

THE

AFCON

SENTINEL



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March 2016

AFCON OFFICERS

Linda Parker
President

Lora Leibrandt
President-Elect

Nancy Comer
Past President

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Secretary

Cathi McMurtry
Treasurer

David Moshman
Policy Coordinator

Peggy Adair
Legislative Liaison

Linda Parker and
Lora Leibrandt
Website Administrators

Frank Edler
Newsletter Editor

Purpose:

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

MESSAGE FROM THE PRESIDENT—Linda Parker



Linda Parker

Organizations experience ongoing change, and AFCON is fortunate to have a pool of outstanding leaders. Many thanks to Nancy Comer, who was AFCON President for 2015. The new slate of officers for 2016 include Peggy Adair, Secretary; Cathi McMurtry, Treasurer; and Lora Leibrandt, President-elect. The Board also welcomed two new members—Jayaram Betanabhatla, representing the UNO Faculty Senate, and Russ Alberts, Member-at-Large. It is with regret that the AFCON Board accepted the resignation of Dwayne Ball at its January meeting. Dwayne has served AFCON well for many years. We wish him great success in his new endeavors.

AFCON's new year is well underway, and we expect the year to be eventful. When the Unicameral is in session, life in Nebraska is always interesting. Board members have been following the progress of four legislative bills--LB868, LB885, LB969 and LB1109.

The current legislation we are following has interesting ramifications for academic freedom.

LB885 proposes "...to provide student journalists the right to exercise freedom of speech and of the press..." This bill is designed to protect the free press and free speech rights of university-level student journalists. Several AFCON Board members attended the legisla-

tive committee hearing for the bill, and Laurie Thomas Lee testified in favor of it.

LB868 requires high school seniors to pass a citizenship test, which is based on an immigration test designed for adults. The Nebraska State Board of Education took a neutral stance on the bill. The Nebraska Association of School Boards (NASB) expressed concerns about the bill's directly legislating curriculum. Senator Pansing Brooks criticized the immigration test for its omission of topics relating to women and Native Americans. Senator Morfeld said he thought the test was too basic. AFCON has not taken a formal stand on the bill.

LB969 intends to "provide and change duties for the establishment, maintenance, and operation of public libraries or reading rooms by cities or villages." The library community, two members of the Omaha City Council, and AFCON have taken a stand against the bill. Opponents contend that the bill would inappropriately introduce political agendas into the collections and management of public libraries and that public library boards are the rightful agents of the public trust.

LB1109 would require NU only to release the name and resume of a single finalist for positions such as president and campus chancellors. A quote from the Omaha World Herald sums up AFCON's opposition to the bill, "It's hard to be a watchful citizen when government doors are closed" (*Omaha World Herald*, Sunday January 24, 2016, p.6B).

Goals for the coming year were approved at the February 2016 Board meeting. We will be working on recruitment, greater

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Upcoming Events

AFCON Board Meetings, April 9, May 14, June 11, 2016
Abrahams Library, 5111 N. 90th Street, Omaha, Nebraska, at 10 a.m.

THE PRESIDENT'S MESSAGE (Continued from Page 1)

member involvement, state legislation, academic freedom issues in Nebraska's colleges and universities, and annual conference planning for 2016 and 2017. Plans

underway for a media project, grant funding for the 2017 annual conference, outreach to member organizations, promoting the FIRE model for

academic freedom, and advocacy for academic freedom in the state legislature. Please join us as we embark on an exciting and productive year!

Summaries of AFCON Board of Directors' Meetings—Peggy Adair



December, 12, 2015, Loren Eiseley Library, Lincoln, NE

P R E S E N T :

Peggy Adair, Dwayne Ball, Nancy Comer, Frank Edler, Bob Haller, Laurie Thomas Lee, Lora

Leibrandt, David Moshman, Linda Parker and Rod Wagner.

MINUTES: A motion was made by Moshman, second by Haller, to approve minutes of the AFCON board meeting held on November 14, 2015. Motion carried on a voice vote.

TREASURER'S REPORT:

Treasurer's report was tabled until the January, 2016 AFCON board meeting.

SENTINEL: Edler reported the December *Sentinel* should be ready for distribution within a week. Deadline for material to be included in the March issue of the *Sentinel* is **Wednesday, February 24, 2016.**

POLICY COORDINATOR:

Moshman updated the board on discussions with UNL faculty and others regarding 1) the chancellor's designation of a "free speech plaza," and 2) concerns about the chilling effect on free speech that can arise from well-intended anti-sexual harassment policies. A motion was made by Ball, second by Lee, that the AFCON board shall authorize Ball to write a letter to ACLU-Nebraska encouraging ACLU to send written communication to the UNL administration asking for clarification of the anti-sexual harassment policy and the "free speech plaza." Motion carried on a voice vote.

The board discussed the University of Chicago's statement on free speech that is endorsed by FIRE, and how AFCON can encourage Nebraska university systems to incorporate similar language into policies and faculty contracts. Moshman offered to contact FIRE to learn what strategies they may be pursuing.

TREAT OF THE DAY:

Crumbly Stollen. Thank you, Bob!

LEGISLATION:

Adair reported the state legislature will convene on January 6, 2016. Adair recommended that AFCON not pursue introducing a student expression bill during this session because it will be a short session and will occur during a Presidential election year. The AFCON board concurred.

Wagner reported the League of Nebraska Municipalities will be bringing a bill that allows second class cities and villages to designate their library boards as advisory boards. Wagner reported a number of Nebraska organizations concerned with supporting libraries and intellectual freedom plan to oppose this legislation.

AFCON MEMBERSHIP:

Ball will contact Russ Alberts to invite him to attend an AFCON board meeting and consider becoming an at-large member. The board discussed inviting representatives of the Association of Students of the University of Nebraska (ASUN) to participate in AFCON.

