



Welcome to the Higher EDquity Webinar

Campus Free Speech: Protecting Rights While Protecting Students



UNIVERSITY OF
LOUISVILLE



Featured Speakers



William Thro, University of Kentucky



Jeffrey Sun, University of Louisville



Travis Powell, Kentucky Council on Postsecondary Education



Freedom of Speech

- No “hate speech” exception
- Narrow categorical exceptions



Cases Protecting “Hate Speech”

- *Snyder v. Phelps*—protests at military funerals
- *Matal v. Tam*—trademark of a racial slur
- *Iancu v. Brunetti*—trademark of “immoral” or “scandalous” trademarks



Narrow Categorical Exceptions

- Incitement to violence
- True threat
- Harassment (by inference)



Incitement to Lawless Action

- Advocacy of the use of force or of law violation where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action



True Threat

- “True Threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.



Threat Must be Intended

- The fact that someone feels threatened or a “reasonable person” would feel threatened is not enough
- Speaker must intend the threat, or know that it would be perceived as a threat



Harassment

- Supreme court has held that public schools and universities are liable for harassment.
 - Therefore, we can infer that harassment is not protected.



Harassment Definition

- Conduct that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits



Ground rules

- Participate in dialogue, not dialectal delivery or debate;
- Convey messages from your vantage point, not “right” or “wrong”;
- Provide quick tools and supports to advance understanding and dialogue;
- Listen to our participating colleagues;
- Be agile about your learning and others’ learning, which may include educational moments;
- Establish a trusted, safe space;
- Observe discomfort and consider solutions and resources;
- Allow follow-ups for productive learning opportunities; and
- ***What else?***

