BEN BUELL: Hello, everyone, and welcome to today's event. Lawyer shaming, legal ethics, the rule of law, and equal access to justice. My name is Ben Buell, and I'm the vice president for speakers for UVA's Federalist Society chapter. The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be.

We are fortunate today to be joined by Jonathan York. Jonathan is associate Chief Counsel at the US Chamber Litigation Center, the litigation arm of the US Chamber of Commerce. He rejoined the chamber after helping launch the National Litigation Boutique, the Lehotsky Keller LLP, where he represented large corporations and trade associations as one of the firm's early partners. He previously served as senior counsel for the Chamber Litigation Center, primarily covering arbitration and class action issues.

Before his first stint at the Chamber, Jonathan practiced law at McGuire Woods LLP on the firm's Appeals and Issues team. He has also served as a law clerk at all three levels of the federal judiciary for Justices Antonin Scalia and Clarence Thomas of the US Supreme Court, Judge Jeffrey Sutton of the US Court of Appeals for the Sixth Circuit, and Judge Amul Thapar, then a judge on the US District Court for the Eastern District of Kentucky. Jonathan graduated from UVA Law, where he served as Articles Development Editor of the Virginia Law Review. He received his undergraduate degree in economics from the University of Delaware. Please join me in welcoming Jonathan York.

[APPLAUSE]

JONATHAN YORK: Thank you all. Can you hear me OK? Thanks to the UVA Federalist Society Chapter for having me here today. It's such a pleasure to be back here. As some of you may know, I'm a very proud graduate of the University of Virginia School of Law, and I was a very active and enthusiastic member of the Federalist Society Chapter when I was here, and it brings me great joy to know that you guys still have such an active chapter here today, and so thank you. It's a great honor to be on this side of the podium now and to be back here in Charlottesville. And it's actually my 10 year reunion this year, so I look forward to coming back yet again later in the spring right around finals time for you all.

But the topic here today has been said is lawyer shaming, and I have one pretty simple straightforward message here today, which is that lawyers shouldn't be shamed for representing unpopular clients, whatever makes them unpopular. And until very recently, there was pretty widespread consensus in our society over that principle, both within the legal profession as a norm of our profession but also as a general broader rule of law value of American society at large. And that value, I think, goes back-- has a very long pedigree in our society and in our country.

It goes back at least as far in our history as to the famous representation by John Adams in 1770 of the British redcoats, who were accused of murdering American Patriots at the Boston Massacre. And John Adams's private practice actually suffered at the time because his representation of the redcoats was so unpopular, but of course, he persevered, and that representation didn't end up hampering his political career. He went on to become the second president of the United States. And quite the contrary to it being a hindrance to his political career, his representation of the redcoats actually came to be regarded as one of his finest hours.

And of course that episode-- because we're also familiar with it, that episode became a model for American lawyers all the way up till today. And so in line with that story tradition in American law in our society, lawyers look to that as an example-- look to John Adams as an example of the brave role that lawyers play and their important role in ensuring that even the most unpopular among us have access to justice. And so in line with that, we have a very long and celebrated tradition of lawyers representing unpopular and even quite despicable clients.

So just to rattle off a few examples from the 20th century, American military lawyers represented axis war criminals in war tribunals during and after World War II. American lawyers represented communists and suspected communists in the mid-20th century and other speakers and protesters with extremely odious views to help establish views that we would all find offensive but that helped established core free speech principles. And of course, every single day in our country, criminal defense attorneys and public defenders represent criminal defendants accused of committing heinous crimes all the time, and we regard all these representations in our history as honorable and as essential and as a part of the essential role that lawyers play in our country.

Now, that said, there have been occasional-- we haven't been consistent necessarily in adhering to this norm and respecting it throughout our history. Americans in our society do occasionally forget this important norm against lawyer shaming. So for example, in the 20th century, lawyers representing communists were ashamed and civil rights lawyers representing Black plaintiffs seeking to vindicate their constitutional and legal rights were shamed and criticized and at times even punished by the bar. But we look back on those episodes with shame, right? We regard these episodes as fundamental violations of that norm that should be criticized.

