



May 16, 2023

Chief Justice Mike McGrath
Supreme Court of Montana
215 North Sanders St.
Helena, MT 59601

Dear Mr. Chief Justice:

I write to you in my capacity as chief legal officer of the State of Montana, member of the Montana State Bar, and fellow attorney concerned with the future of our profession.

Recent events at Stanford Law School highlight a concerning trend in American law schools, showing that students are far too comfortable using intimidation to silence opposing viewpoints. Many of these students are self-styled members of the progressive vanguard and justify their actions based on the perceived evil of conservative legal views. These students engage in these actions, in part, because they believe no consequence will flow from them. And so far, they're right. But I ask that you make clear that the Montana legal profession disapproves of this behavior. As the regulators of the legal profession in Montana, it is the Supreme Court's responsibility to place law students on notice that these unacceptable actions will be considered upon applying to the Montana Bar.

In March, students at Stanford Law School shouted down Fifth Circuit Judge Kyle Duncan while he attempted to speak at a student-led event.¹ The school had invited Judge Duncan to speak on cutting-edge legal issues, but students at Stanford greeted the judge by hurling insults and heckling him during his speech.² To make

¹ Stanford Law School Federalist Society, Event Notice—The Fifth Circuit in Conversation with the Supreme Court: Covid, Guns, and Twitter (Mar. 2023), *available at* <https://law.stanford.edu/event/lunch-with-judge-duncan/>; Jon Levine, *Trump-Appointed Judge Wants Apology After Ambush from Stanford Dean*, N.Y. POST (Mar. 11, 2023, 1:00 PM), <https://ny-post.com/2023/03/11/trump-appointed-judge-wants-apology-from-stanford-dean/>.

² See Stewart Kyle Duncan, *My Struggle Session at Stanford Law School*, WALL ST. J. (Mar. 17, 2023, 2:59 PM), <https://www.wsj.com/articles/struggle-session-at-stanford-law-school-federalist-society->

DEPARTMENT OF JUSTICE

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matters worse, Stanford's Dean of Diversity, Equity, and Inclusion joined the protestors, monopolizing Judge Duncan's time and egging on the disruptors.³ When Stanford's Dean finally apologized to Judge Duncan, students at the school turned their harassment against her.⁴

This incident at Stanford is only the most recent example of a troubling trend in legal academia. The disruption of speaking events is fast becoming the norm at law schools and Stanford's incident is similar to one at Yale Law School a year ago.⁵ This trend is a problem for several reasons. First, in most law schools, outside speakers represent the only diversity of viewpoints that students will see before graduating. Because legal academia is increasingly monolithic in its hiring practices, inviting outside speakers is necessary to expose students to contrarian views and prepare them for the practice of law.⁶ Even if students disagree with speakers like Judge Duncan, they should at least understand the points of view that they hold. When students shout these speakers down, they prevent their classmates from hearing opposing points of view—ensuring that they never understand the legal arguments they oppose.

Second, allowing students to silence speech they disagree with sends a terrible message to these future lawyers. Our profession relies on effective persuasion and depends on allowing space for opposing arguments. But when students exercise a heckler's veto over disfavored speech, they learn to shortcut the marketplace of ideas. In doing so, they learn a skill that they should never use in the real world. If someone attended an oral argument before your Court and heckled an advocate during his or

kyle-duncan-circuit-court-judge-steinbach-4f8da19e (describing the disruption and protestors telling Judge Duncan that they hope his daughters are raped).

³ Neirin Gray Desai, *Disgraced Stanford 'Equity' Dean Admits She Handled Students' Heckling of Conservative Judge Badly – but Says She Never Imagined Her Speech Berating Him Would Ignite Firestorm of Fury*, DAILY MAIL (Apr. 10, 2023), <https://www.dailymail.co.uk/news/article-11955891/Stanford-dean-admits-handled-students-heckling-conservative-judge-badly.html>.

⁴ Aaron Sibarium, *Student Activists Target Stanford Law School Dean in Revolt over Her Apology*, WASH. FREE BEACON (Mar. 14, 2023), <https://freebeacon.com/campus/student-activists-target-stanford-law-school-dean-in-revolt-over-her-apology/>.

⁵ Yaron Steinbuch, *Yale Law Students Disrupt Bipartisan Free Speech Panel, Trigger Police Escort*, N.Y. POST (Mar. 17, 2022), <https://nypost.com/2022/03/17/yale-law-students-disrupt-bipartisan-free-speech-panel/>.

⁶ See Ilya Somin, *What Law Professors Think About Legal Issues—and Why it Matters*, VOLOKH CONSPIRACY (Aug. 10, 2022, 6:02 PM), <https://reason.com/volokh/2022/08/10/what-law-professors-think-about-legal-issues-and-why-it-matters/> (citing a new study on professor ideology in law schools and explaining the issues with the lack of ideological diversity); see also *id.* (explaining “that support for originalism (17%) is only slightly greater than backing for prison abolitionism (13%) and substantially less popular than the radical idea of granting legal personhood to ‘non-human animals’ (31%).”).

her argument, you would rightly hold that person in contempt. But when students are rewarded for this behavior in law school, it's only a matter of time before it rears its ugly head in practice.

