it to Judge Case. And so --

11 THE COURT: I'll let you make that argument to
12 him.

13 MR. BERLIN: Well, I'm not done yet. Let me if
14 I may, Your Honor.

15 And the second thing is, it is simply untenable
16 to have a huge swath of documents that you have now
17 ruled -- that are marked "Attorneys Eyes Only" that
18 I cannot discuss the contents of with Ms. Dietrick.

19 THE COURT: I have not seen those materials, so
20 that's why I'm saying I think that -- let Judge Case
21 look at those materials, and then maybe he'll make
22 that recommendation.

23 MR. BERLIN: Well, Your Honor, it's just simply
24 untenable. I'm asking you for an immediate stay of
25 that ruling so that we can seek appellate review.

1 It's just we can't litigate a case where we have no
2 client. We have no client that we can discuss about
3 the merits of the case. I have deadlines.

4 THE COURT: He'll be in town on Saturday and
5 so, hopefully, you can get before him right away.

6 Okay. Thank you.

7 MR. BERLIN: So that you're denying the motion
8 to stay?

9 THE COURT: Yes.

10 MR. BERLIN: Very well, Your Honor.

11 THE COURT: Thank you.

12 All right. Anything else on the motion for
13 clarification?

14 All right. So let's go ahead then and move to
15 when we're going to set the trial.

16 So I appreciate the fact that the plaintiff
17 would like me to set the trial right away on an
18 expedited basis. I don't see the -- one, the
19 Court's calendar is totally full. So on an
20 expedited basis, I can't bump other people's cases
21 for this one.

22 So at this point in time, the next availability
23 of a two-week docket, which I think this case is
24 still going to be on a two-week docket, is going to
25 be in March 2016. March 7th, 2016.

1 MR. TURKEL: Judge, one suggestion we would
2 make. And if it please the Court, I understand the
3 practical aspect of setting the trial. We had --

4 THE COURT: It's not a staying of the trial.

5 MR. TURKEL: No, no, I know, Judge. And the
6 one thing we'd just suggest was -- we had cited the
7 priority ruling. That does give you discretion. My
8 suggestion, from a practical standpoint, was going
9 to be this.

10 And, Judge, I'm saying this understanding what
11 you're saying about your dockets, because I've known
12 your dockets are, I think, six and seven deep in
13 September.

14 THE COURT: No, 14.

15 MR. TURKEL: 14 now?

16 THE COURT: Right, I have 14 trials for
17 September. I have -- November and December are
18 one-week trials where there is eight and nine per
19 trial -- per docket. January is a one-week docket.
20 February already has 14 on it. And March is the
21 first available.

22 MR. TURKEL: The only suggestion I was going to
23 make -- and we made it in our motion. And I'm
24 assuming, by virtue of moving us into March, you
25 maybe have considered it and rejected -- was the

1 right to set certain priority cases.

2 We are almost three years old. Put us at the
3 front of the docket, the normal -- the normal
4 pretrial settlements occur, maybe you're left with
5 two or three and then --

6 THE COURT: Here is where I'm at.

7 MR. TURKEL: -- you can refer them down the
8 hall maybe.

9 THE COURT: Unfortunately, I can't, but here is
10 what I am going to require; is that the case go to
11 mediation before October 1st, which is our next
12 hearing.

13 MR. TURKEL: Certainly we'll abide by that.

14 Judge, if you're saying March is all we can do,
15 I mean --

16 THE COURT: March is the soonest.

17 MR. TURKEL: Okay.

18 THE COURT: If everybody is available in March.

19 MR. TURKEL: Certainly. And the only problem
20 we have, I think Mr. Bollea may have a conflict in
21 March.

22 THE COURT: I'm sorry.

23 MR. TURKEL: Okay. Judge, you're aware of how
24 badly we want this case to get to trial, so I'm not
25 going to waste your time --

1 THE COURT: We've tried to get this case to
2 trial for a year. We started talking about this
3 trial a year ago, so -- and just to let everybody
4 know, there were 13 media trucks had reserved space
5 for July 6th. Five local, eight from New York.
6 People had reserved restaurant spaces, which
7 apparently whoever the attorneys were that reserved
8 spaces in the restaurant, the restaurants ordered
9 extra food and nobody called them to tell them the
10 trial was off. And Friday was a Court holiday.
11 So -- and I didn't know people had reserved spaces
12 in restaurants. So those restaurants then sustained
13 damage because they had extra food.

