May 23, 2016

To:  Hank Foley, Interim Chancellor  
      Ben Trachtenberg, Chair, University of Missouri Faculty Council

From:  Bob Jones  
        Isidor Lubin Professor of Law  
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        Chair, Ad Hoc Joint Committee on Protests, Public Spaces, Free Speech, and the Press


The Ad Hoc Joint Committee on Protests, Public Spaces, Free Speech, and the Press was appointed by the Chancellor and the Faculty Council in January 2016 for the purpose of making recommendations on two charges. We were asked to “(1) recommend how public spaces can be regulated on campus while protecting safety, free inquiry, and free expression and (2) suggest how the University might diffuse future conflicts should they arise concerning the use of public spaces on campus.” The Committee began meeting regularly in January. In March, we submitted an interim report in which we recommended that the University approve a proposed statement reaffirming its commitment to free expression. This statement was endorsed by the Chancellor shortly after we made our report and by the Faculty Council in April.

Early in the semester with the aid of an excellent research assistant, we assembled and reviewed the policies and regulations on public space and free expression of 40 different universities. Based on this review, consultations with individuals with experience in these areas both inside and outside the University, and our own discussions and assessments of the needs of our University, we assembled a proposed policy that, as stated in its “General Principles” section, “seeks to ensure that individual and group rights of expression, assembly, dissent, and protest are not infringed or abridged at the same time it seeks to support and preserve the means to maintain the safety of all members of the University community and visitors to the campus, to enable the University to fulfill its missions of teaching, education, and research, and to provide all members of the University’s academic enterprise with the broadest possible latitude to speak, write, listen, challenge, and learn.”

The proposed policy has a number of elements:

- It is crafted to adhere to the requirements of Mo. Rev. Stat. § 173.1550.1, which became effective in August 2015 and places special requirements with respect to how outdoor spaces on public university campuses in Missouri are made accessible for expressive events and activities.
The policy states that the University will not interfere with expressive activities unless participants engage in one of the policy’s specifically enumerated behaviors. These behaviors fall within the scope of reasonable time, place, or manner limitations the Supreme Court of the United States has authorized government authorities, such as public universities, to place on expressive activities.

The policy creates a default principle that allows spontaneous, unscheduled expressive activity in any outdoor area on the campus unless the location is specifically listed in either Appendix B (listing spaces that can be reserved for expressive activities but in which unscheduled expressive activities may not occur; also listing other spaces where spontaneous expressive activities are allowed without a reservation in the absence of a prior reservation for use of the space) or Appendix C (listing spaces in which no event or activity, including an expressive activity, is allowed).

The policy creates a clear, understandable procedure through which students, student organizations, other campus groups, and noncampus groups can reserve facilities and grounds for events and activities.

The policy assembles in one place a number of existing University policies relevant to free expression in public spaces. These policies are, for the most part, difficult to access, and general campus awareness of these policies is limited. We hope that the proposed policy will alleviate this gap in understanding.

The second charge to the committee asks for recommendations about how future conflicts regarding the use of public space on campus can be diffused. As an initial observation, we believe that adopting a clear policy on use of public space is the most direct way to both avoid and diffuse future conflicts over the use of such space.

That being said, we also observe that no single policy can anticipate and answer all questions about the full range of possible future disputes about the use of public space. Thus, senior university leadership will inevitably be required to make decisions about particular cases and situations as they arise. It is important that university leadership, guided by the advice of the University’s General Counsel, exercise its discretion thoughtfully. Appendix D to the proposed policy is intended to assist university leadership in the exercise of that discretion. We also intend that Appendix D serve as a tool to educate members of the University community about how each of us can contribute positively to avoiding disputes about the use of public space and to resolving such disputes fairly and expeditiously when they arise.

Beyond those two observations, we have three specific recommendations.

First, we recommend that the Campus Mediation Service (“CMS”) be made available to mediate disagreements about free expression issues that arise on the campus as well as disagreements that involve the use of facilities and grounds. Mediation provides a setting in which people who are in conflict can work with a neutral third party in an attempt to resolve their
differences. Making the CMS resource available to assist with conflict resolution when free expression disagreements arise will help diffuse these conflicts.

The First Amendment issues that inevitably arise with respect to these kinds of disagreements are complex. Thus, we suggest that three to four mediators on the CMS panel be trained at the University’s expense in foundational principles of the First Amendment and that these “specialist mediators” be available for service in resolving disputes that arise under the proposed policy. We recognize that implementing this recommendation would expand the jurisdiction of CMS; thus, we suggest that the number of mediators on the existing CMS panel be expanded to accommodate this increased role.

As a corollary to this first recommendation, we suggest that, if a University ombuds office is created sometime in the future, at least one ombudsperson on the staff should be trained in foundational principles of the First Amendment and be available to offer resources, referrals, counseling, and informal dispute resolution services for those who raise free expression questions, complaints, or concerns.

Second, we recommend that the University take steps to improve the understanding of all members of the University community – faculty, administration, staff, and students – of the meaning and importance of the First Amendment and the values embedded in it. To this end, we recommend that the University’s Commitment to Free Expression be included in student orientation materials and that each school, center, and institute on the campus be invited to identify ways to encourage conversations about the Commitment statement. We encourage appropriate campus departments to schedule speakers and symposia on free speech and free expression issues. We further recommend that these occasions be used to impress upon all members of the University community the importance of respect for the dignity of all people, for the values of diversity and inclusivity, and for a diversity of viewpoints. Although the First Amendment requires the University to protect the right to make statements opposing these values, nothing in the First Amendment restricts the University’s efforts to teach and model respect for human dignity, to promote diversity and inclusivity, and to encourage respectful debate.

Third, we recommend that this proposal, even if it is implemented expeditiously without significant revision, become the subject of further discussion and vetting in appropriate campus governance organizations. The issues addressed by this proposal are complex, and the logistical aspects of the proposal are not simple. Although we believe we are making a good recommendation that will benefit the University, we acknowledge that continued discussion and review are likely to identify ways the proposal can be improved. Although the committee hopes you consider our work on the charges to be completed and that you formally discharge the committee, we offer to reconvene informally in the future for the purpose of commenting on any proposed revisions to the policy.
Members of the Committee

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