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CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Hearing

Date: November 8, 2019

Case: Depp, II -v- Heard

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

2 (Court reporter duly sworn by the Court.)

3 THE COURT: Could I get everybody to note
4 their appearances on the record for us, please, and
5 we'll include those with regard to the amicus brief
6 issue as well.

7 MR. CHEW: Good morning, Your Honor. May
8 it please the court. Ben Chew for plaintiff Johnny
9 Depp. With me here today is co-counsel Rob Gilmore.

10 THE COURT: Good morning.

11 MR. TREECE: Good morning, Your Honor.
12 Joshua Treece on behalf defendant Amber Heard. And
13 with me is John Quinn from Kaplan Hecker & Fink ham
14 on behalf of Ms. Heard.

15 THE COURT: Good morning.

16 MS. NELSON: Good morning, Your Honor.
17 Jennifer Nelson on behalf of the Virginia Press
18 Association.

19 THE COURT: Good morning.

20 All right. Well, why don't we start with
21 the first motion with the first motion -- we'll get
22 to the other one in time -- that would be the motion

1 with regard to the leave to file amended responsive
2 pleading.

3 MR. TREECE: Thank you, Your Honor.

4 As Your Honor is well aware, we're here
5 today on defendant's motion for leave to file an
6 amended responsive pleadings, specifically an
7 amended plea in bar and demurrer. And we have an
8 accompanying request to file the oversized brief
9 that is attached to our motion in amended responsive
10 pleadings.

11 I'd like to take a quick minute to set
12 the procedural stage for the court. Ms. Heard's
13 initial responsive pleadings were due on May 20th,
14 2019. In her initial responsive pleadings she filed
15 a plea in bar and she filed a motion to dismiss.
16 The motion to dismiss was essentially a motion to
17 transfer. This court ruled on the motion to dismiss
18 on August 8th, 2019 disposing of the motion to
19 transfer. And, Your Honor, less than a month after
20 the court ruled on that dispositive motion, the
21 motion to transfer, motion to dismiss, less than a
22 month on September 5th, we filed our motion for

1 leave. We did it quickly. We did it diligently.

2 And I will tell the court, as you may be
3 aware, new counsel were added to the case after the
4 motion to dismiss hearing. And immediately upon
5 being added to the case, we filed the motion for
6 leave to amend our responsive pleadings. Less than
7 a month from the court's ruling, is not a long time,
8 as Your Honor is well aware, parties at least have
9 21 days to answer after dispositive pleadings are
10 dismissed if it's a demurrer or something along
11 those lines. We, of course, still had an active
12 plea in this case, so no answer is due.

13 Immediately upon becoming involved in the
14 case, Your Honor, I had a couple of calls with
15 Mr. Chew. In those first calls, I told Mr. Chew we
16 are going to be moving to file amended responsive
17 pleadings. He didn't note an objection to that
18 until September 13th. So we told them at the outset
19 that we were doing this. We have moved diligently
20 to set it for a hearing, Your Honor.

21 As you may remember, we had the
22 protective order hearing scheduled. The next

1 available date was October 11th. We moved to set
2 this hearing for October 11th. There were some
3 scheduling issues that occurred later, which
4 necessitated us putting a motion to compel in the
5 place of this motion. But since it's been filed, we
6 have moved quickly, we have moved swiftly to have
7 this heard, and we're now here today on that issue.

8 The other point, Your Honor, Ms. Heard is
9 not in default. Again, she has an active pleading
10 and she's not previously moved to amend her
11 pleadings. The motion before this court, as you
12 well know, is routine, is routinely granted, and it
13 should be granted here.

14 The Virginia Supreme Court rules set a
15 liberal standard for amended pleadings. The rules
16 say, Rule 1:8 says, "Leave to amend shall be
17 liberally granted in the furtherance of the ends of
18 justice." As you've seen in our motion, we note
19 that the Supreme Court has repeatedly reversed lower
20 courts that deny leave to amend when there is no
21 prejudice to the opposing party. So the real issue
22 Your Honor is, is there any prejudice? As a matter

1 of law, there is and can be no prejudice here.

