

REPORT OF INDEPENDENT COUNSEL

NEAL & HARWELL, PLC

TO

DANIEL DIERMEIER, CHANCELLOR

VANDERBILT UNIVERSITY

**NEAL & HARWELL, PLC
1201 DEMONBREUN ST.,
SUITE 1000
NASHVILLE, TN 37203**

MAY 30, 2024

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. DISCLOSURES	2
III. FACTUAL OVERVIEW	3
IV. FINDINGS OF FACTS—ARREST.....	6
A. Background	6
B. Mr. Reporter Arrest.....	9
V. FINDINGS OF FACT—MEDIA ACCESS POLICY	14
VI. CONCLUSIONS AND RECOMMENDATIONS.....	18
A. Conclusions	18
B. Recommendations	20
 APPENDICES:	
Appendix A: List of Witnesses Interviewed	23
Appendix B: List of Items Reviewed	24
Appendix C: List of Counsel and Consultant.....	25

I. INTRODUCTION

On April 3, 2024, Vanderbilt University retained the law firm of Neal & Harwell (“Counsel”) to perform an independent investigation into the March 26, 2024 on-campus arrest of *Nashville Scene* reporter **Reporter** and to review the University’s actions regarding that arrest. Counsel was also asked to review Vanderbilt’s media access policies in light of these events.¹

In conducting the investigation, Neal & Harwell attorneys interviewed a number of University officials and police officers. The reporter who had been arrested was interviewed, as were others present that day. Counsel reviewed surveillance video from the day of arrest, reviewed numerous relevant documents, and toured the premises of Kirkland Hall.

This Investigative Report serves as the findings and conclusions of Counsel’s investigation.

¹ Counsel was not asked to investigate the actions of the protesting students or the University’s response to those actions.

II. DISCLOSURES

Independent Counsel has attempted to handle the investigation consistent with the charge given to them by Vanderbilt University. Independent Counsel was not retained to represent Vanderbilt, but rather to investigate these specific events and media access policies. Neal & Harwell's team, immediately following this assignment from Vanderbilt, began to gather information so as to understand the history and the facts regarding the March 26, 2024 arrest of **Reporter**. Voluminous information was reviewed, including notes from the incident, text messages, police reports, videotapes, media coverage, and other data. Numerous witnesses were interviewed.

Independent Counsel has no subpoena power or right to compel the testimony of witnesses or production of documents. All witness interviews were voluntary. The individuals interviewed were not under oath and were not recorded. The Vanderbilt University Police Department and its officers and other Vanderbilt officials were fully cooperative, as were others interviewed. Independent Counsel was able to interview anyone at the University that they requested.

The facts contained herein are based upon the information obtained in the investigation. The findings and conclusions are made to the best of Counsel's knowledge, information, and belief. They reflect the opinions and beliefs of Independent Counsel and not Vanderbilt University, or necessarily any of its officials.

III. FACTUAL OVERVIEW

On March 26, 2024, Vanderbilt University Police Department (VUPD) arrested *Nashville Scene* reporter **Reporter** outside Kirkland Hall, the administration building on the Vanderbilt University campus. At the time, Vanderbilt students were protesting the University's decision not to allow a student referendum on a proposed amendment to the Vanderbilt Student Government Constitution that would prohibit expenditures from the Vanderbilt Student Government budget to boycott targets of the Boycott, Divestment, Sanctions ("BDS") movement.

Earlier that morning, shortly after 9:00 a.m., a number of students forced their way past a community service officer and entered the locked administration building. The students began in a sit-in on the third floor, outside Chancellor Daniel Diermeier's office.

VUPD was notified of the students' breach of Kirkland Hall and police officers were ultimately dispatched to the building. These officers were stationed at each of the building's entrances with the instruction not to allow anyone else inside unless they were properly authorized. The entrance doors were all locked, and at each entrance, there was a sign already posted that said the building was closed due to construction.

Several hours after the students broke in, *Nashville Scene* reporter, **Reporter** texted Vanderbilt Communications Officer **Com1** stating that he was "on-campus at the sit-in." Several minutes later, Mr. **Reporter** again texted Mr. **Com1** and **Com2** this time stating, "I'm at Kirkland. I'm wondering who my University point of contact is for this sit-in please call me."

