

**BUCHAREST UNIVERSITY OF ECONOMIC STUDIES**  
The Faculty of International Business and Economics  
The Department of Modern Languages and Business Communication of ASE  
**11th International Conference: Synergies in Communication (SiC)**  
Bucharest, Romania, 26 - 27 October 2023

## **DEPP V. HEARD: A SETBACK FOR WOMEN?**

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### ***Abstract***

*The Depp v. Heard trial was at the forefront of American culture and news for its entire duration. This public trial, which was streamed on social media for millions of people to see, follow and comment on, came as a result of famous actor Johnny Depp suing ex-wife and actress Amber Heard for publishing what he claims to be a defamatory op-ed in 2018. In it, Heard indirectly accuses Depp of allegedly having perpetrated acts of physical, psychological and sexual violence against her. While some critics and internet users alike would argue that this case was only made culturally significant by the notoriety of the two parties involved, the lawsuit's close relation to the Me Too movement due to Heard's involvement in the latter as well as her and her legal team's portrayal of said trial as a stepping stone for the women's rights movement makes of it a potentially impactful cultural turning point. While this paper does not aim to determine the veracity of the two parties' claims, by utilizing a combination of feminist theory and new historicism, it analyzes the trial as a byproduct of the Me Too movement in an effort to evaluate its cultural meaning and, most importantly, its potential impact on American culture and gender roles.*

**Keywords:** Heard v. Depp trial; the Me Too movement; American culture; new historicism; feminism.

**DOI:** 10.24818/SIC/2023/06.09

### ***1. Introduction***

The John C. Depp, II v. Amber Laura Heard trial was held in Fairfax County, Virginia between the 11<sup>th</sup> of April and 1<sup>st</sup> of June 2022. Before diving into the court case itself, it is important to note that the two parties involved, namely Johnny Depp and Amber Heard, are both famous actors who accumulate millions of fans worldwide. This is especially important to keep in mind while discussing how and why, aided by the fact that it was livestreamed for the world to see, the trial polarized the media and public opinion. Indeed, Johnny Depp is most notoriously known for starring as the lead role in the popular franchise *Pirates of the Caribbean* (2003-2017) as Captain Jack Sparrow, as well as for his versatility on the big screen. His numerous collaborations over the last two decades with director and producer Tim Burton in movies such as *Charlie and the Chocolate Factory* (2005), *Corpse Bride* (2005), *Sweeney Todd* (2007), *Alice in Wonderland* (2010) and many others notably stand out as especially successful and helped build his image as a jack-of-all-trades actor. In fact, his works with Burton were so successful that they have earned the actor a spot in the 2012 Guinness World Records as the highest paid actor (Guinness World Records, 2011). As for Amber Heard, while the actress has not been as embraced by popular culture as her former partner, she nevertheless remains a recognizable name in the industry for her role as Mera in D.C. Comics' filmic adaptation of *Justice League* (2017) and *Aquaman* (2018).

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Depp and Heard's notoriety is not the only factor one should keep in mind while discussing the defamation case which unfolded in 2022. While the fans' involvement on social media and in real life through their presence inside and outside the court undeniably had somewhat of an impact on the overall atmosphere of the trial for both parties involved, another factor to keep in mind is the fact that the trial itself did not aim to determine a guilty party in light of domestic abuse. While the discussion around the trial involved many speculations on who is the "real abuser", the Depp v. Heard case is not a criminal case but a civil dispute over alleged defamatory statements put out by Heard in an Op-Ed written for and published by the Washington Post in 2018. According to the United States District Court of Florida, a criminal case "allege[s] a violation of a criminal law" (United States District Court of Florida, 2022) while a civil case "usually involve[s] disputes between people or organizations" (United States District Court of Florida, 2022). Furthermore, what should also be taken into consideration is that both types of cases lead to very different outcomes; while the verdict for a criminal case can be classified under the infamous 'guilty' and 'not guilty' dichotomy, in a civil case, the members of the jury can either side with the plaintiff or against them. While the first may lead the guilty party to have to serve jail time, the second can only lead to either a settlement or a jury-determined sum of money being paid to the winning party. Heard therefore needed to prove to the jury that she was indeed telling the truth in the Op-Ed, and that she was abused by Depp during her marriage to the actor. It is thus the strength and veracity of her claims as well as her right to write about her experiences without defaming a second party that were judged and not whether Heard or Depp did in fact commit any criminal acts of physical, sexual, or mental violence.

