

The Perils of Parody

BY CLAUDE DUCLOUX

As I know from the past 30 years of receiving both appreciation and scorn from my readers, everyone loves an excellent satire attacking something or someone who richly deserves it. But how one handles being on the receiving end is enormously informative. Petulance and self-pity are as useless as moving too fast in quicksand—you just sink more quickly. Except when the U.S. Sixth Court of Appeals has your back. But I'm getting ahead of myself. Let's start at the beginning.

In my estimation, the most astounding expression of the human organism is the ability to create, express, and appreciate humor. And the profound achievement associated with the art of satire is the ability to create social change by deft exposition and reflection of the idiocies and failures of societal structures through clever parody.

Human progress is moved, as we are entertained and informed, and often transformed, by the brilliance of legendary humorists who expose the silliness, hypocrisy, and cruelty of those in power. The names are legion: Voltaire, Benjamin Franklin, Mark Twain, Oscar Wilde, Dorothy Parker, H. L. Mencken, and yes, even Andy Borowitz. Not surprisingly, those with no sense of humor (and, sadly, you DON'T know who you are) frequently seek to punish those whose brilliance holds them or their personal credo up to ridicule. Voltaire (a personal idol of mine) was imprisoned in the Bastille for almost a year in 1717 for mocking the Duc d'Orleans, who banished him from Paris. Ten years later, he was imprisoned again and exiled from France. He remains one of France's greatest playwrights and historians.

Fortunately, there has been

a robust *stare decisis* in this country, protecting the rights of humorists to make fun of the high and mighty and those in power. "The last thing we need, the last thing the First Amendment will tolerate, is a law that lets public figures keep people from mocking them." *White v. Samsung Electric*, 989 F.2d 1512, 1519 (9th Cir. 1993). Well, we are apparently down at the last thing the First Amendment will tolerate. (Go get a strong beverage before you keep reading.)

While few police departments are known as elite training institutions for the next wave of writers for *National Lampoon*, their activities, like many governmental processes, are rich and productive sources of parody, sarcasm, and humorous exposition. But, as I mentioned above, such humor is not accessible to the humorless. Nevertheless, "[A] parody enjoys First Amendment protection notwithstanding that not everyone will get the joke." *Golb v. Atty. Gen. of N.Y.*, 870 F.3d 89, 102 (2d Cir. 2017).

When Anthony Novak created a fake Facebook page parodying the real Facebook page of the Parma, Ohio Police Department, he apparently failed to read them their rights or perhaps his rights—to poke fun at them. So, when Novak's page announced, *inter alia*, that: a) Parma Police Department was holding a "pedophile reform event," and successful participants could not only be removed from the sex offender registry, but could be police officers after completing "puzzles and quizzes"; and b) that the police department would be offering abortions to teenagers in the police van; and c) that, in connection with recruiting officers, minorities were "strongly encouraged not to apply"—all of which *should have*

