

# CIVIL DISCOURSE

*Alaska Association of School Boards Conference 2016*

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**FAULKNER BANFIELD**  
A PROFESSIONAL CORPORATION

# WHERE IS THE LEGAL LINE?

- **GENERALLY NOT CRIMINAL**
  - **UNLESS INCLUDES THREAT OF VIOLENCE**
- **IF NOT CRIMINAL, VICTIM HAS TO SUE FOR DAMAGES**



# WHERE IS THE LEGAL LINE?

- OPINIONS (INCLUDING INSULTS) ALLOWED UNLESS
  - WILDLY OUTRAGEOUS
  - OBSCENITY
  - THREATS OR CALLS FOR VIOLENCE



# WHERE IS THE LEGAL LINE?

- **UNTRUE FACT STATEMENTS**
  - **IF ABOUT A PUBLIC FIGURE, MUST HAVE REASON TO KNOW IT'S A LIE**
  - **IF ABOUT A PRIVATE FIGURE, NEGLIGENCE OR RECKLESS**



# WHERE IS THE LEGAL LINE?

- **IF THE LIE IS ABOUT YOUR SERVICE ON THE SCHOOL BOARD...**

**YOU ARE A PUBLIC FIGURE!**



# WHERE IS THE LEGAL LINE?

- **ALSO:**
  - **LIE TOLD TO OTHERS**
  - **LIE DAMAGES YOUR REPUTATION**
    - **IN SOME CASES, THIS IS ASSUMED**
    - **IN SOME CASES, YOU WILL HAVE TO PROVE IT**

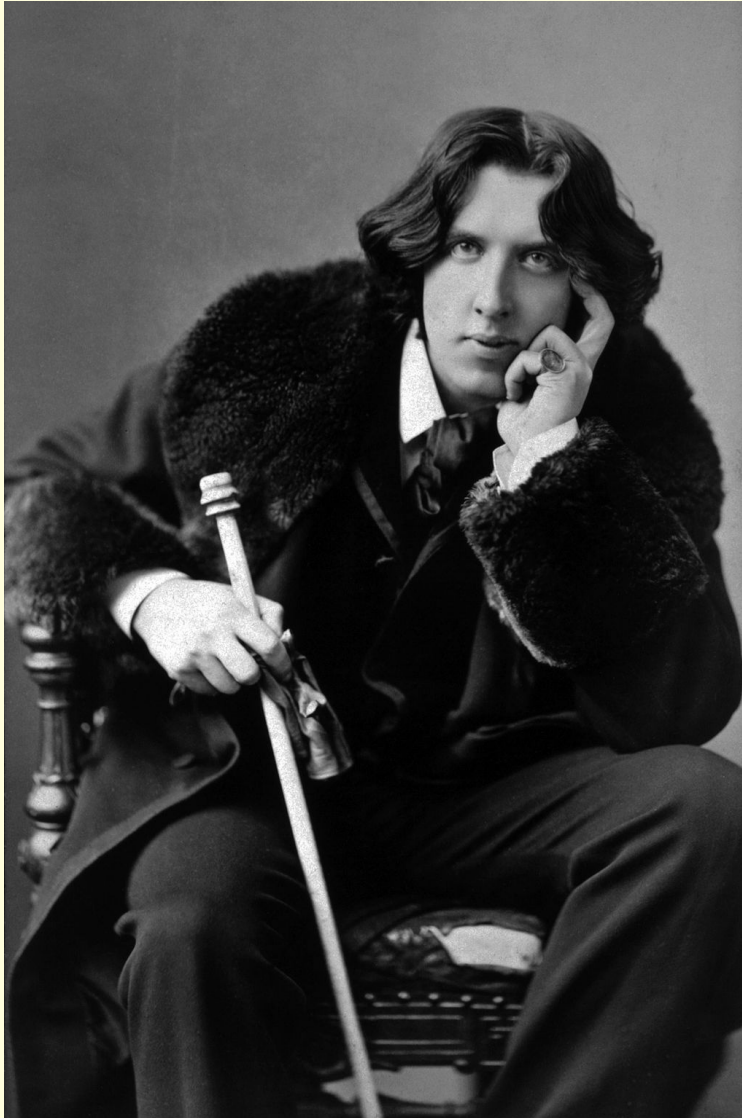


# WHERE IS THE LEGAL LINE?

- IN SOME UNUSUAL CASES, PUBLISHING SOMETHING *TRUE* CAN BE ACTIONABLE
  - “HIGHLY OFFENSIVE”  
INVASION OF PRIVACY
  - NOT OF “LEGITIMATE CONCERN TO THE PUBLIC”



# WHY VICTIMS SELDOM SUE





# PREVENTATIVE MEASURES

- **VIEWPOINT NEUTRAL RULES**
- **EXECUTIVE SESSION WHEN REPUTATION AT STAKE**
- **AVOID SOCIAL MEDIA WITH ANONYMOUS COMMENTS**
- **DON'T REPEAT UNLIKELY FACTUAL RUMORS**



# PREVENTATIVE MEASURES

**BUT DON'T BE AFRAID TO  
GIVE HONEST OPINIONS OR  
STATE FACTS YOU HAVE  
REASON TO BELIEVE ARE  
TRUE**



# *QUESTIONS?*

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