

1 MICHAEL A. DI LANDO, ESQ. SBN 119665
2 MARK KANE, ESQ. SBN 170588
3 ROBINSON DI LANDO
4 A Professional Law Corporation
5 800 Wilshire Boulevard
6 Suite 750
7 Los Angeles, California 90017-2687
8 Telephone (213) 229-0100
9 Attorney for Defendant Mark Speer

FILED
LOS ANGELES SUPERIOR COURT

MAR 17 2009

JOHN A. CLARKE, CLERK
[Signature]
BY GLORIETTA ROBINSON, DEPUTY

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 HOWARD K. STERN, an individual,) Case No.: BC397417
12) (Assigned for all purposes to the Hon. Mary
13 Plaintiffs) H. Strobel)
14 vs.)
15) **DEFENDANT'S REPLY TO**
16 MARK SPEER, an individual, JACQUELINE) **PLAINTIFFS' OBJECTIONS TO THE**
17 ELIZABETH HATTEN also known as) **DECLARATIONS OF RITA COSBY,**
18 JACKIE HATTEN, an individual, and DOES) **MARK SPEER, VIRGIE ARTHUR AND**
19 1-20, inclusive,) **MARK KANE.**
20 Defendants.)
21) **Dept. 32**
22) **Hearing Date: March 18, 2009**
23) **Time: 8:30 a.m.**
24)
25)
26)
27)
28)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¶ #	STATEMENTS IN DECLARATION OF RITA COSBY AND PLAINTIFF'S OBJECTIONS	DEFENDANT'S REPLY TO PLAINTIFFS EVIDENTIARY OBJECTIONS
6.	In my years as reporter and host, I secured some of the most sought-after interviews on cable news, including with more than a dozen world leaders. For example, I have conducted back to back interviews with Yasser Arafat in the West Bank and Prime Minister Ariel Sharon in Israel; interviewed then Pakistani President Pervez Musharraf related to his country's relationship with Bin Laden and the United States; and spoke to former Yugoslav President Slobodan Milosevic by phone from the Hague. Irrelevant. <i>California Evidence Code</i> § 350.	6. Plaintiff Howard K. Stern's (referred herein as both "plaintiff and Mr. Stern") objection is not well taken. The subject statement is foundational to Ms. Cosby's credentials as a reporter and her ability to testify concerning the circumstances of her publication of "Blonde Ambition," which plaintiff now claims included defamatory material which he attributes to defendant Mark Speer. Additionally, this testimony is foundational as to Ms. Cosby's ability to testify as to the unique media frenzy/reporting surrounding Anna Nicole Smith and her companion/lawyer/manager, Mr. Stern both prior and subsequent to Ms. Smith's death and goes to the issue of Mr. Stern's status as a public figure. <i>California Evidence Section 350.</i>
7.	At Fox News, I was a lead reporter covering the 1996 Presidential campaign, following the candidates from the New Hampshire primary to election eve, and played a major role in Fox's coverage of the 2000 campaign. With MSNBC, I traveled with law enforcement on patrol at the U.S-Mexican border for stories about the war on drugs. I spent over a week	7. Plaintiff's objection is not well taken. The subject statement is foundational to Ms. Cosby's credentials as a reporter and her ability to testify concerning the circumstances of her publication of "Blonde Ambition," which plaintiff now claims included defamatory

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>in New Orleans and other parts of the Gulf coast covering the aftermath of Hurricanes Katrina and Rita, including coverage of house to house visits with U.S. Marshals looking for fugitives, and search and rescue crews looking for survivors and bodies. Irrelevant. <i>California Evidence Code § 350.</i></p>	<p>material which he attributes to defendant Mark Speer. Additionally, this testimony is foundational as to Ms. Cosby's ability to testify as to the unique media frenzy/reporting surrounding Anna Nicole Smith and her companion/lawyer/manager, Mr. Stern both prior and subsequent to Ms. Smith's death and goes to the issue of Mr. Stern's status as a public figure.</p> <p><i>California Evidence Code § 350.</i></p>
8.	<p>In my years as a journalist, I have received a number of awards, including three Emmy Awards, and the Jack Anderson Award for a career of outstanding journalism and investigative excellence. Irrelevant. <i>California Evidence Code § 350.</i></p>	<p>8. Plaintiff's objection is not well taken. The subject statement is foundational to Ms. Cosby's credentials as a reporter and her ability to testify concerning the circumstances of her publication of "Blonde Ambition," which plaintiff now claims included defamatory material which he attributes to defendant Mark Speer. Additionally, this testimony is foundational as to Ms. Cosby's ability to testify as to the unique media frenzy/reporting surrounding Anna Nicole Smith and her companion/lawyer/manager, Mr. Stern both prior and subsequent to Ms. Smith's death and goes to the issue of Mr. Stern's status as a public figure. <i>California Evidence Code § 350.</i></p>

1 9. Like much of America, I came to
2 the Anna Nicole Smith story in
3 2006 with familiarity with her public
4 persona. Anna first became known as
5 the beautiful Amazon that graced the
6 pages and the cover of Playboy
7 magazine. Anna became a household
8 name, however, when in 1994, at the
9 age of 26, she married J. Howard
10 Marshall III, a billionaire Texas oil
11 magnate who was, at the time of their
12 marriage, 89 years old and confined
13 to a wheelchair.
14 Irrelevant. *California Evidence Code*
15 § 350.

9. Plaintiff's objection is not well taken. The
subject statement is foundational to Ms.
Cosby's credentials as a reporter and her ability
to testify concerning the circumstances of her
publication of "Blonde Ambition," which
plaintiff now claims included defamatory
material which he attributes to defendant Mark
Speer. Additionally, this testimony is
foundational as to Ms. Cosby's ability to testify
as to the unique media frenzy/reporting
surrounding Anna Nicole Smith and her
companion/lawyer/manager, Mr. Stern both
prior and subsequent to Ms. Smith's death and
goes to the issue of Mr. Stern's status as a
public figure.

California Evidence Code § 350.

16
17
18 10. Although I had been aware of Anna
19 Nicole Smith for years, I did not
20 begin regular coverage until her
21 daughter was born, the paternity suit
22 heated up in earnest and Anna died on
23 February 8, 2007. In brief, the
24 timeline of events that are the focus
25 of *Blonde Ambition* is as follows: For
26 years, Howard K. Stern had been
27 publicly known as Anna's attorney
28 and friend on *The Anna Nicole Show*.¹ In 2005, Anna was living in
Los Angeles and dating Larry
Birkhead when she met and became
involved with a wealthy developer
from South Carolina, Ben Thompson.
As a result, she grew close to the
Thompson family and ended up

10. Plaintiff's objection is not well taken. The
subject statement is foundational to Ms.
Cosby's credentials as a reporter and her ability
to testify concerning the circumstances of her
publication of "Blonde Ambition," which
plaintiff now claims included defamatory
material which he attributes to defendant Mark
Speer. Additionally, this testimony is
foundational as to Ms. Cosby's ability to testify
as to the unique media frenzy/reporting
surrounding Anna Nicole Smith and her

