

Testimony to Dept of Education|OMB on Proposed Revisions to TitleIX Regulations (E.O. 12866)

Talking Points :: Conversation with DoEducation|OMB Prepared and Submitted by:

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School of Engineering (2009-2022)

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Call on 9 April 2024 | 3pm EST | Scheduled E.O. 12866 Meeting 1870-AA16 | Ms. Lisa Jones

Present in Call: Ms. Fiama Arce, OMB; three Dept of Education staff members (names not audible)

[These Notes Uploaded to RegInfo.gov on Wednesday 10 April 2024]

1. Background of Dr. Burton H. Lee

- Former Adjunct Lecturer with Stanford School of Engineering, from 2009 to June 2022.
- Responsibilities: teaching annual Engineering course. Resigned in early 2022 due to illness (Covid-19, Long Covid).
- Demographics: Age: 70 y.o. | Male | Heterosexual | Single | European-American

2. Relevant Affiliations of Dr. Burton H. Lee | Political and Philosophical Orientation

- Member/Supporter of ***Foundation for Individual Rights and Expression*** (FIRE)
- Supporter of ***Innocence Project*** (defending and freeing wrongly convicted and incarcerated prisoners and Death Row inmates – mostly minority men)
- Have voted Democratic Party in all US presidential elections since 1972 (McGovern), with the exception of voting for George Herbert Walker Bush in 1988
 - Voted for Bernie Sanders and Elizabeth Warren in 2016 (write-in ballot); Biden in 2020
 - Consider myself a Center-left or Left-center ‘liberal’ in mindset and orientation
- Former labor union member

3. Key Principles To Be UpHeld in E.O. 12866 | Centrality of Due Process Protections

- Sound and trusted **Due Process principles, procedures and protections** must stand at the heart of any sustainable TitleIX sexual conduct adjudication system, in my opinion.
 - Adoption of universally accepted, fair and transparent Due Process practices are the best way to Protect both Accusers and Accused from bias, and to win sustained public support for, and Trust and Confidence in, the TitleIX adjudication system

- The Proper Design and Operation of a Fair and Just TitleIX System Should Also Result in Maintaining/Growing Broad Public Trust in Higher Education Institutions
- **Importance of DUE PROCESS for All Accused – Key Points**
 - Accused should receive **In Writing** All Accusations/Charges made against them, with name of Accuser
 - Anonymous accusations should be verified first; precautions should be taken to ensure these are not being used as weapons to target/ruin/'cancel' an Accused person for other reasons or vendetta
 - Hearing(s) should be scheduled so that Accused has sufficient time to secure Counsel and Advisors, and prepare a defense, including securing of exculpatory evidence, and review of evidence provided by Accuser
 - Hearing Officers and Procedures should be NEUTRAL
 - Officers should not be responsible for enforcing TitleIX rules on campus
 - Officers should not be Political Advocates or Play a Role in Hearings with a Political Agenda
 - Officers should not be subject to external influence/pressure by HE institution or media
 - **Primary Role of Hearing Officers is TO ESTABLISH THE TRUTH**
 - ***Hearings and related adjudication processes should not be used as a platform for Activism or Achieving Political Objectives and Agendas***
 - Accuser and Accused may present, explain and challenge Evidence
 - Cross-examination of Accuser and Accused is to be Permitted, so as to determine soundness and validity of all evidence submitted
 - Cross-examinations may be indirect, in separate rooms
 - Accuser(s) and Accused may question and challenge evidence presented
 - Presumption of Innocence
 - Presumption of Guilt | Presumption of Victimhood ??
 - Which presumption produces a better society, communities and relationships?
 - Which presumptions provide better sustained and trusted protections against sexual assault and harassment?
- Dr. Burton Lee Supports in Full the stated positions of **FIRE** (Philadelphia PA) and **TitleIX For All** (Dallas TX) organizations in respect of E.O. 12866 and TitleIX:
 - Essential to maintain DUE PROCESS for Accused at all Times
 - Fairness for Both Accuser and Accused Should be Maintained in Higher Education TitleIX processes

