



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—Nancy Comer

At our July Board meeting, Professor Frank H.W. Edler at Metropolitan Community College Omaha shared his research and a request he had submitted to the University of Nebraska Board of Regents to rescind an injustice that occurred over 90 years ago as a violation of academic freedom. You may be thinking, so what. Why stir up old wounds?

But the title, American Terror in Nebraska: the 1918 State University Professors' Trial, intrigued me, and as I read through the 30 page document Policy Coordinator Dave Moshman provided the AFCON Board beforehand, I was taken with how relevant what happened 90 years ago is today.

Turns out that back then (1915-19) there was no overwhelming majority that wanted to go to war with Germany. An "outraged public" had to be created. This time the fear mongers saw German conspiracies, disloyal German-Americans, and communities filled with spies. (As Board member Dick Herman pointed out, the bias against citizens of Germanic ancestry still exists in Nebraska's Constitution.)

The government, encouraged by President Wilson, enacted the Espionage Act of 1917 and the Sedition Act of 1918. These were extremely repressive measures. Furthermore, the government's right to suppress first amendment rights during war was affirmed by the Supreme Court! Vigilante

groups could work with impunity. Anyone suspected of being a "lukewarm" patriot, could be whipped, tarred, feathered or even lynched.

In May of 1918, as war hysteria swept the nation, a trial began in Lincoln, Nebraska. There were 12 defendants accused of disloyalty, eleven professors and one staff member. Freedom of speech, as noted earlier, was irrelevant. One was expected to be one hundred percent American. In the case of the University professors and staff member, engaging in behavior which was negative, halting, or hesitating in support of the government was grounds for immediate dismissal. Professor George W.A. Luckey, Dean of the Graduate School of Education wasn't convinced about the reason for going to war and had the audacity to say so. Both he and American History Professor Clark E. Persinger were part of the anti-war group, and held responsible for involving the University in public controversy. Agronomy Professor Erwin P. Hopt was an avowed pacifist and would contribute money only to mercy funds like the Red Cross and Salvation Army. At his trial, the prosecutor said "it is difficult for me to follow the processes of reason by which one brings himself in this age to believe in the doctrine of non-resistance. Such a doctrine is inconsistent with modern civilization and leads inevitably to the chaos of anarchy."

(Continued to Page 2)

Upcoming Events

AFCON Board Meetings: **October 11, November 8, December 13, 2008**,
Loren Eiseley Library, 1530 Superior, Lincoln, Nebraska; 10 AM

THE PRESIDENT—Nancy Comer

I mention these three, as all were dismissed from their UNL positions for nothing more than not being 100% behind the war. Another interesting piece of the “Nebraska Terrorism” story is that of another defendant, Annis Chaikin, then Alumni Secretary. She was defended by C. A. Sorensen. They married and became the parents of four sons, one of whom is Ted Sorensen.

We are again engaged in an unpopular war. Nebraska Senator Chuck Hagel has been threatened

and called names by those who think his criticism of the current war is unpatriotic and disloyal to the President. The Democratic presidential candidate, Barack Obama, has been deemed unpatriotic for not wearing an American flag lapel pin. If you resemble a person of Middle Eastern descent, prepare to be pulled aside for further scrutiny at the airport. First amendment rights have been eroded as the Bush administration has been involved in warrantless wiretapping, secret scrutiny of library records and expanding the role of the

national intelligence director’s role. Some fear this authorizes intelligence agencies to focus even more on domestic spying. Today as I read about Solzhenitsyn’s death, I am reminded of the importance of being able to criticize our government and its leaders. Our first amendment rights are precious and vital to a strong democracy; we need to uphold them at all times.

See this page below to read the letter Dr. Edler sent to the University of Nebraska Board of Regents.

Dr. Jim McClurg
Board of Regents
University of Nebraska – Lincoln
3835 Holdrege Street
Lincoln, NE 68583

May 7, 2008

Dear Regent McClurg:

After careful examination of the 1918 loyalty trial of fifteen professors and one staff member conducted by the Board of Regents of the State University of Nebraska in response to the pressure exerted by the Nebraska State Council of Defense from May 28 to June 12, 1918, I respectfully request that you declare the Board’s judgment on June 19, 1918, to be null and void. In addition, I would hope that the injustice of the trial would be recognized and put to rest by a public apology for the dismissal of Professors George W. A. Luckey, Clark E. Persinger, and Erwin P. Hopt. This May 28 will mark the 90th anniversary of the trial that concluded on June 12, 1918.

