

Michigan Law Review

Volume 118 | Issue 6

2020

Cyber Mobs, Disinformation, and Death Videos: The Internet as It Is (and as It Should Be)

Danielle Keats Citron
Boston University School of Law

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Entertainment, Arts, and Sports Law Commons](#), [Internet Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Danielle Keats Citron, *Cyber Mobs, Disinformation, and Death Videos: The Internet as It Is (and as It Should Be)*, 118 MICH. L. REV. 1073 (2020).

Available at: <https://repository.law.umich.edu/mlr/vol118/iss6/9>

<https://doi.org/10.36644/mlr.118.6.cyber>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CYBER MOBS, DISINFORMATION, AND DEATH VIDEOS: THE INTERNET AS IT IS (AND AS IT SHOULD BE)

*Danielle Keats Citron**

SABRINA. By *Nick Drnaso*. Montreal: Drawn & Quarterly. 2018.
Pp. 203. \$27.95.

INTRODUCTION

Nick Drnaso's¹ graphic novel *Sabrina* provides a powerful snapshot of online norms. The picture is not pretty: A young woman goes missing. Her grief-stricken boyfriend cannot bear to stay in their home and escapes to a friend's house. Her sister struggles with the pain of her loss. We learn that the woman's neighbor, a misogynist loner, killed her and recorded the murder. Online, people clamor for the video.

The execution video leaks and goes viral. The media hounds the woman's sister and her boyfriend. A conspiracy theorist with a popular radio show argues that the murder is a deep-state hoax. He gins up a cyber mob to "investigate" what is really going on.

A cyber mob descends. The woman's family, her boyfriend, and her boyfriend's friend are smeared as crisis actors. They are barraged with death threats, and their personal information is posted far and wide. The attacks continue until a shooting massacre captures the conspiracy theorist's attention. The cyber mob redirects its wrath at other mourners.

The novel raises important questions about the interaction of human behavior, culture, and law in the digital age. What compels people to like, click, and share grotesque execution videos, conspiracy theories, and destructive falsehoods? We have always been drawn to information that resonates with us, but the online environment seems to supercharge human

* Professor of Law, Boston University School of Law; Vice President, Cyber Civil Rights Initiative; Affiliate Fellow, Yale Information Society Project; Affiliate Scholar, Stanford Center on Internet and Society. I am grateful to Mary Anne Franks and Sara Rimer for their helpful insights, to Carrie Goldberg for talking to me about her important work, to Ellie Citron and Brian Flaherty for excellent feedback and research, and to Tyler Gabrielski for his kind assistance. This project benefited from the support of Boston University School of Law and my wonderful deans—Dean Angela Onwuachi-Willig and Associate Dean Stacey Dogan. Deep thanks to the *Michigan Law Review*, my editors Nina Cahill and Andrew Lanham for their inspired suggestions, and to Cade Boland and Sarah McDonald for their helpful insights.

1. Author and graphic novelist. Drnaso was nominated for the Man Booker Prize in 2018.

biases. Why? Platforms structure and shape online activity, so what are they doing about online abuse? Each and every one of us is ultimately responsible for liking, clicking, and sharing the destruction. How can we work to change our behavior?

Right now, it is cheap and easy to wreak havoc online and for that havoc to go viral. Platforms act rationally—some might say responsibly to their shareholders—when they tolerate abuse that earns them advertising revenue and costs them nothing in legal liability.

Combatting cyber-mob attacks must be a priority. Law should raise the cost of cyber-mob attacks. It is time for tech companies to tackle some of the negative externalities of their business model. Platforms should not enjoy immunity from liability for user-generated content unless they have earned that immunity with reasonable content-moderation practices. Education should play a role as well. As digital citizens, we need to do better.

I. EXPOSING THE DARK SIDE OF NETWORKED LIFE

Sabrina is an important read. Fiction and visual representations can alter our understanding of human experiences and struggles.² The recognition of human rights owes much to novels, art, and photographs that changed social attitudes by showing human pain and degradation in a visceral way.³ As Hillary Chute has argued, hand-drawn pictures forge a personal connection with readers.⁴ They help us bear witness to suffering.⁵

Sabrina does this in spades. Male aggression and fear pervade Drnaso's graphic novel. So do dark, dull hues and slow-moving action.⁶ The novel's inhabitants and environs appear muted, contemplative, and restrained except when the action moves online. Then, texts, emails, blog posts, comments, videos, Skype calls, and multiplayer games appear in stronger colors.⁷ Then, frenetic, impulsive, and disturbing developments come to the fore.

The novel's contrast of quiet introspection offline to the loud negativity online allows readers to feel how jarring and destabilizing a cyber-mob attack can be. One minute, people are safely and anonymously proceeding with the minutiae of daily life. The next, they are caught in the blinding glare

2. LYNN HUNT, *INVENTING HUMAN RIGHTS* 35–69, 82–92 (2007).

3. MARK PHILIP BRADLEY, *THE WORLD REIMAGINED: AMERICANS AND HUMAN RIGHTS IN THE TWENTIETH CENTURY* 9, 26, 48 (2016).

4. HILLARY L. CHUTE, *DISASTER DRAWN: VISUAL WITNESS, COMICS, AND DOCUMENTARY FORM* (2016).

5. *Id.*

6. Nick Drasno told the *New Yorker* that he “severely restricted his color palette” by design. He embraced an “ethic of subtraction: ‘If there is a gas station in a comic, usually you see four cars. In “Sabrina,” there are no cars.’” D.T. Max, *The Bleak Brilliance of Nick Drnaso’s Graphic Novels*, *NEW YORKER* (Jan. 14, 2019), <https://www.newyorker.com/magazine/2019/01/21/the-bleak-brilliance-of-nick-drnasos-graphic-novels> [https://perma.cc/F5WN-78J9].

7. *Id.*

of a cyber mob's attention. They are exposed, maligned, and scared. *Sabrina* helps us appreciate what it is like to be in the vortex of a cyber-mob attack.

The novel opens with Sabrina Gallo, whose later absence is a driving force of the story. Twenty-seven-year-old Sabrina is seen talking to her sister, Sandra, in their childhood home in Chicago (pp. 2–4, 81). After chatting about their parents, Sandra asks Sabrina to join her for a bike trip. The idea is to “[g]et out of the city. Get away from the internet” (p. 8).

Sabrina wonders about the safety of camping out alone (p. 8). After thinking quietly about the question, Sandra recalls a trip she took by herself at age nineteen (pp. 8–9). The experience was “a spring break nightmare. . . . lousy with college date rapists . . .” (p. 9). One night, three boys confronted her on the beach (p. 9). They were “out hunting,” they said, and asked her to go to their room (p. 9). One of the boys grabbed Sandra’s arm to prevent her from leaving (p. 9). Sandra managed to escape to a restaurant where she hid, crying in the bathroom (p. 9). She reveals the incident to Sabrina for the first time and says that she has not taken a vacation since (p. 9). Sandra assures Sabrina that their bike trip would be safe because “[t]he fucking wild animals stay in hotels” (p. 9).

Two days after the sisters’ chat, Sabrina disappears (p. 58). She is last seen leaving work (p. 30). As time passes, her loved ones assume the worst (p. 37). Grief incapacitates her boyfriend of two years, Teddy King, who has been living with her (p. 16). Teddy flees to Colorado Springs to stay with a high-school friend, Calvin Wrobel, a cybersecurity analyst in the Air Force (pp. 12–31).

Teddy is seen in Calvin’s guest room, listless and worried, while Sandra is seen cradled in a ball on the floor (pp. 54–59). With her hands over her ears, Sandra repeatedly cries, “I want it to stop” (pp. 62–63). Every night, Calvin returns home from work and tries to convince Teddy to eat something (pp. 32, 55). Calvin retreats to his bedroom to play first-person shooter video games with his Air Force buddies (p. 42). In online chats, someone says, “Just woke up and I can’t fall back asleep. Killing people always puts me to sleep . . .” (p. 42).

