

Defamation By Omission?

BY ADRIANOS FACCHETTI

I remember sitting in a church pew many years ago hearing the pastor speak about two different kinds of sin: Sins of "commission" and sins of "omission." I understood very well as a teenager that you weren't supposed to do bad things (commission), but it was always a bit more abstract and difficult to understand that failing to do something could get you into trouble. And, if defamation can be analogized to sin (which, on many levels it probably shouldn't) in California at least, you cannot be held liable for defamation by omission. I know it sounds a bit weird but I'll explain it down below.

In *Paterno v. Superior Court* (2008) 163 Cal.App.4th 1242, a newspaper sued a student journalist because the student had made some statements in a magazine article about the newspaper. The article stated that the newspaper had "killed" a story about a drunk driving sentence imposed on one of the newspaper's editors. The article also stated that the newspaper initially investigated a workplace restraining order against a former employee, but then dropped it.

Now what's interesting is that instead of claiming that the statements were false, the newspaper complained that the magazine article did not include important facts, which identified why the newspaper did what it did. Essentially, the newspaper said that the magazine article didn't tell the whole story, and therefore falsely implied bad motives with respect to the newspaper.

First off, I doubt this would be the first time a newspaper didn't tell the whole story and omitted key facts, so the newspaper should have known better.

In any event, the court held that defendant had no obligation to include plaintiff's explanation of the story. Therefore, there is no liability for defamation by omission in California.

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