There are many reasons for the current Board to take immediate action:

- 1) It is in the University’s best interest to recognize and correct past injustices relating to its own history, not just for the sake of healing old wounds but also for the sake of upholding truth and justice as basic principles of the University itself.
- 2) More importantly, the rescinding of the 1918 Board’s decision would affirm the University’s commitment to free speech and academic freedom, a tradition that was essentially eliminated during World War I and the Red Scare.
- 3) The trial was forced upon the University by the persistent threats of the Nebraska State Council of Defense. Without this pressure and the ideology of one hundred per cent American patriotism, there would not, in all likelihood, ever have been a trial.
- 4) The *only* professor dismissed for disloyalty, that is, for behavior that was “negative, halting, or hesitating in support of the government” was Erwin P. Hopt, an avowed pacifist. Hopt, of course, was patriotic in his own way
(See **Edler** Page 3)

(Edler continued from page 2.)

since he did contribute to the Red Cross and the Salvation Army. His pacifist principles simply did not allow him to contribute directly to the war effort. More importantly, he did not try to restrain his son from enlisting; indeed, he understood why his son enlisted and condoned it. To dismiss this professor after long service to the University simply because he expressed his patriotism in a different way is reprehensible.

5) Professors Luckey and Persinger were not dismissed for disloyalty but for making “indiscreet” utterances of such a nature “as to destroy their usefulness to the institution.” In other words, they were dismissed for reasons that had nothing to do with the charge of disloyalty. They were sacrificed by the Board of Regents for the sake of a public war hysteria that demanded dismissals.

6) Professor of Law Henry H. Wilson, who was floor manager of the trial on behalf of the Board of Regents, violated the very principles he himself laid down for the conduct of the trial. He stated in his “Principles and Procedures,” published in the *Lincoln Daily Star*, that the manager was not “in any sense a prosecutor of the charges before us,” and that “the manager will seek neither a conviction nor an acquittal.” In his summation, however, Wilson violated both principles in that he turned into a prosecutor by demanding the dismissal of Professors Luckey, Persinger, and Hopt not just for halting loyalty but also for sedition with which they had not been charged.

7) Although convictions for disloyal speech under the Espionage Act were upheld at that time by the Supreme Court in *Schenck v. United States*, *Frohwerk v. United States*, *Debs v. United States*, and *Abrams v. United States*, the Supreme Court since then has effectively overruled these cases in *Brandenburg v. Ohio* where the Court in a unanimous decision held that “the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe even express advocacy of ‘law violation except where such advocacy’ is likely to incite ‘imminent lawless action.’” In other words, since Wilson’s “bad tendency” construction of the Espionage Act has been overruled by the Supreme Court, it is time to admit that Wilson’s call for the dismissal of all three professors was unjust. A trial under the same conditions today would be considered a travesty of justice.

Enclosed is a copy of my paper on the trial that I hope will explain the reasons for my request in greater detail and a copy of an article entitled “Pardon the Delay” by Charles S. Johnson relating to Montana Governor Brian Schweitzers’s pardons for seventy-eight persons convicted in Montana under the extremely harsh Sedition Act of 1918 during World War I.

As a scholar who deeply loves the University of Nebraska, I trust the Board will take this action immediately, reaffirming the value of constitutional free speech in our democratic society as well as the value of academic freedom as the foundation of higher education.

Many thanks for your consideration.

Sincerely,

Frank H. W. Edler, Ph. D.
Philosophy
Metropolitan Community College
Omaha, NE 68103

908 Elmwood Ave.
Lincoln, NE 68510
(402) 476-4775

Summaries of AFCON Board of Directors' Meetings—Karen Buckley

June 14, 2008—

Present: Tom Black, Marsha Bradbury, Karen Buckley, Nancy Comer, Gerry Cox, Bob Haller, Dick Herman, Laurie Thomas Lee, Cathi McMurtry, Dave Moshman, Susan Oles, Linda Parker, and Rod Wagner.

Minutes: (Buckley). Minutes from the May 10 meeting, were approved upon a motion by Ball and a second by Moshman.

Treasurer's Report: McMurtry distributed copies of the treasurer's report, showing a balance of \$2019.42, with 45 individuals and 13 organizations current with dues. The report was approved following a motion by Paterson and a second by Ball.

President's Report: Comer said that she had asked Jessica Brauer to send a substitute when she cannot attend meetings so that AFCON might have a student perspective on issues. She noted that a new representative is needed for the Nebraska High School Press Association. Comer also called attention to an article in the June 1 *Washington Spectator*, "Using Academic Freedom to Keep God in the Science Classroom" and to a court case involving a California State University faculty member who refused to sign a loyalty oath because it was in conflict with her Quaker belief. Her reinstatement created a precedent to protect the religious liberty of all university employees.

