

September 14, 2020

Polly Grunfeld Sack, Chief Legal Counsel
Gannett Company, Inc.
7950 Jones Branch Drive
McLean, Virginia 22107-0150

Nicole Carroll, Editor-in-Chief
USA Today Newsroom
7950 Jones Branch Drive
McLean, Virginia 22018

Re: Retraction Request and Libel Legal Notice Concerning the Committee to Defend the President

Dear Ms. Sack and Ms. Carroll:

It has come to the attention of my client, the Committee to Defend the President (the “Committee”), that the Gannett Company, doing business as “USA Today,” published a [libelous report](https://www.usatoday.com/story/news/factcheck/2020/09/10/fact-check-ad-misuses-quote-barack-obamas-memoir/3292499001/) (https://www.usatoday.com/story/news/factcheck/2020/09/10/fact-check-ad-misuses-quote-barack-obamas-memoir/3292499001/) on September 10, 2020 titled “Fact check: Ad misuses quote from Barack Obama’s memoir.” A copy of this report is included in this correspondence. This concerns the Committee’s advertisement “[Enough is Enough](http://www.obamasvoice.com)” (http://www.obamasvoice.com). The report falsely alleges the Committee “misused” President Obama’s quote, falsely states President Obama was not the individual issuing the quote, and alleges it reached out to the Committee, yet did not do so through any of the Committee’s press inquiry options on its website or public phone numbers. These statements are wholly untrue and form the basis for libel claims and other relief by my client.

1. Problems with the Report

Your September 10 report inaccurately claims in bold face font that the advertisement created by the Committee, “Enough is Enough,” has “[w]ords from ad not Obama’s, misused.” This is because the statement, in USA Today’s estimation, “was not supported by our research.” It further claims the “words chosen for the ad aren’t his own and are misused.” It then offers a lengthy recount of President Obama’s book, *Dreams from My Father*, as well as a history of the mayorship of Chicago under Harold Washington. It goes on to explain the “quote used in the ad was taken from Obama’s memoir, but it wasn’t said by him.” Instead, the report insists they “are another man’s words, which Obama is reading in an audiobook recording.” Because of this, USA Today concludes the Committee’s advertisement is false. Naturally, these untrue statements have the effect of damaging the goodwill, reputation, and credibility of my client.

The Committee’s advertisement, handily available at obamasvoice.com, includes easily readable, bold text that notes the subtitles below it are “Obama’s voice.” Observant readers will notice it does not state “President Obama’s own words” nor does it state the words shared are the opinion of President

Obama. Rather, the Committee communicated a clear message—the audio heard is the voice of President Obama. The Committee communicated this message because that statement is verifiably true: President Obama narrated *Dreams from My Father* and used his own voice to state those words.

Oddly, the report then delves into the particular discussion in *Dreams from My Father* where President Obama recalls discussions with “Smitty” the barber. USA Today decides the words issued by “Smitty” are, indeed, Smitty’s words and not Obama’s words. However, it appears USA Today did not read the very introduction to the book. There, President Obama noted he employed the use of composite characters—a common literary device employed to convey the author’s own thoughts or feelings. Indeed, he noted “For the sake of compression, some of the characters that appear are composites of people I’ve known, and some events appear out of precise chronology.” Thus, Smitty may not exist at all. He may be an amalgamation of many acquaintances of President Obama. He may be President Obama himself. For readers who reviewed the book in its entirety, President Obama’s introduction leaves that issue up to the audience. All of this information is easily attainable when done by competent factcheckers.

The Committee was shocked to read that USA Today would issue a “fact check” article so utterly devoid of facts. The Committee’s advertisement plainly communicates onscreen it is using “Obama’s voice” while the video runs. Your report expressly states the advertisement claims “Obama said [b]lack people have the ‘worst jobs’ and ‘worst housing’” as “false.” But the Committee nowhere communicates such a message. It rather indicates it is using Obama’s *voice* to communicate a message to the American public, which it is free within its rights to do so as fair use of that material. It is also free, under the First Amendment, to offer critical commentary about the state of political affairs in America. Only USA Today fallaciously made the assumption that President Obama was himself expressing an opinion about “worst jobs” or “worst housing.”¹

Because USA Today issued a fallacious “fact check” rating for this advertisement, Facebook (which funded, in whole or in part, USA Today’s factchecking program) has now labeled this false as well. This means the Committee has been deprived of an important platform upon which to communicate its ideas and to engage the public.

As a political action committee, the Committee to Defend the President depends on maintaining its good moral character and reputation for integrity. Its very ability to function requires the support of donors—donors who must believe in the reputation of the Committee. Without platforms upon which it may message and interact with other Americans, it is deprived of its very means of existence. Deceitfully accusing the Committee of publishing false and misleading information that USA Today knows or should have known is truthful is actionable as libel.

2. The Law Supports an Award of Damages

In Illinois, the elements supporting libel are: (1) defendant made a false statement concerning the plaintiff, (2) there was an unprivileged publication, and (3) plaintiff was damaged. *Thomas v. Fuerst*, 345 Ill.App.3d 929, 933-34 (Ill.App. 2004). Words published must not only be false; they must harm the reputation of another such “that it lowers that person in the eyes of the community or deters third

¹ President Obama never disputed that the barbershop discussion was done by him or that it contains his own words. To the extent the President disputed the Committee’s characterization, he was free to litigate that issue. The Committee would appreciate just such a chance for a deposition.

parties from associating with her.” *Bryson v. News America Publications, Inc.*, 174 Ill.2d 77, 87 (Ill. 1996). As is generally recognized across the United States, one’s reputation is an important possession the law protects.

