OA 639

A. Alex Jones - $965MM verdict
1. Is this overinflated?

We told you the Texas number, nearly $50 million, was going to get reduced on appeal, and that's because only $4.1 million of that was in compensatory damages. The other $45+ million was in punitives and Texas has a tight cap on those.

But these are ALL compensatory – NO punitives have been awarded yet (AND the case has a cause of action that enables evasion of the cap, that's the CUTPA claim Morgan Stringer told us about).
-compensatory damages
-broken down by plaintiff
https://www.nytimes.com/2022/10/12/us/politics/alex-jones-damages.html

So, for example, the jury awarded Robbie Parker – probably the most attacked parent - $120 million
Defamation/slander damages, past and future: $60 million
Emotional distress damages, past and future: $60 million

They awarded William Sherlach $36 million. He's the husband of Mary Sherlach, the Sandy Hook school psychologist, who was killed in the hallway shortly after the gunman entered the school. Sherlach said he received notes and emails from conspiracy theorists, including a printed note on his car windshield, saying Robbie Parker was an actor.

Defamation/slander damages, past and future: $9 million
Emotional distress damages, past and future: $27 million

Go through all the plaintiffs, add them all up, you get $965 million. That's almost certainly more than Alex Jones/InfoWars/whatever are worth. So I know people are pessimists, but you shouldn't be here.

2. Appeals?

Appeals do not automatically stay the effect of a judgment
Two options: post a bond or don't post a bond
-if you don't post a bond (10%?), *the judgment runs during the appeal*

I don't think Alex Jones can come up with $100 million in cash. So it's going to run, and we'll talk about how it interfaces with the Bankruptcy. But I want to be clear, Alex Jones is NOT not going to get the damages reduced on appeal; that's what a trier of fact is for and you'll have to prove abuse of discretion and there isn't that here. It's a big number because he did an unprecedentedly big terrible thing for a long time.

Why so much more in compensables here? I think because Norm Pattis is such a complete idiot. For as bad as Reynal McMullet Andino was, he didn't try to make Alex Jones-level arguments to the jury. Norm IS an InfoWars guy, and he spent the entire trial bullying the victims, making constant objections (even when some of them were sustained). If the jury hates your lawyer, they're going to hate you, too.

3. Bankruptcy ties up everything?

-NO. Alex Jones isn't a party to the bankruptcy. You can attach his bank accounts and assets RIGHT NOW. There are limits (e.g, you can't take social security) but there aren't easy ways to evade this. The bank will help you monitor funds IN or OUT.

-Alex Jones *could* declare personal bankruptcy, but, as some of our listeners can attest, that's not a huge benefit and it tanks your credit score and would be a victory in and of itself.

-for the stuff in bankruptcy, the plaintiffs now become the largest secured creditor. Get Morgan on for FSS/IW bankruptcy update but the court has purged Alex Jones's efforts to have his cronies run the bankruptcy

-the plaintiffs' lawyers have already filed fraudulent transfer actions and they're incentivized to track this down.

------ bigger picture -------

Free speech: this is <u>under</u> the *NY Times v. Sullivan* rule and some of the families would have been limited purpose public figures had liability been an issue. So use this against your Uncle Frank. If he talks about it, stress that Clarence Thomas and Donald Trump want to make it easier to sue the press

4. Section 230 and 5. Onion Supreme Court Brief – Parody – will discuss

A. Beer & Hot Sauce Law

https://www.youtube.com/watch?v=j3nRLC6PlP4&ab_channel=gripjohnny

California Unfair Trade Practices Act

The UCL. California Business & Professions Code, sections 17200, et seq. (the "UCL") prohibits unfair competition and provides, in pertinent part, that "unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising."

Supersedes an earlier False Advertising Law, but it's the same thing.

