

University Senate of the University of Kansas Ad Hoc Committee on Freedom of Speech

Chairman's Final Report
May 2, 2017

The University Senate formed the Ad Hoc Committee on Freedom of Speech in the fall of 2016 and charged it with developing a free speech policy for the University of Kansas. As this report spells out in further detail, the committee made substantial progress in the development of a working draft, but was unable to reach consensus on the need for or value of such a policy. Nonetheless, a copy of the working draft is attached without recommendation, as work product for the reference of the University Senate.

The committee met four times in the Fall of 2016 (October 3, October 21, November 4, and November 17) and once in the Spring of 2017 (March 14). Informal minutes from the Committee's meetings are attached. The chair, with the help of the Governance Office, set up a blackboard site with relevant documents, including the committee's charge, various university policies, model free speech policies from other universities, and background information about free speech issues.

At the committee's initial meeting, members expressed some uncertainty about the committee's charge, raising questions about the reasons for developing the policy, the nature and use of the policy, and the status of the policy as a university policy. A particular concern was that such policies may be used to silence voices demanding a more inclusive campus environment, a concern that is widely shared on colleges and universities throughout the country. *See* PEN America, *And Campus for All: Diversity, Inclusion, and Free Speech at U.S. Universities*, October 17, 2016, available at https://pen.org/sites/default/files/PEN_campus_report_final_online_2.pdf Report. In view of these uncertainties, the chair requested a meeting with the University Senate Executive Committee.

The Chair met with SenEx on October 18, 2016, to discuss the committee's charge and seek clarification on the issues raised by committee members. As a result of this discussion, the committee proceeded with the understanding that the goal was to develop a statement of principles (rather than a specific set of rules) to reaffirm the central role of freedom of speech in a university setting and to provide guidance for the application of policies that may implicate freedom of speech. The committee developed the attached draft statement of principles in several steps.

First, at its October 21 meeting, the committee used the University of Minnesota's statement of free speech principles as a starting point. The committee worked through the Minnesota statement with some care, identifying those parts of the statement that the committee liked, those that it disliked, and issues or elements that ought to be included in the statement but were not. Based on this discussion, the chair prepared a draft statement and distributed it to the committee in advance of the next meeting.

Second, at its meeting on November 4, the committee worked through the draft, with members offering comments, suggestions, and criticisms. One important suggestion from this

meeting was to document the principles in the statement in a scholarly way, which was a departure from the other models the committee examined. The committee concluded that this sort of approach was in keeping with the University's role as a scholarly institution and because documenting the basis for the principles included in the statement would make it more useful as an educational and guidance document. The chair revised the draft in light of the committee discussion and circulated that revision in advance of the next meeting.

Third, at its meeting on November 17, the committee reviewed the revised draft. A primary focus of this meeting concerned whether and how the policy would be useful, insofar as it did not (and could not) provide any specific answers for particular problems. Suggestions for making the document more user friendly included the incorporation of headings to guide readers. There was also concern that the draft was too focused on the University's obligation to remain neutral when it regulated speech, as opposed to the more affirmative role of the university in promoting the free speech rights of all members of the university community. Members present also agreed that the statement should highlight the University's right and duty to speak out against intolerance and in favor of diversity and inclusion. The chair revised the draft in accordance with the discussion and distributed it to committee members before the semester break, requesting that members read and comment on the draft.

Due to other commitments, the chair was unable to schedule a meeting after the semester break until March 14, 2017. In light of the lack of response to request for comments and the limited attendance at the meeting, the committee members present determined that it would not be possible to finalize the draft statement as a formal committee recommendation. The most recent version of the draft is included in this report as the committee's work product, but without any recommendation that it be adopted. It is hoped that the document may be of some use going forward as a resource for future discussions.

The inability of the committee to finalize a statement of principles is attributable to various factors. As an initial matter, the issues surrounding freedom of speech on campus are extraordinarily complex and highly contentious. From the outset, some committee members doubted the wisdom and utility of adopting a statement of principles at all, and the clarifications from SenEx did not entirely alleviate those concerns. Ultimately, developing a policy statement that can address these complex issues in a manner on which all constituencies can agree may not be possible.

