

THE

AFCON



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AFCON OFFICERS

Nancy Comer President

Linda Parker President-Elect

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> Peggy Adair Secretary

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David Moshman Policy Coordinator

Peggy Adair Legislative Liaison

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Frank Edler Newsletter Editor

Purpose:

To promote academic freedom. defined as intellectual freedom in educational research contexts. This includes freedoms of belief and expression and access to information and ideas.

MESSAGE FROM THE PRESIDENT—Nancy Comer

AFCON lost a valuable member of the AFCON Board of Directors with the passing of Dick Herman on October 28. Dick represented the Nebraska Press Association, and after his statehouse assignment, he later became the editorial page editor of the Lincoln Journal Star. It has been said of him that no one knew more about state government than he did. I remember seeking his advice when as President of AF-CON, I had to write an op ed about Bill Ayers, former member of the Weather Underground, who had his invitation to address a conference at UNL rescinded. Most of all I enjoyed the conversations with Dick and Jacqui around their dining room table, sipping a cup of tea, looking out into their beautiful garden and trying to solve the problems of the world.

When new AFCON Board member Jayaram Betanabhatla, representing UNO faculty senate, joined us for his first meeting in September, I was concerned that Jay would think we had nothing important to discuss. Truth be told, there were only a few minutes to handle our business before joining ACLU for our combination annual meeting. (AFCON was one of the sponsors of "Beyond Privacy: Liberty and Free Speech in the Era of Mass Surveillance.") Dave Moshman wrote an article about this in the September Sentinel.

Jay returned to AFCON's October meeting (along with other board members who make the monthly trek to Lincoln) to find interesting events occurring as freedom of speech issues were surfacing on university campuses around the country. There is concern that campuses are becoming places of censure. University administrators and faculty find themselves

having to balance a free exchange of ideas with protection of students from microaggressions. This means that certain topics and language that might be distressing to students should be forewarned before bringing them up in class. As I write this, Frank Edler, our Sentinel editor has forwarded an open letter from students at University of Kansas calling for termination of a faculty member for racial discrimination in a class she was leading to help graduate assistants communicate with students.

There is concern at UNL about an email in which Chancellor Perlman defended free speech in a plaza outside the Nebraska Union because that plaza, he wrote, had been designated as a place for "provocative speech." While the Chancellor assures faculty that free speech is not limited to a free speech zone, some faculty wish the written policy on academic freedom would be more like the University of Chicago's statement (included in this issue) "articulating the University's overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University's community." AFCON Board members representing AAUP and UN faculty senates are monitoring and asking UNL to adopt a policy similar to University of Chicago.

We continue to monitor a situation at Wayne State College where there are concerns about issues of free speech, and associated matters of due process and tenure that protect free speech. I was directed to send a letter about these concerns and offer assistance from AFCON to President Rames of Wayne State College; Chancellor Stan Carpenter of the Nebraska State College System received a copy. (Continued on page 2)

Upcoming Events

AFCON Board Meetings, **January 9, February 13, March 12, 2016**Milton Abrahams Library, 5111 North 90th Street, Omaha, Nebraska; 10 AM

THE PRESIDENT

While much of what I've reported is in flux, and continuing to be monitored, I think these issues need a little civil discourse

between opposing interests. If this sounds familiar, it's a topic I wrote about in September. Regarding the microaggressions and need to give

warnings about sensitive issues, college and university students need a broadening of issues, not sheltering.

We mourn the death of Dick Herman, long-time AFCON board member representing the Nebraska Press Association, and offer our deepest condolences to his wife Jacqui and the other members of his family.

AFCON GOALS FOR 2016 - MEMBER INPUT INVITED

The AFCON Board is developing goals for 2016. Ideas under consideration are listed below. The Board welcomes member comments and/or suggestions for other goals. Please send your ideas to Linda Parker, President-elect, lparkerlib@gmail.com. We look forward to your input!

1. RECRUITMENT

- 1.1 Expand membership to states bordering Nebraska
- 1.2 Increase individual membership
- 1.3 Increase institutional membership

2. INCREASE MEMBER INVOLVEMENT

- 2.1 Develop a webinar specifically for members
- 2.2 Sponsor high school video contest
- 3. REVIEW STUDENT FREE EXPRESSION LEGISLATION

4. ADDRESS ACADEMIC FREEDOM ISSUES IN THE UN SYSTEM

- 4.1 FIRE rating
- 4.2 Free speech zone policies

5. ANNUAL CONFERENCE PLANNING

- 5.1 2016 topic selection and follow through
- 5.2 2017 topic "Freedom of Speech in Wartime" and Cooper Foundation grant application

Summaries of AFCON Board of Directors' Meetings—Peggy Adair

Annual Meeting, September 3, 2015, Livestock Exchange Building, 44920 South 30th Street, Omaha, NE—

Present: Nancy Comer, David Moshman, Frank Edler, Lora Leibrandt, Linda Parker, Bob Haller, Dwayne Ball, Laurie Thomas Lee, Jayaram Betanabhatla.

MINUTES: Minutes of the October 9, 2014 AFCON Annual Membership Meeting were approved upon a motion by Dwayne Ball, second by Dave Moshman, and a voice vote.

TREASURER'S REPORT: The Treasurer's Report for October 9, 2014 to September 3, 2015 was reviewed and filed for audit. Balance on hand as of September 3, 2015 is \$2906.87.

PRESIDENT'S REPORT:

President Comer thanked the organizers of the annual meeting.

2015 AFCON AWARD: The 2015 AFCON Award was presented during the program portion of the annual meeting to Alan Peterson to recognize his defense of "intellectual freedom in Nebraska throughout his career ... [and] his commitment to the rights of children and students and to the special need for intellectual freedom in education." From the award presentation by David Moshman.

