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## 6 Being defamed

She emailed me with a problem. There was a picture of her on the web and she wanted it removed. It was the year 2000 and the web was less than a decade old. It was not an easy problem to solve.

Her name was Qafika Gauliflo-Edmondsen. She had been in a relationship with a fellow named John, but then she had left — she had even left the country — because he was so controlling. John was hurt, and also vindictive. He set up a web page with a revealing photo of Qafika and the word “whore” in large bold print. Qafika was mortified. When anyone put her name into a search engine, this picture would pop up as the first link. What should she do?

### Defamation and whistleblowing

In 1996, when I became president of Whistleblowers Australia, one of the first things I did was write a leaflet about defamation.<sup>1</sup> When whistleblowers speak out about corruption, dangers to the public and other matters of concern, they often suffer reprisals such as ostracism, petty harassment, reprimands, referral to psychiatrists, demotions and dismissal. Some of them are threatened with being sued for defamation.

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<sup>1</sup> Brian Martin, “Defamation law and free speech,” 1996, <http://www.bmartin.cc/dissent/documents/defamation.html>

Whenever you say anything derogatory or damaging about a person, you have defamed them. If you tell a friend that Bill is an officious bastard, you've defamed Bill. Even if you just say he's overweight, that can be defamatory. If you say it verbally, it's called slander. If it's in print or broadcast, for example in an email or radio programme, it's called libel. If you defame someone you can be sued and it can be very expensive.

This might seem absurd because most people are saying derogatory things about others on a daily basis. Gossip, including nasty comments, is routine in most workplaces. Yet rarely does anyone sue. It's simply too expensive and too much trouble for everyday purposes.

Suppose, though, that a television station runs a story suggesting you're running a shonky business, even though you're innocent. The station refuses to retract the story, so you might be tempted to sue for defamation.

One of the main problems with defamation law is that it is used so rarely. To threaten someone with a legal action for defamation can be a form of intimidation. That's why I wrote the leaflet: lots of whistleblowers were being threatened with defamation actions as a means of intimidation. Indeed, many were afraid to speak out in the first place because of the risk of being sued.

Suppose you are actually sued for defaming someone. You can defend on various grounds depending on the jurisdiction, namely the laws of the country or region. The most common defence is that what you've said is true. If Bill actually is overweight you can defend your comment, but you might need a photo in case he has lost weight by the time of the court case. When you said he is an offi-

cious bastard, you might have more trouble proving this is true. You would need to provide evidence and obtain witnesses because Bill will be claiming you're wrong.

Another defence is qualified privilege. For example, imagine you're a teacher and you write a report on one of your students, Sally, saying she's a poor performer — and Sally's parents arrange for Sally to sue you for defamation. You can defend on the grounds that your report was part of the performance of your duties; this is called qualified privilege. However, if you comment at a party that Sally is a lousy student, your speech is no longer protected.

Then there is what is called absolute privilege, including speeches given by politicians in parliament and proceedings of court cases. If you have some hot material about corruption, one way to avoid the risk of being sued is to find a politician willing to make a speech about it. News outlets can safely report what the politician said — but only when it was said under parliamentary privilege.

Just recounting these different defences gives a whiff of the complexities of defamation law. The field is a lawyer's paradise. A case involving someone making a single defamatory statement, or publishing a picture that lowers someone's reputation, can lead to months of legal claims and counter-claims, costing many thousands of dollars, long before the matter reaches court. Most cases are settled, by some agreement between the people involved, without going to court. Those few in which there are court hearings can cost tens of thousands of dollars.

My leaflet on defamation law, titled "Defamation law and free speech," was oriented to people who are threat-

ened with legal actions for defamation. A government employee speaks out about corruption and is threatened with being sued. In the leaflet, I describe ways to reduce the risk. For example, instead of writing “Jones is corrupt,” it’s safer to write “Jones received \$50,000 from the real estate developer and then approved the developer’s application.” Sticking to facts is far safer than passing judgements. It’s also more effective to let readers draw their own judgements from the facts.

I checked the text in the leaflet with quite a number of people, including a barrister who specialised in defamation law. I wanted the leaflet to be accurate as well as accessible to members of the public — especially whistleblowers. When a whistleblower contacted me, I usually would send a packet of articles to them, including the defamation leaflet if it seemed relevant.

It was 1996 and I had just set up my website, gradually adding material about suppression of dissent. The defamation leaflet was there too, and it gained a considerable readership. People would contact me saying they had searched the web for information about defamation and my leaflet was the most useful thing they found. Most of the other materials available were more legalistic. This was before Wikipedia and the huge amount of material subsequently available. My leaflet was listed highly by search engines for several years. Of the thousands of items on my website, it received more hits than anything else. This led quite a few people to contact me about defamation matters.

Most of those who contacted me were seeking to speak out, or already had. Some of them were planning to

circulate a document or set up a website and were worried that they might be sued. Some had been threatened with being sued for something they had said. Some had received a letter of demand from a lawyer, requesting an apology and a payment to their client. Some had received a writ requiring them to appear in court, charged with defamation. It was for these sorts of problems that I had written the leaflet: defamation law was being used for the purposes of censorship.

However, I also received another sort of enquiry, from people who felt they had been defamed. Some wrote saying that their former spouse was telling lies to everyone in their family and hurting their relationships. Others wrote saying media coverage had damaged their reputations. Yet others wrote asking my advice about choosing a lawyer to help them sue for defamation. Qafika, whose story I mentioned in the introduction to this chapter, was one of this group of people.

Years later, I wrote a short article telling about options, titled “What to do when you’ve been defamed.”<sup>2</sup> Here, I want to be a bit more specific and look at options for Qafika. Then I will assess these options in light of the features of effective nonviolent action.

### Being defamed: some examples

Here are some brief accounts of people who have been defamed — or believe they have been — and want to do

<sup>2</sup> Brian Martin, “What to do when you’ve been defamed,” *The Whistle* (Newsletter of Whistleblowers Australia), no. 45, February 2006, pp. 11–12.

something about it. These are taken from emails to me, with names and details changed to disguise the identity of all concerned. If some of these seem familiar, it is probably because the same sorts of issues arise in many different places.

Fred is the father of a child who attends Frenches Primary School. Marie is the mother of two other children at the school. Marie has been telling other parents that Fred assaulted her and that he was convicted. According to Fred, witnesses said Marie pushed him and then went to the police claiming Fred had assaulted her. Fred also said police had never even charged him. Due to Marie's comments, parents and the principle have put pressure on Fred to withdraw from school activities, in order to "keep the peace." Fred wants to sue Marie for defamation.

Helen is married to Bob. Bob's former wife, Joan, seems to be pursuing a vendetta against both of them, telling police and various government agencies that Helen and Bob are unfit parents. As a result, the police and some of the agencies have carried out investigations but found nothing of concern. However, Joan's continuing claims sometimes affect Helen, Bob and the children, for example when they are applying for a loan or for approval of home renovations. Helen discovered that Joan has a history of making false claims that hurt others. Helen wants to know whether she should expose Joan's behaviour.

Wing is involved in a custody dispute with his former partner Alicia. In the family court, Alicia claimed that Wing assaulted their young daughter. An investigation by welfare authorities and police found no evidence to support Alicia's claim. Wing wants to know whether he can sue for defamation.

Zim is involved with an organisation named Farmers Against Sexual Discrimination (FASD). A fellow named Alph has posted numerous videos on YouTube making outrageous claims about FASD and seeking to shut it down. Zim has contacted lawyers, who say all they can do is write Alph and threaten to take him to court — and it will cost \$15,000 just for the letters. FASD can't afford this. Zim wants to know what FASD can do.

Cenfrida, a mother of several children in a large Asian city, visited the business of her neighbour Elena and asked for a small item costing only a few cents. They had a misunderstanding over payment for the item. Elena began shouting at Cenfrida, calling her an ugly monkey from the jungle and other uncomplimentary names. Cenfrida wants to know the first step for suing.

Elsa, during a year in another country, had a relationship with Barry. He put pressure on Elsa to obtain explicit photos of her, and she eventually acquiesced. They have now broken up. Elsa asked Barry to delete all the photos of her, but heard from another woman who had seen explicit photos of Elsa and several other women on Barry's computer. Elsa is worried about her reputation,

especially because she wants to obtain a job in the other country, and wants to know whether there is anything she can do.

Daniela manages a small business named Lyleservice. Adrian, a technician working for Lyleservice, failed to do his job and insulted a customer, and was fired. Adrian then set up a website, Lyleservicesucks.com, containing nasty comments about Lyleservice. Furthermore, Adrian has been posting hostile comments about Lyleservice on various other sites. Daniela wants to know how the company can handle this problem.

Raelene broke up with Alphonse over a year ago. Alphonse, in collaboration with Brett, produced a video about Raelene. Both Alphonse and Brett have spent time in prison for fraud and stalking. In the video, Alphonse and Brett make numerous derogatory claims about Raelene. They include an excerpt from a video, making Raelene appear to be an angry woman. The video is available on YouTube and several other places on the web. Raelene wants to know what she can do.