- Conceptually: I fill water from a hose, and I sell it as "Glacier Springs Water, fresh from the Alaskan glacier springs

- So consider

Peacock v. Pabst
https://scholar.google.com/scholar_case?case=12551582289915473665

1. Olympia Beer

-terrible cheap American lager from Olympia, Washington
-In 1990, you used to be able to buy it for $4/case
-slogan was "It's the Water!", which we would shorten to "It's Water!"

-Lots of people used to love it in the way people from my hometown of Baltimore love National Bohemian, even though it's barely distinguishable from any other terrible cheap American lager.

But they have a story. It begins in 1896 with Leopold Schmidt, a German immigrant who built a four-story wooden brewhouse in Olympia, Washington and began cranking out beer. It went okay for 20 years, when Washington enacted state-level prohibition. Once prohibition was ended in 1934, they went right back to selling Olympia Beer.

Olympia was brewed at the Tumwater facility in Washington, and was brewed with water obtained from artesian wells. Here, I'll let Wikipedia take over: "The company's promotions made much of the use of artesian water in the brewing process. One later advertising campaign, rather than explaining what artesian water was, claimed the water was controlled by a mythical population of "artesians."

As befitting a beer that went national in the 1970s – about the same time as Coors, by the way – Olympia was most closely connected with motorcyclist Evel Knievel, who wore Olympia patches on his jacket and flew an Olympia Beer parachute.

You know what happens next. Olympia goes national right around the time people start to realize that beer doesn't have to taste like cold urine. In 1983, they were sold to the G. Heileman Brewing Company, which made Old Style Beer (very similar to Olympia); that's the cheap stuff you see Jimmy McGill drinking whenever he goes back to Chicago in Breaking Bad. Fun fact: G. Heileman also made LaCroix water.

Heileman was bought by Stroh's in 1996; and then most of Stroh's was bought by Pabst in 1999, which makes Pabst Blue Ribbon, which is very similar to Olympia and Old Style.
In the early 2000s, for reasons that are too complicated to get into here, Pabst contracted with Miller Brewing Company, which became SABMiller, then MillerCoors, and is now MolsonCoors and makes basically every cheap beer there is because antitrust is dead.

So during that run where all these regional breweries realized "hey, we're all using basically the same process and the same ingredients, let's have MillerCoors brew our beer for us," they sold off their physical breweries. The Olympia brewery was sold to… Miller, which used it for a short while before shutting it down in 2003. The machinery was sold off to an ethanol plant. Nobody uses the artisanal wells for anything any more, as far as I can tell.

Olympia is brewed god-knows-where in giant industrial vats with PBR and Hamm's and Old Style and all the other crap bottom-tier brands MolsonCoors produces. And that that takes us to our first lawsuit.

So we have Olympia beer that's no longer made anywhere near Olympia. And… let's quote from the Court: "Defendant's labeling at the top of the Olympia Beer can displays the phrase "The Original Olympia Beer." (*Id.* at 4-5.) Beneath this text is an image depicting waterfalls similar to those at the site of the original brewery in Washington. (*Id.* at 5.) At the bottom of the can is the slogan "It's the Water." (*Id.* at 4-5.) Taken together, Plaintiff alleges he was deceived by the labeling on the can that Olympia Beer is brewed with water from the Olympia area of Washington. (ECF No. 30 at 8.)

Olympia Beer label from 1914

Court: "California courts ... have recognized that whether a business practice is deceptive will usually be a question of fact not appropriate for decision on demurrer." *Id.* at 938. Because this determination requires consideration and weighing of evidence, courts rarely grant a motion to dismiss under the reasonable consumer test.

B. The Onion Amicus

-fascistic assault on *NYT v. Sullivan*
-section 230 case pending before SCOTUS

1. Novak v. City of Parma

https://www.scotusblog.com/case-files/cases/novak-v-city-of-parma-ohio/

6th Cir opinion below:
COMPLETELY BONKERS by Amul Thapar, who was a serious short-lister for the Supreme Court
https://casetext.com/case/novak-v-city-of-parma-4

100% classic free speech
Anthony Novak of Parma, Ohio, created a parody page to mock the local police department.
[quoting from Onion amuics brief]
Novak's spoof Facebook posts advertised that the Parma Police Department was hosting a "pedophile reform event" in which successful participants could be removed from the sex offender registry and become honorary members of the department after completing puzzles and quizzes; that the department had discovered an experimental technique for abortions and would be providing them to teens for free in a police van; that the department was soliciting job applicants but that minorities were "strongly encourag[ed]" not to apply; and that the department was banning city residents from feeding homeless people in "an attempt to have the homeless population eventually leave our City due to starvation."

