

EXHIBIT D

Nick Denton

Hulk v. Gawker, the story so far



Nick Denton
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I was supposed to be on the stand this week, down in St Petersburg, Florida, giving testimony in a dispute with a local and global celebrity, the wrestler and reality star, Hulk Hogan.

The trial is delayed, while Gawker's lawyers pursue a lead about a suspicious audio track. More on that later, but this unexpected interlude provides the opportunity to take stock of the story — and the case — so far.

The initial story by A.J. Daulerio on Gawker in 2012 introduced a recording of an evening including Hulk, a shock jock called Bubba The Love Sponge who was the host of the evening in question, and Bubba's wife Heather, who had "relentlessly" pursued the wrestling star.

The second act, which has just concluded, has revealed the arguments on both sides: Hulk's team maintains his rights of privacy and publicity were violated; Gawker that the wrestling and reality star had himself made the tape newsworthy.

There will be a third act which we believe will center on the real story: the additional recordings held by the FBI, the information in them that is Hulk Hogan's real secret, and irregularities in the recordings which indicate some sort of cover-up. In the way of so many news stories, the deeper you go, the more interesting it gets.

(A side-note: this prediction is based on court filings, existing press reports and publicly available information. Our external lawyers and in-house counsel are severely limited in what they can tell me.)

In the meantime, during this interval between the second and third acts, here's an account conveyed through quotes from journalists, legal experts and protagonists in the dispute. I've tried to include some commentary too from habitual critics of Gawker, and Hulk's lawyers and surrogates, for at least some balance. Headlines are mine.

Gawker's editorial mission

Tommy Craggs, Executive Editor of Gawker Media, speaking to Vice

“There’s a learned passivity in the media surrounding anything that might find its way into court... If a reporter thinks [something] is true, and there is evidence to support that to the reporter’s satisfaction, then there is no earthly reason why it shouldn’t be out there. That is the entire philosophy of this company.”

Profile of Heather Dietrick in Above The Law

Dietrick has been at Gawker for a little more than two years. She had the wonderfully well-rounded résumé you’d expect from the GC of a company like Gawker: she previously worked in-house at Hearst, clerked in the Eastern District of New York, and practiced intellectual-property and media law at two firms (Goodwin Procter and Heller Ehrman). She holds both a JD and an MBA from the University of Michigan — and it’s good that she has some business background, because in a company reorganization last December, Denton promoted Dietrick to serve as president as well as GC of Gawker. She now divides her time between legal and non-legal matters.

When I spoke with her last week, though, Dietrick did not seem stressed. Sporting an elegant black blouse and impressively full, white A-line skirt, which she smoothed over her crossed legs from time to time during our conversation, she seemed calm and confident...

“I believe in this story,” she said. “At Gawker, we stand by our stories when we believe in them. That’s fundamental to what journalists do. There are lots of stories based on information that someone doesn’t want out there but that it’s important to have it out there.” According to Dietrick, who describes herself on the Gawker website as “a fast walker and a fierce defender of the First Amendment,” this mission is what makes Gawker so great.

Nick Denton on Gawker's modus operandi (NYT)

“We’re talking about a central issue of our time, which is the proliferation of marketing. We are being bombarded by marketing all of the time — marketing and self-promoters, people who wake up in the morning and get into character, whether

they are Captain America or Hulk Hogan. If you want to be in the marketing haze, then be in the haze. But the Internet does give you the ability right now to go to Gawker and to find out what really happened.”

Gawker has evolved since its early days as tormentor of the Manhattan media elite. But Mr. Denton sees a thread through the years, and across Gawker’s disparate network of blogs. “Whatever information we have, whatever insight we have, whatever knowledge we have, our impulse is to share it as quickly as possible, and sometimes with as little thought as possible,” he told me after we had settled into a small conference room. “Before you can think about it too much, just put it out there, just share it out there. I think that’s the essence of who we are.”

