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CLERK, CIRCUIT COURT  
FAIRFAX, VA

August 9, 2021

**BY MESSENGER**

John T. Frey, Clerk  
Fairfax County Circuit Court  
4110 Chain Bridge Road, 3rd Floor  
Fairfax, VA 22030

Re: *Case No. CL-2019-0002911 – John C. Depp, II v. Amber Laura Heard*

Dear Mr. Frey:

Enclosed for filing please find the Corrected Transcript from the July 22, 2021 hearing on Defendant Amber Laura Heard's Supplemental Plea in Bar. Also enclosed please find a file copy of the Power Point slides presented in hard copy to the Court and used as a demonstrative exhibit during the hearing on July 22, 2021.

Thank you very much for your assistance.

Very truly yours,



Elaine Charlson Bredehoft

Enclosures

cc: Hon. Penney S. Azcarate  
Benjamin Chew, Esq.



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JOHN T. FREY  
CLERK, CIRCUIT COURT  
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# Transcript of Hearing

**Date:** July 22, 2021  
**Case:** Depp, II -v- Heard

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V I R G I N I A:  
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY  
-----x  
JOHN C. DEPP, II,  
Plaintiff,  
v. Case No. CL2019-0002911  
AMBER LAURA HEARD,  
Defendant.

-----x  
Hearing on Motions  
Before the HONORABLE PENNEY AZCARATE, Judge  
Fairfax, Virginia  
Thursday, July 22, 2021  
10:56 a.m. EST

Job No.: 388256  
Pages: 1 - 141  
Transcribed by: Bobbi J. Fisher, RPR

1 Hearing on Motions before the HONORABLE PENNEY  
2 AZCARATE, Judge, at the Fairfax County Circuit  
3 Court.

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6 Pursuant to Docketing, before Joshua Tubbs, Digital  
7 Court Reporter.

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A P P E A R A N C E S

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

2 THE COURT: Good morning.

3 MS. BREDEHOFT: Good morning, Your Honor.

4 THE COURT: If I could have the court  
5 reporter to be sworn. You got to stand, please.  
6 Face her.

7 (The court reporter was duly sworn.)

8 THE COURT: All right. Thank you. Are  
9 we ready to go forward?

10 MS. BREDEHOFT: Yes, Your Honor.

11 THE COURT: All right. Do you have  
12 evidence or --

13 MS. BREDEHOFT: I will have some  
14 exhibits --

15 THE COURT: Okay.

16 MS. BREDEHOFT: -- but I will not be  
17 putting a witness on.

18 THE COURT: Okay. That's fine. Did you  
19 want to start with your evidence, then, whatever  
20 evidence you have?

21 MS. BREDEHOFT: Yes. Thank you, Your  
22 Honor.



1 THE COURT: Okay. I just -- I have read  
2 all the briefs, and I don't think I need any  
3 openings, if that's okay.

4 MR. CHEW: Your Honor, I just -- with  
5 just a point of clarification, may it please the  
6 Court, Ben Chew for Plaintiff Johnny Depp. I'm  
7 here with Neil Vasquez and Jessica Meyers.

8 Ms. Bredehoft indicated that she might be  
9 referencing material that's subject to the  
10 protective order.

11 THE COURT: Okay.

12 MR. CHEW: She said she wasn't sure.

13 THE COURT: Are you doing that?

14 MS. BREDEHOFT: Your Honor, in my  
15 opening, I don't have any intention of -- under the  
16 protective order, we have to notify. And I filed a  
17 notification with the Court --

18 THE COURT: Okay. But you didn't --

19 MS. BREDEHOFT: -- and with the other  
20 side that, if it comes up -- and it would probably  
21 be more likely in my rebuttal --

22 THE COURT: Okay.

1 MS. BREDEHOFT: -- if something comes up  
2 that I think does. I have intentionally not  
3 included it in my initial arguments. I make one  
4 reference to the confidential judgment, nothing  
5 else.

6 THE COURT: Okay. And so -- and the  
7 evidence that you're going to present to the Court  
8 has nothing to do with --

9 MS. BREDEHOFT: It has nothing -- it does  
10 not include that.

11 THE COURT: -- the protective order.

12 MS. BREDEHOFT: And I have also told --  
13 and I have told Mr. Chew that, in the event I  
14 determine that I need to mention it substantively,  
15 that I will alert the Court and Mr. Chew so that we  
16 can determine how to handle that.

17 THE COURT: Okay.

18 MR. CHEW: I would greatly appreciate  
19 that because, as the Court has noticed, there are  
20 people in the courtroom.

21 THE COURT: Okay.

22 MR. CHEW: So, to the extent that she

1 feels the need to reference that, we would  
2 respectfully ask --

3 THE COURT: We can close the court.

4 MR. CHEW: -- close the court. Thank  
5 you, Your Honor.

6 THE COURT: Sure. No problem. Okay.  
7 All right.

8 MS. BREDEHOFT: Thank you, Your Honor.  
9 And if it pleases the Court, my name is Elaine  
10 Bredehoft. With me today, Your Honor, is Ben  
11 Rottenborn, co-counsel; Clarissa Pintado; and I  
12 also have our paralegal and my daughter, Michelle  
13 Bredehoft here sitting. We represent Amber Heard.

14 Before I start, Your Honor, and this is  
15 the question you asked, I have prepared some  
16 exhibits. I have a copy for defense counsel --  
17 plaintiff's counsel, sorry, and the Court. And  
18 then I have done something a little unique here.

19 THE COURT: Do you have something,  
20 Mr. Chew? You're standing so...

21 MR. CHEW: I apologize for interrupting.  
22 I just wanted to note: We haven't seen these

1 before, but we'll take a look at them.

2 MS. BREDEHOFT: Right.

3 THE COURT: That's fine. I haven't  
4 either. We'll see together, I guess.

5 MR. CHEW: Thank you.

6 THE COURT: Okay.

7 MS. BREDEHOFT: And what I did -- what  
8 I -- I did something a little unusual, Your Honor.  
9 I prepared a PowerPoint but have it in hard copy  
10 slide instead of actually doing a PowerPoint. Part  
11 of it was we didn't know what courtroom Your Honor  
12 would be in. We didn't know what the electronic  
13 situation would be, so I ultimately decided this  
14 just made more sense.

15 THE COURT: Are these the same copies?

16 MS. BREDEHOFT: Yes. In case Your Honor  
17 wanted to write on one and wanted to preserve one,  
18 I felt like I should give you two.

19 THE COURT: Okay. That's fine. All  
20 right. Thank you.

21 MS. BREDEHOFT: So, with that, if Your  
22 Honor is ready --

1 THE COURT: Okay. Yes, sir -- yes,  
2 ma'am. Go ahead.

3 ARGUMENT ON BEHALF OF THE DEFENDANT

4 MS. BREDEHOFT: Thank you. Thank-you.

5 Mr. Depp's complaint should be dismissed  
6 because of the following principles of his --  
7 principles bar his defamation claim: Comity,  
8 Uniform Foreign-Country Money Judgments Recognition  
9 Act, collateral estoppel, which is here, Your  
10 Honor, defensive collateral estoppel, which is also  
11 known as issue preclusion.

12 It gets a little confusing sometimes in  
13 these cases, and I'll try to take Your Honor  
14 through these to ensure that we have our  
15 distinctions.

16 And the last is res judicata which, in  
17 this case, we're referring to as claim preclusion.

18 Now, the UK court has adjudicated on the  
19 merits that statements published by a newspaper  
20 referring to Mr. Depp as a wife beater and domestic  
21 abuser of Ms. Heard are true. The UK court found  
22 that Mr. Depp committed acts of domestic violence

1 against Ms. Heard on 12 occasions, causing her, on  
2 several occasions, to fear for her life.

3 This decision on the facts by the UK  
4 creates a bar to Mr. Depp's recovery because the  
5 statements by Amber Heard in "The Washington Post"  
6 op-ed involve the identical issue and have already  
7 been fully and fairly adjudicated by Mr. Depp in  
8 his chosen forum in the UK.

9 I'm going to take Your Honor through the  
10 procedural chronology of this because it's  
11 relevant, I think, in a number of the issues as we  
12 go through them.

13 June 13, 2018, Plaintiff Depp sued "The  
14 Sun" newspaper and Dan Wootton, the editor, for  
15 libel in the UK based on the statements that Depp,  
16 quote, "beat his wife Amber Heard, causing her to  
17 suffer significant injury, and, on occasion,  
18 leading her to fear for her life -- fearing for her  
19 life," end of quote.

20 Depp strategically selected the United  
21 Kingdom as the forum for his libel suit where the  
22 UK is known for its plaintiff-friendly venue in

1 part because the burden of proof is on the  
2 defendants to prove the statements are true. In  
3 other words, the statements are presumed in the UK  
4 to be false. The defendants must then prove them  
5 to be true.

6 On March 1, 2019, Depp sued Amber Heard  
7 for defamation, claiming the statements published  
8 as an op-ed in "The Washington Post" that did not  
9 even mention him, nonetheless imply he committed  
10 domestic violence against Ms. Heard. The exact  
11 same violence claimed in "The Sun" publication.

12 On November 2, 2020, the UK court issued  
13 its approved judgment. The UK High Court, in a  
14 129, 585-paragraph decision, found that the  
15 statements published by "The Sun" were true. The  
16 UK High Court found that the defendants proved  
17 Mr. Depp committed acts of domestic violence  
18 against Ms. Heard at least 12 times, causing her to  
19 suffer significant injury and, on several  
20 occasions, to fear for her life.

21 Now, discovery in the UK and the U.S.,  
22 there were no lack of procedural tools. Your Honor

1 may recall that, in the opposition filed by  
2 Mr. Depp, they claim they lacked some of the  
3 procedural tools over there, but, in fact, not the  
4 case. And, in fact, Depp had the unique advantage  
5 of full discovery not only in the UK but also in  
6 the U.S. He had two full years in the UK and 16  
7 months in the U.S.

8 Your Honor, his -- and I cited it in my  
9 reply brief, but Mr. Sherborne, who was Mr. Depp's  
10 UK counsel, referred to the, quote, "mass  
11 evidence," end of quote, that was before the UK  
12 Court. And I have -- Your Honor, Exhibit 1 that's  
13 in front of Your Honor is the actual core trial  
14 bundle index. This is what was before the Court.  
15 This is all of the evidence. This is the core  
16 trial bundle index.

17 What they do in the UK, Your Honor, is  
18 you don't have plaintiff's exhibits and defendant's  
19 exhibits. You put them all in and it's a core  
20 trial bundle. And so it was -- in fact, it was 11  
21 bundles, which we call binders in the United  
22 States, but they were bundles there.



1           And this is the mass of evidence they  
2           had. And Your Honor will see in there that many of  
3           the things in this trial core bundle were  
4           depositions taken in this case in the U.S. They  
5           were evidence that was produced in this case.  
6           There was no prohibition whatsoever from being able  
7           to use everything that came in the U.S. in the UK.  
8           And, in fact, the way they do it there is the full  
9           depositions come in. So the depositions were  
10          actually exhibits.

11           Now, the second thing is that Depp, in  
12          the meantime, was conducting extensive discovery  
13          over here. Now, if Your Honor will look at Exhibit  
14          No. 2, this is the first of the request for  
15          production of documents by Mr. Depp to Ms. Heard.  
16          This was July 9, 2019. That's a year -- a full  
17          year before the trial in the UK. Exhibit 3 is the  
18          second set of requests for production of documents  
19          issued November 4, 2019.

20           Then, if you go to Exhibit 4, you have  
21          the first set of interrogatories issued July 9,  
22          2019. Then if you go to Exhibit 5, you have the

1 second set of interrogatories issued November 4,  
2 2019. Then you have, if you go to Exhibit No. 6,  
3 the request for admissions. They were issued on  
4 November 25, 2019.

5 By the time I got into this case, Your  
6 Honor, in June of last year, they had already used  
7 up all the interrogatories and all of the requests  
8 for admissions. Then there also were multiple  
9 depositions, and Your Honor could see those in  
10 Exhibit 1, too, because they came in to the other  
11 side. For reasons unclear to me, Depp chose not to  
12 depose Ms. Heard over that 16-month period. There  
13 are no notices of deposition, there was no requests  
14 to depose her. In fact, they have since asked to  
15 depose her twice. I have immediately given them  
16 dates. And then, when they got close, they decided  
17 not to. But they chose not to. That was a choice,  
18 not something they were prevented from doing.

19 Then Mr. Depp argued they didn't have the  
20 expert witness disclosure and discovery has not  
21 occurred. But if Your Honor would flip to Exhibit  
22 7, that's plaintiff's designation, identification

1 of expert witnesses that was dated November 4,  
2 2019. Again, all of this well before the July 2020  
3 trial in the UK.

4 And, significantly, Your Honor, at the  
5 time that -- there was a time when our trial here  
6 was scheduled for what is traditionally the case,  
7 it was going to be within a year of the filing of  
8 the complaint. The complaint was filed on March 1,  
9 2019. The trial date was scheduled for February 3,  
10 2020. And all the filings -- everybody was gearing  
11 up for that trial. In December, there was a joint  
12 request for a continuance. It was bumped back.

13 So, at one time, they still believed that  
14 they were going to be trying the case here before  
15 the UK.

16 Now, Depp claims that there was no expert  
17 discovery in the UK, but that's not true either.  
18 Expert discovery is allowed here. What happened in  
19 that case -- and, fortunately, the judge set it  
20 out -- and this is the JN is the judicial  
21 notification, the first one. At Attachment A,  
22 that's the full 129-page judgment. At pages 561 to

1 72, the Court laid out the series of events  
2 relating to a question of expert testimony in that  
3 case. Mr. Depp, not even the defendants, Mr. Depp  
4 produced a number of the photos, some of which Your  
5 Honor will see shortly, produced these in the case  
6 over there. Then, as they got almost to the eve of  
7 trial, they suddenly said, we're challenging the  
8 metadata on these.

9 So defendants went and got an expert who  
10 then examined the materials and gave an expert  
11 report on the metadata, verifying the metadata.  
12 Then Depp's team said, "Well, wait a second, you  
13 know, we object to your using that expert."

14 So the judge goes into a careful analysis  
15 there and says, Look, the only reason this is so  
16 late is because of your delay. You're the ones  
17 that produced this, and it's been sitting here for  
18 a long time, and now you suddenly challenge it.

19 Then what Depp's team did was turn around  
20 and say, Okay, we don't challenge the metadata and  
21 we don't challenge the authenticity of this. So  
22 the judge said, Well, if you don't challenge it,

1 then we don't need the expert witness, so I'll deny  
2 the request for the expert witness. And in came  
3 all the photos with the metadata, no issues. So it  
4 wasn't correct they didn't have the opportunity.

5 It's also significant to note, Your  
6 Honor, at those paragraphs, if you read through it,  
7 that Ms. Heard had an attorney, David Price, who  
8 was representing her in the UK, and David Price  
9 even said that he would be willing to work with  
10 Depp's team to allow them to examine the actual --  
11 the actual devices, if necessary, so that they  
12 could have their own expert. But, instead, Depp's  
13 team said, Look, we're not going to challenge it.

14 Now, Depp told the Court days before --  
15 I'm sorry; did Your Honor have a question?

16 THE COURT: No, no, go ahead.

17 MS. BREDEHOFT: Oh, okay.

18 Depp told the Court days before the start  
19 of the UK -- within a week before the trial that  
20 started on July 7, that he wanted to go to trial in  
21 the UK because the decision of the UK court would  
22 result in vindication of the prevailing party and

1 was preferred to, quote, "just a verdict," end of  
2 quote, referring to our jury verdicts over here.

3 Now, surely, his counsel would not have  
4 claimed that there was a, quote, "mass amount of  
5 evidence" and that they wanted to go to trial in  
6 the UK if they felt they were at some disadvantage  
7 and weren't prepared to go to trial or had any kind  
8 of disadvantage procedurally or didn't have  
9 discovery that they wanted.

10 The second part of that, Your Honor,  
11 is -- and I pointed it out on my reply so I don't  
12 have it here, but -- in the slides, but they  
13 claimed that Ms. Heard didn't give them sufficient  
14 discovery. Well, she gave them sufficient  
15 discovery for 16 months here, but what they  
16 misunderstood or miscomprehended is, when they  
17 issued that third-party request to her shortly  
18 before trial, they had to have the burden of  
19 essentially proving that it would be relevant  
20 evidence; that it either would be helpful to them  
21 or harmful to the other side. And they didn't meet  
22 the burden on any of the four requests that they

1 issued. And so the judge ruled, You haven't met  
2 your burden; she's not going to have to produce  
3 those. But she did produce an enormous amount over  
4 there, and she produced an enormous amount here  
5 that went over there.

6 Now, the last point that I want to make  
7 here, Your Honor, is it was Depp who engaged in  
8 significant discovery abuses in the UK, repeatedly  
9 resisting producing responsive documents.

