



THE

AFCON

SENTINEL



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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—Spencer Davis

On-Line Instruction and Academic Freedom

The many applications of the Internet to college instruction, which seem to so many to be revolutionary improvements, have disturbing implications for academic freedom. Any questioning of technology risks being branded intellectual Luddism, but the issues demand attention even at the risk of wearing that description. The first disturbing development is the appearance of private web-sites displaying evaluations of instructors.

A commercial web-site offering a range of services to students, collegestudent.com, invites students at four hundred institutions to post critiques of their courses and instructors. Other commercial web-sites are much smaller, but all permit uncensored, anonymous, and unconfirmed evaluations to be posted.

At the City College of San Francisco, one instructor has sued the creator of the web-site evaluating UCSF faculty, claiming that his professional reputation has been harmed by the actions of the web-site developer, a distinguished former student at the college. The instructor claims that such a private web-site allows for instructor reviews by non-students, multiple reviews by aggrieved students, and biased selection of reviews by the web-site master. The existence of such a web-site, the instructor argues, has harmed his reputation and hurt enrollment in his classes, and unchecked it will lead to grade inflation and will force other instructors to avoid complex or controversial

topics. The instructor's prediction seems quite credible to me, as does the possibility that instructors might create supposedly independent web-sites filled with favorable evaluations. Tenure is no protection against a technological smear campaign that empties an instructor's classroom.

A 2nd danger to academic freedom comes from the drive for profit. Colleges turning to on-line courses as money-makers have little interest in the traditional prerogatives of instructors—the content of courses will be screened and approved by the institution, marketed as the institution's product, and owned by the institution. Inevitably administrators rather than instructors will determine course content and their decisions will be based on assessments of marketability and political correctness.

That profit rather than academic integrity or academic freedom is driving the creation of on-line courses is clear from a recent decision of the State of Washington Higher Education Coordinating Board. That body recently approved a new Master Plan calling for creation of on-line courses to replace the costlier alternative of building new facilities. The coordinating board refused to investigate concerns about on-line instruction before making its decision and voted to consider such questions (and the actual full cost of the program,) only as questions arise in the implementation of the program. Such unbounded fascination with technology eliminates any respect for academic freedom. One must wonder whether such fascination is the product of a powerful contempt for professional educators.

Upcoming Events

Academic Freedom Coalition of Nebraska

Board Meetings, July 8, September 9

Gere Library, 56th and Normal, Lincoln, 10 AM

MINUTES of the AFCON Board of Directors

March 11, 2000—McMurtry presented the Treasurer's Report with a balance of \$658.02 in AFCON funds and \$1365.00 in the Survey fund. Some AFCON 2000 dues are not yet in. Davis and Ball will contact the several organizations which still have dues pending..

Davis reported that Jeff Lofthus will report on the status of the survey of Nebraska public schools and libraries on incidents of challenge and censorship.

Ball composed a letter to organizations asking them to list their concerns and any trends, policies, or incidents regarding academic freedom of which they are aware.

Moshman, Policy Issues chair, reported that feedback on the sexuality policy was positive. No further information is available on the fetal tissue research bill. The Board discussed additional possible action by the AFCON Board.

April 8, 2000—The Board approved the February and March minutes.

McMurtry presented the Treasurer's Report showing a balance of \$693.02 in AFCON funds and \$1365.00 in the Survey fund. Dues from member organizations and individuals continue to come in.

The Board approved a McMurtry/Ball motion to pay mileage for Krutz's attendance at the reading conference in Kearney.

The Board discussed methods to notify organizations to renew their memberships. Davis referred to his letter to several organizations reminding them to pay their dues. Ball proposed that they be billed at the end of each year. The Board tabled the topic until the May meeting.

Lofthus reported the survey on in-

cidents of challenge and censorship goes to press within the week and will be mailed before Easter. He will compile results this summer.

Haller has a list of persons who will serve on the Higher Education Committee. There is no chairman for the Elementary and Secondary Committee.

Moshman reported the fetal tissue bill was withdrawn but will probably be re-introduced next term. He suggested an AFCON Academic Freedom award to the Nebraska Board of Regents for its support of fetal tissue research.

Moshman also reported on the *Alpha Clarion*, an unofficial newspaper published by some Lincoln Southeast High School students. The Southeast administration allowed distribution of a second issue, but not a third. The *Lincoln Journal-Star* published an article on the students' paper in its Saturday, April 8, 2000, issue.

The Board approved a Moshman/Black motion to approve the Sexuality and Academic Freedom policy. It will be printed in the June *Sentinel*.

