User-Generated Content and the Regulation of Reputational Harm:
The Boston Marathon Bombing as Case Study

Ben Medeiros, State University of New York-Plattsburgh.[*]

When the New Haven police announced the name of a "person of interest" in the 2009 murder of Yale student Annie Le, *New Haven Independent* editor Paul Bass refrained from publishing the name until the police had officially arrested the suspect. Bass was particularly cognizant of the potential for reputational and emotional harm because of an earlier incident in which "police had mistakenly identified a Yale professor as a person of interest in the murder of a student" (Kennedy, 2013, p. 23). Not only could Bass damage his own professional credibility by prematurely naming a suspect, but he could potentially expose *New Haven Independent* to defamation liability. Today, however, coverage of criminal investigations is not confined to professional journalistic outlets. When professional coverage overlaps with the kind of speculation that occurs on internet forums, how are the reputational stakes different? What factors drive the development and ostensible resolution of coverage that join information from professional investigations with internet speculation? What role, if any, should the law play in this scenario? To explore this topic, I examine the search for the 2013 Boston Marathon bombing suspects, a case of online speculation that brought forth two instances of wrongful scrutiny. The bombers were ultimately found to be Tamerlan Tsarnaev and his brother Dzhokhar Tsarnaev. However, before that would occur digital media users would interject erroneous information into the situation.

Two suspects, Salaheddin Barhoum and Yassine Zaimi, were first spotted in photographs by users of the social media site Reddit and later depicted as persons of

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[*] Dr. Medeiros is an Assistant Professor in the Department of Communication Studies at the State University of New York-Plattsburgh: benmedeiros85@gmail.com

interest on the cover of the *New York Post*. A third suspect, Sunil Tripathi, was a missing Brown University student who was erroneously identified as a bombing suspect on Reddit and Twitter. Commentary on these suspects was voluminous in the immediate aftermath, with much of it eagerly excoriating those who posted the content of their wantonly irresponsible scrutiny. Examining the Boston Marathon case studies specifically helps us better understand both the novel consequences that can arise from anonymous speculation on social media as well as the unique responses and remedies that the new digital media ecosystem facilitates. In turn, such an analysis helps to problematize some recent proposals to reform United States intermediary liability laws (via Section 230 of the Communications Decency Act).

The primary materials analyzed in this article are drawn from professional media coverage and from social media postings about the two instances of wrongful identification. Documents from the "bag men" lawsuit (*Barhoum v. NYP Holdings, Inc. v. New York Post* [No. 13-2062, Mass.], Aug. 8, 2013) are also discussed. Though the lawsuit concerned statements made by a professional print publication, the suit is inextricable from the larger context of discussions occurring about online media. In each case study, I first summarize news accounts and draw from social media postings that have been preserved to explain how the rumors spread. I then analyze the reputational consequences of those speech acts and the corresponding responses to them in the digital media ecosystem.

Community, Accountability, and Regulation on Social Media

The literature discussing uses of user-generated content platforms for voluntary citizen collaboration is voluminous and long-established. Yochai Benkler (2006) celebrated how user-generated content (UGC) platforms allow for "peer production," or the "aggregat[ion of] small judgments, each of which entails a trivial effort for the contributor" but which can also provide a collective benefit that exceeds any individual contribution (p. 80). Clay Shirky's (2010) account of "cognitive surplus" — visible, for instance, in how users of the application Ushahidi, Inc., a nonprofit technology company dedicated to supporting marginalized people's free speech,

voluntarily aggregated information about the 2010 Haitian earthquake — is similarly celebratory. More recently, Zizi Papacharissi (2015), Zeynep Tufekci (2017), and others have examined the uses of platforms like Twitter for the construction of alternative public spheres in protest movements and political uprising. Journalism practice has likewise embraced citizen collaboration. The venerable Missouri School of Journalism (2017), for instance, now frames its "convergence journalism" concentration around the principle that "[m]any people want to create, respond to, and interact with media … [as] citizen journalists." In short, collaboration and discussion over social media platforms can augment the reporting of professional journalists and build community solidarity.

Correspondingly, however, the forces that have traditionally constrained the professional press do not apply identically to the kinds of citizen collaborations that take place over social media. Professional journalists such as Paul Bass from the *New Haven Independent* adhere (however unofficially) to the Society of Professional Journalists Code, which specifically advises journalists to "[c]onsider the implications of identifying criminal suspects before they face legal charges" and to "minimize harm" generally (Society of Professional Journalists, 2014). Along with normative professional guidelines, the provisions of libel law have traditionally served as a complementary factor in decisions about reporting on criminal investigations. Broadly speaking, libel law offers redress for harm to reputation caused by published falsehoods, and individuals wrongly implicated in crimes have sued in the past — though not necessarily successfully. Examples of lawsuits brought by those wrongly identified as criminal suspects include *Stokes v. CBS*, 1998*; Schafer v. Time*, 1998*; Jewell v. NYP Holdings*, 1998; *Bryant v. Cox Enterprises*, 2011; *Hatfill v. New York Times,* 2008. Both libel law and competitive market forces thus incentivize professional organizations to remain vigilant against reckless and inaccurate speculation in their reporting — if only to maintain collective trust in their product (Epstein, 1986, p. 813). Even in the event of a mistake, a newspaper can print a retraction that will perhaps be read by the same audience as the initial statement. Correcting mistakes again reinforces faith in the

product while often also helping to mitigate the publication's potential defamation liability (Martin, 1993, p. 293).

