

## Committee on a Civil, Safe and Open Environment

October 9, 2007  
10:30 a.m. – 12:30 p.m.

The meeting of the President's Ad Hoc Committee on a Civil, Safe and Open Environment was called to order by the Chair, Professor Kim Tanzer. Tanzer welcomed those attending and asked those at the table to introduce themselves. Present were the following Committee members: Professor Sandra Chance (College of Journalism), Professor James Klausner (College of Engineering), Mr. Brian Aungst (law student), Mr. Steven Hoffstetter (political science/business undergraduate student), Ms. Leslie Jean (political science undergraduate student), Ms. Lola Bovell (women's studies graduate student), Professor Mike Seigel (College of Law), and Professor Mark Rush (College of Business). Also present were President Bernie Machen and Vice President and General Counsel Jamie Lewis Keith. Professor Tanzer distributed an agenda for the meeting, a copy of which is attached and incorporated in these minutes as Attachment A.

### The Committee Charge

Tanzer asked Dr. Machen to give the committee charge. Dr. Machen distributed and read the charging letter that he sent to Tanzer thanking her

and the other members of the Committee who have agreed to serve. A copy of the letter is attached to and incorporated in these minutes as Attachment B. Dr. Machen stressed the forward-looking nature of the Committee's charge, which is to develop recommendations on how the University of Florida can best conduct events in the future, ensuring a civil and secure environment, conducive to a full, free, diverse and lively discourse in the tradition of great academic institutions. In particular, he asked the Committee to review the University's police protocols, university and ACCENT events management practices, and community conduct policies to come up with a series of recommendations for best practices. He asked the Committee to provide an initial report to him by the end of December 2007.

Tanzer opened the floor to the Committee for questions regarding the charge. Seigel asked for clarification of the scope of the charge, particularly whether it extends to academic freedom in all settings including the classroom. Dr. Machen responded that the committee's charge focuses on the conduct of events and gatherings in a civil and safe environment that fosters openness, not academic freedom in the classroom or generally. However, within that focus, the Committee should feel free to explore whatever they deem necessary.

Klausner asked whether the Committee's charge extends to demonstrations.

Dr. Machen responded in the affirmative.

### Committee Communications

Dr. Machen raised the issue of communications with the media. He noted that any Committee member of course is free to speak with the media, but in doing so must make clear that the person speaks on his or her own behalf and not for the Committee. He thanked the Committee members for agreeing to serve and told them the campus is committed to open dialogue and is looking to the Committee for guidance.

Tanzer noted that she is exercising the prerogative of the Chair to recognize only the members of the Committee and others who are formally invited to participate at Committee meetings. She noted that open meetings issues would be discussed later in the meeting. However, Tanzer emphasized that whether or not meetings are open, the public will not have the right to the floor and unless a person is a member of the Committee or an invited guest giving input, she will not accept public comment from the floor unless a public comment period is designated.

## Public Records and Open Meetings

Tanzer then asked Vice President and General Counsel Jamie Lewis Keith to provide guidance to the Committee on the applicability and requirements of Florida's public records law and sunshine law governing open meetings, as they relate to the Committee's work.

Keith commented that the Committee is fortunate to have Professor Chance as a member because she has focused her academic research on these issues and invited Chance's views. Keith then provided the Office of the General Counsel's interpretation of Florida's public records law, noting that it applies to records in any medium received or developed by the Committee or its members in connection with the Committee's official work. Keith also explained certain of the key exclusions from public records requirements, including those for personal notes and transitory and non-substantive administrative communications. Keith explained that the Committee must retain its public records and offered assistance in determining the retention schedule and what is and is not a public record. Keith also advised the Committee that the University of Florida refers public records requests to Steve Orlando, Director of the News Office and recommended that the Committee do so. She also advised that the Committee may avoid numerous

requests by posting materials of interest on the Committee's web page within the President's web site. Links are also provided to the Faculty Senate and Student Government web sites.

Tanzer urged Committee members not to write anything in an email that they would not feel comfortable seeing in the press.

Keith next advised the Committee on the general provisions of the Florida sunshine law governing open meetings of public boards and commissions, and the respective circumstances in which this law applies and does not apply to University committees. Keith noted, as a threshold matter, that she is merely explaining the law. She stated that, even if the law would allow the Committee's meetings to be closed if the Committee assumes a fact-finding role and operates consistently with that role, the Committee may make the policy decision to hold open meetings. In such event, the Committee may also decide to hold mostly open meetings and reserve the right to hold some closed sessions for stakeholders who do not feel comfortable appearing at an open meeting. Keith noted that she was not expressing an opinion on or trying to influence the Committee in its policy decision. With that clarification, Keith explained the difference between fact-finding committees that do not participate in or have authority to make

decisions and are not subject to the sunshine law, and committees that winnow facts or recommendations and thereby participate in decision-making and are subject to the sunshine law.

