

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

Volume 23, Number 2

April 2019

From the President

Laurie Thomas Lee

I must admit, I was star struck. Getting to meet the plaintiff in *Hazelwood School District v. Kuhlmeier* was an amazing moment. And I'm thrilled to say that it's one that AFCON members and others will also get to enjoy when Cathy Kuhlmeier Frey comes to speak at our annual meeting, October 12th.

As many of you may recall, the *Hazelwood* decision in early 1988 immediately preceded the founding of AFCON, just one month later. The decision was such a blow to intellectual freedom because it largely removes First Amendment protection for students when expression is based in the curriculum—such as a school's newspaper, of which Cathy Kuhlmeier was an editor. It limited the long-standing view from *Tinker v. Des Moines* that “neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” As a result, school administrators can—and some unfortunately do—censor their student journalists, whose work is considered within their journalism curriculum. Since *Hazelwood*, AFCON has worked hard to help restore student press freedom, supporting Nebraska legislative bills such as the current LB206, which protects the free speech rights of student journalists and their media advisers.



Cathy Kuhlmeier Frey (l.) and AFCON President Laurie Thomas Lee (r.) meet at the Unicam.

Cathy Kuhlmeier Frey was in Lincoln on February 1 to testify before the Judiciary Committee in support of LB206. Her words were inspiring as she urged senators to return to the protection of the landmark *Tinker* decision. Even though it has been over 30 years since her loss before the U.S. Supreme Court, she has been active in speaking out on behalf of the rights of student journalists and advisers. She has a great story to tell that you won't want to miss when she brings her spirited message to our annual meeting this fall.

I'm hoping to involve others at our meeting who also testified in support of LB206. A dozen or so current and former high school students passionately related their censorship stories and concerns. There were even students who came from as far away as North Platte, prompting great praise and encouragement from the senators on the committee, including Ernie Chambers. Several high school media advisers also spoke as well as representatives from the national Student Press Law Center, the Nebraska High School Press Association, and the Nebraska Press Association. Their messages and show of support must have resonated, because the bill successfully advanced out of committee. Stay tuned.

Yours truly also testified on behalf of AFCON, delivering a message that protection of student journalists is a matter of academic freedom, which means intellectual debate without censorship. I pointed out that journalists, in particular, know all too well the issues of censorship, and that's why journalism educators—including student media advisers—teach about the First Amendment and the rights of American citizens which includes journalists. Academic freedom protects these media advisers, who as the experts in their subject matter must be able to teach, model and protect these rights for their students. I also pointed out that academic freedom protects students who have the right to master the subject material. To be constrained by censorship clearly flies in the face of their education for this profession. Do we really want our young people to prepare for a profession in journalism thinking that government censorship is OK?

I also stated our position that we need a law protecting freedom of the press for students even though we already have the First Amendment. In the first place, students and teachers shouldn't have to go to federal court to defend their constitutional right to free speech. And second, a state can legitimately decide to protect free expression beyond the

constitutional minimum set by the First Amendment.

LB206 does not go beyond the First Amendment. Rather, it simply restores the First Amendment standard that governed public education set back in 1969 in *Tinker* but later removed in *Hazelwood*. Nebraska now has the opportunity to effectively reinstate student free expression protection enjoyed before *Hazelwood*. It's the First Amendment standard that Cathy Kuhlmeier bravely fought for and continues to promote. And it's what makes her our champion in this fight.



Academic Freedom in the Legislature

Peggy Adair
AFCON Legislative Liaison

We are a bit more than half-way through the 90-day legislative session. The legislature is currently debating bills during mornings only, with afternoons devoted to public hearings on each of the 739+ bills that have been introduced. On April 2, full-day floor debate will begin on bills as scheduled by Speaker Scheer. Senators, standing committees and the Speaker have chosen their priority bills. By custom, priority bills have the best chance of being heard on the floor at least once.

AFCON has a long history of supporting bills protecting free press and academic freedom for student journalists and their advisers. This year AFCON President Laurie Thomas Lee testified in support of Senator Morfeld's LB206, which was

subsequently approved by the committee and is now on general file, awaiting floor debate. This is a good, reasonable bill that doesn't cost any money. However, since LB206 is not a priority, it remains to be seen if Senator Morfeld can convince Speaker Scheer to put the bill on the agenda for discussion on the floor.

