

[Intro Music]

Kirk McDaniel: When a case goes to trial, both parties must try and convince a jury why they are right and deserve a verdict in their favor. However, for those lucky or unlucky enough to be a household name, they must also contend with the court of public opinion. The stage is set and cameras are ready to capture the intersection of these two cores. Prepare yourself for what is likely to be the most talked-about trial of the year: the defamation trial between Hollywood stars, Johnny Depp and Amber Heard. You're listening to Sidebar, a podcast by Courthouse News. I'm Kirk McDaniel, Sidebar's producer and a reporter based in Austin, Texas. In this episode, Brooklyn-based reporter Nina Pullano takes us to Virginia where Depp and Heard are about to step into their roles as plaintiff and defendant. So many elements swirled into one with this case, with the MeToo movement, accusations of lies, the media's coverage and participation in the story and the public taking up their respective banners, "Justice for Johnny" or "I stand with Amber Heard." Here's Nina with the report.

Joan Hennessy: Unless you live at the bottom of the sea on a distant planet, you've probably heard of this case. So, there's sort of baggage, if you will, that this case has with it.

Nina Pullano: By pretty much anyone's standards, Johnny Depp is one of the most famous American movie stars of all time. He's had leading roles in iconic movies for decades. "Cry-Baby" and "Edward Scissorhands" in the early 1990s. He played Captain Jack Sparrow in the "Pirates of the Caribbean" franchise starting in 2003. Those are just a few, so, it's no wonder that there's been a lot of media attention surrounding the intense and years-long dispute between Depp and his ex-wife Amber Heard. Now it's all coming to a head in a courtroom in Fairfax, Virginia.

JH: I'm Joan Hennessy, and I work as a reporter for Courthouse News. I cover Northern Virginia.

NP: Joan has been following the long road leading up to the trial. It really goes back to when the two actors met while filming the movie "The Rum Diary," which came out in 2011. Four years later, they got married and it lasted just 15 months.

JH: As the marriage was ending, Amber Heard appeared in court and her face was bruised. She took out a temporary restraining order against him.

NP: The next year, the MeToo hashtag went viral and more and more people, especially in the entertainment industry, started naming names.

News Clip: The disgraced Hollywood mogul made his initial court appearance today after being extradited from New York. Weinstein pleaded not guilty to 11 counts, including rape and sexual battery by restraint.

News Clip: There's new accusations against Matt Lauer. NBC fired the "Today Show" host after a woman came forward Monday evening with allegations. Now more are telling their stories.

News Clip: Charlie Rose is out at CBS News, less than 24 hours after Rose was accused by eight women of lewd behavior and unwanted advances.

News Clip: Bill Cosby found guilty. The actor and comedian once known as America's dad found guilty on all charges today.

News Clip: Kevin Spacey, the latest high-profile star caught up in allegations. Actor Anthony Rapp accusing Spacey of making a sexual advance at a party 30 years ago when he was 14.

NP: In 2018, some of that attention turned toward Johnny Depp. Amber Heard, who's now 35 years old, claimed that Depp, who's 58, had been verbally and physically abusive for years before and during their marriage.

JH: A British tabloid published an article accusing Depp of being a wife-beater. Depp sued that publication and its editor for libel. Later that year, December 2018, Heard published an op-ed in the Washington Post.

NP: Heard wrote about becoming a figure speaking out against domestic violence, and in particular, what the response had been like from the public.

JH: She didn't mention Depp by name. Right? But, it was known that she'd been married to him. And it was a powerfully written article. She wrote that she felt the full force of culture's wrath for women who speak out.

NP: Johnny Depp says that after the opinion piece was published, he lost two jobs. One as Jack Sparrow and another in an upcoming movie in the "Fantastic Beasts" film series. A few months later, so, in March of 2019, Depp filed this lawsuit in Virginia, which is where the Washington Post is printed. There may also be another tactical reason that he chose the state.

Xiyin Tang: Virginia, in many instances, has proven to be a popular venue because up until recently, it did not have what's known as an anti-SLAPP law, which would allow the defendant, usually a publication, in this case a person, to quickly dismiss the suit and also get a sizeable amount of damages against the plaintiff. So, even though Virginia seems like a very odd venue in a lot of ways in this case, I think it was certainly a strategic choice made by Johnny Depp.

NP: That's professor Xiyin Tang.

XT: I'm Xiyin Tang and I'm an assistant professor of law at UCLA, where I focus on entertainment law and intellectual property.

NP: The year after Depp filed his lawsuit, Virginia changed its anti-SLAPP laws, SLAPP being an acronym for strategic lawsuits against public participation.

