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# Defamation and the Internet

## Representation in the Digital Age

### By Ethan Bordman

The Black Entertainment and Sports Lawyers Association (BESLA) held an informative panel titled *Counseling Celebrities in a Time of Crisis*.[1] One attorney on the panel recounted an incident when, several minutes before a judgment was rendered in a high-profile celebrity trial, he watched as a media blogger working on a laptop in the courtroom put the finishing touches on his article about the trial. The blogger guessed at what the decision would be and drafted his headline accordingly. The attorney, sitting nearby, asked the blogger why he did not just wait a few minutes for the actual decision to be announced. The blogger responded that if the facts of the article were incorrect he could fix them later – but if they were right, then he would be the first to announce the decision.

Celebrity defamation cases have come a long way since 1981, when Carol Burnett was awarded $1.6 million in the first libel judgment against the *National Enquirer*.[2] The paper was found to have fabricated a story, published in 1976, portraying Burnett as out of control at a Washington restaurant while dining with then-Secretary of State Henry A. Kissinger.[3] Following the headline "Carol Burnett and Henry K. in Row," the article reported that Burnett "knocked a glass of wine over," was "boisterous," "had a loud argument with another diner," and "traipsed around the place offering everyone a bite of her dessert," all of which implied that she had been intoxicated.[4] The jury voted unanimously that the paper had printed false and defamatory information with the knowledge that it was false, and finding that the paper did not do enough to check the truthfulness of the story.[5] Attorneys for the *National Enquirer* argued that the information came from an informant considered by the editors to be reliable and claimed the paper acted responsibly by attempting to confirm the story and by publishing a retraction after learning that the information was wrong.[6] The judgment was later reduced to $200,000.[7]

In 2013, Tom Cruise settled a defamation suit with Bauer Publishing and two of its publications.[8] The July 30, 2012, cover of *Life & Style* read "Suri in Tears, Abandoned by Her Dad" beneath a picture of Cruise's six-year-old daughter Suri, who was being held by her mother, Katie Holmes.[9] A few months later in the October 1 issue, the cover of *In Touch* magazine featured a picture of Suri above the headline "Abandoned by Daddy."[10] Cruise sued the magazine for $50 million, plus punitive damages, for defamation and invasion of privacy; he claimed the headlines were false, and that "he loves his daughter dearly and would never abandon her."[11] Bauer Publishing later stated it "never intended to communicate that Tom Cruise had cut off all ties and abandoned his daughter, Suri, and regret if anyone drew that inference . . . ."[12] Cruise stated that despite his busy schedule filming two movies back-to-back in 2012, he spoke with his daughter nearly every day and received frequent updates from Ms. Holmes.[13]

In 2014, actor and former Minnesota Governor Jesse Ventura was awarded more than $1.8 million (this amount was later reduced to $1.3 million) for damages to his reputation and career as the result of a story in the book *American Sniper*, which was about Chris Kyle's career as a Navy SEAL sniper.[14] In the book, Kyle describes punching out a celebrity, identified as "Scruff Face," after this man disparaged fallen soldiers at a war hero's wake.[15] In promotional interviews following the book's release, Kyle confirmed that the story referred to Ventura. Ventura claimed the story was fabricated and had damaged his reputation. Kyle's widow, Taya, is appealing the decision.[16]

Even outrageous claims may have ramifications on a celebrity client's image. Earlier this year, actress Mila Kunis was accused of stealing a chicken 25 years ago from her first-grade friend, singer Kristina Karo.[17] The claim states when the two were childhood friends in Ukraine, six-year-old Kunis was so jealous of Karo's pet chicken – named "Doggie" – that Kunis stole it. Karo is asking $5,000 for emotional distress, claiming Kunis confessed at the time of the alleged theft. According to Kunis, she has yet to be served with papers regarding this lawsuit, noting the allegation was timed to coincide with the release of Karo's new song.[18]

## What Constitutes Defamation?

For defamation to be proven, a plaintiff must fulfill four elements: (1) the defendant made a false statement purporting to be fact; (2) the statement was published or communicated to a third person; (3) the defendant was at fault in making the statement; and (4) the statement caused damages or harm to the person who is the subject of the statement.[19] For statements to be considered defamatory when they involve public officials or public figures, such as celebrities, the United States Supreme Court established in *New York Times Co. v. Sullivan*[20] that such statements must be made with malice – knowledge that they were false or with reckless disregard for the truth. Although the defamation cases described above were successful for the plaintiffs, mostly by settlement, proving that a statement was made maliciously makes it difficult for most celebrity defamation suits to be successful in court.

