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Ask an Attorney:

How to handle defamatory statements in letters to the editor

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Q: How do I recognize a defamatory statement in a letter to the editor? What if non-print and other media have in effect published the same defamatory statement?

A: Law books in Texas carry many examples of libel suits against newspapers over letters to the editor. Recognizing a defamatory letter is much the same as recognizing a defamatory news article or editorial – and just as important.

Previous publication by a website or other media will not usually in itself shield a newspaper from potential liability. However, federal law provides immunity from defamation liability for a newspaper for comments or other content posted to the newspaper's websites by readers or website users.

Defamation is most simply defined as a false statement of fact that tends to injure the reputation of a person or company. False statements that accuse a person of a crime, a breach of ethics or professional dishonesty are often cited as examples of defamation, depending on the context. For a statement to constitute defamation it must not only injure reputation, but

must convey actual facts about the defamed person. A statement that expresses only pure opinion, even if it harms reputation, is generally deemed not actionable for defamation.

Texas law protects substantially truthful publications – those that correctly convey the gist of an event or assertion. The legal test for substantial truth examines whether a publication caused more damage to a plaintiff's reputation than a literally truthful statement. Discrepancies as to details do not defeat substantial truth. However, getting isolated facts correct is not enough if the publication as a whole conveys a false impression as a result of omitting or juxtaposing material facts.

The First Amendment may protect certain letters to the editor. If the subject of the letter is a public official or public figure, that person will have the burden of proving the newspaper knew it was publishing a false statement or had doubts as to the truth. Prior publication by a reliable source may afford protection in a suit by a public official or figure.

Now let's pull these legal strands

together into practical advice. First, it is wise to give any letter that contains highly damaging factual statements about a person or company careful attention. It is prudent to require authors to include their name for publication and provide contact information in order to allow a newspaper to make reasonable efforts to confirm the authenticity of the letter. If the editor has a question about any statement in a letter, the newspaper may require the letter writer to provide satisfactory factual proof, edit out the potentially libelous material or reject the letter. Remember, part of freedom of the press is the right to reject letters for publication.

Paul C. Watler, a partner in TPA sponsor Jackson Walker LLP, has defended Texas newspapers and journalists in libel cases for more than 30 years. He is board certified in civil trial lawyer, has been recognized by "Best Lawyers in America" since 1995 in the category of First Amendment law and was named the "Go To" lawyer in Texas for media litigation by Texas Lawyer magazine. You may follow Paul on Twitter @pwatler.

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