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Professors Need the Power to Fire Diversity Bureaucrats

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ONE OF THE most closely watched free-speech battles in higher education reached its denouement recently at Georgetown University’s law school, where that foremost obsession of the American intelligentsia—a problematic tweet!—sparked a months-long investigation of a newly hired legal scholar who was supposed to run Georgetown’s Center for the Constitution. Ilya Shapiro’s inquisition revealed how diversity bureaucrats and other administrators, seizing on a vague mandate to make campuses more inclusive, are essentially overturning free-speech protections.

Shapiro arrived on campus with right-leaning views and an aggressive, prosecute-my-positions comportment, a combination better tolerated at the Cato Institute, his former employer, or the *Wall Street Journal* op-ed page, where he has told his side of this controversy, than in left-leaning faculty lounges. It all began around the time that President Joe Biden pledged to nominate a Black woman to the Supreme Court. Shapiro objected to that pledge, both because he believed that jurists of all races should be considered and because Biden’s approach excluded Shapiro’s favorite progressive judge.

On Twitter, while doomscrolling late one night in January, Shapiro expressed his beliefs badly. “Objectively best pick for Biden is Sri Srinivasan, who is solid prog & v smart,” he wrote, articulating a subjective judgment. “Even has identity politics benefit of being first Asian (Indian) American. But alas doesn’t fit into the latest intersectionality hierarchy so we’ll get lesser black woman.” Was Shapiro expressing the racist belief that Black women are inferior jurists? Some observers said so. Deleting the tweet, Shapiro apologized for “inartful phrasing”

and clarified that he meant only that *every* other jurist, of any race, would be a lesser nominee than Srinivasan. He had posted hastily in a feisty and agitated mood. He was sorry. But it was too late. Screenshots of the deleted tweet were already circulating. Georgetown Law was tagged. Students were upset. Soon, the law school suspended Shapiro even before he started work there and launched an investigation that stretched on absurdly for several months. Last week, he was finally reinstated, but quickly resigned, explaining that after reading the Georgetown diversity office's report on his case, he felt sure that its expansive notions of what inclusion requires would be used to persecute him administratively. Instead he will work for the Manhattan Institute, a right-leaning think tank, and America's ideological bubbles will be a bit more tightly sealed.

In a phone interview last week, Shapiro expressed contrition for his ill-chosen words. "I regretted the hurt that people felt. I never want to hurt people. And I certainly regretted the error in communication. I am a communicator after all. I write and I speak for a living," he said. But he also expressed contempt for Georgetown's response to his words.

"These sorts of investigations"—lengthy, opaque inquisitions of speech clearly protected by official campus freedom-of-expression policies—"are just not serious," Shapiro told me, because they proceed as if even one ambiguously phrased, deleted tweet can rise to the level of punishable harassment or create a hostile educational climate. That threshold makes "a laughingstock of the educational mission of the university to grapple with difficult ideas," he said.

He's got a point. In recent years, diversity, equity, and inclusion administrators have proliferated across colleges as the "kindly inquisitors" of the "Great Awakening." These officials are supposed to make sure that people from underrepresented groups feel included on campus. Yet in practice, DEI offices and the deans who supervise them have taken on a dubious enterprise: enforcing leftist speech norms most familiar to highly educated cultural elites. The unspoken assumption is that disciplining a scholar for, say, an offensive tweet will help young people from marginalized backgrounds. It's an assumption that too many universities simply accept and too few feel any need to study or measure, let alone prove.

In practice, nonprogressives of all races have ample reason to fear that, unless their speech is perfectly artful, they won't just face criticism; they'll have HR problems. Student activists respond to that incentive. They reframe ideological disagreements as emotional traumas or "unsafe" climates. Deans either don't know or don't care that ostensibly neutral rules are being weaponized in ideological power struggles.

The absurd result in this matter: For months, Shapiro was in the public eye without incident—national newspapers, TV programs, think tanks, podcasts, and other outlets uncontroversially interviewed him and circulated his ideas—even as a major university banned him from setting foot on its campus. Universities are supposed to be earth's most freethinking settings, yet they employ administrators who condescendingly behave as if even law students cannot thrive unless protected from the sorts of speech that pervade American society.

