IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CASSIE KUHR and NICK KUHR, by and through their mother and next friend, JEANNE KUHR, and DAN KUHR,	)	**CASE NO. 8:09CV363**
Plaintiff,	)	**JURY INSTRUCTIONS**
v.	)	
MILLARD PUBLIC SCHOOL DISTRICT and DR. KEITH LUTZ, in his capacity as Superintendent of Millard Public Schools,	)	
Defendants.	)	

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I have asked some questions of witnesses. Do not try to guess my opinion about any issues in the case based on the questions I asked.

INSTRUCTION NO. 3

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness's intelligence, the opportunity a witness had to see or hear the things testified about, a witness's memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 4

The Plaintiffs and the Defendants have stipulated – that is, they have agreed – to certain facts in this case. You should, therefore, treat those facts as having been proved. Those facts include the following:

1. Cassie Kuhr was a junior at Millard South High School ("Millard South") in August of 2008. She graduated in February of 2010.
2. Nick Kuhr was a freshman at Millard South in August of 2008. He graduated from Brook Valley School South in 2012.
3. Dan Kuhr was a senior at the Millard Learning Center in August of 2008. He graduated in December of 2008.
4. Jeanne Kuhr is the natural mother of Cassie, Nick, and Dan Kuhr. She does not claim that any of her rights have been violated. She is a party to this case because one or more of her children are minors and the law requires her presence under these circumstances.
5. The Millard Public School District is one of the Defendants; Dr. Keith Lutz is the other. Dr. Keith Lutz, at all times relevant to this case, was acting in his capacity as the superintendent and agent of the Millard Public School District.
6. Dan Kuhr and Julius Robinson were classmates and friends at the Millard Public Schools. Julius Robinson was close friends with Dan Kuhr, and had a close relationship with the Kuhr family. Julius Robinson and Dan Kuhr would have graduated in the same class, but Julius was murdered by being shot to death in Omaha, Nebraska, on June 15, 2008.

7. Dan Kuhr designed Julius Robinson memorial shirts, wristbands, and key chains.

8. On August 13, 2008, Cassie Kuhr and Nick Kuhr began classes at Millard South, and Dan began classes at the Millard Learning Center.

9. On August 27, 2008, Nick Kuhr appeared at school in the ordinary course wearing the memorial t-shirt honoring Julius Robinson. Administrators at Millard South met with Nick Kuhr and Jeanne Kuhr and told them that Nick could not wear the shirt while in school.

10. On August 28, 2008, Nick Kuhr appeared at school in the ordinary course wearing a Julius Robinson memorial t-shirt. Nick was sent to the principal's office and told to take off the t-shirt or he would be suspended from school. He refused to remove the t-shirt, and was suspended from school for two (2) days.

11. Also on August 28, 2008, Cassie Kuhr was suspended for one (1) day because, on that day, she wore a Julius Robinson memorial t-shirt and/or a Julius Robinson memorial bracelet or wristband and carried a memorial key chain.

12. On September 2, 2008, Cassie Kuhr went to school wearing the wristband and displaying "Julius" written in ink on her hand. She was suspended for three (3) days for doing so.

13. In early September of 2008, Dan Kuhr appeared at school in the ordinary course wearing a "RIP Julius" memorial t-shirt, a Julius Robinson memorial wristband, and displaying the Julius Robinson memorial key chain. The principal at Dan Kuhr's school told Dan that he could not wear or display any of those items in or during school.

INSTRUCTION NO. 5

The Plaintiffs bring their claims under the federal statute, 42 U.S.C. § 1983, which provides that any person or persons who, under color of law, deprive another person of any rights, privileges, or immunities secured by the Constitution or the laws of the United States shall be liable to the injured party. The Plaintiffs allege that the Defendants infringed on their right to free speech under the First and Fourteenth Amendments to the United States Constitution when the Defendants prohibited the Plaintiffs from wearing or displaying Julius Robinson memorial items, such as t-shirts, wristbands, and key chains, and from displaying "Julius" in ink on their hands. As an affirmative defense to the Plaintiffs' claims, the Defendants allege that they could restrict the Plaintiffs' free speech rights because they possessed information that reasonably led them to believe that gang-related violence might have occurred if the Plaintiffs were allowed to wear or display the Julius Robinson-related attire and/or markings while attending school.

To succeed with their affirmative defense, the Defendants have the burden of proving by a preponderance of the evidence that, at or prior to the time they decided to prohibit a Plaintiff from wearing or displaying the Julius Robinson-related items or markings, the Defendants had available to them specific information which might reasonably have led them to believe that a substantial disruption of, or material interference with, school activities would occur if students were permitted to wear or display those items or markings. The information relied upon by the Defendants in making their decision need not necessarily have been true, as long as the Defendants reasonably believed it to be true. A substantial disruption or material interference is something more than the discomfort and

unpleasantness that always accompanies an unpopular viewpoint. Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.

If you find that the Defendants have satisfied their burden of proving their affirmative defense with respect to each Plaintiff, then your verdict must be for the Defendants and against that Plaintiff. If, on the other hand, you find that the Defendants have failed to satisfy their burden, then your verdict must be in favor of the Plaintiff and against the Defendants.

INSTRUCTION NO. 6

If you find that a Plaintiff is entitled to a verdict under Instruction No. 5, then you must return a verdict for that Plaintiff in the nominal amount of One Dollar ($1.00).

INSTRUCTION NO. 7

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase "proof beyond a reasonable doubt." That is a stricter standard than "more likely true than not true." It applies in criminal cases, but not in this civil case; so put it out of your mind.

INSTRUCTION NO. 8

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, you may send a note to me through Ms. Roundtree, signed by one or more of you. I will respond as soon as possible either in writing or orally in open court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise Ms. Roundtree or someone else in my chambers that you are ready to return to the courtroom.