Walter runs a business linked to his full name. A year ago, police investigated him for selling heroin, and he appeared in court, but eventually the charges were dropped. Walter says the claims against him were instigated by a business competitor. A local newspaper published a story titled “Local man on drug-pushing charges” that now appears as the first link on Google when searching for Walter’s

business. Walter wants to know whether it is worth suing the newspaper for defamation.

Adelle runs a small business. Someone on eBay, from another country, claimed Adelle is dishonest and recommended others not to buy from her. She complained to eBay and was told to get a court order. A lawyer quoted her \$1500 to write an initial letter, which is too much for Adelle, and she’s not sure whether this will fix the problem considering her critic is in another country. She wants to know what to do.

Pat lives in a small community where she is a member of a church and contributes to activities in several ways, for example ushering and preaching. She started a relationship with a man. The pastor of the church disapproved of the man, and told a group at the church that Pat’s relationship was immoral and that she had stolen church property. Pat said everyone was talking about this, causing her to become depressed and attempt suicide. She wants to sue the pastor.

### **Qafika’s options**

Qafika was distraught because anyone who looked her up on the web would end up looking at the revealing photo and the word “whore.” She was looking for jobs and she knew employers often checked online for information about applicants. She wanted the page taken down, whatever it took. She wanted to know how to sue John, if he refused to remove the image.

The trouble was that John was pretty good with tricks online. He knew how to create anonymous webpages. Suing him would take ages and might not actually help. Qafika told me she wanted to sue, but I knew from experience that there were often other options. It's worthwhile to step back from the issue a bit and examine a wide range of options. This way, it's possible to get a better perspective on the benefits and risks of different possibilities.

### **Option 1: do nothing**

Sometimes negative comments are best ignored. Making a big fuss causes people to pay more attention to them. If there's an embarrassing story on a news bulletin, lots of people will see it, but most of them will forget it pretty soon — it will fade into insignificance. Years later, hardly anyone will remember. How often do you meet someone and think, "I saw this story about you on television four years ago." Even if you do happen to remember the story, your face-to-face impressions with a person are likely to be more influential. If you are known to all your friends and family as honest and trustworthy, and live a modest lifestyle, they will probably dismiss a story about you swindling an elderly couple out of a million dollars as ridiculous. The media can lose credibility by broadcasting stories that are later discredited or, even worse, shown to be fabricated.

Because people's memories are short and because false and malicious information is not likely to be credible to people who know you, in many cases the option of doing nothing is a good one. However, many people are so outraged by false claims about themselves that they want

to do something. This urge needs to be resisted, at least initially, until the anger dies down and a calm assessment of options can be made.

For Qafika, doing nothing wasn't such a good idea. The webpage with her photo wasn't a broadcast, shown today and gone tomorrow, but rather an ongoing sore, viewable by anyone searching the web using her name. So what other options did she have?

### **Option 2: sue for defamation**

Qafika wanted to sue, or at least threaten to sue. Quite a few people, when they are defamed, think of the legal system as the solution to their problems. Unfortunately, it hardly ever is.

As described already, the legal system has several disadvantages: it is slow, expensive, oriented to technicalities, and reliant on experts, especially lawyers. If someone has been spreading rumours about you around the neighbourhood, suing them for defamation escalates the matter dramatically. Suddenly many thousands of dollars are at stake, and it becomes more than a neighbourhood matter: outsiders are involved. You have to collect all sorts of information and your neighbour, the one you've sued, starts collecting information to defend. The result, ironically, is that more attention is paid to the rumours than before. Before you sued, no one may have treated the rumours all that seriously. Now *you* have taken them very seriously indeed, and they have become the centre of attention.

The unfortunate result may be that more people know about and talk about the defamatory claims than before.

Rather than ignore the rumours or move on to other topics, the rumours are scrutinised endlessly. Furthermore, because the legal system is so slow, this may continue for months or even years.

If you lose the case, you're worse off than before, financially and in terms of your reputation. On the other hand, imagine that you win: your neighbour makes an apology and pays you a handsome sum of money. But what about your reputation? Have you really cleaned it up? Perhaps some neighbours will think the rumours are true and that the reason you sued was that you knew they were true and wanted people to shut up. It sounds contradictory and it is: suing for defamation can be bad for your reputation.<sup>3</sup>

This may not matter if all you care about is making your neighbour pay for spreading rumours and collecting a bundle of money as well. However, if you really care about your reputation, you need to think twice before launching a court action. If nothing else, others may think you are a bully, and avoid you. Maybe that's what you want, but maybe actually you'd really just like people to think you're a decent person.

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3 Brian Martin and Truda Gray, "How to make defamation threats and actions backfire," *Australian Journalism Review*, vol. 27, no. 1, July 2005, pp. 157–166; Truda Gray and Brian Martin, "Defamation and the art of backfire," *Deakin Law Review*, vol. 11, no. 2, 2006, pp. 115–136. See also Sue Curry Jansen and Brian Martin, "The Streisand effect and censorship backfire," *International Journal of Communication*, vol. 9, 2015, pp. 656–671.

Qafika thought that if she threatened to sue, John would remove the photo from the web. She would thus get what she wanted by using a *threat*, without the trauma of an actual court case. She didn't think ahead to what might happen if he refused. After all, he was in another country, so launching a legal action would be awkward and expensive.

Furthermore, what if he was in such a vindictive mood that he didn't care about potential costs? He might decide to post the photo on several websites. Even worse, he might get some of his friends to upload the photo anonymously. Then he could, in all sincerity, agree to remove the photo from his own website and agree to ask others to remove it from other sites — knowing that his friends would refuse. Qafika would then be in a worse situation: the photo would be all over the web. If she threatened defamation actions against John's friends, that would be costly. Even worse, if the photo was posted anonymously, she might have to use other means to get it taken down.

Is it realistic to think that John has so many friends willing to support him in a nasty act against a former girlfriend? Maybe he doesn't have any friends willing to do his dirty work. However, John knows how to do things on the web. He creates a fake identity and uploads the photo using it. He is cautious and does all this at a cybercafe far from his home where he pays in cash, so his actions can't be traced. He covers his tracks in another way: at the cybercafe, he first downloads the photo of Qafika and then uploads it on another site. Anyone who traces his actions will not have any evidence that John was

involved. Anyone — John, a friend of John's or a complete stranger — could download the photo and upload it elsewhere. John can say he didn't authorise or encourage this action and be completely sincere. After all, maybe he didn't do it.

Threatening to sue thus has quite a few disadvantages. If the threat on its own isn't enough, then either Qafika has to give up and admit powerlessness or to proceed with a legal action that is likely to be expensive and slow. If John isn't worried about legal action — he might think Qafika's threat is a bluff, or he might not care — then Qafika could be in a worse situation. To thwart the intent of the legal action, John might arrange for the photo to be uploaded in several locations.

It's possible to imagine an even nastier response. John might upload other photos that are unpleasant — pictures of mutilation or grotesque objects — and include Qafika's name as a metatag — a bit of hidden information used by search engines — so anyone putting her name into a search engine will come up with these disturbing images. He has to arrange for links to these other pictures, so search engines will find them.

On the surface, legal action sounds powerful. In practice, when tackling defamation on the web, it can be useless or worse. It can be worse if it provokes John into putting more defamatory images on the web, in a way designed to be resistant to legal action.

For the moment, let's assume John is not extraordinarily nasty and vindictive, but instead just very upset and wanting to get back at Qafika. Let's consider some other options for Qafika.

### **Option 3: counter-attack**

Suppose Qafika decided to get back at John. She had some compromising pictures of him with other women. She could post them on the Internet with some juicy comments, maybe "What John won't tell you." Suppose she wishes to hurt John even more. She has suspicions about his preference for young men, and convinces herself that he's really a paedophile. She doesn't have any photos, but she's so convinced that she creates some using a digital technique. She posts them, and sends anonymous emails to various friends of John, giving the web address.

Is it fanciful to imagine Qafika doing something like this? Others do similar things. Police often believe that certain suspects are guilty, but there's not enough evidence to enable a conviction, so they will lie in court about what happened — a practice called "verballing" — or "fit up" the suspect by creating false evidence. For example, police might plant some drugs in a house, or in someone's pocket, and then "discover" it. Some of these sorts of dealings are payback for someone the police don't like, or are reprisals against those who speak out about police corruption, but in many cases the police are quite sincere in their belief that the suspect is guilty. All the police are doing is ensuring justice is done.

Selective perception plays a part too. If you believe second-hand smoke is harmless, you are more likely to notice information that supports your view and to ignore or discount contrary information. Sometimes police form an opinion that a particular suspect is the guilty one, and thereafter look at all the evidence with that assumption: evidence that supports their opinion is readily noticed,



neutral evidence is interpreted to support guilt, and contrary evidence is ignored. Furthermore, police will go looking for evidence of guilt and not follow up leads that might implicate others.<sup>4</sup>

Qafika is so angry at John that she is prepared to believe the worst. She reinterprets all his behaviour in a negative light. As she mulls over their time together, remembering various episodes and interactions, her suspicion that he is a paedophile — or a thief or a compulsive liar — gradually becomes a certainty. So when she manipulates photos to create incriminating images, she thinks she is entirely justified, because in her mind he is guilty.

