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Responding to Campus Protests: *A Practitioner Resource*

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CAMPUS ACTIVISM

Jeffrey C. Sun
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Campus activism in the form of student protests has long been an iconic part of American higher education as a liberating experience for young adults. Most notably, the 1960s and 1970s marked a time in higher education when campus demonstrations, sit-ins, blockages, riots, and rallies were normative tactics to convey calls for social change. Groups such as Students for a Democratic Society (known as a more liberal organization) and Young Americans for Freedom (known as a more conservative organization) also formed in college campuses across the country to participate in open expressions on differing political, economic, and social ideologies. A clear message of the time was that "[v]iolence must stop because the sounds of violence drown out all words of reason."[1]

Since then, the choice of campus protest activities has changed. In more contemporary times, blockages, rioting, and sit-ins have played a smaller role in campus protests. Based on a 2010 random sample of U.S. four-year public and private college campuses, college representatives identified actions of student activism employed between 1989-2010.[2] Of the seventy-nine institutional respondents, the five most frequently reported activism approaches occurring among U.S. college campuses were petitioning (71.1%), rallies (56.6%), letter writing campaign (51.3%), protests (34.2%), and demonstrations (30.3%).

Commentators on higher education have suggested that campuses have been encountering a rather milder social activism climate than that of the 1960s and early 1970s, in part because policies and procedures have changed.[3] Some commentators have also argued that the purposes of these policies have changed. In a *Chronicle of Higher Education* article, critics of student speech and protest policies asserted that in the 1980s, institutional policies put attention on political correctness, whereas in the 2000s, a noticeable shift emerged toward creating policies that address student speech and protest with a focus on public relations.[4] Regardless of whether the critics' views are accurate, challenges to student conduct policies governing protest activities have not waned. Across the nation, students have been actively engaged in campus activism by protesting tuition increases and payment policies,[5] policies against concealed weapons on campus,[6] administrative actions that address organizational climate and culture (e.g., responses to sexual assault complaints[7] and reports of racist and homophobic conduct[8]), invitations of a campus speaker (particularly as a commencement speaker),[9] the lack of opportunities for student involvement in decision making,[10] wage and employment practices of graduate students,[11] economic disparities in society,[12] institutional investment practices,[13] state policies toward affirmative action and undocumented persons,[14] and international policies (e.g., the Israeli-Palestinian conflict).[15]

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These and other events require thoughtful processes and policies that advance the institutional mission and balance the interests of the parties. Specifically, this issue of *Legal Links* offers student affairs professionals a resource for addressing campus protests. Divided into several short articles, this issue identifies key legal rules applicable to campus protests, suggests policy language for student codes of conduct, distinguishes between practices at private and public institutions, presents advice on partnering with campus police, and highlights an institution's

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response to civil disobedience on its campus. Throughout this issue, the legal and practice-based insights honor First Amendment principles of free speech, promote inclusion, and maintain campus safety and order.

In the first article, Rhonda Beassie and Fernando Gomez offer practical matters to consider when crafting and interpreting student conduct policies that touch upon campus protests and other related expressions. They present seven points as a guide for legal and administrative practice concerns that arise in these matters.

In a supplemental commentary to the first article, Neal Hutchens and Jeffrey Sun offer several points about the legal differences between private and public colleges in terms of how we respond to student protests.

In the second article, Robert Axmacher and Jeffrey Sun offer insights on how to plan and coordinate with university police and other campus safety teams. They suggest an integrated, community policing approach and the establishment of an incident command system as steps to prepare campuses for protests that escalate into large-scale acts of civil disobedience.

In the third article, Kerry Brian Melear and Leslie Banahan recount an institution's effort to respond quickly to a student protest that emerged initially as acts of civil disobedience to an incident concerning campus safety and acts of hate. They illustrate how an investigation team, a campus vigil, and other steps contributed to enhancing the campus environment after the event.

In a fourth piece, Jeffrey Sun offers an easy to follow guide for campus leaders through a series of questions and answers about how to analyze a student protest issue and address it in a legally sound manner.

SPEECH & ASSEMBLY CODES: *Striking a Delicate Balance*

Rhonda Beassie
Fernando Gomez

The First Amendment to the Constitution of the United States prohibits the government (e.g., public colleges and universities) from "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." The U.S. Supreme Court has ruled that students do not "shed their Constitutional rights to freedom of expression at the school house gate,"[16] but retain the right to speak on matters of public concern on school property and in the classroom (if the topic is germane).

Such rights, however, are not absolute and are counterbalanced by the school's interests in preventing disruption to its educational or business processes, or substantial invasion of the rights of others.[17] Speech and assembly policies or codes should strike a delicate balance, upholding fundamental individual freedoms while safeguarding the school's academic and business operations so as to protect against negative headlines,[18] campaigns from national advocacy organizations,[19] and the specter of litigation.[20]

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Although the First Amendment's imperatives apply only to public colleges and universities, its fundamental values are woven into the very fabric of the American academy. Our nation's private institutions quite commonly incorporate these values into their institutional aspirations for free exchange of ideas and student rights statements. While regulations may vary with each college's public/private designation, location, history, services offered, and facilities available, the following guidelines will assist colleges in crafting an effective and constitutionally balanced student speech policy.

Cross Reference or Consolidate Policies. Speech and assembly regulations are often found in nooks and crannies, from overarching

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governing board policies to campus police rules, creating confusion, conflicting statements, and discriminatory enforcement. Avoid these potential errors by integrating and harmonizing all related policies.