AFCON 2016: Parker developed draft goals for AFCON for 2016 and encouraged all AFCON members to provide input. Adair will update the AFCON letterhead and AFCON directory for 2016.

JANUARY 2016 AFCON

BOARD MEETING: The AFCON Board agreed by consensus to resched-

ule the January, 2016, board meeting. The meeting will be held on Saturday, January 16, at a HyVee in Omaha following an ACLU meeting at the same venue. The time of the AFCON meeting will be approximately 1:30 pm. Ball will email the AFCON board after he confirms the date, time and place for the AFCON board meeting.

MEMBER REPORTS:

American Association of University Professors, Nebraska Conference: Haller reported AAUP is also monitoring the events at Wayne State University.

ADJOURNMENT: Motion to adjourn was made by Ball, second by Edler. Motion carried on a voice vote.

Meeting adjourned at 11:52am

Respectfully submitted,
Peggy Adair, Secretary

The next board meeting will be **Saturday, January 16, 2016 in Omaha.** Time and place TBA.

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

**January 16, 2016 —
Abrahams Library, Omaha,
NE**

PRESENT: Peggy Adair, Russ Alberts, Dwayne Ball, Jayaram Betanabhatla, Lora Leibrandt, Cathi McMurry, David Moshman, Linda Parker

MINUTES: A motion was made by Ball, second by Moshman, to approve corrected minutes of the AFCON board meeting held on December 12, 2015. Motion carried on a voice vote.

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Summaries of AFCON Board of Directors' Meetings (Continued from Page 2)

TREASURER'S REPORT:

McMurtry presented the treasurer's report dated January 15, 2016. Balance on hand on January 15, 2016 is \$1,901.32. The treasurer's report will be filed for audit.

PRESIDENT'S REPORT:

President Parker recommended appointing Russ Alberts to the AFCON board of directors. The appointment was affirmed with a unanimous vote of the board.

Parker reported the state of Michigan has passed legislation that forbids public librarians from disseminating information about elections and voting. Parker will do more research and will report back to the board.

STRATEGIC PLANNING:

Under "Recruitment," Moshman recommended prioritizing increasing institutional members, with a goal of 20 institutional members. The board agreed by consensus. Under "Increase Member Involvement," Adair recommended using the journalism student bill, LB885, as a tool to increase member involvement. The board agreed by consensus. Under "Address Academic Freedom Issues in the UN System," Moshman recommended changing "free speech zone policies" to "free speech in higher education," and also recommended promoting the adoption of the FIRE resolution by Nebraska colleges and universities as an action plan. The board agreed by consensus. Moshman will work on an action plan to promote the FIRE resolution. Parker and Adair will work on an updated strategic plan document to present to the board at the February meeting.

ANNUAL MEETING 2016:

The board discussed options for the 2016 AFCON annual meeting. Further discussion will take place at the February meeting.

TREAT OF THE DAY:

Cranberry Muffins, thanks to our sous chef, Linda Parker.

WEBSITE: The board discussed the need to update the website and the need to maintain the website on an ongoing basis. Leibrandt will see if one of her students might be available to do either or both. Parker will ask for volunteers to do either or both in the next issue of the *Sentinel*.

RESIGNATION: Ball tendered his resignation as an AFCON board member. A motion was made by Moshman, second by Alberts, to commend Ball for his many years of service as an AFCON board member. Motion carried by voice vote.

LEGISLATION: The board discussed LB885, a bill that will protect First Amendment rights of post-secondary student journalists. Adair will work on contacting Mike Kennedy, executive director of the Nebraska Collegiate Media Association, to offer AFCON assistance in support of LB885.

The board discussed LB969, a bill that will place public libraries under the control of city or village administrators. A motion was made by Adair, second by Moshman, that AFCON shall officially oppose LB969 on the basis of its chilling effect on intellectual freedom. Motion carried on a voice vote. Parker will contact the Nebraska Library Association to let them know AFCON opposes the bill and will report back to the board on what strategy the NLA plans to take to defeat the bill.

MEMBER REPORTS:

Nebraska Library Association: Parker reported she is an official representative of NLA on the AFCON board. Parker reported NLA Advocacy Day will be March 8, 2016.

There being no further business, the meeting adjourned at 11:54am.

Respectfully submitted,
Peggy Adair, Secretary

The next meeting of the **AFCON BOARD OF DIRECTORS** will be **Saturday, February 13, 2016, at Abrahams Library in Omaha, Nebraska.**

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

**February 13, 2016 —
Abrahams Library, Omaha,**

PRESENT: Russ Alberts,

Jayaram Betanabhatla, Frank Edler, Laurie Thomas Lee, Cathi McMurtry, Linda Parker, Rod Wagner.

APPROVAL OF AGENDA:

A motion was made by Russ Alberts and seconded by Laurie Lee to approve the agenda with the addition of board representation from the ACLU of Nebraska (new business) and Legislative Bill 1109 (legislative bills). The motion was approved by voice vote.

MINUTES:

A motion was made by Frank Edler and seconded by Jay Betanabhatla to approve the minutes of the January 16, 2016, board meeting. The motion was approved by voice vote.

TREASURER'S REPORT:

Cathi McMurtry presented the January-February 2016 treasurer's report and membership list as of January. The account balance on hand as of February 12, 2016 is \$1,946.32. Cathi mentioned personal and organizational membership renewals that have been received and those yet to come. The report will be filed for audit.

PRESIDENT'S REPORT:

Parker said that she has been following several state legislative bills in order to be informed on the issues and that updates and discussion would follow later in the agenda.

SENTINEL: The deadline for contributions to the next Sentinel edition is February 24. Send articles to Frank Edler at frankhwedler@gmail.com Edler said that he expects to have a follow-up about Wayne State College.

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Crystal Eastman

Crystal Eastman with Roger Baldwin co-founded the National Civil Liberties Bureau, forerunner of the ACLU, in 1917. She was a feminist, pacifist, and socialist who fought against the U. S. entry into World War I.

