No. 126024

In the
Supreme Court of Illinois

PAUL J. CIOLINO,

Plaintiff-Appellee,

v.

TERRY A. EKL,

Defendant-Appellant,

ALSTORY SIMON, JAMES DeLORTO, JAMES G. SOTOS, MARTIN PREIB, WILLIAM B. CRAWFORD, ANITA ALVAREZ, ANDREW M. HALE and WHOLE TRUTH FILMS, LLC,

Defendants.

Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-0181.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division No. 18 L 000044.
The Honorable **Christopher E. Lawler**, Judge Presiding.

BRIEF OF APPELLANT TERRY A. EKL

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NATURE OF THE CASE

The plaintiff, Paul J. Ciolino ("Ciolino"), filed suit against a number of defendants for defamation, false light invasion of privacy, intentional infliction of emotional distress ("IIED"), and civil conspiracy in connection with statements that were published in a documentary film, a press conference, a book and a blog. Ciolino's claims against this defendant, Terry A. Ekl ("Ekl"), relate to three statements that Ekl made in the documentary film. The trial court dismissed all claims against all defendants as being barred by the statute of limitations. The Appellate Court reversed the dismissal orders entered relative to Ekl and a number of his co-defendants.

ISSUES PRESENTED FOR REVIEW

1. Whether the Appellate Court erred in applying the discovery rule to defamation and false-light claims where the publication that contained the allegedly-defamatory publication—a documentary film that premiered over one year before Ciolino filed suit—was open to the public and was neither concealed nor inherently undiscoverable or unknowable.

2. Whether the statements attributed to Ekl are not actionable under Illinois law and, as such, the trial court's order dismissing Ciolino's claims against Ekl should be affirmed based on Ekl's legal defenses to Ciolino's defamation and false-light claims.

JURISDICTION

This Court has jurisdiction over this appeal pursuant to Supreme Court Rules 301 and 315. On January 22, 2019, the trial court entered an order dismissing all of Ciolino's claims, including his claim against Ekl. Ciolino filed a Notice of Appeal on January 24, 2019. The Illinois Appellate Court, First Judicial District, First Division, issued its original opinion on January 13, 2020. The Appellate Court reversed the trial court's dismissal order as to all defendants except one, Anita Alvarez. Ciolino and Defendants Andrew Hale and Whole Truth Films filed petitions for rehearing. The Appellate Court denied all petitions for rehearing as moot on March 9, 2020, and issued a new opinion on March 16, 2020. On May 26, 2020, Ekl filed a timely petition for leave to appeal within 70 days of the Appellate Court's March 16, 2020, opinion and judgment, in accord with the March 24, 2020, order entered in *In re: Illinois Courts Response to COVID-19 Emergency, M.R. 30370*. On September 30, 2020, this Court granted Ekl's petition.

STATUTES INVOLVED

735 ILCS 5/13-201 provides:

> Defamation--Privacy. Actions for slander, libel or for publication of matter violating the right of privacy, shall be commenced within one year next after the cause of action accrued.

740 ILCS 165/1 provides, in pertinent part:

> No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one

> edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture.

STATEMENT OF FACTS

The Underlying Factual Background

This case stems from the 1982 murder of Jerry Hilliard and Marilyn Green in Chicago. (R. C32; A.21.) Anthony Porter was convicted of the murders based on eyewitness testimony and was ultimately sentenced to death. (R. C32; A.21.) Based on the actions of Professor David Protess ("Protess") of Northwestern University's Medill School of Journalism, a team of Protess's journalism students, and Plaintiff Ciolino, a licensed private investigator, Porter was eventually released and another man, Alstory Simon ("Simon"), was convicted of the murders. (R. C31; A.20.)

After Simon filed an unsuccessful *pro se* petition for post-conviction relief, he hired attorneys Ekl and James Sotos ("Sotos") to assist in his post-conviction efforts. (R. C40, C933-C47, C949-C954; A.29.) Ekl and Sotos filed a successive post-conviction petition asserting Simon's actual innocence on the basis that the two witnesses who had implicated Simon for the murders, Simon's ex-wife and her nephew, had recanted their statements, explaining that their false statements were a product of promises made to them by Protess. (R. C1191-C1192, C1198-C1199.) Ekl and Sotos's post-conviction petition was unsuccessful, (R. C40, C1181-C1215; A.29), but the Cook County State's Attorney's Office conducted a lengthy

investigation into the circumstances surrounding the conviction and ultimately moved to abandon all charges against Simon. (R. C829.) The circuit court granted the motion, vacated all charges against Simon and released him from custody in 2014. (R. C829.)

Simon's Federal Civil Rights Lawsuit

In 2015, Simon filed a lawsuit for malicious prosecution against Protess, Ciolino and others in the United States District Court for the Northern District of Illinois. (R. C24; A.11.) On April 27, 2016, Ciolino filed a counterclaim against Simon and a third-party complaint against all defendants in the instant action, including Ekl. (R. C58-C60; A.47-A.49.) Ciolino's subsequently-amended complaint asserted claims for defamation, false light, civil conspiracy and intentional infliction of emotional distress. (R. C58-C60; A.47-A.49.) On January 3, 2017, the district court dismissed Ciolino's complaint for lack of subject matter jurisdiction. (R. C25; A.14.)

Ciolino's State Court Lawsuit

On January 2, 2018, Ciolino re-filed his complaint in the Circuit Court of Cook County, Illinois. (R. C22-C72; A.11-A.61.) Ciolino's claims against Ekl stem from three allegedly "false and defamatory" statements that Ciolino alleged Ekl made in the documentary film, *A Murder in the Park*. According to Ciolino, Ekl said the following in the documentary:

- "*They stay on people* to try to finally get something out of them that fits their theory of who they think did the case." (R. C54; A.43.) (Emphasis in original.)

- "So that seems to me to be part of their M.O. They'd go to impoverished people who don't have a lot of money, make them promises and basically get them to recant." (R. C54; A.43.)

- "Ciolino got the confession and then handed him over to his office mate and his own personal attorney to represent him and tell him that he had to plead guilty." (R. C57; A.46.)

Count I of Ciolino's complaint was directed all defendants with the exception of Martin Prieb and asserted defamation claims based on thirty statements, including the aforementioned statements attributed to Ekl, made in the documentary. (R. C53-C60; A.42-49.) Count IV was directed at all defendants and asserted claims for false light invasion of privacy based on the allegedly defamatory statements identified in Counts I, II and III, including the three statements attributed to Ekl in Count I. (R. C66-C67; A.55-56.) Count V was also directed at all defendants and asserted a claim for intentional infliction of emotional distress, incorporating all prior and subsequent allegations of the complaint therein. (R. C67; A.56.) Count VI was directed at all defendants, as well, and asserted a claim for civil conspiracy, again incorporating all allegations of the complaint therein. (R. C70-71; A.59-60.)

The Motions to Dismiss and Dismissal Order

On July 30, 2018, Ekl filed a motion to dismiss Ciolino's claims pursuant to 735 ILCS 5/2-619.1. (R. C708-C846.) In addition to other arguments, Ekl asserted that Ciolino's claims were time-barred as Ciolino failed to file suit in federal court prior to the expiration of the one-year statute of limitations. (R. C712-C714.) All co-

defendants also moved to dismiss asserting, *inter alia*, the statute of limitations as an absolute bar to Ciolino's claims. (R. C316-C320 (Alvarez); R. C533-C702 (Crawford); R. C847-C1024 (Sotos); R. C1025 (Hale and Whole Truth); R. C1667-C1710 (Prieb); R. C1721 (Simon); R. C1726 (Delorto).)

Ekl and Christopher Rech ("Rech"), a member of Whole Truth Films, attested to the following in unrebutted affidavits submitted in connection with motions to dismiss:

Rech attested to the fact that Whole Truth Films created the documentary film in 2014. (R. C1056.) The documentary premiered on November 17, 2014, at DOC NYC. (R. C1056.) DOC NYC is America's largest film festival. (R. C1056.) Before the premiere, the documentary was advertised and mentioned in several different media outlets, including the Chicago Sun-Times, the Chicago Tribune, Fox News, and the Jacksonville Journal-Courier (Illinois). (R. C1056-C1058.) Rech's affidavit attached copies of the articles, all of which are dated on or before November 2, 2014. (R. C1056-C1058, C1060-C1070.) Also before the premiere, the documentary was advertised on Twitter and via other media outlets such as IndieWIRE, Variety, and the Villager. (R. C1058.) After the premiere, multiple media outlets, including the Chicago Sun-Times and VOX, reported on the documentary. (R. C1058.) The documentary subsequently played to sold-out audiences at the Cleveland International Film Festival from March 24-26, 2015. (R. C1058.) Per Rech, the documentary was not hidden; rather, it was actively advertised so people would go see it. (R. C1059.)

Ekl attested to the fact that he personally attended the premiere of the documentary in November 2014 at the 2014 DOC NYC film festival in New York, New York. (R. C842.) The showing was open to the public. (R. C842.)

Ciolino attached his own affidavit to his response in opposition to the multiple motions to dismiss. (R. C1973-C2067, C2121-C2123.) Therein, Ciolino stated that he was not aware of the existence of the documentary as it was being shown in New York in 2014 or of any of the articles or other media promoting the documentary at the time. (R. C2122.) He was also unaware that the documentary was shown in Cleveland in March 2015. (R. C2123.) Per Ciolino, he did not learn of the documentary's existence until after it was shown at the Gene Siskel Film Center in Chicago in or around July 2015. (R. C2122-23.)

On January 22, 2019, the circuit court ruled that Ciolino's claims against Ekl and the other defendants arising from the documentary were time-barred, as the documentary premiered over a year before Ciolino filed suit. (R.C2209-18). The trial court did not address the defendants' various arguments that Ciolino's claims were not actionable as a matter of law.

The Appellate Court Decision

On March 16, 2020, the Appellate Court affirmed in part, reversed in part, and remanded to the circuit court for further proceedings. ¶¶ 100-01. The Appellate Court concluded that there exists a question of fact that precluded a determination as to when the statute of limitations began to run as to all

defendants other than former Cook County State's Attorney Anita Alvarez. ¶¶ 51-68.[1]

In reaching its decision, the Appellate Court recited the foundational rules that govern the timeliness of defamation and false-light claims. Such claims are governed by a one-year statute of limitations that begins running upon the date that the cause of action accrued. ¶ 42, citing, 735 LCS 5/13-201 and *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 73 (1st Dist. 2010). The general rule in Illinois is that the "statute of limitations for defamation and false light claims generally accrues at the point that the statements are published." ¶ 52, citing *Moore*, 402 Ill. App. 3d at 73.

The Appellate Court cited to *Peal v. Lee*, 403 Ill. App. 3d 197 (1st Dist. 2010), for the proposition that "[w]hile we have previously acknowledged that there is some uncertainty about what circumstances should cause us to apply the discovery rule in defamation cases, we have explained that we will not ordinarily apply the discovery rule in defamation cases unless the publication is hidden, inherently undiscoverable, or inherently unknowable." ¶ 52.

Citing to this Court's decision in *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill.2d 129, 136-37 (1975), which the Appellate Court identified as the "supreme court's seminal case on the issue" as to when the

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[1] Citations not to the record, in the format "¶ _," are to paragraphs of the Appellate Court's opinion, *Ciolino v. Simon*, 2020 IL App (1st) 190181, A.65-A.97.

discovery rule should apply in defamation cases, the Appellate Court held that "when a plaintiff does not know and cannot reasonably know about the existence of material defaming him, the cause of action accrues at the time the plaintiff knows or should know that the defamatory material exists." ¶¶ 54-55.

Based on the foregoing principles, the Appellate Court framed the issue before it in this case as "whether, under the circumstances presented, the nature of the publication was such that knowledge sufficient to trigger the statute of limitations should be imputed to Ciolino because of the putative availability of the information." ¶ 55. The Appellate Court further framed the issue for review as "whether the premiere of 'A Murder in the Park' in New York, along with the attendant press coverage, was a sufficiently prominent medium that it could be equated to a mass media publication that would proscribe the application of the discovery rule." ¶ 56.

The Appellate Court acknowledged that, in this case, "the existence of the film was not necessarily hidden," but concluded that the content of the film, unlike traditional "mass media" communications, was "undiscoverable to any unwitting member of the general public *** including Ciolino" as it "was for a relatively small number of people at an event 800 miles away from the allegedly defamed subject," ¶ 57, and "was shown to a small audience in one city and was available for a couple of hours." ¶ 59.

Based on the foregoing, the Appellate Court concluded that there is an "unresolved fact question" whether either "Ciolino [or] anyone other than those

in the theater [at the New York premiere] on November 17, 2014 had access to the allegedly defamatory statements that were published that day" and that "there are questions about what Ciolino could have possibly discovered even if he was completely diligent." ¶¶ 57, 62.

The Appellate Court further acknowledged that it had the power to affirm the dismissal order on any grounds found in the record, and that the arguments presented by the defendants on some of those points—including arguments that the complained-of statements were statements of opinion—"are questions of law that [the Appellate Court] would review *de novo* on appeal," but nonetheless declined to address Ekl's and other defendants' arguments on those points. ¶¶81-84. Characterizing the issues presented by such arguments as "thorny," the Appellate Court concluded that the "trial court is the appropriate forum for these issues to be hashed out for the first time." ¶¶ 82, 85.

STANDARD OF REVIEW

A motion to dismiss pursuant to 735 ILCS 5/2-619 ("Section 2-619") admits the legal sufficiency of the plaintiff's complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's claim. *Barber v. Am. Airlines, Inc.*, 241 Ill.2d 450, 455 (2011). Section 2-619(a)(9) provides for dismissal of a claim if it is barred by an affirmative matter. *Abruzzo v. City of Park Ridge*, 231 Ill.2d 324, 331 (2008). The defense that a matter is barred by the statute of limitations is appropriately raised in a Section 2-619(a)(5) motion to dismiss. *Moore v. People for*

the Ethical Treatment of Animals, Inc., 402 Ill. App. 3d 62, 73 (1st Dist. 2010). The grant of motions to dismiss pursuant to Section 2-619 present questions of law that an appellate court will review under a *de novo* standard. *DeLuna v. Burciaga*, 223 Ill.2d 49, 59 (2006).

A motion to dismiss pursuant to 735 ILCS 5/2-615 ("Section 2-615") challenges the legal sufficiency of a complaint. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34. The court will accept as true all well-pleaded facts in the complaint. *Id.* "The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Id.* The appellate court's review of a dismissal under Section 2-615 is *de novo*. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18.

ARGUMENT

Until the Appellate Court issued its opinion in this case, Illinois courts followed a bright-line rule with an objective basis to determine when the statute of limitations would begin running relative to a defamation or false-light claim. With a sole, limited exception, such claims would accrue, and the statute of limitations would begin running, on the date that the complained-of material was first published. The sole exception has been for publications that are concealed, inherently undiscoverable or unknowable. Only under such circumstances would the discovery rule be applied to ascertain when the statute of limitations began

running. Under the longstanding formulation, which is consistent with the legislative framework as set forth in the statute of limitations and the statutory single publication rule, a determination as to whether a claim is time-barred could typically be made at the outset of litigation based on an undisputed initial date of publication.

The Appellate Court's decision eliminates the need to look to the publication date and turns the limited exception into the rule of universal application. Based on the Appellate Court's decision, a determination whether a defamation or false-light claim is timely will necessarily involve a factual inquiry as to when the plaintiff knew or should have known of the allegedly-defamatory material.

The Appellate Court's decision is a drastic departure from what had been a well-settled general rule adopted by this Court: A defamation or false-light claim will accrue, thereby causing the statute of limitations to begin to run, on the date of publication, with a limited exception for cases in which the publication was "concealed, inherently unknowable or inherently undiscoverable," in which case the discovery rule shall be applied. *Peal v. Lee*, 403 Ill. App. 3d 197, 207 (1st Dist. 2010) (quoting *Blair v. Nevada Landing Partnership*, 369 Ill. App. 3d 318, 326 (2d Dist. 2006)).

By making the discovery rule not just the general rule but the only rule, the Appellate Court not only abrogates the bright-line test followed by courts in Illinois for decades, but it has usurped the legislature's authority in two

independent respects. First, the Appellate Court's decision renders effectively meaningless the legislature's decision not to incorporate a discovery rule into the statute of limitations, 735 ILCS 5/13-201 ("Section 13-201"). Second, it seriously undermines the legislature's enactment of the single publication rule, codified in 740 ILCS 165/1.

The Appellate Court's formulation of the analysis necessary to identify the commencement of the statute of limitations would result in a slippery slope. By making the discovery rule the only rule, the timeliness of lawsuits based on statements made in certain publications (publications of the sort to which the discovery rule has never been applied, like television news and newspaper articles), would be adjudicated on a factual, case-by-case basis. Courts would be forced to determine whether the particular circumstances concerning the nature of the publication and the plaintiff's exposure thereto are such that the plaintiff should be deemed to have had constructive knowledge of the publication. Courts would be asked to assess whether the publication was directed to the plaintiff or a group of people of which the plaintiff is a member, rather than simply identifying whether the publication was accessible to the public at large. Nearly every defamation lawsuit, even those founded upon statements made many years prior, would be able to survive timeliness challenges brought via motions to dismiss and for summary judgment. The cost of defending against stale and spurious claims would increase significantly and the chances that such claims will proceed to trial would increase exponentially.

The Appellate Court's decision also merits reversal on a second basis. In reversing the dismissal of Ciolino's claims against Ekl, the Appellate Court declined to rule on whether statements attributed to Ekl were actionable as a matter of law. By declining to rule on these issues, the Appellate Court acted inconsistently with the principle that free-speech protections should be addressed as a matter of law at an early stage of litigation in order to avoid the chilling effects of drawn-out, costly litigation.

I. THE TRIAL COURT RULED CORRECTLY WHEN IT DISMISSED CIOLINO'S CLAIMS PURSUANT TO THE ONE-YEAR STATUTE OF LIMITATIONS WHERE THE DOCUMENTARY FILM PREMIERED OVER ONE YEAR BEFORE CIOLINO FILED SUIT.

A. Ciolino's defamation and false light claims were barred by the statute of limitations as of the date that Ciolino filed suit in federal court.

Under Illinois law, the statute of limitations for a claim for defamation is one year from when the cause of action accrued. 735 ILCS 5/13-201 ("Actions for slander, libel or for publication of matter violating the right of privacy, shall be commenced within one year next after the cause of action accrued."). The one-year limitations period also applies to claims of false light invasion of privacy. *Bryson v. News Am. Publications, Inc.*, 174 Ill.2d 77, 105 (1996).

Unlike many other statutes of limitations, the legislature did not write a discovery rule into Section 13-201. 735 ILCS 5/13-201. *Compare* 735 ILCS 5/13-213 (statute of limitations for product liability actions begins running in certain cases when the plaintiff knew or should have known of an injury); 735 ILCS 5/13-214 (statute of limitations for lawsuits arising from construction activities begins

running when the plaintiff knew or should have known of the complained-of action); 735 ILCS 5/13-214.2 (statute of limitations for accounting claims begins running when the plaintiff knew or should have known of the complained-of act or omission); and 735 ILCS 5/13-214.3 (statute of limitations for legal malpractice claims begins running when the plaintiff knew or should have known of an injury).

Illinois courts interpreting Section 13-201 have long and consistently held that a cause of action for defamation accrues, and the statute of limitations begins to run, on the date of publication of the allegedly-defamatory material. *Winrod v. Time, Inc.*, 334 Ill. App. 59, 66-67 (1st Dist. 1948); *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill.2d 129, 131-32 (1975); *Bank of Ravenswood v. City of Chicago*, 307 Ill. App. 3d 161, 167 (1st Dist. 1999); *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 73 (1st Dist. 2010).

In order to render defamation of any kind actionable, there must be a publication thereof by the author or by his or her authority. *Libert v. Turzynski*, 129 Ill. App. 2d 146, 150 (1st Dist. 1970). Communication to any third party satisfies the publication requirement. *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 264 (1st Dist. 2005). As such, any act by which defamatory matter is communicated to someone other than the person defamed is a "publication." *Missner v. Clifford*, 393 Ill. App. 3d 751, 763 (1st Dist. 2009), *cert. denied*, 130 S. Ct. 3355 (2010).

In *Tom Olesker*, the appellate court adopted a narrow exception to the general rule that the statute of limitations begins to run on the date of publication.

There, the court applied the discovery rule to toll the statute of limitations where an allegedly-false credit report was published to a select group of individuals who subscribed to the defendant's credit-reporting service and for which re-publication to non-subscribers such as the plaintiff was prohibited. *Tom Olesker*, 61 Ill.2d at 131-32. In applying the discovery rule, the court cautioned that it would have only very limited application. *Id.* at 137-38. It distinguished the dissemination of the credit report to a private group from publications of material "for public attention and knowledge" such as so-called "mass media" publications. *Id.* The court held that defamation claims premised on statements contained within "mass-media publications, including magazines, books, newspapers, radio and television programs are not subject to the discovery rule because they are readily accessible to the general public" and therefore could not be considered hidden, inherently undiscoverable or unknowable. *Id.* at 137–38.

Relying on *Tom Olesker*, subsequent decisions have articulated that, as a limited exception to the general rule, the discovery rule will apply *only* where the publication was "hidden, inherently undiscoverable, or inherently unknowable." *Blair v. Nevada Landing Partnership*, 369 Ill. App. 3d 318, 326 (2d Dist. 2006); *Peal v. Lee*, 403 Ill. App. 3d 197, 207 (1st Dist. 2010) (quoting *Blair*). In one such case, *Winrod v. Time, Inc.*, the court held that the statute of limitations for a defamation claim based on an allegedly-defamatory statement appearing in a magazine began to run on the date upon which the magazine was first disseminated to the general public. *Winrod*, 334 Ill. App. at 65. The court did not consider whether the plaintiff

had himself been given a copy of or was otherwise made aware of the publication. *Id.* The only relevant factor was when the magazine was first published. *Id.*

Here, it is undisputed that *A Murder in the Park* – the documentary that contains the allegedly-defamatory statements – premiered at the 2014 DOC NYC festival in New York in November 2014 – well over a year before Ciolino first filed suit in federal court. (R. C842, C1056.) The DOC NYC festival was not a small, private gathering. Rather, it was America's largest documentary film festival and was open to the public. (R. C1056, C842.) Nor was the festival kept hidden; it was advertised and discussed ahead of time in multiple large, national media outlets as well as a smaller Illinois outlet. (R. C1056-C1058.) It was advertised on Twitter. (R. C1058.) Multiple media outlets reported on the documentary in late October and early November 2014, after it was shown in New York. (R. C1058.) It is also undisputed that the documentary was shown at a second film festival, the Cleveland International Film Festival, from March 24-26, 2015. (R. C1058.)

The documentary was advertised, reported on, and shown at two different film festivals between November 2014 and March 2015. Ciolino first filed claims against Ekl and his co-defendants in federal court in April 2016 – well over a year after the documentary was shown in multiple locales. Because Ciolino's claims were not filed until over a year after publication, Ciolino's claims are barred by the statute of limitations.

Despite the undisputed factual record as to the date of the documentary's premiere and the public nature thereof, the Appellate Court found a question of

fact, thereby reversing the order dismissing Ciolino's claims against Ekl. In so doing, the Appellate Court declined to conduct the foundational inquiry established in *Tom Olesker* and later articulated in *Blair* and *Peal*. Rather than attempt to answer the question whether the New York showing was concealed from the public or inherently undiscoverable or unknowable, the Appellate Court's rationale erodes the longstanding rules applicable to defamation and false-light claims.

The Appellate Court's decision is not overt in its disregard of the general rule and limited exception. Rather, it acknowledges the well-settled law that "the statute of limitations for defamation and false light claims generally accrues at the point that the statements are published." ¶ 52, citing *Moore*, 402 Ill. App. 3d at 73. The appellate court decision also cites approvingly to *Peal*:

> While we have previously acknowledged that there is some uncertainty about what circumstances should cause us to apply the discovery rule in defamation cases, we have explained that we will not *ordinarily* apply the discovery rule in defamation cases unless the publication is hidden, inherently undiscoverable, or inherently unknowable. ¶ 52 (emphasis added).

But the appellate court reads into the *Peal* decision a qualification that cannot be found in the *Peal* decision itself. In *Peal*, the court quotes *Blair*, 369 Ill. App. 3d at 326, for the proposition that "the discovery rule … should not be applied 'unless the publication was hidden, inherently undiscoverable, or inherently unknowable.'" *Peal*, 403 Ill. App. 3d at 207. Via the addition of a single word – "ordinarily" – the Appellate Court created an opening where one had not

previously existed. Prior to the Appellate Court's decision, the discovery rule could only be applied if the court first concluded that the publication was hidden, inherently undiscoverable or inherently unknowable. But by using the term "ordinarily," the Appellate Court implied that circumstances exist in which, under the rule set forth in *Peal* and *Blair*, the discovery rule might appropriately be applied even where, as here, the publication is neither hidden nor inherently undiscoverable or unknowable.