The Notions of Balance. The key word in assessing First Amendment principles is balance. Any policy restricting speech should balance and articulate:

- The student's interests, objectives, and rights, including:
  a. The nature of the expression;
  b. Whether the location chosen for expression is appropriate; and,
  c. Whether the student can accomplish his or her objective in some other way.
- The school's interests and objectives, including whether:
  a. They advance compelling or important school interest(s) and objective(s);
  b. The policy is narrowly tailored to advance those interests and objectives; and,
  c. The speaker is left with reasonable alternative channels of communication.[21]

The school's interests are often to preserve operations without disruption and maintain campus safety, as well as to prevent interference with the rights of its students. Any regulations related to the substance or content of the speech must be based on a "compelling interest," the highest constitutional standard. Restrictions on the time, place and manner of the speech must be in furtherance of an important school interest and are subject to less stringent judicial scrutiny. A policy that does not meet these constitutionally based tests, will likely be invalidated by a court of law. Therefore, balancing the interests of the speaker,

Distinctions Under the Law Between Public & Private Colleges

Neal H. Hutchens & Jeffrey C. Sun

Whether an institution is a public or private college makes a difference in terms of legal obligations and the source of law. Public institutions, unlike their private counterparts, are subject to constitutional provisions such as free speech protections under the First Amendment and due process rights under the Fourteenth Amendment. These constitutional provisions expressly state that the government, which includes public colleges, affords citizens such as students these rights. Accordingly, this issue of *Legal Links* will, on several occasions, point out variations in terms of students' legal rights when addressing campus protests and other behaviors arising from protests.

Some states (e.g., California and New Jersey) have recognized legal rights permitting free speech activities on otherwise private land such as a private college campus.[38] These instances would occur in narrowly defined occasions involving the balance of rights of the private college as a private landowner and a public citizen, who seeks to assert rights of free speech. The considerations to be balanced include the property's designation for expressive purposes, the alignment between the challenged expressions and the property's purpose, and the college's practices and policies surrounding the public's invitation to use the property in question.

For instance, in California, a state law adds protections to students at certain private colleges. Known as the Leonard Law, the California statute prohibits private institutions with a nonsectarian (e.g., nonreligious) mission from making or enforcing any college policy that would lead to student disciplinary action solely for acts protected as free speech. As noted in a California Court of Appeal decision, the Leonard Law "creates statutory free speech rights for students of private postsecondary educational institutions."[39]

Further, at both public and private colleges and universities, standards derived from sources such as student handbooks are legally significant. While courts are often careful to avoid defining the relationship between the student and institution as solely of a contractual nature, contract standards provide a legal framework often used by courts to evaluate a college's actions in cases of student protests.

In short, public institutions are subject to potential constitutional challenges such as First Amendment Free Speech rights (i.e., freedom of expression) and Fourteenth Amendment Due Process (i.e., fairness in terms of notice of a violation and right to be heard through a hearing). Private and public colleges are subject to state constitutions and laws that may afford students special rights. In addition, private and public colleges may have established contractual obligations through student conduct codes or handbooks requiring certain standards and procedures to follow. By default, we first refer to these policies and follow them.

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the school, and the intended or accidental audience, necessitates a policy that addresses the location, method, and, to a lesser degree, the substance of the speech.

Avoid Restriction of Pure Speech. Pure speech, which includes spoken or written words communicating the thoughts, opinions, or ideas of the speaker, receives the highest level of constitutional protection, as courts will review any content-related restriction under the strict scrutiny standard.[22] Because this is a high bar, schools should refrain from regulating the substance of pure speech. Symbolic speech, which involves conveying a message through expressive conduct or imagery, is a form of pure speech.[23] Protected pure and symbolic speech may not be prevented solely because the school believes the message may offend or upset an audience. Preventing expression on this basis is a prior restraint, "the most serious and least tolerable infringement of First Amendment rights."[24] Policies should be clear and content-neutral to avoid:

- Contextual or substantive permission to hold events, use space, or operate equipment.
- Lengthy or burdensome authorization processes for scheduling expressive activities.
- Heckler's Vetoes: Preventing or interrupting speech because of anticipated disruptive or violent reaction from the audience is an unlawful restraint known as the "heckler's veto."[25] Anticipating a disturbance is insufficient reason to restrict speech. A school must have actual evidence of imminent disruption before interfering with expression.[26] Again, administrators must balance school rights and interests against those of the speaker.

Speech Rights Are Not Absolute. The four "classic" speech exceptions to strict scrutiny review include: [27]

- Violent speech, expression directed or likely to incite violence. Likewise, actions that violate the law, even when employed in peaceful demonstration, are not protected as symbolic speech;
- Obscenity, that which appeals to a prurient interest in sex and is offensive, or without redeeming social value;
- Defamatory speech; and
- Commercial speech or solicitations.

Speech codes should advise students of the types of expression that will be protected, allowed with regulation, or prohibited entirely.

Time, Place, and Manner. Schools have the right to apply "time, place, and manner" restrictions on speech.[28] The U.S. Supreme Court requires that these restrictions be content-neutral, related to furthering a school's important interest, be narrowly tailored to achieve that interest, and offer alternative opportunities for speech.[29] These restrictions might include:

- Time – Limitations on the length of the activity, frequency, hour, and date of expression.
- Place – Specifying areas available for free speech, requiring space reservations, and the limiting or prioritizing the categories of users for particular locations.
- Manner – Limitations related to the form (not content) of the communication, such as a display of photographs, volume controls, construction prohibitions, distribution of literature, or oration.

Because these restrictions are constitutional only if they serve an important interest, they require significant forethought and deliberation prior to implementation, such as predetermining the occupancy limits for certain locations, providing alternate locations for larger gatherings, and stating that the campus will not tolerate encampment/overnight demonstrations. Once promulgated, time, place, and manner restrictions must be enforced on a consistent, content-neutral basis.

Forum Designation(s) of Campus/Locations.[30] The law recognizes three types of forums: traditional public forums, designated or limited public forums, and nonpublic. Stating the nature of the forum in a policy clarifies that the entire campus is not a public forum and advises which areas are non-public forums, limited to use by particular constituents. Forum-related sample language of a speech policy might include:

- Assignment of location designations and users, for example:
  a. Campus grounds are open to the public for exercise of rights of free expression, speech and assembly.
  b. The Central Campus Mall is a limited public forum with priority of use designated for students, faculty, and staff.
  c. Meeting rooms on the third floor of the Student Union

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are reserved for use by registered student organizations.

