

Exhibit 2

EXPERT REPORT OF MIKE FOLEYAS OF MARCH 6, 2015

Bollea v. Gawker

I am the Master Lecturer in the Journalism Department in the College of Journalism and Communications at the University of Florida. It's the latest phase of a career in journalism that has spanned more than 40 years and includes decades of experience as a Tampa Bay area newspaper reporter and editor. (Please see the attached Exhibit for a full list of my education and experience.)

In this report, I will answer two questions:

QUESTION 1: Did Gawker's publication of the Hulk Hogan sex video serve any valid, ethical, journalistic purpose?

QUESTION 2: Did Gawker's publication of the sex video violate fundamental principles of journalism?

I base my answers on my experience, background, training, education and my in-depth knowledge of the craft and mission of journalism from a more than 40-year career in that field. Over the course of my career, I have attended numerous professional and educational seminars on everything from writing to reporting to storytelling in the Internet age. Most importantly for purposes of this report, I have attended and been involved in numerous sessions regarding journalism ethics. I also am applying the standards and practices of the journalism

industry, including the standards of the Society of Professional Journalists and its code of ethics.

I also have done extensive research for this case. I have watched the video of Mr. Bollea (Hulk Hogan) that Gawker posted on its website, Gawker.com. I also have viewed and read numerous Gawker, Deadspin and other Internet postings. I have researched articles about Gawker executives, editors and staffers and have read transcripts of depositions taken in the case.

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The First Amendment protects our rights of speech and press. It ensures freedom to publish, and its scope is broad. But journalists don't see that power as unlimited. They see it in the context of ethical standards and limitations, and they respect the rights of the people they cover.

In October 2012, Gawker.com published one minute and 41 seconds of secretly recorded footage of Terry Bollea (Hulk Hogan) having private sexual relations with Heather Clem in a private bedroom. The footage, its distribution and its publication were all made without Mr. Bollea's knowledge or consent.

QUESTION 1: Did Gawker's publication of the Hulk Hogan sex video serve any valid, ethical journalistic purpose?

CONCLUSION: Based on my experience, background, knowledge, training, education, and more than 40-year career in journalism, I conclude

with a reasonable degree of certainty, that Gawker’s publication of the sex video itself did not serve any valid, ethical journalistic purpose.

Journalists don’t check their humanity at the door when they enter the profession. They don’t have to have cold hearts or lack sympathy or eliminate their empathy. In fact, just the opposite is true. A journalist is sensitive and understands the power he or she has—tremendous power to help or harm.

NEWS VALUES

Is it news that a sex video involving a famous professional wrestler exists? Probably. He is a celebrity, after all. Is it news that the ex-wife of the wrestler’s friend also is on the tape? Yes. Is it news that the video was shot secretly and that the person(s) responsible is (are) unknown? Yes.

But is the video itself news? Absolutely not.

Real journalists are ethical. Journalism has standards and values. The First Amendment is a privilege, not a license. To protect that privilege, professionals have established guidelines for reporting and publishing the news. They are designed to help journalists get at the truth while respecting basic human rights.

Consider these excerpts from the Society of Professional Journalists’ Code of Ethics, which, in my experience and based on my expertise, is commonly accepted as authoritative on ethical issues in the profession:

“MINIMIZE HARM

“Ethical journalists treat sources, subjects, colleagues and members of the public as human beings deserving of respect.

“Journalists should:

“Balance the public’s need for information against potential harm or discomfort. Pursuit of the news is not a license for arrogance or undue intrusiveness.”

“Recognize that legal access to information differs from an ethical justification to publish or broadcast.”

“Avoid pandering to lurid curiosity, even if others do.”

Respect for privacy is fundamental to the profession of journalism. While it is sometimes necessary to publish intimate details of a story, it is unethical to make it the goal. It is customary in the industry **not** to publish grisly images of car accidents, for example, unless it is absolutely necessary to the telling of the story. And when it is deemed necessary, the least-offensive material sufficient to tell the story is used.

The *Tampa Bay Times*, for example, published stories about the beheadings and burning alive of hostages by terrorists. It did **not** publish links to the videos. Gawker did.

In newsrooms across the country, editors employ something called the “Cheerios Test.” They consider graphic photos and descriptions—even graphic

language—using a simple standard: How would it play for readers eating breakfast? Yes, this standard varies from publication to publication and from editor to editor. But at its heart is basic humanity: Don't abuse the First Amendment to hurt anyone unnecessarily.

