

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

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From the President

John R. Bender

COVID-19 weighs on everyone's mind. It has obliterated almost all other topics from the news on television or in newspapers. It has separated family member from family member. It has separated congregants from their churches, synagogues and mosques. It has separated businesses from their patrons. And it has separated employees from their jobs.

Nor are we seeing an end to this crisis. President Trump may dream of full churches on Easter, but health workers and public officials around the country are convinced the pandemic will not abate that quickly. Some are suggesting that even if the country manages to bring it under control by late spring or summer, COVID-19 will rebound in the fall.

With people dying, losing their jobs and losing their savings in the stock market crash, the impact on academia seems minor. Nevertheless, the pandemic is having profound effects on education at all levels. One writer in the *New York Times* said the pandemic was forcing universities like Harvard and Michigan and Nebraska to turn themselves into the University of Phoenix. I have spent several days revising my classes for online delivery, and while we talk of this as a temporary fix to get through this crisis, the pandemic is likely to change universities permanently.

The changes forced by COVID-19 may have implications for the principles of shared governance and academic freedom.

Greg Weiner, who was an aide to Nebraska Sen. Bob Kerrey and is a political scientist, recently

wrote in the *New York Times* that crises like the pandemic tend to expand executive power. That certainly was the case with the world wars of the last century and the terrorist attacks of this one. Weiner fears that such transfers of power undermine the constitutional balance among the three branches, a foundation for our democracy and our freedom.



Something similar may be happening in universities. The principle of shared governance has been eroding for some time. The COVID-19 epidemic may accelerate it. The decision to shut down the University of Nebraska for the week before spring break and cancel all in-person classes was made largely by administrators with some faculty consultation. In the circumstances, that seems reasonable. The decision had to be made quickly for the safety of the students, staff and faculty.

A Canadian scholar, Shannon Dea of the University of Waterloo, agreed that emergency decisions cannot be consultative, but she hoped that once the crisis passed, the tradition of shared governance could return. The crisis, however, may continue for many months and the fallout may last longer. Until a vaccine or cure is developed, which may take a year or more, people may fear congregating in classes. And the economic impact on universities may continue for much longer as tax revenues drop and foundation portfolios shrink. Administrators may see these continuing problems as justification for continuing to concentrate decision-making in their hands.

On the academic freedom side, some individuals and organizations see the COVID-19 crisis as an opportunity to chip away at the freedom for teaching and research educators value and need. A story in the *Chronicle of Higher Education* reported that Charlie Kirk, the founder of Turning Point USA, has told students to use the crisis as an opportunity “to document and expose the radicalism that has been infecting our schools.” Because university teachers are putting videos or audios of their lectures online for students to watch or listen to at home, Kirk sees this as way to collect evidence that many teachers are engaging in liberal indoctrination, not instruction. But the danger is that some people will see lectures about controversial topics as propaganda.

A sociology professor at Washington State University, Dylan Bugden, told the *Chronicle*, “I find it difficult to teach without referring to important events and issues in the world.” Bugden said this method of teaching exposed him to criticism. While he said it was unlikely students would launch a campaign against him, “the risk is so severe that it’s simply not worth it.”

The threat comes not only from right-wing organizations like Turning Point USA but also from liberal groups. An assistant professor of psychology at Marietta College, Bo Winegard, has said he was fired because his research and theories about innate differences among races contradicted liberal orthodoxy.

The teachers who are at greatest risk are the lecturers, adjuncts and professors of practice. They lack tenure and they tend to be paid less than tenured faculty. If their teaching is attacked, their contracts may not be renewed. And if the economic pressures that follow from the pandemic force cutbacks at universities, they are the ones most likely to lose their jobs.

No one can foresee all the ramifications of the COVID-19 pandemic. And it seems likely some of the changes academia is experiencing will be permanent. But the values of shared governance and academic freedom are central to the success of American universities and they must be protected.