*New York Times Co. v. Sullivan* came about because of a full-page ad that was placed in the *Times* in response to Martin Luther King, Jr.'s arrest, in Alabama, on two counts of felony perjury for allegedly signing fraudulent tax returns. Soon after his arrest, supporters of Dr. King formed a committee to defend him and raise money for legal fees and bought the full-page ad in the *Times*, which was titled "Heed Their Rising Voices." The text stated that Dr. King had been arrested seven times and that the purpose of the current indictment was to intimidate him. It went on to describe the events of recent civil rights rallies, explaining that after students sang "My Country, 'Tis of Thee" on the Alabama state capitol steps, "truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus."[21] Although none of the respondents was mentioned by name in the ad, L.B. Sullivan, a Montgomery Commissioner (an elected supervisor of the police department), contended that the word "police" referred to him and therefore accused him of "ringing" the campus with police.[22] Sullivan further contended that the statement "they have arrested him [Dr. King] seven times" was libelous, because the word "they" referred to the police and, therefore, to him in his capacity as Commissioner.[23] It was acknowledged by the parties that some of the statements in the ad were not accurate.[24] For example, the students sang the national anthem, not "My Country, 'Tis of Thee." Further, although the police were near the campus, they did not "ring" the campus and were not called to the campus in connection with the demonstration on the state capitol steps.[25] It was also noted that Dr. King had been arrested four times,[26] not seven, as stated in the ad. Sullivan claimed that three of the four arrests took place prior to his election as Commissioner, and that he had nothing to do with the current indictment.[27] But the U.S. Supreme Court noted that "the right of free public discussion of the stewardship of public officials was . . . a fundamental principle of the American form of government"[28] and decided that the Alabama law, which allowed for libel for "criticizing the way public officials perform or fail to perform their duties,"[29] would "threaten the very existence of an American press."[30] The Court concluded that under the First and Fourteenth Amendments to award damages to a public official for defamatory falsehood relating to their official conduct "actual malice"[31] must be proven, emphasizing that "a State has no more power than the Federal Government to use a civil libel law or any other law to impose damages for merely discussing public affairs and criticizing public officials."[32]

## Using the "Truth" as Fact

Use of the truth as a defense to defamation was advocated by Alexander Hamilton in his appeal of *People v. Croswell*.[33] Croswell, a printer, published a story claiming that then-president Thomas Jefferson had paid newspaper publisher James Callender to run negative stories about his opponents. During his six-hour closing argument to the U.S. Supreme Court, Hamilton stated: "[T]he right of giving the truth in evidence, in cases of libels, is all-important to the liberties of the people."[34] Soon after the argument, on April 6, 1805, the New York Legislature enacted chapter 90 of the N.Y. Laws of 1805, providing that the truth was a defense to a libel charge "where published with good motive and for justifiable ends."[35]

Celebrity defamation cases have come a long way since 1981, when Carol Burnett was awarded $1.6 million in the first libel judgment against the *National Enquirer*.

Fast-forward to the Internet age: The website the smokinggun.com posts stories it promises are "cool, confidential, quirky – that can't be found elsewhere on the Web" and "100% authentic."[36] Thesmokinggun.com posts are based on legal documents, arrest records, and mug shots, and are frequently about celebrities and the entertainment industry. Subject matter used by the smokinggun.com is obtained from government and law enforcement sources via the Freedom of Information Act, as well as from court files. Thesmokinggun.com can guarantee that everything is "100% authentic" because its posts are truthful according to the various court, police, and other records it cites as sources, thereby eliminating the first element of defamation.