NOMINATING COMMITTEE:

The slate of nominees for 2016 include President-elect, Lora Leibrandt Treasurer, Cathi McMurtry Secretary, Peggy Adair

The Nominating Committee was chaired by Rod Wagner. The election will be conducted by email.

MEMBERSHIP RE-PORTS: There were no membership reports

The next AFCON board meeting will be on Saturday, October 10, 2015 at Eiseley Library in Lincoln.

Submitted by Linda Parker

(See Minutes, page 3)

Summaries of AFCON Board of Directors' Meetings

(Continued from Page 2)

October 24, 2015 —

Present: Peggy Adair, Dwayne Ball, Jayaram Betanabhatla, Nancy Comer, Frank Edler, Bob Haller, Laurie Thomas Lee, Lora Leibrandt, Cathi McMurtry, David Moshman, Linda Parker, Rod Wagner.

MINUTES: President Nancy Comer convened the meeting at 10:12 a.m.

TREASURER'S REPORT: McMurtry presented the September and October 2015 treasurer's report. Balance on hand as of October 23, 2015 is \$2,246.90. The treasurer's report will be filed for audit.

SENTINEL: Deadline for articles for the next edition of the *Sentinel* is November 24. Send articles to Editor Edler at frankhwedler@gmail.com.

POLICY COORDINATOR:

Moshman discussed concerns over Chancellor Perlman's assurances that free speech is protected campus wide at UNL, despite lack of written policy and references to a "free speech zone" on campus. Moshman and Ball discussed problematic changes in UNL's sexual harassment policy and policy ties to Title IX federal funding. Moshman updated the board on FIRE's downgrade of UNL from green to yellow light status, and efforts by FIRE to encourage college administrators to adopt free expression statements similar to that of the University of Chicago. Moshman and Ball will continue to monitor the situation at UNL and will explore ways to assure UNL more proactively and explicitly upholds academic freedom and free expression on campus.

Parker reviewed her October 23, 2015 meeting with Mike Meyer, President of the Board of Trustees for the Omaha Public Libraries. Wagner, Moshman and Comer also attended this meeting via conference call. Parker concluded the tension between Omaha Mayor Jean Stothert and the library board is mainly an issue of political and financial power, with intellectual freedom being a side issue. Wagner indicated legislation could possibly be introduced in the 2016 session relating to local political control over library boards. Wagner and Parker will continue to monitor the library/intellectual freedom issues.

ANNUAL MEETING 2016: Parker introduced several ideas for topics for the 2016 AFCON annual meeting.

ANNUAL MEETING 2017: Edler introduced a proposal for the 2017 AFCON annual meeting, "Freedom of Speech in Wartime, 1917-2017." A motion was made by Ball, second by Lee, to authorize Edler to pursue a grant through the Cooper Foundation to fund the proposed 2017 AFCON annual meeting. Motion carried on a voice vote.

ADJOURNMENT: Due to time constraints and the fact that the Nebraska Cornhusker football team was behind Northwestern University 7 to 5 in the first half, at home, Comer advised postponement of the remainder of the agenda until the November board meeting. Motion to adjourn was made by Lee, second by Parker. Motion carried on a voice vote.

The meeting adjourned at 11:50 am.

The next meeting of the AFCON BOARD OF DIRECTORS will be Saturday, November 14 in the ELL (English Language Learners) room at Eiseley Library, Lincoln, Nebraska. Bring lawn chairs. Just kidding!

www.academicfreedomnebraska.org afcon.nebraska@gmail.com

November 14, 2015 —

Present: Peggy Adair, Dwayne Ball, Jayarm Betanabhatla, Nancy Comer, Frank Edler, Lora Leibrandt, Cathi McMurtry, David Moshman, Linda Parker, Rod Wagner

President Comer convened the meeting at 10:10 am.

MINUTES: A motion was made by Moshman, second by Parker, to approve minutes of the AFCON board meeting held on October 24, 2015. Motion carried on a voice vote.

TREASURER'S REPORT: McMurtry presented the November, 2015 treasurer's report. Balance on hand as of November 13, 2015 is \$2,011.71. The treasurer's report will be filed for audit.

PRESIDENT'S REPORT:
Comer and board members shared fond memories of Dick Herman. Comer has prepared ballots for the upcoming AFCON elections. Adair will email the ballots to members. Parker volunteered to count the millions of return ballots. Election deadline is December 1, 2015.

TREAT OF THE DAY: Pecan pull-apart rolls. Yumm! Not home-baked Haller treats, but treats nonetheless. Thank you, Nancy Comer, for helping AFCON board members stay nourished.

SENTINEL: Edler proposed using the *Sentinel* as part of membership outreach. Edler will develop a list of librarians, faculty and others who may be interested in AFCON, with the idea of sending a

letter of introduction, an AFCON fact sheet, and a copy of the *Sentinel* to prospective members. Deadline for articles for the next edition of the *Sentinel* is November 24. Send articles to Editor Edler at frankhwedler@gmail.com.

POLICY COORDINATOR:

Moshman reported the University of Illinois has settled the Salaita lawsuit. The university will pay Salaita \$600,000.00 and Salaita's attorneys will receive \$275,000.00. The legal expenses for the university's own stable of attorneys amounts to \$1.2 million, for a grand total of over \$2 million. Tuition at the University of Illinois is expected to rise substantially next semester.

Moshman and the board discussed the chilling effect on the speech at UNL and all college campuses with the rise of the "microaggressions" movement. Ball will work on an AFCON advertisement regarding free expression rights to be submitted to the UNL student newspaper, the *Daily Nebraskan* ("daily" being a misnomer). Ball will present a draft of the advertisement at the December AFCON board meeting.

Moshman and Comer discussed their conversations with Mark Leeper, faculty member at Wayne State University and husband of former faculty member Karen Walker, who was recently fired. A motion was made by Moshman, second by Parker, to send a letter to the new president of Wayne State offering AFCON's assistance in amicably resolving issues of academic freedom, tenure, and due process. Motion carried on a voice vote.