In addition to the inherent difficulty of the charge, another problem for the committee was limited attendance at meetings. It proved impossible to find a time when all of the committee's members could meet, and when meetings were scheduled, members who had indicated their availability did not always attend. At some meetings, the committee lacked a quorum and the committee never had anything approaching its full membership at any one meeting. Because the members in attendance varied from meeting to meeting, the committee was forced to revisit many topics from one meeting to the next and the consensus from previous meetings often proved ephemeral. In the future, when forming a large committee with membership from various constituencies, governance might consider establishing a set meeting time for the committee (perhaps in consultation with the committee chair) and then soliciting members who are available at that time.

APPENDIX 1: DRAFT STATEMENT

Draft Statement of Free Speech Principles University of Kansas

Introduction: Freedom of speech and the related principle of academic freedom are central to the mission of the University of Kansas as “a comprehensive research and teaching university and a center for learning, scholarship, and creative endeavor.”¹ In keeping with this mission, the University strives to promote freedom of thought, inquiry, and expression for all its students, faculty, and staff. Nonetheless, important University policies may raise complex and difficult free speech issues when they are applied to the many and varied activities, events, and occurrences at the University. Therefore, through the process of shared governance, the University has adopted this statement of principle to underscore the University’s commitment to freedom of speech, elaborate on the meaning of free speech in a university setting, and provide guidance for the application of University policies that may implicate freedom of speech.

Freedom of Speech at a Public University. Freedom of speech and academic freedom are the lifeblood of a public University because teaching, learning, and scholarship can thrive only in an atmosphere of free and open inquiry. As a public institution, the University is bound by constitutional protections for freedom of speech, as well as Board of Regents and University policies that protect speech.² The University also subscribes to the principle of academic freedom, which protects freedom of research, instruction, and governance in accordance with the standards of each academic discipline.³ Pursuant to these principles, the University protects the speech of all students, faculty, and staff. Even when the University has the legal and constitutional authority to restrict speech, it should, whenever possible, err on the side of protecting speech.

Content and Viewpoint Neutrality. A core constitutional requirement of freedom of speech is that any government restriction on speech must be neutral as to content and viewpoint.⁴ Accordingly, the University must respect the right of all students, faculty, and staff to express ideas

¹ University of Kansas, Mission Statement. Available at <http://www.ku.edu/about/mission/>.

² See Faculty Code of Rights, Responsibilities, and Conduct, Art. III, ¶ 1; Code of Student Rights and Responsibilities, Art. III, ¶¶ A, I.

³ See Faculty Senate Rules and Regulations § 6.1.2 (“The University of Kansas subscribes to the 1940 American Association of University Professors (AAUP) statement on Academic Freedom and Tenure . . .”). Academic freedom has constitutional underpinnings as well. In *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967), the Supreme Court observed that “[o]ur Nation is deeply committed to safeguarding academic freedom,” and characterized the principle as being “of transcendent value” and “a special concern of the First Amendment.” See also *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (concluding that a governmental inquiry into the contents of a scholar’s lectures at a state university invaded his “liberties in the areas of academic freedom and political expression—areas in which government should be extremely reticent to tread”).

⁴ Subject to certain narrow exceptions, “content-based” restrictions on speech can only be sustained if they serve a “compelling” governmental interest and are “narrowly tailored” or “necessary” to accomplish that purpose. See, e.g., *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786 (2011) (“Because the Act imposes a restriction on the content of protected speech, it is invalid unless California can demonstrate that it passes strict scrutiny—that is, unless it is justified by a compelling government interest and is narrowly drawn to serve that interest.”). This standard, commonly referred to as “strict scrutiny” is almost always fatal to a law restricting speech. See *id.* (observing that strict scrutiny is “a demanding standard” and that “[i]t is rare that a regulation restricting speech because of its content will ever be permissible.”).

