

## THE CORRUPTION OF LAW SCHOOLS AND THE HEALTH OF OUR DEMOCRACY\*

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A review of ILYA SHAPIRO, *LAWLESS: THE MISEDUCATION OF AMERICA'S ELITES* (2025)

The legal scholar Ilya Shapiro has written a splendid book about corruption. The corruption in question is festering at elite American law schools, which, in Shapiro's telling, are no longer "schools" and are no longer concerned with "law." Instead, they have become expensive echo chambers where highly credentialed students stroke each other's prejudices and, abetted by an army of bureaucrats, ruthlessly suppress any dissent that might offend their sensibilities.

Shapiro has his own intimate experience of that corruption. He was subjected to a months-long racking by Georgetown Law School over a single tweet decrying President Joe Biden's avowed use of race and sex to select a Supreme Court Justice. Throughout the book, he weaves in harrowing examples of other cancellations, of students and professors alike, for various thoughtcrimes against the orthodoxies of their elite masters.

The key incident Shapiro recounts—which he says “exemplifies the illiberal dynamic at the heart of this book”—is one I'm all too familiar with: my own encounter with the gargoyles of Stanford Law School in 2023. You may have seen the video. And while I have no desire to relive that experience, Shapiro's book helped me understand *why* such a disgraceful thing could have happened at what is supposed to be one of the best law schools in the land.

Read Shapiro's book. You will find the juice worth the squeeze.

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\* Note from the Editor: The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the author. To join the debate, please email us at [info@fedsoc.org](mailto:info@fedsoc.org).

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## I. TAKEN DOWN FOR TWEETCRIME

Shapiro begins with a blow-by-blow account of his own ordeal at the hands of Georgetown Law School over a six-month period in 2022. It reads like a bureaucratic horror story, as if *The Paper Chase* had been written by Franz Kafka.

Shortly before assuming his new position as executive director of Georgetown's Center for the Constitution (founded by originalist pioneer, Professor Randy Barnett), Shapiro sent out a late-night tweet about the recent vacancy on the Supreme Court created by Justice Stephen Breyer's resignation. He admits the tweet was "inartful." Here it is:

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?

Because Biden said he'[d] only consider black women for SCOTUS, his nominee will always have an asterisk attached. Fitting that the Court takes up affirmative action next term.

The tweet's gist is not hard to grasp. Shapiro was lamenting that President Biden had limited the pool of potential picks to black women. In his view, the best pick on the merits would have been the Chief Judge of the D.C. Circuit Court of Appeals. But Sri Srinivasan is neither black nor a woman. Ergo, the pick would end up being someone who lacked Srinivasan's superior (in Shapiro's view) qualifications and who was chosen principally because she checked the demographic boxes predetermined by the president.

This territory is familiar—even boring. Many people think it's wrong, counterproductive, and even unconstitutional to base hiring decisions on someone's race or sex—especially decisions as important as who should sit on the Supreme Court. Many others vehemently disagree. Shapiro has long been in the first group, quite publicly so. His views shouldn't have surprised anyone, including Georgetown.

I do understand why hackles went up over the phrase "lesser black woman," which Shapiro admits was a poor choice of words. But imagine for a moment living in a saner world where the following conversation subsequently took place between Shapiro and the Georgetown Dean.

DEAN: Hi Ilya. We're glad you're coming on board soon, but could we have a chat about that tweet?

SHAPIRO: I know what you're about to say, and I should have phrased it differently.

DEAN: Yep. "Lesser black woman"?!!? Some people are pissed off.

SHAPIRO: I get it. Truly sorry about that. I'm happy to put out another tweet explaining better what I meant.

DEAN: That would be really helpful. I mean, I know what you meant. You're against affirmative action; we knew that. And you're free to speak and tweet about it all you want. But try to be sensitive to people around here who strongly disagree. And help me out a little. I just got finished saying how glad we are that you're bringing intellectual diversity to this school which (between you and me) we could really use.

SHAPIRO: I will do that, Dean. Thanks for being straight with me. I want this to work out for everyone. My colleagues and students may continue to disagree with me, but at least they'll have my word that I never meant to suggest all black women are "lesser" than anyone else.

Of course, that constructive dialogue never happened. A firestorm erupted instead. Casting Shapiro's tweet in the worst light possible, the Georgetown administration and student body denounced Shapiro as a racist, and he was placed on paid administrative leave. A months-long, sham investigation of the tweet followed, during which Shapiro was subjected to an absurd and pointless inquisition by administrators.