- Specifying the rights, if any, of the general public to campus grounds, for instance:
  a. No member of the public, including an elected official, should have any priority of use over another member of the public.
  b. Religious organizations enjoy the same right of access as any other group.[31]
- Asserting nonpublic forums, such as:
  a. The computer network is neither a public forum, nor a limited public forum.[32]
  b. Interior spaces within academic buildings, administration buildings, libraries, computer labs, and residence halls are not available for expressive activity and are restricted in use for their intended purposes.[33]
- Offer auxiliary locations for expression and allow spontaneous speech, so long as the location and the expression do not upset the campus order. The policy might state, "Parks are available for expressive activity, planned or spontaneous, at any time without prior approval."[34]

In designating forums, some schools attempt to restrict speech to a few limited areas labeled "free speech zones."[35] At least one court asserts that parks, sidewalks, and the like are irreducible public forums on state-supported colleges.[36] Thus, schools cannot limit speech only to areas labeled "free speech zones" and must be prepared to address First Amendment expression in many traditional or designated public forums.

Excessively Broad or Vague Language.[37] Before a governmental regulation can be used to curtail a fundamental right, the rule must be sufficiently clear that a person of common intelligence can understand it (vagueness) and not penalize or restrict protected, along with unprotected, speech (overbreadth). Policies must avoid both unclear and far-reaching language, as they do not provide effective notice and are rarely enforceable.

- A rule that prevents expression or assembly anywhere on the campus during business hours would likely be considered an overbroad and unlawful constraint on expression.
- Likewise, attempts at imprecise, catch-all language, such as "The University encourages students to engage in free speech as contemplated by our judicial system or common sense principles of fairness," would be too obscure to be a valid regulation.

Conclusion

American colleges and universities should be vital and vibrant places where the nation's best minds of whatever generation, political or religious affiliation, ethnic or national identity can peacefully and freely express their views, opinions, most cherished aspirations and values without fear of censorship or reprisal. A well-crafted speech and assembly policy is a sturdy fulcrum upon which an institution of higher education can balance its educational needs and the speaker's interests in expression. Hopefully, the guidelines provided above will help administrators design their speech and assembly policies to flexibly achieve an enlightened and legally sustainable equilibrium.

PLANNING AND ORGANIZING WITH OUR CAMPUS POLICE PARTNERS

Robert Axmacher
Jeffrey C. Sun

Recently, university police departments and public safety offices at various campuses have responded to sit-ins opposing institutional decisions such as tuition increases;[40] encampment groups opposing societal income disparities and national policies; chanters criticizing institutional responses to sexual assaults, homophobia, and racism; vocal objections to commencement speakers; assembled students expressing wage and unionization concerns of graduate students;[41] and hecklers in a crowded auditorium repeatedly interrupting invited speakers as a means to silence.[42] These events reflect the range of student behaviors during campus protests, which include engagement in public discourse, peaceful demonstration, and disruptive civil disobedience.

During these incidents, campus police and institutional leaders often work together. The principles that guide their decisions are often grounded on the institution's commitment to the free exchange

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of ideas, but their interests also include responsibilities to protect the health and safety of the community and preserve the institution's educational mission.

This article offers several considerations and recommendations on how campus leaders might integrate successfully applied policies and practices, complying with legal and regulatory requirements, to address campus protests arising to civil disobedience and disorder.[43]

Campus Relations

Variations of Campus Police and Security

Our nation's colleges and universities employ a range of police and security arrangements. The principles discussed herein are generally applicable, regardless of whether a campus contracts with third-party security vendors, operates its own commissioned police or noncommissioned security personnel, or relies on a local law enforcement agency for police services. That said, the unique challenges and populations associated with the campus environment require a public safety infrastructure with a high degree of understanding and dedication to institutional mission and values as principles to guide policies, procedures, and other decisions.

Campus Perceptions

As a whole, members of the academic community often have limited contact with campus law enforcement, yet the presence of campus officers plays a role in assuring the community of its safety and order. As noted in prior studies, this sense of community is important to students and others on campus. For instance, in a study conducted in Illinois, college students reported satisfaction with the visibility of campus police as contributing to their sense of safety.[44]

While presence is valued, campus law enforcement express challenges with their community integration and perceived value. Anecdotal reports often emerge indicating campus law enforcement does not necessarily feel understood or properly supported. Based on a small sample of 37 campus police officers in Rhode Island, Wilson and Wilson (2013) found that more than half of the respondents (57%) believed that the campus community did not understand their role as law enforcement officers.[45] Even more disappointing, 70% of the respondents reported feeling inadequate support from college administrators.[46]

Planning and Community Relations, Community Policing

Campus police represent a critical partner in supporting institutional leaders before, during, and after protest events. In practice, that message translates into several critical areas.

Campus law enforcement personnel, like many other units at an institution, play an instrumental role in planning for and responding to these incidents or events. It is critical that campus public safety officials and senior campus leaders communicate and collaborate to identify objectives and priorities when considering how to manage these events. Specifically, there needs to be understanding and agreement regarding critical items, such as how to balance the needs to maintain public safety, promote free speech and debate, minimize disruption to normal operations, control costs, and safeguard institutional reputation.

Campus Tips

Understanding the Campus Culture

As part of training and officer development, an established best practice of campus law enforcement is socializing officers to the campus culture and the purposes of higher education. Professional development and training activities with other units, such as Housing & Residence Life, Student Activities & Involvement, and Care and Crisis Teams, contextualize aspects of the evolving and variegated dispositions of college students, their developmental processes, the institution's mission, and the roles of the campus staff. Equally important, the training and development of campus law enforcement occurs in a collaborative manner, modeling campus expectations that communication take place across offices and that integration of support services is continuously demonstrated. Further, this training and development reframes the role of campus law enforcement

A frequently cited model of assessing campus conditions using a community-oriented policing and problem-solving approach is known as SARA (i.e., scanning, analysis, response, and assessment).

