

ESSAY

The Process Was the Punishment: Georgetown Law’s Failure to Stand Up for Speech

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I. INTRODUCTION

I never intended to be a poster boy for cancel culture. Yet, for several months in 2022, I found myself in that terribly unenviable position. Two Georgetown offices were conducting a joint investigation into off-the-cuff comments I posted on social media. Would I be allowed to start my job as the head of a prestigious law school center or would I be terminated for wrongspeak? That was the bizarre world I found myself in. I did not think I was naive about higher education, but still my eyes were opened to the institutional rot in academia—most alarmingly at law schools.¹

When I accepted a position with the Georgetown University Law Center, one of the most prestigious law schools in the most credential-focused profession, I thought it would be an opportunity to have a big impact. After nearly 15 years at the Cato Institute, ultimately directing the think tank’s center for constitutional studies and rising to the level of vice president, I was open to a new challenge. Having developed Cato’s nationally renowned *amicus curiae* (friend of the court)

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1. See generally Anemona Hartocollis, *A Conservative Quits Georgetown’s Law School Amid Free Speech Fight*, N.Y. TIMES (June 6, 2022), <https://www.nytimes.com/2022/06/06/us/georgetown-ilya-shapiro.html> [<https://perma.cc/7KX7-C4JN>].

brief program and published a bestselling book on the Supreme Court,² I needed to consider what else I could do in my career. And so, when I received an offer to be the next executive director of Georgetown Law's Center for the Constitution, I had to take it. The Center was renowned for advancing originalism, the idea that constitutional provisions should be interpreted according to their original public meaning. It was a chance to do something different, to have more of an academic profile while expanding the Center's footprint.

If I wanted a new challenge, that was what I got—but it was not quite what I had imagined when I was first approached about the possibility over dinner at a Capitol Hill bistro.

On January 26, 2022, five days before I was set to start at Georgetown, Supreme Court Justice Stephen Breyer announced his retirement. Or rather, because his press conference did not happen until the next day, it was announced for him. Rumor has it that White House Chief of Staff Ron Klain leaked the news to lock in Justice Breyer's decision and ensure that there would be a vacancy for President Joe Biden to fill while Democrats had control of the Senate.³ Indeed, we have not had a Supreme Court confirmation process under divided government since 1991, when then-Senator Biden presided over an explosive set of hearings for Justice Clarence Thomas.

I was on a plane to Austin, Texas, when the news broke. Upon landing, my phone blew up, and I spent the rest of the afternoon fielding media queries about Justice Breyer's legacy and the search for his successor. My bottom line was that it was unfortunate and unseemly that President Biden was narrowing his candidate pool by race and sex—he had promised during the presidential campaign that he'd pick a black woman⁴—but that whomever he picked would be a reliable vote on the Court's left wing. After all, it has long been the case that Democratic-appointed justices vote much more in lockstep than their Republican-appointed counterparts do.⁵

2. ILYA SHAPIRO, *SUPREME DISORDER: JUDICIAL NOMINATIONS AND THE POLITICS OF AMERICA'S HIGHEST COURT* (2020).

3. E.g., Jim Geraghty, *Ron Klain Gave Democratic Senators a Heads Up About Breyer's Retirement*, NAT'L REV. (Feb. 1, 2022), <https://www.nationalreview.com/corner/ron-klain-gave-democratic-senators-a-heads-up-about-breyers-retirement> [<https://perma.cc/F7GR-7XNR>]; Callie Patteson, *White House's Klain Leaked Breyer Retirement News: Dem Sen. Durbin*, N.Y. POST (Feb. 1, 2022), <https://nypost.com/2022/02/01/white-houses-klain-leaked-breyer-retirement-news-dem-sen-durbin> [<https://perma.cc/HB3M-H34Y>].

4. Harper Neidig, *Biden Pledges to Nominate Black Woman to Supreme Court*, THE HILL (Feb. 25, 2020), <https://thehill.com/regulation/court-battles/484656-biden-pledges-to-nominate-black-woman-to-supreme-court/> [<https://perma.cc/87B8-5J9G>]; Sahil Kapur, *Biden Pledged to Put a Black Woman on the Supreme Court. Here's What He Might Have to Do.*, NBC NEWS (May 6, 2020), <https://www.nbcnews.com/politics/2020-election/problem-biden-s-pledge-black-woman-justice-n1200826> [<https://perma.cc/Y59S-QRJ3>].

5. See Ilya Shapiro, *Liberal Supreme Court Justices Vote in Lockstep, Not the Conservative Justices*, USA TODAY (Sept. 10, 2019), <https://www.usatoday.com/story/opinion/2019/09/10/liberal-supreme-court-justices-vote-in-lockstep-not-the-conservative-justices-column/2028450001> [<https://perma.cc/FKE4-LZ23>]; Adam Feldman, *Changes Are Afoot: Evidence from 5-4 Decisions During the 2018 Term and What This Tells Us About the Supreme Court Moving Forward*, EMPIRICAL SCOTUS (July 7, 2019), <https://empiricalscotus.com/2019/07/07/changes-are-afout> [<https://perma.cc/ET2Q-7P5X>].

At a certain point, the immediate media cycle ended, and I went to a dinner celebrating a friend's new job. Walking back to my hotel from the restaurant, I was feeling festive and feisty. As I doomscrolled Twitter before going to bed—not a best practice—I became increasingly upset about the criteria being applied to the Supreme Court nomination. I asked myself: “If I were a Democratic president, whom would I pick?” I thought about it and concluded: Sri Srinivasan, the chief judge of the U.S. Court of Appeals for the D.C. Circuit, an Obama appointee who had argued 25 cases in the high court and was universally respected for his intellect and legal acumen. Also, he had been born in India and immigrated to Kansas with his parents, so he combined diversity and the American dream. Judge Srinivasan had the potential to have a huge impact as a justice and had been considered for the 2016 nomination that had ultimately gone to Merrick Garland. But he was now preemptively disqualified because of his race and gender.

I fired off a late-night tweet:

Objectively best pick for Biden is Sri Srinivasan, who is solid prog & v smart. Even has identify [identity] politics benefit of being first Asian (Indian) American. But alas doesn't fit into the latest intersectionality hierarchy so we'll get lesser black woman. Thank heaven for small favors?⁶

In other words, I argued, in stilted shorthand given the platform, that Chief Judge Srinivasan was the best candidate, meaning that *everyone else in the entire world* was less qualified. So, if President Biden kept his promise, he would pick a less-qualified—or, given Twitter's character limit, “lesser”—black woman.

Then I went to bed.

Overnight, a firestorm erupted on social media, particularly over those three words: “lesser black woman.” I deleted the tweet and apologized for my inartful choice of words but stood by my view that President Biden should have considered “all possible nominees,” as 76 percent of Americans agreed in an ABC News poll released a few days later.⁷ Many politicians and legal commentators made the same point. But it was too late. My ideological opponents were out for blood, or at least my new job, even before I assumed it.

The day after the tweet was the second-worst day of my life, after another January day nearly 25 years earlier, when my mom died. I thought that I had blown up my life and killed my career. Everything I had worked hard for over decades—the sacrifices my parents had made in getting me out of the Soviet Union, the earnest striving of an immigrant kid to get to the Ivy League and work

6. Robby Soave, *Georgetown Ends Investigation of Ilya Shapiro for Bad Tweet, Will Not Fire Him*, REASON (June 2, 2022), <https://reason.com/2022/06/02/ilya-shapiro-georgetown-tweet-investigation> [<https://perma.cc/X5YF-LE74>].

7. Brittany Shepherd, *Majority of Americans Want Biden to Consider 'All Possible Nominees' for Supreme Court Vacancy: Poll*, ABC NEWS (Jan. 30, 2022), <https://abcnews.go.com/US/majority-americans-biden-nominees-supreme-court-vacancy-poll/story?id=82553398> [<https://perma.cc/WWH9-ZQ54>].

in the halls of power, the life my wife and I were building for our two young sons (who would be joined later that year by boy-girl twins)—all of it was crumbling. Over a tweet.

Never mind that a good-faith reader would not construe what I said to be offensive. It is willful miscomprehension to read my tweet to suggest that “the best Supreme Court nominee could not be a Black woman,”⁸ or that I considered black women to be “lesser than” everyone else. Although my tweet could have been phrased better, as I readily admitted, its meaning that I considered one candidate to be best and thus all others to be less qualified is clear. Only those acting in bad faith would misconstrue what I said to suggest otherwise. Only those trying to get me fired for my political beliefs would campaign for my banishment from polite society.

Thanks to friends and allies with public platforms and private back channels to the Georgetown administration, I was not fired during those initial four days of hell. Instead, I was onboarded but suspended pending an investigation into whether I had violated university policies. That investigation continued for more than four months of purgatory, during which I was banned from campus.

It is clear now that the “investigation,” led by Human Resources (HR) and the Office of Institutional Diversity, Equity and Affirmative Action (IDEAA), and advised by the prestigious (and expensive) Washington law firm WilmerHale, was a sham. The process was the punishment. It does not take months to investigate a tweet—or to look at a calendar. Any junior law professor could have applied the law (the short policies at issue, particularly Georgetown’s vaunted Speech and Expression Policy⁹) to the facts (an even shorter tweet) and come up with a quick answer—specifically that I had engaged in protected speech that was not discriminating against or harassing anyone. But that did not happen, and as the process dragged on, it became abundantly clear that university officials were just stalling until students left campus.