Thesmokinggun.com made national headlines when it exposed a number of inconsistencies in author James Frey's book *A Million Little Pieces*. This memoir about Frey's years as an alcoholic and drug addict sold more than 3.5 million copies.[37] The book was a selection in Oprah Winfrey's book club and the subject of a full episode of her television show.[38] Thesmokinggun.com approached Frey to clarify some facts before releasing its article; however, Frey refused to answer questions. He subsequently sent a letter to his fans claiming the website was trying to discredit him.[39]

In his book, Frey claimed that he was incarcerated for three months, but arrest records revealed that he was held for a few hours in jail.[40] He also claimed he was charged, in another incident, with several counts, including assault with a deadly weapon, assault on a officer of the law, felony DUI (driving under the influence), resisting arrest, possession of a narcotic with intent to distribute, and felony mayhem in Granville, Ohio.[41] The Licking County Sheriff's Department found no arrest record, and showed only a misdemeanor for speeding and driving without a seat belt. Neither the prosecutor nor the Common Pleas Court, where felony cases are handled, could find any record of felony prosecution.[42] Moreover, the charge of felony DUI did not exist in Ohio until after 1996; Frey claimed the event occurred in 1992.[43] There were other stories in the book that Frey could not substantiate.[44] Frey and his publisher, Random House, Inc., later agreed to a settlement by which purchasers of the book could claim refunds.[45]

Frey encountered what is known as the "Streisand Effect."[46] This is a reference to a case in which singer and actress Barbra Streisand sued the California Coastal Records Project, claiming the site invaded her privacy by posting pictures of her Malibu mansion.[47] Filing the lawsuit brought greater publicity to her privacy claim and attracted many more viewers than usual to the Coastal Records Project website because they wanted to see Streisand's home. News of the lawsuit grew, showing how often "efforts to suppress a . . . piece of online information can backfire making things worse."[48]

## Reputation Plays a Major Role

In its defense of the Tom Cruise lawsuit, Bauer Publishing filed several claims of relief with 34 affirmative defenses,[49] including the following: that the headlines were the opinion of the paper, supported by the article and allowed by the First Amendment; that some or all of the statements were true or substantially true; that the statements could not be reasonably understood by a reasonable reader to be defamatory; and that Cruise could not prove he suffered any compensable damage. Other defenses made applied uniquely to individuals in the public eye, including that Bauer did not act with actual malice; and that Cruise had "impliedly assumed the risk"[50] of harm. This implies that because he chose to be an actor – a profession that makes him a public figure – he was aware that he would be the subject of photographs and discussion in media outlets.

Perhaps the most difficult defense in a celebrity defamation case is that the statement did not harm a person's reputation, and therefore there are no damages. It is difficult to prove that the *only* reason a celebrity did not receive a movie role, endorsement contract, or record contract is because of untrue statements published by one person or one publication. In 2012, Kim Kardashian brought suit against the clothing company Old Navy for $20 million, claiming the company had tarnished her reputation by running a TV advertisement that featured a look-alike.[51] Kardashian alleged that the appearance of

model/singer Melissa Molinaro in the ad created confusion among viewers, who thought they were watching Kardashian, which therefore violated Kardashian's rights to her name and likeness. The one-minute commercial, styled as a music video, had showcased Molinaro's singing and dancing talents, and in preparation for the defense, Old Navy's attorneys investigated "Kim Kardashian's reputation as a singer and dancer."[52] Other anticipated arguments were that Kardashian is "libel-proof," "with a reputation so stained that no injury could cause true damage,"[53] and that she is neither a singer nor a dancer. Molinaro had appeared in MTV's *Making the Band 3*, a reality show about forming a musical group, as well as another music-themed show,[54] and had recorded and released a song. The attorneys also intended to show that Kardashian's claims had no merit, because the "look-alike" ad was a small part of the overall campaign and any profits attributed in violation of Kardashian's rights were *de minimis*.[55] Kardashian's lawyers were expected to show consumer surveys showing confusion.[56] The Gap, which owns Old Navy, was indemnified by the advertising agency that created the campaign.[57] Several months later, Kardashian and Old Navy reached a settlement.[58]

> Frey encountered what is known as the "Streisand Effect."

## Where You Say Something May Mean More Than What You Say

Though you may have the right to say something – to produce the content of your message – you may not have the right to say it *where* you said it. According to the American Civil Liberties Union (ACLU), "[a]lthough the First Amendment gives you the right to decide where best to express yourself, your right to exercise your free-speech rights may hinge upon exactly where you choose to exercise those rights."[59] There are three free speech forums: traditional public forums, designated public forums, and private property.[60] Traditional public forums include public parks, sidewalks, and any areas usually open to political speech and debate.[61] These places have the strongest First Amendment protections; the government may set only reasonable, content-neutral restrictions on the time, place and manner of speech.[62] A designated public forum is that which the government opens for public expression. Public auditoriums, municipal theaters, public libraries, and meeting rooms are examples. The government may limit access but may not exercise viewpoint discrimination.[63] With regard to private property, the ACLU states: "Private property owners can control what happens on their property and may prevent people from protesting on their land."[64] However, adjoining public property, such as sidewalks and streets in front of private property, may provide an alternate venue.[65] As many publications have an online presence, a magazine's or newspaper's website is considered private property because it is owned and operated by a private company.