These traditional accountability mechanisms are not perfectly replicated on social media. First, given their lack of institutional membership or professional identity, it is not surprising that social media commenters would not exercise the same discretion in their speech as professional journalists and publications (Dugan, 2008, p. 802). Further, anonymous communication proliferates online. The so-called "Dendrite test" sets a high bar for uncovering the identity of an anonymous speaker who might have uttered a libelous statement (*Dendrite v. Doe*, 2001; see also Saint, 2017, pp. 68-69). While a suspect wrongly named by one overzealous newspaper would have a clear target for legal action, the aggrieved party might not know who to hold responsible for the distribution of a rumor on social media. This is especially true given the ways in which rumors intensify and mutate over time. On some level, a digital media environment that "never forgets" (Rosen, 2010) perhaps challenges the adequacy of libel lawsuit judgments as remedies for reputational harm. This possibility has been acknowledged even in the "offline" context. Law professor Sadiq Reza wrote, "[c]riminal accusation stigmatizes," and "[m]erely having been accused of a crime lasts in the public eye, damaging one's reputation and threatening current and future employment, relationships, social status, and more" (2005, p. 755). Even when a plaintiff like Richard Jewell (the man wrongly suspected in the 1996 Olympics bombing) garnered a settlement from a news outlet, he also "said he never felt he could outrun his notoriety" (Sack 2007, see also *Bryant v. Cox Enterprises*, 2011; Simmons, 2012).

In light of this situation, online platforms themselves might seem like the natural entity on which to place blame for reputationally damaging speech. Yet, Section 230 of the U.S. Code regulating telecommunications, the Communications Decency Act (CDA) documented in 47 U.S. Code § 230, protects online platforms from defamation liability for third party comments (Ardia, 2010). Section 230 has been described as integral to the ability of websites to host user-generated content. As the Electronic Frontier Foundation (EFF) put it, without Section 230 "most [websites]

would likely not host any user content at all or would need to protect themselves by being actively engaged in censoring what we say, what we see, and what we do online" (Electronic Frontier Foundation, 2016). Yet the law has also received a steady drumbeat of criticism — especially following the advent of interactive web 2.0 platforms that host user-generated content — on the premise that it affords platforms "power without responsibility" (Tushnet, 2008, p. 101; see also Jeweler, 2008, p. 1).

Several more recent proposals have thus outlined ways in which Section 230 might be amended to better address the reputational (and, tragically, sometimes physical) harm that can result from several emergent genres of problematic social media content and behavior. One proposal law professors Danielle Citron and Benjamin Wittes that has enjoyed a positive reception, for instance, suggests modifying Section 230 to make absolution from liability for third party content contingent on the webmasters of a platform demonstrating that the site is acting as a "good samaritan" (Citron and Wittes, 2017, p. 14). Specifically, sites that make a good faith effort to remove inappropriate content when notified by a user that it fits particular categorical criteria would still enjoy protection — or as they put it, "platforms would enjoy immunity from liability if they could show that their response to unlawful uses of their services in general was reasonable" (Citron and Wittes, 2017, p. 17). Thus, Citron and Wittes' proposal is essentially targeted against "sites whose business model is abuse" (2017, p. 5).

Two examples that Citron and Wittes offer of "bad samaritans" include the notorious gossip site The Dirty (which essentially encouraged users to post scurrilous and potentially false rumors) and the video chat service Omegle, which Citron and Wittes describe as essentially knowingly providing a service on which sexual predators would sometimes be randomly matched for video chat sessions with children (2017, p. 1-2). A separate proposal from Heather Saint echoes this distinction. She suggests that "[S]ection 230 should be amended so as to properly distinguish a passive website entitled to immunity (the type of website the Act's drafters confronted and contemplated) and those of a more culpable nature, such as TheDirty.com" (2017, p. 40).

Even if not legally compelled, UGC hosts also can, and indeed have, taken voluntary steps to purge the sites of certain kinds of problematic content posted by users. In 2015, for instance, Reddit's host Advance Publications banned so-called "revenge porn," or intimate images non-consensually shared by ex-partners. At the time, Citron argued elsewhere that the ban of such images by the platform itself was appropriate: while "pornography and amateur porn is fully protected speech" as a matter of law, communities themselves are free to declare that "nude images posted without the subjects' consent is a violation of sexual privacy and won't be tolerated" (cited in Hess, 2015). Even libertarian free speech scholar Eugene Volokh (2013) has conceded that there could be a legitimate legal argument for excluding revenge porn from First Amendment protection. If that is in fact the case, then a voluntary ban by a platform seems fairly uncontroversial.

