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OF THE
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*Affiliations appear only
for purposes of identification.*

15 February 2001

Brian L. Stafford
Director
United States Secret Service
950 H St. NW, Suite 8000
Washington, D.C. 20223

Dear Mr. Stafford:

This letter is prompted by actions taken by Secret Service agents from the Melville, N.Y., field office against Glenn Given, managing editor of The Stony Brook Press.

The undersigned organizations generally represent the First Amendment interests of the news media. The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. The Student Press Law Center, established in 1974, is a nonprofit, nonpartisan organization that provides free legal assistance to high school and college student media around the country.

These are the facts of the situation at issue, as we understand them.

On Wednesday, February 7, 2001, Glenn Given wrote an editorial entitled "*Editorial: Dear Jesus Christ, King of Kings, all I ask is that you smite George W. Bush.*" This editorial was published in The Stony Brook Press, a student newspaper at SUNY-Stony Brook.

The editorial was in the form of an open letter to Jesus. The writer stated that he had recently "found" Jesus in light of the recent election and asked Jesus to "smite" George W. Bush, as well as his Vice President and the cabinet members. The editorial also requested that Jesus smite Carson Daly, host of MTV's *Total Request Live*.

The editorial was clearly a form of satire and political hyperbole. President Bush has extensively publicized his dedication to Christianity. He publicly cited Jesus as his favorite philosopher. His inaugural speech invoked numerous religious themes, and he has established an Office of Faith-Based and Community Initiatives, which has been criticized by some as an improper promotion of religion. To invoke religion in stating an opposition to President Bush's

administration would therefore be an expected satirical ploy. Moreover, the fact that Carson Daly was included in the panoply of petitioned smitees should have made it obvious that the editorial was satire.

Neither the newspaper's editorial board nor the University saw any reason to censor Mr. Given's speech. However, a faculty member contacted the Secret Service, apparently because he or she was disturbed by the editorial.

It is our understanding that on February 14, 2001, University police and Secret Service agents arrived unannounced at the newspaper's offices. The agents first demanded to speak to the entire editorial board, but eventually questioned Mr. Given alone when he claimed responsibility for the editorial.

Secret Service agents questioned him extensively and asked him to submit to a psychological evaluation which reportedly consisted of personal questions about his family and his parents' divorce. During questioning, Mr. Given was not represented by an attorney, nor was he advised of his rights as an accused. Mr. Given signed, upon request, a waiver allowing the search of his home. Apparently, nothing threatening was found there. He also signed a medical release authorizing the Secret Service to obtain his medical records. Mr. Given was told by Secret Service agents that his editorial was not protected by the First Amendment and that charges could be filed against him. Agents also stated that they may file charges if they received additional complaints about the editorial. Although Mr. Given voluntarily signed the waivers and offered to remove all remaining newspapers from stands, such actions were taken under the threat of arrest and without legal counsel. The paper has since reported that 2000 copies of the newspaper are missing from a storage area, and there is a concern that Secret Service agents seized those copies.

We understand that threats against the President are a serious matter, and we in no way mean to imply that the Secret Service should not undertake to protect the President and investigate credible threats. Mr. Given's editorial, however, was not a credible threat. As stated above, the editorial was satire, or, at a minimum, sarcasm.

The statute governing threats against the President, 18 U.S.C. § 871(a), provides for criminal sanctions against anyone who threatens the President, but the statute must still be read in the context of free political debate. Our position is supported by the U.S. Supreme Court decision in *Watts v. United States*, 394 U.S. 705 (1969). In *Watts*, a young man at a political rally was protesting the draft. He had received a draft card and was supposed to report to the Army. He stated, "I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J." *Id.* at 706.

The Supreme Court held that his statement was not sufficient to constitute a "threat" against the President within the meaning of the statute, even though the statement, taken literally, referred to shooting the President. The Court found that his statement was merely political hyperbole. Even though the statement referenced shooting the President, it was, in context, merely a crude expression of political opposition to the President rather than a genuine threat.

The Court stated that the statute, 18 U.S.C. § 871(a), is constitutional in general, as the nation has a strong interest in protecting the President, but the Court also stated, "what is a threat must be distinguished from what is constitutionally protected speech." *Watts*, 394 U.S. at 707.

The Court held that in order to prosecute someone under the statute, the government must prove that there is a "true" threat as opposed to a mere statement of political hyperbole, which is protected. The Court stated, "we must interpret the language Congress chose 'against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on the government and public officials.'" *Watts*, 394 U.S. at 708 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

Similarly, Mr. Given's editorial may have been crude and offensive to some, but it fell well within the range of political hyperbole.

