

# Exhibit 1

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

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TERRY GENE BOLLEA, professionally  
known as HULK HOGAN,

Plaintiff,

No. 12-012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA, LLC,  
aka GAWKER MEDIA, et al.,

Defendants.  
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DEPOSITION OF:	MICHAEL F. FOLEY
DATE:	March 20, 2015
TIME:	9:58 a.m. to 4:16 p.m.
PLACE:	Riesdorff Reporting Group 100 Second Avenue South Suite 104-S St. Petersburg, Florida
PURSUANT TO:	Notice by counsel for Defendant Gawker Media for purposes of discovery, use at trial or such other purposes as are permitted under the Florida Rules of Civil Procedure
REPORTED BY:	Susan C. Riesdorff, RPR, CRR Notary Public, State of Florida

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APPEARANCES:

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- and -

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Attorneys for Defendant Gawker Media, LLC

1       journalistic careers in broadcasting, did it touch on  
2       FCC stuff?

3             A.    A little, yes.  It's a long time ago.

4             Q.    Right.  Fair enough.

5                     For students that were going to pursue public  
6       relations, that end of the media, did it touch on like  
7       advertising law and things like that?

8             A.    I think as it pertained to these significant  
9       cases.

10            Q.    Okay.  All right.  Then did it touch on what  
11   I would call your kind of core areas of defamation,  
12   invasion of privacy, prior restraint, things like that?

13            A.    Yes.

14            Q.    All right.  Now, since then, perhaps when you  
15   were pursuing your Master's, did you take any courses  
16   in just media law?

17            A.    I don't think so.

18            Q.    All right.  What I'd like to do now is kind  
19   of shift gears and focus on your history as a  
20   professional journalist, the work history part of that  
21   portion of the document.  All right?

22            A.    Okay.

23            Q.    What was your first job as a working  
24   journalist?

25            A.    I was a reporter for the Evening Independent.

1 Q. And what -- I'm not real familiar with the  
2 papers at the time. What was the Evening Independent  
3 and what was its area?

4 A. The Evening Independent was the afternoon  
5 newspaper owned by the Times Publishing Company that  
6 covered local news primarily.

7 Q. And did the Times Publishing own a morning  
8 daily as well?

9 A. It also owned the St. Petersburg Times.

10 Q. And that was the morning paper?

11 A. That is correct.

12 Q. All right. What year did you begin as a  
13 reporter for the Evening Independent?

14 A. 1970.

15 Q. And were you a beat reporter?

16 A. I was a general assignment reporter for less  
17 than six months. Then I was assigned to beat.

18 Q. And what was your beat?

19 A. It was covering the cities of Pinellas Park  
20 and Kenneth City.

21 Q. What was the second one?

22 A. Kenneth City.

23 Q. Kenneth. Thank you.

24 And what type of reporting did you do there,  
25 just general municipality coverage?

1 A. Yes.

2 Q. City government?

3 A. City government.

4 Q. Police matters?

5 A. Not so much police, but city government  
6 primarily.

7 Q. All right. And how long did you do that?

8 A. I'm going to say eight months, but that's an  
9 approximation.

10 Q. Okay. And then what was the next position  
11 you held?

12 A. I became beat reporter for the St. Petersburg  
13 city government.

14 Q. For the same paper?

15 A. Yes.

16 Q. I take it that was a promotion.

17 A. Yes.

18 Q. And how long did you hold that position?

19 A. I'm going to approximate again. A couple of  
20 years.

21 Q. Was your title during this period just beat  
22 reporter?

23 A. Yes.

24 Q. And then what was the next position you held?

25 A. Assistant city editor.

1 Q. Professor Foley, when would you have become  
2 the assistant city editor?

3 A. Wow, that goes way back. Maybe 1973, '74.

4 Q. Let me ask you this. During the time that  
5 you were a reporter, did you -- were you sued for any  
6 kind of -- any claims lodged against you, legal claims?

7 MR. HARDER: Objection to the term "you."

8 MR. SULLIVAN: I do mean him personally.

9 MR. HARDER: Okay.

10 THE WITNESS: No, not that I can recall.

11 BY MR. SULLIVAN:

12 Q. And then following up on Mr. Harder's point,  
13 was the paper sued for any of your reporting?

14 A. For my reporting?

15 Q. Yes, sir.

16 A. No.

17 Q. Now, I'm going to move over to the work you  
18 did as an editor in just a minute, but before we move  
19 on, I'd like to ask you this.

20 Did you receive any professional awards as a  
21 result of your work as a reporter?

22 A. I was named the staff writer of the year at  
23 the Evening Independent for the year 1971.

24 Q. 1971?

25 A. Correct.

1 Q. Any other professional awards?

2 A. Not that I can recall.

3 Q. Did you win any -- now I'm expanding to your  
4 entire career as a working journalist. Did you receive  
5 any professional awards as a result of your work as a  
6 journalist?

7 A. Several -- well, let me make sure. One as a  
8 professional journalist.

9 Q. And what was that?

10 A. Wait, I take it back. I take that back. I'm  
11 sorry. I'm confusing things here. No, I did not.

12 Q. All right.

13 A. I don't know if this counts. I was named  
14 distinguished alumnus of the University of Florida  
15 while I was at the newspaper in 1994.

16 Q. And was that in recognition of your work as a  
17 journalist or your -- I'm sorry.

18 A. At least in part certainly. It was in  
19 relation to my achievements, I believe, at the  
20 St. Petersburg Times.

21 Q. Rather than for recognition of your standing  
22 in the community or something like that?

23 A. I believe I was a corporate vice president at  
24 the time I got that award.

25 Q. Were you ever nominated for a Pulitzer Prize?



1 A. No.

2 Q. Now, as I mentioned a moment ago, I would  
3 like to kind of shift our focus and look at and talk  
4 about your work serving in an editorial role. Okay?

5 A. All right.

6 Q. Now, you mentioned that in 1973, you were  
7 promoted to assistant city editor. How did that come  
8 about?

9 A. The Evening Independent had not had an  
10 assistant city editor and the city editor needed help,  
11 and I was given that job. I filled a position that had  
12 not existed prior to that.

13 Q. So it was a new position?

14 A. I think it was a new position. If not, it  
15 was a re-upping of an old position that had not been in  
16 existence in my time at the paper.

17 Q. I take it that was viewed as a promotion.

18 A. It was.

19 Q. Were you happy to move into that new role?

20 A. Yes.

21 Q. The reason I'm asking is because some  
22 reporters just want to stay as reporters. The last  
23 thing they want to be is an editor. You know what I  
24 mean?

25 A. Yes.

1 Q. All right. Now, just so I'm clear, that is  
2 still at the Evening Independent?

3 A. Yes.

4 Q. And then what were your duties in this new  
5 position?

6 A. I would edit copy, discuss with the city  
7 editor story ideas, help plan coverage, help evaluate  
8 staff writers.

