HARVARD LAW SCHOOL
STUDENT BODY
SPRING TERM
TWO THOUSAND TWENTY-TWO

RESOLUTION NO. R.-205-003

AUTHORED BY: Austin Powell
SUPPORTED BY: Faith Jackson

A RESOLUTION TO: REQUEST THE HARVARD LAW SCHOOL ADMINISTRATION COMMIT TO EFFECTIVE STUDENT GOVERNMENT ADVOCACY

THE STUDENT BODY OF HARVARD LAW SCHOOL ENACTS:

WHEREAS, Harvard Law School has a well-documented history of stifling student speech and quashing student dissent, as illustrated by Amanda Chan's recent article in the *National Lawyers Guild Review,* "How to Suppress Student Speech: The Harvard Law School Playbook" (Appendix 1); and

WHEREAS, Harvard Law School Student Government has advocated for a number of topics through weekly Dean of Students Meetings and additional meetings with the Dean of the Law School, the Dean of Financial Services and the Deputy Deans; and

WHEREAS, Student Government was barred in March 2022 from bringing student advocates on the summer contribution policy to a meeting with the Dean of the Law School, even after bringing students advocates on Summer Public Interest Funding (SPIF) the previous month without issue; and

WHEREAS, Student Government was also barred in March 2022 from setting the summer contribution policy as an agenda item in their regular meeting with the Dean of the Law School; and

WHEREAS, the only reason provided for this stonewalling was that the topic was not "ripe" for discussion, yet this situation reflects frustrations Students Government members have had when raising multiple issues with the law school administration; and

WHEREAS, HLS announced an increase in SPIF funding shortly after the advocacy meeting without referencing any input of students, which Student Government asserts is a reflection of three issues with the law school: 1) a refusal to consider student input until a decision is all but made, 2) a refusal to acknowledge the role of student input when it does impact decisions, and 3) a refusal to provide transparency on if and how student input is passed on to appropriate decision-makers within the law school; and

WHEREAS, members of Student Government have found these three issues demoralizing, and it makes it especially hard to keep students engaged as they raise issues and Student Government cannot report on any progress made on topics students bring to Student Government; and

WHEREAS, Student Government has received push back from the law school when raising concerns on grading policies, grade release dates, COVID policies and restrictions, recording policies, socializing during the pandemic, the printing credit, SPIF funding, and the Summer Contribution; and

WHEREAS, the fact that Student Government is not able to freely set the agenda items during meetings with the Dean undermines student government's autonomy and ability to have a productive relationship where Student Government raises concerns to the Administration; and

THEREFORE, BE IT RESOLVED, Harvard Law School Student Government recognizes the Harvard Law School Administrations's persistent lack of transparency and unwillingness to provide clear answers to advocates on key student issues; and

BE IT FURTHER RESOLVED, Student Government cannot effectively advocate for its constituents without a shift in administrative culture and attitudes towards students, especially student advocates; and

BE IT FURTHER RESOLVED, Student Government calls upon the Administration to be transparent about how student input is incorporated into decision-making processes, with the knowledge that student groups cannot effectively advocate on behalf of students when they are under-informed about the processes employed in reaching decisions; and

BE IT FURTHER RESOLVED, Student Government requests that the Dean of Students codify a process for engaging with student input from Student Government and the student body and commit to abiding by the process for transparency and accountability; and

BE IT FURTHER RESOLVED, Student Government requests that the Dean of Students provide the Student Government elected in March 2022 an overview of the following topics within its first few meetings: 1) Overview of which policies the university is currently reviewing, 2) Overview of how student input will be considered in decisions on budget, COVID requirements, class recordings, and other topics impacting students, and 3) Overview of the relationship between Student Government and the Dean of Students Office, underscoring the responsibilities of each party to the other.

PASSED IN THE STUDENT COUNCIL: March 23, 2022

VOTE TOTALS:
__11__ YES
__1__ NO
__1__ ABSTAIN

Appendix 1

How to Suppress Student Speech:

The Harvard Law School Playbook[1]

By Amanda T. Chan[2]

I. INTRODUCTION

"*All members of the University have the right to press for action on matters of concern by any appropriate means. The University must affirm, assure, and protect the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate, and publicize opinion by print, sign, and voice*."

— University-Wide Statement of Rights and Responsibilities, 2020[3]

1 I would like to thank all those who agreed to an interview or phone call. I thank Prof. Noah Feldman for his feedback. Thank you to the editors of this journal for your meticulousness. Law students Mary Claire Kelly and Marina Multhaup contributed to legal research for this paper.

2 Amanda Chan is a graduate of Harvard Law School.

3 University-Wide Statement on Rights and Responsibilities, https://provost.harvard.edu/university-wide-statement-rights-and-responsibilities [Perma-link: https://perma.cc/BU7R-E2XK] (last visited Nov. 14, 2021).

In fall of 2015, Harvard Law students formed a group called "Royall Must Fall" which objected to the Royall family crest represented in Harvard Law School's shield. According to these students,

> The Harvard Law School crest is a glorification of and a memorial to one of the largest and most brutal slave owners in Massachusetts. But Isaac Royall, Jr., was more than simply a slave owner; he was complicit in torture and in a gruesome conflagration wherein 77 black human beings were burned alive.[4]

Eventually, the students staged an occupation of one of Harvard Law's beloved student lounges, renaming the lounge to "Belinda Hall" named after one of the enslaved women who was sold and whose profit was used to establish Harvard Law as an academic institution. Armed with sleeping bags, air mattresses, and political literature, students formed the Reclaim Movement and occupied Belinda Hall in 2015. They demanded that Harvard Law School replace its shield, which featured three bales of wheat in reverence to the slave-owning Isaac Royall family, with something else and honor the legacy of the slaves who suffered for the profit of Harvard Law. The Reclaim occupation worked: In 2016, the Harvard Corporation voted to take down the Harvard Law shield. This made the headlines in countless worldwide and national papers, including the *Washington Post*, the *New York Times*, the *Boston Globe*, and countless others. With these acts of organizing, students shamed Harvard Law into taking just action.

In this article, I posit that Harvard Law School has since developed a closed-door system to ensure that such student organizing never happens again. Harvard Law has perfected this subtle strategy by making unofficial threats of academic discipline against vulnerable student organizers, especially Black female students. Student activists at Harvard Law School, racial justice activists in particular, have experienced false accusations, increased surveillance, a culture of paranoia and fear, and investigation from outside counsel. On one hand, there is a group of passionate students who view Harvard as an epicenter of power, money, and exploitation. They target the Law School's weaknesses and make demands of authority figures. They are organizers. On the other hand, the administrators must protect the Law School's public image as an traditional and long-established educational institution –

4 Antuan Johnson, Alexander Clayborne, and Sean Cuddihy, *Royall Must Fall*, The Harvard Crimson, Nov. 20, 2015 (https://www.thecrimson.com/article/2015/11/20/hls-royall-must-fall/).

an image where the Law School nominally supports students' "free speech."

But the administration, in trying to balance these interests, has effectively squashed student dissent. The administration has overstepped its bounds when it comes to mechanisms for controlling student behavior. As a result, the Dean of Harvard Law, Dean John Manning, now heads an administration that simultaneously boasts of being the "best" law school in the country while actively working to suppress its students' free speech.

Harvard Law School has violated the University's and Law School's self-espoused values, purporting to support free speech and the right to associate. The University's Statement of Rights and Responsibilities states, "The University must affirm, assure, and protect the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate, and publicize opinion by print, sign, and voice." Harvard Law students, former and current, report that the Law School did not affirm, nor ensure, nor protect the rights of the students to organize, associate, and convene public meetings. On the contrary, the students reported fear and intimidation tactics as a result of their chosen methods of expression and speech. As part of a student-led program called DisOrientation, for example, students reported that the Dean of Students threatened the students with disciplinary action if they were to gather in a student lounge to discuss historical events.

The University-Wide Statement on Rights and Responsibilities states:

> In particular, it is the responsibility of officers of administration and instruction to be alert to the needs of the University community; to give full and fair hearing to reasoned expressions of grievances; and to respond promptly and in good faith to such expressions and to widely expressed needs for change. In making decisions that concern the community as a whole or any part of the community, officers are expected to consult with those affected by the decisions.[5]

This does not match the experiences of students at Harvard Law, who found that Dean Manning's administration ignored the students' grievances and repeatedly threatened students with disciplinary action instead of allowing students to choose their own methods of expression freely and widely.

5 University-Wide Statement on Rights and Responsibilities, https://provost.harvard.edu/university-wide-statement-rights-and-responsibilities (last visited Nov. 14, 2021).

This article outlines discoveries from confidential interviews and anonymous survey submissions on the policing of political speech at the Law School. This article further outlines recommendations for how the administration can move forward and respect the rights of students to dissent and express their own beliefs without reactionary measures.

I should note at the outset that I, Amanda Chan, am one of the many students who received increased scrutiny from the administration for my dissent and protest. I am not a third-party neutral in any way. I cannot claim to know the psychology and rationale behind the actions of The Dean of Students nor Dean Manning, nor anybody else in the Law School administration. Dean of Students Marcia Sells thrice did not respond my invitations to interview for this article. This article is intended as a historical record of tactics used by the administration to stifle political speech at the Law School. I hope this record will be a useful resource for the future generations of student organizers at Harvard Law School. I also hope all those affiliated with Harvard Law School understand the importance of the free speech of student organizers.

II. METHODOLOGY

I conducted socially-distant interviews with all the participants, mostly through Zoom. I explained repeatedly to each participant that the interview was completely voluntary, they could pass on any question, and they could stop at any time. Most participants were eager to share their stories, as they do not have other forums to air their grievances with the Harvard Law administration without revealing their identities and risking retaliation. I also created a short online survey regarding free speech where people could anonymously submit information, in lieu of a confidential interview with me. I received three anonymous submissions via this method. I also had confidential phone calls with two people who did not want to be officially interviewed but were willing to answer a few, short pointed questions about certain facts.

I categorize the types of interactions that students had with the Dean of Students ("DOS") in three different frames: *Interference*, *Intimidation*, then *Investigation*. First, the participants describe DOS interference in their organizing and educational activities. In the *Interference* stage, DOS never tells students "no" outright, but rather asserts strange hoops that students must jump through or new rules not previously known to students

Then, if *Interference* does not work, the DOS moves onto the next stage: *Intimidate*. The Dean of Students sends an email demand to meet with

various students, usually those who have engaged in some sort of dissent. In this meeting, The Dean of Students outlines at length the disciplinary procedures facing the student, with the clear implication that the students in the meeting could be in serious trouble – for what, exactly, is not clear on the face of the email. But in these meetings, the DOS refuses to provide any information about the student's alleged conduct, any accusers, any accumulated evidence against the student, or any other information which may provide clarity or quell the students' concerns. Typically, the DOS will discuss, at length, the procedures of the Harvard Law School Disciplinary and Administrative Board ("Ad Board").

Usually, most students stop their dissent and protest at the interference or intimidation stage. DOS's actions scare the students enough so that most focus on their studies or choose to advocate more quietly. But, for the few students who persist, there comes the final hammer – the *Investigation* stage. The Ad Board launches an investigation of the students, and the students have no choice but to cooperate. This causes a great deal of prolonged pain and suffering for the students and is an effective dissent suppressant.

III. PROTEST CULTURE AT HARVARD LAW SCHOOL

The protest culture at Harvard Law is thoughtful, strategic, and valued. Student protestors are not unhinged rabble rousers; they view their actions as a means of pushing the institution into the progressive future. For example, Participant 1 said, "[Protest is] the only way to affect change on these issues. . . . Protests are important for making the stakes high enough for the administrators, so they let change happen."[6] Participant 5 noted, "I think it's important to challenge institutions you're a part of. I am really invested in my personal liberation and liberation of all Black people. For me, that means looking to dismantle institutions that oppress Black people where I can."[7] Participant 6 described protest as a last resort because all other attempts at communication have been siloed or ignored:

> Protest is . . . an effective form of communication and is often a form of sometimes frustrated communication. The other methods of communication have been tried. I know that students have been organizing on campus either trying to contact Dean Manning or other administrators . . . we felt that the campaign was not gaining—didn't get the respect or attention that it de-

6 Confidential Interview with Participant 1 (July 24, 2020) (on file with author).
7 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

> served and wasn't being taken seriously by the Administration, particularly Dean Manning. And even if they did, the format in which the law school likes to have these conversations are very siloed and ineffective. Really, it's part of the project to quell any speech that challenges the foundations of Harvard Law School.[8]

Participant 7 insisted that protest is part and parcel with the student experience– challenging the powerful institutions:

> We're trying to use knowledge that we've gained to challenge the institutions around us, that we're most intimately connected to. . . I'm not just some passive person gratefully receiving a gift from the university. I paid years of my life in debt to go to this school. Potentially the rest of my life . . . they want Harvard to be a big part of our lives from the moment we get in until we die. Why wouldn't I be critical of that? . . . Why wouldn't I investigate the blood on the money? That's what being a responsible student is.[9]

For the Harvard Law School administration to suppress, intentionally or not, this protest culture is a deep disservice not only to the many intelligent individuals who attend the school but also to the rich history of leadership and progressive change at Harvard.

