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POLICING CAMPUS PROTEST

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POLICING CAMPUS PROTEST

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College campuses across the country celebrate their legacies of creating free speech guarantees following student protests from the mid-1960s to early 1970s, even though colleges had minimal tolerance of such protests at the time. As part of the New Left's vision for a different society, students, sometimes joined by faculty, demanded an end to the Vietnam War and war industry research, fought for Black and ethnic studies departments, and protested urban renewal plans that displaced Black working-class communities.

We are experiencing another transformative moment. Lawmakers and other stakeholders pressure university administrators to act against students or face funding cuts. Police repression follows, escalating into violence. Universities create or enlarge their own police or security forces in response, while also expanding codes of conduct to quash disruptive protest activity. This Symposium Piece traces the throughlines between university responses in the past and today.

This Piece also provides three features of policing campus protests. First, campus police and administrators engage in political surveillance, monitoring the political activity of the campus community, which enables universities to sanction students and faculty through campus codes of conduct and refer them for criminal prosecution. Second, police and administrators network with local and federal law enforcement agencies to share information. Third, police act formally and informally as part of the disciplinary process within universities to sanction and control protests. This Piece ends with contemporary and historic examples of university leaders who have avoided police repression as a response to student dissent and instead chosen negotiation.

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INTRODUCTION

The modern world is highly divided. Activists and protesters in the present moment agitate for improving working conditions and public infrastructure as well as against fossil fuel industries and environmental destruction.¹ Advocates have been insisting on police reform, even the

1. See Rachel Kleinfeld, Carnegie Endowment for Int'l Peace, Polarization, Democracy, and Political Violence in the United States: What the Research Says 10–11 (2023), https://carnegie-production-assets.s3.amazonaws.com/static/files/Kleinfeld_Pola

abolition of the police, since the murder of Trayvon Martin in 2012, but their outcry grew even more urgent after Darren Wilson shot and killed Michael Brown, and then again after police killed George Floyd in 2020.² The call for shrinking the stronghold of policing in everyday life has reached many quarters, including K–12 schools, health institutions, and colleges and universities.³ The Cops Off Campus movement led to academic inquiry and student and labor mobilization.⁴ It also forced policy reform in colleges and universities.⁵ Such reforms acknowledged the harm police inflict on students of color, particularly Black students, and the role policing plays within larger forces of deeply rooted structural racism in higher education.⁶ Universities and colleges also examined diversity and

rization_final_3.pdf [https://perma.cc/6QYD-GVP6] (describing how social movements in the United States offer the opportunity to improve living conditions for working-class people).

2. See How Student Activists Are Working to Defund, Disarm, and Abolish the Campus Police: An Interview With Jael Kerandi, *in* Cops on Campus: Rethinking Safety and Confronting Police Violence 203, 203–08 (Yalile Suriel, Grace Watkins, Jude Paul Matias Dizon & John J. Sloan III eds., 2024) [hereinafter Cops on Campus] (discussing reform efforts at the University of Minnesota in May 2020).

3. See Police Exec. Rsch. F., Municipal and Campus Police: Strategies for Working Together During Turbulent Times 24–25 (2021), <https://www.policeforum.org/assets/MunicipalCampusPolice.pdf> [https://perma.cc/6HLT-JE3U] [hereinafter PERF Report] (summarizing examples of universities reducing campus police, ties to municipal police, and additional calls to reduce policing on college campuses).

4. See Yalile Suriel, Grace Watkins, Jude Paul Matias Dizon & John J. Sloan III, Introduction: A Fresh Perspective on Campus Policing in America, *in* Cops On Campus, *supra* note 2, at ix, xxi (noting the “tidal wave of organizing within the national Cops Off Campus Movement since 2020” and the authors’ attempt to “preserve the reflections and observations of activists for the future”); see also Rema Bhat, Police Free Penn: Toward an Abolitionist Future, 34th St. Mag. (Dec. 6, 2021), <https://www.34st.com/article/2021/12/police-free-penn-over-policing-maureen-rush-abolition-upenn-penn-police-brutality> [https://perma.cc/5KGT-BKV7]; Emily Rich, The Movement to De-Cop the Campus, *In These Times* (Sept. 6, 2021), <https://inthesetimes.com/article/cops-off-campus-uc-police-abolition> [https://perma.cc/9MVS-LBSE] (describing the movement within the University of California system).

5. See, e.g., Univ. of Md., Task Force on Public Safety and Community Policing Report 21–24 (2021), https://umd-president.files.svdcn.com/production/files/Public_Safety_Community_Policing_Report_March172022_v2.pdf?dm=1648132334 [https://perma.cc/9D5Y-MTAS] (setting forth recommendations for the University of Maryland Police Department’s training, contracts, equipment, and policies); Chancellor Carol Christ on Reimagining Public Safety, UC Berkeley News (June 18, 2020), <https://news.berkeley.edu/2020/06/18/chancellor-carol-christ-on-reimagining-public-safety/> [https://perma.cc/FGR2-WL4K] (“We acknowledge the harm that can be done by a militarized police force. In response to calls for demilitarization, we will review our tools and equipment to ensure that they are sufficient, but not excessive, for ensuring community safety.”); Peter Salovey, The Yale Police Department in a Time of Historic Change, Yale Univ. (June 22, 2020), <https://salovey.yale.edu/writings-and-speeches/statements/yale-police-department-time-historic-change> [https://perma.cc/F3DT-BQAL] (outlining steps the Yale Police Department would take as part of “the reimagination of how we protect and serve our campus”).

6. See *supra* note 5. Still, administrators and university communities generally believe that, compared to municipal police, campus police operate as kinder, friendlier forces that

inclusion anew as a way of creating a more welcoming environment for Black students.⁷

These ideals espoused by college administrators following the rebellious summer of 2020 were quickly tested. Ethnic studies is under attack, academic freedom is at risk, and even weak diversity, equity, and inclusion initiatives are being scaled back.⁸ Moreover, in April and May 2024, university⁹ campuses across the world witnessed university administrators meet the wave of student encampments protesting higher education's investments in Israel's military industries with repressive and violent police sweeps.¹⁰ The photographs flashing across news feeds and social media

are potentially aligned with the educational mission. See Andrea Allen, Are Campus Police 'Real' Police? Students' Perceptions of Campus Versus Municipal Police, 94 *Police J.* 102, 115 (2021) (describing how students tend to view campus police as less likely to severely sanction suspects due to their better understanding of college life, familiarity with students, and investment in student success).

7. Many universities created task forces or underwent studies or reviews to determine how they can best address the overall demand to reconsider the role and purpose of policing. See, e.g., Riley Safer Holmes & Cancila LLP & Security Risk Mgmt. Consultants, LLC, External Review of the Northwestern University Department of Safety and Security: Findings and Recommendations 4 (2021), <https://web.archive.org/web/20211001181354/https://www.northwestern.edu/social-justice-commitments/docs/nupd-external-reviewer-report.pdf> [<https://perma.cc/FP3S-UEA8>] (stating that Northwestern University retained two consultants in June 2020 to conduct a review of its Department of Safety and Security, including its use of force policy); Univ. of Cal., UC Community Safety Plan 2 (2021), <https://www.ucop.edu/uc-operations/systemwide-community-safety/policies-and-guidance/community-safety-plan/uc-community-safety-plan.pdf> [<https://perma.cc/699G-7BUW>] (documenting the University of California's "systemwide effort to reimagine [its] approach to campus safety and security" at this "pivotal moment in history").

8. See Hani Morgan, Ethnic Studies Programs in America: Exploring the Past to Understand Today's Debates, 22 *Pol'y Futures Educ.*, 1469, 1469 (2024) (explaining how activists on the right across the United States have recently sought to ban the teaching of critical race theory and ethnic studies courses); Erin Gretzinger, Maggie Hicks, Christa Dutton & Jasper Smith, Tracking Higher Ed's Dismantling of DEI, *Chron. Higher Educ.*, <https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei> (on file with the *Columbia Law Review*) (last updated May 16, 2025) (collecting changes to universities' DEI-related activities resulting from state bills, executive orders, and other state-level actions since January 2023); see also Robin D.G. Kelley, Over the Rainbow: Third World Studies Against the Neoliberal Turn, in *Reflections on Knowledge, Learning and Social Movements: History's Schools* 205, 205–19 (Aziz Choudry & Salim Valley eds., 2017) (discussing the fight for ethnic studies during the 1980s and 1990s).

9. Throughout this Piece, the terms "university," "college," and "school" are used interchangeably to refer to institutions of higher education.

10. See, e.g., Sanya Mansoor, Koh Ewe & Mallory Moench, Pro-Palestinian Encampments Take Over American College Campuses, *Time* (Apr. 22, 2024), <https://time.com/6969875/pro-palestinian-encampments-take-over-college-campuses-across-america/> [<https://perma.cc/T949-MTV5>] (last updated Apr. 27, 2024) (reporting reactions to pro-Palestine protests at Columbia, Yale, Vanderbilt, and other institutions); Nick Perry, Dave Collins & Michelle L. Price, Pro-Palestinian Protests Sweep US College Campuses Following Mass Arrests at Columbia, *AP News*, <https://apnews.com/article/columbia-yale-israel-palestinians-protests-56c3d9d0a278c15ed8e4132a75ea9599> [<https://perma.cc/3V4Y-TJSG>] (last updated Apr. 23, 2024) (describing mass arrests and campus closures in response to pro-Palestine protests). But see *infra* Part IV.

were vivid: campus and local police in black riot gear, marching in formation on campuses across the country to flatten tents and eject students.¹¹ Police made over 3,500 arrests.¹² They brutally broke up encampments, removed students from occupied buildings, managed crowd dispersals, arrested and transported protesters, locked students out of dorms, and processed them for criminal offenses.¹³ The world witnessed police behave precisely as university administrators knew (or should have known) they would. In general, police acted as police, enforcing the laws, policies, and norms of institutions. No longer could we hold the image of university police as benevolent security forces with friendly relationships with students, controlled by academic administrators and trained to work within a college environment.¹⁴

The protest events of the 2023 to 2024 academic year also reminded some observers and commentators of student protests in the mid-1960s to early 1970s and the divestment campaigns against South Africa's apartheid government.¹⁵ While some seek to distinguish the past from present—

11. See, e.g., Olivia Bensimon & Lola Fadulu, Police Enter Fordham's Manhattan Campus and Arrest Protesters, N.Y. Times (May 1, 2024), <https://nytimes.com/2024/05/01/nyregion/fordham-university-protest-police.html> (on file with the *Columbia Law Review*); Elea Castiglione, Emily Scolnick, Ethan Young, Diany Wang, Katie Bartlett, Ella Sohn & Jasmine Ni, Police in Riot Gear Arrest 33 Protestors, Including Penn Students, at Gaza Solidarity Encampment, Daily Pennsylvanian (May 10, 2024), <https://www.thedp.com/article/2024/05/penn-palestine-gaza-protests-arrests> [<https://perma.cc/6WT7-TP7Q>].

12. Stephen Semler, Cops Arrested Over 3,500 Pro-Gaza Campus Protesters, New Data Shows, Forever Wars (July 24, 2024), <https://www.forever-wars.com/cops-arrested-over-3-500-pro-gaza-campus-protesters-new-data-shows/> [<https://perma.cc/M6FM-YPJ8>].

13. See *id.*

14. See e.g., Bonnie S. Fisher, Michelle E. Protas, Logan J. Lanson & John J. Sloan III, The Evolution of College and University Campus Security in the United States: Congressional Legislation, Administrative Directives, and Policing, in *The Handbook of Security* 399, 419 (Martin Gill ed., 3d ed. 2022) (“[A]dministrators believed that *campus* police would become part of the fabric of the community and thus achieve more legitimacy than would outside law enforcement agencies brought to campus to address crime, order maintenance, and physical plant protection.”); John J. Sloan III, The End of In Loco Parentis and Institutionalization of Campus Policing, in *Cops on Campus*, *supra* note 2, at 3, 7 [hereinafter Sloan, The End of In Loco Parentis] (describing the evolution of administrators relying on “outsiders—local and state police, members of state National Guard units”—and the growing use of campus police that “could be assimilated into and become part of the campus community”).

15. See Michael Wines, In Campus Protests Over Gaza, Echoes of Outcry Over Vietnam, N.Y. Times (Dec. 24, 2023), <https://www.nytimes.com/2023/12/24/us/gaza-vietnam-student-protest.html> (on file with the *Columbia Law Review*) (describing parallels between anti-Vietnam war protests and student organizing against the genocide in Palestine, observed by people who lived through the Vietnam era). Several experts on protest movements have noted the unusual use of suspensions and expulsions in the pro-Palestine context when compared to other contemporary student protests, such as those against schools' investments in the fossil fuel or private prison industries. See Laura Meckler & Hannah Natanson, Massive Pro-Palestinian College Protests Bring Rare Surge in Discipline, Wash. Post (May 6, 2024), <https://www.washingtonpost.com/education/2024/05/06/college-protests-suspensions-expulsion-arrests/> (on file with the *Columbia Law Review*). They

claiming the past eras were less repressive and the causes more just, or more sympathetic to university officials¹⁶—this Piece instead aims to excavate the connections between past and present responses to student protests. It specifically focuses on the student protest movements of the mid-1960s to early 1970s: demands to end the Vietnam War and war industry research, create Black and Ethnic Studies departments, and prevent the enactment of urban renewal plans that displaced Black working-class communities. This Piece focuses on this period for a few reasons. By some measures, the scale of pro-Palestine student protest is likely greater than any of the movements between then and now,¹⁷ and campus police agencies as they exist today formed in response to the widespread activism in that period. In the late 1960s and early 1970s, universities across the United States tasked local and state police officers with controlling college campuses and disrupting public dissent, sometimes unnecessarily and violently.¹⁸

As this Piece explains, during the student protest movements of the 1960s and 1970s, administrators and university presidents faced intense economic and political pressure to quash the escalating mobilizations. Heads of universities faced strong criticism and threats of (or actual)

note the level of suspensions or threats of suspension is more similar to the levels seen many decades ago during anti-Vietnam War and anti-apartheid protests. See *id.* That is to say, others have noted that the protests of the 2000s and early 2020s didn't lead to as many sanctions across the board as these two bookend moments. See *id.*

16. See, e.g., Wines, *supra* note 15 (interviewing a former elected official who had protested the Vietnam War in the 1960s, who said that the current war in Gaza “has a lot more moral and philosophical nuance” than the United States’ involvement in Vietnam, which was a “show of superpower hubris” (internal quotation marks omitted) (quoting Miles Rapoport, former Conn. Sec’y of State)). For a broader discussion on how activist movements recover and use forgotten or marginalized histories to inform contemporary struggles, see generally Aziz Choudry & Salim Vally, *History’s Schools: Past Struggles and Present Realities*, in *Reflections on Knowledge, Learning and Social Movements: History’s Schools 1* (Aziz Choudry & Salim Valley eds., 2017).

17. Of course, comparisons will be difficult to quantify or measure, and metrics such as numbers of arrests related to campus protests or disciplinary charges are faulty. This Piece argues that arrests and disciplinary actions are expected to be more common today because the infrastructure for these steps was created in response to past protests. However, some sources note that more schools saw pro-Palestine encampments than shantytowns protesting South African apartheid. For example, scholars have estimated that there were 46 shantytown events on college campuses between 1985 and 1990 during the anti-apartheid movement, as compared to 138 encampments between October 7, 2023, and June 7, 2024. See Erica Chenoweth, Soha Hammam, Jeremy Pressman & Jay Ulfelder, *Protests in the United States on Palestine and Israel, 2023–2024*, *Soc. Movement Stud.*, Oct. 18, 2024, at 1, 5; Sarah A. Soule, *The Student Divestment Movement in the United States and Tactical Diffusion: The Shantytown Protest*, 75 *Soc. Forces* 855, 864 (1997).

18. See Jerome H. Skolnick, *Task Force on Demonstrations, Protests, & Grp. Violence, The Politics of Protest: Violent Aspects of Protest & Confrontation 185–86* (1969) (referencing the Kerner Commission’s finding that, during the 1967 riots, “police violence was out of control” and the Cox and Sparling Commissions’ findings that police used unnecessary force, often vindictively, against both peaceful and “provocative” protesters (internal quotation marks omitted)).

reprisal for inaction or delayed action.¹⁹ States and administrators rushed to create in-house campus police forces that answered to the heads of universities, in part to avoid the type of police violence that led to incidents such as the Kent State massacre.²⁰ With campus police came codes of conduct, disciplinary processes, and criminal laws all aimed at diminishing and deterring student and faculty protest.²¹

Colleges and universities are today using and expanding upon the structures built in that past protest era. Numerous universities have wielded the threat of their full disciplinary and carceral influence—disciplinary hearings, suspension, campus bans, policing, social media monitoring, high tech surveillance, and criminal prosecution—in their responses to pro-Palestine activity.²² Students and employees are now subject to police threats and violence along with school disciplinary actions. Police—usually campus police—provide the evidence and factual basis for codes of conduct hearings, and students and employees have little due process or appeal rights.²³ From late spring to early fall 2024, schools across the country issued new restrictive time, place, and manner (TPM) policies with provisions, for instance, requiring longer periods of notice for a broader range of activities.²⁴ These policies—aimed at quelling pro-Palestine student protests and speech—combined with threats of police violence on the one hand and lack of protection from counter-protesters on the other to coerce many in the campus community into silence and inaction.²⁵

19. See *infra* section II.B.1.

20. See Vanessa Miller & Katheryn Russell-Brown, *Policing the College Campus: History, Race, and Law*, 29 Wash. & Lee J. C.R. & Soc. Just. 59, 76–78 (2023) (explaining how “student sit-ins, demonstrations, and public dissent led institutional leaders to accelerate the role of campus police departments” in the 1960s and 1970s); *infra* notes 215–218 and accompanying text (describing the Kent State Massacre in 1970); see also Seymour Gelber, DOJ, *The Role of Campus Security in the College Setting* 35–38 (1972) (providing the first account of campus police and finding that between 1967 and 1972, twenty-three states passed laws on campus police authority); Max L. Bromley, *Policing Our Campuses: A National Review of Statutes*, 15 Am. J. Police 1, 2 (1996) (“Since the mid-1970s the courts, state legislatures and Congress have become active in responding to campus crime issues.”); Vanessa Miller, *A National Survey and Critical Analysis of University Police Statutes*, 72 Buff. L. Rev. 751, 756–58 (2024) (building on the Gelber and Bromley studies to provide an updated empirical study of the statutory authority of today’s campus police).

21. See *infra* section I.B.

22. See *infra* section III.C.

23. See *infra* section III.C.

24. See *infra* notes 530–533 and accompanying text.

25. See Halley Sutton, *Campus Protests Sharply Decreased From Spring to Fall 2024*, Campus Sec. Rep., Apr. 2025, at 9, 9 (2025) (noting that the decline of protests in 2024 may be attributable to university TPM restrictions discouraging students from protesting); *infra* note 530 and accompanying text. Although this Piece does not address questions of under-protection, it provides a foundation for analyzing such questions. Future work will take up these issues.

Today, forty-seven states and the District of Columbia have enacted one or more statutes authorizing campus police.²⁶ Colleges and universities host more than 1,700 police agencies,²⁷ and 95% of four-year institutions with 2,500 or more students operate their own campus police forces.²⁸ Campus police are largely modeled after municipal police with paramilitary rank structure, specialization, top-down communication, distinctive badges and uniforms, and weapons like firearms and batons.²⁹ Data from 2021 to 2022 for schools serving more than one thousand students show a total budget of around \$2.7 billion for campus police forces,³⁰ which will likely grow given the munition and police personnel increase in the last year.³¹ Ninety-five percent of law enforcement agencies serving four-year schools authorize their full-time sworn officers to carry handguns.³² These full-fledged police agencies are integrated into school operations through crisis management, Title IX investigations, threat assessments,³³ housing security and evictions, and code of conduct charges brought by deans of students' offices.³⁴

26. Miller, *supra* note 20, at 788–89.

27. Elizabeth J. Davis, DOJ, *Campus Law Enforcement Agencies Serving 4-Year Institutions, 2021–2022—Statistical Tables 28* (2024), <https://bjs.ojp.gov/document/cleas4i2122st.pdf> [<https://perma.cc/K9AG-VT5P>] (reporting that 1,783 campus law enforcement agencies were eligible to participate in the Bureau of Justice Statistics' 2021 Survey of Campus Law Enforcement Agencies).

28. Brian A. Reaves, DOJ, *Campus Law Enforcement, 2011–12*, at 2 (2015), <https://bjs.ojp.gov/content/pub/pdf/cle1112.pdf> [<https://perma.cc/K4LG-3M7N>].

29. Fisher et al., *supra* note 14, at 419.

30. Davis, *supra* note 27, at 13, 15 tbl.6.

31. See *infra* note 41.

32. Davis, *supra* note 27, at 21 & tbl.11 (noting that, in the 2021 to 2022 school year, a higher percentage of agencies within public institutions (98%) than private (89%) were authorized to use handguns). Older figures from 2011 to 2012 report that 68% of campus police departments have arrest power. Reaves, *supra* note 28, at 1.

33. For an interesting analysis of behavioral threat assessments on college campuses and elsewhere, see Mark Follman, *Trigger Points: Inside the Mission to Stop Mass Shootings in America* 4–5 (2022) (discussing the University of Virginia as one of the first institutions to embrace threat assessments with its campus police).

34. See Sunita Patel, *Transinstitutional Policing*, 137 *Harv. L. Rev.* 808, 873 (2024) [hereinafter Patel, *Transinstitutional Policing*] (explaining that police have wide-ranging responsibilities at their institutions, including enforcing evictions, monitoring suicidal patients in hospitals, and enforcing transit fare payment); see also Jude Paul Matias Dizon & Charles H.F. Davis III, *Campus Policing: Eight Steps Toward Abolition*, *J. Diversity Higher Educ.*, Feb. 15, 2024, at 1, 2 (describing how campus police officers “regularly collaborate with student affairs departments and human resources to address workplace issues, mental health crises, and threat management”); Anne Walther, *The Dual Role of the Campus Police Officer at Public Institutions of Higher Education*, *BYU Educ. & L.J.*, 57, 58, 60 (2023) (stating that campus police hold a dual role as law enforcement officers and school officials and may serve on threat assessment teams and internal disciplinary councils, access student records and dorms, and fulfill other roles to support the educational goals of the institution).

Heads of the nation's institutions of higher education are now confronting political pressure and threats of funding cuts from all sides, echoing the challenges faced by their predecessors in the mid-1960s to early 1970s. Administrative leaders must also address the potential for security concerns from protesters, who may destroy property or prevent full access to university grounds or classrooms,³⁵ and navigate liberal constituents from within and outside the university.³⁶ In the face of funding cuts and attacks from the Right,³⁷ even public universities in liberal states find themselves relying on tuition, donors, endowed positions, and private investments, all of which threaten to erode an ideal vision of institutions of higher education as spaces of equity, academic freedom, and debate, free from outside interests and corporate capture.³⁸ Both past and contemporary protest movements have seen few political elites standing up for student protesters, especially once their tactics escalate to disruptive conduct and meaningful property damage.³⁹ This Piece, however, reveals

35. See, e.g., *Expectations and Responsibilities of Our University Community*, Univ. of Wash. (Sept. 16, 2024), <https://www.washington.edu/president/2024/09/16/community-expectations-and-responsibilities> [<https://perma.cc/XE3K-4ZPZ>] (reminding the campus community that “if and when protest activities . . . are accompanied by the destruction of public resources, we will first and foremost take action to protect people’s physical safety”); Carol L. Folt, Andrew Guzman & Steven Shapiro, Off. of the President, *Welcome to a New Year at USC*, Univ. of S. Cal. (Aug. 20, 2024), <https://www.president.usc.edu/2024/08/30/welcome-to-a-new-year-at-usc> [<https://perma.cc/PXY4-CQ95>] (reminding the campus community of “long-standing rules” against “damaging property” and “blocking access to campus and classrooms”).

36. See, e.g., Eden Stranahan, *Over 1,000 Barnard Alums Pledge to Withhold Donations, Issue Letter to Rosenbury Demanding Suspended Students Be Reinstated*, Colum. Spectator (Apr. 24, 2024), <https://www.columbiaspectator.com/news/2024/04/24/over-1000-barnard-alums-pledge-to-withhold-donations-issue-letter-to-rosenbury-demanding-suspended-students-be-reinstated> [<https://perma.cc/V9P4-FCJR>]; Rachel Treisman, *How Some Faculty Members Are Defending Student Protesters, in Actions and in Words*, NPR (May 1, 2024), <https://www.npr.org/2024/05/01/1248099600/campus-protests-faculty-arrests-letters-no-confidence-votes> [<https://perma.cc/K8LK-T97Q>] (reporting on faculty at multiple campuses sending letters to administrators and conducting no confidence votes against university presidents).

37. See *infra* Part II.

38. Athena Mutua, Jonathan Feingold, Angela Harris, and their co-authors argue that the privatization and corporatization of academic institutions, coupled with targeted, anti-democratic attacks and interference by private profit-seeking interests into university governance “hinder[s] every college and university’s truth-seeking function [and] cripples universities’ ability to serve as a check on authoritarian impulses.” Athena Mutua, Jonathan Feingold, Angela Harris, Emily Houh, Matthew Patrick Shaw & Frank Valdes, *The War on Higher Education*, 72 *UCLA L. Rev. Discourse* 2, 29–36 (2024), <https://www.uclalawreview.org/the-war-on-higher-education/> [<https://perma.cc/C7PC-55P7>]. This Piece does not address private donors or government grants as important sources of economic pressure pushing universities to take action against student protests; however, it discusses financial restrictions that legislatures enact to steer universities into harsh and punitive responses to protest by the Left, including lawful First Amendment activity. See *infra* section I.B, Part II.

39. See John R. Thelin, *Going to College in the Sixties* 79–80 (2018) (describing how politicians’ and state governments’ support for public higher education began to fade during the 1960s as a result of student protests and a belief that administrators lacked

examples of administrators working with students to avoid arrests—for some leaders know such scenes can radicalize students, embolden police to take even more repressive actions, and alienate large swaths of students (future alumni donors).⁴⁰

School administrators and lawmakers are poised to use the current wave of pro-Palestine student mobilization to boost funding and police personnel while expanding their surveillance apparatuses, increasing criminal consequences for protest activity, creating more stringent protest rules, and enlarging protest-related codes of conduct and disciplinary consequences.⁴¹ This Piece shows the historic complexity behind decisions to

control over students and were unable to maintain order and decorum on campuses); Nicole Narea, *How Today's Antiwar Protests Stack Up Against Major Student Movements in History*, Vox, <https://www.vox.com/politics/24141636/campus-protest-columbia-israel-kent-state-history> [<https://perma.cc/XVL6-4G2S>] (last updated May 1, 2024) (describing how in the 1960s, like today, politicians sought to capitalize on campus unrest to advance their own careers, encouraging repressive policies at universities and demanding that universities call the police on protesters).

40. See *infra* Part IV. With a focus on a past era spanning years and multiple universities, fully recounting the negotiations and protests is beyond the scope of this Piece. A deeper account of the trade-offs, individuals involved in negotiations, and factors that led to more or less willingness to resolve the pro-Palestine student movement's demands is worthy of its own study.

41. The UC system held a public meeting showcasing the munitions it planned to purchase in anticipation of protests in the 2024 school year. See Memorandum from Off. of the President of Univ. of Cal. to Members of the Compliance & Audit Comm. 4–5 (Sept. 19, 2024), <https://regents.universityofcalifornia.edu/regmeet/sept24/c1.pdf> [<https://perma.cc/G7HH-AWM3>] (reporting UC schools' requests for new equipment, including drones, explosive breaching tools, and kinetic energy weapons and munitions); Mikhail Zinshteyn, *UC Approves New Less-Lethal Arms for its Police Force Amid Protest*, CalMatters (Sept. 19, 2024), <https://calmatters.org/education/higher-education/2024/09/uc-protests-less-lethal-weapons-regents/> [<https://perma.cc/4U6C-74QK>] (last updated Sept. 20, 2024) (reporting that, after a brief disruption by student protesters at the UC Regents' committee meeting, the committee “swiftly approved the purchase of drones and ammunition such as pepper bullets and sponge rounds”). In another example, the University of North Carolina Chapel Hill Board of Trustees recommended that \$2.3 million be reallocated from diversity, equity, and inclusion programs to campus police. Brianna Atkinson, *UNC-Chapel Hill BOT Votes to Divert DEI Funding, Redirecting it to Campus Public Safety*, WUNC (May 13, 2024), <https://www.wunc.org/education/2024-05-13/dei-unc-chapel-hill-trustees-vote-redirect-funding-police> [<https://perma.cc/J7UZ-NDQW>]; Ryan Quinn, *UNC Chapel Hill Shifts \$2.3M From DEI to Police, Public Safety*, Inside Higher Ed (May 14, 2024), <https://www.insidehighered.com/news/quick-takes/2024/05/14/chapel-hill-shifts-23m-dei-police-public-safety> (on file with the *Columbia Law Review*). Other universities have similarly expanded their campus police departments. See, e.g., U.S.C., 2024 Annual Security and Fire Safety Report 3, <https://dps.usc.edu/wp-content/uploads/2024/09/USC-ASR-2024-reduced-size-tagged-v.3.pdf> [<https://perma.cc/5AS5-G6MH>] (last visited Mar. 26, 2025) (describing how USC hired additional security personnel after October 2023); Amy Morona, *Case Western Reserve Beefed Up Its Police Force During Height of Last May's Pro-Palestinian Campus Protests*, Signal Cleveland (Jan. 16, 2025), <https://signalcleveland.org/case-western-reserve-beefed-up-its-police-force-during-height-of-last-mays-pro-palestinian-campus-protests/> [<https://perma.cc/D3WH-9GLZ>]; New Initiatives Continue to Enhance Campus Security at UGA, UGA Today (Jan. 30, 2025), <https://news.uga.edu/new-initiatives-continue-to-enhance-campus-security-at-uga/> [<https://perma.cc/AS3P-Y7SH>]

wield state power through campus police, and both the internal and external demands on universities to restrict the time, place, and manner of student protests.⁴² The connections between local police and police embedded within institutions—like colleges and universities—are negotiated through Memoranda of Understanding (MOUs) and Mutual Aid Agreements.⁴³ But deciding when and how to utilize police and whether to call on local police instead of or alongside campus police involves a mix of politics, capacity, and stakeholder influence. For example, university presidents faced considerable pressure from, among other sources, federal lawmakers and state legislatures to eliminate the spring 2024 encampments and quash protected pro-Palestine speech.⁴⁴ A better understanding of the coercive influence of political and economic concerns is critical for balancing interests and determining what role police should play on campuses, and whether they belong there at all.⁴⁵

This Piece proceeds in four parts. Part I is a reminder that the conflicts and struggles faced by today's administrators echo those of their predecessors. By focusing on another period of large-scale student activism—the mid-1960s to early 1970s—this Piece shows how campus police grew in authority and numbers in response to protests during this time and how codes of conduct were expanded to more explicitly address unrest and

(reporting a 21% increase in police personnel, along with additional license plate readers and thousands of feet of new perimeter fencing, in 2024); Off. of Mktg. & Commc'ns, Key Issues: Campus and Off-Campus Safety, Ohio St. Univ., <https://omc.osu.edu/key-issues> [<https://perma.cc/3WC7-DTLQ>] (last updated Sept. 30, 2024) (describing how administrators implemented additional measures since the fall of 2023, including authorizing the campus police department to hire more police, purchasing more surveillance cameras, and supporting the continued use of license plate readers).

42. See *infra* notes 487–490 and accompanying text.

43. See *infra* notes 463–464 and accompanying text.

44. Other sources of pressure not addressed in this Piece but worth acknowledging are major donors and private influence. See Alan Blinder, *For Columbia and a Powerful Donor, Months of Talks and Millions at Risk*, N.Y. Times (May 10, 2024), <https://www.nytimes.com/2024/05/10/us/columbia-university-donor-angelica-berrie.html> (on file with the *Columbia Law Review*) (reporting on the suspension of donations to Columbia University by a private foundation); Nathaniel Meyersohn, *Harvard and UPenn Donors Are Furious. It May Have a Financial Domino Effect*, CNN, <https://www.cnn.com/2023/10/19/business/harvard-upenn-donors-israel> [<https://perma.cc/7MXB-Q27Y>] (last updated Oct. 19, 2023) (reporting on donor withdrawal).

45. See Suriel et al., *supra* note 4, at xvi–xviii (surveying interdisciplinary scholarship on campus policing and claiming campus police departments are under-studied, “especially in light of their significant impact not only in shaping university life for students, faculty, and staff but also in gentrifying surrounding neighborhoods”). More broadly, university police have been under-studied in policing scholarship, yet they increasingly police local communities and maintain racialized borders between colleges and the surrounding areas. See Patel, *Transinstitutional Policing*, *supra* note 34, at 848. Some scholars suggest university police serve as a public good, acting as adjuncts to local police forces by adding capacity and resources to historically underserved, race–class subjugated communities. See *id.* at 870 n.385 (collecting sources).

free speech activity.⁴⁶ Part I also illustrates how the pressure applied today to silence and stop student mobilization at universities—legislative threats and funding cuts—was also present during this earlier time period.

Part II analyzes ninety-six state and federal antiprotest legislative proposals and enactments since October 7, 2023, using an antiprotest legislation database maintained by the International Center for Not-for-Profit Law. It showcases the political and economic pressures weighing on the heads of universities as they determine whether to permit or limit certain types of protest and speech. Although much of this fervor has emerged as a response to pro-Palestine activity, the same legislation will no doubt apply and expand in response to agitation around other progressive and left-leaning causes in the future.

Part III demonstrates how protest policing functions through embedded campus police and their connections to local police. It maps how police and administrative leaders network and share information to

46. Of course, campuses have seen periods of student mobilization beyond the ones addressed in this Piece. Here are a few others: The 1990s anti-apartheid student shantytowns were met with police hostility at schools such as Yale and UCLA, but were sometimes permitted to continue without much disruption. See Matthew Kiviat & Anushka Shorewala, From ‘Shantytown’ to the ‘Liberated Zone’: Cornell’s History of Encampments, *Cornell Daily Sun* (May 6, 2024), <https://cornellsun.com/2024/05/07/from-shantytown-to-the-liberated-zone-cornells-history-of-encampments/> [<https://perma.cc/J9D2-ZFE7>] (last updated May 7, 2024); Narea, *supra* note 39. Unlike the antiwar student protests of the 1960s, however, students faced less pushback due to an embarrassment among American leaders regarding the nation’s complicity with South Africa’s white government. See Narea, *supra* note 39. And during Occupy Wall Street student protests, the excessive police response was met with apologies and police reform studies to prevent such violence in the future. See Josh Keller, Public Colleges Struggle to Respond to Occupy Protests, *Chron. Higher Educ.* (Nov. 16, 2011), <https://www.chronicle.com/article/public-colleges-struggle-to-respond-to-occupy-protests/> (on file with the *Columbia Law Review*); see also, e.g., Christopher F. Edley, Jr. & Charles F. Robinson, Response to Protests on UC Campuses 17–20 (2012), <https://campusprotestreport.universityofcalifornia.edu/documents/protest-report-091312.pdf> [<https://perma.cc/69VH-Y77B>] (reviewing the University of California’s policies regarding the administration’s response to student demonstrations and civil disobedience).

It is worth noting here that this Part does not address criminal prosecutions against protesters, an important topic that others in this Symposium and elsewhere are focused on. See, e.g., Amber Baylor, Unexceptional Protest, 70 *UCLA L. Rev.* 716, 760–61 (2023) (outlining how antiprotest laws have been deployed to suppress “not only expressions of dissent, but also gatherings and effervescence of joy, sharing, and expression”); Rachel Moran, Overbroad Protest Laws, 125 *Colum. L. Rev.* 1197, 1199–204 (2025) (clarifying the limits of criminalizing protest by analyzing overbreadth doctrine through Supreme Court case law, evaluating current protest-related statutes, and offering guidelines to reform or eliminate laws that are overly broad). For example, a group of ten students was convicted of disrupting a public meeting after protesting a speech by Israel’s ambassador to the United States at UC-Irvine. Lauren Williams, Nicole Santa Cruz & Mike Anton, Students Guilty of Disrupting Speech in ‘Irvine 11’ Case, *L.A. Times* (Sept. 24, 2011), <https://www.latimes.com/local/la-xpm-2011-sep-24-la-me-irvine-eleven-20110924-story.html> (on file with the *Columbia Law Review*).

enhance surveillance and how campus police are an integral part of university code of conduct and discipline processes. Some have criticized universities for using disciplinary processes in the context of protests; even an administrative sanction can deter legitimate First Amendment speech activity.⁴⁷

Part IV excavates some examples of past and present university administrators choosing not to use police when faced with large-scale campus protest. This shows that even in moments of heightened political and economic pressure, some leaders make different decisions.

