



THE

# AFCON

SENTINEL



Volume XIII, Number 1

A Quarterly of the Academic Freedom Coalition of Nebraska

March 20, 2009

## AFCON OFFICERS

Dwayne Ball  
President

Linda Parker  
President-Elect

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Past President

Karen Buckley  
Secretary

Cathi McMurtry  
Treasurer

David Moshman  
Policy Coordinator

Peggy Adair  
Legislative Liaison

Robert Brooke  
Webmaster

Tom Black  
Newsletter Editor

### 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

## MESSAGE FROM THE PRESIDENT—Dwayne Ball

We are off to a good start for 2009, but let me first reprise where we went in 2008. I'm going to miss some significant events and people – it's inevitable – but you'll see where I'm going when I get to the end. Hint: we're a very lucky organization.

We had a very good 2008 under the fine leadership of Nancy Comer, who wrote (with help from Dave and others) an excellent letter to the UN Regents and the Lincoln Journal-Star over the matter of getting the 3 UNL professors fired in 1918 over an alleged lack of pure patriotism exonerated, and making telling parallels with the UNL Bill Ayers dis-invitation. Our ever-faithful treasurer, Cathi McMurtry, kept the books in good order despite personal tragedy. Our efficient secretary, Karen Buckley, always got the minutes out accurately and on time. Our newsletter editor, Tom Black, did his usual highly professional job, aided by Bob Haller on the mailings. Our policy coordinator, Dave Moshman, kept us abreast of developments in the state and elsewhere. Past president Doug Paterson and current president-elect Linda Parker worked on outreach to other organizations concerned with academic freedom, and Linda has also been working on having the AFCON records archived. Legislative liaison Peg Adair kept us up-to-date on academic freedom issues in the state legislature, and aided by Bob brainstormed on finding sponsors for the student expression bill (more later).

During the year, we sent letters to Omaha North High School and the Omaha World-Herald protesting the canceling of a student-led play that used the "n-word" to make a point about racism (Dwayne), met with education students at Nebraska Wesleyan to talk about

academic freedom and banned books (Bob), and advised a teacher whose academic freedom was being abused. We had a good annual meeting, jointly with the board of the Nebraska ACLU, on November 15, all about the Hazelwood decision at 20 years. We awarded our academic freedom awards to Frank Edler (who has published on the 1918 firings at UNL and has pressed the Board of Regents to revoke them) and Kate Wiig, an Omaha North High School teacher who supported her students in producing a play that was banned by her administration. We have more individual members of AFCON (over 40) than we've ever had before, fully a dozen and a half organizational members, and maintain our modest but well-managed budget.

For 2009 we are going to lay all of the public education groundwork necessary to, we hope, see a student expression bill passed in the Nebraska legislature. As our legislative liaison and author of the draft bill, Peg Adair, points out, Nebraska has long had a bill of public school student "rights and responsibilities," which is all responsibilities and no rights! The Hazelwood decision made it worse. We are going to do our part to give students, teachers, and administrators the academic freedom to produce empowered public school students in the future, who know and exercise the rights of free citizens.

But, let me finish with the part about how lucky we are. We're lucky because we somehow manage to have the right people on hand when we need them. We have people on our board who know thoroughly how the legislature works; we have great writers to turn to when a  
(See **The President**, Page 2)

## Upcoming Events

AFCON Board Meetings, Saturdays: April 11, May 9, and June 11, 2009.  
Loren Eiseley Library, 1530 Superior, Lincoln, Nebraska; 10 AM

## THE PRESIDENT

persuasive letter or editorial needs to be written; we have people familiar with how the public schools and universities work who can find the right strategy for dealing with threats to academic freedom there; we have people who know someone in every important post in the state that can affect academic freedom; we have

people with magnificent judgment about academic freedom who can dissect a difficult situation for a teacher or professor and offer excellent advice; we have someone who knows how to design websites and is full of ideas (Robert Brooke) for redesigning the AFCON web site; we have people who can take on every functional role in the organization and produce great outcomes.

Finally, we have a collective dedication to the ideals of academic freedom, and we know how much civilization depends upon teachers and students reading, hearing, and expressing the truth regardless of who might be unhappy with it.

We are, indeed, a lucky bunch. And the state is lucky to have us.