without regard to their viewpoint,⁵ and may not seek to prevent or punish speech simply because it disagrees with the speaker's message.⁶ These principles protect speech that some or even most people find offensive, they protect novel ideas that challenge accepted premises, and they protect unconventional modes of expression that may seem strange or unfamiliar.⁷ While content and viewpoint neutrality limit the University's ability to restrict or punish speech, the University may articulate and promote its own institutional values and may explicitly disavow speech with which it disagrees.⁸

Counter-speech. Freedom of speech protects offensive speech or ideas, but it does not insulate them from the criticism of other people or relieve the speaker of the moral and social responsibility to consider the impact of his or her words on others. Indeed, the same principles that protect offensive speech protect the rights of those who disagree to denounce that speech in forceful terms.⁹ In a community dedicated to freedom of thought and inquiry, the remedy for false or offensive speech is "counterspeech" and the proper response to a bad idea is a good one.¹⁰ Thus, even when freedom of speech may require the University to tolerate offensive speech or ideas, it does not prevent the University from publicly denouncing them. Likewise, all members of the University community have a right and a responsibility to speak out against speech that violates essential standards of decency, that dehumanizes others, or that targets members of vulnerable communities.

Unprotected Speech. While the University may not prohibit speech simply because it is offensive, freedom of speech does not protect threats, harassment, or intimidation.¹¹ Such conduct is prohibited by state and federal law and University policies, which may be enforced against

⁵ Under established freedom of speech doctrine, the general rule against content-based restrictions on speech is subject to certain limited exceptions. Specifically, the government may proscribe certain "narrowly defined" categories of speech, such as obscenity, defamation, true threats, and incitement. *See, e.g., United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012) (listing these categories as including "advocacy intended, and likely, to incite imminent lawless action," "obscenity," "defamation," "speech integral to criminal conduct," "fighting words," "child pornography," "fraud," "true threats," and "speech presenting some grave and imminent threat the government has the power to prevent").

⁶ *See R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (invalidating a hate speech ordinance as improper viewpoint discrimination, even if it only applied to "fighting words" that could otherwise be proscribed, because it targeted a particular point of view).

⁷ *See, e.g., Snyder v. Phelps*, 562 U.S. 443 (2012) (extending First Amendment protection to funeral picketing); *United States v. Stevens*, 559 U.S. 460 (2010) (extending First Amendment protection to animal crush videos); *Texas v. Johnson*, 491 U.S. 397 (1989) (extending First Amendment protection to flag-burning as a means of political protest); *Cohen v. California*, 403 U.S. 15 (1971) (extending First Amendment protection to jacket using obscene language to protest the draft).

⁸ *See Pleasant Grove, Utah v. Summum*, 555 U.S. 460, 467-68 (2009) (observing that freedom of speech "does not regulate government speech" and that "[a] government entity has the right to speak for itself, [and] is entitled to say what it wishes . . . and to select the views that it wants to express").

⁹ For example, the Report of the University of Kansas Diversity, Equity, and Inclusion Advisory Group, April 27, 2016, discusses an incident involving an undergraduate who tweeted in response to "chalking" that she found offensive. As the report emphasized, free speech protects both messages. *See id.* at pp. 15.

¹⁰ As Justice Brandeis famously stated in *Whitney v. California*, 274 U.S. 357, 375, 377 (1927), "the fitting remedy for evil counsels is good ones" and "[i]f there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

¹¹ *See, e.g., Virginia v. Black*, 538 U.S. 343, 363 (2003) (upholding convictions for cross-burning with the intent to intimidate because, in view of its history, "burning a cross is a particularly virulent form of intimidation").

speech that creates a hostile educational or work environment.¹² Likewise, freedom of speech does not convey a right to vandalize or deface property, to interfere with the lawful expression of others, or to engage in other illegal conduct, no matter how important or valuable the message.¹³ Even when speech is unprotected, however, University policies or rules that may apply to expressive activities must provide clear guidance so as to prevent their application to protected speech and to prevent arbitrary or discriminatory enforcement.¹⁴