Whether the mechanism for regulation is liability or simply voluntary moderation, the kinds of situations exemplified by the Boston Marathon cases would be imperfectly remedied by a modest "bad samaritan" reform proposal. They do not involve platforms that are 'dedicated to abuse,' nor do they necessarily involve speech that can be neatly categorically partitioned such as revenge porn. Instead, the platforms involve posting speculations about ongoing situations; the speculations may well turn out to be false but would be difficult for hosts to control in real time. In the event that speculations about criminality on the Reddit platform turned out to be false, the host could simply ban such discussions entirely — which would represent a net negative outcome given the ways in which such discussions can also generate collective community reflection and grappling with current events.

Recently, Tumblr's response to the 2018 Fight Online Sex Traffickers Act (FOSTA) and Stop Enabling Sex Trafficker Act (SESTA), which amended the immunity clause in Section 230 regarding speech related to sex trafficking, is instructive. Passed over the objection from many in the sex worker and trafficking victim-advocacy community (who contended that the bill could actually harm those it was intended to help), FOSTA-SESTA imposes penalties on anyone who "owns, manages, or operates an interactive computer service (or attempts or conspires to do

so) to promote or facilitate the prostitution of another person" (Tracy, 2018). Rather than run the risk of incurring liability for failing to discern when a post was related to trafficking, Tumblr simply banned all adult content. As the EFF (2018) put it:

> when you're being cut off from potential customers and you could be liable for things related to sex, it's much easier to just institute a blanket ban on sex and nudity as much as possible. And it's much easier to do that by using a filtering tool that is over-inclusive (2018, __).

While proponents of reforming Section 230 are therefore rightfully concerned about content like harassment, the facilitation of involuntary prostitution, or defamation, there are also significant downsides to the different alternative liability schemes that have been proposed. We must thus consider how reputationally-damaging speech is received and managed in lieu of sweeping changes to Section 230.

Social Media and the Boston Marathon Bombings

In this section I consider the dynamics of speech regulation on display in the Boston Marathon case studies. These examples illustrate a problematic space where more modest legal reform would apply imperfectly, but truly consequential legal reform would be draconian and thus unpalatable for freedom of expression. Are such situations outside of the ambit of legal adjudication? Do other forces shape their outcome and perhaps provide remedies or indicate avenues for further productive change that would be less apparent from an analysis focused exclusively on the applicability of Section 230? The following sections dissect the case studies to explore the consequences of and responses to the Boston Marathon discussion on social media. I also evaluate what this indicates about the management of reputationally-harmful speech even in the absence of a further content-based change to Section 230 along the lines of FOSTA-SESTA.

I. Salaheddin Barhoum and Yassine Zaimi

The Boston Marathon bombing occurred on April 15, 2013 at 2:49 PM near the finish line. Three people were killed and hundreds were injured. The r/findbostonbombers subreddit was created soon after, and discussion both there and

in other social media forums initially complemented the efforts of law enforcement and professional journalists. After the FBI released pictures of the bombing device, for instance, contributors to the subreddit with some engineering background were annotating them with observations about how the device was made (De Rosa, 2013). Yet these citizen efforts of course also contributed to the two main instances of misidentification that constitute the following case studies. Each case study is broken into two sections: one that outlines the development of the rumors based on news accounts and social media posts, and one analyzing the reputational consequences of these rumors and the means by which those consequences were or were not mitigated.

The Development of the Rumor. April 17, 2013 (two days after the bombing) brought the first scrutiny on Reddit and 4chan, an anonymous imageboard website. Two photographs were posted of people standing near the marathon finish line holding bags. These photographs came from a series of images posted on the photo-sharing platform Flickr by a man who worked in an office very close to the blasts (Aaron Tango, 2013). One of these photographs was of Barhoum and Zaimi, the men who would grace the *New York Post* cover. Some commenters contended that the outline of a pressure cooker (which police had identified as the mechanism for the bomb) could be seen in the backpack worn by one of them (Imgur, 2017). The person posting the image indicated on the picture using crude MS-Paint annotation where the poster thought the outline of the device was, and it is difficult not to see the scrutiny as mere confirmation bias. One might charge that even engaging in this kind of wild speculation in a public forum based on so little information is at best irresponsible.

At the same time, the public's initial suspicion about Barhoum and Zaimi appears to have been stifled on Reddit fairly quickly. As *Gawker* snidely put it the next day, "thanks to [participants on /r/findbostonbombers'] ability to do really basic internet detective work, they managed to figure out pretty quickly that [Barhoum] almost certainly isn't a bomber. All they had to do was find his Facebook" (Read, 2013). As Facebook showed, Barhoum was simply "a Moroccan-American kid, a local

high-school soccer player and track runner … [who] took a couple of geekily enthusiastic photos of himself at the marathon" (Read, 2013).

