

**10th Judicial District, Treanor County,
STATE OF FORDHAM**

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Evan GALVEZ, :
 :
 : Plaintiff, : **DECISION**
 : **and**
 : **ORDER**
 :
 : v. :
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 : Civ. No. 06-01382
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 Katherine MILLER and :
 TREANOR COUNTY SCHOOL DISTRICT, :
 :
 :
 : Defendants. :
-----X

MASSEY, District J.:

STATEMENT OF THE FACTS

Social networking websites such as MySpace.comTM (“MySpace”), Friendster.comTM, Facebook.comTM, Xanga.comTM, and LiveJournal.comTM are only a few of the social websites that have made the internet both accessible and attractive to young people seeking a forum to express their views.¹ The success of these sites has been tremendous: MySpace, the most popular and biggest of these sites, recently boasted over seventy-five million registered users in the United States, with hundreds of thousands of new users registering every day.² MySpace has attracted negative publicity due to concerns that the predominantly young users³ are ignorant of the ramifications of having so much biographical information publicly available. Incidents in the

¹ Janet Kornblum, Teens Hang Out At MySpace: Web Is Now A Real Place to Socialize, USA Today, January 9, 2006.

² Hoover’s. (2006, Aug. 9). MySpace.com. Hoover’s In-Depth Company Records, retrieved September 1, 2006 from Westlaw.

³ The company’s Hoover report indicates that MySpace has gained popularity primarily with teens, and twenty- and thirty-somethings. Id.

national news regarding MySpace and its connections with online predators and “cyber-bullying” have many parents and educators worried about use of the site.⁴

MySpace users can customize almost everything about their profile. To become a registered user, an individual need only provide an email address and a name: after that, users may do as they like with their personal corners of the world wide web. The default MySpace privacy settings make a user’s profile accessible to the general public. Unless the user modifies this setting, other users can post comments that will be visible to any persons authorized to view the user’s profile, without the user’s prior consent or approval. MySpace users can, however, remove these comments from their profile, at the time of their next log-in. A MySpace profile asks users to provide their “Interests and Personality,” “Basic Info,” “Background & Lifestyle,” “Schools,” “Companies,” and “Networking.” Users can supply whatever (and however much) information they choose in these categories and many users leave certain categories blank. Although most MySpace users have pictures of themselves in the top left-hand corner of their profile, many users put iconic photographs, cartoons or other symbols in that location. MySpace users post on-line photo albums, links to music or favorite internet sites. The site prohibits libelous or lewd material but with so many users and visitors, MySpace depends on user and visitor cooperation to report and eradicate abuses.

Treanor County, located in the State of Fordham, has approximately 40,000 residents. Martella High School (“Martella High”), the public high school for Treanor County, has approximately 2,000 students enrolled in grades 9 through 12. In September, 2005, the Treanor County School District passed an Educational Protocol requiring all Treanor County public schools to install filters on school computers to block access to social networking sites. Nevertheless, the sites still generated controversy during the 2004-2005 school year when student disputes that

⁴ Janet Kornblum, Adults Question Its Safety, USA Today, January 9, 2006.

originated on the websites outside of school found their way into the classroom. Because of the observed increase in student disputes, due in part to student use of MySpace, the Martella High Guidance Department urged the school administration to investigate measures that might curb student use of MySpace for the upcoming school year.

On August 25, 2005, just before the September 5 start of the 2005-2006 academic term, the Martella High administration sent letters to its students' parents and guardians. In the letter, the Martella High administration encouraged parents and guardians to consult with their teens about appropriate uses of social networking sites like MySpace, and emphasized the emotional consequences of anonymous personal attacks, so often effected by these sites. The administration also informed parents and guardians that a Martella High faculty member would be appointed to occasionally monitor the sites and keep school administrators up to date on cyber-fights brewing amongst Martella High students. On August 26, Lauren Segura, Martella High's principal, appointed Katherine Miller, a veteran Martella High teacher, to monitor the MySpace site once the school year commenced.

Since 2004, the Daily Treanor, Treanor County's local newspaper, has published several articles on the nationwide controversies arising from MySpace. In light of the August 25 letter sent home to parents, Veronica Bernstein, a staff reporter for the Daily Treanor, wrote an article profiling Treanor County MySpace users of different ages for the September 5 edition. The article began with a short squib detailing the August 25 letter sent home by the Martella High administration and a general overview of MySpace. The article then introduced four Treanor County MySpace users. Jennifer Spillane, a thirty-year-old singer, touted MySpace's creative potential, explaining that through the site, she had been able to connect with a base of musicians outside the Treanor County area. The connection had produced a "virtual" collaboration that Spillane maintained would not

have been possible without MySpace. Omri Schmidt, a fifty-year-old plumber, discussed the ease with which he had been able to track down long-lost family members, as well as discover his inner-poet. Erika Newhouse, a nineteen-year-old college student, gleefully noted that it was a “really easy and great way to meet guys—oh, and other likeminded people.” Evan Galvez, a seventeen-year-old junior at Martella High, explained that he had been using MySpace for over a year and that it was a great place to “let loose.” Galvez also remarked that the site gave him an opportunity to practice and develop his website design skills, and to showcase his artistic endeavors. The Daily Treanor published the article on September 5, making Galvez a Martella High celebrity for having been interviewed and profiled in a front-page story.

During a free period on the first day of school, Katherine Miller logged onto her office computer for her first MySpace monitoring session. After finding the MySpace homepage, Miller limited the search to “MySpace.com” and typed “Martella” in the search field. This search produced over 3,000 results. Miller then added “Treanor County, Fordham” to the search field and began to recognize some Martella High students. The third profile she viewed was “Evan Galvez.” According to his profile, Galvez has been a registered MySpace user since 2004 and last updated his profile that morning (September 5). The “Background & Lifestyle” portion of Galvez’s profile tells users that he is single, from Treanor County, Fordham, attends Martella High, and is 5’9”. Under his “Interests & Personality,” Miller learned that Galvez likes books by Michael Crichton, dislikes asparagus and “when people make assumptions about [him],” had an “awesome time at Tommy’s on fri” and photography is his favorite class at Martella High. His profile has links to three on-line photo albums, but only the album entitled “Wears the Floods,” is instantly viewable on his profile; the other two are archived. The first picture in the “Wears the Floods” album shows Galvez between three other teenagers in cropped pants, none of whom Miller recognized as Martella High students.