<p>1 2 3 4 5 6 7 8</p>	<p>spending much of the month of December 2005 with the Thompsons in South Carolina. <i>California Evidence Code</i> § 350. Lack of Foundation. <i>California Evidence Code</i> § 403.</p>	<p>companion/lawyer/manager, Mr. Stern both prior and subsequent to Ms. Smith's death and goes to the issue of Mr. Stern's status as a public figure.</p> <p><i>California Evidence Code</i> § 350. <i>California Evidence Code</i> § 403.</p>
<p>9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>11. After returning to Los Angeles, it was later reported that Anna was pregnant. Soon after, she seemingly broke up with Larry Birkhead, traveled to South Carolina in May 2006 to again be with the Thompsons, ultimately ended up in the Bahamas with Howard K. Stern in a house called Horizons that was bought by Ben Thompson. Then Anna gave birth to her daughter Dannielynn on September 7, 2006. Her son, Daniel, tragically died three days later of a drug overdose in Anna's hospital room where she was recovering from the delivery. Irrelevant. <i>California Evidence Code</i> § 350. Lack of Foundation. <i>California Evidence Code</i> § 403. Hearsay. <i>California Evidence Code</i> § 1200.</p>	<p>11. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of Mr. Birkhead's public paternity claims, the paternity dispute between Mr. Birkhead and Mr. Stern and the death of Ms. Smith. This testimony is both relevant to establish the media coverage of these events, as well as the media circumstances of Ms. Smith's son's death by overdose, leading to public speculation as to the role of Mr. Stern. This testimony is both relevant to establish the media coverage of these events and goes to the ability of Mr. Stern to establish his burden of prevailing in his defamation action with respect to the underlying allegations that Mr. Stern was defamed by suggestions that he was involved in</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<p>providing drugs to Ms. Smith.</p> <p><i>California Evidence Code § 350. California Evidence Code § 403. California Evidence Code § 1200.</i></p>
<p>12.</p>	<p>Larry Birkhead appeared to proclaim that he was the baby's father. Soon after, Howard announced on Larry King Live that he was the father. This was the beginning of a paternity dispute that would occupy the public mind for more than six months. Approximately four months after Howard's announcement, Anna was found dead at the Hard Rock Hotel in Florida. Irrelevant. <i>California Evidence Code § 350. Lack of Foundation. California Evidence Code § 403. Hearsay. California Evidence Code § 1200.</i></p>	<p>12. Plaintiff's objection is not well taken.</p> <p>Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of Mr. Birkhead's public paternity claims, the paternity dispute between Mr. Birkhead and Mr. Stern and the death of Ms. Smith. This testimony is both relevant to establish the media coverage of these events, as well as the public statements of Mr. Birkhead that seemingly contradict the statements in the declaration submitted in support of Mr. Stern's opposition and goes to the issue of plaintiff's ability to meet his burden of prevailing in his defamation action.</p> <p><i>California Evidence Code § 350. California Evidence Code § 403. California Evidence Code § 1200.</i></p>
<p>13.</p>	<p>The media "feeding frenzy" that accompanied the aftermath of Anna's death really began with the birth of Dannielynn and subsequent death of Daniel. During his September 2006 Larry King Live appearance, Howard</p>	<p>13. Plaintiff's objection is not well taken.</p> <p>Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and</p>

1 2 3 4 5 6 7 8 9	said that Anna was devastated and in "lock-down mode." Nonetheless, just two days later, and still weeks before Daniel would be buried, Howard and Anna participated in a non-binding "commitment ceremony" in which they exchanged vows and rings with a few friends on board a boat off the Bahamian coast. It was revealed soon afterwards that Howard had negotiated to sell photos of the ceremony through Getty Images to People Magazine for what was reported to be \$1,000,000. Irrelevant. <i>California Evidence Code</i> § 350	the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy as well as Mr. Stern's role in taking advantage of the media coverage and the monetary benefits of such coverage. Such testimony is relevant to the legal issue as to whether, under the circumstances of this case, Mr. Stern's defamation claims are actionable. <i>California Evidence Code</i> § 350.
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	14. Less than two weeks after Daniel's death—and also before he was buried—Anna, with Howard acting on her behalf, made a deal to sell the TV rights and last photos of Daniel to Entertainment Tonight and In Touch Weekly Magazine for a reported total of \$600,000. Irrelevant. <i>California Evidence Code</i> § 350. Lack of Foundations. <i>California Evidence Code</i> § 403.	14. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy as well as Mr. Stern's role in taking advantage of the media coverage and the monetary benefits of such coverage. Such testimony is relevant to the legal issue as to whether, under the circumstances of this case, Mr. Stern's defamation claims relating to the paternity lawsuit and the drug issues are actionable. <i>California Evidence Code</i> § 350. <i>California Evidence Code</i> § 403.
27 28	15. As I learned in my reporting and was reported elsewhere, Anna's mother, Virgie	15. Plaintiff's objection is not well taken. Having established her credentials as a well

1 Arthur, was devastated to learn
2 of her grandson's death from the
3 media. And as I reported in
4 *Blonde Ambition*, a week before
5 Daniel's funeral, the estrangement
6 between Anna and her mother
7 became national news when
8 Virgie Arthur went on CNN to
9 plead for her daughter Vickie's
10 life, better known to the world as
11 Anna Nicole Smith, asking her to
12 "be careful about who you hang
13 around with, because you may
14 be next" Lack of foundation.
15 *California Evidence Code* § 403.
16 Irrelevant. *California Evidence*
17 *Code* § 350.

connected reporter knowledgeable concerning
the media's coverage of Anna Nicole Smith and
the events both prior and subsequent to her
death, including the public feud between Mr.
Stern and Anna Nicole Smith's mother Virgie
Arthur and Ms. Arthur's public statements
about Mr. Stern. This testimony is relevant to
the legal issue as to whether, under the
circumstances of this case, Mr. Stern's
defamation claims relating to claims that he was
involved in providing drugs to Ms. Smith are
actionable.

California Evidence Code § 403. *California*
Evidence Code § 350.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16.	Following her mother's interview on CNN, it was reported that Anna and Howard entered into an exclusive relationship with Entertainment Tonight, said to be worth \$1 million, which resulted in a series of interviews. In a November 1, 2006 "world exclusive" interview, Anna appeared to me and many other viewers, to be drugged in some fashion, slurring her words as she blasted her mother, Virgie Arthur, telling her to "bring it on Mom, Mommie Dearest, Bring it on!" Entertainment Tonight also aired additional footage of Dannielynn's caesarean birth on November 6, 2006—footage that ET advertised as "beautiful" and "uncensored" but which many perceived as crass, commercial and "disgusting." Lack of foundation. Speculative. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350. Hearsay. <i>California Evidence Code</i> § 1200.	16. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy as well as Mr. Stern's role in taking advantage of the media coverage and the monetary benefits of such coverage. Such testimony is relevant to the legal issue as to whether, under the circumstances of this case, Mr. Stern's defamation claims are actionable. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350. <i>California Evidence Code</i> § 1200.
17.	All of the drama and media coverage concerning these events paled in comparison to the media storm that began when, on February 8, 2007, I was the first to officially reveal that Anna Nicole Smith, at the age of 39, had died in a hotel room in the Hard Rock Hotel in Florida. Coming just a few short months after the death of her young son, the news of Anna Nicole's death at just 39 years of age sent the media into a frenzy from the outset. The two untimely deaths—with the common denominators of drug overdoses and Howard K. Stern—caused endless speculation, charges and counter-charges. Irrelevant. <i>California Evidence Code</i> § 350. Lack of foundation.	17. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy as well as public speculation as to Mr. Stern's role in the untimely drug-related deaths of Ms. Smith and her son. Such testimony is relevant to the legal issue as to whether, under the