10 Now, I laid out -- I set out in Exhibit A  
11 to the reply the witness statement of Louis  
12 Charalambous, who was one of the UK counsel for  
13 "The Sun" and Mr. Wootton. He set out in a  
14 declaration -- he went in great detail over the  
15 history of the discovery abuses by Depp over in the  
16 UK. Significantly -- and this is really at  
17 paragraphs 25 through 41 of his declaration. What  
18 happened was that Depp's counsel, who was the same  
19 counsel that are here today, Your Honor -- Brown  
20 Rudnick used to be Mr. Depp's counsel. There was a  
21 shift closer to trial to another team, Shillings  
22 (ph), over there. But they inadvertently disclosed

1 70,000 texts of Mr. Depp. They tried to get it  
2 back but the rules in the UK say that somebody gets  
3 to go through it and determine what might be  
4 responsive and then return everything else, which  
5 is what they did. In fact, it was Mr. Charalambous  
6 who had that task. And it turned out that there  
7 were many, many text messages. They were not only  
8 relevant but responsive and responsive to court  
9 orders over there. And Mr. Charalambous lays out  
10 in that declaration a number of examples that are  
11 pretty significant, especially about his use of  
12 drug and alcohol leading up to and at the time of  
13 some of the domestic violence incidents.

14 On November 16, 2020, the UK High Court  
15 denied Mr. Depp's permission to appeal.

16 On March 25, 2021, the UK Court of  
17 Appeals issued its decision, upholding the UK High  
18 Court's ruling against Mr. Depp, denying his  
19 application for permission to appeal, and  
20 dismissing his application to adduce further  
21 evidence.

22 After exhausting his appeals, the



1 judgment against Mr. Depp became final with no  
2 further appellate options on April 6, 2021.

3 Your Honor, in the words of the Virginia  
4 Supreme Court almost a century ago -- and you'll  
5 hear me talk about Eagle Star -- that means the  
6 judgment is no longer subject to collateral attack,  
7 and Mr. Depp must face the logical and legal  
8 consequences of his adverse decision.

9 Defendant filed her amended answer and  
10 grounds of defense and this supplemental plea in  
11 bar, which is before the Court today. We are  
12 seeking the dismissal of the complaint because the  
13 exact same issue has been fully and fairly  
14 adjudicated by Mr. Depp and he lost.

15 Now, just a couple of words about the  
16 burden of proof, because I think they're  
17 significant in this case, Your Honor. In the UK --  
18 and it's conceded -- the burden of proof is on the  
19 defendants to prove the statements were true. In  
20 the U.S., the burden of proof is on Depp to prove  
21 he did not commit any acts of domestic violence.  
22 Remember, it is just any that can go here.

1           Now, we set out pretty well in our briefs  
2 and we cited the Jackson and the Kollman cases that  
3 the standard is clear and convincing evidence. The  
4 opposition takes issue with it, but I think, Your  
5 Honor, if you read the cases, you're going to see  
6 the mistake that I think opposition made, is they  
7 went from a couple of the ones that talked about  
8 the public figure and the actual malice and then  
9 they shifted over to some that didn't have public  
10 figure when they gave their standards.

11           But, as a practical matter, Your Honor,  
12 it doesn't matter whether it's clear and convincing  
13 or not. It's still much more favorable to Mr. Depp  
14 in the UK because the burden is on the defendants.  
15 Over here, the burden is on him, whether it's by  
16 clear and convincing or by preponderance of the  
17 evidence, but the law under the Jackson case in the  
18 Virginia Supreme Court is quite clear that it's  
19 clear and convincing.

20           Now, the Court found 12 instances of  
21 domestic violence by Mr. Depp against Ms. Heard.  
22 And remember, Your Honor, there's one more thing

1 that I think is important to point out. In the UK,  
2 the UK defendants put out 14 acts of domestic  
3 violence by Amber Heard. She's not restricted to  
4 14. Sadly, there are many more. So all she needs  
5 to do is establish one act of domestic abuse. One.  
6 But, as a matter of law, there's already been 12.

7 Now, Your Honor, I'm going to take you  
8 through these, and I'll try to do it relatively  
9 quickly, but the reason I'm taking you through  
10 these 12 incidents of factual findings is because  
11 Your Honor has to make a determination whether  
12 these findings are related or the exact same issues  
13 and when we go into the privity, when we go into  
14 all of the other discussions, this is, I think,  
15 quite critical, and I took you --

16 THE COURT: Briefly, briefly.

17 MS. BREDEHOFT: I will do it as briefly  
18 as I can, Your Honor. I will just go through them.

19 The first one, Your Honor, Los Angeles,  
20 early 2013. The tattoo incident. Ms. Heard  
21 misunderstood. Mr. Depp thought he was making a  
22 joke. She laughed. He slapped her repeatedly,

1     knocked her to the ground. Later explained that he  
2     snaps sometimes, and he calls himself the monster.  
3     That became quite relevant here, Your Honor,  
4     because Mr. Depp's overarching theme, when he would  
5     get into very extreme alcohol and drug use, is he  
6     would become the monster, and that's the one who  
7     would domestically abuse her.

8             Second, painting incident. March 2013.  
9     Mr. Depp hit Ms. Heard so hard blood ended up in  
10    the wall. Grabbed her, shooked her, shoved her in  
11    the wall. Lasted into the evening and the  
12    following day. He even made -- in a text message  
13    referred to it as a disco blood bath and a hideous  
14    moment.

15            And, Your Honor, what I did is, starting  
16    at Exhibit 12 of what's in front of you, the  
17    pictures that I have in the PowerPoint are the  
18    pictures that were actually in evidence in the UK,  
19    and so they actually have those pictures, just  
20    so -- out of fairness, I wanted to make sure it was  
21    clear.

22            THE COURT: Well, just for the record,

1 the PowerPoint is just demonstrative, so I'm not  
2 going to make that as part of the record.

3 MS. BREDEHOFT: Correct.

4 THE COURT: Your exhibits, if you want  
5 them in evidence, we can go through them and you  
6 can -- if there's any objection to them coming in,  
7 we can do that. Okay?

8 MS. BREDEHOFT: Okay.

9 THE COURT: I just want to make sure you  
10 understand.

11 MS. BREDEHOFT: Okay. And perhaps for,  
12 you know, convenience, maybe I can just move them  
13 in at the end and we can --

14 THE COURT: Okay. That's fine.

15 MS. BREDEHOFT: Okay. But I will refer  
16 to them as I go. That might be helpful.

17 So Exhibit 12, Your Honor, is a picture  
18 from that particular incident, and that was before  
19 the Court in the UK. It was in evidence in the UK.

20 The next one is Hicksville, June 2013.  
21 Mr. Depp assaulted Ms. Heard, including throwing  
22 drinking glasses at her, ripping her dress in a

1 jealous rage, admitted to breaking a wall sconce,  
2 and a witness testified that there was broken  
3 glass, pieces of fabric strewn everywhere, and he  
4 heard screaming and shouting.

5 This was also in a time frame where some  
6 of the inadvertently disclosed texts by Depp's  
7 counsel came in, and so I have just set out some of  
8 these text messages to Paul Bettany, which are,  
9 frankly, quite negative and derogatory towards  
10 Ms. Heard.

11 The next one, Your Honor, is the factual  
12 findings of the UK court of the Boston plane  
13 incident, which was May 2014. It was a flight from  
14 Boston to LA. Mr. Depp kicked Ms. Heard in her  
15 back and threw a boot at her, later passed out in  
16 the bathroom and was ill as a result of consuming  
17 alcohol and cocaine. And I have cited the judicial  
18 sections of that.

19 Now, the significance of this, Your  
20 Honor, is Mr. Depp's witness statement -- and I  
21 have attached that as Exhibit -- just the relevant  
22 pages; I didn't want to overdo it here --

1 Defendant's Exhibit 8, he claimed that he just had  
2 a little bit of alcohol, he was sketching at his  
3 sketch board, and Ms. Heard started haranguing him.  
4 Then he changed his testimony, after being  
5 confronted with the text his counsel had  
6 inadvertently produced. And that's at Defendant  
7 Exhibit 9 is where the exchange goes with Ms. Wass  
8 -- Sasha Wass, who was the Queen's counsel for the  
9 defendants who cross-examined Mr. Depp.

10 Now, significantly in this particular  
11 case, Your Honor, is that the Court, in making its  
12 findings on the Boston plane incident in May of  
13 2014, based everything based on Mr. Depp's  
14 communications and his bodyguard's communications.  
15 And those -- I have set some of those out on this  
16 particular PowerPoint.

17 And here, for example, Mr. Depp admits to  
18 Paul Bettany to having ingested an enormous amount  
19 of drugs and alcohol, far from what he said in his  
20 witness statement. And he was confronted with it.  
21 And he also, to his bodyguard, apologized -- was  
22 very upset to what he had done to Ms. Heard.

1           Now, the next one is the Bahamas, August  
2           2014, Your Honor. Mr. Depp visited the island he  
3           owns in the Bahamas to try to rid himself of the  
4           addiction to Roxies. Ms. Heard accompanied him, so  
5           did a nurse, although she stayed in a different  
6           part of the island. The High Court found that Depp  
7           assaulted Ms. Heard by pushing her on at least one  
8           occasion, and the Court also held his -- and I have  
9           quoted it here because I think it's significant --  
10          his feelings toward Ms. Heard vacillated wildly.  
11          At times he was extremely fond of her and grateful  
12          to her; at other times, he imagined that she was  
13          the cause of his pain and that her actions  
14          increased his torment.

15                 I say "imagined" because there's no  
16          evidence that Ms. Heard was anything other than  
17          solicitous and following strictly the regime  
18          prescribed by Nurse Lloyd and/or Dr. Kipper. And I  
19          have cited the section of the judgment in which he  
20          addresses this.

21                 The next one is Tokyo, Your Honor.  
22          January 2015. Ms. Heard and Mr. Depp were in a



1 hotel room in Tokyo. Mr. Depp shoved Ms. Heard,  
2 slapped her, grabbed her hair, and when Ms. Heard  
3 tried to stand up, muscled her to the ground,  
4 standing over her, yelling as she cried on the  
5 floor.

6 The next one, Your Honor, and quite a  
7 significant one, is Australia, March 2015. And  
8 this is one where Mr. Depp had ingested an enormous  
9 amount of cocaine and ecstasy, and it was a  
10 three-day ordeal. Mr. Depp pushed Ms. Heard,  
11 slapped her, shoved her to the ground, continued to  
12 slap her, grabbed her by the neck and shoved her  
13 against the refrigerator, slapped her face. Later,  
14 hit her multiple times, shoving and pushing her to  
15 the ground, choked her, spit in her face, threw  
16 unopened bottles at her, shoved her into a  
17 ping-pong table, threw more glass bottles through  
18 the window panels and the glass door, grabbed her  
19 and tore her nightgown, grabbed her by the neck,  
20 again, choked her against the refrigerator, slammed  
21 her against the countertop while strangling and  
22 choking her and banging her head against the

1 countertop, ignoring Ms. Heard saying, "You are  
2 hurting and cutting me," and, instead, continued to  
3 hit her and slammed a plastic telephone repeatedly  
4 against the wall with his hand.

5 Those assaults left Ms. Heard with a  
6 broken lip, swollen nose, and cuts all over her  
7 body. And this is also, Your Honor, where the UK  
8 High Court had the confidential annex, which is the  
9 second judicial notification. And I just make  
10 reference to that in the Court of Appeals on the  
11 issue.

12 In addition, the Court rejected -- and  
13 this is still Australia -- the Court rejected that  
14 Ms. Heard caused Mr. Depp's finger injury or injury  
15 to his face and found that it was Mr. Depp who  
16 scrawled graffiti in his own blood from his injured  
17 finger and then dipped his injured finger in paint  
18 and continued to write the messages.

19 And, Your Honor, I have here -- and it's  
20 Defendant's 13, I have these pictures, and they  
21 were in evidence in the UK that we're showing here,  
22 and we have indicated he's written on a mirror,

1 starring Billy Bob and Easy Amber and good luck and  
2 be careful at the top on the lamp shade,  
3 combinations of paint and blood at different times.

4 The Court said, "I accept her evidence of  
5 the nature of the assaults he committed against  
6 her. They must have been terrifying. I accept  
7 that Mr. Depp put her in fear of her life."

8 The next one we go to, Your Honor, is Los  
9 Angeles, March 2015, which is shortly after they  
10 get back from the Australia incident, and it's  
11 called the staircase incident. Mr. Depp hit  
12 Ms. Heard hard and repeatedly lunged at her to hit  
13 her again, shoved Ms. Heard's sister when she tried  
14 to stop him, grabbed Ms. Heard by the hair with one  
15 hand and hit her repeatedly in the head with the  
16 other hand and destroyed personal property.

17 And, Your Honor, these are at Defendant's  
18 Exhibit No. 14, clearly showing the amount of rage  
19 exhibited by Mr. Depp not only on Ms. Heard but his  
20 surrounding areas. And these were also in evidence  
21 in the UK.

22 The next one, Southeast Asia, August

1 2015. It's called the train incident. Mr. Depp  
2 picked a fight with Ms. Heard, hit her, pushed her  
3 against a wall by grasping her throat and holding  
4 her there, causing her to fear for her life. The  
5 Court accepted Defendant's account as true, relying  
6 on Ms. Heard's contemporaneous diary entry which  
7 said, "J" -- that's how she referred to Mr. Depp --  
8 "finally at one point found himself with his shirt  
9 wrapped around my neck. Amazing to think about the  
10 precision and coordination that it required  
11 considering the circumstances. He hit me several  
12 times. I don't even know how I wound up with this  
13 huge, rather annoying, knot on the back of my  
14 head."

15           The next one, Your Honor, is Los Angeles  
16 December 2015, and, fortunately, we're closing in  
17 on -- there's only three left -- and this is a very  
18 serious one. Mr. Depp put Ms. Heard in fear of her  
19 life by slapping her, grabbing her by her hair,  
20 dragging her through the apartment, pulling out  
21 chunks of Ms. Heard's hair, following Ms. Heard  
22 upstairs, hitting her in the back of the head,

1 grabbing her hair again, dragging her by her hair  
2 up the last few steps, then shoving her at the top  
3 of the stairs, repeatedly hitting Ms. Heard,  
4 knocking her to the floor, then head-butting her in  
5 her face when she stood up and bashed her nose.

6 Depp conceded on cross-examination this  
7 was true, and the Court rejected that it was  
8 accidental, as claimed by Mr. Depp. And these  
9 pictures, Your Honor, are Defendant's Exhibit No.  
10 15, again, all in the UK proceedings. The first of  
11 those shows the two black eyes given by the  
12 head-butting there on Ms. Heard.

13 And then go to the next page, Your Honor.  
14 This is a continuation. Then he dragged Ms. Heard  
15 into an upstairs office, grabbed her by the throat,  
16 pushed her down to the ground, punching her in the  
17 back of her head, and then grabbing her by her  
18 hair, slapping her face and screaming "I'll fucking  
19 kill you," and continuing to hit Ms. Heard with  
20 closed fists, pushing her face into the mattress  
21 and pulling out chunks of her hair.

22 And, again, that picture, Your Honor, is

1 at Defendant's Exhibit 15 as well and shows the  
2 bloody lip as well.

3 Then Mr. Depp pushed Ms. Heard, grabbed  
4 her by her hair, dragged from room to room by her  
5 hair. Mr. Depp hit Ms. Heard with his closed fist,  
6 pushed her face into the mattress, and pulled out  
7 chunks of her hair. Again, these are at  
8 Defendant's Exhibit 15, the next two also in the UK  
9 trial bundle.

10 Then the next page, Your Honor, which is  
11 also Exhibit 15, this is Mr. Depp now scrawling on  
12 the kitchen counter another message to her, "Why be  
13 such a fraud?", "All is such bullshit." And then  
14 you see another picture of Ms. Heard's injuries,  
15 particularly the bloody lip, and you can see the  
16 black eye.

17 Then probably the most disturbing one is  
18 on the next page, Your Honor, and that is the bed.  
19 The claimant got on top of Ms. Heard, placed his  
20 knee on her back and the other foot on the bed  
21 frame while repeatedly punching her in the head.  
22 The claimant screamed "I fucking hate you" over and

1 over again. The bed frame splintered under the  
2 weight of the pressure of claimant's boot. And you  
3 can see that at Defendant's Exhibit 15, the  
4 splinters there, the force with which he was  
5 engaging in this horrible conduct to Ms. Heard.

6 Next we go to Los Angeles, April 21.  
7 This is April -- this is Amber Heard's 30th  
8 birthday celebration. Mr. Depp threw a  
9 magnum-sized bottle of champagne at her, grabbed  
10 her by the hair, pushed her to the ground, scraping  
11 her knees on broken glass while further pushing and  
12 shoving her. Pushed her onto a bed, bumped his --  
13 excuse me, his chest with hers, causing her to fall  
14 back down on the bed, physically prohibited  
15 Ms. Heard from leaving the room while he assaulted  
16 her. Happy birthday, Amber.

