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Dear Dean Mazza:

I write to discuss with you the current culture of discourse at Green Hall. In recent years, I have sensed a dampening of the spirit of open inquiry I have so loved and benefited from at KU Law. A spirit that—going all the way back to my days as a law student—always existed within Green Hall. But events this fall have brought an unwelcome clarity to what before was only a vague and foreboding feeling. So I write to let you know that, as a result, I will not be renewing my teaching relationship with KU Law next fall. During my time on the bench, I have endeavored to bring the world of legal scholarship and the world of day-to-day judging closer together. Teaching at KU Law has been a big part of that. But I do not want to do so in a closed and fearful environment, brimming with hidden hostilities and carefully nursed grievances.

I hasten to say that I have no doubt that in today's climate of strong partisan feelings, deep policy-based divisions, instant media-feedback, and intense external scrutiny, the role of leading an institution like KU Law and balancing the interests and expressions of different student commitments, beliefs, passions, and actions is difficult. I have no reason to think that anyone in the administration at KU Law has not made a good-faith effort to do so. I admire and respect each of the KU faculty receiving this letter and have had wonderful experiences with each of you.

My class this semester just wrapped up with some stellar oral argument performances by the students in front of three Kansas appellate judges in the Kansas Supreme Court courtroom. I waited until after the class ended to send this letter so news of my departure would not interfere with the students' experience. It has been a joy and privilege to teach some of the best students at KU Law over the past six years. During those years my students have arrived with a diversity of backgrounds, ethnicities, genders, sexual orientations, religious persuasions, and political persuasions. Yet this has never impeded us from taking up—together—the exciting task of becoming lawyers.

To that end, I have taught the craft, skills, and habits of effective advocacy—always grounded in the foundational principles of our profession. I have emphasized above all that the law is, at heart, a great and ongoing conversation. Indeed, one of the most noble and important conversations humankind has with itself. I teach my students that to be a lawyer is to join that great conversation—to take one's spot in the long line of advocates who have bound themselves to certain professional norms and rules to further that conversation within the institution we sometimes call the “rule of law.”

It is a remarkable thing to be a part of this profession. And I have always tried to instill this sense in my students—that to be a part of this conversation is an extraordinary privilege. That to steward such a conversation is a noble calling, in part because of its fragility. After all, there is no guarantee the conversation will continue.

So you will understand why I was disappointed to hear from KU Law students who recently came to me to express concern over administration actions surrounding a lunch-hour event sponsored by the student chapter of the Federalist Society. My understanding, from participants, is that after the KU Law student chapter of the Federalist Society announced that a lawyer from the Alliance Defending Freedom would speak in Green Hall, there was a significant uproar from members of the student body and faculty. Concerned about what might happen at the event, the Federalist Society student chapter President asked the administration to provide event security. In response, the administration asked to meet with the entire student board of the chapter.

At that meeting Associate Dean Leah Terranova and Professor Pam Keller pressured the students to cancel the event. The administration representatives warned the student leaders that they needed to consider and understand the impact the event could have on them. The administration mentioned that at least five law professors had written to object. The students were told that even though it was their right to host the speaker, they needed to be warned about the impact of their choices. The student leaders were told several times to consider what this would do to their reputation.

Now, knowing the people involved, I can well imagine that there was no intent to threaten or coerce the board members of the student chapter. I can even see that this effort was likely an ill-conceived attempt to protect those students. After all, it is true that in the current environment, being willing to swim upstream may in fact harm a person's reputation and even standing in the legal community. But isn't that the problem? Rather than acquiescing to this, my hope and expectation is that leaders in the legal community would instead help protect the reputations of students willing to engage in difficult discussions—and guide them in that process. Without that support, it took great courage for the students to carry on with the event.

