

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
CIVIL PROCESSING  
2022 MAY -3 P 1:08

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Civil Action No.: CL-2019-0002911

**PLAINTIFF JOHN C. DEPP, II'S OPPOSITION TO DEFENDANT AMBER LAURA HEARD'S MOTION TO STRIKE**

Plaintiff John C. Depp, II, by and through his undersigned counsel, hereby opposes Defendant Amber Laura Heard's Motion to Strike. The evidence at trial shows that Mr. Depp has satisfied each of the necessary elements for the jury to find in his favor on his defamation claim against Ms. Heard. Simply put, while Ms. Heard artfully avoided outright naming Mr. Depp in her December 2018 Op-Ed, the evidence shows the Op-Ed clearly referenced Ms. Heard's relationship with Mr. Depp and insinuated that Mr. Depp physically and sexually abused her. Among other things, Ms. Heard explicitly referenced the time period during which she obtained a domestic violence restraining order against Mr. Depp (in support of which she filed a public declaration stating Mr. Depp had abused her). The record contains extensive testimony and evidence showing Mr. Depp did not ever abuse Ms. Heard, including Mr. Depp's own testimony that he never once struck Ms. Heard. There is no doubt that the evidence supports a finding of defamation by Ms. Heard.

## RELEVANT LAW

“In considering a motion to strike, the trial court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the plaintiff. Any reasonable doubt as to whether the plaintiff has produced sufficient evidence of the wrong alleged must be resolved in the plaintiff's favor and the motion to strike denied.” *Izadpanah v. Boeing Joint Venture*, 243 Va. 81, 81 (1992).

“The weight and credibility of the testimony of witnesses are solely matters for the jury. The jury may accept that part of the testimony it believes and reject that which it does not. It is also within the exclusive province of the jury to draw any reasonable inferences from the evidence before it.” *Wright v. Minnicks*, 275 Va. 579, 585 (2008) (internal citations omitted).

The elements of defamation are as follows: (1) publication of (2) an actionable statement with (3) the requisite intent. *See Tharpe v. Saunders*, 285 Va. 476 (2013). To be “actionable,” a statement must be both “false and defamatory.” *See id.* A statement qualifies as “defamatory” only if it “tends to injure one’s reputation in the common estimation of mankind . . . .” *Schaecher v. Bouffault*, 290 Va. 83, 92 (2015). “Virginia law recognizes a claim for defamation by inference, implication or insinuation” and that a defamation action may be “based on a statement expressing a defamatory meaning ‘not apparent on its face.’” *See Pendleton v. Newsome*, 290 Va. 162, 172 (2015); *see also Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 7 (1954) (“In order to render words defamatory and actionable, it is not necessary that the defamatory charge be in direct terms but it may be made indirectly, and it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory.”). As such, “evidence is admissible to show the circumstances surrounding the making and publication of the statement which would reasonably cause the statement to convey a defamatory meaning to its recipients.” *See id.* “Whether the

circumstances were reasonably sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby,” are issues to be resolved by the fact-finder at trial. *See id.*

The requisite intent for defamation against a public figure is “actual malice” – that is the statement must be made “with the knowledge that it was false or with reckless disregard of whether it was false or not.” *See Sanders v. Harris*, 213 Va. 369, 372 (1972); *see also Jackson v. Hartig*, 274 Va. 219 (2007) (“In order to establish actual malice, a plaintiff ‘must demonstrate by clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement.’”); *id.* (“‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”).

### **ARGUMENT**

The evidence shows that each of the elements of defamation have been satisfied.

#### **1. Ms. Heard’s statements were published and seen by third parties.<sup>1</sup>**

“To constitute a publication, it is not necessary that the contents of the writing should be made known to the public generally. It is enough, it is said, if they are made known to a single person.” *Snyder v. Fatherly*, 158 Va. 335, 350 (1932). Here, there is extensive testimony and evidence that the Op-Ed at issue was published in The Washington Post and viewed by many people outside of Mr. Depp and Ms. Heard. *See, e.g., Plaintiff’s Trial Exhibit 1; see also* Testimony of Jack Whigham (noting that he read the Op-Ed shortly after it was published in December 2018); Tr. <sup>2</sup> 515:17-20 (testimony of Christi Dembrowski “Q: Moving ahead two years in time, did you see Ms. Heard’s Washington Post op-ed when it was published in December 18,

---

<sup>1</sup> Ms. Heard admitted in her answer that she wrote the Op-Ed that was published in the Washington Post in December 2018. *See, e.g. Answer at ¶ 1.*

<sup>2</sup> Excerpts of the trial transcripts are attached hereto as **Exhibit 2**.

2018? A: Yes.”); testimony of Richard Marks (stating that, “The publications that carry the most weight in Hollywood, in my opinion, after all these decades, are Variety, Hollywood Reporter, Washington Post, Wall Street Journal, New York Times. Those are the publications.”).

## **2. Ms. Heard’s statements are actionable.**

As discussed above, it is well-settled under Virginia law that defamation need not be made by direct reference, but may instead be made by inference, implication, or insinuation. While Ms. Heard has already argued that her statements at issue were not actionable in her 2019 demurrer, such argument was soundly rejected by former Chief Judge White in a March 27, 2020 Opinion Letter (“Opinion Letter”). *See Exhibit 1*, attached hereto. Specifically, former Chief Judge White noted that the following three statements from the Op-Ed were actionable as a matter of law under a theory of defamation by implication:

- “Amber Heard: I spoke up against sexual violence – and faced our culture’s wrath.”
- “Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture’s wrath for women who speak out.”
- “I had the rare vantage of seeing, in real time, how institutions protect men accused of abuse.”

*See Exhibit 1* at 4-8; *see also id.* at 3 (“On demurrer, ‘the trial judge is responsible for determining whether, as a matter of law, the allegedly defamatory statements are actionable.’”) (citing to *Taylor v. Southside Voice, Inc.*, 83 Va. Cir. 190 (2011)).

The evidence at trial supports Chief Judge White’s finding. While Ms. Heard made a conscious effort to avoid naming Mr. Depp explicitly in her 2018 Op-Ed, the implication of her statements was clear. The evidence shows that Ms. Heard’s statement “two years ago, I became a public figure representing domestic abuse” is a clear reference to Ms. Heard’s 2016 obtainment of

a domestic violence restraining order. Multiple witnesses testified to that fact and the circumstances surrounding it. *See, e.g.*, Tr. 1601:15 – 20 (Mr. Depp’s testimony that “About six years ago [in 2016] Ms. Heard made some quite heinous and disturbing, brought these certain criminal acts against me that – were not based in any species of truth.”); Tr. 1864:14-19 (Mr. Depp’s testimony that “Going, reading [Ms. Heard’s op-ed] and reading the words that she had written about what was obviously – it was obviously referring to our relationship, it was obviously referring to me, ‘two years ago,’ you know, it all matched up, so it was clearly about me.”); Tr. 708:13-21 (testimony of Isaac Baruch that around May 29 or 30, 2016, he saw pictures of Ms. Heard at the LA courthouse where she obtained the restraining order and learned that she had filed for divorce); Testimony of Jack Whigham (noting that he understood this statement to be referring to Ms. Heard’s relationship with Mr. Depp); *see also* Ms. Heard’s Answer at ¶ 2 (admitting that she obtained a temporary restraining order against Mr. Depp May 27, 2016). Indeed, there is no one else Ms. Heard’s statements could be referring to besides Mr. Depp.

Former Chief Judge White agreed.

- For the first statement, “Amber Heard: I spoke up against sexual violence—and faced our culture’s wrath,” Judge White found “this statement could reasonably imply that the ‘sexual violence’ Ms. Heard ‘spoke up against’ was in fact perpetrated by Mr. Depp. *See Exhibit 1* at 6.
- For the second statement, “Then two years ago, I became a public figure representing domestic abuse,” Judge White found that the statement “can be read to imply that she became a representative of domestic abuse *because* she was abused by Mr. Depp, not just because she spoke out against the alleged abuse.” *See id.* at 7 (italics in the original).

- For the third statement, “I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse,” Judge White found this could reasonably convey to its recipients that she saw how Mr. Depp was protected by institutions after he abused her and she spoke up against it.” *See id.* at 7.

The evidence evoked at trial supports a finding that Ms. Heard’s statements could convey to their recipients that Mr. Depp abused Ms. Heard. Most tellingly, testimony by the ACLU’s corporate designee, Terrence Dougherty, demonstrated unequivocally that the Op-Ed referred to Mr. Depp and his purported abuse of Ms. Heard. For example:

- “Q Isn’t it true that Ms. Heard’s advisors initially revised the draft to remove any reference to Ms. Heard’s marriage or divorce? A I recall a number of email communications back and forth among ACLU personnel and Ms. Heard’s attorneys, where they were suggesting edits to the op-ed relating to matters covered in the NDA. Q And then, isn’t it also true that there were some, at the ACLU, who expressed their belief that excising those references to her marriage and divorce from Johnny Depp made the op-ed less impactful, correct? A It is correct. That is correct.” Tr. 3216:1-14.
- “Q And Amber is referencing her own direct personal experience and her marriage to Johnny Depp makes it a strong product, correct? A I think that the – Amber’s contributions to the, you know, the portion of the op-ed that talks about personal experiences is part of what informed the view that this was a strong op-ed, and the importance of the women’s rights issues referred to in the op-ed, in that some of them were very timely women’s rights issues before Congress.” Tr. 3219:20 – 3220:8.

