

# The AFCON Sentinel

*Newsletter of the Academic Freedom Coalition of Nebraska*

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## **From the President**

John R. Bender

Don't celebrate yet, but Nebraska may be on the verge of protecting academic freedom in two areas: the standards for suspension and removal of University of Nebraska faculty members and protection for high school and college student journalists.

The UNL Faculty Senate has proposed changes to the Bylaws of the Board of Regents that would address issues created by the hasty removal of Courtney Lawton from the classroom in 2017.

In a fall 2017 incident that received much local and national attention, Lawton, who was a graduate student in English and held a teaching appointment, joined other students and faculty in protesting a UNL sophomore who had set up a table on the plaza north of the UNL Student Union. The student, Kaitlyn Mullen, was encouraging students to join Turning Point USA, a conservative organization that promotes unfettered capitalism and maintains a watchlist of professors it accuses of proselytizing in the classroom on behalf of liberal causes.

In addition to carrying a sign that said, "Just say NO! to neo-Fascism," Lawton approached the table and berated Mullen loudly and personally, leaving her in tears. Mullen reported the incident to Turning Point, along with video of Lawton's behavior. The organization reported it on the web as an example of liberal intolerance. The episode went viral.

Initially, Lawton was removed temporarily from the classroom because the uproar drew threats against her. But three state senators, Steve

Erdman of Bayard, Tom Brewer of Gordon and Steve Halloran of Hastings wanted UNL to punish her more harshly. Eventually, administrators decided summarily to remove Lawton from the classroom for the rest of the school year. She completed her Ph.D. program that spring and graduated.



The American Association of University Professors took up Lawton's case, and after an investigation, it placed UNL on its censure list. The AAUP said the university had failed to provide due process for Lawton before removing her from the classroom.

The summary nature of Lawton's removal puzzled many UNL faculty members. The university has an elaborate system for handling complaints against faculty members alleged to have engaged in misconduct. The system, which is overseen by the Academic Rights and Responsibilities Committee (ARRC), a

committee of five tenured faculty members, calls for hearings in which the complainants and the faculty member have opportunities to present evidence and question witnesses. Yet in Lawton's case, UNL simply ignored those procedures.

The Faculty Senate proposal would write into the Regents Bylaws procedures and standards for suspensions, both those imposed immediately to address some perceived emergency and suspensions that take effect at the end of a term. Immediate suspensions would have to be justified by a "clear and present danger" to the university of harm to the staff member or others or an investigation of violations of university policies where suspension is necessary to prevent further violations or protect evidence. Either before the university imposes an immediate suspension or within two days of doing so, it must present evidence to an elected faculty committee (probably the ARRC at UNL) explaining the suspension. The committee then has 10 days to decide whether the suspension was valid. It must also recommend whether a formal complaint against the faculty member is warranted. Immediate suspensions are limited to 90 days.

If the Faculty Senate's proposal becomes part of the Regents Bylaws, administrators at UNL and all campuses in the system will have no choice but to follow procedures that guarantee due process to faculty facing charges of misconduct.

The issue of freedom for high school and university students has been hanging around for a lot longer than the issue raised by Lawton's dismissal. In 1988, the U.S. Supreme Court held that high school administrators are free to censor school publications so long as doing so is reasonably related to a legitimate pedagogical interest. Some lower federal courts have since held the same standard could be applied to college and university publications.

California had a law in place before the 1988 decision that protected student journalists. Other states soon joined. According to the Student Press Law Center, 14 states—Arkansas, California, Colorado, Illinois, Iowa, Kansas, Oregon, Maryland, Massachusetts, Nevada, North Dakota, Rhode Island, Vermont and

Washington—have laws protecting student journalists. Nebraska teachers and students have been trying to persuade the legislature to join that parade for at least 25 years. So far, those efforts have failed.

This time Sen. Adam Morfeld of Lincoln has taken up the issue and not only has it reached the floor of the Senate, it received first round approval.

Morfeld's bill says high school and college student journalists would have the freedom to make the editorial decisions about the content of their publication, so long as they do not publish anything that is libelous, constitutes an invasion of privacy, incites unlawful conduct or a material and substantial disruption of the school, violates state or federal law or violates established journalistic ethical standards.

Although Morfeld's bill advanced on a 27-5 vote, opposition remains. Sen. Jim Scheer of Norfolk said the bill gave students "carte blanche to say literally anything about anything." It doesn't. And Sen. Erdman said the bill was a solution in search of a problem.