All four teens are making the same unusual finger gesture. The next photograph is a black and white grainy portrait of someone who appears to be Galvez outside a QuikMart convenience store with his hands behind his back, head down, and a man in a dark but unidentifiable uniform standing behind him. (Hereinafter, “QuikMart photograph”). Knowing the Floods to be a notorious juvenile gang in Fordham, Miller jotted down on her notepad: “Evan Galvez—Floods gang, robbery arrest.” She then decided to post a comment on Galvez’s profile. After registering her Martella High faculty email address with MySpace, Miller wrote the following message:

Being a member of a gang is nothing to be proud of. Neither is being arrested for robbing a convenience store or suggesting violence against other students. Don’t think that your parents, your principal, and future employers won’t see this.

Galvez did not check his MySpace profile until the following day, September 6, after a friend informed him that someone had commented on his profile. When Galvez logged into his MySpace account, he saw Miller’s message on his publicly viewable profile, the only comment under “Evan Galvez’s Friend’s Comments.” He wrote on his MySpace blog:

I am not a Gang Member and am an artist. let’s band together against teachers and parents spying on us. protest protest protest this procedure. this is our space against assumptions misconceptions and TEACHERS.

Galvez’s blog posting was instantly viewable on his profile.

On September 8, Galvez’s employment at QuikMart was terminated. His supervisor, Dave Sprague, told him he had seen Galvez’s MySpace profile the prior day. Although Sprague stated that he believed Galvez was not a member of the Floods nor had an arrest record, he concluded that QuikMart could not afford to be associated with an individual who had a reputation in Treanor County as a criminal with a violent temperament. Galvez deleted Miller’s posting that evening, September 8.

Galvez filed this defamation action against Miller and Treanor County School District,⁵ alleging that Miller's posting defames him by stating that he is a member of a juvenile gang, has a criminal record, and has a violent and antagonistic temperament. Plaintiff argues that Miller's statements are defamatory per se. Defendants Miller and Treanor County School District argue that the post was not defamatory per se because it was an expression of Miller's opinion.

Defendants Miller and Treanor County School District have raised a public figure defense. The defendants argue that Galvez is a limited purpose public figure by virtue of his prominent role in the public debate concerning the use of MySpace by Treanor County public school students. If their defense is accepted, plaintiff Galvez must prove that Miller posted the statement with knowledge of the statement's falsity or in reckless disregard for the truth of the statement.

During discovery, Galvez produced evidence that his profile had been viewed over 15,000 times. It is undisputed that Galvez is not a member of the Floods gang and has never been arrested.

⁵ Treanor County School District is a party to this action because Katherine Miller in monitoring the site and making her posting was acting within the scope of her employment, therefore making the school district vicariously liable for any potential liability arising from the post.

DISCUSSION

I. EVAN GALVEZ WAS NOT A LIMITED PURPOSE PUBLIC FIGURE.

Katherine Miller and Treanor County School District (“Defendants”) urge this Court to find Evan Galvez (“Plaintiff”) to be a limited purpose public figure and therefore require Plaintiff to prove that Miller made an allegedly defamatory post with knowledge of its falsity. For the reasons set forth below, this Court declines defendants’ request and finds Galvez to be a private figure plaintiff.

A. The First Amendment and Defamation Law

In the state of Fordham, an individual is liable for defamation if he negligently publishes false and defamatory statements concerning another. See Fordham Civ. Code § 570. A statement is defamatory if it tends to injure the plaintiff in the “estimation of a considerable and respectable class in the [relevant] community.” Peck v. Tribune, 214 U.S. 185, 190 (1909). However, because the law of defamation overlaps with the First Amendment’s guarantee of freedom of speech, courts must balance the state’s interest in protecting its citizens’ reputations with the interests of the First Amendment. Gertz v. Robert Welch, Inc., 418 U.S. 323, 341 (1974); U.S. Const. amend. I.

The First Amendment forbids a public official plaintiff from recovering damages for a defamation relating to his official conduct unless the statement was made with constitutional malice (also known as actual malice), defined as knowledge of a statement’s falsity or reckless disregard for its truth. New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). The Supreme Court broadened the application of the constitutional malice standard to apply not only to public officials, but public figures as well. Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). The Court reasoned that because the constitutional malice standard serves “to free criticism of public officials from the restraints imposed by the common law of defamation,” Gertz, 418 U.S. at 164, although public

figures are not constrained by the same political processes demanded of public officials, they “often play an influential role in ordering society,” and should be subjected to the same standard. Butts, 388 U.S. at 164 (Warren, J. concurring in the result). The Court conceded that “[s]ome tension necessarily exists between the need for . . . [a] vigorous and uninhibited press and the legitimate interest in redressing wrongful injury,” but concluded that in cases involving public official or public figure plaintiffs, some level of falsity was preferable to a chilling effect on speech. Gertz, 418 U.S. at 342.

There are three types of “public figures”: the all-purpose public figure, the limited purpose public figure, and the involuntary public figure. See id., 418 U.S. at 345, 351. An all-purpose public figure is an individual who has “achieve[d] such pervasive fame or notoriety that [he] become[s] a public figure[] for all purposes and in all contexts.” Foretich v. Capital Cities/ABC, Inc., 37 F.3d 1541, 1551-52 (4th Cir. 1994). A limited purpose public figure, conversely, is a public figure with regard only to certain public controversies into which he has voluntarily injected himself, and is only a public figure “for a limited range of issues.” Id. at 1552. An involuntary public figure is one who “become[s] a public figure through no purposeful action of [his] own.” Id. at 1551. Whether, and for what purposes, an individual is a public figure is a matter of law for the court to decide. Waldbaum v. Fairchild Publ’ns, Inc., 627 F.2d 1287, 1294 n.12 (D.C. Cir. 1980), cert. denied, 101 S. Ct. 266 (1980).

The determination of a plaintiff’s public or private status is crucial to the plaintiff’s likelihood of prevailing on his defamation claim. If the plaintiff is a private person, as opposed to a “public figure,” the plaintiff must show only that the publisher made a defamatory statement to a third party where a reasonable person in the publisher’s shoes would not have. Fordham Civ. Code § 570. However, if a plaintiff is a public figure, the plaintiff must prove that the publisher made the

defamatory statements with constitutional or actual malice. New York Times Co. v. Sullivan, 376 U.S. 254 (1964). The constitutional malice standard is a very difficult one for a plaintiff to satisfy. Therefore, Galvez's claim is much less likely to succeed if he is found to be a public figure. Defendants do not claim that Galvez is an all-purpose public figure. This court acknowledges the Supreme Court's admonition that involuntary public figure status should be found only in "exceedingly rare" cases, Gertz 418 U.S. at 345, and therefore limits its discussion to whether Galvez has so injected himself into a public controversy as to be considered a limited purpose public figure.

