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# Academic Freedom and Tenure: University of Nebraska–Lincoln<sup>1</sup>

(MAY 2018)

The report of the investigating committee concerns the administration's actions to suspend from her teaching responsibilities—initially, for stated safety concerns—a sixth-year doctoral student with a part-time appointment as lecturer for the 2017–18 academic year. The lecturer, Ms. Courtney Lawton, received threats after a video recording of her participation in a demonstration protesting an on-campus recruitment table for Turning Point USA was disseminated on the internet. The administration subsequently extended Ms. Lawton's suspension through the end of her term of appointment, for stated reasons of misconduct but without affording her an appropriate hearing.

## I. The Institution

The University of Nebraska was founded in Lincoln in 1869 as a land-grant university under the 1862 Morrill Act. In the words of distinguished University of Nebraska folklorist and AAUP charter member Louise Pound, “the primary purpose of the founders of the University was to provide a liberal or cultural education for the youth of the state, in order to make of them—as it has made of them—more rounded

and valuable citizens.” In 1969, the Lincoln campus became part of the University of Nebraska system, which now consists of four institutions, with additional campuses in Omaha and Kearney as well as a separate medical center in Omaha. The members of the governing board, the Board of Regents of the University of Nebraska, are directly elected in eight regional districts and serve six-year terms. The board also includes four nonvoting student regents, one from each campus, who serve concurrently as student body presidents. The University of Nebraska–Lincoln enrolls about 26,000 students, served by 1,800 full-time and 120 part-time faculty members. The institution, which first gained regional accreditation in 1913, is currently accredited by the Higher Learning Commission.

The president of the University of Nebraska system is Dr. Hank M. Bounds, who most recently had been commissioner of higher education for the Mississippi Institutions of Higher Learning; the chancellor of the Lincoln campus is Dr. Ronnie D. Green, previously the system's vice president for agriculture and natural resources; and the executive vice chancellor and chief academic officer is Dr. Donde Plowman, previously dean of the College of Business Administration at the Lincoln campus.

## II. The Case of Ms. Courtney Lawton

On August 25, 2017, Ms. Courtney Lawton noticed that the organization Turning Point USA (TPUSA) had set up a recruiting table on campus. In the words of the “About Us” section of the TPUSA website, “Turning Point USA is a 501(c)3 non-profit organization founded on June 5, 2012 by Charlie Kirk. The organization's mission is to identify, educate, train, and organize students to promote the principles of

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1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the staff and, as revised with the concurrence of the committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty member at whose request the investigation was conducted, to the administration of the University of Nebraska–Lincoln, and to the faculty members interviewed by the committee. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

freedom, free markets, and limited government. Since the founding, Turning Point USA has embarked on a mission to build the most organized, active, and powerful conservative grassroots activist network on college campuses across the country.” TPUSA is perhaps best known for the Professor Watchlist website, the stated mission of which is “to expose and document college professors who discriminate against conservative students and advance leftist propaganda in the classroom.” The person staffing the recruitment table was Ms. Kaitlyn Mullen, an undergraduate student, although Ms. Lawton reports that Ms. Mullen did not identify herself as such.

Ms. Lawton gave the following account of what happened next: “I said, ‘Hi, Faschie Barbie,’ as I walked by. [Ms. Mullen] laughed. I went up to my office . . . to make a sign to protest Turning Point USA with my own materials. The sign read, ‘Just say NO! to NEOFASCISTS.’” Ms. Lawton reports, “I then went down to stand in front of the TPUSA table with my sign. . . . First I stood with my sign in front of the table, maybe a meter in front of the table. I started chanting ‘No KKK! No Neo-Fascist USA!’ . . . [Ms. Mullen] came out from behind the table and started taking my photograph and filming me as I chanted. . . . I believe that she did this to intimidate me. I flipped her off. I also said, ‘Take a picture, it will last longer.’” Later, Ms. Lawton called Ms. Mullen “a neofascist Becky” and shouted, “Fuck Charlie Kirk.”

Ms. Lawton was at different times joined by other students and faculty members. Dr. Amanda Gailey, an associate professor of English, subsequently participated in the demonstration, though at a distance from both Ms. Lawton and Ms. Mullen. After some time passed, Professor Gailey pointed out to Ms. Lawton that Ms. Mullen had begun to cry. Although Ms. Lawton states that she “never addressed [her] shouting” at Ms. Mullen herself but was instead “noisily protesting [Ms. Mullen’s] organization,” Professor Gailey suggested to Ms. Lawton and a student who was also participating in the demonstration that perhaps they should “tone down” their protest. At that point, Ms. Lawton reported that she stopped shouting and instead held her sign in silence. According to Ms. Lawton’s and Professor Gailey’s respective accounts, the demonstration ended at 3:00, when Ms. Mullen packed up her table and the two faculty members departed.

Within a few hours, Campus Reform, a conservative student news outlet, and similar websites posted the video taken by Ms. Mullen, who had sent it to

a TPUSA colleague shortly after the protest ended. Within hours, Ms. Lawton and the administration began receiving numerous online threats and other forms of harassment along with, in the administration’s case, calls for Ms. Lawton’s dismissal.

