

## **Introduction**

*At 12:45 p.m. on Thursday, March 9, the Stanford Law School Federalist Society attempted to host an approximately hour-long discussion with U.S. Court of Appeals for the Fifth Circuit Judge Kyle Duncan, entitled, “[The Fifth Circuit in Conversation with the Supreme Court: Covid, Guns, and Twitter](#).” For its entire duration, the event was overtaken by dozens of student protesters. These student protesters persistently heckled Duncan to such a substantial extent that the event could not proceed as planned, thereby successfully executing a [heckler’s veto](#). See a full account of the event, including the leadup and fallout, [here](#).*

*The event proceeds in three phases.*

***Phase 1** consists of approximately 10 minutes of pure shoutdown, wherein students consistently interrupt Duncan to such an extent that he cannot deliver his prepared remarks. Duncan responded to the disruption by saying that the “inmates have gotten control of the asylum.”*

***Phase 2** consists of the remarks of Stanford Associate Dean for Diversity, Equity, and Inclusion Tirien Steinbach, who approaches Duncan’s podium offering to help restore order. She correctly states Stanford’s strong free speech policies and says she believes in them. But she also questions whether those policies should be reconsidered (“Is the juice worth the squeeze?”), given how Duncan’s visit has caused “pain” and “division.” In a subsequent op-ed, she [claimed](#) to have been attempting “to deploy... de-escalation techniques,” yet her remarks prior to and during the event [clearly echoed](#) the protesters’ discontent.*

*After Steinbach concluded, many students left the room. Unable to finish his prepared remarks, Duncan begins a Q&A period — **Phase 3**. During this phase, students asked Duncan a number of antagonizing questions but generally provided Duncan with a chance to reply. Finally, federal marshals escorted Duncan out.*

## **Methodology**

*FIRE researchers generated this transcript from the [audio posted](#) by journalist David Lat on his Substack. Much of this audio was difficult to decipher, so we supplemented Lat's audio with additional videos sent to us by attendees of the event. Time stamps from Lat's audio, available at <https://davidlat.substack.com/p/the-full-audio-recording-of-judge>.*

----- 0:00 -----

STUDENT INTRO: In 2008 he was an assistant professor of law at the University of Mississippi School of Law. [Before] becoming a judge, Judge Duncan practiced at the Washington, DC firm Schaerr Duncan, where he was a founding partner. He was appointed by President Trump to the United States Court of Appeals for the Fifth Circuit.

[Laughter]

STUDENT INTRO: [Inaudible]

[Applause]

DUNCAN: Thanks, to the, to the Federalist Society... uhm, about, I mean, I'm not blind, I can see this outpouring of contempt.

STUDENT: You'd recognize it quickly. Great speech.

DUNCAN: Yeah I do. It's kind of like my nomination hearing.

[Laughter]

STUDENT: You were nominated by someone who committed treason.

[Chatter]

DUNCAN: The great thing about the independence of the federal judiciary is that it insulates judges from stuff like this.

STUDENT: It doesn't, though.

[Inaudible]

STUDENT: Speak up. Yeah, speak up. I can't hear you in the back.

[Inaudible]

DUNCAN: The independence of the federal judiciary means that we decide cases, and if people don't like it, you know, that's their right to say, to say they don't like it, but it doesn't affect our decisions. And that's why...

STUDENT: How many people get killed for who they are?

DUNCAN: That's why we have Article III, and that's why this, whatever this is...

[Inaudible]

STUDENT: We don't! [Inaudible] It's called protest. It's under the First Amendment. I thought you knew about the First Amendment.

DUNCAN: So, the independence of the federal judiciary means that — it's a great country, I mean, I see what people say about me on Twitter, and the internet, and now here in person. It's a great...

[Chatter]

DUNCAN: It's a great, it's a great country, that you can say whatever you want, and nothing can happen to you.

[Inaudible]

STUDENT: ... canceled.

DUNCAN: And so, you know, it's a great country, that you can say whatever you want about judges or politicians or whoever, and nothing's gonna happen to you. Isn't that a fact? And a law school like this, it's one of the best law schools in the country...

STUDENT: Yeah, we go here.

DUNCAN: You will, you will probably be applauded for attacking me.

STUDENT: Attacking?

[Angry chatter]

[Inaudible]

STUDENT: Tears!

DUNCAN: However, I would like to speak up to the Federalist Society...

STUDENT: Aw, they really need you to.  
[Inaudible]

STUDENTS: Aww, aww. Sad.

STUDENT: All that money.

STUDENT: Boo hoo.

[Snapping]

STUDENT: ... all that university funding.

DUNCAN: So, when I was in law school I... [inaudible]

STUDENT: Cold flex.

DUNCAN: ... and, but I wasn't very political, and I just kind of kept my head down. I wasn't involved in politics... [inaudible]

[Chatter]

DUNCAN: ... and so I didn't get involved in stuff like this. I wasn't, you know, I wasn't in the Federalist Society, I had, I just wasn't very political. But I admire you, uhm, the Federalist Society members...

[Laughter]

DUNCAN: ... for sticking your neck out and inviting me.

[Inaudible]

[Laughter]

DUNCAN: [Inaudible] You guys are outnumbered [inaudible]

[Inaudible]

[Screams and applause]

DUNCAN: And I want to encourage that no matter how many people try to marginalize you in this life...

[Screams and laughter]

STUDENT: Marginalize!?

[Inaudible]

DUNCAN: ... respect your fellow students.

STUDENT: Where's your respect for queer and trans people?

