

Credibility emerges as an issue for both attorney Jeff Herman and plaintiff Michael Egan III, but their responses to pending motions to dismiss are yet to come -- as are the legal moves in a teen sex case brought by Herman on behalf of a different plaintiff.

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Saying "all right, now Mr. Herman, we are having a little credibility problem here," an Oregon federal judge in 1997 took the unusual step of permanently barring attorney **Jeffrey Herman** and a colleague from appearing in his courtroom, *The Hollywood Reporter* has learned.

Herman is the lawyer who represents **Michael Egan III** in four teen sexual abuse suits against **Bryan Singer**, **Gary Goddard**, **David Neuman** and **Garth Ancier**, and an anonymous British actor in a fifth such suit against Singer and Goddard. All defendants have denied the allegations.

The Oregon judge reiterated his ruling the following year. The sanctions ruling against Herman and an associate, **Stuart Mermelstein** -- now a senior attorney at Herman's firm -- stemmed from Herman's claim to have misunderstood when a court order took effect and Mermelstein's assertion that their client had been thwarted in its attempt to comply with the order. The Oregon judge found those to be "frivolous arguments and misrepresentations" and said Herman's claim was made in bad faith.

The 9th Circuit Court of Appeals [affirmed the ruling](#) by a 2-1 decision in 2000, saying "[w]e cannot disagree" that Herman lacked credibility and adding that his conduct was "highly reckless at best."

### **STORY: Bryan Singer Sex Abuse Case: The Troubling History Behind the Accusations**

Contacted by *THR*, Herman's media director referenced the dissenting opinion in the Court of Appeals. There, the judge said, "There is every reason to believe that Mr. Herman had an honest misunderstanding, and no substantial basis in the record for the proposition that he was lying [and] for Mr. Mermelstein, I can see no basis whatsoever for the harsh sanctions imposed on him."

In a separate incident less than a decade later, the Florida Supreme Court suspended Herman from the practice of law altogether for 18 months for actions adverse to a client and "engage[ing] in conduct involving dishonesty [or] deceit," as *THR* [reported](#) in April. Suspension is rare and is effectively the second-most harsh discipline a court can impose, shy of disbarment.

Asked by *THR* last month if the Florida ruling affected his credibility, Herman said: "It's a good thing I'm not testifying. If I was, I'd certainly bring it up." He conceded the incident might affect the perception of his credibility, but added, "This [Egan sexual abuse] case isn't about me."

But the case -- or, rather, four cases -- are in part about Egan's credibility, and that has emerged as a key issue in recent weeks. Singer, Goddard and Neuman have all filed motions to dismiss, quoting from Egan's own sworn deposition from 2003 to demonstrate that the defendants never abused him and were never with him in Hawaii, where some of the activity is alleged to have taken place.

That deposition was taken in the course of a 2000 sex abuse lawsuit that Egan filed against three founders of the now-defunct Digital Entertainment Network (DEN). In one passage, Egan says he'd "never had any trips outside the continental U.S." with the 2000 defendants, apparently contradicting assertions in the 2014 suit that he went on trips to Hawaii in groups that included both the 2000 defendants and the 2014 defendants.

In another passage, Egan says in response to a question about "this thing that happened to you" that no one other than the 2000 defendants had been "partaking in all this stuff."

Neuman's motion also cites a separate 2003 sworn declaration in which Egan said he'd "never had any kind of physical contact" with Neuman other than nonsexual social contact and that Neuman "never acted improperly." Meanwhile, Goddard's filing included over 300 pages of receipts, theater and movie ticket stubs, and handwritten calendar pages to document his absence from Hawaii during the three-month time period at issue. Singer's declaration said that he too had extensive documentation of his presence in Toronto, Los Angeles and New England during that period, but he did not include it with his submission.

In response to Neuman's motion to dismiss, Herman said: "Mike maintains that he was in Hawaii with the defendants, and his mother maintains that she spoke to [2000 suit defendant] **Chad Shackley** and authorized him to take Mike to Hawaii on at least two occasions."

In response to the Singer motion, Herman said, "I do have a response, but I am restricted in that I can only talk about what is in the court record. Many of the things being reported are being taken out of context, or you're only hearing one side of the story. At the appropriate time and in the appropriate venue, we will respond."

Herman has previously claimed to have witnesses who will place the defendants in Hawaii, but he has not yet filed his response to the motions to dismiss. The legal basis for the motions is that if the Los Angeles-based defendants weren't on the island committing wrongful acts at the time alleged, the Hawaii court has no jurisdiction over them.

Ancier has not yet filed a motion to dismiss, though one is expected.