The administration reacted quickly to the release of the video and the resulting media storm. On Saturday, August 26, the day after the protest, Executive Vice Chancellor Plowman sent an email message to Dr. Joseph Francisco, dean of the College of Arts and Sciences, requesting information about faculty involvement in the incident. Over the weekend, Executive Vice Chancellor Plowman and Chancellor Green also spoke with Ms. Mullen by telephone. On August 28, Dean Francisco held a lengthy meeting with faculty members involved in the incident, including Professor Marco Abel, the chair of the English department. Following that meeting, the dean sent the executive vice chancellor a report describing the conduct of Ms. Lawton and Professor Gailey, together with an email message from another faculty member outside of the college who had witnessed many of the interactions at the protest and who had contacted Dean Francisco separately. According to the dean, this report corroborated what the participants themselves had told him.

On August 28, President Bounds posted on Twitter that the behavior of the “UNL faculty member” was “unprofessional” and “not in keeping with the standards of conduct.” The tweet intensified the social-media furor over the released video and brought a new flood of angry email messages, many of which included threats of violence against Ms. Lawton, Professor Gailey, and the administration. On August 29, Chancellor Green met with Ms. Lawton together with Professor Abel to follow up on the dean’s report. Later that week, on September 1, Ms. Lawton met with campus police to discuss the threats she had received.

In a September 5 meeting, Executive Vice Chancellor Plowman notified Ms. Lawton of her immediate removal, with pay, from her teaching responsibilities for two sections of English 150, Writing and Inquiry, offering “security reasons” as the basis for the decision. Ms. Lawton reports that because she herself had expressed concern for her safety to campus police and because the executive vice chancellor had assured her that the suspension was not disciplinary, she raised no objections during the meeting, although that very morning she had received an email message from an officer of the campus police concluding that there was “no imminent safety

concern at this time.”<sup>2</sup> When Ms. Lawton asked whether she could expect to resume her teaching responsibilities in the spring semester, the executive vice chancellor stated that the decision would depend on the administration’s future assessment of threats against her.

Even though Executive Vice Chancellor Plowman had assured Ms. Lawton on September 5 that the administration had not imposed the suspension for disciplinary reasons, she sent Ms. Lawton a letter of reprimand the following day. In it she wrote, “In addition to being a graduate student you are a classroom instructor and with that role come special responsibilities in regard to students on our campus. Any behavior by an instructor that could be viewed as disrespectful, taunting, or intimidating falls outside the values of our community. In our view, upon reflection of all evidence, your behavior toward Kaitlin [*sic*] was outside the bounds of what we expect for classroom instructors. We believe the way you chose to express your views was disrespectful, and it was in fact experienced by the student as ‘silencing.’” After citing the section of the University of Nebraska board of regents bylaws on “Academic Responsibility,” the executive vice chancellor added, “Consider this as a warning that if there are further incidents in which we determine that your conduct fails to meet the duties of academic responsibility, you will have jeopardized your employment relationship with the university.” The letter did not address Ms. Lawton’s removal from

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2. In its response to the draft text of this report, the administration wrote,

It is our understanding that the investigating committee was provided a copy of Ms. Lawton’s letter to Dr. Donde Plowman, Executive Vice Chancellor and Chief Academic Officer, dated September 11, 2017. In her letter, Ms. Lawton writes “I am grateful that because of your concern for my safety and the safety of my students you removed me from the classroom . . .” The timing of Ms. Lawton’s expression of gratitude is important. This letter was written *after* Ms. Lawton’s September 1, 2017 meeting with campus police regarding her personal security; *after* a campus police officer’s email threat assessment; *after* Ms. Lawton’s September 5, 2017 meeting with Dr. Plowman regarding the removal of Ms. Lawton’s teaching responsibilities; and *after* a supposed “letter of reprimand” from Dr. Plowman dated September 6, 2017. Far from raising “no objection” to a “suspension,” Ms. Lawton clearly did not consider herself to have been “suspended” on September 11, 2017. In the face of this record, repeated references to a “suspension,” (and the campus police officer’s neutral threat assessment), are misleading and prejudicial at best and may call into question the fairness of the investigatory process.

her teaching duties, nor did the administration give her any subsequent written notice of the suspension or its anticipated conclusion.

The next interactions between the administration and Ms. Lawton occurred around October 25, when Chancellor Green held what he described as “individual follow-up meetings” with Ms. Lawton, Professor Gailey, Professor Abel, and Ms. Mullen. At these meetings, the chancellor reviewed with each of them what he had learned, including from a surveillance video that recorded much of the demonstration. In her meeting with Chancellor Green, Ms. Mullen was apparently unhappy to learn that Ms. Lawton had not been permanently removed from future teaching assignments. Afterward, she tweeted, “No justice,” stimulating a new torrent of social-media activity critical of the university and Ms. Lawton.

On October 30, over two months after the incident, three Republican members of the Nebraska state legislature published an op-ed article in the *Hastings (NE) Tribune* under the title “Five Questions for UNL.”<sup>3</sup> Avowing that “as state senators” they had “justifiable reasons to be concerned about the social condition and discriminatory actions of our state’s flagship university,” they posed the following questions:

1. Are professors at UNL hostile toward conservative students?
2. Are university administrators warm, welcoming, inviting, and transparent towards conservative students?
3. Can the university’s administration conduct an honest investigation when a conservative student is involved?
4. Can anyone at the university tell the truth about free speech zones on campus?
5. Does anyone teach English anymore at UNL?

