

SHOULD PEOPLE HAVE THE RIGHT TO SAY AWFUL THINGS WITHOUT FACING LEGAL CONSEQUENCES?

Those who want to curtail freedom of speech do not log the debits and credits of censorship, nor do they care about the balance of norms—they act when they have power.

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November 25, 2023



Videos of a former State Department official verbally abusing a Manhattan street-truck vender went viral last week. Photograph from Anadolu/Getty Images

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terrible times breed terrible words, and words have consequences—especially

T Last week, Stuart Seldowitz, a former State Department official, was arrested and charged with a hate crime after videos of him delivering a series of bigoted rants against Mohamed Hussein, a twenty-four-year-old Manhattan street-cart vender, went viral. In these, Seldowitz called Hussein a terrorist, insulted his Muslim faith, and said, with a hysterical crack in his voice, “If we killed four thousand Palestinian children, you know what—it wasn’t enough.” Hussein, for his part, repeatedly asked Seldowitz to leave him alone.

The online case against Seldowitz is fairly open-and-shut. It is quite clear that he is a bigot and a bully. As hundreds of people on social media have pointed out, his dangerous rhetoric is far more disturbing when placed in the context of his proximity to the highest levels of the U.S. foreign-policy establishment. Seldowitz served under both Republican and Democratic Presidents and worked in the State Department’s Office of Israeli and Palestinian Affairs. Bad people go viral for all sorts of reasons, but there’s a special level of contempt reserved for those who seem to reveal something rotten at the core of the institutions of power.

The legal case against Seldowitz comes down to this: in New York State, a person can be charged with stalking in the fourth degree if he “intentionally, and for no legitimate reason” engages with someone in a manner that causes the target to have “reasonable fear” for his or his family’s health and safety. In the videos, Seldowitz appears to make bizarre threats to sic an Egyptian intelligence agency on Hussein’s grandfather. The law also protects people against threats to their employment. Seldowitz told Hussein that he was going to call immigration authorities, and repeatedly asked him about his citizenship status. There is also a clause that says you cannot repeatedly initiate contact at someone’s place of business if that person has asked you to stop. Hussein asks Seldowitz to go away several times, yet he appears to have come back on at least three separate occasions. Harassment in the second degree is a similar charge that says you cannot engage in repeated acts to

“seriously annoy” another person if those acts “serve no legitimate purpose.” Both charges are misdemeanors.

All that feels appropriate enough here. But, because Seldowitz said clearly bigoted things while committing these acts, he has also been charged with a hate crime. (Seldowitz has pleaded not guilty to all charges, and has said in interviews that he was responding to a provocation from Hussein.) In such a case, the verbalization of hate is what matters, but there are no clear standards for what counts and what does not. This ambiguity has led to a fractured and absurd enforcement, whereby individual police departments and prosecutors make judgment calls on how to classify discrete incidents. You could punch three people of a particular race in the face and your social media could look like a Nazi-propaganda wall, but, unless you actually say a racial slur and either someone hears it or it’s caught on film, chances are that the hate-crime charges aren’t going to survive the legal process. To the point: between 2004 and 2019, the Justice Department decided to prosecute only seventeen per cent of the nearly two thousand suspects investigated for hate crimes.

There are many reasons that police departments and prosecutors tend to avoid pursuing hate-crime charges. They are difficult to prove because, absent some verbal proof, it’s nearly impossible to know why anyone does anything; they can sometimes taint juries, which might fixate on whether the crime was actually motivated by hate instead of focussing on the crime itself; and some prosecutors have ethical concerns about pushing for more punishment in a seemingly arbitrary way.

The peculiar evidentiary standards for hate crimes combined with law enforcement’s reluctance to bring relevant charges means that the statutes can be reserved for high-profile cases, when a particularly repulsive person goes viral. Last month, Jeanne Umana of Santa Barbara was charged with a hate crime after she verbally abused a Latino construction worker and a street vender, in two separate incidents. Both instances were caught on video

and sparked protests in the city. On Tuesday, Hadasa Bozakkaravani, a forty-eight-year-old Brooklyn woman, was arrested on hate-crime charges after she went viral for screaming Islamophobic slurs and throwing hot coffee at a man who was walking with his eighteen-month-old son.

These are awful incidents, but their prosecution as hate crimes suggests that we may be setting up a show court for bigots that serves mostly to placate a rightfully angry public. The decision to bring hate-crime charges should not be pegged to whether a video goes viral; nor should those, like myself, who criticize the arbitrary nature of law enforcement, make exceptions as they see fit. The fourth-degree-stalking and second-degree-harassment charges for Seldowitz seem appropriate—although I would argue that both laws feel like they were written to be cynically enforced—but hate-crime laws should not be used as a tool of retribution against the stars of viral videos.

What I am presenting here is a moral question about whether people have a right to say terrible things without legal consequence. There's an argument to be made that those who find Seldowitz's words repugnant should have grace and set an example that speech should always be protected; this course of action would act as a bulwark against those who blame today's censorious environment on the so-called woke purges of the past decade. I don't find this line of reasoning particularly convincing, because it assumes that somehow consensus, however shaky and conditional, can be created by the push and pull between polarized factions. A theoretical bargain—such as “If we agree to defend Stuart Seldowitz's right to say horrible things, you will promise to stop harassing students and firing employees for expressing their support for Palestinians or Black Lives Matter or whatever other cause they think is righteous”—is premised on a silly fantasy. Those who want to curtail freedom of speech do not log the debits and credits of censorship, nor do they care about the balance of norms—they act when they have power. And they should be resisted because it is immoral to imprison someone for expressing their views, however righteous or repulsive they may be.

These principles were once safeguarded by institutions such as the A.C.L.U., which famously defended the First Amendment rights of Nazis and the Ku Klux Klan, but that type of advocacy feels both verboten and anachronistic now. It's hard to imagine that any legal organization would come to the defense of Stuart Seldowitz's right to say awful things about the slaughter of Palestinian children. This is unfortunate because we are in a period of seismic change for civil liberties, especially when it comes to the First Amendment, surveillance, and the sanctity of a free press, and it has never been more vital to defend the moral case for free speech. One does not need to put forth a slippery-slope argument to point out how all this could go wrong. Nearly everything we do in public is surveilled, most of our communication is controlled by tech companies, and any of us could go viral at any moment. We should denounce any show court that bends the law in arbitrary ways to incarcerate people who get caught on video saying unpopular things. ♦