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Yale Law School Students May Be Out of Luck

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'She has herpes,' 'she bribed officials at Yale to gain admission,' 'she engaged in a lesbian affair with the dean of Admissions,' 'she likes having group sex while family members watch,' 'she has large false breasts,' 'she has a sexually transmitted disease,' 'she has low LSATs,'...

All of the above, and much worse, were effectively said of two Yale law students on the Web site AutoAdmit. Search for one of these students on Google and you will read she has fake breasts and is 'universally hated.'

The students allege they couldn't get summer employment because of these statements. Last month they filed an amended complaint against those who posted those remarks. An easy victory, one would think.

Au contraire. The students may never find out who posted the comments. They also can't sue the site's administrators since there is a U.S. law that makes administrators immune from suits for the postings of others.

The original complaint alleged that the site was managed by Anthony Ciolli, a 31-year-old student at the University of Pennsylvania Law School, and that he refused to take down the comments. To do so would violate First Amendment values, he says.

Edwards Angell Palmer & Dodge, the prominent Providence-based law firm, offered Mr. Ciolli a job last summer. They revoked the offer when they learned of his actions.

Until the Internet came along, a publisher/distributor, similar to Mr. Ciolli and his Web site, would have responsibility for the content disseminated. With the advent of the Net, however, Congress passed a law that changed this age-old concept.

Generally, under this law, a person who provides a site as a bulletin board for others has no responsibility for its content. If, however, such a provider actively edits content, there could be responsibility.

With little responsibility for speech, the Internet would seem to be a First

Amendment paradise. But the fact that a bulletin board operator has no responsibility defies human experience. It has led directly to the dilemma of the two Yale law students.

They may have no remedy for their destroyed reputations and perhaps even careers.

As a society, we have long ago concluded that reputations of public officials, and the like, have limited protection under the First Amendment. But the Yale law students are not public officials, public figures or otherwise engaged in public discourse. They are private individuals.

Congress concluded that Web site providers should have no legal responsibility in order to promote the Net and not unduly burden companies like AOL. This approach has no doubt resulted in the tremendous explosion of speech on the Net, which is obviously a good thing.

But there are limits. The First Amendment does not provide absolute freedom.

Courts are beginning to pick away at the exemption Congress provided for Web sites. In the last year, courts have opened the door a crack to housing discrimination suits against Web sites for hosting discriminatory advertising.

The validity of this exemption, however, will not be raised in the law students' case. Despite a factually appealing case against Mr. Ciolli, the two Yale law students have dropped him from the suit.

The task before them, to find out who posted the libelous remarks, is daunting. The defendants have names such as 'The Ayatollah of Rock-n-Rollah,' 'Sleazy Z,' 'Dirty Nigger,' and 'Dean_Harold_Koh,' who is the dean of Yale Law School, but whose name is used by another.

But who are they in fact? They are what is known as 'anonymous speakers.' A court order is needed to unmask them.

Court orders to unmask anonymous speakers are not slam dunks. There are excellent First Amendment reasons, in the ordinary course, not to unmask them.

The Federalist Papers were written by anonymous speakers. Dissidents' political speeches around the world are posted on the Net by anonymous speakers.

But the law students' case does not involve speech critical of government, or what First Amendment lawyers call 'political speech.' It is, as noted above, private speech.

The law as to unmasking is just beginning to develop. Apparently, no one has ever tried to unmask an anonymous speaker on the Net in Connecticut. Courts there have not yet addressed the issue.

More and more the law is becoming that if one can make out a pretty good case of

libel, then the court will unmask the speaker. It is a good bet, then, that the court in this case will permit the two Yale law students to try to find out who the malicious posters were.

But here's the rub: they may never succeed.

The anonymity of posters may be protected by Tor. Ever heard of it? Neither had I before I wrote this.

Tor is a new, to me anyway, software-based system that makes it virtually impossible to unmask anonymous speakers. It consists of relaying messages through computers on the Internet that remove identifying information. If you try to identify a speaker, you run into a dead end.

Anyone can download the instructions for Tor (I did), including terrorists. While apparently invented by the U.S. Navy and useful for legitimate purposes, U.S. Intelligence officials are reportedly panicked by potential (or actual) use of the systems by terrorists.

Tor's inventors boast in their materials there is no 'backdoor.' By that they mean there is no way to defeat the system. They even go further to say if intelligence officials ask them to take Tor off the Web, they will fight them in court.

And so, the Yale law students may never find out who defamed them.

If this is the case, it would seem to make sense to change the law that protects administrators of sites. When such an administrator knowingly causes defamation by refusing to take down libelous posts, as the AutoAdmit managers did, they should be responsible for the damage they have effectively caused.

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