The op-ed piece, with its insinuations about the university’s handling of the incident and about the university more generally, was publicly rebuked in strong terms by Chancellor Green, who noted that “all at the university have dedicated their careers to furthering education, research, and service to society. Some faculty have liberal views. Others have conservative views. To recklessly and falsely accuse the university as

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3. A public-records request from the *Lincoln Journal Star* revealed that Senator Steve Erdman, one of the signatories, had informed other senators that he had called the chancellor’s office on August 29 and demanded the firing of both Ms. Lawton and Professor Gailey.

a whole of hostility toward a particular view appears to be an attempt to further political agendas.” He went on, “The university will not be politicized and will not be used as a pawn. I find your falsehoods and distortions defamatory and an egregious breach of the trust that Nebraskans put in each of us.”

The university also received open-records requests from the Nebraska Republican Party, which brought to light email messages from members of the university’s public-relations staff proposing to have “surrogate(s) submit op-eds” to local papers to defend the administration against critics who accused it of having been too timid in its handling of Ms. Lawton’s case. Two staff members resigned following the publication of the email messages, citing disagreements with the system administration over “communication practices.”

On November 17, Ms. Lawton met with the chancellor, the executive vice chancellor, and Professor Abel, her department chair, to discuss her ongoing suspension. At the meeting, the chancellor informed her that she would not be permitted to resume teaching in the spring semester. According to Ms. Lawton, Chancellor Green stated that he was anticipating further threats to her safety and the safety of her students resulting from renewed press coverage of her case sparked by the imminent release of the public-relations department email messages.

In an op-ed article sent to local newspapers that same day, however, the chancellor gave an entirely different reason for the decision to continue her suspension: “The behavior of the graduate student that day was unacceptable; she has not been teaching at the university since that time. We communicated today to the grad student that she will not teach at our university going forward because of this inappropriate behavior.” Ms. Lawton also reports that when Professor Abel asked at the November 17 meeting whether Ms. Lawton could teach her courses online—an arrangement that would certainly not present concerns for her safety or that of her students—the chancellor and the executive vice chancellor responded that under no circumstances could she be the instructor of record for any course at the University of Nebraska–Lincoln.

Also on November 17, President Bounds wrote to Governor Pete Ricketts and Mr. Jim Scheer, the speaker of the legislature, to assure them that Ms. Lawton would “not be teaching at the University of Nebraska.” He also outlined a number of steps that he had taken to address perceived anticonservative bias on campus,

including instructing the chancellor “to develop a plan to ensure that no inappropriate political bias exists in our classrooms and anywhere else on campus.”

Following the announcement that the administration had decided to extend the suspension, Ms. Lawton’s case continued to reverberate around the state. In an op-ed piece published on December 5, state senator Erdman wrote as follows:

On Nov. 21, a misleading headline appeared on a story in the *Lincoln Journal Star* newspaper: “Firing UNL lecturer marks an abrupt change of course for administrators.” Such a headline would naturally lead any casual reader of the newspaper to conclude that Courtney Lawton has, indeed, been fired, but she has not. University administrators have only removed her from her lecturing duties at UNL. Lawton will remain on the payroll until her contract expires in May 2018. Lawton has been teaching English at UNL since 2012, and her doctoral program maintains a five-year timeline. So, she may be eligible to graduate at the same time her contract expires. To me, this is unacceptable. If you agree, then I encourage you to contact NU Regent Bob Phares and let him know.

He continued, “If you have personally felt that the culture at the University of Nebraska has been unwelcoming to your beliefs or to your right to freely express your point of view, then I urge you to contact the University of Nebraska Board of Regents and share your concerns.” “The University of Nebraska is our university,” he concluded. “Our tax dollars substantially fund it. So, the University of Nebraska should reflect and respect the beliefs and values of all Nebraskans. I want our flagship university to become a champion for free speech, a safe place for conservative students and a model for all other universities to follow.” December 12 press reports indicated that the state senator was among several Republican legislators who intended “to create legislation that would require the state’s public universities and colleges to uphold free-speech rights and show neutrality in protecting freedom of expression.”

In response to the ongoing attention by state legislators to perceived liberal bias on campus, the Nebraska AAUP conference circulated an open letter expressing concern that

members of the state legislature . . . have leveraged a single campus interaction into a sustained attack on the University that has greatly surpassed the

scope and import of the initial incident. These senators have called for an end to tenure, demanded further budget cuts, and written a letter censuring the mission statement and curriculum of the Department of English. A number of that department's faculty have since been aggressively targeted by sweeping open records requests made by the Governor's allies, including a request that they turn over private email addresses and emails between the chair and faculty members who have publicly criticized members of the state government.

The letter concludes,

We, the undersigned, expect our administration to stand for the values of the University of Nebraska, a large community of diverse people with diverse viewpoints, and the most significant institutional asset to the state of Nebraska. We understand this community as being committed to the pursuit of truth (wherever it may lead), to the inherent value of open discussion, and to the fundamental values of democracy and free expression. If the Governor or his surrogates in the legislature interfere with the intellectual freedom of the faculty, one of the state's most precious resources will be squandered in a political power grab, as the quality of work at our university and the value of a degree from UNL will quickly decline.

