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LIABLE FOR LIBEL?—THE TEXAS SUPREME COURT’S OPINION ON OPINIONS AND IMPLICATIONS

Griffin S. Rubin*

“The truth is rarely pure and never simple.” – Oscar Wilde¹

LAW professors and legal commentators seldom spare a kind word for the distinctive “anomalies and absurdities”² that constitute defamation law, as these “senseless distinctions and overly technical rules”³ have left judges and juries “hopelessly and irretrievably confused.”⁴ Rooted more than 1,500 years ago in the legal systems of Germanic tribes and derived from centuries of Anglo-American legal tradition,⁵ modern American defamation law stubbornly persists in making little sense.⁶ These legal peculiarities were presented to the Texas Supreme Court in *Dallas Morning News, Inc. v. Tatum*, a case involving a heart-wrenching death and a well-intentioned newspaper column.⁷ While the state supreme court correctly held that the statement in question did not constitute actionable defamation, its attempt to resolve lingering substantive issues in Texas defamation law unnecessarily contributed to the existing confusion and further demonstrated the intricate and profound problems in defamation law.

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1. OSCAR WILDE, *THE IMPORTANCE OF BEING EARNEST* 18 (Methuen & Co., Ltd., 7th ed. 1915).

2. W. PAGE KEETON ET AL., *PROSSER AND KEETON ON TORTS* § 111, at 771 (5th ed. 1984).

3. J. Skelly Wright, *Defamation, Privacy, and the Public’s Right to Know: A National Problem and A New Approach*, 46 *TEX. L. REV.* 630, 643 (1968).

4. *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 514 (S.C. 1998) (Toal, J., concurring).

5. See Van V. Veeder, *The History and Theory of the Law of Defamation*, 3 *COLUM. L. REV.* 546, 546–49 (1903); see also Joel D. Eaton, *The American Law of Defamation through Gertz v. Robert Welch, Inc. and Beyond: An Analytical Primer*, 61 *VA. L. REV.* 1349, 1350–51 (1975) (stating that British common law defamation “transplanted into the United States, where its complexities multiplied in the state legislatures and courts, and its inconsistencies grew multifoliate in the variety of soils provided by federalism.”).

6. KEETON ET AL., *supra* note 2, at 771; Nat Stern, *The Intrinsic Character of Defamatory Content as Grounds for a Uniform Regime of Proving Libel*, 80 *MISS. L.J.* 1, 4 n.9 (2010).

7. See *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 621–23 (Tex. 2018).

On a mid-May evening in 2010, seventeen-year-old Paul Tatum was severely injured when he crashed his parents' car on the way home from a fast-food run.⁸ He walked home from the crash site, started consuming alcohol, and began "behaving erratically."⁹ Soon after, Paul retrieved one of his family's firearms and took his own life.¹⁰ In the wake of his death, Paul's parents (the Tatums) purchased space in the obituary section of the Dallas Morning News (the News) to memorialize their son.¹¹ As stated in the obituary, Paul died "as a result of injuries sustained in an automobile accident."¹²

One month later, the News published a piece written by columnist Steve Blow (Blow) addressing suicide and its public stigma.¹³ The column characterized suicide as the "one form of death still considered worthy of deception."¹⁴ While Blow did not refer to the Tatums by name, he referenced Paul's obituary and quoted the cause of death stated in the obituary.¹⁵ Blow then identified the cause of death as suicide.¹⁶ He lamented society for "allow[ing] suicide to remain cloaked in . . . secrecy, if not outright deception," and explained how this secrecy leaves society "greatly underestimating the danger there."¹⁷ The last thing Blow wished to do was "put guilt on the family of suicide victims," but he argued that more lives would be at risk if society continued "averting [its] eyes to the reality of suicide" and failing to be honest about it.¹⁸

Paul's parents subsequently filed suit against Blow and the News, alleging libel and libel per se.¹⁹ The News filed a motion for summary judgment on several grounds, "notably that the column was not reasonably capable of a defamatory meaning and that the column was an opinion."²⁰ The trial court granted the News's motion.²¹ On appeal by the Tatums, the court of appeals reversed and remanded the claims based on the libel and libel per se theories, rejecting every possible ground on which the

8. *Id.* at 621.