## Online Content: Providers vs. Commentators

In June 2014, a significant decision regarding defamation and the Internet was rendered by the Court of Appeals for the Sixth Circuit. Sarah Jones brought suit against the website thedirty.com in 2009, following the appearance of several posts about her.[66] Thedirty.com enables users to anonymously upload comments, photographs, and video about any person – whether or not that person is a public figure. Nik Richie, the owner of the site, selects and publishes the material, adding his own editorial comments. Users of the site, referred to as "The Dirty Army," may submit "dirt" – that is, text, photographs, or video about any individual – and may also post comments about content submitted by others. Editing by the staff consists only of deletion – there is no modification of any user-generated submissions and the staff does not create content. The staff does not fact-check submissions for accuracy. Postings of nudity, obscenity, threats of violence, profanity, and racial slurs are removed.

Jones, a member of the Cincinnati Bengals football cheerleading squad, was a teacher in Kentucky. Between October 2009 and January 2010, she was the subject of several posts on thedirty.com, along with editorial remarks made by Richie. One posting of two photographs showing Jones with a man was captioned "[Jones] slept with every other Bengal football player" with Richie adding his own comment.[67] Richie refused Jones's request to remove the post. In December 2009, another photograph of Jones appeared on the site along with claims that she had contracted several sexually transmitted diseases and had been intimate with her boyfriend in her school classroom.[68] Richie commented on this as well. Additional postings about Jones appeared over the next few months, and she filed suit, alleging defamation, libel *per se*, false light, and intentional infliction of emotional distress. She claimed that the postings undermined her position as an educator, her membership in the Cincinnati Bengals cheerleading squad, and her personal life.[69] Dirty World, LLC and Richie stated that the claims were barred under § 230(c)(1) of the Communications Decency Act (CDA),[70] which, under "Protections for 'Good Samaritan' blocking and screening of offensive material," states "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

The district court denied the motion, indicating that "a website owner who intentionally encourages illegal or actionable third-party postings to which he adds his own comments ratifying the posts becomes a 'creator' or

'developer' of that content and is not entitled to immunity."[71] Jones was awarded $38,000 in compensatory damages and $300,000 in punitive damages. The Court of Appeals for the Sixth Circuit, however, noted that § 230 marks a departure from the common-law rule that allocates liability to publishers or distributors of tortious material written or prepared by others.[72] The court stated that Congress had decided to treat Internet speech differently.[73] By barring publisher-liability and notice-liability defamation claims brought against interactive computer service providers, the court said, § 230 serves three purposes:[74]

1. to "maintain the robust nature of Internet communication and, accordingly . . . keep government interference in the medium to a minimum";
2. to provide immunity that "protects against the 'hecklers veto' that would chill free speech"; and
3. to "[encourage] interactive computer service providers to self-regulate."

Additionally, subsection (b)(2) of § 230[75] states: "It is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." The immunity granted by § 230(c)(1) is not without limits, applying only if the interactive computer service provider is not also the "information content provider" of the content at issue.[76] An "information content provider" is "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service."[77] The decision hinged on how narrowly or capaciously the term "development" was interpreted. The court concluded that Richie and Dirty World could not be found to have materially contributed to the content of the posts simply by selecting them for publication.[78] Further, because Richie added his comments *after* the defamatory postings had already been displayed, they did not materially contribute; rather, they "effectively ratified and adopted the defamatory third-party post."[79] In vacating the judgment in favor of Jones, the Court of Appeals noted that the CDA does not necessarily leave persons who are objects of anonymously posted defamatory content online without remedies.[80] Jones, however, "did not attempt to subpoena Richie or Dirty World to discover who authored the defamatory posts. Instead, she sued Dirty World and Richie. But, under the CDA, Jones cannot seek her recovery from the online publisher where that publisher did not materially contribute to the tortious content."[81]