In January 2018, the board of regents approved a statement that pledged the university to uphold the First Amendment and reiterated the university's commitment to freedom of expression. With respect to civility, the regents stated:

The First Amendment provides no guarantee of civility. However, as a community of educators and learners, the University places a high value on civil discourse and respect for one another. The University has an obligation to protect the dignity and security of all members of its community from those who would seek to use speech primarily to deprive others of their freedom to learn, their freedom to contribute and their freedom to participate fully in the University's mission. Therefore, the University encourages all within its community—its Board, administration, faculty and staff, students, alumni, and all who act as its ambassadors—to serve as models reflecting behavior consistent with the tenets of civil discourse. Civility defines Nebraska and our University of Nebraska community.

### III. The Association's Involvement

In response to an inquiry from the Nebraska AAUP conference, a member of the staff contacted Chancellor Green on September 13 to convey the Association's concerns about the suspension of Ms. Lawton in evident disregard of widely accepted standards of academic due process as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative AAUP policy documents. The letter urged the administration to consult with an elected faculty body "concerning the propriety, the length, and the other conditions of the suspension," as stipulated under Regulation 5c(1) of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. It further urged the administration to inform Ms. Lawton in writing of the outcome of this consultation and to afford her a faculty hearing in which to challenge both the suspension and the letter of reprimand.

In its initial response to the staff's letter, the administration declined to address substantive aspects of the case for the stated reason that Ms. Lawton had retained legal counsel. After she gave the administration permission to discuss her case with the Association, Chancellor Green wrote again on October 12 to say that, because the case was "a personnel matter for the University of Nebraska," he did not see any "formal representative role for the AAUP" and therefore "deem[ed] the matter closed."

When Ms. Lawton informed the Association of the outcome of the November 17 meeting, the staff wrote again to the chancellor to inform him that, under AAUP-recommended standards, "a suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process." The staff also advised the chancellor that "the summary dismissal of a faculty member in potential violation of that faculty member's academic freedom is a matter of basic concern to this Association under our longstanding responsibilities" and urged Ms. Lawton's immediate reinstatement. The chancellor responded by letter of December 4 to say that he disagreed with the Association's characterization of the terminal suspension as a summary dismissal, but he declined to comment on "other aspects of Ms. Lawton's employment." The chancellor also stated that Ms. Lawton could "request another meeting or file a grievance regarding her concerns." He concluded by expressing a willingness "to continue the dialog with [the Association's staff] and other representatives of the AAUP as we revisit our campus policy on free

speech.” In response, the staff wrote to the chancellor on December 12, reiterating the Association’s position in the matter and informing him of the authorization of this investigation.

In his December 18 reply, Chancellor Green for the first time referred to “a regularly constituted body to hear any employee’s ‘tantamount dismissal’ claim” and cited section 4.14 of the bylaws of the University of Nebraska board of regents and the grievance procedures of the Academic Freedom and Tenure Committee. Section 4.14.2(h) states that when a hearing concerns “the termination of an Appointment for a Specific Term prior to its stated termination date, . . . the University shall have the burden of proving adequate cause for the termination by the greater weight of the evidence.” Such a procedure is consistent with AAUP-supported standards. In its December 19 response, the Association’s staff accordingly stated that if the university were now willing to afford Ms. Lawton a dismissal hearing in which the burden of proof would rest with the administration, the staff “would be in a position to recommend suspending the investigation.” The staff asked Chancellor Green to confirm by December 21 that the administration was indeed now offering Ms. Lawton an appropriate procedure. Responding by that date, the chancellor wrote that he viewed the university’s grievance process, rather than the university’s dismissal-for-cause procedures, as “a much better way to manage the associated confidentiality and related issues.” On the matter of the burden of proof, the chancellor stated that even though the grievance procedures place the burden of proof on the grievant, “[h]ypothetically, if the employee and I can both agree to a stipulated complaint filed together (including that the University bears the burden), that would be an option I would favorably consider.” Responding on the same day, the Association’s staff wrote that it regretted that the administration was unable “to confirm that the process to be afforded Ms. Lawton [would] be consistent with Association-supported standards” and informed the chancellor that the investigation would continue as planned. Chancellor Green did not reply.

The undersigned investigating committee visited Lincoln on January 11 and 12, 2018. The committee interviewed Ms. Lawton, Ms. Mullen, and members of the English department, the faculty senate, and the Academic Freedom and Tenure Committee. The University of Nebraska–Lincoln administration extended its full cooperation to the investigating committee: the committee met separately with Executive

Vice Chancellor Plowman and Dean Francisco and later spoke with Chancellor Green by telephone, as he had a prior engagement on the dates of the visit.

#### IV. Issues

The key facts regarding Ms. Lawton’s conduct were not in dispute. The task of the investigating committee was to examine to the best of its ability the facts regarding the actions taken against Ms. Lawton and assess the degree to which they departed from Association-supported principles and standards.