Summaries of AFCON Board of Directors' Meetings (Continued from Page 3)

UNFINISHED BUSINESS:

Parker asked for comments on the draft proposed goals for 2016. Russ Alberts suggested that AFCON provide content for member organizations (newsletters). Laurie Lee suggested that AFCON also invite those organizations to contribute content to the Sentinel. Providing an information packet about AFCON to member organizations was another suggestion. A webcast was discussed as a means to reach members beyond or in addition to the annual meeting. Laurie Lee mentioned the Nebraska High School Press Association and getting on its agenda with "What are Your Rights?" as a topic. A video contest targeted to college students was discussed. **Legislative Bill 1109** – The bill is in regard to provisions for withholding the identify of and information about high-level candidates for University of Nebraska appointments. Laurie Lee said that a hearing was held on February 10. Laurie commented on the bill's provisions and hearing testimony.

Legislative Bill 969 – The bill is in regard to changing public library boards from governing to advisory and giving city councils and village boards administrative authority over public libraries. Linda Parker read a Facebook post from Gary Wasdin, former Omaha Public Library executive director and currently executive director of the King County Library System based in the state of Washington. Gary listed actions that he had been asked to do when he was in Omaha, actions that were detrimental to freedom of speech, public use of libraries, and other questionable practices. Wagner commented on the status of the bill, hearing testimony, and the involvement of the American Library Association. Wagner said that an op-ed piece written by Steve Laird regarding LB 969 is scheduled to be published in Sun-

day's *Omaha World Herald*. Laird is the president-elect of United for Libraries, a division of the American Library Association. Laird is the CEO of ReferenceUSA headquartered in Papillion, NE.

ANNUAL MEETING:

Parker said that she had met with Lora Leibrandt to discuss the annual meeting. Lora had asked whether a formal program was needed as part of the meeting. One idea that Parker offered was a legislative bill summary, status, and commentary from Peggy Adair. Parker also mentioned inviting the Nebraska Library Association lobbyist (Andy Pollock) to speak regarding LB 969. Laurie Lee added that the student video contest could be an element if the annual meeting was in November to allow sufficient time to run the contest. Alberts suggested inviting former Omaha Public Library director Gary Wasdin to speak on his experiences regarding intellectual freedom issues. Parker said that she would write a brief proposal for the annual meeting program with a November date.

AFCON GOALS: It was moved by Russ Alberts and seconded by Laurie Lee to approve the 2016 AFCON goals with modifications for including a student video contest and further elaboration on some of the goal statements. The motion was approved by voice vote.

ACLU NEBRASKA REPRESENTATIVE (to AFCON Board) : With Dwayne Ball's resignation Parker said she would ask ACLU to designate a new representative. Laurie Lee offered to be the ACLU representative in the interim since she serves on the ACLU board.

Nebraska Center for the Book: Rod Wagner reported that there will not be a Nebraska Book Festival this year. Wagner said that the University of Nebraska Press has expressed interest in taking a leadership role in the festival and that is currently being explored for a 2017 book festival. A governor's proclamation was presented in January for the 2016 One Book One Nebraska selection – Karen Shoemaker's *The Meaning of Names*. The month of March will include recognition of the Letters About Literature contest winners (elementary, middle school, and high school age levels) – a ceremony at the State Capitol, a luncheon for the winners, their parents, teachers, judges, and Center for the Book board members.

Nebraska Library Association: Linda Parker reported that the Nebraska Library Association will hold its annual Library Advocacy Day on March 8 with activities at the State Capitol and a luncheon with state senators at the Cornhusker Hotel. Parker said that she attended Advocacy Day last year for the first time and learned a lot. Parker said it was a great experience. Information about Library Advocacy Day can be found via the Nebraska Library Association website. There is a registration expense that includes the lunch cost.

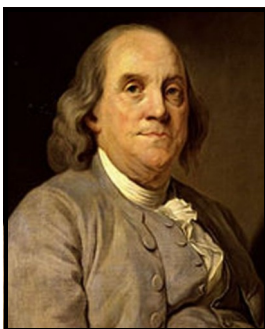
The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Rod Wagner (secretary pro tem)

The next meeting of the **AFCON Board of Directors** will be **Saturday, March 14, 2016 at 10 a.m. at the Abrahams Library in Omaha, NE.**

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“Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech.”

Benjamin Franklin, *Silence Dogood, The Busy-Body, and Early Writings*

Dwayne Ball, Long-time AFCON Board Member, Resigns



Dwayne Ball

Dwayne Ball, Department Chair and Associate Professor of Marketing at the University of Nebraska, Lincoln, resigned from the board of AFCON during the January, 2016, meeting in Omaha. As a long-time AFCON board member representing ACLU Nebraska, he will be missed for his many contributions and professional expertise.

Dwayne served as president of AFCON twice, once in 2001 and again in 2009. For many years he wrote a regular column for the AFCON *Sentinel* under the title of "University Reports" that summarized articles dealing with violations of and issues in academic freedom from a variety of sources. He is the

2006 recipient of the James A. Lake Academic Freedom Award.

One of the important articles he contributed to the *Sentinel* was entitled "Threats to Academic Freedom at American Universities" in the September 2000 issue. He also participated in an interesting pro-con debate in the *Sentinel* with Doug Paterson on the question of whether the states should adopt the Academic Bill of Rights proposed by David Horowitz.

We will miss Dwayne, and we wish him all the best with his future endeavors.