Despite a lengthy report from Georgetown's Diversity, Equity, and Inclusion (DEI) office decrying the "significant" harm Shapiro's tweet had caused the "Georgetown community," Shapiro was eventually "cleared" by the Dean—but only on the technicality that he had sent the tweet before he was a Georgetown employee.<sup>1</sup> Nonetheless, Shapiro's reinstatement was festooned with such onerous conditions that he realized he was being set up for failure. He decided the only sensible course was to resign.<sup>2</sup>

Shapiro recounts this saga with a mixture of outrage, humor, and resignation. But it is a chilling read. An appendix includes the Georgetown DEI office's lengthy "confidential report"—essentially an indictment of Shapiro filled with heavy-breathing academic doublespeak. The report concluded that

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<sup>1</sup> Dean's Statement re Ilya Shapiro, GEORGETOWN L. SCH. (June 2, 2022), <https://web.archive.org/web/20220602205418/https://www.law.georgetown.edu/deans-statement-re-ilya-shapiro/#gsc.tab=0>.

<sup>2</sup> Ilya Shapiro, *Why I Quit Georgetown*, WALL ST. J. (June 6, 2022), <https://www.wsj.com/articles/why-i-quit-georgetown-11654479763>.

Shapiro's tweet "denigrated individuals based on race, gender, and sex" and "had a significant negative impact on the Georgetown community." (The appendix also includes the Dean's letter reinstating Shapiro, subject to a laundry list of ominous caveats, as well as Shapiro's resignation letter).

In the surrounding chapters, Shapiro places his own ordeal in the context of other harrowing academic cancellations. Most notably:

- A joint event at Yale Law School featuring Kristen Waggoner of Alliance Defending Freedom and Monica Miller of the American Humanist Association—one ironically meant to showcase cooperation in the Supreme Court between opposite sides of the political spectrum—which was violently shut down by student protestors furious about ADF's social conservatism.
- Georgetown's firing of two adjunct law professors, Sandra Sellers and David Batson, who were caught on Zoom expressing sincere concerns about black students' poor performance in their classes.
- The so-called "Trap-House" incident at Yale Law School, where administrators tried to bully a student, Trent Colbert, into signing a scripted apology for his innocuous use of the term "trap house" in an email invitation to a Federalist Society event (the student was saved only because he recorded the administrators' strong-arm tactics).
- Shapiro's own subsequent shout-down at UC Hastings Law School, where the very professor who was supposed to debate Shapiro encouraged raucous student protestors to drown him out.

## II. CAUSES OF THE CRISIS

Shapiro's book is a compelling attempt to understand how we arrived at this dark place. Wisely, he does not point to any *one* thing as the key to explaining why America's elite law schools have turned into authoritarian leftist echo chambers. Instead, like a good lawyer, Shapiro methodically presents his case as a series of interlocking arguments.

The factors Shapiro identifies are these: (1) the identitarian cult of so-called Diversity, Equity, and Inclusion, better known by its acronym DEI; (2) the kudzu-like growth of radicalized and punitive university bureaucracies; (3) the withering of free expression; (4) the seepage of critical theory, especially critical race theory (CRT), into all parts of law school curricula; (5) the politicization of bodies, like the American Bar Association, that govern lawyers and accredit law schools; and (6) external factors—principally, many elite

law students' coddled upbringing, the intolerant groupthink of the Covid-19 era, and the racial panic that erupted after the death of George Floyd.

While each factor plays its part, the starring role goes to DEI.

Shapiro carefully traces DEI's rise from the advent of "affirmative action" in 1961 (ironically, this date points to President John F. Kennedy's executive order designed to ensure colorblind hiring by federal contractors, which later became a mandate for race-conscious hiring<sup>3</sup>), through Justice Lewis F. Powell Jr.'s "diversity" opinion in *Bakke*,<sup>4</sup> to its present-day manifestation as "a financially lucrative industry in both the academic and corporate spheres, with the expansion of training, messaging, and general human-resources management tinged with a diversity focus." As a matter of philosophical underpinnings, Shapiro situates DEI as "the administrative manifestation of . . . 'critical theory,'" which "reveal[s], critique[s], and "challenge[s] power structures, with an understanding that certain identity groups deserve special privileges based on suffering under systems of marginalization."

How did these factors, with DEI leading the way, converge to transform elite law schools into illiberal reeducation camps? In Shapiro's telling, it worked like this.

The law schools had long been stacked with left-leaning professors. But starting in the 2010s, there was rapid growth in the number and power of administrators. This expensive new bureaucracy was the vector through which DEI was operationalized on campus. It radicalized the law schools. Its enforcement methods were a mockery of due process.

To get a taste of those methods, read Shapiro's account of the "trap house-gate" incident. He recounts in chilling detail how Yale Law administrators summoned Federalist Society members to meetings where they were casually threatened with severe consequences (including disapproval of the organization's budget and having their careers ruined by being reported to state bar associations)—unless they essentially confessed to being racists. All because of the innocuous use of a supposedly "black" term in an email invitation ("trap house") that white people (especially those who are members of the Federalist Society!) should never use. The whole shameful episode reads like a law school version of the band leader story from *The Godfather* ("Either your brains or your signature will be on that contract.").

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<sup>3</sup> See Exec. Order No. 10925, 26 Fed. Reg. 1977 (Mar. 6, 1961).

<sup>4</sup> *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 269 (1978).

