

National Law-Related Education Conference  
**CIVILITY AND FREE EXPRESSION IN A CONSTITUTIONAL DEMOCRACY**

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HELD IN CHICAGO, IL, MARCH 3-5, 2011

**CONFERENCE REPORT**

## **PARTNERS**

Constitutional Rights Foundation Chicago  
Illinois Humanities Council  
National Endowment for the Humanities  
Northwestern University Center for Civic Engagement  
The Newberry Library

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Dear Colleagues:

We at the National Endowment for the Humanities are honored to help facilitate the American Bar Association's *27th National Law-Related Education Conference: Civility and Free Expression in a Constitutional Democracy*.

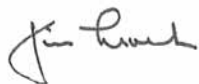
This conference is part of an initiative titled "Bridging Cultures," through which the NEH is supporting conversations about the topic of civility throughout the United States. The concept of civility implies politeness, but civil discourse is about more than good etiquette. At its core, civility requires respectful engagement: a willingness to consider other views and place them in the framework of history, philosophy, and life experiences.

Few subjects may seem duller than concern for public manners. But in the context of American history, where change was wrought in the crucible of debate about the nature as well as the rights of man, little is more important for the world's leading democracy than recommitting to an ethos of thoughtfulness in the public square.

What is particularly profound about the American Bar Association's Forum is the way it brings together the diverse perspectives of legal scholars, educators, civic leaders, and experts in political and cultural history. Bridging academia and public leadership is a social imperative if we are to lead a world distinguished by change and challenges to the rule of law.

In this context, this ABA-led conference promises to raise compelling questions about the tensions between civility and free speech and the relationship between civility and the laws, as well as to contribute to vital public conversation about civil discourse in cyberspace. Thank you for your interest and leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Leach". The signature is fluid and cursive, with the first name "Jim" being more prominent than the last name "Leach".

Jim Leach

Chairman, National Endowment for the Humanities

Dear Law-Related Education Conference Participants,

On behalf of the American Bar Association Division for Public Education, I welcome you to the *27th National Law-Related Education Conference: Civility and Free Expression in a Constitutional Democracy*. The relationship between civility, law, democracy, and free expression are current matters of great interest for the general public, and the work that you will do during this conference is vital in creating rich, topical public discussions with the American people.

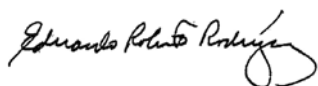
The conference will explore the importance of balancing civility and freedom of expression—recognizing that these values sometimes conflict—and the role that they play in a constitutional democracy. Topics and issues to be addressed include civility and free expression in cyberspace, in popular culture, in the public square, in political discourse, and in cross-cultural perspectives.

The American Bar Association has a long history of supporting law-related education, even prior to the establishment of the Special Committee on Youth Education for Citizenship in 1971. The work of that committee continues today through the Standing Committee on Public Education. The ABA encourages lawyers to consider it part of their fundamental professional responsibility to further the public's understanding of and confidence in the rule of law and the American system of justice.

As conference participants, I thank you for helping lawyers fulfill this responsibility, and I challenge you to create public discussions exploring the theme of civility and free expression—a theme that affects the lives of Americans every day.

Enjoy your time here and, again, welcome!

Sincerely,



Eduardo Roberto Rodriguez

Chair, American Bar Association Standing Committee on Public Education

## FOREWORD

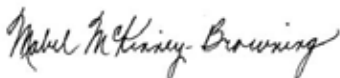
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In March 2011, the American Bar Association Division for Public Education convened its 27th National Law-Related Education Conference around the theme of *Civility and Free Expression in a Constitutional Democracy*. The conference explored the relationships among civility, law, democracy, and free expression, recognizing that these values sometimes conflict. Programming was part of a national dialogue on civility and democracy within the National Endowment for the Humanities' *Bridging Cultures* initiative. Our program partners were the Constitutional Rights Foundation Chicago, the Illinois Humanities Council, Center for Civic Engagement at Northwestern University, and the Newberry Library. Participants included scholars, teachers, legal professionals, civic organization leaders, students, and other persons interested in the theme.

The conference kicked off with a public forum skillfully moderated by John Milewski, which was followed by facilitated working groups around five separate topics related to civility and free expression in political discourse, cyberspace, popular culture, the public square, and among cross-cultural perspectives. The third and final day of the conference featured workshops for educators and practitioners in which discussions focused on wide-ranging topics. Some addressed historical and contemporary court cases related to free expression. Others considered technological phenomena such as cyberbullying and sexting. Still others looked at the line between humor and hate speech and modern civil rights issues. The discussions were informed by a sense that contemporary public discourse is punctuated by polarizing speech, harmful consequences of seemingly harmless pranks or bullying, and intolerance of "other" groups. Equally prevalent was the sense that technological advancements that are providing all of us with unprecedented instant connectivity are also posing unprecedented social, cultural, and legal challenges that affect our everyday lives.

This conference report includes a dialogue on the theme based on the public forum, essays from plenary presentations, as well as summaries of the working group and breakout session activities. Finally, this report features selected resources related to the conference theme, as well as a list of conference participants and workshops.

I would like to thank all of the conference participants for their contributions to this event. The ABA Division for Public Education is committed to educating the public about the role of law in society, including issues of civility and free expression within our constitutional democracy. Through this report, we hope to promote recognition and discussion of the need to continue this conversation and hope that you will be part of it.



Mabel McKinney-Browning

Director, American Bar Association Division for Public Education

## INTRODUCTION

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The *Civility and Free Expression in a Constitutional Democracy* conference explored norms and laws of civility and free expression within our society and system of government. Participants at the conference explored questions such as:

- ★ What is civility? Are we experiencing a “civility crisis”?
- ★ What is civility’s role in sustaining democracy and democratic values and the rule of law? How is it related to the role of incivility?
- ★ How do we determine what is free expression, what is uncivil, and what is unlawful?
- ★ When do the values of civility and free expression conflict? What are the implications of the conflict for democracy and the rule of law?
- ★ To what extent do free expression and the civil exchange of ideas define us as Americans?

What follows in this report is a distillation of the wide-ranging and robust discussions that took place around these questions during the conference. The **Dialogue on Civility and Free Expression in a Constitutional Democracy** captures a lively public conversation among six experts about civility and its role in our constitutional democracy. **Essays on Civility and Free Expression** add to the discussion. Both “Civility and Free Expression in a Constitutional Democracy” (Diane Wood) and “New Technologies, Legal Challenges, and Questions of Civility” (Jeffrey Rosen) were plenary presentations, which have been adapted for print.

- ★ Also included in the conference report are **Working Group Reports for Civility and Free Expression Subthemes**, which provide a glimpse into the in-process conference discussions. Working groups explored the conference theme through five separate topics related to *civility and free expression in political discourse, cyberspace, popular culture, and the public square*, and among *cross-cultural perspectives*. Each of the working groups had a mission to develop the subthemes into distinct public programs meant to engage a diverse public audience. The results of these extensive deliberations are available in a separate publication, *Civility and Free Expression in a Constitutional Democracy: Guide to Planning Public Programs*, which is available at [www.ambar.org/civility](http://www.ambar.org/civility).

Finally, in the **Appendix**, readers will find an annotated bibliography of additional resources, including curriculum resources and a list of conference participants, as well as an annotated list of workshops presented during the conference.

For additional information about the conference proceedings, including video clips, please go to [www.ambar.org/civility](http://www.ambar.org/civility). There you will also find resources for learning more about the issues, as well as planning and conducting your own public discussion around the theme.

# Dialogue on Civility and Free Expression in a Constitutional Democracy

## MODERATOR



**JOHN MILEWSKI** is executive producer and host of *dialogue*, a production of the Woodrow Wilson International Center for Scholars. He is a veteran broadcast journalist and communications professional with extensive experience in moderating, interviewing, anchoring, reporting, and producing.

## PANELISTS



**BENET DAVETIAN** is a professor of sociology at the University of Prince Edward Island and founder and director of The Civility Institute. His most recent book is *CIVILITY: A Cultural History*. An earlier book, *The Seventh Circle*, was awarded the Mordecai Richler Prize for best book of the year.



**RONNELL ANDERSEN JONES** is a professor at Brigham Young University School of Law, where she teaches constitutional law, First Amendment, and media law. A former newspaper reporter and editor, Professor Jones researches and writes on legal issues affecting the press and on the intersection between media and the courts.



**JOHN KASSON** is a professor of history at the University of North Carolina at Chapel Hill. He is the author of several books, including *Civilizing the Machine: Technology and Republican Values in America, 1776–1900* and *Rudeness and Civility: Manners in Nineteenth-Century Urban America*.



**ANDREW KOPPELMAN** is a professor of law and political science at Northwestern University. He is the author of many books, including *Religious Neutrality in American Law* (forthcoming), *Same Sex, Different States: When Same-Sex Marriages Cross State Lines*, and *The Gay Rights Question in Contemporary American Law*.



**DAHLIA LITHWICK** is the senior editor and legal correspondent for *Slate*. Her work has appeared in *The New Republic*, *Commentary*, *The New York Times*, the *Washington Post*, *Elle*, and on CNN.com. She is a weekly legal commentator for the NPR show *Day to Day*. She is co-author of *Me v. Everybody: Absurd Contracts for an Absurd World*.



**SUZANNE SPAULDING** is a deputy undersecretary for the U.S. Department of Homeland Security's National Protection and Programs Directorate. She spent 20 years working on national security issues for the U.S. government, including serving as minority staff director for the U.S. House of Representatives Permanent Select Committee on Intelligence and assistant general counsel at the CIA.



**MODERATOR:** *Can we begin with some definitions? What is civility? What is incivility? Where do we cross the line from one to the other?*

**BENET DAVETIAN:** Civility is much more than we think it to be. Civility is not the lack of rudeness or the lack of incivility. It's an actual force that needs to be identified and practiced. It is not simply detached tolerance or tolerance itself. Civility is restraint of one's own desires, one's own impulses in favor of the comfort of the other—the physical and emotional comfort of the other and, at a deeper level, concern for the person and the dignity of the other. At what point then is civility not only a relationship between two people but also something that I owe to my nation and that my nation owes to me?

**RONNELL ANDERSEN JONES:** I was thinking about why we call this a *civility* movement instead of one of the many synonyms we might have for that word, such as *respect, tolerance, politeness, or kindness*. One reason extends back to the origins of the word—*civitas*—about the rights and obligations of citizens and citizenship. We want to think about something bigger than politeness, kindness, or caring for other people. We want to think about behavior that we presuppose is necessary for community living.

**JOHN KASSON:** *Civility* has a whole host of definitions. The ones that struck me as most relevant to our discussion are, first of all, the virtues of citizenship and the ways in which we as citizens help construct and contribute to a larger social order. Then, there's a notion more commonly used—of refinement, respect, and politeness. If you dig deeper, you'll see decency. At different times we bring one or a combination of those meanings into discussion,

but they can also be distinguished and in some ways—certainly as a citizen—I would want to include them all.

If there were one definition we most want to defend, it would be the one in which civility promotes democracy. This often results in a lack of polite conversation or even a lack of decency in expression. Civility can be used as a way of seeming to talk about manners and politeness. It may also be a way of obstructing people who have legitimate things to say that other people do not want to hear.

We can think about many rights movements in our own country's history, the civil rights movement, for example, that challenged prevailing notions of behavior. That movement challenged authorities and societal rules in a variety of ways. It was objected to as being not in good manners. We need to remember that it is important to disagree passionately but also respectfully. There are ways in which people can intentionally try to disrupt the workings of civil exchange, not only polite exchange but also the constructive dialogues that contribute to the working of our social order, to democracy itself. In short, we need to protect the vitality and the robustness of a democracy against elements that would in effect shut it down.

**ANDREW KOPPELMAN:** Civility refers to how you ought to behave in civilized society. This includes a wide range of behaviors which have nothing to do with speech. There is also a whole sphere of speech about public matters directed to an audience of strangers, or people who are never going to meet one another face-to-face. Yet these are people who are talking to one another, and there are accompanying rules, norms, and underlying values.

Speech is absolutely necessary to democracy. It is, of course, potentially dangerous and disruptive. The point of this public sphere is to form some kind of collective will. The relevant aspect of civility here involves the norms inherent in this practice, one of which is treating your interlocutor with enough respect for the conversation to continue. Indeed, a central idea of democracy is that the conversation ought to be able to continue. Part of what comes with public discourse is encountering views hostile to your own—indeed, views that you think nobody should hold because they are so mistaken and pernicious in their consequences.

In sum, we must be careful with “civility” rules because part of what free speech contemplates is being exposed to views that you really don’t want to hear. The idea that we ought to be willing to expose ourselves to deeply hostile views is not one to be taken for granted. It is an aspect of civility that has to be constructed and nurtured.

**DAHLIA LITHWICK:** I have an elaborate First Amendment framework and, as a parent of young children, I also have an elaborate “mommy” framework. They only occasionally intersect. It has been interesting for me to see how painful words can be, and how when you are trying to teach civility to young people, you refract that back through the way we should all talk to each other.

I think of civility as a type of “Golden Rule of Speech”—don’t say to others or about others words that you would not like to be said to or about you. That does not mean you cannot speak sharply or passionately. Ours is a country born in a revolution—the Boston Tea Party was not a civil affair. But I strongly believe that you should not lie in political discourse or presume that the other

side lies. I think you should attack the speech, not the speaker. You should not knowingly mischaracterize the other side. That will incline them to mischaracterize you. These are basic “Golden Rule” propositions about speech and civility, ideas that one (hopefully) teaches one’s own children.

We are talking about a communal enterprise. Civility is not something that you do by yourself when you are brushing your teeth—it presumes you and another person. As a result, there is an enormous burden in the conversation about civility to be listening, not just talking. Although I am not sure about whether we are now less civil than in the past, I am certain we are now in the midst of a culture of raging narcissism, in which the sense that our voice is more important than anyone else’s and that our dignity is more important is now prevalent. When our rights are impinged, somehow the theater of acting out becomes very important. Civility is an inoculation against that kind of narcissism that has, indeed, grown rapidly in recent times.

**SUZANNE SPAULDING:** I agree with Dahlia that we learn a lot of important lessons through our experiences as parents. For me, one lesson about civility occurred when my kids were in elementary school, and my husband and I discovered that our children had very strong opinions because their teachers told us that our children had very strong opinions about topics, particularly political issues. Initially, we were proud of this behavior. Then their teachers told us that they intimidated the other children in the class who were afraid to speak up. We realized we had not done a good job of teaching our children how to engage in a civil debate.

Many years later, when I went to work on Capitol Hill, I discovered that many members of Congress also needed to have this same kind of instruction. The members who have the greatest credibility on the Hill are those who remember these rules about how to engage in a civil public discourse. Yes, there is an important place for anger in public discourse. Indignation about injustice, for example, can be very appropriate, but we have to be careful here. Certainly, the First Amendment was not designed merely to protect civil public discourse.

**JOHN MILEWSKI:** I want to ask you about national security and civility. This is an area that was supposedly once above incivility or harsh partisanship. Is this still the case?

**SUZANNE SPAULDING:** No, and it's been very sad for me to see. When I started working national security issues in 1983, it was always the case that nobody knew my party affiliation, and I didn't know the party affiliations of the people with whom I worked. There was a strong consensus that you did not bring your partisan views—for political purposes—to national security discussions. Yes, there were disagreements that broke down along party lines, which never struck me as inappropriate or improper. It is when politics begins to supersede national interests that we cross a dangerous line. Unfortunately, I think this trend of hyperpartisanship has now moved into the national security arena. Much of it started post-9/11, when these issues began to have some real political currency.

**JOHN MILEWSKI:** Such as General Petraeus urging that the Quran should not be burned to “celebrate” 9/11—as advocated by a fringe group here in the United States, this

would be harmful, indeed detrimental to our troops, their efforts, and safety?

**SUZANNE SPAULDING:** Exactly. The Quran burning episode is a very good example. Our best response is not to make such behaviors unlawful but to engage—to get all citizens to engage and to reassert the kind of America that we really represent, which is an America that believes in freedom of religion, an America that is tolerant.

**JOHN MILEWSKI:** Is 24/7 cable television news, which thrives on hyperbole, shouting, and the like, a cause of incivility these days?

**RONNELL ANDERSEN JONES:** It is certainly an important question to think about how much the media is to blame for our state of incivility. Changes in our media ecology have put us in a place where we can more quickly be uncivil to more people. I have been researching the fragmentation of the American media. Just a generation or two ago, the daily newspaper came to our houses, and we looked to it for everything—our sports, our city council meeting, our movie listings, our recipes, opinions, and classified ads, etc. So, if we went to the newspaper mostly for sports, we would stumble upon news, public affairs, and opinion. But the world of media consumption has totally changed. Accidental encounters with others' opposing ideas are waning in our new media ecology. As we move to social networking, following blogs, and polarizing cable news entities, the result is that incivility prevails and is rewarded. The First Amendment presupposes a marketplace of ideas, and to the extent that we have less of one, we become less tolerant. We have

so much constant validation of our own cloistered ideas and so little real competition to them. Similar thinking audiences are increasingly being served a steady diet of anger and dissatisfaction.