IV. INTERFERENCE

A. Suppression of handbilling and leafletting

When the Harvard Administration does not approve of student speech, they begin their first step—Interference. At first, it is just bizarre. The office of the DOS starts asking students strange questions. Participant 1 encountered Interference when she was simply "tabling," a very common practice at Harvard Law School where people sit at a table near the dining hall and hand out literature to or chat with passers-by. Participant 1 was spreading information about LexisNexis and Westlaw, two very common legal databases, which have financial connections to U.S. Immigration and Customs Enforcement ("ICE"). DOS sent Participant 1 emails asking Participant 1 and her colleagues to perform extra tasks in order to finalize the table reservation.

8 Confidential Interview with Participant 6 (Apr. 7, 2021) (on file with author).
9 Confidential Interview with Participant 7 (Apr. 11, 2021) (on file with author).

These emails required students to jump through extra hoops to have their tabling reservations confirmed, hoops through which other student groups were not required to leap. For example, one DOS staffer demanded that the student group, National Lawyers Guild ("NLG"), contact a professor before DOS would approve of the group's tabling reservation:

> We received this request from NLG for tabling with the title of Immigration Advocacy and with the purpose as "NLG Members will chat with interested students about immigration advocacy opportunities available to law students." As you know, we have a wonderful group of people at the Harvard Immigration & Refugee Clinical Program ["HIRC"], OPIA [Office of Public Interest Advising] and even OCS [Office of Career Services], in WCC [Wasserstein Hall] who would love to know more about what you are planning to present to the students. They also could help with information that they already have and that could be beneficial to the students learning as well. Please reach out to Professor [redacted], copied on this reply and who is the [redacted] for the HIRC, so you can start this conversation with her. We can still talk about tabling after your conversation with HIRC if there is no change of plans.[10]

Notably, the DOS office very explicitly blocks the students' tabling request until further "conversation" with someone who has no administrative oversight over students at the Law School. The students interpreted this as discouragement from actively advocating against, or even speaking of, the Law School's contracts with companies who provide services to ICE.

> Some of the smaller obstacles, especially through the National Lawyers Guild, we tried to conduct routine business, booking tables in shared space or booking rooms, we sometimes got weird invasive emails from
>
> the Dean of Students office sort of questioning if outside people were coming in to talk at these tables. Or questioning if what we were doing was really necessary because the Law School offered immigration rights programming. We got weird interference, which

10 Confidential Interview with Participant 1 (July 29, 2021) (on file with author).

> we had never heard of happening to people just, like, booking tables…When this interference happened, we took it very seriously. We took it as pressure to not partake in these forms of advocacy.[11]

> We were told, for example, that we had to check in with the immigration clinic and the clinical professors to get their approval for the activity [regarding information about legal research companies that contract with ICE]. So, we reached out separately to the person we were told to reach out to. And she was confounded by the entire thing. She had never encountered this before where she was told to basically approve of student activity. That was definitely novel. And again, there is nowhere on the HLS website where it says that you need to get approval from any such entity or professor before you can table. Tabling is generally just a generic thing you can do. But we ran into these hurdles.[12]

This regulation of the mere act of leafleting and speaking with passers-by is especially concerning for those who believe that Harvard Law should honor the fundamental principles of free speech. Leafleting and handbilling is a quintessential part of free speech. As the Supreme Court noted:

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press, in its historic connotation, comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated.[13]

This "liberty of the press" is the same liberty of press expressed in the University-Wide Statement of Rights and Responsibilities: "All members of the University have the right to press for action on matters of concern by any ap-

11 *Id.*

12 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

13 *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938).

propriate means. The University must affirm, assure, and protect the rights of its members[.]"[14] Yet, imposing surprise requirements and extra bureaucratic steps is antithetical to the encouragement—much less the affirmance, assurance, nor protection—of this liberty. Of course, the City of Griffin's handbill ordinance banned all leafleting, which the Dean of Students did not do. Still, the selective imposition of these unrecognized encumbrances should raise eyebrows.[15]

Participant 5 experienced interference when printing posters advertising for the Harvard Prison Divestment Campaign[16] as well as a different student group's podcast. According to Participant 5, the Dean of Students Office interfered with the most basic and foundational rights under the First Amendment – the right to print leaflets and spread the word.

> After the event at the institute of politics, I felt that I was being increasingly targeted by the Dean of Students Office. There were several incidents. First, we had tried to print out posters for HPDC using the NLG institutional capacity and we faced a ton of pushback [from the law school copy center]. We were not allowed. We were initially allowed to print out one poster, and then apparently, we had to go through a process where the Dean of Students to approve any further things that we had to print out.[17]
>
> We were not told [beforehand] that there was this process, there is nowhere on the HLS website that says you have to go through a process of getting approval from the Dean of Students before you print something out. And we were told something about copyright infringement because [the divestment campaign's] logo

14 University-Wide Statement on Rights and Responsibilities, https://provost.harvard.edu/university-wide-statement-rights-and-responsibilities [Perma-link: https://perma.cc/BU7R-E2XK] (last visited Nov. 14, 2021).

15 Throughout this paper, I make many comparisons between First Amendment jurisprudence and the practices of the Harvard Law Administration's policing of speech. To be clear, the First Amendment does not bind Harvard Law School, as a private institution. But as a as an institution that expressly endorses First Amendment principles in its policies, such jurisprudence is useful for both policy guidance and as a comparative tool.

16 The Harvard Prison Divestment Campaign is a student-led activist group aiming to persuade Harvard to divest its endowment from companies which significantly profit off of the prison-industrial complex. More information is available at harvardprisondivest.org.

17 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

> uses Harvard's shield—uses a shield that resembles Harvard's shield.[18]

When Participant 5 returned to the Copy Center with a new version of the flyer without any shield or logo, the Copy Center again refused to print the flyer and insisted they needed permission from the Dean of Students: "They said, without the Dean of Student's approval, they couldn't do it."[19]

In the absence of overt threats, the hovering presence and surveillance from the administration left students feeling uneasy and reluctant to speak up:

> I got way more security conscious. I felt like every email I was sending was being scrutinized and surveilled. That was anxiety-inducing. We even switched around roles in the [student group National Lawyers Guild] so that someone [a student] who hadn't been in the spotlight was doing the work of liaisoning [sic] with the Administration. Similarly, we did the same thing with the podcast. . . To just be in the [law school] building and to know that every action I did was being surveilled by the Administration.[20]

B. Suppression of spoken word

It appears that the use of one's "voice" is not beyond the purview of irregular regulation by the Dean of Students. For example, a podcast attracted the attention of the Harvard Law Administration. Participant 5 recounted her experience with the DOS related to her work with a Black Law Students Association ("BLSA") podcast:

> The podcast was a BLSA-affiliated podcast. We were again printing out signs advertising the protest. This was again sanctioned by the leadership BLSA. And we apparently had to wait, before the signs could be printed out, which were literally just advertising that the podcast was happening—apparently [we] had to wait for the Dean of Students Office to listen to the podcast and make sure that there wasn't any material that didn't reflect poorly on the school or something. I

18 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).
19 *Id.*
20 *Id.*

> didn't know what exactly they were looking for.[21]

Per this account, the Dean of Students Office was pre-screening speech of Black students before allowing its dissemination to the larger Harvard Law body. Notably, the Civil Rights and Civil Liberties Journal, a prestigious civil rights law journal at Harvard Law, also hosts a podcast. Two former editors of this journal – active on campus at the same time as Participant 5 – did not face any attempts, whatsoever, to regulate or pre-approve the content of the Civil Rights and Civil Liberties Journal podcast before it was released; suggesting that the administration subjects some student organizations to different speech regulations than others.

This type of regulation is analogous to prior restraint, where a governing body requires that certain speech be subject to approval before dissemination:

> The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. . . A prior restraint . . . has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for the time.[22]

The debate in *Stuart* was, in some ways, a conflict between the First Amendment and the Sixth Amendment: Whether a prior restraint on reporting of a murder trial violated a defendant's right to a fair trial.[23] But here, there is no evidence that the BLSA podcast was possibly endangering anyone's Constitutional rights. Instead, the first episode spoke of free food, printing quotas, the Harvard Law grading system, and Shaun King. Harvard Law has no written rules regulating the dissemination of podcasts granting the DOS the authority to place this prior restraint on the podcast other than its apparent ability to give orders to the Harvard Law Copy Center. It is unclear why the Civil Rights and Civil Liberties Journal podcast faced no similar restraint. Even if there were prior restraints on other podcasts, why there must be a prior restraint in the first place?

C. Suppression of the right to associate

21 *Id.*
22 *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976).
23 See generally *Id.*

The DOS office sometimes accuse students of improper behavior based on with whom the student associates. The DOS office warns students about potential violations of the rules, even if the accusation or direction of the warning is factually incorrect. On September 12, 2019, the DOS sent me and two other student organizers[24] an email that stated, "I was sent a note that you are requesting booking space in Haas Lounge for a 'demonstration.' This space is not one that is booked by students. This was noted in a message that Dean Claypoole, Burns and I sent to all student [sic] on September 6th."[25,26] The Dean of Students was referring to the anti-JAG protest, where some students protested JAG recruiters at campus and more specifically, JAG's anti-trans discriminatory hiring policies. This email from the Dean of Students confused me. I was not involved in leading the organizing around the alleged "demonstration."

On Sunday, October 20, 2019, I sent the Dean of Students an email denying the accuracy of the alleged "note" and asked who sent the "note." The Dean of Students claimed that the Harvard Event Management System ("EMS"), the online network which allows students to book rooms, sent her the note.[27]

I went through my emails on Sunday and found I had

I was sent a note that you are requesting booking space in Haas Lounge for a "demonstration". This space is not one that is booked by students. This was noted in a message that Dean Claypoole, Burns and I sent to all student on September 6th.

I only learned about your request this morning. You can be very visible and read your statement near the Hark ramp and hand out the statement to students and give out buttons about support for Trans-students. This space is still available.

Dean Sells

Marcia Lynn Sells, Esq. | Associate Dean & Dean of Students

Harvard Law School

leadership position, is the affinity group for queer or trans people of color. All three were known student organizers. The alleged protest was against Harvard Law's decision to allow military JAG recruiters onto campus despite its transphobic hiring policies.

25 E-mail from Dean of Students Marcia Sells, Harvard Law School, to author (Sept. 12, 2019, 11:00am ET) (on file with author).

26

27 E-mail from author, to Harvard Law Dean of Students Marcia Sells (Oct. 20, 2019, 10:10am ET) (on file with author) ("Hello Dean Sells, I deny the accuracy of this note. I must ask: who sent you such a note?").

> sent this note to you and the leadership of QTPOC back in September.[28] I had been sent a note from Event Management System that someone from LAMBDA or QTPOC had tried to reserve Haas Lounge. I did not have the name of who was trying to book the space."[29,30]

Another student, who did help to organize the anti-JAG protest, said:

> [Dean Sell's] email . . . was sent saying that we could not protest in Belinda Hall [a.k.a. Haas Lounge]. The JAG protest the year before had successfully taken place in Belinda and we were trying to replicate the format. I was alarmed to receive a personal email from the [Dean of Students] herself telling us to move our protest. She made it seem that we were trying to "reserve" Belinda for our "event," but we had not reserved any room since this was a protest, not a sanctioned event.[31]

As a result, this student said, "we moved our protest and changed its format based on a vaguely threatening email from DoS[.]"[32]

Other students attempting to gather in Belinda Hall have also faced similarly inexplicable roadblocks from the DOS. One such unofficial student

28 The Dean of Students did not send this email in question to anybody else in the QTPOC leadership. She only sent it to me and two leaders in Lambda.

29 E-mail from Dean of Students Marcia Sells, Harvard Law School (Oct. 21, 2019, 11:06am ET) (on file with author).

30 The Dean of Students' claim that there was an attempt on EMS to book Haas Lounge was not supported by evidence. By the very nature in which the EMS system is designed, at the time, it was impossible for a student, such as myself at that time, to attempt to book the Haas Lounge because it is not an available selection on the EMS. It was technologically impossible to make an EMS reservation of Haas Lounge because it is not listed as an option on EMS. It is like ordering a cheeseburger from a salad shop—It is just not a choice on the menu. Furthermore, the EMS system forces the user to login with personal credentials; student organizations did not have group credentials. If there was an attempt to book a room, the database would show an individual's credentials, not the credentials of a student organization, and certainly not the credentials of two different student organizations. That means that either the EMS system had glitched severely in creating a reservation on behalf of three known student organizers at Harvard Law or on behalf of student organization accounts which did not exist, for a room which did not exist on EMS – or, more likely, the Dean of Students' statement was false.

31 Anonymous survey submission (on file with author).

32 *Id.*

group, Law Students Against ICE, aimed to have a teach-in in Belinda Hall but instead found that the Dean of Students claimed that such a teach-in was in violation of a rule and demanded that the students moved the teach-in to a

Hello Amanda,

I went through my emails on Sunday and found I had sent this note to you and the leadership of QTPOC back in September. I had been sent a note from Event Management System that someone from LAMBDA or QTPOC had tried to reserve Haas Lounge. I did not have the name of who was trying to book the space.

