



Personal Foul? *Deadspin* and an Iconic Athlete

In the early 21st century, the simultaneous surge of celebrities and nonstop demand for content from digital news websites created a new world in sports journalism. Stories that traditional sports reporters and editors often rejected—either for ethical reasons or for lack of interest or evidence—became fodder for sports blogs (many written by fans) and other websites, including those of mainstream newspapers, magazines and television networks. The Internet with its 24/7 news cycle ramped up the race to break news first. Increasingly, gossip and innuendo became accepted as news in its own right. Sports editors had to find ways to compete while trying to maintain editorial standards.

Enter *Deadspin*, a sports blog launched by Gawker Media in 2005. Like many sportswriters dating back to the 1960s, *Deadspin* shunned the accepted narrative of athletes as heroes. For *Deadspin* bloggers, however, digging into the off-the-field behavior of athletes was standard fare. Readers loved it. In 2009, the website attracted upwards of 2 million visitors a month.

In February 2010, *Deadspin* Editor A.J. Daulerio learned that celebrated football quarterback Brett Favre, while with the New York Jets, in 2008 had sent cellphone photos of his genitalia to Jenn Sterger, an in-house sideline reporter for the Jets. Favre had been named the National Football League's Most Valuable Player three times. Throughout his legendary career, Favre had built his image and reputation on being a family man (he was married, with two daughters and a grandchild) and as a sponsor of many charities. He had retired in 2009 for the second time.

Sterger would not give Daulerio the photographs. But over the spring and summer, Daulerio discovered that she had forwarded the photos, along with Favre's voicemails and text messages, to friends and colleagues. He also learned that members of the Jets front office were aware of the communications. A Jets staffer may have given Favre Sterger's phone number without her permission, and the Jets organization clearly did not want the story made public.

To Daulerio, that sealed it. On August 4—without Sterger's approval—he posted an unattributed item on the *Deadspin* website in which he named her. In it, he asked if anyone had the

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photos. Within weeks, he had a volunteer. But the source wanted to be paid—and handsomely. Moreover, *Deadspin*'s legal director opposed running the photos. She worried that *Deadspin* might, in effect, be encouraging the source to break the law if the materials were stolen. Daulerio had to decide: did the photos add significantly to the story? Were they newsworthy? Should he pay for them?

The Rise of *Deadspin*

If true, the Favre-Sterger story was the kind of sports news *Deadspin* had targeted from the beginning. In early 2005, freelance writer and sports fanatic Will Leitch pitched a sports gossip site to Nick Denton, who had launched *Gawker* in 2002. *Gawker*, a blog, published gossip and news about the entertainment, media and business worlds. Its loft-like offices in Manhattan's NoLiTa (north of Little Italy) section, with long tables of glowing monitors, exuded more dot-com company than newsroom.

Since *Gawker*'s founding, Denton had added other titles, including *Gizmodo* (technology) and *Jezebel* (women's fashion and pop culture). Leitch's proposal could fit nicely in the *Gawker* group. The sports site, Leitch promised, would feature smart writing with an irreverent take for the sports enthusiast. "I mapped out how it might work, how I thought there was not only a wealth of material to write about, but also an audience for sports writing that was not so insular and perhaps not so kind of *faux* heroic," Leitch says.¹

Leitch was following in the footsteps of an earlier iconoclastic generation of sportswriters. Until the 1960s, most sports journalism treated the athlete as a god-hero. Journalists were complicit in sustaining athletes' public images as superhumans; their private lives were off-limits. That changed with such reporters as Robert Lipsyte (author of the seminal *SportsWorld*), Ira Berkow (later a Pulitzer-winning *New York Times* sports columnist), Leonard Shecter of the *New York Post* (who wrote the classic *The Jocks*), and legendary sportscaster Howard Cosell. They described sports in the context of American society, candidly examining its role in such social issues as drug use and racism even when that meant de-glorifying teams and players.

Leitch proposed a test site first to allow Denton an opportunity to see what the new publication would sound and look like. He asked Rick Chandler, with whom he had worked before, to be associate editor for the prototype. Both of them had other writing gigs at the time; they produced the trial site on the side. For several months, the two published posts—Denton paid \$12 per post—on a blog-hosting site called Movable Type. The blog was visible only to Leitch, Chandler, Denton and *Gawker* Managing Editor Lockhart Steele. Leitch averaged 10 posts a day.