STUDENT: Where's your respect, dude?

DUNCAN: You never show up at, whoever these people are, protesters...

STUDENT: You know who we are!

DUNCAN: You never show up... [inaudible]

[Chatter]

STUDENT: Their rights are never under attack. You attack trans people and LGBTQ people. That's an accurate fact.

DUNCAN: So, I would hope that you could be treated equally, just like everybody else...

[Shouting]

[Inaudible]

STUDENT: What part of your prayer says that?

[Laughter]

DUNCAN: So ...

----- 5:00 -----

STUDENT: Oh my god.

DUNCAN: To those that I think, I assume... [inaudible]

STUDENT: You don't have to finish this talk.

[Inaudible]

[Laughter]

DUNCAN: So, the, uhm, the circuit courts, uh, in this country, uh, obviously, uh, are inferior courts. Right? That's what the Constitution calls them. They're inferior courts. They have to follow SCOTUS, uh, when scotus speaks...

STUDENT: Boring

[Laughter]

STUDENT: We're taking con law.

[Laughter]

DUNCAN: So, uhm, I tell you what, uh: When, uh, when inferior courts, how, however have to deal with issues that are gray areas, and they don't have their mandate from the Supreme Court or the precedent, uh, we have to sort of...

STUDENT: You mean like Roe? [unclear]

DUNCAN: ... like tea leaves... We have to figure out what to do.

STUDENT: [inaudible] ... in free states, Judge?

DUNCAN: And, so, there's kind of three different areas that my court deals with and there are areas where there's change in the law in the process — where there's a change in the law that's already occurred. And then, where there may be a change on the horizon, but it's really hard to tell, you know, I have to really work hard... [inaudible] to figure out what direction the law's going.

STUDENT: The direction against marginalized people?

DUNCAN: So, for example, uh in VST Holdings, the Occupational Safety and Health Administration, uh, issued a vaccine mandate.

STUDENT: Do you want people to die from Covid?

STUDENT: My grandma died from Covid!

DUNCAN: So, the vaccine mandate would cover two thirds of private employers in the United States, and was justified as an emergency workplace measure by OSHA.

STUDENT: So people wouldn't die.

DUNCAN: And so, the question was, for our court — there were challenges filed in every circuit — and the question was whether the statute actually covered this act of, of pretty dramatic authority from OSHA.

STUDENT: So people wouldn't die.

STUDENT: Six million people. Dead.

STUDENT: How is that different from the act of forcing people to get other kinds of vaccines?

DUNCAN: And so, we have to look at...

[Chatter]

DUNCAN: The depth of contempt...

STUDENT: It's disrespectful.

DUNCAN: ... that you are showing to me is appalling.

[Yelling]

[Banging]

STUDENT: Get over it.



DUNCAN: You are supposed to be in law school, where you are...

STUDENT: We owe you nothing.

DUNCAN: ... listening to other points of view.

[Indistinguishable yelling]

[Laughter]

DUNCAN: ... to your fellow students.

STUDENT: So answer the question.

DUNCAN: Instead you want to be in an echochamber where you only hear what you agree with. It's appalling.

[Groaning and yelling]

STUDENT: You know who can't listen? The people vilified by your decisions! ...queer and trans people killed by your decisions.

DUNCAN: I am so grateful. I am so grateful that I did not go to a law school...

STUDENTS: [inaudible] doubt you could get in here.

DUNCAN: ...where there's this echo chamber of contempt for people you don't agree with. It is astonishing to me. It is astonishing.

STUDENTS: Love that judicial temperament.

DUNCAN: It is astonishing to me.

[Inaudible]

DUNCAN: Do you actually think this is going to work in a court of law? Do you actually think...

STUDENT: We're not in a court of law. This is our school.

DUNCAN: Do you actually think that this is going to work with a client?

STUDENTS: You're not a client!

DUNCAN: Do you actually think... It won't. It will not work...

STUDENTS: We don't want you here. We don't work for you. You don't pay us. [Yelling]

DUNCAN: You are in an echochamber.

STUDENT: You can leave. You're in our school. You're literally appointed for life. You can leave.

DUNCAN: All you want to do is shut down people who don't agree with you.

STUDENT: You can leave!

DUNCAN: That's... That's...

STUDENT: Then shut down. You can leave! Why should we agree with you?

STUDENT: Just get out. Unoriginal. You have bad takes, dude.

DUNCAN: It is appalling. And obviously...

STUDENT: You are appalling us.

DUNCAN: Obviously, in this school...

STUDENT: You're such a victim!

DUNCAN: In this school, the inmates have gotten control of the asylum.

[Screaming]

[Inaudible]

DUNCAN: Who else do you treat this way when you invite people to the law school.

[Yelling]

STUDENT: If you can't handle it, you can leave.

STUDENT: This is our jurisdiction!

STUDENT: Free speech!

STUDENT: Criticism is a valid form of communication.

[Inaudible]

STUDENT: Don't you have a SuperCuts to get to?

[Laughter]

DUNCAN: And so in that case, that I was just talking about, my court said that Congress needed to pass a law that clearly gave OSHA the authority to do that.

STUDENT: They already did.

DUNCAN: Other courts disagreed with us — the sixth circuit in particular — and, as often happens, it went to the Supreme Court, which affirmed us, 6 to 3.

----- **10:00** -----

STUDENT: Because they are five Federalist Society justices on the Supreme Court.

DUNCAN: I'm hoping... [inaudible] you'll show me a little bit more respect... [inaudible]

STUDENT(S): No. No.

