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DEFAMATION IN THE TWENTY-FIRST CENTURY:
SOME OBSERVATIONS AND A BRIEF TAXONOMY

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I. INTRODUCTION

Defamation is having a moment—but not a good one. A recent spate of high-profile trials has drawn renewed attention to this venerable tort and has mainly highlighted how this cause of action needs to be rethought. In some cases, the publicity surrounding the trial has all but ensured that neither party would realize the possible reputational benefits of suing for an allegedly defamatory statement. In others, the claim is simply ill-suited to the harm suffered. Defamation still has an important place in the torts pantheon, but it should be reserved for cases involving reputational harm.

Much of the scholarship on defamation focuses on its constitutional dimensions and how they have transformed defamation law. Beginning with the 1964 Supreme Court case

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of *New York Times Co. v. Sullivan*,[2] it has become increasingly challenging to establish a prima facie case for this ancient tort.[3] Subsequent decisions by the high court have expanded and fleshed out the initial rules and standards established in *Sullivan*.[4] But several members of the court have recently advocated for reconsidering the current constitutional rules in light of developments following the 1964 decision. Doing so is warranted in part because of the radical transformations in the media landscape during the past sixty years. Most notably, the explosion of social media and its impact on the relationships among public figures, public officials, and, well, the rest of us.[5] This is a route well worth exploring, but beyond the scope of this essay.

Although this essay, like the calls for reconsidering the constitutional rules of defamation, considers the effect of social

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[2] 376 U.S. 254 (1964).

[3] In that case, the Court held that a public official could not recover damages for defamation absent proof of "actual malice" (knowing the statement was false, or acting with reckless disregard as to whether it was true or false). *Id.* at 279–280.

[4] *See* Curtis Publishing Co. v. Butts, 388 U.S. 110 (1967) (extending the *Sullivan* test to public figures) and Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (holding that, as to matters of public interest, state law could impose liability for negligence; but could *not* impose presumed or punitive damages unless actual malice were shown).

[5] In 2021, Justice Gorsuch joined Justice Thomas in questioning the Court's adherence to the constitutional architecture established by *Sullivan*. Dissenting from the denial of certiorari in *Berisha v. Lawson*, 141 S.Ct. 2424 (2021), Gorsuch noted the vast changes in the media landscape and the emergence of many "publishers" (in the broad legal sense of that term) who did virtually no fact-checking, but who were protected by the "actual malice" standard. Thomas's views are based on his belief in originalism, and he sees no historical precedent for the *Sullivan* standard. Tellingly, Justice Gorsuch also cited a law review article, written by Justice Kagan during her time as a law professor, raising similar doubts about the continued vibrancy of *Sullivan*: "As *Sullivan*'s actual malice standard has come to apply in our new world, it's hard not to ask whether it now even 'cut[s] against the very values underlying the decision.' Kagan, A Libel Story: *Sullivan* Then and Now, 18 L. & SOC. INQUIRY 197, 207 (1993) (reviewing ANTHONY LEWIS, MAKE NO LAW: *THE SULLIVAN* CASE AND THE FIRST AMENDMENT (1991))." *Id*. at 2428.

(and other) media on defamation lawsuits, my legal project here is different. My focus is primarily on the common law of defamation, including a preliminary argument that claims should be better calibrated to suit the type of relief the plaintiffs seek. In other words, we can work backward from the categories of damages sought and granted to get a better sense of whether the tort is the best fit in a particular situation. As the cases discussed herein illustrate, another tort claim may be the best vehicle when a defamation claim is not appropriate. Pegging recovery to the most apt civil cause of action emphasizes how different torts lead to different types of damages and brings much-needed clarity to defamation in the process.

II. A VERY BRIEF HISTORY OF DEFAMATION, INCLUDING SHAKESPEARE

It is helpful to begin with a summary of the requirements and purposes of defamation at common law. We can get a good sense of the concerns of early modern Englishmen from the following Shakespeare quote: "Good name in man and woman . . . is the immediate jewel of their souls."[6] That is the devious Iago, perhaps Shakespeare's purest villain, reciting what the audience knew to be true in Othello[7] and what they also knew of how Iago was twisting this common view to his advantage. Iago's statement also reflects the common law in the early 1600s. Back then, defamation claims were primarily concerned with false statements about the plaintiff that led to reputational injury, which was thought of not entirely in material terms. Thus, a false statement about another person was not actionable *unless* the statement was likely to cause the victim reputational injury. The concern with the immortal soul expressed by Shakespeare was at the heart of the claim, although of course the successful claimant could recover damages for any economic loss that he could establish. (For instance, if customers stopped employing a blacksmith because of false accusations that he did a poor job shoeing horses, recovery could be had for loss of business.) The tort also required that the statement would have been taken as true and

[6] WILLIAM SHAKESPEARE, OTHELLO act 3, sc. 3,l. 155.
[7] *Id.*

would have diminished the plaintiff in the eyes of at least a minority of "respectable people," so that claims could not be brought for statements so absurd that they beggared belief.