9 I have a frog in my throat. Sorry.

10 Q. And how old were you at the time?

11 A. 1973 -- I started at the Independent when I  
12 was 24. So I was about 27 or 28.

13 Q. Professor, how long did you hold that  
14 position?

15 A. Maybe a year.

16 Q. And then what happened?

17 A. I became an assistant metro editor at the  
18 St. Petersburg Times.

19 Q. And that would have been roughly when?

20 A. '74, '75.

21 Q. Okay. Again, I take it that was -- you  
22 viewed that as a promotion.

23 A. I did.

24 Q. And then what were your duties as an  
25 assistant metro editor?

1           A.    I worked nights, weekends, holidays.  I was  
2   in charge of coverage when the other editor -- when the  
3   metro editor and others went home.  On weekends I was  
4   in charge of the coverage, local coverage.

5           Q.    Now, in that position, I take it that was  
6   full-time editing.  You weren't also reporting.  You  
7   didn't have some limited beat that you were trying to  
8   cover, did you?

9           A.    No, I did not.

10          Q.    When you served in that capacity as assistant  
11   metro editor at the St. Petersburg Times, any of --  
12   were you involved in any legal claims that were  
13   asserted against the paper for stories that you had a  
14   hand in?

15                MR. HARDER:  Just let me object.  Vague and  
16   ambiguous on "had a hand in."

17                Go ahead.

18   BY MR. SULLIVAN:

19          Q.    Do you know what I mean by that?

20          A.    I don't know what you mean.  I know what I  
21   would mean.

22          Q.    You tell me what you mean.

23          A.    Being sued for stories that I edited or  
24   assigned or handled.

25          Q.    Yes, sir.

1 A. I don't recall any. I don't recall any.

2 Q. All right. Now, what -- how long did you  
3 hold that position, assistant metro editor?

4 A. I truly don't recall.

5 Q. Okay. Do you have -- can you give us a rough  
6 sense? Are we talking a few months or years?

7 A. No. It was at least -- at least a year and  
8 maybe two.

9 Q. All right. What was your next position at  
10 the paper?

11 A. City editor.

12 Q. And when were you -- when did you become city  
13 editor?

14 A. I truly cannot recall the exact years, but it  
15 would be mid to -- '76, '77, something like that.

16 Q. That's helpful. I'm just trying to get a  
17 sense of how this developed.

18 A. That's fine. I haven't thought about this  
19 for a long time.

20 Q. Sure.

21 Now, how did you come to become the city  
22 editor?

23 A. I think I did a very good job as assistant  
24 metro editor.

25 Q. So I take it that, too, was a promotion.

1           A.    Yes.

2           Q.    Once you moved into the city editor position,  
3 what were your duties in that capacity?

4           A.    I was in charge of the day Times shift.  I  
5 would make sure the reporters were assigned coverage,  
6 that events were covered, that the staff was working on  
7 stories.  I edited -- I did the first edit on a number  
8 of stories.  I worked Monday through Friday.

9           Q.    I take it that beats nights and weekends.

10          A.    And holidays.  I was involved in some  
11 projects, too, you know, special projects, bigger  
12 stories.

13          Q.    Would these be -- when you say projects or  
14 bigger stories, are you referring to like investigative  
15 pieces?

16          A.    Not so much investigative, but you have minor  
17 investigations, smaller investigations, and series of  
18 stories, longer term projects.

19          Q.    Any other duties you had in that position?

20          A.    I did the schedules for the reporters.  I  
21 interviewed potential job candidates.  I would  
22 evaluate --

23          Q.    So I take it in that capacity, you also had  
24 or undertook kind of a management role at the paper.

25          A.    Yes.

1 Q. Given that, I take it by the same token, you  
2 weren't reporting, hands-on reporting; you weren't  
3 doing -- you didn't have some limited beat that you  
4 were responsible --

5 A. No.

6 Q. -- for? Okay.

7 MR. HARDER: Let him finish the question and  
8 then answer, because otherwise, she's typing part  
9 of a question, answer, rest of the question.

10 THE WITNESS: Sorry.

11 MR. SULLIVAN: Thanks.

12 BY MR. SULLIVAN:

13 Q. All right. Now, how long did you serve as  
14 the city editor?

15 A. About five years.

16 Q. So that would take us up to the early '80s?

17 A. Yes.

18 Q. And just so we're clear, all of these roles,  
19 you were city editor for the St. Petersburg Times?

20 A. I was.

21 Q. You never -- just so we know and we don't  
22 have to keep going over it, you never went back to the  
23 Evening Times at some point?

24 A. Evening Independent, no.

25 Q. Sorry. Evening Independent. Okay. Great.

1 All right. So what was your next position  
2 then with the paper?

3 A. I believe I was metro editor.

4 Q. And was that a promotion as well?

5 A. It was.

6 Q. What is the difference between -- if you can  
7 just explain for us, what's the difference between what  
8 you did as city editor and what you did as metro  
9 editor?

10 A. City editor primarily was responsible for  
11 St. Petersburg and southern Pinellas County. Metro  
12 editor took on some of the responsibility for the  
13 various news bureaus in outlying areas.

14 Q. So it was a larger scope of responsibility?

15 A. Yes.

16 Q. And then what did you do when you served in  
17 that capacity?

18 A. The city editor reported to me. I honestly  
19 can't recall how much -- I know that I dealt with the  
20 entire local news report, and that included bureaus in  
21 Clearwater, Pasco, Hernando, and some Citrus County.

22 Q. And how long did you serve as metro editor?

23 A. I'm going to guess. Maybe two years or so.

24 Q. So that takes us to the mid 1980s?

25 A. I believe so. Maybe earlier than that. I'm

1 fuzzy on the math.

2 Q. I may have mis-added. Maybe like 1983?

3 A. Early '80s, I believe.

4 Q. All right. So what -- I take it you advanced  
5 yet again at the paper.

6 A. I did.

7 Q. Okay. And what was your new position?

8 A. I took over the features department of the  
9 paper, the news features department, and was promoted  
10 to assistant managing editor.

11 Q. And how long did you hold that position?

12 A. One year.

13 Q. So does that now take us to the mid '80s?

14 A. Probably 1984.

15 Q. All right. What were your duties as the  
16 assistant managing editor and the person in charge of  
17 the features department?

18 A. I was in charge of Section D of the paper,  
19 which was a features section that had a staff of  
20 writers, copy editors, designers, plus our food  
21 section, our weekly food section, other special  
22 sections.

23 Q. Professor Foley, when you say features, and  
24 you gave food as an example, is this -- would this be  
25 what some metropolitan papers would refer to as kind of



1 a style section?

2 A. Similar.

3 Q. It would touch on movies perhaps,  
4 entertainment matters?

5 A. Entertainment, fashion, advice.

6 Q. Okay. And anything else that was within  
7 your -- the scope of your duties?

8 A. Photos, illustrations.

9 Q. All right. Anything else?

10 A. Well, you know, I was responsible for the  
11 staff evaluations, critiques.

12 Q. So you had a management role as well?

13 A. Yes.

14 Q. Okay. And then did you say you held that  
15 position for about a year?

16 A. Yes.

17 Q. And let me just ask you this. In any of  
18 these positions that you held as an editor from the  
19 first one, which I asked you about subsequent to that,  
20 any lawsuits in which you were involved because of your  
21 role as an editor?