## Summaries of AFCON Board of Directors' Meetings—Karen Buckley

### January 10, 2009—

**Present:** Peggy Adair, Dwayne Ball, Susan Bauers, Robert Brooke, Karen Buckley, Nancy Comer, Karen Drevo, Bob Haller, Laurie Thomas Lee, Cathi McMurtry, Dave Moshman, Linda Parker, Doug Paterson, Rod Wagner

**Opening:** On behalf of the nominating committee, Haller announced that the proposed slate of officers (Ball, president; Parker, president-elect; Buckley, secretary; and McMurtry, treasurer) was elected.

**Minutes:** The minutes were approved.

**Treasurer's Report** AFCON's treasury has a balance of \$1397.45, as of Jan. 9. The treasurer's report was approved.

**President's Report:** Comer, as immediate past president, noted that three members of the Lincoln Education Association would be rotating as AFCON representatives. They are: Darla Reinwald, Susan Bauers, and Matthew Hoffman.

**Newsletter:** The deadline for the next edition of the Sentinel is Feb. 25. Haller noted that printing color pictures in the newsletter resulted in higher cost. Some newsletters were printed in black and white; color pictures were available on the website.

**Legislative Report:** Adair said that with only two days of the new session underway, she did not see any bills introduced with specific AFCON interest/concern. She noted that last year streaming video of Unicameral floor proceedings was available; this year streaming video of committee hearings also will be available. During the discussion of the Unicameral proceedings, members identified some state senators who might be willing to introduce the student free expression bill. Haller and Ball planned to meet with Senator Ken Haar to request his sponsorship of that bill. Ball addressed the state Nebraska High School Press Association last fall and appealed for the group's support for the proposed bill.

**Membership Reports:** Moshman said that Miles Bryant wants to have a representative on AFCON from the State Conference

of American Association of University Scholars. Moshman will follow up to see if Bryant or another member will become the AFCON representative.

Lee said that the UNL Faculty Senate is concerned with upcoming budget cuts and the impact those cuts will have on faculty.

Patterson noted that the UNO Faculty Senate passed a strong statement on the Bill Ayres situation.

Comer noted that the Nebraska Reading Association's winter issue of the Nebraska Reader printed Dave Moshman's article on the disinvitation of Bill Ayres.

Ball reporting on the ACLU's support of the Millard South student suspended for wearing a t-shirt commemorating a slain classmate. She and others who followed suit were suspended. The school later reversed its decision and allowed students to wear the t-shirts.

**Old Business:** Parker said that AFCON's contact at the Nebraska State Historical Society is Tom Mooney, curator of manuscripts (tom.mooney@nebraska.gov). AFCON and the Historical Society will sign the agreement for archiving when the first donation is made. Preserving information on the website is not currently available through the Society.

Comer noted that AFCON's letter regarding AFCON's continued support of Frank Edler's endeavors to have the board rescind the 1918 termination and censoring of University of Nebraska faculty and staff was sent to all the members of the Board of Regents and to area newspapers. The letter was reprinted as an opinion-editorial column in the Journal Star Dec. 12, 2008. Members discussed possible further action, including asking university academic departments and faculty to become involved, especially those in German and psychology, whose members were directly involved in the firings. Another strategy might be continuing to write letters and request one or two persons to respond to printed columns to generate more response.

Ball announced the appointment of Robert Brooke as webmaster. Brooke proposed a switch in Webhosts to allow graphics and

Web 2.0 elements. Adair moved, and Comer seconded a motion to go forward with the change in websites and accepted a friendly amendment for accompanying costs to be included in the motion. The motion passed. Members agreed the current site should redirect visitors to the new site.

**New Business:** Parker requested members begin brainstorming on a theme for the next annual meeting. Patterson and Drevo agreed to work with Parker in pursuing program ideas. Suggestions included joining a coalition of other organizations to bring Bill Ayres to Lincoln. The new accountability in the state for testing as required by "No Child Left Behind" might prove an appropriate tie-in. Another possibility might be a reading of the play written about the 1918 University of Nebraska terminations

### February 14, 2009—

**Present:** Peggy Adair, Dwayne Ball, Robert Brooke, Karen Buckley, Nancy Comer, Bob Haller, Matthew Hoffman, Mark Karpf, Laurie Thomas Lee, Cathi McMurtry, Dave Moshman, Susan Oles, Doug Paterson, Darla Reinwald, Rod Wagner

**Minutes:** The minutes were approved, following spelling corrections, upon a motion by Moshman and a second by Brooke.

**Treasurer's Report:** AFCON's treasury has a balance of \$1193.83, as of Jan. 9. The treasurer's report was filed for audit. Dues statements for 2009 were distributed

**President's Report:** Ball said the major project this year would be providing education and soliciting support for the introduction of students expression bill.

