



Defamation and DARVO

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Defamation and DARVO

Violence and trauma are often central features of the news cycle, but some stories attract especially intense and sustained attention. In these instances, the media spotlight often stimulates energetic discussions about interpersonal violence in the public discourse. One such case is actor Johnny Depp's recent defamation trial against his former spouse Amber Heard, which dominated headlines in the spring of 2022. The trial inspired numerous public conversations of varying quality about domestic violence, victim credibility, defamation lawsuits, and DARVO (e.g.: Nolan, 2022).

Depp's legal action against Heard, who is also an actor, began when he sued her over a 2018 op-ed she wrote for the *Washington Post*. According to the lawsuit, Heard defamed Depp when she wrote about witnessing how "institutions protect men accused of abuse," (Heard, 2018, para. 5) and when she described herself as "a public figure representing domestic abuse" (Heard, 2018, para. 3). Even the title of Heard's op-ed ("I spoke up against sexual violence – and faced our culture's wrath. That has to change") was identified in the lawsuit as being defamatory against Depp. Although Heard did not name any perpetrators in the op-ed, Depp's legal team argued she had defamed him and further alleged she had actually been the abusive partner in the relationship. Heard filed a counterclaim against Depp and his attorney after they called her reports of abuse a hoax. The jury sided primarily with Depp, awarding him \$10 million in damages and Heard \$2 million in damages.

While the Depp v. Heard trial gained much of its attention due in part to its high-profile plaintiff and defendant, it reflects a growing trend in the world of civil litigation: alleged perpetrators of interpersonal violence are filing defamation lawsuits against the individuals who have named them as abusers. In a 2020 article, *Mother Jones* journalist Madison Pauly reported that at least 100 defamation cases had been filed since 2014 by those accused of sexual misconduct (Pauly, 2020). Of these cases, about half were filed in the years following the rise of the 2017 #MeToo movement on social media, indicating a sharp increase in the number of people taking their alleged victims to court. Legal experts have also taken notice of this growing phenomenon. In a 2017 interview for *Buzzfeed*, a lawyer who works with campus sexual assault victims shared that previously only a small fraction – 5% – of her cases included a defamation lawsuit but more recently that number had jumped to about 50% (Kingkade, 2017). Equality Now, a women's rights organization, similarly reports seeing a worldwide increase in perpetrators filing defamation lawsuits against victims of gender-based violence (Dugan, 2022). Defamation lawsuits

against victims have even caught the attention of the U.N. Special Rapporteur for Freedom of Opinion and Expression, Irene Khan. “In a perverse twist in the #MeToo age,” Khan writes, “women who publicly denounce alleged perpetrators of sexual violence online are increasingly subject to defamation suits or charged with criminal libel or the false reporting of crimes” (Khan, 2021, p. 8).

It’s not just the growing number of cases that’s concerning. The threat of such lawsuits against people reporting or disclosing abuse is also something that many victims fear or experience. A survey of 107 sexual assault survivors who reported their assaults to school officials found that 23% were threatened with a defamation lawsuit by either their perpetrator or their perpetrator’s attorney (Nesbitt & Carson, 2021). According to this survey, nearly 20% of survivors were also warned by their school that they may be at risk of being sued for defamation.

For victims, the notion of participating in a retraumatizing, expensive, time-consuming, and hostile legal process is chilling and upsetting. For abusers, these lawsuits are an opportunity to enforce DARVO through civil litigation.

DARVO (Deny, Attack, Reverse Victim and Offender) is a perpetrator tactic first described by Freyd (1997). Based on her observations of sex offenders, Freyd (1997) proposed that perpetrators deny committing any wrongdoing, attack their victims’ credibility, and cast their victims as the real aggressor and themselves as the real victims when held accountable or confronted with their abusive behavior. DARVO is a tactic used to urge observers to believe that the only real wrongdoing is a false accusation – a terrible injustice brought on by someone pretending to be a victim. The presence of this alternative and oftentimes compelling narrative put forth by an alleged perpetrator can generate confusion – who is really to blame? Did the abuse even happen? By eroding trust in victims, DARVO’s purpose is to enable perpetrators to deflect at least some blame and responsibility.