- In internal emails, the ACLU acknowledged that prior drafts of the Op-Ed contained explicit references to her marriage with Mr. Depp: “Okay. And she says, ‘Amber sent back the op-ed with final edits from her legal team, which specifically neutered much of the copy regarding her marriage and the domestic violence.’ Do you see that? A I do. Q Is that consistent with your recollection? A I’m not sure of the term ‘neutered’ here. But I do know that her lawyers removed references to her marriage and divorce.” Tr. 3222:21 – 3223:9.
- In trying to place the Op-Ed with the Washington Post, the ACLU wrote: ““Hey, Michael. Wondering if we might interest you in a piece by Amber Heard (who, as you may recall, was beaten up during her brief marriage to Johnny Depp) on what the incoming Congress can do to help protect women in similar situations.”” Tr. 3229:11-16.
- Third parties immediately interpreted the Op-Ed as being about Ms. Heard’s relationship with Mr. Depp: “This is an article that was in US Today [sic] and, specifically, ties Amber’s statements in her op-ed piece to Johnny Depp. Q And when Jessica Weitz says ‘so much for not mentioning JD,’ what did she mean? A I speculate that she was saying that there was significant efforts made by Amber’s attorneys to take out the references to Johnny Depp and her marriage and, yet, nonetheless, people made that connection. Q And in particular, the reporter for the USA Today took her to be referring to Johnny Depp when she spoke of being the victim of domestic violence, correct? A Correct.” Tr.3231:19 – 3232:11.
- “A This is a statement by Robin Shulman saying that the article that they’re referring to, basically, you know, recasts everything that’s said but ties it to Johnny

Depp. Q So, Ms. Shulman is agreeing with Ms. Weitz's characterization that the USA took Ms. Heard to be referring to her allegations of physical violence by Johnny Depp, correct? A Yes." Tr. 3233:4-12.

- "If that was consistent with your understanding, she was referring, at least in part, to Johnny Depp, correct? A Based on my review of prior drafts of the op-ed, I knew that they were -- that she was referring to Johnny Depp and her marriage." Tr. 3233:18 – 3234:1.

So while Ms. Heard may have avoided any direct mention of Mr. Depp's name, there is extensive testimony and evidence in the record showing that the implication of her Op-Ed could not be more clear: that Mr. Depp abused Ms. Heard during the course of their marriage. Under Virginia law, "it is not necessary that the defamatory charge be in direct terms but it may be made indirectly, and *it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory.*" See *Carwile*, 196 Va. at 7 (emphasis added). Such words are actionable and "[w]hether the circumstances were reasonably sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby," are issues to be resolved by the fact-finder at trial. *See id.*

### **3. Ms. Heard acted with the requisite intent.**

Finally, the evidence shows that Ms. Heard acted with the requisite intent. Even assuming Ms. Heard is a public figure, which would then require Mr. Depp to prove the higher standard of "actual malice," there is sufficient evidence for the jury to find that Ms. Heard made the statements with knowledge of their falsity. Mr. Depp testified that he never abused Ms. Heard. *See* Tr. 1601:17-1602:6 ("About six years ago, Ms. Heard made some quite heinous and disturbing, brought these certain criminal acts against me that -- that were not based in any species of truth. It



was a complete shock that it would -- it just didn't need to go in that direction, as *nothing of the kind had ever happened*. Though, the relationship, there were arguments and things of that nature, but *never did I, myself, reach the point of striking Ms. Heard in any way*, nor have I ever struck any woman in my life.”) (emphasis added).

In addition to Mr. Depp's testimony, many other witnesses testified that (a) they had never witnessed Mr. Depp abuse Ms. Heard; and (b) that they observed Ms. Heard without injuries/marks/bruises/swelling, etc. during periods when Ms. Heard claimed to have injuries, marks, bruises, etc. Such witnesses include but are not limited to Isaac Baruch, Kate James, Dr. David Kipper, Officer Melissa Saenz, Officer William Gatlin, and Starling Jenkins.

It is the jury's job to weigh the credibility of Mr. Depp and other witnesses but if the jury believes Mr. Depp's testimony that he did not abuse Ms. Heard as she insinuated in her Op-Ed, then Ms. Heard made the statements in her Op-Ed with actual malice, *i.e.* actual knowledge of their falsity. Such evidence is clearly sufficient to survive a motion to strike.

#### **4. Mr. Depp was damaged by Ms. Heard's statements.**

There is sufficient evidence to show that Mr. Depp was damaged by Ms. Heard's statements. First, Jack Whigham, Mr. Depp's manager, testified that Mr. Depp lost the movie *Pirates 6* in late 2018/early 2019 as a result of Ms. Heard's statements in the Op-Ed, damaging Mr. Depp in the amount of \$22.5 million. Mr. Whigham also testified that Mr. Depp did not appear in a single film between publication of the December 2018 Op-Ed and October 2020. He testified that 2017 was a typical year for Mr. Depp where he performed in three separate studio films alone. This testimony alone supports a finding that Mr. Depp is entitled to damages.

But regardless, the nature of Ms. Heard's statements are such that they are actionable *per se* and thus require no proof of actual damages. *See, e.g., Tronfeld v. Nationwide Mut. Ins. Co.,*

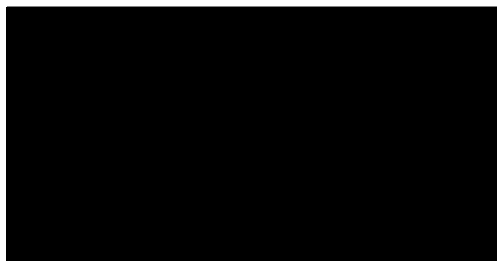
272 Va. 709, 713 (2006) (“defamatory words that are actionable *per se* are: (1) Those which impute to a person the commission of some criminal offense involving moral turpitude, for which the party, if the charge is true, may be indicted and punished...(4) Those which prejudice such person in his or her profession or trade.”); *Carwile*, 196 Va. at 8 (“Every false and unauthorized imputation, spoken, written or printed which imputes to a business or professional man conduct which tends to injure him in his business or profession is libelous and actionable without allegation or proof of special damages.”); *Askew v. Collins*, 283 Va. 482, 486 (2012) (“[I]f the published words are determined ... to be actionable *per se* at common law, compensatory damages for injury to reputation, humiliation, and embarrassment are presumed.”).

**5. None of Ms. Heard’s affirmative defenses can support a motion to strike**

Ms. Heard bears the burden of proof on her affirmative defenses. “Whether the defendants met their burden of proof cannot be resolved when considering a motion to strike.” *See Izadpanah*, 243 Va. at 83.

**CONCLUSION**

There is evidence to support all of the required elements of Mr. Depp’s defamation claim against Ms. Heard and the motion to strike should be denied.



BROWN RUDNICK LLP  
601 Thirteenth Street NW, Suite 600  
Washington, DC 20005  
Tel.: (202) 536-1785  
Fax: (617) 289-0717  
bchew@brownrudnick.com  
acrawford@brownrudnick.com

Camille M. Vasquez (*pro hac vice*)  
Samuel A. Moniz (*pro hac vice*)  
BROWN RUDNICK LLP  
2211 Michelson Drive  
Irvine, CA 92612  
Tel.: (949) 752-7100  
Fax: (949) 252-1514  
[lpresiado@brownrudnick.com](mailto:lpresiado@brownrudnick.com)  
[cvasquez@brownrudnick.com](mailto:cvasquez@brownrudnick.com)  
[smoniz@brownrudnick.com](mailto:smoniz@brownrudnick.com)

Jessica N. Meyers (*pro hac vice*)  
Yarelyn Mena (*pro hac vice*)  
BROWN RUDNICK LLP  
7 Times Square  
New York, NY 10036  
Tel.: (212) 209-4800  
[jmeyers@brownrudnick.com](mailto:jmeyers@brownrudnick.com)

Wayne F. Dennison (*pro hac vice*)  
Rebecca M. Lecaroz (*pro hac vice*)  
Stephanie P. Calnan (*pro hac vice*)  
BROWN RUDNICK LLP  
One Financial Center  
Boston, MA 02118  
Tel.: (617) 8568149  
[Wdennison@brownrudnick.com](mailto:Wdennison@brownrudnick.com)  
[rlecaroz@brownrudnick.com](mailto:rlecaroz@brownrudnick.com)  
[scalnan@brownrudnick.com](mailto:scalnan@brownrudnick.com)

*Counsel for Plaintiff and  
Counterclaim Defendant John C. Depp, II*

Dated: May 3, 2022


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3rd day of May 2022, I caused copies of the foregoing to be served on the following:

Elaine Charlson Bredehoft (VSB No. 23766)  
Adam S. Nadelhaft (VSB No. 91717)  
Clarissa K. Pintado (VSB No. 86882)  
David E. Murphy (VSB No. 90938)  
CHARLSON BREDEHOFT COHEN & BROWN,  
P.C.  
11260 Roger Bacon Dr., Suite 201  
Reston, VA 20190  
Phone: 703-318-6800  
Fax: 703-318-6808  
ebredehoft@cbcblaw.com  
anadelhaft@cbcblaw.com  
cpintado@cbcblaw.com  
dmurphy@cbcblaw.com

A. Benjamin Rottenborn (VSB No. 84796)  
Joshua R. Treece (VSB No. 79149)  
WOODS ROGERS PLC  
10 S. Jefferson Street, Suite 1400  
P.O. Box 14125  
Roanoke, Virginia 24011  
Telephone: (540) 983-7540  
brottenborn@woodsrogers.com  
jtreece@woodsrogers.com

*Counsel for Defendant Amber Laura Heard*

  
Benjamin G. Chew



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5498 • TDD: 703-352-4139

BRUCE D. WHITE, CHIEF JUDGE  
RANDY I. BELLOWS  
ROBERT J. SMITH  
BRETT A. KASSABIAN  
MICHAEL F. DEVINE  
JOHN M. TRAN  
GRACE BURKE CARROLL  
DANIEL E. ORTIZ  
PENNEY S. AZCARATE  
STEPHEN C. SHANNON  
THOMAS P. MANN  
RICHARD E. GARDINER  
DAVID BERNHARD  
DAVID A. OBLON  
DONTAË L. BUGG

JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

THOMAS A. FORTKORT  
J. HOWE BROWN  
F. BRUCE BACH  
M. LANGHORNE KEITH  
ARTHUR B. VIEREGG  
KATHLEEN H. MACKAY  
ROBERT W. WOOLDRIDGE, JR.  
MICHAEL P. McWEENEY  
GAYLORD L. FINCH, JR.  
STANLEY P. KLEIN  
LESLIE M. ALDEN  
MARCUS D. WILLIAMS  
JONATHAN C. THACHER  
CHARLES J. MAXFIELD  
DENNIS J. SAUTH  
LORRAINE NORDLUND  
DAVID S. SCHELL  
JAN L. BRODIE

RETIRED JUDGES

March 27, 2020

Roberta A. Kaplan, Esq.  
Julie E. Fink, Esq.  
John C. Quinn, Esq.  
Joshua Matz, Esq.  
Kaplan Hecker & Fink, LLP  
350 Fifth Ave., Suite 7110  
New York, NY 10118

J. Benjamin Rottenborn, Esq.  
Joshua R. Treece, Esq.  
Woods Rogers, PLC  
10 S. Jefferson St., Suite 400  
Roanoke, VA 24011

Eric M. George, Esq.  
Richard A. Schwartz, Esq.  
Browne George Ross, LLP  
2121 Avenue of the Stars, Suite 2800  
Los Angeles, CA 90067

Benjamin G. Chew, Esq.  
Elliot J. Weingarten, Esq.  
Camille M. Vasquez, Esq.  
Brown Rudnick, LLP  
601 Thirteenth St. NW, Suite 600  
Washington, DC 20005

Adam R. Waldman, Esq.  
The Endeavor Law Firm, P.C.  
5163 Tilden Street NW  
Washington, DC 20016

Re: *John C. Depp, II v. Amber Laura Heard*, Case No. CL-2019-2911

Dear Counsel:

This matter came before the Court on December 20, 2019, for argument on Defendant's Demurrer and non-evidentiary Plea in Bar. At the conclusion of the hearing, the Court took the matter under advisement. The questions presented are (1) whether Plaintiff has pleaded an actionable claim for defamation by implication, and (2) whether Plaintiff is barred from recovering on his defamation claim under the applicable statute of limitations.

**OPINION LETTER**

## BACKGROUND

Plaintiff's claim for defamation stems from four statements made in Defendant's op-ed, which was published in the *Washington Post* online and in print on December 18, 2018, and December 19, 2018, respectively. The article, entitled "Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. That has to change" (online) and "A transformative moment for women" (print), does not name Plaintiff explicitly. It discusses how—two years before the op-ed was published—Defendant became a public figure "representing domestic abuse," what Defendant experienced in the aftermath of attaining this status, and what Defendant believed could be done to "build institutions protective of women." See Compl. Ex. A, at 1-4. Plaintiff brought this action on March 1, 2019, alleging that the op-ed was really about "Ms. Heard's purported victimization after she publicly accused her former husband, Johnny Depp ("Mr. Depp") of domestic abuse in 2016 . . . ." Compl. at ¶ 2. Plaintiff asserts that "the op-ed's clear implication that Mr. Depp is a domestic abuser is categorically and demonstrably false," Compl. at ¶ 3, and he specifically takes issue with the following four statements from the op-ed:

1. Amber Heard: I spoke up against sexual violence—and faced our culture's wrath. That has to change.
2. Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out.
3. I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse.
4. I write this as a woman who had to change my phone number weekly because I was getting death threats. For months, I rarely left my apartment, and when I did, I was pursued by camera drones and photographers on foot, on motorcycles and in cars. Tabloid outlets that posted pictures of me spun them in a negative light. I felt as though I was on trial in the court of public opinion—and my life and livelihood depended on myriad judgments far beyond my control.

Compl. at ¶ 22. Plaintiff details a number of facts and circumstances to contextualize the 2018 op-ed, including certain events surrounding the couple's highly publicized divorce in 2016, to support his allegation that Defendant falsely implied that she was a victim of domestic abuse at his hands. See Compl. at ¶¶ 13-19, 24-30.

Presently before the Court is Defendant's Demurrer, wherein Defendant asserts that the four statements are not actionable under a theory of defamation, and one of Defendant's Plea in Bar arguments as to the statute of limitations.<sup>1</sup> This Letter Opinion addresses these issues in turn.

---

<sup>1</sup> At the plea in bar portion of the hearing, Ms. Heard reserved her arguments that (1) she is entitled to immunity under Virginia's Anti-SLAPP statute and (2) that she cannot be liable for the online article's title for a later evidentiary hearing.

## ANALYSIS

### I. Defendant's Demurrer

On demurrer, the trial court must determine whether the complaint states a cause of action upon which the relief requested may be granted. *Welding, Inc. v. Bland County Service Auth.*, 261 Va. 218, 226 (2001). "A demurrer admits the truth of all properly pleaded material facts and all facts which are impliedly alleged, as well as facts that may be fairly and justly inferred." *Pendleton v. Newsome*, 290 Va. 162, 171 (2015) (citing *Cox Cable Hampton Roads, Inc. v. City of Norfolk*, 242 Va. 394, 397 (1991)). "In deciding whether to sustain a demurrer, the sole question before the trial court is whether the facts pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action against a defendant." *Id.*

The elements of a defamation claim include: (1) publication of (2) an actionable statement with (3) the requisite intent. *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015). On demurrer, "the trial judge is responsible for determining whether, as a matter of law, the allegedly defamatory statements are actionable." *Taylor v. Southside Voice, Inc.*, 83 Va. Cir. 190 (2011). To be "actionable," a statement must be both "false and defamatory." *Schaecher*, 290 Va. at 91. Because statements of opinion cannot be "false," they are never actionable. *See Fuste v. Riverside Healthcare Ass'n*, 265 Va. 127, 132 (2003). A statement qualifies as "defamatory" only if it "tends to injure one's reputation in the common estimation of mankind . . . ." *Schaecher*, 290 Va. at 92 (noting the speech complained of must have "the requisite defamatory 'sting' to one's reputation.>").

Typically, "an editorial or op-ed column" is "ordinarily not actionable" because it appears "in a place usually devoted to, or in a manner usually thought of as representing, personal viewpoints." *Id.* However, Virginia recognizes that "a defamatory charge may be made by inference, implication, or insinuation," *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 8 (1954), and that a statement expressing a defamatory meaning may not be "apparent on its face." *Pendleton*, 290 Va. at 172 (citing *Webb v. Virginian-Pilot Media Cos., LLC*, 287 Va. 84, 89 n.7 (2014)). Accordingly, "[i]n order to render words defamatory and actionable, it is not necessary that the defamatory charge be in direct terms but it may be made indirectly, and it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory." *Carwile*, 196 Va. at 7.

Under this theory of implied defamation, "in determining whether the words and statements complained of are reasonably capable of the meaning ascribed to them by innuendo, every fair inference that may be drawn from the pleadings must be resolved in the plaintiff's favor." *Carwile*, 196 Va. at 8. "However, the meaning of the alleged defamatory language cannot, by innuendo, be extended beyond its ordinary and common acceptance." *Id.* The innuendo functions to show "how the words used are defamatory, and how they relate to the plaintiff, but it cannot introduce new matter, nor extend the meaning of the words used, or make that certain which is in fact uncertain." *Id.*

The Supreme Court of Virginia has summarized the role of a trial court on demurrer where the plaintiff has proceeded on a theory of defamation by implication as follows:

Because Virginia law makes room for a defamation action based on a statement expressing a defamatory meaning “not apparent on its face,” evidence is admissible to show the circumstances surrounding the making and publication of the statement which would reasonably cause the statement to convey a defamatory meaning to its recipients. Allegations that *such circumstances* attended the making of the statement, with an explanation of the circumstances and the defamatory meaning allegedly conveyed, will suffice to survive demurrer if the court, in the exercise of its gatekeeping function, deems the *alleged meaning* to be defamatory. Whether the circumstances were reasonably sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby, remain issues to be resolved by the fact-finder at trial.

*Pendleton*, 290 Va. at 172 (bold emphasis added).

In the present case, Plaintiff pleaded (1) that Defendant published the statements at issue, Compl. at ¶ 75, and (2) that Defendant had the requisite intent when making the statements that allegedly imply that Plaintiff abused Defendant. Compl. at ¶ 81 (“At the time of publication, Ms. Heard knew these statements were false.”). Accordingly, the Court must determine whether the statements complained of are actionable. See *Schaecher*, 290 Va. at 91. Because a statement must be both false and defamatory to be actionable, *Fuste*, 265 Va. at 132, and because the statements at issue were made in an op-ed that does not name Plaintiff, the Court must determine whether Plaintiff has adequately pleaded that the statements otherwise possess a prohibited defamatory implication. See *Carwile*, 196 Va. at 8. To make this determination, the Supreme Court of Virginia has articulated that when “[a]llegations that . . . circumstances [that would reasonably cause the statement to convey a defamatory meaning to its recipients] attended the making of the statement, with an explanation of the circumstances and the defamatory meaning allegedly conveyed,” they will “suffice to survive demurrer if the court, in the exercise of its gatekeeping function, deems the *alleged meaning* to be defamatory.” *Pendleton*, 290 Va. at 172 (emphasis added).<sup>2</sup> Here, Plaintiff has pleaded circumstances that would reasonably cause three of the four statements at issue to convey the alleged defamatory meaning that Mr. Depp abused Ms. Heard, and this alleged meaning is in fact defamatory.

#### A. Three Statements Are Actionable Under a Theory of Defamation by Implication

The Court finds that the following three statements are actionable:

- i. Amber Heard: I spoke up against sexual violence—and faced our culture’s wrath. That has to change.

---

<sup>2</sup> “Whether the circumstances were reasonably sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby, remain issues to be resolved by the fact-finder at trial.” *Id.*



- ii. Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out.
- iii. I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse.