As part of the efforts to deal with the student protest and sit-in, **Officer1** led a briefing for higher ranking VUPD officers on the second floor of Kirkland Hall. Based upon the information received from Mr. **Com1** there was a concern and belief that the reporter **R** was possibly already inside the closed building with the students. The decision was made **ep**
ort

to determine if Mr. **Reporter** was, in fact, in the building and, if so, to ask him to leave. There was no intention to arrest him, but he was to be removed if he resisted leaving. **Officer1** directed the police officers at the briefing that there should be no arrests without clearing it through the command leadership.

The VUPD officers who were stationed at the entrance doors of Kirkland Hall had interactions with Mr. **Reporter**. He approached at least four different entrances. He tested the doors at several of the entrances, and all were locked. The police officers present at each of the doors told him he was not allowed inside. Mr. **Reporter** was not told to leave the campus, but was asked to back away from the doors and quit trying to get inside.

Mr. **Reporter** was arrested at approximately 1:30 p.m. outside Kirkland Hall. The police officers who arrested him believed he was still trying to get inside and that he had failed to respond to their requests. Mr. **Reporter** stated he was never asked to leave the campus, and he disputes that he failed to follow police requests.

Following his arrest, Mr. **Reporter** was taken downtown to be booked into the Metropolitan Nashville Jail. A Metro Commissioner advised the arresting officer that the District Attorney would not prosecute Mr. **Reporter** and ordered that he be released without charges being filed.

There was no intention or plan to arrest Mr. **Reporter**. In fact, his arrest was made contrary to **Officer1** directive about clearing any arrests through him and the chain of command. The officer who arrested Mr. **Reporter** believed that higher ranking officers had instructed him to do so and had approved the arrest. Mr. **Reporter** was arrested for criminal trespassing.

Mr. **Reporter** was not arrested because he was a reporter. He was arrested because he had been repeatedly told that he was not allowed inside Kirkland Hall, but he continued to try to gain

entry into the locked building. Reporters from other media were present at the protest, but it appears that they stayed back on the more public areas outside the building.

Vanderbilt does not have a written media access policy that can be referenced online. Vanderbilt does, however, have a consistent policy or practice of asking the media to contact the University Communications Department before coming on campus. Mr. **Reporter** acknowledges that he was previously told by **Com1** to contact him or **Com2** when he was coming to campus to report. Mr. **Reporter** said he attempted to reach Mr. **Com1** Ms. **Com2** and another Vanderbilt contact person after he arrived on campus to cover the protest. He had not received any return communication with them before he was arrested and had not spoken to any of them.

IV. FINDINGS OF FACT—ARREST

Nashville Scene reporter **Reporter** was arrested on Tuesday afternoon, March 26, 2024, at approximately 1:30 p.m. Mr. **Reporter** came to the Vanderbilt campus to cover the student protest. Earlier that same morning, students had forced their way into Vanderbilt's administration building, Kirkland Hall and injured a Vanderbilt community service officer. Mr. **Reporter** was arrested outside that building by officers of the VUPD after his repeated attempts to gain entrance to this locked building.

A. Background

The VUPD provides law enforcement and security services for Vanderbilt University twenty-four hours a day, three hundred sixty-five days a year. VUPD operates with a Memorandum of Understanding with the Metropolitan Nashville Davidson County Police Department and is thereby empowered to enforce laws and make arrests on campus.

The VUPD police officers interviewed by Counsel had significant levels of training and experience in security and law enforcement. All of them had experience as police officers policing college campuses and had an understanding of their role of policing a college campus while respecting and acknowledging the students' rights to express their opinions and protest. The VUPD cooperated fully with Counsel in this investigation.

Vanderbilt students had begun protests over the University's decision to remove a proposed amendment from a student referendum that would amend the Vanderbilt Student Government Constitution to prohibit expenditure of student funds on companies that are boycott targets of the BDS movement, including Israel-related firms. The student protests also included protests of Israel's actions regarding Palestinians and the humanitarian crisis in Gaza.

At least two days before the events in question, Vanderbilt officials advised the VUPD that they had received information that students were possibly planning to enter Kirkland Hall as a part

of the protest. The VUPD planned an increased police presence for Monday, March 25, though no such attempts to enter Kirkland Hall were made that day.

The next day, on Tuesday, March 26, 2024, students were able to get into Kirkland Hall by pushing past the community service officer stationed at the locked, front door of the building. The VUPD received the initial radio call reporting this breach of the building at approximately 9:17 a.m. It was reported at that time that the community service officer had been injured when the students forced their way into the building.