Research on DARVO suggests it is common and effective. Harsey et al. (2017) surveyed 138 undergraduates on their DARVO exposure during confrontations with individuals who had committed wrongdoing and reported that approximately 72% of the sample had experienced denials, attacks, and reversals of victim and offender. Among a sample of undergraduate women who had been sexually assaulted, just over half indicated that their perpetrator had used DARVO tactics during post-assault contact (Rosenthal & Freyd, 2022). An experiment testing the effect of DARVO on third-party observers found that, among those who were exposed to a perpetrator’s use of DARVO, individuals perceived the perpetrator as less abusive and less responsible for their harmful behavior compared to those who were not exposed to perpetrator DARVO (Harsey & Freyd, 2020). DARVO-exposed participants in this study also rated the victim as less believable, more abusive, and more responsible for the harm they experienced. DARVO may also impact the victims

themselves. Harsey et al.'s (2017) study identified a positive association between DARVO exposure and victim self-blame – in other words, the more DARVO participants experienced during a confrontation, the greater self-blame they reported feeling for the abuse.

Defamation lawsuits targeting abuse survivors tick all the DARVO boxes: by suing for defamation, those accused of abuse are collectively denying they are guilty of their behavior while asserting that any claims made against them are false (in most cases, individuals cannot be defamed by true statements). Alleged perpetrators who sue alleged victims for defamation often attack the mental competence and motivations of the defendant in the defamation lawsuit. Moreover, defamation lawsuits position the plaintiffs – i.e., the abusers – as victims harmed by libel or slander. This is the three-pronged DARVO response – deny, attack, reverse victim and offender – packaged in a lawsuit intended to intimidate, silence, and punish victims.

Freyd, in her original conceptualization of DARVO, recognized that the legal system would be a likely context for the tactic to appear, stating, “. . . I have observed that actual abusers threaten, bully and make a nightmare for anyone who holds them accountable or asks them to change their abusive behavior. This attack, intended to chill and terrify, **typically includes threats of law suits**, overt and covert attacks on the whistle-blower's credibility, and so on” (Freyd, 1997, pp. 29–30, emphasis added). Indeed, for many victims, the prospect of being taken to court by their perpetrators is frightening. In the survey of 107 sexual assault survivors who alerted school officials of their assaults, the researchers note, “The threats [of defamation lawsuits] universally inspired fear, discouraged online engagement, and inhibited reporting, because the survivors knew those threats were not empty ones. As one survivor wrote: ‘Knowing my abuser – he will do anything to retaliate against me’” (Nesbitt & Carson, 2021, p. 21). The mere fact of these lawsuits' existence ensures many victims hesitate to report or publicly disclose their experiences of abuse.

A defamation lawsuit in this context is therefore an act of DARVO. Beyond the lawsuit itself, however, perpetrators who end up taking their victims to court have additional opportunities to employ DARVO. For instance, a plaintiff's legal team may use DARVO in the courtroom as an aggressive strategy to undermine the victim's credibility and argue for the plaintiff's victimhood. In many cases, a plaintiff's lawyer might find it advantageous to assert in court that the victim had mental health or memory problems or even fabricated claims of abuse (Attack) which resulted in harming the plaintiff's reputation and wellbeing (Reverse Victim and Offender). Any claims of abuse put forward by the defendant to prove truth would be refuted (Deny) by the opposing side. Although elements of DARVO play a central role in many kinds of court cases – for example, a criminal defendant might deny or minimize wrongdoing – defamation lawsuits filed by abusers are especially

likely to elicit DARVO during the trial. In these cases, the lawsuit itself necessitates that abuser be on the attack. Denial of abuse or wrongdoing alone here would not suffice. The defamation plaintiff often has to prove damages, and this requires the plaintiff's lawyers to prove the victim harmed their client. If the defamation plaintiff seeks punitive damages too, the plaintiff's attorneys will emphasize that the victim has done something egregious and needs to be punished.

In some high-profile defamation cases, public discourse becomes another platform for DARVO. The Depp v. Heard trial serves as an example of this. While we will never know the full context for all that happened between Depp and Heard before the trial (including the possibility that Heard herself used DARVO in interactions with Depp), the public could see what happened in the courtroom due to television coverage. The public could also witness the coverage of the case in the traditional media and on social media during the trial itself. The denials, attacks, and reversals used in court against Heard were echoed online, creating a highly visible outpouring of DARVO. Survivors who disagreed with the jury verdict and thought Depp won only because of DARVO will certainly be silenced going forward.

