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ARTICLES

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ARTICLES

TRAINING LAW STUDENTS TO MODEL CIVILITY WHEN SOCIAL MEDIA MAKES CIVILITY HARDER TO MAINTAIN*

Nancy B. Rapoport**

Because this symposium is dedicated to the legacy of the Hon. Joseph F. Weis Jr., it's fitting to start with a story that I learned about him: Judge Weis was twenty-one years old and fighting in World War II (serving under General Patton) when he was wounded by a shell and rescued by a fellow soldier.[1] As he would recount to his law clerks years later, that story of his rescue had very little to do with him but a great deal to do with "the bravery and heroism of *another* soldier. *That* soldier's risks."[2] Professor Bill Janssen—a former Weis clerk—told that tale in his profile of Judge Weis, and he concluded that "[t]he privilege of 'earning' that rescue ha[d],

** UNLV Distinguished Professor, Garman Turner Gordon Professor of Law, Boyd Law School, and Affiliate Professor of Business Law and Ethics, Lee Business School. Many thanks to Youngwoo Ban, J. Scott Bovitz, Catherine Glaze, Walter Effross, Jeff Garrett, LawProfBlawg (who prefers to remain anonymous), Jonathan Hogg, Bill Janssen, Hunter Peterson, Wendy Perdue, Jeff Van Niel, Jim Thomson, Lawrence Wang, and Bernie Burk, and special thanks to the University of Pittsburgh for inviting me to present an earlier version of this paper at *The Jurisprudence and Legacy of the Honorable Joseph F. Weis Jr. Symposium* (Mar. 17, 2023).

[1] William M. Janssen, *Judicial Profile: Hon. Joseph F. Weis, Jr., Senior Circuit Judge, U.S. Court of Appeals for the Third Circuit*, FED. LAW., Oct./Nov. 2012, at 1, https://www.fedbar.org/wp-content/uploads/2019/10/WeisOctNov2012-pdf-3.pdf.

[2] *Id.*

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perhaps, been motivating Judge Weis his entire life."[3] A large part of Judge Weis's legacy was "'out-nice-ing' the other guy,"[4] which is why striving for civility is a way of honoring his legacy.[5]

And so many of us are striving for civility today. In an earlier article,[6] I suggested that one way of ameliorating our dysfunctional social discourse would be to:

> train law students not only to pick apart bad arguments but also to find ways to pick arguments apart without showing disrespect for the person making the argument. By training law students to behave civilly, even when they are convinced that the other person is flat-out wrong, we might just be able to get people to hear each other, rather than speak past each other—not just in law schools, not just in universities, but in our society.[7]

I defined civility as "a behavior [that] demonstrates respect for others' views—for maintaining courtesy in the face of deep disagreement."[8] Given that much of what we teach involves examining multiple sides of an issue and communicating clearly when advocating a position, my gut hunch was that we could find ways—if not in the actual law school curriculum itself, then in co-curricular activities—to encourage law students to develop habits that could diffuse[9] some types of tense situations long

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[3] *Id.*

[4] *Id.* at 2.

[5] To be sure, "nice" isn't always the answer. Sometimes, "nice" just won't cut it. If someone insists on demonizing an entire group of people, or cutting off the group's access to rights, being "nice" to that person isn't the best response. But neither is stooping to that person's level. There are better ways to deal with bullies than by bullying them back.

[6] Nancy B. Rapoport, *Training Law Students to Maintain Civility in Their Law Practices as a Way to Improve Public Discourse*, 98 N.C. L. REV. 1143 (2020).

[7] *Id.* at 1143.

[8] *Id.* at 1146 (footnote omitted). I distinguished my definition of civility from the definition that was "code for 'you don't have a right to express your opinion, so let those of us who are older and wiser (and are members of the dominant group) have our way' [as] an excuse to avoid hearing unpopular views." *Id.* at 1147.

[9] And maybe, as my friend Walter Effross suggests, "de-fuse," too. Notes from Walter Effross, Professor of L., Am. Univ. Washington Coll. of L., to author (Mar. 19, 2023) (on file with author). He also points out that there are certain issues that are "non-arguable" in one's own belief system. *See* WALTER A. EFFROSS, KEEPING YOUR OWN COUNSEL: SIMPLE STRATEGIES AND SECRETS FOR SUCCESS IN LAW SCHOOL 25 (2023) ("What personal positions might you, or others, not be prepared to surrender, no matter

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enough for all concerned to hear each other out.[10] I concluded that article with the following idea:

> The "civility as advocacy" approach can help law students in two ways: it can reinforce the need for law students to choose their words carefully in order to keep their listeners' attention, and it can help law students who have been faced with incivility find ways to manage their own emotions and get a dialogue back on track. By emphasizing that the need to be understood is inextricably linked with the need to understand, perhaps we can create the habit of openness that will lead to better discourse.[11]

To be sure, civility doesn't mean "rolling over and letting someone plow right over you." One can craft a civil but still devastating dismantling of an argument. Good lawyers do that all the time.

I was hopeful then about deploying hordes of well-trained law students to diffuse difficult conversations so that people could hear each other out. I'm less hopeful now.[12] I'm less hopeful in part because law students haven't always found

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what arguments are made against them?"). Walter's book is a must-read for law students and potential law students (and is a great read for people who are already lawyers, too). Walter also pointed me to some useful terminology when categorizing disagreements after documents:

> [A Class One disagreement is] when two people disagree and neither can explain to the other person's satisfaction that other person's point of view . . . . A Class Two disagreement is when each *can* explain to the other's satisfaction the other's point of view. Class Two disagreements enable people to work together even when they disagree. Class One is destructive. Most disturbances and international crises and most of the pain and suffering and difficulty in the world are based on Class One disagreements.

MICHAEL HILTZIK, DEALERS OF LIGHTNING: XEROX PARC AND THE DAWN OF THE COMPUTER AGE 182–83 (1999). In this Essay, I'm referring primarily to discourse involving Class Two disagreements. Like many people, I've been on the receiving end of both types of disagreements—and to the unpleasantness of being a minority in an intolerant town. I grew up Jewish fifteen minutes from Vidor, Texas, which had an enormous Klan presence, so I remember driving past burning crosses at rallies and getting beaten up in grammar school. I haven't lived the lives of other minorities, but I have an inkling of some of what others have experienced.

[10] Rapoport, *supra* note 6, at 1161–66. I don't mean to imply, though, that all thoughts are—or should be—malleable. Walter's right that some personal positions are sacrosanct. *See* EFFROSS, *supra* note 9.

[11] Rapoport, *supra* note 6, at 1167 (footnote omitted).

[12] But I'm not giving up, though the recent debacle at my alma mater isn't a good sign. *See, e.g.*, David Lat, *Yale Law Is No Longer #1—For Free Speech Debacles*, ORIGINAL JURISDICTION (Mar. 10, 2023),

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effective ways to express their displeasure publicly when controversial speakers come to town.[13] I'm also less hopeful because I think that social media applications like X (formerly Twitter) and maybe Instagram and Facebook,[14] encourage a

https://davidlat.substack.com/p/yale-law-is-no-longer-1for-free-speech (discussing the law student protests when Fifth Circuit Judge Kyle Duncan spoke at Stanford Law School).

I have to admit that my heart sank when I saw the pictures of Dean Martinez's classroom whiteboard covered in protest signs. *See* Lee Brown, *Stanford Students Protest Dean for Apologizing to Trump-Appointed Judge*, N.Y. POST (Mar. 15, 2023, 11:22 AM), https://nypost.com/2023/03/15/stanford-students-protest-dean-for-apologizing-to-trump-appointed-judge/; Aaron Sibarium, *Student Activists Target Stanford Law School Dean in Revolt Over Her Apology*, FREE BEACON (Mar. 14, 2023), https://freebeacon.com/campus/student-activists-target-stanford-law-school-dean-in-revolt-over-her-apology/ ("The majority of Martinez's class—approximately 50 students out of the 60 enrolled—participated in the protest themselves, two students in the class said. The few who didn't join the protesters received the same stare down as their professor as they hurried through the makeshift walk of shame.").

I remember what it was like to be the dean on the receiving end of a student protest. *See, e.g.*, Lynda Edwards, *The Rankings Czar*, ABA J., 38, 40 (2008). Heads of academic units—department chairs, deans, provosts, and presidents—are walking a fine line today in terms of how they respond to student protests, and that line is so fine that it's almost invisible. *Cf.* Sylvia Goodman, *By Announcing an Investigation, Did Tulane Censor Her?*, THE CHRON. OF HIGHER EDUC. (Feb. 23, 2023), https://www.chronicle.com/article/by-announcing-an-investigation-did-tulane-censor-her (discussing the risks in responding to remarks that some students find offensive); Vincent Lloyd, *A Black Professor Trapped in Anti-Racist Hell*, COMPACT (Feb. 10, 2023), https://compactmag.com/article/a-black-professor-trapped-in-anti-racist-hell (telling the story of a Black professor whose students had decided that his "seminar perpetuated anti-black violence in its content and form, how the black students had been harmed, how [he] was guilty of countless microaggressions, including through [his] body language, and how students didn't feel safe because [he] didn't immediately correct views that failed to treat anti-blackness as the cause of all the world's ills.") (emphasis omitted); Conor Friedersdorf, *An Anti-racist Professor Faces 'Toxicity on the Left Today,'* THE ATL. (Feb. 17, 2023), https://www.theatlantic.com/ideas/archive/2023/02/villanova-professor-vincent-lloyd-anti-racism-conversation/673079/ (interviewing Professor Vincent Lloyd about his experiences in the seminar); *id.* ("I worry that left political discourse today takes social movements, or even just an individual who has suffered, as conversation stoppers rather than conversation starters. That frustrates me because I firmly believe these movements are the key to our collective liberation. Justice struggles always involve a back-and-forth between movement participants making demands for radical transformation and those in power trying to manage those demands so that they can keep their grip on power." (quoting Interview with Vincent Lloyd, Professor of L., Villanova Univ.)).

[13] *See, e.g.*, *supra* note 11 and accompanying text. *See also* David Lat, *Is Free Speech in American Law Schools a Lost Cause?*, ORIGINAL JURISDICTION (Mar. 17, 2022), https://davidlat.substack.com/p/is-free-speech-in-american-law-schools?utm_source=%2Fsearch%2FYale%2520law&utm_medium=reader2 (discussing law student protests at UC Hastings and Yale).

[14] I'm still a bit of a Luddite, but these are the three social media applications that I use.

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viciousness[15] clothed in anonymity that is degrading the civility of our discourse, and in part because I've seen anonymity being weaponized even without social media.[16]

In terms of weaponizing anonymity, I am referring in particular to a situation that happened at Seattle University School of Law during the fall semester of 2022.[17] What caught my eye was a student newspaper story that accused a law professor of being racist, sexist, and transphobic:

> "[The professor] has spouted hateful and discriminatory comments towards womxn, BIPOC and LGBTQ+ students, so much so, that we no longer feel safe in our classroom, and we have lost faith in the administration's competency in handling these matters," a group of first-year law students wrote in a statement. "This professor uses racial slurs, stymies classroom participation by yelling

[15] Jeff Garrett pointed out to me that the viciousness might be part of "emotion contagion." Notes from Jeff Garrett, Att'y, to author (Mar. 24, 2023) (on file with author). There's a study that indicates that

> Exposure to another person's emotions on social media can lead an individual's emotions to become more similar to the emotions of the other person, a process called *digital emotion contagion* . . . . As such, it is possible that negativity on social media manifests itself in the mood and of users as it spreads across the social media network . . . . Although the extent of the spread and impact of digital emotion contagion is currently unknown, it is possible that a high frequency of negative news may spread negative emotion through the Twitter network.

Andrea K. Bellovary, Nathaniel A. Young & Amit Goldenberg, *Left- and Right-Leaning News Organizations' Negative Tweets Are More Likely to Be Shared*, AFFECTIVE SCI., 391, 394–95 (2021).

