"You Can't Fire Me; I Quit!"

Academic freedom and the case of Steven Salaita

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EDUC 1740: Academic Freedom on Trial

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The letter from Brian H. Ross, then-Interim Dean of the College of Liberal Arts and Sciences at the University of Illinois at Urbana-Champaign, reads "I am pleased to offer you a faculty position...effective January 01, 2014." The "January 01" is crossed out by hand, and in the left margin is written "August 16" and the initials SS.¹

SS stands for Steven Salaita, who signed his name at the bottom of the next page, and returned the letter to Ross. Ten months later, Professor Salaita received another letter, this one much shorter, from Christophe Pierre, Vice President for Academic Affairs, and Phyllis M. Wise, Chancellor at University of Illinois at Urbana-Champaign.² "We write to inform you that your appointment will not be recommended for submission to the Board of Trustees in September, and we believe that an affirmative Board vote approving your appointment is unlikely. We therefore will not be in a position to appoint you to the faculty of the University of Illinois at Urbana-Champaign."

By the time Vice President Pierre and Chancellor Wise wrote this letter, Professor Salaita and his wife had resigned their positions at Virginia Tech. Salaita had conversed extensively with Robert Warrior, Director of the American Indian Studies department at University of Illinois about such logistics as his relocation expenses and teaching schedule for the fall semester.³ He had co-authored an op-ed with the byline "Steven Salaita is an associate professor of American Indian studies at the University of Illinois at Urbana-Champaign. He tweets at @stevesalaita." (Seen in retrospect, this byline is deeply ironic.) In short, Professor

¹ Ross, B. H. (2013, October 3). Letter to Professor Steven Salaita. Retrieved from https://www.dropbox.com/sh/fyy0x8grt2d90by/AAC0WKONDDh4upSnzgvrxnnfa/Salaita.document.pdf?dl=0

² Pierre, C., & Phyllis M. Wise. (2014, August 1). Letter to Professor Steven Salaita. Retrieved from https://www.dropbox.com/sh/fyy0x8qrt2d90by/AAC0WKONDDh4upSnzgvrxnnfa/Salaita.document.pdf?dl=0

³ Robin, C. (2014, September 2). Reading the Salaita Papers. Retrieved from http://coreyrobin.com/2014/09/02/reading-the-salaita-papers/

⁴ Salaita, S., & Palumbo-Liu, D. (2014, July 8). US college presidents should address Palestinian university closures. *Al Jazeera America*. Retrieved from http://america.aljazeera.com/opinions/2014/7/education-asa-bdsisraelpalestinianuniversityclosures.html

Salaita was doing everything one might expect of a tenured professor at a research university – from public speaking to departmental mundanities.

In this paper, I will examine the reasoning behind Chancellor Wise's decision not to recommend Professor Salaita's appointment. Ultimately, I determine that Wise and the Board of Trustees seriously violated Salaita's academic freedom and that Salaita should be "restored" to his position at UI.

Trouble began brewing in late July, when Professor Salaita's tweets on the Israeli military operation in Gaza attracted attention. Salaita's research is primarily focused on Native Americans, but he has also written about Palestinians, using a comparative approach to examine questions of colonialism and genocide. He is himself of Palestinian descent. As one might expect, his tweets were angry, sarcastic, biting and often rude or vulgar. For example, on July 19th, he wrote "Zionists, take responsibility: if your dream of an ethnocratic Israel is worth the murder of children, just fucking own it already. #Gaza" The next day, he tweeted "At this point, if Netanyahu appeared on TV with a necklace made from the teeth of Palestinian children, would anybody be surprised? #Gaza"

Unsurprisingly, his tweets were not universally well-received. A July 22nd News-Gazette article wrote that the tweets had "drawn the ire of a conservative website," presumably referring to a Daily Caller article from the previous day.⁶ The Daily Caller picked up the story from Legal Insurrection, which first called attention to Professor Salaita's tweets on July 19th.⁷ It was not

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⁵ Salaita, S. (2014, July 19). Retrieved from https://twitter.com/stevesalaita/status/490535944169484288

⁶ Owens, E. (2014, July 21). America 2014: University of Illinois Professor Blames Jews For Anti-Semitism. *The Daily Caller*. Retrieved from

http://dailycaller.com/2014/07/21/university-of-illinois-professor-blames-jews-for-anti-semitism/

⁷Jacobson, W. A. (2014, July 19). U. Illinois Prof: Zionists partly to blame for recent outbursts of anti-Semitism. Retrieved from

http://legalinsurrection.com/2014/07/u-illinois-prof-zionists-partly-to-blame-for-recent-outbursts-of-anti-semitism/

long before Chancellor Wise and other UI administrators began receiving angry emails from current students, alumnae and community members.

