



February 11, 2016

President Simon Newman
Mount St. Mary's University
Office of the President
205 Bradley Hall
Emmitsburg, Maryland 21727

Sent via U.S. Mail and Electronic Mail (president@msmary.edu)

Dear President Newman:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned by recent actions taken by Mount St. Mary's University (MSMU) to terminate two faculty members in the midst of a public controversy surrounding a proposed freshman retention plan. These actions have had a profound chilling effect on free expression at Mount St. Mary's, and call into question the university's fundamental commitments to free speech, academic freedom, and due process. MSMU must immediately reinstate the two professors.

The following is our understanding of the facts. Please inform us if you believe we are in error.

On January 19, 2016, *The Mountain Echo*, MSMU's student newspaper, published an article concerning a proposed freshman retention program that would allow students perceived as poorly prepared for college study the opportunity to leave the university within their first few weeks, with a full refund of their tuition. The *Echo's* article contained the following description of an exchange between you and Gregory W. Murry, assistant professor of history and director of MSMU's Veritas Symposium, regarding his concerns about the retention program:

According to Murry, during the course of the conversation, Newman said, “This is hard for you because you think of the students as cuddly bunnies, but you can’t. You just have to drown the bunnies...put a Glock to their heads.”

According to a statement by MSMU Board of Trustees Chair John E. Coyne, the trustees undertook a “forensic investigation” of the *Echo*’s article following its publication, finding “incontrovertible evidence of the existence of a small group of faculty and recent alums working to undermine and ultimately cause the exit of President Newman.” Coyne’s statement further claimed this unnamed group of faculty were “continuing, both directly and through others, to malign and denigrate President Newman and our plans for the university’s future by circulating mischaracterized accounts and flat-out falsehoods.” The statement promised that “the university will hold those individuals accountable for these actions.” Previously, on December 3, 2015, Coyne sent a letter to the *Echo* criticizing a draft of the then-unpublished article and accusing Ryan Golden, the *Echo*’s managing editor, and Ed Egan, then-director of MSMU’s pre-law program and faculty advisor to the *Echo*, of violating MSMU’s Code of Conduct as well as the “‘fair use’ policy of [MSMU’s] electronic mail system” for publishing the article.

On Friday, February 5, your office contacted Thane Naberhaus, a tenured associate professor of philosophy at MSMU, requesting that he come to a meeting that afternoon. According to press reports, Naberhaus had previously challenged the MSMU administration on institutional matters, criticizing a policy change that resulted in cuts to retirement benefits for MSMU employees and publicly expressing support for the affected retirees.¹ However, it is unclear what connection, if any, MSMU believes Naberhaus may have with the current controversy; *The Frederick News-Post* has reported that “Naberhaus said he was not involved at all in the *Echo*’s story about the retention program or Newman’s controversial comments.”²

When your office declined to provide specific details about the meeting and prohibited Naberhaus from recording the meeting or bringing an attorney, he informed the office that he would not attend. On February 8, you terminated Naberhaus via a hand-delivered letter. The letter stated that Naberhaus owed a “duty of loyalty” to MSMU and that Naberhaus’ “recent actions ... have violated that duty and clearly justify your termination of employment[.]” The termination letter continued:

Further, because of the nature of your conduct and its impact on the University, you have been designated *persona non grata*. As such, you are not

¹ Jeremy Bauer-Wolf, *Firing of two Mount St. Mary’s teachers – one with tenure – attracting national backlash*, THE FREDERICK NEWS-POST, Feb. 9, 2016, available at

http://www.fredericknewspost.com/news/education/schools/higher_ed/mount_saint_marys/firing-of-two-

² Jeremy Bauer-Wolf, *Controversy continues at Mount St. Mary’s University with two employees fired and one demoted*, THE FREDERICK NEWS-POST, Feb. 8, 2016, available at

http://www.fredericknewspost.com/news/education/schools/higher_ed/mount_saint_marys/controversy-continues-at-mount-st-mary-s-university-with-two/article_eac0ddea-d53d-5405-9b09-f715659e84d3.html.

welcome to visit the University's campus or to attend any University activities or sporting events on the University's property. Failure to comply with this directive will result in legal proceedings.

The letter further declared that Naberhaus would "continue to be held accountable" for his actions after his termination, including the possibility of legal action against him by the university. Naberhaus was presented with this letter in his office, and was then escorted from the campus by a security officer. MSMU also confiscated his computer at this time.

On the same day as Naberhaus' termination, MSMU summoned Ed Egan, the *Echo's* faculty advisor, to a meeting at which he was given a similar (if not identical) termination notice to that received by Naberhaus, banning him from the MSMU campus and threatening potential future legal action. As with Naberhaus, Egan was escorted from the campus by a security officer upon his termination.³

MSMU's unilateral actions against its faculty are profoundly troubling and raise fundamental concerns about its commitment to free expression and academic freedom. These concerns are compounded by the lack of any discernible due process afforded to the professors before they were terminated and physically removed from the MSMU campus.