9. *Id.*

10. *Id.*

11. *Id.* at 622; *see also Paul Kaelson Tatum Obituary*, DALL. MORNING NEWS, May 21, 2010, at 7B.

12. *Dall. Morning News, Inc.*, 554 S.W.3d at 622.

13. *See* Steve Blow, *Shrouding Suicide in Secrecy Leaves Its Danger Unaddressed*, DALL. MORNING NEWS (July 12, 2010), <https://www.dallasnews.com/news/news/2010/07/12/20100620-Shrouding-suicide-in-secrecy-leaves-its-9618> [<https://perma.cc/Q665-ASAX>].

14. *Id.*

15. *See id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 622 (Tex. 2018). The Tatums also alleged intentional infliction of emotion distress and violation of the Texas Deceptive Trade Practices Act. *See* Plaintiffs' First Amended Petition and Jury Demand at 6–7, *Tatum v. Dall. Morning News, Inc.*, No. DC1107371 (68th Dist. Ct., Dallas County, Tex. Nov. 29, 2011), 2011 WL 13290458.

20. *Dall. Morning News, Inc.*, 554 S.W.3d at 622–23.

21. *Id.* at 623.

trial court might have granted summary judgment.²² The News petitioned the Texas Supreme Court for review, and the court agreed to hear the case.²³

The Texas Supreme Court unanimously reversed the court of appeals and reinstated the trial court's order for summary judgment.²⁴ The court began its *de novo* review by asking whether the column, or any of its parts, was reasonably capable of a defamatory meaning.²⁵ To answer this threshold question, the court made two separate inquiries: (1) what does the column mean, and (2) is such meaning defamatory?²⁶

The court proceeded to summarize seemingly all applicable Texas libel law and altered conventional defamation terminology in a dense and protracted section.²⁷ The court outlined several points about Texas defamation law. First, defamation can be written, known as libel, or spoken, known as slander.²⁸ Second, a statement can be textual defamation, defamatory based simply on the text itself, or extrinsic defamation, requiring reference to extrinsic circumstances.²⁹ Third, textual defamation can be either explicit defamation or defamation-by-implication.³⁰ While explicit defamation occurs when what a statement says and communicates are the same, defamation-by-implication occurs when what a statement says and communicates differ.³¹ Fourth, defamation-by-implication can occur either by its "gist" or by partial implication.³² While a publication only has a singular gist, numerous discrete implications are possible within a single publication.³³ The standard for deriving implied meaning from a statement is whether an objectively reasonable reader *would* draw such an implication.³⁴ Further, the plaintiff must point to "additional, affirmative evidence" within the publication itself that suggests the defendant "intends or endorses the defamatory inference."³⁵

22. *Id.* (alteration in original); *see also* Tatum v. Dall. Morning News, Inc., 493 S.W.3d 646, 656–74 (Tex. App.—Dallas 2015), *rev'd sub nom.*, 554 S.W.3d 614 (Tex. 2018).

23. *Dall. Morning News, Inc.*, 554 S.W.3d at 623.

24. *Id.* at 620–21.

25. *Id.* at 624–25.

26. *Id.* Meaning is a question of law, and the inquiry into meaning is objective. *Id.* at 625.

27. *See id.* at 625–36.

28. *Id.* at 623; *see* William L. Prosser, *Libel Per Quod*, 46 VA. L. REV. 839, 839–43 (1960).

29. *Dall. Morning News, Inc.*, 554 S.W.3d at 626. For further explanation and an example of this distinction, *see* Marc A. Franklin & Daniel J. Bussel, *The Plaintiff's Burden in Defamation: Awareness and Falsity*, 25 WM. & MARY L. REV. 825, 834 (1984).

30. *Dall. Morning News, Inc.*, 554 S.W.3d at 626–27.

31. *Id.* at 628. For further explanation and an example of this distinction, *see* Thomas B. Kelley & Steven D. Zansberg, *Libel by Implication*, 20 COMM. LAW. 3, 9–10 (2002).

32. *Dall. Morning News, Inc.*, 554 S.W.3d at 628.