It is possible that the Secret Service's concern was not that Mr. Given himself posed a threat, but rather that some random member of the community *might* read the editorial as a call to action. However, the Supreme Court has clearly stated that speech should not be censored and does not create criminal liability unless such speech is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. *Brandenburg v. Ohio*, 395 U.S. 444 (1969). Mr. Given's editorial cannot reasonably be interpreted as speech that incites imminent lawless action.

We believe that it is inappropriate to harass a journalist, editor, writer, or any citizen for exercising his or her right to free speech. Prior to allowing federal law enforcement agents to launch an intrusive and intimidating investigation, the government *must* make a reasonable attempt to distinguish between true threats and political hyperbole. This was clearly not done in the present case.

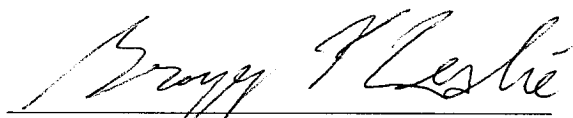
We are also concerned that the over-aggressive response to Mr. Given's editorial may signify disparate treatment of student publications from professional publications, and an intent to intimidate Mr. Given simply because he is a student. Student publications are entitled to equal First Amendment protection. Suppose a professional publication whose editorial board believed that President Bush was improperly promoting his own religious denomination to the exclusion of others featured an editorial cartoon of God smiting President Bush. Would the editorial board be detained, questioned, threatened and subject to searches of their homes and medical history? The television show *Saturday Night Live*, which has a long history of political satire and parody, recently featured a skit where former President George H.W. Bush contemplated shooting his son, the current President Bush. Should that skit have been censored as a veiled threat to the President? Would the cast of *SNL* be subject to prosecution? Student publications provide a forum for students to learn the principles of journalism and hone their skills to better prepare them for professional endeavors. Student editorials may, at times, be less refined than professional editorials, but they are nevertheless entitled to equal First Amendment protection.

There is a proud history of political satire in America. Satire, sarcasm, hyperbole and parody allow for richer expression. We may not all agree with Mr. Given's sentiments, but we all agree that he has an unrestricted right to express his opinion.

The undersigned organizations therefore respectfully request that the Secret Service recognize the valid and important First Amendment issues raised by Mr. Given's editorial. We ask, first, that the Secret Service issue a formal, written apology to Mr. Given and The Stony Brook Press for subjecting them to unreasonable harassment when their only action was to engage in protected expression in political opposition to the President. Second, we ask that the Secret Service educate its agents to be more sensitive to First Amendment issues. Finally, we ask that the Secret Service clarify that it will not pursue charges against Mr. Given based on his editorial, which is protected by the First Amendment.

Thank you for your cooperation in this matter.

Sincerely,



Gregg Leslie, Esq., Legal Defense Director
Lucy Dalglish, Esq., Executive Director
Ashley Gauthier, Esq., Legal Fellow
The Reporters Committee for Freedom
of the Press

Mark Goodman, Esq., Executive Director
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Editorial: Dear Jesus Christ, King of Kings, all I ask is that you smite George W. Bush

Now, I'm not what you would call a Christian. Nor would you even refer to me as an overtly spiritual fellow. But, in the wake of the recent presidential election I have found you, my lord and saviour, Jesus Christ.

So Jesus, King of Kings, Son of Man, Holiest of Holies all that I, your newly devoted son, ask of you is that you smite George W. Bush.

I know that this seems like a tall order, especially coming from one of your new recruits, but I truly believe that my love and adoration for you and you father would only be strengthened if you were to strike George W. Bush dead where he stands.

Actually, now that I think of it, simply releasing George W. from this mortal coil wouldn't really do much to solve the predicament that my people and I find ourselves in. As such, in the interest of the greater good you should also claim the life of Dick Cheney as well. And John Ashcroft, and Christine Whitman, and if it's not to much trouble the rest of George W's Cabinet.

Oh, and while you're at it take out Carson Daily as well. Yeah, he's an evil son

of a bitch.

Hey, I know that you're busy, believe me I can sympathize. So if you want to subcontract this work out to some other biblical figure that would be just fine. Heck, even if you wanna get some crazy mortal to do it that's cool with me. All I ask is that you make sure that whoever does the job is thorough.

Oh, and try and get it to happen on live TV if you could.

I appreciate your consideration in these matters and for taking the time out of your busy schedule of appearing in water stains on the sides of buildings and inciting holy wars to listen to me. If upon further consideration you find that you are unable to either personally or through one of your intermediaries snuff the flame of George W. Bush's candle, please forward this request to any and all other Messiahs, Deities or Demi-Gods that you are aware of.

P.S. I must stress the urgency of this situation and implore you to act swiftly should you choose to entertain my humble request.

Thank you Jesus, Jesus whose love is eternal, Jesus, bringer of Life after Death (except, hopefully, for George W. Bush).