It should be also pointed out that Heard's article's publishing date (2018) is consistent with the height in popularity of the Me Too movement, a socio-political women's rights movement against sexual abuse and misconduct. While the trial occurred in 2022, years after the #MeToo went viral, the movement was mentioned multiple times throughout the trial as well as in relation to Heard as a public figure. Therefore, #MeToo remains an important component to consider and discuss in relation to the court case. The movement is based on the initiative of African American activist Tarana Burke who first used the phrase in 2006 on then popular social media platform Myspace. The activist's aim was to help victims of sexual abuse, especially children and women of color who are, according to current research, less likely to be taken seriously by the authorities, with the help, resources and support they need to heal from the traumatic events they have experienced (Burke). Nonetheless, the Me Too movement as we know it at the time of the writing of this paper has seen its rise to fame when, after hearing about the Harvey Weinstein allegations, American actress Alyssa Milano wrote a tweet encouraging women all around the world to use the hashtag #MeToo to talk about their own experiences with sexual abuse in an attempt to demonstrate the magnitude of the issue at hand. Milano will later on acknowledge the existence of a movement which uses the same phrase prior to her usage of the hashtag and share the link to Burke's work on her Twitter account (Milano, 2017).

It is based on this information that the aim of this paper, rather than evaluate the claims of both parties, was set to examine the cultural significance of this now infamous trial and determine whether its verdict had a significant impact on women's rights in the United States. Put differently, in this paper, I intend to investigate if the outcome of this trial can truly be said to have been a "setback" (Heard, 2022) for women as claimed by Heard and her attorneys.

## **2. Theoretical framework:**

To achieve the goals set for this paper, two theoretical perspectives (new historicism and gender studies) will be combined to create an alternative framework that would allow for this case study to explore feminist themes and concerns while putting the socio-cultural and historical context in which the events took place to the forefront.

The basis of feminist thought is that both sexes should be considered equal despite their biological differences. As such, the challenge becomes how to acknowledge and condemn certain differentiations, including discriminatory gender-based differences in treatment, without compromising said equality. This problematic and complex issue is what Martha Minow refers to as

the “dilemmas of difference” (Minow 1990, 19-48). The idea is that, sometimes, in order to resolve discriminatory situations, laws and programs may be implemented which, in an effort to help a minority acquire more equal opportunities, put other groups of people into a disadvantage thus creating new forms of inequality. This will be especially relevant to the representation of the ‘survivor’ and the ‘perpetrator’ within the Me Too movement as well as within this trial itself.

In a similar fashion, Mulvey’s male gaze will be used to discuss and address the portrayal and ridiculing of Heard throughout the trial. In her inaugural psychoanalytical and feminist film criticism text, the author discusses the gender implications of spectatorship in cinema as she claims that the spectator identifies with the masculine point of view, therefore making women on screen the object of the bearer of the look’s desires (Mast, Braudy & Marshall, 1999). She goes on to identify three ‘looks’ or, put differently, three ways in which images of women are associated with cinema. The first look is that which is produced by the camera and places women as exhibitionistic erotic objects put on display for the voyeuristic audience to derive pleasure from. The second look is that of the audience and consists of how the viewers are conditioned to watch the product. The third and last look revolves around the way that characters look at each other within the movies. For the purpose of this article, and as the latter discusses real life events which were live-broadcasted, only the first two looks will be discussed.

Additionally, in *The History of Sexuality Volume 1*, Foucault classifies types of power as either repressive or normalizing and argues that the latter is more insidious and subtle (Foucault, 1978, 5). He also discusses how normalizing forms of power mold behaviors and activities that people do into forms of discourses that are used to produce power (Foucault, 1978, 5). While, in this particular book, the French philosopher focuses on the idea that sexuality is a social and historical construct, his conceptualization of power as normalizing should be considered when discussing the way in which Heard’s team instrumentalized/weaponized #MeToo.

