

FREE SPEECH IS STILL FREE SPEECH

Part Three: How to Criticize, Investigate, Report, Advocate and Ask Hard Questions Without Turning Suspicion Into a False Statement of Fact

In-Depth Legal Information & Analysis Series

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After hearing **\$4 million, \$10 million, and \$15 million selected by a jury before a statutory punitive-damages reduction**, some people may reach an understandable but incorrect conclusion:

"Apparently you can't say anything about anybody anymore."

No.

That is not the lesson.

The First Amendment remains enormously important.

Defamation law does not prohibit criticism simply because criticism is harsh.

It does not make every negative opinion actionable. It does not prevent consumers from discussing businesses. It does not prevent tenants from complaining about housing conditions. It does not prohibit advocacy. It does not prohibit journalists from investigating allegations. It does not prohibit people from discussing court proceedings.

And it certainly does not give someone a legal right to silence every critic by shouting: **"DEFAMATION!"**

The real distinction is more sophisticated.

OPINION AND FACT ARE NOT THE SAME THING

Consider: **"I think this restaurant is terrible."**

That is fundamentally different from: **"The restaurant owner steals customers' credit-card numbers."**

One expresses subjective evaluation. The other communicates a specific factual accusation.

Now try adding: **"In my opinion, the restaurant owner steals customers' credit-card numbers."**

The words **"in my opinion"** do not necessarily transform the underlying factual assertion into constitutionally protected opinion.

Courts can examine the substance and context of the communication.

"ALLEGEDLY" IS NOT A FORCE FIELD

Another internet favorite: **"Allegedly."**

People sometimes make an accusation, add "allegedly," and assume they have purchased legal immunity with one word.

They haven't.

Attribution matters. Context matters. Meaning matters.

The question is what the communication reasonably conveys.

There is a substantial difference between: **"According to the complaint filed Tuesday, the plaintiff alleges that Jones falsified the records. Jones denies that allegation."**

and: **"Jones falsified the records - allegedly."**

The first accurately describes a litigation position. The second may still communicate that the speaker believes Jones committed the act.

A LAWSUIT IS NOT PROOF

This principle is essential for anyone creating legal content.

A complaint establishes that someone **alleged** something. It does not establish that the allegation is true.

Complaint != Judgment

Allegation != Finding

Arrest != Conviction

Investigation != Guilt

Demand Letter != Proof

Rumor != Evidence

Viral Post != Truth

A responsible publisher preserves those distinctions.

DEPP v. HEARD: WHY IDENTIFICATION MATTERS

The Depp-Heard litigation supplies an especially valuable lesson.

The Washington Post op-ed at issue did not expressly identify Depp by name.

Yet the litigation proceeded on the theory that the statements were understood as referring to him.

That illustrates why merely replacing someone's name with **"a certain landlord," "a certain business owner," "someone we all know,"** or **"I'm not saying who..."** does not necessarily prevent a defamation claim.

If the audience can reasonably determine who is being discussed, the absence of a literal name may not be dispositive.

CARDI B v. TASHA K: WHY REPETITION MATTERS

The Tasha K litigation illustrates another danger.

Online publication is rarely isolated. Creators make follow-up videos. They respond to comments. They livestream. They create sequels. They invite guests. They repeat accusations.

Each additional publication can increase dissemination and complicate the factual and legal record.

When credible contrary information emerges, a responsible publisher should reassess.

Continuing simply because **"I already said it, so I'm sticking with it"** can be an extraordinarily costly strategy.

SCOFIELD v. GUILLARD: SPECULATION IS NOT EVIDENCE

The Scofield case provides perhaps the clearest warning about the difference between speculation and factual foundation.

A person can have intuition. A person can have suspicions. A person can ask questions.

But an extraordinary accusation presented as fact requires an evidentiary foundation.

The more serious the accusation, the more important disciplined sourcing becomes.

THE DOCUMENT-FIRST RULE

Anyone engaged in advocacy, investigative commentary or legal reporting should consider adopting a simple rule:

DOCUMENT FIRST. CHARACTERIZE SECOND.