Newsletter: (Black) The next deadline for the *Sentinel* will be August 25 for the Sept. 19 issue. Haller had printed copies of the most recent newsletter available.

Policy Coordinator: Moshman brought up a recent City Council/Mayor agreement that gives the mayor the right to hire a library director with input from the library board and the City Council. The key change is that the mayor cannot fire the library director without the permission of the library board. The mayor was actually given the right to hire the city library director 50 years ago, contrary to the Nebraska statute which states that library boards are to appoint the director.

Membership Reports: Members shared what they have learned about their respective organization's policies or lack thereof on academic freedom.

Old Business: Paterson requested that AFCON outreach to other organizations be revisited in the fall.

Parker distributed draft copies of Archives Policy of Academic Freedom Coalition of Nebraska. She suggested that the secretary consulting with the president be

responsible for coordinating annual deposits to the archives or that a historian, who would be appointed by the president, would assume this duty. The archive policy will be discussed further at the September meeting.

New Business: Paterson requested that a discussion of Academic Freedom's relationship with Affirmative Action be held, especially if the Affirmative Action petition becomes a ballot issue.

Ball said that Linda Beckstead, former AFCON board member, has volunteered to be on the panel. He has also contacted Kansans who were instrumental in implementing anti-Hazelwood legislation to see if they would participate in the panel discussion at the annual meeting. Following motion by Ball, second by Parker and a friendly amendment by Moshman (seconded by Ball), the board gave Ball the discretion set the date for the annual meeting as either Nov. 8 or 15th, depending on speakers' and facility availability. Ball will formalize plans for the meeting to be at the Beacon Hills Restaurant.

AFCON members will revisit the fee structure for the annual meeting at the July meeting.

July 12, 2008—

Present: Nancy Comer, David Moshman, Tom Black, Gerry Cox, Robert Brooke, Bob Haller, Cathi McMurtry, Dick Herman, Frank Edler, Guest. Robert Haller, acting secretary

Agenda and Minutes: Approved.

Treasurer's report. Presented by Treasurer Cathi McMurtry: Accepted.

President's report: Comer reported on attempts to get a student representative and a representative for NHSPA. Currently the matter is in the hands of John Bender.

Sentinel: Deadline for copy for the September 19 *Sentinel* is August 25. Black passed around two plaques presented in Washington, D.C., by NEA-Retired recognizing his editorship of the *NSEA-Retired Advocate* and the *NSEA-Retired Corner*.

Policy: Dave Moshman introduced Frank Edler, author of a paper on the 1918 hearing which resulted in the firing of three University of Nebraska faculty members for insufficient enthusiasm for the war. Edler distributed a letter to the Regents asking that this finding be rescinded as a violation of academic freedom. He read a letter from Ted Sorensen responding to a request for help in this case; Sorensen declined direct help because his mother Annis Chaikin had

been a defendant and his father C.A. Sorensen had defended her (prior to their marriage), but hoped the move would be a success.

A discussion followed which dealt with the English Only provision in the Nebraska Constitution, the removal of exceptions from the *habeas corpus* section, the AAUP participation in the Nebraska case and the war hysteria.

Elder reported that his only response to the letter so far was an acknowledgement from Regent Hassebrook, who said that the matter had been referred to the University attorney.

A discussion followed concerning means of reporting the issue to the public and the possible allies and supporters.

Moshman moved and Black seconded a motion to the effect that AFCON support the effort to bring about the reversal of the Regents' 1918 decision.

Discussion which followed pointed out that the issue was still relevant, as manifest in the difficulties in bringing Professor Waskar Ari to Nebraska, since his visa was held up presumably on the ground of his connection with anti-American groups.

The motion was approved. The *Sentinel* will publish the letter to the Regents following upon an explanation of the issue in the President's report.

Legislation: no report

Membership reports: It was reported that the Nebraska Library Assn had no statement on Academic Freedom

Robert Brooke, reporting for the Nebraska Writing Project, noted that the AFCON web site is text only and is not entirely clear about how to contact and get support in cases of the violation of Academic Freedom. Comer noted the difficulties of trying to get people to speak up about their grievances.

Gerry Cox reported that the Writers Guild was also improving its web site.

Nancy Comer announced the Reading Association meeting July 29-30, with Peggy Adair making a report on the Student Free Expression Bill on the 30th.