Soon, Sabrina’s terrible fate is revealed. A twenty-three-year-old neighbor, Timmy Yancey, abducted and killed her (pp. 70, 81). He is a misogynist loner, an avid player of video games, and a freeloader whose mother pays his rent (p. 70). He is modeled after Elliot Rodger, a college dropout who shot and killed six people, including two sorority women, at the University of California, Santa Barbara, because, as he raged online, beautiful women refused to sleep with him.⁸

Chicago police learn about the killing after a newspaper contacts them about a VCR recording of the murder (pp. 67–76). The killer sent copies of

8. *Id.* (noting that Drnaso modeled Sabrina’s murderer after Elliot Rodger); see also *Isla Vista Massacre: What Do We Know About Elliot Rodger’s Rampage?*, NBC NEWS (May 26, 2014, 12:02 AM), <https://www.nbcnews.com/storyline/isla-vista-rampage/isla-vista-massacre-what-do-we-know-about-elliott-rodgers-n114416> [<https://perma.cc/CV3Q-Y48G>].

the video to several news outlets, Chicago politicians, and a local sportscaster (p. 76). The police discover that after murdering Sabrina, the killer committed suicide (p. 72). The killer's smiling face is seen jutting out of a bloody bathtub in his apartment (p. 72). Although we never see the execution video, we learn that the killer wore a black mask and said on the tape, "It has become increasingly difficult for my voice to be heard above the din of chatter. This is only a means to an end" (pp. 81, 114).

After a news outlet posts a screenshot of the killer taken from the video (p. 76), online posters clamor to see the whole thing. Online commenters solicit links (p. 81). The comment "I NEED to see this," posted at 1:37 a.m., gets 101 likes (p. 81). Trending hashtags of the day include #TimmyYancey, #SabrinaGallo, #TheAvengers, and #SalmonRecall (p. 81).

Details about the killer's life appear in posts that garner hundreds of clicks, comments, and shares. The post "What we know about Timmy Yancey" reveals that he was "active" on men's rights message boards and had been banned from several online communities due to his "vitriolic rants" (p. 81).

The frenzy builds offline as well. Television crews surround Sandra's house (p. 99). The family issues a statement to stop people from contacting them, but to no avail (p. 99). Reporters camp out at Calvin's house to reach Teddy (p. 99). Calvin tells a coworker that only after a "big shooting happened in Buffalo" did the media retreat (p. 99). The shooting massacre diverts the public's attention, but just for a while.

After learning about Sabrina's death, Teddy spends his days listening to the radio (p. 88). He tunes into the show of conspiracy theorist Albert Douglas, a takeoff on Alex Jones's *Infowars*.⁹ Teddy is seen hugging a pillow as he listens to Douglas talk about a "globalist" conspiracy to keep the public repressed (p. 88). According to Douglas, the government has been staging school shootings to keep people separated and scared (pp. 101, 118, 121).

Douglas urges listeners to harness their rage in the "right direction" (p. 88). "[The government is] going to announce a state of emergency. . . . Then they will shut down the power grid and disable the internet," Douglas insists (p. 138). He warns that at that point, fighting back will be useless: the "moment to organize an armed rebellion [will have] passed" (p. 138).

A month later, the execution video leaks and goes viral (pp. 112–13). According to Douglas, the video is being downloaded "five million times per hour" (p. 108). Online advertisements flash next to links to the execution video (p. 113). Searches for the video yield autocomplete suggestions that include the killer's name and various terms like "video leak," "download," "video full," and "video stream" (p. 113). Even Calvin succumbs to curiosity and searches for the video. He watches it while Teddy sleeps in the room next to him (p. 114). We see him struggling to make it to the bathroom to vomit (p. 114).

9. P. 88. Drnaso explained that his research for the book included "listen[ing] to podcasts of 'Infowars,' the extremist radio show hosted by Alex Jones." Max, *supra* note 6.

The viral spread of the video generates intense media attention. Sandra is seen in news footage posted online crying and yelling, "This is madness! This has to stop! Get away from me!" (p. 113). Camera crews appear at Calvin's home (p. 109). He pleads for the crew to leave: "Please respect our privacy. I don't even know why you're asking me about this. I didn't even know Sandra" (p. 110).

As the madness escalates outside his bedroom and online, Teddy hides in Calvin's house (p. 117). He stays in bed listening to Douglas's show. Douglas turns his attention to Sabrina's murder (p. 117). According to Douglas, Sabrina's murder is a fiction: "I don't believe something like that could happen. . . . It's possible she never even existed," he says (p. 117).

At first, Teddy covers his ears when Douglas talks about Sabrina's death (p. 108). But then we see him listen, especially as Douglas makes the case that Sabrina is alive (p. 117). Douglas claims that the execution video is a government-created fake: "We know the military has access to advanced computer-generated image technology that the public won't be aware of for another ten years."¹⁰ Douglas pleads with his audience not to believe what they are seeing. His entreaty? Do not be manipulated by "them" (pp. 117–18).

Douglas calls upon his "amateur sleuths" to study the facts of Sabrina's case (p. 108). He tells them to find the "discrepancies, inaccuracies, distortions, and outright lies" (p. 108). Douglas urges his listeners to recognize and leverage their power: "Take one lonely person clacking away at a keyboard: powerless. Put them all together, and you have a force to be reckoned with that can move mountains" (p. 101).

Douglas's followers spread the false claim that Sabrina's death is a hoax. His website's discussion board has 6,790 posts devoted to Sabrina's case (p. 122). The posts include "Sabrina Gallo Alive!" and "Timmy Yancey - CIA Mind Controlled Killer" (p. 122). Other conspiracy websites follow suit, accusing Sabrina's loved ones and Calvin of being crisis actors (p. 119). Proof of the conspiracy? That Calvin referred to the victim by the wrong name when the media hijacked him outside his home and that he works for the Department of Defense (pp. 119, 121). Posts claim that Calvin and the killer were best friends (p. 122). A search of Calvin's name includes autocomplete suggestions including his name next to terms like "fake," "actor," and "exposed" (p. 119).

Sandra and Calvin receive hundreds of emails from strangers accusing them of lying and threatening death (pp. 119, 132, 155). Their contact information is published online.¹¹ An emailer ominously tells Sandra: "Your

10. P. 117. Drnaso is invoking the specter of deep fakes, machine-learning technology that manipulates or fabricates video or audio recordings to show people doing or saying things that they never did or said. Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 CALIF. L. REV. 1753 (2019).

11. P. 122. See generally DANIELLE KEATS CITRON, HATE CRIMES IN CYBERSPACE 53 (2014) (explaining that cyber stalking often includes the publication of targeted individuals' personal information, which is known as doxing).

address is online. People in our community are waking up to the truth. I'm armed and protected. See what happens if they try and test me" (p. 155). Online comments include, "Someone should kill you 'Calvin Wrobel'"; "Fraud! Your day is coming. We know your lies and will smoke you out where you live" (p. 120). An email sent to Calvin features the Florida address of his ex-wife and young daughter next to the missive, "It's a dangerous world out there. Please do the right thing" (p. 122).

Sabrina ably captures the breathtaking velocity of disinformation online and the rapid escalation to terroristic threats. Alex Jones's smears of the Sandy Hook families took no time to spread to all corners of the internet.¹² Yes, message boards like 4chan and 8chan were filled with damaging lies about the parents and their personal information. But so were mainstream sites like Facebook and Twitter.¹³ In short order, the families received death threats and their personal information was exposed.¹⁴

Much like real life, gruesome shootings are followed by conspiracy theories and cyber-mob assaults. In *Sabrina*, word spreads about a new mass shooting, this time in Denver, Colorado (p. 143). We see the Denver killer's Facebook post declaring his desire to be remembered (p. 143). Right after putting up the post, the young man killed everyone at a day care center and turned the gun on himself (p. 143). Online commenters declare him the "New Face of Evil" (p. 144). Stories about Sabrina's case are replaced with ones about the Denver killing (p. 144).