Finally, even if you believe that these incidents are isolated to a few radical students at coastal elite schools, Montana will still feel the effects of these incidents if we are complacent. As explained by a student at Boston College Law School, virtually every law school in the country hires professors from the schools that allow this behavior.⁷ It's a scary proposition that the same ideologues who disrupted Judge Duncan might one day teach law students at the University of Montana. The disruptions at Stanford and Yale are everyone's problem and Montana can't bury its head in the sand and hope it goes away.⁸

We are at a turning point for the integrity of the legal profession. It should go without saying, but in light of recent events, I respectfully urge this Court to remind lawyers, law school administrators, and law students that the legal profession holds itself to a code of conduct higher than society at large. The Montana Rules of Professional Conduct remind us that lawyers have a responsibility to “use the law’s procedures only for legitimate purposes and not to harass or intimidate others,” and to “demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.”⁹ The conduct of students at Stanford Law School clearly contradicts these principles. In addition to creating a general atmosphere of disrespect and intimidation, the students who engaged in these acts demonstrated an extreme disrespect for the federal judiciary and the enduring principle that the remedy for disfavored speech is a well-articulated rebuttal, not a heckler’s veto. Stan

⁷ Jillian Jacobson, *Stanford Law School Meltdown: Yes, the Juice Really is Worth the Squeeze*, WASH. EXAM’R (Mar. 19, 2023, 6:00 AM), <https://www.washingtonexaminer.com/restoring-america/faith-freedom-self-reliance/stanford-law-school-meltdown-yes-the-juice-really-is-worth-the-squeeze>.

⁸ Some judges and state bars are pushing back on this behavior already. See, e.g., James C. Ho, *Read: Judge James Ho’s Remarks Announcing a Hiring Boycott from Stanford Law School*, WASH. FREE BEACON (Apr. 1, 2023), <https://freebeacon.com/campus/read-judge-james-hos-remarks-announcing-a-hiring-boycott-from-stanford-law-school/> (reporting on Judge Ho’s announcement at the Texas Review of Law & Politics’ annual banquet that he will no longer hire law clerks from Stanford); see also Aaron Sibarium, *Texas Bar Application adds Questions About ‘Incivility’ and Free Speech in Wake of Stanford Law School Fracas*, WASH. FREE BEACON (Apr. 14, 2023), <https://freebeacon.com/campus/texas-bar-application-adds-questions-about-incivility-and-free-speech-in-wake-of-stanford-law-school-fracas/>.

⁹ See Montana Rules of Professional Conduct: Preamble & Scope ¶ 6, available at <https://www.montanabar.org/Membership-Regulatory/Ethics-Resources/Professional-Conduct>.

ford's Dean rightly explained in an open letter that the "sustained heckling that disrupted the event" was not protected by the First Amendment and is rightly understood not as an exercise of free speech but as an attempt to suppress another's exercise of that right.¹⁰ Conduct that would constitute contempt of court cannot be acceptable in the academic setting for those aspiring to join the legal profession.

To that end, I respectfully suggest that the Supreme Court take the following actions:

- As part of your materials intended to inform law students and other aspirants to bar admission of their responsibilities and expected conduct, clarify that students' conduct in law school—including conduct at speaker events and similar occasions where a range of perspectives are presented on key issues—is relevant to an evaluation of their character and fitness for admission to the bar.
- As part of conducting evaluations of character and fitness on the part of applicants for bar admission, include as an express element of that evaluation whether a student has demonstrated respect or hostility toward free, open, and civil debate on campus, including their participation in conduct such as that recently seen at Stanford Law School, with consequences to include delaying or rejecting applications and requiring remedial education in professional conduct responsibilities.¹¹

The Montana Rules rightly note that "[l]awyers play a vital role in the preservation of society."¹² But the atmosphere today in our law schools too often appears geared not toward the preservation of society and the rule of law but precisely toward its opposite: transforming it into a dystopia of mob rule and fanatical intolerance. You have an important role to play in countering this trend, and the most obvious and pressing way for you to play that role is by explicitly incorporating

¹⁰ See Letter from Jenny S. Martinez, Dean, Stanford Law School, at 2–4 (Mar. 22, 2023), available at <https://law.stanford.edu/wp-content/uploads/2023/03/Next-Steps-on-Protests-and-Free-Speech.pdf>.

¹¹ The Supreme Court of Texas recently took similar action and announced that its Board of Law Examiners would add questions about incivility prior to granting bar admission. Aaron Sibarium, *Texas Bar Application Adds Questions About 'Incivility' and Free Speech in Wake of Stanford Law School Fracas*, WASH. FREE BEACON (Apr. 14, 2023), <https://freebeacon.com/campus/texas-bar-application-adds-questions-about-incivility-and-free-speech-in-wake-of-stanford-law-school-fracas/>.

¹² Montana Rules of Professional Conduct: Preamble & Scope ¶ 14, available at <https://www.montana-bar.org/Membership-Regulatory/Ethics-Resources/Professional-Conduct>.

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respect for free speech generally, and campus speech in particular, into character and fitness evaluations. I hope and trust that you will do so.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin Knudsen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Austin Knudsen
ATTORNEY GENERAL OF MONTANA

cc: Justice Beth Baker
Justice Laurie McKinnon
Justice James A. Rice
Justice Jim Shea
Justice Dirk Sandefur
Justice Ingrid Gustafson