Let's take a cool look at Qafika's plan. It very well could be damaging to John: he will be embarrassed, probably furious, and perhaps worse. But will counter-attack get what Qafika wants, namely removal of the picture of her that John posted? For this to happen, John would need to respond with an offer: "If you remove the photos of me, I'll remove my photo of you." This is possible. But there's a problem: most of the damage has already been done. John's friends have seen the photos and some of them are repelled. That can't be reversed.

4 On confirmation bias and other biases that affect police and indeed anyone, see for example Margaret Heffernan, *Willful Blindness: Why We Ignore the Obvious at Our Peril* (New York: Walker & Company, 2011); Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus and Giroux, 2011); Carol Tavris and Elliot Aronson, *Mistakes Were Made (but Not by Me): Why We Justify Foolish Beliefs, Bad Decisions, and Hurtful Acts* (Orlando, FL: Harcourt, 2007).

For Qafika to use her photos more effectively, she should only threaten to post them, essentially blackmailing John into removing the photo of her. But this will work only if Qafika actually has compromising photos. John isn't likely to be intimidated by the threat to post fake photos, unless perhaps he has been sexually involved with boys.

What he might do instead is escalate his attack on Qafika, posting more photos. If she has posted fake photos, he might be able to show that they can't be true, or find some expert to show this. Then he can discredit Qafika further. And there's something else he could do: sue for defamation. If the photos can be shown to be fake, there's the extra dimension of malice on Qafika's part.

All in all, counter-attack is very unlikely to be effective in helping Qafika's reputation. She might feel satisfied at getting back at John, but that's a different goal. There's a risk that counter-attack will escalate the hostility, hurting Qafika as much as John.

#### **Option 4: inform**

Rather than direct counter-attack, Qafika could have applied indirect pressure on John, by informing various people in his life about his behaviour. Potentially, there are lots of possibilities, especially if John has several circles of relationships. To start, there are members of John's family, including his parents, his siblings and his children. Assuming he is on good terms with them and respects their views, contacting them could be effective.

Suppose Qafika sends an email to John's sister Sarah explaining that they had been together, had broken up and

John had posted an embarrassing photo of her. If Sarah is sympathetic, she might say to John, “Don’t be a fool. Take down that photo.” And John, caring about what Sarah thinks, takes it down. Simple!

However, this scenario depends a lot on Sarah’s reaction and her relationship with John. Sarah might not do anything. Perhaps she’s on John’s side. Perhaps she knows about John’s string of relationships and never discusses them with him. Perhaps she fears John’s reaction, knowing how volatile and vindictive he can be. Perhaps she simply doesn’t care because she has too much else happening in her life to worry about Qafika’s feelings.

Appealing to Sarah thus is potentially effective but far from guaranteed to work. The same applies to others in John’s life. If John is a charmer, he may be able to convince his relatives that Qafika did terrible things to him and that posting her photo is just a tiny contribution towards evening the score. Another possibility is that John is estranged from his relatives, so their opinions don’t matter to him.

Qafika could inform John’s boss and workmates. John’s boss Sam is a crucial figure, because John’s job may depend on Sam’s favourable opinion. Sam might be appalled at John’s behaviour — especially if Sam is a woman. On the other hand, Sam might think that John’s private life is his own business, or rather his own affair. If John is doing his job satisfactorily, what concern is it of Sam’s what John does outside the workplace?

In a worst-case scenario, some of John’s co-workers — including other men who have been hurt by broken

relationships — sympathise with him, give him encouragement, offer him suggestions on other ways to get back at Qafika, and even join in the online harassment. Sometimes a mob mentality can develop, and Qafika might become a scapegoat for group resentments, with the men thinking it great sport to discover further ways to humiliate her.

Telling John’s boss and co-workers thus is a potentially risky response. If Qafika can convince some of them to see the matter from her point of view, then they may react by putting pressure on John to be sensible and take down the photo. But if John is such a good fellow that his co-workers want to please him, all Qafika has achieved is to alert more people to the photo, thereby hurting her reputation.

### **Option 5: complain**

Qafika would like to complain to somebody — some agency or regulatory body — to fix the problem. So she thought about complaining to the Internet Service Provider (ISP) that hosts the picture of her that John posted. Surely the ISP, being a responsible organisation, would remove this picture that she finds so offensive. So she sends an email to the ISP. What is likely to happen?

This depends a lot on the ISP. Many ISPs are just barely making money, and the staff are too overloaded to spend much time on what they consider small matters. Furthermore, they would prefer not to become embroiled in personal disputes. They don’t have the time, expertise or interest to try to figure out who’s right and who’s wrong. Furthermore, they would rather not set a precedent

for removing material, because if one request is granted, where will it stop?

The most likely result of Qafika's complaint is no response. However, suppose that Qafika is lucky and finds someone who takes her complaint seriously and removes the photo. All John has to do is find another ISP, preferably one unconcerned about complaints.

Now it's time to pay closer attention to the photo. If it were pornographic, for example a revealing shot of sexual intercourse, then it would be easy to argue for its removal. However, the photo is simply "revealing": it shows Qafika smiling in a very low-cut top. Some would say it shows her as very attractive. That's why John took the photo, after all, during better times with Qafika. What makes the posting offensive and defamatory is the addition of the word "whore."

Suppose John's ISP tells him to remove the photo, or at least the word. He can then play with options, like "sleeps around" or "my former lover" or "ready for work." There are some possibilities that skirt around defamation, and that might placate a concerned ISP.

John might also decide to post the photo on several different websites, run by different ISPs. Qafika then has the task of tracking down the ISPs and making complaints to each of them. In this scenario, the problem gets worse.

So Qafika thinks of another solution: she'll contact Google and other search engines and ask them to remove the photo from their search results. What she wants is that when people put her name into Google, they won't find the photo. This sounds like an ideal solution — except it's very unlikely Google will agree. Google will rightly say it

only provides links and doesn't control the content of the material.

By the same logic, someone might complain to a library that there is a catalogue entry to a book containing lewd images or defamatory remarks. Some librarians might agree to remove the book or put it in a special collection requiring permission to see it, but are unlikely to want to remove an entry from the catalogue. Anyway, is it the library's responsibility to judge whether something in a book is defamatory? That should be the publisher's business.

The same applies to Google Books. If you think something in a book is defamatory, Google is hardly likely to agree to your request to remove the relevant page. Google is not an organisation that adjudicates claims about defamation — that's supposed to be a matter for the courts. Qafika's complaint to Google is unlikely to succeed. Furthermore, John has options to get around any restrictions placed on him.

### **Option 6: explain**

Instead of trying to force John to remove the photo, Qafika has another option: present her own view. She could set up a website and briefly tell what happened with John, thereby framing the story according to her perspective. A website is just one possibility; others are sending emails, handing out leaflets and talking with people individually or in groups.

The advantage of explaining events is that Qafika has the opportunity of presenting information in her own terms. If she wants, she can tell about her involvement

with John, positioning herself as the victim of a vengeful loser. Or she could just give the briefest details, telling about her life and her approach to it in general.

The explanation has two facets: what is told and how it is told. Giving the facts and their significance is just one part of a story. Equally or more important is the style used. If Qafika makes cruel remarks about John and expresses her hatred for him, she may give an impression that she is saying nasty things about John because she is hurt and angry, which is not necessarily convincing. On the other hand, if Qafika indicates that she is concerned about John, understands his feelings but doesn't support his actions, she will come across as tender and perhaps magnanimous. The more generous Qafika seems to be, the greater the contrast with John's hurtful posting of her photo.

Of course, Qafika's telling of her side of the story will affect different people in different ways. Furthermore, she is likely to change what she says and how she says it depending on who is listening and how they respond as she goes along. She has the greatest opportunity for adapting her story when she talks with individuals one-on-one, whether face-to-face or by telephone or Skype. Emails can be tailored to individual recipients, but there is little interaction. Putting up a website gives the least opportunity for individual variation. On the other hand, it can be more carefully crafted. Qafika can use a combination of these methods, for example by designing her website text and format mainly for people who don't already know her and speaking to individuals who do.

Explaining the situation, as well as allowing Qafika to frame the events from her point of view, has another

great advantage: it is an opportunity to build connections with people she cares about. For some, it is not so much what Qafika says that is important but rather the very fact that she cares about what they think.

There is, however, a significant down side to explaining her problems with John: she may make this matter bigger than it would be otherwise. Some of her friends or colleagues may never have thought of putting her name into a search engine. After hearing from her, they may not be able to resist having a look at the source of her concern, and thus the photo gets more attention than it would have otherwise. So there is a fine line to tread between saying nothing (option 1) and explaining what happened. One way to make a choice is to wait for others to raise the matter. If a friend says something about John or the photo, she can provide her explanation; likewise, if she hears indirectly that someone has seen the photo, she can send an email.