Shapiro figured he was doomed in such an environment. “Someone would have complained,” he told me. “Someone would have felt uncomfortable.” Faculty members can’t function as educators or scholars if they worry that their earnest views on matters of national controversy will get them investigated.

AFTER LEAVING SHAPIRO in limbo for months, Georgetown Law ultimately cleared him on a technicality. Because his offending tweet appeared before his start date, the school recently concluded, he was not properly subject to its discipline. Yet, according to Shapiro, a report by the school’s Office of Institutional Diversity, Equity & Affirmative Action (IDEAA) declared that, should he “make another, similar or more serious remark as a Georgetown employee, a hostile environment based on race, gender, and sex likely would be created.” The university has not released the report, but after analyzing a copy, the UCLA legal scholar Eugene

Volokh concluded, “It doesn't matter whether you care about Ilya Shapiro's career. The important thing here, I think, is just how much speech is now in peril, going forward, for Georgetown professors generally.”

Georgetown Law Dean William M. Treanor declared in a statement that he was guided in the Shapiro matter “by two overarching principles.” The first was the law school’s “dedication to speech and expression,” while “the second and equally important principle was our dedication to building a culture of equity and inclusion.” When free speech and “building a culture of equity and inclusion” are on equal footing, the implication is that, when they conflict, free speech can sometimes lose. Treanor’s formulation leaves employees without any way of knowing exactly where the lines are. If even one ambiguously worded tweet can ostensibly surpass Georgetown’s threshold for harassment—or is deemed to violate professional-conduct policies against offensive or inclusionary speech—an employee risks being disciplined or fired over almost any statement that might offend others.

Even some Georgetown Law professors who have contempt for Shapiro worry about his treatment. “Georgetown, in my view, shouldn’t have hired Shapiro—his ‘business model’ of racial provocation is hostile to the spirit of free, reflective inquiry,” the health-law scholar Gregg Bloche told me via email. “Yet his provocation has exposed our contradictions—contradictions we need to admit and address, at Georgetown and at universities across America. Chilling free expression by threatening careers foments fear and resentment, not inclusion.” Bloche argued that “fear of career-ruining responses to words that offend is chilling classroom discussions, faculty scholarship, and conversation among colleagues.”

The constitutional-law professor Mike Seidman, another critic of both Shapiro and his tweet, argued in an email that the standards Treanor announced would endanger free expression if applied to everyone. “People like me, who identify with the left side of the political spectrum, can feel secure only because we are reasonably confident that the standards will not be applied fairly and equally,” he wrote. “What’s happened is not only bad for academic freedom ... It reinforces a narrative that progressives cannot tolerate disagreement, that they are unwilling to

defend their ideas on the merits, and that they will use their power to enforce orthodoxy. Ultimately, this stance will harm us.”

Not every faculty member, I should note, thinks Shapiro was wronged. “Georgetown has both civil rights policies and free speech policies, and as is fairly common with two important policies, in some instances they need to be reconciled,” the professor David Super told me via email. “This country’s history of exclusion based on race, ethnicity, religion, and gender is just too devastating to ignore the effects of statements sweeping all members of a traditionally excluded group with a broad broom.” Victoria Nourse, a professor who directs the school’s Center on Congressional Studies, contends that Shapiro was impermissibly uncivil. “Many conservative academics manage to avoid uncivil discourse,” she wrote to me in an email. “I have championed tenure level conservative candidates in the past. *It’s not a question of ideology, it’s a question of civility*” (emphasis hers).

In any case, the careful thinking that so many Georgetown Law professors have done on freedom of speech, academic freedom, and related matters is in no way dispositive, because school administrators and diversity bureaucrats make all the consequential decisions—sometimes overriding judgments that faculty members have expressed clearly.