14 And we had 150 jurors coming for that Monday
15 and 150 jurors coming for that Tuesday. So a lot of
16 work had been put into July.

17 I appreciate the fact of the appellate court's
18 ruling, but, you know, unfortunately, the reality
19 is, just as soon as we can get it back on. I mean,
20 I would love for it to be sooner than that, but,
21 unfortunately, there are many other cases that have
22 already been set and people that have been working
23 very diligently to bring their cases to trial.

24 MR. TURKEL: I'll make a suggestion. And I'm
25 sure it's going to be qualified with if the parties

1 agree.

2 Would the Court be amenable if the parties were
3 to agree to let Judge Case try it if we could try it
4 earlier?

5 THE COURT: You need to talk to your appellate
6 attorneys about some of that, but I don't know that
7 you would agree with that.

8 MR. TURKEL: Yeah, I was more thinking him
9 since he's senior judge status here.

10 THE COURT: It comes under Chapter 44 as a
11 voluntary trial lawyer, but I believe there are some
12 appellate limitations on that.

13 So I don't have any problem with it, but I
14 imagine that since everything I say gets appealed, I
15 certainly doubt that a trial, both parties would
16 agree to not having any appellate review.

17 MR. TURKEL: If I can -- let me confer with my
18 client one moment on the March date, Judge.

19 THE COURT: That's fine. Why don't we take
20 just a few minutes break so everybody can talk about
21 it, look at their calendars. You all can look at
22 your calendar, so let's take a five-minute break.

23 (Recess taken.)

24 THE COURT: Mr. Turkel, was March a good date,
25 please?

1 MR. TURKEL: Judge, yes, with a caveat. I
2 mean, I was just on the phone with Wil Florin and he
3 is representing Mr. Bollea's suit which is specially
4 set before Judge St. Arnold in that month, but we
5 really -- we need to get this case tried.

6 THE COURT: This is March 7th for that two
7 weeks. Usually that third --

8 MR. TURKEL: You all don't have the same
9 dockets, right?

10 THE COURT: Usually we would not.

11 MR. TURKEL: He may have been March 14th. He
12 may have been starting March 14th, Wil, I mean.

13 THE COURT: Okay.

14 MR. TURKEL: But I think that what we would
15 prefer is just go ahead and set this and we'll take
16 action as needed in the other case, because we need
17 to get this case tried.

18 Judge, and just so I'm clear and so my
19 colleagues that are attending by phone are clear,
20 because, for whatever reason, the calendar is
21 showing up in docket time in September and October,
22 but you're 14 deep in September already and -- on
23 your jury trial week? And how deep in October?

24 THE COURT: Some of those, some have already
25 settled, but that doesn't mean that you -- the Court

1 counts on them settling before. Obviously, I can't
2 do 14 trials in two weeks.

3 MR. TURKEL: Right. And October equally?
4 Okay. I just wanted to make sure Mr. Harder and
5 Mr. Houston heard that, because I think they had
6 looked online and saw, for whatever reason --

7 THE COURT: I don't know where they're looking
8 online. There isn't an online calendar that you
9 look at.

10 MR. TURKEL: Maybe they spoke to Ms. McCreary.
11 They both -- whatever the case would be --

12 THE COURT: All right. October had had 16
13 trials at one point, so currently I'm down to 12,
14 but --

15 MR. TURKEL: Okay. Judge, given that, with the
16 qualifications I told you, we're fine with that
17 March date.

18 THE COURT: Mr. Berlin, March, March 7?

19 MR. BERRY: Your Honor --

20 THE COURT: Mr. Berry.

21 MR. BERRY: -- we had actually talked to
22 Mr. Turkel a couple weeks back, and I thought that
23 they had come to an agreement that we're both
24 available in February. And at that time, we
25 understood your calendar was open in February. If

1 that's not the case, then March is acceptable to us.
2 But going --

3 MR. TURKEL: Obviously, we prefer February,
4 Judge, but you sort of prefaced it all with the idea
5 that February was already stacked. If you can put
6 us in February, we prefer that.