22 A. I don't recall.

23 Q. Then what was the next position you held at  
24 the paper?

25 A. I was named managing editor.

1 Q. And that was another promotion?

2 A. Yes.

3 Q. How long did you serve as managing editor?

4 A. I think it was seven or eight years. The  
5 math is really getting fuzzy now.

6 Q. I think now by my calculations you're about  
7 98 years old. I'm just kidding you.

8 Let me ask you this. So you were managing  
9 editor roughly seven or eight years?

10 A. (Indicates affirmatively.)

11 Q. What were your duties as the managing editor?

12 A. I reported to the editor. I was in charge of  
13 everything in the paper except the ads and the  
14 editorials.

15 Q. So you had responsibility for the complete  
16 news side; is that correct?

17 A. News, features, photos, illustrations --

18 Q. Okay.

19 A. -- correspondence, sports, budgets.

20 Q. All right. Any other duties when you served  
21 in that capacity?

22 A. I was a member of a couple -- I represented  
23 the paper to the Associated Press Managing Editors  
24 Association and the American Society of Newspaper  
25 Editors.

1 Q. So you were the rep for ASNE?

2 A. ASNE, APME.

3 Q. In all seriousness, I think the years are a  
4 little off because that would take us up to like '92 or  
5 something.

6 A. The years are off. We can work back, because  
7 after that I became executive editor.

8 Q. Okay. Fair enough.

9 Your next position then was executive editor?

10 A. Right.

11 Q. At the St. Petersburg Times?

12 A. Correct.

13 Q. And do you know when that happened?

14 A. I believe that was through '92.

15 Q. When did you become --

16 A. It would have been '90. So we would have to  
17 work back and redo the math. Sorry.

18 Q. We can figure it back. So 1990, you became  
19 executive editor?

20 A. I believe that's correct.

21 Q. And if you could, explain to us what your  
22 duties were in that capacity.

23 A. About the same except that we had a managing  
24 editor who reported to me.

25 Q. Any other duties that you held in that

1 capacity?

2 A. At some point I was appointed to the board of  
3 directors of the Times Publishing Company.

4 Q. Do you remember when that was?

5 A. 1988 perhaps.

6 Q. And then how long did you serve as executive  
7 editor?

8 A. Two years.

9 Q. Two years.

10 What happened at the end of the two years?

11 A. I moved from the news department to the  
12 corporate side of the paper.

13 Q. Now, did you seek to move to the corporate  
14 side?

15 A. It's a difficult question because I made it  
16 clear to the boss, the editor of the paper and CEO,  
17 that I did not want to be the CEO.

18 Q. Had you been asked to be the CEO?

19 A. No. And that's what -- this is fuzzy because  
20 I recall the conversation something along the lines of  
21 I like being number two.

22 Q. Who was that conversation with?

23 A. Andrew Barnes. I believe he was editor and  
24 president at the time, or he was CEO. I can't remember  
25 exact titles.

1 Q. And who then took your position as executive  
2 editor?

3 A. I don't remember.

4 Q. I'll see if -- I saw some kind of a little  
5 news blurb that indicated that a Paul Tash -- does that  
6 refresh your recollection?

7 A. I believe he eventually became executive  
8 editor. I don't know if it was right away.

9 Q. He might have not stepped right into the  
10 position?

11 A. (Indicates affirmatively.)

12 Q. Okay. Now, if you could, what was your new  
13 position?

14 A. I was director of I believe either community  
15 affairs or community relations.

16 Q. And that took place in 1992?

17 A. I believe so.

18 Q. What were your duties in that capacity?

19 A. I was the face of the newspaper, of the Times  
20 Publishing Company. I was in the community. I served  
21 on various boards in the community. I represented the  
22 paper at functions. I did a lot of public speaking  
23 explaining the newspaper and what journalism is to  
24 various groups. I was in charge of all the trademarks,  
25 logos. I was in charge of community events that we

1 Q. I'm not following you, if you mean the times  
2 being our times generally or the Times, the paper?

3 A. The St. Petersburg Times is one of the best  
4 newspapers in America. Time magazine called it one of  
5 the top ten. And I just didn't have that kind of  
6 desire anymore.

7 Q. Just before we move into your work as a  
8 professor, did you consider being involved in any other  
9 kinds of publishing, for example, giving your -- giving  
10 a shot at magazine publishing or something like that?

11 A. I don't recall I did.

12 Q. All right. So you were contacted by the  
13 department chair for the journalism department at the  
14 University of Florida. And what -- how did that go?  
15 What --

16 A. I knew him for quite some time. I had been  
17 on the advisory council of the journalism department  
18 for maybe 20 years, and I had hired him during breaks  
19 in the school year. He was a very skilled copy editor.  
20 So he called me and asked me if I would be interested  
21 in teaching.

22 Q. And what did you say?

23 A. I said I'd like to give it a try. However, I  
24 lived in St. Petersburg and Gainesville is 155 miles  
25 away. He said, you can stay at my house two nights a

1 week and let's give it a try. I did that for three and  
2 a half years. I would drive up on Tuesday morning,  
3 drive back on Thursday night.

4 Q. So you left the paper in 1999, and you took a  
5 year and looked into -- explored other options?

6 A. Uh-huh. (Indicates affirmatively.)

7 Q. And then would it have been in 2000 that you  
8 started teaching?

9 A. It was the spring of 2001.

10 Q. And that was when you were doing the -- where  
11 you would go up for two days --

12 A. That's correct.

13 Q. -- stay at his house, teach the class?

14 A. Yes.

15 Q. How many classes were you teaching?

16 A. Two.

17 Q. Which two classes?

18 A. Two sections of reporting, the reporting  
19 labs.

20 Q. I'd like to go into a little more detail on  
21 the teaching, but I just wanted to wrap up our  
22 discussion of your career in journalism. All right?

23 As I tally this, it looks like you spent your  
24 entire career as a journalist, about 22 years, in  
25 newspapers, correct?

1 A. A total of 29 plus at the newspapers.

2 Q. Okay.

3 A. 1970 to 1999.

4 Q. Right. That's fair.

5 But as an actual practicing journalist, it  
6 would be --

7 A. 22 years.

8 Q. -- 22 years.

9 A. Yes.

10 Q. And that 22 years as a practicing journalist  
11 would have been in print journalism?

12 A. Yes.

13 Q. In other words, newspaper journalism?

14 A. I did do appearances and for a while a small  
15 spot on a weekly TV show that we sponsored.

16 Q. All right. As of 1992, you were out of the  
17 newsroom, correct?

18 A. Correct.

19 Q. Okay. And you never worked on a magazine,  
20 correct?

21 A. In what time period?

22 Q. During the period up to the year 2000.

23 A. When I was managing editor, we started a  
24 weekly entertainment magazine that I was one of the  
25 founders of.



1 Q. Okay. And what was your role?

2 A. I would oversee it. But with the editor of  
3 that magazine, we decided what it would be and I  
4 critiqued it on a regular basis.