Old Business: Those with items to be archived were urged to identify these materials and prepare to submit them.

Outreach: Apparently Paterson and Parker have not had time to work further on this matter.

Brooke suggested that he would be the representative of the Nebraska Writing Project rather than the UNL AAUP, after securing membership for NWP.

AFCON SPEAKER'S BUREAU (As of December 2007)

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

Dwayne Ball: "Threats to Academic Freedom at Universities"
adball@neb.rr.com

Bob Haller: "Civics Education and the Practice of Freedom" and "How Books Can Harm You: Lessons from the Censors"
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
dmoshman1@unl.edu

Laurie Thomas Lee: "Implications of the USA Patriot Act"
llee1@unl.edu

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

ADDRESS FOR THE AFCON WEB SITE <http://www.AFCONebr.org>

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; Study our Publications, Principles, and Statements

FOR SALE BY AFCON

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

Note cards with a Paul Fell design with the wording "When all Books are Banned, see the Book— \$1.00;" \$1.50 each or a packet of four for \$5.00. Packaging and postage: \$0.75 per packet.

Reader's Theatre Script (a booklet,) entitled TANGLED ISSUE: Student Freedom of Expression. \$10.00 buys the booklet and production rights, including rights to copy. Packaging and postage: \$3.00.

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 **December 20, 2008**, issue is **November 24, 2008**.

Send to Tom Black, editor, 610 West Park, West Point, NE 68788 or wpc6296@cableone.net

University reports—Dwayne Ball

My sources for these reports are the Chronicle of Higher Education (CHE) the newsletters of the Foundation for Individual Rights in Education (FIRE), and other sources as noted.

FREEDOM OF EXPRESSION ON CAMPUS

You can't read THAT book on THIS campus! Last November, at Indiana University-Purdue University at Indianapolis (IUPUI), 58-year old student and janitorial employee Keith Sampson was taking a break in the break room. He was reading a book, "Notre Dame versus the Klan: How the Fighting Irish defeated the Klu Klux Klan." It was about an incident in 1924 in which Notre Dame students fought a street battle with the KKK, and features a Klan cross-burning on its cover. Two black co-workers found Mr. Sampson reading the book and filed a complaint against him for "racial harassment." Did we mention that the book is anti-Klan? Naturally, the Affirmative Action Office at IUPUI moved into high gear, and Mr. Sampson received a judgment to be placed in his personnel file that he was guilty of racial harassment for (gasp) "openly reading [a] book related to a historically and racially abhorrent subject," and at a university, no less. Under pres-

sure from FIRE, the ACLU, and the press, a retraction was issued in February, but no apology to Mr. Sampson. Then, the AA office attempted its revenge, claiming publicly that Mr. Sampson was guilty of other, unspecified, secret charges, which justified the now-retracted finding against him. Finally, under further public pressure, the University apologized for the whole business, in July, in writing, to Mr. Sampson. (FIRE newsletter of 7/8/200, the Wall Street Journal of 7/9/2008, and the NY Times of July 14, 2008).

A blow against the Bong Hits 4 Jesus decision, speech codes, and political correctness! In 2002, Christian DeJohn entered Temple University to work on a masters degree in history. Mr. DeJohn was in the Pennsylvania National Guard, and was shortly called up for action in Bosnia. Upon returning, he had very definite opinions about the suitability of women as soldiers. However, when returned to his studies, he felt that he could not express those opinions when the subject came up in a history class, because of the Temple University Code of Conduct for students, which contained the usual sorts of phrases that threaten dire action against anyone for uttering anything that anyone finds offensive on the basis of race and sex. Mr. DeJohn sued Temple for violation of his constitutional rights (a chilling environment for free expression), and the case made its way up-

ward in the court system. On August 4, 2008, a 3-judge panel of the U.S. Court of Appeals for the Third Circuit (one step below the U.S. Supreme Court, covering PA, NJ, and DE), sitting in Philadelphia, unanimously told Mr. DeJohn he was right and Temple was wrong.

The *DeJohn v. Temple Appeals Circuit* case is important to academic freedom, because the decision references the apparently disastrous *Morse v. Frederick* case of 2007, in which the U.S. Supreme Court declared that a high school student holding a "Bong Hits 4 Jesus" sign during a school event (but off-campus) could be disciplined by the school. Temple tried to claim that the *Morse* decision authorized a *university* to control speech on campus. The Circuit Appeals court explicitly denied that the *Morse* case so applied, ruling that (as the U.S. Supreme Court *may* have intended but did not make as clear as it could) the *Morse* decision was a narrow one, applying only and specifically to a high school censoring the advocacy of illegal drug use at a high school event, not to universities in apparently any way whatsoever. The court is actually, in a roundabout way, recognizing the existence of academic freedom in universities as a legal right of the students.

