

Academic Freedom and Free Speech

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Lest it be thought by the unaware that these restrictions have been imposed by imperious university administrators on an unwilling faculty and student body, it's more complicated than that. The radicals of the '60s, ensconced in the academy ever since, have nurtured a culture of

University of California,

the College Republicans, Jacob Ellenhorn, has been asked formally to leave his position in the university's student government.²³ In the interest of time I won't go into the details, which are still unfolding, but it seems that at the heart of the matter is a charge that Ellenhorn violated USC's "Principles of Community" when on behalf of the college Republicans he invited another Breitbart editor, Milo Yiannopoulos, to the USC campus to speak—a speaker, the complaint reads, who "blatantly perpetuates sexism."²⁴

And that affords me a springboard to another area where speech is restrained on today's campuses, although the underlying and more serious issue is one of due process. I allude to the issues of sexual harassment and, in particular, to the so-called trials that college administrators conduct to adjudicate allegations of sexual assault, where the speech and due process rights of the accused are severely restricted.

Here the driver is not simply radical feminism but its manifestation in an expansive reading of Title IX of the Civil Rights Act of 1964 as amended. That reading has evolved over the years, but it took a sharp turn in the fall of 2010 when the Obama administration's Department of Education, Office of Civil Rights (or OCR), sent a "Dear Colleague" letter to every college and university receiving federal funding—which is all but a handful.²⁵ The letter outlined Title IX's obligations, as reconceived by OCR, and threatened the withdrawal of all federal funds for failure to comply. The "guidance" contained numerous directives aimed at preventing discrimination on the basis of sex. But the one that's drawn the most attention mandates that schools use the "preponderance of the evidence" standard—50 percent plus 1—when adjudicating sexual assault claims, not the higher standard that most schools had been using, much less the "beyond a reasonable doubt" standard used in criminal trials for sexual assault

concluding that “sexual paranoia reigns; students are trauma cases waiting to happen.”²⁸ What followed was a two-month kangaroo-court “trial” at which she wasn’t allowed to have an attorney, wasn’t apprised of the charges before meeting with the investigators, and had to fight with the investigators over recording the session. Only after she published another *Chronicle* article titled “My Title IX Inquisition” was the investigation ended.²⁹

Louisiana State University Professor Teresa Buchanan wasn’t so fortunate. Nearly two decades on the LSU faculty and widely published and respected, she was pulled from her spring 2014 classes and later fired after a student complained about a few comments Buchanan had made in a 2012 class that LSU administrators, apparently afraid of losing federal funds, decided met OCR’s standard for “unwelcome conduct of a sexual nature,” including verbal conduct.³⁰ FIRE is now representing Buchanan in her suit for reinstatement.³¹

But outrageous as most of these Title IX pure speech cases are, the sexual assault cases are even more chilling, because they strike at centuries of progress in establishing procedural protections for those accused of serious crimes. Just last Thursday, for example, we read at CNN that the two-year captain of the Yale men’s basketball team, Jack Montague, after facing a university-led investigation, has been expelled from Yale just as the team has won the Ivy-League title and is on its way to the NCAA tournament for the first time in more than five decades.³² According to Montague, he had consensual sexual relations with another student in 2014. But a year later, in fall 2015, he was summoned to appear before Yale’s University-Wide Committee on Sexual Misconduct, instituted in response to the 2011 OCR directive. Yet neither the New Haven nor the Yale police departments has ever

only that we respect the equal rights of others to do the same.⁵⁶ We'll pursue our different ends in a variety of different ways, of course, making for a far more interesting world than if we acted only collectively, as the evidence of history makes clear. And in the course of so doing, we'll often say and do things that offend others, intentionally or not. But we have never held that there is a

complacency and the slumber of settled propositions. It does not allow ‘consensus’ or appeal to the authority of either the crowd or the expert to settle a dispute.” And he adds that “as far as the statement goes, all expressions enjoy the same title to ‘freedom of expression.’ That’s a view that comports pretty well with the First Amendment, but comports very poorly with the reasons why higher education values freedom of expression.” Contrasting the Chicago statement with a much longer 1974 Yale statement, Wood concludes that the latter explains “*why* freedom of expression should matter to a university. Its first sentence declares: ‘The primary function of a university is to discover and disseminate knowledge by means of research and teaching.’”

Finally, Wood argues that the Chicago statement “is conducive to the further trivialization of the university. ... In treating free expression as an end in itself and divorcing it from any concern about the processes that establish and dis-establish intellectual authority, the statement gives license to the forces that have brought on the regime of triviality, curricular incoherence, narcissistic teaching, and intellectual aimlessness that have beset so many colleges and universities.”

Plainly, Wood’s critique goes well beyond the limited concerns of the Chicago statement. I include it simply to bring that perspective to bear on our subject, which is not simply free speech but the larger aims of free speech in the academic setting, which should not be ignored if the academy is to serve its function in a free society. And now I welcome your questions and I look forward to the panel discussion ahead. Thank you for your kind attention.