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EDUCATION AND THE WORKFORCE
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March 31, 2023

Mr. Joseph K. West, Chair
Council of the Section of Legal Education
and Admissions to the Bar
American Bar Association
321 North Clark Street, 19th Floor
Chicago, IL 60654-7598

Dear Mr. West:

We write to express our disgust at the appalling treatment U.S. Court of Appeals Judge Stuart Kyle Duncan received as an invited speaker at Stanford Law School on March 9, 2023,¹ and to question whether Stanford Law School is out of compliance with its accreditation standards. Shouted down by disruptive law students, Judge Duncan was prevented from delivering his remarks.² As he recounted on March 17 in the *Wall Street Journal*,

When I arrived, the walls were festooned with posters denouncing me for crimes against women, gays, blacks and ‘trans people.’ Plastered everywhere were . . . fliers declaring ‘You should be ASHAMED,’ with the last word in large red capital letters and a horror-movie font Some 100 students were massed outside the classroom as I entered . . . waving signs and banners, jeering and stamping and howling. As I entered the classroom, one protester screamed: ‘We hope your daughters get raped!’

I had been warned a few days before about a possible protest. But Stanford administrators assured me they were ‘on top of it,’ that Stanford’s policies permitted ‘protest but not disruption.’³

¹ See <https://www.nationalreview.com/bench-memos/crybullies-at-stanford-law-school-threaten-free-speech/>; <https://www.washingtonpost.com/opinions/2023/03/15/stanford-law-school-protest-kyle-duncan-federalist/>; <https://www.washingtonexaminer.com/policy/courts/stanford-law-disruption-judge-legal-profession-trouble/>;

² *Id.*

³ Stuart Kyle Duncan, Op-Ed., *My Struggle Session at Stanford Law School*, WALL ST. J., March 17, 2023, 2:59 pm ET, https://www.wsj.com/articles/struggle-session-at-stanford-law-school-federalist-society-kyle-duncan-circuit-court-judge-steinbach-4f8da19e?mod=hp_trending_now_opn_pos2.

It took two days for the President of Stanford University (Stanford), Dr. Marc Tessier-Lavigne, and the Dean of Stanford Law School, Jenny Martinez, to extend a written apology to Judge Duncan and announce that the actions of the students violated Stanford’s disruption policy.⁴ That policy declares it to be a “violation of University policy for a member of the faculty, staff, or student body to . . . [p]revent or disrupt the effective carrying out of a University function or approved activity, such as lectures, meetings, interviews, ceremonies, the conduct of University business in a University office, and public events.”⁵

The president and dean acknowledged the significant shortcomings of “staff members who should have enforced university policies [but] failed to do so,” and “[who] instead intervened in inappropriate ways that are not aligned with the university’s commitment to free speech.”⁶ This appears to be an allusion to the widely-reported comments of the law school’s Associate Dean for Diversity, Equity, and Inclusion, Tirien Steinbach, as well as an allusion to other administrators who were there but did nothing to prevent or stop the disruption.⁷ Associate Dean Steinbach told Judge Duncan, in the presence of all those gathered,

[Your] ‘work,’ . . . ‘has caused harm.’ It ‘feels abhorrent’ and ‘literally denies the humanity of people.’ . . . She assured . . . [Judge Duncan] [he] was ‘absolutely welcome in this space’ because ‘. . . me [Steinbach] and many people in this administration do absolutely believe in free speech.’⁸

Judge Duncan noted he “didn’t feel welcome—who would?”⁹

Distinct from our concerns about Stanford’s acknowledged violation of its Policy on Campus Disruptions, we write to raise the question of whether Stanford Law School is out of compliance with the American Bar Association’s (ABA) Standard 405(b) of the ABA Standards and Rules of Procedure for Approval of Law Schools (ABA Standards). Standard 405(b) requires a law school to have an established and announced policy with respect to academic freedom and tenure.¹⁰ The Standard goes further and references “Appendix 1: Statement on Academic Freedom and Tenure,” as one example of a policy on academic freedom and tenure.¹¹ The introductory paragraph speaks of the importance of the free search for truth and its free exposition:

The purpose of this statement is to promote public understanding and support of academic freedom . . . and agreement upon procedures to assure . . . [academic

⁴ <https://law.stanford.edu/wp-content/uploads/2023/03/letter-from-Stanford.pdf>.

