

# The Terrible Irony of Teaching Business Ethics in the Modern University

JOHN HASNAS\*

“Do as I say, not as I do”

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\* J.D., Ph.D., LL.M., Professor of Ethics, McDonough School of Business, Georgetown University and Professor of Law (by courtesy) at Georgetown University Law Center. The author wishes to thank Annette Hasnas of Georgetown University Law Center, and Ann C. Tunstall of Martin Pharmaceuticals for their insightful comments on a draft of this article; Creigh Greensmith of Georgetown University Law Center for his invaluable research assistance; and Annette and Ava Hasnas for teaching him the importance of matching word to deed. © 2024, John Hasnas.

## I. INTRODUCTION

I have been teaching ethics courses at Georgetown University's McDonough School of Business (MSB) for many years. Such courses, usually designated Business Ethics courses, have long been the subject of gentle ridicule. Mentioning that you teach business ethics often elicits comments such as "Isn't that a contradiction in terms?" or "That must be a short course." When I told my brother that I had accepted a position teaching business ethics at Georgetown, his pithy response was "That makes sense. Only a business school would hire a lawyer to teach ethics."

Many years ago, the ethics courses taught in business schools could aptly be criticized as overly abstract and too far removed from the practical problems that business people face in the real world. But at many schools, and especially at Georgetown, those days are long gone. Business ethics courses now combine the study of normative ethics with that of organizational behavior, social psychology, economics, and political and legal incentive structures. Contemporary business ethics courses focus not only on identifying what the right thing to do is, but also on what makes it more or less likely that people and organizations will do it. Accordingly, the courses have organizational behavior components that explore how organizations' internal incentives and lines of communication encourage or discourage employee wrongdoing; social psychology components that study how individuals' moral blind spots, weakness of will, and tendency to conform create ethical stumbling blocks; and political science components that examine how government regulation creates incentives that can direct an organization's conduct toward or away from the ethically prescribed path.

## II. SOME FUNDAMENTALS OF CONTEMPORARY BUSINESS ETHICS

### *A. Integrity: A Core Ethical Principle*

Business ethics courses explore many complex ethical issues that do not always have clear-cut answers. Analysis of these issues often involves appeal to controversial principles about which there can be reasonable disagreement. But there is at least one core ethical principle that is not controversial: Organizations are ethically required to honor their freely undertaken commitments—their actions must be consistent with their public representations.<sup>1</sup> In our courses, we examine examples of both organizations that act with integrity and honor their commitments even when doing so carries some cost, and those that pay lip service to their commitments but abandon them when they become inconvenient.

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1. JASON BRENNAN ET AL., BUSINESS ETHICS FOR BETTER BEHAVIOR 23 (2021).

### *B. Incentives*

Contemporary business ethics courses devote considerable time to exploring the effect of corporations' internal incentive structures. A corporate commitment to ethical conduct will not be effective if employees can benefit personally from unethical conduct. For corporations to achieve not only their material, but also their ethical goals, they must align the incentives of their employees with the firm's desired ends. Misaligned incentives lead to the classic managerial blunder of "hoping for A, but paying for B,"<sup>2</sup> which invariably produces B.

Enron is the poster child for how misaligned incentives can undermine a corporation's ethical commitments. It employed a "rank and yank" compensation system under which the traders were ranked against each other on the basis of how much money they brought in, with the top performers receiving large bonuses and those ranked in the bottom 10-15 percent being fired.<sup>3</sup> By elevating financial performance above all other considerations, this compensation system encouraged the traders to ignore ethical and legal constraints in pursuit of revenue. And they did.

### *C. Diffusion of Responsibility*

It is possible for corporations to behave unethically even though no individual employee of the corporation has behaved unethically. This can occur when the corporate structure blurs the lines of responsibility or blocks the flow of information within the firm.

The former occurs when there is no designated party that has personal responsibility for the outcome of a collective endeavor. In such cases, everyone may think that someone else is taking care of the problem with the result that no one does. When this is the case, a corporation may take unethical action simply because none of its individual employees see it as his or her role to prevent it.

This type of problem is illustrated by the actions of the B.F. Goodrich Company, which, in 1967, sent an aircraft brake that its engineers knew to be unsafe to the Air Force for flight testing. Goodrich had two different sets of engineers working on the project: one that ran the tests and one that certified that the tests had been run and the brake had passed. Under pressure to show that the brake worked, the former group altered the test conditions to ensure that it passed. The latter group certified that the brake passed the tests that had been performed. All involved knew that the brake was unsafe, but all also thought that it was someone else's job to prevent the brake from being sent on for flight tests.<sup>4</sup>

The latter occurs when there are organizational impediments to information flowing to where it is needed to ensure that the corporation behaves ethically.

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2. See Steven Kerr, *On the Folly of Rewarding A, While Hoping for B*, 18 ACAD. MGMT. J. 769, 769 (1975).

3. See, e.g., Geraldine Szott Moohr, *Of Bad Apples and Bad Trees: Considering Fault-based Liability for the Complicit Corporation*, 44 AM. CRIM. L. REV. 1343, 1352 (2007); Milton C. Regan, Jr., *Moral Intuitions and Organizational Culture*, 51 ST. LOUIS UNIV. L.J. 941, 942 (2007).

4. See Kermit Vandivier, *The Aircraft Brake Scandal*, in ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH 323 (Thomas Donaldson et al. eds., 7th ed. 2002).

Strict reporting lines can prevent lower level employees from getting information about potential wrongdoing to upper level managers who can do something about it. Lack of internal channels of communication can result in the corporation making public representations that do not correspond to its actual progress or ability to deliver. Using the Goodrich case as an example again, the lack of direct communication between the engineers and the executives marketing the brake resulted in the company making false representations about the brake's performance to the Air Force.

#### *D. Values*

Business Ethics courses also explore how invested corporations are in realizing their value commitments. Most corporations issue value statements. But, as one of my colleagues puts it, values drive success; value statements don't.<sup>5</sup> Corporations that make sincere and meaningful commitments to a set of values can reap significant rewards. Employees who share the company's values become more invested in its success. Consumers who see that the company honors its value commitments become more loyal customers. In contrast, corporations whose value statements are seen as vacuous, feel-good window dressing not only fail to reap these rewards, they often suffer a detriment. When a company is seen as inauthentic, employees often feel authorized to cut ethical corners themselves and principled consumers are more readily open to switching brands.

For value commitments to be meaningful, they must be specific and definite enough to guide action. General exhortations to maintain the highest standards of ethics or act with the utmost integrity are mere boilerplate that carry no definite commitments. Effective values are connected to the mission of the organization, incentivized in the sense that compliance with them is rewarded and both measurable and measured. In our pedagogy, we teach students that corporations should avoid DUMB values—values that are Disconnected, Unincentivized, Measureless, and Boilerplate.<sup>6</sup>

The pre-eminent example of an effective value statement is Johnson & Johnson's credo, which is specific, places the interests of customers above those of the company, and which James Burke, the CEO, had employees across the organization discuss in challenge sessions.<sup>7</sup> The result was that all parties were behind the extremely expensive product recall when bottles of Tylenol had been laced with poison by an unknown third party. The pre-eminent example of a company with DUMB values is Enron, which committed itself to the values of "Respect, Integrity, Communication, and Excellence" by writing these on the

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5. BRENNAN ET AL., *supra* note 1, at 215.

6. *Id.* at 214–24.

7. Amanda Kelly, *James Burke: The Johnson & Johnson CEO Who Earned a Presidential Medal of Freedom*, JOHNSON & JOHNSON, <https://www.jnj.com/our-heritage/james-burke-johnson-johnson-ceo-who-earned-presidential-medal-of-freedom> [perma.cc/FWE9-KURJ].

office wall at its headquarters and including them in its annual report,<sup>8</sup> but otherwise ignoring them.

### *E. Virtue Signaling/Moral Grandstanding*

Contemporary business ethics courses will often explore what has come to be called virtue signaling or moral grandstanding. Virtue signaling is defined as the conspicuous expression of moral values done primarily with the intent of enhancing one's standing within a social group. Or, more informally, it is saying that "you love or hate something to show off what a virtuous person you are, instead of actually trying to fix the problem."<sup>9</sup>

Moral grandstanding is the use of moral talk to cause others to believe that "one is worthy of respect or admiration because one has some particular moral quality—for example, an impressive commitment to justice, a highly tuned moral sensibility, or unparalleled powers of empathy."<sup>10</sup> One can engage in moral grandstanding by "piling on"—reiterating a proposition others have endorsed to show that one is on the right side; "ramping up"—making increasingly stronger claims about the matter being considered e.g., that statement is offensive; that statement is not just offensive, it makes me feel unsafe; that statement does just make me feel unsafe, it denies my existence; "trumping up"—insisting on the existence of a moral problem where there is none; displaying levels of excessive outrage, and claiming the moral position one supports is self-evidently true.<sup>11</sup> These behaviors benefit those who engage in them by elevating their standing within their particular social group.

Whether defined generally as virtue signaling or more specifically as one of the identified forms of moral grandstanding, corporations that engage in this type of behavior are abusing moral language for corporate aggrandizement. This may be merely distasteful rather than unethical if it does not prevent the company from addressing the underlying problem or impose unfair costs or reputational damage on others. But when it crosses the line of imposing harm on others or allowing the underlying issue to fester, it becomes unethical conduct.

The problem with this type of behavior was neatly captured by a colleague who explains that "if you are trying to show that your heart is in the right place, it isn't."<sup>12</sup>

In the corporate world, insincere virtue signaling often manifests itself in the form of "greenwashing"—representing cost cutting or profit enhancing measures as efforts to protect the environment. The most obvious example of this may be the practice of hotels informing guests that they have curtailed the daily washing

8. ENRON ANNUAL REPORT 53 (2000), <https://enroncorp.com/corp/investors/annuals/2000/index.html> [perma.cc/2K58-9WDZ].

9. Post to *Virtue Signaling*, URBAN DICTIONARY (Nov. 3, 2015), <http://www.urbandictionary.com/define.php?term=virtue%20signalling> [perma.cc/KF3U-WRM8].

10. Justin Tosi & Brandon Warmke, *Moral Grandstanding*, 44 PHIL. & PUB. AFFS. 197, 198 (2016).

11. *Id.* at 203–08.

12. University of West Virginia professor David Schmidtz is the source of this pithy characterization.

of linens and towels to save water and reduce the use of energy and detergents. A perhaps more ironic example was provided by Deer Park, a company that sells natural spring water in plastic bottles. When the company reduced the size of its plastic bottle cap, it added a text box with a green background containing the words "Smaller cap = less plastic. Our eco-slim cap is part of our ongoing effort to reduce our impact on the environment. This cap contains an average of 37% less plastic than our previous cap." Directly below this text box was another that stated: "WARNING: Cap is a small part and poses a CHOKING HAZARD, particularly for children."

#### *F. Summary*

A core component of any business ethics course is, of course, drawing distinctions among ethically required, ethically permissible, and ethically prohibited action in the business environment. But the majority of the course is likely to be devoted to questions of corporate structure such as: What internal arrangements are necessary to ensure that the corporation acts in accordance with its public representations? How does one craft a corporate incentive structure that rewards ethical behavior and punishes unethical behavior? Are there clearly identified parties who have responsibility for the outcome of collective efforts and clear lines of communication among all relevant parties? Has the company adopted definite value commitments that are measured and incentivized? How can one ensure that the company is genuinely trying to address ethical issues rather than merely paying lip service to them?