ACADEMIC FREEDOM LINKS

David Moshman's *Huffington Post* article "Martin Luther King on the First Amendment"

http://www.huffingtonpost.com/david-moshman/martin-luther-king-on-the_b_8911848.html

David Moshman's *Huffington Post* article "Palestinians Erased"

http://www.huffingtonpost.com/david-moshman/palestinians-erased-from-space_b_9287162.html

Alex Morey's article from FIRE about a Mizzou professor's firing and AAUP's due process concerns :

<https://www.thefire.org/controversial-mizzou-professors-firing-raises-due-process-concerns/>

Adam Steinbaugh's article from FIRE about the resignation of Mount St. Mary's University president Simon Newman:

<https://www.thefire.org/mount-st-marys-university-president-simon-newman-resigns-after-accreditor-questions-commitment-to-freedom-of-expression/>

Will Creeley's article from FIRE on a UCLA law professor's criticisms of the mandatory reporting of "sexual harassment":

<https://www.thefire.org/ucla-law-professor-criticizes-schools-new-mandatory-sexual-harassment-reporting/>

Ann Bisaro's article on the free speech/safe speech debate at Yale hosted by Intelligence Squared US:

<http://www.nhregister.com/general-news/20160301/debate-at-yale-rep-in-new-haven-examines-free-speech-on-campus>

AFCON Welcomes Two New Board Members

It is a pleasure to welcome two new members of the AFCON board of directors, Jayaram Betanabhatla and Russ Alberts.

Russ, a biomedical engineer, has his doctoral degree in bioengineering and engineering mechanics from Iowa State University. As a research fellow at the University of Southampton (UK), he

worked in the Engineering and Environment department focusing on problems with artificial hip implants. He is a returning board member and will function in the capacity of director-at-large.

Jayaram has been teaching in the physics department at the University of Nebraska-Omaha for over twenty-five years. His research interests include

superconducting materials, thermoelectric and ionic conductors. His graduate thesis is on ferroelectric materials. Jayaram represents the University of Nebraska - Omaha Faculty Senate.

Jayaram joined the AFCON board of directors in September of 2015, and Russ joined the board in January of 2016.

ACLU Nebraska Sends Free Speech Letter to Chancellor Perlman



March 3, 2016

University of Nebraska - Lincoln

Chancellor Harvey S. Perlman
201 Canfield Administration Bldg
Lincoln, NE 68588

Dear Chancellor Perlman:

Recent news reports and inquiries to my office have raised questions about how public campuses are balancing free speech rights under the First Amendment and the right to access a safe and fair learning environment under Title IX and Title VII. We have had no specific complaints from your campus—but because this issue has arisen elsewhere in the country, we write to provide you with guidance and urge you to consider providing clear guidelines to your students and faculty.

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STUDENT PROTESTS AND ASSEMBLIES

The United States Supreme Court has repeatedly recognized that the campus of a public university serves as a public forum for its students for First Amendment purposes. See *Widmar v. Vincent*, 454 U.S. 263, 268, fn. 5 (1981). See also *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983); *Healy v. James*, 408 U.S. 169, 181 (1972).¹

In light of the fact that protests have sparked all across the country, we suggest you review your campus free speech policies to ensure they embody a modern and constitutional framework for student activities. For example, here are some of the most frequent questions that have arisen in my office:

Q: Must students obtain a permit to hold a gathering or demonstration?

A: No. Per the U.S. Supreme Court's rulings in *Watchtower Bible & Tract Soc'y of N.Y. v. Village of Stratton*, 536 U.S. 150 (2002) and *Thomas v. Collins*, 323 U.S. 516 (1945), any such permit or registration requirement for students to conduct a rally would be impermissible.

Q: Must students be sponsored by a recognized student organization to hold a gathering or demonstration?

A: No. The government may not require association with another organization or official sanction to express oneself, nor may the government impose rules which may lead to delays. See, e.g., *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 964, fn. 12 (1984) and *Shuttlesworth v. Birmingham*, 394 U.S. 147, 163 (1969).

¹ In contrast, the general public who are not students have a more limited right to such activities at a college campus, but may not be entirely barred. *Bowman v. White*, 444 F.3d 967 (8th Cir. 2006)

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ACLU Nebraska Letter to Chancellor Perlman — Continued from Page 6

Q: Can students be forced into one “free speech zone” for all protests or gatherings?

A: No. While such a designation may be made for non-students, students have the right to freely use public green space for their events. *Bowman v. White*, 444 F.3d 967 (8th Cir. 2006)

HARASSING SPEECH

The school clearly has an obligation under Title IX and Title VII to provide a safe learning environment for all students, including women and people of color. Setting aside clearly harassing behavior (e.g., sexual assault), the questions we get frequently concern how and where to draw the line between protected speech and illegal harassment. We suggest two key principles.

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First, faculty and students must be free to advance and discuss ideas in classes and other academic settings—even if those ideas are upsetting to others. A public university or college cannot limit or punish speech that is merely offensive or that causes nothing more than hurt feelings. Both the First Amendment and the principles of academic freedom would forbid such a step.

Second, courts and the ACLU agree that speech directed at particular individuals can be illegal harassment when it is “sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the educational program.” The proper standard of review is an objective standard, rather than the subjective view of a victim. See *Davis v. Monroe County Bd. Of Educ.*, 526 U.S. 629 (1999) and *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).

We know that navigating the intersecting requirements of the Constitution and federal law can be difficult, and we encourage you to develop clear policies that explicitly protect free speech while distinguishing illegal harassment. Proactive efforts to educate your students and faculty about the scope and boundaries of free speech will help avoid future problems and eliminate the chilling effect of never knowing when one’s speech may be deemed to violate vague or unknown rules.

We are always available to work with your legal department to help review policies. Please do not hesitate to contact me if you have questions or concerns.


Amy A. Miller
Legal Director

cc: Title IX Coordinator Susan Foster



Nadine Strossen
(Photo by David
Shankbone)

**“ We should not censor offensive speech, but
we surely have a responsibility to censure it.”**

Nadine Strossen, past president of the ACLU,
“Free Expression: An Endangered Species”

Adopt the University of Chicago Free Speech Statement

David Moshman



David Moshman

In July 2014 the president and provost of the University of Chicago, “in light of recent events nationwide that have tested institutional commitments to free and open discourse,” appointed a Committee on Freedom of

Expression to draft a statement “articulating the University’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.”