17 The last one, Your Honor, is May 21st,  
18 2016. The Court found Mr. Depp ripped the phone  
19 from Ms. Heard's hands and threw it at her,  
20 striking her cheek and eye, charged at her, pulling  
21 her hair, striking and violently grabbing her face,  
22 slapping, shaking and yanking her around the room

1 while she screamed.

2 And, Your Honor, this is at Defendant's  
3 Exhibit 16. Again, these were exhibits in the UK  
4 proceeding, and they show the redness in the face  
5 from having the cellphone thrown at her.

6 And then the next set, additional  
7 pictures from that.

8 Now, the damages. Depp repeatedly argued  
9 that "The Sun's" published statements were, quote,  
10 "career-ending," end of quote. The bill of the  
11 particulars of claim, which we attached as  
12 Attachment 3 to the plea in bar, has, quote, "The  
13 very likely intended effect of the articles" -- and  
14 they're talking about "The Sun" articles -- "was to  
15 finish the claimant's career." End of quote.

16 At the UK trial, counsel for Depp  
17 argued -- and this is significant for two different  
18 reasons here, Your Honor. As for the defendants,  
19 they could have ignored Ms. Heard's claims but they  
20 chose not to. They could have reported them  
21 alongside Mr. Depp's physician, but they  
22 deliberately decided not to do so. They chose



1 instead, as I say, to convict Mr. Depp, and that is  
2 what they seek to do in this court, to prove that  
3 this reputation-destroying, career-ending  
4 allegation is true. That is what your lordship is  
5 concerned about, true or not? That's, Your Honor,  
6 at Defendant's Exhibit No. 10, and it's page -- I  
7 give the citation there of 2503. And this is  
8 Mr. Sherborne, Mr. Depp's counsel.

9 Now, there's two parts that are  
10 significant here. First, if those articles were  
11 career-ending, career-finishing, then by them being  
12 found true, Mr. Depp's career is over and his  
13 damages are done. But second -- and this is even  
14 more important in this case, what Your Honor is  
15 deciding here today is that he is admitting that  
16 the issue before his lordship, which is the High  
17 Court in the UK, is whether the allegations about  
18 his beating Amber are true, the identical issue  
19 that's before this Court in this complaint.

20 Now, because Mr. Depp cannot prove  
21 damages in this case after arguing his career was  
22 destroyed by "The Sun's" allegations, Depp is

1 grasping at yet another shot: Vindication. It was  
2 in the opposition's brief. They claim vindication.  
3 But Mr. Depp has also suggested this.

4 Now, Depp already chose the UK as his  
5 forum of choice to prove vindication, and he used  
6 that. And it was vindication for whoever the  
7 prevailing party was. And I cited it in my reply  
8 brief, Your Honor, but I think it's important to  
9 highlight these two quotes in particular.

10 Mr. Sherborne, who was Mr. Depp's counsel  
11 at trial in the UK, said, quote, "The U.S.  
12 proceedings will not produce a clear and reasoned  
13 judgment," which is exactly what EDJ -- he's citing  
14 a case, you know, to the high counsel there -- to  
15 the High Court there, said is so important. "Trial  
16 in the proceedings in Virginia will be a jury trial  
17 with just a verdict. Here, your lordship will  
18 deliver a clear and reasoned judgment, taking into  
19 account a mass of evidence, hearing from the  
20 parties, and giving your judgment in relation to  
21 the 14 different incidents.

22 As I say, EDJ made clear that it is a

1 reasoned judgment that provides the vindication,  
2 not just for the claimant but also for the  
3 defendant." So, here, Mr. Depp's counsel is  
4 conceding he can't get that vindication in our  
5 court because we can only give just a verdict, but  
6 they can get the vindication there for either side.  
7 Then he lost.

8 Now, the other significant part of this,  
9 Your Honor, is it's clear what he means by parties.  
10 Mr. Sherborne says "hearing from the parties."  
11 Well, "The Sun" didn't testify. Mr. Wootton didn't  
12 testify. Amber Heard was the key witness in this  
13 case, giving testimony for four days and seven  
14 witness statements.

15 The UK -- and this is at our reply at  
16 Attachment 2, Your Honor. The UK High Court, in  
17 granting Depp's request for relief, specifically  
18 found, "I also see force in Mr. Sherborne's" --  
19 that's Mr. Depp's counsel -- "points that a  
20 reasoned decision, which I shall have to give after  
21 the trial, will be a vindication for whatever party  
22 is successful of a different order than a bald

1 verdict of a jury. Of course I mean no respect  
2 [verbatim] to the procedures adopted in Virginia."

3 This is one of the reasons, Your Honor,  
4 why we need to end this litigation. They have  
5 already sought everything they were choosing and  
6 lost. But each time Mr. Depp loses, he will just  
7 keep litigating. Mr. Depp, after losing that  
8 well-reasoned decision that would have given him  
9 vindication now characterizes his entire two-year  
10 multi-million-dollar UK litigation as culminating  
11 in, quote, one man's opinion, end of quote, and  
12 seeks a second try at the vindication if this Court  
13 does not put a stop to it and end the litigation.

14 The crusade for vindication will  
15 continue, but here's the other ramification of of  
16 that, Your Honor. Ms. Heard will have to continue  
17 to be the witness every single time Mr. Depp brings  
18 a cause of action, and that's one of the reasons  
19 that we need to consider this in the privity  
20 situation as well. But what was necessary for the  
21 defendant's to win in the UK? Ms. Heard's  
22 testimony. No one else could testify to Mr. Depp's

1 abuse of her. She had to be there. She was a  
2 necessary witness. She was a critical witness.  
3 She would be the critical witness here.

4 If we buy what Depp's people are saying,  
5 as you always have to have the exact same parties  
6 and that privity is measured by whether it's a  
7 newspaper over Amber Heard, then, next, they can  
8 sue "The Washington Post" and Amber Heard will have  
9 to go testify. Any time anybody says that he was a  
10 wife-beater or a domestic violence abuser or  
11 anything like that, he sues them for defamation  
12 anywhere, and she's got to come in and testify.  
13 That's the logical sequence of this if that claim  
14 is true and that you have the strict interpretation  
15 of mutuality that they are asking you to. And I  
16 will also be pointing out, Your Honor, that the  
17 Virginia Supreme Court doesn't agree with Depp,  
18 fortunately.

19 Now, I attached here, Your Honor, in the  
20 next two slides -- and I'm not going to read  
21 through all of it for time purposes, but I am going  
22 to bring Your Honor's attention to Defendant's

1 Exhibit No. 11, which we have highlighted the  
2 sections that are in these next two slides. And  
3 what this tells you is that Mr. Depp is never going  
4 to stop. It doesn't matter whether it's one man's  
5 opinion, whether it's seven people. I asked him,  
6 you know, if you go through this jury trial and you  
7 lose, is it going to be seven people's opinion?  
8 And you'll see him -- he rambles on quite a bit,  
9 which he does, and then, at the end of it, he says,  
10 "So if I can help other people by continuing, I  
11 certainly will now." In other words, if you get  
12 through his convoluted reasoning here, he's going  
13 to just keep going and keep going and keep going.  
14 And that's exactly what Eagle Star -- the Virginia  
15 Supreme Court in Eagle Star and Bates v. Devers and  
16 a whole line of cases say can't happen. You  
17 litigate it fully and fairly once; you're done.  
18 You live with the logical and legal consequences of  
19 it.

20 So then I'm now to slide -- page 32, Your  
21 Honor, if that helps. So I'm going to talk about  
22 comity for a couple of minutes. Our position is

1 that comity should be afforded to the UK judgment.  
2 The restatement fourth of the foreign relations law  
3 of the U.S. provides a party to a U.S. proceeding  
4 may rely on a foreign judgment to preclude  
5 relitigation of a claim governed by a foreign  
6 judgment, claim preclusion, or to resolve an issue  
7 of law or fact addressed in the foreign proceeding,  
8 issue preclusion.

9 Now, the seminal U.S. Supreme Court case  
10 on this is Hilton v. Guyot, which articulated that  
11 comity is a recognition of one country of a foreign  
12 country's legislative, executive, or judicial acts.  
13 The rationale behind comity is reciprocity.

14 Now, if this Court refuses to recognize  
15 the UK judgment, the ramifications are significant  
16 not only for Fairfax County but -- in Virginia but  
17 in the United States throughout, and one of the  
18 things that we argue in our briefs is that we would  
19 end up with a significant chill because now, after  
20 going through that whole litigation there, if Your  
21 Honor says, "Nope, we have got to do it all over  
22 again," then they don't know what they can say and

1 whether he's going to go after each one of them.

2 Now, there are no Virginia cases refusing  
3 to grant comity to the UK judgment, and  
4 significantly -- and that's on the next slide, and  
5 we have cited this case, Your Honor, and I think  
6 it's an extremely significant case -- and that's  
7 Oehl v. Oehl where they recognized the UK judgment.  
8 Significantly in this one -- and I'm going to read  
9 the actual part because I think it's important  
10 because I think the Court is governed by the  
11 precedence from the Virginia Supreme Court in Oehl  
12 v. Oehl in applying the comity to English  
13 visitation order, it says, quote, "Virginia's  
14 jurisprudence is deeply rooted in the ancient  
15 precedence, procedures, and practices of the  
16 English system of justice. A substantial portion  
17 of the common law of England and the writs,  
18 remedial and judicial, given by any statute or act  
19 of parliament made in aid of the common law have  
20 been legislatively incorporated in the law of this  
21 Commonwealth."

22 So the Virginia Supreme Court recognizes



1 we are alike and recognizes that the UK procedures  
2 are legitimate and the same as ours.

3 THE COURT: For visitation orders.

4 MS. BREDEHOFT: Well, true, Your Honor,  
5 but it's -- it didn't --

6 THE COURT: Not for libel; right?

7 MS. BREDEHOFT: I'm sorry?

8 THE COURT: Not for libel causes but for  
9 visitation orders.

10 MS. BREDEHOFT: Well, no. And, you know,  
11 the interesting thing is, Your Honor, because the  
12 UK is so plaintiff friendly in libel cases, there  
13 aren't cases where people lose, except for  
14 Mr. Depp. And so you don't have -- we haven't had  
15 that opportunity in Virginia for the Court to  
16 recognize a UK libel case because we haven't had  
17 the situation. So that's the short of it.

18 But I agree with Your Honor. It was in a  
19 visitation order but the significance of this is  
20 the language that the Virginia Supreme Court uses  
21 when they're analyzing UK versus here.

22 Now, Mr. Depp dismisses Oehl because he

1 says the parties were in privity. They don't talk  
2 about privity here. They're talking about are we  
3 the same, do we have the same kind of  
4 jurisprudence.

5 Now, the factors that were given by the  
6 United States Supreme Court in Hilton are whether a  
7 full and fair trial abroad before a court of  
8 competent jurisdiction, conducting the trial upon  
9 regular proceedings, having jurisdiction over -- in  
10 that case it was the defendant but it would be the  
11 party -- under a system of jurisprudence likely to  
12 secure an impartial administration of justice  
13 between the citizens of its own country and those  
14 of other countries, nothing to show either  
15 prejudice in the Court or in the system of laws  
16 under which it was sitting or fraud in procuring  
17 the judgment or any other special reason why the  
18 comity of this nation should not be allowed its  
19 full effect.

20 In those cases where you meet all of  
21 these -- and we contend we do meet all of these in  
22 this instance with Mr. Depp -- the Hilton -- the

1 U.S. Supreme Court says the merits of the case  
2 should not, in an action brought in this country,  
3 upon the judgment, be tried afresh. And that's the  
4 concept that we're advocating to Your Honor is, if  
5 you have had your shot -- and he had all of this,  
6 in fact, and he's admitted it -- his counsel  
7 admitted it in that argument the week before the  
8 trial, We are going to get a better decision here,  
9 a well-reasoned decision, you have a mass of  
10 evidence, they're not complaining -- claiming any  
11 type of prejudice whatsoever.

12 Now, in addition to Virginia -- and I  
13 think this is probably important given Your Honor's  
14 question to me -- other jurisdictions afford comity  
15 to the UK judgments. One of these that we cite,  
16 Your Honor, is the Pony Express Records v. Bruce  
17 Springsteen, and that's in New Jersey where Bruce  
18 Springsteen had previously sued Masquerade Music  
19 for copyright infringement of his compositions and  
20 sound recordings in the UK, and he had prevailed.

21 Plaintiffs were not parties to the prior  
22 litigation and filed an action in the U.S. for

1 multiple claims, including copyright infringement  
2 against Springsteen. Plaintiffs argued that they  
3 were prohibited from engaging fully in the UK  
4 litigation by Masquerade and had only directly  
5 participated in the litigation by sending the Court  
6 two letters detailing plaintiff's positions on the  
7 copyright issues at stake.

8           The Court applied the factors of the  
9 Hilton case and found -- and these are quite  
10 relevant and very similar to the ones here. The UK  
11 Court had personal jurisdiction over the parties.  
12 Well, clearly they did here. Mr. Depp sued in the  
13 UK. The parties of the UK action received adequate  
14 notice. Well, clearly, Depp did because he brought  
15 the suit. The UK court was a fair and just  
16 tribunal that, quote, "carefully and thoroughly  
17 considered their respective allegations and proofs,  
18 provided Masquerade with ample opportunity to  
19 defend itself, and recorded the Court's final  
20 decision clearly within the opinion," end of quote.

21           We have got 129 pages, 585 paragraphs  
22 with what even Mr. Depp's counsel conceded would be

1 a well-reasoned decision and would provide  
2 vindication for whoever the prevailing party was.

3 The next one is the issue pending  
4 litigation was identical to the issue in the  
5 previous litigation. Now, I will talk about this a  
6 number of times, Your Honor, but what is the issue  
7 here? What Mr. Depp's team is saying is the issue  
8 is the publication. No. The issue is whether he  
9 committed the domestic violence. And that's the  
10 exact same thing in both places.

11 The next one is, there was no privity  
12 between plaintiffs and the prior parties. In this  
13 instance, there was not any privity, and they still  
14 found the comity. Even though there was no privity  
15 and plaintiffs had not fully and fairly  
16 participated in the litigation, they were still  
17 estopped from asserting their claims because,  
18 quote, "they had the opportunity to participate but  
19 forwent that opportunity." Clearly, Mr. Depp  
20 participated.

21 Now, we also cited *Apostolou vs. Merrill*  
22 *Lynch*, Your Honor, an Eastern District of New York

1 case, which also applied comity to London  
2 employment tribunal decision, noting, quote, "The  
3 circumstances under which federal courts will  
4 disregard foreign proceedings are construed  
5 especially narrowly when the alien jurisdiction is  
6 a sister common law jurisdiction with procedures  
7 akin to ours." In that case also, there was no  
8 privity, Your Honor.

9 Your Honor, the comity, like full faith  
10 and credit, bars defamation claims contradicted by  
11 prior adjudicated facts. We cited Schuler v. Rain  
12 Forest Alliance, Your Honor. And this was a  
13 situation where there was a Mexican judgment and it  
14 was determining what the property ownership was.  
15 Ultimately, that got communicated in the United  
16 States, and the same party who brought the attempt  
17 in Mexico and failed then brought a defamation  
18 claim against the person who said, no, they don't  
19 own the property. And in this situation, again,  
20 there's no privity, and they applied the Mexican  
21 judgment.

22 In the Stevens v. Redwing, Your Honor,

1 which was an Eighth Circuit case in 1998, the Court  
2 afforded full faith and credit to Georgia juvenile  
3 court decision, finding that the father had  
4 sexually abused his daughter and holding that  
5 foreign judgments found the statement to be true,  
6 so there was no tort for defamation, which is much  
7 more akin to this one, Your Honor, and it's a  
8 public policy issue as well. Obviously, that was a  
9 sexual abuse of a child, but domestic violence is  
10 no fun either, Your Honor, and it's very, very hard  
11 on the victim to have to keep testifying to it, and  
12 that kind of public policy, I think, is relevant in  
13 this case as well.

14 Now, the cases cited by Mr. Depp are  
15 inapplicable in this case. The Gordon v. Breach  
16 Science Publishers was a Southern District of New  
17 York, 1995 case. The Court examined six factors  
18 before declining to grant preclusive effect to  
19 German and Swiss judgments there, but those same  
20 six factors don't apply the same in this case.  
21 There is reciprocity with the UK court, which  
22 recognizes collateral estoppel, referred to as an

1 issue estoppel.

2 Your Honor, may I just take a quick  
3 break?

4 THE COURT: All right. That's fine.

5 (Pause in the proceedings.)