Moshman outlined events leading to the possible firing of Karl Reinhard, a UN-L professor. A Moshman letter to James Moeser, UN-L Chancellor, was discussed and revised. The Board approved a McMurtry/Ball motion to send the revised letter to Moeser.

May 12, 2000—The Board approved the April minutes with two corrections.

McMurtry reported the treasury contained \$1082.74 in AFCON funds and \$1365.00 in the Survey fund. Receipt of organizational and individual dues is almost complete. The few remaining will be contacted.

The Board approved a Ball/Black motion to send an annual bill in January to each organizational and individual member along with a message from the

President reporting on the activities of the previous year to encourage membership renewal.

Board members had received copies of the Jeff Lofthus survey of public schools and libraries in Nebraska on incidents of challenge or censorship of materials. Davis will contact him to ascertain the date when the Board may expect a report of the survey.

Haller reported on his progress in setting up the Higher Education subcommittee to review threats to academic freedom around Nebraska. He added Board suggestions of persons to add to his list as possible members of the subcommittee. Haller intends to call a meeting and ask each AFCON Board member of the subcommittee to call a portion of the names periodically to review threats at their institutions.

Davis reported no progress on finding a chair for the Elementary and Secondary subcommittee. Black volunteered to contact an NSEA staff person for suggested K-12 educators to serve on the subcommittee and or to agree to serve as chairman.

Moshman reported that the unofficial Lincoln Southeast High School newspaper, the *Alpha Clarion*, can be continued, but must be distributed outside the school. The Board discussed the Reinhard matter, but no action by AFCON was requested at this time. Davis discussed the situation of an untenured faculty member at Peru State who was fired for a memo regarding the Peru State president. Moshman said the ACLU-Nebraska had received a request for a case evaluation of the incident. More information may be available for the AFCON Board at the next meeting.

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 September 18, 2000, issue is August 28, 2000.

Contact Tom Black, 610 West Park, West Point NE 68788 or tb35925@navix.net

Sexuality and Academic Freedom

A Statement of the Academic Freedom Coalition of Nebraska (AFCON)

April 2000

Many of the academic freedom issues that come to AFCON'S attention involve questions of human sexuality. We have reason to believe, moreover, that the dozens of cases involving human sexuality that AFCON has addressed in recent years are just the tip of the iceberg that chills education about sexuality throughout Nebraska.

Implicit in most efforts to restrict discussion of sexuality is a widely-shared assumption that human sexuality is special in ways that render standard principles of academic freedom irrelevant. We see no justification for this views. In this statement we apply general principles of academic freedom to seven overlapping areas of concern with regard to sexuality and academic freedom.

Sexuality within the Curriculum

Issues of sexuality are important in psychology, sociology, anthropology, biology, history, literature, law, and other fields and should be presented and discussed in many areas of curriculum at all levels of education. The specific content of various areas of the curriculum at various levels of education should be determined by teachers and other professionals on the basis of academic considerations. In responding to challenges, administrators and school boards should explain and support justifiable curricular decisions and should educate their constituencies about the educational importance of an inclusive curriculum and the critical role of respect for academic freedom.

Teaching Sexual Responsibility

In addition to teaching about sexuality in various curricular areas, many educational institutions attempt to promote sexual responsibility in students. Recognizing the diversity in beliefs and values among parents and cultures, and respecting the present and future autonomy of students, education for sexual responsibility should not be a program to indoctrinate students in specific sexual beliefs and values. Rather, education for sexual responsibility should provide accurate information and encourage students to formulate—and act on the basis of—justifiable beliefs and values of their own.

Of particular concern in recent years have been abstinence-only curricula and associated regulations aimed at restricting education about birth control. Students should indeed be informed that abstinence is the only certain way to avoid pregnancy and sexually transmitted diseases. In deliberately and systematically omitting other relevant information, however, abstinence-only curricula are inconsistent with the goal of encouraging students to formulate, and act on the basis of justifiable beliefs and values of their own.

Student Freedom of Belief and Expression

Students have a right to believe whatever they believe about matters of sexuality and to maintain or change their views

as they deem appropriate. Educational institutions may present alternative views but may not require belief in those views. Students have a right to express their views even if those views are deemed inconsistent with what the school is trying to communicate. Students may be evaluated and graded with regard to their understanding of curricular material but not on the basis of their agreement with particular viewpoints.