A little-known statute promoting "Americanism" in schools is re-discovered every few years in the legislature, usually because a bill is introduced that ties into the outdated statute and then we suddenly go back for a visit to the Red Scare days of the 1950's that are alive and well in the language of Nebraska Revised Statutes 79-724 and 79-727. ("...that he or she be in full accord with our form of government and fully aware of the liberties... of which we are possessed...") And every few years, a senator tries to convince the legislature that these dusty statutes will automatically instill patriotism in our school children if we just update the language. But LB399, introduced this year by Senator Slama and co-signed by 21 other senators, transforms the Americanism statute into an American Civics statute, with less indoctrinative language ("...Students should be made fully aware of the liberties... we possess...") and a conception of civics education that drew broad support. The bill passed 44-2.

AFCON has also been following several other education-related bills, only one of which has been designated a priority. Senator Linehan's LB670 would grant tax breaks to people of means who contribute money to certain charities who then use that money to offset tuition to send Nebraska children to private schools. The resulting loss in general fund revenue available for public education will be at least ten million dollars every year, forever. Similar bills are being introduced in other states in what many see as a concerted effort to undermine public education. LB670 is currently in committee.

Other bills AFCON is following include LB73, Senator Erdman, requiring the display of "In God

We Trust" in schools; LB283, Senator Pansing Brooks, requiring UNL to develop an action plan to adapt to and mitigate the impact of climate change; LB390, Pansing Brooks, requiring training of and clear parameters for the role of resource officers in schools; LB589, Chambers, eliminating resource officers altogether in schools; LB640, Senator Howard, requiring study of the Holocaust in multicultural education, and LB702, Senator Cavanaugh, the Campus Safety Act.

If you want further information on any of these bills, the Nebraska legislature has a very user-friendly website: www.nebraskalegislature.gov. You can look up, read, and follow the progress of the AFCON bills (or any bill) by typing in the bill number in the upper right portion of the home page. You can email senators to state your support for or opposition to a bill by clicking on "senators" on the left side of the home page and scrolling to the senator's web page. If you have a question about a bill, you can call the introducing senator's staff (number is listed on their web page). They are always happy to help. And, you can always go to the AFCON website, www.academicfreedomnebraska.org, to learn more about the cause of academic freedom in our state.

The Bell Case at the University of Nebraska, 1939-41

Bob Haller

UNL is on the AAUP Censure List for the first time in its history. But, no surprise, there has been at least one earlier close call. The non-reappointment of Earl Hoyt Bell, to his position in the Anthropology Department came near to being such a case. It produced an extensive and revealing exchange of letters between the University and the national AAUP, but ended without an AAUP Committee A investigation and therefore no censure.

This account depends on archival sources in the Libraries of UNL and George Washington University. My thanks to Josh Caster at UNL and Kierra Verdun at GWU, as well as to Hans-Joerg Tiede, Associate Secretary of AAUP and author of *University Reform: The Founding of the American Association of University Professors*



Bob Haller

On June 6, 1939, Professor Bell of the Anthropology Department was called in to the Dean's office, where Dean Oldfather and Anthropology Chair J.O. Hertzler told him that his appointment would be discontinued after the next academic year. The reasons given were his "unsatisfactory scholarship and the lack of respect of colleagues" and "unsatisfactory student contacts." Bell took his case to the new Chancellor Boucher, who told him that it was "best for [him] to leave" because he "did not," according to the reports given the Chancellor, "create a good impression."

Bell did not contact the AAUP national office until April of 1940. When he did so, President Ralph Himstead recognized that what was to become the "1940 Statement on Academic Freedom and Tenure," just about to become the official, required that the Faculty member receive in writing the charges and that, if requested, he would have a hearing. Himstead so informed the University's Chancellor and Dean of Arts and Sciences, who replied without providing a direct answer to either request.

They claimed that the writing down of the specific charges would bring shame to the institution and that Bell knew what the charges were because of the "rumors" that had been circulating since 1935. They recounted the many meetings of the University's administrators, the Regents, and faculty members, where, when the reasons were presented, there was universal agreement that they justified the actions taken, and therefore no difference of opinion that required a hearing.

A very important letter, in March of 1941, came from H. P. Davis, the President of the University's AAUP Chapter. He explained that he and the three other signers were members of the Chancellor's Faculty Advisory Committee, not appointed by the Chancellor but elected by the faculty. When supplied with the evidence against Bell, they had all four (and the non-signing faculty member as well) agreed that his firing was justified. They also agreed that AAUP principles were not involved. Davis added that, at the Chancellor's request, the Advisory Committee had submitted a new procedure for tenure and promotion, approved by the Chancellor and certain to be adopted by the Regents. He concluded that "further pressing of the case would hardly serve the best interests of the association, the University or Dr. Bell."

Himstead's reply repeated, once again, his insistence on the presentation of the charges to Bell and the offer of a hearing. To this he added that policy and decisions in specific cases were the prerogative of the National and its Committee A, not of the local chapters, who were too close to the matters and persons to make an objective and principled judgment.

