

Book Review
Speaking Up:
The Unintended Costs of Free Speech in Public Schools
by Anne Proffitt Dupre
Cambridge, MA: Harvard University Press, 2009

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*How does a nation "conceived in liberty" stay alive while giving its citizens
the freedom to undermine its most sacred principles and institutions?
—Abraham Lincoln*

Perhaps it was my experience, many years ago, with a threatened lawsuit against a school administrator and myself for disciplining a student who "mooned" my geometry class that first sparked my wondering what happened to common sense. How could anyone think that the disruptive act was a free-speech issue? Further, why would a lawyer take such a case? Could this clash between individual rights and the rights of others to learn actually find merit in the court system? These seeds of wondering were likely what influenced the decision to read *Speaking Up: The Unintended Costs of Free Speech in Public Schools*. In this book, Anne Proffitt Dupre challenges the reader to wrestle with the question posed by President Lincoln. When does the mission to educate citizens so they have tools necessary to preserve and protect tenets of democracy outweigh individual liberty (p. 2)? The search for this paradoxical balance between freedom and restraint is nowhere more evident than in public school classrooms and campuses.

The knowledge that Dupre acquired from teaching in a public school combined with her expertise as a professor of law provides a unique per-

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spective on the struggle to maintain the First Amendment right within the American school system. The first chapter provides an overview of the First Amendment rights along with important events in history that influenced its inclusion in the Bill of Rights. Each subsequent chapter highlights different components of free speech, an explanation of the implications of the court decisions to public schools, and a colorful account of the people whose stories are intertwined with the cases. Dupree includes numerous helpful references for educators, which is an asset of the book.

Chapter two provides a detailed account of a free speech case that occurred during the civil unrest of the 1960s. The *Tinker* children defied school policy and wore black armbands on campus in protest of the Vietnam War. The *Des Moines* school district suspended the children and their parents sued. In a contentious decision in *Tinker v. Des Moines* (1965), the Supreme Court sided with the *Tinkers*. This case set the bar for regulation of student speech and decried an unprecedented message of “distrust for ‘oppressive school authority’ which set the tone that it accepted—and perhaps encouraged—challenges to school authority” (p. 15). For the first time in history, the justices declared that “teachers could not be trusted to *not* make secret, one-sided, self-righteous determinations of facts regarding student discipline” (p. 32). As a result, school districts must now prove “material disruption” or “substantial interference” with the educational process if they are to avoid litigation or prevail in the courts (p. 24).

In a later chapter, Dupree explains how a fee shifting statute passed by congress in 1976 gave lawyers more economic incentive to pursue constitutional cases like *Bethel School District v. Fraser* (1986). Matthew Fraser was suspended from school after he delivered an obscenity-laced nomination speech in support of his friend during a school election assembly. The principal cited violation of the school rule prohibiting speech that materially and substantially interferes with the educational process (*Tinker*). School administrators later removed Matthew’s name from a list of potential graduation speakers and the Frasers sued the school district (p. 40). The effect of this case was evidenced by a further shift away from school control and raised the standard that must be met if a school district is to prevail in the courts or avoid litigation. School districts must now prove that teachers are ‘unable to control the situation’ for the ‘material disruption’ standard to be met (p. 42).

Although the majority decision regarding *Fraser* was in favor of a more disciplined atmosphere in school and cited Justice Black’s *dissent* in *Tinker*, confrontations regarding school discipline raged and, at times, all common sense seemed lost. *Speaking Up: The Unintended Costs of*

Free Speech in Public Schools includes cases of sexual harassment, bullying, school newspaper scandals, Pledge of Allegiance debates, and school prayer arguments, as well as accounts of book bans by school boards. In addition, Dupre describes the shift of legal opinions within the court system based on personal beliefs of the justices in power at the time of the decision. For example, in *Fraser*, the court of appeals found that allowing school officials unbridled discretion to apply a subjective and amorphous “indecent” standard “would increase the risk of cementing of White, middle-class standards for determining what is acceptable and proper speech and behavior in our public schools” (p. 45). In another example, Thomas Reed Powell described a great sympathy for the school children of Jehovah’s Witnesses whose religion forbids them to recite the Pledge of Allegiance, “however misguided the teachings and compulsions of their simple-minded, unintelligent parents” (p. 157).

Dupre also includes a description of *Morse v. Frederick* (2006), the most recent and notable case to reach the Supreme Court regarding student speech rights. Deborah Morse, a high school principal, suspended Joseph Frederick for displaying a fourteen-foot banner that read “BONG HiTS 4 JESUS”. Nine students held the banner during the 2002 Olympic Torch Relay that passed by their school during school hours. Frederick admitted that his reason for the action was to see if Morse would try to suppress his speech rights (p. 233). This case was ultimately argued in the Supreme Court where it was decided that Morse would not have to pay Fredericks. Some hope for common sense prevailed when Justice Hugo Black stated “This case, therefore, wholly without constitutional reasons, in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students” (p. 238).

Noteworthy information regarding speech rights included in chapter seven will engender critical knowledge of the constitutional freedoms and boundaries for teachers. Clearly, there exists a complex, twisted border between the right to teach controversial subjects and speaking out about topics of public concern. Of particular interest to universities is the indeterminate nature of academic freedom. All professors who serve the government in a public university are subject (as employees) to restrictions imposed by their employer (government). However, any state action is also constrained by the First Amendment (p. 205). In *Wiemer v. Updegraff* (1952), Justice Frankfurter stated that teachers must be given “free play of the spirit” in light of the task they have to “foster open-mindedness and critical inquiry as they help to shape responsible citizens” (p. 210). This decision struck down a statute in Oklahoma that rendered all persons ineligible for state employment if they would not

swear that they did not belong to any organization listed by the U.S. attorney general as subversive or a communist front (p. 210). In a latter case regarding a similar McCarthy-era focus, Frankfurter's discourse included "four essential freedoms of the university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study" (p. 212). When this same standard is applied to K-12 schools, the essential conundrum to be solved is the 'difficult nature of dealing with students who are in the midst of gaining knowledge and common sense and attachment to their country' (p. 217).

I heartily recommend *Speaking Up: The Unintended Costs of Free Speech in Public Schools*. It is a book packed with fodder for rich debates and discussion that should be part of any school-law course in credential programs, and required reading for teachers, administrators, and school board members. The influence of each case is evident in our school handbooks, decisions of district administrators, and the propensity of families to take legal action. Furthermore, the question "When does the mission to educate citizens so they have tools necessary to preserve and protect tenets of democracy outweigh individual liberty?" (p. 2) could frame powerful curriculum in many school settings. I found no weaknesses in Dupre's book. However, the inclusion of a study guide would make the book more readily useable.

It is hard to imagine that Abraham Lincoln had the disruption of my geometry class in mind when he spoke of freedoms for citizens and sacred principles. Equally unlikely is that the justices intended that their decision in *Tinker*, which was surrounded by a country in turmoil over war, promote student rights to "moon" a class for attention. My wonderings of how our common sense went awry began in the 1980s around the same time that Matthew Fraser's case was making its way to the Supreme Court. However, I never understood how it was possible that school authority could be challenged over such a case until I read *Speaking Up: The Unintended Costs of Free Speech in Public Schools*.