



THE

# AFCON

SENTINEL



Volume XVI, Number 2

A Quarterly of the Academic Freedom Coalition of Nebraska

June 15, 2012

## AFCON OFFICERS

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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—Laurie Thomas Lee

April 13<sup>th</sup> was a sad day for Nebraska students and academic freedom.

It started with the sad memory of a day in June of 2008 when 18-year-old Julius Robinson, a student at Millard South, was shot to death by a gang. More than two dozen of his friends wore memorializing t-shirts to school and were suspended when they refused to remove the shirts. A lawsuit was eventually filed, accusing the school district of violating the free speech rights of three of the students—Dan Kuhr and his siblings Nick and Cassie. But after eight hours of deliberation on Friday the 13th, a federal jury sided with the school. They deadlocked in the case of Cassie, who had written Julius’s name on her arm and wore a wristband protesting the t-shirt ban. But on April 23<sup>rd</sup>, U.S. District Judge Laurie Smith Camp again ruled in favor of the school.

AFCON had high hopes for the case. In 2009 we honored the Kuhrs and their mother Jeanne with our Academic Freedom award. The family bravely stood up to the school, becoming role models for the cause of academic



(Dan, Cassie, Mrs. Jeanne, Nick Kuhr) Their story was compelling. Dan simply wanted to honor his best friend who was not involved in a gang. The t-shirts merely depicted Julius as a football player and friend with the phrase “Julius RIP” and dates. Dan hoped to sell t-shirts in order to raise money to help pay for Julius’s funeral and gravestone.

Selling shirts was not what upset school officials, though. It was the message.

In light of Tinker v. Des Moines (1969), how could a school be allowed to ban students from wearing memorializing t-shirts and wristbands to school? In the Tinker case, the U.S. Supreme Court affirmed the First Amendment rights of students who wore black armbands to protest the Vietnam, stating that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The High Court found the students and their wristbands did nothing to disrupt the educational process.

In the Kuhr case, however, the school was successful in distinguishing Tinker, claiming that the Julius t-shirts and memorabilia were, indeed, disruptive. Even though it was acknowledged that the shirts were worn for several days without incident, the defendants made the case that the t-shirts bearing the initials “R.I.P.” and memorializing an individual killed by a gang could be perceived as “call-outs” challenging rival gangs and possibly eliciting violent responses from gang members, affiliates, or “wanna-bes.” At one point, the Kuhrs had offered to remove the initials “R.I.P.,” but the school said the connection to the killing was so closely made that they reasonably concluded that any of the items, including Cassie’s red wristband with only the name Julius on it, posed danger. The court concluded that there was significant fear that the expressive conduct—including Cassie’s wristband in protest—would cause a disruption of school activities.

Having met Dan, Nick, Cassie and their mother, and seeing the innocuous t-shirt, it’s hard to imagine a loss. The Kuhr children are kind and compassionate, and the memorabilia was an expression of grief and support. It’s

(See **The President**, Page 2)

## Upcoming Events

AFCON Board Meetings, June 9, July 14, and September 8  
Loren Eiseley Library, 1530 Superior, Lincoln, Nebraska; 10 AM

## THE PRESIDENT

difficult to understand how anyone could truly believe the t-shirts might have inspired violence and were a threat to anyone's safety. For the Kuhr family and friends, the death of a classmate and friend was hard enough. To be denied an expressive outlet and now suffer another loss in court is sad. They had a great case. It's not only disappointing, but somewhat distressing.

Student rights have been slipping away since Tinker. In the "Bong Hits 4 Jesus" case (Morse v. Frederick, 2007), for example, the Supreme Court declined to use the Tinker analysis. The display of a student-created banner on the street was not a disruption of the educational process; instead the Court said the words "Bong Hits" advocated drug use, which interfered with the school's goal of promoting a drug-free environment. Dissenting Justices couldn't believe that such a silly message could reasonably be proscribed as advocating drug use.

Our own Eighth Circuit has produced some different outcomes in recent years. On the one hand in Lowry v. Watson Chapel School District (2008),

the court upheld students' right to wear protest armbands. In Lowry, Arkansas students wore black armbands to protest a school dress code and were disciplined. Administrators tried to distinguish the case from Tinker by saying the issue was not the Vietnam war but merely a dress code. The court did not agree and found the protest to be non-disruptive.

