Does the First Amendment Have a Future?

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Since its founding more than 200 years ago, America has stood for the promise, if not always the practice, of freedom. On our best days, we are a nation committed to the revolutionary proposition that more freedom, not less, is the key to a vibrant, equitable, and secure democracy.

Central to that proposition is the First Amendment to the United States Constitution. Indeed, more so than any other part of our shared national creed, the five freedoms of the First Amendment—religion, speech, press, assembly, and petition—define what it means to be an American. Properly understood and applied, they are the tools of democracy that allow us to expand the promise of freedom more fairly and fully to succeeding generations of Americans, and forge unity in the interest of our diversity, instead of at the expense of it.

However, the results of a recent national study, “The Future of the First Amendment,” suggest that America’s schools are leaving the First Amendment behind. Researchers from the University of Connecticut, funded by the John S. and James L. Knight Foundation, interviewed more than 100,000 students, 8,000 teachers and 500 administrators at 544 U.S. high schools over the course of two years. Their purpose? “To determine whether relationships exist—and, if so, the nature of those relationships—between what teachers and administrators think, and what students . . . know about the First Amendment.”

Overall, the news is discouraging. In fact, write the study’s investigators, “it appears that our nation’s high schools are failing their students when it comes to instilling in them an appreciation for the First Amendment.”

Among their findings:

• Students lack knowledge and understanding about key aspects of the First Amendment. Seventy-three percent say they don’t know how they feel about it or that they take it for granted;

• Students are less likely than teachers or principals to think that people should be allowed to express unpopular opinions;

• Nearly 90 percent of the students polled do not participate in any media-related activities at school. Even worse, 3 in 10 administrators feel that student learning about media and journalism is “not a priority”; and of the high schools that do not have a student newspaper, 40 percent have eliminated them within the past five years;

• More than a third of students think the First Amendment goes too far in the rights it guarantees.

These results would provide a cause for concern at any time in our history. Against the current backdrop of a war on terrorism being waged both at home and abroad in the name of America’s founding principles, they are particularly troubling. Yet our tendency to view the work of our nation’s schools as somehow separate from our nation’s larger mission is not new.

In the wake of the terrorist attacks of September 11, 2001, for example, the American government acted quickly to mobilize what it called “critical homeland defenders” to meet the threat faced by our nation and the world. Not surprisingly, 21 government agencies made the list, from the State Department to the Border Patrol.

Of course, those organizations are essential for addressing the immediate crisis. But for the long-term preservation and expansion of democratic freedom, the Knight Foundation’s survey results remind us that we must also remember our nation’s public schools—the institutions founded to transmit civic principles and virtues from one generation to the next.

Why Don’t Kids Care about the First Amendment?

So why are so many of our nation’s young people uninterested in their fundamental freedoms? After all, as comedian Bill Maher put it, students are supposed to rage against the machine, not for it.

One factor, according to the survey results, may simply be ignorance. Seventy-five percent of the students polled believe that flag burning is illegal. Nearly half believe the government can censor the internet. And just 51 percent believe newspapers should be allowed to publish freely without government approval of stories.

More disturbing, however, are the number of students who simply did not respond to the questions. Thirty-seven percent “don’t know” if they take the First Amendment for granted. Twenty-three percent don’t know if people should be allowed to express unpopular opinions. And one in five can’t say for sure whether the First Amendment goes too far in the rights it guarantees.
But an important factor may also be the attitude conveyed by the students’ schools. How can young people value the First Amendment when so many of their schools don’t honor freedom of expression? Over the past few years, in schools across the country, officials have rebuked or penalized students for expressing certain political or religious sentiment.

In a Michigan high school, in 2003, Bretton Barber was told he could not wear his anti-war t-shirt to school. The then-high school junior was angry about the Bush administration’s foreign policy and the imminent war in Iraq, and he wanted to provoke some discussion at his high school in Dearborn, which has a large Arab American community. For a “compare and contrast” essay in English class, Barber decided to compare George W. Bush and Iraqi dictator Saddam Hussein. “Bush has already killed over 1,000 people in Afghanistan,” he later told a reporter. “That’s terrorism in itself.” It was a strong stance, especially in the Dearborn public school district, where many students had family members serving in the armed forces. To go along with his presentation, Barber decided to wear a t-shirt with a picture of the president and the words, “International Terrorist.”

