

August 8, 2018
Livingston Appeal @ Rutgers University

I hereby appeal the finding rendered by Carolyn Dellatore's investigation of my social media posts and their possible consequences for Rutgers. My objections are both substantive and procedural: the investigation's conclusions are unsupported by the facts of the case, and the investigation was procedurally flawed.

Beyond that, this determination effectively redefines the intellectual mission of our university, arrogating to the Employment Equity Office the power to pronounce on what the letter itself acknowledges are matters of ongoing academic debate—in effect, censoring and censuring a professor for public commentary on matters germane to his field of expertise and research.

I begin with the procedural errors:

- a) new information is introduced in the finding letter that I wasn't given an opportunity to respond to;
- b) statements I made in the context of the Skype interview are falsely repurposed as a response to information I was never given access to;
- c) guesswork and speculation are substituted for facts;
- d) public and media commentary on my remarks, regardless of the source, motives, or intellectual caliber, are uncritically regarded as dispositive.

In my Skype interview with Ms. Dellatore, I asked, very specifically, about the *sources* of the complaints. She informed me that all the complaints were external and anonymous, which would thus preclude a claim of harassment according to Rutgers policy. Apparently I was misled, since according to new information contained in the report, Ms. Dellatore now surmises that these anonymous complaints *could have been* internal complaints, since their anonymity “means we cannot confirm” that the complainants were not members of the Rutgers community.

This is a speculation, not a fact, and a speculation I was not given a chance to respond to. Had I been given that chance, I would have pointed out that, first of all, this is mere conjecture—you can neither prove nor disprove a negative. The report further notes that numerous complaints come through “an internal complaint system”—the Rutgers Complaint Hotline—“which arguably suggests that the individuals expressing those views may well have some connection with the university.” Arguably? Again, this is more speculation leading to a specious conclusion given that a link to the compliance hotline is available to anyone via the internet. There is *no evidence* in the finding that any of these complaints came from anyone within the Rutgers community.

Ms. Dellatore continues: “Professor Livingston has asserted that no university students or faculty (that we are aware of) have yet complained to OEE or university administration—so the response to his posts is nothing more than internet trolls attacking a liberal academic.” *I did not assert any such thing.* I was repeating and responding to Ms. Dellatore’s own assurances that the complaints were external and anonymous. In other words, she was my source of information on the origin of the complaints. In clearly departing from what was actually said in the interview—which can presumably be substantiated by consulting a recording—Ms. Dellatore reveals a strong partiality in this case, a partiality (not to say hostility) which seriously undermines the reliability of her other judgments.

The guesses continue apace, with Ms. Dellatore assuming the veracity of an anonymous complainant who threatens to withhold his offspring’s application to Rutgers, meaning that I’m responsible for “disrupting” Rutgers’ mission. Why assume this anonymous complainant is a real parent with real children?

Ms. Dellatore also finds it “highly improbable that every complaint came from a neo-Nazi or internet troll,” but the fact is that the communications that came to me via my Rutgers faculty page—roughly 230 of them—were from outraged members of the alt-right who called me a “nigger lover,” a “nigger,” a “racist fuckstain,” and so forth, and who sometimes threatened me with bodily harm. Not one so-called complainant claimed to be part of the Rutgers community.

Why is it that all the guesswork lines up against me, while the evidence I presented, showing that the complaints were from white supremacists, is ignored?

The deck-stacking includes taking critical media coverage as evidence of something substantive. Do I need to point out the well-known propensity of media—especially the local news—to sensationalize and stir up controversy whatever feats of misinterpretation are required? Not only does Ms. Dellatore’s letter hold me responsible for being misinterpreted by the media, it buys into the media sensationalism by taking at face value the NBC report that four students were troubled by my remarks.

Again, this is “evidence” I was never given a chance to respond to. Did NBC interview any students who said they were untroubled? If so, these students weren’t included in the report, perhaps because this would be a less sensational story. Further questions: How many students did NBC speak to before finding these four? Are these four (and the two who say they wouldn’t take my classes) representative of the student population? Beyond the questions any media-literate person would ask regarding news coverage biases, are university professors really supposed to avoid being “criticized by the mainstream media” or held responsible when they are? Are we so cravenly in the popularity business?