1 2 3 4 5 6	Speculative. <i>California Evidence Code</i> § 403.	circumstances of this case, Mr. Stern's defamation claims relating to the drug issues are actionable. <i>California Evidence Code</i> § 350. <i>California Evidence Code</i> § 403.
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	18. Immediately after Anna's death, a dispute arose between Howard and Anna's mother as to where Anna should be buried and a hearing was convened in Florida to resolve the issue. In what many thought should have been a one-day hearing, Judge Seidlin held six days of hearings and, as one commentator noted on NBC's Today Show, allowed testimony into "murder, money, drugs and lots of sex." I covered much of the hearing, but not all, reporting on the events for MSNBC from outside of the Florida courthouse. (I also followed the news that came out during the hearing and then, in the course of reporting <i>Blonde Ambition</i> , I obtained a partial transcript of the hearing.) Each day, and often each hour, brought new developments and the public came to know each of the major players, Howard K. Stern, Larry Birkhead and Virgie Arthur. For instance, Anna's will was introduced into evidence to support the conclusion that Howard was Anna's personal representative and could presumably dictate where she would be buried. People were shocked to learn that it expressly disinherited any future children, namely Dannielynn, leading Judge Seidlin to question the entire will's validity. Irrelevant. <i>California Evidence Code</i> § 350. Lack of foundation. Speculative. <i>California</i> 5 10	18. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy concerning public allegations of Mr. Stern's role relating to the issues of money, drugs and sex ensuing from the public deaths of Ms. Smith and her son as well as the paternity dispute between Mr. Stern and Mr. Birkhead. Such testimony is relevant to the legal issue as to whether, under the circumstances of this case, Mr. Stern's defamation claims relating to the paternity lawsuit and the drug issues are actionable <i>California Evidence Code</i> § 350. <i>California Evidence Code</i> § 403.

1 2	<i>Evidence Code § 403.</i>	
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	19. Finally, in the midst of all this drama, Anna's funeral took place on March 2, 2007. Yet, the perception that financial deals were at the center of the events continued. Entertainment Tonight had "exclusive" video coverage of the funeral, with Splash News also present to take still photographs. I had been invited to the funeral by Virgie Arthur, and believe that I was the only non-ET on-air reporter in attendance. Just following the funeral, I interviewed Larry Birkhead at some length near his Bahamian counsel's office. Irrelevant. <i>California Evidence Code § 350.</i> Lack of foundation. Speculative. <i>California Evidence Code § 403</i>	19. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy as well as Mr. Stern's role in taking advantage of the media coverage and the monetary benefits of such coverage. She also has personal knowledge of her interactions. Such testimony is relevant to the legal issue as to whether, under the circumstances of this case, Mr. Stern's defamation claims relating to the paternity lawsuit and the drug issues are actionable. <i>California Evidence Code § 350. California Evidence Code § 403.</i>
22 23 24 25 26 27 28	20 The doubts as to the validity of the will evidenced by Judge Seidlin were echoed by numerous commentators. Since any question as to the will's validity cast doubt on Howard's designation as executor, Howard's posturing and negotiations surrounding DNA testing acquired new meaning. Thus, when I learned, and others reported, that Howard was in secret negotiations with Larry	20. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>Birkhead—his supposed enemy—to resolve the paternity dispute, not surprisingly, a key point of negotiations was Howard's status as the executor. Irrelevant. <i>California Evidence Code</i> § 350. Lack of foundation. Speculative. <i>California Evidence Code</i> § 403.</p>	<p>well as Mr. Stern's role in taking advantage of the media coverage. Such testimony is relevant to the legal issue as to whether, under the circumstances of this case, Mr. Stern's defamation claims relating to purported misstatements made in connection with the paternity lawsuit and Mr. Stern's ultimate appointment as the executor of Ms. Smith's estate. This testimony is also goes to the evidentiary import of Mr. Birkhead's denial that he and Mr. Stern reached a compromise of the paternity dispute.</p> <p><i>California Evidence Code</i> § 350. <i>California Evidence Code</i> § 403.</p>
21.	<p>Ultimately, closure was reached in early April, 2007 when Howard and Larry's public relationship turned by 180 degrees, and they suddenly resolved all differences. When a Bahamian court ordered Howard to allow the paternity test, Howard announced that he would drop all challenges to custody if it was determined that Larry was the father. When Larry was then announced to be the father, Howard and Larry held a joint news conference. Shortly thereafter, the baby's transition from Howard to Larry took place. Lack of foundation. <i>California Evidence Code</i> § 403. Irrelevant <i>California Evidence Code</i> § 350.</p>	<p>21. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy as well as Mr. Stern's role in taking advantage of the media coverage. Such testimony is relevant to the legal issue as to whether, under the circumstances of this case, Mr. Stern's defamation claims relating to purported</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<p>misstatements made in connection with the paternity lawsuit and Mr. Stern's ultimate appointment as the executor of Ms. Smith's estate. This testimony is also goes to the evidentiary import of Mr. Birkhead's denial that he and Mr. Stern reached a compromise of the paternity dispute.</p> <p><i>California Evidence Code § 403. California Evidence Code § 350.</i></p>
25.	<p>...I used this rare opportunity to learn more about Larry's relationship with Anna, his belief that Howard was stealing from Anna, and his anger over her, and especially Howard's, unwillingness to submit to a paternity test. Lack of foundation. <i>California Evidence Code § 403. Irrelevant California Evidence Code § 350.</i></p>	<p>25. Plaintiff's objection is not well taken. Ms. Cosby is the author of "Blonde Ambition," and plaintiff has claimed that Mr. Speer's statements to Ms. Cosby gave rise to a defamation claim against him, including statements that Larry Birkhead made to third parties about the paternity issue which Larry Birkhead now denied in plaintiff's opposition to the subject motion. Ms. Cosby's testimony concerning these issues is relevant to Mr. Birkhead's various positions over time concerning his dispute with Mr. Stern on the issue of paternity and goes both to the public nature of the dispute as well as Mr. Birkhead's credibility on this issue.</p> <p><i>California Evidence Code § 403. California Evidence Code § 350.</i></p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>26.</p>	<p>Larry Birkhead did tell me that Howard was stealing money from Anna. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. <i>California Evidence Code</i> § 403.</p>	<p>26. Plaintiff's objection is not well taken. Ms Cosbys statement is direct testimony of her first hand knowledge of Mr. Birkhead making a statement accusing Mr. Stern of stealing money from Ms. Smith. This testimony directly contradicts the declaration of Birkhead submitted by plaintiff in support of his opposition.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403.</p>
<p>27.</p>	<p>...I also reported that Tas Brighthaupt, the wife of Anna's bodyguard, described seeing a \$37,000 wire transfer on Howard's computer on the day she died. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. <i>California Evidence Code</i> § 403.</p>	<p>27. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy concerning events occurring before and subsequent to Ms. Smith's death. Plaintiff has alleged that he was defamed by Speer through Ms. Cosby's book, and particularly reporting of a statement made by Mr. Birkhead to the effect that Mr. Stern was wiring funds from Ms. Smith's accounts. While Mr. Stern's opposition suggests that he did not have oversea's accounts, he does not directly address whether</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<p>he made unauthorized wires from Ms. Smith's accounts. This testimony therefore goes both to the issue of whether Mr. Stern's defamation claims concerning unauthorized wires, in the context of the arguably manufactured media frenzy (benefiting Mr. Stern) is actionable in the first instance. It also goes to the weight and sufficiency of declarations submitted in support of Mr. Stern's opposition.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403.</i></p>
28.	<p>Howard (and now Larry) also challenges a series of passages in the Book concerning a "secret meeting" between Larry Birkhead, Ford Shelley and Howard in Florida and the terms of the deal Howard was proposing to Larry in order to break the impasse concerning paternity. The description of the "secret meeting" in Florida was confirmed by Ford Shelley, Ben Thompson's son-in-law, who was in the meeting. Ford Shelley also confirmed that he heard Howard make a statement to Larry to the effect of "I will give you your baby." <i>Hearsay. California Evidence Code § 1200. Lack of foundation. California Evidence Code § 403.</i></p>	<p>28. Plaintiff's objection is not well taken. Ms. Cosby is the author of "Blonde Ambition," and plaintiff has claimed that Mr. Speer's statements to Ms. Cosby gave rise to a defamation claim against him, including statements that Larry Birkhead made to third parties about the paternity issue. Ms. Coby's testimony demonstrates that her information concerning a resolution of the paternity dispute was confirmed by other witnesses and goes to the weight and sufficiency of the opposition's claims that Mr. Birkhead never made any statements concerning reaching a resolution of the paternity dispute with Mr. Stern.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<i>California Evidence Code § 1200. California Evidence Code § 403.</i>
29.	Larry Birkhead also told me what Howard was proposing to him in the negotiations, and what Larry told me was consistent with what Ford Shelley and Mark Speer told me, and what was reported in the press. Hearsay. <i>California Evidence Code § 1200. Lack of foundation. California Evidence Code § 403.</i>	29. Plaintiff's objection is not well taken. Ms Cosbys statement is direct testimony of her first hand knowledge of Mr. Birkhead making a statement to the effect that he had reached an agreement with Mr. Stern on the paternity issue consistent with the statements of Mr. Shelly and Mark Speer. This testimony directly contradicts the declaration of Birkhead submitted by plaintiff in support of his opposition. <i>California Evidence Code § 1200. California Evidence Code § 403.</i>
30.	Specifically, the fact that Larry and Howard were negotiating to resolve the impasse concerning the baby's paternity was as widely reported as reports that Howard enabled Anna's drug abuse. Almost immediately after the "secret meeting" in Florida, news reports leaked out about the negotiations and possible terms. To cite but a few sources: (A) "They are negotiating basically money. And what Howard Stern wants to go away. And we're told that two of the things on the table are the house that Anna bought before her death and the boat that she bought just before she died." [CNN, 2/27/07]. (B) "These are settlement negotiations between Larry Birkhead	30. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy concerning events occurring before and subsequent to Ms. Smith's death. Plaintiff has alleged that he was defamed by Speer through Ms. Cosby's book, and particularly reporting of a statement made by Mr. Birkhead to the effect