**BENET DAVETIAN:** The Canadian environmental advocate David Suzuki has used the metaphor of the runaway automobile, where we are all sitting in a car headed for a brick wall, and we are arguing about where to sit.

**JOHN KASSON:** People at times are now in violent disagreement or violent agreement with one another. But we also have staged in the media violent disagreement as a type of theater. What we get less of in our society than we used to is *face-to-face*, disciplined disagreement and disciplined discussion. The decontextualization of those interchanges and the anonymity of them in various technologies, from blogging to driving on interstates, lead to the expression of anger and incivility, even to rage and violence. These exchanges are no longer mediated or tempered by ongoing personal relationships.

**ANDREW KOPPELMAN:** If you asked me about the general direction of civility in American culture, I would say that it is a complicated story. Yes, we know of recent examples of members of Congress shouting at one another on the House floor. But back in the nineteenth century at the peak of the slavery debates prior to the Civil War, there was once an episode where one member of Congress mutilated another with a cane on the Senate floor. Yes, you can talk about a television commentator challenging another commentator to a duel, but Aaron Burr did more than that to Alexander Hamilton.

**DAHLIA LITHWICK:** Despite all the rampant incivility around us, I do think as a society we are, paradoxically, thinner skinned than we have ever been. We are much too inclined to take personally what was never intended to be personal. The internet does not help. The more connected we are to the world, the more utterly alone we are. The moment someone insults you—and the internet is great for this—the gloves are off because now you are enemies.

What has changed is that the benefit of the doubt to the other speaker is now gone. What we now see is a meta-discussion taking place. We begin to have a conversation on the merits of a question. When I decide that I don't like what you say and accuse you of being politically correct or incorrect, this is all a way of disengaging from the merits. It's a way of saying I don't want to have this conversation anymore so I am going to talk about the way we are talking to each other. This is quite pernicious really, because once you start talking about the conversation you have lost the substance of what you were meant to be talking about.

**SUZANNE SPAULDING:** Much of this uncivil tone, unfortunately, is set by our political leadership and what we see them doing. Politicians learn very quickly that you can convey much more to voters with a negative ad and quick slur than you can by trying to engage them in a substantive debate about issues. It's very much like the power of music, the power of symbols, or the power of poetry—nonverbal ways of communicating that are incredibly powerful. Politicians know this and act accordingly. Because the media reports more readily about confrontation, it does a politician or any political figure no good to engage in civil public discourse.

**JOHN MILEWSKI:** Can we identify a “Golden Age” for civility in American history? What’s the high point of American civility?

**JOHN KASSON:** I don’t think there was a “Golden Age” for civility. There are two ways that people like to talk about civility. One is that it’s worse than ever, which is demonstrably not true. Alternatively, it’s better than ever, which is unsatisfying as well. Looking at the composition of our society and the dynamics of our problems, we can see continuities. We can also see many issues that are in fact novel, though not necessarily unprecedented. We can see, on the one hand, that if people want to go back to an earlier time and say that was a Golden Age of civility, you can point to all kinds of people who were silenced or kept out of the democratic process in those conversations. We can also see many troubling things about our own democracy today, where not all of the people and their voices are represented in a strong and vital way. But I also don’t subscribe to the idea that at one time everyone in society behaved very well and now people behave badly.

**JOHN MILEWSKI:** Let me ask about the legal dimension. Can we legislate civility? Is there a role for law in this discussion?

**ANDREW KOPPELMAN:** Yes, there is a critical role for law in our discussions of civility. Having a rule of free speech actually does have an educative role because it means that we are going to have to live in an environment where we know that our fellow citizens disagree with us. As a result, we have to learn to cope with that situation, and we have to learn to engage with it. This helps to develop a different kind of character than when the orthodoxies that you accept or take for granted are the same orthodoxies accepted by every decent person around you.

**JOHN MILEWSKI:** I want to ask about two contemporary situations to further inform our discussions here. One is the recent *Snyder v. Phelps* decision of the U.S. Supreme Court and the other is John Galliano’s anti-Semitic rant in Paris.

**DAHLIA LITHWICK:** *Snyder v. Phelps* is the March 2, 2011, decision involving the Westboro Baptist Church and its band of protesters who go to military funerals holding up all sorts of incredibly hurtful signs. They believe that the reason soldiers die in war is because of America’s tolerance for homosexuality. The Supreme Court said that this kind of protest is protected speech because it’s a matter of public concern. The protesters are talking about the war and sexuality, and they marched and stood where they were supposed to. In short, they did nothing wrong. Justice Alito offered a lengthy dissent, arguing that the First Amendment does not protect the kind of verbal assaults launched upon the deceased marine’s family at or near the funeral site. John Galliano, a designer for Dior, got drunk in a bar in Paris, France, where he said unspeakable things about Jewish people. Because France has the kind of hate speech laws at which Andrew cringes, he actually has been charged with a crime and is due to stand trial in June, 2011.

The funeral protest case (*Phelps*) would have been particularly interesting from a legal standpoint if it were an incitement case. There is some discussion in both the majority opinion and the dissent that flirts with the question: What if somebody were so affronted by this speech that they punched someone in the mouth? When we talk about First Amendment doctrine, we need to ask anew whether we are using the wrong test for incitement. The test is a very old one, and perhaps the requirements for incitement have changed.

**RONNELL ANDERSEN JONES:** I have this debate with my students every time I teach the First Amendment, when we talk about the “fighting words” doctrine (see sidebar). Prior to the 1960s, “fighting words” was one of a very small number of categories of words that the Supreme Court declared to be *not speech* for the purposes of the First Amendment. If the words were fighting words, then the Court had consistently said that the state was free to regulate them, free to ban them, indeed free to penalize people for uttering fighting words.

Initially, the fighting words doctrine had two different parts. One part was the kind of speech that Dahlia talked about—speech likely to cause someone to punch another person in the face, the immediate trigger to violence. The other type of fighting words involved words that, by their very utterance, inflicted injury. So, for example, saying really terrible, scathing, nasty things about a person—where the words themselves hurt you—we used to treat those as not speech and therefore not protected by the First Amendment. But by the 1970s, the Court reversed the second part of the doctrine. Now, these kinds of words are totally protected by the First Amendment. In short, the Court has turned the doctrine from a focus on uncivil words to a focus on uncivil behavior. Thus, if your words cause physical violence or are the trigger to physical violence, then you are outside the umbrella of the First Amendment. But a wide variety of thoroughly uncivil words are wholly protected. In fact, the Court has said that the onus is on you, the listener, to restrain yourself. It’s on you to avert your eyes, if you see something that offends you, and to keep control of yourself rather than ask others to control their words.

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### “FIGHTING WORDS” DOCTRINE

In *Chaplinsky v. New Hampshire* (1942), the Supreme Court upheld the conviction of a pamphleteer for Jehovah’s Witnesses who called the public officials trying to curb his activity “fascists.” The Court held that a few narrowly defined categories of speech lie outside the protection of the First Amendment, including so-called “fighting words”—words that by their very nature inflict injury or incite to violence. In subsequent decisions, the Supreme Court narrowed its scope of fighting words, notably in *Cohen v. California* (1971), where it protected an expletive-based criticism of the military draft, and later in *R.A.V. v. City of St. Paul* (1992), where the Court struck down the constitutionality of a municipal ordinance prohibiting fighting words on the basis of race, religion, and gender. Today, the fighting words doctrine remains part of American jurisprudence; *Chaplinsky* has been trimmed but not overruled and is still cited favorably by some lower courts.

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**BENET DAVETIAN:** This idea that the victims should restrain themselves is the thoroughly mistaken mind-set that is legalizing bullying, which is crippling our students today. This mind-set is also prevalent in the corporate and political worlds. This is the kind of discourse we get due to what I would call First Amendment abuses.

**ANDREW KOPPELMAN:** One aspect of the way the regime of free speech works here in our country is that there is speech that is fully protected in the United States that is criminalized in other countries. For example, if you engage in racist or

## Forum Q & A

How has the fragmentation of our common culture contributed to incivility? Recently, for example, social science behavioral research has enabled marketers to target aspects of consumer behavior and desire with a high degree of precision. All of this “micro-targeting” has moved from the consumer to the political realm. How much of this contributes to the lack of civility?

**SUZANNE SPAULDING:** I think marketing is surprisingly civil. Compared with consumer advertising, political advertising is so different and less civil. For example, cars that battle against each other in advertising wars are appealing to you based on their functionality. Subliminally, they may be appealing to you based on the sexiness of the car, but it’s a much more civil discussion. I do think that the microtargeting of voters has contributed to this hyperpartisanship, because it allows a candidate to pull in more

of the voters who agree with this package of ideas, often extremist ideas. Before microtargeting, candidates had to draw upon a broader base of voters and attract some political independents.

**RONNELL ANDERSEN JONES:** Civility takes more time than incivility does. In a sound bite in seven to eight seconds, you can easily capture anger and vitriol—you can lie pretty quickly. You can level an accusation that is targeted at a campaign, and likewise you can do a lot of things quickly in public schools. But talking about and engaging in civility is a longer, more percolated educational process, not as well suited to the faster-paced environment in which we now live.

In a perfect world, there would be a cost to incivility. But it feels like that doesn’t happen very often; most times, there isn’t any cost. Can we say that in our country, or community, there is a shunning or shaming that might follow from incivility?

**JOHN KASSON:** I think the most famous moment in the second half of the twentieth century in American history about rebuking someone for shameful behavior was Joseph Welch in the Army-McCarthy hearings, when he asked of Senator McCarthy “Have you no sense of decency, sir?” We pine for moments like that to be recreated. We should also remember that, for all the figures currently in Congress who we think behave badly in one way or another, there are people who do not get a lot of headlines but are very civil persons.

One type of uncivil speech that we have not been talking much about is speech that is simply not true, speech in the public discourse that purposely distorts figures and precedents and otherwise harms public understandings. What are your thoughts?

**ANDREW KOPPELMAN:** Let’s take the example of recent health-care reform discussions

and references to “death panels.” The problem with allowing that speech to be sued or prosecuted is that then you have to decide which false speech to sanction. That person doing the deciding is likely to be the exact incumbent who is being criticized by the speech. This might lead you to think that you don’t trust that person to decide fairly as to which is the false speech that needs to be sanctioned. This is the best reason for keeping the government out of the business of policing true versus false speech when it comes to matters of public policy.

There has been a long series of cases in the South involving students wearing t-shirts and other clothing with images of the Confederate flag. These cases have resulted in quite different court decisions, depending on whether or not the school had a history of racial tension. Where the school had such a history, the courts have said that schools could bar the flag because of a fear of substantial disruption on school grounds. But if the school doesn’t have that history of racial tension, the First Amendment protects wearing the flag on a t-shirt. How do you educate middle

school and high school students about the proper way to handle an issue like this, especially when the court’s standard—substantial disruption—seems to hinge on historical artifact or how clever the school is at demonstrating particular types of disruption?

**ANDREW KOPPELMAN:** This relates to our earlier discussion about legal sanctions versus social sanctions. The legal test is that you can’t sanction the speech absent substantial disruption. If you didn’t have that rule, schools would be free to censure any political speech that they don’t like, which would

anti-Semitic speech in the United States, the police will not arrest you. However, even though you cannot be arrested, such speech still has consequences here. Employment and social standing are just two that jump to mind. These non-legal or social sanctions about which I spoke are a part of the regime of free speech in the United States.

**JOHN MILEWSKI:** How much of this talk about civility is generational? How much of our perception of a slippery slope of civility is part of this failure to decode language properly?

**JOHN KASSON:** Some of this is generational, but I think it’s also contextual. Certain words will be used within a certain context or with certain groups. I think now we might say the boundaries of those words, for technological or social reasons, have been removed. One result is some words lose their meaning and their force.

**JOHN MILEWSKI:** Dahlia, you are someone who writes in a very witty and entertaining fashion. Do you consider that some of the words you choose, when attempting to be entertaining, might be perceived as impolite?



almost certainly involve suppression of politically unpopular viewpoints. Courts have to make a threshold determination about whether or not students ought to have legally enforceable free speech rights. If students do have such rights, then the school has to offer something beyond speculation in order to support its claim that it has an important reason to suppress this speech.

Does the lack of civility have something to do with the lack of discipline in the family?

**SUZANNE SPAULDING:** This question refers to our previous

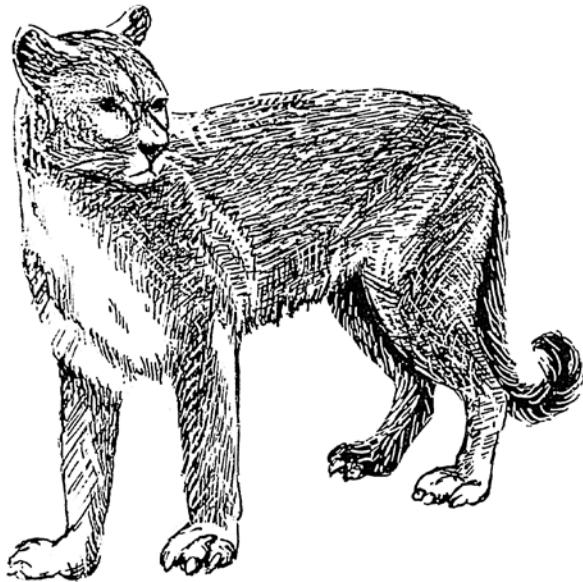
talk about whether the lack of civility is a generational issue. But I actually don't see the younger generation to be significantly less civil in their discourse than adults, such as those on Capitol Hill. I don't know quite how to evaluate what families are doing today. The role of the family is important. One of the things I worry about when we expand law into these spheres is that law begins to displace the family, in particular the relationship between parents and their children and the obligation of parents to educate their children about these kinds of values.

**RONNELL ANDERSEN JONES:**

I do see a very serious problem that underlies the sense of expanded entitlement, whether it is a parenting problem or a changing cultural norm, which is connected to these civility questions. No one wants to concede any ground. Everyone feels that they are totally entitled. Frankly, I think that better parenting would help this situation. I think dialogue between educators and parents can help. As educators, we can say to parents: here are the expectations and goals we hope that you will set, and we will help your children achieve them.

**DAHLIA LITHWICK:** I think that the cornerstone of what I do is impolite and irreverent, and I feel that's important—this is what the First Amendment protects. I want to flip your question and ask: Are we doing the right thing by creating a regime in which a young person is prosecuted for saying or posting something perceived as offensive by adults? When we allow prosecution for more and more instances, we are turning to others to deal with these problems for us, particularly the government—i.e., if we're uncomfortable with a situation, then there “ought to be a

law against it.” I worry about this tendency, because it gives us permission to disengage. What really needs to happen in these contexts is for us to become more engaged. The way to address a lack of civility in public discourse and offensive speech is to become very much engaged. The marketplace of ideas depends upon all of us swarming like antibodies, and if instead we think that certain speech should be illegal, we tend to disengage, which is dangerous.



## Civility and Free Expression in a Constitutional Democracy

BY HONORABLE DIANE P. WOOD

**O**n March 2, 2011, the U.S. Fish and Wildlife Service declared the eastern cougar to be extinct. In fact, they tell us, this beautiful big cat was probably wiped out by humans no later than the 1930s, even though for decades observers insisted that they caught glimpses of it from time to time. But those glimpses were probably of different subspecies. As a lifelong lover of cats of all sizes, I was greatly saddened by this news. And even if you think that one mountain lion more or less won't matter in the grand scheme of things, I often wonder how well we really

understand nature's grand design. Pull out one thread, and what else will unravel? The Fish and Wildlife Service has one response to that question: the loss of the cougar has had ecological consequences already, including an explosion in the deer population and a corresponding decline in the health of the Eastern forests.

I mention the eastern cougar because I hope that it does *not* serve as a metaphor for civility and free expression in a constitutional democracy like ours, but I fear that without renewed commitment on our part that it may come to do so. Consider just a few news items that are so recent that the ink hasn't dried yet (or more appropriately the shadow on your computer screen hasn't faded). On March 2, 2011, the Supreme Court handed down its decision in *Snyder v. Phelps*, the case in which the father of a Marine who was killed in Iraq had sued members of the Westboro Baptist Church for intentional infliction of emotional distress. Church members had congregated on public land near the place where Marine Lance Corporal Matthew Snyder's funeral was taking place. There they displayed signs that said, among other things, "Thank God for Dead Soldiers," "God Hates You," and "Thank God for IEDs." As I am sure you all know, the Supreme Court decided that this speech was protected by the First Amendment, and therefore Mr. Snyder was not entitled to recover damages for what the majority conceded was the "anguish" and "incalculable grief" that the demonstrators inflicted upon him. Or consider what is going on in several state capitals, where public officials have become so deeply antagonistic to one another that one group sees no alternative but to flee the state

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altogether. Or think of the dark side of the social networks that permeate cyberspace: two young women in Brooklyn were arguing through their Facebook pages; their exchange culminated in a face-to-face encounter in which one stabbed the other to death. These are only a few examples, but they suggest that civility and respectful discourse are in short supply.