In discussing the *Tom Olesker* decision, the Appellate Court further subtly eroded the general rule and the limited circumstances in which the discovery rule has long been held to apply. The Appellate Court correctly identifies *Tom Olesker* as the "supreme court's seminal case on the issue" as to when the discovery rule should apply in defamation cases, ¶ 54, but reads equivocation into this Court's opinion where none existed. The Appellate Court's opinion states that "[t]he *Tom Olesker* court distinguished the case before it from those in which the alleged defamation was *easily* discoverable due to its mass media publication." ¶ 55 (emphasis added). But this Court did no such thing in the *Tom Olesker* decision. This Court did not reach the conclusion that the discovery rule is inapplicable only if the alleged defamation was *easily* discoverable, but rather that the discovery rule is inapplicable if the allegedly-defamatory content was discoverable, period. *Tom Olesker*, 61 Ill.2d at 131-32. As set forth in the later decisions in *Blair* and *Peal*, the discovery rule is applicable *only* if the defamatory material is *inherently* undiscoverable. *Blair*, 369 Ill. App. 3d at 326; *Peal*, 403 Ill. App. 3d at 207. There is

a major gulf between that which is easily discoverable and that which is inherently undiscoverable. Although the November 2014 showing of the documentary may not have been *easily* discoverable, it was far from being *inherently undiscoverable.*

Having eroded the bright line between the general rule and the narrow exception in which the discovery rule has been held to apply, the Appellate Court framed the issue before it in this case as "whether, under the circumstances presented, the nature of the publication was such that knowledge sufficient to trigger the statute of limitations *should be imputed* to [Plaintiff] Ciolino because of the putative availability of the information." ¶ 55 (emphasis added). By framing the issue in such a manner, the Appellate Court improperly focused its inquiry on the plaintiff's constructive knowledge, rather than the inherent discoverability of the publication. Inasmuch as it focused in the first instance upon Ciolino's constructive knowledge—the question whether Ciolino should reasonably have known of the allegedly-defamatory material—the Appellate Court applied the discovery rule as though it is the only rule, rather than a limited exception to the general rule.

As its formulation of the question on appeal foreshadowed, the Appellate Court ultimately found a question of fact as to whether "the allegedly defamatory statements at issue here were 'easily discovered, and delivered to a mass sector of the public.'" ¶ 62, quoting *Blair*, 369 Ill. App. 3d at 326.

The Appellate Court rationalized that "[i]n the cases where the mass media exception has been recognized, it is because the allegedly defamatory statements

themselves were on display for all to view." ¶ 65. But the Appellate Court failed to appreciate that, even in cases of the "mass media" publications discussed in *Tom Olesker*, including magazines, books, newspapers, and radio and television programs, the publications are accessible to all, but they are not truly "on display for all to view."

In looking not at whether the publication could be accessed by members of the general public but instead at whether the publication was likely to be viewed by the plaintiff, the Appellate Court's formulation will effectively eliminate the "mass media" exception to which it so approvingly cited.

A decision of the Seventh Circuit Court of Appeals demonstrates how an analysis of the Illinois statute of limitations should focus not on whether the plaintiff could or should have discovered the allegedly-defamatory material, but whether the material was inherently undiscoverable. In *Schweihs v. Burdick*, 96 F.3d 917, 921 (7th Cir. 1996), the court held that the discovery rule applies to Illinois defamation claims only "where the defamatory material is published in a manner likely to be concealed from the plaintiff, such as credit reports or confidential memoranda."

In *Schweihs*, the court considered whether the publication of a book containing allegedly-defamatory statements started the running of the statute of limitations although the allegedly-defamed plaintiff was imprisoned and had no reason to know of the publication of the book until long after the publication date. *Id.* at 919-20. The court examined Illinois law relating to the discovery rule and the

mass media exception and concluded that the Illinois legislature did not intend the discovery rule to apply to all statutes of limitations. *Id*. at 921. The court held that the discovery rules applies to toll the one-year statute of limitations for defamation claims only where the allegedly-defamatory material was "published in a manner likely to be concealed from the plaintiff." *Id.* at 921. Although the plaintiff may not have had reason to know that the book was published, the publication was not concealed from the plaintiff and, therefore, the discovery rule did not apply to toll the statute of limitations. *Id.*

Though the *Schweihs* decision is not binding upon this Court, its rationale applies here. Although Ciolino may not have actually known about the showing of the documentary in New York in November 2014 and although Ciolino may not even have had reason to know that the documentary even existed, the documentary was available to the public, was advertised nationally, and was in no way concealed from Ciolino. As such, the discovery rule does not apply to toll the statute of limitations and Ciolino's claim is clearly time-barred.

The decision of the Appellate Court also rendered the statutory single publication rule effectively meaningless. Illinois courts adopted the single publication rule via the 1948 opinion in *Winrod*, 334 Ill. App. 59. The single publication rule provides that a defamation or false-light cause of action accrues at the time of first publication, and subsequent publications or distributions do not toll the statute of limitations or create new causes of action. *Id.* at 72. After the

Winrod decision, the legislature enacted the Uniform Single Publication Act, 740 ILCS 165/1, which provides, in pertinent part:

> No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture.

740 ILCS 165/1.

The Uniform Single Publication Act has been held to provide that a cause of action for defamation is complete at the time of first publication and that there exists only one cause of action "for the same means of publication, no matter how many times that publication is reproduced." *Weber v. Cueto*, 253 Ill. App. 3d 509, 522 (5th Dist. 1993). *See also* 740 ILCS 165/1. Any subsequent appearances or distributions of the original publication do not toll the statute of limitations. *Founding Church of Scientology of Washington, D. C. v. Am. Med. Ass'n*, 60 Ill. App. 3d 586, 589 (1st Dist. 1978). One reason that courts have been explicit in their decisions to decline to apply the discovery rule to defamation cases because such a rule, if given general application, would undermine the protection provided by the single-publication rule. *Blair*, 369 Ill. App. 3d at 326 ("We agree that the application of the discovery rule undermines the single-publication rule").

Adopting a rule as unworkable as the one applied by the Appellate Court would have serious implications. Although statutes of limitations can sometimes yield harsh results, they are essential to prevent stale claims. Stale claims present

significant evidentiary problems that may seriously undermine defendants' abilities to investigate and courts' abilities to determine facts. Statutes of limitations thereby serve to limit spurious claims. If the discovery rule is applied to all defamation and false-light cases, even stale and spurious cases will result in protracted litigation and significant litigation costs.

In this case, the legislature enacted a one-year limitations period with no discovery rule incorporated therein. A clear determination has already been made that public policy favors a short limitations period and a bright line test that can be objectively applied by the courts. The rule of law adopted by the Appellate Court, however, threatens to thwart the legislature's expression of the public interest. The Appellate Court's rule creates an unworkable system that shifts the focus from the nature of the publication and instead focuses on the plaintiff's particular circumstances. Under this system, courts will find questions of fact as to the application for the discovery rule in almost every case, making it virtually impossible to obtain dismissals at the pleading stage and thereby increasing the cost to the press, media and public of defending spurious claims.

Ciolino first filed suit in federal court on April 27, 2016. *A Murder in the Park* had been shown in New York City in November 2014 and in Cleveland in March 2015, both well over a year before Ciolino filed suit. His defamation claims against Ekl are barred by the statute of limitations.

B. Ciolino's civil conspiracy claim is derivative of his defamation and false-light claims and, therefore, is also barred by the statute of limitations.

Because Plaintiff's defamation and false-light claims are untimely, Plaintiff's conspiracy claim premised on the same allegations is untimely, as well. Illinois law provides that the one-year statute of limitations for defamation claims applies to claim of conspiracy to defame. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 110-11, 116. In light of the foregoing, this court should affirm the circuit court's dismissal of Ciolino's civil conspiracy claim against Ekl.

C. Ciolino's IIED claim is barred by the one-year statute of limitations.

A two-year limitation period usually applies to an IIED claim, but a one-year limitations period should apply in this case because the conduct upon which Ciolino's IIED claim is premised—Ekl's allegedly false and defamatory statement—is subject to a one-year statute of limitations.

As a general matter, derivative claims are subject to the same statute of limitations as the underlying claim. *Hammond v. North American Asbestos Corp.*, 97 Ill.2d 195, 208-09 (1983). Here, Ciolino's IIED claim is founded entirely upon emotional distress allegedly brought upon as a direct result of the making of allegedly-false statements about Ciolino. (R. C68-C69, ¶¶ 181, 182, 186, 187; A.57-58.) As such, Ciolino's IIED claim is derivative of his other claims against Ekl and is subject to the same one-year statute of limitations. To conclude otherwise would allow Ciolino to avoid the clear application of the one-year limitations period in

Section 13-201 by re-framing his defamation and false-light claims as an IIED claim, even though they are founded upon the exact same alleged wrongdoing. Applying the one-year statute of limitations, as discussed above, Ciolino's claim is time-barred.

Moreover, although the two-year statute of limitations applicable to personal injury actions found in 735 ILCS 5/13-202 usually applies to IIED claims, the fact that the one-year statute of limitations contained in Section 13-201 more specifically applies to the complained-of conduct—allegedly-defamatory statements—requires the application of Section 13-201 to Ciolino's IIED claim.

Under Illinois law, "[w]hen a general statutory provision and a more specific one relate to the same subject, [courts] will presume that the legislature intended the more specific statute to govern" *Abruzzo v. City of Park Ridge*, 231 Ill.2d 324, 346 (2008). Courts have applied the foregoing principle in concluding that when two statutes of limitations arguably apply to a particular claim, the more specific statute of limitations must control. *See Moon v. Rhode*, 2016 IL 119572, ¶ 29 (applying the medical malpractice statute of limitations as opposed to the wrongful death statute of limitations in a case involving a death allegedly resulting from medical malpractice).

In determining which statute of limitations applies to any given claim, "[t]he focus of the inquiry is on the nature of the liability and not on the nature of the relief sought." *Armstrong v. Guigler*, 174 Ill.2d 281, 291 (1996). Here, Ciolino's IIED claim is founded entirely upon allegations that the defendants "induced

Simon to make false statements," engaged in a "scheme to falsely accuse and defame Ciolino," "contrived a false and injurious narrative," "financed and produced a documentary that contained false and defamatory statements about Ciolino," lied about Ciolino, and published a book containing "false, defamatory, and highly injurious statements about … Ciolino." (R. C68-C69, ¶¶ 181, 182, 186, 187.)

In this case, as in *Moon*, the court should apply the statute of limitations that specifically addresses the complained-of conduct—false statements constituting defamation and/or a false light invasion of privacy—rather than the statute of limitations that generally addresses the claimed injury.

Based on the allegations of Ciolino's complaint, Ciolino's IIED claim is nothing more than a defamation or false-light claim through which Ciolino seeks to recover for emotional distress. As such, the one-year statute of limitations applies thereto and this Court should affirm the circuit court's dismissal of Ciolino's IIED claim against Ekl.

II. THE CIRCUIT COURT PROPERLY DISMISSED ALL OF CIOLINO'S CLAIMS AGAINST EKL BECAUSE THE CLAIMS ARE BASED ON CONDUCT THAT IS NOT ACTIONABLE UNDER ILLINOIS LAW.

The reasons given for a circuit court's judgment or order are not material if the judgment or order itself is correct. *Keck v. Keck,* 56 Ill.2d 508, 514 (1974). "It is the judgment and not what else may have been said by the lower court that is on appeal to a court of review. The reviewing court is not bound to accept the reasons given by the trial court for its judgment…." *Material Service Corp. v. Department of*

Revenue, 98 Ill.2d 382, 387 (1983) (internal citations omitted). Rather, a reviewing court "can sustain the decision of the circuit court on any grounds which are called for by the record regardless of whether the circuit court relied on the grounds and regardless of whether the circuit court's reasoning was correct." *Bell v. Louisville & Nashville R.R. Co.*, 106 Ill.2d 135, 148 (1985).

As discussed below, the dismissal of all of Ciolino's claims against Ekl should be affirmed because none of the claims are based on actionable conduct.

A. The three statements attributed to Ekl are not actionable under a false-light theory because they are not "highly offensive to a reasonable person."

"Three elements are required to state a cause of action for false-light invasion of privacy: (1) the plaintiffs were placed in a false light before the public as a result of the defendants' actions; (2) the false light in which the plaintiffs were placed would be highly offensive to a reasonable person; and (3) the defendants acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false." *Kapotas v. Better Gov't Ass'n*, 2015 IL App (1st) 140534, ¶ 77.

A claim for false light invasion of privacy must be founded upon more than the mere statement of a false fact. Rather, the false fact must be 'highly offensive to a reasonable person." *Lovgren v. Citizens First National Bank*, 126 Ill.2d 411, 418 (1989) (quoting Restatement (Second) of Torts § 652(E) (1977)). The test set forth in the Restatement and applied in *Lovgren* provides that that this element is met "when the defendant knows that the plaintiff, as a reasonable man, would be

justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity." *Lovgren*, 126 Ill.2d at 420 (quoting Restatement (Second) of Torts § 625E, comment *c,* at 396 (1977)). The *Lovgren* court cautioned, however, "that minor mistakes in reporting, even if made deliberately, or false facts that offend a hypersensitive individual will not satisfy this element." *Id.*

Here, the three statements that Ciolino attributes to Ekl are as follows:

- *"They stay on people* to try to finally get something out of them that fits their theory of who they think did the case."
- "So that seems to me to be part of their M.O. They'd go to impoverished people who don't have a lot of money, make them promises and basically get them to recant."
- "Ciolino got the confession and then handed him over to his office mate and his own personal attorney to represent him and tell him that he had to plead guilty."

(R. C54, C57, ¶ 149, emphasis in original; A.43, 46.)

None of the statements that Ciolino attributes to Ekl would be highly offensive to a reasonable person—especially a reasonable person who, like Ciolino, is a long-time private investigator and a frequent public commentator on homicide and violent-crime investigations. Ciolino states the following on his website:

> He has lectured extensively at Yale Law School, Northwestern University, John Marshall Law School, Massachusetts School of Law, Kent Law School, University of Cincinnati Law School, Northern Arizona University, University of Illinois and many other academic institutions.
>
> He has spoken about criminal defense investigations and participated in panels for the American Bar Association, National

> Association of Criminal Defense Lawyers, numerous Federal Defender Conferences, and another dozen state bar and criminal defense groups.
>
> * * *
>
> Paul [Ciolino] is not only an internationally recognized speaker, but he is also the co-author of the highly acclaimed and successful books, Advanced Forensic Criminal Defense Investigations, Advanced Forensic Civil Investigations. Paul [Ciolino] has been profiled in magazines, newspapers and professional journals. He has appeared on CNN and FOX news as a commentator on high profile murder cases over 100 times. He has been featured on CBS's 48 Hours, and ABC's 20/20.

(R. C845-C846.)

If anything, the statements attributed to Ekl imply that Ciolino is a dogged investigator, which Ciolino would certainly claim to be. Because the statements attributed to Ekl would not be considered highly offensive to a reasonable person, they are not actionable under a theory of false light invasion of privacy.

B. The statements attributed to Ekl are not actionable under a false-light theory because Ciolino is a public figure.

Per Ciolino's own website, his career as an investigator has led him to becoming an "internationally recognized speaker, [and] the co-author of … highly acclaimed and successful books" and discloses that he has appeared on network television news outlets on over 100 occasions, as well as having been featured on CBS's 48 Hours and ABC's 20/20. (R. C845-46.) Clearly, Ciolino is a public figure.

Ciolino has no right to privacy in connection with his work as an investigator. *See, e.g.*, *Leopold v. Levin*, 45 Ill.2d 434, 442–43 (1970) (holding that there was no actionable false light invasion of privacy as to matters associated with

a plaintiff's participation in a publicized event, where the plaintiff did not "seek retirement from public attention" but rather discussed the matter in an autobiography and on television). In *Leopold*, the court noted that "[h]aving encouraged public attention '[the plaintiff] cannot at his whim withdraw the events of his life from public scrutiny.'" *Id.*, (quoting *Estate of Hemingway v. Random House, Inc.*, 23 N.Y.2d 341, 352 (1968).

C. Two of the statements attributed to Ekl are not actionable under a defamation or false light theory as they are statements of opinion.

Prior to 1990, the Illinois Supreme Court perceived a fundamental distinction between statements of fact and statements of opinion for purposes of the First Amendment to the United States Constitution. Statements of opinion were held to be protected by the First Amendment and not actionable in a defamation action. *Mittelman v. Witous*, 135 Ill.2d 220, 239-40 (1989). However, the United States Supreme Court reexamined the law of defamation within the context of the First Amendment and rejected what it called "the creation of an artificial dichotomy between 'opinion' and fact." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 (1990). The court held that there is no separate First Amendment privilege for statements of opinion, and that a false assertion of fact can be libelous even though couched in terms of an opinion. *Id.* at 18. Thus, a statement is constitutionally protected under the First Amendment only if it cannot be "reasonably interpreted as stating actual facts." *Id.* at 20. However, if a statement viewed in its specific context is obviously an exaggeration rather than literal fact, the statement is

considered rhetorical hyperbole and is not defamatory. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill.2d 1, 15 (1992) (citing *Greenbelt Cooperative Publishing Assoc. Inc. v. Bresler*, 398 U.S. 6 (1970)).

To determine whether a statement is one of fact, a court must examine whether the statement, "in context, could be reasonably understood as describing actual facts about the plaintiff." *Bryson v. News America Publications*, 174 Ill.2d 77, 101 (1996). The more generalized and vague the opinion, the more likely the opinion will be unactionable as a matter of law. *Hopewell v. Vitullo*, 299 Ill. App. 3d 513, 521 (1st Dist. 1998).

Two of the statements attributed to Ekl are unactionable statements of opinion, not fact. First, the statement that, "[t]hey stay on people to try to finally get something out of them that fits their theory of who they think did the case," clearly expresses an opinion as to how the speaker believes "they" act. (R. C54, ¶ 149; A.43.) It is generalized and vague, rather than a specific, detailed statement as to how anyone acted in any particular instance. The second statement, which begins "[s]o that seems to me," could not more clearly be an expression of opinion, as opposed to fact. (R. C54, ¶ 149; A.43.)

D. The statement that "[t]hey stay on people to try to finally get something out of them that fits their theory of who they think did the case" is not actionable as defamation or under a false-light theory because it is vague as to who is being referred to as "they," therefore Ciolino cannot claim that the statement concerns him.

One element of a defamation claim is that the defendant "made a false statement concerning [the] plaintiff." *Cianci v. Pettibone Corp.*, 298 Ill. App. 3d 419, 424 (1st Dist. 1998). Likewise, one element of a false light invasion of privacy claim is that the plaintiff was placed in a false light before the public. *Kapotas v. Better Government Ass's*, 2015 IL App (1st) 140534, ¶ 77. For both types of claims, the statement must be clearly directed at the plaintiff.

Here, the aforementioned statement makes no direct reference to Ciolino. It contains a vague reference to "they." The context within which the statement is made is irrelevant, because the filmmakers, not Ekl, dictated the context within which statements were presented on film. Because the statement is not one "concerning the plaintiff" and does not place the plaintiff, Ciolino, in a false light, it is unactionable as defamation or under a false light theory.

E. Ciolino's IIED claim against Ekl is premised on conduct not actionable under an IIED theory.

Under Illinois law, a claim for IIED only exists if (a) the defendant's conduct was truly extreme and outrageous, (b) the defendant intended to inflict or knew that there was a high probability that his conduct would inflict severe emotional distress upon the plaintiff, and (c) the defendant's conduct in fact caused the plaintiff severe emotional distress. *McGrath v. Fahey,* 126 Ill.2d 78, 86 (1988). "[T]o

qualify as outrageous, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency and be regarded as intolerable in a civilized community." *Feltmeier v. Feltmeier*, 207 Ill.2d 263, 274 (2003). Whether conduct rises to the level of outrageous depends on all of the facts and circumstances of the case. *Id.* at 274. The severe distress element is met "'only where the distress inflicted is so severe that no reasonable man could be expected to endure it.'" *McGrath*, 126 Ill.2d at 86 (quoting Restatement (Second) of Torts § 46, comment j, at 77-78 (1965)).

"[T]he tort does not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *McGrath*, 126 Ill.2d at 86 (quoting Restatement (Second) of Torts § 46, cmt. d, at 73 (1965)). "Rather, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency, and to be regarded as intolerable in a civilized community." *Schweihs v. Chase Home Fin.*, LLC, 2016 IL 120041, ¶ 27.

Here, for the reasons discussed above, none of the three statements attributed to Ekl is extreme or outrageous. At the very worst, the three statements imply that Ciolino is an overzealous investigator—not behavior regarded as "intolerable" in a civilized community.

CONCLUSION

For all of the foregoing reasons, defendant-petitioner Terry A. Ekl respectfully requests that this Court reverse the opinion and judgment of the

appellate court and affirm the order of the trial court entered on January 22, 2019, or grant any other relief as may be appropriate.

Respectfully submitted,

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SUPREME COURT RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 35 pages.

/s/ Jeremy N. Boeder
Jeremy N. Boeder

APPENDIX

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Paul J. Ciolino, Plaintiff, v. Alstory Simon; James Delorto; Terry A. Ekl; James G. Sotos; Martin Preib; William B. Crawford; Anita Alvarez; Andrew M. Hale; and Whole Truth Films, LLC; Defendants.	No. 18 L 44 Calendar R Judge Christopher E. Lawler

ORDER

This matter is before the Court on: (1) Defendants James Delorto, Andrew M. Hale, and Whole Truth Films, LLC's motions to dismiss pursuant to 735 ILCS 5/2-619; (2) Defendant William B. Crawford's combined motion to dismiss pursuant to 735 ILCS 5/2-619.1; (3) Defendant Terry A. Ekl's combined motion to dismiss pursuant to 735 ILCS 5/2-619.1; (4) Defendant James G. Sotos's motion to dismiss pursuant to 735 ILCS 5/2-619; (5) Defendant Anita Alvarez's motion to dismiss pursuant to 735 ILCS 5/2-619; and (6) Defendant Martin Preib's combined motion to dismiss pursuant to 735 ILCS 5/2-619.1.

I.

Anthony Porter was a death row inmate exonerated and released shortly before his scheduled execution. Porter's release depended on Defendant Alstory Simon's videotaped confession to Plaintiff Paul J. Ciolino. Simon recanted his confession, but a Court sentenced him to prison.

Defendant James Delorto began to investigate Simon's innocence. Simon and his attorneys, Defendants James G. Sotos and Terry A. Ekl, filed post-conviction petitions. Several years later, Defendant Anita Alvarez, then the Cook County State's Attorney, agreed to revisit Simon's case. Upon review, Alvarez's office moved to vacate Simon's conviction. A court granted the motion and released Simon.

The media and public followed the case throughout. Defendant William B. Crawford wrote a narrative about the story in 2011. In 2013, Defendants Whole Truth Films, LLC and Andrew M. Hale created a documentary film to tell the story.

The film, entitled *A Murder in the Park*, quoted, referenced, and published statements made by some defendants. The film premiered in New York City in 2014. From June 2015 to April 2016, Defendant Martin Preib wrote a series of blog posts about the story. Also in 2015, Crawford wrote a book about the case.

Ciolino alleges he discovered the film when it played at a Chicago-based film festival in 2015. He then filed a federal action in 2016, which the court dismissed in 2017. Ciolino filed this action in January 2018. He seeks damages for defamation, false light invasion of privacy, intentional infliction of emotional distress, and civil conspiracy.

II.

Section 2-619.1 of the Illinois Code of Civil Procedure permits a combined motion under section 2-615, section 2-619, and section 2-1005. 735 ILCS 5/2-619.1. A section 2-619.1 combined motion must be: (1) in parts; (2) with each part limited to and specifying that it is made under one of sections 2-615, 2-619, or 2-1005; and (3) with each part clearly showing the points or grounds relied on under the section on which it is based. *Id.* When analyzing motions brought under section 2-619.1, courts first consider and rule on the parts under section 2-615, then proceed to the section 2-619 motion, and conclude with the section 2-1005 motion. *Janes v. First Fed. Sav. & Loan Ass'n of Berwyn*, 312 N.E.2d 605, 609 (Ill. 1974). This procedure retains each section's procedural requirements and ensures that the cause of action is legally sufficient before addressing factual issues.

A section 2-615 motion attacks the sufficiency of a complaint and raises whether a complaint states a cause of action on which relief can be granted. *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). The Court must take all well-pleaded facts as true and draw any inferences in the non-movant's favor. 735 ILCS 5/2-615; *Hammond v. S.I. Boo, LLC*, 386 Ill. App. 3d 906, 908 (1st Dist. 2008). Plaintiffs need not prove their case at the pleading stage; they are merely required to allege sufficient facts to state all elements which are necessary to constitute each cause of action in their complaint. *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (1st Dist. 2007). A 2-615 motion to dismiss should be granted only if no set of facts could be proven that would entitle the plaintiff to relief. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008).

Unlike a section 2-615 motion to dismiss, a section 2-619 motion to dismiss admits the legal sufficiency of the complaint. 735 ILCS 5/2-619. The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the start of the litigation. *Henry v. Gallagher*, 383 Ill. App. 3d 901, 903 (1st Dist. 2008). Although a section 2-619 motion to dismiss admits the legal sufficiency of a complaint, it raises defects, defenses, or some other affirmative matter appearing on the face of the complaint or established by external

submissions, which defeat the plaintiff's claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (1st Dist. 2008).

A. Defendants William B. Crawford, Terry A. Ekl, and Martin Prieb's section 2-615 motions to dismiss.

(i) Defendant William B. Crawford's section 2-615 motion to dismiss.

Defendant William B. Crawford moves to dismiss paragraphs 103 to 105 of Plaintiff Paul J. Ciolino's complaint on the basis that the paragraphs allege legally immaterial facts. Section 2-615 provides that a pleading or portion of a pleading may be stricken because it is substantially insufficient in law or designates immaterial matters. 735 ILCS 5/2-615(a).

In support of the motion, Crawford attached Ciolino's complaint. Paragraphs 103 to 105 are below a heading entitled: "Operation Swift-Boat David Protess Is Joined By A Washed-Up Writer, a Chicago Cop, and Jon Burge's Long-Time Writer." Paragraph 103 alleges that Crawford is the "washed-up journalist." Paragraph 104 alleges that Crawford's history of substance abuse "eventually sidelined his career" rendering him "painfully jealous" and "seeth[ingly envious]" of David Protess and the Northwestern University students. Paragraph 105 alleges that Crawford, "depleted [ ] of all journalistic standards" and "seen as mentally unstable, illogical, and erratic," threatened Ciolino and others "in drunken stupors."

