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AUG 22 2022

JOHN T. FREY  
Clerk of the Circuit Court  
of Fairfax County, VA

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# Transcript of Hearing

**Date:** January 29, 2021  
**Case:** Depp, II -v- Heard

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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

**FILED**  
**AUG 22 2022**

JOHN T. FREY  
Clerk of the Circuit Court  
of Fairfax County, VA

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JOHN C. DEPP, II, :

Plaintiff, :

v. : Civil Action No.

AMBER LAURA HEARD, : CL-2019-0002911

Defendant. :

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Hearing before THE HONORABLE BRUCE D. WHITE

Conducted Virtually

Friday, January 29, 2021

10:00 a.m. EST

Job No.: 349957

Pages: 1 - 40

Reported By: Paul P. Smakula

1           Deposition of THE HONORABLE BRUCE D. WHITE,  
2 conducted virtually:

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9           Pursuant to notice, before Paul P. Smakula,  
10 Notary Public in and for the State of Maryland.

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF DEPP:

BENJAMIN G. CHEW, ESQUIRE  
ANDREW C. CRAWFORD, ESQUIRE  
BROWN RUDNICK LLP  
601 Thirteenth Street Northwest  
Suite 600  
Washington, D.C. 20005  
(202) 536-1785

ON BEHALF OF DEFENDANT HEARD:

ELAINE CHARLSON BREDEHOFT, ESQUIRE  
ADAM S. NADELHAFT, ESQUIRE  
CHARLSON, BREDEHOFT, COHEN & BROWN  
11260 Roger Bacon Drive  
Suite 201  
Reston, Virginia 20190  
(703) 318-6800

1 P R O C E E D I N G S

2 THE COURT: Could I get everyone to note  
3 their appearances for your record then.

4 MR. CHEW: Good morning, Your Honor. May  
5 it please the Court, Ben Chew and Andrew Crawford  
6 for plaintiff, Johnny Depp.

7 MS. BREDEHOFT: Good morning, Your Honor.  
8 Elaine Bredehoft and Adam Nadelhaft for the  
9 defendant and counter-plaintiff, Amber Heard.

10 MR. NADELHAFT: Good morning, Your Honor.

11 THE COURT: Good morning. I set aside an  
12 hour for your argument. I don't know that you're  
13 going to need that. Hopefully you won't, but if  
14 you do need it, we've got that time set aside.  
15 But I want to tell you at the outset that once the  
16 hearing is concluded, if we do it before 11:00,  
17 when my next case is scheduled for, I'd like for  
18 counsel to call me in chambers at (703) 246-4147.  
19 I want to discuss briefly a matter unrelated to  
20 today's motion. All right. And we'll get  
21 everybody to mute themselves except those are  
22 arguing, and I'm ready when you all are.

1 MR. CHEW: Thank you, Your Honor. The  
2 Court should deny the remainder of defendant  
3 Heard's plea in bar and find that she, like  
4 Mr. Depp, is not entitled to anti-SLAPP immunity.  
5 With Your Honor's leave, I plan to take about  
6 15 minutes for opening and reserve up to  
7 15 minutes for reply, but as Your Honor suggested,  
8 probably take less.

9 Critically, Your Honor, Ms. Heard admits  
10 at pages five and six of her opposition brief that  
11 the issue of whether her defamatory statements are  
12 a matter of public concern is a matter of law that  
13 this Court should resolve as a matter of law.  
14 Thus Ms. Heard concedes that if Your Honor  
15 concludes that her three statements are not a  
16 matter of public concern, it's game over and  
17 there's no anti-SLAPP immunity and the Court does  
18 not need to reach any other issue.

19 Clearly Ms. Heard's statements are not  
20 matters of public concern. They're not, quote,  
21 based solely on statements regarding matters of  
22 public concern, unquote, as required by Virginia's

1 anti-SLAPP statute at section 801-223-2, and  
2 therefore do not qualify for anti-SLAPP immunity  
3 under the statute.

4 Rather, as Your Honor previously wrote at  
5 pages five, six -- at pages five and six of his  
6 letter opinion dated March 27th, 2020, attached to  
7 Mr. Depp's opening and reply briefs as Exhibit A,  
8 quote, plaintiff has alleged an implied meaning  
9 that is clearly defamatory, citing complaint at  
10 paragraph 78, noting that these statements imply  
11 Ms. Heard was the victim of domestic violence at  
12 the hands of Mr. Depp, unquote.

13 That implied meaning, i.e., that Mr. Depp  
14 committed domestic violence, is not solely a  
15 matter of public concern. As Your Honor is well  
16 aware, the Supreme Court of Virginia addressed a  
17 very similar situation in the case of Pendleton v.  
18 Newsome and rejected the precise argument that  
19 Ms. Heard makes today. Quote, because defamatory  
20 speech falls outside the protection of the First  
21 Amendment, a First Amendment analysis is  
22 inapposite in a case in which a plaintiff must

1 allege and ultimately prove that the defendant  
2 intended his words to express a defamatory  
3 innuendo, that the words actually did so, and that  
4 the defendant was actually defamed thereby,  
5 unquote, Pendleton 290 Virginia 162 at page 174.