## Anonymity Is Not Guaranteed for Bloggers

Although the courts have decided that websites themselves may not be found responsible, in cases of defamation, sites may be required to reveal the identities of anonymous posters. Model Liskula Cohen successfully sued Google in 2009[82] to uncover the name of the individual who made statements about her on a blog titled "Skanks of NYC."[83] The anonymous blogger had posted photographs, captions to the photographs, and commentary about Cohen. The blogger's statements pertained to Cohen's appearance, hygiene, and conduct, describing her as "skank," "skanky," "ho," and "whoring." Cohen claimed these comments were malicious, untrue, and impugned her chastity. She also asserted the statements negatively reflected her business as a professional full-time model and stated that she would bring suit for defamation if she could ascertain the identity of the person who created the blog and posted the remarks about her. Google refused to release the name of blogger without a court order, claiming that the statements were "non-actionable opinion and/or hyperbole" and that no reasonable viewer of the blog would conclude the statements made about Cohen convey verifiable statements of fact.[84] Words like "skank" or "ho" are not statements of objective fact but rather "have become a popular form of 'trash talk' ubiquitous across the Internet as well as network television and should be treated no differently than 'jerk' or any other form of loose and vague insults that the Constitution protects."[85] Google further argued that even if the words are capable of a defamatory meaning, "the context here negates any impression that a verifiable factual assertion was intended."[86] Google emphasized that blogs "have evolved as the modern day soapbox for one's personal opinions," by "providing an excessively popular medium not only for conveying ideas, but also for mere venting purposes, affording the less outspoken, a protected forum for voicing gripes, leveling invective, and ranting about anything at all."[87]

The court had to determine if the blogger's statements were considered protected opinion, hyperbole, or statements of fact. The determination of whether a statement expresses fact or opinion was a question of law resolved "on the basis of what the average person hearing or reading the communication would take it to mean."[88] The court used three factors to distinguish fact from opinion:

> (1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears, or the broader social context and surrounding circumstances, are such as to "signal . . . readers or listeners that what is being read or heard is likely to be opinion, not fact."[89]

As for the first factor, the court stated the dictionary defines the words as follows: a "skank" is someone "considered sexually promiscuous"; "ho" is "slang" for a "prostitute"; and "whoring" is to "associate . . . with prostitutes."[90] As for the second and third factors, the court found that the statements, along with captions on certain photographs, conveyed "facts" that are capable of being proved true or false, and that the blog as a whole – by

communicating that a person is promiscuous – is defamatory.[91] "[I]n the context of this specific blog, such words cannot be reasonably viewed as comparable in meaning and usage to the word 'jerk' or any other loose and vague insult."[92] In its decision to reveal the name of the blogger, the court noted the case of *Anonymous Publicly Traded Co. (APTC) v. Does*,[93] which involved a suit against America Online, Inc., brought to learn the identity of an individual who allegedly published certain defamatory material misrepresentations and confidential material concerning APTC in Internet chat rooms.[94] There, the court addressed whether the potential loss of anonymity of the John Does could constitute an unreasonable intrusion on their First Amendment rights:

> In that the Internet provides a virtually unlimited, inexpensive, and almost immediate means of communication with tens, if not hundreds, of millions of people, the dangers of its misuse cannot be ignored. The protection of the right to communicate anonymously must be balanced against the need to assure that those persons who choose to abuse the opportunities presented by this medium can be made to answer for such transgressions. Those who suffer damages as a result of tortious or other actionable communications on the Internet should be able to seek appropriate redress by preventing the wrongdoers from hiding behind an illusory shield of purported First Amendment rights.[95]

Google eventually revealed the blogger to be Rosemary Port,[96] and Port stated she planned to file a $15 million lawsuit, charging that Google "breached its fiduciary duty to protect her expectation of anonymity."[97] She further said that Cohen had defamed herself by going to the press, claiming that before the lawsuit there were two hits on Port's website – one from Port and one from Cohen.[98] If this claim were to be proven true, Port could have a successful defamation defense, because it would have been Cohen who, by filing the lawsuit, was responsible for publishing the statements to third persons. A similar defense was also raised by Bauer Publishing against Tom Cruise, stating that relief was barred "because any damages allegedly suffered by plaintiff were the result, in whole or in part, of plaintiff's own legal fault . . . ."[99]

