

EXHIBIT A

Robert Ochshorn by Mr. Quesnel

1 Q. So part of the funding the Ithaca High School
2 provided to The Tattler went to produce the Ithaca
3 Journal?

4 A. No. The Ithaca Journal had previously printed
5 The Tattler. And they -- they claimed we had an
6 outstanding bill with them.

7 Q. So there was an outstanding debt from the
8 previous year's issues of The Tattler still owed when you
9 became editor-in-chief?

10 A. Yes.

11 Q. And part of the \$1,000 provided by the Ithaca
12 High School to The Tattler went to pay off that previous
13 debt?

14 A. Yes.

15 Q. So if that previous debt had not been there,
16 \$1,000 would have gone to pay for the first issue of The
17 Tattler.

18 A. Would have gone to whatever we wanted it to go
19 to in terms of our expenses.

20 Q. And are you aware of approximately how much it
21 costs to produce a single printing of The Tattler?

22 A. Yes.

23 Q. What is that cost?

24 A. It varies with regards to amount of color we

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1 have, amount of pages, amount of copies.

2 For the issues in my year, the -- the number
3 tended to be around \$700.

4 Q. When did the majority of The Tattler staff
5 members work on the paper?

6 A. There were a few different kinds of work on
7 the paper. There was research and reporting. And then
8 writing stories. There were coordination of --
9 coordinating meetings and getting other writers to
10 contribute. And then there was advertising and the actual
11 production of the paper from articles into a newspaper.

12 Some aspects, like writing the stories, were
13 typically done from people's own homes and on their own
14 time. Production of The Tattler was generally done after
15 school and during school, during free periods in The
16 Tattler office, but was often supplemented by work at home
17 from my house.

18 Reporting was often done during free periods
19 and often done after school.

20 Q. How about research, when was that conducted
21 primarily?

22 A. I think different writers had different
23 preferences on how to conduct their research. Sometimes
24 during school, sometimes after school.

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1 Q. Let me rephrase.

2 Was the person who invited you to speak a
3 member of the 2005 through 2006 school year editorial
4 board of The Tattler?

5 A. I think I went twice last year. Once I asked
6 to speak and once I was invited by a member to look at
7 proofs.

8 Q. Now, with respect to the time you asked to
9 speak, what did you speak about?

10 A. I spoke about the lawsuit.

11 Q. Okay. What did you say?

12 A. I explained where we were and I asked people
13 if they had considered involvement. And if they were
14 interested, they should speak to me.

15 Q. Where did you state the lawsuit was when you
16 spoke to that group of The Tattler?

17 A. I don't remember at the moment.

18 Q. You also stated that you asked people if they
19 had considered involvement. What was their response?

20 A. It was varied. Most -- I asked people who
21 were generally minors to talk to their parents about it.
22 And I think some were interested.

23 Q. Do you remember who stated they were
24 interested?

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1 Although I understand the parental
2 concern involved with these students
3 maintaining no involvement in this case,
4 again I believe that they are relevant, as
5 Mr. Ochshorn attempted to solicit them as
6 plaintiffs in this case, as well as the fact
7 that there is clearly no privilege at issue
8 here.

9 We will reserve this discovery
10 dispute to be resolved with the magistrate.

11 BY MR. QUESNEL:

12 Q. Mr. Ochshorn, could you provide me the
13 initials of those students you spoke to.

14 A. I spoke with everyone. You are interested in
15 the initials of people who expressed greater interest?

16 Q. Let me rephrase.

17 Could you please provide me the initials of
18 the minors who expressed interest in this lawsuit, in
19 becoming a plaintiff in this lawsuit?

20 A. JK and JO.

21 Q. And to the best of your knowledge, are JK and
22 JO currently students at the Ithaca City School District?

23 A. One is, one is not.

24 Q. What grade is the one who is a student?

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1 A. Junior.