Gawker Media CEO Nick Denton discusses Hulk Hogan’s sex tape, their pending trial, and more on Reliable Sources

There are too many people in the media who make calculations. I can understand what they do, but they make cautious, conservative financial and reputational calculations that often result in good stories not seeing the light of day. And they settle cases. They settle cases like this one, even when they know that they’re in the right. We are independently owned, and we can afford to stand up for the principles of good journalism... We can afford to bear the risks. We have a higher tolerance for risk than most organizations. Being independently owned, we can make those calls. And as far as business goes, to have a reputation for putting out the real story, despite the risks, that is a rare, that is a rare thing in the modern world, in the modern media world. So I’m confident that this reputation that we have built, and that we continue to build, will pay off in the longer term.

Taking responsibility (Hollywood Reporter)

As Denton prepares to defend a brand of journalism that he believes is free of corporate influence and the spin of publicists, he’s speaking out about how celebrities should know better. Asked what would happen if he had the chance to sit down with Hogan, Denton says he’d tell his nemesis, “I take no pleasure in your embarrassment, but this was a story we had to write: It was true and it was interesting. You let the genie out of the bottle; you boasted about your sexual conquests endlessly. And you took up a celebrity perk — an invitation to have sex with a fan’s wife — without thinking through the consequences. We take responsibility for our journalists’ words and actions; take responsibility for yours.”

A changing media culture (Amanda Hess in Slate)

Over the past several years, Gawker's journalists have largely absorbed the societal shift in regards to celebrity skin, no court order necessary. They even deserve some credit for precipitating the change. When a sex tape featuring Playmate Kendra Wilkinson was released against her will in 2010, Gawker's women's site Jezebel had her back. As Gawker's bloggers evolved into reporters, their proximity to the underbelly of the Internet helped them break important stories about online sexual exploitation and harassment. And when the 2014 celebrity hack broke, Gawker didn't publish a pic. Instead, Deadspin launched an investigation into who was responsible for the hack, Valleywag demystified Apple's security failures, and Jezebel critically analyzed the incident as a massive act of bullying against a group of women publicly humiliated for their success.

A blog network that earned notoriety in part for exalting in leaked nudes had become the Internet's conscience. It kind of always has been: Every time Gawker found a strange new artifact from some corner of the Internet and threw it on the site, it forced the rest of us to begin to consider which elements of this new online culture felt fair and which smelled foul, until something like values emerged. Now they have. Which is why we can feel icky that the Hogan tape landed on the Internet, and just a little bit grateful that Gawker was free to put it there.

Despite Hulk of a lawsuit, financials show Gawker making money, moves. (New York Observer)

"With the possibility of an initial judgment against Gawker Media at the forthcoming trial in Florida, there's been interest in the company's underlying financial health," Mr. Denton said in a statement. "Our journalists and I stand for open discussion of true and interesting stories, and our finances have become part of the story. So we intend to be open about them, both in the media and in the St. Petersburg courtroom. I am as proud of our business track record as I am of our writers' reputation for journalistic boldness."

Gawker dodges potentially deadly Hulk Hogan lawsuit — for now (New York Post)

Although the trial is delayed, Denton's lawyers, it was learned, were trying to quash that the company is incorporated in the well-known tax haven of the Cayman Islands. His lawyers worried that such information would be used to inflame the Florida jury about foreign owners.

Denton defends the incorporation status. “There is no reason, as a small-sized company, that we should not take advantage of the same laws as large companies so we are not taxed doubly,” he said.

His lawyers also did not want the jury to hear that he had set up offices in Hungary as well. Denton explained that his mother’s family is Hungarian. “It’s a very natural place for us to do business,” he maintained. He said about 40 of Gawker’s 268 employees are there.

Jeff John Roberts in Fortune

The case is important not only because Hogan wants \$100 million, which could ruin Gawker, but also because it highlights how Gawker is alone among new media companies in waging the sort of public interest legal fights that were once second nature for traditional media.