Once inside, the protesting students got into the elevator and went up to the third floor, where they pushed a member of the Chancellor's staff before beginning a sit-in outside the Chancellor's office. Twenty-seven students entered the building and participated in the sit-in.

Officer2 of the VUPD and other officers under his command responded to the call that students had breached the doors of Kirkland Hall and that a community service officer had been injured. It was **Officer2** understanding that the building was still closed for construction and was not supposed to be entered without an appointment.

Officer2 initially set up a staging area for responding officers in a nearby campus parking lot (Lot 3). The VUPD did not want to evidence a police presence unless necessary. They believed that it was preferable that Vanderbilt Student Affairs or other "campus partners" manage the situation and were hopeful that it could be de-escalated so that police intervention would not be necessary.

VUPD Chief Deputy **Officer1** eventually ordered **Officer2** and the other officers to come to Kirkland Hall. The students inside the building were asked to leave by Vanderbilt officials, including **DOS1** Student Affairs and Vanderbilt police officers, but the students strongly expressed their intent not to leave.

VUPD officers were stationed in and around the building, being placed at each door or entry point. They were instructed that only authorized people were allowed to enter the building.

Several hours after the students' entry, reporters from the local media arrived. It is believed that two reporters from *The Tennessean* and at least two from *The Vanderbilt Hustler* were present at various times. It is also believed that reporters of WSMV-Channel 4 and WKRN-Channel 2 were present at some time during that day. **Officer2** advised that often on prior occasions, media representatives have been asked to stay on public sidewalks or across from campus. It appears that on this occasion the directives were simply to stand back, away from the building.

At approximately 12:23 p.m., *Nashville Scene* reporter **Reporter** texted **Com1** a member of Vanderbilt's Communications Department, that he was "on-campus at this sit-in." Several minutes later, he again texted Mr. **Com1** and **Com2** of the Communications Department that, "I'm at Kirkland. I'm wondering who my University point of contact is for this sit-in please call me." Mr. **Reporter** said that he tried several times to reach Mr. **Com1** and Ms. **Com2** without success before his arrest. In response to Mr. **Reporter** texts, they had decided to go to Kirkland Hall to see him, but he was arrested before they could get there.

Officer3 was monitoring these events throughout the day from his office. Beginning at approximately 12:58 p.m., VUPD **Officer1** held a briefing for higher-ranking VUPD officers inside Kirkland Hall on the second floor. The officers present included **Officer4** **Officer5** **Off6** **Officer7** **Officer8** and others.

At this briefing, the officers were told that a reporter, **Reporter** possibly was already in the building with the students. Officers were shown a picture of Mr. **Reporter**. The stated plan was to determine if he was in the building and ask him to leave if he was there. There was no intention to arrest him, but it was discussed that he was to be removed if he refused to leave.

Officer1 believes that he was very clear in his instructions that there were to be no arrests at that time without clearing it through the police command structure.

B. Mr. Reporter Arrest

Mr. **Reporter** arrest directly arose from his repeated attempts to gain entrance into Kirkland Hall and his failure to respond to police officers at the scene. After his arrival on campus, Mr. **Reporter** attempted to enter Kirkland Hall several times. As shown on surveillance videos, he went to each of the entrances and tried several of the doors. Each of the doors was locked and each of them that had a sign that read:

KIRKLAND HALL IS, UNTIL FURTHER NOTICE, CLOSED DUE TO CONSTRUCTION. ACCESS BY ANYONE OTHER THAN VANDERBILT EMPLOYEES WHO HAVE OFFICES IN THE BUILDING OR THEIR AUTHORIZED GUESTS IS STRICTLY PROHIBITED AND, IN ACCORDANCE WITH POLICY, MAY RESULT IN REMOVAL AND DISCIPLINARY ACTION.

VUPD **Officer9** was posted at the north entrance. At approximately 12:35 p.m., Mr. **Reporter** walked past **Officer9** and tried to open the door. At that point, **Officer9** intervened and advised Mr. **Reporter** to “go back.” Mr. **Reporter** said he was confused. **Officer9** told him that the building was closed and he could not enter. According to **Officer9** Mr. **Reporter** told him that he had a meeting inside.