2 Q. And the one that is not, have they since
3 graduated?

4 A. Yes.

5 Q. And are you aware if they are 18 years of age
6 or older?

7 A. I do not know at the moment.

8 Q. And you stated that -- excuse me, do you know
9 why they decided not to become plaintiffs in this lawsuit?

10 A. As I explained --

11 Q. Let me stop you. I want you to testify. I've
12 heard Mr. Schlather's version of why they didn't. But I
13 want you to tell me to the best of your understanding why
14 they decided not to be plaintiffs in the lawsuit.

15 A. All my information about their reasons not to
16 come from play because they expressed interest and
17 ability. But as best as I know, one of their parents had
18 some open concerns and blocked their entry to the case.

19 Q. So you never spoke with their parents?

20 A. I spoke with their parents at a meeting, but I
21 didn't speak to them after they had withdrawn support.

22 Q. And is this meeting you just mentioned, is
23 that the same meeting where you asked to speak and did
24 speak to The Tattler staff?

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1 A. No.

2 Q. Okay. What is this new meeting you are
3 referencing?

4 A. I guess I'm going to have to ask -- this was a
5 meeting with counsel present explaining.

6 Q. Was there anyone other than your attorney and
7 anyone other than one of the plaintiffs present?

8 A. I don't recall how many -- I don't recall
9 everyone who was there at the moment.

10 Q. Okay. Were one of the potential plaintiffs
11 present at that meeting?

12 A. Potential plaintiffs were present at that
13 meeting.

14 Q. Okay. No attorney-client privilege is going
15 to attach to any of these communications, so can you
16 please tell me what was discussed at that meeting?

17 A. Okay. Summarized the nature of the case.
18 Summarized prospects for the case. Likely time frames,
19 likely scenarios, likely costs to be incurred by
20 plaintiffs.

21 We discussed potential -- potential
22 retribution against those students possible from the
23 Ithaca City School District. And discussed concerns about
24 that.

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1 That's all can I remember at the moment.

2 Q. Who spoke at this meeting?

3 A. I was present. Ray was -- Ray Schlather was
4 present. Potential plaintiffs and their parents were
5 present.

6 I do not remember if there was anyone else
7 there at the moment.

8 Q. Who spoke at the meeting?

9 A. Everyone who attended the meeting spoke at the
10 meeting.

11 Q. Who discussed the nature of the case?

12 A. Ray led the meeting.

13 Q. Are you referring to your attorney,
14 Mr. Schlather?

15 A. Yes.

16 Q. What did Mr. Schlather say about the nature of
17 the case?

18 A. It was a First Amendment case. Concerned
19 censorship. That it was high school speech. That there
20 were two primary precedents in the Supreme Court case law,
21 Hazelwood, Kuhlmeier and the Tinker case. Explained both
22 cases and explained The Tattler's position in relation to
23 those two cases. And that the dispute between the
24 district laid primarily in resolving with The Tattler fit

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1 in between these two cases.

2 Q. Have you had an opportunity to fully respond
3 to my question?

4 A. Could you repeat that?

5 Q. I asked you a somewhat broad question about
6 what was said with respect to the nature of the case. I
7 just wanted to make sure you've had an opportunity to
8 fully respond.

9 A. I've had an opportunity to fully respond.

10 Q. You've also stated that the prospects of the
11 case were also discussed. Who spoke about the prospects
12 of the case?

13 A. My attorney.

14 Q. Mr. Schlather?

15 A. Yes.

16 Q. What did Mr. Schlather say about the prospects
17 of the case?

18 A. I don't remember at the moment.

19 Q. You also stated that you discussed the likely
20 time frame of the case. Not you, but someone spoke about
21 the likely time frame of the case. Who spoke about that
22 time frame?

23 A. Mr. Schlather.

24 Q. What did Mr. Schlather say about the time

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1 frame of the case?