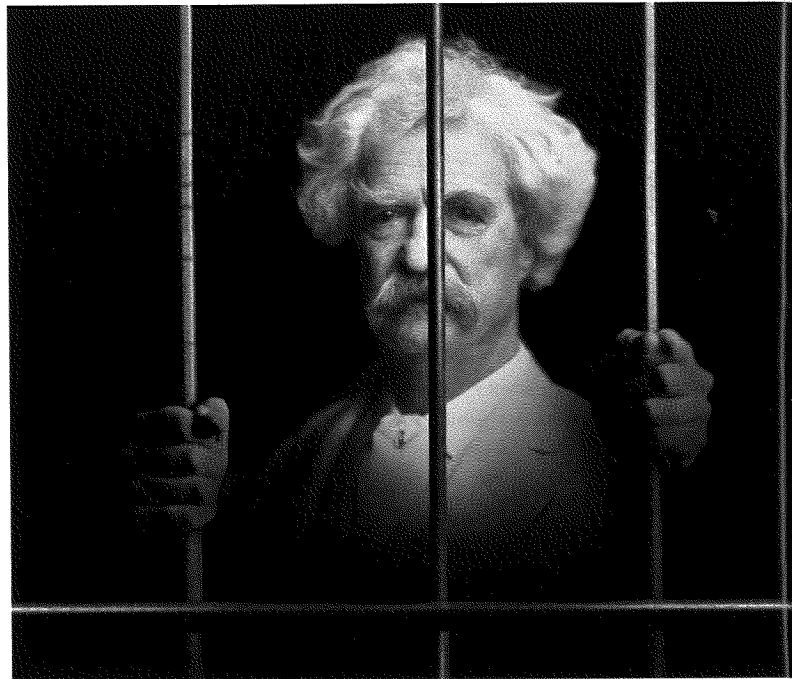


Image courtesy Claude Ducloux.

triggered some reasonable doubt as to authenticity—all hell broke loose. Although Novak took down the page after only 12 hours, he was arrested, jailed, indicted, and prosecuted for disrupting public

doing their job by arresting him. But the Sixth Circuit disagreed, saying the First Amendment doesn't protect you from an arrest supported by "probable cause." So, let's look at the arrest.

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services—a felony!

After hearing no evidence of disruption, but that the police department was simply focused on the derogatory nature of the page, the jury acquitted him, and Novak sued the department and the two investigating officers. The federal judge denied the police department's motion to dismiss, which asserted qualified immunity—they had just been

Long story short, the judge found that the police department did NOT act in bad faith, claiming it was *reasonable* for officers to believe Novak was "impersonating a police officer," so, claims denied. Now, wait—*impersonating a police officer*? By describing policies and activities that everyone knew do not (and could not possibly) exist? How did that harm a citizen? Now

the case awaits *certiorari* in the Supreme Court of the United States. The clear argument is that the police department's defense of "probable cause" could NOT work so long as a reasonable reader would recognize this was parody. But the court says, in so many words, "Well, you should have had a disclaimer warning the reader that this fake page was supposed to be funny!" Well, here is the really funny part.

To bolster Novak's petition to the Supreme Court, *The Onion*, the nation's most prominent satirical newspaper, has written an amicus brief, which is a thing of beauty. *The Onion* is justifiably worried that if this gambit works for the Parma Police Department, irritated officials all over the U.S. could harass and arrest their humor writers and editors for bogus "good faith" reasons, clearly stifling free speech and the transformative power of commentary. (Isn't arresting critics what Putin, Kim Jong Il, and other despots do?) This fairly serious (yet immensely entertaining) brief—which, in itself becomes a parody of brief-writing—explains to the Supreme Court how humor and parody work, and what a dangerous precedent this is to people like the writers of *The Onion* to have to fear "good faith" arrests by the subjects of their humor.

Most importantly, *The Onion* explains, parody does NOT work by warning the reader that it is coming. The joy of parody is that the reader believes, even for a second, that the statements are true, before reality kicks in and laughter results. And humor is not perfect. Writers cross the line, but here a claim that probable cause existed is hard to swallow. As the jury saw, Novak's arrest was pure retaliation, not police work.

Hefty legal precedent should have protected Novak. And in fact, the reader's transitory appreciation that the item is not real, but a parody, bolsters its rhetorical effect on the reader—it

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makes the reader think!

Humorists throughout time have unwittingly predicted the future while creating fiction. (*The Onion* had a story in 2017 about nuclear codes being found by a cleaning lady in Mar-A-Lago, and delivered to the lost and

found). Even more importantly, these parodies often commend us to examine whether we, as a society, should prevent that future.

Finally, as the greatest writer of all time, I hope you will join me in protecting my right to

make you think and laugh at the same time. (See? You didn't need a warning on that last sentence, did you?)

Enjoy your holidays. And let's hope the Parma Police Department doesn't arrest Santa for burglary.

The Onion's Amicus Brief can be found on the Supreme Court's website, www.supremecourt.gov. ^{AL}



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