XT: The legislature realized that the choice of venue in Virginia could be prone to a lot of gamesmanship because it was one of the outlier states and not having an anti-SLAPP law. So, it recently passed one.

NP: Just a few weeks ago, the Fairfax Circuit Court's Chief Judge Penny Azcarate ruled against Depp's argument that Amber Heard should not be allowed to use an anti-SLAPP defense in the Virginia lawsuit. Johnny Depp, who contends that all the allegations of abuse are false, is asking for \$50 million in damages. Amber Heard has filed a countersuit, asking for twice as much and saying that Depp used his attorney to orchestrate a smear campaign, calling her a hoax artist and accusing her of perjury. Coming on the heels of the viral MeToo hashtag, Professor Tang said that Depp's lawsuit sort of stands out.

XT: It's very rare, I think, especially for a famous and powerful male actor to be suing someone who, by all accounts, I think is less established and also a woman, and as Amber Heard is, one can think of the lawsuits that were swirling around in the industry years ago when several women came forward and

spoke out against Harvey Weinstein and then claim that the industry retaliated against them and as a result, they lost roles or were not being considered for as many roles as they used to be.

NP: It's sort of hard to ignore the imbalance in celebrity between Amber Heard and Johnny Depp.

Jason Whiting: Depp is the better-known and better-loved actor.

Lyrissa Barnett Lidsky: I knew who Johnny Depp was. I did not, before this lawsuit, really know who Amber Heard was.

NP: And Depp's fame in particular has already played a big part in this case. The responses to Amber Heard prompted her to write the piece in the Washington Post. And comments haven't died down since, from questioning Heard's account to showing support for Depp to weighing in on the facts on what people believe to be the real story.

Optimus: It really seems like Johnny Depp is getting the short end of the stick on this one. It seems like he is kind of being thrown under, you know.

NP: That's a YouTuber named Optimus. Here's a clip from another account called E-Hacker.

E-Hacker: I guess she's just trying to trick the people who know nothing about Johnny at all and don't look into this at all. And really, really only on the surface level.

NP: And one more from an account called Observe.

Observe: Amber, on the other hand, does something which a lot of deceitful people will do, and that she adds tons of extraneous details that don't need to be in there, which people would assume would be, oh, it's because she remembers it. It's so vivid, but that's not what actually happens.

NP: Courthouse News has definitely been on the receiving end of these comments too. They come up virtually every time we cover the trial. People post unflattering photos of Amber Heard, they support Johnny Depp and call Heard an abuser. They attack journalists for reporting on this trial. One comment screenshots our reporting and just reads "Courthouse News is trash." There's actually data to quantify this effect. A team of researchers analyzed social media comments about the accusations after Heard first spoke publicly. This was before she even wrote the op-ed.

JW: My name is Jason Whiting. I'm a professor of marriage and family therapy here at Brigham Young University and a researcher of intimate partner violence and other couple dynamics.

NP: Whiting called this kind of conflict a lightning rod for highly charged passionate response. His team's analysis showed that judgment and blame were key themes in the comments. A lot of people express mixed views, some withheld judgment, but others picked sides. Thirty-seven percent place the blame on Amber Heard while just 9% said that Johnny Depp was at fault. Social dynamics help us understand why that might be the case. Like a concept known as the myth of evil.

JW: People assume somebody that does bad things, domestic violence, that they would be some bad person and they would look bad and they would have a trench coat on and be in the alley, you know what I mean? But that's just not how most domestic violence or addiction or pedophilia, it's not how it usually works. It's by otherwise normal people, obviously people aren't putting themselves forward as some sort of monster and people are just complicated that way.

NP: When researchers look at how society reacts to reports of abuse, there's another concept called the ideal victim.

JW: We tend to not take somebody as seriously unless they fit this profile of totally blameless, likable. Sometimes people are skeptical or hesitant to help if that person is sort of unlikeable or if they did things that were problematic, you know, let's say they were screaming and yelling and throwing things too.

NP: When we questioned an accuser's story, there's also something sort of going on in our brain.

JW: We have these levels of denial around violence, especially like sexual assault or those kinds of violence where victims, you know, we're like, well, she probably shouldn't have been doing what she was doing or wearing what she was wearing. It's like, we're looking for that cause, we don't like to accept the fact that these things just happen.

NP: We don't want to believe that these situations are real. We don't want to think that the world is unsafe or consider how abusive situations are really complex.

JW: Our brains resist that a little bit, and that ends up kind of harming those that are victims.

[Music Break]

NP: Remember the news article in a British tabloid that Joan mentioned? The one that referred to Johnny Depp as a wife beater. It was published in The Sun and Depp sued the paper in response. He lost that case in November of 2020. A judge in London ruled that 12 out of 14 incidents the paper reported were credible. They met the civil standard of proof. Here's Professor Tang again.