F. S. Deibler, a founder and leader of the AAUP, a Professor at Northwestern and a scholar and activist of the labor movement, was giving Himstead advice and was probably responsible for persuading him not to call for a Committee A investigation. Deibler wrote early in this correspondence that he had been in touch with Dean Oldfather and could assure Himstead that

he had kept careful records of all the meetings of university officers, faculty and Regents, and that he had an affidavit from a former graduate student, male, now on the faculty at Indiana, laying out a female graduate student 's account of her relationship with Bell, "who had charge of her research program." He noted the Dean's "hesitancy" about bringing these two into the discussion. He also thought that the letter from Davis showed that independent faculty members agreed with the administration, and that where there was smoke.....!!

But Himstead also received advice from Louise Pound, who thought the evidence was flimsy and who saw the case as arising from the "insane jealousy" of James Reinhardt of the Sociology Department. She said he resented Bell's publicity for his archaeology fieldwork and his popularity with students, and added that she would more readily attribute inappropriate student contact to Reinhardt than to Bell. She further made out a list of faculty members forced out of their positions or suffering administrative harassment, a sign of low morale and a deliberate policy of informal removal of very successful faculty.

And Himstead's last letter to Bell contains some evidence to support Professor Pound. Himstead says that Boucher and Oldfather sent him the documents related to the case, but would not allow Himstead to forward them to Bell, only to summarize them as they relate to the case. This summary mentions the original meeting assertion about "unsatisfactory student contacts"; a report from Reinhardt that Bell was planning to put the Dean and Chancellor out on a limb and then cut it off "and watch the squirm"; that Bell had made it clear to Reinhardt that he knew the charges; and that he preferred to embarrass the Dean rather than have a hearing. Still no mention of sex.

So ends the short form of the story. It illustrates shoddy policies with regard to faculty decisions. It illustrates what happens to personnel practices when sexual matters are involved; the

need for procedures that cannot allow personal feelings to distort practices. It illustrates why the 1940 Statement was needed to end arbitrary management procedures. The more interesting long form is being prepared....

Bob Haller, professor emeritus of English at UNL, was the first president of AFCON in 1988 and has continued to serve ever since on its Board of Directors.

The AFCON Sentinel is the newsletter of the Academic Freedom Coalition of Nebraska, published bimonthly in February, April, June, August, October, and December.

Editor: David Moshman
email: dmoshman1@unl.edu

AFCON promotes intellectual freedom in education and research, including freedoms of belief and expression and access to information and ideas.

From the AFCON Constitution, Article I:

The purpose of AFCON shall be to promote academic freedom in Nebraska, defined as intellectual freedom in educational and research contexts. This includes freedoms of belief and expression and access to information and ideas. In pursuit of this general goal, AFCON shall:

1. support application of the First Amendment in academic contexts, including schools, colleges, universities, and libraries.
2. educate Nebraskans in and out of academic settings, citizens and professionals, parents and students 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.

3. assist students, teachers, librarians, researchers, and others confronted with censorship, indoctrination, or suppression of information or ideas in academic settings.

4. act as liaison among groups in the State of Nebraska that support academic freedom.

www.academicfreedomnebraska.org

AFCON Board of Directors

Laurie Thomas Lee, 2019 President
John Bender, President-Elect (2020 President)
David Moshman, Immediate Past President,
Policy Coordinator, and Newsletter Editor
Peggy Adair, Secretary and Legislative Liaison
Ally Halley, Treasurer
Todd Schlechte, Webmaster
Russ Alberts
Nancy Comer
Bob Haller
Paula McClung
Rod Wagner
Linda Parker, ex officio, Archivist

JOIN OR RENEW

Ally Halley, Treasurer

AFCON now accepts PayPal! Use your PayPal account to join or renew. We offer two ways to pay: You can send a direct payment to us at afcon.freedom@gmail.com or you can use the new PayPal button on our website <https://www.academicfreedomnebraska.org/join-afcon.html>. The button on the website will auto-renew your membership each year so you don't have to manually submit a payment when it's time to renew. If you do not have a PayPal account, send us a check at 3015 S 35 Ave, Omaha, NE 68105. Memberships are \$120 for organizations and \$15 for individuals.

Academic Freedom Coalition of Nebraska Board of Directors Meeting

Eiseley Library, Lincoln, Nebraska
February 9, 2019

Present:

Peggy Adair, secretary, legislative liaison
Russ Alberts, director at large
John Bender, representing UNL Faculty Senate
Nancy Comer, representing Nebraska State Literacy Association
Laurie Thomas Lee, president, representing American Civil Liberties Union of Nebraska
Paula McClung, representing Nebraska School Library Association
David Moshman, immediate past president, newsletter editor, policy coordinator
Todd Schlechte, webmaster
Rod Wagner, representing Nebraska Center for the Book

MINUTES

President Laurie Thomas Lee convened the meeting at 10:15 a.m.