The *New York Post* ran the picture of Barhoum and Zaimi on its front cover on Thursday, April 18, 2013 with the accompanying headline: "BAG MEN: 'Feds seek these two pictured at Boston Marathon.'" The photograph appeared, in other words, *after* commenters on Reddit had located the social network profiles of the two men pictured and discussed the improbability of their involvement in the bombing. Additionally, by the early morning hours of the day that the cover was released, both Zaimi and Barhoum had themselves voluntarily given interviews with investigators and were assured that they were not suspects (*Barhoum v. NYP Holdings, Inc.*, 2014). As the *Gawker* article stated, evidently "the *Post* newsroom couldn't even be bothered to do the *bare minimum* of follow-up reporting" (Read, 2013).

Yet some other professional outlets cast the story as one in which the *Post* article was but one component of a witch hunt against the two men – a hunt that had been precipitated by social media "vigilantes." As a *Sky News* piece the next day described the situation, "[a] teenager says he fears for his safety after internet vigilantes wrongly identified him as a suspect in the Boston Marathon bombings and he was pictured on the front of the *New York Post*" ("Boston Bombings," 2013). National Public Radio cited the original scrutiny of Barhoum and Zaimi on social media in an article titled "Social Media Vigilantes Cloud Boston Bombing Investigation" (All Things Considered, 2013). Attributing the problem to internet vigilantes undoubtedly offers more tabloid appeal, but it distorts the full picture. The "vigilantes" indeed scrutinized the images of two men; then they figured out that the men were probably not involved in the bombing, and the *New York Post* published the article anyway.

In its defense, the *New York Post* claimed that the story had not actually asserted anything factually inaccurate and the newspaper had a duty to do more than simply wait for the police to announce the official suspects. Law enforcement had indeed circulated the picture in connection with the investigation, but the two men were never actually labeled suspects. Since the *New York Post* did not call them "suspects"

outright, the editor reasoned that their coverage was consistent with the information the press was getting from law enforcement. Further, if the information they received was coming from law enforcement, then "it might be newsworthy" (Wemple, 2013). Given that information from law enforcement might be newsworthy, an analogy could be made to the content received from social media. What was the paper supposed to do, asked Editor Col Allan – "wait until the complete truth [was] clear?" In such a case, "there [would be] little need for journalists" (quoted in Wemple, 2013).

Consequences and Responses. Barhoum and Zaimi sued the *New York Post* in June 2013, alleging libel, false light invasion of privacy, and infliction of emotional distress. As the complaint described, the combination of the front page headline and article "would [falsely] lead a reasonable person to believe plaintiffs were involved in causing the Boston Marathon bombing" (*Barhoum v. NYP* Complaint, 2013). As a result, it had caused material reputational harm in that it "discredited plaintiffs and/or held them up to scorn, hatred, ridicule, or contempt in the minds of a considerable and respectable segment of the community" (*Barhoum v. NYP Holdings, Inc.*, Complaint, 2013).

The complaint also alleged that the *New York Post*'s headline and story also inflicted "severe emotional distress" and "embarrassment and humiliation, the nature of which no reasonable person could be expected to endure" (*Barhoum v. NYP Holdings, Inc.*, Complaint, 2013). In the landmark *Hustler v. Falwell* case, the Supreme Court affirmed that even intentionally distressing, exaggerated speech can communicate ideas. Public figures like Jerry Falwell who voluntarily seek public attention cannot win a lawsuit for intentional infliction of emotional distress on the basis of subjective emotional distress alone, without some accompanying distortion that would be taken as fact by the reader (*Hustler v. Falwell*, 1988). Barhoum and Zaimi were certainly not public figures and the paper did imply false facts, making the court considerably more sympathetic to their situation.

Barhoum and Zaimi offered anecdotal accounts of the harm they suffered as a result of the *New York Post* story in a variety of published interviews and legal documents. According to a later proceeding, upon becoming aware of the *New York*

Post article, "plaintiff Zaimi's manager called the FBI, who informed him that Zaimi was not a suspect" (*Barhoum v. NYP Holdings, Inc.*, 2014). Zaimi is said to have "started shaking … and felt as though he was having a panic attack" upon seeing the cover (Barhoum v. NYP Holdings, Inc., 2014). Barhoum, a high school student, experienced a pervasive sense of fear that people would recognize him from the cover and attack him. According to *Sky News*, "[Barhoum] was so frightened by being wrongly implicated that he ran back to school on Thursday when he saw a man staring at him" ("Boston Bombings"). As he stated to *New York Magazine*, "[p]eople are definitely going to be looking for me just to hurt me" (Coscarelli, 2013). The *Boston Globe* reported that he was "afraid to leave [his] home" (Miller, 2013, __). He anticipated that the impact would spread to his family and his daily life, telling *Sky News* that "[w]orkwise, my family, everything is going to be scary" ("Boston Bombings," 2013). The two men reported that they "received numerous unsolicited communications by cell phone and social media, some of which caused them to be frightened" (*Barhoum v. NYP Holdings, Inc.*, 2014). Finally, Barhoum described a kind of dignitary injury that came with simply being accused of such a heinous act: "It's such a disaster," he stated in the *New York Magazine* interview; [t]o be blamed for all that injury and death. It's the worst" (Coscarelli, 2013).