[Indistinguishable yelling]

STUDENT: You don't respect us, bro!

STUDENT: You don't respect us.

DUNCAN: Why would you? That's a good question. Because you should treat people the way that you want to be treated.

[Screaming]

STUDENT: Let's take away *your* rights.

DUNCAN: If somebody showed up to disagree with me...

STUDENT: We just did.

STUDENT: ... you couldn't get married ...

STUDENT: Judge! How is it respectful to misgender someone in an open court? I'd like to know.

[Banging]

DUNCAN: And so, in the secondary...

STUDENT: You can't answer it, because it wasn't respectful.

[Indistinguishable chatter]

[Inaudible]

DUNCAN: This is not...

[Indistinguishable chatter]

STUDENT: Free marketplace of ideas!

DUNCAN: If you had been on the receiving end of this...

STUDENT: We have been our whole lives!

STUDENT: I don't hate trans people.

STUDENT: You suck at cold calls.

STUDENT: ... be on the receiving end of your opinion.

STUDENT: Answer the question!

[Indistinguishable chatter]

STEINBACH: Actually, yes.

DUNCAN: Do you think this is an appropriate way to receive a guest? Do you think...

STUDENTS: Let her speak!

[Yelling]

STUDENT: Awww. Boo hoo.

STUDENT: You're censoring her speech.

STEINBACH: I am an associate dean, and I would love to answer your questions. Should I?

DUNCAN: [Inaudible]

STEINBACH: Yeah, and to this room, because you're asking to this room, as well. Is that ok?

[Indistinguishable yelling]

STEINBACH: ... because you are also talking to the room.

STUDENT: You asked for an administrator. She's an administrator.

STEINBACH: You just asked for an administrator. I'm here.

[Indistinguishable yelling]

STUDENT: Don't raise your voice at me!

[Yelling]

STUDENT: Don't raise your voice at a black woman! Don't raise your voice at a black woman.

STEINBACH: Can I say something? Is that ok?

DUNCAN: So, you've invited me to speak here, and I'm being heckled nonstop, and I'm just asking for an administrator to [inaudible].

STUDENT: Actions have consequences—

[Screaming]

STUDENT: She's right there! She works here! She's an administrator! Your racism is showing. Read the room! Did you know, women can be administrators! Genius.

[Indistinguishable yelling]

STUDENTS: Respect black women! Respect black women. If you want... [inaudible] like this, you've got to want to take it.

STEINBACH: Can I? Can I help?

STUDENTS: But do you want an echo chamber, what's the issue?

STEINBACH: Can I help?

[Applause]

DUNCAN: I guess I had prepared remarks, but...

STEINBACH: And I want you to... [inaudible].

STUDENTS: You can burn them.

STEINBACH: And I want you to [inaudible] your prepared remarks. Okay. I had to write something down because I am so uncomfortable up here. And I don't say that for sympathy. I'm just saying I'm deeply, deeply uncomfortable. I'm uncomfortable cuz this event is tearing at the fabric of this community that I care about and am here to support. And I don't know and I have to ask myself and I'm not a cynic to ask this: Is the juice worth the squeeze? Is this worth it?

[Students snapping fingers]

DUNCAN: Like I said, this is a setup.

STEINBACH: It isn't a setup. But for many people in this law school who work here, who study here and who live here, your advocacy, your opinions from the bench, land as absolute disenfranchisement of their rights and... [inaudible].

[Students snapping fingers]

DUNCAN: So you... Okay. Okay.

STEINBACH: Please let me finish.

STUDENTS: Let her finish! She's speaking! Let her finish! Let her talk!

DUNCAN: This is a total. This is a total setup.

STEINBACH: [inaudible] please...

STUDENTS: [inaudible] talking to you.

STEINBACH: And it impacts directly— they're people, humans, and their families, and their communities. And I'm uncomfortable, and it's uncomfortable to say this to you as a person. It's uncomfortable to say that for many people here, your work has caused harm. Has caused harm.

[Students snapping fingers]

STEINBACH: And I know that must be uncomfortable to hear. I know that must be ...

DUNCAN: [Inaudible]

STEINBACH: Let me please finish. And I want to give you space to finish your remarks too, Judge Duncan. I'm also uncomfortable because many of the people in the room here I've come to care for and in my role at this university my job is to create a space of belonging for all people in this institution. And that is hard and messy and not easy and the answers are not black or white or right or wrong. This is actually part of the creation of belonging. And it doesn't feel comfortable and it doesn't always feel safe. But there are always places of safety. And there is always an intention from this administration to make sure you all can be in a place where you feel fully you can be here, learn, grow into the amazing advocates and leaders and lawyers that you're going to be.

STEINBACH (CONT): I'm also uncomfortable because it is my job to say: You are invited into this space. You are absolutely welcome in this space. In this space where people learn and, again, live.

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I really do, wholeheartedly welcome you. Because me and many people in this administration do absolutely believe in free speech. We believe that it is necessary. We believe that the way to address speech that feels abhorrent, that feels harmful, that literally denies the humanity of people, that one way to do that is with more speech and not less. And not to shut you down or censor you or censor the student group that invited you here. That is hard. That is uncomfortable. And that is a policy and a principle that I think is worthy of defending, even in this time. Even in this time. And again I still ask: Is the juice worth the squeeze?

DUNCAN: What does that mean? I don't understand...