6 Applying Pendleton, which this Court did  
7 throughout its letter opinion of March 27th, 2020,  
8 denying Ms. Heard's demurrer, Your Honor should  
9 similarly grant Mr. Depp's motion because  
10 Ms. Heard's statements accusing Mr. Depp of  
11 domestic violence is a matter of private, not  
12 public concern, and are therefore not shielded by  
13 anti-SLAPP immunity as a matter of law.

14 Such a decision by Your Honor today would  
15 be fully consistent with the Court's recent  
16 decision at page 10 of the Court's letter opinion  
17 dated January 4th, 2021, denying Mr. Depp's plea  
18 in bar for anti-SLAPP immunity as to Mr. Waldman's  
19 three statements finding that those statements  
20 were not a matter solely of public concern.

21 Ms. Heard's inappropriate reference to the  
22 Violence Against Women Act when it was she, not



1 Mr. Depp, who was arrested for physically  
2 assaulting her then girlfriend Tasya van Ree and  
3 spending the night in jail in Washington State  
4 does not change -- is both ironic nor does it  
5 change this analysis one iota. In contrast, no  
6 women other than Ms. Heard has ever accused  
7 Mr. Depp of domestic violence. That fact was  
8 confirmed again yesterday when Mr. Depp's former  
9 agent of 30 years, Tracey Jacobs, who is no longer  
10 a fan of Mr. Depp, testified (inaudible) who has  
11 made such a vile accusation. Because Ms. Heard's  
12 three statements are not protected by the First  
13 Amendment, the Court should grant plaintiff's  
14 motion and deny her remaining plea in bar full  
15 stop.

16 Now, Your Honor, turning to the second  
17 issue, which is germane only if the Court were to  
18 conclude that the Virginia SLAPP statute confers  
19 immunity on Ms. Heard's three statements, which is  
20 does not, Your Honor should still grant  
21 plaintiff's motion because Mr. Depp has plausibly  
22 alleged that Ms. Heard made the three statements,

1 quote, with actual knowledge that they are false,  
2 unquote, quoting Virginia code Section 801-223.2.

3 As Your Honor is aware, in Steel v.  
4 Goodman, Judge Lauck in the Eastern District of  
5 Virginia Richmond Division held that a defendant  
6 could not avail himself of Virginia's anti-SLAPP  
7 statute where, as here, the allegations in  
8 plaintiff's complaint, quote, plausibly support a  
9 conclusion that defendant made the statement with  
10 knowledge of their falsity, unquote. 32 328F2nd  
11 3rd 403 at page 407. That's a 2019 opinion. . .

12 That was in a very analogous procedural  
13 posture as we are today. That was on a motion the  
14 dismiss based on the allegations in the complaint.  
15 The Court did not hold an evidentiary hearing or  
16 trial, it was based solely on the allegations of  
17 the complaint. Applying Steel versus Goodman,  
18 Your Honor, the Court should grant Mr. Depp's  
19 motion and find that Ms. Heard is not entitled to  
20 anti-SLAPP immunity because Mr. Depp also  
21 plausibly alleged that Ms. Heard knew that her  
22 three statements were false. And this is alleged

1 plausibly at paragraphs 6, 23, and 62 through 68.

2           Indeed, the allegations are far more  
3 plausible in this case because we already have the  
4 testimony of Officers Science and Hadden that the  
5 incident on May 21, 2016, did not occur as  
6 Ms. Heard alleged. They found that there was no  
7 sign of injury on Ms. Heard and no damage to the  
8 penthouse. So these allegations are even more  
9 plausible than the ones that were sufficient in  
10 the Steel case.

11           Your Honor followed the same logic in his  
12 letter opinion of January 11th, 2021, when the  
13 Court denied -- when the Court denied Mr. Depp's  
14 anti-SLAPP plea in bar as to Mr. Waldman's three  
15 statements that Ms. Heard would ascribe to  
16 Mr. Depp. Quoting Your Honor's letter opinion of  
17 page 10, quote, Ms. Heard has alleged sufficient  
18 facts in her counterclaim to demonstrate that  
19 Mr. Depp made these statements with actual or  
20 constructive knowledge or with reckless disregard  
21 for whether they are false, unquote. And on that  
22 basis, Your Honor held that Mr. Depp was not

1 entitled to anti-SLAPP immunity.

2 Similarly here, Your Honor, the Court  
3 should therefore deny Ms. Heard's remaining plea  
4 in bar and rule that, as it did with Mr. Depp,  
5 Ms. Heard is not entitled to anti-SLAPP immunity  
6 and therefore grant Mr. Depp's motion and strike  
7 Ms. Heard fifth affirmative defense asserting such  
8 anti-SLAPP immunity. Thank you, Your Honor, and  
9 I'll reserve for the remainder.