##### A. Academic Due Process

As noted in *The Use and Abuse of Faculty Suspensions*, a 2008 report of Committee A on Academic Freedom and Tenure, the Association has long been concerned about the misuse of faculty suspensions and considers suspension to be a sanction second in severity only to dismissal. The Association’s staff has recently handled multiple cases in which administrations have suspended for stated safety reasons faculty members targeted for online harassment. Regulation 5c(1) of the *Recommended Institutional Regulations on Academic Freedom and Tenure* does allow an administration to suspend a faculty member, pending the result of disciplinary proceedings, when a threat of immediate harm to the faculty member or others appears to exist, but doing so requires prior consultation with a faculty body “concerning the propriety, the length, and other conditions of the suspension.” It seems reasonable to assume that such a consultation would require the administration to present evidence of the threat of immediate harm and that the suspension would be rescinded once the threat had passed.

In Ms. Lawton’s case, the administration did not consult with an appropriate faculty body, which at the University of Nebraska–Lincoln would have been the Academic Freedom and Tenure Committee or the faculty senate, and presented no evidence of a threat of immediate harm. In fact, evidence provided by the University of Nebraska Police Department points to the opposite conclusion. On the morning of September 5, ten days after the incident, Ms. Lawton received an email communication from a university police official reporting that the department had “continued to actively monitor the situation, noting a continued and steady decline in activity, which is a positive development.” The official added, “Barring additional concerns from recent activity on your end, we have no information to suggest an imminent safety concern at this time.”

Despite this assessment, Executive Vice Chancellor Plowman informed Ms. Lawton that same afternoon that the administration was removing her from the classroom because of concerns about immediate harm to herself and her students. That she gave this explanation suggests that the administration either had failed to consult with the university police department or had ignored the department's assessment. In the investigating committee's interview with her, Executive Vice Chancellor Plowman stressed that the "intensity" or quality of the threats, rather than the quantity, was instrumental to the decision. The contradiction between the administration's claim of a threat of immediate harm and the university police department's assessment that no such threat existed raises serious questions regarding the real basis for the administration's decision to remove Ms. Lawton from the classroom.

After September 7, the administration in its public statements ceased referring to threats of immediate harm and instead stated that Ms. Lawton's misconduct was the reason for her removal. The timeline suggests that near the end of October, as the administration met to update the involved parties, Ms. Mullen became dissatisfied with what she believed was a lack of disciplinary action against Ms. Lawton. As noted earlier in this report, when Ms. Mullen learned that Ms. Lawton was listed on the spring course schedule, she tweeted, "No justice." She also took a screenshot of the online spring class schedule, which was distributed widely on social media. Ms. Mullen sat for radio interviews for local stations and in Omaha about this alleged injustice. Several state senators wrote op-ed columns expressing their anger, and the Nebraska Republican Party subjected the university and the English department to a flurry of wide-ranging open-records requests. Executive Vice Chancellor Plowman reported to the investigating committee that the "intensity" of threats and outrage increased following this activity. The irony is not lost on the investigating committee that the university's concern for safety began rather quickly to evolve into solicitude for the free-speech rights of conservative students. The potential for this shift was implicit from the beginning, when Ms. Mullen characterized Ms. Lawton's actions toward her as "silencing."

Public scrutiny increased when the open-records request uncovered the email messages from the university's public-relations staff about strategies for managing the negative press about Ms. Lawton's case. The pressure of the media firestorm came to a head

on November 17, when Chancellor Green announced the resignations of two public-relations staff members involved in handling the TPUSA incident and addressed the charge that a liberal bias on campus left conservative students feeling fearful and silenced. In the view of the investigating committee, Ms. Lawton was a convenient scapegoat for an administration under pressure to respond to such a charge.

As noted earlier in this report, that same day, just prior to his press briefing, Chancellor Green had met with Ms. Lawton to inform her that she would not be permitted to teach her spring courses because of threats he expected to arise from the public revelation of the internal communications and resignations. Ms. Lawton informed the investigating committee that in that meeting the chancellor told her that matters were "too out of hand," the story "will not go away," the administration "cannot allow disruption on campus," and "if we put you back into the classroom, we will continue to suffer damage." However, Chancellor Green's subsequent public announcement clearly states that Ms. Lawton's suspension from teaching was related directly to her conduct, not to threats of immediate or anticipated harm. This statement makes evident that the continuation of Ms. Lawton's suspension was imposed as a disciplinary sanction.

Furthermore, when Ms. Lawton's suspension was subsequently extended into the following semester, for which she already held an appointment, the suspension became equivalent to a summary dismissal under long-standing Association-supported standards. As noted in the ninth Interpretive Comment on the 1940 *Statement*, "[a] suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process."<sup>4</sup>

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4. In the 1989 case of a faculty member at King's College (New York) who, in the words of the administration, was "merely relieved of her teaching and advising responsibilities" with pay for the duration of her appointment, the investigating committee found that "an administration's action to separate a faculty member from her teaching duties unmistakably constitute[d] suspension." It went on to conclude as follows: "In this case . . . the suspension was followed neither by reinstatement nor by opportunity for a hearing. The investigating committee accordingly finds that the suspension [of the faculty member] was tantamount to her summary dismissal." "Academic Freedom and Tenure: The King's College (New York)," *Academe*, July–August 1990, 45–52.