STEINBACH: I mean is it worth the pain that this causes and the division that this causes? Do you have something so incredible important to say about Twitter and guns and COVID that that is worth this impact on the division of these people who have sat next to each other for years, who are going through what is the battle of law school together, so that they can go out into the world and be advocates. And this is the division it's caused. When I say "Is the juice worth the squeeze?" That's what I'm asking. Is this worth it? And I hope so, and I'll stay for your remarks to see, because I do want to know your perspective. I am not, you know, in the business of wanting to either shut down speech, because I do know that if they come for this group today, they will come for the group that I am part of tomorrow.

STUDENT: Mmhmm. They already did.

STEINBACH: I do believe that. And I understand why people feel like the harm is so great that we might need to reconsider those policies. And luckily they're in a school where they can learn the advocacy skills to advocate for those changes. I hope that you have something to share with us that we can learn from. I hope you can learn too while you're in this learning institution.

[Students snapping fingers]

STEINBACH: I hope you can look through the spectacle and the noise to the people holding these signs. The people who are here to learn. The people just like you who absolutely are fighting for, working for freedom. Just to be free, to be themselves. That is what they are here for. They are here because they feel harmed not just by your speech. If it was just words that would be one thing. You have authority, and you have power to make decisions that impact the lives of millions.



STUDENTS: Mmhmm. [snapping fingers]

STEINBACH: And I hope if you learn anything that you can listen through,

DUNCAN: [Inaudible] the snapping.

STEINBACH: If you can listen through your partisan lens, your hyper-political lens and just look and see human beings who are asking you to take care, and like all guests on our campus, we ask that you come with good intentions and respect. And I do want to hear your remarks, and I do want to say thank you for protecting the free speech that we value here of our speakers and of our protesters, and I want to remind you all of one thing: I chose to be here today. You all chose to be here today. Many people go before Judge Duncan who do not necessarily choose to be there.

[Students snapping fingers]

STEINBACH: And they have to listen to everything he says. Literally thousands of people. You have a choice. You do not need to stay here if this is not where you want to be. You can stay here if this is where you want to be right now. But make that choice. If you do choose to stay here, I do think we should give space to hear what Judge Duncan has to say, and I hope that also you will take the question and answer and comments section to say what you need to say and ask the questions you need to ask. I'm really grateful to be in this institution. I look out and I don't ask, "What is going on here?" I look out and I say, "I'm glad this is going on here."

[Applause]

STUDENT: I will now ask that half the folks walk out in protest and the rest of us, lets tone down the heckling slightly so he can get to our questions, uh, which we so very much want to hear the responses to

STUDENT: Thank you... [inaudible]

[Applause]

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STUDENT: Leave your signs in front of him.

STUDENT: Feel free to fill in the front.

[Laughter]

DUNCAN: It's upside down.

STUDENT: So are your views.

[Inaudible]

DUNCAN: It's supposed to be upside down? It's supposed to be upside down?

STUDENT: Can you read it?

[Inaudible]

DUNCAN: Um this is an appalling and despicable... [inaudible]

STUDENTS: One more time, one more time.

[Inaudible]

STUDENT: Did you want us to sit quiet?

STUDENT: Finish your remarks.

DUNCAN: A student group like any other student group on this campus invites a speaker. I'm sure the groups that are represented here do it all the time — they invite speakers. Nobody treats your speakers this way, why are you treating their speaker this way?

STUDENT: Twitter, guns, Covid.

STUDENT: Our speakers don't tell us our lives aren't worth anything.

STUDENT: Our speakers aren't funded by the Koch Brothers.

STUDENT: Our speakers don't take away voting rights from black people in Louisiana.

STUDENT: Ooh, great point, great point.

DUNCAN: That is a poor point. That's a really great point, when did I do that?

STUDENT: Can we get the case for you?

DUNCAN: Yeah please, please you go right ahead. Cite the chapter and verse of how I took away voting rights from people in Louisiana?

STEINBACH: Do you want to get to your prepared remarks?

DUNCAN: Chapter and verse. You just made an accusation, you want to be a lawyer? Fine. When did I take away voting rights from people in Louisiana? You made a specific accusation. Which one is it?

STUDENT: She's going through.

DUNCAN: Which one is it? Are you not prepared? You show up when a federal judge shows up to your law school and you say, "You take away voting rights..." [inaudible]

[Inaudible shouting]

STEINBACH [approaching Duncan]: Judge Duncan, do you want a moment to be able to compose yourself to give your prepared remarks?

DUNCAN: So, you invite a speaker on campus.

STUDENT: We didn't invite you.

DUNCAN [to Steinbach]: I've heard what you have to say.

STUDENT: That was very disrespectful.

STUDENT: Don't dismiss her. Please don't dismiss a black woman.

DUNCAN: Oh, wow! Because, why, because you invite a speaker on to campus, and then you gang up and heckle them to death.

[Shouting]

DUNCAN: And then you invite an administrator to give a staged remark

[Shouting]

STUDENT: You asked for an administrator!

DUNCAN: What is this, like a struggle session?

[Shouting]

STUDENT: Fusilier v. Landry

[Inaudible]

STUDENT: Finish your remarks.

STUDENT: Fusilier v. Landry

STUDENT: Yeah finish your remarks

STUDENT: Do you want me to read it?

STUDENT: Yeah, read it.

DUNCAN: [Inaudible]... a dramatic reading of it, that'd be awesome.

STUDENT: African American voters and the Claiborne Parish NAACP filed suit in 2014 to challenge the electoral method for Louisiana in the 32nd judicial district, blah blah blah. They asserted the at-large elections for the... [inaudible]

DUNCAN: Was I even on the panel?

