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The ABCs of Crisis Management: How to Stay out of Court

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The ABCs of Crisis Management: How to Stay Out of Court

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About the Authors

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Advice about Crisis Management is what this handbook is all about. We have comprised a handbook to hopefully help you stay out of court.

We call it the ABC’s of CRISIS MANAGEMENT. Since it is imperative that one must advise properly, there is a need to have the skill of knowing what type of advice one renders. The key explanation of these types of advice lies in the audience or recipients of the advice. Our goal is to keep you out of court throughout a crisis.

Take it or leave it.
Just don’t say we didn’t tell you so!
B is for Being Mindful.

When any type of crisis on your campus occurs, no matter what type of crisis it is (health, financial, natural disaster, etc.) BE MINDFUL of what each role is. Know your role, the role of the Administration, Faculty, Housing Staff, etc. Having a plan of action is the smartest step in prevention. It also helps to be mindful how your decisions will affect those who are a part of campus. Media is another huge topic to consider. When Western Kentucky University locked down campus in October of 2008 for a potential shooter on campus, it made headline news on CNN.

Being mindful of all aspects of the situation at hand, and weighing all of the options is the safest move to make. Have a plan of action for everything, and consider the consequences - especially if there is a chance you could wind up in court.
C is for the Civil Rights Act of 1964

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<th>Civil Rights Act of 1964</th>
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<td>An Act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States of America to provide relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.</td>
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What does it have to do with today?

You may think “that was then and this is now”, and “what does it have to do with today?”

Well, the Civil Rights Act was legislation put into action to put an end to racial discrimination and segregation to African Americans who were at that time not afforded equal opportunity and access to education, housing, employment, public transportation, dining privileges, holding and election to public office,

We have all read about many of the Civil Rights champions such as Rosa Parks, Dr. Martin Luther King, Jr., and Malcolm X, just to name a few, but there are many unsung, faceless, voiceless heroes who shed their blood for the cause.

What does it have to do with today? Racism is still alive and sick today, although not overtly as in 1964. Not only are African Americans protected by it, but Hispanic/Latinos, Native Americans, women, and yes, even Caucasians. There are thousands seeking adequate housing, employment and/or promotion, and admission to public institutions whose applications are marked or thrown away not long after submission. The Civil Rights Act of 1964 is still in affect and provides protection to those who feel their basic human rights have been violated based upon their race, ethnicity, nationality, or gender.

It has everything to do with today. The Civil Rights Act of 1964 says that anyone can learn where they want to, eat where they want to, live where they want to, lodge and recreate where they want to, work where they want to, and vote how they want to and cannot be denied because of the color of their skin, their origin, beliefs, or political affiliation.
Dis for Disability Services

The Americans with Disabilities Act of 1990 provides individuals with protection from discrimination in employment, housing, and education.

Under the legislation, postsecondary institutions are required to provide students who have documented disabilities reasonable accommodations enable them to equal access to learning. It is the student’s responsibility to inform the institution of the disability and to request assistance.

A disability is defined as:

1. “A physical or mental impairment that substantially limits one or more major life activities of the individual”
2. "A record of such impairment." (Official Physician Statement)
3. "Being regarded as having such an impairment (Americans with Disabilities)

When seeking accommodations the student should:

1. Contact the institutions Disability Coordinator to request services. A doctor’s statement will be requested at that time to verify the disability.
2. Discuss individual disability and needs, so that the Disability Coordinator can determine appropriate accommodations.

Meet with instructors, or request that the Disability Coordinator meet with instructors to advise them of the students needs for accommodations.
E is for the Equal Pay Act

Institutions must insure that there is equality in pay and compensation for all employees regardless of gender. While it is common knowledge that many organizations are guilty of inequality in pay when it comes to females, new legislation now protects women faculty and staff on the college campus.

The Lilly Ledbetter Fair Pay Act amends the Civil Rights Act of 1964 and other anti-discrimination laws to clarify at which points in time discriminatory actions qualify as an “unlawful employment practice.” According to the legislation, unlawful conduct occurs when: “(1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by application of the decision or practice, including each time compensation is paid.” The law further states that individuals may receive back pay as compensation for discrimination that occurred up to two years preceding the filing of a charge. (Themiddleclass.org)
F is for Free Speech Claims and Academic Freedom
(The Pickering/Connick Line, 1968)

Faculty personnel in public and private institutions, who desire to avoid lengthy and potentially embarrassing court cases and possible termination of employment, must be cognizant of the fact that their First Amendment constitutional rights are guaranteed and protected only when they are infringed upon after the said person has spoken as an individual citizen and not as an agent of the institution.