Indeed, on June 2, 2022, about a week after the semester ended, I was reinstated on the technicality that I was not an employee when I had tweeted and, therefore, was not subject to discipline under the relevant policies. I celebrated that technical victory in the pages of the *Wall Street Journal*,¹⁰ but after reading the IDEAA report in detail, realized that Georgetown had made it impossible for me to fulfill the duties for which I had been hired. After consulting with colleagues, my lawyer, and other trusted advisers, especially my wife—a better

8. William M. Treanor, *Dean William M. Treanor’s Statement on Recent Ilya Shapiro Tweets*, GEORGETOWN L. (Jan. 27, 2022), <https://www.law.georgetown.edu/dean-william-m-treanors-statement-on-recent-ilya-shapiro-tweets> [<https://perma.cc/F8QM-GJXJ>].

9. See GEORGETOWN UNIV., HUMAN RESOURCES POLICY MANUAL § 1008: POLICY ON SPEECH AND EXPRESSION (2024), <https://policymanual.hr.georgetown.edu/1000-university-policies/1008-policy-on-speech-and-expression> [<https://perma.cc/9F4M-MYLL>].

10. Ilya Shapiro, *My Cancel Culture Nightmare Is Over*, WALL ST. J. (June 2, 2022), <https://www.wsj.com/articles/ilya-shapiro-georgetown-twitter-kbj-cancel-law-school-supreme-court-appoint-ee-twitter-free-speech-11654211044> [<https://perma.cc/YD5F-VVN6>].

lawyer than any of us—I concluded that remaining in the job I was hired for was untenable.

I recount my reasoning later in this essay, but suffice it to say that Georgetown implicitly repealed its free-speech policy and set me up for discipline the next time I transgressed progressive orthodoxy. Instead of participating in that slow-motion firing, I quit.¹¹

Now, alongside the publication of my book, *Lawless: The Miseducation of America's Elites*, about the illiberal takeover of legal education that builds on my experience at Georgetown, I decided to publish the definitive account of that experience with the *Georgetown Journal of Law & Public Policy*.

II. FOUR DAYS OF HELL

On the morning of January 27, 2022, I woke up in my Austin hotel room refreshed and ready to take on the world, knowing that I would now be spending the week before I joined the Georgetown Law faculty discussing Justice Breyer's legacy and succession. But when I checked my phone, my heart sank, and I realized I would be taking on the world in a completely different way.

Mark Joseph Stern, Slate's legal correspondent and a Georgetown Law alum, had taken advantage of my inartful phrasing to go after my head—or, more precisely, my job. Screen-capturing my tweets, he commented, "I hate to draw attention to this troll because attention is what he craves. But now that @GeorgetownLaw has hired him, I feel an obligation to condemn his overt and nauseating racism, which has been a matter of public record for some time. I am deeply ashamed of my alma mater."¹²

Before Stern's salvo, my tweets had not been getting that much attention. But afterward, the Twitter mob piled on. In addition to the usual collection of bots and anonymous accounts, left-wing activists and intellectuals pounced, including would-be future colleagues. Other future colleagues showed me grace and offered personal support, sometimes despite ideological disagreements. These colleagues demonstrated compassion and professionalism from day one. Although I had online defenders as well, I quickly realized that things were getting out of hand and that a debate about what I had actually meant was both professionally unhelpful and a distraction from my point about judicial nominations.

Stern also got some social-media backlash, causing him to backpedal and insist that he was not out to get me fired. Charles C. W. Cooke, who is a friend, skewered Stern's facetious posture in *National Review*:

There he was on Twitter, minding his own business, when he came across some tweets he disliked from Georgetown's Ilya Shapiro, screenshotted and

11. Ilya Shapiro, *Why I Quit Georgetown*, WALL ST. J. (June 6, 2022), <https://www.wsj.com/articles/why-i-quit-georgetown-11654479763> [https://perma.cc/R5G5-6CHN].

12. Mark Joseph Stern (@mjs_DC), X (Jan. 27, 2022, 8:42 AM), https://x.com/mjs_DC/status/1486696022516682752 [https://perma.cc/E26G-5XWQ].

shared them, condemned their author as a racist troll in tweets that tagged his employer, insisted dramatically that he was “ashamed” of his “alma mater,” solicited and published a reproaching comment from that alma mater’s dean, and . . . well, for some inexplicable reason, the people watching this saga concluded that Stern was trying to get Shapiro *fired*. . . .

When Stern said that Shapiro was a “troll” and a “racist” whose “overt and nauseating” bigotry made him “ashamed” of Georgetown, he was simply confirming that overtly racist nauseating trolls are precisely the sort of people whom Georgetown should *keep on staff*—and maybe even give a promotion and a raise.¹³

Many others in the media would also come to my defense with both reported and opinion pieces. But on that first morning, the damage had been done. As Cooke noted, Georgetown Law’s leadership, having been apprised of the brewing “scandal,” put out a statement mischaracterizing what I had said as a “suggestion that the best Supreme Court nominee could not be a Black woman” and labeling that as “appalling.”¹⁴ The statement also said that my tweets were “at odds with everything we stand for at Georgetown Law and are damaging to the culture of equity and inclusion that Georgetown Law is building every day.”¹⁵

“As soon as I read the dean’s email, I thought, ‘Oh my gosh, this is gonna make it so much worse,’” said the then-editor of the *Georgetown Journal of Law & Public Policy* in a media interview.¹⁶ The GULC administration’s statement, he said, “took an already volatile situation and made it worse by inferring that students should adopt the worst possible reading of Mr. Shapiro’s tweets.”¹⁷

It was not at all clear what would happen to me, though it was certainly within the realm of possibility—perhaps more likely than not—that I would be fired later that afternoon. I had repeated conversations with a close friend and advisor, who was an academic leader of the libertarian legal movement and has long been one of my mentors and heroes. We discussed whether I should just resign to avoid being dragged further through the mud. In the end, we decided that this would not be the right course, that it would show weakness and damage the ideals of free speech and academic freedom, which were already under attack on university campuses.

It was time to move into damage control and crisis public relations. I would need both an “outside” strategy of media and public statements and an “inside”

13. Charles C. W. Cooke, *Poor, Misunderstood Mark Joseph Stern*, NAT’L REV. (Jan. 28, 2022), <https://www.nationalreview.com/corner/poor-misunderstood-mark-joseph-stern> [https://perma.cc/W8N2-RXCH].

14. Treanor, *supra* note 8.

15. *Id.*

16. Nate Hochman, *Inside Georgetown Law’s Campaign to Cancel Ilya Shapiro: ‘This Is Melting Down’*, NAT’L REV. (Feb. 2, 2022), <https://www.nationalreview.com/2022/02/inside-georgetown-laws-campaign-to-cancel-ilya-shapiro-this-is-melting-down> [https://perma.cc/B7W8-W2DR].

17. *Id.*

strategy working behind the scenes in private communications to push Georgetown Law not to fire me.

I emailed Greg Lukianoff, whom I had known for a long time, with the subject heading “My Twitter storm crisis.” Greg is the president and CEO of what was then called the Foundation for Individual Rights and Education (FIRE), the nation’s premier organization dedicated to the freedom of speech and expression in the academic world. (That summer, FIRE would rebrand itself as the Foundation for Individual Rights and *Expression*, expanding its mission to defend and promote “the value of free speech for all Americans in our courtrooms, on our campuses, and in our culture.”¹⁸) I was no stranger to FIRE, having worked with the organization’s lawyers on Supreme Court and other appellate cases over the years, either supporting them with amicus briefs or joining together on filings. Never had I expected that I would personally need the organization’s services, as the target of potential disciplinary action in response to something I had said or written. But then nobody does—or should. It is a sad testament to the state of the academic world that FIRE continues to exist, and expand, 26 years after it was founded.

A basic question about how I should deal with media queries quickly evolved into an A-Team thread regarding all aspects of speech-related crisis management and legal action. Greg did not hesitate to involve all of his top people. In the next 48 hours, that core group exchanged so many emails that we had to start a new thread several times.

The day was drawing on, and I needed to get dressed, check out of my hotel, and eventually fly home. The day before, I had made lunch plans to meet an old friend, Fifth Circuit Court Judge Don Willett, along with a few of his current and former clerks. I texted him to say that I was running late because of “a Twitter-related personal crisis.” The fact that I was meeting this particular federal judge made the episode seem scripted; Don had gained national acclaim for being the most active judicial Twitter user when he was on the Texas Supreme Court, but had ended his tweeting upon being nominated to the Fifth Circuit in 2017.

I spent the rest of the afternoon before the flight home strategizing with friends and allies, dodging media queries, and trying to settle my nerves. A trusted advisor offered that we were in a “wait and see” period, and there was not much to be done unless things escalated. Just in case, and with FIRE’s help, I drafted several statements, some combative, some conciliatory, eventually settling on a short one regretting my choice of words but doubling down on my point about colorblind judicial selection. But I did not tweet or send anything out yet.