(See **Reports**, page 7.)

(Reports, from page 6)

The *DeJohn v. Temple* case is further important because it renders all university speech codes vulnerable unless they specifically use the standard written by U.S. Supreme Court Justice Sandra Day O'Connor in the *Davis v. Monroe County Board of Education* case of 1999. According to that ruling, harassment must be so "severe, pervasive, and objectively offensive ... that the victims are effectively denied equal access to an institution's resources and opportunities." In other words, a university speech code cannot threaten punishment of mere expression of opinion, *even if directed against a single individual on the basis of his or her race or sex*, unless the expression meets the *Davis* standard. Alleged "victims" must now prove that repeatedly hearing someone's opinion regarding race or sex is so debilitating that they are damaged in their ability to complete their studies. So, vigorous, and even personal, argument over an academic point is now grounds for punishment only if it meets a very strict and narrow standard. Many speech codes across the U.S. are now in jeopardy.

Mr. DeJohn, who was supported by amicus briefs from FIRE, the ACLU, the Christian Legal Society, Feminists for Free Expression, the Individual Rights Foundation, Students for Academic Freedom, and the Student Press Law Center, was awarded one dollar in damages, the satisfaction of seeing Temple's unconstitutional speech code crumble along with, in all likelihood, many more. (FIRE newsletter, 8/4/2008, CHE 8/5/2008 and 8/8/2008).

ACADEMIC FREEDOM IN THE CLASSROOM

You can't say THAT word in the classroom! Brandeis political science professor Donald Hindley uttered the excruciatingly horrible and damaging word "wetback," in a classroom discussion on the origin and political meaning of that very word, in the early Fall of 2007. Of course, a student found the word offensive, and filed a complaint, and of course, Dr. Hindley was reprimanded for racial harassment and – as an inducement to watch his mouth in the future – was graced with a university-appointed monitor to sit in on all his classes. The

Brandeis administration considerably gave him an hour's warning before the monitor appeared. Dr. Hindley appealed to his colleagues on the Faculty Rights and Responsibilities committee, who faulted the university for violations of his academic freedom and due process, and recommended retraction of the reprimand and the monitor. The Brandeis administration refused and declared the matter closed. The Brandeis faculty revolted (in an academic sort of way), with letters, speeches, opinion pieces, Faculty Senate resolutions unanimously withdrawing support from the university harassment policy and suspending all future hearing of cases against faculty, and so on, which continue. The Brandeis administration has its back up against the wall and is spitting like a cornered cat, as of this writing. Should you like to participate in a campaign to awaken the Brandeis administration to academic freedom in this case, go to <http://www.thefire.org/index.php/article/9503.html> and find a model letter from FIRE to the Brandeis president (FIRE newsletter of 7/23/2008). Check the FIRE website first to see if there have been any developments.

MARK YOUR CALENDAR; ATTEND BANNED BOOKS WEEK ACTIVITIES

AFCON, along with ACLU Nebraska and the Nebraska Library Association, will be celebrating Banned Books Week September 27 through October 4th. The week recognizes the freedom to read and the importance of that freedom in the face of censorship in such places as our schools and libraries. Readings from challenged books and other activities are tentatively planned for Omaha and Lincoln. **More information, including this year's "One State, One Banned Book" selections, will be posted on AFCON's website: <http://www.AFCONebr.org>**

AFCON

515 North Thomas Avenue
Oakland, NE 68045.

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ACADEMIC FREEDOM COALITION OF NEBRASKA

HELP AFCON PROMOTE ACADEMIC FREEDOM

As a member of AFCON, you can help us

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

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

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

Individual Membership (\$15) provides newsletter subscription, eligibility for office and for chairing standing committees, reduced rates for AFCON conferences, and one vote at annual meetings.

Student Membership (\$5) entitles full-time students to the same privileges as provided by the Individual Membership.

**AFCON ORGANIZATIONAL MEMBERS, PLEASE DUPLICATE THIS NEWSLETTER FOR YOUR MEMBERS.
INDIVIDUAL MEMBERS, PLEASE PASS THIS NEWSLETTER TO A FRIEND AFTER YOU HAVE READ IT.
ENCOURAGE HIM OR HER TO JOIN AFCON**