Count VI, which alleges civil conspiracy, incorporates and re-alleges all prior paragraphs by reference. To state a claim for civil conspiracy, plaintiffs must allege that (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004). Count VI does not specify which party the allegations are against, but refers to "Defendants." The Court construes "Defendants" to include Crawford.

Crawford argues that paragraphs 103 through 105 allege "immaterial and scandalous" facts. Taking all well-pleaded facts as true, however, paragraphs 103 to 105 allege sufficient facts which make it more probable that Crawford acted in concert with others to defame Ciolino. *Id.* at 317-18. Paragraphs 103 to 105 are thus relevant to Ciolino's civil conspiracy claim, and dismissal under section 2-615 is unwarranted. Crawford's section 2-615 motion to dismiss is therefore DENIED.

(ii) Defendant Terry A. Ekl's section 2-615 motion to dismiss.

Defendant Terry A. Ekl moves to dismiss Counts I, IV, and V of Plaintiff Paul J. Ciolino's complaint on the basis that Ciolino fails to state actionable claims. In support of the motion, Ekl attached Ciolino's complaint.

Ciolino's Count I alleges defamation. A statement is "defamatory" if it tends to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with her. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 10 (1992). To state a claim for defamation, a plaintiff must plead that the defendant made a false statement about the plaintiff, there was an unprivileged publication to a third party by the defendant, and the publication damaged the plaintiff. *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 261 (1st Dist. 2005). Communication to any third party satisfies the Illinois publication requirement. *Id.* at 263.

In Count I, Ciolino incorporates and re-alleges all prior paragraphs by reference. Ciolino then alleges that Ekl "made false and defamatory statements" about him in *A Murder in the Park*, which caused Ciolino damages. Ciolini then lists the allegedly defamatory statements. Taking these well-pleaded facts as true, Ciolino pleads sufficient facts to state a defamation claim against Ekl under section 2-615.

Ciolino's Count IV alleges false light. To state a claim for false light, a plaintiff must establish that (1) the plaintiff was placed in a false light before the public as a result of the defendants' actions; (2) the false light in which the plaintiff was placed would be highly offensive to a reasonable person; and (3) the defendants acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false. *Garrido*, 2013 IL App (1st) at ¶ 29 quoting *Kirchner v. Greene*, 294 Ill. App. 3d 672, 682 (1st Dist. 1998).

In Count IV, Ciolino incorporates and re-alleges all prior paragraphs by reference. Ciolino then alleges that Ekl's statements, published in *A Murder in the Park*, placed Ciolino "in a false light before the public." Ciolino alleges that Ekl knew the statements to be false and were "highly offensive to a reasonable person." Taking these well-pleaded facts as true, Ciolino pleads sufficient facts to state a false light claim against Ekl under section 2-615.

Ciolino's Count V alleges intentional infliction of emotion distress. To state a claim for intentional infliction of emotional distress, a plaintiff must adequately allege that (1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended to inflict severe emotional distress or knew that there was a high probability that its conduct would do so; and (3) the defendant's conduct

caused severe emotional distress. *Graham v. Commonwealth Edison Co.*, 318 Ill. App. 3d 736, 745 (1st Dist. 2000).

In Count V, Ciolino incorporates and re-alleges all prior paragraphs by reference. Ciolino then alleges that Ekl "engaged in extreme and outrageous conduct" when he "induced Defendant [Alstory] Simon to make false statements" about Simon's confession. Ekl "intended to inflict severe emotional distress or knew that there was a high probability" his conduct would inflict emotional distress. Ciolino also alleges that he has and continues to suffer emotional distress as the result of Ekl's conduct. Taking these well-pleaded facts as true, Ciolino pleads sufficient facts to state an intentional infliction of emotional distress claim against Ekl under section 2-615.

Upon review, Ciolino pleads sufficient facts in Counts I, IV, and V to state claims against Ekl under section 2-615. Ekl's section 2-615 motion to dismiss is therefore DENIED.

(iii) Defendant Martin Prieb's section 2-615 motion to dismiss.

Defendant Martin Prieb moves to dismiss under section 2-615 on the basis that Counts III, IV, V, and VI of Plaintiff Paul J. Ciolino's complaint fail to state claims against him. In support of the motion, Prieb attached Ciolino's complaint, in which Ciolino alleges defamation in Count III, false light in Count IV, intentional infliction of emotional distress in Count V, and civil conspiracy in Count VI.

Prieb argues that Count III fails to state a claim for defamation. A statement is "defamatory" if it tends to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with her. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 10 (1992). To state a claim for defamation, a plaintiff must plead that the defendant made a false statement about the plaintiff, there was an unprivileged publication to a third party by the defendant, and the publication damaged the plaintiff. *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 261 (1st Dist. 2005). Communication to any third party satisfies the Illinois publication requirement. *Id.* at 263.

Count III incorporates and re-alleges all prior paragraphs by reference. Count III then lists Prieb's allegedly defamatory statements. Prieb published the statements to his online blog, "Crooked City: The Blog about the Wrongful Conviction Movement," between June 2015 and April 2016. Ciolino alleges that Prieb knew his statements were false and defamatory. Ciolino also alleges that the statements injured Ciolino's reputation and career. As a result, Ciolino suffered damages. Taking these well-pleaded facts as true, Ciolino alleges sufficient facts to state a defamation claim against Prieb under section 2-615.

Prieb argues that Count IV fails to state a claim for false light. To state a claim for false light, plaintiffs must establish that (1) the plaintiff was placed in a false light before the public as a result of the defendants' actions; (2) the false light in which the plaintiff was placed would be highly offensive to a reasonable person; and (3) the defendants acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false. *Garrido*, 2013 IL App (1st) at ¶ 29 quoting *Kirchner v. Greene*, 294 Ill. App. 3d 672, 682 (1st Dist. 1998).

In Count IV, Ciolino incorporates and re-alleges all prior paragraphs by reference. Ciolino then alleges that Prieb's statements placed him "in a false light before the public." Ciolino also alleges that Prieb knew his statements to be false, and the statements were "highly offensive to a reasonable person." Taking these well-pleaded facts as true, Ciolino pleads sufficient facts to state a false light claim against Prieb under section 2-615.

Prieb argues that Count V fails to state a claim for intentional infliction of emotional distress. To state a claim for intentional infliction of emotional distress, a plaintiff must adequately allege that (1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended to inflict severe emotional distress or knew that there was a high probability that its conduct would do so; and (3) the defendant's conduct actually caused severe emotional distress. *Graham v. Commonwealth Edison Co.*, 318 Ill. App. 3d 736, 745 (1st Dist. 2000).

In Count V, Ciolino incorporates and re-alleges all prior paragraphs by reference. Ciolino then alleges that Prieb knowingly published "false, defamatory, and highly injurious statements" about Ciolino to Prieb's blog. That conduct was "extreme and outrageous." Prieb "intended to inflict severe emotional distress or knew that there was a high probability" his conduct would inflict emotional distress. Ciolino also alleges that he has and continues to suffer emotional distress as the result of Prieb's blog posts. Taking these well-pleaded facts as true, Ciolino pleads sufficient facts to state an intentional infliction of emotional distress claim against Prieb under section 2-615.

Count VI alleges civil conspiracy. To state a claim for civil conspiracy, plaintiffs must allege that (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004). Count VI does not specify which party the allegations are against, but refers to "Defendants." The Court construes "Defendants" to include Prieb. Count VI pleads sufficient facts to state a claim for civil conspiracy under section 2-615.

Upon review, Ciolino sufficiently states claims against Prieb under section 2-615. Dismissal under section 2-615 is therefore unwarranted.

B. Defendants Alstory Simon; James Delorto; Terry A. Ekl; James G. Sotos; Martin Preib; William B. Crawford; Anita Alvarez; Andrew M. Hale; and Whole Truth Films, LLC section 2-619 motions to dismiss.

(i) Plaintiff Paul J. Ciolino's Counts I, II, III, IV, and VI.

Plaintiff Paul J. Ciolino's Counts I, II, and III allege defamation. A statement is "defamatory" if it tends to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with her. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 10 (1992). To state a claim for defamation, a plaintiff must plead that the defendant made a false statement about the plaintiff, there was an unprivileged publication to a third party by the defendant, and the publication damaged the plaintiff. *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 261 (1st Dist. 2005). Communication to any third party satisfies the Illinois publication requirement. *Id.* at 263.

Count IV alleges false light. To state a claim for false light, plaintiffs must establish that (1) the plaintiff was placed in a false light before the public as a result of the defendants' actions; (2) the false light in which the plaintiff was placed would be highly offensive to a reasonable person; and (3) the defendants acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false. *Garrido*, 2013 IL App (1st) at ¶ 29 quoting *Kirchner v. Greene*, 294 Ill. App. 3d 672, 682 (1st Dist. 1998).

The statute of limitations in Illinois for a claim for defamation and false light is one year from when the cause of action accrued. 735 ILCS 5/13-201. Under Illinois law, the cause of action for defamation accrues, and the statute of limitations begins to run, on the date of publication of the defamatory material. *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 73 (1st Dist. 2010) *citing Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill. 2d 129, 131-32 (1975).

Count VI alleges civil conspiracy. To state a claim for civil conspiracy, plaintiffs must allege that (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004). Conspiracy, standing alone, is not a separate and distinct tort in Illinois. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 109. Because it is the underlying tortious acts performed under the agreement that give rise to a claim for

civil conspiracy, the statute of limitations for the underlying tort governs a conspiracy claim. *Id.* at ¶ 110. The statute of limitations for a conspiracy to defame action is thus one year as well. *Id.* at ¶ 111; 35 ILCS 5/13-201.

In support of the motion, Defendants attached *A Murder in the Park*. The film premiered in July 2014, and the statutes of limitations ran in July 2015. 735 ILCS 5/13-201. Defendant William B. Crawford attached his narrative, entitled *Chimera—A Story Based on the Public Record*. Crawford published the narrative in 2011, and the statute of limitations ran in 2012. Crawford published his novel in 2015, and the statute of limitations ran in 2016. Defendant James G. Sotos communicated his statements at an August 2013 interview, and the statute of limitations ran in 2014. Defendant Terry A. Ekl made his statements no later than June 2015, and the statute of limitations ran in 2016.

Defendant Anita Alvarez's communicated her allegedly defamatory statements at an October 2014 press conference. At that time, Alvarez was the Cook County State's Attorney. The press conference announced her office's decision to vacate Defendant Alstory Simon's conviction. Alvarez also discussed the reasoning behind the decision. The statute of limitations for Alvarez's statements ran in October 2015. Prieb published his statements between June 2015 and April 2016, and the statute of limitations ran no later than April 2017.

Ciolino contends that the statute of limitations did not accrue until he discovered the alleged statements in 2015. The proposition that a given statute of limitations is tolled until a party knows or should know both that it was injured and that the injury was wrongfully caused is known as the "discovery rule." *See Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 414 (1981). A plaintiff, however, bears the burden of specifically pleading facts in the complaint showing the date plaintiff reasonably could have learned of the injury. *Nordsell v. Kent*, 157 Ill. App. 3d 274, 277 (3d Dist. 1987).

Ciolino filed his complaint in January 2018, outside the applicable statute of limitations period. 735 ILCS 5/13-201. Even if the discovery rule applied—which it does not—Ciolino's complaint would still be untimely. Counts I, II, III, IV, and VI are thus time-barred by the applicable statutes of limitations. Because Counts I, II, III, IV, and VI are time-barred, the Court declines to address any First Amendment arguments. Defendants' section 2-619 motions to dismiss are therefore GRANTED. Counts I, II, III, IV, and VI are stricken with prejudice.

(ii) Plaintiff Paul J. Ciolino's Count V.

Defendants also move to dismiss Plaintiff Paul J. Ciolino's Count V, which alleges intentional infliction of emotion distress. To state a claim for intentional infliction of emotional distress, a plaintiff must adequately allege that (1) the

defendant's conduct was extreme and outrageous; (2) the defendant either intended to inflict severe emotional distress or knew that there was a high probability that its conduct would do so; and (3) the defendant's conduct actually caused severe emotional distress. *Graham v. Commonwealth Edison Co.*, 318 Ill. App. 3d 736, 745 (1st Dist. 2000).

In support of the motion, Defendants attached Ciolino's January 2018 complaint. Count V incorporates and re-alleges all prior allegations by reference. But as ordered above, Counts I, II, III, IV, and VI are time-barred and stricken with prejudice. Count V then alleges the defendants' respective "extreme and outrageous conduct." Defendants James Delorto, Terry A. Ekl, and James G. Sotos induced Defendant Alstory Simon to make false statements. Defendant Anita Alvarez "doubled down" with Ekl and Sotos and moved to vacate Simon's conviction. Defendants Andrew Hale and Whole Truth Films, LLC created *A Murder in the Park*. Defendant William Crawford wrote a narrative and a book. Defendant Martin Prieb posted to his blog. Ciolino alleges that the various acts caused damages to his reputation, economic prospects, and general health.

Intentional infliction of emotional distress is a personal injury tort, and the applicable statute of limitations is two years. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003); 735 ILCS 5/13-202. Defendants attached *A Murder in the Park*, which premiered in July 2014. The applicable statutes of limitations ran in July 2016. Crawford attached his 2011 narrative, and the statute of limitations ran in 2013. The statute of limitations for his 2015 novel ran in 2017. Sotos communicated his statements in an August 2013 interview, for which the statute of limitations ran in 2015. Ekl made his statements no later than June 2015, and the statute of limitations ran in June 2017. Alvarez attached her October 2014 press conference statements, for which the statute of limitations ran in October 2016. Ciolino filed his complaint in January 2018, and any claims against the defendants' respective conducts are time-barred.

Prieb posted his blog statements between June 2015 and April 2016. The statute of limitations ran two years from the date of publication. *Id.* Any claims based on statements published before January 2016 are thus time-barred.

Prieb argues that the "fair report privilege" protects the four remaining statements, which he posted between February and April 2016. The fair report privilege is a qualified privilege which overcomes allegations of either common law or actual malice. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 585-7 (2006). The fair report privilege has two requirements. *Id.* at 588. But to fall within the privilege, statements must first be determined to be defamatory. *Id.* at 591. Count III alleges defamation against Prieb, but is time-barred and stricken with prejudice.

In any event, Prieb's statements were based on court records and findings. Even if Prieb's negative statements were offensive, rude, annoying, and unwarranted, the nature of his criticisms against Ciolino are not so unendurable to a reasonable person and "so extreme as to go beyond all possible bounds of decency, and to be regarded as intolerable in a civilized community." *Kolegas*, 154 Ill. 2d at 21. Prieb's statements thus do not rise to the required level of "extreme and outrageous conduct." *Id.*

Defendants Alstory Simon; James Delorto; Terry A. Ekl; James G. Sotos; Martin Preib; William B. Crawford; Anita Alvarez; Andrew M. Hale; and Whole Truth Films, LLC section 2-619 motions to dismiss Count V are therefore GRANTED. Count V is stricken with prejudice.

III.

For these reasons, it is ORDERED:

(1) Defendants Alsory Simon, James Delorto, Andrew M. Hale, and Whole Truth Films, LLC's section 2-619 motion to dismiss is GRANTED. Simon, Delorto, Hale, and Whole Truth Films, LLC are dismissed. 4271/4226

(2) Defendant William B. Crawford's section 2-619.1 combined motion to dismiss is GRANTED. Crawford is dismissed. 4271/4226

(3) Defendant Terry A. Ekl's section 2-619.1 combined motion to dismiss is GRANTED. Ekl is dismissed. 4271/4226

(4) Defendant James G. Sotos's section 2-619 motion to dismiss is GRANTED. Sotos is dismissed. 4271/4226 4004

(5) Defendant Anita Alvarez's section 2-619 motion to dismiss is GRANTED. Alvarez is dismissed. 4271/4226

(6) Defendant Martin Preib's combined section 2-619.1 motion to dismiss is GRANTED. Prieb is dismissed. 4271/4226

(7) Plaintiff Paul J. Ciolino's complaint is stricken with prejudice. 4271

(8) This is a final, appealable order that disposes of this matter in its entirety. 9207

ENTERED,

JUDGE CHRISTOPHER E. LAWLER
JAN 22 2019
Circuit Court-2098

Christopher E Lawler 2098
Judge Christopher E. Lawler, No. 2098

A.10

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

PAUL J. CIOLINO,	)	
Plaintiff,	)	
	)	Case No.
v.	)	
ALSTORY SIMON, JAMES DELORTO, TERRY A. EKL, JAMES G. SOTOS, MARTIN PREIB, WILLIAM B. CRAWFORD, ANITA ALVAREZ, ANDREW M. HALE and WHOLE TRUTH FILMS, LLC,	)	
Defendants.	)	

COMPLAINT

Paul J. Ciolino ("Ciolino") brings this lawsuit against Alstory Simon, James Delorto, Terry A. Ekl, James G. Sotos, Martin Preib, William B. Crawford, Anita Alvarez, Andrew M. Hale, and Whole Truth Films, LLC (collectively, the "Defendants").

NATURE OF THE ACTION

1. Plaintiff Ciolino brings Complaint, alleging defamation (of the *per se* and *per quod* varities), false light, intentional infliction of emotional distress, and civil conspiracy against the named defendants.

2. In July, 2015, a self-proclaimed documentary entitled "Murder in the Park," ("MIP") produced and funded by Defendant HALE and his production company WHOLE TRUTH FILMS, LLC, ("WTF") premiered before a small audience in Chicago at the Gene Siskel Film Center. The documentary, featuring Defendants SIMON, HALE, EKL, SOTOS, DELORTO, CRAWFORD, and ALVAREZ advances an outrageous and demonstrably false

claim that with the blessing of Northwestern University, David Protess and Plaintiff Paul Ciolino framed an innocent man [SIMON] so that death row inmate Anthony Porter could become a 'poster boy' for the bid to end executions in Illinois. In February, 2016, the documentary aired on Showtime and is still widely through a myriad of on-line streaming services.

3. The self-proclaimed documentary was the culmination of a protracted conspiracy by the Defendants to defame Plaintiff Ciolino, David Protess and Northwestern University's innocence project with a wider goal of discrediting the wrongful conviction movement as a whole.

4. MIP is based on a book written by defendant CRAWFORD and published in July 2015, entitled Justice Perverted: How The Innocence Project at Northwestern University's Medill School of Journalism Sent an Innocent Man to Prison.

5. The false narrative advanced by MIP and defendant CRAWFORD's sensational book was partially the brain-child of defendant PREIB, a Chicago Police officer and spokesman for Chicago's Fraternal Order of Police ("FOP"). Defendant Preib was instrumental in developing the false narrative presented in MIP and has himself peddled the same false and defamatory statements about Ciolino on his blog "Crooked City: The Blog About The Wrongful Conviction Movement[1]"

6. Specifically as to Plaintiff Ciolino, each of the Defendants named in this Complaint have published to the public, either by spoken word or in the written form, false and defamatory statements accusing Ciolino of framing SIMON for the murder of Marilyn Green and Jerry Hillard by forcing SIMON to confess to the murders at gun point during a video-recorded statement procured in 1999.

[1] Martin Preib's blog is now simply entitled "Crooked City" and can be found at http://martin-preib-b7is.squarespace.com/rainbo2hotmailcom/ but his older posts are archived through caching.

7. Each and every Defendant possessed a high degree of awareness that the statements they advanced in MIP, CRAWFORD'S book, and on Defendant PREIB's blog were probably false and that SIMON is actually guilty of the murders to which he pled guilty and confessed to no fewer than eight separate times.

8. As the detailed factual statement, *infra,* sets out, Defendants conspired to discredit, defame, and defeat David Protess, Paul Ciolino, and Northwestern University – all as 'pay back' for their efforts and success at revealing the injustices in the Illinois criminal justice system and their work toward abolition of the death penalty.

9. Plaintiff Ciolino's reputation and career as a private investigator in Chicago was destroyed by the false narrative published by defendants in the mainstream media, starting in July 2015 when MIP first premiered in Chicago. Since early 2016 when MIP was broadcast nationally on Showtime, Ciolino has received scores of threats and attacks on his well-being, forcing him to retreat from his normal life-activities. Ciolino's inability to work as an investigator has caused him severe financial distress.

JURISDICTION AND VENUE

10. On February 17, 2015, Defendant SIMON filed a Complaint in the United States District Court for the Northern District of Illinois invoking diversity jurisdiction to raise a state malicious prosecution claim, naming Plaintiff Ciolino as a defendant. *Simon v. Northwestern University, et al*, 15-cv-1433. Ciolino moved to dismiss the Complaint pursuant Fed. R. Civ. P. 12(b)(6).

11. On March 29, 2016, the United States District Court judge denied Ciolino's motion to dismiss the Complaint and ordered Ciolino to answer the Complaint. On April 27, 2016, Ciolino filed a counter-complaint pursuant to Fed. R. Civ. P. 13(b) against Alstory Simon

along with additional counter-complaint co-defendants including Alvarez, Hale, Sotos, Ekl, Delorto, and Crawford [all named as Defendants here].

12. On January 3, 2017, the United States District Court dismissed Ciolino's counter-complaint for lack of subject matter jurisdiction, finding that it did not raise compulsory counter claims and declining to exercise supplemental jurisdiction over the claims. The District Court noted that Ciolino was not left without a forum as he could bring his claims in state court.

13. Plaintiff Ciolino now brings his state tort claims in state court within one year of the dismissal of his counter-complaint raising the same claims. 735 ILCS 5/13-217.

14. Venue is proper pursuant to 735 ILCS 5/2-101 because the defendants either reisde in Cook County or because the transaction or some part thereof out of which this cause of action arises occurred in Cook County.

PARTIES

15. Plaintiff Ciolino, is a resident of Lisle, Illinois in Dupage County.

16. On information and belief, Defendant SIMON is a resident of the State of Ohio. However, he has brought a federal lawsuit against Plaintiff in the Northern District of Illinois.

17. Anita ALVAREZ, at all relevant times, was the Cook County State's Attorney and an attorney licensed to practice law in the State of Illinois. Upon information and belief, ALVAREZ is a resident of Cook County.

18. Andrew M. HALE ("HALE"), at all relevant times, was an attorney licensed to practice law in the State of Illinois. HALE was an executive producer and participant in the self-proclaimed documentary MIP. Upon information and belief, HALE is a resident of Park Ridge, Illinois and operates his law office and production company in Chicago, Illinois.

19. Terry A. EKL ("EKL"), at all relevant times, was an attorney licensed to practice law in the State of Illinois. EKL is one of Defendant SIMON'S attorneys in this litigation. EKL was a participant in the self-proclaimed documentary MIP. Upon information and belief, EKL is a resident of Wheaton, Illinois and operates his law office in Lisle, Illinois.

20. James G. SOTOS ("SOTOS"), at all relevant times was an attorney licensed to practice law in the State of Illinois. SOTOS is one of Defendant SIMON's attorneys in this litigation. SOTOS was a participant in the self-proclaimed documentary MIP. Upon information and belief, SOTOS is a resident of Elk Grove Village, Illinois and operates his law office in Itasca, Illinois.

21. James DELORTO ("DELORTO"), at all relevant times was a private investigator for Delorto, Mazzola & Associates located in Batavia, Illinois. DELORTO was a participant in the self-proclaimed documentary MIP.

22. Martin PREIB ("PREIB"), at all relevant times, is a retired Chicago Police officer who writes for and maintains a blog entitled "Crooked City: The Blog About the Wrongful Conviction Movement." On information and belief, PREIB is a resident of Cook County, Illinois.

23. William B. CRAWFORD ("CRAWFORD"), at all relevant times, is an author. On information and belief, CRAWFORD is a resident of DuPage County, Illinois.

24. WHOLE TRUTH FILMS, LLC, is a limited liability company based in Chicago, Illinois. On information and belief, Whole Truth Films, LLC is owned and operated by defendant HALE who is the managing member along with Christopher Shawn Rech. WHOLE TRUTH FILMS, LLC produced MIP.

FACTUAL BACKGROUND

[Northwestern University's Innocence Project] led by Professor David Protess framed Alstory Simon so death row inmate Anthony Porter could become a 'poster boy' for the bid to end executions in Illinois. - Terry Ekl

25. In the early part of the 1990's, nearly seventy percent of Americans favored the death penalty and wrongful convictions were seen as rare anomalies.

26. That all changed over the course of a decade in the State of Illinois, a state that has became nationally known as the hub of wrongful convictions.

27. Against all odds, the death penalty in Illinois was abolished in 2011 largely as a result of the work of Northwestern University and certain key players associated with the institution.

28. For many, this moment in Illinois history was a glorious triumph over a criminal justice system that had resulted in scores of travesties of justice and seemed too broken to fix. For others, it marked a dark day where the 'bad guys' prevailed over the good.

29. This case is about a campaign to disrupt the so-called "innocence movement" – a campaign planned and executed by a small group of individuals [the defendants] who largely reject the notion that the Illinois' criminal justice system has resulted in wrongful convictions (even in the face of undisputed scientific evidence).

30. These individuals who view the hard-working advocates and the wrongly convicted as predators of a so-called "innocence industry," have openly and publicly claimed that Northwestern University's Innocence Project "led by Professor David Protess framed [Alstory Simon] so death row inmate Anthony Porter could become a 'poster boy' for the bid to end executions in Illinois."

31. To prove this absurd claim, these Defendants conspired to defame Plaintiff

Ciolino by falsely alleging that he engaged in illegal and unethical acts when he secured a confession from SIMON in February, 1999. These false and defamatory statements have caused irreparable harm to Ciolino's reputation and destroyed his career. Defendants acted not only with reckless disregard for the truth but also with actual malice.

The Groundbreaking Work of David Protess, Rob Warden, and Lawrence Marshall

32. In November, 2003 the Illinois General Assembly passed sweeping death-penalty reform legislation less than a year after Governor George H. Ryan exercised his clemency authority and cleared out death row. The *Chicago Tribune* trumpeted, "[a]t last, death penalty reform" calling it "historic reform of death penalty procedures in a state embarrassed by its penchant for choosing the wrong people to die."