First, Plaintiff has alleged a number of circumstances that would reasonably cause the three statements above to convey the alleged defamatory meaning—that Mr. Depp abused Ms. Heard—to its recipients. Specifically, the Complaint alleges that the events surrounding the parties' divorce—including Ms. Heard's repeated allegations of domestic violence—attended the making of her statements in the *Washington Post* op-ed. See Compl. at ¶ 16 (alleging that, in May 2016, Ms. Heard falsely yelled “stop hitting me Johnny,” in addition to stating that Mr. Depp struck her with a cell phone, hit her, and destroyed the house, before she “presented herself to the world with a battered face as she publicly accused Mr. Depp of domestic violence and obtained a restraining order against him.”); ¶ 19 (“Despite dismissing the restraining order and withdrawing the domestic abuse allegations, Ms. Heard (and her surrogates) have continuously and repeatedly referred to her in publications, public service announcements, social media postings, speeches, and interviews as a victim of domestic violence, and a “survivor,” always with the clear implication that Mr. Depp was her supposed abuser.”); ¶ 20 (“Most recently, in December 2018, Ms. Heard published an op-ed in the *Washington Post* that falsely implied Ms. Heard was a victim of domestic violence at the hands of Mr. Depp.”); ¶ 21 (“The “Sexual Violence” op-ed’s central thesis was that Ms. Heard was a victim of domestic violence and faced personal and professional repercussions because she “spoke up” against “sexual violence” by “a powerful man.”); ¶ 22 (“Although Mr. Depp was never identified by name in the “Sexual Violence” op-ed, Ms. Heard makes clear, based on the foundations of the false accusations that she made against Mr. Depp in court filings and subsequently reiterated in the press for years, that she was talking about Mr. Depp and the domestic abuse allegations she made against him in 2016.”). Drawing every fair inference in Plaintiff's favor, the Court finds that these circumstances, as pleaded, would reasonably cause the three statements above to convey the alleged defamatory meaning that Mr. Depp abused Ms. Heard.

Second, Plaintiff has alleged an implied meaning that is clearly defamatory. Compl. at ¶ 78 (noting that these statements imply “Ms. Heard was the victim of domestic violence at the hands of Mr. Depp.”). The implication that Mr. Depp abused Ms. Heard is defamatory *per se* because it imputes to Plaintiff “the commission of some criminal offense involving moral turpitude, for which the party, if the charge is true, may be indicted and punished.” See *Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 713 (2006) (citing *Fleming v. Moore*, 221 Va. 884, 889 (1981); see also VA. CODE § 18.2-57.2 (2020); CAL. PENAL CODE § 243(e)(1) (2016).

Because the Complaint contains allegations of circumstances that would reasonably cause the three statements above to convey an alleged defamatory meaning, and this alleged meaning—that Mr. Depp abused Ms. Heard—is defamatory *per se*, the Court is instructed under *Pendleton* to allow these statements to proceed beyond demurrer. 290 Va. at 172-73.

Additionally, the Court finds that allowing these three statements to proceed beyond demurrer under the standard articulated in *Pendleton* is consistent with the doctrine set forth in *Carwile*, which states that “[t]he province of the innuendo is to show how the words used are defamatory, and how they relate to the plaintiff, but it [cannot] introduce new matter, nor extend the meaning of the words used [beyond their ordinary and common acceptance], or make that certain which is in fact uncertain.” *Carwile*, 196 Va. at 8.

By holding that Plaintiff has met the pleading standard set forth in *Pendleton*, 290 Va. at 172, the Court is not allowing Plaintiff to proceed on an allegation of an implicit defamatory meaning that introduces new matter. The implied defamatory meaning alleged was that Mr. Depp abused Ms. Heard, and Defendant’s op-ed concerns the matter of what happened after Defendant attained the status of a public figure representing domestic abuse. Drawing every fair inference in Plaintiff’s favor, the Court can conclude—as Plaintiff alleges—that an aspect of the article relied on the factual underpinning that Ms. Heard was abused by Mr. Depp.

This finding also does not extend the meaning of the words in each of the three actionable statements beyond their ordinary meanings.

***Amber Heard: I spoke up against sexual violence—and faced our culture’s wrath. That has to change.***

The first statement could reasonably convey the alleged defamatory meaning—that Mr. Depp abused Ms. Heard—to its readers without extending the words beyond their ordinary and common acceptance. *See Pendleton*, 290 Va. at 172; *Carwile*, 196 Va. at 8. Resolving every fair inference in Plaintiff’s favor, this statement could reasonably imply that the “sexual violence” Ms. Heard “spoke up against” was in fact perpetrated by Mr. Depp, as he alleges. While the Court recognizes that this factual implication derives only from a part of the statement, and that the remaining portion is couched in Defendant’s subjective opinion and perception, the Supreme Court of Virginia has held that “[f]actual statements made in support of an opinion . . . can form the basis for a defamation action.” *See Lewis v. Kei*, 281 Va. 715, 725 (2011) (citing *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 46 (2009)).

Although the Court in *Lewis* noted that, “in determining whether a statement is one of fact or opinion, a court may not isolate one portion of the statement at issue from another portion of the statement” it made clear that this meant, “in considering whether a plaintiff has adequately pled a cause of action for defamation, *the court must evaluate all of the statements attributed to the defendant and determine whether, taken as a whole, a jury could find that defendant knew or should have known that the factual elements of the statements were false and defamatory.*” *Id.* (emphasis added). This Court holds that a jury in this case could find that Defendant knew or should have known that the implied factual elements of this statement (and the other two allowed to proceed) were false and defamatory based on the pleadings.

***Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out.***

As for the second statement, Defendant called herself “a public figure representing domestic abuse,” which can be read to imply that she became a representative of domestic abuse *because* she was abused by Mr. Depp, not just because she spoke out against the alleged abuse. This inference can be drawn without extending the language beyond its “ordinary and common acceptance.” *Carwile*, 196 Va. at 8. The word “represent” has over ten meanings in Merriam Webster’s dictionary, including: “to serve as a specimen, example, or instance of,” and “to serve as a counterpart or image of.” *See Represent*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/representing> (last visited Mar. 25, 2020). Notwithstanding the other meanings of the word “represent,” the Court must resolve every fair inference in Mr. Depp’s favor, including that Ms. Heard meant she was an “example of” a public figure who was domestically abused. This conclusion is further supported by Defendant saying she attained this status “two years ago,” which would have been the same time the parties’ divorce was unfolding. Again, in light of the law set forth in *Lewis*, 281 Va. at 725, this Court holds that a jury in this case could find that Defendant knew or should have known that the implied factual elements of this statement were false and defamatory based on the pleadings.

***I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse.***

Drawing every fair inference in Plaintiff’s favor, the Court can fairly conclude that Defendant’s statement that she saw “how institutions protect men accused of abuse,” could reasonably convey to its recipients that she saw how Mr. Depp was protected by institutions after he abused her and she spoke up against it. The Court finds that to reference one who was accused of abuse and protected by an institution can reasonably imply—at the demurrer stage—that the person in fact committed the abuse of which he was accused without extending the words beyond their ordinary meaning. Further, Defendant said she saw this happen to “men,” “in real time,” which—when read in context of the entire article, where Defendant previously stated that she became a public figure representing domestic abuse “two years ago,” and in light of the circumstances pleaded about the parties’ divorce—would reasonably cause readers to conclude she was referring to her experience with Mr. Depp despite her efforts to globalize the statement. *See Lewis*, 281 Va. at 725 (holding that the court must evaluate the statements taken as a whole to determine whether a jury could find that defendant knew or should have known that the factual elements of the statements were false and defamatory); *see also Carwile*, 196 Va. at 8 (noting that it does not matter “how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory.”).

To summarize, all *Pendleton* requires is that the plaintiff plead allegations of an implied defamatory meaning, that is in fact defamatory, as well as circumstances that would reasonably cause the statements at issue to convey an alleged defamatory meaning. *Pendleton*, 290 Va. at 172-73. Because Plaintiff alleged that all three of these statements carry the same defamatory meaning based on the same attenuating circumstances, the Court must overrule Defendant’s

Demurer because it finds that these statements could reasonably convey the alleged defamatory meaning that Mr. Depp abused Ms. Heard when drawing every fair inference in Plaintiff's favor.

## **B. The Fourth Statement Is Not Actionable**

Even in light of the somewhat relaxed defamation by implication pleading standard set forth by the Supreme Court of Virginia in *Pendleton*, the Court must still determine that the alleged circumstances are ones that “**would reasonably cause the statement to convey a defamatory meaning.**” *Id.* (bold emphasis added). The Court finds that the circumstances alleged regarding the statements Ms. Heard made during and after the parties' divorce would not reasonably cause the fourth statement to convey a defamatory meaning. Therefore, the Court cannot proceed to the other steps of the analysis outlined in *Pendleton*. *See id.* Plaintiff argues that the following statement implies that Mr. Depp abused Ms. Heard:

I write this as a woman who had to change my phone number weekly because I was getting death threats. For months, I rarely left my apartment, and when I did, I was pursued by camera drones and photographers on foot, on motorcycles and in cars. Tabloid outlets that posted pictures of me spun them in a negative light. I felt as though I was on trial in the court of public opinion—and my life and livelihood depended on myriad judgments far beyond my control.

This statement lacks any factual underpinning that Mr. Depp abused Ms. Heard even when considering the circumstances alleged and resolving all fair inferences in Plaintiff's favor. The statement is too opinion-laden and representative of Defendant's own perspective for it to be actionable, and it notably lacks any implicit reference to the alleged meaning that Mr. Depp abused Ms. Heard. The Court simply cannot find that this statement has a defamatory charge without extending the meaning of the words far beyond their ordinary and common acceptance. *Carvile*, 196 Va. at 8. Accordingly, Defendant's Demurrer is sustained with prejudice as to the fourth statement discussed above.

Drawing the line at this statement is consistent with this Court's ruling regarding the other three statements, as those were held to be statements that were “artfully disguised,” as articulated in *Carvile*, 196 Va. at 8, but nonetheless reasonably capable of conveying the alleged defamatory meaning in light of the circumstances pleaded, such that a jury could find that Defendant knew or should have known that the implied factual elements of the statements were false and defamatory. *See Pendleton*, 290 Va. at 172-73; *Lewis*, 281 Va. at 725. As for the first three statements, it is still the province of the fact-finder in this case to determine whether the circumstances were sufficient to convey the alleged defamatory meaning, and whether the plaintiff was actually defamed thereby. *Pendleton*, 290 Va. at 172-73.