Yet the following year, in B.W.A. v. Farmington R-7 School District, a student wore clothing to school that featured a Confederate flag and was suspended. The Eighth Circuit concluded that "schools may act proactively to prohibit race-related violence." The court dismissed the Missouri student's claim, saying that the school's ban on the flag was reasonably related to substantial disruption and did not violate the First Amendment.

A recent case in San Francisco also upheld administrators who barred stu-

dents from wearing American flag t-shirts. In Dariano v. Morgan Hill Unified School District, administrators feared conflict on Cinco de Mayo when other students would be celebrating their Mexican heritage. They pointed to ongoing racial tensions and gang violence within the school and an altercation during a prior Cinco de Mayo over the display of an American flag.

If Nebraska ends up requiring the display of American flags in classrooms and students being led in reciting the Pledge of Allegiance, I wonder... would an exception be made on Cinco de Mayo in Nebraska?

It seems that any expressive conduct that might remotely be linked to drug use, gangs, racial tensions and violence may be prohibited in schools. Students may have to stick to protests about less significant matters, such as dress codes. That is provided, of course, any dress code complaint doesn't include words like "RIP" that could be tied to gangs, colors that favor one nationality or gang, or symbols that resemble drugs. Sad indeed. AFCON will need to continue to actively monitor these cases.



## Summaries of AFCON Board of Directors'

### March 10, 2012—

**Present:** Peggy Adair, secretary, Dwayne Ball, Tom Black, Bob Haller, Laurie Thomas Lee, Lora Leibrandt, Cathi McMurtry, David Moshman, Rod Wagner.

**MINUTES:** Minutes of the AFCON board meeting held on February 11, 2012 were approved upon a motion by Black, second by Moshman, and voice vote.

**KURZ FOUNDATION:** Adair reported she mailed the required annual report to the Kurz Foundation in February.

**TREASURER'S REPORT:** McMurtry presented the treasurer's report dated March 9, 2012. Balance on hand is \$3,578.41. The treasurer's report was filed for audit. McMurtry distributed a "dues status" list of organizational members and individual members. McMurtry asked board members to get their organization's direct billing contact information to her in November before billing goes out in January.

Ball thanked the AFCON board for their donation to the Arthritis Foundation in memory of his beloved wife, Shirley.

**PRESIDENT'S REPORT:** Lee reported she has not received any entries yet for the high school academic freedom video contest. Adair and Leibrandt offered to recirculate information about the contest. The AFCON board will review contest entries at the April 14 board meeting. Ball offered to bring a laptop to view the video entries.

Lee reported Robert Brooke has resigned from the AFCON board, and also has resigned his position as AFCON webmaster.

**WEBSITE:** The AFCON board discussed strategies for maintaining and updating the AFCON website in light of the resignation of our webmaster. Leibrandt will chat with Linda Parker about some possible ideas.

**SENTINEL:** Tom was here! The deadline for articles for the next issue of the *Sentinel* is **May 28**. The next issue of the *Sentinel* will be available June 15.

**LEGISLATIVE REPORT:** Adair

reported LB990, the "pledge of allegiance" bill, is a Speaker Priority bill, so it will likely be debated this year. The AFCON board decided to take no further action in opposition to this bill at this time.

The board also decided to include "reintroduction of a student expression bill" as a goal for 2013

**STRATEGIC PLANNING:** The Board set these goals for 2012: Fund/develop an AFCON website that is relatively easy to update and does not overburden one person; Get a big-name speaker at the AFCON fall program to raise the AFCON profile; Increase the AFCON membership base; and Focus upon participatory civics education as a way to engage more people in academic freedom.

**POLICY COORDINATOR:** Moshman reported the religion-laced testimony of Ron Brown before the Omaha City Council provoked a public statement from UNL administration distancing the

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

university from Mr. Brown's remarks. Moshman indicated he felt no academic freedom violations occurred and no action is necessary.

### MEMBER ORGANIZATION REPORTS:

**ALCU Nebraska:** ACLU Annual Dinner is March 10. The organization continues to search for a new executive director.

**AAUP Nebraska State Conference:** Haller reported AAUP-UNL is comatose but John Bender and others are trying to revive the organization. Haller reported AAUP has a new Academic Freedom online newsletter and he plans to send in an article about the fine, unique AFCON organization in Nebraska.

