

## cyberlaw: the brave new e-world

By Anne F. Downey



### The New Witch Hunt

*"[S]he denied all that was charged upon her, and said they could not prove her a witch. She was that afternoon committed to Salem prison..."*

- Deodat Lawson, Eyewitness At The March 21, 1692 Salem, Massachusetts Trial Of Martha Corey, A 72-Year-Old Puritan, Executed On September 22, 1692  
By Hanging

We live in an online world, with news events broadcast at lightning speed. A piece of airplane debris is found on a beach, and within hours the news has circled the globe and experts have weighed in. A politician makes a controversial remark, and commentaries immediately explode on traditional media and social media.

I have a client who recently made a disparaging remark about looters engaged in violent criminal activity during an otherwise peaceful racial justice protest. The client's comments were instantly condemned in the media and social media as being racist. It was particularly ironic that the online assault against my client began on the very day when I happened to be viewing some terrific videos he posted online over the span of several years championing African-American history. Based on one misconstrued remark, my client's solid track record of respecting all races was lost in a firestorm of vicious comments. The truth of the situation mattered little. The cyber barrage was powerful, relentless and unstoppable.

We ought to learn from history. The Salem witch trials in the spring of 1692 were touched off when a group of girls accused several women of witchcraft. A wave of hysteria swept the region, and 20 defendants were executed before cooler heads prevailed and the injustice was condemned. During the McCarthy era of the 1950s, the fear that Communists were infiltrating or influencing American government and organizations led to baseless allegations. Targets of the accusations lost their jobs, lost their reputations, and some were convicted and imprisoned.

It is hard to see my client suffer, but the law provides little relief in these situations. Defamation can be addressed, but opinions – however unfounded – are free game. On social media, even identifying a defamatory commentator can be a challenge because many persons comment under a pseudonym or false identity. Moreover, Section 230 of the Communications Decency Act shields a website operator that allows a stream of defamatory user comments.

In a January 2015 article in New York Magazine entitled "That's Not a Very PC Thing to Say: How the Language Police are Perverting Liberalism," Jonathan Chait wrote: "At

a growing number of campuses, professors now attach "trigger warnings" to texts that may upset students, and there is a campaign to eradicate "microaggressions," or small social slights that might cause searing trauma. These newly fashionable terms merely repackage a central tenet of the first PC movement: that people should be expected to treat even faintly unpleasant ideas or behaviors as full-scale offenses. Stanford recently canceled a performance of "Bloody Bloody Andrew Jackson" after protests by Native American students. UCLA students staged a sit-in to protest microaggressions such as when a professor corrected a student's decision to spell the word indigenous with an uppercase I – one example of many "perceived grammatical choices that in actuality reflect ideologies." A theater group at Mount Holyoke College recently announced it would no longer put on "The Vagina Monologues" in part because the material excludes women without vaginas. These sorts of episodes now hardly even qualify as exceptional.

Social media has had a big impact on the push for political correctness. As Rebecca Traister wrote in "The New Republic:"

"All over social media, there dwell armies of unpaid but widely read commentators, ready to launch hashtag campaigns and circulate Change.org petitions in response to the slightest of identity-politics missteps."

Attorneys have long assisted clients in the midst of public relations disasters. Every day, criminal defense attorneys assist clients whose alleged crimes make the front page news. Lawyers are often called upon to help those who have said and done terrible things, as well as those who are falsely accused of saying and doing terrible things. We help our clients to the extent that the law can provide an answer for them, while recognizing that the justice system is imperfect and many wrongs are never righted. Sometimes perhaps our greatest assistance is to provide a listening ear.

I don't have any great solutions to these problems. I wrote this column in large part as a cathartic exercise, struggling with my own frustration at witness-

ing the cyberworld's increasing assaults on individuals falsely accused on P.C. grounds.

One of the Ten Commandments instructs us not to bear false witness against a neighbor. In the year 2015, we ought to consider that ancient precept as we pen our online comments about others. Condemning racism is righteous and necessary. Falsely accusing an individual of racism is unhelpful to all. Good luck to the lawyers and clients as we live in this brave new cyberworld and experience its incredible power for good and evil. [B]

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### Are You An Attorney Struggling With Depression?

If so, you're definitely not alone. A recent Johns Hopkins study of 108 occupations found that lawyers topped the list of those who suffered from depression. Attorneys were found to suffer from depression at a rate of four times that of the general population.

Depression is a treatable illness and the right combination of medications and therapies can significantly improve the quality of life for those who suffer from it.

Help and support are just a phone call away. The Lawyers with Depression Support Group meets on a weekly basis to share stories and fellowship. The group meets every Friday (except holidays). See the calendar on page 24 for meeting dates, times and locations.

If you or a colleague are struggling with depression, there is no need to suffer in silence. For further information, visit [www.lawyerswithdepression.com](http://www.lawyerswithdepression.com) or contact Daniel T. Lukasik at 847-1010. All calls are strictly confidential. We invite you to join us and share your story.