[16] In fact, some law students' activities have always been anonymous, and some of that anonymity has also been vicious. For a thoughtful series of posts about anonymous teaching evaluations (and why some of that anonymity protects students from retaliation but also risks penalizing certain groups of professors), see LawProfBlawg, *Weaponizing Student Evaluations*, ABOVE THE L. (Sept. 25, 2018, 2:47 PM), https://abovethelaw.com/2018/09/weaponizing-student-evaluations/; LawProfBlawg, *Weaponizing Student Evaluations (Part II)*, ABOVE THE L. (Oct. 2, 2018, 3:01 PM), https://abovethelaw.com/2018/10/weaponizing-student-evaluations-part-ii/; LawProfBlawg, *Weaponizing Student Evaluations (Part III)*, ABOVE THE L. (Oct. 9, 2018, 3:59 PM), https://abovethelaw.com/2018/10/weaponizing-student-evaluations-part-iii/. LawProfBlawg has had the great idea of partial anonymity for student evaluations (anonymous to the professor, to avoid retaliation, but not to the administration, to enable a more nuanced study of who's saying what in which courses and about which professors). *See id.*

[17] Sam Bunn & Cameron Christopherson, *First Year Law Students Allege Discrimination in the Classroom*, SEATTLE SPECTATOR (Jan. 18, 2023), https://seattlespectator.com/2023/01/18/25797/ [hereinafter *First Article*].

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> predominantly at womxn and discriminates against students with school-approved accommodations."[18]

To be fair, I knew that trouble was brewing long before this story came out, because I know the law professor named in the article, and he and I had spoken before about the difficulties that he had had with some of the students in this course.[19] What first struck me about the article was that these students had made their allegations anonymously, with specific sentences that the student newspaper quoted.[20] So I blogged about that point:

> But here's the disconnect that I am facing: these are *law students* who are making these allegations about this law professor. In a few years, they will be lawyers. As lawyers, they will have to sign their names to their pleadings, their drafts of contracts, and any other work product that they do. They will appear in public on behalf of others, and they will have to announce their names as they represent their clients. They will be bound by ethics rules that include the obligations to be

[18] *Id.* Take another look at the allegations in the First Article—that these anonymous students "no longer feel safe in our classroom . . . ." I take it from the context of the article that the students were referring to "dignitary safety"—the feeling of belonging—rather than to "intellectual safety," but I'm not sure that I'm right. *See* SIGAL BEN-PORATH, FREE SPEECH ON CAMPUS 62 (2017) (discussing the difference between the two concepts). The reason that I'm not sure is that some of the students in the course started complaining about their workload even before the course started, when they argued that the professor was, in essence, making them work too hard. Another student in that section has sent me notes of a meeting on November 2, 2022, in which the students complained about the excessive amount of work that the professor required, especially on Fridays. *See* Notes from Meeting with Student (Nov. 11, 2022) (on file with author)). If those students were angry with the professor even before he started teaching them, they were unlikely to be sympathetic to his teaching style or to any of his comments during class. *See, e.g.*, *First Article*, *supra* note 17. And some of the "extra work" of which the students were complaining involved things that I do in my own first-year courses. *See* Notes from Meeting with Student, *supra*. I ask my students to group themselves into "law firms" so that they can answer my questions and work on assignments together. Many of my first-years also use their law firms as study groups.

[19] I've known him for decades, actually, and he's one of my co-authors.

[20] *See First Article*, *supra* note 17. LawProfBlawg made a good point regarding these anonymous allegations:

> The anonymous student report shifts power positions. The goal of hiding the student is to prevent abuse of power by the professor, but there are issues of due process that arise in that concealment.
> That is in large part why I think that student evaluations should be only semi-anonymous: Namely, someone should know who is saying the things on the paper and trace them across classes.

Comments from LawProfBlawg (Mar. 26, 2023) (on file with author).

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> truthful to the court and to others, and to avoid making unmeritorious claims. Because they are lawyers, they likely will be asked to serve on non-profit boards, and they will have to voice their opinions, as board members, in front of their colleagues. (And as board members, they will have a fiduciary duty to speak up if they see the board going off the rails.)
>
> How do we get people who are afraid to associate their names with their allegations to develop into lawyers who may be asked to argue in favor of controversial topics or to represent controversial people?[21]

Let's assume that the students who made those allegations were afraid of retaliation, which is why they made their anonymous complaints to the student newspaper.[22] There is, after all, a power imbalance between professors and their

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[21] Nancy Rapoport, *Should We Train Law Students Never to Complain Anonymously?*, NANCY RAPOPORT'S BLOG (Jan. 19, 2023), https://nancyrapoports.blog/2023/01/19/should-we-train-law-students-never-to-complain-anonymously/.

[22] Boyd Law graduate Hunter Peterson, who assisted me in my research for this Essay and gave me comments on an earlier draft, suggested a different hypothesis:

> [W]hat if this attack was not a misguided lashing-out from students with a lack of professional skills? What if this was an attempt to force some sort of change in the way the Seattle School of Law conducts its classes as a whole, and [this professor] just caught the brunt of it? After all, if the students just wanted to make an example of someone, hypothetically [this professor] would make a fairly ideal target. He is white, male, graduated from Yale and Stanford in the 80's, and has his name on half the books and articles those 1Ls are using. A student in severe mental distress, which happens all the time in law school, could see an official investigation as one of the only means to "get even," get the administration to listen to them, or to simply bring [this professor] down to their perceived level.
>
> If this was a form of demonstration, then I would argue that there was no breakdown of civility here . . . . If this was a demonstration, it helps explain to me why the students didn't care that their statements were easily disproven; the point was for Professor Burk to have to reconsider everything he does and says while teaching, and to feel the need to walk on eggshells around students. As horrible as that is for a motivation, it does change the student-teacher power balance in favor of the students.

E-mail from Hunter Peterson, former student, Boyd Sch. of L., to author (Mar. 19, 2023) (on file with author). That's an intriguing thought, though I think that such behavior—if done by a lawyer—would violate the ethics rules for honesty, candor to the tribunal, and possibly truthfulness in statements to others (those that last rule requires the act to be in the course of representing a client). *See* MODEL RULES OF PRO. CONDUCT r. 8.4(a) (AM. BAR ASS'N 2020); MODEL RULES OF PRO. CONDUCT r. 3.3(a) (AM. BAR ASS'N 2020); MODEL RULES OF PRO. CONDUCT r. 4.1(a) (AM. BAR ASS'N 2020). What I love about Hunter's hypothesis, though, is that it caused me to link the Seattle Law student behavior to the demonstrations of Stanford Law students at Fifth Circuit Judge Kyle Duncan's talk, which I discuss later in this Essay. *See infra* text accompanying notes 42–50. *See supra* text accompanying notes 12–13. Both

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students. But Seattle University's Office of Institutional Equity investigated the allegations in the article by reviewing the videotapes of the classes and found that the allegations were false.[23] Notwithstanding the University's findings, and notwithstanding the fact that each student in the course had access to every taped class session, "[t]he anonymous source has confirmed that they stand by the relevant quotation as reported."[24] That's when it hit me: the anonymous source(s) had doubled down on allegations that were contrary to the facts.[25] This is not a *Rashomon*-type situation, in which characters see the same set of facts and interpret them differently.[26] This situation reflects a difficulty in understanding the concept of

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the reporting of false information and the demonstrations during the talk and in the dean's classroom are power moves to try to reset a power imbalance. What they are *not*, though, are power moves of which Judge Weis would have approved. *See* Janssen, *supra* note 1.

[23] Andru Zodrow & Sam Bunn, *Update: Law School Responds to Student Allegations Against Professor*, SEATTLE SPECTATOR (Jan. 25, 2023), https://seattlespectator.com/2023/01/25/update-law-school-responds-to-student-allegations-against-professor/.

[24] *Id.*

[25] So, of course, I blogged about *that*, too:

> As lawyers, we have certain tools: we have our brains; we have our words; and we have our reputations. Words matter to good lawyers. There is a world of difference between "I think" and "I know." When we make representations to a court, or to opposing counsel, or to our own clients, or to our colleagues, we need to be precise and truthful. Precision and truth, in this particular situation, seem to have been left by the wayside. And imprecision and falsity should have consequences.
>
> Those accusations have damaged a professor's reputation, with no consequences yet for those who made the allegations.

Nancy Rapoport, *Why We Should Train Law Students Not to Complain Anonymously, Part 2*, NANCY RAPOPORT'S BLOG (Jan. 26, 2023), https://nancyrapoports.blog/2023/01/26/why-we-should-train-law-students-not-to-complain-anonymously-part-2/. For a wonderful response to my posts, see David Lat, *Notice and Comment: Law Student Anonymity*, ORIGINAL JURISDICTION (Feb. 1, 2023), https://davidlat.substack.com/p/notice-and-comment-law-student-anonymity.

[26] To give you context,

> The expression "Rashomon" encapsulates a disturbingly relativistic, skeptical view of truth, reality, humanity, and the nature of the legal process. Using the film's title, we refer to a situation in which, as in the film, different witnesses to an occurrence offer completely incompatible testimonies of it, as if attesting to altogether different events. This usage implies that objective truth is unattainable and perhaps nonexistent, and that the legal process is a place where subjective narratives can only be evaluated against each other.

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"truth."[27] Either the professor said the phrases that the students attributed to him, or he didn't. The class tape recordings demonstrated that he didn't make those statements.[28] And the students didn't even bother to turn to the excuse of, "well, he

Orit Kamir, *Judgment by Film: Socio-Legal Functions of Rashomon*, 12 YALE J.L. & HUMAN. 39, 41 (2000).

[27]

> Truth is under substantial pressure. AI is being used to flood the marketplace with certain ideas and to push citizens from participation. At the same time, deep fakes, videos that portray individuals as saying and doing things they never said or did, threaten to undermine citizens' ability to believe their own eyes and ears when it comes to making conclusions about what is happening in the world around them. As these phenomena expand, individuals are becoming increasingly fragmented and polarized as they settle into their self-made information echo chambers, spaces where intentionally false information, whether it is composed and shared by humans or AI, or suggested via tech giants' powerful and secretive algorithms, is often accepted and circulated by other community members because it reinforces pre-existing narratives within the group. Thus, truth, in the choice-rich, virtual environments that host much of democratic discourse in the networked era, has become increasingly based upon the beliefs and narratives that dominate online communities, rather than the types of universal, objective realities Enlightenment thinkers and those who have subscribed to their beliefs conceptualized. As a result, marketplace theory and its Enlightenment foundations regarding truth and rationality also become a problematic tool for rationalizing free expression. In other words, the nature of truth, as it was understood when the First Amendment was constructed and later interpreted, in many ways diverges from how it exists in the networked era.

Jared Schroeder, *Fixing False Truths: Rethinking Truth Assumptions and Free-Expression Rationales in the Networked Era*, 29 WM. & MARY BILL RTS. J. 1097, 1099–1100 (2021) (footnotes omitted); *see also* David R. Barnhizer, *Truth or Consequences in Legal Scholarship?*, 33 HOFSTRA L. REV. 1203, 1203 (2005) ("There has been an erosion of the ideal of truth as a guiding force for what we do."); *id.* at 1205 ("The danger is that it is extraordinarily easy to mistake belief for validity, and this risk expands greatly when someone becomes part of a politically-driven identity collective."); Susan Haack, *Truth, Truths, "Truth," and "Truths" in the Law*, 26 HARV. J.L. & PUB. POL'Y 17 (2003) (distinguishing among the concepts of "truth," "truths," and ironic uses of the word); *id.* at 18 ("What passes for truth, the argument goes, is often no such thing, but only what the powerful have managed to get accepted as such; *therefore* the concept of truth is nothing but ideological humbug. Stated plainly, this is not only obviously invalid, but also in obvious danger of undermining itself. If, however, you don't distinguish truth from scare-quotes 'truth,' or truths from scare-quotes 'truths,' it can seem irresistible."); Bill Haltom, *A Lawyer's Obligation is to the Truth, Not Truthiness*, 42 TENN. BAR J. 3 (2006) ("Stephen Colbert, host of Comedy Central's wonderfully hysterical television program, 'The Colbert Report,' says that what Americans value these days is not 'truth' but 'truthiness.' Truthiness should never be confused with truthfulness. In fact, truthiness should not be confused with the truth.").

[28] Zodrow & Bunn, *supra* note 23.

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said something *like* what we said that he said."[29] They just stood by their prior, now-proven-false statements.[30] And so far, it is my understanding that they have suffered no repercussions.[31] I'm surprised about that, though the anonymity may make an investigation difficult. But once the University found that the statements were false, that finding would have created an opportunity, at the very least, for the Dean to host a session for students explaining the professional obligation of lawyers to be truthful.[32]

I had to ask myself: was this a situation unique to these particular students in the course, or has social media normalized anonymous attacks, whether those attacks were based on truth, misunderstanding, or lies?[33] And if social media normalizes such attacks, can we train law students to run counter to that norm?[34]

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[29] Even if they *had* turned to that excuse after being caught out by their misstatements, that excuse would have been unavailing had they already been admitted to the bar. *See, e.g.*, MODEL RULES OF PRO. CONDUCT r. 4.1(a) (AM. BAR ASS'N 2020) ("In the course of representing a client a lawyer shall not knowingly . . . (a) make a false statement of material fact or law to a third person . . . ."); *id.* r. 3.3(a)(1) ("A lawyer shall not knowingly . . . (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . ."); *id.* r. 3.4(b) ("A lawyer shall not . . . (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law . . . ."); *id.* r. 8.4(c) ("It is professional misconduct for a lawyer to . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . .").