Stepping back, this project sits within the larger context of university policing in the lives of students, workers, and community members. This Piece focuses on the levers that grow policing on campuses. Student protest movements can balloon the authority and resources for campus police, but any surge in campus police as regulators of protest demands will carry ripple effects for other uses of police. For example, university administrators use campus police to quash labor actions and disrupt picket lines when university workers decide to strike.⁴⁸ Race and education scholars have long criticized campus police departments' actions, such as targeting investigative resources toward Black and Latinx people on campus, as contributing to unbelonging for those students and employees.⁴⁹ Campus police also extend their reach to areas surrounding the formal campus boundaries, purportedly to uphold legal obligations to provide and maintain campus safety, but also to retain university land holdings and keep low-income or unhoused neighbors out.⁵⁰

In addition, while this Piece focuses on certain time periods, it is important to acknowledge the rich tradition of student protests on the left before and after the mid-1960s to early 1970s. Students fought U.S. involvement in Central America, university investments in South Africa's

47. See *infra* note 545 and accompanying text.

48. See, e.g., Sarah Michelson, Student Workers on Strike at UCLA, Knock LA (Dec. 1, 2022), <https://knock-la.com/ucla-student-workers-strike/> [<https://perma.cc/FT9C-72T8>].

49. See Patel, *Transinstitutional Policing*, *supra* note 34, at 854 (“Studies have shown that university policing disproportionately targets Black and Latinx students, furthering a sense of alienation from their peers and carrying negative educational consequences.” (footnote omitted)). When university administrators use police for problem-solving functions (e.g., crisis response), it likely leads to the alienation and distrust of race-class subjugated students from the institution. Police blur the boundaries between policing and other institutional operations. This author has argued elsewhere that information sharing between police and administrators serves a gatekeeping function, altering the quality and type of educational services students may receive. See *id.* at 811–12, 864–65. Race and education scholars have made the empirical and theoretical case for this proposition. See *id.* at 862–65.

50. See *id.* at 837 (noting that campus police are integrated into “threat assessment teams as part of the university administration’s efforts to uphold its legal obligations to secure and maintain campus safety”); *infra* note 79 and accompanying text (describing how universities expanded into surrounding communities as part of urban renewal efforts).

apartheid government,⁵¹ the wars in Iraq and Afghanistan,⁵² wealth hoarding during Occupy Wall Street,⁵³ and sexual violence on college

51. See, e.g., Larry Rohter, Activism at Schools Seems to Be Stirring as Protests Continue, N.Y. Times (Apr. 25, 1985), <https://www.nytimes.com/1985/04/25/us/activism-at-schools-seems-to-be-stirring-as-protests-continue.html> (on file with the *Columbia Law Review*) (describing protests on college campuses during the 1980s opposing investments in South Africa's apartheid government, the United States' involvement in Central America, the CIA's on-campus recruitment activities, as well as protests in support of staff strikes); see also Héctor Perla Jr., Heirs of Sandino: The Nicaraguan Revolution and the U.S.-Nicaragua Solidarity Movement, 36 Latin Am. Persps. 80, 82 (2009) (stating that the Nicaraguan solidarity movement in the United States consisted of many advocacy groups across the nation, including student activists).

52. See, e.g., Dana Mulhauser, Students Protest and Show Support for U.S. Military Strikes in Afghanistan, Chron. Higher Educ. (Oct. 9, 2001), <https://www.chronicle.com/article/students-protest-and-show-support-for-u-s-military-strikes-in-afghanistan/> (on file with the *Columbia Law Review*); Joe Plomin, US Students March Against War, The Guardian (Oct. 8, 2001), <https://www.theguardian.com/education/2001/oct/08/international-educationnews.highereducation> [<https://perma.cc/XE7P-RAX2>] (describing how thousands, including large numbers of student activists, quickly mobilized to condemn the bombing of Afghanistan); Lloyd Vries, Students Cut Class to Protest War, CBS News (Mar. 10, 2003), <https://www.cbsnews.com/news/students-cut-class-to-protest-war/> [<https://perma.cc/98RD-PGHM>] (reporting that high school and college students across the country walked out of classes and held rallies opposing the invasion of and potential war with Iraq).

53. See, e.g., Malia Wollan & Elizabeth A. Harris, Occupy Wall Street Protesters Shifting to College Campuses, N.Y. Times (Nov. 13, 2011), <https://www.nytimes.com/2011/11/14/us/occupy-wall-street-protests-shifting-to-college-campuses.html> (on file with the *Columbia Law Review*) (describing, for example, how thousands of students gathered at Berkeley in protest of tuition raises and how in places like Denver, St. Louis, and Salt Lake City protests were met with policing and arrests).

campuses.⁵⁴ They sought nuclear disarmament,⁵⁵ ethnic studies departments,⁵⁶ divestment from fossil fuel industries⁵⁷ and sweatshops,⁵⁸ solidarity with the Black Lives Matter⁵⁹ and #MeToo movements,⁶⁰ Cops Off College Campuses,⁶¹ and, even before October 2023, divestment from the Israeli military.⁶² This Piece connects the past era of protest to recent years

54. See, e.g., John Hanna & Summer Ballentine, Sexual Assault Cases Spur Protests on Campuses Across US, AP News (Sept. 24, 2021), <https://apnews.com/article/education-alabama-michigan-massachusetts-nebraska-3c7f948afabe2c5c4a8353e6f862a5eb> (on file with the *Columbia Law Review*) (describing widespread protests on university campuses across the country following the COVID-19 pandemic and how activists have accused schools of doing too little to protect students from sexual violence).

55. See Rohter, *supra* note 51.

56. See, e.g., Kelley, *supra* note 8, at 205–19 (analyzing the long trajectory of student organizing to create and preserve ethnic studies and Black studies departments); Six Fasting to Press for a Chicano Studies Department at U.C.L.A., N.Y. Times (June 2, 1993), <https://www.nytimes.com/1993/06/02/news/six-fasting-to-press-for-a-chicano-studies-department-at-ucla.html> (on file with the *Columbia Law Review*).

57. See, e.g., Ilana Cohen, How Students Pressured Harvard to Divest From Fossil Fuels—And Won, *The Nation* (Sept. 14, 2021), <https://www.thenation.com/article/activism/harvard-fossil-fuel-divestment-won/> [<https://perma.cc/KQ5V-3C25>] (referencing direct action protests, petitions, and the filing of legal complaints as tactics used by fossil fuel divestment organizers on college campuses); Dharna Noor, How Divestment Became a ‘Clarion Call’ in Anti-Fossil Fuel and Pro-Ceasefire Protests, *The Guardian* (Apr. 24, 2024), <https://www.theguardian.com/us-news/2024/apr/24/university-fossil-fuel-divestment-student-protests-israel-gaza> [<https://perma.cc/4NTU-W83B>] (describing how student-led campaigns for divestment from fossil fuels nationwide prompted roughly 250 educational institutions to divest from major polluters).

58. See, e.g., Are Protestors Wrong About Sweatshops?, ABC News (Oct. 10, 2003), <https://abcnews.go.com/2020/GiveMeABreak/story?id=124264> [<https://perma.cc/WQ7U-HLSM>] (describing how student protesters and labor unions objected to sweatshops and the exploitation of low-income people in developing countries, where factories pay workers just a fraction of the American minimum wage).

59. See, e.g., Christopher Rim, How Student Activism Shaped the Black Lives Matter Movement, *Forbes* (June 4, 2020), <https://www.forbes.com/sites/christopherrim/2020/06/04/how-student-activism-shaped-the-black-lives-matter-movement/> [<https://perma.cc/724T-ZFFD>] (describing the student-led Black Lives Matter protests which began following the acquittal of Trayvon Martin’s murderer and grew even more prominent after the murder of George Floyd).

60. See, e.g., Anemona Hartocollis & Giulia Heyward, After Rape Accusations, Fraternities Face Protests and Growing Anger, N.Y. Times (Oct. 1, 2021), <https://www.nytimes.com/2021/10/01/education/fraternities-rape-sexual-assault.html> (on file with the *Columbia Law Review*) (last updated Oct. 12, 2021); Emma Pettit, The Next Wave of #MeToo, *Chron. Higher Educ.* (Feb. 16, 2020), <https://www.chronicle.com/article/the-next-wave-of-metoo/> (on file with the *Columbia Law Review*) (describing protests by students at New York University advocating for reforms to the Title IX reporting process, an annual report with all relevant statistics on Title IX complaints, and a restorative justice-focused option for addressing sexual violence).

61. See, e.g., Mary Retta, The Cops Off Campus Coalition’s Abolition May Is Underway, *Teen Vogue* (May 11, 2021), <https://www.teenvogue.com/story/cops-off-campus-abolition-may> [<https://perma.cc/MU4G-ZR3W>].

62. See *infra* Part III.

of student activism, framing the movements of the late 1960s, not as a comparison, but as a springboard for what is unfolding today.

Finally, the focus on the Left and progressive causes is not to suggest the Right or conservative movements are not active on college campuses. Although worthy of its own study, the Right seems to use different tactics than traditional protest and demonstration, such as inviting controversial speakers to college campuses. In such instances, under prevailing views of the First Amendment, universities must take reasonable steps to accommodate speakers, which often means engaging police and private security at considerable costs to protect provocative speakers from disruptors.⁶³ These practices were shored up during Donald Trump's first administration, when a wave of antiprotest legislation—often taken from model legislation drafted by the Goldwater Institute—focused on protecting conservative speakers from public disruption, specifically on college campuses.⁶⁴ Moreover, while growing systems of protest policing at universities may also increase police surveillance of student groups on the right, the asymmetry in tactics and disruption leads to different consequences. Some groups operate under the threat of violence and intrusion for their protest tactics, while others seem to receive protection from colleges.

I. LEARNING FROM HISTORY: STUDENT PROTEST MOVEMENTS

Campus police departments often grow their size, munitions, authority, and stature in response to moments of large-scale student activism.⁶⁵ This Part introduces what scholars call the “four eras” of campus policing, focusing primarily on the most recent era: the 1960s to early

63. See, e.g., Teresa Watanabe, UC System Will Chip in at Least \$300,000 to Help Berkeley Pay Security Costs for Controversial Speakers, *L.A. Times* (Sept. 20, 2017), <https://www.latimes.com/local/lanow/la-me-ln-uc-berkeley-security-20170920-story.html> (on file with the *Columbia Law Review*) (reporting security costs totaling millions for speakers such as Milo Yiannopoulos and Ben Shapiro); see also Jocelyn Gecker, UC Berkeley Spent \$4 Million for Free Speech Event Security, *Wash. Times* (Feb. 5, 2018), <https://www.washingtontimes.com/news/2018/feb/5/uc-berkeley-spent-4-million-for-free-speech-event/> (on file with the *Columbia Law Review*) (reporting law enforcement and security expenses during August and September 2017 for three scheduled events).

64. See, e.g., US Protest Law Tracker, Int'l Ctr. for Not-for-Profit L., https://www.icnl.org/usprotestlawtracker/?location=&status=&issue=2&date=custom&date_from=2017-01-20&date_to=2021-01-20&type= [<https://perma.cc/DQ5J-99UW>] (last visited Apr. 9, 2025) (collecting nineteen campus protest bills introduced during the first Trump Administration); see also Stanley Kurtz, James Manley & Jonathan Butcher, Goldwater Inst., Campus Free Speech: A Legislative Proposal 2, 20–21 (2019), https://www.goldwaterinstitute.org/wp-content/uploads/2019/03/Campus-Free-Speech-A-Legislative-Proposal_Web.pdf [<https://perma.cc/YS6L-KC3Q>] (suggesting a model “Campus Free Speech Act” and recommending discipline for students who interfere with others’ free speech rights, as well as requiring “security fees for invited speakers to be reasonable, and not based on the content of speech”).

65. See, e.g., Wesley Strong, Repression of Student Activism on College Campuses, *in* Policing the Campus: Academic Repression, Surveillance, and the Occupy Movement 15,

1970s. These years of historic national student mobilization were met with entrenchment of campus policing, increased criminalization of campus protest, and the creation of special student conduct provisions to deter and sanction protest activity—often with little to no due process protections. The story is not as simple as equating activism to growth in policing and punishment, however. A more nuanced understanding accounts for the pressures universities faced, both externally from lawmakers and internally from faculty, and illustrates how these pressures influenced universities’ decisions to repress speech and civil disobedience using police. This Part foreshadows how legislative and economic forces press administrators to quash campus activism today. It also delineates the origins of political surveillance, networked information, and protest discipline discussed in Part III.

A. *The Four Eras of Campus Policing*

1. *Colonial Era to the Mid-Nineteenth Century.* — Historians typically categorize the evolution of campus security and policing in U.S. higher education into four time periods or “eras”: the faculty in loco parentis era, the watchmen era, the pseudo-police era, and the modern campus policing era.⁶⁶ First, the in loco parentis era, from the colonial period to the early

16, 24 (Anthony J. Nocella II & David Gabbard eds., 2013) (“The growing corporatization of higher education brought greater levels of policing and repression of free speech to enforce neoliberal reforms and austerity.”).

66. See Suriel et al., *supra* note 4, at xi–xvi (describing these four eras); Miller & Russell-Brown, *supra* note 20, at 64–83 (characterizing campus policing as fitting into three similar “eras”: early “watchmen,” security officers who oversaw student conduct amid urban renewal plans and student activism, and modern full-service campus police); John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 *Am. J. Police* 85, 86, 89 (1992) [hereinafter Sloan, *The Modern Campus Police*] (developing a typology with three stages: “watchmen” from 1894 to 1950, “pseudo-police” from 1950 to 1965, and “[m]odern [c]ampus [p]olice” from 1960 to present (internal quotation marks omitted)); see also Diane C. Bordner & David M. Petersen, *Campus Policing: The Nature of University Police Work*, at ix–xii (1983) (describing the evolution of campus police); Fisher et al., *supra* note 29, at 416–22 (similar).

In actuality, one might characterize the 1990s as starting another era of campus policing in which federal statutes and reporting requirements press universities to look inward at the causes of gender-based campus crime. In 1990, Congress passed the Crime Awareness and Campus Security Act, Pub. L. No. 101-542, § 201, 104 Stat. 2384 (codified as amended at 20 U.S.C. § 1092 (2018)) (requiring that universities distribute an annual report including campus security policies and statistics for certain criminal offenses and arrests to current students and staff, and to student and employment applicants upon request). In 1998, the Campus Security Act was amended with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), which expanded the requirements for campus administrators to collect and disclose crime statistics to the public. Pub. L. No. 105-244, § 486, 112 Stat. 1741, 1745 (codified at 20 U.S.C. § 1092(f)). Samuel Walker names the 1960s to present as the period of “conflicting pressures.” Samuel Walker & Charles M. Katz, *The Police in America* 33, 48 (10th ed. 2022). Perhaps the last frontier is the increasing support for private universities deputizing their own law enforcement officers. See, e.g., Elina Lingappa, *Private Colleges Want More Power to Police Trespassers. Here’s What You Need to Know*, *CalMatters* (May 31, 2022),

1960s involved no formal police or security.⁶⁷ Institutions of higher education were small—both in terms of pupil numbers and campus size and in terms of the number of institutions. Prior to the early twentieth century, faculty and administrators, along with groundskeepers (e.g., janitors), were responsible for addressing rules violations through their *in loco parentis* authority.⁶⁸ Universities called local police or fire departments when needed and relied on professors and administrators to address “security” needs; administrators simply dismissed disobedient students or those acting out of step with social or moral norms.⁶⁹ With little legal governance, the “parental university” of this era had free reign to regulate and control its pupils and was largely insulated from parental or judicial review.⁷⁰

During the second era, in the late nineteenth and early twentieth centuries, universities began hiring campus security as property “watchmen”—whether as maintenance workers or gatekeepers⁷¹—with the first known occurrence of armed police on campus in 1894, when Yale University hired two officers from the New Haven Police Department to create a campus police department.⁷² By the 1930s, universities began to expand watchmen’s responsibilities, charging them with enforcing campus rules and regulations.⁷³

<https://calmatters.org/education/higher-education/college-beat/2022/05/college-police-trespassing/> [https://perma.cc/U6TZ-U7VY] (describing a popular bill introduced to increase private colleges’ policing powers).

67. Suriel et al., *supra* note 4, at xii–xiii.

68. See Gelber, *supra* note 20, at 16–23.

69. See Suriel et al., *supra* note 4, at xiii.

70. Peter F. Lake, *The Rights and Responsibilities of the Modern University: The Rise of the Facilitator University* 17–18, 35–44 (2d ed. 2013) (discussing *in loco parentis* as one among several doctrines prior to *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), which created momentum toward “college civil rights,” initially in public schools and later in private ones).

71. See Gelber, *supra* note 20, at 16–28 (chronicling the varied responsibilities of the watchman on campuses, such as “keeping the stoves going during the long winter nights,” “serving as gate tender,” and “protect[ing] the grounds and buildings ‘only on pleasant summer afternoons’” (quoting Merle Curti & Vernon Carstensen, *The University of Wisconsin* 508 (1949))); see also Miller & Russell-Brown, *supra* note 20, at 64–65 (explaining that early campus police in the 1890s and early 1900s started out as night watchmen protecting university property and later oversaw student conduct); Sloan, *The Modern Campus Police*, *supra* note 66, at 86 (noting that early campus police forces, which primarily consisted of retired workers with no formal law enforcement training, were hired as unsophisticated “watchmen” responsible for protecting university property).

72. Gelber, *supra* note 20, at 24–25.

73. See Sloan, *The Modern Campus Police*, *supra* note 66, at 86; see also Gelber, *supra* note 20, at 21 (noting one reported campus incident demonstrating the potential power this role held when, in 1893, a night watchman was discharged after shooting at students, injuring one); Miller & Russell-Brown, *supra* note 20, at 72 (explaining that the first university police statute was passed by Rhode Island in 1905, codifying police officers’ legal authority to “preserve peace and good order and decorum” during commencements at Brown University and Providence College (quoting Gelber, *supra* note 20, at 25))).

Third came the security guard era, following the expansion of land-grant colleges after World War II and the 1944 G.I. Bill,⁷⁴ which led to increases in university student enrollment.⁷⁵ In the 1950s, colleges and universities began receiving large amounts of federal research funding and support from state legislators.⁷⁶ Some of this widespread funding was criticized and threatened, however, when students protested funding streams tied to war manufacturing, like the scientific development of atomic energy in the mid-1960s.⁷⁷ Meanwhile, during this period, both public and private universities began to enlarge their footprint through urban renewal grants in partnership with major cities,⁷⁸ capitalizing on

74. See Miller & Russell-Brown, *supra* note 20, at 71–72; see also Servicemen’s Readjustment Act of 1944, Pub. L. No. 78-346, § 400, 58 Stat. 284, 287–90 (codified as amended in scattered sections of 38 U.S.C.) (providing World War II veterans with funds for college education); Ellen Schrecker, *The Lost Soul of Higher Education* 156 (2010) [hereinafter Schrecker, *The Lost Soul*] (noting that the G.I. Bill “doubl[ed] prewar enrollments,” with enrollments growing “78 percent during the 1940s, 31 percent during the 1950s, and an astonishing 120 percent during the 1960s”); Marvin Lazerson, *The Disappointments of Success: Higher Education After World War II*, 559 *Annals Am. Acad. Pol. & Soc. Sci.* 64, 66 (1998) (noting that student enrollment increased from 2.66 million in the 1949 to 1950 academic year to 8 million in 1969 to 1970 and to 13.54 million in 1989 to 1990). Some accounts, however, contest the G.I. Bill’s impact on the surge of enrollment and see it as one of several factors contributing to educational opportunity at the time. See Philo A. Hutcheson, *A People’s History of American Higher Education* 88–93 (2020).

75. Suddenly affordable, widespread post-secondary education at low or no cost was a reality for many Americans. See Ellen Schrecker, *The 50-Year War on Higher Education*, *Chron. Higher Educ.* (Oct. 14, 2022), <https://www.chronicle.com/article/the-50-year-war-on-higher-education> (on file with the *Columbia Law Review*) [hereinafter Schrecker, *The 50-Year War*]. Millions of qualifying veterans took advantage of the federally funded education benefits; by 1947, veterans made up 49% of college enrollments in the United States. See Keith W. Olson, *The G.I. Bill and Higher Education: Success and Surprise*, 25 *Am. Q.* 596, 602, 606 (1973).

76. See Thelin, *supra* note 39, at 63–65 (“[T]he source of funding and the place of research came together to help consolidate the federal grant university, typically a prominent university with highly skilled personnel, substantial laboratories and research facilities, and a track record derived from industrial contracts, World War II projects, and positioning in specific, high-profile fields.”).

77. Between October 1967 and May 1969, an estimated seventy-four campus incidents centered on opposition to military recruiting, research, or ROTC on campuses. See Staff of S. Comm. on Gov’t Operations, 91st Cong., *Staff Study of Campus Riots and Disorders—October 1967–May 1969*, at 1 (Comm. Print 1969) [hereinafter *Staff Study of Campus Riots and Disorders*].

78. See, e.g., Davarian L. Baldwin, *In the Shadow of the Ivory Tower: How Universities Are Plundering Our Cities* 30–31 (2021) (discussing urban renewal projects at Case Western Reserve, the University of Alabama at Birmingham, and the University of Chicago); Brandi Kellam & Louis Hansen, *Erasing the “Black Spot”: How a Virginia College Expanded by Uprooting a Black Neighborhood*, *ProPublica* (Sept. 5, 2023), <https://www.propublica.org/article/how-virginia-college-expanded-by-uprooting-black-neighborhood> [<https://perma.cc/WR2F-9ZB3>] (describing how universities exacerbated racial gaps in homeownership, seizing Black lands during the 1960s and uprooting entire communities).

anti-Black crime wave hysteria⁷⁹ that opened up opportunities for federal urban renewal resources.⁸⁰ A case in point: The University of Chicago institutionalized urban renewal projects in the surrounding community of Hyde Park through the creation of the South East Chicago Commission (SECC).⁸¹ The SECC, seeking to legitimize its role in reshaping the landscape, relied on University of Chicago police to draft “crime narratives” suggesting that nearby Black communities were a threat to the University.⁸² The private university police suggested that neighboring buildings were operating as crime havens in order to facilitate foreclosure and sale.⁸³ The University used these crime narratives to justify isolating and enclosing itself from the surrounding area while keeping low-income Black community members out.⁸⁴ During this period, student enrollment ballooned and federal funding to support higher education grew.⁸⁵ A National Center for Education Statistics survey found that federal spending on higher education increased from \$2.66 billion in 1950 to \$7.14 billion in 1960, \$25.27 billion in 1970, \$62.46 billion in 1980, and \$151.76 billion in 1990.⁸⁶ Historian Ellen Schrecker aptly characterizes “two interrelated strands of the story” of higher education in the 1950s and 1960s as “growth and turbulence.”⁸⁷ As universities expanded their

79. See Baldwin, *supra* note 78, at 27–30 (discussing the relationship between urban renewal, the University of Chicago’s growth, and the media’s attention to a crime wave). The crime wave hysteria starting in the 1950s has been attributed to concerted media coverage of robberies and assaults on university affiliates, and it helped drive university-led urban renewal projects. See Eddie R. Cole, *The Campus Color Line: College Presidents and the Struggle for Black Freedom* 1, 5 (2020) (describing how, amid struggles for racial equality on college campuses, university presidents sometimes reached beyond their campuses to shape urban renewal efforts in nearby communities); Francesca M. Ciampa, *The Interlocking Roles of Campus Security and Redevelopment in University-Driven Neighborhood Change: A Case Study of the University of Pennsylvania*, 28 *J. Higher Educ. Outreach & Engagement* 137, 150, 159–60 (2024) (describing how the “crime wave” surrounding the University of Pennsylvania led to the university increasing security measures and related urban renewal efforts).

80. See, e.g., James Bradley, *The University of Chicago, Urban Renewal, and the Black Community*, *Black Persps.* (Apr. 12, 2021), <https://www.aaihs.org/the-university-of-chicago-urban-renewal-and-the-black-community/> [<https://perma.cc/9RBZ-AD48>] (discussing the instrumental role that universities played in shaping urban renewal policies that displaced Black communities by using eminent domain powers under section 112 of the Fair Housing Act to acquire “‘blighted’ land . . . to rehabilitate . . . for ‘educational uses’”).

81. Teona Williams, *For “Peace, Quiet, and Respect”: Race, Policing, and Land Grabbing on Chicago’s South Side*, 53 *Antipode* 497, 502–03 (2021).

82. *Id.*; see also Baldwin, *supra* note 78, at 28–30.

83. Williams, *supra* note 81, at 503–04.

84. See Baldwin, *supra* note 78, at 28–30.

85. See Miller & Russell-Brown, *supra* note 20, at 71–72 (“The unprecedented growth in campus enrollment increased government and social support and drastically transformed the role and purpose of higher education.”).

86. Lazerson, *supra* note 74, at 66 (citing Thomas D. Snyder & Charlene M. Hoffman, *Nat’l Ctr. for Educ. Stat., Digest of Education Statistics: 1944*, at 36 tbl.32 (1994)).

87. Ellen Schrecker, *The Lost Promise: American Universities in the 1960s*, at 3 (2021) [hereinafter Schrecker, *The Lost Promise*]. Samuel Walker and Charles Katz refer to the

property holdings in response to the booms in enrollment and overall operations in this third era, administrators increasingly used campus security (or police) to maintain these holdings, address purported crime waves, and keep out those deemed out of place. Historian Stefan M. Bradley provides one example of how this worked in New York City, in the relationship between Columbia University and surrounding neighborhoods: “In a moment when black people sought to gain control of the neighborhoods where they lived and the policies that affected them, Columbia represented a white institution that evicted tenants, displaced residents, and had a private police force in the park that arrested black youth regularly.”⁸⁸ But one should not overstate police authority at this time. While Professor Bradley discusses the power of university police to move Black people from West Harlem and Morningside Heights in New York, another commentator notes that this was a period in which police and security were “limited to detection, apprehension, and reporting, rather than to making an arrest.”⁸⁹ The campus officers’ inability to make arrests is one reason they lurked in the shadow of municipal police for so long.

2. *Modern Campus Policing and University Responses to Disruption.* — Finally, and most importantly for this Piece, comes the modern campus policing era.⁹⁰ During this period, university administrators relied on local police agencies, and even the National Guard, to respond to rapidly growing student protest movements.⁹¹ During the mid-1960s, as President Lyndon B. Johnson escalated U.S. involvement in the Vietnam War, widespread opposition from students, faculty, and community members surfaced on many college campuses.⁹² Across the country, antiwar faculty

1960s as “a series of upheavals” characterized by the Supreme Court’s expansion of civil rights, the civil rights movement’s “new militancy,” urban riots, antiwar protests on college campuses, “and the emergence of a ‘youth subculture’ that challenged established standards. . . . All of these dramatic changes directly affected the police.” Walker & Katz, *supra* note 66, at 48–50 (citation omitted).

88. Stefan M. Bradley, *Upending the Ivory Tower: Civil Rights, Black Power, and the Ivy League* 186 (2018) [hereinafter Bradley, *Upending the Ivory Tower*].

89. Sloan, *The Modern Campus Police*, *supra* note 66, at 87 (internal quotation marks omitted) (quoting Bordner & Peterson, *supra* note 66, at x).

90. Scholars that focus on policing more broadly describe the same post-1960s period as a time of much conflict. See, e.g., Walker & Katz, *supra* note 66, at 74–103 (describing the contemporary law enforcement industry and situating campus police within the category of “special district police”).

91. See *id.*; see also Staff Study of Campus Riots and Disorders, *supra* note 77, at 2 (tallying the number of campus disturbances in which the administrative response was to call law enforcement); The Report of the President’s Commission on Campus Unrest 174 (1970) [hereinafter President’s Commission Report] (discussing how the National Guard was called upon more and more “to intervene in campus disturbances”).

92. See Kenneth J. Heineman, *Campus Wars: The Peace Movement at American State Universities in the Vietnam Era* 130 (1993) [hereinafter Heineman, *Campus Wars*] (observing that, as public dissatisfaction with the war grew, “campus advocates of nonviolent protest at the state universities began to lose control of the peace movement” and activists

members held teach-ins to explain the problems associated with the war to their students.⁹³ In 1966, as tensions around the war grew, the Johnson administration authorized the Selective Service to draft college students.⁹⁴ This motivated student activists to intensify their protest efforts, and the ensuing sit-ins, draft card burnings, and attacks on campus Reserve Officers' Training Corps (ROTC) offices were intended to disrupt military recruitment and defense industry research at their universities.⁹⁵ Alongside antiwar protests were many student-led protests associated with the Civil Rights Movement, fighting against racial segregation and inequality.⁹⁶ Many students at historically Black colleges and universities in the South began engaging in political activities by the mid-1960s.⁹⁷ Around the same time, many of the first Black students to integrate white universities called for the introduction of Black studies programs.⁹⁸ Students also protested the encroachment of higher education into surrounding urban and Black neighborhoods as part of urban renewal—gentrification—processes.⁹⁹ In a direct response to these protest movements,¹⁰⁰ universities

simultaneously exposed universities' ties to the defense establishment, making the academy "a target, as well as a locale, of protest").

93. See Schrecker, *The Lost Promise*, supra note 87, at 136–62.

94. Gregory Duhé, *The FBI and Students for a Democratic Society at the University of New Orleans, 1968–1971*, 43 *La. Hist.* 53, 54 (2002).

95. *Id.*; Kenneth J. Heineman, *Campus Unrest in the 1960s: The Penn State Experience*, Pa. Legacies, Fall 2018, at 6, 10–11 ("Headhunters from Dow Chemical, which manufactured napalm for the Vietnam War, became a magnet for protestors, as did the Reserve Officers' Training Corps (ROTC), which provided a visible campus link to the Vietnam War.").

96. See Roderick A. Ferguson, *We Demand: The University and Student Protests 14–34* (2017); Elizabeth Hinton, *America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s*, at 1–2, 160–68 (2021); Thelin, supra note 39, at 102–05.

97. See, e.g., Katherine J. Ballantyne, *Radical Volunteers: Dissent, Desegregation, and Student Power in Tennessee 104–15*, 131 (2024) (discussing the role of activists at historically Black institutions like Fisk University).

98. See, e.g., *id.* at 96–98 (discussing Memphis State); Martha Biondi, *The Black Revolution on Campus 174–210* (2012) (discussing "critical challenges and points of contention during the early Black studies movement," particularly at Harvard); Bradley, *Upending the Ivory Tower*, supra note 88, at 296–330 (discussing Harvard and Cornell); Donna Murch, *The Campus and the Street: Race, Migration, and the Origins of the Black Panther Party in Oakland, California*, in *The New Black History: Revisiting the Second Reconstruction* 53, 60–63 (Manning Marable & Elizabeth Kai Hinton eds., 2011) (discussing UC Berkeley and Merritt College).

99. See, e.g., Bradley, *Upending the Ivory Tower*, supra note 88, at 167–96 (discussing Columbia); *id.* at 197–248 (discussing the University of Pennsylvania).

100. A trove of historical work chronicles the events on college campuses in this period. This literature is too extensive to give adequate treatment, but for some examples, see, e.g., Ballantyne, supra note 97, at 105–08 (examining interracial student activism in Tennessee in the mid-twentieth century); Biondi, supra note 98, at 1–12 (recounting the story of the Black student movement in the late 1960s and early 1970s); Ferguson, supra note 96, at 1–13 (placing contemporary student movements in the historical context of student activism in the post-World War II period); Heineman, *Campus Wars*, supra note 92, at 1–10 (discussing anti-Vietnam War protests at state universities); Kenneth J. Heineman, *Put Your*

shifted toward the use of professional law enforcement forces on campus by expanding the size, authority, and jurisdiction of campus police forces.¹⁰¹ During the late 1960s and early 1970s, universities increasingly employed sworn law enforcement officials in campus police departments to maintain order and reestablish administrative control.¹⁰²

College administrators and university presidents generally responded in two ways to the mounting tensions on campuses nationwide and the pressure to stop students' escalating tactics.¹⁰³ First, as discussed in section I.B, they reformed their own codes of conduct and disciplinary processes to strengthen avenues for school-based sanctions. Second, administrators turned to states for assistance, persuading state legislatures and attorneys general to pass legislation and legally binding opinions to grant them authority to form campus police departments.¹⁰⁴ In the wake of these legislative reforms, most universities centralized physical security in a single campus police department, while other schools contracted non-sworn security guards or third-party security companies.¹⁰⁵ They also sought statutory authorization for granting arrest power to campus police.¹⁰⁶

Bodies Upon the Wheels: Student Revolt in the 1960s, at xi (2001) (surveying radical student protest and social unrest in the 1960s); Hinton, *supra* note 96, at 14–15 (exploring the history of Black rebellions in the 1960s); Gregg L. Michel, *Spying on Students: The FBI, Red Squads, and Student Activists in the 1960s* South 17–41 (2024) [hereinafter Michel, *Spying on Students*] (providing an account of law enforcement surveillance of white student activists in the 1960s); Thelin, *supra* note 39, at 93–115 (discussing student activism in the 1960s); see also Simon Hall, *Marching on Washington: The Civil Rights and Anti-War Movements of the 1960s*, in *The Street as Stage: Protest Marches and Public Rallies Since the Nineteenth Century* 213, 227–30 (Matthias Reiss ed., 2007) (comparing the 1963 March on Washington and the 1967 March on the Pentagon).

101. Historians' prevailing view has been that campus police forces developed in response to protests. See, e.g., Jamie P. Hopkins & Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The Jurisdictional Limits of Campus Police*, 75 Mont. L. Rev. 123, 126–28 (2014); see also Sloan, *The Modern Campus Police*, *supra* note 66, at 87–88 (noting that campus administrators created university police agencies “to regain control over campus activity” in response to student protests in the 1960s). In addition, the race-conscious nature of activists' demands and the war on drugs contributed to campus police departments' development in this period. See *infra* notes 223–224 and accompanying text.

102. See Fisher et al., *supra* note 29, at 417–18.

103. See *infra* section I.B. Of course, there is much nuance and complexity to these responses.

104. See Fisher et al., *supra* note 29, at 418–19 (noting how “administrators believed that *campus* police would become part of the fabric of the community and thus achieve more legitimacy than would outside law enforcement agencies brought to campus”).

105. See *id.* at 419 (“Most schools chose to centralize physical security in a campus police department. The remaining schools chose to use non-sworn security guards they either hired or were provided by third-party vendors (e.g., Wackenhut Corporation).”).

106. See, e.g., Richard C. Gibson, *A Proposed Model of Legislative Powers for Campus Law Enforcement*, in *The Challenge of New Directions in Campus Law Enforcement* 57, 57–64 (O. Sutherland Sims, Jr. ed., 1972) (describing how the “1967 campus peace officer bill,” which permitted Texas university governing boards to commission certain personnel as peace officers with arrest powers and was “the outgrowth of threatened disruptions on the Austin campus”).