¹ Author's interview with Will Leitch in New York, NY, on October 28, 2011. All further quotes from Leitch, unless otherwise attributed, are from this interview.

By early summer, Denton was sold. The blog was a go. Leitch would be editor-in-chief, and Chandler was hired as associate editor. Denton came up with the blog's name, *Deadspin*. When Leitch asked what it meant, Denton replied that "it doesn't mean anything. It's two very easy words to remember, right next to one another." Denton decided to wait until the first day of football season in September 2005 to launch. Leitch's first post was about an agency that arranged for sports personalities, including ESPN co-host Stuart Scott, to speak at conferences for as much as five figures. "I wanted to launch with something like that because I think that showed the sensibility [of the site], that we weren't afraid to criticize ESPN," Leitch says. ESPN was a pioneer among single-focus cable channels, creating a sports-only channel in 1979.

Within the first six months, *Deadspin*'s readership grew rapidly. The formula appealed to readers who had a thirst for sports news with a cheeky approach. Ninety-six percent of its readers were male, 80 percent of those ages 18-34. Eighty-two percent were college educated. The site published articles that ran the gamut from a story about fallen baseball star Pete Rose's corked bat (under its running category "Cheaters") and photos of drunken athletes in bars, to a poll showing that basketball star LeBron James' popularity had declined. By 2008, *The Financial Times* noted that *Deadspin* was the world's most visited sports blog with 116 million visitors in less than three years.²

As the site's popularity grew, Leitch needed additional contributors. In March 2008, he hired Daulerio for a position as senior writer. Daulerio came to *Deadspin* from *Philadelphia Magazine*, where he had been a staff writer for a year. Leitch had worked with him on other projects. Daulerio wrote longer posts that required investigative reporting, while Leitch continued to produce shorter pieces. "When [Daulerio] wants to know an answer to a question, he finds out the answer to the question," Leitch says. "He has a doggedness ... that frankly I don't."

By the summer, however, Denton started pushing for more site traffic. Leitch realized that the editor's role would become more managerial, with less reporting and writing. Leitch preferred writing full time, so in July 2008 he opted to take a position as a contributing writer for *New York Magazine*. Daulerio was named editor-in-chief of *Deadspin*.

Blogging and Journalism

Since the term "web log" was first used in 1997—"blog" was a contraction—its use as a way to publish updated information and journal entries in reverse chronological order had evolved. Blogs were first the territory of the proverbial "nerds in pajamas" writing up their observations about technology and the Internet and linking to websites they considered intriguing. Soon others joined in, establishing subject niches. Blogs were seen as democratic. Publishing became easy, instantaneous and close to free.

² Simon Kuper, "The blogger who takes the hyperbole out of Super Bowl," *Financial Times*, January 19, 2008.

The advent in July 1999 of free blog hosting sites, which required no software coding knowledge and featured the simplicity of a word processing program, meant anyone could start a blog. It was only a matter of time before journalists adopted the medium. Some, with no traditional media organization behind them, created blogs that reported news, blurring the definition of journalist. Some established journalists used blogs to post items that didn't fit within their published stories. A few bloggers became so popular that they were like independent newspaper publishers, with readerships that a small-town newspaper would envy.

In 2008, *Talking Points Memo*, a political website, received the prestigious George Polk Award for its investigative reporting on the firing of eight US attorneys general. TPM founder Joshua Micah Marshall told the *New York Times*: "We have kind of broken free of the model of discrete articles that have a beginning and end. Instead there are an ongoing series of dispatches."³ That was the first time a Polk award had been given to a news organization that existed solely on the web.

Despite such accolades and growing popularity, journalists wrestled with the question of whether blogging should be considered a legitimate form of journalism and whether its practitioners should be encouraged to adhere to traditional media ethics. Were bloggers journalists, or simply aggregators? Most bloggers linked to interesting content online, added a snarky comment and posted it rather than do original reporting. Should they second-source facts, and protect sources as traditional journalists tried to do? Non-journalists, such as government agencies, struggled with the definition as well: were bloggers entitled to press passes to public events?