2 A. I don't remember at the moment.

3 Q. You also stated that someone spoke about
4 likely scenarios of the case. Who spoke about likely
5 scenarios?

6 A. Mr. Schlather.

7 Q. What did Mr. Schlather say about likely
8 scenarios of the case?

9 A. The two obvious scenarios are settlement and
10 trial. I don't remember at the moment many specifics
11 about what things looked like exactly from that point of
12 time with regards to either of those scenarios.

13 Q. What did Mr. Schlather say with respect to
14 settlement of this case?

15 A. I don't remember at the moment.

16 Q. What did Mr. Schlather say with respect to the
17 trial of this case?

18 A. I don't remember at the moment.

19 Q. You also said that someone spoke about the
20 likely costs of this case. Who spoke about the likely
21 costs?

22 A. Mr. Schlather.

23 Q. What did Mr. Schlather say about the likely
24 costs of this case?

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1 A. Well, that if it went through trial, it would
2 likely -- he was representing us pro bono, but
3 out-of-pocket expenses like depositions, traveling costs,
4 sorts of other fees would likely add up to several
5 thousand dollars to be split among all of the plaintiffs.

6 Q. How did people respond to that?

7 A. I don't remember at the moment.

8 Q. Okay. And you also stated that potential
9 retribution was discussed at this meeting. Who spoke
10 about potential retribution?

11 A. It was a concern broached by some of the
12 parents in attendance.

13 Q. And would that be the parents of JK or JO,
14 since we are not stating their full names for the record
15 at this time?

16 A. Yes.

17 Q. What did the parents of JK say about potential
18 retribution? What concerns did they raise about potential
19 retribution?

20 A. They raised a number of concerns about their
21 children's college applications and graduation. And what
22 the Ithaca City School District might do.

23 Q. How about the parents of JO, what did they
24 express about retribution?

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1 A. You asked me before, I believe, about both of
2 them at once.

3 Q. No, I asked you specifically about JK first.
4 I can have it read back to you if you'd like.

5 MR. SCHLATHER: Is your answer --

6 A. My answer --

7 Q. Explain, does your answer apply to both or one
8 or the other?

9 A. My answer does not distinguish between the
10 parents of either. I don't remember which parents said
11 what at the moment.

12 Q. What was the result of that meeting?

13 MR. SCHLATHER: Objection to the
14 form.

15 Q. You can answer.

16 MR. SCHLATHER: If you understand
17 the question.

18 A. Could you rephrase it a little?

19 Q. Were the parents of any students other than JK
20 or JO at that meeting?

21 A. I don't remember any at the moment.

22 Q. Where was this meeting held?

23 A. At the office of Mr. Schlather.

24 Q. And when was this meeting held?

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1 A. I don't remember exactly.

2 Q. After the meeting was over, did the parents of
3 JK or JO agree to join this lawsuit?

4 MR. SCHLATHER: Don't speculate.

5 Just tell what you know.

6 A. I don't remember at the moment.

7 Q. Do you know whether JK and their parent and
8 guardian is currently a plaintiff in this lawsuit that
9 you've commenced?

10 A. JK and parent are not plaintiffs in this case.

11 Q. Do you know whether JO and their parent or
12 guardian is currently a plaintiff in the lawsuit that
13 you've commenced?

14 A. JO and JO's parent/guardian is not a party in
15 this case.

16 Q. Although we've mentioned the complaint that I
17 have containing the original caption, are there any
18 plaintiffs that are not listed on the caption that is in
19 Exhibit 4?

20 A. Who are plaintiffs?

21 Q. We have R.O., a minor, by his parent and
22 guardian Jonathan Ochshorn; T.S., a minor, by his parent
23 and guardian Mark E. Sorrells; Andrew M.H. Alexander;
24 Harry T. Stinson; L.F., a minor, by her parent and

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1 and we certainly had discussions.

2 (Whereupon a short break was taken)

3 (Whereupon Exhibit 6 was marked for
4 identification)

5 BY MR. QUESNEL:

6 Q. Mr. Ochshorn, I'm now handing you what has
7 been marked for identification as Defendants' Exhibit 6.
8 Do you recognize this?