10 THE COURT: All right. Thank you.

11 Ms. Bredehoft, go ahead when you're ready.

12 MS. BREDEHOFT: Thank you, Your Honor.  
13 Good morning. I'm going to take these one at a  
14 time. And the first issue is whether Virginia's  
15 anti-SLAPP statute applies to potentially  
16 defamatory statements. Now, Mr. Depp argues that  
17 because this Court found that some of Ms. Heard's  
18 statements in the Washington Post op-ed may  
19 ultimately found defamatory, the anti-SLAPP  
20 statute and its attendant immunity cannot apply.  
21 This makes no sense. Such an interpretation would  
22 render the anti-SLAPP statute meaningless.

1           Instead the opposite is true. The  
2 anti-SLAPP statute is explicitly designed to  
3 provide immunity from defamation claim under  
4 certain circumstances. The actual statute, which  
5 is at 8.01-2232(a) says, quote, a person shall be  
6 immune from civil liability for a violation of  
7 Section 18.2499, which is the conspiracy, a claim  
8 for tortious interference within an existing  
9 contract or business or contractual expectancy or  
10 a claim of defamation.

11           So the fact that this Court found at the  
12 demurrer stage that Ms. Heard's statements could  
13 potentially be defamatory is of no significance in  
14 determining whether Ms. Heard is entitled to  
15 anti-SLAPP immunity. Now the interesting thing is  
16 that Mr. Depp cites Pendleton v. Newsome and  
17 relies heavily on this case. It was a 2015 case,  
18 Virginia Supreme Court case, and it had nothing to  
19 do with anti-SLAPP immunity because anti-SLAPP  
20 immunity didn't come into effect until two years  
21 later, it was prestatute, and it didn't obviously  
22 address anti-SLAPP immunity there. So it has

1 absolutely no applicability whatsoever to the  
2 anti-SLAPP statute.

3           The second issue, Your Honor, is whether  
4 under Virginia's anti-SLAPP statute there's a  
5 question of law and a question of fact. Now,  
6 Mr. Chew is correct, Your Honor, that we have, in  
7 researching the analysis on this, come to the same  
8 conclusion that Judge Payne did in the Eastern  
9 District of Virginia, that one part of this is a  
10 question of law and the second of it is a question  
11 of fact.

12           Under the anti-SLAPP statute there are two  
13 prongs. The first is -- the first prong is, are  
14 the statements, quote, regarding matters of public  
15 concern that would be protected under the first  
16 amendment to the United States Constitution, made  
17 by that person that are communicated to a third  
18 party. The second prong is if it is determined  
19 the statements are of public concern, the immunity  
20 provided by the anti-SLAPP provision would not  
21 apply to, quote, any statements made with actual  
22 or constructive knowledge that they are false or

1 with reckless disregard for whether they are  
2 false. And the burden of proof on that is clear  
3 and convincing evidence on Mr. Depp's part.

4 Because this is a relatively new statute,  
5 Your Honor, and we talked about in earlier  
6 hearings, there's very little case law in Virginia  
7 interpreting or addressing the statute. But Judge  
8 Payne, on December 3rd, 2020, in the Eastern  
9 District of Virginia addressed it in Alexis v.  
10 Kamras, which was at 2020 U.S. District Lexus, and  
11 I have the cite and we attached it in our  
12 compendium, Your Honor. And he addressed for the  
13 first time whether in the context of a defamation  
14 claim whether there is a question of law in there.

15 And what Judge Payne did is he actually  
16 went through an analysis and he -- he said  
17 nobody's made this decision, and granted Judge  
18 Payne is in the Federal Court, but his analysis I  
19 thought was pretty good, and he said basically  
20 it's kind of like a qualified immunity, and where  
21 the Court is a gatekeeper on immunity, that seems  
22 to be the most comparable type of thing. And we

1 agree with that, we think that analysis makes  
2 sense.

3 But he also found, Judge Payne also found  
4 that the second prong whether the statements were  
5 made with actual or constructive knowledge of  
6 whether they were false or with reckless disregard  
7 for whether they are false is a question for the  
8 jury. And he says again that that burden is by  
9 clear and convincing evidence to prove that the  
10 person acted with improper mental state.

11 Now, Your Honor, this necessarily involves  
12 questions of fact and would require a full  
13 evidentiary hearing, which Ms. Heard has properly  
14 requested. I find it interesting that Mr. Chew  
15 argues and tries to advance to Your Honor a number  
16 of his -- and I'll say quote facts, end of quote,  
17 because obviously we dispute all of those, and we  
18 also would point out that the UK court in a  
19 129-page opinion with 585 paragraphs found exactly  
20 the opposite and found against Mr. Depp and that  
21 in fact Ms. Heard had been domestically abused and  
22 violated on at least ten occasions. But in any



1 event, what the point is here, Your Honor, is that  
2 requires an evidentiary hearing.