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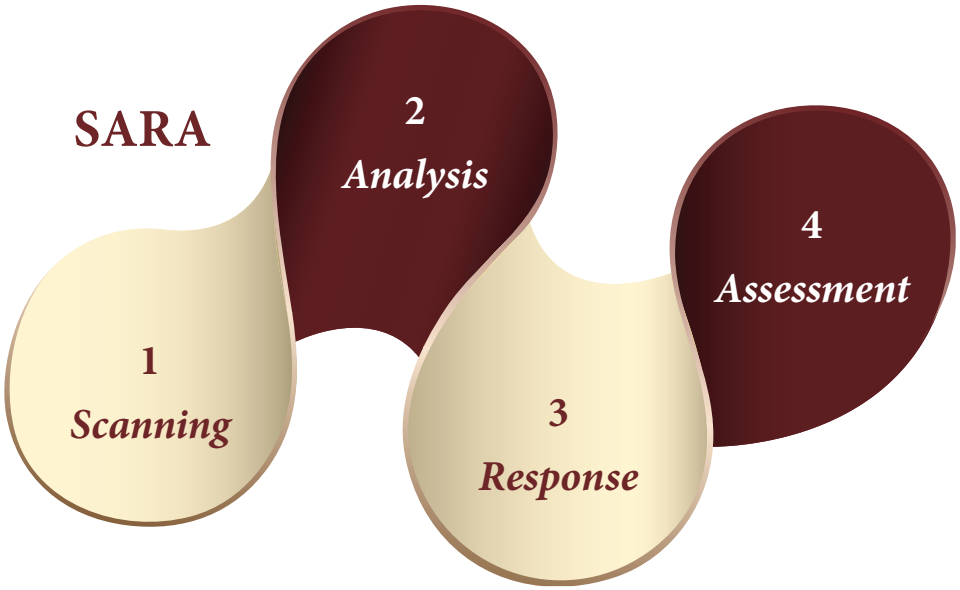
officers as participants in the students' educative process. When Dr. F. King Alexander was President of California State University, Long Beach, he aptly described this crucial role of campus law enforcement as serving as "an educator, not an adversary."[47]

Engagement with the Campus, Particularly Students

Campus law enforcement, with the assistance of the Division of Student Affairs, should particularly engage with institutional leaders, students, and staff within the campus community. The engagement leads to relationship building, trust formation, and general awareness of campus events, and these efforts have been linked to advancing common goals in campus operations. The effect of engaging campus law enforcement with the campus has long been a strategy as many campuses have moved to a community policing approach. For instance, during his time as the Executive Director and Chief of Police at the University of Southern California, Carey Drayton emphasized the need for campus law enforcement to engage with the university community, especially students.[48] He noted the importance of knowing student leaders, as well as "up and coming leaders."[49] That relationship made it possible for him to march with students in one protest event when he served on the campus police force at Florida State University. His participation guided the direction of the march, thus directing the event with more intentionality and order so that the protest was peaceful and the message was heard. Similarly, during his tenure as President of San Francisco State University, Dr. Robert Corrigan recounted incidents involving the Occupy movement. He took steps to achieve inclusion and integration



of university police officers into the campus community so officers are visible and interacting with students. His rationale is that campus law enforcement should "not [be] seen as some kind of military operation."[50]

Adopting a Philosophy of Partnership

A frequently cited model of assessing campus conditions using a community-oriented policing and problem-solving approach is known as SARA (i.e., scanning, analysis, response, and assessment).[51] Scanning employs observational techniques that identify and define current or potential problems that impact the campus community. Analysis entails data integration such as understanding the context and underlying conditions of the protest event, as well as processing information about the various individuals involved and how they participated in the incidents. Response draws on an articulated set of actions based on the scan and analysis. It factors several items such as the cultural context, situational safety concerns, and severity and imminence of the matter. Assessment reviews the response's effect in terms of the college's ability to define the problem and the effect on both perceived and actual problems. It highlights the lessons learned from scanning, analysis, and response.

Mining and Monitoring Intelligence with Other Agencies

When addressing campus protests, the resources may extend beyond traditional off-campus agencies such as local law enforcement. The data mining and monitoring may include other intelligence and investigation centers. For instance, the Joint Terrorism Task Force is a Federal Bureau of Investigations (FBI) unit that fosters communication and responds to terrorist activities at the regional and national levels. The Task Force conducts investigations and maintains detailed records by means of its Guardian Threat Tracking System. Similarly, around the mid-2000s, two federal agencies, the Department of Homeland Security and the Department of Justice, championed the establishment of Fusion Centers. Fusion Centers are state or local entities that serve as

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Several universities have adopted an Incident Command System, which provides a command structure that delineates responsibilities and protocols for operations, planning, logistics, finance/administration, and intelligence.

centralized resources to address terrorism, crime, and other public safety matters by serving as hubs for reporting, gathering, analyzing, and disseminating information. As the U.S. Department of Homeland Security describes them, Fusion Centers are "uniquely situated to empower front-line law enforcement, public safety, fire service, emergency response, public health, critical infrastructure protection, and private sector security personnel to understand local implications of national intelligence, thus enabling local officials to better protect their communities."[52] Their role is critical to linking federal resources to state, local, tribal, and territorial (SLTT) partners. In terms of operations and intelligence availability, the operations of Fusion Centers are very similarly to those of other groups that respond to community concerns and draw on multiple government agencies (e.g., local drug taskforces and community-based Violent Gang and Terrorist Organizations). It is likely that many campus protests, such as peaceful rallies and typical civil disobedience acts, may appear as routine and may not arise to alarming events (e.g., activities requiring counterterrorism monitoring). However, campuses may, at times, find themselves working with locally or regionally based government agencies for purposes of mining and monitoring intelligence, with the ultimate goal of ensuring campus safety.

Coordinated Campus Response Effort

Many campuses have adopted an integrated emergency management plan or program as an organized approach to address crises and other urgencies. Somewhat similar to these response efforts, campus task forces and response team experts have recommended that institutions develop a structured systems approach to address campus protests and other events requiring crowd management.[53] This approach is particularly critical for campus leaders and police when an event escalates to civil disobedience and poses potential physical harm to others.

The absence of a response team exposes a campus to inconsistent actions and levels of uncertainty regarding command structure and incident assessment. In the 2012 University of California Campus Protest study, the evaluation team found no formal policies and practices among its system campuses.[54] While the respective UC campuses typically maintained some coordinated campus response during times of protests, the authors of the report recommended the establishment of a Campus Event Response Team.[55] The campus team would be designated as the response unit for demonstrations, assemblies, event gatherings, and protests.