Keith then explained the sunshine law requirements that apply to meetings between two or more members of any decision-making public board or commission in any form or media (e.g., by telephone, in person, etc.) concerning a subject that is reasonably foreseeably likely to come to the board or commission for official action. She noted the requirements for posting reasonable advance notice of an open meeting, taking and promptly transcribing minutes of the proceedings, and making any agenda available upon request. She explained that member communications with non-members in a manner that does not circumvent the open meeting law is permitted. She also explained that members may communicate with the members concerning topics that will not come before the board or commission for official action. Keith explained that the public may attend, but does not necessarily have the right to speak at, an open meeting and may not disrupt the meeting. A board or commission may decide to dedicate a part of its meeting to public input, but may impose limits including the requirement for advance requests to speak, time limits, and the requirement

that input relate to agenda items. It is also appropriate to take reasonable safety measures, including limiting attendance to room capacity. However, the board or commission should seek a venue that is suitable for reasonable public attendance.

Keith also noted after the Committee completes its work, if the President were to decide that changes to any University regulation is warranted, the changes would be adopted in accordance with the University's full and open regulatory development process. The Office of the Vice President and General Counsel works with the appropriate administrative or academic unit to draft regulations. These are presented to the Senate at open meetings of the Constitution Committee and the full Senate. Through the Constitution Committee the Senate recommends approval or rejection of the proposal. Then the President decides whether to take the Senate's recommendation. The President presents his recommendation to the Board of Trustees at an open meeting and they take action to adopt or reject the proposed regulation.

Keith cautioned that a board or commission that is subject to the sunshine law must be careful not to address matters at their meetings that are not

public records, such as student disciplinary records or law enforcement or employee misconduct investigations.

Tanzer asked whether an administrative liaison to a public board or commission would be treated as part of the board or commission. Keith answered that administrators who are not appointed to a board or commission, but serve in an advisory role, are not considered members, and a member may communicate with such administrators outside of an open meeting. Administrative liaisons may not be used to circumvent the open meeting requirements, for example, by acting as a go-between for members of the board or commission.

Chance noted there are lots of subtleties of the law and appreciated the overview presented by Keith.

After discussing other aspects of the committee's work, Tanzer opened a discussion of whether the Committee should assume a role and operate as a fact-finding committee not subject to open meetings requirements, or participate in decision-making and be subject to open meetings. Chance and Klausner expressed strong support for operating in the open, as did Professor

Tanzer. The members generally concurred, although a discussion ensued, initiated by Bovell and Hoffstetter, concerning how to accommodate those students and others who may not want to appear at a public meeting. Keith offered that a fact-finding committee may elect as a policy matter to hold most of its meetings in the open, while reserving the ability to hold an occasional closed session to hear those who do not want to appear in public. After further discussion, she noted, as an alternative, that an individual member of the Committee could have a private discussion with any person who does not want to appear publicly and can then present such person's input anonymously to the Committee at a public meeting. She also noted that the Committee would have to decide whether anonymous input has less weight.

ACTION: Tanzer asked for a motion on the issue of whether the Committee would hold open meetings. Chance made a motion, which was seconded, discussed, and amended several times, ultimately providing that the University of Florida Committee on a Civil, Safe and Open Environment, given the University of Florida's commitment to open dialogue, chooses to operate under the Florida's open meeting laws. Klausner seconded the motion and the Committee voted unanimously in favor of the motion.

### Organizing the Work of the Committee and Committee Communications

Tanzer stated that she began to think about how to organize the work of the Committee and prepared a draft work plan and schedule. She distributed her draft work plan, a copy of which is attached to and incorporated in these minutes as Attachment C, and invited the Committee members to feel free to change the draft.

Tanzer informed the Committee that Amelia Bell of the Senate Office will assist in organizing meetings and that Karon Grabel of the General Counsel's Office will take the minutes. Tanzer opined that the best place for the Committee's web page would be on the President's Web site, with links to the Faculty Senate and Student Government web sites. The Committee's minutes and other materials it develops will be posted on its Web site.

Tanzer also suggested that Amelia Bell develop a list serve for the members of the Committee, the General Counsel, Amelia Bell and Karon Grabel. Bell said she would create the list serve so that members could only respond to her to avoid inadvertent substantive communications among members via email. Tanzer encouraged Committee members to use email only in the most perfunctory fashion possible and reminded the Committee that their

emails pertaining to the Committee's official work will be subject to public records requests. Tanzer stated that the Committee has the whole University Administration at its disposal and the Administration is ready and available to assist.