2 The first point on that, Your Honor, is
3 we could file a motion for summary judgment today on
4 the exact same issues. We don't want to do that
5 because we don't want to have multiple motions for
6 summary judgment and we already have a motion to
7 file the demurrer. But we could do that today.
8 There is zero prejudice to Johnny Depp by having
9 this heard on a demurrer when we can raise the exact
10 same deficiencies in his pleading on a motion for
11 summary judgment. Secondly, Your Honor, judicial
12 economy and economic efficiency support the
13 having -- granting a motion for leave and having the
14 demurrer heard.

15 If Your Honor agrees with us that the
16 statements at issue are merely subjective opinions,
17 they don't reference Johnny Depp, they were made
18 more than two years ago, to the extent they
19 reference any specific statement, they reference a
20 statement that was made in a declaration submitted
21 to a court in connection with a temporary
22 restraining order, which is judicially immune from

1 liability. If the court agrees with us on those
2 things, the case may be gone. If the court takes
3 issue with some of the statements and says some of
4 them can proceed and some of them can't, that
5 nonetheless has the effect of trimming the case,
6 trimming the issues for trial, and trimming the
7 issues for discovery. It is inefficient to wait to
8 have these issues heard. We have been moving
9 quickly. We would like to have this heard.

10 We tried to set the hearing on this
11 matter for the 22nd. We worked with opposing
12 counsel to try to achieve that. That date did not
13 work for them. So now we have agreed to December
14 20th. We've agreed to a briefing schedule that they
15 requested. Since we filed this, they had our brief,
16 they had our arguments, they know the landscape.
17 The court knows the landscape from the attachments.

18 The other point, Your Honor, is we've got
19 the active plea in bar. And the active plea in bar
20 is on immunity under the anti-SLAPP statute. The
21 arguments on that plea in bar are going to deal with
22 the very same issues, in some respects, that are

1 presented on demurrer. Are these actionable
2 statements of provable fact? Are they merely
3 subjective opinion? When Ms. Heard said, I became a
4 public figure representing domestic abuse, is that,
5 as it appears to be, a clear subjective statement of
6 her view of her standing in the community,
7 independent of any underlying facts? She says she
8 is a public representative, became a public figure
9 representing domestic abuse, whether -- that is
10 independent of underlying facts, Your Honor. I
11 mean, if the public views her in that way, she is a
12 public figure representing domestic abuse.

13 I don't want to devolve into that too
14 much at this point, Your Honor. I simply want to
15 point out that the plea in bar that we're going to
16 have heard anyway is going to deal with these
17 issues. They can be more tightly addressed on a
18 demurrer to determine whether they're actionable
19 statements in the first instance. That could
20 potentially avoid an evidentiary hearing in a plea
21 in bar. So it is a much more efficient way to
22 address the issue. There's no reason to call our

1 demurrer a motion for summary judgment. We could,
2 if the court would like us to, but it doesn't change
3 the facts.

4 The other point, Your Honor, is we are at
5 the early stages of this case. You don't have to
6 take my word for it. I would like to quote you
7 their expert disclosures, which we'll deal with
8 separately, but I would like to quote their expert
9 disclosures that were filed this Monday.

10 "This case is in the preliminary state of
11 discovery. In particular, the parties have barely
12 begun their document production. Nonparties have
13 yet to make significant document productions. And
14 no depositions have been taken."

15 That is their summary of the state of the
16 case. This is a prime time for a demurrer, Your
17 Honor. It is appropriate. There is zero prejudice.
18 And it's inconceivable that Mr. Depp could suffer
19 any prejudice. He would benefit just like the court
20 would benefit from resolving matters that are not
21 actionable as soon as possible, so that those
22 matters don't remain in front of the parties and the

1 court for discovery, for trial, and for all those
2 other issues.

3 Now, Your Honor, I would like to briefly
4 address arguments they raised in their opposition.
5 One of the arguments they make is, well, you're
6 barred from bringing a demurrer now because there is
7 this notice of scheduling conference that says that
8 demurrers, pleas in bar, and the like need to be
9 resolved before the scheduling conference. Several
10 points on that, Your Honor.