An early work by one of the foundational scholars of campus policing focuses on the structure and historic development of campus police and summarizes the shift from the security guard or pseudo-police era to the modern era in the following way:

The late 1960s signaled the last major shift in the evolution of campus policing. As campus unrest grew and the specter of urban police on college campuses loomed, college administrators confronted a dilemma. Unless they took measures to keep order on campus, outsiders would do it for them. One possible solution to this dilemma was to create their own police departments. Thus, the late 1960s and early 1970s saw the birth of the “modern campus police department.” Officers in these departments were no longer custodians, but sworn law enforcers (in some instances, even deputy sheriffs). Professionalization of officers became a major goal, and the duties of campus officers expanded greatly.¹⁰⁷

One of the most salient examples of the university response to disruption in this era took place at the University of California (UC), Berkeley. The Free Speech Movement (FSM) gained notoriety after the October 1964 arrest of a Berkeley student and civil rights activist for tabling without a permit and for disobeying a school regulation that banned political activities on campus.¹⁰⁸ Several thousand Berkeley students mobilized and surrounded a campus police car containing the arrested student for more

107. Sloan, *The Modern Campus Police*, *supra* note 66, at 87.

108. See Robert Cohen, *The Many Meanings of the FSM: In Lieu of an Introduction*, in *The Free Speech Movement: Reflections on Berkeley in the 1960s* 1, 1 (Robert Cohen & Reginald E. Zelnik eds., 2002) [hereinafter *The Free Speech Movement*]; see also Margot Adler, *My Life in the FSM: Memories of a Freshman*, in *The Free Speech Movement*, *supra*, at 111, 115–16 (recounting observations from the rally that took place after Jack Weinberg’s “ridiculous” arrest for “sitting behind a table covered with civil rights literature”); Bettina Aptheker, *Gender Politics and the FSM: A Meditation on Women and Freedom of Speech*, in *The Free Speech Movement*, *supra*, at 129, 129 (recounting a speech the author gave at “the beginning of . . . the Free Speech Movement” after Jack Weinberg was “arrested . . . for distributing civil rights literature and soliciting donations, activity that had recently been banned from the campus”). The Berkeley protest is often identified as the start of the Free Speech Movement, but it is not the first time in the United States that students at a major institution peacefully protested their own university. See Heineman, *Campus Wars*, *supra* note 92, at 7 (discussing the first peaceful protest at Kent State University, led by activist Tony Walsh, who in 1963 staged a protest “which resulted in the university administration granting students the right to form political organizations and to speak freely on the campus”); see also Erwin Chemerinsky & Howard Gillman, *Free Speech on Campus* 74–76 (2017) (“Historically, the Berkeley campus had a policy of preventing student groups from using campus grounds for non-university-focused political activity or protest. Students would get around this prohibition by setting up tables and passing out leaflets on the city-owned sidewalk just on the edge of the campus.”); Neil J. Smelser, *Reflections on the University of California: From the Free Speech Movement to the Global University* 10–11 (2010) (discussing the administration “prohibiting political advertising and soliciting on a thin strip of land at Telegraph and Bancroft Avenues” where “[s]tudents had enjoyed informal use of this strip for years”).

than thirty-two hours.¹⁰⁹ In December 1964, about a thousand students affiliated with FSM held a sit-in at Sproul Hall, an administrative building at Berkeley, to protest the University's tight restrictions prohibiting political activity¹¹⁰ after administrators "charged four prominent FSMers with violations of the old University rules."¹¹¹ Protesters refused to leave until 3:30 a.m., when the university called over 400 police officers—including Alameda County sheriffs, California Highway Patrol officers, Berkeley police, and campus officers—to forcibly remove them over the course of the next thirteen hours.¹¹²

UC President Clark Kerr was quoted as saying that the student-led FSM had become an "instrument of anarchy" and that, at the Governor's direction, he had called in local and state police to expel students from Sproul Hall.¹¹³ Later, Kerr explained that he was opposed to calling in the police, but he had faced administrative and political pressure to do so from the Chancellor and then-Governor Edmund Brown.¹¹⁴

Estimates suggest that 732 students—out of 801 total protesters—were arrested after police used tear gas, birdshot and buckshot ammunition, shotguns, and rifles to forcibly end the protest.¹¹⁵ Onlookers and students reported that police brutalized participants, despite the nonviolent nature of their protest.¹¹⁶ After these mass arrests, Berkeley continued to face significant community backlash for its deputization of police against its own students, with both student and faculty strikes continuing on campus

109. See Malcolm Burnstein, *The FSM: A Movement Lawyer's Perspective*, in *The Free Speech Movement*, supra note 108, at 433, 433–34 (noting that after thirty-two hours, administrators agreed to a settlement with the demonstrators, which included the creation of a committee on campus political activity composed of an equal number of students, faculty, and administrators).

110. Daryl E. Lembke, 801 Arrested as Police Break Up Sit-in at UC, *L.A. Times*, Dec. 4, 1964, at 1 (on file with the *Columbia Law Review*) [hereinafter Lembke, 801 UC Arrests].

111. Burnstein, supra note 109, at 433, 437.

112. Lembke, 801 UC Arrests, supra note 110; see also Lindsay M. Eichinger, Comment, *How Free Is Free Speech in Our Nation's Colleges and Universities*, 28 *Widener Commonwealth L. Rev.* 191, 202 (2019).

113. Clark Kerr, President, Univ. of Cal., *A Statement by President Clark Kerr* (Dec. 7, 1964), in *XIII University Bulletin: July, 1964–June, 1965*, at 85, 85 (n.d.); cf. Clark Kerr, Fall of 1964 at Berkeley, in *The Free Speech Movement*, supra note 108, at 362, 383–84 [hereinafter Kerr, Fall of 1964] ("Again I opposed this action and persuaded the governor that no action should be taken that night but that he and I should together enter Sproul Hall in the morning and try to persuade the students to leave.").

114. See Kerr, Fall of 1964, supra note 113, at 383–84; see also *infra* Part IV.

115. See Leon Wofsy, *When the FSM Disturbed the Faculty Peace*, in *The Free Speech Movement*, supra note 108, at 345, 352 (recounting "[b]uckshot fired by massed police, tear gas released from swooping helicopters, [and] National Guard bayonets surrounding the campus on orders of Governor Reagan"); Duhé, supra note 94, at 53–54.

116. Eichinger, supra note 112, at 202; see also Lembke, 801 UC Arrests, supra note 110 ("Even as police were dragging the insurgents out of Sproul Hall and into a fleet of patrol wagons, 5,000 students were being urged at a rally to shut down the school today with a strike.").

for the following two months.¹¹⁷ Berkeley eventually loosened its restrictions on political activity, but only after inflicting such serious police violence that the faculty voted to support the FSM and called upon the administration to loosen restrictions on the content of student advocacy.¹¹⁸

The Columbia University administration's response to antiwar protests on its campus in April 1968 offers another glimpse into the ways that university officials commissioned police to suppress nonviolent student activism during this period.¹¹⁹ The New York Police Department violently arrested more than 600 students on campus after students occupied a campus building to protest both the Vietnam War and Columbia's expansion into Harlem.¹²⁰ The April 20–30 student strike led to a wave of police violence and repression.¹²¹

After such horrific acts of police violence and mass arrests of students, some universities changed their policies on protest and police response, while others suppressed further.¹²² In 1969, Columbia officials

117. See Duhé, *supra* note 94, at 53–54.

118. Despite pushback from the UC Regents, a sympathetic new chancellor was shortly hired and immediately granted the students' demands as his first official act. See Daryl E. Lembke, UC Faculty OKs Plan to End Student Revolt, *L.A. Times*, Dec. 9, 1964, at 1 (on file with the *Columbia Law Review*).

119. See Stefan M. Bradley, Harlem vs. Columbia University: Black Student Power in the Late 1960s 93–99 (2009) [hereinafter Bradley, Harlem vs. Columbia] (recounting how a thousand New York City police entered Columbia's campus and violently suppressed student protesters, who had occupied multiple school buildings).

120. See *id.* at 96–97 (noting that one graduate student “recalled that ‘somebody gave the order to clear the campus—and what that meant was the police just raised their billy-clubs and ran around beating everybody they could’” (quoting Eric Foner)); Skolnick, *supra* note 18, at 186 (documenting how police used force against protesters, often with vindictive intent, “regardless of whether [the protesters] were ‘peaceful’ or ‘provocative’” (citing Cox Comm’n, Crisis at Columbia: Report of the Fact-Finding Commission Appointed to Investigate the Disturbances at Columbia University in April and May 1968 (1968); Edward J. Sparling, April 27 Investigating Comm’n, Dissent and Disorder: A Report to the Citizens of Chicago on the April 27 Peace Parade (1968))); see also *id.* at 197 (discussing the Cox Commission report that suggested that police inaccurately estimated the number of student demonstrators occupying the buildings at Columbia, which in turn motivated their use of indiscriminate violence); Joseph Herman, Injunctive Control of Disruptive Student Demonstrations, 56 *Va. L. Rev.* 215, 229 n.85 (1970) (describing how, when students refused to leave the occupied University buildings, several hundred policemen were called to clear the building, injuring ninety-two student protesters (citing Jerry L. Avorn, Up Against the Ivy Wall: A History of the Columbia Crisis 181 (Robert Friedman ed., 1969))).

121. See, e.g., Michael V. Metz, Radicals in the Heartland: The 1960s Student Protest Movement at the University of Illinois 148 (2019) (discussing the May 1968 protest at Southern Illinois University that led to students being cleared from the President's office and arrested); Staff Study of Campus Riots and Disorders, *supra* note 77, at 3–45 (listing campus protests in April 1968).

122. See, e.g., Sunny Nagpaul, Columbia Created New Rules After Historic 1968 Protests. Its Administration Just Broke Them to Authorize Police on Campus, *University Report Concludes*, *Fortune* (May 7, 2024), <https://fortune.com/2024/05/07/columbia-created-new-rules-protests-police-report/> (on file with the *Columbia Law Review*); cf. Matthew Johnson, Undermining Racial Justice: How One University Embraced Inclusion

restructured the administration's decisionmaking process from a twelve-member advisory body to multiple regulatory bodies bound by principles of shared governance and established the University Senate, comprised of roughly one hundred Columbia affiliates including faculty members, students, administrators, and alumni.¹²³ Under this system, which is still in place, Columbia's administration is required to consult with the University Senate before allowing police to enter Columbia's campus.¹²⁴

Meanwhile, at Dartmouth College on May 6, 1969, a group of over fifty students and their supporters forcibly ejected several university staff members from their offices in an on-campus administration building, Parkhurst Hall, and barricaded themselves inside for over twelve hours to protest for the abolition of ROTC on campus.¹²⁵ In response, Dartmouth filed for, and alerted students to, a temporary injunction preventing unauthorized persons from occupying any office or private area of campus buildings.¹²⁶ When students refused to leave, a court ordered the New Hampshire State Police "to use all reasonable means to carry out the court

and Inequality 109 (2020) ("In January 1970, Michigan joined thirty-two other states in passing new laws regarding campus disruptions.").

123. See Bradley, *Harlem vs. Columbia*, supra note 119, at 164–65; Robert A. McCaughey, *Stand, Columbia: A History of Columbia University in the City of New York, 1754–2004*, at 487–89 (2003); Nagpaul, supra note 122 (recounting the roots of the University Senate). Prior to the formation of the University Senate, governance was held by the University Council, initially a twelve-member advisory body formed in 1890. Columbia Coll., *Handbook of Information 1890–1891*, at 267–68 (1890); Nearing a University Standard, 26 *Colum. Spectator* 80, 80 (1890) (on file with the *Columbia Law Review*) (discussing the establishment of the University Council).

124. Columbia Coll. Student Council, *We Columbia University Students Urge You to Listen to Our Voices*, *The Guardian*, (May 4, 2024), <https://www.theguardian.com/commentisfree/article/2024/may/04/columbia-university-student-protest-gaza> [https://perma.cc/4XLK-UB2F]. Although these governance structures still exist, at least in name, in April 2024 Columbia's administration appeared to only minimally comply with the requirement outlined in the Columbia University Charters and Statutes that it consult the University Senate—choosing instead to discount shared governance principles and ignore the Senate's disapproval of using police—and enlisted the NYPD to clear out the campus's Gaza solidarity encampment and arrest over a hundred protesters. See id.; see also Columbia Univ., *Charters and Statutes*, 142–44 (Apr. 6, 1959), https://secretary.columbia.edu/sites/default/files/content/University%20Statutes_January2022.pdf#page=22 [https://perma.cc/3XWQ-ED7P] (last updated Jan. 2022) ("If the President, upon consultation with a majority of a panel established by the University Senate's Executive Committee, decides that a demonstration poses a clear and present danger . . . [they] shall take all necessary steps to secure the cooperation of external authorities"); Columbia Univ. Sen., *Resolution Addressing Current Events*, Columbia (Apr. 26, 2024), <https://senate.columbia.edu/news/resolution-addressing-current-events> [https://perma.cc/26YC-SCNW] (stating that the decision "to call for police intervention on campus, after the Senate Executive Committee told the administration that the Executive Committee did 'not approve the presence of NYPD on our campus at this time,' has raised serious concerns about the administration's respect for shared governance and transparency" (quoting the Senate Exec. Comm.)).

125. See Herman, supra note 120, at 224.

126. See id.

order.”¹²⁷ Ninety police troopers from New Hampshire (with additional troopers from Vermont) responded, with the New Hampshire troopers “armed with pistols” and “most carr[ying] clubs at their belts.”¹²⁸ The troopers “smashed their way into the building through nailed doors,” and, although no injuries were reported, around fifty-six demonstrators were arrested.¹²⁹ Approximately forty-five people, “most of them Dartmouth students,” were convicted of criminal contempt, fined \$100 each, and sentenced to thirty days in jail.¹³⁰

While student protesters were often the focus of campus policing and suppression, outspoken faculty at universities all over the country also faced dire consequences for their support of protest activism.¹³¹ In 1970, the California state legislature denied what was once an automatic cost-of-living raise to UC and California State faculty members.¹³² Professors lost their jobs because of their political views, and some young faculty members were denied tenure or reappointment during this time.¹³³ For example, at Wayne State University in Detroit, one history professor was denied tenure due to his political activism, even though he had been careful not to discuss the war in class.¹³⁴ At Penn State between 1969 and 1973, twenty-nine out of thirty faculty members involved in antiwar activism were either fired or driven out of the institution; at SUNY Buffalo, faculty who refused to sign the Feinberg Loyalty Oath—disavowing the Communist Party—were

127. *Id.* (internal quotation marks omitted) (quoting May 9, 1969 hearing before Judge Martin F. Loughlin, at 9).

128. Douglas Robinson, *Troopers Oust Protestors at Dartmouth*, N.Y. Times, May 8, 1969, at 43, <https://timesmachine.nytimes.com/timesmachine/1969/05/08/88991850.html?pageNumber=43> (on file with the *Columbia Law Review*).

129. *Id.*

130. *Dartmouth Rebels Get 30-Day Terms in R.O.T.C. Protest*, N.Y. Times, May 10, 1969, at 1, <https://timesmachine.nytimes.com/timesmachine/1969/05/10/78344726.html?zoom=14.94&pageNumber=1> (on file with the *Columbia Law Review*).

131. See Schrecker, *The Lost Soul*, *supra* note 74, at 59; see also Ballantyne, *supra* note 97, at 131 (describing a Texas state senator’s recommendation that the University of Texas “refuse to pay the salaries of any faculty who participated in the [antiwar] moratorium”).

132. See Schrecker, *The Lost Promise*, *supra* note 87, at 449. According to one contemporaneous article, “\$18.6 million for a 5% cost-of-living increase [for UC and Cal State professors] was deleted from the final budget” for 1970 to 1971, but other employees still got a raise. William Trombley, *College Salary Gap Widens as Other States Boost Faculty Pay*, L.A. Times, July 12, 1970, at B1 (on file with the *Columbia Law Review*).

133. See Schrecker, *The Lost Promise*, *supra* note 87, at 369 (collecting examples); see also Johnson, *supra* note 122, at 110 (discussing a Black Activist Movement faculty ally at the University of Michigan in 1970, Gloria Marshall, whose tenure was approved only after an administrator intervened, “plead[ing] with the regents not to use Marshall’s role in the strike as a factor in their decision”).

134. See Douglas J. Snyder, *Dissent in Detroit: Anti-Vietnam War Protest at Wayne State University, 1965–1971*, at 56 (2006) (M.A. thesis, Wayne State University) (on file with the *Columbia Law Review*).

fired.¹³⁵ Further still, some faculty were targeted by right-wing groups,¹³⁶ physically confronted by police during protests,¹³⁷ and even targeted by the secret FBI Counterintelligence Program (COINTELPRO), which surveilled and disrupted protesters the U.S. government considered subversive.¹³⁸ This monitoring and harassment of faculty was often made possible with the assistance of campus police forces.¹³⁹

B. *Pressure to Take Police Action*

Adversarial university reactions to antiwar protests, including those at Berkeley and Columbia, did not arise out of thin air. Universities faced significant legislative and economic pressure following disruptive actions on campuses.¹⁴⁰ Many universities in the late 1960s and early 1970s were threatened with proposed state and federal cuts by legislators, slashes in financial aid, and a slew of new or potential civil and criminal laws dictat-

135. Heineman, *Campus Wars*, supra note 92, at 57, 63.

136. See, e.g., David R. Seager, *Repression in Academia: New Left and Antiwar College Teachers and Political Dissent in the Vietnam War Era, 1964–1975*, at 12 (May 1995) (Ph.D. Thesis, University of Maine) (on file with the *Columbia Law Review*) (“Peter Bohmer, an economist at San Diego State University, was a target of right-wing organizations like the ‘Minutemen,’ and the ‘Secret Army Organization.’”).

137. See Michael Rosenthal, *Life on the Ledge*, in *A Time to Stir: Columbia ‘68*, at 281, 286–87 (Paul Cronin ed., 2018) (“The police, clenching small blackjacks, urged those of us in front of the building, now some twenty or twenty-five strong, to disband, but we hardly could just go away. Instead we burst into ‘We Shall Overcome’ and waited for the police to come at us, which they promptly did.”).

138. Records of the FBI’s COINTELPRO, operated between 1956 and 1971, are available on the FBI’s FOIA Library and organized by subject, such as the “New Left.” New Left, FBI, <https://vault.fbi.gov/cointel-pro/new-left> (on file with the *Columbia Law Review*) (last visited Mar. 12, 2025). Many scholars have documented the FBI’s counterintelligence operations. See, e.g., Ward Churchill & Jim Vander Wall, *The COINTELPRO Papers: Documents From the FBI’s Secret Wars Against Domestic Dissent* 165, 179 (1990) (describing the FBI’s counterintelligence strategy at Columbia University, which was designed to prevent left-wing student organizations from consolidating their forces or recruiting new members); David Cunningham, *COINTELPRO—New Left*, in *The Federal Bureau of Investigation: History, Powers, and Controversies of the FBI* 89, 89 (Douglas M. Charles & Aaron J. Stockham, eds., 2022) [hereinafter *The Federal Bureau of Investigation*] (same); see also Johnson, supra note 122, at 77 (“Part of the FBI’s counterintelligence strategy included sending letters to [University of Michigan] administrators and board members, complaining that university leaders weren’t doing enough to suppress campus protests.”).

139. See Seager, supra note 136, at 14–15 (“[S]cores of professors [were] investigated and harassed by Cointelpro activities and local police ‘red squads’—in some cases with the assistance of . . . campus police.”).

140. See, e.g., Thelin, supra note 39, at 79–80 (“Had university presidents lost control of spending as well as . . . of the campus and of student conduct? Some politicians believed this to be the case, as taxpayers and state legislators began raising questions about the funding models and expectations that had been put into place by 1960.”).

ing behavior on campuses if administrators did not shut down student protests.¹⁴¹ These so-called cutoff laws were passed in multiple states,¹⁴² following the lead of the federal government, which passed the Higher Education Amendments of 1968.¹⁴³ Meanwhile, the media's portrayal of the protests at campuses across the country led conservative politicians to claim universities were incapable of controlling their students and to demand harsher crackdowns.¹⁴⁴ Caving to public and financial pressures, administrators increasingly began to rely on police to suppress student-led protests on their campuses.¹⁴⁵

In 1970, President Richard Nixon established the Commission on Campus Unrest to issue a report on the police killings at Kent State and Jackson State.¹⁴⁶ When the report was published, it dedicated a chapter to "the responses to disorder available to the university, short of calling in the police."¹⁴⁷ Finding that many university disciplinary codes were insufficient, it recommended that "every college or university that has not

141. See e.g., Karl J. Bemserderfer, *The Legislators Strike Back*, in *Law and Discipline on Campus* 149, 149–57 (Grace W. Holmes ed., 1971) (discussing state responses to campus disruptions); John Holt Myers, *Political Reactions*, in *Law and Discipline on Campus*, supra, at 139, 139–48 (discussing federal and state responses to campus disruptions); Robert M. Haddock, Note, *Federal Aid to Education: Campus-Unrest Riders*, 22 *Stan. L. Rev.* 1094, 1096–101 (1970) (collecting examples of federal riders in response to campus disruptions).

142. See, e.g., *infra* notes 181–183 and accompanying text.

143. Higher Education Amendments of 1968, Pub. L. No. 90-575, § 504, 82 Stat. 1014, 1062 (codified at 20 U.S.C. § 1060 (1970)), repealed by Pub. L. No. 92-318, § 139 B(b), 86 Stat. 282 (1972).

144. Thelin, *supra* note 39, at 114 ("One consequence of the dramatic events associated with student activities and student activism was that colleges and universities lost a great deal of public confidence and legislative support by the end of the 1960s.").

145. Data points collected at the time by subcommittee staff show that thousands were arrested in the protest movements of the time. See *Staff Study of Campus Riots and Disorders*, supra note 77, at 2 (reporting an estimated 6,158 arrests and 654 suspensions and expulsions). Among fifty-one respondents to a June 1969 survey sent to police chiefs or sheriffs in selected college towns, 70% (twenty-four of thirty-four departments) reported that arrests were made. *New Directions in Campus Law Enforcement: A Handbook for Administrators* 50 (O. Suthern Sims ed., 1971). Other data indicates that between September 1967 and December 1968, 455 students on UC campuses were disciplined (8 were dismissed, 71 were suspended (of which 31 had suspended sentences), 159 received disciplinary probation, and 220 were reprimanded, censured, or warned). Report of the Select Committee on Campus Disturbances, Cal. Leg. Assemb., Reg. Sess., at 23, 143 (1969) [hereinafter *Cal. Comm. Report*]. Of this number, 279 were Berkeley students, 96 were UCLA students, and 50 were San Diego students. *Id.* at 143. 178 students were arrested, with all but four convicted at the time of the report. *Id.*

146. President's Commission Report, supra note 91, at ix.

147. *Id.* at 117–47.

recently done so reexamine its internal rules of conduct,”¹⁴⁸ generally calling for a larger disciplinary enforcement apparatus.¹⁴⁹

Even before the report was published, however, discourse surrounding conduct code reformation in response to campus protests was actively taking place. Multiple articles, studies, and reports published in the mid-to-late 1960s and early 1970s wrestled with the scope of university governance, student discipline and conduct codes, and campus rules.¹⁵⁰ With the end of *in loco parentis* and the advent of new due process requirements in the early 1960s, administrators lost their ability to control student bodies by dismissing disobedient students at will. By the late 1960s, under pressure to address student mobilization, administrators expanded the range of student conduct code offenses, sometimes in response to demands from legislatures or elected officials.

1. *Pressure From Politicians.* — As a candidate in the 1966 California gubernatorial election, Ronald Reagan rose to power and campaigned with the promise to “return[] our universities to their original purpose,” where “free speech does not justify letting beatniks, and advocates

148. *Id.* at 128. The passage stated:

The current disciplinary codes of many universities are inadequate. Some are inconsistent with the university’s commitment to the principles of free expression. Others are vague or overbroad: instead of informing students what they may not do, the codes merely proscribe “conduct unbecoming [of] a student.” The code should include, among other things, simple and precise regulations governing the time, place, and manner of permissible mass assemblies and demonstrations.

We recommend that every college or university that has not recently done so reexamine its internal rules of conduct with a view toward making them consonant with principles of free speech and due process, as well as more explicit in defining what the university considers to be impermissible conduct.

Id. at 128.

149. *Id.* at 128-31.

150. For some examples, see, e.g., Symposium: Student Rights and Campus Rules, 54 *Calif. L. Rev.* 1, 1 (1966) (presenting “a selection of views by law faculty members involved in the free speech controversy” at the University of California, Berkeley); see also Charles J. Stathas, *Student Conduct Regulations Inherent Power v. Specificity*, 3 *Coll. Couns.*, no. 2, 1968, at 29 (providing remarks on a panel about student unrest at a conference of the National Association of College and University Attorneys). For examples of campus-specific studies, see, e.g., Caleb Foote et al., *The Culture of the University: Governance and Education* 1 (1968) (reporting the recommendations of the University of California, Berkeley Study Commission on University Governance); N.Y. Univ. Sch. of L., *Student Conduct and Discipline Proceedings in a University Setting: Proposed Codes With Commentary* 9-24 (1968), <https://files.eric.ed.gov/fulltext/ED033671.pdf> [<https://perma.cc/UN47-6Z3K>] [hereinafter NYU Report] (providing a proposed code prepared by a research seminar on student conduct and discipline at NYU School of Law). Furthermore, many of the reports published during this time period, like the *Report of the President’s Commission on Campus Unrest* and the N.Y.U. School of Law’s *Student Conduct and Discipline Proceedings in a University Setting* report, include bibliographies citing to more articles, studies, and reports related to student discipline and conduct codes. See President’s Commission Report, *supra* note 91, at 467; NYU Report, *supra*, at 31.

of . . . 'filthy speech' disrupt the academic community and interfere with our universities' purpose."¹⁵¹ In early 1969, in response to a student strike initiated by the Black Student Union that led to the closure of the San Francisco State University (then College) campus,¹⁵² Governor Reagan issued a statement vowing to keep the college open "at the point of a bayonet if necessary."¹⁵³ His view was that the Berkeley and San Francisco campuses were in "constant turmoil," and causing an "infection [that] ha[d] spread nationwide."¹⁵⁴ That same year, Reagan dispatched hundreds of National Guard members to Berkeley during the People's Park protests¹⁵⁵ and encouraged the suppression of campus activities through broad legislation.¹⁵⁶ Reagan proposed (but failed to successfully implement) 10% cuts to the UC budget.¹⁵⁷ He also suggested that the public university system start charging tuition and ultimately prompted the UCs to stop offering free education.¹⁵⁸ As a "slap on the wrist," Reagan directed funding away from the UCs and toward community colleges and the California State University system.¹⁵⁹ Reagan's entire campaign and much of his career as governor focused on dismantling California's public institutions of higher

151. Ronald Reagan Speaks Out on the Issues: Academic Freedom, in II Ronald Reagan Presidential Library Digital Library Collections, Ronald Reagan Gubernatorial Campaign Files, 1966: RR Speeches and Statements 311 (1966), <https://www.reaganlibrary.gov/public/2021-06/40-835-209207990-C30-008-2021.pdf> [<https://perma.cc/TF5R-JPJS>].

152. For a discussion of the strike, see Biondi, *supra* note 98, at 43–78.

153. Daryl E. Lembke & John Dreyfuss, Strike Cuts Attendance at S.F. State Classes, L.A. Times, Jan. 8, 1969, at AB (on file with the *Columbia Law Review*) (internal quotation marks omitted) (quoting Gov. Ronald Reagan).

154. Ronald Reagan, Academic Freedom and Academic Order, *Change Higher Educ.*, July/Aug. 1969, at 33, 34.

155. Lawrence E. Davies, Guard Aids Police in Moving Berkeley Protesters, N.Y. Times, May 17, 1969, at 30, <https://timemachine.nytimes.com/timesmachine/1961/05/17/88998664.html?pageNumber=30> (on file with the *Columbia Law Review*).

156. Reagan, *supra* note 154, at 33, 35–36 (expressing support for bills that "would update the law to give administrators and law enforcement officials some legal teeth with which to deal with some of the problems on our campuses where immunity has been achieved because the law has not covered some" protester tactics); Jerry Gillam, Reagan Signs Bills to Curb Campus Violence, L.A. Times, Sept. 4, 1969, at 3 (on file with the *Columbia Law Review*).

157. 2 Clark Kerr, *The Gold and the Blue: A Personal Memoir of the University of California, 1949–1967*, at 298 (2003) [hereinafter Kerr, *The Gold and the Blue*].

158. See Jennifer M. Nations, How Austerity Politics Led to Tuition Charges at the University of California and City University of New York, 61 *Hist. Educ. Q.* 273, 277, 284–86 (2021) (explaining how Governor Reagan advocated for the UCs to adopt tuition fees, with the Regents eventually adopting "an 'educational fee' of \$250 in [1970] and \$600 in the next" year).

159. Jillian Berman, If History Is Any Indication, the Economic Impact of Campus Protests Could Be Felt at Colleges Across the U.S., *MarketWatch* (May 1, 2024), <https://www.marketwatch.com/story/if-history-is-any-indication-the-economic-impact-of-campus-protests-could-be-felt-at-colleges-across-the-u-s-c538f65f> (on file with the *Columbia Law Review*) ("Reagan also gave Berkeley 'a slap on the wrist,' Thelin, a higher-education historian, put it, by directing funding toward community colleges and to the California State University system." (quoting John Thelin)).

learning. This included his 1967 recommendation to fire Clark Kerr,¹⁶⁰ then-UC President and the former chancellor of Berkeley, whom Reagan blamed for failing to maintain campus order.¹⁶¹

Reagan's actions are just one example of how state officials pressured school administrators to suppress student activism on college campuses in this period.¹⁶² Less well known than Reagan, but powerful in his state, was Illinois State Representative Charles Clabaugh, who also vowed to squash the student uprisings at the University of Illinois—in 1968, he proclaimed, “If the University doesn’t clean its house and put an end to this sort of thing, the legislature will be forced to step in and take greater control,” and, “We as legislators just aren’t going to put up with all this damn foolishness and continue to pour hundreds of millions of dollars into a University that can’t maintain law and order.”¹⁶³ In September 1969, the Illinois legislature passed several laws designed to suppress campus protests, including one on the “maintenance of decorum on the campuses of State-supported institutions of higher learning.”¹⁶⁴ The law required the campus administration to file a “Policy on Demonstrations” with the state’s governor and higher education board, which was defined as “an outline of rules and regulations to maintain order on the campus of an institution of higher learning . . . which gives special attention to firmness . . . and to establishment of a step by step approach to secure the reasonable operation of university or college activities in case of any disruptive activity.”¹⁶⁵ During the early 1970s, trustees of the University of Illinois worked to

160. High profile student protest movement incidents like Kent State and Berkeley’s FSM led to pressure for the removal of university presidents. This is another parallel to what occurred in 2024. See *infra* notes 262–263 and accompanying text.

161. See Thelin, *supra* note 39, at 79 (“[G]overnors, legislators, business executives, and taxpayers . . . were upset by what they perceived to be a lack of leadership in the inability to maintain student decorum and order This assessment of the situation would be central to Governor Ronald Reagan’s decision to strongly recommend that Clark Kerr be fired . . .”).

162. See Mary Ann Wynkoop, *Dissent in the Heartland: The Sixties at Indiana University* 90–91 (rev. & expanded ed. 2017) (discussing how the Indiana University Board of Trustees, due to pressure from the legislature, implemented a “tough new student code of conduct” reflecting “a reactionary trend among university officials across the nation”).

163. Metz, *supra* note 121, at 167 (internal quotation marks omitted) (quoting Carl Schwartz, Union Incident ‘Damn Foolish’—Rep. Clabaugh, *Daily Illini*, Sep. 13, 1968, at 1).

164. 1969 Ill. Laws 3235.

165. *Id.* (internal quotation marks omitted); see also Thomas Buck, *Adopts Illini Code of Conduct*, *Chi. Trib.*, Aug. 13, 1970, at 7 (on file with the *Columbia Law Review*) (reporting on the adoption of a code of conduct by trustees of the University of Illinois “to prevent any further ‘disruptive or coercive demonstrations’ on the Urbana and Chicago campuses”); Thomas Buck, *U. of I. Trustees Move to Avert Campus Disorders*, *Chi. Trib.*, Sept. 17, 1970, at 10 (on file with the *Columbia Law Review*) (discussing the amendments made to the student code by the University of Illinois Trustees to “[r]estrict [d]isorders”).

“strengthen” the school’s disciplinary rules in an attempt to suppress campus protests.¹⁶⁶ Around the same time, several states enacted legislation specifically directing university governing boards to adopt, enforce, or reinforce student conduct codes.¹⁶⁷ In fact, laws addressing punitive measures for students engaged in what were deemed unruly protests emerged in more than half of states nationally.¹⁶⁸ According to public opinion polls at the time, the public and other students largely supported the discipline and crackdown of student protesters.¹⁶⁹

2. *Criminal Sanctions.* — Some states and universities pursued harsh sanctions against students, including expulsion and criminal penalties. In California, for example, new sections were added to the Penal Code in 1969 to criminalize behavior such as “loud or unusual noise” on higher education campuses, carrying a fine of up to \$200, up to ninety days in jail, or both.¹⁷⁰ Similarly, in Wisconsin, using “sound-amplifying equip-

166. Thomas Buck, New Illini Discipline Plan Set, Chi. Trib., Jan. 20, 1972, at 7 (on file with the *Columbia Law Review*).

167. Florida approved a law that same year. See 1969 Fla. Laws 1016–17, § 240.045 (“[T]he board of regents shall adopt rules and regulations for the lawful discipline of any student, faculty member, or member of the administrative personnel who intentionally acts to impair, interfere with, or obstruct the orderly conduct, processes, and functions of a state university.”); see also, e.g., A Compendium of State Legislation in Response to Campus Disorder, in *Law and Discipline on Campus*, supra note 141, 331 app. X at 333–35 (compiling statutory provisions that directed the adoption of administrative rules in California, Florida, New York, North Dakota, and Virginia); Ronald L. Rowland, An Overview of State Legislation Responding to Campus Disorders, 1 J.L. & Educ. 231, 243–45 (1972) (discussing New York and collecting statutory citations). As Ronald Rowland described these rules:

In keeping with a general legislative feeling that university administrators had not properly handled student disciplinary problems, some legislatures have pressured university officials into developing disciplinary codes and procedures by reaffirming in statute that such administrators have been delegated such authority. Several legislatures also have gone beyond the mere recognition of the authority by making it mandatory for trustees and governing boards to adopt rules to maintain campus order and to adopt an enforcement program for these rules. In all states having such a statute, compliance is assured by conditioning state aid upon filing of the rules.

Id. at 243 (footnotes omitted).

168. See A Compendium of State Legislation in Response to Campus Disorder, supra note 167, at 331 (collecting laws from twenty-seven states).

169. In an August 1969 Gallup poll for Newsweek, 84% of respondents indicated college campus demonstrators had been dealt with too leniently. Gallup/Newsweek Poll # 1969-6988: Middle America (1969) [Roper #31089333], Roper iPoll, <https://ropercenter-cornell-edu.ezproxy.cul.columbia.edu/ipoll/study/31089333> (on file with the *Columbia Law Review*).

170. 1969 Cal. Stat. 2919 (codified as amended at Cal. Penal Code § 415.5 (2024)). The current version of the law provides even harsher penalties. See Cal. Penal Code § 415.5 (stating that any person who “maliciously and willfully disturbs another person” at a school

ment . . . without the permission of the administrative head of the institution or his designee” was penalized with a fine of up to \$100, thirty days in jail, or both.¹⁷¹

Carrying even greater sanctions and harsh consequences were new failure-to-leave, unauthorized reentry, and criminal trespass laws enacted in several states. For example, California Assembly Member Frank Murphy, Jr. sponsored Assembly Bill 534 “to give school administrators the legal tools to deal with campus troublemakers.”¹⁷² Among other provisions, the law made it a misdemeanor for a student or employee who had been “suspended or dismissed from [an institution of higher education] for disrupting the orderly operation of the campus” and denied access as a condition, to thereafter access campus without “express written permission.”¹⁷³ A first conviction carried a fine of up to \$500, up to six months in jail, or both; a third conviction carried a mandatory three-month prison term and a fine of up to \$500.¹⁷⁴

Similar provisions were enacted in Wisconsin and Ohio. In Wisconsin, anyone who was “in a state of suspension or expulsion from the institution” and entered the property without consent faced a fine of up to \$500, up to six months imprisonment, or both.¹⁷⁵ Meanwhile, in Ohio, House Bill 1219 swept a wide variety of activities—under the then-heading of “[d]isrupting orderly conduct of a college or university”—into the crime of disruption, which carried a fine of up to \$100, thirty days in jail, or both, for the first offense.¹⁷⁶ The penalty escalated to a fine of up to \$500, six months in jail, or both, for each subsequent offense.¹⁷⁷ That same bill prohibited any “student, faculty or staff member, or employee under dismissal or suspension” from entering campus “without the express permission of the Board of Trustees or the President.”¹⁷⁸

A Michigan law also prohibited faculty and employees from even receiving salary or wages from “any appropriation made by this act” if “convicted of the offense of interference with normal operations of any public institution of higher education,” which included a list of misde-

“by loud and unreasonable noise” is guilty of a misdemeanor punishable by a fine of up to \$400, imprisonment for no more than 90 days, or both).

171. 1969 Wis. Sess. Laws 64, repealed by 1973 Wis. Sess. Laws 1092.

172. Jerry Gillam, Assembly OKs Bill to Crack Down on Campus Violence, L.A. Times, June 27, 1969, at 3 (on file with the *Columbia Law Review*); see also Day in Sacramento, L.A. Times, June 27, 1969, at B4 (on file with the *Columbia Law Review*).

173. 1969 Cal. Stat. 2919, 2920–21 (codified as amended at Cal. Penal Code § 626.2 (2025)).

174. *Id.*

175. 1969 Wis. Sess. Laws 64 (codified as amended at Wis. Stat. § 36.35 (2025)).

176. 1970 Ohio Laws 3022, 3023 (codified in scattered sections of Ohio Rev. Code Ann. §§ 2911, 2917 (2025)).