That's not bad, but I think this is the funniest bit, and now I'm quoting from the 6th Circuit:
Once the Department heard about the page, it sprang into action. First, officers verified that the official page hadn't been hacked. Then, they posted a notice on the Department's actual page, confirming that it was the official account and warning that the fake page was "being investigated." R. 123-9, Pg. ID 24596. **Novak then copied that notice onto his knockoff page.**

That's some funny shit right there.

The Police Department announced on TV that they were investigating the page, so Novak took it down. It was up less than 12 hours, and resulted in 12 calls to the police's non-emergency phone line asking if ti was real.

But, possibly because ACAB, the Parma police department went after Novak, charging him with violating Ohio Rev. Code § 2909.04(B), which makes it illegal to knowingly use a computer to disrupt or impair police functions. Officers arrested Novak, searched his apartment, and seized his phone and laptop. He spent four days in jail before he made bond. Then prosecutors presented the case to a grand jury, which indicted him for disrupting police functions. HE WENT TO TRIAL, and was of course acquitted.
So the law is CRYSTAL clear that protected constitutional rights cannot be the basis for probable cause

So Novak sued the Parma police department and the officers under section 1983. And this should be a slam-dunk except that the 6th circuit invented a bizarre set of reasons to shield the officers from liability because nonsense.

Some of that nonsense was criticizing Novak for not having explicit disclaimers on the Facebook page and deleting comments saying "this is fake"

-cert petition
https://www.supremecourt.gov/DocketPDF/22/22-293/238740/20220926094542129_Petition%20for%20Writ%20of%20Certiorari%20Novak%20v.%20Parma.pdf

1. Whether an officer is entitled to qualified immunity for arresting an individual based solely on speech parodying the government, so long as no case has previously held the particular speech is protected.

2. Whether the Court should reconsider the doctrine of qualified immunity.

Into this wades the Onion
https://www.supremecourt.gov/DocketPDF/22/22-293/242292/20221003125252896_35295545_1-22.10.03%20-%20Novak-Parma%20-%20Onion%20Amicus%20Brief.pdf

YOU SHOULD READ THIS – it's not just great because the Onion is funny.

INTEREST OF THE AMICUS CURIAE

The Onion is the world's leading news publication, offering highly acclaimed, universally revered coverage of breaking national, international, and local news events. Rising from its humble beginnings as a print newspaper in 1756, The Onion now enjoys a daily readership of 4.3 trillion and has grown into the single most powerful and influential organization in human history. In addition to maintaining a towering standard of excellence to which the rest of the industry aspires, The Onion supports more than 350,000 full- and parttime journalism jobs in its numerous news bureaus and manual labor camps stationed around the world, and members of its editorial board have served with distinction in an advisory capacity for such nations as China, Syria, Somalia, and the former Soviet Union. On top of its journalistic pursuits, The Onion also owns and operates the majority of the world's transoceanic shipping lanes, stands on the nation's leading edge on matters of deforestation and strip mining, and proudly conducts tests on millions of animals daily. The Onion's keen, fact-driven reportage has been cited favorably by one or more local courts, as well as Iran and the Chinese state-run media. Along the way, The Onion's journalists have garnered a sterling reputation for accurately forecasting future events. One such coup was The Onion's scoop revealing that a former president kept nuclear secrets strewn around his beach home's basement three years before it even happened.2 The Onion files this brief to protect its continued ability to create fiction that may ultimately merge into reality. As the globe's premier parodists, The Onion's writers also have a self-serving interest in preventing political authorities from imprisoning humorists. This brief is submitted in the interest of at least mitigating their future punishment.

