



April 12, 2012

Catherine C. Scroggs, Vice Chancellor for Student Affairs
University of Missouri
110 Jesse Hall
Columbia, MO 65211
VIA FACSIMILE AND U.S. MAIL

Dear Vice Chancellor Scroggs,

I am writing to ask that you intercede, immediately and decisively, to terminate any disciplinary investigation of former student editors Abby Spudich and Travis Cornejo by the Office of Student Conduct based on their involvement in the “April Fool’s” parody version of *The Maneater* newspaper, the publication of which was an act of legally protected First Amendment expression.

My organization, the Student Press Law Center, advocates for the rights of student journalists. We do not “represent” *The Maneater* or its editors as counsel. We are writing out of concern for the rights of all student journalists to be free from retaliatory action for their journalistic work.

As we understand the facts, former *Maneater* editors Spudich and Cornejo have been summoned for a “pre-disciplinary” meeting with the Office of Student Conduct, for purposes of assessing whether to initiate formal disciplinary proceedings under the Standards of Conduct of the University of Missouri. We understand that Ms. Spudich and Mr. Cornejo have been told that attendance at these meetings is compulsory. Consequently, the meetings cannot be characterized as mere informal conversations, but rather must be seen as a stage (albeit a preliminary stage) of the campus disciplinary process.

While undoubtedly offensive to some readers, the content of the parody newspaper indisputably was within the boundaries of the First Amendment. At the college level, student journalists have, at a bare minimum, the level of First Amendment protection vouchsafed by the Supreme Court in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). Under *Tinker*, content-based punishment of speech is permissible only in the rare event that the speech incites unlawful or substantially disruptive activity, or is itself unlawful (*i.e.*, legally obscene). Nothing in the *Maneater* parody edition even remotely approaches the *Tinker* threshold. Accordingly, punishment of the speech will not withstand constitutional scrutiny.

Of all institutions, the University of Missouri should be the last university in America to need reminding that even highly offensive speech is constitutionally protected against disciplinary sanction. In *Papish v. University of Missouri Curators*,

410 U.S. 667 (1973), the Supreme Court overturned your university's disciplinary expulsion of a journalism student who was punished under a rule against "indecent" speech for the content of an "underground" newspaper. The newspaper included an editorial cartoon depicting police officers raping the Statue of Liberty and Lady Justice, as well as a headline, "Motherfucker Acquitted," concerning the outcome of a high-profile trial. Relying in part on *Tinker*, the Supreme Court ordered the student reinstated, admonishing the university that "the mere dissemination of ideas – no matter how offensive to good taste – on a state university campus may not be shut off in the name alone of 'conventions of decency.'"

If the university determines again to travel down the *Papish* road, it will inevitably end at the same destination. And because *Papish* provides directly-on-point precedent placing the university on notice of the unlawfulness of its conduct, any university employees involved will be *personally and individually* liable – without the benefit of qualified immunity – for the consequences of their actions.

Beyond the substantial constitutional issues involved, there are significant practical considerations that counsel against disciplinary proceedings in this matter. *The Maneater* is a place of employment, with workplace rules that govern employee conduct. If a student employee at the campus coffee shop performed her job unacceptably – she greeted you rudely, gave you incorrect change, handed you the wrong beverage order, and then spilled it all over you – you would respond by complaining to her supervisors, who would deal with her through workplace channels. Filing a complaint with the Student Conduct Committee would not conceivably be within the range of reasonable responses.

Similarly, *The Maneater* has standards that are enforced through workplace remedies, including a Student Publications Board that is empowered to adjudicate instances of employee misconduct. Complaints against the editor-in-chief are properly handled through this workplace mechanism, and – in the extreme instance of editorial content that violates the rights of identifiable individuals (*e.g.*, libel) – through the civil justice system. Further, those affronted by editorial content can (and do) resort to the marketplace remedies that are always the best retort to hurtful speech – they may write letters to the editor, publish their own responsive publications, or boycott the newspaper and its advertisers. Given the multitude of avenues for redress, activating the student conduct system – even at the preliminary inquiry stage – constitutes needless "piling on."

The editors have publicly apologized on multiple occasions, have forfeited their jobs, have been publicly upbraided by the President and by the newspaper's own editorial board in published letters, and have experienced damage to their reputations likely to hamper them in the search for post-graduate employment. This is ample punishment for what was simply a misguided attempt at humor with no intent to harm anyone. The disapproval of the university community has been clearly heard. No legitimate purpose is served by compounding the injury.

Your university prides itself on journalism as a “crown jewel” program. Imposing discipline on students for making a journalistic misjudgment will – in addition to exposing the University to a costly and embarrassing First Amendment lawsuit – send the unwelcoming message to prospective future journalism recruits that the University of Missouri considers poor editorial judgment to be grounds for suspension or expulsion. Even if the editors ultimately are vindicated through the Student Conduct Committee process, the mere fact of facing an investigation imposes a chill on the exercise of First Amendment rights that is unacceptable at a public institution of higher learning.

It is imperative that you “pull the plug” on any disciplinary inquiry at once, and convey a public reassurance that even offensive journalistic speech is to be dealt with through the marketplace of ideas and not through the imposition of governmental sanctions.

Yours truly,

A handwritten signature in black ink, appearing to read "Frank D. LoMonte". The signature is fluid and cursive, with a prominent initial "F" and "L".

Frank D. LoMonte
Executive Director
Student Press Law Center