

**WRITING WITH LIBEL IN MIND
A GUIDE FOR NON-PROFITS AND BLOGGERS**

PROTOCOLS FOR LIBEL REVIEWS

The final section of this guide discusses the manner in which the report and its sources should be organized for transmission to the libel reviewer. Most bloggers and small non-profit organizations will not have an attorney who is an experienced libel reader; or they may not be able afford to pay for libel review by an attorney. In theory, anybody who was not involved in the preparation of the report could conduct a libel review, which is largely a matter of dispassionately comparing potentially actionable statements in a report to the source materials. A good libel reviewer will make judgments about what statements to review, how closely to review them, and what sources should be deemed acceptable, based on experience and knowledge of libel law, as well as an appreciation of the likely course of litigation should it come to that. To that extent, it is preferable to obtain review by a libel lawyer. However, if that is not possible, review by another dispassionate observer or experienced writer or reporter, using the considerations and procedures provided in this guide, would still be worthwhile.

A draft should be sent for libel review only once it is substantively complete. That is, the draft it should be presented in the form that the public will see, except for all but the most mundane editing and formatting. The draft should include things as seemingly innocuous as headings titles, photo captions, charts, graphs, and all felicitous turns of phrase, which, after all, are there to grab the public's attention, and, therefore, must be critically reviewed from a libel perspective. It doesn't make sense to libel-read a draft

that is not what is intended for public consumption. It is better to avoid sending the report to the reviewer in stages, say, three of four sections of a report at first, with the fourth section to follow, because it is usually necessary to see the whole report, at once, in final form.

A draft cannot be reviewed unless it is accompanied by support for the factual assertions in the report. Typically, the factual statements in reports are footnoted, so the reviewer needs the support for the footnotes. For instance, if you say that Jane Doe gave \$4,000 to Sonja Smith's Ohio gubernatorial campaign, and the report cites the Cleveland Plain Dealer in footnote 4, the reviewer needs a copy of the Cleveland Plain Dealer article. (In this instance, a better source might be the relevant Ohio campaign finance reporting records, but that's a different issue.) Of course, footnotes are less common in blogs and newsletters.

The key job of the libel reviewer is not checking footnotes or footnoted statements, but checking the support for all statements that might be actionable as libel. The decision about whether to footnote, and what to footnote, is an editorial, stylistic and political one. Certainly a report with every statement footnoted can look more credible – but it also may be more ponderous to read. But an author should be prepared with support for every fact, footnoted or otherwise.

In some instances, the source material may be very voluminous (a large book, for example; in those circumstances, the report should be accompanied by the cover page of the document and the relevant pages. The relevant pages would include not just the

precise page on which the fact appears, but also the surrounding pages that provide context for that fact.

If the source is a personal interview, the source material, whenever possible, should be interviewer's notes or tape recordings from the interview, which help test the accuracy of the report. Although important in any case, this is absolutely critical when the interviewer is not an employee of the issuing organization (in other words, a person whose interviewing and recollection skills you don't know).

The relevant passages in the source material should be highlighted (for instance, with a yellow marker). Moreover, the source materials should be arranged in the order of their appearance in the report. So, the source material for footnote 1 should be on top of the pile, with the source material for footnote 2 next, and so forth. The source material should be labeled accordingly. So, the source material for footnote 22 should say "22" on its first page. But a libel reviewer should not ask that items be duplicated more than once (which is a waste of paper). If the source material for footnote 2 is also the source material for footnotes 11, 13, and 18, the material would appear behind the source material for footnote 1 and be marked on the front page "2," "11," "13," and "18." In situations where there are only a small number of sources — say, five sources to support 75 footnotes — you can simply arrange the source materials in alphabetical order and highlight the relevant passages. In that situation (which happens occasionally), it is not a good use of anyone's time to mark dozens of footnote numbers on every source. The reviewer can just go to the relevant source based on the footnote. Although it is always a

good idea for the footnote to contain both the source and the page at which the fact is supported (e.g., 2003 World Almanac, p. 12), it is particularly important to state the page number in the footnote if the libel reader needs the page number to locate quickly the relevant portion of a large document. If the page information is not in the footnote, the reviewer will need an index indicating where in each long source to go for each fact supported.

As noted above, in general, a reviewer needs only a small portion of a large document, and so it is sufficient to provide the cover page and other relevant pages. In rare instances, however, the libel reader must review large portions of a large document. When that is the case, there are two good alternatives to reproducing the entire item: (1) send the original (e.g., a book), which the libel reviewer will return when the review is complete, or (2) point the reviewer to an on-line source.

Some reviewers may prefer to review support provided in soft form, such as files furnished on a CD or URL's cited from the Internet. Support found that way can be more readily searched, for example. In that case, highlighting could be done in soft form for a file, although it is difficult to mark a web site (and downloading an entire report to be transmitted on a CD could raise copyright questions as well though it might also be fair use). Some reviewers will be less comfortable than others reviewing sources on a computer screen, and may insist on printed copy.

Finally, the press work done in connection with a report must also be done with libel in mind. If the report is shared with a reporter who is given an "exclusive" before

public release, libel review should be done **first**, even if the report has been embargoed until a date certain. If an organization plans to release a report accompanied by a written press statement, the press releases must be libel read before they are issued, especially if they are not written by the author of the report. It makes little sense to review the report but not the press release, since the press release is intended to maximize public impact. There could be serious consequences if press releases are not subjected to the same kind of scrutiny as the report itself. Similarly, statements made to the press at a press conference, or in post-release interviews, are potentially actionable as slander; they might also be cited in arguments about the real meaning of otherwise ambiguous statements in the report, or as evidence of how “reckless” the writer may have been. Staff thus need to resist the temptation to save the really explosive statements for the telephone or the press conference podium, unless such intended statements have also been considered by a more dispassionate reviewer.

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