177. *Id.*

178. *Id.* at 3028 (codified at Ohio Rev. Code Ann. § 3345.25).

meanors such as “willfully remaining on” campus or “damaging or disrupting” higher education institutions.¹⁷⁹ Lastly, the legislature conditioned appropriations on schools’ enforcement through expulsion, stating “that a student of a college or university who causes willful damage to public property on a campus or other facility of a college or a university and subject to all other legal penalties shall be expelled from the college or university.”¹⁸⁰

3. *Economic Sanctions and Expulsions.* — Some of the harshest forms of punishment inflicted upon protesters were economic sanctions, including fines and educational interruption resulting from suspensions. Utilizing similar formidable tactics as the California and Illinois politicians, state legislators across the nation revoked state financial aid for students engaged in protest.¹⁸¹ For example, in April 1969, New York legislators amended the education code to compel “[t]he trustees or other governing board of every college chartered by the regents” to “adopt rules and regulations for the maintenance of public order on college campuses and other college property used for educational purposes and provide a program for the enforcement thereof.”¹⁸² Penalties for “a student or faculty violator” included “suspension, expulsion or other appropriate disciplinary action.”¹⁸³ Furthermore, the statute required that the rules be filed with the regents and the education commissioner within ninety days of the law’s enactment; failure to do so placed schools’ eligibility for state aid at risk.¹⁸⁴

Following the National Guard’s shooting of two Black student protesters in 1969, the North Carolina legislature enacted House Bill 985, a law revoking student financial aid based on a broad range of protest activities.¹⁸⁵ The law applied to all students enrolled in higher education who were convicted, entered a guilty plea, or pled *nolo contendere* to certain protest-related charges, including: unlawful demonstration or

179. 1970 Mich. Pub. Acts 73; *id.* at 248.

180. *Id.* at 248.

181. See, e.g., Rowland, *supra* note 167 (examining legislative responses to campus unrest); Michael Frei, Note, Campus Unrest, University Autonomy, and the Legal Process, 1971 Utah L. Rev. 355, 356–60 (reviewing sources of community pressure); Gregory D. Keeney, Comment, Aid to Education, Student Unrest, and Cutoff Legislation: An Overview, 119 U. Pa. L. Rev. 1003 (1971) (collecting and examining cutoff legislation).

182. 1969 N.Y. Laws 913, 913–14. For a summary of the law in the year of passage, see John C. Crary Jr., Control of Campus Disorders: A New York Solution, 34 Alb. L. Rev. 85, 85–90 (1969); see also Rowland, *supra* note 167, at 243–45.

183. 1969 N.Y. Laws 913, 913–14.

184. The Second Circuit decided, after some years of litigation, that the lower court had too quickly dismissed the argument that private schools could not be subject to this new law. See *Coleman v. Wagner Coll.*, 429 F.2d 1120, 1124–25 (2d Cir. 1970). The court determined that, in the context of other bills in the New York legislature, it was likely that the legislature “intended to coerce colleges to adopt disciplinary codes embodying a ‘hard-line’ attitude toward student protesters.” *Id.*

185. 1969 N.C. Sess. Laws 1162 (codified at N.C. Gen. Stat. § 116-174.2 (2025)).

assembly, sitting down in a building they had seized, and lying down in building entrances or on the campus of any college.¹⁸⁶ The law pressured administrators to immediately revoke state financial assistance for such students.¹⁸⁷ The law stands today without amendment.¹⁸⁸

Similarly, the Pennsylvania legislature added a new section to the Pennsylvania Higher Education Assistance Agency Act “permitting the Pennsylvania Higher Education Assistance Agency to deny financial assistance for students.”¹⁸⁹ Among other provisions, the law permitted denial for students “expelled, dismissed or denied enrollment . . . for refusal to obey . . . a lawful regulation or order” of a higher education institution, where the refusal, “*in the opinion of the institution*, contributed to a disruption of the activities.”¹⁹⁰ Furthermore, the law required higher education institutions to provide the state agency with the names and addresses of these students, and it mandated that any institution “which refuse[d] to execute an agreement with the agency to comply . . . shall be denied the status of an approved institution.”¹⁹¹ The law stands today without amendment.¹⁹²

Pennsylvania was not alone in mandating schools turn over protester identities, and some states required even more information sharing. In Michigan, for several years through appropriation bills, the legislature ushered in new reporting requirements, along with a range of penalties against faculty and students in connection with campus disorder.¹⁹³ The law mandated that higher learning institutions report, within thirty days, incidents of physical violence or property destruction, along with the amount of damages, “the number of students arrested, and [the number of] classes missed due to strikes, boycotts or demonstrations.”¹⁹⁴ Furthermore, the law required students that were “either convicted in a court of law of the violation of any penal statute or ordinance prohibiting disorderly conduct, violence to a person or damage to property, . . . or by the proper authorities of such institutions of violating its rules and regulations while so participating” to forfeit scholarship funds or tuition grants.¹⁹⁵

186. N.C. Gen. Stat. § 116-174.2.

187. See *id.*

188. *Id.*

189. 1969 Pa. Laws 284 (codified at 24 Pa. Stat. and Cons. Stat. Ann. § 5104.1 (2025)).

190. 24 Pa. Stat. and Cons. Stat. Ann. § 5104.1 (emphasis added).

191. *Id.*

192. *Id.*

193. 1970 Mich. Pub. Acts 230, 248 (providing that students who violate “[c]ampus disorder[]” laws may forfeit scholarships or grants and that faculty who “interfere[] with normal operations of any public institution of higher education” may lose their salary or wages).

194. *Id.* at 247.

195. *Id.* at 248.

Finally, in California, then-Governor Reagan approved Assembly Bill 1286 on September 4, 1969.¹⁹⁶ Among other measures, students who were found to have “willfully and knowingly disrupted the orderly operation of the campus” could become ineligible to receive state financial aid for two years.¹⁹⁷ The law differentiated between students who were arrested and convicted and those who disrupted campus life.¹⁹⁸ For students found to have disrupted campus activities, but who had not been arrested and convicted, a board would make the ineligibility determination after a hearing.¹⁹⁹ The bill as proposed required mandatory, not discretionary, ineligibility for that group of students.²⁰⁰ During consideration of the campus disorder legislation in 1969, a member of the Select Committee on Campus Disturbances, Assembly Member John Vasconcellos, raised the issue of the disparate effect that mandatory ineligibility would have based on a student’s socioeconomic background and recommended a review hearing process instead.²⁰¹ The law as substantially enacted stands today.²⁰²

4. *Role of U.S. Congress.* — As schools and states condemned student activism, the federal government also took measures to punish universities for allowing antiwar and civil rights activism.²⁰³ In 1968, Congress passed the Anti-Riot Act, also known as Title X, criminalizing those who “incite,” “organize, promote, encourage, participate in, or carry on a riot” as well as those who “aid or abet any person in inciting or participating or carrying on a riot.”²⁰⁴ Federal agencies also shifted research funding away from colleges where students protested war-related research and toward colleges

196. 1969 Cal. Stat. 2927, 2930 (codified as amended at Cal. Educ. Code § 69810 (2025)).

197. *Id.*

198. *Id.*

199. *Id.*

200. Letter from John Vasconcellos, Cal. Assemblyman, to Victor Veysey, Chairman, Assemb. Educ. Comm. (May 9, 1969), in Cal. Comm. Report, *supra* note 145, at app. H 168, 173–74.

201. *Id.* (stating the bill “invokes a heavier burden on poor students than falls upon rich students” since “the rich student could continue to avail himself of the public institution supported by our tax money while the poor student would be eliminated because of his resultant inability to finance his education”). Other literature at the time, including by students, also highlighted the inherent unfairness of cutoff statutes. See Keeney, *supra* note 181, at 1020 (“Financial cutoff statutes are unfair and ineffective because the punishment fits, not the crime, but the wealth of the offender.”).

202. The financial aid eligibility provisions are codified at section 69810 of the California Education Code. Cal. Educ. Code. § 69810 (2025). In 1988, the provisions were temporarily suspended and scheduled to be made operative again on January 1, 1993. 1987 Cal. Stat. 2150, 2152.

203. See Berman, *supra* note 159 (noting that federal agencies “shifted their research funding away from prominent colleges where students were protesting their schools’ involvement in war-related research, and toward labs at less hostile schools”). President Nixon approved reallocating funds from federal research grants to universities to student loan programs. Schrecker, *The 50-Year War*, *supra* note 75.

204. Pub L. 90-284, ch. 102, 82 Stat. 73, 75–77 (codified at 18 U.S.C. §§ 2101–2102 (2018)) (internal quotation marks omitted).

with less hostile environments.²⁰⁵ That same year, to further pressure states and institutions, Congress enacted amendments to the Higher Education Act of 1965, restricting eligibility for federal financial assistance under various programs, including federal student loans, grants, the student loan insurance program, work-study, and fellowship programs.²⁰⁶ The amendments restricted aid to students and employees of higher education institutions convicted of crimes involving “force, disruption, or the seizure of property” on campus after October 16, 1968.²⁰⁷

Considering these legislative responses aimed at preventing protest in the context of colleges’ new and growing policing and disciplinary apparatuses, one can see the potential for policing to influence core educational functions and processes.

5. *Violent Crackdowns on Campuses.* — As discussed by historian Elizabeth Hinton, the late 1960s were marked by students protesting police brutality and advocating for their civil rights. In May 1969, confrontations between high school and college student protesters and police in North Carolina led to the National Guard shooting a student at North Carolina A&T State University.²⁰⁸

Police involvement on college campuses reached a peak after President Nixon announced the United States’ ground invasion of Cambodia in the spring of 1970.²⁰⁹ In response, protesters held strikes at roughly four hundred colleges across the country, resulting in faculty from around two hundred colleges suspending classes²¹⁰ and the temporary closure of many universities.²¹¹ These student protesters were met with even stronger police and military presence than that which was seen in the 1960s. At Ohio State University, antiwar protesters joined Black student activists for a cross-campus student strike pressuring officials to meet their demands following the assassination of Dr. Martin Luther King in 1968.²¹²

205. *Id.*; see also Thomas D. Snyder & Charlene M. Hoffman, Nat’l Ctr. for Educ. Stat., NCES 94-115, Digest of Education Statistics: 1994, at 38 tbl.34 (1994), <https://nces.ed.gov/pubs94/94115.pdf> (on file with the *Columbia Law Review*) (publishing data from 1970 to 1990 showing that roughly 2% of all governmental expenditures on educational institutions went toward funding public safety—categorized as “[p]olice protection” and “[c]orrection”).

206. Higher Education Amendments of 1968, Pub. L. No. 90-575, § 504, 82 Stat. 1014, 1062 (codified at 20 U.S.C. § 1060 (1970)), repealed by Pub. L. No. 92-318, § 139 B(b), 86 Stat. 235, 281–82 (1972)).

207. *Id.*

208. Hinton, *supra* note 96, at 2 (“The confrontations between local police and Black high school and college students led authorities to call the National Guard to A&T’s campus, unleashing violence and repression that ended in the killing of sophomore Willie Grimes.”).

209. Metz, *supra* note 121, at 205–06, 209–10.

210. See *id.* at 210, 212 (noting that nearly 30% of colleges nationwide went on strike or closed).

211. Biondi, *supra* note 98, at 160.

212. *Id.*

The National Guard, alongside city and state police, threw tear gas and shot rounds to put down the strike, leading to at least seven deaths and hundreds of arrests.²¹³ A few days later, the horrific Kent State massacre occurred.²¹⁴ The Ohio National Guard killed four unarmed student protesters and wounded nine others after opening fire into a crowd of student protesters.²¹⁵ Just two weeks later, at an antiwar protest at the historically Black Jackson State College in Jackson, Mississippi, police killed two students—a local high schooler and a law student—and injured twelve others after firing 140 shots into a women's dormitory.²¹⁶ The students had been “protesting racism in the city, the war in Vietnam and Cambodia, and the Kent State murders.”²¹⁷ The nation was shocked to see police shooting and killing students.²¹⁸

At this time, universities began to turn toward more robust campus police forces as a way to control students, with assistance from state legislatures and attorneys general.²¹⁹ The 1970 report published by President Nixon's Commission on Campus Unrest construed student protesters as potential criminals, framing them as the root cause of the ongoing social disorder in the United States and as a threat to democracy.²²⁰ While seemingly advocating for civil rights, President Nixon wielded the Commission's report to redirect authority to police and courts, and away from students.²²¹ When President Nixon declared the war on drugs in 1971, for instance, state and local law enforcement gained access to federal

213. *Id.*

214. *Id.* at 161.

215. *Id.*

216. See *id.* at 161; cf. Jack Bass & Jack Nelson, *The Orangeburg Massacre* 61–77 (2002) (documenting a similar incident that took place in 1968 at South Carolina State College in Orangeburg, South Carolina, also a historically Black college, where law enforcement shot and killed three student protesters and wounded twenty-eight); Will D. Campbell, *Introduction* to Bass & Nelson, *supra*, at xi (same); Suriel et al., *supra* note 4, at xv (“Just two weeks [after the Kent State massacre], state and municipal police fired on a women's dormitory at the historically Black institution Jackson State College in Jackson, Mississippi, killing two students and injuring twelve others.”).

217. Biondi, *supra* note 98, at 161.

218. See *id.*

219. *Id.*

220. See President's Commission Report, *supra* note 91, at 1–6 (“There can be no more ‘trashing,’ no more rock-throwing, no more arson, no more bombing by protesters. . . . If our society is to survive, criminal acts by students must be treated as such wherever they occur and whatever their purpose.”); see also Ferguson, *supra* note 96, at 17–20.

221. Ferguson, *supra* note 96, at 17–20 (“Let those who have the responsibility to enforce our laws, and our judges who have the responsibility to interpret them, be dedicated to the great principles of civil rights. But let them also recognize that *the first civil right of every American is to be free from domestic violence.*” (emphasis added by Ferguson) (internal quotation marks omitted) (quoting Richard Nixon, 37th President of the United States, Address Accepting the Presidential Nomination at the Republican National Convention in Miami Beach, Florida (Aug. 8, 1968), <https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-republican-national-convention-miami> [<https://perma.cc/6L4Q-SZ9B>])).

funding used to enmesh police within schools, including institutions of higher education.²²² During this same period, school administrators elevated the status of campus security, authorizing campus police to remove and arrest protesters from occupied buildings and to use force against students.²²³

C. *Law Enforcement Surveillance*

Campus police didn't operate alone in clamping down on antiwar and civil rights protests on college campuses.²²⁴ Though these relationships are highly secretive, the FBI has long partnered with police and security forces on some university campuses, especially larger universities with high crime rates and institutions heavily involved in sensitive research topics.²²⁵ In the context of the broader monitoring of political dissent and activism on university campuses during the 1960s and 1970s, police engaged in political surveillance through actions like infiltrating university classrooms, attending campus political activities, and maintaining investigative files on educators or academic administrators.

The University of Minnesota Police Department shared information with military intelligence in the late 1960s and early 1970s, among other

222. See Patel, *Transinstitutional Policing*, *supra* note 34, at 883–85. The ongoing war on drugs in large urban areas fueled campus policing, encouraged universities to forge stronger relationships with municipal and federal agencies, and shaped campus police strategies and tactics. See Valile Suriel, *The War on Drugs Meets Campus Police*, *in* *Cops on Campus*, *supra* note 2, at 95, 96 (arguing that “the War on Drugs was a critical force in making campus police what they are today”).

223. Suriel, *supra* note 222, at 96; see also Miller & Russell-Brown, *supra* note 20, at 76.

224. See generally Michel, *Spying on Students*, *supra* note 100, at 17–41 (describing how “Presidents Lyndon Johnson and Richard Nixon . . . insisted that security officials use their considerable powers to investigate student groups and activists”); Nina Gilden Seavey, *Surveillance and Subversion of Student Activists, 1967–1970: Standoff in St. Louis*, *in* *Left in the Midwest: St. Louis Progressive Activism in the 1960s and 1970s* 145, 154–56 (Amanda L. Izzo & Benjamin Looker eds., 2022) (chronicling the surveillance of students by the FBI at Washington University and noting that “the FBI was not the only agency of surveillance and subversion on college campuses”); Grace Watkins, *Campus Police, FBI and, in 1 The Federal Bureau of Investigation*, *supra* note 138, at 49, 49 (“Two types of interactions typically characterized [FBI–campus police] partnerships: officer training and surveillance. A significant number of schools hired former FBI agents or FBI-trained police officers to serve as their police chiefs, as part of a larger effort to rapidly professionalize their departments and closely monitor student activism.”).

225. See Paul G. Chevigny, *Politics and Law in the Control of Local Surveillance*, 69 *Cornell L. Rev.* 735, 768 (1984); see also Richard E. Morgan, *Domestic Intelligence: Monitoring Dissent in America* 68–69 (1980) (discussing the CIA’s Operation CHAOS, which “developed files on New Left activities, campus radicals, and black nationalists,” and another file-gathering project, “Project RESISTANCE,” a “campus-oriented program” with “occasional contributions” from local law enforcement and campus police); Athan Theoharis, *Spying on Americans: Political Surveillance From Hoover to the Huston Plan* 18 (1978) (noting that the FBI director “imposed an age minimum of twenty-one for FBI campus informants” in 1967).

campus surveillance activities.²²⁶ In a statement, then-University of Minnesota President Malcolm Moos said:

Nonetheless, it is the case that military intelligence agents, normally assigned to conduct security clearance interviews on individuals seeking employment or commissions that required such clearances, began in 1967 to engage in systematic surveillance of our campus. Liaison was established with the university police department and the office of admissions and records. In the latter case, agents obtained total access to confidential student records without demonstrating that the student had granted permission for the investigation. The relationship with the university police department was less detailed but equally profound. It involved conversations about the political life on the campus, occasional identification of individuals in photos taken by military intelligence agents, and in at least one instance, the transfer of university police photographs to agents of the military intelligence.²²⁷

Beyond protecting research and addressing crime, the FBI, as part of COINTELPRO, also partnered with university police departments throughout the 1960s and 1970s to infiltrate leftist antiwar and civil rights activist groups.²²⁸ Counterintelligence “suggestions” shared with FBI field offices in July 1968 offered a wide range of disruption, exploitation, and “ridicule” techniques, such as promoting anonymous letter writing and false propaganda campaigns.²²⁹ Agents (or their informants) tapped into radio frequencies to disrupt the planning of protests, stole membership rolls or accessed financial records,²³⁰ and profiled individual student

226. See Federal Data Banks, Computers and the Bill of Rights: Hearings Before the Subcomm. on Const. Rts. of the S. Comm. on the Judiciary, 92d Cong. 551 (1971) (report of Eugene Eidenberg, Assistant V.P. for Admin., Univ. of Minn., to Malcom Moos, President, Univ. of Minn.).

227. *Id.* at 533 (statement of Malcom Moos, President, Univ. of Minn.).

228. See Watkins, *supra* note 224, at 49–50 (describing COINTELPRO’s campaign against the New Left on college campuses).

229. S. Rep. No. 94-755, at 26 (1976).

230. See, e.g., Biondi, *supra* note 98, at 272 (explaining how Black student unions were especially vulnerable to surveillance and infiltration by law enforcement); Michel, *Spying on Students*, *supra* note 100, at 39 (discussing a 1967 Memphis office report on the Southern Student Organizing Committee that included membership, mailing, and financial records and detailing how FBI agents and informants were embedded on campuses during the 1960s, including at the University of South Carolina); Andrew Pedro Guerrero, “The King of Sting”: A History of the UCLA Police Department, *in* *Cops on Campus*, *supra* note 2, at 109, 111 (explaining how during antiwar protests in 1969, LAPD officers enrolled at the University of California, Los Angeles and posed as students to “gather intelligence and disrupt student activism,” embedding themselves in student organizations as prominent antiwar figures, inciting violence during protests, and even writing op-eds for the student newspaper).

leaders.²³¹ Federal tactics included employing “fake leaflets” to spread misinformation and sow discord among student activist groups.²³² The FBI also designed plans to disrupt student activism through strategies like informing local police about “pot parties” in hopes that student activists would be arrested and expelled.²³³ Investigators sometimes targeted white student activists and monitored meetings associated with the predominantly white Southern Students Organizing Committee, believing the organization provided financial and logistical support to other Black organizers.²³⁴

One instance of undercover police surveillance for the FBI on a college campus took place at the University of Vermont.²³⁵ In December 1970, a student newspaper at the Vermont college uncovered ties suggesting that campus officers were conducting undercover surveillance for the FBI.²³⁶ The student-written article included a surveillance photograph of the lead organizers with annotations likely made by the chief of the University of Vermont’s security force.²³⁷ In the photo, “FBI” was written next to the main activists’ names.²³⁸

Professor Gregory Duhé has written about similar infiltration tactics at Louisiana State University of New Orleans²³⁹ (LSU-NO), where, in spring 1968, New Orleans FBI agents initiated a COINTELPRO and planted an informant to monitor a Student Liberal Federation (SLF) chapter affiliated with trade unions.²⁴⁰ The infiltration efforts were fueled by the fact that the FBI suspected that a student activist’s parents could be potential sympathizers with the New Left movement.²⁴¹ The New Orleans field office investigation of the SLF reported that the group was “revolutionary in the sense that it attacks the policies, procedures, regulations, and authorities within the university.”²⁴² As the protest movement on LSU-NO’s campus grew, the FBI informant—Harry Schafer—used FBI COINTELPRO techniques to disrupt, discredit, and ultimately cause the

231. See Wynkoop, *supra* note 162, at 72–73 (describing the surveillance and arrest on a drug charge of Indiana University student Bob Grove, founder of the University’s Du Bois Club, by Indianapolis agents).

232. Michel, *Spying on Students*, *supra* note 100, at 43.

233. *Id.* at 88 (internal quotation marks omitted).

234. *Id.* at 39.

235. See Seager, *supra* note 136, at 14.

236. *Id.*

237. *Id.*

238. *Id.*

239. See Duhé, *supra* note 94, at 57.

240. *Id.*

241. *Id.*

242. *Id.* at 58 (internal quotation marks omitted) (quoting Memorandum from FBI, New Left Activities—Louisiana State University in New Orleans 2 (June 26, 1968), <https://vault.fbi.gov/cointel-pro/new-left/COINTELPRO%20New%20Left%20New%20Orleans%20Part%2001%20%28Final%29/view> (on file with the *Columbia Law Review*)).

destruction of the student activist movement on campus.²⁴³ Schafer repeatedly provoked violent confrontations between the student protesters and university officials to discourage student activism and to lead campus administrators to believe that the students had a violent agenda prone to terrorism.²⁴⁴ Schafer changed the student activist group's main slogan from "get the Marines off campus" to "off the Marines," suggesting the protesters supported killing Marines.²⁴⁵ The informant also urged members of the group to vandalize hotels and throw bricks through windows of wealthy establishments, which the FBI would use as pretexts to legally investigate suspect groups.²⁴⁶ When Schafer's role as an informant was finally revealed in a *New York Times* article, many faculty members claimed they were unsurprised, having recognized that Schafer gave the university administration the grounds to attack radicals on campus and discredit the student movement, as the government had intended.²⁴⁷

In a discussion about the Los Angeles Police Department's (LAPD) involvement in campus policing, scholar Andrew Pedro Guerrero describes similar circumstances in the late 1960s and early 1970s, when LAPD officers enrolled as college students at the University of California, Los Angeles (UCLA).²⁴⁸ The LAPD officers—with access to campus and classroom activities and the intent to disrupt and surveil campus antiwar protest activities—infiltrated student groups, promoted violence during protest activity, and sowed discord through letters published in the student newspaper.²⁴⁹ Furthermore, the LAPD gathered intelligence and created "dossiers" as part of their surveillance of campus activity.²⁵⁰ Officers filed "intelligence" reports to compile "records" on students and professors.²⁵¹

History reveals that law enforcement surveillance during this period also relied on networked information²⁵² between law enforcement agencies and school administrators to monitor and suppress students and faculty. Scholar Mary Ann Wynkoop tells the story of the Indianapolis FBI infiltrating Indiana University at Bloomington with paid informants, "one of whom had been elected to an office of a student group," providing the informant the opportunity to attend meetings of campus organizations

243. Id. at 65.

244. Id. at 65, 67.

245. Id. at 69 (internal quotation marks omitted).

246. Id. at 70.

247. Id. at 72.

248. See Guerrero, *supra* note 230, at 109, 111.

249. See *id.* at 111.

250. See *White v. Davis*, 533 P.2d 222, 225 (Cal. 1975) (in bank) ("The complaint also alleges that the undercover police agents have joined university-recognized organizations, have attended [their] public and private meetings . . . and have made reports on discussions at such meetings. The reports of these undercover agents are allegedly maintained by the police department in files, 'commonly designated as "police dossiers."").

251. Id. at 224 (internal quotation marks omitted).

252. See *infra* section II.B.

and gather intelligence.²⁵³ FBI agents routinely kept the Indiana University president apprised of “potential problems among student activists.”²⁵⁴

In another example, scholar Gregg Michel recounts how the Memphis Police Department’s Domestic Intelligence Unit (DIU) collaborated with the administration and security office at Memphis State University (MSU), “who were anxious to control the student population and prevent the type of discord that had roiled other campuses” in the 1960s.²⁵⁵ Michel describes how, among other surveillance activities, undercover police infiltrated the campus to monitor protest activity by posing as enrolled students.²⁵⁶ He also chronicles the extensive flow of information between the DIU and MSU, which included the MSU security office sharing with the DIU confidential educational and personal records of student activists, as well as the dates of activists’ meetings.²⁵⁷ In turn, the DIU provided MSU with photographs of demonstrators suspected of being MSU students so that administrators could identify them.²⁵⁸

Since the early 1970s, most colleges and universities have maintained a relatively apologetic stance regarding police repression and student movements of that era. They promote their past promotion of free speech while downplaying the reality of their role in student movement repression and police violence.²⁵⁹ As universities face another time of crisis and state interference, this Part centers that past time to show the connections between the ways university discipline, policing, and state regulation of student protest developed. This historical review also provides insights into prior attempts to condition financial aid in higher education. The rest of this Piece shows how the policing and university discipline infrastructures created in the mid-1960s and early 1970s enable the repression students and faculty experience today.

II. LEGISLATIVE AND ECONOMIC PRESSURE

In December 2023 and April 2024, the country witnessed members of the House Committee on Education and the Workforce uncomfortably question three university presidents.²⁶⁰ Soon thereafter, leaders from many

253. Wynkoop, *supra* note 162, at 71.

254. *Id.* at 72.

255. Gregg L. Michel, *Surveilling the Memphis Movement: Police Spying in Memphis, 1968–1976*, 87 *J.S. Hist.* 673, 698 (2021).

256. *Id.* at 699–700.

257. *Id.* at 698–99.

258. *Id.*

259. See, e.g., Free Speech, UC Berkeley, <https://www.berkeley.edu/free-speech/> [<https://perma.cc/C3RQ-G4C6>] (last visited Mar. 10, 2025) (crediting UC Berkeley as founding the Free Speech Movement and honoring free speech as “indispensable to our society” and “one of UC Berkeley’s most cherished values”).

260. See Stephanie Saul & Anemona Hartocollis, *College Presidents Under Fire After Dodging Questions About Antisemitism*, *N.Y. Times* (Dec. 6, 2023), <https://www.nytimes.com/2023/12/06/us/harvard-mit-penn-presidents-antisemitism.html> (on file with the

universities dispersed student-led, pro-Palestine encampments,²⁶¹ perhaps to avoid similar fates. Harvard's former president, Claudine Gay, an esteemed scholar and the first Black woman to hold the prestigious position, resigned after her congressional hearing under a cloud of accusations, including allegations of antisemitism and condemnations of her response to the University's spring encampments.²⁶² Elise Stefanik's (R-NY) questioning of Columbia University's former president Minouche Shafik made headlines for similar reasons, and Shafik resigned after botched dealings with student protesters and pressure from trustees and lawmakers.²⁶³ The questioning and its aftermath laid bare that the pressure university decisionmakers faced during the student protest movements in the late 1960s and early 1970s still exists today. University administrators remain beholden to state and federal political willpower and feel pressure from, among other sources, legislators to curtail traditionally protected speech and less protected expressive conduct in order to maintain their funding and research grants.²⁶⁴

A year later, the events of March 2025 highlight the vulnerability of higher education to extreme political agendas. Leaders of colleges and universities have faced intense scrutiny by the Trump Administration for diversity initiatives and for permitting minimal levels of pro-Palestine protests and speech.²⁶⁵ Even storied institutions with large endowments

Columbia Law Review); Hearing Recap: College Presidents Edition, Comm. on Educ. & Workforce (Dec. 5, 2023), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409831> [<https://perma.cc/QLQ8-EM59>].

261. The responses were varied. Northwestern negotiated a resolution to its encampment. See Michael Schill, Kathleen Hagerty & Susan Davis, Agreement on Deering Meadow, Nw. Univ. (Apr. 29, 2024), <https://www.northwestern.edu/leadership-notes/2024/april-29-agreement-on-deering-meadow.html> [<https://perma.cc/FFR7-T8LX>]. Columbia used the NYPD. See Letter from Minouche Shafik, President, Columbia Univ., to Michael Gerber, Deputy Comm'r, N.Y. Police Dep't (Apr. 18, 2024), <https://publicsafety.columbia.edu/content/letter-nypd> (on file with the *Columbia Law Review*).

262. Emma H. Haidar & Cam E. Kettles, Harvard President Claudine Gay Resigns, Shortest Tenure in University History, Harv. Crimson (Jan. 3, 2024), <https://www.the-crimson.com/article/2024/1/3/claudine-gay-resign-harvard/> [<https://perma.cc/U75N-5KMG>].

263. See Gabriella Borter, Columbia University President Takes Heat at Congressional Antisemitism Hearing, Reuters (Apr. 17, 2024), <https://www.reuters.com/world/us/columbia-university-president-takes-heat-congressional-antisemitism-hearing-2024-04-17/> (on file with the *Columbia Law Review*).

264. Antiprotest laws have surged since 2017, with 372 bills introduced that aim to restrict protest rights. Of these, fifty bills have been enacted into law across twenty-one states, marking a substantial shift in the regulatory landscape for public demonstrations. See U.S. Protest Law Tracker, Int'l Ctr. for Not-for-Profit L., <https://www.icnl.org/usprotestlawtracker> [<https://perma.cc/LY5E-KDT6>] (last visited Apr. 9, 2025).

265. See Press Release, U.S. Dep't of Educ., U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment (Mar. 10, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-sends-letters-60-universities-under-investigation-antisemitic-discrimination-and-harassment> [<https://perma.cc/7NWF-ZZVK>].

have not been spared from the executive's attempts to strike fear in pro-Palestine college students and faculty. Columbia University revoked a number of already conferred degrees, and student protesters have been targeted for arrest and deportation.²⁶⁶ Unfortunately, the esteemed university seems to have bowed to a long list of demands, including the creation of a private "internal security force" with arrest powers, in order to reopen negotiations over \$400 million in federal funding that the Trump administration revoked.²⁶⁷ Many would say who can blame them. University presidents and deans at risk of losing millions in federal funding and grants would face potential layoffs and research funding cuts severe enough to affect not only the bottom line but also recruitment of students, tuition assistance, and research productivity.²⁶⁸

This Part reviews the political pressure that leaders in higher education navigate when they balance protecting time-honored traditions of protest and civil disobedience with external and internal disagreements on which speech and expressive conduct to protect. It relies upon an analysis using the US Protest Law Tracker,²⁶⁹ an antiprotest legislation database maintained by the International Center for Not-for-Profit Law

266. Anna Betts, *Homeland Security Agents Search Two Columbia University Students' Rooms*, *The Guardian* (Mar. 14, 2025), <https://www.theguardian.com/us-news/2025/mar/14/homeland-security-search-columbia-students> [https://perma.cc/Z8YP-R5WT]; Spencer Davis & Daksha Pillai, *UJB Issues Expulsions, Degree Revocations, and Suspensions for Hamilton Hall Occupation*, *Colum. Spectator* (Mar. 13, 2025), <https://www.columbiaspectator.com/news/2025/03/13/ujb-issues-expulsions-degree-revocations-and-suspensions-for-hamilton-hall-occupation> [https://perma.cc/YE6J-9338] (last updated Mar. 14, 2025); Maria Tsvetkova & Andrew Goudswaard, *US to Probe Columbia Protests for Terrorism Violations*, *Official Says*, *Reuters* (Mar. 14, 2025), <https://www.reuters.com/world/us/federal-agents-search-two-student-residences-columbia-university-2025-03-14> (on file with the *Columbia Law Review*).

267. Troy Closson, *Columbia Agrees to Trump's Demands After Federal Funds Are Stripped*, *N.Y. Times* (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/nyregion/columbia-response-trump-demands.html> (on file with the *Columbia Law Review*); see also *Colum. Univ., Advancing Our Work to Combat Discrimination, Harassment, and Antisemitism at Columbia 1, 2* (2025), <https://president.columbia.edu/sites/default/files/content/03.21.2025%20Columbia%20-%20FINAL.pdf> [https://perma.cc/G5E3-TX5H] (announcing the implementation of policies and initiatives that broadly align with the demands made by the Trump Administration).

268. See, e.g., Closson, *supra* note 267 ("Federal money is the lifeblood of major research universities, and some have begun to keep quiet on hot-button issues in hopes of escaping the administration's ire.").

269. See *supra* note 264. For this Piece, the author filtered the tracker by date to capture all bills introduced and laws enacted between October 7, 2023, and April 9, 2025. This led to a total of ninety-six entries for review. See US Protest Law Tracker, Int'l Ctr. for Not-for-Profit L., https://www.icnl.org/usprotestlawtracker/?location=&status=&issue=&date=custom&date_from=2023-10-07&date_to=2025-04-09 [https://perma.cc/W6UC-2MPA] (last visited Apr. 9, 2025). The author then categorized all the legislation and analyzed those relevant to campus protests and pro-Palestine protests. The author included legislation aimed at "riot" offenses or other criminal charges because these legal reforms followed high-profile, pro-Palestine demonstrations. Though not specifically aimed at college protesters, the laws would affect protest activity on large urban campuses.

(ICNL), an organization that works to “improve the legal environment for civil society, philanthropy, and public participation around the world.”²⁷⁰ This Piece is focused on campus protest policing; some of the legislative measures are specific to protests on college campuses, while others reference tactics that have or could be used during campus protests. Thus, this Part includes antimasking provisions, riot offenses, and traffic related offenses.

Notably, in response to pro-Palestine protests, there has been an intensification of legislation targeting protest activity, with ninety-six state and federal bills introduced since October 7, 2023.²⁷¹ Despite this flurry of legislative activity, only nine of these state antiprotest bills have been enacted.²⁷² The scope and nature of these bills threaten to chill the speech and the desire of individuals and organizations to participate in or support pro-Palestine demonstrations on university campuses, while creating more opportunities for police action. Surveying such legislation brings to light two notable insights. First, lawmakers use economic disincentives and immigration policy to stifle pro-Palestine speech and expressive conduct. These actions are direct, affecting protest participants, and indirect, forcing universities and colleges to change university culture in ways that prevent or delegitimize certain protected speech. Second, the proposed laws attack protest tactics (e.g., traffic interference) and measures to protect protesters’ safety (e.g., masking). This wave of enhanced antiprotest legislation at both federal and state levels regulates time-honored methods of student dissent, with implications for First Amendment and civil liberties.

A. *Federal Legislation*

At the federal level, the legislative response to pro-Palestine protests has been focused and targeted, with lawmakers introducing a series of bills demonstrating three main goals: exacting financial pressure, tightening immigration policies, and regulating masking during demonstrations. While none of the nineteen federal bills introduced since October 7, 2023,

270. About Us, Int’l Ctr. for Not-for-Profit L., <https://www.icnl.org/about-us> [<https://perma.cc/JXU9-QT2N>] (last visited Feb. 19, 2025).

271. See *supra* note 269.

272. US Protest Law Tracker, Int’l Ctr. for Not-for-Profit L., https://www.icnl.org/us-protestlawtracker/?location=&status=enacted&issue=&date=custom&date_from=2023-10-07&date_to=2025-04-02&type= [<https://perma.cc/GG69-VD6G>] (last visited Apr. 9, 2025). These nine laws have been enacted in six states: Florida (imposing new penalties for protests near pipelines and other infrastructure); Kentucky (imposing new penalties for protests at the state capitol); Louisiana (criminalizing protests near residences, providing civil immunity for drivers who hit protesters, imposing new racketeering penalties, and increasing penalties for street protesters); North Carolina (increasing penalties for street protesters and masked protesters); Tennessee (increasing penalties for protesters who block streets and highways); and West Virginia (increasing penalties for protesters near pipelines and other infrastructure). *Id.*

were enacted into law,²⁷³ they represent a shift in the legislative approach to campus activism likely to be advanced under the Trump Administration.

1. *Financial Pressure.* — A prominent strategy in federal legislative efforts since October 7, 2023, has been the use of economic leverage. These bills aimed to deter protest activities by threatening the financial stability of both individual students and educational institutions. These bills sought to use federal funding, student loans, and financial aid as tools to influence campus protest policies and individual behavior.