In order to determine the validity of a freedom of speech claim, the Pickering/Connick Line is used to measure if an educator has just cause to bring a free speech claim against an institution. The court must first establish if the faculty/educator addressed a matter of public concern, and second, if a positive educational and learning process was affected by the educator’s communication.

The Pickering/Connick Line considers four questions to determine if a violation has occurred:

1. Was a close working relationship damaged because of the faculty/teacher’s actions?

2. Is the matter of legitimate public concern?

3. Does the matter have a detrimental impact on the administration of the educational system?

4. Is the faculty/teacher daily work performance affected?

5. Is the faculty/teacher acting as a private citizen or a as a professional?

Educators and their respective institutions/systems should apply the Pickering/Connick Line before heading to court over free speech issues to determine if a violation has occurred.
G is for Guns

With the exception of police and local authorities, Guns should be prohibited from all areas of campus.

What Gun policy should cover:

- **Storage in College/University Vehicles Prohibited.** No vehicle owned or under the control of the college or university shall carry a firearm.

- **Violations.** Violations of this policy by students or employees are misconduct subject to discipline with judicial department and may be suspended or expelled pending on severity of violation.

- **Referral to Law Enforcement.** College or university may refer violators of law to appropriate law enforcement authorities.
Hazing is defined in the WKU Student Handbook as practices which are a part of initiation into or affiliation with an organization. It includes:

1. Any action or creation of a situation which recklessly or intentionally endangers the mental or physical health of a participant.
2. Forced or coerced use or consumption of liquor, drugs, or any other vile substance.
3. Harassment by exacting degrading or disagreeable work, ridicule or abusive and humiliating conduct which tends to bring the reputation of the organization or University into disrepute.
4. Any action that intentionally prevents students from fully participating in the academic process.
5. Other examples of hazing include but are not limited to calisthenics, “treeing,” paddling, line-ups, theft of any property, sleep deprivation, forced nudity, personal servitude, and forcing the violation of University policies and federal, state, or local laws.

Rider University Administrators Charged with Hazing

On March 20, 2007, Rider University student, Gary DeVercelly died after drinking an entire bottle of vodka during Phi Kappa Tau’s big brother/little brother night. The prosecutor for the case, Joseph Bocchini, announced on August 3, that Rider University Dean of Students Anthony Campbell and Director of Greek Life Ada Badgley were going to be charged with aggravated hazing along with the students involved in DeVercelly’s death for “knowingly or recklessly organized, promoted, facilitated or engaged in conduct which resulted in serious bodily injury” (McCarthy, 2007, p. 2). This is the first case in the nation where university administrators were indicted for a hazing death. On August 28, 2007, the charges against Campbell and Badgley were dropped due to a lack of evidence to prove guilt beyond a reasonable doubt.

Source:

I is for Investigation

When conducting an investigation for alleged violations of the student code of conduct, it is important to make sure that you follow the correct procedures according to university policy and state laws. If you do not give students or organizations due process during an investigation, you risk being sued for damages caused by the mismanagement of the investigation. The following case, *Phi Delta Theta House Assn. and Iowa Beta Chapter of Phi Delta Theta v. State of Iowa, et al.*, depicts a situation where a student organization suffered significant damages due to the abuse of power by a university official and the lack of due process during a hazing investigation.

In fall 2001, Philip Jones, Vice President for Student Affairs at the University of Iowa, received an illegally obtained recording from a former new member of Phi Delta Theta of an alleged hazing incident at the fraternity house. The alumni conducted an internal investigation and admitted to an alcohol violation while denying any hazing took place. Jones levied a one year suspension on the fraternity as long as it waived its right to a hearing. Phi Delta Theta refused, and they were immediately suspended from campus. The fraternity received an evidentiary hearing in August 2003 and was found guilty on the sole basis of the recording.

After appeals to the university president and the Board of Regents, Phi Delta Theta took the university to Iowa District Court in 2005 on the counts that the chapter had lost 50% of its membership, lost tens of thousands of dollars on income, and accumulated $20,000 in attorney fees. On January 24, 2007, the court ruled in favor of the fraternity on the basis that “the University and Vice President Jones expressly used the illegal recording against the chapter, in violation of Iowa law, by improperly suspending its recognition from November 19, 2001 to November 21, 2003” (Harvey, 2007, p. 2). The University and Jones were ordered to pay over $141,000 in damages, and they filed an appeal to the Iowa Supreme Court.

