

# Free Speech and SLAPP Suits

ANDREW SKOLNICK

*The following remarks by Andrew Skolnick were made upon his receiving CSICOP's "Responsibility in Journalism" award at the 1992 CSICOP Conference in Dallas for his investigative reporting in the Journal of the American Medical Association about the Maharishi Ayur-Veda products (see "The Maharishi Caper," SI, Spring 1992). Skolnick is associate editor for JAMA's Medical News and Perspectives department.*

At several previous CSICOP meetings, I watched with benign envy as outstanding journalists like Gene Emery, Boyce Rensberger, Lee Dembart, and Keay Davidson received this same Responsibility in Journalism award. The support that this award represents, from this unique committee—a committee of champions for free scientific inquiry, academic integrity, and the rule of reason—comes at a critical time. Like James Randi, like CSICOP, and like a growing number of others who have spoken critically of litigious parties, I have become the target of a multimillion-dollar lawsuit for writing the article that CSICOP honors tonight. I and my editor, George Lundberg, are being sued for almost \$200 million—plus legal expenses. This amount is so great that, in the unlikely event I lose the suit, I intend to declare myself an independent country and request foreign aid from the United States.

The article that CSICOP has chosen to honor this year has earned other kudos. Earlier this year, the

*Columbia Journalism Review* awarded *JAMA* one of its coveted "Laurels" for having the guts and integrity to publish this exposé in order to correct a previous mistake. This mistake occurred when *JAMA* published a report that promoted Maharishi Ayur-Veda products marketed by the Maharishi Mahesh Yogi and his Transcendental Meditation movement, believing Maharishi, Ayur-Veda to be India's ancient system of healing.

The National Council Against Health Fraud said this article is "a classic in the literature of consumer health education, and is must reading."

The article also was one of the five semifinalists to be judged for this year's National Association of Science Writers' Science in Society Awards.

Last, but not least, the article was rated "gutter journalism" in a press release from the American Association for Ayurvedic Medicine, one of the parties that is suing me and my editor.

Despite such kudos, under the advice of attorneys I am unable to talk about my article or about the lengthy investigation behind it. But I would like to give some credit where a lot of credit is due.

I am indebted to Phil Gunby, director of *JAMA*'s division of medical news and humanities, Richard Glass, deputy editor of *JAMA*, and George Lundberg, editor, for giving me an enormous amount of freedom to conduct this and my other journalistic investigations. Their support never

wavered despite the stream of attacks on my personal and professional character they received.

Marsha Goldsmith, director of *JAMA's* Medical News and Perspectives department, was the primary editor of the article. I am in her debt for keeping me faithful to the English language and to a dispassionate discourse of the facts.

I also want to acknowledge the enormous help I received from Diane Hendel, Pat Ryan, and others associated with TM-EX, a support group for former members of the TM movement. Ryan and Hendel spent countless hours and dollars on phone calls and faxes that provided me with much of the information and documents upon which my article was based.

I also want to credit CSICOP and the SKEPTICAL INQUIRER, and people like Randi, and Ken Frazier, and Paul Kurtz, and all the others, for providing me with the background information over the past 16 years that enabled me to catch *JAMA's* mistake.

Perhaps most of all, I am grateful to George Lundberg for having the integrity to expose the journal's own error and the courage to expose the errors of others even when faced with the threat of litigious retaliation.

Lundberg is not the only editor of a prestigious medical journal to be hit recently with a defamation suit—a suit that in my opinion is totally without merit. In August, a month after the suit was filed against us, Arnold Relman, the recently retired editor of the *New England Journal of Medicine*, and three other medical experts were sued for making critical comments about a controversial cancer treatment center. These comments were published in a major city newspaper. Relman was sued for \$6

million because he gave a low opinion of the center's advertising, an opinion similar to that held by many other medical authorities. My journalism, law, and society professor, the great Fred Friendly, taught that opinion was protected speech. [On December 16, U.S. District Judge A. Joe Fish dismissed the suit against Relman and two of the three other defendants.]

While opinion and truthful statements are usually protected from *successful* lawsuits in the United States, such speech does not appear to be protected from harassing lawsuits that are brought to punish critics and to intimidate others who would speak out.

More and more now, opinion and truthful speech are being fought with SLAPP suits—SLAPP is an acronym for strategic lawsuits against public participation. These frivolous and harassing suits are being brought by powerful groups with deep pockets. Their intentions are not to recover damages but to stifle, to silence, public criticism.

Those who have followed the trials and tribulations of CSICOP and James Randi don't have to be told how frightfully damaging SLAPP suits can be. SLAPP suits are brought with little expectation of winning. Those who bring SLAPP suits win no matter how the case is decided. Their rewards are virtually guaranteed from the start, for the suit ties up defendants and drains their energies and finances, and punishes them psychologically for having spoken out. At the same time, it warns others of what they could face if they dare to enter the public debate.

The SLAPP suit problem has grown so intolerable that the states of California and New York have passed legislation to provide some relief for victims. The new laws, which

go into effect in 1993, will make it easier for defendants in frivolous defamation suits to collect their legal expenses from plaintiffs.

Similar protection is needed in the 48 other states and in the federal courts. I believe that the SLAPP-suit epidemic will end only after the courts more consistently make plaintiffs pay for abusing the legal process for the purpose of stifling public debate.

Toward that end, I would like to suggest that CSICOP and other groups represented here consider organizing a conference next year to explore remedies for the SLAPP epidemic. I've spoken recently with leaders of the Council for Advancement of Science Writing, the National Association of Science Writers, and the Scientists Institute for Public

Information about such a conference, and they expressed an interest in participating. I believe there are other organizations that also would be interested in cosponsoring such a meeting.

In conclusion, I think it is an outrage that in this free land people like Randi and groups like CSICOP have to risk financial ruin in order to speak their minds. I think it is outrageous that many publications in this land of liberty are not willing to publish articles that are critical of SLAPP-happy individuals and groups. And I think it's outrageous that a journalist in the United States is prevented from discussing his work at an awards ceremony for that work.

I think it's time we start SLAPP-ing back.

Thank you all very much. □

**OUT THERE** Rob Pudim



WHY EVERYONE WAS ALWAYS SOMEBODY  
IN THEIR PREVIOUS LIFE.