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MARCH 18, 2016

3:56pm PT by Eriq Gardner

Hulk Hogan Gets \$115M Verdict Against Gawker at Sex Tape Trial



Scott Keeler/The Tampa Bay Times via AP, Pool, File



The outcome comes after two weeks of testimony in a first-of-its-kind case where discussions of newsworthiness and decency dominated.

Weighing free speech against privacy, a Florida jury has decided to uphold the sanctity of the latter by turning in a \$115 million verdict against *Gawker* over its 2012 posting of a Hulk Hogan sex tape.

Hogan brought the case three years ago after *Gawker*, a 13-year-old digital news site founded by Nick Denton, an entrepreneur with an allergy to celebrity privacy, published a video the wrestler claimed was secretly recorded. The sex tape was sensational, showing Hogan — whose real name is Terry Bollea

— engaged in sexual intercourse with Heather Cole, the then-wife of his best friend, Tampa-area radio shock jock Bubba the Love Sponge (real name: Todd Alan Clem). *Gawker's* posting of the Hogan sex tape was accompanied by an essay from then-editor-in-chief A.J. Daulerio about celebrity sex and a vivid play-by-play of the encounter between Hogan and Cole.

In an era when digital networks have reshaped culture, raising tough questions about sharing and prying in society, the jury got to hear two weeks of testimony in a first-of-its-kind sex tape case where discussions of newsworthiness and decency dominated.

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Hulk Hogan Wins \$115M in Sex-Tape Lawsuit, Internet Weighs In



Hogan, the first to take the witness stand, attempted to separate his public persona from his true and private self. "It's turned my world upside down," he testified about *Gawker's* posting. His many interviews with press outlets, some addressing his sexual boasts and endeavors, became the subject of a heated cross-examination. "The person sitting here under oath is Terry Bollea, and I don't lie under oath," said Hogan.

His attorneys also played depositions conducted with Denton and *Gawker* staffers, who had to explain tasteless jokes and their boundary-pushing philosophies on what's appropriate to publish. "I believe in total freedom and information transparency," said Denton. "I'm an extremist when it comes to that." Many of those same *Gawker* hands later took the witness stand to put their journalism in a more flattering light, although Daulerio admitted Hulk Hogan's penis isn't newsworthy.

The trial also featured less salacious elements, with experts delving into the media business through discussion of digital marketing and web analytics. One of Hogan's experts testified the benefit to *Gawker* from the sex tape was \$15 million, while another, on behalf of the defendant, told the jury it was just \$11,000.

The mysterious background of the sex tape was explored by *Gawker*. Who knew a taping was happening? Was it a publicity stunt? Were there really secrets? But *Gawker* couldn't get Clem,

whom they desperately wanted on the witness stand, to address conflicting accounts of who knew about the taping. Nor could they discuss many of the racist comments that Hogan had made during his sexual encounter with Cole to set up a possible argument that Hogan had an ulterior motive for the lawsuit.

A Florida appeals court ordered the unsealing of court records — including text messages between Hogan and Bubba, Bubba's deposition testimony, what the FBI was told during its investigation, and a \$5,000 settlement agreement between Hogan and Bubba — but none of that made it into the trial thanks to Florida Circuit Judge Pamela Campbell's pretrial rulings that strongly favored Hogan. No part of the actual sex tape itself — including the excerpts published by *Gawker* — was shown to the jurors.

Nevertheless, the trial — which resembled the Scopes trial insofar as the amount of publicity attracted by a case centered on free speech and concerns about morality — provoked a discussion of ethics and boundaries in media like no other. One journalism professor, acting as an expert for Hogan, introduced his "Cheerios test" — whether readers could digest their breakfast when reading — with Hogan's attorneys bringing up Caitlyn Jenner, Madonna, Magic Johnson and others to probe whether it mattered if a celebrity injects their personal life into the public arena. Even Thomas Jefferson's name came up, with that same witness, Mike Foley, agreeing that it was good that the media speaks in different voices. "That was the original concept by Thomas Jefferson," said Foley, referring to the First Amendment.

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Ultimately, the case became a battle — at least indirectly — between the First Amendment, guaranteeing free speech and a free press, and the Fourteenth Amendment, where courts have determined that a right to privacy derives under equal protection of life, liberty and property. Like many states, Florida has enacted statutes that guard against intrusions on seclusion and privacy of communications. Hogan also won on his right of

Hulk Hogan Gets \$115M Verdict Against Gawker at Sex Tape Trial - Hollywood Reporter
publicity claim.

"Do you think the media can do whatever they want?" asked Hogan's attorney Ken Turkel in closing arguments.

"We don't need the First Amendment to protect what's popular," responded *Gawker* attorney Michael Sullivan in his own closing. "We need a First Amendment to protect what's controversial."

"This is not about political speech," rebutted Turkel to the jury. "This case is unique. ... You're not going to condemn someone's right to engage in speech. You're balancing the right to make the speech versus privacy rights."

In reaching its verdict, the jury tipped that scale toward privacy. Hogan sobbed, and after the outcome became clear, appeared relieved more than happy. The court will reconvene next week where the judge could decide to award punitive damages to Hogan.

A stunned-looking Nick Denton watched from the gallery and took a deep breath. *Gawker* has already indicated it will appeal. The focus of the coming proceedings will likely be whether the First Amendment should have precluded claims and whether *Gawker* got a fair trial.

Denton delivered a statement in response to the verdict. "Given key evidence and the most important witness were both improperly withheld from this jury, we all knew the appeals court will need to resolve the case," he said. "I want to thank our lawyers for their outstanding work and am confident that we would have prevailed at trial if we had been allowed to present the full case to the jury. That's why we feel very positive about the appeal that we have already begun preparing, as we expect to win this case ultimately."

Hogan's legal team hailed the outcome: "We're exceptionally happy with the verdict. We think it represents a statement as to the public's disgust with the invasion of privacy disguised as journalism. The verdict says no more."

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Gawker Trial: Editor Admits Hulk Hogan's Penis Isn't Newsworthy



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

THOMAS G. BRUTON
CLERK

CASE NUMBER _____

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THOMAS G. BRUTON, Clerk

By: *Amanda Fisher*
Deputy Clerk

UNITED STATES DISTRICT COURT

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DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

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December 8, 2015

The Honorable Cameron McGowan Currie
Senior United States District Judge
901 Richland Street
Columbia, South Carolina 29201

RE: Seward v Riddle
C/A: 3:12-cv-3103 CMC

Dear Judge Currie:

Please find enclosed a letter I received from the plaintiff in the above captioned matter. I am forwarding this letter to you for your review and information, as this case was assigned to your docket.

With kind regards, I am

Sincerely,



David C. Norton
United States District Judge

DCN:egr

cc: ✓ Keith Seward

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
WWW.CA4.USCOURTS.GOV

PATRICIA S. CONNOR
CLERK

TELEPHONE
(804) 916-2700

March 15, 2016

Keith Seward
Apt. 125
3111 Two Notch Road
Columbia, SC 29204

Re: Correspondence

Dear Mr. Seward:

This acknowledges receipt by this court of your document. Please be advised that this court has jurisdiction over matters appealed from federal district courts within our circuit, original proceedings arising from federal district courts within our circuit, and appeals from certain agencies. A search of our docket does not reveal a pending matter to which your document might attach. Accordingly, the court is without jurisdiction to act.

Yours truly,

/s/Margaret Thomas
Deputy Clerk

... that whenever any form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

The Declaration of Independence and The Constitution of The United States.
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