Examining the situation and offering solutions

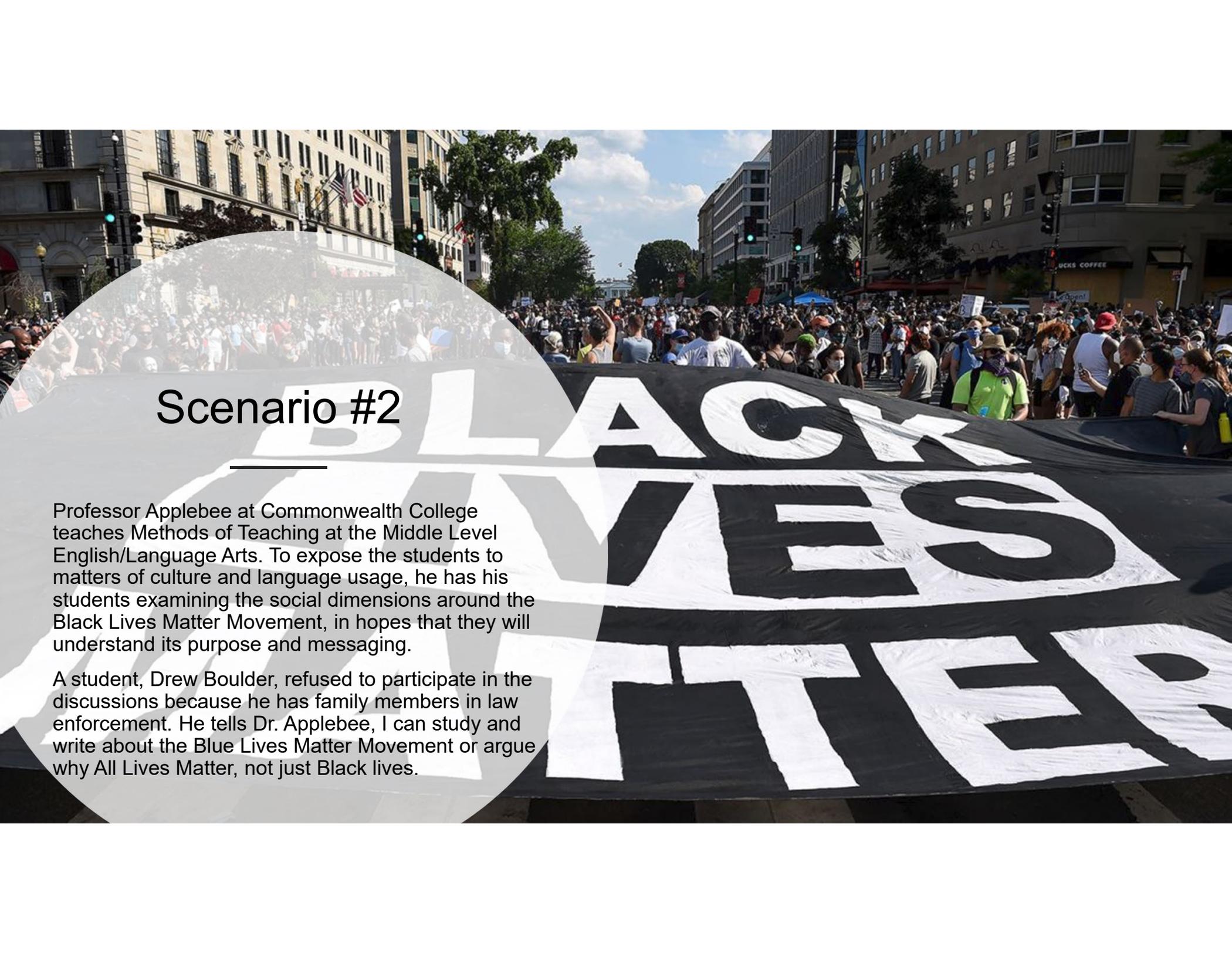


- What was expressed?
- In what space was it expressed?
- What policies apply?
- What concerns do we have?
- What de-escalation techniques might I consider?

“God hates f&#%. God seeks repentance from those who live in sin, or else, COVID and other diseases will continue to riddle the earth.”

Scenario #1

Starting this past Sunday evening, students at Commonwealth State have found flyers all around campus with an image of a defaced rainbow flag, which has a prohibition symbol (i.e., a circle backslash) drawn in the middle. The flyer also contains the caption, **“God hates f&#%. God seeks repentance from those who live in sin, or else, COVID and other diseases will continue to riddle the earth.”**



Scenario #2

Professor Applebee at Commonwealth College teaches Methods of Teaching at the Middle Level English/Language Arts. To expose the students to matters of culture and language usage, he has his students examining the social dimensions around the Black Lives Matter Movement, in hopes that they will understand its purpose and messaging.

A student, Drew Boulder, refused to participate in the discussions because he has family members in law enforcement. He tells Dr. Applebee, I can study and write about the Blue Lives Matter Movement or argue why All Lives Matter, not just Black lives.

Divided Community Project

When first aware of a concern, conflict, or divisive incident, college and university leaders should consider working with others to take – roughly simultaneously – the following steps, all discussed in more detail in this guide:

- ✦ **REACT EARLY:** *Become engaged right away, asking other campus leaders to do the same, and augment resources as necessary to respond quickly and effectively. Support students, consult widely, and search for safe and effective avenues for students to pursue their goals.*
- ✦ **FRAME:** *Issue a statement that “frames the matter” by summarizing what has occurred, recognizing the impact, describing issues, announcing decisions, acknowledging who has been consulted, identifying the processes and values that will be applied to address the issues – all with an authentic voice and delivered by a person whose message will be trusted.*
- ✦ **TEACH AND CREATE OPTIONS:** *Capture the opportunity presented by divisive incidents and conflicts for students to learn to advocate, negotiate, facilitate, and understand each other, laws regarding freedom of expression, and conflict resolution techniques. Offer students safe and effective options to meet their needs and goals.*
- ✦ **COMMUNICATE:** *Develop communications plans and engage in constant messaging.*
- ✦ **LISTEN:** *Stay in touch with students, faculty, staff and other key groups, using both informal techniques and mediators.*
- ✦ **DEVELOP PROTOCOLS:** *Create protocols with safety agencies, especially regarding disruptive activities that do not threaten safety, consider the common message that all will convey, and let the campus community know that this has occurred.*
- ✦ **HELP FACULTY:** *Prepare the faculty for the ways that issues will play out in classrooms.*