USA Today’s “fact checking” report proves to be little more than an orchestrated publicity attack against the Committee to Defend the President. The trust, integrity, and reputation for effective political advocacy the Committee developed since it was first founded in 2013 can be damaged in a heartbeat by reckless reports such as those created by your organization. The Committee proudly stands by the veracity of its political messaging. Your careless, poorly researched “fact checking” report depicting the Committee as a purveyor of false information is deeply damaging and utterly untrue. Indeed, this sort of shoddy reporting is replete with unsupported statements that would impeach the Committee’s reputation and public character. Because USA Today’s statements are categorically false, they give the Committee the right to pursue monetary damages for these misstatements.

Illinois law also offers remedies when one sets out to interfere in the business relationship of others. In Illinois, the elements of a claim for tortious interference requires: “(1) a reasonable expectancy of entering into a valid business relationship; (2) defendants’ knowledge of that expectancy; (3) purposeful interference by the defendant that prevents the plaintiff’s legitimate expectancy from ripening into a valid business relationship; and (4) damages to the plaintiff resulting from defendants’ interference.” *Fidelity National Title Ins. Co. of New York v. Westhaven Properties Partnership*, 386 Ill.App.3d 201, 219 (Ill.App. 2007).

In 2020, it is more important than ever for political organizations to use social media and online platforms to contact and communicate with Americans nationwide. Doing so requires the ability to share messages, boost views, and pay for advertisements. But where a reporter issues untrue “fact checking” reports about such an entity, it quickly becomes impossible to share messages, place an ad, or even have its content viewed online. Naturally, this all interferes with one’s ability to maintain business relationships or place advertisements online.

Inaccurate “fact checking” mutes the Committee to Defend the President by choking off its voice on social media. Already, Facebook (the organization funding your supposed “fact checking” program) has labeled the Obama’s Voice advertisement as “false.” Having a political advertisement labeled as “false” when it is not does damage to the Committee since such stories: (1) appear lower in the Facebook news feed, (2) have a negative “false” moniker attached to them, and (3) impair the organization’s ability to boost views or even advertise in the first place.

Justice Holmes reminds us that, in the American tradition, we respect a “free trade in ideas—the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . .” *Abrams v. U.S.*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Americans are free to agree or disagree with the Committee’s message, but it will not stand by and allow its voice to be silenced. The orchestrated launch of half-truths and injurious falsehoods against political groups just prevents them from engaging the American public. Erroneous “fact checking” chokes off ideas, shuts down debate, and hurts the reputations of honest political brokers. And this is all done cleverly under the ruse of “fact checking.” As my client’s advertisement already notes, enough is enough.

3. False Misstatements Must be Retracted or Corrected

Specifically, the erroneous USA Today report alleges:

- a. “Words from ad not Obama’s, misused” (in bold face font)
- b. “. . .the words chosen for the ad aren’t his own and are misused.”
- c. “Our rating: False” (in bold face font)
- d. “The quote used in the ad was taken from Obama’s memoir, but it wasn’t said by him. They are another man’s words, which Obama is reading in an audiobook recording. The quote was also wrongly used to describe national politics, as it is referring to Chicago politics.”

These statements are categorically false. Remedies for libel include actual damages to reputation, punitive damages, and injunctive relief. Because of the Committee to Defend the President’s status as a highly popular and distinguished political committee, we believe these monetary damages would total in the millions of dollars.

We make a formal demand you immediately correct the referenced story, and all references to it, from all media you own or control, including websites, blogs, social media accounts, print publications, and any other form of media. We further demand you immediately publish a conspicuous update explaining these changes on your website, usatoday.com. We also demand you issue statements of correction to any media or online social media platform, such as Facebook, you furnished the report to or discussed its findings with. With this, we ask you retract the statements by printing a conspicuous notice in any newspaper or magazine or radio or television broadcasting station that runs such a story. Alternatively, you may opt to entirely remove the story from all these sources.

The Committee has worked earnestly for over seven years to gain the trust of Americans who love our country and want her to succeed. It honors the hard work, commitment to standards of ethics, and thorough messaging everyone at the Committee helps create. USA Today recklessly or purposefully set out to injure the Committee by spreading falsehoods. The truth surrounding the Committee’s advertisement could have been easily discovered had you factchecked the report and made a reasonable attempt to discuss the matter with it. By failing to do so, your unfounded allegations that the Committee created a falsely worded political message satisfies the elements of a cause of action for libel.

Due to the damaging nature of your report, the Committee intends to vigorously pursue any and all legal remedies available to it should you fail to immediately comply with the foregoing demands. Please confirm with the undersigned that you will comply with the demands set out in this letter within 5 (five) business days or be promptly in touch to discuss this matter.

Respectfully,

Benjamin Barr

Benjamin Barr
BARR & KLEIN PLLC
(202) 595-4671
ben@barrklein.com