**UNL Faculty Senate:** Lee reported her dean made a unilateral decision to move advanced broadcasting classes to the NET building without consulting faculty or students. Ball reported similar problems are occurring in his college. Board members gave Lee several suggestions on how to proceed.

### April 14, 2012—

**Present:** Frank Edler, Cathi McMurtry, Dave Moshman, Rod Wagner, Dwayne Ball.

**MINUTES:** approval moved by Moshman, seconded Ball, unanimously approved.

**TREASURER'S REPORT:** \$4140.15 on account. Several individual members were dropped from the rolls due to non-payment of dues for several years. Ball expressed great gratitude for a donation of \$230 by AFCON members to the Arthritis Foundation in memory of his wife, Shirley Noble. Approval of the report moved by Ball, seconded Moshman, unanimously approved.

**SENTINEL:** Due date for material is May 28.

**WEBMASTER:** Since the members responsible for suggesting solutions to a new webmaster, Lori Liebrandt and Linda Parker, were not present, this was not discussed.

**ACADEMIC FREEDOM VIDEO CONTEST:** The vote of the board members present, and the votes of three not present who had expressed opinions made the vote 7-1 in favor of the "First Amendment" entry. This will be conveyed to Laurie Lee, who will convey it to our partners in the contest, the ACLU of NE.

**POLICY COORDINATOR:** Moshman reported that LB 990, the "Pledge of Allegiance" in the schools bill, will not get out of committee this year. However, the

Nebraska State Board of Education will require all Nebraska public schools teaching through 8th grade to say the pledge each morning. Individual children may remain silent and sit or stand while their classmates (not clear if the teacher is required to) stand and repeat the pledge. Moshman will testify against the imposition of this rule at a public hearing, if the scheduled time is available for him.

### MEMBER ORGANIZATION REPORT:

As ACLU representative, Ball reported a disappointing result in the *Kuhr v. Millard Public Schools* case. A federal jury ruled for the disciplinary actions imposed by Millard on students Dan and Nick Kuhr for wearing "RIP Julius" t-shirts in honor of their friend who was murdered. Their sister, who wore a bracelet with that message, and was also disciplined, provoked a split jury with no decision on the Millard action disciplining her. The ACLU legal director, Amy Miller, is contemplating further action, while admitting that reversing the decision at present would be a long shot.

Wagner, as NCB representative, reported the success of the Nebraska Book Festival on March 31, including a presentation by Joe Starita, author of "*I am a Man: Chief Standing Bear's Journey for Justice*."

### May 12, 2012—

**Present:** Peggy Adair, secretary, Dwayne Ball, Tom Black, Nancy Comer, Laurie Thomas Lee, Lora Leibrandt, David Moshman, Linda Parker, Rod Wagner.

**MINUTES:** Minutes of the AFCON board meeting held on April 14, 2012, were approved upon a motion by Moshman, second by Wagner, and voice vote. Special thanks to Dwayne Ball for preparing the April minutes.

**TREASURER'S REPORT:** McMurtry presented the treasurer's report to the board before the meeting via email. Balance on hand for May 7, 2012, is \$3,573.75. The treasurer's report will be filed for audit.

**PRESIDENT'S REPORT:** Lee reported she and Laurel Marsh drove to Palmer to present the Academic Freedom video contest award to the second place winner. A good time was had by all. Lee asked for Omaha volunteers to present the award to the first place winner who is a student at Skutt High School. Adair said she

could probably do the deed. (Later she contacted Lee to confirm.)

Comer asked how the students learned about the video contest, and nobody knew. Adair suggested we add a line to the contest application next year asking where the student found out about the contest, so we will know what publicity efforts work best.

**SENTINEL:** Tom was here again! The deadline for articles for the next issue of the *Sentinel* is **May 28**. The next issue of the *Sentinel* will be available June 15. Tom will include an article on the video contest winners.

**WEBSITE:** Parker and Leibrandt presented some of their ideas for starting a new AFCON website. Their priorities are to create a website that will be user friendly and easily accessed by all board members. Parker will develop a mockup website with Leibrandt's help and will present the mockup for discussion at the June AFCON board meeting.