## **II. Defendant's Plea in Bar as to the Statute of Limitations**

A plea in bar condenses the litigation by narrowing it to a discrete issue of fact that bars a plaintiff's right of recovery when proven. *Tomlin v. McKenzie*, 251 Va. 478, 480 (1996). The

burden of proof on the dispositive fact rests on the moving party. *Id.* When considering the pleadings, “the facts stated in the plaintiffs’ motion for judgment [are] deemed true.” *Tomlin*, 245 Va. at 480 (quoting *Gluscock v. Laserna*, 247 Va. 108, 109 (1994)). “Familiar illustrations of the use of a plea would be: the statute of limitations, absence of proper parties (where this does not appear from the bill itself), *res judicata*, usury, a release, an award, infancy, bankruptcy, denial of partnership, *bona fide purchaser*, denial of an essential jurisdictional fact alleged in the bill, etc.” *Nelms v. Nelms*, 236 Va. 281 (1988).

Defamation claims are governed by VA. CODE § 8.01-247.1, which provides that “[e]very action for injury resulting from libel, slander, insulting words, or defamation shall be brought within one year after the cause of action accrues.” Defendant argues that the gravamen of Plaintiff’s case is that Defendant should be held liable for reviving statements she made in 2016, which is an attempt to end-run the statute of limitations. Def.’s Mem. Supp. Dem. & Plea in Bar 14-15. Plaintiff argues that the op-ed was published less than three months before Plaintiff filed suit, and—even if this were a case regarding revived statements—that Virginia law considers a new action to accrue each time the defamatory statement is published. Pl.’s Opp’n 10-11.

Assuming *arguendo* that Plaintiff proceeds on a theory of republication, Plaintiff is correct in asserting that the date of republication is the date on which the clock begins running for the statute of limitations in a defamation action. *See Blue Ridge Bank v. Veribanc, Inc.*, 866 F.2d 681, 689 (4th Cir. 1989) (“It is well settled that the author or originator of a defamation is liable for republication or repetition thereof by third persons, provided it is the natural and probable consequence of his act, or he has presumptively or actually authorized or directed its republication”) (quoting *Weaver v. Beneficial Finance Co.*, 199 Va. 196, 199 (1957)); *Weaver*, 199 Va. at 200 (holding the one-year statute of limitations does not bar a defamation claim involving a letter when the letter’s contents were revealed before a promotion board (i.e., republished) within one year of the present action). Consequently, the original publication date of these statements does not prohibit Plaintiff from bringing this action because the statements—if republished—were reiterated within one year of Plaintiff bringing this action. The Court must therefore deny Defendant’s Plea in Bar as to the statute of limitations.

## CONCLUSION

For the foregoing reasons, Defendant’s Demurrer is sustained as to the fourth statement listed above, but it is overruled as to the other three statements. Further, Defendant’s Plea in Bar regarding the statute of limitations is denied. Counsel shall prepare an Order reflecting the Court’s ruling and forward that Order to the Court for entry.

Sincerely,



Bruce D. White

**OPINION LETTER**

<p style="text-align: right;">513</p> <p>1 before she was -- I think it was a Thursday, I 2 think, I learned that one. 3 Q So this was two days after your brother 4 had left for New York? 5 A Yes. Yes. Because I was shocked at 6 that -- at that. I was shocked at that and 7 concerned that he was out of town and didn't know 8 if he needed to be there. He was gone, you know, 9 and -- and I was asking the attorney and they 10 said, "No, he doesn't have to be there. No one 11 has to be there. Amber won't be there, no one 12 will be there, just attorneys. It's a very simple 13 process." 14 Q Did Johnny attend the restraining order 15 hearing? 16 A No. He was not in town; he wasn't in 17 the country. 18 Q Did you see any press coverage of the 19 restraining order hearing? 20 A Yes, I did. 21 Q Would you please tell the jury what you 22 saw or read?</p>	<p style="text-align: right;">515</p> <p>1 Q Was the -- 2 THE COURT: All right. I'll sustain 3 the objection. 4 Next question. Go ahead. 5 Q How did you feel when you read the 6 press? 7 MR. ROTTENBORN: Relevance. How the 8 witness felt is irrelevant. 9 THE COURT: What's the relevance, 10 Mr. Chew? 11 MR. CHEW: I think it -- I think it's 12 relevant to her testimony, Your Honor, but I can 13 move on. 14 THE COURT: Okay. I'll sustain the 15 objection. 16 Next question. 17 Q Moving ahead two years in time, did you 18 see Ms. Heard's Washington Post op-ed when it was 19 published in December 18, 2018? 20 A Yes. 21 Q What did you think Ms. Heard's op-ed 22 was about?</p>
<p style="text-align: right;">514</p> <p>1 MR. ROTTENBORN: Objection. Calls for 2 hearsay. 3 MR. CHEW: Not asking for the proof of 4 what was in the articles. It's a present-sense 5 impression. 6 MR. ROTTENBORN: Irrelevant. Why is it 7 relevant? 8 THE COURT: I'll sustain it to hearsay 9 and relevance. 10 MR. CHEW: Okay. 11 Q Did you see press -- was there press 12 coverage of the hearing? 13 A There was a tremendous amount of press 14 coverage. 15 Q Did you read any of it? 16 A I did -- I did. I did read some of it. 17 You know, I saw some of it. 18 Q Putting aside the truth or falsity of 19 what you saw, what did you see? 20 MR. ROTTENBORN: Relevance. 21 THE COURT: Why is that relevant? 22 MR. ROTTENBORN: And hearsay.</p>	<p style="text-align: right;">516</p> <p>1 MR. ROTTENBORN: Relevance. 2 MR. CHEW: It's entirely relevant. 3 They're -- they're trying to argue somehow that 4 people didn't understand what -- what the op-ed 5 meant. We heard an opening where there was -- 6 THE COURT: I want you to approach. 7 (Sidebar) 8 MR. CHEW: Yes, ma'am. 9 THE COURT: What is her opinion of the 10 op-ed? How is that relevant? 11 MR. CHEW: What was -- not her opinion, 12 but what did she think it was about. He's arguing 13 that -- that because it didn't -- 14 THE COURT: But that's still her 15 opinion of what she thought it was about. 16 MR. CHEW: Right. But, I mean, they 17 are trying to argue that people didn't understand 18 that this was about Johnny Depp. I mean, she's a 19 human being. 20 THE COURT: I understand. But I'll 21 sustain the objection, okay? 22 MR. CHEW: Thanks.</p>

708

1 Q Mr. Baruch, did you see Ms. Heard, at  
2 all, the rest of that week of May 23rd?  
3 A No.  
4 Q Did you learn, at some point in time,  
5 that Ms. Heard had filed for divorce from  
6 Mr. Depp?  
7 A Say that again.  
8 Q Did you learn, at some point in time,  
9 that Ms. Heard had filed for divorce from  
10 Mr. Depp?  
11 A Yeah.  
12 Q How did you learn that?  
13 (A) I learned it from the Internet, after  
14 the weekend, around, probably, Monday -- either  
15 Sunday or Monday. I'm on the Internet and I end  
16 up seeing a picture of, it was the Friday of that  
17 week, the past week, and there's a picture of  
18 Amber wearing a black mourning dress and with this  
19 brown mark on her cheek, and she's out -- she's  
20 been to a divorce, you know, she went to go file  
21 for divorce. That's how I found out.  
22 Q Were you surprised when you saw that?

709

1 A Surprised is not the word. It's like,  
2 what the hell is this? What's going on?  
3 Q At any point when you had seen her  
4 during that prior week, had she told you that she  
5 intended to file for divorce?  
6 MS. BREDEHOFT: Objection. Leading.  
7 THE COURT: I'll allow it. Go ahead.  
8 You can answer the question, sir.  
9 A What's the question again?  
10 Q At any point when you had seen her  
11 during that week, had Ms. Heard told you that she  
12 intended to file for divorce?  
13 A No. No. Never once, Sunday, Monday,  
14 Tuesday, Wednesday, and Thursday or Friday, not  
15 even said it, no. I'm clueless. She does not --  
16 she did not say anything about divorce.  
17 Q So what did you think when you saw  
18 those pictures and read the articles and learned  
19 that she was filing for divorce?  
20 MS. BREDEHOFT: Objection as to what he  
21 thought. I'm sorry. Objection. Relevance to  
22 what he thought.

710

1 MS. LECAROS: It builds on all the  
2 testimony he has given previously, Your Honor.  
3 THE COURT: I'll sustain the objection.  
4 Q When did you see Ms. Heard next, after  
5 that?  
6 A She knocked on my door, June 3rd,  
7 Friday, a Friday night, June 3rd, she knocked on  
8 my door around 11:00, is the next time that I see  
9 her.  
10 Q What happened when she knocked on your  
11 door on June 3rd?  
12 A I open the door, and I said something,  
13 I said, hey, how you doing, to say hello. I open  
14 up the door, I said, hey, how you're doing? She  
15 looked at me and says, I'm not feeling so hot. I  
16 made some food, would you like to come over and  
17 eat with me? And at that point, after, you know,  
18 everything I've seen, I looked at her, I said,  
19 listen, me and you, we're not going to talk  
20 anymore. After everything that I've just seen all  
21 week long from the past couple -- the past week  
22 and change, listen, I'm confused, I'm angry, and

711

1 I'm frustrated by everything that I've seen, and I  
2 think the best thing is for me and you, that we  
3 don't talk anymore.  
4 Q Did she say anything in response?  
5 A Yeah. In response to that, she looks  
6 at me and she said, I told Johnny I don't want  
7 anything. The lawyers are making me do all of  
8 this. And I -- you know, that's what she said.  
9 Q Did you respond to Ms. Heard?  
10 A No. What I was thinking was, to me,  
11 after saying that, after she said that to me, I'm  
12 thinking to myself, gay kocken yom, hey, how --  
13 MS. BREDEHOFT: Objection to what he's  
14 thinking, Your Honor.  
15 THE COURT: I'll sustain it.  
16 Next question.  
17 Q Did you see any injuries on Ms. Heard's  
18 face on June 3rd, when you spoke with her?  
19 A No.  
20 Q Did you ever speak with Ms. Heard again  
21 after that?  
22 A Well, she said to me, after that, the

1599

1 THE COURT: Of course there is.  
 2 MR. CHEW: Very unreasonable.  
 3 THE COURT: Okay. So do you want me to  
 4 come back a little early so I can decide which  
 5 one? Or are you guys going to figure that out on  
 6 your own? I'm not going to give the jurors two  
 7 transcriptions.  
 8 MS. VASQUEZ: You're not going to give  
 9 them two?  
 10 THE COURT: No. The whole point is to  
 11 help them.  
 12 MS. VASQUEZ: Would it be --  
 13 THE COURT: If you can't agree, then  
 14 I'm not going to give it to them and it's just  
 15 going to be on their hearing of it.  
 16 MS. VASQUEZ: Okay. Or would you be  
 17 amenable if we play a portion of the transcript,  
 18 that we provide our transcription, and then --  
 19 THE COURT: No. We're not going to do  
 20 that.  
 21 MS. VASQUEZ: No? Okay.  
 22 THE COURT: No.