The Committee’s report (see the full report in the December 2015 *Sentinel* on page 4), released in January 2015, begins with a brief account of the University of Chicago’s long, proud history of commitment to freedom of expression. It later clarifies that intellectual freedom is crucial not only for reasons of historical tradition but also because “without a vibrant commitment to free and open inquiry, a university ceases to be a university.”

In between, the report provides a principled statement of free expression rooted not just in the University of Chicago’s institutional history but also in the nature and purpose of higher education. The Foundation for Individual Rights in Education (FIRE) has since urged every college and university to adapt and adopt this statement (see FIRE’s model resolution). Some already have. The core statement begins:

Because the University of Chicago is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limita-

tions 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.”

The statement acknowledges that ideas inevitably 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.

To its credit, the statement acknowledges justifiable limits to freedom of expression.

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.” There must be “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.

The statement then reminds us that the remedy for bad speech is better speech and that universities should foster rational “debate and deliberation.” Finally, it clarifies that the right to disagree is not a right to prevent others from speaking.

It is noteworthy that the statement never mentions the First Amendment. As a private institution, the University of Chicago’s commitment to free expression is rooted in history and principle, not constitutional law. Even where the First Amendment applies, moreover, legal decisions over the past 30 years have limited its application to academic speech. What Chicago has provided is a principled statement of free speech, not a summary of First Amendment case law.

It is also important to note that this is not a comprehensive statement of academic freedom, which is the freedom to do academic work. In addition to free expression for faculty and students, academic freedom also includes related freedoms of teaching, learning, inquiry, assessment, curricu-

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Chicago Statement, (Cont'd from p. 9)

lum development, academic governance, and access to information and ideas.

Free expression is for everyone, and is especially crucial in academic contexts. We can argue about the subtleties

of academic freedom and the technicalities of First Amendment law, but the University of Chicago statement on freedom of expression gets to the heart of intellectual freedom and provides a basis for further discussion. FIRE's model resolution should be adopted everywhere.

This article originally appeared in The Huffington Post on February 1, 2016. AFCON urges all colleges and universities in Nebraska to adopt the model resolution, which can be found here: <https://www.thefire.org/model-freedom-of-expression-resolution-based-on-university-of-chicago-statement/>.

A Nazi Professor in Nebraska (Part III -- Conclusion)

Frank Edler



Frank Edler

The questions at the beginning of Part II of this essay were the following: if academic freedom at the University of Nebraska were extended to a nazi exchange professor

from the University of Berlin, would this enable him to spew nazi propaganda during his stay at the university? Or would the university community engage in a free and open discussion of nazism and on the basis of that discussion arrive at its own conclusions? The answers to both questions are "yes" and "yes" as the concluding part of this essay will show.

When the *Daily Nebraskan* published its first story on Friedrich Schoenemann in September of 1936, Weldon Kees responded to the article by writing a letter to the editor. In that first story, Schoenemann presented a heavily whitewashed version of changes in the German educational system under the National Socialist regime. For him, the most important change was the fact that professors were coming down from their Mandarin ivory towers to deal more collegially with students and workers.

Schoenemann used the German word *Kameradschaftlich* (companionable) to describe this new relationship.

In his letter to the editor, Kees focused on this point and left no doubt where he stood from the first paragraph: "According to a story featured on yesterday's front page of your paper, Dr. Friedrich Schoenemann, visiting professor from fascist Germany, opines that 'the most important change that the nazi regime has wrought in German schools has been to make professor and student 'kameradschaftlich [sic]'. This is an interesting idea from Herr Schoenemann, but there have been some, at least, who have felt that the expulsion of hundreds upon hundreds of professors – liberals, Jews, democrats – men such as Einstein, to mention the best known – is perhaps slightly more 'important'" (*Daily Nebraskan*, "They Call It 'Kameradschaftlich,'" Sept. 23, 1936, p. 2). Kees had misspelled the German word in the title of his letter because the original interview in the *Daily Nebraskan* had misspelled the word.

He then launched into a biting satire of the new professor-student relationship in nazi Germany: "Think of how pleasant it must be! The student comes into the professor's office, shouts out a 'Heil Hitler!'", hears a "Heil Hitler!" from his kamerad (professor), and then they are free to embrace each other They can sit down and talk about how their beloved leader has saved Germany from that horrid bolshevism; they can watch from their

windows the sadistic brown shirts returning from a pogrom; they can slap each other on the back, forsaking academic dignity for the moment, and discuss the aesthetic value of beating labor organizers over the kidneys with rubber truncheons. Of an evening, professors and students may journey together in true kameradschaftlich [sic] fashion to indulge in a blood purge or a book burning. What fun they must have! On their way home, professor and student may arm in arm indulge in some good fascist Jew baiting, chauvinism, hatred of the soviet union, and a little old fashioned war hysteria. It's all in good fun, very pleasant indeed. They are kameradschaftlich [sic]" (*Daily Nebraskan*, Weldon Kees, "They Call It Kameradschaftlich [sic]," September 23, 1936, p. 2).

In a few sentences, Kees managed to reduce to absurdity the significance of Schoenemann's claim that a new relationship had emerged between professors and students by placing that relationship back into its context of anti-Semitism, intolerance, brutality, and authoritarianism. The image of professor and student arm in arm indulging in "Jew baiting, chauvinism, hatred of the soviet union" may be reminiscent of scenes in Alfred Doebelin's novel *Berlin Alexanderplatz* such as the one where Franz Biberkopf (beaverhead), the main character, and Willy, a young pick-pocket, walk out of a meeting hall arm in arm after having baited anarchists and socialists (*Berlin Alexanderplatz*, volume 2, p.374). According to his

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biographer, James Reidel, Kees read Alfred Döblin's *Berlin Alexanderplatz* (the English translation appeared in 1931) on the train to Beatrice, NE, when he left the University of Chicago in late September or early October of 1935 (Vanished Act, 43).