As in mainstream media, the pressure was on to be first with a scoop and attract a large audience. In the blogosphere, success was measured by page views, which in turn translated into advertising revenue. Detractors of blogging sites claimed that the emphasis on site traffic, rather than substance, resulted in a preponderance of salacious items, sometimes with insufficient sourcing. To generate more "hits," bloggers wrote headlines containing keywords that were known to increase a post's chances of coming up first in web searches. This practice, known as "search engine optimization" or SEO, made a site more visible. So, for example, sex sold. As *Gawker* founder Denton would later write:

We measure. We hone headlines. We sell stories. Sometimes we oversell. But—and this marks us out—we believe that the best web content optimization strategy is something as old as journalism itself: the shocking truth and authentic opinion. We'll spill the truths that others gloss over to protect their access to sources or to conform to political correctness.⁴

³ Noam Cohen, "Blogger, Sans Pajamas, Rakes Muck and a Prize," *New York Times*, February 25, 2008.

⁴ David Carr, "Nick Denton, Relentless Seeker of Online Traffic, Turns Sentimental About Writing," Media Decoder blog, *New York Times*, Jan. 6, 2012. See: <http://mediadecoder.blogs.nytimes.com/2012/01/06/nick-denton-relentless-seeker-of-online-traffic-turns-sentimental-about-writing/>

At *Deadspin*, Daulerio and his staff sought to create a hybrid—blog-style short posts with commentary and links, combined with more traditional deeply reported stories, some as long as 11,000 words. “I like the mix of highbrow and puerile [expletive deleted],” he says.

Tracking Stories Down

As editor-in-chief, Daulerio took on added responsibilities. While he still wrote occasionally, he also had administrative duties such as hiring and budgeting. He retained control of editorial concepts such as theme weeks. His staff included 10 full-time bloggers, plus 10 freelancers. Daulerio made sure to develop a deep network of contacts in sports. “We have this thing internally we call the Deadspin Gold Club,” he says, which consisted of go-to insider sources who worked for sports teams or covered sports.⁵ When he or someone on his staff got a tip, they looked to their sources for verification—“just standard newspaper kind of beat and source-gathering kind of stuff.”

At the start of the September 2009 football season, Daulerio contacted Jenn Sterger, an in-house sideline reporter for the Jets football team. He hired her to write a Jets season preview for *Deadspin*. The following February, just before the Super Bowl NFL championship game, Daulerio emailed Sterger because he was planning a *Deadspin* swimsuit issue that would feature members of the sports media. Sterger was widely considered very attractive.

In a follow-up phone conversation later in February, Daulerio told her about the website’s annual Super Bowl Bounties, a kind of treasure hunt list of gag photos taken at the event. Sterger planned to attend the Super Bowl. If a reader sent in a photo that met the criteria, *Deadspin* would pay 65 cents. One item on the list was a cellphone snapshot of an athlete’s penis, an idea prompted by a scandal: the previous month, photos of basketball player Greg Oden’s genitalia had surfaced on the web.

Athletes “sexting” female journalists and staff was not unusual. Numerous female sports journalists had been sent such photos. “It goes from ‘Hi, how you doing?’ to a picture of their ‘junk’ very quickly in a very informal way,” says Daulerio.

During their phone conversation, Sterger told Daulerio that he should see the photos she had received on her cellphone. As Daulerio recalls, she described some of the photos and who had sent them, and added: “You’re never going to believe who was the worst.” Sterger dropped hints: Jets, quarterback, old guy. When he realized it was Favre, Daulerio told her, “You’ve gotta be kidding me.”

⁵ Author’s interview with A.J. Daulerio in New York, NY, on October 28, 2011. All further quotes from Daulerio, unless otherwise attributed, are from this interview.

Initially, Favre sent Sterger text messages, she explained to Daulerio. The athlete then left multiple voicemails on her phone, inviting her to his room, though he never identified himself. Sterger played several of the voicemails for Daulerio. "Send me a text. Love to see you tonight," one voicemail said. Sterger had never met Favre, but details he left helped her figure out the caller's identity.

Favre had a squeaky clean image. Among other achievements, he had led the Packers to a 41-7 victory the day after his father died in December 2003; faced the death of his brother-in-law in an accident the following October; dealt with his wife's breast cancer diagnosis in 2004; and endured the destruction of his family's Mississippi home during Hurricane Katrina in August 2005. Sterger's story challenged this image. "Jenn, you know, this is kind of a big deal," Daulerio told her. But Sterger asked him not to tell anyone and said that she didn't want to be the next Rachel Uchitel (Uchitel was pro golfer Tiger Woods' mistress, and news about their text messages made headlines in November 2009).