The University's initial response was to stand behind Professor Salaita's right to speak his mind. "Faculty have a wide range of scholarly and political views, and we recognize the freedom-of-speech rights of all of our employees," Associate Chancellor for Public Affairs Robin Kaler told the News-Gazette on July 22nd. An email from Vice Chancellor Kaler to Chancellor Wise, obtained by the News-Gazette by Freedom of Information Act request, shows that Wise was aware that Kaler had referred to Salaita as "faculty" and "employee" and recognized his "freedom of speech rights" – all in one sentence. In fact, when Kaler forwarded her correspondence with the News-Gazette reporter, including the statement quoted in the article, Wise responded "I have received several emails. Do you want me to use this response or to forward these to you?" It seems that Chancellor Wise initially regarded this as simply a public relations flap.

It was not long, however, before the administration began taking a very different stance towards Professor Salaita, especially in private correspondence with alumni and donors.¹⁰ By the end of July – less than two weeks after the initial story broke, Chancellor Wise was under a great deal of pressure to somehow prevent Professor Salaita's appointment. After going far, far out of her way to rearrange her travel and meeting schedules in order to meet with a particularly

⁸ Des Garennes, C. (2014, July 22). UPDATED: Soon-to-be UI prof's Mideast posts drawing ire. *The News-Gazette*. Retrieved from

http://www.news-gazette.com/news/local/2014-07-22/updated-soon-be-ui-profs-mideast-posts-drawing-ire.ht ml

⁹ Kaler, R. N. (2014, July 21). RE: Steven Salaita. Retrieved from

https://www.dropbox.com/sh/fyy0x8qrt2d90by/AAC0WKONDDh4upSnzgvrxnnfa/Salaita.document.pdf?dl=0 Robin, C. (2014, September 2). Reading the Salaita Papers.

important donor¹¹ on August 1st, Chancellor Wise and Vice President Pierre wrote the revocation letter to Professor Salaita. Wise emailed it to him the following day.

Reactions to Wise's decision were varied and strong. A number of letters and petitions, from parties as varied as the American Historical Association, graduate students across the country and law faculty at many different schools, expressed strong disagreement with the decision. A petition supporting Chancellor Wise's actions received far fewer signatures. The Student Senate President made a speech supporting Wise's decision, and the Student Senate passed a heavily-modified version as a resolution, proclaiming the need for a less ambiguous hiring process. Presaging the debate to come, Chancellor Wise sent out a campus-wide email justifying Salaita's "de-hiring" on the grounds that his tweets were not appropriately civil for university discourse. In response, the Committee on Academic Freedom of the University of Illinois Academic Senate proposed a resolution stating that, while administrators are free to write whatever they want to the campus, these "massmails" cannot be considered normative policy statements. The resolution (which did not pass the full Academic Senate) specifically

This exchange takes place on pages 78-81 of the FOIAd documents. The donor's name was redacted in all but one place (by mistake), allowing Carol Tilley to identify this particular correspondent as Steven Miller, an alum of UI who had donated a significant sum to the business school, and was an influential venture capitalist, as well as a member of the UI Hillel Board of Trustees. See Robin, C. (2014, September 2). Reading the Salaita Papers and Tilley, C. (2014, September 2). Retrieved from https://twitter.com/AnUncivilPhD/status/506878954624806912

¹² See "Faculty Letter to U of I," 2014, "Graduate Students Demand Restoration of Academic Freedom at the University of Illinois at Urbana-Champaign," 2014, "Open Letter to Chancellor Phyllis Wise, President Robert Easter, and the University of Illinois Board of Trustees," 2014, "Academic Freedom and Justice at the University of Illinois," 2014; Goldstein, Vicki Ruiz, & Kenneth Pomeranz, 2014; Levy, 2014 and Merriman, 2014 for examples.

