

Administrator Claims Privilege in Defamation Suit

College administrators are often wary of communicating with other officials about student behavior because of the perceived risks of liability associated with such communications. Concerns about possible claims of violating student rights under the federal Family Educational Rights and Privacy Act, as well as possible defamation or invasion of privacy claims, can deter disclosure of information that should be disseminated to other campus officials. A recent case in Texas confirms that such risks are real but also offers comfort to university administrators who act reasonably in the interest of campus safety.

A claim of harassment was made by a female student to campus police at the University of Texas at San Antonio (UTSA) about a graduate student, Retzlaff. The College of Business Dean reviewed Retzlaff's file after becoming aware of the complaint and discovered that Retzlaff had, contrary to information provided in his admissions application, previously served an eight year term in prison. That falsehood, along with other misconduct, led to a disciplinary hearing resulting in Retzlaff's dismissal from UTSA.

During this period of time, the Dean distributed an e-mail that included information received from the female student to the effect that she had seen a gun in the glove box of Retzlaff's car. The e-mail went to eight other UTSA administrators and law enforcement officials, accompanied by the Dean's comment that she did not know if the information was accurate but that she thought, in the interest of student and employee safety, she should bring it to their attention.

In Retzlaff's suit against UTSA and several of its officials, he included a defamation claim against the Dean. The federal district court dismissed this claim, however, holding that the Dean's e-mail was "privileged":

[B]ecause the email was sent by [the Dean] only to other UTSA administrators and UTSA law enforcement personnel concerning a matter they shared a common interest in, the communication is protected by a qualified privilege recognized in Texas law.

Retzlaff v. de la Vina, 606 F.Supp. 2d 654 (W.D.Tex. Mar. 4, 2009). Alabama, like most states, also recognizes that a communication may be covered by a qualified privilege that will shield the "speaker" from a defamation claim. The elements that must be present to invoke the privilege are that the communication be one in which both the speaker and the other party to whom the communication is made have an interest in the information, or that the speaker have a duty to the public or a third party prompting the communication. The privilege, once established, is lost only upon a showing that the speaker acted with ill will. See *Ex parte Blue Cross & Blue Shield*, 773 So.2d 475 (Ala. 2000).

The *Retzlaff* decision provides some comfort to university administrators in holding that college officials with responsibilities relating to campus safety do have a shared interest in information about a student possibly affecting safety issues. That common interest will provide the basis for a qualified privilege to share the information with each other without being subjected to liability.