STUDENT: Yeah it was Higgenbaugh, Jones, Duncan, and Jones did the opinion.

[Inaudible chatter]

STUDENT: Do you remember?

DUNCAN: Awesome. What I don't remember is taking anybody's vote on the basis of race.

STUDENT: Of course you don't.

STUDENT: Because it doesn't matter to you.

DUNCAN: So, you've made zero points whatsoever.

[Inaudible shouting]

DUNCAN: Just to be clear, what's going on here is: A student group invites a speaker. Ok, yeah, I happen to be a federal judge. It doesn't really matter. You invite a speaker. We have this absurd, whatever the heck that was outside.

STUDENT: A protest, baby!

STUDENT: Exercise of First Amendment rights

DUNCAN: What do they call it?

STUDENT: A protest.

[Inaudible]

DUNCAN: Great. And then they file in here and they heckle you relentlessly, and then an administrator stands up and says... [inaudible]

STUDENT: Because you asked her to!

[Shouting]

DUNCAN: "I just care about everybody. I just care about everybody. I want everybody to feel welcome or some such thing."

STUDENT: You're here!

[Shouting]

DUNCAN: [Inaudible] ... everybody who doesn't agree with you is laughable. And everybody knows it. You know it, the Federalist Society knows it, everybody knows it. You don't want to hear a single solitary thing [inaudible]

STUDENT: What interest do you have in what we have to say?

STUDENT: Finish your remarks Judge. We're giving you a chance.

STUDENT: Everyone just hold on, and let him finish his remarks.

DUNCAN: Do you think that's going to work in court?

[Shouting]

DUNCAN: Is this a law school?

STUDENT: Yeah! This is our jurisdiction.

DUNCAN: This is not a jurisdiction, this is a law school. How absurd. Do you... you're supposed to be learning to be lawyers.

STUDENT: We are, that's why we're questioning you.

DUNCAN: What court are you going to go in and act like this?

STUDENT: We're not a court. We're a school.

STUDENT: There's no jurisdiction.

ADMINISTRATOR: If we could just let him speak about Covid, guns, and Twitter...

STUDENT: He doesn't want to.

[Inaudible]

STUDENT: He has not said that for the past ten minutes.

STUDENT: That's not what he wants to talk about.

ADMINISTRATOR: And then we will have a Q and A, so just let him speak. And I'm [name] the director of engagement, across the street.

DUNCAN: Why would you subject anybody to this treatment? Why do you... [inaudible]

[Shouting]

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STUDENTS: Trigger!

DUNCAN: Why would you expect someone to come into this environment... [inaudible].

STUDENT: We asked the Federalist Society to cancel this event.

DUNCAN: Why do you want to cancel people's speech?

[Inaudible chatter]

DUNCAN: These are not responses. This is infantile.

STUDENT: You are infantile, I agree!

[Inaudible]

DUNCAN: This is ridiculous. [To administrator who approached him] You are ridiculous. I cannot believe that you would invite someone here and allow them to be treated this way.

[Inaudible]

STUDENT: Hey, leave him alone! Take it out on us!

[Inaudible]

DUNCAN: Well you've got it up — you've got it the right way up now, congratulations.

STUDENT: Yeah, we know you can't get it up.

STUDENTS: This is so embarrassing. He's literally having a mental breakdown.

DUNCAN: Do you think this is an appropriate way...

STUDENT: Have you tried crying about it?

DUNCAN: ... to treat invited speakers at your school?

STUDENT: Don't come back.

DUNCAN: You're in administration here?

STUDENT: Why are you berating him?

DUNCAN: Do you think this is...

STUDENT: Do you feel better now?

STUDENTS: He was trying to help you.

STUDENT: He's your only ally, literally.

ADMINISTRATOR: [inaudible] We'll take a two minute break

DUNCAN: For what?

ADMINISTRATOR: Because I want them to calm down, so you can say your words.

DUNCAN: So I can say my words.

ADMINISTRATOR: Yes, your prepared remarks.

DUNCAN: He wants me to say my words.

ADMINISTRATOR: Yes, I want to hear what you have to say.

[Inaudible chatter]

STUDENT: Isn't that what you wanted? Like...

DUNCAN: My words. He wants me to say my words. What has he done wrong to me? He is aiding and abetting this infantile... [inaudible].

[Inaudible yelling]

DUNCAN: [inaudible] ...can't believe you treat your fellow students this way.

STUDENT: I can't believe you treat... [inaudible]



DUNCAN: [Inaudible]... your fellow students at this law school. And if you got treated this way by them, you'd want to get them kicked out of law school.

[Inaudible]

DUNCAN: Oh yeah, really? When's the last time a member of the Federalist Society showed up at one of your speeches and heckled your speaker? When? Anybody?

STUDENT: We're not attacking their rights.

STUDENT: Alright everybody. Everybody.

DUNCAN: When is the last time the Federalist Society showed up at one of your speeches and did this to your speaker? Anybody?

STUDENT: Okay let's just let him finish his rant in complete silence so he can get that out and it can go into the newspaper or whatever. Just pointed silence until the Q&A.

STUDENT: Thank you.

DUNCAN: Um. You know what? Fine. Go to the Q&A.

[Laughter]

STUDENT: [Inaudible]... trans people. We listen to trans people.

DUNCAN: If you think. If you think that I'm going to stand here and answer a bunch of hostile, ridiculous, when-did-you-stop-beating-your-wife type questions...