11 THE COURT: You don't need to waste your
12 time on that.

13 MR. TREECE: Thank you.

14 THE COURT: We hope that that's done,
15 I've never found that there was any ability to
16 dismiss somebody's case because they didn't get
17 those things done before the scheduling conference.

18 MR. TREECE: Thank you, Your Honor.

19 THE COURT: We'd love to have it done.
20 It's more aspirational, I guess.

21 MR. TREECE: I understand and we
22 appreciate that, Your Honor.

1 Now, on their futility arguments, I've
2 kind of delved into this a little bit, but they
3 allege four distinct statements that they take issue
4 with. An op-ed that is clearly public commentary
5 about the need for social reform, the need for legal
6 reform. They take four statements out of that, try
7 to match those four statements together, and then
8 try to argue that this creates some implication
9 that's really unspecified. You've got to plead
10 defamation in (inaudible), as Your Honor is well
11 aware. They trying to check that box by saying,
12 well, we quoted the specific language from the
13 op-ed, but then what they're trying to do is
14 bootstrap that to say, well, there's this
15 implication that refers to statements made in 2016,
16 you know, one year outside the statute of
17 limitations, so it's time-barred. And they're
18 trying to say that it refers to some statements in
19 there, but they don't quote what those are, and
20 there's no reasonable inference that those could be
21 imported.

22 Your Honor is well aware, and this is

1 really more the substantive demurrer that I think
2 they're trying to bring into this argument when it's
3 not necessary, because we're on a motion for leave.
4 But, nonetheless, to address futility, what they're
5 trying to do is take the narrow doctrine of
6 defamation by implication, broaden that doctrine and
7 essentially break the doctrine.

8 The bottom line is the Supreme Court has
9 said an allegation and defamation by implication has
10 to be based on the words actually used. And if you
11 look at the words actually used here, Your Honor,
12 there's no reference to Johnny Depp. There's no way
13 it refers to any specific statement. There's no
14 conceivable way it is a republication. The law on
15 that is clear, Your Honor. We've cited that law.
16 We're looking to do a reply brief. We'll elaborate
17 further on that issue on reply.

18 But the bottom line is our arguments are
19 not futile. These are serious legal issues that
20 deserve the court's consideration, deserves the
21 court's attention, and they deserve the court's
22 consideration and attention sooner rather than

1 later, to save the court's time, to save the
2 parties' time, to save the court's money, to save
3 the parties' money.

4 And with that, Your Honor, I will save
5 additional points for rebuttal.

6 THE COURT: All right.

7 MR. CHEW: Good morning, again, Your
8 Honor. May it please the court. Ben Chew for
9 Johnny Depp.

10 THE COURT: Good morning.

11 MR. CHEW: Before addressing Mr. Treece's
12 arguments, I just wanted to clarify a point that
13 came up in the last hearing. My co-counsel, in
14 response to Your Honor's question, may have appeared
15 to suggest that the allegations in paragraph 23 of
16 the complaint were made for purposes of the press.

17 THE COURT: I don't think he sort of did
18 it. He completely did it, didn't he?

19 MR. CHEW: Well, that, that was an
20 inadvertent misstatement. The complaint, as Your
21 Honor knows, was filed on March 1 of 2019. My
22 co-counsel was not part of the team at that point.

1 His partner, Ms. Biles, worked with me.
2 Mr. Weingarten, Mr. Waltman, who's another
3 co-counsel, and Mr. Depp in drafting the complaint.
4 Co-counsel did not join the team until May 20th.
5 And he's been an outstanding addition to the team,
6 but he inadvertently misspoke. I probably should
7 have corrected it at the time, but I didn't want to
8 interrupt the flow, but I wanted to make it clear to
9 the court, having been an officer of the court for
10 31 years, I don't include allegations in pleadings
11 for reasons other than they are related to the case.