Seeing that the furor was not dying down on either social media or the Georgetown faculty listserv, however, I was advised to prepare an apologetic letter to the dean and faculty—apologetic with regard to my language, not my message. The FIRE brain trust was uniformly against my issuing *any* further apology,

18. FOUND. FOR INDIVIDUAL RTS. & EXPRESSION, *FIRE’s Mission* (2024), <https://www.thefire.org/about-us/mission#:~:text=FIRE’s%20mission%20is%20to%20defend,most%20essential%20qualities%20of%20liberty> [<https://perma.cc/Z4YU-9VCF>].

because in its experience with academic persecutions, apologies are taken as admissions of guilt and capitulation and never achieve a beneficial result. At 11:03 p.m.—still day one of the initial “four days of hell”—I sent a statement to the faculty listserv, again expressing regret for my communication failure and leaving it at that.

There was no immediate response, but the next day, the Georgetown Black Law Students Association (BLSA), joined by many other groups and individuals—including the Student Bar Association, the school’s ACLU chapter, and the school’s American Constitution Society chapter, among others—issued a letter criticizing the administration’s “bare-bones email” for offering “no apology or action plan” and arguing that I was undeserving of “a space as a leader and educator in the Georgetown community.”¹⁹ The letter laid out a series of demands, including that my employment contract be revoked. Other demands included expanding the IDEAA Office, giving BLSA a voice on the faculty hiring committee, and funding an endowment for black students. One allegation was that my comments “pit South Asian communities against Black communities in furtherance of white supremacy.”²⁰ Numerous members of the faculty joined in the attacks over Twitter and email.

A Georgetown student, who told a *National Review* reporter that he “tends to lean a little more liberal,” was thrown off a group chat after being called “privileged” for defending students who questioned those calling for my cancellation.²¹ “That’s what really got to me,” he said. “Like, my mom was undocumented for 35 years. I grew up on food stamps and welfare and had to dig myself out of a hole to get to go to Georgetown Law. My life has been difficult, but I don’t complain. And it just bothered me that these kids that didn’t even know me—you know, a fellow person of color—were telling me that I’m privileged. Like, you don’t know the things that I had to see growing up and what I had to do and struggle to get here.”²² He was also kicked out of a separate group chat for first-generation law students. “Some people encouraged me to go to the administration, but like, you’ve seen the administration’s response,” he explained. “They’re not going to be on my side. . . . I’m on a scholarship. I don’t want to get kicked out, you know?”²³

Other students and alumni organized counter-letters. Georgetown Law’s Conservative and Libertarian Student Association (CALSA) bravely put out a strong statement of support.²⁴ FIRE organized a nationwide faculty letter that was

19. Georgetown BLSA (@GeorgetownBLSA), X (Jan. 28, 2022, 12:51 PM), <https://x.com/GeorgetownBLSA/status/1487121210039230469> [<https://perma.cc/5US8-EYCT>].

20. *Id.*

21. Hochman, *supra* note 16.

22. *Id.*

23. *Id.*

24. See Philip Klein, *Georgetown Law’s Conservative and Libertarian Students Rally Around Ilya Shapiro*, NAT’L REV. (Jan. 29, 2022), <https://www.nationalreview.com/corner/georgetown-laws-conservative-and-libertarian-students-rally-around-ilya-shapiro> [<https://perma.cc/CWQ5-ZUNL>].

ultimately signed by more than 200 academics.²⁵ The Academic Freedom Alliance, spearheaded by Princeton Professor Keith Whittington, issued a similarly powerful letter.²⁶ Nadine Strossen, a former head of the ACLU, wrote a particularly strong statement, concluding that my case “provides an especially compelling context for Georgetown to abide by the important constitutional norms that it has committed to honor.”²⁷ She also wrote a pointed personal missive to the law school’s administration.

Peter Kirsanow, a member of the U.S. Commission on Civil Rights and former member of the National Labor Relations Board who happens to be black, wrote in support of me and my “mainstream opinion” that “deserves to be heard at a law school, which is supposed to be a place of free expression and intellectual inquiry.”²⁸ Eugene Volokh and other academics at the influential *Volokh Conspiracy* blog took up my cause.²⁹

Thanks to both public and private efforts by my allies and supporters—most of whom acted without my asking—I survived that second day. The administration let the campus community know that Friday afternoon that there would be no decision made about my situation until Monday.

That was a reprieve of sorts; surviving the first 24–48 hours is key in cancellation campaigns. But I was not out of the woods yet, and the emotional toll was beginning to manifest itself physically: not just sleepless nights, but I lost my appetite and felt ill. My wife was also, of course, affected. There were tears—from both of us—and she told me over and over, “Fix this, fix this.” Kristin had prophetically warned me over dinner a few days earlier, before my trip to Austin, that at Georgetown I would have to be particularly careful about issues of race and sex. And now I had stepped into that exact quagmire because I was not yet in the mode of thinking of myself as being in academia. We tried not to convey our worries to our two young sons (then six and almost four), but kids can sense when something’s not quite right with Mommy and Daddy, so they displayed some unusual behavior.

25. Letter from Eugene Volokh, Distinguished Professor of L., UCLA, to William M. Treanor, Dean, Georgetown Univ. L. Ctr. (Jan. 31, 2022), <https://www.thefire.org/research-learn/faculty-letter-support-ilya-shapiro-january-31-2022> [<https://perma.cc/DT2W-M7RQ>].

26. Letter from Keith Whittington, Chair, Acad. Comm., Acad. Freedom All., to William M. Treanor, Georgetown Univ. L. Ctr. (Feb. 1, 2022), <https://academicfreedom.org/wp-content/uploads/2022/02/AFA-Letter-to-GULC-regarding-Ilya-Shapiro.pdf> [<https://perma.cc/9QJW-X6V3>].

27. Nadine Strossen, *Statement on the Ilya Shapiro Free Expression Controversy*, FIRE (Jan. 30, 2022), <https://www.thefire.org/research-learn/statement-nadine-strossen-ilya-shapiro-and-free-expression-georgetown-january-30> [<https://perma.cc/XR6K-DQ2U>].

28. Letter from Peter Kirsanow, Comm’r, New Am. Civ. Rts. Project, to Dean Treanor, Geo. L. Sch. (Jan. 28, 2022), <https://web.archive.org/web/20220722094932/https://www.newamericancivilrightsproject.org/wp-content/uploads/2022/01/Letter-to-Treanor-re-Ilya-Shapiro-1.pdf> [<https://perma.cc/XVW7-4MMK>].

29. *E.g.*, Will Baude, *Faculty Letter Against Firing Ilya Shapiro*, VOLOKH CONSPIRACY (Jan. 31, 2022), <https://reason.com/volokh/2022/01/31/faculty-letter-against-firing-ilya-shapiro> [<https://perma.cc/Q33A-DXXN>]; Josh Blackman, *Ilya Shapiro Is Shouted Down at U.C. Hastings*, VOLOKH CONSPIRACY (Mar. 3, 2022), <https://reason.com/volokh/2022/03/03/ilya-shapiro-is-shouted-down-at-u-c-hastings> [<https://perma.cc/Z9SZ-ZESN>].

The trend of canceling speakers rather than challenging them, of being oblivious to the “LOL nothing matters” collateral damage, also represents the loss of grace in our culture more broadly. There is a desire to ascribe malign motives to one’s political enemies and unwillingness to think of them as merely wrong, rather than evil. As American society has secularized, politics has replaced religion to fill our spiritual needs. In that context, it’s easy to see one’s political opponents as heretics—and then of course their sacrilege isn’t worth hearing. It’ll take courage from cultural influencers to get us back to where we can disagree without wanting to ruin the lives of people with whom we have those disagreements.

On Saturday, January 29, after further discussions with my advisors and my good friend Libby Locke, one of the nation’s premier plaintiff-side First Amendment lawyers and also a Georgetown Law alum, I asked to meet with the law school’s leadership. The meeting was arranged for the next day via Zoom. It would have been better to meet in person, but Georgetown was maintaining extreme Covid measures such that masks were required even for small gatherings, which would have been even more surreal and impersonal.

During the Zoom meeting, I was asked for suggestions on where we should go next. I said that principles of free speech and the university’s own policy protected my expression, so I should be allowed to take up my job. I said that the administration itself had muddied the waters by mischaracterizing my tweet and thus advancing the notion that a maliciously unreasonable reading of my tweet as racist was its best reading. Nonetheless, and despite that unfortunate start to my Georgetown tenure, I said that I was prepared to do my job and be a better communicator in the future.

I was asked whether I could be effective given the offense I had caused. I explained that I could because I still had my professional skills, networks, and media contacts, and that students and faculty who did not want to interact with me would not have to. (The appointed investigators would eventually use that point, which I reiterated when they interviewed me, to claim that I would be denying “access” to some students’ educational opportunities.) I was asked whether I was open to issuing a further apology, perhaps in the context of structural racism. Biting my tongue about the reference to critical race theory, I explained that I had already said enough and that any further statements would have to be issued jointly in the context of the continuation of my employment.

The meeting lasted less than half an hour. That evening, I was in touch with two prominent members of Georgetown Law’s Board of Visitors, who were in my corner and disappointed by my treatment. It could be that their entreaty was the last straw that allowed me to survive past the initial decision-making period, to persuade the administration to punt.