7 THE COURT: February has 15.

8 So looks like -- so -- and, I mean, when I set
9 this for July, I didn't set 14 on July because,
10 clearly, this one was anticipated to go.

11 MR. TURKEL: Understood.

12 THE COURT: So I have to -- when I plan this
13 one, I won't be scheduling 14 others around the same
14 timeframe, because if this one is not resolved prior
15 to October 1st, we're going. So --

16 All right. So mediation prior to October 1st,
17 please, and a trial date then for March. And the
18 date is March 7th. We'll send out a pretrial order
19 to that effect. And the pretrial is February 16th
20 at 9:30.

21 So what I would like to do is, if you all
22 could -- pending my ruling on your request for
23 discovery, the plaintiff's request for -- I know,
24 Mr. Berlin, I'm looking at you, but the plaintiff's
25 request for discovery. Pending my ruling on that

1 issue, I'd like for the two parties to get together
2 and determine other types of how much trial time do
3 you need based on whatever additional discovery
4 needs to happen, so we can go ahead and put those --
5 block those dates out like we did before on the
6 Court's calendar. I know that we already have
7 October 1st for a half a day in the morning.

8 MR. TURKEL: Just the same practice where we
9 held Fridays sort of as a catchall day for status,
10 et cetera?

11 THE COURT: Well, I don't know. That's what
12 I'm saying. I don't know that there is much more
13 discovery. In my view, it looked like we were --
14 everybody was ready for trial. The discovery had
15 been done. The things that nobody -- and that may
16 have changed at this point in time. So I don't hold
17 Fridays open. I packed Fridays with mortgage
18 foreclosures. So usually 100 to 150 mortgage
19 foreclosure trials on Friday.

20 So unless these are specifically reserved dates
21 for you, they're packed with something else. So
22 that's why I'm saying --

23 MR. TURKEL: I think the only discovery issue,
24 Judge, that was lingering -- and I'm glad you
25 brought this up -- was we had one to finish the

1 financial work discovery, and we got to a point
2 there was just no time left before trial, so that
3 issue was left lingering not because of the merits
4 of it, but because we had no time left. We do want
5 to finish that discovery.

6 Perhaps what we'll do is look and just -- I
7 thought it was nice when we held a few hours every
8 two or three weeks just to have status in this case.
9 We always found ways to use that. Sometimes needed
10 more time. So if the Court's amenable to that,
11 we'll look at your calendar, get with Ms. McCreary
12 and maybe hold some of those dates so we can at
13 least have checkpoints.

14 MR. BERLIN: I think that makes sense,
15 Your Honor. We -- as you may recall when we were
16 together on the 1st of July for the series of
17 something like, I think, there were about 42 motions
18 in limine, that evidentiary rule, some of those
19 rulings were made without prejudice to you actually
20 looking at the exhibits and it might be --

21 THE COURT: Really, they were made without
22 prejudice until the trial started going, because I'm
23 not going to prejudge the whole trial by motions in
24 limine.

25 MR. BERLIN: Also true.

1 THE COURT: No, I had -- let's make it really
2 clear. Before the motions in limine, I had reviewed
3 all those records, so I have those notebooks and I
4 still have them. So those rulings are still going
5 to stand. We're not doing them again.

6 MR. BERLIN: No, I'm not asking you to do them
7 again, but there were a couple that you said, "I'd
8 like to look at the specific evidence" --

9 THE COURT: Evidence during the trial.

10 MR. BERLIN: Your Honor, if I could just
11 finish, I think I can try and help you. Okay.

12 What the issue was at the time was you had
13 directed the parties to try and sit down and reduce
14 the number of exhibits, which we had agreed to do.
15 And what I'm proposing -- the only thing I was
16 proposing, I was trying to agree with Mr. Turkel in
17 setting some dates to deal with some of these issues
18 that will come up as we try and do that. That's all
19 I was proposing, Your Honor.