Officer9 called **Officer2** who came to this entrance to speak with Mr. **Reporter**. He also told Mr. **Reporter** that the building was closed and he could not enter. Mr. **Reporter** got the impression from his interaction with the officers that this was where he might meet Mr. **Com1** or Ms. **Com2** and said he tried to call them again.

VUPD **Off10** was stationed at the front door of Kirkland Hall when Mr. **Reporter** approached. Mr. **Reporter** asked him if the building was closed, and **Off10** said, “Yes.” According to **Off10** Mr. **Reporter** said he was a journalist and suggested that it was

the law that he be allowed inside. Off10 stepped outside to talk to Mr. Reporter and told him he was not allowed to enter the building. He did not tell Mr. Reporter to leave the campus. According to Mr. Reporter the officer at the front door told him he could not let him in the door now, but suggested that might change later.

VUPD Off11 was stationed at the rear door (west entrance) to Kirkland Hall. At approximately 1:13 p.m., Mr. Reporter and another colleague approached this entrance. They said they were trying to get in touch with individuals in the University's Communications Department. Off11 did not have the phone numbers. Mr. Reporter grabbed the door handles and began shaking them. The doors were locked. Off11 asked him to step away and said that the building was closed. Mr. Reporter and his colleague did back away but remained in that area for several minutes.

VUPD Off12 was posted at the southeastern entrance of Kirkland Hall. At approximately 1:20 p.m., Mr. Reporter and his colleague approached that entrance. Off12 (who was inside) heard someone try to open the locked door. Off12 noticed that one of the individuals had *Nashville Scene* press credentials.

According to Off12 he never opened the doors. When they asked to come inside, he pointed to the sign saying the building was closed. They asked for a quote from someone at Vanderbilt, and he referred them to Com3 who had, apparently in the past, been one of the regular press contacts for the University. They walked away but were not asked to leave the campus. Mr. Reporter said he "googled" Com3 and then attempted to contact her. He was unable to reach her.

After the VUPD briefing on the second floor of Kirkland Hall, police officers went to the third floor to determine if Mr. Reporter was there with the students sitting in there. It was

determined that he was not there with the students. At that point, the situation with the students refusing to leave was still somewhat tense.

At approximately 1:13 p.m., **Officer4** was asked by VUPD **Officer8** to have someone go outside and take a lap around the building to see if Mr. **Reporter** was out there. In the alcove of the front entry, **Officer4** encountered Mr. **Reporter** and two other individuals. The female he encountered told him, "We're the press." According to **Officer4** he asked Mr. **Reporter** his name, and he said, **Repo**. He asked Mr. **Reporter** to come talk with him. According to **Officer4** Mr. **Reporter** ignored his requests. **Officer4** believed that Mr. **Reporter** was not going to respond to him or his directions. According to Mr. **Reporter** he did stay on his telephone, but his colleague, *Nashville Scene* photographer **Photographe** talked to **Officer4**. He noted that **Officer4** was not in uniform, but was wearing a grey polo shirt.

Officer9 was coming around the building towards the front entrance. **Officer4** asked **Officer9** to come with him. He believes that he told **Officer9** that they were probably going to have to arrest this guy (or words to that effect). **Officer9** believes that **Officer4** told him, "This guy needs to be arrested." **Officer4** pointed out Mr. **Reporter** and told **Officer9** that he had just tried to enter the building at **Off12**'s door.

There had been radio traffic on the police band that said an individual had been trying to gain entrance to the building. According to both **Officer4** and **Officer9** they knew that Mr. **Reporter** had tried to enter several different doors, and that he had already been told by several officers that he could not enter the building.

Officer9 believed he had been instructed by **Officer4** to arrest Mr. **Reporter**. He also believed that the order to arrest had come from command to **Officer4**. (In fact, the command of VUPD did not know about the arrest until it was announced over the police radio.)

Officer4 and **Officer9** both state that their decision to arrest was not based upon Mr. **Reporter** being a reporter, but rather upon his repeatedly trying to enter the building after officers told him he was not allowed to come inside. **Officer4** understood that there had been a prior issue with Mr. **Reporter** presence at other campus protests. **Officer9** did not have knowledge of any prior incident with Mr. **Reporter** and Vanderbilt University.

Officer9 placed handcuffs on Mr. **Reporter** and told him he was under arrest for criminal trespass. This occurred outside the front of Kirkland Hall in full view of the students. The students were yelling at the officers as they were arresting him.