Example: A student in a psychology class argues that gays can be “cured” through psychotherapy. The instructor may tell the class that most psychologists disagree with this view and may explain the evidence against it, but the student should not be ridiculed or penalized for maintaining this view.

Some educational contexts, such as school libraries and school newspapers, provide a forum for students to pursue topics of their own. Such topics should not be restricted simply because they may create controversy. The school may, however, clarify its nonendorsement of views and values that it does not hold.

Example: A student writes an article about gay teens for the high school newspaper. The article is deemed by the advisor to meet all journalistic standards but the principal is concerned that it will be controversial and may jeopardize financial support for the school. The principal should not censor the article but may require the newspaper routinely to publish a disclaimer explaining that the paper is a forum for student expression and that views expressed within it are not necessarily those of the school.

Freedom of Inquiry

Sexuality is no less legitimate than any other field of inquiry. It is not consistent with academic freedom to set special restrictions on inquiry with regard to sexual topics.

Of particular concern in recent years have been regulations limiting access to sexual materials on the internet. Academic institutions must recognize sexuality as a legitimate academic topic. Restrictions on the use of computer facilities must be based on written policies that reflect genuine academic priorities in the allocation of scarce resources. Such restrictions, if any, must be viewpoint-neutral and must be enforced consistently with regard to all topics, not just sexuality.

Example: A school library allows students to use a bank of computers to access the internet but restricts access to pornographic sites. This restriction is inconsistent with a commitment to academic freedom. Simply applying the subjective label “pornography” to sexual ideas and materials that some deem objectionable (Continued on Page 4.)

Sexuality and Academic Freedom

(Continued from Page 3)

does not justify special limits on freedom of inquiry with regard to matters of sexuality.

Example: A school library allows students to use a bank of computers to access the internet but posts a notice limiting each student to 20 minutes if other students are waiting to access a computer. This limitation is neutral with regard to topics and viewpoints and is thus a legitimate restriction on the use of a scarce resource.

Sexual Harassment

Individuals have a right to believe whatever they choose about matters of sexuality and to express their views even if those views are deemed offensive or otherwise objectionable. We have seen numerous cases in which broadly- and vaguely-worded sexual harassment policies effectively create a right not to be offended with regard to sexual matters. It is inconsistent with academic freedom to limit freedom of expression to the expression of ideas that will not be deemed offensive. We see no reason why sexuality requires a special exception to the right to hold and express ideas that others find offensive.

Harassment, strictly defined, is a pattern of actions specifically directed against a particular individual with the intent of humiliating, or otherwise harming that individual. Thus defined, harassment is not protected by norms of academic freedom regardless of the sexual content of any ideas that may be expressed as part of the act of harassment.

Example: A student in the course of class discussion expresses the view that homosexuality is sinful and disgusting, whereupon a second student claims that the views of the first are stupid and offensive. Each student has a right to hold and express his or her view. Teachers may and should encourage civil discussion, but must not use censorship to require this.

Example: A student repeatedly targets another student with epithets that the second clearly finds upsetting,

even after being asked to stop. This is an act of harassment whether or not the epithets are sexual.

Equal Opportunity

All members of an academic community have a right to enjoy the benefits of academic freedom regardless of their actual or perceived sex, gender, or sexual orientation. Teachers and administrators must not discriminate on the basis of such characteristics and should encourage students to respect each other in this regard.

Expressing a view that members of certain demographic groups find offensive is not in itself an act of discrimination, even if the expression is sexual in content. Although sexual harassment regulations are typically intended to protect women, our experience has been that broadly- and vaguely-worded sexual harassment regulations are routinely used against the most vulnerable members of an academic community, including women and sexual minorities. As discussed above, acts of harassment may and should be forbidden, but harassment must be strictly defined so that it does not include the mere expression of offensive sexual ideas.

Sexual Orientation

Several of the examples used in this policy statement involve sexual orientation. This reflects the reality that a large proportion of the complaints and concerns that come to our attention involve sexual orientation. The fact that issues of sexual orientation are controversial in our society does not justify censorship. On the contrary, recognizing that the urge to restrict intellectual freedom is always strongest with regard to controversial matters, school authorities should be especially vigilant in protecting intellectual freedom with regard to matters of sexual orientation.

This statement, approved on April 8, 2000, is based on the Principles of Academic Freedom adopted as the guiding policy of the Academic Freedom Coalition of Nebraska (AFCON) on September 11, 1999. Queries may be directed to David Moshman, AFCON Policy Coordinator, Educational Psychology, University of Nebraska, Lincoln, NE 68588-0345. E-mail: dmoshman1@unl.edu

FOR SALE BY AFCON

Send orders to Mel Krutz, 2625 Bluff Road, Seward, NE 68434-9801

T-shirts with a Paul Fell "banned books" design; Sizes M, L, XL, XXL, XXXL; \$15.00. Packaging and postage: \$2.00 each.