6 MS. BREDEHOFT: Thank you. Sorry.

7 Depp was a party to the previous  
8 litigation and litigated his case on the merits.

9 The third is the UK is a common law  
10 jurisdiction from which our legal system is  
11 derived.

12 Fourth, the foreign law is ascertainable  
13 and undisputed.

14 Fifth, the UK applies collateral estoppel  
15 consistently.

16 And, sixth, there are no conflicting  
17 foreign judgments.

18 Now, Depp also cites Amica Life Insurance  
19 v. Barber at opposition page 6 -- page 19. The  
20 Court there refused to bind a non-party to a prior  
21 judgment. Here, Depp should be bound because he  
22 was the party.



1           Furthermore, the Court did not view that  
2 as a comity case and, instead, a collateral  
3 estoppel case, and it was not clear from the  
4 decision whether the Court thought that the actual  
5 issue had been litigated. Notably, though, the  
6 four factors for preclusion of factual finding for  
7 foreign litigation articulated in the Amica are met  
8 in this case. Identical issues, the abuse of Amber  
9 Heard by Johnny Depp. Actual litigation of the  
10 issues, the finding of the relevant fact was  
11 necessary to the foreign court's final decision. I  
12 already quoted earlier, Your Honor, Mr. Sherborne's  
13 concession that the issue before his lordship was  
14 whether they were true.

15           Four, the foreign tribunal's proceeding  
16 were fundamentally fair. Again, no mention of  
17 mutuality.

18           It is undisputed that the High Court had  
19 subject matter jurisdiction and personal  
20 jurisdiction over the UK action to make such a  
21 ruling. That was one of the factors. It is  
22 undisputed that the UK court is a fair and just

1 tribunal. Mr. Depp even expressed his preference  
2 for the UK over the U.S. as a better venue for  
3 vindication for both parties. Depp selected the UK  
4 for the plaintiff-friendly defamation laws and more  
5 favorable burden of proof. Depp failed to provide  
6 any evidence that the UK High Court is not fair and  
7 a just tribunal.

8 As Mr. Depp admitted, he was not  
9 precluded from calling any witness or submitting  
10 any evidence that he wanted to submit in the UK  
11 proceedings. Now, this was Mr. Depp's deposition  
12 testimony. We attached it as Attachment 1 in the  
13 plea in bar, and I asked him in his deposition if  
14 there were any witnesses he wanted to call that he  
15 was not allowed to call, and I also asked him if  
16 there was any evidence. On one of those two  
17 questions, his counsel objected, instructed him not  
18 to answer on attorney-client privilege. Once you  
19 have done that, you can't use it as a shield and  
20 then a sword. They can't come back now and say,  
21 Oh, no, no, no, we did have some other evidence.

22 But significantly, Your Honor, even in

1 their opposition, there is not any witness that  
2 they said, Gee, we really needed this person, they  
3 were critical to the UK case, and we were prevented  
4 from being able to introduce them. And there's not  
5 any evidence, you know, the donation, you know, I  
6 have already dealt with, I think, quite fully in  
7 the reply, and the UK Court had that before it and  
8 said it had nothing to do with anything.

9 Depp had a full and fair opportunity  
10 evidentially to litigation Ms. Heard's claims of  
11 abuse. Now, I set out here, Your Honor, pretty  
12 significantly the issue of the recordings and the  
13 material -- and the claims of modification. I  
14 already went through it earlier, so I'm not going  
15 to repeat it, but in this slide, Your Honor, I set  
16 out specifically what the Court said, and I have  
17 already given Your Honor the page numbers for  
18 those. And the Court went through and gave very  
19 detailed analysis of that.

20 But I will go to the second part of the  
21 slide to say that the Court did rely on photos in  
22 reaching its factual findings. In re-examination,

1 Ms. Heard denied that she had photographed the  
2 pictures taken of her on 16 December or had asked  
3 anyone else to do so. She had worn heavy makeup  
4 for the James Corden show, only to hide her  
5 injuries. She had not pulled out her own hair for  
6 the photos.

7 In the situation of the December 15,  
8 2015, incident, Your Honor, where she had the two  
9 black eyes, she was scheduled to go on the James  
10 Corden Show the next night, and there was testimony  
11 from the makeup artist and the hair people on the  
12 efforts they went through to cover up all of the  
13 bruises and the hair and everything else. And  
14 that's what he's referring to here.

15 Mr. Depp also tore clumps of hair from  
16 Ms. Heard's head. These were photographed later.  
17 There is a copy of a photograph on the right side  
18 of Ms. Heard's -- in the documents, which the  
19 metadata shows, as I have said, was taken at 2023.  
20 And so before the plaintiff arrived.

21 Further photographs were taken of  
22 Ms. Heard's face, timed according to the metadata.

1 And he's referring to the May 16, 2021 -- or May  
2 16 -- May 21, 2016, incident, which was the last  
3 one before she went and filed for divorce and for  
4 the temporary restraining order.

5 Now, the UK judgment should be recognized  
6 also under the Uniform Foreign-Country Judgments  
7 Recognition Act. And I have cited Virginia Code  
8 Section 8.01-465.13, and the applicability is for  
9 any -- any judgment that grants or denies recovery  
10 of a sum of money under the law of a foreign  
11 country where it's rendered as final, conclusive,  
12 and enforceable.

13 Now, I sent in yesterday, Your Honor, a  
14 case that we found, and I sent it to opposing  
15 counsel as well. It's -- because they argued that  
16 this is only where they're the same parties.  
17 There's nothing in the statute that requires this.  
18 And this is a uniform statute. We were able to  
19 find a case in New York applying the same uniform  
20 statute, and it's difficult to read this case, I  
21 have to admit, because they have Plaintiff A,  
22 Plaintiff B, and they go through, but at the end of

1 it, the gist of it is that a party who was not  
2 party to the judgment was able to use this to bar  
3 the recovery under those circumstances.

4 Now, the second part of this, Your Honor,  
5 I have set out here the subsections B and C because  
6 in A of 8.01-465.13, it says, "Except as otherwise  
7 provided in subsections B and C, a court of the  
8 commonwealth shall recognize a foreign country  
9 judgment to which this chapter applies."

10 And then we have B and we have C. Now,  
11 significantly in the opposition, Mr. Depp makes no  
12 attempt to even articulate that there's anything in  
13 B or C that would put -- that would give them an  
14 exception, and then more significantly, if you go  
15 to the next slide, Your Honor, is that D says, "A  
16 party resisting recognition of a foreign country  
17 judgment has the burden of establishing that a  
18 ground for nonrecognition is stated in subsection B  
19 or C exists." They never even articulated one,  
20 much less established it, and it was their burden  
21 of proof to do so.

22 Now, I'm going to go to defensive

1 collateral estoppel, Your Honor. Black's Law  
2 Dictionary defines defensive collateral estoppel as  
3 estoppel which prevents re-litigation by plaintiff  
4 of issues previously lost against another  
5 defendant. I'm also citing Lohr v. McCurdy, Your  
6 Honor, which is Rockingham County in 2000. And  
7 it's exactly the situation here.

8 Now, Eagle Star, Your Honor, was decided  
9 almost a century ago, and it is still good law.  
10 It's been cited by the U.S. Supreme Court. It's  
11 been cited by the Fourth Circuit. It's been cited  
12 by other Virginia Supreme Court decisions. It's  
13 been cited by the circuit courts. It is still good  
14 law. And they permit -- and Eagle Star permits  
15 defensive collateral estoppel and non-mutuality to  
16 this day.

17 And the Virginia Supreme Court in Eagle  
18 Star held that the trial court erred in denying  
19 defendant's pleas of res judicata and estoppel and  
20 prohibiting evidence of plaintiff's prior  
21 conviction of willfully burning goods in a civil  
22 case against the insurer of the same goods. What

1 happened, Your Honor, was there was a criminal  
2 case --

3 THE COURT: I have read the case.

4 MS. BREDEHOFT: Okay.

5 THE COURT: It's a criminal case so it's  
6 an arsonist who is trying to get the insurance.

7 MS. BREDEHOFT: Correct. The first one  
8 was a criminal case, the second is --

9 THE COURT: Don't you think that's  
10 distinguished from here?

11 MS. BREDEHOFT: I don't think Your Honor  
12 can distinguish it from here. I think that what  
13 the judge -- what the Court says is that was even  
14 more favorable circumstances. You have a beyond a  
15 reasonable doubt standard. They had to prove  
16 beyond a reasonable doubt, and they proved beyond a  
17 reasonable doubt that you did this. So you can't  
18 turn around and ignore the logical and legal  
19 consequences of an adverse determination by coming  
20 in here now and trying to capitalize on it and say,  
21 Oh, it's a civil standard and it's not privity and  
22 it's not mutuality, so I want the insurance money.



1           So it's very much the same. It's the  
2 same concept. And, Your Honor, there's -- I would  
3 like to just read a couple of the sections on this  
4 because it's so important and it's exactly what  
5 we're dealing with here. It said -- and this is  
6 what we're talking about here, this rigid adherence  
7 when somebody says, "Oh, no, it's only going to be  
8 mutuality." If Amber Heard wasn't a party to that  
9 one, then tough beans; she gets to get sued and  
10 everybody else -- all these news organizations get  
11 to be sued and everybody does. That's not right.

12           In Eagle Star, it says, quote, "This is a  
13 case in which a rigid adherence to a general rule,"  
14 and they're talking about mutuality, "and to some  
15 judicial expressions would be a reproach to the  
16 administration of justice." The Court held  
17 mutuality does not apply to a party, quote, "who  
18 once litigated the identical question and had it  
19 adversely decided under conditions most favorable  
20 to himself," end of quote. That is exactly the  
21 situation here. He went into the UK where the  
22 burden of proof was on the defendant. He had a

1 much better situation there.

2 Now, Eagle Star, as I indicated, has been  
3 cited -- it's still good law. It's almost a  
4 century old. But there are other -- others that  
5 also recognized defense of estoppel, including  
6 Virginia court cases. But I want to take Your  
7 Honor to the U.S. Supreme Court for a minute  
8 because the U.S. Supreme Court and the majority of  
9 the jurisdictions in the United States recognized  
10 defense of use of non-mutual estoppel. The U.S.  
11 Supreme Court in *Blonder-Tongue Laboratories*, a  
12 1971 case, cited *Eagle Star* and applied defensive  
13 collateral estoppel, ruling, quote, "The  
14 achievement of substantial justice, rather than  
15 symmetry, is the measure of the fairness of the  
16 rules of *res judicata*, not symmetry."

17 Bernard v. Bank of America -- and it's  
18 significant here, Your Honor, because I'm going to  
19 go to *Bates v. Devers*, and *Bates v. Devers* cites  
20 *Eagle Star*, it cites *Blonder-Tongue*, it cites  
21 *Bernard*.

22 It's also cited and it recognized the

1 move away from mutuality by the majority of courts.  
2 Quote, "Many courts have abandoned the requirement  
3 of mutuality and confined the requirement of  
4 privity to the party against whom the plea of res  
5 judicata is asserted."

6 Now, in the Bates v. Devers case, Your  
7 Honor, they go through and they also cite some  
8 people who have gone through and done an  
9 examination of the laws throughout the state, and  
10 they found that, in fact, a majority no longer  
11 require the mutuality.

12 So let me talk about Bates v. Devers,  
13 Your Honor, because we're suggesting that Bates v.  
14 Devers stands for the proposition that we're asking  
15 for today. They carved out an exception for  
16 collateral estoppel mutuality and that exception is  
17 met here.

18 The Virginia Supreme Court intentionally  
19 embedded flexibility in its decisions on collateral  
20 estoppel for cases like this one. And I'm going to  
21 quote, "Collateral estoppel is the preclusive  
22 effect impacting in a subsequent action based upon

1 collateral and different cause of action. In the  
2 subsequent action, the parties to the first action  
3 and their privies are precluded from litigating any  
4 issue of fact actually litigated and essential to a  
5 valid and final personal judgment in the first  
6 action." I'm citing Bates v. Devers.

7 They continue, quote, "The mutuality  
8 doctrine should not be mechanistically applied when  
9 it is compellingly clear from the prior record that  
10 the party in the subsequent civil action against  
11 whom collateral estoppel is asserted has fully and  
12 fairly litigated and lost an issue of fact which  
13 was essential to the prior judgment." That's  
14 exactly the situation here, whether Depp abused  
15 Heard was essential to the prior judgment.

16 Now, the Fourth Circuit interpreted  
17 Virginia law as holding that no mutuality or  
18 privity required for the collateral estoppel. And  
19 the significance of that Graves v. Associated  
20 Transport, Your Honor, is that Bates v. Devers  
21 cites Graves with approval and actually takes some  
22 of the language from Graves and also takes language

1 from Eagle Star.

2 The Fourth Circuit -- and they reviewed a  
3 number of Virginia cases -- and, by the way, the  
4 Virginia Supreme Court in Bates v. Devers says that  
5 Graves reviewed and applied Virginia law.

6 Graves said, quote, "The mutuality rule  
7 was probably never a solid wall. Exceptions were  
8 created under the pressure of the public interest  
9 in an end to litigation. The fact was that under  
10 certain circumstances, once the party against whom  
11 the former judgment was asserted, has been afforded  
12 a full and fair day in court and a reasonable  
13 opportunity to be heard on all relevant issues,  
14 even though against a different adversary, a plea  
15 of estoppel by judgment ought to be recognized.  
16 The rule of mutuality is itself based on policy and  
17 practical necessity and justice, as is the whole  
18 doctrine of res judicata. And on the same grounds  
19 of policy and justice, there would seem to be no  
20 objection to departing from it where the party  
21 affected has been given one adequate opportunity to  
22 be heard, either personally or by representative."

1 Graves, applying the Virginia law, barred  
2 Graves' tort claims where the defendant, a  
3 non-party to the prior lawsuit, asserted collateral  
4 estoppel to bar claims that the plaintiff, a prior  
5 party, had brought and lost. After extensive  
6 review of the Virginia cases on collateral  
7 estoppel, the Court reasoned that Graves had,  
8 quote, "already had his day in court," end of  
9 quote, and held that the district court erred in  
10 rejecting the plea in bar.

11 The Court found, quote, "there is no  
12 compelling reason for requiring that the party  
13 asserting the plea of res judicata must have been a  
14 party or in privity with a party to the earlier  
15 litigation."

16 Now, the Eastern District of Virginia and  
17 Virginia circuit courts have interpreted Bates v.  
18 Devers as recognizing collateral estoppel with no  
19 mutuality. We cited, Your Honor, Moore v. Allied  
20 Chemical, which was an Eastern District of Virginia  
21 case, which permitted defensive collateral  
22 estoppel, and they said specifically the Supreme

1 Court of Virginia has recognized the doctrine of  
2 collateral estoppel even though the previous  
3 determination may have involved a different cause  
4 of action and different parties. The Court held  
5 that the defendant was not precluded from asserting  
6 collateral estoppel, although was not a party to  
7 the previous administrative proceedings.

8 Virginia circuit courts have also held  
9 that mutuality is not required. We cited Leech v.  
10 Virginia State Bar, a Richmond case from 2007.  
11 Now, in the opposition, Depp claimed that they were  
12 identical parties. They were not. Three of the  
13 individuals that were in the next one were on a  
14 panel but they were not individual defendants. We  
15 pointed that out in our reply.

16 Now, Depp's rigid requirement of  
17 mutuality rather -- would invite rather than end  
18 litigation. And I think I have made this argument  
19 already, but if it's true that mutuality of parties  
20 is dispositive; every time he loses, he can just  
21 bring another one against another news  
22 organization, bring it against another publisher.

1 And Ms. Heard is going to have to go testify in  
2 every one of these; otherwise, they run the risk of  
3 losing. And he gets more financing for the next  
4 litigation.

5 Obviously, news organizations' speech  
6 will be chilled if they can't rely on a three-week  
7 UK trial with a well-reasoned decision that even  
8 Mr. Depp said would provide vindication from sides.

9 Now, *res judicata*, the claim preclusion.  
10 This action and the UK action arises from the same  
11 conduct transaction and occurrence. And, Your  
12 Honor, I think this is probably the weakest  
13 argument that the opposition made in this case.  
14 They just completely avoided and skirted the  
15 concept that this is about abuse of Amber Heard by  
16 Johnny Depp. Instead, they claim, no, no, no, it's  
17 the publication. So it's the publication by "The  
18 Sun" and it's the publication of the op-ed. That  
19 is not what the courts are talking about with the  
20 same conduct, transaction, or occurrence.

21 The actual issue -- and I have already  
22 cited for you Mr. Sherborne's admission that the



1 issue before the High Court was whether or not it  
2 was true that Johnny Depp abused Amber Heard. That  
3 was the issue. That was the critical issue.

4 Now, in *Funny Guy*, the Virginia Supreme  
5 Court -- and this is a 2017 case -- said, like  
6 collateral estoppel, *res judicata* protects parties  
7 from the cost and vexation of multiple lawsuits,  
8 conserves judicial resources, and by preventing  
9 inconsistent decisions, encourages reliance on  
10 adjudication. And we're going to ask Your Honor to  
11 adhere to these principles and apply this in this  
12 case.