While the Campus Event Response Team identifies the designated campus individuals charged with leading efforts, protocol must also include a logistic framework. One coordinated approach, which has been adopted at a number of universities, is an Incident Command System (ICS). ICS is a standardized approach used by many governmental agencies. It provides a command structure that delineates responsibilities and protocols for operations, planning, logistics, finance/administration, and intelligence.[56] This approach establishes command in terms of structure, assessment of priorities and new knowledge, messaging, and finances. In preparing to formulate or test the effectiveness of your Campus Event Response Team, we advise asking the following questions:

1. What is the command structure? Who is the incident point person? Is there a different point person on the ground versus at an off-site command center?
2. Who should be present at the incident? What principles are used to delineate necessary presence? For instance, how do the protocols ensure for responder safety and command response team safety?
3. How will the Campus Event Response Team assess incident priorities? What are the operational objectives?
4. At what point will external or support agencies such as local law enforcement enter the environment? How will they be briefed and to whom do they respond?
5. How will the Campus Event Response Team manage incident resources such as personnel, physical environment and building use, and finances to address the matter?
6. Who will respond to the media? Who will release

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information, and who will serve as a spokesperson?

Conclusion & Resources

This article presented strategies for institutional leaders to engage campus law enforcement when addressing student protests that arise to civil disobedience and disorder. As this article highlights, campus leaders should continuously participate in planning activities and partnership engagement to respond appropriately to campus protest events. The planning requires articulating principles and organizational values, establishing policies and processes, identifying key people, managing physical places and other spaces (e.g., social media), and identifying priorities and other key decision factors.

THE ELECTION NIGHT INCIDENT

Kerry Brian Melear
Leslie Banahan

On the night of November 6, 2012, the University of Mississippi experienced an "election night event." Barack Obama was re-elected to his second term as President of the United States of America, and what began as a civil college student vigil related to political persuasions spread into an ugly incident that placed Ole Miss at center stage in the public eye because of our history and important responsibility related to racial issues.

Brief Recount of the Election Night Event

At 10:39 p.m. on November 6, 2012, the Associated Press called the election in favor of President Barack Obama. Shortly after 11:30 p.m., University of Mississippi students supporting Governor Mitt Romney began to assemble in the Grove near the Walk of Champions for a "Romney Rally." University Police Department (UPD) officers learned that students were gathering there from a student journalist and, when they arrived, there were approximately 40-50 students divided into two groups along political lines: Obama supporters and Romney supporters.

Officers concluded that students did have the right to peaceably assemble, but shortly after midnight, as the crowd grew larger and more vocal, they decided to disperse the crowd based on University policy that the Grove closes at midnight. Through an interview with one student, it was noted that a racial slur, "the shout heard round the world," was directed toward the predominantly African-American Obama supporters. This appeared to be the turning point in the evening. From this point on, the antagonisms switched from being purely political to being racialized, with the presidential election serving as a pretext for racially charged verbal confrontations. In other words, what began as a civil college student vigil related to political persuasions spread into an ugly incident that placed Ole Miss at center stage in the public eye because of our history and important responsibility related to racial issues.

UPD officers informed students the Grove was closed, and they encouraged students to return to their residence halls. However, instead of returning to the halls as directed, students moved down Student Union Drive toward the intersection of Rebel Drive, and the crowd began to grow. While most students were "onlookers," their mere presence exacerbated the situation because it made it more difficult for UPD officers to disperse the students.

During this time period the crowd grew considerably to approximately 400 students as social media, primarily Twitter, fueled speculation about what was happening on campus. Inflammatory and inaccurate statements were being broadly distributed that stoked students' curiosity. Street traffic also increased considerably, and students were in the roadways blocking traffic. UPD officers indicated that the overwhelming majority of students were present as curious spectators, and most students present were freshmen living on campus. Of the students interviewed, most said that they had received tweets that there were "riots" taking place on the Ole Miss campus as a result of President Obama's re-election and had come from their rooms to see what was happening.

In the wake of many successful events during 2012 commemorating the University's fiftieth anniversary of integration, the events of November 6 cast an unfortunate pall over those successes locally, regionally, and nationally. What began as a political disagreement and vocal protest became a divisive, racially-charged incident as the unconscionable actions of a small number of students evolved into a larger gathering through which racial tension was woven.

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Incident Review Committee Established

The university responded by naming an Incident Review Committee composed of faculty and staff and co-chaired by a faculty member of the Department of Leadership and Counselor Education and the assistant vice chancellor for student affairs. The committee was composed of a broad cross-section of the campus community, including faculty members from various disciplines and administrators from across campus. Fully respecting students' rights to due process and separating the roles of investigators and adjudicators, care was taken to ensure that no one from offices charged with adjudicating students would participate in the incident review.

The Incident Review Committee was charged to be only a fact-finding entity, not posit an opinion, and to paint a portrait of the evening's events as presented by the evidence. The committee reviewed written, electronic, and video documentation of the incidents and interviewed students and police officers who were present at one or more key campus locations that night.

Committee members were asked to interview students involved in the events on the evening of November 6, 2012, and the early morning of November 7, 2012, and submit a report outlining the facts of the evening's events based on the interviews and other documentation. The committee was tasked with identifying student behaviors, which were inconsistent with the university's Student Code of Conduct, and identifying students for possible judicial review or participation in a restorative justice or similar educational intervention.

The committee was mindful of students' First Amendment rights and balanced their free speech and expression rights against violations of university policy and the Student Code of Conduct. Because this committee was strictly investigatory in nature, it had no role in any judicial process resulting from its referrals. The Office of Student Conduct was responsible for determining if any judicial action should be taken, and the Office of the Provost was responsible for determining if any academic sanctions should result from committee referrals.

Committee Process

The Incident Review Committee met for the first time on Thursday, November 15, 2012. At that meeting Dr. Brandi Hephner LaBanc, vice chancellor for student affairs, explained the charge to the committee and distributed information packets regarding the incidents that occurred on campus the night of November 6, 2012. The information included police incident reports, student housing staff's timeline of events, students identified by the Office of the Dean of Students as being present at the November 6 incidents, Twitter posts and media quotes collected by University Communications, Facebook posts, screen shots, and video footage.