ANNUAL MEETING 2016: The board discussed the possibility of "microagression" as a topic for the 2016 AFCON annual meeting. Brittney Cooper (Rutgers University) and Greg Lukianoff (FIRE) debated the microagression concept on a recent episode of Chris Hayes' *All In* television show on MSNBC. They were suggested as possible speakers for the 2016 AFCON annual meeting.

ADJOURNMENT: Motion to adjourn was made by Edler, second by Parker. Motion carried on a voice vote. Meeting adjourned at 11:43am.

The next meeting of the AFCON BOARD OF DIRECTORS will be Saturday, December 12, 2015, at Eiseley Library, Lincoln, Nebraska.

www.academicfreedomnebraska.org afcon.nebraska@gmail.com

The University of Chicago Statement on Freedom of Expression

From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University's culture. In 1902, in his address marking the University's decennial, President William Rainey Harper declared that "the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago" and that "this principle can neither now nor at any future time be called in question."

Thirty years later, a student organization invited William Z. Foster, the Communist Party's candidate for President, to lecture on campus. This triggered a storm of protest from critics both on and off campus. To those who condemned the University for allowing the event, President Robert M. Hutchins responded that "our students . . . should have freedom to discuss any problem that presents itself." He insisted that the "cure" for ideas we oppose "lies through open discussion rather than through inhibition." On a later occasion, Hutchins added that "free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities."

In 1968, at another time of great turmoil in universities, President Edward H. Levi, in his inaugural address, celebrated "those virtues which from the beginning and until now have characterized our institution." Central to the values of the University of Chicago, Levi explained, is a profound commitment to "freedom of inquiry." This freedom, he proclaimed, "is our inheritance."

More recently, President Hanna Holborn Gray observed that "education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of freedom."

The words of Harper, Hutchins, Levi, and Gray capture both the spirit and the promise of the University of Chicago. Because the University is committed to free and open inquiry, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community "to discuss any problem that presents itself."

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University's commitment to a completely free and open discussion of ideas.

In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be

suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University's educational mission.

As a corollary to the University's commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

As Robert M. Hutchins observed, without a vibrant commitment to free and open inquiry, a university ceases to be a university. The University of Chicago's longstanding commitment to this principle lies at the very core of our University's greatness. That is our inheritance, and it is our promise to the future.

"Liberty ... means the right to tell people what they do not want to hear."

— George Orwell

FIRE Downgrades UNL's Free Speech Rating David Moshman

The Foundation for Individual Rights in Education (FIRE) has recently downgraded the University of Nebraska -Lincoln's free speech rating from "green light" to "yellow light." FIRE gives a college a green light rating if its policies "do not seriously imperil speech." It gives a red light rating if there is "at least one policy that both clearly and substantially restricts freedom of speech." It gives a yellow light rating to a college that does not merit a red light but has one or more policies that "restrict a more limited amount of protected expression or, by virtue of their vague wording, could too easily be used to restrict protected expression."

Because nearly all major colleges and universities proclaim their support for free speech, restrictions on expression are often hidden in the fine print of policies addressing a variety of other matters. Until recently, UNL's policies all met FIRE's standard for a green light. Recent changes, however, led FIRE to send two letters to UNL Chancellor Harvey Perlman. The first, sent in August 2014, warned that "major changes to UNL's definition of sexual harassment now threaten the free speech rights of UNL students and faculty, and thus put UNL's green light rating in jeopardy." The second, sent in September 2015, informed the Chancellor that

UNL's free speech rating had been downgraded to yellow on the basis of its sexual harassment policy and five additional policies that also incorporated definitions of objectionable behavior so broad and/or vague as to potentially include a great deal of speech fully protected by the First Amendment.

There has been no response from the Chancellor or anyone else at UNL. Now that UNL is searching for a new Chancellor, this suggests some good questions for candidates: Are you aware of FIRE's downgrading of UNL? How high a priority do you put on free speech and academic freedom? Does the downgrade concern you? How would you respond to FIRE's letters?

The AFCON Board has been considering a variety of responses to UNL's downgrade and other issues of free speech at UNL and also within the state college system (on the latter see Bob Haller's article in this *Sentinel*). One part of our response is to endorse an excellent recent statement on freedom of expression from the University of Chicago, which has also been endorsed by FIRE, and to urge all Nebraska colleges and universities to endorse or adopt the principles presented in this statement and to ensure that their policies conform to it. The statement

has been reprinted elsewhere in this issue of the *Sentinel*.

The specific problem of sexual harassment policies that infringe on free expression is not new, but it has recently become increasingly serious across the country. A devastating critique of such policies was provided in a recent talk at Harvard by Nadine Strossen, former president of the ACLU. The talk can be viewed at http://shorensteincenter.org/nadinestrossen-free-expression-an-endangeredspecies-on-campus/. A transcript can be found at http://shorensteincenter.org/ nadine-strossen-free-expression-anendangered-species-on-campus-transcript/. For AFCON's policy concerning sexual harassment in relation to academic freedom, including an account of a UNL case from the early 1990s, see http:// www.huffingtonpost.com/david-moshman/ sexual-harassment-andaca b 3328856.html.

For more on FIRE's rating of UNL, see https://www.thefire.org/schools/university-of-nebraska-lincoln/. An article about the downgrade appeared in the *Daily Nebraskan*: http://www.dailynebraskan.com/news/unl-undergoes-downgrade-for-vague-code-of-conduct-guidelines/article/ Tofbbe6c-73a8-11e5-86cd-775c42822284.html.

AFCON Board Members Publish Article in AAUP's September 2015 Issue of the *Journal of Academic Freedom*

http://www.aaup.org/sites/default/files/MoshmanEdler--JAF6.pdf

David Moshman and Frank Edler teamed up to publish an article in the September issue of the *Journal of Academic Freedom* entitled "Civility and Academic Freedom after Salaita." Length prohibits us from reproducing the article here in full. Edler published a piece in the *AAUP*

Blog to accompany the article entitled "After Salaita: Keep Pushing for Academic Freedom!" which is included here on the next page.