Barber later explained that he wore the shirt “to emphasize the message, ‘no war.’” He added, “High school can be a pretty apathetic place.” To combat that apathy Barber hoped “to generate some discussion about the then-brewing war in Iraq.” Yet the shirt had no effect in terms of provoking debate among his classmates.

Barber’s experience underscores what the Knight survey results reveal—that the less students are engaged in real-life considerations and applications of their individual rights and civic responsibilities, the less likely they are to value First Amendment freedoms. In fact, the Knight results indicate that the more media or First Amendment classes a student takes, the less likely that student will respond to a question by saying “I don’t know.”

Ironically, the only person who responded to Barber’s shirt that day was the school’s vice principal, Michael Shelton. According to *The New York Times*, Shelton told the teenager he must either turn the shirt inside out or go home.

Within days, the story became national news. Within weeks, the two sides were in court. And in October of 2003, a federal judge ruled that the school administration had to allow Barber to wear his t-shirt in school.

In another Michigan school, Abbey Moler, valedictorian of her high school class, had her yearbook entry censored. Moler had submitted a biblical passage that she found meaningful, to be published in her 2001 yearbook. When the yearbook came out, she discovered that her entry had been deleted. School officials said they had omitted the passage because it was religious in nature. The American Civil Liberties Union (ACLU) took on Moler’s case, arguing that while a public school cannot promote religion, it also cannot suppress the religious expression of students. Eventually, Moler and the school reached an out-of-court settlement; the school district promised not to censor students’ yearbooks just because they contained religious or political speech.
and officials agreed to provide ongoing staff training on free speech and religious freedom issues.³

In May of 2004, a group of Utah high school students were punished for wearing gay-themed, anti-smoking t-shirts that read “Queers Kick Ash.” School officials also threatened to ban the school's gay-straight alliance (GSA). The students were wearing the t-shirts as part of an anti-smoking campaign aimed at lesbian and gay youth. In addition to the usual stress faced by adolescents, lesbians and gays face harassment and coming out issues that lead them in greater numbers to smoking as a coping mechanism. The ACLU came to the defense of the teens demanding that officials remove any suspensions from the students’ records, drop threats against the GSA, and allow the students to wear the shirts without fear of punishment.⁴

A few years earlier, Minnesota teen Elliot Chambers was prohibited from wearing a “Straight Pride” sweatshirt in his school. Several students were offended by the message and complained to the assistant principal. Conscious of past incidents at the school in which gay students were singled out and victimized, the administration informed Chambers that his sweatshirt was not acceptable. Chambers and his parents met with the principal, but no resolutions were reached; the family decided to sue the school district. Chambers commented later, “I felt defeated at the time... [and] I believe the point can be made that public schools have sunk to an all time low. They have abandoned the goal of educating students and have chosen, instead, to indoctrinate them.”⁵

How Schools Can Respond

Whichever way you feel about these students’ chosen forms of expression, there is no denying that the issues raised cut to the quick of our nation’s current culture wars. Indeed, imagine almost any conflict in a school community—dress codes, speech codes, school prayer, etc.—and it’s likely a First Amendment issue. These are such delicate and incendiary subjects because they relate to notions of identity and conviction, issues about which people are least willing to compromise. But the

First Amendment Educational Resources

▶ The mission of the American Bar Association (ABA) Division for Public Education is to promote public understanding of law and its role in society. Recognizing the centrality of an informed and committed citizenry, the ABA Division for Public Education affirms the value of law in a democratic society (www.abanet.org/publiced/).

▶ The Campaign for the Civic Mission of Schools was created to increase the quality and quantity of civic learning in our schools, grades K-12. The Campaign works to bring about changes in state, local, and national policy that promote civic learning and implement the recommendations in the Civic Mission of Schools report (civicmissionofschools.org).