Sterger asserted that nothing came of Favre's offers and that she ignored his messages. But when the 41-year-old married football legend began sending close-up photos of his genitalia, she began to feel uncomfortable.

From 'Cowgirl' to Gameday Host

Sterger was something of a star herself. She first attracted media attention on Labor Day 2005 during a nationally televised Florida State University football game. At the time, she was an FSU junior studying psychology and criminology. Nicknamed the "FSU Cowgirls," she and several friends attended the games wearing short shorts, revealing tops and cowboy hats. When one of ABC's cameras showed a shot of them, sports announcer Brett Musberger commented on live television, "I think 1,500 red-blooded American men just decided to go to FSU next semester."⁶

Those few seconds of crowd shots after a commercial break led to thousands of friend requests on Facebook. Photos of Sterger went viral online. Bloggers wrote about her. The magazines *Maxim* and *Playboy* wanted to do photo spreads of her with her friends—offers she accepted. *Sports Illustrated* asked her to write a regular column called "Scorecard Daily" for its website beginning in early 2006. She was let go a year later.

In August 2008, the New York Jets hired Sterger as an in-house sideline reporter or "gameday host." The Jets had created the position for her. Before the game, she interviewed celebrities and hosted a segment, "Keys to the Game," on the Jets' pre-game show. Sterger also appeared during timeouts and halftime and introduced the Jets dance team. That same year, she also worked as a host for the Fox Sports show *Big Man On Campus*.

⁶ Brent Musberger, ABC Sports, September 5, 2005. See: <http://www.youtube.com/watch?v=3Pj2zV5FdYU>

In 2009, Sterger left her job with the New York Jets to pursue an acting career. In February 2010, when she mentioned Favre's photos and messages to Daulerio, she had started work on another cable TV sports show, *The Daily Line*.⁷

Dead End

In late February 2010, Daulerio called Sterger again to see if she would allow him to post a "blind item," a term for unattributed stories in a gossip column, about the messages and photos from Favre without mentioning Sterger. On February 15, Sterger sent him an email that seemed to say yes:

I like ya AJ... and if there is a way to expose this dude for the creepy douche he is WITHOUT me being attached to it in any way that is fine. I just want to make it clear I never met him, saw him, etc... because I don't roll that way. That way meaning old... or married.

But by March, Sterger was having second thoughts. "She wanted to speak to her lawyer," Daulerio said. "She was supposed to come into this office with the voice mails and the photos and, you know, we were going to talk about how we could publish them." But Sterger emailed to let him know that she was sick. The two exchanged a flurry of emails. Daulerio kept pressing her. She stalled for time.

At this point, Daulerio contacted a mutual friend in the media who told him that Sterger had told numerous people about Favre's messages and the photos; she had also forwarded the photos to some of them.⁸ The mutual friend had seen the photos and told Daulerio that the texts, voicemails and photos had become a running joke among her friends. "I was, like, 'How many people know about the story?'" recalls Daulerio. That's when he learned that several employees of the Jets organization also knew about this. "That made it a bigger story than just a creepy old guy hitting on a girl," says Daulerio. "There were people who had known about this story who probably would not want this story to go public."

During the spring and summer months, Daulerio turned his attention to other work, but checked in with Sterger about once a month. By then, Sterger was busy with her new job at the *Daily Line*. She emailed him back, but ignored his questions about the possibility of a blog post about the photos and messages.

Other sources. In the meantime, Daulerio decided to work other sources, specifically three people whom he had heard knew about the photos. These potential sources worked in the media

⁷ The show appeared on the Versus Network cable channel.

⁸ Daulerio would not name his source.

and covered Favre and the Jets. "Have you ever heard about anything that happened with Brett and Sterger during his time with the Jets?" Daulerio asked each of them.

All three of his contacts said they had heard about Favre's wristwatch. In one of the explicit photos sent to Sterger, a distinctive watch that Favre had worn during a press conference announcing his first retirement from football (before he resumed his career with the Jets) was clearly visible. The watch had a blue-green face, black band and beveled silver casing. That had helped Sterger identify Favre. But none of the people Daulerio spoke to could understand his interest in the story. They cited ethical concerns. "This is not [just] about a professional athlete whipping out his [penis]," Daulerio responded.