Add to all this various structural features of the law schools themselves. The ABA's "accreditation monopoly" was already pressuring schools to filter courses, hiring, and admissions through the lens of "bias," "inclusivity," and "racial balancing." Curricula and scholarship had long marinated in the backwash of critical theories that reject our liberal order as "systemically racist." Such anti-intellectual projects tar the very idea of "colorblind equality" as "itself a form of white supremacy." Under this view, the *Plessy* majority opinion and Harlan's dissent were *both* racist.

Finally, add what Shapiro calls external factors. He highlights three. The "safetyism" mentality—diagnosed in *The Coddling of the American Mind*, by Jonathan Haidt and Greg Lukianoff—fostered when elite children are raised to regard challenges to their opinions as "harm." Covid-19 lockdown and reporting measures, which, in Shapiro's view, accelerated cancel culture. And the hysterical response to George Floyd's death, which featured elites reflexively denouncing American institutions, even America itself, as irredeemably stained by the sin of racism.

This witches' brew has produced, in Shapiro's telling, not merely *left-leaning* but *illiberal* law schools. This is a key point. His argument is not: "Elite law schools are overwhelmingly left-leaning." No kidding. That would be like saying: "Snow is overwhelmingly white." Shapiro goes much further, arguing that elite law schools have "reject[ed] the spirit of open inquiry" and "disagree[] . . . with the rule of law as commonly understood."

That is a far more damning indictment. If Shapiro is right, it would mean the label "law school" has become false twice over. These institutions are no longer "schools," but camps for refined groupthink. And what they teach is not "law," but a lawless ideology of racialism, identity, and power. It would be as if elite medical schools began to teach leechcraft or leading chemistry departments, alchemy.

### III. STANFORD STRUGGLE SESSION

Which brings us to Stanford. Shapiro holds up as "the single worst manifestation" of this illiberal trend an event at Stanford Law School on March 9, 2023, in which a student mob—abetted by the school's DEI Dean—shut down a speech by a federal judge. Shapiro vividly recounts how this train

wreck unfolded.<sup>5</sup> No surprise that, for me, this is the most riveting part of the book. It's like watching a horror movie where the target of the axe-wielding maniac turns out to be you.

Here are the basics.

I was invited by the school's Federalist Society student chapter to give a talk on Fifth Circuit jurisprudence. The talk never happened, though, because it was subverted by a braying mob of law students whose obscene, self-righteous, and moronic heckling made it impossible for me to speak. It's been claimed that this isn't true—that, to the contrary, I was “given a chance” to speak. Please. I invite you to listen to the full audio.<sup>6</sup> Ask yourself whether you could give a speech when every other word is interrupted by loud retching sounds or someone screaming, “YOU SUCK!”

After several minutes of pointless back-and-forth with the hecklers, I asked an administrator to restore calm. Then things got weird, fast.

The school's DEI Dean—who, unbeknownst to me, was already in the audience along with other administrators—strode forward, occupied the podium, and announced that she would speak to “all” of us. Baffled, I protested the hijacking of my own speech, as students began to rail against my “racism.” (Because the Dean was a black woman, you see, any resistance to the ambush was “racist.” Just writing that sentence made me stupider.) I gave way, as one does before hostile crowds baying for one's blood. The Dean opened her portfolio, extracted some papers, and—the mob now strangely become quiet as lambs—proceeded to deliver a *prepared* six-minute speech.

Before writing this essay, I watched the video of that speech (until now, I had only read a transcript).<sup>7</sup> It's hard to overstate how surreal it is. In some of the choicest moments, the Dean (1) berates me for my “abhorrent” work that “literally denies the humanity of people” and “absolute[ly] disenfranchise[s]” the students' rights; (2) observes that my mere presence on campus “tear[s] the fabric of this community”; (3) states she is “glad” to see the protestors'

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<sup>5</sup> I've written about it elsewhere. See Stuart Kyle Duncan, *My Struggle Session at Stanford Law School*, WALL ST. J. (Mar. 17, 2023), <https://www.wsj.com/articles/struggle-session-at-stanford-law-school-federalist-society-kyle-duncan-circuit-court-judge-steinbach-4f8da19e>.

<sup>6</sup> See David Lat, *The Full Audio Recording of Judge Kyle Duncan at Stanford Law*, ORIGINAL JURISDICTION (Mar. 15, 2023), <https://davidlat.substack.com/p/the-full-audio-recording-of-judge>.

<sup>7</sup> See Ed Whelan (@EdWhelanEPPC), X, <https://x.com/EdWhelanEPPC/status/1634218660494548993?s=20> (last visited Mar. 26, 2025); *Judge Duncan's Speech Interrupted by Associate Dean at Stanford*, DAILY MAIL, <https://www.dailymail.co.uk/video/news/video-2913015/Judge-Duncans-speech-interrupted-associate-dean-Stanford.html> (last visited Mar. 26, 2025).

behavior; and yet (4) assures me that she “absolutely believe[s] in free speech” and that I am “absolutely welcome” to speak on campus.