Counsel has reviewed a video that shows **Officer9** and **Officer4** escorting Mr. **Reporter** to the patrol car, which was at Lot 3. At some point, **Officer2** joined them and walked with them. During that walk to the car, Mr. **Reporter** told the officers that he had not been asked to leave. He said he would leave now. **Officer4** told him that he had been warned before, and added, "not today, in the past." Mr. **Reporter** said he did not know what **Officer4** was referencing by past warnings. (He did say he was previously asked to leave a construction site protest on campus by Vanderbilt police.)

There was no misunderstanding about Mr. **Reporter** being a reporter. None of the VUPD officers interviewed by Independent Counsel believed he was treated any differently because he was a reporter. Mr. **Reporter** does not believe he was arrested for being a reporter, but rather, he says he believes he was arrested because the officers believed he was "annoying."

Officer9 transported Mr. **Reporter** in his patrol car to the Metro Criminal Justice Center for booking. **Officer8** called **Officer9** while he was taking Mr. **Reporter** to be booked. He called to ask what had happened. In that conversation, **Officer9** realized that **Officer8** and VUPD command had not known about the arrest. (He had believed the instructions to arrest Mr. **Reporter** must have come from the command.) VUPD officials asked **Officer9** to delay booking Mr. **Reporter** so he waited outside the Metro booking area and completed his arrest report. **Officer9** checked the box on the arrest report that said, "Offense likely to continue." The offense to be charged was criminal trespass.

The sequence of events that occurred at the Metro Justice Center is not completely clear. The decision to arrest Mr. **Reporter** was not overruled by the VUPD. **Officer9** did turn Mr. **Reporter** over to Metro personnel to be booked. At some point, shortly thereafter, Metro Commissioner Lee told **Officer9** that the District Attorney was not going to prosecute this charge. **Officer9** tried to tell the Commissioner what had happened; he offered to show the Commissioner a video of Mr. **Reporter** attempts to get into the building. Commissioner Lee told **Officer9** that he "didn't find probable cause" and to go back and retrieve Mr. **Reporter**. **Officer9** picked up Mr. **Reporter** and transported him and a friend back to campus. He instructed Mr. **Reporter** that he was no longer to come on campus without proper authorization.

Mr. **Reporter** disputes that his actions justified an arrest for criminal trespass. He does not believe he acted unethically or unprofessionally in his efforts to report on the protest at Vanderbilt. Reporters from the *Vanderbilt Hustler* were also present that day and observed some of Mr. **Reporter** actions. Those reporters who were interviewed by Counsel do not believe Mr. **Reporter** actions were significantly different from the actions of other reporters.

V. FINDINGS OF FACT—MEDIA ACCESS POLICY

Vanderbilt University does not have a formal written policy regarding media access to its campus. There is not a current policy that is available to view on its website.

The University says that it has had a consistent practice of asking that members of the media reach out to the Communications Department in advance if they are coming to campus to report a news story. For safety and privacy reasons, Vanderbilt believes it needs to know when the media is coming to campus, where they intend to be, and how long they may be present. The media's requests are reviewed on a case-by-case basis.

Vanderbilt believes that its media access practices have worked well, and that the local media has followed them, largely without incident. Periodically, Vanderbilt has sent out reminders to broadcast media, prior to events on campus that may be of interest to the media. For example, the following text was sent out to media in October 2023:

We wanted to send a reminder from Vanderbilt to please reach out to the media team at media@vanderbilt.edu if any reporters or camera operators have plans (or would like to arrange) to film on campus, whether it be a stand-up on the grounds, or an interview in a lab or classroom. This applies to student events as well as Vanderbilt-sponsored events and allows us to ensure the safety and security of the campus at all times.

In many cases, we will be able to make arrangements while in others – as in the case of events taking place outdoors – where your request may be more immediate, we ask that you limit stand-ups and interviews to the public street and grounds surrounding Vanderbilt proper. As a reminder, the Vanderbilt grounds are private property so if you show up unannounced, a public service officer will likely ask you to move to the public street.

Thanks very much for your partnership with this and please let us know if you have any questions at all.²

² This type of reminder was sent a number of times during the pandemic when there was a “no guests” policy that included media.

