

# Paradoxes of ivory-tower mind: NYU Law professor decries misinformation – than insists on staying misinformed

By Lev Tsitrin

The title of a book-signing event sponsored by the Brennan Center for Justice was “[\*Solutions for a Threatened Democracy\*](#)” – and one of the obvious threats to democracy being a judiciary that is not bound by due process but, in a monarchical fashion, deciding cases according to judges’ whim and politics rather than law (which is something that happened to me), I just had to attend in the hope of asking, in Q&A, about federal judiciary’s part in wrecking American democracy, and turning America into a judges-ruled oligarchy.



As has become typical of such events, questions had to be submitted in writing – they were pre-screened/censored. I knew I had no chance; but, to ease my conscience, I wrote mine down, handed it in, and proceeded with listening to the speakers.

The conversation ran along familiar themes – the overzealous screening of voter eligibility that might scare away a legitimate voter; the right-wing tilt of the Supreme Court

that gave Trump so much immunity (and the ways to right it, term limits offered as a preferred solution); misinformation and disinformation originating from, and amplified by, the social media.

All speakers and the moderator were aligned in their vision of both the problems and solutions, so there were no fireworks in the discussion, no displays of disagreement. Panelists were smooth talkers, and the time passed quickly. Just as I anticipated, my question of how the immunity for acting from the bench “maliciously and corruptly” which the federal judges granted themselves in *Pierson v Ray* impacted democracy, and why it did not merit the public discussion while Trump’s immunity generated a volcanic explosion of analysis and condemnations in both the press and the academe was not taken – so I saw my chance in at least talking to the panelists individually while the audience lined up to get refreshments.

The nearest was [Trevor W. Morrison](#),”[NYU’s] Eric M. and Laurie B. Roth Professor of Law [and] Dean Emeritus” – who, no sooner than I outlined my experience of federal judges throwing parties’ argument into garbage and replacing it in decisions with their own, bogus one to decide cases the way they want, interrupted me by saying “this is not true!” The dialog – if the the brief exchange could be called a “dialog” – proceeded about as following:

*Me*: “How can it be not true if it actually happened to me? Let me give you a flier explaining it”

*Professor Morrison*: “I do not want to talk to you.”

*Me*: “But you stressed the need for combating misinformation and disinformation. If you don’t listen to people, how can you be informed?”

*Professor Morrison*: “If so, I will stay misinformed on this. But I will not talk to you!”

He turned his back, and the discussion was over.

Which raises a question or two.

Since the subject of the talk was fragility of American democracy and the need to protect it, how “democratic” is it on the part of those wielding influence and power to not listen to the concerns of the public?

How can a person who refuses to learn how the system actually works, suggest improving it? Yet Professor Morrison, we are being informed, was one of the great legal minds whom “In 2021, President Biden appointed to the Presidential Commission on the Supreme Court of the United States.” (Indeed, the report of the Commission was filled with platitudes – not surprisingly since it is highly likely that the other panelists were as close-minded as Professor Morrison, and as ignorant of reality of how judging in federal courts is actually done: I emailed the panel several times, but never got a reply.)

And what does Professor Morrison teach his students? That federal judging is fair and honest, impartially weighing parties’ respective argument – as the innumerable images of Lady Justice show us – rather than “corruptly and maliciously” fitting the argument to the preconceived decision, in the *Alice in Wonderland* fashion of “decision first, ways to arrive at it later,” letting his students learn the truth through the nose when an unhappy client asks them (just as I did when Judge Lettow’s decision in *Overview Books v US* came down), “how did this garbage wind up in the decision? We did not argue it, the government did not argue it – so why is the judge playing government’s lawyer? What the !@#\$ is going on here???” – the scene repeating when Judge Vitaliano claimed in his decision that my lawyer has not argued what was his central argument! How is this not the very misinformation and disinformation which Professor Morrison ostensibly decried in his remarks? (for the record, the other panelists were civil –

they heard me out, nodded in sympathy, and took my flier – though the sour mien of Professor Zelizer could hardly conceal his annoyance and disapproval of me saying such things).

So the question is – how can a refuser of information be lamenting misinformation?

“Practice what you preach” is clearly not the motto of NYU Law professor/ex-Dean of its Law School Trevor W. Morrison. Did he learn his contempt of reality (and of the people) while being an “Associate Counsel to President Barack Obama in 2009”? Or, “earlier in his career, [as] a law clerk to Judge Betty B. Fletcher of the US Court of Appeals for the Ninth Circuit (1998-99) and to Justice Ruth Bader Ginsburg of the US Supreme Court (2002-03)”? Or as “a Bristow Fellow in the US Justice Department’s Office of the Solicitor General (1999-2000)”? Or as “an attorney-advisor in the Justice Department’s Office of Legal Counsel (2000-01)”?

I do not pretend to have an answer – but he surely loves misinformation and disinformation, even while professing to hating them. Talk of ivory tower intellectualism – and of split personalities!

*Lev Tsitrin is the author of “[Why Do Judges Act as Lawyers?: A Guide to What’s Wrong with American Law](#)”*