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DeVos and campus sexual assault

By DEBRA J. SAUNDERS

Education Secretary Betsy DeVos talked to lots of people—victims, students who said they were falsely accused and the family members of both —before she started to reform a policy instituted under President Barack Obama that instructs college campuses on how to deal with allegations of sexual assault.

In the not so distant past, university administrators often failed to protect female students or establish a culture that discouraged aggressive predatory behavior. In such an atmosphere, victims of sexual assault had good reason to fear reporting crimes committed against them lest they be subjected to an onslaught of questions that looked for fault in their behavior, instead of that of their attackers.

With the rise of feminism, the paradigm shifted. Authorities generally stopped looking for excuses to explain away violent or abusive acts. In the criminal justice system, the word was out—don't blame the victim.

And then, as happens, the movement to stand up for victims morphed into something different. In 2011, the Office of Civil Rights for the Education Department sent a “Dear Colleague” letter to colleges with new guidelines for handling sexual assault cases. The letter threatened to withhold funds from institutions that did not adhere to the new policy, which requires schools to investigate all complaints of sexual assault and details how they must conduct disciplinary proceedings.

Desperate not to appear insensitive to victims of sexual assault, academia went overboard. The burden shifted from the accuser to the accused. The horror stories made news. Male students charged with assault were presumed guilty. Tribunals had the ability to expel students who were denied due process.

In *The Atlantic*, Emily Yoffe wrote about a University of Massachusetts, Amherst junior who was accused of sexual assault in 2014. His accuser wrote that the two students had gotten high together, then engaged in foreplay. She decided to leave. Later she wrote, “as my RA (resident adviser) training kicked in, I realized I'd been sexually assaulted.”

Police investigated the case and never charged Kwado Bonsu. But the university restricted Bonsu's movement on campus, while investigating him. Yoffe wrote that the university found Bonsu was not responsible for sexual misconduct, but suspended him for not adhering to its restrictions. Bonsu sued and his case was settled confidentially.

“Definitions of sexual wrongdoing on college campuses are now seriously over-broad,” four Harvard law professors wrote in an August paper, *Fairness to All Students under Title IX*, that challenged the Obama policy. “They go way beyond accepted legal definitions of rape, sexual assault, and sexual

harassment. They often include sexual conduct that is merely unwelcome, even if it does not create a hostile environment, even if the person accused had no way of knowing it was unwanted, and even if the accuser's sense that it was unwelcome arose after the encounter. The definitions often include mere speech about sexual matters.”

The Harvard law professors noted, “The procedures for enforcing these definitions are frequently so unfair as to be truly shocking. Some colleges and universities fail even to give students the complaint against them, or notice of the factual basis of charges, the evidence gathered, or the identities of witnesses.”

Their decision to release this memo, said Walter Olson, a senior fellow at the Libertarian-leaning Cato Institute, sends the message that if you want to defend the policy, “you're not going to have to argue with Libertarians and conservatives” only, you are going to have to argue with left-leaning legal scholars who also care about fairness and due process.

That makes it harder to push the notion that if you are truly outraged about rape, you are willing to go overboard.

That's the tack former Vice President Joe Biden took when he wrote on Facebook, “Sexual assault is the ultimate abuse of power, and its pernicious presence in our schools is unacceptable. Policies that do not treat this epidemic with the utmost seriousness are an insult to the lives it has damaged and the survivors who have worked so hard to make positive change.”

Biden urged like-minded individuals to “speak up. Any rollback of Title IX protections will hurt your classmates, your students, your friends, your sisters. Make your views known.”

There are many reasons DeVos could have decided to let the current policy continue.

The White House released a statement that applauded DeVos' decision “to overhaul the Department of Education's approach to campus sexual assault enforcement under Title IX. These efforts will produce better policy—one that ensures that sexual assault is taken seriously on campuses without denying the accused the fundamental protections of due process.”

DeVos didn't detail how the rules will change but she said her office will seek feedback from the public and universities to develop new rules, a decision the White House also applauded.

“So much momentum has built up for federally driven changes in campus discipline and rules, so much momentum for unreasonableness,” Olson said, but the unfairness was so striking that it brought together feminists, Libertarians and Trump supporters.

Still, he added, “It took a great deal of courage for her to do this. It would have been easy for her to find some way to dodge it, or postpone it.” (Creator Syndicate)

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The Dreamers deserve compassion

By MICHAEL GERSON

“The last temptation is the greatest treason: To do the right deed for the wrong reason.”
T.S. Eliot

We have every reason to assume the worst when it comes to President Trump's motivation in rescinding DACA—the program allowing undocumented immigrants to live and work openly if they came to the United States as children. Trump's public justification is that President Obama's creation of DACA by executive action was unconstitutional. A usurpation of Congress. A process violation.

Yet Trump didn't give a fig for constitutional niceties in his initial order to keep people from certain Muslim-majority countries out of the U.S. Now, to potentially send Hispanics out of the country, he has discovered an appreciation for process and precedent. There is a theme here, and it is not respect for the rule of law. Trump does not deserve the benefit of the doubt when it comes to issues of race and ethnicity. Recently, and with increasing frequency, he has displayed malevolent prejudice for political reasons. His action on DACA is another installment in this disturbing series.

But, apart from Trump's motivations, was his action on DACA the right deed? Not, certainly, by the measure of its outcome. Trump has removed reasonable protections from a sympathetic group. It would be a grave injustice to send the Dreamers “home” to countries where many have hardly visited.

A democracy, however, consid-

ers more than outcomes, or else the American system of government would be the Chinese system of government. And the constitutional case concerning DACA is not obvious.