For Schoenemann the unification of the German *Volk* under nazism with its promise of eliminating class distinctions was extremely important. His father was a tradesman, a master painter, and intended his son also to follow a trade in masonry. Schoenemann, however, revolted and wanted to go to the university. He wrote a letter directly to the kaiser and won a place for himself in higher education. Furthermore, he paid for his university studies by working as a part-time journalist (Beck, 382; Erwin Hoelzle, "Friedrich Schoenemann," *Jahrbuch fuer Amerikastudien*, v.2, 283). He like so many other Germans wanted to see a savior in Hitler. In Schoenemann's case, the saving act was leveling the playing field between an elite and at times arrogant educational system that thumbed its nose at workers and the middle class (*Burgerschaft*). Like so many other Germans, Schoenemann refused to confront the brutality of the regime or minimized it as a necessary cost of the revolution.

In his concluding paragraph, Kees lamented the fact that the University of Nebraska found liberals like Stuart Chase and Norman Thomas "dangerous" and hesitated to allow them on campus whereas the university found room easily enough "for a minister of nazi propaganda who whitewashes ... the whole nazi regime. We seem to be able to find room for fascists here. Furthermore, such action is accepted by professors and students without question; or at least, without protest. When such a condition exists, it might be said that an American form of fascism is not far off" (*Daily Nebraskan*, Weldon Kees, "They Call It Kameradschaftlich [sic]," September 23, 1936, p. 2).

In his reference to an "American form of fascism," Kees may have been referring to Lawrence Dennis's recently published book entitled *The Coming*

American Fascism. . Dennis, perhaps the foremost fascist intellectual in America, perceived the Great Depression as a failure of capitalism. As Arthur M. Schlesinger states in *The Politics of Upheaval*, "If capitalism could not survive, the choices, as Dennis saw them, were Communism, fascism, or chaos" (Politics of Upheaval, 75). This would replicate the either-or conditions – that is, either communism or fascism – that had brought Hitler to power. According to Dennis, there was no need to look to Germany when America had her own home-grown dictator in the senator from Louisiana, Huey P. Long (Politics of Upheaval, 77). One wonders today about the possible resurgence of such a fascism in presidential candidates like Donald Trump.

Interestingly, Schoenemann did not take the bait and respond to Kees's letter; rather, a third year journalism student by the name of James Boyd Innes took up the challenge. The day after Kees's first letter appeared, Innes published a letter in response entitled "Mr. Kees Calls It 'Kameradschaftlich [sic]'" (*Daily Nebraskan*, "Mr. Kees Calls It 'Kameradschaftlich [sic],'" September 24, 1936, p. 2). Sadly, Innes was no match for Kees.

Innes's two main points were that Kees's letter was simply a "rechauffe" or rehash of an old Arthur Brisbane editorial and that Kees "took advantage of an interview, which was evidently sought by the Daily Nebraskan, to belittle an innocent professor and an equally guiltless administration" (*Daily Nebraskan*, "Mr. Kees Calls It 'Kameradschaftlich [sic],'" September 24, 1936, p. 2). Unfortunately, Innes provided no evidence for either claim; thus, the readership was not told how Kees was belittling an innocent Schoenemann nor was the readership made aware of which Brisbane editorial Innes was referring to. In addition, no evidence was given about how the administration was guiltless in the matter of hiring Schoenemann. Innes ended his response on a rather puerile note: "So look out you international conspirators. Weldon 'Bloodhound' Kees is on your trail" (Ibid). Kees responded to Innes's letter the next day on September 25 with a letter entitled "Mr. Innes Misses the Point" (*Daily Nebraskan*, "Mr. Innes

Misses the Point," September 25, 1936, p. 2).

After his summary, Kees turned to a critique of Innes's letter: "And now one Boyd Innes seeks to make personal issue out of a discussion of fascist trends by calling me a lot of names. I submit that this is no way to discuss any issue, if that was actually what Mr. Innes was attempting to do. Calling me a 'bloodhound' may be good stuff for remarks in the back of high school annuals, but it doesn't mitigate the fact that Mr. Innes was unable to disprove any of the points I made" (Ibid). In particular, he said that "Shedding tears for 'an innocent professor ... helpless before an attack of that nature' hardly takes into consideration that these columns are open to Herr Schoenemann to make any sort of a reply that he wishes, even as they are to Mr. Innes and myself" (ibid). In relation to Schoenemann being "an innocent professor," Kees did not bring up Schoenemann's previous lecture tour of 1933. I imagine there was a collective sigh of relief from Chancellor Burnett and the board of regents. Kees apparently was not aware of the stupid things Schoenemann had been saying during that lecture tour, and no one told Kees of the Ford Hall Forum riot. Had Kees known of Schoenemann's earlier incidents and remarks, one can only speculate how he would have used them in his letters to the editor. Certainly, an "innocent Schoenemann" and a "guiltless administration" would have been easy targets to excoriate.

Another criticism that Kees addressed was Innes's claim that his letter was just a rehash of an old Arthur Brisbane editorial. This must have galled Kees. Brisbane, known to some as one of the fathers of yellow journalism and who worked for Joseph Pulitzer's *New York World* before signing on as editor of William Randolph Hearst's *Evening Journal* in 1897, was the complete antithesis of what Kees regarded as a good writer. As Oliver Carlson said in his

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biography of Brisbane, "He read widely, but not well. He thought quickly, but superficially. These qualities which fitted him so well as a newspaper editor appealing to the mass mind, at the same time unfitted him for the more profound and worthwhile contribution to American thought and letters (Oliver Carlson, *Brisbane: A Candid Biography*, 1937, pp. 17- 18). Kees retorted to Innes: "Comparing my point of view with that of Arthur Brisbane is so patently absurd that I hesitate to point out to Mr. Innes, who must be very naïve indeed, that Brisbane is employed by and writes for William Randolph Hearst, whose connections with Hitler are well known to prominent educators and progressives everywhere" (*Daily Nebraskan*, Sept. 25, 1936, p. 2).