This overriding concern with reputational harm leads to certain corollary observations that are relevant here. First, courts did not worry about emotional harm *per se*. While it's true that harm to reputation might be expected to, and often does, lead to emotional distress, courts did not care about that until the twentieth century, when intentional and then negligent infliction of emotional distress were established. Before then, recovery for emotional distress was considered only for coincidentally related reasons, such as the interest in dignity and keeping the peace.

Other ancient common law torts reflect the same values, although not in a consistent way.[8] Assault, for instance, was created to provide a cause of action for those who feared imminent, unprivileged harm or offense, but not because of the emotional harm that the near-miss of a hatchet predictably causes.[9] Instead, the English courts wanted to create a prophylactic rule that would deter people from swinging the hatchet in the first place in an effort to keep the peace and protect the dignity of the person on the receiving end of the offense. A claim for offensive battery involves no physical harm; it is simply contact that a reasonable person would find offensive. This claim exemplifies the English courts concern with the plaintiff's dignity. In one case, the court repeatedly used the term "indignity" and summarized the nature of the offense as "[o]ne of pure malignity, done for the mere purpose of insult and indignity."[10] Similarly, the long-recognized tort of false imprisonment allows recovery when an injury results from the unjustified confinement of the plaintiff or when the

[8] For an excellent and nuanced account of the shifting role and meaning of dignity as it applies to these (and other torts), see Kenneth S. Abraham & G. Edward White, *The Puzzle of the Dignitary Torts*, 104 CORNELL L. REV. 317 (2019).

[9] *I. De S. and Wife v. W. de S,* At the Assizes, coram Thorpe, C.J. (1348).

[10] Alcorn v. Mitchell, 63 Ill. 553, 554 (1872).

plaintiff is aware of the confinement.[11] Courts believe no one should suffer this indignity, even when there is no actual harm. Similarly, defamation claims were primarily about the loss of reputation and dignity. To a twenty-first-century reader, emotional harm seems intrinsically connected to a loss of dignity, but that was not in the minds of early common law courts.[12]

Another relevant rule is that courts did not consistently require proof of damages in defamation cases. As any first-year law student is (painfully) aware, the requirement of proving damages only held when the defamation was spoken, not written. This difference explains the distinction between libel (written) and slander (spoken) defamation, which has held on stubbornly in most states until the present day.[13] One of the stated justifications for this separation is that a spoken

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[11] *See* RESTATEMENT (SECOND) OF TORTS § 35 (1) (c) (AM. L. INST. 1965) (liability where the plaintiff "is conscious of the confinement or is harmed by it."). Modern cases reflect this continuing concern with dignity denied. In *Chellen v. John Pickle Co.*, the plaintiffs added a common law claim to a host of federal labor counts. Chellen v. John Pickle Co., 446 F. Supp. 2d 1247, 1274 (N.D. Okla. 2006). In allowing the actions, the court emphasized the suffocating restrictions to which the Indian workers were subjected, noting that the defendants "restricted the[ir] movement, communications, privacy, worship, and access to health care." *Id.* Privacy is another tort that protects one's dignity.

[12] Claims for intentional infliction of emotional distress begin to emerge at the end of the nineteenth century and reflect a growing recognition that emotional health is an interest worth protecting as its own right. Abraham and White, *supra* note 8, at 337–338 (noting the tort was not expressly recognized in the United States until the 1930s, but English cases go back some thirty-plus years before that). *See* Wilkinson v. Downton, 2 Q.B. 57 (1897).