And so the pendulum has swung back, and we've recommitted to this core historical norm against shaming lawyers for representing unpopular clients. And so today, the norm, I think, is best reflected in the ethical rules. I promise I won't be throwing a ton of ethical rules at you all, but I think it's best reflected in ABA Model Rule 1.2B, which I won't quote it, but in my view it rejects the fundamental premise of lawyer shaming by establishing the principle that legal representation does not equate to endorsement or imply endorsement of a client's views or activities or whatever it may be.

And so every state in the country, as far as I know, has adopted some version of Model Rule 1.2B, and many have also adopted the associated commentary, but I think that fact illustrates the pretty wide acceptance of the norm against lawyer shaming. So as we'll be discussing throughout the talk today, I think lawyer shaming harms our entire legal system. It violates these fundamental principles of legal ethics. It impedes access to justice, especially for minority and disadvantaged clients. And for all these reasons, it ultimately undermines the rule of law, which depends on tolerance for lawyers that represent unpopular clients and may have different views about the moral complicity of lawyers in the activities of their clients, and we'll talk about that a little bit too.

So first, let's define our terms a little bit. So by lawyer shaming, I don't have a super precise definition, but here's my working definition. Which is that criticizing, shunning, ostracizing, or punishing a lawyer merely for representing unpopular clients and using social or economic pressure to do those things. That's another part of my definition. So that's sort of like the working definition that I have, and I really do mean for whatever makes a client unpopular. So as we discuss some examples-- criminal defendants, they could be suspected terrorists, which I'll get into an example with that.

They could be large corporations and disfavored industries. They could be protesters and controversial speakers, religious minorities, abortion clinics, or women seeking abortions, immigrants seeking asylum, and even government bodies and political candidates. But as you can see from that list, you can easily imagine how lawyer shaming can have a disproportionate impact on minority and disadvantaged clients because a lot of those type of clients tend to be unpopular for various reasons.

But just as important as the affirmative definition of lawyer shaming, I do think it's important for identifying it to know what it is not. So in our society, criticisms of lawyers, and clients, and strategy, and arguments, and the clients' goals of representation. These sorts of criticisms often get all bundled together in the social discourse, and so not all of those criticisms are necessarily lawyer shaming. They may be problematic for other reasons. I'm not here to defend cancel culture or anything like that, but I think lawyer shaming presents a unique set of rule of law concerns that I'll be discussing. So it's important to distinguish the lawyer shaming that presents those unique problems from other forms of criticism.

And so here's a few associated types of criticism that I think are not lawyer shaming. So for example, criticizing violations of legal ethics-- the rules governing how lawyers conduct themselves in court or in litigation or in other forums, like civil rule 11, Federal Rule 11 type stuff. Your obligation to not lie to the court, or mislead the court about the law or the facts, or filing frivolous vexatious pleadings just to harass or delay. That sort of behavior, criticizing lawyers for committing those sorts of ethical violations, not lawyer shaming. That's totally acceptable. Those are acceptable and encouraged forms of criticism. We need to enforce those norms and rules in our legal system, and they're essential for courts to do their job and for our legal system to function.

Now, to be sure, we shouldn't be throwing around those sorts of accusations of such ethical violations of lightly, and if they're thrown around lightly, they can be abused, and it can bleed into effective lawyer shaming. But in theory, good faith, criticisms for violations of legal ethics, not lawyer shaming. Likewise, attacking weak legal arguments, not lawyer shaming. That's just what lawyers do, as long as the attack is against the art directed at the argument, not an ad hominem attack on the lawyer, then it's OK. That's just what lawyers do.

And criticizing parties, and the goals of the representation is not lawyer shaming. Even if the client has a legal right to pursue something, you still might be-- criticize the client and say, I don't care that you have that legal right. You shouldn't pursue it. It's immoral for whatever reason. Again, that's not lawyer shaming because the criticisms are directed against the client. As Paul Clement once famously said, and I'll get into this example later-- but he said, being on the right side or wrong side of history is a matter for the clients, not for the lawyers.