**Newsletter:** The deadline for the next edition of the Sentinel is Feb. 25. Ball requested members let Haller know if AFCON could send their newsletters by e-mail, rather than mailing print copies.

**Legislative Report:** Adair provided a brief history of efforts that have been made to pass similar student expressions bills following the U.S. Hazelwood Supreme Court decision. (See **Minutes**, Page 3)

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

Ball noted that a sponsor has been found to introduce the student expression in the next Unicameral session.

**Membership Reports:** Ball said that ACLU Nebraska plans to support the student expression bill when it is introduced.

Moshman noted that the UNL Faculty Senate has appointed a committee, whose original focus was how to handle future challenges to campus speakers and has now been expanded to further examine the Bill Ayers "disinvitation" to speak at UNL.

Comer said the Nebraska State Reading Association will hold its annual conference Feb. 26-28 in Kearney.

Hoffman said that LEA has been successful in cyber lobbying for passage of bills.

Oles attended the recent National Council of Teachers of English in San Antonio.

Lee said the UNL Faculty Senate is monitoring UNL's budget process and is concerned budget cuts may be vertical.

Adair noted that the Unicameral had

added streaming of public hearings to the live coverage of the Unicameral session. Interested persons may go to [Nebraskalegislative.com](http://Nebraskalegislative.com) at 1:30 p.m. to see that day's agenda.

Brooke said that the spring gathering of the Nebraska Writers Project will be Saturday, May 2 and be the 30<sup>th</sup> anniversary observance. Afternoon activities will include a panel presentation on writing for social justice. He suggested someone volunteer to speak on the student expression bill as part of the panel. Brooke said that he is working on the new web page and would like to have input from members on designing pages to make them more user friendly, especially to non-AFCON members (such as students, teachers, librarians, administrators, parents, etc.)

Wagner said the Nebraska Center For the Book said committees are beginning to organize plans for the annual meeting and book festival to be held this fall. AFCON generally sponsors a display table at this event

**Old Business:** Paterson has been in con-

versation with Leonard Kurz of the Lewin Academic Association. Kurz said the association is interested in learning more about AFCON and would be willing to consider AFCON for a grant to increase public awareness.

A sponsor has been found for the student expression bill. Co-sponsors and people to testify in favor of the bill are being solicited. AFCON needs a consensus of member organizations and to discuss benefits to various groups, including students, teachers, administrators and school boards. The Civics Education Board might be one avenue of support for the bill. Strong support in the form of testimonials and compelling stories to state senators are needed.

**New Business:** There being no further business, Ball declared the meeting adjourned at 11:47 a.m., following a motion by Comer and a second by Adair. The next board meeting will be at 10 a.m. Saturday, March 14 at Eiseley branch library.

## Book review: The case for adolescents —by David Moshman

Roger J. R. Levesque, *Adolescents, media, and the law: What developmental science reveals and free speech requires*. Oxford University Press, New York, 2007, ISBN: 978-0-19-532044-2 (cloth), 345 pp., \$65

Roger J. R. Levesque, Professor and Chair of Criminal Justice at Indiana University in Bloomington, is the editor of the *Journal of Youth and Adolescence* and the author of many books on legal issues related to children and adolescents. In *Adolescents, media, and the law*, his latest, he connects psychological and legal considerations in addressing media and adolescents.

In the first half of the book, Levesque provides detailed reviews of the complex literatures concerning the effects of media on adolescent aggression, body image, smoking, and sexuality. Devoting an entire chapter to each of these four topics, he finds that media infiltrate everything but determine nothing. Adolescent behavior and development are deeply and thoroughly influenced by the media within which they are immersed but particular experiences do not cause particular results.

Adolescents, Levesque concludes,

are active agents working their way through a maze of media. We can best help them not by picking out what shouldn't be allowed to impinge on their allegedly innocent young minds but rather by promoting their ability to engage with media productively.

Levesque then analyzes the bases for free speech in U. S. First Amendment law. Case law since the 1920s has recognized at least three major justifications for freedom of expression. First, freedoms of speech and press are necessary to the functioning of democratic government. Second, intellectual freedom within the marketplace of ideas is central for intellectual and social progress. And third, freedoms to express one's beliefs and identity are central to human dignity and development.