Diversity, Equity, and Inclusion. Above all, a university values learning, which demands an environment in which all members of the community are free to explore, to engage with new perspectives, and to test themselves and their beliefs. There is much work to do before this vision is realized for members of traditionally disadvantaged and marginalized groups, who all too often confront a hostile learning environment.¹⁵ Accordingly, the University has an obligation to protect all its members against harassment and intimidation, to speak out in favor of equity and inclusion, and to provide resources for the victims of harassment.¹⁶ Ultimately, although freedom of speech may protect the voices of intolerance and exclusion, history has shown that free speech is an essential tool for promoting social justice and addressing the needs of oppressed groups.¹⁷

Use of University Resources. Faculty, staff, and students retain their rights as private citizens to speak on matters of public concern,¹⁸ but the University may control or limit the use of its resources for expressive activities.¹⁹ Conversely, freedom of speech does not ordinarily apply

¹² See University of Kansas Sexual Harassment Policy, <http://policy.ku.edu/IOA/sexual-harassment> (defining harassment to include speech that is “so severe, pervasive and objectively offensive that it has the purpose or effect of substantially interfering with a person’s academic performance, employment or equal opportunity to participate in or benefit from University programs or activities or by creating an intimidating, hostile or offensive working or educational environment”); University of Kansas Policy on Racial and Ethnic Harassment, <http://policy.ku.edu/IOA/racial-ethnic-harassment-policy>.

¹³ See, e.g., *Wilson v. Johnson*, 247 Fed. Appx. 620, 2007 WL 1991057 (6th Cir. 2007) (upholding state university’s policy prohibiting vandalism as applied to student’s antiwar messages painted on university buildings).

¹⁴ See, e.g., *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012) (“When speech is involved, rigorous adherence to [the requirements of the vagueness doctrine] is necessary to ensure that ambiguity does not chill protected speech.”); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002) (“The Constitution gives significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere.”).

¹⁵ The University is not alone in confronting these issues, which have arisen at universities throughout the country, prompting varying responses. In some cases, freedom of speech has become a “hot button issue.” See generally PEN America, *And Campus for All: Diversity, Inclusion, and Free Speech at U.S. Universities*, October 17, 2016, available at https://pen.org/sites/default/files/PEN_campus_report_final_online_2.pdf Report. This statement operates on the premise that freedom of speech does not stand in opposition to equity and inclusion, but rather is an essential protection for advocacy of social justice.

¹⁶ Identify resources.

¹⁷ See, e.g., *Edwards v. California*, 372 U.S. 229 (1963) (overturning disturbing the peace convictions of civil rights protesters who refused to disperse from state house grounds); *Garner v. Louisiana*, 368 U.S. 157 (1961) (overturning disturbing the peace convictions of civil rights protesters who engaged in a “sit-in” at a segregated restaurant).

¹⁸ See, e.g., *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 465 (1995) (“Even though respondents work for the Government, they have not relinquished “the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest.”); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968) (rejecting premise that teachers “may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work”).

¹⁹ For example, State statutes, Board of Regents policy, and the University prohibit the use of University resources for partisan political activities. See University Policy on Political Activity, available at <http://policy.ku.edu/provost/political-activity-KS-statutes>.

when students, faculty, or staff represent the University or speak on its behalf.²⁰ Likewise, principles of academic freedom protect the rights of students, faculty, and staff to engage in teaching and scholarship without improper interference, but the University has the responsibility to provide for the academic integrity and content of its courses, and to ensure that scholarly activities sponsored by the University meet professional norms for intellectual integrity and rigor.