Additionally, if the report was going to rely on the opinions of four students as evidence, procedurally speaking, why was I not allowed an opportunity to provide evidence to the contrary? I will happily provide you, or NBC, with the names of a hundred student who've taken my courses and had no complaints about any sort of racial discrimination. My classes are known for open, wide-ranging discussions of race by students of all political persuasions and ethnicities. Black nationalism, for example, is a crucial topic in the courses I have taught in American intellectual history. As a procedural matter, I'd like to know why the opinions of the four students interviewed by NBC outweigh the experiences of the hundreds (if not thousands) of Rutgers students I've actually encountered in the classroom, who would attest to my unblemished record when it comes to not stigmatizing white students.

Again, speaking procedurally—and were you after exculpatory evidence—my track record is readily available in thousands of student evaluations, none of which supply *any substance* to the charge of racism here being leveled.

Onto substantive errors:

- a) deliberate misinterpretation;
- b) ignoring context;
- c) unwarranted conclusions.

The interpretation of my remarks—that Professor Livingston is a racist—is, at best, predicated on a highly literal reading of the words I have written, whereas my remarks were clearly intended to be hyperbolic and satirical. They were made on social media, a venue known for hyperbole, satire, and rants.

Once we acknowledge the existence of irony, satire, and hyperbole, this case falls apart. In Facebook posts, as in everyday conversation more generally, literal readings are demonstrably false readings, and anyone choosing to take them as statements of actual fact or opinion would thereby prove his or her failure to understand how people live and speak in real life. Nothing whatsoever in these satirical remarks suggests that Rutgers “implicitly sanction[s] racial bias against Caucasians.” Anyone who says so has an agenda, and is willfully misreading my remarks to suit that agenda.

The United States Supreme Court has also, by the way, provided broad protection for opinions expressed in caustic or satiric language, and it will be news to the university community that this protection can be arbitrarily waived (at a public university!) by the Office of Employment Equity.

There is, additionally, the social context in which these remarks were made. The social conversations of the moment often feature commentary about white

cluelessness, some of which no doubt makes some white people uncomfortable: note the movie and subsequent television spinoff “Dear White People”; the phrase “white privilege”; think pieces about “white fragility”; articles with titles such as “Why I’m No Longer Talking to White People About Race.” Any of these might, according to the standard deployed by the Office of Employment Equity, create “an unreasonably intimidating, offensive or hostile environment” to someone on the defensive about whiteness.

I understand such defensiveness. Nevertheless, let me reiterate what I have said about reverse racism. Racism is about power, not hatred. Black people can hate white people all they want, but that has not, and will not, change the contours of American history, or the nation’s future. Black people have never been able to colonize, enslave, and enclose whites. Nor will they be. For whites to say that they are the victims of reverse racism, is, then, to obliterate 500 years of history.

The “friends” to whom I was writing on Facebook know this. They also know how to recognize satire, and self-satire, when they see it. Speaking as someone who has spent forty odd years researching and writing about American history these are, as the letter of determination acknowledges, matters of ongoing intellectual debate. There exists, for example, a considerable body of respected scholarship on the issue of “whiteness” [citations provided on request]. Whether or not Ms. Dellatore is aware of this literature, these matters cannot be treated as settled at a *leading research university governed by a tradition of academic freedom*. If my freedom of speech is to be weighed against the university’s mission, then I assert that the university’s mission of diversity must include making a home for diverse viewpoints and modes of expression.

Two former Rutgers graduates—Jelani Cobb, the *New Yorker* writer and a national authority on race relations, and Chris Fisher, now a professor at TCNJ, both of whom studied with me, will be sending letters on my behalf to Executive Dean Peter March. So will FIRE, the Foundation for Individual Rights in Education.

To conclude, I regret that my remarks were misinterpreted, but misinterpreted remarks don’t qualify as conduct “sufficiently severe or pervasive” enough to “alter an individual’s employment conditions or a student’s educational opportunities.” To suggest otherwise—in other words, to accuse me of racism—is to act as a committee of hanging judges, rather than to acknowledge that human communication is always imperfect. The benefit of the doubt applies here, too.

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