Turning to adolescents, Levesque notes that civic engagement, participation in the marketplace of ideas, and expression of one's emerging beliefs and identity are all at least as important for adolescents as for anyone else. On all three grounds, he concludes, developmental considerations reinforce constitutional considerations in mandating the protection of intellectual freedom for adolescents.

Current law provides some support for

this view of adolescents as persons with rights. As Levesque acknowledges, however, there are many counterexamples. Good precedents exist for future decisions recognizing the importance of free speech to adolescent development, but there are all too many bad precedents that provide diverse rationalizations for governmental control.

Regarding adolescent access to media, Levesque concludes that we should rely neither on government censorship, which is unjustified and counterproductive, nor on parental control, which is futile beyond childhood. Rather, he highlights the promotion of media literacy among adolescents as part of a general concern for their development.

Adolescents, in other words, are active agents navigating complex informational and social environments, not passive recipients of bad ideas. We should assist them by supporting and promoting their dynamic self-determination. We undermine this goal when we restrict them on the basis of their alleged immaturity.

*David Moshman, AFCON Policy Coordinator, teaches adolescent development at UNL.*

## Chaucer, Academic Freedom, and Free Speech: Confessions of an ex-Medievalist

By Robert Haller

That night was come into that hostelrye  
Wel nine and twenty in a companie  
Of sundry folk, by aventure yfall  
In fellowship, and pilgrims were  
they all.

So had I spoken with them everichon  
That I was of hir fellowship anon...

We assume in AFCON a close connection between the First Amendment right of Free Speech and the educational right to Academic Freedom. In case any readers have reason to question this assumption, I want in this short essay to tie them together by locating them in the 14<sup>th</sup> century English poet we all know and love: Geoffrey Chaucer

I taught Chaucer for years, and emphasized the peculiar circumstances of the *Canterbury Tales* as also indicative of cultural norms in 14<sup>th</sup> century English Society. Chaucer acts as if there is nothing out of the ordinary about 29 guests at a suburban London hotel, intent on a pilgrimage to Canterbury and the tomb of St. Thomas à Beckett, to form a “fellowship”. That fact however says about Medieval English society that people were willing and eager to enter into “fellowships” for almost any enterprise—a “fellowship” meaning a voluntary corporate union for a specific purpose in which all who entered were equal and bound themselves to follow the consensus of the group. In this case, the group committed themselves to participation in a verbal contest in which all individuals would present themselves through the recital of tales for their mutual instruction and pleasure. They represented a full range of social class; they bound themselves

to follow the mandates of a motel owner and bartender.

The symbolism is clear enough. Life is a “pilgrimage” a journey to one’s ultimate “home” motivated by the recognition that a person is not at home where he or she lives. It is a corporate venture carried out by speaking and listening to one’s fellow pilgrims, who were not to be censored or restricted in what they reported through fictions which revealed and reflected their scenes of life and its aims.

Some two centuries earlier, a peculiar institution came into existence, a “university” made up of “colleges,” voluntary mutual commitments of individuals to engage in the enterprise of the search for truth to which all must contribute according to their rank and function within the fellowship. Before universities, there had been monastic and diocesan and municipal and court schools, essentially training clergy and civil functionaries, and sometimes developing doctrine to support their sponsors. In contrast, the most important aspect of this new enterprise is that it had to be independent, autonomous, resistant to any attempt by those outside to dictate either the methods or the outcomes of its studies and disputations. Breaches of this autonomy occurred only when members broke their oath and took their contentions to outside authorities—as happened in the famous events of the late 13<sup>th</sup> century in Paris, when the Bishop of Paris, to solve an internal dispute, listed doctrines to be condemned and dispatched many faculty, including St., Tomas Aquinas (who died during his period of exclusion from the University).

During this same period, in France and English in particular, the institution known as the Parlement came into existence, literally the place for speaking. The Lords Temporal and

Spiritual, and the Commons, came together to speak for their mutual benefit. The Bishops and Barons were used to asserting their wishes; the Commons appointed their Speaker to participate with their betters. And through this institution the King was required to hear the views of his subjects because only the Parlement could order a tax to support a war or infrastructure development or economic policy

Because of the integrity made possible by its autonomy, the University acquired the authority of its disinterested search for truth, and became, like our present Supreme Court, the body to which ecclesiastical and secular government brought their disputes for arbitration. In the early 14<sup>th</sup> century, for instance, the University of Paris declared Pope John the 22<sup>nd</sup> in error in his assertion about the Beatific Vision, that the blessed see God only after the Last Judgment. The University’s contention prevailed, and the Pope acknowledged his error shortly before his death. So much for Papal Infallibility; much more for the intellectual strength of the university idea.

