

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.

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.”

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 — . 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.

FIRE researchers generated this transcript from the [audio posted](#) by journalist David Lat on his [Substack](#). Much of this audio ~~was~~

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,

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]

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: 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.
[MUSIC]

[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: 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...

If

STUDENTS: We don't want you here. We don't work for you. You

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.

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 -

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

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

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.

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 incredibly 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 advB

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.

[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?

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.

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]

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

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STUDENT: ...city of 120, so actually this is like, kind of about a fifth of our school.

DUNCAN: ...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

STUDENTS: Oh yeah.

STUDENTS: You feel intimidated?

STUDENTS: Ip

about
not W R well,

want

they

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

[Inaudible yelling, laughing, and chatter]

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

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

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.

DUNCAN (cont.): Okay, it had to do with a legal doctrine. Okay. The law was set up so that

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.

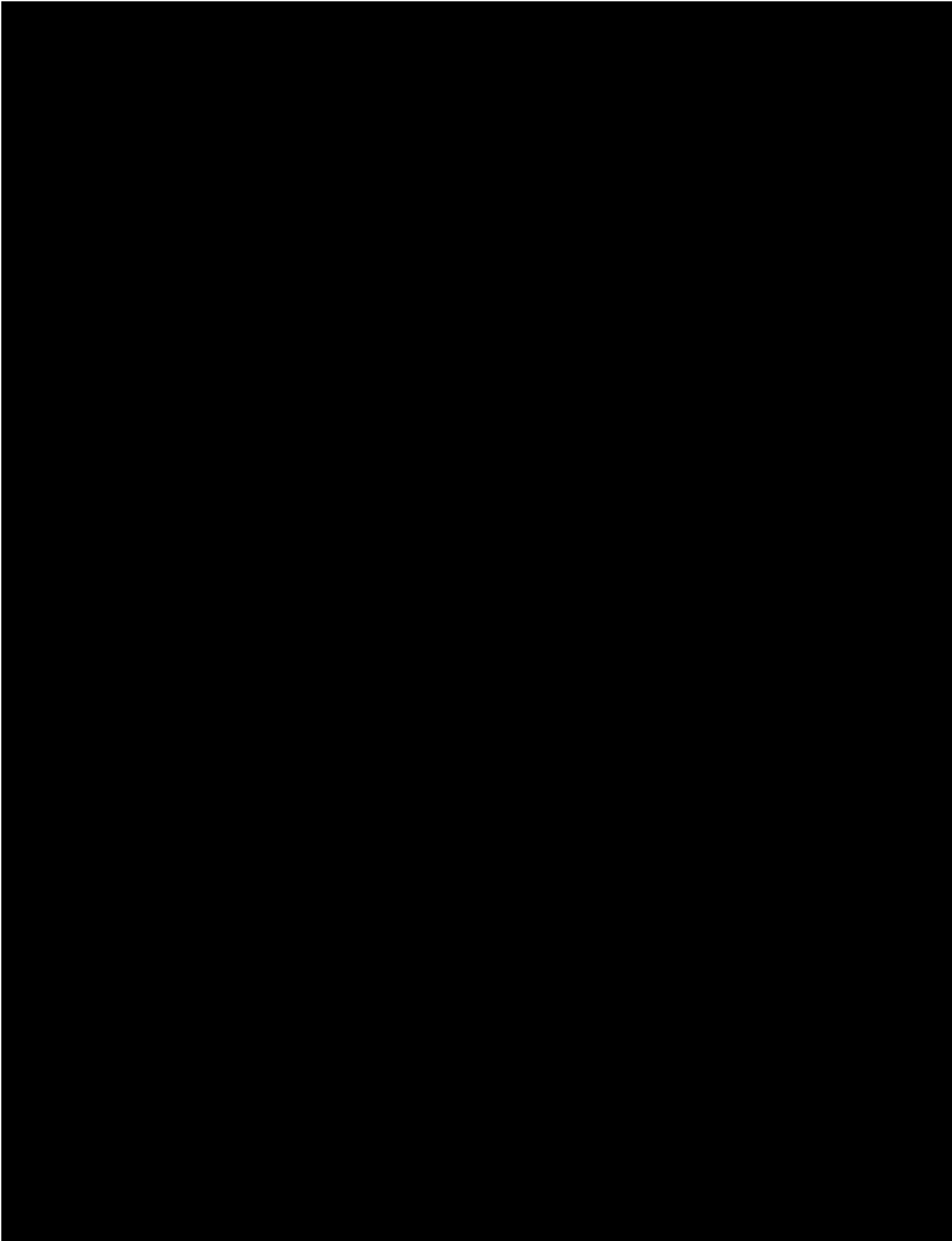
STUDENT D: I don't mean that.

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: 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].

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 ^{me} different pronouns and what could happen if you chose a specific course.

~~ESAC~~
DUNCAN: Yeah, we're talking about,

STUDENT: How about you give them to us?

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

DUNCAN: Yeak.

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.

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].