That day, "Denver Massacre" is the trending hashtag (p. 143). Douglas shifts his focus to the "business" of Denver (p. 145). The last thing Teddy hears Douglas say before turning off the radio: "The final death tally is at thirty-one. More of the same. The globalists will stop at nothing to undo our constitutional rights" (p. 145). The cyber mob has new mourners to target.

This cycle is depressingly familiar. After a teenage boy walked into the Sandy Hook Elementary School and killed twenty children and six adults and injured many more, the hashtags #SandyHook and #ProtectOurKids took off.¹⁵ The hashtag #PrayForVegas trended after the Las Vegas shooter killed more than fifty people and injured 400 others.¹⁶ After a student

12. Ed Pilkington, *Trapped in a Hoax: Survivors of Conspiracy Theories Speak Out*, GUARDIAN (Jan. 24, 2019, 1:00 AM), <https://www.theguardian.com/technology/2019/jan/23/conspiracy-theories-internet-survivors-truth> [<https://perma.cc/9QU6-3BND>].

13. *Id.*; see also Mike Wendling, *Sandy Hook to Trump: 'Help Us Stop Conspiracy Theorists'*, BBC (Apr. 2, 2017), <https://www.bbc.com/news/blogs-trending-39194035> [<https://perma.cc/ZEK6-R7PD>].

14. See Pilkington, *supra* note 12.

15. Melissa Fares, *Three Years Later, Thousands Mark Sandy Hook Shooting on Social Media*, REUTERS (Dec. 14, 2015, 3:04 PM), <https://www.reuters.com/article/us-connecticut-shooting-socialmedia/three-years-later-thousands-mark-sandy-hook-shooting-on-social-media-idUSKBN0TX2BK20151214> [<https://perma.cc/V7QN-KDW5>].

16. Megan Armstrong, *#PrayForVegas: Support Pours Out on Social Media for Route 91 Harvest Shooting Victims*, BILLBOARD (Oct. 2, 2017),

brought weapons of war to Marjory Stoneman Douglas High School in Parkland, Florida, and killed seventeen students and staff and injured seventeen others, the hashtags #NeverAgain and #MarchForOurLives went viral.¹⁷ After a man killed three people at the Gilroy Garlic Festival, hashtags #Pray-ForGilroy and #GunControlNow filled news feeds,¹⁸ only to be eclipsed days later by the hashtag #WhiteSupremacistTerrorism after the mass shootings in El Paso, Texas, and Dayton, Ohio.¹⁹

As in *Sabrina*, cyber mobs descended upon the loved ones of the victims of those mass shootings with frightening intensity. The Sandy Hook families were stalked, terrorized, and defamed online as crisis actors.²⁰ Alex Jones spread lies about the Las Vegas shooting and inspired his followers to investigate further.²¹ Grieving Parkland students were attacked online as well-paid actors and hounded with lies and threats.²² And as in *Sabrina*, the press demanded that the mourners respond to conspiracy theories and lies.²³

Although the novel does crucial work in helping us appreciate the terror of an unrelenting cyber-mob attack, its major flaw is its predominantly male perspective. Calvin is the focus of the novel. We see Calvin's inbox full of threats and his Google searches filled with lies. After the Denver shooting, we see his inbox empty for the first time in ages (p. 144). We see Calvin later receiving an ominous email warning that he has not been forgotten (p. 175). The novel ends with Calvin dreaming about being murdered by men in black masks.²⁴

<https://www.billboard.com/articles/news/7981950/las-vegas-shooting-social-media-support-route-91-pray-for-vegas-hashtag> [<https://perma.cc/HM9U-7VVX>].

17. John Bacon, 'They Have Made Change': 1 Year After Carnage in Parkland, Where Key Figures Are Now, USA TODAY (Feb. 10, 2019, 2:48 PM), <https://www.usatoday.com/story/news/nation/2019/02/10/parkland-one-year-after-shooting-where-key-figures-are-now/2721798002/> [<https://perma.cc/U2C3-82SX>]; Abby Ohlheiser & Kayla Epstein, 'Just Try to Keep Calm,' WASH. POST (Mar. 3, 2018), <https://www.washingtonpost.com/graphics/2018/lifestyle/parkland-shooting-in-social-media/> [<https://perma.cc/8EH7-9KVU>].

18. Mary Papenfuss, *Gilroy Garlic Festival Shooting Prompts Outcry, Mourning on Twitter*, HUFFPOST (July 29, 2019, 1:45 AM), https://www.huffpost.com/entry/gilroy-garlic-festival-twitter-reaction_n_5d3e73e2e4b0ef792e0e8ee6 [<https://perma.cc/2SXC-MYB8>].

19. Jay Connor, #WhiteSupremacistTerrorism: Hashtag Takes Over Twitter After Latest Pair of Mass Shootings, ROOT (Aug. 4, 2019, 11:12 AM), <https://www.theroot.com/whitesupremacistterrorism-hashtag-takes-over-twitter-1836949240> [<https://perma.cc/S7FD-U26R>].

20. See Pilkington, *supra* note 12.

21. Keith Kloor, *Anatomy of a Conspiracy Theory*, POLITICO MAG. (Nov. 16, 2018), <https://www.politico.com/magazine/story/2018/11/16/conspiracy-theory-las-vegas-shooting-dangerous-222576> [<https://perma.cc/Q7NP-64QH>].

22. See Matthew Yglesias, *The Parkland Conspiracy Theories, Explained*, VOX (Feb. 22, 2018, 8:00 AM), <https://www.vox.com/policy-and-politics/2018/2/22/17036018/parkland-conspiracy-theories> [<https://perma.cc/4HC3-M5CU>].

23. See *id.*

24. P. 199. Teddy receives attention too for his experience listening to Douglas and his quiet suffering. Pp. 107–08. In the novel, we see and experience the cyber mob's fixation on Calvin.

Sandra is the least-known character. We only see snapshots of her suffering. There is no inkling that the cyber mob demeans or threatens Sandra for her gender, sex, or sexuality. This is a glaring omission. Women and minorities are disproportionately the targets of cyber-mob harassment.²⁵ Often, the abuse is sexually threatening and sexually humiliating.²⁶ Threats lobbed at victims typically include death and rape threats and threats of anal rape. Privacy invasions aimed at victims typically involve the nonconsensual posting of nude photos and sex videos.²⁷ The novel's failure to highlight this reality is disappointing, and it detracts from an otherwise compelling story.

This is not to discount the novel's contribution. In focusing on a white man with a steady job in the military, Drnaso does something important. He shows us that cyber mobs can terrorize even the strongest among us. *Sabrina* gives people from dominant groups reason not to dismiss cyber harassment as no big deal. Far too many people, including law enforcement, tell victims to ignore online abuse.²⁸

As civil rights scholar Derrick Bell argued, the fight against discrimination, hatred, and intolerance can only prevail if it advances white self-interest.²⁹ An agenda to combat cyber-mob abuse will succeed only if dominant groups join the fight. Drnaso's graphic novel will help convince the people who most need convincing to care about the destruction wrought by cyber mobs.

II. DIAGNOSING THE PROBLEM

The dark side of online life depicted in *Sabrina* is well-trodden ground for me. My scholarship has explored the forces animating destructive online behavior, including cyber stalking and sexual-privacy invasions.³⁰ Drnaso's

25. CITRON, *supra* note 11, at 13–19; Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 65–66 (2009) [hereinafter Citron, *Cyber Civil Rights*]; Danielle Keats Citron, Essay, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 374–75 (2009) [hereinafter Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*]; see also Danielle Keats Citron, *Sexual Privacy*, 128 YALE L.J. 1870, 1924–28 (2019) [hereinafter Citron, *Sexual Privacy*].

