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..."

- Donald 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 comments immediately flood on traditional media and social media.

I have a client who recently made a disparaging remark about hosts 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 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 from liability if the comment is provided by another user.

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"Police are perverting liberalism," Jonathan Chait wrote: "At That's Not a Very PC Thing to Say: How the Language of the Communications Decency Act shields a website operator from liability if the comment is provided by another user. 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 beforecookie 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.

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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 barbing campaigns and circulate Change.org petitions in response to the slightest of identity-politic 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 called upon to help those who have sued 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 witnessing 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 peruse 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 lawyer and clients as we live in this brave new cyberworld and experience its incredible power for good and evil. [B]"