

**EXHIBIT D to
Plaintiff's Notice that Action is Still at Issue and
Motion to Set Cause for Trial**

The price of free journalism



Nick Denton
6/12/15 9:52am

The free press is prized in theory, constitutionally protected in this country and elsewhere because of its value to society — and unpopular with public figures who are exposed or embarrassed by its work. As a business, media carries the usual risks, vulnerable to recession and changes in technology, and a special danger, which Gawker Media is now facing.

The Hogan lawsuit — which concerns a true but embarrassing story published by Gawker in 2012, and a swingers' circle in the wrestler's home town a few years before — is actually coming to trial, probably on July 6th. We win the argument eventually, but in the first round, the celebrity has a home-court advantage.



Why Hulk Hogan Is Likely to Lose Sex Tape Lawsuit Against Gawker (Analysis)

The former wrestler and TV reality star hasn't shown off any good legal moves in this case.

As I said to Peter Sterne of Capital: *I have a simple editorial litmus test, which is: is it true, and is it interesting? The interest in is in proportion to the gap between the story that a brand or a celebrity brand is telling and the reality. The more the gap, the more interesting it is. Here, there was a gap between [Hogan's] rather boastful sexual persona that was on display in these radio interviews and elsewhere and the real story, which made it interesting.*



Gawker in the fight of its life with Hulk Hogan sex-tape suit

These cases are almost always settled, even if the law and the truth are on the side of the journalist as they are in this instance. To confirm the primacy of the First Amendment can take years and millions of dollars. Even the outside chance of a defeat in the first round is an unbearable risk.

I should make it clear: we would have settled too, in the interest of fighting another day, if Hogan's demands were reasonable and the story flawed in any way. But now that the trial is on, we intend to fight it as far as we need to and we can.

I told the company all-hands last week, in an average year, the chance of disaster, some conjunction of events that would compromise the company's independence and journalistic purpose, is about 1 in 50. I'm going to reuse a phrase from that meeting. We are currently at *heightened risk levels*. If you want a number: internally, we reckon about 1 in 10.

Being a tight community of free writers, independent as a company and committed to putting out the real story, Gawker Media can bear a higher level of uncertainty than most. I believe it's more likely than not we emerge tested and stronger, clear in our responsibility to readers and the values of our writers' profession. Without someone actually having the gumption to fight these cases, journalists might as well resign themselves to a role as liaisons for PR people and stenographers for celebrities.

BOLLEA 006868

In the interview in Capital New York, which went up this morning, Heather Dietrick of Gawker said: *“Once you see that that topic is a matter of public concern, the law does not allow a judge or the plaintiff or the subject of the story to come along with a red pen and say, ‘I didn’t really like the way you said it here. I didn’t like the way you added this source material. I would’ve done this part differently.’ You don’t get a line item veto, basically. The journalist has freedom and the organization has freedom to write about that topic as they see fit.*

This is an opportunity to tell our own story, our own real story, to a wider group of people. They may not be familiar with us. They may have preconceptions about New York media or the internet in general. On the other hand, there’s widespread distrust of the spin put out by celebrities, publicists, and the media they largely control — and an appetite for the real story, the story behind the story, which is Gawker’s specialty.

Heather Dietrick, Gawker’s President and General Counsel, says: *I think as a common-sense matter, they’re going to see that, see what he’s talked about in the past. He’s talked about really, really graphic details of his sex life, again and again and again, including on the shock jock’s show. These are practical people. I think they’re going to see through him and say, ‘Give me a break. Take responsibility for what you did here.’*

Above all, this is an opportunity to reaffirm the legal protection for free expression and the free press, in an age of ubiquitous marketing and spin. I didn’t really want to be this generation’s Larry Flynt, but the law is made by stories like this and cases like this.

This story was not the Pentagon Papers. Most stories aren’t. But it was true and interesting, and clearly within the law. As I told Capital: *The story was a real sober take on a version of events that [Hogan] had been talking about. If you don’t defend that, then what do you defend? You might as well just take the First Amendment and tear it up.*



Graby Sauce ▸ Nick Denton
6/12/15 11:05am

This is the first that I’ve heard Gawker’s rationale that you posted the sex tape because Hogan had talked about his sex life publicly before. I don’t believe the court will buy that argument. We talk about sex, bowel movements, and menstrual cycles, too, but most people don’t think talking about these private acts publicly opens the door to having film of us in our bathrooms on the toilet taking care of business.

‘Give me a break. Take responsibility for what you did here.’

What he did here? He had consensual sex. Does Gawker think he’s Hester Prynne and needs to wear a scarlet letter “A” on his forehead? When did Gawker become adult sex shamers?

You probably will eventually win this case, but as I said then, having the **right** to do something doesn’t mean you **should** do something. Hulk Hogan is a pretty innocuous part of American culture. He didn’t hurt anyone by having consensual sex with a willing adult. He didn’t rape a child. He isn’t a politician trying to take away the right of other consenting adults to have sex. There really was no journalistic reason, no “truth” to out by posting this sex tape.



TheLongtimeLurker ▸ Graby Sauce
6/12/15 11:18am

Excellent points, I never really got their rationale for posting it. Particularly considering Gawker’s subsequent position on the leaked celebrity iCloud pics, I’m not really sure how this adds up.

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