Third, the Sixth Circuit's ruling imperils an ancient form of discourse. The court's decision suggests that parodists are in the clear only if they pop the balloon in advance by warning their audience that their parody is not true. But some forms of comedy don't work unless the comedian is able to tell the joke with a straight face. Parody is the quintessential example. Parodists intentionally inhabit the rhetorical form of their target in order to exaggerate or implode it—and by doing so demonstrate the target's illogic or absurdity. Put simply, for parody to work, it has to plausibly mimic the original. The Sixth Circuit's decision in this case would condition the First Amendment's protection for parody upon a requirement that parodists explicitly say, up-front, that their work is nothing more than an elaborate fiction.

Tu stultus es. You are dumb. These three Latin words have been The Onion's motto and guiding light since it was founded in 1988 as America's Finest News Source, leading its writers toward the paper's singular purpose of pointing out that its readers are deeply gullible people. The Onion's motto is central to this brief for two important reasons. First, it's Latin. And The Onion knows that the federal judiciary is staffed entirely by total Latin dorks: They quote Catullus in the original Latin in chambers. They sweetly whisper "stare decisis" into their spouses' ears. They mutter "cui bono" under their breath while picking up after their neighbors' The Onion cannot stand idly by in the face of a ruling that threatens to disembowel a form of rhetoric that has existed for millennia, that is particularly potent in the realm of political debate, and that, purely incidentally, forms the basis of The Onion's writers' paychecks.

The second reason—perhaps mildly more important—is that the phrase "you are dumb" captures the very heart of parody: tricking readers into believing that they're seeing a serious rendering of some specific form—a pop song lyric, a newspaper article, a police beat—and then allowing them to laugh at their own gullibility when they realize that they've fallen victim to one of the oldest tricks in the history of rhetoric. See San Francisco Bay Guardian, Inc. v. Super. Ct., 21 Cal. Rptr. 2d 464, 466 (Ct. App. 1993) ("[T]he very nature of parody . . . is to catch the reader off guard at first glance, after which the 'victim' recognizes that the joke is on him to the extent that it caught him unaware.").

WHAT IF YOU'RE MISTAKEN?

Parodists can take apart an authoritarian's cult of personality, point out the rhetorical tricks that politicians use to mislead their constituents, and even undercut a government institution's real-world attempts at propaganda. Farah, 736 F.3d at 536 (noting that the point of parody is to "censure the vices, follies, abuses, or shortcomings of an individual or society") (cleaned up). Time and again, that's what has occurred with The Onion's news stories. In 2012, for example, The Onion proclaimed that Kim Jong-un was the sexiest man alive.7 China's state-run news agency republished The Onion's story as true alongside a slideshow of the dictator himself in all his glory.8 The Fars Iranian News Agency uncritically picked up and ran with The Onion's headline "Gallup Poll: Rural Whites Prefer Ahmadinejad To Obama."9 Domestically, the number of elected leaders who are still incapable of parsing The Onion's coverage as satire is daunting, but one particular example stands out: Republican Congressman John Fleming, who believed that he needed to warn his constituents of a dangerous escalation of the pro-choice movement after reading The Onion's headline "Planned Parenthood Opens $8 Billion Abortionplex."10 The point of all this is not that it is funny when deluded figures of authority mistake satire for the actual news—even though that can be extremely funny. Rather, it's that the parody allows these figures to puncture their own sense of self-importance by falling for what any reasonable person would recognize as an absurd escalation of their own views. In the political context, the effect can be particularly pronounced. See Hustler Mag., Inc. v. Falwell, 485 U.S. 46, 53–55 (1988); see also Falwell v. Flynt, 805 F.2d 484, 487 (4th Cir. 1986) (Wilkinson, J., dissenting from denial of rehearing) ("Nothing is more thoroughly democratic than to have the high-and-mighty lampooned and spoofed.").

