

October 13, 2022

Dean Heather K. Gerken  
Yale Law School  
127 Wall Street  
New Haven, CT 06511

Dear Dean Gerken,

Thank you for the invitation to meet to discuss the state of freedom of speech and intellectual discourse at Yale Law School. We accept and look forward to scheduling the panel discussion at your earliest convenience. In particular, we ask that the event take place sooner than the proposed date of January 17, 2023. But if that is the earliest you are available, so be it. In the meantime, we take this opportunity to further flesh out the concerns we've recently expressed about the environment at Yale Law School.

1. Our nation is founded on a simple principle: As citizens, we can agree to disagree on any number of issues, yet still work together and achieve remarkable success as one great country. The Federalists and Anti-Federalists battled over this fundamental point: Can we assemble as one large nation, and enjoy the countless economic, domestic security, foreign policy, and other benefits that flow from achieving scale? Or is a republic of this magnitude destined to fail due to balkanization and strife, because people are unable to see past their conflicting positions? Is the only way our republican form of democracy can work through small, homogenous communities?

It is our firm belief that America is the greatest nation on earth. A principal reason is that our Founders wrote a Constitution premised on respect for our nation's diversity of viewpoints. We would respect community differences and local rules. We would have a national government, but it would be limited. We would do at the national level only what has to be done at the national level. And we'd leave everything else to state and local governance, to reflect the great diversity of our nation.

In sum, our Founders understood that, in such a large country, disagreement is inevitable. But we would tolerate our diverse viewpoints and encourage interaction and discourse in the face of our differences.

2. Thank goodness the Federalists won. But we worry that the Anti-Federalists may soon be proven right, because the next generation has forgotten what makes America unique. We're no longer content to engage with one another in the political sphere—we expel people from social and economic life. We live in a culture of cancellation, not

conversation. We don't talk—we tweet. We don't disagree—we destroy. This is not just wrong. It's antithetical to who we are as a nation.

We've stopped teaching students the fundamental importance of respecting diverse viewpoints. That appears to be the case at various universities across America, but especially at Yale. Yale not only tolerates the cancellation of views—it practices it.

Moreover, these campus trends are now spilling over to the country at large. When students learn to cancel each other, they take those lessons and use them on their future co-workers and colleagues. We no longer teach students how to disagree. We teach them how to destroy. And then we launch them into the world.

Our whole country has now become a campus. Powerful law firm leaders and tenured law professors confess that they're "afraid" of their own associates and law students. Let that thought marinate for a moment. Why are these leaders so afraid? What is it they fear that cancel culture can do to their lives, their careers, and their families? And what does that say about the state of our nation?

Many Americans have started to see this in their own lives. The Supreme Court has warned us of this as well. *See, e.g., Hollingsworth v. Perry*, 558 U.S. 183, 185 (2010) (per curiam) (citizens "have been forced to resign their jobs" and businesses have been "blacklist[ed]" and "boycott[ed]" in "retaliation" based on their views about marriage); *Citizens United v. FEC*, 558 U.S. 310, 370 (2010) (citizens have been "blacklisted, threatened, or otherwise targeted for retaliation" based on their financial support for certain organizations).

In sum, what happens on campus doesn't stay on campus. We're not just seeing students cancel other students. We're seeing young lawyers cancel other young lawyers. We've heard from past and future law clerks who have faced physical intimidation and threats to their careers for doing nothing more than expressing mainstream viewpoints. We've also heard from a number of our colleagues who fully support what we're doing and why we're doing it—but do not want to go public with their support. We get it. We respect their personal concerns. But it illustrates our whole point: Cancel culture is real, and coerced self-censorship is one of its primary weapons.

Our effort is dedicated to all of our law clerks—as well as countless other Americans nationwide who fear this troubling new dynamic.

3. We turn now to the statement you issued on October 12. On the one hand, we appreciate that your statement opens: "Yale Law School is dedicated to building a vibrant intellectual environment where ideas flourish. To foster free speech and engagement, we



emphasize the core values of professionalism, integrity, and respect. These foundational values guide everything we do.”

But as members of the legal profession, it’s in our DNA to ask whether such statements reflect reality or are nothing more than parchment promises. We regrettably conclude that the statement only raises more questions—and more concerns. We summarize them here for your convenience.

First, the statement suggests that Yale’s handling of recent events is praiseworthy. We think Yale handled those events poorly.

On March 10, 2022, a large group of students loudly and angrily disrupted a panel discussion featuring Kristen Waggoner of the Alliance Defending Freedom and Monica Miller of the American Humanist Association. Ironically, the focus of the panel was freedom of speech. In its March 28, 2022 message, the administration concluded that the student disruptors did not warrant any form of discipline or consequence because they fully “complied with University policies.” As you know, Professor Kate Stith, who moderated the panel, strenuously disagreed in her March 31, 2022 response. She described the “shocking and extraordinary disruption,” not only of the event, but the entire law school. She concluded that the “determination that the March protest at Yale Law School did not violate Yale’s policy on Free Expression would set a terrible precedent at Yale and elsewhere.” We agree, and we do not understand why the administration continues to disagree.

Moreover, the administration’s inaction regarding the student disruption stands in marked contrast with its overreaction to another student incident that occurred that same school year. In October 2021, a student sent an email inviting other students to a party hosted by various student groups including the Federalist Society. The email included the word “traphouse.” Other students reported that they found the use of the term offensive. In response, the administration threatened to harm the student’s career for sending the email. In doing so, administration officials made clear that they disfavored the Federalist Society as an organization that is “triggering” to others, and that the student’s only saving grace was that he is not white.

Notably, the threat to the student’s career was uncovered only because he recorded his interactions with administration officials. We can only imagine what campus life must be like, that a student would think it necessary to record his interactions with school officials for his own protection.

That leads us to our second concern. The statement announces a new policy “prohibiting surreptitious recordings.” Why? And why now? The only reason we even know about the

administration's threat to harm a student's career over the October 2021 email is because that student recorded his interactions with school officials. Does this new policy somehow improve free speech conditions on campus? Or does it simply ensure that the school will not be caught in the future for infringing on speech? This new policy appears to be a step backwards.

Third, the statement defends the new policy on surreptitious recordings on the ground that it simply "mirrors policies that the University of Chicago and other peer institutions have put in place to encourage the free expression of ideas." But then why not also mirror the University of Chicago's policy on free speech itself? And not just Chicago's policy on paper, but its actual practice of robust enforcement when students violate the policy.

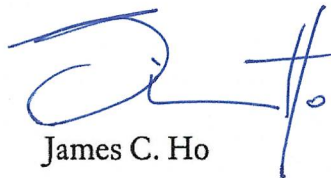
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Yale presents itself as the nation's finest institution of legal education. Yet it's among the worst when it comes to legal cancellation. And this matters because, as an elite institution, Yale sets the tone for other law schools and for the legal profession at large.

We would like to see Yale Law School embrace open discourse on campus. Our effort is modest: All we ask is that students be able to invite speakers—including conservative Christian speakers—without having to worry about police protection, public opprobrium, and professional intimidation. All we want is for the school to teach students to agree to disagree, not to destroy. We do not think this is too much to ask. We would love nothing more than for the story of your deanship to be a record of success—and a restoration of free speech and the rigorous exchange of ideas.



Elizabeth L. Branch



James C. Ho