[30] Zodrow & Bunn, *supra* note 23. My friend Jeff Garrett points out that so many people in the public domain say things that are demonstrably false without consequences, and that consequence-less behavior might spill over in the more private domain. *See* Notes from Jeff Garrett, *supra* note 15.

[31] Zodrow & Bunn, *supra* note 23.

[32] LawProfBlawg points out, "There is no incentive to be truthful if you're anonymous. That is why I have friends who know who LPB is. It is a way to check on my behavior as an anonymous person. But most online anons [anonymous commenters] do not do that, and have echo chambers at best." Comments from LawProfBlawg, *supra* note 20.

[33] Of course, LawProfBlawg has pointed out that "[s]tudent evaluations can be anonymous attacks. And they predate the internet." Comments from LawProfBlawg, *supra* note 20. So I can't blame everything on social media.

[34] Prof. Bill Janssen forwarded this quote by Judge Weis to me, and it resonates: "[Rule 11] imposes an obligation on counsel and client analogous to the railroad crossing sign, 'Stop, Look and Listen.' It may be rephrased, 'Stop, Think, Investigate and Research' before filing papers either to initiate a suit or to conduct the litigation . . . . It bears repeating that the target is abuse . . . ." Gaiardo v. Ethyl Corp., 835 F.2d 479, 482 (3d Cir. 1987). The law students in this story didn't appear to have thought or investigated first. Nor have they retracted their demonstrably false statements. Zodrow & Bunn, *supra* note 23.

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I. SOCIAL MEDIA AND DISCOURSE GENERALLY

When I presented my talk at the symposium, everyone in the room nodded when I alleged that social media has made us more unkind. There is a slew of research on the topic, but out of courtesy to the law students who will be cite-checking my Essay, I'm not going to rehash that research here.[35] Instead, I'll focus on the fact that the developer of the "retweet" button, Chris Wetherell, has regretted his invention:

> After the retweet button debuted, Wetherell was struck by how effectively it spread information. "It did a lot of what it was designed to do," he said. "It had a force multiplier that other things didn't have."
>
> "We would talk about earthquakes," Wetherell said. "We talked about these first response situations that were always a positive and showed where humanity was in its best light."
>
> But the button also changed [X, formerly Twitter] in a way Wetherell and his colleagues didn't anticipate. Copying and pasting made people look at what they shared, and think about it, at least for a moment. When the retweet button debuted, that friction diminished. Impulse superseded the at-least-minimal degree of thoughtfulness once baked into sharing. Before the retweet, Twitter was largely a convivial place. After, all hell broke loose—and spread.[36]

The hell to which that quote refers is that unfettered desire to post the first thing that we think, right when we think it, without first pausing to consider the effects of what we say on those who might read it.[37] That unfiltered discourse has also increased the

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[35] You're welcome, symposium editors.

[36] Alex Kantrowitz, *The Man Who Built the Retweet: "We Handed a Loaded Weapon to 4-Year-Olds,"* BUZZFEED NEWS (July 23, 2019, 4:05 PM), https://www.buzzfeednews.com/article/alexkantrowitz/how-the-retweet-ruined-the-internet. Remember back when X, (formerly Twitter) started asking "have you read this article?" before letting you retweet it? *See* James Vincent, *Twitter is Bringing Its 'Read Before You Retweet' Prompt to All Users*, THE VERGE (Sept. 25, 2020, 7:08 AM), https://www.theverge.com/2020/9/25/21455635/twitter-read-before-you-tweet-article-prompt-rolling-out-globally-soon. Thinking before retweeting could've kept a lot of people out of X, formerly known as Twitter "jail."

[37]

> Yet it seems people let their guards down when they are in the online space and write things that can be potentially offensive to others and that may breach professional expectations of conduct. It is suggested this occurs when "private" and professional boundaries become blurred, and people feel relatively disinhibited online such that they can more freely express their views and relax, and are less constrained by social inhibitions or expectations of professional conduct.

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rise of Internet bullying.[38] Remember: we don't have to use our own names when we post. We can use pseudonyms. And what do you get when you combine pseudonyms, immediate and unfiltered speech, and a belief that your views are the only ones with validity? You get the anonymous hostility (and disregard of the facts) of those Seattle Law students and an increased tendency to want to prevent speech that a group

Kylie Burns & Lillian Corbin, *E-Professionalism: The Global Reach of the Lawyer's Duty to Use Social Media Ethically*, 2016 J. PROF. LAW. 153, 161 (2016); *see also* Mariana Plata, *Is Social Media Making Us Ruder?*, PSYCH. TODAY (Feb. 26, 2018), https://www.psychologytoday.com/us/blog/the-gen-y-psy/201802/is-social-media-making-us-ruder ("The anonymity factor contributes to online rudeness and trolls, [Danny] Wallace notes, 'but the latest research says that it's actually a lack of eye contact that allows us to be particularly rude to people.'").

38

> The newest venue used to bully peers in law school has been the various mediums afforded by the Internet. The rise of the Internet has increased the degree of anonymity between peers. A bully can choose to attack and be relatively sure no one can trace the attack to the perpetrator. . . . The rise of the Internet has provided law school bullies the most dangerous weapon, one that by its design dehumanizes and deindividualizes all participants by making the recipients of messages anonymous and removing immediate consequences for posting messages. Additionally, most law school administrators and many professors attended law school well before the advent of the Internet and remain blind to the threat posed by the wireless web installed throughout classrooms and group spaces.

Rebecca Flanagan, *Lucifer Goes to Law School: Towards Explaining and Minimizing Law Student Peer-To-Peer Harassment and Intimidation*, 47 WASHBURN L.J. 453, 466–67 (2008) (footnotes omitted); *see also* Cheryl B. Preston, *Lawyers' Abuse of Technology*, 103 CORNELL L. REV. 879, 893 (2018) ("[A] tantrum online is much more likely to be exposed and disseminated than oral conversations or a sheet of paper. The digital era represents some fundamental behavioral and attitudinal changes.").

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hates.[39] And, like a game of Go[40] or Newton's Third Law,[41] every mean tweet or anonymous attack and every public event that degenerates into shouting takes us one step closer to deciding never to engage with anyone who is not "like us."

There are, unfortunately, plenty of news stories these days about law students who are protesting speech,[42] not with counter-speech but via the heckler's veto.[43] In

[39] The irony here is that people who want to shut down offensive speech haven't considered what will happen when they no longer hold power and the opposite group does. Nothing captures this point better than the famous poem by Martin Niemöller:

> First they came for the socialists, and I did not speak out—because I was not a socialist.
> Then they came for the trade unionists, and I did not speak out—because I was not a trade unionist.
> Then they came for the Jews, and I did not speak out—because I was not a Jew.
> Then they came for me—and there was no one left to speak for me.

Martin Niemöller: "First They Came For. . .", U.S. HOLOCAUST MEM'L MUSEUM: HOLOCAUST ENCYCLOPEDIA (Apr. 11, 2023), https://encyclopedia.ushmm.org/content/en/article/martin-niemoeller-first-they-came-for-the-socialists.

[40] *See Go (game)*, WIKIPEDIA, https://en.wikipedia.org/wiki/Go_(game) (last visited Jan. 7, 2024).

[41] *See Newton's Third Law*, THE PHYSICS CLASSROOM, https://www.physicsclassroom.com/class/newtlaws/Lesson-4/Newton-s-Third-Law (last visited Jan. 7, 2024).

[42] In one of life's little ironies, on the day that I gave my symposium talk, I discovered that some University of Pittsburgh students were petitioning the university not to invite a speaker that they considered transphobic. *See, e.g.*, Jordana Rosenfeld, *Pitt Students Petition University to Cancel "Transphobic" Speaker Events*, PITTSBURGH CITY PAPER (Mar. 9, 2023), https://www.pghcitypaper.com/news/pitt-students-petition-university-to-cancel-transphobic-speaker-events-23471809; *cf.* G.B. TRUDEAU, BRAVO FOR LIFE'S LITTLE IRONIES (1973).

[43] Kenneth Lasson, *The Decline of Free Speech on the Postmodern Campus: The Troubling Evolution of the Heckler's Veto*, 37 QUINNIPIAC L. REV. 1, 3 (2018) (footnote omitted) ("The so-called 'heckler's veto,' once rarely invoked, is now commonplace. In popular parlance, academic individuals use the term to describe situations where hecklers or demonstrators are able to silence a speaker with little or no intervention by the law."). Universities that are worried about protests becoming violent have to pony up significant and expensive security measures for the event. *See, e.g.*, Clay Calvert, *Reconsidering Incitement, Tinker and the Heckler's Veto on College Campuses: Richard Spencer and the Charlottesville Factor*, 112 NW. U. L. REV. ONLINE 109, 124–26 (2018), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1254&context=nulr_online. There is a difference between violent protests that leave the speaker without a forum and angry counter-speech. *See id.* at 127 ("[T]he heckler's veto principle merely protects a speaker against violence, not against counterspeech in the form of verbal insults and disruptions."). But counter-speech that silences the speaker cuts off all opportunities for real dialogue. For some other interesting articles on the heckler's veto and First Amendment jurisprudence, see R. George Wright, *The Heckler's Veto Today*, 68 CASE W. RSRV. L. REV. 159 (2017); Brett G. Johnson, *The Heckler's Veto: Using First Amendment Theory and Jurisprudence to Understand Current Audience Reactions Against Controversial Speech*, 21 COMM. L. & POL'Y 175 (2016).

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March 2023, several Stanford Law School students protested an invited Federalist Society speaker, Fifth Circuit Judge Kyle Duncan.[44] They shouted down Judge Duncan,[45] who responded in anger with some choice words.[46] (In my opinion, neither

[44] *See supra* note 12. There are already all sorts of opinions about this latest demonstration, and it's clear that we have a problem figuring out how to hear and then respond to each other. *See, e.g.*, Joe Patrice, *Federal Judge Calls Stanford Law Students 'Appalling Idiots' After Refusing to Answer Their Questions*, ABOVE THE L. (Mar. 13, 2023, 3:46 PM), https://abovethelaw.com/2023/03/kyle-duncan-stanford-law-school/ ("Judge Duncan dispensed with playing the respectable victim and went full wrestling heel, channeling his inner Ric Flair and preening for the crowd about how much they hate him because he's beautiful—or in this case, because he's life-tenured and doesn't have to care about their rights."); Steven Lubet, *Chaos and Rudeness at Stanford*, THE HILL (Mar. 21, 2023, 9:30 AM), https://thehill.com/opinion/judiciary/3909452-chaos-and-rudeness-at-stanford/ ("The judge, the student protesters and an on-scene administrator all played to type, exhibiting arrogance, intolerance and irresponsibility, respectively, that combined to make the afternoon a fiasco for all concerned."); Aaron Sibarium, *Student Activists Target Stanford Law School Dean in Revolt Over Her Apology*, THE WASH. FREE BEACON (Mar. 14, 2023), https://freebeacon.com/campus/student-activists-target-stanford-law-school-dean-in-revolt-over-her-apology/ ("The embattled dean arrived to the classroom where she teaches constitutional law to find a whiteboard covered inch to inch in fliers attacking Duncan and defending those who disrupted him, according to photos of the room and multiple eyewitness accounts. The fliers parroted the argument, made by student activists, that the heckler's veto is a form of free speech."); James C. Ho & Elizabeth L. Branch, *Stop the Chaos: Law Schools Need to Crack Down on Student Disrupters Now*, NAT'L REV. (Mar. 15, 2023, 6:30 AM), https://www.nationalreview.com/2023/03/stop-the-chaos-law-schools-need-to-crack-down-on-student-disrupters-now/ (suggesting that "if [law] schools are unwilling to impose consequences themselves, at a minimum they should identify the disrupters so that future employers know who they are hiring."); Vivia Chen, *Stanford Law Students Are Fueling the Right-Wing Agenda*, BLOOMBERG L. (Mar. 15, 2023, 12:12 PM), https://news.bloomberglaw.com/ ("Certainly, being young and callow comes into play. But is it also arrogance—the arrogance that comes from going to a rarefied place like Stanford Law that makes students feel superior?"); Howard Wasserman, *Stanford, Preferred First Speakers, and the Nonsense of "Civil Discourse,"* PRAWFSBLAWG (Mar. 15, 2023, 12:03 PM), https://prawfsblawg.blogs.com/prawfsblawg/2023/03/stanford-preferred-first-speakers-and-the-nonsense-of-civil-discourse.html (calling the "'civil discourse' trope" an expletive); Howard Wasserman, *On Why I Think I am (Mostly, Generally) Right*, PRAWFSBLAWG (Mar. 17, 2023, 1:43 PM), https://prawfsblawg.blogs.com/prawfsblawg/2023/03/on-why-i-think-i-am-mostly-generally-right.html ("We might describe [the Stanford Law students'] conduct many ways—rude, obnoxious, unprofessional, counter-productive, many others. I do not believe we can describe it as falling outside of the First Amendment—especially the hostile signs and questions that created a nasty environment but did not prevent him from speaking."); Ken White, *Hating Everyone Everywhere All at Once at Stanford*, THE POPEHAT REP. (Mar. 14, 2023), https://popehat.substack.com/p/hating-everyone-everywhere-all-at ("That's why the whole notion of 'free speech heroes' is dicey. Plenty of people who stand up for *their own* free speech rights would cheerfully infringe on the rights of others given a chance.").