The legal matter at issue: Does the executive branch have enough discretion and authority to interpret immigration laws in the manner set out by Obama—essentially as a new pseudo-program that grants benefits to a group that

Congress did not mark out for benefits? The courts have granted broad discretion to immigration officials in determining who to deport and who not to deport. The fact that the law is not applied equally in every case does not invalidate the just application of the law in any case. But the further question is: Can that discretion be applied to an entire class of undocumented people who are then granted a package of benefits (including work permits, advance parole to travel in and out of the country and, eventually, Social Security and Medicare)?

For most of his presidency, Obama maintained that creating such a program by executive action would be improper overreach. In 2012, out of frustration with congressional inaction, he changed course and created DACA. At the time, Obama frankly admitted that this was a substitute for legislation—a measure taken in “the absence of any immigration action from Congress.”

There is little question that the president can prioritize immigration enforcement in a variety of ways, say, to focus on deporting convicted felons rather than Dreamers.

This is the manner in which the law was generally enforced before DACA, and in which it could still be enforced without DACA.

At some point, however, the systematic organization of this discretion into a new legal status, bringing a series of public benefits, becomes the equivalent of legislating. And the courts might focus particular scrutiny on forms of executive action that Congress could have legislated but didn't. Given the more conservative composition of the Supreme Court, it is likely that DACA would have been struck down.

Whatever the merits of the constitutional case on DACA, the Dreamers should now be protected by law. For the last few decades, Congress has pliantly surrendered a number of roles—particularly on social policy and national security—to the courts and the president. A shortage of institutional ambition is a problem that America's founders did not even contemplate. This is an opportunity for Congress to reclaim its proper constitutional role.

This is also a debate, given that few Republicans actually want to deport the Dreamers, and most Democrats seem to prioritize their welfare, on which compromise is particularly ripe. The obvious deal: stronger border enforcement (though not the surpassingly silly wall) for a new version of DACA.

If Republicans can't accept such a deal, they have no heart and a severely limited political future in an increasingly diverse country. If Democrats can't accept such a deal, their rhetoric on the Dreamers is empty. On this issue, compromise is now the evidence of compassion. (Washington Post Writers Group)

Keizer's 9/11 memorial

To the Editor:

The Keizer Fire District has provided a community memorial for the 9/11/2001 attack for the last sixteen years. It is a very respectful and sober event to remember those who died and the emergency responders who served. Through the fire district, the city of Keizer demonstrates its community patriotism for America and our citizens.

The Keizer Fire District hosts the event, providing a flag ceremony, bag

pipe band, prayer, short respectful speeches and even a breakfast after the ceremony. It is a very professional and moving event to remember that day and the sacrifices made. We are very fortunate to have such a patriotic fire district and city.

It moves me every year I attend and it makes me proud to live in Keizer. Thank you, Keizer Fire District for all that you do for our community.

John P. Rizzo,
Keizer

letters

Don't like DACA? Let Congress fix it

By GENE H. MCINTYRE

Humanitarians are people who are concerned about, and seek to, protect their fellow human beings. They are also found to be kind and thoughtful about the welfare of most living creatures. They are those Americans among us who view Deferred Action for Childhood Arrivals (DACA) from an emotional position, seeing it as a humane way to treat those who entered the U.S. through no choice of their own.

DACA is an American immigration policy that allows certain undocumented immigrants who entered the U.S. before their 16th birthday and before June, 2007, to receive a renewable two-year work permit and exemption from deportation. It does confer non-immigrant status but not a path to citizenship.

Meanwhile, we Americans hardly got to direct our attention to the divisive expressions of racism and hate at Charlottesville when two weeks later we've got DACA. However, while Charlottesville had only one side wrong, as much as evil is never right, DACA, it's argued, has two legitimates, that is, the humane angle and the law and order angle.

In the first instance, with DACA, there's a case to be made that former President Barack Obama used DACA as an executive order in 2012 for political gain and has used his legal jargon knowledge to defend it. By Obama's own standards, DACA does not stand the test of legal scrutiny. The U.S. Constitution

plainly gives the role of lawmaker to Congress while the executive branch enforces the law.

DACA defers deportation and provides work permits, Social Security cards, and a driver's license to over one million illegal immigrants who arrived as minors while, from the beginning, has been controversial due to its dubious legal origins; therein lies the rub with DACA. Those protesting its rescind want us to believe this is a simple question of the heart, of kindness, of just another chapter in the American immigration story. Yet, at it core, DACA is a question of legality, that is this: Is it legal for a president to create legislative authority out of thin air, deciding what preferences to enforce?

All presidents try end runs and this was Obama's end run. However, it's an extreme action by the executive branch that underscores the broken state of our immigration system. The 11 million immigrants living illegally here is due in part at least to a system that requires long wait times, imposes ancient and possibly irrelevant quotas and often gets those, trying to negotiate it, into a morass of subjective decision making.

Those who want to crawl out from under the mountain of emotions now being unleashed throughout our land should recognize that the current system needs to be remedied and stand down to redirect their efforts to the U.S. Congress. The question

of immigration, especially when it involves children, is always packed with emotion. Yet, intense emotion should not overrule the law itself.

In keeping with his reputation for self-serving ventures that are profit motivated, President Trump just may be onto something worthy of consideration. He is consistently guilty of what's judged hypocritical by his own executive orders; nevertheless, in this case, sending the matter of DACA to the U.S. Congress may be the only way the 11 million undocumented immigrants will ever come to a place where lasting peace-of-mind and law-providing safety can be realized by them.

Personal satisfactions may be derived from marching in America's streets and byways while calling out and carrying signs conveying messages about what's wanted. In our country today, unfortunately, the way to get a law on the books is what U.S. corporations and America's wealthy do: they hire lobbyists and send them to D.C. with bags of money.

(Gene H. McIntyre lives in Keizer.)

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