

# **Legal Issues for UTA Supervisors**

**January 8, 2019**  
**Presented by Shelby Boseman,**  
**Chief Legal Officer University of Texas at Arlington**  
**[sboseman@uta.edu](mailto:sboseman@uta.edu)**

# First, Some Things That Are Not True

- People who use wheelchairs can't be athletes.



# Why Am I Here Today?

“The only thing that can save an institution of higher education is strong supervisors.” Ned Stark— Game of Thrones\*



# Your Responsibilities as a Supervisor

- **Federal Laws and Regulations**
- **Texas Laws and Regulations**
- **Texas Higher Education Coordinating Board**
- **Board of Regents' Rules and Regulations**
- **UT System Policies**
- **UTA Handbook of Operating Procedures**
- **Other UTA policies/procedures**



# What I Want You to Know

**Enough to know when to ask for help.**



# UTA's Office of Legal Affairs

**Shelby Boseman, Deanna Belknap,  
Katharine Adams**

Experienced higher-education attorneys

Primary source of legal advice

[contracts@uta.edu](mailto:contracts@uta.edu) 817-272-2142

# UT System Office of General Counsel

- In downtown Austin
- 1 General Counsel, 35 attorneys
- Many specialties

- Intellectual Property
- Contracts
- Health Law
- Real Estate
- HR/Employment
- Constitutional Law
- Civil Rights
- Copyright, Patent, Trademark
- Ethics

- Research/Tech. Transfers
- Collections
- Litigation (Lawsuits)
- Public Information Act
- Oil and Gas
- Tax
- Utilities
- FERPA/HIPAA



# He Said What!?

- **Employee Mark is very frustrated about the immigration policies of the current political administration. After a couple of martinis one night he signs his name with his employee title to a circulating petition entitled “Intellects to Overthrow Trump’s Immigration Policies.”**
- **Employee Stephanie upset with police dynamics joins a protest in Grand Prairie for Black Lives Matter.**
- **Professor Wilson’s Facebook page shows he is a professor at UTA. He “likes” several posts condemning a new “Bathroom Bill” in the Texas legislature.**



# Employee Free Speech Rights

HOP 11-The freedoms of speech, expression and assembly are **fundamental rights** of all persons and faculty and staff have **the attention of others** when they choose to listen or choose not to listen.

Students, faculty and staff, individually or in organized groups, may picket on any parts of the campus, so long as they do not interfere with the rights of others and the **and other official functions** of space on campus.



**University.** Students, faculty and staff have **the right to attempt to attract the attention of others** when they choose to listen or choose not to listen.

Students, faculty and staff, individually or in organized groups, may picket on any parts of the campus, so long as they do not interfere with the rights of others and the **Teaching, research and other official functions** of space on campus.

# Not Okay

Texas Government Code Section 556.004(c) “A state officer or employee may not use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.”

Political Purpose?? This has generally been interpreted by case law and administrative opinions as anything dealing with partisan politics.

# Not Okay

Not OK:

Obscenity

Inciting imminent lawless action

Defamation

Harassment

Cannot disrupt teaching or research.

Cannot disrupt pedestrian or vehicle traffic

Cannot disrupt guest speakers, public assemblies or exhibits.

Cannot damage property.

# Your Responsibilities as a Supervisor

**A former employee is upset at his supervisor for a poor performance review. The employee makes a request for copies of all the supervisors emails and also for a copy of the supervisor's personnel file.**

**What does the University do?**



"I haven't been in any academic journals but I do get my Tweets re-Tweeted a lot."

# Texas Public Information Act

**The Texas Public Information Act (PIA) guarantees copies/access to any information that is collected, assembled, or maintained by UTA under a law or ordinance or in connection with the transaction of official business.**

# What If I Use My Phone for Work

- **Work records from your phone are included.**
- **Phone contents can also be subpoenaed.**

# General Process

**When your department receives a request –**

If received **in person or by mail**, send it to Shelby Boseman ASAP. If request received by **fax or email**, have the requestor send it directly to Shelby Boseman (publicrecords@uta.edu), PIO, do not forward to PIO.

My office has 10 days to provide the information (unless voluminous) or to notify the AG it will seek to withhold information requested.

