

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

Volume 25, Number 1

February 2021

From the President

Using Counterspeech Against Hate Speech

Todd Schlechte



At our last AFCON Board of Directors meeting, policy coordinator David Moshman recommended the book *Hate: Why We Should Resist it with Free Speech, Not Censorship* by Nadine Strossen (Oxford University Press, 2018). As this is a pertinent topic today, when students, young people, and others are pursuing an improved climate in schools, universities, and libraries, I ordered the eBook to find out what Strossen has to say. Following are just a few brief items from the book that I found important.

First, Strossen believes that most often hate speech laws are used by governments to silence their critics and are ineffective in achieving their original intended purposes. Fortunately, the U.S. Supreme Court has decided upon a robust interpretation of the First Amendment. Government may punish speech “only when it

directly causes a specific, imminent, serious harm, such as inciting imminent violent or illegal conduct” (14).

While Strossen spends the majority of her book showing why “hate speech” laws are ineffective, she also demonstrates that it is still possible to potentially counter hate speech without resorting to a hate speech restriction or law. She argues, following the lead of the Supreme Court, that the climate in our nation, in our schools, and on our university campuses can be best improved with what is known as “counterspeech.”

Counterspeech may take a variety of forms. These include “speech that directly refutes the ideas the ‘hate speech’ conveys; broader, proactive educational initiatives; and expressions of remorse by discriminatory speakers” (158).

In some other instances, ignoring hateful speakers can be effective, because “silence can powerfully convey implicit messages of disdain, while at the same time denying hateful speakers the attention they seek and often get from sparking controversy” (161). Counterprotests away from occurrences of hate speech, the holding of alternative events, and the staging of humorous programs mocking hateful speech may also be enormously helpful.

Strossen also gives free speech advocates a challenge: “I consider the responsibility to raise our voices against hateful speech to be especially incumbent on those of us who oppose censorship and urge counterspeech as the right alternative” (166).

<https://global.oup.com/academic/product/hate-9780190089009?q=strossen&lang=en&cc=us>

The Right Education

Robert Haller



Secretary of State Mike Pompeo chose the National Constitutional Center in Philadelphia to announce on July 16, 2020 his new focus of U.S. diplomacy on human rights. At the same event, he thanked his *Commission on Unalienable Rights* (<https://www.state.gov/commission-on-unalienable-rights>) for providing him with an analysis that alleged to derive the *Universal Declaration of Human Rights* (UDHR) from the U.S. *Declaration of Independence* (DofI) assertion that there are “unalienable rights.” Two Declarations coming together in the city where one was written.

The Secretary’s wish to clarify the understanding of human rights is laudable. But since the U.S. Declaration of Independence has no standing in international law and does not list its “unalienable rights,” he would have done better if he had asked his *Commission* to identify what interpretation of a Human Right has been accepted in the international courts and by the nation states which have signed on to the UDHR. American diplomats will not be effective if they base their negotiations on a definition of a “human right” which departs from the international legal understanding of that right.

By chance, the posted text of his Philadelphia speech (<https://www.state.gov/unalienable-rights-and-the-securing-of-freedom/>) provides an example of a careless appeal to a “Right” wrongly

asserted as supported by the UDHR and certainly not understood by the framers of the DofI as “inalienable.”

The text reports that, during the question period following his speech, the Secretary wanted all to recognize the “many remarkable Americans still engaged in the drive to fulfill the Declaration’s promises.” He identified as one of these “David Hardy... the founding CEO of Boys Latin School – a charter right here in Philadelphia” and went on to praise him for being “still very involved in the charter school community” and “having “devoted the great part of his adult life to equal opportunities for a good education, often called the civil rights movement of our time.”

The Secretary clearly meant that the “civil” right to an education is the same as the human right, UDHR Article 26, although in fact Hardy’s “drive” is to secure public funding for schools run by non-government entities not directly under control of a school board or department of education. Still, he claims that Charters fulfill the “Declaration’s promise” without in any way referring to the language of UDHR *Article 26* and to its “promises.”