3 Now, for the second part of this, Mr. Depp  
4 continues to cite Steel v. Goodman, which is an  
5 Eastern District of Virginia case, Judge Lauck. In  
6 that particular case, the judge found that it  
7 could not find anti-SLAPP immunity at the motion  
8 to dismiss stage because of the allegations of  
9 malice. So in other words, it helps us, it  
10 doesn't hurt it. It says, I can't make a decision  
11 on malice at the motion to dismiss stage. So it's  
12 not helpful to Mr. Depp's case.

13 Now, with respect to the first prong, Your  
14 Honor, whether Ms. Heard's statements are matters  
15 of public concern. If Ms. Heard's op-ed in the  
16 Washington Post is not considered a matter of  
17 public concern, it is unclear what would  
18 constitute a matter of public concern.  
19 Ms. Heard's statements were made in the context of  
20 an op-ed in the Washington Post, which is a  
21 nationally respected newspaper, it was drafted in  
22 conjunction with the ACLU, and in her role as

1 ambassador for the ACLU.

2 Now, the ACLU submitted a declaration that  
3 indicated the ACLU suggested that Ms. Heard write  
4 and assist in -- and they assisted Ms. Heard in  
5 submitting the op-ed piece to the Washington Post  
6 addressing how victims are often intimidated by  
7 institutions in social dynamics to protect abusers  
8 and that these dynamics cause people to question  
9 victims.

10 And, Your Honor, if I may, it was  
11 Attachment 7 to our brief, but I think it's  
12 important to read into the record the actual  
13 statement -- part of the statement of Mr. Wisner,  
14 who is with the American Civil Liberties Union.  
15 He says at paragraph three, domestic violence,  
16 sexual assault, and other forms of gender-based  
17 violence deprive women and girls of their  
18 fundamental ability to live with dignity. Women  
19 and girls experience domestic violence and sexual  
20 assault at alarming rates.

21 Governments, institutions, laws, and  
22 policies contribute to the systematic devaluation

1 of the lives and safety of women and girls by  
2 failing to respond to gender-based violence and by  
3 discriminating against those subjected to such  
4 violence. Domestic violence and sexual assault  
5 can affect women in all walks of life, including  
6 celebrities. And the reason I read that to you,  
7 Your Honor, is that talks about the public  
8 concern.

9           Then Mr. Wisner goes on in his paragraph 5  
10 of the declaration -- and I think this is very  
11 much on point here -- in November 2018, the ACLU  
12 suggested Ms. Heard write and assisted in her  
13 submitting an op-ed piece to the Washington Post  
14 addressing the reluctance of survivors of domestic  
15 violence and sexual assault to report their  
16 experiences and the institutional intimidation and  
17 social dynamics that discourage such reporting and  
18 protect abusers.

19           Her piece further addressed how these  
20 dynamics can cause people to question survivors  
21 who report violence. The ACLU regards all of  
22 these matters as subjects of public concern and

1 has repeatedly addressed them through litigation,  
2 advocacy, and public education.

3 This op-ed piece also included discussion  
4 of the "Me too" movement, an increase in women of  
5 Congress, the Violence Against Women Act, and  
6 reduction in school's obligations to respond to  
7 sexual harassment and assault under Title IX.  
8 Clearly these are public concern, Your Honor, and  
9 this was the address of it.

10 Now, interestingly enough, Mr. Depp does  
11 not say a word about the declaration, does not  
12 address it at all. Now, Ms. Heard's op-ed,  
13 written during the height of the "Me Too" movement  
14 in America, called for, quote, Congress to  
15 reauthorize and strengthen the Violence Against  
16 Women Act, end of quote, and called for, quote,  
17 changes to laws and rules and social norms so  
18 that, quote, women who come forward to talk about  
19 violence receive more support, end of quote.

20 Ms. Heard also described the lessons of  
21 the "Me Too" movement, surveyed the dramatic rise  
22 of women in electoral politics, and declared that,

1 quote, women's rage and determination to end  
2 sexual violence are turning into a political  
3 force, end of quote. She therefore called on  
4 Congress to reauthorize and strengthen the  
5 Violence Against Women Act, end of quote, and  
6 criticized, quote, proposed changes to Title IX  
7 rules governing the treatment of sexual harassment  
8 and assault in the schools, end of quote.

9 More broadly, she advocated the election  
10 of, quote, representatives who know how deeply we  
11 care about these issues, end of quote, as well as  
12 the adoption of cultural and political reforms to,  
13 quote, right the imbalances that have shaped our  
14 lives, end of quote.

15 So the question arises, Your Honor, how  
16 does this Court determine if the statements are of  
17 public concern? First, it is critical that the  
18 statements not be isolated, and that public  
19 concern analysis must examine the form and the  
20 context in which they were made. And if Your  
21 Honor thinks of it, that's also the analysis the  
22 Virginia Supreme Court has consistently conveyed

1 in interpreting defamatory statements. And Your  
2 Honor recognized this in both of his letter  
3 opinions in talking about the context of  
4 defamation.