13 Now, Rule 1:6 addresses claim and cause  
14 of action preclusion, not issue preclusion, I might  
15 note. The rule mandates application of *res*  
16 *judicata* where mutuality exists, but it permits  
17 application where there's not mutuality. What  
18 Depp's team has missed every time -- and that was  
19 both in their opposition to my motion for leave to  
20 amend and in their opposition in this case, they  
21 just ignore Rule 1:6(d). And I pointed it out at  
22 the argument last time, Your Honor. What that

1 says, it expressly preserves the common law  
2 governing privity as it relates to the rule,  
3 stating, quote, "The law of privity, as heretofore  
4 articulated in case law in the Commonwealth of  
5 Virginia, is unaffected by the rule and remains  
6 intact. For purposes of this rule, party or  
7 parties includes all named parties and those in  
8 privity."

9 Now, this action and the UK action arise  
10 from the same conduct, transaction, and occurrence.  
11 And if we apply the factors that were set out by  
12 the Virginia Supreme Court in the 2017 Virginia  
13 Supreme Court case of Funny Guy, the origin of both  
14 actions is Mr. Depp's domestic abuse of Ms. Heard,  
15 preceding a 2016 domestic violence restraining  
16 order and the filing of the divorce proceeding.

17 Mr. Depp's motivation is to prove the  
18 allegations of abuse are false. The facts  
19 underlying the two are also related in time and  
20 space. Both center around the events of Mr. Depp's  
21 abuse of Ms. Heard back at the time of their  
22 relationship and their marriage.

1           Finally, the facts underlying the two  
2 form a convenient trial unit and their treatment as  
3 such conforms to the reasonable parties'  
4 expectations. Evidence presented will be  
5 essentially the same here, although we're not  
6 restricted to the 14 and we're going to certainly  
7 have that evidence but we'll probably have a lot  
8 more, but it doesn't matter. That's enough.

9           Reasonable parties would not expect, much  
10 less warrant, a dispute over the veracity of the  
11 statement to disintegrate into multiple lawsuits,  
12 and no one said it better than Mr. Sherborne,  
13 Mr. Depp's UK counsel, when he said they would  
14 prefer to have that reasoned decision from the UK,  
15 that would provide the vindication that a jury  
16 verdict could not.

17           Now, Ms. Heard is not required to  
18 establish all these factors, according to Funny  
19 Guy, but she has in this situation.

20           And, now, my last point, Your Honor, is  
21 that Ms. Heard and the UK were in privity. She  
22 doesn't have to prove it here, we have gone through

1 the cases, but she absolutely is in privity.

2 Your Honor, I think that the best case to  
3 look at here is one that was two years ago from the  
4 Virginia Supreme Court in Lane v. Bayview Loan  
5 Services. The Virginia Supreme Court talked about  
6 privity in that case and said that they really had  
7 not applied it much in the past, and they were  
8 going into new territory. But I'm going to quote  
9 specifically what the Virginia Supreme Court said  
10 in Lane. Quote: "Privity, as used in the context  
11 of res judicata or collateral estoppel, does not  
12 embrace relationships between persons or entities  
13 but, rather, it deals with a person's relationship  
14 to the subject matter of the litigation. Whether  
15 privity exists is determined on a case-by-case  
16 examination of the relationship and the interest of  
17 the party."

18 The UK case was about whether Mr. Depp  
19 abused Ms. Heard. This case is about whether  
20 Mr. Depp abused Ms. Heard. Ms. Heard could not  
21 have been a closer person to the subject matter.  
22 She is the subject matter. She was the person

1 being abused.

2 The defendants in the U.S. [verbatim]  
3 could not have prevailed without Ms. Heard's  
4 testimony. She was the key witness. She was on  
5 the stand for four days. She gave seven witness  
6 statements.

7 THE COURT: Should we focus more on the  
8 statements, though? The statements in the UK and  
9 "The Sun" versus the statements here for  
10 defamation? I mean, we're talking about different  
11 occurrences with the statements for defamation,  
12 basis on the statements.

13 MS. BREDEHOFT: Your Honor, that's the  
14 argument that the opposition makes, but that's not  
15 the law at all in these cases. We're not  
16 litigating -- and they didn't litigate in the UK  
17 whether they published those statements. That was  
18 a given. Nobody refuted that. The statements were  
19 there.

20 The issue was whether they were false or  
21 true, and that was whether she [verbatim] was a  
22 wife-beater and it went in and mentioned her ten

1 times, "The Sun"'s -- ten times about her bringing  
2 the domestic violence temporary restraining order,  
3 about bringing the suit, what she had alleged about  
4 the violence, particularly the December 2015, the  
5 April 2016, and the May 2016. It's not the -- the  
6 occurrence -- the transaction is not the  
7 publication. It's what is the subject of the  
8 libel. The subject of the libel, as he said, it's  
9 not true that I beat her. He's not saying it's not  
10 true that you published or you didn't publish.  
11 It's not true that I beat her. No one said that  
12 better than Mr. Sherborne, Mr. Depp's own attorney,  
13 in saying what's before your lordship is whether  
14 it's true.

15 THE COURT: Well, just, in the Lane case,  
16 they found that there wasn't privity, right,  
17 between the attorney and his client; correct?

18 MS. BREDEHOFT: Yeah, that was --

19 THE COURT: Because they had different  
20 legal rights. Well, doesn't here "The Sun" have  
21 different legal rights than Amber Heard?

22 MS. BREDEHOFT: In the Lane case, Your

1 Honor, that one was an attorney.

2 THE COURT: An attorney, right. And the  
3 attorney's client, right. And they didn't have  
4 privity, according to the Court.

5 MS. BREDEHOFT: Right. In that  
6 situation, in fact, they found that the attorney  
7 was mistaken basically --

8 THE COURT: Because they didn't have the  
9 same legal rights, that's what they found in the  
10 case.

11 MS. BREDEHOFT: Right.

12 THE COURT: Right. So how does "The Sun"  
13 and Amber Heard have the same legal rights here to  
14 be in privity?

15 MS. BREDEHOFT: But Lane wasn't saying  
16 that that's -- that you have to apply that. In  
17 fact, Lane was and that's why I quoted the  
18 language. You have to look at them on a  
19 case-by-case basis. And they say -- they  
20 absolutely say it deals with the person's  
21 relationship to the subject matter of the  
22 litigation, and the subject matter of that

1 litigation was whether Mr. Depp beat Ms. Heard.  
2 That's the relationship.

3 THE COURT: That wasn't a defamation  
4 case, so it's --

5 MS. BREDEHOFT: No, that one wasn't. It  
6 was about all kinds of title rights.

7 THE COURT: But a defamation case is  
8 based on statements. Every statement is a separate  
9 cause of action; right?

10 MS. BREDEHOFT: But it's what -- it's the  
11 substance of the statement that makes a difference.  
12 They could not have defended that -- they could not  
13 have proven their case and prevailed over there  
14 without Ms. Heard testifying. The issue was  
15 whether he committed domestic violence. That's the  
16 subject matter.

17 THE COURT: Go ahead.

18 MS. BREDEHOFT: I think I need to work  
19 harder on this one, Your Honor, given Your  
20 Honor's --

21 THE COURT: You have gone an hour and 12  
22 minutes, so let's keep on going.



1 MS. BREDEHOFT: It's a very important --  
2 very important matter, Your Honor.

3 The -- I would also say, Your Honor, that  
4 Mr. Depp conceded that the effective opponent in  
5 that case was Ms. Heard, and that's at the judicial  
6 notification attachment A, paragraph 576. The  
7 Court actually says that Depp's counsel  
8 repeatedly -- repeatedly referred to her as the  
9 effective opponent in the case.

10 Now, the UK court also recognized that  
11 Heard was an integral part of the UK proceedings.  
12 He said, "Noting the importance of Heard being in  
13 the courtroom for the trial, refusing Depp's  
14 request to exclude her, conditioning Depp being  
15 able to go to trial in the UK, that he would not  
16 retaliate against Ms. Heard for providing the  
17 Australian drug texts." And that's in the order  
18 dated July 2, which was in the reply brief at  
19 Attachment 3.

20 The UK case and this case are about  
21 Ms. Heard being the victim of domestic abuse at the  
22 hands of Mr. Depp. Ms. Heard is the subject

1 matter. I see where Your Honor is coming here,  
2 Your Honor, but it can't possibly be that -- and  
3 that interpretation that it's about the articles  
4 means that -- and that goes back to what I was  
5 saying earlier, and I know Your Honor was looking  
6 at me at that time I think with somewhat of a  
7 question here, but if it's true that they don't  
8 have the same legal rights, then what stops  
9 Mr. Depp from suing "The Washington Post", suing  
10 every one of those organizations that have come out  
11 and said he was a wife-beater? They have got  
12 headlines and everything. What stops him from  
13 every single time, bringing another libel or  
14 defamation action anywhere in the country, anywhere  
15 in the commonwealth, anywhere in the world if you  
16 don't ever apply issue preclusion? He had his day  
17 in court.

18 THE COURT: So you're saying he is a  
19 wife-beater, that that's just the statement  
20 forever?

21 MS. BREDEHOFT: Yeah. He had his day --  
22 that's absolutely right. He had his day in court.

1 He fully and fairly --

2 THE COURT: So anybody in the world can  
3 call him a wife-beater in print?

4 MS. BREDEHOFT: Absolutely. They should  
5 be able to, based on the constructs of the U.S.  
6 Supreme Court decision in *Blonder-Tongue* and based  
7 on *Eagle Star* in the Virginia Supreme Court, based  
8 on *Bates v. Devers, Graves*. All of those cases  
9 say, when you have your full day in court, you have  
10 to live with the legal and logical consequences.

11 THE COURT: So whenever anybody loses a  
12 libel action anywhere, then they can never -- then  
13 they can never sue again for libel -- for different  
14 statements based on that same issue?

15 MS. BREDEHOFT: If it's the exact same  
16 statement, I would say that's correct.

17 THE COURT: If it's the same statement, I  
18 agree, you know, from the same exact people, okay,  
19 but you're -- that's not what you're saying.  
20 You're saying that anybody anywhere in any context  
21 can say that he's a wife-beater for any reason.

22 MS. BREDEHOFT: He has been adjudicated

1 as a wife-beater.

2 THE COURT: I just wanted to --

3 MS. BREDEHOFT: The Court found that to  
4 be true. So, yes, then he is estopped from suing  
5 anyone for saying he's a wife-beater now because it  
6 has been adjudicated as true, and he cannot -- and  
7 anybody can say that he beat Amber Heard at least  
8 12 times, that he committed domestic violence  
9 against her and caused her, on occasion, to fear  
10 for her life. Absolutely.

11 He litigated that. He lost it. He has  
12 to live with, in the words of Bates v. Devers and  
13 in the words of Eagle Star, the logical and legal  
14 consequences of his actions.

15 THE COURT: Okay.

16 MS. BREDEHOFT: The last thing that I  
17 would end on, Your Honor -- and this is Exhibit 10  
18 again -- is the impact this has on Ms. Heard. She  
19 has no choice but to be involved in these, and I  
20 think this dovetails right into what Your Honor was  
21 just asking. How many times does Mr. Depp get to  
22 sue for them saying that he beat Amber Heard? And

1 each time he does, she has to be implicated in it.

2 And what I have here in Exhibit 10, Your  
3 Honor, was her testimony in the UK --

4 THE COURT: I'm sorry; can I ask you one  
5 more question on this?

6 MS. BREDEHOFT: Uh-huh.

7 THE COURT: If it had been different in  
8 the UK and he was not found a wife-beater, okay,  
9 and they say you are not a wife-beater so now  
10 then -- then anybody could never call him a  
11 wife-beater; correct?

12 MS. BREDEHOFT: Well --

13 THE COURT: If the law of that case was  
14 "You're not a wife-beater," so then if anybody --  
15 then nobody in the world could ever have any First  
16 Amendment right to say he's a wife-beater anywhere;  
17 correct?

18 MS. BREDEHOFT: Well, two answers to  
19 that. The first is, I absolutely --

20 THE COURT: I'm just following your  
21 logic.

22 MS. BREDEHOFT: No, no, no. And I'm glad

1 Your Honor asked that. The first thing is you can  
2 bet your bottom dollar that Mr. Depp would be up  
3 here -- Mr. Depp's counsel would be up here arguing  
4 to apply that to this case and saying that it had  
5 been adjudicated and that she was effectively a  
6 party. But second of all, we have what's known as  
7 the speech act in the United States, which only  
8 applies one way, not the other way. It doesn't  
9 apply in this one but it applies in the reverse.

10 And so the speech act may implicate that,  
11 but, yeah, I would say effectively, if he won, I  
12 think he -- if somebody said it after that, then I  
13 think he would have the right to be able to sue  
14 them for it. I do think that.

15 THE COURT: Okay.

16 MS. BREDEHOFT: Because he's won. But we  
17 have the opposite situation here. He's lost. And  
18 so how many times does he get to go back and  
19 litigate the exact same issue, which is Amber  
20 Heard?

21 If somebody came out and said he beat  
22 somebody else, that's a different issue. And that

1 may bring a different result.

2 I think with that, Your Honor, I would  
3 just ask that the Court grant the supplemental plea  
4 in bar, and I'll reserve the rest of my time for  
5 rebuttal.

6 THE COURT: All right. Thank you.

7 MS. BREDEHOFT: Thank you.

8 ARGUMENT ON BEHALF OF PLAINTIFF DEPP

9 MR. CHEW: Good morning again, Your  
10 Honor. May it please the Court. Ben Chew, Camille  
11 Vasquez, and Jessica Meyers for plaintiff, Johnny  
12 Depp.

13 The Court should deny Ms. Heard's  
14 supplemental plea in bar and impose sanctions on  
15 her for filing what she knew to be a false -- a  
16 futile amended pleading before she filed for motion  
17 for leave to do so.

18 As to the latter, contrary to Footnote 1  
19 of Ms. Heard's opposition to Mr. Depp's motions for  
20 sanctions, Mr. Depp's counsel never stated that  
21 this case was presented a matter of first  
22 impression. Indeed, as set forth in our

1 opposition, the Supreme Court of Virginia has  
2 emphatically rejected the arguments Ms. Heard makes  
3 in her opening and reply briefs and made here  
4 today, which arguments are neither novel nor are  
5 they new. Rather, what Mr. Depp actually stated at  
6 page 29, Footnote 9 of his opposition was that  
7 Ms. Bredehoft, in a meet-and-confer with  
8 Ms. Vasquez and me, after admitting she had no  
9 Virginia case supporting her position, that there  
10 was no mutuality requirement, asserted that this  
11 might be a case for first impression, which was an  
12 obvious dodge to avoid sanctions.

13 But as set forth in our opposition,  
14 Virginia law is well settled, and Ms. Heard's  
15 supplemental plea in bar is futile, frivolous, and  
16 should be sanctioned.

17 Ms. Heard sets up a false premise, which  
18 you have heard throughout her argument today, i.e.,  
19 that Mr. Depp, quote, "cannot escape the fact that  
20 the issue decided by the UK court is identical to  
21 the issue before this Court, whether he abused  
22 Ms. Heard," unquote.



1           But under controlling black letter  
2 Virginia law, Mr. Depp does not need to escape that  
3 fact, which is insufficient to grant preclusive  
4 effect to the UK judgment under any of the theories  
5 she argues today.

6           The fact that actually matters -- and  
7 it's an undisputed fact -- is that Ms. Heard was  
8 not a party to the UK action nor, as the Court has  
9 suggested, was she in privity with those UK  
10 defendants. This fact alone dooms Ms. Heard's  
11 improper invocation of res judicata, collateral  
12 estoppel, and comity. Ms. Heard's three law firms  
13 scoured the entire legal landscape to harvest any  
14 snippet of language or dicta to contradict the same  
15 party/privity requirement to no avail. Those  
16 citations either do not apply Virginia law at all  
17 or they involve facts or exceptions that are not  
18 present here.

19           This case embodies or personifies the  
20 rationale for the same party requirement. The UK  
21 case in this case focused on what took place during  
22 the short marriage between Mr. Depp and Ms. Heard.

1 That can only be adjudicated fully and fairly where  
2 both husband and wife are actually parties in the  
3 case subject to the same discovery rights and  
4 obligations.

5 As described in the opposition, the fact  
6 that Ms. Heard was a non-party in the UK precluded  
7 full and fair adjudication of the factual issues  
8 there. Discovery was incomplete. There were no  
9 depositions in the UK. They didn't allow them.

10 Ms. Heard had not been deposed in the  
11 Virginia action yet, and Ms. Bredehoft -- and this  
12 I don't fault her for because she wasn't part of  
13 the case, but we did notice her deposition in  
14 Virginia, and she didn't appear.

15 The expert testimony, to the extent it  
16 occurred at all in England, was very limited to the  
17 metadata issue. That Court could not compel  
18 Ms. Heard to do anything and accepted at face value  
19 of her testimony, for example, about donating the  
20 \$7 million of the divorce settlement -- the entire  
21 divorce settlement to charity, which the UK judge  
22 cited as proof that she was not a gold-digger.