The next day, Monday, January 31, Georgetown declined to take my suggestion and vindicate the values of free speech and grace, but it also declined to take the student organizations’ suggestion to cut ties with me and grant their desired concessions. Instead, the law school announced that, even as I would be onboarded the next day, per my contract, I would be immediately placed on paid

administrative leave pending an investigation into whether my social-media comments had violated university policies on harassment, antidiscrimination, and professional conduct.³⁰

My personal hell had ended, only for my purgatory to begin.

III. FOUR MONTHS OF PURGATORY

Once the acute pain of the immediate “scandal” ended, a period of chronic annoyance began in which pain ebbed and flowed. I think that the phrase “banality of evil” is apt for an evil that can result “merely” in career death rather than loss of life. My experience with the IDEAA Office was one of encountering bureaucrats enforcing an illiberal regime that expects people to bend the knee to established orthodoxy or suffer the consequences. IDEAA, and the DEI offices that have spread across academia, go far beyond merely preventing discriminatory practices and ensuring that everyone has access to university facilities. They are the apotheosis of what those warning about political correctness in the 1990s feared: thought police.

The problem isn’t limited to canceling professors and treating speakers differently based on their viewpoints. The illiberal takeover of law schools involves the clash between the classical pedagogical model of legal education and the post-modern activist one. This dynamic was crystallized in Stanford DEI Dean Tirien Steinbach’s memorable question to Judge Kyle Duncan when she fomented the mob that shouted him down in March 2023: “Is the juice worth the squeeze?”³¹ It’s just a cute way of giving ideological opponents a heckler’s veto—not only on speakers, but on class materials, extracurricular activities, whatever. If they hate an idea enough, surely it isn’t worth exposing students to a person who espouses that idea.

Initially, I did not think that the “investigation” would last long—it was suggested by someone with reason to know that it might take a month or six weeks—so I took it seriously because, after all, I wanted both to keep my job and to stand up for free speech.

What I did not understand was that the values I was expecting to be applied—reason, good faith, and professional courtesy—had long since been abandoned by Georgetown’s bureaucracy. There’s a difference between an investigation and an inquisition. The first is trying to find the truth, and the second is trying to

30. See GEORGETOWN UNIV., HUMAN RESOURCES POLICY MANUAL § 1004: POLICY STATEMENT ON HARASSMENT (2024), <https://policymanual.hr.georgetown.edu/1000-university-policies/1004-policy-statement-on-harassment> [https://perma.cc/SZV4-RPG4]; GEORGETOWN UNIV., EQUAL OPPORTUNITY AND NONDISCRIMINATION IN EMPLOYMENT (2024), <https://georgetown.app.box.com/s/qqtpk66pgqy2cnx90ihl> [https://perma.cc/L4M7-J5QW].

31. Josh Blackman, *Is the DEI Juice Worth the Squeeze?*, VOLOKH CONSPIRACY (Mar. 11, 2023), <https://reason.com/volokh/2023/03/11/is-the-dei-juice-worth-the-squeeze> [https://perma.cc/VH57-89G5]. For a comprehensive account of this event, see David Lat, *Yale Law Is No Longer #1—For Free-Speech Debacles*, ORIGINAL JURISDICTION (Mar. 10, 2023), <https://davidlat.substack.com/p/yale-law-is-no-longer-1-for-free-speech> [https://perma.cc/2B5E-HY8E].

assemble evidence for a predetermined result. Bureaucracy is about order, tidiness, and obedience. Academia is about growth, challenge, and debate—or it should be. What differentiates education systems in liberal democracies from those in authoritarian regimes is the emphasis on the free exchange of ideas, which enhances education, innovation, and personal growth. Bureaucratic bloat and governance by administrators trained on something other than scholarly values is deadly to the survival of the academic mission.

What should have given me a clue that the investigation was farcical from the outset was that its very genesis patently contradicted Georgetown’s Speech and Expression Policy, which is actually quite good on paper and worth quoting from.

It is not the proper role of a university to insulate individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. . . .

It is for the individual members of the University community, not for the University as an institution, 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. . . .

. . . [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.³²

Given that my speech alone was being investigated—and that I was not harassing or discriminating against anyone, except possibly President Biden for having a racist and sexist employment policy—the case should have been open-and-shut. Even the left-wing literary critic Jeet Heer tweeted that my comments “were vile but well within the parameters of academic free speech. The university is betraying fundamental principles here.”³³ Critical race theorist Nikole Hannah-Jones, the founder of the 1619 Project, which aims to recenter America’s story around racism and slavery, joined the criticism of Georgetown’s decision to investigate me, however non-disciplinary my leave might be framed. “I agree,” she quote-tweeted Heer.³⁴

And recall that all of this took place at a law school, where any junior professor could have applied the above policy to the discrete set of facts and closed the case before the last sleepy-headed students rolled in for morning class. That’s what would have happened in a sane world.

In the real world, something different happened. It quickly became apparent that the true priority for those campus bureaucrats was not implementing due process but pleasing everyone who had an opinion about the matter. On February 1, 2022, my first official day as a Georgetown faculty member, students held a

32. GEORGETOWN UNIV., *supra* note 9, at 174–75.

33. Jeet Heer (@HeerJeet), X (Jan. 31, 2022, 1:43 PM), <https://x.com/HeerJeet/status/1488221335193100292> [<https://perma.cc/4H8A-AU5N>].

34. Ida Bae Wells (@nhannahjones), X (Jan. 31, 2022, 9:33 PM), <https://x.com/nhannahjones/status/1488339601668386816> [<https://perma.cc/59KX-MK2N>].

sit-in, calling for “the immediate termination of Ilya Shapiro.”³⁵ Georgetown administrators attended the sit-in, fielding questions for more than an hour. Student activists floated the idea of defunding the Center for the Constitution—“I really want you to defend why we really need it, beyond, like, you know, free speech, and beyond diversity of opinion”—and demanded everything from “reparations” to free food to a crying room. “Is there an office they can go to?” one student asked. “I don’t know what it would look like, but if they want to cry, if they need to break down, where can they go?”

“It is really, really hard to walk out of class or a meeting in tears, and you should always have a place on campus where you can go,” an administrator replied. “And if you’re finding that you’re not getting the person that you want to talk to or not getting the space that you need, reach out to me anytime—anytime—and we will find you space.”

The administration defended the Center for the Constitution as “important” but added that they wanted to “draw a line between conservatism and things that are racist.” Georgetown was trying to placate the students without committing to any action. “Since we’re a private institution, the First Amendment doesn’t apply to us,” but “on the other hand, the university does have a free speech and expression policy which binds us.” It was not exactly a courageous defense of the principles of academic freedom and free speech.

Throughout the protest, the Georgetown administrators present maintained a deferential tone but remained noncommittal about taking concrete steps: “I’m grateful for you taking the time to talk; I’m grateful for your insights; I heard a lot today that I won’t just be reflecting on but that I’ll be moving forward with, and I will be in dialogue with you about what we’re doing.” The students, far from being mollified, were irate.

At the same time, the law school’s “bias reporting” hotline fielded complaints about a student who had defended me in a national publication—taking particular issue with the article’s headline (which of course the editor, not the student, had written). While sitting in class later that week, that student received a letter stating that law school administrators were evaluating a potential violation of the same policies under which I was being investigated.³⁶ The student hired a lawyer to push back. Georgetown ultimately decided not to go through with an investigation, but there, too, the process was the punishment: in addition to anxiety and distress, the episode cost the student upwards of \$10,000 in legal fees.

There have been, in just the last few years, numerous attempts to “cancel”—shame, ostracize, and threaten the careers of—anyone who deviates from a “safe” discourse. In April 2023, FIRE released a comprehensive report that explored

35. Nate Hochman, *Georgetown Law Students Stage Sit-in, Demand Dean Fire Ilya Shapiro*, NAT’L REV. (Feb. 1, 2022, 1:56 PM), <https://www.nationalreview.com/corner/georgetown-law-students-stage-sit-in-demand-dean-fire-ilya-shapiro> [<https://perma.cc/G3CE-UM7X>]. All quotes from the sit-in in this and the next few paragraphs come from this article.

36. Author’s conversation with the student.

cancel culture in colleges and universities across the country.³⁷ It examined attempts to punish or professionally sanction scholars from 2000 to 2022 for speech that is—or would be in public settings—protected by the First Amendment. Its findings are staggering, with 1,080 scholar sanction attempts, almost two-thirds of which (698) resulted in sanctions, including 225 terminations.³⁸ Alarming, the annual number of attempts at cancellation has increased dramatically over time, from 4 in 2000 to 145 in 2022.³⁹ Perhaps not surprisingly, 75 percent of attempts by undergrads, 82 percent by fellow scholars, and 94 percent by graduate students (which includes law students) came from the ideological left.⁴⁰ The schools with the most cancellation attempts were Harvard (23), Stanford (22), UCLA (19), Georgetown (16), Columbia (14), and Penn (14).⁴¹ What’s most telling is that law professors were targeted more than any other discipline.