¹³ Letter of confidence and support for Chancellor Wise. (2014, September). Retrieved December 12, 2014, from http://www.ipetitions.com/petition/confidence-in-chancellor

¹⁴Dickey, M. (2014, September 3). Statement on Salaita. Illinois Student Senate. Retrieved from http://iss.illinois.edu/publicdocs/Pres%20Dickey%20Statement%20on%20Salaita.pdf

Klinge, M. (2014, October 8). 11th Assembly General Meeting Minutes. Illinois Student Senate. Retrieved from http://iss.illinois.edu/publicdocs/11thAssembly/2014-10-15%20Post%20Packet.pdf

¹⁵ Wise, P. M. (2014, August 22). The Principles on Which We Stand. Retrieved from http://illinois.edu/blog/view/1109/115906

¹⁶ Roether, J. (2014, October 20). Minutes. University of Illinois at Urbana-Champaign Senate. Retrieved from http://www.senate.illinois.edu/20141020m.pdf,

refers to some of the crucial documents from the American Association of University Professors, documents which I will rely heavily upon in evaluating this case.

Before moving into an in-depth analysis of the possible justifications for Chancellor Wise's actions, it is important to note that she did not ultimately follow through on her threat not to bring Professor Salaita's appointment to a vote before the Board of Trustees. At their regular September 11th meeting, the Board voted on a number of new faculty appointments, including Salaita's, but the damage was done. His was the only appointment not approved.¹⁷

Based on research into internal University communications, public meeting minutes and various news sources, I find three distinct arguments as to whether Chancellor Wise's actions were justified. The first concerns whether she had the legal right to fire Professor Salaita. The second assumes she did have the legal right and asks whether she followed proper University procedure in doing so. The final argument is over whether she violated Professor Salaita's academic freedom.

Dean Ross' original offer letter explicitly stated that Professor Salaita's appointment was contingent on approval from the Board of Trustees. At first glance, this would appear to settle the matter – since faculty academic freedom rights only apply to tenured faculty members, Salaita had none and they therefore could not have been abridged. However, this is a simplistic understanding of the academic hiring process. Dean Ross' letter was from October of 2013, but the Board was not scheduled to vote on Salaita's appointment until September 2014, after Professor Salaita had begun teaching and drawing a University paycheck on August 16th. If he had opted not to finish his year at Virginia Tech and begun teaching in January of 2014 as

¹⁷ Winters, J. (2014, September 15). Board of Trustees reject Salaita appointment. *The Daily Illini*. Retrieved from http://www.dailyillini.com/news/article_2c2a8088-39fe-11e4-8dfa-001a4bcf6878.html

¹⁸ Ross, B. H. (2013, October 3). Letter to Professor Steven Salaita. Retrieved from https://www.dropbox.com/sh/fyy0x8qrt2d90by/AAC0WKONDDh4upSnzgvrxnnfa/Salaita.document.pdf?dl=0

originally requested, he could have been teaching for as much as 8 months before formally being approved by the board.

That this was the regular course of business at University of Illinois is revealing and important. It forms the basis for a possible contract claim based on "promissory estoppel." Essentially, since the University of Illinois induced Professor Salaita to give up his old job by promising a new one, they can be held accountable for breaking that promise¹⁹ There is also some evidence in the released internal emails that senior administrators in the Chancellor's office were aware of and supported Professor Salaita's appointment quite early on in the process.²⁰ Finally, the Board's ongoing tacit endorsement of faculty-administered job searches (as evidenced by the previously mentioned practice of faculty teaching and being paid by the University before official Board confirmation) makes it is hard to claim that the Board can simply step back into the hiring process whenever it chooses.

However, there are conflicting legal opinions as to the strength of Professor Salaita's claim here. One complicating factor is the question of what the University's promise actually was. If the promise was simply to put Professor Salaita's appointment to a Board of Trustees vote, the promise was kept. If the promise was that Professor Salaita would be appointed, the promise was not kept. Additionally, while Illinois state law recognizes promissory estoppel, Virginia state law does not, further muddying the waters.²¹ Overall, the legal case against the University of Illinois is uncertain at best.

This brings us to the procedural question. Did Chancellor Wise actually have the right to intercede in the hiring process the way she did? If she did have this right, did she exercise it in a manner consistent with the relevant University policy?