What are friends for if not to offer advice? As Qafika tells a few trusted friends about her difficulties, she can listen to their ideas about what to do next, in particular about who else to talk to and how to raise the issues with them.

### **Option 7: escape**

Rather than try to get the photo taken down, and rather than risk drawing attention to it by explaining the situation, Qafika can use methods of evasion, seeking to avoid being linked to the photo.

One possibility is to populate the web with positive references to her. She can put up her own website,

presenting her educational qualifications and job experience, her activities or indeed anything she would feel she is willing to share with the world. By encouraging a few friends to make links to the site, it would not be long before it is the top link given when putting her name into search engines like Google.

If she wanted, on her site she could provide her own account of her interactions with John, along the lines of the option of explaining. Then casual browsers would read her version of the story first, before encountering the actual photo. She could thus frame the matter in her own terms, which greatly influences people's responses.

Another possibility is to seek to move the objectionable photo from the initial page provided by search engines, and thus put it out of sight for all but the most persistent of enquirers. To do this, she needs her name in various sites, all in positive or at least neutral contexts. How to proceed at this point depends greatly on Qafika's interests and skills. If she's a member of a sporting team, her name might appear in news reports about games. She might decide to make comments, on Amazon.com, about books in an area that interests her. She could join Facebook groups and make comments or post photos — including photos of herself. More deviously, she could set up multiple websites about herself, in different contexts, each of them linking to the others.

All this would require quite a bit of time and energy, which might seem excessive in comparison to the goal, namely moving the photo off the first page of search engine results for her name. It is possible to pay agencies to help in creating a favourable web profile.

Another way to think of this approach is one of doing “good things” that receive online recognition. Being involved in charities, churches, clubs or other groups can be valuable in itself; developing the capacity to write book reviews or make other informed online contributions is also worthwhile in itself. So the task of swamping the photo with positive references could be a motivation to undertake positive activities that are socially worthwhile and, very likely, personally satisfying. There is another immediate spin-off for Qafika: her interactions with others are very likely to create a favourable impression.

However, creating a favourable web profile takes time, and in the short term she is worried that employers will find the photo. Is there any other escape? One possibility — which I mentioned to Qafika — is to change her name.<sup>5</sup> If she became Jessica Smith or Sarah Parker or some other name common on the web, employers looking for online information about her would soon give up. Even if John discovered her new name and changed the tag on the photo, it would be extremely difficult to link this to her, because the photo would be too far down on search engine results.

Changing your name to avoid being linked to a photo: it sounds drastic, and it is. It is a lot of hassle, and doesn't provide complete protection, because for some jobs it is necessary to provide previous names. Neverthe-

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<sup>5</sup> Qafika is not her real name to start with. For the discussion in this chapter, I replaced her distinctive full name with a pseudonym with no web presence, in the hope that it isn't anyone's name.

less, a new identity sometimes offers the best way to avoid certain forms of harassment.

Qafika dismissed the idea of changing her name: her name was part of her identity. Still, it was useful to consider this possibility. Examining a range of options can help in clarifying one's values and priorities.

### **Analysing options**

Qafika has quite a few options. How is she to make a decision? In an actual situation such as Qafika's, few people consider a range of options and systematically analyse their strengths and weaknesses. Instead, they usually latch onto what seems most obvious or most effective. This is the reason people contact me asking me to recommend a lawyer so they can sue for defamation: they have assumed a legal action is the best way, or perhaps the only way, to address an attack on their reputation.

Here, there is no rush to make a decision. Qafika's case is in the past, so we can scrutinise it at leisure, which means we can look at a range of options that she might consider. To analyse these options, I will use seven features of effective nonviolent action, as discussed in chapter 1: participation, limited harm, voluntary participation, fairness, prefiguration, non-standard action and skilful technique. For each one, I will look at different options to see how they relate to the features. This process will highlight some of the dimensions of the issue that might otherwise be neglected.

### **Participation**

When there is greater participation in actions for a cause, there is a greater chance of success. Large numbers show a greater level of support and can demoralise the opposition and trigger defections from their ranks. When participation is from different sectors of the population — for example different ethnic groups, genders, ages and social classes — this demonstrates a breadth of support and is more likely to encourage yet more participation. When people from different sectors join a campaign, this contributes diverse knowledge and skills and thus greater capacity to counter the opposition's tactics.

For the one-on-one dispute between John and Qafika, it may seem strange to talk about participation, but in every defamation case, third parties are involved. This is because hurting a person's reputation necessarily involves others. If John told Qafika she was a terrible person, called her a whore and emailed her the photo, this would be unpleasant and might be considered harassment, but it wouldn't be defamatory, because John would be communicating only to Qafika. If others didn't know, their views about Qafika would be unchanged: her reputation would be intact.

So who are the third parties? Most obviously, anyone who sees the photo that John posted on the web. In addition there are those who Qafika or John tell about the matter. For example, if Qafika goes to a lawyer to see about suing John, she needs to tell the lawyer about the photo.

For the purposes of nonviolent action, though, participation refers to joining in the action, for example

joining a rally, boycott or sit-in. It means taking sides, demonstrating support for a cause. So which options for responding to the photo involve the most supportive participation?

Of the options canvassed, informing people about the issue involves the most people in a way likely to make them sympathetic and perhaps be willing to do something on Qafika's behalf. Methods for informing people include talking to individuals and setting up a website with relevant information and then giving people the web address. In contrast, suing, counter-attacking and making complaints bring few allies into the picture, unless lawyers are counted. For Qafika to ignore the photo or change her name will do nothing to get others involved.

As noted earlier, informing others risks making some people aware of the photo who otherwise would not have known about it. However, there can still be benefits, especially if Qafika is able to obtain feedback from those she informs. Some of them might have insights about personal disputes, the law, Internet dynamics or public relations and have valuable suggestions about the best way forward. For Qafika to increase the number of people involved can expand her options. Furthermore, some of the individuals might offer to assist directly, for example by helping her set up a website or making links to it.

She can follow this approach even more by telling her story even to those she had most worried about: potential employers. After interviewing for a job, she can — if the circumstances seem right — tell them about her dilemma. If she has just been hired, her new employer should be sympathetic to reducing the visibility of the

photo. If she wasn't hired, she can find out whether the employer knew about the photo, and get their suggestions on dealing with it in future.

When your reputation has come under attack, telling others and getting them involved thus has several advantages. The main shortcoming is that more people become aware of the defamatory claims.

### **Limited harm**

When protesters take to the street and behave in a dignified, peaceful way, it is risky for police to use violence against them: it seems unfair and can generate more public support for the protesters. However, if even a few of the protesters become violent themselves — throwing bricks through windows or hitting the police — then the interaction seems quite different to outsiders: it can seem like a confrontation in which both sides are violent, even when the police violence is much greater. Not harming the police thus can be highly important in winning greater support.

Some protesters oppose using violence for another reason. As a matter of principle, they do not want to hurt the police or anyone else. They respect their opponents as human beings.

This principle, as applied to responding to defamatory comments, can be interpreted to mean not attacking the reputation of the person making the comments. In other words, in responding, try to avoid hurting the other person.

In practice, this might mean being generous rather than nasty. Qafika could say, for example, "I think John

was very hurt by our break-up. I feel for him.” Or she could say, “I care for John, but I don’t like what he’s done,” thus distinguishing between John and his actions.

To some, being concerned about not hurting John may seem to be a ridiculous expectation. After all, he’s gone out of his way to hurt Qafika, and surely she is completely justified in hurting him back — and it’s even more justified if she is just telling the truth.

The principle of limited harm, however, is not about whether something is justified. It is about respecting the other party and attempting to open possibilities for dialogue and reaching a satisfactory resolution of a conflict. There are plenty of situations in which doing something is justified but unethical or unwise or both. If a foreign government builds a nuclear weapon, it might be justified to build one of your own and prepare to use it, but this could be considered unethical because innocent people will be killed in a nuclear strike and unwise because obtaining nuclear weapons feeds a military race.

Similarly, if someone has said false and harmful things about you, you might be justified in saying things that hurt them. However, even setting aside the ethics of making hurtful comments (which might be more harmful than you imagine), this is likely to escalate the nastiness in the interaction.

If Qafika remains generous in her comments, she retains the moral high ground. She makes it easier for John to calm down and remove the photo. If John continues his attacks, Qafika will seem to others to be the injured party, and thereby gain sympathy. On the other hand, if she

seems insincere in her expressed concerns for John, she might be seen as a manipulator.

The principle of limited harm rules out the strategies of suing, counter-attacking and informing his boss. It is compatible with the strategy of informing others and defending. But the principle’s implications go further, by providing guidance for what to say when talking to others or putting up a website. The implication is to avoid putting too much blame on John. When Qafika presents her side of the story, her aim should be to reduce the damage to herself and do this while limiting any damage to John. Even further, she can reduce the damage to herself *by* limiting damage to John, because the more she seems generous in her response, the more highly people are likely to think of her, and the more they are likely to focus on the problem to be solved rather than think about who to blame.