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>and Howard K. Stern...and if Birkhead is the dad, it may be that Howard K. Stern, in some ways, controls the purse strings and is the trustee, perhaps..." [CNN, 2/16/07] Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. <i>California Evidence Code</i> § 403.</p>	<p>that he had made statements reflecting a compromise with Mr. Stern on the paternity issue which also involved financial benefits to Mr. Stern. This testimony therefore goes both to the issue of whether Mr. Stern's defamation claims concerning a compromise of the paternity issue, in the context of the arguably manufactured media frenzy (benefiting Mr. Stern), is actionable in the first instance. It also goes to the weight and sufficiency of the declarations submitted in support of Mr. Stern's opposition.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>31. Several commentators mentioned kidnapping in commenting on the negotiations. Consider this sampling: Describing the situation as "child stealing" (Hannity & Colmes 2/23/07) " [T]o me, this is kidnapping" Nancy Grace 4/27/07; (C) "We are at a kidnapping point, maybe. Maybe it's a kidnapping point." (On the Record with Greta Van Sustereen 3/13/07) (D) "Some have even accused [Stern] of holding this child hostage" (CNN Showbiz Tonight 3/29/07) (Jane Velez-Mitchell); (E) "Absolutely. Just like stealing a house. He's been holding this baby hostage, Trying to extort money or some kind of deal basically out of Larry Birkhead, saying, 'Sure, you want to see the baby, want to have a visit? Come on over.' And dangling</p>	<p>31. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy concerning events occurring before and subsequent to Ms. Smith's death. Plaintiff has alleged that he was defamed by Speer through Ms. Cosby's book, and particularly reporting of a statement made by Mr. Birkhead to the effect that he had made statements reflecting a compromise with Mr. Stern on the paternity</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>the baby in front of him." (Hannity and Colmes 3/21/07); (F)"There's got to be someone, somewhere, a child advocate somewhere, that can take control of this situation and say 'I demand that we be able to at least look at this child. That child is being held hostage." (Nancy Grace 3/8/07) (G)"I think this is so disgusting. This guy—you know what it is, it's like negotiating with a terrorist. He is holding this baby hostage, using the baby for money." Fox Big Story with John Gibson, 3/12/07 (page 66) Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. <i>California Evidence Code</i> § 403.</p>	<p>issue which also involved financial benefits to Mr. Stern. This testimony therefore goes both to the issue of whether Mr. Stern's defamation claims concerning a compromise of the paternity issue, in the context of the arguably manufactured media frenzy (benefiting Mr. Stern), is actionable in the first instance. It also goes to the weight and sufficiency of the declarations submitted in support of Mr. Stern's opposition.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403.</p>
32.	<p>Perhaps the most telling point confirming the veracity of the widely reported negotiations between Larry and Howard is that Howard seems to have ended up with the very things he reportedly sought in the negotiations: executor of the will, house and boat. <i>California Evidence Code</i> § 403.</p>	<p>32. Plaintiff's objection is not well taken. Having established her credentials as a well connected reporter knowledgeable concerning the media's coverage of Anna Nicole Smith and the events both prior and subsequent to her death, Ms. Cosby has personal knowledge of the media's coverage of that media frenzy concerning events occurring before and subsequent to Ms. Smith's death. As such, Ms. Cosby has personal knowledge of the terms of the resolution of the paternity settlement, terms that Mr. Stern has not denied.</p> <p><i>California Evidence Code</i> § 403.</p>
33.	<p>Larry Birkhead testified under oath that Howard gave Anna drugs from a duffle bag while she was in the</p>	<p>33. Plaintiff's objection is not well taken. Ms. Cosby testified that she covered the hearings</p>

1 hospital detoxing and pregnant; and
2 in general, Howard was the conduit
3 to her doctors and asked them to fill
4 her prescriptions. Hearsay.
5 *California Evidence Code § 1200.*

relating to the dispute concerning where Ms.
Smith would be buried. Ms. Cosby testimony is
submitted not to establish that Mr. Stern in fact
gave Ms. Smith drugs and facilitated Ms.
Smith's receipt of drugs, but rather as
impeachment to Mr. Birkhead's denial of
statements he made accusing Mr. Stern of
facilitating Ms. Smith's drug use.
Consequently, Ms. Cosby's testimony of Mr.
Birkhead's in court testimony on this issue
impeaches Mr. Birkhead's declaration denying
that he made such statements and thus goes to
the weight and sufficiency of the declarations
submitted in support of Mr. Stern's opposition.
Such testimony further establishes the public
nature of this dispute and thus goes to the issue
of whether such statements were actionable in
the first instance.

19 33. Larry Birkhead also said during an
20 interview with me in October, 2006
21 that "Howard K. Stern's lies need to
22 stop." Hearsay. *California Evidence
23 Code § 1200.*

Hearsay. *California Evidence Code § 1200.*
33. Plaintiff's objection is not well taken. The
subject testimony is direct testimony that Mr.
Birkhead previously accused Mr. Stern of being
a liar. Such testimony both demonstrates the
public nature of the issues of Mr. Stern's
credibility and goes to the weight of the
declaration of Mr. Birkhead's declaration
submitted in support of the opposition.

