

Steering Clear of Slander

By Janis Balda

This article does not and is not intended to constitute legal advice and should not be relied on as such; each state has different laws, each situation is fact-specific, and it is impossible to evaluate a legal problem without a comprehensive consultation and review of all the facts and documents at issue.

Communication is hard work, even among those who consider themselves experts at it or who communicate as part of their job. What we communicate can have consequences, positive or negative, in private and public spheres. We can cause angst and aggravation by making sloppy statements; our automatic reactions come out of our mouths before we take the time to assess and analyze them, especially if we feel strongly about the matter at hand. We are all subject to cognitive biases that affect our judgments and decisions. In addition, it feels good to belong and to bond with those who think like us or are from our “tribe” against those who are different and cause us anxiety because they are perceived to be threatening. Polarization often occurs because of the need to belong, and it causes us to accept our own group’s pressure and biases. We also tend to blame individuals for what concerns us, rather than the situations or circumstances that affect and shape our

lives. This fundamental attribution error contributes to our willingness to discuss problems in terms of individual personalities, blaming someone’s character rather than the situation they are in. It leads to harsh judgment of others while excusing our own behaviors.

As a result, we can frequently resort to gossip. Through this informal sharing, we seek to collect evidence that confirms our beliefs and satisfies our confirmation bias—that is, information that supports what we already believe to be true, another form of cognitive bias. This tendency also means that we ignore or dismiss information that challenges our existing opinions.

Sometimes, though, more destructive and long-term divisions, conflict, and discord arise even within groups we choose to associate with. This can occur when, for any number of reasons, someone chooses to inflict harm on another person, group, or organization. Some of the most vivid social, political, and religious issues we are familiar with can be traced in some part to intentional statements meant to cast other persons in a bad light—to misrepresent what they said or what they intended—and thus influence others to attack or demean the person, their position, or their interests.

The result is that some people intentionally malign other people either verbally or in print for a variety of reasons. Defamation refers to anything communicated,

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either verbally (more transitory and labeled *slander*) or in print (more permanent and labeled *libel*), that harms the reputation or livelihood of a person, business, or organization, causing personal, professional, or financial damage. It occurs when a false statement made to a third party is presented as factual.

Considering what we hear around us, you may be surprised to know that slander is not considered free speech in

the U.S.; a person cannot knowingly make defamatory comments against someone else. If someone is defamed, they can sue in civil court and seek monetary damages. Generally such suits fall under state jurisdiction with state courts following the common law principles of defamation.

In order for a plaintiff to recover compensation for defamation, the plaintiff must prove the defendant was at fault for making the false statement. In the U.S., proving

How can we avoid slander and ensure our own speech falls under the category of “protected speech”?

- Recognize that your own introspection can be flawed, which is essential to addressing our cognitive biases. Paradoxically, it is the people who have more confidence in their own objectivity who often prove the most susceptible to bias and group pressures (Cohen, 2023).
- Communicate with the person whom you are feeling threatened by. It is better to talk after you have calmed down if the issue upsets you. Ask questions. This is particularly important to override the individual attribution bias; if we attempt to put ourselves into their shoes, we put our focus back onto the individual and how they do not act like we would. According to Stanford Professor and Psychologist Geoffrey Cohen, it is by asking questions and listening to the answers that we get better at empathic accuracy.
- Learn how to manage disagreement. Find help in the variety of conflict resolution trainings available in your community or industry. Acquiring the ability to create connection in our day-to-day encounters with people with whom we disagree is an essential skill in our world today, particularly as disciples of Jesus.

fault depends on who was defamed—a private or a public figure (*Gertz v. Welch*, 418 U.S. 323 (1974)). In certain circumstances, if the defendant retracted the statement or if it was based on privileged information (as are certain practices by employers in the workplace related to performance appraisals, evaluations, and other types of internal business communications) then the defendant may also be able to avoid being held liable for defamation.

We all have moments where we say something we later regret. Frequently the situation can be remedied by a sincere apology and a willingness, where possible, to fix our mistakes. Improving our communication, being mindful of our potential for bias, and seeking ways to manage disagreements will help us prevent more potentially damaging behaviors.

Resources:

- Geoffrey Cohen discusses his book *Belonging: The Science of Creating Connection and Bridging Divides* with Beverly Daniel Tatum, April 12, 2023, as part of the Academic Innovation for the Public Good book

series. <https://digitaleducation.stanford.edu/book-series/2023/Geoffrey-Cohen-belonging-science-creating-connection-bridging-divides>.

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- N. B. Kurland and L. H. Pelled, "Passing the Word: Toward a Model of Gossip and Power in the Workplace," *The Academy of Management Review* 25, no. 2, 2000: 428–438.
- B. Martin, "Caught in the Defamation Net," *GP Solo (American Bar Association General Practice, Solo & Small Firm Division)*, 23 no. 1 (2006): 48–51.
- R. S. Nickerson, "Confirmation Bias...Many Guises," *Review of General Psychology* 2, no. 2, (1998): 175–220.
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