▶ The Center for Civic Education is a nonprofit, nonpartisan, educational corporation dedicated to fostering the rights and responsibilities of citizens committed to values and principles fundamental to U.S. constitutional democracy. The center specializes in civic and citizenship education, law-related education, and international education exchange programs for developing democracies. Programs focus on the U.S. Constitution and Bill of Rights; U.S. political traditions and institutions at the federal, state, and local levels; constitutionalism; civic participation; and the rights and responsibilities of citizens (www.civiced.org).

▶ The Close Up Foundation brings more than 20,000 students and teachers to Washington, D.C., each year for a “close-up” experience in government. Its website offers valuable curricular materials for civic education, as well as information about Close Up’s state and local programs (www.closeup.org).

▶ The Constitutional Rights Foundation (CRF) is a non-profit, non-partisan, community-based organization dedicated to educating America’s young people about the importance of civic participation in a democratic society. Under the guidance of a board of directors chosen from the worlds of law, business, government, education, the media, and the community, CRF develops, produces, and distributes programs and materials to teachers, students, and public-minded citizens all across the nation (www.crf-usa.org).

▶ First Amendment Schools: Educating for Freedom and Responsibility is a national reform initiative, co-sponsored by the Association for Supervision and Curriculum Development and the First Amendment Center, that is designed to transform how schools teach and practice the rights and responsibilities of citizenship that frame civic life in our democracy. Now in its third year, the First Amendment Schools Network consists of 60 schools, K-12, and includes public, private, and charter schools that serve urban, suburban, and rural communities. For more information about the First Amendment Schools project, visit www.firstamendmentschools.org.

▶ With $5.3 million in grants to the American Society of Newspaper Editors in 2000 and 2001, the Knight Foundation launched an initiative to strengthen interest in journalism and in the importance of the First Amendment among young Americans. www.highschooljournalism.org provides an array of information to students, teachers, and others interested in journalism, the role of journalism in a democracy, and the First Amendment.
streetlaw.org

The American Civil Liberties Union (ACLU) works daily in courts, legislatures and communities to defend and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States. The ACLU works to conserve America’s original civic values—the Constitution and the Bill of Rights. Its Freedomwire section focuses specifically on the constitutional rights of students and young people www.aclu.org/freedomwire.

For a list of other key organizations, visit the First Amendment Schools resources page at www.firstamendmentschools.org/resources/weblinks.aspx.

end result needn’t always be a lawsuit. It needn’t mean turning the asylum over to the inmates, either. There is a difference, after all, between being authoritative and authoritarian.

To find common ground, however, Americans must stop being reactive—and start being proactive—to First Amendment issues. We must be able to exemplify an attitude of respect for First Amendment rights in our public schools. That means creating consistent forums for open, respectful exchanges of ideas, it means encouraging students to encounter and analyze different perspectives, and it means teaching students to debate their differences respectfully and become more comfortable with a true marketplace of ideas.

Minnesota judge Donald Frank understood this. “Maintaining a school community of tolerance includes the tolerance of such viewpoints as expressed by ‘Straight Pride,’” he wrote in his 2001 opinion on the Chambers case. “The Court does not disregard the laudable intention of [the principal] to create a positive social and learning environment by his decision. However, the constitutional implications and the difficult but rewarding educational opportunity created by such diversity of viewpoint are equally as important and must prevail under the circumstances.”

Of course, schools should not just allow a wide range of perspectives without establishing any behavioral ground rules. No one is born with the wisdom to exercise one’s First Amendment rights responsibly—we must learn to become comfortable with different ideas; and that takes both guidance and practice.

So what can schools do to achieve this ideological sea change? David Ferrero, the director of Education Research and Evaluation for the Bill and Melinda Gates Foundation, believes the first step must be to either create or reconnect to a shared philosophy—the beliefs and values that help to create our sense of what makes life worth living. In a school context, says Ferrero, this means defining “what is worth teaching and how we should teach it.”

