



**MOUNTAIN STATES LEGAL  
FOUNDATION**  
FREE COUNTRY. FREE PEOPLE.

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March 16, 2023

Dean Jenny Martinez  
Stanford Law School  
559 Nathan Abbott Way  
Stanford, CA 94305  
jmartinez@law.stanford.edu

**Re: The Need to Take Further Action with Respect to Dean Steinbach  
and the Students who Disrupted Judge Duncan’s Remarks**

Dear Dean Martinez:

We are attorneys at Mountain States Legal Foundation, a nonprofit litigation firm working to protect and defend the U.S. Constitution. Our mission is to secure the right to live freely throughout the United States, by litigating the cause for freedom. Part of our practice involves First Amendment free speech cases, and we have watched in sadness over the last week as reports of Stanford’s misconduct have made national and international news.

Of course, as a private actor, Stanford isn’t bound by the First Amendment. It is, however, bound by its contractual obligations to create a welcoming environment for free speech. *See, e.g.*, Letter from Dean Martinez and President Tessier-Lavigne (Mar. 11, 2023) (“Freedom of speech is a bedrock principle for the law school, the university, and a democratic society . . .”);<sup>1</sup> *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 593 (D. Mass. 2016) (treating student handbook as a student-university contract for Title IX due process purposes).

Stanford is also bound by its institutional policies regarding freedom of speech. *See* 34 C.F.R. § 75.500 (“[A]n institution of higher education, as defined in 20 U.S.C. 1002(a), that is private . . . must comply with its stated institutional policies regarding freedom of speech, including academic freedom . . .”). Even beyond these legal requirements, Stanford Law’s website materials clearly claim to value

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<sup>1</sup> <https://law.stanford.edu/wp-content/uploads/2023/03/letter-from-Stanford.pdf>

ideological diversity within its halls. *See* Quote of Jasmine Ying Miller, JD 2019 (“Honest and difficult conversations are integral to education here.”).<sup>2</sup>

These principles are not supposed to be empty words. They have meaning only when they are lived. Stanford students will one day be Stanford attorneys, and they will have to interact with colleagues, opposing counsel, and judges with whom they disagree. They may even disagree with their clients’ personal beliefs. Nevertheless, as attorneys, they will be expected to maintain professionalism and courtesy. Indeed, as attorneys, they will have a responsibility to the legal system and to the judiciary as a whole. *See* Model Rules of Professional Conduct: Preamble and Scope, Cmt. 6 (“[A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”).

Put simply, it is the responsibility of the law school to firmly disabuse students of the notion that they may freely disrupt, harass, and intimidate others based on their beliefs. To do otherwise is a disservice to students who may think that they can proceed through their careers displaying hostility and aggression with lawyers and judges based solely on disagreement with their views.

Indeed, permitting such unprofessional behavior is setting your students up for failure in the legal profession. Inside of the courtroom, they will be unable to persuade judges or juries, and will likely find themselves on the receiving end of bar complaints about their behavior or incompetence. Outside of the courtroom, they will have difficulty engaging in professional courtesies with their peers and opposing counsel, to their clients’ detriment. Ultimately, they will develop reputations for being unprofessional, and their own clients will suffer the consequences.

For these reasons, your joint apology with President Tessier-Lavigne was an appropriate and encouraging first step. But it is not enough. To protect Stanford’s reputation and its student body, Dean Steinbach and the students who disrupted Judge Duncan must suffer actual consequences. Their misconduct should follow them. With respect to Dean Steinbach, who was in a position of authority during the event, discipline is appropriate. With respect to the students, we leave to your discretion whether suspension, public reprimand, notice to future employers, expulsion, notification to the bar, or permanent transcript notations, among other possibilities, would be most appropriate. However, what is clearly *not* appropriate is for their misconduct to have no future consequences.

Sadly, it is also apparent that Stanford Law students do not have a basic understanding of First Amendment free speech principles. Their signs in your

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<sup>2</sup> Stanford Law School, Education, available at: <https://law.stanford.edu/education/>

classroom—which suggest that law students believe that there is a First Amendment right, in a private school, to disrupt an event—demonstrate this clearly.



We urge you to reconsider your curricular materials to assist Stanford Law students to understand what rights they do, and do not, have under the First Amendment.

Short of disciplining Dean Steinbach and the students who disrupted Judge Duncan’s remarks, it will be obvious that Stanford Law’s purported commitments to “diversity” and “inclusion” are only illusory. These concepts mean more than embracing people for their immutable traits, and certainly more than fostering a community where only one set of views is tolerated; instead, “diversity” and “inclusion” mean welcoming and encouraging unpopular, divergent viewpoints, in order to foster healthy dialogue. Worse, without further action, Stanford’s reputation

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<sup>3</sup> <https://twitter.com/AndyGrewal/status/1635657981256687616>

will continue to be blemished, and its students will think that misconduct has no consequences.

Sincerely,

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Brian Abbas, Director  
Joseph Bingham, Senior Attorney  
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