Note cards with a Paul Fell design; \$1.50; four for \$5.00. Packaging and postage: \$0.75 per packet.

Reader's Theatre Script of a TANGLED ISSUE: Student Freedom of Expression. \$10.00 buys the book with rights to duplicate the script and produce the play. Packaging and postage: \$2.00 each.

AFCON SPEAKER'S BUREAU (As of June 2000)

Dwayne Ball: "Threats to Academic Freedom at Universities"
3120 Jasper Ct., Lincoln, NE 68516
dball@alltel.net

Linda Beckstead: "Freedom of Student Press Issues"
3919 Davenport, Omaha, NE 68131
becksteadl@aol.com

John Bender: "The Nebraska Student Freedom of Expression Bill"
3609 S. 20 St., Lincoln, NE 68508
jbender@unl.edu

Spencer Davis: "Academic Freedom on the College Campus" and "Principles of Academic Freedom"
512 Laurel Circle, Bellevue, NE 68005
sdavis@bobcat.peru.edu or ssdavis@uswest.net

Bob Haller: "Money Talks: Ideas in the Political Process" and "Religion, Intellectual Freedom, and the University"
4000 S. 56th St., 393C, Lincoln, NE 68506
rhaller@unl.edu

Jeff Lofthus: "Surveying Censorship in Nebraska"
1220 Hayes Ave., Norfolk, NE 68701
jlofthus@pluggers.esu8.k12.ne.us

Mel Krutz: "So, When the Supreme Court Says Yes to Censorship, What Do You Say, Dear?" and "Current Nebraska Censorship Issues and Why They Matter"
2625 Bluff Rd., Seward, NE 68434
mel34938@navix.net (soon to be mel@alltel.net)

Carol MacDaniels: "Street Language and Student Writing"
4740 Grassridge Rd., Lincoln, NE 68512
cmaddani@unl.edu

David Moshman: "Nature and Purpose of Academic Freedom;" "General Principles of Academic Freedom;" "AFCON Policies;" "Intellectual and First Amendment Rights of Adolescents;" "Intellectual and First Amendment Rights of Students;" and "Intellectual Freedom and Intellectual Development"
1901 Pepper Ave., Lincoln, NE 68502
dmoshman1@unl.edu

Presentation of the Readers' Theatre production of A Tangled Web: Student Freedom of Expression (a cast of adults and students)

AFCON Questions Recommendation to Fire UN-L Professor Karl Reinhard

On March 20, a special committee of the UN-L Academic Senate recommended to James Moeser, UN-L Chancellor, that Professor Reinhard be dismissed for professional misconduct related to his research with Native American remains. Professor Reinhard provided AFCON with a copy of the committee report and the AFCON Board of Directors voted 6-1 at its regular April 8, 2000, meeting to send the Chancellor a memo questioning this recommendation. Since then, a university official has told Professor Reinhard that there are serious doubts about the committee's recommendation to dismiss him and that an outside attorney has been appointed to investigate whether his due process rights have been violated.

AFCON's concerns in this case include not only due process issues but substantive issues related to academic freedom in research and teaching. Excerpts from our memo to the Chancellor appear below. The full memo can be obtained from AFCON Policy Coordinator David Moshman (e-mail: dmoshman1@unl.edu). A statement from the dissenting member of the AFCON Board also appears in this issue of

the *Sentinel*.

On May 11, we received the following e-mail message from Professor Reinhard regarding his ongoing work with the Omaha tribe: "I greatly appreciate the efforts of AFCON. That support has made me more or less comfortable with posting 'Learning from the Ancestors' on the web. This is part of a project between myself, the Omaha Tribe Historian, and the Macy Community College Director, to write a short book on Omaha history for the high school and college. . . . Please take a look at <<http://www.unl.edu/ancestors/>>. It is mainly due to the support of AFCON and other faculty that I feel up to taking the hassle that the page will generate. Thanks."

April 10, 2000

To: James Moeser, UN-L Chancellor

From: David Moshman, AFCON Policy Coordinator

Re: Recommendation of the ARRC Special Committee to terminate the continuous appointment of Professor Karl Reinhard [. . .]

(Continued on Page 6.)

Professor Karl Reinhard

(Continued from Page 5.)

