

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

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August 2020

From the President

Deep Fakes, Stolen Honor,
and the First Amendment

John R. Bender

President Trump lies—a lot. The *Washington Post* reported that as of July 9, Trump had made more than 20,000 false or misleading statements during his time in office. The Post fastidiously refrains from calling them lies. But even if one excluded the falsehoods Trump uttered out of ignorance, certainly some would stand as lies, meaning falsehoods spoken with the knowledge they were false and with an intent to deceive.

Trump's lies have been easy to expose. More ominous is a threat to the country, its democratic ideals and the First Amendment emerging from the cutting edge of computer technology—deep fakes. The technology exists to create videos of people doing things and saying things they never did or said. Yet the videos look so realistic that one cannot distinguish them as fakes. The movie “Forest Gump” gave us a glimpse of this when it included scenes that seemed to show Tom Hanks as Forest Gump talking to President Kennedy or watching Gov. George Wallace.

“Forest Gump” was the product of a major Hollywood studio with all the technical and financial resources it commanded. Today, equally realistic fake videos are possible on home computers. The software used to create deep fakes analyzes multiple videos and photographs to create images that closely resemble the real person. As you might expect, pornographers have been in the vanguard of developing the technique, creating videos that appear to show celebrities like Gal Gadot or Emma Watson performing sex acts.



Writing in *Lawfare*, a blog that specializes in legal and national security issues, Robert Chesney and Danielle Citron say the threat posed by deep fakes goes beyond a proliferation of raunchy videos. It could threaten security of the country. Imagine, they say, what would be the effect of a video that seemed to show a politician taking a bribe from a foreign agent. Or think about the consequences of a video that appeared to show U.S. soldiers in a war zone committing atrocities.

Deep fakes could undermine even the fundamental premise of the First Amendment: People can govern themselves if they have free access to information. Too many people already believe the mainstream media intentionally fabricate or distort the news. If deep fakes become common, it will be easy for skeptics to discount anything they disagree with as fake.

Academic freedom is threatened by deep fakes as well. The pursuit of truth is the goal of academic inquiry, but deep fake videos could be used to intimidate or harass academics pursuing unpopular lines of inquiry. Or they could taint the pool of evidence from which well-meaning scholars draw their conclusions.

Deep fakes are a problem created by technology. Can technology provide an answer? Perhaps. Internet companies like Google are trying to develop artificial intelligence software that can detect deep fakes. Unfortunately, the ability to create realistic fakes is outracing the ability to detect them. We may not be able to count on an easy technological solution.

The law provides some protection. Someone who is defamed, whose privacy is invaded or who is harassed through deep fakes can sue for damages, assuming the injured party can identify the person who created the deep fake. But for the corrosive effect of deep fakes on democracy and public discourse, no clear legal remedy exists.

The novelty of the threat is part of the problem, but another part is the approach the U.S. Supreme Court has taken on First Amendment issues, and particularly the court's holding in *United States v. Alvarez*. This 2012 decision struck down the conviction of Xavier Alvarez for having violated the Stolen Honor Act. The act made it a misdemeanor for anyone to falsely claim to have received a military honor. Alvarez falsely claimed to have received the Congressional Medal of Honor. Six justices agreed the statute was unconstitutionally overbroad and that the government had other ways to protect the integrity of military honors than imposing criminal penalties on those who falsely claimed them.

Alvarez clearly knew his claim to having received the Medal of Honor was false. But the court was reluctant to punish even intentional falsehoods unless there was some clear injury inflicted. In all other cases where the government has the power to punish falsehoods, injury either is likely or can be demonstrated by the state or plaintiff. Perjury, for instance, can be punished

because it undermines the pursuit of justice. Defamation can be punished because it injures a person's reputation.

With some conceivable deep fakes, however, the injury may be diffuse or the victims unable to sue. Enough audio and video of Ronald Reagan exists that some talented faker could create a convincing video in which Reagan would appear to say he had been fully aware of what was going on in the Iran-contra scheme and all of his top national security aides knew it as well. Reagan is dead, as are many of those who were involved in the affair, so he could not sue. The injury would be to our understanding of what is true and our ability to distinguish truth from falsehood. That is precisely the kind of vague and indirect injury the Supreme Court held insufficient to justify punishing Alvarez.