## **Powers, William C**

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**From:** Cigarroa, Francisco <fcigarroa@utsystem.edu>  
**Sent:** Thursday, May 29, 2014 10:35 PM  
**To:** Powers, William C  
**Cc:** Cigarroa, Francisco; Reyes, Pedro

Dear Bill:

In follow up to Regent Hall's request to visit with Dr. Kidra Ishop to learn more about the admissions process, as well as your view and my sensitivity towards your view of having other experts with Dr. Ishop at this meeting, I am setting forth the following plan:

I ask you to provide me with a list of individuals in addition to Dr. Ishop that Regent Hall should be able to visit with who have expertise on admissions. I respect Regent Hall's position that he would like to visit with these experts individually as it is within his right as a regent. I cannot deny this right to a regent as it is within our Regents Rules. I have also asked Regent Hall that I would like to have Dr. Pedro Reyes at this meeting as he is UT System's Chief Academic Officer and he is very knowledgeable on admission matters; in fact, he is helping me enhance our admission policies system wide as I proposed to our Board of Regents last month. Regent Hall is perfectly acceptable with having Dr. Pedro Reyes in the meeting with Dr. Ishop as well as any future meetings as the purpose of the meeting is to learn more about the admissions process, especially in light of the Chancellor's desire to enhance admissions policies across the University of Texas System. To alleviate concerns [REDACTED]

[REDACTED] Mr. David Morales who is a deputy general counsel to the Board of Regents, will be present at the meeting. The structure of this proposed meeting addresses my recommendation and desire that there be an academic officer present at this meeting in addition to having general counsel available as it relates to protecting any attorney/client privilege.

We will schedule the first meeting with Dr. Ishop. I await your list of additional experts on admissions as well. Please provide a description with this list conveying the expertise of each of these additional members as it relates to admissions. We will schedule additional meetings with your suggested experts as needed to provide Regent Hall with the best information possible related to admissions at UT Austin. I ask you to please notify Dr. Ishop of this upcoming meeting; please notify Dr. Reyes as soon as you have reached out to Dr. Ishop so we can have the Board of Regents Office begin to coordinate this meeting.

I want to personally thank you for our conversation this morning as well as your cooperation and professionalism. I



# Do Not Use Email for Personal Reasons

## **BREAKING! The Email Scandal That Just Shook Cornell's Campus**

By Stanely Stuyvesant on Friday, November 6, 2009

“Everyone has had at least one bad email incident that they have had to learn from. **But, NO ONE, and we mean NO ONE has had a worse email gaffe than John X did about an hour ago.** The Cornell Business School Tech Consultant managed to pass on his entire long and very steamy exchange with his mistress, **Lisa** (another Cornell Business Employee), **TO THE ENTIRE JOHNSON SCHOOL.** Click below for the entire email exchange, including photos of the two. It seems like a joke, but we assure you, this is real life, folks, and it's not pretty.”

# Verify Spelling

St. Thomas Law School Snapshot Day

Inbox x



**St. Thomas Law Admissions** admitme@stu.edu via auth.ccsend.com  
to me

9:34 AM (37 minutes ago)



# Take Time To Verify Content

UC San Diego sends wrong e-mail to rejected students

L.A. NOW

Southern California -- this just in

10:48 am

UC San Diego Admissions Director Mae Brown said this morning that an “administrative error” was responsible for a bogus e-mail that went out to 28,000 students congratulating them on their admission and welcoming them to the campus.

The applicants had been denied admission by the university earlier in the month. Someone accidentally sent the e-mail to the entire applicant pool of 47,000 although it was intended for only the 18,000 students who got in, Brown said.

# Take Time To Verify Content

In April 2012, the registrar's office at Baylor Law School sent out an email containing a trove of admissions data — including names, grades, and LSAT scores — to every student admitted to the Class of 2015.

In March 2014, Loyola Law School in Los Angeles sent out an email to members of the class of 2014 containing financial information for the entire graduating class —including Social Security numbers and loan amounts .

# What's Funny is Debatable.



Chief Judge Cebull, a graduate of the University of Montana Law School and a former federal magistrate judge, was appointed to the district court by President George W. Bush in 2001.