And then finally, and this is a really important one-- having strong personal moral objections to representing certain clients is not lawyer shaming if it comes from you. If you have strong objections, and you're not caving to outside social or economic pressure, that's not lawyer shaming. Quite the contrary. If you have such strong moral objections, the ethical rules may actually require you to decline to represent a particular type of client, right? So you could easily imagine an example of a devout Catholic or Christian lawyer who objects to representing an abortion clinic. That's not lawyer shaming.

In fact, the rules say if you have such a strong moral objection that it would compromise your ability to zealously represent the client. You have an obligation to decline. So again, not lawyer shaming, but that's a really key important line-- your personal moral objections versus caving to outside social and economic pressure because a particular client is unpopular. The rules generally encourage us as lawyers to represent unpopular clients, so the line-- a little bit of discomfort with your clients. That's something criminal defense attorneys deal with every day. So a little bit of discomfort is not necessarily an ethical problem, and the rules encourage you to get over that and ensure that even unpopular clients receive representation. But if you have strong moral objections, again, that's not lawyer shaming.

But let's make this a little more concrete, and let's discuss some examples. And so I think really in the last decade or so, particularly in the last few years, there's been a really disturbing uptick in lawyer shaming in our country that I think does pose a threat to the rule of law. But I think the norm that I discussed earlier was holding firm in our country as late as the late 2000s. And I think we see this, and I try to be very deliberate in this talk to be bipartisan. I do not regard this as a partisan left-right right thing.

I think the norm against lawyer shaming is a bipartisan value, but so I think we saw the norm hold strong in the very swift and forceful bipartisan criticisms of too conservative attacks on lawyers in the late 2000s that represented the suspected terrorists detained at Guantanamo Bay, Cuba. And so there was a lawyer in the Bush administration. His name is Cully Stimson. He was in the Defense Department, and he gave some media interviews suggesting that corporations should pressure their private law firms to get them to drop the Guantanamo Bay detainees as clients.

And almost immediately there was swift bipartisan reaction to this. There was criticisms, op-eds from the left and the right criticizing these remarks. The Bush administration rapidly walked back Khalid Simpson's remarks. He resigned like three weeks later after making these remarks. And so again, you see the norm really at work. There was an open letter signed by 130 law school deans explaining in great detail why these remarks and criticisms were fundamentally inconsistent with the values of the American legal system and the legal profession.

And then again a year or two after that-- I think that was like 2009 and then-- oh, sorry. 2008 because it was still the Bush administration. And then 2009 or 2010, Liz Cheney had a group that ran an attack ad against the Obama administration's government-appointed lawyers that were appointed to defend the Gitmo detainees, and the ad is pretty bad. It basically implies that-- raises questions about whether the lawyers were sympathetic to the terrorists-- whose values do they share type questions. And similar reaction, right? Similar reaction-- bipartisan criticism, very swift. And even none other than Cully Stimson even wrote an op-ed, I believe, criticizing this ad as below the belt as it's a violation of this norm against lawyer shaming.

So that's the state of the norm in the late 2000s. It seems to be holding pretty strong across the aisle. And then I think there's a watershed moment in 2011 when Paul Clement-- when he was then a partner at King and Spalding in Washington DC. He represented the Republican House of Representatives at that time, which had stepped in to defend the constitutionality of the Defense of Marriage Act when the Obama administration refused to defend the constitutionality of that statute in court. And so Paul Clement and King and Spalding were shamed and criticized for representing the GOP House in that litigation and for defending DOMA.

And the groups that did-- the shamers even went after the firm's clients, the firm's other clients, in pressuring them to pressure the firm to drop the House as a client. And what eventually did happen is the firm did drop the House as a client, and Paul Clement famously resigned in protest, and that's where I was quoting that letter. He resigned in protest, refused to drop his client amid the representation, and then went on to join Bancroft, which was then later acquired by Kirkland and Ellis.