AFCON supports the authority and responsibility of faculty committees to make professional judgments regarding charges of professional misconduct against individual members of the faculty. Thus we would normally urge administrative deference to the recommendation of a faculty committee, such as the ARRC Special Committee, that addressed specific charges of professional misconduct with regard to written standards, as this committee did.

AFCON is extremely concerned, however, about the recommendation to dismiss Karl Reinhard. We believe that the Committee making this recommendation did not show due regard for the serious academic freedom issues involved in this case. Specifically, as discussed below, we have concluded that (1) some of the charges brought against Professor Reinhard should not have been investigated; (2) some of the charges were improperly investigated; (3) the entire investigation was tainted by damaging testimony, evidence, and discussion relevant only to the above illegitimate and improperly investigated charges; (4) the entire investigation showed a remarkable insensitivity; and (5) the investigation was seriously compromised by procedural ambiguities and irregularities.

1. Charges that should not have been investigated.

Riding In/Yellow Bird Charge #11: “Reinhard transmitted his unethical and immoral values to his students in violation of UNL policy and Native government policy.” The Committee apparently heard testimony leading it to conclude that “Reinhard’s actions might have been perceived as a negative model for professional conduct by his students,” that “he set a bad example,” and that he “had frequently disparaged the work of some of his colleagues to graduate students.” On this basis he was found guilty of the charge by a vote of 3-2 (with one abstention.)

The Committee appears to have operated on the assumption that UNL has a policy that forbids faculty to transmit unethical or immoral ideas or values to their students. Such a policy presumably permits formal action against faculty who, in the presence of students, express or model ideas or values that are deemed by others to be unethical or immoral. If UNL had no such policy, there is no basis for action on this charge. If UNL does have such a policy, that policy is inconsistent with a commitment to academic freedom. Students construct their ideas and values through active processes of reflection and discussion in contexts of intellectual freedom. Faculty must not be penalized for exposing their students to ideas and values that some individuals or groups deem objectionable.

UNL policy should protect the right of faculty to express and model their ideas and values. Even if others object to what they think students are learning. Charge #11, even if true, does not identify any faculty behavior that can be a legitimate basis for punitive action. This charge should have been dismissed without investigation. [. . .]

2. Charges that were improperly investigated.

Riding In/Yellow Bird Charge #13: “In violation of UNL policy, Professor Reinhard created a hostile environment where Native faculty, staff, and students have serious mental anguish that he could physically harm them.” We presume it would be, and believe it should be, contrary to UNL policy for any member of the UNL community to make a credible threat of physical harm to another. Certainly any member of the UNL community who has been physically threatened by another should be able to bring a charge against the individual who threatened him or her.

In the present case, however, there are two major problems that the Committee apparently failed to consider. First, it appears that neither of the complainants claims to have been threatened by Reinhard with physical violence raising questions about whether UNL policy permits third-party complaints (in which person A alleges that person B harmed person C.) Second, even if third-party complaints were legitimate, there does not appear to be any specific allegation that Reinhard threatened to physically harm any particular individual, much less evidence to support such an allegation. Upon preliminary analysis, then, this charge devolves into a vague claim that Reinhard was responsible for a “hostile environment” at UNL. Reinhard was found guilty of this charge by a vote of 3-1, with 2 abstentions. [. . .]

3. The entire investigation was tainted by damaging testimony, evidence, and discussion relevant only to the above illegitimate and improperly investigated charges.

The Committee heard a great deal of testimony about Reinhard’s attitudes and statements, about perceptions that UNL is hostile to Native Americans, and about Reinhard’s alleged responsibility for these perceptions. Most or all of this testimony was not relevant to any legitimate charge against him.

The Committee indicates, for example, that it “heard stirring testimony from Native students about how vulnerable they felt at the University” (Riding In/Yellow Bird Charge #13.) We do not doubt that UNL has a legitimate interest in these perceptions and a serious obligation to respond to them. With respect to the present investigation of professional misconduct, however, this testimony has no relevance to any legitimate charge. (see point #2 above.) Similarly, the Committee’s improper investigation of Miller Charge #5 led it to observe that Reinhard “said and did things that seemed reprehensible to the majority.” We believe the extensive consideration of emotional testimony irrelevant to any legitimate charge improperly poisoned the atmosphere of the hearings and undermined the objectivity of the Committee. This casts serious doubt on the Committee’s conclusions even with regard to those charges that may indeed have merited serious investigation.