9 A. Yes.

10 Q. What do you recognize it to be?

11 A. It seems to be the pen ultimate page of the
12 May 2004 issue of The Tattler.

13 Q. This is part of a -- one page of the May
14 200- --

15 A. Part of the page.

16 Q. -- 2004 Tattler?

17 A. Mm-mm.

18 Q. And specifically, there is a personal ad in
19 the bottom right-hand corner. Would you please read that
20 out loud.

21 A. Personales. 6'8" Hispanic male seeking
22 intimate relationship with class of 2005 presidente. Must
23 want to watch Teletubbies on sofa with me. Inquiries to
24 Box 5621 -- 50621.

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1 Q. Who wrote this personal ad?

2 A. It was e-mailed in anonymously to The
3 Tattler's e-mail address.

4 Q. And does The Tattler regularly publish
5 anonymous submission of personal ads at this time?

6 A. We had in the preceding months advertised for
7 personal ads for a section that the layout editor had
8 wanted to start. But this was the first and only
9 submission we received and the first and only personal ad
10 published.

11 Q. And the personal ad references a 6-foot tall,
12 8-inch Hispanic male. Do you know who that's referring
13 to?

14 A. The e-mail was attributed to an account
15 claiming to be from Pepe Enchilada Chalupa Gordita. This
16 is a name constructed based on Taco Bell sandwiches.

17 And all indication is that this Pepe
18 fictitious character is the 6'8" Hispanic male in question
19 and is not an actual person.

20 Q. In May of 2004, or the time period surrounding
21 May 2004, are you aware of any 6'8" tall Hispanic males
22 going to the Ithaca High School?

23 A. I'm not aware of any at the moment.

24 Q. And are you aware of who at the time was the

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1 class of 2005 president?

2 A. Matthew Colbert.

3 Q. And do you know Matthew Colbert?

4 A. I knew him. Other members of the staff knew
5 him better than I did.

6 Q. How did you know him?

7 A. It's a relatively small school. You know,
8 most people who were taking higher-level classes to some
9 level. He was also an elected official, so he was a very
10 public personality around the school. Everyone in the
11 class at least knew who he was.

12 Q. Is the Matthew Colbert male?

13 A. Yes.

14 Q. Did Matthew Colbert in the '03-'04 or '04-'05
15 school year submit any stories or editorials to The
16 Tattler?

17 A. He was a contributor to The Tattler.

18 Q. Okay. Was he a staff member?

19 A. We never formally -- we don't formally
20 distinguish between staff members and contributors in any
21 way. We have just the editorial editors and everyone
22 else.

23 Q. And the reference to Box 50621, what is that a
24 reference to, to the best of your knowledge?

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1 A. Nothing.

2 Q. Could you explain to me how this personal ad
3 ended up appearing in the newspaper?

4 A. Yes. It's a long, complicated story.

5 Started out with advertising for personal ads
6 in the paper. One came to The Tattler e-mail address and
7 was forwarded by news editor at the time -- no, he was
8 activities editor at the time, Andrew Alexander, who was
9 also a vice president of the class of 2005 and knew very
10 well and was very close with the class of 2005 president,
11 Matthew Colbert.

12 So he forwarded this message to Matthew
13 saying, look what we got, sort of funny. And Matthew
14 responded, and I've seen this issue enough that I can
15 quote directly his response, LOL, L-O-L, that's fucked up,
16 tell him I don't date men.

17 And the e-mail from Matt was either forwarded
18 or described by Andrew to our layout editor who, for some
19 reason, interpreted that Matt had seen it and thought it
20 was sort of funny to Matt, saying that he had approved it
21 in some way or acknowledged that it was going to be
22 printed in some way. Which he had never done. But our
23 layout editor understood the communications to mean that
24 Matthew Colbert had seen and approved for publication this

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1 message.