California has stepped into this issue by creating two new laws aimed at restricting deep fakes. One prohibits the distribution of fake videos about a political candidate 60 days or fewer before an election. Another prohibits the distribution of sexually explicit deep fake videos. The law pertaining to political candidates will expire Jan. 1, 2023; the prohibition on sexually explicit fakes will not. Both, however, may raise First Amendment concerns.

The problem of deep fakes resists easy solutions. Clearly the danger is real. A technological solution may be unlikely or, at best, only temporary. Legal solutions may pose their own threats to democracy. Even a well-framed law could jeopardize videos that recreate historic events.

Unless some way is discovered to manage the threat from deep fakes, the divisiveness we see today in American society and politics may only deepen.

AFCON Annual Meeting Set for October 17

Todd Schlechte

This year's annual meeting of AFCON members will take place virtually on October 17 beginning at 10 am via Zoom and will last about two hours, including the annual membership business meeting.

As usual, there will be a program. This will be composed of three speakers addressing aspects of "Current Topics in Intellectual Freedom in Libraries."

The first speaker, Vicki Wood, will speak on *Public Library Programming: Achieving the Balance*. Public Libraries strive to be inclusive in their program and event offerings. Community pushback and protests can lead to self-censoring and fear of offering programs considered controversial by some members of the community. How does the Library decide what programming to include, and how does it protect the rights of all community members to be seen and heard, and to feel safe in the library, while staying true to the ideals of Intellectual Freedom?

Secondly, Devra Dagros will address the topic *Balancing the Books*. There are difficult challenges to be faced in building and maintaining a collection of popular eBooks and digital audiobooks for public libraries due to numerous, expensive, and constantly changing publisher models for selling to libraries.

Lastly, Jim Shaw will cover *The Electronic Academic Library: Licensing Resources Versus Ownership and Implications for Access*. College and university libraries commonly spend 75% to 85% of their acquisitions budgets on electronic resources. That is how they provide access to many thousands of electronic books, research journals, historical archives, and other resources. Many may not appreciate, however, that libraries do not actually own electronic resources, but instead purchase licenses which permit use within certain parameters. For example, academic licenses typically permit off-campus use only to current faculty and students. Non-affiliated

persons may usually access resources on computers at the library, but that is not guaranteed. Spending so much on electronic resources necessarily implies that when budgets are cut, some of those licenses will not be renewed and access for everyone is lost. Libraries have been able to leverage electronic resources in ways that provide more to their users than ever, but this new era could prove volatile and create further separation between the haves and have-nots.



These presentations promise to present a window into a world of challenges for libraries in providing the access that is so important to intellectual freedom.

Todd Schlechte, president-elect of AFCON, is organizing this year's annual meeting.

JOIN OR RENEW

Rod Wagner, Treasurer

AFCON now accepts PayPal! Use PayPal to join or renew. We offer two ways to pay: you can use the PayPal button on our website <https://www.academicfreedomnebraska.org/join-afcon.html> or send us a check payable to AFCON at 3901 S. 27th St., #47, Lincoln, NE 68502. Memberships are \$120 for organizations and \$15 for individuals.

Remembering Amy Birky

Nancy Comer

Like many of you, I've known Ann Marie (Amy) Birky for a long time, but I needed to do a bit of digging to learn that she joined AFCON in 1991. Since the organization was founded in 1988, one might say that Amy was around almost from the very beginning.

It was the kind of group Amy, an educator and media specialist for 35 years, would be drawn to with its goals of "promoting academic freedom defined as intellectual freedom--and including freedom of expression and access to information and ideas--in educational and research contexts." David Moshman, Policy Coordinator, couldn't remember a time when she didn't attend the AFCON Annual meeting. Amy must have served on the board, at least in 1998, as she is listed with other AFCON Board Members Bob Haller, John Bender, Cathi McMurtry, Jeff Lofthus, and Mel Krutz as being a member of the cast in a presentation of the readers theater play, "A Tangled Issue: Student Freedom of Expression."

It's difficult to lose a faithful supporter like Amy, who was not only interested in everything dealing with social justice, academic freedom, and community issues that impacted the lives of others, but always volunteering her time and talents to make things happen.

Nancy Comer is a past president of AFCON and continues to serve on its Board as the representative of the Nebraska State Literacy Association.