The Supreme Court has not delineated any specific tests to determine what makes a plaintiff a limited purpose public figure. Lower courts have taken guidance from the Supreme Court's decisions in Gertz and Butts and have concluded that the proper inquiry is whether an individual has become engaged in a public controversy to such an extent that the state's interest in protecting the individual's reputation must be subordinated to the publisher's First Amendment right to free expression, without fear of liability for reasonable inaccuracies or misstatements. See Waldbaum, 627 F.2d 1287. Although courts uniformly require a public controversy for limited public figure status to apply, they have developed different tests to measure the extent of a plaintiff's participation in the controversy. This Court adopts the Fourth Circuit's test because it best balances the competing interests of the First Amendment with the interests in vindicating an individual's reputation.

B. Galvez is not a limited purpose public figure.

This Court holds that Galvez is not a limited purpose public figure because he did not voluntarily assume any role of special significance in the public controversy surrounding Treanor County MySpace users. Gertz and its progeny developed a two-part analysis to determine whether a

plaintiff was a private person or “limited purpose” public figure. The test examines whether (1) there was a “public controversy” that gave rise to the defamation, and (2) the nature and extent of the plaintiff’s participation in that controversy was sufficiently prominent that he should be deemed a public figure. Foretich, 37 F.3d at 1553. The debate in Treanor County over the appropriate use of MySpace and its social benefits and detriments was indeed a public controversy. However, Galvez did not voluntarily pursue any role of special prominence in this wide-reaching controversy. Therefore, he cannot be considered a public figure.

1. The use of MySpace was a public controversy in Treanor County.

Within the Treanor County community, the use of MySpace was a public controversy. A public controversy is “a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way.” Waldbaum, 627 F.2d at 1297. A controversy can be national, regional or local in scope for the purpose of determining whether the plaintiff was a public figure. Id. at 1295 n.22. In Treanor County, the several Daily Treanor articles from 2004 through 2005 profiling both the local and national use of MySpace, the August 28 letter from the Martella High administration expressing concerns over the use of MySpace, and considerable discussion among Treanor County citizens all support the finding that the citizens of Treanor County were engaged in a real dispute over the appropriate use of MySpace. Therefore, the controversy at bar was public.

2. The nature and extent of Galvez’s participation in the controversy are not substantial enough to warrant limited purpose public figure status.

Galvez is not a limited purpose public figure because his access to effective means of communication was no greater than that of an ordinary private citizen, his role in the public controversy was minimal, and his blog postings responding to Miller’s defamatory posting were privileged statements of self-defense. For a plaintiff to be labeled a public figure, he must have

voluntarily injected himself into the “vortex” of a public controversy such that a reasonable person viewing the plaintiff’s actions would conclude that the plaintiff would play, or would seek to play, a role in the resolution of the controversy. Gertz, 418 U.S. at 352; Waldbaum, 627 F.2d at 1298. To determine the nature and extent of a plaintiff’s involvement in a public controversy, courts look to such factors as (a) whether the plaintiff had access to means of effective communication, so that his views on the public controversy were equally “public,” (b) whether plaintiff voluntarily assumed a role of special prominence in the public controversy, (c) whether plaintiff sought to influence the outcome of the controversy, (d) whether the controversy existed prior to the allegedly defamatory statement, and (e) whether plaintiff retained public figure status at the time of the publication of the defamatory statement. Foretich 37 F.3d at 1556. Courts do not need to consider all five elements of the test if one or more is sufficient to resolve the issue. Id. (holding that where the court found that the plaintiffs had not voluntarily assumed roles of special prominence in a public controversy, consideration of the other elements was unnecessary). Galvez’s participation in the controversy was limited to maintaining his own MySpace profile, the few comments he made to the Daily Treanor about his use of MySpace, and his blog postings denying gang membership and an arrest record. Therefore, the first three elements sufficiently indicate that Galvez is not a limited purpose public figure, and it is unnecessary to consider the remaining two.

(a) Access to Means of Effective Communication

Galvez’s access to effective means of communication was no greater than an ordinary private citizen’s, militating against a finding that he is a limited purpose public figure. “Effective means of communication” is typically understood as media access. Hutchinson v. Proxmire, 443 U.S. 111, 135-36 (1979) (holding that the recipient of federal research funding was not a limited purpose public figure where plaintiff’s access to the media was not “regular and continuing access”, because

regular and continuing media access is “one of the accouterments of having become a public figure”). The Gertz decision indicated that access to channels of effective communication was primarily relevant because it afforded public figures “a more realistic opportunity to counteract false statements than private individuals.” Gertz, 418 U.S. at 344. Galvez’s single interview with the Daily Treanor did not afford him heightened access to the media. Further, Galvez’s maintenance of a profile on a popular social networking website gives him no greater access to effective communication than the seventy-five million other MySpace users.

(b) Voluntary Assumption of a Role of Special Prominence

Galvez’s conduct does not endow him with a role of special prominence or establish that he “voluntarily” injected himself into this public controversy. Galvez was only brought into the vortex of the public controversy by the actions of defendants. See Foretich, 37 F.3d 1541, 1557-58 (stating that plaintiffs were only injected into the “public eye” as a result of extraordinary attacks on plaintiff’s reputation). Although he was a MySpace user prior to the publication of the Daily Treanor article, Galvez was only one of millions of other MySpace users and only one of four to be interviewed for the Bernstein article on Treanor County MySpace users. In Time, Inc. v. Firestone, a prominent socialite was held not to be a public figure even though she held numerous press conferences during her divorce proceedings. 424 U.S. 448 (1976). Even in Gertz, a plaintiff who voluntarily took on a case that was guaranteed to have heightened media attention was still found to be a private figure plaintiff. 418 U.S. at 323. Here, Galvez was interviewed in a single article in a local newspaper and maintained a profile that he had created a year before. Therefore, his conduct does not suggest that he assumed a role of special prominence or voluntarily injected himself into the public controversy.