While those sorts of spectacles were taking place on campus, I began the virtual “onboarding” process: setting up direct deposit for my hard-earned paycheck, signing up for benefits, figuring out email and computer systems, going through HR training, and other standard procedures. I was contacted by both HR and IDEAA to arrange my investigatory interview. We set it for February 17, 2022, at 9:00 a.m., via Zoom again because my presence on campus could be “triggering” and “harmful.” For me, the virtual meeting would actually be at 6:00 a.m. Pacific time, because I was on the West Coast speaking to chapters of the Federalist Society and participating in an academic conference. That was all in my personal capacity, because Georgetown’s letter also specified that I was “not to perform work for the University.”

And so, I prepared to face my investigators. I was staying with a friend in San Diego, which was where, in the wee hours that Thursday morning—three weeks after the tweet that shook the world—I fired up my laptop.

The reason that bureaucrats have eschewed all of the virtues undergirding the rule of law is that they’ve accepted the new orthodoxy that what matters is not the objective meaning of a given statement or even its intent but its effect—not the facts but the feelings. In retrospect, it’s obvious that IDEAA’s questions that morning were not about understanding me or what I had said but instead about getting me to agree with a bad-faith reading of the situation. It was a struggle session in which I was supposed to admit my guilt. If others perceived what I said as bad, it *must be* bad. No wonder we got nowhere; we were in a pitched epistemological battle.

Georgetown’s investigators questioned me for an hour, almost exclusively asking variations of three questions:

37. Komi Frey & Sean Stevens, *Scholars Under Fire: Attempts to Sanction Scholars from 2000 to 2022*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION (2023), <https://www.thefire.org/research-learn/scholars-under-fire-attempts-sanction-scholars-2000-2022> [<https://perma.cc/2X8U-7PK5>].

38. *Id.* at 2.

39. *Id.*

40. *Id.* at 18 n.42.

41. *Id.* at 3.

What did you mean by your tweet?

What was the context of your tweet?

Do you think you can still be effective in the job for which you were hired?

The questions were repetitive; my interlocutors were not really focused on my answers but waiting for me to say the magic words “I was completely wrong.” They also tried another tack: pointing out that other people had *felt* harmed by my words. How, then, could I not concede that I was wrong? Of course, the idea that the freedom to speak depends on the emotional reactions the speech elicits has long been rejected, including by Georgetown’s own speech and expression policy. There is an exception for the incitement of violence, to be sure, but nobody accused me of doing that!

It was all rather straightforward and, dare I say, easy. It was not a lawyerly deposition. There were no gotcha games or sharp questions. The investigators were incredulous that I didn’t back away from my explanation that I had just imperfectly expressed a sentiment by which I stood, but there was nothing that they gleaned that could affect their predetermined judgment that I was guilty of creating a “hostile educational environment” because some people were offended. It was clear that, even if I had fallen on my sword and pledged fealty to critical race theory, the outcome was preordained.

On Monday, February 21, I filed my written submission with HR and IDEAA. The upshot was that I urged Georgetown to uphold its values and live up to its ideals.

The following week, on March 1, I headed back to California to speak at the law school then known as UC Hastings, which would mark another bizarre twist in the saga. By the time I flew back to California, my lawyer and I decided that I should resume a normal schedule of public events and writings. The thinking was that it would help my case to show that I was still capable of performing as a communicator and exponent of my area of expertise. That course of action would also address the investigators’ concerns about my being able to do my job. And it would be a psychological balm, because I was beginning to get antsy about being bottled up and “inside my head” about the surreal situation I was in. Moreover, the publisher of my last book had decided to release *Supreme Disorder* in paperback—I had begun working on an epilogue that would update the narrative to include Amy Coney Barrett and whomever Biden would now pick—so being “out there” would help sales.

What I was about to discover was a truth that contradicted the most prominent defenses of cancel culture. Cancel-culture apologists like to claim that cancellation is about accountability for bad actors. Who could oppose that? Every society needs a way to chastise those who have broken its rules. What puts the lie to the “accountability” defense, however, is that cancellations aren’t specific; they’re blanket punishments. Accountability is designed to seek truth and *then* punish, but cancellation seeks to isolate its victims without investigation—and to isolate

them in every way across their careers. That’s simply an exercise of power. Presumption of innocence? Forget about it. Grace? That’s for chumps. Such an atmosphere is particularly detrimental to the development of lawyers.

After all, if an English or sociology department is led astray, that is unfortunate and a loss to the richness of life and the accumulation of human knowledge. But the implosion of legal education has much more dire consequences.⁴² Law schools train future lawyers and politicians and judges, who are the gatekeepers of our institutions and of the rules of the game on which American prosperity, liberty, and equality sit. An illiberal takeover of medical schools might be more immediately dangerous, in that you wouldn’t have the best doctors treating people, but law students who police their professors’ microaggressions and demand the “deplatforming” of “harmful” speakers will eventually occupy positions of authority. Without any understatement, it would be a disaster for the American way of life to have future generations of lawyers think that applying the law equally to all furthers white supremacy or that the strength of one’s rights depends on one’s level of privilege—or that due process and freedom of speech protect oppressors and perpetuate injustice.

As it happened, the day before I flew to San Francisco to speak at UC College of the Law, San Francisco—renamed from UC Hastings “in recognition of harms done by the school’s founder against the Yuki Indians”⁴³—President Biden announced the nomination of then-Judge Ketanji Brown Jackson to the Supreme Court. “Great,” I thought, “Professor Rory Little and I will be able to discuss not just the role that politics plays in judicial nominations or my ongoing Georgetown travails, but the merits of this particular nominee.” But it was not to be; we did not get to discuss anything at all. I was shouted down, not allowed to speak at all, throughout a bizarre experience I have chronicled elsewhere.⁴⁴

So it went the next few months. I did some legal consulting, wrote popular and academic articles, filed amicus briefs—including in the Harvard/UNC affirmative-action cases that the Supreme Court would decide in June 2023⁴⁵—gave speeches and panel remarks, explored some idea-entrepreneurship opportunities, and otherwise kept busy so as not to think about the dragged-out “investigation.” One highlight was an event at Princeton, my undergraduate alma mater, focused on threats to collegiate free speech, after which I had dinner with Professor

42. See, e.g., Tunku Varadarajan, *DEI at Law Schools Could Bring Down America*, WALL ST. J. (Mar. 28, 2023), <https://www.wsj.com/articles/woke-law-schools-could-bring-down-america-ilya-shapiro-dei-bureaucracy-stanford-supreme-court-rule-of-law-34c402c2> [<https://perma.cc/QZJ7-TA5T>] (interviewing author on subject matter).

43. *UC Hastings Is Now UC Law SF*, UNIV. OF CAL. COLL. OF L., S.F. (Jan. 1, 2023), <https://www.uclawsf.edu/new-name> [<https://perma.cc/FE98-6M6L>].

44. For a detailed description of that episode, see Ilya Shapiro, *Mob Rule and Cancel Culture at Hastings Law School*, WALL ST. J. (Mar. 22, 2022), <https://www.wsj.com/articles/mob-rule-at-hastings-law-school-shouting-obscenities-ilya-shapiro-georgetown-yale-law-11647957949> [<https://perma.cc/G8QT-U892>]; Ilya Shapiro, *Learning from My Lived Experience with Academic Intolerance*, 27 TEX. REV. L. & POL. 743 (2023).

45. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

Joshua Katz and his lovely wife, Solveig Gold. Josh is a classicist and a linguistic genius, whose long-ago disciplinary case for an inappropriate (but consensual) relationship with a student was reopened after he bucked progressive orthodoxy in the aftermath of the George Floyd protests.⁴⁶ He would be stripped of his tenure and fired later that spring.

It was an emotional roller coaster. There were fun, rewarding times and plenty of both quality and quantity time with my family. But there were pits of . . . not despair but doubt and mental exhaustion. The word is overused, but it was surreal: Was all this happening because of one tweet? Where was my career going? Sure, I had a jocular personality in public, trying to make constitutional law more accessible, but I was getting tired of being the case study and making news rather than explaining cases on news programs.

More broadly, what was happening to our country and to legal academia? Why were professors not teaching students that they would face bigger issues in their careers than offensive speakers?

But as I mentioned in the introduction, my experience was no isolated incident—not even for that month of March 2022! On March 10, a Yale Law School discussion bringing together Monica Miller of the American Humanist Association and Kristen Waggoner of the Alliance Defending Freedom—who agreed on little other than the importance of free speech—was interrupted by dozens of protesters who were upset about ADF’s positions on LGBTQ issues.⁴⁷ The protesters continued their disruption in the hallway outside in a way that further disrupted several classes and a faculty meeting, while Miller and Waggoner had to be escorted out of the room. It would take Dean Heather Gerken more than two weeks to respond and essentially let the disrupters off with a warning.⁴⁸

Then students obstructed a debate at the University of Michigan on Texas’s heartbeat bill featuring its architect, former Texas solicitor general Jonathan Mitchell, with whom I overlapped in law school. They focused on the particularly clever method of holding signs at the front of the room that prevented the audience from seeing Mitchell and his presentation. Somehow, that event was not livestreamed and didn’t make the national news; I learned of it only because I was due to speak in Ann Arbor the following week.

