

Employment References: The tightrope between defamation, negligence, and misrepresentation.

The following digests the results of *In Re Randi W.*, a recent California Supreme Court employment law case (January 27, 1997), which held that an employer may be liable for failure to disclose negative performance information about a former employee in a reference letter if the letter affirmatively misrepresents favorable performance that might present a substantial and foreseeable risk of harm to a prospective employer or third party. In essence, the case holds that, although employers may have no duty to provide information, if they choose to do so, they have a duty to use reasonable care in the process. The Court also found that defendants should have foreseen that future prospective employers would rely on favorable letters and hire problematic employees, placing others in the workplace at risk. The Court was not persuaded by defendants' arguments that the threat of tort liability would unduly restrict the flow of information and impede job applicants from finding new employment, or that no reasonable person would assume that a letter of recommendation contains the whole truth about a candidate's background and character. However, perhaps mindful of the growing number of employers who find it best to adopt uniform "no comment" policies (under which they refuse to provide any references whatsoever even for stellar former employees), the Court limited its ruling to situations that present "a substantial foreseeable risk of physical injury to the prospective employer or third persons," and which in fact result in such harm. The potential applicability of this holding to more extreme types of workplace violence seems clear. A partial summary of the facts, lifted from a book chapter I've recently authored, appears below.

In *Randi W.*, plaintiff, a 13-year old female middle school student, accused her vice-principal, Gadams, of sexual molestation. Gadams had obtained his position through a college placement office. Defendants, Gadams' previous employers, sent letters to the placement office that described Gadams as "an upbeat, enthusiastic administrator who relates well to the students," and that contained glowing praise for Gadams' "genuine concern" for students, "outstanding rapport" with everyone, and contribution to achieving "a safe, orderly, and clean environment for students and staff." One of the former employers recommended him "without reservation;" the other energetically concluded that it "wouldn't hesitate to recommend Mr. Gadams for any position!" These comments turned out to be sadly ironic in view of allegations that both employers had actual knowledge of previous conduct by Gadams that included hugging female junior high school students, giving them massages, and making sexual overtures to them. One defendant had even disciplined Gadams in connection with sexual harassment charges that included "sexual touching" of female students, and induced Gadams to resign, thereafter writing its letter of recommendation in an apparent effort to get Gadams employed elsewhere
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(Dr. Stan Malos, J.D., Ph.D.)