33. The political will to enact these reforms resulted from the exonerations of at least 13 death-row inmates, vindicated largely by the efforts of three men associated with Northwestern University, David Protess, Rob Warden, and Lawrence Marshall. Indeed, Warden and Marshall co-founded Northwestern University's Center on Wrongful Convictions, an institution that trail-blazed the anti-death penalty movement and to date has exposed scores of wrongful convictions.

34. Protess joined the faculty of Northwestern University's Medill School of Journalism in 1981. He also served as a contributing editor and staff writer at the *Chicago Lawyer* magazine, a publication founded by award-winning investigative reporter Rob Warden.

35. In 1991, Protess and Warden successfully exposed the wrongful conviction of David Dowaliby who had been convicted of the murder of his 7-year old adopted daughter. Warden and Protess uncovered evidence that led to Dowaliby's exoneration and which garnered significant media attention.

36. In the mid-1990s, Protess, with the assistance of his journalism students, was instrumental in proving the innocence of Dennis Williams, Verneal Jimerson, Kenneth Adams, and William Rainge – four men who were convicted of the murder, kidnapping, and robbery of Lawrence Lionberg and Carol Schmal and the rape of Schmal. Willliams and Jimerson were sentenced to die while Adams and Rainge were sentenced to lengthy prison sentences. The four men became known as the "Ford Heights Four."

37. While Protess (with assistance from Ciolino) led the investigation that led to their exonerations, Lawrence Marshall, a lawyer and professor at Northwestern University took up the representation of Rainge along with Matthew Kennelly (now U.S. District Court Judge Kennelly). Williams was represented by Robert Byman of Jenner & Block. Jimerson was represented by Mark Ter Molen of Mayer, Brown & Platt, and Adams was represented by Jeffrey Urdangen who eventually became a staff attorney at the Northwestern Center on Wrongful Convictions.

38. The Ford Heights Four were ultimately freed when DNA analysis of semen recovered from the scene not only cleared them but connected three other individuals to the horrific crime, one of whom openly confessed at a press conference. All three men connected to the crime scene were eventually convicted of the double murder and Cook County settled civil claims brought by the Four Heights Four for $36 million.

39. Three months later, Lawrence Marshall secured the release of yet another innocent man, Gary Gauger, who had been sentenced to death in Illinois.

Rolando Cruz and the Genesis of the Anti-Northwestern Movement

40. On November 3, 1995, Lawrence Marshall secured the acquittal of Rolando Cruz for the 1983 abduction, rape, and murder of 10-year old Jeanine Nicarico.

41. Cruz had been twice convicted and sentenced to death row for the murder of Nicarico by DuPage County State's Attorney Jim Ryan.

42. Even after Brian Dugan, an Aurora man who was arrested (and later convicted) for a child rape and murder in LaSalle County, confessed to the murder of Jeanine Nicarico and was implicated by DNA evidence, Ryan insisted that Cruz and his co-defendant were guilty of the Nicarico rape and murder.

43. At Cruz's third and final trial, a high-ranking DuPage County sheriff admitted that Cruz had never made certain inculpatory statements previously attributed to him. This admission in conjunction with new DNA evidence pointing to Dugan and not Cruz as the offender led to a DuPage County judge directing a verdict of not guilty.

44. In the fall out from Cruz's exoneration, four sheriff's deputies and three County prosecutors were indicted by a DuPage County Grand Jury on charges of perjury and obstruction of justice. The collection of police officers and prosecutors were dubbed the "DuPage 7."

45. Defendants EKL, SOTOS, DELORTO were outraged by this turn of events. Defendant EKL, a former Cook County prosecutor, took up the representation of one of the accused, former prosecutor Thomas Knight.

46. In June, 1999, Defendant EKL's client Thomas Knight and the other "DuPage County 7" were acquitted to the dismay of many who firmly believed that the evidence showed that Cruz had been framed. For his part, Defendant EKL argued that mistakes were made but no criminal conspiracy occurred. EKL remarked, "[m]y client [former prosecutor Thomas Knight] is a smart guy. If he wanted to frame Rolando Cruz, he would be dead right now."

47. Despite Cruz's acquittal and Dugan's guilty plea, the DuPage County Board represented by Defendant SOTOS reluctantly and begrudgingly agreed to pay out 3.5 million to Rolando Cruz and his co-defendant, calling the decision to pay Cruz "morally reprehensible."

48. Defendant SOTOS later appeared before the Illinois Prisoner Review Board on behalf of DuPage County to object to Cruz's request for clemency. SOTOS spent an hour listing the reasons why Cruz was still under suspicion and telling the Board that Cruz is "conning you."

49. That same day, Defendant SOTOS also objected (this time on behalf of McHenry County) to the clemency petition of Lawrence Marshall's other client, Gary Gauger, who was also exonerated from death row. SOTOS suggested that Gauger may have contracted the killing of his parents or at least concealed evidence.

The Center on Wrongful Convictions is Launched and Anthony Porter is Exonerated

50. In April, 1999, Rob Warden and Lawrence Marshall officially co-founded Northwestern's Center on Wrongful Convictions ("CWC"). Marshall and Warden's work had exposed the deep and disturbing flaws of Illinois' criminal justice system and had led the nationwide movement to reform the criminal justice system and abolish the death penalty. Indeed, in 1999, Governor George Ryan called for a moratorium on the death penalty in large part due to another Northwestern exoneration, namely the exoneration of Anthony Porter – a death row inmate who had come within 36 hours of execution.

51. Porter's exoneration came as a result of investigative work conducted largely by David Protess, his journalism students, and Plaintiff Ciolino, a licensed private investigator.

52. In September, 1998, Protess was contacted by death penalty lawyer Aviva Futorian to see if he would be interested in investigating issues surrounding Porter's competence to be executed and also possible innocence.

53. Protess initially expressed doubt that he could be of any assistance in light of Porter's impending execution, but when Porter's execution was stayed that same month, Protess and his students agreed to work on the case. Although the initial focus of Protess and his students' work centered on competency issues, it eventually turned towards issues of innocence.

54. Porter was sentenced to death for the 1982 murders of Jerry Hillard and Marilyn Green in Washington Park on the south side of Chicago. After the shooting, police interviewed a witness, William Taylor, who had been swimming in the park pool. Taylor at first said he had not seen the person who had committed the shooting but after 17 hours of police interrogation named Anthony Porter as the shooter.

55. In November 1999, Protess' students went to Washington Park and attempted to re-enact William Taylor's perspective on the crime based on his critical eyewitness testimony at trial. The students questioned whether Taylor could have seen what he testified to and told Protess that they wanted to interview William Taylor.

56. Plaintiff Ciolino and a journalism student later went to see William Taylor at his apartment. The trio convened in the lobby of Taylor's building and after a short conversation, Taylor admitted that his trial testimony was false and that police had pressured him to identify Porter. Taylor executed an affidavit memorializing his statements to Plaintiff.

57. Protess and team also reviewed the investigatory work of Porter's prior criminal defense attorney who had obtained affidavits from witnesses strongly suggesting that a person named Alstory SIMON was responsible for the Hillard-Green Murders.

58. One of those witnesses was a man named Ricky Young who had claimed that SIMON had admitted to killing Hillard and Green. Even Marilyn Green's mother opined that SIMON and his wife, Inez Jackson, were involved in the murders because SIMON and Inez were

the last people seen with the victims. To add to the suspicion, SIMON and Inez had abruptly moved out of the neighborhood almost immediately after the shootings and left the state soon thereafter.

59. Based on these leads, Protess' students located Inez Jackson who was by then divorced from SIMON and living apart from him in Wisconsin. Protess, his students, and Plaintiff Ciolino went to Wisconsin to interview Inez. During that interview, and again later on videotape, Inez admitted that she was present when Hillard and Green were shot and that Alstory Simon shot them in relation to a drug dispute.

60. Inez's video-taped statement implicating SIMON was aired on national news that same evening.

Simon Confesses On Videotape to Ciolino

61. The following day, Ciolino traveled to Milwaukee with his associate Arnold Reid to attempt to interview SIMON. They arrived at the house at approximately 7:30 a.m. and SIMON answered the door shirtless. Ciolino and Reid introduced themselves and told SIMON why they wanted to speak to him. As they stood in the doorway conversing, SIMON told Ciolino and Reid, "get inside," remarking how cold it was outside.

62. During a meeting that would last approximately 30 minutes, Ciolino told SIMON that they had developed evidence that pointed to him as the offender and that another man had been sentenced to a die for a crime that he did not commit. In an effort to gauge SIMON's response, Ciolino showed SIMON a clip of a video that Ciolino had prepared in which a young man (who sometimes worked for Ciolino) claimed to see SIMON commit the shooting. SIMON laughed off the video, remarking in sum and substance, "Fuck you man, that guy wasn't there." Ciolino responded, "[b]ut you were."

63. Moments later, Ciolino noticed that SIMON's television was on and fortuitously was re-airing a news report from the night before in which the Porter case was covered and was broadcasting Inez Jackson's video-recorded statement pointing the finger at SIMON as the responsible party – an event SIMON later recalled in an apology letter he wrote directly to Anthony Porter.

64. SIMON watched the report intently and was overcome with emotion. He then admitted that he committed the shooting but claimed he had acted in self-defense. SIMON agreed to go on video to tell his story and delivered the statement unrehearsed.

65. After completing his video-recorded statement, SIMON asked Ciolino whether he was going to need a lawyer and Ciolino told him that he most likely would. At Simon's request, Ciolino offered the names of three well-regarded lawyers who Ciolino knew, Jack Rimland, Gerald Boyle, and Jim Montgomery. Ciolino and Reid departed the premises at 8:03 a.m.

66. Ciolino made a copy of the video-taped confession and then arranged for the original to be delivered to the Cook County State's Attorney's office that same day.

Simon Confesses Eight More Times

67. Shortly after making the video-recorded statement, SIMON turned himself into the police at 51st and Wentworth in Chicago. SIMON bumped into Inez Jackson and her lawyer Martin Abrams at the police station. In the presence of Abrams, SIMON asked Jackson in sum and substance, "What the fuck are you doing here?" to which Inez responded, "I'm here to tell them you did it. What are you here for?" Simon responded, "To tell them the same thing."

68. On February 11, 1999, Jack Rimland along with attorney Steve Wagner visited SIMON in jail. SIMON again confessed, adding additional details about the crime, including details about the motive for the crime and his history with Hillard and Green.

69. On September 7, 1999, pursuant to a *negotiated* plea agreement, Simon admitted his guilt again, this time in open court. During the lengthy plea proceeding, Simon denied being forced or promised any benefit in exchange for his guilty plea. After Marilyn Green's mother, Offie Lee Green, directly *asked* SIMON why he took her daughter's life, "What did my daughter do to you?" she pleaded. SIMON *impromptu* responded:

> Your daughter never did nothing to me. I never meant to hurt your daughter. And – excuse me. (Short pause) It was an accident that your daughter got shot. I never meant to hurt her. Never meant to do it. Never meant her no harm at all. I had things between Jerry and I. And when the shots started she just, she was coming past and happened to got [sic] in the way when the shot went off. Before I realized it I had already squeezed the trigger, she was trying to stop me from coming at Jerry. She threw up her hands, and trying to hit her in the hand, I didn't even realize she had, she even hurt that bad."

70. Before being sentenced, SIMON made the following statement to the Court:

> First of all, I would like to apologize to Miss Green. I know it won't bring her daughter back. I'd like to apologize to her grandchildren. I never meant to hurt Miss Green. This was, started off as friendship, turned into a tragedy that I have had to live with for the last 17 years. And I never meant to harm or hurt anyone actually. I am sorry that Anthony Porter had to suffer for 17 years on death row. I never knew that anyone had even been arrested or accused of a crime. Because I had moved out of the State of Illinois. I was never the type of person to really watch television. Because I was too busy wrapped up trying to maintain a life for myself, trying to do the right things. Trying to stay out of trouble. And all I could say is, is that I am sorry, Miss Green, and the little ones, that this ever happened. And that I hope that they can find it within themselves to maybe forgive, which I doubt, I doubt. It would be hard to. And I am just truly sorry that it happened. She was a wonderful person. And I had no beef with her. We weren't arguing about nothing. She was always nice too. We was always nice to one another. It was just an accident. And I am sorry.

71. In exchange for his guilty plea, SIMON received a sentence of 37 years' imprisonment (with day for day good time) and prosecutorial immunity in the murder of Felix Alonzo for which SIMON was also a suspect. All in all, SIMON would serve roughly 17 years in prison for a double homicide that had earned Anthony Porter a

sentence of death. SIMON never attempted to withdraw his guilty plea.

72. On October 1, 1999, after SIMON began serving his sentence in the Illinois Department of Corrections, SIMON asked to be placed in protective custody. SIMON told a correctional officer that "he had a high profile case *as he was responsible for a murder that another man was charged and incarcerated 17 years on death row.*"

73. During the month of October, 1999, SIMON wrote his prior attorney Jack Rimland numerous times thanking him profusely for representing him and saving his life. SIMON also asked Rimland to provide him with Anthony Porter's address so he could write him an apology letter.

74. On or around October 25, 1999, SIMON wrote a letter to Rimland expressing his profound appreciation for his representation. SIMON also enclosed a copy of a letter that he had attempted to send directly to Anthony Porter. SIMON asked Rimland to forward the letter to Porter. SIMON stated in pertinent part, "I hope it [the letter] finds you in an open frame of mind. What I'm about to express is deep from the reservoir of my heart. I never knew that someone had been blamed for the double-slaying. As I sat in the privacy of my home watching time you appeared on the network, and the clock was ticking. I knew then that it was true. It was nothing of conscious, nor pity or trickery by the investigators. When I saw you I could not let that happen to you." Simon offered his heartfelt apology to Porter, even inviting him to come visit him in the penitentiary.

75. In his numerous letters to Rimland, SIMON never once stated that his statement to Plaintiff Ciolino was coerced or induced by any promises from Ciolino or David Protess. Indeed SIMON never mentioned Ciolino or Protess at all. SIMON never told Rimland he wanted to withdraw his guilty plea and never complained about Rimland's representation.

76. On November 24, 1999, SIMON confessed again. This time, he participated in a television interview from the Illinois Department of Corrections with a Milwaukee television station reporter Colleen Henry from WISN, an ABC affiliate station.

77. In the interview with WISN, Simon again confessed, explaining how he never meant for the shooting to happen but "before I knew anything, I just pulled it up and started shooting." Simon said "I thought I got away with it . . . long as it never was brought up, I wasn't going to say anything." On the issue of Porter sitting on death row for a crime he had committed, Simon told the reporter "he had sat there all these years for something he didn't do . . . and now they fitting to kill him too? That's when I decided that I was not going to let this man die for something that he did not do . . and that's when I told the investigator . . . ok man let's do this."

78. Even in May, 2000 – seven months after entering his guilty plea, SIMON wrote a letter to attorney, David Thomas, a professor at Chicago-Kent College of Law who had met SIMON shortly after his arrest. For the first time, SIMON complained about Rimland's performance suggesting that because SIMON had acted in self-defense and only killed Green by accident, he should not have been convicted. SIMON asked Thomas whether he would be willing to represent him on post-conviction proceedings. SIMON never claimed that his confession to Ciolino was coerced, that his guilty plea were involuntary or that he was actually innocent of the crime. SIMON wrote, "David, I'll be fifty years old this second day of June. I never meant to kill anyone. I was only defending myself from a young man who was trying to kill me and another person was killed by accident." Thomas declined SIMON's request.

79. After roughly a year in the penitentiary, SIMON decided he did not want to serve the remainder of his 37-year sentence after all. Luckily for him, he found allies in two private investigators, Defendant James DELORTO and his partner John Mazzola who worked almost

exclusively for defendants EKL and SOTOS. DELORTO and Mazzola cared nothing of SIMON's plight but had an agenda that worked to SIMON's benefit.

A Conspiracy to Disrupt the "Innocence Industry"

80. On February 3, 1999 at 6:00 p.m., Simon's videotaped confession aired on WBBM-Channel Two. Defendant DELORTO and his partner Mazzola watched the SIMON confession on television and remarked, "What a crock of shit!"

81. DELORTO and Mazzola are both retired ATF agents who run a private investigative firm that works almost exclusively for Defendants EKL and SOTOS. DELORTO and Mazzola and their employers EKL and SOTOS were no fans of David Protess and Paul Ciolino or the work of the Northwestern's Medill School of Journalism.

82. DELORTO and Mazzola were familiar with Plaintiff and Protess because of their work on the exoneration of the Four Heights Four. DELORTO and Mazzola had assisted in the defense of a Chicago suburb police chief who was indicted in the fall out of the Ford Heights Four case. They strongly believed that the Ford Height Four should still be imprisoned, despite the fact that DNA evidence cleared them and implicated three others.

83. Defendant DELORTO publicly opined that Protess, Ciolino and Northwestern's "innocence" work was all a "liberal conspiracy" and that the public had been hoodwinked and "good coppers" were paying the price. Defendant DELORTO and Mazzola made it their mission to discredit the work of Plaintiff and Protess.

84. Shortly after SIMON pled guilty and was sentenced for the murders of Hillard and Green, DELORTO and Mazzola decided to visit SIMON in the Illinois Department of Corrections.

85. Believing that David Protess with the assistance of Plaintiff had "worked unscrupulously to free guilty men," DELORTO and Mazzola targeted SIMON as an accomplice in their mission to discredit Protess and Ciolino's work.[2] SIMON knew that he was guilty and that his statements to Ciolino and subsequent guilty plea were voluntarily given, but DELORTO and Mazzola were eager to help SIMON get out of prison and SIMON was happy to accept their assistance.

86. Defendant DELORTO and Mazzola helped SIMON develop a false claim that Plaintiff Ciolino had coerced SIMON's video-recorded confession to the Hillard and Green murders. DELORTO and Mazzola knew that SIMON had never claimed that his video-recorded statement was false or that his guilty plea was coerced, but they fed a false narrative to SIMON that he willingly regurgitated.

87. In return, DELORTO and Mazzola promised SIMON that they could secure legal representation for him through their employers Defendants EKL and SOTOS. But there was one catch. Defendants EKL and SOTOS didn't represent people who were wrongly convicted. In fact, they represented police officers and municipalties who were responsible for wrongful convictions. EKL and SOTOS' new found interest in representing the "wrongfully convicted" might be seen as something less than genuine. To avoid the appearance that EKL and SOTOS had any involvement in crafting SIMON's false story, DELORTO and Mazzola told SIMON that he would first have to file a petition *pro se.*

[2] "So shortly after Alstory Simon was sentenced to thirty-seven years in September, 1999 for a crime he did not commit, Delorto and Mazzola knew precisely what their next move would have to be. They would have to climb into their van, make the 143.18-mile , three-hour and three-minute drive to the Illinois Department of Correction prison in Danville, and talk to Alstory Simon about this case." Crawford, William B., *Justice Perverted: How the Innocence Project of Northwestern University's Medill School of Journalism Sent an Innocent Man to Prison,* pg. 122 (2015)

88. Aided by the defendants, SIMON filed his *pro se* post-conviction petition in July, 2001. SIMON did not actually draft the petition and received assistance from defendants. At some point in 2002,[3] EKL and SOTOS formally undertook his representation with any eye toward using the case to discredit the Porter exoneration and smear David Protess and Northwestern University.

89. In 2003, Defendants EKL and SOTOS unsuccessfully lobbied Cook County State's Attorney Dick Devine to give SIMON a hearing, and in 2005, Defendants EKL and SOTOS filed a successive post-conviction petition on SIMON's behalf.

90. Defendants DELORTO, EKL, and SOTOS knew that SIMON was guilty and that any claims that his confession was coerced were bogus. But together, the Defendants contrived an elaborate tale to explain away SIMON's many confessions (no fewer than eight) to the murders.

91. Significantly, around the time that Defendants EKL and SOTOS took up SIMON's cause, David Protess and his students also began investigating the wrongful conviction of Gordon "Randy" Steidl who was serving a death sentence for the murder of a young married couple in Paris, Illinois. In addition to thoroughly discrediting the evidence that had been used to convict Steidl and his co-defendant Herb Whitlock, Protess had publicly theorized that an alternative suspect, a prominent Paris, Illinois businessman and banker by the name of Robert ("Bob") Morgan, was a strong suspect in the murders.

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[3] "Years later, on December 19, 2002, Jimmy Delorto and Johnny Mazzola interviewed McCraney. At the time, the two investigators were working for attorneys James Sotos and Terry Ekl, who were representing Alstory Simon pro bono in an effort to get Simon a post-conviction hearing." William B., *Justice Perverted: How the Innocence Project of Northwestern University's Medill School of Journalism Sent an Innocent Man to Prison,* pg. 118 (2015)

92. In May, 2000, CBS 48-Hours aired a show about the Paris, Illinois murders challenging the shaky evidence on which Steidl's conviction rested and suggesting that other suspects had not been fully vetted by the police. David Protess pointed the finger at Bob Morgan as one of those suspects.

93. Steidl was released from prison in 2004, owing in part to Protess' investigative efforts. By this point, the national media was paying close attention to the case and asking questions about Morgan's connection to the Paris, Illinois double homicide.

94. Morgan, a powerful and wealthy businessman with ties to the Republican establishment who had donated generously to Jim Ryan's various election bids decided he needed a public relations team to counteract the damning narrative that had taken hold in the press.

95. In late 2005, Morgan hired Jim Ryan's former press secretary and spokesman Dan Curry for the job. Curry was also friendly with Defendants EKL and SOTOS on account of their mutual connections within Jim Ryan and the DuPage County Republican establishment.

96. Morgan paid Curry $8000 a month to derive an aggressive PR plan that would refute the theory that he was involved in the murders for which Steidl and Whitlock had been wrongly convicted. Dan Curry later partnered up with his long-time friend John Pearman, a native of Paris, Illinois, who had also worked as top staff for Jim Ryan, to form a PR firm they named Reverse Spin, LLC.

97. Meanwhile, Steidl filed a federal civil rights lawsuit naming the City of Paris, Edgar County, and various law enforcement personnel including Edgar County Prosecutor Mike McFatridge, alleging that he had been framed for the Paris murders. The defendants in the Steidl

matter hired Defendants EKL and SOTOS to represent them (SOTOS representing the City of Paris and various Paris police officers and EKL representing Prosecutor McFatridge)

98. With a fierce and common goal, Morgan's mouthpiece Dan Curry, along with Defendants EKL, SOTOS, DELORTO, and Mazzola joined forces to bring down David Protess. Together they conceived a plan to ruin the reputations of Northwestern University, David Protess, and Plaintiff Ciolino. Part of the strategy to discredit Protess and plaintiff was to attack the integrity of their success stories, most importantly the Porter exoneration.

99. In an April 2006 memo written to Defendants EKL and SOTOS, Curry accused Protess of a pattern of demagoguery and wrote that he "will continue to work closely with Sotos and Ekl to push the Anthony Porter/Alstory Simon case into the media."

100. In early 2007, Curry proposed to Morgan (and Defendants EKL and SOTOS) the idea of producing a book or documentary that would essentially "swift boat" David Protess and his work on the Porter case. In a memo to Morgan, copied to EKL and SOTOS, Curry recommended engaging Rick Reed of the SRCP who was responsible for the so-called John Kerry "swift boat" ads (that were widely seen as an unfair attack on John Kerry's military service during the 2004 presidential race) to produce a movie that would show "the role David Protess and others played in framing Alstory Simon." The movie would also address Protess' role in the Steidl case and his alleged smears of Bob Morgan. Curry also suggested writing a book about Protess' "dishonesty" and "framing of Morgan and Alstory Simon."

101. In the aforementioned memo, Curry wrote to Morgan, EKL, and SOTOS:

> As I mentioned before, the centerpiece of the project would be a book on the Porter-Simon case. That case, in my opinion, has a strong national "news hook" because Porter has been described as a nationwide symbol of the death penalty. I'm seeking to find a high-profile conservative publisher. . . In the book, of course, I would explain how Northwestern University professor David Protess, investigator Paul Ciolino, attorney Jack Rimland and others framed Alstory

> Simon in order to free Anthony Porter. . .What could supercharge the dynamic in the 30-minute documentary by a well-known and respected film maker. Rick Reed of Stevens, Reed, Curcio & Potholm, Alexandria, VA., produced the Swift Boat ads that are credited by many with winning the 2004 presidential election for George W. Bush. He is a friend of mine and believes the Porter-Simon story is compelling and quite newsworthy if played correctly.

102. Although Reed was never hired to produce a documentary and Curry never wrote a book, the idea of writing a book and producing a documentary to help further the goal of discreding Protess, Ciolino, and Northwestern stuck with defendants.

Operation Swift-Boat David Protess Is Joined by A Washed-up Writer, a Chicago Cop, and Jon Burge's Long-Time Lawyer.

103. In 2010, DELORTO and MAZZOLA put into motion the plan to "swift-boat" David Protess as conceived by Dan Curry and outlined in his memo to Defendants EKL and SOTOS. Although the defendants were unable to secure a reputable writer to take up their cause, the defendants found a washed-up journalist Defendant CRAWFORD to write *their* version of the Porter/Simon saga. CRAWFORD was a good fit as he had an axe to grind with Protess and Northwestern University.

104. Although CRAWFORD had previously enjoyed some success while writing for the Chicago Tribune, alcohol abuse eventually side-lined his career leaving him bitter and irrational. CRAWFORD was painfully jealous of David Protess who was widely lauded by the journalism world and rose to the prominent position of Dean of Northwestern University's Medill School of Journalism. CRAWFORD seethed with envy as Protess and his students received national acclaim for their work on the Porter exoneration.