Contemporary business ethics courses are designed not merely to aid our students in determining what constitutes ethical conduct in business, but also how to manage businesses so that they act ethically in their collective capacity. Our focus is not so much on teaching students how to resolve difficult ethical dilemmas as it is on teaching them how to avoid such dilemmas in the first place.

### III. THE TERRIBLE IRONY

Universities employ business ethics faculty to teach students techniques that help complex organizations meet their ethical obligations. But universities are themselves complex organizations. The irony is that those who run universities rarely conform to the practices their ethics faculties teach their students. The *terrible* irony is that the only parties who are aware of this disjunction are the business ethics professors themselves, who are rarely in a position to do anything about it.

In the remainder of this article, I will illustrate this disjunction with examples from my own institution, Georgetown University. This is *absolutely not* because Georgetown is a bad actor. I believe that Georgetown is fairly representative of how universities function. In fact, I believe that Georgetown probably functions better than most. I use Georgetown as my exemplar only because I have first-hand knowledge of events at Georgetown and have experienced the terrible irony of the business ethics professor on several occasions myself.

I have been associated with Georgetown University for twenty-five of the last thirty-two years. In all that time, I have never met any member of the administration that intentionally engaged in unethical conduct. My interaction with the school's administrators suggests that they are uniformly well-intentioned individuals who genuinely care about the good of the institution. And yet, Georgetown as a corporate entity has frequently engaged in what can only be called unethical conduct.

What accounts for this?

*A. Integrity: Speech and Expression Policy*

In the wake of a wave of student protests in 2015, a presentation was made to the Steering Committee of Georgetown's Faculty Senate that made the following points:

1) As a private University, Georgetown is not bound by the First Amendment, which applies only to state institutions. As such, Georgetown is free to afford its students and faculty as much or as little protection for freedom of speech as it believes to be consistent with its values.

2) Georgetown is ethically obligated to honor whatever public representations it makes to its students and faculty. An implication of this is that Georgetown is ethically obligated not to undertake conflicting commitments that cannot be simultaneously fulfilled.

3) Georgetown publicly represents itself as both supplying an inclusive and welcoming educational environment for people of all backgrounds and ensuring freedom of speech on campus. But because the expression of certain ideas can offend some members of our academic community and make them feel unwelcome, there can be cases in which it is difficult, if not impossible, for the University to live up to both of its representations.

4) To meet its ethical obligations, Georgetown must clarify which representation has priority. If the University's commitment to freedom of speech has priority, then Georgetown should make it clear that the University is committed to providing the most inclusive and welcoming educational environment that it can *short of restricting any student's or faculty member's ability to express his or her sincerely held beliefs*. But if the University's commitment to providing an inclusive and welcoming educational environment has priority, then Georgetown should make it clear that the University is committed to maintaining the greatest amount of freedom of speech that it can *without making members of the faculty or students feel excluded or unwelcome*.

In response, the Steering Committee commissioned an ad hoc committee to address the matter. That committee worked for two years to produce a policy that was acceptable to all relevant parties. In the spring of 2017, at a meeting attended by representatives of the Office of Student Affairs, University counsel, the Office of Institutional Diversity, Equity & Affirmative Action, and the Faculty Senate, a revised speech and expression policy was approved and sent to the Georgetown's Board of Trustees, which ratified it.



The new policy was a version of the University of Chicago's *Report of the Committee on Freedom of Expression* (Chicago Principles) that was adapted to Georgetown University's history and Jesuit tradition. This policy clearly gave priority to freedom of speech over other University commitments. Relevant portions of the policy state that:

Georgetown University is committed to free and open inquiry, deliberation and debate in all matters, and the untrammelled verbal and nonverbal expression of ideas. It is Georgetown University's policy to provide all members of the University community, including faculty, students, and staff, the broadest possible latitude to speak, write, listen, challenge, and learn. . . .

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. . . .

Although members of the University community are free to criticize and contest the views expressed by other members of the community, or by individuals who are invited to campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of deliberation and debate, but also to protect that freedom when others attempt to restrict it. . . .

[C]oncerns about civility and mutual respect can never be used as a justification for closing off the discussion of ideas, no matter how offensive or disagreeable those ideas may be to some members of our community.<sup>13</sup>

What was the effect of adopting this policy? Apparently, nothing.

In October of 2017, the undergraduate student group, Love Saxa, faced a Student Activities Commission hearing to determine whether it should be defunded on the ground that the group's definition of marriage as "a monogamous and permanent union between a man and a woman" fostered "hatred or intolerance of others because of their . . . sexual preference."<sup>14</sup> Despite Georgetown's new speech and expression policy, Love Saxa was threatened with punishment solely and explicitly on the basis of the beliefs it was expressing.

In October of 2019, the Acting Homeland Security Secretary was repeatedly shouted down when he attempted to deliver a speech at a conference at Georgetown

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13. *L. Policy on Free Speech and Expression, Faculty Handbook*, GEORGETOWN UNIV. (approved June 8, 2017), <https://facultyhandbook.georgetown.edu/section4/l/#> [perma.cc/M7BE-7MML]. The full text of the policy is in Appendix I.

14. See Mary Hui, *Georgetown Students Have Filed a Discrimination Complaint Against a Campus Group Promoting Heterosexual Marriage*, WASH. POST (Oct. 25, 2017), <https://www.washingtonpost.com/news/acts-of-faith/wp/2017/10/25/georgetown-students-file-a-discrimination-complaint-against-a-campus-group-that-promotes-heterosexual-marriage/> [perma.cc/9ND5-PMZA].



Law, and was forced to leave without speaking.<sup>15</sup> Despite Georgetown's new policy statement that protesters "may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe" and its commitment to "a solemn responsibility not only to promote a lively and fearless freedom of deliberation and debate, but also to protect that freedom when others attempt to restrict it," the law school's administrators and public safety officers who were present at the event took no action.<sup>16</sup>

In March of 2021, two adjunct professors at Georgetown Law were recorded discussing the performance of students in their class. One professor stated her opinion that African-American students made up a disproportionate share of those with the lowest grades in her courses and expressed dismay over this. The other listened and did not actively disagree. When this recording came to light, the dean of the law school summarily fired the first professor and placed the second on administrative leave in response to their "abhorrent" conversation in which they made "reprehensible statements concerning the evaluation of Black students."<sup>17</sup> The President of the University subsequently endorsed this action in a University-wide message stating that the dean's "decisive actions were essential and consistent with the ethos and ideals we strive to sustain at Georgetown."<sup>18</sup> Despite the University's commitment not "to insulate individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive" or suppress debate "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," the first professor was fired and the second disciplined purely because of the content of their speech.

In January of 2022, Ilya Shapiro, the incoming director of Georgetown Law School's Center for the Constitution expressed his opposition to President Biden's decision to appoint an African-American woman to the Supreme Court by tweeting: "Objectively best pick for Biden is Sri Srinivasan, who is solid prog & v smart. Even has identity politics benefit of being first Asian (Indian) American. But alas doesn't fit into latest intersectionality hierarchy so we'll get lesser black woman." In response, the dean of the law school issued a campus-wide e-mail in which he called the tweet "appalling" and "at odds with everything we stand for at Georgetown Law."<sup>19</sup> He then placed the director on "administrative leave, pending an investigation into whether he violated our policies and

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15. See Nick Miroff, *Protesters Shout Homeland Security Chief off Georgetown University Stage*, WASH. POST (Oct. 9, 2019), [https://www.washingtonpost.com/immigration/protesters-shout-homeland-security-chief-off-georgetown-university-stage/2019/10/07/1f2892d2-e915-11e9-9c6d-436a0df4f31d\\_story.html](https://www.washingtonpost.com/immigration/protesters-shout-homeland-security-chief-off-georgetown-university-stage/2019/10/07/1f2892d2-e915-11e9-9c6d-436a0df4f31d_story.html) [perma.cc/9SKW-DW3G].

16. This was witnessed by the author, who was present at the event.

17. Michael Levenson, *Georgetown Law Fires Professor for 'Abhorrent' Remarks About Black Students*, NY TIMES, March 11, 2021.

18. See broadcast email from John DeGioia, President of Georgetown University (Mar. 12, 2021), reprinted at <https://president.georgetown.edu/response-to-law-center-incident/#> [perma.cc/5L3U-RJGA].

19. Broadcast e-mail from William Treanor (Jan. 27, 22), reprinted at <https://www.law.georgetown.edu/dean-william-m-treanors-statement-on-recent-ilya-shapiro-tweets/> [perma.cc/45JP-76RN].

expectations on professional conduct, non-discrimination, and anti-harassment.”<sup>20</sup> Despite the University’s commitment not “to insulate individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive” or suppress debate “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,” Mr. Shapiro was barred from campus for five months.

On May 3, 2022, the University distributed a “Campus Climate Newsletter - May 2022” containing the following statement: “[M]any of you may have been made aware about racially insensitive messages posted anonymously on the new social media app ‘Flok,’ . . . We will be continuing to investigate these incidents and urge anyone with information . . . to contact the Office of Institutional Diversity, Equity and Inclusion.”<sup>21</sup> The only apparent reason for investigating anonymously posted speech would be to sanction it. By urging people to report those who make racially insensitive statements to the authorities, the University is exhorting members of the community to inform on each other for expressing thoughts the University considers “offensive, unwise, immoral, or ill conceived.”

On June 2, 2022, the dean of Georgetown Law published a broadcast e-mail stating that he was reinstating Mr. Shapiro to his position as Executive Director of the Center for the Constitution. In explaining the basis for his decision, the dean stated,

In considering how to address the impact of Mr. Shapiro’s tweets, I was guided by two overarching principles. The first is the Law Center’s dedication to speech and expression. Georgetown University’s Speech and Expression Policy provides that the “University is committed to free and open inquiry, deliberation and debate in all matters, and the untrammelled verbal and nonverbal expression of ideas.” The second and *equally important* principle was our dedication to building a culture of equity and inclusion. . . .

Georgetown Law is committed to preserving and protecting the right of free and open inquiry, deliberation, and debate. We have *an equally compelling obligation* to foster a campus community that is free from bias, and in which every member is treated with respect and courtesy. (emphasis added).<sup>22</sup>

This is an explicit statement that Georgetown University has undertaken two equally important commitments that cannot be simultaneously fulfilled, precisely the situation that the revision to the speech and expression policy was designed to avoid.

In the fall of 2022, the Foundation for Individual Rights and Expression (FIRE) published its 2022-2023 College Free Speech Rankings that evaluated

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20. Broadcast e-mail from William M. Treanor, Dean, Georgetown University Law Center, (Jan. 31, 2022) (on file with author).

21. Broadcast e-mail, (May 2, 2022) (on file with author).

22. Dean’s Statement re Ilya Shapiro, Email from William M. Treanor, Dean, Georgetown University Law Center, (June 2, 2022) (on file with author).