Following this meeting, but before the lunch event occurred, I and the entire KU Law community received an email from the Diversity, Equity, Inclusion and Belonging Committee. The email described the speaker—by his association with ADF—as a practitioner of “hate speech.” The email went on to acknowledge, grudgingly, that as a public university KU Law was bound by “the tenets of the First Amendment” and would permit the event to move forward. The email, by implication, accused the student leaders of the KU Law Federalist Society of facilitating hate speech. Worse, the email made it very clear that the principles of free and open dialogue are only acquiesced to as a legal obligation at KU Law—they are not celebrated, cherished, or valued. Here, the Diversity, Equity, Inclusion and Belonging Committee cemented in fact what was predicted by the administration only a few hours earlier—the student members of the KU Law Federalist Society chapter were held up before the entire community as pariahs.

I wonder if the Diversity, Equity, Inclusion and Belonging Committee is aware that the Kansas Bar Association, only a few days after the KU Law Federalist Society lunch, sponsored and hosted an ADF lawyer at a Continuing Legal Education event for all Kansas lawyers (approved by the Kansas Supreme Court as all CLE's are)? The event was organized by the KBA Religion Law Section, chaired by Bob Howard—a deeply respected lawyer in the Kansas legal community. And of note, KU Law's J.B. Smith Distinguished Professor of Constitutional Law Richard Levy was also part of the program. In fact, Professor Levy and the ADF lawyer shared the stage during a panel discussion that made up the ethics portion of the program. Is KU Law prepared to accuse the KBA, Bob Howard, Professor Levy,

and the Kansas Supreme Court of facilitating hate speech? Somehow I doubt it. And this double standard speaks volumes about what is really going on.

Of course, it shouldn't have to be said—but I will say it—that my criticism and concern over the handling of this incident by KU Law has nothing to do with the particular speaker, his institutional affiliation, or ADF generally. In the same way, it would be absurd to accuse the Kansas Bar Association or Professor Levy of espousing identical views as those held by ADF. Even so, the KBA did invite an ADF lawyer to present a CLE to Kansas lawyers and Professor Levy did agree to sit on a panel with that lawyer to discuss religious liberty issues. Why?

Part of the answer is probably that neither the KBA nor Richard Levy are especially afraid of—or vulnerable to—bullying by the KU Law DEI movement. Perhaps they should be more afraid (and isn't that the point?). But the bigger and more important part of the answer is, I think, that Professor Levy and the KBA understand and embrace the core principles of our profession. They understand themselves to be practicing stewards of the great conversation called “the law.” They understand that engaging in reasoned, constructive, open dialogue on an equal footing among people of diverse backgrounds representing different viewpoints is the strength and glory of liberal democracy—and is in a real sense what makes the rule of law possible.

Professor Levy put the matter well during the panel discussion when he observed—in a context entirely apart from the controversy at KU surrounding the Federalist Society—that “if lawyers cannot talk to each other about difficult subjects on which they disagree, how can we expect anyone to?” The entire KBA event stands as a stark counterpoint to the events at KU Law. This is how a mature legal community processes, constrains, and works through even the most difficult of societal conflicts.

Now, I am not insensitive to the real fact that the conflict underlying this controversy is deeply felt and reasonably may be understood by many participants on both sides as existential in nature. I won't downplay that or pretend it doesn't matter. These conflicts can seem intractable, and solutions are elusive. Liberal pluralism and the public square it both built and inhabits are groaning under the weight of these disputes. And yes, there is the dangerous and sickening fact of incidents of ideologically motivated violence. Such acts of brutality, terror, and lawless criminality threaten the peace and stability that benefit us all. And each of us can probably think of figures who want nothing more than to see the liberal public square disposed of as a relic of history—clearing the way for more direct forms of conflict.