This was all a bunch of pseudo-intellectual bafflebap. I publicly told the Dean then, and I believe to this day, that the whole thing was a set-up—a coordinated effort to embarrass me and the Federalist Society students who dared invite a troglodyte like me to campus. The real point of the Dean’s harangue lay in the question she repeated throughout—“Is the juice worth the squeeze?” And that point was clear as a summer sky. The harm inflicted by my setting foot on Stanford’s campus was far greater than the value of anything I might have to say. So don’t come back, fascist.

Things broke down further during the Q&A, where I was asked questions like: “*How do you feel about the people your opinions have killed?*” and “*I f\*\*\* men. I can find the prostate. Why can’t you find the clit?*” (That student was holding a large sign featuring the same inquiry. I’m still pondering just the right answer.) I ended the event, and the remaining students departed, some calling me “scum” to my face. And, yes, as some have reported, I responded by calling them “appalling idiots.” They deserved much more.

One last bizarre detail. Just before the talk began, I was surprised when two plainclothes U.S. Marshals came up and introduced themselves. I hadn’t called them, but someone must have alerted them about the protest (whoever it was: thanks!). One advised me to put one hand on my head if I felt unsafe. I never did, but as the students filed out hurling anathemas at me, I decided I’d had enough. The marshals led me out of the classroom. Later, I wrote their boss to thank them.

Other than that, I very much enjoyed my visit to Stanford.

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Shapiro is right to locate the event’s real significance in the part played by Stanford administrators.

I’ve already detailed the DEI Dean’s corrosive role in the event itself. I would later learn that, in *advance* of the event, the Dean (formerly a senior ACLU lawyer) had sent a campus-wide email criticizing my work and asserting that “my presence on campus represents a significant hit” to various groups’ “sense of belonging.” Her email also said students were free to protest “in compliance [with] the school’s policy against disrupting speakers.” After the event (and, indeed, *during* it), she maintained that the protestors had stayed within Stanford’s policies. She no longer works at Stanford.



Just as significant was the post-event role played by the law school Dean, Jenny Martinez (who was later promoted to University Provost). After emailing me a written apology from her and the University President, Martinez would later publish a lengthy open letter addressing the role of free expression in the university setting.<sup>8</sup> As Shapiro observes, the letter “was the best exposition of free-speech values that we’ve seen from a prominent university official in this contentious period.”

Shapiro’s careful parsing of the letter is well worth reading. I will highlight just two aspects. First, the letter confirms what everybody believed about free speech until about five minutes ago: “Freedom of speech does not protect a right to shout down others so they cannot be heard.” It’s sad that this bedrock truth had to be reaffirmed under fire by the Dean of one of America’s most prestigious law schools, but thank heaven for small favors.

Second, more controversially, the letter asserts that a “commitment to diversity and inclusion” *requires* the school to “protect the expression of all views.” It elaborates this view in a passage Shapiro highlights (I’ve broken it into paragraphs for ease of reading):

Our commitment to diversity, equity, and inclusion is not going to take the form of having the school administration announce institutional positions on a wide range of current social and political issues, make frequent institutional statements about current news events, or exclude or condemn speakers who hold views on social and political issues with whom some or even many in our community disagree.

I believe that focus on these types of actions as the hallmark of an “inclusive” environment can lead to creating and enforcing an institutional orthodoxy that is not only at odds with our core commitment to academic freedom, but also that would create an echo chamber that ill prepares students to go out into and act as effective advocates in a society that disagrees about many important issues.

Some students might feel that some points should not be up for argument and therefore that they should not bear the responsibility of arguing them (or even hearing arguments about them), but however appealing that position might be in some other context, it is incompatible with the training that must be delivered in a law school.

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<sup>8</sup> Letter from Jenny Martinez, Dean, Stanford L. Sch., to Stanford L. Sch. Community (Mar. 22, 2023), *available at* <https://law.stanford.edu/wp-content/uploads/2023/03/Next-Steps-on-Protests-and-Free-Speech.pdf>.

Law students are entering a profession in which their job is to make arguments on behalf of clients whose very lives may depend on their professional skill. Just as doctors in training must learn to face suffering and death and respond in their professional role, lawyers in training must learn to confront injustice or views they don't agree with and respond as attorneys.

From this passage Shapiro mines the central theme of his book. As he puts it, the question is “whether DEI can ever be consistent with academic freedom.” The premise of the Dean's letter is, yes, the two *can* co-exist, provided the university does not misunderstand what “inclusivity” means. The concept can't be used as a cudgel to suppress dissenting views, presumably on the basis that the “harm” of having to hear them is just too much for the ears of elite students to bear.

For all the praise he gives the Dean's letter, though, Shapiro remains unconvinced. He is “skeptical” that anyone who truly embraces the “racial and gendered lenses” of the DEI and CRT catechism “will ever accept th[e] neutral rules of the game” as sketched in the Dean's letter. If, say, the Federalist Society is at bottom an engine of white supremacy and oppression (a conviction evidently shared by a large part of the Stanford student body), then is it really plausible for the Dean to promise that the Society “has the same rights of free association that other student organizations at the law school have”?