¶ #	STATEMENTS IN DECLARATION OF MARK SPEER	EVIDENTIARY OBJECTION
5.	I first met with Larry Birkhead because he was concerned about his security. Lack of foundation. <i>California Evidence Code § 403.</i>	Plaintiff's objection is not well taken. This statement is introduced as foundation to Mr. Speer's statements and goes to Mr. Speer's state of mind and the issue of malice as raised by plaintiff's defamation claim. <i>California Evidence Code § 403.</i>
6.	I was certainly privy to his thoughts and conversations during the time we were together. Lack of foundation. Speculation. <i>California Evidence Code § 403.</i>	Plaintiff's objection is not well taken. Mr. Speer as set forth the basis for his personal knowledge based upon his proximity to Mr. Birkhead during the relevant time period and thus has set forth a foundation for his testimony. <i>California Evidence Code § 403.</i>
7.	I doubt that is a task he would have given to someone he had concerns about. Lack of foundation. Speculation. <i>California Evidence Code § 403.</i>	Plaintiff's objection is not well taken since the subject testimony is submitted both to establish Mr. Speer's state of mind and as impeachment concerning statements set forth in Mr. Birkhead's declaration concerning Mr. Speer. <i>California Evidence Code § 403.</i>
8.	The irony is that if I had made "wild" claims about Howard K. Stem, I certainly would not have been asked to leave the room. That is not how police work is done. From my experience, I know that a police investigator would certainly not ask someone providing information, good, bad or even outrageous sounding, to "leave the room." A police investigator would not prejudge information. Lack of foundation. Speculation. <i>California Evidence Code § 403.</i>	Plaintiff's objection is not well taken since the subject testimony is submitted both to establish Mr. Speer's state of mind and as impeachment concerning statements set forth in Mr. Birkheads concerning Mr. Speer. <i>California Evidence Code § 403.</i>
9.	We then sat in a large room with several police investigators for approximately 45 minutes to an hour	Plaintiff's objection is not well taken. Mr. Speer's testimony is based upon his personal knowledge of the facts and circumstances of the

1	during which time Larry told the investigators everything he claimed to know about Howard K. Stern. Lack of foundation. Speculation. <i>California Evidence Code § 403</i>	visit with the police investigators. <i>California Evidence Code § 403.</i>
2		
3		
4	14. Larry said that he didn't want to make Howard mad now. Hearsay. <i>California Evidence Code § 1200</i>	Plaintiff's objection is not well taken. The subject testimony is not submitted to prove that Larry did not want to prove that he didn't want to make Mr. Stern mad, but rather to demonstrate Mr. Speer's understanding of Mr. Birkhead's statements which goes to the issue of malice. Additionally, the subject testimony is impeachment as to Mr. Birkhead's declaration submitted in support of Mr. Stern's opposition. <i>California Evidence Code § 1200.</i>
5		
6		
7		
8		
9		
10		
11	¶ # STATEMENTS IN DECLARATION OF VIRGIE ARTHUR; PLAINTIFF'S EVIDENTIARY OBJECTIONS	DEFENDANT'S REPLY TO PLAINTIFF'S EVIDENTIARY OBJECTIONS
12		
13		
14	4. I was only sixteen years old when Vickie was born and I married her father, Don Hogan. The marriage did not last. Don was abusive and he beat me when I was pregnant with Vickie. Not in my home, but in Liberty County, he raped my ten-year-old sister and her young friend while I was married to him. I did not find out about this until I left him. Don moved out of our house when Vickie was about four or five months old when I finally fought back. We weren't divorced until just weeks before Vickie's second birthday because I could not afford a divorce. I got the divorce as soon as I could. He was charged in connection with these crimes and served sixty days in jail and five years probation. Irrelevant. <i>California Evidence Code § 350.</i>	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony serves as impeachment to the declarations submitted in support of the opposition which claims that statements made by Mr. Speer to Ms. Cosby concerning Mr. Birkhead's statements relating to Mr. Stern constituted actionable defamation. <i>California Evidence Code § 350.</i>
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26	5. During Vickie's childhood she had little to no connection with her father. I remarried and Vickie was primarily raised by me along with her	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the
27		
28		

1 2 3 4 5 6 7 8 9	stepfather. Like a lot of Texas parents during this period, I whipped Vickie's butt a few times, when she had earned it. All my children were disciplined the same way. I would discipline her with a leather belt, if I had one handy. The last time I recall doing so was when she was 13 and didn't come home from school. I ultimately found her at a friend's house at 3 a.m. and brought her home. When we got home, she received the belt. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350.	disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony serves as impeachment to the declarations submitted in support of the opposition which claims that statements made by Mr. Speer to Ms. Cosby concerning Mr. Birkhead's statements relating to Mr. Stern constituted actionable defamation. <i>California Evidence Code</i> § 350. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.
10 11 12 13 14 15 16 17 18 19 20 21 22 23	6. I also have been made aware that Vickie claimed that both her biological father, Don Hogan, and her stepfather molested her. While living under my roof, she never made such a claim. Since Vickie was not around Don Hogan when she was growing up, it must have happened when they reunited many years later, after Vickie appeared in <i>Playboy</i> magazine in 1992. I do not know whether that did or did not happen. As for her stepfather, I do not believe that ever happened. In my view Vickie had a decent childhood. When she started her career, she created the "poor pitiful me story," because it worked better for the media. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350.	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony serves as impeachment to the declarations submitted in support of the opposition which claims that statements made by Mr. Speer to Ms. Cosby concerning Mr. Birkhead's statements relating to Mr. Stern constituted actionable defamation. <i>California Evidence Code</i> § 1200.; <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.
24 25 26 27 28	7. Vickie dropped out of high school after her freshman year. At the age of 17, she married Billy Smith, and had her son Daniel that same year. I picked the name "Daniel" from the Bible. Vickie's marriage to Billy didn't last long, and they separated shortly after Daniel's birth. When Daniel was	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony serves as impeachment to the declarations submitted in

1 2 3 4 5	three months old, Vickie called me to come get her and the baby. I got them and they lived with me off and on for a while. Daniel lived with me until he was six years old. During Daniel's young years, until he was about six years old, he lived with me, and I raised him. Irrelevant. <i>California Evidence Code § 350.</i>	support of the opposition which claims that statements made by Mr. Speer to Ms. Cosby concerning Mr. Birkhead's statements relating to Mr. Stern constituted actionable defamation <i>California Evidence Code § 350.</i>
6 7 8 9 10 11 12 13 14 15 16 17 18 19	8. While Vickie was growing up, I worked as a sheriff's deputy. When Vickie was a young mother, I learned from her boyfriend that she was stripping. I was understandably concerned, and so I went to see for myself, driving there in my sheriff's deputy patrol car. When I entered the club, I saw Vickie dancing in nothing but a g-string right in front of some old man's face. I told the manager that she was my daughter and that he had better get her out of there and, if he continued to let her dance there, would be back regularly to check his license. When we got home, I told Vickie she wasn't going to strip, and she moved out of my house. Hearsay. <i>California Evidence Code § 1200. Lack of foundation. California Evidence Code § 403. Irrelevant. California 350.</i>	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony serves as impeachment to the declarations submitted in support of the opposition which claims that statements made by Mr. Speer to Ms. Cosby concerning Mr. Birkhead's statements relating to Mr. Stern constituted actionable defamation. <i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i>
20 21 22 23 24 25 26 27 28	9. After Vickie moved out and later moved to Los Angeles, our relationship became more estranged. One issue was Vickie's abuse of drugs. In 1995, I assisted in getting her help for her addiction, and she checked into the Betty Ford Clinic. But Vickie's drug use continued. In my view, the estrangement increased when Howard Stern entered Vickie's life as a friend and her attorney. He kept all of us from her, not just me. He kept the whole family away from her. People who loved her tried to help her. Those that didn't love her,	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony serves as impeachment to the declarations submitted in support of the opposition which claims that statements made by Mr. Speer to Ms. Cosby concerning Mr. Birkhead's statements relating to Mr. Stern constituted actionable defamation <i>California Evidence Code § 403. California Evidence Code § 350.</i>