(c) Attempts to Influence the Outcome of the Controversy

Galvez's September 6 blog post was a defensive reply to Miller's post and not an attempt to influence the outcome of the controversy. Where a party reasonably and proportionately responds to a reputational attack, such responses are not statements intended to influence the outcome of the controversy. Foretich, 37 F.3d at 1558-59. Galvez's blog posting is appropriately characterized as a reasonable public reply to Miller's accusations of serious criminal misconduct. His statement, "I am not a Gang Member and am an artist," was an attempt by plaintiff to salvage his reputation within the Treanor County community and not a statement intended to resolve the controversy. His other statement, "this is our space against assumptions misconceptions and TEACHERS," supports this interpretation, in that Galvez is suggesting that Miller misinterpreted his profile and made incorrect assumptions about his "artwork." Galvez's blog posting was proportional because it did not reach a wider audience than Miller's post on his MySpace profile and was directly responsive to the charges leveled against him.

Galvez's additional comments, asking other students to protest the Martella High practice of monitoring MySpace, do not constitute an attempt to influence the outcome of the controversy. Galvez never took any substantial action to galvanize the student body. The context of the statements is most reasonably read as an angry victim of defamation firing back at his accuser and critiquing the administration that had mandated the monitoring practice. Further, Galvez's blog did not contain any language regarding the use of MySpace by Treanor County citizens. His statements merely attacked Martella High's monitoring program, thereby addressing a dispute narrower than the public controversy at bar. Therefore, Galvez was not attempting to influence the outcome of this public controversy.

II. MILLER’S POSTING ON GALVEZ’S MYSPACE PROFILE IS DEFAMATORY PER SE.

Having found the limited purpose public figure defense to be without merit, this Court must next determine whether defendants Miller and Treanor County School District are liable for defamation. In the state of Fordham, a plaintiff must prove that a defendant has negligently or unreasonably published a false and defamatory statement concerning plaintiff to a third party, and plaintiff was injured by the publication. See Fordham Civ. Code § 570. There is no dispute that Plaintiff has been injured by the posting or that Miller’s post was published to third parties. Therefore, this Court need only examine whether Miller’s post was false and defamatory concerning Plaintiff. Plaintiff argues that Miller’s post, “[b]eing a member of a gang is nothing to be proud of. Neither is being arrested for robbing a convenience store or suggesting violence against other students,” implies that he is a member of the Floods, has a criminal record and is an instigator of violence, and is therefore defamatory per se under Fordham Civ. Code § 571. As set forth below, this Court agrees.

A. The posting was “of and concerning” plaintiff Evan Galvez.

The defendants argue that the defamatory statements in the posting did not refer explicitly to Galvez and were merely statements expressing Miller’s disapproval of Martella High students becoming involved in criminal activity or violence. Because defamatory statements must be read in context to ascertain their defamatory meaning and effect, this court rejects defendants’ argument. In Peck v. Tribune Co., 214 U.S. 185, 190 (1909), a picture of plaintiff was placed in an advertisement extolling the medical benefits of whiskey. The Court found that the advertisement defamed plaintiff, even though the name ascribed to the image was not plaintiff’s name. Id. at 188. The Court held that reasonable persons would believe the advertisement was “of and concerning” plaintiff Peck and

defamed her by attributing to her an affinity for liquor. Id. at 188-89. Likewise, the spatial context of Miller’s post on Galvez’s profile would lead a reasonable person to conclude that her statements were about Galvez specifically. Therefore, Miller’s post was of and concerning Galvez.

B. The posting was defamatory because it imputed specific criminal conduct and an arrest to plaintiff Galvez.

Four categories of words constitute libel per se in most jurisdictions: (1) words imputing the commission of a criminal offense, (see Fordham Civ. Code § 571), (2) words imputing a loathsome communicable disease, causing the victim’s exclusion from society, (3) words imputing incompetence or “want of integrity” in the victim’s profession, and (4) words prejudicing the victim in his profession. Lowe, 534 N.E.2d at 552. One result of labeling something libel per se is that, with respect to such statements, the plaintiff is presumed to have been injured, so he is excused from providing proof of injury at trial. Fordham Civ. Code § 571. This Court finds Miller’s statements to constitute libel per se because the statements fit squarely in category (1), implying that Galvez has committed a crime, punishable in the state of Fordham. Here, Miller imputed to Galvez robbery and association with a violent gang, both accusations of criminal conduct and offenses signifying moral turpitude, which also serves as a basis for libel per se under Fordham Civ. Code § 571.

Miller’s post on Galvez’s profile both implies that Galvez robbed a convenience store and suggests that he endorses criminal behavior. Even though Miller did not specifically state that Galvez committed robbery or was a gang member, her suggestions are sufficient to render the post capable of defamatory meaning. In Lowe, the defendant newspaper had published an article that suggested plaintiff, an automobile reposessor, had attempted to steal a car from a local couple. 534 N.E.2d at 551. The article was entitled, “Would-be repo man draws blank,” and included language indicating the plaintiff had threatened the couple with a razor. Id. The court held that the article was

incapable of innocent, non-defamatory construction, and, considered in context, implied that the plaintiff had committed or attempted to commit theft. Id. at 553. The court noted that although the article never explicitly accused plaintiff of stealing, the language used by the newspaper “clearly implied that plaintiff was something other than a legitimate automobile repossessor.” Id. The court also rejected the defendant’s contention that the use of “apparently,” “nearly,” and “appeared,” warned the reader that the author’s statements were unproved assertions of facts. Id. The court concluded that the article was libelous per se because it imputed criminal activity to the plaintiff. Id. at 553. Likewise, a reasonable reader of Miller’s post would understand the post to confirm Galvez’s criminality, by imputing gang membership and an arrest record to him. Galvez had posted personal photographs open to a number of different interpretations on his MySpace profile. However, just like the plaintiff in Lowe, Galvez’s conduct was lawful, yet misinterpreted by defendant. Therefore, the fact that Miller’s post was not explicit does not absolve her of liability for defamation.

Further, a reasonable person viewing Galvez’s MySpace profile and the spatial positioning of Miller’s post, directly underneath the photographs, would assume that Miller was accusing Galvez of gang membership and of having been arrested for robbery, and not merely expressing her opinion of his behavior. In Hale v. City of Billings, the Supreme Court of Montana held that the police department’s list entitled “Most Wanted” “fugitives,” which included plaintiff’s name and picture, as well as stating that plaintiff “may be armed and dangerous,” could not constitute protected opinion. 986 P.2d 413 (Mont. 1999). The court held that “the term ‘armed and dangerous,’ although qualified with ‘may be,’ nevertheless implies to viewers that there are undisclosed, potentially defamatory facts upon which the opinion is based.” Id. at 419-20. Here, Miller argues that her statements merely demonstrate her disgust with conduct she perceived to be glorified on Galvez’s MySpace

profile. However, a reasonable person viewing the profile would believe that Miller knew of additional, undisclosed facts suggesting that Galvez had committed a robbery.