Counsel believes that this accurately sets forth Vanderbilt's policy or practice regarding media access to campus. Apparently, the "reminders" have only gone to broadcast media, and not to print or other media. Vanderbilt believes it has had good relationships with all local media outlets, and stated that there has not been a problem with reporters in the past.

Vanderbilt's contact with the media is often a result of its own proactive outreach. Thus, on those occasions that Vanderbilt initiates contact, there is direct guidance given for the filming or interviewing. In addition, the Communications Department often receives requests for access, and they work to facilitate access when they believe that they are able to do so.

In those instances when the media has shown up unannounced, the VUPD would typically notify the Communications Department to determine if the media had received permission to be on campus. In some cases, a representative of the Communications Department would meet the reporters and facilitate the visit. In other cases, the police officers would be told to tell the reporters to move to the public street or the perimeter of the campus for their interviews and camera shots. Vanderbilt believes that this process has worked well and that the reporters have typically respected the requests to move.

Counsel's interviews with the VUPD officers revealed that this was also their understanding of the policy regarding media access. They advised us that they typically told reporters and camera crews to move to a public street or sidewalk or an area surrounding campus. They also affirmed that they would notify the Communications Department to advise of media appearances and inquire whether they were permitted to be there.

On March 27, the day after his arrest and release, Mr. **Reporter** sent the following text to Vanderbilt Communications (**Com1** and **Com2**

Hoping to get some clarity on whether I'm allowed to physically be on Vanderbilt's campus. The arresting officer yesterday told me to contact the administration.

In response, the following response was sent to the *Nashville Scene* from **Com1** of

Vanderbilt Communications:

As a matter of policy, we ask that members of the media reach out to Communications (media@vanderbilt.edu) in advance of coming to campus so we understand what you are coming to cover, as well as when you plan to arrive and when you plan to leave.

Because Vanderbilt is a private university and the community's safety and privacy is a priority, it's important that we know what reporters or photographers are on campus and when. Any media on campus without prior permission may be asked to leave by VUPS.

In addition, at all times, administrative buildings, individual schools, and residential colleges and residence halls (all on private property) are off-limits to media unless interviews and/or filming is cleared with Communications and community members are notified that media will be present.

In some cases, we may ask media to remain on the perimeter of campus to take photos/video and conduct interviews (as we have today), particularly during events where safety may be an issue.

Although Mr. **Reporter** subsequently claimed that this was a new policy, this statement appears consistent with how media access has been handled in the past.³ Vanderbilt denies there is a new media access policy. Mr. **Reporter** admitted that he knew that if you come on campus to report on a story that you are supposed to contact the communications people promptly.

Independent counsel has inquired of some local media representatives about their understanding of Vanderbilt's media access policies. One broadcast media representative confirmed that they understood they needed permission to be on campus or, at least, they had to

³ For example, in an August 16, 2022 email to **NS Personnel** of the *Nashville Scene*, **Com1** reminded the *Nashville Scene* that ". . . [a]s Vanderbilt is private property, permission is required from Communications to be on the grounds." This email related to "Scene Reporter **Reporter**—Divestment coverage and presence of Vanderbilt construction site."

notify the Communications Department of their presence. Other representatives of local media that were contacted declined to comment.

Reporter did not give Vanderbilt prior notice that he would come to campus to cover the protest event. His coming to campus was based upon the events of that morning when students broke into the administration building. He made it to campus approximately three hours after it happened. As previously noted, Mr. **Reporter** did text to **Com1** that he was “on-campus at this sit-in” at 12:23 p.m., followed by a text to **Com1** and **Com2** at 12:32 p.m. that “I’m at Kirkland. I’m wondering who my university contact is for this sit-in please call me.”⁴ During his encounters with police officers, Mr. **Reporter** asked several officers whom he could contact at the University for a quote or comment. At least one officer gave him the name **Com3**. Mr. **Reporter** said he attempted to contact **Com3** after being given her name. **Com3** was interviewed and said that she did not receive any contact from Mr. **Reporter**.

Mr. **Reporter** said he made multiple attempts to find someone in the Communications Department to speak with him about the protest (and hopefully allow him access to the building). In response to Mr. **Reporter** texts, Vanderbilt Communications’ evolving plan was to contact the *Nashville Scene* to confirm Mr. **Reporter** presence on their behalf and also to go to Kirkland Hall to talk with Mr. **Reporter** and any other media present there. Before that could happen, however, Mr. **Reporter** was arrested.