The principle of limited harm thus has important applications in defamation issues. Because it is so important, I need to say a bit more. Some people will think, going easy on John — or whoever said those nasty things — is just being sappy. They might say to Qafika, “He’s a right royal bastard and deserves no mercy. So do whatever you like. It’ll be nothing compared to what he’s done to you.”

In less blunt terms, the principle of limited harm might seem too soft, too accommodating, too weak to make a difference. Many people think, “I need to get back at them. They deserve everything they get.”



This seems all very reasonable — when you’ve heard or seen just one side of the story. But it might be based on a mistake or misinterpretation.

It’s possible that John didn’t actually mean to hurt Qafika so greatly. He might have been feeling down in the dumps after Qafika left and, combined the photo with the label “whore” as an expression of his anger — an anger that oscillates with sadness and regret. He wanted to see the photo on the web, so he posted it on an obscure part of his website, with her name as the name of the image file, never thinking that search engines might push it to the top of their hits. After viewing it on his screen, his anger faded and he went back to feeling sad and remorseful — and forgot to remove it. In this scenario, John wasn’t intending to hurt Qafika at all. His peculiar method of self-therapy just ended up with damaging consequences.

There’s another scenario. John has a precocious daughter who saw how sad he was, and blamed Qafika. She was at his computer and composed the photo-word montage and uploaded it. John didn’t even know about it.

Suppose John next receives a heavy-handed legal threat. He didn’t even realise the photo was on the web, and now he’s being accused of an illegal act that could cost him a huge amount. He might retreat, or he might be fired up with anger at this sort of approach, making him more committed to keeping the photo on the web. He would have been much more responsive to a gentle email saying “I’m so sorry, John. I miss you but I couldn’t make it work for us. I feel really hurt about the photo you put on your website. Can you remove it so we can maintain cordial connections?”

The trouble is that Qafika doesn’t know what really happened. She left and she’s not privy to John’s private thoughts or to what his daughter might be doing. Maybe he’s a vicious, vindictive, impulsive fellow, but maybe not. The principle of limited harm protects Qafika from overreacting, or doing a greater harm to John than was done to her, or of hurting John when actually he didn’t even realise what had happened.

Roy Baumeister, a psychologist, wrote a book titled *Evil: Inside Human Violence and Cruelty*.<sup>6</sup> He wanted to better understand the people who do horrible things like killing and torture. Hollywood movies portray bad guys as pure evil, intending to hurt others and lacking any conscience. Baumeister in his studies came up with a different picture: perpetrators often don’t think what they’ve done is all that significant. After it’s done, they quickly forget about it. In many cases they feel justified in their actions because of all the bad things done to them in their lives. Perpetrators of horrible crimes seldom sit salivating and reminiscing over their exploits, but instead their actions fade from their memories.

Their victims, on the other hand, are frequently traumatised. Far from forgetting, they repeatedly relive, in their minds, the terrible things done to them. The result is a huge asymmetry: the perpetrators don’t think it’s a big deal and soon forget about what happened, whereas for victims the hurt is huge and lasts a very long time.

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6 Roy F. Baumeister, *Evil: Inside Human Violence and Cruelty* (New York: Freeman, 1997).

This asymmetry between the perceptions of perpetrators and victims can cause long-lasting feuds. In a family feud, or an armed conflict between nations, the initial victims nourish their resentments and counter-attack when they have the opportunity. Those on the other side then feel they are the real victims. One side calls an assault, a killing or an air strike a reprisal; the other side calls it an unjustified attack.

Not using violence — using only methods of nonviolent action — helps to undermine this process of escalation in which each side forgets or minimises its own actions and responsibility and only pays attention to the terrible things done by the other side. Using the principle of limited harm is a way of avoiding adding to the cycle of harm and resentment.

John's viewpoint about what happened was not favourable to Qafika. He had been smitten with her, loved her and wanted to stay with her. Nevertheless, he felt he had to put up with a lot: her whims, her expensive tastes, her moodiness, her need to be pampered at all times. This was tolerable, but what riled John most of all were Qafika's comments about him. John had a slight stutter, about which he was greatly embarrassed. Yet Qafika was prone to making passing references to it as a way of needling him. Even worse, she would draw attention to it when they were with friends. Eventually this infuriated him.

On top of this, John became convinced that Qafika was cheating on him. He had no formal proof, but the pieces of damning evidence were overwhelming. When Qafika walked out on him, saying he was too controlling,

it was the final straw. Putting a photo of her on the web was, for him, a trivial issue. It was far less, indeed nothing at all, compared to the hurt she had caused him.

That Qafika actually was charmed by John's occasional stutter and thought others were too, and that she felt she required some time on her own just to create some distance from John's suffocating demands, need not detain us here. In relationships, differences in perception are commonplace.

The point here is that John may well feel that he was the wronged party, and not feel that putting the photo on the web was anything all that significant. So when Qafika contacted him threatening to sue, he thought "What the hell? She treats me like dirt and now has the gall to make demands." He might do what she wants, but he might be provoked to become more devious in hurting her, for example by surreptitiously giving other photos to friends who post them on a range of websites.

If, on the other hand, Qafika tries to minimise the hurt to John, there is less risk of provoking him. If she apologises for things she did and accepts a share of blame for the break-up, John may be more likely to take down the photo.

The same dynamic applies to John's friends. If he can forward them a high-handed demand, they are more likely to take his side and to help him. If all he can forward is a conciliatory email, they are less likely to assist.

The principle of limited harm needs to be understood in the context that perceptions in a conflict are nearly always different. Assessments of responsibility for injustice sometimes are starkly different. Even though Qafika

might feel like she is entirely justified in coming down hard on John for posting the photo, her feelings may not correspond to John's reality. The principle of limited harm, if followed, prevents Qafika from making the situation much worse. In the best-case scenario, it helps John to voluntarily remove the photo and reach an acceptance of the end of their relationship.

### **Voluntary participation**

In most nonviolent actions, it is assumed that participants are there voluntarily. There are some situations in which protesters are induced to participate. Some regimes give incentives for citizens to support it, for example paying them to join pro-government rallies, or giving them a day off work so they can join. The resulting protest actions are far from an authentic expression of sentiment. The ratio of voluntary to paid or coerced participants might be used as a test of how genuine a nonviolent action is.

In struggles over defamation, however, participation is less likely to be voluntary in one particular aspect: the involvement of lawyers, who are paid advocates. When suing someone for defamation, lawyers are often key players, making this unlike a nonviolent action.

Some of the other options for responding to defamation have very limited participation. Complaining to John's boss or to his Internet Service Provider, for example, do not require action by anyone except Qafika. The issue of whether participation is voluntary or not does not even arise.

The main implication here is that relying on legal or other paid advocacy is not characteristic of effective

nonviolent action. To have a stronger effect, encouraging involvement of volunteers is more likely to be effective.

### **Fairness**

The principle of fairness in nonviolent action boils down to a simple assessment: do observers think that the actions taken are reasonable, or do they think the actions are too extreme? Of course, different observers will have different views, so seldom is there a simple answer.

If you are defamed, the test of fairness is whether your response seems reasonable to most people. If you have an argument with a friend and, in the heat of the moment, he calls you a twit — and others were around listening to this — what do you do? Most people would say “just forget it” or perhaps “ask for an apology, but after both of you have calmed down.” If though, you write a formal letter saying you expect a written apology, many would say you're being unreasonable, maybe telling you, “it wasn't that important, so why are you making such a big deal about it?” If you threatened to sue, that would seem like an extreme over-reaction.

The basic idea here is that the response should seem reasonable in comparison to the harm. This can be difficult to get right, because of differences in perception about the significance of things that are said, and because personal honour is involved.

In many cases, suing, or threatening to sue, is likely to be perceived as an over-reaction. You unwisely sent around an email calling the president of your club a liar. An apology might be in order. A demand for a payment of \$10,000 might seem excessive.

Qafika in her reaction to the photo needs to be seen to be fair. The photo is pretty damaging, so many of her options will seem reasonable to observers. However, if she complains to John's boss and he loses his job as a result, that might seem to be a severe penalty — at least to many who know John. Likewise, a legal action demanding damages of one million dollars is likely to be seen as excessive, if not silly. If Qafika posts dozens of demeaning photos of John, that also could be seen as an over-reaction. Indeed, she might be seen as the source of the problem. Observers might think, if those are the sorts of things she does, imagine what she was like when she was with John: he does something that offends her, and she blows it up into a huge issue and pays him back a hundred-fold.