5 The same is true for public concern. Now  
6 we cited a United States Supreme Court decision of  
7 Connick v. Meyers in the context of analyzing  
8 whether employee speech was of public concern.  
9 The U.S. Supreme Court held that to determine  
10 whether speech is a matter of public concern, the  
11 Court must consider the content, form, and context  
12 of the statement as revealed by the entire record.

13 The California Supreme Court also  
14 addressed this -- and one of the reasons, Your  
15 Honor -- we know these are not binding on Your  
16 Honor, but one of the reasons we included some of  
17 the California ones is that their anti-SLAPP  
18 statute is it very, very active, there's a lot of  
19 -- there's a lot of case determinations out there,  
20 and so it does give a lot of good analysis that  
21 the Court can consider in the process.

22 And the FilmOn Company case we cited, Your

1 Honor, included in the compendium, the California  
2 Supreme Court said, quote, in articulating what  
3 constitutes a matter of public interest, courts  
4 look to certain specific considerations such as  
5 whether the subject of the speech or activity  
6 could affect large numbers of people beyond the  
7 direct participants and whether the activity  
8 occurred in the context of an ongoing controversy,  
9 dispute, or discussion. That Court continued,  
10 first we asked what public issue or issue of  
11 public interest the speech in question implicates?  
12 A question we answer by looking at the content of  
13 the speech.

14 Second, we ask what functional  
15 relationship exists between the speech and the  
16 public conversation about some matter of public  
17 interest. It is the latter stage the context  
18 proves useful. That same FilmOn Court went on to  
19 say, we are not concerned with the social utility  
20 of the speech at issue or the degree to which it  
21 propelled the conversation in any particular  
22 direction, rather we examined whether the

1 defendant, through public or private speech or  
2 conduct, participated in or furthered the  
3 discourse that makes an issue one of public  
4 interest.

5 Now, we also cited some other cases, Your  
6 Honor, including the Indiana Court of Appeals that  
7 indicated -- that also gave its guidance and it  
8 was consistent with what our arguments are here.  
9 And in furtherance of this, Your Honor,  
10 Ms. Heard's was published in a major national  
11 newspaper, was specifically designed to contribute  
12 to the public debate about sexual violence and  
13 domestic abuse and the consequences of speaking  
14 out on these issues. Thus, the courts have  
15 essentially held, Your Honor, that you cannot  
16 parse out the alleged -- allegedly defamatory  
17 statements and then analyze them in a vacuum under  
18 the anti-SLAPP. You must analyze the overall  
19 context.

20 But, Your Honor, even looking at the  
21 statements themselves individually, they show that  
22 they are matters of public concern. And I'm going



1 to go through them quickly here. The first of  
2 those, Amber Heard, I spoke up against sexual  
3 violence and faced our culture's wrath. That has  
4 to change. Now, significantly, Your Honor,  
5 Ms. Heard didn't write that. That was what the  
6 Washington Post chose as the title on this, but  
7 nonetheless it was clear -- I mean, it really  
8 illustrates the significance of public concern  
9 there.

10 The second is, then two years ago I became  
11 a public figure representing domestic abuse, and I  
12 felt the full force of our culture's wrath for  
13 women who speak out. Same issues. The third, I  
14 had the rare vantage point of seeing in realtime  
15 how institutions protect men accused of abuse.  
16 Again, same issue. Now, Mr. Depp is never  
17 mentioned. His name is never mentioned in this  
18 article. And the whole context of it, it's  
19 clearly a dialogue of public concern.

20 Now, the statements, if we compare this,  
21 Your Honor, to the other statements other cases  
22 have found to be of public concern, in Judge

1 Payne's case of Alexis v. Kamras, there were a  
2 number of statements that were made here. And I'm  
3 just going to direct the Court's attention to a  
4 couple of them because I know we've attached this  
5 case and Your Honor has it in front of you.

6 But it says if the VDOE report presents  
7 abundant evidence of what amounts to cheating by a  
8 small group of adults on the SOL examinations for  
9 the past several years of Carver in response to a  
10 question about whether he believed the cheating  
11 was done intelligently or was the product of  
12 mistakes or not following protocol, Kamras stated,  
13 based on the evidence in the report I don't see  
14 any other conclusion that it was intentional. I  
15 want to reiterate that what happened at Carver is  
16 unconscionable. The adults who orchestrated this  
17 systemic cheating violated a sacred trust with our  
18 students and our families.

19 To be direct, pending board approval, I  
20 can confirm that no one who participated in the  
21 cheating scandal will be employed by RPS when the  
22 new school year begins. Moreover, pending State

1 approval, I can confirm that none of these  
2 individuals will hold a teaching or administrative  
3 license in Commonwealth. He blamed all of the  
4 named individuals collectively for the efforts of  
5 the report, and the fact that there was now a  
6 cloud over Carver's academic integrity.