The judge emailed from his chambers email account on February 20 at 3:42 p.m., to seven recipients (including his personal email address):

“Normally I don’t send or forward a lot of these, but even by my standards, it was a bit touching. I want all of my friends to feel what I felt when I read this. Hope it touches your heart like it did mine.

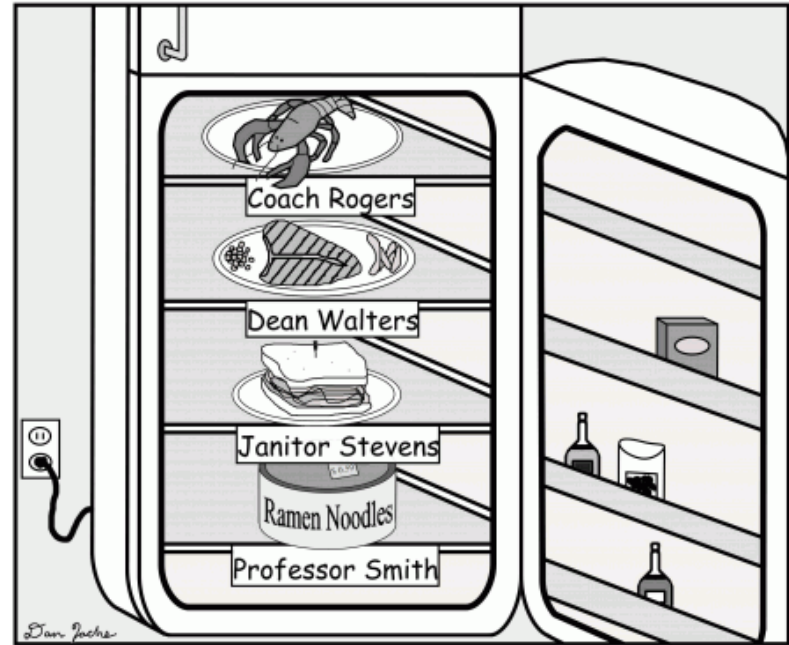
“A little boy said to his mother; ‘Mommy, how come I’m black and you’re white?’” “His mother replied, ‘Don’t even go there Barack! From what I can remember about that party, you’re lucky you don’t bark!’”

# Tips

- Don't be afraid to be old fashioned. (Make a call)
- Don't think that "I can delete this email, and no one will ever know."
- Don't get caught up in a back and forth email argument.
- Be very careful when forwarding email from your phone; be careful when replying (all).
- When email is required for sensitive issues, consider sending a scanned letter.
- Emails to Legal Affairs requesting legal advice (including legal issues surrounding an email or draft email) can be protected under the attorney-client privilege.

- An employee has a voicemail from someone alleging to be from the FBI and needs to speak to the employee asap. The employee asks her supervisor what she should do.
- A student upset about financial aid tells an employee he's going to sue UTA!

© AcademicKeys.com



"After placing his lunch in the faculty and staff lounge fridge, Professor Smith realizes his status in the university's food chain."

# Law Enforcement Contact, Subpoenas, Calls from Attorneys

- **Contact your lawyer immediately.**
- **Shelby Boseman, Deanna Belknap, or Katharine Adams**
- **Don't be intimidated by a badge.**
- **If a student/vendor is merely upset and threatening to sue, continue to assist them. Give Legal Affairs a heads up and refer the student/vendor to Legal Affairs when he/she has an attorney.**



# UTA HOP 5-503

It is the policy of The University of Texas at Arlington ("the University") that no person shall, on the basis of race, color, national origin, religion, age, sex, sexual orientation, disabilities, genetic information, and/or veteran status, be denied employment with or admission to the University; or be excluded from participation in, denied the benefits of, or subject to discrimination under, any program or activity that the University sponsors or conducts.

# Disparate Treatment

A supervisor will not hire a Latina as an admin because everyone knows Latinas are overly emotional?

Applicant Matt looked great on paper, but when he showed up for his interview he looked older than dirt and sleepy?

Supervisor George is filling an important position with grant application deadlines. Molly interviews and it is very obvious she is pregnant?