While Foucault’s *The History of Sexuality* is often associated with gender and feminist studies, the French philosopher’s take on power also extends and heavily inspires new historicist thought. In fact, while Foucault himself is not directly associated with the theory or considered as a new historicist, his take on power, knowledge and discourse plays a considerable role in the method’s analysis of texts and co-texts. In *Discipline and Punish*, Foucault explains how,

We should admit ... that power produces knowledge ...; that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations (Foucault, 1995, 27).

Through this quote, one could infer that the French scholar’s definition of power includes the traditional understanding of the word as “the power of vested authorities, the power of violence, or the power of tyranny from above,” but also that it includes “knowledge..., it is the explanation of how certain forms of knowledge come to exist– knowledge... not necessarily of something that is true” (Fry, 2009, 8:32-9:35). This Foucauldian notion implies that power circulates knowledge by means of discourse and is therefore inescapable, which is what makes its normalizing nature so powerful and dangerous.

Building on these ideas, in his works, Stephen Greenblatt<sup>2</sup> highlights the existence of these same power dynamics but regards them as being a form of either “containment” or “subversion”. Indeed, he argues that both elements are necessary for the existence of power to begin with. These terms, as explained by Montrose, are thus understood to refer to the “capacity of the dominant order to generate subversion as to use it to its own ends” (Montrose, 1996, 8). As such, new historicists acknowledge the automatic generating of subversion as a reaction to the dominant narrative pushed by the existing power structures as well as the containment of said subversion by said structures. Power then should

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<sup>2</sup> Stephen Greenblatt can be considered as the founder of new historicism as a theory since the term first appeared in his 1980 book entitled *Renaissance Self-fashioning: From More to Shakespeare*.

be understood as omnipresent, “not because it embraces everything, but because it comes from everywhere” (Greenblatt, 1980, 93).

The second new historicist idea that will be used in the analysis of the topic is the referential relation between a text and its co-text, or what Louis Montrose refers to as “the historicity of texts and the textuality of history” (Veeseer, 1989, 20). In his now famous chiasmic statement, which appears in Veeseer’s Collection of essays *The New Historicism*, Montrose points out the mutual relation between history and literature. From this method’s perspective, the traditional historicist conviction that discourse –or, in the case of this article, the trial– is shaped by its historical context is indeed factual and rightful. Nonetheless, for new historicists, this relationship is not unilateral and thus, history can be, and more often than not is, also influenced by the texts produced during that era. In that sense, not only is the Depp v. Heard trial influenced by the Me Too movement and the socio-cultural implications of the latter, American culture is, to some extent, also shaped by the trial.

Lastly, since new historicist criticism is based on the idea that a text, be it historical or literary, is deeply rooted in its context and it is therefore the product of “a negotiation between a creator or class of creators, equipped with a complex, communally shared repertoire of conventions, and the institutions and practices of society” (Veeseer, 1989, 12), subjectivity inevitably appears to be at the center of the discussion as both History and Literature are considered products of an individual’s work. For new historicists, human beings carry the weight of their culture, of their background and of their ideological beliefs on their shoulders which makes the traditional academic, and in a way Historicist quest for the complete objective analysis of an event or text idealistic and therefore unattainable. In Stephen Greenblatt’s famous book *Renaissance Self-fashioning: From More to Shakespeare*, he does not shy away from confronting this issue as he declares the following:

If cultural poetics is conscious of its status as interpretation, this consciousness must extend to an acceptance of the impossibility of fully reconstructing and reentering the culture of the sixteenth century, of leaving behind one’s own situation: it is everywhere evident in this book the questions I ask of my material and indeed the very nature of this material are shaped by the questions I ask myself (Greenblatt, 1980, 5).

Indeed, one’s choice of topic, the perspective taken in the study of an issue as well as the interpretation of the latter often speak of the person behind the quill. This statement not only emphasizes the subjective nature of new historicist criticism based on an author’s baggage and the biases they carry but it also acknowledges the subjectivity that accompanies the critics and scholars throughout their study of both history and literature alike. The importance given to subjectivity as a concept will be especially relevant to keep in mind throughout this analysis as the events discussed occurred behind closed doors and, therefore, the claims made by both parties are subject to debate.

Combining elements taken from both theories allows the analysis to focus on feminist themes and key concerns such as sex, gender, equality, discrimination, difference, choice and representation on and off screen with intra as well as extra-diegetic elements introduced as co-texts. In that sense, the event analyzed, i.e., the trial, can be considered as the text while the co-texts which will be juxtaposed to it are all the socio-cultural elements which affected the film industry and the American society including the Me Too movement.