7 Judge Payne found these statements to be  
8 potentially defamatory, but also found them to be  
9 statements of public concern. And the Court held  
10 specifically because of the nature of the topic  
11 discussed, i.e., the reliability of the City's  
12 educational system and the intense local media  
13 interest in the scandal and the persons  
14 responsibilities, the Court held, although the  
15 termination of a private employee by a private  
16 employer may not be a matter of public concern,  
17 allegations that the public school teachers  
18 coached public school students to cheat on State  
19 examinations are a matter of public concern.

20 Now, we also cited some other cases, Your  
21 Honor, for an example, Guzman v. Finch, a 2019  
22 Southern District of California case. In that one

1 there was a long Facebook post and it basically  
2 talked about abuse not, again, naming anybody in  
3 particular, but defining what they felt was abuse.  
4 And the Court held that that qualified as public  
5 interest and said, the focus of defendant's  
6 conduct appeared to be the public interest in  
7 domestic violence and/or abusive relationships  
8 rather than an effort to gather ammunition for  
9 another round of a private controversy.

10 The next argument advanced by Mr. Depp is  
11 because the Court held that Mr. Depp's statements  
12 were not of public concern, it means necessarily  
13 that Ms. Heard's statements are of public concern.  
14 That logic doesn't flow. They're very, very  
15 different statements. Unlike Ms. Heard's op-ed,  
16 which published in a highly recognized and  
17 respected publication, which focused on the  
18 transformative political "Me Too" movement, called  
19 for Congress to reauthorize and strengthen  
20 Violence Against Women Act, Mr. Depp's defamatory  
21 statements were not directed to matters of public  
22 concern that would be protected by First Amendment

1 and subject to immunity under Virginia's  
2 anti-SLAPP statute, rather they were directed at  
3 Ms. Heard and whether she was committing perjury  
4 and created a hoax against Mr. Depp.

5 Now, significantly, all three of the  
6 statements were highly personal matters, and the  
7 statements were made by Mr. Depp or on his behalf  
8 solely for his personal benefit. And we cited  
9 *Kadia v. South Harrison*, and we cited *Bramholter*  
10 *v. Twins Peak*. And remember, Your Honor, that in  
11 the plea in bar which they chose to come through  
12 with and put in front of this Court, after we  
13 argued that they were not a public concern and  
14 cited the cases and cited the reasons, they did  
15 not respond to it at all and did not respond in  
16 the oral argument. And Your Honor actually stated  
17 in the opinion letter, quote, Mr. Depp's counsel  
18 neither argued nor addressed this post during oral  
19 argument in their reply brief, end of quote.

20 The final issue, Your Honor, that I'm  
21 addressing is whether the statements were made  
22 with factual or constructive knowledge, that they

1 are false or with reckless disregard for whether  
2 they are false is a question for the jury. And I  
3 think the answer has to be yes. Mr. Depp argued  
4 that because he has alleged that the statements  
5 are false, anti-SLAPP immunity cannot apply. In  
6 other words, Your Honor should just take his word  
7 for it that by clear and convincing evidence they  
8 are false and that Ms. Heard had actual or  
9 constructive knowledge they were false or with  
10 reckless disregard for whether they are false.

11 That can't be done as a matter of law. ...  
12 That clearly calls for evidentiary hearing and  
13 factual issues to be presented. It also doesn't  
14 make any sense, Your Honor, because it would mean  
15 that anti-SLAPP immunity would never apply if a  
16 plaintiff merely alleges falsity, because that's  
17 exactly what the argument is here.

18 As the Court held in Alexis v. Kamras,  
19 this is a question for the jury, that is  
20 Mr. Depp's burden to prove by clear and convincing  
21 evidence. Now, Ms. Heard has a right to ask for a  
22 jury on an issue of fact, and these are clearly

1 issue of fact. The, quote, right of trial by  
2 jury, as declared in article one, section 11 of  
3 the Constitution of Virginia and by statutes  
4 thereof should be preserved in violate to the  
5 parties. That's Virginia code Section 8.01-336,  
6 and see also Rule 3:21, Your Honor.

7 This also is applicable to a plea in bar,  
8 and we cited for Your Honor, Painter v. Singh,  
9 which was a 2007 Fairfax Circuit Court decision.  
10 Here, Ms. Heard is clearly requested a jury  
11 determination on this issue. She filed a motion  
12 to dismiss and a plea in bar in which she stated,  
13 quote, Mr. Depp's claims are also subject to  
14 dismissal under the Virginia anti-SLAPP statute,  
15 end of quote. And, quote, demand that any plea in  
16 bar in Virginia be tried as an evidentiary hearing  
17 before a jury, end of quote. That's at  
18 Attachment 3, Your Honor, at two and note three of  
19 our brief.