Because the Court finds the defendants liable for libel per se, the court need not reach the issue of whether there would be liability and damages if the statements did not constitute libel per se.

CONCLUSION

Based on the foregoing, it is therefore ORDERED as follows:

1. Galvez is not a limited purpose public figure and is entitled to an award of damages on his defamation claim against Miller and the Treanor County School District.
2. Miller's post on Galvez's MySpace profile was defamatory as libel per se.

SO ORDERED AND ENTERED.

Dated: September 1, 2006.

/s/ J. Massey
MASSEY, J.

**Court of Appeals,
STATE OF FORDHAM**

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Katherine MILLER and, :
TREANOR COUNTY SCHOOL DISTRICT, :
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Petitioners, : **DECISION**
 : **and**
 : **ORDER**
v. :
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 : Civ. No. 06-977
Evan GALVEZ, :
 :
Respondent. :
 :
-----X
Before Ibanez-Vasquez, Rhodes, and Somekh, Circuit Judges,

SOMEKH, C.J.:

This is an appeal from the 10th Judicial District of the State of Fordham ruling that (1) Evan Galvez (“Respondent”) is not a limited purpose public figure for his defamation action against Katherine Miller and the Treanor County School District (“Petitioners”), and (2) Petitioner Miller’s post on Galvez’s MySpace profile was defamatory as libel per se. For the reasons discussed below, we REVERSE both rulings of the District Court.

STATEMENT OF THE FACTS

The Statement of the Facts are set forth in Judge Massey’s district court opinion. We will not repeat them here.

DISCUSSION

I. EVAN GALVEZ IS A LIMITED PURPOSE PUBLIC FIGURE.

Under the District of Columbia Circuit’s Waldbaum test, we find Evan Galvez to be a limited purpose public figure. The District Court’s choice of the Fourth Circuit’s Foretich test is inappropriate for disposition of these facts. We further find that the public controversy is properly

defined as the use of MySpace by Treanor County public high school students and not the Treanor County community at large. Because Galvez chose to post information about himself on MySpace and be interviewed for a local paper concerning that use during a time where there was debate in Treanor County about student use of MySpace, he voluntarily injected himself into the public controversy and assumed the risk that certain information on his profile would be misinterpreted. Finally, Miller's post was relevant to Galvez's participation in the public controversy. Therefore, we find Galvez to be a limited purpose public figure and, in order to prevail, must prove that Miller posted her statement with actual malice.

- A. The Waldbaum test is the appropriate test to determine limited purpose public figure status because it furthers the First Amendment's interest in free speech by lowering the threshold required to find a limited purpose public figure.

We choose to apply the less stringent Waldbaum test to resolve questions of limited purpose public figure status. Under the Waldbaum test, a plaintiff is a limited purpose public figure if (1) the controversy at issue is public (people are discussing it and people other than the immediate participants are likely to feel the impact of its resolution), (2) the plaintiff has more than a trivial or tangential role in the controversy (plaintiff must purposely try to influence the outcome of the of the controversy), and (3) the alleged defamation is germane to plaintiff's participation in the controversy. Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287, 1296-98 (D.C. Cir. 1980). The Foretich test too narrowly defines limited purpose public figure, thereby inadequately protecting the First Amendment interest in free expression. Although the tests are similar, the Waldbaum test does not require that a plaintiff voluntarily pursue a role of special prominence in the public controversy. Therefore, the Waldbaum test better serves the interest of free and robust public debate.

- B. The controversy was public and encompassed the use of MySpace by Treanor County public high school students.

This Court agrees with the district court that there was a public controversy, and finds that it existed before Miller's post on Galvez's MySpace profile. A public controversy is "a real dispute, the outcome of which affects the general public or some identifiable segment of the public in an appreciable way." Hibdon v. Grabowski, 195 S.W.3d 48, 59 (Ct. App. Tenn. 2006). Additionally, a public controversy must exist prior to the alleged defamatory comments, since "no branch of the government . . . should be able to set society's agenda for public debate." Id. at 60. The district court incorrectly defined the controversy as "the use of MySpace [in Treanor County]." The appropriate controversy is limited to the use of MySpace by Treanor County public high school students. The controversy developed in the 2004-2005 school year, and intensified on August 25, when Lauren Segura, the Martella High principal, sent home a letter about MySpace and other similar sites informing parents of school monitoring of these sites. This letter prompted Bernstein to write an article profiling MySpace use, which was published by the Daily Treanor on the first day of school at Martella High. Therefore, the public controversy in dispute was the use of MySpace by Treanor County public school students, not the use of MySpace by all Treanor County citizens.

C. Galvez's participation in the public controversy was more than trivial or tangential.

The front-page Daily Treanor article featuring Galvez, coupled with his maintenance of a MySpace profile, demonstrates that his participation in the public controversy was greater than an ordinary MySpace user. Courts have held that participating in media interviews can satisfy this requirement. See Atlanta Journal-Constitution v. Jewell, 555 S.E.2d 175 (Ga. Ct. App. 2002); see also Finkelstein v. Albany Herald Publishing Co., Inc., 392 S.E.2d 559, 561-62 (Ga. Ct. App. 2003) (holding plaintiff, a lawyer, to be a public figure where he had been the subject of a single newspaper article reporting his accusations of a local district attorney's lack of professionalism). In Jewell, the court held that because the plaintiff had voluntarily participated in the public controversy

of the 1996 Atlanta Olympic Park bombing by granting several media interviews regarding the bombing and the Park's safety, he could be considered a public figure regarding the media frenzy surrounding the subsequent investigation into his culpability in the bombing. 555 S.E.2d at 184-85. Here, Galvez's participation in the front-page article made him a celebrity within the halls of Martella High, having been the only high school student profiled in the story. This interview with the Daily Treanor is significant because the article began by detailing the letter sent home to Martella High parents and guardians about student use of MySpace. Therefore, Galvez's comments as a student at Martella High, in contrast to the other citizens profiled in the article, assumed superior significance in the controversy over student MySpace use.