20 THE COURT: All right.

21 MR. BERLIN: Sorry for causing any confusion.

22 MR. BERRY: Just so we're very clear, I'm not
23 coming back and arguing over 40 motions in limine.

24 MR. TURKEL: We've ruled on those. You've
25 defined for us the boundaries of that very well.

1 And if it's other stuff, look, it was my suggestion,
2 okay, having a few dates on the calendar. That's
3 fine, Judge.

4 THE COURT: So if you all would like to,
5 between yourselves, figure out how regularly you
6 want those to be held, I don't know that they're
7 going to be on Fridays.

8 MR. TURKEL: Whenever.

9 THE COURT: As you all -- some of you from out
10 of town don't know, the mortgage foreclosures came
11 back to us, so we no longer have a mortgage
12 foreclosure division, so our calendars are pretty
13 stacked.

14 So you are welcome to see when the -- when the
15 calendar is open and then we'll go from there. So
16 probably I would imagine if you all get together,
17 figure out how much time you think you need, how
18 often, and then we'll figure out where we can
19 accommodate that on the calendar. Okay?

20 MR. TURKEL: Thank you, Judge.

21 MR. BERLIN: Your Honor, if I may, just a
22 housekeeping matter. I did start my remarks on the
23 discovery motion seeking additional discovery from
24 Mr. Turkel, that saying that we had just gotten it
25 yesterday and asking if we could file the proper

1 response. And I was going to just ask if we could
2 have 14 days to do that.

3 THE COURT: That's fine. No.

4 MR. TURKEL: Judge, can we truncate --

5 THE COURT: Not 14 days. I would really like
6 to get it done sooner than that, because I'd like --
7 I really would like to get the order out. And so if
8 you want to make -- or if you want to supplement
9 your oral remarks that you made today, which I took
10 quite a lot of notes from, but if you want to
11 supplement that, if you can have them -- if you
12 could really supplement it by the 10th or 11th, by
13 August 10th or 11th.

14 MR. BERLIN: Yes. Look at my calendar,
15 Your Honor.

16 If we can do the 11th, that would be great,
17 Your Honor.

18 THE COURT: Okay.

19 MR. BERLIN: We'll make that work.

20 THE COURT: Thank you. Anything else,
21 Mr. Berlin?

22 MR. BERLIN: No, Your Honor.

23 THE COURT: Anything else, Mr. Turkel?
24 Mr. Vogt?

25 MR. VOGT: Yes, Your Honor, I have copies of --

1 we've actually e-mailed -- clearly, Mr. Conner and
2 I, we have competing orders on the order -- on the
3 ruling that Your Honor made concerning the video,
4 displaying of the video at trial, as well as the
5 transcript. So I've informed that we would bring
6 these.

7 THE COURT: And these are the competing orders?

8 MR. VOGT: Yes, Your Honor.

9 THE COURT: There's one from each side?

10 MR. VOGT: One from each side and additional
11 copies. I put a post-it on them. And the
12 transcript is there as well.

13 THE COURT: Okay. Perfect. Great. Thank you.

14 And I think there are a number of other orders
15 too that still need to be entered from all the --
16 especially the ones on the motions in limine and all
17 the other things that --

18 MR. VOGT: I think those are -- we have not
19 prepared written orders on any of those rulings yet.

20 THE COURT: Okay.

21 MR. TURKEL: We've got time.

22 MR. VOGT: But we can get to those.

23 THE COURT: Thank you. Anything else?

24 MR. TURKEL: I think that's it.

25 MR. BERLIN: Nothing from us, Your Honor.

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Thank you, Your Honor.

THE COURT: Thank you. See you October 1st.

(Proceedings concluded at 11:48 a.m.)

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REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Valerie A. Hance, Registered Professional Reporter, 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 30th day of July, 2015, IN THE CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

Valerie A. Hance, RPR