**LEGISLATIVE REPORT:** Adair reported Senator Haar has a strong challenger in this year's election. She suggested the board wait until after the November general election to decide on strategy for a new student expression bill in the 2013 legislative session.

**POLICY COORDINATOR:** Moshman reported the State Board of Education has indicated they will hold a public hearing on a "pledge of allegiance" policy. Moshman has not been able to determine when the public hearing will take place, and will continue to monitor the issue.

### MEMBER ORGANIZATION REPORTS:

**Nebraska Educational Media Association:** Leibrandt reported the Association has voted on changing the name to "Nebraska School Librarian Association." The results of the vote should be revealed soon.

**ALCU Nebraska:** The new executive director of the ACLU is Becki Brenner.

**National Association of Scholars:** Ball reports that one Scholar, Dwayne Ball, has been appointed "temporary" chair of his department, a position he expects to hold for at least the next two years. The AFCON board issued hearty congratulations and condolences.

**Nebraska Library Association:** Parker reported the Association is in the process of changing the Intellectual Freedom portion of the organization from committee status to round table status. Parker reports the change will elevate the status of Intellectual Freedom and will bring more

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**Minutes**, continued from Page 3) members on board. The round table is presently working on by laws and selecting a slate of officers.

The NLA conference will be October 17-19 in LaVista.

**All Things Wise and Wonderful:** Comer reported in Haller’s absence that Haller is developing curriculum for a six-week class

on civic education that he will teach at the Osher Lifelong Institute in Lincoln.

**UNL Faculty Senate:** Lee reported her dean is still insisting on moving the Broadcasting classes to the UNL East Campus despite many valid objections from faculty and students. Lee also reported the Faculty Senate is working on a conflict of interest policy.

**ANNUAL MEETING:** Moshman offered the idea of inviting UNL football coach Ron Brown as our featured speaker at the AFCON annual meeting. The board envisioned various interesting scenarios that could occur, and agreed this could be a good choice to draw attention to academic freedom.



# Academic Freedom Video Contest 2012 Winners Announced

## Omaha Skutt and Palmer Public High School Students Recognized

LINCOLN – Three Nebraska high school students are being recognized by ACLU Nebraska and the Academic Freedom Coalition of Nebraska (AFCON) for their winning entries in the 2012 *Academic Freedom Video Contest*. Students were asked to create 30 second to 2 minute videos about First Amendment rights for students

First place went to Ceara Kirkpatrick, a sophomore at Skutt Catholic High School, for her video, “The First Amendment: I Have the Right.” Her video addressed the importance of the First Amendment and how different life would be without it. She received a \$300 prize.

Second place went to Joseph Kleier and Rose Vesely, sophomores at Palmer Public Schools, for their video, “Discussing Teenage Pregnancy in Class.” Their video dealt with freedom of belief and expression in the classroom. They received a \$250 prize.

Contest videos were to address and promote the importance of academic freedom to students and/or teachers. This includes intellectual freedom in educational and research contexts, including freedoms of belief and expression and access to ideas and information, as well as freedoms in various disciplines and activities such as school newspapers, theatre productions, and speech/debate

Winners were judged based on originality/creativity, effectiveness of message, and production quality. See [www.aclunebraska.org](http://www.aclunebraska.org) to view the videos.

**ABOUT:** ACLU Nebraska and its diverse membership works in courts, the legislature and our communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States and Nebraska guarantee everyone in this state.

The Academic Freedom Coalition of Nebraska (AFCON) is a coalition of educational and literary organizations that promote academic freedom in Nebraska.



Rose Vesely and Joseph Kleier, sophomores at Palmer Public Schools, won Second Place with their video entitled “Discussing Teenage Pregnancy in Class.”

“Restriction of free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.”  
—Supreme Court Justice William O. Douglas

Ceara Kirkpatrick, a sophomore at Skutt Catholic High School, won First Place with her video “The First Amendment: I Have the Right.” A picture of Ceara was unavailable, but this quote was featured in her presentation..

## Should Creationist Teachers Have Academic Freedom?

Tennessee is now the second state, after Louisiana, to pass a law protecting the academic freedom of teachers in public elementary and secondary education. Other states are likely to follow suit.