“Few of us went into education out of a burning desire to raise students’ test scores,” he continues. “We went into it out of a deep sense of what’s good for kids and society, what’s worth knowing and thinking about, what it means to be a good citizen and person—indeed, what it means to lead a good life.”

That means rethinking the larger school culture. It means grounding all conversations in a spirit of mutual respect for freedom of expression and religion, and ensuring that everything that makes up the student’s learning experience—from classroom dynamics to school rules—reinforces the student’s understanding of what Voltaire said centuries ago: “I may disagree with what you say, but I will defend to the death your right to say it.”

George Wood, principal of Federal Hocking High School in Stewart, Ohio, and a participant in the First Amendment Schools project, a reform initiative that helps schools teach and practice First Amendment principles, said: “Democratic life is primarily about process, finding information and acting on it.” As Wood sees it, Hocking’s evolution reflects its support for the idea that the purpose of education is to serve as “democracy’s finishing school, the last shared experience for citizens in our republic and the place where we can inculcate the virtues of civic life.”

One way Federal Hocking has achieved this is by mandating that students as well as the administration interview all incoming teachers. Wood has also given his students a chance to clarify the school dress code, revise the student handbook, and press for student inclusion on the school board. And the school is constantly seeking new ways to improve. Using the First Amendment as a barometer, he says, “has allowed our community to review its efforts, examine additional ways to engage the school community, and push forward on our work to ensure that democracy is not just a slogan, but a way of life.”

That work isn’t just for high schools. “A healthy, respectful school climate is the first step toward a healthy, vibrant learning environment,” said Mary Kennerly, a principal at another First Amendment School, Nursery Road Elementary School in Columbia, South Carolina. “And at this time of controversial political and patriotic issues in our nation and our state, it has...
been healthy and productive for the adults and students in our school community to focus on the First Amendment and its role in our society and our school. It has helped us understand concepts that are of utmost importance in a democracy."

One way students learn about these concepts is through media literacy. For three years now, student documentarians, armed with handheld cameras, have entered the community and quizzed adults on their civic knowledge. Kindergartners have helped register high school students to vote. First through fifth grade students have learned editorial writing skills—a state standard—in a variety of different class activities. And the students in the after-school program have published a newspaper. “Young children are capable of understanding and using their First Amendment rights, more than adults may think,” said one teacher.

At Fairview Elementary School, a large year-round school in Modesto, California, the administration holds monthly “press conferences” at which parents can hear updates, ask questions and address concerns. Many of the parents are recently arrived immigrants, so the meetings take on a UN-feel—headpieces are available so the conversation can be simultaneously conducted in English and Spanish.

Teachers, meanwhile, have instituted a recurring roundtable discussion on issues of professional development. Attendance at the Teachers’ Café is optional, although Principal Rob Williams schedules the meetings during the school day to facilitate involvement, providing subs when necessary. “These conversations are so important for our future as a school and the job satisfaction of the faculty,” he says. As a result of these and other initiatives at the school, community involvement is at an all-time high and student attendance is the highest of the area’s year-round schools, at 96.44 percent.

“What we’ve learned is that now that the philosophy of the school is ingrained with First Amendment principles, we have a common point around which we can rally,” said one teacher. “We see that it’s how we debate, not just what we debate, that matters.”

Next Steps
The Knight Foundation’s survey provides an important wake-up call, and we must be willing to answer it. Otherwise, our tendency to take the First Amendment for granted will not just endanger the quality of our nation’s schools, it will endanger the future of our nation’s experiment in liberty.

As Molly McCloskey, co-director of the First Amendment Schools project, said, education is about more than just academic learning. “It should also provide students with the skills to make moral and ethical decisions, help prepare them for active participation in a democracy, and allow students to fully access and engage in the economy and live as responsible citizens within a community.”

That’s why school leaders everywhere, even in this era of high-stakes testing, must be encouraged, and given the necessary public support, to become true laboratories of democracy. Citizenship is just as important as academic achievement. It’s not an either/or proposition.

Notes
1. For more information about “The Future of the First Amendment” survey, visit www.firstamendmentfuture.org/main.html.