⁴ Mr. **Reporter** also left a voicemail on Mr. **Com1** telephone at 12:37 p.m. saying he was outside Kirkland Hall and being told that he wasn’t being allowed in. Mr. **Com1** did not hear this voice message until later.

VI. CONCLUSIONS AND RECOMMENDATIONS

Based on the foregoing findings of fact, Counsel makes the following conclusions and recommendations:

A. Conclusions

- The Vanderbilt campus is private property, including Kirkland Hall.
- As supported by the surveillance videos and statements of the VUPD officers, Mr. **Reporter** repeatedly tried to gain entrance to Kirkland Hall on March 26, 2024.
- The entrances to Kirkland Hall were locked at the time Mr. **Reporter** attempted to gain entrance. There was a sign posted at each entrance that stated the building was closed and access by anyone other than authorized guests was strictly prohibited.
- Mr. **Reporter** was repeatedly told by VUPD officers stationed at the several entrances that he was not allowed in the building.
- Mr. **Reporter** was not arrested because he was a reporter.
- Mr. **Reporter** was arrested because he continued to try to gain entrance to the building after he was repeatedly told he was not allowed to enter. The police officers directly involved in his arrest believed he was not following their directives, but was still attempting to gain access.
- The arrest of Mr. **Reporter** was contrary to the specific directive of **Officer1** **earlier that morning that there were to be no arrests without going through the chain of command.**
- The arresting officer believed that he was directed by a superior officer to arrest Mr. **Reporter** and that the arrest must have been authorized up through the chain of command.

- Mr. **Reporter** was not asked to leave the campus or given the opportunity to do so on that date.
- After the arrest, VUPD higher ranking police officials had the opportunity to reverse the decision to arrest Mr. **Reporter** but decided not to do so.
- Vanderbilt does not have a formal written policy regarding media access to its campus that is accessible by the public or media.
- Vanderbilt does have a consistent practice and policy of asking that the media contact the University in advance before coming to campus.
- This policy has worked well in practice because the local media outlets have, for the most part, followed this policy. Vanderbilt has often reminded the broadcast media (but apparently not other media) of its policy prior to events on campus that might be of interest to the media.
- If a media representative does arrive unannounced, the practice is for the VUPD to contact the Communications Department to confirm prior approval or obtain approval to remain. If approval is not confirmed or given, the media representatives are often asked to move to a public street or area adjoining campus.
- Other reporters were present and covered the protests on March 26, but were not arrested or removed from the premises.
- Vanderbilt's arrest of the one reporter was not done to impede or prevent a reporter from covering the protest and, thus, was not contrary to its values to support and encourage the First Amendment freedoms of speech, assembly, and press.

- Vanderbilt is, in fact, committed to the principles of free speech, free speech and free assembly, and its Chancellor and other officials dispute that the reporter's arrest should be interpreted as a lack of support for those principles.

- Vanderbilt has partnered with The Future of Free Speech project, now with offices on the Vanderbilt campus. Person1, issued the following statement after the reporter's arrest:

We do not condone the use of violence or trespassing as a protected form of protest and would encourage students to demonstrate peacefully in accordance with Vanderbilt's policy. However, arresting an independent local reporter covering the protest, regardless of his alleged attempts to enter a building without authorization, was a disproportionate response that failed to live up to Vanderbilt's commitment to free expression and First Amendment ideals.

Counsel recognizes that this matter has obviously created emotion and understandably upset members of the media, locally and nationally. Much of it is focused on the fact that Reporter from the *Nashville Scene* was arrested. It has been suggested that what occurred impeded a reporter from doing his job, therefore, giving rise to issues of Constitutional magnitude, including freedom of the press. Vanderbilt has communicated that access to the media and freedom of the press is a fundamental right and one which the University respects. As is indicated in our conclusion, regardless of whether the decision to arrest Mr. Reporter was right or wrong, we have concluded that his being a reporter was not the reason he was arrested, a conclusion with which he agrees. It was his conduct. In fact, had he not been a reporter, he may well have been treated the same way he was treated on March 26, 2024, by the Vanderbilt University Police officers.