**“Send him our toughest collection letter, threaten him with legal action, and subliminally suggest some type of bodily harm. But put XOXOXO under my signature to show that we still love him as a customer!”**

# Disparate Treatment

A supervisor allows a black employee who is always at work on time to leave early a few days each week to pick up his kids from daycare, but she does not allow a white employee who has attendance issues to leave early to pick up his kids from daycare?

A male supervisor will not hire females who will work after hours with him, because he was previously falsely accused of improprieties?

A supervisor will not hire an employee because his English is poor and he is difficult to understand.

A supervisor invites several male employees to the bar on Fridays, but will not invite any female employees.

# Disparate Impact

Unintentional Discrimination - policy looks neutral, but it disproportionately impacts (negatively) persons within a protected class.

- A position posted at UTA requires a person to be able to lift 50 pounds?
- A supervisor requires that student workers have driver's licenses and personal transportation?
- During interviews for a new position, the supervisor, who loves basketball, continues to use basketball analogies in his questions about teamwork.
- A department consists solely of male employees.

A Department needs to order a new sequencer. The fee is only \$2,000 per year. There is sufficient funds in the budget. The equipment is needed urgently so the supervisor signs the company's purchase order.



"Class dismissed. And, remember, if you want to help with my tenure, 'like' me on Facebook."

# Board of Regents Rule 10501

“The Board of Regents delegates to the Chancellor or the president of an institution authority to execute and deliver on behalf of the Board contracts and agreements of any kind or nature, including without limitation licenses issued to the Board or an institution.”

The President may further delegate his authority by a written delegation memorandum.

## UTA Procedure 3-34 “Ethics and Standards of Conduct”

Employees are not authorized to sign a contract or agreement, including a gift agreement, which claims to bind UTA unless that employee has official written delegated authority to do so. Only the University's President can delegate this authority.

# Signature Delegation

- President, John Hall, Kelly Davis, Julia Cornwell/Stephanie Scott are only individuals who may sign all contracts for University > \$1M.
- Dr. Duane Dimos/Jeremy Forsberg - Research/IP agreements.
- Dr. Teik Lim – Academic Agreements
- Sarah Panepinto – Grants
- Teri Schultz – Non-disclosure agreements
- Lisa Nagy– Student affairs < \$25k
- Teresea Madden – Revenue Generating < \$25k
- Jim Baker – Athletic game and travel agreements < \$25k
- Certain Library Staff – POs and agreements for library materials.



# Software Contracts

To submit your request, please go here:

<https://uta.service-now.com/selfservice/>

Click on “Request Something” at the top of the page.

Scroll down to the section entitled “Desktop or Lab Hardware & Software,” and click on “Software Purchase Approval.”

# What Did You Say?

- Supervisor Karen is meeting with an employee to discuss performance issues and later finds out that the employee recorded their conversation.



“Mum, Dad, I’ve downgraded  
my academic forecast.”

# What Did You Say?

- Texas is a one-party consent law. i.e. if one party to the conversation must agree to record the conversation.
- Ask the employee if they are recording the conversation? If so, then state you will record also.
- We generally recommend supervisors not record conversations otherwise, unless extraordinary circumstance. Rather, follow-up by email.

# Let's Get Rich

Cindy loves the clothes made by LuLaRoe. Everyone knows leggings are today's ultra fashion statement, and Cindy wears them every day! A friend convinces her she could be quickly making six figures if she becomes a LuLaRoe seller. Any problems??

# Let's Get Rich

## HOP 5-508 Outside Activities

All full time staff and faculty must electronically request and receive prior approval for the following activities:

All outside employment or other compensated activity;

Any outside activity, regardless of compensation, that reasonably appears to create a conflict of interest or a conflict of commitment;

Outside board service as described in Section E.4 below.

# Let's Get Rich

## Conflict of Interest

A significant outside interest of a UTA employee or one of the employee's immediate family members that could directly or significantly affect the employee's performance of the employee's institutional responsibilities.

