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## **Blasted or Blogged: Defamation Still Hard to Prove**

*If celebrities can take on the National Enquirer for defamation and actually win, can trustees prevail against bloggers and gadflies?*

By SUZETTE LOVELY

It's happening more and more. School officials are slammed whenever a decision makes a constituent unhappy. Parents stream to the podium at board meetings and bash the superintendent for banning soda in school vending machines. A trustee learns from a neighbor that she's been spoofed on YouTube after her vote on attendance boundaries. When salary talks break down, the union president stages a press conference and lobs personal attacks against the entire board for not making teachers a "priority."

Where does one draw the line when people let loose on you in public, especially if what's being said isn't true?

Defamation is a generic word for false statements that injure someone's reputation. As a general rule libel is written and slander is spoken. With citizens-o-plenty weighing in on educational issues, malcontents are able to spew nastiness across a vast network. Yet, trustees struggle to understand how strongly hostile allegations are buffered by the First Amendment. If celebrities can take on the *National Enquirer* for defamation and actually win, do trustees have a chance against bloggers, gadflies, and haters who are ruining their good name?

### **A free exchange of ideas?**

When the Supreme Court first set the defamation standard in the 1964 *New York Times v. Sullivan* decision, disagreements were more civil. Cyberspace was a place where only The Jetsons hung out. Since then, the courts have been consistent in ensuring lawsuits aren't used to chill the free exchange of ideas Americans hold dear.

As recently as 2002, the Texas 9<sup>th</sup> Court of Appeals tossed out a claim filed by the Port Arthur School District after a web warrior embellished about a gang fight at a high school prom, dubbing it "The Prom from Hell." In the opinion, the court noted that if the government were allowed to use public resources to file claims against its critics, criticism would be silenced through the fear of monetary loss.

The door was left open a crack when the Port Arthur ruling found that a government or public official could file an individual lawsuit if defamatory attacks specifically targeted them. Using this ruling as a backdrop, counsel for the Galveston Independent School District recently sent a demand letter to the creator of <http://gisdwatch.com/> ordering her to remove libelous statements on a website.

GISDWATCH, also known as the Galveston Alliance for Neighborhood Schools, is an active blog where anonymous users blast the superintendent, trustees, and administrators for falsifying budget numbers, using positions for personal gain, violating open meeting laws, spying on employees, hiring incompetent people, and fascism.

With the site still going strong, the district is taking legal action and filing suit on behalf of individual trustees and administrators. Superintendent Lynne Cleveland told reporters that the board decided to take legal action after considering how the inflammatory material was deterring families from moving into the community and scaring away good employees from wanting to work in the school district.

In North Carolina, the Durham School District recently filed a \$100,000 defamation lawsuit against a parent after he circulated an online petition about his son's middle school principal. The petition intimates the principal is incompetent, lazy, unfair, and fails to act in the best interest of children. The father says concerns began two years ago when the principal chose a bulldog for the school mascot against the wishes of the site council and allowed a "beer basket" to be auctioned at a school fundraiser. More recently, fervor has mounted over the principal's decision to make students wait 15 to 20 minutes on the school bus because there's no morning supervision to not having an 8<sup>th</sup> grade graduation ceremony.

Legal experts say the Galveston and Durham boards still have an uphill battle since proving disruptive speech is knowingly false and made with reckless disregard for the truth rests squarely on the plaintiff's shoulders. Adding to the challenge is the fact that Internet anonymity and defamatory speech has already had its legal debut in the school board arena.

### **Needed: Thick skins**

In a barely noticed case filed against Google by a Long Island school board member, a New York lower court found that a commentator's insinuation that the trustee was a "bigot" and "anti-Semite" was not incontrovertibly true. As such, Google's disclosure of the identity of "Orthomom" would have a chilling effect on protected political speech on the eve of an election. The board member's petition was dismissed.

Although the degree to which speech can be controlled in a government venue varies from state to state, some state constitutions go beyond the federal guarantees. For example, California's civil code says that comments made in the course of a judicial proceeding, like a school board meeting, are absolutely a private matter. Therefore, public commentary cannot constitute defamation, since libel and slander are defined as "unprivileged" statements. While Joe Citizen has tremendous latitude in launching personal missiles, district officials have almost no latitude in responding or correcting the record.

So where does this leave you when untruths and innuendo are used to drag your reputation through the mud? Free speech advocates say that trying to quiet those who ruffle feathers makes them seem credible and publicizes their cause. Free speech attorneys advise public officials not to attack a scorpion when they know they're going to be stung.

With such rigorous First Amendment hurdles to overcome, it's likely the courts will come down on the side of free speech if the district charges a member of the public with defamation. Given the time, expense and emotional toll it takes to fight such statements, school boards and superintendents must continue to develop thick skins and recognize that public criticisms come with the territory.

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