5 Q. Okay. Did you serve as one of the editors of  
6 the magazine?

7 A. Direct editor, no.

8 Q. Okay. Did you ever write for the magazine?

9 A. I don't believe so.

10 Q. Okay. And during your period working with  
11 the St. Petersburg Times, I take it you didn't work in  
12 online publishing.

13 A. I don't believe so.

14 Q. Have you ever worked for a web-based  
15 publisher?

16 A. No.

17 Q. Professor Foley, what online publications do  
18 you read on a regular basis?

19 A. I read all my newspapers online.

20 Q. In other words, I take it what you're telling  
21 me is -- I think I saw somewhere in your report that  
22 you read, for example, the New York Times.

23 A. The St. Petersburg Times, the Gainesville  
24 Sun, U.S.A. Today.

25 Q. You indicated that you read those on your

1 is required. And a dictionary. They need access to a  
2 dictionary, the official AP dictionary, which is I  
3 think Oxford Collegiate, fourth edition. And a daily  
4 newspaper.

5 Q. Now, what textbook do you use to address the  
6 media law topics?

7 A. That's in Inside Reporting. It has a section  
8 on media law.

9 Q. I got you. Okay.

10 And then you indicated that you'll do a class  
11 on defamation. You do a class on privacy concerns.

12 A. One -- I do all the ethics in one class and  
13 the libel in another class, because we have courses in  
14 those disciplines, full semester courses.

15 Q. Now, are you a tenured professor?

16 A. No.

17 Q. Are you on what they call a tenure track?

18 A. No.

19 Q. Are you on like an annual contract?

20 A. I guess. I'm not sure. I haven't signed a  
21 contract in a long time. It renews itself from year to  
22 year.

23 Q. Are you considered an adjunct professor?

24 A. No. I'm a full faculty member.

25 Q. What does that mean?

1           A.    I'm a master lecturer.  I was hired as a  
2 master lecturer.  There are three levels of lecturer,  
3 lecturer, senior lecturer, and master lecturer.  It's  
4 similar to the professor levels, associate, assistant,  
5 and full.

6           Q.    Okay.  And then in that capacity, are you  
7 compensated like a set sum, or are you compensated  
8 based upon how many courses you teach?

9           A.    No.  I have a set salary.

10          Q.    Okay.  Got you.  Okay.

11          A.    It's a nine-month contract.  I get paid extra  
12 when I teach during the summer.

13          Q.    I'd like to shift gears for a minute and  
14 focus on writings that you've done as a professor.

15                    You explained to us the work that you did for  
16 your Master's thesis which has now been included in the  
17 course materials.  Have you published other things  
18 during your time as a journalism professor?

19          A.    No.

20          Q.    Professor Foley, do you have a publications  
21 list of any sort that shows writings over the -- your  
22 years as a journalist and now as a professor?

23          A.    No.  It's not a job requirement.  That's the  
24 difference between a lecturer -- a master lecturer and  
25 a tenured professor.  They do research.  I do two of

1 A. No.

2 Q. Any reporting work that you do since you've  
3 gone to the University of Florida?

4 A. No.

5 Q. And what I mean there is, you know, like have  
6 you engaged in some reporting project with a colleague,  
7 you did the reporting, but you're not writing up the  
8 article, and then you funnel your work product to  
9 others, things of that nature?

10 A. No.

11 Q. All right. Last thing on the teaching, have  
12 you ever taught a course in media law at the University  
13 of Florida?

14 A. Media law, no.

15 Q. I take it from what you said earlier, you  
16 indicated to us -- you said, I'm not a lawyer.

17 Would you consider yourself qualified to  
18 teach media law if they asked you?

19 MR. HARDER: Let me object. It calls for  
20 speculation. It's vague and ambiguous.

21 Go ahead and answer.

22 THE WITNESS: I think I could, but -- I think  
23 I could, yes.

24 BY MR. SULLIVAN:

25 Q. Do you consider yourself an expert in media

1 to the top of page 2, you'll see it says, "I also am  
2 applying the standards and practices of the journalism  
3 industry including the standards of the Society of  
4 Professional Journalists and its Code of Ethics."

5 Do you see that?

6 A. Yes.

7 Q. Professor Foley, how is the SPJ Code of  
8 Ethics relevant in this case?

9 A. It helped frame my opinion on why the Hulk  
10 Hogan sex video is not journalism. It's not  
11 newsworthy. It's not ethical.

12 Q. Let me ask you this. Who does the code of --  
13 who does the Society of Professional Journalists Code  
14 of Ethics apply to?

15 A. Journalists.

16 Q. Okay. And who does the SPJ code say its Code  
17 of Ethics applies to?

18 A. Ethical journalists.

19 Q. And does the Society for Professional  
20 Journalists attempt to force its ethics code on  
21 nonmembers?

22 MR. HARDER: Calls for speculation.

23 MR. SULLIVAN: No. I'm asking for his --

24 BY MR. SULLIVAN:

25 Q. To your knowledge, does it attempt to force

1 Q. Okay. If you will look now over on to  
2 page -- well, I guess we're still on page 2. You'll  
3 see there you pose a question, question 1, and you say,  
4 "Did Gawker's publication of the Hulk Hogan sex video  
5 serve any valid ethical journalistic purpose?"

6 Do you see that?

7 A. Yes.

8 Q. Then your conclusion follows and it says,  
9 "Based on my experience, background, knowledge,  
10 training, education and more than 40-year career in  
11 journalism, I conclude with a reasonable degree of  
12 certainty that Gawker's publication of the sex video  
13 itself did not serve any valid ethical journalistic  
14 purpose."

15 Do you see that?

16 A. I do.

17 Q. I take it from this conclusion that you do  
18 not object to the article discussing the sex tape that  
19 was posted by Gawker.

20 MR. HARDER: Objection, argumentative,  
21 objection to form of the question.

22 THE WITNESS: I thought it was graphic and  
23 not journalism and, given the description, that it  
24 was not newsworthy. And I felt it was unethical.

25 BY MR. SULLIVAN:

1           though he's a journalist, he's not a judge.

2           MR. SULLIVAN: Right. And I don't want his  
3           legal views, but I take your point. I understand  
4           what you're saying.

5           MR. HARDER: I don't see how you can ask him  
6           that question and not seek his legal views  
7           regarding whether an injunction should have or  
8           should not have been issued. I think it's just  
9           kind of contradictory in that sense.

10          MR. SULLIVAN: All right. Let's go back I  
11          think to where we were.

12          MR. HARDER: Okay.

13 BY MR. SULLIVAN:

14          Q. Let me ask you -- Professor Foley, let me ask  
15          you a preliminary question.

16                 Did you review the Gawker post, the article  
17          itself?

18          A. I read it.

19          Q. And in your view as a journalist, do you  
20          believe that that post is protected under the First  
21          Amendment?

22          MR. HARDER: Again, all the same prior  
23          objections that we were talking about.

24          MR. SULLIVAN: Right.

25          THE WITNESS: I think like the video, the

1           graphicness of it is unethical, not newsworthy,  
2           and not journalism.