But lawyers of all people must resist the temptation to turn our backs on the liberal public square—even when it may feel justified by the perceived offense given by one's political opponents. In fact, lawyers ought to form the last and best line of defense of the liberal public square and its pillars—a fair hearing for all voices, dispassionate and deliberate judgment, individual not group guilt, protection for dissent, and an ethos that, if not quite capable of walking a mile in another's shoes, can at least tolerate a few minutes of quiet listening in another's presence. Consider that—as reported in the local paper—several students were so distraught over this event and afraid for their “physical and emotional safety” that they claimed they could not even be inside Green Hall at the same time as the speaker. Perhaps this should alert us to an institutional failure to cultivate the norms, habits, and skills necessary to the task of lawyering.

As far as I can tell, there is no one that comes out of this unsullied. I understand that some have accused the student leaders of the KU Law Federalist Society chapter of not following the right procedure before inviting the lunch-time speaker—that the event was an “ambush.” I find that plausible given what is clearly a closed and stifling culture of discourse at KU Law. Certainly nothing that transpired suggests that KU Law would have welcomed a discussion or debate with this speaker if the chapter had only followed proper procedure. Of course, that doesn’t justify a failure on the part of the Federalist Society chapter to be fully considerate of others. Two wrongs never a right make. The point is that the behavior on both sides indicates an institutional failure.

Consideration and respect for others is the common good bought and paid for by the sacrifices entailed in curating and maintaining a robust and vibrant liberal public square. We cannot have one without the other. And if the different sides of the societal conflicts we see all around us continue to anathemize each other before engaging in the hard, demanding, and sometimes tedious work required by the liberal public square, we are likely to see that square disappear entirely.

This is what I have seen play itself out at KU Law this fall—and it is especially concerning to see it take root within the leadership of the school. To the extent the movement calling itself Diversity, Equity, and Inclusion is an effort to encourage the imaginative effort on everyone’s part to consider what it is like to walk that proverbial mile in another’s shoes, it is laudable. But if—as demonstrated by KU Law’s Diversity, Equity, Inclusion and Belonging Committee—it is the operational arm of a bigger effort to silence large segments of our society, then it is an ideological movement committed to principles that are contrary to the principles of a free and equal society living under the rule of law.

There is a perennial temptation to cheat on the social contract—to shortcut or bypass the liberal public square on the road to achieving one’s preferred outcomes. Such efforts are drawn to censorship, reprisals against those espousing disfavored views, and to dividing people based on shared group identities and characteristics. The result is likely to be the crushing viewpoint diversity, the elimination of a level and equal playing field, and the exclusion of disfavored individuals and groups—quite the opposite of the chosen aspirational name of the DEI movement.

I know all too well that these disturbing trends—and the authoritarianism at work behind them—are not limited to any one wing (or wings) of our political and cultural moment. So the tell-tale tricks and sleights-of-hand that mark such ideologies must be opposed wherever and whenever they are found—not only when practiced by those one disagrees with (and not only when it is easy or convenient to do so). Indeed, such ideologies threaten the foundational tenets of liberal democracy and the free and open society it enables—principles and practices such as a basic respect for all people as individual human beings; tolerance; openness; the free exchange of ideas without promises of favor or fear of reprisal; and privileging individual character and merit above group characteristics when rendering judgments.

Last year, for example, I took the unusual step of publicly defending a judicial nominee from those who sought to punish him for representing a despised minority in society—people charged with serious sex crimes. As I wrote in the *Topeka Capital Journal*:

*At a time when different segments of society seem less and less inclined to give a fair hearing to voices, ideas and people they disagree with, it strikes me as imperative that we*

*reacquaint ourselves with the majestic principles that serve as pillars of justice delivered under the rule of law. ... In the face of hard disagreements—and unfair name-calling—the civic temperament demanded by the rule of law calls us to strive for the ideal of a public-spirited, deliberative and reasoned engagement with others. For a lawyer, this may mean speaking vigorously and boldly on behalf of a client or cause that society has turned against. ... [A]t a time when many are wondering if our political structures are hopelessly broken, the American constitutional tradition of sheltering, protecting and cherishing an open public space for the full airing of all viewpoints and facts—even on behalf of unpopular people and ideas, and doing so with deliberation and reason—deserves the respect and support of all of us, together.*