203 of the nation's universities and colleges on the extent to which they maintained a campus hospitable to free speech and open inquiry. Georgetown was ranked at #200.<sup>23</sup>

In 2023, Georgetown received FIRE's Lifetime Censorship Award.<sup>24</sup>

Finally, in fall of 2023, FIRE released its 2024 College Free Speech Rankings, which, this time, evaluated 248 universities and colleges. Georgetown was ranked at #245, and was one of only four universities to receive a rating of very poor.<sup>25</sup>

One would be hard-pressed to find an institution whose public representations are more at odds with its behavior. And yet, no member of Georgetown's administration is opposed to free speech on campus or has acted intentionally to undermine the speech and expression policy. Much of Georgetown's faculty seems perplexed as to how the University arrived at such a point. But not its business ethics faculty. Given that we teach about the effect of incentives and the diffusion of responsibility, this result is precisely what we would expect.

Incentives: The speech and expression policy is designed to restrain the actions of the University's administrators. Who is in charge of enforcing the policy? The University's administrators. Under these circumstances, how effective would you expect the enforcement of the policy to be?

Deans get no reward for upholding an abstract commitment to freedom of speech in the face of student outcry and protest. Their incentive is to quell dissension as quickly as possible and keep the institution functioning normally. This can usually be done by mollifying the protestors. Standing on principle will almost certainly exacerbate the strife by provoking more student protests and generating negative media coverage. It will also subject him or her to personal attacks and charges that his or her school is insensitive to the plight of minority students or creates an unsafe learning environment. In contrast, deans who successfully quiet the disruption often earn praise from the administration—as did the dean of Georgetown Law when he sanctioned the adjunct professors—but suffer no personal blowback for violating the institution's abstract commitment to freedom of speech.

Further, like most colleges and universities, Georgetown has its own bureaucracy devoted to ferreting out and punishing any incident of bias on campus. At Georgetown, this is the Office of Institutional Diversity, Equity & Affirmative Action (IDEAA). The staff of this office is dedicated to creating a bias-free campus environment that is comfortable for all students regardless of race, sex, ethnicity, and sexual orientation. They are rewarded for effectively investigating and sanctioning behavior that is offensive to members of minority groups. They are

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23. 2022 *College Free Speech Rankings*, FIRE, <https://www.thefire.org/research-learn/2022-college-free-speech-rankings> [perma.cc/34M5-7TVF].

24. 10 *Worst Colleges for Free Speech*, FIRE (Feb. 2, 2023), <https://www.thefire.org/news/10-worst-colleges-free-speech-2023> [perma.cc/864N-ES6P].

25. 2024 *College Free Speech Rankings*, FIRE, <https://www.thefire.org/research-learn/2024-college-free-speech-rankings> [perma.cc/W8QG-M9SZ].

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 are subject to criticism and may be penalized for failing to act on an allegation of bias, but they suffer no penalty for pursuing allegations based exclusively on the content of speech.

Diffusion of responsibility: In adopting the revised speech and expression policy, Georgetown made an institutional commitment to freedom of speech on campus. It then failed to designate anyone to be responsible for seeing that the policy is enforced.

The University has an Executive Vice-President for Diversity, Equity, Inclusion who is responsible for seeing that the University's anti-bias policies are vigorously enforced. Each of Georgetown's schools have Executive Vice-presidents (deans) who are responsible for maintaining the proper functioning of the school. But there is no Executive Vice-President who is responsible for ensuring the school honors its speech and expression policy, which means that there is no one to challenge administrative actions that violate the speech and expression policy. Apparently, at Georgetown, it is everyone's responsibility to maintain the University's commitment to protect free speech on campus, which, in practical terms, means that it is no one's.

Look at through a business ethics lens, Georgetown's #245 ranking is not mysterious at all. It is a classic example of hoping for A but paying for B.

### *B. Integrity: Faculty Hiring*

Georgetown University represents itself to the public as strongly committed to complying with all federal and state civil rights legislation.<sup>26</sup> Faculty hiring is an employment matter governed by Title VII of the Civil Rights Act of 1964 and the District of Columbia Human Rights Act. Title VII does not permit employers to make any hiring, promotion, termination, or other employment decision on the

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26. For example, Georgetown's office of Institutional Diversity, Equity & Affirmative Action declares that its job is to ensure that the University is compliant with non-discrimination and equal opportunity laws and regulations such as: Title VII of the Civil Rights Act of 1964; the District of Columbia Human Rights Act; Executive Order 11246, as amended; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended; the Americans with Disabilities Act of 1990, as amended; Title IX of the Education Amendments of 1972; the District of Columbia Protecting Pregnant Workers Fairness Act of 2014; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967; the Age Discrimination Act of 1975; and Title VI of the Civil Rights Act of 1964. *Institutional Diversity, Equity and Affirmative Action*, GEORGETOWN UNIV., <https://ideaa.georgetown.edu/> [perma.cc/BL3L-4KSQ] (2024). Similarly, the University asserts that its faculty recruitment policy will be pursued consistent with our federal obligations and regulatory requirements of the United States Department of Labor and United States Department of Education as promulgated by Title VII, of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the American with Disabilities Act, among other such laws. *Diversifying the Georgetown Faculty*, OFF. OF INSTITUTIONAL DIVERSITY, EQUITY, AND AFFIRMATIVE ACTION, GEORGETOWN UNIV., <https://ideaa.georgetown.edu/faculty-hiring-procedures/> [perma.cc/YD5B-Y5YY] [hereinafter *Diversifying the Georgetown Faculty*] (2024).

basis of race, color, religion, sex, or national origin.<sup>27</sup> The DC Human Rights Act extends the protected categories to include age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, sealed eviction record status as a victim of an intrafamily offense, place of residence or business, status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking, and homeless status.<sup>28</sup>

Under Title VII and the DC Human Rights Act, schools can mount vigorous outreach programs—undertake affirmative action—to persuade under-represented minorities to apply for faculty positions. These statutes impose no legal restriction on what universities can do to increase the number of minority candidates in the applicant pool. But once the applicant pool has been assembled and the selection process has begun—once the search committee begins compiling its list of candidates for further consideration, deciding whom to put on the short list for on-campus interviews, and ultimately, whom to hire—Title VII and the DC Human Rights Act prohibit any consideration of the candidate’s race, color, religion, sex, national origin, or other protected category.<sup>29</sup>

I have never been involved with a faculty search at Georgetown that complied with these requirements. Almost all faculty searches consider the prohibited characteristics in the selection process *when doing so would increase faculty diversity*. Instances in which I have first-hand experience include the following:

1) During a search to fill two ethics positions, there were two candidates who were head and shoulders above the others and were our clear first choices, one male and one female. We had good reason to believe that the female candidate would turn down an offer from us. When the male candidate received a competing offer that required us to make a quick decision, we decided to request an offer for the male candidate from the Provost to lock him in and continue the search so that we had an alternative if the female candidate turned us down.

At the time, a large percentage of the McDonough School of Business’s (MSB) faculty were male. The Provost denied our request for an offer to the male candidate, explaining in an email that there was a well-qualified female candidate available, and instructing us to “ask which would add the particular value of diversification of the faculty.” The email ended with the admonition, “I hope you

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27. Civil Rights Act of 1964, 42 U.S.C. § 2000e-2. The exception to this is when an employer is hiring according to a temporary, valid affirmative action plan designed to remedy “conspicuous racial [or gender] imbalances in traditionally segregated job categories.” See *United Steelworkers v. Weber*, 443 U.S. 193, 209 (1979). Georgetown University has such a plan, but it does not apply to faculty hiring, and so is irrelevant in the present context.

28. Human Rights Act of 1977, D.C. CODE § 2-1402.11 (2023).

29. See *Shuford v. Al. State Bd. of Educ.*, 897 F. Supp 1535, 1553 (M.D. Ala. 1995). See also *Duffy v. Wolle*, 123 F.3d 1026, 1039 (8th Cir. 1997). For a more detailed explanation of the legal significance of the distinction between assembling the applicant pool and selecting candidates from the pool, see Kate McCormick, *The Evolution of Workplace Diversity*, 44 HOUS. LAW. 10 (2007).

understand that what you present suggests that thinking and acting have not changed in MSB in the way we hope to see.”<sup>30</sup>

The search committee got the message, and decided to request an offer for the female candidate *because she was female* in order to be able to make a timely offer to the male candidate.

2) The following year, I was co-chair of the search committee formed to fill the open slot left when the female candidate from the previous search turned down our offer. Before the search began, the dean of the business school called a meeting of the chairs of all of that year’s search committees in which he stressed the importance of diversity. In an effort to reassure him, one of my colleagues chairing a different search said, “Don’t worry. We will only bring in female candidates this year.”

3) During that search, we identified four well-qualified final candidates, two females and two males. By happenstance, the two female candidates had their on campus interviews first. Before the male candidates were interviewed, the deputy dean requested and was granted permission to make an offer to one of the women. When I asked why, the dean answered that she was not willing to bring a request to hire a white male to the provost.

Although these are specific incidents in which I was personally involved, they are not aberrant cases. My faculty colleagues speak openly of making hiring decisions on the basis of the prohibited categories when doing so would increase faculty diversity.

Once again, the University’s behavior is divorced from its public representations. And yet, very few of my faculty colleagues are intentionally violating the law. Most are shocked to learn that basing hiring decisions on the candidates’ sex, race, or other prohibited category to increase diversity is a violation of the Civil Rights Act. They seem genuinely puzzled by the disjunction between the University’s relentless exhortation to increase faculty diversity and the legal restrictions on that pursuit. But there is nothing surprising about this result to those of us who teach about the effect of incentives and the diffusion of responsibility within organizations.

Incentives: Georgetown University sees the pursuit of diversity as one of its pre-eminent goals. The University’s mission statement asserts,

Established in 1789 in the spirit of the new republic, the university was founded on the principle that serious and sustained discourse among people of different faiths, cultures, and beliefs promotes intellectual, ethical and spiritual understanding. We embody this principle in the diversity of our students, faculty and staff, our commitment to justice and the common good, our intellectual openness and our international character.<sup>31</sup>

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30. E-mail from Provost, Georgetown University, (on file with author).

31. *University Mission Statement, Governance*, GEORGETOWN UNIV., <https://governance.georgetown.edu/mission-statement/#> [perma.cc/D34F-8MB3] (2024).



In addition, Georgetown identifies ten core values that comprise its identity as a Jesuit institution. One of these is “Community in Diversity.” The University web site explains that “[a]s a Catholic and Jesuit University, the Georgetown community affirms and promotes a rich and growing diversity of faith traditions; racial, ethnic, and gender identities; and the varieties of cultural heritages represented by our students, faculty, and staff.”<sup>32</sup>

At present, the chief impediment the University faces to achieving its goal of diversifying its faculty is the restrictions of the Civil Rights Act and DC Human Rights Act. The easiest and quickest way to diversify its faculty is to give hiring preference to women and other members of the designated minority groups. But to uphold its public commitment to abide by the Civil Rights and DC Human Rights Acts, the University would have to ensure that its faculty search committees do *not* give hiring preference to women and minorities.