3 BY MR. SULLIVAN:

4           Q.    But taking that for granted, do you believe  
5           it's protected by the First Amendment?

6           A.    I honestly --

7           MR. HARDER:   Wait.

8           THE WITNESS:   I'm sorry.

9           MR. HARDER:   Asked and answered.   Same  
10          objections.

11          Go ahead.

12          THE WITNESS:   I don't know.   I really have to  
13          think about it.

14 BY MR. SULLIVAN:

15          Q.    All right.   And following up where we were  
16          when we left off, do you believe that the post  
17          itself -- as a journalist, now, do you believe that the  
18          post should have been enjoined?

19          A.    I don't know what enjoined means.

20          MR. HARDER:   Okay.   Again, I need to get in  
21          my objections.

22          THE WITNESS:   I'm sorry.

23          MR. HARDER:   Same objections as before.

24 BY MR. SULLIVAN:

25          Q.    Mr. Harder can clarify if he wishes, but what



1 A. Yes.

2 Q. And at the bottom of 2 and the top of 3 --

3 MR. HARDER: Can we just pause one second?

4 Could I just note real quickly for the record, I

5 just looked at the transcript and it just seemed

6 to me like I heard words that didn't show up on

7 the screen and I'm just not sure if there's a

8 clear record. That's all I want to say. It could

9 be a LiveNote issue. I don't know.

10 BY MR. SULLIVAN:

11 Q. Professor Foley, looking back at the bottom

12 of 2, which is where we were, and continuing over on to

13 the top of 3, you see the statement there, "I conclude

14 with a reasonable degree of certainty that Gawker's

15 publication of the sex video itself did not serve any

16 valid ethical journalistic purpose"? Do you see that?

17 A. You just read the last half of it, yes.

18 Q. Yes, sir.

19 My question for you is, what type of

20 certainty are you referring to there?

21 A. My years of experience, my education, the

22 other qualifications that are listed.

23 Q. Okay. Let me see if I can put a finer point

24 on it. Are you testifying to a reasonable degree of

25 journalism ethics certainty?

1 there at the bottom, last paragraph, "The SPJ Code of  
2 Ethics is a statement of abiding principles supported  
3 by additional explanations and position papers (at  
4 SPJ.org) that address changing journalistic practices."

5 Do you see that?

6 A. Yes.

7 Q. Now, following after that, it says, "It is  
8 not a set of rules, rather a guide that encourages all  
9 who engage in journalism to take responsibility for the  
10 information they provide, regardless of medium."

11 Do you see that?

12 A. I do.

13 Q. Now, to your knowledge, was the Code of  
14 Ethics ever intended to be binding on journalists?

15 MR. HARDER: I'm going to object, calls for  
16 speculation.

17 MR. SULLIVAN: I'm asking him to his  
18 knowledge. There is no speculation involved. You  
19 either know to your knowledge or you don't.

20 THE WITNESS: I do not.

21 BY MR. SULLIVAN:

22 Q. You do not, correct?

23 A. Correct.

24 Q. What happens to a journalist if he or she  
25 refused to follow this Code of Ethics?

1 MR. HARDER: I'm going to object. It's vague  
2 and ambiguous, incomplete hypothetical, calls for  
3 speculation.

4 THE WITNESS: I think it would depend on what  
5 the journalist, in quotes, did.

6 BY MR. SULLIVAN:

7 Q. Didn't follow the code. In my question,  
8 assume they didn't follow the code, any of these  
9 prescriptions here, didn't follow them.

10 MR. HARDER: Same objections.

11 THE WITNESS: It would depend on the  
12 incident, the story.

13 BY MR. SULLIVAN:

14 Q. Is the Code of Ethics enforceable?

15 MR. HARDER: Same objections.

16 THE WITNESS: I believe any -- this Code of  
17 Ethics is not -- as you say, it's not rules. It  
18 is meant as guidelines for journalists.

19 BY MR. SULLIVAN:

20 Q. And the Code of Ethics, if there are  
21 violations, I take it the Society of Professional  
22 Journalists does not convene a hearing and bring  
23 journalists up on charges, correct?

24 A. I've not ever heard of that, no.

25 Q. Among journalists, does the Code of Ethics

1 the second sentence, and it says, "It is customary in  
2 the industry not to publish grisly images of car  
3 accidents, for example, unless it is absolutely  
4 necessary to the telling of the story."

5 Do you see that?

6 A. I do.

7 Q. Why would it ever be necessary to include a  
8 grisly image of a car accident?

9 A. I'm not sure I can come up with an example  
10 right here.

11 Q. Can you -- as you sit here, can you think of  
12 a situation where it would be deemed necessary?

13 MR. HARDER: Asked and answered.

14 THE WITNESS: I can't come up with a good one  
15 unless it maybe involved a prominent figure or was  
16 the cause of assassination or something along  
17 those lines.

18 MR. SULLIVAN: I'll ask the court reporter to  
19 mark as Defendant's Exhibit 161 a multi-page  
20 exhibit bearing ID numbers Gawker document 24635  
21 through 36. And I'll ask that you take a moment  
22 and look that over.

23 (Exhibit No. 161 marked for identification.)

24 MR. HARDER: 161?

25 MR. SULLIVAN: Yes, sir.

1 BY MR. SULLIVAN:

2 Q. Professor Foley, have you had an opportunity  
3 to look over Defendant's Exhibit 161?

4 A. I have.

5 Q. Do you recognize Exhibit 161?

6 A. Do I remember it, recognize it?

7 Q. No. I mean, as you look at it, do you see  
8 there that it appears to come from the St. Petersburg  
9 Times?

10 A. Yes.

11 Q. And it bears a date of June 11, 1988. Do you  
12 see that?

13 A. I do.

14 Q. At this point in time, you were serving as an  
15 editor?

16 A. Yes.

17 Q. And you would have been the -- you would have  
18 been the managing editor at this point?

19 A. Probably.

20 Q. Now, you see that this particular photo -- to  
21 give you the context, I have the blowup so that you can  
22 read it. Then if you want to see how it fits in the  
23 paper and what page it appeared on and all that, I've  
24 given you the second page, but it's a little hard to  
25 read because it's so small.

1           But what we have before us, the first page of  
2 Exhibit 161 is the whole of the article. Would you  
3 agree?

4           A. It's a caption, yes.

5           Q. Now, you see there it depicts a victim on a  
6 stretcher, strapped on a stretcher. Do you see that?

7           A. Yes.

8           MR. HARDER: Objection to the term "victim."

9           MR. SULLIVAN: Well, he's the --

10 BY MR. SULLIVAN:

11          Q. Is it your understanding that that is one of  
12 the individuals hurt in the accident?

13          A. It appears so.

14          Q. Now, why did you publish -- I don't mean you  
15 personally, but why did the newspaper publish this  
16 photo?

17          A. It's news.

18          Q. Do you think that this was newsworthy, this  
19 photograph?

20          A. I do.

21          Q. Okay. You see if you look at the text of the  
22 publication, the brief little article there, under the  
23 photograph, it indicates that two people received  
24 relatively minor injuries after the van in which they  
25 were riding lost control Friday evening on a

1 rain-slickened U.S. 19 in Hudson and flipped several  
2 times by the side of the road according to Pasco  
3 Emergency Medical Services.