## Twitter + Libel = Twibel

Courtney Love was sued for defamation after suggesting in a tweet that one of her attorneys had been "bought off" after she no longer represented Love.[100] San Diego attorney Rhonda Holmes had been hired by Love in 2008 to investigate funds missing from the estate of her late husband, Kurt Cobain, the lead singer of the band Nirvana. In June 2010, as @CourtneyLoveUK, Love tweeted: "I was . . . devastated when Rhonda J. Holmes Esq of San Diego was bought off . . . ."[101] Love told the jury she believed that she had sent the message to only one person, had not intended to post it publicly, and had deleted it quickly. The case against Love was billed as the first "twibel,"[102] or Twitter libel, case to go to trial.[103] The jurors found that although the tweet did have "a natural tendency to injure Holmes' business," they did not believe Love knew the statement was false.[104]

## The Internet: A Fine Line Between Public and Private Domains

Online cases are challenging because the Internet is both a public and a private forum. Anyone in the world can have access either privately at home or publicly, at places including libraries and cafés. Further, anyone can create a blog or website; there is no government license or approval required, and doing so is inexpensive. However, blogs, websites, and Internet service providers are owned by either a person or a private company – making them private property. The site's owner determines what content is published, and who has access to view it.

Filing a defamation suit, as with all legal action, involves weighing the pros and cons. Filing a lawsuit may result in additional publicity by way of the Streisand Effect. Alternatively, choosing not to file may cause friends, family and the general public to believe the story is true. Even if a story is withdrawn, oftentimes it is still available on the Internet – although a printed version is likely more difficult to obtain.

Instantaneous communication is imperative in today's society. The application of freedom of speech to interactive media will continue to evolve as new technologies that facilitate communication are developed. Our ability to share our opinions and broadcast our ideas to a global audience – instantly – has important ramifications for our First Amendment rights. As our communication needs and tools develop, our laws will adapt accordingly, and in ways that have yet to be defined. ■

1. Black Entertainment and Sports Lawyers Association, *Counseling Clients in a Time of Crisis*, 2014. http://www.besla.org/#!programming-and-events/c1fkq.
2. Robert Lindsey, *Carol Burnett Given $1.6 Million in Suit Against National Enquirer*, N.Y. Times, Mar. 27, 1981. http://www.nytimes.com/1981/03/27/us/carol-burnett-given-1.6-million-in-suit-against-national-enquirer.html.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. Jonathan Friendly, *20 Years After Key Libel Ruling, Debate Goes On*, N.Y. Times, Mar. 9, 1984. http://www.nytimes.com/1984/03/09/nyregion/20-years-after-key-libel-ruling-debate-goes-on.html.
8. *Tom Cruise's Defamation Lawsuit Ends in a Settlement, Tabloids Take Back Their Suri Story*, Huffington Post, Dec. 21, 2013. http://www.huffingtonpost.com/2013/12/21/tom-cruise-defamation-lawsuit_n_4485653.html.
9. TMZ Staff, *Tom Cruise Files $50 Mil Lawsuit Over Mag Claiming He Abandoned Suri*, Oct. 24, 2012. http://www.tmz.com/2012/10/24/tom-cruise-50-million-dollar-lawsuit-life-and-style-abandoned-suri.
10. *Id.*
11. *Id.*
12. Huffington Post, *supra* note 8.
13. *Id.*

14. Marino Eccher, *Federal Judge Rules $1.3 Million Is Reasonable in Jesse Ventura Defamation Suit*, TwinCities.com, Aug. 8, 2014. http://www.twincities.com/localnews/ci_26299954/venturas-1-8m-award-defamation-trial-ruled-reasonable.

15. *Id.*

16. Matt Bradwell, *"American Sniper" Widow Appeals Jesse Ventura's Defamation Award*, UPI, Dec. 26, 2014. http://www.upi.com/Top_News/US/2014/12/26/American-Sniper-widow-appeals-Jesse-Venturas-defamation-award/4981419620802.

17. David Moye, *"Mila Kunis Stole My Chicken": Alleged Childhood Friend*, Huffington Post, Apr. 23, 2015. http://www.huffingtonpost.com/2015/04/23/mila-kunis-chicken_n_7127402.html.

18. *Id.*

19. Cornell University Law School, "Defamation." https://www.law.cornell.edu/wex/defamation.

20. 376 U.S. 254 (1964).

21. N.Y. Times, advertisement titled "Heed Their Rising Voices," appeared March 29, 1960.

22. *Sullivan*, 376 U.S. at 258.

23. *Id.*

24. *Id.*

25. *Id.* at 258–59.