Here is David's postscript to the Salaita case: On November 12 the University of Illinois agreed to a settlement in which it will pay Steven Salaita \$600,000 plus attorney fees of \$275,000 to stay away from its students. For more on the settlement and on the University of Illinois as a "safe space," see http://www.huffingtonpost.com/david-moshman/safe-from-salaita-at-illib-8572152.html

After Salaita: Keep Pushing for Academic Freedom!

Frank Edler

When Chancellor Phyllis Wise at the University of Illinois at Urbana-Champaign blocked the appointment of Professor Steven Salaita on August 1, 2014, the incident went viral and sent shock waves through the academic community. The Center for Constitutional Rights, AAUP, MLA, and other organizations began responding almost immediately. David Moshman and I are both members of the Academic Freedom Coalition of Nebraska (AFCON), a twentyfive-year-old organization in Lincoln, NE, composed of representatives from the AAUP, faculty senates, library organizations, ACLU Nebraska, Nebraska Center for the Book, and other organizations interested in protecting academic freedom.

The first chance our organization had to discuss the case was at our September 13, 2014, meeting. All of us felt a sense of urgency about the case and thought that it would become iconic in some way for academic freedom. We kept the case on our agenda and provided updates for our members by e-mail when new developments occurred. However, even before our meeting, David, president of AFCON at that time, had already written a piece for his *Huffington Post* blog on September 2 entitled "Academic Freedom at the University of Illinois."

In his blog, David identified three issues involved in the Salaita case: 1) Did the University of Illinois violate Professor Salaita's right of free speech outside his context of employment? 2) Did Chancellor Wise violate the freedom of speech of students and faculty by imposing a standard of civility for the University of Illinois? And 3) By blocking Professor Salaita's hiring, did Chancellor Wise arbitrarily and unilaterally disregard the academic freedom and integrity involved in the already completed hiring process? According to Maria LaHood, Salaita's attorney with the

Center for Constitutional Rights, "Wise went out of her way to meet with donors and didn't bother to consult Salaita himself or the hiring committee that vetted him or the department that hired him."

During my tenure as president of AFCON in 2013, we invited ReLeah Cossett Lent, co-author of Keep Them Reading. An Anti-Censorship Handbook for Educators (Teachers College Press, 2013) and Chair of the Standing Committee Against Censorship (SCAC) of the National Council of Teachers of English (NCTE), to be the keynote speaker at our annual conference on September 28. Since AFCON is the only state organization of its kind in the United States, we agreed that AFCON would give a presentation at NCTE's annual convention in Washington in 2014 on how to develop anti-censorship coalitions on the state level. Joan Bertin, executive director of the National Coalition Against Censorship, kindly agreed to be on a panel with ReLeah and myself. For a small state organization, this felt like it was our attempt at national outreach. The Salaita case underscored even more the importance of defending academic freedom.

By mid-September, 2014, the Board of Trustees at the University of Illinois at Urbana-Champaign voted eight to one not to hire Professor Steven Salaita. Motivated perhaps by this case and other incidents of enforced civility, NCTE president Ernest Morrell in early October charged Lent and the SCAC with creating a stronger statement in defense of academic freedom than the one NCTE currently possessed. Lent asked David to join an SCAC subcommittee of which I was a part in order to see what we could do. Led by Lent, we decided to formulate a statement that included the five principles of academic freedom that David formulated in his book Liberty & Learning. Academic Freedom for Teachers and Students (Heinemann, 2009). On November 19. Lent informed the SCAC that the new academic freedom statement had passed the executive committee and was now official NCTE policy.

It was also about this time (October 30 to be more precise) that I got an email from David about volume 6 of the AAUP Journal of Academic Freedom. He had just gotten the call for papers from Michael Bérubé and asked whether I'd be interested in collaborating on an article. I immediately answered that I would love to collaborate with him. Since David and I had taken it upon ourselves to keep track of the developments in the Salaita case in order to inform the other members of AF-CON, we kept up a regular e-mail exchange with each other whenever there were new developments or articles. Our article for JAF grew out of this e-mail exchange.

On November 21, 2014, Joan Bertin, ReLeah Cossett Lent and I gave a presentation at the annual NCTE convention in Washington. The title of the presentation was "Academic Freedom Fighters: Create an Anti-Censorship Coalition in Your State!" Although Diane Ravitch was slated as a convention keynote speaker, she was unable to attend, and NCTE substituted roundtable discussions of her book Reign of Error: The Hoax of the Privatization Movement and the Danger to America's Public Schools (2013). Some people left when it became clear that Ravitch would not be present, but in the huge hall most people stayed. Electricity was in the air. Enough with the corporate culture of education and the reform movement! To me it felt very similar to the massive response against the firing of Salaita. Enough with the trampling of academic freedom!

As it happened, the alliance between Chancellor Phyllis Wise and the Board of Trustees at UIUC began to unravel as the withheld e-mails slowly dribbled out about the extent to which e-mail addresses were used

(Continued on page 7)

(After Salaita, cont'd from page 6)

by Wise and other UIUC administration officials to evade public disclosure laws. Chancellor Wise resigned on August 6, 2015, the day before the university released the emails showing that she not only used her own private e-mail address to conduct university business, but she also deleted the personal emails. As the Electronic Intifada has already pointed out, it is ironic that Wise who broke Salaita's contract now claims that the Board of Trustees had broken its contact with her for the \$400,000 resignation package.

Most recently on August 27, 2015, U. S. District Judge Harry Leinenweber reversed his ruling about the claims Salaita could make against UIUC. He had disallowed Salaita's claim that university

officials were destroying evidence in relation to his case. Now he reversed himself and allowed Salaita to add destruction of evidence to his lawsuit.