The No Bailouts for Campus Criminals Act (S. 4240/H.R. 8242), introduced on May 2, 2024, and referred to the Senate Committee on Health, Education, Labor, and Pensions, aimed to make individuals convicted of protest-related offenses at institutions of higher education ineligible for various forms of federal student loan relief.²⁷⁴ Specifically, the bill stated that any individual “convicted of any offense under any Federal or State law related to the individual’s conduct at and during the course of a protest that occurs at an institution of higher education shall be ineligible for forgiveness, cancellation, waiver, or modification of certain Federal student loans.”²⁷⁵ This legislation would have rendered individuals convicted of even minor, nonviolent state law offenses, like trespass or unlawful assembly, ineligible for federal student loan forgiveness.²⁷⁶

Similarly, the No Debt Forgiveness for Self-Centered Pupils at Overpriced Institutions Lacking Effectively Disciplined Students Act (or the No Debt Forgiveness for SPOILED Students Act), introduced on May 21, 2024, further epitomized the significant escalation in federal efforts to influence campus protest rules through loan policies.²⁷⁷ The bill aimed to prohibit students *and faculty* from receiving federal student loan forgiveness if they were expelled or terminated for specific offenses, including a “[h]ate crime,” “[d]isorderly conduct,” “[t]respassing,” “[c]reating a public disturbance,” or “[v]iolating Titles IV or VI of the Civil Rights Act of 1964.”²⁷⁸ This broad language encompasses a wide range of potential offenses, some of which are commonly associated with protest activities. The bill’s provocative acronym, “SPOILED,” and its depiction of “Self-Centered Pupils at Overpriced Institutions Lacking Effectively Disciplined Students” frames student protesters and others engaged in these activities in a negative light and suggests universities are not doing enough to discipline their students.

273. US Protest Law Tracker, Int’l Ctr. for Not-for-Profit L., https://www.icnl.org/us/protestlawtracker/?location=1&status=&issue=&date=custom&date_from=2023-10-07&date_to=2025-04-09&type= [https://perma.cc/XZ4E-EGUU] (last visited Apr. 9, 2025).

274. S. 4240, 118th Cong. (2024).

275. *Id.*

276. *See id.*

277. H.R. 8468, 118th Cong. (2024).

278. *Id.* § 294.

Building on these initiatives, then-Senator JD Vance (R-OH) introduced the Encampments or Endowments Act, a bill that also attempted to influence campus protest policies through financial leverage.²⁷⁹ Referred to the Senate Finance Committee, the bill aimed to make institutions of higher education ineligible for funds under Title IV of the Higher Education Act of 1965 if they failed to address what the bill termed “campus disorder.”²⁸⁰ An institution would be ineligible for funding when it “failed to disestablish any permanent encampment on the institution’s campus” or when an encampment’s occupants “attempted to interfere” with an institution’s “core function” or “obstructed the ingress or egress of students.”²⁸¹ This language directly targets the protest encampments that have become a common feature of recent campus demonstrations.

Other legislation that has targeted either encampments or student protest more broadly includes the No Tax Dollars for College Encampments Act of 2024, introduced by Representative Jim Banks (R-IN) in July 2024;²⁸² the No Higher Education Assistance for Mobs of Antisemitic and Terrorist Sympathizing Students Act (or No HAMAS Act), introduced by Senator Thomas Tillis (R-NC);²⁸³ the Prohibiting Student Loan Forgiveness for Antisemites Act;²⁸⁴ and the Education Not Agitation Act of 2024.²⁸⁵

This collection of federal legislation frames protest activity as criminal activity or destructive acts taken by “spoiled” children rather than as a legitimate method of social change.

2. *Immigration Policies.* — Another trend in recent federal antiprotest legislation has been to leverage the immigration status of international students and noncitizens as a means of deterring student protest. This section examines five key bills that exemplify this approach: the Hamas Supporters Have No Home Here Act; two bills introduced by

279. S. 4295, 118th Cong. (2024).

280. *Id.*

281. *Id.* § 124. The bill defines a “permanent encampment” as “any encampment existing on the campus of the institution of higher education for 7 days or more.” *Id.* § 124(b)(4) (internal quotation marks omitted).

282. H.R. 8883, 118th Cong. (2024) (suggesting amending the Higher Education Act to “require institutions of higher education to disclose campus policies relating to responding to certain incidents of civil disturbance”). This bill was introduced again in 2025. S. 982, 119th Cong. (2025).

283. S. 4302, 118th Cong. (2024) (proposing that individuals convicted of a broad list of protest-related offenses—such as unlawful assembly, trespass, and riot—“shall not be eligible to receive any grant, loan, or work assistance”).

284. H.R. 9102, 118th Cong. (2024) (barring any student convicted of a hate crime for “conduct that occurred during a protest at an institution of higher education that disrupts the normal campus functions” from receiving student loans or student loan forgiveness).

285. H.R. 10013, 118th Cong. (2024) (excluding individuals convicted of unlawful assembly, rioting, trespassing, vandalism, or battery in connection with a protest at an institution of higher education from eligibility for “the American opportunity credit, the lifetime learning credit, and the deduction of interest paid on qualified education loans”).

Representative Andrew Ogles (R-TN) that seek to punish pro-Palestine protesters; and two bills seeking to amend the Immigration and Nationality Act (INA). These latter two bills work in tandem with the Stop Pro-Terrorist Riots Now Act,²⁸⁶ introduced by Senator Tom Cotton (R-AR) in March 2024, which sought to greatly increase the scope of criminal penalties for federal riot and incitement to riot offenses involving property damage or injury.²⁸⁷

The Hamas Supporters Have No Home Here Act,²⁸⁸ introduced on May 1, 2024, and referred to the House Judiciary Committee, sought to amend the INA to facilitate the deportation of noncitizens charged with crimes related to their participation in what the bill characterized as “pro-terrorism or antisemitism rallies or demonstrations.”²⁸⁹

Building upon this immigration-focused approach, Representative Ogles introduced two bills on May 8, 2024, both of which proposed to expand the use of immigration policy and international penalties to address campus protests. House Resolution 8321 proposed mandatory community service in Gaza for students convicted of unlawful campus activities related to protests.²⁹⁰ This unprecedented bill, referred to the Foreign Affairs Committee, specifically targeted pro-Palestine demonstrations occurring after October 7, 2023.²⁹¹ Ogles’s second bill, House Resolution 8322, otherwise known as the Study Abroad Act, calls on the Secretary of State to revoke visas of foreign students involved in “rioting or unlawful protests.”²⁹² In a statement about the bill, Ogles stated, “It’s time to send a clear message to foreign, Hamas-sympathizing students rioting: if you bring chaos to our universities, you can study abroad somewhere else. Might I recommend Iran, Qatar, or Gaza? They seem more your speed.”²⁹³

In July 2024, Representative Nick Langworthy (R-NY) introduced House Resolution 9158, which would have required higher education institutions to report students with nonimmigrant status under the INA to ICE’s Student and Exchange Visitor Program if the students had “endorsed or supported a foreign terrorist organization.”²⁹⁴ Around the

286. S. 3887, 118th Cong. (2024).

287. *Id.* (seeking to establish a mandatory one-year prison sentence and increase the maximum penalty from five to ten years in prison for anyone who commits an act of violence while participating in a riot).

288. H.R. 8221, 118th Cong. (2024).

289. *Id.*

290. Antisemitism Community Service Act, H.R. 8321, 118th Cong. (2024).

291. *Id.*

292. H.R. 8322, 118th Cong. (2024).

293. Rep. Ogles Tells America-HATING Foreign Students “Go Home!”, Congressman Andy Ogles (May 14, 2024), <https://ogles.house.gov/media/in-the-news/rep-ogles-tells-america-hating-foreign-students-go-home> [<https://perma.cc/T8YJ-B5FS>] (internal quotation marks omitted) (quoting Rep. Andy Ogle).

294. H.R. 9158, 118th Cong. (2024).

same time, Senator Cotton introduced Senate Bill 4756²⁹⁵ and Representative Banks introduced House Resolution 9117²⁹⁶—together titled the No Visas for Criminals Act, which would have amended the INA to immediately cancel visas and deport “[a]ny alien who is convicted of a crime . . . related to the alien’s conduct and during the course of a protest that occurs at an institution of higher education.”²⁹⁷

3. *Antimasking.* — Antimasking efforts again merge campus protest policing with police surveillance technologies. The Unmasking Antifa Act of 2024 sought to regulate what some lawmakers characterized as identity concealment during protests.²⁹⁸ Introduced on May 6, 2024, and later referred to the House Judiciary Committee, it attempted to address the use of face coverings and other “disguise[s]” during demonstrations.²⁹⁹ The legislation proposed enhanced penalties under federal criminal law for individuals who commit certain offenses while “disguised,” effectively criminalizing a common protest tactic used for both personal safety and symbolic expression.³⁰⁰ The bill notably did not define “disguise,” other than as “including a mask.”³⁰¹ This broad definition encompasses a wide range of face coverings protesters use for various reasons, including preventing doxxing and protecting medically vulnerable participants.³⁰² The legislation not only makes it easier for police to engage in political surveillance of students during campus protests but also puts participants in a bind: They can either wear a mask and face criminal penalties, or go without a mask and face social or personal penalties such as doxxing, getting sick, or infecting others. Many progressive protests since the COVID-19 pandemic have encouraged masking to prevent the spread of viruses and to protect medically vulnerable participants.³⁰³ In Los Angeles,

295. S. 4756, 118th Cong. (2024).

296. H.R. 9117, 118th Cong. (2024).

297. *Id.*

298. H.R. 8248, 118th. Cong. (2024). This bill was introduced again in 2025 as the Unmasking Hamas Act of 2025. H.R. 2065, 119th Cong. (2025).

299. See H.R. 8248.

300. *Id.* § 2(a) (enhancing penalties for individuals who commit, attempt to commit, or conspire to commit certain offenses “while in disguise, including while wearing a mask” (internal quotation marks omitted)).

301. *Id.* § 3.

302. See Nicholas Fandos, In an Online World, a New Generation of Protesters Chooses Anonymity, *N.Y. Times* (May 2, 2024), <https://www.nytimes.com/2024/05/02/nyregion/college-campus-protests-anonymity.html> (on file with the *Columbia Law Review*) (reporting student demonstrators’ doxxing and virus-spreading concerns).

303. David Weigel, Behind the Mask: Why the New US Campus Protestors Cover Their Faces, *Semafor* (Apr. 23, 2024), <https://www.semafor.com/article/04/23/2024/the-rise-of-the-masked-israel-gaza-protester> (on file with the *Columbia Law Review*) (“[F]ace masks are widely used and encouraged [in left-leaning protests]. Part of the reason, say organizers, remains an attempt to make a point about exposure to COVID-19 and other health risks, which some in the left-wing protest movements believe remain dire.”).

Mayor Karen Bass ironically considered an antimasking bill five days before contracting COVID-19 herself.³⁰⁴

B. *State Legislation*

At the state level, the legislative response to protests has been more varied and proactive than federal efforts, with lawmakers introducing bills focusing on four main areas: antimasking, protecting critical infrastructure from protest-related disruptions, expanding definitions of riot-related offenses, and increasing liability for traffic-related interferences. Since October 7, 2023, seventy-seven of the ninety-six antiprotest bills introduced nationwide have originated at the state level,³⁰⁵ demonstrating the significant role state legislatures are playing in shaping protest regulation. Despite this flurry of legislative activity, however, only nine of these state bills have successfully been enacted into law,³⁰⁶ highlighting the challenges these proposals face in navigating the legislative process and potential constitutional scrutiny. This section discusses legislation targeting identity concealment, riot-related offenses, and traffic interference.

1. *Antimasking.* — Several states have introduced legislation addressing the issue of identity concealment during protests,³⁰⁷ and one, North Carolina’s House Bill 237, has been enacted into law.³⁰⁸ House Bill 237, effective June 27, 2024, permits the wearing of “medical or surgical grade mask[s]” to prevent the spreading of disease but requires a person to remove a mask when asked to do so by police or by others for identification purposes.³⁰⁹ The law created an enhanced sentence for misdemeanor or felony convictions in instances where “the defendant was wearing a mask or other clothing or device to conceal or attempt to conceal the

304. Edith Olmsted, Los Angeles’s Mayor Was Contemplating a Mask Ban. She Just Got Covid., *New Republic* (June 28, 2024), <https://newrepublic.com/post/183289/los-angeles-mayor-contemplating-mask-ban-just-got-covid> [<https://perma.cc/6XZJ-FJR2>].

305. See *supra* note 273.

306. See *supra* note 272.

307. See US Protest Law Tracker, Int’l Ctr. for Not-for-Profit L., https://www.icnl.org/usprotestlawtracker/?location=&status=&issue=5&date=custom&date_from=2023-10-07&date_to=2025-04-09&type= [<https://perma.cc/452M-AJVK>] (last visited Apr. 9, 2025) (collecting thirteen face-covering laws from eight states as well as two from the federal government); see also S.B. 709, 2025 Reg. Sess. (Md. 2025) (proposing to “prohibit[] a person from intentionally harassing, intimidating, or threatening another person while hiding or concealing their face”); Jay Stanley, States Dust Off Obscure Anti-Mask Laws to Target Pro-Palestine Protesters, *ACLU* (May 15, 2024), <https://www.aclu.org/news/privacy-technology/states-dust-off-obscure-anti-mask-laws-to-target-pro-palestine-protesters> [<https://perma.cc/7CTK-9CC3>].

308. H.B. 237, 2023–2024 Gen. Assemb. (N.C. 2024).

309. N.C. Gen. Stat. § 14-12.11 (2025).

defendant's identity."³¹⁰ Commentators said the law was passed, in part, as a result of campus protests.³¹¹

Among the states that have proposed antimasking legislation, New York has been particularly active: Two bills were introduced in the 2023 to 2024 legislative session, both of which failed, and now new bills have been introduced in the 2025 to 2026 session.³¹² Senate Bill 723³¹³ (unenacted Senate Bill 9194 in the prior session³¹⁴) introduced on January 8, 2025, represents a significant attempt to regulate the use of face coverings during protests. The bill seeks to create new criminal offenses specifically targeting mask-wearing protesters.³¹⁵ The bill proposes two distinct charges: "deceptive wearing of a mask," classified as a Class B misdemeanor punishable by up to ninety days in jail, and "aggravated deceptive wearing of a mask," classified as a more serious Class A misdemeanor carrying a potential sentence of up to one year in jail.³¹⁶ Another bill, Senate Bill 3070, introduced on January 23, 2025, creates the crime of "masked harassment."³¹⁷

At the local level, Nassau County, New York, approved its Mask Transparency Act in August 2024, which prohibits the "wearing of masks or facial coverings for the purposes of concealing an individual's identity in public places."³¹⁸ The stated intent indicated that "masks and facial covering that are not worn for health and safety concerns or for religious or celebratory purposes" are "predicate[s]" to "harassing, menacing, or criminal behavior."³¹⁹ Punished as a misdemeanor, the law carries a fine of not more than one thousand dollars, imprisonment up to a year, or both.³²⁰

310. N.C. Gen. Stat. § 15A-1340.16G (2025).

311. See Makiya Seminera, North Carolina's Restrictions on Public Mask-Wearing Are Now Law After Some Key Revisions, AP News, <https://apnews.com/article/masks-ban-north-carolina-campus-protests-128a6aa32a4c832faa83befb2e7dd77e> (on file with the *Columbia Law Review*) (last updated June 27, 2024) ("Multiple times during the bill's pathway through the legislature, GOP lawmakers said it was, in part, a response to widespread protests on college campuses against the war in Gaza.").

312. US Protest Law Tracker, *supra* note 307.

313. S.B. 723, 2025–2026 Leg. (N.Y. 2025).

314. S.B. 9194, 2023–2024 Leg. (N.Y. 2024).

315. N.Y. S.B. 723.

316. *Id.*; see also N.Y. Penal Law § 70.15(1) (McKinney 2025) (laying out punishments for Class A misdemeanors).

317. S.B. 3070, 2025–2026 Leg. (N.Y. 2025).

318. Nassau Cnty., N.Y., A Local Law to Prohibit the Use of a Mask or Facial Covering for the Purposes of Concealing an Individual's Identity in a Public Place (2024) (to be codified at Miscellaneous Laws of Nassau County, tit. 90).

319. *Id.*

320. *Id.*

The proponents of such legislation cite the need to unmask lawbreakers to identify them for criminal enforcement.³²¹ Another objective is stifling speech—engaging in pro-Palestine speech has led to well-known examples of doxxing, violence, and firing.³²²

Previous attempts to penalize masking include New York’s Senate Bill 9837, introduced on June 14, 2024, by Democratic Senator James Skoufis, which sought to amend the penal law by adding a new section making it “unlawful for any person or persons, involved in a lawful assembly, unlawful assembly, or riot, to wear a hood, mask, or device whereby the person or the person’s face is disguised so as to conceal the identity of the wearer”;³²³ New Jersey Senate Bill 3578, introduced by Republican Senator Jon Bramnick in September 2024, which seeks to establish a new “disorderly persons offense” for those “wear[ing] masks with purpose to conceal identity while committing another crime or offense”;³²⁴ House Bill 601, introduced by Missouri State Representative Bill Lucas on January 8, 2025, to enhance criminal sentences for wearing a mask during the commission of another offense;³²⁵ and Senate Bill 286, introduced by Indiana Senator Gary Byrne and currently under review by the Committee on Corrections and Criminal Law, amending Indiana’s criminal code both to broadly criminalize anyone who wears a mask at a public assembly and to establish disorderly conduct and rioting as felony offenses.³²⁶

321. See, e.g., Marquise Francis, Mask Bans Are Growing in Popularity. Critics Call the Trend a ‘Dog Whistle’ to Quell Protest., NBC News (July 8, 2024), <https://www.nbcnews.com/news/us-news/mask-bans-are-growing-popularity-critics-call-trend-dog-whistle-quell-rcna160218> (on file with the *Columbia Law Review*) (“Proponents of mask restrictions, however, say they will go a long way in keeping people safe by helping law enforcement identify criminals.”).

322. Maureen Farrell, A Prestigious Law Firm Rescinded Job Offers for Columbia and Harvard Students, but It May Reverse Itself, N.Y. Times (Oct. 17, 2023), <https://www.nytimes.com/2023/10/17/business/davis-polk-employment-columbia-harvard-israel-palestine.html> (on file with the *Columbia Law Review*) (last updated Oct. 18, 2023); Anemona Hartocollis, After Writing an Anti-Israel Letter, Harvard Students Are Doxxed, N.Y. Times (Oct. 18, 2023), <https://www.nytimes.com/2023/10/18/us/harvard-students-israel-hamas-doxxing.html> (on file with the *Columbia Law Review*) (reporting that a truck with a digital billboard “circled Harvard Square, flashing student photos and names, under the headline, ‘Harvard’s Leading Antisemites’” (quoting the billboard truck’s message)).

323. S.B. 9867, 2023–2024 Leg. (N.Y. 2024).

324. S.B. 3578, 221st Leg. (N.J. 2024).

325. H.B. 601, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025).

326. S. 286, 124th Gen. Assemb., 1st Reg. Sess. (Ind. 2025).

2. *Riot-Related Offenses.* — Several state bills would also broaden the definition of riot-related offenses and increase penalties for such activities.³²⁷ These bills, introduced in Idaho,³²⁸ Louisiana,³²⁹ Michigan,³³⁰ Missouri,³³¹ New Jersey,³³² New York,³³³ Ohio,³³⁴ Oregon,³³⁵ West Virginia,³³⁶ and Wisconsin,³³⁷ suggest a trend toward more stringent regulation of protests across different regions of the United States.

In Louisiana, House Bill 205, enacted in June 2024, sweeps into Louisiana's racketeering law new definitions of "racketeering activity," including "[r]iot," "[i]nciting to riot," "[a]iding and abetting others to enter or remain on premises where forbidden," "obstruction of a highway of commerce" (simple and aggravated), "[i]nstitutional vandalism," and more, with steep punishments.³³⁸

Missouri also introduced bills related to rioting in January 2025. On January 27, 2025, the Missouri Senate passed Senate Bill 52, making "rioting" a felony offense and expanding the scope of what constitutes such an offense.³³⁹ Meanwhile, in New Jersey, Senate Bill 652, introduced on January 9, 2024, proposes to broaden the definitions of riot and disorderly conduct while introducing new offenses related to public demonstrations.³⁴⁰ Notably, the legislation proposes heightened penalties for blocking traffic, destroying public monuments, and assaulting individuals during riots.³⁴¹ It also introduces a new crime of "promotion of violent, disorderly assembly," potentially targeting protest organizers.³⁴² The proposed penalties are severe: The bill expands the scope of the crime of riot, which is punishable by up to eighteen months in prison and with fines up to \$10,000.³⁴³ The bill also creates the new crime of "promotion of violent, disorderly assembly," which carries a fifteen-to-thirty-year prison term.³⁴⁴

327. US Protest Law Tracker, Int'l Ctr. for Not-for-Profit L., https://www.icnl.org/us/protestlawtracker/?location=&status=&issue=9&date=custom&date_from=2023-10-07&date_to=2025-04-09&type= [https://perma.cc/BLU8-UPTE] (last visited Apr. 9, 2025).

328. H.B. 125, 68th Leg., 1st Reg. Sess. (Idaho 2025).

329. H.B. 205, 2024 Leg., Reg. Sess. (La. 2024) (enacted).

330. H.B. 5708, 102d Leg., Reg. Sess. (Mich. 2024).

331. S.B. 52, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025); S.B. 44/H.B. 495, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025) (enacted).

332. S. 652, 221st Leg. (N.J. 2024).

333. S.B. 5911, 2025–2026 Leg. (N.Y. 2025).

334. S. 267, 135th Gen. Assemb., Reg. Sess. (Ohio 2024).

335. Assemb. 88, 2025–2026 Leg. (Wis. 2025).

336. H.B. 4994, 2024 Leg., Reg. Sess. (W. Va. 2024).

337. Ohio S.B. 267.

338. La. Stat. Ann. § 15:1352 (2024); H.R. 205, 2024 Leg., Reg. Sess. (La. 2024.).

339. S.B. 52, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025).

340. S. 652, 221st Leg. (N.J. 2024).

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

Senator Joseph Pennacchio also introduced Senate Bill 399, seeking to broaden the criminal definition of “riot” and enhance penalties for crimes committed during such riots.³⁴⁵

Among the unenacted bills, House Bill 5708, introduced in the Michigan Legislature on May 7, 2024, sought to establish mandatory minimum penalties for the crimes of “rioting.”³⁴⁶ This bill proposed that individuals convicted of rioting would face a minimum sentence of five years in prison, with the possibility of life imprisonment, a fine of up to \$10,000, or both.³⁴⁷ Even more severe, those convicted of incitement to riot would face a minimum sentence of ten years in prison, with the possibility of a life sentence.³⁴⁸ House Bill 4994 in West Virginia would have created new “terrorism” offenses that could be used to criminalize nonviolent protesters.³⁴⁹

3. *Traffic Interference.* — Fifteen states have introduced bills related to traffic interference or driver immunity, four of which have been enacted.³⁵⁰ Two bills in Louisiana became effective on August 1, 2024: House Bill 383 provides civil immunity to drivers who injure protesters blocking roads under certain circumstances,³⁵¹ and House Bill 127 adds to the definition of “simple obstruction” to include “conspiracy or aiding and abetting of other individuals to commit either the intentional or criminally negligent placing of anything or . . . performance of any act on any . . . road, highway, [or] thoroughfare,” which makes movement difficult.³⁵² A third bill, House Bill 355, was not enacted.³⁵³ That bill sought to add “an additional circumstance” to existing self-defense laws for “a person who is lawfully inside a motor vehicle against a person who is illegally blocking a roadway.”³⁵⁴ The bill would have offered immunity when “the force or violence used is reasonable and apparently necessary in order to retreat or escape from the person illegally blocking the roadway” and the person lawfully inside the vehicle “reasonably believes that he or his passenger is in immediate danger of imminent death, bodily injury, or serious bodily harm.”³⁵⁵ This language sets a subjective standard based on the driver’s perception of danger, potentially broadening the circumstances under which a driver could claim immunity after injuring a protester.

345. S. 399, 221st Leg. (N.J. 2024).

346. H.B. 5708, 102d Leg., Reg. Sess. (Mich. 2024).

347. Id.

348. Id.

349. H.B. 4994, 2024 Leg., Reg. Sess. (W. Va. 2024).

350. US Protest Law Tracker, Int’l Ctr. for Not-for-Profit L., https://www.icnl.org/us-protestlawtracker/?location=&status=&issue=4,12&date=custom&date_from=2023-10-07&date_to=2025-04-09&type= [https://perma.cc/JM6L-VGUV] (last visited Apr. 9, 2025).

351. La. Stat. Ann. § 9:2792.10 (2024); H.B. 383, 2024 Leg., Reg. Sess. (La. 2024).

352. H.B. 127, 2024 Leg., Reg. Sess. (La. 2024).

353. H.B. 355, 2024 Leg., Reg. Sess. (La. 2024).

354. Id.

355. Id.

In North Carolina, the previously discussed House Bill 237, effective December 1, 2024, also imposes criminal penalties for a “person who willfully stands, sits, or lies upon the highway or street” and impedes traffic.³⁵⁶ The crimes range from a misdemeanor to felony,³⁵⁷ and the law imposes civil liability upon a person “who organizes a demonstration that prohibits or impedes” traffic and causes emergency vehicle delays that then result in injury or death.³⁵⁸

In Tennessee, Senate Bill 2570 became effective on July 1, 2024.³⁵⁹ This law allows a person who “suffers loss or injury” as a result of an obstruction to bring a claim for compensatory damages against a person who intentionally obstructed a highway or street.³⁶⁰

Assembly Bill 8951B, introduced in the New York State Legislature on January 30, 2024, represents the proliferation of state domestic terrorism provisions and a dramatic escalation in the approach to regulating protests that obstruct traffic.³⁶¹ Sponsored by State Assembly Member Stacey Pheffer Amato, this bill initially proposed to classify certain protest activities as acts of domestic terrorism.³⁶² The bill, which has not been enacted, sought to amend the New York Penal Law by adding a new section, 490.29, titled creating “the crime of domestic act of terrorism.”³⁶³ This section would have made it a Class D felony offense to “act[] with the intent to cause the deliberate blocking of” public roads, bridges, transportation facilities, or tunnels.³⁶⁴

The language of the bill as introduced and later amended directly targets protest tactics that involve blocking roads or highways. The severity of the proposed punishment is striking. The offense would be classified as a Class D felony in the state and punishable by up to seven years in

356. N.C. Gen. Stat. Ann. § 20-174.1(a) (2025); H.B. 237, 2023–2024 Gen. Assemb. (N.C. 2024).

357. N.C. Gen. Stat. Ann. § 20-174.1(c) (“A person who violates subsection (a) of this section while participating in a demonstration intended to prohibit or impede the use of the highway or street is guilty of a Class A1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense.”).

358. *Id.* § 20-174.1(e).

359. S.B. 2570, 2024 Gen. Assemb. (Tenn. 2024).

360. Tenn. Code Ann. § 39-17-307(e) (2025) (“If a person suffers loss or injury . . . [when] the defendant intentionally obstructed a highway, street, or other place used for the passage of vehicles or conveyances, then the person may bring a cause of action . . . to recover compensatory damages from the loss or injury.”).

361. Assemb. 8951B, 2023–2024 Leg. (N.Y. 2024).

362. *Id.*

363. Assemb. 8951A, 2023–2024 Leg. (N.Y. 2024) (as amended Feb. 2, 2024); see also Pheffer Amato Fights Back Against Domestic Terrorism, Assemblywoman Stacey Pheffer Amato (Feb. 5, 2024), <https://assembly.state.ny.us/mem/Stacey-Pheffer-Amato/story/109321> [<https://perma.cc/6EAE-UQJA>] (announcing a bill to address “the chaos and disruption that has skyrocketed during the recent wave of unauthorized protests throughout New York”).

364. N.Y. Assemb. 8951B.

prison.³⁶⁵ This represents a significant increase in potential penalties for protest-related activities that have traditionally been treated as misdemeanors or civil infractions. Although not enacted, the bill's introduction during the 2023 to 2024 legislative session reflects a broader trend of increasingly punitive approaches to regulating protests, particularly those that disrupt traffic or other public services.

III. THE SHAPE OF UNIVERSITY PROTEST POLICING

Antecedents to the violent clashes between police and pro-Palestine students in spring 2024 can be found by examining the historical development and expansion of police forces on college campuses, the pressure universities face from politicians to discipline students, and the creation of strict codes of conduct targeting leftist student movements.

Police work within and across other institutions.³⁶⁶ To understand the nature of campus protest policing, organizational theory suggests paying attention to the relationships between police and nonpolice personnel within institutions³⁶⁷ and the ways institutions and institutional actors learn from one another.³⁶⁸ This Part maps three features of policing that universities use to monitor, discipline, and repress protests. These features are embedded within and affect the university community, which this Piece defines to include students, administrators, staff, and faculty.³⁶⁹ *Political surveillance* refers to monitoring, investigating, and gathering intelligence on individuals or groups based on their political beliefs, associations, or activities, rather than on suspicion of criminal conduct. *Networked information* involves sharing information between and across

365. N.Y. Penal Law § 70.00(2)(d) (McKinney 2025); N.Y. Assemb. 8951B.

366. Patel, *Transinstitutional Policing*, supra note 34, at 868–74. In prior work, the author of this Piece has identified patterns of policing across multiple organizational contexts: K–12 schools, public emergency departments, veterans' health care, public and low-income housing, mass transit, and universities and colleges. Id. The author of this Piece has argued that transinstitutional policing mediates service delivery, creates subcriminal pathways to surveillance and the criminal legal system, and spills beyond the institution into the street and the home. Id.

367. See id.

368. See, e.g., Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 *Am. Socio. Rev.* 147, 147 (1983) (arguing that “bureaucratization and other forms of organizational change occur as the result of processes that make organizations more similar without necessarily making them more efficient”); Daniel N. Lipson, *The Resilience of Affirmative Action in the 1980s: Innovation, Isomorphism, and Institutionalization in University Admissions*, 64 *Pol. Rsch. Q.* 132, 133 (2011) (emphasizing that “the resilience of race-conscious inclusion policies” is largely attributable to the “central role” of civil rights and diversity professionals in corporations and government).

369. This Piece focuses on policing campus protest, though this author has already written about the ways in which networked information and red flagging may have broader implications within embedded policing in several formal institutions. See generally Patel, *Transinstitutional Policing*, supra note 34, at 868–74.

institutions, from universities to university police to local, state, and federal law enforcement.³⁷⁰ *Protest discipline* operates to sanction and manage the campus community via both formal disciplinary processes and the more subtly coercive influence of codes of conduct and invisible monitoring of politically nonconforming individuals or groups.³⁷¹

These features provide a framework to organize the interactions between police, protesters, administrators, and the campus community in the protest context. They highlight the less visible police actions that impede higher education institutions from functioning as spaces of critical thinking and open inquiry. The features explained here are not an exclusive list and sometimes overlap. Future engagement and research may clarify these features and illuminate additional ones. Additionally, while this Piece is centrally focused on police departments embedded within universities and accountable to their administrators, the picture would be incomplete without engaging with how university police and administrators relate to municipal and federal law enforcement.

A. *Political Surveillance*

Campus protest policing includes “political surveillance.”³⁷² Political surveillance includes local and federal officers targeting political expression and speech and focusing attention on activities vaguely described as un-American.³⁷³ As other scholars have assessed, political surveillance especially targets Muslim, South Asian, and Arab communities for their

370. For example, in 2021, a graduate student at the University of Southern California had an encounter with sheriff’s deputies at the hospital after giving birth. See Patel, *Transinstitutional Policing*, *supra* note 34, at 852. This encounter led to local police, campus police, and the department of social services forcefully entering the student’s graduate housing on campus. See *id.* at 852–53.

371. See *id.* at 826–27 (describing the process of “red flagging,” whereby staff or police track a person’s future behavior).

372. The history and political science literature on political surveillance is too large to summarize here. This Piece draws particularly from the work of historian Douglas M. Charles, who defines “political surveillance” as “monitoring a person or group’s lawful political activities perceiving them somehow as a threat, or with an aim to use that information for bureaucratic purposes.” Douglas M. Charles, *Political Surveillance*, in 2 *The Federal Bureau of Investigation: History, Powers, and Controversies of the FBI* 373, 373 (Douglas M. Charles & Aaron J. Stockham eds., 2022); see also Linda E. Fisher, *Guilt by Expressive Association: Political Profiling, Surveillance and the Privacy of Groups*, 46 *Ariz. L. Rev.* 621, 645 (2004) (defining political surveillance “as an array of techniques employed by government agents to investigate and record the political and religious beliefs and activities of those engaged in First Amendment expression, ranging from infiltrating and disrupting organizational leadership to observing and recording public events”). For a background discussion of legislative, judicial, and administrative tools used to control political surveillance in eight U.S. cities and states, see generally Chevigny, *supra* note 225.

373. Strong, *supra* note 65, at 19 (“Activists are under surveillance by campus, state, and in some cases by federal police forces. These targets are largely defined by their anti-war, workers’ rights, environmental justice, or economic justice sentiment in almost every case.”).

presumed anti-American views.³⁷⁴ This Piece looks at specific law enforcement tactics as manifestations of political surveillance: raids targeting student activists involved with politically unpopular groups, surveillance of online activity, undercover infiltration of student groups, and monitoring of protest activity.

A core aspect of political surveillance involves covert and undercover police operations. This Piece has already engaged with historical examples of such activities.³⁷⁵ In more contemporary times, one example of such surveillance can be found at the University of Chicago, where Black community leaders and students have engaged in a years-long effort to pressure the university to open a Level 1 Trauma Center in the predominantly Black South Side of Chicago.³⁷⁶ Their campaign garnered the attention of the University of Chicago Police Department (UCPD).³⁷⁷ During a march and protest that ended at then-University President Robert Zimmer's house, a UCPD detective named Janelle Marcellis marched while undercover and never identified herself as law enforcement.³⁷⁸ Photographs show Marcellis texting updates, including details about protesters' demands and activities, about the protest to UCPD Deputy Chief Owens.³⁷⁹ This undercover involvement occurred despite protest organizers having met with UCPD officials beforehand to communicate their intentions for a peaceful demonstration. The campus police commander, Milton Owens, was terminated for permitting the undercover operation rather than utilizing uniformed officers (who are

374. See, e.g., Muneer Ahmad, *Homeland Insecurities: Racial Violence the Day After September 11*, 4 *Race/Ethnicity: Multidisciplinary Glob. Contexts* 337, 338 (2011) (stating that "[a]mong the enormous violence done by the United States since the tragedies suffered on September 11 has been an unrelenting, multivalent assault on the bodies, psyches, and rights of Arab, Muslim, and South Asian immigrants"); Vinay Harpalani, *Racial Triangulation, Interest-Convergence, and the Double-Consciousness of Asian Americans*, 37 *Ga. St. U. L. Rev.* 1361, 1372 (2021) (describing how Asian Americans in the United States are "seen as 'perpetual foreigners'—an alien race that was incapable of assimilation and that could never be truly American" (footnote omitted)); Sunita Patel, Comment, *Performative Aspects of Race: "Arab, Muslim, and South Asian" Racial Formation After September 11*, 10 *UCLA Asian Pac. Am. L.J.* 61, 61 (2005) ("Like racial commandments, Arabs, Muslims, and South Asians must demonstrate that 'we are not terrorists,' 'we belong,' 'no, we are not "foreign,"' and 'look, we are or can be good Americans.'" (footnotes omitted)); Leti Volpp, *The Citizen and the Terrorist*, 49 *UCLA L. Rev.* 1575, 1576 (2002) (discussing how after September 11, there was a dangerous consolidation of those who appear as Middle Eastern, Arab, or Muslim as terrorists).

375. See Madhu Srikantha, *Undercover UCPD Detective Infiltrates Protest*, *Chi. Maroon* (Mar. 1, 2013), <https://chicagomaroon.com/16801/news/undercover-ucpd-detective-infiltrates-protest/> [<https://perma.cc/D5TE-3QNC>]; see also Lee Harris, *Jury Sides With Cop Allegedly Scapegoated by UCPD's "Old Boys' Club"*, *Chi. Maroon* (May 17, 2018), <https://chicagomaroon.com/25945/news/ucpd-infiltrated-protest-milton-owens-lawsuit/> [<https://perma.cc/67XM-FQ5L>].