As was the case with regard to freedom of speech, the University’s commitment to an abstract principle—in this case, to compliance with the law—is in conflict with its desire to realize one of its goals. But, as explained in Part II,<sup>33</sup> the test of an organization’s integrity is whether it honors its commitments even when they carry a cost to its goal-directed activity. And, as was the case with regard to freedom of speech, no administrator has the incentive to ensure that faculty search committees abide by the legal rules or are even aware of them.

Deans, provosts, and university presidents get no reward for ensuring that faculty members comply with the law governing searches, but all of the blame for the failure to increase faculty diversity. Academic administrators are under constant criticism for not diversifying the faculty rapidly enough. If it is true to say that ordinary faculty members are not aware of the law governing hiring, this is doubly the case for the student groups and other activists who constantly complain about the institution’s lack of commitment to diversity and social justice. In these circumstances, the less the ordinary faculty members who serve on search committees understand the legal restrictions on searches, the better it is for the administrators. Not only do they have no incentive for ensuring that the faculty are legally well-informed, they benefit from the faculty’s ignorance.

This may be the explanation for the 48-page document Georgetown created entitled *Diversifying the Georgetown Faculty*.<sup>34</sup> This is an absolutely brilliant document. It never recommends anything that would violate Civil Rights Act or DC Human Rights Act. It is immaculately written to never instruct faculty to give women or other protected minorities preferential treatment in the selection process. And it is just as immaculately written to never inform the faculty of the legal restriction on such preferential treatment. Having read the document carefully, I submit that it would be impossible for anyone who did not already know of the

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32. *Spirit of Georgetown, Mission and Ministry*, GEORGETOWN UNIV., <https://missionandministry.georgetown.edu/mission/spirit-of-georgetown/#> [perma.cc/C6V6-9ED8].

33. See BRENNAN ET AL., *supra* note 1.

34. *Diversifying the Georgetown Faculty*, *supra* note 26.



legal restriction to become aware of it by reading this document. The document begins by declaring diversifying the faculty to be a moral imperative.

Diversity, equity, and inclusion are an integral part of building great institutions of higher learning and are critical to Georgetown University's mission and values. Two of the founding principles upon which the University was established are community in diversity and social justice. Therefore, for Georgetown, diversifying our faculty comes naturally and has long been a moral imperative.<sup>35</sup>

This is an admirable goal as long as the University pursues it in compliance with the various civil rights acts, something the University reiterates its promise to do, stating,

The university's policies reflect the requirements of Executive Order 11246 (as amended by Executive Order 11375), Title VII of the Civil Rights Act of 1964, as amended, the District of Columbia Human Rights Act of 1977, as amended, Section 503 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, 38 US Code §4212 (formerly known as 402 of Vietnam Era Readjustment Act of 1974) and all other applicable laws. The university has established procedures for recruitment and hiring that ensure Georgetown's compliance with these laws and regulations. It is the university's expectation that all employees abide by these procedures in support of the university's affirmative action obligations and prohibition of unlawful discrimination and harassment.<sup>36</sup>

This is an entirely reasonable expectation if only the University would tell its employees what these obligations and prohibitions are. It does not.

It reminds the faculty that "[i]t is essential that search committees develop a proactive approach that will strategically assist them in ensuring that diversity and inclusion remain at the forefront of the recruitment and hiring processes," without distinguishing between the recruitment process (the assembling of the applicant pool) and the hiring process (the selection process).<sup>37</sup> It tells the faculty that,

At its discretion, IDEAA will notify the search committee chair if there is an affirmative action placement goal associated with the position. A placement goal is an indication that current faculty demographics are below the national Ph.D. recipient demographics in the field. A placement goal is not a quota by any means, but searches with an affirmative action placement goal means that it is especially important that the committee conduct robust outreach.<sup>38</sup>

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35. *Id.* at 1.

36. *Id.* at 23.

37. *Id.* at 7.

38. *Id.* at 8.

It does not explicitly state that robust outreach refers exclusively to expanding the applicant pool.

This is an incredibly detailed document that exhorts the faculty to employ the most vigorous efforts to increase faculty diversity, but *never* mentions the legal restrictions on such efforts.

Perhaps as a result, many administrators may themselves be unaware of the legal restrictions. Those for whom the moral imperative of increasing diversity seems self-evident often cannot imagine that its pursuit could be restricted by civil rights legislation. This was the case at MSB with regard to the incidents recounted above. Our dean at the time seemed to be unaware that our conduct violated the law.

Diffusion of responsibility: When we teach students about the aircraft brake scandal described in Part II,<sup>39</sup> they find it difficult to believe that the company could have sufficiently bifurcated lines of responsibility and poor internal communication to send a defective brake for flight testing. They tend to regard the case as a shocking aberration rather than an illustration of a problem that afflicts many organizations. Perhaps it is time for us to supplement the case with something closer to home since Georgetown's faculty hiring presents an almost perfect analog.

There is a group of people within Georgetown's administrative structure who have a full understanding of the legal rules governing faculty hiring. They reside in the University counsel's office.<sup>40</sup> However, they play no role in and have no direct responsibility for the conduct of faculty searches. It is not their job to inform faculty of the legal restrictions on faculty hiring, and they do not.

There is another group of people who know what is going on in faculty searches. These are the faculty members on the search committees, department chairs, deans, and the provost. Almost none of these people are lawyers, and many of them do not know how the Civil Rights Act applies to faculty searches.<sup>41</sup> However, they have no direct responsibility for ensuring that search committees comply with the law. They are under no duty to report their activities and deliberations to University counsel, and they do not.

The two groups form almost perfect silos within the organization with little communication between them on matters concerning faculty searches. No one in either group is directly responsible for ensuring that faculty searches comply with the law. It is entirely possible for both groups to believe that all faculty searches are in compliance with the law.

The ethical issue in this situation is not the University's pursuit of a diverse faculty. This is a perfectly legitimate goal. The ethical issue is that the University

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39. See *supra* note 4 and accompanying text.

40. I have personal knowledge that University counsel understand the law. Following the three searches described above, I checked with University counsel to make sure I had a clear understanding of the law. She confirmed that the account I provide in this article is correct.

41. Some of them must, but on the basis of the messages we receive as faculty members, it is believable that none of them do.

represents itself as pursuing diversity in compliance with the law, when, at best, it makes no effort to do so, and, at worst, it encourages its violation with its silence.

As business ethics professors, we teach our students that an organization acts with integrity when it honors its commitments even though doing so makes it more difficult for it to achieve some desired end. In the case of for-profit corporations, this usually means taking a hit to the corporation's bottom line, but the same is true for non-profits when the goals that must take a hit are non-financial ones. For a University to act with integrity, it must honor its public commitments even when doing so makes it more difficult for the institution to achieve one of its goals, even if it considers the goal a moral imperative.

Unfortunately, with regard to its commitment to comply with civil rights legislation, this is something Georgetown has failed to do. Even if no individual within the University has acted with ill-will, the organization as a whole has acted unethically.

### C. Values: *Cura Personalis* and the Pandemic

Georgetown University considers itself a values-based institution. The University's web site states that "[a]s a Jesuit institution, . . . we can identify a number of characteristics or values that inspire our University and that are referred to in the University mission statement, institutional documents, and iconography."<sup>42</sup> The web site then provides a list of these values—1) *Ad Majorem Dei Gloriam* (For the Greater Glory of God), 2) Academic Excellence, 3) Care for Our Common Home, 4) Community in Diversity, 5) Contemplation in Action, 6) *Cura Personalis* (Care of the Person), 7) Educating the Whole Person, 8) Faith that Does Justice, 9) Interreligious Understanding, and 10) People for Others—and concludes by stating that "[t]hese values are central to the identity of Georgetown University, and each generation of students, faculty, and staff is invited to engage them in ways that sustain our Jesuit character."<sup>43</sup>

These values are clearly connected to the University's mission as a Jesuit institution. Further, they are not mere boilerplate. The University provides a paragraph explaining the meaning and significance of each value on the web site, and these explanations are incorporated into the orientation program for incoming students. Note, however, that compliance with them is neither measured nor incentivized. To my knowledge, Georgetown has never held meetings or training sessions for administrators comparable to J&J's challenge sessions to explore how the values should impact practice in crisis situations, and there is no direct reward for administrators who act in accordance with them when doing so would impede the attainment of one of their goals.

The value that the University administration appeals to most frequently to justify its initiatives is *cura personalis*. The University web site explains that

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42. University Mission Statement, *supra* note 31.

43. Spirit of Georgetown, *supra* note 32.

This Latin phrase translates as “Care of the Person,” and originally was used to describe the responsibility of the Jesuit Superior to care for each man in the community with his unique gifts, challenges, needs and possibilities . . . *Cura Personalis* is a profound care and responsibility for one another, grounded in individualized attention to the needs of the other, attentive to their unique circumstances and concerns, and their particular gifts and limitations, to encourage each person’s flourishing.<sup>44</sup>

Elsewhere, the University explains that *cura personalis* “means that the university is committed not just to your academic achievement, but also your mental and physical health, your spiritual growth, and your development as a citizen of the world.”<sup>45</sup>

Although it may not be clear precisely what adherence to this value requires, the least that it can mean is that the administration will consider the students, faculty, and staff as individuals; that it will not ignore the individuals’ particular needs, circumstances, and concerns. Care of the person appears to entail respect for one’s individuality—for each person’s existence as a responsible, autonomous agent.

Georgetown’s response to the pandemic: Georgetown faced a crisis situation when the pandemic hit in 2020. It reacted by imposing a series of highly restrictive, and to some extent oppressive, policies on its students.

The University cancelled all in-person classes for the fall of 2020, converting them to remote learning, online courses. It also excluded almost all students from campus and required anyone who wanted to enter the campus to sign the Georgetown University Community Compact (“Compact”). This contained an extremely arduous set of thirteen conditions, one of which required agreement to: 1) always maintain six feet of physical distance between oneself and anyone else, 2) engage in frequent hand washing for twenty seconds, 3) use hand sanitizers frequently, and 4) wear a face covering over one’s nose and mouth at all times except when alone in a room, eating, in a personal residence without guests, or exercising outdoors with at least six feet of physical distancing.<sup>46</sup>

The oppressive aspect of the Compact is that it applied extraterritorially to students who lived off campus in nearby neighborhoods, whether they intended to come on campus or not. To take their remote, online classes, these students were

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44. *Id.*; *Our Catholic and Jesuit Heritage*, GEORGETOWN UNIV., <https://www.georgetown.edu/who-we-are/our-catholic-jesuit-heritage/> [perma.cc/JJU8-WNSQ] (“*Cura personalis* encourages care and individualized attention to the needs of each person, distinct respect for his or her circumstances and concerns and an appropriate appreciation for his or her particular gifts and insights.”); *Spirit of Georgetown*, GEORGETOWN UNIV., <https://missionandministry.georgetown.edu/mission/spirit-of-georgetown/> [https://perma.cc/9FAD-8NXL].

45. *Cura Personalis, Academics*, COLL. OF ARTS & SCIS., GEORGETOWN UNIV., <https://college.georgetown.edu/discover/cura-personalis/> [perma.cc/EB8U-BS9G].