What would have happened back in July of 2014 if Chancellor Wise and spokeswoman Robin Kaler had held fast to their initial position concerning Salaita's tweets that faculty hold a wide variety of political views and that "we recognize the freedom-of -speech rights of all our employees"? Wise would have had to defend Salaita's academic freedom before a Board of Trustees that was willing to throw academic freedom under the bus. The worst thing that could have happened is that she would have had to resign; however, her reputation would not have been damaged to the extent that it is today. But that would have taken a different Phyllis Wise.

Notes:

Maria LaHood's quotation is available at https://www.insidehighered.com/ news/2015/01/30/steven-salaitas-long-anticipated-lawsuit-against-u-illinois-includes-twist.

The reference relating to *The Electronic Intifada* is available at https://enealing-information-about-salaita-firing

Chancellor Wise's and Ms. Robin Kaler's early position defending academic freedom is available at https://electronicintifada.net/blogs/ali-abunimah/emails-indicate-univ-illinois-concealing-information-about-salaita-firing and at http://www.news-gazette.com/news/local/2014-07-22/updated-soon-be-ui-profs-mideast-posts-drawing-ire.html respectively.

Academic Freedom Links

Henry Reichman on the Future of Academic Freedom (from *Academe*) http://www.aaup.org/article/does-academic-freedom-have-future#.Vk3qcihOSJV

David Moshman's *Huffington Post* blog on sexual harassment and academic freedom http://www.huffingtonpost.com/david-moshman/sexual-harassment-and-aca b 3328856.html

The National Coalition Against Censorship's report on trigger warnings http://ncac.org/wp-content/uploads/2015/11/NCAC-TriggerWarningReport.pdf

Inside Higher Ed's article on the NCAC report

 $\frac{https://www.insidehighered.com/news/2015/12/02/survey-sheds-new-light-faculty-attitudes-and-experiences-toward-trigger-warnings}{}$

The Onion on Safe Space

 $\underline{http://www.theonion.com/article/parents-dedicate-new-college-safe-space-honor-daug-50851}$

Erika Christakis will quit teaching at Yale; Nicholas Christakis will take a sabbatical (from FIRE)

https://www.thefire.org/erika-christakis-to-quit-teaching-after-email-controversy-husband-to-take-sabbatical/

Iowa State University student government votes down free speech (from FIRE) https://www.thefire.org/isu-student-government-votes-down-additional-free-speech-zone/

Is There Academic Freedom at Wayne State College? Bob Haller

The campus at Wayne State was in turmoil six weeks ago. Security personnel were called onto campus to remove Associate Professor Karen Walker, as a preliminary to starting dismissal procedures. The students organized a protest on campus and the Wayne Stater reporter Derek Pufahl published the story on October 28 reporting that a student protest would be held that evening. He interviewed faculty leaders who claimed that Professor Walker's dismissal was a "vendetta by the vice president of academic affairs" who blamed her husband Mark Leeper for his being passed over in the presidential search. (The Vice President has since resigned his position.)

This incident, however, is much more than a personal vendetta. It occurred because the Board of the Nebraska State Colleges has been taking steps to undermine academic freedom by weakening its supporting conditions: tenure and shared governance. Consequently, AFCON and the State Conference of the AAUP are following the events closely. AFCON has offered its assistance in the process.

So here is a brief outline of the board's maneuvers and the faculty response to them as these bear on the state of academic freedom, tenure and shared governance.

The three state colleges in Chadron, Peru and Wayne are governed by a board whose members are appointed by the governor. They come from various parts of the state, and from a variety of occupations and interests, but no notable connection to higher education. At the same time, the three faculties are represented by the State College Education Association (SCEA), a component of the NSEA.

Some years ago, the Board of the Nebraska State College System determined that, contrary to the usual practice in higher education, Deans and higher administrators should not have tenure, reasoning that holding on to tenure meant insufficient commitment to their administrative responsibilities. It of course also meant that they would have an incentive to respond favorably to Board policy suggestions, since they did not have a tenured faculty position to fall back on. Within the past two years they have backed away from that policy, largely because of excessive turnover. Within the past two years they have backed away from that

policy, largely because of excessive turnover.

So at present the policy manual allows a dean to retain tenure for four years, after which "the right to return to a faculty position shall terminate." If while dean a person wishes to return to faculty status, notice must be given in October of the academic year, and it becomes effective the following July. As for other higher officers—the system has a Chancellor, each campus has a President and some Vice Presidents—they are "Professional Staff" and not "Faculty."

The turmoil of October had its beginning last January, when the Wayne Faculty Senate, whose president at the time was Mark Leeper, sent a letter to the board requesting that they consider changes that would serve to improve shared governance: letting deans retain their faculty tenure, and allowing a faculty leader from each campus to be a non-voting member of the board (which already has a non-voting student member from each campus).

The request was non-confrontational, but the response from the board was hostile. This attitude affected the President and VP for Academic Affairs at Wayne, who were apparently accused by the Board of not properly controlling their faculty. Professor Leeper was called into the VP's office last spring, accused of insubordination, and asked to desist from pressing the faculty senate issues. Professor Walker, upon hearing her husband's treatment, responded vigorously in a departmental meeting. This response was eventually made the basis of starting a procedure of dismissal, and, specifically, forcibly removing her from the campus.

The situation is complicated by other features of governance in the state colleges. Reading through the board policy manual, you will find "tenured faculty" referred to, but there is no mention of the process by means of which tenure is granted. There is a section entitled Academic Freedom, where the first three paragraphs of the AAUP Statement are quoted, but leaving out the rest of the statement, discussing tenure. And this quotation is followed by a statement that "The Board places particular emphasis on paragraphs 2 and 3 of the above statement relating to the responsibilities, as well as the privileges, which members of the profession and professional organizations associate with this important concept of American life." Shared governance does not have its own subsection.