26. CITRON, *supra* note 11, at 17.

27. *Id.*

28. See *id.* at 73–91; Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, *supra* note 25, at 392–95.

29. DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 61–62 (1987); Citron, *Cyber Civil Rights*, *supra* note 25, at 84–85 (arguing that an agenda to combat destructive cyber mobs can only succeed if, as Professor Bell argued, people from dominant groups see that such attacks can be targeted at them).

30. See, e.g., CITRON, *supra* note 11; Citron, *Cyber Civil Rights*, *supra* note 25; Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, *supra* note 25; Citron, *Sexual Privacy*, *supra* note 25; Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345 (2014). Mary Anne Franks has brilliantly explored the destruction wrought by online abuse. See, e.g., Mary Anne Franks, *Sexual Harassment 2.0*, 71 MD. L. REV. 655 (2012); Mary Anne Franks, *Unwilling Avatars: Idealism and Discrimination in Cyberspace*, 20 COLUM. J. GENDER & L. 224 (2011).

novel contributes to the discussion by surfacing pathologies of online interactions peculiar to this moment. This Part will explore those pathologies, the financial incentives for tolerating destructive abuse, and the harm suffered.

A. Cognitive Biases Behind Clicking, Liking, and Sharing

Today, opportunities abound to share video and audio content online. Facebook Live, YouTube, TikTok, and Snapchat let people broadcast video and audio to audiences that span the globe.³¹ In the novel, the killer's execution video made it to the public eye at a snail's pace as compared to the Denver killer's post. The trend is instant access to real-time content. Livestreamed content has included murders, shootings, rapes, assaults, suicides, and attempted suicides.³²

When video and audio content surfaces online, as it did in *Sabrina*, it may go viral. Cognitive biases help explain why certain content grabs our attention. We have a visceral reaction to audio and video recordings.³³ Audio and video allow us to become firsthand witnesses to events, eliminating the need to trust what others say happened.³⁴ Their accuracy is self-evident—we trust our eyes and ears to tell us the truth.³⁵

People will be especially likely to like, link, and share video and audio content if it is provocative and salacious. Human beings are naturally attracted to negative and novel information.³⁶ Researchers have found that online hoaxes spread ten times faster than accurate stories because they are more novel than real news.³⁷ According to the study, people—not bots—were responsible for sharing the fake news.³⁸

31. Katie Conner, *YouTube, Facebook, Instagram, Twitter Have a Dark Side. Here's How to Report Abuse*, CNET (June 13, 2019, 5:00 AM), <https://www.cnet.com/how-to/youtube-facebook-instagram-twitter-have-a-dark-side-heres-how-to-report-abuse> (on file with the *Michigan Law Review*).

32. Mary Anne Franks, *Justice Beyond Dispute*, 131 HARV. L. REV. 1374, 1375 (2018) (reviewing ETHAN KATSH & ORNA RABINOVICH-EINY, *DIGITAL JUSTICE: TECHNOLOGY AND THE INTERNET OF DISPUTES* (2017)).

33. Drnaso explains that, as a teenager, he watched beheading videos. Max, *supra* note 6. He felt “compelled to watch.” *Id.* He acknowledged why so many people click on execution videos: “It sounds really sick, but a lot of times you’d just end up in tears, but you’d feel something visceral. The feeling is something.” *Id.*

34. See Jennifer L. Mnookin, *The Image of Truth: Photographic Evidence and the Power of Analogy*, 10 YALE J.L. & HUMAN. 1, 1–4 (1998).

35. *Id.* The Supreme Court has endorsed the truth-telling power of audio and video: if a video shows someone driving recklessly, then the person drove recklessly. *Scott v. Harris*, 550 U.S. 372, 380–81 (2007) (ruling that a videotape of a car chase constituted definitive proof of facts so as to preclude the necessity of a trial on the merits).

36. Chesney & Citron, *supra* note 10, at 1766–67.

37. Soroush Vosoughi et al., *The Spread of True and False News Online*, 359 SCIENCE 1146, 1148–50 (2018).

38. *Id.* at 1146.

Attraction to the provocative helps explain why so many people downloaded the execution video; viewed the Denver killer's post; and liked, shared, and linked to the conspiracy theories about Sabrina's death. Alex Jones propagated theories that the shooting massacre of children and teachers at Sandy Hook Elementary School was a government-staged hoax, which ginned up cyber-mob attacks on the parents of murdered children.³⁹ The abuse was so frightening that one family was forced to move seven times.⁴⁰

Another explanation for the viral spread of content is the natural inclination to share information that is consistent with our views. Psychologists call that "confirmation bias."⁴¹ Douglas, like the real-life Jones, mined people's fear of government, and online audiences propagated his falsehoods in thousands of comments, tweets, and posts (p. 122).

Provocative audio and video recordings, gossip, and information confirming our viewpoints are nothing new. But today's networked tools change the stakes of their publication and distribution. Social media platforms supercharge human frailties by allowing us to instantly and widely share content that involves video or audio, salacious lies, or views similar to our own (or some combination of those biases).⁴² Indeed, platforms' algorithms are designed to do precisely that, as explored below.

People's likes, links, and shares often snowball into what is known as an "information cascade."⁴³ That happens when people pass on what others say without checking on the information's veracity.⁴⁴ The more people pass on information shared with them, the more its credibility grows.

Information cascades often spill over into the media. "[T]raditional mass-audience outlets . . . take note of the surge of social media interest and as a result cover stories that otherwise they might not have."⁴⁵ Just as the media covered the false-flag conspiracy theories about the Sandy Hook massacre, news outlets amplified the fictions about Sabrina's murder.

Sabrina ably captures our current cultural moment, one that Mary Anne Franks powerfully explores in her book *The Cult of the Constitution*.⁴⁶ As Franks explains, a growing view depicts the right to bear arms and the right to free expression as under siege.⁴⁷ Any restriction on gun ownership

39. See Elizabeth Williamson, *Alex Jones, Pursued over Infowars Falsehoods, Faces a Legal Crossroads*, N.Y. TIMES (July 31, 2018), <https://www.nytimes.com/2018/07/31/us/politics/alex-jones-defamation-suit-sandy-hook.html> [<https://perma.cc/4NMZ-U3YK>].

40. *Id.*

41. CITRON, *supra* note 11, at 67.

42. See Chesney & Citron, *supra* note 10, at 1766–67.

43. See generally DAVID EASLEY & JON KLEINBERG, NETWORKS, CROWDS, AND MARKETS: REASONING ABOUT A HIGHLY CONNECTED WORLD (2010) (discussing information cascades); CASS R. SUNSTEIN, REPUBLIC.COM 2.0 (2007) (discussing cyber cascades).

44. CITRON, *supra* note 11, at 67.

45. See Chesney & Citron, *supra* note 10, at 1766.

46. MARY ANNE FRANKS, THE CULT OF THE CONSTITUTION (2019).

47. *Id.* at 21, 116.

amounts to an unraveling of the right to self-defense.⁴⁸ Gun rights organizations have convinced their members “into believing that they are always just one step away from being disarmed by the government, which cultivates a collective paranoia and persecution complex.”⁴⁹ Similarly, proposed speech restrictions are viewed as a crisis for free expression.⁵⁰ This “free speech orthodoxy [has] allowed threats, conspiracy theories, defamation, and outright lies to flourish unchecked in the media and on the Internet.”⁵¹

The absolutist, cult-like obsession with guns and speech that Franks discusses pervades *Sabrina*. Douglas propagates a false-persecution narrative. He argues that the government is poised to take away people’s internet and guns (p. 138). Douglas is the victim of a government trying to silence him. “I have been targeted for voicing what amounts to perfectly legal and acceptable free speech. If you ever see me being taken away in handcuffs, you’ll know what’s going on,” he argues (p. 89).