In its written comments on the draft text of this report, the administration objected to the characterization of its action against Ms. Lawton

AAUP-recommended standards of academic due process, as set forth in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly formulated by the AAUP and the Association of American Colleges, and in Regulation 5 of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*, require that an administration demonstrate adequate cause for dismissal in a pretermination adjudicative proceeding before a duly constituted faculty hearing body. These standards apply not only to faculty members on indefinite tenure but also to teachers on term appointments when their dismissals are sought before their appointments expire. As noted earlier in this report, the dismissal procedures contained in section 4.14 of the Bylaws of the Board of Regents of the University of Nebraska and in the Code of Procedures for Special Academic Freedom and Tenure-B Committees are consistent with Association-supported standards, including requiring the administration to carry the burden of proof.

As this report has also noted, the administration did suggest to Ms. Lawton the procedural remedy of filing a grievance through the Special Academic Freedom and Tenure-A Committees. But the administration, as has also been noted, has never accepted the AAUP's position that the action against Ms. Lawton was a summary dismissal. As a result, the administration declined to file charges against Ms. Lawton, and the question that the administration apparently believed would be at issue in the grievance was not whether Ms. Lawton should be dismissed for cause but whether the terminal suspension was tantamount to dismissal. In addition, under the Code of Procedures for Special Academic Freedom and Tenure-A Committees, "[t]he complainant bears the burden of proving relevant facts by a preponderance of the relevant evidence," and the administration offered only to assume the burden of proof under certain hypothetical conditions. Thus, the procedural remedy offered by the administration falls far short of Association-supported standards.<sup>5</sup>

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as a summary dismissal: "As a matter of fact, Ms. Lawton's Special Appointment has not been terminated. Ms. Lawton continues to receive her 2017-2018 academic year salary and has not suffered any loss of compensation or benefits. With the removal of classroom responsibilities, the Chair of the Department of English, Dr. Marco Abel, asked Ms. Lawton to research academic freedom and free speech concerns at peer institutions, including Big Ten and Big 12 universities. Ms. Lawton has been performing these assigned duties."

5. In a similar case that the Association investigated in 1983, that of Professor Gretel Chapman at Goucher College, the administration also

## B. Grounds for Dismissal

The letter of reprimand that Ms. Lawton received cited a section of the University of Nebraska board of regents bylaws on "Academic Responsibility" that provides,

Membership in the academic community imposes certain obligations. These obligations include the following duties of academic responsibility:

To respect: (1) the dignity of others; (2) the right of others to express differing opinions; (3) the right of others to be free from fear, from violence, and from personal abuse; and (4) the right of the University community to be free from actions that impede its normal functioning.

The letter of reprimand additionally claimed that Ms. Mullen experienced Ms. Lawton's conduct as "silencing." The executive vice chancellor's characterizations of Ms. Lawton's conduct as "fail[ing] to meet the duties of academic responsibility" placed Ms. Lawton's actions within the framework of misconduct. Given this framing of the issue, one of two formal processes could have been pursued, as Ms. Lawton is both a student and a member of the faculty at the University of Nebraska. The process followed, at least in part, by the University of Nebraska administration—both initially on August 26, 2017, and throughout the events that followed—was that applicable to members of the faculty.

During the investigating committee's meeting with her, Executive Vice Chancellor Plowman acknowledged that the administration had not considered treating Ms. Lawton as a student, but she did not provide a clear rationale for determining that Ms. Lawton's primary role on campus was that of a member of the faculty, nor do the bylaws clarify which role is to be given priority and under what circumstances. However, once the decision was made to treat

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offered only a grievance process in which the burden of proof fell on the faculty member, even though the faculty member credibly asserted, in the view of the investigating committee, that she was being dismissed in violation of her academic freedom. The faculty member subsequently declined the offer because of the placement of the burden of proof. The committee noted that "the safeguarding of academic freedom is the central purpose of Association-supported procedural standards governing cases of termination. . . . Adherence to or deviation from these policies correspondingly decreases or increases the possibility that violations of academic freedom will occur." "Academic Freedom and Tenure: Goucher College," *Academe*, May–June 1983, 13–23.



Ms. Lawton as a faculty member, the procedures and protections for faculty as outlined in the University of Nebraska board of regents bylaws should have applied. Because an appropriate complaint was not filed and was thus not evaluated by the appropriate university committee, the executive vice chancellor's characterization of Ms. Lawton's conduct as having "fail[ed] to meet the duties of academic responsibility" was not considered by a duly constituted faculty body charged with looking into the allegation and making factual determinations. It is the judgment of this investigating committee that, had Ms. Mullen been Ms. Lawton's student or had Ms. Lawton even been aware that Ms. Mullen was a University of Nebraska student, the ethical obligations of "academic responsibility" cited by the administration could conceivably have applied.

