



National Association of College and University Attorneys
Presents:

**Navigating Campus Activism: Legal Insights for
University Protests**

Webinar

September 25, 2024

12:00 PM – 2:00 PM Eastern
11:00 AM – 1:00 PM Central
10:00 AM – 12:00 PM Mountain
9:00 AM – 11:00 AM Pacific

Presenters:

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Contents

1. Speaker Biographies
2. Materials
3. NACUA Webinar CLE Forms
4. PowerPoint Slides

**Note: You can click on the individual entries to jump to each section.*

Navigating Campus Activism: Legal Insights for University Protests



Shelby Boseman was hired by UT Arlington in 2014 as its first in-house counsel and Chief Legal Officer. He has oversight of the Office of Legal Affairs, Title IX, Equal Opportunity Services, Public Records, Records Information Management, and policies. Prior to UT Arlington he was the Deputy General Counsel at the Lone Star College System, and In-House Counsel at the Houston Housing Authority. Shelby received his Bachelors degree from Weber State University and his JD from the University of Houston. He is currently a 2nd year student in the Ph.D. program in Educational Leadership and Policy Studies at The University of Texas at Arlington.



Kelly Cruz joined the Office of the Vice President and General Counsel in 2019 and provides legal and policy advice regarding student affairs at the University of Michigan.

Prior to joining the OGC, Kelly served as Chief Compliance Counsel for Dell, Inc. in Boston, Massachusetts. Kelly began her career as a litigator at the law firm of Alston + Bird LLP in New York, NY. In her free time, she enjoys spending time with her husband and their three kids in Ann Arbor, Michigan.

Materials

- I. Procedures for Managing Demonstrations
- II. Internal Operating Procedures for Managing Campus Protests
- III. U. S. Department of Education Office for Civil Rights, "[Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses](#)" (July 2, 2024).
- IV. Bryan Heckenlively, Karen Johnson Shaheed, Joshua Meltzer, and Augustin Rivera, Jr., "[Free Speech Under Scrutiny \(Again!\)](#)" (NACUA Annual Conference 2024).
- V. Shelby Boseman, Patrice Goldmon, Derek Ishikawa, and Wesley Markham, "[Red Light, Green Light? Navigating Off-Campus Forces Influencing Student Protests on Campus](#)" (NACUA Annual Conference 2024).
- VI. U.S. Department of Education Office for Civil Rights, "[Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, including Shared Ancestry or Ethnic Characteristics](#)" (May 7, 2024).
- VII. James Jarvis, Adam Steinbaugh, and Ana Vieira Ayala, "[The Speaker, The Heckler, and the Bottlethrower: First Amendment Principles of Campus Unrest](#)" (NACUA 2023 Virtual CLE Workshop).

Procedures for Managing Demonstrations

Responsible Senior Administrator: Chair of Crisis Management Team

Last Updated: September 2022

Next Update: Summer 2024

This procedure outlines Institution's response for all staff asked or called to assist with managing a demonstration on campus. [Note: Institution has no sworn law enforcement officers in its Campus Safety department, and a small municipal police force in the surrounding town.]

Introductory Notes:

- Demonstrations in compliance with our Open Expression Policy and Demonstration Regulations are permitted.
- Vice Presidents with offices affected by demonstration activity are responsible for deciding whether to temporarily suspend or relocate a service.
- Capacity for all campus spaces has been determined by the EHS Coordinator and is available at the time of space reservation and is posted at event locations on campus.
- When protests are likely at/outside an evening event, area lighting should be supplemented with portable lights as possible.

I. Demonstrations in buildings open during regular hours

- a. Activity that complies with the Open Expression Policy is permitted.
- b. If the space is over-crowded, the event host / resident / building responsible has the primary responsibility to address overcrowding.
- c. Upon learning of the over-crowding (from Campus Safety or a senior leader), the event host will make an announcement and tell people to leave.
- d. If the event host interventions have not been able to address the overcrowding issue, Campus Safety will provide assistance, consistent with usual practices for overcrowding.

II. Guidelines for Police engagement

- a. Engagement with Students/Affiliated Individuals
 - i. The Director of Campus Safety may request that a uniformed police officer be present at an event if there are credible safety concerns.
 - ii. If law enforcement officers are present on campus during an event, and individuals are actively engaged in trying to shut down or disrupt the event, Institution will request that the law enforcement officers remain on campus in the vicinity of the event until it has ended and individuals protesting and attending the event have dispersed.
 - iii. Police will not be asked to remove students from Institution buildings during ordinary business hours, except by a member of Institution's Crisis Management Team (CMT) and only after substantial, good-faith efforts to negotiate have been undertaken.
 - iv. Police will not be asked immediately after business hours end in a building to arrest students engaged in a demonstration for trespass. Police will only be asked to arrest students for trespass by the president or her designee on Institution's Crisis

Management Team (CMT) and only after substantial, good-faith efforts to negotiate have been undertaken.

- v. Police can be asked to come speak with students to facilitate negotiations.
 - vi. Police will not be asked by Institution to arrest students (or use any kind of force) without authorization by the president or her designee on the Crisis Management Team (CMT), VPSA or Chief of Staff.
 - vii. Police will be asked to not respond to the Institution campus in riot gear.
 - viii. These guidelines address how Institution will request support from police, while acknowledging that police officers who respond to Institution 's campus will follow their own policies and procedures.
- b. Police Engagement with Unaffiliated Individuals
- i. Police may be asked by Institution to remove unaffiliated individuals who are engaged in substantially disruptive behavior if it can be done safely without interference from students.
 - ii. Police will not be asked by Institution to use force against unaffiliated individuals, except as necessary to effect an arrest and removal

III. Protests: Initial Response protocol

- b. Guidelines for Administrative point person engagement
- i. For administrative building or a significant student demonstration, the administrative point person is usually the Dean of Students or Vice President of Student Affairs, and/or the President's special assistant as an alternate. For scheduled events, the point person is the Event Host. For other buildings, the administrative point person will usually be the employee responsible for the impacted building or program.
 - ii. Individuals who are expected to serve in this role will be trained on an annual basis; including staff from DPS and the VPSA office.
 - iii. The point person will begin engagement with those demonstrating.
 - iv. Make an introduction of her/himself and explain their role.
 - v. If Public Safety is not on site, notify Public Safety and describe situation.
 - vi. Administrative point person will listen to any issues raised, and consider resolution processes, including engaging a trained restorative practices facilitator.
 - vii. All administrative staff assisting with an event or demonstration will engage with demonstrators using the following protocol:
 - i. Provide a clear and brief explanation of the problematic behavior
 - ii. Provide clear direction/information on what needs to occur in order to correct the problematic behavior.
 - iii. If students fail to comply, explain that failure to correct the behavior is a violation of Institution policy.
 - iv. Request noncompliant individuals provide verbal identification and a valid form of identification.
 - v. If anyone refuses to identify, state warning that failure to provide identification is a violation of Institution policy.
 - vi. Photograph individual refusing to provide identification.