Daulerio believed the story went beyond a photo of genitalia. To him, the photos and messages demonstrated not only the hypocrisy of Favre's family man persona, but also the nature of an organization that was "facilitating every kind of whim and desire he had." Daulerio adds: "I understand the sentiment that this is so commonplace, and you can nail almost every single athlete for stepping out on his wife. But this felt like a bigger deal to me." Sterger and Favre were both Jets employees, and Daulerio thought the Jets organization appeared to be protecting Favre.

In July, Daulerio contacted Jesse Derris of Sunshine, Sachs & Associates, the agency that handled public relations for the Jets. Derris said he had never heard about the photos and messages but he would make a few phone calls and get back to Daulerio. "He calls me back, and the first thing he says is that, well, technically, Jenn Sterger's not really an employee, she is freelance, and she has no grounds for a suit," Daulerio says. He found Derris' response "an interesting answer" to something that supposedly hadn't happened. "It was clear that somebody knew something."

To Blog or Not to Blog

Throughout July, Daulerio talked to additional sources. The more he pushed and dug, the more confident he felt that Sterger was telling the truth about the photos. Football season was approaching. Meanwhile, the sports media were speculating that Favre was considering coming out of retirement yet again. Daulerio thought that his possible return to football could be a news peg for the Sterger photo story.

In late July, Daulerio pressed Sterger for more details. She said her final text message from Favre arrived in June 2009. He had retired from the Jets in February 2009, and was in New York City for an HBO Sports show with host Joe Buck. On the show, Favre had admitted that he was considering a comeback to play for the Minnesota Vikings. Sterger's additional information was enough for Daulerio. "I was basically locked in at that point," Daulerio says.

Editorial Process. At *Deadspin*—and at all *Gawker* sites—the writer of a post was responsible for fact checking the story. Still, mistakes inevitably occurred. As with most news organizations, the staff included legal counsel. At *Gawker*, that person was Gaby Darbyshire, the media company’s chief operating officer and legal director (she trained originally as a barrister in the United Kingdom).

“Obviously, we are known to be quite controversial and to be more risk-takers than the mainstream media,” says Darbyshire.⁹ To guide staff, Darbyshire had put together a “strongly worded and clearly defined set of editorial policies. Editors are all expected to understand the basics of law, like copyright law and libel.”

Darbyshire did not review every item prior to posting. Such a policy would have created a bottleneck, given that *Gawker Media* sites published hundreds of items a day. Instead, she explains, “we work under a principle of asking for my forgiveness, not for my permission.” If a problem arose, Darbyshire asked the writer to describe the history of reporting the story, what happened, why someone was upset and any salient details. She might suggest the writer add a clarification or an update. If the offended subject of a story sent a letter or statement, *Deadspin* was willing to publish it. But that did not happen often. Darbyshire explains:

Most of the time, no forgiveness [of the writer] is required because we’re entirely right, we’re within the law, and you have someone who’s complaining because they don’t like what was said about them. But we’re perfectly entitled under the First Amendment to say so.

“Occasionally, something could be sloppy, the misuse of a word that’s really meaningful,” she adds—for example, something said in jest. But items that might be construed as libel in a traditional newspaper might not be considered as such given the tone and context of all *Gawker* sites. She notes:

There’s a difference between the *New Yorker* spending nine months on an article, and being a site that prints rumors. And you know, often there’s no smoke without fire, because most of the stuff—life imitating art imitating life. You can’t make this [expletive deleted] up. It’s too crazy.

Darbyshire asserts that sometimes one source is sufficient to publish an item. However, “obviously, the more sources you have to corroborate something, the better,” she adds. “What’s ironic is people think that we don’t do enough background source checking and research... [Actually, Daulerio] is much more diligent a journalist than he lets on in public.” She was comfortable with writers relying on secondhand sources if the story seemed credible, and the writer was willing to stand behind it.

⁹ Author’s interview with Gaby Darbyshire in New York, NY, on October 28, 2011. All further quotes from Darbyshire, unless otherwise attributed, are from this interview.