1600

1 MS. VASQUEZ: Okay.  
 2 THE COURT: Okay? So it's either one  
 3 transcription or none --  
 4 MS. VASQUEZ: Or none.  
 5 THE COURT: -- and it doesn't go to the  
 6 jury. Okay? We'll see you at 2.  
 7 MR. CHEW: Thank you.  
 8 MS. VASQUEZ: Thank you very much, Your  
 9 Honor.  
 10 THE BAILIFF: All rise.  
 11 (A recess was taken from 11:56 a.m. to  
 12 2:00 p.m.)  
 13 THE BAILIFF: All rise. Please be  
 14 seated and come to order.  
 15 THE COURT: Sorry, my microphone was  
 16 off. I'm sorry, Judy, I've got it.  
 17 (Whereupon, the jury entered the  
 18 courtroom and the following proceedings took  
 19 place.)  
 20 THE COURT: All right. I hope  
 21 everyone's lunch went okay, all right? Good.  
 22 All right. Your next witness.

1601

1 MS. MEYERS: Your Honor, we call  
 2 Mr. John C. Depp.  
 3 THE COURT: All right. If you could  
 4 stand, sir.  
 5 JOHN C. DEPP, II,  
 6 the plaintiff and counterclaim  
 7 defendant, having been first duly sworn by the  
 8 Clerk, testified as follows:  
 9 THE COURT: Okay. Yes, ma'am  
 10 EXAMINATION BY COUNSEL FOR THE PLAINTIFF AND  
 COUNTERCLAIM DEFENDANT  
 11  
 12 BY MS. MEYERS:  
 13 Q Good afternoon, Mr. Depp.  
 14 A Good afternoon.  
 15 Q Can you please tell the jury why you're  
 16 here today?  
 17 A Yes. About six years ago, Ms. Heard  
 18 made some quite heinous and disturbing, brought  
 19 these certain criminal acts against me that --  
 20 that were not based in any species of truth. It  
 21 was a complete shock that it would -- it just  
 22 didn't need to go in that direction, as nothing of

1602

1 the kind had ever happened.)  
 2 (Though, the relationship, there were  
 3 arguments and things of that nature, but never did)  
 4 I, myself, reach the point of striking Ms. Heard)  
 5 in any way, nor have I ever struck any woman in my  
 6 life. And so, I -- at the time, because the news  
 7 of this -- her accusations had sort of permeated  
 8 the industry and then made its way through media  
 9 and social media, became quite global, let's say,  
 10 "fact," if you will. And since I knew that there  
 11 was no truth to it, whatsoever, I felt it my  
 12 responsibility to stand up, not only for myself,  
 13 in that instance, but stand up for my children,  
 14 who, at the time, were 14 and 16, and so, they  
 15 were in high school. And I thought it was  
 16 diabolical that my children would have to go to  
 17 school and have their friends or people in the  
 18 school approach them with the infamous People  
 19 magazine cover with Ms. Heard with a dark bruise  
 20 on her face. And then it just kept -- the -- it  
 21 kept multiplying. It just kept getting bigger and  
 22 bigger.



1861	1863
<p>1 had made statements to the press saying that the 2 7 million was going to be — the 7 million was the 3 settlement, and that 7 million was going to be 4 split up between two charities. One was the ACLU, 5 and the other was the Children's Hospital of 6 Los Angeles, which, in fact, was a breach of the 7 agreement. 8 Neither one of us was supposed to speak 9 about details, money, anything of that nature. So 10 when Ms. Heard breached that agreement, that was 11 when I asked Ed White, my business manager, to 12 send the first payments directly to the charities 13 in Ms. Heard's name, and after I did that, 14 Ms. Heard was very, very angry that I had made 15 those first payments. And she went into a kind of 16 a tirade about how I should be charged double the 17 7, I should be charged 14 million, so that — 18 because she thought that I was looking for a tax 19 break. 20 Q Mr. Depp, between the time that the 21 joint statement was released and the time that the 22 op-ed came out, how many movies did you work on in</p>	<p>1 MR. ROTTENBORN: Yes, Your Honor. I 2 think a part. We don't have any objection to the 3 joint statement that was read, but the rest of the 4 article contains hearsay statements that we think 5 should be redacted. 6 THE COURT: Okay. 7 MS. MEYERS: We can redact that. 8 THE COURT: So you owe me a redacted 9 408 with just the statement, then; is what you're 10 talking about? 11 MR. ROTTENBORN: Just that second to 12 last paragraph. 13 THE COURT: Okay. All right. That 14 statement will be in evidence once it's redacted. 15 MS. MEYERS: Thank you. 16 THE COURT: Uh-huh. 17 MS. MEYERS: If we could, please pull 18 up Plaintiff's Exhibit 1. 19 Q Mr. Depp, do you recognize this 20 document? 21 A Excuse me. Yes, I do. 22 Q And what is it?</p>
1862	1864
<p>1 that time period if you can recall? 2 A When did the joint statement come out? 3 Was it — I'm sorry. 4 MS. MEYERS: Could we scroll up, 5 please. 6 Q I'll withdraw the question for the 7 moment. 8 In the time leading from the divorce 9 through the — excuse me. In the time period 10 between when your divorce was finalized and the 11 release of the op-ed in December 2018, do you have 12 any idea of how many television or movie projects 13 you worked on? 14 A I don't exactly. I don't exactly. I 15 believe there was another, maybe a smaller tour 16 with the Vampires, and it's — I don't remember. 17 It's hard to remember. I've done too many movies. 18 Q That's okay. 19 A Sorry. 20 MS. MEYERS: Your Honor, I apologize. 21 Can we please move into evidence Exhibit 408. 22 THE COURT: Any objection to 408?</p>	<p>1 A This is Ms. Heard's op-ed for the 2 Washington Post that I believe came out in 3 December of '18. I recognize the — yes, I 4 certainly remember this. 5 Q And have you actually read this op-ed? 6 A Yes, I have. 7 Q And what do you think of it, its 8 contents? 9 A Well, it was a hell of a start, I'd 10 say, in terms of the title. 11 THE WITNESS: If you could — can we 12 scroll down a little bit just for a second? 13 Because I'd like to make a point. 14 (A Going, reading it and reading the words 15 that she had written about what was obviously — 16 it was obviously referring to our relationship, it 17 was obviously referring to me, "two years ago," 18 you know, it all matched up, so it was clearly 19 about me.) 20 And then I read the rest of the article 21 where she talks about — 22 THE WITNESS: If you could scroll down</p>

3214

1 Q Did anybody ever ask you to review any  
2 drafts of the op-ed, including the final draft  
3 that was published in the Washington Post?  
4 A No.  
5 Q She says, "I want to make sure nothing  
6 was said in here that puts you in jeopardy with  
7 your NDA."  
8 What does that refer to?  
9 A The nondisclosure agreement that was  
10 entered into between Depp and Heard in connection  
11 with the dissolution of their marriage and the  
12 settlement agreement.  
13 Q Okay. And is this a document that was  
14 prepared in the ordinary course of the ACLU's  
15 business?  
16 A Yes.  
17 Q Was it kept in the ordinary course of  
18 the ACLU's business?  
19 A Yes.  
20 Q All right. Let's move, please, to  
21 Exhibit 37.  
22 Have you ever seen Exhibit 37 before?

3215

1 A Yes.  
2 Q What is it?  
3 A I have. This is a draft of the op-ed  
4 that Robin is sending to Amber, after a  
5 conversation that they had to discuss the issues  
6 in the op-ed, and, in particular, my -- yeah, to  
7 have a conversation about the op-ed.  
8 And then she sends her changes that  
9 were made to the op-ed that were relating to  
10 things that Robin and Amber discussed during that  
11 meeting.  
12 Q And to be clear, this next draft of the  
13 op-ed reflects changes that Robin Shulman made  
14 after she met, in person, with Amber Heard; is  
15 that correct?  
16 A Correct.  
17 Q What did Ms Shulman and Ms. Heard  
18 discuss during their in-person meeting?  
19 A My understanding is that they discussed  
20 some of the personal experiences of -- that Amber  
21 Heard has had that were -- that Robin used to  
22 incorporate into the op-ed.