STUDENTS: Whoa! Whoa!

STUDENT: What's that all about?

[Inaudible chatter]

DUNCAN: You people. I mean...

STUDENTS: You people? [inaudible]

DUNCAN: I mean you went to college.

STUDENT: And I don't think domestic violence is funny.

STUDENT: Yeah, really.

DUNCAN: That's what I mean. You have no sense of humor?

[Gasps]

DUNCAN: You've never heard...

STUDENTS: I was actually a victim of domestic violence. No. I don't think it's funny.

DUNCAN: You've never heard that expression? You've never heard that expression?

STUDENT: No. Because I don't think it's funny.

DUNCAN: You don't know what a question like that is?

STUDENT: Do you think that it is appropriate for you as a judge on the fifth circuit court, to speak...

DUNCAN: I think this entire thing is a joke.

STUDENT: I think [inaudible] is a joke!

STUDENT: Then leave!

[Inaudible]

DUNCAN: Um, somebody who actually wants to ask a question about something... [inaudible]

STUDENT: She would like to ask a question. She has a question.

STUDENT A: So, um, there's been some scholarship about Abbot [indecipherable] ... characterizes, uh, you know, common-good constitutionalist opinion. Would you object to that term, would you, you know, would you...

DUNCAN: I mean, I-I don't—I don't like...

[Audience sighs]

DUNCAN: I don't adopt ...academic theories is sort of what guides, what guides my decisions. That decision is just trying to apply Jacobson vs. Massachusetts is all about.

STUDENT A: Sure.

DUNCAN: Which is an old Supreme Court opinion written by the first, uhm, Justice Carlton. I mean, it's still on the books. It has to do with the state ability to have, to require vaccination. So that's what that was.

STUDENT A: Sure.

DUNCAN: What's your question?

STUDENT B: You said after gay marriage was upheld by the Supreme Court that the opinion was, quote, "an abject failure," that, quote, "it imperils civil peace," and that the decision, again, I quote, "raises the question about the legitimacy of the court." Do you believe...

DUNCAN: So did the Chief Justice in dissent.

STUDENT B: Still part of my question — I haven't asked it yet. Do you believe that civil peace indeed has been imperiled by that decision?

DUNCAN: Yes, I do.

STUDENT B: And can you tie the imperiling directly to the fact that queer people can get married?

DUNCAN: Yeah, I think that civil peace has been imperiled by this decision as evidenced right here.

[Laughter]

STUDENT: People aren't allowed to be happy?

STUDENT B: Is speech not peaceful?

DUNCAN: No, because I show up at an event and because I have a difference of opinion on something when I was a lawyer—

STUDENTS: Difference of opinion?

DUNCAN: A difference of opinion. Yes, a difference of opinion. You haven't heard that? That's what you study at real law schools.

STUDENTS: This is a real law school. Just because you couldn't get in doesn't make it real.

[Laughter]

STUDENT: Light him up!

DUNCAN: I didn't apply. Uhm, when people have differences of opinion and a judge shows up at school and gets treated like this, yeah, I'd say civil peace has been imperiled.

STUDENT: And that's because of gay marriage?

DUNCAN: Next question.

STUDENT: Answer the question.

STUDENTS: If you're so brave, answer the question.

----- 30:00 -----

DUNCAN: Next question.

STUDENTS: Is it because of *Obergefell*?

DUNCAN: Next question. Yeah.

STUDENT C: I'm interested in what you see as the future of education. Are schools like Stanford going to collapse and is the answer going to be that smaller schools rise up...

DUNCAN: I assume schools like this are very, very wealthy and well-funded and well-endowed, and of course they won't collapse, they'll keep going and, and producing... The question that I have is what is the cast of mind that the students that it wants to produce. If this... I hope that this isn't representative of the entire student body.

STUDENT: It is.

STUDENT: This room has a capacity of 120, so actually this is like, kind of about a fifth of our school.

DUNCAN: Okay well, so four-fifths maybe are interested in, in...

STUDENTS: They're not here.

DUNCAN: Yeah, I wonder why they're not here. Why they'd want to be a part of this circus. Right? Isn't that the point of this? I think, what is the point of this? I think one point of this is to intimidate other people.

STUDENTS: Oh yeah.

STUDENTS: You feel intimidated?

DUNCAN: [Inaudible] ... one, one important point of it. Why would a student who may agree with you on [indecipherable] or maybe doesn't agree with you, but why would a student want to show up at an event like this with this kind of atmosphere, right? So the idea is to intimidate or even to silence. Is it to erase their existence? Maybe so. So what, how does it feel, you complain about people like me, or judges like me, or lawyers like me, or whatever. You complain about them denying your rights, and erasing your existence, and whatever other buzzword you want, and then you turn right around and do the same thing...

STUDENTS: How is it the same?

DUNCAN: ...to somebody else.

STUDENT: We're not judges.

DUNCAN: It's the same damn thing and you do it to somebody else.

STUDENTS: [Inaudible] ... the same rights.

DUNCAN: What does it feel to be a complete hypocrite? That's what you are...

STUDENTS: You have a lifetime appointment to the federal judiciary. This isn't about you.

DUNCAN: ...you are a bunch of hypocrites. You are not interested in actually having a civil discussion with anybody. You just want to shut them down. What's your question?

STUDENT D: Hi. Um, okay, so this is going to be super respectful, and not... it's a genuine inquiry, so apologies for that.

DUNCAN: You know... great.