4. Context & Personal History – Experiences w Obama DCL from 2011 - Revised DeVos Regime

- The original Obama-era *Dear Colleague Letter* (DCL) issued in 2011 was an overdue and badly needed effort to address higher education's inadequate management of sexual assault/harassment on US campuses up to that point
- BHLee worked at Stanford, was on campus daily, during 2012 to 2020, based in engineering laboratory
- Witnessed and experienced many effects of, and changes under, original DCL
 - Positive response of many female students/staff to new Obama Administration initiatives
 - Also witnessed and experienced views of numerous male students/staff that felt new DCL procedures were unfair and biased against men, and presumed guilt of Accused
 - Witnessed how several male students/staff pulled back from interactions with female students/staff, for fear of being Falsely Accused and unfairly judged by Stanford administrators
 - Witnessed how the DCL rules negatively impacted the work and climate of our research group, by creating division, suspicion and mistrust among certain students, staff and faculty
- Revisions to TitleIX procedures introduced under DeVos in 2018-19 were viewed positively by many male students/staff in my environment, for the explicit declaration and application of Due Process principles in adjudicating sexual harassment/assault accusations
 - Many male colleagues I discussed this with, and some women colleagues, viewed the new DeVos rules as less biased, and more fair, than the previous Obama DCL rules

5. Adjunct Faculty Are Especially Vulnerable

- Different from other 'staff' and 'faculty'
 - Often, no formal employment contract, no benefits, no salary – appointed via a simple one-page letter from Department Chair or Office of the Dean
 - Can be terminated very easily, very few protections under employment laws or collective bargaining agreements
 - No one to advocate for Adjunct Faculty in university HR departments
- Most Vulnerable of All Categories of Persons on Campus ??
 - vs Students, Tenured Faculty, Administrators

6. Downstream Effects of TitleIX Enforcement – Increased Transparency is Needed

- Data collection in support of Accused is lacking
 - Downstream effects of False Accusations and Biased Adjudication Processes on Accused and university communities are not being monitored or assessed
 - Lost Jobs, lost study opportunities, health, suicide
- Transparency of TitleIX hearings and processes is lacking
 - Transcripts?
 - Annual Reports for Each Institution?
 - Annual Report Issued by Federal Government?
 - Federal government-supported and -maintained databases?
- Removal of University administrators and Hearing Officers with demonstrated bias is Essential to gaining and maintaining Trust of university communities and the public
- Holding University administrators and administrations Publicly ACCOUNTABLE is Essential to Gaining and Maintaining Public Confidence and Trust in TitleIX processes – and in the Federal Government
- Size and Cost of a Fully Fair and Transparent Federal Government Effort around TitleIX enforcement
 - How many oversight staff needed at US Dept of Education? At OMB?
 - What is annual cost to federal budget for a system and organization that is Accountable and Trustworthy to the US Public

7. Outdated and Misplaced Assumptions and Biases

- The following underlying assumptions and biases which were not challenged in the original 2011 DCL rules and regime deserve to be re-examined today:
- Higher Education institutions are Neutral and Trustworthy organizations without a Political Agenda – NOT TRUE
- False Accusations are ‘Rare’ – MORE ‘FREQUENT’ THAN BELIEVED
 - False Accusations are not limited just to sexual harassment & assault
 - **Domestic Violence and False Accusations** (see also below)
 - Widespread presumption that men initiate all violence in DV cases – UNTRUE
 - Domestic Violence initiated by women is far higher than recognized, but not adequately tracked or reported by government and media
 - *Family Courts* see False Accusations used far more against Fathers than against Mothers

- The data here are difficult to assess, as collection of False Accusations numbers is difficult to do, and even discouraged
- UK data show prevalence of False Accusations most clearly (vs USA)
- False Accusations are ‘Harmless’ – NOT TRUE
 - There are many many documented cases where False Accusations Create New Traumas for Accused Persons
 - Suicide, loss of job, loss of family and friends, loss of reputation, lifetime ostracism and social shunning
- **Misandry** (anti-male attitudes and practices) against Men & Boys is ‘Rare’ – NOT TRUE
 - Anti-male attitudes and stereotyping are Widespread in US Society Today, as a review of weekly reporting in media, on television reveal
 - Examples of systemic bias against men and boys which possibly influence DoEduc and higher education institution approaches to, and enforcement of, TitleIX procedures include (not exhaustive listing):
 - Domestic Violence shelters for abused men are extremely rare in the USA
 - Men receive more severe sentences for similar crimes than women
 - (see attached 2012 study from University of Michigan, as an example here)
 - Gross under-representation of men in teaching and nursing professions
 - Male-only compulsory military service (conscription) in the Selective Service Act

8. DoEduc & OMB Face An Increasingly Complex Environment – Vastly Different from 2011

- The social and political environment we are in today is completely different - and far more complex - than in 2011, when the original *Dear Colleague Letter* was issued by DoEduc.
 - Much higher use of **Social Media** today, as one example of differences
- Incorrect Assumption:
 - Accusations of sexual assault/harassment are not influenced by – and are Independent of - the broader societal and strategic environment – NO LONGER TRUE TODAY vs 2011 (see below)
 - **BECAUSE:**
 - Increased politicization of US universities and media affects the broader culture and climate on campuses, including student/staff biases and attitudes towards/against:
 - Truth-telling, notions of justified ‘resistance’ against perceived oppression, freedom of speech, collective vs individual ‘guilt’, Due Process, and violence