The legal background is complicated, but the gist of it is that Gawker would likely win the case—but for the fact the trial is taking place in Hogan’s hometown, and in front of jurors who are unlikely to look kindly on New York-based Gawker and its Oxford-educated founder, Nick Denton.

Denton’s doughty attitude to legal threats (which Gawker also showed while exposing the crack-smoking mayor of Toronto) is similar to what newspapers and traditional media have long displayed. As Adam Liptak has explained, these older media companies financed many of the major free speech fights of the 20th century; they saw paying for litigation as part of their business model, and as a public duty.

All of this is why Gawker’s fight with Hulk Hogan, despite the sleazy subject matter, should attract the support of media companies and free speech advocates everywhere. Gawker is the only one among a new generation of media companies that appears ready to stand its ground in the face of legal threats; if it loses, there may soon be no one else who is willing to do so.

Gawker’s moment of truth

[Denton] has probably done more than any individual to loosen up the mainstream media. His various websites have stood for nothing if not the proposition that decorum should never stand in the way of entertaining readers. By Gawker’s

definition, if it's interesting, it's news. As Mr. Denton himself has put it, what journalists put in their stories is inherently less interesting than what they say after work.

It's surprising that the suit has gone this far, given the wide berth that judges have historically granted the news media when it comes to covering the lives of public figures.

People at Gawker tend to talk about "the Hogan case" in apocalyptic terms, suggesting that it could very well bring down Mr. Denton's entire empire. Of course, hyperbole is baked into the company's identity. The goal has always been to draw notice, which means framing everything in the most extreme manner possible. Even when the subject is the future of Gawker.

It's an especially pertinent issue for Gawker, a company whose identity is bound up in a particular voice and worldview. You can call it an unwavering commitment to truth-telling — or, less generously, a relentless cynicism. Either way, the Gawker sensibility that helped set the tone for an earlier generation of Internet journalism no longer really squares with the prevailing spirit of positivity on social media networks like Facebook. The Gawker writer Tom Scocca called this ethos "smarm" in a withering essay in late 2013: "Smarm aspires to smother opposition or criticism, to cover everything over with an artificial, oily gloss."

Gawker's Nick Denton: 'We are not part of your PR marketing machine' (Jane Martinson profile in The Guardian)

When we first met as young reporters on the Financial Times, he had already won a reputation for being a brilliant if somewhat unforgiving journalist – the subs dubbed him the "mad Magyar" when he came back from being a stringer in Hungary. He was possibly the last person anyone would have picked as the future head of a site which outs celebrities and publishes sex tapes involving a 62-year-old wrestler. And yet Denton always loved gossipy details, as with his obvious joy at discovering that Barings rogue trader Nick Leeson used superman as his computer password. "Gawker is a reflection of part of me," he says now. "Gossip is the first draft of news." Or, as he said when he first set up Gawker, journalists tell the best stories in the bar after work rather than in the paper. Friend and former FT colleague John Gapper compares him to Rupert Murdoch: "At heart he's a great traditionalist. Like Murdoch, he loves a great story."

The media debate

Eriq Gardner in Hollywood Reporter on the battle over coverage between entertainment stars and the journalists that cover them

Hogan's battle represents the latest strife in the escalating tension between the media and celebrities. As news outlets expand their reach through social media, public figures are finding it more difficult to escape the sometimes unflattering spotlight. More than 2.5 million people watched the Hogan sex video online. Gawker's story was published alongside an essay about why everyone likes to watch celebrities have sex, which Denton believes adds to its newsworthiness. But Hogan's team is preparing to call a professor of journalism at the University of Florida to testify that the video itself didn't need to be posted and fails the "Cheerios test," playing badly for readers eating breakfast.

Maria Bustillos on the original story by AJ Daulerio, then EIC of Gawker

Daulerio's commentary on the original "highlights reel" is witty and entertaining, and worth reading most of all for his penetrating observations on the ordinariness and vulnerability of celebrities. The excerpted video is the springboard for a broader examination of our complicatedly voyeuristic celebrity-obsessed society.

