

## HEAD OF THE CLASS

### Marc Zitomer gets straight A's from his school district clients

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by Hank Bordowitz

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You know the character Nelson Muntz on *The Simpsons*? The schoolyard bully who punctuates his pranks with a satisfied “Ha ha!”? Imagine him with a laptop. That’s the type of character Marc Zitomer deals with all the time.

“Cyber-bullying is a big issue for us,” says Zitomer. “We had a situation that involved a student who created a ‘Vote for the ugliest girl in the eighth grade contest.’ It caused a real ruckus.”

Such controversies keep Zitomer busy. “Representing a school district is like representing a city, and all the issues that go along with it — from personnel issues, to litigation issues, to contract issues, to corporate law issues,” he says. “School districts are constantly being sued, for a variety of things.”

The “ugliest girl in the eighth grade” contest pointed to one of the key challenges that Zitomer faces — how to draw a line between a student’s First Amendment rights and the policies of the school. Could the district discipline a student for something that was done off-campus? “The law is generally that the school district can discipline a student for off-campus conduct if it’s going to cause substantial material disruption to the school environment,” he explains. “The student was directed to take down his Web site, which he did. He was disciplined for it. The district took a strong stand against it, and nobody ultimately challenged what the board did.”

At 36, Zitomer is one of the firm’s youngest partners. “When I was a first-year student in law school at Seton Hall, my father happened to be the president of the Union County Regional High School District Board of Education,” he says. “This firm represented his school district at the time, so my father knew different partners here. At the time, the job market for lawyers was very, very tough, especially for a first-year law school student. I volunteered here as an intern and I’ve been here ever since.”

Some years later his father, also an attorney, joined the firm. Burton Zitomer leads the transactional/construction law department. “I like to tell people I got him the job,” says the younger Zitomer.

And the father is certainly thrilled to get the chance to work every day with his son. “It’s a privilege that few parents really get to do on a professional level,” he says. “I’ve been very fortunate to work with him. It’s a source of great pride to see how he has grown as a professional and as a person.”

The rise of information technology, particularly the Internet, has created a growing number of issues for school districts. The New Jersey School Boards Association invited Zitomer to lecture on the topic at the 2001 New Jersey School Board Convention.

“The Internet has really changed the dynamic of schools,” he says. “We want to use it as an education tool in school, yet at the same time curtail what students have access to because it’s not meant for entertainment while they’re at school. It’s meant for education. So when the Internet first really grew in schools, we were asked to develop policies for the Boards of Education on acceptable Internet use, and contracts, if you will, that parents and students were required to sign, expressing their understanding that the use of the Internet in schools is a privilege and not a right.

“Kids are trying to do things in schools they couldn’t necessarily do at home, because there’s less of a watchdog in terms of parents. It’s a little bit more anonymous — nobody can catch them — in terms of some of the things they do in school, when you have 25 computers in a room, versus one sitting in a bedroom somewhere.”

Zitomer is careful not to tread on the freedom of expression of students. “Most kids probably don’t realize they do have constitutional rights,” he says. “It stems from a 1969 case called *Tinker v. Des Moines Independent Community School District*, where the students wore the black armbands to protest the Vietnam War, and the school district disciplined them because they were afraid of the disruption it might cause. The Supreme Court said that undifferentiated fear of disruption is not enough. It’s got to be something more concrete than that. And the court is famous for the quote that students don’t shed their constitutional rights at the schoolhouse gates.

“School districts constantly have to wrestle with the First Amendment rights of students, whether it be free-speech rights or what T-shirts kids can wear to school. There’s been case law about students wearing T-shirts that school districts have tried to ban.”

While he has not had to deal with a T-shirt case specifically, he has had to address other sartorial situations, most recently one that involved teachers wearing black to protest administration decisions, as well as the question of where or when an educator can appropriately state a position (in the form of a button or pin) on clothing.

“I get called by superintendents from time to time questioning student attire, like outfits that might show midriff or very high skirts,” he says. “The district has a lot of authority to deal with these issues. New Jersey law actually permits school districts to mandate a uniform if they want to, but I know of none that have. The regulations call for a public hearing with the parents involved. It’s a whole process.”

Yet another important question in these days of growing classrooms and shrinking budgets is where students should attend school. “Not everybody lives in the typical Leave It to Beaver-like situation,” he says. “You have families that are divorced, people

who own multiple homes, nontraditional families. School districts in New Jersey have become overcrowded, so the districts are now looking at this and saying, 'We need to address the kids who have the legal right to be here.' So they hire attorneys to deal with these issues of figuring out where students legally have a right to attend school. When they free up a classroom seat, districts save a great amount of money. In New Jersey, it costs \$10,000 a year to educate a child. Special education students cost more like \$50,000 to \$100,000 a year. The numbers speak for themselves. It's never a question about whether the student should be educated, it's a matter of where the student should be educated."

In his job Zitomer gets a firsthand view of how things have changed in the years since he left the ranks of the public school system. Columbine led to a revolution in the way schools teach students to deal with each other.

"Schools really focus now on character development," he says, "and building self esteem, respect and dignity for other students. We never had any of that when I was in school. When I was in school — and it wasn't that long ago — bullying and harassment, and kids beating each other up on the playground was just accepted. It was known as kids play, and that's the way kids were. 'Let 'em kick the God-knows-what out of each other.' That is no longer acceptable."

Zitomer spends many evenings a week at school board meetings. Being a father of two young sons helps him empathize with the problems that are discussed.

"I hear parents come to the microphone expressing their concerns about a variety of different issues that impact schools, and now that I'm a parent, I sit there and take off my lawyer hat and say, 'Hmm. This is an interesting issue,'" he says. "It's forcing me to think of things as a parent, not necessarily as a lawyer, which I think is a good thing. I take education very seriously from a legal perspective, and now I'm starting to take it seriously from a parental perspective. I think it's made me a more well-rounded attorney."

Zitomer spends so many evenings attending meetings that he doesn't see his kids as much as he'd like. "I try to make up for it by being Super Dad during the weekends," he says. It's a dilemma common to any working parent. And it points to the roots of many of the problems Zitomer witnesses during a workday.

"A lot of parents rely on the schools to raise their kids, so to speak, because a lot of them work long hours. And I think there's maybe some guilt factor on the part of parents," he says. "They feel that, 'Hey, look, I don't spend a lot of time with my kids, so when I do, I really don't want to spend a lot of time disciplining them, and reprimanding them, and teaching them right from wrong. Let the school deal with that issue.' And certainly it's part of a school district's responsibility. They do stand in loco parentis for a child when they're in school. But the parents have to be part of the team. And if they're not, school districts can only do so much."

But whatever they can do, Zitomer will make sure they do it.