Of course, not all defamation lawsuits are representative of DARVO. In cases where someone has truly been defamed, there is a need for legal recourse. This is even relevant for alleged victims of violence, who can be defamed and serve as plaintiffs in defamation trials. For instance, writer E. Jean Carroll, who reported that Donald Trump raped her in the 1990s, is suing the former president for defamation after he accused her of lying (Mangan, 2022). Furthermore, it may sometimes be difficult to distinguish between a defamation lawsuit filed by someone who has participated in wrongdoing and someone who has truly been defamed. But additional research on DARVO, similar to the DARVO studies currently funded by the Center for Institutional Courage (Redden, 2021), might help aid in making this distinction.

For the time being, however, we know that defamation lawsuits pursued by abusers both weaponize and propagate DARVO, a known perpetrator tactic commonly used to the detriment of victims (Harsey & Freyd, 2020; Harsey et al., 2017). This kind of litigation poses an existential threat to justice and victims' rights, but there are ways of resisting this growing trend.

First, identifying abusers' defamation lawsuits as DARVO might offer a useful framework of understanding such aggressive legal action. For some, it might be tempting to see defamation lawsuits of this nature as a symbol of an abuser's innocence – after all, why would someone who is guilty intentionally seek out the courtroom? But those who are familiar with DARVO know this decision actually fits into a common pattern of perpetrator responses. Importantly, research demonstrates that individuals who are educated about DARVO are also less likely to be swayed by it (Harsey & Freyd, 2020).

A widespread awareness of DARVO might therefore make abusers' defamation lawsuits less socially acceptable to pursue and less successful before a judge or jury.

A second way to mitigate such cases is to strengthen anti-SLAPP laws. SLAPPs (strategic lawsuits against public participation) are intimidation lawsuits that seek to silence and burden their targets with legal proceedings. Defamation lawsuits against survivors who have spoken out about their victimization or sexual violence more generally may be considered to be SLAPPs in some jurisdictions with stronger anti-SLAPP laws, leading such lawsuits to be dismissed. In recent years, states like New York and Tennessee have strengthened their anti-SLAPP laws, but legal challenges continue to threaten these laws across the country (Jankowski & Hogle, 2022). Protecting and expanding existing anti-SLAPP laws, as well as implementing new ones where they don't exist, might offer some victims greater protection against legal action from their abusers. Beyond anti-SLAPP laws, other legislation can help stop abusers from exploiting the legal system to cause further harm to their victims. In July 2022, California Governor Gavin Newsom approved AB 2391, a new bill allowing domestic violence victims to petition for their abusers to be classified as "vexatious litigants," a label that prevents individuals from filing lawsuits without a judge's permission.

Until this onslaught of retaliatory defamation lawsuits is controlled, clinicians and researchers who work with victims should be aware of the rise of these lawsuits and their connection to DARVO, as many clients who report or disclose abuse could be at risk for being sued. Victims who express concern about their abusers retaliating with a defamation lawsuit might benefit from being educated about DARVO – understanding a frightening and confusing defamation lawsuit as another DARVO strategy might offer victims a sense of empowerment. Victims who are threatened with a lawsuit or who have had a lawsuit filed against them should seek legal assistance. As discussed by a blog post for the ACLU, many homeowners' and renters' insurance policies insure against libel (Johnson & Tremaine, 2018). Some anti-harassment organizations have legal defense funds that victims can apply for if they are sued by their abusers.

Protecting the rights of victims is essential for justice. Individuals who have experienced abuse should never have to fear reporting their experiences. Victims will be better able to speak their truth freely when DARVO is kept out of the courts.

State of the Journal

The impact of the *Journal of Trauma & Dissociation* continues to grow, both in the USA and internationally, as measured by our 2021 Impact Factor (calculated by Clarivate) at 3.6, and also by our relatively high rank on various lists of

influential scholarly journals by topic area. The number of online views and downloads has also been growing; in 2021 there were over 180,000 views and downloads of JTD articles. This growing impact of JTD is a reflection of the quality of the articles. That quality is in turn a function of the excellent submissions and insightful evaluative work of our editorial Board and ad hoc reviewers. I am deeply grateful to the authors of JTD articles and also to our thoughtful and dedicated reviewers.

I am also grateful to Taylor & Francis for providing a cash award for a particularly excellent publication in *JTD* for the ninth consecutive year and to Dr. Bethany Brand for her excellent work as Chair of the Awards Committee.