This is not, I hasten to add, solely, or even primarily, a strictly legal problem. As Chief Justice Roberts, writing for eight members of the Court, underscored in *Snyder*, “Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” Subject to reasonable time, place, and manner restrictions—all of which the Westboro Baptist Church picketers observed—people who wish to engage in outrageous, hurtful, vicious speech are free to do so. The court of appeals on which I now sit saw a similar case back in 1978, called *Collin v. Smith*. There, members of the Nazi party wanted to march in the village of Skokie, just north of Chicago. They wanted to do so precisely because Skokie has a large Jewish population, which at the time included several thousand survivors of the Holocaust. Their march was thus planned to inflict special pain on a large number of people, and one can easily see that their message was abhorrent. But the court of appeals held that the First Amendment protected their right to march nonetheless, based on the same rationale that the Supreme Court later used in *Snyder*. So, with narrow exceptions,

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## The ability to engage in civil discourse is a skill that can be learned.

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civility is not something that can be forced on people through legal rules telling them what they may say and what is forbidden. It must be fostered in some other way.

Although none of us is so naive to think that there is a silver bullet out there somewhere that will ensure civility in all public discourse. This fact should not lead us to shrug our shoulders and give up. In fact, there is no reason for such pessimism. The ability to engage in civil discourse is a skill that can be learned. Indeed, it has been taught for millennia: think, for example, of the importance the Greeks placed on rhetoric or the effectiveness of the Roman orators. Closer to our time and place, schools have long sponsored programs in debate and forensics, in which students are trained to present one side or the other of a topic of current importance. We have courts in large part because we do not want disputes to be resolved violently; instead, we want them to be resolved through the presentation of evidence and argument, to be accepted or rejected by a jury. But this will not happen without a conscious effort to educate the next generation in this area. Everyone understands that young people will not learn math, or science, or Shakespeare by osmosis. Similarly, they will not learn how to function in a civil society without guidance.

The question then becomes whether that vital guidance is being provided in our schools and our communities. Many people are concerned that it is not. The seriousness of this problem has attracted attention from prominent members of Congress. In September 2010, Senators Lamar Alexander of Tennessee and Mark Warner of Virginia wrote to the American Academy of Arts and Sciences

to express their concern. They noted that “Our strong tradition of research and scholarship in the humanities and social sciences—in history, jurisprudence, philosophy, foreign languages, cultural studies, sociology, and economics—is, in large part, responsible for our nation’s unique ability to evolve with historical circumstances. *We are concerned that this great tradition of humanistic teaching and research is at risk, and as a result, puts the unique American character at risk as well.*” Congress called upon the Academy to convene a group to be charged with the mission of examining and assessing the state of humanistic and social scientific scholarship and education—including, among other things, education in public and private primary and secondary schools—and respond to the following question:

*What are the top ten actions that our country, including federal, state and local governments; universities; foundations; educators; individual benefactors; and others should take now to maintain national excellence in humanities and social scientific scholarship and education and to achieve long-term national goals for our intellectual and economic well-being, for a stronger, more vibrant civil society, and for the success of cultural diplomacy in the 21st century?*

The Academy has responded to this challenge by naming a forty-person Commission on the Humanities and Social Sciences, which is co-chaired by Richard H. Brodhead, president of Duke University, and John W. Rowe, chairman and chief executive officer of Exelon Corporation. I am greatly honored to be one of the people serving on this commission, and I urge any of you with thoughts about how we might go about answering these urgent questions from Congress to pass them along to me.

But that is not all you can do. There is a great deal that all educators can do, using resources that are publicly available and close to home. And you don’t even need to be a lawyer to find them, although I will confess that your local friendly lawyer may be of some help when you are looking. The question we need to ask is what can we do, realistically and immediately?

One answer—though undoubtedly not the only one—is to find examples of hard, contested questions that our courts and public institutions are facing and make them the basis of a discussion with the students. Persuade public officials—judges, city council officials, prosecutors, public defenders, police officers—to come to the schools and talk to the students. Or designate a group of nine students as the Supreme Court for the day and have them sit around a table and explain how they would decide a particular case. There are many cases that could be used for this purpose, and many lawyers and civic leaders who would be happy to help in that endeavor.

Let me offer a few examples of questions that lend themselves to this approach. I have already mentioned two of them: the Supreme Court’s new decision in the *Snyder* case and the Seventh Circuit’s case about the right of the Nazis to march through the streets of Skokie. Many other possibilities, however, come readily to mind:

- ★ Illinois recently abolished the death penalty. Many other states still have the death penalty, and so the important questions it raises will remain. Proponents of capital punishment might argue that some murders are so brutal and heinous

that juries should have the option to impose the ultimate sanction on the guilty party. Opponents might argue that (quoting Sister Helen Prejean), “the real question is not whether [those criminals] deserve to die, but whether we deserve to kill them.”

- ★ President Obama decided to abandon the administration’s support of the Defense of Marriage Act, which essentially said that states had no obligation to recognize same-sex marriages performed in other states. Congress has repealed the “Don’t Ask, Don’t Tell” policy that governed gays in the military. Up until now, however, Title VII of the Civil Rights Act of 1964, which prohibits various forms of discrimination in employment, has been understood not to cover discrimination on the basis of sexual orientation. As one Seventh Circuit case explained:

*We have stated that the phrase in Title VII prohibiting discrimination based on sex means that it is unlawful to discriminate against women because they are women and against men because they are men. . . . In other words, Congress intended the term “sex” to mean “biological male or biological female,” and not one’s sexuality or sexual orientation. Therefore, harassment based solely upon a person’s sexual preference or orientation (and not on one’s sex) is not an unlawful employment practice under Title VII.*

Some cities, including Chicago, have gone further than the federal law and now protect many forms of discrimination based on sexual orientation. Imagine

a discussion focusing on a hypothetical bill to amend Title VII, or a hypothetical argument before the Supreme Court to reinterpret the concept of “sex” discrimination to include sexual orientation.

- ★ A third area that regularly occupies the serious attention of the Supreme Court relates to the place of religion in our civil society. In *Christian Legal Society v. Martinez*, the Supreme Court faced the question of whether the First Amendment precludes a public university from denying a student organization access to school-sponsored benefits because of the group’s religious views. In that case, the record indicated that the Christian Legal Society refused to accept people as members who were openly and “unrepentantly” homosexual. The school had a nondiscrimination policy that required all student groups to accept anyone for participation, membership, or leadership positions, regardless of race, color, religion, national origin, ancestry, disability, age, sex, or sexual orientation. Here we had a clash between two strong values: antidiscrimination, and the right of individuals freely to associate and practice their chosen religion. The Court . . . ruled 5-4 that what it called the “all-comers” policy of the school was constitutional.
- ★ Another well-known set of cases dealing with religion have concerned the placement of religious symbols on public land. One pair of cases concerned Ten Commandment monuments on state grounds (*Van Orden v. Perry* and *McCreary County v. ACLU*), and another (*Salazar v. Buono*,) dealt with the display of a Latin cross displayed at the top of Sunrise Rock in Mojave National Preserve. In the Ten Commandment

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cases the Court found that the display was permissible, in light of its history and context, in one case, and not permissible in the other. There you have a great foundation for discussion. In the Sunrise Rock case, the Court upheld a statute that would transfer both the cross and the land on which it stood to a private party (the Veterans of Foreign Wars) as constitutional.

- ★ There are a wealth of questions that are arising every day from the electronic world in which we all live now. One was considered by the Supreme Court in a case called *City of Ontario v. Quon*, which dealt with the question of whether a police department was entitled to review private text messages that one of the officers sent using a department-issued telephone. Another example arose in the Second Circuit in a case brought by a mother against various school officials. In *Doninger v. Niehoff*, a mother complained that her daughter, who wanted to run for the office of senior class secretary, was disqualified from office after she posted a vulgar message about the assumed cancellation of an upcoming school event on her blog. The court held that the daughter's blog post created a foreseeable risk of substantial disruption at the high school and thus concluded that the district court had correctly refused to grant relief to the mother (who had wanted either a new election or an order allowing her daughter to have all the benefits she would have had, if elected).

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I have no doubt that today's students not only would have strong views about cases like this but would also be able to suggest many more similar problems that would benefit from a full airing.

These and other topics will not always be easy to discuss. But if the students learn that respectful, informed, and attentive exploration of these and other topics is possible, they will have taken a huge step. They will have learned that free expression, far from being incompatible with civility, thrives in the right atmosphere. They will learn to listen to competing views and, at least from time to time, to modify their own opinions in light of those voices.

I applaud the work that all of you are doing toward this end. Nothing is more important. It is up to us to ensure that civility does not suffer the fate of the eastern cougar. It will not, if we can train the next generation to reach their highest potential. I am happy to join you in that common pursuit. Thank you very much. ■



**DIANE P. WOOD** is a circuit judge on the U.S. Court of Appeals for the Seventh Circuit and a senior lecturer at the University of Chicago Law School.



## New Technologies, Legal Challenges, and Questions of Civility

BY JEFFREY ROSEN

I am really excited to be here to discuss my favorite topic, which is technological change in the 21st century. What will the future of privacy and free speech, and civility look like in the age of dizzying technological change? This is a question that will directly influence students' lives in the most tangible ways. Not only are there legal choices, but also there are political and technological and personal choices that will define the future of constitutional values, such as free expression. So, what I would like to do is give you three hypothetical scenarios of technologies that might challenge constitutional values of the next twenty years. None of these will be as sci-fi as they might sound.

I think we will conclude that the Supreme Court may not be the most influential body to decide these very difficult questions. In the end, technologists themselves, companies such as Google, may influence the future of free speech, privacy, and civility even more than the Supreme Court. And then, finally, I would like to have a conversation with you about how to promote deliberative conversations about the shape of constitutional values in your classroom and in the future.

### HYPOTHETICAL SCENARIO 1: BRAIN SCANNING

The first hypothetical is about terrorism concerns in 2020. Government leaders are finding that the new three-dimensional naked machines installed at airports across the country just are not doing the trick when it comes to detecting possible threats. So the government decides to select suspicious-looking people off the streets and subject them to brain scans. One day, they choose you. It is just a simple test, using a magnetic imaging device. You are shown photos of a training camp in Afghanistan. If you've been there, your brain will recognize the pictures, and send a certain signal that alerts the test monitors. If your brain does not recognize the images, it will not send that signal, and it will not alert the test monitors. This test is more accurate than a lie detector test—90 percent accurate. By 2020 standards, this is accurate enough to be admitted in court. Basically, if your brain signals did not make the test light up, you can go free. If your brain signals did make the test light up, you are detained indefinitely as an enemy combatant.

Before too long, you can imagine, someone will sue, and the case goes to the Supreme Court. What are they going to

decide? Well, under existing constitutional doctrine, the answer is not clear. Some people would say that you put out your brain waves the same way you put out your trash, in a public place, and therefore you have no expectation of privacy in your brain waves. Therefore, there is not a violation of the Fourth Amendment to the U.S. Constitution, which prohibits unreasonable searches and seizures of your persons, houses, and effects. That would be one argument. On the other hand, some people would say that your brain waves are the most fundamental aspect of the privacy of your person, and they reflect who you are. Therefore, in a profound way, it is an unreasonable search of a person, to search their brain waves. If the existing law doesn't cover this idea, then we need a new concept of cognitive liberty to insure that no one can be stopped on the street and have their brain waves searched in this way.

## **HYPOTHETICAL SCENARIO 2: STEM CELL MANIPULATION**

Here is the second hypothetical. It is 2020 and Supreme Court recognized gay marriage. Gay couples are getting married, and in most states, gay couples can adopt children. Some gay couples are going to want to have children who are biologically related to both members of the couple. So, using stem cell technologies, because it is already possible to take a stem cell and to coax it into any other cell, in 2020, you take a cell from one man who is married to another man, and coax it into an ovum. Using in vitro fertilization technology (IVF) and a surrogate womb, the couple could have a child who is biologically related to both men. People *will* want to

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How do you  
reconcile two  
positions, so  
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science, law,  
and civility?

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do this. Some members of Congress are outraged, calling this human cloning. They introduce a bill banning any form of IVF or human cloning for enhancement purposes and restrict its use to therapeutic purposes to correct existing disease. This case also reaches the Supreme Court, and again you can argue it two ways.

On the one hand, people will argue that at the heart of liberty is the right to define one's own conception of meaning, of the universe, of the mystery of human life. If

there is a right to procreate recognized in *Roe v. Wade*, then that right to procreate should include the right to select aspects of your offspring, including eye color or height, for example, or to clone, so you can have someone biologically related to both parents.

The other argument is to suggest that to even destroy a stem cell in the course of creating this ovum is a form of murder. Stem cells might come from embryos or fetuses, which are human lives, and they should be entitled to total access to constitutional rights under the Fourteenth Amendment. Therefore, stem cell research itself is a form of murder, as, in fact, one state court held, prosecuting a doctor for engaging in it. Far from cloning being a constitutional right, the people who engage in it, rather, should be prosecuted for negligent homicide.

How do you reconcile these two positions, so completely diametrically opposed, with science, law, and civility? Both of these arguments are plausible under existing doctrine, so my hunch is that it will not be up to the



Court to solve this problem, but Congress, and each state legislature.

### **HYPOTHETICAL SCENARIO 3:**

#### **OPEN PLANET**

The slightly less-dramatic third hypothetical, and I have been told by the people at Google that this will actually happen within the next five to ten years, is the use of what I will call “Open Planet.” The head of public policy at Google said he expects within five years to put online, live feeds from all of the closed circuit television cameras throughout the country. All cameras, from government to shopping malls, are included in Open Planet. So in 2020, you can imagine that you search Google, click on a picture of me to see where I went after I left the house this morning. Forward click on me to see where I went after lunch. Images are stored and basically, you have 24/7 ubiquitous surveillance of everyone at all times online for your neighbors and friends and students to voyeuristically follow each other. If you thought Foursquare was bad, meet Open Planet. Ubiquitous surveillance is challenged, and the case goes to the Supreme Court.

The first argument is that Google is not the government. The ubiquitous surveillance is not a state action, and the Fourth Amendment only binds government actions. This is just a private company doing whatever it wants, and therefore, not a violation of constitutional rights. The other argument is that this *is* a state action because the surveillance is enabled by a mix of private and public cameras.

Supreme Court Justice Louis Brandeis, in 1890, was concerned that “the details of sexual relations are

spread broadcast in the columns of the daily papers. ... [C]olumn upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle.” He was talking about snapshot photography. It pales in comparison to Open Planet. Laws were created to cover this; surely, our law should be extended to cover Google’s Open Planet.

#### **NO CLEAR ANSWERS**

There are two themes that emerge from all three of these examples: (1) The answers are not clear under existing doctrine; and (2) Google and the technology companies may influence the future of free speech, privacy, and civility more than the Supreme Court. So who is the person right now who has more influence over free speech than Chief Justice Roberts, or President Obama, or even the king of Thailand? Her name is Nicole Wong. This incredibly powerful and impressive woman is the deputy general counsel of Google. Her colleagues call her The Decider. She is the one who gets calls in the middle of the night from the Thai government, which wants Google to take down a YouTube video that is critical of the king of Thailand, which is a crime there. Or she’ll get a call, three hours later, from the government of Turkey. Greek football fans have posted YouTube videos suggesting Kemal Atatürk, the founder of Turkey, is gay. This is also illegal in Turkey. Nicole, who is tired and doesn’t speak Turkish, has to decide on the spot whether the video stays up for the world to watch. She also decides how each of the search engines that Google runs throughout the world, in Germany, France, and so forth, will respond to certain searches. If something is illegal under German law, such as Holocaust denial, but not illegal in France, and a Holocaust denial video or link

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or blog is posted, Nicole Wong decides whether it has to come down. She decides what goes up, what comes down. It is an extraordinarily complicated job, and she thinks it is actually too much for her and her small group of colleagues. She would prefer that democratically elected bodies, such as the one Germany has set up, make these decisions and tell her what to do, because she doesn't want to be the decider of free expression for the world. But right now, she is the only one doing it, so we have to pay attention to the influence of these private companies on thinking about constitutional and social values.

I want to close by talking about something I know your students care about because I know I care a lot about it, and this is the privacy issue of our day. If I have to give a dramatic example of someone who is suffering from this problem, this would be Stacy Snyder. She was a student weeks from earning her teaching degree, who applied for a full-time job as a teacher just before graduation. Her potential employer 'googled' her and found a Facebook picture that was labeled "drunken pirate." She was at a party, carrying a plastic cup (we don't know what was in the cup), wearing a hat, and smiling. The University denied her teaching degree, and Stacy was denied a job. She sued, arguing that no one knew what she was drinking from the cup in the photo, and if it *was* alcohol, she was of age and at a legal party. She lost the case. So what is this case of Stacy Snyder and the drunken pirate? This is the inability to escape our past, or the lack of second chances.