Use of University Spaces. Many public spaces on campus are forums at which free speech receives maximum protection.²¹ In such spaces, anyone may engage in speech without restriction, although the University may prevent disruption of the learning environment through neutral policies that regulate the time, place, and manner of speech-related activities and expressive conduct without regard to its content.²² Other spaces on campus are not forums for speech and the University may impose reasonable regulations to preserve those areas for their intended use, provided that those regulations do not discriminate against disfavored viewpoints.²³ Thus, for example, classrooms are not forums for speech and the University may restrict their use, but when it opens unused classrooms for use by student groups, it may not discriminate on the basis of a group's viewpoints.²⁴

Conclusion. Various societal trends and local or national events implicate freedom of speech and academic freedom in various ways. It is not possible or desirable to address all of the potential free speech issues that may arise on campus or to articulate bright line rules for all occasions. In practice, the application of University policies to complex issues with free speech

²⁰ See *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”). This principle does not apply when principles of academic freedom protect research and teaching. See *Ceballos*, 547 U.S. at 425 (“There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence.”); *Demers v. Austin*, 746 F.3d 402 (9th Cir. 2014) (concluding that faculty member's book that was critical of school's program was protected by the First Amendment).

²¹ A public forum is public property, such as the streets and parks, that has been set aside for speech. See *Hague v. Comm. for Indust. Org.*, 307 U.S. 496, 515, 516 (1939) (stating that the “streets and parks ... have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions”). Although the government has no obligation to set aside other public property for speech, once it does so, the First Amendment applies. See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). Some government property is a public forum for limited purposes, and is treated as a public forum if speech falls within the scope of the forum, but as a nonpublic forum if it does not. See *id.*

²² See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984) (upholding neutral ban on camping on the mall in Washington, D.C., as applied to protest against homelessness); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) (upholding volume restriction on concerts in New York City's Central Park). Even content neutral restrictions on speech in a public forum may be invalid if they restrict more speech than needed to achieve the government's legitimate and important purposes. See *McCullen v. Coakley*, 134 S.Ct. 2518 (2014) (invalidating neutral ban on counseling within a certain distance of abortion clinics because it restricted more speech than necessary to accomplish the government's purpose).

²³ See *Christian Legal Soc. of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661 (2010) (applying forum analysis to uphold content neutral requirement that student groups receiving law school funding must be open to membership for all students); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (invalidating the denial of funding to religiously oriented newspaper published by student organization because the denial discriminated on the basis of viewpoint).

²⁴ *Widmar v. Vincent*, 454 U.S. 263 (1981) (holding that university could not exclude religious groups from policy of allowing student groups to use empty classrooms when available).

implications requires careful consideration of competing concerns. In keeping with the University's mission, ensuring an environment in which freedom of inquiry, thought, and expression can flourish must be of paramount importance. Although our understanding of free speech and its implications evolves over time, the central principle remains constant. The discovery of truth is best served by the free exchange of ideas. The University of Kansas reaffirms its commitment to this essential principle.

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APPENDIX 2: MEETING MINUTES

Ad Hoc Free Speech Committee Minutes:
October 3, 2016

The meeting came to order at 7:05, with Committee Chair Levy and Members Back, Hampton, Jones, and Warrior present. Members Alexander, Ehling, Gomez Cervantes, Issawi, Stone-Sewalish, could not attend.

1. The meeting began with members introducing themselves and providing some background about their positions within the University and interest in the committee's work.
2. Following introductions, the members present reviewed the committee's charge. This review raised some fundamental questions about the nature of the charge.
 - One question was whether the committee is charged with producing a set of specific and enforceable rules for inclusion in the University Senate Code, as the charge seems to say, or whether the charge is to produce a general statement of principles, as reflected in the examples provided to the committee.
 - A second and related question was what deficiencies in existing policies the committee was to correct. The background provided to the committee identified events and issues that raise free speech concerns, but did not indicate whether or why existing policies were insufficient to handle them.
 - Professor Levy offered to seek clarification on these matters from SenEx and report back to the committee.
3. Discussion of the committee's charge also provided some opportunity for discussion of the issues and challenges presented by the committee's charge.
 - A core concern was that the perception of the committee as a response to specific incidents and groups, with the aim of implicitly or explicitly expressing disapproval.
 - A related concern was that the formation of the committee implied that there was some failure of current policy that needed to be corrected, but the perceived problems may have more to do with how particular incidents are handled or the need for education and leadership, which cannot be addressed by changes to the code.
 - Members present also discussed the range of complex issues identified in the charge and raised by the development of a free speech policy, including how to balance the protection of free speech with the goals of diversity and inclusion, the impact of concealed carry on campus, the meaning and scope of academic freedom.
4. The committee also discussed some issues concerning how best to move forward.
 - One issue confronting the committee is scheduling meetings so that all or almost members can attend. Going forward, the committee will ask Kathy Reed, in the governance office, to work on scheduling meetings. If it is impossible to find a time when everyone can meet, it will be necessary to rotate meeting times so that no members are excluded from the committee's work. In the alternative, it may be necessary to replace committee members who cannot participate.
 - It was agreed that the process should be an open one in which public participation is meaningful (and not just window dressing).