XT: So, there we actually have a court who did a rigorous fact-finding and found that, you know, it was, it was true that he was abusing Amber Heard. And so, I think in that sense on public opinion and whether or not we choose to believe women, I don't even know if we necessarily have to adhere to that standard because we know that she was at least in part telling the truth when she claimed that, you know, he abused her.

NP: The London trial lasted three weeks. Both Heard and Depp testified in person. Depp's legal team argued that Amber Heard was verbally abusive herself and hit and threw a bottle and other items at Johnny Depp. In the end, not everyone agrees that justice was done. This is Arizona-based defamation attorney, Raees Mohamed. He works at the firm RM Warner in Scottsdale.

Raees Mohamed: One of the things that I had a problem with is I don't think the judge considered in the UK case some of the evidence, the video evidence, the text messages that cut against Amber Heard, that showed that maybe she was the instigator, that in fact she was abusive. Like the images of, you may have seen these, right, Johnny Depp with the bloody finger in the hospital. I don't think the judge looked at those. So, there's some prejudice here that judges would naturally hesitate to adopt conclusions from another court when they haven't had the same opportunity to have a neutral party evaluate those things.

NP: That's exactly what happened in Virginia. The judge denied Heard's request to essentially accept those results and use them to toss out the case. These lawsuits lead us to examine how journalists treat these stories and by extension the role of the internet, as opposed to maybe old-school print media.

RM: Probably the most significant departure is how quickly these statements move. You can do a lot of damage with a one-minute TikTok video nowadays. And I could tell you, Nina, about the generalities of stories and calls I get multiple times a week about "I am ruined because of XYZ TikTok video." It's a minute to three minutes.

NP: Another big change, as you can probably guess, internet commentary.

RM: Then you have these other actors, like third parties. So, you have a publisher for example, Sun newspaper, but then there's third parties who pick that up and comment on it, who may be adding their own flavor to it and their own spin, or they may purport to have personalized knowledge. So, that commentating element is new and it's something that we still don't know even legally how to deal with completely, it's a very mushy area.

[Music Break]

NP: If you're looking for someone to talk about the intersection of MeToo, journalism and defamation law, you can't do much better than a reporter who's been sued for defamation because of his MeToo coverage.

Michael Balter: My name is Michael Balter, I've been a journalist for coming on 44 years now.

NP: Balter has taught journalism at three universities in the U.S. and worked as the Paris correspondent for Science magazine for 25 years.

MB: Now I've come back to the United States. It is true that I've done an enormous amount of MeToo reporting over the last six years. But I also write about a lot of other things ranging from science to politics and so forth.

NP: Balter has written dozens of stories about sexual misconduct, many of them in academia.

MB: I was sued by an archeologist who I had reported on, an archeologist at the University of California, Santa Barbara, for \$18 million for defamation. We had a very hard battle for 13 months.

NP: The case was eventually settled. If you want to know more about that agreement, it's covered on Balter's blog, where he posts most of his MeToo reporting.

MB: Just Google Balter's Blog, and you'll find it.

NP: Balter fought the case with support from a pro bono legal team at the firm Baker Hostetler and the Reporters Committee for the Freedom of the Press and the Committee to Protect Journalists.

MB: They saw the First Amendment implications of my case and the importance of it and the attempts to intimidate not only me, but the survivors, because if an abuser sues a reporter, they're not just going out, trying to shut the reporter up. They're also trying to shut the survivors up. They're trying to shut anybody up who, you know, might speak the truth about that.

NP: Journalists have such a prominent role in how these stories are told. And, of course, there's always ways to improve that coverage. One issue with the way we cover MeToo stories, Balter says, is that these big stories really focus on the person being accused and their sort of fall from grace.

MB: The media tends to be very focused. I mean, the mainstream media, tends to be very focused on the kind of what I call, celebrity abusers. So, you know, Harvey Weinstein and Johnny Depp, Bill Cosby, it's almost always people who are in the entertainment industry or media.

NP: Looking at these stories as kind of a Greek tragedy, as Balter puts it, loses sight of the experience of the people who came forward. The focus on celebrity misses another really big element of situations where there's sexual misconduct going on, where the people involved aren't rich and famous and where the stakes are higher when it comes to someone risking their job by coming forward.

MB: You know, nobody can name a McDonald's manager who sexually harassed a woman working at McDonald's and nobody can name a survivor of sexual harassment at a McDonald's even in their own hometown, because it's occasionally mentioned in media stories, but this is not what the media focuses on. And yet if you had to say, OK, is sexual harassment a more serious problem for successful actresses or is it a more serious problem for young women working two, three jobs, trying to support their kids, single mothers and so forth that McDonald's, I think you and I both know that, you know, McDonald's is a more serious situation and there's very little that you can do about it.