12 This, as Mr. Treece pointed out, is a
13 defamation case. And though it's not subject to the
14 same pleading standards as fraud, it must be pled
15 with specificity. We had all the language, et
16 cetera. So that's why it was included for purposes
17 of the case.

18 Now, to address --

19 THE COURT: Thank you.

20 MR. CHEW: Thank you, Your Honor.

21 To address Mr. Treece's point, trial is
22 several weeks away. We have two dozen or so

1 depositions that must be taken between Thanksgiving
2 and Christmas. We're already doubling up scheduling
3 of those depositions. And that's an awful lot of
4 work to do. We still don't have Ms. Heard's answer.
5 I understand that Ms. Heard is able to switch out
6 counsel if she wishes, but that really should not be
7 made to be Mr. Depp's problem. So we would
8 respectfully submit there would be unfair prejudice
9 in this case. We do know that some of their
10 affirmative defenses are this notion that Ms. Heard
11 is not liable somehow because the ACLU may have
12 drafted the title of her op-ed and that somehow, if
13 true, would absolve her of responsibility. We don't
14 know what the basis of that would be. We've asked
15 the VPA for some guidance on that and they weren't
16 at liberty to share with us of whether that had any
17 basis at all. It's not something Ms. Heard had
18 mentioned in any of her prior declarations to this
19 court.

20 Going to futility, Your Honor, the main
21 thrust of the demurrer appears to be that this op-ed
22 did not refer to Johnny Depp, which is risibles. We

1 have interviews with Ms. Heard, which make very
2 clear who she was speaking with. She wasn't talking
3 about her female partner, who she abused. She was,
4 she was speaking with -- speaking about her client.
5 It was very clear to Disney, who fired him two days
6 later from one of the most lucrative franchises in
7 movie history, Pirates of the Caribbean. It wasn't
8 because it wasn't a successful franchise. But, Your
9 Honor, you know, obviously, it's within the court's
10 discretion. We would ask the court to exercise its
11 discretion and not allow the amendment.

12 To the extent the court does, we have had
13 a conditional schedule, because we didn't know how
14 this motion would come out. If the court is
15 inclined to grant the motion for leave, which we
16 oppose, we have a proposed schedule that would get
17 it drafted and heard by December 20th, which would
18 be at the very end of the discovery period.

19 I will reserve time with respect to the
20 VPA motion, which is a separate issue. Thank you,
21 Your Honor.

22 THE COURT: Okay, thank you.

1 You wanted to respond, apparently?

2 MR. TREECE: Yes, Your Honor. Thank you.

3 So the first point, with respect to their
4 allegation of prejudice from discovery, we have no
5 intention of pausing discovery or doing anything
6 along those lines. We're working diligently on that
7 front. We continue to work diligently on that front
8 and we still will with a demurrer, plea in bar. The
9 plea in bar is already pending, so that would not
10 pause discovery, nor would a demurrer, but if the
11 demurrer is ruled on and trims the case or
12 eliminates the case, obviously, that's in everyone's
13 interest to know where the court is going to go on
14 those issues.

15 With respect to, just to briefly mention,
16 with respect to title of the article, that was
17 written by the editors of the Washington Post. In
18 paragraph 7 of Ms. Heard's declaration that's been
19 submitted to this court, she attests to that, so
20 that issue is going to be resolved.

21 They do mention damages. And he
22 referenced issues with damages. We've been trying

1 to get information from them on damages and had
2 issues doing so. I think we'll be dealing with that
3 in the near future. But the bottom line, Your
4 Honor, is there is no prejudice. They've got to
5 deal with the plea in bar. Answer is not going to
6 be due anyway, because we have an active plea in
7 bar. Having a demurrer heard first is a more
8 efficient way to resolve many of those issues. We
9 would ask the court to grant leave. Thank you, Your
10 Honor.

11 THE COURT: Leave to amend is to be
12 liberally granted. I grant the leave in this case.
13 I have no objection and actually appreciate that you
14 all have already anticipated that might happen and
15 worked on the scheduling.