But whose speech is really in jeopardy of being silenced? Douglas’s violent rhetoric and false statements incite his followers to harass and stalk the family of a murdered young woman. That sort of cyber harassment has been empirically shown to chill the free expression of *victims*.⁵² Online falsehoods, privacy invasions, and threats imperil targeted individuals’ life opportunities, including their ability to express themselves.⁵³

Franks contends that an illusion of “constitutional scarcity” has been created, which has been met with demands for “more” guns and speech.⁵⁴ As Franks compellingly argues, “[w]e are facing a *continuing* crisis of constitutional inequality” rather than a scarcity of gun and speech rights.⁵⁵ As she underscores, constitutional principles are often invoked to deny equal opportunity to women and minorities.⁵⁶ We see them deployed to justify defamation, harassment, discrimination, and violence against the most vulnerable.⁵⁷ The cult-like obsession with gun rights and free speech is surfaced in *Sabrina*, but without any recognition of the discrimination faced by women and minorities trying to speak and work in our networked age.

48. See *id.* at 60–67.

49. *Id.* at 19–20.

50. See *id.* at 107–09, 115.

51. *Id.* at 16; see also *id.* at 116.

52. See CITRON, *supra* note 11, at 119; Danielle Keats Citron, *Civil Rights in Our Information Age*, in *THE OFFENSIVE INTERNET* 31 (Saul Levmore & Martha C. Nussbaum eds., 2010); Citron, *Cyber Civil Rights*, *supra* note 25, at 64; Citron & Franks, *supra* note 30, at 385; Danielle Keats Citron & Neil M. Richards, *Four Principles for Digital Expression (You Won’t Believe #3!)*, 95 WASH. U. L. REV. 1353, 1365 (2018) (“[N]ot everyone can freely engage online. This is especially true for women, minorities, and political dissenters who are more often the targets of cyber mobs and individual harassers.” (footnote omitted)).

53. CITRON, *supra* note 11, at 5–12, 35–50.

54. FRANKS, *supra* note 46, at 21.

55. *Id.*

56. *Id.*

57. *Id.* at 106–07.

B. *Harm*

My scholarship has explored the devastating impact that cyber-mob harassment has on individuals and society, so I won't belabor the point. But a brief overview of the harm helps put into poignant relief the novel's grim suggestion that cyber-mob attacks are as inevitable as they are disturbing. In Drnaso's fictional universe, this is just the way that we operate. We click, like, and share gruesome videos and conspiracy theories. We hurl vitriol and threats online and think nothing of it. The attacks on Sandra, Teddy, and Calvin recede after another murder is attributed to the deep state. The cyber mob does not skip a beat. It goes on to exact other pounds of flesh.

Cyber-mob attacks inflict profound harm. Targeted individuals fundamentally alter their lives. They move,⁵⁸ as in the Sandy Hook case.⁵⁹ They switch schools.⁶⁰ They change their names because it is impossible to obtain employment, find love, and meet clients when one's Google search is filled with threats, falsehoods, and privacy invasions.⁶¹ They lose their jobs and have difficulty finding new ones.⁶² They experience profound emotional distress, anxiety, and depression.⁶³ They shut down their social media profiles, blogs, and websites, because keeping them invites more abuse.⁶⁴

We see some of this harm in the novel. Sabrina's loved ones surely experienced emotional distress when reporters asked them to address the hoax allegations. Not only were they grieving, but then they were asked to *justify* their grieving.⁶⁵ Calvin has nightmares. Sandra is terrified and exhausted.

58. CITRON, *supra* note 11, at 6.

59. Williamson, *supra* note 39.

60. *See id.*

61. *See id.*

62. CITRON, *supra* note 11, at 7–10.

63. *Id.* at 10–11.

64. *Id.* at 1–4, 8–9, 193–99.

65. Susan Svruga, *First, They Lost Their Children. Then the Conspiracy Theories Started. Now, the Parents of Newtown Are Fighting Back*, WASH. POST (July 8, 2019, 4:57 PM), https://www.washingtonpost.com/local/education/first-they-lost-their-children-then-the-conspiracies-started-now-the-parents-of-newtown-are-fighting-back/2019/07/08/f167b880-9cef-11e9-9ed4-c9089972ad5a_story.html [<https://perma.cc/77VT-55N8>] (explaining that a Sandy Hook parent suffered not only because he lost his son but because he had to prove that his son had lived and that he had died). Cyber mobs have long tormented people who are grieving loved ones. Whitney Phillips, *LOLing at Tragedy: Facebook Trolls, Memorial Pages and Resistance to Grief Online*, FIRST MONDAY (Dec. 5, 2011), <https://firstmonday.org/article/view/3168/3115> [<https://perma.cc/CZX6-LUYJ>] (explaining the phenomenon of RIP trolling—where people scour Facebook for sensitive people to exploit, notably people in mourning who set up memorial or RIP pages, and then target them with disturbing photos and cruel comments). *See generally* WHITNEY PHILLIPS, THIS IS WHY WE CAN'T HAVE NICE THINGS (2015) (discussing how internet trolls traumatize grief-stricken families). The grieving students who survived the Marjory Stoneman Douglas High School shooting have faced cruel online abuse. Stephanie Ebbs, *Social Media Companies Block Abuse of Parkland Shooting Survivors Online*, ABC NEWS (Feb. 21, 2018, 9:07 PM), <https://abcnews.go.com/Politics/social->

The societal harm is potent. Viral conspiracy theories and falsehoods undermine our sense of a shared reality. This is a perilous time for the pursuit of truth.⁶⁶ Even the president of the United States cries “fake news” and propagates fringe theories on his official presidential Twitter account.⁶⁷

Things are poised to take a turn for the worse. Soon, deep-fake video and audio content, only alluded to in *Sabrina* but now on the minds of Congress and the press, may be so sophisticated that distinguishing genuine content from fakery will be difficult, if not impossible.⁶⁸ The truth will have difficulty emerging in a deep-fake-ridden marketplace of ideas.

C. Incentives of Platforms

Fred Guttenberg’s daughter Jaime was murdered at the Marjory Stoneman Douglas school shooting on February 14, 2018.⁶⁹ Guttenberg turned his grief into online and offline activism for gun-control legislation. On August 1, 2019, he tweeted that he was “[r]eceive[ing] targeted harassment on Twitter” from someone “using a made up profile with the name of my daughters [sic] killer.”⁷⁰ Twitter initially refused to take action.⁷¹

This is as unsurprising as it is depressing. Allowing attention-grabbing abuse to remain online accords with platforms’ rational self-interest. Social

media-blocks-abuse-parkland-shooting-survivors-online/story?id=53250460 [https://perma.cc/CNM6-H9DA].

66. Chesney & Citron, *supra* note 10, at 1763–68.

67. Edgar Alvarez, *Trump’s ‘Social Media Summit’ Was a Celebration of Conspiracy Theorists*, ENGADGET (July 12, 2019), <https://www.engadget.com/2019/07/12/trump-social-media-summit-white-house-facebook-twitter/> [https://perma.cc/A8HB-YMG2]; Justin Hendrix, *Trump’s Encouraging QAnon May Result in Violence—Just Ask the FBI*, JUST SECURITY (Aug. 1, 2019), <https://www.justsecurity.org/65659/trumps-encouraging-qanon-may-result-in-violence-just-ask-the-fbi/> [https://perma.cc/R3MW-MFKD].