1 Well, she was a gold-digger.

2 Under the rules of this court, Ms. Heard,  
3 who fought like blazes, as did the ACLU, which  
4 continues to fight, ultimately had to cough up the  
5 documents, which exposed her perjury. And, in  
6 fact, she stiffed both the ACLU -- no heartache for  
7 them -- but far more egregiously, the Children's  
8 Hospital of Los Angeles. What kind of person  
9 leaves sick children in the lurch?

10 This is the last case in which the Court  
11 should create an exception to the Virginia black  
12 letter same-party requirement.

13 I know Your Honor has read the cases  
14 carefully, so I'll go through them as quickly as  
15 possible, but I have to address the false assertion  
16 at page 1 of Ms. Heard's reply that Mr. -- and you  
17 heard it again today -- that Mr. Depp somehow  
18 preferred the UK as a venue to vindicate himself  
19 against Ms. Heard's false allegations of abuse.

20 As a threshold matter, Mr. Depp's UK  
21 counsel never said that. Rather, he merely stated  
22 that one aspect UK procedure, i.e., that there

1 would be a written opinion, could, had Mr. Depp  
2 prevailed against "The Sun" defendants, have  
3 provided more explicit vindication than a binary  
4 jury verdict. That's all he said. He never stated  
5 that Mr. Depp preferred the UK action over this one  
6 to adjudicate the factual issue of whether there  
7 was physical abuse. He really had no choice in the  
8 matter.

9 "The Sun" published the article in  
10 London. He had to go to London, just as he came  
11 here to Virginia because Ms. Heard published the  
12 article, which was printed physically in this  
13 county, and it was published in the Virginia  
14 version of "The Washington Post".

15 It's patently untrue that all of the  
16 witnesses that will be witnesses here were  
17 witnesses in London. For example, Dr. Kipper, who  
18 was the psychiatrist for both of them, who has  
19 since been deposed; the nurses of Dr. Kipper, who  
20 will testify that they did witness abuse. They  
21 witnessed abuse by Ms. Heard against Mr. Depp in  
22 the waiting room while the two of them were waiting

1 to meet with Dr. Kipper. The ACLU, which has  
2 resisted discovery, ironically, for about a year --  
3 and we finally wrestled them down, and Ms. Myers  
4 will be prosecuting that motion to compel when it's  
5 scheduled.

6 Elon Musk, the mystery donor, who came up  
7 with some partial payments to the ACLU and the  
8 Children's Hospital of Los Angeles so that  
9 Ms. Heard could cover or try to cover the perjury.

10 Now to the cases. Ms. Heard cannot cite  
11 a single case that supports her argument that res  
12 judicata or collateral estoppel applies here. In  
13 Rawlings versus Virginia, 267 Va. 4, a 2004 case,  
14 the Supreme Court of Virginia held that res  
15 judicata and collateral estoppel cannot be invoked  
16 and do not apply, whereas here, the parties are not  
17 the same or in privity. In so doing, the Supreme  
18 Court reversed the ruling by the circuit court.

19 Applying Rawlings, this Court should deny  
20 Ms. Heard's supplemental plea in bar because she  
21 was not a party to the UK action nor in privity  
22 with those Sun defendants such that she would have

1 been bound by the UK judgment had they lost. And  
2 Your Honor asked Ms. Bredehoft asked that question.  
3 She artfully avoided it and gave you two answers,  
4 neither of which really answered it, which was of  
5 course she wouldn't have been bound by that  
6 judgment. We wouldn't have argued that she was.  
7 She wasn't a party there.

8 But what's really striking to me -- I'm  
9 not surprised about that, but what's really  
10 striking is that Ms. Heard made no attempt  
11 whatsoever in her reply brief and did not, in her  
12 opening argument today, make any attempt to  
13 distinguish Rawlings. She didn't even mention it.  
14 This is -- I was taught in law school that you have  
15 to bring to the Court's attention controlling  
16 authority in the jurisdiction. You can try to  
17 distinguish it, but you better mention it. And  
18 that's a fairly recent and relative terms decision  
19 by the Supreme Court of Virginia, and it's right on  
20 point.

21 Rather, the reply in Ms. Bredehoft's  
22 argument today cites factually distinguishable --

1 oh, in that regard -- I'm sorry, Your Honor,  
2 this -- Ms. Bredehoft referred to Mr. Depp's rule  
3 of mutuality. It's not Mr. Depp's rule of  
4 mutuality. It's the Supreme Court of Virginia's  
5 rule of mutuality. But what the reply does, when  
6 it did not respond to Rawlings, is it cites  
7 factually distinguishable cases which do not apply  
8 Virginia law. The few Virginia cases that  
9 Ms. Heard does cite are inapposite.

10 First, Eagle Star, which Ms. Bredehoft  
11 referred to several times today, 149 Va. 82, 1927.  
12 As Your Honor suggested, it involved the preclusive  
13 effect of a prior criminal verdict on a subsequent  
14 civil action. And as Your Honor pointed out, the  
15 Court established an exception to the general rule  
16 that records in criminal cases are generally  
17 inadmissible because parties to civil cases could  
18 not possibly be the same by definition as parties  
19 in the prior criminal case.

20 Specifically, the Court admitted the  
21 prior conviction that defendant burned the property  
22 at issue because that precise fact had been

1 established beyond a reasonable doubt. Because the  
2 preponderant standard in a civil case was lower,  
3 the Court reasoned that, quote, "The greater  
4 includes the less," unquote, and made an exception  
5 to the general rule. That exception does not apply  
6 here.

7           The UK action indisputably was not a  
8 criminal case, and the issue of abuse was not  
9 established beyond a reasonable doubt but, rather,  
10 by a preponderance of the evidence. In this case,  
11 by contrast, Mr. Depp must prove the falsity of  
12 Ms. Heard's claims by a preponderance of the  
13 evidence.

14           So this is not a situation where, quote,  
15 "the greater includes the less," unquote, presented  
16 in Eagle Star. In this context, Ms. Heard, with  
17 respect erroneously asserted at pages 1 and 12 of  
18 her opening brief, that Mr. Depp has to prove  
19 falsity by a clear and convincing standard. That's  
20 dead wrong, as set forth in pages 9 through 11 of  
21 our opposition.

22           In fact, while Mr. Depp does have to



1 prove actual malice by clear and convincing  
2 evidence, he need only prove falsity by a  
3 preponderance of the evidence.

4 Ms. Heard's purported reliance on Leech  
5 versus VSB, a circuit court case out of Richmond,  
6 is similarly misplaced. In the prior action,  
7 Plaintiff Leach was disbarred. He then sued the  
8 prosecutor in the disciplinary action and members  
9 of a disciplinary board for defamation based on the  
10 notice that they posted of his disbarment. The  
11 circuit court dismissed Leach's claims on multiple  
12 grounds. We respectfully submit that Leach is  
13 distinguishable for several reasons.

14 First, despite Ms. Heard's contention in  
15 her reply, the parties in the two cases were, in  
16 fact, the same or in privity. They were the  
17 prosecutor and the members of the board, unlike  
18 this case where Ms. Heard and the UK defendants  
19 were totally distinct.

20 Second, the allegedly defamatory  
21 statement, that is, the notice of disbarment, was  
22 merely announcing the outcome of the disciplinary

1 hearing. By contrast, Ms. Heard's defamatory  
2 statements in the op-ed related to her own alleged  
3 experience, not the mere recitation of the outcome  
4 of a proceeding.

5 Third and finally, the circuit court's  
6 dismissal appeared to be based primarily on the  
7 fact that the allegedly defamatory statement was  
8 merely an accurate statement of the outcome of the  
9 disciplinary proceeding, not collateral estoppel.

10 Hozie vs. Preston, which we didn't hear  
11 about today but it was in his papers, from the  
12 Western District of Virginia, does not help  
13 Ms. Heard either. Hozie sued the former lawyer for  
14 executing authority over a settlement agreement  
15 between Hozie and Hart. The Court found that  
16 Hozie's suit was barred by an earlier suit by Hart  
17 to enforce that settlement agreement, which  
18 defendants had defended.

19 Hozie is distinguishable because the  
20 initial suit found to have preclusive effect, was  
21 litigated in the same U.S. jurisdiction as the  
22 second suit. So Hozie had the same ability to

1 marshal evidence this both actions, most  
2 particularly in the first. By contrast, though, as  
3 Ms. Bredehoft points out, Mr. Depp was certainly  
4 able to marshal some evidence in the UK action. He  
5 could not compel complete disclosure from Ms. Heard  
6 because she was not a party to the UK action or  
7 subject to that court's jurisdiction or its  
8 compulsory process.

9 So all Mr. Depp had from Ms. Heard is  
10 what she selectively fed to counsel for the UK  
11 defendants. For example, there were no records of  
12 her contributions or lack thereof to the CHLA or to  
13 the ACLU or a number of other matters.

14 Finally, Ms. Heard's citation to Moore  
15 versus Allied Chemical Corporation from the Eastern  
16 District of Virginia is unavailing. In Moore, the  
17 prior case was an OSHA complaint in which the  
18 defendant company made specific admissions as to  
19 its production of certain toxic materials. The  
20 Court recognized the preclusive effect of those  
21 admissions by plaintiff in a prior proceeding where  
22 he was the defendant.

1                   Here, by contrast, Mr. Depp never  
2 admitted in the UK that he physically abused  
3 Ms. Heard, to the contrary. Thus, the UK opinion  
4 was not based on any admission by Mr. Depp but,  
5 rather, on an incomplete evidentiary record.

6                   And very briefly, I'd just like to  
7 address three cases that Ms. Bredehoft mentioned  
8 today. Bates v. Devers, I think Your Honor  
9 addressed, but this case is distinguishable as one  
10 in which the Court found no issue of preclusion  
11 because the issue before the Court had not been  
12 decided in the prior litigation.

13                   She also made reference and did in her  
14 brief to the *Blonder-ongue* case. Again, Mr. Depp  
15 submits that this is consistent with the exception  
16 announced by the Supreme Court. Mr. Depp is not  
17 estopped from litigating his defamation claim  
18 against Ms. Heard because her status as a non-party  
19 in the UK hindered his ability to have a full and  
20 fair opportunity, evidentially, to litigate the  
21 truth of her claims of abuse in her op-ed.

22                   Also, the case is distinguishable as

1 specific to the patent context where the  
2 requisition of a determination of patent invalidity  
3 has implications for efficient operation and  
4 policies underlying the patent system at large.  
5 And this was described in our opposition at pages  
6 13 and 14.

7           Finally, Ms. Bredehoft mentioned in oral  
8 argument the Graves case from the Fourth Circuit.  
9 Graves is distinguishable because the parties to  
10 the two actions were in privity to each other as  
11 employee and employer. So this requisite element  
12 of res judicata, which is not present here, was  
13 satisfied.

14           And, Your Honor, the UK judgment cannot  
15 bar Mr. Depp's claims against Ms. Heard as res  
16 judicata for the additional reason that the Court  
17 touched upon; that the UK action and this action do  
18 not arise out of the same conduct, transaction, or  
19 occurrence as required by Virginia Supreme Court  
20 Rule 1:6.

21           The Supreme Court of Virginia's decision  
22 in Funny Guy versus Lecego makes clear that, in

1 evaluating whether two causes of action arise out  
2 of the same conduct, transaction, or occurrence, a  
3 Court should examine, quote, "Whether the facts are  
4 related in time, space, origin, or motivation;  
5 whether they form a convenient trial unit, and  
6 whether their treatment as a unit conforms to the  
7 parties' expectations or business understanding or  
8 usage," at 144.

9           The conduct underlying the UK action does  
10 not relate in any way to the cause of action in  
11 this matter. As Your Honor suggested, the article  
12 at issue in the UK action was published months  
13 before Ms. Heard's defamatory op-ed in a different  
14 country, in a different publication than the op-ed.

15           Moreover, the publishers of "The Sun"  
16 article has no personal knowledge of the truth of  
17 what they were publishing and published the article  
18 in connection in their professional conduct --  
19 capacity, unlike Ms. Heard, who published an  
20 opinion piece about her own purported experience.

21           Under the factors detailed in Funny Guy,  
22 the UK action in this action do not arise from the

1 same conduct, transaction or occurrence such that  
2 the UK action might operate as res judicata.

3 And addressing briefly Ms. Bredehoft's  
4 parade of horrors about other cases against other  
5 publications, these other publications prefaced  
6 their statements by "as Ms. Heard alleges," so they  
7 don't say he's a wife-beater. What happened with  
8 "The Sun" is they actually said that, and that's  
9 why they got sued, and they had to be sued in  
10 London.

11 English Boiler and Tube, Inc. versus W.C.  
12 Rouse and Son, 172 F3d 862, Fourth Circuit 1999 is  
13 right on point here, and you didn't hear anything  
14 from Ms. Bredehoft about that. Unlike any of the  
15 authorities relied upon by Ms. Heard, English  
16 Boiler actually analyzed whether defamation claims  
17 from separate publications arose from the same  
18 conduct, transaction, or occurrence. And the  
19 English Boiler court concluded that two separate  
20 instances of defamation, even if they involved the  
21 same subject matter, did not arise from the same  
22 conduct, transaction or occurrence.

1 Ms. Heard's apparent position is that  
2 this case should be disregarded because it's  
3 unpublished and applies North Carolina law. But  
4 English Boiler is the most factual apposite case  
5 that we have here, jurisdictionally relevant  
6 authority on whether Mr. Depp's defamation claims  
7 in the UK and the claims that arose here involve  
8 the same conduct, transaction, or occurrence. And  
9 they emphatically said that they do not.

10 Ms. Heard also claims at page 7 of her  
11 reply that the Supreme Court rejected English  
12 Boiler's purportedly narrow view of what  
13 constitutes the same conduct, transaction, or  
14 occurrence announced in the Fourth Circuit  
15 decision; that is, she says that the Virginia  
16 Supreme Court has adopted her theory.

17 But, tellingly, she cannot cite any  
18 Virginia authority supporting this contention and  
19 contradicting English Boiler's common sense  
20 analysis.

21 Ms. Heard relies heavily on Funny Guy,  
22 but the Supreme Court of Virginia's holding in this



1 case is entirely consistent with the holding in  
2 English Boiler. In English Boiler, the Fourth  
3 Circuit essentially cited to the same factors  
4 announced in Funny Guy, in holding that the  
5 separate instances of defamation do not arise from  
6 the same conduct, transaction, or occurrence,  
7 explicating -- citing to the fact that the  
8 publications were published on different dates at  
9 different times by different authors to different  
10 recipients. That's English Boiler, 172 F3d at 3.

11 Moreover, Funny Guy and Fox v. Dees, the  
12 other Virginia case relied upon by Ms. Heard, were  
13 factually distinguishable from the circumstances  
14 here. Funny Guy involved two successive actions,  
15 which, unlike the UK action in this action, were  
16 brought against the same defendant for the same  
17 failure to pay money, with the only difference  
18 being a different in legal theories.

19 In Fox versus Dees, which evaluated  
20 whether there had been a misjoinder of parties and  
21 claims, the Supreme Court found that the claims  
22 brought by a concert promoter against a city and

1 certain city officials for conduct that occurred in  
2 connection with the plaintiff's dealings with the  
3 city to arrange a Mardi Gras concert. The various  
4 claims at issue in Fox vs. Dees, unlike those in  
5 the UK action in this action, were brought in the  
6 same action and arose from plaintiff's continuing  
7 interactions with the City and its employees in  
8 their official capacities in connection with  
9 ongoing efforts to get a concert up and running.

10 There is indisputably no comparable  
11 employer/employee relationship between Ms. Heard  
12 and the UK defendants nor any concerted activity  
13 between Ms. Heard and the UK defendants that  
14 resulted in the publication of Ms. Heard's op-ed in  
15 "The Sun" article. Quite simply, the factual  
16 circumstances giving rise to the claims in Fox vs.  
17 Dees were much more related in time, space, origin  
18 and motivation than the conduct of the UK  
19 defendants and Ms. Heard.

20 Because Mr. Depp's claims in the UK  
21 action and this action arose from separate conduct  
22 transactions and occurrences, the UK judgment

1 cannot bar Mr. Depp's claims on the grounds of res  
2 judicata.

3           Moving to comity, even had Ms. Heard  
4 established all of the requisite elements of res  
5 judicata and collateral estoppel with respect to  
6 the UK judgment, which she did not, this Court  
7 could and should still decline to recognize its  
8 preclusive effect. As Your Honor is aware, because  
9 the UK judgment is a foreign judgment, the Court  
10 has discretion, which it exercised -- which it  
11 should exercise to decline comity here. Tellingly,  
12 Ms. Heard cited only two Virginia cases applying  
13 Virginia law that recognized the preclusive effect  
14 of a foreign judgment, and in both of those cases,  
15 Oehl vs. Oehl, 221 Va. 618, which, as Your Honor  
16 pointed out, was in the context of a visitation  
17 order, and Seale vs. Associates vs. Vector Aero  
18 Corporation from the Eastern District of Virginia,  
19 2010, the parties in the U.S. and foreign actions  
20 were the same.