46. *Georgetown University Community Compact*, GEORGETOWN UNIV. (July 25, 2020), <https://www.georgetown.edu/coronavirus/community-compact> [perma.cc/6S2H-VP9B] (URL does not work, but the permalink does).

required to sign the compact and be governed by it in their off-campus conduct and homes.

At the beginning of the fall semester, the University distributed an email entitled, *Student Behavior and New COVID-19 Student Conduct Policies*, that included the following:

You must adhere to the rules set forth in the Community Compact and the Code of Student Conduct, including the Office of Student Conduct's COVID-19 Impact and Related Student Policies, which include sanctions for violations of public health guidance. If you violate these policies you pose a threat to public health, and as such, your violation will be adjudicated through an expedited process, and significant policy violations will result in severe sanctions including disciplinary suspension or dismissal. Policies and sanctions will remain in place while any appeals might be considered. As stated in the Code of Student Conduct, if it is determined that a violation of the Code occurred at your residence, all residents may be held accountable unless compelling information, as determined by the Conduct Officer, is presented during the adjudication of the case.<sup>47</sup>

It then published a document entitled, *COVID-19 Related Student Conduct Policies, Sanctions, and Adjudication Procedures*, that defined failure to comply with the restrictions in the Compact as disorderly conduct under the Code of Student Conduct, and created a schedule of sanctions for such violations.<sup>48</sup> Thus, for the first violation of failing to wear a mask that covered one's nose and mouth or failing to maintain a six-foot separation, violators were subject to one year's disciplinary probation, would be required to complete an educational program, and would have his or her dean and parents notified of the violation.<sup>49</sup> Increasingly harsh sanctions were assigned for second and third violations culminating in 2 years suspension and possible expulsion.<sup>50</sup> In addition, if these violations occurred in the student's private residence, the entire household would be prohibited from admitting guests for a semester or the entire year.<sup>51</sup> Similarly harsh individual and household sanctions were applied to gathering in groups of more than ten or failing to comply with University testing, quarantine, isolation, and contact tracing policies.<sup>52</sup>

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47. *Student Behavior and New COVID-19 Student Conduct Policies*, GEORGETOWN UNIV. (Aug. 27, 2020), <https://www.georgetown.edu/news/student-behavior-and-new-covid-19-student-conduct-policies/> [perma.cc/Z6SK-3GTV].

48. See *COVID-19 Related Student Conduct Policies, Sanctions, and Adjudication Procedures*, DIV. OF STUDENT AFFS., GEORGETOWN UNIV., [perma.cc/2894-ZYGJ]; *COVID-19 Impact and Related Student Policies*, GEORGETOWN UNIV., <https://studentconduct.georgetown.edu/home-page/covid-19/> [perma.cc/6PUQ-3R2G].

49. *COVID-19 Related Student Conduct Policies, Sanctions, and Adjudication Procedures*, DIV. OF STUDENT AFFS., GEORGETOWN UNIV., [perma.cc/2894-ZYGJ].

50. *Id.*

51. *Id.*

52. *Id.*

The document also created a special adjudication process for anyone accused of violating these policies. This process required the accused student (or for an incident that occurred in a student's residence, all students in the household) to attend a mandatory Zoom meeting with a Conduct Officer at a time designated by the officer that "may be scheduled without consideration of students' academic schedules."<sup>53</sup> The Conduct Officer will then make a determination regarding responsibility and sanctions no later than two business days following the meeting.<sup>54</sup> If the student or students do not attend the meeting, the "determination regarding responsibility will be made without the benefit of their perspective."<sup>55</sup> Finally, the document indicated that students had no right to appeal stating, "[i]f found responsible for any alleged violations adjudicated through this COVID-19-Related Adjudication Process, student(s) will NOT have a right to appeal any decision resulting in a sanction short of disciplinary suspension/dismissal."<sup>56</sup>

In a subsequent broadcast email message, the University encouraged individual members of the community to help enforce its COVID policies by reporting violations.

If a student or faculty or staff member observes an individual or group whom they suspect is not acting in accordance with established health and safety protocols, they can report these incidents through the COVID-19 Incident Report Form. Reports will be referred to the relevant campus official for follow up. Your good faith reporting is protected by the University's whistleblower protection policy. Examples of behaviors to report include concerns about gatherings of more than ten people, failure to wear a mask or comply with physical distancing guidelines, or failure to adhere to quarantine/isolation protocols.<sup>57</sup>

It also enlisted parents in the enforcement effort, sending a message to students' parents that stated, "[i]f you have a student residing in neighborhoods surrounding the University, we write requesting your help, . . ."<sup>58</sup> This message detailed the rules requiring mask wearing, social distancing, remaining in groups of 10 people or less, and informed the parents that "[s]tudents violating these policies will face negative sanctions, including possible suspension from the university," and that "[i]f your student is in off-campus housing, please know that not only the host of a party in the house, but all residents of that house, are held accountable for behavior in the house and will be subject to the same sanctions,

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53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* (emphasis in original).

57. September 8, 2020: *COVID-19 Health and Safety Protocol Violations, Communication to Georgetown University Students*, OFF. OF THE PROVOST, GEORGETOWN UNIV. (Sept. 8, 2020), <https://provost.georgetown.edu/communication-to-georgetown-university-students-2020> [perma.cc/EV4E-GWXA].

58. Broadcast e-mail from Robert M. Groves, Provost, Georgetown Univ., "Working Together" (Sept. 4, 2020) (on file with author).

including suspension.”<sup>59</sup> It closed with “[i]f you have a student living in the area surrounding the University, your help in this effort, by having conversations with your student about these important requirements, is invaluable.”<sup>60</sup>

In sum, the University reacted to the pandemic by adopting a rigorous, highly punitive approach to suppressing the virus. It required all parties coming onto campus, *and students living in their own apartments off campus* to sign the Compact, which, despite its name, was not a voluntary agreement. It threatened students with extremely harsh individual and collective punishment for violations, which could be applied without due process or right of appeal. It exhorted the students to inform on each other and attempted to enlist their parents in the enforcement process.

The University’s values: It is not my purpose here to question the wisdom of these policies, but to examine their relationship to the University’s value commitments. Interestingly, the University appealed directly to the value of *cura personalis* in announcing the policies. Thus, the first paragraph of the Compact declared, “[o]ur mission of *cura personalis* calls each of us at this time to bear individual responsibility to help protect the health and safety of the entire community.”<sup>61</sup> The University then adopted a set of inflexible policies that left no room for individual decision-making. Ironically, the University had invoked the need for individual responsibility immediately before announcing policies that denied any scope for it.

There is no evidence that the administration paid any attention to the University’s value commitments in crafting its pandemic policy. It is difficult to square a commitment to provide “profound care and responsibility for one another, grounded in individualized attention to the needs of the other, attentive to their unique circumstances and concerns, and their particular gifts and limitations, to encourage each person’s flourishing”<sup>62</sup> with a policy that forces students to sign onto arduous restrictions on their personal lives off campus, threatens them with harsh, and sometimes collective, punishment without due process, and exhorts them to inform on each other. And it is difficult to imagine anything more antithetical to individual responsibility and more infantilizing than to contact the parents of young adults to ask them to control the behavior of their children.

It may not be entirely clear what it means for the University to be committed “not just to your academic achievement, but also your mental and physical health, your spiritual growth, and your development as a citizen of the world,” but it must require more than treating its students merely as physical bodies and disease vectors.<sup>63</sup> At a minimum, it would seem to require that the University treat its

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59. *Id.*

60. *Id.*

61. *Georgetown University Community Compact*, *supra* note 46.

62. *See supra* note 44 and accompanying text.

63. *See supra* note 45 and accompanying text.



students as responsible agents with the ability and obligation to exercise good judgment when faced with important choices.

The irony of the situation lies in the fact that we teach Georgetown's business students that, when organizations act inconsistently with their avowed values, people tend to defect from the organization's goals. We also present them with empirical evidence showing that attempts to generate compliance with punitive measures coupled with intense surveillance are less effective than "integrity-based" measures that attempt to align the incentives of the employees with the organizational goal by adhering to principles of organizational justice. This is because the former approach places the organization and its employees in an antagonistic relationship that tends to undermine trust, while the latter utilizes employees' belief in the "legitimacy" of the organization's injunctions to cause them to willingly act in pursuit of the organizational goal.

The *terrible* irony for those of us teaching business ethics at Georgetown is that we made precisely these points to Georgetown's administration to no avail.

It is worth reiterating that none of these observations imply any ill-will or intentional wrongdoing on the part of any member of the administration. The University was confronted with a sudden and serious emergency that required a rapid response. The administration obviously consulted with its public health experts and University counsel as part of the decision making process. It certainly received empirical advice on how to reduce both the spread of the virus and potential legal liability. It appears that the administration then adopted the most rigorous policy it could to attain these ends. But there is nothing to suggest that it ever considered its value commitments in forming this policy. As evidenced by the University's repeated appeal to *cura personalis*—the value that emphasizes taking each individual's particular needs, circumstances, and concerns into account and caring for the whole person—to introduce a policy that drew no distinction among individuals and focused exclusively on their physical health, the University appears to have treated its values as mere boilerplate.

This is unsurprising to business ethicists who teach that behavior is driven by what is measured and rewarded. The metric the University employed during the pandemic was its COVID dashboard that measured the number of confirmed cases of infection. There had been no prior discussion or training about how to apply the values in crisis situations, no way to measure whether administrators acted in accordance with the values, and no reward for placing adherence to the values over the attainment of concrete objectives. Under such circumstances, it cannot be unexpected to find that administrators charged with protecting the interests of the University as a collective entity acted on the basis of purely empirical considerations without taking account of the normative implications of their actions.

#### *D. Virtue Signaling: Bias-Related Incidents*

As noted in the preceding section, Georgetown considers itself a values-based institution. It references its values in most of its official communications to

Georgetown students, faculty, and staff, and to the general public. This can be an admirable practice when it helps the public understand the rationale for the school's actions. But if overdone—if the value statements are used as boilerplate when they are not necessary for understanding or justification—the practice can cross the line into unethical virtue signaling or moral grandstanding.

Recall that virtue signaling and moral grandstanding are not necessarily unethical. They become so only when they make the underlying problem worse or cause harm to third parties. But moral grandstanding—piling on, ramping up, and trumping up—frequently has the effect of exacerbating the underlying issue. When this is done merely to enhance one's moral standing by demonstrating one's heightened moral sensibility, it crosses the line into unethical conduct.