MacMillan Embargo Has Been Lifted

Todd Schlechte



In the February issue of the *Sentinel*, it was mentioned that Macmillan had placed an embargo on eBooks to libraries for 8 weeks. The embargo meant that a library or library system could lease only one copy of an eBook directly after publication. In light of COVID-19, which has closed many libraries and is creating a much higher demand for digital materials, Macmillan eliminated its embargo on newly published eBooks and temporarily lowered the prices on some eBooks to help libraries meet demand.

Over the long term, however, very little has changed. Libraries still generally are allowed to lease eBooks for only two years from the Big 5 publishers, and the price per copy is generally several times higher than the price an individual consumer would pay. In the world of print hardcovers, by contrast, libraries pay approximately the same prices as an individual purchasing a copy off Amazon.

“Hate Speech,” Free Speech, and Group Violence

David Moshman

This is a slightly elaborated version of the introduction to my chapter, “‘Hate Speech,’ Free Speech, and Group Violence,” in Perspectives on Hate, a new book edited by Robert J. Sternberg and scheduled for publication in May 2020 by the American Psychological Association (www.apa.org/pubs/books/perspectives-on-hate).

What should we do about hate speech? A common answer is that we must stamp it out, or at least keep it to a minimum. But what about free speech? A common answer is that hate speech is not free speech. Free speech must be protected. But hate speech, many argue, is a distinct category of speech that causes violence against groups, including individuals affiliated with those groups. To protect those individuals and groups, it is argued, hate speech may and should be censored and punished.

In this chapter, I look more closely at the role of hate in group violence and at efforts to define and restrict hate speech. I conclude that the term “hate speech” does not identify a distinct category of speech and that censorship of “hate speech” is unjustified and counterproductive.

In the first three sections of the chapter (following this introduction) I address hate, speech, and “hate speech,” respectively, beginning in the first section with hate. Group violence usually seems intrinsically hateful, so it is natural to attribute it to hate. Serious consideration of actual group violence, however, casts doubt on this explanation. Hate, it appears on closer analysis, is part of a much larger picture that includes dichotomization of identities, dehumanization of the other, and denial of our own violence. Hate, I conclude, plays much less of a causal role in genocides and other group violence than is commonly assumed.

I then turn, in the second section, to speech. I begin with three standard justifications for

freedom of expression: individual rights, democratic deliberation, and the progress of knowledge. I then provide a brief history of First Amendment law protecting free expression in the United States. Not all speech is protected by the First Amendment, but exceptions, we will see, are narrow and carefully defined. A central principle in theories of free expression, including First Amendment law, is that restrictions on expression must be viewpoint neutral.



In the third section, I extend the discussion to what is commonly called “hate speech.” There is no such thing as “hate speech” in First Amendment law, and thus no exception for it. Outside of the United States, however, restrictions on “hate speech” are common. Such restrictions, I argue, are based on false assumptions about the role of hate in violence. Some speech deemed hateful can be restricted for specific reasons, such as personal harassment or incitement of violence, even under First Amendment law. Drawing on the principle of viewpoint neutrality, however, I argue that hateful speech should never be restricted simply because it is hateful.

The remaining two sections of the chapter (prior to a brief conclusion) provide case studies concerning censorship of speech deemed hateful. In Rwanda, it is illegal to hold beliefs associated with “genocide ideology.” Of course, it is the government that defines “genocide ideology” and determines whether someone’s speech is evidence of such ideology. Government restrictions on freedoms of belief and expression

are part of a broader pattern of oppression that many observers see as increasing, rather than decreasing, Rwanda's risk of another genocide.

Meanwhile, in Israel, the United States, and elsewhere, speech deemed critical of Israel is routinely denounced as "anti-Semitic" hate speech. Even factual statements about historical events associated with the founding of Israel are often construed as hate speech because they do not fit patriotic Zionist narratives of those events. Unjustified charges of anti-Semitism, I argue, impede the free discussion necessary to seek truth and justice.