NP: Big celebrity media coverage is where the Depp versus Heard case originated. There's going to be a lot more reporting to come. The judge in Virginia is allowing a camera in the courtroom. The trial will be live-streamed, and we can probably expect a lot of buzz, especially around the witnesses that both parties have listed. Actor James Franco and entrepreneur Elon Musk are expected to testify over livestream. We'll see communications with people like Jason Momoa, an actor who co-starred in "Aquaman" with Amber Heard, and J.K. Rowling, who's of course, the mind behind the Fantastic Beasts movie that Johnny Depp was supposed to star in. Attention from the public and the legal process itself can sort of sway each other in both directions. Sometimes stories that come out can later lead to legal action. Think of the FreeBritney movement or the "Surviving R. Kelly" documentary series. Other times it's about telling a new version of a story that everybody already knows, or maybe thinks they know. Here's Professor Tang from UCLA one more time.

XT: Amber Heard feels like social media has been against her maybe largely because of Johnny Depp's deep fan base. It's very possible that there would be a revisionist history, very similar to Pam and Tommy who, you know, public opinion and the media was not on Pamela Anderson's side back when she was pursuing legal action against the disseminators of her sex tape. And now it's obviously, I think it's swung back around and the miniseries is really an attempt to paint her in a more sympathetic light and give her a second chance at telling this story in a different lens than what the media actually did at the time, which was kind of largely paint her as similar to I think how Johnny Depp is trying to paint Amber Heard now, as someone who's just interested in a payout.

NP: I asked our reporter Joan Hennessy what kind of arguments we can expect to come out at trial.

JH: The narrative from Depp's team is that Depp is not an abuser. The lawsuit specifically says that Heard's claims were part of an elaborate hoax to generate positive publicity for Ms. Heard and advance her career. So, to bolster that argument, they use wording that conveys doubt. For example, the business about her appearing in court with her face bruised. In one brief, they say that she appeared with an apparently battered face. And in another brief, they say supposedly with bruises on her face. The narrative from Amber Heard's team is that Depp regularly abused her both physically and emotionally throughout much of the relationship. Her attorneys also have argued that Depp had other

problems that range from substance abuse to not showing up on time to forgetting his lines, sort of work issues and that that was why he lost his part.

NP: Ultimately, this is a case about the private lives of public figures, super famous people who are out there litigating details from their most intimate lives. That's what sets this case apart as a defamation suit in terms of what has to be proved at trial.

Lyrissa Lidsky: I think it's a lot different because what you're looking at in a case like the Sarah Palin case against the New York Times is what was the newsgathering and editorial process that went behind the publication of the false factual matters about Sarah Palin. So, no one disputed ultimately that what was said was false, but they disputed, was it done negligently? Was it done with knowledge or reckless disregard of the falsity? That was really where the dispute was in that case. Here, there's a dispute about whether what Amber said about Johnny Depp was true or false.

NP: That's Lyrissa Lidsky, the dean of the University of Missouri Law School.

LL: One of the functions of defamation law is that it is supposed to set the outer boundaries of public discourse, how we talk about one another. And guaranteed that at the outer boundaries, our public discourse has some necessary anchor in truth. At least when we're speaking in ways that damage others reputation.

NP: That means getting the court to determine that your version of events is true or that what someone else said is false.

LL: Basically, Johnny Depp's contention as I understand it he's just contending she made it up. She's lying entirely. He would have to prove it by a clear and convincing standard that she's lying in order to prevail or that she recklessly disregarded the truth. But he's going for the lying angle.

NP: The Depp versus Heard trial sits in the context of a bigger conversation about how defamation statutes like SLAPP should be used. Folks have opinions about who should file claims and what defenses they're entitled to use. Always up for scrutiny is whether a defamation lawsuit is being used as a form of self-protection or a tactic to silence others.

LL: Defamation is designed to root out, in some ways, root out false reputation, damaging information, but you can also use defamation law strategically to try to chill true speech. At least if you have enough money.

[Music Break]

KM: The trial has only just begun. Stay with us at Courthouse News to learn the latest on the case. Thank you to our very own Joan Hennessy. For more on the Depp-Heard saga, check out her reporting at courthousenews.com. Follow us on Twitter @sidebarCNS and @courthousenews to stay up to date on news around the globe. A special thank you to all of our listeners, from Tacoma to Tbilisi. We want to hear what you think. Drop us a DM with story ideas on Twitter and a review on Spotify and Apple Podcasts. On our next episode, we take a look at the mantra my body, my rights, and how it's not just about reproductive freedom anymore. See you then.

[Outro Music]