Still another factor that has raised eyebrows is that Egan's 2000 lawsuit covered much the same time period and some of the same geography as the 2014 suit, yet the prior suit did not name or even mention

the 2014 defendants -- one of whom (Neuman) was, like the 2000 defendants, a top DEN executive. Neither Herman nor Egan's prior counsel, **Daniel Cheren**, have ever offered an explanation of the omission, despite Herman having publicly promised some weeks ago to obtain one.

## **STORY: Gary Goddard Files Motion to Dismiss Sex Abuse Case, Includes 300 Pages of Evidence**

Singer's and Goddard's motions reserve the right to seek sanctions, while Neuman has already served a sanctions motion. A hearing is set for July 28 in Hawaii federal court on the motions to dismiss.

Ultimately, Judge **Susan Oki Mollway** has wide discretion in how to handle the motions: If she opts to decide them by simply reading the declarations and attachments, the legal burden of proof on Egan is quite light. Thus, seemingly, if he declares that he was indeed in Hawaii with the 2014 defendants, that might suffice notwithstanding his apparently contradictory 2003 statements and Goddard's voluminous evidence. The suit would then move forward and ultimately at trial, a higher and more balanced standard of proof would apply: the "preponderance of the evidence" standard.

But the stark contrast between those statements and the new lawsuit, coupled with the at times white hot publicity that Herman has sought and obtained in the case, may lead the judge to resolve the jurisdictional matter more decisively, even if that inevitably means treading into an early resolution of the case itself.

If Mollway goes in this direction, she could order discovery -- depositions, written questions and exchange of documents -- on the issue of jurisdiction and could even demand that the witnesses appear before her in open court and tell their apparently conflicting stories while she looks them in the eye. The preponderance of the evidence standard applies under such a procedure, just as it does in a full-blown trial. Such a hearing would be unusual, but not beyond the judge's power, and might be the only way to reliably determine whether Egan and the defendants were on Oahu in 1999.

Meanwhile, Singer and Goddard have yet to file a response to the suit [brought by Herman](#) on May 3 in Los Angeles federal court on behalf of "John Doe 117," the anonymous British actor, although those responses will probably come soon. That suit too raises jurisdictional questions, because although it was filed where the defendants live, the alleged conduct took place over the Internet or in London -- and at least some of what happened in London appears to have been legal there, where the age of consent, as in two-thirds of U.S. states (but not California), is 16.

Doe alleges in his suit that Goddard contacted him via social media in 2003 when he was 14, had nude webcam sessions with him; and later lay in bed naked with him when he was 15, and had sex with him in London when he was 16. Later, says the suit, Singer had sex with -- and attempted to rape -- the then-17-year-old plaintiff at a *Superman* after-party in a London hotel room, with Goddard summoning a "large,

muscle-bound man" who smacked the teenager around to overcome his resistance.

At a press conference held two days after bringing the suit, Herman displayed photos that he said showed the plaintiff as a teenager with the two defendants at the premiere party. Later that day, photos surfaced on a website that showed the same individual (or, at least, a similar individual wearing an identical green striped shirt) on the red carpet with what appear to be Goddard and friends of Singer, with Singer nearby, at the London premiere for *Superman Returns*, which had its UK bow July 13, 2006. In all the photos, though, the asserted teenager's face was blacked out for anonymity.

## **STORY: Lawyer for New Bryan Singer Accuser Shows Photos, Says He Has Physical Evidence**

Also displayed at the press conference was an email that purports to be from Goddard, with the subject line stating "the closest thing I have to a 'naughty' shot of you." The text of the email reads: "Haha -- it's not all that naughty because you wouldn't let me take any of you showing even a bit of your bum" and included was a picture of the subject wearing just a towel. A final photo showed a card dated Sept. 5, 2004, that says "Here's your Hershey's surprise box!" and apparently accompanied a box of chocolate. According to Herman, the card was signed "Love Gary," although in viewing the image, this is not completely clear.

Herman also said the plaintiff still had the envelope in which his premiere ticket was enclosed along with souvenir gifts from the premiere, such as a *Superman* bracelet.

The lawsuit asserts that the California age of consent, 18, should apply because Singer and Goddard allegedly formulated sexual plans regarding the teen while in California, even though he was in England. That's a legal contention that Singer's and Goddard's lawyers are likely to dispute. In addition, the federal age of consent, also 18, assertedly applies to travel from the U.S. for sexual purposes. Even so, the defendants' lawyers will presumably argue that the trip was a premiere junket, not sex tourism, and therefore there was no violation even if sex occurred. Both Singer's and Goddard's lawyers have issued blanket denials in any case.

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