These harms provided ample grounds for a defamation claim, but the incident also highlights important informal means by which reputational harm is sometimes mitigated. The influential *Gertz v. Welch* (1974) case described self-help as the ideal "first remedy of any victim of defamation" (p. 344). In this spirit, Barhoum seemed to recognize an imperative to use the press and internet platforms in his choice to be proactive in addressing the accusations. When he was alerted to the discussion on Reddit and Twitter by peers, an exchange captured from his Facebook page indicates that an investigator told him that "you have to stand up for yourself—you can't just let people talk" (Coscarelli, 2013). Almost immediately, Barhoum posted "going to the court right now!! S[***] is real but u will see guys I did not do anything" (screen capture reproduced in Read, 2013) In response, his friends chimed in with expressions of solidarity. One friend one asked if Barhoun needed a lawyer; another affectionately

assured him that "RHS track teams [sic] behind you bro we know you just like to run[;] you couldn't figure out a bomb if your life depended on it 😊" (screen capture reproduced in Read, 2013). In the immediate aftermath of the *New York Post's* publication of the cover, he "ha[d]n't even lost his somewhat naïve faith in the goodness of journalists, 'gladly posing for photos and taking media questions outside his home in Revere, Mass[achusetts]'" (Coscarelli, 2013).

Barhoum's candid approach greatly enhanced the ability of myriad news outlets to construct a sympathetic narrative about his ordeal. The headline of the *New York Magazine* article, for instance, announced with implicit admiration that Barhoum was "relatively chill" given the circumstances (Coscarelli, 2013).. This publicity possibly led to a kind of widespread, immediate redemption that money damages from a lawsuit would not provide. Likewise, his forthrightness through social media possibly mitigated the reputational harm of the *New York Post*'s cover. Such a performance of transparency is of course redolent of the kind of compulsory embrace of online publicity that is problematic to some cultural studies scholars (e.g., Hearn, 2010; Andrejevic, 2014). Yet in this context, online publicity also represents a novel form of self-help that mitigated the harm to Barhoum's reputation.

In March 2014, Judge Judith Fabricant denied the *New York Post*'s motion to dismiss except for the claim of false light invasion of privacy, since the photograph had been taken in a public setting (*Barhoum v. NYP Holdings, Inc.*, 2014). Significantly, the order makes only a single mention of the scrutiny on social media – to note that postings prompted the two men to voluntarily speak with police and confirm that they were not suspects prior to the *New York Post*'s cover (pp. 2-3). As Fabricant wrote regarding the defamation claims, "a reasonable reader could construe the publication as … implying that the plaintiffs were the bombers, or at least that the investigators so suspected" (*Barhoum v. NYP Holdings, Inc.*, 2014). Fabricant reasoned that the article made much of the fact that Zaimi was carrying a backpack in one picture that was not visible in a subsequent picture. Given the context, such a statement implied that the two might in fact be responsible for the bombing. These factors were enough to "support the inference that at least some readers who recognized the plaintiffs gave

credence to the impression of their involvement in the crime … such that the article triggered harm to their reputation." As law professor Clay Calvert put it pithily following the filing of the lawsuit, "a reader passing the paper on his way to the subway would only see the headline and photo, but fail to read the article on the sixth page" (Zhang, 2013).

The *New York Post* opted to settle the case rather than go to trial, although no news outlet was able to obtain any information regarding the terms of the settlement (WBUR, 2014). On one level, this outcome seems both just and important if we assume that the *New York Post* would have actually lost the jury trial. Yet one might wager that the reason they settled has more to do with the brief but intense feeling of persecution that the two men experienced than with the lasting reputational impact of the remaining web content or its origins on social media. Whether one performs an internet search for marathon bombing suspects or for the names of the two specifically, there is nothing ambiguous about whether the two men were legitimately involved in the bombing. For instance, the first page of results returned for an April 2018 Google search of "Bag Men Boston Marathon" all refer to the lawsuit and Barhoum and Zaimi's innocence (screen capture available). In this sense, the lawsuit functions as a kind of publicity vehicle. Even if the crime had never been solved, someone learning about the investigation now could not form the inaccurate impression that the two men were legitimate suspects. Further, from a legal reform perspective, an intermediary liability policy that caused Reddit to impose prior restraint on subreddits or threads that discussed criminal suspects might have *hindered* the exoneration of Barhoum and Zaimi. Regardless, the *New York Post* may have depicted the two men as "bag men" based on information obtained from the FBI.

