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Gawker's lawyer is proud of Hulk Hogan fight, regrets outing exec

by Jeff John Roberts

@jeffjohnroberts

AUGUST 4, 2015, 2:28 PM EDT



What's it like being Gawker's lawyer? Watch this video of Heather Dietrick discussing Hulk Hogan.

It's been a hell of a month for Heather Dietrick, even by the standards of the mud-slinging, gossip-soaked world of Gawker Media. I caught up with Dietrick, who is the company's general counsel and president, in early July shortly before a slated \$100-million trial over a Hulk Hogan sex tape, and then again after Gawker nearly imploded following an ill-advised story it published about a man seeking to hire a male escort.

Take a minute to watch the short video above, which shows Dietrick narrating the Hogan saga so far. It reveals her as someone who is smart, confident and imposing—and suggests she doesn't think for a second that, despite her relative youth, she might be in over her head.

"It's a story I hold my head high in fighting. We told a real story that cleared a lot up about what was out there. Hogan himself was out there talking in color detail about his sex life again and again and his interaction with women in the bedroom again and again," said Dietrick, explaining why Gawker published a grainy excerpt of a tape showing the wrestler having sex with the then-wife of his friend.

Her point is that celebrities wield a lot of power in society, and many use the media to puff up their fame, but only on their terms. Dietrick believes it's the job of outlets like Gawker to tell celebrity stories the way journalists want to recount them, and the way the public wants to hear them.

But why, in the Hogan case, did this extend to publishing his sex video? Why must Gawker's view of free speech extend to showing people with their clothes off?

Dietrick's answer is that the video serves to prove Gawker's source material. Without it, Hogan could have continued to refute the tape's very existence. Indeed, that's what occurred when Gawker, in another of its major exposés, revealed that the former mayor of Toronto liked to smoke crack; the mayor denied the charge, and threatened to sue Gawker until the police confirmed existence of the tape.

These sort of episodes often involve Gawker going out on a legal limb all alone since most newspapers—which won so many free speech fights in the 20th century—can no longer pay for litigation, and other digital media outlets have yet to take up that torch.

For Dietrick, who always aspired to be a First Amendment lawyer, the Hogan fight is also a career-making case, since losing the wrestler's \$100 million privacy claim could mean Gawker will fold. But for now, things are looking up since the recent leaks of Hogan's racist rants appear to validate the publication's position that publishing its tape excerpt was newsworthy. (The trial has been moved back to September).

Despite the halo from its free-speech crusades, however, Gawker must also wear the stigma of its moral mistakes—including the decision to ruin the life of a married Conde Nast executive by publishing his attempts to buy a male escort. Gawker was pilloried for the story not only because the executive was not a public figure, but because it became complicit in the escort's attempt to blackmail him (the escort had warned the executive he would go to the media unless he tapped his politically-connected brother, and Gawker helped the blackmailing escort—whose identity it concealed—make good on that threat).

“I was extremely uncomfortable with the post as an editorial post,” Dietrick told me last week. “I believe it's a newsworthy story that's legally defensible, though we didn't do the story in a way we want to do going forward.”

She added that she and many others regretted that the story was published, but that she disagreed with owner Nick Denton's decision to take it down, and would have elected instead to add text to the top of it in order to explain the mistake in judgment.

The decision to take down the post triggered a meltdown among the editorial staff, and led a gaggle of writers and editors to leave. But Dietrick, who like many others at Gawker owns shares in the company, says the organization is now "back to calmer waters and business as usual."

Gawker's future is now up in the air as it strains to reinvent itself amidst a rapidly changing and consolidating media field. But, for now, Dietrick is likely to stay busy helping Gawker navigate legal fights that other publications can't or won't take up.