16 So I guess the remaining question for us
17 is whether or not there should be a need for an
18 amicus brief.

19 MS. NELSON: Good morning, Your Honor.
20 Jennifer Nelson on behalf of the Virginia Press
21 Association.

22 THE COURT: Good morning.

1 MS. NELSON: Good morning.

2 Your Honor, this is a high profile case,
3 featuring two California residents who are currently
4 litigating a defamation by implication case here in
5 the Commonwealth. And as plaintiff concedes in his
6 opposition, this court may, in its discretion,
7 accept third-party amicus briefs. And it should
8 exercise that discretion here. This brief is both
9 timely and will assist the court at the demurrer
10 stage.

11 Your Honor, this case presents important
12 questions of law surrounding defamation by
13 implication that are of significant importance to
14 the press members of the Virginia Press Association,
15 its 225 members. And the VPA often provides amicus
16 support in cases such as this one, defamation
17 matters, and has done so in cases over the course of
18 more than three decades.

19 And with all due respect to the parties,
20 these free press considerations are not being
21 adequately represented by the parties in this
22 action. The VPA and its members will have to

1 operate under the parameters --

2 THE COURT: So let me make sure I
3 understand your position.

4 MS. NELSON: Yes.

5 THE COURT: Your position is that the
6 attorneys in this case are adequately representing
7 their clients' interests, but they're not adequately
8 representing your interests; is that your position?

9 MS. NELSON: Yes, yes, Your Honor. I
10 think that there are free press considerations. And
11 when this case is over, the Virginia Press will have
12 to operate under the parameters of the ultimate
13 decision by this court. And I think there are
14 important considerations. As Your Honor knows, the
15 court is an important gatekeeper in determining
16 whether or not statements are actionable as a matter
17 of law. If there is significant interest in the
18 press having early disposition of matters like this,
19 rather than have them go on and on, and go to a
20 jury, and go up to the Supreme Court of Virginia.
21 In fact, the Supreme Court of Virginia, just this
22 past June in a case, specifically reminded the trial

1 court of the importance of evaluating, at the
2 earliest stages of litigation, whether or not
3 statements are actionable as a matter of law, and
4 reminding the trial court that by allowing a case to
5 go to a jury and to go all the way up on appeal, you
6 are wasting party resources, you're wasting the
7 jury's resources, and the court's resources.

8 And so, Your Honor, I would set forth
9 that the VPA's proposed amicus brief will set forth
10 some of these considerations and some of the
11 chilling effects that can occur by prolonged
12 litigation on defamation cases, where the underlying
13 statements at issue are not actionable as a matter
14 of law.

15 And, Your Honor, plaintiff, in his
16 opposition, argues that VPA has done no due
17 diligence on the case, but, as Your Honor is well
18 aware, the demurrer is focused on the four corners
19 of the complaint and that is the due diligence that
20 VPA has undertaken in seeking to put forth an amicus
21 brief in this case. Your Honor, whether those
22 statements at issue are reasonably capable of

1 carrying defamatory meaning, it's important to
2 decide at the early stages of the case.

3 And, Your Honor, I would argue that this
4 motion for leave is timely. There are no circuit
5 court rules on amicus briefs, but looking to the
6 Supreme Court of Virginia, Rule 5:30, states that an
7 amicus brief is timely if it's filed on the date on
8 which the brief of the party supported is required
9 to be filed. Given that Your Honor has granted the
10 motion for leave by defendant and will accept for
11 filing, presumably today, the amended demurrer, if
12 the VPA submits its amicus brief today, which it is
13 in a position to do, it would be timely under the
14 Supreme Court of Virginia rules.

15 In arguing that VPA's proposed brief is
16 untimely, plaintiff refers to three district court
17 cases, none of which are applicable here. Two of
18 them are District of Maryland cases, in which a
19 motion for leave to submit an amicus brief was filed
20 long after the briefing at issue was fully briefed
21 and ripe before the court. In the third case, a
22 District of South Carolina case, the court -- the

1 United States had moved to file as amicus or in the
2 alternative to join as a plaintiff. The court
3 denied the motion for leave to file as an amicus
4 because it granted the United States' motion to join
5 as a plaintiff. So, again, that case is inapposite.