The reason for this omission is that tenure is not board policy. It is created by the agreement between the SCEA and the board. Thus

tenure is something negotiated every two years, not accepted as integral to the institution. The provisions for the achievement of tenure contained in the document are satisfactory by AAUP standards; but of course the agreement is negotiated for two years only.

This peculiar tenure status leads to some very peculiar language in the policy manual and the agreement. The PM 5010 creates Categories of Personnel, one of which is Faculty, "persons serving in full-time faculty positions." PM 5014 differentiates "Special Appointment" from Specific Term Appointment" the latter "a professional staff or faculty appointment for a term of one academic or fiscal year" and includes "tenured appointment". But there is no "continuous appointment" in the document. Turning to the Agreement (Section 16.6) we find "Tenure is the right to reappointment from appointment term to appointment term until such time as the faculty member resigns, is dismissed for just cause or is laid off during a reduction in force."

Article III of the agreement is headed Academic Freedom and reads as follows: "Concepts of academic freedom are based on the current AAUP Statement of Principles and Interpretive Comments on Academic Freedom and Tenure ("Statement"). The Statement, however, is not incorporated herein by reference." I read this as an assertion that appealing to your "academic freedom" will have little standing in a grievance procedure or a dismissal. But there is no "continuous appointment" in the document. Turning to the Agreement (Section 16.6) we find "Tenure is the right to reappointment from appointment term to appointment term until such time as the faculty member resigns, retires, is dismissed for just cause, or is laid off during a reduction in force."

And there is in the agreement a detailed procedure for dismissal, the provisions of which should be governing the current action being brought against Professor Walker. It requires the selection of an advisory committee of four

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tenured faculty members, two chosen by the SCEA President and two by the President. This Committee is to "set a date and time when it shall consider the evidence presented by the President and the faculty member" within 30 days. It provides that "The faculty member may be represented by SCEA or by legal counsel at his or her own expense." Its "written recommendation" will be rendered to the faculty member and the president within 10 business days, and a copy of its recommendation provided to the local SCEA president. Within 10 business days after receiving the recommendation, the president "shall render a decision in writing to the faculty member and Advisory Committee" with reasons in writing if the president's decision is not that of the advisory committee. The faculty member may then appeal to the Chancellor, who may also have a hearing.

In this case, the SCEA has provided an attorney, and the advisory committee has been appointed. But more than 30 days have already passed, and no hearings have been scheduled. Indeed, some of the witnesses called have asked to testify by Skype. The NSEA claims that their attorney is highly qualified for the defense of a faculty member's rights. But the Board apparently feels it can ignore its own procedural requirements with impunity and ignore as well the overwhelming response of Wayne State students, faculty, alumni and friends, who find no substance in the charges.

At of the writing of this report, the evidence available to the interested public shows a disregard by the State College Board for the traditions of the academic community and its own commitment to the negotiated agreement. Section 18.1 of the agreement states

"This agreement shall supersede any rules, regulations, or practices of the Board which shall be specifically contrary to or inconsistent with the terms of this agreement." It expresses a distrust of the board and with good reason: quite clearly the board believes that it can override its own procedures and deal with faculty as if there is no reason to recognize that tenure means the right of the faculty to express policy disagreements, to seek shared governance and to deal with administrators as colleagues, much less work with the board for the best interest of the colleges.

(Bob Haller will write a follow-up article on this issue in the March Sentinel)

A Nazi Professor in Nebraska (Part II)

Frank Edler

What would happen if an American university offered a guest teaching position to a professor from the University of Berlin who was a known member of the National Socialist Party and a known nazi propagandist? Would the academic freedom accorded to such a professor provide him with a platform from which he could indoctrinate students in Nebraska or would the open forum of academic freedom provide the opportunity for students to engage the professor's propaganda? Many if not most people would be horrified that an American university would even think of making such an invitation. Many if not most people would not place their trust in the ability of free speech and open discussion to provide a space in which the evils of nazism could be illuminated and exposed. However, that is what happened in the fall of 1936.

The University of Nebraska established a professor exchange with the University of Berlin in 1936-1937 in which Professor Friedrich Schoenemann, head of the *Amerika-Institut* at that university, came to the University of Nebraska and Professor William Werkmeister, philosophy professor at Nebraska, in exchange

went to Germany to teach at the University of Berlin. I have discussed the circumstances of the exchange and the university's concern that it had hired a rabid nazi ideologue in the previous issue of the *Sentinel*. In this issue I want to elucidate and evaluate the collision between Schoenemann's nazism and free speech at the university.

As a nazi propagandist, Schoenemann minimally tried to encourage people to have a favorable view of Hitler, nazism, and the so-called revolution that was happening in Germany. The question is the following: was Schoenemann able to succeed in a context where free speech prevailed and uncomfortable questions would have to be engaged? Although the University of Nebraska did not cancel its contract with Schoenemann, Chancellor Edgar Burnett did send a letter of warning to him that "no unpleasant incidents may happen while you are a guest at this university" (UNL Archives, Chancellor Edgar Burnett Correspondence).

The dilemma that faced American universities after Hit-

ler's appointment as chancellor on January 30, 1933, was how to deal with German universities for whom there was almost universal respect without appearing to approve of the nazi regime that seemed bent on destroying the very tradition that had produced those universities. Indeed, 'liberal tradition' and 'liberalism' had become dirty words in the nazi vocabulary. Although the university was taking a cautious step into international waters, it was not as though Nebraskans were unaware of the reports of brutality, anti-Semitism, the mass firings of professors (many of them Jewish), the complete dictatorship of Hitler, the murder of Ernst Roehm along with the leadership of the SA and other opposition leaders as well as the takeover of the state bureaucracy by the nazi party. Hitler had used the Berlin Olympics games in the summer of 1936 as a public relations spectacle in order to create a more favorable image of the new

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regime as well as an attempt to make a case for racial superiority through athletic prowess.