2 So then our layout editor told then
3 editor-in-chief Adrienne Claremont when we were wondering
4 what we had -- that Matt had seen and approved this. So
5 Adrienne understood Matthew Colbert as being part of this
6 sort of joke and so that was -- that was the context of
7 which students decided to print this.

8 On the back page, which is a page full of, you
9 know, fake horoscopes, mock advice column and a coolness
10 spectrum, placing this silly little thing on that page was
11 approved with the understanding by the editors that this
12 was content that had been seen and approved by all
13 characters who had existed and were mentioned. So that's
14 why we decided to print it.

15 Could you restate your question so I know if
16 I've answered it fully?

17 MR. QUESNEL: Could you read it
18 back?

19 (Whereupon the record was read back
20 by the reporter)

21 BY MR. QUESNEL:

22 A. I think I'll add a little more to that.

23 I imagine it would have been a follow-up
24 question, but this did not appear on the proofs of

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1 Q. Okay. Who raised concerns to you?

2 A. Administrator -- we had a couple issues with
3 the center spread. With our content in it, the disclosure
4 of Jarett Powers' name while other teachers' names had
5 been granted anonymity. And that was actually a mistake.
6 We had intended to get rid of all teachers' names and had
7 done most of it, but somehow missed this one.

8 So we talked to Jarett Powers individually and
9 said to him our apologies. But that was brought up -- I
10 guess -- I don't recall who -- which ones -- I don't
11 recall which administrators brought this up.

12 Q. Okay.

13 (Whereupon Exhibit 20 was marked for
14 identification)

15 BY MR. QUESNEL:

16 Q. Mr. Ochshorn, I'm handing you what has been
17 marked as Defendants' Exhibit 20 for identification.
18 Would you please review.

19 A. (Witness complies). It looks like proofs of
20 the paper.

21 MR. QUESNEL: That is a complete
22 set.

23 MR. SCHLATHER: Counsel, you are
24 representing this is a complete proof set to

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1 Ms. Vinch dated January 2005?

2 MR. QUESNEL: To the best of my
3 knowledge. I'm going to have Mr. Ochshorn
4 verify for me.

5 BY MR. QUESNEL:

6 A. Did you give me two identical copies of all of
7 this?

8 Q. Oh, I may have.

9 Does this appear to be a complete copy of what
10 you've previously referenced to be a proof set of an issue
11 of The Tattler being the proof set for the January 5th,
12 2005, Tattler?

13 A. Yeah. Proofs as in not the final copy of the
14 publication where we were at a specific moment -- there
15 are all sorts of little things, like insert page number
16 here, XXX. But we've been referring to them as proofs.

17 Q. The word on top, Vinch, would you understand
18 that to be a reference to Stephenie Vinch?

19 A. Yes.

20 Q. Do you know who would write Vinch on top of
21 the proof sheet?

22 A. Stephenie Vinch.

23 Q. Why would she write her last name on the top
24 of each page of this proof sheet?

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1 A. To distinguish it from the set of proofs that
2 are given to section editors, layout editor, myself. So
3 that if we have questions, we know who to bring them to
4 about comments on the page.

5 Q. Did Ms. Vinch during the period of time she
6 was a faculty advisor, to the best of your knowledge, did
7 she usually sign her name on the proof sheets she
8 reviewed?

9 A. I don't recall at the moment.

10 Q. And during the January 5th, 2005, issue of The
11 Tattler, its production, she was the faculty advisor?

12 A. She was faculty advisor in January, yes.

13 Q. I'll have you turn to page 11, please.

14 A. (Witness complies).

15 Q. The cartoon that is featured below the
16 features line, does that cartoon appear in the
17 January 5th, 2005, version of The Tattler we just
18 previously looked at as Defendants' Exhibit 17 -- excuse
19 me, January 18 -- Exhibit 18.

20 A. No.

21 Q. Who decided that that drawing would not appear
22 in there?

23 A. The decision made by -- ultimately by myself.

24 Q. Okay. Did you ever speak to Ms. Vinch why she