33. *Id.* at 629. For further explanation and an example of this distinction, *see* C. Thomas Dienes & Lee Levine, *Implied Libel, Defamatory Meaning, and State of Mind: The Promise of New York Times Co. v. Sullivan*, 78 IOWA L. REV. 237, 290–92 (1993).

34. *Dall. Morning News, Inc.*, 554 S.W.3d at 631; *see also* Transcript of Oral Argument at 2, 4, *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614 (Tex. 2018) (No. 16-0098), 2018 WL 488211 (discussing the "would" versus "could" distinction).

35. *Dall. Morning News, Inc.*, 554 S.W.3d at 635 (citing *White v. Fraternal Order of Police*, 909 F.2d 512, 520 (D.C. Cir. 1990)); *see also* David M. Cohn, *The Problem of Indi-*

In the words of Justice Boyd, “Got it?”³⁶

The Tatums alleged that the column’s gist was implicitly defamatory.³⁷ The court unequivocally disagreed that the column’s gist pertained to the Tatums, maintaining the column as a whole conveyed that “our society ought to be more forthcoming about suicide and that by failing to do so, our society is making the problem of suicide worse, not better.”³⁸ The court then examined three allegedly defamatory statements derived from the Tatums’ petition: (1) “the Tatums acted deceptively in publishing the obituary;” (2) “Paul had a mental illness, which the Tatums ignored and which led to Paul’s suicide; and” (3) “the Tatums’ deception perpetuates and exacerbates the problem of suicide in others.”³⁹ The court found that only the first of these three implied statements would have been drawn by an objectively reasonable reader.⁴⁰

Next, the court examined whether the implied statement’s meaning was defamatory.⁴¹ The court found the implication “reasonably capable of impeaching the Tatums’ ‘honesty and integrity,’” and thereby “‘reasonably capable’ of injuring [their] standing in the community.”⁴² As such, the meaning of the publication’s implied statement was defamatory.⁴³

However, the court noted that even if a statement is defamatory, such statement is not actionable under defamation law if it is unverifiable as false or if it cannot be understood to convey a verifiable fact in the context the statement was made.⁴⁴ “A statement that fails either test—ver-

rect Defamation: Omission of Material Facts, Implication, and Innuendo, 1993 U. CHI. LEGAL F. 233, 244–46 (1993) (discussing the “capable of defamatory meaning” test applied in the *White* case and other implied defamation cases).

36. *Dall. Morning News, Inc.*, 554 S.W.3d at 644 (Boyd, J., concurring). The concurrence appears empathetic to any confusion stemming from the majority’s pronouncement of applicable law. *See id.* at 644–45.

37. *Id.* at 636 (majority opinion).

38. *Id.* at 636–37.

39. *Id.* at 636.

40. *Id.* at 637. The attorney for the Tatums regularly maintained that all three discrete implications were defamatory because the “objectively reasonable reader” would have been someone who knew the Tatums. *See* Transcript of Oral Argument at 9, *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614 (Tex. 2018) (No. 16-0098), 2018 WL 488211; *see also* Brittany C. Solomon & Simine Vazire, *Knowledge of Identity and Reputation: Do People Have Knowledge of Others’ Perceptions?*, 111 J. PERSONALITY & SOC. PSYCHOL. 341, 342–44 (2016) (suggesting a difference between the way acquaintances and society as a whole perceive an individual).

41. *See Dall. Morning News, Inc.*, 554 S.W.3d at 637.

42. *Id.* at 638 (alteration in original). A written statement is defamatory if it “tends to injure a living person’s reputation and thereby expose the person to public hatred, contempt or ridicule, . . . or to impeach any person’s honesty, integrity, virtue, or reputation.” Tex. Civ. Prac. & Rem. Code Ann. § 73.001.

43. *Dall. Morning News, Inc.*, 554 S.W.3d at 638. *But see* Lyrissa Barnett Lidsky, *Defamation, Reputation, and the Myth of Community*, 71 WASH. L. REV. 1, 36–43 (1996) (suggesting that a community constructed in defamation jurisprudence is somewhat or entirely dissimilar to the actual community in which a plaintiff’s reputation is allegedly harmed).