I gather it took you a while to get through past emails and that is when you found this note. It would be great to talk with you about it if you have time. I will ask Edgar in our office to schedule a time.

All the best,

Marcia Sells

different location.[33]

In response to the DOS's email, the NLG students clarified that the DOS was mistaken. The students meant to use Belinda Hall as a social gathering space – not as an official "event" as the Dean had incorrectly stated. Thus, they did not need to "book" the space through official DOS channels. The students also noted that the "Use of Space" rule failed to define "event" or "programs, meetings, or other activities" in any capacity, and thus, no reasonable reader could materially evaluate whether their planned social gathering would violate the so-called "Use of Space" rule. Further, an email from the DOS is not necessarily binding upon the students as agreed-upon law or policy. It certainly does not carry the same weight as, for example, the rules enshrined in the Harvard Law Handbook of Academic Policies. Clearly, as the students noted, there were many holes in the DOS's attempted enforcement of this alleged "Use of Space" rule.

On its face, the "rule" is discretionary. It states that students looking to use Belinda Hall for an event "may" do so through the Dean of Students Office. A reasonable interpreter of this statement may believe that the Dean of Students is simply offering a service – not banning all events which are not approved and requiring students to acquire approval before gathering in

33 E-mail from Dean of Students Marcia Sells, Harvard Law School, to NLG students (Nov. 13, 2019, 10:13pm) (on file with author).

Belinda. There are many unanswered questions about this "notice" which the DOS has yet to clarify.

Most importantly, why would a teach-in about ICE and its actions be a problem in the first place? Does Harvard Law School stand for the principle

On Nov 13, 2019, at 10:13 PM, Sells, Marcia <msells@law.harvard.edu> wrote:

[redacted]

I am writing because I received a flyer that notes an event the National Lawyers Guild is planning for tomorrow. In our records for student organizations you each are listed as having leadership roles---President, Vice President and Treasurer—for the NLG, so I write to you about this event. It indicates NLG is planning a teach in on an important national concern. However, the flyer has listed the location as "Belinda Hall" which is known as Haas Lounge. This lounge is not available for scheduling an event.

On September 6, 2019, all students were sent a notice from Dean Burns, Dean Claypoole and myself. In this notice it states:

> **Use of Space** – Students who wish to book space for programs, meetings, or other activities that connect to important issues that arise or engage the community in dialogue may do so through the Dean of Students Office. We will ensure that space is made available. The Law School's lounges and other shared spaces are reserved for personal study, small group study and small social groups. The Law School has defined these as the "normal activities" for these spaces within the meaning of the University's Statement of Rights and Responsibilities. Please also review the Law School's Protest and Dissent Guidelines, which strike the balance between the right to protest and the right of speakers to be heard, and the HLS Bulletin and Chalkboard Policy.

For this very important teach in that NLG is planning we can book you into a class room or you can use the Student Organization Workroom. I hope you will reach out to DOS to plan this event in one of those spaces.

All the best,
Dean Sells

that students may express their views in a non-protest format only under certain conditions in certain location with a certain number of people? What is so worrisome about students providing educational services to other students? Yet, it is unclear what purpose the so-called "rule" could serve exactly other than to limit student speech and association.

The right to speak in a public forum is one of the most fundamental pieces of the First Amendment.[34] Harvard Law's property is not a public forum, but if Harvard Law and Harvard generally is committed to upholding

34 *See Hague v. Committee for Industrial Organization*, 307 U.S. 496, 512 (1939) ("[I]t is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects.").

principles of free speech, then a peaceful educational gathering in a social space – a space which tourists and non-Harvard affiliated visitors frequently use – should not be scrutinized by the administration. In the *Hague v. Committee for Industrial Organization*, the Supreme Court wrote:

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens.[35]

Belinda Hall—while not public property—is a private equivalent of public space. Within Harvard Law School Belinda Hall is common space for students, a space where anyone can study, socialize, exchange ideas, and relax. Harvard Law should think deeply before limiting speech and association in this space, and must critically examine the wording and implementation of any such limitations.

V. INTIMIDATION

If these acts of Interference do not deter students from advocacy, the next step is Intimidation. This usually occurs in the form of a mandatory meeting with the DOS, where the Dean discusses the Administrative Board—Harvard Law School's disciplinary board and "Ad Board" for short—and the corresponding disciplinary process at length with students.

A. *DisOrientation*

Participant 4, a Black woman, describes one such meeting, where the DOS allegedly threatened Participant 4 with Ad Board discipline for reading a poem about Belinda, an enslaved African woman who was sold to profit Harvard Law School.[36] The DOS asked Participant 4 to meet; Participant 4 was wary:

> I felt suspicious. I didn't feel scared or intimidated but I did feel suspicious because before she asked me to come, I knew [The Dean of Students] had a history of

35 *Id.* at 515.

36 Confidential Interview with Participant 4 (Aug. 6, 2020) (on file with author).

> targeting Black women in particular who speak out, trying to get them to not speak out. Because she did the same thing to the Black woman who organized DisOrientation the year before[.] . . . I thought, oh, she's probably going to try to discourage me. And that's what she did.[37]

DisOrientation is a yearly gathering of students to discuss the history of student and faculty activism at Harvard Law,[38] usually held in Haas Lounge, colloquially known as Belinda Hall, renamed after the enslaved woman Belinda Sutton by the Reclaim Movement in 2015.

> I was helping organize DisOrientation. We wanted to have it in Belinda Hall because of the history of Belinda Hall. And because I had written a poem about Belinda Sutton that I wanted to read at DisOrientation. And so I was like, I think it's important that
>
> we do this *in* Belinda Hall. And the Dean of Students called me to her office and told me that she supports DisOrientation and that she thinks we should have it, but that we just can't have it in Belinda Hall specifically. Like we need to have it somewhere else. . . She offered to book another room but if we decided to have it in Belinda Hall, she said she could send me to the Administrative Board because I would be breaking the rule. . . She said, 'If you do this, then I might have to send you to the Administrative Board.[39]

Two issues arise here: 1) which rule Participant 4 might break; and, 2) who interprets the rules and decides when they are broken. The so-called "rule" in question was not in the Protest and Dissent Guidelines, nor in the Student Handbook of Academic Policies, nor in the University-Wide Statement on Rights and Responsibilities. Rather, the rule was found in an email from Dean Lisa Burns, Assistant Dean and Registrar of Harvard Law School, dated September 6, 2019, which stated:[40]

37 Confidential Interview with Participant 4 (Aug. 6, 2020) (on file with author).

38 DisOrientation is also held at law schools throughout the United States. *See* National Lawyers Guild, https://www.nlg.org/disorientation/ (last visited Nov. 10, 2021).

39 Confidential Interview with Participant 4 (Aug. 6, 2020) (on file with author).

40 At some point, one must ask why the Harvard Law Administration even bothers with publishing the Handbook of Academic Policies, if they have the self-designated right to create new rules, without notice, without comment, at a moment's notice.

> **Use of Space** – Students who wish to book space for programs, meetings, or other activities that connect to important issues that arise or engage the community in dialogue may do so through the Dean of Students Office. We will ensure that space is made available. The Law School's lounges and other shared spaces are reserved for personal study, small group study and small social groups. The Law School has defined these as the "normal activities" for these spaces within the meaning of the University's Statement of Rights and Responsibilities. Please also review the Law School's Protest and Dissent Guidelines, which strike the balance between the right to protest and the right of speakers to be heard, and the HLS Bulletin and Chalkboard Policy.[41]

Paradoxically, this email or "rule" refers to the Protest and Dissent Guidelines but nowhere in these Guidelines are students required to have their dissent, meetings, or protests pre-approved by the Dean of Students. There is no additional information to help interpreters of this "rule" to understand what "personal study, small group study and small social groups" means.

The term "normal activities" is from the University's Statement of Rights and Responsibilities, but this Statement fails to define normal activities. The only available definition is:

> The central functions of an academic community are learning, teaching, research and scholarship. By accepting membership in the University, an individual joins a community ideally characterized by free expression, free inquiry, intellectual honesty, respect for the dignity of others, and openness to constructive change. The rights and responsibilities exercised within the community must be compatible with these qualities.[42]

Nothing about reading a poem about a slave or talking about the actions of

41 E-mail from Assistant Dean and Registrar Lisa Burns, Harvard Law School (Sept. 6, 2019, 3:14pm) (on file with author).

42 University-Wide Statement on Rights and Responsibilities, https://provost.harvard.edu/university-wide-statement-rights-and-responsibilities [Perma-link: https://perma.cc/BU7R-E2XK] (last visited Nov. 14, 2021).

ICE seems to disrupt this definition of the central functions of the academic community. If anything, the gathering of students to discuss ideas and learn about the world seems exactly aligned with the purpose of the academic community to learn and teach.

Notably, the "rule" also asks that the students review the Protest and Dissent Guidelines. First, it is not clear how the Protest and Dissent Guidelines apply to a social gathering, where no protest or demonstration is happening. Second, the Protest and Dissent Guidelines speak mostly of the acceptable ways to protest against a speaker. For example, "The speaker is entitled to communicate her or his message to the audience during her or his allotted time, and the audience is entitled to hear the message[.]" When there is no speaker, how could these Protest and Dissent Guidelines apply?

Participant 4, as well as many other students at Harvard Law, believe that the Administration likely has a concerted interest in keeping political activity—particularly political activity associated with racial justice—away from Belinda Hall in order to prevent another occupation or political protest.

It is a common sentiment among students, particularly those involved with racial justice oriented causes, that Harvard Law School will go to great lengths to prevent another student occupation or student uprising like Reclaim. Participant 4, when speaking about her own attempt to use Belinda Hall for DisOrientation, said, "My perception is that [the Dean of Students] or the Administration doesn't want anything in Belinda Hall because of Reclaim. Like, they don't want another Reclaim to happen."[43] She also said, "I really hit a nerve. Part of the Reclaim movement was talking about Harvard's history with slavery. And I, again, years later, am talking about Harvard's history with slavery – the fact that she threatened me with the Administrative Board shows that Harvard really does not want to confront its history."[44] At the end of our interview, Participant 4 stated again, "I really want to very heavily emphasize, I think that this heavy pressure coming down on students of color is a direct response to the Reclaim movement. I think they're trying really hard to not have that shit happen *ever* again. Any inkling of student protest, student dissent, especially if it's coming from students of color, they squash it."[45]

In response to the threat of disciplinary action, Participant 4 cited various parts of the University-Wide Statement on Rights and Responsibili-

43 Confidential Interview with Participant 4 (Aug. 6, 2021) (on file with author).
44 *Id.*
45 *Id.*

ties to support the proposition that DisOrientation's presence in Belinda Hall did not violate the rules, including "free expression, free inquiry, intellectual honesty, respect for dignity of others, and openness to constructive change. [.]" Participant 4 also told The Dean of Students via email, "We, students of Harvard Law School, plan to use Belinda Hall as a gathering place, not to interfere with its use as a gathering place. I hope this email clarifies our intentions for you."[46]

> I told her what I am trying to do in Belinda Hall, a.k.a. reading a poem about a slave, it is in total alignment with the Handbook of Student Rights and Responsibilities . . . she ended up not sending me to the Administrative Board—yet! We'll see! (laughs).[47]

Participant 4 laughs because the DOS rarely – from my research – informs students after an Ad Board threat whether the Ad Board has decided to pursue discipline against the student. As a result, the students are left hanging in uncertainty, never sure if they will hear days, weeks, months, or maybe even years into the future, that they are under investigation or possibly will be charged by the Ad Board. This hanging sword has a chilling effect on future dissent and protest activities, a win for an institution that wants to avoid future protests but a major loss for an institution that claims to champion free speech. The DisOrientation in question occurred in October 2019 but in my interview with Participant 4 in August of 2020, Participant 4 could not say definitively whether she would be investigated or charged by the Ad Board:

> Me: [The Dean of Students] didn't provide any certainty. She didn't tell you who is on the Ad Board? What is the racial composition? Who are the students [on the Ad Board]? What is the timeline? Did she provide you any of those kinds of details?
>
> Participant 4: No. She just said, I *might* have to send you to the Administrative Board. . . The only reason I knew, like broadly, what the Administrative Board was because my other Black female friends have also been threatened with it. (laughs)[48]

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46 E-mail from Participant 4 to Harvard Law Dean of Students Marcia Sells (Oct. 7, 2019, 6:25pm) (on file with author).