[13] Good luck finding a court, legal scholar, or random person will defend this distinction today, yet only a few states have done away with these evil twins in favor of a unified tort of defamation. *See, e.g.*, Bryson v. News America Publications, Inc., 672 N.E.2d 1207, 1215 (Ill. 1996); N.M. Sup. Ct. Rules Ann. 13-1001 (Recomp. 1986) (U.J.I. Civ.) (committee comment). For scholarly criticism, *see* Leslie Yalof Garfield, *The Death of Slander,* 35 COLUMBIA J.L. & ART 17–20, n.13 (2011) (citing a comically long list of scholars calling for the abolition of this distinction).

statement is less likely to cause reputational injury than a written one. The expectation, in the early age of the printing press, was that written statements would be widely disseminated—even though only a fraction of the population could read. In libel cases, damages were presumed. This rule underscores the principal concern of reputational harm rather than temporal, documented loss. Only when a statement was deemed unlikely to gain substantial purchase in the community (slander) was damage required, more likely an indirect marker that a reputation had been damaged rather than compensation for actual economic loss.

These observations are not to suggest that economic damages were not appropriate in such cases, only that these were not the principal focus of defamation claims—*reputation* was. I propose that the same focus remains appropriate as we sort through the present cluttered landscape of lawsuits, with some attention to the closely related imperative of protecting dignity.

III. CELEBRITY DEFAMATION TRIALS, INCLUDING THE JOHNNY DEPP/AMBER HEARD CIRCUS

First, consider the lawsuit brought by Johnny Depp against Amber Heard. After their tumultuous relationship crashed, Heard penned an op-ed about the domestic abuse she had suffered.[14] While she did not mention Depp by name, it was clear (and she did not deny) that Depp was the alleged abuser. In due course, Depp sued Heard for defamation. The ensuing trial was a media circus —including a cameo appearance by alpacas outside the courthouse.[15] Videographers, photojournalists, and legacy media provided blow-by-blow

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[14] Amber Heard, *I Spoke Up Against Sexual Violence—And Faced Our Culture's Wrath*, WASH. POST (Dec. 18, 2018), https://www.washingtonpost.com/opinions/ive-seen-how-institutions-protect-men-accused-of-abuse-heres-what-we-can-do/2018/12/18/71fd876a-02ed-11e9-b5df-5d3874f1ac36_story.html.

[15] Mike Miller, *Why Johnny Depp's Fans Brought Alpacas Outside Courthouse in Amber Heard Trial,* ENT. WKLY. (May 20, 2022, 8:00 PM), https://ew.com/movies/johnny-depp-amber-heard-trial-alpacas-explained/.

accounts of the televised trial. Social media predictably amplified the drama, leading to online discussions, arguments, and grunting that often had little to do with the underlying legal issues. The cacophony was far removed from the underlying reason Depp had brought the claim—to restore his reputation. Even the jury verdict in favor of Depp did little to accomplish that goal because the unsavory facts adduced at trial did nothing to present him in a positive light, except perhaps to his die-hard fans who would have presumably supported him in any case.[16]

This summary of the *Depp v. Heard* lawsuit raises some questions: (1) What did Depp gain by the suit? (2) What other legal avenues might he have pursued? In this case, if any claim was appropriate, it was interference with business relations, but the arguments supporting that claim were watery. More likely, the legal system was not the best means of redress for what Depp seems to have wanted: to refute Heard's claim and restore his reputation. Had he (and his lawyers) given more thought to the matter, he might have decided the better course would have been to either (1) not respond at all, letting the matter die a natural death; or (2) use his own considerable media access to push back. Bringing a legal claim only dragged Depp into a reputational abyss from which he is unlikely to emerge and cost him whatever dignity he had. Indeed, the media frenzy dragged Heard down as well. In a statement about settling the case, Heard stated: "I defended my truth and in doing so my life as I knew it was destroyed. The vilification I have faced on social media is an amplified version of the ways in which women are re-victimised when they come forward.[17]

It is hard to know what the jury had in mind in awarding Depp ten million dollars. Given the adverse

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[16] To be precise, Depp was awarded ten million, and Heard won two million in her countersuit for defamation claiming Depp was lying. Christi Carras, *Amber Heard, Johnny Depp Settle Defamation Case: 'This is not an act of concession,'* L.A. TIMES (Dec. 19, 2022), https://www.latimes.com/entertainment-arts/story/2022-12-19/amber-heard-johnny-depp-settle-defamation-case-appeal-trial#:~:text=Now%20I%20finally%20have%20an,to%20my%20voice%20moving%20forward.%E2%80%9D.

