



June 8, 2010

Dr. Charles Brown
Senior Vice President for Student Affairs
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431
VIA FACSIMILE AND U.S. MAIL

Dear Dr. Brown,

The Student Press Law Center is a nonprofit organization that provides legal resources in support of the student media at schools and colleges nationwide. We have worked many times with adviser Michael Koretzky and with the editors and staff of the *University Press* at Florida Atlantic University, and we are concerned over reports that the university is attempting to control – under threat of discipline – the interaction between the editors of the newspaper and Mr. Koretzky, even off-campus on personal time.

As we understand it, Editor-in-Chief Karla Bowsher has been told that, since Mr. Koretzky's discharge, she and her fellow *University Press* staff may no longer meet with Mr. Koretzky – even on their own time – for the purpose of receiving journalism advisement. Without getting into the substantial constitutional issues that would be raised by attempting to enforce such a directive, it is both legally and educationally unsound for a public university to interject itself into core matters of newsroom editorial judgment such as this one. If journalists at the *University Press* wish to have their work critiqued by Mr. Koretzky, by a professional journalist at the *Sun-Sentinel*, or by an attorney from the Student Press Law Center, that is their absolute right. They should be congratulated – not threatened – for seeking input from a more experienced reviewer.

Our overriding concern is that your students are able to work in a climate in which they can perform the watchdog function to which an editorially independent press is essential. Any implication that the university can restrict with whom the students consult in gathering and reporting news creates an intimidating climate that stifles fundamental press freedoms.

Part of the misunderstanding about the university's ability to control the way *University Press* editors do their jobs stems from the misclassification of the editors as "employees" of FAU. From our many years of experience in working with student publications around the country, we can tell you that it is not standard practice for the editors of student publications to be classified as college "employees," for just

this very reason. The potential for college administrators to abuse their supervisory authority to control discretionary decisions made by the editors is simply too great in an employer/employee relationship.

If it is necessary to create some type of structure in order to compensate the editors of the *University Press*, then the relationship should be one of independent contractor and not employee. The critical legal distinction is that, in an independent contractor relationship, the client does not purport to control the manner or method in which services are performed. This legal structure would more accurately capture the nature of the relationship between a university and the editor of a student publication. (Additionally, an independent contractor structure would be far more protective of the interests of FAU. It is our experience that the editors of college student newspapers work vastly more hours than they are paid for, and classifying them as "employees" raises serious wage-and-hour issues that would not exist in an independent contractor relationship.)

The Student Press Law Center would be pleased to be a resource in helping FAU put together an independent contractor agreement tailored to your needs that would protect the editorial independence of the *University Press* and minimize the risk of future conflicts.

We hope that the FAU administration will declare unequivocally that student journalists are free to meet and talk with anyone of their choosing in the course of their work. We also hope that you will put in place more protective policies to guard against university interference in newsroom decisions in the future, especially as you go forward with the hiring of a permanent, full-time adviser – a hiring decision that the journalism and legal communities will be closely watching.

Sincerely yours,



Frank D. LoMonte, Esq.
Executive Director
Student Press Law Center

cc: Audra K. Lazarus, Esq., FAU Associate General Counsel
Marti Harvey, Director of Student Media