44. *Dall. Morning News, Inc.*, 554 S.W.3d at 638 (recognizing the “joint test” outlined in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21–22 (1990)).

ifiability or context—is called an opinion.”⁴⁵ The News argued that the statement in question failed both tests, claiming that the Tatums’ mental state following their son’s death could not be factually verified and that the context clearly demonstrated that the implied statement was protected because of its placement “among the opinions that the column contains.”⁴⁶ To the contrary, the Tatums insisted that the statement satisfied both tests, maintaining that their mental state following Paul’s death must be verifiable,⁴⁷ and that a reasonable reader would conclude that the statement in question contextually stated a fact.⁴⁸

The court held that the column’s context “manifestly discloses” that any implication of deception by the Tatums is opinion.⁴⁹ In the column, Blow accused the Tatums of a “single, understandable act of deception, undertaken with motives that should not incite guilt or embarrassment.”⁵⁰ The court reasoned that the column’s language was indicative of a “personal viewpoint,” demonstrated by recurring phrases such as “I think” and “I understand.”⁵¹ Moreover, the column did not imply any previously undisclosed facts.⁵² The court of appeals erred in its analysis, according to the Texas Supreme Court, by ignoring the column’s context, instead focusing on “de-contextualized words which [the court of appeals]—not Blow—emphasized.”⁵³ In the Texas Supreme Court’s view, the column as a whole, while including facts, argued “in support of the opinion that . . . society ought to be more frank about suicide.”⁵⁴ The court concluded that the column is “an opinion piece through and through,”⁵⁵ and thereby did not “run afoul” of the standards governing the law of defamation.⁵⁶

While the court ultimately applied its precedent correctly, slogging through the “unsettlingly messy” intersection of opinion and implication doctrines in defamation law was an arduous task.⁵⁷ Instead, the court should have relied on the role that matters of public concern play in this

45. *Id.* Courts have struggled to develop an effective analytical process for the fact–opinion distinction. See Robert Neal Weber, *The Fact–Opinion Distinction in First Amendment Libel Law: The Need for a Bright-Line Rule*, 72 GEO. L.J. 1817, 1818 (1984).

46. See *Dall. Morning News, Inc.*, 554 S.W.3d at 638; see also Brief for Reporters Committee for Freedom of the Press as Amici Curiae Supporting Petitioners at 8–12, *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614 (Tex. 2018) (No. 16-0098), 2017 WL 2616476.

47. *Dall. Morning News, Inc.*, 554 S.W.3d at 638 (arguing the reality cannot be “that defamation law can ascertain a defendant’s mental state but not a plaintiff’s”).

48. *Id.*

49. *Id.* at 639.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* Subsequently, Justice Brown, writing for the court, addressed the defense of truth under Texas Civil Practice and Remedies Code § 73.005(a). See *id.* at 640–41.

56. *Id.* at 641–42.

57. See Leonard M. Niehoff, Viewpoint, *Opinions, Implications, and Confusions*, 28 COMM. LAW. 19, 19 (2011); Arlen W. Langvardt, *Media Defendants, Public Concerns, and Public Plaintiffs: Toward Fashioning Order from Confusion in Defamation Law*, 49 U. PITT. L. REV. 91, 92–96 (1987).

context.⁵⁸ “Speech on matters of public concern is at the [core] of the First Amendment’s . . . profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open” and is, therefore, “entitled to special protection.”⁵⁹ “[S]peech deals with a matter of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the public,” including “a subject of general interest and of value and concern to the public.”⁶⁰ When speech from a media defendant is a matter of public concern and the plaintiff is a private figure, “the plaintiff bear[s] the burden of showing falsity” in a defamation suit.⁶¹

The Tatums are private figures.⁶² The gist of the column relates to public health and the societal issue of suicide, undoubtedly matters of public concern.⁶³ Therefore, in order for a claim to succeed, sufficient evidence needed to be presented to raise a genuine issue of material fact as to the falsity of the implication in question.⁶⁴ Given what was alleged and used as evidence at the summary judgment stage, the trial court and the Texas Supreme Court would have been well within their right to grant a motion for summary judgment given a lack of a genuine issue of material fact

58. See *McIlvain v. Jacobs*, 794 S.W.2d 14, 16 (Tex. 1990) (citing *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986)); see also *Thornhill v. Alabama*, 310 U.S. 88, 101 (1940) (the First Amendment “embraces at the least the liberty to discuss publicly and truthfully all matters of public concern”).