[17] *Id.*

ramifications the trial had on Depp's career, the hefty payout may have been worth wading through the muck of a train-wreck trial. But, according to what we know from the trial, the alleged loss of business opportunity may have constituted the bulk of the jury's largesse. Had the claim focused exclusively on the interference with prospective business advantage, perhaps the circus would have left town without destroying the performers.[18] In any case, the judicial process did nothing to restore or repair Depp's reputation; indeed, it may have made it worse.[19]

IV. WHEN DEFAMATION ISN'T THE BEST FIT, INCLUDING THE FALL OF ALEX JONES

Another cluster of defamation cases that fits uncomfortably into the common law's concern with reputation

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[18] Similar observations can be made about the lawsuit Blac Chyna brought against Kim Kardashian, Khloe Kardashian, Kris Kardashian, and Kylie Jenner for defamation and interference with business opportunity. Chyna and Rob Kardashian had a reality show on the E! network that was canceled. Chyna claimed that the defamatory comments made by the sisters about her abusive conduct toward Rob Kardashian led to the show's cancelation. Chyna sued under multiple theories, including defamation, false light privacy (a tort closely related to defamation), and interference with contractual relations. The suit was not successful and did nothing for Chyna's reputation, which was chewed up and fed through a toxic stew of racism and misogyny. Andrew Dalton, *Jury gives sweeping win to Kardashians in Blac Chyna lawsuit,* AP NEWS (May 2, 2022), https://apnews.com/article/entertainment-tv-arts-and-lawsuits-los-angeles-1440ab3abdf39580ae76ef753ac4dd9a.

[19] The *Depp* trial in the United States was preceded by another trial in the United Kingdom, where Heard emerged the winner. David Sillito, *Johnny Depp Loses Libel Case Over Sun "Wife-Beater" Claim*, BRIT. BROAD. CORP. (Nov. 2, 2020), https://www.bbc.com/news/uk-54779430. The difference may be explainable by important differences in the factual background and the legal standards relating to defamation cases in the U.K. and the U.S. In the U.K., Depp sued a London tabloid in connection with allegations the paper printed about him and was required to prove – but could not – that the comments the tabloid made against him were false. The case was also tried before a judge, rather than to a jury. Further, the proceedings were not televised.

are those the Sandy Hook families brought against Alex Jones. Many will recall that in December 2012, a deranged man with a powerful assault weapon killed twenty-six people (including twenty children) at the Sandy Hook Elementary School in Newtown, Connecticut. Jones, the host of a right-wing talk radio show and the operator of the website *InfoWars*, has spread many conspiracy theories over the years, but none as vile and harmful as the nonsense that the Sandy Hook massacre never happened, and that the event was "played" by actors in a "simulation" to increase support for laws restricting guns.[20]

Understandably, the bereaved Sandy Hook parents, siblings, and loved ones had their emotional distress greatly multiplied by these statements—and they were not going to put up with it. Complaints were filed against Jones, which included the intentional tort claims of defamation and the intentional infliction of emotional distress. At first blush, the defamation claim looks solid: Through his intentionally and recklessly false statements, Jones engaged in conduct calculated to harm the plaintiffs' reputations. But did he succeed in doing so? Defamation is not the perfect fit for Jones's repellant behavior. As noted earlier, a successful defamation claim has generally required that at least a "respectable minority" of people believe the false statements being made about the party claiming defamation. This requirement follows logically from the requirement of harm to reputation—if a claim is so outlandish that no "respectable" person believes it, the justification for the lawsuit disappears. I feel confident in saying that no "respectable person" believes any of the bile that spewed from Jones and some of his followers; The plaintiffs' reputation did not diminish, except to those who believe in conspiracy theories without a shred of evidence.

But surely these families were entitled to compensation, and they received it. Jones is on the hook for approximately one

[20] Jason Wilson, *Crisis Actors, Deep State, False Flag: The Rise of Conspiracy Theory Code Words*, GUARDIAN (Feb. 21, 2018), https://www.theguardian.com/us-news/2018/feb/21/crisis-actors-deep-state-false-flag-the-rise-of-conspiracy-theory-code-words.

billion dollars in the Connecticut case alone.[21] Is defamation the right tort, though? The argument for it would go something like this: Because of the way information is virally spread, seeping into every area of the population, including to some who believe these theories, there *is* reputational harm, at least to some extent.