The newsworthiness of the story (Capital New York)

The case has its roots in an Oct. 4, 2012 post written by Gawker's then-editor A.J. Daulerio about Hogan's 2006 sex tape. By the time Daulerio published the post, it had been seven months since TMZ broke the news about the existence of the sex tape and more than five months since gossip website The Dirty had published grainy screenshots from the video.

Hogan is certainly a very public person, having written two memoirs and starred in the reality show, "Hogan Knows Best." He has been particularly open about his sex life. During various appearances on both Bubba's radio show and Howard Stern's radio show, he has discussed: his erection, the size of his penis, where he prefers to ejaculate during sex, how he uses his mustache during sex, the way his wife pleasures him in the car, his penchant for rough sex, and more.

With the sex tape, though, Gawker did expose some lies. After the video had been recorded in 2006, but before Gawker published its post in 2012, Hogan had said in an interview that he would never sleep with Clem. Once screenshots of the video were published in early 2012, many speculated online that Bubba had set up the cameras in order to catch Hogan and Clem cheating. Gawker's publication of excerpts of the sex tape, which revealed that Bubba had encouraged Hogan and Clem to have sex, refuted both of these false narratives.

Hogan's original lie about sex with Bubba's wife (CNN)

During a 2011 interview with Stern, Hogan said flatly that he would never have sex with Heather Clem. "Man law, brother," Hogan told Stern. "Even if they were divorced for 10 years." In the same interview, Hogan opened up about the sexual chemistry with his wife.

Disproves a public lie (Farhad Manjoo of NYT — on Twitter)

This really seems like an obvious basis for publication. It's news, it disproves a public lie. Hogan had regularly discussed his sex life and this incident in particular. Seems worthy of celebrity journalism to point out a clear lie.

Hulk Hogan All-American Liar (Vice)

Hulk Hogan lies. All pro wrestlers lie, of course, and pro wrestling is a lie, but Hulk Hogan is a liar's liar. He's said he was nearly Metallica's bassist and that he had to shoot on (read: beat up for real) Japanese wrestler Tatsumi Fujinami to save the WWE title. His re-telling of his iconic match with Andre the Giant at Wrestlemania III is rife with obvious, gratuitous, easily disproved lies—Andre was 600 pounds, Hogan didn't know if Andre would let him win, Andre died days later.

Gawker makes no moral judgment, says Heather Dietrick (FOX News)

"Here is this tape of this guy having sex with another man's wife, with his blessings. No judgment from us...Gawker doesn't care what you do in regard to that. But people should be able to know and make their own decisions as to what is going on in the whole world."

Quotes from Danielle Citron, University of Maryland law professor and author of the book *Hate Crimes in Cyberspace* (Fusion)

“Of course, journalists can write that it was made but the video itself isn’t newsworthy. We don’t need to see the video. It’s a sacred invasion of privacy and humiliating and exposing...It was a big mistake and [Gawker is] sticking by it because they made it.”

Do you need to see to believe? (Mashable)

“Seeing the video tape of someone having sex is very different from journalists writing about it...If Gawker successfully argues that publishing the video was necessary, then Citron says the “end implication” is that “there’s no privacy in anything, which I don’t think we’re prepared as a society to say.”

Gawker could counter by essentially saying that “seeing is believing,” Eric Goldman, an Internet law professor at Santa Clara University, told Mashable. Without the video, Gawker could argue that readers would say the outlet misinterpreted its contents, or that it was making up details.

A rare statement from David Houston, Hogan’s closest attorney and adviser (Hollywood Reporter)

For Denton, who founded Gawker in 2003, the trial represents perhaps the most significant risk to his company. He settled a suit over an Eric Dane-Rebecca Gayheart sex tape that Gawker posted, but he says he found Hogan’s demands unreasonable. (Neither side will say what Hogan wanted.) Now, the fate of his company could be in the hands of Florida jurors who will be told that Google searches for “Gawker” reached a historic high around the time of the Hogan sex tape story. “It is time to put an end to the immoral bullies who use the First Amendment as a means to destroy privacy and decency,” says David Houston, a Hogan attorney.