68. Chesney & Citron, *supra* note 10, at 1760. I discussed deep fakes in testimony before the House Intelligence Committee in June 2019 and at my TED talk at the TED Global Summit held in July 2019. See *The National Security Challenge of Artificial Intelligence, Manipulated Media, and ‘Deep Fakes’: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116 Cong. (2019) (written testimony of Danielle Keats Citron, Morton & Sophia Macht Professor of Law, University of Maryland Carey School of Law), <https://docs.house.gov/meetings/IG/IG00/20190613/109620/HHRG-116-IG00-Wstate-CitronD-20190613.pdf> [https://perma.cc/J3C2-U9SA]; Ann Powers et al., *The Big Rethink: Notes from Session 3 of TEDSummit 2019*, TEDBLOG (July 23, 2019, 4:15 PM), <https://blog.ted.com/the-big-rethink-notes-from-session-3-of-tedsummit-2019> [https://perma.cc/SER6-MXLS]; TED, *How Deepfakes Undermine Truth and Threaten Democracy*, YOUTUBE (Oct. 7, 2019), <https://www.youtube.com/watch?v=pg5WtBjox-Y>.

69. Jessica McBride, *Fred Guttenberg, Jaime’s Father: 5 Fast Facts You Need to Know*, HEAVY (Sept. 4, 2018, 2:26 PM), <https://heavy.com/news/2018/02/fred-guttenburg-video-jaime-father-marco-rubio-cnn/amp> [https://perma.cc/9QV3-5ESP].

70. Morgan Gstalter, *Parkland Father: Twitter Did Not Suspend Users Who Harassed Me Using Name of Daughter’s Killer*, HILL (Aug. 1, 2019, 12:46 PM), <https://thehill.com/policy/technology/455759-parkland-father-twitter-did-not-suspend-user-who-harassed-me-using-name-of> [https://perma.cc/Y3UB-3MNL].

71. *Id.*

media companies earn advertising revenue when users like, click, and share.⁷² “They produce nothing and sell nothing except advertisements and information about users, and conflict among those users may well be good for business.”⁷³ If a company’s analytics suggest that people pay more attention to content that makes them sad or angry, then the company will highlight such content.⁷⁴

As Federal Trade Commissioner Rohit Chopra powerfully warned in his dissenting opinion in the agency’s 2019 settlement with Facebook, the behavioral advertising business model is the “root cause of its widespread and systemic problems.”⁷⁵ Online behavioral advertising generates profits by “turning users into products, their activity into assets,” and “platforms into weapons of mass manipulation.”⁷⁶ Tech companies “have few incentives to stop [online abuse], and in some cases are incentivized to ignore or aggravate [it].”⁷⁷

To be sure, tech companies do moderate certain content by shadow banning, filtering, or blocking it.⁷⁸ They have acceded to pressure from the European Commission to remove hate speech and terrorist activity.⁷⁹ They have banned certain forms of online abuse, such as nonconsensual pornography, in response to pressure from users, advocacy groups, and advertisers.⁸⁰ When it is bad for business, platforms have expended resources to stem abuse.⁸¹

Social media platforms generally do not filter or remove content for the sake of accuracy or quality.⁸² That makes sense given that their business model is premised on clicks, views, and shares and that law supports this laissez-faire approach.

72. Franks, *supra* note 32, at 1381.

73. *Id.* at 1386.

74. Dissenting Statement of Commissioner Rohit Chopra, *In re Facebook, Inc.*, Commission File No. 1823109, at 8 (July 24, 2019), https://www.ftc.gov/system/files/documents/public_statements/1536911/chopra_dissenting_statement_on_facebook_7-24-19.pdf [<https://perma.cc/5X5M-2WCN>].

75. *Id.* at 2.

76. *Id.*

77. Franks, *supra* note 32, at 1386.

78. Danielle Keats Citron, *Extremist Speech, Compelled Conformity, and Censorship Creep*, 93 NOTRE DAME L. REV. 1035, 1038–39 (2018); Danielle Keats Citron & Helen Norton, *Intermediaries and Hate Speech: Fostering Digital Citizenship for Our Information Age*, 91 B.U. L. REV. 1435, 1468–71 (2011).

79. Citron, *supra* note 78, at 1037.

80. *Id.*

81. See CITRON, *supra* note 11, at 229 (discussing how Facebook changed its position on pro-rape pages after fifteen companies threatened to pull their ads); see also Mary Anne Franks, “*Revenge Porn*” Reform: A View from the Front Lines, 69 FLA. L. REV. 1251, 1270–71 (2017).

82. Chesney & Citron, *supra* note 10, at 1765.

III. ASSIGNING RESPONSIBILITY

Sabrina depicts the internet as a virtual Wild West. Seemingly, nothing is off-limits. False assertions that Calvin, Teddy, and Sandra are crisis actors are plastered online, as are their home addresses and contact information (pp. 120–22). Death threats appear on message boards and in emails and texts (pp. 120, 154). Sabrina’s execution video is downloaded on millions of computers (p. 108). Neither law nor self-regulation seems to have a role in slowing down or stopping the destruction wrought by Douglas and his cyber mob.

Reality is not as grim as *Sabrina* suggests, but it isn’t great either. Networked interactions are not totally outside law’s reach. Law provides some redress for victims. But for the most part, only individual perpetrators can be sued. Thanks to federal law, platforms are largely immune from liability. This Part will focus on avenues for redress and on the role of education.⁸³

A. Suing Harassers

Cyber-mob members could be sued for their reputation-harming lies, privacy invasions, and threats. Various tort claims come to mind, including defamation, public disclosure of private fact, and intentional infliction of emotional distress.⁸⁴ The success of these claims depends upon victims’ ability to afford counsel, to identify perpetrators, and to have access to a court with jurisdiction over the perpetrator.⁸⁵ A considerable number of variables are thus at play, and just one could stop a lawsuit in its tracks.⁸⁶

Even if those concerns are surmounted, lawsuits are invasive and take considerable time and money. Several Sandy Hook parents have sued Alex Jones for defamation. While the lawsuits have overcome initial challenges to the pleadings, many steps remain before plaintiffs get their day in court.⁸⁷

Despite these limitations, tort claims are valuable. They teach us about what conduct is harmful and wrong, and they secure redress for victims.⁸⁸ Renowned privacy lawyer Carrie Goldberg has obtained civil remedies for clients who have been harassed online. As her website notes, one of things she does is “[s]ue the hell out of [people] who hurt you.”⁸⁹ Simply said, and

83. I have explored the role of criminal law in addressing cyber-mob attacks elsewhere. See, e.g., CITRON, *supra* note 11, at 123–41, 157–61; Citron, *Cyber Civil Rights*, *supra* note 25, at 86–97; Citron & Franks, *supra* note 30, at 365–74.

84. CITRON, *supra* note 11, at 121–23 (discussing various potential claims that can be brought against online harassers).

85. *Id.* at 122; cf. Chesney & Citron, *supra* note 10, at 1792–93.

86. Chesney & Citron, *supra* note 10, at 1792–93.

87. See Svrluga, *supra* note 65.

88. Citron, *Law’s Expressive Value in Combating Cyber Gender Harassment*, *supra* note 25.

89. C.A. GOLDBERG VICTIMS’ RIGHTS LAW FIRM, <https://www.cagoldberglaw.com> [<https://perma.cc/WZD5-HSG6>].

abundantly true.⁹⁰ From her perspective, tort suits can be an important tool to secure redress if perpetrators can be identified and have some funds to recover.⁹¹

What about the deep-pocketed platforms? After all, social media companies are best situated to minimize the damage. Through their design choices and speech policies and procedures, platforms control what content appears on their services. Shouldn't they be responsible for those decisions?

Thanks to the broad judicial interpretation of a federal law passed in 1996, tech companies are largely immune from liability for their users' illegal conduct.⁹² That is why Goldberg's law firm is focusing on chipping away at that broad interpretation in the courts or—as she hopes and as I agree—on working to help Congress fix it.⁹³

B. *Holding Platforms Accountable*

In *Sabrina*, social media platforms are everywhere and nowhere. On the one hand, they are front and center in the story. Their services facilitate the novel's action. On the other, the reader sees and hears little from them. The platforms seemingly take no action vis-à-vis the online abuse. They appear to proceed as if they have no responsibility for the havoc of their users.

Drnaso has elegantly depicted reality. The invisibility of platforms captures, in important respects, federal law, which has left little risk of liability and no requirement of responsible content moderation.