- vii. If refusal to identify continues, staff will report policy violation to the Office of Community standards for sanctioning, providing photograph and any other information to aid in identification.
 - viii. Failure to identify oneself is one infraction. Failure to leave upon request is a second infraction, etc.
 - viii. Food delivery to protesters will not be permitted. Bringing in sleeping bags or other overnight supplies is not permitted in buildings not designed for overnight occupancy. Individuals will be warned that the intentional choice to create a safety risk will be weighed in the discipline sanction.
- c. Campus Safety Procedure for Engagement with Protesters
 - i. Notify Telecommunications of the location and situation prior to entering the venue.
 - ii. An additional officer(s) will be directed to respond to assist the officer on scene.
 - iii. The officer will locate the host / resident / event organizer / building responsible or manager, and/or the administrative point person. Record the names of these individuals.
 - iv. If the event is over-crowded, the officer can assist with determining if there are options to:
 - a. Reduce the crowd size;
 - b. Locate an appropriate sized location and move the event (inside or outside);
 - c. End the event and everyone leaves.
 - v. If over-crowding continues, the officer will request the assistance of a DPS supervisor.
 - vi. The first Campus Safety officer will begin engagement if there is no administrative point person on scene. Campus Safety will notify and partner with the administrative point person as soon as possible. Campus Safety will:
 - a. Make an introduction of her/himself and explain their role.
 - b. Provide a clear and brief explanation of the problematic behavior (over crowded, blocking entry or egress, noise, etc.).
 - c. Provide clear direction/information on what needs to occur in order to correct the problematic behavior(s).
 - d. If people fail to comply, a statement will be given that failure to correct the behavior(s) is a violation of Institution policy.
 - e. Request noncompliant individuals provide verbal identification and a valid form of identification.
 - f. Campus Safety shall attempt to photograph each person asked for identification at time of request.
 - g. If anyone refuses to identify, DPS will state the warning that failure to provide identification is a violation of Institution policy.
 - h. In residential buildings, Campus Safety will contact a CRD for assistance with student behavior.

- i. If refusal to identify continues, Campus Safety will report policy violation to the Judicial Affairs Officers (JAOs) when applicable, for sanctioning, providing photograph and any other information to aid in identification. (If the person is an employee, HR will be notified. If the person is a faculty member, the Dean of the Faculty. If the person is a non-student, DPS may seek the assistance of the Police Department or refer the person's name to police at a later time.)
 - j. Warn individuals that failure to identify oneself is one infraction. Failure to leave upon request is a second infraction, etc.
 - k. Campus Safety will listen to any issues raised by an individual or group and will relay these to the administrative point person (usually the VPSA or the President's Chief of Staff) so they can determine if and how to respond.
 - l. Campus Safety will seek assistance from the VPSA and the President's Chief of Staff with addressing the group as necessary and with identifying individuals if necessary.
 - m. Food delivery to protesters will not be permitted.
 - n. Bringing in sleeping bags or other overnight supplies is not permitted in buildings/spaces not designed for overnight occupancy. Individuals will be warned that the intentional choice to create a safety risk will be weighed in the discipline sanction.
 - o. If DPS point person determines that occupancy limits are exceeded, s/he will notify administrative point person and work in coordination to reduce numbers. Individuals will be required to leave until the numbers comply with occupancy limits. Campus safety will follow practices for overcrowded events.
 - p. If protesters remain in a non-residential building overnight, a campus safety officer must be present.
 - q. The Campus Safety supervisor, or officer on scene, may need to contact the Institution Police to assist.
 - r. The officers will document the incident and those identified according to Campus Safety Incident Report Procedures.
- b. Photography & Video of Demonstrations
- 1. Event planning for registered demonstrations or events where demonstrations are anticipated should include arranging for videography and/or still photography of the event by services providers contracted through Campus Safety.
 - 2. The role of the videographers/photographers is to produce high-quality, time-stamped, and – in the case of video – continuous records of the behaviors of individuals engaged in demonstration. It may be wise to record from multiple vantage points, depending on the space.
 - 3. The contracted videographers/photographers will be instructed not to engage with demonstrators and not to enforce Institution policies.
 - 4. If existing cameras may have captured useful images of a demonstration, Campus Safety will identify those cameras and ensure that the recordings are retained, promptly after the events.

- c. Fire Alarms
 - i. For Commencement and certain exceptional circumstances where it is essential for the Institution event to occur without interruption, it may be determined by the Director of Campus Safety in consultation with Facilities Service and the Fire Marshal that fire alarms in a largely unoccupied building may be temporarily silenced.
 - a. When fire alarms are silenced, Campus Safety in conjunction with Facilities Services will establish the appropriate precautions such as fire watch, etc., to protect the community's safety.
 - 2. Otherwise, fire alarms will remain audible and will trigger evacuation if they are activated.
 - 3. If the event planning merits such a precaution, individuals may be stationed to watch fire alarm trigger stations to prevent fire alarms from being triggered.
 - ii. If a fire alarm is triggered during an event, all event attendees will be required to exit the affected building, without exception for the nature of the event.

- c. Guidelines Specific to main administrative building/President's Office
 - i. During ordinary business hours
 - a. Building is open to our community during its posted business hours, 7:30am to 5:30pm, Monday – Friday.
 - b. It is not reasonable on weekdays when classes are in session to lock doors or station a campus safety officer in the building
 - c. Specific target areas may be locked, such as the Boardroom and President's office.
 - d. Protest activity is permitted, in compliance with the Open Expression Policy and Demonstration Regulations.
 - ii. High Risk Situations When Classes Are Not In Session, or Off-Hours
 - a. Any member of the Senior Leadership Group or the Director of Campus Safety may request the activation of the Crisis Management Team.
 - b. Campus Safety will lock administrative building.
 - c. The administrative point person will arrange for the doors to be staffed with an administrative greeter, and allow access only to those in scheduled meetings.
 - d. A Campus Safety staff member should on-site to support this effort and respond to uninvited individuals, as needed.
 - e. Office holders are responsible for securing confidential materials in a reasonable manner if the building may be occupied by demonstrators.
 - f. If the situation warrants, Campus Safety will instruct officer holders to shelter in place, preferably in an office where the door can be locked from the inside.