47 Confidential interview with Participant 4 (Aug. 6, 2020) (on file with author).

48 *Id.*

DisOrientation is a teach-in and gathering. There is no chanting, occupation, or even singing. Participant 4 emphasized, "Students of color are organizing to talk about the history of other students of color at this law school, to read poetry, you know, it was a very harmless event. It was a teach-in. It was not even a protest."[49] Participant 4 felt angry with the DOS, during and after their short 10-minute meeting, citing, "I felt angry mostly. I told her in the meeting, let me just get this straight, you're telling me that you might send me to the Administrative Board because I want to read a poem about a slave in public? And she was like, no, not because you're reading a poem about a slave but because of *where* you're reading this poem."[50]

The DOS' threat caused emotional turmoil for Participant 4:

> I felt a mix of both, like, concern or like worry, anxiety. A mix of anxiety and kind of indignation. . . Part of my personality is that if someone threatens me, that makes me even more upset. And I couldn't believe that she was threatening me over something that I knew was *not* wrong. I was like, it is not wrong for me to honor the ancestors. That's not bad! But I still did feel anxiety . . . because what if, this, like, ruins my entire Harvard Law education? What if I don't get my diploma, or something, because I read this poem? . . . I'm the first in my family to go to law school. I'm the first in my family to go to an ivy-league institution. And so a lot of people are rooting for me, a lot of people are cheering for me, you know, like, back home. And I feel this dual responsibility . . . to my community to graduate from this school and to do as well as I can while I'm here, but also a responsibility to tell the truth while I am at this school.[51]

Word of Dean Sells' threat to send Participant 4 to the Ad Board traveled quickly. Participant 5, another Black woman, also helped organize DisOrientation also feared retaliation from the Ad Board or the DOS and quickly re-organized the teach-in in an effort to avoid disciplinary trouble. Participant 5 describes:

> I was one of the organizers [of DisOrientation] this

49 *Id.*
50 *Id.*
51 *Id.*

> year . . . I along with other students were concerned about facing disciplinary consequences from Dean Sells. So a lot of people's roles in the event actually shifted because they were worried about facing disciplinary consequences. I know that even though I had a speaking role, I had a less prominent role because I was concerned about facing further disciplinary consequences. . . I know that the student whose name was featured prominently on the flyers advertising the event was emailed saying that she might possibly face disciplinary consequences for holding the event in Belinda . . . There was just a lot of consternation during the planning process from various individuals who had various run-ins with Dean Sells not wanting to engage in particular ways because they were worried that she would engage in some kind of retaliatory action.[52]

Participant 4 described a similar re-shift in roles towards white students in response to the perception that the Dean of Students was targeting Black students:

> With DisOrientation, I added more protection. So I, immediately after that meeting with Dean Sells, when I sent that email to Dean Sells, I also cc'd white faculty members just so they could see what was happening. . . I also reached out to the other organizers of DisOrientation and told them that we needed the white people who were involved with organizing DisOrientation to be a little more heavily involved and that we needed Legal Observers. If [the DOS] calls the police on DisOrientation, we need white people who are willing to deescalate, confront the police. We added extra layers of protection.[53]

Both Participant 4 and 5 were wary of the Dean of Students' alleged threats and were frustrated with how unnecessarily difficult, in their view, the Administration was making it to hold a peaceful educational gathering about the history of anti-Blackness at Harvard Law. During the teach-in itself, the Harvard University Police Department arrived, which Participant 5 perceived to be an extension of the administration's threat:

52 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).
53 Confidential interview with Participant 4 (Aug. 6, 2020) (on file with author).

> The cops actually showed up during DisOrientation. There was an HUPD car. Belinda has a wall of windows. And there was a cop car that showed up with its lights brightly flashing through the windows, shining through the windows. And the cop car was there for a lengthy period of time. That was clearly a tool of intimidation. There was no reason for the cop car to be there. Belinda is a space that students hang out in and convene in regularly, like, everyday. So there was no reason to have a cop car there again. But when you see certain student activities as disruptive or dangerous, obviously, you have to take action to quell those events and stifle dissent.[54]

> Partway through the event, the police showed up in an SUV in what is clearly a walking path through the law school. That's the path I take every day to walk back and forth to class. It is very much not a street. The police pulled up in their big SUVs and blasted their headlights through the window towards the speakers, who were all people of color. There was very obviously a tension in the room at that point. . . The speaker pointed out that it was dramatic . . . and that the students would try to keep each other safe in case the police would come in. . . We know that people call the cops on Black and brown people when there are too many in one room or when they're talking about their own power. This history is not a wild history. It could have been spoken about at Harvard's own orientation. Maybe acknowledge its not-perfect history. . . I think Harvard could have done their own jobs as a justice school, quote-unquote. . . I think we know that cops show up when people of color are asserting their own rights or speaking to their own power[.]"[55]

When I checked, the HUPD Police Log for "demonstrations" for the falls of 2018 and 2019 showed no calls to report a demonstration to Wasserstein Hall, which suggests the call to dispatch the police did not originate from a fellow student or passer-by. Perhaps, the call to the police originated from someone who called the police directly, not through the normal hotline open

54 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

55 Confidential Interview with Participant 2 (July 31, 2020) (on file with author).

to the public.

Participant 5 and 4 both expressed suspicion that the police presence was due to the high attendance of Black students at DisOrientation, although it is unclear if they are talking about the same DisOrientation year.

> I definitely think that the fact that it was mostly Black students did play a role. I do think that if the event was mostly white, no, the police probably would not have been called[.][56]

> I was like, wow, this feels like a little bit of an over-reaction. We're just talking in this hall. . . that was my first precursor to realizing that when Black and brown people speak out at Harvard Law School, they face consequences. So it made me feel a little less likely to speak out. . . It made me feel discouraged . . . like, oh, they might call the police on me if I talk about slavery. (laughs) . . . I don't know who called the police, but the police showed up.[57]

The Participants could not confirm who exactly called the police.

I asked Participant 4 how the DOS and school administration could have managed the situation better.

> In that specific instance, I think something [The Dean of Students] could have done better was recognize the intent behind the event . . . And instead of being motivated by this fear of Black thought or students of color revolting, they should be, what's the word I'm looking for? It's not inspired, because they're not going to be inspired. They should see the larger issue, the larger arch of history. It's important for these students to be able to say what they think! They also should be able to have the academic freedom that we like to talk about. Especially when it's non-violent. Especially when it's not even a protest. Literally, the event is *teaching* in a *school* (laughs) . . . It's really interesting to me that the school, the administration, the Dean of Students Office

56 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).
57 Confidential Interview with Participant 4 (Aug. 6, 2020) (on file with author).

> specifically feel the need to intervene whenever Black people start to have autonomous thought[.]

Participant 4 expressed frustration with what she identified as disparate treatment by the Administration between regulation of Black students' speech and white students' speech. In an unrelated meeting with various leaders of HLS affinity groups, Dean John Manning, and the Dean of Students, Dean Manning allegedly told Participant 4 that writing a letter to fellow students to call out anti-Blackness in the classroom was an inappropriate violation of other students' academic freedom, according to Participant 4.[58] As a result, Participant 4 thought these comments from Dean Manning and the threat of disciplinary action by the Ad Board to be part of a larger pattern of stifling Black student dissent but failing to regulate white student speech in any manner.

> "In fact, when they [Law School administrators] do intervene when white people start talking, it's to *protect* those white people, to protect their academic freedom. That's what the Dean of Students needs to do differently, to realize the disparity in how they are treating students of color and rectify that disparity by allowing students of color to have the same freedom to speak as they let white students have . . . Dean Manning and Dean Sells were all saying that we need to protect the other students in the class from feeling too scared to speak. . . And I'm like, that's so interesting that you're focused on protecting these white students from being scared to speak and you never protected me. Do you know how scared I feel to speak? As a Black woman, first person in my family to go to law school? When white people are saying blatantly racist things in class, do you know how much courage it takes for me to speak up? And you never thought about protecting my right to speak."[59]

58 *Id.*

59 *Id.*

Although Participant 4 declined to give specific examples from her classroom experience, due to fear of divulging her identity, many students of color at Harvard Law School assert that their classmates often say racist things during class. The @BlackatHarvardLaw Instagram account gives many examples of such racist discussions. The official Harvard Law Instagram account follows @BlackatHarvardLaw and so presumably, the Administration is aware of the many claims of racism made on this page.

One post describes, "In my Family Law class, a white student volunteered to discuss Lov-

This disparity is also evident in what students signs the Law School allows on its walls. During Participant 4's first DisOrientation, the Dean of Students demanded that the DisOrientation organizers take down the signs they had hung up. "My 1L year, we tried to hang up signs and the Administration told us we had to take it down . . . Dean Sells came into Belinda Hall and told organizers they had to take the [Disorientation] signs down. The organizers also had a projector for a PowerPoint or something, and she made them take that down too."[60]

[61]

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ing v. Virginia. He explained that the state's rationale was to protect white identity and culture. The professor, a woman of color, gently corrected him and said, 'Do you mean white supremacy?' (Note: the case itself actually describes the rationale as white supremacy.) And he said, 'I don't like to use that term because it is pejorative. I prefer white identity.' No one held him accountable for saying that accurately labeling white supremacy was 'pejorative.'" https://www.instagram.com/p/CB9GbMhn5U1/

Another post on this Instagram states: "My 1L contracts professor began a completely off-topic tirade about undocumented people in the US (or 'illegals' as she called them). Then, she cold called me—the only immigrant latinx in the class—to begin a debate on whether as a future upholder of the law, I have a duty to call ICE on my future undocumented clients. She pushed me on it for about 20 minutes . . . She knew I was an immigrant. She had no idea whether I was documented or not. She seemed to enjoy debating me to tears in front of my classmates." https://www.instagram.com/p/CBwbrN6HL_x/

Another post: "I was the only Black person in my first amendment class on the day that we were discussing fighting words. My first amendment professor cold-called me that day and asked: 'If I called you the n-word right now, would you fight me?'" https://www.instagram.com/p/CBqYIx2HpDc/

60 Confidential Interview with Participant 4 (Aug. 6, 2020) (on file with author).

61 Sidni M. Frederick, "Belinda Hall", The Crimson (last visited Nov. 14, 2016) (https://www.thecrimson.com/image/2016/2/25/belinda-hall/).

This treatment stands in stark contrast to the signage that students hung up next to Professor and Senator Elizabeth Warren's portrait in March of 2020, when she announced that she dropped out of the race for the Democratic Presidential nomination. There, a few students hung up sticky-notes thanking Professor Warren for her campaign and other positive messages. A couple of sticky-notes ballooned into many more. Instead of enforcing the rule against signs, the Administration put out a table to facilitate students writing nice messages on sticky-notes and affixing them to the wall. The sticky notes were left untouched for at least a few days.

 [62]

This Elizabeth Warren sticky-note homage wall provides a comparison point in reviewing the Administration's treatment of the DisOrientation organizers, many Black, who could not even hang up a sign declaring Haas Lounge to be "Belinda Hall" despite students commonly referring to the lounge as Belinda. It seems that messages which highlight the dark practices of Harvard Law School are not allowed by the Administration, while messages which promote praise and reverence of Harvard and its professors are not only allowed, but *encouraged*.

> I think that the reason that Harvard is silencing us specifically is because we're people of color talking about

62 Photograph of Elizabeth Warren Portrait in Harvard Law School's Wasserstein Hall (on file with author).

> racial justice. I think that's the entire reason . . . That's part of the reason why when we were organizing DisOrientation and The Dean of Students threatened me why we had more white people get involved, because we *know* that the School is not going to come after white people the same way it comes after people of color. . . even if white people are talking about racial justice, the School doesn't come down on them as hard.[63]

Another instance that exemplified this for Participant 4 was a rally that another student group, which did not have as many Black student leaders as DisOrientation (if any), held in advocacy against Supreme Court Justice Kavanaugh's professorship at Harvard Law School.

> [Other student group] had everybody meet in Belinda Hall and then march outside to have the rally. And as far as I know, there weren't any repercussions for them having the meeting place or rally to be Belinda Hall.

Per Participant 4's observation, non-Black students face no threats for using Belinda Hall as a rallying space, but Black students face threats of Ad Board for using Belinda Hall as an educational space. I spoke with an organizer with this other student group, which is predominately white, and confirmed that there were no disciplinary threats or repercussions for this rally, although they emphasized that Belinda Hall was simply a meeting place for rally participants, not the location of the actual rally itself. Apparently, according to this anonymous organizer, this student group had found out through an indirect, trusted source that the Dean of Students Office was not happy, allegedly, about this public rally. Even so, the Dean of Students Office never expressed any sort of discontent or unhappiness to the organizers of the rally. Even more strangely, this rally was advertised as a "walk-out" from class, where students were encouraged to walk out of their classroom to join the rally for rhetorical effect. The encouraged disruption of class seems more than anything to be a violation of the normal purposes of an academic institution, yet the student organizers of the rally heard nothing from the administration before or after the rally.[64]

Furthermore, this organizer informed me that this student group frequently held "phone banks" in Belinda Hall where students gather to phone

63 Confidential Interview with Participant 4 (Aug 6, 2020) (on file with author).

64 Confidential phone call with organizer (Dec. 28, 2020).

people for a cause and never received any communication from the Dean of Students Office regarding these. When I asked this organizer whether they had ever been investigated for their political organizing on campus, they responded, "What would they investigate? People are allowed to have political activity on campus. There's nothing wrong with that."[65]

This point of view is worlds away from the view of Black student organizers at Harvard who have faced repeated threats of investigation for their political activity. The difference is stark. Black students face many negative consequences that others, it appears, do not for their political activity.

Lambda is another group on campus which has received undue scrutiny from the Dean of Students Office. Lambda is a student affinity group for those who identify as LGBTQ or otherwise queer. Lambda stages an annual protest against the presence of JAG recruiters on campus because of JAG's anti-trans hiring policy. Participant 4 noted this protest as one that has received less pushback.