1 2 3 4	lived with her and lived off her. Yes, I blamed Howard for keeping me out of Vickie's life. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350.	
5 6 7 8 9 10 11 12 13 14 15 16 17	10. I first learned of Daniel's death from the media, not from Vickie. When Vickie called to tell me about Daniel's death, it was several days after he had died, and I had already learned the news from reports on television. In the phone message received, Vickie's speech was slurred, and she was mumbling like she was drunk. She was in the middle of telling me that Daniel was gone, but that he would come back, when the phone went dead in the middle of her sentence. I tried to contact Vickie numerous times, but each time I called I was either hung up on or the number had been changed. That message from Vickie was the last time I heard from my daughter. Hearsay. <i>California Evidence Code</i> § 1200. Irrelevant. <i>California Evidence Code</i> § 350.	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony serves as impeachment to the declarations submitted in support of the opposition which claims that statements made by Mr. Speer to Ms. Cosby concerning Mr. Birkhead's statements relating to Mr. Stern constituted actionable defamation <i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 350.
18 19 20 21 22 23 24 25 26 27 28	11. I was not invited to Daniel's funeral, which hurt a lot. About a week before Daniel's funeral, I was interviewed by CNN. I was quoted as saying: "I know that Danny had a trust fund...But if Howard marries Vickie and Daniel's gone, that leaves Howard and the baby to inherit whatever money she has...: Vickie Lynn, you know I love you, always have. And be careful about who you hang around with, because you may be next." I firmly believed those opinions at the time, and still believe them today. Hearsay. <i>California Evidence Code</i> § 1200. Irrelevant. <i>California</i>	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events. It also reflects the existence of public accusations by Ms. Arthur directed at Mr. Stern and whether in the unique context of the instant case, Mr. Stern has an actionable defamation claim against Mr. Speer arising out of the publication of <i>Blonde Ambition</i> . <i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 350.

	<i>Evidence Code § 350</i>	
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	<p>12. Sure enough, just a few months later on February 8, 2007, Vickie died. The Florida hearings that were held to determine where Vickie would be buried were very painful for me. I was angry with Judge Seidlin's behavior during the court case in Florida. I thought he acted like a clown and made the proceedings into a circus. After the ruling (during which he broke down crying) he came up to me, tried to hug me, and told me, "I did the best I could." I was furious, and remembered that he had talked about his six-year old daughter in court. I told him, "Look at my face. I want you to remember my face because one day your daughter is going to have trouble, and you're going to need help." I told him that when he can't help her, he should remember my face.</p> <p>Hearsay. <i>California Evidence Code § 1200</i>. Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events and whether in the unique context of the instant case, Mr. Stern has an actionable defamation claim against Mr. Speer arising out of the publication of <i>Blonde Ambition</i>. <i>California Evidence Code § 1200</i>. <i>California Evidence Code § 350</i>.</p>
17 18 19 20 21 22 23 24 25 26 27 28	<p>13. I tried to help Dannielynn before I went to Florida. I thought she was going to be the next dead person. Then, after the Florida hearing, I sought access to my granddaughter, Dannielynn, in the Bahamian courts. At that point, Howard had custody of the baby and was involved in a bitter fight with Larry Birkhead over who was the baby's biological father. Howard was refusing to have his DNA tested. During this period, my relationship with Larry was not antagonistic, and as I believed at that time he was the father and that he shared the goal of doing what was best for Dannielynn.</p> <p>Lack of foundation. Speculation. <i>California Evidence Code § 403</i>. Irrelevant. <i>California Evidence Code</i></p>	<p>Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events. It also reflects the existence of public accusations by Ms. Arthur directed at Mr. Stern and whether in the unique context of the instant case, Mr. Stern has an actionable defamation claim against Mr. Speer arising out of the publication of <i>Blonde Ambition</i>. <i>California Evidence Code § 403</i>. <i>California Evidence Code § 350</i>.</p>

	§ 350.	
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	14. Before Vickie's funeral in the Bahamas, a Bahamian judge ruled that I should be allowed to see my granddaughter. I was also continuing to press my claim in the Bahamas that Vickie should be buried in Texas. I went to Horizons to see her for a visit that lasted only about twenty-five minutes due to the tension between me and Howard Stern. When I went to touch the baby, Howard stopped me, and said that "the judge said you could see her, not touch her." He then offered to let me hold her and kiss her if I let Vickie be buried in the Bahamas. I refused to drop my legal action, and left the house without ever touching Dannielynn. During the visit, my former attorney, Debra Rose, and the babysitter, Gibson, got into a screaming fight and Dannielynn never moved. Irrelevant. <i>California Evidence Code § 350</i>	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events. It also reflects the existence of public accusations by Ms. Arthur directed at Mr. Stern and whether in the unique context of the instant case, Mr. Stern has an actionable defamation claim against Mr. Speer arising out of the publication of <i>Blonde Ambition.. California Evidence Code § 350</i>
16 17 18 19 20 21 22 23 24 25 26 27 28	15. During that trip, I met with Larry Birkhead at the Hilton Hotel. I told him that I believed in him, that he seemed like a good, decent guy; that I believed at the time that he was the baby's father, and that I would help him in any way I could against Howard. Larry appeared to be so nervous and desperate. It didn't make sense that Larry seemed to be now listening to Howard. I asked him what Howard had on him. Larry told me that Howard had so much "stuff" on him, and I asked what kind of "stuff." He said "that they were fixing to tell all about him, that they say they caught him dating men." I told him, "I don't care if you have men or women in your life. I don't care if you were caught fucking a sheep. If you are the baby's daddy,	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events. It also is impeachment to Mr. Birkhead's testimony denying that he either made statements accusing Mr. Stern of improper behavior or that he made statements concerning effecting a resolution of the paternity dispute between Mr. Birkhead and Mr. Stern. It is also impeachment regarding Mr. Birkhead's denial of negotiations with Mr. Stern. <i>California Evidence Code § 1200. California Evidence Code § 350</i>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>and I believe you are at this time, it doesn't matter what they say, I will stand by you, son, one hundred percent." He said he was tired, and he just wanted to take his daughter and go home. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350.</p>	
16.	<p>On the day of Vickie's funeral in the Bahamas, I got caught in a traffic jam and arrived to the funeral late. When I got out of my car, there was a large crowd of people, all booing and jeering at me. It was the worst feeling in the world. But I knew my daughter was supporting me, even if no one else was. My feet felt like they weighed fifty pounds, and the walk into the church felt like it was a mile long. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. <i>California Evidence Code</i> § 350</p>
17.	<p>At the funeral in the church, Howard Stern would not let my son be one of the pallbearers, and refused to let me put out any of my family photographs. At the gravesite, all her so-called friends and pallbearers placed their flowers on the casket and stood around the gravesite. After everyone else had put roses on the coffin, and they were lowering the coffin, I threw a 8x10 picture of me and Vickie onto her coffin. I waited until the casket was low enough so that no one could remove the picture without crawling into the hole, then I threw the picture on top of her casket. Everyone put a shovel of dirt on the casket. I was the last one, so I filled the entire grave with all the dirt. I remember thinking to myself, "I brought you into this world, and I'm going to be the last to send you out." I shoveled a lot of dirt, quickly, onto</p>	<p>Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. <i>California Evidence Code</i> § 350.</p>