Maybe that is correct. But it seems stretched to me, and, in fact, the damages for defamation have mostly focused on the emotional distress caused by the spread of these vicious lies—not on any loss of reputation. While an attorney's decision not to include a defamation claim in a lawsuit against Jones would have been poor legal strategy and poor public relations, the truer claim lies elsewhere—in the tort of intentional infliction of emotional distress, which is tailor-made for this situation. A claim for emotional distress first requires that the action of the defendant be "extreme and outrageous," not an ordinary slight, but a course of conduct that transgresses all bounds of civilized society. We can safely leave that one to the jury, which, in fact, also found against Jones under this theory. The tort also requires that the defendant acted intentionally or recklessly (with disregard of known risk) in causing severe emotional distress, and that such distress results.

The things that were said about the Sandy Hook families were so outrageous, and so heart-breaking, that they are difficult to describe. Below is one example among the many I could have chosen. Note the anguished expression of the emotional devastation at the end:

> Francine Wheeler, whose son Ben was one of the first-grade victims, testified that she couldn't even find peace in a support group for grieving mothers. Here's how she described her encounter with another woman in the group, whose son had died just three weeks earlier:
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> She looked at my necklace. I have a picture of Ben. She said, "Who's that?"

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[21] Laurel Brubaker Calkins, *Alex Jones Punished Plenty by $1 Billion Jury Award, Lawyer Says*, BLOOMBERG NEWS (Nov. 7, 2022), https://www.bloomberg.com/news/articles/2022-11-07/alex-jones-punished-plenty-by-1-billion-jury-award-lawyer-says.

> I said "That's my son Ben. He died in his first-grade classroom at Sandy Hook School." She said, "What? You are lying. That didn't happen."
> . . .
>
> They took my identity. And then they took my husband's identity, they took my surviving child's identity who was hiding in the gym.[22]

This is almost impossible to read, and there is certainly satisfaction in seeing Jones hit with crippling damages. Of course the statement is untrue, but the untruth in this case is relevant to the emotional distress, not to any loss of reputation. In short, this case contains some of the elements of a libel claim, but the gravamen of the action is more solidly anchored in the intentional emotional distress. As with *Depp vs. Heard*, reputational loss and repair is tangential to what is truly at stake.

V. A FEW CONCLUSIONS, INCLUDING SKEPTICISM ABOUT THE FUTURE OF (SOME) DEFAMATION CASES

These observations are not meant to suggest that defamation is ripe for abandonment. Until courts begin to look at some of these cases more critically, plaintiffs' attorneys will often owe their clients a duty to raise a claim for libel or slander, as appropriate under the current standards. More deeply, the defamation claim can signal to a court that, even if the *damages* are for emotional distress or interference with a business relationship, a false statement precipitated those damages. At least while defamation is a viable option, it should continue to

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[22] Leah Myers, Lindsey Kane & Matt Caron, *Letter sent to parents of Sandy Hook victim said son's grave was peed on: Testimony,* FOX 61 (Oct. 4, 2022), https://www.fox61.com/article/news/special-reports/alex-jones-trial/sandy-hook-families-testimony-alex-jones-defamation-trial-connecticut/520-a59defb1-e67a-4e1b-9781-891ea66f6095. The headline speaks to another crushing instance of inhumanity by the conspiracy theorists following the Jones trial.

be used, assuming (perhaps unlike the Depp case) that the cause is worth bringing in the first place. Additionally, a successful defamation claim can serve as a pointed reminder that, even though recklessness is required for liability, those making false statements can still be held accountable and should check their sources of "information" before spreading lies.

Those collateral benefits aside, is there anything left of defamation in an age where everyone with a smartphone can spread both news and disinformation? What role remains for this tort, at least where celebrities are involved? Is there still a prospect of repairing reputations? Sometimes, yes.

Not all defamation cases brought by public figures are this unlikely to serve the very purpose for which the tort was created. Consider another case that, while in the news somewhat, received far less attention, but is a much more traditional defamation claim. Nona Gaprindashvili is a real-life person mentioned in "The Queen's Gambit," the popular 2020 Netflix mini-series about a female chess champion who laid waste to a succession of male grandmasters. Now eighty-one years old, Gaprindashvili is a Georgian who played chess for the Soviet Union. She sued the streaming service for a line during the final episode that she had "never faced men" in competition, even though the speaker of that line also noted that she had been a world champion among women.