More on Amy Birky

https://journalstar.com/lifestyles/announcements/obituaries/ann-marie-amy-eisentrager-birky/article_2ded890f-b405-582c-934a-b69827d9c787.html



Letter on Justice and Open Debate

"A Letter on Justice and Open Debate" in *Harper's Magazine* signed by many prominent writers and academics warns that "the free exchange of information and ideas . . . is daily becoming more constricted." Signers include Margaret Atwood, Noam Chomsky, Wendy Kaminer, Steven Pinker, Letty Cottin Pogrebin, Katha Pollitt, J. K. Rowling, Salman Rushdie, Gloria Steinem, Nadine Strossen, Randi Weingarten, and Fareed Zakaria.

<https://harpers.org/a-letter-on-justice-and-open-debate/>

The letter was strongly criticized by many. The main arguments seem to be that (1) the letter is the product of privileged intellectuals, (2) threats to intellectual freedom are relatively rare and inconsequential, and (3) now is not the time to be talking about intellectual freedom.

<https://www.latimes.com/entertainment-arts/story/2020-07-09/cancel-culture-harpers-letter>

<https://www.cnn.com/2020/07/10/opinions/the-letter-harpers-cancel-culture-open-debate-yang/index.html>

Meanwhile, the Foundation for Individual Rights in Education (FIRE) reported that in June 2020 it received by far the largest number of case submissions of any month in its 20-year history. In related news, the Supreme Court just agreed to hear a speech code case in its 2020-2021 term:

<https://www.thefire.org/supreme-court-grants-cert-in-speech-code-case-uzueghunam-v-preczewski/>

At its July meeting, after discussion of the letter, the objections to it, and the current environment for intellectual freedom, the AFCON Board voted unanimously to endorse the *Harper's* letter.

Reasoning, Argumentation, and Deliberative Democracy

David Moshman's new book is scheduled for publication October 2:

<https://www.routledge.com/Reasoning-Argumentation-and-Deliberative-Democracy/Moshman/p/book/9780367312770>

From the Chapter 1 overview:

Intellectual Freedom

A recurring theme of the book is that rationality requires intellectual freedom. This includes freedoms of belief, expression, discussion, inquiry, and access to information and ideas. Intellectual freedom is crucial to rational argumentation (Chapter 5), deliberative democracy and rational institutions (Chapter 6), developmental progress (Chapter 7), and academic work at all levels of education (Chapter 8).

Intellectual freedom can be justified on at least three grounds. First, intellectual freedom is a fundamental right of individual persons as it respects their rational agency, which is what defines them as persons. Second, intellectual freedom serves the pursuit of truth by enabling collaborative reasoning. Third, intellectual freedom is necessary for democracy, especially deliberative democracy. But intellectual freedom is not just the absence of government censorship. Intellectual freedom, broadly defined as freedom to engage the intellect, is presented throughout much of the book as the basis for reasoning, rationality, argumentation, democracy, development, and education.

Recent Links

ACLU has brought a lawsuit arguing that new Title IX regulations defining harassment include language too protective of free speech. The federal government will argue that the new regulations are legally and constitutionally permissible. FIRE is seeking to intervene in the case in order to present the stronger argument that the free speech protection provided by the

new regulations is constitutionally required by the First Amendment standard set by the U.S. Supreme Court in *Davis v. Monroe* (1999).
<https://www.thefire.org/campus-free-speech-orgs-seek-to-intervene-in-lawsuit-to-defend-new-title-ix-regulations/>

A recent U.S. circuit court decision resists the trend in other circuits to extend school authority over student speech to speech outside of school. The Third Circuit concluded instead that students outside of school have full First Amendment rights, which are greater than those protected in school by *Tinker*.
<https://reason.com/2020/07/01/out-of-school-k-12-student-speech-cant-be-punished-even-if-it-causes-disruption-at-school/>

A new AAUP statement on racial justice includes a reminder that speech cannot be censored or punished on the basis of being offensive or uncivil
<https://www.aaup.org/news/statement-racial-justice-higher-education#.XvJKXi-ZP1w>

UNL remains on AAUP censure list
https://www.omaha.com/news/education/unl-will-remain-on-organizations-censure-list-for-the-near-future/article_8ee9aa5a-c608-59ae-9015-6a02df2cdeff.html

Lou Crompton's interdisciplinary proseminar on "homophile studies" tested the limits of academic freedom in Nebraska in 1970.
<https://news.unl.edu/newsrooms/today/article/50-years-ago-crompton-brought-gay-studies-to-nebraska/>

John Bender on COVID restrictions and free speech
https://journalstar.com/opinion/columnists/local-view-panic-and-the-pandemic/article_a9876e97-b29a-5fc2-aa13-39b68e0bf480.html