4 Do you see that?

5 A. I do.

6 Q. Now, you viewed this as newsworthy even  
7 though the passengers only had minor injuries?

8 A. Given the photo, that might make it more  
9 newsworthy.

10 Q. All right. Do you know whether it would have  
11 been the practice of the St. Petersburg Times at that  
12 point to get the consent of the person depicted there  
13 on that stretcher?

14 A. The consent for what?

15 Q. To publish the photograph of him or her. I  
16 think it's a him actually. You can't tell. To get the  
17 person's permission to publish their photograph having  
18 been injured lying on the side of the road there in  
19 that fashion.

20 A. No.

21 Q. Why not?

22 A. Well, it's a public place. It is involving  
23 public paramedics. It occurred as rather miraculous.  
24 And he was involved in an accident.

25 Q. That's about the size of it?

1 A. Yeah.

2 MR. SULLIVAN: Okay. Let me ask the court  
3 reporter to mark as Defendant's Exhibit 162 a  
4 single-page document that bears identification  
5 number Gawker 24663 and ask if you can take a  
6 moment and look that over.

7 (Exhibit No. 162 marked for identification.)

8 THE WITNESS: What am I looking at?

9 BY MR. SULLIVAN:

10 Q. Professor, if you could look at kind of right  
11 in the center of the page, there is a piece that says,  
12 three hospitalized in Pasco crash. There is a  
13 photograph of what looks like an emergency type worker  
14 and a person on a stretcher. And then there's text  
15 beneath that. If you can, read that over.

16 A. I cannot.

17 Q. Can you read the text?

18 A. I cannot.

19 Q. I'm happy to read it for you. I'll ask the  
20 others assembled to try to correct me if I misread.  
21 But here's what the text says.

22 "Pasco Deputy Darcy Scarpati comforts Matthew  
23 Delgato after a collision Friday on U.S. 19 in Hudson.  
24 Police say Donald and Peggy Castleman pulled in front  
25 of Denise Delgato's car. The three of Spring Hill were



1 flown to Bayfront Medical Center. Delgato's children,  
2 Matthew three and Leslie seven, and niece Rebecca  
3 Decker 11, were treated and released."

4 Okay? And then you have the photo that  
5 appears above that. Do you see that?

6 A. I'll take your word for it.

7 Q. Now, can you make out the date at the top of  
8 the page?

9 A. Saturday, July 20th, 1991.

10 Q. Yes, sir.

11 Now, at that point in time, would you have  
12 been the executive editor of the paper?

13 A. I think so.

14 Q. Now, my question for you on this exhibit is  
15 the same as the last one. Why did the paper, the  
16 St. Petersburg Times, publish this story?

17 A. That was a question?

18 Q. Yes, sir. Why did the newspaper publish this  
19 story?

20 A. It's not a story, first of all. It's a photo  
21 and a caption. Is that what you're asking me, about  
22 the photo and caption?

23 Q. Yes.

24 A. It's not a story. For the same reason as the  
25 other one, it was something that happened, an accident.

1 Q. Was it deemed newsworthy?

2 A. Obviously it was.

3 Q. When you say obviously, was the photo  
4 newsworthy?

5 A. Yes.

6 Q. And why publish the photo of an injured  
7 child, which we know from your caption is Matthew  
8 Delgato, age three? Why publish that young boy, age  
9 three, a photo of him?

10 A. He was the victim of the accident. He was  
11 injured in the accident.

12 Q. Now, would it have been the practice of the  
13 St. Petersburg Times to obtain the consent of that  
14 boy's parents to publish his photo on the pages of your  
15 paper?

16 A. I don't believe so.

17 Q. And why is that?

18 A. As I answered before, it was an accident. It  
19 was news. It took place and involved city streets,  
20 city personnel. It's news.

21 Q. And you say city streets because it took  
22 place in public?

23 A. That's part of it.

24 Q. Now, Professor, if you would look on page 4,  
25 the paragraph after the one we just looked at, you'll

1 see it says, "The Tampa Bay Times, for example,  
2 published stories about the beheadings and burning  
3 alive of hostages by terrorists. It did not publish  
4 links to the videos. Gawker did."

5 Do you see that?

6 A. I do.

7 Q. Now, why do you point out that Gawker did  
8 publish those things?

9 A. I think it's part of a pattern of  
10 sensationalism and graphicness, if that's a word.

11 Q. All right. Was it illegal for Gawker to  
12 publish the links to the videos of the beheadings?

13 MR. HARDER: I'm going to object, calls for a  
14 legal conclusion.

15 THE WITNESS: I don't know.

16 BY MR. SULLIVAN:

17 Q. Was it unethical for Gawker to publish the  
18 links to the videos of the beheadings?

19 A. I wouldn't do it.

20 Q. Would it be fair to say that Gawker made a  
21 different news judgment?

22 A. Yes.

23 Q. Are you aware of any other news entities that  
24 made the same judgment as Gawker?

25 MR. HARDER: I'm just going to object to the

1 extent it's compound because there were five  
2 different beheading videos and one burning video.

3 THE WITNESS: I don't know.

4 BY MR. SULLIVAN:

5 Q. Okay. Professor Foley, are you aware that  
6 Fox News broadcast on its air a still image from the  
7 video of the pilot being burned alive? They did that  
8 on the air.

9 A. I do recall that, yes.

10 Q. It was a still, correct?

11 A. I believe so, to my recollection.

12 Q. Are you aware that Fox News chose to put the  
13 video of that pilot being burned alive on its website?

14 A. I'll take your word for it.

15 Q. Assuming that that was indeed done, in your  
16 judgment, was that unethical?

17 A. I wouldn't do it.

18 Q. But did it violate journalistic ethics?

19 A. It's distasteful. It's disgusting. I think  
20 it's a close call.

21 Q. As you understand it, did it violate the  
22 code, the SPJ Code of Ethics?

23 MR. HARDER: Take a look at the Code of  
24 Ethics.

25 THE WITNESS: I think it does.

1 BY MR. SULLIVAN:

2 Q. All right. And why is that?

3 A. I think the first tenet under minimize harm,  
4 journalists should balance the public's need for  
5 information against potential harm or discomfort.  
6 Pursuit of the news -- it's the harm or discomfort.

7 Q. The harm or discomfort to whom?

8 A. Families.

9 Q. And you're aware that the family in this  
10 instance was that pilot who lived in the Mideast,  
11 right?

12 A. I don't know.

13 Q. Let me ask you this. Do you have any idea  
14 why Fox News chose to do that, to publish the link to  
15 the video?

16 MR. HARDER: Calls for speculation.

17 THE WITNESS: I don't know.

18 BY MR. SULLIVAN:

19 Q. Were you aware that at least the proffered  
20 explanation by Fox News was that they did it so that  
21 people in this country could see the true horror of the  
22 enemy that we're up against?

23 MR. HARDER: Lacks foundation.

24 BY MR. SULLIVAN:

25 Q. Were you aware of that?

1           A.    I was not, but -- no, I was not.

2           Q.    As you understand these matters, did Fox News  
3 have the right under the First Amendment to make that  
4 decision to publish that link?