On February 20, 2009, the Iowa Supreme Court upheld the decision by the trial court but reduced some of the punitive damages to the University and Jones based on the date that the hazing charges were officially dropped (Harvey, 2009). Due to the drop in membership from the suspension, Phi Delta Theta was closed in 2005 but has since reopened. The chapter plans to use the settlement money to help with the recolonization efforts.

Source:

**J is for Jurisdiction**

Judicial Jurisdiction is the personal, geographical, temporal, and legal limits of the code of conduct, and it establishes the who, where, and when of the types of violations that can be adjudicated on campus (Sokolow, 2001). When a crisis occurs that is a violation of the student code of conduct, who has jurisdiction over the investigation? Sokolow believes that the Judicial Affairs Office needs to have a written policy that addresses the constituents falling under the institution’s jurisdiction, the geographic area of the jurisdiction, the allowable time frame, and the legal issues facing the jurisdiction.

**Elements of Jurisdiction (Sokolow, 2001)**

- **Personal or Physical** – who should be covered by the college’s rules
  - Current students, faculty and staff, non-students against students, non-student offenders
- **Geographic** – where the incidents take place (i.e. on or off campus)
  - Why an institution hears all off-campus incidents
    - Duty to protect students from foreseeable dangers
    - Expel students that pose potential danger to the campus community
  - Off-campus compromise
    - Any incident that could potentially have a significant impact on campus
    - Could modify behavior if students know that any incident at any time could be heard by Judicial Affairs
  - Off-campus control – incident occurs off campus but in an area where the institution oversees the physical property
- **Temporal** – time period involved in the issue
  - Period of limitation – statute of limitations for hearing a violation
  - Retained jurisdiction – holding alumni accountable for violations; also covers leaves of absence, study abroad, etc.
    - Institution retains right to revoke diploma depending on the situation
    - Incident happens before graduation but not reported until after graduation

Source:

K is for Keeping Campus SAFE

The vast majority of colleges and universities have an entire department dedicated to Campus Safety. Keeping a safe campus is very vital to staying out of court and litigation. There are a variety of aspects to cover to ensure the safety of a college campus.

Senator Bobby Scott has introduced the CAMPUS (Center to Advance, Monitor and Protect University Safety) Act, as a response to recent tragedies on college campuses (Virginia Tech and Northern Illinois, to name a few). It will be administered through the U.S. Department of Justice, and will train campus public safety agencies. They are striving to take all steps possible to prevent any future tragedies on college campuses in the United States.

Keeping a college campus safe doesn’t always mean preventing tragedies. It means monitoring students who might be a potential harm to others, building inspections, grounds inspections, etc. Take all precautions possible.

http://www.house.gov/apps/list/press/va03_scott/pr_090128a.html
L is for Liability Insurance

Why should you think about getting liability insurance as an administrator?

As a student affairs professional, you should be covered under the university’s insurance policy as long as you are working within the scope of your job duties. If the university’s coverage is insufficient or it chooses to not defend you, purchasing a liability insurance plan could help you in the event that you get sued for an incident that occurs under your supervision.

Where do I get liability insurance?

If you are a member of ACPA or NASPA, you can purchase an Educators Professional Liability Plan through Forrest T. Jones & Company. For $99 per year, you can purchase a $1 million liability limit policy or $136 for a $2 million policy.

What does a liability insurance policy cover?

An Educators Professional Liability Insurance Plan with Forrest T. Jones and Company covers a broad range of incidents such as injuries to students under your supervision, defamation, violation of student civil rights, improper methods employed in instruction, counseling, research design, etc., and negative consequences in implementing the recommendations of research studies.

When does a liability insurance policy not cover an incident?

Certain student organizations can have an insurance policy through their national organization. If an incident occurs that breaks a national risk management policy, it is possible that the students will not be covered under the insurance policy. In April 2003, Travis Starr, an underage Lambda Chi Alpha member at the University of Georgia, got drunk during a recruitment event and died after falling out of a moving truck. The fraternity was sued two years later and was not covered under its national insurance policy because Lambda Chi Alpha’s national policy “provides that no duty to defend nor any insurance coverage afforded by this policy, shall apply to any claim arising out of or in any way resulting from any violation of fraternity alcohol policy” (Burke, 2007, p. 7).