There he would find a declaration that “Education shall be free [and] compulsory” [for at least six years], “generally available,” and “equally accessible” to all within the Nation State (or in the U.S. its Sovereign States). What it describes is what we recognize in the U.S. as a public school system. Charters come from outside the system to claim its financial support although they are run by private companies and are open not to all but to the winners of a lottery system. By no means do they fulfill the “promises” of Article 26(1).

And of course no schools can be said to fulfill the “promises” of the Declaration of Independence. There is no evidence that when our Founders “Declared” our nation’s “Independence” they were thinking of the “Right to an Education” as “inalienable.” It took about a hundred years to reach a consensus in our country on the need for public education; and it took most of another century to build school systems that had all the essential features of Article 26(1). When we

declared our independence, our schools were optional, costly, parochial and available to the privileged few. Education as a Right assumes a nation state able to create a universal system serving all of its children equally.

Charters and other alternatives to Public Schools will never be able to cite Article 26 in their support because Article 26 has a unique feature: no other Article in the UDHR gives instructions for the design of the institutional entity that is needed to provide the Right. That is reason enough to conclude that private alternatives cannot replace the public school system without denying to some students the “promise of the Declaration.” The school is central to as much as 12 years of the life of a child on the way to becoming a full citizen. As an entity the school must be focused on the creation of that set of conditions that the UDHR promises all Humans. No other school can deliver the full “promise” of the Declaration.

The UDHR Articles presuppose sovereign states with legal systems both criminal and civil; a government structure with the participation of citizens; an economy and property; families and households; a full range of human activity for the life, health and happiness--every aspect of human existence as ordered by principles to assure a dignified life for all. When its Preamble goes on to say that “every individual and every organ of society...shall strive by teaching and education to promote respect” for the rights and freedoms contained in the 30 Articles that follow, it implicitly assigns to the Right to an Education the establishment and maintenance of its twenty-nine companions in the UDHR.

That insight also accounts for the content of Article 26(2) which emphasizes “the full development of human personality...respect for human rights...tolerance and friendship among all nations...and the maintenance of peace.” Of course the framers of the UDHR knew that “the 3 R’s,” arts and sciences, and other academic subjects will be the content of education, but the way schools operate implicitly fulfills the mandates of Article 26(2). Providing for equal access and equal resources, making available special resources to facilitate learning,

compensating for deficiencies of a home, encouraging independent advanced learning, punishing bullies, recognizing religious obligations and spiritual aspirations, and many other policies, make the schools into examples of a culture built on the Articles of the UDHR.

Bob Haller, President-elect of AFCON, will serve his fourth term as president in 2022.

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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Truth, Lies, and Freedom of Speech

David Moshman



Freedom of expression is the freedom to express what you believe, even if it is not true. More simply, free speech is the right to say what you think. But is there a right to say what you don't think? Does free speech include the freedom to lie?

Legally, the matter is complex, in part because efforts to ban or punish lies may infringe on legitimate expression (see John Bender's presidential column in the August 2020 issue of *The Sentinel*). But deliberate falsehoods are different from honest mistakes and may have less First Amendment protection in cases where they lead to harm, as in defamation, perjury, fraud, and incitement.

As a matter of moral principle, free speech respects the right of individuals to determine and express their own beliefs, even if those beliefs are wrong. Restrictions on false statements would violate this right, but restrictions on deliberate falsehoods do not.

Free speech is also valued because it promotes progress toward truth by encouraging all to express their ideas so they may be fully considered. Lying undermines the mutual respect necessary to serious discussion and the collaborative rationality of this process.

Free speech is particularly crucial to democratic self-governance, which requires democratic

deliberation. But this purpose is served when people are actually expressing and discussing their beliefs, not when they are lying to serve political or other purposes.

Consider the aftermath of the November 3, 2020, presidential election. It was clear by Nov. 7 that Joe Biden won both the popular and electoral vote. Over the course of November it became increasingly clear that he won a majority of votes in states with 306 electoral votes (to Donald Trump's 232) and that there was no evidence of election fraud on a scale that could reverse the outcome in any state (much less reverse the result of the election).