- Making accusations of sexual misconduct against students, professors and staff with whom one may disagree seems to be occurring more frequently (again, hard trusted data is lacking here as of now)
 - Far more widespread use of social media today among students and on campuses
- **Malign Behaviors Are Increasing – On and Off College Campuses – Around the Globe**
 - We are experiencing a continuing massive loss of Trust and Integrity at US higher education institutions - within student, administrator and faculty communities
 - This has profoundly *negative* consequences for DoEducation’s efforts to create a Trusted and Sustainable System for assessing, adjudicating and reducing valid cases of sexual assault and harassment today:
 - Increase of ‘**mobbing**’ on US university campuses
 - Disruptive Gaza and Palestine demonstrations
 - Increased frequency of accusations of anti-semitism, racism, misogyny, ‘colonialism’ are shouted, hurled about and repeated in media and social media
 - Increased visibility of **Plagiarism** by university administrators and faculty (Harvard President Gay, etc)
 - Growing numbers of American students believe that **Violence is Acceptable** to Silence Opinions they do not agree with
 - Growing use of **Generative AI** (artificial intelligence) consumer applications will make it easier to create and propagate MisInformation, Untruths, Confusion, Mistrust and False Accusations in the coming 2-3 years

DOWNSTREAM ACTORS OUTSIDE US ACADEMIA

- *Family Courts* are seeing increased challenges to unsubstantiated Accusations by Mothers against Fathers in custody battles and divorce proceedings
 - Family Courts and Child Protective Services agencies’ adjudication procedures generally **lack any substantial Due Process protections for Fathers** and husbands today
 - The extent of **harm done to children** by automatic sole-custody-to-Mother judicial decisions and Parental Alienation behaviors is often at the center of these debates
 - Hard and trusted data on the prevalence of this kind of abuse of the legal system, and the extent of such False Accusations, remains elusive at present
 - DoEducation TitleIX regulations regarding Due Process have downstream effects in other parts of the US judicial system, and are also influenced by judicial traditions outside academia – many of which show deep historic bias against Fathers, Husbands and men

- The False Accusations debate within TitleIX has broad ripple effects beyond academia that deserve careful consideration by the DoEduc.

ACTORS OUTSIDE THE USA

- Scotland's new **Hate Crime and Public Order Act**
 - Entered into force on April 1 2024, designed and passed by Parliament with the best of intentions, this new law is turning into a disaster for the Scottish government and social justice activists
 - **"We're embarrassed": Scottish police despair as they attempt to 'police the impossible' ::** After a deluge of complaints, some fear the 'clumsily' written new hate crime legislation could seriously harm the force's credibility (April 8 2024, The Telegraph)
- Malign global actors – strategic adversaries - weaponizing False Accusations against Americans and other prominent figures in western democracies
 - Chinese Ministry of State Security (MSS)/CCP
 - Australian example (see attachment)
 - **"Stunning moment Andrew Phelan Aussie China watcher is questioned by police over vile false threats to 'rape and kill' a young Chinese woman - as it's revealed China's spies were really behind the email"** (Daily Mail, June 2023)
 - Russia's FSB Security Service
 - Highly successful in disseminating False Information within the US Republican Party base and leadership
 - There is the Potential for Russia to expand these practices to include False Accusations of sexual assault and harassment against leaders within US higher education institutions
 - This deserves careful monitoring and discussions with the FBI
- ***Important Unaddressed Issue***
- **How does the DoEducation propose to guard against this growing malign external environment, from indirectly influencing and corrupting TitleIX procedures?**
 - *How does the DoEducation propose to protect Accused persons from the likely growing prevalence of False Accusations and Misinformation in online Social Media in the coming months and years?*

9. Comments|Feedback on April 9 Phone Call with DoEduc | OMB

- At the end of my call on April 9, there were No Questions or Requests for Clarifications regarding my testimony from any of the three DoEduc participants, which I found quite surprising
- I was also explicitly discouraged from Asking Questions
 - The call seemed a bit **Adversarial** in nature, in my opinion.
 - Is that an appropriate stance for a Federal government agency to take here?
- The names of the DoEduc staff participants were not provided to me in advance by OMB.
 - Despite having 10 days advance notice of the appointment, there was no effort by OMB to inform me ahead of time of who would be participating
 - As a result, I was surprised to find three additional persons on the call who I was not expecting.