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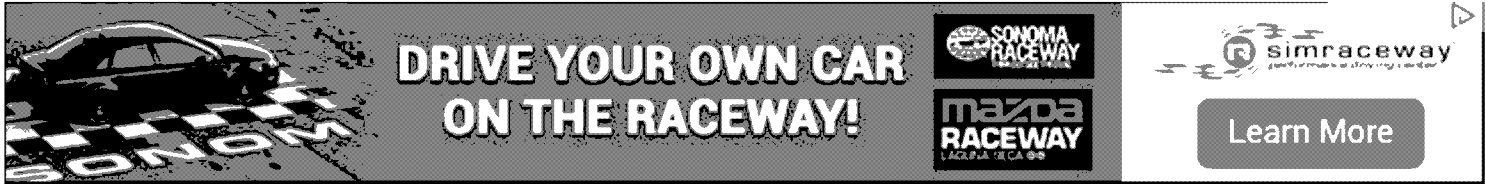
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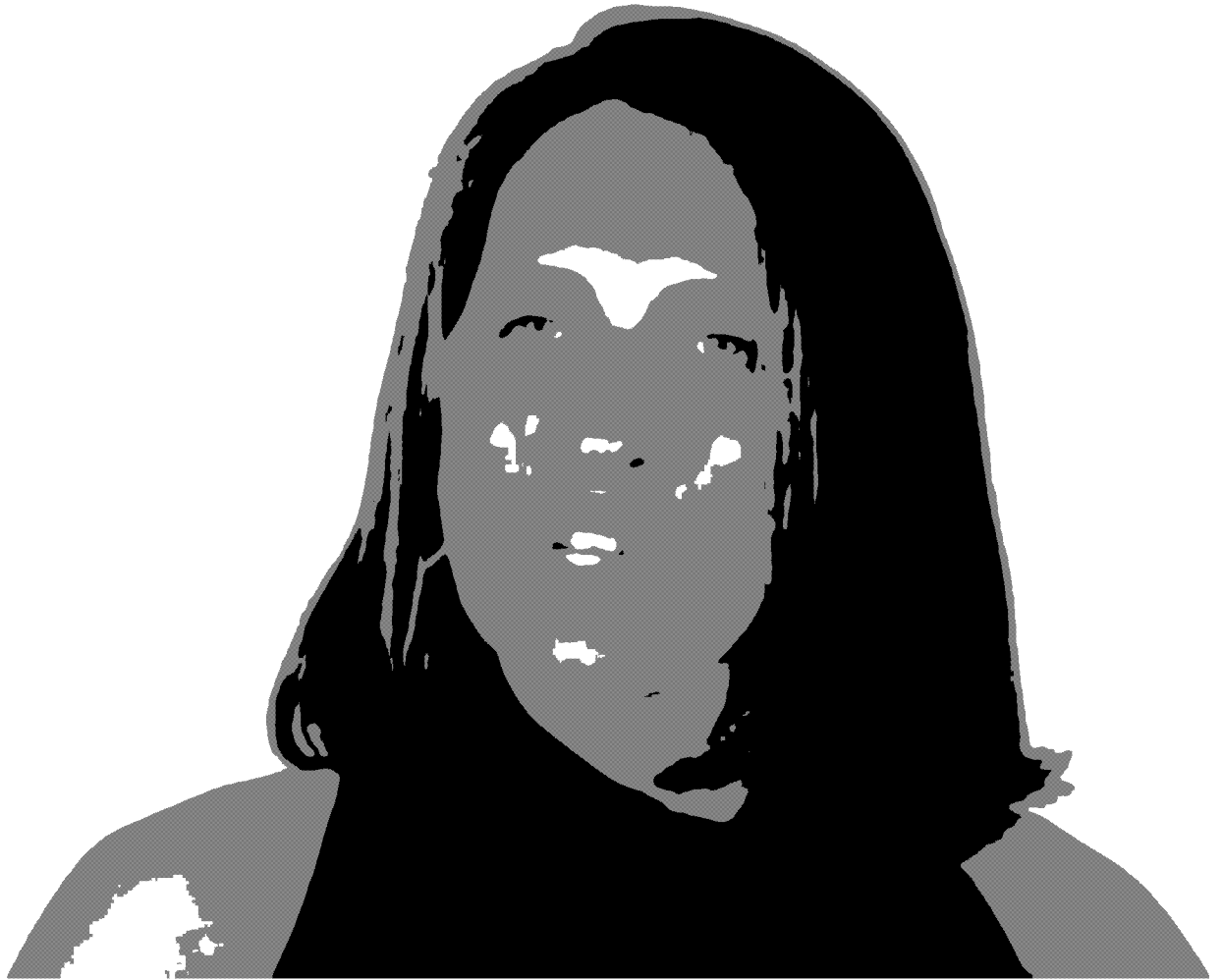
Meet the young, fearless lawyer behind Gawker