Senator Ben Sasse, a conservative Republican from Nebraska, says his Republican colleagues in the U.S. Senate all know this (<https://www.independent.co.uk/news/world/americas/us-election-2020/ben-sasse-trump-election-fraud-b1781000.html>). But many of them have publicly claimed otherwise and some continue to do so. This may not be a crime, but it is morally wrong because it fails to respect the ethical principle, central to argumentation, that everyone aims to be truthful. The Republican Senators have a right to say what they believe. They don't have a right to say what they don't believe.

Senator Josh Hawley's lies about the election led Simon & Schuster to decide not to publish a book he was writing for them. This may or may not have violated his contract, but his immediate charge of a First Amendment violation was false. As a private publisher, Simon & Schuster has a First Amendment right to publish or not publish whatever it pleases. If Sen. Hawley deliberately misrepresents facts to serve his purposes, Simon & Schuster could reasonably decide it does not wish to publish his work. (Regnery has since agreed to publish it and the controversy will no doubt help sales.)

And what if Sen. Hawley actually believes what he says about the election? Simon & Schuster could reasonably decide in that case that he is too impervious to evidence to be a credible author. Given the focus of his book on free speech and social media, moreover, his false claims about the

First Amendment are problematic whether or not he actually believes what he says.

Questions of truth and honesty are of course central to education and research. Academic freedom is the intellectual freedom to do academic work, which often includes reaching and teaching controversial conclusions. But academic freedom does not include the right to falsify evidence or to deliberately deceive one's colleagues or students. We have a right to speak even when we're wrong, but we don't have a right to lie.

David Moshman has served four terms as president of AFCON without being impeached even once. He is the author of Reasoning, Argumentation, and Deliberative Democracy (Routledge, 2021).

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

FIRE's New Letter to UNL

In November 2020, UNL announced a review of its bias protocols.

<https://news.unl.edu/newsrooms/today/article/chancellor-initiates-broad-review-of-university-s-bias-protocols/>

This led in December to a cautionary letter from FIRE about apparent threats to freedom of expression, which was endorsed by AFCON, and an article in the *Omaha World-Herald*.

https://omaha.com/news/local/education/two-groups-caution-unl-against-broad-bias-hate-speech-restrictions/article_dd6ad4ac-3ef1-11eb-8c5d-8398affd0690.html

Online comments about the article suggested that it was written by a right-wing reporter, that FIRE and AFCON are right-wing organizations, and that free speech is a right-wing subterfuge. AFCON policy coordinator Dave Moshman responded:

AFCON was founded in 1988 in response to concerns about right-wing censorship of books and curricula in secondary education and has been denounced as a left-wing conspiracy ever since. As the politics of

free speech has shifted since 1988, however, AFCON is now more often accused of being a right-wing conspiracy. The reality is that we were never left-wing and have not become right-wing. We have been defending intellectual freedom in teaching, learning, and inquiry for all Nebraskans since 1988.



Student Freedom of Speech in the U.S. Supreme Court

In January 2021, the U.S. Supreme Court agreed to hear *Mahanoy Area School District v. B.L.* (No. 20-255), a case concerning school regulation of student speech on social media. This could lead to a major ruling clarifying the scope of its 1969 *Tinker* decision protecting student speech.

<https://www.edweek.org/policy-politics/u-s-supreme-court-to-weigh-whether-schools-may-discipline-students-for-internet-speech/2021/01>

It is unclear how the court will rule in this case. Although the Supreme Court has repeatedly narrowed the scope of *Tinker* since 1969, a 2011 decision outside the public school context upheld children's First Amendment rights in a 7-2 vote involving some unusual alignments of justices.

https://www.huffpost.com/entry/children-violence-and-the_b_886606

The U.S. Supreme Court has also agreed to hear a case involving campus speech zones, though the immediate question before the court is whether the case has become moot due to a change in university policy.