Further, Galvez welcomed the public to view his site and peruse his musings: his privacy settings allowed visitors to view his entire profile without requiring MySpace membership, and he maintained a blog where he urged other students to protest the Martella High practice of monitoring student profiles. He cannot now claim that he is a private person because someone disliked or misinterpreted materials put forth on his profile.

Moreover, Galvez was able to adequately counteract the reputational damage done by Miller's posting. The availability and effectiveness of self-help remedies for any victim of defamation are important factors underlying the public figure analysis. Gertz v. Robert Welch, Inc., 418 U.S. 323, 344 (1974). Here, anyone viewing Galvez's profile would have seen not only Miller's defamatory statements, but also Galvez's blog which responded to Miller's comments. Thus, Galvez was capable of defending his reputation in a meaningful way by posting his reply on the very forum where the alleged defamatory statement was made. See Hibdon v. Grabowski, 195 S.W.3d 48, 62 (Ct. App. Tenn. 2006) (finding that the plaintiff had adequate access to counterspeech by posting

comments in the same sports news group where the original defamatory statements appeared). Therefore, Galvez's participation in this public controversy was significant.

D. Miller's posting on Galvez's profile was germane to his involvement in the public controversy.

Miller's posting on Galvez's MySpace profile was relevant to his participation in the public controversy of the use of MySpace by Treanor County public school students. A defamatory statement must be relevant or "germane" to the plaintiff's involvement in the public controversy. Waldbaum, 627 F.2d at 1298 ("Misstatements wholly unrelated to the controversy . . . do not receive [constitutional malice] protection."). A defamatory publication is "germane" to a public controversy if it assists the public in measuring the plaintiff's credibility. Jewell, 555 S.E.2d at 185. In Jewell, the court held that the allegedly defamatory publications regarding plaintiff Jewell's "aberrant" character were germane to his participation in the controversy surrounding the safety of Olympic Park. Id. at 185-86. Similarly, Miller's post on Galvez's MySpace profile was relevant to Galvez's involvement in the MySpace controversy. Her comment addressed precisely the behavior that prompted the controversy surrounding Treanor County public students' MySpace use, namely that Miller perceived Galvez's profile to encourage student-on-student violence. Therefore, Miller's post was directly related to Galvez's participation in the public controversy.

II. MILLER’S POST ON GALVEZ’S MYSPACE PROFILE FALLS SHORT OF THE ACTUAL MALICE STANDARD AND THEREFORE THERE IS NO PER SE LIABILITY FOR LIBEL.

Having found Evan Galvez to be a limited purpose public figure, he must prove with convincing clarity that Miller acted with constitutional malice, or knowledge of falsity, by posting allegedly defamatory statements on his MySpace profile. We find that Galvez cannot, as a matter of law, prove that Miller’s statements were published with constitutional malice.

A. Miller’s post on Galvez’s MySpace profile merely expresses her opinion and is not an actionable basis for a defamation claim.

Although there is not express constitutional protection for statements of opinion, the Supreme Court has held that to be actionable, a statement must be “sufficiently factual to be susceptible of being proved true or false.” Milkovich v. Lorain Journal Co., 497 U.S. 1, 21 (1990). A court must also examine “the statements themselves to determine whether they are too imprecise” to be interpreted as making factual assertions. Henry v. Halliburton, 690 S.W.2d 775, 789 (Mo. 1985). We find that the statements included in Miller’s post were not defamatory assertions of fact but merely expressions of Miller’s opinions concerning Galvez’s MySpace profile.

Miller’s post is an opinion and not a statement implying defamatory facts. Where charges of criminal conduct are at issue, a court must examine whether the statements contain accusations of a crime or whether “the assertion . . . only suggest[s] to the ordinary reader that the defendant disagrees with the plaintiff’s conduct and used pejorative statements or vituperative language to indicate his or her disapproval.” Henry, 690 S.W.2d 788-89. Here, Miller’s statements merely expressed disapproval at what she perceived to be a glorification of violence and crime. See, e.g., Henry, 690 S.W.2d at 789 (holding that allegedly defamatory statements of the plaintiff as a “crook” and “fraud” were non-actionable statements of opinion where the statements occurred in the context

of the publisher expressing his disapproval of certain practices performed by the plaintiff).

Additionally, Miller's final admonition, "[d]on't think that your parents, your principal, and future employers won't see this," suggests that Miller was warning Galvez that his profile could be easily misinterpreted. Therefore, because Miller's post can only be reasonably interpreted as stating Miller's opinions and not as implying any defamatory facts, the statements are non-actionable in defamation as a matter of law.

- B. Even if Miller's post on Galvez's MySpace profile can be viewed as implying defamatory facts, her conduct in publishing it did not rise to the level of actual malice because her comments were a result of a rational interpretation of the "Wears the Floods" and "QuikMart" photographs.

Because this Court has ruled that Galvez is a limited purpose public figure, he is required to prove that Miller's post was made with knowledge of the statement's falsity. Galvez cannot prove as much here. "Constitutional malice" requires the plaintiff to prove that the defendant entertained serious doubts as to the truth of her publication or acted with a "high degree of awareness of probable falsity" in publishing the statement. Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 510 (1991).

Miller's posting was not made with constitutional or actual malice. In the context of defamatory statements arising from misinterpretation, there can be no constitutional malice where the defamatory statement was a result of the publisher's rational interpretation of an ambiguous document or photograph. Masson, 501 U.S. at 519 ("The protection for rational interpretation serves First Amendment principles by allowing an author the interpretive license that is necessary when relying upon ambiguous sources."). For example, in Cibenko v. Worth Publishers, Inc., a Sociology textbook featured a picture of the plaintiff, a police officer, handcuffing an African American. 510 F. Supp. 761, 764 (D.N.J. 1981). Under the photograph, the caption read:

The social status of the offender seems to be the most significant determinant of whether a person will be arrested and convicted for an offense and of the kind of penalty that will be applied. In this picture, a police officer is preventing a black male from falling asleep in a public place. Would the officer be likely to do the same if the "offender" were a well-dressed, middle-aged white person?

Id. at 764. The court held that the caption did not defame the plaintiff because it merely phrased a rhetorical question for educational purposes as to what appeared to be happening in the photograph.

Id. at 765. Further, the court held that even if the statements were understood as innuendo, implying that the plaintiff was racist, because the plaintiff was a public official, there contained no false assertion of fact to satisfy the actual malice standard. Id.