4. The entire investigation showed a remarkable insensitivity to academic freedom, freedom of expression, and First Amendment rights. (Continued on Page 7.)

Professor Karl Reinhard

(Continued from Page 6.)

In its consideration of the above charges related to Reinhard's attitudes and values and his communication of these attitudes and values to students, the Committee does not appear to have considered his First Amendment right to freedom of belief and expression or his academic freedom to teach what he believes. People have a right to believe what they believe; restrictions in expression and teaching must be specifically acknowledged, circumscribed, and justified. The First Amendment does not include a right to make death threats, for example, but this does not mean an individual can be punished for all manner of threats and hostile statements without any regard for freedom of expression. The Committee does not appear to have recognized this.

The same considerations apply with respect to the charges related to Reinhard's research. Academic freedom does not provide an absolute right to do any research one pleases, but respect for academic freedom does require that restrictions on research be specifically acknowledged, circumscribed, and justified. Researchers must not violate the rights of human research participants, for example, but academic freedom requires that IRB restrictions on research be based on clear and justifiable criteria directly related to specific rights of those who will be invited to participate in the research. The presumption is that research may not be restricted or punished except in clearly specified and justifiable ways. [. . .]

5. The investigation was seriously compromised by procedural ambiguities and irregularities.

Although the present analysis has focused on issues of intellectual freedom with regard to belief, expression, teaching, and research, we also wish to raise two sets of procedural concerns. First, it is unclear whether the ARRC Special Committee was the proper faculty forum for these complaints. The protection of academic freedom requires procedural clarity about who may charge whom with what, and in what forum. The Committee appears to have brushed aside serious ambiguities in this regard.

In addition, there appears to be a serious question about the decision of the Committee to exclude from consideration relevant documents supplied by Reinhard. The Committee indicates that Reinhard "chose not to supply any documents until several weeks after the deadline" (p.1.) It is unclear, however, just when Reinhard provided his documents to the Committee and whether he indeed forfeited his right to have his documentation considered by the Committee.

Conclusions and recommendations

1. The procedural ambiguities and irregularities discussed in point #5 may have fatally compromised this investigation. Even if the concerns raised in point #5 could be resolved, however, the report of the ARRC Special Committee still provides no basis for punitive action. Even if the ARRC Special Committee was the proper faculty forum for the present charges and all admissible documents were fully considered, the entire investigation was tainted by damaging testimony, evidence, and discussion relevant only to several illegitimate and improperly investigated charges (see points 1-3 above) and showed remarkable insensitivity to academic freedom, freedom of expression, and First Amendment rights (point #4.) We recommend that you either dismiss the charges against Professor Reinhard or refer this matter back to the Academic Senate for reconsideration by a new, and properly, instructed committee.

2. Whatever Professor Reinhard may be guilty of, if anything, UNL is clearly guilty of an abusive investigation into his beliefs, values, teaching, and research that went far beyond any legitimate charge against him. We think UNL should frankly acknowledge this and take responsibility for the psychological harm done by this investigation.

3. We do not know what sort of orientation, training, or instructions are received by ARRC special committees, but we urge that this be investigated and that steps be taken to insure that all UNL committees that hear charges against individuals are knowledgeable about and sensitive to academic freedom, freedom of expression, and First Amendment rights. AFCON would be happy to assist in addressing this.

Reservations about the AFCON Statement in the Reinhard Case

By Bob Haller, AFCON Board member

My reservations about the AFCON statement on the Reinhard case arise from my double perspective in Academic Freedom. The perspective represented in the AFCON statement regards Academic Freedom as something belonging to an individual, much like and in many cases identical with the First Amendment right to Freedom of Expression. My second perspective is that of a member of the Professoriat and of a University Faculty for whom Academic Freedom is something belonging to the Faculty and the Institution. It is the right of the faculty to do its own hiring and firing and to control by its own methods and procedures the exchange of ideas within the profession.

No one, for instance, has claimed that the possession of an idea entitles anyone in Academe to promulgate that idea. Research papers are submitted for peer review and their publication is a sign that other persons in the profession have found the work and the ideas sufficiently plausible within the methodology and traditions of the discipline to be published in the particular venue in which it appears. We can in the profession make judgments of quality and these in turn may influence who gets jobs, grants, and the like to produce other ideas within the profession. We train our students to master the discipline under our direction, and we believe that our control of the disciplines has been and is (Continued on Page 8.)

Reservations about the AFCON Statement on the Reinhard Case (Continued from Page 7.)

responsible for the enormously productive and interesting research that our institutions carry out.