Internal Operating Procedure for Managing Campus Protests

Responsible Senior Administrator: _____

Last Updated: _____

Next Update: _____

This procedure outlines INSTITUTION's response for all staff asked or called to assist with managing a protest on campus.

Introductory Notes:

- Protests in compliance with INSTITUTION's Free Speech Policy are permitted.
- Vice Presidents with offices affected by protest activity are responsible for deciding whether to temporarily suspend or relocate a service due to impact caused by the protest.
- Only campus public forums (mall area, sidewalks, green spaces, etc.) are open for protest activity. Protests are not permitted on other areas of campus (classrooms, administrative offices, the library, etc.). However, students, staff and faculty may be lawfully present in a building and express concerns to administration. The APP, as defined below, is responsible for determining when a lawful presence becomes an unlawful protest, with assistance from the Office of Legal Affairs.
- The Office of _____ will coordinate training for APPs on an annual basis, along with staff from INSTITUTION PD, the VPSA office, and any other employees involved in responding to campus protests.
- This procedure is intended to provide guidance for consistency in INSTITUTION's response to a protest. However, employees involved may adjust their response depending on the size and scope of the protest, with the understanding that the safety of the campus is the priority concern.
- If at any time the President or designee believes the circumstances of a particular protest may lead to the need for a more significant response from INSTITUTION PD, and time permits, the President may put together a team of executive leadership members to strategize regarding appropriate course of action.

I. INITIAL RESPONSE PROTOCOL: Guidelines for Administrative Engagement

- a. Administrative Point Person (APP) is the INSTITUTION liaison with the protestors during a protest. The APP is generally determined by which group is organizing or leading the protest. APPs should collaborate when a protest consists of multiple constituent groups.
 - i. For protests led by students, the administrative point person is the Dean of Students (DoS) or Vice President of Student Affairs (VPSA), or their designee.
 - ii. For protests led by staff employees, the point person is the Vice President of Human Resources (VPHR), or their designee.
 - iii. For protests led by faculty employees, the point person is the Provost.
 - iv. For protests led by individuals who are unaffiliated with the University, the administrative point person is the _____, or their designee.
- b. The APP should first determine appropriate campus notifications, which may include INSTITUTION PD; Communications, the Office of the President, Legal Affairs, etc. If INSTITUTION PD is not already on site, the APP should notify INSTITUTION PD and

describe the situation to give INSTITUTION PD as much notice as possible about the potential need for INSTITUTION PD assistance or interaction.

- c. The goal of the APP communication with the demonstrators is to allow the protest to continue in a peaceful manner that is compliant with INSTITUTION policy. To that end, the APP should engage with demonstrators using the following protocol:
 - i. The APP will initiate engagement with the demonstrators by introducing themselves and explaining their role at the University and their role as an APP (i.e. to ensure the protest continues in a peaceful and policy-compliant manner).
 - ii. The APP will listen to any issues raised by the demonstrators, consider possible resolutions, and be willing to communicate those concerns to the appropriate members of INSTITUTION administration, if applicable.
 - iii. If there are policy violations or safety concerns, the APP should:
 - i. Provide a clear and brief explanation of the problematic behavior, including citing which policies are being violated.
 - ii. Provide clear and direct information about what the demonstrators must do or cease doing to correct the problematic behavior or policy violation(s).
 - iii. Explain that failure to bring their actions into compliance with INSTITUTION policy at the request/direction of administration is an additional violation of INSTITUTION policy.
 - iv. Provide the demonstrators an opportunity to bring their protest into compliance.

II. ESCALATED RESPONSE PROTOCOL

- a. If demonstrators continue to engage in policy violations, after consultation with INSTITUTION leadership, the APP should re-approach the group using the following protocol:
 - i. Request noncompliant individuals provide verbal identification, a valid form of physical identification, and state their relationship with the University (i.e. employee, student, etc.).
 - ii. **Protestor(s) is identified as:**
 1. **Students.** The APP should warn the student the APP will report the policy violation to the Office of Student Conduct (OSC) for sanctioning. The APP may wait until the conclusion of the protest to make the referral to OSC and provide any related information.
 2. **Employee.** The APP should warn the employee the APP will report the policy violation to the Office of Human Resources, for employment discipline.
 - iii. **Protestors Refuse to Identify:**
 1. If a demonstrator(s) refuse to identify, the APP should warn the individual that failing to identify themselves to a University official is a violation of (Applicable Law) and that violations of law on campus are violations of University policy failure, which will result in the issuance of a Criminal Trespass Warning (CTW) and they will be required to leave the campus. The APP should then tell the individuals that failure to

leave the campus after the issuance of a criminal trespass warning may result in arrest.

b. Protestors enter a INSTITUTION building or a group of students/faculty/staff in a building becomes a protest.

- i. The APP should follow the guidelines in Section II.a. above.
- ii. Only the APP, or their designee, may ask INSTITUTION PD to remove students, faculty, and staff from INSTITUTION buildings, and only after the APP has made substantial, good-faith efforts to explain that the protest is in a prohibited location and they must relocate.
- iii. The APP, or their designee, may ask INSTITUTION PD to remove unaffiliated individuals present without a legitimate business purpose
- iv. The APP, or their designee, may ask INSTITUTION PD to remove anyone engaged in substantially disruptive behavior.

III. GUIDELINES FOR POLICE ENGAGEMENT

- a. These guidelines address how INSTITUTION Administration will request support from INSTITUTION PD, while acknowledging that police officers who respond to INSTITUTION protests will follow INSTITUTION PD policies, procedures and general orders. These guidelines are to provide guidance for consistency in INSTITUTION's response for INSTITUTION PD engagement, however, INSTITUTION PD officers may adjust their response based on safety concerns.
- b. The APP may request that a uniformed police officer be present at an event or protest if there are credible safety concerns.
- c. INSTITUTION PD may request assistance from other law enforcement agencies in its discretion based on the size and scope of the protest.
- d. If INSTITUTION PD is present on campus during an event or protest, officers will remain on campus, in the vicinity of the event, until it has ended, and individuals protesting and attending the event have dispersed.
- e. The APP may ask INSTITUTION PD to come speak with demonstrators to facilitate compliance with INSTITUTION policies in the event the APP has been unsuccessful.
- f. CTW violations should only be given as a last resort, preferably after consultation between the INSTITUTION PD Chief of Police and campus leadership. However, INSTITUTION PD may issue a CTW at any time in accordance with INSTITUTION PD protocols. Violations of CTWs should be implemented consistently with appropriate arrest protocols.
- g. Once the APP, or their designee, decides that it is time to make arrests of non-compliant demonstrators, INSTITUTION PD will move officers into position near the protest to prepare to arrest individuals.
- h. The APP will approach the group and offer a final warning using **Exhibit A**, as updated by INSTITUTION PD or the Office of Legal Affairs, outlining what behavior is problematic, which INSTITUTION policies the demonstrators are violating, provide direction about what the demonstrators must do or cease doing to become compliant, and remind the group that, for some individuals, refusing to comply with the directive of a University official may be a further policy violation.
- i. The APP should allow an appropriate time for the demonstrators to bring themselves into compliance, depending on the circumstances. If the demonstrators do not bring themselves into compliance, the APP will continue using the script in **Exhibit A**.