The only thing the disrupted events had in common was that nonprogressive speakers were presenting ideas that some students found objectionable. We have gotten to a place where questioning affirmative action or abortion is outside the

46. Colleen Flaherty, *Princeton Moves to Fire Professor*, INSIDE HIGHER ED (May 19, 2022), <https://www.insidehighered.com/quicktakes/2022/05/20/princeton-moves-fire-professor> [https://perma.cc/FD46-XYBX].

47. Robby Soave, ‘Grow Up’: Yale Law School Students Interrupt Event, Demand Right to Talk Over Speakers, REASON (Mar. 16, 2022), <https://reason.com/2022/03/16/yale-law-school-students-disrupt-event-adf-aha> [https://perma.cc/GK46-T3UE].

48. See Heather K. Gerken, *A Message from Dean Gerken on the March 10 Protest*, YALE L. SCH. (Mar. 28, 2022), <https://law.yale.edu/yls-today/news/message-dean-gerken-march-10-protest> [https://perma.cc/P5K7-CKDT].

academic Overton window, the acceptable range of policy views. We have also gotten to a place where the demand for racism—to justify allegations of “systemic racism” and racialist “antiracism”—far outstrips the supply, so outrages have to be manufactured.

Nearly all these cases follow the same pattern: Students weaponize hurt feelings—which are often performative, not genuine—to demand the obliteration of a political opponent’s career. Institutional cultures are so weak, thanks to a bureaucratic explosion and increase in academic activists, that administrators are easily overwhelmed by these moral panics and either engage in performative denunciations of the accused or actually terminate them. This pernicious dynamic is reminiscent of the Chinese Cultural Revolution, in which students publicly shamed and otherwise humiliated professors to scare them into ideological obedience.

At least I can report some counterexamples from my personal experience, though it’s unclear whether these are green shoots or exceptions that prove the rule. My Michigan event was supposed to cover the politics of Supreme Court nominations, but in light of national and local developments was reformatted as a discussion on the importance of free speech on campus. Apparently, between the Mitchell event and mine, deans had read the leaders of student organizations the riot act, reiterating university policies on free speech and telling them, “We don’t want to be Hastings or Yale.” And right before my event, which also featured Northwestern law professor Andrew Koppelman, a longtime sparring partner, the dean of students (who happened to be a black woman), told the audience that I was “most welcome” and reiterated school policies on disciplinary actions against those who disrupt speaker events.

Koppelman said that my substantive legal writings on a range of constitutional issues were “a lot worse than an insulting tweet” but that paying attention to what I said would help those on the left fight their opponents.⁴⁹ I gave as good as I got, assailing him and progressives for having upended the rule of law in favor of a constitutionally untethered pursuit of social justice. It was a fantastic event, and we ended up writing about our experience for the *Heterodox Academy* blog, modeling civil engagement despite vehement disagreement over real issues.⁵⁰

In addition to my Michigan event, I had a thrilling and serious two-hour standing-room-only discussion at the University of Oklahoma College of Law. Then-Dean Katheleen Guzman attended the whole thing, took copious notes, and came up to me afterward to ask what administrators should do to promote civil discourse. I suggested that just as law school deans imbue the importance of diversity and public service, they should imbue the values of free speech and civil

49. Andrew Koppelman & Ilya Shapiro, *How We Fought Each Other at Michigan Law*, HETERODOX ACAD. (May 11, 2022), <https://heterodoxacademy.org/blog/how-we-fought-each-other-at-michigan-law> [<https://perma.cc/QSC8-A587>].

50. *Id.*

discourse. I do not think it is that hard, but there is little desire to do it or to demonstrate the backbone to stand up to the anti-free-speech mob.

But more people emerged from outside the academy to advocate for free speech in the academy. Two weeks before my Hastings debacle, Fifth Circuit Judge James C. Ho came to Georgetown Law to give a talk on originalism. “But I hope you won’t mind that I’ve decided to address a different topic today instead,” he announced to much surprise. “I’m going to spend my time today talking about Ilya Shapiro.”⁵¹

Now, I should disclose that I have known Judge Ho for about 20 years, and we see each other fairly regularly. But I had no idea that he was going to do what he did. A Taiwanese American who immigrated to the United States with his parents as a child, Judge Ho became the first person of Asian descent to sit on the Fifth Circuit when he was appointed by former President Donald Trump in 2017. He is also a cochair of the Judiciary Committee of the National Asian Pacific American Bar Association, a member of the U.S. delegation to the United Nations Committee on the Elimination of Racial Discrimination, and a former attorney in the Justice Department’s Civil Rights Division. Judge Ho’s personal background featured prominently in his remarks. “I confronted racial discrimination,” he said, but “cancel culture is not just antithetical to our constitutional culture and our American culture;” it is “completely antithetical to the very legal system that each of you seeks to join.”⁵²

Judge Ho’s speech, which he later annotated and published in this Journal, argued generally about the importance of freedom of speech, since it is “the foundation of our entire adversarial system of justice.”⁵³ Paralleling Koppelman, he explained that “[y]ou must understand your opponent’s views in order to fully understand, and thus powerfully defend, your own views. And that means exposing yourself, not just to the *arguments* on the other side—but to the very *people* who most fervently believe those arguments.”⁵⁴

Going beyond the general, he also defended my substantive point that we should be against racial preferences and for equality of opportunity, which he described as “fundamental to who we are, and to who we aspire to be, as a nation.”⁵⁵ “Ilya has said that he should have chosen different words. That ought to be enough,” he said.⁵⁶ “I have no doubt—zero doubt—that Ilya did not intend anywhere near the worst interpretation that has been applied to his remarks.”⁵⁷

“Make no mistake,” he intoned. “If there is any racial discrimination in statements like these, it’s not coming from the *speaker*—it’s coming from the *policy*

51. Hon. James C. Ho, *On Ilya Shapiro, Cancel Culture, and Color Blindness*, 20 GEO. J. L. & PUB. POL’Y 381 (2022).

52. *Id.* at 382, 388.

53. *Id.* at 382.

54. *Id.* at 383.

55. *Id.* at 385.

56. *Id.* at 384.

57. *Id.* at 385.

that the speaker is criticizing.”⁵⁸ That statement was a not-so-veiled criticism of Georgetown, but he went even further to show that there was no daylight between the positions I was taking and his own views.

“[L]et me be clear: I stand with Ilya on the paramount importance of color blindness. And that same principle should apply whether we’re talking about getting into college, getting your first job, or receiving an appointment to the highest court in the land.”⁵⁹ As evidence, Judge Ho cited testimony that he had given at a House Judiciary Committee hearing on “The Importance of a Diverse Federal Judiciary,”⁶⁰ in which he had echoed my longtime criticism of race-based judicial appointments, calling it “un-American” to restrict a judgeship to members of only one race.⁶¹ Calling racism “a scourge” on America, he added, “the first step in fighting racial discrimination is to stop practicing it. That’s all Ilya is trying to say. That’s all he has ever tried to say.”⁶² “If Ilya Shapiro is deserving of cancellation, then you should go ahead and cancel me too.”⁶³

I got in touch with Judge Ho that evening to thank him. He said it had been the least he could do and asked if there was any other way he could help. I told him that more statements from federal judges couldn’t hurt! Indeed, I had members of the media and lawyers defending me, but having a federal judge come to Georgetown to say all those powerful things was next-level support.

As March gave way to April and April to May, my lawyer, Jesse Binnall, and I heard nothing about the investigation. I knew that the investigators had also interviewed at least one other Georgetown Law professor. I suspected that they had interviewed the leader(s) of student organization(s), who had orchestrated the campus campaign against me, to show the alleged harm I had caused. What was taking so long, and what was the university paying WilmerHale to advise it on?

IV. REDEMPTION AND RESIGNATION

In early May, I attended the Manhattan Institute’s annual Alexander Hamilton Award Dinner, that year honoring Paul Gigot, the editor of the *Wall Street Journal’s* opinion page. I had long been friends and professional colleagues with lots of folks there, notably Jim Copland, MI’s head of legal policy. I did not receive a job offer that night, but it is quite possible, given various synergies and mutual admiration, that had I not tweeted and remained at Georgetown, I would still be an MI adjunct scholar of some sort. In any event, it was a great night in New York, where I had not been since before the pandemic.

58. *Id.*

59. *Id.* at 388.

60. See *The Importance of a Diverse Federal Judiciary Before the Subcomm. on Cts., Intell. Prop., and the Internet of the H. Comm. on the Judiciary*, 117th Cong. 116 (2021) (statement of Hon. James C. Ho, J., 5th Cir.)

61. Ho, *supra* note 51, at 387.

62. *Id.* at 388.

63. *Id.*

I was beginning to feel antsy but cautiously optimistic. If Georgetown had wanted to fire me, it would have done so sooner. Clearly, they were waiting for the semester to end and students to leave campus. Graduation was coming up, Jesse had been having occasional contacts with WilmerHale's Bruce Berman, and trusted advisors had been having occasional contacts with the Georgetown administration. We had an inkling that this would all soon be over.

By the time classes and exams ended, the farcical "investigation" was approaching its four-month mark. I was starting to get plaudits all over the place for just "hanging in there" and taking the high road by not publicly attacking Georgetown's insanity and the law school administration's timidity. Twitter was also abuzz, pointing out time-related perversities. Lawyer Ted Frank began noting after every Georgetown basketball loss that the team had been cursed ever since the Law Center's administration had put me under the spotlight.⁶⁴ Already on a seven-game losing streak when I tweeted, the Hoyas did not win again the rest of the season, a total of 21 losses.