1 2	the coffin, so that no one could take the photo out. I'm still glad that I did. Irrelevant. <i>California Evidence Code</i> § 350	
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	18. I saw Larry Birkhead only three times outside the court house. After Larry left the Bahamas, his attitude toward me changed. Howard had put Larry through a costly legal battle, had not let Larry see his daughter for months, and then abruptly dropped all challenges to Larry having custody. After that, Larry completely cut me out. Howard then supported Larry getting sole custody. I was furious, and I wanted to know why Howard had suddenly become Larry's biggest supporter. I asked Larry what was going on, what deal was he working, and why Howard was suddenly helping him. Larry denied it, told me that he wasn't doing anything, that Howard was just being nice. But Larry was obviously nervous and couldn't look me in the eye while he talked to me. I believed he had cut a deal with Howard. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350.	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events. It also is impeachment to Mr. Birkhead's testimony denying that he either made statements accusing Mr. Stern of improper behavior or that he made statements concerning effecting a resolution of the paternity dispute between Mr. Birkhead and Mr. Stern. It is also impeachment regarding Mr. Birkhead's denial of negotiations with Mr. Stern. <i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.
20 21 22 23 24 25 26 27 28	19. I filed paperwork asking to be named Dannielynn's guardian. All I ever cared about is the safety and well-being of my granddaughter. I was very angry at Larry for being in cahoots with Howard, but I tried to stay optimistic when I spoke to the press. I said that I looked forward to working with Larry to help raise Dannielynn, and do what's best for her. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350.	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events. It also is impeachment to Mr. Birkhead's testimony denying that he either made statements accusing Mr. Stern of improper behavior or that he made statements concerning effecting a resolution of the paternity dispute between Mr. Birkhead and Mr. Stern.. <i>California Evidence Code</i> § 403.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<i>California Evidence Code § 350.</i>
20.	I don't believe that Larry has shown that he's responsible enough to manage Dannielynn's affairs with Howard by his side. After Larry got sole custody, urged him to put the millions of dollars he was receiving through media deals into a trust for the baby, and have an independent company monitor it. I told Larry that he can live on it, but he should not squander it. After I told him that, he called me to threaten me that if I didn't drop the guardianship suit in the Bahamas, he'll make sure the court fines me and that I will have to pay for his legal fees and flights to and from the Bahamas. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350.</i>	<i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i>
21.	I wish all the money tied to Vickie's late husband was gone. I think the money is tainted for any greedy person who grabs it. J. Howard Marshall is dead. My grandson Daniel is dead, my daughter is dead, Pierce Marshall is dead. If Dannielynn ever gets this money, it should be put in trust until she is 25 years of age. The prospect of the money has brought my family nothing but grief. I think about Ron Goldman's family and the O.J. Simpson case all the time. I see how much pain they are still going through and that's what my life has become. Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350.</i>	Plaintiff's objection is not well taken. Ms. Arthur's testimony is foundational to her knowledge of the underlying facts and her personal knowledge and involvement with the disputes between Mr. Birkhead and Mr. Stern as well as Mr. Stern's involvement with her daughter. This testimony reflects the public nature of the subject events. It also is impeachment to Mr. Birkhead's testimony denying that he either made statements accusing Mr. Stern of improper behavior or that he made statements concerning effecting a resolution of the paternity dispute between Mr. Birkhead and Mr. Stern. <i>California Evidence Code § 403. California Evidence Code § 350.</i>
¶ #	STATEMENTS IN DECLARATION OF MARK KANE; PLAINTIFFS	DEFENDANT'S REPLY TO PLAINTIFF'S EVIDENTIARY OBJECTIONS

EVIDENTIARY OBJECTION		
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>2. Attached to the Evidence in support of this Reply as Exhibit 14 is internet coverage of an Exclusive Interview with Anna Nicole Smith and Howard K. Stern on Entertainment Tonight which I obtained from the internet. During that interview, plaintiff and Anna Nicole Smith challenges her mother, Virgie Arthur. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350.</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son, the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern. It is also foundational as to Ms. Smith and plaintiff's use of the media to try and influence the discussion of events.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.</p>
<p>16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>3. Attached to the Evidence in support of this Reply as Exhibit 15 is a true and correct copy of the internet transcript of the interview of Howard K. Stern on Larry King Live which aired on September 26, 2006 which I obtained from the internet. During that interview, plaintiff unequivocally proclaims that he is the father of Dannielynn, publicly disputing Mr. Birkhead's paternity claim.</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the matters stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son, the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern. In addition, this evidence is impeachment to Mr. Birkhead's denial of prior statements by him relating to Mr. Stern and the issues of paternity and</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<p>circumstances under which Mr. Stern was appointed executor of Ms. Smith's estate and Mr. Birkhead was given custody. It is also foundational as to Ms. Smith and plaintiff's use of the media to try and influence the discussion of events.</p> <p><i>California Evidence Code § 403. California Evidence Code § 350.</i></p>
4.	<p>Attached to the Evidence in support of this Reply as Exhibit 16 is a true and correct copy of the Entertainment Tonight Website (etonline.com) coverage of the Exclusive Interview of Howard K. Stern with Mark Steines on Entertainment Tonight/ the Insider which aired February 12, 2007 through February 16, 2007. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the burial place of Ms. Smith, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith and paternity issues relating to Ms. Smith's child. It is also foundational as to plaintiff's use of the media to try and influence the discussion of events.</p> <p><i>California Evidence Code § 1200; California Evidence Code § 403. California Evidence Code § 350.</i></p>
5.	<p>Attached to the Evidence in support of this Reply as Exhibit 17 is the a true and correct copy of the Entertainment Tonight Website (etonline.com) coverage of Howard K. Stern with the Bahamian Police after Anna Nicole Smith's home was allegedly burglarized. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<p>circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern. It is also foundational as to plaintiff's use of the media to try and influence the discussion of events.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
6.	<p>Attached to the Evidence in support of this Reply as Exhibit 18 is the a true and correct copy of the Entertainment Tonight Website (etonline.com) coverage of the "Commitment Ceremony" of Howard K Stern and Anna Nicole Smith in the Bahamas on or about September 29, 2006. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Hearsay. <i>California Evidence Code § 1200.</i> Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern. It is also foundational as to Ms. Smith and plaintiff's use of the media to try and influence the discussion of events.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
7.	<p>Attached to the Evidence in support of this Reply as Exhibit 19 is a true and correct copy of the Entertainment Tonight Website (etonline.com) coverage of the funeral of Anna Nicole Smith which I obtained from the internet. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms.</p>

<p>1 2 3 4 5 6 7 8 9</p>	<p><i>Evidence Code § 403. Irrelevant. California Evidence Code § 350</i></p>	<p>Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern. It is also foundational as to plaintiff's use of the media to try and influence the discussion of events.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
<p>10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>	<p>8. Attached to the Evidence in support of this Reply as Exhibit 20 is a true and correct copy of an internet transcript from Showbiz Tonight on CNN from February 27, 2007 referenced in the Declaration of Rita Cosby regarding news reports of the negotiations between Plaintiff and Larry Birkhead which I obtained from the internet. Hearsay. <i>California Evidence Code § 1200. Lack of foundation. Speculation. California Evidence Code § 403. Irrelevant. California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
<p>24 25 26 27 28</p>	<p>9. Attached to the Evidence in support of this Reply as Exhibit 21 is a true and correct copy of an internet transcript from Showbiz Tonight on February 26, 2007 on CNN referenced in the Declaration of Rita Cosby regarding news reports of the negotiations between plaintiff and</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr.</p>