> Lambda [in 2018] organized a protest with Harvard bringing JAG on campus . . . because they exclude trans people. And so Lambda organized that protest and that protest happened in Belinda Hall. We all held up signs protesting JAG in Belinda Hall. . . I don't know who organized it but the majority of the people who were at the protest were white. . . They did not get the heat the way that people of the color get the heat, you know.

A witness to the development of the protest confirmed that Lambda received permission to protest JAG in Belinda Hall in the Fall of 2018 from the Dean of Students and that one administrator brought cookies to the anti-JAG protest. This source assured me that there was "nothing interesting" about this interaction and that the JAG protest was successful. Notably, while in the year the JAG protest was approved, Lambda's presidents were not Black, but in the year following where the Dean of Students warned student organizers not to have the JAG protest in Belinda, one of the Lambda presidents was Black.

The main dispute between the Dean of Students and the organizers

65 Confidential phone call with organizer (Dec. 28, 2020).

of DisOrientation was not necessarily the content of DisOrientation, but the location of it. Indeed, the Dean of Students' alleged statement of Participant 4 ("[N]ot because you're reading a poem about a slave but because of *where* you're reading this poem.") raises the same questions as "time, place, and manner" restrictions on speech addressed by the Supreme Court. Importantly, when "time, place, and manner" restrictions are concerned, the Supreme Court has held that regulations must be content, neutral, narrowly tailored ins support of a significant government interest, and leave open ample alternative channels for the affected speech.[66] Of course, First Amendment doctrine is not binding upon a private academic institution, it is a helpful framework to understand how free speech at Harvard Law operates.

Notably, in most cases, the Dean of Students is careful to provide an alternative space for students to conduct their gathering. For example, the Dean of Students allowed JAG protestors to protest near a ramp and the Dean of Students also offered to book another room for Participant 4's poem. Thus, a naysayer may argue that this time, place, and manner regulation is aligned with the principles of free speech established by the Supreme Court, given that the Dean of Students offered alternatives. But under the principles of First Amendment jurisprudence, courts may not agree. In *Million Youth March, Inc. v. Safir*,[67] the City of New York denied the Million Youth March organizers a permit to parade in Harlem and asked the organizers to parade on Randall Island instead.[68] The court ruled that while the speaker has no constitutionally "protected franchise on the forum of its choice" the state must take into account "(1) the audience to which the speaker seeks to communicate and (2) the contribution of the desired location to the meaning of the speech.[69] When it came to the Million Youth March organizers' desire to hold their rally in Harlem, the court reasoned, "Holding the event in that location will infuse substantial and unique additional meaning to the message of the event. While this alone is not controlling here, its relevance to the analysis was recognized expressly by the Supreme Court in City of Ladue and by the district court in the highly-analogous Nationalist Movement decision. The special significance of Harlem thus undermines the adequacy of the City's alternative locations.[70]

The *Million Youth March* plaintiffs' reasons for marching in Harlem closely parallel the reasons a poem about Ms. Belinda should be read in Be-

66 *Ward v. Rock Against Racism,* 491 U.S. 781 (1989).
67 18 F. Supp. 2d 334 (S.D.N.Y 1998).
68 *Million Youth March, Inc. v. Safir*, 18 F. Supp. 2d 334 (S.D.N.Y 1998)
69 *Id.* at 347.
70 *Id.*

linda Hall instead of any other place. As Participant 4 noted, the place of Belinda Hall was of particular importance due to its name homage to Belinda herself and due to the history of the student activism which took place in Belinda Hall. Moreover, as Belinda Hall is located in a large, open lounge it has the potential to reach many more students. The DOS' suggested use of the student organization room would only allow those who had a Harvard ID card to attend and attract only those who affirmatively chose to attend the poem reading. Furthermore, it does not appear that the DOS nor Dean Manning would be able to allege any of the same concerns that New York City asserted in *Million Youth March*, such interference with repair work, inability to physically or safely contain the expected crowd, possible problems for emergency vehicles, and excessive traffic congestion. Why exactly the Dean of Students would not permit DisOrientation to occur, other than allegedly breaking a possible rule, are unknown.[71]

B. *The Protest Against Harvard University President Lawrence Bacow*

Participant 1 and 5 were both called to meetings with the DOS during which the vague threat of Ad Board discipline was floated. In April of 2019, the Harvard Prison Divestment Campaign, a group of student organizers agitating to divest Harvard's endowment from significant actors in the prison-industrial complex, protested a speaking event featuring Harvard President Lawrence Bacow and the Dean of the Education School Bridget Long.

> One thing we did to challenge the narrative the institution is pushing, by pointing to how its endowment is actually antithetical to [their] objectives and how prisons are really not good for people's economic well-being and how investments in prisons actually take resources away from other resources that communities need to thrive. . . We were trying to push [Bacow] to take action around our key demands . . . The attendees at the event were donors, very wealthy and influential donors at the Kennedy School. We thought it was a good chance to pressure the University. Again, there are a few things that Harvard responds to which are money and [embarrassment to their] public reputation. . . We decided to dissent by holding up signs and

71 To be clear, the First Amendment does not actually apply to Harvard Law School, as it is a private actor, but using the framework of First Amendment jurisprudence as a baseline for what is an acceptable restriction in a space proclaiming itself to be pro-free speech is helpful and illuminating.

> disrupting the event and ultimately shutting down the event briefly before it was moved to a different room.[72]

Some of the audience members verbally abused the protestors, according to Participant 5. After the protestors left, the Harvard University Police Department followed them:

> At the location where we debriefed, we discovered that we had been followed by some members of the Harvard University Police Department. They had surrounded the building that we were in. They were essentially looking for folks who had participated [in the protest]. There were several, if I recall, cop cars outside the building that we were in. And so, that caused a bit of consternation. . . I was concerned. I did not want to get into any altercation with the police. I understand the role the police play, which is especially at the university to police who does and doesn't belong. . . As a Black woman, I was concerned with being dealt with violently by the police. . . I was definitely a little concerned, more than a little concerned with their presence.

A few days after the protest, the Dean of Students demanded to meet with Participant 5 under vague circumstances. It was a confusing and convoluted interaction, marked with non-transparency and distress. Participant 5, who is Black, describes:

> In the days following, I received an email communication from the Dean of Students at the Law School, summoning me to her office to have a meeting with her about the events that occurred at the talk with the
>
> President. Very vague. At that point, after some brief digging, I discovered that I was the only one who had received this communication.
>
> And so I responded, initially, telling the Dean that I was skeptical about this summoning, indicating that as far as I was able to gather, I was the only one who received this communication. It struck me as possibly

72 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

> discriminatory, that I was the only one from the Law School who had been identified as someone who had participated in this protest and was possibly the only one who was going to be disciplined as a result, despite the fact that other non-Black students from the Law School and other schools had participated in this protest. Then, I received a very cagey response, being like 'we don't discuss other student's disciplinary issues' et cetera.
>
> Then, initially, [the DOS] had set a date for me to come in and in response to me pointing out, at that point, I was the only one being summoned, she tried to push the date of the meeting back. In my mind, it was pretty clear to me that she was doing that to cover her tracks and essentially try and pull other people in so to basically undermine any accusations of discriminatory action on her part.
>
> So I refused to change the meeting because I did not want to give her the time to cover her tracks and had already made the time to meet with her at that time. So I thought it was unprofessional to change the meeting time at what was fairly last-minute. A few hours after the initial email she sent me trying to change the meeting, I found out that another person had received an email communication summoning them to a meeting. So it was clear to me that they had gone back and tried to identify other people to, again, cover their tracks. Later, maybe a day or two later, another student was also summoned.[73]

In response to this, Participant 5 panicked, unsure how to handle what she perceived to be the selective persecution of her dissent. She said, "I definitely had an anxious reaction to this. I was a first year law student and I did not intend to get expelled or kicked out or significantly disciplined in my first year of law school. . . I was definitely in panic mode at that point. . . I felt like I was being singled out. That was definitely anxiety-inducing."[74]

73 *Id.*
74 *Id.*

[75]

Participant 1, a white woman, was one of the other students "summoned" to meet with the Dean of Students.

[76]

Participant 1 describes:

> At the protest, I had been someone who was sitting on the stage, holding a sign, and chanting. But totally peaceful. I didn't have any contact with the police officers during the protest or anything like that. . . I

Hello [redacted]

This meeting which must take place is to talk to you face to face about the Harvard Law School Handbook of Academic Policy ("HAP") and make sure you understand the requirements of the policy. A formal charge, at this moment, has not been made. In the event of a formal charge, you would have received a letter outlining the charge, the role of the Ad Board, the range of possible sanctions, your right to a hearing and right to have legal representation. This meeting is to explain the full scope of the HAP and the Ad Board's role when allegations of violations of academic policy are charged.

I want you to have a full understanding of the concerns raised by your actions. Again I look forward to our face to face conversation on Tuesday in my office.

All the best,

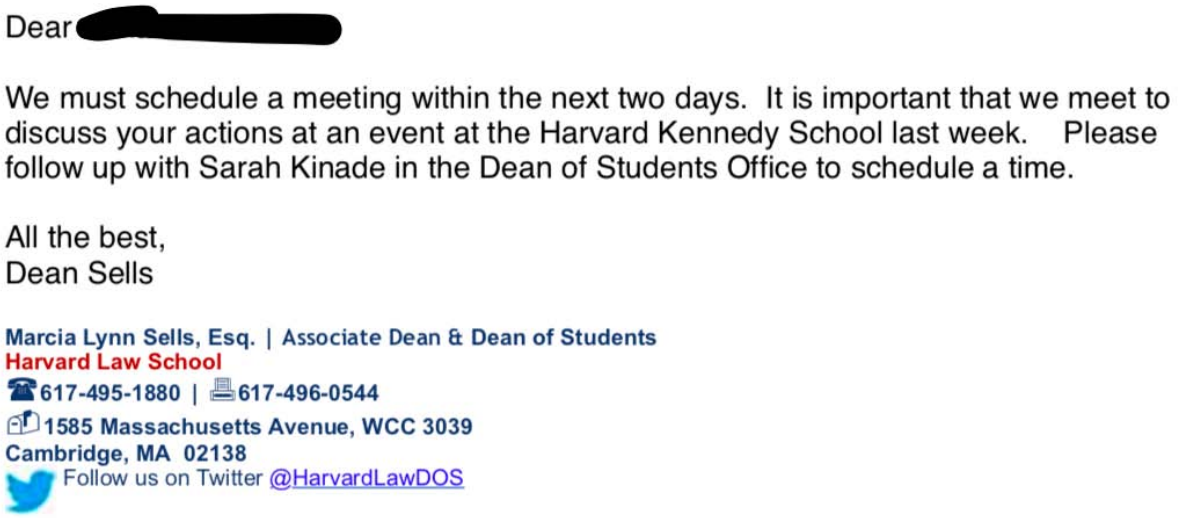
Dean Sells

---

75 E-mail from Dean of Students Marcia Sells, Harvard Law School to Participant 5, Professor Alex Whiting, Lakshmi Clark-McClendon, Edgar Filho (Apr. 07, 2019, 7:34pm) (on file with author).

76 E-mail from Dean of Students Marcia Sells, Harvard Law School to Participant 1, Professor Alex Whiting, Sarah Kinkade, Lakshmi Clark-McClendon (Apr. 9, 2019, 10:49am) (on file with author).

initially didn't get any contact from the Dean of Students. My fellow protestor [Participant 5], who is a



Dear [redacted]

We must schedule a meeting within the next two days. It is important that we meet to discuss your actions at an event at the Harvard Kennedy School last week. Please follow up with Sarah Kinade in the Dean of Students Office to schedule a time.

All the best,
Dean Sells

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Black woman, did get an email from Marica Sells, the Dean of Students, saying that she had to come in. My fellow protestor's first response was, 'why am I only being asked to come in? There were like a lot of other Harvard Law School students there, including a white woman who was right next to me on the stage doing the exact same actions as me.' After that, I was also sent an email saying that I had to come in with a meeting with the Dean of Students, Marcia Sells.

So this other protestor and I took the meeting together with [the DOS]. It was a very confrontational meeting. Going in, I think we already felt that we were being investigated and punished. It was set up in a way that felt very intimidating and we were supposed to feel intimidated. I guess we were told that the meeting was so we were aware of what [the Ad Board's] processes are and what our rights are and what we were facing. But that didn't ring totally true. They did a lot of things unnecessarily intimidatingly and meant to intimidate us. For example, we were told that if the issue were remanded to the Ad Board, the Ad Board could take a number of actions against us, like find us not guilty,

> give us a warning. It could suspend us. It could expel us. And some other things that were even more severe than expulsion.
>
> We weren't told what rule we had broken ever, which we asked for very specifically. It wasn't super clear who was making the decisions if we were going to be remanded. . . From [Dean Sell's] email and coming out of the meeting, this felt like a mandatory process, one that would be used to decide whether I would be punished or not. [This meeting] would affect my education and future employability. So it was emphasized as a severe thing. The way things were framed by the email and what [the Dean of Students] said, it was always assumed that I had broken some school rule. So I think intensity was always maintained by [the Dean of Students]. It was always framed as a serious thing that had happened and that I could be getting in serious trouble.[77]

Participant 1 was adamant that this meeting was mandatory: "At this point, I was explicitly told it was a mandatory meeting . . . [The DOS] said something like, we *have* to meet."[78] Participant 5 also felt that the meeting was mandatory and that she had no choice but to meet with the Dean of Students: "It definitely seemed mandatory, not optional at all. I had no sense that it was optional."[79]

Approximately six months later, the Dean of Students requested a meeting with me regarding a separate protest but stated that such a meeting was optional after I pointed out that such a meeting was not within the Disciplinary Procedure outlined in the Handbook of Academic Policy.