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## Google and the technology companies may influence the future of free speech, privacy, and civility more than the Supreme Court.

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The essence of American society is the right to new beginnings, to second chances. Nowadays, chat that your students are putting up on Facebook is going to come back to haunt them. According to Microsoft, 80 percent of employers 'google' people, and 50 percent of employers deny people of jobs or fire them because of their Facebook posts. It is not just about jobs: a man was stopped at the Canadian border recently, was 'googled,' and wasn't allowed to get into Canada because he had written

an article when he was a student praising marijuana use. Here he is, twenty years later, tainted by this scarlet letter of his past work. So you get the problem; there are infinite number of examples.

What are the legal, technical, or civil solutions? You could prohibit employers from looking on Facebook. Or you could pass a law. New York has a public personnel law that prevents holding someone accountable for legal off-duty conduct. But this is a difficult law to extend; after all, it is useful for potential employers to find out something about you. You could also limit the looking. For example, if a potential employer 'googles' you, they have to tell you, and you should have a chance to respond, or put yourself in context. This would be similar to the Fair Credit Reporting Act, which gives you access to your credit scores and tells you how you are being held accountable financially.

Solutions such as these could be productive, but my hunch is that law is not going to really ultimately be able to solve this problem. There simply is so much information about us out there, and it never goes away, so prohibiting the use of the information is going to be difficult. A technical solution might include changing how data is stored online. Facebook, right now, stores things forever. If they didn't want to put the stuff out there forever and sell ad space on it, they could make the data go away in three months unless you click a button telling them to keep it forever. That could solve the problem. Or, there are new technologies. Researchers at the University of Wisconsin are working on a project called Vanish, which can encrypt e-mails, documents, or Facebook chat. It also makes data "vanish" after a certain expiration date set by the user. It would be technologically challenging, but not impossible, to use these technologies to insure that our data went away.

There is also a new interesting field called visceral technologies, which could analyze items in photos. It could scan the potential Facebook picture, analyze what is in the photo—flesh or alcohol bottles, for example—and produce a pop-up box for the uploading user that asks, "Are you sure you want to post this?"

Ultimately, the solutions to these problems are going to come down to norms. For what are we, as a society, going to choose to hold ourselves accountable to? It is too simplistic to suggest that privacy is over and we will all just be more forgiving. The data about heuristics—how we judge other people—suggest we emphasize the bad and discount the good. Something dramatic and bad that happened to you two years ago is going to be remembered

for a much longer time than all of the good you did in the five years before that. It is also not the case that people are going to be more forgiving of others who engage in shared acts of misconduct. I might have a drunken Facebook picture that hasn't gotten me in trouble, but I'll still judge Stacy Snyder. This phenomenon is called the "devil's horn effect," which is to overemphasize the bad and not the good. So let's not be overly unrealistic about the possibilities for overcoming this through norms.

Conversations about civility are useful here. These hypotheticals and questions presented today will not be solved by law or by technology or by themselves. It is really a question of values. Those values can only be shaped through conversation, deliberative conversations. The choices that our students, children, and we make in our personal lives and our political lives mean far more for our society than anything decided in any court or even by Nicole Wong, the decider at Google herself. Thank you so much. ■



**JEFFREY ROSEN** is a professor of law at George Washington University Law School and the legal affairs editor of *The New Republic*. His most recent book is *The Supreme Court: The Personalities and Rivalries that Defined America*. He also is the author of *The Most Democratic Branch*, *The Naked Crowd*, and *The Unwanted Gaze*.

## Civility & Free Expression in Political Discourse

### FACILITATOR

**DIMITRA TASIOURAS** is currently the director of programs and partnerships for the Illinois Humanities Council (IHC).

### PRESENTERS

**ADAM P. GREEN** is associate professor of American history at the University of Chicago. His publications include *Selling the Race: Culture and Community in Black Chicago, 1940–1955*.

**THOMAS METZLOFF** directs Duke Law School’s Voices of American Law project, which provides educational materials to assist in studying the Supreme Court and its role in American society.

**KELLEY O’BRIEN** directs the North Carolina Civic Education Consortium, a program of the University of North Carolina–Chapel Hill School of Government.



### OVERVIEW

Political discourse—on the campaign trail, in attack ads on television, in the halls of Congress, in verbal exchanges between Republican and Democratic party leaders, and everywhere on cable television and radio—seems nasty, conflict-oriented, unproductive, and generally discouraging to most Americans today. Many scholars and observers connect this current wave of uncivil political discourse to historically low levels of trust and confidence in the institutions of government (notably Congress, but also other elected leaders and the president), as well as to widespread cynicism about public service and public servants, especially among the once-idealistic young.

The tragic shootings in Tucson in January 2011 and the often strident political talk about their causes and implications brought the subject of civility to the forefront of our national conversations. Public leaders and politicians of all stripes promised to do better, to work together more cooperatively, and to disagree where necessary in a more civil tone. How long this truce of words and tone might last is difficult to predict, but we do know from our nation’s history that heated partisan political talk flows and ebbs and that no generation has had a monopoly on civility in political discourse.

The Supreme Court has rarely been directly involved in debates about political talk, leaving the elected branches of government to monitor themselves. However, in a landmark campaign finance case—*Citizens United v. Federal Election Commission* (2010), the Court held that government bans or limits on corporate political spending for individual candidates violated a basic free

speech principle, one that extended not only to individuals but to corporations.

### QUESTIONS FOR DISCUSSION

As we move forward, many questions about the future of our political discourse remain:

- ★ Will the removal of campaign spending limits enrich or inhibit political speech?
- ★ In what other ways has or could the U.S. Supreme Court have an impact upon our national political discourse?
- ★ Is contentious or uncivil political talk between the two major political parties a necessary precondition for meaningful elections that clarify policy differences for voters?
- ★ Is there any substantial relationship between a civil political discourse and effective government policies?
- ★ Is civility a desirable political goal, mere window dressing for democracy, or an actual hindrance to widespread political participation?

### FREE SPEECH AND POLITICAL CAMPAIGNS

The working group opened with a viewing of *Free Speech and Political Campaigns*, a documentary from the Voices of America Law Project of Duke Law School. The film told the story of the recent Supreme Court case *Citizens United v. Federal Election Commission* and raised interesting questions about the intersection between the First Amendment and campaign finance reform. The film and accompanying curriculum was developed by Thomas Metzloff, professor at Duke Law School, and Kelley O'Brien, director of the North Carolina Civic Education Consortium.

Participants agreed that the film would be a useful resource for teachers and schools as it presents the issues very clearly and highlights the important concepts to be discussed. The working group then used the film and the *Citizens United* case as a starting point for discussion, raising the question, "What impact will lifting campaign spending limits have on political speech. Will it inhibit or promote more civil speech?"

In general there was concern among working group participants that the decision in *Citizens United* might inhibit the free exchange of ideas because it will allow corporations to use their vast resources to promote particular arguments and positions on issues. Given that few other organizations or individuals can match the financial resources of corporations, there would be an uneven playing field in the ability to get certain messages out to the public. If only certain messages are funded and delivered due to the backing of corporations, will the general public be able to get all of the information they need to be engaged and informed?

The group agreed that *Citizens United* begs the question "What is the legitimacy of corporate participation AND to what degree does corporate access to significant resources affect campaign outcomes?"

There was some agreement that disproportionate participation appears to be the problem in political speech today and the concern is that *Citizens United* will only reinforce that disproportionate participation and that many individuals or less powerful groups will be discouraged from participating in campaigns.

The group discussed several questions raised by the *Citizens United* case regarding free speech in political campaigns:

- ★ Entities with the greatest resources will have the greatest influence on what people hear and see during a campaign. Are there ways to ensure resources are spread so that there is a balance of messages that are promoted during a campaign?
- ★ One participant observed, “*Citizens United* is a misnomer; it really should be Corporations United.” Does the case primarily increase corporate influence on political campaigns and political discourse?
- ★ Is free speech the issue, or is it the context of the speech that is at issue? Was *Hillary*, the film produced by *Citizens United*, entertainment or political speech and do we view entertainment as different from political speech?
- ★ Is the *Citizens United* case part of an overall anti-democratic movement in this country? Other examples: Wisconsin’s Governor Walker proposing legislation that would eliminate the right of local communities to raise funds for schools, and that would give the governor the right to sell energy plants without being challenged or questioned; attacks on labor unions, spurred on by the Wisconsin governor’s efforts to take away the right to collective bargaining by state employees.

There followed discussion on the issue of disclosure and how vital it is to ensuring effective political discourse. If we know who is funding certain messages, commercials, candidates, we can decide how to respond to those messages or candidates. The recent case of Target making a campaign contribution to an antigay candidate was raised. When this contribution was disclosed, many

supporters of gay rights protested, boycotted Target, and the Target CEO later apologized.

Will examples such as Target become the norm, where, when contributions are made, the public responds with approval or disapproval? Or will most contributions be made with little attention from the public? Some participants were optimistic that if we get full disclosure on campaign contributions, people will respond, as in the case of Target.

Another participant noted that the *Citizens United* case highlighted the problem of defining a corporation as a person entitled to the same legal rights as an individual person and raised questions such as

- ★ What does it mean to be an agent?
- ★ What constitutes free speech?
- ★ Does lifting campaign spending limits for corporations apply also to global corporations, or just American-based companies? What are the implications of unlimited campaign spending by multinational corporations?

## **CIVILITY IN POLITICAL DISCOURSE**

One participant wondered, given their decision on *Citizens United*, what the Supreme Court’s notion of ‘ideal election’ would be. Would civility be part of that definition? Would it support the notion of equal participation in election campaigns despite unequal distribution of resources? Does this call for a redefinition of democracy?

Participants agreed that we do not look to the courts and the law to define civility or limit free speech in political discourse. Yet, the group wondered, if we cannot legislate civility in political discourse, how else can we reinforce or encourage it?

# Civility & Free Expression in Cyberspace

## FACILITATOR

**NISAN CHAVKIN** is the executive director for the Constitutional Rights Foundation Chicago where he has worked since 1995. Chavkin holds a Bachelor of Arts degree cum laude from the Hebrew University of Jerusalem in Jewish Thought and History of the Jewish People.

## PRESENTERS

**KAREN BROWN** is an instructor in the School of Criminology and Project Coordinator for the Centre for Education, Law, and Society at Simon Fraser University in British Columbia, Canada.

**WANDA CASSIDY** is associate professor of education and director of the Centre for Education, Law, and Society at Simon Fraser University in British Columbia, Canada.

**RONNELL ANDERSEN JONES** is a professor at Brigham Young University School of Law, where she teaches constitutional law, First Amendment, and media law.



## OVERVIEW

In the past fifteen years, there has been a technology-driven transformation in American life. We now utilize online media to accomplish much of our work on the job and explore the wonders of our world beyond the local community where we reside. We also communicate with—and, indeed, find and make—friends online, not simply one-on-one but in interconnected webs of relationships now referred to as social networks. These media are not only the province of the young but extend, in varying degrees, to people of all ages.

No governmental unit, substantial business, or nonprofit organization is without a Web site. Facebook is the current global face of social networks. YouTube's online videos and music have added to artistic entrepreneurship and the cultural fabric. And personal mobile phones have facilitated connecting the individual to these and other online networks. As a result, new controversies and conflicts—often, ones that challenge traditional understandings of civility or civil discourse—have arisen. Moreover, our Constitution and most current laws never contemplated the arrival and integration of these new technologies or the conflicts arising from them.

Bullying, harassment, hate speech, and other forms of incivility are a regrettable part of chat rooms, online forums, YouTube, Facebook, and the like. Host Web sites have become more sensitive to these issues, monitoring talk and encouraging users to report abuses. Indeed, Facebook utilizes an entire team of specialists to monitor abuses and remove illegal content or material that violates its own terms of service. But large online entities confront thousands of conflicts, where the line between verbal bullying, racial harassment, and uncivil comments about

religion, sexual orientation, or other personal or group attributes on the one hand, and speech protected by the First Amendment is blurred, indeed simply unclear. Political advocacy groups walk a similarly fine line on Web sites that promote, among other things, Holocaust denial, the identification of Islamic terrorists or supporters, or the unauthorized labeling of sex offenders.

### **QUESTIONS FOR DISCUSSION**

A whole array of questions arises from serious breaches of civility in cyberspace:

- ★ Do these uncivil words pose more, less, or similar problems online compared with in-person, face-to-face encounters?
- ★ Does the frequent anonymity of online talk encourage incivility?
- ★ What kinds of laws concerning hate speech, harassment, and bullying have the states or federal government enacted?
- ★ Have any of these laws been challenged in the courts?
- ★ Has the U.S. Supreme Court issued relevant rulings?
- ★ Do legislators or judges have sufficient experience with and knowledge of online media to reach informed decisions?

### **NEW RESEARCH IN CYBERBULLYING**

The *Civility and Free Expression in Cyberspace* session began with scholars Wanda Cassidy and Karen Brown sharing findings from their joint research on cyberbullying. Their research shows that cyberbullying is a worldwide phenomenon wherever there is access to the Internet and technology. They reported that 25 percent to 35 percent of those surveyed admit to participating in

cyberbullying and over 30 percent claim that they have been victims themselves. Both boys and girls are likely to be victims; however, more girls than boys engage in cyberbullying. Cassidy and Brown have found that cyberbullying behavior escalates between the ages of 13 and 14 and then diminishes as youth grow older. Victims are often targeted because of specific attributes such as special needs, academic abilities, unpopularity, physical appearances, physical and/or mental disabilities, unfashionable clothing, and ethnicity.

Cyberbullying is most likely to start at school and then continue at home. Most occurs on social networks sites and e-mail, not through text messaging. There is a strong link between the home and school life vis-à-vis the Internet, and cyberbullying that starts at home negatively impacts the school milieu, and vice versa. Some boys and girls are frightened by electronic messages they have received. Some messages threaten lives or safety or threaten reputations; other messages affect youths' ability to concentrate, while some communications affect students' abilities to make friends at school.

Most cyberbullying is happening under the radar of principals, counselors, teachers, and parents. It can occur within "friendship groups," particularly among girls, so bullying may not be immediately apparent. Few school districts have policies for addressing cyberbullying (as opposed to face-to-face bullying). Reasons for not reporting cyberbullying include a belief that it is an individual problem rather than a school's policy mandate; feelings of powerlessness among education staff; and students' fears that reporting the incident could get their friends in trouble, their parents would restrict their access to the Internet, or other



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## Cyberbullying is a worldwide phenomenon wherever there is access to the Internet and technology.

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students would label them as “informers” or “rats.” The most common reason is the fear of retribution from the cyberbully.

Cassidy and Brown stressed the importance of educators and policymakers listening to youth. Students should be given a voice to express what they believe are the causes, consequences, and possible solutions to cyberbullying. Students’ suggestions to school officials as solutions to cyberbullying include anonymous phone lines where students can report cyberbullying, programs to teach students about cyberbullying and its effects, and programs that build positive self-esteem in students.

Participants agreed that technology is not the “problem” causing cyberbullying, but rather, misuse of technology. Most educators stress the need to learn new technology and propose the primary method for preventing cyberbullying is education. Key steps—educating teachers about social networking sites, engaging parents and teachers in collaborative solutions, designing effective curriculum, modeling appropriate values and behaviors in the school and home, and building trusting relationships with youth to permit more open and respectful dialogue—will encourage a kinder online world. Participants added that parents need to be more involved, and strictly monitor their children’s online activities.

### **ANONYMITY IN CYBERSPACE**

To add to the discussion, RonNell Andersen Jones shared findings from her research regarding the legal treatment of anonymous speech. She raised several issues regarding anonymity online.

As *The New Yorker* cartoon famously said, “On the Internet, nobody knows you’re a dog.” Jones stated that people need to recognize that anonymous speech plays an important role in our democracy [e.g., *The Federalist Papers*, etc.]. It is consistent with the First Amendment because persons have control over their own message and there are real virtues to the online realm. And it is a socially valuable avenue of dialogue that we don’t want to shut down. For

example, the “balloon boy” incident was uncovered through anonymous online comments.

There are also problems with anonymity. It increases unethical behavior by emboldening people to do things they would not do if they had to identify themselves. It is easier to disparage others. In an online context, it leads to increases in cyberbullying, trolling, spam, and advertising. It creates a “consequence-free zone” of expression, a popular view of the Internet. Anonymous speech also creates a double standard—anonymity is a virtue in the online world but not in the real world.

Should we consider eliminating anonymity online? Where is the balance between benefits and harms? Participants noted that intimidation can be more frightening if anonymous, and people can feel empowered by others’ comments. On the other hand, some participants argued that threats online can be discounted precisely because of their anonymity (hyperbole and exaggeration). Finally, participants discussed how courts are thinking about the issue of anonymity in cyberspace. One solution is to focus on Web site managers, where parameters are imposed and a reputation system is used.

# Civility & Free Expression in Popular Culture

## FACILITATOR

**MABEL MCKINNEY-BROWNING** is director of the American Bar Association's Division for Public Education.

## PRESENTERS

**BENET DAVETIAN** is a professor of sociology at the University of Prince Edward Island, and founder and director of The Civility Institute.