That is why we guard jealously our right to make personnel judgments, to hire, promote, reward, grant tenure, and provide special recognitions for our own. Similarly, we guard our right to determine the requirements for graduation within our departments and colleges and to specify the courses that will count toward the degrees we grant. Academic Freedom and Tenure make sense only within the context of an independent professoriat empowered to develop procedures and standards for the operation of the institutions in which we work.

I was I believe the first Chair of the Professional Conduct Committee at the University of Nebraska and I chaired its hearings during the first three years of its operation. I at the time wrote most of the rules and procedures for the Committee. I observed that the complaints brought to the Committee seemed rather ad hoc, and looked for standards, written standards if possible, upon which to base our judgments. Finding none, I recommended that the Faculty write and approve a Statement of Professional Ethics. The AAUP itself had come out with such a statement in 1966, but it did not cover all the points I thought necessary.

The University of Nebraska Faculty Senate later issued such a document, and it contained many sound principles of academic life. Similarly, other standards were promulgated by the various national disciplinary organizations, and other kinds of standards were embodied in national and institutional regulations dealing with research on human subjects and research using human remains.

The UNL Statement on Professional Conduct contains the following clause: In our research and in our teaching we give fair consideration to conclusions and theories not in agreement with our own. Only if we all respect and defend free inquiry, only if we all disseminate facts and ideas, only

if we all credit and assess the work of others fairly and rigorously, only under these conditions can the academic community grow and develop to its full potential.

This standard is invoked in the Committee report. While it is certainly possible that some positions deserve mockery rather than a surface show of respect, it is certainly also the case that mockery, as a replacement for “fair and rigorous” consideration of opposing ideas can have a chilling effect on students, who realize that a professor may give a low grade or flunk them for taking seriously the object of that mockery. Perhaps there is an absolute standard of Academic Freedom which says that no professor should be sanctioned for mockery. That would be a principle which says that Academic Freedom is absolute, and does not have as its end the growth and development of the academic community itself.

Although the AFCON statement begins with an acknowledgement that the faculty must have the major responsibility for adjudicating complaints about professional misconduct, much of it involves second-guessing the Committee which heard the evidence. I am quite willing to grant that there may be cases in which the rights of Academic Freedom take precedence over standards of professional conduct. The system in place at UNL takes such a possibility into account by making it impossible for the tenure of a faculty member to be removed on the basis of a recommendation contained in a Professional Conduct Committee hearing and report.

What I worry most about is any implication that faculty committees duly constituted, instructed, and advised, should have their findings overturned by a non-faculty agency. The rules at UNL require that if the administration does not accept a committee report, it must convey its reasons to the Academic Rights and Responsibilities Committee and to the Faculty Senate. The AFCON statement supplies reasons which might be used in this context. But its questioning of the competence of faculty to carry out these responsibilities is in my view unfortunate. I have much less trust in the Administration, and have no desire to encourage them to hold faculty opinion in contempt.

Dr. Leo Sartori awarded UNL James A Lake Academic Freedom Award

Professor Emeritus Dr. Leo Sartori made substantial contributions in defense of and in the promotion of academic freedom in numerous roles over his 27-year career at UNL. He is regarded as one of the best informed faculty members on academic freedom issues and due process at UNL. Sartori has contributed his knowledge and talents to safeguard both the collective and individual rights of faculty. His defense of academic freedom has always been based on principle and careful evaluation of facts and not on popularity or self interest. While he is most noted for his defense of the academic freedom and due process for faculty, he also has emphasized the importance of academic freedom for students and has dissented from faculty on this issue.

Remarks by Leo Sartori

With your indulgence I shall reminisce a bit. My professional life goes back a long way—I taught my first class in 1952—and I have seen many diverse challenges to academic freedom. During the 1950’s, the principal challenge was external. It was the era of loyalty oaths, imposed by overzealous state legislatures. Several principled and courageous faculty members left their institutions in protest. These people were not disloyal; the irony was that a disloyal person would probably have had no compunction about signing a loyalty oath. I wonder how I would have reacted if I had been asked to sign one. (Continued on Page 9.)

Many academics were called before the House un-American Activities Committee—the infamous HUAC—or before Joe McCarthy’s equally infamous Senate Committee, and cited for contempt when they refused to answer questions concerning their alleged communist affiliations or to provide the names of colleagues. Universities faced intense pressure from politicians, alumni, and others to fire these individuals. By and large, the pressure was resisted; very few professors lost their positions.