Censorship of CDC guidance for colleges on coronavirus: "The good news is, this is very thoughtful and complete. The bad news is, it's never been released."
<https://www.insidehighered.com/quicktakes/2020/07/13/unreleased-cdc-document-campus-reopening>

Randall Kennedy on quoting racial epithets in class

<https://reason.com/2020/06/11/prof-randall-kennedy-harvard-law-on-accurately-quoting-racial-epithets/>

Admission offers revoked for racist speech

<https://www.insidehighered.com/admissions/article/2020/06/22/colleges-reverse-admissions-offers>

China's new restrictions on civil liberties in Hong Kong include severe restrictions on the intellectual and academic freedom of teachers and students.

<https://www.nytimes.com/2020/07/11/world/asia/china-hong-kong-security-schools.html>

AAUP statement concerning Trump administration restrictions on international students in the U.S.

<https://academeblog.org/2020/07/13/aaup-statement-on-july-6-dhs-ruling-on-international-students/>

University of Nebraska joins suit concerning international students

https://journalstar.com/news/local/education/nu-joins-brief-opposing-ice-rule-for-international-students/article_37a99954-5d80-53d7-8083-0b21f8cd472a.html

The restrictions were rescinded on July 14 as legal proceedings were about to begin.

<https://www.insidehighered.com/news/2020/07/15/trump-administration-drops-directive-international-students-and-online-courses>

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.



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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AFCON Board of Directors

John Bender, President

*Todd Schlechte, President-Elect (2021 President)
and Webmaster*

Laurie Thomas Lee, Immediate Past President

Peggy Adair, Secretary and Legislative Liaison

Rod Wagner, Treasurer

*David Moshman, Policy Coordinator and
Newsletter Editor*

Nancy Comer

Bob Haller

Linda Parker, ex officio, Archivist

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

**Academic Freedom Coalition of Nebraska
Board of Directors Meeting**

Via Videoconference
June 13, 2020

Present:

Peggy Adair, secretary, legislative liaison
John Bender, president, representing UNL Faculty Senate
Nancy Comer, representing Nebraska State Literacy Association
Bob Haller, chief baker, director at large
Dave Moshman, newsletter editor, policy coordinator, executive vice secretary
Todd Schlechte, president-elect, webmaster, representing Nebraska Library Association
Rod Wagner, treasurer, representing Nebraska Center for the Book

MINUTES

President John Bender convened the meeting at 10:03 a.m.

AGENDA: A motion was made by Schlechte, second by Moshman, to approve the agenda as presented. Motion carried on a voice vote.

MINUTES: A motion was made by Moshman, second by Wagner, to approve corrected minutes of the AFCON board meeting held on May 9, 2020. Motion carried on a voice vote.

TREASURER'S REPORT: Wagner submitted the June treasurer's report via email. Wagner reported he received organizational membership payments from the Nebraska Library Association and the Nebraska State Literacy Association. Balance on hand as of June 12, 2020 is \$1,801.76. Treasurer's report will be filed for audit.

NEWSLETTER: Deadline for articles to be published in the next edition of the *Sentinel* is July 24, 2020.

WEBSITE: Schlechte reported he has reorganized website tabs so the *Sentinel* is in a higher-priority position since the newsletter receives the most traffic on the AFCON website. Schlechte has also reorganized pages for past annual meetings for easier viewing.

ANNUAL MEETING: Schlechte reported three options for the AFCON annual meeting: 1) cancel, 2) hold an in-person annual meeting at Anderson Hall with social distancing in place, or 3) hold a virtual

annual meeting via Zoom. Bender reported Anderson Hall can hold 35-40 people with social distancing. Discussion followed. Board consensus was to develop a tentative plan for the annual meeting at the July AFCON board meeting, and make a final decision on annual meeting plans by the September AFCON board meeting. Moshman recommended annual meeting presenters be invited to write out their presentations for publication in the *Sentinel* whether or not AFCON holds an annual meeting this fall.

PRESIDENT'S REPORT: Bender reported UNL enrollment for the 2020 fall semester is up 1% from last year.

TREAT OF THE DAY: Bob the Baker! He is our treat of the day! So good to see you, Bob!

POLICY COORDINATOR: Moshman reported UNL remains on the AAUP censure list and is likely to be there for the near future. Moshman continues to monitor responses to the global pandemic and concurrent mass public protests on racial injustice, as such responses may affect academic freedom.