James B. Conant, president of Harvard, faced this dilemma of wanting to uphold and promote the tradition of German universities without also endorsing the nazi regime. Harvard's law school dean, Roscoe Pound, one of the University of Nebraska's illustrious graduates, spent six weeks touring Germany and Austria in the summer of 1934. The tour. according to the New York Herald Tribune, "convinced Dean Roscoe Pound ...that political conditions in those countries had been greatly exaggerated" (quoted in Charles A. Beard, "Germany Up to Her Old Tricks," New Republic, October 24, 1934, p. 299). James B. Hershberger, Conant's biographer, says that Pound "had gushed admiration for Hitler's 'new order' and discounted reports of persecution of Jews" (James G. Hershberger, James B. Conant: Harvard to Hirshima and the Making of the Nuclear Age (Stanford: Stanford University Press, 1993), p. 87).

It was hardly a coincidence that a month or so after Pound returned to the United States, the University of Berlin offered him an honorary doctorate. Harvard wanted to acknowledge the university and the honorary degree, but not the nazi regime. Conant declined to participate in the ceremony conferring the degree at the Law School's Langdell Hall by Hans Luther, German ambassador to the United States; however, he did attend the luncheon after the ceremony at the Ritz-Carlton Hotel, but he refused to be photographed with Pound and Luther (William M. Tuttle, Jr., "American Higher Education and the Nazis. The Case of James B. Conant and Harvard University's 'Diplomatic Relations' with Germany," American Studies 20: p. 87, https://journals.ku.edu/index.php/ amerstud/article/viewFile/2256/2215; Hershberger, James B. Conant, 87).

Prior to Schoenemann's

arrival, Ingeborg Oesterlin, a German exchange student from the University of Heidelberg, attended the University of Nebraska during the 1934-35 academic year doing graduate work in chemistry. In an article in The Nebraska Alumnus entitled "About an Exchange Student" by Lorraine Campbell, Oesterlin was identified as "an admirer of the German leader." The article went on to quote her about the Führerprinzip (leadership principle): "You will find in some respects compulsion [in Germany] in political affairs and you will wonder about it. The 'Reich' has control over many institutions. All things are organized under the principle of leadership, but this principle of leadership is not to be confused with a dictatorship. When a people vote 90 per cent in favor of a certain leader, it is evident they are really wishing him [that is, wishing him to be the leader] and such a leader cannot, in consequence, be regarded as a dictator who builds his power by means of compulsion and illegal methods" (The Nebraska Alumnus, Vol. 30, No. 10, December, 1934, pp. 7-8). Unfortunately, her argument holds no water: Hitler may have been elected by overwhelming numbers, but that does not diminish the fact that he had absolute power after Hindenburg's death and having absolute power is what defines a person as a dictator.

Oestlerlin with two other German exchange students toured the southern states by car, and she published a number of excerpts from her diary in the Daily Nebraska. Miami clearly made a dramatic impression on her: "Miami was for us like a dream ... There is something of smoothness and a shine and mellowness about it, that is fascinating" (Daily Nebraskan, "Ingeborg Oesterlin Continues Story -Impressions Gained During Holiday Car Trip Thru South United States," February 17, 1935, pp. 1-2). It appeared as if Miami had won her over, but then she turned on a dime and said "On the other hand, we would never think that we could live there because we are of a northern race and we would miss the clearness, the hardness and the strictness of our country" Ibid, p.2). I can almost feel someone looking over her shoulder

Schoenemann, even before fall classes started at the University of Nebraska was already engaged with Ne-

braska audiences. He was one of the quest speakers at the German Day celebration in Omaha on September 13, 1936. After he was introduced to an audience of about 3,000 people by Val J. Peter, president of the German-American Federation of Nebraska, Schoenemann gave "an interesting address in which he outlined in brief the new regime in the homeland and the new confidence in the German folkcommunity" (Welt-Post, September 17, 1936, p. 4). 1936, p. 4). It is ironic, of course, that Schoenemann was already at work putting the best face he could on nazism to a large German-American audience, but his role as nazi propagandist was not as full of shrill hyperbole or as directly confrontational as his previous lecture tour in 1933.

On September 22 the Daily Nebraskan ran its first article on Schoenemann entitled "Nazi Regime Initiates Friendship in Schools Prof. Schoenemann Says" (Daily Nebraskan, September 22, 1936, p. 1, Image 1, p. 4, Image 4, http://nebnewspapers.unl.edu/ lccn/sn96080312/1936-09-22/ed-1/seq-1/). Based on an interview with Schoenemann, the article opened with his estimation of how German education had changed under National Socialism: "The most important change that the Nazi regime has wrought in German schools has been to make professor and student 'Kameradsdraftlich' [sic]." Unfortunately, the editors failed to check the spelling of the German word which is 'kameradschaftlich.' The article did go on to explain what Schoenemann meant by the word: "In plain English, German professors and students have developed a new understanding of each other, and friendly personal relationships are rising in German classrooms under Hitler's reign" (Ibid).

Schoenemann also mentioned two additional changes in education: the first was the emphasis on physical training and sports. He said that he as an educator was "especially proud of the proficiency that Germany has shown in all athletic fields" (Ibid). The second

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was the "new conception of Germanic tribes" which corrected the notion that German ancestors were barbarians (Ibid).

In his presentation of nazi pedagogy, Schoenemann was playing his cards very close to the vest and only laying down those cards that were least objectionable to American students. He could hardly have conveyed to them what Hitler conveyed to Hermann Rauschning: "I want a brutal, domineering, fearless, and cruel youth ... I don't want intellectual education" (quoted in Klaus P. Fischer, Nazi Germany. A New History (New York: Continuum, 1995), p. 349). As Klaus Fischer has stated, by 1935 "the Führerprinzip was officially inflicted on the universities" where party members loyal to Hitler were appointed as university rectors who in turn appointed deans who were politically correct (Ibid, 348).