## Conflict of Commitment

Any point when the time or effort that a UTA employee devotes to an outside activity directly or significantly interferes with the employee's fulfillment of their institutional responsibilities or when the employee uses State property without authority in connection with the employee's outside employment, board service, or other activity

# Outside Board Service

Neither approval nor disclosure is required for participation on the board of a municipality; local religious congregation; neighborhood association; public, private or parochial school; political organization; youth sports or recreation league; affinity group such as the local orchid society or model train collectors club; and other similar outside boards if the service is primarily personal rather than professional in nature and does not require time away from UTA responsibilities, and it does not create the appearance of, or an actual, conflict of Interest or conflict of commitment.

# You Talking 'bout me!!

Supervisor Steve becomes aware that employees he supervises are talking about him and UTA on Facebook. What should he or the University do?

*When you hear rumors that there are donuts in the breakroom...*





# You Talking 'bout me!!

- “When I actually do go to work, halfway through I begin to hate God for giving me the legs that brought me there.”
- “It’s like our VP wanted to play a practical joke on us when he promoted \_\_\_\_\_. I hoped the VP would come in and say ‘gotcha!’ but it never happened.”
- “If I had a choice between working for \_\_\_\_\_ and being saturated with brown gravy and locked in a room with a wolverine that is high on PCP, then I honestly believe that I would choose the latter of these two choices.”
- “Literally the worst supervisor since man invented the written language. I heard at his last job he caused a worker to commit suicide.”
- “UTA’s new policy on employee tuition is a stupider idea than Barack Obama being President!”

# You Talking 'bout me!!

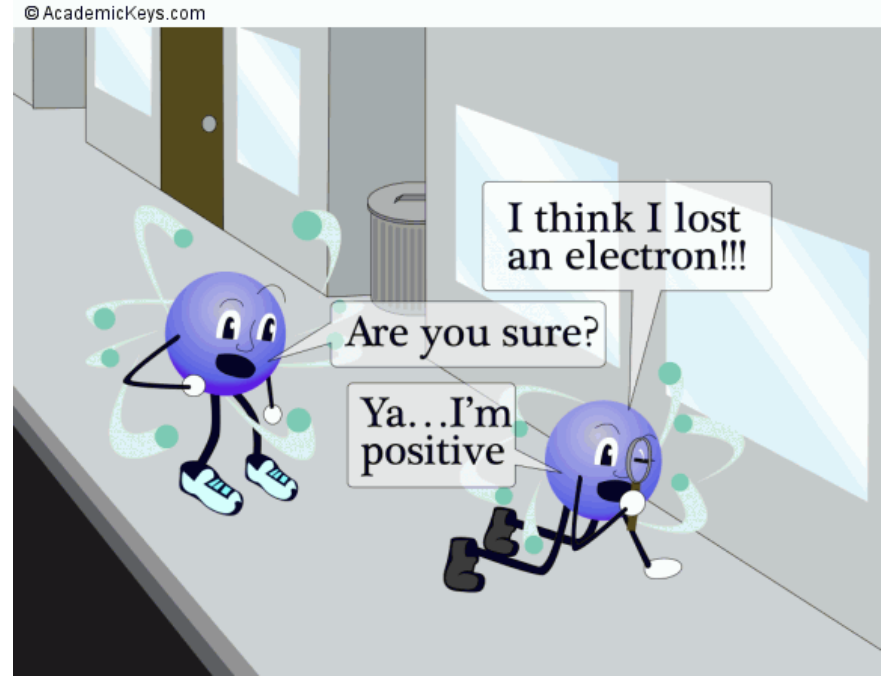
- Should the University take any action?
- Should the supervisor/UTA sue for defamation?
- What if a student organization starts a petition for an employee to be fired?
- What if a student tweets an employee should kill herself?
- What if a student posts a comment on the UTA Facebook page that the employee is a neo-nazi and the student knows his address?

# You Talking 'bout me!!

- Who is making the statements? Employee, Student, Anonymous?
- When?
- Is a threat made?
- If so, is it a direct and or imminent threat?
- Is it a violation of UTA policy or Student Code of Conduct?
- If none of the above then it may be a good coaching opportunity for the supervisor or HR.

# Is This Love?

John and Jane have worked together for years, and what once was a co-worker relationship has evolved into friendship, and now evolved into eternal love. They are ready to move off the grid to Alaska to keep this forever relationship. Are there any other alternatives?