[Chatter]

STUDENT D: Hi. Sorry, let me finish. I apologize.

DUNCAN: Do you? What-what are you doing? What are you doing?

STUDENT: I'm trying to ... [inaudible]

DUNCAN: You're standing there with this sign: 'Fed Suck'. Not particularly clever. Not particularly clever. You stand up. What's the point?

[Inaudible yelling]

STUDENT: I think she got what she wanted with the sign.

STUDENT D: So to my understanding...

STUDENT: You do not respect women. Talk to her.

DUNCAN: Oh, give me a break. Give me a break, I don't care whether she's a woman or not. She's holding a stupid sign up in my face.

[Yelling]

DUNCAN: Is that impossible for you to understand? What's your question?

STUDENT D: This is actually a question that is specific to...

[Inaudible yelling and laughing]

DUNCAN: I mean, what the f-... Who...

STUDENTS: Is she invisible?

[Inaudible yelling, laughing, and chatter]

STUDENTS: I don't think he knows what that is. Do you know what that is?

DUNCAN: What-what's your problem, man?

[Laughing, yelling, chatter]

DUNCAN: How could you show up and flash that sign in my face? I mean that is infantile.

[Sign reads: "Duncan can't find the clit"]

[chatter and laughter]

STUDENTS: That's iconic.

DUNCAN: That's like a 14-year-old, are you 14 years old? Are you 14 years old?

STUDENT: Are you 96?

DUNCAN: No.

STUDENT: Because to me you look like that. [Laughing]

DUNCAN: But...what?

STUDENT D: May I ask my question?

[Chatter]

STUDENTS: But can you find the clit? Can you find it? Can you find the clit?

DUNCAN: I mean, seriously. Are you a student here?

[chatter]

STUDENTS: Oh, okay, okay, okay. Yeah! Okay guys, okay guys.

DUNCAN: No, I'm sorry. I was just distracted by the stupid, infantile 14-year-old sign. What's your question?

STUDENTS: Yeah, you are distracted.

STUDENT D: Sure. So, hi, um...

DUNCAN: Hi.

STUDENT D: I am from Texas...

DUNCAN: Great.

STUDENT D: I am also—I was working in Houston this summer. I'm like native to south Texas. To my understanding, you were the judge, or maybe one of the judges, that you know, allowed the Texas abortion ban to move forward. Let me finish my question. Um. So I am a woman from Texas. I have been raised (Inaudible). About one-third of the undergraduate women at my university reported being sexually assaulted by the time that they graduated. Actually, it was around 48%, about a third nationally of women will experience sexual violence. And should that result in a pregnancy in the state of Texas, you would no longer have the ability to end that pregnancy. And so how am I, as a woman from Texas, to have access to citizenship or autonomy if I am incapable of making choices about my own body and my future existence when the consequences of childbirth and of sexual violence could mean, um, death frankly from giving birth. We have pretty high, um, you know, maternal mortality in the state of Texas, how am I to have access to citizenship...

[Students snapping fingers]

DUNCAN: What's with the creepy snapping? I mean, what is that?

STUDENTS: Answer the question. Move on. You're creepy.

DUNCAN: What is it you're—I mean, do-do you talk to anybody that way?

STUDENTS: [inaudible]

Duncan: Anybody else?

[Inaudible arguing]

DUNCAN: Fine, fine, fine. I can't. You made a speech, great, congratulations.



STUDENT D: The crystalized version of my question is...

DUNCAN: What?

STUDENT D: In a society where women experience severe sexual violence- sexual violence that often leads to pregnancy, how can women have access to citizenship and be treated the way they want to be treated if they have no access to their own reproductive rights? That's my question.

DUNCAN: Great. That's like a long speech. Um, ok you-you mentioned a case that was in [inaudible] the case that was on the panel had nothing to do with any of that. Okay, it had to do with who can you sue to try to enjoin the law.

----- 35:00 -----

DUNCAN (cont.): Okay, it had to do with a legal doctrine. Okay. The law was set up so that private people could bring the lawsuits- Private people brought the lawsuits and they were shut down by the state courts in Texas. So that's your- that's the answer to your question about access as far as that law goes. The Texas state courts shut that law down. In federal court we were dealing with a very specific legal issue, and we went up and got affirmed 95% by the Supreme Court. That's how courts work. Courts don't address questions like that. I mean that's a very nice speech, but courts don't address like speeches, courts address legal issues. And that was a legal issue and it went up to the Supreme Court and they said "Well you're 95% right but maybe you could sue these people" so they kicked it over to the Texas supreme court and said "well can you sue those people?" and the Texas supreme court said "no you can't sue those people either". So that didn't sound as compelling as the speech you just gave, but that's what federal courts do. Ok? And by the way, the people who address large scale questions like that are legislatures. Legislatures. The congress. The legislatures of states. People acting together to make decisions on difficult issues. But you're being- evidently some of you- are being taught in law school that it's all up to the 'super wise solomonic judges' to just sort of make decisions. Well you know what I don't ascribe to that particular view that you just shared. We have other branches of government. We have state governments who do this, we have local governments who do things. That's an answer to the question.

STUDENT D: Do you ever think about the ethical implications of your decisions? Or no. Is that beyond the scope of your work?

DUNCAN: That- you know what, remember when I said the wifebeater question, that's a wifebeater question. That's, that's that's, that's where [inaudible scream from audience] Yeah I am, I'm doubling down on it, I'm quadrupling down on it because you are willfully misunderstanding what I'm saying.