21           Ms. Heard and her multiple law firms and  
22 the ACLU could not find a single Virginia case

1 applying comity, whereas here, the parties were  
2 different. Rather, Ms. Heard cites two  
3 non-Virginia cases, which she mentioned again  
4 today: Pony Express from New Jersey and Schuler  
5 from the Second Circuit, which, with the Court's  
6 leave, I will address in a moment.

7 But, first, I would like to respectfully  
8 correct certain of Ms. Heard's misstatements about  
9 the scope and operation of Virginia's Uniform  
10 Foreign-Money Judgments Recognition Action, which I  
11 will refer to as the statute.

12 To start, Ms. Heard incorrectly states,  
13 at page 14 of her opening brief and page 4 of her  
14 reply, that, under the statute, Mr. Depp bears the  
15 burden of showing that a foreign judgment should  
16 not be recognized. That's wrong. Ms. Heard fails  
17 to tell the Court that under Section 8.01-465.13:2,  
18 it is she as, quote, "the party seeking recognition  
19 of a foreign country judgment," unquote, who bears  
20 the threshold burden to first establish that the  
21 statute even applies to the judgment sought to be  
22 recognized.

1           Only after a party like Ms. Heard has met  
2 that burden would the burden then shift to the  
3 party, such as Mr. Depp, resisting recognition to  
4 establish a ground for non-recognition. See  
5 Section 8.01-465.13:3.

6           Here, Ms. Heard has not met, because she  
7 cannot meet, her threshold burden that the statute  
8 applies to those portions of the UK judgment for  
9 which she seeks recognition. The statute  
10 explicitly does not apply to non-monetary portions  
11 of foreign judgments. See Section 8.01-465.13:10.

12           The commentary by the National Conference  
13 of Commissioners on uniform state laws, which  
14 drafts the Uniform Foreign-Country Monetary  
15 Recognition Act, confirms that the statute was not  
16 intended to facilitate recognition of any portion  
17 of a foreign judgment other than the grant or  
18 denial of monetary recovery. Quote: "If a foreign  
19 country judgment both grants or denies recovery of  
20 a sum of money and provides for some other form of  
21 relief, this act would apply to the portion of the  
22 judgment that grants or denies monetary relief but

1 not the portion that provides some other kind of  
2 relief," unquote.

3 So the UK defendants could invoke the  
4 statute to enforce the UK's denial of monetary  
5 recovery to Mr. Depp in the UK action, but neither  
6 the UK defendants nor Ms. Heard could invoke the  
7 statute with respect to the non-monetary portion of  
8 the UK judgment. More fundamentally, Ms. Heard  
9 lacks standing to invoke the statute because she  
10 was not a party to the UK action.

11 None of the statutory provisions or cases  
12 Ms. Heard cites provides authority for a non-party  
13 to a foreign judgment, like Ms. Heard, standing to  
14 invoke the statute to bar domestic claims against  
15 her or him. Indeed, in the only two cases  
16 Ms. Heard cites in which a foreign judgment was  
17 recognized under the statute, the parties in the  
18 foreign and domestic actions were the same. If  
19 Ms. Heard had had standing, which she does not, and  
20 Ms. Heard had met her threshold burden under the  
21 statute, which she did not, Mr. Depp would then  
22 have been able to assert a valid claim -- strike

1 that -- a valid ground for non-recognition under  
2 Section 8:01-465.13:3, subsection B(2) as, quote,  
3 "the foreign court did not have jurisdiction over  
4 the defendant." So that's a specific statutory  
5 ground for non-recognition. The defendant,  
6 Ms. Heard, was not a party.

7           Again, it's undisputed that Ms. Heard was  
8 not a defendant in the UK and the foreign court  
9 lacked jurisdiction over her. So Mr. Depp would  
10 have had a clear-cut basis for nonrecognition under  
11 the statute.

12           Yesterday at 4:07 p.m., Ms. Bredehoft  
13 sent the Court breaking news: A new case from New  
14 York, which was actually decided back in May 1979,  
15 which is before Ms. Vasquez and Ms. Myers were even  
16 born. This wasn't anything new and nothing  
17 anything that could have -- couldn't have been  
18 cited in the briefing schedule that the Court  
19 established months ago.

20           In any event, the Court -- this Fairchild  
21 case is wildly inapposite. Number one, it was  
22 decided under New York and not Virginia law. And

1 in Fairchild, at least one of the defendants in the  
2 UK judgment was the same as the parties -- as --  
3 one of the defendants in the UK judgment was also a  
4 defendant in the U.S.

5 The remaining comity cases cited by  
6 Ms. Heard are inapposite because they were rendered  
7 in other jurisdictions, applying non-Virginia law,  
8 and they involve different facts. Ms. Heard's  
9 citation to Apostolou from the Eastern District of  
10 Virginia, which was cited at page 11 of her opening  
11 brief, seems to have been a mistake, as that Court  
12 reversed judgment finding for a foreign judgment's  
13 entitled to collateral estoppel.

14 Pony Express and Schuler do not help  
15 Ms. Heard either. In Pony Express, the federal  
16 court in New Jersey held that plaintiffs were  
17 precluded from suing defendants in the U.S. because  
18 they had a contractual right to participate in a  
19 prior action with defendant in the UK that  
20 litigated the very same factual issue, and  
21 plaintiffs declined to enforce their contractual  
22 right to participate.



1           The situation here is vastly different.  
2           Mr. Depp did not strategically wait to see what  
3           happened in the UK. Ms. Heard actually did. That  
4           is, she could have submitted herself entirely to  
5           the jurisdiction in the UK, but she chose not to do  
6           that. She made selective submissions, which was  
7           her right.

8           What she did, as has been pointed out, is  
9           she fed selective evidence, much of it false, to  
10          "The Sun" defendants, resisting any of -- resisted  
11          any vetting of such evidence for completeness or  
12          accuracy.

13          Schuler, which is out of the Second  
14          Circuit, is highly distinguishable and has no  
15          precedential or persuasive force here. In Schuler,  
16          the Court dismissed three causes of action, all of  
17          which were premised on Plaintiff's assertion that  
18          they held title to certain real property in Mexico.  
19          But the issue of ownership of Mexican property had  
20          been determined previously by a Mexican court  
21          applying Mexican law. There was little, if any,  
22          factual or legal nexus to the U.S. or anything for

1 an American court to re-examine, as the Court  
2 wrote, quote, "Plaintiffs are essentially asking an  
3 American court to overrule the Mexican court's  
4 judgment that the plaintiffs failed to prove  
5 ownership of property located in Mexico," unquote.

6 By contrast, this case involves two  
7 Americans, one on either side of the V, and what  
8 happened and what did not happen during their  
9 marriage here in America. And the previous case  
10 took place in a country that had limited nexus to  
11 that marriage and lacked jurisdiction over  
12 Ms. Heard, who was not a party in that case.

13 Mr. Depp proceeded in London because he  
14 had to, because that's where "The Sun" published  
15 the article.

16 In her reply, Ms. Heard makes no attempt  
17 whatsoever and made no attempt whatsoever today to  
18 explain the clear distinction between this case and  
19 Schuler, and it's a crucial distinction.

20 Another distinguishing factor of this  
21 case and Schuler is that plaintiff's claims in  
22 Schuler were barred at least in part because of the

1 conduct that occurred after the Mexican judgment  
2 and reliance on that -- after the determination by  
3 the Mexican court, which were cited by the Court in  
4 its decision.

5 By contrast, Ms. Heard's statements in  
6 the op-ed occurred before "The Sun" was published  
7 and had no relation to or reliance on the UK  
8 decision.

9 I wanted to mention in this context  
10 Stephens versus Redwing, which Ms. Bredehoft  
11 mentioned. This case does not involve -- this  
12 case, meaning Stephens, did not involve a foreign  
13 judgment or comity but, rather, full faith and  
14 credit afforded to a decree from a court in another  
15 U.S. jurisdiction.

16 In short, Ms. Heard cannot identify a  
17 single authority that dictates that this Court  
18 should recognize the preclusive effect of a factual  
19 finding by a foreign court with respect to an issue  
20 that is uniquely within the knowledge of two  
21 parties in this domestic action where one of the  
22 parties, Ms. Heard, was not a party or subject to

1 discovery or the foreign court's authority on that  
2 issue.

3 And, in this context, I believe  
4 Ms. Bredehoft referred to, on the privity point,  
5 which I think has been pretty much exploded, but  
6 she referred to the Lane versus Bayview case. This  
7 case actually undermines Ms. Heard's position. The  
8 law firm had been a stranger to the foreclosure  
9 sale and had no direct legal rights at stake other  
10 than its representation of the client, and,  
11 therefore, was not in privity per the Court's  
12 decision with the foreclosing party, despite having  
13 effectively defended its interest in the preceding  
14 action. So this actually hurts Ms. Heard's  
15 argument on privity.

16 Your Honor, Ms. Heard knew before filing  
17 her third attempt to avoid a deposition, an  
18 exposure of her deceit and defamation. She knew  
19 this before she filed that it was futile. We told  
20 her counsel so, and Ms. Bredehoft all but admitted  
21 it before she filed her motion for leave.

22 Your Honor then cautioned her about

1 futility on May 28th at the hearing on the motion  
2 for leave, stating that, if it turned out to be  
3 futile, it would be sanctionable. But Ms. Heard  
4 ignored the flashing red lights and filed anyway,  
5 expending vast judicial resources and costing  
6 Mr. Depp a substantial amount of money. Mr. Depp  
7 most respectfully requests that the Court deny  
8 Ms. Heard's supplement plea in bar in its entirety,  
9 strike paragraph 13 of Ms. Heard's amended  
10 affirmative defenses, which are based on comity,  
11 collateral estoppel, issue and claim preclusion and  
12 res judicata, and impose sanctions against  
13 Ms. Heard such as she reimburses Mr. Depp for the  
14 cost of responding to both the motion for leave to  
15 amend and to this supplemental plea in bar. And  
16 the preparations were massive.

17 Your Honor, what I would specifically  
18 request is that the Court give us seven days in  
19 which to present our affidavit and our underlying  
20 billing records, give Ms. Bredehoft a week to  
21 respond, and then, to the extent that the Court  
22 makes an adjudication of the appropriate costs --

1 reasonable costs and attorney's fees, that  
2 Ms. Heard pay within one week. Thank you, Your  
3 Honor.

4 THE COURT: All right. Thank you.

5 Ms. Bredehoft, response? You have got  
6 about 15 minutes left on your hour and a half, just  
7 to let you know.

8 FURTHER ARGUMENT ON BEHALF OF THE DEFENDANT

9 MS. BREDEHOFT: Your Honor, I want to  
10 cover a few specific items that were covered in his  
11 argument. I recognize I have a limited amount of  
12 time, so let me choose carefully here.

13 The first thing that I want to do is move  
14 the admission of my exhibits, Your Honor.

15 THE COURT: Any objection to the  
16 exhibits?

17 MR. CHEW: Your Honor, we have no  
18 objection to Exhibits 1 through 11.

19 THE COURT: Okay.

20 MR. CHEW: We do, respectfully, object to  
21 Exhibits 12 through 16, which are the alleged  
22 photographs, on three grounds: Hearsay, lack of

1 foundation, and authenticity. And not to cut into  
2 Ms. Bredehoft's remaining time but Officer Saenz  
3 and Hadden (ph), who were called to the scene on  
4 May 21, 2016, testified emphatically that they saw  
5 no marks on Ms. Heard, and they saw no damage at  
6 all to the penthouse.

7 So that -- so what Ms. Heard is  
8 purportedly showing us on Exhibit 16 is something  
9 that the police emphatically rejected. And  
10 Ms. Heard's response is that those police officers  
11 committed perjury and all that, which is nonsense.  
12 It's the same thing she said when she was arrested  
13 for beating up Ms. Van Ree.

14 THE COURT: So 12 through 17 is a  
15 foundation objection.

16 MR. CHEW: Yes, please, Your Honor.

17 MS. BREDEHOFT: These are not offered to  
18 prove the truth of the matter asserted. They are  
19 all exhibits that were introduced in the UK and  
20 that were relied upon by the UK judge. And if you  
21 look at Exhibit 1, which they're not objecting to,  
22 all of them are listed as exhibits.

1 THE COURT: I understand they're listed,  
2 but I'm going to sustain the objection to 12  
3 through 17. So we have 1 through 11 in evidence.  
4 Any objection to 17?

5 MS. BREDEHOFT: 17, I haven't put in yet,  
6 Your Honor.

7 THE COURT: Oh, I'm sorry.

8 MS. BREDEHOFT: And I'll be mentioning  
9 that shortly.

10 THE COURT: Okay. So we have 1 through  
11 11 then. All right. Yes, ma'am.

12 (Defendant's Exhibits 1 through 11 were received  
13 into evidence.)

14 MS. BREDEHOFT: Thank you, Your Honor.

15 Then the next thing I'd like to do is I  
16 would like to have a clarification here.

17 Ms. Heard's deposition was never noticed in this  
18 case. I think that Mr. Chew misspoke and --

19 THE COURT: He said that her deposition  
20 was noticed in the UK case in Virginia, and she  
21 never appeared.

22 MR. CHEW: Oh, I'm sorry, Your Honor.



1 Just to clarify. There were no depositions in the  
2 UK. Before Ms. Bredehoft was involved --

3 THE COURT: Okay.

4 MR. CHEW: -- we did notice her  
5 deposition to occur in Virginia. She did not  
6 appear.

7 THE COURT: Okay.

8 MS. BREDEHOFT: And I think he's wrong on  
9 that. Mr. Rottenborn has been in the case much  
10 longer than I have. He says no, I don't have a  
11 Notice of Deposition, and I think he's  
12 misremembering. In the divorce proceeding --

13 MR. CHEW: No, no, no.

14 MS. BREDEHOFT: -- there was a Notice of  
15 Deposition.

16 MR. CHEW: No, I'm not misremembering.  
17 Mr. Rottenborn -- Ms. Heard has been through many  
18 lawyers. Mr. Rottenborn is a fine lawyer, but he  
19 was not counsel at the time. Mr. McAvoy, another  
20 fine lawyer, was the lawyer, I believe, when we --  
21 I know, because I wrote it -- propounded the Notice  
22 of Deposition, and she did not appear. Anyway, I'm

1 not sure it's a material point.

2 THE COURT: That's fine. Go ahead.

3 MS. BREDEHOFT: I agree it's still not  
4 material because they could have and they could  
5 have moved to compel if she didn't appear, and  
6 there was no motion to compel. There was nine  
7 motions, Your Honor, argued in this case prior to  
8 the UK trial, and there was no motion to compel her  
9 for a deposition.

10 Significantly, Mr. Chew does not address  
11 at all my arguments in my Exhibits 1 through 11,  
12 Your Honor, which show there was an extensive  
13 amount of discovery, an extensive amount of  
14 documentation in this case as well as what was put  
15 in front of the UK and that the UK had the benefit  
16 of the extensive discovery in the U.S. Instead,  
17 what he tries to do is say, "Gee, we didn't have as  
18 much -- she got to selectively decide what."

19 No, she didn't get to selectively. They  
20 propounded discovery for 14, 16 months on her.  
21 This is in this court. So he can't claim that she  
22 was selective. She had to produce that in response

1 to this Court, and then it was turned over to the  
2 UK court. So that's just flat out wrong.

3 But the more important thing here, Your  
4 Honor, and what is not addressed here is she had --  
5 they had the full benefit of two courts, two years  
6 of discovery in the UK. He doesn't respond to my  
7 argument about Louis Charalambous, who went  
8 extensively into what Depp's discovery abuses were  
9 and the 70,000 texts, doesn't respond to any of  
10 that.

11 He had the full opportunity to fully and  
12 fairly litigate his claims in the UK. That's what  
13 Eagle Star talked about. That's what Bates v.  
14 Devers talks about. That's what Blonder-Tongue,  
15 the U.S. Supreme Court talks about in this case.  
16 He had the full opportunity, and, again, they don't  
17 respond to what did Mr. Sherborne say? He said, we  
18 want to be in this court, Your Honor. We want the  
19 well-reasoned decision. We can't get that kind of  
20 vindication in the other. We can get the  
21 vindication here.

22 There was no complaint at the time they

1     tried that case that they had any kind of  
2     deficiency or hadn't been able to depose anyone.  
3     And, again, Mr. Chew also does not address, Your  
4     Honor, the arguments that Mr. Depp admitted there  
5     was no witness he wanted to call that he could not.  
6     There was no document that he wanted to introduce  
7     that he was unable to. And, in fact, they haven't  
8     said that even today.

9             And I will address the next one. The  
10     next one is he claims -- and, Your Honor, this has  
11     come back -- again, back in I think it was  
12     September of 2020, Mr. Chew represented to the  
13     Court that Dr. Kipper was going to testify that  
14     Amber Heard abused Mr. Depp and had done so in his  
15     offices.