There is perhaps also a different kind of harm in the indignity of being forever associated with this episode, even if the majority of the coverage is now redemptive. Unlike Reza's formulation of how false accusations cause lasting harm, the information available online probably does not continue to "stigmatize" them. Only the most conspiratorially-minded reader would continue to suspect some involvement in the bombing; only the most foolish employer would consider them somehow too

suspicious to hire. At the same time, the two men have permanently lost some ability to define their identities to their immediate acquaintances and to the wider world. Though they may not actually be held in low esteem by others now, they will, in one sense, always be the "bag men" from the infamous newspaper cover. Even as the case highlights novel non-judicial elements of the digital age remedies for defamatory speech, it also illustrates a novel form of dignitary harm that fits imperfectly within traditional understandings of "defamation," yet can perhaps result from the manner in which search engines construct a lasting version of our digital identities.

II. Sunil Tripathi

Tripathi had gone missing from Brown University about a month prior to the Boston Marathon. Following his disappearance, his family created a Facebook page to give people a place to pool information in an effort to locate him. He was later found to have committed suicide prior to the Boston Marathon attack. As with the first case study, the following analysis is broken into two parts: it first uses news accounts and social media posts to retrace the development of the rumor, and then turns to analyzing the harms caused by the rumor as well as the response to it from the family, the Redditors who participated in the discussion, and journalists.

The Development of the Rumor. On April 18, 2013, the FBI released photographs of the official suspects in the Boston bombing with a reminder that "the nation is counting on those with information to come forward" (FBI Boston, 2013). (These suspects would, of course, turn out to be Tamarlan and Dzokhar Tsarnaev.) It would be unfair and inaccurate to blame one person on social media for the incorrect identification of Sunil Tripathi as "suspect two" in the Boston Marathon bombing. Nonetheless, retrospective accounts suggest that a high school classmate of Sunil Tripathi initiated the speculation because of a perceived physical resemblance coupled with the fact of his disappearance. As the classmate tweeted, "the back story of his sudden disappearance and the FBI's inability to find him is suspicious" (@kmattio, 2013).

The speculation quickly made its way to Reddit. According to *New American Media*, "[w]hen Reddit user 'pizzatime' confirmed that Tripathi looked exactly like

Suspect 2 a subreddit devoted to the bombing confirmed it was Tripathi" (Kundani, 2013). During the April 18-19, 2013 manhunt for the Tsarnaev brothers, many people were also tuned into the Boston Police Department's public scanner frequency. According to *Atlantic* writer Alexis Madrigal, a "key moment" was when Twitter user named Greg Hughes tweeted at 2:43 a.m. on April 19 that "BPD has identified the names: Suspect 1: Mike Mulugeta. Suspect 2: Sunil Tripathi" (2013). The word "Mulugeta" was indeed spelled out at 2:14 a.m. by someone speaking on the scanner, but there was no indication that this was supposed to be the name of a suspect. In the many reviews of the scanner audio since the incident, nobody has been able to discern any reference to Tripathi (Madrigal, 2013).

The involvement of professional news outlets seemed to greatly enhance the spread and perceived credibility of incorrect information. Madrigal (2013) cites tweets by at least six journalists who repeated the alleged scanner confirmation verbatim within 20 minutes of Hughes' assertion. "The information cascade was fully on" when YourAnonNews (admittedly not a professional organization) repeated the same scanner confirmation (Madrigal, 2013). By 5:00 a.m., journalists and pundits who had not been following the discussion in real time began to chime in. Columnist Michelle Malkin, for one, invited her followers on Twitter to observe "COMPLETE [coverage] of [Massachusetts Institute of Technology]/#watertown rampage by bombing suspects Mike Mulugeta (dead) & Sunil Tripathi" in case her followers were "just waking up" (@MichelleMalkin, 2013).

How was discussion of Tripathi handled once the content migrated to Reddit on Thursday, April 18? Did coverage of Tripathi truly turn into the kind of mob witch hunt that was later caricatured by publications like *Mic* as a case of "vigilantes on Reddit pick[ing] up the low-grade physical similarity on its FindBostonBombers thread?" (Baijal, 2013). The /r/FindBostonBombers subreddit has since been closed from public view, but reflections on the discussion that took place there have proliferated on other subreddits and been dissected by professional outlets. Some posters did engage in premature self-congratulation. For instance, Hughes, the man who claimed that he heard scanner confirmation of Tripathi's identification as a

suspect, implored "[j]ournalism students take note: tonight, the best reporting was crowdsourced, digital and done by bystanders" (cited in Kundani, 2013). The implications and perhaps the solutions would be simpler if this were an unambiguous instance of ethically bankrupt vigilantes engaged in a witch hunt.