[80]

Participant 1 described the experience as wreaking havoc on their emotional health:

> I think it was very stressful. It probably increased my

77 Confidential Interview with Participant 1 (July 29, 2020) (on file with author).
78 *Id.*
79 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).
80 E-mail from Dean of Students Marcia Sells, Harvard Law School, to author (Nov. 17, 2019, 4:49pm) (on file with author).

> daily anxiety and it probably made it harder for me to enjoy normal life. I was probably pretty preoccupied with it at the time . . . I don't think anyone enjoys getting in trouble. I was worried about my standing in the

Amanda,

Thank you for your note. The meeting is to discuss the events that took place on Saturday, October 26th. It is a chance to explain the HLS policies and procedures. I have no vote on the Ad Board decisions; my role is to provide information if you have questions. You do not have to meet with me if you do not want to, it is your choice.

All the best,

Dean Sells

> legal community, my ability to get a job, my ability to graduate, and also, you know, no one likes to be forced to interact with people who are treating you in a harsh disciplinary way without a good reason.[81]

The DOS's reputation for disciplinary threats precedes her. I asked Participant 5, "How did you know that this meeting was going to be about discipline if Dean Sell's email did not mention it to you?" Participant 5 answered:

> I mean, I think I deduced from her history at the institution. As someone who, again, was very much interested in protest and dissent, I had conversations with individuals who were involved in Reclaim and other protest movements at the Law School and they essentially had made it clear to me the role that the
>
> Dean of the Law School played in the institution was basically to police student dissent and to stifle student activism at the school. She essentially didn't do much else[.][82]

Participant 7 also had been called into a meeting with Dean Sells as a result of allegations regarding the Institute of Politics protest. However, Participant 7 found the conversation to be much less a session to review the Protest and

81 Confidential Interview with Participant 1 (July 29, 2020) (on file with author).
82 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

Dissent Guidelines and more of an attempt to scold the student for her political activity.

> She gave me this whole lecture about like, there was this one weird thing she said, like *you know what I understand that people want to protest but this is not the right way to protest.* She was like, and *I understand there are some laws that don't make sense, like a law that criminalizes people for sleeping under bridges when they have nowhere else to sleep. Like, I could understand that you're really angry at that law, as a law student, I understand that there is anger against unfair laws and things. But that is not the same situation that we're in right now* . . . something about some laws being unfair and some laws not being unfair. And I pushed back on that, I told her, no, actually, this is very similar to the unfair situation that you're describing. It's just that I think that prisons are extraordinarily and deeply unjust. Extremely violent, and like, evolutions of slavery. All these sort of things that are deeply upsetting to me. So I do have every right to be protesting this. And she just didn't really respond at all to that.[83]

The Harvard Law Administration never followed up with any of the participants to confirm whether the students would be formally disciplined, which meant that the threat of disciplinary action hung over the students until they graduated:

> I was told I would get, like, a follow-up email saying if the issue was being put before the Ad Board or not. . . [The Dean of Students] told me that verbally during the meeting. But I never received any follow-up from her . . . We asked who was making the decision if the Ad Board was going to make this decision or not. And

83 Confidential Interview with Participant 4 (Aug. 6, 2020) (on file with author).

Participant 7's conversation with the Dean of Students is particularly interesting in that it raises questions about whether the Administration was selectively enforcing the guidelines against students for their viewpoints. Was it that the particular demand of prison divestment, as opposed to say something more mainstream like reducing prison sentences for non-violent offenders, that incited a negative reaction from the Administration? Few of the participants heard Dean Sells' personal opinion on any particular controversial issue.

> she said it was Dean Manning of the Law School and herself. I think we asked what rule we were accused of breaking, and she wasn't super clear on that . . . She gave vague answers that weren't totally satisfying. We had wanted her to point to something concrete in the policy that we had violated and she couldn't do that at the time.[84]

> Dean Sells just didn't get back to me. She never did . . . She didn't follow up like she said that she would. It just sort of disappeared. So it seemed like it was purely an intimidation tactic and there was absolutely no weight behind it. It doesn't seem like she ever was planning on following-through with anything. It seems like she just did it in an attempt to try to intimidate us.[85]

Some Participants found the meeting lacked information, clarity, and clear procedure. Multiple Participants explained that it always felt like the "goalposts" were moving. The students could not keep up with the new rules that the Administration seemed to be pulling out of its back pocket at any given moment.

> It's especially powerful in a school setting, I think, to speak about history, because we are only . . . citizens or residents of this space for a few years and then we leave. So the school only needs to distract us or stop us from building power for a couple of years. But Dis-Orientation has grown a quite bit in the last few years since the Reclaim Movement. And so I think DisOrientation poses a direct threat to the Administration. . . . Oppressors often have all the same rules or all the same tactics. . .There's not that many tactics. You can see them on rotation. . . Something as silly as pizza can be used to thrown sand in the gears and stop power building. DOS can make up a fake rule about food not being allowed in a space *once* that space becomes an organizing space and therefore a threat. So it wasn't that we were having pizza in that space [that was the problem], it was that we were using that space to build power, which the Administration is afraid of—a seem-

84 Confidential Interview with Participant 1 (July 29, 2020) (on file with author).
85 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

ingly neutral rule to get in our way.[86]

> In school, the question is, if the action, if you feel like it's something that risks suspension or expulsion, or some sort of disciplinary action—ideally, you can determine how high risk your action is by looking at the rules. But we've seen even in instances where you specifically plan protests that don't break a single rule, they still get angry, they still try to penalize you, they still drag it out for years, they make a big deal out of it, they make new rules, they try to track you. You can't really determine how high or low risk an action is going to be, because they keep changing the goalpost. They keep changing the definition that lets you determine if something is high or low risk. that makes it difficult. . . It's like Whack-A-Mole. The rules grow alongside us as we're moving.[87]

VI. INVESTIGATION

Sometimes, Interference and Intimidation are not enough to diminish a student's political activities. This is when the Administration's harshest threat of disciplinary action arises in the context of student dissent: an Investigation into a student's conduct that may lead to formal disciplinary charges.

The foremost example of this was a 7-month investigation conducted over a silent protest of Dean John Manning's speech at the Harvard Law School Fall Alumni Reunion Class of 1969.[88] The Ad Board investigated four students ("Student Dissenters") out of the approximately ten who took part in the protest. The student group behind the protest, the Harvard Prison Divestment Campaign, circulated a press release:

> On Saturday morning, student organizers from the Harvard Prison Divestment Campaign staged a silent protest at the Harvard Law School Annual 45th Fall Reunion at "A Conversation with Dean John F. Manning '85" with HLS alumni. Dean Manning initially asked the organizers to leave. But after being handed a copy of Harvard Law School's policy on protest and

86 Confidential Interview with Participant 2 (July 31, 2020) (on file with author).
87 Confidential Interview with Participant 6 (Apr. 7, 2021) (on file with author).
88 The author was an active participant in this protest.

dissent, he allowed the students to stay and continued his talk to alumni.[89]

[90]

Pictured: Dean Manning (left), The Author (right)

89 PRESS RELEASE: HPDC Stages Silent Protest at HLS Reunion Event (https://harvardprisondivest.org/press-release-hpdc-stages-silent-protest-at-hls-reunion-event/ [Perma-link: https://perma.cc/955F-MSG7]) (last visited Nov. 14, 2021).

90 *Id.*

[91]

Pictured: Protestor (left), Dean Manning (right)

This protest took place on October 26, 2019. the Dean of Students Office subsequently hired the firm Hogan & Lovells to investigate the protest.[92] The investigator was Natashia Tidwell, a former federal prosecutor turned partner at Hogan Lovells and now a partner at Saul Ewing.[93] According to her report, which none of the student protestors were able to read until after graduating and submitting FERPA requests to the Law School, the protest started as Dean Manning began speaking and student protestors walked to the front of the room and held up signs while standing behind him. Ms. Tidwell, from watching the alumni staff's video footage of the event, described the protest as follows:

> Dean Manning stops speaking for approximately one minute while the students, including [redacted] hands out flyers and positions themselves around the room. The audience members talk quietly. [. . .]

91 *Id.*

92 Confidential Final Investigative Report (March 20, 2020) (on file with author).

93 Ms. Tidwell's biography states, "Natashia Tidwell brings a depth of experience and nuanced perspective to the Firm's practices in Higher Education, K-12 Schools, and White Collar and Government Litigation. As a former police officer and federal prosecutor, Natashia offers a practical real-world approach to her work leading internal investigations for colleges, universities and independent secondary schools in matters involving racial discrimination, Title IX and other federal and state constitutional issues." Natashia Tidwell, (https://www.saul.com/attorneys/natashia-tidwell) (last visited Nov. 14, 2021).

> Manning: At Harvard Law School, we respect the right to protest. We respect the right to speak. But it must not disturb and disrupt the right of others to engage in their speech. [Chan makes a "go ahead" gesture.] So I am going to say thank you for presenting these signs and I'm going to ask you now to let us resume our work. You may sit down [Chan again makes a "go ahead" gesture] and you may hear what we're talking about, but this is not consistent with the guidelines that we have on time, place, and manner of dissent.
>
> Chan: Are you sure about that?
>
> Manning: Yes, I am.
>
> There is brief applause and some unintelligible dialogue. [Redacted] then reaches in her bag and shows the Dean a copy of what appears to be the HAP Protest and Dissent Guidelines. [Redacted] can be heard stating that protestors can stand quietly with signs, but her comments are not fully captured on the video recording. The conversation continues:
>
> Chan: That's the policy you wrote.
>
> Manning: That's not a policy that I wrote, but—
>
> Chan: —That's the policy that your administration enforces— [unintelligible]
>
> Manning: You know what? We can sort all of this out later. And if you stand, you're on notice . . . [Crosstalk by [redacted]] So we're not going to [Crosstalk by [redacted]] You know what, we have time, place, and manner restrictions on this, so we will sort this all out later. [Crosstalk by [redacted]] So we will, we will sort it out later. So right now, you're disrupting an event. We will sort this out later.[94]

94 Confidential Final Investigative Report (March 20, 2020) (on file with author) at pg. 3-5.

The student protestors left a few minutes later. Natashia Tidwell concluded, "In sum, the protest lasted . . . roughly eight and a half minutes."[95] A total of nine law students protested at that event. But only four law students, all three of the law students of color and one white woman, were investigated by the Administration. The other five law students, all white, received no communication whatsoever from the Administration.

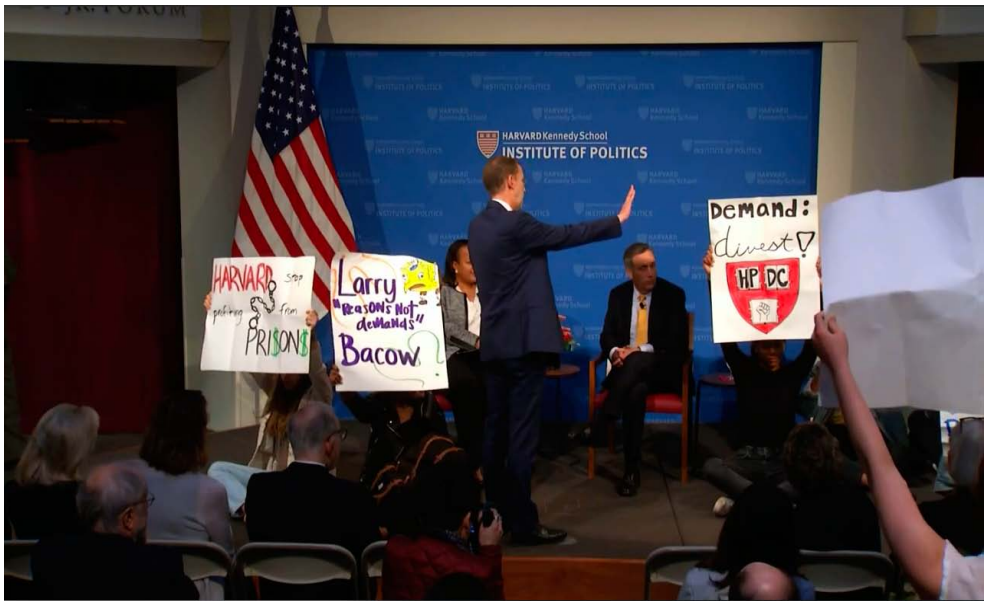
The Protest and Dissent Guidelines are a fairly recent development from the Harvard Law Administration. Such Guidelines did not exist until the Fall of 2019, so the Student Dissenters at the Fall 2019 Reunion were venturing into new territory. This protest took place on April 9, 2019. A few months later, in September 2019 the Protest and Dissent Guidelines were introduced to the Harvard Law student body, although the Harvard Law Faculty had not voted to implement them.