⁵ Policy on Campus Disruptions, <https://studentservices.stanford.edu/more-resources/student-policies/student-rights-responsibilities/campus-disruptions>.

⁶ *Supra* at n.3.

⁷ *See supra* at n.1 and n.3.

⁸ *See supra* at n.3.

⁹ *Id.*

¹⁰ Standard 405(b), American Bar Association Standards and Rules of Procedure for Approval of Law Schools (2022-2023) at 31 (“A law school shall have an established and announced policy with respect to academic freedom.”).

https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch4.pdf.

¹¹ Appendix 1, American Bar Association Standards and Rules of Procedure for Approval of Law Schools (2022-2023) at 47.

freedom] in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.¹²

Similarly, the Stanford Faculty Handbook’s Preamble to its Statement on Academic Freedom acknowledges that “the central functions of teaching, learning, research, and scholarship depend upon an atmosphere in which freedom of inquiry, thought, expression, publication and peaceable assembly are given the fullest protection” and that “[e]xpression of the widest range of viewpoints should be encouraged, free from . . . internal or external coercion.”¹³

While Stanford has an “established and announced policy with respect to academic freedom,”¹⁴ it is out of compliance with ABA Standard 405(b), at least to the extent an “established” and “announced” policy implies the law school follows its policy. Sadly, the facts point to the failure of the law school to follow the applicable Statement on Academic Freedom.¹⁵ While Judge Duncan is not a member of the Stanford faculty, he is a respected jurist, was invited to speak at the law school, and carried out (or sought to carry out) the “central function[] of teaching . . . [and] scholarship,”¹⁶ but was denied.

In no sense can it be said that Stanford Law School, its administrators, or students promoted “an atmosphere in which freedom of inquiry, expression, publication, and peaceable assembly . . . [were] given the fullest [or any] protection.”¹⁷ In no sense can it be said that Stanford Law School adhered to its announced encouragement of the “widest range of viewpoints.”¹⁸ And in no sense were Judge Duncan’s viewpoints “free from . . . internal or external coercion.”¹⁹ Indeed, he was ultimately prevented from giving his prepared remarks.

Under the ABA’s Rules of Procedure for Approval of Law Schools, the Council of the Section of Legal Education and Admissions to the Bar, as an accreditor, clearly has the authority to “determine compliance [of law schools] with the [Council’s accreditation]

¹² *Id.*

¹³ See 4.2 Statement on Academic Freedom, specifically 4.2.1 Preamble, Stanford Faculty Handbook (Oct 13, 2022), <https://facultyhandbook.stanford.edu/faculty-handbook/index>. The handbook applies to Stanford University as well as Stanford Law School.

¹⁴ See 4.2 Statement on Academic Freedom, Stanford Faculty Handbook; see also ABA Standard 405(b).

¹⁵ *Id.*

¹⁶ See 4.2.1. Preamble, Stanford Faculty Handbook.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Standards.”²⁰ In light of all the facts and circumstances surrounding Judge Duncan’s March 9, 2023, visit to Stanford Law School, we urge you and the Council to initiate a proceeding under Rule 11 of the ABA’s Rules of Procedure for Approval of Law Schools to determine whether Stanford Law School was or is noncompliant with the ABA Council’s accreditation Standards.

We look forward to hearing from you on what action, if any, the Council may pursue no later than two weeks after the date of this letter.

Sincerely,



Virginia Foxx
Chairwoman
U.S. House Committee on Education
and the Workforce



Burgess Owens
Chairman
Subcommittee on Higher Education
and Workforce Development

²⁰ Rule 2(a) of the ABA Rules of Procedure for Approval of Law Schools (2022-2023).