105. CRAWFORD jumped at the chance to work on a project devoted to maligning his nemesis David Protess and smearing the university that had passed him up for a full-time professor position. CRAWFORD's indignation in conjunction with his drinking problem

depleted him of all journalistic standards, a condition necessary to advancing the false narrative created by defendants. Even among his friends and allies, CRAWFORD is seen as mentally unstable, illogical, and erratic. On numerous occasions, CRAWFORD has threatened Protess and Ciolino (and others) in drunken stupors.

106. CRAWFORD spent hours upon hours in the law offices of Defendant SOTOS scouring the Porter record and brainstorming with defendants how to persuasively sell the false narrative that SIMON was framed by Protess, Plaintiff Ciolino and Northwestern University.

107. In spring 2011, CRAWFORD completed a document he entitled "Chimera" detailing defendants' false narrative that SIMON was framed by Protess, Ciolino, and Northwestern University. Although CRAWFORD circulated the document to virtually every media outlet in the city, none found it worthy of publication.

108. Around this time, DELORTO, Mazzola, and CRAWFORD expanded their "swift-boat" committee by joining forces with a Chicago police officer and part-time blogger Defendant PREIB. PREIB is currently the spokesman for Chicago's largest Fraternal Order of Police ("FOP").

109. PREIB is an ardent Jon Burge supporter committed to combating the "wrongful conviction movement" in Chicago and vindicating Burge, former Chicago police commander and convicted felon who gained national notoriety for torturing more than 200 African-American suspects in the 1970s and 80s.[4] As recently as last month, PREIB bemoaned the proposed $31 million dollar settlement for four African-American men who had each spent 15 years in prison before being exonerated by DNA evidence, opining publicly, "[w]hat is happening in this city is

[4] The City of Chicago, including former mayor Richard M. Daley, has acknowledged the atrocities committed by Burge. Defendant PREIB considers it all "fake news" advanced by the wrongful conviction movement and the liberal Chicago media.

that the civil rights lawyers have carved out a cottage industry in the name of wrongful convictions. They look to this chamber [city council] as their blank check. Their playbook is simply: they claim police misconduct, get the proseuctors to exonerate, draft a willing media and then manipulate the citizens of Chicago out of their tax money."

110. PREIB began his crusade to combat the "wrongful conviction" movement by writing a blog entitled "Crooked City: The Blog about the Wrongful Conviction Movement" www.crookedcity.org devoted to circulating false and misleading narratives about the exonerations of wrongfully convicted men and women and the people who fought for their freedom.

111. In spring 2011, the Protess "swift-boat" committee now consisting of the defendants DELORTO (and Mazzola), CRAWFORD, PREIB, EKL and SOTOS began to implement phase two of Dan Curry's PR strategy, that is, to develop a documentary about the Porter exoneration with the goal of discrediting Protess, Plaintiff Ciolino and Northwestern.

112. The defendants engaged film producer Paul Pompian to develop their version of the Porter/Simon story. Pompian was a Chicago native who had worked for Richard J. Daley's administration as a lawyer before becoming a film producer.

113. While Pompian and his production company were based in Los Angeles, DELORTO, Mazzola, CRAWFORD and PREIB operated as the production crew for the film, tracking down witnesses and arranging to interview them on video for use in the documentary. Conveniently, DELORTO and Mazzola were simultaneously acting as "investigators" for SIMON's attorneys (SOTOS and EKL).

114. Defendants DELORTO and Mazzola harassed, threatened, pressured, and coerced witnesses into conforming their stories to the false narrative that had been developed by the

defendants. While falsely accusing Protess and Ciolino of using unethical tactics to overturn wrongful convictions, DELORTO and Mazzola *actually* used those tactics in their efforts to make a case for SIMON's innocence, a claim all involved *knew* was patently false.

115. Just by way of example, DELORTO and Mazzola harassed, threatened and induced Inez Jackson with monetary benefits to secure a recantation from her. Inez initially told DELORTO and Mazzola that her statements in 1999 were true, that is, SIMON committed the murders. But eventually Inez, who was dying of AIDS, went along with the story fed to her by DELORTO and Mazzola. Similar tactics were used to get Walter Jackson to change his story.

116. Defendants routinely used money to gain the cooperation of the witnesses. SIMON himself was paid significant sums of money during the course of this campaign. In a letter written to Defendant SOTOS in September, 2011, SIMON wrote:

> You mention that if I needed anything to let you know. I don't try to be a burden on anyone. But I could use some finances man. I have been confined for 12 years and 7 months I don't here from any of my people. I have no money coming in. Jim [DELORTO] and John [MAZZOLA] sends me a little something every now and then. . . [If] you do decide to send anything, we can receive money orders up to $200 you can send as many as you want, but they can't exceed that limit . . . Five $200 money orders is enough finances to last me a year for an intire [sic] year in here. Letter from SIMON to SOTOS dated 9-16-2011

117. SIMON's IDOC trust fund accounts shows that he was paid over $2000 by the defendants in a one year period.

118. Whle DELORTO and MAZZOLA were inducing people to change their stories (all while on the payroll of SOTOS and EKL), they were wearing two hats; namely as a member of the production team for the Pompian documentary and as investigators for SIMON's legal team.

119. In late 2011, Defendant Andy HALE joined the team to "swift-boat" Protess after reading CRAWFORD's manifesto "Chimera." HALE was an attorney whose practice was

devoted almost entirely to representing police officers against civil rights lawsuits (including the prodigious civil rights violater Jon Burge). Between 2004 and 2012, the City of Chicago paid defendant HALE 20.5 million in fees and costs associated with his representation of defendants in police misconduct cases. HALE shared the other defendants' desire to discredit Protess, Ciolino and Northwestern's innocence project.

120. In addition to acting a producer for the documentary, Defendant PREIB started lobbying the Fraternal Order of Police ("FOP") to take a stand in favor of SIMON's innocence. On August 15, 2012, PREIB wrote the head of the FOP

> Mike,
>
> This is Martin Preib again. Wanted to let you know we have been very busy on the Porter case. We've begun shooting a documentary. This weekend we are planning on shooting for five days straight, interview with inmates, detectives, lawyers and journalists. The interviews are really fantastic. We have also collected an even larger body of evidence showing the whole case is a fraud. We are still hopeful the FOP will take a stand, but I haven't heard from you. You seemed very enthusiastic at one point. We are hopeful this case will turn the tide on all these false accusations against poilice.
>
> Marty Preib

121. By fall 2012, Pompian had finished a sizzle reel[5] highlighting the false narrative that SIMON had been framed by Protess, Ciolino and Northwestern using the footage accumulated by DELORTO, Mazzola, CRAWFORD, and PREIB. Defendant PREIB was anxious to use the propoaganda-piece to start pushing a narrative that Jon Burge and his Area 2 co-conspirators had also been wrongly targeted by the wrongful conviction. On September 21, 2012 wrote the following to Paul Pompian.

> Last night I worked the police board hearing. At these hearings, anyone can come forward and address the board. The superintendant, OPS, all kinds of officials are

[5] A sizzle reel is a short, 2-4 minute fast paced, video that highlights the larger project and is generally designed to market and raise money for the project.

> there. Lots of community activists show up and rant and rave. Innocence Project sometimes shows and demonstrates. I was thinkin it would be pretty good if you [Paul Pompian] or Bill [William Crawford] or both of you showed up, with Jim too [Jim Delorto], played the sizzle reel and perhaps showed the memo and told them you have credible evidence the wrong man is incarcerated and the right one was freed and that this is not the only instance, that many cops have had their careers ruined. Man, they wouldn't know what to do. But they would have to respond on some level. The cunt from OPS would just be floored.
> In my mind the documentary has to end on one theme. If this was going on in the Porter case, what was going on in the other wrongful conviction cases. Then we have snippets of interviews with Dwyer, Dignan, Andy Hale, Beuke and we run a list of case headlines across the screen, the ones we know are dirty: Hobley, Cannon, Logan, Ronald Kitchen, Tillman, Patterson along with snippets of the interview from Shaw saying he know they are all dirty. In this section, an interview with me might be worthwhile because I am so familiar with many of these cases. Andy Halle [sic], too.
>
> Marty

122. However, less than two months later, PREIB and the other defendants decided that Pompian's sizzle reel was not aggressive enough and did not advance the false narrative as strongly as they would like. PREIB complained to Pompian:

> The documentary has to be focused and simple. It has to center on what Protess did in the Porter case. In my mind, it has to start with him being fired from Northwestern and the accusations that surfaced there applied to the Porter case; bribery, perjury, intimidation, etc. The sizzle reel just falls apart when it gets to Alstory. It makes no sense. No one I have shown it to can follow it. We are using the Porter case as an allegory. Let the viewer understand the Porter case specifically and the suggestions of malfeasance in other cases will come about organically. . . .

123. Whem Pompian pushed back explaining that the story couldn't be told without interviewing SIMON himself, PREIB fired Pompian, telling him that he was going to have a "studio head" in Chicago make a new sizzle reel.

124. Pompian was diagnosed with cancer not long after this email exchange and died a little over a year later. Luckily for the team, defendant HALE was eager to get more actively involved in the project and agreed to take over where Pompian left.

125. Although HALE was a lawyer and not a documentary-maker, he had already waded into the entertainment world by becoming a sponsor and host of of a local cable show called "Crime Stoppers Case Files, Chicago." The executive producer of Crime Stoppers was a man named Christoper "Shawn" Rech who began his career by producing a local cable show in Ohio called "Warrant Unit." Warrant Unit was akin to a local "America's Most Wanted." The show was later re-branded Crime Stoppers. HALE and Rech forged a relationship while collaborating on Crime Stoppers Chicago. Although Rech had never produced a documentary, he agreed to work with HALE on producing a documentary based on CRAWFORD's false version of the Porter-Simon story as set forth in his manifesto "Chimera."

Anita Alvarez Releases a Murderer to Settle a Score

126. While the defendants worked in earnest to continue production of the documentary that later became known as "Murder in the Park," ("MIP") David Protess had made an enemy out of then-Cook County State's Attorney Anita ALVAREZ, a hard-line, pro-law enforcement prosecutor known for her reluctance to acknowledge the problem of wrongful convictions and unwillingness to hold police officers accountable for criminal conduct.

127. ALVAREZ and her right-hand woman, communications director Sally Daly despised Protess and Northwestern University's innocence project as a whole. ALVAREZ believed that the Chicago media had a clear bias in favor of Northwestern and had been unfairly critical of her during her time in office. She vowed to fight Northwestern and Protess at every turn, even resorting to unethical, underhanded and downright sleazy methods to discredit him.[6]

[6] ALVAREZ's office provided at least two reporters an undated, unsigned memo containing scurrilous and completely unsubstantiated claims about Protess and his students, apparently hoping the information would make its way into the press. *Chicago Magazine* reporter Bryan Smith confronted Alvarez directly about her office's attempt to leak and circulate patently unreliable and potentially defamatory statements about Protess. Sally Daly, ALVAREZ's

128. In late 2011, ALVAREZ scored a win on Protess when she successfully moved a circuit court judge to rule that Protess had waived his reporter's privilege. In an unprecedented ruling, the court permitted ALVAREZ's office to embark on an odyssey to discover everything and anything she could about Protess' investigations. Indeed, Northwestern and Protess were ordered to turn over every email, memo, record, and document that Protess and his students had ever written about their investigations going back decades.

129. At the same time, however, ALVAREZ was being widely and nationally criticized for her handling of a different Northwestern case known as the "Dixmoor Five" case. ALVAREZ was excoriated by the press and veteran legal observers after she refused to dismiss cases against five juveniles who had been convicted of the rape and murder of a south-suburban woman even after DNA evidence implicated a convicted rapist of the crime.

130. With mounting pressure, ALVAREZ eventually capitulated by releasing the men, but she stubbornly refused to acknowledge their wrongful convictions. During an interview on CBS's 60 Minutes, ALVAREZ went so far as to suggest that it was entirely possible that the DNA was left by a necrophiliac who had wandered onto the victim's body and had sex with it after the murders. The far-fetched "wandering necrophiliac theory" exposed ALVAREZ as a ruthless and irrational prosecutor completely out of step with the times and resistant to any criminal justice reform. The national media was merciless in its review of ALVAREZ's distrastrous 60-minutes performance. And fairly or not, ALVAREZ blamed Northwestern for being left a national laughing stock.

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spokeswoman explained that the memo was leaked in an effort "to get the whole picture out there." Finding no merit or credibility to the claims, no reporter ever saw fit to publish the leaked memo. To this day, it is unclear who created the false memo that originated in ALVAREZ's office.

131. With the war waging between ALVAREZ and Northwestern, defendants SOTOS and EKL saw an opportunity to form an alliance with ALVAREZ against Northwestern The defendants agreed that ALVAREZ might be willing to review the Porter/SIMON case if it meant discrediting Protess and Northwestern. SOTOS announced publicly, "[w]ith all this new information coming out about Protess, we're hoping this will serve as a catalyst."

132. Defendant PREIB offered to pressure the FOP to get formally involved in advocating for SIMON's exoneration, since ALVAREZ's desire to please the FOP for its endorsement in her upcoming election could prove helpful in their cause.

133. In October 2013, the FOP (directed by PREIB) and SOTOS and EKL wrote tandem letters to ALVAREZ advancing the false tale that Ciolino and Protess with the blessing of Northwestern framed SIMON.

134. Eager to exploit any claims of wrongdoing by Protess and Ciolino, ALVAREZ promptly announced that she would direct her newly-formed Conviction Integrity Unit "CIU" to re-investigate the Porter case. But ALVAREZ already knew what she was going to do. ALVAREZ knew she was going to release SIMON, guilty or not, to settle the score with Protess and Northwestern.

135. The situation presented an opportunity too good to pass up. ALVAREZ who had been widely criticized for her unwillingness to review old cases and dismiss where justified had an opportunity to appease her critics by vacating SIMON's convictions while simultaneously sticking-it to the man and the organization that was most responsible for bringing the problem of wrongful convictions to the public conscience.

136. Although ALVAREZ's assistants were tasked with reinvestigating the case and embarked on that assignment with diligence, ALVAREZ was disinterested in what the

investigation showed. Rather, ALVAREZ was fixated on the propoganda the "swift-boat team" was developing, namely HALE's "documentary" that advanced the false narrative developed by the defendants.

137. In October 30, 2014, Defendant ALVAREZ vacated SIMON's convictions and then moved to dismiss the charges in the face of a mountain of evidence showing that that he was the offender. Rather than explain how or why SIMON confessed no fewer than eight times (including well after his guilty plea), ALVAREZ focused on defaming plaintiff Ciolino, David Protess, and Northwestern.

Release of "Murder in the Park" and the Companion Book "Justice Perverted: How the Innocence Project of Northwestern University's Medill School of Journalism Sent An Innocent Man to Prison."

138. With SIMON released from prison, HALE and his production team went to work to finish MIP including the "feel-good" ending of SIMON being exonerated and released from the Illinois Department of Corrections.

139. The Chicago public got its first viewing of MIP in July 2015 when it premiered to a small audience at the Gene Siskel Film Center.

140. Ciolino did not attend the premiere but learned from a number of attendees that the movie advanced the outrageous lie that Ciolino had obtained SIMON's video-recorded statement in 1999 by using an array of unethical and criminal tactics, including posing as a police officer, commiting a home invasion, and forcing SIMON to confess at gun point.

141. That same month defendant CRAWFORD published the companion book on which the documentary claims to be based entitled Justice Perverted: How the Innocence Project of Northwestern University's Medill School of Journalism Sent An Innocent Man to Prison."

142. By early 2016, HALE and his production company, "Whole Truth Films, LLC" ("WTF") had sold MIP to Showtime. In February 2016, MIP began airing regularing on Showtime to a national audience. It also became widely available on You Tube, iTunes, Google Play Movies and TV, and Amazon Video.

143. As set out in greater detail below, both MIP and "Justice Perverted" advance *per se* defamatory statements by the defendants that Ciolino framed SIMON by forcing a confession from him and then directing his lawyer to make sure he pled guilty.

144. In conjunction with the release of MIP and "Justice Perverted," defendant PREIB pushed the same defamatory statements on his blog "Crooked City."

145. Ciolino suffered devastaing damages as a result of the publication of the false and defamatory statements in MIP, "Justice Perverted," and PREIB's blog.

COUNT I – DEFAMATION
(Against All Defendants Excluding Defendant Preib)

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

146. On or around July 15, 2015, the documentary MIP which was funded and produced by defendant HALE and his production company defendant WHOLE TRUTH FILMS, LLC premiered at the Gene Siskel Film Center in Chicago, Illinois.

147. After defendants HALE and WHOLE TRUTH FILMS, LCC sold MIP to Sundance Select/IFC Films, the movie aired on Showtime on February 17, 2016 and continues to air to this day. It is widely available today through a number of on-line streaming services.

148. To advance the false precept that Ciolino framed SIMON, Defendants SIMON, EKL, SOTOS, HALE, DELORTO, CRAWFORD, and ALVAREZ all made false and defamatory statements concerning Ciolino in this documentary.

149. The following chart identifies the false and defamatory statements made against Ciolino in the documentary MIP, including a time stamp of when the statement is made in the film.

MURDER IN THE PARK

Statement	By Who	Timestamp
This case had a motive behind it bigger than the crime. They did it. They killed the death penalty on the wrong case.	Jim Delorto	8:02
So there you have an honest answer. It wasn't about finding the truth, it was about freeing Anthony Porter.	Andrew Hale	31:19
They stay on people to try to finally get something out of them that fits their theory of who they think did the case.	Terry Ekl	32:52
They call it a recant and *what they get him to say is*, "I was in the park. I never saw Porter with the gun. I didn't see Porter fire the shot." And this is the journalism professor of one of the top if not the top journalism schools in the country does an affidavit that intentionally leaves out the most important fact of all.	Andrew Hale	35:31
She had been promised all kinds of favors from Protess including money in exchange for her testimony	Bill Crawford	46:44
So that seems to me to be part of their M.O. They'd go to impoverished people who don't have a lot of money, make them promises and basically get them to recant.	Terry Ekl	49:44
Alstory Simon was approached [by Ciolino] at 6:30 in the morning after he had spent the night doing cocaine. So he was clearly intoxicated.	James Sotos	51:25
When I opened the door, there was Paul Ciolino and Arnold Reid. They were armed with weapons and had a video camera and a tripod and badges. They claimed to be police investigators from Chicago investigating a 1982 homicide and bogarded their way on into the house.	Alstory Simon	51:34
And they just pushed me back up in the house like Police do when they come in to make an arrest. They pushed me and shoved me into a corner part of what a sofa was. He stood over me, and Arnold Reid, he started going from room to room. I'm asking him what are you walking all through my house for? What are you looking for? So Ciolino he tells me, "we know you did these murders. You're	Alstory Simon	52:06

going down for these murders and there's nothing you're going to be able to do about it." I'm telling him man I don't know nothing about no murders man what are you talking about? I said, "man just get out of my house man." He said, "no we're not going anywhere you better look at the evidence and I'm gonna show you this is why we think you did it." So he showed me affidavits of some people."		
He [Ciolino] showed Alstory Simon the statement that Walter Jackson had made claiming that Alstory Simon had admitted the crime to him 17 years earlier. Alstory Simon said that's ridiculous. Get out of my house. Ciolino then pulled out a video camera.	Andrew Hale	52:56
Alstory Simon did not know that this African American making these allegations on this videotape was an actor, hired by Ciolino and scripted by Ciolino.	Bill Crawford	53:28
I became fearful of my life though. Then after he says, "look Alstory we got all the evidence we need to put you on death row but I'm going to level with you, we're not police officers." I said, "what?" He said, "no we're not police officers, were investigators working for the same person that you just seen on the screen, Professor Protess." So I said, "well get the hell out of my house." They refused to leave and he said, "look all we want to do is stop this execution."	Alstory Simon	54:37
And then to create the urgency they told him that you only have a half hour to help yourself. If you don't' say that you did this crime in self-defense in the next half hour, the Chicago police are going to walk in here, arrest you, take you downtown and there's nothing anybody can do to help you. This is your only opportunity.	James Sotos	55:18
Then he tells me if I cooperate with him, he'll make sure that it was a self-defense murder and when he said that he made me feel like he was trying to give me a way out and he told me that um I would be paid financially well off, that I'd never have to work again if I cooperated with them and I'd ask them, "man are you fucking serious? And he said, "Look you can play hardball all you want but I'm telling you you're going to death row and there's nothing you can do about it." I tell him, "I didn't murder anybody." He puts his hand on his gun ya know and started easing it up like this that tells me hey we can do this	Alstory Simon	55:37

the easy way or we can do this the hard way. Being souped up on drugs and alcohol I was paranoid and I'm thinking when he said the easy way or the hard way that he's going to shoot me in my head and make it look like that he's come to question a murder suspect and I maybe open fired on him and he had to kill me and all this kind of stuff is going through my head. So again I tell them to get out of my house. So I tReid to get up to get to the phone to call the Milwaukee authorities. Arnold Reed blocked me from using the phone and he put his hand on the phone and pulled his gun out literally so I sat back down. Then Ciolino he tells me, if you cooperate with us, I guarantee you that you will come out of this with millions of dollars, that the money will come from movies and book deals and all of this kind of stuff, that professor Protess will pull the necessary strings to get you released in a couple of years. You only have to do a few years and all we want is to stop this execution. Now I'm scared to death after what I done saw on this TV screen I wanted the man out of my house so bad and I asked him and said well what do you want me to do? So he picked up the papers that he showed me and he started writing stuff on a piece of paper and underlining different stuff and then told me I want you to say this on camera..		
Ciolino basically used Walter Jacksons affidavit as a template for Alstory Simons confession	James Sotos	58:12
So we rehearsed it oh man for a long time because that's how out of it I was and then when he felt that I had it down pat to sound convincing enough, we put it on camera.	Alstory simon	58:18
And while I was talking I had the paper ya know right next to me on the cocktail table so if I forgot something, I could look at it ya know and say what he wanted me to say.	Alstory Simon	59:50
And then he told me that the only person who would see that tape would be the prosecution.	Alstory Simon	1:00:17
And at one point in a Chicago magazine article, he acknowledges that he "bull-rushed" this client into confessing.	Bill Crawford	1:02

Ciolino acknowledges that he used an actor. He acknowledges that he scripted the actor but he denies flatly that he ever promised favors or that he ever threatened him.	Bill Crawford	1:02:20
I strongly believed and felt that I wouldn't have had a chance to sit on death row no five years, not even no five months. I believe they would have killed me immediately.	Alstory Simon	1:04:56
And the key is he [Ciolino] told him, I'll get you a lawyer. We'll take care of that because the only way this was going to work is if they made sure that Simon had a lawyer who wasn't really going to represent him.	James Sotos	1:05:08
He [Ciolino] also told me that they was going to furnish me with the best defense attorney in the city of Chicago. He went to my phone, made a call and told me that attorney Jack Rimland would be representing me and then they packed up and left.	Alstory Simon	1:05:23
Ciolino got the confession and then handed him over to his office mate and his own personal attorney to represent him and tell him that he had to plead guilty.	Terry Ekl	1:06:15
That lawyers' job was to scrutinize the confession that Ciolino had taken from Alstory Simon. Now how is a lawyer who is close friends with the person who took the confession going to scrutinize that confession? The first thing he did was to announce publicly that he understood that if Alstory Simon was charged he'd be facing the death penalty which is almost exactly what Paul Ciolino told Alstory Simon to get him to confess in the first place.	James Sotos	1:06:25
David Protess engineered the investigation and Paul Ciolino executed the investigation	Andrew Hale	1:21:36
Justice compels that I take action today. This case has undoubtedly been the most complicated and the most challenging re-investigation that we have undertaken. One of the most significant factors that led me to today's decision was the fact that the original re-investigation into this case was conducted by a former journalism professor, a private investigator employed by that professor and a team of young journalism students.	Anita Alvarez	1:25:34

This investigation by David Protess and his team involved a series of alarming tactics that were not only coercive and absolutely unacceptable by law enforcement standards, they were potentially in violation of Mr. Simons constitutionally protected rights.	Anita Alvarez	1:26:12
My view, the original confession, made by Alstory Simon and the coercive tactics that were employed by investigator Ciolino have tainted this case from the outset and brought into doubt the credibility of many important factors. At the end of the day and in the best interests of justice, we can reach no other conclusion but that the investigation of this case has been so deeply corroded and corrupted that we can no longer maintain the legitimacy of his conviction.	Anita Alvarez	1:26:48
The bottom line is that the investigation conducted by Protess and private investigator Ciolino, as well as the subsequent legal representation of Mr. Simon were so flawed that it is clear that the constitutional rights of Mr. Simon were not scrupulously protected as our law requires. This conviction therefore cannot stand.	Anita Alvarez	1:27:26

150. As a proximate result of the foregoing defamatory statements by Defendants SIMON, DELORTO, EKL, SOTOS, HALE, CRAWFORD, and ALVAREZ, Plaintiff suffered injuries, including injuries to his reputation and his career. Indeed, Plaintiff can no longer work as a private investigator on account of Defendants' conduct.

151. The defamatory statements are of a *per quod* and a *per se* nature since they impute the commission of a criminal offense and impute an inability to perform or want of integrity in the discharges of duties related to Mr. Ciolino's employment.

152. The foregoing defamatory statements were made by the Defendants with the knowledge of their falsity and with actual malice, so as to justify an award of punitive damages. Defendants EKL, SOTOS, DELORTO, HALE, CRAWFORD and ALVAREZ knew that Defendant SIMON'S claims that Ciolino coerced his confession were false where Defendant DELORTO and Mazzoka fed the false narrative to SIMON and the Defendants discussed this plan to discredit Protess and Ciolino on numerous occasions.

153. The Defendants either knew that SIMON's claims were false or possessed a high degree of awareness that they were probably false when SIMON had never once mentioned that he was completely and factually innocent of the offense or that his confession to Ciolino was false until Defenant DELORTO fed the false narrative to SIMON after meeting with SIMON after his guilty plea.