Tanzer continued by thanking each of the Committee for agreeing to service on this incredibly important committee. She noted that the University of Florida is counting on the Committee and having the confidence of the public is critical. Tanzer then reiterated what Dr. Machen had said, that it is important until the Committee finishes its work and comes to a consensus that any member who speaks to the media or community is speaking as an individual, not on behalf of the Committee. She also cautioned the Committee members to remember they are carrying a heavy weight for the University of Florida and that their message can be carried around the world very quickly. Tanzer asked the members to be thoughtful about how they communicate.

Seigel stated it was his intention to refer any media either to Tanzer as Chair or to Steve Orlando. The Committee members generally concurred in this approach to media communications.

Tanzer asked if there were any other comments with regard to communication and committee governance issues. There were none and she moved on to the next item on the agenda, the proposed work plan.

Tanzer reviewed the draft work plan for subjects, dates and times of meetings through the end of the calendar year. The first subjects include legal parameters, including the U.S. Constitution, federal law, Florida Constitution, Florida law, and UF regulations on conduct. Next, are UF regulations, policies and practices relating to events management and conduct at events, as well as peer institutions' best practices. Next are UF regulations and policies relating to events safety and security, UF police security and safety protocols, and peer institutions' best practices. After considering members' expertise and preferences, Tanzer suggested that Chance and Aungst with assistance from Seigel, and Keith address the legal parameters. She suggested that Rush and Bovell address student and community conduct. Klausner and Jean will address events management and that Seigel and Hoffstetler will address security and safety. The dates for Seigel's and Rush's sessions will be switched to accommodate their schedules.

Rush asked for guidance on how subcommittees may meet under the sunshine law. Keith answered that subcommittee meetings must be noticed a reasonable time in advance, minutes must be taken, and meetings must be open. Bell noted that she could easily post the meeting notices. Keith noted that non-substantive discussions and emails arranging for subcommittee meetings or assigning work need not be noticed as open meetings. She noted that the time required for reasonable notice is not defined, but several days is a good rule of thumb in the absence of an emergency. Chance noted that 24 hours is acceptable for an emergency meeting, but she did not think emergency meetings would be likely.

Tanzer discussed the possibility of the Committee hearing at its next meeting the most complete video tape of the recent Kerry speech that resulted in a student being arrested and tasered. Keith advised that the Committee's charge is forward-looking and focused on recommending best practices, not determining whether a student or the police acted rightly or wrongly in any particular event, a determination for which other processes exist. Tanzer noted that past events could be a source for identifying issues around events management, community conduct and events safety and security, as long as

the focus is on general issues presented, not on whose behavior was right or wrong.

Seigel agreed that there is no need to watch the tape at a Committee meeting and noted that it could be viewed by those who are interested outside of the meeting. Keith noted a video tape is on WUFT's Web site. Aungst noted that none of the several tapes that exist are complete; all are missing the initial outburst and disruption by the student and the reprimand that he received initially.

Tanzer stated she heard Seigel's point regarding the time and focus of the Committee and that it may not be useful to view a tape of the Kerry event at a meeting. She stated that the Committee members could review the most complete tape available on their own time, but reminded the Committee that, in doing so, the Committee's charge is to think of policies and practices to help the University manage events better.

Tanzer stated she is committed to keeping meetings to two hours.

Aungst suggested a few night meetings to allow more students to attend and recommended a 6:00 to 8:00 p.m. meeting time for some meetings.

Seigel agreed and suggested allowing public comment sessions at several meetings to enable the students and community to react. He expressed a preference for devoting a few meetings to public comment rather than devoting 15 minutes at each Committee meeting to this purpose. Chance expressed her preference for both so that the public could comment on the matters addressed at a Committee meeting at the time.

It was noted that last week there was a public open forum where students expressed their views and several attended and collected notes and would likely at some point make those notes available to the Committee.

Tanzer noted there should be at least two meetings where the public could comment on draft recommendations of the Committee before they are finalized and given to the President. Bell said she would determine availability of one of the large auditorium rooms at the College of Law for this purpose.

Keith noted that her office had begun gathering information on relevant existing UF regulations and policies, as well as those of peer institutions.

Tanzer thanked Keith's office and the University for being at the Committee's disposal.

Chance expressed concern about scheduling meetings at the end of the semester when members are preparing for exams and leaving town. She also noted that a single two-hour meeting is unlikely to be enough for consideration of each major topic to be addressed.

Keith stated that Dr. Machen is very sensitive to how important the Committee's work is. He has asked for at least an initial progress report by the end of the calendar year, but she believes he will understand if the Committee has not completed its recommendations by then.

Tanzer recommended evaluating progress made by the end of November and then deciding whether the Committee will prepare a progress report or its recommendations for submission to Dr. Machen by December 31<sup>st</sup>. The Committee can see where it is on December 4<sup>th</sup>.

Tanzer reminded the Committee that at its next meeting the Committee will be hearing information regarding the legal and constitutional parameters.

Tanzer ended the meeting by thanking all members for being willing to serve on this Committee.