In his last paragraph, Kees turned the table on Innes: "If Mr. Innes resents my statements in regard to fascism, as his vague and confused letter implies, I can only assume that he regards the menace of fascism as of little consequence" (ibid). Since Innes had attempted not only to ridicule Kees with such phrases as "hairy-chested attitude," "little duck," "youngster," and "bloodhound," but also to trivialize his concern for fascism as a hunt "uncovering international intrigue" and "international conspirators," Kees brought up nationally known figures whose concern for fascism could not be trivialized such as John Dewey, Charles Beard, and Robert Morss Lovett. In his last line, Kees challenged Innes to provide information as to how this concern could be trivialized.

On Sunday, September 27, two days after Kees's letter, the *Daily Nebraskan* published Innes's second response to Kees. (Ironically, it was also the day that the Spanish city of Toledo fell to the fascist forces of General Francisco Franco who was being aided by Hitler and Mussolini. A few days later, Franco will declare himself *Generalissimo* and head of Spain. The letter exchange between Kees and Innes started a little more than a month after the execution of Federico García Lorca). Innes's letter was entitled

"Mr. Innes Replies" (*Daily Nebraskan*, "Mr. Innes Replies," September 27, 1936, p. 2). It would turn out to be Innes's last letter addressed to Kees. Innes began with the following statement: "One observes that Mr. Kees in his second letter to the press has ceased his painful satire" (Ibid). Innes seemed to be taking credit for halting Kees's satire when, in fact, Kees had completed his satire in his first letter, and there was no need to continue it.



Dr. Friedrich Schoenemann
Daily Nebraskan, January 10, 1937, p. 3

The rest of his opening paragraph addressed the request Kees had made at the end of his letter for information about how Innes could trivialize fascism, especially in America: "He [Kees] said in his letter that fascism had given earnest concern to such men as John Dewey...; Charles A. Beard ...; Weldon Kees, Nebraska '35; Robert Morss Lovett.... Mr. Kees suggests that I might perhaps supply him with answers to his standard questions concerning the deplorable conditions which he assures us, exist in Germany (*Daily Nebraskan*, September 27, 1936, p. 2). Innes's unfortunate attempt to continue to ridicule Kees by inserting his name along with the names of Dewey, Beard, and Lovett was nothing short of juvenile.

Innes went on to state that it was not his intention "to defend fascism" and

that he "was merely answering a grossly unfair attack by Mr. Kees" (Ibid). He then turned to address the issue of fascism in Germany: "I agree that certain aspects of the nazi regime are indefensible. But along with these there are accomplishments that are commendable. Mr. Kees took all the worst features of a country that was in a state of revolution and presented them as a true picture of the present day Germany. His first letter was so hopelessly bigoted, dogmatic, and prejudiced that anyone out of his intellectual diapers would have resented it. He condemned the nazi party for what he himself was practicing; namely, intolerance, fanatical adherence to narrow partisanship, and glaring misrepresentation" (Ibid).

Innes presented the following reasons to support his claim that Kees's argument was grossly unfair: first, he said Kees did not mention nazi accomplishments that were commendable, although Innes supplied no examples of such accomplishments. Second, Innes implied all the examples that Kees brought up to show how negative nazism was actually belonged to the time when Germany was in a state of revolution (I will assume Innes means the period roughly from 1930 to the end of 1934.) Even before the Roehm purge of June 30, 1934, Hitler stressed that the revolution was over and that it was time for evolution. Third, Innes claimed Kees used the same tactics of intolerance, partisanship, and misrepresentation that he accused the nazi regime of practicing.

In addition, Innes made some astounding leaps in his logic. After stating that he did not know what Kees's sources were except for the original interview with Schoenemann in the *Daily Nebraskan* that contained a misspelled German word, Innes concluded that it was "probable that his [Kees's] other sources of information concerning Germany are just as susceptible to conscious and unconscious corruption. Therefore it can be reasonably assumed that he has never read a Hitler speech in its original form nor in its entirety" (Ibid).

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At the end of his letter, Innes did apologize to Kees “for identifying him with Arthur Brisbane,” but not for what Kees had described as his “gutter tactics” because (this is Innes’s last *ad hominem*) “it is truly an unconventional plumber who dresses up in his Sunday serge to work on a sewer” (Ibid). Thus ended Boyd Innes’s responses to Weldon Kees in the “Student Pulse” section of the *Daily Nebraskan*.

Kees seemed to be taken aback by Innes’s ability to accept things at face value and not question them. When Innes in his second letter told Kees not to worry about fascism coming to the United States because “Hitler in a recent speech to the German public said: ‘National socialism is not a commodity for export’” (*Daily Nebraskan*, “Mr. Innes Replies,” September 27, 1936, p. 2), Kees retorted that he was “unable to accept political speeches as absolute truth in the whole-hearted manner” that Innes seemed to be able to do (*Daily Nebraskan*, “The Last Word – We Hope,” September 30, 1936, p. 2). Kees went on to say that perhaps “Mr. Innes is unaware of the existence of such groups in this country as Friends of New Germany, the Silver Shirts, the Vigilantes, the Black Legion, and other such fascist groups. Or perhaps he believes such statements from The Leader [*der Fuehrer*] along with ‘Prosperity is just around the corner’ [Herbert Hoover] and ‘Vote for Landon and land a job’ [Alf Landon]” (Ibid).

