

Faculty Senate

November 8, 2017

Faculty Senate Code

To promote the communication of opposing views and to serve as a free-speech-with-respect model for the rest of the campus, all discussion in the Faculty Senate must be conducted in a civil fashion that is free of any intimidation or personal attacks.

- *the University Faculty Committee*

Announcements

Charlie Van Loan
Dean of Faculty

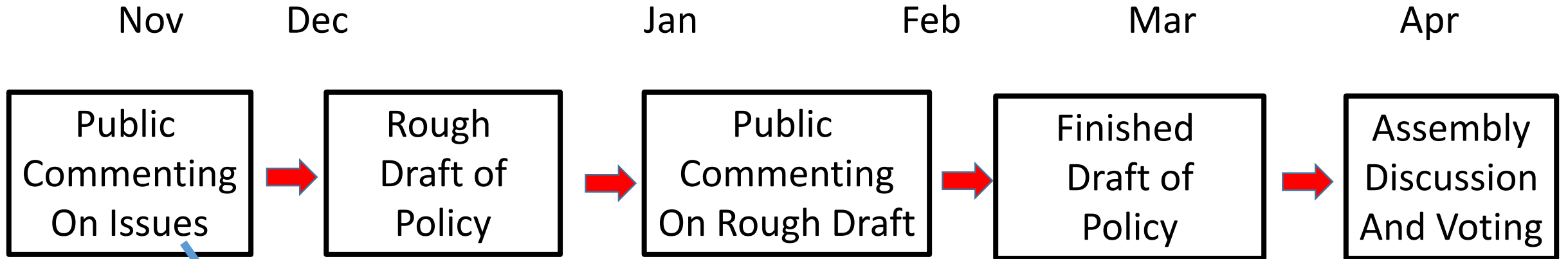
Monday Morning Messages

1. One way that you can respond to the [anti-semitic poster incident](#) is to talk to students following these [excellent guidelines](#) .([Center for Teaching Innovation](#))
2. [Fake News, Alternative Facts, and Misinformation: Learning to Evaluate Media Sources](#) 3:30pm Wed Nov 1 (Cornell University Library)
3. [Communicating Knowledge and Truth by Social Media](#) 5:00-7:00pm Wed Nov1 (Breaking Bread, [Intergroup Dialog Project](#))
4. [We need great faculty on the Presidential Task Force on Campus Climate.](#) 11AM Fri Nov 3 ([Scheinman Institute](#))
5. [Cornell Chapter Meeting of the American Association of University Professors](#) 2:30pm Fri Nov 3
6. [Upcoming Retirement-Planning Workshops](#) Nov2 and Nov 15 (Fidelity, TIAA)

For Example:

In December we will decide whether it is a good idea or not.

The Consensual Relationships Policy Committee Is Now Active



Connections to Harassment
Radius of Influence
Pre-Existing Relationships
Title IX

Conflict of Interest
Disclosure
Confidentiality
Prevention and Education

Sanctions
Gender Equality
etc.

Power Differentials
Right to Romance
Undergraduates,
etc.

The Committee

Co-Chairs

Charles Van Loan (DoF)
Anna Waymack (PhD Student)

Graduate Students (3 seats)

Bradi Heaberlin (Information Sci)
Aubrie James (Ecology & Evol Bio)
Stephen Kim (English)
Katherine Quinn (Physics)
Nate Stetson (Law)
La'Tise Tangherlini (Law)

TT Fac, NTT Fac, Researchers

Tisha Bohr (Vet)
Rhonda Gilmore (DEA)
Kim O'Brien (Nutrition Sci)
Charles Seyler (ECE)
Gillian Turgeon (Int Plant Sci)
Makda Weathersoon (Near Eastern Studies)

Undergraduate Students (3 seats)

Joseph Anderson (ILR)
Jenna Chong (Biological Sciences)
Sofie Cornelis (Information Sciences)
Renee Cornell (Interdisciplinary Studies)
Jesse Pollard (Environmental Engineering)