3216

1 Q Isn't it true that Ms. Heard's advisors  
2 initially revised the draft to remove any  
3 reference to Ms. Heard's marriage or divorce?  
4 A I recall a number of email  
5 communications back and forth among ACLU personnel  
6 and Ms. Heard's attorneys, where they were  
7 suggesting edits to the op-ed relating to matters  
8 covered in the NDA.  
9 Q And then, isn't it also true that there  
10 were some, at the ACLU, who expressed their belief  
11 that excising those references to her marriage and  
12 divorce from Johnny Depp made the op-ed less  
13 impactful, correct?  
14 A It is correct. That is correct.  
15 Q But ultimately, based on those voices,  
16 Ms. Heard pushed to get that excised material back  
17 into the op-ed so it could be more impactful,  
18 true?  
19 A That's not my understanding. My  
20 understanding is that the language that wound up  
21 in the final op-ed piece was very different from  
22 the original language that Robin included in the

3217

1 op-ed, after having spoken with Amber about her  
2 personal experiences.  
3 Q And how was it different?  
4 A It was -- it did not refer directly to  
5 Ms. Heard's relationship with Johnny Depp.  
6 Q Okay. Let's move ahead, please, to  
7 Exhibit 38.  
8 AV TECHNICIAN: Yes, sir. Stand by.  
9 Q Mr. Dougherty, have you ever seen this  
10 document before?  
11 A Yes.  
12 Q And is this one of the documents you  
13 reviewed in preparation for your deposition?  
14 A Yes.  
15 Q What does this relate to?  
16 A So this relates to Stacy Sullivan, who  
17 reported to Terry Tang, and her role, with respect  
18 to this op-ed piece, was to think about the best  
19 place to place it, and to make the contacts with  
20 the media in order to get it placed.  
21 Q And she suggests here that the outlets  
22 that the ACLU and Ms. Heard was considering were

3218

1 the New York Times, The Washington Post, Teen  
2 Vogue, and USA Today; is that correct?  
3 **A So not Stacy, but Gerry, who I think**  
4 **you said "she," Gerry is a he, and Gerry wrote**  
5 **some suggested places to place this after having**  
6 **had conversations with Amber.**  
7 **Q And Gerry's suggestions were the New**  
8 **York Times, Washington Post, Teen Vogue, or USA**  
9 **Today; is that correct?**  
10 **A Correct.**  
11 **Q Whose responsibility was it to place**  
12 **the op-ed? Was it the ACLU's, Ms. Heard's or some**  
13 **combination of the two?**  
14 **A The work to place the op-ed was taken**  
15 **on by the ACLU, in that we have, in our**  
16 **communications department, people with expertise**  
17 **and people who regularly do that kind of work.**  
18 **But as we can see from this email, it was done in**  
19 **consultation with Amber Heard.**  
20 **Q And Mr. Johnson writes, "Since the**  
21 **draft turned out pretty strong and Aquaman is**  
22 **slated to do large numbers, I'm wondering what you**

3219

1 think about it."  
2 What does he mean by saying "the draft  
3 turned out pretty strong"?  
4 **A This appears to be the analysis of how**  
5 **broad-based and how – what kind of reach the**  
6 **media outlets where we can place this, will have,**  
7 **and that media outlets are more likely to take on**  
8 **publishing an op-ed like this if it is a strong**  
9 **one and if it is – and to the extent that it is**  
10 **written by a public person who is an entertainer,**  
11 **a well-known person, that the more they are in the**  
12 **public eye at the time, the more likely it will be**  
13 **accepted by a more prominent or broader-reach**  
14 **media outlet.**  
15 **And so, that's the sort of**  
16 **descending – media outlets in descending terms of**  
17 **descending likelihood – well, descending**  
18 **importance and reach, but greater likelihood from,**  
19 **you know, for example, as we go down that list.**  
20 **(Q) (And Amber is referencing her own direct**  
21 **personal experience and her marriage to Johnny)**  
22 **Depp makes it a strong product, correct?)**

3220

1 **(A I think that the – Amber's)**  
2 **contributions to the, you know, the portion of the**  
3 **op-ed that talks about personal experiences is**  
4 **part of what informed the view that this was a**  
5 **strong op-ed, and the importance of the women's**  
6 **rights issues referred to in the op-ed, in that**  
7 **some of them were very timely women's rights**  
8 **issues before Congress.)**  
9 **Q And Ms. Heard had a costarring role in**  
10 **Aquaman, correct?**  
11 **A I don't know whether she was a costar,**  
12 **but I know that that was a film that she was in.**  
13 **Q And didn't she tell the ACLU that she**  
14 **wanted the op-ed to come out just after Aquaman**  
15 **was released?**  
16 **A I do recall that there was a**  
17 **conversation about the optimal timing for the**  
18 **op-ed piece.**  
19 **Q And as part of that conversation,**  
20 **Ms. Heard said, in words or substance, that she**  
21 **wanted the op-ed to come out soon after Aquaman,**  
22 **correct?**

3221

1 **A I believe that's correct.**  
2 **Q Who did she relay that to?**  
3 **A I don't recall. Although I believe**  
4 **that there are documents that we produced that can**  
5 **shed some light on that.**  
6 **Q Is Exhibit 38 kept in the ordinary**  
7 **course of the ACLU's business?**  
8 **A Yes.**  
9 **Q Was it prepared by people with**  
10 **knowledge and prepared in a contemporaneous**  
11 **manner?**  
12 **A Yes, it was.**  
13 **Q And it was made in the ordinary course**  
14 **of the ACLU's business, true?**  
15 **A True.**  
16 **Q Okay. If we could move ahead, please,**  
17 **to Exhibit 41. This is another one of these --**  
18 **well, it's not that long.**  
19 **AV TECHNICIAN: Yes, sir. Stand by.**  
20 **Q Mr. Dougherty, have you ever seen this**  
21 **document before?**  
22 **A Yes.**

3222

1 Q What is it?  
2 A These are further communications among  
3 employees, staff members, in the development  
4 department, regarding Amber's – the placement of  
5 Amber's ad and the finalization of the op-ed  
6 piece – not ad, I'm sorry, op-ed. The  
7 finalization of it.  
8 Q If we could move ahead, please, to ACLU  
9 257, and, specifically, the email from Robin  
10 Shulman to Jessica Weitz December 11th, continuing  
11 on to the next -- strike that.  
12 Let's go to the email on the last line,  
13 Jessica Weitz's email.  
14 MR. SCHWARTZ: What's the timestamp?  
15 What's the timestamp on the email you're referring  
16 to?  
17 MR. CHEW: I'm sorry.  
18 Q This is the December 11th email, at  
19 11:05 a.m, from Jessica Weitz.  
20 Do you see that?  
21 (Okay. And she says, "Amber sent back  
22 (the op-ed with final edits from her legal team,)

3223

1 (which specifically neutered much of the copy)  
2 (regarding her marriage and the domestic violence.)  
3 (Do you see that?)  
4 (A I do.)  
5 (Q) (Is that consistent with your  
6 (recollection?)  
7 (A I'm not sure of the term "neutered")  
8 (here. But I do know that her lawyers removed  
9 (references to her marriage and divorce.)  
10 Q And then she writes, "The goal is to  
11 get this out this week to capitalize on the  
12 tremendous campaign for Aquaman."  
13 What does that mean?  
14 A That means, from the ACLU's  
15 perspective, that Amber is about to receive an  
16 incredible amount of press and be in the public  
17 eye. So what better time would it be than now to  
18 put out this op-ed so that it generates  
19 significant readership about our issues.  
20 Q And Amber agreed with the ACLU on that  
21 point, correct?  
22 A I believe the answer is yes. Every

3224

1 step of the way, we were making these decisions  
2 with Amber's PR representatives involved.  
3 Q Okay. Let's move back to an email in  
4 the middle of 257.  
5 A Okay.  
6 Q And it is from Jessica Weitz,  
7 time-stamped 11:09 a.m. on December 11th, 2018.  
8 A Okay.  
9 Q "Robin, her lawyers omitted the below,  
10 but Amber would love to see a way to have that  
11 part in bold somehow put back in. Is there an  
12 artful way to do that? Otherwise, she is okay  
13 with the final. 'Two years ago, I sought a  
14 temporary restraining order from my then-husband'  
15 was changed to 'two years ago, after successfully  
16 acquiring a temporary restraining order,' but  
17 still not cleared by her lawyers."  
18 Do you see that?  
19 A I do.  
20 Q Is that consistent with your  
21 understanding about what Ms. Heard's desires were?  
22 A Yeah. I trust Jessica Weitz's

3225

1 relationship with Amber, so that when Jessica told  
2 Robin that that was something Amber wanted, I had  
3 no reason to think that that's not correct.  
4 Q Okay. Finally, let's look at the  
5 beginning, the first email in Exhibit 41, from  
6 Stacy Sullivan to Jessica Weitz, and says "Yes,  
7 and I need to read the latest version. Robin told  
8 me Amber's lawyers took out some of the stuff that  
9 made it really powerful, so let me look to see if  
10 I think it's strong enough for top tier."  
11 What did she mean by "top tier"?  
12 A I think, from Stacy's perspective, the  
13 more powerful a document is, the more likely it  
14 will go into a top tier news outlet, such as New  
15 York Times or The Washington Post, you know, that  
16 sort of descending tiering that was in Gerry  
17 Johnson's email.  
18 Q Okay. And is Exhibit 41 kept in the  
19 ordinary course of the ACLU's business?  
20 A Yes.  
21 Q Was it prepared in the ordinary course  
22 of the ACLU's business by people having knowledge