Kees was right about the existence of fascist groups in the United States. For example, the Friends of New Germany – actually the full title was *Bund der Freunde des neuen Deutschland* (Alliance of Friends of the New Germany) – was created in July of 1933 in New York by Heinz Spanknoebel under Rudolf Hess’s authorization [Sander Diamond, *The Nazi Movement in the United States: 1924-1941* (Ithaca: Cornell University, 1974), pp. 113, 112-127]. This Bund, whose membership was mostly German nationals, used the violent bully-tactics of Ernst Roehm’s SA [*Sturm Abteilung*] troopers (Diamond, 39). Indeed,



Weldon Kees
Berkeley, California, 1953

Schoenemann was in the United States when the “Spanknoebel affair” came to an end on October 29, 1933, with Spanknoebel’s secret return to Germany to avoid imminent arrest. Spanknoebel had tried to take control of Victor and Bernard Ridder’s *New Yorker Staats-Zeitung und Herold*, which was the largest German-language newspaper in the United States, as well as the United German Societies of Greater New York (Diamond, 121-127). Indeed, the demonstration and riot that accompanied Schoenemann’s talk in Boston at the Ford Hall Forum on November 27, 1933, was a backlash to the Bund’s SA tactics. The Bund was disbanded but later reorganized in 1936 as the *Amerikadeutscher Volksbund* (German American Bund or Federation) under Fritz Kuhn. German nationals were barred from joining the organization.

Near the end of his last letter, Kees summarized his criticism of Innes: “Mr. Innes answers no questions; avoids issues; can not argue away the truth of actual conditions in Germany. Instead he attacks me for lack of tolerance” (*Daily Nebraskan*, “The Last Word – We Hope,” September 30, 1936, p. 2). Innes’s claim that Kees was intolerant was based on his assumption that Kees wanted to muzzle Schoenemann’s statements that whitewashed nazi Germany.

Kees made no such claim. In his first letter, Kees did say that “we seem to be able to find room for fascists here.” His argument was not to deny Schoenemann the right to state his opinions; rather, his argument was based on fairness: if the University allows Schoenemann the right to express fascist propaganda, why does the University view liberals like Stuart Chase and Norman Thomas as dangerous and deny them “a fair hearing”?

Innes’s charge of intolerance failed because Kees never wished to deny Schoenemann’s freedom of speech. It is clear that Kees launched his letters to the editor with the view of trying to initiate an open, no-holds-barred discussion of both fascism and nazism not only as it existed in Germany, but also its manifestations in the United States. He was in complete agreement with the University of Chicago statement on freedom of expression made recently affirming that “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” (*AFCON Sentinel*, Vol. 19, No. 4, December 2015, p. 4).

The debate between Kees and Innes about nazism came to an end after Kees’s last letter. It was unfortunate that Kees did not have a stronger adversary to represent the opposing view. By 1936, of course, it would have been difficult for anyone to defend National Socialism. The important point, however, is that academic freedom and freedom of the press enabled Kees publicly to confront Schoenemann’s claim that the nazi regime was making improvements to higher education in Germany. Kees did not allow Schoenemann to present his claims in isolation from the larger context of the regime’s brutality.

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padair@tconl.com

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rhaller1@unl.edu

David Moshman: "Principles of Academic Freedom"

dmoshman1@unl.edu

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

jbender1@unl.edu

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

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ADDRESS FOR THE AFCON WEB SITE

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Check it out 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; read our newsletter, the AFCON *Sentinel*.

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 for the June 2016 issue is May 24, 2016.

Send to Frank Edler, editor, 908 Elmwood Ave., Lincoln, NE 68510 or frankhwedler@gmail.com

Shared Governance in Universities Began 100 Years Ago in 1916

After AAUP's first president, John Dewey, appointed Edwin R. A. Seligman in 1915 to create a new committee that eventually became Committee A on Academic Freedom and Tenure, the AAUP went on in 1916 to create Committee T on the Place and Function of Faculties in University Government and Administration.

In the spring of 1916 faculty at Bryn Mawr College rebelled against their autocratic president M. Carey Thomas. In May of the same year the Academic Committee of the Bryn Mawr Alumnae Association issued a statement reported in the *New York Times* (May 4, 1916, p.11) as follows: "The question of Faculty co-operation in the matter of reappointments and dismissals was under discussion in many other colleges and universities at the time of the mid-year meeting of the [Bryn Mawr] Academic Committee and the Association of University Professors had recently brought home to the public through its admirable reports

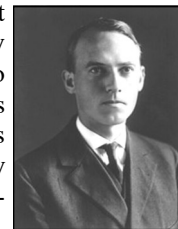
that the present organization of our colleges and universities is autocratic and hostile criticism of certain recent Faculty changes at Bryn Mawr had made the subject seem of urgent importance there."

"President Thomas has publicly declared that the 'whole system is radically wrong,' a survival of the closed corporation era which is now everywhere under scrutiny and criticism. 'Professors,' she said, 'should be made to share the burden with us. Trustees and college Presidents should no longer stand alone in the responsibility of maintaining the teaching and research of any given college at the highest possible level. I believe that the college professors would rise to these responsibilities if they were placed on them.'"

"It was more recently, toward the end of March, that some of the Professors of Bryn Mawr College addressed a letter to the President of the college asking to be more closely asso-

ciated with the management of the college. This letter was presented at a special meeting of the Directors of the college called March 30, at the request of the President of the college with a statement that she entirely sympathized with the general movement and a committee of five Directors was appointed to confer with the Professors."

The statement of the Alumnae Association's Academic Committee went on to say that everyone involved in "this most difficult problem of college administration" hoped that it could be solved in the same way that the University of Pennsylvania was able to solve the firing of Scott Nearing. In that case, the trustees of the University of Pennsylvania after six months of protest over the firing finally added an amendment to the college regulations stating that professors could be removed by trustees only after consultation with faculty.



Scott Nearing

ACADEMIC FREEDOM COALITION OF NEBRASKA

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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.

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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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INDIVIDUAL MEMBERS, PLEASE PASS THIS NEWSLETTER TO A FRIEND AFTER YOU HAVE READ IT.**