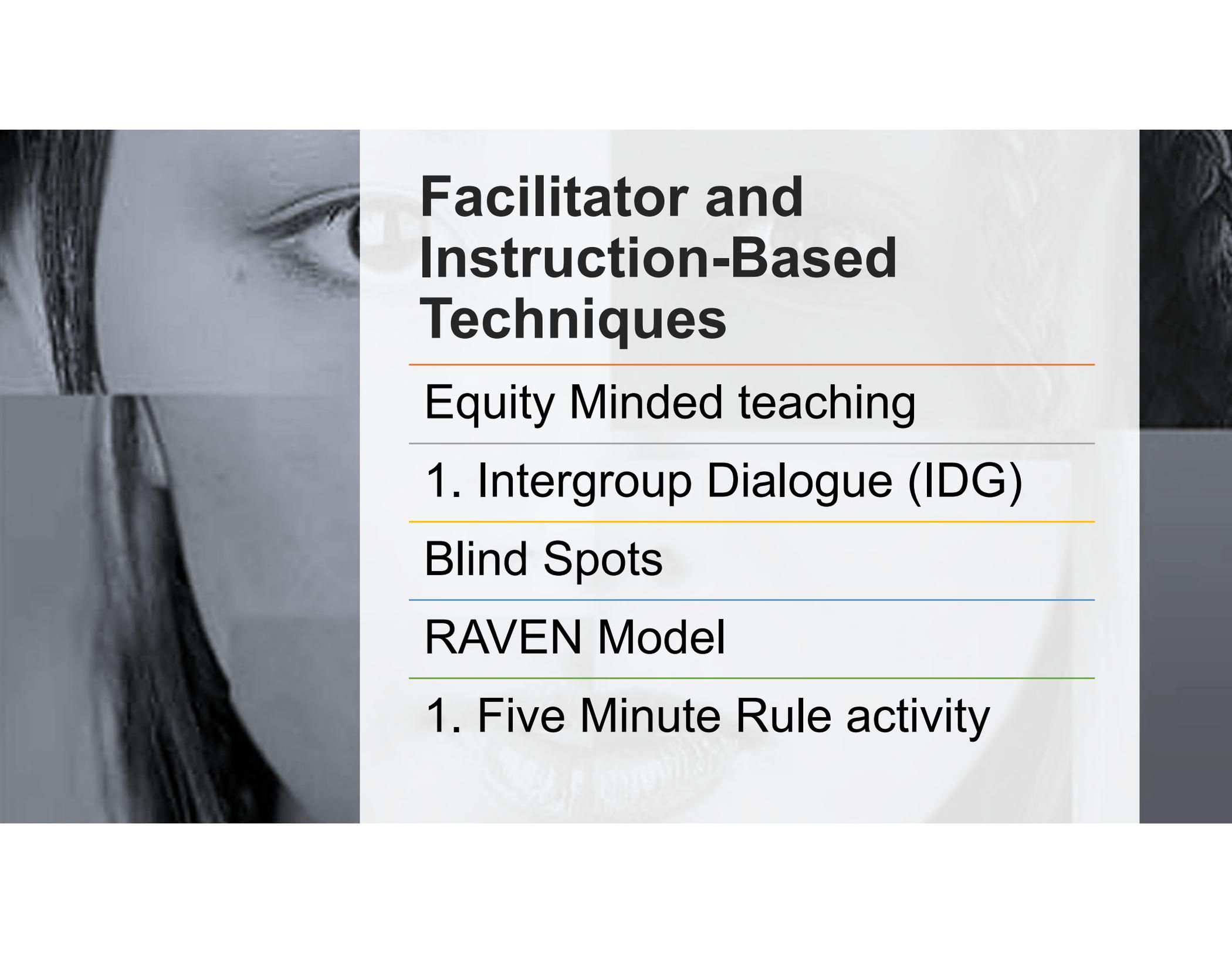
Divided Community Project

Once volatile events cease, university leaders should organize staff, faculty, students, and other constituencies to:

- ✚ **CONTINUE SOLVING PROBLEMS:** *Develop and implement solutions* to both immediate concerns and longer-term problems.
- ✚ **CONTINUE TO COMMUNICATE:** *Issue regular reports* to let these constituencies know how issues are being addressed.
- ✚ **LEARN:** *Learn how to respond more effectively* next time through an after-incident analysis.
- ✚ **PLAN:** *Develop plans* for responding to the next crisis, based on lessons learned.¹
- ✚ **RECONCILE:** *Work to improve relationships* that were strained during the conflict.

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Facilitator and Instruction-Based Techniques

Equity Minded teaching

1. Intergroup Dialogue (IDG)

Blind Spots

RAVEN Model

1. Five Minute Rule activity

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