Staff

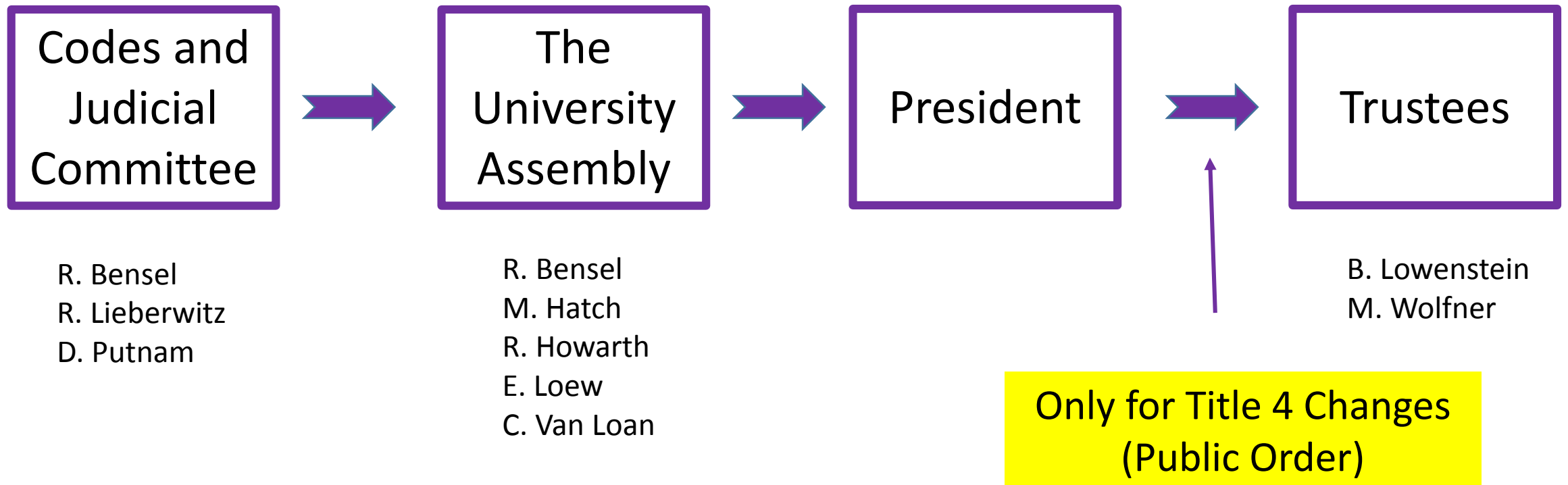
Sarah Affel (Title IX)
Sandy Dhimtri (OHR)
Janna Lamey (Grad School)
Wendy Tarlow (Univ Counsel)
Laura Weiss (Dean of Students)

Track the committee's work on its [website](#).

The Free Speech / Hate Speech /
First Amendment / Campus Code
Scene

Code-Change Approval Process

This [webpage](#) has the Code and the rules associated with the modification process. The process looks like this:



What to Watch in the Coming Months

Codes and Judicial Committee

The CJC Working Group on Issues of Hate Speech

Presidential Task Force on Campus Climate

Subcommittee on the Regulation of Speech and Harassment

Elected!

UFC

[Rosemary Avery](#) (Human Ecology)

[Cynthia Bowman](#) (Law)

[Harry de Gorter](#) (Dyson)

[Shannon Gleeson](#) (ILR)

[Kimberly O'Brien](#) (Nutritional Sciences)

Nominations & Elections

[Julia Finkelstein](#) (Human Ecology)

[Ruth Richardson](#) (Engineering)

Senator-at-Large

[Rosemary Avery](#) (Human Ecology)

[Michael Mazourek](#) (CALs)

[Rob Thorne](#) (A&S)

[Suman Seth](#) (A&S)

The Online-Syllabus Initiative

The idea first surfaces in the Student Assembly [SA 29](#) (2014). Senate's EPC involved from the start. [More in a minute.]

[SA 42](#) (Feb 2016)

“Be it therefore resolved, that the Student Assembly recommends that **where practical and appropriate**, professors upload a digital copy of the syllabus...”

[Senate Presentation](#) describes the system (March 2017)

“Syllabi can take many forms. The provost's office is **not imposing requirements on either form or content.**”

The Online-Syllabus Initiative

The Office of the University Registrar made it possible to upload syllabi into the course roster. Here are the [instructions](#).

Nothing in this [FAQ](#) suggests that uploaded syllabi are to have a certain minimum level of detail.

Implementation is left to the Colleges

A quick look at the college messages (A&S, CALS, HumeEc, Engin, Johnson,..) suggests that there are **no expectations** for a particular syllabus format or a prescribed level of detail.

However, I will work with the Vice Provost for Undergraduate Education office to ensure that syllabus-related messaging to the faculty is more clear.

Educational Policy Committee Update

Professor David Delchamps
Chair

EPC Update

The Online Syllabus Project

Shared Educational Requirements

Final Exams and Other End-of-Term Activities

Laptop-Use-in-Class Policy

Undergraduate Request:

[SA Resolution 19: Recommending Uniformity in Faculty Laptop Policies](#) (Feb 2017)

“Recommends that professors and instructors allow students to use laptops in lectures and discussion sections where note-taking is necessary and/or the reading materials can be accessed online.”