6 I will also briefly mention, Mr. Chew
7 mentioned, his questions regarding the VPA and its
8 knowledge of the ACLU and whether or not it had
9 written a portion of the op-ed in question, I will
10 just say for the court, the VPA has no affiliation
11 with the ACLU and want to clear up any confusion on
12 that matter, and has no knowledge about ACLU's
13 involvement in the op-ed at issue. So in the
14 interest of brevity, I will just ask the court to
15 accept the amicus brief.

16 THE COURT: Okay.

17 MR. CHEW: Very briefly, Your Honor. The
18 proffer that Ms. Nelson gave in her motion was to
19 address two issues. One, whether Ms. Heard's
20 statements in the op-ed were legally actionable.
21 That's in her motion at paragraphs 15 and 16. And
22 two, she wants -- the VPA wishes to address

1 anti-SLAPP. And that's in paragraph 17. So those
2 are the two topics that the VPA seeks to address.

3 These topics are already addressed in
4 Ms. Heard's proposed, and now filed, deemed filed,
5 17-page oversized brief. There is nothing that the
6 VPA seeks to address that hasn't already been
7 addressed by Ms. Heard's counsel. And not to
8 belabor the fact, but Ms. Heard has four active law
9 firms and 11 attorneys of record in this case. One,
10 Ms. Kaplan, told the court that she is one of the
11 top First Amendment lawyers in the country. Have no
12 reason to doubt that. But these topics are already
13 addressed in the 17-page oversized brief. They will
14 be addressed, if the court accepts our proposed
15 briefing schedule, also in a 5-page reply brief. So
16 there's nothing that the VPA would address that's
17 not already encompassed by very well-represented
18 counsel for Ms. Heard.

19 So it would be redundant it. It does
20 come late. We filed this complaint on March 1st. I
21 understand defendant changed counsel and rearranged
22 the deck chairs, but there was nothing to stop the

1 VPA, within a timely period of time, to notice its
2 amicus. But the point, the main point is, Your
3 Honor, everything she proposes to address, and I'm
4 sure it will be very good, is already encompassed in
5 what defendant has done. There is no purpose for
6 this.

7 And it would be prejudicial. We are
8 already having to file an oversized response,
9 proposed 22 pages, then they get the 5 pages, so we
10 have an even 22 pages. But if the court grants
11 leave, then we would be obligated or we would be
12 obligated to request that Your Honor gives us leave
13 to write a 10-page opposition. So now Mr. Depp, on
14 a second round of dispositive motion pleadings, is
15 going to have to divert resources -- and our team is
16 not as large -- from depositions from Thanksgiving
17 to Christmas, to coming up with 32 pages of
18 opposition briefs. Do we have to use that? No, but
19 we're going to have to respond. And I think that is
20 unfair. I think Ms. Heard is already amply
21 represented. She gets the benefit of the liberal
22 construction, but it really would be piling on for

1 the VPA to be allowed to add another ten pages of
2 briefing the court has to read, we have to respond
3 to, then we would ask the court if the court is
4 going to grant leave for 10 pages to respond. That
5 is not fair. That is not efficient. And it is not
6 necessary, because Mr. Treece and his counsel
7 already are addressing those issues. Thank you,
8 Your Honor.

9 THE COURT: Do you all want to be heard
10 on this issue?

11 And I will let you come back in a minute.

12 MR. TREECE: I would just briefly say,
13 Your Honor, we have different interests, as you've
14 heard, from the Virginia Press Association. So we
15 are dealing with the specific issues, the specific
16 statements at issue. They are dealing with broader
17 ramifications on the impact on their industry at
18 large. They represent, I think, 200-and-some-odd
19 papers and publications. They have, you know,
20 varying interests than the individuals in this case
21 do, for purposes of demonstrating that Ms. Heard is
22 not liable for a \$50 million lawsuit. That is our

1 focus.