Keep the Paul Clement thing in your mind because there's more of lawyer shaming as a circle. We'll get back to that. But so he resigned, but what-- so this incident is very famous. A lot of you may be familiar with it, but what you may not is-- so the lawyer shaming did unfortunately have the effect of pressuring the firm to drop the client, but the reaction was still bipartisan and negative, even about DOMA gay rights issue. And so there were op-eds from *The Washington Post* and *The New York Times* and even *Slate.* Dahlia Lithwick at the time wrote very critical op-ed articles, criticizing the shamers as being inconsistent with these fundamental values.

And what's amazing about this too is that all of these op-eds, even in *Slate, New York Times, Washington Post,* they 100% agreed that DOMA was unconstitutional in their view-- bigoted, should be struck down by the Supreme Court, but they said that regardless of that, didn't matter. The criticisms of Paul Clement were violating this core norm in our society against lawyer shaming.

So cracks in the norm are starting to emerge in 2011, but it's still-- the bipartisan reaction still seems to be pretty strong. And then so fast forward to like around 2019, where I think we really see an uptick in lawyer shaming in our country. And so I'll just rattle off a few examples, and if you have more questions about them, I'm happy to explore them in more detail in the Q&A. But in 2019 and 2020, many of you may be familiar with there were law student climate protests across elite law schools in our country targeting firm recruiting events, encouraging the firms to drop clients like Exxon and Chevron. Those were literally the campaigns. They were like hashtag drop Exxon, drop Chevron. They targeted recruiting events to shame, in my view, law students from joining those firms, and a new student group, law student group, even arose out of these protests called Law Students for Climate Accountability.

And they now publish an annual scorecard of all big law firms based on how much work they do for the fossil fuel industry. And so now, you may ask some fair questions about this. And you could say, John, is that really lawyer shaming? Because all they're doing is providing information. You just told us that lawyers can make-- they don't have an obligation to represent clients. They can have strong moral objections to representing certain clients. More information is better, right? How is this lawyer shaming?

And so I think that's a fair response because I think if it was just information providing, that wouldn't automatically be lawyer shaming, but I think in context when you look at this campaign, it's obviously-- the information is being weaponized as a tool of lawyer shaming. It's not just an educational tool to young lawyers to help them make career decisions consistent with their moral values. They were-- this was part of a broader campaign where they were-- the protesters were explicitly calling on firms to drop clients. And the other reason I know that's true is because they were targeting-- again, like the Paul Clement King and Spalding episode, they went after other clients of the firms, non-fossil fuel clients, encouraging them to pressure their firms to drop the fossil fuel companies as clients for climate change reasons.

So again, fair point about information and educating young lawyers about moral considerations, but it can be weaponized in the context of a broader lawyer shaming campaign. Another example is Ron Sullivan, a professor at Harvard Law School for a brief time represented Harvey Weinstein in his criminal defense trial, and he was viciously attacked at Harvard for that representation. And he was attacked mainly, interestingly, by undergrads, and he actually served a dual role at both the law school and as an undergrad advisor, and he was removed from his position as an undergrad advisor because of his representation of Harvey Weinstein. The undergrad said his representation made them feel unsafe, and he suffered a stream of verbal harassment, and his home was vandalized. They spray painted, like, whose side are you on his home because he represented Harvey Weinstein.

And what's so fascinating about this episode as well is that Ron Sullivan has Sterling progressive credentials. He represented-- helped free numerous innocent convicted criminal defendants. He represented the family of Michael Brown in their civil rights lawsuit against the city of Ferguson. So this is a man with a very strong progressive resume, and none of that mattered to the protesters because he represented Harvey Weinstein as an attorney.

And then in 2021, Paul Weiss was viciously shamed on social media for representing the state of Oklahoma, which was defending a capital death penalty judgment in the Supreme Court in a case that raised some interesting difficult Indian law questions. The court ended up not taking that case or taking a different case that presented the same questions, also represented by Paul Weiss. And Oklahoma ended up winning those exact same arguments that were raised in this capital case, but nonetheless, even though they were making ultimately winning arguments, Paul Weiss was viciously shamed online for defending this capital judgment of the state of Oklahoma.