[45]

> Duncan went out of his way to score points against what the rightwing calls wokeism. A federal prison inmate had, without a lawyer, petitioned the court for a name change from Norman Keith Varner to Katherine Nicole Jett, having come out as a "transgender woman." Duncan's majority opinion denied the

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the students nor the speaker came out smelling like roses here.)[47] Later, Dean

> request as beyond the jurisdiction of the court, a harsh but not entirely unreasonable decision.
> But then Duncan went further, launching into an uncalled-for six-page disquisition denying the prisoner's request for the use of female pronouns. Although the inmate explained that the use of male pronouns "makes me feel very uneasy and disrespected," Duncan absurdly held that using female pronouns would compromise "judicial impartiality," as though extending such a simple courtesy was somehow an indicator of bias. The dissenting judge called Duncan's opinion "inappropriate [and] unnecessary," while himself using the feminine pronoun "out of respect for the litigant's dignity."

Lubet, *supra* note 44. I find many of Duncan's opinions abhorrent, too, but in my wildest dreams, I would never have shouted at him, "We hope your daughters get raped!" That is what one protester did when Duncan entered the room. Stuart 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-kyle-duncan-circuit-court-judge-steinbach-4f8da19e. That's not debate. It's just invective. And, as my friend Jonathan Hogg has pointed out, that type of behavior would've violated the ethics rules, had these students already been admitted to the bar. *See, e.g.*, MODEL RULES OF PRO. CONDUCT r. 3.5(d) (AM. BAR ASS'N 1983) ("A lawyer shall not . . . engage in conduct intended to disrupt a tribunal. . . ."); *id.* r. 8.2(a) ("A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office. . . ."); *id.* r. 8.4(c) ("It is professional misconduct for a lawyer to: . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . ."); *id.* r. 8.4(d) ("It is professional misconduct for a lawyer to: . . . (d) engage in conduct that is prejudicial to the administration of justice . . . ."). *See* E-mail from Jonathan Hogg to author (Mar. 30, 2023) (on file with author). Post-incident, some conservative judges have chosen to boycott Stanford Law applicants for clerkships. *See, e.g.*, Andrew Goudsward, *Conservative Judges Extend Clerk Boycott to Stanford After Disrupted Speech*, REUTERS (Apr. 3, 2023, 3:20 PM), https://www.reuters.com/legal/government/ (observing that Circuit Judges James Ho and Elizabeth Branch have extended their "no Yale Law students as clerks" ban to now include a ban on Stanford Law students). One wonders how the conservative students at Yale and Stanford are reacting to this overinclusive ban.

[46] *See* Duncan, *supra* note 45 ("I have been criticized in the media for getting angry at the protesters. It's true I called them 'appalling idiots,' 'bullies' and 'hypocrites.' They are, and I won't apologize for saying so. Sometimes anger is the proper response to vicious behavior.").

[47] I'm wondering how many of the students in the audience were there to hear the judge speak, whether or not they agreed with his opinions. Maybe some of them could have asked pointed questions in a more structured environment that was consistent with Stanford Law's policies. And it would be nice if Stanford had figured out a way to make this whole episode a "teachable moment" in terms of setting out appropriate norms for controversial speakers. I could envision a session on "what to do when your friends are shouting down someone but you really want to hear that person speak." Don't get me started on Solomon Asch and his social pressure experiments, though they have a useful application here.

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Martinez and Stanford's President apologized to Judge Duncan,[48] but some students protested the apology itself.[49] Various columnists, including David Lat[50] and George

[48] It's my understanding that neither then-President Tessier-Lavigne nor then-Dean Martinez (now Provost) were present at the talk.

[49] *See, e.g.*, Brown, *supra* note 12; Sibarium, *supra* note 44. The Dean also wrote to Stanford Law alumni, explaining:

> Freedom of speech is a bedrock principle for our community at SLS, the university, and our democratic society. Since becoming Dean in 2019, my commitment to free speech has only deepened. I firmly believe that we can and must do better to ensure that it continues even in polarized times.
>
> In the past few years, SLS has hosted a number of events with controversial speakers on campus without incident. We are very clear with our students that, given our commitment to free expression, if there are speakers they disagree with, they are welcome to exercise their right to protest but not to disrupt the proceedings. Our disruption policy states that students are not allowed to "prevent the effective carrying out" of a "public event" whether by heckling or other forms of interruption. Consistent with our practice, protesting students are provided alternative spaces to voice their opinions freely. While students in the room may do things such as quietly holding signs or asking pointed questions during question and answer periods, they may not do so in a way that disrupts the event or prevents the speaker from delivering their remarks.
>
> The way the event with Judge Duncan unfolded was not aligned with our institutional commitment to freedom of speech. Staff members who should have enforced university policies failed to do so and instead intervened in inappropriate ways that are not aligned with the university's commitment to free speech.

Letter from Jenny S. Martinez, Dean of Stanford L. Sch., to Stanford Law Alumni (Mar. 13, 2023) (on file with author). One missed opportunity in this entire episode was the chance to point out to law students that, as advocates, they will be disagreeing with "the other side" throughout their careers, and learning how to craft a good argument disagreeing with someone's position is part of learning how to be a good lawyer. Dean Martinez later published a letter to the entire Stanford Law community setting out a reasoned explanation for the event disruption policy, and she instituted a "mandatory half-day session in [the] spring quarter for all students on the topic of freedom of speech and the norms of the legal profession." Letter from Jenny S. Martinez, Dean of Stanford L. Sch., to the Stanford Law School Community (Mar. 22, 2023) (on file with author). And others have noticed and applauded Dean Martinez's principled letter. *See, e.g.*, Ken White, *Stanford Law Responds Appropriately, If Belatedly, to Judge Duncan Fiasco*, THE POPEHAT REP. (Mar. 25, 2023), https://popehat.substack.com/p/stanford-law-responds-appropriately?utm_source=substack&utm_medium=email; Howard Wasserman, *Still More on Stanford (Updated)*, PRAWFSBLAWG (Mar. 25, 2023, 10:17 AM), https://prawfsblawg.blogs.com/prawfsblawg/2023/03/still-more-on-stanford.html ("Within the space reserved for a speaker event, it is not a simple binary between silently listen, display signs, and ask questions on the one hand and complete chaos on the other; oral counter-speech remains permissible prior to the point of disruption (wherever that begins).").

White summarizes his points here:

> The point of Dean Martinez' analysis is that people have a right to invite speakers and listen to them and those speakers so invited have a right to

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> speak and you're violating other people's rights if you imagine you have a right to stop them. This does not make you a victim; you retain a vast array of means of protest (as the students' effective, evocative, attention-attracting protest of Dean Martinez' apology shows).
> On the other hand, Dean Martinez is to be commended for not overreaching. She makes it clear that the shouting down was excessive because of the specific context—an invited speech to a group—and that in other contexts (a political rally in the open, for instance) it might be defensible. It's clear that she's not going to follow demands to impose some sort of rigid civility code against protestors, which is correct.

White, *Stanford Law Responds Appropriately, if Belatedly, to Judge Duncan Fiasco*, *supra*. Stanford Law's then-on-leave (and now departed) Associate Dean, Tirien Steinbach, has her own take on what happened. *See* Tirien Steinbach, *Diversity and Free Speech Can Co-Exist at Stanford*, WALL ST. J. (Mar. 23, 2023, 2:00 PM), https://www.wsj.com/articles/diversity-and-free-speech-can-coexist-at-stanford-steinbach-duncan-law-school-protest-dei-27103829?st=4azrva89sukptcg&reflink=share_mobilewebshare. As of July 20, 2023, Dean Steinbach had resigned. *See* Zachary Schermele, *Stanford Law's Diversity Dean Departs After Campus Speaker Controversy*, THE CHRON. OF HIGHER EDUC. (July 20, 2023), https://www.chronicle.com/article/stanford-laws-diversity-dean-departs-after-campus-speaker-controversy?cid=gen_sign_in. Dean Martinez became Stanford University's Provost in August 2023. *See* Karen Sloan, *Stanford Law Dean Named Provost After Managing Free-Speech Controversy*, REUTERS (Aug. 24, 2023, 3:43 PM), https://www.reuters.com/legal/government/stanford-law-dean-named-provost-after-managing-free-speech-controversy-2023-08-24/. I am sure that Dean Martinez's elevation to a university-wide administrative position was due to her artful handling of this whole incident. The question remains: did this event blow up because of the speaker, the students, or the interaction?

Maybe some speakers are itching for a fight. *Cf. infra* note 66. Others, who might want to engage with supporters and dissenters, may well decide not to bother showing up if they're likely to get shouted down. *See* Mary Eberstadt, *You Can't Cancel Me, I Quit*, WALL ST. J. (Mar. 26, 2023, 1:34 PM), https://www.wsj.com/articles/you-cant-cancel-me-i-quit-furman-university-speech-mary-eberstadt-free-speech-sexual-revolution-e1f375c9. Furman disputes her version of the situation. *See Furman University Replies to Mary Eberstadt*, WALL ST. J. (Mar. 30, 2023, 10:16 AM), https://www.wsj.com/articles/furman-university-replies-wsj-cancel-speaker-5c71caae.

[50] David Lat, *The Full Audio Recording of Judge Kyle Duncan at Stanford Law*, ORIGINAL JURISDICTION (Mar. 15, 2023), https://davidlat.substack.com/p/the-full-audio-recording-of-judge?utm_source=%2Fsearch%2Fstanford&utm_medium=reader2. Currently-on-leave Associate Dean, Tirien Steinbach, tried to explain herself in a *Wall Street Journal* op-ed. *See* Tirien Steinbach, *Diversity and Free Speech Can Co-Exist at Stanford*, WALL ST. J. (Mar. 23, 2023, 2:00 PM), https://www.wsj.com/articles/diversity-and-free-speech-can-coexist-at-stanford-steinbach-duncan-law-school-protest-dei-27103829
("Whenever and wherever we can, we must de-escalate the divisive discourse to have thoughtful conversations and find common ground.").

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Will[51] (among others) have weighed in on the Stanford Law protests, some with links to the audio and video of the event.[52]

I'll give the Stanford Law students kudos in one respect: they weren't anonymous. They made themselves known, which took some courage.[53] But their protests are a classic demonstration of the heckler's veto: "Stanford's own policy, as well as California's Leonard Law, provides Stanford students First Amendment-like free speech rights. But contrary to the argument of the Stanford protestors on their masks and flyers, shouting down an invited speaker is not free speech. It's a heckler's veto—and it's censorship."[54]

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[51] *See* George F. Will, *Expensively Credentialed, Negligibly Educated Stanford Brats Threw a Tantrum*, WASH. POST (Mar. 15, 2023, 7:00 AM), https://www.washingtonpost.com/opinions/2023/03/15/stanford-law-school-protest-kyle-duncan-federalist/. Here's one of my favorite comments on the imbroglio:

> Were the students within their rights to chant "Shame!" at classmates for merely showing up to listen to an invited speaker? Yes. Was that an intelligent exercise of their rights to free expression? No. If they posted signs saying "F[] Judge Duncan" in the halls tomorrow, would I defend the signs on free-speech grounds? Yes. Do I find it prudent for law students to choose modes of discourse that disadvantage brilliant legal reasoning in favor of the skill set of Andrew Dice Clay? No.