During the 1960’s and early 70’s, the overriding issue before the country was the Vietnam War. The greatest challenge to academic freedom during that period came from the opposite end of the political spectrum; it came from anti-war students (joined by a few professors,) who shouted down their opponents and disrupted the work of the university through occupation of buildings (sit-ins) and other similar tactics. [One such sit-in occurred when I was a faculty member at MIT.] It was a truly surreal episode. The most frustrating part of the entire experience was that we (the liberal faculty) totally agreed with the students that the war was immoral and should be ended. Our tactic, however, was the teach-in rather than the sit-in. We tried hard to maintain a dialogue with the students, to convince them that they were trampling on academic freedom and that their tactics were in any case unlikely to increase public support for their cause, but it was in vain. The students’ argument was, “Would you have defended the academic freedom of Nazi scientists to develop better gas chambers?” Of course we would not have, but one must question whether the student’s analogy was an apt one.

I turn now to contemporary issues. The script today is far less dramatic; no one is smashing doors with battering rams. But difficult academic freedom issues continue to confront us. I would like to address two particular concerns of mine. The first is the academic freedom of students, which at times appears to come in conflict with that of the faculty.

We would all agree, I am sure, that academic freedom is not unlimited. It does not, for example, grant the professor a license to humiliate students, or to subject them to religious, ethnic, or sexual slurs. Does a student have the right not to be made uncomfortable in the classroom? My answer, unequivocally, is no. The teaching mission of the university would be drastically impaired if professors had to avoid saying anything in class that might make some student uncomfortable. I would encourage my colleagues to display sensitivity toward the feelings of students when discussing certain highly-charged issues, although I would oppose any attempt to codify such sensitivity. Students do, however, have the right to a classroom in which they can express their views freely, even when their views differ from those of the instructor. A by-law of the University of Nebraska Board of Regents specifically guarantees that right. How then can we protect academic freedom of students without imposing oppressive speech codes on faculty? There is no easy answer, but I shall make a few suggestions in a moment.

Let me cite an actual case, some years ago I sat on a committee that heard a complaint from a professor who

claimed that grading appeals committees had violated the professor’s academic freedom by changing the grades of two students. The focus quickly shifted from the actions of the grading appeals committees to Prof. X’s conduct of the class. Letters from several students asserted that Prof. X had been consistently hostile toward them, had ridiculed their views, and had maintained a classroom atmosphere that stifled the free expression of student ideas. More than half the class had gone to the ombudsman in desperation. Prof. X conceded that many of the incidents described by the students had in fact occurred but maintained that the incidents were examples of a “confrontational” teaching style, which is protected by academic freedom.

I believe the case illustrates quite clearly the tension between the academic rights of faculty and those of students—the professor’s right to adopt an unconventional teaching style versus the student’s right to a hospitable classroom environment. The students’ evidence, corroborated by Prof. X’s own testimony, constituted a *prima facie* case that the students’ academic freedom had been violated. A professor may employ a confrontational teaching style, but when teaching style clashes with student freedom of expression, the former must give way.

Looking beyond the specifics in this particular case, I am troubled by the fact that students have no voice in the adjudication of a dispute of this nature. No student sat on our committee, and there exists no mechanism for a student to file an academic freedom complaint against an instructor. The system seems to be set up to protect only the academic freedom of the faculty. I suggest that the playing field needs to be leveled. Let the students have the opportunity to accuse a professor of violating their academic freedom and let the students be represented on the committee that hears the case.

The other concern that I want to talk about also relates to a case in which I was personally involved, although it is of a very different nature from the first. I refer to the disturbing trend, primarily in the physical sciences, to have tenure decisions dominated by consideration of external funding. I recognize that scientific research, particularly experimental research, is expensive nowadays; without funding, a scientist will find it very difficult, perhaps impossible, to be a productive researcher. But the paramount criterion in the tenure decision ought still to be the quality of the research and not the amount or the source of the funding. The right to select one’s area of research is one of the bedrocks of academic freedom; young scientists should not feel pressured into pursuing particular areas simply because they are popular with the funding agencies, whose principal agenda is not always the advancement of knowledge. If a researcher manages to be productive even with limited funding, or with funding from unconventional sources, or (heaven forbid!) with funding that does not generate overhead money for the university, that fact should not prejudice the tenure decision. And I am naïve enough to believe that even a professor with a multimillion-dollar grant might on occasion be undeserving of tenure. The tenure decision regarding our junior colleagues is perhaps the most important one that we as faculty have to make. We must guard that prerogative jealously and not surrender it to the funding agencies. Thank you.

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