MEMBER ORGANIZATION REPORTS:

Nebraska Library Association – Schlechte reported the NLA has cancelled their annual conference that was scheduled for October.

Nebraska State Literacy Association – Comer reported they did hold their annual meeting in February. Comer reported the Ollie Lifelong Learning association surveyed their members and a majority are not willing to participate in in-person classes at this time.

Nebraska Center for the Book – Wagner reported the National Book Festival has cancelled its in-person annual event, but will have online presentations by national speakers. One Book, One Nebraska selection committee plans to announce their decision by Labor Day.

There being no further business, the AFCON board meeting adjourned at 10:31am.

Respectfully submitted,
Peggy Adair, secretary

**Academic Freedom Coalition of Nebraska
Board of Directors Meeting**
Via Videoconference
July 11, 2020

Present:

Peggy Adair, secretary, legislative liaison
John Bender, president, representing UNL Faculty Senate
Nancy Comer, representing Nebraska State Literacy Association
Bob Haller, chief baker, director at large
Laurie Thomas Lee, immediate past president, representing ACLU Nebraska
Dave Moshman, newsletter editor, policy coordinator, executive vice secretary
Todd Schlechte, president-elect, webmaster, representing Nebraska Library Association
Rod Wagner, treasurer, representing Nebraska Center for the Book

MINUTES

President John Bender convened the meeting at 10:03 a.m.

AGENDA: A motion was made by Moshman, second by Lee, to approve the agenda as presented. Motion carried on a voice vote.

MINUTES: A motion was made by Moshman, second by Comer, to approve minutes of the AFCON board meeting held on June 13, 2020. Motion carried on a voice vote.

TREASURER'S REPORT: Wagner submitted the July treasurer's report via email. Wagner reported the recently unearthed AFCON Paypal account has a balance of \$576.35. Balance on hand in the AFCON checking account as of July 10, 2020 is \$1,801.76, for total AFCON assets of \$2,378.11. Treasurer's report will be filed for audit.

NEWSLETTER: Deadline for articles to be published in the next edition of the *Sentinel* is July 24, 2020.

ANNUAL MEETING: AFCON board agreed by consensus to hold a virtual annual meeting on October 17, 2020. The theme for the annual meeting will be "Current Topics on Intellectual Freedom in Libraries." Schlechte has arranged for the speakers to present via Zoom. Schlechte reported Scott Childers has offered the use of the library system's Zoom account and provision of advance and real time technical assistance. The board heartily accepted the offer.

NOMINATING COMMITTEE: Bender appointed the following to the nominating committee: Laurie Thomas Lee, Bob Haller, and Nancy Comer. A motion was made by Moshman, second by Schlechte to approve the appointments. Motion carried on a voice vote.

POLICY COORDINATOR: Moshman reported on three events: 1) ACLU has filed a lawsuit in opposition to new Title IX regulations, claiming the regulations are too protective of free speech. FIRE holds the opinion the speech protection in the new regulations is constitutionally required. 2) The Third Circuit has issued a finding that speech of students when they are outside the school setting is fully protected by the First Amendment. 3) "A Letter on Justice and Open Debate," has been signed by prominent and diverse persons and will appear in the October issue of Harper's Magazine. The letter highlights the need to protect intellectual freedom. A motion was made by Moshman, second by Schlechte, that AFCON shall officially endorse "A Letter on Justice and Open Debate." Motion carried on a voice vote.

NEW BUSINESS: Several AFCON board members noted the recent death of Amy Birky, longtime AFCON member and just a dear, kind person. Comer offered to send condolences to Amy's family on behalf of AFCON.

AFCON ACADEMIC FREEDOM AWARD FOR 2020: A motion was made by Moshman, second by Comer, to present Brenda Ealey with the AFCON Academic Freedom Award of 2020 for her expertise and years of dedication promoting libraries, librarians, and intellectual freedom. Motion carried on a voice vote.

MEMBER ORGANIZATION REPORTS: The pandemic is currently in charge. Please wear a mask, wash your hands, distance yourself from others and listen to medical experts. Stay safe. Hindsight is 2020.

AFCON BOARD MEETINGS: As is our custom, there will be no AFCON board meeting in August. The next meeting of the AFCON board of directors will be Saturday, September 12, 2020.

There being no further business, the AFCON board meeting adjourned at 10:59 a.m.

Respectfully submitted,
Peggy Adair, secretary