- j. Following the **Exhibit A** script, the APP should tell the lead INSTITUTION PD officer that they have warned the demonstrators multiple times about their policy violations and that the APP wants to initiate the formal criminal trespass warning from INSTITUTION PD and bar the demonstrators from campus until further notice.
- k. Following the **Exhibit A** script, after receiving the request to initiate formal CTWs from the APP, the lead INSTITUTION PD officer should announce their name and badge number to the demonstrators, using amplified sound if necessary, and inform them that they must leave campus immediately and not return or they will be subject to arrest for Criminal Trespass. INSTITUTION PD should then tell the demonstrators that they have **X** minutes to comply. Repeat the warning, as necessary, decreasing the number of minutes to comply by the number of minutes that have passed since the initial warning was given.
- l. Following the **Exhibit A** script, once **X** minutes have passed, the lead INSTITUTION PD officer should announce to the remaining demonstrators, using amplified sound if necessary, that they are now in violation of _____ law and subject to arrest.
- m. The INSTITUTION PD officers on the scene should begin arresting remaining demonstrators. If additional demonstrators arrive, as arrests take place, and it is obvious they were not there when the warnings were initially given, repeat the INSTITUTION PD warnings as necessary for new arrivals.
 - a. After arrests and demonstrators are removed, (Applicable Department) will collect any remaining property. Property of value, like backpacks, and purses will be separated from trash and other otherwise non-valuable assets and disposed of in accordance with INSTITUTION Lost or Abandoned Property Policy.

IV. AFTER ACTION ITEMS

- a. Once the protest site is secured and demonstrators have vacated the area (through arrest or of their own accord). The APP should inform relevant stakeholders (President, VP of Communications, Provost, Vice President of Student Affairs, General Counsel), as applicable, about the issuance of the CTWs and the prohibition against any identified students or employees from returning to campus. The APP should work with the relevant stakeholders, INSTITUTION's Office of Legal Affairs, and INSTITUTION PD to determine the length of any issued CTWs.
- b. INSTITUTION PD should complete all necessary paperwork related to the CTWs according to its policies and procedures.
- c. Although demonstrators will be instructed to contact INSTITUTION PD regarding their CTW, they will likely expect to be able to discuss the terms of the CTW with relevant stakeholders (Dean of Students for students, VPHR for staff, PROVOST for faculty). Stakeholders may discuss the terms of the CTW with students and employees but should direct students and employees to contact INSTITUTION PD to make absolutely certain that their CTW has been lifted before returning to campus.
- d. If existing cameras may have captured useful images of a protest, the APP and employees involved should attempt to locate any recordings or images and ensure that the recordings are retained, promptly after the events.

V. ADDITIONAL CONSIDERATIONS

- b. Photography & Video of Protests

1. The APP or designee or applicable staff should determine if resources are available to record the protest and individuals involved. This will help protect INSTITUTION and may be later used as evidence of policy violations or criminal activity.
2. This may include employees using INSTITUTION video equipment or even employees using cell phones. Safety should remain the top priority when recording and individuals should remain in a safe location. Individuals recording should be instructed not to engage with demonstrators and not to enforce INSTITUTION policies.

EXHIBIT A

BEFORE USING THIS SCRIPT, INSTITUTION PD OR LEGAL AFFAIRS SHOULD CONTACT THE _____ COUNTY DA TO DETERMINE IF UPDATES ARE NEEDED TO THIS SCRIPT. IN THE EVENT TIME DOES NOT ALLOW FOR THIS VERIFICATION THEN USE THE SCRIPT BELOW.

APP approaches group:

*"This a warning to **all of you** that you are in violation of the INSTITUTION _____ Policy which prohibits _____. You or your group have been provided this warning and notice of your violations on 3-4 separate occasions, so we will not debate the merits of those warnings with you, now. This is a further warning **to INSTITUTION students** that you are now **also** in violation of the Student Code of Conduct for failing to comply with the directive of a University official when you did not bring yourself into compliance with the _____ Policy after earlier warnings.*

*"I need to get a quick understanding from y'all about which of these items belongs to whom. **Direct this question to each of the protesters.** "Which items are yours? Please separate your personal items from the rest of the communal items here." **Once all items claimed by the protesters are separated from the remaining items, ask the protesters** "Is there anything else here that belongs to you?" **Allow the protesters to grab and separate any other items they are claiming.***

All of the unclaimed property is considered abandoned. Ask a member of Facilities to remove the items. If the protesters have claimed some items that violate the _____ Policy, tell them:

"The storage of this/these item(s) is/are prohibited under INSTITUTION's _____ Policy, I need you to remove it/them, or you will receive a criminal trespass warning at which point you will be asked to leave. A criminal trespass warning is a prohibition from being physically present on the INSTITUTION campus and any other property owned, controlled, or leased by INSTITUTION. If you do not leave, you may be arrested."

If protesters are claiming the prohibited items, but refusing to remove them, move to Step II.

STEP II

"I need to collect your names, your identification, and your affiliations with INSTITUTION. Please provide me with your IDs. I can take any picture ID that includes your name, including your INSTITUTION student or employee ID."

If they ask why: *"You are required to provide me with your identification pursuant to (Applicable Law)."*

Take down the names of anyone who willingly provides identification and note whether they are a student or employee. Direct the instruction a second time to anyone who has not provided their identification. Once you have collected the identification of everyone who is willing to give it to you:

"I am directing all of you to leave the campus, immediately. Do NOT return to campus until you have contacted the INSTITUTION Police Department to inquire about the circumstances under which you may return.

If you do not comply with this directive to leave, you will be arrested. Any items left behind after you are arrested will be considered abandoned property and disposed of accordingly. You have 5 minutes to comply by identifying yourselves if you have not already and removing any personal belongings you are storing.”