**JOHN KASSON** is professor of history at the University of North Carolina at Chapel Hill. He is the author of several books, including *Rudeness and Civility: Manners in Nineteenth Century Urban America*.

**JOHN MILEWSKI** is executive producer and host of *dialogue*, a production of the Woodrow Wilson International Center for Scholars.



## OVERVIEW

Popular culture, in its many forms, both reflects and shapes our understandings of American society, its institutions, and people. Through film, television and radio, literature, music, video games, and humor, we come to better understand and appreciate our shared values, individual perspectives, and diversity.

As each new genre appeared, however, controversy inevitably followed. Powerful works of fiction that challenged racial understandings, political institutions, or artistic limits with respect to sexual content were banned from public schools or libraries and occasionally burned, not only in the days of Jim Crow and twentieth-century America but also in much more recent times. Films, in particular, have provided fertile ground for different views about what constitutes obscenity, but the Motion Picture Association of America's adoption and periodic revision of voluntary rating systems have helped to neutralize conflicts by providing parents with guidelines. Television, given its presence in virtually every home in America since the 1950s, has been an especially sensitive medium, where struggles about the appropriateness of foul language, sexual innuendo, the glamorizing of alcohol and drugs, and violence have periodically erupted. Nevertheless, the advent of cable television and parental controls (e.g., the V-Chip), as well as changing social mores, all helped to reduce conflicts. The story of video games has followed a similar path of voluntary controls, designed to keep youths from renting [if not playing] violent games without parental permission. Currently, music is perhaps the most contested arena of popular culture, where contemporary lyrics in urban, hip-hop, and rap music often challenge cultural and social boundaries.

This short review suggests how complex calls for greater civility across the many genres of popular culture can be. The value of civility can and has been invoked by opponents of pornography, supporters of increased protections for children, book burners, and critics of the vulgarity of youth music. On the other side, supporters of unfettered freedom of expression typically seek to push political and cultural boundaries. In the landmark decision of *Miller v. California* (1973), the U.S. Supreme Court developed a stringent three-pronged test to determine if materials were obscene, thereby providing protection to works having “literary, artistic, political or scientific value.”

### QUESTIONS FOR DISCUSSION

Nevertheless, many areas of conflict and questions remain.

- ★ What limits on freedom of expression are constitutionally permissible under the First Amendment? Why?
- ★ In what ways (and at what ages) should children be more protected than adults from obscene or controversial content?
- ★ How can society encourage greater civility in the content and messages of its literary, musical, and film artists without compromising creative inquiry and the First Amendment?

### THEMES OF ANGER AND CIVILITY IN FILM

John Kasson opened the working group by showing a clip from Spike Lee’s movie, *Do the Right Thing* (1989). Most people in the room had either seen the movie or were familiar with it. [The particular clip highlighted a scene in a pizzeria, where a conflict arose between the Italian American owners and several African American

customers who questioned why there were no black faces on the owners’ “Wall of Fame,” which included mostly Italian Americans. After a few heated exchanges, the African American customers left, suggesting that they would not return to eat there because the pizzeria didn’t represent the community being served.] Kasson suggested that the themes of anger and civility were very well highlighted in this movie. He raised a number of questions posed by the film, including most broadly: How does popular culture fight the establishment, the “powers-that-be”? Also, how can we, as a society and as individuals, be civil in concrete situations where people are angry and distrustful?

Kasson sought to ground the discussion in connections to popular culture and its impact. He suggested, for example, that forms of popular culture (such as film) dramatize what unites and divides us as people, that popular culture helps us to dig deeper into the emotions of everyday life for people. Film also helps us better see the line between civility and incivility and when that line is crossed. With respect to classroom teaching, popular culture helps students begin discussion by focusing on others, rather than themselves. Popular culture also enables students to discuss controversial topics in a safe space. More generally, Kasson asks: How do we cultivate more artists who can create these kinds of opportunities for public discussion?

### HOW MASS CULTURE REPRESENTS NATIONAL VALUES

Following Kasson’s presentation, sociology professor Benet Davetian introduced his work and perspectives on civility and popular culture, utilizing a few short clips

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from YouTube as examples. He began by asking the broad question: How well or accurately does popular (mass) culture represent a nation's values? He offered comments on this subject by comparing experiences in the United States with Canada, France, and England from the 1950s forward. He identified some antiintellectual strains in the United States and Canada, pointing out that television is America's real "public square" where values are reflected and contested. Film, too, often gives powerful indictments of culture or public policy, and we in the United States are free to make these films, unlike in some nondemocratic countries. Davetian argued that the dark side of current popular culture is its negative impact on civility, where extreme or outrageous behaviors are too often rewarded. He discussed a few examples of such behaviors using YouTube clips—e.g., one clip showed a teenage girl complaining to her parents that the car presented to her for her 16th birthday was the "wrong color."

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## Forms of popular culture dramatize what unites and divides us as people.

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One participant commented that the triumph of consumerism over substance, as reflected in the media, means that incivility is often tied to celebrity rather than to politics. In response to several video clips shown, the group debated and discussed whether young people today have a greater sense of entitlement than in

previous generations, as well as whether adults are any different from youth in this regard. Is there a different standard for civility for youth, compared with adults? The group also discussed how adults could help young people develop a framework or better context for civility. Finally, the group acknowledged that the mass media present only a representation of reality and perhaps not a very accurate one. We need to teach effective media literacy to help young people (and adults) better understand and evaluate critically communications they receive.



# Civility & Free Expression in the Public Square

## FACILITATOR

**DAN LEWIS** is the director of the Center for Civic Engagement at Northwestern University.

## PRESENTERS

**DAHLIA LITHWICK** is the senior editor and legal correspondent for *Slate*.

**RICHARD PRICE** is a justice of the New York State Supreme Court currently serving in the Bronx Criminal Division.



## OVERVIEW

The “public square” is at the heart of American democracy. It is both a metaphorical symbol of our commitment to First Amendment freedoms of speech, assembly, press, and religion and a robust collection of real places where debates, political expression, and protests take place. In settings as diverse as street corners, shopping malls, town halls, barber shops, colleges, and outside of abortion clinics and funeral services for soldiers, Americans from different walks of life come together to listen, discuss, debate, and protest.

But the practices of democracy are often messy. Protesters become loud and unruly; groups with opposing points of view try to shout each other down. Scuffles, violence, and arrests sometimes ensue. Special interests choose locales to gather and march that are designed to offend the targets of their protest. The language, signs, and symbols of the public square are often nasty, offensive, and indeed uncivil. As historians remind us, however, the lack of civility in the public square is not new—it was also present as far back as colonial times and the early days of the Republic (recall The Alien and Sedition Acts of 1798). Not every democratic encounter looks like a small town hall meeting in New England or has the tranquility of a (staged) campaign stop for today’s presidential candidates.

The U.S. Supreme Court has generally protected political speech and assembly (with very few exceptions) in many different forms and settings, including in recent decades the right of neo-Nazis to march down the streets of Skokie, Illinois, a community heavily populated by Jewish residents and Holocaust survivors (*National*

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## The practices of democracy are often messy.

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*Socialist Party v. Skokie*, 1977) and the right of residents and even gang members to assemble (or loiter) on the streets of Chicago (*Chicago v. Morales*, 1999). Most recently, the Court in a 9-0 decision upheld the free expression rights of a church to picket at a funeral even though the expression was considered offensive and outrageous (*Snyder v. Phelps*, 2011).

### QUESTIONS FOR DISCUSSION

Nevertheless, a variety of policy and legal questions linger, as the boundaries of the public square are challenged:

- ★ At what point, if any, do the free-speech rights of protesters trample upon both civility and the fundamental rights of other people (doctors at abortion clinics, families honoring fallen soldiers)?
- ★ Can some conflicts in the public square be resolved as mere matters of space and proximity?
- ★ What actions can governments take, within the limits of the law, to encourage civility and ensure safety for all people in the public square?
- ★ Should the Supreme Court identify new or broader exceptions to the First Amendment, so as to bring into better balance democratic civility and the political dialogues of the public square?

### CIVILITY IN DEBATE AND DISCUSSION

The *Civility & Free Expression in the Public Square* working group session opened with a lively set of discussions on how to conceptualize a way to increase civility in the public square when discussing controversial issues.

What would it look like if we could get people together (either face to face or digitally) to work on these issues of civility in the public square?

Reactions were diverse, but participants generally agreed with *Slate* Legal Correspondent Dahlia Lithwick's concern that the current situation is one of basic incivility, and that lately there has been an uptake in ugly public discourse. It has been fueled, in part, by notions that our First Amendment freedom of speech is an absolute right allowing people to speak or write anything they want, anytime, anywhere.

Ms. Lithwick referred to the public forum discussion, when panelists brought up the issue of the distinction between what is public and what is private. This distinction seems to be disintegrating quickly and there is little consensus between what is the boundary between the public and the private. Commensurate with this boundary problem is an American public that has a shrunken expectation of privacy. If someone is being uncivil but doing so in a private space, is this permissible? What if we then take a video camera and place the uncivil act in a public space?

Justice Richard Price of New York discussed a program that he conducts with local teachers and the state bar association. This program brings children to visit his court and observe hearings. He emphasized that the courts have a role to play in encouraging civil discussion and debate and that courts need to be open to all people. He also noted that the most

successful district attorneys have the most respect for their adversaries. Ms. Lithwick agreed that courts can and do much to model civility—the legal system is almost the last bastion of civility. Adversaries in court do not talk to each other like people talk to each other on reality television. Attorneys and judges do not start with the presumption that the other side is lying or systematically lies all of the time.

All of the participants agreed that in debate and discussion, especially heated discussion, speakers need

to address and attack the speech, not the speaker. But we do need to protect and preserve space in which two people can strongly express disparate views.

The group agreed that if we want to encourage a robust but civil conversation, we should work with young people and young adults where they are—this should define the “public square.” Civility is more than just being courteous—it is being open to disagreement and yet still being able to talk, to discuss.



# Civility & Free Expression Among Cross-Cultural Perspectives

## FACILITATOR

**DANIEL GREENE** is vice president for Research and Academic Programs at the Newberry Library in Chicago.

## PRESENTERS

**ANDREW KOPPELMAN** is a professor of law and political science at Northwestern University.

**KEVIN SCHULTZ** is a professor of history at the University of Illinois at Chicago. He has special interests in history, religion, and American intellectual and cultural life.

**ALAKA WALI** is an anthropologist and the director of the Center for Cultural Understanding and Change at the Field Museum. She is also an adjunct professor in the Anthropology Department at the University of Illinois at Chicago.



## OVERVIEW

Diversity is a strong component of the American story. We are a nation awash in diversity of many forms—racial and ethnic diversity, religions of many faiths and sects, political views that span the ideological spectrum. *E pluribus unum* has been one of the historical and cultural foundations of the United States, from the founding of the Republic through the Civil War to twentieth-century efforts to assimilate a nation of immigrants into the body politic. Many scholars and observers now view the United States as a multicultural mosaic. Our president is biracial—the son of a black father from Kenya and a white mother from Kansas.

Diversity contributes enormously to the richness of American culture, as our books, films, and other cultural sources amply document. Yet diversity also challenges the political order, makes consensus more difficult to reach, and contributes to some political and social incivility. These challenges were particularly evident during World War I (anti-German rhetoric) and World War II (the Japanese American internment camps), as well as at other times of nationalistic fervor or racial strife. Recently, however, ethnographers such as Elijah Anderson find new forms of civility in urban America, places under the “cosmopolitan canopy” where diverse people meet, interact, and develop mutual understandings across racial, ethnic, and social borders.

This cross-cultural American view parallels, to some extent, the experiences of other countries, particularly democracies. But there are striking global differences, too, both in levels of diversity and in how individual governments respond to religious, ethnic, and racial



differences. In many countries, religious diversity may be present but barely tolerated; religious minorities may be unwelcome or even subject to constant harassment. In Western Europe, laws against hate speech and group defamation have been enacted since World War II, reflecting efforts to ensure political civility in the wake of the Holocaust, even at the expense of some limitations on freedom of expression that might not pass constitutional scrutiny in the United States.

### QUESTIONS FOR DISCUSSION

These issues of group and personal identity within and across national boundaries raise a number of questions:

- ★ Are diversity and civility inherently at odds with one another? What steps can a diverse society, such as the United States, take to promote civility?
- ★ What are the most important exceptions or limitations to key First Amendment freedoms? Do these exceptions have a disproportionate impact upon different racial, ethnic, or religious groups?
- ★ As our conceptions of racial and ethnic identity change in the United States (to better reflect a multi-racial model), what will be the impact on the “*Unum*,” politics, and government?
- ★ What lessons about civility, group identity, and freedom of expression can we learn and adopt from other countries?

### REGIME OF FREE EXPRESSION

The *Civility & Free Expression Among Cross-Cultural Perspectives* working group session began with presentations by scholars Andrew Koppelman, Kevin Schultz, and Alaka Wali. Andrew Koppelman identified

the tensions between civility and free expression. A regime of free expression is a kind of civility. A society can have different groups within the culture who have very different conceptions of how life ought to be lived, yet who can still live peacefully together.

Koppelman raised two questions for consideration:

1. How do we change our culture to make it more accommodating of free speech?
2. To what extent can we maintain a culture that is hospitable to free speech?

He explained that people develop attachment to free speech because of the way it complements a general worldview of those people who hold it dear. The challenge he identified is how we listen to people who disagree with us without wanting to harm them.

Koppelman then offered an example of the *Areopagitica*, a 1644 speech against censorship by John Milton, in which he argued for a free press. His argument was theological: a free press was God’s will, based on the Biblical text, “... the truth will make you free.” (John 8:32). Milton’s arguments for free speech came out of shared belief with his audience. Koppelman noted that the way you advance ideas of free speech is to understand the commitments of the culture and try to get a group to see why free speech will advance their beliefs. He claimed that those promoting freedom of speech need to engage with their audience’s concrete, preexisting worldviews.

Participants responded to Koppelman’s emphasis on “tolerance,” and asked for a more rigorous definition

of tolerance. Facilitator Daniel Greene also asked the participants in the working group to consider whether tolerance is an ambitious enough goal for those who truly value civil society.

## **RELIGIOUS FREEDOM AND NATIONAL IDENTITY**

Next, Schultz opened by citing a quote from Franklin D. Roosevelt dating from 1942: “You know this is Protestant country, and the Catholics and the Jews are here under sufferance.” Schultz then asked participants to think about how the nation moved from that moment to the 1960 election of John F. Kennedy, the first Catholic president just 18 years later. In other words, how does the idea of the United States as a Protestant nation begin to fade, or at least become challenged, within a generation?

Schultz noted that the idea of a Protestant nation did not come from the Constitution because that document was written in the spirit of the secular Enlightenment. Religious freedom is at the foundation of the Constitution. Schultz then reviewed a number of foundational documents, from Madison to Jefferson to Article Six of the Constitution, to demonstrate the founders’ belief that the religion of every man should be left to every man. These documents push past “mere tolerance.” The British marketplace asks colonists to tolerate each other; the idea of religious freedom takes this further and allows religion to flourish. The Second Great Awakening marked the embodiment of the religious freedom idea; American people begin to practice religion fervently.

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## Are diversity and civility inherently at odds?

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The 1920s witnessed a protest movement against the notion of a Protestant nation, due to the rise of domestic nativism and totalitarianism abroad. Some argued that the United States was not a Protestant nation, instead describing it as a “Judeo-Christian” nation (1930s). This led to a push back against

Protestant hegemony, including noteworthy Supreme Court cases such as *Engel v. Vitale* (1962). This case focused on Bible reading in schools. The Court ruled that, if it had to choose between including everyone and including nobody, it chooses nobody. The 1960s then witnessed a protest against the idea of a religiously neutral nation. By 1963, Jerry Falwell and other conservative Christian leaders argued that we needed bring our country back to its religious roots. Schultz also pointed out that Muslims don’t fit into the notion of a “Judeo-Christian” nation, so there is now an emergent concept of “Abrahamic” faiths.

Schultz also raised one case study for consideration of civility, citing a theater in a small Virginia town that wanted to show pornographic movies. What the case proved to Schultz is that local debates on “civility” work pretty well, and often the involvement of national organizations can prevent solutions to local problems.

Facilitator Daniel Greene responded briefly by asking Schultz and others to think hard about this move from Protestant to Judeo-Christian to Abrahamic faiths. We often define ourselves relationally, by defining ourselves against those we consider to be different from us. How does this language of increasing inclusion then influence debates about civility and interethnic and interracial understanding?

## **CIVILITY, PLURALISM, AND “TOLERANCE”**

In the last portion of the working group session, Wali asked what happens to understandings of the West in the context of “the rest?” How can we understand and learn from the different ways people try to deal with civility across cultures? Are diversity and civility inherently at odds? Looking across cultures reveals that people have created a range of solutions to accommodate difference.