The Richard P. Kluft Award for the *Journal of Trauma & Dissociation* 2021 Best Article was awarded to Mekawi, Y., Carter, S., Brown, B., Martinez de Andino, A., Fani, N., Michopoulos, V., & Powers, A (Mekawi et al., 2021) for their article “Interpersonal Trauma and Posttraumatic Stress Disorder among Black Women: Does Racial Discrimination Matter?”

The Awards Committee explained:

This study empirically demonstrates that racial discrimination exacerbates the impact of interpersonal trauma on a population that is highly exposed to both adversities due to the intersection of race, gender and associated socioeconomic disparities. This is an important contribution to our understanding of the complex intersectionalities affecting marginalized populations.

The awards committee also selected three additional 2021 articles for Honorable Mention:

1. Atchley, R. & Carter, B. (Atchley & Carter, 2021) for their article “Dissociative symptoms in posttraumatic stress disorder: A systematic review.” According to the Awards Committee:

This paper reviews studies that treated dissociative symptoms and posttraumatic stress disorder. The authors conclude that some treatments have demonstrated small to moderate effects in reducing dissociation. They conclude that that the positive results do not generalize to groups that are currently excluded including those with suicidal ideation and dissociative disorders, and they suggest important improvements in research for dissociative individuals.

2. Yalch, M. M., Stewart, A. M., & Dehart, R. M. (Yalch et al., 2021) for: “Influence of betrayal trauma on antisocial personality disorder traits.”

The Awards Committee explained:

This paper addresses an understudied topic of importance to both clinicians and forensic experts. Most important, it convincingly moves antisocial personality disorder from the often assumed framework of inborn “badness” to an understandable response to interpersonal betrayal trauma.

3. Paetzold, R.A. & Rhodes, W. S. (Paetzold & Rhodes, 2021) for “The Link from Child Abuse to Dissociation: The Roles of Adult Disorganized Attachment, Self-Concept Clarity, and Reflective Functioning.” The Awards Committee noted:

This paper is important because it addresses mechanisms that explain how child abuse experiences lead to attachment disorder and to dissociative symptoms in adults. The ideas in the paper are useful for preventive care in children and adolescents and clinical care in adults. The paper is also important because the ideas it describes are applicable not only to adults with dissociative disorders, but to the larger population of adults who have troubling dissociative symptoms, but not a dissociative disorder.

In addition to publishing regular issues, the *Journal of Trauma & Dissociation* publishes special issues that focus on a particular topic and usually are guest edited. Special issue topics and guest editors are selected by the editor-in-chief. Typically, at least one of the special issue guest editors has served on the JTD Editorial Board. All submissions are subjected to expert scrutiny via a thorough peer review process. Final acceptance is based on approval by both the special issue guest editors and the editor-in-chief of the *Journal of Trauma & Dissociation*.

Most years JTD publishes one special issue and occasionally two. The full list since 2006 can be found here: <https://dynamic.uoregon.edu/jjf/jtd/special.html>. In recent years JTD has published several highly regarded and timely guest-edited special issues:

“Innovations in Understanding the Nexus between Elder Abuse and Trauma”, guest edited Anne P. DePrince and Shelly L. Jackson, Volume 21, Issue 2, 2020 pages 151-277 (for an overview see, DePrince & Jackson, 2020)

“Trauma, Advocacy, and Social Movements”, guest edited by Joan Cook, Alexis Adams-Clark, and Alec Smidt, Volume 21, Issue 4, 2020 pages 413-504 (for an overview see, Cook et al., 2020)

“Discrimination, Violence, and Healing in Marginalized Communities”, guest edited by Jennifer M. Gómez, Robyn L. Gobin & Melissa L. Barnes, Volume 22, Issue 2, 2021 pages 135-240 (for an overview see, Gómez et al., 2021)

“Trauma, Narratives, Institutions: Transdisciplinary Dialogues”, guest edited by Michael Salter & Iro Filippaki, Volume 22, Issue 4, 2021 pages 407-477 (for an overview see, Salter & Filippaki, 2021)

“The Science and Politics of False Memories”, guest edited by Michael Salter & Ruth Blizard, Volume 23, Issue 2, 2022 pages 141-204 (for an overview see, Salter & Blizard, 2022)

These special issues contribute not only to the advancement of scientific and clinical knowledge, but also to timely social issues and thus are typically among our most highly cited articles.

Whether part of a regular issue or a special issue, I look forward to reading your insightful articles submitted for consideration for publication in *JTD*. I invite you to visit our website at <https://dynamic.uoregon.edu/jjf/jtd/> for instructions and more information about *JTD*.

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