by Jeff John Roberts

@jeffjohnroberts

AUGUST 18, 2015, 11:54 AM EDT





Fortune

At the age of 34, Heather Dietrick is general counsel of a controversial media company – and loving every minute of it.

Journalists confront powerful people. When those people strike back, it's good to know a lawyer. That's especially true at Gawker Media, which takes particular glee in publicizing the antics of thin-skinned athletes and politicians.

The journalists at *Gawker*, which also runs *Jezebel* and *Deadspin*, know Heather Dietrick has their backs. As the company's general counsel and president, Dietrick not only vets the sites' stories, but also steps in when angry men (yes, they're usually

men) try to threaten the writers and editors into backing down.

“I knew I wanted to move somewhere that pushed the envelope and Gawker is a natural choice for that,” Dietrick said, explaining why she chose to join a company that has had legal tussles with everyone from wrestler Hulk Hogan to quarterback icon Brett Favre to the crack-smoking ex-mayor of Toronto, Rob Ford.

Dietrick always wanted to fight for the First Amendment and, after obtaining her law degree at the University of Michigan and clerking for a federal judge, she landed a fellowship at Hearst Media, where she stayed on as a lawyer.

“It’s really critical for young lawyers to get their foot in the door in what is a pretty small media law world,” she said, explaining the challenge of breaking into the tight-knit media bar.

Now, at Gawker, she faces the enormous responsibility of regularly making legal decisions whose outcomes can determine the fate of the company. To get an idea of the stakes, consider the \$100 million lawsuit Hulk Hogan is pursuing over Gawker’s decision to publish a short clip of him having sex with the then-wife of his

friend.

Dietrick says she doesn't feel scared in helping Gawker stand up to powerful celebrities. Instead, she says she finds the work "exhilarating," even when the company's controversial editorial decisions lead to turmoil. And she says that being a woman has not made her job any more difficult, though her age—at 34 she is very young for a general counsel—has at times surprised people.

"Being young in this position can sometimes stop people in their tracks, such as when you're in court and fighting for the right to speak," she said. "Being a woman has helped get women's stories out there when pushing the envelope. Internally, our company is a meritocracy so being a woman or young is not such a big deal."

So what tips does Dietrick have for those who want to follow a similar path? Her advice can be summed up in one word: network.

"You hear as a young person starting your career 'network and build your relationships' and you don't really understand why that's going to be meaningful to you," she says. "Then you start seeing much you can learn from people. You take something away in business and personally from everyone you end up networking with."

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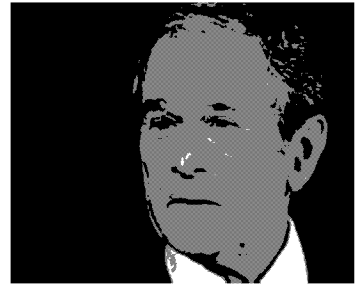
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Gawker president: 'More likely than not' we'll lose Hogan case



Hulk Hogan. (Photo by Evan Agostini/Invision/AP)



By PETER STERNE 5:38 a.m. Oct. 27, 2015

Gawker Media president and general counsel Heather Dietrick thinks that it is "more likely than not" that a jury will find in favor of professional wrestler Hulk Hogan — but also that they'll award him significantly less than the \$100 million he's seeking.

"It's probably difficult to win the case entirely, outright, knowing the jury that we're facing, but it's possible. More likely than not, we end up with a really small judgment that we can easily carry and we appeal that," Dietrick said during a Gawker staff meeting held on Thursday.