India is one of the most diverse places in the world (religion, language, histories). How do people accommodate this diversity? Hinduism is a religion that accepts diversity as a practice, an alternative to the Abrahamic model. Hinduism also incorporates other religious traditions into its own practices. Indonesia, for example, has the largest Muslim population of any country in the world. There are Hindu and Buddhist temples there that are shared with Muslims. This diversity may be possible only because Indonesia is an island culture. Over 100 languages are spoken in New Guinea in the Pacific Islands, and peoples have developed complicated friendship networks through trade.

Wali then asked how these examples apply to dispute resolution. She spoke of many cultures where dispute resolution is solved face-to-face. She also spoke of arbitration (allows people to accommodate differences) and mediation vs. systems of judgment (where members of society determine that someone is right and someone

is wrong). Wali cited examples in the Congo, Panama, and among Native Americans.

The group discussed how all of these ideas relate to multiculturalism and tolerance: Does using the word “tolerance” harm the movement to have more civility? Should we stop using “tolerance” to promote pluralism?

- ★ Problems “tolerance”: it does not move us toward acceptance, only to dealing with each other; “tolerance” does not promote human rights, for example.
- ★ Tolerance leads to silence: People are afraid to engage with each other. The fear is of the unknown, fear of not wanting to say the “wrong” thing, not wanting to feel blamed by the community. Schultz used the example that often at the beginning of a class, students do not want to talk about issues related to difference. Teachers must open the door to these discussions.
- ★ Is there a better word than tolerance? Perhaps tolerance is a first step; acceptance and inclusion are further goals. Tolerance has a very definite opposite (intolerance) with historical precedent; perhaps the need to change the word is not that important.

Participants agreed that education is more important. We cannot force people to accept things, but we can ask them to listen to each other.

## Annotated Bibliography

### BOOKS AND ARTICLES

Abramowitz, Alan I. *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy*. Yale University Press, 2011.

Argument that the increasing ideological divide in American life has engaged more people while making the stakes in elections more clear and thus leading to much higher voter turnout. Helpful presentation that runs counter to mainstream explanations regarding both civility and voter participation.

Abrams, Douglas E. "Recognizing the Public Schools' Authority to Discipline Students' Off-Campus Cyberbullying of Classmates" (March 16, 2011). *New England Journal on Criminal and Civil Confinement*, Forthcoming; University of Missouri School of Law Legal Studies Research Paper No. 2011-06. Available at SSRN: <http://ssrn.com/abstract=1788482>.

Explores cyberbullying in the context of both *Tinker v. Des Moines* (1969) and Justice Brandeis' dissent in *Olmstead v. United States* (1928).

The courts can remain true to *Tinker* by applying their express holdings to technology that the Supreme Court had no reason to anticipate when it decided those cases. Particularly useful for school settings.

Barnes, Robin. *Outrageous Invasions: The Defamation and Harassment Surrounding Media Invasion of Celebrities' Private Lives*. Oxford University Press, 2009.

Discusses how the paparazzi have used immunity from liability to disrupt the private lives of celebrities and thereby degraded the implied civility of personal privacy. Also details efforts to redraw media/privacy boundaries to reassert a code of civility.

Beck, Glenn, David Boies, Tom Brokaw, Deepak Chopra, Jeff Flake, Francis Fukuyama, David Gergen, Garrison Keillor, Tim Pawlenty, Robert Pinsky, Ed Rendell, Ruth Simmons, Peter Singer, Victoria Toensing, Frances Townsend, and Markos Moulitsas Zuniga. "Are We Becoming an Uncivil Society?" *Time*, January 13, 2011.

Brief, provocative commentary offered by leaders and thinkers

from across the political spectrum concerning charged political rhetoric and civility in current American society. Excellent examples for discussions in schools, universities, and workplace settings.

Bennett, Robert. *Talking It Through: Puzzles of American Democracy*. Cornell University Press, 2003.

A thoughtful recasting of the indirect mechanisms of American democracy as "an extraordinary engine for producing conversation about public affairs" that involves almost the entire adult citizenry and plays an important role in promoting national cohesion.

Bishop, Bill. *The Big Sort: Why the Clustering of Like-Minded America Is Tearing Us Apart*. New York: Mariner Books, 2009.

Argues that over the last three decades Americans have clustered into like-minded communities, interacting less and less with diverse peoples and opinions. Explores the consequences of the trend in this well-reviewed trade publication.

Boyd, Richard. "The Value of Civility?" *Urban Studies* 43:5-6 (May 2006): 863-78.

Argues for civility's vital place in contemporary urban life. Contrary to many critics who see civility as a conservative or nostalgic virtue deployed to repress difference and frustrate social change, it is argued that civility should be understood as democratic, pluralistic, and premised on a sense of moral equality.

Browe, Kathleen P. "A Critique of the Civility Movement: Why Rambo Will Not Go Away." *77 Marq. Law Review* 751 (1993–94).

Examines the history of the civility movement within the legal profession and suggests that proponents of civility need to reevaluate their goals and methods.

Brown, Juanita et al. *The World Cafe: Shaping Our Futures Through Conversations That Matter*. San Francisco: Berrett-Koehler Publishers, 2005.

Offers a method for beginning dialogues between groups of people who disagree. The method has been used at Hewlett-Packard, the University of Texas, and by the nation of Singapore to successfully facilitate discussion, dialogue, and change.

Brown, Karen, Margaret Jackson, and Wanda Cassidy. "Cyber-bullying:

Developing policy to direct responses that are equitable and effective in addressing this special form of bullying." *Canadian Journal of Educational Administration and Policy*, Issue #57, December 18, 2006.

Reviews existing research on cyberbullying, framed through a policy lens—specifically, how responses to cyberbullying necessarily implicate multiple core values, numerous stakeholders, and, by implication, a redefining of civility.

Brownstein, Ronald. *The Second Civil War: How Extreme Partisanship Has Paralyzed Washington and Polarized America*. New York: Penguin Press, 2007.

Examines the historical roots of hyperpartisanship as far back as the mid-nineteenth century.

Caldwell, Mark. *A Short History of Rudeness: Manners, Morals, and Misbehavior in Modern America*. New York: Picador, 1999.

Flits around the obsession with good manners and moral behavior, touching upon a number of aspects of public life (the workplace, mass transit, the Internet) and private (child rearing, home design, sexual politics). The cultural obsession with manners

and morality unfolds as part of a deeper anxiety over class.

Caro, Jason. "Confronting Complicit Civility." Western Political Science Association 2011 Annual Meeting Paper. Available at SSRN: <http://ssrn.com/abstract=1766915>.

Contends that codes of conduct are morally problematic in the context of injustice. Simply put, "Civility is too much a friend of power," and when combined with acute injustice it has made too often for a pernicious, stultifying political duo. A welcome challenge to defining civility as politeness at all costs.

Carter, Stephen L. *Civility: Manners, Morals, and the Etiquette of Democracy*. New York: Basic Books, 1998.

Continues to meditate upon the "pre-political" qualities on which a healthy society is based. Why do people show poorer manners today than in previous ages? How did we come to confuse rudeness with self-expression and acting on our "rights"? Carter looks at these and other important questions with a combination of his personal experiences and a long shelf of reading material.

Chaltain, Sam. *First Freedoms: A Documentary History of First Amendment Rights*. New York: Oxford University Press, 2006.

Presents a sequential history by telling the stories of the men and women who fought to obtain and retain freedoms that came to be guaranteed under the First Amendment.

Cmiel, Kenneth. *Democratic Eloquence: The Fight Over Popular Speech in Nineteenth-Century America*. Berkeley: University of California Press, 1990.

Tells the dramatic story of how Americans thought and argued about the English language between 1776 and 1900. The rise of a popular democracy in the early nineteenth century rudely challenged gentlemanly assumptions that only the well-educated should be able to speak in public. The popular challenge stimulated discussions about how grammars, dictionaries, and even the English Bible should be written and what the idiom of a democratic society should be.

Crowley, Sharon. *Toward a Civil Discourse: Rhetoric and Fundamentalism*. Pittsburgh: University of Pittsburgh Press, 2006.

Examines how, in the current political climate, Americans find it difficult to

discuss civic issues frankly and openly with one another. Crowley uses the lenses of rhetoric and anthropology to probe the history of debate and provide solutions to the problems of living in a staunchly divided world.

Dahnke, Cassandra, Tomas Spath, and Donna Bowling. *Reclaiming Civility in the Public Square: 10 Rules That Work*. Livermore, CA: Wing-Span Press, 2007.

Offers practical lessons on reincorporating civility in interactions in the public sphere. Each rule is illustrated with a true life story. These stories not only demonstrate how the rule works but also give evidence that while “civility in government” may sound like an oxymoron to some, there are examples to be found showing civility to be alive and well in the political sphere.

Davetian, Benet. *Civility: A Cultural History*. Toronto: University of Toronto Press, 2009.

Review of civility from 1200 to the present provides an in-depth analysis of the social and personal psychology of human interaction and charts a new course for the study and understanding of civility and civil society. *Civility* addresses major topics in public discourse today regarding the ideals and practices of civility and the

possibility of a future civility ethic capable of inspiring cooperation across cultural and national boundaries.

Forni, P. M. *Choosing Civility: The 25 Rules of Considerate Conduct*. New York: St. Martin's Press, 2002.

Identifies the 25 rules that are most essential in connecting effectively and happily with others. Forni provides examples of how to put each rule into practice and so make life—and the lives of others—more enjoyable, companionable, and rewarding.

Glaeser, Edward L., and Cass R. Sunstein. “Extremism and Social Learning,” Harvard Law School Public Law Research Paper No. 08-14. *Journal of Legal Analysis*, Volume 1, Number 1, (Winter 2009). Available: <http://ssrn.com/abstract=1150411>.

Describes the phenomenon of group polarization—a critical problem for juries, administrative tribunals, corporate boards, and other institutions. Offers a different rationale for how deliberation often exacerbates the predeliberation tendencies of the deliberation group members, leading them to hold views that are even more extreme and susceptible to the follow of crowds. Not a light read, but still worthwhile.

The following three books address contemporary theories of “deliberative democracy” in a highly accessible style intended to bring this important topic to the attention of a wider audience. *Deliberative democracy* is a term used to describe a mode of decision making that privileges participation in debate or dialogue (as opposed to mere polling or casting ballots) as the desirable means for arriving at public judgment.

- ★ Guttman, Amy, and Dennis Thompson. *Democracy and Disagreement*. Cambridge, Mass: Harvard University Press, 1998.
- ★ Guttman, Amy, and Dennis Thompson. *Why Deliberative Democracy?* Princeton, NJ: University Press, 2004.
- ★ Guttman, Amy, and Dennis Thompson. “The Mindsets of Political Compromise.” *Perspectives on Politics*, 8 (2010).

Herbst, Susan. *Rude Democracy: Civility and Incivility in American Politics*. Philadelphia: Temple University Press, 2010.

Democracy is, by its very nature, often rude. But there are limits to how uncivil we should be. Explores the ways we discuss public policy, how we treat each other as we do, and how we can create a more civil national culture.

Hess, Diana. *Controversy in the Classroom: The Democratic Power of Discussion*. Routledge, 2009.

Challenging the conflation of civility with niceness and polite silence, this is a tremendous argument in favor of using controversial public issues to promote authentic and vigorous democratic conversation in the classroom and, by extension, in American society. Highlights the importance of sustained attention to controversial public issues for healthy political communities. Offers powerful empirical data and anecdotes suitable for exploration in secondary schools, universities, and community settings.

Focusing on how *technology* can facilitate or magnify bullying behavior, the following three resources provide proactive strategies, current research, and legal rulings to protect students from cyberbullying.

- ★ Hinduja, Samir, and Justin W. Patchin. *Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying*. Thousand Oaks, Calif.: Corwin Press, 2009.
- ★ Hinduja, Samir, and Justin W. Patchin. “Cyberbullying and Self-Esteem.” *The Journal of School Health*, 80:12 (2010): 614–21.

- ★ Hinduja, Samir, and Justin W. Patchin. “Offline Consequences of Online Victimization: School Violence and Delinquency.” *Journal of School Violence* 6:3 (2007): 89–112.

Kasson, John F. *Rudeness and Civility: Manners in Nineteenth-Century Urban America*. New York: Hill and Wang, 1990.

Explores the history and politics of etiquette from America’s colonial times through the nineteenth century. He describes the transformation of our notion of “gentility,” once considered a birthright to some, and the development of etiquette as a middle-class response to the new urban and industrial economy and to the excesses of democratic society.

Kovacs, M., and D. Shea. *Youth Attitudes Toward Civility in Politics*. (2010). CIRCLE Working Paper No. 71. [http://www.civicyouth.org/PopUps/WorkingPapers/WP\\_71\\_Kovacs\\_Shea.pdf](http://www.civicyouth.org/PopUps/WorkingPapers/WP_71_Kovacs_Shea.pdf).

This study, one of the first of its kind, was intended to move beyond anecdotal evidence and punditry to get at the heart of public perceptions regarding the tone of contemporary politics. The findings suggest nearly universal recognition of the problem and a

growing concern about the implications of an uncivil body politic. Further, the findings cast blame at a number of institutions, but also give reasons for optimism. Generational differences exist in the attitudes and feelings the authors measured.

Lee, Jennifer. *Civility in the City: Blacks, Jews, and Koreans in Urban America*. Cambridge, Mass.: Harvard University Press, 2002.

Examines the relationship between African American, Korean, and Jewish store owners and their black customers in New York and Philadelphia. Interviewing merchants and customers and analyzing the economics of small-business ownership, she shows that the parties on both sides of the counter strive to make interactions pleasant and routine, yet she also examines how and why tensions can periodically escalate.

Leiter, Brian. "The Circumstances of Civility," from *Civility and American Democracy*. Washington State University Press (2011); University of Chicago, Public Law Working Paper No. 351. <http://ssrn.com/abstract=1804544>.

Attempt to identify the circumstances in which civility in discourse is both necessary and obligatory. A useful

theoretical analysis of civility as a variety of norms about language, tone, and attitude governing an exchange of words and ideas.

Locke, John. *Two Treatises of Government*. 1689.

Had considerable influence in the foundation of American law and democracy during the eighteenth century.

Loeb, Harlan. "Words Have Consequences: Re-framing the Hate Speech Debate." *Human Rights Magazine*. American Bar Association (Fall 1999).

Explores the 1999 two-state shooting rampage of Benjamin Nathaniel Smith and the relation of his actions to the rhetoric of Matthew Hale, the leader of a white supremacist organization. Important case study for discussions of civil and uncivil speech.

Lucas, John, and Gloria Rolden-Scheib. "The Creation and Implementation of a Student Civility Code." *College Teaching Methods & Styles Journal*, Volume 2, Number 2 (Second Quarter 2006). <http://www.umfk.maine.edu/pdfs/facultystaff/studcivilitycode.pdf>.

Examines the design and implementation of a student civility code at a regional campus of a Big Ten University. Also provides some guidelines to

address student incivility in both the classroom and service offices throughout a higher education institution.

Mill, John Stuart. *On Liberty*. 1859.

Enormously influential work; the ideas presented within it remain the basis of much political thought since its publication. Aside from the popularity of the ideas themselves, it is quite short and its themes are easily accessible to a nonexpert. It has remained in print continuously since its initial publication.

Milton, John. *Areopagitica*. 1644.

Published in 1644 to protest an order issued by Parliament the previous year requiring government approval and licensing of all published books.

Mutz, Diana. *Hearing the Other Side: Deliberative versus Participatory Democracy*. Cambridge University Press, 2006.

Research-based analysis that documents how two key modalities—deliberative democracy and participatory democracy—conflict with each other: increased exposure to different viewpoints leads to decreases in political participation. Extremely important data for schools and communities.

Nielsen, Laura Beth. *License to Harass: Law, Hierarchy, and Offensive*



*Public Speech*. Princeton, NJ: Princeton University Press, 2004.

Offensive street speech—racist and sexist remarks that can make its targets feel both psychologically and physically threatened—is surprisingly common in our society. Many argue that this speech is so detestable that it should be banned under law. But is this an area covered by the First Amendment right to free speech? Or should it be banned? Laura Beth Nielsen pursues the answers by probing the legal consciousness of ordinary citizens using a combination of field observations and in-depth, semistructured interviews.

Pappacharissi, Zizi. “Democracy Online: Civility, Politeness, and the Democratic Potential of Online Discussion Groups.” *New Media and Society* 6:2 (2004): 259–83.

Proponents of cyberspace promise that online discourse will increase political participation and pave the road for a democratic utopia. This article explores the potential for civil discourse in cyberspace by examining the level of civility in 287 discussion threads in political newsgroups.

Randall, Peter. *Adult Bullying: Perpetrators and Victims*. London: Routledge, 1997.

The frequency and severity of personal harassment is a problem that is only just beginning to be uncovered. In *Adult Bullying*, psychologist Peter Randall uses the voices of both bullies and victims to reveal the misery that many adults endure.

Rousseau, Jean-Jacques. *The Social Contract: Or Principles of Political Right*. 1762. <http://www.constitution.org/jjr/socon.htm>.

Classic treatise on the challenges of individual freedom, political society, law, and property.