If it's a problem Erdman is seeking, he should look to Waverly. The high school principal there in August censored a yearbook picture showing teacher and yearbook adviser Erin Konecky in a hospital bed with her newborn child. Why was the photo censored? Because the baby died only 96 minutes later. A school policy forbids publications that memorialize students or staff who have died. Although the photo of the baby did not technically violate the policy, the principal called it contrary to the spirit of the rule.

The kind of untethered discretion to censor school publications exemplified by the action of the Waverly principal is precisely what Morfeld's bill will prevent. And by preventing the arbitrary use of power by school principals, it helps students recognize the value of freedom of inquiry and expression.

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## Freedom to Access Information in eBooks Hindered at Public Libraries

Todd Schlechte

Ten years ago, when I was still involved in Collection Development for Nebraska Overdrive Libraries, the eBook revolution was in full swing. At the time eBooks were priced reasonably for public libraries, and there was nothing to suggest that this would change. Libraries had long enjoyed a terrifically good deal for many print items; for print adult fiction books, libraries paid about 60% of the retail price and could lend a book until it fell apart. The vision was that public libraries could also provide equity of access to the general public in the electronic format

The reality was different, because libraries could not actually buy eBooks from a book wholesaler. Instead, they had to purchase licenses to lend eBooks, and it became possible for publishers to set onerous terms. For example, in 2011 HarperCollins said it would allow any new titles licensed to libraries to circulate only 26 times before the license expired (Jackson). Things did not improve from there. Random House increased its prices on eBooks 300% in 2012 (Brodsky).

Most major publishers followed suit but not always in quite the same way. Today they generally price one copy at about \$50 for two years of library access, while consumers pay \$15 or less for ongoing access (Inouye). Libraries do not have enough resources to build a sufficient collection to satisfy demand.

And now a new tactic has arisen: the embargo. MacMillan has decided that for the first eight weeks it will allow each library or library consortium to lease only one copy of an eBook, which the library will be able to keep in perpetuity. After that time, it can lease as many as it wants for a period of two years or 52 lends at the price of \$60 per lease (The Authors Guild). This move basically makes the book unavailable for 8 weeks in any large library or consortium.

Libraries are being further cut off in the digital realm by the fact that Amazon has become a major publisher of both eBooks and digital audio books. It will not sell or lease either of those formats to libraries.



*Todd Schlechte is President-Elect of AFCON  
(to serve as president in 2021)*

Libraries promote equity of access to information. Publishers seek profit for their shareholders. Current publisher pricing and policies are at odds with the freedom to access information electronically and equitably. Since talks with publishers have been unsuccessful, the American Library Association is continuing to promote an #eBooksforall campaign, with members of Congress being the next conversation partners after unsuccessful talks with publishers.

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"ALA turns to Congress as Macmillan ignores public call to reverse library e-book embargo." American Library Association, November 1, 2019, <http://www.ala.org/news/press-releases/2019/11/ala-turns-congress-macmillan-ignores-public-call-reverse-library-e-book>

Brodsky, Art. "The Abomination of Ebooks: They Price People Out of Reading." *Wired*, 2 October 2013, <https://www.wired.com/2013/10/how-ebook-pricing-hurts-us-in-more-ways-than-you-think/>.

"Ebook Library Pricing: The Game Changes Again." The Authors Guild, The Authors Guild, 17 Sept.

2019, <https://www.authorsguild.org/industry-advocacy/e-book-library-pricing-the-game-changes-again/>

Inouye, Alan S. "The Future of Ebook Pricing." *American Libraries Magazine*, American Library Association, 9 July 2019, <https://americanlibrariesmagazine.org/blogs/the-scoop/the-future-of-ebook-pricing/>

Jackson, Nicholas. "Boycott HarperCollins: Publisher Limits Library E-Book Lending." *The Atlantic*, Atlantic Media Company, 1 Mar. 2011, <https://www.theatlantic.com/technology/archive/2011/03/boycott-harpercollins-publisher-limits-library-e-book-lending/71821/>

### AAUP Statement on Knowledge

Responding to threats posed by attacks on expert knowledge and on the disciplines and institutions that produce it, the American Association of University Professors has issued a new statement entitled, "In Defense of Knowledge and Higher Education" that was prepared by its Committee A on Academic Freedom and Tenure and has been endorsed by the Association of American Colleges and Universities, PEN America, and the Phi Beta Kappa Society. In calling attention to the new statement, Committee A Chair Henry Reichman asks:

"How can a government develop effective policy when it rejects informed, dispassionate studies of climate change, suppresses its own data collection on white supremacist domestic terrorism, or imposes gag orders on doctors under regulations prohibiting discussion of abortion or contraception, merely because they contradict ideological belief?"