THANK YOU.

Dr. Burton H. Lee

Attachments and Exhibits:

- Starr, Sonja, "**Estimating Gender Disparities in Federal Criminal Cases**" (2012). Law & Economics Working Papers (57), University of Michigan Law School. (https://repository.law.umich.edu/law_econ_current/57)
- **"Stunning moment Aussie China watcher is questioned by police over vile false threats to 'rape and kill' a young Chinese woman - as it's revealed China's spies were really behind the email"** (June 19 2023, Daily Mail)
- **"Australian Academics Apologize for False AI-Generated Allegations Against Big Four Consultancy Firms"** (November 2 2023, The Guardian)
- **"A hate crime law was meant to protect against prejudice. It ended up sowing further division"** (April 10 2024, CNN). On Scotland's new Hate Crime and Public Order Act that came into force on April 1 2024.

Stunning moment Aussie China watcher is questioned by police over vile false threats to 'rape and kill' a young Chinese woman - as it's revealed China's spies were really behind the email

- China watcher Andrew Phelan arrested over fake vile email
- Believes the Chinese Communist Party was behind the message
- Police found the email was sent by a fake account

By [MAX AITCHISON FOR DAILY MAIL AUSTRALIA](#)

PUBLISHED: 10:58 EDT, 18 June 2023 | **UPDATED:** 05:23 EDT, 19 June 2023



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This is the shocking moment an Australian China watcher is questioned by police over vile threats he was falsely accused of making to 'rape and kill' a Chinese journalist - which he believes were actually crafted by China's spies.

Andrew Phelan, an entrepreneur and vocal critic of the Chinese Communist Party, was arrested by four armed police officers at his [Melbourne](#) home on 25 January this year.

They confiscated his phone, two laptops and several external drives and took him to a local police station for questioning.

He was accused of sending an email to the young female journalist, who is believed to have Chinese-Singaporean heritage, which read: 'Get back to [China](#), b**** and if you don't I'm going to come find you and pound your yellow p****, cut your throat.

'At least then you'll bleed red, in the colour of the CCP, you b****'

Footage of Mr Phelan's police interview shows him completely gobsmacked hearing the words supposedly written in his name.

'I would never ever, in a month of Sundays, use that kind of language to women or anybody else,' he tells the officers.

After questioning, police established that the email had been sent by a fake account purporting to be him.

'It was surreal. Incredibly confronting. It was horrible - I wouldn't wish it on my worst enemy,' Mr Phelan told 60 Minutes.

Mr Phelan, who was a former Department of Foreign Affairs and Trade Australia-China Council scholar, was in no doubt about who was behind the vicious message.

'I believe that this has been done under the auspices of the MSS, China's Ministry of State Security,' he said.

'I believe they are targeting Westerners who have been critical of the CCP in the public square.'

He confirmed to Daily Mail Australia his conviction that the 'fake email tactic is a



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Australian academics apologise for false AI-generated allegations against big four consultancy firms

Case studies created by Google Bard AI as part of submission to parliamentary inquiry proven to be factually incorrect

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Henry Belot

Thu 2 Nov 2023 10.08 EDT



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KPMG has written to the academics' employers to state they will seek to publicly correct the record to protect their staff. Photograph: Diego Fedele/AAP

A group of academics has offered an unreserved apology to the big four consultancy firms after admitting they used artificial intelligence to make false allegations of serious wrongdoing in a submission to a parliamentary inquiry.

The accusations have been met with scorn by the firms, concerned that inaccurate information has been given parliamentary privilege to unfairly tarnish the reputation of its staff.

The academics, who specialise in accounting, were urging a parliamentary inquiry into the ethics and professional accountability of the consultancy industry to consider broad regulation changes, including splitting up the big four.

Part of the original submission relied on the Google Bard AI tool, which the responsible academic had only begun using that same week. The AI program generated several case studies about misconduct that were highlighted by the submission.

November 2 2023



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A hate crime law was meant to protect against prejudice. It ended up sowing further division

By Amy Cassidy, CNN

🕒 6 minute read · Updated 5:38 AM EDT, Wed April 10, 2024

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(CNN) — A ferocious debate that has raged across social media, legal chambers, police stations and Scottish politics also played out on the streets of Edinburgh this weekend.

Scotland's Hate Crime and Public Order Act came into force last week, a contentious law that expands existing legislation to include transgender identity as a protected characteristic from hate crimes.

"We must remember why this Bill is so necessary, every day in Scotland around 18 hate crimes are committed," Scottish First Minister – then Justice Secretary – Humza Yousaf said when the act was passed back in 2021, citing the government's estimated figures at the time.