Free speech can function as a condition of truth only if there are respondents who have the courage to take up an erroneous or misinformed claim in order to question it. In this case, who would respond to Schoenemann's lopsided and superficial presentation of changes in the German educational system? Weldon Kees. After graduating from the University of Nebraska in the summer of 1935 and a brief sojourn in graduate school, Kees who thought of himself as a communist found his way to Hollywood in January of 1936 to work and write. When Kees lost his room including several manuscripts and his typewriter to a fire, he decided to leave Los Angeles and move back to Nebraska in June of 1936. Lowry Wimberley, editor of the Prairie Schooner who had recently published Kees's short story "Frog in the Pool" in that journal, helped Kees get a job

as an editor of the state guide of Nebraska sponsored by the Federal Writers' Project (*Daily Nebraskan*, "Schooner Sales Set New Record for Opening Day," May 24, 1935, p. 4, Image 4; James Reidel, *Vanished Act. The Life and Art of Weldon Kees* (Lincoln and London: University of Nebraska Press, 2003), pp. 40-50).

Kees responded to the *Daily Nebraskan* article on Schoenemann the very next day. His letter to the editor was published in the "Student Pulse" section. Another student by the name of Boyd Innes responded to Kees and thus began an exchange between Kees and Innes about Schoenemann in the *Daily Nebraskan*.

(Look for the exchange between Kees and Innes in the concluding section of "A Nazi Professor in Nebraska (Part III)" in the next edition of the *Sentinel*.)

NCTE Position Statement on Academic Freedom

adopted from David Moshman's book *Liberty & Learning:Academic Freedom* for Teachers and Students (Heinemann, 2009)

In its support of intellectual freedom, NCTE maintains that students have the right to materials and educational experiences that promote open inquiry, critical thinking, diversity in thought and expression, and respect for others (NCTE Position Statement on Intellectual Freedom, 2014). Academic freedom is intellectual freedom in academic contexts, though it may encompass a wider spectrum of rights, freedoms, interests, and responsibilities. The protection of academic freedom, required at all levels of education, not only serves the common good but also enhances academic integrity and the overall quality of education while protecting students from indoctrination. Inherent in academic freedom is both a moral and educational obligation to uphold the ethics of respect and protect the values of inquiry necessary for all teaching and learning. Because situations involving academic freedom differ according to circumstances and grade level, NCTE encourages the discussion of the principles of

academic freedom, listed below, within faculties and institutions for the purpose of developing policies and procedures that will protect such freedoms.

- Freedom of Belief and Identity
- Freedom of Expression and Discussion
- Freedom of Inquiry
- Freedom from Indoctrination
- Equality, Privacy, and Due Process

"The University is not engaged in making ideas safe for students. It is engaged in making students safe for ideas."

—Clark Kerr

AFCON SPEAKER'S BUREAU (As of December 2015)

Peggy Adair: "Banned Books, Black Armbands, and School Prayer: The Evolution of Children's First Amendment Rights in America"

impa@centurylink.net

Dwayne Ball: "Threats to Academic Freedom at Universities"

db68516@yahoo.com

Bob Haller: "Civics Education and the Practice of Freedom" and "How Books Can Harm You: Lessons from the Censors"

mshortt@nebraska.com

David Moshmann: "Principles of Academic Freedom"

dmoshman1@unl.edu

John Bender and David Moshman: "Student Freedom of Expression/Student Rights"

jbender1@unl.edu dmoshman1@unl.edu

Laurie Thomas Lee: "Implications of the USA Patriot Act"

llee1@unl.edu

ADDRESS FOR THE AFCON WEB SITE

http://www.academicfreedomnebraska.org/

Check out our Website and learn Who We Are and about Our Activities; read our Constitution; learn how to Join Us; see the where and when of our Meetings; meet our Members and Officers; Study our Publications, Principles, and Statements

REQUEST FOR NEWS FOR FUTURE ISSUES

The editor of the AFCON SENTINEL invites all AFCON individual and organizational members to send news about academic freedom issues in Nebraska or editorial comments for inclusion in this newsletter and/or announcements of organizational meetings for the UPCOMING EVENTS column. **Due date for submissions** to the **March 2016**, issue is **February 24, 2016**.

Send to Frank Edler, Editor, 908 Elmwood Avenue, Lincoln, NE or frankhwedler@gmail.com

515 North Thomas Avenue Oakland, NE 68045.

The University of Chicago Statement on Freedom of Expression Addresses Microaggressions

"Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community."

(from the University of Chicago statement on freedom of expression included in this issue on page 4)

ACADEMIC FREEDOM COALITION OF NEBRASKA

HELP AFCON PROMOTE ACADEMIC FREEDOM

As a member of AFCON, you can help us

- support applications of the First Amendment in academic contexts, including elementary and secondary schools, colleges, universities, and libraries.
- educate Nebraskans about the meaning and value of intellectual freedom, intellectual diversity, mutual respect, open communication, and uninhibited pursuit of knowledge, including the role of these ideals in academic contexts and in democratic self-government.
- assist students, teachers, librarians, and researchers confronted with censorship, indoctrination, or suppression of ideas
- act as liaison among groups in Nebraska that support academic freedom.

MEMBERSHIP (To become a member, send dues, organization or individual name, address, and phone number to Cathi McMurtry, 515 N. Thomas Avenue, Oakland, NE 68045)

Organizational Membership (\$120) entitles the organization to one seat on the AFCON Board, one vote in the election of officers and at the annual meeting, eligibility for office and chairing standing committees, provides newsletter subscription for the board member to share with the organization's information director, and reduced rates to AFCON conferences for its members.

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AFCON ORGANIZATIONAL MEMBERS, PLEASE DUPLICATE THIS NEWSLETTER FOR YOUR MEMBERS. INDIVIDUAL MEMBERS, PLEASE PASS THIS NEWSLETTER TO A FRIEND AFTER YOU HAVE READ IT.