MINUTES: A motion was made by Moshman, second by Schlechte, to approve minutes of the AFCON board meeting held on December 8, 2018. Motion carried on a voice vote.

TREASURER'S REPORT: Halley distributed the treasurer's report via email. Balance on hand as of February 8, 2019, is \$2,154.16

NEWSLETTER: Moshman reported the deadline for the April edition of the *Sentinel* is March 24. Lee will include information on her recent meeting with Cathy Kuhlmeier Frey, plaintiff in *Hazelwood v. Kuhlmeier*. Adair will write a legislative report.

WEBSITE: Todd Schlechte continues to update and vastly improve the AFCON website.

PRESIDENT'S REPORT: Lee reported on the legislature's judiciary committee hearing held on February 1, 2019. Lee testified on behalf of AFCON in support of LB206, a bill to protect the first amendment rights of student journalists and their advisers.

TREAT OF THE DAY: Girl Scout Cookies. Thank you, President Lee and the Girl Scouts Spirit of Nebraska Council.

LEGISLATIVE REPORT: Adair distributed a list of legislative bills of relevance to academic freedom. The bill numbers are LB73, LB206, LB399, LB534, LB589, LB640, LB670, and LB702. Moshman reported on LB283, a bill that requires UNL to study and issue a report on climate change. Adair will add LB283 to the list of AFCON bills.

ANNUAL MEETING: Lee will contact Cathy Kuhlmeier Frey as a possible keynote speaker for the 2019 AFCON annual meeting. The board discussed Ted Genoways, author of *This Blessed Earth*, as another possible speaker for the event.

MEMBER ORGANIZATION REPORTS:

Nebraska Center for the Book: Wagner thanked Governor Pete Ricketts for doing his part to spark unprecedented public interest in and book sales of this year's One Book One Nebraska selection, *This Blessed Earth*.

There being no further business, the AFCON board adjourned at 11:15am.

Respectfully submitted,
Peggy Adair, Secretary

**Academic Freedom Coalition of Nebraska
Board of Directors Meeting
Anderson Library, Lincoln, Nebraska
March 9, 2019**

Present:

Peggy Adair, secretary, legislative liaison
John Bender, representing UNL Faculty Senate
Nancy Comer, representing Nebraska State Literacy Association
Bob Haller, chief baker, director at large
Ally Halley, treasurer, representing Fine Lines
Laurie Thomas Lee, president, representing American Civil Liberties Union of Nebraska
Rod Wagner, representing Nebraska Center for the Book

MINUTES

President Laurie Thomas Lee convened the meeting at 10:13 a.m.

MINUTES: A motion was made by Wagner, second by Haller, to approve minutes of the AFCON board

meeting held on February 9, 2019. Motion carried on a voice vote.

TREASURER'S REPORT: Halley distributed the treasurer's report. Balance on hand as of March 8, 2019, is \$2,168.90. Halley will send membership dues invoices to AFCON organizational members.

NEWSLETTER: Deadline for articles to be published in the April edition of the *Sentinel* is March 24.

WEBSITE: Halley will work with Todd Schlechte to add information regarding automatic renewal of dues to the website.

PRESIDENT'S REPORT: Lee reported LB206, a bill to protect the first amendment rights of student journalists and their advisers, has advanced out of committee to general file. The bill does have committee amendments.

TREAT OF THE DAY: Homemade cookies with butterscotch morsels. Yumm!

LEGISLATIVE REPORT: Adair provided an update on the status of legislative bills of relevance to academic freedom. Adair will write a legislative report for the April *Sentinel*.

ANNUAL MEETING: Lee contacted Cathy Kuhlmeier Frey, who accepted our request that she serve as keynote speaker at the 2019 AFCON annual meeting. The meeting will be held on October 12, 2019. Lee will work on accessing a venue through the UNL journalism department.

MEMBER ORGANIZATION REPORTS:

UNL Faculty Senate – Bender reported graduate students are receiving instruction in academic freedom. Bender also reported members of the UNL Faculty Senate continue to be concerned about the vulnerability and abuses of non-tenured faculty.

Fine Lines – Halley reported Fine Lines is preparing for another fun and educational summer camp season. Summer camp will take place in June at an Omaha Public Schools middle school.

There being no further business, the AFCON board adjourned at 11:12am.

Respectfully submitted,
Peggy Adair, Secretary