Shea, Daniel, Melissa S. Kovacs, Maya Brod, Katherine Janocsko, Matt Lacombe, and Richard Shafranek. “Nastiness, Name-calling & Negativity: The Allegheny College Survey of Civility and Compromise in American Politics.” *Allegheny College Survey of Civility and Compromise in American Politics* (April 2010). <http://sites.allegheny.edu/civility/>.

Study based on a survey of 1,000 randomly selected Americans that was designed to gauge attitudes and perceptions on civility in politics. Findings suggest near universal recognition of the problem and a growing concern about the implications of an uncivil body politic, coupled with near universal belief that civility in politics is

important for a healthy democracy. Rich data for classroom and community discussions.

Shils, Edward. *The Virtue of Civility: Selected Essays on Liberalism, Tradition, and Civil Society*. Indianapolis: Liberty Fund, 1997.

Explores the importance of civility and tradition to a free society. The essays’ significance is due to the fact that Shils was one of the first writers to examine the natures of civility and civil society and their relation to a free, ordered, liberal democratic society.

Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism*. New York: W.W. Norton & Co., 2004.

Examines America’s tendency in wartime to compromise First Amendment rights in the name of national security. Identifies six periods of widespread free-speech repression, dating back to the administration of the nation’s second president, John Adams, and continuing through the Vietnam era.

*Virginia Statute for Religious Freedom*. 1786. <http://www.vahistorical.org/sva2003/vsrf.htm>.

Statement about both freedom of conscience and the principle of separation of church and state. Written by Thomas

Jefferson and passed by the Virginia General Assembly on January 16, 1786, it is the forerunner of the First Amendment protections for religious freedom.

Washington, George. *Rules of Civility & Decent Behaviour in Company and Conversation: A Book of Etiquette*. Williamsburg, VA: Beaver Press, 1971. <http://www.history.org/almanack/life/manners/rules2.cfm>.

List of the rules of polite and civil society written by George Washington.

Weiner, Merle Hope. "Dirty Words in the Classroom: Teaching the Limits of the First Amendment." *Tennessee Law Review*, Vol. 66, p. 597, 1999. Available at SSRN: <http://ssrn.com/abstract=184577>.

Useful assessment of the civility boundary of the schoolhouse gate. Analyzes whether a public school high school teacher could (and should) be fired for using primary sources from *Cohen v. California* and the Starr Report. Analyzes the tension between inculcation in students of civility and other values with the need to prepare students to participate in self-government. Ultimately an argument in favor of heightened constitutional protection for the public school teacher's in-class speech, the article also suggests some practical

reasons for allocating decision-making autonomy to certain teachers.

Wells, Christina E. "Privacy and Funeral Protests." *North Carolina Law Review*, Vol. 87, p. 151, 2008; University of Missouri School of Law Legal Studies Research Paper No. 2008-06. Available at SSRN: <http://ssrn.com/abstract=1106363>.

Examines the free-speech implications of funeral protest statutes enacted in response to the activities of the Westboro Baptist Church and the 2011 U.S. Supreme Court decision *Snyder v. Phelps*. Stresses the causes and implications of conceptualizing privacy as a protection of human dignity against breaches of civility as opposed to the more traditional understanding as protection from intrusion.

Whitman, James Q. "Enforcing Civility and Respect: Three Societies." *The Yale Law Journal* 109:6 (April 2000): 1279–1398.

Can the law really enforce "civility"? Article examines the law of civility in Germany, France, and the United States, looking specifically at the law of "insult."

Woolley, Alice. "Does Civility Matter?" (September 1, 2009). *Osgoode Hall Law Journal*, Vol. 46, p. 175,

2008. Available at SSRN: <http://ssrn.com/abstract=1466226>.

Recent discussion of legal ethics in Canada has focused on the importance of "civility" as a fundamental value and goal of ethical conduct. This comment questions that focus. After defining the content of "civility" and reviewing its treatment in these initiatives by both the law societies and the courts, the author suggests that the emphasis on civility is misplaced. Focusing on civility has the undesirable tendency to impede lawyer reporting of misconduct by other lawyers and potentially undermines the effective representation of client interests. It also shifts emphasis away from the ethical values that should be the focus of our attention, namely loyalty to clients and ensuring the proper functioning of the justice system.

Young, Ralph F. *Dissent in America: Voices That Shaped a Nation*. New York: Pearson Longman, 2006.

Collection of primary sources presents the story of U.S. History as told by dissenters who, throughout the course of American history, have fought to gain rights they believed were denied to them or others, or who disagree with

the government or majority opinion. Each document is introduced by placing it in its historical context, and thought-provoking questions are provided to focus the student.

Zwiebach, Burton. *Civility and Disobedience*. Cambridge: Cambridge University Press, 1975.

Seeks to examine the problem of political obligation: when are we obligated to obey the laws? It attempts to develop a fresh theory of obligation as both justified and limited by the need to substitute the culture of civility for the violence and barbarism of pre-political society.

#### **NEWSPAPER AND MAGAZINE ARTICLES**

Brooks, David. "The End of Integration." *New York Times*. July 6, 2007.

Paints a bleak picture of the state of integration by reflecting on the dashed hopes of several attempts to bring people together. He suggests that we might need to move past the historical dream of integration and instead focus on increasing mobility between homogenous communities.

"Facebook Wrestles with Free Speech and Civility." *New York Times*. December 12, 2010. [http://www.nytimes.com/2010/12/13/technology/13facebook.html?\\_r=1](http://www.nytimes.com/2010/12/13/technology/13facebook.html?_r=1).

Facebook is struggling to decide how to maintain civility without inhibiting free speech.

Will, George F. "America's Political Disharmony." *Washington Post*. January 23, 2011. <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/21/AR2011012104561.html>.

Places the current crisis of civility in the context of American history.

#### **ORGANIZATIONS**

Arizona Humanities Council. *Project Civil Discourse*. <http://www.projectcivildiscourse.org/index.php>.

Special initiative of the Arizona Humanities Council working in collaboration with organizations from around the state to provide opportunities for the public to participate in trainings, forums, and special events that share, model, and provide insight on collaborative problem-solving skills. The site has a list of resources, some of which are cited here.

California Council for the Humanities. "Searching for Democracy: A Forum on Democracy and Civic Conversation" (March 4, 2011). <http://www.searchingfordemocracy.org/>.

One of several NEH-funded initiatives, this project features recorded webcasts of all forum sessions on the project website. Segmented for easy use in community as well as classroom settings.

Choices Program. "Guidelines for Deliberation." <http://www.choices.edu/resources/guidelines.php>.

Definitions, rules for participants, guidelines. These guidelines are coupled with the distinctive Choices deliberation curricula on historical and current issues. A tremendous resource for secondary classrooms, it also can serve well for adult study and community groups.

The following teaching and discussion guides are available from the Constitutional Rights Foundation Chicago:

- ★ "Student Speech Rights: *Morse v. Frederick* (2007)." <http://www.crfc.org/programs/eqljustmat.php#2007>.
- ★ Lesson materials on the U.S. Supreme Court decision featuring the free expression activities of Alaska high school student who unfurled a banner stating "Bong Hits 4 Jesus" at a nationally televised Olympic rally.

★ “Speech Rights: *Snyder v. Phelps* (2011).” <http://www.crfc.org/programs/eqljustmat.php#2010>.

Lesson materials on the U.S. Supreme Court decision involving protests conducted at the site of a private military funeral. Case addresses the tension between personal privacy, public civility, and free expression.

Constitutional Rights Foundation Chicago, Constitutional Rights Foundation, and Street Law, Inc. “Deliberating in a Democracy.” [www.deliberating.org](http://www.deliberating.org).

Program featuring methodology, lessons, and resources for increasing the knowledge, ability, and dispositions of high school teachers and their students to effectively participate in deliberations of controversial issues related to democratic principles. Deliberation guidelines and lesson materials on over 30 topics available in ten different languages.

Difficult Dialogues Initiative. <http://www.prairie.org/humanities-resources/keep-learning-explore-humanities-online/organization-resources>.

A program designed to promote academic freedom and religious, cultural, and political pluralism on

college and university campuses in the United States. The site has information about specific programs and topics as well as a list of resources.

Facing History and Ourselves. *Choosing to Participate* (revised edition). Facing History and Ourselves Foundation (2009).

Curriculum presents students and teachers with opportunities to explore civic choices—the decisions people make about themselves and others in their community, nation, and world—with attention to courtesy, civility, and different responses to prejudice, discrimination, and oppression.

Fetzer Institute’s Campaign for Love & Forgiveness. <http://www.fetzer.org/loveandforgive>.

Launched in 2006, encourages people to bring love and forgiveness into the heart of individual and community life. Through facilitated conversations, public television documentaries, web resources, activities, events, and educational curricula, people from all walks of life explored the role and power of love and forgiveness in their lives and experience how these virtues allow them to participate more fully in the world.

First Amendment Center. “When Can’t I Say That?” <http://www.freedomforum.org/packages/first/curricula/educationforfreedom/L04main.htm>.

Interesting lesson that explores the difficult but important question of limited freedom and different justifications for restricting free speech. Participants explore past court precedents as well as the values underlying them.

Illinois Humanities Council’s (Un)Common Good Project. <http://www.prairie.org/uncommon>.

Provides models and forums to practice disagreement without being disagreeable. The site has an extensive resources list, some of which are repeated here.

Institute for Civility in Government. <http://www.instituteforcivility.org/>.

Nonprofit organization that works to reduce polarization in society. Through educational programs and membership, the Institute aims to build civility in a society that increasingly tilts towards uncivil speech and actions.

Kettering Foundation. *We Have to Choose: Democracy and Deliberative Politics* (March 2008). [http://www.kettering.org/media\\_room/publications/we\\_have\\_to\\_choose](http://www.kettering.org/media_room/publications/we_have_to_choose).

Important report designed primarily for civic organizations, centers, and

institutes that sponsor deliberative forums and/or prepare people to conduct such forums. Presents deliberation as both something to be learned and something that can only be understood in the larger context of democracy. Emphasizes how the values that deliberation promotes are integral to all that has to occur in order for people to rule themselves. Centrally addresses norms for communities in deliberation.

National Issues Forum. "Teacher's Guide to National Issues Forums (NIF) in the Classroom" (2005). [http://www.nifi.org/discussion\\_guides/detail.aspx?catID=3238&itemID=3239](http://www.nifi.org/discussion_guides/detail.aspx?catID=3238&itemID=3239).

Step-by-step guide offers a basic lesson structure by which teachers and students can learn about and sponsor deliberative forums in their classrooms. The loose-leaf book includes background material, a procedural manual for conducting forums, students' handouts, instruments for evaluating students' performance, and a list of additional resources for teachers. Materials include an introductory video for students and teachers and four sample issue books. Separate kits are designed for middle school and high school students.

Public Broadcasting System. "Free Speech or Hate Speech?" [http://www.pbs.org/pov/film-files/pov\\_thefirenexttime\\_lesson\\_lesson\\_plan\\_0.pdf](http://www.pbs.org/pov/film-files/pov_thefirenexttime_lesson_lesson_plan_0.pdf).

Lesson plan features the film *The Fire Next Time* to look at what happens when free speech dissolves into hate speech. The hour-long documentary looks at a two-year period in Kalispell, Montana, that started with the loss of timber and aluminum industry jobs and devolved into hate, intimidation, and violence. Eventually community members organized and began actively looking for ways to engage in productive and respectful dialogue. Explores the impact of language and the responsibilities inherent in the right to free speech.

Southern Poverty Law Center, Teaching Tolerance Program. <http://www.tolerance.org/>.

Dedicated to reducing prejudice, improving intergroup relations, and supporting equitable school experiences for school-aged children in the United States. The program produces a magazine, professional development resources for teachers, and a vast list of resources on topics of civility and tolerance in the United States.

Street Law, Inc. and the Supreme Court Historical Society. "*Texas v. Johnson* (1989): Flag Burning, Freedom of Speech." <http://www.streetlaw.org/en/Case.16.aspx>.

Differentiated unit on the landmark U.S. Supreme Court case involving the burning of an American flag during a political demonstration during the Republican National Convention in Texas.

Street Law, Inc. and the Supreme Court Historical Society. "*Tinker v. Des Moines* (1969): Student Speech, Symbolic Speech." <http://www.streetlaw.org/en/Case.10.aspx>.

Differentiated unit on the landmark U.S. Supreme Court case of John and Mary Beth Tinker, who wore black armbands at their public school as a symbol of protest against American involvement in the Vietnam War and were suspended when they refused to remove them.

Smithsonian Institution. "The Proper Gentleman: George Washington And 'The Rules Of Civility.'" <http://www.georgewashington.si.edu/kids/activity5.html>.

Lesson materials for reading and interpreting Washington's "Rules of Civility & Decent Behavior in Company and Conversation" and the

significance of these rules in Washington's time, with an exploration of their significance for today.

#### **PROGRAMMING**

Sorensen Institute for Political Leadership at the University of Virginia. "Free Speech or Disruption: Civility in Public Debate." <http://www.sorenseninstitute.org/newsroom/entry/free-speech-or-disruption-civility-public-debate>.

The Sorensen Institute's Bob Gibson and Coy Barefoot participated in a panel discussion in Charlottesville exploring civility in public debate and discourse. The event was sponsored by the Thomas Jefferson Center for the Protection of Free Expression and titled "Free Speech or Disruption: Balancing the Rights to Speak and Hear."

Stephen Carter on "PBS NewsHour." [http://www.pbs.org/newshour/gergen/august98/carter\\_8-5.html](http://www.pbs.org/newshour/gergen/august98/carter_8-5.html).

Stephen L. Carter is the William Nelson Cromwell Professor of Law at Yale, where he has taught since 1982. Among his courses are law and

religion, the ethics of war, contracts, intellectual property, and professional responsibility. Much of his work focuses on the creation of conditions for rational dialogue, while preserving a rich diversity of points of view, whether at home or in international affairs.

Bloggheads TV. <http://bloggheads.tv/>.

Bloggheads stages debates between bloggers and columnists who disagree on current events.

#### **OTHER**

Remarks by the President at a Memorial Service for the Victims of the Shooting in Tucson, Arizona, January 13, 2011. <http://www.whitehouse.gov/the-press-office/2011/01/12/remarks-president-barack-obama-memorial-service-victims-shooting-tucson>.

President Barack Obama's speech at the McKale Memorial Center in Tucson, delivered in response to the shooting of Representative Gabrielle Giffords and others. Obama commented on the fact that "discourse has become so sharply polarized" in the United States.

[The Human Library. http://humanlibrary.org/](http://humanlibrary.org/).

Innovative website and exhibition designed to promote dialogue, reduce prejudices, and encourage understanding. Visitors to a Human Library are given the opportunity to speak informally with "people on loan"; this latter group being extremely varied in age, sex, and cultural background.

*Snyder v. Phelps* Decision. Supreme Court, October Term, 2010. <http://www.supremecourt.gov/opinions/10pdf/09-751.pdf>.

Case before Supreme Court of the United States on whether the First Amendment protected protests of public protestors at a funeral against tort liability. It involved a claim of intentional infliction of emotional distress made by Albert Snyder, the father of Matthew Snyder, a Marine who died in the Iraq War. The claim was made against the Phelps family, including Fred Phelps, and against Phelps's Westboro Baptist Church (WBC). The Court ruled in favor of Phelps in an 8-1 decision, holding that their speech related to a public issue, and was disseminated on a public sidewalk.