EPC Response:

It is up to the instructor to determine the rules associated with the use of electronic devices during class. It is recommended that the instructor clearly state these rules at the start of the semester, i.e., the first day of class/on-line syllabus. This is consistent with Center for Teaching Innovation advice on [ground rules](#)

Proposed Changes to the Becoming-Emeritus Process

Charlie Van Loan
Dean of Faculty

Current Process for Awarding Emeritus/a Status

Any member of the professorial staff who retires after ten years in the tenured rank of university professor, professor, or associate professor and who has rendered distinguished and meritorious service to the university, may be appointed professor emeritus by the provost after recommendation by the members of the particular department and the dean of the college or school faculty to which the retiring member belonged.

Proposed Process for Awarding Emeritus/a Status

Upon retirement, a university professor, full professor, or associate professor who has been a tenured member of the University Faculty for ten or more years may be considered for emeritus/a status.

Awarding the title of university professor emeritus/a, professor emeritus/a, or **associate professor emeritus/a** shall be based upon the career contributions of the candidate through a combination of **teaching, research, advising, administration, extension, and outreach**. An overall record of meritorious service to the university is expected.

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Proposed Process for Awarding Emeritus/a Status

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The candidate supplies a curriculum vita to the department chair together with a cover letter that includes the date of retirement and a request to be considered for either emeritus or emerita status.

If the request is from a full professor, then it is reviewed and voted upon by the full professors and the emeritus faculty in the candidate's department. If the request is from an associate professor, then it is reviewed and voted upon by the tenured professors and the emeritus faculty in the candidate's department. The result of the vote and the chair's recommendation to either approve or deny emeritus/a status is communicated to the dean of the candidate's college.

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Proposed Process for Awarding Emeritus/a Status

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The dean reviews the dossier and makes a recommendation to the provost. If the recommendation is positive and an endowed chair is held by the candidate, then the dean should indicate whether the college authorizes use of the endowed chair title, e.g., Jacob Gould Schurman Professor Emerita. This will not continue to encumber funds attached to the chair title.

If either the dean or chair recommendation is negative, then the candidate is so informed by the provost and given the opportunity to respond in writing within ninety days. The final decision to approve emeritus/a status is made by the provost, perhaps in consultation with the dean of faculty and others.

Summary and Vote

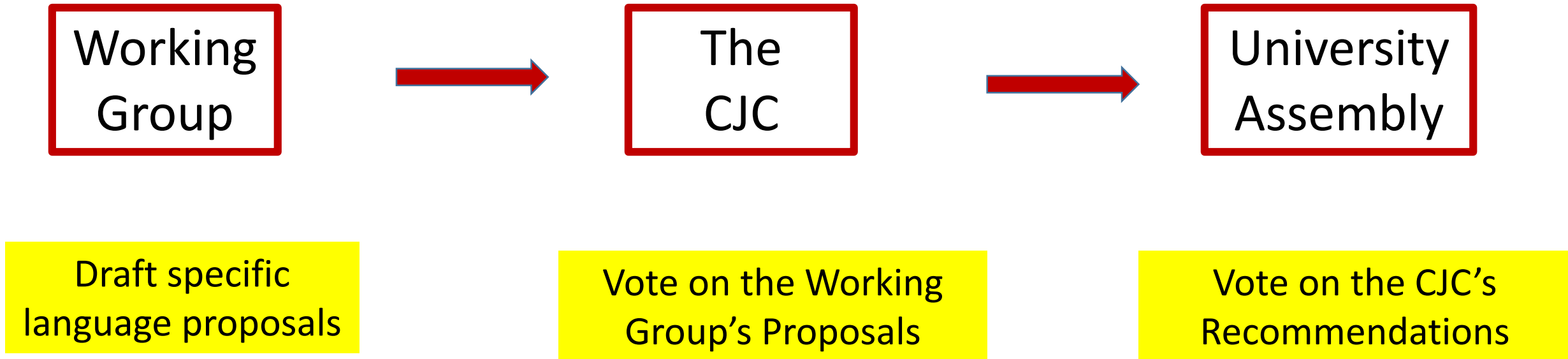
1. By making “emeritus/a” a modifier, we smooth the path for associate professors and make it possible in the future to award this status to other titles, e.g., senior lecturer, research professor, etc.
2. By clarifying “who votes” and defining “meritorious service” broadly we make life easier for both the chair and the candidate.
3. By instituting a low-overhead appeal process we ensure fairness and adherence to the rules.