Consequences and Responses. The discussion on the forums in question was far from unanimous, and a chorus of participants expressed concern about identifying the wrong person while the situation was unfolding. In fact, the official guidelines for posting on r/FindBostonBombers included the following command: "DO NOT POST PERSONAL INFORMATION" (screen capture reproduced in Abad-Santos, 2013a). Some participants in the forum were adamant about this guideline. "LISTEN UP ALL YOU F[******] IDIOTS…YOU CAN LITERALLY RUIN AN INNOCENT MAN'S LIFE WITH THIS!!!!!!" warned one post on April 17, the day that Zaimi and Barhoum were being discussed on the site (Abad Santos, 2013a, __). The most upvoted comment on the /r/Boston thread (as of July 17, 2019; it was eventually archived), titled "Is Missing Student Sunil Tripathi Marathon Bomber #2?," was posted early on the morning of April 19th when the Tripathi rumor was in full swing. The post echoed this sentiment even as it cautiously celebrated the identification of Tripathi as a crowd victory:

> I would, however, like to caution against people now concluding that we should all be internet detectives / vigilantes, etc. … There have been plenty of cases in the past (even the recent past) where online communities (reddit included) have gotten it wrong and caused someone innocent a lot of grief … So I hope people aren't patting themselves on the back *too* hard over this (honestbleeps, 2013).

In the estimation of some participants, the main problem was that there was no authoritative voice or official account to displace all of the independent comment threads and sources of the Tripathi rumor. As one wrote in a retrospective discussion, the first exchanges about Tripathi on the page were in fact "initially upvoted and discussed for about half an hour before being locked." But the initial rumor simply multiplied — and spread to other forums — too quickly: "People then began posting on the family's Facebook page [set up to help find him] that he was behind the bombings. From that point on, every few minutes a new thread would emerge about

Sunil" (Thirtydegrees, 2013). The fact that the speculation on Reddit catalyzed more direct harassment in a different forum would appear to represent a novel harm exemplified by the case.

The "upvote" mechanism (by which posts that receive positive feedback votes are made more visible) on /r/FindBostonBombers helped various formulations of the Tripathi rumor gained steam. To some participants, the fact that assertions of his involvement were continually upvoted indicates the shortcomings of the mechanism. For one, the bombing investigation demonstrated the propensity for cascades on social media: "[Reddit] simply allows people to give more credence and emphasis to things that appeal to (often) nothing more than a fleeting sense of 'yeah, what he said!' rather than logic, reason or intelligence." The effect was to "thrust similar group think into the fore while hiding information that may be equally important yet not nearly as 'appealing' or 'engaging' to the casual reader" (Diverdn, 2013). While Tapia, LaLone and Kim's (2014) computational research on the Boston Marathon rumors suggests that "Reddit fared better…because of a more conscious community and a system where true information could be upvoted" (p. 271), some participants clearly saw the impact of the upvote mechanism itself differently.

The presence of a community norm that discourages sharing personal information is in one sense disheartening in this case. Even a largely sympathetic user base and dedicated moderators were powerless to quell the cascade because of the architecture of the forum itself and the ease with which others could cherry pick the narrative they found most politically appealing or entertaining.

At the same, other reflections seemed to hold out some hope that what happened could ultimately reinforce more responsible information vetting norms similar to those (theoretically) employed by professional journalists. The post above imploring participants to not be too sanguine was later emended to include the names of the real suspects, yet he or she also felt it important to leave up the original "for posterity" as a kind of archival reminder of what can go wrong in these endeavors (honestbleeps, 2013). One commenter who had participated on /r/FindBostonBombers vowed that "we'll learn from this," and "the next time an

investigation happens, we'll be even more stringent in terms of what we accept and what we do not" (hrishirc, 2013). Though Reddit is not a formal organization, such comments suggest that some participants do conceive of the Reddit community as having a kind of credibility of its own to defend. In fact, the executives of the platform itself apologized to Tripathi's family following the incident (Gandhi, 2013). Such a response is not terribly different than one might expect from a professional news organization in whom trust had been diminished.

In an interview with the *Atlantic Wire*, the main moderator for /r/findbostonbombers, "Oops777," indicated that he had indeed been simply overwhelmed by the rate at which the rumor about Tripathi had persisted and people were flouting the "no personal information" edict in order to advance that storyline. This moderator claimed that when Tweets started appearing, Tripathi had been confirmed as a suspect on the police scanner. The claim "was posted so many times in /r/FindBostonBombers that he had to stay up the entire night deleting them (Abad-Santos, 2013a). Oops777 suggested that there was simply no single entity to hold accountable for the problem – including him. In a separate question and answer session on Reddit, he regarded the threat of a libel lawsuit as "not even [a] sligh[t]" concern, likening it to "suing the Reddit founders for something posted here" (Oops777, 2013). Recalling Section 230 of the CDA, such action would likely prove fruitless. Oops777 claims that moderation itself (and simply enforcing the rules of the particular subreddits) was spun by some in the discussion as censorship: "all of the users turned against the mods [moderators], and there were multiple posts telling mods to stop censoring things, or as they called them at the time 'facts'" (Abad-Santos, 2013a). The implicit contention, therefore, is that the subreddit was saturated by a competing norm: it was actually the *lack* of moderation that made Reddit a useful supplement to the mainstream press in the search for "truth."