### **3. *Depp v. Heard: Between Serious Allegations and Memes***

As previously mentioned, a huge component in this trial’s relevance to the American culture is not only the two parties’ notoriety but also how it was treated like live entertainment. Indeed, Depp v. Heard was livestreamed on various platforms and therefore reached over 3.5 million people at a time (Zaveruha, 2022). Due to the platforms on which it was broadcasted, namely Twitch, YouTube, Twitter along with the traditional media such as television and the radio, this “show” was not only relevant to American culture but also American and global popular culture.

As such, as the trial was naturally integrated into internet culture, its meaning, implications as well as the cultural discussion surrounding it shifted from being about a civil dispute over alleged defamatory statements to memes mainly targeting Heard such as her mention of her dog stepping on a bee (see Figure 1), alleged defecation on Depp’s bed or supposed fabrication of bruises.

**Figure 1: Bee Meme**



Source: Imgflip [@Just\_a\_bored\_student], 2022

As the case progressed and more evidence was being admitted as well as testimonies being given, more and more content was being created on the internet specifically targeting and deconstructing Heard’s narrative, appearance, and body language (see Figure 2). Thus, for a few weeks, not only were Heard’s outfits, hair and makeup analyzed by the public court of opinion, her own testimonies were being recreated on social media websites such as TikTok in an attempt to point out the inconsistencies in the actress’ recollection of Depp’s alleged abuse. In fact, so many recreational videos were being made on TikTok on one of the actress’ testimonies that YouTube compilations were made based on a 10 second long audio clip (TIKTOK VIBE KIT, 2022).

**Figure 2: Amber Heard “acting face” meme posted on Reddit’s r/memes thread (74k upvotes)**



Source: Reddit [@ConanCimmerian], 2022

While memes may seem to be of no particular importance when discussing alleged physical and mental violence, the thousands of memes made, reposted, and used throughout and after the trial prove that this case did have a significant cultural impact as it suggests the participation and involvement of the public in the containment and subversion of Heard’s narrative. As for its judicial impact however, as mentioned in the introduction, despite its lengthy description of abusive behavior, this case is not a criminal case but a civil dispute and, as such, the trial is unlikely to be used as reference for future cases of domestic, sexual, or verbal abuse which all fall under the classification of criminal offenses; it

may however be cited in future defamation cases involving two individuals with a significant following.

Nonetheless, regardless of whose side one is on, what this high profile trial really puts into perspective is how looks interact with the popular culture's reception of one's claims. Most importantly, it made many reevaluate the previously accepted #BelieveAllWomen and opened the conversation to whether men should also be accepted as survivors within the #MeToo context, which was previously heavily women dominated. On the one hand, women have been silenced for decades in all fields and what #MeToo pointed out through the likes of the Weinstein case is that this appeared to have been exceptionally true within the entertainment industry. It is therefore not surprising that, when credible, highly regarded actresses such as Alissa Milano, Angelina Jolie or even Amber Heard herself at the time decided to shed light on their own experiences with sexual, physical, domestic and psychological violence, the world's first instinct was to #BelieveAllWomen. On the other hand, Depp's defamation case and the backlash experienced by Heard shows that in 2022, the trend has died down leaving people more skeptical of abuse narratives which do not provide undeniable evidence. Indeed, he-said-she-said types of narratives were no longer accepted as inherently brave and true and became rather criticized by the court of public opinion by 2022 which may explain why the way that one portrays themselves became vital to earning the audience's support during this case.

This assumption is confirmed by the fact that while Heard's speech at the 2020 Women's March in LA in which she describes being made to feel like, "a discreetly silenced second class citizen" (Heard 2020) went over positively with her audience, her testimonies and appearance did not satisfy the audience's look amidst the 2022 trial. As a matter of fact Heard, as an actress, was mainly recognized for her advantageous physique, face and as put by Mulvey, "to-be-looked-at-ness" (Mast, Braudy & Marshall, 1999). When stripped away from the skintight suit and heavy makeup, she seems to no longer satisfy the looks' desires and, therefore, anything that she says becomes subject to skepticism rather than accepted as truth by virtue of one's perception of her as trustworthy and attractive. Heard's transition from the femme fatale onscreen to the conservatively, court appropriately dressed woman therefore seems to have made her look disingenuous and constructed to her audience as a consequence of the vast contrast between the two.