16             When Dr. Kipper's deposition was taken,  
17     guess what? He denied that. He said I have never  
18     heard that from anyone. No one has ever testified  
19     to that. That's in Mr. Chew's imagination.

20             But what the most important thing is  
21     here, Your Honor, he had all the due process. He  
22     had a full opportunity to litigate. He admitted he

1 had a full opportunity to litigate. His counsel  
2 admitted that it was a full and fair opportunity  
3 and that he preferred the UK court and the  
4 well-reasoned decision and that they had a mass of  
5 evidence. That's significant.

6 I'm going to touch on the donations, Your  
7 Honor, and that will also implicate Exhibit 17. So  
8 in the UK, the issues of the donations did come up,  
9 Your Honor, and I specifically cited, Your Honor,  
10 in the reply brief the decisions by both -- both  
11 from the underlying UK Court of Appeals as well  
12 as -- I mean, UK High Court as well as the Court of  
13 Appeals.

14 But let me just give the whole big story  
15 here. So we go through a divorce. It's a no-fault  
16 state. It is a 50 percent community property.  
17 Mr. Depp is making hundreds of millions of dollars.  
18 Ms. Heard would have been entitled to much, much,  
19 much than 7 million, and, in fact, we attached, as  
20 part of our -- in our reply brief, the email from  
21 her lawyer saying "I want you to sign this because  
22 you're entitled to a lot more money."

1           She took seven and she said her intention  
2 was to donate that. Half to the ACLU and half to  
3 the Children's Hospital. And I attached the  
4 business manager -- this is Mr. Depp's business  
5 manager, enclosing the first 100,000 he sent on  
6 Ms. Heard's behalf 100,000 to the ACLU, 100,000 to  
7 Children's Hospital and said she has pledged these  
8 amounts, and it is undetermined what those payment  
9 schedules will be, but this is the first payment  
10 towards the pledges. That's what the issue was.

11           Then Ms. Heard gave quite a bit more to  
12 both. Then she got sued by Mr. Depp. Then she had  
13 to spend millions of dollars defending against  
14 Mr. Depp's lawsuit. That's what happened here.

15           She was also responsible for more than a  
16 million being donated to ACLU and more than a  
17 million being donated to Children's Hospital. They  
18 deposed Children's Hospital. They told how many  
19 amounts she had given. ACLU -- we produced the  
20 documents from the ACLU on how much she has. She  
21 has always said she fully intends to continue to  
22 give the full 7 million, but she can't do it yet.

1 She will do it when she can. But she has given a  
2 significant amount to both.

3 Mr. Depp has given zero. And he's the  
4 one that made \$650 million and has not given a dime  
5 to either of them.

6 Now, let me tell you as well, they're  
7 incorrect that this was not fully and fairly aired  
8 in the UK. He's simply unhappy that the courts of  
9 appeal found that the donation issue to be, at  
10 best, a minor collateral attack of no significance  
11 on whether he abused Amber Heard. Mr. Depp has not  
12 alleged in this case, Your Honor, that Amber Heard  
13 said that she was abused for any kind of financial  
14 gain. The complaint does not allege it anywhere,  
15 and we cite that in the rebuttal.

16 Instead, he's alleged that she did it to  
17 advance her career. We have cited and we attached  
18 as part of our exhibits to the reply that, in fact,  
19 when I asked Mr. Depp for proof of that -- and it's  
20 in these exhibits as well, Your Honor -- proof  
21 of -- what proof he had that she had advanced her  
22 career, he said, "I have no proof." "What roles

1 did she get?" "I have no proof." "What commercial  
2 opportunities did she get as a result of saying he  
3 was a victim of domestic abuse?" "I have no  
4 proof." And that's because he has no proof. And  
5 that's what he alleged in this case. He did not  
6 allege that she said that for financial gain or for  
7 the 7 million.

8 Now, the next thing is that they  
9 misstated what the UK Court of Appeals said. The  
10 UK Court of Appeals said whether she intended the  
11 word "donation" or "pledge" or whether they were  
12 interchangeable was not something the Court needed  
13 to reach because, quote, "We need not decide  
14 whether that was, in fact, a fair reading of what  
15 Ms. Heard said." These JN Attachment C at  
16 paragraph 40.

17 The Court further noted in paragraph 42  
18 that the issue of donations had only come up fairly  
19 peripherally. The Court further noted the  
20 insignificance of the donations says the judge did  
21 not refer to her charitable donation at all in the  
22 context of his central findings. On the contrary,



1 he only mentioned it in a very particular context,  
2 as explained above, and after he had already  
3 reached the conclusions in relation to the 14  
4 incidents. So this was fully in front of them.

5 Now, the Court also pointed out that  
6 Depp's legal team made a strategic decision not to  
7 examine Heard on the donations. It was there -- in  
8 fact, it was there -- in fact, there were  
9 exhibits -- and you'll see in Exhibit 1 here, Your  
10 Honor -- that there were exhibits on the donation,  
11 including what she meant by donation and including  
12 what she meant by pledge. And he said that might  
13 have resolved the issue completely.

14 Now, the last thing is -- on that  
15 donations -- and this is Exhibit 17, Your Honor.  
16 The reason that I had moved motion in limine on  
17 this is because of something that Judge White held,  
18 and that's at Exhibit 17. It's a transcript from a  
19 hearing on September 18, 2020. It's an excerpt.  
20 And, in that situation, it was a motion to compel,  
21 and it said, "As to the documents" -- and it's 17  
22 on the highlighted section -- "As to the documents

1 that I guess I have got sort of categorized here,  
2 basically, the information related to the divorce  
3 case, request is denied as to those documents. It  
4 is denied under the doctrine of enough is enough.  
5 You-all have been going through the divorce  
6 already. We're not going to retry that divorce in  
7 this case, and that's what I deem this to be aimed  
8 at."

9 So he was saying enough is enough, we're  
10 not going back into the divorce, we're not going  
11 into the divorce settlement, we're not going into  
12 the 7 million payments, and so that's why I said  
13 enough is enough, let's get this out of this case.  
14 And then he said I just can't make those decisions  
15 yet in this case. But the donations issue has  
16 absolutely nothing to do with whether Mr. Depp beat  
17 Ms. Heard.

18 Your Honor, with my limited time, let me  
19 just make sure that I cover a few very important  
20 points. The sanctions, I am passionately of the  
21 belief that the Virginia Supreme Court has carved  
22 out beautifully in Eagle Star and Bates v. Devers

1 and even in its statements in Lane about privity, I  
2 am passionately of the belief that the defensive  
3 collateral estoppel applies here and the Virginia  
4 Supreme Court will agree with us. I passionately  
5 believe that. There is no way that sanctions can  
6 be awarded or even considered by a Court, in my  
7 view, when you are taking the law that they have  
8 been setting out and saying it cannot be  
9 mechanic -- I can't say that word --  
10 mechanistically applied. You have to have  
11 flexibility. You have to look at the  
12 circumstances. And there are going to be  
13 circumstances that I quote from Bates v. Devers.  
14 Mutuality doctrine should not be mechanistically  
15 applied when it is compellingly clear from the  
16 prior record that the party in the subsequent civil  
17 action against whom collateral estoppel is asserted  
18 has fully and fairly litigated and lost an issue of  
19 fact that was essential to the prior judgment.

20 It can't get any clearer than that, Your  
21 Honor. This is the case. This is the case that  
22 the Virginia Supreme Court was saying is the exact

1 one from Bates v. Devers. This is the case that  
2 Lane said is the one that you would apply and look  
3 at the privity and look at the nature of the  
4 relationship to the subject matter. That's the  
5 difference there.

6 This is the case that Eagle Star, a  
7 century ago, said we need to look at these and look  
8 and stop vexatious litigation. That's exactly the  
9 case. Not only are sanctions not warranted; we  
10 believe fervently, passionately that the Virginia  
11 Supreme Court will say this is the case they were  
12 talking about, this is exactly the set of  
13 circumstances.

14 Now, counsel for Depp spends an awful lot  
15 of time going into what the holdings are in the  
16 case, but as Your Honor well knows, there's a  
17 reason why you have a fault opinion. It's because  
18 you're giving all of the analysis as you go through  
19 and you're talking about what is important, what to  
20 look at, why are we deciding this way, what is the  
21 law.

22 What we have done is gone in and said

1 this is what the law is. This is how they're  
2 saying to do it. They're saying doing it on a  
3 case-by-case basis.

4 We're talking about defensive collateral  
5 estoppel, and Your Honor asked me earlier about the  
6 hypothetical of what Mr. Depp could do with the  
7 decision had he won. That's offensive collateral  
8 estoppel, Your Honor, which is not what we have  
9 been talking about in any of these cases, by the  
10 way, today, so I'm not sure we can answer that one  
11 fully anyway.

12 But, here, it's defensive collateral  
13 estoppel, and the Virginia Supreme Court is dead on  
14 with us on those. And we believe fervently and  
15 passionately that they will come out in our favor  
16 on that.

17 I do want to address in Lane, Your  
18 Honor -- I already cited for you how Lane sets out  
19 the importance of "does not embrace relationships  
20 between persons or entities but, rather, it deals  
21 with the person's relationship to the subject  
22 matter of the litigation."

1           They went on to apply to the attorney  
2 here because the attorney was representing. They  
3 said there's ethical issues with us saying that  
4 they are legally aligned. There's a lot of other  
5 reasons. But, remember, they say right before that  
6 "does not embrace relationships between persons or  
7 entities." That's not what you look at. You look  
8 at the relationship to the subject matter. Then  
9 they say we have got to do this on a case-by-case  
10 examination of the relationship and of the interest  
11 of the parties. The interest of Amber Heard on her  
12 truth are very important.

13           Now, I'm going to go back, Your Honor, to  
14 Exhibit 10. And this was a question that was asked  
15 of Ms. Heard, if we can go to the first page.  
16 You'll see where I have the highlighting. And  
17 Sasha Wass, the Queen's counsel, is asking her to  
18 explain what she means by "I didn't want to be  
19 here. I wanted to save the embarrassment," and all  
20 of this.

21           And Amber Heard said, "Every day, more  
22 and more attacks were coming out against me and

1 accusing me of being a liar and was forcing me in a  
2 position where I would be increasingly aware I  
3 would have to come out and speak to prove and speak  
4 out against it. I did not want to do this. I did  
5 not want to expose this. I did not want to expose  
6 the totality of what really happened to me. I did  
7 not want to talk about everything that we -- that  
8 happened in our marriage and in our relationship.  
9 I did not want to put Johnny in a situation where  
10 the world or his kids would know fully what he was  
11 or what he could do. It is embarrassing."

12 The Court then said, "Did you want to  
13 involve yourself in court proceedings in relation  
14 to your domestic history?"

15 The answer was no. "No. I just wanted  
16 to be left alone. I just wanted him to leave me  
17 alone."

18 In that same section, Your Honor -- and  
19 this goes to the ability of, you know, what is the  
20 suggestion of whether she was trying to benefit her  
21 career, she said, "What woman has ever benefitted  
22 from being the victim of domestic violence,

1 especially accusing a powerful member or entity or  
2 one of them of her own industry?"

3 And I think that really answers the  
4 question of privity. I think defensive collateral  
5 estoppel does not have to be mutual, does not have  
6 to be privity, and we meet every one of the tests,  
7 and I don't think they have adequately responded.

8 I do want to respond to just a couple  
9 more things, and I know my time's almost up. He  
10 said we didn't talk about English Boiler. That's a  
11 Fourth Circuit decision that explicitly based its  
12 decision on the fact that the first letter had a  
13 different author and the recipient. That's why  
14 they said they were not the same acts or of the  
15 same transactions. And that was North Carolina,  
16 Your Honor.

17 And then with the Rawlings, that was also  
18 distinguishable. That was the driver and a  
19 passenger. Very, very different interests. They  
20 were not related and there was -- the ruling also  
21 limited to res judicata claim preclusion, not  
22 collateral estoppel. We're saying defensive



1 collateral estoppel operates here.

2           The final thing is just the actual  
3 malice, Your Honor, just to be clear. The clear  
4 and convincing, we are right on this. They have  
5 to -- Mr. Depp would have to prove, with knowledge,  
6 that they were false and with reckless disregard of  
7 whether it was false or not, and that's the Jackson  
8 decision, Virginia Supreme Court decision. And it  
9 cited the other actual malice cases.

10           The subject matter, Your Honor, we can't  
11 get around here, and I know Your Honor asked me  
12 some questions about the publication, but the  
13 subject matter of what is true or not,  
14 Mr. Sherborne said it best -- and he was the  
15 attorney for Mr. Depp. The issue was whether it  
16 was true or not that Johnny Depp beat his wife and  
17 domestically abused her.

18           This is a case about domestic violence  
19 between intimate partners. As Amber Heard has  
20 expressed, it's embarrassing and humiliating to  
21 testify about the abuse by one's mate.

22           Amber Heard was essential to proving the

1 allegations of abuse were true in the UK. There's  
2 no way they could have done it without her. The  
3 High Court found that she was the primary witness  
4 and that they had proven -- and the defendants had  
5 proven 12 instances of domestic violence.

6 Mr. Depp fully and fairly litigated the  
7 truth or falsity of those allegations in his choice  
8 of forum. They can say he had to go there. He  
9 didn't have to do anything. And "The Sun"  
10 publishes all over the world. There's no evidence  
11 in front of Your Honor that he was required to go  
12 there. And, in fact, Your Honor knows from this  
13 case, he didn't have to sue Amber Heard in Virginia  
14 either. He chose to do that because we have a  
15 different anti-SLAP law than California. And even  
16 though all the witnesses or most of them are there.

17 At the end of the day, Your Honor, I go  
18 back to the first page of the reply brief where I  
19 cite Mr. Sherborne and I cite the High Court. They  
20 said that was the choice. That's where they wanted  
21 to be. That's where they could get their  
22 vindication for either party. They wanted to be

1 there. There's a mass of evidence, and he lost.  
2 He has had his day in court. I think we have cited  
3 a significant number of cases.

4 It's not about the holdings, Your Honor.  
5 It's about the explanations and the dicta and what  
6 the Court is reserving, and what they reserved --

7 THE COURT: Well, it is about the  
8 holdings also.

9 MS. BREDEHOFT: But, Your Honor, the  
10 holdings are all just -- every single one of them  
11 is distinguishable. There is not one that's  
12 anywhere close on point on this one, but the  
13 rationale in Bates v. Devers and the rationale in  
14 Eagle Bank and the rationale in Lane all point to  
15 this is the case, the Virginia Supreme Court will  
16 say, should end. This is the case that all of  
17 these principals should apply to, and we ask you to  
18 do it, Your Honor.

19 THE COURT: All right. Thank you.

20 Obviously, after argument, I want to take  
21 this case under advisement. I do have 11 more  
22 documents to review as well, so I'll take it under

1 advisement. I hope to have a letter opinion to you  
2 hopefully within the next three weeks, definitely  
3 by August 20th. That will be the drop-down date.  
4 I hope to have it before then. Okay?

5 But, obviously, discovery continues.  
6 Everything keeps going on course, and I'm sure we  
7 have another motion coming before that, so we'll  
8 take care of that too. Okay?

9 MR. CHEW: Thank you very much, Your  
10 Honor. For the record, we object to Exhibit 17,  
11 which is --

12 THE COURT: I don't think it was offered  
13 into evidence.

14 MR. CHEW: Oh, okay.

15 MS. BREDEHOFT: I may (indiscernible)  
16 with the addition of (indiscernible).

17 MR. CHEW: I shouldn't have said  
18 anything. But we would object. It's a snippet --  
19 it's actually where Judge White is denying  
20 Ms. Heard's motion to compel all the documents in  
21 the divorce case. He subsequently ruled that she  
22 had to turn over the charitable donations and he

1 subsequently de-designated them because --

2 THE COURT: All right. All right. You  
3 used it in your argument. I allowed it. They're  
4 not going to put it into evidence. Okay?

5 MR. CHEW: Thank you, Your Honor.

6 MS. BREDEHOFT: Thank you very much, Your  
7 Honor.

8 THE COURT: Thank you. All right. Have  
9 a good day.

10 (At 1:17 p.m., the above hearing  
11 concluded.)

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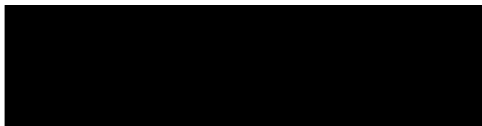
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CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

I, Joshua Tubbs, the officer before whom the foregoing deposition was taken, do hereby certify that said proceedings were electronically recorded by me; 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.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 22nd day of July, 2021.

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Joshua Tubbs, Notary Public  
for the Commonwealth of Virginia

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CERTIFICATE OF TRANSCRIBER

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.



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Bobbi J. Fisher, RPR  
NCRA Registered Professional Reporter (RPR)  
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