Since its founding, only one lawsuit had been brought against *Deadspin*. In 2009, football player Sean Salisbury sued the website for libel because Daulerio reported that Salisbury had been fired by one of ESPN's radio stations for sending cellphone photos of his penis to a woman who worked at the station.¹⁰ Several months into the lawsuit, Salisbury admitted on national radio that he had, in fact, done that. The lawsuit was dropped.

Now Daulerio had a similar story, this time involving Favre. "Everybody loved the Brett Favre story" of triumph over adversity, he says. "He transcended sports in a lot of ways." That was precisely why Daulerio felt the story was important. "I [knew I was] going to get a lot of [expletive deleted] on this, and the upside in my mind was basically, like, still tremendous," he says.

As July turned to August, Daulerio considered his options. He had a secondhand story based on multiple anonymous sources. Posting it would be risky. Sterger still refused to go on the record. Publication might trigger a lawsuit from Favre against Daulerio and *Deadspin*. Daulerio also realized that many fans would be surprised and dismayed to hear of Favre's behavior.

The only thing missing was the photos themselves. But Daulerio's efforts to get copies had so far failed. Maybe if he published what he knew, the pictures would surface. "This is the type of thing that could potentially get some national attention or, at least, spark some national conversation about the behavior of athletes," he says.

Giving Notice

On the morning of August 3, Daulerio decided he couldn't hold the story any longer. He sent the following message to Sterger:

Okay, here's the deal: I'm very close to running your Favre allegations today. I've spoken to the Jets about this. So let me know how you want to proceed, please. I'd prefer you were on the record about this stuff, but I understand if you don't want to be. However, I do have our email conversations we had and, frankly, that's enough to get this started. Not trying to dick you over, but, there was no way I was going to sit on it forever, either. So lemme know.

Sterger responded from her smartphone, which was working erratically: "I can... as soon as I get this [phone] back and running... or you could meet me in person on my way to studio in a few hours." Other than that response, Daulerio heard no more from Sterger.

The next day, at 10:50 a.m., Daulerio posted the story and included the text messages he and Sterger had exchanged the day before. In his post, Daulerio added: "Maybe those photos will

¹⁰ Salisbury was fired by Dallas radio station 105.3 FM, The FAN, a CBS affiliate.

surface at this point since I assume many people would like to hear her side of this story.”¹¹ The post had almost 727,000 pageviews.

Several weeks later, someone contacted Daulerio via email and said he had files of the photos and voice messages that Favre had sent. He was willing to hand them over to *Deadspin*, but he wanted \$12,000 in compensation. Daulerio had paid for materials before, but usually token amounts. This was a lot of money.

Daulerio contacted legal director Darbyshire. He had a clear understanding of her publication guidelines, but wanted her opinion on this specific situation. She was not enthusiastic. He already had the story, she noted. What would the pictures add? She also mentioned the risk of a lawsuit—from either Favre or Sterger. Darbyshire asked whether Daulerio was willing to go to prison over a photo of a penis just to protect a source. “I was concerned about running the images if there was any suspicion that they had been obtained by theft or other illegal means and if we were, in offering to pay for them, soliciting someone to break the law,” she says.¹²

Daulerio knew he would have to get sign-off from *Gawker* founder Denton before he could pay for the photos. He would also like Denton’s view on whether to publish the explicit pictures. Daulerio himself was in no doubt: “I’d mortgage the site for this. This is like Monica Lewinsky’s dress for *Drudge*,” he told a reporter.¹³ But was this an issue worth fighting for? What about the payment—was that justified? Was there a need to publish the actual photos themselves? Finally, the legal threat was real. Was he prepared to run the risk or pay the price if found liable?

¹¹ A.J. Daulerio, “‘Brett Favre Once Sent Me Cock Shots’: Not A Love Story,” *Deadspin*, August 4, 2010. See: <http://deadspin.com/5603701/brett-favre-once-sent-me-cock-shots-not-a-love-story>

¹² Email from Gaby Darbyshire to the author, February 15, 2012.

¹³ Gabriel Sherman, “The Worldwide Leader in Dong Shots,” *GQ*, February 2011. The website *Drudge Report* was one of the first to break the news that Lewinsky, a White House intern, had an extramarital affair with President Bill Clinton. She had kept a semen-stained dress worn during one of their encounters as evidence.