The statement includes substantial discussion of the role of intellectual freedom in academic contexts and the relation of academic freedom to freedom of speech. It can be found at this link:

<https://www.aaup.org/report/defense-knowledge-and-higher-education>



### Executive Order on Anti-Semitism

On December 11, 2019, President Trump issued as executive order on anti-Semitism incorporating a very broad definition of anti-Semitism that has been seen by many as a serious threat to freedom of expression.

<https://www.whitehouse.gov/presidential-actions/executive-order-combating-anti-semitism/>

<https://www.insidehighered.com/news/2019/12/12/trump-order-anti-semitism-campus-draws-free-speech-concerns>

An opinion column in the *New York Times* by President Trump's son-in-law Jared Kushner defended the executive order, arguing that "anti-Zionism is anti-Semitism."

<https://www.nytimes.com/2019/12/11/opinion/jared-kushner-trump-anti-semitism.html>

Concerns that the order threatens the right to criticize Israel and to question or oppose Zionist ideology were expressed by many, including the *New York Times* editorial board, legal blogger Eugene Volokh, and the Foundation for Individual Rights in Education (FIRE).

<https://www.nytimes.com/2019/12/11/opinion/trump-bds-movement-israel.html>

<https://reason.com/2020/01/02/executive-order-on-anti-semitism-may-suppress-first-amendment-protected-criticism-of-israel/>

<https://www.thefire.org/fire-statement-regarding-executive-order-on-campus-anti-semitism/>



# **AFCON**

[www.academicfreedomnebraska.org](http://www.academicfreedomnebraska.org)

The Academic Freedom Coalition of Nebraska was founded in 1988 to promote intellectual freedom in Nebraska education and research, including freedoms of belief and expression and access to information and ideas.

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### *AFCON Board of Directors*

- John Bender, President*
- Todd Schlechte, President-Elect (2021 President) and Webmaster*
- Laurie Thomas Lee, Immediate Past President*
- Peggy Adair, Secretary and Legislative Liaison*
- Rod Wagner, Treasurer*
- David Moshman, Policy Coordinator and Newsletter Editor*
- Nancy Comer*
- Bob Haller*
- Ally Halley*
- Linda Parker, ex officio, Archivist*

### *From the AFCON Constitution, Article I:*

The purpose of AFCON shall be to promote academic freedom in Nebraska, defined as intellectual freedom in educational and research contexts. This includes freedoms of belief and expression and access to information and ideas. In pursuit of this general goal, AFCON shall:

1. support application of the First Amendment in academic contexts, including schools, colleges, universities, and libraries.
2. educate Nebraskans in and out of academic settings, citizens and professionals, parents and students 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.
3. assist students, teachers, librarians, researchers, and others confronted with censorship, indoctrination, or suppression of information or ideas in academic settings.
4. act as liaison among groups in the State of Nebraska that support academic freedom.

### **JOIN OR RENEW**

*Rod Wagner, Treasurer*

*AFCON now accepts PayPal! Use your PayPal account to join or renew. We offer two ways to pay: You can send a direct payment to us at [afcon.freedom@gmail.com](mailto:afcon.freedom@gmail.com) or you can use the new PayPal button on our website <https://www.academicfreedomnebraska.org/join-afcon.html>. The button on the website will auto-renew your membership each year so you don't have to manually submit a payment when it's time to renew. If you do not have a PayPal account, send us a check at 3901 S. 27th St., #47, Lincoln, NE 68502. Memberships are \$120 for organizations and \$15 for individuals.*

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**The AFCON Sentinel** is the newsletter of the Academic Freedom Coalition of Nebraska, published bimonthly in February, April, June, August, October, and December.  
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## Minutes

**Academic Freedom Coalition of Nebraska  
Board of Directors Meeting**  
Eiseley Library, Lincoln, Nebraska  
December 14, 2019

Present:

Peggy Adair, secretary, legislative liaison  
John Bender, representing UNL Faculty Senate  
Bob Haller, chief baker, director at large  
Laurie Thomas Lee, president, representing  
American Civil Liberties Union of Nebraska  
Dave Moshman, immediate past president,  
newsletter editor, policy coordinator  
Todd Schlechte, webmaster, director at large  
Rod Wagner, representing Nebraska Center for the  
Book

### MINUTES

President Laurie Thomas Lee convened the meeting at 10:10 a.m.

MINUTES: A motion was made by Moshman, second by Haller, to approve minutes of the AFCON board meeting held on November 9, 2019. Motion carried on a voice vote.

TREASURER'S REPORT: Halley distributed the treasurer's report via email. Treasurer's report reflects updated annual meeting expenses of \$1,363.65. Balance on hand as of December 14, 2019, is \$1,775.51. Treasurer's report will be filed for audit.