154. The Defendants knew SIMON's claims were false or possessed a high degree of awareness that they were probably false when SIMON confessed no fewer than seven times *after* he confessed to Ciolino, including: (1) offering an impromptu and heartfelt apology in open court during his guilty plea proceedings that revealed his intimate knowledge about the shooting, (2) in multiple letters to his prior attorney Jack Rimland, (3) in an apology letter to Anthony Porter, (4) in a lengthy prison interview that featured both him and Porter conducted months after his guilty plea, and (5) in a letter to his former co-counsel David Thomas in May of 2000.

155. Defendants can present *no* plausible explanation for SIMON's repeated confessions well after Ciolino's alleged "coercive" tactics were no longer in play. Indeed, Defendants can point to no other instance in the history of the criminal justice system where a defendant offered eight false confessions, spread out over a year long after the alleged coercion dissipated. In light of these undisputed facts, even if Defendants did not supply SIMON with this false narrative (which they did), they certainly knew it was false or possessed a high degree of awareness of its probable falsity. Certainly, former State's Attorney Dick Devine and the Courts found no merit to the claims, consistently rejecting them.

156. Likewise, Defendant ALVAREZ knew that the narrative advanced by SIMON and his attorneys EKL and SOTOS was false in light of SIMON's many confessions and impromptu speeches detailing his intimate knowledge of the facts of the crime. At a minimum,

ALVAREZ harbored serious doubts about the truthfulness of SIMON, EKL and SOTOS' allegations and possessed a high degree of awareness that SIMON's story was probably false.

157. When Defendant ALVAREZ dismissed all charges against SIMON, she was fully aware of the strength of evidence against SIMON and the fact that he had repeatedly confessed to the crime well after his single 30-minute encounter with Paul Ciolino. Defendant ALVAREZ was also fully aware that her predecessor Dick Devine had found the claims frivolous as did both the Circuit Court of Cook County and the Illinois Appellate Court.

158. Defendant ALVAREZ ignored the mountain of evidence pointing to SIMON's guilt and the falsity if his claims, instead eagerly agreeing to release a man she knew was guilty, all in the name of "pay backs" and possible future campaign donations.

COUNT II – DEFAMATION
(Against Defendant Crawford)

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

159. On June 9, 2015, and continuing until the present day, Defendant CRAWFORD published to the public a book entitled Justice Perverted: How the Innocence Project of Northwestern University's Medill School of Journalism Sent An Innocent Man to Prison.

160. The book is widely available on the internet and elsewhere. Additionally, Mr. Crawford is currently promoting the book by routinely making appearances at public locations, including the Evanston Public Library and Chicago Public Library (on April 21, 2016), and reading excerpts from the book.

161. The book contains numerous false and defamatory statements, including false and defamatory statements against Mr. Ciolino.

162. The following is a list of false and defamatory statements made in defendant CRAWFORD'S book as to Plaintiff Ciolino:

(a) "On December 14, Ciolino and this time Protess returned to Taylor's Clarendon residence, picked him up, and drove him to Ann Sather's, a popular eatery not far from where Taylor lived. *There, after plying Taylor with wine*, they asked him – and he complied – to sign a second affidavit, witnessed by Protess and notarized by Ciolino." At Pg. 44.

(b) "Barely conscious, Simon was awakened from his stupor about 6:30 a.m. by two men armed with guns who identified themselves as "police investigators" from Illinois." Pg. 61

(c) "Ciolino told Simon that all Protess wanted was to free Porter, that when Porter got out, millions of dollars would be flying around from book deals, Hollywood movies, and the like. And Simon would be sharing in the bounty. Simon had to move quickly, however, because Chicago police were on their way to Milwaukee at that very moment to arrest Simon and return him to Chicago in chains to face the double-murder charge." Pg. 63

(d) "If Simon agreed and confess, Ciolino promised Simon that a Chicago lawyer, a veteran member of the defense bar by the name of Jack Rimland, would take Simon's case. And Rimland would take it free of charge. All the defendant had to do was plead guilty, but – and it was a major-league "but" – he had to extend a personal apology to Green's mother and to Porter. That was the key: Simon had to extend the apology for the deal to go through." Pg. 63

(e) "Ciolino said that Protess, a respected professor wielded immense clout back in Chicago, would see to it that if Simon pleaded guilty and extended the apologies, the resulting prison sentence would be short, no more than a two-year stretch. It was an iron-clad guarantee, and here is why it all made sense to Simon – when Simon finished doing his time, just twenty-four months, Ciolino assured him, there would be millions of dollars waiting for him on the outside. Again, book deals and Hollywood movies that would generate so much money Simon would never have to work another day in his life." Pg. 64

(f) "Up all night, the effect of booze and cocaine tapering off, Simon caved, *he signed a statement prepared by Ciolino,* declaring that he had killed Hillard because Hillard was going for a weapon and Green, accidentally, because she had gotton in the way." Pg. 64

(g) "Remarkably, *at Ciolino's direction, Simon rehearsed a confession prepared earlier by Ciolino*. Equally remarkable, Simon then donned a T-shirt at Ciolino's request; took a seat in a living room easy chair; and after Ciolino pulled out his video equipment and rolled the tape, solemnly read the confession *that had been scripted by Ciolino*." Pg. 64

(h) "Ciolino shared an office with Abrams and arranged for him to represent Inez in getting her obstruction of justice charge dismissed." Pg. 65

(i) "The wholesale deprivation of his client's rights *by the gun-toting Ciolino* and cohort Arnold Reed would be brought to light. *Threat against his client's life would be revealed. The house of mirrors that had been fabricated that day by Ciolino and Reed.*" Pg. 97

(j) "He [Rimland] didn't tell Simon that he, Rimland, *was being paid by Ciolino.*" Pg. 99

(k) "He [Rimland] did not tell Simon that he was aware that Ciolino had coerced witnesses to implicate Simon in the murders in exchange for money and reduced sentences." Pg. 100

(l) "Rimland never challenged the illegal and outrageous confession extracted from his client by his West Jackson Boulevard officemate [Ciolino]." Pg. 187

(m) "Nor did they know the details of how Ciolino extracted his illegal confession." Pg. 191

(n) "For this perversion of justice to have succeeded from the outset and to have gone on for as for as long as it did, members of the media and four specific individuals had to abandon their professional obligations. Assistant State's Attorney Tom Gainer, Simon's lawyer Jack Rimland, investigator Paul Ciolino, and Northwestern Professor David Protess all had to ignore or fail in their presumed roles in order for Simon to replace Porter in prison. . . . *Had Ciolino acted in concert with his profession's ethical guideline, instead of threatening Simon with physical harm and "bull-rushing" him until "he just could not recover," there never would have been a phony and illegal confession in the first place.*" Pg. 197-198.

163. As a proximate result of the foregoing defamatory statements by Defendant Crawford, Plaintiff suffered injuries, including injuries to his reputation and his career.

164. The defamatory statements are of a *per quod* and *per se* nature since they impute the commission of criminal offenses, and impute an inability to perform or want of integrity in the discharges of duties related to Mr. Ciolino's employment.

165. The foregoing defamatory statements were made by Defendant CRAWFORD with the knowledge of their falsity and with actual malice, so as to justify an award of punitive damages. Minimally, defendant CRAWFORD published these false and defamatory statements with a high degree of awareness that they were probably false.

166. As stated more fully *supra*, Defendant CRAWFORD was hired by Defendants EKL and SOTOS to write the manuscript that would ultimately become the documentary MIP. Defendant CRAWFORD knew that SIMON had been fed a false narrative by DELORTO and Mazzola.

167. In his acknowledgements, Defendant CRAWFORD writes:

> *Justice Perverted: How The Innocence Project at Northwestern University's Medill School of Journalism Sent an Innocent Man to Prison* would not have been possible without the enduring assistance of three individuals . . . The two others: retired Alcohol, Tobacco and Firearms agents Jimmy Delorto and Johnny Mazzola without whom Alstory Simon never would have been freed from his wrongful incarceration. The two former agents, working as licensed private investigators, were the first to discover the injustice imposed on Alstory Simon, the first to identify those responsible for the injustice, and the first to bring the miscarriage to the public's attention.

168. Having fully researched the case, Defendant CRAWFORD was also fully aware that SIMON had confessed no fewer than eight times to this crime.

169. Defendant CRAWFORD has further shown actual malice by his repeated harassment of David Protess and Paul Ciolino. Defendant CRAWFORD has left numerous voice messages and emails for Mr. Protess calling him offensive names and ranting at him. In one voice mail left *after* the filing of SIMON's lawsuit, Defendant CRAWFORD called Mr. Protess a "jag off" and told him "*we* are going win." Defendant CRAWFORD is *not* a plaintiff in the lawsuit, but the reference to "*we*" is telling as it further confirms that Defendant CRAWFORD has colluded with the other defendants in this case to discredit Protess and Ciolino.

170. Defendant CRAWFORD has likewise taunted Mr. Ciolino, recently emailing a flyer to Mr. Ciolino promoting his book and his speeches on the book that contain the false and defamatory statements about Ciolino.

COUNT III – DEFAMATION
(Against Defendant Preib)

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

171. Defendant PREIB writes a blog entitled "Crooked City: The Blog about the Wrongful Conviction Movement" www.crookedcity.org

172. Defendant Preib has made numerous false and defamatory statements with respect to this case, including false and defamatory statements against Mr. Ciolino.

173. The following is a list of false and defamatory statements made on Defendant PREIB's blog.

DATE	TITLE	FALSE AND DEFAMATORY STATEMENT
6/22/2015	Who's On First?	"A private investigator, Paul Ciolino, who was working with Northwestern Professor David Protess, burst in to Simon's apartment on a cold February day in 1999 armed with a handgun, claiming he had evidence against Simon for the murders, including witness statements from Simon's ex-wife and another man. *Ciolino trumped other evidence as well and threatened Simon that if he didn't go along with the plan, he would get a life sentence or perhaps even the death penalty. Play ball, Ciolino told Simon, and you'll get a few years and we'll give you a cut of the movie and book deal money.*" In the six months between Simon's arrest and his confession, he was in agony in the countl jail. Simon said he did not want to confess to the crimes, but says his attorney, Jack Rimland, *who was obtained for him by Protess and Ciolino*, threatened Simon that if he didn't plead guilty, he would get the death penalty or life sentences. Simon was lied to by Protess and Ciolino. He was coerced into confessing on tape after Ciolino presented him with false evidence and threatened with the death penalty or several life sentences.

6/29/2015	"Murder In the Park" A Stab in the Back?	Simon had been framed by former Professor David Protess and private investigator Paul Ciolino as part of a larger plan to get Anthony Porter exonerated for a 1982 double homicide. If Protess and Ciolino could frame Simon by getting him to confess to the murders, then Porter could get out of prison.
7/11/2015	An Open Letter to the PLO	When private investigator Paul Ciolino, working on behalf of Northwestern Univesrity, went to the residence of Alstory Simon in 1999, armed, and threatened violence and trumped up criminal charges in order to get Simon to confess to a double murder he did not commit, that was bullying. When Ciolino and former Professor David Protess made deals with other witnesses to provide false testimony to free sociapathic killer Anthony Porter, that was bullying. When Ciolino and former Professor David Protess manipulated naïve Northwestern students to take part in their plan to frame Alstory Simon, that was bullying. When Ciolino and student Thomas McCann badgered Taylor into changing his eyewitness testimony in the Porter case, that was bullying.
12/3/2015	Preckwinkle Won't Tell the Whole Truth in Bid for Control of Prosecutor's Office	"It was all the fault of David Protess, a once heralded, now disgraced fired former professor at the University's Medill School of Journalism; of Northwestern University for its lack of supervision of Protess; *of Paul Ciolino a small-time private eye who once threatened to shoot a suburban man in the head . . .*" "Gainer knew full well that Simon's confession to the pool shootings had been extracted through threats of violence and evil sleights of hand wrought by an armed Ciolino, the small time gum shoe and an armed Ciolino associate who had invaded Simon's house in January, 1999"
12/28/2015	After Acquittal of Police Commander, Nine Murders Hang Heavy on Eric Zorn	Zorn could have looked fairly at the facts of the case all the way back in 2005. But he didn't. In doing so, he acted as kind of media henchman for Northwestern Professor Protess, *Ciolino and the rest of the wrongful conviction zealouts who had fraudulently exonerated Anthony Porter and framed Alstory Simon.*
2/21/2106	Special Prosecutors?	Protess and his student had made these claims based upon coerced confession by a private investigator, Paul Ciolino, working for them. The man they coerced a confession from was Simon.

3/30/2016	A Toast, of Sorts, to the Real Warriors . . .	Simon had been framed as part of a depraved plot by Northwestern University, David Protess and his private investigator, Paul Ciolino. By getting Simon to confess to the murders he did not commit. Protess and Ciolino were able to spring Anthony Porter from death row. But Crawford saw the case for what is was, a criminal conspiracy by Protess and Ciolino.
4/11/2016	Justice Department Ignores Key Evidence in Takeover of Chicago Police	Northwestern, David Protess and Paul Ciolino were once internationally renowned as crusaders for justice. Now they are looking more like con men, worse, even, given the accusations of using their students to seduce statement from witnesses and offenders.
4/18/2016	Lightfoot Cops Out Again	More so, the community of law firms, law schools and activists working hand in and with Protess on wrongful convictions, including Lightfoot's own University of Chicago Law School, never noticed the evidence that a Northwestern professor was pimping out its students either, *nor the evidence that his private investigator, Paul Ciolino, was bribing witnesses and committing obstruction of justice, all in effort to vilify cops."*

174. As a proximate result of the foregoing defamatory statements by Defendant PREIB, Plaintiff suffered injuries, including injuries to his reputation and his career.

175. The defamatory statements are of a *per quod* and *per se* nature since they impute the commission of criminal offenses and impute an inability to perform or want of integrity in the discharges of duties related to Mr. Ciolino's employment.

176. The foregoing defamatory statements were made by Defendant PREIB with the knowledge of their falsity and with actual malice, so as to justify an award of punitive damages. Minimally, defendant PREIB acted with a high degree of awareness that the statements he published were probably false.

COUNT IV –FALSE LIGHT
(Against All Defendants)

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

177. As set forth in specificity in Counts I, II and III of this Complaint, Defendants placed Plaintiff Ciolino in a false light before the public when they knowingly advanced a false narrative in: (1) the documentary MIP (2) the book "Perverted Justice;" and (3) in various articles posted on Defendant PREIB's blog, "Crooked City," claiming that Ciolino used illegal and unethical tactics to coerce Alstory Simon into confessing to a double homicide - all for the purpose of making Anthony Porter a 'poster boy' for abolishing the death penalty

178. Critically, MIP consists largely of re-enactments using actors to act out this false narrative. MIP features vignettes of an actor resembling Plaintiff Ciolino using illegal and unlawful tactics, including violence and bribery, to force SIMON to confess to the crime. MIP depicts Ciolino essentially committing a home invasion, busting his way into SIMON's house and then using a weapon to threaten SIMON.

179. That false light in which he was placed is highly offensive to a reasonable person since the allegations clearly involve crimes and unethical conduct.

180. As set forth fully in the defamation claims, *supra*, the Defendants knew that the statements were false and acted with actual malice. Certainly, Defendants acted with reckless disregard for the truth.

COUNT V – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against All Defendants)

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

181. Defendants DELORTO, EKL, and SOTOS engaged in extreme and outrageous conduct when they agreed to induce Defendant SIMON to make false statements about the circumstances under which SIMON made a video-recorded statement to Plaintiff Ciolino.

182. Providing SIMON with money, promises of freedom, and even more money from an eventual lawsuit (now filed in federal court), Defendants DELORTO, EKL, and SOTOS contrived a false and injurious narrative that Plaintiff Ciolino had engaged in criminal acts against SIMON. This scheme to falsely accuse and defame Ciolino was designed to ruin the reputation of David Protess and Northwestern University. Indeed, when Mr. Ciolino was served with the summons and complaint in this lawsuit, Defendant DELORTO told Ciolino "Jim [Defendant SOTOS] told me to tell you, you could be a witness in this lawsuit as easy as you can be a Defendant" In other words, Ciolino was collateral damage and if he just agreed to 'turn on' Protess and Northwestern, they would drop the claims against him.

183. Defendants DELORTO, EKL, and SOTOS acted with malice when they supplied SIMON a false narrative describing Ciolino's conduct in obtaining his confession. As set out more fully, *supra*, the Defendants *knew* the narrative was false, because SIMON had made multiple confessions to the murder which were corroborated by statements from his family and other circumstances; and until Defendants DELORTO and Mazzola visited with SIMON and fed a false narrative to him did SIMON claim to be innocent or claim that his confession and guilty plea were coerced.

184. Defendants EKL, SOTOS, and ALVAREZ doubled-down on their outrageous conduct when ALVAREZ agreed to dismiss all charges against SIMON in the face of extraordinary evidence of guilt.

185. Defendant ALVAREZ's decision to release a murderer who admitted his guilt to the crime no fewer than eight times, is perhaps the most outrageous offense of all as it was clearly motivated by matters other than "truth." ALVAREZ's vendetta against Protess and Northwestern and perhaps a hope of campaign donations by her like-minded colleagues SOTOS

and EKL was the motivating factor for releasing a murderer – not any belief of an injustice or wrongful conviction.

186. Defendant HALE engaged in extreme and outrageous conduct when he financed and produced a documentary that he knew contained false and defamatory statements about Ciolino. Defendant HALE, a lifetime defender of police officers charged with misconduct – including his client (many times over) Jon Burge, created this documentary with the assistance of the other defendants for the purpose of gutting the innocence movement – an outrageous act that has caused severe emotional distress to Ciolino.

187. Similarly, Defendants CRAWFORD and PREIB engaged in extreme and outrageous conduct when CRAWFORD published his book "Perverted Injustice" and PREIB his blog "Crooked City," knowing that those publications contained false, defamatory, and highly injurious statements about Defendant Ciolino.

188. Defendants either intended to inflict severe emotional distress or knew that there was a high probability that the conduct would cause severe emotional distress.

189. Recently, Defendant CRAWFORD emailed Plaintiff Ciolino a promotional flyer about a speech he was giving promoting his book at the Chicago Public Library. The email was intended to taunt Ciolino and demonstrates Defendant CRAWFORD's intent to inflict severe emotional distress on Ciolino.

190. As a proximate result of Defendants outrageous acts, Plaintiff has sustained severe and extreme emotional distress, including depression, anxiety, fear, and sleep and eating issues.

191. Defendant's reputation as a private investigator has been decimated, leaving it difficult for him to work in his field of expertise. Ciolino has worked in the investigative field for

decades. He recently gave up his detective's license because he no longer has clients for which the license serves a purpose. Ciolino used to give lectures all over the world at a rate of approximately 25 a year. He has not been asked to give a lecture in the past year. Ciolino was making a good living prior to these publications and now earns virtually nothing. Ciolino routinely hears this phrase, "we'd love to use you but this lawsuit is killing you. Sorry."

192. Defendant receives regular hate mail and phone messages, including unnerving death threats as a result of Defendants' extreme and outrageous conduct. The following is a sampling of some facebook/email and phone and messages received by Defendant CIOLINO:

- Your a fuckin' shit bag . . get cancer and die already, what you did to Al is fuckin' sick I hope you can't sleep
- You are a piece of shit
- Youre sick
- Truly a chump
- You are a disgrace! An absolute disgrace, I hope you know that.
- You're a fucking prick. You ruined a man's life, you coerced him, manipulated him, threatened and tormented him until he folded and did what you demanded of him. And once your shit was found out, you called the lawsuit frivolous. I hope you end up working the rest of your amoral life in order to pay him back for what you took from him.
- And why did your poster boy for wrongful conviction (even though he killed two people) not get a dime from his lawsuit and it was told to the press that the guilty man has been sitting in this courtroom. You are nothing but a piece of shit who has to lie and threaten people in order to get the answers you wanted even though you knew they were false. You and your piece of shit buddy Protes should be sitting in prison next to the murderer you lie to get off. Read this you fat fuck.

COUNT VI – CIVIL CONSPIRACY

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

193. Defendants conspired by concerted action to accomplish an unlawful purpose or a lawful purpose by an unlawful means.

194. In furtherance of the conspiracy, Defendants committed overt acts and were otherwise willful participants in joint activity.

195. The acts of misconduct described in this Complaint were undertaken with malice, willfulness, and reckless indifference to the rights of others (and to the truth).

196. As a proximate result of the Defendants' conspiracy, Plaintiff suffered damages, including severe emotional distress and anguish, as more fully alleged above.

WHEREFORE, Plaintiff, PAUL CIOLINO, respectfully asks that this Court enter judgment in his favor and against the named Defendants, jointly and severally, for compensatory damages in a sum greater that $25,000,000, punitive damages, costs, as well as any other relief this Court deems just and appropriate, including but not limited to an injunction preventing the Defendants from continuing to publish the defamatory statements, and an order disgorging defendants HALE, CRAWFORD, WTF (and any other Defendants to the extent that they profited from the distribution of these defamatory statements) from any profits made from the distribution of the largely defamatory documentary, "Murder in the Park." Defendant Ciolino further demands a jury trial.

Respectfully Submitted,

/s/JENNIFER BONJEAN
Attorney for Paul Ciolino

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CIRCUIT CLERK
COOK COUNTY, IL
2018L000044

Notice of Appeal **(10/17/18) CCA 0256 A**

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

First **DEPARTMENT,** _____ **DIVISION/DISTRICT**

Paul J. Ciolino

Plaintiff/ • Appellant Appellee

v.

Alstory Simon, James Deloria, Terry A. Ekl, James G. Sotos, Martin Preib, William B. Crawford, Anita Alvarez, Andrew Hale, Whole

Defendant/ Appellant • Appellee

Reviewing Court No.:

Circuit Court No.: 2018 L 000044

Plaintiff's **NOTICE OF APPEAL**

(Check if applicable. See IL Sup. Ct. Rule 303(a))(3).

☐ Joining Prior Appeal ☐ Separate Appeal ☐ Cross Appeal

Appellant's Name:

• Atty. No.: 45342
Pro Se 99500

Name: Jennifer Bonjean

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State: NY Zip: 11238

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Appellee's Name:

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Pro Se 99500

Name: Mandell Menkes LLC

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City: Chicago

State: IL Zip: 60606

Telephone: 312-759-2775

Primary Email: kallen@mandellmenkes.com

Notice of Appeal **(10/17/18) CCA 0256 B**

An appeal is taken from the order or judgment described below:

Date of the judgment/order being appealed: 1/22/2019

Name of judge who entered the judgment/order being appealed: Christopher E. Lawler

Relief sought from Reviewing Court:

Plaintiff respectfully requests that the reviewing court reverse the Court's order dismissing Plaintiff's complaint pursuant to 2-619

I understand that a *"Request for Preparation of Record on Appeal"* form (CCA 0025) must be completed and the initial payment of $110 made prior to the preparation of the Record on Appeal. The Clerk's Office will not begin preparation of the ROA until the Request form and payment are received. Failure to request preparation of the ROA in a timely manner, i.e., at least 30 days before the ROA is due to the Appellate Court, may require the Appellant to file a request for extension of time with the Appellate Court. A *"Request for Preparation of Supplemental Record on Appeal"* form (CCA 0023) must be completed prior to the preparation of the Supplemental ROA.

To be signed by Appellant or Appellant's Attorney

FILED
1/25/2019 9:35 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L000044

Notice of Appeal **(10/17/18) CCA 0256 A**

APPEAL TO THE APPELLATE COURT OF ILLINOIS
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2020 IL App (1st) 190181
No. 1-19-0181

FIRST DIVISION
March 16, 2020

PAUL J. CIOLINO, Plaintiff-Appellant, v. ALSTORY SIMON, JAMES DeLORTO, TERRY A. EKL, JAMES G. SOTOS, MARTIN PRIEB WILLIAM B. CRAWFORD, ANITA ALVAREZ, ANDREW HALE, and WHOLE TRUTH FILMS, LLC, Defendants-Appellees,	) Appeal from the Circuit Court of) Cook County))))) No. 18 L 0044)))))) Honorable Christopher E. Lawler) Judge Presiding

PRESIDING JUSTICE GRIFFIN delivered the judgment of the court, with opinion.
Justices Pierce and Walker concurred in the judgment and opinion.

OPINION

¶ 1 This case stems from one of the most famous murder cases in the recent history of our state. The background of the case is gripping. It is no real surprise then that the events surrounding the case have spurred a movie, a book, and other media attention. But that media attention is the reason the parties are before the court today.

¶ 2 Plaintiff Paul Ciolino is suing several defendants for defamation and other causes of action for the statements they made about his alleged involvement in framing a supposedly innocent man for murder. The allegedly defamatory statements attributed to defendants are found in a book and the movie it inspired. Despite that the case reads like a movie script, there has been no fairytale ending for anyone involved.

¶ 3 The subject of the appeal is a bit less engrossing than the overall subject matter of the case. Here we are called to decide whether Ciolino's claims arising from the publication of the allegedly defamatory statements are barred by the statute of limitations. We hold that the claims against one defendant are time barred, but that the remainder of the claims are not. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In 1982, Jerry Hillard and Marilyn Green were murdered in Washington Park in Chicago. Anthony Porter was convicted for the murders and was sentenced to the death penalty. Professor David Protess and other members of Northwestern University's Innocence Project took an interest in the case. Members of the Innocence Project reviewed evidence gathered by Porter's defense attorney during the case and they identified that another man, defendant Alstory Simon, was in the area of the murders close to the time that they were committed. The Innocence Project began to collect and evaluate evidence and, at some point, came to believe that Simon committed the murders, not Porter.