Seven centuries later, universities and governments have changed in many ways, but what differentiates a university from an academy or a trade school or a think tank is still its autonomy and its self-governance, making it possible for its search for truth to be independent of outside control and its intellectual conclusions dictated by the appropriate methods of its disciplines, with the quality of ideas and findings judged by peers. Similarly, what distinguishes modern government is its openness to full participation by citizens and those elected to deliberate its laws and policies. The rights associated with Academic Freedom are

(See **Chaucer**, page 6)

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

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

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

Bob Haller: "Civics Education and the Practice of Freedom" and "How Books Can Harm You: Lessons from the Censors"  
rhaller1@unl.edu

David Moshman: "Principles of Academic Freedom"  
dmoshman1@unl.edu

John Bender and David Moshman: "Student Freedom of Expression/Student Rights"  
jbender1@unl.edu  
dmoshman1@unl.edu

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

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

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### ADDRESS FOR THE AFCON WEB SITE

<http://www.AFCONebr.org>

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

### FOR SALE BY AFCON

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

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

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

### REQUEST FOR NEWS FOR FUTURE ISSUES

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

Due date for submissions to the **June 19, 2009**, issue is **May 25, 2009**.

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

**CHAUCER**, from Page 4) conferred within the institution and protected from outside dictation. The rights of free speech in civil society, we say, are inherent but also necessary to the operation of a democratic government and thus create a limitation on what that government can proscribe.

Interestingly, the common schools (nowhere mentioned in the U.S. Constitution), not voluntary institutions, have no history and articulated theory to support the academic freedom and civil rights of its teachers and students, except the most obvious justification: they are to prepare students for the univer-

sity and for civic life, and cannot do so without allowing them to experience on their way the freedoms intrinsic and necessary to their adult lives as those admitted to the fellowship of the University and the body of citizens.

This little piece is an attempt to justify being a Medievalist in modern society.

What knowledge of our past does for us is to make us see that our institutions have a history that is relevant to our present. The unwashed often use the term "Mediaeval" to mean hierarchical, censorious and restrictive.

Any reader of the *Canterbury Tales* should know differently. Those tales present drunken Millers parodying the activities of their betters, Friars and

Diocesan officers attacking each other, students expressing contempt for the working classes (and vice versa), and a woman asserting her right to rule the household and correct the clergy. The tales are obscene and behavior within them licentious.

Censorship and restrictions on the range of opinion allowed are nowhere to be seen. No one is excluded: when vicious insults are exchanged between the Pardoner and Our Host, the Knight requires them to kiss and make up (however offensive it is to Harry Baily to kiss a man, especially one he suspects is gay.) And yet Chaucer was popular (see **CHAUCER**, page 7)

## UNIVERSITY REPORTS —By Dwayne Ball

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

### FREEDOM OF EXPRESSION ON CAMPUS

**Keep your thoughts out of the e-mail system!** Michigan State student government leader Kara Spencer was found guilty of "spamming" on the MSU e-mail system. The university was contemplating changing its calendar in ways she and others in the student government felt would harm students. Ms. Spencer disagreed, and sent e-mails to a selected group of 391 faculty (8% of MSU faculty) to ask that they express disapproval and engage in a dialogue. The MSU administration, apparently threatened by the use of the e-mail system to disagree with it, peremptorily demanded Ms. Spencer's presence at an "investigation," convicted her in a judicial hearing, and placed a warning reprimand in her

file. However, 6 weeks later, after an appeal filed by Ms. Spencer and considerable negative publicity by FIRE and a number of civil liberties organizations, MSU reversed itself. Its unconstitutional policy on the use of the MSU e-mail system remains in place, however. (FIRE newsletters of December 2008 and January 2009)

**Christian groups denied recertification by courts.** San Diego State University and California State U. at Long Beach both have policies against certifying student groups that discriminate on a number of bases, including sexual orientation. Campus Christian organizations already certified changed their charters to deny membership to homosexuals or those who believed homosexuality was not a violation of "God's order." They were de-certified, appealed in the courts, and lost when a federal judge ruled that student groups are a "limited public forum," and rules may bar discrimination by such student groups, as long as such rules are "view-point neutral." (CHE, Feb 9, 2009)

