

MEMORANDUM

To: Tenured Faculty, Yale Law School

From: Kate Stith

Re: Free Expression at Yale

Date: March 31, 2022

This is an important moment. Any formal determination that the March protest at Yale Law School did not violate Yale's policy on Free Expression would set a terrible precedent at Yale and elsewhere.

I commend Dean Gerken for supporting Yale's policy. I here explain why in my judgment that policy was clearly violated by the deliberate and extensive disruptions of a Federalist Society event in Room 127 on March 10, as well as by disruption of other events taking place in classrooms off the main hallway.

FACTS: The hallway disruption was far more than excessively noisy. An audiotape released on March 29 by the group FIRE* reveals disruption and interference even while the protesters were in Room 127. The audiotape further reveals the shocking and extraordinary disruption of the event after the protesters moved (twice) to the School's main hallway—yelling, stomping, powerful chanting, and wall-banging. Students and faculty have also reported serious disruption of a faculty meeting and of two classes that were being conducted in other classrooms off the main hallway. Presumably there are audio/video tapes associated with these other classroom events. These recordings would also reveal the extent of interference.

LAW: It is critical to understand that Yale's Free Expression policy does not only prohibit disruption that successfully shuts down an event or class. Rather, Yale's policy prohibits "disrupting" an event, including "interfere[ing] with speakers' ability to be heard and of community members to listen."

APPLYING LAW TO FACTS: There is no doubt that the event in Room 127 was significantly disrupted. The audiotape posted by FIRE establishes that the noise seriously interfered with our efforts to hear and to speak.

ANALYSIS: Limiting Yale's policy to prohibit only "shutting down" events would make no sense. Whether speakers persevere depends in part on how difficult it would be to move the event to a different platform, place, or day. Even more importantly, whether to shut down an

* Foundation for Individual Rights in Education (thefire.org), <https://www.youtube.com/watch?v=Che9UldnnSY>. The event formally opens about thirty seconds after minute 21. The hallway noise begins soon after minute 28 with the door being held open. I shut the door around minute 29. The protesters return to the classroom for Q&A soon after minute 35. Protestors begin to return to hallway soon after minute 68. The event wraps up around minute 88.

event depends on the speakers' and audience members' personalities, hearing abilities, and preferences as to which is worse—giving in and stopping the event, or continuing in hard-to-speak/hard-to-hear and uncomfortable circumstances.

As it happens, events on March 10 were shut down by the remarkably loud and multi-source hallway noise. For instance, whoever was running the faculty meeting decided to shut down its in-person portion and proceed solely on Zoom. Students in the class in Room 128 have said the instructor urged them to “yell” in order to be heard. The instructor in Room 121 stopped the class at one point explicitly because the noise so interfered with the teaching function. And we in Room 127 ceased even trying to talk or listen on multiple occasions.

FREEDOM OF SPEECH FOR ALL: The Room 127 event had two speakers, one from the Left and one from the Right. The topic was First Amendment Freedom of Speech. The two panelists, who disagree on much else, had joined together in the Supreme Court, both arguing that the State of Georgia had violated the First Amendment at a public college. They recently won, 8-1.[†]

Disrupting that panel discussion was especially ironic.

As a former prosecutor, I know well that not every violation has to be an occasion for sanctions. In my judgment we should use this moment as an opportunity to educate our students about the core importance of free expression to our academic mission—and to make clear, as Dean Gerken has forcefully written, this can never happen again. That said, we cannot make the most of this opportunity unless we recognize that a blatant violation of Yale's Free Expression policy occurred on March 10.

[†] Uzuegbunam et al. v. Preczewski et al, 141 S Ct 792 (2021).