Gawker should pay for free speech (Michael Wolff in USA Today)

Until, that is, the Internet, which is able to operate without responsibility or costs. Neither Google nor Facebook, regarded as more like telephone lines than publishers, are legally accountable for their invasions and defamations. And the cruelest and

vilest words are usually uttered by people who don't have enough money to make it worth suing them.

But Gawker Media, with its flagship site Gawker, the news, gossip and bile blog, has made quite a success out of gratuitous and ad hominem attacks. And now it is in tenacious litigation with wrestler and reality TV personality Hulk Hogan for violating his privacy over a sex tape that Gawker edited and posted. While this suit is the kind that will likely be defeated on constitutional grounds, it is also true that you need to be richer than Gawker to adequately defend against a plaintiff like Hogan, who is righteous enough and stubborn enough not to settle.

Still, if Hulk Hogan were to win his suit before the Florida jury, demonstrating the financial risks of indiscriminate speech, and that decision is eventually reversed by a higher court, reaffirming the ultimate principle of free expression, that might offer a sort of balance, albeit sacrificing Gawker, but to the regret of few.

Most great stories are based on unauthorized disclosure of information (Heather Dietrick to CNN)

"It's difficult to think of a huge news story about a celebrity or a politician or someone people care about that didn't involve some information that that person did not want disclosed...That's the job of a journalist."

The gap between reality and perception, that's where the interest lies (Heather Dietrick to Business Insider)

"We think that a jury will understand that it's the journalist's role to clarify when misinformation exists about a widely reported topic and to close the gap between a celebrity's marketed version of a story and reality."

Gawker Argues Publishing Hulk Hogan's Sex Tape Was Simply 'Good Journalism'
(Michael Calderone in Huffington Post)

It's easy to get bogged down in the salaciousness of the content. But Denton and Gawker's defense team want jurors to conclude that publishing an edited clip of the 30-minute sex tape falls in line with what journalists do every day: provide verifiable information in response to rumors and reveal contradictions related to a celebrity's public claims... "Others used screenshots, and in that muck and confusion,

lies and rumors and speculation proliferated...We wrote a story which did not simply add another rumor to an already large pile of rumors, but actually sorted through those rumors and tried to establish some truth. That is the definition of good journalism, whatever you think about the subject matter."

Talk and let talk (Nick Denton to Reason)

"Hulk and Bubba have aired the wrestler's sex life on talk radio...The way they talk about women seems disrespectful, but it's a free country. But—especially when revealing information leaks out—Gawker writers and readers also have a right to their own conversation on the same subject."

What would I do if sex pics leaked? I already had an exercise in that kind of crisis management! (Nick Denton to BuzzFeed)

"In the modern world, if you're in the public eye and you've opened the door yourself, and I've opened the door myself to pretty much any discussion of my life, really, you have to own it...You have to own up to it and do it with as much grace as you can. Just don't fight it... (Hulk Hogan) wants to talk about his sex life but no one else is allowed to. You don't get to do that in this country."

Dude, you're a celebrity (Nick Denton in The Daily Beast)

Putting aside any First Amendment arguments, the common-sense arguments are pretty clear. 'Dude, you're a celebrity. That's comes with a price. And part of that price is you've got to be discreet. Generally it's good to be discreet if you're fucking around, but especially if you're a celebrity."

Citing public comments, many of them graphic, that Hogan has made about his sex life during media appearances, Denton continues: "If you can't even remember if you slept with Heather Clem [Hogan's video sex partner] or not because there were so many brunettes that year, in the Internet Age you might once in a while have something come out if you're going to be that indiscriminate in the pursuit of your celebrity perks."