Hogan sued Gawker for \$100 million after the company published an excerpt of one of his sex tapes in October 2012 and refused to take it down. A \$100 million judgment in favor of Hogan could bankrupt Gawker, especially since Florida state law generally requires parties appealing a monetary verdict to post a bond for the full amount of that verdict. In other words, Gawker would have to post a \$100 million bond to appeal a \$100 million judgment.

But Dietrick doesn't think the jury will award Hogan anything close to \$100 million. She told POLITICO Media it's likely the judgment will be so small that Gawker would not even bother to appeal the verdict.

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"It's quite possible that Hogan just gets a very small judgment against us, and then we have to make the decision: do we appeal that and incur further fees to vindicate the First Amendment rights that we know we're on the right side of, or do we simply say, OK this very small judgment is a win and makes it very difficult for Hulk Hogan, who's spent a lot of time on pursuing this case and could walk away with something very small," to continue litigating, she said.

If the jury does award Hogan a large judgment, Dietrick said, then Gawker will appeal the ruling to Florida's Second District Court of Appeal. Dietrick expects that the appeals court will side with Gawker and throw out a lower court ruling in favor of Hogan. The court has already ruled on various motions and court orders related to the case eight times; seven of those times, it ruled in favor of Gawker.

"We've already taken this case up on the merits once to the appeals court on the preliminary injunction motion and we got a decision in our favor saying this is protected by the First Amendment, it's a matter of public concern and we wrote properly about this topic. That's the merits of the case. Those are the same issues that we would be taking up at the very end," she said.

As for the bond that Gawker would be required to post, Dietrick said that she expects the court will allow it to post a reduced bond, given the case's significance.

"The rights at stake are so important, not just to this story but to other stories that we do and stories that every news outlet does, that I expect that the appeals court will allow us to appeal, which means allowing a reasonable bond that we're able to post," she said.

Going forward, Gawker is taking steps to decrease its legal risk, reminding employees of the basics of copyright and defamation law and encouraging writers and editors to send risky posts to the legal department for review before publishing.

During Thursday's staff meeting, some editorial staffers asked whether the legal department could exercise a veto over the editorial department, rejecting posts that seemed legally risky.

Executive editor John Cook said that this situation has only occurred once, when he wanted to publish a photo of what appeared to be Justin Bieber's penis.

"The only time this has come up is, I wanted to post Justin Bieber's dick, and Heather thought it was not going to be legally defensible and that there was a high risk that he actually would seek legal action, based on prior indications," Cook said during the meeting. "We had an argument. ... At the end of the day, I don't think I would have

gotten fired for posting Justin Bieber's dick, but I didn't want to damage a relationship with Heather over, like, four million uniques."

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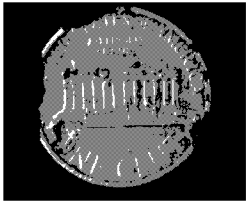
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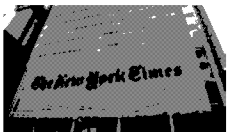
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IN-HOUSE COUNSEL, MEDIA AND JOURNALISM, PRIVACY, TRIALS

The Most Interesting In-House In The World?

By DAVID LAT

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How's this for an in-house lawyer's job description? You advise journalists on the legality of using crowdfunding to raise \$200,000 to buy a video of Toronto mayor Rob Ford smoking crack — in your first month on the job. Over subsequent months, you confront interesting issues involving the First Amendment, freedom of speech, privacy, and intellectual property. Your latest challenge: defending your company as it steps into the ring with Terry Bollea, better known as professional wrestler Hulk Hogan, who's suing your client for the body-slammings sum of \$100 million. The Hulkster claims that his right to privacy was

violated when one of your company's websites posted portions of his sex tape online.

Welcome to the world of Heather Dietrick, president and general counsel of Gawker Media. Who says in-house life is boring?

I met Dietrick last year when I moderated a great panel sponsored by our friends at Betterment about what it's like to work as the general counsel of a startup company. She regaled the audience with entertaining tales about the legal issues she faces as the top lawyer at Gawker Media, publisher of more than half-a-dozen wildly popular, addictive websites that collectively attract around 64 million readers a month.