20 On March 27, 2020, this Court ruled on the  
21 demurrer but recognized that, quote, Ms. Heard  
22 reserved her arguments that she's entitled to

1 immunity under Virginia's anti-SLAPP statute for a  
2 later evidentiary hearing. That's Attachment 4,  
3 Your Honor, at Note 1. Mr. Depp, on the other  
4 hand, never asked for a plea in bar -- for an  
5 evidentiary hearing in his plea in bar and never  
6 asked for a jury. So it's a very, very different  
7 situation.

8 For these reasons, Your Honor, Ms. Heard  
9 respectfully requests this Court to deny  
10 Mr. Depp's motion. If Your Honor feels that it  
11 has enough evidence in front of it to issue a  
12 determination of public concern, to make that  
13 determination that these statements are of public  
14 concern. If the Court requires additional  
15 evidence to make that determination, set an  
16 evidentiary hearing or reserve that issue for  
17 trial. And for the second prong, permit Ms. Heard  
18 to present the remaining issues on the anti-SLAPP  
19 defense to a jury at the May 17, 2021, trial.  
20 Thank you, Your Honor.

21 MR. CHEW: Thank you, again, Your Honor.  
22 I don't know which party is showing more gall or



1 the chutzpah, Ms. Heard or the ACLU. Remember,  
2 Your Honor, it was Ms. Heard who committed perjury  
3 in claiming that she took the \$7 million that she  
4 received from Mr. Depp in the divorce settlement  
5 and gave half of it to the Childrens Hospital of  
6 Los Angeles, which she lied about under oath in  
7 England, and the other half, the \$3.5 million, to  
8 the ACLU, which was another lie which Ms. Heard  
9 documents order -- which Your Honor ordered be  
10 produced be produced.

11 The ACLU, even though it submitted a  
12 self-serving affidavit to Your Honor on  
13 January 22nd, is ducking process. Ducking process  
14 out in California for which they -- we suspect  
15 they will be sanctioned, but it really takes an  
16 enormous amount of gall for them to come ahead  
17 with the declaration when their dodging a process  
18 of a subpoena and when they've been stiffed by  
19 Ms. Heard to the tune of \$3.5 million.

20 But, Your Honor, now turning to the law  
21 cited by Ms. Bredehoft, the Alexis versus Kamras  
22 case that Ms. Bredehoft cited supports Mr. Depp's

1 position. There the Court held that the issue of  
2 whether a statement is a matter of public concern  
3 is a question of law. And if Your Honor says --  
4 determines, as it should, that Ms. Heard's  
5 statements are not solely a question of public  
6 concern, then Ms. Bredehoft and the Court in  
7 Alexis agrees, that the Court should make that  
8 determination now as a matter of law and not get  
9 to the second issue.

10 That case is clearly distinguishable on  
11 the facts, and the Court held there that although  
12 the termination of a private employee by a private  
13 employer may not be a matter of public concern,  
14 allegations that public school teachers coached  
15 public school students to cheat on State  
16 examinations are a matter of public concern. That  
17 is eminently distinguishable.

18 With respect to Pendleton versus Newsome,  
19 that case is not only still very much good law  
20 from the Supreme Court of Virginia post  
21 anti-SLAPP, 2015, but it's directly on point.  
22 That -- the defamatory statements, as Your Honor

1 knows, in that case were also cloaked in terms of  
2 a highfalutin opinion about public policy. But in  
3 fact, the Court spoke quite eloquently, as Your  
4 Honor did in his March 27th letter opinion, that  
5 the cloaked opinion, there is liable by  
6 implication there.

7           And the holding in Pendleton versus  
8 Newsome very clearly undercuts Ms. Heard's  
9 argument that she should be immunized from  
10 liability for statements made in the op-ed merely  
11 because it is in the form of an opinion. That's  
12 what the Supreme Court of Virginia dealt with  
13 quite squarely. Steel versus Goodman, again, I  
14 don't know what the Court followed in its prior  
15 letter opinion of January 4th, but it's the same  
16 logic the Court applied in Steel versus Goodman  
17 when it held that Mr. Waldman's three statements  
18 were not protected by anti-SLAPP and Your Honor  
19 specifically cited at page 10 that Ms. Heard had  
20 plausibly alleged that Mr. Waldman's statement  
21 were made with reckless disregard.

22           And that's exactly the standard Steel --

1 that Judge Lauck applied in Steel v. Goodman,  
2 which is post anti-SLAPP. In fact, she was  
3 applying anti-SLAPP. And Ms. Bredehoft,  
4 respectfully, is incorrect. She says, well, this  
5 exception would swallow the rule because any time  
6 you allege actual malice, then there's no  
7 anti-SLAPP. It's crucial, the word plausibly.  
8 Whether it is plausibly alleged, and in this case  
9 it's clear that if Ms. Heard is lying about  
10 domestic abuse, and she is, then the allegations  
11 by Mr. Depp are certainly plausible that -- it's  
12 plausibly alleged.