A student conduct administrator explained the student conduct/judicial process to the committee. Members also were briefed on the restorative justice process. Committee members agreed to read and view all materials provided by the university and the Office of the Dean of Students. Members also agreed that interviews with students and police officers should be scheduled as soon as possible to ensure fresh recounts of the incident and easier accessibility to archived information.

Members committed to attend as many interviews as personal schedules would allow rather than break into small groups for the interviews. One or both of the co-chairs were present for every interview. The committee created and used a list of common questions in the interviews.

After reviewing all of the information provided to the committee, the committee developed a list of interviewees. The next day, an electronic message was sent to identify students asking that they write a summary of their actions and observations from November 6 and submit their statements to the co-chairs.

Members of the Office of the Dean of Students scheduled interviews for the committee. The first interviews were held November 21 and continued through December 3. More students were added to the schedule as names emerged from interviews.

Committee members were asked to submit summaries of their notes to the co-chairs, who then drafted the report and distributed it to the committee for corrections, additions, and comments. Upon conclusion of the committee's assignment, much work was left to be done, including conversations with students regarding the values we consider supportive of higher education's mission and the University of Mississippi's creed in advancing an educated society.

Legal Considerations

The First Amendment was an issue of primacy to both of us. Dr. Melear is a legal scholar who teaches higher education law and has taught a class on the First Amendment and its impact on the college campus. Leslie Banahan works in that world every day as a student affairs professional and

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brought insights from her experiences in the field. During this process, we both have been finely attuned to the First Amendment and its shifting definitions, particularly regarding college students and free speech.

We both deeply believe that our students' First Amendment rights should be respected throughout such a process, as this is an obvious concern. The report was directed to be strictly informational, not something that could be brought through an adversarial process, and that is what we tried to do with support from our committee. Accordingly, identifiable student information was redacted from the publicly available report to comply with FERPA and general privacy concerns, and we were mindful of student positions and philosophies regarding the election, race, and the larger framework as we conducted our interviews and wrote the report. Put simply, the report was intended to extract what we learned about the incident and how we might enhance the academic community.

University's Quick Response

The Incident Review Committee played an important role in the University's response, but it was not the only entity which responded to the events of November 6. The University of Mississippi community as a whole moved quickly to condemn the events of November 6, 2012. On the evening of Wednesday, November 7, 2012, a vigil entitled "We are One Mississippi Candlelight Walk" was held on campus. Nearly 700 members of the University community assembled in front of the Lyceum, our historic administration building. Chancellor Daniel W. Jones addressed the gathering, and the University's Creed was recited.

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A group of faculty later signed a letter urging Chancellor Jones to take affirmative steps to address issues of race on the campus. Additionally, in an open letter to the students, faculty, and alumni, a group of student leaders rejected the behavior exhibited after the presidential election:

> "We have made progress as a community and as a university since James Meredith bravely integrated our institution, but election night reminded us we still have a long way to go. The University of Mississippi is not a perfect place—we must not be complacent. We cannot settle for the status quo or think we've come far enough. That type of mentality is the reason inequality, injustice, and prejudice still exist—and to move forward, we need to have meaningful dialogue with one another, face-to-face, not by tweets or text or Facebook. To move forward as a student body and university, we need to discuss our differences and strive to genuinely understand one another's backgrounds, cultures, and beliefs. Long gone should be the days of self-segregation, of exclusion, of hateful words, and of ostracizing someone for being different. To students who believe what happened on our campus is somehow acceptable, and to those who partook in hateful speech: you are not welcome at the University of Mississippi. We do not want you here. Our campus is not a safe haven for hate."

Subsequent to the 2012 Election Night event, the University of Mississippi campus community has been roiled by yet another incident resulting from the unconscionable actions of a few students whose opinions do not reflect those of the university. The defilement of the James Meredith monument on our

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campus has again brought national attention to our posture on civil rights across a range of concerns from race to sexual orientation and beyond. This event underscores the importance of swift and acute attention to the safety and well-being of our students and staff. Although the reckless actions of individuals can never be predicted or policed, we must all be mindful of the strength of our responses to hateful acts that do not link with the values of our educational communities.

Conclusion

Several lessons emerged from this process:

1. Independent Review Committee: Most evidently, the charge of an independent review committee presented an approach to advance First Amendment rights, student development, and investigation neutrality. The committee formation and role in terms of the committee charge, composition, independence from student conduct officers, principles of constitutional rights, and values of student growth and learning, played a significant part in its success.
2. Data Collection: The data collection also revealed important lessons for the University in understanding student protests and other campus disruptions. For instance, tweets were critical sources of data in triangulating information. Some students we interviewed had hundreds, even a thousand, Twitter followers to disseminate perceived recounts of the events. Unregistered users also can read publicly available tweets. Yet, tweets have potentially deleterious effects on acts of civil disobedience and other group malfeasance. Specifically, the limitation on characters was identified through committee deliberation as problematic because students often tweeted inaccurate information, or their tweets were oblique, because of constraints on the size of the message. Thus, the tweets led to confusion and mischaracterization of events.
3. Community Response: The community response speaks loudly about the campus' priorities and values. The university's response to condemn the actions and reiterate its position through recitation of the University Creed presented a powerful message. These actions redirected efforts to community building and campus reunification and emphasized campus inclusion, safety, and care.

Q & A ON CAMPUS PROTESTS

Jeffrey C. Sun

When we discuss campus protests, what are some examples of how students might express themselves and some general considerations?

We might think of student protests as campus demonstrations, sit-ins, blockages, chanting, riots, camp-outs, and rallies. These protest activities might grow into civil disobedience or present disruptive behaviors, justifying actions to regulate or address them through some other means. A thorough analysis of the speech, campus space, and permissible regulations (such as reasonable justifications based on time, place, and manner) would be conducted. The subsequent questions and answers offer more explicit guidance.