¶ 6 Plaintiff Paul Ciolino was employed as a private investigator and did work for the Innocence Project. Ciolino and another Innocence Project investigator traveled to Milwaukee to meet with Simon. Simon claims that Ciolino arrived at his home in Milwaukee, claiming to be a police officer from Illinois. Ciolino was armed with a handgun. He allegedly informed Simon that his team had developed evidence that pointed to Simon as the guilty party in the Washington Park murders. Simon was a drug addict and he maintains that he was intoxicated at the time of Ciolino's visit.

¶ 7 Ciolino allegedly told Simon that he had secured sworn statements from Simon's ex-wife Inez Jackson, and from others in which they averred that Simon committed the murders. Ciolino

showed Simon the statements. Ciolino also showed Simon a video that the Innocence Project had made using a paid actor. The actor in the video stated that he was an eyewitness to the murders and that he saw Simon kill Hillard and Green. Simon also viewed video of a news report in which his ex-wife, Inez Jackson, claimed that she was with Simon when he committed the murders in Washington Park. Simon maintains that Ciolino promised him that he would receive only a short prison sentence if he confessed and that he would receive large sums of money from book and movie deals because of the intense publicity of the case.

¶ 8 As the meeting progressed, Ciolino allegedly informed Simon that he and his colleague were not actually police officers, but that they were members of the Innocence Project. Simon claims that Ciolino then told him that Ciolino and Protess would secure a lawyer to represent him in the murder case and that they would do whatever else was necessary to ensure that he would receive no more than a couple years in jail if he confessed. Ciolino then allegedly informed Simon that the police were imminently on their way from Chicago to arrest him, and that they were trying to help him, but that the only way Simon could avoid the death penalty was to provide a videotaped confession before the police arrived. Ciolino allegedly told Simon that confessing at that moment was his one and only chance to help himself. Simon provided a videotaped confession.

¶ 9 Armed with Simon's videotaped confession and the statements from Simon's ex-wife and her nephew, Walter Jackson, the Innocence Project undertook to free Porter from prison. After a petition was filed and the proceedings progressed, Porter's conviction was vacated. The Cook County State's Attorney simultaneously empaneled a grand jury that indicted Simon for the murders.

¶ 10 Ciolino allegedly followed through on his promise to secure an attorney to represent Simon. Simon, in fact, retained attorney Jack Rimland to represent him in the murder case. Jack

Rimland was an attorney in Chicago that shared office space with Ciolino. Rimland purportedly convinced Simon to plead guilty by telling Simon that he needed to make the deal in order to avoid the death penalty or life in prison. Rimland, on Simon's behalf, did not challenge the confession that Simon gave to Ciolino nor did he present any other evidence to the court, including the evidence that implicated Porter in the first place and led to his conviction.

¶ 11 Simon further claims that Rimland told him to apologize to the victims' families in order to make his confession seem legitimate. During the time Rimland was representing Simon, Rimland maintained contact with his officemate Ciolino. For example, Rimland presented an award to Ciolino and other Innocence Project members for the work they did to overturn Porter's conviction even though he was concurrently representing Simon in a case for the same murders.

¶ 12 Simon eventually did plead guilty to the murders. He was sentenced to 37 years in prison. At his sentencing hearing, Simon apologized to the victims' families. Simon continued to claim responsibility for the murders in a televised news interview after his guilty plea. Simon also wrote letters to several individuals, including to Anthony Porter, apologizing for committing the murders. Nonetheless, many people did not believe that Simon was responsible for the crimes. Another private investigator, defendant James DeLorto, who did not believe Simon's confession and was skeptical of the Innocence Project's involvement, independently began to investigate Simon's case for the potential that he was innocent of the crimes.

¶ 13 Not surprisingly, the case generated significant publicity, including publicity generated by Ciolino and other members of the Innocence Project giving interviews and making statements to the press. Anthony Porter's exoneration for the Washington Park murders led to Governor George Ryan calling for a moratorium on the death penalty in Illinois.

¶ 14 Ciolino was interviewed on television following Simon's conviction. Ciolino described

the tactics he used in securing Simon's confession. Ciolino acknowledged that he used a paid actor to make a video who identified Simon as the shooter. Ciolino stated that, after Simon was confronted with the video and other evidence, Simon just "gave up." Ciolino stated that he and his partner "just bull rushed [Simon] and mentally he couldn't recover." Ciolino stated that, as a private investigator, "I don't have any rules. The Supreme Court says I can lie, cheat, do anything I want, to get him to say what I want him to say." Also in that vein, Protess published a book in which he explained how, on another occasion, Ciolino posed as Hollywood producer Jerry Bruckheimer and offered a witness a movie deal in exchange for the witness to change testimony he had previously given.

¶ 15 Simon filed a *pro se* petition for postconviction relief claiming that his confession to Ciolino was involuntary and that he received ineffective assistance of counsel from Rimland. The court denied Simon's *pro se* petition.

¶ 16 Subsequently, defendants Terry Ekl and James Sotos undertook to represent Simon, and they filed a successive postconviction petition on his behalf. In his successive petition, Simon asserted an actual innocence claim and provided new evidence. The new evidence that Simon provided in support of his petition was that two of the witnesses that had implicated Simon in the murders, his ex-wife Inez Jackson and her nephew Walter Jackson, recanted their statements.

¶ 17 Inez Jackson and Walter Jackson explained that they had implicated Simon based on promises from David Protess of the Innocence Project. Inez Jackson reportedly had serious drug and alcohol problems and was allegedly given food, cash, alcohol, and other things of value by Protess and his team. In an affidavit, Walter Jackson admitted that he provided false evidence against Simon for money and for help with his own legal problems, and that he encouraged Inez Jackson, his aunt, to also provide false testimony in order to help with his legal troubles. It was

additionally brought to light for the first time in Simon's successive postconviction proceedings that Inez Jackson had provided a statement to the police when they were originally investigating the murders in which she stated that she was with Simon the night of the murders and that he did not commit them.

¶ 18 Some concerns were raised about the Innocence Project's conduct in this case and in other cases. After Northwestern University conducted a court-ordered internal investigation into the controversial journalistic and investigative practices of the Innocence Project under Protess, he was separated from the University. Once the controversial practices of the Innocence Project were revealed, defendant Anita Alvarez, the Cook County State's Attorney, agreed to revisit Simon's case. After a year-long investigation in which more than 100 witnesses were interviewed, the State's Attorney Office concluded that, in light of the unlawful investigative conduct by Ciolino and Protess and the inadequate representation that Simon received, the case was so tainted and the convictions so called into doubt, that Simon's convictions could not stand. The State's Attorney Office moved to formally abandon all charges against Simon, and the circuit court granted the motion and vacated Simon's convictions. Simon was released from prison after serving 15 years.

¶ 19 At a news conference announcing the decision to drop the charges against Simon, Alvarez, as State's Attorney, stated that the "investigation by David Protess and his team involved a series of alarming tactics that were not only coercive and absolutely unacceptable by law enforcement standards, they were potentially in violation of Mr. Simon's constitutionally protected rights." Alvarez continued, expressing that, in her view, "the original confession, made by Alstory Simon and the coercive tactics that were employed by investigator Ciolino have tainted this case from the outset and brought into doubt the credibility of many important factors." She concluded that "[t]he bottom line is that the investigation conducted by Protess and private investigator Ciolino, as well

as the subsequent legal representation of Mr. Simon, were so flawed that it is clear that the constitutional rights of Mr. Simon were not scrupulously protected as our law requires. This conviction therefore cannot stand."

¶ 20 Thereafter, Simon sought a certificate of innocence. The circuit court denied Simon's petition for a certificate of innocence under the statute governing such proceedings because the statute requires the petitioner to prove, among other things, that the petitioner did not, by his own conduct, voluntarily bring about his conviction. See 735 ILCS 5/2-702(g)(4) (West 2016). The circuit court found that Simon had, in fact, brought about his own conviction by confessing and by pleading guilty. However, the circuit court went further, finding that Simon "had certainly satisfied his burden" of demonstrating his innocence by a preponderance of the evidence.

¶ 21 In explaining its finding that Simon had demonstrated his innocence, the circuit court stated that it accepted Simon's allegation that he had gone along with Protess and Ciolino's plan to free Porter and to frame himself. The circuit court further accepted that Simon had done so based upon Ciolino's promises that he would receive a short prison sentence and would receive large sums of money when he was freed from prison with Protess's assistance. The circuit court credited Simon's allegations that Ciolino had impersonated a police officer, that Simon was threatened with the death penalty if he did not confess, and that Ciolino promised Simon money from book and movie deals and a short prison sentence if he confessed. In conclusion, the court noted, "it is more likely true than not that [Simon] is actually innocent of the murders of Hillard and Green."

¶ 22 On February 17, 2015, Simon filed a federal civil rights lawsuit for malicious prosecution against Ciolino, Northwestern University, David Protess, and Jack Rimland. In his suit, Simon sought damages for the parties' respective roles in his allegedly wrongful conviction. The allegations made in Simon's federal suit are consistent with those set forth above.

¶ 23 About three years before Simon was released from prison, in the Spring of 2011, defendant William Crawford wrote a document he titled "Chimera" that set forth his narrative that Simon was framed by the Innocence Project. "Chimera" was not officially published, but Crawford claims that he uploaded a copy of it to the internet. Then, while Simon's federal case against the Innocence Project parties was ongoing, on June 9, 2015, Crawford published a book entitled *Justice Perverted: How the Innocence Project of Northwestern University's Medill School of Journalism Sent an Innocent Man to Prison. Justice Perverted* has the same subject matter and has many verbatim passages from "Chimera." The book makes the case that Ciolino, Protess, and others framed Simon for the Washington Park murders in order to secure the release of Porter who was on death row. The book further makes the case that the Innocence Project had a more Machiavellian motive for securing Porter's release: to put an end to the death penalty in Illinois.

¶ 24 Crawford's book, *Justice Perverted*, inspired a documentary film made by defendants Andrew Hale and Whole Truth Films entitled "A Murder in the Park." The documentary features interviews and commentary from defendants Simon, Hale, Ekl, Sotos, Delorto, Crawford, and Alvarez. The documentary has the same theme as *Justice Perverted*, and the film's subjects claim that Ciolino engaged in a variety of crimes to secure a false confession from Simon. Both the book and the film track closely to the allegations made by Simon in his postconviction proceedings, some of which have been found credible in the courts and some of which have been admitted by Ciolino. The film's thesis is that Protess and the Innocence Project wanted to end the death penalty in Illinois and that they were willing to use any means to accomplish that objective—including framing an innocent man for murder.

¶ 25 Ciolino has his own theory about the motives behind the individuals on the other side of the dispute. Ciolino contends that the whole effort to free Simon was an undertaking aimed at

discrediting the Innocence Project and the wider wrongful conviction movement as a whole. The narrative Ciolino advances begins with defendant DeLorto. DeLorto has a law enforcement background and has made negative statements about the work of Protess in the past. During the course of his work as a private investigator, DeLorto worked with attorneys Ekl and Sotos. Ciolino maintains that Ekl and Sotos undertook to represent Simon, with DeLorto as their investigator, "with any eye toward using the case to discredit the Porter exoneration and smear David Protess and Northwestern University."

¶ 26 Ciolino contends that defendant Crawford became involved with DeLorto and with Simon's lawyers, Ekl and Sotos, and wrote *Justice Perverted* to disseminate their false narrative that Simon was framed by the Innocence Project. Ciolino further contends that DeLorto and his cohorts enlisted defendant Martin Preib to help them combat the wrongful conviction movement. Preib began to author a blog entitled "Crooked City: The Blog About the Wrongful Conviction Movement." Ciolino claims that Prieb used the blog to circulate false and misleading narratives about exonerations, including the Porter exoneration. It is Ciolino's position that Crawford's book, Hale's documentary, and Prieb's blog were all conceived as part of a conspiracy to disrupt the "innocence industry."

¶ 27 Similarly, Ciolino contends that Anita Alvarez dismissed the charges against Simon because she harbored resentment towards Protess and the Innocence Project because of her supposed pro-law-enforcement leanings and because Protess had been critical of her in the past. Ciolino opines that Alvarez had been nationally embarrassed in another case in which Northwestern was involved and that Alvarez had become dead set on doing anything she could to discredit Protess. Ciolino goes as far as to say that Alvarez "release[d] a murderer to settle a score."

¶ 28 Defendants Hale and Whole Truth Film's documentary "A Murder in the Park" premiered

on November 17, 2014 at DOC NYC in New York. DOC NYC bills itself as "America's largest documentary film festival." Several defendants in this case attended the film's premiere, and, around this time, several publications of varying renown wrote about the film's premiere or the film's existence. "A Murder in the Park" was also shown at the Cleveland International Film Festival which took place from March 24 to 26th in 2015.

¶ 29 On April 27, 2016, Ciolino filed a counterclaim in Simon's federal case. Ciolino countersued Simon, and he interposed claims against Alvarez, Hale, Ekl, Sotos, DeLorto, Prieb, Crawford, and Whole Truth Films. Ciolino sought damages against the defendants therein for defamation, false light, intentional infliction of emotional distress, and conspiracy. Ciolino's claims stemmed from the statements those defendants made in "A Murder in the Park" and *Justice Perverted*. Ciolino contends that those publications advance "an outrageous and demonstrably false claim" that Protess and Ciolino framed Simon, an innocent man, "so that death row inmate Anthony Porter could become a 'poster boy' for the bid to end executions in Illinois."

¶ 30 The federal district court dismissed Ciolino's counterclaim on January 3, 2017. The district court found that Ciolino's counterclaim was not a compulsory counterclaim under the Federal Rules of Civil Procedure (see Fed. R. Civ. Pro. 13(a) (West 2016)) and that the court did not have supplemental jurisdiction over the counterclaim because the "counterclaim [did] not arise out of the same transaction or occurrence as Simon's malicious prosecution claim." *Simon v. Northwestern University*, No. 15-CV-1433, 2017 WL 25173, at *5 (N.D. Ill. Jan. 3, 2017). The court noted that, even if it could exercise supplemental jurisdiction over the counterclaim, it would decline to do so. *Id.*

¶ 31 Subsequently, Simon reached a settlement for his malicious prosecution claim with Northwestern University and Protess. Simon then voluntarily dismissed Ciolino as a defendant.

¶ 32 A day less than a year after Ciolino's counterclaim in Simon's federal case was dismissed, on January 2, 2018, Ciolino filed this case. Ciolino raises the same claims against the same parties in this case as he did in his counterclaim in federal court. This case is, in substance, a refiling of the counterclaim that was dismissed for lack of jurisdiction in federal court.

¶ 33 In this case, Count I of Ciolino's complaint is for defamation against all defendants except for Prieb. That count is really based upon all of the content and statements contained in "A Murder in the Park." Count II is for defamation against Crawford only. That count is based upon Crawford's book *Justice Perverted* and the statements he makes therein. Count III is for defamation against Prieb only. That count is based upon the statements Prieb made on his blog "Crooked City." Count IV is for false light publicity against all defendants. Count V is for intentional infliction of emotional distress against all defendants. And Count VI is for civil conspiracy and seemingly alleges the involvement of all defendants.

¶ 34 Defendants all moved to dismiss the respective claims against them. The trial court granted all the motions to dismiss, finding that the claims asserted by Ciolino are time barred. Ciolino filed this appeal.

¶ 35 II. ANALYSIS

¶ 36 The circuit court granted all defendants' motions to dismiss on the basis that the claims Ciolino filed against them are barred by the statute of limitations. Defendants all brought their motions to dismiss, at least in part, under section 2-619 of the Illinois Code of Civil Procedure which provides for the involuntary dismissal of a claim based upon certain defects or defenses. See 735 ILCS 5/2-619 (West 2016).

¶ 37 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint. 735 ILCS

5/2-619 (West 2016). The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of the litigation. *Jones v. Brown-Marino*, 2017 IL App (1st) 152852, ¶ 20. Although a section 2-619 motion to dismiss admits the legal sufficiency of a complaint, it raises defects, defenses, or some other affirmative matter appearing on the face of the complaint or established by external submissions, that defeat the plaintiff's claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (2008). The failure to file a claim within an applicable statute of limitations is one of the proper bases for dismissal under section 2-619. See 735 ILCS 5/2-619(a)(5) (West 2016). We review the trial court's decision to grant a motion to dismiss *de novo*. *In re Marriage of Wojcik*, 2018 IL App (1st) 170625, ¶ 17.

¶ 38 To begin, it is helpful to set forth the relevant dates that provide a roadmap for this appeal—providing the ultimate criteria for determining whether the claims are time barred. The first relevant date for purposes of the defamation case is Crawford's completion of "Chimera." That document was completed in Spring 2011. "A Murder in the Park," the documentary film at issue in the case, premiered to an audience for the first time in New York on November 17, 2014. *Justice Perverted* was published June 9, 2015. The relevant blog posts allegedly written by Prieb were posted between June 2015 and April 2016. Ciolino's federal court counterclaim was filed April 27, 2016 and dismissed on January 3, 2017. And Ciolino's complaint in this case was filed January 2, 2018.

¶ 39 We note here that the operative filing date for Ciolino's claims in this case is April 27, 2016. The reason that date is the operative date is because the Illinois Savings Statute is applicable. The Illinois Savings Statute states that where an action is dismissed by a United States District Court for lack of jurisdiction, then, regardless of whether the statute of limitations has run during the pendency of the action, the plaintiff may commence a new action in state court within one year

of the dismissal or within the remaining period of limitation, whichever is greater. 735 ILCS 5/13-217 (West 2016); see also *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 105-06 (1996). Ciolino timely refiled his claims in state court within one year of the claims being dismissed for lack of jurisdiction in federal court. So the question before us now is whether the claims were timely filed when Ciolino filed them in federal court on April 27, 2016.

¶ 40 The main issue before us is whether defendants are entitled to dismissal on the basis that "A Murder in the Park" premiered more than a year before Ciolino filed his claims in federal court. For purposes of logical flow, however, we begin with Ciolino's claims against Crawford for his publication of *Justice Perverted*. We will then address the primary issue on appeal—whether the defamation claims accrued when "A Murder in the Park" premiered or at any time thereafter but more than a year before Ciolino filed suit. Then, because the claims against Alvarez require an analysis separate from that required for the claims against the other defendants, we will turn to the claims against her which relate to comments she made in a news conference that were re-aired in "A Murder in the Park." We will then address defendant Prieb's arguments and all of the other defendants' alternative arguments regarding why we should affirm. Finally, we will move to the propriety of the trial court's dismissal of Ciolino's claims for intentional infliction of emotional distress and conspiracy.

¶ 41 A. Defamation and False Light

¶ 42 Ciolino's principal claims are for defamation and false light publicity. In Illinois, the statute of limitations for a claim for defamation is one year from the point that the cause of action accrued. 735 ILCS 5/13–201 (West 2016); *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 73 (2010). Generally, in defamation cases, the cause of action accrues, and the statute of limitation begins to run, on the date the allegedly defamatory statement is published.

Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc., 61 Ill. 2d 129, 131-32 (1975). Similarly, an action for false light publicity has a one-year statute of limitations. 735 ILCS 5/13–201 (West 2016); *Ludlow v. Northwestern University*, 79 F. Supp. 3d 824, 841 (N.D. Ill. 2015). False light publicity claims accrue when the statements are made. *Id.*

¶ 43 1. Crawford–*Justice Perverted*

¶ 44 "Chimera," its full title apparently being "Chimera–A Story Based on the Public Record," was written and completed by William Crawford in Spring 2011. Subsequently, Crawford wrote a full-length book on the subject titled *Justice Perverted: How the Innocence Project at Northwestern University's Medill School of Journalism Sent an Innocent Man to Prison. Justice Perverted* that was published on June 9, 2015. Crawford maintains that most of the statements in *Justice Perverted* that Ciolino alleges to be defamatory are verbatim statements from "Chimera" and that only minor alterations have been made to those statements that are not exact reproductions. Thus, Crawford argues, Spring 2011 should be the point at which Ciolino's claims accrued for defamation based on the allegedly defamatory statements in *Justice Perverted* because that is the point at which the statements were published in "Chimera."

¶ 45 For defamation claims, Illinois applies the "single publication rule." The single publication rule is that "[n]o person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance." 740 ILCS 165/1 (West 2016). Under this rule, defamation and privacy actions are complete at the time of the first publication, and any subsequent appearances or distributions of copies of the original publication are of no consequence to the creation or existence of a cause of action. *Blair v. Nevada Landing Partnership*, 369 Ill. App. 3d 318, 324-25 (2006).

¶ 46 Crawford points out that Ciolino's own allegations in this case reveal that Crawford

"circulated ["Chimera"] to virtually every media outlet in the city." Crawford suggests that the statements that Ciolino alleges to be defamatory were, thus, published to those news outlets when Crawford was trying to have his story printed. We have held that any act by which a defamatory matter is communicated to someone other than the person defamed is a "publication." *Missner v. Clifford*, 393 Ill. App. 3d 751, 763 (2009) (citing Restatement (Second) of Torts § 577, Cmt i, at 201-02 (1977)). On this basis, Crawford posits that the statements were "published" to those to whom he circulated "Chimera" with the purpose of trying to obtain a wider circulation.

¶ 47 We reject Crawford's assertion that the statements in "Chimera" were, as a matter of law, published when he allegedly shopped his story to media outlets in the city. There is no evidence that anyone at those news outlets even read "Chimera," let alone that they read the specific statements that Ciolino now claims are defamatory. Whether a publication has occurred at all is a question for the jury. *Missner*, 393 Ill. App. 3d at 763 (citing Restatement (Second) of Torts § 617, Cmt. a, at 315 (1977)). The only support for Crawford's position that "Chimera" was seen by anyone other than him is Ciolino's allegation that Crawford attempted to have the story disseminated by media outlets in the city. There is no evidentiary support from Crawford, including even an affidavit from him, to support a finding that he published "Chimera" or any individual statement therein to anyone.

¶ 48 The single publication rule simply does not apply here. The supposed republication in this case is not really a republication at all, it was the statements' actual publication. Because there is a question regarding whether "Chimera" and the statements therein were ever "published," the allegedly defamatory statements in *Justice Perverted* cannot be deemed to be re-airings of any previously published defamatory statements such that they might benefit from the single publication rule. Crawford even acknowledges, as he must, the many differences between

"Chimera" and *Justice Perverted*. *Justice Perverted* is far from a mere republication of "Chimera," it is a new, independent work. As far as the record in this case is currently constructed, there has only been one publication of the allegedly defamatory statements in *Justice Perverted*, and that publication occurred when *Justice Perverted* was published.

¶ 49 Crawford also states that he "placed [Chimera] on the internet" in 2011 when he completed it. He argues that by putting "Chimera" on the internet in 2011 he published the statements therein such that the statute of limitations for any claims related to those statements should have begun to run in 2011. However, Crawford presented no evidence in support of his section 2-619 motion to dismiss that he, in fact, posted "Chimera" to the internet in 2011. All we have is Crawford's own, unsworn assertion that he put the document on the internet: he does not detail where he posted it, when it was posted, how it could be accessed or any other details about his supposed posting of the document. At this stage, his unsupported assertions are insufficient to entitle him to dismissal. Moreover, we do not even know if anyone read it. A communication of the allegedly defamatory statement to a third party satisfies the publication requirement. *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 264 (2005). But simply making a material available on some corner of the internet does not mean that the material is "published" for purposes of a defamation claim. Crawford's argument on this point raises more questions than it answers—questions not suitably resolved on a motion to dismiss.

¶ 50 2. Movie Premiere as Accrual Date

¶ 51 All defendants other than Prieb in some way argue that Ciolino's claims against them accrued when "A Murder in the Park" premiered at a film festival in New York. "A Murder in the Park" premiered on November 17, 2014 at DOC NYC in New York. Defendants argue that Ciolino was required to file claims arising from statements made in "A Murder in the Park" within one

year of that film's premiere such that his April 27, 2016 filing was untimely. Ciolino, meanwhile, argues that he did not know, nor could he reasonably have known, about the film's premiere in New York. He argues that he had one year to file his claims relating to "A Murder in the Park" after it premiered in Chicago on July 15, 2015, so his April 27, 2016 filing was timely.

¶ 52 As stated above, the statute of limitations for defamation and false light claims generally accrues at the point that the statements are published. *Moore*, 402 Ill. App. 3d at 73. While we have previously acknowledged that there is some uncertainty about what circumstances should cause us to apply the discovery rule in defamation cases, we have explained that we will not ordinarily apply the discovery rule in defamation cases unless the publication is hidden, inherently undiscoverable, or inherently unknowable. *Peal v. Lee*, 403 Ill. App. 3d 197, 207 (2010); see also *Tirio v. Dalton*, 2019 IL App (2d) 181019, ¶ 69. Defamation via mass-media publications, including magazines, books, newspapers, radio and television programs are not subject to the discovery rule because they are readily accessible to the general public. *Tom Olesker*, 61 Ill. 2d at 137.

¶ 53 DOC NYC, where "A Murder in the Park" premiered, bills itself as "America's largest documentary film festival." Several articles were written in publications about the premiere of "A Murder in the Park" near the time that the film premiered. For example, before or at the time the film premiered, marketing and promotional materials for "A Murder in the Park" appeared on social media and on the websites of the national publications *Variety* and *Fox News*. Several articles mentioning the film were also posted on the websites of local publications. Christopher Rech, the producer of "A Murder in the Park," submitted a declaration in support of the motions to dismiss stating that the film was not concealed from the public in any way and, in fact, the film was actively marketed and advertised in order to maximize public interest in the film.

¶ 54 Although Illinois courts have sometimes implied that the discovery rule does not apply to defamation claims because the date of publication is the date that matters, it is clear that our supreme court has not ascribed to such a bright-line rule. In fact, in the supreme court's seminal case on the issue, *Tom Olesker*, the court had "no hesitation" in applying the discovery rule to hold that the plaintiff's cause of action accrued when the plaintiff knew or should have known about the existence of the allegedly defamatory material. *Tom Olesker*, 61 Ill. 2d at 136-37.