STUDENT D: No, I know what I wifebeater question is

DUNCAN: Great, so you know it's just a loaded question

STUDENT D: No it assumes the facts not the ethics,

DUNCAN: Yes, thank you

STUDENT D: Which I didn't do, I didn't assume any facts. I asked do you think that considering the ethical implications of your decisions is outside the scope of your work?

DUNCAN: Do you mean- I don't understand the question- do you- do you mean the rules of judicial ethics?

STUDENT D: I mean when the -

DUNCAN: The rules of judicial ethics?

STUDENT D: You know as well as I do, that the courts weigh different interests all the time. That they all the time consider experiments among a range of different required considerations. How does that factor into your ethical considerations as a judge?

DUNCAN: Um so, so let- let me see if I can unpack this. Judges are ruled by rules of ethics; there are codes of ethics. Do we consider them? Oh you bet we do.

STUDENT D: I don't mean that.

DUNCAN: Oh you don't mean that? You mean do I sit back and sort of say, well, what is fair, what is fair, what do I think is fair? The answer is judges aren't supposed to engage in some sort of cosmic fairness balancing because we have elected officials to do such things.

STUDENTS: Wait? A judge's job is not to decide what's fair? [mumblings from the audience]

DUNCAN: We have elected officials. I'll tell you when judges- if there was a law that said "hey judge- maybe- maybe some common law court in some state somewhere is addressing some sort of equitable dispute saying, I don't know, a contract dispute, something like that. Yeah, judges might engage in some sort of equitable balancing. But something tells me you-you're asking a question like 'well is there some sort of cosmic ideal of fairness that you consider?'

STUDENT D: No my question is-

DUNCAN: And the answer is no.

STUDENT D: In civil rights litigation, constitutional litigation, when you have to balance the interest of the states against the interest of the individual, that's the kind of balancing [inaudible].

DUNCAN: Can you give me a specific example? I know that there are legal doctrines that sort of look like that.

STUDENT: Yeah.

DUNCAN: So give me a specific example.

[Mumbling]

DUNCAN: She's asking a question and you just interrupted

STUDENT D: I'm actually ok with this

DUNCAN: Oh great you're ok with that, my goodness. What did I miss? By going- by not going to law school here? Oh my goodness this is so like invigorating to have this kind of just free for all nonsense

STUDENT: You moved to Q and A!

STUDENT: I just want to say she is a brilliant student... [inaudible]

DUNCAN: Ok great is that a question, can you give me a specific example of some case?

STUDENT D: A specific example of a civil rights case?

STUDENT: Matthew versus Eldridge

DUNCAN: Ok great great! Matthew versus Eldridge thank you very much. Procedural due process. What do we have to consider in order to, what was it, take away benefits I think? Yeah so the court considered sort of the right to be heard, the right to notes, ok sure [inaudible]. Ok great, thanks. Next question?

STUDENT E: Uh judge, since you refuse to call [inaudible] Katherine Nicole Jett by her name and pronouns, may we call you Kylie Duncan and She/Her?

DUNCAN: You can call me whatever you want

[Students laughing]

DUNCAN: Whatever. Yeah ok great super.

[inaudible]

DUNCAN: Ok next question?

STUDENT: Why did you refuse to call that transgender litigant by her-

DUNCAN: You know, I wrote an opinion on it, go read it.

STUDENT: We did read it.

DUNCAN: Next question? And maybe you're not persuaded. Super.

STUDENT: It didn't make sense. Can you explain it?

DUNCAN: Super. Great, good. Next question.

STUDENT F: I did read it, just before this, and I'm confused how that squares with what you said about being respectful of people when you're talking about like [inaudible].

----- 40:00 -----

DUNCAN: Yeah I thought it was perfectly respectful. I gave reasons. I gave reasons, that's what judges do. I gave reasons.

STUDENT F: Slippery slope argument about like using a bunch of different pronouns and what could happen if you chose a specific course.

DUNCAN: Yeah, we're talking about, yeah you write your opinion. Next question

STUDENT F: But you didn't answer my question which is like why did you think that you couldn't be respectful to one litigant without somehow causing damage or offense.

DUNCAN: For the reasons that I gave in the opinion. Thanks. Next.

STUDENT: How about you give them to us?

DUNCAN: Next question. How about you ask me a question.

STUDENTS: We did.

[Inaudible arguing]

DUNCAN: Okay, great. Yeah, any next question?

STUDENT: How about you give them to us is the next question. You're a coward, man.

DUNCAN: Alright, well look. Thanks. Thanks to the Federalist Society for inviting me.

STUDENT: Whoo!

DUNCAN: As for as for the rest of you people.. Yeah, whatever, bye.

[students say bye]

[applause]

DUNCAN: Unbelievable.

**--- SHORTLY AFTER THE SPEECH, WITH DUNCAN STILL AT PODIUM ---**

STEINBACH: [inaudible]

DUNCAN: This is unbelievable. I cannot believe. From your talking.

STEINBACH: [inaudible]

DUNCAN: No, no, it's genuine... [inaudible]. It's genuine... [inaudible].

STUDENTS: You come in here waiting for a male administrator. You don't respect Dean Steinbach. It's disgusting! It's disgusting!

DUNCAN: Yeah. You are an appalling idiot.

STUDENTS: It's disgusting!

DUNCAN: You are an appalling idiot.

STUDENTS: You're calling her an idiot?

STUDENTS: Thank you. Thank you for your opinion. It matters. It takes so long to like find the opinion because it's so far down on the list of the recent ACLU... [inaudible].