Georgetown's response to bias-related incidents: Georgetown University is committed to achieving “a more caring and inclusive community of learners and colleagues.”<sup>64</sup> The vision statement for its Office of Institutional Diversity, Equity, Inclusion and Affirmative Action states that “Georgetown reaffirms its commitment to more fully embrace diversity, equity and inclusion as it pursues excellence. . . . [in order] to create a University climate where respect and inclusion for all individuals are even more strongly encouraged than they are today.”<sup>65</sup>

To this end, Georgetown has empowered IDEAA to respond to any bias-related incident, and IDEAA has adopted a zero-tolerance policy toward such incidents. To wit,

[w]e remain committed to ensuring our learning and working environment . . . *is free from* harassment and discrimination. *Any* incidents of bias, harassment or discrimination, *will not be tolerated* and should be reported to the Office of Institutional Diversity, Equity, and Affirmative Action (IDEAA), so they can be responded to consistent with our current policies and our commitment to a *harassment-free* environment.<sup>66</sup>

In pursuit of this goal, IDEAA and the University administration publish broadcast messages to the entire Georgetown community detailing their efforts. Over the past few years, we have received messages informing us that:

1) “offensive fliers that advertised a non-existent ‘off the Georgetown campus’ ‘Frito Bandito’ party were seen around our campus,”<sup>67</sup>

2) “a swastika was found scratched onto the interior of an elevator in one of our residence halls on campus,”<sup>68</sup>

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64. *Vision Statement*, INSTITUTIONAL DIVERSITY, EQUITY & AFFIRMATIVE ACTION, GEORGETOWN UNIV., <https://ideaa.georgetown.edu/vision%20statement/#> [perma.cc/JM8J-QENJ] (2024).

65. *Id.*

66. INSTITUTIONAL DIVERSITY, EQUITY & AFFIRMATIVE ACTION, GEORGETOWN UNIV., <https://ideaa.georgetown.edu/#> [perma.cc/FZB3-4DPU] (emphasis added) (2024).

67. Broadcast email, (Nov. 1, 2016) (on file with author).

68. Broadcast email, (Mar. 23, 2017) (on file with author).

3) “the Muslim and Hindu flyers on Chaplain-in-Residence bulletin boards have been ripped down and vandalized,”<sup>69</sup>

4) “a swastika was found carved onto the interior of an elevator in one of our residence halls on campus,”<sup>70</sup> “two swastikas were found painted on the inside of an LXR Hall elevator” (the next day),<sup>71</sup> and “a swastika [was] found painted inside the stall of a women’s restroom in the LXR residence hall” (two weeks later),<sup>72</sup>

5) “racist epithets and threats of violence were shouted at a Black student sitting outside the New South residence hall from a window several stories up” and that the University was reclassifying this bias-related incident as a hate crime and “apologiz[ing] for ways we have fallen short in addressing this incident,”<sup>73</sup>

6) “a swastika [was] painted on the public sidewalk near the intersection of Reservoir Road and 38th Street this morning,”<sup>74</sup>

7) “an unknown suspect made harassing comments regarding their perceived race and/or national origin” to a Georgetown employee near the Georgetown offices at 2115 Wisconsin Avenue,<sup>75</sup>

8) “a swastika [was] drawn on a wall of the second floor hallway of Darnall Hall,”<sup>76</sup> and

9) a hate crime occurred on the 2200 block of Wisconsin Avenue NW when “[a] member of the Georgetown community . . . was approached by an individual who made anti-Asian comments and threw a rock at her.”<sup>77</sup>

Every one of these messages and all of the similar ones that we receive contain some version of the following:

As a community, we condemn all acts of anti-Semitism, Islamophobia, racism, and any form of hate. These acts are antithetical to our values as a Catholic and Jesuit university and our commitment to be inclusive and welcoming to people of all faiths and racial and ethnic backgrounds. The Code of Student Conduct defines “bias-related conduct” as “language and/or behaviors which demonstrate bias against persons because of, but not limited to, others’ actual or perceived: color, disability, ethnicity, gender, gender identity and expression, national origin, race, religion, and/or sexual orientation.”

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69. Broadcast email, (Mar. 23, 2017) (on file with author).

70. Broadcast email, (Sept. 6, 2017) (on file with author).

71. Broadcast email, (Sept. 7, 2017) (on file with author).

72. Broadcast email, (Sept. 20, 2017) (on file with author).

73. Broadcast email, (Dec. 8, 2022) (on file with author).

74. Broadcast email, (Nov. 21, 2022) (on file with author).

75. Broadcast email, (Jan. 19, 2023) (on file with author).

76. Broadcast email, (Jan. 23, 2023) (on file with author).

77. Broadcast e-mail, (Feb. 17, 2023) (on file with author). The full text of the broadcast e-mail messages from which these quotes are drawn is in Appendix II. This does not contain an exhaustive list of such messages, only those the author has copies of.

If you observe an incident you believe to be motivated by bias or hate, you should file a report through the online Bias Related Incident Reporting form, or by calling GUPD at . . . The form is also accessible via the LiveSafe app. Through the reporting system, the university is able to track and review bias-related incidents. Reporting the incident may lead to an investigation by members of the Bias Reporting Team, comprised of trained professionals in Student Affairs, the Office of Institutional Diversity, Equity and Affirmative Action, Campus Ministry, GUPD and other University offices.

As always, counseling and Campus Ministry staff members are available, and we encourage anyone who may be in need of these services to utilize them:

- To schedule an appointment with Counseling and Psychiatric Services (CAPS), students may call . . . between 9 a.m. and 5 p.m., Monday-Friday. In the event of an urgent need after hours, call . . . and request the CAPS clinician on call.
- The Office of Campus Ministry is available to all students during business hours by calling . . . In addition, chaplains in residence may be reached after hours by calling . . .

The Faculty and Staff Assistance Program (FSAP) can provide free confidential counseling and referral services to faculty, AAPs and staff. For more information, visit [http: . . .](http://...) or call . . .

Acts of hate and intolerance have no place at Georgetown. The University is committed to investigating this incident of bias, and those found responsible for violations of university policy will be held accountable for their actions. It is our duty to report evidence of bias and to ensure Georgetown is an inclusive, welcoming community.<sup>78</sup>

Virtue signaling/Moral grandstanding: What purpose is served by maintaining a zero-tolerance policy toward bias-related incidents? Georgetown University has an undergraduate population of close to 7600 students. By design, these students come from widely diverse geographical and cultural backgrounds. Most of them are teenagers whose prefrontal cortex—the part of the brain responsible for the ability to plan and think about the consequences of actions, solve problems, and control impulses—is not fully developed. In addition, many of them drink enough alcohol (or use other drugs) to reduce their natural inhibitions, especially on weekends. Given these facts, it seems unreasonable to believe that the purpose of a zero-tolerance policy can actually be to prevent *all* “bias-related incidents.”

So what is its purpose? To all appearances, it is to allow the University to broadcast its value commitments. Each incident allows the University to reiterate how strongly it condemns prejudice and hatred, how committed it is to

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78. Broadcast e-mail, (Sept. 6, 2017) (on file with author). As indicated by this text, the University continually exhorts its students to report any bad behavior by their fellows.

inclusiveness, how rigorous its Code of Student Conduct is, how accessible its Bias Reporting System and how professional its Bias Reporting Team is, and how concerned with its students' psychological well-being its counseling and Campus Ministry is—in short, to virtue signal.

Indeed, the University's behavior seems to exhibit several forms of moral grandstanding—of using moral talk to cause others to believe that the University possesses “an impressive commitment to justice, a highly tuned moral sensibility, or unparalleled powers of empathy.”<sup>79</sup> For example, publishing three broadcast messages within two weeks condemning the use of the swastika is a pretty good example of “piling on.” Similarly, elevating the shouting of racial epithets and threats at someone four floors below from a bias-related incident to a hate *crime* and apologizing for the original “mischaracterization” is a good illustration of ramping up. And going out of its way to condemn the presence of fliers for a non-existent, off-campus Frito Bandito party seems to fit the model of trumping up.

There is not necessarily anything wrong with this behavior. Virtue signaling becomes an ethical issue only if it exacerbates the underlying problem or causes harm to others. But there is good reason to believe that the type of virtue signaling and moral grandstanding we are considering has that result.

In the first place, there is reason to believe that this conduct is making the problem worse. We know that, for some people, especially teenagers, there is great appeal in engaging in transgressive conduct—that some people get a thrill from violating a taboo. The thought of doing something against the rules that offends others can give such people a feeling of pleasure. We know this because, for most of us, we had the same feeling at least once or twice during our teenage years.

Some of the people with this personality trait will indulge it when no one is looking. They will write or draw offensive words or images on surfaces that are open to public view. For such people, the pleasure arises from the violation of social norms—from the offensiveness of the action—not from the content of the message. The content is essentially irrelevant.

For an older generation, the great taboo was the public use of profanity, and the transgressive act usually took the form of scrawling one of the “seven words you can't say on TV”<sup>80</sup> across surfaces open to public view.<sup>81</sup> For today's youth, the great taboo is to make racist, sexist, or other ethnically derisive remarks, and the transgressive act can take the form of etching swastikas or KKK symbols into bathroom stalls or elevator walls. For both generations, the pleasure comes from provoking a shocked response. What possible reason can there be for distributing

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79. Tosi & Warmke, *supra* note 10, at 198.

80. GEORGE CARLIN, *CLASS CLOWN* (Little David 1972).

81. The Simon and Garfunkel song, “A Poem on the Underground Wall,” elegantly captures the emotional payoff from such conduct. See SIMON & GARFUNKEL, PARSLEY, SAGE, ROSEMARY & THYME (Columbia Records 1966).

flyers for a *non-existent* “Frito Bandito” party other than to provoke an outraged response from the University?

In a community of 7600 youths, there is little the University can do to eliminate this sort of behavior short of having 1984 style surveillance of all public spaces. But there is much the University can do that is likely to increase the incidence of such behavior.

Instead of merely painting over a swastika scratched onto an elevator wall, the University can issue a broadcast message publicizing its existence, greatly magnifying the number of people offended by it. It can invest the event with great significance, calling it a bias-related incident and condemning it as an act that is “antithetical to our values as a Catholic and Jesuit university and our commitment to be inclusive and welcoming to people of all faiths and racial and ethnic backgrounds.” It can exaggerate its potential effect by suggesting that members of the University community may need counseling to deal with it. It can do all the things that will increase the emotional payoff the perpetrator receives from his or her transgressive act, and make it more likely that he or she will seek to repeat it or that others with the same personality trait will seek to copy it. In short, the University can do things that make it unsurprising for there to be another, almost identical broadcast message the next day stating,

[y]esterday we wrote to inform you of a bias-related incident in one of the residence halls on campus. Today, we are disheartened to follow up our message with news of another incident in the LXR residence hall. Last night, two swastikas were found painted on the inside of an LXR Hall elevator,<sup>82</sup>

followed by another one two weeks later stating, “[e]arlier tonight, the Georgetown University Police Department (GUPD) responded to a report of a swastika found painted inside the stall of a women’s restroom in the LXR residence hall.”<sup>83</sup>

Rather than discouraging the offensive behavior, there is good reason to believe that the University’s virtue signaling is actually provoking it.

There is also reason to believe that the virtue signaling is doing harm. By continually broadcasting reports of bias-related incidents, the University is spreading fear. The repeated reports can create the impression that the campus is rife with hateful conduct.

In the case above, for example, had the University simply repaired the elevator wall and remained silent, the total harm done would have been that a small number of students would have been exposed to a hateful symbol. By broadcasting the incident across campus, the University multiplied the number of people offended, frightened, or dismayed by the event exponentially. And by sending similar messages whenever there are similar incidents, the University so

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82. Broadcast e-mail, (Sept. 7, 2017) (on file with author).