At the Kennedy School protest, Dean Douglas Elmendorf of the Kennedy School attempted to reason with the protestors and encouraged the protestors to stand at the side with their signs instead of shutting down the event. The protestors refused. Dean Elmendorf then said:

> I understand that some of you [the protesters] want to make a point. And you can make that point. What I'm afraid you can't do is hinder the ability of other people here to listen to our speakers. So if you want to stand there [gestures to side of stage] and hold up your signs in a way that does not block other people from seeing our guests, you can do that[.][96]

95 *Id.*

96 Dean Douglas Elmendorf, Harvard Kennedy School Institute of Politics, Address to Protestors (Apr. 4, 2019) (on file with author). The recorded video of this event was previously available on Harvard's website, though it has since been taken down.



Dean Douglas Elmendorf speaking to protestors at the April 4, 2019 event at the Harvard Kennedy School Institute of Politics.

Dean Elmendorf's permission to protest beside a stage informed the planning of the protest at the Fall HLS 2019 Reunion, especially because the Student Dissenters understood the Protest and Dissent Guidelines were designed to prevent another protest as aggressive as the one that took place at the Kennedy School. A reasonable dissenter, looking to exercise his right to free speech, could interpret the Protest and Dissent Guidelines to allow sign-holding without disruption. The Protest and Dissent Guidelines state "Displaying a sign, wearing significant/symbolic clothing, gesturing, standing, or otherwise protesting noiselessly is acceptable unless the protest interferes with the audience's view or prevents the audience from paying attention to the speaker. Any use of signs, prolonged standing or other activity likely to block the view of anyone in the audience should be confined to the back of the room."[97]

One of the student protestors expressed skepticism towards the Protest and Dissent Guidelines:

> Understanding the history of [the Protest and Dissent Guidelines], that they came after the Reclaim of Belinda Hall, that the particular purpose of that is to stop

97 Protest and Dissent Guidelines (Archived) (https://hls.harvard.edu/dept/dos/dos-student-orgs/protest-and-dissent-guidelines/) (last visited Nov. 14, 2021).

> any other protest like this one. On one hand, what is the purpose of the Protest and Dissent Guidelines? Who are they meant to address? They're not meant to address folks who have capital intraction at Harvard Law School . . . Historically, the people who have been marginalized are radical leftists, intellectual scholars, organizers, and movements. [The Guidelines] criminalizes dissent but dissent specifically that the left and radical thinkers and organizers use.[98]

Jon F. Weber '84 and mentee [redacted] '21 pose for a photo before Friday's plenary, Paving the Way: The Power of Mentors and Advisors

Fall Reunion – 8 [99]

Throughout the six months of investigation, all the Student Dissenters suffered greatly from the prolonged nature of the investigation, the lack of transparency, the looming threat of a delayed graduation, and, for some of the student dissenters, risk of losing post-graduation employment. And because the Administration decided to continue this investigation throughout the first wave of the coronavirus pandemic, some of the Student

98 Confidential Interview with Participant 6 (Apr. 7, 2021) (on file with author).

99 Photo Gallery Fall Reunion 2019 (https://hls.harvard.edu/alumni/reunions/fall-reunion-2019/photo-gallery/) (last visited Nov. 14, 2021).

Dissenters were simultaneously suffering through the threat of Harvard Law disciplinary action as well as the illness and pending eviction of their family members. Although these hardships were communicated to the Dean of Students and to the Administrative Board, neither party made any offer to drop the investigation– even though the protest had taken place in October of 2019 and the pandemic had not set in until March of 2020.[100]

Amongst all the chaos, uncertainty, and feelings of unfairness and corruption, the most notable aspect of the investigation was its complete lack of transparency.[101] The Ad Board and the Dean of Students very rarely communicated via paper or email and insisted on chatting via phone calls with the Dissenters' lawyers. Although the Student Dissenters repeatedly asked to see the Ad Board's evidence, no Harvard Law Administrator ever presented the Student Dissenters with any evidence during the course of the investigation. Some Dissenters, including myself, were only able to view the Natashia Tidwell report after Harvard Law produced it under a FERPA request in September 2020. The protest itself took place in October 2019.

The Student Dissenters described the investigation as muddled, untransparent, and confusing.

> [The Ad Board] was telling each of the four students investigated, kinda, different things, like, piecemeal through our lawyers that we would have to piece together . . . It was never said what we were accused of . . . It was never said to me, like, this is how you violated the rules . . . Another one of the student [Dissenters] was told by our lawyers that maybe it was the guy in charge of alumni relations [Steven Oliveira who reported us].[102]

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100 Confidential Interview with Participant 6 (Apr. 7, 2021) (on file with author).

101 XI. (B.) Procedures for Disciplinary Cases* (https://perma.cc/ZK9B-USBY?type=image) (last visited Nov. 14, 2021).
The investigation was in part due to the Ad Board's designation of the investigation in as "informal" meaning that the student was not yet charged with a "formal" investigation. Although this meant that the student would not have to disclose the informal investigation on their future bar application, it also meant that the student was accorded none of the benefits or privileges afforded to the student under the Disciplinary Procedure as outlined in the Student Handbook of Academic Procedure.

102 Confidential Interview with Participant 1 (July 29, 2020) (on file with author).

Moreover, the Ad Board did not follow any particular process and failed to explain its erratic approach of making repeated requests of statements from the Student Dissenters.

> It was a very odd process. They kept asking us more and more questions about our conduct. And they also demanded that we give an apology to the alumni staff and they asked me for references about my character—they asked me for character references. They didn't give me that much information. Their asks would just slowly trickle in, like requests for information and character references. And stuff like that, it would just drag out the process.[103]

One student found this particularly frustrating as he was also facing severe Covid-19 related family problems; the Administrative Board did not seem to care about the investigation's effect on the student's life and mental well-being.

> I made that very clear. I even asked my attorney, do you think this is something I should bring up? He said, yeah, you should let [the Ad Board] know what is going on with your family. So I did. I wrote them a statement, look this is what is happening with my family. I don't have time for this petty investigation. I have given you all that you need . . . I explained to them with as much information as I felt comfortable sharing with them what was happening with my family. They didn't care! There was no response to it. There was no response. I had family members getting Covid-19, getting hospitalized, people being laid off, et cetera, not having food. They didn't care. They just wanted to know again, how come I was wearing a nametag with no name? How come I was holding up a sign?[104]

What information did the Ad Board or Dean of Students provide in the course of the investigation?

> They told me what the potential consequences would be if you're found guilty by the Ad Board, including

103 *Id.*

104 Confidential Interview with Participant 6 (Apr. 7, 2021) (on file with author).

> expulsion and worse. They told me that I was being investigated by a law firm. But they never told me when they would make a decision on it. They never told me exactly what I was being accused of . . . They never gave me what they had against me. They asked me questions about my conduct, which, I eventually, with a lawyer and in contemplation with the other students, answered.[105]

Whatever the intention of the Harvard Law Administration, the Investigation took a toll on the mental health of the Student Dissenters, who found that their graduation would possibly be delayed as a result of an undecided Ad Board.

Other Student Dissenters also found it to be a harrowing experience.

> Anytime they contacted us, it was pretty stressful. It was a stressful dynamic between me and the other students, and the lawyers. Especially once the pandemic started, it was very front of mind. Because we kept asking them questions and they weren't very forthcoming. They also insisted on handling the students as quote-unquote separately. Other students would get requests and the others wouldn't—so it was pretty clear they were trying to wedge us off from each other. . . Especially the last few weeks, it was the only thing on my mind. All of this during a pandemic as well. There was a lot of stress about my future and my ability to plan for myself have security. So it definitely had a really big mental impact on me at the time . . . I lost sleep as well. I was not able to eat healthily. I was not able to focus on other things . . . I wasn't sure if I was going to graduate or have something on my record that would make it harder for me to be accepted into the bar.[106]

A. *Students of Color Targeted In Particular*

The Administration seems to have a particular eye for student organizers of color. About nine law students, including myself, Participant 1, Participant

105 Confidential Interview with Participant 1 (July 29, 2020) (on file with author).
106 *Id.*

6, and Participant 5 was present at Fall Reunion 2019 protest. There were nine law students present at the protest, six white and three students of color. The three students of color were Participant 5, myself, and another student. According to the Dean of Students, the Law School possesses video of the protest, which is likely how they identified Participant 5.[107]

The Harvard Prison Divestment Campaign had issued a press release about the protest.[108] In the press release, there were photos of the protestors, including a photo of a white male protestor, who was never investigated by the Ad Board. Furthermore, the HPDC Press Release was included as an exhibit to the Tidwell Report.[109] All parties were on notice that there was a white male protestor who stood next to Dean Manning – yet there was no evidence or attempt to ever contact this student and subject him to the same disciplinary consequences as all of the students of color were facing for half a year.

There is evidence of both white students and students of color protesting on October 26.[110] But The Dean of Students sent Notice Letters to only the students of color and to Participant 1, who was previously left out in one of DOS' *Intimidation* meetings, as discussed above. Participant 5 implied that DOS was acting discriminatorily by scrutinizing her, but not Participant 1.[111] Thus, DOS launched investigations against only students of color and the one white student already under scrutiny – but failed to do so for all other white protestors.[112]

This should raise eyebrows, especially when compared to the Administration's reaction to other student protests. A group of Harvard Law students, mostly white, held a #DropExxon protest against Paul Weiss, the law firm which represents the energy giant. The protestors attended a Paul Weiss recruiting event, held up a banner, chanted, and disrupted the event for ap-

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107 Confidential Final Investigative Report (Mar. 20, 2020) (on file with author). The Dean of Students has refused and continues to refuse to release the video to the students who are under investigation so I cannot be sure to the content of the video.

108 PRESS RELEASE: HPDC Stages Silent Protest at HLS Reunion Event (https://harvardprisondivest.org/press-release-hpdc-stages-silent-protest-at-hls-reunion-event/ [Perma-link: https://perma.cc/955F-MSG7]) (last visited Nov. 14, 2021).

109 Confidential Final Investigative Report (Mar. 20, 2020) (on file with author).

110 PRESS RELEASE: HPDC Stages Silent Protest at HLS Reunion Event (https://harvardprisondivest.org/press-release-hpdc-stages-silent-protest-at-hls-reunion-event/ [Perma-link: https://perma.cc/955F-MSG7]) (last visited Nov. 14, 2021).

111 Confidential Interview with Participant 5 (Aug. 23, 2020) (on file with author).

112 I am a White Student Protestor but I was Never Investigated by Harvard (https://medium.com/@studentdissenter/i-am-a-white-student-protestor-but-i-was-never-investigated-by-harvard-402d71efab17) (last visited Nov. 14, 2021).

proximately 15 minutes, then left without incident.[113] None of these students received any investigation or threats of discipline from the Harvard Law Administration.[114] One #DropExxon protestor reported, "I didn't experience any direct blowback from the school for my role in our protests," but added, "I would say what they've done to the Prison Divest folks is super fucked up . . . knowing that these kind of responses do happen could certainly create a chilling effect on direct action and make it harder to recruit more students to take part in this kind of organizing."[115]

When the #DropExxon protestors crashed a Harvard-affiliated event, chanted, disrupted, and held up a banner, the Administration took no action. When prison divestment protestors attended the widely-attended alumni reunion and silently held up signs, all of the students of color received threats of expulsion while 5 out of the 6 white protestors heard absolutely nothing. Why treat the two groups so differently? Some will accuse the Administration of racism, others will insist that there must be some innocent explanation. Regardless, the root of the problem is that such a discrepancy exists *at all*. The Protest and Dissent guidelines, the Disciplinary Process, and the Ad Board decisions are not transparent enough to accurately inform the student body of what constitutes actionable conduct and how such alleged conduct will be investigated. A future Harvard Law dissenter may not be able to parse the meaning behind the words of the Protest and Dissent Guidelines if these are the two points of comparison.

VII. CHILLED SPEECH

Harvard Law School's unequal application of policy results in the chilling of student speech – not just the speech of the surveilled students, but the speech of Harvard students generally who hear of the threats against their colleagues and fellow students. Indeed, I left a rally early, while I was under investigation, for fear that I would run into an HLS Administrator knowing that the wrong move, even within my rights, could sway the Ad Board to find more ways to punish me. Multiple students described the suppression of their speech and political activity as a result of the Administration's actions.

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113 Joe Patrice, *Harvard Law School Students Protest Paul Weiss Recruiting Event*, Above The Law (https://abovethelaw.com/2020/01/harvard-law-school-students-protest-paul-weiss-recruiting-event/) (last visited. Nov. 17, 2021).