Ad Hoc Free Speech Committee Minutes:
October 21, 2016

The meeting came to order at 1:05 pm. Members Back, Ehling, Issawi, Jones, Levy, Stone-Sewalish, and Summers were in attendance. Members Alexander, Hampton, and Warrior could not attend. Also in attendance were two members of the University community, Jonathan Ehrlich (a Law Student) and Jonathan Peters (a Faculty Member in the School of Journalism).

The chair reported that at the committee's initial meeting, which many members could not attend, the discussion focused on the committee's charge. This discussion raised several issues concerning the charge, and the chair agreed to communicate with SenEx to seek clarification. The Chair met with SenEx at its meeting on October 18, 2016. As a threshold matter, SenEx endorsed the production of a statement of principles, as opposed to a set of rules for inclusion in the University or Faculty Senate Rules and Regulations. Regarding the purpose of such a statement, SenEx identified several points:

- Although University policies reference freedom of speech, they do so in a general way and without any clarification of what freedom of speech means;
- Given the importance of freedom of speech, there should be a general statement articulating core principles that is readily accessible; and
- A statement of principle could help educate the University community and provide guidance for the application of particular policies or resolution of particular issues.

Finally, SenEx confirmed that the completion of a draft by the committee is the first step of a larger process and that the broader, campus-wide discussion of these issues will be led by Governance rather than by this committee.

The committee turned to a discussion of the University of Minnesota's statement of principles. As an initial matter, the consensus of the members present was that (without regard to its specific content) this sort of statement provided a useful model. The discussion proceeded paragraph by paragraph, as committee members highlighted ideas or statements that they endorsed, other statements or comments that seemed undesirable, and additional issues that might be addressed. Among the key points that emerged from this discussion were:

- An introductory paragraph or preamble be specific to the University of Kansas and explain the purposes of the statement of principles.
- There was general agreement with the first principle articulated in the Minnesota policy, especially in terms of the role of free speech in a public university. The members present, however, thought that our statement should not emphasize the University's affirmative duty in this regard to the same degree as the Minnesota statement.
- There was also general agreement with the second principle articulated in the Minnesota statement regarding the protection of offensive speech, but members also thought it important to recognize that harassment, threats, and intimidation are not protected.
- The third principle in the Minnesota statement received less support because it focused on a narrow point (power differentials) rather than the broader principle of viewpoint neutrality.

- The fourth Minnesota seemed unnecessarily condescending with respect to the demand for diversity and inclusion and the need to create a safe learning environment for all members of the University community. It was agreed that our statement should highlight that the right to speak did not absolve speakers of their social responsibility of civil discourse and that the right to engage in offensive speech did not prevent others from being critical of that speech.
- There was also a general sense that our statement should address some topics that the Minnesota statement did not, including the context of speech and academic freedom.

At the conclusion of the meeting, it was agreed that the chair would produce a preliminary draft reflecting this discussion.

Ad Hoc Free Speech Committee Minutes:
November 4, 2016

The meeting came to order at 1:05 pm. Members, Alexander, Ehling, Levy, Stone-Sewalish, and Warrior were in attendance. Members Back, Hampton, Issawi, Jones, and Summers could not attend. Jonathan Ehrlich (a Law Student) was also in attendance.

The minutes from the Committee's meeting on October 21, 2016 were approved.