Sources:


M is for Media Relations

If a crisis happens under your supervision that could potentially tarnish the image of the university, you should work with the Media Relations Office to ensure that the proper communication strategies are being employed. WKU’s Office of Media Relations defines a crisis as “a significant disturbance in the University’s activities which results in extensive news coverage and public scrutiny, and which has the potential to cause campus disruptions and long-term public relations damage.”

**WKU Crisis Communication Team Procedures**

1. Designate a spokesperson – This person will have the most direct knowledge of the crisis.
2. Draft a fact sheet – The fact sheet will quickly send information to all parties seeking information about the crisis.
3. Notify key constituencies – The Crisis Communication Team will identify certain groups that should be informed about the situation.
4. Alert the media – At this point, the team will begin delivering information via written or oral communication to the public and the media.
5. Disseminate information – In order to get this information out to a variety of people, the university will utilize several communication methods ranging from press releases, mass emails, and voice mail messages.
6. Control access – If the media wishes to come to campus, the team and the police will create a staging area for press conferences.
7. Determine appropriate documentation – Depending on the type of crisis, the types of documentation will be determined by the highest ranking communication official on the crisis team. Types of documentation include audio, visual and written.
8. Follow up – When the crisis is resolved, the team will reconvene to assess the response to the situation.


**Examples of Crisis Communication Methods**

- Website
- Telephone
- Text Messages
- Media
- Call boxes
- Public Address System
- Siren

Source: Nicholls State University Emergency Preparedness, [http://emergency.nicholls.edu/crisis-communications](http://emergency.nicholls.edu/crisis-communications)
N is for Natural Disasters

Most importantly, HAVE A PLAN IN PLACE!
Natural Disasters in which a College or University should have a plan for:

- Tornado
- Earthquake
- Blizzards
- Severe Thunderstorms
- Hurricane (Depending on Region)

Don’t get caught without a plan. Have all faculty and staff trained in the event of all pertinent natural disasters. Go over these crisis management plans during training at least once per year and always with new faculty or staff. This not only helps ensure the safety of your college or university, but it could also help save lives.
O is for an Open Communication System

At your college or university, you should always have a communication system in place to inform people of serious and potentially dangerous situations.

Ways in which colleges or universities can use an open communication system are (but not limited to):

- Mass Email of a high threat situation
- Mass text
- Information on the front page of college/university website
- Calling tree from department to department or building to building
- Campus-wide sound system alarming people about threatening weather or high threat situations
P is for Public Relations

Don’t let a crisis situation own your entire PR.

Take control of the situation:

1) Have the appropriate person address the media following a crisis situation
2) Have them address what happened, what steps were taken by the college/university to prevent danger to faculty/staff/students to ensure that proper safety and situational protocol was followed
3) Don’t let the media control the interview or press statement.

Possible situations in which a school should have a crisis management plan:

- Bomb threats
- Natural disasters
- Suicide
- Killing threats
- Gang activities
Quality is defined as a degree of Excellence. Using quality in every aspect of running a campus is vital. If you use quality and morals in every facet of the operation, not only will you try to please everyone, you will hopefully use correct tactics and follow laws and procedures correctly.

Quality is also important for campus life. Adding quality of life on campus is what can make or break a college experience. Having a good balance with diversity, harmony, experience, academics, athletics, extracurricular activities, climate, etc. are huge. If students, faculty and staff are happy and content in their campus environment, there is less of a chance of crisis’ happening, which is less of a chance of ending up in court.
Reporting Abuse

According to the Kentucky Association of Sexual Assault Programs if in doubt, it is always better to call and talk with the trained professionals about what has come to your attention when it comes to reporting abuse.

There are mandatory reporting laws in the state of Kentucky for any crime committed against a person under the age of 18, all cases of domestic violence, and cases of abuse and neglect of persons over the age of 18 who are physically or mentally challenged. If you receive information regarding someone in one of these categories who has been sexually assaulted, or in any other way abused or neglected, you are legally obligated to report the incident to the Department of Community Based Services or law enforcement.

What to Report

The following definitions should only be used as a guide as relating to sexual assault. Any suspected abuse that falls under these definitions must also be reported.