NEWSLETTER: Deadline for articles to be published in the February edition of the *Sentinel* is January 24, 2020.

WEBSITE: Schlechte has updated the website to include newest AFCON events.

PRESIDENT'S REPORT: Lee mentioned our collective loss of Gerry Cox, longtime academic freedom advocate and a very kind, sweet soul.

Lee reported the UNL Faculty Senate has prepared suggested bylaws changes for the UNL Board of Regents. The changes address problems with due process rights of faculty. A motion was made by Adair, second by Bender that AFCON shall send a letter to the UNL Board of Regents in support of the bylaws changes. Motion carried on a voice vote. Lee and Bender will work together to prepare a letter to the Regents. Bender offered to attend the Regents' next board meeting in his official capacity as AFCONs 2020 president.

Lee reported on recent incidents in the journalism department at UNL where faculty are being restricted from teaching journalism students how to investigate and report on controversial issues affecting the "image" of the university. Lee will continue to monitor the situation and will keep the AFCON board apprised.

POLICY COORDINATOR: Moshman reported the nondisparagement clause in the new UNL president's contract is problematic and seems to violate free speech rights. It also sets a precedent that all new administrators may be required to sign such a clause in exchange for millions of dollars in salary... a sort of quid pro quo, as it were. However, the new president did accept the terms of the contract and says he was not pressured, although he has yet to be rewarded with a visit to the Governor's mansion, or an admiralty in the Great Navy of the State of Nebraska.

Moshman reported on the recent executive order signed by President Trump banning anti-Semitism in higher education. Moshman explained the problematic clause of the executive order that equates anti-Zionism with anti-Semitism.

Moshman reported on the unintended consequences and viral negative publicity encountered when school authorities ban certain words from being uttered.

## 2020 PLANNING

### **Annual Meeting:**

Lee and Moshman suggested the annual meeting center around academic freedom issues of libraries and librarians. Schlechte informed the board about librarians' concerns for their patrons' equal access to information since net neutrality (requiring internet companies to provide equal internet speed to all customers) is being deregulated under the present federal administration.

Schlechte reported book publishers are putting onerous restrictions on libraries' purchases of ebooks for their patrons that place financial burdens on libraries and access burdens on patrons.

The board agreed by consensus to frame the 2020 annual meeting around current academic freedom issues of concern for libraries. Bender offered to write an article for the AFCON newsletter regarding net neutrality. Schlechte will write an article for the newsletter about the problems with ebook acquisition for libraries.

### **Membership:**

The board discussed the need to recruit more organizational members. Strategies include making a personal contact, informing organizations of what AFCON has accomplished, and explaining the benefits of being a member of our statewide coalition.

The board discussed the importance of getting invoices out to member organizations in a timely manner. Moshman will revisit a letter he developed previously to insert with invoices outlining AFCON accomplishments. Moshman will update the letter for insertion with 2020 invoices.

### **Legislation:**

Wagner noted AFCON needs to continue its support for Senator Morfeld's student journalism bill that remains in the hopper for the 2020 legislative session. The AFCON legislative liaison will keep the board apprised of any new bills introduced in 2020 pertaining to academic freedom.

**ELECTIONS:** Adair will retrieve the election-related emails from 2019 to use as a template for the 2020 ballot. Adair will work with Haller to get the 2020 ballot prepared and distributed to the membership.

**TREAT OF THE DAY:** Holiday sugar cookies with sprinkles! Thank you, Bob the Baker!

**WORD OF THE DAY:** "Kuarm" Spelling: K-U-A-R-M Used in a sentence: "If you don't have a kuarm, you can't do anything." Thank you, Bob the English Professor!

### **MEMBER ORGANIZATION REPORTS:**

**Nebraska Center for the Book:** Wagner reported Ted Genoways, author of *This Blessed Earth*, was the keynote speaker at the Nebraska Center for the Book's annual meeting held on November 9, 2019. The 2020 One Book One Nebraska selection is: *All the Gallant Men: An American Sailor's Firsthand Account of Pearl Harbor*, by Donald Stratton and Ken Gire.

**Nebraska Library Association:** Schlechte reported NLA has elected new officers and appointed new committee heads for 2020.

**MEETING SCHEDULE:** The next AFCON board meeting will be held at Eiseley Library on February 8, 2020, from 10:00am to 11:30am.

There being no further business, the AFCON board adjourned at 11:50am.

Respectfully submitted,  
Peggy Adair, Secretary

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*As we go to press, it appears that senators will vote soon, perhaps Friday, Jan. 31, on whether to advance the student press bill (LB206). Contact your senator to support this bill!*