Conor Friedersdorf, *What Stanford Law's DEI Dean Got Wrong*, THE ATL. (Mar. 15, 2023), theatlantic.com/newsletters/archive/2023/03/what-stanford-laws-dei-dean-got-wrong/673410; *see id.* ("If you're ever on trial, do you want a legal system that finds you guilty or not guilty based on a careful adjudication of the facts or based on which lawyer can be most profane or scathing?").

[52] *See supra* notes 12–13 and accompanying text.

[53] Unlike the Seattle Law students. And in case you're wondering by now if I'm really intending in this Essay to berate them, I am. I find their anonymous attacks to be cowardly and dangerous for the profession.

[54] Jessie Appleby, *Stanford Law Hecklers Demanding 'Free Speech' Don't Know What They're Asking For*, FIRE (Mar. 15, 2023), https://www.thefire.org/news/stanford-law-hecklers-demanding-free-speech-dont-know-what-theyre-asking. This essay concluded with two important points:

> FIRE routinely defends the free expression rights of both invited speakers to speak and student protestors to protest a speaker. FIRE also defends students' right to ask pointed questions or make rude or uncivil comments during a Q&A session. But students' right of protest does not include the right to disrupt an event to the point that it is unable to proceed as planned. Counter-speech can't happen if the speaker is censored.
>
> It's clear that Stanford's promises to enforce their non-disruption policies won't be enough to ensure a thriving culture for discussion and debate on campus. Students have to know what free speech means, and that it is a force for good. The elite students of Stanford Law must come to learn that free expression is the most powerful tool for social change ever devised—one they

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I like Robert Corn-Revere's point about the heckler's veto: "What does it say about a person if, when asked the question, 'Who should be the guardians of truth and the final censors for all social discourse?,' he or she answers: 'Me and a few guys just like me?'"[55] And I would much rather teach students—especially law students, who should know a little something about free speech and its history—to engage, listen carefully, and debate, rather than to shout and insult.

I don't want to give the impression that all student protests involve the heckler's veto.[56] Far from it.[57] As just one example, the University of Richmond responded to

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> could quite capably use to their advantage. But that won't happen if they keep begging administrators to protect free speech rights only for them.

Id. It is quite possible that some of the law students who were LGBTQ+ didn't feel comfortable challenging Judge Duncan publicly—uncomfortable enough that they wouldn't have been able to provide counter-speech. As my friend who writes as LawProfBlawg puts it, "[I]f I'm one of the few people of a particular minority or SES [socio-economic status], and a bunch of people bring in a speaker who doesn't think I should exist, marry, have sex (or criminalize the sex I want with my partner), then I'm at a disadvantage providing that counter[-]speech." E-mail from LawProfBlawg to author (Mar. 26, 2023) (on file with author). LawProfBlawg also posits that a student group that brings in a controversial speaker may be trying to get extra attention: "The truth doesn't sell as much as a slap. So, one of the other reasons that perhaps protests and [s]peaker choices have escalated is that it's hard to get that attention." *Id.* Another possibility is that some of the students have taken a page from the Free Speech Movement of the Sixties and rejected the current political structure entirely:

> There is a time when the operation of the machine becomes so odious, makes you so sick at heart, that you cant [sic] take part; you cant [sic] even passively take part, and youve [sic] got to put your bodies upon the gears and upon the wheels, upon the levers, upon all the apparatus, and youve [sic] got to make it stop. And youve [sic] got to indicate to the people who run it, to the people who own it, that unless youre [sic] free, the machine will be prevented from working at all!

Public Affairs, *Words of Freedom: Video Made from Mario Savio's 1964 'Machine Speech*,' BERKELEY NEWS (Sept. 30, 2014), https://news.berkeley.edu/2014/09/30/words-of-freedom-video-made-from-mario-savios-1964-machine-speech/. Rejecting the system gives a person complete freedom to destroy it. As my friend Lawrence Wang puts it, "[e]ven more dangerous is . . . how activism can now hide behind the anonymity of the internet and social justice activism takes a darker turn toward name calling, false accusations, and sheer lies and character assassination." E-mail from Lawrence Wang to author (May 15, 2023) (on file with author).

[55] Robert Corn-Revere, *The Anti-Free Speech Movement*, 87 BROOK. L. REV. 145, 150 (2021).

[56] If you want to read a list of "interrupted speeches at U.S. law schools," see LawProfBlawg, *How to Get Canceled at a Law School for Fun and Profit*, ABOVE THE L. (Mar. 14, 2023, 11:16 AM), https://abovethelaw.com/2023/03/how-to-get-canceled-at-a-law-school-for-fun-and-profit/. As the author puts it, "attention is the goal." *Id.* (boldface omitted).

[57] For a discussion about why students invite controversial speakers (including him) to campus, see Josh Blackman, *#Heckled*, 18 FIRST AMEND. L. REV. 1 (2019). He also discusses the four types of classic

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a visit by Ryan Anderson—someone with outspoken views about same-sex marriage[58]—with peaceful protests; one protesting student, who is transgender, engaged in a discussion with Mr. Anderson.[59] The President of the University of Richmond reflected on this interaction:

> [M]any people called for me to disinvite Ryan Anderson from coming to our campus because they thought his views were transphobic, but I insisted that we allow him to speak. We have a responsibility as educators to help students craft counterarguments and develop the intellectual strength necessary to rebut perspectives they find personally challenging. We do not help them develop those muscles by insulating them from speakers who offend.
> Ultimately, Anderson came to campus, and members of our community protested his appearance vigorously but peacefully.[60] Later, one of the protesters, who

student reactions to disliked speakers: encouraging the university to disinvite the speaker, discourage others from attending the speech, demonstrate during the event, or disrupt the event. *Id.* at 11–12.

[58] *Ryan T. Anderson*, WIKIPEDIA, https://en.wikipedia.org/wiki/Ryan_T._Anderson (last visited Jan. 13, 2024).

[59] Ronald A. Crutcher, *Leadership in Crossing Divides*, INSIDE HIGHER ED (Feb. 18, 2021), https://www.insidehighered.com/views/2021/02/19/college-president-shares-lessons-learned-navigating-divides-race-class-and-politics#.

[60] I want to take a moment to brag about the students at Richmond Law. Here's a copy of an email that Dean Wendy Perdue shared with me the night before the Weis Symposium. The email went to her faculty colleagues, many of whom were also upset that Anderson was speaking there:

> Dear Colleagues,
> As you know, on Tuesday Ryan Anderson will be speaking at the law school. He is coming at the invitation of a law school student group, not the administration. Our practice at the law school is to allow student groups to invite their own speakers without pre-clearing them with the administration. While that practice can result in speakers being invited with whom many of us profoundly disagree, the Law School is generally comfortable with this because the school is, after all, training *lawyers*. Great lawyers take arguments head on, critically assess them, and develop powerful, persuasive responses. Dismissing an argument as unworthy of a response is not a luxury that lawyers have and our nation's recent political experience has shown that weak arguments sometimes catch on if not countered with an energetic response. Thus, even speakers whose arguments are grounded in bad reasoning or bad evidence give our students a chance to demonstrate that they are, as we like to say of them, "passionate, professional, and prepared."
> Indeed, in the past several days, students who disagree with Mr. Anderson have again distinguished themselves as great lawyers-to-be. There is a strong LGBTQ community within the law school and, rather than demand that the talk be cancelled, the community has organized a response. First and foremost, our students have organized themselves into a team of advocates, pored over

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> identified as transgender, engaged Anderson in a one-on-one conversation and reflected on the experience in our student newspaper: "Coming into this was really hard for me because it's really easy to vilify someone when you haven't met them," they wrote. "It's hard to hate someone when you meet them." I'll go out on a limb and suggest that this meeting between a young adult and someone they perceived as an enemy was among the most valuable educational experiences that student had all year.[61]

I have to remind myself that most student protests, like the one at Richmond Law, are peaceful.[62] It's the ones that aren't (and that get all of the press) that make me

> Mr. Anderson's writings, and are preparing forceful questions and counterarguments for him. (Consistent with how these events are normally run, we expect that Mr. Anderson will field questions from students for about half of the event). Beyond this, however, our students are also using the event as an opportunity to organize support for the transgendered community. For example, here are two events that have been added to the calendar for Tuesday:
> **Celebrating the Trans Identity**, from 10 a.m.-1 p.m. in the law school courtyard: Come join a diverse group of law and undergrad University of Richmond students for a day of celebration of the trans community and trans individuals. We will have music and dancing, face painting, sign-making supplies, and all manner of trans flag-colored decorations. Doughnuts, coffee, and water will be served. Hosted by David Forsyth and local drag queen Michelle Livigne.
> **Solidarity Space**, from 12-1, room 102: A safe space on campus for students and faculty to spend lunch away from the other events happening on campus at lunch. Professor Crane will be present for any students that want to speak with a supportive faculty member. All are welcome.
> In sum, our students have concluded that the best way to bring attention to the challenges facing the trans community—including hostility, discrimination and even violence—is to turn attention to those issues rather than focus on the question of who should be allowed to speak. They are energized and organized and will be looking for ways to use their lawyering skills to bring change. I have no doubt that they will do it with the professionalism and zealousness that characterizes Richmond lawyers.

E-mail from Wendy Purdue, Dean, Univ. of Richmond Sch. of L., to author (Mar. 16, 2023) (on file with author). Counterprogramming like this demonstrates the cleverness of the Richmond Law students and the caliber of education that they're getting.

[61] Crutcher, *supra* note 59.

[62] History.com Editors, *History of Student Protests*, HIST. (May 31, 2019), https://www.history.com/topics/vietnam-war/history-of-student-protests.

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wonder whether our law students really can be trained to have genuine conversations with those whose views they detest.[63]

II. SOCIAL MEDIA, DISCOURSE, AND ONE PERSON'S LESSONS

Let's get back to the tendency toward meanness that social media encourages. As I was researching the background for this Essay, I discovered Dylan Marron.[64] His book, *Conversations with People Who Hate Me: 12 Things I Learned from Talking to Internet Strangers*,[65] presents a cogent way of dealing with people who were vicious to him in their comments to some of his posts. After contributing his own share of snark to the Internet (and compiling a list of the worst comments that he had received in a "hate" folder), he decided to approach discourse in a different way:

> The internet . . . is not built to mitigate conflict; in fact, it seems like it's built to sustain it. I had so deeply bought into the game, thinking that winning would start a conversation. But it was the game itself, and my allegiance to it, that obscured the humanity of the people I was playing against. It obscured my own humanity, too. Without realizing it, I had hurt someone who once hurt me. I had become the Goliath.
>
> *So*, I ask myself. *What am I going to do about it?*[66]

[63] Again, the attacks on Judge Duncan weren't anonymous (though some of those attacks were vicious). At least one of my friends thinks that perhaps Judge Duncan was itching for a fight. Comments from LawProfBlawg, *supra* note 20 ("One answer is Duncan was looking for it. He wanted that sensationalism—the joy of getting canceled. Or as I put it in my article, he was trying to draw the foul.").

[64] Dylan would be cool even if he *hadn't* written a book that I loved. Here's more information about him:

> Dylan Marron hosts & produces ***Conversations with People Who Hate Me***, a podcast where he calls up the people behind negative comments on the internet . . . . [His] TED Talk, 'Empathy is Not Endorsement,' has been viewed millions of times worldwide . . . . He recently joined the writing staff of ***Ted Lasso***.

Dylan Marron, DYLAN MARRON, https://www.dylanmarron.com/about (last visited Jan. 13, 2024).

[65] DYLAN MARRON, CONVERSATIONS WITH PEOPLE WHO HATE ME: 12 THINGS I LEARNED FROM TALKING TO INTERNET STRANGERS (2022) [hereinafter MARRON].

[66] *Id.* at 41.

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What he did about dealing with "haters" was to invite them to speak with him on his podcast, and those stories form the crux of this book.[67]

He learned many things from those podcasts—including the temptation to want to address every single thing that a speaker said that bothered him (the "Everything Storm");[68] the difference between talking *at* someone and talking *with* him (the dance);[69] the difference between asking questions to learn and asking questions to prove one's own point;[70] and the value of treating people whose actions annoy us not as bad actors who are intending to offend, but as humans with the same foibles that we have.[71] Marron's story is one of growth and hope.