Taiwanese animators get hold of the story

The legal issues: a free press v. advocates of internet privacy

Ed Krayewski in Reason Magazine

If successful, Hogan's suit could be financially ruinous to Gawker. But the case has larger implications for free speech as well. Indeed, it could have serious chilling effects on other news outlets that report unfavorably on celebrities and pseudo-celebrities obsessed with image management while setting a poor precedent on the use of privacy claims to squash reporting on public figures.

On the most basic level, this is a case about Gawker, an independent media company, fighting for its life. But it's also a case about the First Amendment and the right of the press to publish ideas, information, and images that the public wants to read.

At its core, the dispute between Gawker and Hogan is about competing visions of fundamental rights—a nearly unbridled right to free speech (at least theoretically) and a free press vs. the right more and more public figures are asserting to choose which parts of the lives they have made public can be reported on and how.

Charles Harder, Hulk Hogan's attorney, says public's morbid curiosity does not amount to public concern (Huffington Post)

"The video is private...It does not become a 'public concern' just because Gawker and Denton want to play it (and profit from it) or because it might appeal to the morbid curiosity of a segment of the population. If that were the test, then no one would have privacy, so long as certain people have an interest in watching them naked or having sex."

Charles Harder says Florida statute on video voyeurism trumps constitutional protection for free press and free expression (CNN)

"The First Amendment has limitations... In Florida, it is a crime of video voyeurism to film someone naked without their permission, or to publish that footage. Doing so is against the law and not protected by the First Amendment."

Who knew that professional wrestlers could be so sensitive? And that their antics could have potentially grave First Amendment implications? (Jane E Kirtley, Silha Professor of Media Ethics and Law at University of Minnesota)

Gawker generally revels in controversy and seems to especially relish acquiring contraband videotapes of celebrities misbehaving. For example, Gawker reporters made several attempts in 2013 and 2014 to purchase recordings allegedly showing Toronto mayor Rob Ford smoking crack cocaine. But in these instances, as with the Hogan tape, no one has accused Gawker of making or inducing someone else to make the illicit recordings. Under US Supreme Court precedent, if they did nothing illegal to obtain the tapes, publication would be protected by the First Amendment, provided the contents are a matter of public interest and concern.

In this case, of course, Hogan isn't suing for libel. He couldn't, because there is no dispute that the tape is genuine. Truthful speech, no matter how offensive, cannot be the basis for a defamation suit. Here Hogan is arguing that intimate facts about his private life were made public in a way that would be highly offensive to a reasonable person.

Jurors are likely to identify with the plaintiff, on a very visceral level. They wouldn't want a tape of themselves to be posted online, and they could agree that Hogan shouldn't have to put up with it, either. A ruling for Hogan could send a strong message that online sites should be very wary of posting videos of celebrities misbehaving, even if they think the content is newsworthy.

A bonus item. Rob Ford, the crack-smoking mayor of Toronto, himself exposed by a Gawker scoop in 2013, arm-wrestling with Hulk Hogan.



Michael McCann of The University of New Hampshire, for Sports Illustrated

Although jurors are hard to predict, Gawker appears well positioned to prevail in the trial. Gawker's strongest argument is that the First Amendment protects media companies in the reporting of news and that courts have broadly defined what counts as "newsworthy" and "of legitimate public concern." The First Amendment safeguards our open society and allows media to report on stories that some would prefer be kept confidential.

News stories, moreover, do not have to be about weighty topics to be accorded First Amendment protection. Stories about celebrities and—yes—athletes are as protected by the First Amendment as are stories about international affairs and policy reforms. Along those lines, while critics of Gawker might dismiss it as a gossip website, for purposes of the law Gawker is clearly a media company engaged in the distribution and commentary of news items. This was apparent in Gawker's 2012 post that featured the sex tape. While the embedded video of Hogan having sex surely drew Internet traffic, the accompanying post featured a 1,400-word commentary about the video and what it signifies.

Gawker is thus distinguishable from entertainment companies that have lost "sex tape" lawsuits. In 1998, Poison lead singer Bret Michaels defeated Internet Entertainment Group Inc. in a case involving a sex tape of Michaels and Baywatch