

[Back to FIRE Home](#)

Dear Professors and Faculty Senators,

The Foundation for Individual Rights in Education unites civil rights and civil liberties leaders, scholars, public intellectuals, and journalists across the political and ideological spectrum on behalf of liberty, academic freedom, legal equality, free speech, freedom of religion, and, in this case, due process and fundamental fairness on America's college campuses. Our web page, www.thefire.org, will give you a fuller sense of our identity and activities.

The faculty members of an institution of higher learning have a solemn obligation to pass along to the next generation a university at least as free, humane, and decent as the institution they inherited from their predecessors. When freedom and fundamental fairness are threatened at that institution—particularly when the administration has defaulted on its obligation to protect these vital and time-honored principles—it is incumbent upon the faculty senate to exercise its legal and moral authority to take corrective action.

FIRE is profoundly troubled by the pending implementation of a sexual misconduct disciplinary policy that lacks even the most fundamental principles of decency and fairness. The new policy will subject GW students and faculty to the most severe life-altering disciplinary sanctions with virtually no procedural safeguards to ensure that the innocent student or faculty member does not suffer a punishment properly reserved for those found guilty after a fair search for the truth. Implementation of the new policy will not only betray the principles that form the foundation of George Washington University's reputation and standing as a great institution of higher learning, but it will subject GW to a withering and rightful moral criticism. We therefore appeal to your ethical obligation, common sense, your thoughtfulness, and your sense of responsibility to stop the implementation of this unfair policy.

Surely, students and faculty at GW should not be less free than students who attend the New Mount Olive Community College or the University of the District of Columbia. The privilege of attending George Washington University should not come at so high a price that it requires students to give up their natural and reasonable expectation of receiving decent treatment and fundamental fairness from all of GW's programs, including its campus disciplinary system.

A disciplinary system based on secrecy offers the perfect breeding ground for miscarriages of justice. It contradicts one of the most vital principles of a free society, as expressed in the words of Justice Louis Brandeis, that "sunlight is the best disinfectant."

Sexual misconduct is the type of charge that is most likely to result in miscarriages of justice due to misidentification in the case of rape by strangers, and, in charges of rape or other sexual misconduct arising out of a relationship, due to animus, bias, and false swearing. Procedural safeguards for the

accused in such cases should be stronger, not weaker. In traffic court, we accept few safeguards; in cases pertaining to truly damaging charges and penalties, we expect more protections. Indeed, in a civilized society, the more serious the charges, the greater the protections offered to ensure a fair search for the truth.

With those procedural safeguards now stripped away by the new policy, a bare allegation of sexual misconduct—standing alone as a presumption of guilt—can suffice to justify an expulsion or a dismissal, with all its life-altering consequences. There is a simple test of good faith: Would you want your friend, your parent, your child, or yourself tried under such a fundamentally unfair policy?

Last year, Columbia University adopted a similar code. The deeply flawed and dangerous Columbia policy is the subject of intense public scrutiny and a growing coalition has emerged to fight this injustice. Columbia's policy, similar to that of George Washington University, has drawn written criticism from Feminists for Free Expression, the American Civil Liberties Union, and hundreds of alumni, contributors, and students. It has also been the subject of strong editorial and other commentary from such diverse publications as *The Wall Street Journal*, *The Village Voice*, and *The New Republic*. The battle over the Policy has been duly reported in *The New York Times*, in which Norman Siegal, director of the New Civil Liberties Union, said, "It's a no-brainer, sexual misconduct is a serious and substantial problem, and Columbia needs to take it seriously. But due process is equally important."

Zechariah Chafee, Jr., writing over seventy years ago on the obligations of non-profit institutions in the Harvard Law Review, advised universities that "an institution which professes to prepare youth for life in a democracy might wisely give them an example of fair play when conducting its own affairs." In this case, GW's example to its students is a sexual misconduct policy devoid of decency and fundamental fairness. Innocent GW students and faculty can now be sacrificed to an unfair campus disciplinary system solely because those concerned with the problem of sexual misconduct have concluded that the ends justify the means.

We would be happy to provide technical assistance to the faculty senate or the administration should you request it. In the meantime, please vote in favor of the resolution condemning this indecent policy.

You are the last hope of reason, conscience, and decency at George Washington University.

Very truly yours,

Thor L. Halvorssen
Executive Director