5           MR. HARDER:  Calls for a legal conclusion.

6           MR. SULLIVAN:  Just so we're clear, I don't  
7 want your legal view.  I want your understanding  
8 of the First Amendment as a journalist who  
9 practiced in this area for decades.

10          MR. HARDER:  Again, I don't think that you  
11 can distinguish it that way.

12          MR. SULLIVAN:  That's all I'm interested in.

13          THE WITNESS:  I'm not a lawyer.

14 BY MR. SULLIVAN:

15          Q.    I don't -- I understand that.  I'll stipulate  
16 to it.  You as a journalist, is it your understanding  
17 that Fox News had the right under our First Amendment  
18 to make that decision to publish the link?

19          MR. HARDER:  Calls for a legal conclusion.

20          THE WITNESS:  In my view?

21 BY MR. SULLIVAN:

22          Q.    Yes, sir.

23          A.    Yes.

24          Q.    All right.  If you would look, please, at  
25 page 4 -- we're going to go to the bottom of 4 over

1 onto the top of 5. And you see a passage there that  
2 says, "In newsrooms across the country, editors employ  
3 something called the "Cheerios test." They consider  
4 graphic photos and descriptions, even graphic language,  
5 using a simple standard. How would it play to readers  
6 eating breakfast? Yes, this standard varies from  
7 publication to publication and from editor to editor,  
8 but at its heart is basic humanity. Don't abuse the  
9 First Amendment to hurt anyone unnecessarily."

10 Do you see that?

11 A. I do.

12 Q. Now, the so-called Cheerios test was an  
13 offspring of the morning daily newspaper, correct?

14 A. Probably. I don't know the -- where it  
15 really came from.

16 Q. But the notion -- the notion being that folks  
17 wouldn't want to find something on the front page of  
18 their morning paper that might be upsetting or  
19 disturbing, correct?

20 A. Yes. But I think that would pertain to an  
21 afternoon newspaper or an evening newscast.

22 Q. All right. That's fair.

23 Also, you wouldn't want to have something  
24 that would be upsetting on the front page of your paper  
25 if you sent your eight-year-old daughter out on your

1 front porch to pick up the paper, right? You wouldn't  
2 want something that was upsetting to a person that  
3 might come upon this unawares, correct?

4 A. That's certainly part of it.

5 Q. Does every paper follow the same Cheerios  
6 test?

7 A. Well, as the report says, the standard varies  
8 from publication to publication and from editor to  
9 editor.

10 Q. Does the Rural Weekly in Nebraska follow the  
11 same Cheerios test as the Philadelphia Enquirer?

12 MR. HARDER: Calls for speculation. It's an  
13 incomplete hypothetical.

14 THE WITNESS: I have no idea.

15 BY MR. SULLIVAN:

16 Q. Do -- let me ask you this. Do magazines  
17 follow the Cheerios test?

18 MR. HARDER: Calls for speculation.

19 THE WITNESS: I have no evidence one way or  
20 the other. I imagine -- I'm not even going to  
21 imagine.

22 BY MR. SULLIVAN:

23 Q. Since Mr. Harder objected that it calls for  
24 speculation, let me put a finer point on it.

25 To your knowledge, do magazines follow the



1 Cheerios test?

2 MR. HARDER: Vague and ambiguous as to all  
3 magazines.

4 THE WITNESS: There are so many magazines, so  
5 many publications.

6 BY MR. SULLIVAN:

7 Q. Right.

8 A. I would imagine there are niche publications  
9 that pay no attention to the Cheerios test.

10 Q. Let's put a finer point on it yet again.

11 To your knowledge, does Playboy magazine  
12 follow the Cheerios test?

13 A. No.

14 Q. To your knowledge, does Sports Illustrated  
15 follow the Cheerios test?

16 A. That could probably be debated.

17 Q. To your knowledge, does the editor of the  
18 Sports Illustrated swimsuit edition follow the Cheerios  
19 test?

20 A. That has been debated.

21 Q. What's the answer?

22 MR. HARDER: Calls for speculation.

23 THE WITNESS: I think in his way, if it's a  
24 him -- or I don't know. I think in his way, yeah.

25 BY MR. SULLIVAN:

1 Q. Does your old paper, the St. Petersburg  
2 Times, follow the same Cheerios test that it did when  
3 you served as executive editor of that paper?

4 A. I don't know.

5 MR. HARDER: Calls for speculation.

6 THE WITNESS: I'm sorry. I don't know.

7 BY MR. SULLIVAN:

8 Q. Can you make an assessment based on -- you  
9 indicated that you continue to read the St. Petersburg  
10 Times, correct?

11 A. Yes.

12 Q. Can you make an assessment based on having  
13 read that coverage for how many decades now, four?

14 A. Probably five.

15 Q. Okay. In your view, have times changed? Do  
16 you see things there now that you wouldn't have seen  
17 when you were the executive editor?

18 A. I'm not sure.

19 Q. Okay. Do you see things there now that you  
20 wouldn't have seen when you first entered into this  
21 business, when you first became a reporter?

22 A. Very broad question. I'm sure lots of things  
23 are different. It's a different world from 1970.

24 Q. Let me ask you this. How -- how does the  
25 Cheerios test have relevance in the current world of

1 online publications?

2 A. The Cheerios test is a metaphor, obviously,  
3 in my view for taste. And it is -- it is -- as the  
4 Code of Ethics states, it's part of the balancing act  
5 of the public's need for information against harm or  
6 discomfort.

7 Q. All right. Let me ask you this. With an  
8 online publication, we don't have the problem of my  
9 eight-year-old daughter going out on the front porch  
10 and picking up a paper and seeing some half-naked  
11 person, right?

12 MR. HARDER: I object. You think  
13 eight-year-olds don't go online?

14 THE WITNESS: I think the Internet is -- you  
15 have that problem almost infinitely more than  
16 ever.

17 BY MR. SULLIVAN:

18 Q. But when you go to a site, you know what  
19 you're getting, don't you?

20 MR. HARDER: Objection, vague and ambiguous,  
21 argumentative.

22 THE WITNESS: Not always.

23 BY MR. SULLIVAN:

24 Q. Okay. Well, let's take the post that's at  
25 issue here, the Gawker Hulk Hogan post. You had to

1 click on it, didn't you?

2 MR. HARDER: Objection. Objection, vague.

3 THE WITNESS: That doesn't make it  
4 anything -- that doesn't make it newsworthy. That  
5 doesn't make it journalism. That doesn't make it  
6 ethical.

7 BY MR. SULLIVAN:

8 Q. No. But it doesn't surprise you. It doesn't  
9 jump out at you and surprise you. You have to take an  
10 affirmative act. You have to decide to click it, don't  
11 you?