Georgetown Law held its commencement ceremony on May 22, 2022. A week later, I got a note that the Georgetown Administration wanted to meet with me. It would again be over Zoom because of the continuing Covid mania. And so, at 1:00 p.m. on June 2, I clicked on the link and opened the *Brady Bunch* window.

It was a short meeting. Georgetown informed me that, although both the IDEAA and HR had found that my comments had made a "significant negative impact on the Georgetown Law community," they were making no findings regarding whether I had violated university policies because I was not an employee when I tweeted. Accordingly, I was being reinstated and would start work the next day, subject to certain "expectations" that they presented to me in a letter.

In other words, it had taken two university bureaucracies, plus untold billable Big Law hours, more than four months to determine that the policies under which I was being investigated did not apply to me. This was an obvious attempt to split the baby, castigating me for my political incorrectness while allowing me to keep my job. I was guilty but let out of academic jail on a technicality. Long live due process—or rather, long live the public and private pressure campaigns that made the cost of firing me too high to bear.

I felt relieved—not fully vindicated but relieved—that I could finally get to work. I celebrated the technical victory in the pages of the *Wall Street Journal*, saying that

I'm confident that even without the jurisdictional technicality, I would've prevailed. After all, Georgetown'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." There's an exception for harassment, of course, but I wasn't harassing anyone except possibly Mr. Biden.

64. E.g., Ted Frank (@tedfrank), X (Mar. 10, 2022, 4:22 AM), <https://x.com/tedfrank/status/1501851085736140802?s=46> [<https://perma.cc/3TPX-VBAZ>].

In any case, I look forward to teaching and engaging in a host of activities relating to constitutional education and originalism. As befitting a center for the Constitution, all students and participants in my programs can expect to be accorded the right to think and speak freely and to be treated equally. A diversity of ideas will be most welcome.⁶⁵

After submitting that piece, I took my son to soccer practice, had a relaxing dinner with family, and played tennis. As I concluded in my op-ed, it was “a new day.”

Except it wasn't, not really. A couple of things still sat uneasily with me. The first was Georgetown's public statement on June 2 about the resolution of my case, in which the administration framed the question as a conflict between two principles: (1) the Law Center's “dedication to speech and expression” and (2) its dedication to “building a culture of equity and inclusion.”⁶⁶ The statement quoted Georgetown's Speech and Expression Policy—“The freedom to debate and discuss the merits of competing ideas does not mean that individuals may say whatever they wish, wherever they wish”⁶⁷—noting that it does not supersede harassment or professional conduct policies. After running through a discussion similar to what was in their letter to me, the statement concluded, “I am deeply aware of the pain this incident has given rise to in our campus community,” and said that while the Law Center is “committed to preserving and protecting the right of free and open inquiry, deliberation, and debate,” it has “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.”⁶⁸

Worryingly, this statement did not quote or discuss the part of the speech policy that says, “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.”⁶⁹ Nor did it explain how I had failed to treat any member of the community with respect. “Whatever,” I thought. “This progressive doublespeak is what I signed up for when I decided to go into academia. If people want to protest me for imagined or manufactured slights, have at it.”

But then, later that afternoon, while I was writing my *Wall Street Journal* piece, IDEAA's report landed in my inbox. As I read the report closely, it quickly became clear that little was over except my suspension. Georgetown was setting me up for a fall: it appeared that the next time I said something—while speaking, writing, or teaching—that someone (anyone) claimed was offensive, I would be back under investigation. It became clear that my position at Georgetown was

65. Shapiro, *supra* note 10.

66. William M. Treanor, *Dean's Statement on Ilya Shapiro*, GEORGETOWN UNIV. L. CTR. (June 2, 2022), <https://www.law.georgetown.edu/deans-statement-re-ilya-shapiro> [<https://perma.cc/J8S5-7EQ2>].

67. GEORGETOWN UNIV., *supra* note 9.

68. Treanor, *supra* note 66.

69. GEORGETOWN UNIV., *supra* note 9.

untenable. By midday Saturday, I knew that I would have to resign. It was both a terrifying and a liberating realization. Moreover, in light of the illiberal denouement that betrayed deep injustice, it would have to be what lawyers call a “noisy withdrawal,” using the spotlight I had been given to show that all was not right at Georgetown Law even if it had “reinstated” me.

Deciding to quit the job which I had fought so hard to keep was another surreal experience. The saga was over, the farce had ended, and I was out of purgatory, yet I would never be able to live the life I had been expecting when I announced that I was leaving Cato, when Georgetown had celebrated my hiring.⁷⁰ It was certainly not a hellacious period like the first days after my tweet, but it was a fast-moving, uncertain time that I would have to handle nearly perfectly to emerge into—if not quite heaven—a psychologically and professionally comfortable situation.

Over that June 4–5 weekend, I did two things: (1) put together my resignation letter and (2) found another job. In my letter, I first argued that the IDEAA report speciously found that my tweet had made a “significant negative impact,” requiring “appropriate corrective measures” to address my “objectively offensive comments and to prevent the recurrence of offensive conduct based on race, gender, and sex.”⁷¹ Although my tweet had been inartful, as I had admitted many times, its meaning that I considered all potential candidates to be less qualified than my preferred pick is clear. Only those acting in bad faith would misconstrue what I had said to suggest otherwise.

Second, any harm or “negative impact” had been created by those seeking to get me fired. I deleted my tweet well before any student was likely to learn of it. Screen captures were then disseminated by others seeking to settle ideological scores. It was they, not I, who intentionally and knowingly caused distress to any member of the Georgetown community who later came to learn of the tweet.

Third, under IDEAA’s reasoning, none of that analysis even mattered. As the report put it, “The University’s anti-harassment policy does not require that a respondent intend to denigrate or show hostility or aversion to individuals based on a protected status. Instead, the Policy requires consideration of the ‘purpose or effect’ of a respondent’s conduct.”⁷² The mere fact that many people were offended, or claimed to be, was enough for me to have violated the relevant policies. Although there was no formal finding of a violation because I had not been subject to the policies when I had tweeted, so long as someone claims that a

70. See Press Release, Georgetown Univ. L. Ctr., Constitutional Law and Supreme Court Expert Ilya Shapiro Joins the Georgetown Center for the Constitution (Jan. 21, 2022), <https://www.law.georgetown.edu/news/constitutional-law-and-supreme-court-expert-ilya-shapiro-joins-the-georgetown-center-for-the-constitution> [<https://perma.cc/JNH5-QN2N>].

71. See Letter from Ilya Shapiro, Exec. Dir. & Senior Lecturer, Georgetown Univ. L. Ctr., to William M. Treanor, Dean, Georgetown Univ. L. Ctr. (June 6, 2022), <https://www.thefire.org/research-learn/ilya-shapiro-resignation-letter-georgetown-university-law-center-june-6-2022> [<https://perma.cc/7HGF-B5FU>].

72. *Id.*

statement “denigrate[s]” or “show[s] hostility or aversion” to a protected class, that is enough to constitute a violation of Georgetown antidiscrimination rules.⁷³ Georgetown has thus adopted what constitutional law describes as an impermissible “heckler’s veto.”⁷⁴

Fourth, regardless of the “effect” of what I had tweeted, the IDEAA report found that “if [I] were to make another, similar or more serious remark as a Georgetown employee, a hostile environment based on race, gender, and sex likely would be created.”⁷⁵ On this theory, all sorts of comments that someone—anyone—could find offensive would subject me to disciplinary action.

And not only would faculty now be subject to discipline for subjective perceptions of offense, but that standard was being applied unevenly, with many left-wing faculty members not being “investigated” for various inflammatory statements in recent years and even months. I also gave examples of not-very-hypothetical scenarios that would subject me to renewed investigation and discipline.

It was a slow-motion firing, one in which I would not participate. I concluded thus:

It’s all well and good to adopt free-speech policies that track the gold standard, the University of Chicago Principles of Freedom of Expression—and more broadly that same university’s 1967 Kalven Report, which states that “the neutrality of the university . . . arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints”—indeed, it’s essential. But it’s not enough. If university administrators aren’t willing to stand up to left-wing activists, Georgetown’s enacted free speech and expression policy is a mere “pixel barrier.”

What’s worse, the problem isn’t limited to fearful administrators. The proliferation of IDEAA-style offices (more typically styled Diversity, Equity, and Inclusion) enforce[s] an orthodoxy that stifles intellectual diversity, undermines equal opportunity, and excludes dissenting voices. Even a stalwart T-14 law school dean bucks these bureaucrats at his peril.

Since I accepted your offer of employment, I’ve come to learn that Georgetown is by no means a follower in these trends. Instead, it’s a leader. In contrast to the Jesuitical values that you’re fond of reciting, this institution no longer stands for tolerance, respect, good faith, self-reflective learning, and generous service to others.