III. A Reasonable Reader Does Not Need A Disclaimer To Know That Parody Is Parody. At bottom, parody functions by catering to a reasonable reader—one who can tell (even after being tricked at first) that the parody is not real. If most readers of parody didn't live up to this robust standard, then there would be nothing funny about the Chinese government believing that a pudgy dictator like Kim Jong-un was the sexiest man on Earth. Everyone would just agree that it was perfectly reasonable for them to be taken in by the headline.

And the "reasonable reader" is " 'no dullard. He or she does not represent the lowest common denominator, but reasonable intelligence and learning. He or she can tell the difference between satire and sincerity.' " New Times, Inc. v. Isaacks, 146 S.W.3d 144, 157 (Tex. 2004) (quoting Patrick v. Sup. Ct., 27 Cal. Rptr. 2d 883, 887 (Ct. App. 1994)). "Nor is the reasonable person some totally humorless drudge who cannot perceive the presence of subtle invective." Patrick, 27 Cal. Rptr. 2d at 887. Instead, the reasonable reader's perspective "is more informed by an assessment of her well-considered view than by her immediate yet transitory reaction," particularly "in light of the special characteristics of satire," which leverage that transitory reaction for rhetorical effect. Farah, 736 F.3d at 536.

CONCLUSION

This is the fifteenth page of a convoluted legal filing intended to deconstruct the societal implications of parody, so the reader's attention is almost certainly wandering. That's understandable. So here is a paragraph of gripping legal analysis to ensure that every jurist who reads this brief is appropriately impressed by the logic of its argument and the lucidity of its prose: Bona vacantia. De bonis asportatis. Writ of certiorari. De minimis. Jus accrescendi. Forum non conveniens. Corpus juris. Ad hominem tu quoque. Post hoc ergo propter hoc. Quod est demonstrandum. Actus reus. Scandalum magnatum. Pactum reservati dominii. See what happened? This brief itself went from a discussion of parody's function—and the quite serious historical and legal arguments in favor of strong protections for parodic speech—to a curveball mocking the way legalese can be both impenetrably boring and belie the hollowness of a legal position. That's the setup and punchline idea again. It would not have worked quite as well if this brief had said the following: "Hello there, reader, we are about to write an amicus brief about the value of parody. Buckle up, because we're going to be doing some fairly outré things, including commenting on this text's form itself!" Taking the latter route would have spoiled the joke and come off as more than a bit stodgy.

More importantly, it would have disarmed the power that comes with a form devouring itself. For millennia, this has been the rhythm of parody: The author convinces the readers that they're reading the real thing, then pulls the rug out from under them with the joke. The heart of this form lies in that give and take between the serious setup and the ridiculous punchline. As Mark Twain put it, "The humorous story is told gravely; the teller does his best to conceal the fact that he even dimly suspects that there is anything funny about it."12 Not only is the Sixth Circuit on the wrong side of Twain, but grafting onto the reasonable-reader test a requirement that parodists explicitly disclaim their own pretense to reality is a disservice to the American public. It assumes that ordinary readers are less sophisticated and more humorless than they actually are. And the stakes here are significant, involving no less than one of many more or less equally important components of social and political discourse. "[R]hetorical hyperbole . . . has traditionally added much to the discourse of our Nation." Milkovich, 497 U.S. at 20 (cleaned up). Although "parody is often offensive, it is nevertheless deserving of substantial freedom—both as entertainment and as a form of social and literary criticism." L.L. Bean, Inc. v. Drake Publishers, Inc., 811 F.2d 26, 33 (1st Cir. 1987) (cleaned up).

The Onion intends to continue its socially valuable role bringing the disinfectant of sunlight into the halls of power. See Buckley v. Valeo, 424 U.S. 1, 67 (1976) (quoting Louis D. Brandeis, Other People's Money and How the Bankers Use It 62 (National Home Library Foundation ed. 1933)). And it would vastly prefer that sunlight not to be measured out to its writers in 15- minute increments in an exercise yard.