This reasoning might be incorrect, but it is predictable. People often judge a person by the nature of their actions, rather than by the purpose of their actions.<sup>7</sup> This sounds abstract. What it means in practice is that many people will judge Qafika by her actions, not by her goal, which is to get John to remove the photo. Her goal might be legitimate, but people won't think of that when contemplating her actions such as suing for defamation or posting numerous photos of John. John and his supporters are the ones most likely to think along these lines; independent observers might also judge Qafika by her actions rather than the justice of her goal.

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<sup>7</sup> See the discussion of correspondent inference theory on pages 47–49.

There's another factor. What seems reasonable depends on the sequence of actions. If Qafika first politely appeals to John, apologising for any hurt she has caused him, and he brushes her off or posts another photo, many will see it as fair that she escalates her actions. This is analogous to what happens when social movements act for change. They commonly first make rational appeals; when nothing happens, they undertake more forceful agitation.

The implication of the principle of fairness is that Qafika needs to be careful. If she reacts too strongly, she will lose sympathy; some might even think she is the cause of the problem. She can seem to be fair by starting with the most gentle methods — politely asking John to remove the photo, in a message that is sympathetic to him — and gradually escalating to stronger methods. She needs to be careful not to escalate too far, namely to use methods likely to be seen as so heavy-handed that people will sympathise with John.

### **Prefiguration**

The principle of prefiguration is that the means should incorporate the ends. If the goal is peace, then use peaceful methods. If the goal is respectful interactions, then use respectful methods. The idea of prefiguration is that by choosing the appropriate methods, goals can be modelled and fostered. It's not always possible to apply the principle of prefiguration, but when it is, it is worthwhile.

If people are telling lies about you, your goal might be an end to the defamatory comments and an apology. A wider goal might be a culture of respect.

The implication for Qafika is straightforward. She needs to behave towards John the way she'd like him to behave towards her. That rules out legal actions and counter-attack. It suggests she should start with a gentle approach, without passing judgement, and escalate if necessary by talking with others.

Qafika's immediate goal is getting John to remove the photo. However, thinking of means and ends may encourage her to consider longer-range, more fundamental goals, such as fostering an honest and open relationship with John, even if staying together is not feasible. So Qafika might take a step back and think about their time together and how she ended the relationship. She realises now that John was deeply hurt, whereas at the time it was her own hurt that drove her away. If John was deeply hurt by her leaving, or by the way she left, maybe she could imagine a different way, perhaps involving a heart-to-heart talk or gestures of good will.

It's possible, of course, that no matter what Qafika did, John would still be vindictive. Maybe nothing would have made any difference. But at least Qafika would know that she had done all she could to be sensitive towards John's needs along the way.

### **Non-standard action**

What is called nonviolent action is, by definition, something beyond the routine. Literally, "nonviolent" implies not using violence, so just saying hello to someone is an action without physical violence. By convention, though, nonviolent action needs to be something out of the ordinary. In countries with representative government,

voting, lobbying and campaigning are conventional political activities. Nonviolent action includes methods such as boycotts, strikes and sit-ins, that are seldom considered routine. Nonviolent action is non-standard action that doesn't involve physical violence.

When a person is defamed, there are some usual responses. Suing for defamation is legally legitimate, though often an over-reaction. At the other end of the spectrum is doing nothing: not responding at all. This is hardly in the spirit of nonviolent action, though in many cases it may be a good idea. It is useful to remember that carrying out nonviolent action is seldom a goal in itself: it is a means to an end, and in many cases it is better to use conventional methods if they work reasonably well.

Qafika has various options, ranging from doing nothing to suing and counter-attack. It is the ones in between these extremes that are analogous to nonviolent action: the ones that go beyond what is usual but conform to the principles of limited harm, fairness and prefiguration. Some of these were canvassed earlier, such as setting up her own website. It's possible to develop further ideas by examining a wider range of conventional nonviolent actions and seeing how they might apply to a defamation scenario, or suggest original options.

The first category of nonviolent actions, called protest and persuasion, includes petitions, leaflets, picketing, wearing of symbols, vigils, humorous skits, marches and walk-outs. Applied to Qafika's situation, the general idea is to get people expressing their views about John's action, through words or actions. There are quite a number of ways to do this. Today the most obvious

candidates involve social media such as Facebook and Twitter.<sup>8</sup> However, there's a problem: involving more people in a protest against what John has done inevitably means giving more visibility to the offending photo. In other words, protesting can potentially cause more harm than benefit to Qafika's reputation.

One way to resolve this tension is to protest more generally against abusive comment on the Internet. Qafika could join with others who have been similarly targeted for spiteful attacks and be involved in various forms of protest, including on blogs, email lists, petitions and the like.

This is analogous to campaigning on some other issues, for example violence against women. Few women want to be named in public as victims of violence — this might trigger further attacks — but women can combine to protest, for example marches on International Women's Day. The idea for Qafika is to work with others who have similar or related problems and come up with ways of protesting that target the problem without naming individuals.

Does this count as non-regular action? Surely, there are so many online campaigns that another protest against some abuse is a routine form of politics. In a general sense, this is true, but the assessment of what is regular and non-regular needs to be more specific. There might be plenty of online protests, but are there organised protests about online defamation, where the targets do not want to

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<sup>8</sup> These were not available at the time of Qafika's conflict with John.

be named? If not, this suggests that for this issue, a protest action is non-standard. In any case, being non-standard is not a goal in itself. If examination of methods of nonviolent action can lead to ideas that are actually conventional forms of action, but ones that have been neglected, this is worthwhile.

The basic idea here is collective action. This is obvious enough in retrospect, but at the beginning Qafika only thought about ways to address her own individual problem. Furthermore, collective protests are not going to solve Qafika's problem, at least in the short term. Protests are more likely help prevent problems, as well as to put Qafika in touch with others with similar concerns. Possibly the greatest advantage is cross-fertilisation of ideas. If Qafika makes contact with others with similar problems, she will hear about what worked and what didn't work, and possibly get some new ideas about what she can do.

So there are some benefits from protest that may be overlooked: providing moral support, sharing experiences and stimulating ideas for responding. For Qafika, joining or helping organise a protest — even one where her case is not mentioned — can provide support and ideas that may help her.

A second main type of nonviolent action is noncooperation, which includes a wide range of boycotts and strikes. These seem an unlikely option for Qafika. She's not buying anything from John anyway, and not working for him. However, this conclusion is based on a narrow conception of boycotts and strikes, which usually bring to mind consumer boycotts of major companies and strikes

by large numbers of workers. Using the concept of noncooperation enables more creative thinking, as well as examining the many types of boycotts and strikes.

One type of noncooperation is called social ostracism. This means refusing to interact with someone. This technique is most commonly used against outcasts in schools and workplaces, and is a common method used against targets of bullying. When used against a more powerful person or group, it fits into the spectrum of nonviolent actions.

Imagine that John is known to a wide circle of friends and work colleagues. If they learn about John posting the photo of Qafika and think his action was repellent, they might complain to John — or they might simply avoid him. The one photo of Qafika is hardly enough to trigger such a response, especially because John didn't attach his name to it. However, if Qafika has created her own website and provided a calm, factual account of her attempts to get John to remove the photo, this could be more influential. Qafika then needs to alert some of John's acquaintances to her site; she can do this because she met quite a few of them during her time with John.

Even so, the one photo and an account of John's refusal to remove it, despite polite, heartfelt appeals, might not be enough to trigger his friends to ostracise him. However, if John has done the same thing to previous girlfriends, and Qafika can find them and get them to join her in a collective effort, more of John's friends might be appalled and decide to stay away. John might not care and be willing to carry on with his few loyal friends. On the other hand, he might think that the effect on his life is

becoming too great. At work, his colleagues are less helpful, making his job less pleasant and reducing his career prospects. His social life is crimped because too many women he meets have heard about him posting the photo. With this sort of pressure, he might decide that getting back at Qafika is not worth the cost.

Noncooperation is a form of coercion. Taken to extremes, it can be highly damaging, as anyone who has been ostracised can testify. In using noncooperation in cases of defamation, the basic idea is to apply pressure through people's disapproval of actions taken. The concept is simple but the execution can be difficult, because it involves informing a range of people about defamatory materials and their damaging effect. Doing this is risky because it can worsen the original problem — loss of reputation due to the defamatory materials.

The third major category of nonviolent action is "disruption" via nonviolent intervention. This includes various types of actions, such as fasts, sit-ins, overload of facilities, seizure of assets, land seizures and alternative markets. Few of these look immediately promising for Qafika. She could undertake a fast — but would John care? For this to be effective, she needs to establish communication with him. Unless they share a cultural background in which fasting has significance, it might be useless.

What about a sit-in or some other type of nonviolent intervention? The normal idea in these methods is to put your body between a person and something they desire. Qafika can hardly do this personally; perhaps some friend of hers could do it, but it seems unlikely. So instead of

thinking of physical bodies, what might this mean in cyberspace? Is it possible to occupy something of John's online? Perhaps it would be possible to squat in his web domain, but probably only if he forgot to renew it.