59. *Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011) (alteration in original) (internal citations omitted); see Jeffrey M. Shaman, *The Theory of Low-Value Speech*, 48 SMU L. REV. 297, 317 (1995) (“Speech on matters of public concern is of high constitutional order.”).

60. *Brady v. Klentzman*, 515 S.W.3d 878, 884 (Tex. 2017) (quoting *Snyder*, 562 U.S. at 453); see also Mark Strasser, *What’s It to You: The First Amendment and Matters of Public Concern*, 77 MO. L. REV. 1083, 1084–98 (2012).

61. *Phila. Newspapers, Inc.*, 475 U.S. at 776; see William G. Hagans, *Who Does the First Amendment Protect?: Why the Plaintiff Should Bear the Burden of Any Proof in Any Defamation Action*, 26 REV. LITIG. 613, 615–19 (2007) (elaborating on the determination of burden of proof in defamation actions).

62. See Jeffrey Omar Usman, *Finding the Lost Involuntary Public Figure*, 2014 UTAH L. REV. 951, 972–75 (2014) (outlining the plaintiff classifications in defamation actions).

63. See *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 636–37 (Tex. 2018); see also *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017) (“Suicide prevention and awareness relate to health, safety, and community well-being” and are “matters of public concern.”). Both the Texas Legislature and United States Congress have repeatedly reaffirmed suicide awareness and prevention as matters of public concern. See 42 U.S.C. § 290bb-36a (2012); National Suicide Hotline Improvement Act of 2018, Pub. L. No. 115-233, 132 Stat. 2424 (2018); Tex. Health & Safety Code Ann. § 193.011; Tex. H.R. Con. Res. 40, 82nd Leg., Reg. Sess., 2011 Tex. Gen. Laws 4990; H.R. Res. 1067, 115th Congress (2018). The court of appeals even acknowledged the prevention of suicide as a matter of public concern. See *Tatum v. Dall. Morning News, Inc.*, 493 S.W.3d 646, 672 (Tex. App.—Dallas 2015), *rev’d sub nom.*, 554 S.W.3d 614 (Tex. 2018).

64. See *Phila. Newspapers, Inc.*, 475 U.S. at 776. The Tatums might have responded that even if the gist of the column pertains to a matter of public concern, the discrete implication that they acted deceptively in publishing the obituary is not a matter of public concern. See *Tatum*, 493 S.W.3d at 671–72. However, granting validity to such a claim would contravene the First Amendment’s prohibition on chilling free speech and would decimate the constitutional safeguard of the “unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

regarding the implication's falsity.⁶⁵ Had the court taken this approach, the outcome would have been logically simpler and judicially more straightforward.⁶⁶

In this case, the court undoubtedly struck the classic defamation balance of the First Amendment rights of a citizen and the right to reputation of another.⁶⁷ But amid the considerations involved, Justice Brown renamed existing principles ingrained in the common law of defamation in an effort to resolve persistent problems in defamation law.⁶⁸ Such actions, while admirable, appear to have muddied the already "cluttered slate" upon which defamation law is written.⁶⁹ The renaming of common law terms of defamation was arguably nothing more than a linguistic face-lift that fails to address the tangled web of defamation law.⁷⁰

This attempt to retool defamation principles sought to answer one of the longstanding dilemmas in defamation law—the differing contextual usages of "defamation per se" and "defamation per quod."⁷¹ Whether such change sufficiently clarifies this enduring doctrinal confusion remains to be seen.⁷² However, this attempted revision opened the Pandora's box of complications deeply rooted in American defamation law.⁷³ Consideration is due and answers are needed to many of these foundational issues within defamation law, such as the degree to which an accused defamer's intent matters;⁷⁴ the effectiveness of the economics of defamation law in achieving its aims;⁷⁵ the most effective remedy for actionable defamation;⁷⁶ and the value of reforming defamation law given

65. See *Phila. Newspapers, Inc.*, 475 U.S. at 776; see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986).

66. See generally Amy Kristen Sanders & Holly Miller, *Revitalizing Rosenbloom: The Matter of Public Concern Standard in the Age of the Internet*, 12 FIRST AMEND. L. REV. 529, 544–46 (2014).