The new wave of academic freedom laws require governing boards and administrators to recognize the responsibility of teachers to help students understand and analyze ideas presented in the approved curriculum. This includes respecting their authority to present and discuss the strengths and weaknesses of theories included in the curriculum.

The new laws recognize, moreover, the responsibility of schools to their students. They require governing boards and administrators to create an environment that encourages active exploration of ideas, respect for diverse opinions, concern for relevant evidence, and the development of critical thinking.

Unfortunately, there is a major problem with these laws. Fortunately, it is easily corrected, at least in principle.

Constitutional law since the 1960s has made it clear that legislatures and other governmental authorities responsible for public schools cannot forbid the teaching of evolution and cannot require equal treatment for creationism, even when it is dressed up as “creation science” or “intelligent design.” After repeated failures to modify the curriculum, creationists now seek to protect the academic freedom of creationist teachers.

Specifically, the new academic freedom laws recognize the right of individual teachers to discuss the “strengths and weaknesses” of evolution and alternative views. That does not change the curriculum itself but

may embolden creationist teachers to question what they teach.

To make matters worse, in recent years the political right not only continues to challenge evolution but also questions global warming and other scientific phenomena. The new academic freedom laws are not just about evolution. They list multiple aspects of science that their supporters deem especially problematic, always including evolution and global warming.

The prospect of creationist teachers questioning evolution, however, should not stop us from promoting academic freedom. Rather than opposing academic freedom for creationist teachers, we should advocate amendments that support academic freedom equally for all teachers and all students.

Two changes are needed. First, the laws should not single out particular topics or theories for special question. State legislatures may believe that scientific conclusions about evolution or global warming are more questionable than conclusions in other areas of science, but it is not for them to determine this. Science educators should discuss the scientific strengths and weaknesses of all ideas that merit such treatment.

Second, the laws should not single out science. There is no reason to suggest to students that what they learn in history or literature classes is the unquestioned truth or that scientific knowledge is less justified or more controversial than other knowledge. Teachers should be free to present the strengths and weaknesses of all ideas in all areas of study, and students should be encouraged to think critically in all their classes.

In addition to enhancing education, generalizing these laws protects them

from constitutional challenge. A law that furthers religious and political ideas favored by a state legislature is likely to be seen as the next generation of creationism and struck down as a violation of the First Amendment. A law that applies equally to all teachers, students, and ideas is far more likely to be upheld.

There is in fact an interesting precedent. The federal Equal Access Act, which protects the equal right of all student-initiated groups to meet on school premises, was originally intended to protect religious groups and was initially limited to such groups. The final law, however, protects all student groups equally, which enabled it to withstand constitutional challenge.

Should creationist teachers have academic freedom? Of course, as should all teachers. Academic freedom does not permit a teacher to ignore the approved curriculum or to indoctrinate a captive audience of students in his or her religious or political views, whatever those may be. It does, however, leave teachers free to present relevant arguments and alternatives and to promote critical thinking.

Academic freedom is for everyone engaged in teaching and learning. That certainly includes teaching and learning about the origin, history, current state, and potential futures of the earth and its inhabitants. But it must include the rest of science as well, and the rest of education too.

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David Moshman is the AFCON Policy Coordinator. This article originally appeared on May 8, 2012, on his Huffington Post blog (<http://www.huffingtonpost.com/david-moshman/>).

## AFCON SPEAKER'S BUREAU (As of December 2007)

Peggy Adair: "Banned Books, Black Arm-bands, 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

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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.nebafcon.org>

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**Check it out and learn Who We Are and about Our Activities; read our Constitution; learn how to Join Us; see the where and when of our Meetings; meet our Members and Officers;**

### REQUEST FOR NEWS FOR FUTURE ISSUES

The editor of the AFCON SENTINEL invites all AFCON individual and organizational members to send news about academic freedom issues in Nebraska or editorial comments for inclusion in this newsletter and/or announcements of organizational meetings for the UPCOMING EVENTS column.

**Due date for submissions to the SEPTEMBER 21, 2012, issue is AUGUST 27, 2012.**

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

# AFCON

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Mailing  
Address  
Label

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## ACADEMIC FREEDOM COALITION OF NEBRASKA

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### 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**