

Mr. Thorwaldson:

My situation is the subject of an article in the April 17, 2002 issue of the Palo Alto Weekly. One expects some mistakes in any article despite the best attempts of reporters and editors to present facts but this article by Daniel Velton is so full of errors, omissions, and innuendo that one might be forgiven for concluding that this intern was directed to produce a story to reflect a certain bias. And surely an intern has an editor who is more seasoned and could have ensured that a fair account was published.

This article with the headline, *Palo Alto woman beats around the bush*, has:

- 1) Diminished my effectiveness in working within my neighborhood to solve the real traffic safety problems of stop-sign violations, speed, and cut-through traffic.
- 2) Reduced my credibility in communicating with the public through the media and letters to government officials. I do not want my ideas to be dismissed as just another bit of blather from “the shrub lady.”
- 3) Probably damaged a cordial working relationship with Annette Ashton, Chair of the Midtown Residents Association.
- 4) Complicated my legal defense.
- 5) Consumed a significant amount of my mental and physical energy at a time when I can least afford extra stress.
- 6) Inhibited my forming new relationships within the community.

I believe it is your responsibility as editor of the Palo Alto Weekly to correct in print and in a timely manner at least some of the most inaccurate elements of the story. I will point them out below, using specific examples that anyone could verify. I will skip some minor errors. Starting at the beginning is easiest.

Headline – libel per se?

My dictionary tells me that “beat around the bush” means “to fail to confront a subject directly”. In fact I did confront the subject directly by pruning, starting on Labor Day weekend last fall to improve visibility at my intersection. Neighbors can attest to this. I sought out Tom Ashton, talked with him on November 8, 2001, and did additional pruning to address his safety concerns. And I tried persistently, starting on November 5, 2001, to work my way through the code enforcement administrative hierarchy, to get city officials to answer my questions. At the time of my arrest I was waiting for answers from Lance Bayer about my legal options.

Byline – responsible reporting?

The writer Daniel Velton *did not interview me* for this article. Any quotes attributed to me were taken from comments I made to the photographer or from my website. To be fair, he did call me just after I had seen the front-page article in the Palo Alto Daily News which published the story first on April 11, 2002. At that time I was uncertain what, without legal advice, I should say to newspapers and told him this. Later, when I realized that the attention was the result of a press release issued by Lance Bayer, I felt I had no choice but to talk to the media. Obviously, someone at the Palo Alto Weekly realized

that I had chosen to talk as evidenced by he or she sending a photographer. Should the reporter have come also? Yes.

Paragraph 2 – not accurate, not fair

Some changes were made to the Palo Alto Municipal Code to implement the Visibility Project. The project itself is described at <http://www.city.palo-alto.ca.us/attorney/code-enforcement/index.html> . Nowhere in the Municipal Code is wording like “guarantees a person who is 3 feet tall...” This may be a quote from a city official. If so, it should have been attributed to that person. And the image of a small child standing on a chair at the intersection? Too much!

Paragraph 3 - misinformation

The 2-foot height limit on planting strip landscaping has been in place for many years and was never enforced in a zero-tolerance manner before. The second sentence that begins, “That’s because...” is a sloppy hash of the Visibility Project Flyer information.

Paragraph 5 - error

Tom Ashton is identified as leader of the Midtown Residents Association. In fact, Tom is a very active member of the association but it is his wife who is the chair of the association.

Paragraph 6 – innuendo!

The first sentence about four injuries and one death, printed in the context of a criminal complaint, is the *most egregious example of innuendo*. It has led some to think that there have been accidents at the Waverley/El Dorado intersection caused by the planting strip shrubs there. One can check the accident history at the intersection in the report requested by Fujimoto and supplied by the Transportation Division last fall. There have been no recent accidents there. The accidents that I can remember involved stop-sign violations and traffic coming from directions such that the planting strip shrubs did not affect visibility. And furthermore, overgrown shrubs did not even cause the four injuries and one death at other locations. I have summarized information about these accidents at <http://www.neighborspace.org/> under Community Issues – Traffic and Transportation Issues – Shrub Height and Street Visibility, Message #3. Of course, the press may be able to obtain the original accident reports from the Palo Alto police. Police will not release accident reports to the general public.

Paragraph 9 – false statement and significant omission

It is true as Fujimoto claims in court documents that he mailed 2 notices in October. As a point of fact the 2 notices were identical, dated October 30, and arrived on consecutive days. The statement, “Neither of the letters was answered.”, is *false!* I called Fujimoto on November 5 and he returned my call on November 7. This November 7 contact is included in the court records for my case and should not have been omitted from the article.

Paragraph 10 - misleading

“On November 21, Fujimoto reached Leibrand by phone.” is misleading for two reasons.

First it implies that this was the first contact with me since the notices were mailed and second it implies that the officer initiated the contact when in fact he was returning my November 19 phone call.

Paragraph 11 - omission

Why quote my personal website without giving the URL? This is a significant omission if one is trying to present a fair story. My URL is <http://leibrand.netdojo.com/paloalto/enforcement.html>

Paragraph 14 - misquote

This paragraph contains a deliberate misquote from my website and an error. My website includes 18 pictures. One is at my address and shows the planting strip after pruning. My clear intent was to show that my location is among many violations of the 2-foot limit and that none of the 18 (including my address) poses a safety problem. I also wanted to make clear that showing these examples did not constitute a complaint against my neighbors. The website does not claim that all these locations are visible from my home.

Paragraph 16 – error **

Lance Bayer is identified as Deputy District Attorney. He left the Santa Clara County District Attorney’s office in 1995. He identified himself in signing the criminal complaint by his usual title of Special Counsel, City of Palo Alto Attorney’s Office.

Paragraph 17 – one-sided conclusion

Lance Bayer is quoted as describing the arrest warrant as a “normal process”. That probably is the normal process after a criminal complaint is filed but is it a normal process to file a criminal complaint without first answering questions from a citizen? Is it normal to intimidate a citizen with a press release? Is this paragraph any way to end a balanced account of a criminal complaint story?

Kay Leibrand
385 El Dorado Avenue, Palo Alto, CA 94306
kay@leibrand.org
650-326-8124

** This paragraph was revised to reflect information received by e-mail on 4/22/02 from Jo Ann Martinez, Secretary to current Santa Clara County District Attorney George Kennedy.