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**Thinking Clearly About Speaking Freely – Part 19:
Law School Rankings Should Include a Free Speech Criterion**

by

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Last year, more than a dozen of the nation's top-tier law school schools announced that they would no longer provide information to *U. S. News & World Report* for its annual ranking of law schools. Then, early this year, *U. S. News* published a [letter to law school deans](#) revealing that it was tweaking certain criteria used to compile the rankings.

While retaining traditional indicators such as LSAT scores, acceptance rates, and student-faculty ratios, *U. S. News* modified some criteria. For example, it's going to give less weight to how educators and others rate the reputation of law schools and alter the way it calculates bar exam passage rates.

In its letter to law school deans, *U. S. News* touts its rankings as a way "to inform the public, to hold powerful institutions accountable and to foster a free and fair exchange of ideas." Promising to continue to work with academic leaders and others to further refine the metrics, it concludes

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by stating what should be obvious: "Our core mission is to help prospective law students make the best decisions for their educational future."

Here's an idea that would help *U. S. News* achieve that mission: Include a factor in its ranking criteria that considers the law school's receptivity to protecting free speech. Call this the "Free Speech Protection" criterion.

Considering today's threatening Cancel Culture environment, which is the subject of this ongoing series of "[Thinking Clearly About Speaking Freely](#)" essays, I'm sure many prospective law students would welcome inclusion of a free speech assessment in the ranking criteria. Given the profession to which they aspire to enter, they should.

Regarding the education of law students, and the relationship of respect for free speech to legal training, the March 22, 2023, [statement to the Stanford Law School community](#) by Jenny Martinez, the law school's dean, is sure to become a foundational document. Dean Martinez's statement followed the shameful disruption – public "shaming" the disrupters happily call it – of Kyle Duncan, a federal judge, as he attempted to deliver an address at the law school. Amidst an eruption of jeers and heckling – the disrupters disagree, obviously, with some of his opinions – Judge Duncan was unable to finish delivering his remarks. To add insult to injury, Tirien Steinbach, the Associate Dean for Diversity, Equity and Inclusion (DEI), who attended the event, acquiesced in the disruption, if not actively encouraged it.

So, Dean Martinez's statement is a good place to think about how to consider a school's free speech environment in the law school ranking criteria. First, she highlighted Stanford's Statement on Academic Freedom, adopted in 1974 by the faculty Senate, which states: "Expression of the widest range of viewpoints should be encouraged, free from institutional orthodoxy and from internal or external coercion."

Second, responding to the disrupters' claim that in silencing Judge Duncan they were simply exercising their own free speech rights, Dean Martinez emphasized that freedom of speech "does not protect a right to shout down others so they cannot be heard."

Third, Dean Martinez made clear that the conduct of Associate Dean Steinbach, the DEI officer present at the event, was improper because she inserted herself into the debate by criticizing Judge Duncan and suggesting he reconsider what he wanted to say. Dean Martinez declared pointedly that at future events "the role of any administrators present will be to ensure that university rules on disruption of events will be followed."

Fourth, she reminded the law school community of what should have been understood all along, that debating positions in a civil manner with people who often hold different perspectives, including regarding controversial public policy issues, is the "very essence of legal work." In other words, civil discourse "is not just positive for our community, constituted as it is in difference, it is a professional duty."

Finally, Dean Martinez announced the law school would be holding a mandatory session for students on the topic of freedom of speech and the norms of the legal profession.

With Dean Martinez's [letter](#) in mind, it's not difficult to imagine factors that might be considered in formulating a "Free Speech Protection" criterion, such as: Does the law school have a policy in place stating that it will not tolerate disruptions of events by those who disagree with a speaker's views and that violators will be subject to appropriate disciplinary action? Does the policy state that all the school's administrators have an affirmative duty to act in ways that prevent the disruption of events? Does the school require student attendance at educational sessions regarding free speech and the relationship of free speech protection to fulfilling a lawyer's professional obligations? Has the school appointed a senior official with responsibility for ensuring compliance with the school's free speech protection policy?

Of course, components like these which might comprise a new Free Speech Protection criterion would need to be refined, and, indeed, like other *U.S. News* criteria, would be subject to ongoing review. But my principal point is that – after what happened recently at Stanford to Judge Duncan and what now regularly occurs at other schools – I expect many prospective students would welcome having more information regarding a school's policies to protect free speech.

And perhaps including a free speech criterion in the rankings would spur more schools to adopt free speech-friendly policies – and to enforce them.

In earlier parts of this ["Thinking Clearly About Speaking Freely" series](#), I've said that now, more than ever, Americans need to rekindle an appreciation of our Constitutional Culture, of which free speech has always been an integral part. Law schools must play a crucial role by teaching their students about the importance of protecting free speech.

That's why *U. S. News* should include a Free Speech Protection criterion in its law school rankings.

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