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[67] MARRON, *supra* note 65, at ix.

[68]

> Where do I even begin?
> There is a rising tension between everything we should discuss and what we actually have time to discuss, and this tension transforms our would-be topics into moisture. And just like that, it begins to pour with a bounty of current events and social ills so overwhelming that I don't know what to do. Then, I look up and see it: the dark gray cloud of everything we could and should talk about, all of the topics that social media tells me "demand my attention," every half-remembered statistic, that funny Twitter retort that once made me laugh, every article I skimmed, every joke I've seen on late night television, and every infographic that I can vaguely recall.
> . . . .
> This is the Everything Storm.

Id. at 77–78.

[69] *Id.* at 120 ("There is no scoreboard here, I am no longer drafting sharp retorts. We are locked in a fluid back and forth of questions and answers. Finally, we are dancing.").

[70]

> Curiosity is not inherently virtuous. Simply asking questions does not automatically lead to a productive conversation. In fact, it can be a recipe for disaster. If conversation is an improvised dance, where each participant feels like they're getting and giving in equal parts, then interrogation is a ceaseless drilling, an emotionally reckless deep dive for answers no matter the cost.

Id. at 183; *see id.* at 184 ("[S]ometimes we mistakenly think our curiosity entitles us to answers, forgetting that curiosity—that noble seed—can quickly devolve into a brutal cross-examination. So, we drill for answers, forgetting that we're talking to a human being who will understandably tire the more we drill.").

[71] *Id.* at 225–37.

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And he's not the only person who has learned how to engage with people whose views are abhorrent to him. There's a wonderful story about Daryl Davis, a Black man who has gotten to know members of the Ku Klux Klan:

> Daryl Davis is a blues musician, but he also has what some might call an interesting hobby. For the past 30 years, Davis, a black man, has spent time befriending members of the Ku Klux Klan.
>
> He says once the friendship blossoms, the Klansmen realize that their hate may be misguided. Since Davis started talking with these members, he says 200 Klansmen have given up their robes. When that happens, Davis collects the robes and keeps them in his home as a reminder of the dent he has made in racism by simply sitting down and having dinner with people.[72]

Davis's story is similar to Marron's because Davis reached out to these people after learning about them (well, about their organization, anyway)[73] and chose to engage them in conversation:

> That began to chip away at their ideology because when two enemies are talking, they're not fighting. It's when the talking ceases that the ground becomes fertile for violence. If you spend five minutes with your worst enemy—it doesn't have to be about race, it could be about anything . . . you will find that you both have something in common. As you build upon those commonalities, you're forming a relationship and as you build about that relationship, you're forming a friendship. That's what would happen. I didn't convert anybody. They saw the light and converted themselves.[74]

Marron and Davis aren't isolated examples of better-than-thou humans.[75] They're just people who decided that shouting at their enemies wasn't the right play. Even

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[72] Dwane Brown, *How One Man Convinced 200 Ku Klux Klan Members to Give Up Their Robes*, NPR (Aug. 20, 2017, 5:59 PM), https://www.npr.org/2017/08/20/544861933/how-one-man-convinced-200-ku-klux-klan-members-to-give-up-their-robes. Hat tip to Jeff Garrett for pointing me to this article.

[73] *Id.* ("When they see that you know about their organization, their belief system, they respect you. Whether they like you or not, they respect the fact that you've done your homework.").

[74] *Id.*

[75] For a description of a study showing similar results, see Virginia Hughes, *How to Change Minds? A Study Makes the Case for Talking It Out*, N.Y. TIMES (Sept. 16, 2022), https://www.nytimes.com/2022/09/16/science/group-consensus-persuasion-brain-alignment.html ("[T]he degree of similarity in brain

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Stephen Covey has the listen-to-understand principle down pat: In his *Seven Habits of Highly Effective People*, his "Habit 5" (with a registered mark, no less) is "Seek First to Understand, Then to Be Understood®."[76]

If only the students at Seattle Law had approached their professor with the same sense of curiosity, armed with an understanding of legal education that first-year students simply don't have during orientation.[77] We teach law students not to start their negotiations with outright aggression, because starting that way leaves them nowhere to go. We assign them books like *Getting to Yes*[78] and talk about the parable of splitting an orange[79] because we want them to be able to think constructively and

responses depends not only on people's inherent predispositions, but also the common ground created by having a conversation[.]").

[76] *Habit 5: Seek First to Understand, Then to Be Understood*, FRANKLIN COVEY, https://www.franklincovey.com/habit-5/ (last visited Jan. 13, 2024). The *Habit* states, in relevant part, that:

> [M]ost people listen with the intent to reply, not to understand. You listen to yourself as you prepare in your mind what you are going to say, the questions you are going to ask, etc. You filter everything you hear through your life experiences, your frame of reference. You check what you hear against your autobiography and see how it measures up. Consequently, you decide prematurely what the other person means before they finish communicating.

Id.

[77] One of my frustrations about law teaching is that first-years tend to imprint on how their first-semester professors teach, so that they distrust deviations from that norm. If the other Seattle professors weren't teaching the same way (grouping students together and asking them to consider questions before class), that difference may have contributed to the disconnect.

[78] ROGER FISHER & WILLIAM L. URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (Bruce Patton ed., 3d ed. 2011).

[79] *See, e.g.*, Katie Shonk, *Positional Bargaining Pitfalls*, PROGRAM ON NEGOT.: HARV. L. SCH.: DAILY BLOG (Oct. 26, 2023), https://www.pon.harvard.edu/daily/negotiation-skills-daily/positional-bargaining-pitfalls/. There are many variations of this story, but here's the one in this post:

> **Move beyond positions to interests.** In positional bargaining, negotiators often become so focused on their demands that they forget to explain why they want what they want. Take the classic example of two sisters arguing over a single orange. One sister wants the orange rind for a cake she's baking, and the other sister wants to squeeze the orange to make juice. A split-the-difference, positional bargaining outcome might result in them simply arguing over the orange and, eventually, reluctantly deciding to cut it in half. Only by revealing the interests underlying their positions could they reach a mutually beneficial outcome—the rind for one sister and the juice for the other. Revealing the interests behind your position is the key to creative dealmaking.

Id.

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creatively about presenting their positions to those on the other side. Had they approached this professor directly and said, "your remarks hurt us because, when you say X, we feel Y," he might well have listened and adjusted his teaching style to the sensitivities of this particular group of students.[80] After all, Professor Geoffrey Stone had civil discussions with his own students, and they persuaded him to stop using the N-word in his First Amendment class.[81] This Seattle Law professor never used that inflammatory phrase.[82] But these Seattle Law students didn't approach him with an eye toward constructive dialogue. My guess is that they had already decided that they didn't like the professor,[83] and their confirmation bias[84] led them to interpret everything that he did in class as discriminatory.

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[80] Of course, he might not have changed his style, but at least he would have had a better chance of understanding what the students wanted him to do.

[81] Colleen Flaherty, *A Free Speech Purist Opts Not to Use the N-Word*, INSIDE HIGHER ED (Mar. 7, 2019), https://www.insidehighered.com/news/2019/03/08/first-amendment-scholar-geoffrey-stone-whos-previously-defended-use-n-word-classroom (discussing why Professor Geoffrey Stone stopped using the N-word in his First Amendment course).

[82] Zodrow & Bunn, *supra* note 23.

[83] My understanding, from talking with the professor and with some of these students' classmates, is that the students believed that the professor was giving them more work than the American Bar Association permitted. In the *Seattle Spectator* article, one anonymous student alleged that "[f]or a five credit class, you're only supposed to be spending 10 hours outside of class to do this work." *First Article*, *supra* note 17. The second anonymous student said that "the class's mandatory preparation] takes upwards of 12 to 13 hours, which greatly exceeds American Bar Association . . . requirements." *Id.* These are first-year students, mind you, so they don't quite understand how the ABA's accreditation rules work. The good news is that they found the standards; the bad news is that they didn't understand them. Standard 310 provides, in part, that:

> (b) A "credit hour" is an amount of work that reasonably approximates: (1) *not less than* one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or (2) *at least an equivalent amount* of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.

ABA STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. 310 (AM. BAR ASS'N 2022) (emphasis added). Interpretation 310-1 uses the "at least" language as well. *Id.* 310-1. The students who complained apparently interpreted "not less than" and "at least an equivalent amount" as "not more than." *See id.*

[84] Confirmation bias is defined as:

> [P]eople's tendency to process information by looking for, or interpreting, information that is consistent with their existing beliefs. This biased approach to decision making is largely unintentional, and it results in a person ignoring

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I'm sure that he misspoke sometimes. We all do.[85] But if our students give us the benefit of the doubt, we can learn from our missteps.[86] Had the Seattle Law students started with a presumption that they could have had a reasonable discussion with this professor, he might not have faced the horrible consequences that those news stories have caused.[87] And remember: the University's investigation established that the remarks in the student newspaper were demonstrably false.[88] Moreover, the professor stayed at Seattle Law for his full visiting term, despite the personal turmoil that he endured. It's hard to imagine that, had there been even a whiff of actual impropriety, the Dean would have allowed him to continue to teach. Yet neither the students nor the newspaper retracted the comments, and it is my understanding that the school's administration did not explain to those students why the professor was still in the classroom.

We all have memories of classmates who were arrogant, or prickly, or kind, or generous, and our impressions of those classmates (even—gasp!—almost forty years ago) have stayed with us. And back then, we didn't have the Internet, which is the world's *real* "permanent record," preserving our own misbehavior in amber for those in the future to uncover.[89] Choosing first to presume a lack of malice, even when

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> information that is inconsistent with their beliefs. These beliefs can include a person's expectations in a given situation and their predictions about a particular outcome. People are especially likely to process information to support their own beliefs when an issue is highly important or self-relevant.

Confirmation Bias, ENCYC. BRITANNICA, https://www.britannica.com/science/confirmation-bias (last visited Jan. 14, 2024).

[85] Walter Effross reminded me that the fear of misspeaking contributes to the stress that students feel when they're on the receiving end of Socratic questioning. *See* Notes from Walter Effross, *supra* note 9. And thanks to the ubiquitous use of cell phones, we can now all live in fear of our misstatements going viral and taken out of context. *Id.*

[86] I had a student come up to me after a Contracts class in the fall of 2022 to tell me that the more modern version of "master suite" is "primary suite." He trusted me enough to give me that information, and I trusted him enough to change how I referred to the suite.

[87] Here's just one example: "[Dean Tony] Varona also reported that the Office of Institutional Equity conducted an expedited inquiry to determine the accuracy of two of the most severe allegations reported in the *Spectator*. The inquiry concluded that the alleged statements were nowhere in the reviewed recordings or transcripts." Rachel E, *Law School Addresses Racism Claims Against Visiting Professor*, JD J. (Jan. 27, 2023), https://www.jdjournal.com/2023/01/27/law-school-addresses-racism-claims-against-visiting-professor/.

[88] *Id.*; Zodrow & Bunn, *supra* note 23.

[89] Simon Whang describes this in the article *Real-Life Lessons for Lawyers Using Social Media: Don't Be That Guy*, stating:

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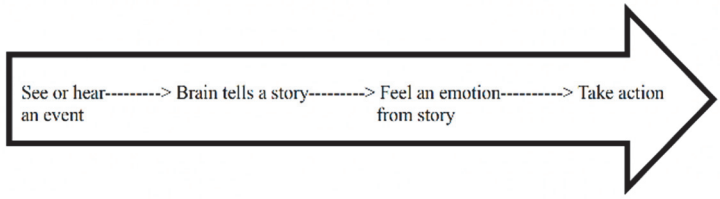
presented with words that may shock us, is a better way to approach difficult conversations. My spouse and I disagree all the time about our interpretations of someone's behavior, and I continue to stick with my own motto, a play on Hanlon's Razor: "Never chalk something up to malice if simple ignorance can explain it."[90] If we're proven wrong, and the person saying the painful words actually does intend to hurt us, we have sufficient ways of dealing with the situation. But if we're right, and the offense was unintentional, we haven't escalated a situation irretrievably.

