



FIRE

Foundation for Individual
Rights and Expression

March 10, 2023

Marc Tessier-Lavigne
Office of the President
Stanford University
450 Jane Stanford Way, Building 10
Stanford, California 94305

URGENT

Sent via U.S. Mail and Electronic Mail (president@stanford.edu)

Dear President Tessier-Lavigne:

FIRE¹ is once again deeply concerned about the state of free expression at Stanford University after a student-organized Stanford Law School speech by U.S. Circuit Judge Stuart Kyle Duncan was disrupted last night,² with at least one report that his remarks ended some 40 minutes earlier than planned as a result.³ The apparently successful exercise of the heckler's veto by attendees determined to disrupt Judge Duncan's remarks, at a Federalist Society-sponsored event, is troubling enough. But FIRE must also express our deep concern regarding Associate Dean for Diversity, Equity, and Inclusion Tirien Steinbach's temporary removal of Duncan from the podium—against his wishes—to offer commentary appearing to promote censorship. Dean Steinbach pinballs between praising free speech, accusing Judge Duncan of “harm,” and asking him if what he has to say is important enough to justify upsetting students. She ultimately suggests Stanford may wish to consider abandoning its free expression commitments altogether to prevent the “harm” allegedly inherent in hearing views with which one may disagree in the future.⁴

¹ As you may recall, FIRE is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² David Lat. (@DavidLat), TWITTER (March 10, 2023, 10:54 AM), <https://twitter.com/DavidLat/status/1634221088753197058?s=20>.

³ The recitation of facts here reflects our understanding of the pertinent facts and is based on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

⁴ Ed Whelan. (@EdWhelanEPPC), TWITTER (March 10, 2023, 8:07 AM), <https://twitter.com/EdWhelanEPPC/status/1634218660494548993>.

As an initial matter, FIRE recognizes that we have limited information about what transpired during Judge Duncan’s speech, as available video captures just a 10-minute segment of the event’s disruption. We are hopeful Stanford can provide additional information.

In the video, Dean Steinbach—who ostensibly was brought into the event to restore calm, and arguably did so—repeatedly praised the hecklers and accused the speaker of “harm.” She also muses about whether, in regard to Stanford’s permissive free expression policies, the “juice is worth the squeeze.” She suggests the university “might need to reconsider these policies” to prevent speakers like Duncan from sharing their views on campus in the future because they may upset some students.

Stanford has notably committed itself, repeatedly, to free expression as a normative good, properly calling freedom of speech “core to the mission and academic life of our university.”⁵ Were it to be given serious consideration, Dean Steinbach’s proposed reconsideration of this commitment would present a grave threat to Stanford’s future ability to provide students a world-class liberal arts education.

As FIRE has reminded you in our recent correspondence, Stanford promises robust expressive rights to students and faculty.⁶ Stanford is likewise obligated by California’s Leonard Law to respect its students’ expressive rights.⁷

When hecklers disrupt planned speeches on a university campus, they not only infringe a speaker’s right to deliver their message, but also the rights of anyone in the Stanford community who wishes to receive that message. As the late Supreme Court Justice Thurgood Marshall famously wrote: “The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin.”⁸

Of course, not all protest during a speech is sufficiently disruptive; for example, protestors peacefully holding signs in the back of an auditorium or offering fleeting commentary are unlikely to be so disruptive as to prevent an event from proceeding. However, when protestors talk over a speaker or cause other disruption such that the event is functionally unable to proceed as planned, Stanford must use all the resources at its disposal to prevent this pernicious form of mob censorship. Would-be disruptors must know Stanford will not tolerate the heckler’s veto and that the university will take swift action to remove anyone who violates the university’s clear policies to that effect. Dean Steinbach’s comments caught on video make it woefully unclear as to whether Stanford will stand up for speech or not.

⁵ *Academic Freedom and Free Expression*, *supra* note 6.

⁶ See e.g. *Freedom of Speech & the Fundamental Standard*, STANFORD UNIV. <https://communitystandards.stanford.edu/resources/additional-resources/freedom-speech-fundamental-standard> [<https://perma.cc/2H25-KAGZ>]; *Academic Freedom and Free Expression*, STANFORD UNIV., <https://freespeech.stanford.edu> [<https://perma.cc/5XKB-VE7J>].

⁷ Cal. Educ. Code § 94367, subd. (a) (barring secular, private colleges from making or enforcing any rule that would subject a student to discipline for speech, were it “engaged in outside the campus . . . is protected from governmental restriction by the First Amendment” or the speech protections in the California constitution).

⁸ *Kleindienst v. Mandel*, 408 U.S. 753, 775, 92 S. Ct. 2576, 2588 (1972) (Marshall, T., dissenting).

When the university allows speakers like Judge Duncan to be silenced, it sends the message to all in the Stanford community that those who engage in unlawful, disruptive conduct have the power to dictate which voices and views may be heard on campus. If reports about last night's disruption are accurate, Stanford must take immediate steps to reaffirm its commitment to expressive rights for all. Failure to do so quickly and clearly will be to Stanford's lasting shame.

Given the urgent nature of this matter, we request a substantive response to this letter by Tuesday, March, 14.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Morey". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Alex Morey
Director, Campus Rights Advocacy

Cc: Jenny S. Martinez, Dean, Stanford Law School
Debra Zumwalt, Vice President and General Counsel
Mona Hicks, Senior Associate Vice Provost & Dean of Students.
Tirien Steinbach, Associate Dean for Diversity, Equity, and Inclusion, Stanford Law School