I thought to myself at the time that Heather Dietrick would be a superb profile subject someday. Then last month, Nick Denton — the founder and CEO of Gawker Media (and my former boss, for the few months I worked at Wonkette before I launched Above the Law nine years ago) — contacted me with a pitch: with Gawker all over the news because of the Hulk Hogan case, which is about to go to trial, why not write about Dietrick and her supervision of the suit?



Heather Dietrick

Great idea. So last week, I sat down with Dietrick at Gawker's offices on Elizabeth Street, a few blocks away from Above the Law's offices. We chatted about her career path, her legal portfolio at Gawker, and, of course, the Hulk Hogan litigation. (Also in the room, but as an unobtrusive presence, was public relations and crisis management guru Davidson Goldin; he has been working with Gawker on press related to Hulkamania.)

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 Dietrick arrived at Gawker, she was the only attorney. Now the company's legal team consists of three lawyers — Dietrick, one colleague who handles litigation matters, one colleague who handles transactional matters — and a paralegal. Gawker Media has around 260 full-time employees, so the legal team is still fairly lean — especially considering the many legal issues generated by running a slew of widely read websites that don't mind generating controversy.

Dietrick spends most of her time on media-law issues, including

defamation and intellectual-property issues. Gawker does use outside counsel for what she described as “heavy lifting,” but many of the standard issues Gawker’s lawyers handle themselves.

One case where Gawker is definitely using outside counsel: the Hulk Hogan lawsuit, currently scheduled for trial before Judge Pamela Campbell down in St. Petersburg, Florida, starting on July 6 and running for two weeks. To handle Hulkamania, Gawker has turned to a team led by Seth Berlin and Alia Smith of Levine Sullivan Koch & Schulz, one of the nation’s top media law firms, and Gregg D. Thomas of Thomas & LoCicero, a prominent Florida lawyer who’s serving as local counsel.

Despite the involvement of many talented outside lawyers in the Hulk Hogan litigation, Dietrick is spearheading the defense and taking a very hands-on role. She’s spending almost all of her time on the case these days, and she will be in St. Petersburg for the duration of the trial. Why isn’t Dietrick taking the GC role of sitting back and letting outside counsel run the show? The high stakes are certainly part of it. The New York Times has called the Hogan lawsuit “Gawker’s moment of truth”, and Capital New York has dubbed it Gawker’s “fight of its life.”



Hulk Hogan

Hulk Hogan is seeking \$100 million in damages. Plaintiffs make over-the-top demands for damages all the time, and as a professional wrestler, Hogan is not one for understatement. But the worst-case scenario, a jury awarding Hogan the full \$100 million, would cripple Gawker. As Denton quipped to the Times, “We don’t keep \$100 million in the bank, no.” As a result, according to Peter Sterne of Capital New York, “[a] loss, and an award of even a fraction of the \$100 million Hogan’s attorneys are seeking, could empty the company’s coffers, forcing Denton to either sell the company outright or to hand much of its equity over to deep-pocketed investors.” (And don’t think that insurance can bail out Gawker; as Dietrick told the Times and confirmed to me, Gawker has exceeded the cap on its insurance in the Hogan case and must now pay out of pocket.)

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.

“This case has been aggressively fought on both sides,” she said, “but we have very strong arguments — as recognized by the federal and state appellate courts that have already ruled in our favor in this case.”

In prior proceedings, a federal judge denied Hogan’s motion for a preliminary injunction to force removal of the sex tape from Gawker. A state judge later issued such an injunction but got reversed on appeal. Most recently, a federal judge ordered the FBI to turn over to Gawker certain evidence related to the bureau’s investigation into Hulk Hogan’s sex tape — evidence that Gawker claims could be important to its defense in the Hogan trial.

But now Gawker is before a jury, not judges — a state-court jury in Pinellas County, Florida, where Hulk Hogan is seen by some as a hometown hero. Does this prospect faze Dietrick?