376. See Srikantha, *supra* note 375.

377. See Harris, *supra* note 375.

378. *Id.*

379. *Id.*

more identifiable as officers).³⁸⁰ The University suggested the rationale for undercover officers was to support the Chicago Police Department's (CPD) involvement after learning gang-affiliated groups would attend.³⁸¹ No gang-affiliated groups attended, and the CPD did not participate in policing the campus demonstration.³⁸²

Undercover campus police have worked with local police in the South as well. At the University of North Carolina at Chapel Hill (UNC), student activists protesting the Confederate statue known as "Silent Sam" exposed an undercover operation by campus police officer Hector Borges.³⁸³ Posing as a sympathetic auto mechanic named "Victor," Borges infiltrated protest groups to monitor their activities.³⁸⁴ His true identity was revealed when activists spotted him in uniform responding to another incident.³⁸⁵ Protesters criticized the University's infringement on free speech and democratic values.³⁸⁶ "The university's tactic 'has a chilling effect on free speech,' as 'activists are afraid to come out to the statue when they know they're constantly being watched,'" said Lindsay Ayling, a history Ph.D. candidate at the time.³⁸⁷ UNC police spokesman Randy Young, citing safety concerns following events in Charlottesville, confirmed that both uniformed and plainclothes officers had been deployed around Silent Sam since August 2017.³⁸⁸ But students questioned the university's motives behind this surveillance.³⁸⁹

In yet another example, a Harvard police detective wrote in a police report that he was "conducting 'plain clothes surveillance' and 'photographing demonstrators for intelligence gathering'" at a political rally in 2008, but a University spokesperson stated at the time that the school "does not have a policy on filming protests."³⁹⁰ In 2010, a University of Washington Police Department (UWPD) Officer surveilled the

380. See *id.*

381. See *id.*

382. See *id.*

383. Ray Gronberg, That 'Auto Mechanic' at the Silent Sam Protests Wasn't a Mechanic, Activists Discover, *Herald Sun*, <https://www.heraldsun.com/news/local/counties/orange-county/article183120191.html> (on file with the *Columbia Law Review*) (last updated Nov. 7, 2017); Andy Thomason, When Student Activists Discovered Their New Friend Was an Undercover Cop, *Chron. Higher Educ.* (Nov. 8, 2017), <https://www.chronicle.com/article/when-student-activists-discovered-their-new-friend-was-an-undercover-cop/> (on file with the *Columbia Law Review*).

384. See Gronberg, *supra* note 383.

385. See *id.*

386. See *id.*

387. *Id.* (quoting Lindsay Ayling).

388. See *id.*

389. *Id.*

390. David Abel, ACLU Queries Harvard's Police: Asks Why Gaza Rally Was Photographed, *Bos. Globe*, Apr. 15, 2008, at B1 (on file with the *Columbia Law Review*) (first quoting Thomas Karns; then quoting Joe Wrinn).

University's Student Worker Coalition (SWC) on at least two occasions.³⁹¹ On one of these occasions, a UWPD officer allegedly sat near the group at a campus café, taking notes and then sharing the meeting's content in an email with a UWPD lieutenant.³⁹² In another, the same officer, posing as an alumna named "Tani," attended a SWC planning meeting where the group discussed plans for a campus demonstration in support of custodial workers; students later saw "Tani" "dressed in a police officer's uniform and getting out of a patrol car."³⁹³

Despite the examples outlined thus far, some agreements between university police forces and municipal police specify limits to covert operations.³⁹⁴ The recent, controversial agreement to create a Johns Hopkins police department specifies that "an officer shall not conduct a covert investigation of a person, a group, or an organization engaged in an assembly or demonstration."³⁹⁵ This protection, however, is not unlimited. Covert investigations are defined to permit the use of plainclothes officers in demonstrations or "crowd control" scenarios.³⁹⁶

Undercover political surveillance operations conducted by local, state, and federal law enforcement often presume that Arab, South Asian, and Muslim communities hold anti-American views that require monitoring under the guise of anti-terrorism.³⁹⁷ Law enforcement has pretextually focused surveillance operations on Muslim, South Asian, and Arab students. As the Associated Press initially reported in 2011 in the first of a series of investigative articles, the NYPD engaged in extensive surveillance and infiltration of Muslim student groups across multiple

391. Press Release, ACLU of Wash., ACLU Calls on University of Washington to Curb Campus Surveillance (July 8, 2010), <https://www.aclu.org/press-releases/aclu-calls-university-washington-curb-campus-surveillance> [<https://perma.cc/QC2T-9V8B>].

392. *Id.*

393. Jennifer Sullivan, ACLU Protests UW Police Surveillance on Student Social-Justice Group, *Seattle Times* (July 8, 2010), <https://www.seattletimes.com/seattle-news/aclu-protests-uw-police-surveillance-on-student-social-justice-group/> [<https://perma.cc/XPB5-23T6>].

394. See ACLU, Policing Free Speech: Police Surveillance and Obstruction of First Amendment-Protected Activity 1–20 (2010), https://assets.aclu.org/live/uploads/publications/policingfreespeech_20100806.pdf [<https://perma.cc/C788-NQNK>] (describing coordination between campus and municipal police forces in California and an arrangement between a campus police officer and the FBI in Massachusetts).

395. Johns Hopkins Univ. Police Dep't, Assemblies, Demonstrations & Disruption of Campus Activities: Operational Procedure #486, at 9 (2024), https://www.jhu.edu/assets/uploads/policies/final/486_Response%20to%20Assemblies%20Demonstrations%20and%20Disruption%20of%20Campus%20Activities%20FINAL.pdf [<https://perma.cc/H5M3-5P2C>] [hereinafter Johns Hopkins Assemblies] (citing Md. Code Ann., Pub. Safety § 3-701 (West 2025)).

396. *Id.* at 3.

397. See *supra* note 374. The stereotyping of groups as perpetually foreign, terrorists, and un-American is well beyond the scope of this Piece and requires its own lengthy attention. This Piece is merely observing the connection between this race literature and protest policing on college campuses.

colleges and universities from 2001 to 2012.³⁹⁸ The NYPD Intelligence Division identified thirty-one Muslim Student Associations (MSAs) in New York for monitoring, though surveillance extended beyond New York City to MSAs at schools like Rutgers, Syracuse University, the University of Pennsylvania, and Yale.³⁹⁹ At these institutions, the NYPD monitored students' online activities, sent undercover officers to infiltrate student groups and events, and recruited young informants to spy on their peers.⁴⁰⁰ For example, they sent an undercover officer on a whitewater rafting trip with City College's MSA and recruited a 19-year-old informant named Shamiur Rahman to spy on his fellow students.⁴⁰¹ This widespread surveillance across multiple campuses created a climate of fear and self-censorship among Muslim students at these schools and beyond.⁴⁰²

Local and federal law enforcement officials have also questioned, investigated, and, in some cases, prosecuted and initiated deportation proceedings against pro-Palestine student advocates based on their speech criticizing the state of Israel.⁴⁰³ In 2018, as part of a New Jersey Joint Terrorism Task Force inquiry, campus security asked a Seton Hall University law student to leave class and took them to a room for questioning by the FBI and a New Jersey State Police detective.⁴⁰⁴ In spring 2014, police questioned Northeastern University students in their homes after a university-affiliated student group slipped mock eviction flyers under dorm room doors to draw attention to Israel's home demolition

398. See Diala Shamas & Nermeen Arastu, Muslim Am. C.L. Coal., Creating L. Enf't Accountability & Resp., & Asian Am. Legal Def. Fund, Creating L. Enf't Accountability & Resp. & Asian Am. Legal Def. & Educ. Fund, Mapping Muslims: NYPD Spying and Its Impact on American Muslims 11 (2013), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/immigration/clear/Mapping-Muslims.pdf> [<https://perma.cc/C62N-G5S6>] [hereinafter CLEAR Report] ("Investigative reporters gave the public documentation proving the existence and sweep of a secret intelligence program that communities had long suspected they were dealing with in their own experiences."); Chris Hawley, NYPD Monitored Muslim Students All Over Northeast, AP News (Feb. 18, 2012), <https://www.ap.org/media-center/ap-in-the-news/2012/nypd-monitored-muslim-students-all-over-northeast/> [<https://perma.cc/E6P6-7T55>] (reporting NYPD surveilling Muslim student groups in 2006).

399. CLEAR Report, *supra* note 398, at 40.

400. *Id.* at 40–42.

401. *Id.* at 40.

402. *Id.* at 40–45. The practices ended after litigation and the AP's scrutiny of the practices and the NYPD's broad overreach and religious and ethnic profiling. *Id.*

403. While these law enforcement actions might be understood as examples of networked information, discussed in section III.B, they are included within this Piece's discussion of political surveillance because they have a political purpose and valence. The information sharing here is targeted at students and student organizations on the left deemed contrary to U.S. foreign policy interests and un-American as a pretext for silencing and eliminating certain political opinions.

404. Alex Kane, The FBI Is Using Unvetted, Right-Wing Blacklists to Question Activists About Their Support for Palestine, *The Intercept* (June 24, 2018), <https://theintercept.com/2018/06/24/students-for-justice-in-palestine-fbi-sjp/> (on file with the *Columbia Law Review*).

policies.⁴⁰⁵ On April 24, 2024, following the most recent surge in pro-Palestine campus events, a New York University student posted on Instagram that they had “received notice” that the FBI and CIA had photos of them engaging in pro-Palestine protest.⁴⁰⁶

In 2024, campus police agencies worked with the FBI and municipal police to enforce warrants and raid the homes of pro-Palestine student leaders. Yale and New Haven Police were collaborating not only with each other but also with Connecticut State Police and the FBI to surveil student protesters.⁴⁰⁷ In October 2024, the University of Pennsylvania police led an operation with the Philadelphia Police Department to raid an off-campus home where students lived.⁴⁰⁸ The police took the students to the police station for questioning related to an incident involving paint thrown on the Benjamin Franklin statue on campus; they were released with no charges or arrests.⁴⁰⁹ Their electronic devices, however, were seized.⁴¹⁰ Shortly after the University of Pennsylvania raid, in November 2024, officers from George Mason University and the FBI raided the family home of two Palestinian American students in Fairfax, Virginia.⁴¹¹ Reports stated that law enforcement cited vandalism as the reason for searching the home.⁴¹²

405. See Pro-Palestinian Students Charge Universities With Censorship, NBC News (Mar. 24, 2014), <https://www.nbcnews.com/news/education/pro-palestinian-students-charge-universities-censorship-n58896> (on file with the *Columbia Law Review*) (including one student’s description of the police presence in dorms as “a really inappropriate response to a nonviolent student action” (internal quotation marks omitted) (quoting Kendall Bousquet)).

406. NYU SJP (@nyu_sjp), Instagram (Apr. 25, 2024), https://www.instagram.com/p/C6M1bPzuFNN/?img_index=2 [<https://perma.cc/WQF2-4TYD>].

407. See Email from Jennifer Wagner, Special Agent, FBI New Haven/Meriden RA, to Anthony Campbell, Assistant Chief of Police, Yale Police Dep’t, & Redacted Recipients (Apr. 30, 2024), <https://s3.us-east-1.amazonaws.com/jewish-currents/YPD-0316.PDF> [<https://perma.cc/7B22-EW5A>] (“The FBI has been monitoring the widespread protests related to the Israel/Hamas conflict at several colleges and universities. . . . FBI New Haven stands ready to provide support to you and your educational institutions.”).

408. See Akela Lacy, Cops in Riot Gear Storm Penn Students’ House in Month-Old Vandalism Case, *The Intercept* (Oct. 23, 2024), <https://theintercept.com/2024/10/23/upenn-cops-students-raid-gaza-palestine/> (on file with the *Columbia Law Review*).

409. See *id.*

410. *Id.*

411. Akela Lacy, Police Raid Pro-Palestine Students’ Home in FBI-Led Graffiti Investigation, *The Intercept* (Dec. 3, 2024), <https://theintercept.com/2024/12/03/george-mason-fbi-gaza-palestine-israel/> (on file with the *Columbia Law Review*).

412. The reports suggest weapons and other items were found in the home that may belong to the family, but the family’s attorney argued the materials were not related to inciting violence. See Dan Rosenzweig-Ziff, Campus Ban for Two Pro-Palestinian Activists Sparks Outcry at George Mason, *Wash. Post* (Dec. 8, 2024), <https://www.washingtonpost.com/education/2024/12/08/george-mason-university-pro-palestinian-activists/> (on file with the *Columbia Law Review*). No charges have been brought to date. See *id.* Several faculty and student leaders questioned the university’s president regarding the event in an all-campus meeting some weeks after the raid. George Mason Univ., Minutes of the Faculty

Political surveillance is a critical component of repressive regimes, and university campuses are not immune to its reach. In the 1960s, universities and states justified authorizing campus police forces to protect students from the most violent and intrusive aspects of policing. This rationale grew into buffering students in their formative years from local police involvement. Policing campus protest thus empowers federal, state, and local police to reach into college campuses in ways that are in tension with the insularity of campus life.

B. *Networked Information*

Networked information refers to two-way information sharing between local and embedded police agencies for surveillance purposes.⁴¹³ Embedded police—like campus police—share information with state, local, and federal law enforcement and vice versa. This intelligence networking increases the surveillance of students, staff, and faculty in university communities.⁴¹⁴ When police and universities share information and collaborate to investigate student protest activity, their actions raise concerns about privacy and potential infringement of the First Amendment or state law. Moreover, surveillance of campus activities may infringe on academic freedom, potentially limiting the range of ideas and discussions in academic settings.⁴¹⁵

University police and local police have historically cooperated with one another,⁴¹⁶ sometimes becoming indistinguishable from the perspective of the students and communities they serve.⁴¹⁷ In 2013, campus police

Senate Meeting 3 (2024), <https://facultysenate.gmu.edu/wp-content/uploads/2024/11/Minutes-11-20-Final.pdf> [<https://perma.cc/K5WP-JPKN>].

413. See Patel, *Transinstitutional Policing*, *supra* note 34, at 862.

414. Often the objective here is to put a border around the university to keep local residents (often more Black or brown than the majority-white college students) off campus.

415. See Joe Lewis, *The College Campus as Panopticon: How Security and Surveillance Are Undermining Free Inquiry*, in *Policing the Campus*, *supra* note 65, at 135, 143 (“Perhaps the most disconcerting aspect of increased surveillance and security on college campuses is that it directly undermines free inquiry and the free exchange of ideas among scholars.”); see also Mutua et al., *supra* note 38, at 9–10 (describing the connection between academic freedom and the First Amendment and arguing that the “processes for evaluating an idea’s quality . . . must be free from external interference and influence”).

416. See Hawley, *supra* note 398 (reporting NYPD surveilling Muslim student groups in 2006); Chris Hawley & Matt Apuzzo, *AP News, Schools Raise Privacy Concerns Over NYPD Spying on Muslim Students 1* (2011), https://www.pulitzer.org/files/2012/investigative_reporting/ap/nypd6.pdf [<https://perma.cc/4S66-CJ5R>].

417. See, e.g., CL Alexander Consulting, LLC, *University of Minnesota, Twin Cities Review and Recommendations to Strengthen UMPD Alignment With Campus Community Expectations and Values 6* (2021), <https://web.archive.org/web/20210127023618/https://president.umn.edu/dr-alexander-report> [<https://perma.cc/7WXQ-VHY8>] (“A campus policing agency should be very different from an urban city police department. Policing styles and tactics are not the same. . . . But UMPD is viewed as being closely tied to MPD, their uniforms and vehicles are very similar, and UMPD does some policing off campus in nearby neighborhoods.”).

at Tulane University in New Orleans shared a radio system with the New Orleans Police Department.⁴¹⁸ In 2019, Georgia State University invested millions of dollars into new security systems, including the platform Genetec, which allows the Atlanta Police Department direct access to the University's camera surveillance system.⁴¹⁹ Today, police departments often share campus video footage, geolocation data, and social media information.⁴²⁰ Other technologies regularly used in the local policing

418. Eric Tucker, College Police Forces, Increasingly Armed, Expand Reach, *WickedLocal.com* (Dec. 25, 2013), <https://www.wickedlocal.com/story/archive/2013/12/26/college-police-forces-increasingly-armed/41058657007/> [https://perma.cc/MAC7-DKCF] (last updated Dec. 26, 2013).

419. Ada Wood, GSUPD Pours \$2 Million Into Campus Security Technology, *Ga. State Signal* (Jan. 17, 2019), <https://georgiastatesignal.com/gsupd-pours-2-million-into-campus-security-technology/> [https://perma.cc/9UA5-NJC5].

420. Sam Sabin, Surveillance Looms Over Pro-Palestinian Campus Protests, *Axios*, <https://www.axios.com/2024/05/03/student-pro-palestine-encampments-campus-surveillance> [https://perma.cc/J4VK-WHEK] (last updated May 5, 2024); see also, e.g., Ari Sen, UNC Campus Police Used Geofencing Tech to Monitor Antiracism Protestors, *NBC News* (Dec. 21, 2019), <https://www.nbcnews.com/news/education/unc-campus-police-used-geofencing-tech-monitor-antiracism-protestors-n1105746> (on file with the *Columbia Law Review*).

context have arrived on college campuses: automated license plate readers,⁴²¹ facial recognition tools,⁴²² iris scanners,⁴²³ and social media monitoring programs.⁴²⁴ A small number of campuses also use gunshot-detection,⁴²⁵ in which, depending on the technology, noises are classified by a “black-box algorithm”⁴²⁶ and may include human voices engaged in

421. See Brigham Young Univ. Police Dep’t, Policy Manual § 427.2 (2023), <https://police.byu.edu/00000191-c3fa-dab9-aff5-cff33130001/automated-license-plate-readers> [<https://perma.cc/FLT3-LZPS>] (indicating that automated license plate readers may be used for “electronic surveillance”); Univ. of Cal. Irvine Police Dep’t, UC Irvine PD Policy Manual § 404.4 (2021), https://www.police.uci.edu/how-do-i/_img/automated_license_plate_readers [<https://perma.cc/2NLB-MN2W>] (same); Univ. of Minn. Police Dep’t, University of Minnesota Police Department Policy Manual, § 454.2 (2023), https://publicsafety.umn.edu/sites/publicsafety.umn.edu/files/2024-02/Automated_License_Plate_Readers_ALPR_.pdf [<https://perma.cc/NFA2-TGQH>] (same).

422. At least one state, Virginia, authorizes by statute the use of facial recognition by campus police. Va. Code Ann. § 23.1-815.1 (2024) (noting that the policy will become more restrictive after July 1, 2026, when campus police will be prohibited from “deploy[ing] facial recognition technology unless . . . expressly authorized by statute”). Campuses across the country have deployed facial recognition in a wide range of circumstances. See, e.g., Katherine Lippert, *Amid Coronavirus, USC Is Requiring Facial Recognition Scans of Students Living on Campus, But the Technology Sparks Controversy*, USC Annenberg Media (May 15, 2020), <https://www.uscannenbergmedia.com/2020/05/15/amid-coronavirus-usc-is-requiring-facial-recognition-scans-of-students-living-on-campus-but-the-technology-sparks-controversy/> [<https://perma.cc/YZ8J-LX8J>]. For a critique of Virginia’s use of facial recognition technology and of the technology generally, see Alison Powers, Korica Simon & Jameson Spivack, *From Ban to Approval: What Virginia’s Facial Recognition Technology Law Gets Wrong*, 26 Rich. Pub. Int. L. Rev. 155, 170–84 (2022).

423. Lindsay Weinberg, *Smart University: Student Surveillance in the Digital Age* 123 (2024) (noting the University of Georgia’s use of iris-scanning technology for its dining halls).

424. Arijit Douglas Sen & Derëka Bennett, *Dall. Morning News, Tracked: How Colleges Use AI to Monitor Student Protests*, Pulitzer Ctr. (Sept. 20, 2022), <https://pulitzercenter.org/stories/tracked-how-colleges-use-ai-monitor-student-protests> [<https://perma.cc/2D55-8NLQ>] (“[A]s more students have embraced social media as a digital town square to express opinions and organize demonstrations, many college police departments have been using taxpayer dollars to pay for Social Sentinel’s services to monitor what they say. At least 37 colleges . . . have used Social Sentinel since 2015.”).

425. See Vineeta Singh, *Ed Tech Is Surveillance Tech: Pedagogies of Surveillance in Physical and Digital Campuses*, in *Cops on Campus*, supra note 2, at 178, 187 (“At least eight university police departments are on record as using gunshot detection software such as ShotSpotter, a notoriously unreliable technology that adds to privacy concerns by capturing conversations, which prosecutors have (so far unsuccessfully) attempted to use as evidence in court proceedings.”); Grace Merritt, *New Technology Enhances Campus Security*, UConn Today (June 16, 2016), <https://today.uconn.edu/2016/06/new-technology-enhances-campus-security/> [<https://perma.cc/K8FQ-5B74>] (reporting on the pilot installation of a gunshot detection system by Verbi, Inc., intended to be “integrated with all the University’s video surveillance cameras around campus”).

426. Brendan Max, *SoundThinking’s Black-Box Gunshot Detection Method: Untested and Unvetted Tech Flourishes in the Criminal Justice System*, 26 Stan. Tech. L. Rev. 193, 206–07 (2023) (“Complicating this classification task is the common occurrence of all manner of similar impulsive noises that can be mistaken for gunfire, from sources as varied as firecrackers . . . and college campus noises.”).

private conversations.⁴²⁷ Other schools utilize drones, body-worn cameras, and video camera analytics.⁴²⁸ Dozens of campuses have acquired military-grade weapons and technology through federal 1033 grants—a Department of Defense program that sells “excess” military equipment to local and federal police organizations⁴²⁹—in order to increase surveillance capacity.⁴³⁰ Other schools hire students to serve in roles such as “Community Service Officers,” “Safety Ambassadors,” and “Student Police Cadets”⁴³¹ to act as a campus police department’s “eyes and ears.”⁴³² And most recently, universities have begun creating confidential information-sharing arrangements. In February 2025, the UNC System Board approved a new system-wide campus information sharing policy that permits campus police to “confidentially share information about public safety and discipline between their schools.”⁴³³ In 2024, a student at UC Irvine participating in a pro-Palestine encampment received a campus citation alleging various code of conduct violations, citing a campus police memorandum as evidence.⁴³⁴

427. See Harvey Gee, “Bang!”: ShotSpotter Gunshot Detection Technology, Predictive Policing, and Measuring *Terry*’s Reach, 55 U. Mich. J.L. Reform 767, 784 (2022).

428. See, e.g., University Continues to Strengthen Campus Security With New Initiatives, UGA Today (Aug. 9, 2024), <https://news.uga.edu/university-continues-to-strengthen-campus-security-with-new-initiatives/> [<https://perma.cc/M9BR-PAUS>] (describing how the University of Georgia purchased “20 automated license plate readers” to supplement its 500 existing security cameras); Press Release, Ga. State Univ., Georgia State University Partners With Atlanta Police Department on Security Camera Initiative (Mar. 30, 2016), <https://news.gsu.edu/2016/03/30/georgia-state-university-partners-with-atlanta-police-department-on-security-camera-initiative/> [<https://perma.cc/L74W-TGTG>] (announcing the integration of “253 campus cameras” with the Atlanta Police Department’s Operation Shield Video Integration Center).

429. See LESO/1033 Program FAQs, Def. Logistics Agency, <https://www.dla.mil/Disposition-Services/Offers/Law-Enforcement/Program-FAQs/> (on file with the *Columbia Law Review*) (last visited Mar. 16, 2025).

430. See Sloan, *The End of In Loco Parentis*, supra note 14, at 3, 11.

431. James Vaznis, Police Walk the Dorm Beat: Stepped-Up Presence at UMass Raises Tensions Over Privacy, Bos. Globe, Dec. 12, 2006, at A1 (on file with the *Columbia Law Review*) (“Student police cadets, created by UMass in 2002, also stand watch in many [residence hall] lobbies in police-like uniforms and hats. . . . About a dozen . . . receive special training and carry handcuffs, pepper spray, and a baton.”).

432. See, e.g., Community Safety Ambassador, Univ. Cal. Irvine Police Dep’t, <https://www.police.uci.edu/about-us/csa.php> [<https://perma.cc/48QZ-EHW3>] (last visited Feb. 16, 2025); Community Service Officer—Student Position, Univ. of Ariz. Police Dep’t (Jan. 14, 2025), <https://www.uapd.arizona.edu/employment-opportunities/community-service-officer> [<https://perma.cc/W248-EHPU>]; CSA Services, Univ. Cal. Irvine Police Dep’t, <https://www.police.uci.edu/how-do-i/csa-service.php> [<https://perma.cc/M6NP-5GQY>].

433. Korie Dean, UNC System Board Approves New Policy on Campus Protests, Hoping to Mitigate ‘Chaos’, News & Observer, <https://www.newsobserver.com/news/local/education/article301027869.html> [<https://perma.cc/JD5K-ZLLV>] (last updated Feb. 27, 2025).

434. Jaweed Kaleem, Apology Letters. Suspensions. After Protest Citations, Students Face Campus Consequences, L.A. Times (Sept. 9, 2024), <https://www.latimes.com/california/story/2024-09-09/usc-college-palestinian-protests-discipline> (on file with the

Many Muslim and Arab students faced hostile environments as well as harassment, intimidation, and suspicion in the post-9/11 era.⁴³⁵ These students were heavily monitored when the FBI enlisted hundreds of campus police departments to surveil Middle Eastern students.⁴³⁶ Campus police worked directly with state and federal officers following the September 11 terrorist attacks.⁴³⁷ The FBI included campus police officers from at least a dozen campuses in its local Joint Terrorism Task Forces during the early 2000s and maintained relationships with hundreds of campus police departments to surveil Middle Eastern students more broadly.⁴³⁸ At the University of Texas in Dallas, one official attended monthly task force meetings and, as of 2003, was regularly communicating with the FBI.⁴³⁹ Meanwhile, one University of Florida officer was assigned to work full-time alongside state police and FBI agents to investigate terrorism.⁴⁴⁰ Similarly, according to a 2003 article, at the University of Toledo, one full-time and one part-time officer worked in a Cleveland-based FBI terrorism task force to identify terrorist threats on campuses.⁴⁴¹ This involvement in FBI operations caused many students and faculty to question and protest the universities' tactics to monitor and disrupt student activism.⁴⁴²

Many campus police took on surveillance in response to antiwar organizing in the early 2000s.⁴⁴³ The federal government also often required institutions of higher education to provide intelligence on students, collaborating closely with these institutions to control student activism.⁴⁴⁴ In 2003, the DHS began requiring post-secondary institutions to furnish federal officers with names, addresses, and other information about all foreign students studying in the United States.⁴⁴⁵ Unauthorized changes in address or even college major could result in immediate

Columbia Law Review) ("A university citation in June against [a student] accused her of camping overnight, using amplified sound without a permit and unlawful assembly, among other violations. As evidence, the document cited a student newspaper article, photos of student protesters, witness statements, and a memo by campus police.").

435. See Richard Beck, *The War on Terror and the Demonization of Student Protests*, Time (Sept. 6, 2024), <https://time.com/7018734/campus-protests-demonization-war-on-terror-essay/> [https://perma.cc/MD2N-2DGD] (noting, for example, that "Muslim and Arab students reported being singled out for hostile questioning by their professors").

436. *Id.*

437. Dan Eggen, *FBI Taps Campus Police in Anti-Terror Operations*, Wash. Post (Jan. 25, 2003), <https://www.washingtonpost.com/archive/politics/2003/01/25/fbi-taps-campus-police-in-anti-terror-operations/c303eb1b-77d3-4bf5-8398-4bc56d76eb2c/> (on file with the *Columbia Law Review*).

438. *Id.*

439. *Id.*

440. *Id.*

441. *Id.*

442. *Id.*

443. *Id.*

444. *Id.*

445. *Id.*

deportation.⁴⁴⁶ The Immigration and Naturalization Service also launched a computerized tracking system for all foreign nationals studying in the United States to address national security concerns.⁴⁴⁷

Several incidents of surveillance and information sharing between university police and local and state police came to light during the protests of summer 2020. Cooperation between the university and other police extended to joint patrols and information sharing about planned demonstrations.⁴⁴⁸ For instance, the University of Wisconsin Police Department assisted local police with managing Black Lives Matter protests in Madison and coordinated plans to handle potential unrest on campus.⁴⁴⁹ Following protests after George Floyd's murder, it was reported that University of Minnesota police shared campus surveillance footage with the Minneapolis Police Department to identify protesters.⁴⁵⁰ Yale University and the New Haven police shared information about Black Lives Matter protesters in 2020, which included information derived from

446. *Id.*

447. *Id.* The FBI's relationship with campus police demonstrates the clear evolution of university police from watchguards to full law enforcement officers.

448. See, e.g., City of Syracuse & Syracuse Univ., Memorandum of Understanding Between Syracuse Police Department and Syracuse University Department of Public Safety 4–5 (2014), <https://dps.syr.edu/wp-content/uploads/2016/01/MOU-Signed-12-3-2014.pdf> [<https://perma.cc/665W-PBZL>] (requiring the Syracuse Police Department (SPD) to contact the university police department in advance of executing a warrant or conducting an investigation on campus and requiring campus police officers to “accompany and/or assist SPD personnel”); see also Sen & Bennett, *supra* note 424 (describing software used by at least thirty-seven different colleges in order to monitor student protest on campus).

449. See PERF Report, *supra* note 3, at 1, 14.

450. See Anna Granias, Ryan Evans, Daniel Lee, Nicole MartinRogers & Emma Connell with Jose Vega, *An External Review of the State's Response to the Civil Unrest in Minnesota From May 26–June 7, 2020*, at 1, 9–11 (2022), <https://www.lrl.mn.gov/docs/2022/other/220604/report.pdf> [<https://perma.cc/RWK3-U2WV>] (describing how the Minneapolis Police Department collaborated with outside law enforcement agencies, as well as the University of Minnesota Police Department in a Multi-Agency Command Center on the University of Minnesota campus); see also Tate Ryan-Mosley & Sam Richards, *The Secret Police: Cops Built a Shadowy Surveillance Machine in Minnesota After George Floyd's Murder*, MIT Tech. Rev. (Mar. 3, 2022), <https://www.technologyreview.com/2022/03/03/1046676/police-surveillance-minnesota-george-floyd/> [<https://perma.cc/8Q7K-ECED>] (reporting on Minnesota law enforcement agencies' “Operation Safety Net,” “a complex engine of surveillance tailor-made for keeping close tabs on protesters and sharing that information among local and federal agencies”).

monitoring social media and intelligence about planned demonstrations.⁴⁵¹ Harvard University police also assisted the Boston Police Department.⁴⁵² Similar concerns were raised at other universities.⁴⁵³

Private universities employ police forces, awkwardly marketing their police departments as a service to the community. Yale Police Department's (YPD) relationship with the New Haven Police Department (NHPD) is the quintessential example.⁴⁵⁴ The *Nation* obtained shocking internal Yale emails from October to the end of December 2023 related to monitoring student activism.⁴⁵⁵ Serving as adjunct police, YPD officials communicated with NHPD to plan responses to pro-Palestine demonstrations.⁴⁵⁶ They shared information about routes of protests and coordinated responses to concerned community members.⁴⁵⁷ Moreover, "[b]oth agencies were intimately involved in the policing of students in the early months of pro-Palestine activism in New Haven through internet monitoring, in-person presence at rallies, and communication with university administrators."⁴⁵⁸

451. See Yale Police Collaborates With New Haven Police to Expand Reach, It's Your Yale (Apr. 12, 2023), <https://your.yale.edu/news/2023/04/yale-police-collaborates-new-haven-police-expand-reach> [<https://perma.cc/S8BD-Y23X>] [hereinafter Yale Police Collaborates] ("The Yale Police Department (YPD) has always worked closely with the New Haven Police Department (NHPD) to keep the Yale community safe.").

452. HUPD Statement From President Bacow, Harv. Univ. (June 10, 2020) <https://www.harvard.edu/president/news-and-statements-by-president-bacow/2020/hupd-statement-from-president-bacow/> [<https://perma.cc/5M8B-YNKY>] ("Last week, seven HUPD bicycle patrol officers were present at a protest in Franklin Park rendering assistance to the Boston police. Their presence has raised legitimate questions in the Harvard community about the appropriate role of HUPD in responding to protests over the brutal killing of George Floyd.").

453. See, e.g., Moira Ritter, Georgetown Community Calls for University to End Relations With Police Departments in Petition, *The Hoya* (June 8, 2020), <https://thehoya.com/news/georgetown-community-calls-for-university-to-end-relations-with-police-departments-in-petition/> [<https://perma.cc/XQ6C-7P4G>]; Claudia Yaw, Organizers Pressure Cauce to Cut Ties With SPD, Re-Think Campus Safety, *The Daily* (July 21, 2020), https://www.dailyuw.com/news/organizers-pressure-cauce-to-cut-ties-with-spd-re-think-campus-safety/article_1c01b4f6-caf8-11ea-8075-97ca9fd733f0.html [<https://perma.cc/FDK7-8YVM>] (last updated Aug. 11, 2020).

454. See Yale Police Collaborates, *supra* note 451. In March 2023, the Yale and New Haven Police Departments expanded their collaboration "to temporarily support the New Haven Police Department. Yale Police will collaborate with the New Haven Police in the following areas: traffic and pedestrian safety, downtown youth order maintenance, nightlife support, gun violence, and New Haven Animal Shelter." *Id.*

455. Theia Chatelle, How Yale University Surveils Pro-Palestine Students, *The Nation* (May 20, 2024), <https://www.thenation.com/article/activism/yale-university-surveils-pro-palestine-student-protests/> [<https://perma.cc/PE5W-ME29>].

456. *Id.*

457. *Id.*

458. *Id.*

Recent review of FOIA records revealed YPD also used drones to monitor students' movements.⁴⁵⁹ YPD's surveillance included online monitoring, attendance at rallies, and coordination with university officials.⁴⁶⁰ Similarly, UC-Santa Barbara campus police went to local courts to acquire search warrants for pro-Palestine Instagram accounts, although this effort was unsuccessful.⁴⁶¹ Meanwhile, the Harvard University Police Department, Cambridge Police Department, and Boston Police Department reportedly shared extensive information among themselves to coordinate responses to over thirty pro-Palestine demonstrations in 2023 and 2024.⁴⁶²

Despite objections from faculty, students, and the nearby community in December 2022, Johns Hopkins University and the City of Baltimore reached a memorandum of understanding to coordinate efforts.⁴⁶³ The newly formed Johns Hopkins Police Department's procedures specifically address communication and coordination efforts with the Baltimore Police Department for both planned and unplanned demonstrations.⁴⁶⁴

C. *Protest Discipline*

Colleges and universities employ diverse approaches to police involvement in student discipline processes. Most institutions adopt an integrated model, in which campus police and student affairs staff work together closely. For example, they might form joint response teams to address incidents, share case management systems for seamless information flow, or implement cross-training programs to train police officers in student development theories.⁴⁶⁵ Officials within the student affairs and dean of

459. *Id.*

460. *Id.*

461. See Ray Briare, Judge Quashes UCPD Search Warrant for Pro-Palestine Instagram Accounts, KCSB (Dec. 23, 2024), <https://www.kcsb.org/judge-quashes-ucpd-search-warrant-for-pro-palestine-instagram-accounts/> [<https://perma.cc/XPD4-AJVP>].

462. See Sally E. Edwards & Asher J. Montgomery, How HUPD, City Police Departments Worked Together to Monitor Pro-Palestine Protests, Harv. Crimson (Dec. 17, 2024), <https://www.thecrimson.com/article/2024/12/17/hupd-cpd-protest-communications/> [<https://perma.cc/LX3Q-4JDQ>].

463. Johns Hopkins Univ. & Police Dep't of Balt. City, Memorandum of Understanding Between the Johns Hopkins Police Department and the Police Department of Baltimore City 2 (2022), <https://publicsafety.jhu.edu/assets/uploads/sites/9/2022/12/Final-Executed-MOU-12022022.pdf> [<https://perma.cc/JRZ3-4GUW>].

464. See Johns Hopkins Assemblies, *supra* note 395, at 10. This agreement also reflects the type of protections universities can implement but are unlikely to adopt without coordinated pushback from the community and students. See *id.* at 8–9 (prohibiting use of body-worn cameras or other AV recording when solely monitoring protected First Amendment activity but authorizing use of such devices when an officer has “reasonable articulable suspicion or probable cause to believe” criminal activity is afoot—a carve out that likely swallows the protection).

465. See Patel, *Transinstitutional Policing*, *supra* note 34, at 865 (“In universities, full-fledged police agencies are integrated into school discipline, behavioral intervention teams,

students offices take on a disciplinarian and pseudo-policing role.⁴⁶⁶ The choice between integration and separation often reflects an institution's philosophy on balancing student development, campus safety, and the role of law enforcement in educational settings.