There would be possibilities, though, if John has some web presence that allows others to post comments. If, for example, he has a Facebook page, it would be possible for Qafika or her supporters to symbolically occupy the page by regularly posting comments, which might be simple things like "Treat Qafika respectfully" or "Remove unwelcome photos." Comments on John's blog or Facebook page are probably better thought of as forms of protest and persuasion. They might be types of nonviolent intervention if they are so frequent and persistent that John cannot easily avoid them.

Another possibility would be to shadow all of John's contributions on the web. If he posts comments on other people's blogs, it might be possible to keep track of them via a Google Alert. This depends, in part on John's name. If it's a very common name, like John Jones or John Nguyen, and he doesn't post very often, it will require lots of monitoring. If his name is less common, like John Apexz, tracking his comments will be easier. If he likes to comment on particular sites, then shadowing him is easier. He might respond by using a pseudonym. Then there's the question of whether to shadow his different identities.

Sharp identified 198 different methods of nonviolent action, and that was long before the Internet.<sup>9</sup> Rather than

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<sup>9</sup> Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent, 1973).

try to apply these methods literally, Qafika and her supporters can use them, and more recent lists, to stimulate ideas about responding to John. Responding to John is different from the usual scenarios envisaged by Sharp in three significant ways. First, what John has done is quite different from the actions normally addressed in nonviolent campaigns, which are major injustices such as repression and war. Second, John's action harms just one individual, Qafika, whereas the harms normally addressed by nonviolent action are collective, affecting many people. Third, John's action is on the Internet; traditional forms of nonviolent action involve people taking physical actions, often in public spaces.

To obtain ideas for responding to defamation, it is worthwhile looking at a wide variety of traditional methods of nonviolent action and figuring out how they might be adapted to a very different set of circumstances. This means that there is no simple formula for responding. Instead, creative thinking is needed.

### **Skilful use**

Methods of nonviolent action do not work automatically. To be effective, they have to be chosen carefully and deployed with great skill. Practice can make a difference. The same thing applies when responding to defamation, whichever method is chosen.

If Qafika decides to sue, or threaten to sue, then picking the right legal advocate is crucial. Some people in this situation think they can do the work themselves, even though they have no legal training. They have little money or perhaps they don't trust lawyers. This is usually a



mistake, because the legal system is filled with pitfalls for the unwary.

Finding a suitable lawyer can be difficult. Defamation law is a specialised area. A lawyer might be willing to take on a case but not have the experience to do a good job. If the lawyer for the other side is more skilled, the prospects are not good.

Some lawyers will just go through the motions, satisfying the usual requirements. This often makes the process drag on for months or years, which is good for lawyers to pocket their fees but is not good for getting results. Qafika wants to protect her reputation, but that is not the goal of either the legal system or most lawyers. She might be lucky and find a lawyer who will serve her interests, even one who tells her not to sue.

Then there is the direct approach to John, appealing to his emotional concerns. This requires the most skill of all. Qafika might think she knows enough about John to do this well, but perhaps she only knows one side of John. Even for such a personal matter, it can be useful to prepare and practise, and to seek advice from others. For example, Qafika could draft two or three different email messages to John and show them to a close friend, asking which one seems most likely to be effective. If Qafika decides to ring John, or leave a message on his phone, then preparation and practice can help make this as good as possible. With a friend, she can practise what she plans to say: the friend can respond the way John might. A friend who knows John may have extra insight, but the main point of practice is to help Qafika be able to sound the way she wants. By role-playing the conversation, perhaps over and over in

different variations, Qafika can prepare herself for John's possible responses, and avoid the risk that she will trigger one of their standard exchanges — in which Qafika and John started criticising each other — that contributed to her leaving.

Practice will also help Qafika if she decides on the option of talking to others about what happened. She can start by practising what she plans to say on her own, in front of a mirror or with a tape recorder, until she can articulate her concerns in a cogent way. She can then start by talking with a close friend and, if her friend is sympathetic and seems willing to help, ask for assistance in improving and practising her approach to others. Obtaining advice along the way, and continually practising, is an excellent way to develop skills.

In responding to defamation, practice is usually neglected entirely. Yet it is one of the most important ways of becoming more effective. Practice on one's own is useful, and even more useful is having a teacher or guide. Where better to find assistance than from one's friends?

## **Conclusion**

Qafika needed to address a disturbing challenge: what to do about an unwelcome photo of her on the web. She could choose from a range of options, from doing nothing to suing for defamation. In each case, it's valuable to consider the options strategically, in particular to work out how John is likely to respond.

By going through several key characteristics of effective nonviolent action, it's possible to gain greater insight into what is likely to work. Many different points could be noted; three in particular are worth highlighting.

First, in cases of defamation, there is often a dilemma: in putting pressure on John to remove the photo, others may be alerted to its existence. In other words, taking action can easily make the problem worse.

Second, it is worth considering collective responses. In many cases when someone is defamed, their first thought is to make threats, especially legal threats. However, operating through the legal system restricts participation in the issue. Often the only additional people involved are lawyers. Qafika might be able to use legal threats to get the photo removed, but this does nothing about the general problem of defamation on the web. The women's movement gained great strength by women sharing their experiences, providing mutual support and taking collective action. Similarly, a collective response to abuse on the web has much greater promise than lots of separate individual responses.

Third, it is worth trying to re-establish a connection with the person making defamatory comments. Qafika broke up with John and he wanted to get back at her. In such circumstances, trying to understand John's motivations and behaviour can be a path to a more satisfactory solution than legal threats.

However, there are no guarantees. Even though there are regular patterns, cases are different. It can be valuable to use experiences of nonviolent action to give ideas for

responding, but this needs to be combined with an understanding of the particular circumstances.

### The story of James Lasdun

After completing a draft of this chapter, I read James Lasdun's book *Give Me Everything You Have*.<sup>10</sup> Lasdun is a poet and novelist who sometimes teaches creative writing. In one class he had a promising student, whom he calls Nasreen (not her actual name). A couple of years after the class, Nasreen initiated correspondence about a book she was writing, and other matters, and James was friendly and supportive, referring her to his literary agent. However, their initially cordial relationship degenerated. According to Lasdun, Nasreen became more and more demanding and, when her demands were not met, turned on James, setting out to destroy his reputation.

Initially her verbal abuse was directed only at James. He was bombarded with emails with all sorts of accusations and slurs, for example saying that he had used her ideas in his own work and attacking him for being Jewish. This was distressing enough for James. Gradually Nasreen became more hostile. Her emails were sophisticated in directing her anger: she knew how to upset James through clever references to his writings and common cultural objects.

Nasreen, as well as continuing to send abusive, upsetting emails to James every day, expanded her assault

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10 James Lasdun, *Give Me Everything You Have: On Being Stalked* (New York: Farrar, Straus and Giroux, 2013).

on his reputation by sending emails to others in his life, making accusations against him, claiming plagiarism, sexual activity with other students and even linking him with rape. She sent emails to James' literary agent and then to staff at the school where he was working.

James' imagination began working overtime. He guessed that Nasreen might write to his publishers, for example magazine editors where his poetry and stories had appeared. But he didn't know for sure, and it would be embarrassing to raise the matter with them. If Nasreen hadn't contacted them, James would be hurting his own reputation by referring to her claims, and even if she had contacted them, how would they respond to his protestations of innocence? He realised that mud would stick.

Nasreen used various aliases to send her missives. Another target was James' online presence. Nasreen sent negative reviews to online services such as *Goodreads*.

Nasreen's assault then took on an even more sinister dimension: she began sending emails to various people that appeared to come from James. She tried to make them sound convincing yet damning.

James was confronted with a major problem, which can be broken down into three aspects. He was being harassed by the continuing abusive emails; he was being stalked, in the digital realm, with every presence of his name or work being subjected to hostile comment; and he was being defamed. Of course these three aspects overlap. Being defamed quite commonly gives rise to a feeling of being harassed.

In terms of the stalking, the advice by one of the most knowledgeable advisers about personal threats is to never

give a response.<sup>11</sup> Even responding to one out of 20 emails can provide enough feedback to keep the stalker going strong.

James contacted the FBI and the police, hoping they would take action. Basically, they were not sufficiently interested to do very much, at least not anything effective. When, finally, Nasreen received a warning from the police, she eased off for a while, but then recommenced her email assault, including mocking references to the police threat. For James, seeking assistance from the FBI and police was an exercise in using official channels. As in so many other realms, they came up short.

Furthermore, in some ways he was worse off. The police advised him to read all of Nasreen's emails, in case there was a significant personal threat. However, this caused him continuing mental anguish. James sometimes deleted Nasreen's emails without reading them, thus destroying potential evidence. He obviously felt the choice was between deleting and reading/saving each email. There was a simple alternative: set up a filter for Nasreen's email address, sending all her missives to a special folder. This way James could save all her emails and only have to read, or even know about, ones in which she used a new alias. The police might have felt obliged to tell James to read all the emails but, in practical terms, if she had sent a hundred or a thousand emails and posed no physical threat to James, surely there was no need to read the next hundred or thousand.