There are, of course, many other ways in which students protest, which tend to be categorized as symbolic speech. Some students may opt for symbolic speech by wearing an item of clothing that conveys a message, such as an armband opposing military occupation, a T-shirt with an image of a cannabis leaf to convey legalization of marijuana, buttons advocating individual rights to marriage, or an empty holster conveying gun rights on campus. The presentation of the symbol, which is intended to communicate a particular message that others observing would likely understand, amounts to symbolic speech. For public institutions, symbolic speech is treated as pure speech, which receives the highest level of protection under the law. For private institutions, the symbolic speech treatment would be consistent with the policy language in the student handbook or other documents that govern students' expression, which may be dictated, in part, by the college's mission or religious tenets.

What forms of speech by protesters are not protected?

There may be differences between public and private colleges. At public colleges, student protests that

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create actual or forecasted disruption on the campus are not protected. Disruption is material and serves as a substantial interference with the college's operations or educational mission.[57] Disruption may be actual or forecasted by school officials; however, college officials must demonstrate how the protestors' activities "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" to justify their actions of limiting or stopping student protests.[58]

The sources that college officials use to evaluate disruption must be "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."[59] Furthermore, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression"[60]

In addition, as discussed earlier, there are four types of speech that are afforded low protections. Specifically, the Constitution does not consider violent expressions directed at or likely to incite violence, true threats, obscenity, defamatory statements, and commercial speech (e.g. ads) or solicitations as protected speech under the First Amendment.

Private colleges may grant more free speech rights; however, many follow practices of free speech and also might limit student protest activities that arise to disruption, incitement of violence, true threats, obscenity, defamatory statements, and commercial speech. In addition, private colleges may place additional restrictions, if those policies do not conflict with other laws such as state constitutions or local ordinances.

What legitimate limitations may colleges place on student protest?

Typically, public and private colleges have asserted reasonable "time, place, and manner" restrictions as permissible policies for student protests and other expressions.

Time is often restricted to avoid disturbances too early or too late in the day. For instance, protesters may rally between 8:00 am and 10:00 pm. Restrictions may also apply to the frequency and timing length.

Place serves to identify permissible spaces in which student protests and other free expressions may occur. Campus Free Speech Zones reflect common practices in limiting place. Below, a discussion on Free Speech Zones explains the permissible legal approaches to that place limitation.

Manner reflects the format used to express and distribute messages, such as leaflets, display boards, leaflets, display boards, picketing signs, sit-ins, campus online venues, and sound amplification at a rally. In certain areas, sound systems may be permissible, whereas other areas near classrooms may not allow extensive sound systems for amplification, but may permit megaphones because the reach of the sound is less intrusive during instructional periods.

For public institutions, a time, place, or manner policy must be narrowly tailored (but not the least restrictive approach) to serve the public college's legitimate, content-neutral interests.[61] According to one federal court, a content-neutral policy may not be applied "because of disagreement with a message presented or a rule that has a substantial risk of eliminating certain ideas or viewpoints from the public dialogue are content-based."[62]

Further, if the time, place, or manner policy promotes a substantial interest of the public college and that interest would not be achieved as effectively without the policy, then the policy would meet constitutional standards.

Courts look to the traditional use of the property, the objective use and purposes of the space, the government intent and policy with respect to the property, and its physical characteristics and location" to determine if the campus space is intended as a forum for free speech or if the space is intended only for limited matters or classes of persons.

Does the campus space or location make a difference in determining permissible places for students to protest?

Very much so. The space or location makes a difference between trespass and non-trespass areas. It also makes a difference in terms of who may speak, what may be expressed, and how it may be expressed. While these differences require a more elaborate explanation through subsequent

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discussions below, the distinction is briefly illustrated in the context of public colleges.

At public institutions, there are federal constitutional concerns. The classification of the space (i.e., "forum") makes a difference as to what rights the public college has to regulate the space through policies and what rights the students and other citizens have to conduct their protests.

The U.S. Supreme Court has indicated that "the First Amendment does not guarantee access to property simply because it is owned or controlled by the government."[63] Thus, a public institution is not the same as public land such as a city park or sidewalk. At the same time, a public college cannot assert the same levels of privacy and controls as private colleges or other private corporations. The U.S. Supreme Court has stated that "the campus of a public university, at least for its students, possesses many of the characteristics of a public forum."[64] Ultimately, various parts of a public institution's campus are broken down to evaluate whether spaces are designated as accessible to students for protest, are limited in their use, or not open at all to protests.

According to a federal court, "courts look to the traditional use of the property, the objective use and purposes of the space, the government intent and policy with respect to the property, and its physical characteristics and location" to determine whether the campus space is intended as a forum for free speech or whether the space is intended only for limited matters or classes of persons.[65]

Do references of "campus space" that students may use for protest include only land?

We typically address matters of student protests in terms of land such as a quad, classroom, or sidewalk. However, the forum or campus space used for protests may include bulletin boards, campus walls, online hubs or blogs, and multimedia signage, if the institution designates those spaces as fora for expressive activity.

May a campus maintain a Free Speech Zone to permit student protests?

At many public and private institutions, the campus maintains a Free Speech Zone. The Free Speech Zone identifies areas of campus in which the community may speak freely in various forms including protests, demonstrations, rallies, and picketing.

Private colleges are subject to applicable state laws and constitutions, such as California's Leonard Law, and any contractual provisions or college handbooks. Public colleges are also subject to the same laws and policies, but more significantly, they are subject to federal constitutional standards.

At public institutions, Free Speech Zones are considered a "designated public forum." For a designated public forum, the legal standards prohibit public colleges from regulating the content of the speech unless the college policy is necessary to serve a compelling state interest and that policy is narrowly tailored to achieve the stated interest.

Besides the designated Free Speech Zones, are there other areas by or within the campus that may be used for student protests?

Yes, there are typically other places around a campus in which student protests may occur. For public and private institutions, the city streets, sidewalks, and land around the outer perimeter of the campus may be open to the public for protesting.

For public institutions, campus areas such as plazas, parks, "sidewalks, streets, or other similar common areas" are generally deemed as spaces permissible for student protests.[66] The treatment of this space is the same as Free Speech Zones. That is, the public college may not set policies restricting or limiting the content of the speech in those spaces unless the college policy is necessary to serve a compelling state interest and that policy is narrowly tailored to achieve the stated interest.