114 Anonymous survey submission (on file with author).

115 *Id.*

> There's a fairly robust protest culture but there's also the concern that any time you step on some random person's toe, you know, who feels really big and proud of themselves and they decide to do what they can to make you miserable. . . There is a culture that you should be quiet and that you should be grateful that you're here. That's the response that protesters get a lot at HLS, like, *what are you complaining about*, *aren't you lucky to be here*, like that . . . I know for a fact that people have gotten in trouble for protesting at HLS.[116]

> During this time, I wasn't participating in anything, any other events [protests] at Harvard . . . the school only targeted students of color and one white woman but the protests included ten other students and most of whom where white, even visibly, there was a white Latinx student in front, who was right next to Dean Manning who was not facing this investigation. So I knew they were specifically targeting certain students who were the most visible, most vocal on campus to make examples out of. That became clear when one of the 2Ls [redacted], when she was also brought in because she was also politically active . . . she got off with a warning, but her warning essentially was: don't participate in any other events . . . it was to the effect of, don't participate again, you are getting off with a warning. So, essentially, she was on probation . . . So I felt like I couldn't participate in other events. And also, I was tending to personal family matters because of Covid-19, finding housing, moving across the country, dealing financially with situations with people at home, people were getting laid off, people couldn't make rent, people couldn't pay for food. So I was more concerned with dealing with basic material things. On top of that, Harvard was asking me, *how come you held up a sign?* I just didn't want to give more energy. So yes, overall, my speech and activism on campus during my seminal semester at Harvard was much more censored and much more surveilled

116 Confidential Interview with Participant 3 (Apr. 11, 2021) (on file with author).

than before.[117]

> I was genuinely fearful that I might, you know, face some sort of consequence and be, like, suspended or expelled or something like that. And that's a really scary thought when I have hundreds of thousands of loans that I'm taking out for this. . . the thought of coming out of this with 200,000 or 300,000 dollars in debt and no degree is pretty terrifying . . . The whole point of my going to law school—to do public defense work—I wouldn't be able to do that. I would have to like, change my entire career path and all my plans, and like, what would my family think? Things like that. Yeah, it did scare me, even if I thought that there was a really small chance.[118]

> I've never, like, completely ceased my political activities on campus but I definitely participated in less things with something hanging over me, both because I don't want to get more in trouble or, like, risk getting in more trouble. And also, it takes up a lot of time dealing with Dean of Students stuff and I'm just anxious. I have to spend a lot of time managing my anxiety.[119]

This intimidation, anxiety, and chilled speech did not just apply to the targeted students. Once word spreads of these threats, the entire student body is put on notice that they could be next. This makes students more hesitant to publicly support causes and movements which have an adversarial relationship with the Administration. In this way, the Administration's strategy is effective: it avoids bad press (certainly reporters were be interested to hear about threats of expulsion over protest at famously pro-speech Harvard Law School)[120] while sending an unofficial warning to other students who may otherwise protest and dissent.

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117 Confidential Interview with Participant 6 (Apr. 7, 2021) (on file with author).
118 *Id.*
119 Confidential Interview with Participant 1 (July 29, 2020) (on file with author).
120 Telephone Interview with prominent New York publication.

VIII. POLICY RECOMMENDATIONS

I offer a list of policy changes in order to avoid these problems. I must emphasize that while these policy changes would be positive steps, no amount of rules could change or reform an institution which is composed of Administrators who do not value student intellectual diversity and speech. All of these suggested changes must accompany an attitude change that views student dissent as essential to the law school experience.

1. **No threatening of disciplinary charges unless a student has clearly broken a rule.** In all the incidents described above, no accused student has clearly or undisputedly broken a rule. The rules were largely vague, undefined, and unhelpful in allowing the students to understand the bounds which policed their free speech. It is unfair for the Administration to punish students for its failure to draft clear rules. Accordingly, students should not be threatened with discipline unless it is clear and undisputable that the student broke a rule.

2. **Clarify the purview of the Protest and Dissent Guidelines; Apply the Rule of Lenity where the rule writer fails to cure ambiguity.**

As it stands, the Administration expects that the 600 words of the Guidelines will clearly govern the culture of dissent and protest at Harvard Law School. These 600 words are ambiguous, as demonstrated by the numerous examples of students facing discipline while not being told what rule they violated.

Some of the best legal scholars in the world teach at Harvard Law School. Surely, between the elite faculty and an engaged student body, Harvard could draft better guidelines for student dissent. Unlike some of the other policies outlined in the Handbook of Academic Policies, the Protest and Dissent Guidelines were not approved by the Harvard Law faculty before implementation.

Furthermore, where the rules are ambiguous, the ambiguity should be construed against the drafter instead of the accused violator. It is a well-settled principle in American jurisprudence that rules should be interpreted strictly.[121]

121 *See United States v. Wiltberger*, 18 U.S. 76, 95 (1820); *see also McBoyle v. United States*, 283 U.S. 25, 27 (1931); *United States v. Lawrence*, 3 U.S. 42 (1795) ("[W]henever a new remedy is so introduced, (more especially in a case so highly penal) it must be strictly pursued."); 1 W. Blackstone, Commentaries on the Laws of England 88 (1765) ("Penal statutes must be construed strictly."). Nearly two centuries ago, Chief Justice Marshall explained that "[t]he rule that penal laws are to be construed strictly, is perhaps not

The most relevant language comes from *Yates v. United States*,[122] where the Court wrote:

> Finally, if our recourse to traditional tools of statutory construction leaves any doubt about the meaning of "tangible object," as that term is used in §1519, we would invoke the rule that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Cleveland v. United States*, 531 U. S. 12, 25 (2000) (quoting *Rewis v. United States*, 401 U. S. 808, 812 (1971)) . . . *See Liparota v. United States,* 471 U. S. 419, 427 (1985) ("Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability."). In determining the meaning of "tangible object" in §1519, "it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *See Cleveland*, 531 U. S., at 25 (quoting *United States v. Universal C. I. T. Credit Corp.*, 344 U. S. 218, 222 (1952)). *See also Jones v. United States*, 529 U. S. 848, 858–859 (2000) (rule of lenity "reinforces" the conclusion that arson of an owner-occupied residence is not subject to federal prosecution under 18 U. S. C. §844(i) because such a residence does not qualify as property "used in" commerce or commerce-affecting activity).

Here, the ambiguous language comes from the Protest and Dissent Guidelines. What is an "open" meeting? What is a "closed" meeting? What is "picketing in an orderly way"? Is that simply picketing while white? What is "interferes with audience's view"? What is "prevents the audience from paying attention to the speaker"? Is getting up and leaving the room quietly interfering? Is holding a sign at the side of the room? What is "substantially interfere"? Indeed, the Tidwell Investigation and the Student Dissenters applied vastly different definitions to these terms. It seems inevitable that there would be conflicting interpretations when the wording is so vague and lacking in explanation.

much less old than construction itself." *Wiltberger*, 18 U.S. 76, 95.

122 574 U.S. 528 (2015).

The only clarification that the Administration has provided is a footnote in the 2020-2021 Protest and Dissent Guidelines, which states, *inter alia*, that students may not share, swap, or steal nametags.[123] None of the Student Dissenters at the October 26, 2019 Alumni Reunion Event nor any of the DisOrientation organizers ever did such a thing—not that the new clarification could be applied retroactively. The core of it is this: The rules aren't clear enough. Try harder. If the rules are ambiguous as applied, the rule of lenity kicks in.[124]

3. **Disclose any and all evidence to the accused which is used to investigate (formally or informally) and prosecute the accused.** Through the entire process of "informal" investigation, none of the Student Dissenters were informed of the exact violations alleged. Although the Ad Board gestured generally towards the Protest and Dissent Guidelines in the Letter of Investigation, all three Student Dissenters received the same perfunctory language, even though the language did not apply to all of the Student Dissenters. As such, to ensure that the disciplinary process is transparent, any time the Ad Board or Dean of Students has reason to believe that a student has violated the Protest and Dissent Policy, the alleged violator should be immediately informed of what rule their alleged conduct violated. This information would have greatly sped along the seven-month investigation and relieved some of the unnecessary opaqueness, which seemed only to serve the Administration's interests, rather than serve an actual inquiry into whether the accused broke any rules.

4. **Always disclose the identity of the accuser and the person who filed the Complaint**. It is very difficult, if not oftentimes impossible, to stage a defense when one cannot even know the identity of the accuser. This is a principle long recognized in the Constitution and should also be recognized as a basic right at Harvard Law School as well.[125] To conceal the identity of the accuser is to conceal many of the basic facts that the accused could in-

123 Handbook of Academic Policies 2020-2021 (https://perma.cc/6H4G-6GDT) pg. 100 n.1 (last accessed Nov. 14, 2021).

124 *See Yates v. United States*, 574 U.S. 528, 548 (2015) ("Ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity . . . . Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability.") (cleaned up) (citations omitted).

125 *See Lee v. Illinois*, 476 U.S. 530, 541 (1986) ("This holding [in *Douglas v. Alabama*, 380 U.S. 415 (1965)], on which the Court was unanimously agreed, was premised on the basic understanding that, when one person accuses another of a crime under circumstances in which the declarant stands to gain by inculpating another, the accusation is presumptively suspect, and must be subjected to the scrutiny of cross-examination."

vestigate while building a defense. Without the ability to knowing the exact allegations, the exact wrongful conduct, nor the identity of the accuser, the accused have no choice but to answer the Ad Board's questions and hope for the best. This lack of due process greatly prejudices the accused.

5. **Allow the accused to have input into the choice of investigator; using the same firm and same investigator every time creates a conflict of interest**. Hogan Lovells appears to be the law firm of choice when it comes to Harvard Law School's commissioned investigations. It was the law firm used for the investigations of all four Student Dissenters, and for the investigation of anonymous racist, sexist texts and emails sent to students in an separate and unrelated series of incidents.[126] Some might believe that this relationship, where Harvard Law School repeatedly hires the same law firm to conduct investigations in exchange for significant pay, might influence the law firm—intentionally or not—to write reports which confirm the bias of Harvard Law School. Meanwhile, the party under investigation has no say whatsoever in the choice of the investigator. The American Bar Association propounds ethics guidelines for its arbitrators that disallow this exact type of conduct. Arbitrators are often lawyers or retired lawyers who agree to act as a third-party neutral to mediate or arbitrate disputes between parties. The American Arbitration Association connects these arbitrators with parties in need of one. The American Bar Association's Code of Ethics for Arbitrators in Commercial Disputes, Canon I states:

> After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or professional relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality.[127\]

Any agreement to act as a third-party neutral should come with the explicit expectation that this neutral would not be used again, at least for a very long time. This would prevent the repeat customer relationship between Harvard and the neutral which creates the perverse incentive in the first place. Where the neutral has no reason to believe their conclusion will affect future earn-

126 Nancy Vu, *These Harvard Law Students Said The School Didn't Do Enough After They Were Targeted With Racist And Sexist Messages*, Buzzfeed, July 22, 2019 (https://www.buzzfeednews.com/article/nancyvu/these-harvard-law-students-say-the-school-didn't-do-enough).

127 The Code of Ethics for Arbitrators in Commercial Disputes (Am. Bar Ass›n 2004) (https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/dispute_resolution/commercial_disputes.pdf) (last accessed. Nov. 14, 2021).

ings, the neutral is more properly incentivized to be impartial.

6. **Select a Third-Party Neutral for the Hearing itself**: As it stands currently, the Administrative Board is the party who interprets the rules, applies the rules, and prosecutes those who violate the rules. The judge and the prosecutor are the same party here. A neutral and unbiased hearing is not guaranteed. I do not mean to say that the Administrators are inherently biased people; rather, there is an inherent contradiction in simultaneously acting as the prosecutorial body and the impartial body. Indeed, on April 14 of 2020, one of the members of the Ad Board informed my lawyer via phone conversation that I had violated the Protest and Dissent Guidelines – long before there was ever a hearing, not to mention before there were even formal charges.[128] In the event that I would get a formal hearing—and have a mark on my character & fitness application for the rest of my legal career—I would be making my case in front of the very people who had already decided that I was guilty.

This is unacceptable. It is unfair. It is illegitimate. It needs to change. The American Arbitration Association could be of assistance here, where, again, both parties have input in a third-party neutral. It defies all logic to allow the "prosecutor" and "judge" to be the same party here. This blatant conflict of interest is in need of correction.

IX. CONCLUSION

This research uncovered evidence of the suppression of student activism at Harvard Law School. There is evidence suggesting that Harvard Law School engaged in systematic racial discrimination when it came to policing the speech of student dissenters, protestors, and organizers. The process by which Harvard Law School regulates speech amongst its students must be more transparent and follow clear procedures. The rules need clarification. Dean Manning and his administration should take a hard look at the Protest and Dissent Guidelines and act to improve their content and application.

In the iconic 1989 Supreme Court decision, *Texas v. Johnson*, a five-justice majority, including Justice Antonin Scalia, ruled, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."[129] Harvard Law School should embrace this principle. If it finds the reading of a poem about Belinda Sutton "offensive or disagreeable," if it finds that holding signs a reunion event is not highly desir-

128 Telephone call with author's counsel (Apr. 14, 2020).
129 491 U.S. 397, 414 (1989) (citing cases).

able, or if it finds that handing out leaflets about Harvard Law School's connections to ICE is not ideal, Harvard Law School should nevertheless encourage the growth of ideas and the freedom of speech amongst its students. That is because the freedom of speech is a fundamental element of an environment of learning. That is especially true for the students who bravely challenge the status quo and tirelessly organize to achieve the justice that the world so desperately needs. If one does not agree with the message, I hope that they can at least understand the importance of their ability to communicate the message.