Likewise, Miller's posting does not satisfy the constitutional malice standard. A rational person could interpret the ambiguous photograph of Galvez in the parking lot, coupled with his allusions to gang affiliation, to be indicative of criminal involvement. The post was merely Miller's rational interpretation of the photographs. At best, the posting was an innuendo that Galvez participated in the criminal activity which Miller disparaged. Further, even if the statements arguably constitute libel per se, because this Court has ruled that Galvez is a limited purpose public figure, he must prove that Miller's post was made with knowledge of its falsity. He has failed to do so here.

CONCLUSION

Based on the forgoing, it is therefore ORDERED that:

1. The district court's order finding Galvez to be a private figure plaintiff is REVERSED. We find Galvez to be a limited purpose public figure.
2. The district court's finding of liability is REVERSED.

We further find that Galvez's defamation claim fails as a matter of law because he has not carried his burden of proving that Miller posted the statements with knowledge of their falsity.

SO ORDERED AND ENTERED.

Dated: September 28, 2006.

/s/ J. Somekh
SOMEKH, J.

SUPREME COURT OF THE UNITED STATES OF AMERICA

-----X		
Evan GALVEZ,	:	
	:	
Petitioner,	:	DECISION
	:	and
v.	:	ORDER
	:	
	:	Civ. No. 06-0921
	:	
Katherine MILLER and	:	
TREANOR COUNTY SCHOOL DISTRICT,	:	
	:	
	:	
Respondents.	:	
-----X		

ON PETITION FOR A WRIT OF CERTIORARI to the Supreme Court of the United States of America, No. 06-0921.

ON CONSIDERATION of the Petition for a Writ of Certiorari herein to the Supreme Court of the United States of America.

IT IS SO ORDERED by this Court that the said Petition be, and the same is hereby granted in order that this Court may consider the following questions raised by the parties:

1. Whether Petitioner Evan Galvez is a limited purpose public figure; and
2. Whether Petitioner is entitled to recover on his defamation claim against Katherine Miller and Treanor County School District (“Respondents”).

Dated: October 6, 2006

/s/
Blanka Lewkowicz, Clerk

APPENDIX I
Table of Authorities

CASES

New York Times Co. v. Sullivan, 376 U.S. 254 (1964)

Peck v. Tribune Co., 214 U.S. 185 (1909)

ISSUE ONE

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967)

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974)

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Time, Inc. v. Firestone, 424 U.S. 448 (1976)

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Lowe v. Rockford Newspaper, Inc., 534 N.E.2d 549 (App. Ct. Ill. 1989)

STATUTES

United States Constitution, amendment I.

Fordham Civ. Code §§ 570, 571 (2000).

ARTICLES

Hoover's. (2005, Aug. 9). MySpace.com. Hoover's In-Depth Company Records, retrieved September 12, 2005 from Westlaw.

Janet Kornblum, Teens Hang Out At MySpace: Web Is Now A Real Place to Socialize. USA Today. January 9, 2006.

Janet Kornblum, Adults Question Its Safety. USA Today. January 9, 2006.

APPENDIX II

U.S. Const. amend I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX III

Fordham Civil Code, 2000.

§ 570. Defamation:

An individual will be liable for defamation where an individual negligently publishes a false and unprivileged statement concerning another to a third party, that subjects the individual to hatred, ridicule, obloquy, or causes other persons to refrain from dealing with him. Defamation can be effected by either libel (written defamation) or slander (verbal defamation).

§ 571. Libel per se:

One who publishes a defamation that imputes to another conduct constituting a criminal offense is subject to liability to the other if the offense imputed is of a type which, if committed in the place of publication, would be

- (a) punishable by imprisonment in a state or federal institution, or
- (b) regarded by public opinion as involving moral turpitude.

If plaintiff establishes that the defamatory statement was libelous *per se*, plaintiff is exempt from proving injury at trial.

APPENDIX IV

Hoover's In-Depth Company Records
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August 9, 2006

MySpace.com

Overview

Don't want people getting all up in your space? Then maybe you shouldn't join MySpace.com. The social networking site was created in the fall of 2003 by Tom Anderson and Chris DeWolfe (CEO), as a looser, music-driven version of Friendster. MySpace quickly surpassed Friendster -- its membership of mostly teens and twenty- and thirty-somethings has grown to some 75 million users, making it the eighth-most popular Web property in April of 2006. In 2005 News Corp. paid \$580 million to buy the site's parent company, Intermix Media, which operates as a part of Fox Interactive Media.

News Corp. is working on transforming MySpace.com from a social-networking site into a full-featured, advertising-supported portal that competes with Yahoo! and Apple's iTunes. Along these lines it has announced plans to offer episodes of its FOX drama 24 available for download on MySpace.com. In 2006 MySpace formed an agreement with Google in which the search giant will provide the search listings for MySpace.com.

APPENDIX V

1/9/06 USA TODAY 01D
2006 WLNR 455658

USA Today (USA)
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January 9, 2006

Section: LIFE

Teens hang out at MySpace

Janet Kornblum

Shanda Edstrom can't stop herself.

Every day -- pretty much no matter where she is -- she's just gotta go to MySpace.

Her friends are there. Her former high school classmates hang out there. Heck, these days it seems like every teen and twentysomething in the USA is there.

"I'm on it every day for like two hours at a minimum," says Edstrom, 18, of Clackamas, Ore., who works at a Kinko's in Portland. "It's just crazy."

Forget the mall. Forget the movies. Forget school. Forget even AOL. If you're a teen in America today, the place to be is the social networking site MySpace, which has virtually exploded in the past few months.

Google just named it the top gainer for 2005, and, in only two years, MySpace has shot from zero to 47.3 million members, say founders Chris DeWolfe, 39, and Tom Anderson, 29. They launched MySpace in January 2004. In July Rupert Murdoch's News Corp. bought MySpace for \$580 million, but DeWolfe and Anderson still are CEO and president.

"This site caught us by surprise," says Pete Blackshaw of market researcher Intelliseek. "I honestly was flabbergasted by the numbers."

For those who didn't grow up with the Internet, it might seem strange to think of a website as an actual place. But for people like Edstrom and Michael Edwards, a high school senior from San Diego who can't remember when there was no Internet, cyberspace is a real place, even if the entry gates come in the form of a PC.

And at least these days, a teen's MySpace page is not just a home in that place, it's actually who he is online.

"Your page is like your personality," Edwards, 17, says.