¹⁹ Dorf, M. C. (2014, August 13). Academic Freedom in the Salaita Case. Retrieved from http://verdict.justia.com/2014/08/13/academic-freedom-salaita-case

²⁰ Robin, C. (2014, September 2). Reading the Salaita Papers.

²¹ Dorf, M. C. (2014, August 13). Academic Freedom in the Salaita Case.

The local Campus Faculty Association aptly notes that Chancellor Wise announced her decision to revoke Professor Salaita's recommendation directly to him, which is inconsistent with University statutes.²² The statutes provide that if the Chancellor does not approve a hiring recommendation, the Dean of the relevant College may present it to the President. If the President does not approve, the Dean may present directly to the Board of Trustees. In keeping Interim Dean Ross completely out of the loop as to her own decision-making process, Chancellor Wise appears to have contradicted the statute. Had Wise followed the rule, Ross could theoretically have presented Salaita's appointment himself.

However, Chancellor Wise ultimately reversed course and presented Professor Salaita's appointment to the Board after all; that is, she ultimately followed the rule. Thus, it seems there was no violation of University policy.

Both the legal and procedural arguments fail to adequately settle the issue. The legal argument can get us only as far as determining whether Professor Salaita had academic freedom rights with respect to the University of Illinois. The procedural argument can get us only as far as determining whether the University acted in accordance with its own policy. The true question is whether the *merits* of Salaita's dismissal stand up to the rather high bar that the standard conception of academic freedom imposes.

This is an *extremely* complicated question. Our main guides in answering it are the AAUP's 1915 and 1940 statements on academic freedom and tenure, but there are a number of other key documents as well. In particular, the AAUP has issued statements on electronic communications (including social media), the role of "collegiality" in evaluating scholarship and the challenges of working in a politically controversial area.

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First of all, is the use of social media such as Twitter (which is what got Professor Salaita into trouble in the first place) considered extramural speech? The AAUP says yes. "The fundamental meaning of extramural speech, as a shorthand for speech in the public sphere and not in one's area of academic expertise, fully applies in the realm of electronic communications, including social media." Effectively, the AAUP considers an academic's use of social media to be a form of public engagement. On the surface, then, Professor Salaita's use of Twitter constitutes protected extramural speech.

However, since Professor Salaita's research concerns Palestinian refugee populations, his tweets could be considered part of his scholarly practice. This contradicts the previously-quoted definition of extramural speech and means that we must also examine whether Wise judged his scholarly practice fairly.

One of the primary charges leveled against Professor Salaita (seen again and again in the many emails sent to Chancellor Wise) is that his views and the way he expressed them render him incapable of providing a safe, welcoming environment for students with a variety of opinions. However, the AAUP underscores that particularly in cases of extreme political controversy (of which this is nothing if not a textbook example), specific charges are required to substantiate a claim of bad teaching or scholarship. It is not enough to merely claim that a person *could* be incapable of teaching properly.²⁴ Concrete evidence to support this assertion must be produced, and Salaita's detractors have to date produced none.

The deeper question, however, is who makes decisions about professional competency.

On this, the AAUP has been consistent since 1915: one's peers. Scholars' competency may be

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²³ Reichman, H., Dawson, A., Garnar, M., Hoofnagle, C., Jaleel, R., Klinefelter, A., ... Nichols, J. (2014). Academic Freedom and Electronic Communications. *Journal of Collective Bargaining in the Academy*, (9), 20, p. 12.

²⁴ Benjamin, E., Nails, D., Schrecker, E. W., Nelson, C., Rabban, D. M., Rhoades, G. D., & Levy, A. (2011). Executive Summary: Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions. American Association of University Professors, pp. 5-6.

judged only by other scholars in their field.²⁵ Professor Salaita's scholarly peers endorsed his appointment in no uncertain terms during the job search. If University administrators can override such recommendations, faculty members' right to evaluate each other is worth very little in practice.

Given that the substance of Chancellor Wise's claims about Salaita regards his civility and collegiality (which are discipline-independent), a case can be made that Wise, as an academic herself, is competent to judge Salaita on these grounds. As we have seen, Salaita's tweets were not civil in any reasonable sense of the word. They were angry, rude and sometimes offensive. However, the AAUP has come down very strongly against even apparently-content neutral civility requirements, saying "a college or university sets a perilous course if it seeks to differentiate between high-value and low-value speech, or to choose which groups are to be protected by curbing the speech of others." Content-neutral speech codes are too often applied in a content-aware manner, and therefore cannot be justified.