And in fact, some lawyers who really should have known better-- some lawyers even went so far on social media as to suggest that competing firms should use this representation against Paul Weiss as a counter recruiting tactic to basically market themselves to young lawyers saying, we don't try to kill people like Paul Weiss does, and that's-- I'm more or less paraphrasing some of the tweets that were circulating in this incident. So that's textbook lawyer shaming in my view that violates this clear norm.

There were multiple calls to blacklist lawyers that previously served in the Trump administration and block their career advancement. And again, lawyers just for serving in the administration. I'm not-- regardless of what they did, what positions they took, what they argued, I realize that government lawyers have unique ethical obligations because their client isn't really the President per se. It's the government and the country in general, and so they have some unique ethical obligations, but these were blanket calls to blacklist Trump administration lawyers and to block their career advancement simply for serving. That's lawyer shaming in my view.

There were similar calls to blacklist and shame Trump election lawyers that were not arguing election fraud. I want to be very clear here. Go back to my example of what is not lawyer shaming. Ethical violations are not lawyer shaming. Misleading the court about the law or the facts, criticizing those violations of legal ethics is not lawyer shaming. So I'm not talking about the criticisms of the folks that we probably are all very familiar with, like Rudy Giuliani, or Lin Wood, or Sidney Powell. I think a lot of those criticisms comfortably fit, if not all of them-- comfortably fit in the bucket of ethical violations.

But there were vicious attempts to shame Trump election lawyers making purely legal arguments about the independent state legislature doctrine, for example, which I don't need to get into the weeds of what that is. But making legal arguments in Pennsylvania, for example, that had absolutely nothing to do with alleged election fraud. And these are arguments that several Supreme Court Justices, since *Bush v. Gore,* have endorsed to some degree or another. And the Supreme Court is considering right now-- in a case called *Moore versus Harper,* they're considering the viability of the independent state legislature doctrine.

And the reason I say that is to show that these legal arguments that have nothing to do with fraud are comfortably well within the reasonable range of legal arguments and legal disagreement. That legal theory is hotly contested by both scholars and lawyers. No one says you have to agree with it, but it's impossible in my view to fairly argue that those arguments are so out of bounds that they're unethical. And nonetheless, these lawyers in Pennsylvania were shamed for making those arguments on behalf of President Trump in his election litigation.

And similarly, those lawyers were doxed on social media, where there some of their contact information was posted, and people encouraged their followers to express their disapproval to the lawyers. And so they suffered a stream of harassment in response. Now, flipping to the other side of the aisle, in 2022, just last year, then Supreme Court nominee, Ketanji Brown Jackson, I think, was unfairly shamed for her prior service as a public defender. And so there may be plenty of legitimate reasons to oppose Ketanji Brown Jackson's nomination to the Supreme Court.

I'm not going to get into those potential reasons here today, but I think her prior service as a public defender should not be one of them. And I think there were some Republican senators who made some remarks about her prior service suggesting that service as a public defender implied that she had sympathy-- that she was sympathetic with murderers and criminals. And I think that's textbook lawyer shaming and should not have been included in any of the criticisms or reasons to oppose her-- excuse me, her nomination to the Supreme Court.

Also last year, *New York Times* journalist David Enrich wrote an entire book called *Servants of the Damned,* which is essentially one giant lawyer shaming project. It's about big law firms and their representation of Donald Trump and other big corporations that Mr. Enrich regards as disfavored. And so I'm not saying every single word in his book is necessarily lawyer shaming, but a large part of it is basically devoted to criticisms of lawyers and big law firms for representing clients he dislikes. And then of course, as I promised in also last year, Paul Clement and his partner Erin Murphy were forced out of Kirkland & Ellis because they refused to drop their gun rights clients in Second Amendment litigation.

And the firm in general decided that they were no longer going to take these gun rights cases, and they refused to drop their clients. So then they left and started their own new conservative boutique called Clement and Murphy. And so I think similarly to the climate protests example, you might say to this, well, John like you said before, you're allowed to take a moral stand. You're allowed to have a moral objection to representing certain clients. So what if that was just what the firm was doing? What if they were-- Kirkland & Ellis was just saying, we have-- the partnership has moral objections to representing these sorts of gun clients. What's wrong with that?