When the investigating committee asked Chancellor Green to state the nature of the misconduct ascribed to Ms. Lawton, he replied that it was the suppression of speech that occurred when Ms. Lawton "blocked" access to Ms. Mullen's table. This determination of denial of access, and thus suppression of speech, as a violation of academic responsibility was made at an administrative level. Both Executive Vice Chancellor Plowman and Chancellor Green stated more than once during their respective interviews that it was Ms. Lawton's behavior, not her speech, that was at issue; both of them asserted that Ms. Lawton was free to say what she did. Neither of them claimed that her "finger speech" or "body speech," as Chancellor Green characterized Ms. Lawton's elevation of her middle finger, was out of bounds. In their view, it was Ms. Lawton's "suppression" of Ms. Mullen's speech through "blocking of the table" that constituted professional misconduct and thus violated the University of Nebraska's provisions on academic responsibility. Both the chancellor and the executive vice chancellor asserted that the surveillance video demonstrated that Ms. Lawton had effectively barred the table with her body, thus making it difficult for Ms. Mullen to be approached by passers-by. However, Ms. Lawton, Professor Gailey, and Professor Abel, all of whom also reviewed the video, dispute this interpretation; they claim that the video shows that the table remained accessible to others and that Ms. Lawton was not, in fact, blocking it with her body. Ms. Mullen, who also saw the video, did not speak to this issue in her interview with the committee. The administration denied the investigating committee's request to view the video.

Regulation 5a of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* states that "adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers." When compared with commonly used grounds for dismissal such as "incompetence," "gross misconduct," "gross neglect," and the like, Ms. Lawton's conduct does not appear to the investigating committee to have met the threshold of adequate cause for dismissal, making the action against her seem disproportionate to its stated basis.

### **C. Political Pressure**

There is little doubt that political pressure played a significant role in the Lawton case; in one sense, it is at the very heart of it. In the days immediately following the release of the video, Republican members of the Nebraska legislature began pressuring the university to remove Ms. Lawton from the classroom and terminate her contract. The evidence suggests that criticism from conservative state politicians helped keep the incident in the public eye. That criticism also maintained pressure on university administrators to keep Ms. Lawton out of the classroom.

There are many documents and interactions that could be cited, but perhaps this sequence of events will suffice: Senator Erdman met with Chancellor Green and President Bounds on November 16 to discuss the ongoing controversy over the Lawton case. The very next day, November 17, the chancellor met with state legislators and the press; later that same afternoon, Ms. Lawton was informed that she would not be teaching in the spring semester.

From its interviews, the committee received the strong impression that President Bounds, Chancellor Green, and Executive Vice Chancellor Plowman were often overwhelmed by, and thus uncertain in their response to, the media storm that greeted the initial incident and was revived in late October. This sense of confusion and uncertainty was reflected in the mixed messages they gave internally to Ms. Lawton and other members of the English department, as well as externally to the university and the larger community. To cite one such instance, President Bounds's tweet on August 28, in which he stated that the "recent treatment of our students in a public space by a University of Nebraska faculty member" was "not in keeping with the standards of conduct," preempted the efforts of the campus administration to follow up on the incident. Further, the administration's public statements

alone often appeared to complicate and intensify the controversy surrounding the case.

In their interviews, both Chancellor Green and Executive Vice Chancellor Plowman acknowledged that the ultimate decision to remove Ms. Lawton from any teaching assignment for the spring semester, whether in person or online, was not primarily a response to concerns for the safety of the instructor and her students nor to her alleged misconduct but rather a reaction to concerns about “continued harm” to the university and ongoing “disruption” to the university’s business, vague standards that do not justify such an action under AAUP-supported principles.

While it was beyond the scope or abilities of this investigating committee to assess the exact weight or role of specific political actors, we find it impossible not to see the heavy hand of political pressure in the decision taken by the administration to remove Ms. Lawton from the classroom without recourse to available institutional policies and procedures.

#### D. Academic Freedom

The 1940 *Statement of Principles on Academic Freedom and Tenure* defines “extramural speech”—protected by academic freedom along with teaching and scholarship—as speech by faculty members in their capacity “as citizens.” As William Van Alstyne, a former president of the AAUP, observed: “The phrase ‘extramural’ is used figuratively in reference to statements made outside of the employment relationship and not merely to statements made outside the walls of the campus. It is perfectly clear that the place where the statement is made, whether on or off campus, is not *per se* determinative of the question whether the teacher is speaking as a private citizen, albeit one whose views may presumably be informed by his profession and his association with an academic institution.”<sup>6</sup>

Ms. Lawton was protesting the presence of the TPUSA table in her capacity as a citizen, not in her capacity as a teacher or researcher, and outside her employment relationship with the university. Despite administrators’ subsequent protestations to the contrary, the conclusion that the administration dismissed Ms. Lawton for reasons associated with the political content of her speech is difficult to avoid, given the varying statements made by the administration—at the campus and system level—about the nature of her misconduct and evidence concerning the political pressure

exerted on the university. The administration’s failure to provide Ms. Lawton with the requisite protections of academic due process, in which the applicability of principles of academic responsibility could have been evaluated, leaves this conclusion un rebutted.

