

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

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From the President

David Moshman

As I complete my fourth term as president (having previously served in 1993, 2005, and 2014), I have decades of people to thank, but with one exception I'll stick to the past year, beginning with the October 13 annual meeting.

Thanks to Sam Walker, winner of our annual academic freedom award, for also serving as the keynote speaker at our annual meeting. He has since prepared a written version of his engaging and important talk for publication in this issue of the *Sentinel* (see p. 3).

Thanks to Nebraska Senator Steve Halloran for agreeing to serve on the panel and for his frank remarks and helpful participation in the subsequent discussion. Thanks also to Nebraska Senator Tom Brewer for attending and joining the discussion.

Thanks to ACLU of Nebraska Legal Director Amy Miller, who also served on the panel and had much to add about free speech for everyone. After the meeting, in typical ACLU fashion, she headed off to meet with a prison inmate who recently told her he's a Nazi.

Thanks to UNL professor John Bender, past president of the UNL Faculty Senate, the UNL AAUP, and AFCON, not only for serving as the third panelist but also for agreeing to run for 2019 president-elect of AFCON, meaning he will serve as president in 2020. And thanks to Laurie Thomas Lee for agreeing on short notice to serve (once again) as president in 2019.

Thanks to 2018 president-elect Russ Alberts for preparing and distributing the academic freedom questionnaire for Regents candidates. We regret that he will not be able to assume the presidency in 2019 for health reasons and appreciate all he has done for AFCON over the years, including a previous term as president.

Thanks as always to secretary Peggy Adair, who not only keeps the best minutes but also maintains the very best email list of academic freedom supporters in Nebraska. If you got this newsletter from her, you're on the list. If not, join AFCON! (See p. 2.)

Thanks to treasurer Ally Halley, who ably manages the huge sums that pass through the AFCON account. Just kidding. Our meager income comes from member dues, and goes a long way because we are all volunteers. Don't forget to pay your dues for 2019.

Thanks to webmaster Todd Schlechte, who has brought the AFCON website back to life after a period of dormancy. Check it out at www.academicfreedomnebraska.org.

Thanks to Rod Wagner, immediate past president, for serving as chair of this year's nominating committee and to Board member Bob Haller for once again arranging the academic freedom award plaque and for baking snacks for our monthly Board meetings.

Thanks to Board members Nancy Comer, Paula McClung, and Katie Schroder; to archivist Linda Parker; and to everyone else who worked with

GIVING FLESH AND BLOOD TO THE PROMISES IN THE BILL OF RIGHTS

SAMUEL WALKER

**Keynote Address
AFCON Annual Meeting
Lincoln, Nebraska
October 13, 2018**

Controversies over freedom of speech have erupted all across the United States in the last few years. Nebraska is no exception. An incident on the University of Nebraska at Lincoln campus in the fall of 2017 sparked a controversy that led to a new Board of Regents policy that severely limits free speech and a legislative effort to secure greater free speech protections.

The controversies across the country include both old issues, such as hate speech, and new ones, including demonstrations where the leaders state that marchers will be carrying guns. On college and university campuses there have been proposals to establish “safe spaces” where students can (presumably) be free of offensive speech related to race, ethnicity, gender, sexual orientation, or other categories, and “trigger warnings” designed to alert students in classrooms that some material they might regard as offensive will be read and discussed.

We should not be surprised by these recent controversies. Continuing controversies over free speech ARE the American tradition. In fact, I argue in this paper that controversies where free speech activists challenge threats to freedom of expression are what give flesh and blood to the promises of the First Amendment, and over the decades have wrought the expansive protections of free speech that we enjoy today.

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The United States today occupies a singular position in the world with respect to freedom of speech. No other country, including all other democracies, protects freedom of expression to the extent that we do. In a world filled with intolerance, tyranny and repression, this is an enormous achievement.

It did not come easy. Americans over the decades fought for free speech, and we owe them a great debt. It is a melancholy fact of American history, however, that the first Supreme Court decisions giving First Amendment protection to both freedom of speech and freedom of the press did not happen

until 1931 (*Stromberg v. California, Near v. Minnesota*), a full 140 years after the Bill of Rights was adopted, and only 87 years from today.