Respectfully submitted,

Karon Grabel

## Attachment A: Agenda

### **Committee on a Civil, Safe and Open Environment October 9, 2007 Agenda**

- |                              |  |
|------------------------------|--|
| 1. Welcome and introductions | Chair Kim Tanzer and Committee Members |
| 2. Committee charge          | President Bernie Machen                |
| 3. Committee governance      |  |
| Florida law                  | General Counsel Jamie Lewis Keith      |
| Open meetings                |  |
| Public records               |  |
| Committee communication      | Kim Tanzer and staff                   |
| Website                      |  |
| Listserve                    |  |
| Email                        |  |
| Administrative liaisons      | Kim Tanzer                             |
| Research and testimony       | Kim Tanzer                             |
| Communication with public    | Kim Tanzer                             |
| During meetings              |  |
| Website                      |  |
| Press                        |  |
| 4. Proposed work plan        | Kim Tanzer                             |
| 5. Other business            |  |
| 6. Adjournment               |  |

## Attachment B: President's Charge to the committee

October 2, 2007

Professor Kim M. Tanzer  
Chair, Ad Hoc Committee  
On A Civil, Safe and Open Environment

Dear Kim:

Thank you and the other faculty members and students who have agreed to serve on the President's Ad Hoc Committee On a Civil, Safe and Open Environment. I have convened this Committee with a forward-looking charge. That charge is to develop recommendations on how the University of Florida can best ensure a civil and secure environment at public and UF community events, conducive to a full, free, diverse and lively discourse in the tradition of great academic institutions. The need to review our existing protocols for the conduct and security of events arises in the wake of an incident at Senator John Kerry's talk at UF on September 17th that resulted in the tasing and arrest of a student, as well as a heightened awareness of the importance of security on university campuses.

In particular, I ask the Committee to review the University's police protocols, university and ACCENT events management practices, and community conduct policies to come up with a series of recommendations for the conduct and security of events at the University in the future. I ask you to provide the Committee's initial report to me by the end of December 2007.

In addition to any issues the Committee may identify, please consider:

1. Existing University policies on conduct of members of the UF community at events, including the code of student conduct.
2. Existing UF Police events security protocols, including those relating to the use of tasers.
3. Best practices for events conduct and security at peer institutions, including the role and training of moderators and the choice and set up of venue.
4. The size of the UF community and the options for security at campus venues of different types and in a variety of circumstances.

The Committee is comprised entirely of faculty and students. Please feel free to call upon others to assist you in fact gathering and for expert consultation. Vice President and General Counsel, Jamie Lewis Keith, is available to provide legal advice and other Vice Presidents and administrators are also available to assist you. Administrative support will be provided for the Committee.

Thank you again for this important service to the University of Florida. I will look forward to receiving and carefully considering the Committee's recommendations.

Sincerely,  
J. Bernard Machen

## Attachment C: Work Plan

### **Committee on a Civil, Safe, and Open Environment Draft Work Plan October 9, 2007**

October 9, 10:30-12:30 in 284 Reitz Union  
Committee charge and organization

October 16, 10:30-12:30 in 346 Reitz Union  
Nested legal parameters-US Constitution, federal law, Florida Constitution, Florida law, UF regulations, UF policies, commonly understood behavior norms  
*Tutorial leaders: Dr. Sandra Chance and Brian Aungst; General Counsel Jamie Lewis Keith*

October 23, 10:30-12:30 in 276 Reitz Union  
Existing UF events policies (Accent, but also other campus operations); best practices from peer institutions  
*Tutorial leaders: Dr. James Klausner and Leslie Jean; Finance and Administration, Student Affairs liaisons?*

November 13, 10:30-12:30 in 276 Reitz Union  
Existing conduct codes relating to students, faculty, staff, UF visitors; parallel codes at peers institutions  
*Tutorial leaders: Dr. Mark Rush and Lola Bovell; Academic, Student Affairs liaisons?*

November 20, 10:30-12:30 in 276 Reitz Union  
Issues, as reflected in policies, laws, and best practices, related to health, security and safety, including the use of force, particularly tasers.  
*Tutorial leaders: Professor Michael Seigel and Steven Hoffstetter; Finance and Administration liaisons?*

November 27, 10:30-12:30 in 284 Reitz Union  
Discussion, evaluation of need for further research

December 4, 10:30-12:30 in 276 Reitz Union  
Discussion of draft recommendations

December 11, 10:30-12:30 in 276 Reitz Union

December 18, 10:30-12:30 in 276 Reitz Union  
Update or recommendations prepared for submittal to President Machen by December 31.

#### **Proposed agenda template:**

1. Presentation by tutorial leaders
2. Presentation by tutorial leaders' invitees
3. Committee discussion
4. Public comment, if time permits: up to 15 minutes-- 5 comments at 3 minutes maximum each
5. Preliminary committee recommendations or need for further review