

*A Defamation Victory for Florida Coastal? No way.*

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Could Florida Coastal or any other law school win a defamation suit against *The New York Times* for its Oct. 24 editorial? The answer is almost certainly not for the following reasons.

First, a defamatory statement has to be “of and concerning” the plaintiff, and the courts have held that general comments about a large group cannot be taken as referring to any specific member of the group. So a non-profit law school that viewed itself as implicated in the editorial’s claim that “a majority of American law schools” are engaged in a “scam” would not be able to establish that this statement was “of and concerning” it.

The country’s six for-profit law schools would fare better since they are among a smaller, more defined group of schools that was specifically mentioned in the editorial (and Florida Coastal was mentioned by name). But these schools (along with non-profit law schools) are likely limited public figures when it comes to the debate about admissions standards, tuition rates, student loans, bar passage rates, and job placement rates. Through their web sites, marketing brochures, admissions outreach, fundraising, and statements to the media they regularly try to influence public opinion about the quality of their education and the value of their degree. Moreover, the type of business they are engaged in – educating lawyers – implicates the public interest, and courts have been especially willing to find that such businesses are limited public figures.

Because they are limited public figures, the schools would have to establish that the *Times* knew that its statements were false or acted with reckless disregard as to their falsity. So which statements in the editorial were potentially false? There are three. First, the *Times* stated that according to the Law School Admission Council (LSAC), students scoring in the bottom quartile on the LSAT “are unlikely to ever pass the bar exam.” Second, the *Times* stated that “most of Florida Coastal’s students are leaving law school with a degree they can’t use, bought with a debt they can’t repay.” And finally, the *Times* stated that Florida Coastal was engaged in a “scam.”

It is unclear whether any of these statements are provably false. The statement about bar passage rates appears to be technically false since the LSAC never said what the *Times* reported, but there is truth in the larger claim that a very low LSAT score correlates with bar exam failure, at least on the first try. (And in any event, this statement is likely not defamatory on its own.) The statement about debt repayment is also questionable, since there is evidence that Florida Coastal’s default rate in the past has been lower than many other schools’. But because the *Times* referred both to students entering in 2013 and graduating in 2014, its statement about repaying debt could be viewed as a prediction of future events that is not provably false. Finally, its claim that Florida Coastal is engaged in a “scam” is likely an opinion or rhetorical hyperbole that is not actionable under defamation law.

But even if some of these statements are partially or completely false, a plaintiff would have to show that the *Times* knew they were false or entertained serious doubts about whether they were true. This is a subjective standard that is incredibly difficult to meet. The failure of the *Times* to fact-check its assertions would not be enough to establish liability. There would have to be evidence that the editors themselves questioned the veracity of their statements but went ahead and published them anyway. And the fact that the *Times* was likely relying on a report by Law School Transparency, a widely-cited advocacy group, would make it even harder for a plaintiff to meet this standard.

Finally, aside from these doctrinal intricacies, I find it highly implausible that a court would hold the *Times* liable for an editorial that is no different from numerous pieces of commentary published and broadcast each day across the country. If this *Times* editorial is actionable, then commentary and opinion about a host of other businesses – such as investment banks, insurance companies, drug makers, hospitals, tobacco

companies, automobile manufacturers, search engines, telecommunications companies, and airlines – could be the basis for successful defamation suits. The media is not perfect, and it is frustrating when it makes overbroad generalizations or jumps to ill-informed conclusions. But a timid and passive media that is too worried about lawsuits to investigate and comment on the affairs of major industries would be far worse.