The commitment and tireless efforts of all the free speech pioneers were the flesh and blood that created the protections that we enjoy today.

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To put the American achievement in perspective, it is useful to examine the many international human rights declarations that have proliferated since World War II, beginning

with the Universal Declaration of Human Rights in 1948.

There are now over 40 international human rights declarations, conventions, and covenants, including the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of all Forms of Racial Discrimination (1966), the Convention Against Torture (1984), the Convention on the Rights of the Child (1989), and many others. Additionally, a large number of private corporations around the world have adopted human rights policy statements.

These documents have familiar ring to American ears. First, they are all based on the principle that human rights are best protected by a written constitution, and not by traditional custom or an “unwritten constitution.” Second, they define human rights in terms of individual rights, and not in terms of traditional or communal rights, or religious doctrine. Third, the enumerated rights include the categories of First Amendment-style rights, equality before the law, and due process of law.

In short, the international human rights movement embraces the U.S. model of protecting rights. This is our gift to the world. It is our greatest export: greater than Boeing airplanes, greater than Microsoft and Google, greater than our Hollywood movies and pop music.

To be sure, the international human rights statements differ with the American approach to rights on several issues. Virtually all assert protections of economic rights, including employment and income. Most also protect “honor,” “reputation,” and “privacy” in ways that are contrary to American law.

Particularly worrisome, the Universal Declaration of Human Rights ends with an escape clause, allowing restrictions on the rights it enumerates. Article 29 provides that rights may be limited if necessary for the protection of “morality, public order, [and] general welfare.”

Other human rights statements contain similar limitations. Battles over these categories, of course, comprise the history of the growth of civil liberties in the U.S. Were the U.S. to embrace the principle stated in Article 29, it would open the door to rolling back our hard-won gains on individual rights.



Sam Walker
Courtesy of the University of Nebraska at Omaha

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Another and fascinating perspective on the American approach to protecting free speech and other civil liberties is offered by the famous 1936 constitution, arguably the most civil libertarian constitution ever written. The 1936 constitution? Which one is that?, you ask.

It was the 1936 constitution of the Soviet Union, produced at the order of Joseph Stalin, in an effort that took several years and involved hundreds of thousands of public meetings where it was debated. This constitution not only guaranteed freedom of speech, press and assembly, but was so protective of a free press that it guaranteed free printers and printing paper!

But of course it was a giant fraud, a lie and a fig leaf to cover Stalin’s Great Terror which began two months before the constitution was unveiled. Historians reliably estimate that over 700,000 people were executed in the Terror (or Great Purge, as it is sometimes called), and an estimated 1,500,000 were sentenced to the

labor camps of the infamous Gulag. Those executed included most of the high-ranking old Bolsheviks and the top command of the Soviet Army. They also included Karl Radek and the other two principal authors of the just-adopted 1936 constitution. So much for freedom of speech.

The saga of the 1936 Soviet constitution is worth our attention because it dramatically illustrates a fundamental point about the vitality of a constitutional democracy. Stalin's fraudulent document was never anything more than words on a page, with no flesh and blood, no meaningful protections. The rights it enumerated had never become embedded in Russian society, in the consciousness of Russian people. And so there was no one to fight Stalin's Terror and defend all those enumerated rights.

The vitality of the American commitment to constitutional democracy and the meaningful protection of individual rights is due in large part to the fact that the idea of rights has penetrated deeply into our social and political culture. The commitment to rights shapes our everyday lives and language.

In conclusion, the deeply embedded American rights consciousness is why there is an Academic Freedom Coalition of Nebraska (AFCON). The organization is comprised of people who believe deeply in academic freedom and feel the need to join and maintain an organization devoted to its defense. It is why there is an American Civil Liberties Union (ACLU), which in 2020 will celebrate its 100th birthday. And it is why so many other rights-oriented groups also exist.

It is the commitment of so many Americans to defending free speech and all the other individual rights we enjoy that gives flesh and blood to the promises of the Bill of Rights.