Well, for starters, I don't think that was likely what was going on, and Paul Clement and Erin Murphy wrote an op-ed in the *Wall Street Journal,* basically, the day they were forced out of the firm, explaining that they were-- the firm decided to drop the clients because those clients were unpopular in certain circles. So if you accept Mr Clement and Ms Murphy's account at face value as plausible or the likely account, it sure seems like an example of lawyer shaming to me, but in fairness, we don't exactly what was going on behind the curtain at Kirkland & Ellis. But they didn't take a clear moral stand. They issued a very short statement that they would no longer take these cases, and they didn't explain that they had moral objections to representing these clients, and that's key.

I want to return to the value of transparency when we discuss some potential solutions and/or strategies for addressing lawyer shaming, but I think the fact that there wasn't really transparency. The firm didn't really explain in detail what was motivating its decision, I think, raises serious question marks about whether this was lawyer shaming and suggests it may have been based on Paul Clements and Erin Murphy's account. So why-- now that we've discussed some examples, why is lawyer shaming so harmful to our society and our legal system?

So I think there are several reasons, and basically they all stem from the same basic tension, which is that lawyer shaming is fundamentally inconsistent with the limited technical role that lawyers play in our society to serve the rule of law, and that role is to advise members of our society to help them conform to the rule of law and to help them navigate the adversarial system, which adjudicates disputes under the rule of law. And so as a result of this inconsistency with the fundamental limited role of lawyers in our society, there are a number of negative consequences that flow from that.

And so the first is a little more-- I want to start low and then get high and broad. So first lawyer shaming encourages ethical violations by interfering with the lawyer-client relationship. So it encourages lawyers to drop clients amid a representation. So lawyers have an ethical duty to see a representation through, and if you do decide to drop a client, you have to do it under the ethical rules in a way that doesn't cause the client prejudice. And it may also encourage lawyers trying to reduce the heat on themselves to break confidentiality to reveal confidential facts that in an attempt to show why the client may not be as bad as they might otherwise seem, or you may feel pressure to distance yourself from your client by criticizing them.

All of this is textbook ethical violations. At least revealing confidential facts without informed consent. So if you get your client's informed consent, then you can reveal confidential information but not without their consent just to reduce the heat on you. And again, I'm not saying lawyer shaming inevitably requires this, but overall it will encourage more of these type of ethical violations. But most importantly, lawyer shaming reduces the availability of effective counsel in the aggregate at least, and that restricts access to justice as I said, especially for minority and disadvantaged clients.

And in fact, we need the general norm against lawyer shaming precisely because some lawyers are going to have moral objections to representing certain clients. And only if we maintain the norm will there be other lawyers available to step up and fill that gap. Other lawyers who don't necessarily share those same moral qualms can step up and fill the gap and ensure that client receives quality representation. But without the norm, that's impossible. So the norm actually allows lawyers with moral objections-- ensures that they can decline representation because other lawyers will be there.

And it's going to-- so it's going to ultimately lead to worse outcomes. And again, I'm not saying it is easy to prove in any particular case that well because this lawyer was shamed, then they got lower quality representation, and that led to this incorrect legal outcome. That may be very difficult to show the causation in any particular case, but in the aggregate, overall, lawyer shaming is going to reduce the quality of legal advocacy, lead to more legal errors by courts on both the facts and the law.

And it's going to lead to worse legal compliance. So clients are going to receive worse legal advice, again, in the aggregate, and it's going to deter lawyers of integrity from representing difficult clients that may most need strong legal advice. So it's precisely the clients that you think are most shaky in their legal commitments that you want there to be strong lawyers of integrity representing them. So if you think the Trump administration, for example, has a shaky commitment to the rule of law, I think the last thing you should do is blanket shame lawyers for serving in his administration because then they won't be there.