This video fails that test and others.

THE SEX VIDEO FOOTAGE IS NOT NEWS

Gawker's posting of this video isn't because of its "news" value. Consider this headline on the site:

Even for a Minute, Watching Hulk Hogan

Have Sex in a Canopy Bed is Not Safe For

Work but Watch it Anyway

Based on my 30 years in the journalism profession, posting this video shows a total disregard for privacy. It's insensitive. It shows contempt for the community and, from everything I have read, incredible arrogance.

Take the case of celebrity Erin Andrews. The fact that some criminal made a surreptitious video of her naked in a hotel room is news. However, I know of no reputable journalistic enterprise that published the tape or even a detailed description of its content. Gawker posted a link to the video.

Last year, a Tampa businessman was arrested and charged with secretly recording hundreds of instances of women showering and using the toilets at his

company. The *Tampa Bay Times* and other news outlets ran stories. Not one published the video.

Last June, the *Los Angeles Times* published a story about a dance company worker who was arrested and accused of video recording underage girls in a dressing room. Is it a good news story? You bet. Did the *Times* print any of his pictures? Of course not. I doubt the possibility was even raised.

Last summer, Johns Hopkins Hospital began paying a \$190 million legal settlement to patients of a gynecologist who secretly videotaped women during examinations. I am not aware of any news outlet publishing any of that footage and, based on my experience, I cannot imagine any news outlet even spending a moment considering publishing that material.

In fact, the archives of the *Tampa Bay Times* and other Florida media outlets contain numerous stories about men being arrested for secretly filming women in restrooms or in the dressing room of a clothing store. As far as I know, nobody published the footage. And, based on my experience, I feel certain that none of these videos was even considered for publication.

The fact that these events occurred is news. Footage of the criminally recorded videos and photos is not.

PRIVACY IGNORED

Based on my examination of Gawker's practices in this matter, as well as others, Gawker violated the privacy of Terry Bollea (Hulk Hogan), which is unfair and meant to cause harm, rather than minimize it.

Gawker Media (@Gawker.com or one of its affiliated publications, Deadspin):

- * Published topless photos of Kate Middleton, wife of the future king of England.

- * Linked to the surreptitiously and criminally recorded tape of Erin Andrews naked.

- * Posted private footage of *Grey's Anatomy* star Eric Dane, his wife Rebecca Gayheart and another young woman naked, and the couple sued Gawker for doing so.

- * Posted cellphone photos of what was claimed to be Brett Favre's penis.

And, in perhaps one of the coldest "news reporting" examples, Deadspin posted a video of an apparently intoxicated couple (neither of whom was a public figure) having sex on the restroom floor of an Indiana sports bar. Emails begging that the video be deleted were met with this response from Gawker's counsel, with a copy to writer and editor A.J. Daulerio

“[Name], This is a news story, and completely newsworthy. It’s the truth, which can be hurtful, granted, but one’s actions can have unintended consequences, especially when carried out in a public or semi-public place where clearly people were able to easily watch the activity at hand....This whole story will blow over quickly if it is not given legs, but we believe that we are publishing this legitimately and as such, we will not remove the clip.”

(The clip was eventually taken down after the editor, Daulerio, reported, “We saw enough.”)

Gawker refused the request of Hulk Hogan’s attorney—sent immediately after the sex video was posted—to take down the video. The sex video remained at Gawker.com for six months.

QUESTION 2: Did Gawker’s posting of the Hulk Hogan sex video footage violate fundamental principles of journalism?

CONCLUSION: Based on my experience, background, knowledge, training, education, and more than 40-year career in journalism, I conclude with a reasonable degree of certainty, that Gawker’s posting of the Hulk Hogan sex video footage violated fundamental principles of journalism.

There are three **absolute** requirements for good reporting: The story must be **accurate**, it must be **complete** and it must be **fair**.

Journalists should not publish unverified anonymous tips and rumors. The custom and practice in journalism is to check and often double check everything. (There's an old saying in the business: "If your mother tells you she loves you, check it out.") Journalists contact everyone involved with the story. They get all sides.