<https://www.thefire.org/supreme-court-grants-cert-in-speech-code-case-uzuegbunam-v-preczewski/>
<https://www.insidehighered.com/quicktakes/2021/01/13/supreme-court-hears-arguments-speech-zone-case>

Regulation of Social Media in Nebraska

John Bender, Immediate Past President of AFCON, was quoted regarding a new bill in the Unicam to regulate social media.

https://omaha.com/news/state-and-regional/govt-and-politics/senator-seeks-to-fine-social-media-giants-for-disabling-or-censoring-nebraskans-accounts/article_6d96c632-5ccd-11eb-93c7-9f79bdb62e82.html

Patriotic History

In January 2021, a White House history commission appointed by President Trump to provide the basis for more patriotic teaching of history released its report, which was immediately rejected by historians. In one of his first acts after the inauguration, President Biden revoked the executive order creating the 1776 Commission and removed its report from government websites.

<https://www.insidehighered.com/news/2021/01/20/historians-trump-administrations-report-us-history-belongs-trash>

AFCON

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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. In pursuit of this general goal, AFCON shall:

1. support application of the First Amendment in academic contexts, including schools, colleges, universities, and libraries.
2. educate Nebraskans in and out of academic settings, citizens and professionals, parents and students 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.
3. assist students, teachers, librarians, researchers, and others confronted with censorship, indoctrination, or suppression of information or ideas in academic settings.
4. act as liaison among groups in the State of Nebraska that support academic freedom.

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.

The AFCON Sentinel is the newsletter of the Academic Freedom Coalition of Nebraska, published bimonthly in February, April, June, August, October, and December. Unless otherwise indicated, articles represent the views of the authors.

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

Via Videoconference
December 12, 2020

Present:

Peggy Adair, secretary, legislative liaison
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
Vicki Wood, director at large

MINUTES

President-elect Todd Schlechte called the meeting to order at approximately 10:24 a.m.

MINUTES: Minutes of the AFCON board meeting held on November 11, 2020 were approved without objection.

TREASURER'S REPORT: Wagner submitted the November treasurer's report via email. Balance on hand for December 11, 2020, is \$2,425.60. Wagner will be sending out invoices to member organizations soon.

NEWSLETTER: Deadline for articles to be published in the February edition of the *Sentinel* is January 25, 2021.

AFCON ELECTION: Moshman reported AFCON officers for 2021 have been officially elected by popular vote of eleven to zero. A manual recount by a bipartisan commission affirmed and certified the results.

POLICY COORDINATOR: Moshman reported on the Foundation for Individual Rights in Education (FIRE) letter to UNL Chancellor Green that outlined concerns of intellectual freedom on campus. Moshman made a motion that AFCON shall endorse the FIRE letter and encourage UNL to consult FIRE as needed. Haller seconded the motion. Motion carried on a voice vote. Moshman will contact FIRE, UNL, and other interested parties such as AAUP, UNL Faculty Senate,

higher education reporters for Lincoln Journal Star and Omaha World-Herald to inform them AFCON endorses the FIRE letter.

2021 PLANNING and NEW BUSINESS: Schlechte discussed a possible theme for 2021 could be the conflict of social justice and intellectual freedom in the current political climate. How to address disinformation and "fake news" in the intellectual search for truth was another possible theme.

Haller reported Osher Lifelong Learning Institute (OLLI) wants him to develop a course on current issues affecting free speech and academic freedom. Haller envisions six sessions to be held in September-October 2021. Wood and Moshman volunteered to help organize and/or present a session. Board members suggested Amy Miller and John Bender as possible presenters. Haller will work with Wood, Moshman and others to develop the course as a way to promote academic freedom and also to showcase the work of AFCON.

Lee suggested plans for 2021 should include rebuilding organizational membership in AFCON. Haller suggested bringing an on-staff newspaper journalist onto the AFCON board. Adair suggested inviting all people on AFCON's email list to attend AFCON board meetings via Zoom to encourage membership growth and participation.

MEMBER ORGANIZATIONS:
Nebraska Library Association: Schlechte reported the NLA held its board meeting and annual meeting via Zoom. NLA is providing 125 free NLA memberships to non-members in honor of the 125th year of NLA.
Wood reported the NLA is working on updating the Intellectual Freedom Manual that was last updated in 2016.

There being no further business, the AFCON board meeting adjourned at 11:16 a.m.

Respectfully submitted,
Peggy Adair, secretary

NEXT BOARD MEETING: The next AFCON board meeting will be held via videoconference on Saturday, February 13, 2021.