And I think history shows that the fact that there were lawyers of integrity in that administration really made a difference when the rubber hit the road at the end of the administration. So I think the last thing we should do is shame lawyers of integrity from representing difficult clients if we want them to hold their clients accountable and give them strong legal advice. And for all these reasons, it's going to ultimately erode public confidence in the rule of law. If you're an unpopular-- if you fit in one of these groups-- if you're a type of client that may be unpopular, and you see that lawyers are getting shamed, and it's more difficult for them to get strong representation, and courts are more likely to make errors in these cases, and they're likely to get worse legal advice, you're going to have less confidence in the legal system and the adversarial system specifically.

And that's contrary to our ethical duties as lawyers to expand access to justice, to foster confidence in our profession, in our system, and to extend civility and respect to all participants in the legal system, including other lawyers. The ethical rules are explicit that we have an obligation as lawyers to show respect to all participants in the system, including other lawyers. And lastly, lawyer shaming creates a toxic law firm workplace culture. It fosters a culture of fear and exclusion. It's going to harm morale and increase lawyer attrition, and I think it's going to ultimately stifle creative legal thinking and weaken your legal practice overall because of the culture of the lack of acceptance of the diversity of ideas.

In fact, in my experience, I've actually found that clients actually appreciate the diversity of perspectives, especially in our current legal environment because they need to be able to make arguments that will appeal to the judges that are out there in the court system right now. So you need, I think, a diversity of viewpoints to be able to be an effective lawyer. But I want to play devil's advocate for a little bit before we go to the Q&A and discuss some solutions and discuss a couple of possible responses to this.

So one response might be, well, yeah, I don't care about the norm against lawyer shaming because the entire legal system and the norm itself is a tool of oppression. And so we could actually-- if we discard the norm against lawyer shaming, we could actually use it to fight injustice and for further morality and justice. And I think I have three fundamental answers to this line of argument. So one is I think this line of thinking is an anti-democratic end run around the normal political and adversarial channels for influencing the content of the law and the outcome of cases under the law.

So those impulses to further justice and morality and change the content of the law are totally legitimate impulses. It's just we have a channel to do that, and that's the legislative and constitutional system for making the primary rules of law. And so when you try to affect case outcomes through manipulating access to justice, denying what you feel are unpopular disfavored clients access to justice, you are manipulating the content of the law outside those normal legitimate political channels. So that's one objection.

I think two, even accepting the premise of this line of argument. Let's say you think-- which I do not, but let's say you think the entire legal system is oppressive, even adversarial system is oppressive and a tool of injustice. Then what makes you think that discarding that norm is going to mean that you can now suddenly manipulate access to justice in the preferred way that you want consistent with your moral values and your vision of justice? All it's going to mean is that lawyer shaming and access to justice becomes just another ordinary tool of our political and moral battles in our society.

And so it's going to be manipulated by the very same oppressive majoritarian or elite forces that you think are infusing the legal system generally. There's no way that you can hold that line and say, oh, well, I can manipulate it in the way that I want for my ends, but it won't be manipulated by others. It certainly would become that tool-- the same sort of tool. And there's no way you could say, well, maybe we can erode the norm for just like the really bad clients. The really bad clients that I think are just cross some line. There's no way you're going to hold that line ever. It's just going to just be a downward spiral, and it's going to raise all sorts of questions of, well, if it's OK to shame lawyers for representing these clients, then why not these clients that are similar or just as bad?

And so all that's going to do is devolve into our general political and moral disagreements overall, and then we're right back to square one, where lawyer shaming and access to justice just becomes another ordinary tool of our political and moral fights. And then lastly, I do want to fight the premise of this objection a little bit, which is that I think effective legal counsel remains an extremely effective and powerful tool for fighting for justice and fighting against oppression in our society. I think we absolutely have a long way to go in our country.

Access to justice is not complete. We could do a lot better in that regard, but I think we shouldn't let that fact that we have a lot of progress still to make obscure the fact that we've made a lot of progress in our history, particularly in the Civil Rights movement and beyond in advancing the positions of disfavored groups and minorities through legal representation in the rule of law and the adversarial system. And I think we shouldn't lose sight. It's become-- our legal system and the rule of law and courts have become so commonplace to us, so mundane, that we forget about how really amazing it is that one single plaintiff with very little resources can take on a massive corporation or even the US government, a nuclear superpower, and get a court order that will be respected in our society.