If discussing a court order: read the order.

If discussing an inspection: obtain the report.

If discussing an arrest: verify the record and disposition.

If discussing a lawsuit: read the complaint - and make clear that allegations remain allegations unless adjudicated.

If discussing someone's statement: preserve the statement.

If discussing your own experience: separate what you personally observed from what someone else told you.

Then characterize the evidence accurately.

THE SIX-BUCKET METHOD FOR RESPONSIBLE PUBLICATION

1. DOCUMENTED FACT - What does reliable evidence objectively establish?

2. PERSONAL OBSERVATION - What did you personally see, hear or experience?

3. THIRD-PARTY ALLEGATION - What has someone else claimed?

4. INFERENCE - What conclusion are you drawing from established facts?

5. OPINION - What is your subjective evaluation?

6. UNKNOWN - What remains unresolved?

This structure dramatically improves both journalism and advocacy.

Instead of saying **"They committed fraud,"** you may discover that the evidence actually supports: **"The records contain a \$10,000 discrepancy that has not been explained. Whether that discrepancy**

resulted from error, misconduct or another cause remains unclear."

That statement may actually be more powerful because it shows readers exactly what is known and what remains unanswered.

HARD QUESTIONS ARE NOT THE ENEMY

Defamation law should not eliminate investigative questions.

Consider: **"Why does Document A report \$20,000 while Document B reports \$35,000?"**

That is a legitimate question grounded in identified evidence.

Compare: **"They stole \$15,000."**

That is an accusation.

The evidence may eventually support the accusation. But until it does, the first formulation preserves the distinction between evidence and conclusion.

CORRECT YOUR ERRORS

Responsible publishers sometimes get things wrong.

When reliable evidence establishes a material error: correct it; identify the correction appropriately; stop repeating the false information; preserve the relevant records; and obtain legal advice when the issue is significant.

Deleting everything and pretending nothing happened may not erase the evidentiary trail.

Transparency often strengthens credibility.

FREE SPEECH DOES NOT MEAN CARELESS SPEECH

The lesson from these cases is not: **BE QUIET.**

It is: BE PRECISE.

Criticize. Investigate. Advocate. Question. Publish. Challenge institutions. Discuss public records. Describe your experiences. Express opinions. Demand accountability.

But understand the line between **"Here is what the evidence shows," "Here is what I believe happened," "Here is what someone alleges,"** and **"Here is what has actually been adjudicated."**

Those distinctions are not meaningless legal technicalities. They are the architecture of responsible public discourse.

THE THREE-CASE WARNING

Cardi B v. Tasha K demonstrates the potential consequences of repeated online accusations distributed to a substantial audience.

Depp v. Heard demonstrates that context can matter to identification, that publication need not necessarily contain someone's name, and that defamation exposure can arise on opposing sides of the same public

controversy.

Scofield v. Guillard demonstrates what can happen when extraordinary accusations about an identifiable person are disseminated through modern social media without an adequate objective factual foundation.

Together, the cases tell us something important about the internet in 2026:

Everyone has a printing press.

Everyone has a television station.

Everyone has a microphone.

Everyone can become a publisher.

And increasingly: **Everyone who publishes serious factual accusations must understand that the courthouse exists offline.**

FINAL THOUGHT

The great promise of social media is that ordinary people finally possess the ability to speak publicly without asking a gatekeeper for permission.

That power should be protected. It should also be exercised intelligently.

The multimillion-dollar verdicts are not instructions to stop speaking.

They are reminders to distinguish **evidence from speculation; allegation from adjudication; opinion from factual assertion; criticism from accusation; and questions from conclusions.**

Because the cases keep coming. The audiences keep growing. The screenshots keep surviving. And the verdicts demonstrate that a post created in minutes can produce litigation lasting years.

THINK BEFORE YOU POST.

DOCUMENT BEFORE YOU ACCUSE.

AND NEVER CONFUSE THE RIGHT TO SPEAK WITH A RIGHT TO INVENT FACTS.

Legal & Editorial Disclaimer

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