You could ask the same question about a religious student organization that advocates overturning *Obergefell v. Hodges*. Or a feminist organization that advocates excluding “transgender women” (men who believe they are women) from women's sports. Could the former organization invite to Stanford the ADF lawyer who defended traditional marriage laws at the Supreme Court? Could the latter invite Riley Gaines or Martina Navratilova to campus? Would those speakers be “absolutely welcome” to speak, like I was?

Building his case for skepticism, Shapiro discusses an incisive article by legal commentator Tal Fortgang, which appeared in *National Review* not long after the Stanford event.<sup>9</sup> Fortgang forcefully argues that DEI is incompatible with academic freedom generally, and with the rule of law specifically.

As Fortgang explains, my treatment at Stanford strictly conformed to basic DEI theory. My presence caused “harm,” not because of anything I said or planned to say, but solely because I already had the wrong opinions. This approach “relied on the common DEI theory that merely platforming someone who holds certain views is intrinsically harmful.” My opinions,

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<sup>9</sup> See Tal Fortgang, *Conformity, Inequity, and Exclusion*, NAT'L REV. (May 1, 2023), <https://www.nationalreview.com/magazine/2023/05/01/conformity-inequity-and-exclusion/>.

furthermore, were not just *wrong*, but, in the Dean's telling, were "abhorrent" and "literally den[y] the humanity of people." This was the common DEI trope of "catastrophizing disagreement"—deeming contrary views not merely incorrect or misguided but "violat[ions] of basic human decency and categorically unworthy of a hearing."

Finally, the Dean openly aligned herself with those students offended by my coming to campus, without sparing one syllable of sympathy for the ones who invited me. This, Fortgang argues, mirrors DEI's privileging "traditionally marginalized communities," who have "special insight into the nature and urgency of their own plight." Evidently lost on the Dean was the irony that the "marginalized" were the ones in control of the room who, without fear of consequences, were hurling profane invective against a guest, while their "oppressors" (a handful of Federalist Society members) cowered silently in their seats.

In Fortgang's view, then, an institutional commitment to DEI makes it impossible to train students "in the proper practice of law." DEI's basic instinct is to silence dissenters because of the intrinsic harm they cause, to catastrophize disagreement beyond any hope of reasoned argument, and to side with the "oppressed" whether right or wrong (and indeed, to deny that categories such as "right" or "wrong" have any meaning beyond what vindicates or violates the interests of the oppressed). Thus, Fortgang's stringent conclusion:

No law school will get itself back on track until it has dismantled its DEI apparatus and disavowed the conspiratorial, catastrophizing, and deeply partisan worldview DEI stands for.

Shapiro ultimately agrees: "The only way law schools will ever be reformed is if they get rid of these anti-intellectual structures that they've allowed to deform the legal-education project."

#### IV. REAL-WORLD REMEDIES

That leads to the question of solutions. Shapiro explores several.

Shapiro makes no bones about his principal goal: abolishing the DEI regime. That ambitious project would include dismantling DEI bureaucracies, ending diversity training, banning diversity statements for prospective students and faculty, and ending identity-based preferences in admissions, hiring, and contracting.

Before Shapiro finished writing his book in 2024 (just before the election), one of the largest dominoes had already fallen. In 2023, the Supreme Court's two *Students for Fair Admissions* cases held that using race as a factor in determining which students to admit to public universities violates the Equal Protection Clause.<sup>10</sup> "Eliminating racial discrimination means eliminating all of it," the Court said. Further litigation will doubtless be necessary to implement these important decisions, and also to decide whether they will extend to other areas beyond university admissions. Of course, I offer no view on any of those matters.

Since President Donald Trump was elected to a second term last November, the field has shifted even more. In his first week in office, the president issued an executive order aimed at ending all DEI policies and programs in executive departments, agencies, contracting, and grant-making.<sup>11</sup> The order also directed agencies to develop policies to "encourage" ending DEI in the private sector. Significantly, the order rescinded Executive Order 11246, which had mandated "affirmative action" policies in federal contracting in 1965. Not long after, citing President Trump's order, the University of Virginia's Board of Visitors unanimously voted to dissolve all DEI programs and offices, which had been some of the most extensive of those at any public university.<sup>12</sup> It remains to be seen whether other schools will follow suit.

To be sure, Shapiro doesn't think DEI is the only culprit responsible for the intolerable state of legal education. On his view, jettisoning DEI would be necessary but not sufficient to reverse the illiberal degradation of elite schools. What else can be done? Shapiro discusses a few ideas.