So that is an amazing fact that I think can only really happen in a system like ours governed by the rule of law with effective zealous advocates on both sides. And then I want to discuss one other potential objection, which is especially relevant for our group of conservatives and libertarians, which is what about market forces? What if-- one objection to this concern is that the market will take care of this, or this is just-- or the lawyer shaming itself is just part of market forces. And market forces will sort it out and take care of it.

And I think that is an incomplete response to lawyer shaming. Look, no one loves market forces more than me. I'm a huge fan of the free market, but it just cannot completely answer this problem. And so we are seeing it as a safety valve a little bit to relieve some of these pressures. I think the rise of conservative boutiques, like Consovoy McCarthy, Clement and Murphy. That is market forces at work trying to, I think, address this problem, but it can't completely address it for a number of reasons. I think just from the basic economics of it, shaming raises the cost of legal representation for everyone. And at least at the margin, it's going to price out unpopular clients and make it more difficult for them to get legal representation.

But look, more practically every lawyer can't join or start their own boutique. And so the key point here really is that we are a unique profession. We are a hybrid profession. We're not a socialized profession. We are private, but we're not a purely profit-driven ordinary industry either. We have public obligations. The ethical rules themselves reflect this tension between private enterprise and public duties to ensure access to justice and access to the rule of law. And so we are-- the premise of our legal system, of our profession and the ethical rules is that access to justice, which means access to the rule of law ultimately, should not purely depend on market forces.

So we have to respect that delicate public-private balance and recognize our responsibilities as lawyers to ensure access to justice for everyone as much as possible. And then very briefly solutions, and then I'll open it up for Q&A. I think this is very hard. But for firms, I think, clarity and communication are very key. Firms should set clear expectations with clients and fellow attorneys about clearly defining what matters, they will and will not accept based on moral objections. So transparency, I think, will help a lot and dispel the idea that lawyer shaming is occurring, and it will create a more positive work culture of respect and civility.

And I think firms consistent with their moral values should adopt some policies to help discourage and prevent lawyer shaming. You can adopt explicit policies encouraging viewpoint diversity in hiring and pro bono and prohibit blacklisting of lawyer candidates based on their prior service for particular clients or administrations. And then perhaps most importantly is education. I think programs like this-- law schools should integrate these values, these core values and the norm against lawyer shaming into their PR courses. Official state bars and voluntary bar association should promote these values and should publicly condemn prominent lawyer shaming incidents when they occur and use those incidents as educational opportunities.

And lawyers, of course, need to educate clients right about these values, and this is the most difficult part that takes courage and fortitude, but I think lawyers should educate their clients about these values. Because it's not natural for clients to think this way necessarily. And so I think it's important that lawyers promote this message to the clients and explain the dangers and harms of lawyer shaming in our society.

And then lastly, what about attorney discipline? Is that an option? Part discipline. And that's a really tough one because I think the answer is at least under the current rules, the answer is probably not an option because these principles that I've been discussing are written in aspirational terms about what lawyers should do and should promote. They're not really written in concrete specific terms that invite discipline. Also there's the First Amendment as well. The First Amendment does protect lawyers, even though lawyers in some capacities have reduced free speech rights based on their unique role as officers of the court and to help administer justice.

So there are some limits, where lawyers might not have speech rights that otherwise other members of society might have, but they still do have speech rights. And so I think just punishing a lawyer for just going online and shaming another lawyer for representing an unpopular client, I think, would be probably prohibited by the First Amendment, but maybe there's some room-- again, I don't know.

I'm not taking a definitive position on this here today, but maybe there's some room under the First Amendment doctrine for some very targeted ethical rules that get at, say, like, economic agreements to not represent certain clients or something like that. Again, I don't really know. It would very much depend on the specific wording of the rule, but it still would raise very difficult constitutional questions if you're trying to use attorney discipline to fight lawyer shaming. So with that, thank you again for having me here today, and I gladly take some of your questions.

[APPLAUSE]