83. Broadcast e-mail, (Sept. 2017) (on file with author). Full text of these messages in Appendix II.

magnifies the significance of each that one may get the impression that under the surface, Georgetown is seething with bigotry—an impression that could indeed lead some students to seek the psychological counseling offered in each message. What could be more antithetical to IDEAA's goal "to make our environment welcoming and inclusive for every member of our community,"<sup>84</sup> than to continually publicize every incident of racially, sexually or ethnically offensive conduct on or around the campus?

By any objective measure, Georgetown University is one of the least racist, most tolerant places on Earth. Why would University administrators take actions that suggest that this is not the case?

Business ethics professors can answer this question. They would point out that this conduct is just another example of misaligned incentives. The collective goal of the University is to create and maintain the most welcoming, inclusive learning environment that it can. Doing so requires recognition that the optimal number of bias-related incidents on campus is not zero. Achieving the collective goal requires sanctioning some instances of offensive conduct—those that are based on racial, sexual, or ethnic animus—but ignoring other instances of such conduct—those that consist of purely transgressive adolescent behavior. But the individual incentives of those charged with policing the campus environment are to sanction all conduct that can discomfort members of protected classes—that is, *all* bias-related incidents.

Those who join DEI administrations are typically highly dedicated to their jobs. These administrators are never subject to criticism for addressing a complaint of bias, but are subject to severe criticism for failing to do so.<sup>85</sup> The surest way for them to demonstrate their diligence is to publicly highlight all of their investigations regardless of the nature of the potential offense. None of them have the incentive to distinguish animus-based conduct from transgressive conduct, and none of them is assigned responsibility for making such distinctions. DEI administrators adopt zero tolerance policies because their incentives make it rational for them to do so *even if doing so stimulates more transgressive conduct and spreads fear*. Virtue signaling advances their individual interests even though it makes achievement of the university's collective goal less likely.

### *E. Summary*

It is important to reiterate that I have focused on Georgetown *only* because I have first-hand knowledge of events at the university. Georgetown is not unique in any way, and I offer it as an exemplar of the modern university. Further, *nothing* in this article suggests that anyone at Georgetown acted with anything but the finest

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84. *Vision Statement*, *supra* note 64.

85. This is well illustrated by the event at Georgetown at which the University apologized for characterizing the incident in which someone in a dorm shouted racial epithets and threats at a student on the ground as a bias-related incident rather than a hate crime. The recharacterization came in response to protest and severe criticism from student groups.



motives. I have spent most of my career at Georgetown, and I have been and still am impressed by the personal commitment and good faith of the individuals who comprise its administration. There are no bad actors at Georgetown.

But that is precisely the point of this article. Georgetown supplies an excellent illustration of how universities can act unethically as a collective entity even though no one associated with it acts unethically in his or her individual capacity. One of the lessons that business ethics faculty teach their students is that entirely ethical, well-meaning individuals who respond rationally to their incentives within a complex organization can nevertheless act in ways that result in unethical corporate action. The irony of their job is that they teach this in complex organizations that themselves do not heed the lesson. And what makes this terribly frustrating is that they can see it happening all around them without being able to do anything about it.

#### IV. SOLUTIONS

What can be done to prevent universities from engaging in the types of unethical conduct described above?

Here is a novel idea. Why not involve the professors the university pays to teach its students how to prevent organizations from engaging in unethical conduct in the university's policy decision-making process? In other words, end the terrible irony.

I open my course on organizational ethics with a story drawn from the time I spent working in the legal department of a large conglomerate. The management philosophy of this company was to develop entrepreneurial employees by rewarding them with bonuses in proportion to the extent that their efforts added value to the firm. As a result, the employees frequently came up with innovative new plans for increasing the firm's profitability. The problem was that, before being implemented, these plans had to be reviewed by the legal department, which frequently torpedoed them. This made the company's lawyers quite unpopular.

Eventually, dissatisfaction with this pattern of events caused the company to place one member of the legal department on every business planning team. The result was the development of innovative business plans that were legally ready to go. This made everyone happier and did wonders for in-house counsel's reputation.

I explain to the students that this is the approach we want them to take to ethics in their business careers. Rather than treating ethical considerations as an afterthought once their strategic plans have been made, we instruct them to build ethical considerations into the business planning process itself. Wouldn't it be cool if the universities in which we teach these lessons did the same thing?

For example, organizational behavior theorists could advise the administration that if the university adopts a policy strongly protective of free speech on campus, it needs to ensure some member of the administration has the incentive to see that the policy is honored. Georgetown University has many vice-presidents,

including a vice-president for diversity, equity, and inclusion. Perhaps it should have a vice-president for free speech. Or the theorist might suggest that the university can overcome the problem of diffusion of responsibility by creating an Initial Review Board made up of people who had expertise in distinguishing protected speech from actionable conduct. The Board would review any allegation that an individual's verbal conduct violated a university policy and dismiss those based exclusively on the content of protected speech.

Similarly, organizational behavior theorists could instruct university administrations on how to break down knowledge silos. In Georgetown's case, he or she might recommend that a member of the university counsel's office meet with all hiring committee chairs at the beginning of each year to make sure they understood the restrictions of the Civil Rights and DC Human Rights Acts.

Further, a business ethicist could help ensure that there was a coherence between the values the University invokes and its actions. They could point out that it would be destructive to appeal to a value exalting the individualized care of each person (*cura personalis*) when adopting blanket policies that apply to all students in exactly the same way. And when the University is confronted with a situation that requires the cooperation of all students, they could point out that associating harsh punishments with intense surveillance is not the most effective way of generating compliance with a desired course of action. They could advise the administration how to craft an integrity-based approach that generated trust and voluntary compliance in which students themselves aided in compliance efforts rather than resisted them.

Finally, business ethics professors could guard against the type of excessive value signaling and moral grandstanding that undermines the very values that are being touted. In the case of bias-related incidents, they could remind the decision makers that the perfect is the enemy of the good, and help them distinguish between incidents that pose a serious risk and should be publicized and those that represent transgressive behavior that should be ignored to avoid stimulating similar conduct. And they would have the larger perspective that allowed them to perceive whether the individual incentives of the administrators and collective goals of the University were misaligned, and if so, to recommend adjustments.

## V. CONCLUSION

I predict that this will not happen.

As collective entities, universities are seriously committed to ethics. They demonstrate this commitment by hiring ethics faculty and requiring students to take ethics courses. They even hire business ethics faculty to teach courses on how to ensure that organizations act ethically as collective entities. But I have never known a university administrator to sit in on one of those courses.

Ethics is always and everywhere a cost. When ethical conduct helps advance an organization's goals, ethical issues do not arise. It is only when ethical conduct impedes the achievement of a goal that ethical considerations become relevant. When it matters, ethics always retards the attainment of one's desired ends.

University administrators may be and usually are highly committed to ethics in the abstract, but they have no incentive to operationalize this commitment. And articles like this one cannot change that incentive structure. This is the terrible irony of teaching and writing about business ethics in the modern university.

## APPENDIX I: GEORGETOWN SPEECH AND EXPRESSION POLICY

As an institution of higher education, one specifically committed to the Catholic and Jesuit tradition, Georgetown University is committed to free and open inquiry, deliberation and debate in all matters, and the untrammelled verbal and nonverbal expression of ideas. It is Georgetown University's policy to provide all members of the University community, including faculty, students, and staff, the broadest possible latitude to speak, write, listen, challenge, and learn.

The ideas of different members of the University community will often and naturally conflict. 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.

Individual members of the University community have the right to judge the value of ideas, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting those arguments and ideas that they oppose. Fostering the ability of members of the University community to engage with each other in an effective and responsible manner is an essential part of the University's educational mission.

The freedom to debate and discuss the merits of competing ideas does not mean that individuals may say whatever they wish, wherever they wish. The University prohibits expression that violates the law, falsely defames a specific individual, constitutes a genuine threat, violates the University's harassment policy, or unjustifiably invades substantial privacy or confidentiality interests. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the institution. Finally, to the extent that appointment letters, confidentiality agreements or policies, professional conduct policies, or HR policies regulate conduct that may include speech and expression, they are not superseded by this policy. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions not be used in a manner that is inconsistent with the University's commitment to a free and open discussion of ideas.

As a corollary to the University's commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed by other members of the community, or by individuals who are invited to campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of deliberation and debate, but also to protect that freedom when others attempt to restrict it.

In 1990 Ernest Boyer, President of Carnegie Foundation wrote, "[A] university is an open, honest community, a place where freedom of expression is uncompromisingly protected, and where civility is powerfully affirmed." [2] Because it is

essential to free and open inquiry, deliberation, and debate, all members of the University community share in the responsibility for maintaining civil and respectful discourse. But concerns about civility and mutual respect can never be used as a justification for closing off the discussion of ideas, no matter how offensive or disagreeable those ideas may be to some members of our community.

## APPENDIX II: FULL TEXT OF BIAS-RELATED INCIDENT MESSAGES

October 2016:

Dear Members of the Georgetown University Community,

Yesterday, offensive fliers that advertised a non-existent “off the Georgetown campus” “Frito Bandito” party were seen around our campus. Other local universities reported seeing similar fliers on their campuses last week and yesterday.

As a Catholic and Jesuit university, we are committed to fostering a community that is welcoming to all people and that values understanding, dignity, inclusion and respect. Georgetown University Police Department is actively investigating these reports and a bias report has been filed. While we do not know if the individuals who distributed the fliers are members of the Georgetown community, their actions have caused concern. This behavior and language has no place in our community.

We encourage anyone who may have information related to the flyers to contact the Georgetown University Police Department (GUPD) at . . . or report a tip anonymously through the LiveSafe app. For more information on the Bias Reporting System or to report a bias-related incident, go to: . . .

March 2017

Dear Members of the Georgetown University Community,

We write to inform you of recent reports of bias-related incidents on campus. A swastika was found scratched onto the interior of an elevator in one of our residence halls on campus. In addition, bias reports have been filed about two incidents in which the Muslim and Hindu flyers on Chaplain-in-Residence bulletin boards have been ripped down and vandalized. The Georgetown University Police Department is investigating these acts of hateful vandalism.

Acts of vandalism and hate have no place on our campus and are deeply troubling. We have heard concerns about bias-related incidents from members of our community across different faiths in recent weeks. As a Catholic and Jesuit university, we are committed to fostering a community that is welcoming to people of all faiths and that values understanding, tolerance, inclusion and respect. Acts of hate are unacceptable and antithetical to the values of our community.

If you have any information about these incidents, please report it to GUPD by calling . . . You can report a bias-related incident through the Bias Reporting System at . . .

We will continue to provide programming and engagement opportunities on these vital issues and our community’s values. As always, counseling and Campus Ministry staff members are available, and we encourage anyone who may be in need of these services to take advantage of them:

- To schedule an appointment with CAPS (Counseling and Psychiatric Services), students may call . . .
- The Office of Campus Ministry is available to all students during business hours by calling . . .

- The Faculty and Staff Assistance Program (FSAP) can provide free confidential counseling and referral services to faculty, AAPs and staff. For more information, visit . . .

September 2017:

Dear Members of the Georgetown University Community,

We write to inform you of a recent report of a bias-related incident and to re-iterate our commitment to diversity and civility as we commence the school year.