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With respect to internal reforms, Shapiro recommends that schools adopt the "Chicago Trifecta," namely:

the Kalven Report, which requires institutional neutrality on political and social controversies; the Shils Report, which makes academic achievement

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<sup>10</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

<sup>11</sup> See Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

<sup>12</sup> See Resolution, Univ. of Va. Bd. of Visitors, Resolution of the University of Virginia Regarding the Presidential Executive Order on Diversity, Equity, and Inclusion (Mar. 9, 2025), *available at* [https://www.washingtonpost.com/documents/dbda1c41-f236-4522-a398-2e1cf3632901.pdf?itid=lk\\_inline\\_manual\\_4](https://www.washingtonpost.com/documents/dbda1c41-f236-4522-a398-2e1cf3632901.pdf?itid=lk_inline_manual_4).

and merit (not viewpoint or ideology) the sole basis for hiring and promotions; and the Chicago Principles of Free Speech.

The last item describes principles developed in 2014 that strongly protect campus free expression, holding it “improper to attempt to shield individuals from ideas that offend them” and even “condemning the use of concerns about civility as a justification for suppressing free speech.” (It should be noted, though, that the Chicago Principles permit reasonable time, place, and manner restrictions as well as well-established limits on defamatory, threatening, and privacy-invading speech).<sup>13</sup>

Shapiro is not naïve, however. He recognizes that merely inscribing these principles on university letterhead will not remedy the mass amnesia about basic free speech principles that has evidently swept elite law schools. What is needed is concrete implementation and enforcement. To that end, Shapiro wisely recommends that schools admit students not solely based on GPA and LSAT, but also on their “character to respect norms of free speech and open inquiry.” And a law school’s demonstrated commitment to respecting free expression, in his view, “ought to be part of law school rankings.”

To see how important such measures would be, let’s return to Stanford. While the theoretical parts of Dean Martinez’s free speech letter were strong, the final part, focused on “next steps,” was not. Most glaringly, no student involved in the shout-down would receive even the mildest discipline—evidently because the Dean doubted whether a “fair process” could be devised to distinguish students who engaged in “disruptive heckling” from those who “engaged in constitutionally protected non-disruptive protest.”

As Shapiro points out, that is nonsense. For starters, a “fair process” to single out the worst disruptors might involve . . . watching the video of the event. At a minimum, there’s no doubt who the protest ringleader was. That would be the young woman at the front of the room *who is standing up and directing the protestors*. Her name is Denni Arnold (JD ’24), and her leadership was widely reported in the media. Her biography is available on the law school website.<sup>14</sup> Evidence must not be a required course at Stanford.

True, all law students later had to complete a mandatory training session on “freedom of speech and the norms of the legal profession.” But, as Shapiro

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<sup>13</sup> Report, Comm. on Freedom of Expression at the Univ. of Chi., Report of the Committee on Freedom of Expression (Jan. 1, 2015), *available at* <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>.

<sup>14</sup> *Class of 2024 2L Public Interest Mentors*, STANFORD L. SCH., <https://law.stanford.edu/levin-center/class-of-2024-2l-public-interest-mentors/> (last visited Mar. 26, 2025).

notes, “that exercise turned out to be four lackluster YouTube videos, much mocked by the student body,” which could be completed via an “unverified Google form.” And *everyone* had to watch the videos, including the Federalist Society members who had invited me to campus. Remedies must also not be a required course at Stanford.

Consider, moreover, the student body’s reaction immediately after Dean Martinez apologized to me. I will simply reproduce Shapiro’s description, which is hard to believe:

The following Monday [after the March 9 event], around 100 students lined the hallways to protest Martinez for apologizing to Duncan. Her classroom’s whiteboard was covered in fliers defending those who had disrupted Duncan. “We, the students in your constitutional law class, are sorry for exercising our 1st Amendment rights,” some fliers read.

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Martinez said at the start of class that her inbox had been bombarded with complaints about her apology to Duncan but that they would not be relitigating that dispute. When the class adjourned, the protestors, black-clad and having donned masks reading “COUNTER-SPEECH IS FREE SPEECH,” glared at Martinez as she exited the room, forming a human corridor to the building’s exit. The vast majority of Martinez’s class participated in the protest; the few who didn’t join the protestors received the same stare-down.

Keep in mind that the students who lined the halls to protest Dean Martinez comprise about a *third* of the entire student body. Not only do these students obviously not regret how they treated me, but their subsequent actions show that they lack the most rudimentary understanding of American principles of free expression. As I said in a speech at Notre Dame<sup>15</sup> a few weeks later:

It is not free speech to silence others because you hate them. It is not free speech to jeer and heckle a speaker who’s been invited to your school so that he can’t deliver a talk. It is not free speech to form a mob and hurl vile taunts and threats that aren’t worthy of being written on the wall of a public toilet. It’s not free speech to pretend to be “harmed” by words or ideas you disagree with, and then use that feigned “harm” as license to deny a speaker the most rudimentary forms of civility.

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<sup>15</sup> See Kyle Duncan, *What We Must Expect of Our Law Schools*, NAT’L REV. (Mar. 29, 2023), <https://www.nationalreview.com/2023/03/what-we-must-expect-of-our-law-schools/>.