#### V. Conclusions

1. The administration of the University of Nebraska–Lincoln summarily dismissed Ms. Courtney Lawton when it suspended her from teaching and extended the suspension through the end of her contract without affording her a dismissal hearing. It thus acted in disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure*.
2. By not affording her an adjudicative proceeding before a faculty body in which the administration bore the responsibility of demonstrating adequate cause for her dismissal, the administration of the University of Nebraska–Lincoln violated the *Statement on Procedural Standards in Faculty Dismissal Proceedings* and Regulation 5c(8) of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, which specifies that “the burden of proof that adequate cause [for dismissal] exists rests with the institution.”
3. The conclusion seems inescapable that the basis for Ms. Lawton’s dismissal was related to the political content of her speech and thus may have violated her academic freedom, a conclusion that stands un rebutted absent the affordance of a dismissal hearing.<sup>7</sup> ■

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7. Having received the prepublication draft of this report with an invitation for comment and corrections, Chancellor Green visited the Association’s Washington office on April 17 to discuss the administration’s response with the AAUP’s staff. Later that day, he submitted a letter containing the administration’s written comments, which the staff took into account in preparing the final version of the report. Excerpted below are the major objections to the report stated in the letter, beginning with the following “General Comment”:

The Draft Report contains instances, too numerous to accurately catalog, of improper characterizations of supposed “facts.” By way of example only, the University would direct your attention to the repeated mischaracterization of the reassignment of Ms. Lawton’s duties on September 5, 2017 as a “suspension.”

With respect to what the chancellor’s letter refers to as the report’s “Improper and Erroneous Conclusions,” it states,

The Draft Report draws three equally unsupported conclusions. First, the Draft Report asserts the University “summarily dismissed” Ms. Lawton when it “suspended” her from teaching. Second, the

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6. William Van Alstyne, “The Constitutional Rights of Teachers and Professors,” *Duke Law Journal* (October 1970): 846.

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Draft Report asserts the University violated Regulation 5c(8) of the *Recommended Institutional Regulations on Academic Freedom and Tenure* by offering a grievance process where Ms. Lawton would have to demonstrate she should not have been dismissed. Finally, the Draft Report reaches the “unrebutted” conclusion that Ms. Lawton’s alleged dismissal was related to conduct protected under principles of academic freedom. These conclusions are addressed in turn.

1. Summary Dismissal.

Having improperly characterized Ms. Lawton’s reassignment of duties as a “suspension,” the Draft Report bootstraps this mischaracterization into a “summary dismissal.” In doing so, the ad hoc committee constructs its conclusion upon the precarious foundation exposed . . . above.

2. Grievance Process.

The Draft Report asserts the University violated AAUP standards in offering Ms. Lawton an inadequate grievance process. . . . This conclusion ignores the representations of the University and the Associations’ [sic] own regulations.

A. The University Offered to Assume the Burden of Proof.

The University’s December 21, 2017 response to your letter of December 19, 2017 indicates the University would “look favorably” upon assuming the burden of proof in a grievance proceeding before a faculty academic rights and responsibilities committee. Your December 21 response rejects such an approach, in favor of an ad hoc committee investigation, expressing disappointment that the University is “unable to confirm that the process to be afforded Ms. Lawton will be consistent with Association-supported standards.” Following this lead, the Draft Report makes no mention of the University’s proposal in finding a violation of Regulation 5c(8).

B. The Regulation 5 Procedures Do Not Apply in All Respects.

To the extent the Association’s concerns over process focus on a particular forum or committee deemed required by Regulation 5, those concerns are misplaced. The Draft Report actually makes no mention of the AAUP standards which control the employment of graduate students such as Ms. Lawton [the letter then quotes Regulation 14, Graduate Student Employees, of the *Recommended Institutional Regulations*]. . . .

Once again, the University disputes Ms. Lawton has been dismissed before the end her academic appointment. However, even if that were the case, the University has proposed a process, consistent with the institutional regulations in place at the University of Nebraska, which would fully meet the standard set out in Regulation 14.

The letter concludes by asking the Association to reconsider the assessments and findings in the report:

We would urge the Association to reconsider its view of the University’s grievance resolution procedures, in light of the application of the appropriate standards from the *Recommended Institutional Regulations on Academic Freedom and Tenure* and the University’s



**NICOLE MONNIER** (Russian)  
University of Missouri, *chair*

**SHANNON K. FREIRE** (Anthropology)  
University of Wisconsin–Milwaukee

**SUSAN JAROSI** (Women’s and Gender Studies)  
University of Louisville

*Investigating Committee*

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **JEFFREY A. HALPERN** (Sociology), Rider University; **MARJORIE HEINS** (Law), New York, NY; **IBRAM X. KENDI** (History and International Relations), American University; **MICHAEL E. MANN** (Meteorology), Pennsylvania State University; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS** (Philosophy), Michigan State University; **ROBERT C. POST** (Law), Yale Law School; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **DONNA YOUNG** (Law), Albany Law School; **RUDY H. FICHTENBAUM** (Economics), Wright State University, *ex officio*; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **JULIE M. SCHMID** (English), AAUP Washington Office, *ex officio*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences*

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willingness to assume a burden of proof. We further urge the Association to reconsider the improper characterization of facts and resulting conclusions contained in the Draft Report.

Regarding Regulation 14—the applicability of which to Ms. Lawton’s case the administration raised here for the first time—it does indeed concede that a dismissal hearing for a graduate student employee “need not conform in all respects with a proceeding conducted pursuant to Regulation 5,” as the administration’s letter notes. But it also stipulates that “the essentials of an on-the-record adjudicative hearing will be observed” and that “the administration will have the burden of showing adequate cause for dismissal.” As noted earlier in this report, a process in which the administration declines to file charges against a faculty member whom it seeks to dismiss and declines to assume the burden of proof, except under certain hypothetical conditions, does not meet the standard set out in Regulation 5—nor, it should be added, that set out in Regulation 14.