# Consensual Relationships

**HOP 5-511** Two consenting adults are free to conduct a romantic or sexual relationship if they wish – if the relationship does not interfere with the goals and policies of the University.

Not OK: relationships between a person who has **a position of power over the other person**, unless disclosed and mitigated.

Instructor and student?

Supervisor and a supervisee?

Athletics coach and an athlete on his team? (strictly prohibited)

Supervisor and an employee in the same unit, but reports to another supervisor?

What do I do? Immediately **notify** the **VP of Human Resources** and take immediate steps to mitigate the conditions.

# After returning to his office, Ned has several voice messages, including

- **One from an individual claiming to be an online student and needing grade information.**
- **One from the mother of a student stating her son was in an accident and she needs a return phone call today!**
- **One from a department chair asking him for a class roster and grade distribution and if he can tell him which students are African American for his paper on African American student's success in science classes.**

# FERPA

**In very general terms FERPA provides students who attend a post secondary institution:**

- **The right to inspect and review their own education records;**
- **The right to request an amendment of records which they believe to be inaccurate or misleading;**
- **The right to control the disclosure of their education records to others.**
- **FERPA is applicable to every student enrolled at UTA regardless of age.**

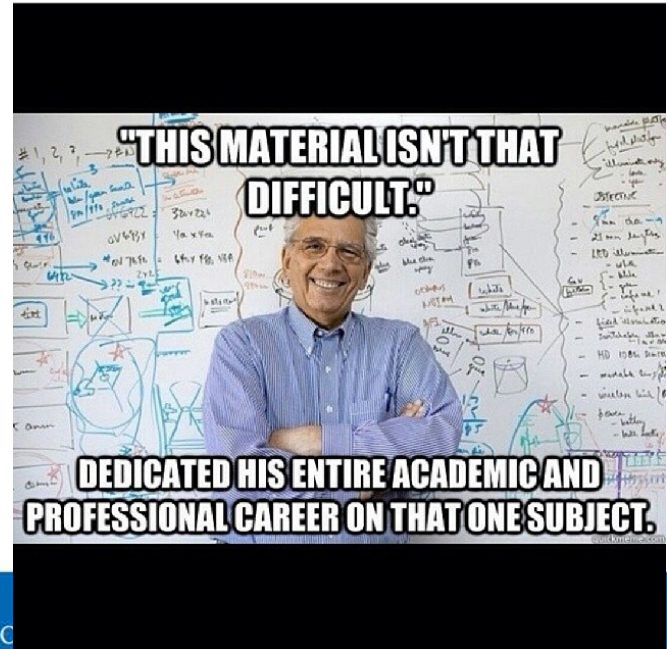
# Disclosing Records

- **To the Student;**
- **To third parties with the written permission of the student;**
- **Directory Information;**
- **“School Officials” who have a “legitimate educational interest” in the records.**
- **To appropriate parties in the case of a “health or safety emergency”;** and
- **Other minor miscellaneous exceptions.**



# Can I Just Fire My Employee?

A supervisor suspects an employee is stealing from UTA. What should he/she do?



# Administrative Leave

UTA is able to place an employee on paid/unpaid leave pending an investigation.

- Must contact HR, who will prepare letter in conjunction with Legal Affairs.
- Leave is not disciplinary in nature.