The AAUP is also opposed to the use of "collegiality" as a discrete criteria in evaluating faculty, noting that it generally ends up connoting homogeneity or willingness to do whatever the administration wants. It is highly desirable that faculty be permitted to disagree with administrators and with each other, and a policy that encourages the appearance of agreement where none exists does a disservice to academic pursuits.²⁷

Finally, as Michael Dorf notes, it is hard to imagine that Professor Salaita's tone was the only thing at issue in this case.²⁸ We cannot know for certain exactly what Chancellor Wise was

²⁵ American Association of University Professors. (1915). General Report of the Committee on Academic Freedom and Academic Tenure. In M. W. Finkin & R. C. Post, *For the common good: principles of American academic freedom* (pp. 393–406). New Haven [Conn.]: Yale University Press, p. 402.

²⁶ Committee A on Academic Freedom and Tenure. (1994). *On Freedom of Expression and Campus Speech Codes*. American Association of University Professors, p. 38.

²⁷Committee A on Academic Freedom and Tenure. (1999). *On Collegiality as a Criterion for Faculty Evaluation*. American Association of University Professors.

²⁸ Dorf, M. C. (2014, August 13). Academic Freedom in the Salaita Case.

thinking, nor exactly what she talked about in the meetings and phone calls with donors and alumni, but based on the contents of the emails she received – some explicitly threatening to withhold donations due to Professor Salaita's views – the actual substance of his tweets (and not just their tone) was clearly a major topic of concern. The signs are all there for a politically motivated de-hiring, especially when we take into account Chancellor Wise's admission that she did not consult with enough academic officers to make the decision properly.²⁹ During the crucial few days when Wise was formulating a policy around the Salaita controversy, it seems she was talking primarily to donors and UI-UC fundraisers.³⁰

Fortunately, the AAUP has a stance on the role of political views specifically in hiring processes. "Discrimination by a public college or university against prospective appointees based on political views or affiliations unrelated to their professional responsibilities may well be found unlawful. It is certainly at odds with principles of academic freedom."³¹ In other words, in the absence of specific charges as to how Professor Salaita's angry and rude tweets affected his abilities as a scholar or a teacher (beyond vague and unsubstantiated claims of potential student discomfort), it is inappropriate to consider the content or style of his remarks in a hiring decision.

There are some important counterpoints to the academic freedom argument. Here I consider three of the strongest in favor of firing Professor Salaita. All fail to adequately address the necessary components of the academic freedom argument – that Professor Salaita's competency as a scholar and teacher has never been questioned by his peers, that extramural

²⁹ Wise, P. M. (2014, October 14). Annual Meeting of the Faculty. Retrieved from http://illinois.edu/blog/view/1109/117451

³⁰ See, e.g., Wise's exchange with Steven Miller, and Robin, C. (2014, September 2). Reading the Salaita Papers for more on this.

³¹ Benjamin, E., Nails, D., Schrecker, E. W., Nelson, C., Rabban, D. M., Rhoades, G. D., & Levy, A. (2011). Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions. American Association of University Professors, p. 30.

speech, civility and collegiality are not acceptable grounds for dismissal and that hiring decisions may not be made on the basis of political belief.

The first counterargument is from Cary Nelson, a former president of the AAUP. He remarks, "I also do not know of another search committee that had to confront a case where the subject matter of academic publications overlaps with a loathsome and foul-mouthed presence in social media. I doubt if the search committee felt equipped to deal with the implications for the campus and its students. I'm glad the chancellor did what had to be done." The problem with this analysis should be readily apparent. "The search committee" never considered Professor Salaita's tweets or had any reason to doubt his abilities as a scholar and teacher. For the Chancellor to assert that she is more capable of judging Salaita than his peers flatly contradicts AAUP principles.

Eric Zorn argues that even though Board confirmation of faculty appointments is a formality, it exists for a reason. "It allows the university one last chance to exercise its discretion before granting academic freedom." Zorn is certainly correct that "the university" has discretion in who it hires – being granted a tenured faculty position is not a right. But his argument misses an important distinction: which *part* of "the university" is to exercise its discretion? All the relevant academic units endorsed Professor Salaita's hiring.