Are you in favor of the new policy? Yes/No/Abstain

The Codes and Judicial Committee

Professor Risa Lieberwitz
ILR

The CJC Working Group on Issues of Hate Speech



More [details](#).

CJC-Approved Working Group Structure

Four Appointed from the CJC

Conor Hodges	Undergraduate student and chair
Risa Lieberwitz	Faculty
Nathaniel Stetson	Graduate student
TBA	Employee

Plus nonvoting members
(unlimited number)

Four Appointed by the Assemblies

TBA	Student Assembly
TBA	Graduate and Professional Student Assembly
TBA	Employee Assembly
TBA	Faculty Senate

Existing Campus Code Violations

To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable.

To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.

Title Three

Existing Campus Code Violations

To use ethnicity, gender, national origin, political persuasion, race, religion, or sexual orientation or affectional preference as a criterion for admission or seating at public speaking events advertised as open to the University community.

To disrupt or obstruct or attempt to disrupt or obstruct any speaker invited to appear on the campus by the University or a University-recognized organization.

Title Four

Policy 6.4: Definition of Bias

Action taken that one could reasonably and prudently conclude is motivated, in whole or in part, by the alleged offender's bias against an actual or perceived aspect of diversity, including, but not limited to, age, ancestry or ethnicity, color, creed, disability, gender, gender identity or expression, height, immigration or citizenship status, marital status, national origin, race, religion, religious practice, sexual orientation, socioeconomic status, or weight.

Protected Status Harassment

Statuses defined as "protected" in Policy 6.4 as "Equal Education and Employment Opportunity (EEO) – Protected Status":

Identities protected under federal, state, and local equal employment laws and regulations. These include race, ethnic or national origin, color, gender (including pregnancy), age, creed, religion, actual or perceived disability (including persons associated with such a person), ex-offender status, military or veteran status, sexual orientation, gender expression and identity, and an individual's genetic information.

The First Amendment on Campus

Professor Nelson Tebbe
Law

Introduction

- Q: What may a university do to address discriminatory speech on campus, consistent with the First Amendment?
- A: Universities may not prohibit hate speech, but they may take certain other steps without offending freedom of speech and academic freedom.
- Road map:
 - Cornell as a private actor
 - Free speech values + rules
 - Are universities special?
 - How universities may respond to discriminatory speech

Is Cornell Subject to the First Amendment?

- Several courts have held that Cornell University is not a state actor for purposes of civil rights laws.
- However, some universities adopt constitutional limitations by code, and/or seek to conform to First Amendment values.

Free Speech Values

- Democratic self-governance
- Search for truth
- Individual autonomy and actualization

Free Speech Rules

- Content and viewpoint discrimination is presumptively prohibited.
 - Speech may not be regulated simply because it is offensive.
 - Hate speech is fully protected under current law.
- Categories of unprotected speech:
 - Incitement to illegal activity
 - Fighting words
 - True threats
 - Defamation
 - Obscenity
 - Child pornography
 - Speech owned by others (intellectual property)

Government Speech and Public Forums

- Traditional public forums: time, place, and manner of speech may be regulated.
 - Restrictions must be reasonably related to a significant government interest.
 - Content and viewpoint discrimination are prohibited.
 - Alternative channels for speech must remain open.
- “Designated” or “limited” public forums: government may support speech on the basis of content.
 - Limits must be reasonably related to the purposes of the forum.
 - Viewpoint discrimination is prohibited.
- Government speech: the Speech Clause does not apply.
 - Even viewpoint discrimination is permitted.

How Do Universities Differ?

- Universities support the professional discovery, and the pedagogical transmission, of knowledge.
- Academic freedom guarantees the expression of ideas consistent with those two goals.
 - Content discrimination must be permitted: scholars and students differentiate subject matters and they must be able to distinguish worthwhile ideas.
 - Yet students and faculty must have the freedom to take unpopular positions.
- See AAUP 1940 Statement of Principles on Academic Freedom.

How May Universities Respond to Discriminatory Speech?

Hate speech is protected by courts, which have invalidated several university code provisions.

- Stanford, for example, prohibited speech that
 - a) is intended to insult or stigmatize an individual or a small number of individuals on the basis of their sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin; and
 - b) is addressed directly to the individual or individuals whom it insults or stigmatizes; and
 - c) makes use of insulting or "fighting" words or non-verbal symbols.
- A court found this violated a California law that applied First Amendment standards against private universities.

How May Universities Respond to Discriminatory Speech?