11 Gavin de Becker, *The Gift of Fear: Survival Signals that Protect Us from Violence* (London: Bloomsbury, 1997).

After Nasreen sent emails to James' workplace, his supervisor came to talk to him about it. James felt his worse fears had come true (though worse was to come). He felt compelled to tell others at the school what was going on, and to his surprise received an outpouring of support. This confirms the value of the strategy of building support. There is power in numbers, if only to provide moral support. Although James feared that dirt would stick and that telling others might make things worse for him, actually it turned out to be one of the best things he did.

Because his online presence was being tarnished by Nasreen's unrelenting campaign to destroy his reputation, James responded by making complaints about posts attacking his books, and often the posts were taken down, usually after a delay. He also undertook a more positive action: setting up his own website. Finally, he decided to embrace the issue that was taking over his life, and write a book about it. Much of *Give Me Everything You Have* is about his interactions with Nasreen, especially her emails and his responses. But the book is more than a chronicle of how a berserk former student harassed him electronically. James devotes much of the book to a deep reflection on his thoughts and experiences, probing his connection with Nasreen through psychological and cultural realms, with commentary on trips he made to New Mexico and to Israel, pilgrimages that provided opportunities for thinking through his circumstances and the meaning of his life. In making his book so broad and deep, James demonstrates his capacity as a writer and his thoughtfulness. Because of the subject matter — the story of being stalked — the

book will attract a different readership than his poetry and novels, and may well increase his visibility. It is a nice example of how to turn an attack into a positive.

### Appendix: being defamed on the Internet

To learn about how to respond to defamation, a seemingly obvious first stop would be writings about defamation. However, most of the legal writing about defamation gives little or no guidance about what to do if you've been defamed. Instead, this body of writing focuses on laws, judicial interpretations, law reform and prominent cases.

The writings that have especially interested me deal with threats to free speech by the use of defamation law, for example to threaten to sue citizens who protest against property developments or police misconduct.<sup>12</sup> On the practical side, there are some useful guides for journalists on how to avoid being sued for defamation.<sup>13</sup>

A lot of this writing is fascinating, but it's not helpful to someone like Qafika. When she contacted me, I knew of nothing that gave advice for a low-profile defamation case, especially for someone without an ample supply of spare cash to pay lawyers.

Unfortunately there are many other stories like Qafika's, many of them much worse than hers. There is a type of harassment called "revenge porn" in which

12 George Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (Philadelphia: Temple University Press, 1996).

13 Mark Pearson, *Blogging & Tweeting without Getting Sued: A Global Guide to the Law for Anyone Writing Online* (Sydney: Allen & Unwin, 2012).

individuals — usually former lovers — post or circulate compromising or embarrassing images of others. These images might be posted online or circulated via social media. They can include photos or film clips of the target naked, engaging in intercourse or other activities. Some of these images were taken with agreement but used without permission; others were taken covertly.

Revenge porn is a type of cyber harassment, which means harassment carried out via online means;<sup>14</sup> it can sometimes be combined with other sorts of harassment, such as verbal taunts, pictures posted at work and physical assault. Cyber harassment can be especially difficult to handle, because harassers can operate at a distance and anonymously, and because images can be difficult to remove. If someone calls you a name, bumps into you, knocks over your bag or lets out the air from your car tyres, there is seldom any permanent record. You can be psychologically affected, but outward appearances return to normal. A photo online is like a constant sore, equivalent to a photo near your workplace or home that you cannot remove.

There have been some moves in parts of the US to pass laws to deal with revenge porn, which is an indication that defamation laws are inadequate to the task. However, it is unlikely that laws will be an effective remedy, certainly not for everyone, given the cost, delay and ineffectiveness of legal action in many circumstances.

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14 Paul Bocij, *Cyberstalking: Harassment in the Internet Age and How to Protect Your Family* (Westport, CT: Praeger, 2004).

Cyber harassment is related to hate speech, which is usually described as speech targeting individuals or groups on the basis of their ethnicity, religion or nationality. An excellent treatment of the problem of hate speech online is the book *Viral Hate* by Abraham Foxman and Christopher Wolf.<sup>15</sup> The authors are involved with the Anti-Defamation League in the US and are especially concerned about anti-Semitism, but also with other forms of hate speech. They describe the problem on online hate speech and examine several remedies. They conclude that the obvious methods — passing laws and enforcing them, or complaining to Internet service providers — have serious limits. They therefore recommend different strategies, especially counter-speech and education, plus liaising with online administering organisations to develop cooperative approaches.

In agreement with my assessment that laws and other official channels are not an effective way of dealing with defamation, Foxman and Wolf state:

... this argument about self-governance [using education to strengthen commitments to democracy] reinforces our conviction that laws attempting to prohibit hate speech are probably one of the weakest tools we can use against bigotry. There's no question that hate speech, which includes threats, harassment, incitements to violence, and other criminal actions unprotected by the First Amendment, should be

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15 Abraham H. Foxman and Christopher Wolf, *Viral Hate: Containing its Spread on the Internet* (New York: Palgrave Macmillan, 2013).

subject to legal sanction. But broader regulation of hate speech may send an “educational message” that actually weakens rather than strengthens our system of democratic values.<sup>16</sup>

Cyber harassment can also be treated as a special type of bullying or mobbing (mobbing is collective bullying). There is plenty of writing about bullying, especially in schools and workplaces.<sup>17</sup> However, only some of it is practical in orientation, and much of it assumes the existence of authorities, such as school principals, bosses or government agencies, that will address the problem. There is much to be learned from studies of bullying, but little that can be applied to Qafika’s problem. For example, one recommendation for targets of workplace bullying is to find another job. Another is to develop skills to counter or avoid bullying behaviours. Yet another is to file a formal complaint. These all have parallels in cyber bullying, but have limita-

<sup>16</sup> Ibid., 171.

<sup>17</sup> On workplace bullying see for example Andrea Adams with contributions from Neil Crawford, *Bullying at Work: How to Confront and Overcome It* (London: Virago, 1992); Carol Elbing and Alvar Elbing, *Militant Managers: How to Spot ... How to Work with ... How to Manage ... Your Highly Aggressive Boss* (Burr Ridge, IL: Irwin Professional Publishing, 1994); Susan Marais and Magriet Herman, *Corporate Hyenas at Work: How to Spot and Outwit Them by Being Hyenawise* (Pretoria, South Africa: Kagiso, 1997); Judith Wyatt and Chauncey Hare, *Work Abuse: How to Recognize and Survive It* (Rochester, VT: Schenkman Books, 1997).

tions for cases in which images cannot be easily blocked and the person who posted them is in another part of the world, or even anonymous.

There is a considerable body of writing, both academic and popular, about people with challenging behaviours, including psychopaths, narcissists and other personality types. Some of those who engage in cyber harassment may fit these categories. For me, one of the most insightful treatments is George K. Simon, Jr.’s book *In Sheep’s Clothing: Understanding and Dealing with Manipulative People*.<sup>18</sup> Simon’s key insight is that traditional psychological frameworks are not relevant for understanding many people today, because genuine neurosis is quite uncommon. The changing structure of society and loosening of constraints mean that the more common source of problems is what Simon calls “character disorders” such as narcissism and aggression. These people aren’t inhibited enough: they know what they want and they don’t care about hurting others to get it. Simon identifies a new psychological type, in the spectrum of character disorders: covert aggressors. These people use manipulation to get their way. The key is to understand that covert aggressors exist and to deal with their behaviours, not their motivations.

According to Simon, covertly aggressive personalities typically believe everything is a battle and they always have to win; furthermore, they fight unfairly, have a sense

<sup>18</sup> George K. Simon, Jr., *In Sheep’s Clothing: Understanding and Dealing with Manipulative People* (Little Rock, AR: Parkhurst Brothers, 2010).

of entitlement but little empathy or respect, and are willing to exploit the vulnerabilities of others. He recommends dealing with covert aggressors by preventing them from setting the terms of engagement. He advises

- get rid of misconceptions
- become a better judge of character
- understand yourself better, including vulnerabilities such as over-conscientiousness, low self-confidence, over-thinking and emotional dependency
- know the other's tactics
- don't fight losing battles
- change your own behaviour

Simon's approach is compatible with one inspired by nonviolent action. He recommends making direct requests and demanding direct responses, but also avoiding being sarcastic or hostile or making threats. In essence, he advises an informed strategy of assertion.

The most entertaining treatment of online attacks is Jon Ronson's *So You've Been Publicly Shamed*.<sup>19</sup> Ronson interviewed individuals who became targets of massive online abuse, in some cases for minor transgressions. His book highlights the enormous challenge in responding to online shaming. For a readable and insightful personal account by a political scientist who became such a target, see Tom Flanagan's *Persona Non Grata*.<sup>20</sup>

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19 Jon Ronson, *So You've Been Publicly Shamed* (London: Picador, 2015).

20 Tom Flanagan, *Persona Non Grata: The Death of Free Speech in the Internet Age* (Toronto: McClelland & Stewart, 2014).