<p>3226</p> <p>1 and done so contemporaneously? 2 A Yes. 3 Q Okay. Thank you. 4 Let's move ahead to 43. 5 AV TECHNICIAN: Yes, sir. Stand by. 6 Q Okay. Directing your attention to the 7 first page in Exhibit 43, from Jessica Weitz to 8 Sean Walsh. 9 Who is Sean Walsh? 10 A Seanwalsh@wwgrconsulting.com. 11 I don't know who that is. This is an 12 email that includes in it people other than ACLU 13 employees and ACLU consultants, so I'm assuming 14 it's somebody relating to, you know, one of 15 Amber's representatives, but I don't know for 16 sure. 17 Q Do you know who Eric George is? 18 A Yeah, george@bgrfirm. Yeah, Eric 19 George was one of Amber's attorneys. 20 Q And she's announcing to the group that 21 "It's going to The Washington Post," and triple 22 exclamation points?</p>	<p>3228</p> <p>1 Q Have you ever seen this document 2 before, Mr. Dougherty? 3 A I am familiar with this document. 4 Q Is this one of the documents you 5 reviewed in preparation for this deposition today? 6 A Yes. 7 Q Was it made in the ordinary course of 8 ACLU's business by people having knowledge and 9 doing so contemporaneously? 10 A Correct, yes. 11 Q Is it maintained by the ACLU in the 12 ordinary course of business? 13 A Yes. 14 Q Would you, please, direct your 15 attention, sir, to page Bates number 1181. In the 16 middle of the page, purports to be an email from 17 Stacy Sullivan to Michael Larabee, and others at 18 The Washington -- well, I'll just say Michael 19 Larabee. 20 Who is Michael Larabee? 21 A Michael Larabee appears to be a person 22 who is a contact that Stacy Sullivan had at The</p>
<p>3227</p> <p>1 A Correct. 2 Q I take it that the ACLU was pleased 3 that it was placed in The Washington Post? 4 A Correct. 5 Q And I believe you testified earlier, 6 but I just want to confirm for the record, the 7 ACLU took on the responsibility of attempting to 8 place the op-ed, correct? 9 A Correct. 10 Q And why the ACLU instead of Amber or 11 her PR team? 12 A Placing op-eds about matters such as 13 this is the kind of thing that is the bread and 14 butter for the ACLU. And, so, I don't recall if 15 conversation happened about whether her PR people 16 or our PR people should place -- should be the 17 ones that do the work to place this, but it is 18 fully consistent with how we do our work, that we 19 place this one. 20 Q All right. Let's go back to 21 Exhibit 42, if you don't mind. 22 AV TECHNICIAN: Yes, sir. Stand by.</p>	<p>3229</p> <p>1 Washington Post. And so, she sent -- she reached 2 out to him first about placing the ad. And then, 3 because she received a bounce back out of office 4 from Mike Larabee, she sent the -- her original 5 request to Michael Duffy and Mark Lasswell, also 6 at The Washington Post. 7 Q And what was the purpose of her sending 8 them this email? 9 A This was her attempt to get the op-ed 10 placed. 11 (Q (And she writes, "Hey, Michael, 12 Wondering if we might interest you in a piece by 13 Amber Heard (who, as you may recall, was beaten up 14 during her brief marriage to Johnny Depp) on what 15 the incoming Congress can do to help protect women 16 in similar situations.") 17 Did I read that correctly? 18 A Yes, you read it correctly. 19 Q All right. Let's look, please, let's 20 turn to Exhibit 73. 21 AV TECHNICIAN: Yes, sir. Stand by. 22 Q Mr. Dougherty, have you ever seen this</p>

3230

1 document before?  
2 A Yes.  
3 Q Is this the online copy of the op-ed  
4 that the ACLU placed?  
5 A Yes.  
6 Q Directing your attention to the title,  
7 "Amber Heard: I spoke up against sexual violence  
8 and faced our culture's wrath. That has to  
9 change."  
10 Who came up with that title?  
11 A Based on my investigation, I'm not  
12 aware of any – I'm not aware that the ACLU had  
13 any role in writing the name of the op-ed piece.  
14 And my understanding of how op-ed pieces work is  
15 that it is the media, in this case, The Washington  
16 Post, would have drafted the name of the – the  
17 title of the op-ed and not the person who wrote  
18 the op-ed.  
19 Q Did The Washington Post seek the ACLU's  
20 or Ms. Heard's approval of its title?  
21 A I believe the answer to that is no.  
22 There's nothing in the evidence that shows that

3231

1 they reached out to us to do that, and it's  
2 consistent with my understanding that these news  
3 outlets do not usually ask for the permission of  
4 the author of the op-ed to, you know, for when  
5 they come up with the title.  
6 Q And, Mr. Dougherty, would you, please,  
7 or the technician, please, call up Exhibit 45.  
8 AV TECHNICIAN: Yes, sir. Stand by.  
9 Q Mr. Dougherty, have you ever seen  
10 Plaintiff's Exhibit 45, which is Bates number ACLU  
11 623?  
12 A Hold on. I'm just making it a little  
13 bigger.  
14 Okay. Yes, I have seen this document.  
15 Q And is this one of the documents you  
16 reviewed in preparation for your deposition?  
17 A That's correct.  
18 Q And what is it?  
19 A This is an article that was in US Today  
20 [sic] and, specifically, ties Amber's statements  
21 in her op-ed piece to Johnny Depp.  
22 Q And when Jessica Weitz says "so much

3232

1 for not mentioning JD," what did she mean?  
2 A I speculate that she was saying that  
3 there was significant efforts made by Amber's  
4 attorneys to take out the references to Johnny  
5 Depp and her marriage and, yet, nonetheless,  
6 people made that connection.  
7 Q And in particular, the reporter for the  
8 USA Today took her to be referring to Johnny Depp  
9 when she spoke of being the victim of domestic  
10 violence, correct?  
11 A Correct.  
12 Q Was this document prepared in the  
13 ordinary course of the ACLU's business  
14 contemporaneously by people having knowledge?  
15 A Yes, it was.  
16 Q Was it maintained by the ACLU in the  
17 ordinary course of business?  
18 A Yes.  
19 Q And would you, please, move ahead, now,  
20 to the Exhibit 46.  
21 AV TECHNICIAN: Yes, sir. Stand by.  
22 Q Mr. Dougherty, have you ever seen

3233

1 Exhibit 46, which is ACLU Bates number 1287?  
2 A Yes.  
3 Q What is it?  
4 A This is a statement by Robin Shulman  
5 saying that the article that they're referring to,  
6 basically, you know, recasts everything that's  
7 said but ties it to Johnny Depp.  
8 Q So, Ms. Shulman is agreeing with  
9 Ms. Weitz's characterization that the USA took  
10 Ms. Heard to be referring to her allegations of  
11 physical violence by Johnny Depp, correct?  
12 A Yes.  
13 Q And she says "It's kind of amazing that  
14 they just grabbed the entire op-ed and rewrote it  
15 using Johnny's name."  
16 Why was it "amazing"?  
17 A I don't know why she found it amazing.  
18 Q If that was consistent with your  
19 understanding, she was referring, at least in  
20 part, to Johnny Depp, correct?  
21 A Based on my review of prior drafts of  
22 the op-ed, I knew that they were – that she was

Transcript of Jury Trial - Day 12  
Conducted on April 28, 2022

27 (3234 to  
3237)

<p>3234</p> <p>1 referring to Johnny Depp and her marriage. 2 Q Was Exhibit 46 prepared in the ordinary 3 course of business by people having knowledge 4 contemporaneously? 5 A Yes. 6 Q Was it maintained in the ordinary 7 course of the ACLU's business? 8 A Yes. 9 Q Okay. Let's move to Exhibit 59, 10 please, which is Bates numbers ACLU 2614 through 11 2616. 12 A Okay. 13 Q Have you ever seen this document 14 before? 15 A Scroll to the beginning. Yes. 16 Q And what is it? 17 A This is a conversation among ACLU 18 employees regarding what were the amounts 19 contributed to the ACLU that were connected to our 20 relationship with Ms. Heard. 21 Q And is this Exhibit 59 kept in the 22 ordinary course of the ACLU's business?</p>	<p>3236</p> <p>1 Q And directing your attention to the 2 first page in this exhibit, do you see the email 3 from Mr. Romero to Mr. Maresco, subject, "a quick 4 question." Mr. Romero asked, "Did Elon's other 5 gifts come from Vanguard?" 6 To what does that refer? 7 A My personal knowledge is that Anthony 8 was just asking whether other gifts from Elon Musk 9 had been issued from recommendations he made to 10 Vanguard regarding his donor-advised fund at 11 Vanguard. 12 Q And Mr. Maresco then responds, "One of 13 them, yes. His \$5 million gift in February 2017 14 was from Vanguard." 15 Do you see that? 16 A I see it. 17 Q And if you look at the next page, 18 Vanguard was the same entity that made the soft 19 credit contribution, in Amber Heard's name, to the 20 tune of \$500,000, correct? 21 A Correct. 22 Q And he says, "In any case, my</p>
<p>3235</p> <p>1 A Yes. 2 Q And it was prepared contemporaneously 3 by people with knowledge in the ordinary course of 4 the ACLU's business, correct? 5 A Correct. 6 Q And looking at the chart on ACLU 2615, 7 this is the same contributions chart that you 8 testified about earlier, from Salesforce, correct? 9 A Correct. 10 Q And, again, as in the prior exhibit, 11 this chart or ledger does not reflect the \$100,000 12 contribution from Johnny Depp, in Amber Heard's 13 name, in August of 2016, correct? 14 A Correct. 15 Q And you still can't account for why 16 that wouldn't have been included? 17 A We assumed that there was an error made 18 in not including that in Ms. Heard's account, you 19 know, where we keep the records of her in 20 Salesforce. Although, Anthony, as you see, then, 21 raised the very question, "What about the 22 \$100,000?"</p>	<p>3237</p> <p>1 understanding was that the \$500,000 from Vanguard 2 was recommended by EM." 3 Do you see that? 4 A Yes. 5 Q And "EM" stands for Elon Musk, correct? 6 A Correct. 7 Q And, also, in that email above that, 8 Mr. Maresco states that Mr. Musk's "\$1 million 9 gift in May of 2018 was from Fidelity." 10 Do you see that? 11 A Yeah, he must – either that means a 12 separate donor-advised fund that he has at 13 Fidelity, or from – Fidelity, you know, a direct 14 investment accounts that he has at Fidelity. I'm 15 assuming the former, but I don't know. 16 Q And if you look at the next page in the 17 Salesforce chart, the second payment credited to 18 Ms. Heard, for \$350,000, as of December 11th, 19 2018, came from that same Fidelity, correct? 20 A I don't know the answer to that 21 question. I know that it came from a Fidelity 22 donor-advised fund for \$350,000, but I don't know</p>