Your summary termination of Naberhaus and Egan appears to violate MSMU's termination procedures, which—at least in the case of tenured faculty—requires the university to inform faculty of the allegations against them in writing, to make an attempt at "conciliation" with the faculty member and, should conciliation fail, a "complete and detailed notification of the grounds for termination for cause" and the opportunity to file a grievance and request a hearing. Yet neither Naberhaus nor Egan were provided with any specific information regarding their alleged offenses. In fact, they were not charged with any particular offenses. Rather, they were told that their "recent actions" justified their immediate termination, on the presumption that those unspecified actions were motivated by malice and disloyalty. They were not given any meaningful hearing to address or contest the university's vague charges against them; indeed, all appearances suggest that MSMU had already decided on their terminations before meeting with either professor. This process is fundamentally opposed to the principles of due process and basic fairness.

MSMU has denied that Naberhaus and Egan's terminations were premised on their expression, or their dissenting from the MSMU administration, but instead had to do with other, unspecified violations of MSMU policy. As *The Washington Post* reported on February 9:

³ Murry was reportedly summoned to a meeting by the MSMU administration as well. A February 10 article in *The Chronicle of Higher Education* reports that an MSMU spokesperson stated that Murry was still employed at MSMU. Murry reports, however, that he was locked out of his university email account. See Sarah Brown and Katherine Mangan, *Fallout at Mount St. Mary's Spreads as Scholars Protest Firings*, THE CHRONICLE OF HIGHER EDUCATION, Feb. 10, 2016, available at <http://chronicle.com/article/Fallout-at-Mount-St-Marys/235251>.

A spokesperson for the university wrote in an email Tuesday evening that, “Mount St. Mary’s University policy is to keep all personnel matters confidential. However, in light of disclosures by terminated faculty member Thane Naberhaus, we will confirm that Mr. Naberhaus was terminated because his actions violated multiple university policies and the University’s standards of ethical conduct.

“He was not terminated for expressing differing views from those of the Administration. To have done so would have been contrary to the academic and educational environment that has always characterized Mount St. Mary’s University.”⁴

MSMU presumably justifies Egan’s termination on similar grounds. Yet MSMU’s refusal to provide Naberhaus and Egan with even basic information regarding their alleged actions amplifies the concerns for free speech and academic freedom raised by this case. MSMU has presented no evidence that Naberhaus has done anything beyond exercising his right to dissent while participating in the institutional governance of the university—a fundamental element of academic freedom. MSMU likewise has presented no evidence to support the claim that Egan did anything more than fulfill his responsibilities as the *Echo*’s advisor—on an article, the *Echo* points out, for which it took the additional measures of seeking counsel from outside journalists and attorneys with the Student Press Law Center to ensure compliance with journalism’s legal and ethical standards.⁵ Naberhaus and Egan’s actions, in sum, are protected by the promises of free expression found, among other places, in MSMU’s Code of Conduct, which states:

Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals.

Lastly, while MSMU claims that the professors’ terminations were not motivated by their expression, it is unquestionable that its actions have deeply chilled free expression at MSMU for both faculty and students. What’s more, the university appears to have taken additional measures to restrict faculty expression during the current controversy. *Inside Higher Ed* reported on January 25, that “the university sent all faculty members an email message last week informing them that all university employees must clear any

⁴ Susan Svrluga, *The controversy at Mount St. Mary’s goes national after professors are fired*, THE WASHINGTON POST, Feb. 9, 2016, available at <https://www.washingtonpost.com/news/grade-point/wp/2016/02/09/the-controversy-at-mount-st-marys-goes-national-after-professors-are-fired/>.

⁵ Ryan Golden, *Editorial Statement On the Article, “Mount President’s Attempt to Improve Retention Rate Included Seeking Dismissal of 20-25 First-Year Students”*, THE MOUNTAIN ECHO, Jan. 19, 2016, available at <http://msmecho.com/2016/01/19/editorial-statement-on-the-article-mount-presidents-attempt-to-improve-retention-rate-included-seeking-dismissal-of-20-25-first-year-students/>.

communications with reporters first with the university spokesman.”⁶ If accurate, this is a thoroughly unacceptable abridgement of a basic right that should never be in doubt, and MSMU must rescind the email immediately.

That in MSMU’s judgment Naberhaus and Egan “caused considerable damage to Mount St. Mary’s University and its reputation,” as stated in their termination letters, does not give the university a license to dispense with their fundamental rights, and doing so likely causes far more damage to its reputation than any acts alleged of the faculty. The myriad deficiencies evidenced in this case necessitate Naberhaus and Egan’s reinstatement, and FIRE calls on MSMU to take this action immediately, so that it may begin to restore its reputation and lift the chill that its actions have cast over free expression.

We request a response to this letter by February 18, 2016.

Sincerely,



Peter Bonilla
Director, Individual Rights Defense Program

cc:

Jennie Hunter-Cevera, Interim Provost
Pauline A. Engelstätter, Vice President for University Affairs
Paula M. Whetsel-Ribeau, Vice President for Student Affairs

⁶ Scott Jaschik, *Drowned Bunnies: Part 2*, INSIDE HIGHER ED, Jan. 25, 2016, available at <https://www.insidehighered.com/news/2016/01/25/mount-st-marys-board-blames-faculty-furor-over-presidents-metaphor-and-plans>.