2 THE COURT: Do you feel that you've done
3 an inadequate job of --

4 MR. TREECE: Certainly not.

5 THE COURT: -- presentation or briefing?

6 MR. TREECE: Certainly not, Your Honor,
7 but I do think the interests are not entirely
8 aligned. We do not represent --

9 THE COURT: Do you present them to be
10 involved in this case for your client?

11 MR. TREECE: Your Honor, I've never had a
12 single conversation with them at all.

13 THE COURT: Have any of your other
14 counsel, any of the other 11 attorneys and four
15 firms contact them?

16 MR. TREECE: I do not know who's had
17 conversations. I honestly can't speak to that, Your
18 Honor. I do not know.

19 THE COURT: All right. Let's let her
20 respond.

21 MR. TREECE: All right. Thank you.

22 MS. NELSON: Your Honor, I will be very

1 brief. I do want to address one issue that was
2 raised by Mr. Chew in terms of the characterization
3 of what the VPA intends to address. It is broader
4 policy goals and in addition, in addition to the
5 gatekeeping role and also the importance of the
6 anti-SLAPP statute, also to set forth to the court
7 policy considerations surrounding allowing public
8 figure plaintiffs, such as Mr. Depp, to state claims
9 for defamation by implication. We have reviewed the
10 demurrer that is submitted by Ms. Heard. The
11 proposed amicus brief is not at all duplicative and
12 we'll present the broader free press policy
13 arguments set forth by the Virginia Press
14 Association, important considerations in a
15 defamation case, such as this one, because it will
16 have significant ramifications on the press moving
17 forward in the Commonwealth long after this case is
18 done.

19 THE COURT: Okay.

20 MS. NELSON: Thank you, Your Honor.

21 THE COURT: The matter as to whether the
22 court would allow an amicus brief is purely within

1 the discretion of the court. And there might be
2 occasions where I might invite and certainly would
3 welcome an amicus brief. This is not one of those
4 occasions. I find that counsel in the case are
5 highly experienced, highly efficient, highly
6 knowledgeable and that they will present the law
7 quite adequately to the court. I don't think it is
8 really the court's position, as seems to be
9 suggested in the last comments, that the court
10 should have policy goals. And I think that's what
11 you really said in your request that you do an
12 amicus, is that your clients have policy goals and
13 that the court, in ruling on this specific case,
14 should take your client's policy goals into effect,
15 as opposed to really, in this case, on what the law
16 already is in the Commonwealth and the evidence and
17 facts that I hear. So the request is denied. Thank
18 you. Thank you.

19 Are you all going to prepare an order?

20 MR. CHEW: We will, Your Honor.

21 THE COURT: I approve the extended
22 briefing that you all want. Reluctantly.

1 MR. CHEW: Thank you, Your Honor.

2 MR. TREECE: And one more thing just on
3 the hearing date, I just want to make sure that this
4 works. We proposed to do the hearing date on
5 December 20th. We know that works with opposing
6 counsel. I believe that's available on the court's
7 schedule. We'll file a praecipe. I just wanted to
8 inform the court of the parties' intent on that
9 front, Your Honor.

10 THE COURT: As long as I'm going to be
11 here, and I think I am, and I think we have court
12 that Friday, so I think that's fine. Could you get
13 the order into Mr. Balland as soon as possible on
14 those things?

15 MR. CHEW: We will, Your Honor. We can
16 scratch it outside.

17 THE COURT: Counsel, before you leave, I
18 need counsel to stick their heads in one second.

19 (Pause.)

20 THE COURT: Thank you. What I wanted to
21 mention is that I get these things all the time. I
22 get a courtesy copy of virtually everything. I

1 don't need a courtesy copy of a certificate of
2 discovery and a certificate. So exercise some
3 discretion maybe on what you send to me as a
4 courtesy copy, okay?

5 MR. CHEW: We will. I apologize.

6 (The hearing was concluded at 11:25 a.m.)
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CERTIFICATE OF SHORTHAND REPORTER

I, Theresa R. Hollister, the court reporter before whom the foregoing hearing was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Theresa R. Hollister
Court Reporter