JOHN HASNAS HAS taught ethics to Georgetown undergraduate and MBA students since 2008. As a classical liberal, he is a confidant of students who are intimidated by academia’s dominant ideology, including in this matter. By email, he recounted a conversation with a student from China who expressed astonishment that the episode was taking place in America. In 2015, Hasnas, who believes all organizations have an ethical obligation to honor their public commitments, noticed that Georgetown was committed on paper to ensuring *both* freedom of speech *and* an inclusive, welcoming environment, even though some free speech can make some people feel excluded or unwelcome. He wanted to clarify what would happen if those commitments came into conflict. In 2017, new language approved by the faculty senate, the board of trustees, and the university president clarified that free speech would take priority:

It is not the proper role of a University to insulate individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Deliberation or debate may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or ill conceived.

And yet Hasnas thinks he understands why Georgetown administrators might violate that policy. When campus protesters or outside critics call for punishing a professor’s speech, a dean can refuse on principle—a choice that offers the moral high ground but risks further protests, negative media attention, and personal attacks—or avoid headaches by mollifying the aggrieved. Deans “suffer no personal blowback for violating the institution’s abstract commitment to freedom of speech,” Hasnas argues in a draft article that he shared with me. By layering an abstract commitment to free speech atop incentives that reward its suppression, colleges are “hoping for A, but paying for B.”

At Georgetown, staff in the Office of Institutional Diversity, Equity & Affirmative Action “are rewarded for effectively investigating and sanctioning behavior that is offensive to members of minority groups,” Hasnas writes in that same draft article. “They are not rewarded for making careful distinctions between reports in which the offense comes from threats or insults directed at particular individuals because of their race, sex, ethnicity, or sexual orientation and those in which the offense comes from the ideas being expressed.” They may be penalized for failing to act on a bias claim, but suffer “no penalty for pursuing allegations based exclusively on the content of speech.”

Shapiro told me that when accepting the job at Georgetown, he underestimated the foothold that illiberal orthodoxies had there. He now believes its bureaucrats have redefined concepts like *harassment* and *hostile climate* so promiscuously as to threaten all manner of mainstream political speech.

In a recent Wall Street Journal op-ed, he offered several examples of comments that he believed would subject him to disciplinary action at Georgetown if someone took offense and reported them. For instance, suppose that “I laud Supreme Court decisions that overrule *Roe v. Wade* and protect the right to carry arms,” he writes in the first example. “An activist claims that my comments ‘deny women’s humanity’ and make her feel ‘unsafe’ and ‘directly threatened with physical violence.’” Would that occasion an investigation? “After I meet with students concerned about my ability to treat everyone fairly,” his second example states, “one attendee files a complaint calling me ‘disingenuous’ and the ‘embodiment of white supremacy.’” Would that prompt a probe? Shapiro also questions whether he’d be allowed to opine that the Constitution prohibits racial preferences in university admissions.

I asked the Georgetown spokesperson Meghan Dubyak: Is the university’s position that faculty members can, in fact, say any of the things that Shapiro suggests might get him in trouble?

She replied,

While we can’t comment on hypotheticals, I can share that our policies are applied consistently without regard to political ideology. Our Policy Statement on Harassment makes clear that the IDEA standard for considering whether there is a hostile environment based on a protected category includes an evaluation of whether the conduct was objectively offensive and whether it was severe or pervasive.

“To constitute harassment, the conduct in question must be objectively intimidating, hostile or offensive, and must interfere with a person’s ability to participate in employment or educational programs or activities of the University. *The injured party’s perception of the offensiveness of the alleged conduct, standing alone, is not sufficient by itself to constitute harassment* [emphasis added].”

That seems unlikely to add clarity. Universities should operate according to scholars' values, not bureaucrats' subjective judgments. And my correspondence with Georgetown professors indicates both significant disagreement with administrators and a dearth of clarity about what speech—in practice—might get them investigated or punished.

To fix this problem at Georgetown and elsewhere, faculty need power to protect free speech. At present, sanctions in higher education flow in one direction: Diversity bureaucrats exert control over faculty members whose speech allegedly undermines inclusion. I propose giving faculty the power to investigate, sanction, and fire diversity officials if they undermine free speech. Administrative abuses will continue as long as bureaucrats can punish speech, even in flagrant violation of university policy, without any consequences.