¶ 55 The *Tom Olesker* court distinguished the case before it from those in which the alleged defamation was easily discoverable due to its mass media publication. *Id.* at 137. But when a plaintiff does not know and cannot reasonably know about the existence of material defaming him, the cause of action accrues at the time the plaintiff knows or should know that the defamatory material exists. *Id.* at 136-37. The question before us is not whether the discovery rule can be applied to a defamation claim, the question is whether, under the circumstances presented, the nature of the publication was such that knowledge sufficient to trigger the statute of limitations should be imputed to Ciolino because of the putative availability of the information.

¶ 56 The parties' dispute, thus, turns on whether the premiere of "A Murder in the Park" in New York, along with the attendant press coverage, was a sufficiently prominent medium that it could be equated to a mass media publication that would proscribe the application of the discovery rule. We find that, when construing the record in favor of Ciolino and viewing the circumstances in a light most favorable to him, there is at least a question of fact regarding whether the film's premiere in New York was sufficient to start the limitations clock on his claims.

¶ 57 In *Tom Olesker*, the supreme court's comment on when the discovery rule would not be applicable for a defamation claim was for situations where "the publication has been for public attention and knowledge and the person commented on, if only in his role as a member of the

public, has had access to such published information." *Id.* at 138. Apparently neither Ciolino nor anyone other than those in the theater on November 17, 2014 had access to the allegedly defamatory statements that were published that day, or at least that is an unresolved fact question. The film and its specific content were not released to the general public in any way. Unlike mass media publications, that are available for anyone to obtain at any time, the premiere of "A Murder in the Park" was for a relatively small number of people at an event 800 miles away from the allegedly defamed subject. The content of the film was undiscoverable to any unwitting member of the general public at that time, including Ciolino. He could not have known that he was harmed at that time.

¶ 58 Even in *Winrod v. Time, Inc.*, 334 Ill. App. 59 (1948), on which defendants rely for support, the court's holding that the statute of limitations began running immediately upon publication was based upon the fact that that the allegedly defamatory material was circulated to the general public and was widely available. The *Life* magazine at issue in that case "appeared for sale on newsstands throughout the country" with "thousands of copies widely distributed," so the court held that the statute of limitations began to run "upon the first publication, when the issue [went] into circulation generally." *Id.* at 61-64. But *Winrod* was still based on the fact that there was a "general release of the magazine[,] completed throughout the nation." *Id.* at 65; see also 54 C.J.S. Limitations of Actions § 229 ("Where a cause of action is based upon a defamatory matter appearing in a publication, the statute of limitations commences to run upon the first *general distribution of the publication to the public*[.]") (Emphasis added).

¶ 59 At this stage of the case, where all inferences must be drawn in his favor, Ciolino is situated much more like the plaintiff in *Tom Olesker* than he is the plaintiff in *Winrod*. When we take plaintiff's allegations as true and view the evidence in a light most favorable to him, Ciolino can

be more neatly analogized to the allegedly defamed plaintiff in *Tom Olesker* who did not and could not have known about the publication of the material about him, than to the plaintiff in *Winrod* who was allegedly defamed through the circulation of thousands of articles on a national stage. The film in this case was not shown to the "general public" when it premiered as some defendants suggest. It was shown to a small audience in one city and was available for a couple of hours.

¶ 60 Even the viewers of "A Murder in the Park" at the film festival in New York are more like the subscribers at issue in *Tom Olesker* than they are like the general public in *Winrod*. Those who saw "A Murder in the Park" at the film festival were a small, select group of people. The select group of people is from another small subset of the population—attendees of the 2014 DOC NYC film festival. According to Ciolino, if the film only showed that one time, he very likely would have never learned of its existence.

¶ 61 As far as we can tell from the record, even if Ciolino wanted to see "A Murder in the Park" before it premiered in Chicago, he would have had no reasonable way to do so. And that is among the litany of factual issues that are currently unresolved. Defendants stressed during the oral argument in this case that we should not even look to the discovery rule because the film was not hidden and its existence was not inherently unknowable. Even in that context, however, factual considerations may operate to preclude the dismissal of a plaintiff's claim. See *Mitsias v. I-Flow Corp.*, 2011 IL App (1st) 101126, ¶¶ 29, 52 (a limitations period for a plaintiff's cause of action should generally not begin to run and expire at a time when the injury is unknowable); *United States v. Kubrick*, 444 U.S. 111, 116 (1979) (where a plaintiff's cause of action might be undiscoverable through reasonable diligence, the limitations period may be tolled). All inferences must be drawn in Ciolino's favor at this stage of the case and defendants have not presented evidence on all points to counteract the effect of those inferences.

¶ 62 When we are dealing with the statute of limitations, if only one conclusion can be drawn from the undisputed facts, the question of the timeliness of the plaintiff's complaint is for the court to decide, otherwise it is a question of fact. *Heredia v. O'Brien*, 2015 IL App (1st) 141952, ¶ 24. We cannot say, as a matter of law, that the allegedly defamatory statements at issue here were "easily discovered, and delivered to a mass sector of the public" (*Blair*, 369 Ill. App. 3d at 326) nor that the circumstances are otherwise such that any claims arising from the allegedly defamatory statements must have accrued immediately when the film was screened in New York. See *Gadson v. Among Friends Adult Day Care, Inc.*, 2015 IL App (1st) 141967, ¶ 14 (a section 2-619 motion to dismiss seeks a summary disposition when a plaintiff's claim is defeated as a matter of law or on the basis of easily proven facts). And even though the existence of the film was not necessarily hidden, there are questions about what Ciolino could have possibly discovered even if he was completely diligent. The evidence currently in the record does not establish *what* Ciolino could have known about the film and the specific statements therein or *when* he could have learned about those matters or otherwise gained sufficient knowledge to take action on the claims asserted here.

¶ 63 We are aware of the fact that, after its premiere, "A Murder in the Park" was sold to Showtime and has been broadcast nationally and become available on several nationwide streaming services. A nationally available movie or television program is tantamount to the nationwide circulation of a magazine like in *Winrod* and would undoubtedly cause the statute of limitations to run. But Ciolino filed his claim within one year of "A Murder in the Park" having any national run.

¶ 64 One of the stated reasons the supreme court had "no hesitation" in applying the discovery rule in *Tom Olesker* was to prevent cases where plaintiffs were "silently wronged." *Tom Olesker*, 61 Ill. 2d at 137. A ruling in favor of defendants here would promote silent wrongs in the future

rather than preventing them. People would have to be timelessly devoted to searching out whether anyone was spreading harmful untruths about them anywhere in the world. The statute of limitations is supposed to compel plaintiffs to act reasonably to discover harms against them. Statute of limitations jurisprudence revolves around the idea that when a person has sufficient information or is deemed as a matter of law to have such information, then he must act. If a plaintiff turns a blind eye to harms against him, he can lose his cause of action. If a plaintiff should discover some harm against him, but does not, then he can lose his cause of action. But the statute of limitations is not intended to serve as a refuge for defendants in instances in which a plaintiff does not act solely because he does not and could not reasonably discover a harm against him.

¶ 65 We also must draw a distinction between the publicity defendants generated with an eye towards drawing attention to the *film itself* on the one hand and the ability to know about the allegedly defamatory *statements* therein on the other. In the cases where the mass media exception has been recognized, it is because the allegedly defamatory statements themselves were on display for all to view. Here, knowledge of the film's existence is not the same as knowledge of the statements therein. So even if defendants drew attention to the film itself to generate publicity and viewership, that does not mean, as a matter of law, that Ciolino must be charged with knowledge about the specific statements made about him in the film.

¶ 66 Courts have applied the discovery rule on a case-by-case basis, weighing the relative hardships of applying the rule to both plaintiffs and defendants. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 78 (1995). As has been recognized repeatedly, the purpose of the statute of limitations is to discourage the presentation of stale claims and to encourage diligence in the bringing of actions. *Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 265-66 (2001). At this point, there is no claim of any want of diligence on the part of the plaintiff in this

case, nor is there any assertion that there are discernable increases in problems of proof so far as defendants are concerned. See *Tom Olesker*, 61 Ill. 2d at 133. We think there would be a significant hardship on plaintiffs if we were to enforce, as a matter of law, a duty to discover and sue for any potentially defamatory statements made anywhere on earth within a year, regardless of the plaintiff's ability to learn about the statements. At least in this case, we see no similar significant hardship on a defendant that might arise due to the passage of time.

¶ 67 When the record is construed in Ciolino's favor, diligence was shown here. Ciolino filed his claims within 19 months of the New York premiere and within 9 months of the Chicago premiere. There is no indication that Ciolino was sitting on his rights. Ciolino filed these claims two months after the documentary aired nationally on Showtime. In this case, the interests of justice and the interest in preventing stale claims would not be furthered by barring Ciolino's claims on limitations grounds.

¶ 68 This case is also different than some of the cases discussed by the parties in which a court was tasked with determining whether the statute of limitations accrues simply by virtue of the allegedly defamatory statement being posted online. Here, only references to the film were made online, on social media, and in the news articles that reference the premiere of the film. The articles discuss the subject matter of the film to varying degrees, but none of the articles carry the specific statements that Ciolino claims to be defamatory. The film itself and the allegedly defamatory statements themselves were not available online or to the public generally until much later, by which time plaintiff sued within one year. Accordingly, based on the record as it is currently developed, we find that Ciolino's claims for defamation did not, as a matter of law, accrue when the film premiered in New York.

¶ 69 3. Alvarez- Press Conference

¶ 70 Defendant Anita Alvarez argues that Ciolino's claims against her are time barred because they are based on comments that she made at a televised news conference on October 30, 2014. Ciolino's claim for defamation against Alvarez is for the inclusion of certain statements she made at a press conference where the footage was reproduced in "A Murder in the Park." However, because the allegedly defamatory statements are simply a republication of publicized statements that Alvarez made more than a year before Ciolino filed suit, we agree that the claims against Alvarez are time barred.

¶ 71 The allegedly defamatory statements that Ciolino claims Alvarez made in "A Murder in the Park" were simply clips from a news conference she held on October 30, 2014. The news conference was widely reported upon in Chicago and nationally when it occurred. Alvarez did not appear in "A Murder in the Park" to give any new commentary or make any other statements about the case or about Ciolino.

¶ 72 At the news conference announcing the abandonment of charges against Simon, Alvarez stated that the "investigation by David Protess and his team involved a series of alarming tactics that were not only coercive and absolutely unacceptable by law enforcement standards, they were potentially in violation of Mr. Simon's constitutionally protected rights." Alvarez continued, expressing that, in her view, "the original confession, made by Alstory Simon and the coercive tactics that were employed by investigator Ciolino have tainted this case from the outset and brought into doubt the credibility of many important factors." She concluded that "[t]he bottom line is that the investigation conducted by Protess and private investigator Ciolino, as well as the subsequent legal representation of Mr. Simon, were so flawed that it is clear that the constitutional rights of Mr. Simon were not scrupulously protected as our law requires. This conviction therefore

cannot stand." The "A Murder in the Park" filmmakers included those clips in the film.

¶ 73 The press conference Alvarez held was reported upon by every major Chicago news organization the day that it happened. It was also reported upon by national news organizations such as the Associated Press, USA Today, and Reuters. Both local and national news articles about the press conference quote Alvarez's allegedly defamatory statements about Ciolino, at least in part. The statements were made in Chicago. In fact, on the day of Alvarez's news conference, Ciolino released a statement in response. See, e.g., Sarahtr, *In Stunning Reversal, Alstory Simon, Convicted in Double Murder, Released from Custody*, Chicago Sun-Times, October 30, 2014 (available at https://chicago.suntimes.com/2014/10/30/18422250/in-stunning-reversal-alstory-simon-convicted-in-double-murder-released-from-custody (last visited Dec. 17, 2019)). In the wake of the backlash of Simon's release and the criticism of his work, Ciolino replied that he still believed Porter was innocent. Ciolino stated that he stood by his work, explaining that "Mr. Simon confessed to a Milwaukee TV reporter, his own lawyer and others since he confessed to me. You explain that." Ciolino also reiterated his belief that "[b]ut for the work we did together with Northwestern and the students, Porter's life would have been taken."

¶ 74 Unlike the claims against Crawford for *Justice Perverted*, the claims based on comments Alvarez made at the news conference are subject to the single publication rule. The single publication rule is that "[n]o person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance." 740 ILCS 165/1 (West 2016). Under this rule, defamation and privacy actions are complete at the time of the first publication, and any subsequent appearances or distributions of copies of the original publication are of no consequence to the creation or existence of a cause of action. *Blair*, 369 Ill. App. 3d at 324-25 (2006). Ciolino's claims against Alvarez accrued on

October 30, 2014 and the rebroadcast of video clips from the news conference in "A Murder in the Park" cannot, as a matter of law, create a new cause of action.

¶ 75 It is obvious that Ciolino knew about Alvarez's press conference and the statements made therein. He responded to them directly in a publicly released statement the same day. Both local and national news outlets reported on Ciolino's statement. The fact that Alvarez's statements were later reproduced in "A Murder in the Park" is insufficient to give rise to a new cause of action. Alvarez is not even the one who reproduced the statements. Therefore, because Alvarez's allegedly defamatory statements were made on October 30, 2014 and Ciolino knew about them that same day, but did not file his claims against her until April 27, 2016, Ciolino's claims against Alvarez are time barred.

¶ 76 4. Prieb's Arguments and Defendants' Other Arguments for Dismissal

¶ 77 Defendant Martin Prieb does not rely on the statute of limitations to argue that we should affirm the dismissal of the claims against him. Ciolino seeks to hold Prieb responsible for blog posts that he made on the blog "Crooked City: The Blog About the Wrongful Conviction Movement." The statements that Prieb allegedly made on the blog for which Ciolino seeks to recover were made between June 2015 and April 2016. Because Ciolino filed his claims in federal court on April 27, 2016, there is no issue as to timeliness. So Prieb raises other arguments that he contends entitle him to dismissal. The other defendants raise the same arguments as Prieb as alternative bases for affirming the dismissal of Ciolino's claims should we reject their position on the statute of limitations.

¶ 78 Defendant Prieb and all of the other defendants argue that even if the claims against them are not time barred, the dismissal of the claims should nonetheless be affirmed on other grounds. The trial court ruled solely on the statute of limitations arguments the parties raised and, in its

written order, did not analyze any of the other possible grounds for dismissal that the parties raised then and now raise again here. Defendants point out that even though the trial court dismissed the claims for one reason, we can affirm the dismissal of Ciolino's claims for any basis in the record. See *Abramson v. Marderosian*, 2018 IL App (1st) 180081, ¶ 40.

¶ 79 Defendants all argue in different ways that we should affirm the dismissal of Ciolino's claims against them because the allegedly defamatory statements constitute inactionable opinion. Only statements capable of being proven true or false are actionable for defamation; opinions are not. *Moriarty v. Greene*, 315 Ill. App. 3d 225, 233 (2000). Defendants contend that the statements attributed to them that Ciolino alleges are defamatory are open to interpretation and merely represent their opinions of Ciolino and his conduct.

¶ 80 Defendants all also argue that the allegedly defamatory statements are covered by the fair reporting privilege. The fair report privilege protects a defendant from a defamation action when the defendant reports information obtained from governmental and public proceedings on matters of public interest. *Harrison v. Chicago Sun-Times, Inc.*, 341 Ill. App. 3d 555, 572 (2003); see also 33A Ill. Law and Prac. Slander and Libel § 31. Defendants contend that their works are based on court records and principally on Simon's postconviction filings, such that they cannot be liable for defamation for repeating the statements made therein.

¶ 81 While defendants are correct that we may affirm on any grounds present in the record, we similarly may decline to search beyond the trial court's analysis to find some basis for its decision. *Allstate Ins. Co. v. Davenport*, 309 Ill. App. 3d 750, 756 (1999); *Nolan v. Johns-Manville Asbestos & Magnesia Materials Co.*, 74 Ill. App. 3d 778, 796 (1979). This case is an appropriate time for us to exercise such restraint. Defendants acknowledge that the trial court made errors in its written order, but they essentially ask that we step in and serve the trial court's function. We decline to do

so.

¶ 82 Even though some of the questions presented by defendants are questions of law that we would review *de novo* on appeal, we remain a court of review. Defendants ask us to consider a number of matters and pass upon them even though no lower court has considered or analyzed the issues. There are a number of thorny issues raised in the parties' arguments that the trial court did not reach, but that defendants want us to reach.

¶ 83 For example, there are questions raised regarding whether defendants abused the fair reporting privilege and, therefore, lost the benefit to claim it. For the fair reporting privilege to apply, the statements must be a fair and accurate representation of the proceedings reported upon. *Missner*, 393 Ill. App. 3d at 761. If not, the privilege does not apply. *Id.* Ciolino argues that "A Murder in the Park" is not a fair and accurate representation of the proceedings and he points to discrepancies he believes exist. The defendant-filmmakers, on the other hand, argue that their film fairly describes the events as reported in police files and court records and, thus, their work is protected. To make matters more complicated, the fair reporting privilege is a qualified one. *Solaia Tech., LLC v. Specialty Pub. Co.*, 221 Ill. 2d 558, 585 (2006). It typically does not bar claims, it simply enhances a plaintiff's burden of proof in proving up a defamation action. *Lykowski v. Bergman*, 299 Ill. App. 3d 157, 166 (1998).

¶ 84 There are also questions about whether particular statements are properly characterized as fact or opinion and whether such statements can be innocently construed. The parties each strenuously press their respective cases: Ciolino that he is seeking recovery for expressions of false facts; and defendants that they were merely expressing their opinions or advocating for Simon. There are several considerations courts must take into effect when determining whether statements are factual and can therefore be evaluated for defamation or whether the statements are

nonactionable opinions. *Hopewell v. Vitullo*, 299 Ill. App. 3d 513, 518-21 (1998); *Brennan v. Kadner*, 351 Ill. App. 3d 963, 969-71 (2004).

¶ 85 The parties also raise questions about whether the statements can be considered "highly offensive to a reasonable person" to support a claim for intentional infliction of emotional distress. As this issue pertains to Prieb, the trial court's ruling is inconsistent. At one point in its order, the trial court finds that Ciolino pled sufficient facts to state a claim for intentional infliction of emotional distress against Prieb. At another point, the trial court finds that Ciolino's claim is insufficient because his "statements thus do not rise to the required level of 'extreme and outrageous conduct.'" It is clear from the trial court's ruling as a whole that it found the claims against Prieb to be time barred. The trial court stated, in analyzing Prieb's motion to dismiss, that "[a]ny claims [against Prieb] based on statements published before January 2016 are thus time-barred." That ruling was in error.

¶ 86 The trial court is the appropriate forum for these issues to be hashed out for the first time. Discovery may well shed light on these matters and provide the trial court or this court with a better opportunity adjudicate these issues that are no doubt significantly important to the overall resolution of the case. We express no opinion about the quality of defendants' arguments or their likelihood of success. The grounds for a favorable ruling that defendants raise including and in addition to the statute of limitations may well entitle them to a judgment of no liability, and defendants are entitled to raise these matters at a later stage in the proceedings. But this court is a court of review and we decline to be the first tribunal to consider and rule upon these important disputed issues.

¶ 87 B. Intentional Infliction of Emotional Distress

¶ 88 The trial court found that, under section 2-615, Ciolino pled sufficient facts to state a cause

of action for intentional infliction of emotional distress against all defendants. The court denied defendants' motions to dismiss in that regard. The trial court held that the claims were nonetheless barred by the two-year statute of limitations governing personal injury actions in Illinois (citing *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003)).

¶ 89 As stated above (*supra* part II, section A, subsections 1 and 2), the claims against defendants are not barred by the one-year statute of limitations governing defamation actions, so they are similarly not barred by the two-year statute of limitations governing actions for intentional infliction of emotional distress. Even if, as defendants argue, the statute of limitations for Ciolino's intentional infliction of emotional distress claims is one year as a derivative of his defamation claims (citing *Hammond v. North American Asbestos Corp.*, 97 Ill. 2d 195, 208-09 (1983)), the claims are still timely.

¶ 90 The trial court apparently failed to apply the Savings Statute to Ciolino's claims. The trial court found that the operative filing date for these claims was in January 2018—when Ciolino filed this case. But when Ciolino filed this case he was refiling the claims that were dismissed for lack of jurisdiction in federal court. The Illinois Savings Statute states that where an action is dismissed by a United States District Court for lack of jurisdiction, then, regardless of whether the statute of limitations has run during the pendency of the action, the plaintiff may commence a new action in state court within one year of the dismissal or within the remaining period of limitation, whichever is greater. 735 ILCS 5/13-217 (West 2016); see also *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 105-06 (1996). For limitations purposes, the operative filing date for Ciolino's claims in this case is April 27, 2016—when Ciolino filed these claims in federal court.

¶ 91 Defendants also argue that Ciolino failed to plead the facts necessary to state a cause of action for intentional infliction of emotional distress. But the trial court denied defendants' motions

under section 2-615. The trial court found that Ciolino had sufficiently stated facts to support his cause of action. None of the defendants appeal that adverse ruling. Defendants again want us to go far beyond the trial court's order and to reach a variety of arguments for the first time on appeal. We decline to do so.

¶ 92 As for Prieb, and as discussed above (*supra* ¶ 85), the trial court's order is inconsistent. The order states that Ciolino pled sufficient facts against Prieb to state a cause of action for intentional infliction of emotional distress. That ruling implies that Ciolino sufficiently pled that Prieb's conduct was extreme and outrageous. To prevail on a claim of intentional infliction of emotional distress, the plaintiff must prove the following three elements: (1) that the defendant's conduct was truly extreme and outrageous, (2) that the defendant either intended that his conduct would cause severe emotional distress or knew that there was a high probability that his conduct would do so, and (3) that the defendant's conduct did in fact cause severe emotional distress. *Taliani v. Resurreccion*, 2018 IL App (3d) 160327, ¶ 26. The trial court found, in denying the section 2-615 part of defendants' motions, that Ciolino had pled sufficient facts to support those elements of the cause of action. The trial court then found that the alleged conduct did "not rise to the required level of extreme and outrageous conduct." The findings cannot be reconciled. The trial court then went on to ultimately find the claims to be time barred. Any finding that the allegations were not sufficient was not a stated basis for the trial court's ruling and cannot serve as a basis to affirm the dismissal of the claims against Prieb.

¶ 93 As for Alvarez, we conclude that Ciolino's claims are time barred. The only conduct Ciolino alleges that Alvarez engaged in that could subject her to liability is not actionable as an independent claim. Ciolino's other allegations regarding intentional infliction of emotional distress refer to Alvarez's official actions in dealing with Simon's case. They do not relate to any action

towards Ciolino. Accordingly, Ciolino has no claim against Alvarez for intentional infliction of emotional distress.

¶ 94 Per the notice of appeal in this case, the only issue currently on appeal is whether the trial court properly granted judgment to defendants under section 2-619. Ciolino's notice of appeal states that "Plaintiff respectfully requests that the reviewing court reverse the Court's order dismissing Plaintiff's complaint pursuant to 2-619." Thus, we do not revisit the trial court's rulings on the section 2-615 portions of defendants' motions. The trial court erred when it dismissed Ciolino's claim for intentional infliction of emotional distress as time barred.

¶ 95 C. Conspiracy

¶ 96 Defendants argue that Ciolino abandoned his conspiracy claim by failing to argue about the propriety of the dismissal of that claim on appeal. At first impression, defendants' position seems persuasive—that the trial court's dismissal of plaintiff's claim for conspiracy should stand because Ciolino forfeited that claim by failing to argue on appeal that its dismissal was improper. However, Ciolino has persuaded us that he did, in fact, dispute the dismissal of his conspiracy claim on appeal. Ciolino has not abandoned his claim sounding in conspiracy and, accordingly, we reinstate his conspiracy claim so that he may pursue it on remand.

¶ 97 The trial court dismissed Ciolino's claim for conspiracy on the basis that the underlying torts supporting the alleged conspiracy were time barred, so the conspiracy claim was time barred too (citing *Mauvdis-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶¶ 109-11). As we have explained above, defendants did not prove that the tort claims underlying the alleged conspiracy were time barred, so the trial court's justification for dismissing the conspiracy claim is not valid.

¶ 98 On appeal, plaintiff argued that *all* of his claims were dismissed improperly. Plaintiff argued in his opening brief, and thoroughly in his reply brief, that his conspiracy claim was

timely—counter to the trial court finding otherwise. Specifically, plaintiff stated that "Because Plaintiff's defamation, false light, and IIED claims are timely (as we have found above) and adequately pled, Plaintiff's civil conspiracy claim survives summary dismissal." Now finding that plaintiff did not abandon his claim for conspiracy, we reverse the trial court's dismissal of plaintiff's conspiracy count as well as it was not time barred.

¶ 99 CONCLUSION

¶ 100 Accordingly, we affirm in part and reverse in part. We affirm the trial court's dismissal as to defendant Anita Alvarez. We reverse all the trial court's other rulings on the motions to dismiss, reinstate all claims against the other defendants, and remand the case for further proceedings not inconsistent with this opinion.

¶ 101 Affirmed in part, reversed in part, remanded.

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NOTICE OF FILING and PROOF OF SERVICE

In the Illinois Supreme Court

PAUL J. CIOLINO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	No. 126024
	)	
TERRY A. EKL,	)	
	)	
Defendant-Petitioner,	)	
	)	
ALSTORY SIMON, et al.,	)	
	)	
Defendants.	)	

The undersigned, being first duly sworn, deposes and states that on November 4, 2020, there was electronically filed and served upon the Clerk of the above court the Brief and Appendix of Appellant. Service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

SEE ATTACHED SERVICE LIST

Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Jeremy N. Boeder
Jeremy N. Boeder

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Jeremy N. Boeder
Jeremy N. Boeder

E-FILED
11/4/2020 3:56 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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