This was, for narrative purposes, a throw-away comment about another female chess master. It was not about the fictional main character of "The Queen's Gambit." However, the show used Gaprindashvili's real name. What's more, Gaprindashvili had in fact faced many male grandmasters and won tournaments against them in the 1960s and '70s. She sued for what she saw as a sexist and defamatory statement. Although the show is fiction and loosely based on a novel, the trial court rejected the argument that statements within the show are protected First Amendment speech, reasoning that they are statements that could be seen as true by a reasonable viewer, and they are likely to damage her reputation—the "immortal part" of herself that could live on, even after death. In allowing the case to proceed, the trial judge noted: "At the very least, the [statement] is dismissive of the

accomplishments central to plaintiff's reputation."[23] After this adverse ruling, Netflix settled the case with Gaprindashvili for an undisclosed sum.[24] Of course, this Grandmaster plaintiff wanted (and received) money damages, but she was mostly concerned with her tarnished reputation as a world-class player who had defeated many men during her career.

This was a classic defamation case, featuring none of the prurient appeal of the two celebrity cases discussed above, and designed to vindicate Gaprindashvili's good name. Perhaps because the plaintiff was a lesser-known public figure, the case attracted little attention even in an age of virality. Yet, this same explosion of "content" threatens the already-permeable border between public and private figures. Once the TikTok world gets ahold of someone, that person will often become, according to courts, at least a "limited public figure" as to the viral lies, and they are therefore required, under prevailing Supreme Court precedent, to prove the disseminators were at least reckless in spreading the libelous statements or images. Restoring reputations will prove difficult because the viral nature of the libel may turn any lawsuit into a *Depp v. Heard*-like circus. The requirement of proving actual malice may also rule out certain suits from the start, or at least make them more challenging.

For vindicating reputation, then, we may be left with truly private defamation claims that do not attract much attention, such as one neighbor lying about another's marital infidelity or business practices, or the rare "public figure" case, such as Gaprindashvili's, that does not attract much attention. A third category could include situations where the public figure's reputation is so untarnished that an outrageous lie could be corrected through a lawsuit that would either result in a quick and well-advised settlement, with an admission of wrongdoing by the defamer, or a successful claim that does not

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[23] For a concise account of the story, *see* Peter Doggers, *Gaprindashvili's Lawsuit Against Netflix Can Proceed*, CHESS.COM NEWS (Jan. 28, 2022), https://www.chess.com/news/view/gaprindashvilis-defamation-lawsuit-against-netflix-can-proceed. The story embeds the trial judge's full opinion.

[24] Gene Maddaus, *Netflix Settles "Queen's Gambit" Defamation Suit Brought by Georgian Chess Grandmaster*, VARIETY (Sept. 6, 2022), https://variety.com/2022/tv/news/netflix-queens-gambit-lawsuit-settlement-nona-gaprindashvili-1235361680/.

leave the defendant (or the attorney) with little grist for the character-assassination mill. The reader is invited to think of some examples of such people, but they might include scientists, a few sports figures, and perhaps some revered and largely unblemished actors and musicians. Not everyone has a tarnished reputation before the lawsuit is even filed.

The celebrity trials are circus affairs, but there is something bigger to consider about the vogue for defamation trials. While defamation has historically been most associated with written falsehoods, today it is often carried through speech and images, which can be widely circulated and remain immortal on the internet.

Yet, that same crush of intellectual and sensory input has contributed to the mess we are in. When (mis)information is "all static, all day, forever," and when public figures and the political class exploit that glut of junk to defiantly deny the plain truth, defamation suits are one way to fight back. It is just that, as both the Depp and Chyna lawsuits depressingly depict, their power to establish truth and restore reputation is limited indeed. Perhaps the solution lies elsewhere, as in requiring social media sites to police their content or face liability. But that would require a change to federal law[25] and is the subject of another essay.

[25] Section 230 of the 1996 Communications Decency Act currently provides immunity for internet platforms (including social media sites) in connection with statements published by third parties. 47 U.S.C. § 230(c)(1). There is talk of amending or repealing the Act, but while it is in force, there is little an aggrieved party can do against the sites that make this content available without any sort of filter. *See, e.g.*, Michael D. Smith & Marshall Van Alstyne, *It's Time to Update Section 230*, HARVARD BUS. REV. (Aug. 12, 2021), https://hbr.org/2021/08/its-time-to-update-section-230.