In a recent opinion, a federal court put the point into perspective:

> A civil litigator's job is to wade into the middle of a pre-existing conflict between two or more parties. Sometimes wading into the conflict between the litigating parties fully immerses the litigators. Over the years of being a civil litigator who was swimming in someone else's conflict while trying to avoid drowning in it, I benefited from a book entitled *Crucial Conversations: Tools for Talking When Stakes are High*. In this book, the authors present a model that accurately describes how individuals, including civil litigators, go from observing a phenomenon to reacting to it. The model the authors present is shown below:



> The authors discuss how the second step in the path to action is often where things go awry because when those embroiled in a pre-existing conflict see their

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> In the good old days, we could say something stupid, right the error with an apology, and often suffer only the consequences of morning-after embarrassment and lesson learned. The concept of privacy on the Internet—itself oxymoronic—is largely gone. The sun never sets on the social media empire. Continuing in Internet eternity are your misinterpreted jokes and slurs, braggadocio and bravado, good intentions backfiring, "private" messages, overzealous ire, political overreach, dumb posts, drunken comments, terrible Tweets. They beat on, borne back ceaselessly into the past, to haunt our future selves.

Simon Whang, *Real-Life Lessons for Lawyers Using Social Media: Don't Be That Guy*, 75 OR. STATE BAR BULL. 32, 35 (2015).

[90] Nathan Ballantyne & Peter H. Ditto, *Hanlon's Razor*, 45 MIDWEST STUD. PHIL. 309, 309 (2021). Of course, my spouse is a former Marine scout-sniper and has been trained to see the world differently from the way that I was trained to see it.

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> "enemy" do something, the other side generally ascribes sinister motives to those actions even though those same actions may have several innocent explanations. Once armed with the story of sinister motives, the observer's brain feels an emotion that is generally negative. High on negative emotion, the observer then acts to right the perceived wrong that the enemy has perpetrated.
>
> Although this single path to action is fraught with problems by itself, those problems compound because the action that a party took to right the perceived sinister wrong serves as the beginning point of the "other side's" path to action. The other side now undergoes the same process ascribing unkind motives, feeling a negative emotion, and reacting accordingly. Pretty soon, the parties' respective paths to action keep chasing each other into a spiraling race to the bottom of civility. Sadly, once the parties reach incivility's rocky bottom, each bruised and battered party figuratively looks up and blames the other side for getting them into this mess while simultaneously feeling justified for every civility foul that party committed all the way down the spiral's declining trajectory.
>
> That is exactly what happened here.[91]

I love the *Boulder Falcon* opinion, and I wonder if the Seattle Law or Stanford Law students in question might have moderated their behavior had they read this opinion before taking the actions that they did. Could *Boulder Falcon* have caused these students to ascribe different motives to those whom they attacked?

III. CAN THE ABA'S NEW STANDARD HELP US COUNTER THE EFFECTS OF SOCIAL MEDIA ON DISCOURSE?

I started this Essay by worrying that social media and the coarsening of public discourse—name-calling and the shouting-down of speakers—would prevent law students from providing that buffer between polarized groups so that the groups could hear each other out. I still despair about what social media is doing to us, but I have found a ray of hope, and it's from a source that I hadn't expected: the American Bar Association's Section of Legal Education and Admissions to the Bar. There's a new accreditation standard that can help:

> **Standard 303. CURRICULUM**
>
> (b) A law school shall provide substantial opportunities to students for:
>
> (1) law clinics or field placement(s);

[91] Boulder Falcon, LLC v. Brown, No. 2:22-cv-00042-JNB-JCB, 2023 U.S. Dist. LEXIS 54514, at *2–4 (D. Utah Mar. 28, 2023) (citing KERRY PATTERSON, JOSEPH GRENNY, RON MCMILLIAN & AL SWITZLER, CRUCIAL CONVERSATIONS: TOOLS FOR TALKING WHEN STAKES ARE HIGH 99 (1st ed. 2002)).

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> (2) student participation in pro bono legal services, including law-related public service activities; and
> (3) *the development of a professional identity*.[92]

It's that concept of a professional identity that can help us reset the current state of discourse, at least with law students. What the ABA means by "professional identity" is set out in its Interpretation 303-5:

> **Interpretation 303-5**
> Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of *the values, guiding principles, and well-being practices* considered foundational to successful legal practice.[93]

Good lawyers have this concept of fairness and civility ingrained, and some state bars codify civility in their creeds.[94] The State Bar of Nevada recently enacted its own creed, which says in part:

> 1. We will strive to find harmony in our responsibilities as a representative of clients, as officers of the legal system, and as public citizens.
> 2. We will treat all participants of the legal system in a civil and courteous manner, not only in court, but also in all other written and oral communications, refraining from disparaging personal remarks or acrimony.
> 3. We will not encourage or knowingly authorize any person under our control to engage in uncivil conduct.

[92] ABA Standards and Rules of Proc. for Approval of L. Schs. 303 (AM. BAR ASS'N 2022) (emphasis added).

[93] *Id.* at 305.

[94] As my friend LawProfBlawg puts it, "You can't mandate full civility. You can turn it into passive-aggressive [behavior], however. And these kinds of things get weaponized too . . . . Is the basic problem a lack of empathy?" Comments from LawProfBlawg, *supra* note 20. He's absolutely right that a lack of empathy is part of the problem.

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> 4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel nor bring the profession into disrepute by unfounded accusations of impropriety. . . .[95]

These types of creeds exist in many state and local bar associations, and they emphasize professionalism in words and deeds.[96] We can use creeds to help inform what we should teach in compliance with the new Standard 303(b). We can arm law students not to respond to incivility in kind,[97] and we can train them to listen before attributing ill motives.

At least one university is trying to inculcate habits of better conversations—though this effort is the subject of some controversy. The University of North Carolina at Chapel Hill has established a new School of Civic Life and Leadership.[98] Whether that new school was established in a way that comports with the principles of shared governance is an open question,[99] but the Board of Trustees has defended

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[95] State Bar of Nev. Bd. of Governors, *Creed of Professionalism and Civility*, STATE BAR OF NEV. (June 21, 2023), https://nvbar.org/wp-content/uploads/State-Bar-of-Nevada-Creed-of-Professionalism-and-Civility-Downloadable-updated-June-2023.pdf. Not to be outdone, Texas's creed is even longer. *See* Tex. Bar Found. & Tex. Ctr. for Legal Ethics & Professionalism, *The Texas Lawyer's Creed: A Mandate for Professionalism*, TEX. JUD. BRANCH (Nov. 7, 1989), https://www.txcourts.gov/media/276685/texaslawyerscreed.pdf ("I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior."). For a more comprehensive listing of creeds, see *Professionalism Codes*, A.B.A. (Mar. 8, 2021), https://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_codes/?login.

[96] For some of my thoughts on shared governance, see Nancy B. Rapoport, *On Shared Governance, Missed Opportunities, and Student Protests*, 17 NEV. L.J. 1 (2016); Nancy B. Rapoport, *Academic Freedom and Academic Responsibility*, 13 GREEN BAG 2D 189 (2010) (book review); Nancy B. Rapoport, *"Venn" and the Art of Shared Governance*, 35 U. TOLEDO L. REV. 169 (2003).

[97] *Cf.* WILLIAM SHAKESPEARE, HENRY V act 4, sc. 1 ("If the enemy is an ass and a fool and a prating coxcomb, is it meet, think you, that we should also, look you, be an ass and a fool and a prating coxcomb? in your own conscience, now?").

[98] Adrienne Lu, *UNC's Board Comes Under Scrutiny After Surprise Plan for 'Civic Life' School*, THE CHRON. OF HIGHER EDUC. (Feb. 16, 2022), https://www.chronicle.com/article/uncs-board-comes-under-scrutiny-after-surprise-plan-for-civic-life-school?cid=gen_sign_in.

[99] *See, e.g.*, *id.* (explaining how the Board of Trustees' establishment of the school surprised both the faculty and the institution's accreditor, with the latter promising a review of whether the Board overstepped its role in the school's foundation). UNC already has a Program for Public Discourse in its College of Arts and Sciences. *Program for Public Discourse*, UNC COLL. OF ARTS & SCIS., https://publicdiscourse.unc.edu/ (last visited Jan. 14, 2024). That program's mission is "to support a culture of robust public argument through curricular and extra-curricular engagement, equipping students with the rhetorical and deliberative capacities to serve Carolina and beyond as citizens, leaders, and stewards of democracy." *Id.* For more on the establishment of UNC's new school, see Mark McNeilly, *The Case for Teaching Students Constructive Dialogue at Scale: UNC's New School of Civic Life and*

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its actions by observing that students need more tools to help them engage in constructive discourse.[100] Imposing the school on the faculty may not be the way to go about it, and the trustees are getting pushback, both on the establishment of the school and on the curriculum itself.[101] But what if the UNC faculty and the trustees could reboot the discussion by talking about their common ground—the desire to give students the best possible education—and then discuss the way that civil discourse feeds into that desire?

The University of Florida is also searching for a way to teach civil discourse via the planned Hamilton Center for Classical and Civic Education, though it too has some shared governance issues.[102] Part of the push to establish institutions like these involves stories about the stagnation of civil discourse on campus—and those stories often have their own biases built in. (Currently, the impetus for creating institutions like this one seems to flow from the same tide that criticizes critical race theory, unfortunately.)[103] Still, the idea of finding structured ways to talk about difficult issues is a good one.[104]

Leadership, HETERODOX ACAD.: THE HXA BLOG (Feb. 23, 2023), https://heterodoxacademy.org/blog/the-case-for-teaching-students-constructive-dialogue-at-scale-uncs-new-school-of-civic-life-and-leadership/?utm_medium=email&utm_source=newcontent&utm_campaign=230216.

[100] Lu, *supra* note 98. Where the Board seems to have overstepped, as far as I can tell, is by failing to remember that the faculty is in control of the curriculum, not the administrators. *Id.*

[101] *See* Editorial Board, *Editorial: School of Civic Life Is Just Another Example of Ideological Combativeness*, THE DAILY TAR HEEL (Feb. 28, 2023), https://www.dailytarheel.com/article/2023/02/opinion-school-of-civic-life-ideological-combativeness; Ryan Quinn, *UNC 'Civic Life' Center Progressing, Over Faculty Objections*, INSIDE HIGHER ED (May 31, 2023), https://www.insidehighered.com/news/faculty-issues/shared-governance/2023/05/31/unc-civic-life-center-progressing-over-faculty; Susan Svrluga, *UNC Trustees' Push for 'School of Civic Life and Leadership' Alarms Some Faculty*, WASH. POST (Feb. 1, 2023), https://www.washingtonpost.com/education/2023/02/01/unc-school-civic-life-leadership-sparks-debate/.

[102] Emma Pettit, *How a Center for Civic Education Became a Political Provocation*, THE CHRON. OF HIGHER EDUC. (Feb. 22, 2023), https://www.chronicle.com/article/how-a-center-for-civic-education-became-a-political-provocation.

[103] *See* Athena D. Matua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U.L. REV. 329 (2006).

[104] Teaching students that active and genuine listening will help them to refine their own beliefs (and address beliefs to which they don't themselves adhere) is part of a university's job. *See, e.g.*, Pamela Paul, *The Most Profound Loss on Campus Isn't Free Speech. It's Listening*, N.Y. TIMES (Mar. 30, 2023), https://www.nytimes.com/2023/03/30/opinion/campus-free-speech-duncan.html ("We know universities can do a better job of preventing one form of speech from inhibiting another. The harder task, but perhaps the more important lesson, will be teaching students not to *want* to do so. They shouldn't avoid opportunities to hear other perspectives but should actively seek them out and reckon with the humbling

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As for law schools themselves? I've been reading an early draft by Eugene Volokh[105] that makes useful suggestions for how we can reorient their education to better comport with what they will be doing as lawyers:

> One critical function of law schools is to help students learn the skills that they can use to persuade people with whom they disagree. As importantly, law schools must help students learn the habits and attitudes required for that—and to unlearn the habits and attitudes, which are so much a part of human nature, that tend to undermine such connections.
>
> It is of course human nature to categorize the world into us and them, the good and the bad, the "enlightened" and the "deplorable." It is human nature to let these categorizations leak into our assumptions about people, into our decisions about whether to listen to people, and into our manners when we speak with people. It is human nature to resist being exposed to arguments that challenge our deepest beliefs, or to facts that we may disapprove of or find offensive. That human nature, though, interferes with our effectiveness as lawyers.[106]

He's right. Good lawyers craft careful arguments after considering the other side's best points, and good lawyers find ways to work with (or across the table from) those with whom they don't agree, or don't even like, or whom they can't persuade. We do our students no favors when we shy away from teaching—and modeling—those skills.[107]

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fact that what they already know—or think they already know—may not be *all* there is to know. Isn't that, after all, precisely what learning is about?").