And as for the asinine notion that the protestors were engaging in “counter-speech” or the “marketplace of ideas” (a phrase that was, at one point, *screamed* at me), well, nope:

Counter-speech means offering a reasoned response to an argument. It’s doesn’t mean screaming, “Shut up you scum we hate you” at a distance of 12 feet. Other students claimed this was nothing more than the “marketplace of ideas” in action. Again, wrong. The marketplace of ideas describes a free and fair competition among opposing arguments with the most compelling one, we hope, emerging on top. What transpired at Stanford was no marketplace. It was more like a flash mob on a shoplifting spree.

You may be thinking that, scarred by my experience, I’m too pessimistic about Stanford Law School. Maybe the kids were just overreacting in the heat of the moment or, afterwards, in the glare of the national spotlight. An optimist might hope that the students at that year’s U.S. News & World Report #2 ranked law school might realize, upon sober reflection, that “free speech” does not involve disrupting a federal judge’s presentation by loudly taunting him about sex organs.

Let’s test that theory, shall we? One year *after* the event, the Foundation for Individual Rights in Education (FIRE) surveyed Stanford law students about my shout-down. Here are some of the results.

- “Three-fifths of Stanford students (60%) said that someone who has stated that ‘same-sex marriage is unconstitutional’<sup>16</sup>—a position Judge Duncan has taken—should not be allowed to give a speech on campus.”
- “Three-quarters of Stanford students said that shouting down a speaker to prevent them from speaking on campus is acceptable.”
- “[A]bout three-fifths said that blocking other students from attending a campus speech is acceptable[.]”

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<sup>16</sup> If this was the actual wording of the survey question, it was poorly phrased. No one I know of takes the position that “same-sex marriage is unconstitutional.” The argument, rather, is that the Constitution does not *require* states to change their definition of marriage to include same-sex couples. That’s the position I took when representing states in marriage litigation. But I’ve never taken the stance that same-sex marriage is *barred* by the Constitution. States could recognize it if their voters decided to, absent a constitutional amendment defining marriage solely as the union of a man and a woman. Of course, the issue is now moot after *Obergefell*.

- “[M]ore than a third said that using physical violence to stop a campus speech is acceptable.”<sup>17</sup>

We shouldn’t sugar-coat these findings: they are an utter disgrace. No one who believes these things should ever graduate from law school or be permitted to practice law. (And, no, it’s not a silver lining that “only” one third of the respondents believe it is ok to use *physical violence* to stop a campus speech.)

Even if these students showed up at Stanford predisposed to be little Maoists, it is Stanford’s responsibility to *convince them otherwise*—to teach them that their instincts about free speech are completely out of step with American traditions. Why else does one go to *law* school?

For me, that is the most depressing aspect of this entire debacle. It turns out that many students at one of America’s premier law schools—despite their sparkling credentials, their commitment to all the right causes, and their pronouns ostentatiously featured in their bios—are just plain dumb.

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Shapiro then turns to discussing external remedies.

For instance, he notes previous efforts by Congress to “extend free-speech protections to students at private schools.” In 2023, Shapiro himself testified that Congress could require schools that receive federal funding to “certify that they will not violate constitutional standards” respecting student free speech and association.<sup>18</sup> We are now witnessing something along those lines as the Trump administration withholds funds from schools for failing to protect Jewish students from antisemitic harassment.<sup>19</sup> Perhaps we will see similar measures targeted at free speech protections on campus. Losing millions in federal funds does tend to concentrate the mind.

Shapiro also mentions Senator Ted Cruz’s successful effort to get the Texas bar to revise its “character and fitness” assessment to ask whether applicants

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<sup>17</sup> *The Judge Duncan Shoutdown: What Stanford Students Think*, FOUND. FOR INDIVIDUAL RTS. AND EXPRESSION, <https://www.thefire.org/research-learn/judge-duncan-shutdown-what-stanford-students-think> (last visited Mar. 26, 2025).

<sup>18</sup> Diversity of Thought: Protecting Free Speech on College Campuses, Before the Subcomm. on Higher Educ. & Workforce Dev. of the H. Comm. on Educ. & Workforce, 118th Cong. (2023) (written testimony of Ilya Shapiro, Director of Constitutional Studies, Manhattan Institute), *available at* [https://edworkforce.house.gov/uploadedfiles/shapiro\\_congressional\\_testimony.pdf](https://edworkforce.house.gov/uploadedfiles/shapiro_congressional_testimony.pdf).

<sup>19</sup> See, e.g., Sharon Otterman & Liam Stack, *White House Cancels \$400 Million in Grants and Contracts to Columbia*, N.Y. TIMES (Mar. 7, 2025), <https://www.nytimes.com/2025/03/07/nyregion/trump-administration-columbia-grants-cancelled-antisemitism.html>.



have engaged in “incivility and violations of school policies.”<sup>20</sup> (He notes a similar effort by Montana Attorney General Austin Knudsen.<sup>21</sup>) This makes good sense. As Shapiro observes, “all states should scrutinize the admission of those who—as 20- and 30-somethings, not kids—openly defy the standards of the legal profession.”