Regarding Children

- Sexual Abuse and Sexual Exploitation refer to contacts or interaction in which the perpetrator uses or allows, permits or encourages the use of the child for the purpose of sexual stimulation of the perpetrator or another person.
- Sexual exploitation refers specifically to acts which constitute child pornography and prostitution.
- Sexual abuse can include a wide range of behavior such as
  - Genital exposure
  - Fondling
  - Masturbation of child victim
  - Fellatio/Cunnilingus
  - Penetration of vagina or anus

Regarding Adults

Abuse or neglect means the infliction of physical pain, injury, or mental injury, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which a person inflicts physical pain or injury upon a spouse or deprives a spouse of reasonable services necessary to maintain the health and welfare of his spouse. This includes sexual assault. Exploitation means the improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or the other person.

Sources:


S is for Sexual Violence

**Sexual violence** is any sexual act that is forced against someone's will. These acts can be physical, verbal, or psychological. All types involve victims who do not consent, or who are unable to consent, or refuse to allow the act. Sexual violence is a serious problem that can have lasting, harmful effects on victims and their family, friends, and communities. The goal for sexual violence prevention is simple… to stop it from happening in the first place. However, the solutions can be just as complex as the problem. Here are some helpful tips that may help in stopping sexual violence before it begins.

- **Start education early.**
  Engage elementary and high school students in various mentoring programs or other skill-based activities that address healthy sexuality and dating relationships.

- **Start with parents.**
  Help parents identify and address social and cultural influences that may promote attitudes and violent behaviors in their kids.

- **Practice educating at all times.**
  Create policies at work, at school, and in other places that address sexual harassment.

- **Use various means of communication.**
  Develop radio, TV, magazines, newspapers messages that promote norms, or shared beliefs, about healthy sexual relationships.

- **Ignorance is not an excuse.**
  Both men and women need to know the their rights and their responsibilities.

- **Be informed of what sexual violence is.**
  Sexual violence comes in all shapes and sizes. Non-contact sexual abuse is defined as abuse that does not involve physical contact. Examples of non-contact sexual abuse include voyeurism; intentional exposure of an individual to exhibitionism; pornography; verbal or behavioral sexual harassment; threats of sexual violence; and taking nude photographs of a sexual nature of another person.

Prevention efforts should ultimately reduce risk factors and promote protective factors for sexual violence. In addition, they should address all levels that influence sexual violence in the individual, relationship, community, and society.
Take notes.

When involved in any legal matter, always take notes.

* Dates of events
* Names of people
* Theories

Note-Taking Techniques:

You don’t have to be super-fancy in your note-taking to be effective, but make sure to jote down information. What may seem to be irrelevant at the time, may later become important information with your case.

Outlining who, what, when, where, and why are effective hints in taking notes.

Understand the law.

Know your rights and know your responsibilities.
You always have the right to remain silent.
V is for the Vagueness Doctrine

What is the law?
What does it mean?
Did I break the law?
Am I guilty?
What am I guilty of?
Will I be charged?
What am I charged with?
Do I need an attorney?
Will I go to jail?

Students, Faculty, or Staff

If you are asking these questions,
you may be protected under the
5th & 14th Amendment!

Under due process of law, when the average person does not understand a statute or a law, its meaning, or its penalties, the statute or law is deemed to be void for vagueness.

Contact an attorney who can interpret and understand!
X is for X-plaining Policy and Procedure

Ensuring that all faculty, staff and students know their rights and rules to follow can keep a college out of legal trouble. Most institutions will have their students sign a waiver that they have read and understand the college handbook, and agree to abide by the rules and regulations. Faculty and staff usually have their own handbook to abide by and sign for, as well.

If a student, faculty or staff member violates a rule they agreed to not break and are punished or terminated for it, they cannot legally fight back and resist. This is a way to protect the institution.
is for Yearly Evaluation

Administering a yearly evaluation of the campus and its environment to students, faculty and staff is a great way to find out lots of valuable information. You can find out what the greatest needs are, fears, great points, what needs to be fixed, etc. It is also a good idea to test and evaluate all emergency procedures to ensure they are carried out in the most effective way. Any time that an emergency procedure has been used on campus, follow up to ensure that it was effective, and can be used in the same emergency should it happen again.
Z is for Zero Tolerance

Zero Tolerance for:

- Guns
- Knives
- Drugs or drug paraphernalia
- Explosives
- Any other potentially harmful substance or object that would disrupt the safety and security of others.