This Piece focuses on progressive and liberal student protests that use tactics or support causes that university administrators (and often other students) view as out of step with university policies and societal norms. When a cause or its protesters are unpopular, the university can capitalize on its punitive powers. *Protest discipline*, then, refers to the coercive influence and managerial function of disciplinary processes on protest activity.⁴⁶⁷ Universities prefer that the campus community conform to certain social and political ideals, and those individuals or communities that do not conform can be marked for special treatment, future surveillance, or potential sanctions. Moreover, campus police rely on administrative disciplinary processes for codes of conduct violations as a tool to control student, staff, and faculty behavior.⁴⁶⁸ They understand that consequences to education, future work, and housing—all of which the disciplinary process can regulate—may carry more coercive influence than a misdemeanor criminal offense.⁴⁶⁹ In some ways, protest discipline illustrates the university as a type of total institution.⁴⁷⁰

1. *Formal Discipline Processes*. — This section starts by describing formal discipline processes and then moves to less formal processes, including “red flagging” administrative records.⁴⁷¹

and threat assessment teams as part of the university administration's duties to secure campuses and maintain their safety.”).

466. Bureaucratic frontline workers act within the carceral logics of formal institutions. In the context of healthcare, medical staff not only work with police to suppress abnormal behavior but also serve police-like roles within health care institutions. Sunita Patel, *Embedded Healthcare Policing*, 69 UCLA L. Rev. 808, 812 (2022). For discipline of student protesters, student affairs officials take on the same function of investigating and charging students with violations that carry real sanctions. See Patel, *Transinstitutional Policing*, *supra* note 34, at 837–38.

467. Here, “discipline” means creating conditions that coerce certain behavior to avoid sanction.

468. See PERF Report, *supra* note 3, at 11, 22 (“[C]ampus police chiefs agreed that disciplinary sanctions that affect academic status or housing often carry more weight with students than the threat of traditional law enforcement.” (emphasis omitted)).

469. *Id.*

470. See Erving Goffman, *Asylums* 6 (1961) (discussing the concept and characteristics of total institutions and explaining that a “key fact of total institutions” is “[t]he handling of many human needs by the bureaucratic organization of whole blocks of people”); see also Michel Foucault, *Discipline and Punish* 231–56 (Alan Sheridan trans., Vintage Books 1979) (1975) (discussing the concept of “complete and austere institutions” of discipline (internal quotation marks omitted) (quoting Louis-Pierre Baltard, *Architectonographie des Prisons* 3 (1829))).

471. Patel, *Transinstitutional Policing*, *supra* note 34, at 826.

Discipline or codes of conduct processes—often managed through a dean of students office—link campus policing and the university’s administrative disciplinary processes. The process generally follows several steps. A typical student code of conduct outlines expected behaviors and prohibited actions, covering areas like academic integrity,⁴⁷² respect for others,⁴⁷³ sexual harassment, weapons, and general campus safety.⁴⁷⁴ The formal disciplinary process generally involves an incident report, an investigation, a notification to the student, a hearing or review, and a decision with potential sanctions.⁴⁷⁵ Given the concerning rates of sexual violence on college campuses,⁴⁷⁶ it may not be surprising that campus police and deans of students offices work together in some instances to address said violence. Collaboration offers consistency in factual information and outcomes of investigations.⁴⁷⁷

In the context of protests, unsworn statements from police have generally served as the factual bases for alleging code of conduct violations and disciplinary charges.⁴⁷⁸ When university police are involved with

472. See, e.g., The Code of Academic Integrity, Geo. Wash. Univ., <https://students.gwu.edu/code-academic-integrity-web> [<https://perma.cc/ZL78-S85G>] (last updated Apr. 2, 2025) (“Students are responsible for the honesty and integrity of their own academic work, which may also include their applications for admission, in addition to any group or collaborative academic work attributed to them that is submitted for academic evaluation or credit in an academic course, program, or credential.”).

473. See, e.g., The Student Code of Conduct of the University of North Carolina at Chapel Hill, U.N.C., <https://policies.unc.edu/TDClient/2833/Portal/KB/ArticleDet?ID=152440> [<https://perma.cc/EY9Z-9NNW>] (last visited Feb. 16, 2025) (“All Students are responsible for conducting themselves in a way that respects the rights, dignity, worth, and freedom of each community member.”).

474. See, e.g., Code of Student Conduct, Univ. of Pa., <https://catalog.upenn.edu/pennbook/code-of-student-conduct/> [<https://perma.cc/Q3DS-WHUU>] (last visited Feb. 16, 2025) (“Responsible behavior includes but is not limited to . . . respect[ing] the health and safety of others. This precludes acts or threats of physical violence against another person (including sexual violence) and disorderly conduct. This also precludes the possession of dangerous articles . . .”).

475. See, e.g., Ctr. for Student Success & Intervention, Columbia Univ., Standards & Discipline 13–27 (2025), <https://cssi.columbia.edu/sites/default/files/content/Standards%20and%20Discipline%202024-25.pdf> [<https://perma.cc/2AFR-C2XG>] [hereinafter Columbia CSSI] (setting forth a detailed process for responding to student misconduct allegations); University Disciplinary Systems, Univ. of Chi., <https://studentmanual.uchicago.edu/student-life-conduct/university-disciplinary-systems/> [<https://perma.cc/C2F9-QCE5>] (last visited Feb. 16, 2025) (explaining its four disciplinary systems for students).

476. See PERF Report, *supra* note 3, at 32 (“Unlike overall campus crime, which has declined, the number of reported forcible sex offenses on campus has risen dramatically in recent years, from 2,201 in 2001 to 10,398 in 2017—a 372% increase.”).

477. See *id.* at 12 (“Depending on the nature and severity of the offense, a violation may involve the police; student counseling or social services such as drug treatment or mental health care; and/or the dean’s office and student disciplinary systems.”).

478. See, e.g., *infra* notes 480–482 and accompanying text.

investigations, arrests, and demonstrations on campus, police (and sometimes their proxies)⁴⁷⁹ provide the informational bases for violations of university codes of conduct and subsequent disciplinary actions.⁴⁸⁰ This should give one pause. Police discretion and misconduct when gathering information taints the information university staff rely upon in making education-related decisions, including disciplinary ones.⁴⁸¹ Although many, including this author, are critical of criminal court processes, it at least purports to provide some checks and balances for the misdeeds of police officers, whereas disciplinary proceedings are held essentially behind closed doors and generally without advocates hired and trained to work on behalf of the student.⁴⁸² In the protest context, students may face unreliable police statements made against them, without much by way of due process.⁴⁸³ Like many individuals and courts in society, deans of students may trust the statements of police (even if unsworn). In addition, embedded police form relationships with frontline staff. In the college set-

479. See Jericho Tran, 30 Harvard Professors Hold ‘Study-In’ Protest at Library, NBC Bos. (Oct. 17, 2024), <https://www.nbcboston.com/news/local/30-harvard-professors-hold-study-in-protest-at-library/3523343/> [<https://perma.cc/WU92-638A>] (reporting on twelve students involved in a silent protest being asked by campus security for identification and thereafter receiving a several-week library suspension).

480. See Tilly R. Robinson & Neil H. Shah, Harvard Faculty Hold Widener Library ‘Study-In’ to Protest Student Activist Bans, Harv. Crimson (Oct. 17, 2024), <https://www.thecrimson.com/article/2024/10/17/harvard-faculty-protest-in-widener-library/> [<https://perma.cc/AHY2-MGGX>] (“During the study-in, Securitas guards recorded the participants’ names and Harvard ID numbers and distributed sheets of paper warning of possible penalties under the University’s January protest guidelines.”).

481. See Eisha Jain, Arrests as Regulation, 67 Stan. L. Rev. 809, 812 (2015) (“In the context of schools and universities, arrests are used to monitor whether a student poses a risk to others, to impose discipline, and, in some cases, to evaluate whether to offer counseling or other services to the arrested individual.”).

482. See, e.g., Univ. of S. Cal., Living Our Unifying Values: The USC Student Handbook 21–22 (2024), <https://policy.usc.edu/wp-content/uploads/2023/09/24-25-Student-Handbook.pdf> [<https://perma.cc/E3BM-GUFW>] [hereinafter USC Student Handbook] (permitting students to have an advisor accompany them in disciplinary process meetings and panel hearings but stating that students have no right to be represented by legal counsel); Disciplinary System for Disruptive Conduct, Univ. of Chi., <https://studentmanual.uchicago.edu/student-life-conduct/university-disciplinary-systems/disciplinary-system-for-disruptive-conduct/> [<https://perma.cc/J8VQ-4GH7>] (last visited Apr. 14, 2025) (permitting students to have a person “whose role is entirely limited to providing support” and “does not function as an advocate” at disciplinary committee proceedings, which are closed).

483. See, e.g., Katie Hyson, ‘It’s David Versus Goliath’: UCSD Student Protestors Challenge Discipline Charges, KPBS (Oct. 21, 2024), <https://www.kpbs.org/news/education/2024/10/21/its-david-versus-goliath-ucsd-student-protestors-challenge-discipline-charges> [<https://perma.cc/4VBP-QKUG>] (describing a hearing in which a campus police officer admitted to never reading the police report used against the student or meeting the student prior to the hearing and stating that the report appeared to be “copy-pasted” rather than individualized).

ting, staff may feel uncomfortable interrogating police about their allegations against student demonstrators after working with police in other sensitive contexts, including sexual assault cases.⁴⁸⁴

Colleges and universities vary in how they involve police in student discipline processes. One large university gives the chief of its public safety department one of ten seats on its Interim Action Committee, which determines when a student or organization should be subjected to interim disciplinary measures while the underlying incident is under investigation.⁴⁸⁵ Another university permits its public safety chief to sit on its Advocacy Advisory Team, which “educat[es] and support[s] students on activism” and liaises between school administrators, campus police, and students.⁴⁸⁶

Regarding First Amendment activities and campus protests, most institutions recognize students’ rights to free speech and peaceful assembly.⁴⁸⁷ These rights, however, are typically balanced against campus safety and operational concerns.⁴⁸⁸ Administrators articulate the challenge as the need to offset the protection of free expression with the need to maintain an environment conducive to learning and safety for all students.⁴⁸⁹ As one commentator put it:

484. See Patel, *Transinstitutional Policing*, *supra* note 34, at 874 (discussing police influence over frontline workers in the healthcare setting).

485. See USC Student Handbook, *supra* note 482, at 26 (listing the Department of Public Safety as a member of the Interim Action Committee).

486. See Safe Activism, Towson Univ., <https://www.towson.edu/studentaffairs/safe-activism.html> [<https://perma.cc/2PUH-5MJU>] (last visited Feb. 15, 2025).

487. See, e.g., Foundational Principles, Univ. of Chi., <https://freeexpression.uchicago.edu/foundational-principles/> [<https://perma.cc/TE3E-M3BR>] (last visited Feb. 16, 2025) (collecting links to its free expression policies and reports); University Policy DSA.DS.100.001, Univ. of Miss., <https://union.olemiss.edu/free-inquiry-expression-and-assembly-for-individual-students-and-registered-student-organizations/> (on file with the *Columbia Law Review*) (last visited Feb. 16, 2025) (“This policy is intended to promote and facilitate free speech across the University’s community of scholars, without interfering with the University’s educational, research and service missions or infringing upon the rights of others. Nothing in this policy authorizes the University to regulate the content or viewpoint of speech.”); see also Find a School, Found. for Individual Rts. & Expression, <https://www.thefire.org/colleges> [<https://perma.cc/NE3S-KXXQ>] (last visited Feb. 16, 2025) (collecting “policies that regulate student expression at over 486 colleges and universities” and assigning a “stoplight” rating of green, yellow, or red “based on the extent to which they restrict free speech”).

488. See *supra* note 487.

489. See Maggie Hicks, *Private Colleges Hope New Speech Policies Will Keep the Peace*, *Chron. Higher Educ.* (Feb. 28, 2024), <https://www.chronicle.com/article/private-colleges-hope-new-speech-policies-will-keep-the-peace> (on file with the *Columbia Law Review*) [hereinafter Hicks, *Private Colleges*] (“Many of the policy changes have the stated aim of protecting both free expression and student safety . . .”); see also Maggie Hicks, *When a Threat Becomes an Excuse to Muzzle*, *Chron. Higher Educ.* (Feb. 6, 2024), <https://www.chronicle.com/article/when-a-threat-becomes-an-excuse-to-muzzle> (on file with the *Columbia Law Review*) [hereinafter Hicks, *When a Threat Becomes an Excuse to*

Colleges have long tried to balance the protection of students' mental and physical safety with their right to free speech. Early on, administrators saw their job as guiding students' morals and values. Colleges had gendered dorms, curfews, and restrictions on student speech. . . .

More recently, though, safety has taken precedence, often with an expansive definition of what constitutes harm.⁴⁹⁰

Sanctions for violating university codes of conduct can range from warnings to expulsion and, when applicable, include an educational focus.⁴⁹¹ Often, the policy's stated aims are to ensure due process, fairness, and consistency while maintaining campus safety and academic standards.⁴⁹² Students usually have the right to appeal decisions, even if the basis for appeal is limited.⁴⁹³ State codes and university codes of conduct include provisions for interim or temporary suspensions or bans from campus.⁴⁹⁴

Muzzle] (reporting on the sanctioning of an associate professor of political science and student adviser at Indiana University related to a speaker event, citing security concerns).

490. Hicks, Private Colleges, *supra* note 489.

491. See, e.g., Student Conduct Procedures, NYU (Aug. 16, 2024), <https://www.nyu.edu/students/student-information-and-resources/student-community-standards/student-conductprocedures.html> [<https://perma.cc/AU7C-ZAVW>] (setting the procedures by which alleged violations of the NYU Student Conduct Policy are reviewed and resolved).

492. See, e.g., *id.* ("All forums, as outlined below, are administered to ensure that any student accused of violating University policy . . . is afforded a fair and impartial process.").

493. See, e.g., Columbia CSSI, *supra* note 475, at 25–27 (describing the three grounds on which an appeal may be requested and the accompanying procedure); Off. of Student Life, Appeals, Ohio St. Univ., <https://studentconduct.osu.edu/for-students/understanding-the-student-conduct-process/appeals> [<https://perma.cc/7JG5-DE62>] (last visited Feb. 16, 2025) (outlining the procedure for appeals).

494. See, e.g., Cal. Penal Code §§ 626.4, 626.6 (2025); Sarah Huddleston & Chris Mendell, Columbia Begins Formally Notifying Students of Suspension for Participation in Wednesday's 'Gaza Solidarity Encampment', *Colum. Spectator* (Apr. 19, 2024), <https://www.columbiaspectator.com/news/2024/04/19/columbia-begins-formally-notifying-students-of-suspension-for-participation-in-wednesdays-gaza-solidarity-encampment/> [<https://perma.cc/6C9X-VUYJ>]; Aaditi Lele, Katherine Oung & Rachael Perrotta, Inside Kirkland Hall: Vanderbilt Divest Coalition Protestors Report 'Inhumane' Treatment Amid Student Suspensions and Arrest of Reporter, *Vand. Hustler* (Mar. 26, 2024), <https://vanderbilthustler.com/2024/03/26/inside-kirkland-hall-vanderbilt-divest-coalition-protestors-report-inhumane-treatment-amid-student-suspensions-and-arrest-of-reporter/> [<https://perma.cc/KP9P-83JL>] (reporting that sixteen students received interim suspensions and campus bans); Justin Wm. Moyer & Peter Hermann, GW University Suspends Students Involved in Protest Encampments, *Wash. Post*, <https://www.washingtonpost.com/education/2024/04/26/gwu-protests-encampment-pro-palestinian/> (on file with the *Columbia Law Review*) (last updated Apr. 26, 2024); Sonja Sharp & Caroline Petrow-Cohen, Student Protesters Face Same Suspensions as Those Who Bring Assault Rifles to Campus, *L.A. Times* (May 9, 2024), <https://www.latimes.com/california/story/2024-05-09/student-protesters-face-same-suspensions-as-those-who-bring-assault-rifles-to-campus> (on file with the *Columbia Law Review*).

Courts are attuned to balancing campus safety and student speech. In *Braxton v. Municipal Court*, the California Supreme Court held that a statute authorizing the barring of any person from a campus based on reasonable cause that they “willfully disrupted the orderly operation of such campus” did not deny due process.⁴⁹⁵ The statute only authorized such banishment when the excluded party had “committed acts illegal under other statutes.”⁴⁹⁶ The court interpreted the provision to authorize banning students without a prior hearing “only when necessary to prevent significant injury to persons or property during an emergency occasioned by a campus disorder.”⁴⁹⁷ And the New York Court of Appeals held in *Tedeschi v. Wagner College* that private educational institutions are bound by their own rules regarding student suspensions, and as such, a plaintiff was entitled to present her case to the College’s administration for review.⁴⁹⁸ Taken together, these decisions, and others,⁴⁹⁹ suggest reviewing courts should at least interpret bans narrowly to uphold some due process rights for students.

University codes of conduct have long served as a mechanism for controlling student and faculty behavior.⁵⁰⁰ The control feature of student

495. 514 P.2d 697, 699–700 & n.1 (Cal. 1973).

496. *Id.* at 705.

497. *Id.* at 707.

498. 404 N.E.2d 1302, 1307 (N.Y. 1980).

499. See, e.g., *Univ. of Vt. Students for Just. in Palestine v. Univ. of Vt. & State Agric. Coll.*, No. 2:24-CV-978, 2024 WL 5193383, at *1 (D. Vt. Dec. 20, 2024) (dismissing a motion for preliminary injunction brought against UVM, finding that neither the temporary suspension of students for violating University policies by participating in an on-campus demonstration nor the ensuing administrative investigation process violated students’ constitutional speech and due process rights); *Students for Just. in Palestine, at Univ. of Hous. v. Abbott*, 756 F. Supp. 3d 410, 427–28 (W.D. Tex. 2024) (dismissing students’ claim that a university policy expanding disciplinary measures available to punish students for antisemitic expression had an impermissible chilling effect on their exercise of freedom of speech).

500. Model codes of student discipline published in the journal of the National Association of College and University Attorneys (NACUA) in 1990 and 2004 seem to emphasize this idea, harkening to Thomas Jefferson’s nineteenth century disciplining of students at the University of Virginia. See Edward N. Stoner II & Kathy L. Cerminara, *Harnessing the “Spirit of Insubordination”: A Model Student Disciplinary Code*, 17 J. Coll. & U.L. 89, 94 (1990) (“Nevertheless, a sound student code following this model, like a sound ship under a sailing captain of old, will enable college and university administrators to navigate confidently past the dangers of insubordination, even when those dangers are accompanied . . . by storm clouds of public concern and campus unrest.”). In 1825, Jefferson responded to riots at the University of Virginia by expelling four students, submitting the matter to a criminal grand jury, and reprimanding the rest of the students involved; he wrote to Ellen Wayles Randolph Coolidge that the imposition of student discipline “determined the well-disposed among them to frown upon everything of the kind hereafter, and the ill-disposed returned to order from fear, if not from better motives. A perfect subordination has succeeded, entire respect towards the professors, and industry, order, and quiet the most exemplary, has prevailed ever since.” Edward N. Stoner II & John Wesley Lowery, *Navigating Past the “Spirit of Insubordination”: A Twenty-First Century Model Student Conduct Code With a Model Hearing Script*, 31 J. Coll. & U.L. 1, 17 (2004).

codes of conduct—in which sanctions carry consequences for licensing or future employment—allows for the same coercive influence that police presence has elsewhere in society. Thus, even when police involvement is less clear, the fact that students know they might be referred to the police or arrested provides disciplinary processes their weight. Other times, the administrative and school-based sanctions are punitive enough to garner corrective behavior.

To illustrate the way university discipline operates—to sanction someone or some organization—and otherwise regulates the actions or behavior of members of the university’s community, consider the following examples. In 2013, an Israeli soldier spoke at Florida Atlantic University; some students walked out and criticized the speech.⁵⁰¹ The student protesters were put on administrative probation, barred from campus leadership positions, and required to attend antibias trainings led by the Anti-Defamation League.⁵⁰² In 2017, students at Middlebury College in Vermont “shouted down” and interrupted an author’s speech, and sixty-seven students were subsequently disciplined, some of whom received a permanent record in their file.⁵⁰³ For several years, the University of Pennsylvania threatened students protesting housing affordability and the fossil fuel industry with disciplinary hearings and actions, including the threat of a permanent transcript notation.⁵⁰⁴ In 2022, ten students at Marquette University protested at a convocation for new students.⁵⁰⁵ They were placed on probation, fined \$300, and required to provide a written apology, participate in community service, and develop programming concerning the University’s policy on demonstrations.⁵⁰⁶ Others were sanctioned with writing a campus-compliant protest plan.⁵⁰⁷

(quoting Letter from Thomas Jefferson to Ellen W. Coolidge in 18 The Writings of Thomas Jefferson 346–47 (memorial ed. 1904)).

501. Fabiola Cineas, Students Protested for Palestine Before Israel Was Even Founded, *Vox* (Apr. 24, 2024), <https://www.vox.com/24138285/columbia-campus-israel-palestine-activism-sjp> [<https://perma.cc/HU4Y-XF7F>].

502. *Id.*

503. Stephanie Saul, Dozens of Middlebury Students Are Disciplined for Charles Murray Protest, *N.Y. Times* (May 24, 2017), <https://www.nytimes.com/2017/05/24/us/middlebury-college-charles-murray-bell-curve.html> (on file with the *Columbia Law Review*).

504. Rodrigo Torrejón, Penn Students Claim University ‘Campaign of Intimidation’ as They Face Disciplinary Hearings for Protests, *Phila. Inquirer* (Oct. 14, 2022), <https://www.inquirer.com/news/penn-student-protests-discipline-uc-townhomes-convocation-20221014.html> (on file with the *Columbia Law Review*).

505. Johanna Alonso, Protester Sanctions Spark Tensions at Marquette, *Inside Higher Ed* (Oct. 9, 2022), <https://www.insidehighered.com/news/2022/10/10/marquette-students-face-sanctions-convocation-protest> (on file with the *Columbia Law Review*).

506. *Id.*

507. First Amended Complaint at Law ¶ 49, *Richardson v. Morgan*, No. 24-cv-01284-JES-JEH (C.D. Ill. filed Oct. 11, 2024) [hereinafter *Richardson* First Amended Complaint]. According to the complaint, the plaintiffs alleged that the request that they write a protest plan as part of their student disciplinary sanction “was an attempt by Defendants to require

Interim suspensions at universities such as Columbia, Harvard, the University of Southern California, and UC Irvine carried housing restrictions that limited access to jobs, food, and medicine.⁵⁰⁸ The University of Florida threatened a three-year ban from its campus if protesters violated “protest rules.”⁵⁰⁹ Some schools even withheld degrees until students settled disciplinary proceedings, requiring students to admit to actions that could potentially carry criminal consequences.⁵¹⁰ One such agreement required students to make what one free speech expert characterized as “forced confessions” reflective of “authoritarian regimes.”⁵¹¹ Students at Harvard were put on involuntary leave.⁵¹²

Plaintiffs to make incriminating statements which could be used against them” in an ongoing criminal case. Id. ¶ 50. An alternative essay topic was assigned after “Plaintiffs filed a motion for a temporary restraining order.” Id. ¶¶ 52–53.

508. See, e.g., Michelle N. Amponsah & Joyce E. Kim, Harvard Places Encampment Protesters on Involuntary Leaves of Absence, *Harv. Crimson* (May 10, 2024), <https://www.thecrimson.com/article/2024/5/10/harvard-palestine-encampment-involuntary-leave/> [https://perma.cc/8Z3T-GMRY]; Annika Bahnsen, UC Irvine Sends Suspension Notices to Several Students in the Pro-Palestinian Encampment on Campus, *Mercury News*, <https://www.mercurynews.com/2024/05/10/uci-sends-suspension-notices-to-several-students-in-the-pro-palestinian-encampment-on-campus/> (on file with the *Columbia Law Review*) (last updated May 10, 2024); Carter Castillo, Vivian Dueker, Raymond Tran & Guardian Staff, UCSD’s Gaza Solidarity Encampment: Students Face Interim Suspensions, Counter-Protests Continue, and Campus Groups Respond, *UCSD Guardian* (May 5, 2024), <https://ucsdguardian.org/2024/05/05/ucsd-gaza-solidarity-encampment-students-face-interim-suspensions-counter-protests-continue-and-campus-groups-respond/> [https://perma.cc/V5K2-UPVL]; Sarah Huddleston, Maya Stahl & Chris Mendell, Four Columbia Students Suspended, Evicted From University Housing Following Unauthorized ‘Resistance 101’ Event, *Colum. Spectator* (Apr. 4, 2024), <https://www.columbiaspectator.com/news/2024/04/04/four-columbia-students-suspended-evicted-from-university-housing-following-unauthorized-resistance-101-event/> [https://perma.cc/WC3P-RC33] (last updated Apr. 5, 2024); Tony Kurzweil, USC Imposes Campus Restrictions After Nearly 100 Arrested During Pro-Palestinian Protest, *KTLA5* (Apr. 25, 2024), <https://ktla.com/news/california/usc-imposes-campus-restrictions-after-nearly-100-arrested-during-pro-palestinian-protest/> (on file with the *Columbia Law Review*).

509. Amanda Friedman & Vivienne Serret, UF Threatens Student Protesters With Suspension, Banishment From Campus for Three Years, *WUFT* (Apr. 26, 2024), <https://www.wuft.org/fresh-take-florida/2024-04-26/uf-threatens-student-protesters-with-suspension-banishment-from-campus-for-3-years> [https://perma.cc/6RLR-J2TF].

510. Rachel Treisman, Brian Mann & Jaclyn Diaz, As Student Protesters Get Arrested, They Risk Being Banned From Campus Too, *NPR*, <https://www.npr.org/2024/04/29/1247761719/campus-protests-arrests-suspensions> [https://perma.cc/Z9PP-FPXE] (last updated Apr. 29, 2024).

511. Arwa Mahdawi, Why Is New York University Making Protesters Watch The Simpsons as Punishment?, *The Guardian* (May 22, 2024), <https://www.theguardian.com/us-news/article/2024/may/22/new-york-university-student-protesters> [https://perma.cc/AE66-Y6T3].

512. Jennifer Vilcarino, How Some Colleges Have De-Escalated Campus Protests and Negotiated With Students, *ABC News* (May 10, 2024), <https://abcnews.go.com/US/colleges-de-escalated-campus-protests-negotiated-students/story?id=110031527> [https://perma.cc/GSS9-RVJ2].

In 2024, students taking part in a pro-Palestine encampment protest at the University of Southern California faced discipline from the Office of Community Expectations.⁵¹³ Students were asked to either accept a resolution—along with a formal warning placed on their record—or decline and participate in a full review process; punishment included preparing a several-page reflection essay in response to prompts like how the student “might make different decisions in the future.”⁵¹⁴

In other instances, faculty have been reprimanded or faced formal sanction for supporting student organizing. An associate professor of political science and faculty adviser to a student group at Indiana University was sanctioned for making a room reservation and other organizing related to an invited speaker event.⁵¹⁵ Prior to the event, the faculty member had received a warning that he was in violation of University policy on the responsibilities and conduct of academic appointees, and he was subsequently punished with a temporary removal from teaching and student advising responsibilities.⁵¹⁶ At UCLA, at least thirteen faculty members have faced criminal charges and internal disciplinary proceedings following their involvement in protests on campus.⁵¹⁷ Professor Steven Thrasher, who teaches journalism at Northwestern University, has faced similar administrative disciplinary action: He was first investigated and suspended for his social media use and views on journalistic objectivity; although he was cleared of University policy violations, he was later investigated for his conduct at a pro-Palestine encampment on campus,⁵¹⁸ even after criminal charges against him were

513. Sophie Sullivan, USC Students Disciplined for Pro-Palestinian Protests Receive Probation, Warnings, USC Annenberg Media (Aug. 9, 2024), <https://www.uscannenbergmedia.com/2024/08/09/usc-students-disciplined-for-pro-palestinian-protests-receive-probation-warnings/> [https://perma.cc/63GL-XD6V] (“Students were given until May 24 to accept a ‘proposed resolution’ from OCE. That resolution asked students to take responsibility for failing to comply with administrators, and to receive a formal warning on their student record.”).

514. Kaleem, *supra* note 434 (describing how students received assignments “to write ‘personal thoughts, experiences, and insights’ from the protest and ‘how you might make different decisions in the future,’” with the caveat that their “papers ‘may not serve to justify your own actions or evaluate the actions of others’”).

515. Marissa Meador, IU Administrator Violated Policy in Suspending Professor Abdulkader Sinno According to Faculty Board of Review, Ind. Daily Student (Apr. 2, 2024), <https://www.idsnews.com/article/2024/04/iu-administrator-violated-policy-suspending-professor-abdulkader-sinno> [https://perma.cc/VK6N-83FV] (linking to the March 28, 2024, Opinion of the Faculty Review Board).

516. Hicks, *When a Threat Becomes an Excuse to Muzzle*, *supra* note 489 (reporting on a faculty member’s punishment, which involved removal from teaching for two semesters and removal from student advising for one year).

517. See Anemona Hartocollis, Professors in Trouble Over Protests Wonder if Academic Freedom Is Dying, N.Y. Times (Oct. 23, 2024), <https://www.nytimes.com/2024/10/23/us/faculty-protests-academic-freedom-tenure-discipline.html> (on file with the *Columbia Law Review*).

518. Isaiah Steinberg, University Will Not Discipline Prof Steven Thrasher, Launches New Investigation, Daily Nw. (Jan. 23, 2025), <https://dailynorthwestern.com/2025>

dropped.⁵¹⁹ In December 2024, NYU determined that at least four faculty members, alongside dozens of students, were *persona non grata* (PNG) due to their presence at a student-led protest on campus.⁵²⁰ NYU's American Association of University Professors (AAUP) chapter condemned the PNG designation by NYU as "tantamount to a summary suspension" for which faculty were denied appropriate due process.⁵²¹ An NYU administrator claimed that the University's actions—implemented the day after the incident—were responsive to graffiti in the library that threatened violence against University leadership, but there has been no publicly available evidence indicating that any faculty members present at the protest were responsible for that graffiti.⁵²²

At least when it comes to protest, the perception of university discipline as an informal, education-related administrative process is more problematic than one might assume. Instead, student disciplinary processes illustrate why critical education scholars think that universities have

/01/23/campus/university-will-not-discipline-prof-steven-thrasher-launches-new-investigation/ [https://perma.cc/G7J6-5NZW].

519. Shreya Srinivasan, *Misdemeanor Charges Dropped Against NU Faculty for Activity During Pro-Palestinian Encampment*, *Daily Nw.* (July 19, 2024), <https://dailynorthwestern.com/2024/07/19/campus/misdemeanor-charges-dropped-against-nu-faculty-for-activity-during-pro-palestinian-encampment/> [https://perma.cc/2WX2-QEUE2] (noting that two additional faculty members and one graduate student were also arrested and charged with Class-A misdemeanors); see also Press Release, Steven Thrasher, *Ad Hoc Committee Exonerates Steven Thrasher, Northwestern Opens New Investigation* (Jan. 23, 2025), <https://evanstonnow.com/wp-content/uploads/2025/01/Press-Release-Steven-Exonerated-charged-anew-1.pdf> [https://perma.cc/U5EW-PJM2] (stating that "a new disciplinary proceeding is now underway to determine whether his alleged actions last spring violated the faculty handbook").

520. Academic Freedom Monitoring Project: December 12, 2024 New York University, *Scholars at Risk Network*, <https://www.scholarsatrisk.org/report/2024-12-12-new-york-university/> [https://perma.cc/V499-9DWE] (last visited Mar. 13, 2025); see also Letter from Ash Ü. Bâli, President, Middle E. Stud. Ass'n, & Laurie Brand, Chair, Middle E. Stud. Ass'n Comm. on Acad. Freedom, to Linda G. Mills, President, N.Y. Univ., & Georgina Dopico, Provost, N.Y. Univ. (Dec. 16, 2024), <https://mesana.org/advocacy/committee-on-academic-freedom/2024/12/16/letter-to-new-york-university-regarding-its-arbitrary-repressive-actions-toward-faculty-and-students> [https://perma.cc/77P6-FTB5] (calling on administrators to rescind the faculty members' PNG status); Press Release, NYU Fac. & Staff for Just. in Palestine, *NYU Faculty Arrested for Supporting Students in Peaceful Pro-Palestine Protests* (Dec. 12, 2024), <https://facultyforpalestine.education/2024/12/12/dec-12-press-release-nyu-faculty-arrested-for-supporting-students-in-peaceful-pro-palestine-protests/> [https://perma.cc/C5PP-E2JN] [hereinafter NYU SJP Press Release] (explaining that individuals assigned PNG status by NYU's Office of the Provost had their ID cards deactivated, effectively preventing them from entering campus buildings, including their offices, laboratories, and classrooms).

521. AAUP Condemns Faculty Arrests Amidst Protest Crackdown at NYU, *Am. Ass'n Univ. Professors* (Dec. 12, 2024), <https://www.aaup.org/news/aaup-condemns-faculty-arrests-amidst-protest-crackdown-nyu> [https://perma.cc/GE7Z-XGF3].

522. See NYU SJP Press Release, *supra* note 520 (discussing an email sent to the community by NYU's Vice President of Global Campus Safety).

carceral features.⁵²³ The deans of students offices that are charged with investigating codes of conduct violations and processing disciplinary proceedings rely on police information, question students without legal counsel, and mediate conflicting ideas of safety and speech on the college campus. Their police- or prosecutor-like roles, coupled with the actual threat of police and prosecution, create a disciplining effect for students challenging their university or its administrators.

Monitoring and suspending student organizations for code of conduct violations as a pretext for silencing disfavored political speech or activity is the final, long-standing, and historically rooted component of political surveillance worth mentioning. This monitoring is connected to political surveillance as discussed in section III.A. George Mason University's chapter of Students for Justice in Palestine (SJP) was issued suspension notices following the aforementioned vandalism incident.⁵²⁴ Governor Ron DeSantis tried to ban two SJP chapters in April 2023 at the University of Florida in Gainesville and the University of South Florida in Tampa.⁵²⁵ The universities allowed the chapters to continue their activities.⁵²⁶ By November 2023, Columbia had revised their Event Policy and Procedure and suspended both the chapters of SJP and Jewish Voice for Peace (JVP) seventeen days later.⁵²⁷ Shortly after Columbia took this action, Brandeis, George Washington, and Rutgers went on to suspend their SJP chapters.⁵²⁸ More recently, UCLA suspended its undergraduate

523. See Royel M. Johnson & Jude Paul Matias Dizon, *Toward a Conceptualization of the College-Prison Nexus*, 96 *Peabody J. Educ.* 508, 511, 513 (2021) (arguing that "higher education institutions exert carceral state power through mostly subtle and covert, institutional innovations, and some covert ones, that increase penalty and exacerbate racial and social inequality").

524. Viviana Smith, *News Update: Safety Statements and Back-to-Back Arrests*, Fourth Est. (Feb. 11, 2025), <https://gmufourthestate.com/2025/02/11/news-update-safety-statements-and-back-to-back-arrests/> [<https://perma.cc/FPZ8-RHYS>]; Gregory Washington, *Off. of the President, Update on Campus Safety as Fall Semester Concludes*, Geo. Mason Univ. (Dec. 13, 2024), <https://president.gmu.edu/news/2024-12/update-campus-safety-fall-semester-concludes> [<https://perma.cc/8MRB-6AYX>].

525. See Friedman & Serret, *supra* note 509.

526. *Id.*

527. Sarah Huddleston, *Columbia Updated Its Event Policy Webpages. Seventeen Days Later, It Suspended SJP and JVP.*, *Colum. Spectator* (Nov. 17, 2023), <https://www.columbiaspectator.com/news/2023/11/17/columbia-updated-its-event-policy-webpages-seventeen-days-later-it-suspended-sjp-and-jvp/> [<https://perma.cc/TE2Z-ZA84>] (last updated Dec. 4, 2023); see also Katherine Franke, *Columbia Is Waging War on Dissent*, *The Nation* (Apr. 1, 2024), <https://www.thenation.com/article/society/columbia-lawsuit-israel-antisemitism/> [<https://perma.cc/S3DK-3DKM>]; Emily Pickering, *New York State Supreme Court Upholds Columbia's Suspension of SJP and JVP*, *Colum. Spectator* (Nov. 13, 2024), <https://www.columbiaspectator.com/news/2024/11/13/new-york-state-supreme-court-upholds-columbias-suspension-of-sjp-and-jvp/> [<https://perma.cc/R4NZ-CM4G>] (noting that, a year later, a New York court found that both SJP and JVP would remain suspended due to their alleged violations of campus policies).