They have ethics. They try to avoid using anonymous sources when it is not necessary to serve the public interest, and they carefully verify stories when they do. They avoid conflicts of interest. They run corrections if they make mistakes. They give careful thought and consideration before publishing offensive material. (It has to have "news" value and be essential to the telling of the story.) They respect peoples' privacy and only disclose private information when it is necessary to report matters of public concern.

The ultimate goal is to help readers/viewers understand a confusing world.

Based on my extensive review of Gawker's work, it is not Gawker's institutional intention to adhere to the fundamental principles of journalism. In fact, Gawker, its founder and its editors have said publicly that they do not.

INADVERTENT "JOURNALISM"

In an interview with Howard Kurtz that appeared in the *Washington Post*, Gawker's founder and CEO Nick Denton is quoted as saying, "We don't seek to do

good....We may inadvertently do good. We may inadvertently commit journalism. That is not the institutional intention.”

In a February 2014 interview in *Playboy* magazine, Denton reportedly was asked: Is it possible you set a lower value on privacy than most people do?

His response: I don't think people give a fuck, actually.

He also is quoted as saying, "...every infringement of privacy is sort of liberating." And "You could argue that privacy has never really existed."

In a March 2013 interview, Tommy Craggs, now the executive editor of Gawker Media, was quoted as saying: "We're a tabloid at heart. You ask if we have policy. There is no policy for this, or for anything, really. The whole point of the company is that we trust our reporters to be smart and judicious without having to adopt the ethical pretense that what they are doing is anything but a sort of professionalized rudeness.

"I'll get killed for this, but: Journalism ethics is (sic) nothing more than a measure of the scurrilousness your brand will bear. That's it. Ethics has nothing to do with the truth of things, only with the proper etiquette for obtaining it, so as to piss off the fewest number of people possible. That works fine for lot of news outlets; we don't have to worry about niceties."

In a December 2014 post on Gawker, Editor-in-Chief Max Read wrote: “..., we can succeed just as effectively by being the best versions of our opinionated, conversational, gossipy selves.”

MONEY IS THE MOTIVE

Gawker is motivated primarily, or entirely, by money. This is evidenced by its focus on traffic / click-bait journalism. While journalism outlets are often for-profit and not charities, the reason the profession has strict ethical standards is to ensure these for-profit organizations serve the public interest and not simply their own financial interests. But Gawker’s whole emphasis as a business is on page views and the revenues from them. Page-view numbers are posted on the articles and on the “big board” at Gawker’s offices. Page-view numbers even are used to determine employee bonuses.

Gawker is a celebrity tattletale and a pornography website that masquerades as a “news site” and panders to its readers. If you look at Gawker.com (and its affiliated websites) over time, you will be inundated with nudity, sex and other content designed to capitalize on the audience’s “prurient interest” and drive traffic (and thereby revenue) to the site. It panders to video voyeurs who write often-salacious comments that are published with the “stories.”

NSFW

As one example, Gawker published a story—and a photo—of a female Arizona State student who went to a Halloween party naked. **“ASU Student Wears the Most Shocking ‘Sexy’ Costume Ever: Nothing [NSFW]”**

(These four letters stand for “Not Safe For Work” and accompany many, many Gawker posts.)

Another NSFW story claimed the ex-deputy mayor of London accidentally posted photos of his penis on his Facebook page. The story included photos. In fact, penis pictures—especially those of athletes—are frequently posted on Gawker Media’s “sports” site, Deadspin.com.

In March of 2012, Gawker posted supposedly hacked cellphone photos of *Mad Men* actress Christina Hendricks. One posted photo showed her wearing only a T-shirt. Another showed a pair of large breasts, but the story quoted Hendricks’ publicist denying the photo was of Hendricks.

RUMORS

Gawker publishes rumors and uses anonymous sources without any attempt to verify the information.

In October 2014, Gawker posted a story by then-Editor-In-Chief Max Read with the headline: **“Beyonce, Clooney, Affleck: What’s the Best Rumor You Heard This Week?”**

His column began with this: “Gawker believes that publicly airing rumors out is usually the quickest way to get to the truth.” He then asks readers to share the “best and juiciest” gossip they have heard.

“We make every effort to track down and report out the rumors and gossip we hear, but for a variety of reasons we can’t always nail them the way we’d like. So let’s acknowledge that we can’t vouch for the veracity or truth (sic) of the rumors we’ll be sharing here—but maybe you can.”

The post goes on to publish readers’ submissions from the preceding week. It doesn’t appear that any fact-checking was done before they were published.