12 MR. HARDER: Argumentative, vague.

13 THE WITNESS: You do have to click it.

14 BY MR. SULLIVAN:

15 Q. Right. You didn't come across the Hulk Hogan  
16 video by accident, did you?

17 A. I don't think so.

18 Q. Okay. Professor Foley, have you noticed that  
19 in recent years, more TV broadcasters provide warnings?  
20 They announce to their viewers, we're about to show you  
21 some video; we're about to show you something that you  
22 may find very disturbing. And then they proceed to  
23 show you a video of some young fellow getting beaten by  
24 the cops or some such thing, right? Have you seen that  
25 yourself?

1           A.    Is it relevant to whether they invaded Hulk  
2 Hogan's privacy?

3           Q.    Yes, sir.

4           A.    Again, as I said, this is a pattern of  
5 invading people's privacy without regard for their  
6 feelings.  There's no balancing of the public's need  
7 for information against potential harm or discomfort.

8           Q.    Look then at the last of the little starred  
9 examples.  Do you see asterisks there?

10          A.    I do.

11          Q.    Do you see the one that says, posted cell  
12 phone photos of what was claimed to be Brett Favre's  
13 penis?  Do you see that?

14          A.    Yes.

15          Q.    How did the fact that Gawker posted cell  
16 phone photos of what was claimed to be Brett Favre's  
17 penis indicate to you that Gawker meant to harm Hulk  
18 Hogan?

19               MR. HARDER:  Asked and answered.

20               THE WITNESS:  It's a pattern of publishing  
21 nudity without regard for privacy.  It's not  
22 newsworthy.  It's not ethical.  And it's not  
23 journalism.

24 BY MR. SULLIVAN:

25          Q.    In your judgment?

1 Q. Right. He was in the bedroom of his best  
2 friend's -- his best friend's bedroom having sex with  
3 his best friend's wife, right?

4 A. Uh-huh. (Indicates affirmatively.)

5 Q. Does that factor into the mix when you're  
6 making your assessment of privacy?

7 A. Where he was, no. The fact that there was a  
8 video of him naked having sex in a private bedroom in a  
9 private home and that was posted on the Internet for  
10 anyone to see, it's not newsworthy. It's not  
11 journalism. It's not ethical.

12 Q. Let me ask you this. Before we finish with  
13 Brett Favre, does it matter to you that Brett Favre  
14 allegedly took a photograph of his own penis? There is  
15 no surreptitiousness in this reporting. He took his  
16 own penis and he texted it to someone. Are you aware  
17 of that?

18 A. I was.

19 Q. Do you find that offensive?

20 MR. HARDER: Objection, incomplete  
21 hypothetical.

22 THE WITNESS: I think it's weird. I think  
23 it's offensive to the person who got the text.

24 BY MR. SULLIVAN:

25 Q. Do you think it's newsworthy?

1           A.    I do.  He is a famous athlete and he is  
2 famous for being a football player and now he does  
3 something that is really weird.

4           MR. HARDER:  I'm just going to object to the  
5 word "it" in his question.  It's vague.

6 BY MR. SULLIVAN:

7           Q.    Did you understand my question?

8           A.    Well, when you're referring to a penis and  
9 use the word "it," I understand it can be ambiguous.  I  
10 think you were referring to the incident.

11          Q.    Yes, sir.  And you answered with that  
12 understanding I take it.

13          A.    Yes.

14          Q.    Professor, if you look now on page 8, you'll  
15 see down at the very bottom of that page, the last  
16 paragraph says, "There are three absolute requirements  
17 for good reporting:  The story must be accurate, it  
18 must be complete, and it must be fair."

19                Do you see that?

20          A.    I do.

21          Q.    Where do those three absolute requirements  
22 derive from?

23          A.    That's based on my years of experience.  I  
24 would guess I probably have read that somewhere on  
25 occasion.  It's part of my lesson plan in class.  It's

1 what I teach my kids.

2 Q. Who enforces that absolute requirement?

3 A. Journalists.

4 Q. In what way?

5 A. They endeavor to make their stories fair and  
6 accurate and complete.

7 Q. But if the absolute requirement is not met,  
8 what penalty is imposed?

9 MR. HARDER: Vague, incomplete hypothetical.

10 THE WITNESS: Lack of credibility, lack of  
11 fairness, lack of human -- what's the word I'm  
12 looking for? There's no penalty in terms of a  
13 wrist slap or something like that. It's just not  
14 journalism.

15 BY MR. SULLIVAN:

16 Q. In your judgment?

17 A. In my judgment.

18 Q. If you would look, sir, over on page 9,  
19 there's a paragraph right before the heading  
20 Inadvertent Journalism. And it says, "Based on my  
21 extensive review of Gawker's work, it is not Gawker's  
22 institutional intention to adhere to the fundamental  
23 principles of journalism. In fact, Gawker, its founder  
24 and its editors have said publicly that they do not."

25 Do you see that?



1 and ambiguous.

2 THE WITNESS: I would need the circumstances.

3 Where did you get it?

4 BY MR. SULLIVAN:

5 Q. Got it from the assistant mayor.

6 A. Who's the assistant mayor?

7 Q. The assistant mayor.

8 A. Do we trust the assistant mayor?

9 Q. What if it -- but if it's true -- let's say  
10 we don't trust the guy. The guy's a bum. He's an  
11 alcoholic. But it turns out he got that right. What  
12 does ethics have to do with the truth of that  
13 statement?

14 A. Ethics is part --

15 MR. HARDER: Argumentative, vague and  
16 ambiguous, incomplete hypothetical.

17 Pause and let me squeeze it in.

18 THE WITNESS: I'm sorry. I apologize.

19 It's part of the reporting process. That's  
20 part of the reporting process.

21 BY MR. SULLIVAN:

22 Q. Let me ask you this. On page 11, you say  
23 under the heading Money is the Motive, "Gawker is  
24 motivated primarily, or entirely, by money."

25 Do you see that?

1 A. I do.

2 Q. "This is evidenced by its focus on traffic,  
3 click-bait journalism."

4 Do you see that?

5 A. I do.

6 Q. What is the significance of that observation  
7 for purposes of reaching your expert opinion?

8 A. I don't understand the question.

9 Q. You know that Gawker's motivated primarily or  
10 entirely by money, right?

11 A. It appears so.

12 Q. For purposes of your assessment and rendering  
13 of your expert opinion, does that matter?

14 A. I believe it does. I think that's why Gawker  
15 publishes nude photographs. I believe it publishes  
16 rumors and half truths without regard for their  
17 veracity. I think that there is total disregard for  
18 privacy. I think that's why we're here, that they  
19 published the Hulk Hogan video to drive traffic even  
20 though it was not newsworthy and not journalistic and  
21 not ethical.

22 Q. Let me ask you this. When you were serving  
23 in a managerial capacity at the St. Petersburg Times,  
24 was it a for-profit entity?

25 A. Yes.

REPORTER'S CERTIFICATE

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STATE OF FLORIDA :  
COUNTY OF HILLSBOROUGH :

I, Susan C. Riedsorph, RPR, CRR certify that I was authorized to and did stenographically report the deposition of MICHAEL F. FOLEY; that a review of the transcript was requested and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of the foregoing action.

Dated this 27th day of March, 2015, IN THE CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

Susan C. Riedsorph, RPR, CRR, CLSP