“There’s always risk in going before a jury,” Dietrick said, “but the jurors don’t need to be First Amendment scholars to see the correctness of our position.”

What is Gawker’s position? Under Florida law, an invasion of privacy claim won’t succeed if the published matter is “newsworthy.” The Florida Supreme Court has declared that this “newsworthiness” defense presents a “formidable obstacle” for a plaintiff claiming a privacy violation. Gawker argues that, as the Times puts it, “Mr. Bollea — or Hulk Hogan — has made his sexual proclivities a matter of public interest by talking about them in ‘exceedingly graphic’ terms on his reality TV show, in his two memoirs and elsewhere, including Howard Stern’s radio show.”

“The newsworthiness claim here is a matter of common sense,” Dietrick said. “Hogan’s sex life was covered in dozens of news reports, from TMZ to the New Zealand Herald to the Christian Post. Hogan himself was out there constantly talking about his sex life. There was a lot of speculation surrounding the sex tape itself, including claims that it was a ‘sting operation’ by Bubba [the Love Sponge Clem, husband of Hogan’s partner on the sex tape, Heather Clem]. Our coverage tried to clarify an ongoing news story.”

I raised to Dietrick a point made by my former colleague Kashmir Hill in a story at *Fusion*: why couldn’t Gawker have written *about* the video without actually publishing the video? As argued by Professor Danielle Citron, author of *Hate Crimes in Cyberspace* ([affiliate link](#)), “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.”

“Video evidence is important and compelling,” Dietrick said. “Take the Rob Ford case. John Cook saw the video and wrote about it, then Ford denied. Once the video surfaced, it couldn’t be denied.”

What about screenshots — wouldn’t those have sufficed here?

“Screenshots were posted by other outlets, but people still didn’t know what was going on,” she responded. “It’s a grainy video. You wouldn’t know without watching the video that Bubba comes in and basically blesses the whole encounter.” Indeed, as explained by *Capital New York*, “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.”

Subjects of media coverage, including celebrities like Hulk Hogan, don’t get to dictate how exactly they are covered, according to Dietrick: “Hulk Hogan was putting himself out there, constantly talking about his sex life. He can’t be doing that and then, when someone calls him out, pull out a red pen and say, ‘Take out this part, cross out that part.’ That’s not how reporting works. Celebrities are free to market themselves, and media outlets are free to call them out.” Dietrick added that Gawker also exercised editorial discretion by whittling down the 30-minute video to about 90 seconds of highlights; it didn’t post the video in its entirety.

Let’s concede that watching the video itself is important for getting to the truth about Hulk Hogan’s sex life. Why do we care about Hulk Hogan’s sex life in the first place? Why is that newsworthy or a matter of public concern?

“This is not the Pentagon Papers,” Dietrick acknowledged. “But the First Amendment allows for many stories. They don’t all have to be government secrets. In this case, Hulk Hogan *created* the story, denying that he would have sex with Heather Clem because it would violate the ‘Bro Code’ with Bubba. The video showed that to be untrue — and also gave the lie to Hulk Hogan’s image as a wholesome all-American icon.”

Dietrick is ready and looking forward to the trial, the first time Gawker has gone to trial in its 12-year history. “I’m confident in our case,” she said, “and I’m looking forward to having the issues sorted out by the

jury.”

I asked her: isn't she worried that a Florida hometown jury might regard Gawker — an irreverent, New York-based website founded by a gay European — with a skeptical eye?

“The jury might look at *Hulk Hogan* with a skeptical eye,” Dietrick said. With his frequent and frank talk about his sex life, he's not exactly a saint. It's also worth noting — even though this wouldn't get before the jury — that Hogan is something of a serial litigant. As noted by Slate:

Hogan is easily aggrieved. When a woman accused him of sexual battery, he sued her; when his ex-wife Linda alleged domestic abuse in her memoir, he sued her; when a series of back surgeries stopped Hogan from inking a last-hurrah wrestling contract, he sued the surgeon; when his auto insurance failed to cover the cost of his tipsy teenage son recklessly driving his sports car into a tree, causing permanent brain damage to a passenger, Hogan sued his insurance company; when that didn't work, he sued Linda, too, for not forcing him to be better insured; when Hogan's lawyers sent the bill for their services, he sued them as well.