These cases and others support the earlier theoretical conclusion that censoring hate speech is unhelpful in preventing violence and often counterproductive. Instead of censorship and punishment, I propose educational and developmental interventions in a general context of intellectual freedom.

Doane makes FIRE's annual naughty list for violating the academic freedom of a librarian https://www.omaha.com/news/education/doane-makes-list-of-worst-colleges-for-free-speech-administrators/article_75ac3810-f214-5449-b903-868079f8757b.html

Will Missouri put librarians in jail? <https://theconversation.com/librarians-could-be-jailed-and-fined-under-a-proposed-censorship-law-130682>

LPS fires Lincoln High theater director for using a forbidden word at a rehearsal https://journalstar.com/news/local/education/lps-fires-lincoln-high-theater-director-over-use-of-n/article_f3322e07-7e20-59bc-8cf4-037aee4d6289.html

An opinion piece on eBooks <https://thehill.com/blogs/congress-blog/politics/482840-bring-back-equitable-access-for-the-digital-age-congress-must>

AFCON

www.academicfreedomnebraska.org

The Academic Freedom Coalition of Nebraska was founded in 1988 to promote intellectual freedom in Nebraska education and research, including freedoms of belief and expression and access to information and ideas.

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**Academic Freedom Coalition of Nebraska
Board of Directors Meeting**
Eiseley Library, Lincoln, Nebraska
February 8, 2020

Present:

John Bender, president, representing UNL Faculty Senate

Ally Halley, representing Fine Lines

Laurie Thomas Lee, immediate past president,
representing American Civil Liberties Union of Nebraska

Dave Moshman, newsletter editor and policy coordinator

Rod Wagner, treasurer, representing Nebraska Center for the Book

MINUTES

President John Bender called the meeting to order at 10:15 a.m.

MINUTES: On a motion by Wagner, seconded by Lee, the corrected minutes of the December Board meeting were approved.

TREASURER'S REPORT: Balance on hand is \$1790.88. Halley and Wagner are working to complete the transition to a new treasurer.

NEWSLETTER: The February *Sentinel* has been distributed. Deadline for articles for the April *Sentinel* is March 24.

POLICY COORDINATOR: Moshman reported that Doane University was on the 2020 edition of the annual list of worst ten colleges for free speech compiled by the Foundation for Individual Rights in Education (FIRE) due to its suspension of a librarian for putting up a historical display that included Doane students from the 1920s in blackface. The librarian has been reinstated but Doane faculty remain concerned about academic freedom policies. Moshman also reported on national controversy regarding the new novel *American Dirt*, including the recent cancellation of the author's book tour due to threats of violence.

The main focus of discussion was on a new draft of a proposed University of Nebraska Student Code of Conduct that appears to be

heading for Regents approval. Despite some concerns about the wording of some provisions, it was generally agreed that the new draft is a major improvement over UNL's existing student code of conduct, which was seriously criticized by FIRE some years ago as a threat to free expression. In particular, the current draft defines harassment in a narrow and careful manner, incorporating criteria from First Amendment case law as suggested by FIRE.

LEGISLATIVE REPORT: The student press bill appears to be stalled for now, with majority support but some serious opposition and not enough votes to overcome a filibuster.

MEMBER ORGANIZATION REPORTS:

Fine Lines: Halley reported that this would be her last meeting and was thanked for her contributions. She reported that Fine Lines has been unable to identify a replacement who lives in Lincoln or would be willing to come to Lincoln for meetings.

Nebraska Center for the Book: Wagner reported that the governor, presumably after careful research, agreed to issue his usual proclamation about this year's One Book One Nebraska selection.

MEETING SCHEDULE: Due to Eiseley not being available, the March 14 Board meeting will be at Anderson library, 10 a.m. to Noon.

There being no further business, the Board adjourned at 11:05 a.m.

Respectfully submitted,
Dave Moshman
Executive Vice Secretary

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