And here it must be added that these core commitments are likewise vital to the mission of a place like KU Law—the training and education of the next generation of lawyers who will become stewards of the institutions of law and democracy. Educated citizens of such a society have a minimum obligation to listen to opposing viewpoints and engage in reasoned dialogue. Lawyers have a heightened duty to do so—and are supposed to be receiving training and expertise in the skill set necessary to accomplish that difficult task. KU Law is not serving its students well—nor is it preparing them to take their place as lawyers in the great conversation (or in Kansas courtrooms)—when it engages in bullying and censoring tactics, fosters a spirit of fear, drives dissent into a guerrilla posture, and gives institutional backing and support to overwrought grievances which can and do cripple a persons' ability to critically engage with ideas or people with whom they disagree.

I wrote an entire essay in the *Kansas Law Review* last year exploring a very old Talmudic fable about what happens when a community expels the losing side of difficult arguments. I concluded by drawing these lessons:

*The fable ... opens up for us the terrifying reality that for a court, a judge, and even for a political community in the throes of an especially difficult decision, heaven smiles mischievously down at us. ... The secret of the story is that we can smile back if we have the stomach for it. The law wants a conversation partner, after all. It inhabits the record of that very conversation. ... There is a universal insight here that goes beyond the law, certainly, but it also includes law and polis—the political community. The [fable] is ultimately about how to recognize, create, and preserve the conditions for convivial relations between and among Heaven, the Law, and the Community. And this is a result worth being "oriented" toward.*

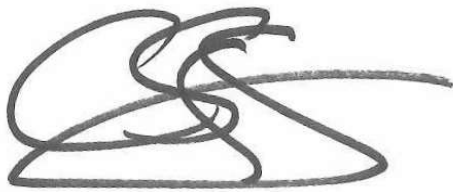
As a steward and participant in the great conversation here in Kansas, I cannot sit by and allow these events to pass without comment. There are many in our legal communities who will shake their heads disapprovingly when things like this happen, but who may not be in positions of sufficient authority or security to speak up. I think it's past time to speak up—and I recognize I am in a position to do so in circumstances when others cannot.

In my view, KU Law owes its students (all of them, not just those in the Federalist Society chapter) and the future of the rule of law in Kansas better. And it is possible to course correct. But until that time, I can't continue to provide tacit support to the current direction through my teaching affiliation

with KU Law. Not when that direction so clearly threatens the basic pillars of our profession—and not when the duty to ensure the great conversation continues is so clearly ours to shoulder.

That said, to the extent it is wanted, I hope to remain a member of the KU Law family more broadly, willing to engage in further discussions on this and any other subject—and hoping to build bridges where possible across all the various divisions that seem so unbridgeable at times. Perhaps my departure as a teacher will open a space for a rethinking. Certainly I could help bring members of the Kansas legal community together to discuss these important matter further. In any event, I remain affectionately a Jayhawk, and always a supporter of you and all who labor at KU Law to take on that most exciting task—forming the next generation of Kansas lawyers.

Very sincerely yours,

A handwritten signature in black ink, appearing to read 'Caleb Stegall', with a long horizontal line extending to the right.

Caleb Stegall

*Postscript: I have mentioned quite a few people and their actions in this letter. I don't think it's fair for me to talk about them behind their back. Hence, they are copied on this letter as set forth below. In addition, there are two members of the KU Law faculty (Professors Hoeflich and Mulligan) who were instrumental in bringing me on as a teacher and who—by rights—deserve a full explanation of my departure. They too are copied. And, though it is not my purpose, I am worldly-wise enough to know that it may be impossible to keep news of my departure from becoming more widely known. Should that happen, you have my assurances I will not have any public comment.*

Cc: Associate Dean Leah Terranova (via email [leaht@ku.edu](mailto:leaht@ku.edu))  
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