	<p>Larry Birkhead which I obtained from the internet. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.</p>
10.	<p>Attached to the Evidence in support of this Reply as Exhibit 22 is a true and correct copy of an internet transcript from Nancy Grace which aired on April 27, 2007 on CNN referenced in the Declaration of Rita Cosby regarding news reports that mentioned kidnapping in commenting on the negotiations between plaintiff and Larry Birkhead which I obtained from the internet. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.</p>
11.	<p>Attached to the Evidence in support of this Reply as Exhibit 23 is a true and correct copy of an internet partial transcript from On the Record with Greta Van Susteren from March 13, 2007 referenced in the Declaration of Rita Cosby regarding news reports that mentioned kidnapping in commenting on the negotiations between plaintiff and Larry Birkhead</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms.</p>

	<p>which I obtained from the internet. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son, the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.</p>
12.	<p>Attached to the Evidence in support of this Reply as Exhibit 24 is a true and correct copy of an internet transcript from Showbiz Tonight on CNN from March 29, 2007 referenced in the Declaration of Rita Cosby regarding news reports that mentioned kidnapping in commenting on the negotiations between plaintiff and Larry Birkhead which I obtained from the internet. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son, the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.</p>
13.	<p>Attached to the Evidence in support of this Reply as Exhibit 25 is a true and correct copy of an internet transcript from Nancy Grace which aired on March 8, 2007 on CNN referenced in the Declaration of Rita Cosby regarding news reports that mentioned kidnapping in commenting on the negotiations between plaintiff and Larry Birkhead which I obtained from the internet. Hearsay. <i>California Evidence Code</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale</p>

	<p>§ 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.</p>
14.	<p>Attached to the Evidence in support of this Reply as Exhibit 26 is a true and correct copy of the internet transcript of Howard K. Stern on Larry King Live which aired on October 10, 2007. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code</i> § 1200. <i>California Evidence Code</i> § 403. <i>California Evidence Code</i> § 350.</p>
15.	<p>Attached to the Evidence in support of this Reply as Exhibit 27 is a true and correct copy of the internet transcript of Howard K. Stern on Greta Van Susteren which aired on April 8, 2008 which I obtained on the internet wherein Greta Van Susteren gives plaintiff an opportunity to defend himself. Hearsay. <i>California Evidence Code</i> § 1200. Lack of foundation. Speculation. <i>California Evidence Code</i> § 403. Irrelevant. <i>California Evidence Code</i> § 350</p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<p>circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
16.	<p>Attached to the Evidence is support of this Reply as Exhibit 28 are media samplings from CNN.com of coverage surrounding the death of Anna Nicole Smith which I obtained from the internet. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
17.	<p>Attached to the Evidence is support of this Reply as Exhibit 29 is a true and correct copy of the internet transcript of Larry Birkhead on Larry King Live which aired on January 26, 2007 which I obtained from the internet. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

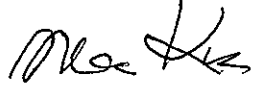
		<p>Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
18.	<p>Attached to the Evidence is support of this Reply as Exhibit 30 is a true and correct copy of the internet transcript of Larry Birkhead on Larry King Live which aired on June 12, 2007 which I obtained from the internet. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p> <p><i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i></p>
19.	<p>Attached as Exhibit 31 is a Forbes Magazine article entitled <i>The Most Expensive Celebrity Photos</i> which indicates that the Anna Nicole Smith and Howard K. Stern wedding photos sold for an estimated \$1 million and the photos of Anna Nicole Smith and son Daniel before his death sold for an estimated \$400,000. I obtained this article from the internet. Hearsay. <i>California Evidence Code § 1200.</i> Lack of foundation. Speculation. <i>California Evidence Code § 403.</i> Irrelevant. <i>California Evidence Code § 350</i></p>	<p>Plaintiff's objection is not well taken. Mr. Kane has set forth the foundation for the introduction of media coverage of the underlying events. The subject testimony is not introduced to prove the truth of the facts stated, but rather establishes the public nature of the very public disputes between Mr. Stern, Ms. Smith and others on issues relating to Mr. Stern's relationship with Ms. Smith, Ms. Smith's drug abuse, Mr. Stern's control of Ms. Smith's finances, the "commitment" ceremony between Ms. Smith and Mr. Stern and the sale of photographs relating to same, the drug abuse and death of Ms. Smith's son , the circumstances of the death of Ms. Smith, the litigation relating to the burial place of Ms. Smith and the paternity dispute between Mr. Birkhead and Mr. Stern.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<i>California Evidence Code § 1200. California Evidence Code § 403. California Evidence Code § 350.</i>
20.	Attached as Exhibit 12 is a true and correct copy of the Declaration of Virgie Arthur filed in the United States District Court, Southern District of New York, in the case entitled <i>Howard K. Stern v. Rita Cosby et al.</i> , Case No. 07 Civ. 8336 (DC). Irrelevant. California Evidence Code Section 350. Lack of foundation. California Evidence Code Section 403.	Plaintiff's objection is not well taken. As attorney for defendant in this case, Mr. Kane may properly introduce Ms. Arthur's declaration which is a public record and subject to judicial notice. Additionally, this declaration is foundational to set forth the underlying disputes involves in the drama between Mr. Stern and others relating to contentions relating to his control of Ms. Smith etc. This evidence s raises the issues of whether plaintiff's defamation action is actionable in the first instance as is impeachment concerning Mr. Stern and Mr. Birkhead's statements submitted in support of the opposition. Evidence Code Section 350;Evidence Code Section 403.

Dated: March 17, 2009

ROBINSON DI LANDO

By: 
MICHAEL DI LANDO, ESQ
MARK T. KANE, ESQ.

PROOF OF SERVICE

1
2 **STATE OF CALIFORNIA** }
3 } **ss.**
4 **COUNTY OF LOS ANGELES** }

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and am not a party to the within action; my business address is 800 Wilshire Boulevard, Suite
7 750, Los Angeles, California 90017.

8 On **March 17, 2009**, I served on the parties of record in this action the foregoing
9 document described as: **DEFENDANTS REPLY TO PLAINTIFF'S OBJECTIONS TO**
10 **DECLARATIONS** by placing the original XX true copies thereof enclosed in sealed
11 envelopes addressed as follows:

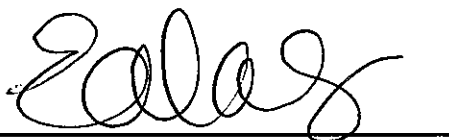
12 David N. Tarlow, Esq.
13 Coggan & Tarlow
14 1925 Century Park East, Suite 2320
15 Los Angeles, Ca 90067
16 *Attorney for Plaintiff, Howard K. Stern*

17 **BY OVERNIGHT MAIL (GOLDEN STATE)** - I caused such envelope(s) to be
18 deposited at a station designated for collection and processing of envelopes and packages for
19 overnight delivery service by GOLDEN STATE. I am readily familiar with the firm's practice
20 of collection and processing of documents and other papers to be sent by overnight delivery
21 service by GOLDEN STATE. Pursuant to that business practice, envelopes in the ordinary
22 course of business are that same day picked up at the front desk by such overnight delivery
23 service to receive documents in an envelope or package with delivery fees paid or provided for.

24 **ELECTRONIC MAIL**

25 (State) -- I declare under penalty of perjury under the laws of the State of California that the
26 above is true and correct.

27 Executed on **March 17, 2009**, at Los Angeles, California.

28 

Evelyn Alas, Declarant

DEF313