The federal law in question is section 230 of the Communications Decency Act of 1996.⁹⁴ In enacting section 230, Congress sought to provide an

90. I have watched Goldberg's practice from its start. In five years, she has become the nation's leading lawyer in cases involving online victimization and sexual-privacy invasions. See Margaret Talbot, *The Attorney Fighting Revenge Porn*, NEW YORKER (Nov. 27, 2016), <https://www.newyorker.com/magazine/2016/12/05/the-attorney-fighting-revenge-porn> [<https://perma.cc/9X72-VTYB>]. Goldberg and I have served on the board of directors of, and acted as advisers to, the Cyber Civil Rights Initiative together since 2013. CCRI Board of Directors, CYBER CIVIL RIGHTS INITIATIVE, <https://www.cybercivilrights.org/ccri-board/> [<https://perma.cc/68EB-JG3J>]. Goldberg has published a book on her life's work and her own experience with online harassment. CARRIE GOLDBERG, NOBODY'S VICTIM: FIGHTING PSYCHOS, STALKERS, PERVS, AND TROLLS (2019).

91. Email from Carrie Goldberg to author (Aug. 2, 2019, 9:21 AM) (on file with author).

92. See, e.g., *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 332–33 (4th Cir. 1997).

93. *Id.*

94. 47 U.S.C. § 230(c) (2018). I have written a considerable amount about section 230, so I am just going to provide a brief summary and then focus on recent developments. For a detailed explanation of section 230, its purpose, and broad judicial interpretation, see CITRON, *supra* note 11, at 170–79, and Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity*, 86 FORDHAM L. REV. 401 (2017). My ideas for fixing it have developed over the years, from early on urging a reasonableness approach including traceable anonymity, Citron, *Cyber Civil Rights*, *supra* note 25, at 121–24, to proposing a more narrow, targeted statutory fix, CITRON, *supra* note 11, at 177, to a statutory fix that conditions the immunity on reasonable content-moderation practices, Citron & Wittes, *supra* at 419. I testified about potential fixes to section 230 before the House Energy and Commerce

incentive to online service providers to moderate “offensive” content.⁹⁵ That incentive was immunity from liability as publishers or speakers for filtering or blocking too much or too little of their users’ online speech.⁹⁶

Section 230’s immunity provision has been broadly interpreted in the courts.⁹⁷ Section 230 would immunize platforms from liability for claims related to the posting of defamatory falsehoods, threats, and personal information.⁹⁸ The immunity would stick even if platforms knew about users’ tortious and illegal activity and refused to do anything.⁹⁹ It would stick even if platforms urged users to engage in tortious and illegal activity.¹⁰⁰ And it would stick even if platforms designed their sites to enhance the visibility of content that would obviously involve tortious and illegal activity.¹⁰¹ The takeaway message to victims is “too bad, so sad.”

Goldberg has been fighting to change the overbroad interpretation of section 230. Her client, Matthew Herrick, sued Grindr for negligently designing its dating app.¹⁰² Grindr was notified approximately 100 times that Herrick’s ex-boyfriend was impersonating him on the app, sharing his nude images, claiming he had rape fantasies, and providing his home address.¹⁰³ Herrick’s ex’s use of Grindr was endangering his life.¹⁰⁴ As many as twenty-

Committee in October 2019. See *Fostering a Healthier Internet to Protect Consumers: Hearing Before the H. Comm. on Energy & Commerce*, 116 Cong. (2019) (written testimony of Danielle Keats Citron, Professor of Law, Boston University School of Law), <https://docs.house.gov/meetings/IF/IF16/20191016/110075/HHRG-116-IF16-Wstate-CitronD-20191016.pdf> [<https://perma.cc/8XL9-5L9Z>].

95. CITRON, *supra* note 11, at 170–73.

96. Citron & Wittes, *supra* note 94, at 404–06. Section 230(c), entitled “Protection for ‘Good Samaritan’ blocking and screening of offensive material,” has two key provisions. Section 230(c)(1) provides that online service providers will not be treated as publishers or speakers of user-generated content. 47 U.S.C. § 230(c)(1). Section 230(c)(2) says that online service providers will not be held liable for good-faith filtering or blocking of user-generated content. *Id.* § 230(c)(2). Section 230 carves out exceptions from its immunity provisions—federal criminal law, intellectual property law, and the Electronic Privacy Communications Act. *Id.* § 230(e).

97. Citron & Wittes, *supra* note 94, at 406–10.

98. See *id.* at 413–14.

99. See *id.* at 414.

100. *Id.* at 408.

101. Danielle Keats Citron, *Section 230’s Challenge to Civil Rights and Civil Liberties*, KNIGHT FIRST AMEND. INST. (Apr. 6, 2018), <https://knightcolumbia.org/content/section-230s-challenge-civil-rights-and-civil-liberties> [<https://perma.cc/NCD6-2NVW>]. See generally Oliver Sylvain, *Intermediary Design Duties*, 50 CONN. L. REV. 203 (2018).

102. *Herrick v. Grindr, LLC*, 306 F. Supp. 3d 579 (S.D.N.Y. 2018).

103. *Id.* at 585.

104. Email from Carrie Goldberg to author, *supra* note 91.

three strange men came to his apartment a day.¹⁰⁵ In all, more than a thousand men came to Herrick's apartment.¹⁰⁶

As Goldberg explains, Grindr was her client's last and only hope for help.¹⁰⁷ Herrick had gotten an order of protection from family court and reported the violations to the police a dozen times.¹⁰⁸ But nothing and no one helped.¹⁰⁹ The order of protection was a paper tiger. Law enforcement took Herrick's complaint but then failed to investigate. Herrick's ex-boyfriend continued to post on Grindr and strangers continued banging on his door. Grindr ignored Herrick's complaints and refused to remove the imposter.¹¹⁰

The trial court dismissed Herrick's claims on section 230 grounds,¹¹¹ and the Second Circuit upheld that dismissal in a nonprecedential summary order.¹¹² Goldberg has "all but lost hope in there being a judicial fix to Section 230."¹¹³ She notes that "[i]t used to be that for the cost of an index number, the poorest person in the world could hold the most powerful corporation accountable for the harms they caused. Those days are gone. We need a [legislative] fix."¹¹⁴

Goldberg is right. Unlike a few years ago when the notion of doing anything about section 230 was viewed as madness, fixing section 230 is now a real possibility.¹¹⁵ Mary Anne Franks and I are currently working with federal lawmakers, both Democrats and Republicans, on potential legislative changes to section 230.

Federal lawmakers have expressed interest in the statutory fix proposed by Benjamin Wittes and me to condition immunity on reasonable content-moderation practices.¹¹⁶ The relevant part of the statute would read:

105. *Id.*

106. Sara Ashley O'Brien, *1,100 Strangers Showed Up at His Home for Sex. He Blames Grindr*, CNN: BUS. (Apr. 14, 2017, 1:02 PM), <https://money.cnn.com/2017/04/14/technology/grindr-lawsuit/index.html> [<https://perma.cc/978P-HWKL>].

107. Email from Carrie Goldberg to author, *supra* note 91.

108. *Id.*

109. *Id.*

110. *Herrick v. Grindr, LLC*, 306 F. Supp. 3d 579, 593 (S.D.N.Y. 2018).

111. *Id.*

112. *Herrick v. Grindr, LLC*, 756 F. App'x 586 (2d Cir. 2019).

113. Email from Carrie Goldberg to author, *supra* note 91.

114. *Id.*

115. Danielle Citron & Quinta Jurecic, *Platform Justice: Content Moderation at an Inflection Point* (Hoover Inst., Aegis Series Paper No. 1811, 2018), https://www.hoover.org/sites/default/files/research/docs/citron-jurecic_webreadypdf.pdf [<https://perma.cc/6XZY-9HBF>]; Danielle Citron & Quinta Jurecic, *Platform Justice: Content Moderation at an Inflection Point*, LAWFARE (Sept. 7, 2018, 1:56 PM), <https://www.lawfareblog.com/platform-justice-content-moderation-inflection-point> [<https://perma.cc/W78N-2STL>].