- Illegal conduct can be punished, whether accompanied by speech or not.
 - And illegal conduct that is motivated by bias toward protected groups may be subject to elevated punishment.
- The university's own speech may condemn discrimination.
- Reasonable time, place, and manner restrictions may ensure that speech does not interfere with university functions.

How May Universities Respond to Discriminatory Speech?

“True threats” can be disallowed.

- According to SCOTUS, “‘true threats’ encompass those statements when the speaker means to communicate a serious intent to commit an act of unlawful violence to a particular individual or group of individuals.”
- These can be proscribed because they amount to conduct—they elicit fear of physical harm.
- Assessment is based on whether a reasonable person would have felt threatened.

How May Universities Respond to Discriminatory Speech?

Harassment is not protected.

- Sexual harassment in the workplace has 5 elements:
 - Verbal or physical conduct of a sexual nature
 - The conduct is unwelcome
 - The conduct is directed at an individual because of their sex
 - The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment
 - The employer knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action
- Federal law prohibits sex- and race-based harassment on campuses.

Specific Issues

- Protests on campus
- Classroom speech: trigger warnings
- Off-campus and online speech
- Invited speakers
- Safe spaces
- Sensitive terms / microaggressions
- Nondiscrimination requirements for student groups

Hate Speech versus Harassment

Madelyn Wessel/Wendy Tarlow
Office of University Counsel

Initially comparing the two concepts

- Hate speech regulations tend to focus (or at least include as a primary element) the *content of expression*
- Harassment regulations tend to focus on the *conduct involved*
- Both types of regulations typically address the impact of the speech/conduct
- But harassment always involves the targeting of an individual person

Campus Codes Restricting “Hate Speech”

- Have had a uniformly negative outcome when challenged in courts.
- 1990’s – over 350 colleges and universities had adopted some form of code
- Every court to consider them, declared the codes unconstitutional or otherwise found them defective.

What was “Hate Speech”? – University of Michigan

Any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status and that:

- Involves an express or implied threat to an individual’s academic efforts, employment, participation in university sponsored extra-curricular activities or personal safety; or
- Has the purpose or reasonably foreseeable effect (of doing so); or
- Creates an intimidating, hostile, or demeaning environment (with respect to same)

Michigan Code Outcomes

- Complaints filed against students based on wide range of classroom comments
- Vast majority of complaints were filed against minority students by majority students
- Code was challenged in federal court
- Code was struck down on the grounds that the definition of prohibited speech was so broad and vague “it was simply impossible to discern any limitation” on the policy’s reach.
- To qualify as prohibited under the code, language must “stigmatize or victimize an individual. However, both of these terms are general and elude precise definition. Moreover, it is clear that the fact that a statement may victimize or stigmatize an individual does not, in and of itself, strip it of protection under the accepted First Amendment tests.”

University of Wisconsin

University could discipline a student in non academic matters in following situations:

For racist or discriminatory comments, epithets or other expressive behavior directed at an individual or on separate occasions at different individuals, or for physical conduct, if such comments, epithets or other expressive behavior or physical conduct intentionally:

1. Demean the race, sex, religion.... of the individual; and
2. Create an intimidating, hostile or demeaning environment for education, university-related work, or other university-authorized activity.

Federal court found regulation unconstitutional, mostly because a great deal of speech that individuals might consider “demeaning” was clearly protected by the First Amendment.

Stanford (a private university)

- Student conduct code drafted by the Student Conduct Legislative Council that prohibited “discriminatory harassment” including “personal vilification of students on the basis of their sex, race, color, handicap, national origin...” Personal vilification is defined as “fighting words or non-verbal symbols.. Commonly understood to convey direct and visceral hatred or contempt for human beings.”
- Struck down under a California law prohibiting any private educational institution from subjecting a student to disciplinary sanctions solely on the basis of conduct that is “speech” and that would be protected by the First Amendment.

After seeing these case outcomes in courts

- University of Pennsylvania withdrew its hate speech code
- Yale announced theirs would not be enforced
- Many other universities quietly followed suit

Wisdom from Justice Harlan: “We cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon censorship of particular words as a convenient guise for banning the expression of unpopular views.”

Options

- *Could* a “Hate Speech Code” be developed that would survive judicial scrutiny?
 - Potentially, and this issue will be looked at carefully by the President’s task force
- *Should* Cornell adopt such a code as a private institution with greater flexibility than a public institution might possess?
 - Implicates very deep values for faculty, students, and community
 - Implications for faculty could be significant if such a code applied to them
 - Requires extremely serious thought
 - AAUP and FIRE would say NO
 - Task force consideration would only be a beginning of a campus and board conversation