IRRESPONSIBLE “REPORTING”

Gawker’s reporting of the Hulk Hogan sex video was irresponsible “reporting.” Gawker knew the tape was surreptitiously recorded and that Hulk Hogan did not consent to its publication. (A TMZ news bulletin sent to Gawker’s tips email account said as much, and Gawker’s editor-in-chief at the time, A.J. Daulerio, admitted during his sworn deposition that he was aware of the TMZ story.) Yet Gawker published it anyway. The site did not contact Hulk Hogan, his attorney David Houston, Heather Clem, Bubba Clem or any of their representatives. It did not find out who the anonymous source was or what the source’s motivation might be.

Gawker refused to take down the video after receiving attorney David Houston's cease-and-desist letter and email sent immediately after the video was posted at Gawker.com.

This conduct was consistent with Gawker's business model—driving traffic without regard to the individuals involved. It was not about reporting the news that a sex video of Hulk Hogan did, indeed, exist; the news story could have been written **without** posting the footage from the video. Gawker posted the 1 minute and 41 seconds of sex footage because Gawker is in the business of publishing sex and calling it news.

The posting of the sex video definitely is not fair. Hulk Hogan had no idea he was on camera. The video is hurtful and embarrassing. And it doesn't add to the story or move it along.

It represents a total disregard for privacy and is nothing more than pornography.

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When the men who framed the Constitution and crafted the list of freedoms that guide this country, the Internet—and websites like Gawker—were not part of the thought process. I don't think they could have imagined the enormous power to help—or hurt—people that has evolved.

I certainly don't think they would be happy.



MIKE FOLEY

EXHIBIT

I started as a news reporter after college. I then served in a variety of editor roles at the Times Publishing Co., which owns the *St. Petersburg Times*, now called the *Tampa Bay Times*. I was city editor, managing editor and, finally, executive editor, responsible for everything in the paper except the ads and editorials.

During my tenure as a news executive I worked with journalists who have won more than two dozen Pulitzer Prizes.

For the last eight of my nearly 30 years at the *Times*, I was a vice president in charge of community affairs, scholarships and corporate giving. I was a juror for the Pulitzer Prizes twice, president of the Florida Society of Newspaper Editors, judge for the Hearst Foundation's college journalism awards and a trustee of the Freedom of Information Foundation of Florida.

I retired in 1999 and began teaching at the University of Florida in 2001. I am the first Hugh Cunningham Professor in Journalism Excellence and was named the college and university's Teacher of the Year in 2006-2007. I received the Distinguished Teaching in Journalism Award, a national honor, from the Society of Professional Journalists in 2013 and was selected as one of *The Best 300 Professors* by the Princeton Review in 2012. I was honored in 1994 as a Distinguished Alumnus of the college.

I have a bachelor's degree in journalism and a master's in mass communications, both from the University of Florida. I also have an honorary doctorate from Tampa College.

I read five newspapers daily, four on the Internet (on my iPad): *The Wall Street Journal*, *The New York Times*, *The Washington Post*, the *Tampa Bay Times* and the *Wall Street Journal*. I also am the de facto adviser to *The Independent Florida Alligator*, the largest student-run newspaper in the U.S.

I am a member of the Society of Professional Journalists and the American Society of News Editors. I regularly read publications from these two organizations, and I monitor the Poynter Institute website regularly to stay current on trends in journalism, ethics, social media and Internet reporting/editing techniques.

I also am an avid user of the Internet, have a Facebook account (1,450 friends), a Twitter account (I have 584 followers) and a Linked-In page (I have more than 500 connections and am a member of the Journalism Group). I use my iPad to view email and all of my various accounts. In addition, I watch movies, TV shows and various other streams.

At the university, I teach two reporting courses:

- The basic reporting course, which includes fact gathering, interviewing, deadline writing, rewriting, basic media law and ethics. Students

majoring in journalism, public relations and broadcast news must complete my course with at least a C. Students write two stories a week, and I grade them down to the punctuation.

- An advanced reporting course. This is a capstone course in the college curriculum and consists of journalistic reporting and writing and extensive reading and discussion of some of the best writing in journalism. We also talk about ethical issues.

In the past, I have been retained as an expert witness on at least two occasions by Gregg Thomas of the Thomas & LoCicero law firm of Tampa.

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