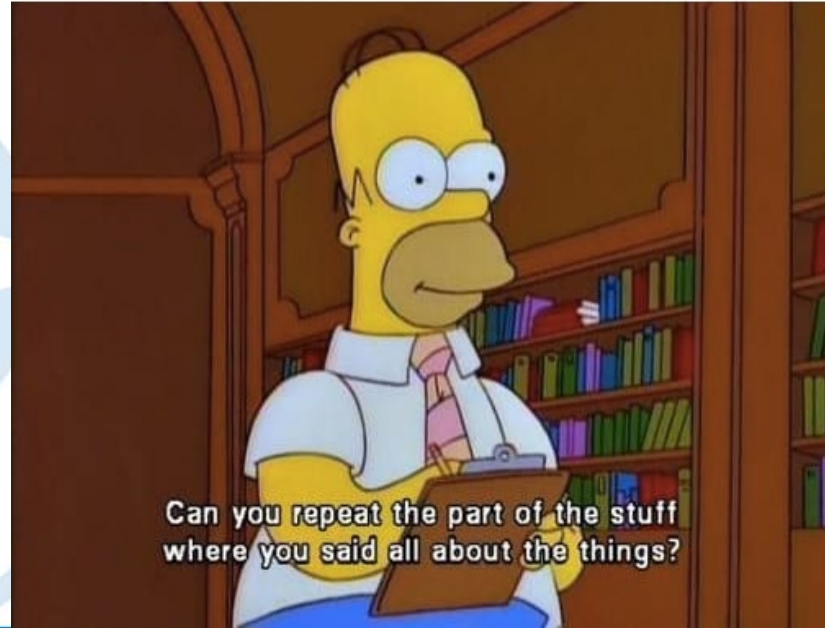
# Administrative Leave Things to Consider

- Generally the employee is prohibited from returning to UTA property w/out permission.
- Should the employee keep email access? Keys?
- Who communicates letter to employee?
- Should the employee return to the office?
- What will be communicated to departmental staff?
- Should a threat assessment be conducted?

# Can I Just Fire My Employee??

Dwight has been acting very strange lately. He's had several verbal outbursts with co-workers has been seen talking to himself, and his appearance is disheveled.

when your lecturer asks if you have any questions



# Behavioral Intervention Team

For Students- UTA has created the BIT, a network of professionals from across campus that are committed to a caring, confidential program of identification, intervention and response in order to provide our students with the greatest chance of success and our community with the greatest level of protection.

# For Employees

If an employee is acting strange, concerning, erratic, etc. contact HR immediately.

If an employee's behavior indicates an imminent threat contact UTA dispatch immediately.

# For Employees

## Threat Assessment and Management Team – HOP 5-314

The TAMT is a multidisciplinary administrative team who meet regularly and whose purpose is to implement the assessment, intervention, and actions to mitigate potential threats. The TAMT also meets in response to crisis situations in order to respond to emerging concerns and threats that may indicate a significant threat to the campus environment or the University's academic mission.

# For Employees

- Intentionally causing physical injury to self or another person;
- Engaging in behavior that creates a risk of physical injury to self or another person;
- Brandishing or using a firearm, weapon, or other device in violation of law or university policy;
- Intentionally damaging property;
- Threatening to cause injury to self or another person or to damage property; and/or
- Other conduct prohibited by law or university policy or harmful to members of the campus community



# Academic Freedom, First Amendment or Discrimination?

A new employee, Mr. Cruise, complains to Supervisor Bill regarding an offensive flyer on employee Ned's door and demands it be removed.

Bill reads the flyer and laughs. He turns to the new employee, "Welcome to higher education. Ned has his free speech. But, I've known Ned for years and he's a good guy."



"Sorry, Frank, but the kiddies all got wise to that gingerbread scam. I'm using Scientology these days."

# Academic Freedom, First Amendment or Discrimination

The flyer remains on Ned's door and two months later Mr. Cruise files an EEOC complaint and a lawsuit against UTA and Supervisor Bill for discriminating against him based on his religion and for creating a hostile work environment.

# Indemnification

- Any UTA employee named in a lawsuit/tort action as a result of them acting in good faith during the course and scope of employment will be indemnified by the University . This means the UT System will provide a legal defense (through the Texas AG) and UTA will pay for damages resulting from any liability or a settlement.
- Additional the TX Civil Practice and Remedies Code provides that a suit filed against a UTA employee based on conduct within the general scope of that employee's employment is considered to be against the employee in the employee's official capacity only and the suit will be dismissed and proceed against UTA.

# Quick Tips

- Be thorough and honest in annual reviews. It's not personal it's a job requirement.
- Request assistance if you need help or to look at something closer (HR and Legal Affairs).
- Document issues and discussions. Follow-up discussions with emails.
- Don't be a CAVE dweller? Problems generally don't solve themselves.
- Everyone likes to feel recognized and appreciated.

# Questions?

# Thank you!

Feel free to contact me if I can assist you.

[sboseman@uta.edu](mailto:sboseman@uta.edu)

817-272-2142