528. Jonathan Friedman, *Suspensions of Students for Justice in Palestine Chapters Raise Questions and Concerns About Chilled Campus Environments*, *PEN Am.* (Dec. 8, 2023),

and graduate SJP chapters in February 2025, citing, among other reasons, the vandalization of a UC Regent's home.⁵²⁹

To discourage protests, codes of conduct often include provisions for time, place, and manner restrictions on demonstrations. From late spring to early fall 2024, revisions of these restrictions swept higher education, requiring more advance notice for large gatherings and prohibiting activities that significantly disrupt campus operations or have the potential to infringe on the rights of others.⁵³⁰ In April 2024, the University of Indiana (IU) updated its "Policy for Use of Indiana University Assembly Ground"—a policy that has been in place since 1969 and designated campus areas as public forums "for expression on all subjects" without

<https://pen.org/suspensions-of-students-for-justice-in-palestine-chapters-raise-questions-and-concerns-about-chilled-campus-environments/> [https://perma.cc/X6VR-9A5T]; Arishita Gupta, SJP Faces 2nd Suspension Until 2025, Daily Targum (Aug. 21, 2024), <https://www.dailytargum.com/article/sjp-faces-2nd-suspension-until-2025-20240821> (on file with the *Columbia Law Review*) (noting that Rutgers SJP was suspended again from August 2024 to July 2025).

529. Alexandra Crosnoe, Chancellor Julio Frenk Announces Suspension of Two Pro-Palestine Student Groups, Daily Bruin (Feb. 12, 2025), <https://dailybruin.com/2025/02/12/chancellor-julio-frenk-announces-suspension-of-two-pro-palestine-student-groups> [https://perma.cc/WAP7-RVU6] (last updated Feb. 13, 2025).

530. See Declan Bradley & Garrett Shanley, We Looked at Dozens of Colleges' New Protest Policies. Here's What We Found., Chron. Higher Educ. (Sept. 12, 2024), <https://www.chronicle.com/article/we-looked-at-dozens-of-colleges-new-protest-policies-heres-what-we-found> (on file with the *Columbia Law Review*) (reviewing TPM policies at forty-four university campuses since Spring 2024—among these universities, forty-one restrict encampments, thirty-eight limit the use of amplified sound, thirty-four restrict the time and places of protests, and twenty prevent students from concealing their identities); see also Sophie Hurwitz, New University Rules Crack Down on Gaza Protests, Mother Jones (Sept. 13, 2024), <https://www.motherjones.com/politics/2024/09/new-university-rules-crack-down-on-gaza-protests/> (on file with the *Columbia Law Review*) ("At Carnegie Mellon University, students and faculty were informed . . . that any 'expressive activity' involving more than 25 students must be registered—under the organizers' names—at least three business days prior to the event, and be signed off on by a 'Chief Risk Officer.'"); NYU's Guidance and Expectations on Student Conduct, N.Y.U., <https://www.nyu.edu/students/student-information-and-resources/student-community-standards/nyu-guidance-expectations-student-conduct.html> [https://perma.cc/LD4Y-L33X] (last visited Feb. 15, 2025) (providing examples of prohibited and permissible protest activities); Guidelines on Open Expression, Univ. of Pa., <https://catalog.upenn.edu/pennbook/open-expression/> [https://perma.cc/BV8W-J7G2] (last visited Feb. 15, 2025) (stating that the "time of day, size, noise level, and general tenor of a meeting, event or demonstration are factors that may be considered in determining whether conduct is reasonable" (footnote omitted)). As part of a 2025 settlement agreement, Harvard University will, among other terms, adopt the International Holocaust Remembrance Alliance definition of antisemitism and prepare a FAQ with conduct examples. Press Release, Harvard Univ., Harvard and Students Against Antisemitism Announce Settlement of Lawsuit (Jan. 21, 2025), <https://www.harvard.edu/media-relations/2025/01/21/press-release-settlement-harvard-saa/> [https://perma.cc/H94Y-9ZR5].

requiring administrative approval.⁵³¹ The updated “Expressive Activity Policy” allows “freedom of expression and peaceful demonstration on campus while also respecting the University’s operations.”⁵³² While the final version of this policy was approved in July and officially went into effect in August 2024, the April updates—which prohibited temporary structures, including tents, without prior administrative approval—were enforced against student protesters at a pro-Palestine encampment the day after IU administrators published the addendum on the University’s events website, with a copy left in the grass near the encampment.⁵³³

2. *Red Flagging.* — Protest discipline also includes what this author refers to as “red flagging”: “a process through which staff or police notice a person’s actions and create a note, list, flag, mark, or new record within administrative files or electronic records to track or monitor the person’s future behavior.”⁵³⁴ The significance of an administrative flag for students or university employees is not merely ministerial. Flagging may lead to further, and more severe, disciplinary actions because the eyes of the administration are watching.⁵³⁵ It can carry other noncriminal, yet still

531. Policy for the Use of Indiana University Assembly Ground, Ind. Univ. Bloomington, <https://vpfaa.indiana.edu/policies/bl-aca-il8-use-assembly-ground/index.html> [https://perma.cc/W25Z-TWSM] (last visited Feb. 15, 2025).

532. *Id.* (indicating its replacement with the Expressive Activity Policy).

533. See Jack Forrest & Carolyn Marshall, New IU Expressive Activity Policy Approved, Will Take Effect Thursday, Ind. Daily Student (July 29, 2024), <https://www.idsnews.com/article/2024/07/new-iu-expressive-activity-policy-approved-will-take-effect-thursday> [https://perma.cc/4US2-H223]; Liam Knox, Abrupt Changes to Protest Policies Raise Alarm, Inside Higher Ed (Apr. 30, 2024), <https://www.insidehighered.com/news/students/free-speech/2024/04/30/indiana-protest-policy-change-raises-free-speech-concerns> (on file with the Columbia Law Review) (discussing an ad hoc administrative committee abruptly updating and enforcing the policy against students protesting in Dunn Meadows, leading to state troopers dismantling the encampment and arresting students); Policy for the Use of Indiana University Assembly Ground, *supra* note 532 (indicating its replacement with the Expressive Activity Policy); see also Expressive Activity Policy, Ind. Univ. Bloomington, <https://policies.iu.edu/policies/ua-10-expressive-activity/> [https://perma.cc/DW5A-CYKG] (setting forth the new policy effective August 1, 2024). The Expressive Activity Policy was amended in November 2024 following backlash. See Isaac Perlich, IU Board of Trustees Approves Time Restraint Amendment to Expressive Activity Policy, Ind. Daily Student (Nov. 15, 2024), <https://www.idsnews.com/article/2024/11/iu-expressive-activity-policy-update-board-of-trustees> [https://perma.cc/3GDY-MQ5C] (last updated Nov. 17, 2024).

534. Patel, *Transinstitutional Policing*, *supra* note 34, at 826.

535. Students on multiple college campuses have reported being followed and surveilled by campus police or security. See, e.g., Jude Paul Matias Dizon, Protecting the University, Policing Race: A Case Study of Campus Policing, 16 J. Diversity Higher Educ. 410, 410 (2023) (“The media has documented several instances [in which] campus police have questioned the university affiliation of Black students and investigated them as potential criminal suspects.” (citation omitted)); DeMarcus A. Jenkins, Antar A. Tichavakunda & Justin A. Coles, The Second ID: Critical Race Counterstories of Campus Police Interactions With Black Men at Historically White Institutions, 24 Race Ethnicity & Educ. 149, 151–53 (2021) (discussing instances of Black students being questioned by police for appearing suspicious or out of place, as well as examples of other students calling the police on Black

punitive, consequences.⁵³⁶ For example, in spring 2024, students at Columbia and UC-Irvine, among other schools, were subject to interim suspensions and stay-away provisions following pro-Palestine encampment clearings.⁵³⁷ Banning a student from their campus community not only cleaves access to campus health care, university housing, jobs on campus, classes, and even graduation, but leaves the banned individual with a sense of alienation from their primary community.⁵³⁸ As an example, one banned student stated:

For the simple act of using a megaphone to direct participants in a recent on-campus protest, campus police issued me a trespass ban that barred me from not only attending classes, but from stepping foot on any property within the entire [University of Michigan] system. While my ban has recently been amended to finally allow me to return to class, I'm still forbidden from participating in protests and student organizing meetings, attending lectures and events, and meeting professors, classmates, and friends in person.⁵³⁹

Disciplinary and code of conduct processes escalate consequences over time.⁵⁴⁰ In 2024, five Towson University students conducting a die-in

students). In other examples, students report being monitored at their events by campus administration or security. See, e.g., Torrejón, *supra* note 504 (“Students who have been told they may be disciplined claim the notification and alleged monitoring of student actions by university officials, including with decibel meters and photos taken of students without their consent, are intimidation tactics . . .”); Emma Whitford, *Fossil Fuel Fight Escalates to State Attorney General*, *Inside Higher Ed* (Dec. 15, 2020), <https://www.insidehighered.com/news/2020/12/16/boston-college-students-alumni-take-fossil-fuel-investment-battle-state-attorney> (on file with the Columbia Law Review) (reporting on Climate Justice students at Boston College “hav[ing] noticed undercover public safety officers at their events”).

536. See Patel, *Transinstitutional Policing*, *supra* note 34, at 826.

537. See, e.g., *Richardson* First Amended Complaint, *supra* note 507, ¶¶ 32, 35 (stating allegations that students received interim suspensions and no-trespass orders in response to alleged student conduct violations); Complaint ¶¶ 44–53, *James v. Columbia Univ.*, No. 655038/2024 (N.Y. Sup. Ct. filed Sept. 27, 2024) (stating allegations that the plaintiff was placed on interim suspension and “banned from campus” (internal quotation marks omitted) (quoting a Columbia spokesperson)); Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ¶ 4 & exh.C, *Z.S. v. Regents of the Univ. of Cal.*, No. 24CV085280 (Alameda Cnty. Super. Ct. filed July 30, 2024) (providing documentation of interim suspension letters that allege students’ violation of student conduct policies).

538. Press Release, ACLU Mich., *ACLU and Sugar Law Center Sue University of Michigan to Stop Unconstitutional Banishment of Protestors From Campus* (Feb. 3, 2025), <https://www.aclumich.org/en/press-releases/aclu-and-sugar-law-center-sue-university-michigan-stop-unconstitutional-banishment> [<https://perma.cc/KL6V-6GMT>] (“Under current [University of Michigan] policies, a campus police officer can issue a person a trespass ban—which they euphemistically call a ‘warning’—without ever having to produce evidence that the recipient violated the law or university policies.”).

539. *Id.* (internal quotation marks omitted) (quoting Jonathan Zou).

540. Johanna Alonso, *Suspended Protesters Fight Back With Lawsuits*, *Inside Higher Ed* (Aug. 23, 2024), <https://www.insidehighered.com/news/students/free-speech/2024/08/23/student-protesters-sue-over-suspensions> (on file with the Columbia Law Review).

on campus grass outside of the assigned area for free speech activity received deferred suspensions, a seven-year flag on their academic records, and the threat of expulsion if cited for one more offense.⁵⁴¹

A flag on a school record might also increase the reach of the state's surveillance apparatus, which can lead to traffic or juvenile law charges.⁵⁴² In this way, flags create the promise of and premise for future monitoring. Even the code of conduct process outcome with the least consequences—sometimes called a reprimand, a “dean’s warning,” or a resolution agreement—has the potential to restrict future protest activities because subsequent code of conduct violations can carry heightened consequences.⁵⁴³

The administrative and disciplinary actions against students and faculty engaging in the most recent round of pro-Palestine activities⁵⁴⁴ illuminate the blending of policing and subcriminal institutional processes. Universities’ discipline processes may also involve information, either direct or indirect, from campus police or security. Universities should use care and avoid disciplinary processes in the context of protests because even an administrative sanction can deter legitimate First Amendment activity.⁵⁴⁵

541. Katherine Mangan, *The Race to Pacify Protesters: Is a New Team of Campus Administrators Protecting Free Speech or Undermining It?*, *Chron. Higher Educ.* (Nov. 25, 2024), <https://www.chronicle.com/article/the-race-to-pacify-protesters> (on file with the Columbia Law Review).

542. See Patel, *Transinstitutional Policing*, *supra* note 34, at 826; see also Thomas A. Brady & L.F. Snoxell, *Student Discipline in Higher Education* 11 (1965) (“It is no exaggeration to say that many educators would regard the use of a college disciplinary record by a professional investigator as a complete misuse of educational information by one not qualified to use it.”).

543. See, e.g., Harvard L. Sch., *Harvard Law School Handbook of Academic Policies* 2024–2025, at 99 (2024), https://hls.harvard.edu/wp-content/uploads/2022/07/HLS_HAP.pdf [<https://perma.cc/HM69-BPLH>] (setting forth possible disciplinary outcomes, including warning, reprimand, suspension, dismissal, or expulsion and noting that a recipient of a warning may face “more serious discipline for [a] subsequent violation”); 1.1. University Principles of General Conduct and Regulations, Princeton Univ., <https://rrr.princeton.edu/university-wide-regulations/11-university-principles-general-conduct-and-regulations> [<https://perma.cc/JV76-XN2M>] (last visited Mar. 27, 2025) (stating that even “informal responses” to conduct violations, such as a “Dean’s Warning” or “[r]eprimand,” may be considered when judging future infractions or violations); Statement of Student Rights and Responsibilities, Univ. of Mich. (July 18, 2024), <https://oscr.umich.edu/state%20ment%20agreement> [<https://perma.cc/FXQ5-5YKM>] (describing the conditions for a resolution agreement and listing possible sanctions, including a “[f]ormal [r]eprimand,” which includes notice that “future violations will be dealt with more severely” (emphasis omitted)).

544. Backlash against pro-Palestine organizing didn’t begin on October 7 and has a long history on college campuses. See, e.g., *supra* section II.C.1, notes 536–540 and accompanying text.

545. See Mutua et al., *supra* note 38, at 23–26 (discussing an AAUP statement condemning Columbia’s “suspension of students engaged in peaceful protest and their arrest by the [NYPD],” which “violate[s] the letter and the spirit of the University Statutes, shared governance, students’ rights, and the University’s absolute obligation to defend students’ freedom of speech and to ensure their safety” (quoting Laura Spitalniak, Pro-Palestinian

Taken together, the three features of campus protest policing discussed in this Piece—political surveillance, networked information, and protest discipline—demonstrate the harmful consequences of integrating campus police into protest regulation. In these times, university administrators risk further federal immigration and other law enforcement engagement through campus police connections at the local, state, and federal levels. It may also be the case, however, that police or some form of security are important for protecting the ability to engage in demonstrations, particularly when counterprotesters are present and tensions are heightened along political or racial lines. On balance, this author is unsure that police will actually protect progressive movements, especially those led by people of color, even when university leaders provide such directives. Instead, the expansive capacity for information gathering, arrests, and discipline should give decisionmakers pause today, for these processes risk alienating students and stifling the types of free speech and critical engagement universities should uphold.

IV. COMPROMISE DESPITE PRESSURE

Despite the pressure to act in ways that eliminate mass student mobilization and discipline those involved with unpopular “radical” causes, some university presidents—in the mid-1960s to early 1970s, as well as more recently—have avoided repression and police sweeps, even if they later resorted to such tactics.⁵⁴⁶ Though this Part provides a few examples from spring 2024, it focuses primarily on the historic period to allow for deeper study of student movements. In addition, future work could further examine the give and take between initial protest demands and outcomes of such negotiations, the particular dynamics of protest movements, and the influence of personal relationships and sympathies. The goal of this Part, simply put, is to serve as a reminder that students, faculty, and administrators can and have compromised. Strong support for preventing

Legal Group Files Civil Rights Complaint Against Columbia University, Higher Ed Dive (Apr. 26, 2024), <https://www.highereddive.com/news/pro-palestinian-legal-group-civil-rights-complaint-columbia-university-gaza/714499/> [https://perma.cc/MQQ3-C95K]); see also Farida Shaheed, Statement by the Special Rapporteur on the Right to Education, Ms. Farida Shaheed on Her Visit to the United States of America, 29 April–10 May 2024, at 2 (May 10, 2024), <https://www.ohchr.org/sites/default/files/documents/issues/education/statements/20240510-stm-eom-sr-education-usa.pdf> [https://perma.cc/WT2D-2JKSA] (stating that university-implemented disciplinary measures against protesters “have inevitably created a chilling effect on the whole academic community and a climate of intimidation”).

546. See, e.g., Michael S. Roth, Why I’m Not Calling the Police on My Students’ Encampment, *New Republic* (May 7, 2024), <https://newrepublic.com/article/181341/wesleyan-president-not-calling-police-student-gaza-encampment> [https://perma.cc/44KK-2WUC] (conveying the Wesleyan University President’s commitment to “protecting [students’] right to protest in nonviolent ways that don’t undermine our educational program”).

police violence at the highest levels combined with good-faith negotiations can help secure resolutions without brute police force.

In the spring of 2024, university officials at, among others, Berkeley, Northwestern, and Rutgers found ways to address student encampments without the use of police force or university disciplinary procedures.⁵⁴⁷ After one of the longest and largest pro-Palestine encampments in the country, administrators at Berkeley negotiated with student protesters for the dismantlement of the encampment without police involvement.⁵⁴⁸ Despite pressure to forcibly remove the encampment, Berkeley's chancellor sought to negotiate with protesters, citing the peaceful nature of the encampment.⁵⁴⁹ She stated that in her long tenure at Berkeley, she had learned "protests don't end with police action" but "end with negotiations."⁵⁵⁰ Similarly, at Northwestern, administrators sought to avoid the "violence and escalation . . . seen elsewhere" through a similar agreement.⁵⁵¹ Northwestern administrators condemned the doxxing of community members exercising their First Amendment rights.⁵⁵² The University negotiated with student activists to allow them to continue their protest for another month, so long as they took down their tents.⁵⁵³ Similarly, at Rutgers, students and administrators reached an agreement to create a cultural center for Arab and Palestinian Students and hire a senior administrator with cultural competency about Arab, Muslim, and

547. Letter from Carol T. Christ, Chancellor, Univ. of Cal. Berkeley, to Free Palestine Encampment (May 14, 2024), https://chancellor.berkeley.edu/sites/default/files/encampment_letter_051424.pdf [<https://perma.cc/CXL7-SAQD>] (addressing demands made by the Berkeley Divest Coalition); Schill et al., *supra* note 261 (relaying an agreement to end the protest and outlining the University's commitments to free speech and inclusivity); Francine Conway, Conclusion of Protest at Voorhees Mall, Rutgers Univ. (May 2, 2024), <https://newbrunswick.rutgers.edu/chancellor/communications/conclusion-protest-voorhees-mall> [<https://perma.cc/UAB7-FB6D>] (sharing an agreement to end the protest and outlining the university's ten-point commitments).

548. See Jaweed Kaleem, Teresa Watanabe & Hannah Wiley, UC Berkeley to Consider Divesting From Weapons Makers as Pro-Palestinian Protesters Break Camp, *L.A. Times* (May 14, 2024), <https://www.latimes.com/california/story/2024-05-14/uc-berkeley-protestors-dismantle-pro-palestinian-encampment> (on file with the Columbia Law Review) (last updated May 15, 2024).

549. *Id.*

550. *Id.* (internal quotation marks omitted) (quoting Chancellor Carol Christ).

551. Jacob Wendler & Avani Kalra, Administrators, Student Demonstrators Reach Agreement to End Encampment on Deering Meadow, *Daily Nw.* (Apr. 29, 2024), <https://dailynorthwestern.com/2024/04/29/campus/breaking-administrators-student-demonstrators-reach-agreement-to-end-encampment/> [<https://perma.cc/5NND-27AW>] (internal quotation marks omitted) (quoting Schill et al., *supra* note 261).

552. *Id.*

553. *Nw. Univ., Northwestern Commits to the Following* (2024), <https://www.northwestern.edu/leadership-notes/2024/agreement-on-deering-meadow.pdf> [<https://perma.cc/A4YH-BLVR>]. The agreement also permitted "one aid tent to remain on Deering Meadow." *Id.* at 1.

Palestinian communities following a student encampment.⁵⁵⁴ Rutgers also assured students, staff, and faculty that no one involved with the encampment would face retaliation, protecting their free speech rights.⁵⁵⁵ These brief examples illustrate that, even in the politically and morally polarized context of Israel and Palestine, at least in spring and summer 2024, students compromised their aims and administrators permitted demonstrations or delayed police intervention, even when pressured to stop visible protest actions.

From fall 1968 to 1970, student strikes opposing the Vietnam War and the military draft, as well as racial injustices, faced significant pushback from universities—often involving police, arrests, violence, and even death.⁵⁵⁶ Historians, however, have highlighted numerous efforts by administrators to validate and collaborate—and sometimes co-opt—with student activists as an alternative to the common approach of discipline and policing.⁵⁵⁷ Two such examples took place at the University of

554. Rutgers Univ., Agreement Between Rutgers University and Protesters on Voorhees Mall ¶ 4 (2024), https://newbrunswick.rutgers.edu/sites/default/files/2024-05/AGREEMENT_05072024.pdf [<https://perma.cc/LG8N-4ZKG>] [hereinafter Rutgers Agreement]; Francine Conway, Community Engagement Following Student Protests, Rutgers Univ. (May 8, 2024), <https://newbrunswick.rutgers.edu/chancellor/communications/community-engagement-following-student-protests> [<https://perma.cc/76RV-BKPE>].

555. Rutgers Agreement, *supra* note 554, ¶ 10.

556. See, e.g., Ballantyne, *supra* note 97, at 107 (discussing a three-day strike at the University of Tennessee by students and some faculty, which “resulted in a 50 percent drop in class attendance” and “drew on deep campus grievances”); Metz, *supra* note 121, at 207–17 (chronicling the strikes at Illinois campuses and the governor’s order sending “the remainder of his National Guard reserves to report for duty, bringing the total of guardsmen stationed at Illinois colleges to now over nine thousand”); Christopher Broadhurst, “There Can Be No Business as Usual”: The University of North Carolina and the Student Strike of May 1970, *S. Cultures*, Summer 2015, at 84, 85, 89 (describing student protests after Ohio National Guard members killed four antiwar protesters at Kent State University and noting that the “increased level of protest at [UNC] drew greater monitoring by outside law enforcement, including the State Bureau of Investigation and the FBI”).

557. For example, University of Michigan President Robben W. Fleming opted to enact preemptive reforms like including a Black scholar in the History Department and creating a lecture series on Black culture after the assassination of Rev. Martin Luther King, Jr. See Johnson, *supra* note 122, at 74–78. President Fleming sought to work collaboratively with student activists to avoid disruptive protests while implementing racial inclusion efforts and validating student activist demands. See *id.* He even argued before the U.S. House of Representatives that Black student activists were justified in their activism in an effort to regain the trust of student protesters. See *id.* At the University of Missouri, after faculty members canceled classes following the Kent State Massacre and in solidarity with antiwar protesters opposing violence in Cambodia, the University Chancellor initially sought to address the controversy with compromise and conciliation. See Seager, *supra* note 136, at 193–95. Though the Chancellor eventually yielded to the Board of Curators’ demands to investigate and discipline faculty, the Dean of the College of Arts and Sciences, as well as the Chair of the Sociology Department, refused to provide a list of faculty who had canceled classes, showing solidarity with the activist efforts by students and faculty. See *id.*

Wisconsin and Stanford University, showing the interplay between pressure, reforms, and repression.

At the University of Wisconsin, administrators managed to defuse escalating protests without the use of police or arrests.⁵⁵⁸ The chancellor, Robben Fleming, advised that the “use of police or the National Guard ought to be resisted as long as possible . . . [and] used only sparingly.”⁵⁵⁹ Fleming sympathized with some of the antiwar and civil rights sentiments advanced by the student activists, believing activism had a rightful place on campus when properly managed by administrators.⁵⁶⁰

On numerous occasions in the mid-1960s, Fleming initiated peaceful tactics for resolving activism without violence or significant disruptions to campus.⁵⁶¹ For instance, in 1967, Fleming managed to resolve a 72-hour-long sit-in in the administration building without police, avoiding the violence seen on other campuses across the country.⁵⁶² Similarly, when students protested campus interviews with companies involved in the war effort, Fleming opted not to involve police but to move the interviews away from campus to avoid disruption and police violence.⁵⁶³ And when student protesters occupied the University’s business office, Fleming decided not to force them out but to instead request that they stay without disturbing offices or roaming the building; the protest ended with students eventually leaving the building peacefully.⁵⁶⁴ In an outlier case in which students were arrested, Fleming personally paid to bail the activists out of jail, realizing that arresting student protesters could inadvertently turn them into martyrs.⁵⁶⁵ Overall, Fleming’s respect for student activism and prioritization of nonviolent conflict resolution at the University of Wisconsin received largely favorable national attention.⁵⁶⁶

Similarly, at Stanford University in the mid-1960s, administrators like then-Provost Richard Lyman and President Kenneth Pitzer worked to resolve disruptions involving student protests through internal processes, rather than police.⁵⁶⁷ Pitzer called the protesters’ commitment to civil disobedience an “impressive testimony” and described his commitment to

558. See Johnson, *supra* note 122, at 70.

559. See Robben W. Fleming, *Tempests Into Rainbows: Managing Turbulence* 150 (1996).

560. See Johnson, *supra* note 122, at 70.

561. See Fleming, *supra* note 559, at 150; see also Johnson, *supra* note 122, at 70; Matthew Levin, *Cold War University: Madison and the New Left in the Sixties* 5, 10, 153 (2013).

562. See Johnson, *supra* note 122, at 70.

563. See Fleming, *supra* note 559, at 153.

564. *Id.*

565. See Johnson, *supra* note 122, at 70; see also Fleming, *supra* note 559, at 151.

566. See Fleming, *supra* note 559, at 151; see also Levin, *supra* note 561, at 153.

567. See Richard W. Lyman, *Stanford in Turmoil: Campus Unrest, 1966–1972*, at 137 (2009) [hereinafter Lyman, *Stanford in Turmoil*].

“working through peaceful channels” to resolve the conflict.⁵⁶⁸ In fact, Pitzer even made public statements in opposition to the Vietnam War.⁵⁶⁹

Two sit-ins at Stanford in the spring of 1969 illustrate administrators’ reluctance to involve police. In April 1969, when the University was pressured to respond with police to a student sit-in at the Applied Electronics Laboratory, Lyman noted how, in past cases, turning to police had yielded results that were “not . . . especially happy or encouraging.”⁵⁷⁰ Recalling how police intervention had led to violence and arrests at Harvard earlier that day, Lyman sought instead to resolve the protest with Stanford’s “own established judicial mechanisms.”⁵⁷¹ The administrators established a voluntary process that involved asking protesters to identify themselves and leave the building without calling in police.⁵⁷² After six days, then-Governor Ronald Reagan advised Stanford to physically remove protesters from the building as Harvard had done, yet administrators remained committed to Stanford’s process.⁵⁷³ Pitzer sought to minimize police presence and to demonstrate University control over the situation, stating after the May 1969 sit-in, “[t]he real test . . . is whether we can control our own affairs in a university community” rather than resorting to “outside forces as we have so unhappily had to do this spring.”⁵⁷⁴

Later, Lyman, in consultation with Pitzer (who was away for the evening) and others, opted to threaten to call the police in response to approximately 100 students occupying Encina Hall in May 1969, but the administrators allowed faculty to warn the student protesters to give them a chance to leave the building.⁵⁷⁵ While universities like Columbia, Harvard, and Berkeley saw violent conflicts in response to student strikes, Stanford administrators managed to clear the building without injuries or

568. See Press Release, Stanford Univ. News Serv. (Apr. 11, 1969), http://www.a3mreunion.org/archive/1968-1969/68-69_ael_su_response/files_68-69_stanford_response/A3MAELresponse_Press_1.pdf [<https://perma.cc/DL33-U8U8>] (internal quotation marks omitted) (quoting Kenneth Pitzer, former President, Stanford Univ.).

569. Wallace Turner, President of Stanford Resigns After 2 Years of Disturbances, N.Y. Times (June 26, 1970), <https://www.nytimes.com/1970/06/26/archives/president-of-stanford-resigns-after-2-years-of-disturbances-dr.html> (on file with the *Columbia Law Review*) (quoting Pitzer).

570. See Lyman, Stanford in Turmoil, *supra* note 567, at 137 (internal quotation marks omitted) (quoting Lyman).

571. *Id.* at 136–37 (internal quotation marks omitted).

572. Richard W. Lyman, Provost, Stanford Univ., Statement on the Occupation of the Applied Electronics Laboratory (Apr. 13, 1969), http://www.a3mreunion.org/archive/1968-1969/68-69_ael_su_response/files_68-69_stanford_response/A3MAELresponse_from_Lyman.pdf [<https://perma.cc/CGM5-Q93K>].

573. Get Tougher With Dissidents, Reagan Advises Stanford, L.A. Times, Apr. 16, 1969, at 3 (on file with the *Columbia Law Review*).

574. Riots, Civil and Criminal Disorders: Hearings Before the Permanent Subcomm. on Investigations of the S. Comm. on Gov’t Operations, 91st Cong. 4565 (1969) (statement of Kenneth S. Pitzer, President, Stanford University).

575. See Lyman, Stanford in Turmoil, *supra* note 567, at 151–52.

arrests, as the students voted to voluntarily vacate.⁵⁷⁶ After the evacuation, Lyman wrote that no one should “consider the clearing of Encina Hall a victory,” calling it a “defeat” to need to summon police.⁵⁷⁷

Meanwhile, in February 1969, student opposition to the University of Pennsylvania’s involvement with the University City Science Center and the administration’s expansion plans led to a six-day sit-in at College Hall.⁵⁷⁸ The protest focused on the Center’s classified military research and the displacement of thousands living in West Philadelphia to make way for the University’s expansion and redevelopment.⁵⁷⁹ The administrators seemed keenly aware of the potential for “[a]nother Columbia,” referring to the protest that led NYPD to enter Columbia in 1968 and brutally arrest hundreds of students.⁵⁸⁰ The cause for protest was similar enough: federally funded military research at its premier scientific research center and property expansion into the surrounding working-class Black neighborhoods. But the University of Pennsylvania protest was resolved peacefully, without the use of Philadelphia police.⁵⁸¹ Professor Wayne Glasker noted that the sit-in resolution involved the campus administration accepting, among other resolutions, “a Quadripartite Commission” consisting of faculty, students, administrators, and the community “to review all existing plans for future land acquisition or development of currently owned land contiguous to existing residential neighborhoods.”⁵⁸²

576. *Id.* at 152.

577. *Id.* at 153. According to reports, this was the first time outside police were called, although no arrests were made. See Daryl Lembke, *Police Summoned to Stanford for First Time in Its History*, L.A. Times, May 2, 1969, at A1 (on file with the *Columbia Law Review*).

578. See, e.g., Judith Ann Fowler, *Six Days in College Hall*, Pa. Gazette, March 1969, at 6, <https://archives.upenn.edu/exhibits/penn-history/sit-in-1969/gazette/> (on file with the *Columbia Law Review*) (describing the sit-in). For a discussion of student activism at the University of Pennsylvania prior to and following the February 1969 sit-in, see generally Bradley, *Upending the Ivory Tower*, *supra* note 88, at 218–46; Wayne Glasker, *Black Students in the Ivory Tower: African American Student Activism at the University of Pennsylvania, 1967–1990* (2002).

579. See John L. Puckett & Mark Frazier Lloyd, *Becoming Penn 128* (2015) (discussing the sit-in demands, including “(1) transfer of UCSC land to Renewal Housing, Inc., an African American nonprofit, which would build low-income housing in Unit 3; (2) development of a fund for low-income housing by the trustees; (3) revision of the UCSC charter to ban classified military research”). The authors further describe the redevelopment of the area created as “Unit 3,” writing, “The orchestration of Unit 3—the [Philadelphia Redevelopment Authority] demolitions, the construction of the much ballyhooed University City Science Center, and the permanent removal of the unit’s predominantly black population—undermined Penn’s community relations in West Philadelphia for decades after the clearances, with aftershocks that are still felt today.” *Id.* at 88.

580. Bradley, *Upending the Ivory Tower*, *supra* note 88, at 237.

581. See Puckett & Lloyd, *supra* note 579, at 130–32 (describing the efforts of both campus administration and student leadership which “averted the rubber truncheons, teargas canisters, and paddy wagons of Police Commissioner Frank Rizzo’s cops”).

582. Glasker, *supra* note 578, at 51.

One month prior, in mid-January 1969, around thirty students from the Black Action Society at the University of Pittsburgh held a sit-in at the University's computer center to demand that the university fulfill its promises to recruit more Black students, faculty, and staff, implement Black campus programming, and establish a Black Studies Department.⁵⁸³ While campus police prevented other students from entering the building, and city police "took up strategic positions," the administration did not engage police further.⁵⁸⁴ Following a tentative agreement among the parties, the students left the building, and the sit-in ended peacefully.⁵⁸⁵ At the University of Pennsylvania and the University of Pittsburgh, like at Stanford and the University of Wisconsin, student strikes and sit-ins were sometimes met with nonviolence and respect for free speech, even though administrators may have disagreed with student activists' disruptive tactics or political ideologies.

Of course, the moments of negotiation and police involvement require nuanced consideration and were influenced by the politics of the time. Former UC President Kerr recounted an instance when the chancellor favored calling police to remove students from a building. Kerr opposed the action and "persuaded the governor that no action should be taken that night."⁵⁸⁶ Instead, Kerr suggested "that he and I should together enter Sproul Hall in the morning and try to persuade the students to leave. Among other things, I argued that these were 'our' students and should not be treated like common criminals." Unfortunately, according to Kerr, the politics changed. As he recounted:

Later that night the governor changed his mind and ordered the police to take immediate action. He telephoned me to say what he had done and that he expected my cooperation, and then abruptly hung up. Hundreds of students and nonstudents were arrested. The movement was greatly energized, and I was left with the charge before public opinion that I had opposed law and order. What I had done was oppose police action without trying persuasion first. I had long experience observing the use

583. See Robert C. Alberts, *Pitt: The Story of the University of Pittsburgh, 1787–1987*, at 386–87, 391–92 (1986).

584. *Id.* The university president at the time of the sit-in, Wesley Posvar, was quoted as saying:

Those who say that we should have reacted to this situation by immediately calling the police and expelling the students, before any attempt to communicate with them, do not, in my opinion, understand the facts of this incident. . . . It must be understood that the actual situations we face do not always present us with simple and unambiguous choices.

Id. at 392 (alteration in original) (quoting Posvar).

585. *Id.* at 391–92.

586. See Kerr, *Fall of 1964*, *supra* note 113, at 362, 383–84.

of police to quell industrial disputes and had seen how uncontrolled this instrument could become.⁵⁸⁷

This Piece offers these examples of compromise to put resistance by administrators in the context of multiple options. When it comes to weighing appropriate responses to student mobilizations for unpopular, left-leaning causes, administrators must navigate pressure from elected officials, donors, students, faculty, and alumni. Still, some administrators have navigated the pressure and did what they thought was best for their university's educational mission and academic freedom.

CONCLUSION

This Piece draws an explicit connection between the student protest movements of the mid-1960s to early 1970s and the laws and processes universities apply to student activists today. The historical research in this Piece shows that, following the elimination of *in loco parentis* control over students, codes of conduct became the new mechanism for moral, social, and behavioral control. In response to protests, conduct codes relevant to protests have been written and rewritten to target left-leaning students, politics, and behaviors. The tools universities developed or expanded in the prior era are used today to quash peaceful protests and protests drawing on traditions of disruptive action.

Periods of student activism correspond to periods of expanded policing, including the increase of campus policing personnel, authority, and munitions. Demonstrating this logic, the 1960s witnessed the emergence and subsequent growth of campus police as a unified category of police forces. In spite of many university administrators' belief that campus police would behave in alignment with the goals and ideals of an educational environment, these police modeled themselves after, and aspired to achieve the stature of, municipal police agencies. Today, universities continue to expand their police forces and their arsenal of weapons to use against their own students in the name of protecting their property and most important administrators.

The Piece also demonstrates how much student discipline and legal action bleed into each other in the realm of student protest, in part due to police involvement in monitoring student activity and disciplining the university community. This means campus police entanglement with the university's subcriminal and administrative disciplinary processes—ostensibly educational in purpose—express and expand the carceral instincts of adjudicatory processes targeting protesters, but without equivalent due process protections. The cultural consequences for students are alienation and isolation from the university, and a profound sense of betrayal. An institution they trusted to protect them instead colluded with state forces

587. *Id.* at 383–84.

and, in some instances, did little to protect them from counterprotest, doxxing, or violence.

Finally, this Piece pinpoints some of the external pressures—namely financial and economic—that have influenced administrative decision-making both in the past and today. Financial and legislative pressure push university presidents to apply police discipline to students or risk job losses and spending cuts. The influence of other financial pressures over decisions to use or not use arrest power and disciplinary processes is outside the scope of this Piece, and more research is needed in those areas. Subsequent work should also address the federal executive branch's influence over university decisions, as well as pressure from private interests such as major individual and corporate donors.

Despite the strong political pressure to discipline students using police forces and their own potential ambivalence toward student demands, some university presidents chose to compromise and work with their students. They knew headlines, criticism, and potentially more demonstrations would follow massive police repression, so they chose negotiation over crackdown. These historic examples could serve as lessons for today's university presidents and students.