67. See T. BARTON CARTER ET AL., *THE FIRST AMENDMENT AND THE FOURTH ESTATE* 86 (12th ed. 2016) ("States remain free to protect reputation in whatever manner they see fit so long as they do so in ways consistent with the First Amendment.").

68. See *Dall. Morning News, Inc.*, 554 S.W.3d at 626–28.

69. See *id.* at 643 (Boyd, J., concurring); see also Rodney A. Smolla, Dun and Bradstreet, Hepps, and Liberty Lobby: *A New Analytic Primer on the Future Course of Defamation*, 75 GEO. L.J. 1519, 1519–23 (1987).

70. See 1 ROBERT D. SACK, *SACK ON DEFAMATION* § 2.8.1 (5th ed. 2018) (stating that the problems with common law defamation terminology are both textual and conceptual). The concurring justices similarly questioned the efficacy of Justice Brown's efforts. See *Dall. Morning News, Inc.*, 554 S.W.3d at 643–45.

71. See *Dall. Morning News, Inc.*, 554 S.W.3d at 625–26 (majority opinion); see also Brief for Belo Corp. et al. as Amici Curiae Supporting Petitioner at 7, *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142 (Tex. 2014) (No. 12-0522), 2013 WL 6229832.

72. See *Dall. Morning News, Inc.*, 554 S.W.3d at 626.

73. See KEETON ET AL., *supra* note 2, at 771–74.

74. See, e.g., Leslie Kendrick, *Free Speech and Guilty Minds*, 114 COLUM. L. REV. 1255, 1256–60 (2014).

75. See, e.g., Randall P. Bezanson et al., *The Economics of Libel*, in *THE COST OF LIBEL* 21 (Everette E. Dennis & Eli M. Noam eds., 1989).

76. See, e.g., James H. Hulme, *Vindicating Reputation: An Alternative to Damages as a Remedy for Defamation*, 30 AM. U. L. REV. 375, 376–77 (1981).

the risk of unpredictable hardships in practice.⁷⁷

Only time will tell how the Court's ruling here will affect Texas defamation law. But the per se-per quod defamation distinction and other doctrinal matters will become increasingly more complicated as society's methods of communication undergo significant changes⁷⁸ and as defamation law faces new challenges unfolding in the twenty-first century.⁷⁹ Modern defamation law must stop "shadow boxing"⁸⁰ with its problems and start landing substantive punches.

77. See, e.g., David A. Anderson, *Is Libel Law Worth Reforming?*, 140 U. PA. L. REV. 487, 537–50 (1991).

78. See Frank Newport, *The New Era of Communication Among Americans*, GALLUP (Nov. 10, 2014), <https://news.gallup.com/poll/179288/new-era-communication-americans.aspx>.

79. See, e.g., Jane Bambauer, *Is Data Speech?*, 66 STAN. L. REV. 57, 68 n.37 (2014); Leslie Yalof Garfield, *The Death of Slander*, 35 COLUM. J. L. & ARTS 17, 31–42 (2011); Elizabeth Kirley & Marilyn M. McMahon, *The Emoji Factor: Humanizing the Emerging Law of Digital Speech*, 85 TENN. L. REV. 517, 557–59 (2018); Mark A. Lemley & Eugene Volokh, *Law, Virtual Reality, and Augmented Reality*, 166 U. PA. L. REV. 1051, 1101–03 (2018); Lyrissa Barnett Lidsky & RonNell Andersen Jones, *Of Reasonable Readers and Unreasonable Speakers: Libel Law in a Networked World*, 23 VA. J. SOC. POL'Y & L. 155, 159–66 (2016).

80. See Roundtable Symposium, *First Amendment on Trial—The Libel Lawyer's Perspective*, 23 SEATTLE U. L. REV. 849, 853 (2000).