Wait 3 minutes and repeat the above two paragraphs. Note the time of each warning. If protesters remain after the two warnings are given, tell INSTITUTIONPD liaison on site:

STEP III

“I have warned this group multiple times and they are not complying with our requests to identify themselves and vacate campus. I think it’s time to initiate the formal Criminal Trespass Warning from PD and bar them from campus pending contact with the student conduct office or human resource office, if applicable, and indefinitely if they are unaffiliated with the University.”

Using amplified sound, INSTITUTION PD will announce:

“This is the INSTITUTION Police Department (Captain/AC name w/ Badge number.) This encampment and its occupants are hereby warned that you must leave the campus immediately and not return or be subject to arrest for Criminal Trespass. Please gather all encampment items and vacate the campus. You have 10 minutes to comply.”

After 5 more minutes, using amplified sound, INSTITUTION PD will announce:

“This is the INSTITUTION Police Department (Captain/AC name w/ Badge number.) This encampment and its occupants are hereby warned that you must leave the campus immediately and not return or be subject to arrest for Criminal Trespass. Please gather all encampment items and vacate the campus. This is your second warning. You now have 5 minutes to vacate the area.”

After 5 more minutes, using amplified sound, INSTITUTION PD will announce:

“This is the INSTITUTION Police Department (Captain/AC name w/ Badge number.) All members of this group and encampment are in violation of _____ Law and subject to arrest.”

INSTITUTION PD will begin arresting any remaining protesters. If additional protesters arrive, as arrests take place, and it is obvious they were not there when the warnings were initially given, repeat the INSTITUTION PD warnings as necessary for new arrivals.

After protesters are arrested, PD will ask them to identify any backpacks or purses that belong to them to take with them to jail.

After arrests and protesters removed, Facilities will collect any remaining property. Property of value, like backpacks, and purses will be separated from trash and other otherwise non-valuable assets and disposed of in accordance with (Applicable Policy).

Navigating Campus Activism: Legal Insights for University Protests

September 25, 2024

If you are an attorney applying for Continuing Legal Education credits (CLEs), you must sign this attendance record to verify your attendance. Please complete and return this form no later than Wednesday, October 2nd to the CLE Credit Submission Portal (www.nacua.org/submitCLE).

***Total CLE Credits = 120 minutes**

Organization

PRINTED Name

SIGNATURE

State & Bar Number (If Applying for CLE)

Navigating Campus Activism: Legal Insights for University Protests

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- **Attorneys from MD, MA, MI, SD, or DC:** These jurisdictions do not have CLE requirements and therefore require no report of attendance or filing.
- **Attorneys from AK, AZ, CA, CO, CT, DE, HI, IN, IA, KY, MN, MO, MT, NH, NJ, NY, VT, WI, or WY:** Do not return this form to NACUA. Please keep this form for your records to submit directly to your state CLE commission or in case your state bar audits you for CLE compliance. Please also remember to sign the attendance record.
- **Attorneys from all other states:** Please complete and return this form no later than Wednesday, October 2nd to the CLE Credit Submission Portal (www.nacua.org/submitCLE). Please also remember to sign the attendance record.

NACUA certifies that this program has been presumptively approved and conforms to the standards prescribed by the rules and regulations of the State Bars of AK, AZ, AR, CA, CT, DE, HI, NV, NH, NJ, NM, PA, RI, VT, WV and WY. NACUA will apply for CLE credits from the following states: AL, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NE, NC, ND, OH, OK, OR, SC, TN, TX, UT, VA, WA and WI.

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Note: Restrictions vary state by state and not all states will accredit this webinar.

Upon receipt of this certificate of attendance and your attendance record, NACUA will process the credits through the applicable state if approved.

Certification

NACUA will apply for a total of 120 minutes. By signing below, I certify that I attended the above activity and request _____ minutes of CLE credits.

Name

State & Bar Number

Address

Email

Signature

Authorized By:

Amanda McLean

Amanda McLean
Meetings and Events Coordinator

Navigating Campus Activism: Legal Insights for University Protests

September 25, 2024

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Date / Time	Session Title	Verification Code 1	Verification Code 2
09/25/2024 12:00 PM ET	Navigating Campus Activism: Legal Insights for University Protests		



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Webinar

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Navigating Campus Activism: Legal Insights for University Protests

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Agenda

- Emerging Trends in Today's Campus Climate
- First Amendment & Title VI Overview
- Case Law Update
- Audience Q&A
- Case Studies
- Practical Tips & Considerations
- Audience Q&A

Emerging Themes: Campus Climate

- A shift in expectations of the management of campus protests
- Increased reliance on law enforcement to manage protests
- Institutions continue to update speech and behavior policies
- Institutional neutrality continues to gain traction

The First Amendment

The U.S. Bill of Rights

Amendment I

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Applicability

- Public Institutions
 - As state agents, all public colleges and universities are legally bound to respect the constitutional rights of their students.
- Private Institutions
 - State constitutions
 - State statutes
 - Federal regulations
 - Free expression policies

Forum Analysis

Type of Forum	Defined As	Permitted Restrictions
Traditional Public Forum	Spaces such as sidewalks that have traditionally been open to political speech/debate	Content neutral Narrowly tailored Ample alternative channels of communication Serve a significant interest
Designated Public Forum	Spaces where government chooses to allow speech generally	<i>Same as Traditional Public Forum</i>
Limited Public Forum	Spaces where government allows certain types of speech and/or speech by certain groups (e.g., History Department bulletin board)	Viewpoint neutral Reasonable in light of the purpose of the forum
Nonpublic Forum	Spaces not available for public expression (e.g., faculty offices)	<i>No general free speech rights, but same limitations as Limited Public Forum if speech occurs</i>

For further information, please visit "[Free Speech Under Scrutiny \(Again!\)](#)" from the NACUA 2024 Annual Conference.

Reasonable Time, Place, Manner Restrictions

- ***Cox v. New Hampshire, 312 U.S. 569 (1941)***. A unanimous Supreme Court, held that, although the government cannot regulate the contents of speech, it can place reasonable time, place, and manner restrictions on speech for the public safety.
- ***Ward v. Rock Against Racism, 491 U.S. 781 (1989)***. The requirements for time, place, and manner regulations in a public forum are that they must be content-neutral, be narrowly tailored to serve a significant government interest, and provide alternative channels for communicating the same content.
 - Time, place, manner regulations do not need to be the least intrusive means of furthering a legitimate government interest, since a "less-restrictive-alternative analysis" has never been a part of the inquiry into the validity of a time, place, or manner regulation. The requirement of narrow tailoring is satisfied so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and the means chosen are not substantially broader than necessary to achieve that interest.