While Shapiro does not mention it, the same idea could be applied to law school accreditation. The ABA—as Shapiro shows in a chapter on the subject—knows how to pressure law schools to conform to its policy preferences (whether those preferences are misguided is a different question). Well, why couldn’t the ABA determine that law schools ought to lose their accreditation if they persistently fail to train students in the rudiments of free expression, free association, and civility? For starters, only the worst offenders could be singled out—say, a school that fails to punish a student mob that hurls obscene epithets at a federal judge and wishes rape on his daughter. Pulling that school’s accreditation would be a powerful first step—how shall I put it?—*pour encourager les autres*.

Finally, Shapiro discusses the decision of some of my colleagues on the federal bench to stop hiring law clerks from schools that have enabled these shout-downs, including Stanford. These boycotts, as I understand them, are meant to pressure law schools to restore a culture of free expression on campus. At a minimum, the judges want the schools to enforce policies that will allow minority student groups (say, originalists or socially conservative Christians) to invite speakers or host events without the fear of being disrupted or harassed.<sup>22</sup>

I support those goals one million percent. Yet, I’ve never joined any of the boycotts, and I remain ambivalent about them. Here are a few reasons why.

First, I can’t shake the idea that the boycotts end up punishing the victims. I vividly remember having dinner with several of the Stanford FedSoc members a few hours after the shout-down. The atmosphere was somber. The students were shell-shocked. Written on their faces was the fear that, going forward, they’d be further ostracized by their classmates and professors. I felt

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<sup>20</sup> Letter from Nathan L. Hecht, Chief Justice, Supreme Court of Texas, to Ted Cruz, Senator, United States Senate (Apr. 7, 2023), *available at* <https://freebeacon.com/wp-content/uploads/2023/04/2023.04.07-Reply-Letter-from-Chief-Justice-Hecht.pdf>.

<sup>21</sup> Austin Knudsen, Attorney General, State of Montana, to Mike McGrath, Chief Justice, Supreme Court of Montana (May 16, 2023), *available at* <https://judicialnetwork.com/wp-content/uploads/2023/05/May-16-2023-Knudsen-Letter.pdf>.

<sup>22</sup> See, e.g., James C. Ho, *Agreeing to Disagree: Restoring America by Resisting Cancel Culture*, 27 TEX. REV. L. & POL’Y 1, 22 (2022).

horrible for them and incandescently furious at what they had been put through—merely because they had been kind enough to invite me to campus.

I can't imagine saying to those students: "You didn't deserve that outrageous treatment. Stanford needs to change. So here's what I've decided to do: starting next year, I will refuse to hire any members of the Stanford Federalist Society. Please tell future FedSoc members not to even bother to apply."

If I couldn't say that to those students' faces, then I don't see how I could join a boycott.

Second, I *want* conservatives (and other outside-the-academic-mainstream students) to go to these schools. I want more and more students to vigorously resist the stifling monoculture the schools have become. I want them to insist in their classes that there's not only one "acceptable" way to think about *Roe* or *Obergefell* or whatever other sacred cows have been set up. I want them to challenge their classmates who self-righteously declare that private property is theft, or that U.S. history began in 1619, or that refusing to use preferred pronouns is genocide.

In other words, I want countercultural students to colonize these once-great institutions that seem to have become nothing but high-priced echo chambers.

And those are the very students I *want* as law clerks. Take, for instance, a student I recently interviewed from an elite school. When I asked about her introductory constitutional law class, she responded: "It wasn't great. The professor seemed to believe the Constitution consists only in the 14th Amendment. Nothing about structure, separation of powers, or federalism." Taken aback, I asked how she hoped to learn constitutional law. Her response: "I'm teaching myself." We then discussed the wide-ranging extracurricular reading she was doing. I don't want to boycott students like that. I want to hire them.

Third, I don't think these schools give a damn whether I hire their students. The opposite is likely true. Here's how I imagine the conversation in a faculty meeting:

PROFESSOR 1: Did you hear that Judge Kyle Duncan has boycotted hiring our law students?

PROFESSOR 2: Really? Even the conservative FedSoc students everyone makes fun of in Con Law?

PROFESSOR 1: Even them.

[*Sound of champagne corks popping*]

So I'm skeptical on the boycotts. I do admire my colleagues' trying to do what they can to fix a bad situation. But I think there are more effective ways of doing so—ways that lie beyond the power of the federal judiciary. If I'm wrong, though, I'll be the first to congratulate them.

#### V. CONCLUSION

Shapiro does not pull punches. “[I]llegalism has infected American law schools,” he warns and, in methodical detail, he explains why he thinks so. If he's right, and I'm afraid he might be, we're in trouble.

Lawyers, like it or not, set the tone for our legalistic society. Elite lawyers do so at the highest echelons. Consider what happened at Stanford and ask yourself how that shameful dynamic would play out in court, in Congress, in agencies, in the Oval Office. It would not be pretty. It would be the opposite of the rule of law. That is why, in his closing sentence, Shapiro does not exaggerate: “Nothing less than the health of our democracy is at stake.”