On the GULC website it reads: “Our motto ‘Law is but the means, justice is the end’ sums up the core commitment of Georgetown Law.” But your and

73. *Id.*

74. A “heckler’s veto” is when an individual or group, who disagrees with a speaker’s message, interferes with the speaker’s constitutionally protected speech, typically through the threat of or use of disorderly conduct. *See Cox v. Louisiana*, 379 U.S. 536, 551 (1965) (holding “constitutional rights may not be denied because of hostility to their assertion or exercise”); *Wright v. Georgia*, 373 U.S. 284, 293 (1963) (stating possibility of breach of peace by others cannot justify the exclusion of persons who otherwise would be allowed to exercise constitutional rights); *but see Feiner v. New York*, 340 U.S. 315, 320–21 (1951) (holding constitutional right to free speech may be interfered with when speaker incites violence or is an “immediate threat to public safety”).

75. Shapiro, *supra* note 71.

IDEAA's treatment of me suggests that neither the due process of law nor justice actually prevails.

I cannot again subject my family to the public attacks on my character and livelihood that you and IDEAA have now made foreseeable, indeed inevitable. As a result of the hostile work environment that you and they have created, I have no choice but to resign.⁷⁶

What Georgetown subjected me to, what it would have subjected me to if I had stayed, is a heckler's veto, one that would lead to a Star Chamber.⁷⁷ "Live not by lies," warned Aleksander Solzhenitsyn, in what has become my mantra.⁷⁸ I could not live that way, so I made a noisy exit that drew the nation's attention.

Over the next five days, I did more than 25 media hits, explaining my decision and what I had learned about the state of American higher education and cancel culture. Most notably, the day after my resignation, I broke the news of my move to the Manhattan Institute live on Tucker Carlson's old show on Fox News. "There are a lot of cowardly administrators who refuse to stand up to the woke mob, who insist that there's no deviation from a progressive orthodoxy," I explained. "I could not stay at a place where if I'm commenting on a Supreme Court opinion or teaching a class and someone says they're uncomfortable or claims they're offended, all of a sudden I'm back in the Star Chamber."⁷⁹

"Yeah, that's the end of a great American institution after hundreds of years, and it's bigger than even your particular case, and it says something really ominous," Tucker concluded.

But do not take my or Tucker's word for it. Cornell law professor William Jacobson, the founder of the influential website Legal Insurrection, was quoted as saying that my case showed that "Diversity, Equity, and Inclusion bureaucracies are growing in size and power at almost every major university. . . . they serve as ideological commissars of a critical-race focused viewpoint."⁸⁰ He went on to say that "the DEI focus is not on the rights of the speaker (Shapiro) but on the sensitivities of the listeners (students). This puts the power to control speech and expression in the hands

76. *Id.*

77. The Star Chamber was an English court that existed outside the regular judicial system of the common law courts. When "it was used by Charles I to enforce unpopular political and ecclesiastical policies, it became a symbol of oppression." *Star Chamber*, BRITANNICA, <https://www.britannica.com/topic/Star-Chamber> [<https://perma.cc/24ZR-CAZJ>]. The Star Chamber's "methods lacked the safeguards that common-law procedures provided for the liberty of the subject." *Id.*

78. See Aleksandr Solzhenitsyn, *Live Not by Lies*, ALEKSANDR SOLZHENITSYN CTR., <https://www.solzhenitsyncenter.org/live-not-by-lies> [<https://perma.cc/3R8T-XQJE>].

79. *Tucker Carlson Tonight: Georgetown Law Lecturer Resigns After Questioning Biden's Race-Based Litmus Tests* (Fox News broadcast June 7, 2022), <https://www.foxnews.com/video/6307433750112> [<https://perma.cc/SB92-TVYZ>].

80. Taylor Penley & Cortney O'Brien, *Academics Hit 'Bureaucratic' Georgetown Law Office of Diversity Following Investigation of Ilya Shapiro*, FOX NEWS (June 9, 2022), <https://www.foxnews.com/media/critics-georgetown-law-office-diversity-investigation-ilya-shapiro> [<https://perma.cc/A9LM-TBUK>].

of the most vocal complainers and reverses our historical norms as to free speech.”⁸¹

DePauw University media studies professor Jeffrey McCall likewise lamented the state of free speech on college campuses, using the term “bureaucratic” to describe the Georgetown affair. “While Shapiro wasn’t technically disciplined, the chilling effect in play here clearly would have made it difficult or even impossible for him to carry out his duties. In a sense, Georgetown has turned its back on its own free expression guidelines, supporting an atmosphere in which shrill voices stifle people with whom they disagree.”⁸² He went on to say that “universities can hardly go around shutting up any faculty member or student who says something ‘inartful.’ It is contrary to free expression philosophy on one level, but also quite impractical on another. . . . Georgetown, and other universities that seek to stifle robust discussion, are reducing the free expression environment of the academy to only approved dogmas or unserious topics.”⁸³

I was finally in control of the media cycle, creating my own narrative! The two workweeks after I resigned were by far the most gratifying in quite some time.

I was finally a free man, free to speak my mind and liberated from the shackles of the Institution. A few days after my resignation, when I attended a special preopening reception at the spectacular and powerful new Victims of Communism Museum in downtown Washington, D.C., I theatrically crossed out the Georgetown affiliation on my name tag and wrote in “Free Man.” This denouement could not have been more fitting. My parents took me out of the Soviet Union more than 40 years ago because they did not want me to grow up under a regime that tried to control one’s every word and thought. I then moved myself from Canada to the United States because I prefer “life, liberty, and the pursuit of happiness” over “peace, order, and good government.” Yet sadly, far too many Americans are blasé about their freedoms, which are now threatened by a growing culture of ignorance and illiberalism. When the freedom of conscience is forced to bend at the wheel of other, “equally important” values, we lose our shining city on a hill and destroy everything that human civilization has achieved. To quote John F. Kennedy, it’s “the peace of the grave or the security of the slave.”⁸⁴

And so, for three years now, I have been using the heightened platform I have been given to shine a light on the institutional rot in academia—and at law schools in particular. You would think that future lawyers would have greater appreciation for spirited and open engagement with provocative ideas. After all, they will be facing much harder situations in their careers than bad tweets. You would think that legal faculty would be at the vanguard of protections for free speech and due process, given their deep understanding of the importance of the rule of law. But it is at law schools in particular that academic freedom is under

81. *Id.*

82. *Id.*

83. *Id.*

84. John F. Kennedy, President of the U.S., Commencement Address at American University (June 10, 1963), <https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/american-university-19630610> [<https://perma.cc/Q23C-7TQH>].

threat, free speech in retreat, and civil discourse now a thing of the past. Illiberal forces are on the march.

V. CONCLUSION

I do not intend to let those four-plus months of Georgetown farce define my life or career. I am enjoying my job as director of constitutional studies at the wonderful Manhattan Institute. MI, as it's known, has described itself as "a think tank whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility,"⁸⁵ one that "works to keep America and its great cities prosperous, safe, and free."⁸⁶ That sounds pretty good to me. It's a shame that Georgetown did not work out, because I would have enjoyed having the sort of impact that teaching provides, as well as engaging in public discourse from an academic perch. But it's clear that I can influence the climate of ideas just as much, if not more, given where I landed.

Although MI has long had legal scholars doing excellent work in areas ranging from criminal justice to civil litigation and the administrative state, it never had a constitutional focus as such. So, this is a natural fit and a mutually beneficial relationship. Both in that day job and beyond, I have remained in the arena, trying to influence the climate of ideas in areas ranging from the First Amendment and federalism to civil rights and deregulation. And I'm still watching the Supreme Court, particularly with the updated paperback edition of my last book, *Supreme Disorder*, having come out just as I joined MI.

With my newfound experience, I have continued, and will continue, to comment on culture and politics. I care deeply about this country and believe it's man's last, best hope for freedom in this world. That means constitutionalism, it means (classical) liberal values, and it means gratitude for the tremendous opportunities we enjoy here—and why so many people still want to come here and live the American dream. I'm generally long on America—to quote Brett Kavanaugh at his confirmation hearings, I live on the "sunrise side of the mountain"⁸⁷—but I'm pessimistic about academia, if slightly less so than in the summer of 2022.

Perhaps we've passed "peak woke" in society writ large, as normal people, concerned with their families and livelihoods rather than performative virtue-signaling, call out the excesses of the progressive movement. But we may also have passed the point of no return on the illiberal takeover of higher education. The backlash to antisemitism that exploded on campuses after Hamas's October 7, 2023, attack on Israel is another inflection point and may provide an opportunity for reform—and the second Trump administration is certainly being zealous in that regard—but we're still in the eye of that storm, so it is too soon to tell.

85. See, e.g., MANHATTAN INST., "Chris Pope Joins Manhattan Institute as Senior Fellow in Health Policy," Apr. 3, 2017, <https://manhattan.institute/article/chris-pope-joins-manhattan-institute-as-senior-fellow-in-health-policy> [https://perma.cc/74LV-NUNK].

86. MANHATTAN INST., <https://manhattan.institute> [https://perma.cc/XP6C-ST4S].

87. *Confirmation Hearing on the Nomination of Hon. Brett M. Kavanaugh to Be an Associate Justice of the Supreme Court of the United States Before the S. Comm. on the Judiciary*, 115th Cong. 112 (2018) (statement of Hon. Brett M. Kavanaugh, J., D.C. Cir.).