At public institutions, certain facilities such as concert halls, auditoriums, and wellness centers may have limited availability as sites for student expression, or may be inappropriate for student protests. That is, students may be subject to discipline for inappropriate behaviors or expressions that fall beyond the scope of the facility's purpose. The limitations of these facilities draw different standards of analysis, and for constitutional purposes, may be referred to as a limited public forum. A limited public forum is when the public college restricts or limits the space to certain topics (e.g., advancing diversity and inclusion, political and social policies, career development) or classes of speakers (e.g., only performance artists or invited guests, registered student organizations). The distinction is important to understand the limited use of the facility.

May the campus limit use of the free speech zone based on a priority determination that relies on the expression's relative benefit to the campus community?

Typically, the answer is "NO".

In a 2004 case, a federal court struck down a public university's Free

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Speech Zone provision recognizing a "priority … based on the relative benefit" of the student protesters and other speakers' expressions.[67] While the concept of having a Free Speech Zone was constitutionally valid, the "priority" determination imposed restrictions based on content (i.e., a priority system). In order to overcome that impermissible consideration of the speech's content, the public university must present a policy rationale of the compelling state interest to prioritize different types of speech, and the policy must be narrowly drawn to achieve that stated interest.

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May students protest in the classroom or the classroom environment?

At public institutions, the general rule is that "classrooms and adjacent hallways … are considered nonpublic for[a]."[68] According to the law, colleges may impose rules restricting speech in nonpublic fora so "long as the restrictions are reasonable and not an effort to suppress expression merely because the public officials oppose" a particular viewpoint.[69] Oftentimes, an asserted justification is that colleges may regulate classroom speech that does not serve a legitimate pedagogical purpose. Thus, if a student raises concerns about the Israeli-Palestinian conflict during a calculus class without any legitimate nexus to the lesson, the instructor has the authority to stop the discussion and redirect attention to the lesson.

The analysis is slightly different if the expression refers to symbolic speech or other forms of speech appropriate for the classroom setting (e.g., speech that serves a legitimate pedagogical purpose). Symbolic speech emerges when conveying a message through expressive conduct or imagery. It may be an armband to protest a political war.[70] In a situation involving either symbolic speech or speech falling with the reasonable classroom standards, the college has a right to regulate speech that is disruptive to the educational mission with measures such as stopping the speech or disciplining the speaker.

A recent case illustrates the protections of symbolic speech in and between classes when such symbolic speech does not create a material disruption, substantial disorder, or an invasion of others' rights.[71] In that case, a federal court held that students could wear empty holsters in and between classes as a political statement advocating for carrying concealed weapons on college campuses. The student group in that case was part of a national organization established in reaction to the shootings at Virginia Tech. The organization's members intended to "wear empty holsters during their normal campus activities to symbolize … that they are unarmed and potentially defenseless against a gunman such as the one at Virginia Tech."[72] In addition, they planned to wear T-shirts representing their cause and requested to hand out flyers about their position.

The college lost the case because it could not show how material disruption could arise or had occurred. The college surmised that disruption to classroom activities would likely take place from other students immediately reacting to the empty holsters or from the campus community calling the police to report firearms on campus due to having seen the empty holsters. The court concluded that the college's assertion of disruption was misplaced in this case and unconstitutional under these circumstances.

Is it permissible for students to protest in front of a faculty, staff, or administrator's personal residence?

Some cities and townships have ordinances prohibiting targeted protests in front of an individual residence. In 1988, the U.S. Supreme

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Court, in *Frisby v. Schultz,*[73] ruled that such an ordinance does not violate the First Amendment because it serves a significant government interest of protecting residential privacy by not intruding on the rights of residents, and it is narrowly tailored by protecting only the stated government interest, which was to block the communications from reaching unwilling recipients.

May an institution require student protesters to file for approval several days prior to the event?

For private colleges, this request for prior approval is generally not an issue.

For public colleges, this request for prior approval sends constitutional red flags. The public college has a "heavy burden" of demonstrating that appropriateness of this action to safeguard against campus disruption.[74] A prior approval process is available in very narrowly defined instances in which the events are likely to lead to material and substantial disruption. The public college must identify the instances in which prior approval is needed. For instance, one federal court commented: "there may be some speech, such as particularly large protests or rallies, that requires the University to take security or logistical steps to ensure the safety and order of campus."[75] This case and others also criticized arbitrary and untimely responses when prior approvals are required. Thus, to meet constitutional muster, prior approval considerations likely include the size and scope of the protest, the objective criteria for the approval process, the people involved in the decision making, and the process for approval, which must demonstrate steps to ensure fairness and timing that show expediency.

What legal considerations should be made when the onlookers or others in the crowd disrupt the protester's expressions or incite unlawful behavior?

To assess the situation, a review of the protesters' conduct must be considered. If the assessment concludes that the protesters are not the cause of the disruption, are not acting in an unlawful manner, and are neither advocating for nor inciting others to act unlawfully, then an analysis of the onlookers or opposing protesters must be examined.

The audience, onlookers, or another group of protesters may be inflaming the situation or instigating problems. The conduct of this new group (or the hecklers) is now the central focus, so long as the originally designated protestors do not disrupt, act unlawfully, incite violence, or advocate for unlawful activity. Traditional policies and restrictions that apply to protesters would not apply to hecklers. The intent here is not to penalize the protesters for the acts of the hecklers; otherwise, the outcome would reward the hecklers' veto. Such action would have the unintended consequences of which Will Creeley of the Foundation for Individual Rights in Education wrote in reference to another higher education speech conflict, "empowering those who disagree with a speaker to determine if his or her message may be heard on campus."[76]

Other than the First Amendment, what other legal actions might be consequences for students?

Multiple laws may be violated during acts of protest. A sample list of laws includes violating civil disobedience, trespassing on government property, blocking access to buildings, engaging in disorderly conduct, disturbing of a public meeting, inciting or participating in a riot, remaining present after warning to disperse, assembling unlawfully, engaging violent behavior, or disturbing the peace of a college/university.

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