Last night, a swastika was found carved onto the interior of an elevator in one of our residence halls on campus, Village C West. If you have any information about this incident, please contact the Georgetown University Police Department (GUPD) at . . .

As a community, we condemn all acts of anti-Semitism, Islamophobia, racism, and any form of hate. These acts are antithetical to our values as a Catholic and Jesuit university and our commitment to be inclusive and welcoming to people of all faiths and racial and ethnic backgrounds. The Code of Student Conduct defines “bias-related conduct” as “language and/or behaviors which demonstrate bias against persons because of, but not limited to, others’ actual or perceived: color, disability, ethnicity, gender, gender identity and expression, national origin, race, religion, and/or sexual orientation.”

This incident, and last month’s violence in Charlottesville, remind us of the need to combat hate and harassment in all forms. Georgetown’s Bias Reporting System is a university initiative to improve the awareness of and response to acts of intolerance, bias, and hate.

If you observe an incident you believe to be motivated by bias or hate, you should file a report through the online Bias Related Incident Reporting form, or by calling GUPD at . . . . The form is also accessible via the LiveSafe app. Through the reporting system, the university is able to track and review bias-related incidents. Reporting the incident may lead to an investigation by members of the Bias Reporting Team, comprised of trained professionals in Student Affairs, the Office of Institutional Diversity, Equity and Affirmative Action, Campus Ministry, GUPD and other University offices.

As always, counseling and Campus Ministry staff members are available, . . .

Acts of hate and intolerance have no place at Georgetown. The University is committed to investigating this incident of bias, and those found responsible for violations of university policy will be held accountable for their actions. It is our duty to report evidence of bias and to ensure Georgetown is an inclusive, welcoming community.



September 2017:

Dear Members of the Georgetown University Community,

Yesterday we wrote to inform you of a bias-related incident in one of the residence halls on campus. Today, we are disheartened to follow up our message with news of another incident in the LXR residence hall.

Last night, two swastikas were found painted on the inside of an LXR Hall elevator. Georgetown University Police Department (GUPD) requests anyone with information to contact . . . The University is committed to investigating these incidents, and those found responsible will be held accountable for their actions.

All of us have an obligation to reject hatred, racism, bigotry, anti-Semitism, and Islamophobia. It is important that anyone who sees evidence of a bias incident to report it. If you observe an incident you believe to be motivated by bias or hate, you should file a report through the online Bias Related Incident Reporting form, or by calling GUPD at . . . The form is also accessible via the LiveSafe app.

At Georgetown, we stand in solidarity with our Jewish community members and condemn these hateful and anti-Semitic acts.

December 2022

Dear Members of the Georgetown University Community:

We write today to provide an update and information on a racially-motivated hate crime that occurred on the Main Campus on April 29, 2022; to share a set of commitments that Georgetown has made to strengthen our framework for responding to hate crimes and bias-related incidents and supporting affected students; and to apologize for ways we have fallen short in addressing this incident.

We make these commitments following conversations this week with a diverse group of students who have expressed their views during protests in Healy Hall and a march across campus on December 7, 2022, and in a series of meetings with administrators. We thank these students for their advocacy and apologize that they did not have the level of support and care we strive to provide all members of our community.

#### Background on April 29 Hate Crime

On April 29, 2022, racist epithets and threats of violence were shouted at a Black student sitting outside the New South residence hall from a window several stories up. Georgetown condemned this incident in a message sent to New South residents asking for additional information and in a campus-wide newsletter. The Georgetown University Police Department (GUPD) immediately began an investigation of the incident, initially classified it as a bias-related incident, and referred it to relevant university offices for further action. After careful reconsideration of information that has been provided, we are notifying the community that this was reclassified as a hate crime on December 6, 2022.

#### Our Values and an Apology

Acts of racism and hate have no place at Georgetown. We are committed to being a campus that welcomes people of all faiths, races, ethnicities,

sexualities, gender identities, abilities and backgrounds. We do not tolerate discrimination or harassment in violation of university policies.

We are grateful for the courage of the student who has come forward to share her experience of the hurt and pain caused by this incident, and we have heard the concerns expressed by students about our response. The advocacy of these students has illuminated the ways in which we have not lived up to our shared commitment to ensure that all of our students – and particularly students of color – feel supported by the university. We acknowledge the pain this has caused students and members of our community and the seriousness of the concerns that have been expressed, and we apologize.

#### Commitments and Resources

Today, we share below a set of commitments dedicated to improving how we support students impacted by hate crimes and bias-related incidents. We have a Bias Reporting System, and several offices work together to respond to these incidents when reported, which may lead to an investigation, following which the university can hold individuals accountable for their acts. Any member of the Georgetown community can make a report about a possible bias-related incident or file a complaint with IDEAA. We are committed to enhancing this system through internal and external reviews, we will be adding resources to provide additional support to students going through the reporting process, and we are making a long-term commitment regarding the Black Survivors Coalition Community Providers Initiative. Mental and emotional well-being resources are also available via our Every Hoya Cares online resource center.

We are committed to continuing to engage with students to ensure the best possible environment for all students to flourish at Georgetown. We hope you will read about these commitments below; again, we express our appreciation to the students for sharing their stories and demanding the best of our university community.

January 2023:

Dear Members of the Georgetown University Community:

We write today to share information regarding a disturbing report of anti-semitic graffiti near campus that we received today through Georgetown's Bias Reporting System.

Several Georgetown community members reported seeing a swastika painted on the public sidewalk near the intersection of Reservoir Road and 38th Street this morning.

The Georgetown University Police Department (GUPD) is coordinating with the Metropolitan Police Department (MPD) to investigate this incident. If anyone has information about this incident, please report it to GUPD at . . .

We strongly condemn antisemitism in all its forms, and this act of hatred has no place in our community. We stand together with our Jewish community and its allies. We recognize the effect that this deeply troubling incident has on our community, including the impacts on individual students and employees.

Our highest priority is the safety, security and well-being of our community, and we affirm our long-standing commitments to diversity, equity, inclusion and interreligious understanding. We include information below about safety measures and mental and emotional well-being resources: . . .

We encourage anyone who sees evidence of a bias or hate-motivated incident to file a report through the Bias Related Incident Reporting form, accessible online or via the LiveSafe app, or call GUPD at . . . Through the Bias Reporting System, Georgetown responds to, tracks and reviews bias-related incidents. Reporting incidents allows the University to quickly provide support to those impacted and hold the appropriate community members accountable for violations of University policy.

We all must stand together and reaffirm our core commitments to diversity, equity, inclusion and interreligious understanding.

January 2023:

Dear Members of the Georgetown University Community:

We write to share information we have received of an off-campus bias-related incident that occurred yesterday in the Georgetown/Glover Park neighborhood.

A Georgetown University employee reported to the Georgetown University Police Department (GUPD) that, at approximately 4 p.m. on Wednesday, Jan. 18, 2023, near the intersection of Wisconsin Avenue and W Place NW (near the Georgetown offices at 2115 Wisconsin Avenue), an unknown suspect made harassing comments regarding their perceived race and/or national origin. The suspect was described as a light-complexioned male, approximately 5 feet 7 inches tall, wearing a red beanie cap, red and white jacket, and light-colored denim jeans.

GUPD is coordinating with the Metropolitan Police Department (MPD) to investigate this incident. If anyone has information about this incident, please report it to GUPD at . . . Please note that the classification of this incident may change as information becomes available to GUPD or MPD.

We strongly condemn any act of racism or hate in our community. We understand the impact this distressing incident has on our community, and resources are available to support our students and employees.

Our highest priority is the safety, security and well-being of our community. We include information below about safety measures and mental and emotional well-being resources: . . .

We encourage anyone who sees evidence of a bias-or hate-motivated incident to file a report through the Bias Related Incident Reporting form, accessible online or via the LiveSafe app, or call GUPD at . . . Through the Bias Reporting System, Georgetown responds to, tracks and reviews bias-related incidents. Reporting incidents allows the University to quickly provide support to those impacted and hold the appropriate community members accountable for violations of University policy.

January 2023:

Dear Members of the Georgetown University Community:

We write today to share information regarding a disturbing report of antisemitic graffiti that we received today through Georgetown's Bias Reporting System.

A Georgetown community member reported the presence of a swastika drawn on a wall of the second floor hallway of Darnall Hall.

The Georgetown University Police Department (GUPD) is investigating this incident. If anyone has information about this incident, please report it to GUPD at 202-687-4343.

We strongly condemn antisemitism in all its forms, and this act of hatred has no place in our community. We stand together with our Jewish community and its allies. We recognize the effect that this deeply troubling incident has on our community, including the impacts on individual students and employees.

Our highest priority is the safety, security and well-being of our community, and we reaffirm our long-standing commitments to diversity, equity, inclusion and interreligious understanding. We include information below about safety measures and mental and emotional well-being resources: . . .

We encourage anyone who sees evidence of a bias or hate-motivated incident to file a report . . .

February 2023:

Dear Members of the Georgetown University Community:

We write today to share information regarding a disturbing incident of anti-Asian hate that occurred off campus on Thursday, February 16, and was reported to the university this morning.

A member of the Georgetown community reported that yesterday morning, at approximately 6 a.m. on the 2200 block of Wisconsin Avenue NW, she was approached by an individual who made anti-Asian comments and threw a rock at her. The assailant is described as a dark-complexioned male appearing to be 50-60 years old.

The Georgetown University Police Department (GUPD) is coordinating with the Metropolitan Police Department (MPD) regarding this reported hate crime. GUPD is also in contact with MPD's Asian Liaison unit.

If anyone has information about this incident, please report it to GUPD at . . .

We strongly condemn this act of violence and hate. We stand together with our Asian, Asian American and Pacific Islander community and are united against all acts of racism and violence. We reaffirm our long-standing commitment to diversity, equity, inclusion and racial justice for all and are working with the impacted member of our community to provide resources and support.

Today's incident is deeply troubling, and we recognize the impact that it has on our community, including the impacts on physical and mental health of individual students and employees. If you need additional resources to support your mental well-being you can find them in our Every Hoya Cares online resource center.

We also want to remind you of these safety measures:

- Use the LiveSafe Mobile App. LiveSafe is a personal security system that connects users with GUPD when activated during an emergency situation. The app also allows users to report suspicious activity, request a SafeRide Shuttle or personal escort, and use SafeWalk to share your location.
- If You See Something Suspicious...Say Something. Program phone numbers for GUPD, ... and Georgetown's EMS responders, GERMS, ... into your phones. If you are concerned about threatening behavior or are worried about potential violence to the university or someone at Georgetown, contact the Georgetown Threat Assessment Program.
- Sign up for Alert DC, which allows you to receive public safety alerts from MPD based on your location and timeframe preferences.
- Be attentive to your surroundings. Consider removing your earbuds when walking alone, especially at night. Choose well-traveled and lighted pathways. Always try to walk with a friend.

We encourage anyone who sees evidence of a bias- or hate-motivated incident to file a report through the Bias Related Incident Reporting form, accessible online or via the LiveSafe app, or call GUPD at . . . . Through the Bias Reporting System, Georgetown responds to, tracks and reviews bias-related incidents. Reporting incidents allows the University to quickly provide support to those impacted and hold the appropriate community members accountable for violations of University policy.