A common refrain in the post-investigation reflections was that the institutional press needs to be far more skeptical of information posted on social media. In fact, many people lay the blame for the spread of the wrongful identifications on the press for failing to step back and consider whether sufficient evidence existed. While self-

serving in obvious ways, such an argument is hard to dismiss given the eagerness with which professional outlets repeated the rumors circulating online. One commenter attributed this eagerness to their desperation to scoop one another—or what the commenter called the "first! Mentality" of the news outlets (ApeManRobot, 2013). Another poster argued that the problem lies with the media treating Reddit like it was an organization: "The problem comes when an actual organization, like the news media, mistakes us for an entity like them, and take our speculation[s] and run with them as accusations, statements, and investigations" (Deleted, 2013a).

User thirtydegrees (2013), who claims to have participated in the marathon investigation on Reddit from the beginning, dismissed such a dichotomy, lamenting that "the response of the creator [of /r/findbostonbombers] was to blame the media and not himself [sic]." Another commenter who has since deleted his/her account agreed, arguing that many /r/findbostonbombers participants were simply not sensitive enough to the implications of their effort: "A 'bunch of people talking to each other' can still irrevocably slander the name of a person with complete reckless abandon and ZERO ACCOUNTABILITY" (Deleted, 2013b). For thirtydegrees (2013), the fact that the moderators initially stood by while /r/findbostonbombers "called [Tripathi] a terrorist to his mother's face and left a record of their libel online" was ultimately the problem. This remains the most upvoted comment on the retrospective r/misc thread as of March 2018.

In the case of both Tripathi and of Barhoum and Zaimi, therefore, social media acted as a vehicle for spreading the rumors as well as mitigating and questioning them. The concluding section considers the implications of this for Section 230 and for our broader understanding of reputation online.

Conclusion

The two Boston Marathon case studies reveal the novel dynamics of digital age reputational harm as well as its associated remedies. They thus further illuminate some of the difficulties with efforts to address reputationally-damaging speech online by modifying Section 230 of the CDA. The "Bag Men" case (*Barhoum v. NYP Holdings,*

Inc., 2014), for which the *New York Post* compensated Barhoum and Zaimi, nominally involved "libel" but the resulting harm probably had more to do with acute panic and self-definition than with lasting stigma. The case illustrates how self-help can be facilitated by web platforms and are potentially even more salient in mitigating reputational harm. In the Tripathi situation, the relevant harm again seems to have involved panic and fear of vitriolic targeting, rather than any lasting damage to the family's standing in the community.

In *Barhoun v. NYP Holdings, Inc.*, the rumor would have been mitigated substantially if it had not been amplified by professional journalists. However, in the Tripathi situation anonymous social media users were the main purveyors of the rumor, and the possibility of a libel lawsuit in that situation was simply not discussed as a serious possibility despite some casual references to "libelous" claims. Indeed, it would seem difficult to pinpoint a clear target for such a lawsuit given the distribution of responsibility for amplifying the rumor.

The speculation that occurred on social media obviously fueled the rumors about innocent men. Yet both case studies also complicate any facile caricature of bloodthirsty, unaccountable social media mobs unconcerned with reputational impact. The structure of Reddit and the fragmented nature of its communities did make authoritative removal of the rumors difficult despite community policies to the contrary regarding personal information. At the same time, the self-critical and conscientious approaches of participants can act as a meaningful counterweight to viral rumors. In at least one subsequent case, Reddit users simply scoffed at the creation of another thread that endeavored to locate a criminal perpetrator (Wade, 2014). Reddit itself has recently demonstrated a willingness to simply ban entire subreddit communities based on the targeted revelation of personal information (or "doxing") (Olheiser, 2016). It would follow logically that participants in individual subreddits might take the edict to refrain from posting personal information more seriously given the Reddit administration's less lenient approach, simply because they do not want their communities banned.

Calls for platforms to perform more proactive moderation of users' speech based on its topical content itself—whether voluntarily or under threat of legal liability—have only increased in the years since the Boston Marathon investigation. Revisions in intermediary liability laws to this effect have been passed in countries like Germany and Singapore as well as within the United States in the form of the 2018 FOSTA-SESTA legislation, where Section 230 appears less sacrosanct than perhaps once thought given the proliferation of proposals for its reform in recent years. While several years old now, the Boston Marathon case studies highlight a blind spot in the more modest, targeted proposals to reform Section 230 that have appeared in recent years. Stripping immunity merely from "bad samaritans" would do little to affect situations like these, but the dramatic legal reform that would be necessary to truly obviate them also seems suboptimal. More categorical moderation rules based on content itself (such as those which Reddit has instituted voluntarily regarding revenge porn) are a poor fit for forums that contain such heterogeneous speech.

Overall, this article has attempted to construct a more detailed, holistic picture of the mechanisms by which reputationally-problematic speech is negotiated online in the absence of sweeping changes to intermediary liability laws. The misidentifications in the Boston Marathon case studies illustrate that viral rumors can clearly cause a unique brand of digital age harm and provide fodder for irresponsible professional journalists to greatly magnify that harm. At the same time, they nonetheless suggest that it might be fruitful going forward to place additional emphasis on further developing norms of responsible speech in online communities, as their participants are perhaps more receptive to such endeavors than caricatures of "internet vigilantes" might suggest.

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