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It's Not Defamation if No One Knows It's You

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As the old saying goes, if a tree falls in the forest and no one is there to hear it, does it make a sound? In the context of defamation law, the saying could be, "if no one knows it's you, is the statement still defamatory?" The answer is no.

I get a surprising number of calls about defamation published in books. Now that anyone can publish a book with a few mouse clicks, more people are publishing their life stories, and those stories always manage to irritate someone. That someone then calls me, stating that some person in the book is them, and they want to sue for defamation. They go on to explain that the name given is not theirs, that the geographic location given is someplace they have never lived or visited, and the gender has been changed, but they know it's them and damn it they want to sue. In some cases it is clear that the caller

made the whole thing up in their mind, but in other cases it is clear that the person referenced really is the caller. Even so, if the author changed the identity so much that no one would recognize them, there is no case.

Today's example involves rocker Sammy Hagar. He wrote a book called "*Red: My Uncensored Life in Rock*", which tells a story of a woman he had sex with following a concert, who later claimed to be pregnant. He explains that he paid her some support during the alleged pregnancy, but that no child was ever born and he now thinks the entire thing was simple extortion.

Had he named her, the would have supported a claim for defamation since he accuses her of a criminal act, but she is identified only as a "Playboy bunny from California". Apparently the woman in question was a Playboy bunny, but Hagar changed her state from Michigan to California, perhaps specifically to make her less identifiable.

Nonetheless, the still unidentified "Playboy bunny from California" sued Hagar for defamation and infliction of emotional distress. Not surprisingly, the trial court today threw out the case.

U.S. District Court Judge Linda Reade ruled that Hagar did not defame the woman because he did not refer to her by name in the book – identifying her erroneously as a "Playboy bunny from California" – and the woman did not prove she suffered any financial, reputational or emotional injuries from his statements. "Only individuals who already knew about their relationship, not the general public, would have understood Hagar was referring to her in the book", she added.