26. *Id.* at 259.

27. *Id.*

28. *Id.* at 275.

29. *Id.* at 293–94.

30. *Id.* at 294.

31. *Id.* at 297–98.

32. Id. at 295.

33. 3 Johns. Cas. 337 (1804).

34. Historical Society of the New York Courts, "Truth as a Defense in a Libel Acton," *People v. Croswell*, 3 Johns. Cas. 337 (N.Y. 1804). http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-02/history-new-york-legal-eras-people-croswell.html.

35. *Id.*

36. About The Smoking Gun. http://www.thesmokinggun.com/about.

37. *A Million Little Lies*, Thesmokinggun.com. http://www.thesmokinggun.com/documents/celebrity/million-little-lies.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Hillel Italie, *Frey and Publisher Settle Lawsuit*, Washington Post, Sept. 7, 2006. http://www.washingtonpost.com/wp-dyn/content/article/2006/09/07/AR2006090700513.html.

46. *What Is the Streisand Effect?*, The Economist, Apr. 15, 2013. http://www.economist.com/blogs/economist-explains/2013/04/economist-explains-what-streisand-effect.

47. *Id.*

48. *Id.*

49. *Tom Cruise v. Bauer Publ'g Co., L.P.*, No. CV 12-09124, The Bauer Defendant's Answer to Complaint, Dec. 14, 2012, U.S. District Court, Central District of California.

50. *Id.* p. 7.

51. Eriq Gardner, *Kim Kardashian's Reputation in Dispute as the Gap Responds to Lawsuit*, Hollywood Reporter, Jan. 17, 2012. http://www.hollywoodreporter.com/thr-esq/kim-kardashian-gap-reputation-lawsuit-282648.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. The Associated Press, *Kim Kardashian and Old Navy Settle Lawsuit Over Ad*, USAToday.com, Aug. 29, 2012. http://www.usatoday.com/money/industries/retail/story/2012-08-29/kim-kardashian-old-navy-lawsuit/57413316/1.

59. American Civil Liberties Union of Northern California, "Know Your Rights: Free Speech, Protests & Demonstrations." https://www.aclunc.org/our-work/know-your-rights/free-speech-protests-demonstrations.

60. Cornell University Law School, Legal Information Institute – Forums. https://www.law.cornell.edu/wex/forums.

61. *Id.*

62. *Id.*

63. *Id.*

64. American Civil Liberties Union of Northern California *supra* note 59.

65. *Id.*

66. *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398 (6th Cir. 2014).

67. *Id.* at 403.

68. *Id.*

69. *Id.* at 405.

70. 47 U.S.C. § 230: Protection for private blocking and screening of offensive material.

71. *Jones*, 755 F.3d at 406.

72. *Id.* at 407.

73. *Id.*

74. *Id.*

75. 47 U.S.C. § 230.

76. *Jones*, 755 F.3d at 409 .

77. 47 U.S.C. § 230(f)(3).

78. *Jones*,755 F.3d at 416.

79. *Id.*

80. *Id.* at 417.

81. *Id.*

82. *Cohen v. Google, Inc.*, 25 Misc. 3d 945 (Sup. Ct., N.Y. Co. 2009).

83. *Id.* at 946.

84. *Id.* at 947.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 949.

89. *Id.* at 949–50 (quoting *Gross v. N.Y. Times Co.*, 82 N.Y.2d 146, 153 (1993)).

90. *Id.* at 950.

91. *Id.* at 950–51.

92. *Id.* at 951.

93. *In re Subpoena Duces Tecum to America Online, Inc.*, 52 Va. Cir. 26 (Cir. Ct. Va. 2000).

94. *Id.*

95. *Id.*

96. George Rush, *Outed Blogger Rosemary Port Blames Model Liskula Cohen for "Skank" Stink*, Daily News, Aug. 23, 2009. http://www.nydailynews.com/entertainment/gossip/outed-blogger-rosemary-port-blames-model-liskula-cohen-skank-stink-article-1.400409.

97. *Id.*

98. *Id.*

99. *Tom Cruise*, No. CV 12-09124 at 10.

100. Corina Knoll, *Singer-Actress Courtney Love Wins Landmark Twitter Libel Case*, L.A. Times, Jan. 24, 2014. http://articles.latimes.com/2014/jan/24/local/la-me-love-libel-20140125.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*