13 Your Honor, the -- Ms. Bredehoft has cited  
14 a number of cases outside of the jurisdiction.  
15 That's no accident. California cases are not  
16 remotely instructive here. The California  
17 anti-SLAPP statute is night and day from the  
18 Virginia anti-SLAPP statute, which is why  
19 Ms. Heard was not sued in California. That  
20 statute is night and day. Those cases are  
21 completely in apposite. What the Court has to  
22 look at in terms of guidance is Pendleton v.

1 Newsome, Steel v. Goodman, Alexis v. Kamras, which  
2 Ms. Bredehoft cited which supports Mr. Depp's  
3 position.

4 And, Your Honor, it's very clear and  
5 Ms. Bredehoft has conceded that the Court can and  
6 should decide the issue as a matter of law as to  
7 whether anti-SLAPP protects Ms. Heard -- it does  
8 not -- and only if the Court decides that issue  
9 against Mr. Depp -- and it should not -- then the  
10 Court would have to decide whether Mr. Depp has  
11 plausibly alleged actual malice -- and he has. In  
12 paragraph 6, 23, 62 through 68, which is directly  
13 on point, Steel v. Goodman, and Your Honor's  
14 decision in his letter opinion January 4th, 2021,  
15 at page 10. Thank you, Your Honor.

16 THE COURT: Ms. Bredehoft, without me  
17 making any ruling, which I'm not making right now,  
18 under your argument that this should be decided by  
19 a jury, how are you anticipating that that would  
20 take place?

21 MS. BREDEHOFT: Your Honor, the issues of  
22 whether it's made with reckless disregard for a

1 falsity, constructive rational knowledge of a  
2 falsity, or -- that's a main issue in this case,  
3 Your Honor. There's going to be an extensive  
4 amount of evidence of whether, in fact, Mr. Depp  
5 committed domestic violence and abuse on  
6 Ms. Heard, and that issue in that process, if the  
7 injury determines, for example, that those  
8 statements are true, then she couldn't have made  
9 them with actual constructive knowledge of  
10 falsity, and she couldn't have made them with a  
11 reckless disregard for the truth, if they believe  
12 her.

13           So all of that evidence comes out anyway  
14 because it's what's in her state of mind in what  
15 she believes. That they can even find -- Your  
16 Honor, even if they find against her, they can  
17 find that she didn't have the mental state to be  
18 able to make those with reckless disregard of the  
19 actual -- actual constructive or reckless  
20 disregard of truth or falsity. So it's dead  
21 center, Your Honor, of this entire trial. It's  
22 very --

1 THE COURT: I understand all that. Maybe  
2 I phrased my question inartfully. Are you  
3 anticipating that this would be put before the  
4 jury by way of special interrogatories to the  
5 jury?

6 MS. BREDEHOFT: Yes, Your Honor.

7 THE COURT: Okay. I just was trying to  
8 think what you were doing. And I wasn't sure if  
9 that's what you were thinking or whether you were  
10 thinking it would be a separate jury trial  
11 strictly on the plea in bar portion of it. I'm  
12 just trying to figure out what you were  
13 envisioning.

14 MS. BREDEHOFT: I think the most efficient  
15 way to do it is to do it at the same time and have  
16 a special interrogatory or portion on the verdict  
17 form for that particular question -- that set of  
18 questions.

19 THE COURT: All right. Anything further  
20 then by way of argument? I'm going to take the  
21 matter under advisement. And I'd ask that you  
22 each give me a proposed order that reflects the

1 ruling that you had hoped that I would be making.

2 MS. BREDEHOFT: We both submitted those in  
3 the last two days, Your Honor. I submitted mine  
4 yesterday, Mr. Chew I think did on Wednesday. If  
5 Your Honor needs another one, we can send it in  
6 again.

7 THE COURT: I'm sure Liz has those.

8 MR. CHEW: Thank you, Your Honor.

9 THE COURT: Why don't we take a break  
10 then. And if you all could call me. It takes me  
11 about five minutes to walk from this courtroom up  
12 to my chambers, and I'll -- one of you set up the  
13 conference call.

14 MS. BREDEHOFT: I'll call you, Ben, and  
15 then I can loop him in.

16 MR. CHEW: Thank you, Your Honor.

17 MS. BREDEHOFT: Thank you, Your Honor.

18 (Off the record at 10:40 a.m.)  
19  
20  
21  
22



1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, PAUL P. SMAKULA, the officer before whom  
3 the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true  
5 and correct record of the testimony given; that  
6 said testimony was taken by me stenographically  
7 and thereafter reduced to typewriting under my  
8 direction; that reading and signing was not  
9 requested; and that I am neither counsel for,  
10 related to, nor employed by any of the parties to  
11 this case and have no interest, financial or  
12 otherwise, in its outcome.

13  
14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 and affixed my notarial seal this 29th day of  
16 January, 2021.

17  
18 My commission expires: June 18, 2023.

19  
20 *Paul P. Smakula*



21 NOTARY PUBLIC IN AND FOR  
22 THE STATE OF MARYLAND