Reasonable Time, Place, Manner Restrictions

- Imposing limits on the noise level of speech,
- Capping the number of protesters who may occupy a given forum,
- Barring early-morning or late-evening demonstrations,
- Restricting the size or placement of signs on government property,
- Posting of information on university buildings is limited to designated bulletin boards,
- Time limits on signage,
- Locations of demonstrations,
- Head/face covering intended to conceal the identity of the wearer, which does not include personal protective or religious coverings,
- Open fires or flames.

Reasonable Time, Place, Manner Restrictions - Injunction

- ***Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994)**
 - Judicial injunctions that impose content-neutral time, place, and manner restrictions are subject to a heightened form of intermediate scrutiny. Appellate courts should subject content-neutral injunctions to more “stringent” First Amendment scrutiny than comparable legislation – that “when evaluating a content-neutral injunction, we think that our standard time, place, and manner analysis is not sufficiently rigorous.”
 - Creating a new standard of review for judicially imposed time, place, and manner restrictions, the Court wrote, “[w]e must ask instead whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest.”
 - This effectively converts the second prong of Ward into a least restrictive means requirement.

Unprotected Speech

- Obscenity - *Miller v. California* (1973)
- Defamation - *New York Times Co. v. Sullivan* (1964)
- Incitement to Illegal Activity - *Brandenburg v. Ohio* (1969)
- True Threats - *Virginia v. Black* (2003); *Counterman v. Colorado*, 600 U.S. 66 (2023)
- Fighting Words - *Chaplinsky v. New Hampshire* (1942)
- Harassment - *Davis v. Monroe County Bd. of Educ.* (1999)

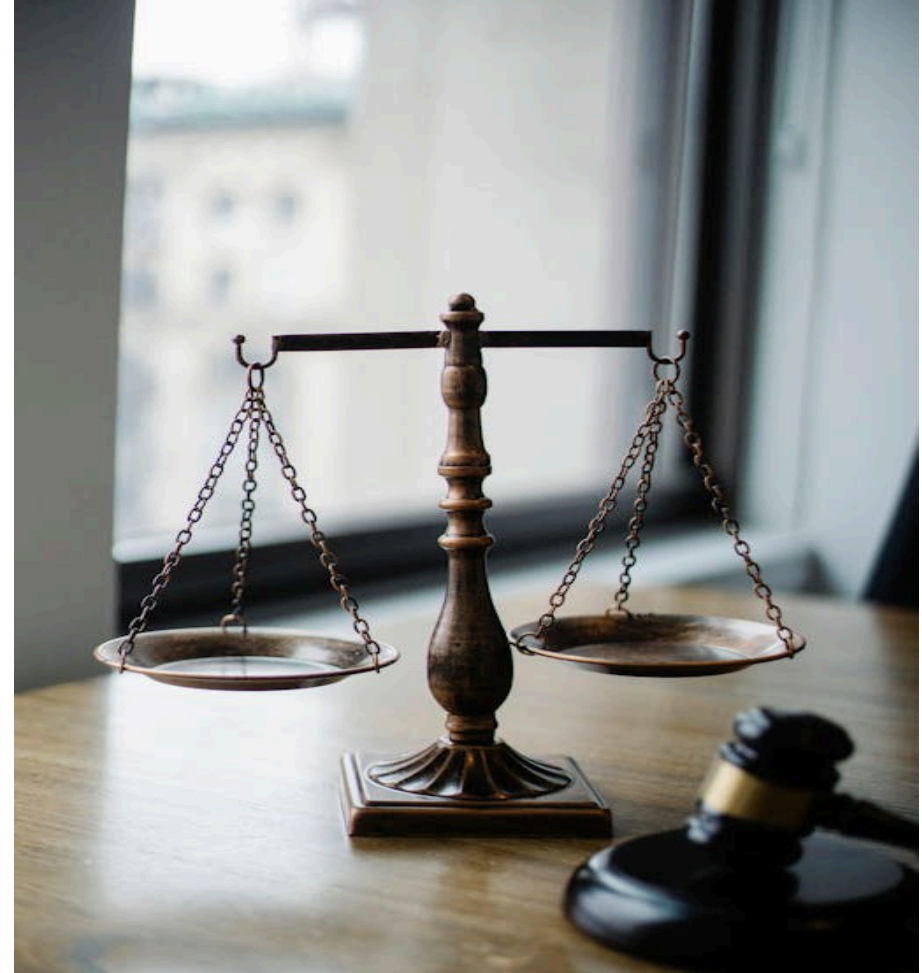
Obscenity

- Whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest;
- Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.



Defamation

- A false statement purporting to be fact;
- Publication or communication of that statement to a third person;
- Fault amounting to at least negligence; and
- Damages, or some harm caused to the reputation of the person or entity.



Incitement to Illegal Activity

- The speech must be directed at inciting or producing imminent lawless action; and
- The circumstances have to be such that the speech was likely to produce such action.



True Threats

- A serious expression
- of intent to commit an act of unlawful violence
- to a particular individual or group of individuals.



Fighting Words

- Words which by their very utterance inflict injury or tend to incite an immediate breach of the peace.
- Offensive and insulting language, even when directed at specific individuals, is not fighting words.



Title VI

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Title VI of the Civil Rights Act of 1964

Title VI



Title VI



Title VI



Title VI

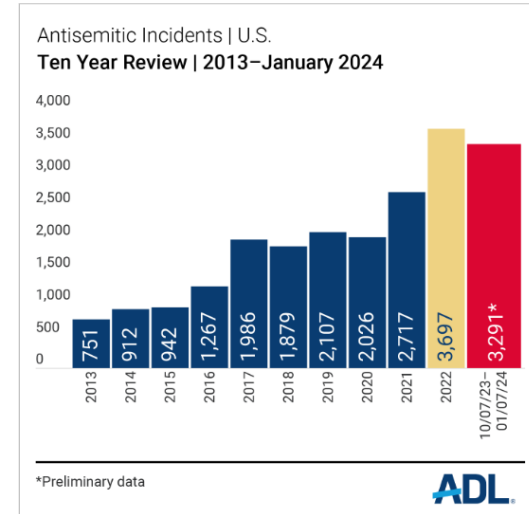


Title VI



Title VI

List of Open Title VI Shared Ancestry Investigations



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Title VI

List of Open Title VI Shared Ancestry Investigations

State:
 Basis of Discrimination:
 Race and National Origin Discrimination:

Show:
 Institution:
 Institution Type:
 Open Date Between:
 And:
 Specific Date:

State ^	Institution	Institution Type	Type of Discrimination	Open Investigation Date
AZ	ARIZONA STATE UNIVERSITY-MAIN CAMPUS	PSE	Title VI - National Origin Discrimination Involving Religion	01/23/2024
CA	CALIFORNIA STATE UNIVERSITY-SACRAMENTO	PSE	Title VI - National Origin Discrimination Involving Religion	07/10/2024
CA	ABRAHAM LINCOLN UNIVERSITY	PSE	Title VI - National Origin Discrimination Involving Religion	01/22/2024
CA	POMONA COLLEGE	PSE	Title VI - National Origin Discrimination Involving Religion	08/06/2024
CA	UNIVERSITY OF CALIFORNIA-SAN DIEGO	PSE	Title VI - National Origin Discrimination Involving Religion	12/11/2023
CA	UNIVERSITY OF CALIFORNIA-SANTA BARBARA	PSE	Title VI - National Origin Discrimination Involving Religion	03/21/2024
CA	UNIVERSITY OF CALIFORNIA-SANTA CRUZ	PSE	Title VI - National Origin Discrimination Involving Religion	05/28/2024
CA	UNIVERSITY OF CALIFORNIA-DAVIS	PSE	Title VI - National Origin Discrimination Involving Religion	12/14/2023
CA	UNIVERSITY OF CALIFORNIA-DAVIS	PSE	Title VI - National Origin Discrimination Involving Religion	06/11/2024
CA	UNIVERSITY OF CALIFORNIA-DAVIS	PSE	Title VI - National Origin Discrimination Involving Religion	06/21/2024
CA	UNIVERSITY OF SOUTHERN CALIFORNIA	PSE	Title VI - National Origin Discrimination Involving Religion	06/11/2024
CA	UNIVERSITY OF CALIFORNIA-LOS ANGELES	PSE	Title VI - National Origin Discrimination Involving Religion	12/06/2023
CA	UNIVERSITY OF CALIFORNIA-LOS ANGELES	PSE	Title VI - National Origin Discrimination Involving Religion	05/07/2024
CA	UNIVERSITY OF CALIFORNIA-LOS ANGELES	PSE	Title VI - National Origin Discrimination Involving Religion	05/08/2024
CA	CHAPMAN UNIVERSITY	PSE	Title VI - National Origin Discrimination Involving Religion	06/07/2024
CA	STANFORD UNIVERSITY	PSE	Title VI - National Origin Discrimination Involving Religion	12/07/2023
CA	SAN DIEGO STATE UNIVERSITY	PSE	Title VI - National Origin Discrimination Involving Religion	01/02/2024
CA	SANTA MONICA COLLEGE	PSE	Title VI - National Origin Discrimination Involving Religion	12/04/2023
CA	SANTA MONICA COLLEGE	PSE	Title VI - National Origin Discrimination Involving Religion	05/20/2024
CT	YALE UNIVERSITY	PSE	Title VI - National Origin Discrimination Involving Religion	01/22/2024

Displaying 1 - 20 of 73 records

Title VI

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Title VI of the Civil Rights Act of 1964

Title VI

Courts and OCR use two different frameworks to evaluate whether a school has engaged in discrimination that violates Title VI

- Different treatment framework
- Hostile environment framework

Title VI

OCR's Definition of Hostile Environment

Unwelcome conduct based on race, color, or national origin when, based on the totality of the circumstances, is:

- Subjectively and objectively offensive; and
- So severe or pervasive that it
- Limits or denies a person's ability to participate in or benefit from the recipient's education program or activity

Harassing conduct need not be targeted at a particular person to create a hostile environment.

Title VI

OCR's Examples of Hostile Environments

- Israeli filmmaker is invited to campus for a screening. Protestors prevent anyone from entering, holding signs "No Jewish Propaganda Allowed." College arranges for different location for movie. Protestors do the same thing again.
- Students surround and shove members of the Arab Student Association and chant "jihad supporters." Members recognize chanters as classmates and skip classes out of fear and cancel future meetings.
- 100 students peacefully engage in a march in support of Gaza. Counter-protestors shout things like "terrorist" and physically attack the students. Muslim students feel unsafe, skip classes, and report the incident. Institution sends campuswide email "we support peaceful protest but we condemn all violence."

Title VI

What is an institution expected to do?

- Make a determination of whether a hostile environment exists
- If yes, take prompt and effective steps to end harassment, eliminate hostile environment, and prevent recurrence

What isn't enough?

- Referring matter to law enforcement
- Denouncing it via campuswide email
- Declaring the activity protected under the First Amendment

New Cases to Highlight

Frankel et al., v. Regents of the Univ. of California et al., 24-CV-04702 (C.D. Cal. 2024).

- Pro-Palestinian protesters occupied Royce Quad, a major thoroughfare on campus. Encampment checkpoints required passersby to wear a specific wristband to cross them. People who supported Israel were not allowed to travel through the Quad. This “directly interfered with instruction by blocking students' pathways to classrooms.”
- Court granted a preliminary injunction and held that UCLA's failure to remove the encampment – even if for safety reasons – had the effect of excluding individuals from public benefits based on their religious beliefs in violation of Free Exercise Clause.

New Cases to Highlight

Molina v. Book, No. 21-1830 (8th Cir. 2023).

- Molina and Book were observing a protest in St. Louis triggered by a fatal police shooting. Wearing bright green hats bearing the label “National Lawyers Guild Legal Observer,” they monitored the demonstration. Upon police orders to disperse, Molina and Vogel complied, relocating to Molina's residence several blocks away, where they stood on the sidewalk. Subsequently, police, traveling in an armored vehicle, passed by Molina's home and deployed tear gas canisters towards them.
- The plaintiffs sued contending that the police targeted them due to their role and identification as legal observers, actions protected under the First Amendment and that the police did not have qualified immunity to fire tear gas at them. The Eighth Circuit held that printed words on clothing lacked First Amendment protection because it did not convey a "particularized message," and it deemed the right to observe and record police actions in public not clearly established, thus granting the officers "qualified immunity."

New Cases to Highlight

Kestenbaum v. Harvard Coll., No. CV 24-10092-RGS (D. Mass. Aug. 6, 2024).

- Jewish student alleges Harvard ignored discrimination against Jewish and Israeli students post Oct. 7.
- Court held that student plausibly pled a claim under Title VI, survives motion to dismiss.
- Court focused on protests that were, at times, confrontational, physically violent, and caused significant impact on Kestenbaum's student experience.