Judging from his, Edwards is a hip guy who is as much into music as he is into his family. (Two of his 10 pictures are family shots.) He likes open-minded and cool people but not nerds and liars. And he really likes Hilary Duff. He plays a song Ode to Hilary Duff on his page.

What do people do on MySpace?

They redecorate their pages, adding new pictures (often sexy). They spruce up their surroundings with new colors, backgrounds and images. Serious MySpace users brag about knowing a thing or two about HTML coding. They

write poetry and put up their own art. They write about themselves.

They play music for friends and post music videos. Some are from well-known artists. Many are from virtual unknowns.

MySpace is fast becoming an avenue for musicians to reach out directly to fans and become stars.

Wired magazine recently featured the band Hawthorne Heights, which became a success after signing up with MySpace. And MySpace recently started its own record label with Hollywood Undead, a rap band that launched on MySpace in June and now has developed a MySpace following of 111,000 "friends" -- people who have joined their network.

Edwards is so into MySpace that he and fellow high school senior Joyce Pace, 18, recorded an ode to MySpace-- rewritten lyrics to the Black Eyed Peas' song My Humps -- and posted it on the site.

"Whatchu gonna do with all them friends, all them friends that's on your page," the song begins. "I'm m-m-m-m- make them comment, make them comment on MySpace, MySpace... OMG (Oh My God) it's MySpace."

Then there's the purely social part of it: Instead of the antiquated teen ritual of talking on the phone for hours, MySpace members spend hour upon hour sending each other instant messages and short messages called bulletins.

But mostly what they do is cruise, big time, wandering from page to page in a tangled network that allows people to create links to one another's pages by naming each other a "friend."

The process of finding new friends -- often complete strangers -- is called "friending." And for many teens, it's the glue that makes them stick with MySpace.

"Teens are narcissistic and exhibitionist," says Anastasia Goodstein, who publishes online news and commentary site Ypulse, about Generation Y. "For teens, especially, who are going through this stage where they're constantly looking for that affirmation and validation and response for everything they are, it's just addictive."

Right place at the right time

MySpace users are often measured by the status of their friends, in the same way high school students are judged by whom they hang out with in the halls.

MySpace says James Katz, a professor of communications at Rutgers University, "is the kind of place that in earlier generations, kids dreamed about -- where they could go and be with their friends, meet new people with similar tastes and find out what's cool, what's hot and what's not."

Of course, MySpace isn't the only place for teens to hang out online. Other sites, such as the social site Facebook, aimed at college students, and blogging sites LiveJournal and Xanga, also are popular.

But thanks to its easy-to-use tools, and being at the right place at the right time, MySpace is by far the most popular, says Peter Klaus, a marketing strategist with Fleishman-Hillard.

Web measurement company comScore Media Metrix ranked MySpace the 18th-most-visited site on the Web for November. When measured by the number of pages viewed, MySpace came in fourth, ahead of eBay and Google.

Supported through ads, MySpace is free to users, who are mostly ages 14 to 34. Membership is growing by 5 million a month, according to MySpace's numbers.

In addition to the record label, MySpace is expanding offline with local event planning -- including large-scale concerts and festivals -- and plans to bring MySpace to mobile devices and satellite radio.

Numbers aside, for hard evidence of MySpace's popularity, walk in on any teen using a PC with unrestricted

Internet access and you're likely to see the chaotic world of MySpace splashed across the screen. Or turn on a popular radio station and hear the disc jockeys talk about MySpace.

It's now replacing the ritual of giving out phone numbers or even e-mail addresses.

"MySpace has gotten to the point where instead of 'What is your phone number?' it's like 'What is your MySpace profile?'" Edwards says. "Like every single person has one. It's like 'Oh, what's your MySpace page?'"

Too popular?

Pace, Edwards' song partner, says she remembers when only the hippest were on MySpace.

"Now that it's gone all mainstream, it's kind of weird," she says. "A lot of people get profiles because they feel obligated to have one. Like 'Everybody in my class has a MySpace, so I should get one, too.'" But having a MySpace profile is still OK, even if it has caught on, she says.

"It's cool in a sense, because it does help you stay connected with people who you don't really talk to, especially if they live far away."

Edstrom, who also models on the side and posts provocative pictures of herself, says MySpace has totally changed her social life.

"I go to parties and a lot of people recognize me from MySpace," she says. "Which is weird. 'Hey, you're MySpace girl.' I've gotten a lot more friends from it.

"I wasn't the popular girl in high school. And now it's like when I see those people, they know me because they know me from my MySpace. They're more inclined to talk to me than they would be just seeing me on the street."

APPENDIX VI

1/9/06 USA TODAY 02D
2006 WLNR 455627

USA Today (USA)
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January 9, 2006

Section: LIFE

Adults question its safety

Janet Kornblum

As MySpace booms in popularity among teens, it also is drawing the wrath of parents and school officials who are concerned about the off-color nature of some pages and the safety of young users who give too much information about themselves.

Many schools have blocked MySpace so students can't access it from school computers. And at least one private school, Pope John XXIII High School in Sparta, N.J., recently made headlines when it told students that they could face suspension for using the site even off campus.

"Parents aren't happy," says Internet safety expert Parry Aftab. "Schools are unhappy."

Aftab, of the non-profit group WiredSafety, began advising MySpace after parents complained about the site, worried that their kids' pages were too explicit and gave out too much personal information.

Aftab says she gets about 1,000 e-mail messages a day from parents who are upset about the site.

A simple scan of MySpace pages clearly shows that four-letter words and sexy pictures are standard features on most pages. And there's no question that kids divulge personal information online. Though MySpace specifically prohibits anyone under 14 from joining, younger teens often lie about their ages.

MySpace tries to educate its users about online safety. It also regularly monitors users' pages and removes photos that contain nudity and hate icons -- although sexually explicit pictures sometimes get through. And profanity is the norm. If the site discovers that users are under 14, it will kick them off.

Aftab says parents should focus on safety.

Though Internet sex crimes represent only 1% to 2% of all sex crimes against children, the danger is real and likely growing because of the Internet's increasing popularity, says David Finkelhor, director of the Crimes against Children Research Center at the University of New Hampshire.

Internet predators almost always are older men who correspond extensively with victims (75% of them young teenage girls) before meeting them, Finkelhor says.

But simply telling kids not to post personal information and to refrain from meeting strangers may not be enough. Parents should teach teens that relationships with adults are both illegal and doomed to failure, he says.

More safety tips are posted on MySpace and at WiredSafety.org.