On the other hand, as pointed out by media attorney Mitra Ahouraian, "...this as distinct from a lot of the #MeToo situations that we've seen... This is two people who were in a toxic relationship that were awful to one another, and a jury decided that one of them was manipulating the situation" (Ahouraian as cited in Bekiempis, 2022). Nevertheless, if one puts aside the issue of whose side is guilty, another interesting question that was brought forward by this trial was: can #MeToo retain its credibility post-trial despite the issues the latter brought to the surface? One of the main problematic aspects of the hashtag #MeToo is how it focused its representation on white cis female actresses therefore reinforcing existing gendered stereotypes of what the 'perfect' victim ought to look like. As a result of said stereotypes, the hashtag excluded many categories of people such as men, people of color and queer individuals from the conversation on sexual abuse as their voices were completely put aside by mainstream media's portrayal of the movement. These gendered stereotypes, which tend to place women as the vulnerable victims and men as the villainous perpetrators, are especially difficult to break in an industry where public image is the key to success, and which champions the unbeatable, hegemonically manly hero image as the apogee of manhood. Consequently, while, at first, Heard fit what was expected of a survivor to look like –an image which slowly shattered throughout the trial–, Depp by virtue of his gender, social and financial status did not. Instead, it is as a result of the trial that his manly, reckless, mysterious and strong pirate-like image, one that was propelled by his role as Jack Sparrow on screen, was slowly replaced by that of the calm, fragile and broken man behind the scenes which restored his reputation within the industry<sup>3</sup>. In that sense, as a result of the public perception and response to this trial, Depp became the embodiment of the idea that, not only should all men not be

<sup>3</sup> It should be noted that Depp lost multiple contracts as a result of the allegations including his role as Grindelwald in the sequel to Harry Potter spin-off *Fantastic Beasts and Where to Find Them* as well as a cameo as Jack Sparrow in a sixth installment of iconic *Pirates of the Caribbean* franchise.

presumed to be the perpetrators by default, they could also potentially fall victim to the weaponization of #MeToo and use of #BelieveAllWomen as a shield for women's own wrongdoings.

#### 4. Conclusion

With all these elements in mind, the one question that remains unanswered is whether this trial's results were truly a setback for women. In a sense, with the shattering of the legitimacy of the #BelieveAllWomen as a result of the public opinion's lack of trust in Heard's testimonies, women will indeed be affected by said verdict as there will always be a mainstream documented precedent of a woman having allegedly lied under oath to accuse an, according to the public's opinion, innocent man of committing various acts of violence against her. Nevertheless, one could consider this verdict as more of a setback for Heard herself than for the Me Too movement or the women's rights movement more generally speaking. As mentioned above, this trial greatly aided in highlighting some of the problematic aspects of #MeToo such as its exclusionary portrayal of abuse survivors as well as its tendency to jump to conclusions. As Feminism was built on the idea of the equality of sexes, the support given to Depp as a man and survivor in his own right should be considered as a step forward for the movement rather than a step backwards.

Furthermore, it is evident that the Depp v. Heard case had a significant cultural impact on America as made evident by the sheer number of people who streamed and tuned in every week to watch it unfold. Its virality on the internet as well as the numerous memes made about and around it attests to the fact that it has indeed seeped into the American popular culture. Nevertheless, as it is unlikely to be referred back to in court, its impact on the American culture and judicial system on a larger scale may be very limited. As such, it can be said that the Depp v. Heard trial had more of an impact on popular culture than it had on American culture in a more general sense. Moreover, it should be noted that this trial shed light on many issues pertaining to the Me Too movement and how, in an effort to bring some women's voices to the forefront, it buried many others' voices in the process. Consequently, I believe that, rather than being a step back for women as claimed by Heard and her team, the verdict is a step forward for the involvement of other groups of people in the Me Too movement and for the breaking of gender-based stereotypes on who gets to speak about their experiences based on gender and appearances. After all, should a movement originally designed to give a platform for survivors of abuse to speak about their experiences and find psychological and judicial support not be inclusive of all survivors regardless of age, race, gender, social status, and other external factors?

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