For her part, Dietrick is ready to enter the legal ring with the Hulkster.

“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.

I asked Heather Dietrick about the best and worst parts of being the general counsel of Gawker. The worst: the long hours, which are more like Biglaw hours than in-house hours.

And isn't it stressful? "It's invigorating," she said with a chuckle.

The best? Dietrick didn't hesitate: "Getting to work with so many people devoted to putting true stories out there."

UPDATE (7/2/2015, 11:30 a.m.): The trial will no longer be going forward on July 6. Gawker just prevailed in the appeals court and secured a petition for mandamus removing the case from the July 6 trial docket.

UPDATE (7/2/2015, 2:00 p.m.): From Heather Dietrick on the change in trial date: "The delay of the trial provides us the important opportunity to find out more about the three Hulk Hogan video recordings obtained by the FBI that appear highly relevant to the facts of the case. We have the right to know the full story and are concerned because one of the tapes produced by the FBI today is incomplete while there is a serious irregularity in another tape."

(Disclosure: Above the Law Redline, the ATL spinoff aimed at bringing law to a broader audience, is powered by Gawker's Kinja platform.)

Gawker in the fight of its life with Hulk Hogan sex-tape suit [Capital New York]

Gawker's Moment of Truth [New York Times]

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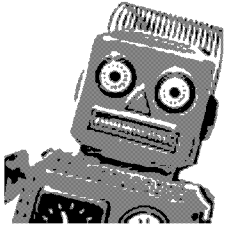
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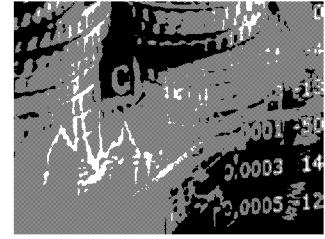
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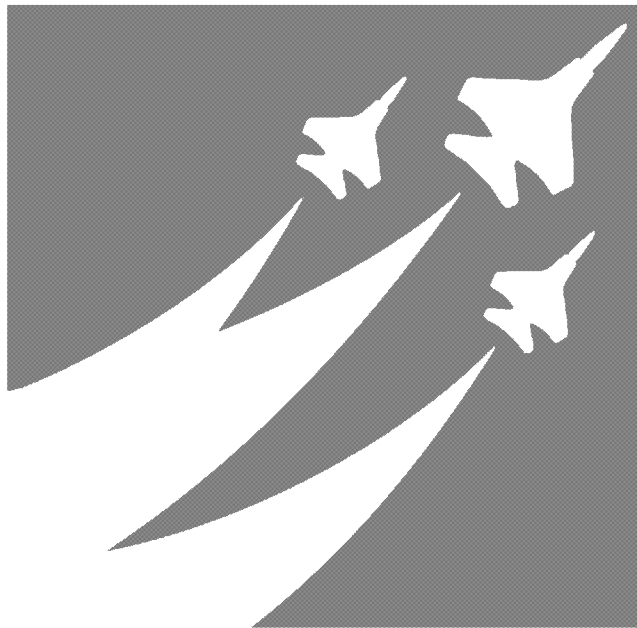


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Kinney's Evan Jowers Now Permanently Based In Hong Kong

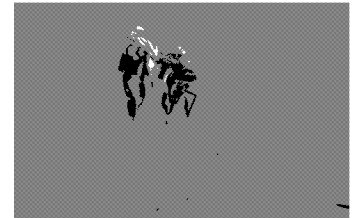
After a decade of 60+ trips to Hong Kong from his former Miami home, our Evan Jowers has finally taken the plunge and moved to Hong Kong on a permanent basis. Since '06, Evan has been head of Kinney's Asia recruiting and over that time Kinney has easily placed more US associates, counsels and partners at top tier US and UK firms than any other recruiting firm (we have also made many in-house placements). (...)



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