The final argument, and that one that does the most to clarify just how strong the case for Professor Salaita actually is, comes from Steven Lubet, who writes "Wise has great discretion when it comes to hiring professors -- as opposed to firing them -- and there is no rule that prevents her from considering Salaita's history of vulgar and intemperate outbursts."

³² Jaschik, S. (2014, August 6). U. of Illinois apparently revokes job offer to controversial scholar. *Inside Higher Ed*. Retrieved from https://www.insidehighered.com/news/2014/08/06/u-illinois-apparently-revokes-job-offer-controversial-schola

³³ Zorn, E. (2014, September 14). U. of I. professor lost job, but not rights. *Chicago Tribune*, p. 28. Chicago, III.

³⁴ Lubet, S. (2014, August 14). The hateful nature of a scholar's tweets. *Chicago Tribune*, pp. 19–1.19. Chicago, III.

Lubet is incorrect – there are actually multiple rules that prevent Wise from considering Salaita's tweets. If the tweets are considered extramural speech (that is, outside of Salaita's discipline), they are clearly protected. If they are part of Salaita's scholarly practice, they can be properly judged only by his academic peers, not University administrators.

Pending the University of Illinois Academic Senate investigation, I would not be surprised to see an AAUP Committee A investigation of this case, with censure of the University a distinct possibility, if not a likelihood. The Illinois AAUP has already weighed in, and the local Campus Faculty Association also believes an AAUP investigation is likely.³⁵

From the available evidence, it appears that Chancellor Wise made her decision without serious regard for Professor Salaita's qualifications and instead based on political and financial pressure, both real and implied. The University of Illinois' failure to respect Professor Salaita's academic freedom sets a dangerous precedent. We must hope that the strong opposition they have experienced will cause them to seriously rethink their actions and reaffirm the importance of academic freedom to an open and ever-changing society.

³⁵ Campus Faculty Association Local 6546. (2014, October 2). AAUP CENSURE, AND WHAT IT COULD MEAN FOR ILLINOIS. Retrieved from

http://cfaillinois.org/2014/10/02/aaup-censure-and-what-it-could-mean-for-illinois/

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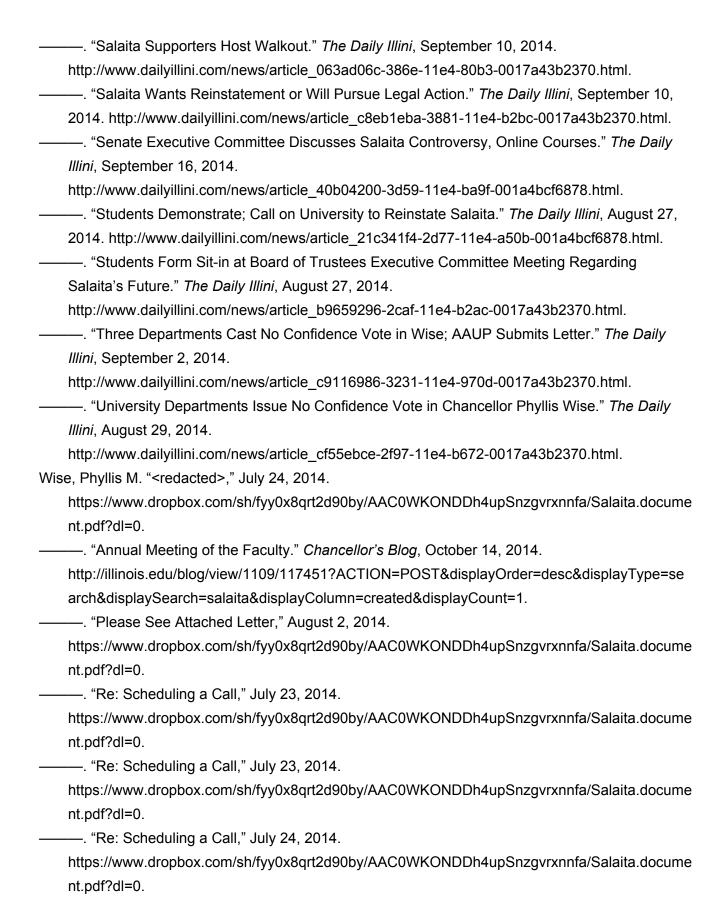
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