### FACULTY EMPLOYMENT RIGHTS

**The meaning of tenure:** tenured professor Edwin Otero-Burgos felt he was unfairly dismissed by Puerto Rico's Inter-American University after complaining of heavy-handed tactics by the university, but lost in the lower courts. Those courts ruled that Puerto Rico's Law 80, which deals with the rights of dismissed at-will employees, applied to him – implying that tenure was meaningless. Upon appeal, and aided by the AAUP, Otero-Burgos was awarded a victory by the federal appeals court for Puerto Rico. The court's ruling stated: "There is a clear difference between a worker whose employment is not subject to a specific temporal limitation, but who may be fired for any reason, and Otero-Burgos, who, under the terms of his tenure contract, presumptively retains his job until retirement," (from Inside Higher Education on Feb 20, 2009, at <http://www.insidehighered.com:80/news/2009/02/20/suit>)

(CHAUCER, from page 6)

at the English court and in the European schools. He celebrated English habit of forming “fellowships” whenever a random group of them by accident (“aventure”) came together. A model of a learning community.

## What Does Tenure Mean to the Law?

By Dwayne Ball

The public conception of tenured university faculty often seems to be that they rise late, play racquetball at the publicly-funded university gym, lunch at the faculty club, and then, perhaps, teach a class or take in some other work. Home by 4 or 5 in the afternoon, they can glory in the fact that they can't be fired, no matter how poorly they teach and no matter how irrelevant or unproductive their research.

Anyone who has spent time at a university has seen one or two faculty like that – but, most faculty work far longer hours than 40 per week, and are far more productive.

Furthermore, faculty are well aware that tenure does not protect them from firing. They can be terminated for unprofessional conduct, poor teaching, chronic lack of research productivity, or because of budget cuts.

What tenure has always meant, however, is that one cannot be fired for stirring up intellectual trouble – publishing or speaking, in whatever outlets, what he or she deems to be the truth. This is what tenure is supposed to mean – no matter what powerful people inside and outside the university may think of what you say or write, you are protected from retaliation. This gives universities the character of an alliance of independent and highly-capable minds, to which the public may turn for facts, predictions, and ideas that are unbiased by pressure from powerful

people and institutions. Society needs an institution like that. Tenure is the core of academic freedom; without it, professors can be fired for making controversial statements, they shut up, and society loses.

Largely, tenure is a property right of the faculty that should be guaranteed by contract and by-laws at their institutions. The courts should only step in when those contracts are violated. Furthermore, there should be First Amendment protections if a professor at a public university speaks out publicly on some issue, even if it concerns his or her own university.

However, the courts are at sixes and sevens regarding what constitutes a violation of tenure rights. In an article in the February 27, 2009 Chronicle of Higher Education, reporter Peter Schmidt summarized case law as it exists today, and the results are mixed.

For example, the U.S. Court of Appeals for the Seventh Circuit ruled, last September, in *Renken v. U of Wisconsin-Milwaukee*, that a professor who speaks out against his or her own administration can be disciplined, including being terminated. The court did not find that there was any difference between a tenured professor criticizing his or her own university administration, and a capitol building maintenance worker complaining about her bosses in the newspaper. They can both be disciplined. If the professor chose to make a statement about some abstract intellectual matter, that might be different. But, if a

professor speaks out as an employee, he or she is risking his or her employment.

For over 50 years, the Supreme Court has held that the First Amendment protects academic freedom at public institutions. However, exactly what kind of speech, about what topics, has been left ill-defined. Recent Supreme Court rulings have chipped away at these First Amendment protections.

In *Pickering v. Board of Education*, 1968, the court ruled that the right of public employees to speak out must be balanced against the ability of a government agency to conduct its business. In *Connick v. Myers*, 1983, the court ruled that for a government employee's speech to be protected, it must be a matter of public concern. In *Garcetti v. Ceballos*, 2006, the court ruled that public agencies can discipline employees for any speech made in connection with their jobs (effectively removing the minor protections of *Connick*).

So, given the set of 4 decisions here, it seems that a legal argument can be made that tenure means something only when professors' speech is a “purely academic” product of their work, and that any other sort of public statements can subject the professor to disciplinary action.

If so, how are we supposed to engage in faculty governance? How can we express a public opinion on violations of academic freedom? I leave that question to you and future court cases.

# AFCON

515 North Thomas Avenue  
Oakland, NE 68045.

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**