[105] Eugene Volokh, *Free Speech Rules, Free Speech Culture, and Legal Education* (unpublished manuscript) (on file with author). And the current Chancellor of Vanderbilt, Daniel Diermeier, agrees that we need to find ways to structure our disagreements. Daniel Diermeier, *How to Combat Tribalism on Campus*, THE CHRON. OF HIGHER EDUC. (Mar. 17, 2023), https://www.chronicle.com/article/how-to-combat-tribalism-on-campus. "We can also provide [students] with more tools. The New York University social psychologist and campus free-speech advocate Jonathan Haidt, who has written about how the definition of morality varies among groups, has started the Constructive Dialogue Institute, which aims to provide students with 'a shared language and set of tools to effectively navigate differences.'" *Id.*

[106] Volokh, *supra* note 105.

[107] I once referred to the decision to protect students from speech that disturbed them as "training law students to go into battle by wrapping them with pillows." Jeff Garrett had a great suggestion:

> What if there was a film of a courtroom proceeding, or written briefs, that showed a lawyer who was being rude and another that was being respectful, one where both lawyers were rude, and one where both lawyers were respectful, and have the students evaluate which were the most effective[?] I

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Others have been urging this modeling of civility as part of lawyers' professional identity for years. Professor Sophie Sparrow, for example,[108] requires "professional engagement" in her legal writing course:

> Some students were infuriated by the notion that they were asked to behave in certain ways, arguing that such course requirements were inflexible and likely to be abused by professors who did not like these students. They found rules about civility demeaning, degrading, and demoralizing. They interpreted "being respected" as having the right to speak their thoughts in the way they wished and to engage in nonverbal acts of their choice. My response was that I appreciated their views, but as their professor my job is to do the best I can to help all students learn and develop as professionals. Most are investing tens of thousands of dollars in their legal education. I do a disservice to most students in the class if I allow a few students' uncivil behaviors and words to dominate and disrupt others' learning. And I do a disservice to the outspoken students if I do not let them know the importance of and provide opportunities for them to practice civility. When they are in class, they are part of a public discourse, and public discourse is most effective when people treat each other with respect.[109]

I don't believe that merely teaching courses on professionalism and civility will solve the problem, although I'm all in favor of those courses. We should help law students understand a lawyer's professional identity in a variety of ways, in and out of classrooms, and faculty members and administrators should model the appropriate behavior. But I now believe that we need something else as well: peer-to-peer norming of civil behavior.

I made an oblique reference to peer-to-peer interaction earlier in this Essay, when I referred to an article about my experiences at the University of Houston Law Center.[110] That was a painful time for me. A faculty member—one who had made a

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> bet as a neutral observer they'd see that the person who was rude was very ineffective and looked pretty ridiculous.

Notes from Jeff Garrett, *supra* note 15.

[108] Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 J. LEGAL WRITING INST. 113, 139–40 (2007) (discussing how to develop behavioral norms of classroom behavior).

[109] *Id.* at 130. I wonder how the law students in the Stanford and Seattle University protests would have reacted to this requirement.

[110] *See* Edwards, *supra* note 12.

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hobby out of ousting all of the previous deans—had organized some law students to attend a faculty meeting and protest our drop in the rankings.[111] I resigned from the deanship shortly thereafter, not because of the students' protest, but because few faculty members had spoken out against his efforts to weaponize the students' distress. If they didn't care about creating a civil atmosphere, why should I try to fight that fight all by myself?

I thought then, and I think now, that the most effective way of changing behavior is for peers to set the boundaries of discourse themselves. In a measured way, perhaps at first with faculty encouragement, students could set their own ground rules for speech that threatens their (or their colleagues') feelings of safety, and they could couple those new ground rules with meaningful counter-speech. We would have to be careful to set the stage for the Rawlsian original position ("an initial agreement situation wherein the parties are without information that enables them to tailor principles of justice favorable to their personal circumstances"[112]) so that students don't create rules that favor only those who think like them. They could also create situations that encourage bystander intervention if those in bitter discourse can't lower the temperature of a discussion.[113] As an example, I like Jeffrey Adam Sachs's concept of choreographed disagreement:[114]

> [C]horeographed disagreement is a type of amicable disagreement whose expression is structured according to highly rigid and often explicitly stated rules. The general function of these rules is to make disagreement clearer, more civil, and more evidence-based. Choreographed disagreement has many goals (e.g., developing critical thinking skills and promoting tolerance), but above all, it is a response to a perceived increase in political polarization and decline in civil discourse and viewpoint diversity, especially within colleges and universities. Typically, it is also quite public in nature, performed in front of and for the enjoyment of an audience. Because choreographed disagreement presumes and even welcomes disagreement, it differs from other structured forms of expression common on university campuses, such as political correctness. But because it is

[111] And it's my understanding that he continued this hobby after I left.

[112] *Original Position*, STANFORD ENCYCLOPEDIA OF PHIL. (Oct. 24, 2023), https://plato.stanford.edu/entries/original-position/#:~:text=Rawls's%20original%20position%20is%20an,favorable%20to%20their%20personal%20circumstances.

[113] This idea also comes from Walter Effross. See Notes from Walter Effross, *supra* note 9.

[114] And how can I not? I'm a dancer.

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> amicable and collaborative, it is also distinct from the structured disagreement found in a courtroom or presidential debate.[115]

By encouraging "intellectual charity" ("a strategy for conducting a disagreement as if it were based on reasonable grounds, regardless of the actual grounds on which it is based"[116]), the audience responds to speech with which it disagrees by conjuring up not necessarily the speaker's best argument, but the best argument that the speaker could have made.[117] Here's why this approach is so attractive to me:

> [C]horeographed disagreement unfolds according to certain rules, like "present evidence for your claims" and "avoid bullying speech or ad hominem attacks." Insofar as these rules force participants to avoid logical fallacies, intimidation, emotional appeals, and so forth, they will push participants to adopt stronger arguments. Participants will also learn how to evaluate their opponent's argument and identify its weak points. Without these skills, they run the grave risk of being swept away or silenced by the rhetorical power of another's words. A clever orator has the power "to move men like machines to a judgment," bringing them to conclusions they would otherwise never accept. Choreographed disagreement offers a defense against these dark arts. It is like a bootcamp for critical thinking and speech. Participants are furnished with a "toolbox" of argumentative techniques, trained in their use via a series of exercise modules or mock debates, and then let loose to deploy their skills in non-choreographed spaces.[118]

That's what we should want law students to do. Instead of shouting down ideas with which they disagree, they should truly engage. (As Judge Weis urged, they should "Stop, Think, Investigate and Research."[119]) They should be open to hearing out others with different points of view.[120] They should urge others to find ways to listen

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[115] Jeffrey Adam Sachs, *Do Universities Need Choreographed Disagreement?*, 20 GEO. J.L. & PUB. POL'Y 937, 938 (2022).

[116] *Id.* at 945. LawProfBlawg thinks that perhaps "intellectual charity" might be "empathy of position." *See* Comments from LawProfBlawg, *supra* note 20.

[117] Sachs, *supra* note 115, at 946.

[118] *Id.* (footnote omitted).

[119] Gaiardo v. Ethyl Corp., 835 F.2d 479, 482 (3d Cir. 1987).

[120] A then-third-year Stanford Law student wrote a poignant essay about how hard it is to be a moderate at the school. *See* Tess Winston, *Opinion, With Some of My Fellow Stanford Law Students, There's No Room for Argument*, WASH. POST (Apr. 3, 2023, 7:30 AM), https://www.washingtonpost.com/

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actively and then engage with the ideas, rather than attacking the speakers themselves.[121] Instead of lobbing anonymous attacks (Seattle Law),[122] or shouting[123] over the voices of those with whom they disagree (Stanford Law),[124] law students should present well thought-out arguments to a professor who has made them feel uncomfortable, or to a partner who has made them feel inadequate, or to a judge who has ruled against them on an issue that they expected to win. And they should do so respectfully, treating the other side more as a person who has had experiences

opinions/2023/04/03/stanford-law-school-intimidation-of-moderates/?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F399a7d8%2F642afc31f19a510b04332ac3%2F59729643ade4e21a84803f9c%2F18%2F74%2F642afc31f19a510b04332ac3&wp_cu=bcb296941fa71db2ec54d6722aac3bb7%7C442D80DEC6CB50EFE0530100007F1B6E ("It's even worse outside the classroom. Expressing nuance about certain matters . . . is essentially taboo for anyone who doesn't want to invite social ostracizing.").

[121] We need to change how law students and lawyers engage with those who see the world differently from the way that they see it:

> [T]he purpose [of many types of talking with those with different opinions] is to convince someone of the correctness of one's position and the error of theirs, or to reach agreement (perhaps by conceding error). We believe, however, that this view represents a fundamental misunderstanding of the purpose of engagement, at least in the classroom and cocurricular settings. High-quality discourse in the service of critical inquiry is about reaching deeper understanding, not agreement. It does not require—and should not, a priori, hold as an objective—changing the other person's mind or compromising one's beliefs. Rather, it requires sharing one's beliefs and defending them with reasoned arguments informed by evidence. The quality of discourse depends on how students carry out discussions. Good discourse consists of participants confronting contested evidence and values, listening to each other, appreciating the experience of others, challenging each other's assumptions, responding to challenges, and being open to reconsidering their own assumptions. Discomfort is a feature of this process, not a bug.

STANFORD L. SCH.: L. & POL'Y LAB, POLARIZATION, ACADEMIC FREEDOM, AND INCLUSION (2023), http://law.stanford.edu/wp-content/uploads/2023/03/Report-of-the-SLS-Law-Policy-Lab-Practicum-on-Polarization-Academic-Freedom-and-Inclusion-Autumn-2022-1.pdf (footnotes omitted). Yes, I know: the irony is palpable. This report came out just a month before the Stanford Law episode.

[122] *See supra* notes 17–33 and accompanying text.

[123] In my entire life, I have never experienced a situation in which shouting won an argument, and shouting *louder* doesn't work as a persuasive tool. Shouting is speech, but it's not persuasion.

[124] *See supra* notes 12–16 and accompanying text.

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different from their own rather than as the devil incarnate. That's what Dylan Marron has done.[125] That is what we all should do.[126]

Will this process of inculcating students in what Judge Weis represented ("out-nice-ing" the other guys)[127] solve all of our communication ills? Of course not.[128] But the best lawyers that I've seen can be forceful advocates for their clients without being jerks or bullies. Judges make their own mental notes about misbehaving lawyers—and even sanction them for egregious misconduct.[129] So do adversaries. So, in fact, do clients, many of whom will hire more than one lawyer throughout their lives. Training law students to develop a professional identity that includes civility—and helping them learn how to enforce the norms of civility themselves—will end up producing more great lawyers, and those great lawyers can end up facilitating difficult conversations in an increasingly uncivil and divided world.

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[125] MARRON, *supra* note 65.

[126] Of course, it would help a lot if the invited speakers were able to be the best advocates for their positions:

> So a speaker comes suggesting that *Obergefell* is wrongly decided based on originalism. It is MUCH tougher to do your exercise [referring to my suggestions in this paper] when you are gay and married. In short, the BURDEN of being nice typically falls greater on those whose rights are at risk. Or, as I've heard, "Let's let Hitler speak at the law school and pretend he's just presenting an argument."
> I think that's the part that is also missing. Is this the BEST SPEAKER to present the argument? Or is the speaker designed to draw the foul and get us media exposure?

Comments from LawProfBlawg, *supra* note 20.

[127] Janssen, *supra* note 1. I believe in starting out nice, but I've been known to change that approach under certain circumstances. *Cf. A Gentleman Is a Man Who Never Gives Offense Unintentionally*, QUOTE INVESTIGATOR, https://quoteinvestigator.com/2015/01/21/offense/ (last visited Mar. 14, 2023) (describing a quote that may be attributed to Oscar Wilde).

[128] And of course, there will be some people who stubbornly refuse to view the world from anyone else's eyes. For them, this joke illustrates their problem: "How many therapists does it take to change a light bulb? Just one, but the light bulb really has to want to change." Ros Johnson, *Therapist Light Bulb Jokes*, MINDING THERAPY (Mar. 7, 2023), https://www.mindingtherapy.com/therapist-light-bulb-jokes/.

[129] For a recent sanctions order, see, e.g., Jahagirdar v. Comput. Haus NC, Inc., No. 20-CV-33, 2023 U.S. Dist. LEXIS 34562 at *4 (W.D.N.C. Mar. 2, 2023) ("strongly admonishing" a lawyer for conduct that was "unprofessional, egregious, and unacceptable for an officer of the court.").

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