Sam Walker is a professor emeritus of criminal justice at UNO, where he continues to work daily 13 years after his retirement. His 14 books on civil liberties, policing, and criminal justice policy include Hate speech: The history of an American controversy; In defense of American liberties: A history of the ACLU; and Presidents and civil liberties from Wilson to Obama: A story of poor custodians.



While this may seem trivial to some people, there may be no better example of this cultural phenomenon than the proliferation of numerous "bills of rights" covering various social issues. A few minutes on the web turns up a shoppers' bill of rights, a bill of rights for pets, a bill of rights for fashion models, a sex workers bill of rights, and on and on. I quickly found over 40 such affirmations.

The list of these bills of rights is amusing and may strike many people as inconsequential. But I argue to the contrary that it illustrates a fundamentally important point. American society is characterized by a "rights culture," in which people almost reflexively respond to a matter of concern by proposing a bill of rights for it.

The rights consciousness that pervades our social and political culture represents the flesh and blood that gives free speech and other constitutional rights meaningful protection, albeit less than perfectly. It is the fuel that arouses Americans to protest abuses of power by a President Richard Nixon and the massive protests that have punctuated the presidency of a Donald Trump.

Minutes

Academic Freedom Coalition of Nebraska Annual Membership Business Meeting UNL Student Union, Lincoln, Nebraska

October 13, 2018

Present:

Peggy Adair, secretary, legislative liaison
John Bender, representing UNL Faculty Senate
Nancy Comer, representing Nebraska State Literacy Association
Gerry Cox, member
Bob Haller, representing all things wise and wonderful
Ally Halley, representing Fine Lines
Laurie Thomas Lee, representing ACLU Nebraska
David Moshman, president, policy coordinator
Linda Parker, archivist
Todd Schlechte, webmaster
Marcella Shortt, member
Rod Wagner, immediate past president, representing Nebraska Center for the Book

MINUTES

President Dave Moshman convened the meeting at 1:00pm.

ACADEMIC FREEDOM AWARD: During the AFCON Annual Membership Meeting, President Dave Moshman presented the 2018 AFCON Academic Freedom Award to Sam Walker, emeritus professor of criminal justice at UNO.

MINUTES: A motion was made by Haller, second by Parker, to approve minutes of the 2017 AFCON annual membership business meeting. Motion carried on a voice vote.

PRESIDENT'S REPORT: President Moshman reported the continuing issue of free speech suppression at the UNL campus prompted the theme for this year's annual meeting: Free Speech and Academic Freedom at the University of Nebraska. Moshman clarified AFCON advocates for academic freedom at all levels of education from pre-K through university; and advocates for intellectual

freedom in theatre, public libraries, journalism, and other venues.

Moshman expressed his gratitude to Schlechte for updating and improving the AFCON website; thanked Adair for doing lots of things; thanked Halley for excelling at her rookie year as Treasurer-For-Life; and thanked Haller for preparing the AFCON Academic Award plaque. Moshman issued a special thanks to Alberts for his work contacting candidates running for positions on the University of Nebraska Board of Regents, soliciting their responses to AFCON questions regarding pertinent academic freedom issues. Responses have been posted on the AFCON website.

SPECIAL RECOGNITION: A motion was made by Schlechte, second by Lee to bestow special recognition to Russ Alberts for his years of support for and contributions to academic freedom and to the AFCON organization. Motion carried on a voice vote.

NOMINATING COMMITTEE REPORT: Wagner presented the 2019 slate of officers for AFCON: President, Laurie Thomas Lee; President-elect, John Bender; Secretary, Peggy Adair; Treasurer, Ally Halley. Moshman thanked the nominating committee of Rod Wagner, Nancy Comer, and Todd Schlechte, for their work in recruiting the slate of AFCON officers for 2019.

ARCHIVIST: Parker reminded AFCON members she is actively soliciting historic AFCON documents for archiving at UNO.

IN APPRECIATION: Adair and the AFCON members expressed their appreciation to Moshman for all of his diligence and hard work as President of AFCON for 2018, and for organizing the very successful annual meeting.

There being no further business, the meeting adjourned at 1:08pm.

Respectfully submitted,
Peggy Adair, Secretary