**LIST OF CONFERENCE PARTICIPANTS**

Last Name	First Name	Organization	City	State	Working Group
Adams	Lisa	Corona del Sol High School	Phoenix	AZ	3
Anderson	Charlotte	Education for Global Involvement	Evanston	IL	1
Arbetman	Lee	Street Law, Inc.	Silver Spring	MD	4
Aulbur	Millie	Missouri State Bar Association	Jefferson City	MO	1
Balbin	Rene	Judiciary of Guam	Hagatña	Guam	1
Bass	Jill	Mikva Challenge Foundation	Chicago	IL	5
Baza	Lisa	Judiciary of Guam	Hagatña	Guam	4
Belzowski	Janice	McCormick Foundation Civics Program	Chicago	IL	3
Bird	Mary	Loyola School of Law Clinic	Chicago	IL	5
Brown	Karen	Simon Fraser University	Vancouver	BC	2
Brown	Paulette	Edwards Angell Palmer & Dodge	Madison	NJ	5
Bukikosa	Doris	Guam Department of Education	Hagatña	Guam	5
Bulgeron	Beth	Legal Prep Charter Academies	Chicago	IL	N/A
Burke	Lisa	New Jersey Judiciary	Trenton	NJ	N/A
Carroll	James	Project LEGAL, Syracuse University	Syracuse	NY	4
Cassidy	Wanda	Simon Fraser University	Burnaby	BC	2
Chavkin	Nisan	Constitutional Rights Foundation Chicago	Chicago	IL	2*
Clark	Hilton	American Bar Association	Chicago	IL	1
Corriea	Shane	Center for Court Innovation	New York	NY	N/A
Craytor	Deborah	State Bar of Georgia	Atlanta	GA	4
Daneels	Mary Ellen	Community High School	West Chicago	IL	N/A
Davetian	Benet	University of Prince Edward Island	Charlottetown	PE	3

The following numbers denote participation in the following Working Groups on Civility and Free Expression:

- 1**—Civility & Free Expression in Political Discourse
- 2**—Civility & Free Expression in Cyberspace
- 3**—Civility & Free Expression in Popular Culture
- 4**—Civility & Free Expression in the Public Square
- 5**—Civility & Free Expression Among Cross-Cultural Perspectives
- (\*)**—Working Group Facilitator

Last Name	First Name	Organization	City	State	Working Group
DePinto	Jessica	Chicago Academy for the Arts	Chicago	IL	3
Dickinson	Kathleen	State Bar of Nevada	Las Vegas	NV	3
Draper	Lindsay	Office of Justice Assistance	Madison	WI	5
Finkelstein	Sam	Legal Prep Charter Academies	Chicago	IL	N/A
Fisher	Margaret	Administrative Office of the Courts	Seattle	WA	2
Fullo	Dexter	Guam Department of Education	Deded	Guam	4
Gadker-Wilkox	Sujata	Western Connecticut State University	Trumbull	CT	1
Gandre	James	Roosevelt University	Chicago	IL	N/A
Goehring	Jan	National Conference of State Legislatures	Denver	CO	1
Gottesman	Jessica	Northwestern University	Evanston	IL	5
Gould	Jon	Campaign for Civic Mission of the Schools	Silver Spring	MD	1
Gravit	Carolyn	Colorado Bar Association	Denver	CO	3
Green	Adam	University of Chicago	Chicago	IL	1
Green	Burma	Chicago Public Schools	Chicago	IL	2
Greene	Daniel	Newberry Library	Chicago	IL	5*
Gunn	Brian	Bill of Rights Institute	Waukesha	WI	N/A
Halvorsen	Eric	American Bar Association	Chicago	IL	N/A
Hawk	Caryn Cross	American Bar Association	Chicago	IL	5
Hawke	Catherine	American Bar Association	Chicago	IL	2
Hayman	Sarah	Tennessee Bar Association	Nashville	TN	2
Healy	Shawn	McCormick Foundation Civics Program	Chicago	IL	2
Hess	Diana	University of Wisconsin Madison	Madison	WI	4
Hollins	Pamela	American Bar Association	Chicago	IL	N/A
Holmes	Charles	Tougaloo College	Tougaloo	MS	5
Huffman	Doris	Nebraska State Bar Foundation Law-Related Education	Lincoln	NE	3
Jones	RonNell	Brigham Young University Law School	Provo	UT	2



Last Name	First Name	Organization	City	State	Working Group
Kaplan	Howard	American Bar Association	Chicago	IL	3
Kasson	John	University of North Carolina at Chapel Hill	Chapel Hill	NC	3
Kessler	Meryl	Discovering Justice	Boston	MA	2
Kitch	Gail Leftwich	MacNeil/Lehrer Productions	Arlington	VA	5
Koppelman	Andrew	Northwestern University Law School	Chicago	IL	5
Larson	Elaine	Center on Congress at Indiana University	Bloomington	IN	5
Laurel	Mallory	Illinois Humanities Council	Chicago	IL	1
Lentz	Colin	Center for Court Innovation	New York	NY	N/A
Levenstein	Richard	Kramer, Sopko, and Levenstein	Stuart	FL	4
Lewis	Dan	Center for Civic Engagement at Northwestern University	Evanston	IL	4*
Lithwick	Dahlia	Slate.com	Charlottesville	VA	4
Livermore	Craig	Rutgers University	Newark	NJ	3
Lollis	Kent	Law School Admission Council	Newton	PA	5
Marshall	Rachel	United States Courts	St. Louis	MO	2
Martin	Karen Birgam	Thomas Edison High School	Alexandria	VA	2
Mascherin	Terry	Chicago Bar Association	Chicago	IL	N/A
Mattice	Matt	Judiciary History Center	Honolulu	HI	1
Mattson	John	Center for Civic Learning, Public Safety, and Prevention	Providence	RI	2
McConnell	Ted	Campaign for Civic Mission of the Schools	Silver Spring	MD	1
McKinney-Browning	Mabel	American Bar Association	Chicago	IL	3*
Merzon	Melvin	N/A	Chicago	IL	3
Metzloff	Thomas	Duke University Law School	Durham	NC	1
Middleton	Tiffany	American Bar Association	Chicago	IL	N/A
Milewski	John	Woodrow Wilson International Center for Scholars	Washington	DC	3
Miller	Barbara	Center for Education in Law and Democracy	Denver	CO	4
Miller	Ellery "Rick"	Citizenship Law-Related Education Program for the Schools of Maryland	Baltimore	MD	1

Last Name	First Name	Organization	City	State	Working Group
Miller	Jan	Law Focused Education State Bar of Texas	Austin	TX	2
Mittleman	Karen	National Endowment for the Humanities	Washington	DC	N/A
Monforte	Moryne-Nicole	Guam Department of Education	Hagatña	Guam	3
Myers	Sondra	University of Scranton	Scranton	PA	4
Nash	May	American Bar Association	Chicago	IL	N/A
Noble	Natalie	Northwestern University	Evanston	IL	4
Nolan	Beverly	N/A	Missouri City	TX	4
O'Brien	Ed	Street Law, Inc.	Washington	DC	5
O'Brien	Kelley	North Carolina Civic Education Consortium	Chapel Hill	NC	1
Paolini	Bob	Vermont Bar Association	Montpelier	VT	3
Pereira	Carolyn	Constitutional Rights Foundation Chicago	Chicago	IL	1
Perry	Jerry	Angelo State University	San Angelo	TX	4
Portis	Vanessa	Chicago Public Schools	Bellwood	IL	2
Price	Richard	New York County Lawyer's Association	New York	NY	4
Radke	Heather	Newberry Library	Chicago	IL	5
Ragsdale	Bruce	Federal Judicial Center	Washington	DC	1
Ray-Hill	Carrie	iCivics	Washington	DC	N/A
Redfield	Sarah	University of New Hampshire School of Law	Orono	ME	5
Respicio	Joleen	Judiciary of Guam	Hagatña	Guam	2
Rosen	Jeffrey	George Washington University Law School	Washington	DC	N/A
Rosete	Danielle	Judiciary of Guam	Hagatña	Guam	5
Rost	Barbara	Classroom Law Project	West Linn	OR	3
Runaas	Dee	Constitutional Rights Foundation Chicago	Chicago	IL	2
Ryan	John Paul	Education, Public Policy, and Marketing Group	Bannockburn	IL	3
Schultz	Kevin	University of Illinois at Chicago	Chicago	IL	5
Serrano	Barbara	Washington State Bar Association	Seattle	WA	4

<b>Last Name</b>	<b>First Name</b>	<b>Organization</b>	<b>City</b>	<b>State</b>	<b>Working Group</b>
Sip	David	American Bar Association	Chicago	IL	4
Spaulding	Suzanne	Bingham Consulting Group	Washington	DC	N/A
Start	Linda J.	Michigan Center for Civic Education	Waterford	MI	1
Stieber	David	TEAM Englewood High School	Chicago	IL	2
Tanabe	Clifton	University of Hawaii at Manoa	Honolulu	HI	3
Tasiouras	Dimitra	Illinois Humanities Council	Chicago	IL	1*
Taylor	Abby	Our Courts	Washington	DC	2
Thornton	Sommer	American Bar Association	Chicago	IL	N/A
Wali	Alaka	Center for Cultural Understanding and Change, Field Museum	Chicago	IL	5
Wojciechowski	Shelley	Citizenship Law-Related Education Program for the Schools of Maryland	Baltimore	MD	2
Wood	Diane	U.S. Court of Appeals for the Seventh Circuit	Chicago	IL	N/A
Worst	Janie	Law Focused Education State Bar of Texas	Carrollton	TX	1
Zavalla	Paul	General Motors	Detroit	MI	3

## ANNOTATED LIST OF CONFERENCE WORKSHOPS

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On March 5, 2011, *Civility and Free Expression in a Constitutional Democracy* conference attendees participated in eighteen different workshops, which highlighted available resources and teaching strategies. Prior to the conference, the American Bar Association Division for Public Education issued a call for proposals around the theme. The following workshops were selected for presentation:

### **BENCHMARKS: RAISING THE BAR ON ADULT CIVICS EDUCATION**

*Richard Levenstein, Kramer, Sopko, and Levenstein*

An initiative of The Florida Bar and its Judicial Independence Committee, “Benchmarks: Raising the Bar on Adult Civics Education” is designed to give attorneys or adult educators activities that they can use to teach the fundamentals of government and the courts to adult civic and community groups. An informed public is the best defense of a vigorous democracy, the rule of law, and an independent, impartial, and fair judiciary and the cornerstone of civil society.

### **CIVIC VOICES: AN INTERNATIONAL DEMOCRACY MEMORY BANK PROJECT**

*David Stieber, TEAM Englewood High School*

Civic Voices: An International Democracy Memory Bank Project transmits the stories of the world’s greatest democratic struggles to the next generation of citizens. Students conduct oral history interviews with democratic activists to explore how decisions to speak out against injustice alter the course of history. Free resources will be distributed.

### **CIVICS AND LAW ACADEMIES**

*Paulette Brown, American Bar Association Commission for Civic Education in the Nation’s Schools and Mabel McKinney-Browning, American Bar Association Division for Public Education*

Civics and Law Academies engage middle and high school students in learning about law and society. By participating in Academies, young people are exposed to a range of civically engaged professionals from their community, including judges, lawyers, teachers, and youth workers. Learn more about how you might conduct an Academy in your community, or take advantage of the free curriculum resources with your students.

### **CIVILITY POLICY AND ONLINE HIGHER EDUCATION**

*Clifton Tanabe, University of Hawai’i at Manoa*

Universities across the country have implemented conduct codes and harassment policies to address uncivil behavior by professors and students. But with the rapid growth of online instruction, institutions of higher education are faced with new challenges. This paper session looks at new civility policy approaches designed to address both face-to-face and online interactions.

### **CIVILITY WITHIN CONFLICT: BILL OF RIGHTS IN ACTION**

*Brian Gunn, Bill of Rights Institute*

How does the Bill of Rights make conflict resolution possible? This session is targeted toward middle or high school teachers who are interested in working with curriculum materials from the Bill of Rights Institute. Examples of

practical lesson activities using contemporary and historic examples will be presented, illustrating the Bill of Rights's role in the legal process.

#### **DELIBERATING IN A DEMOCRACY**

*Nisan Chavkin, Constitutional Rights Foundation Chicago*  
Engaging in a civil conversation in class or the community about a contentious public issue in which more light is shed than heat is difficult. Select an issue question from a list of 23 that would be particularly important to deliberate in your school or community and become familiar with the free online materials and methodology, as well as the research on its effectiveness.

#### **FIFTY YEARS SINCE THE CIVIL RIGHTS DECADE: WHEN ISSUES PERSIST!**

*Lindsey Draper, State of Wisconsin Office of Justice Assistance*

As we approach the 50-year anniversaries of 1960s Civil Rights milestones, public accommodations, voting rights, and open housing themes have been replaced with loud discussions of immigration reform, same-sex marriage, and voter identification legislation. Can framing these issues in the context of history help “lower the volume”?

#### **FINDING OUR VOICE: DISSENT AND DELIBERATION—TOOLS FOR EDUCATORS**

*Elaine Larson, Center on Congress at Indiana University*  
This session will provide tools from the Center on Congress *Teaching with Primary Sources* project for exploring the role of citizen's criticisms of our government and helping educators build students' skills in respectfully listening to and weighing diverse viewpoints to participate in consensus building.

#### **HATE SPEECH AND THE FIRST AMENDMENT: LESSONS FROM VIRGINIA V. BLACK**

*Thomas Metzloff, Duke University Law School and Kelley O'Brien, North Carolina Civic Education Consortium*

In *Virginia v. Black*, a KKK leader was convicted for burning a cross. The case was eventually decided by the Supreme Court in a critical First Amendment decision. This session will feature a documentary produced by the Voices of American Law project as it explores constitutional dimensions of hate speech.

#### **ICIVICS: FREE INTERACTIVE CIVICS EDUCATION FOR THE DIGITAL GENERATION**

*Abby Taylor and Carrie Ray-Hill, iCivics*

Participants will learn about iCivics (formerly Our Courts) mission to engage students in civics through online, interactive, and problem-based learning. The presentation will include an overview of the free resources available at [www.icivics.org](http://www.icivics.org), as well as a demonstration of the civics website and online games.

#### **LAW-RELATED EDUCATION MEETS SEXTING—ENGAGING STUDENTS IN MEANINGFUL CLASS DIALOGUE**

*Sarah Redfield, University of New Hampshire School of Law; and Beth Bulgeron and Sam Finkelstein, Legal Prep Charter Academies*

Where once teens might harbor an interest in *Playboy*, they now find sexting flirtatious and fun and just a *Send* button away. The session will offer a series of take-away pointers and a replicable lesson for educators on how to deal with issues of sexting and cyberbullying within constitutional parameters.

### **PLURALISM AND OTHER CULTURAL APPROACHES TO DOING THE “RIGHT THING”**

*Sondra Myers, University of Scranton; Gail Leftwich Kitch, MacNeil/Lehrer Productions; and James Gandre, Roosevelt University*

We will examine ways in which law is enacted and civilly practiced with regard to freedom of expression in our pluralist democracy and some European countries as well. While it might appear to Americans that we know best in these matters, we will compare and contrast the American approach with other countries' ideas.

### **REDIRECTING STUDENTS FROM CYBER-BULLYING TO CYBER-KINDNESS AND CYBER-CIVILITY**

*Wanda Cassidy and Karen Brown, Simon Fraser University*

Do students use technology in ways that communicate care and kindness to one another or as a tool to hurt one another? Two research studies provoked us to examine the other end of the spectrum, or “cyber-kindness.” Participants will explore real-life examples and discuss ways to work collaboratively with parents, students, and teachers to foster caring, compassion, and civility.

### **THE SUPREME COURT AND THE ANGRY SPEAKER**

*Jan Miller, Jerry Perry, and Janie Worst, Law-Focused Education, State Bar of Texas*

This session will explore Supreme Court cases dealing with the free expression rights of individuals and reactions from the public. Strategies to help students discuss these issues, as well as other controversial subjects, with civility will be shared.

### **USING CompuLEGAL TO DISCUSS THE SCHENCK CASE, THE PENTAGON PAPERS CASE, AND WIKILEAKS**

*James Carroll, Syracuse University*

Participants will use the free exemplary interactive case method Internet application, *CompuLEGAL*, to analyze and discuss the two historical Supreme Court cases—*Schenck* and the *Pentagon Papers*—and then discuss their views on the current issues involving WikiLeaks.

### **WEB CITIZENS: DEVELOPING VIRTUAL CIVILITY THROUGH THE CIVIC ACTION PROJECT**

*Dee Runaas, Constitutional Rights Foundation Chicago; Mary Ellen Daneels, Community High School*

The Civic Action Project, an online civics program for high school students, is providing new insights about how research-based approaches in civic education can translate to developing effective, responsible “web citizens.” Join this session to explore strategies for helping students develop knowledge, skills, and dispositions of virtual civility.

### **WHEN BEING FUNNY IS NO LONGER FUNNY: EXPLORING THE PATHWAY FROM HUMOR TO HATE SPEECH**

*Lisa Burke, New Jersey Judiciary Administrative Office of the Courts*

The most egregious articulations of hate speech are easily recognizable and almost universally offensive, but more subtle, less obvious expressions of hate-based talk are not always so easily identifiable. Why? Does humor desensitize people to some forms of hate speech? This session will explore the social and cultural connections between humor and hate speech.

**YOUTH-LED POLICY DEVELOPMENT:  
PREPARING TEENS TO PARTICIPATE  
IN CIVIL DISCOURSE**

*Colin Lentz and Shane Correia, Center for Court Innovation*

Through the Youth Justice Board program, teens investigate policy issues that affect their lives, produce

recommendations for system stakeholders, and work to implement their ideas. The *Youth Justice Board Toolkit* provides curriculum and strategies to help youth develop the skills necessary to participate in a civil democracy.

***Civility and Free Expression in a Constitutional Democracy:  
Conference Report***

by Tiffany Middleton and Howard Kaplan

***Globalization and Border Crossings:  
Examining Issues of National Identity, Citizenship, and Civic Education***

by Charlotte C. Anderson and James H. Landman

***Judicial Independence:  
Essays, Bibliography, and Discussion Guide***

by Hannah Leiterman

***Adolescents, Society, and the Law:  
Interpretive Essays and Bibliographic Guide***

by Roger J. R. Levesque

***Teaching Ethics in Business Law Courses***

by Jeffrey Nesteruk and David Risser

***White Collar Crime and the Law:  
An Annotated Bibliography***

by Robert Tillman