B. Recommendations

These recommendations include some practices that are already in place or already followed at Vanderbilt University. These recommendations are included in this report given what

happened with the arrest of a reporter and to stress their importance. Counsel makes the following recommendations:

1. Vanderbilt adopt a formal written media access policy. The University's current practices can be the basis for such policy.⁵
2. Vanderbilt widely disseminate its media access policy, including posting it online and communicating directly with all local media outlets, both initially and at regular intervals thereafter.
3. Vanderbilt Communications make arrangements to make sure someone is available to promptly respond to a contact or inquiry, on a twenty-four hour/seven days a week basis.
4. Any time there is threatened or potential civil disorder, protest, or unrest on Vanderbilt campus, there be clear understanding of the procedures for making arrest decisions, communicated to all police officers and that those procedures be followed.
5. Absent emergency situations or specific safety concerns, before any arrest for criminal trespass, the potential arrestee be warned and given an opportunity to leave the area.
6. Vanderbilt Communications and the Vanderbilt Police Department work together to develop guidelines or protocols on how to communicate with each other to work

⁵ Independent counsel has reviewed such policies from other private universities and has obtained suggested policy provisions from Com1 and Person1. Counsel believes it is best for Vanderbilt to craft and adopt such a policy that fits its needs and address its particular situation.

with media seeking to cover unscheduled or unplanned newsworthy events on campus.

7. Vanderbilt do more to promote and encourage a cooperative relationship with the media, consistent with First Amendment freedoms of speech, assembly, and press.
8. Vanderbilt Communications work with the community and its leaders to promote cooperation and understanding of the positions of Vanderbilt's students, faculty, administration, and the community.

Respectfully submitted,

NEAL & HARWELL, PLC

APPENDIX A

WITNESSES INTERVIEWED

1. **Officer2** [REDACTED] (VUPD)
2. **Officer4** [REDACTED] (VUPD)
3. **Off12** [REDACTED] (VUPD)
4. **Off10** [REDACTED] (VUPD)
5. **Off11** [REDACTED] (VUPD)
6. **Officer9** [REDACTED] (VUPD)
7. **Officer1** [REDACTED] (VUPD)
8. **Officer8** [REDACTED] (VUPD)
9. **Officer3** [REDACTED] (VUPD)
10. **Com1** [REDACTED] (Vanderbilt Communications)
11. **DOS1** [REDACTED] (Vanderbilt Student Affairs)
12. **Com3** [REDACTED] (Vanderbilt Communications)
13. **Person1** [REDACTED] (**Person1** [REDACTED]—Vanderbilt University)
14. **Reporter** [REDACTED] (*Nashville Scene* Reporter)
15. **Student1** [REDACTED] (*Vanderbilt Hustler*)
16. **Student2** [REDACTED] (*Vanderbilt Hustler*)

APPENDIX B
ITEMS REVIEWED

Items that counsel reviewed include the following:

1. VUPD Arrest Report
2. VUPD Incident Report
3. Vanderbilt surveillance videos
4. Texts from reporter
5. News reports, including website stories, podcasts, video of arrest
6. Statements made by reporter and Vanderbilt officials
7. Resumes of VUPD officers
8. Media policies from other universities
9. Emails and notes from Vanderbilt Communications

APPENDIX C

COUNSEL

Aubrey B. Harwell, Jr. is the founding member of the Nashville law firm of Neal & Harwell, PLC. He focuses his practice on major commercial litigation, white-collar criminal defense, and crisis management. He has been involved in many high-profile cases in Tennessee and other states, and has headed Independent Counsel investigations in the past.

Ronald G. Harris is the current managing partner of Neal & Harwell, PLC. His principal area of practice is civil litigation, with a substantial part of his practice devoted to commercial and business disputes. He has represented media members and private citizens in defamation cases, open records cases, and on other First Amendment issues.

Aubrey “Trey” Harwell III is also a member of Neal & Harwell, PLC. His principal areas of practice include complex civil litigation, white collar criminal defense, and crisis management. He has been involved in numerous independent investigations on behalf of individuals and corporate clients.

William “Jay” Harbison is a member of Neal & Harwell, PLC. He works primarily in the areas of business and civil litigation. He frequently represents media and private clients in defamation cases and other First Amendment related issues.

CONSULTANT

Jeff Eller of the Eller Group is a former reporter. He was with radio stations in Indiana and Chattanooga before being with WKRN-TV in Nashville for five years. He served in the Clinton White House and is now a public affairs and crisis consultant in Austin, Texas.