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*WRITING LETTERS OF RECOMMENDATION FOR STUDENTS: HOW TO PROTECT
YOURSELF FROM LIABILITY*

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Along with being a teaching psychologist comes the inevitable request for letters of recommendation from students who are applying for admission to graduate school, a fellowship or award, or employment. Some letters are a joy to write. Others, for the student who is marginally qualified or who is more blatantly deficient, raise the intimidating specter of a defamation lawsuit for the writer who wants to give an honest appraisal of the candidate. Here are some points to note that should decrease your risk of being liable.

1. Although there are subtle variations in the law from one state to another, generally the tort of libel occurs when false information that damages a person's reputation is written and disseminated to a third party, with some fault on the part of the writer. The same information, spoken to another, is slander. Both libel and slander are defamatory. Truth is a defense to an allegation of defamation.
2. Be truthful! This obvious statement is the most important thing to remember when writing a letter of recommendation. Make every attempt to state facts about a student, even in a positive letter, and then support them with criterion-referenced observations.

NO: "James performed well in my experimental psychology course and was one of the best students in the class. He will likely be a good teacher." BETTER: "In a research design project, James stated a well-defined hypothesis and described his variables and manipulations with clarity. In comparison with other third-year psychology majors, his design was more feasible within the time and budgetary constraints, and more closely focused on the discovery of the information he desired. His oral presentation of his project was likewise clear and thoughtful. It was illustrated by several interesting and appropriate examples that held the students' attention throughout the 15-minute period. Based on these observations, I predict that he will be an outstanding high school psychology teacher."

3. Unfavorable information must be supportable. Focus on behavioral indicators and performances when making evaluations. A letter reportedly received by a medical school's admissions committee simply stated, "About the application of Joe Jones: Save yourself a headache" (Palmer, 19X3). Although such a letter would probably damage a candidate beyond repair, it offers no basis whatsoever for the devastating evaluation.

NO: "Sarah is an average student; however she is undependable, unreliable, and unresponsive." BETTER: "Sarah was a student in my comparative psychology class last semester. Although her

test scores were average for the class, her attendance was not. My records indicate that she was present for class only on the first day, the day preceding each scheduled hour examination, and the examinations. Her two written assignments were turned in one week and twenty days late, respectively. At no time did she meet with me to discuss her attendance and late assignments, even though I left several messages for her on her answering machine and wrote an "invitation" to her on her second test, which, I might add was picked up for her by a friend in the class. Because attendance and punctuality contributed 20% to the course grade, she received a "D" in the class."

NO: "Stanley was a poor student who did not care about his work." BETTER: "Stanley scored in the 60-70% range on all of the course exams. The class average was 82%. His term paper was not clearly organized and suffered further from a sparse literature review and many typing errors."

4. It is not sufficient to have a "good faith belief" that the information you passed along was true when, in fact, it was false. Courts will determine whether you should have known it was false. This means that you have a duty to check out your facts. Although you might assume that the "XYZ State University psychology major who was arrested for fighting in the local bar" was your student, it would be reckless disregard for the truth to pass this information along without verifying it.

5. If you must state an opinion, clearly label it as such and, if possible, offer the basis upon which the opinion was formed.

NO: "Only if she were highly motivated could Mary perform adequately in graduate school."

BETTER: "Based on my ten years of undergraduate teaching experience, comparing Mary with other students in my classes, it is my opinion that Mary would be able to perform at an adequate level in graduate school if she was highly motivated to do so. "

NO: "Benny is very shy." BETTER: "Based on watching students interact in the classroom before and after lectures and on Benny's demeanor during office visits, it is my impression that he is very shy."

There is often not a clear difference between opinion and fact. A fact cannot be transformed into an opinion by labeling it as one. Writing something like "My distinct impression is that David cheats on exams" carries the implication that facts are available, though not cited. This statement, if it can be shown to be untrue, is arguably defamatory.

6. Review your letters for ambiguities. Unclear statements may be used against a student, even if you intended no negative interpretation, because readers will fill in their own meaning. Yager, Strauss, and Tardiff (1984) offer some examples of potentially harmful ambiguous statements from letters of recommendation for medical positions:

"He was particularly effective in surgical outpatient clinic. " (Was he mediocre or poor on the inpatient service?) "He worked hard to improve himself, and he did. " (What was he like when he started?) "She can be intelligently assertive and aggressive when she wants to be." (How often is that.) "She showed considerable progress." (From what to what?) "He demonstrated a commitment to excellence in those areas which draw his interest. " (What about those areas, critical to the practice in medicine, that did not draw his interest?)

7. We also recommend against attempting to hide negative information about a student through obfuscation. Yager, Strauss, and Tardiff (1984) offer the following examples of this ploy:

"Given sufficient time, he was able to identify the patient's problems." "He performed best when properly supervised and encouraged." "Dr. Jones is often in motion, most of which is purposeful."

8. As a general rule, get the student's consent before you write a letter of recommendation. If one is requested of you by a third party who says, for example, that John Smith has listed you as a reference, check with John to see if this is accurate. Make a note of the date of contact with him. If the reference is oral, keep a record of what you say.

9. Send information only after it has been requested. Do not offer your opinion spontaneously, unless it is unequivocally complimentary. You are putting yourself and your institution at risk by volunteering unfavorable information about a student just because you think it is important for the decision-maker to know it.

10. If a student requests a letter of recommendation from you, and if you send it only to the person or committee designated by the student, then you are carrying out a function that courts feel is important for public policy reasons. This generally results in a qualified privilege, which simply has the potential of giving you more leeway, discretion, and legal protection in your writing, if you are acting in good faith. Do not rely on this to ignore the suggestions outlined above, but think of it as giving you more confidence that you will not be held liable for an adverse decision.

11. It goes without saying that you are not required to write a letter of recommendation for a student just because it is requested. What if a student who had plagiarized a paper asks you for a reference letter for graduate school? Your best choice is to say "no. " You are setting yourself up for trouble by agreeing to be a referee for a student with whom you have had trouble in the past. If you must remind the student that the letter you would write would not be a generally favorable one or would report one or more specific concerns, protect yourself against an allegation of slander by not saying this to her or about her in the company of other people.

12. If in doubt, consult your university's attorney.

References and Additional Readings of Interest

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