116. Indeed, at my recent testimony before the House Intelligence Committee, I engaged in an extensive back and forth with lawmakers about our proposal. *See, e.g., Danielle Citron Explains Content Moderation*, C-SPAN (June 14, 2019), <https://www.c-span.org/video/?c4802966/danielle-citron-explains-content-moderation> [<https://perma.cc/2GCQ-RW9A>]. Tech companies have signaled their support as well. For instance, IBM issued a statement urg-

No provider or user of an interactive computer service that *takes reasonable steps to prevent or address unlawful uses of its services* shall be treated as the publisher or speaker of any information provided by another information content provider *in any action arising out of the publication of content provided by that information content provider*.¹¹⁷

If adopted, the question before the courts in a motion to dismiss on section 230 grounds would be whether a defendant employed reasonable content-moderation practices. Whether a platform acted reasonably with regard to a specific instance of speech would not be the question. Instead, the court would ask whether the platform engaged in reasonable content-moderation practices writ large and thus earned the immunity.

Goldberg's case against Grindr is a helpful example. Did Grindr engage in reasonable content-moderation practices? Not by my lights. The dating app chose to design its service so that it could not ban abusive users. The app's design is arguably negligent and inherently defective. As Goldberg explains, the company "had a defectively designed and manufactured product since it was not just foreseeable but an arithmetic certainty that if you run a dating app used by millions of people with geo-locating functions, some of them will use it to stalk, rape, harass, and prey."¹¹⁸ Herrick's struggles—and Grindr's refusal to do anything—provide an illustration of the problem but are not why Grindr should not enjoy section 230 immunity for Herrick's claims. The reason would be Grindr's design choices that amounted to a failure to take reasonable steps to prevent or address unlawful uses of its services.

What about Douglas's message board? If the message board were sued for users' defamation, for instance, the court would assess whether Douglas, as site operator, engaged in reasonable practices to prevent or address illegality. If, as the novel suggests, Douglas engaged in no content moderation in the face of thousands of posts whose titles suggested tortious and illegal conduct, then his speech policies and practices would be found unreasonable. Douglas effectively called for his followers to hound and defame Sabrina's loved ones, further undermining any notion that he acted reasonably in the face of illegality on his site.

C. *Educating for Our Better Selves*

Changing online norms must include efforts at education. Young or old, middle-aged or teenaged, we click, like, link, and share without thinking. We pass on information others share and like, and we think nothing of it. We

ing Congress to adopt our proposal. Ryan Hagemann, *A Precision Regulation Approach to Stopping Illegal Activities Online*, IBM: THINK POL'Y (July 10, 2019), <https://www.ibm.com/blogs/policy/cda-230/> [<https://perma.cc/HV4F-S3FD>].

117. Citron & Wittes, *supra* note 94, at 419.

118. Email from Carrie Goldberg to author, *supra* note 91.

write threatening and ominous emails, safe behind a computer or phone screen.

Sabrina brought those human frailties alive by showing us that hundreds upon hundreds of people liked, clicked, and shared the destructive posts. The numbers were staggering—millions downloaded the execution video and more than 600 people wrote to Calvin in a single day.

It is uncontroversial to say that all of us have acted impulsively online. In front of a screen, people feel anonymous. That feeling “frees people to defy social norms.”¹¹⁹ It makes it easier to do and say things that we would never do or say if we were in real space.¹²⁰

When face-to-face with other people, we see their facial expressions and body language. We hear the tone of their voice. Those cues remind us to keep our behavior in check.¹²¹ Because those cues are often absent online, we are more likely to resort to invective. We seem to have forgotten about our shared humanity.¹²²

We must do better. We have to acknowledge and discuss the human frailties that lead to our unthinking clicking, liking, downloading, posting, and sharing. We have to consider strategies that can help us stop and think before posting, sharing, and liking content that is salacious, provocative, and simply aligns with our viewpoints.

Right now, schools, teachers, and parents carry the load of that education. Yes, we must continue to educate young people about their responsibilities to other people when using internet-connected tools.¹²³ We teach kids about drunk driving. We must continue to teach them about the problem of texting, tweeting, emailing, sharing, and posting without thinking about the consequences of their actions.

Yet the broad number of people who fall prey to cognitive biases are far beyond their school years. How do we teach people who are settled in their ways to think about their role in a cyber mob? This is a hard task, but one that we should not avoid.

We need to do a better job engaging in public conversations about online abuse. Advocacy groups like the Cyber Civil Rights Initiative devote considerable energy on social media platforms talking about the perils of online abuse and the harm that it causes.¹²⁴ Others can and should do the same.

119. CITRON, *supra* note 11, at 58.

120. *Id.*

121. *Id.* at 59.

122. *Id.*

123. EMILY BAZELON, *STICKS AND STONES: DEFEATING THE CULTURE OF BULLYING AND REDISCOVERING THE POWER OF CHARACTER AND EMPATHY* (2013).

124. See *What We Do*, CYBER CIVIL RIGHTS INITIATIVE, <https://www.cybercivilrights.org/our-services/> [<https://perma.cc/BAD2-GBMS>]. I am the vice president of the nonprofit the Cyber Civil Rights Initiative (CCRI), which was founded by Holly Jacobs to combat nonconsensual pornography. CCRI's mission is to fight for civil rights and liberties in the digital age

Education efforts should involve the platforms. Platforms could design their sites to remind people to think about what they are posting.¹²⁵ Then too, journalists need to learn about how they cover newsworthy events without unnecessarily amplifying falsehoods, conspiracy theories, and threats.

CONCLUSION

Drnaso's fictional world reflects our troubling reality. Every day, people are radicalized online to wreak havoc and violence. On August 3, 2019, in El Paso, Texas, a twenty-one-year-old man posted a racist manifesto online and then walked into a Walmart with a powerful rifle, killing twenty people and injuring many others.¹²⁶ A Twitter profile under the killer's name liked tweets from a far-right YouTuber who works with Alex Jones and promotes links with the #BuildTheWall hashtag.¹²⁷ By all accounts, the killer trafficked in hate and conspiracy theories online.

Drnaso invites a conversation about cyber mobs, conspiracy theories, death videos, and the destruction that they cause. That conversation must include not only why online norms and cultural attitudes are as they are but also how we change them. This Review joins that conversation with suggestions for law and education. Much work lies ahead of us.

and to combat online abuse that denies people of central rights and liberties. Mary Anne Franks is CCRI's president and legislative technology director.

125. Design features aimed to educate people about their cognitive biases could help platforms make the case for the reasonableness of their content-moderation practices. See generally WOODROW HARTZOG, *PRIVACY'S BLUEPRINT: THE BATTLE TO CONTROL THE DESIGN OF NEW TECHNOLOGIES* (2018); M. Ryan Calo, *Against Notice Skepticism in Privacy (and Elsewhere)*, 87 NOTRE DAME L. REV. 1027 (2012).

126. Jordyn Rozensky et al., *Mass Shooting Kills 22 at El Paso Walmart*, DAILY BEAST (Aug. 3, 2019, 1:51 PM), <https://www.thedailybeast.com/el-paso-police-respond-to-active-shooting-at-cielo-vista-mall> [https://perma.cc/56BR-TJRD].

127. Brett Barrouquere, *El Paso Shooting Suspect May Have Authored Manifesto Containing White Nationalist Talking Points*, S. POVERTY L. CTR. (Aug. 3, 2019), <https://www.splcenter.org/hatewatch/2019/08/03/el-paso-shooting-suspect-may-have-authored-manifesto-containing-white-nationalist-talking> [https://perma.cc/86X6-J2CU].