New Cases to Highlight

Mckesson v. Doe, 601 U.S. ____ (2024).

- The Fifth Circuit held that Mckesson, the leader of a Black Lives Matter protest in Baton Rouge, Louisiana, could be liable under a negligence theory for serious injuries sustained by a police officer by a third party.
- The USSC denied certiorari, but provided a statement authored by Justice Sotomayor providing clarity on the court's decision. The decision not to hear the case, was unnecessary based on their recent opinion in *Counterman v. Colorado*, which made clear that “the First Amendment precludes punishment [for incitement], whether civil or criminal, unless the speaker’s words were ‘intended’ (not just likely) to produce imminent disorder, using a standard no greater than recklessness.” She suggested the same principle should guide lower courts when the Mckesson case comes back for review.

An illustration of several hands of different skin tones holding up colorful speech bubbles in various colors like blue, yellow, green, pink, red, and purple. The hands are positioned as if presenting the bubbles. The background is a solid light beige color.

Questions?

Scenario 1

A student in an accounting course asks for the last few minutes of your class to announce a rally in support of Gaza taking place that evening on the quad, including how students can support the cause. You inform the student that you will not allow class time for this purpose. They respond, “but you gave Jane class time last week to announce the fundraiser for her church.”

Even after informing the student that they may not use class time to promote a rally, they insist on speaking. How will you respond?

Scenario 1 Poll

How would you advise the professor?

A – The professor must say "yes" because they have created precedent by already saying yes to Jane.

B – The professor must say "no" because the topic is too sensitive for class and could create a hostile environment for other students.

C – The professor has no obligation to allow students to present during class time and should say "no," even if they've said yes before.

Scenario 2

The Young Republican Student Organization has registered to hold a protest scheduled for the day after the presidential election on campus. They expect about 50 people. The day of the election, University Police become aware of Reddit posts for anti-MAGA students to crash the protest. It has been liked over 200 times. Many posts call for the counter protesters to wear masks and be "ready for anything." The PD is worried about violence and the size of the crowd. The PD notifies administration it will cost about \$20,000 in overtime and additional security for the event. The president wants to cancel the scheduled protest.

Scenario 2 Poll

What do you advise the President?

A – Cancel the protest based on the credible evidence of violence.

B – Allow the protest, but notify the student organization that they will be responsible for the additional security costs.

C – Allow the protest, but move it to a location better suited for security purposes, and tell the President the University is going to have to eat the costs.

D – Allow the protest, keep it in the same reserved location, and tell the President the University is going to have to eat the costs.

Scenario 3

Two students in Professor Adam's seminar report feeling unwelcome and unsafe because six other students consistently wear "Intifada Until Victory" t-shirts to class and sit in the front row. In response, at the next class several students wear shirts stating, "Christians United for Israel" and hand out pamphlets supporting Israel. What should the professor do?

Scenario 3 Poll

What should the professor do?

A – Let the students wear whatever they want and pass out whatever they want. They have First Amendment rights to do so.

B – Students should be asked to stop wearing provocative t-shirts in class because the t-shirts can create a hostile environment for other students.

C – So long as the t-shirts aren't creating disruption, continue class as normal.

Scenario 4

Your president forwards you an email from a donor who is very upset with a faculty member's signature line, which states below their title "Vote - Trump 2024". You speak with the dean to get some background on the faculty and the dean laughs and says, "that's just the tip of the iceberg." She then forwards you emails from faculty with land acknowledgments, "Free Palestine", and even "Happy Hannukah or Merry Christmas". The president tells the donor that their attorney will fix this. The donor tweets this news. The next day the faculty senate shows up at your office and are not going to leave until you meet with them.

Scenario 4 Poll

What do you do now?

A – Faculty tag lines are protected speech, which you need to explain to the President and then re-assure the Senate faculty are okay.

B – Faculty tag lines are not protected speech, so you need to correct this practice, and tell the Senate they are not allowed to protest in your office and need to leave.

C – It doesn't matter if faculty tag lines are protected or not if there is not a policy, so quickly draft a policy and tell Senate you'll meet with them next week.

D – Quickly schedule vacation and delegate to your Deputy GC.

Scenario 5

Your institution's medical school has an open listserv that is available to communicate with members of the school. The Medical School's listserv is available for any member to use freely for any purpose, so long as the use doesn't violate institution policy or the law.

A staff member is furious that they keep getting spammed with political content, unnecessary reply alls, and "pro-this" and "anti-that" from student organizations. The Student Affairs Office, which manages the listserv, asks for your help.

Scenario 5 Poll

What are some options to manage the listserv?

- A – Advise the Student Affairs Office that they can shut down the listserv.
- B – Advise the Student Affairs Office that they can remind the irritated staff member that they can ignore the messages or opt-out of the listserv.
- C – Advise the Student Affairs Office to create a new policy that limits use of the listserv to official university business.
- D – All of the above.

Scenario 6

On Tuesday you receive an email from a national church known for its inflammatory "protests", which are intentionally provocative and single out the LGBTQ+ community. They notify you that they will be on your campus Friday to engage in protected First Amendment speech. The event spreads on social media and the Lavender Alliance student organization contacts you about their safety concerns and demands that the university not allow the event. The faculty advisor for the Lavendar Alliance circulates a petition for a walkout and counter-protest if the event occurs that 50 faculty have signed. The event occurs, there is a significant counter protest, which turns violent, students and visitors are injured and there are multiple arrests including two faculty members. The President calls you and asks how this cluster was allowed to happen and wants the faculty fired.

Scenario 6 Poll

How do you advise the President?

A – You're the president, do your job!

B – First Amendment events can be challenging. We'll assess each step of our response and develop a plan for future events.

C – Don't worry, someone's going to take the fall for this, and I know exactly who....

D – You have the right to be frustrated. This event should have been handled much better. We're reviewing each step, preparing media responses and I'll have a full debriefing for you with next steps by early next week.

Practical Tips and Considerations

- If your campus is anticipating a shift in enforcement, tell students what won't be tolerated.
- Enforce policies and enforce them consistently.
- Create an internal protest response operating procedure so roles, responsibilities, and escalation options are clear.
- Consult with local DA annually to determine necessary elements and appetite to prosecute protestors.
- If you don't have campus PD, meet with local PD preemptively to understand the PD response and so they understand campus concerns.
- Have someone on campus monitoring social media daily for harassment/protest intel.

An illustration of several hands of different skin tones holding up colorful speech bubbles in various colors like blue, yellow, green, pink, red, and purple. The hands are positioned as if presenting or sharing ideas. The background is a solid light beige color.

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