The committee discussed the preliminary draft distributed by the chair prior to the meeting, and agreed that it reflected the discussion at the October 21 meeting. There was general agreement on several specific changes:

- The initial paragraph, which functions as a preamble, should be modified to reflect that the statement is the product of shared governance.
- The second paragraph should incorporate the general principle that the University should protect speech even when it is not constitutionally required to do so and should refrain from restricting speech whenever possible.
- Also in the second paragraph, concerns were expressed about the highlighted phrase in the following sentence: "The University and its officials may not limit, suppress, or punish speech based upon its content, *except in narrowly defined circumstances and based on compelling justifications*. The broad phrasing of the "exception" may seem to swallow the rule. It was agreed that the language should be changed to address this concern.
- In paragraph three, it was agreed that protection for "offensive speech" should be broadened to include (1) unconventional modes of expression; and (2) ideas that challenge conventional or accepted premises.
- Members agreed that paragraph four should be modified to highlight the value that the University places on learning and to connect freedom of speech and expression to that overriding institutional value.
- It was also agreed that the general principle of giving the broadest possible scope to freedom of speech should be repeated so as to "book-end" the discussion.
- In the final paragraph, it was suggested that the statement should acknowledge the evolutionary character of free speech and our understanding of it.

The members also agreed that it would be useful to annotate the statement with references to Supreme Court decisions and other authorities so as to specify the foundations of the principles reflected in the statement. Having the annotations would be useful at least for the committee's discussions going forward and the committee could decide later whether and how to include them in the final document. The chair agreed to revise the preliminary draft in accordance with this discussion and circulate the new draft before the next meeting.

The committee also briefly discussed the process going forward. Finding meeting times that all members can attend remains a problem, and it was agreed that all members of the committee should be encouraged to share comments and suggestions by email, especially if they cannot attend a meeting. In addition, the committee members generally agreed that it would be useful to share a draft of the statement of principles before finalizing our recommendations to governance. This process could include posting a draft on line for comment by faculty, students, and staff, and sharing the draft with the central administration and the University General Counsel's office.

Ad Hoc Free Speech Committee Minutes:
November 17, 2016

The meeting came to order at 1:05 pm. Members, Alexander, Back, Ehling, Hampton, Jones, Levy, and Stone-Sewalish, and were in attendance. Members Issawi, Summers, and Warrior could not attend. Jonathan Ehrlich (a Law Student) was also in attendance.

The minutes from the Committee's meeting on October November 4, 2016 were approved.

The committee discussed the "discussion draft" distributed by the chair prior to the meeting. Before turning to the specifics of the draft, the committee resumed discussion of its charge and the role of the statement of principles. In particular, concerns were raised that the draft was too abstract to be of much assistance, that it did not specifically address key issues, and that it did not speak to students and student concerns, particular in regard to students of color and other traditionally excluded groups. This discussion led to some agreement about specific ways in which the document should be changed:

- The statement should use headings so as to be more accessible for readers, especially those without legal training or background in free speech law.
- The statement should highlight the affirmative role of the University to protect the speech of all rather than an obligation to remain neutral, particular with regard to the University's own speech.
- The statement should address particular contexts in which of freedom of speech issues may arise more directly and specifically, particularly as they relate to students.
- The discussion of diversity, equity, and inclusion should do more to highlight the importance of those principles and the University's role in promoting them.

The Chair agreed to revise the discussion draft in accordance with these changes and circulate the revised draft.

Ad Hoc Free Speech Committee Minutes:
March 14, 2017

The meeting came to order at 1:05 pm. Members, Ehling, Jones, Levy, and Warrior attended. Other members could not attend.

The committee lacked a quorum but discussed what to do going forward in light of the committee's circumstance. There was a general sense among those present that the most recent draft statement of principles reflected the discussion at the committee's last meeting, and that it was, for all practical purposes, complete. Nonetheless, members doubted it would be feasible to gain a formal vote of approval from the committee as whole, given the persistent difficulty of getting all members of the committee together as a single meeting. The consensus among the members present was that the committee should conclude its work without making any formal recommendation. Nonetheless members also agreed that the most recent draft policy, with minor editorial revisions suggested by the chair, should be included in the final report to Senex as "work product."