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Happy Birthday, Sweet 200; Happy Birthday, Sweet Sixteen

Bruce Berner

Nothing so sharpens one's focus on a complex subject as discussing it with teenagers. Enter that process at your own risk, but be sure to bring the following working assumptions: (1) all intellectual baggage, regardless of how long ago you assembled it and with how much care, is subject to being unpacked; (2) arguments which all your life passed without challenge in mature, adult discourse, sound for all the world, when you articulate them to teenagers, like the assertion, "three chickens plus four baseballs equals blue"; (3) teenagers are concerned about the same things we are, only different.

This fall, Valparaiso University has been observing the bicentennial of the ratification of the Bill of Rights. The celebration has included forums on each of the ten amendments conducted by scholars of national repute and culminated in a service of rededication to the Bill of Rights in the Chapel of the Resurrection on 15 December, the date of final ratification in 1791. This semester-long

commemoration was conceived by Dean Ed Gaffney of the law school, who received the inspiration while travelling by car across the great western expanse of the United States on his way to Valparaiso. Never doubt the power of "spacious skies." With the cooperation of local schools, some of us have been conducting sessions with junior-high-school and high-school students, speaking either to classes or larger groups in assembly about the Bill of Rights. (When was the last time you got to go to "an assembly"?) It was at these gatherings, in Valparaiso and Portage, IN, that I furthered my education about both teenagers and the Bill of Rights.

Having quietly tolerated my opening remarks, students were invited to cut to the chase: What questions or comments about the Bill of Rights were on their minds? Prior to the first few presentations, I dreaded this moment most. What if they have no questions? What if I'm forced to do 50 minutes of stand-up stuff on, say, the Third Amendment troop-quartering provision? Will my own children ever live this down? (I had this daymare in which I bombed so badly at my sons' school that they began the rumor that they were adopted.) This dread passed quickly, replaced with the reality that students were both angry and puzzled about constitutional issues and welcomed the chance to discuss them. As with most of us, when the conversation remained abstract, the students gave only polite attention. The moment that their own interests were clearly implicated, when we no longer were speaking of the vague right of others to worship and assemble but about why these

particular teenagers might not be able to listen to Two Live Crew, then the gloves came off.

Because I did not direct the discussion other than by distributing a copy of the Bill of Rights, the sessions were a good experiment in what, within the boundary of legal topics, the teenage mind is concerned with. The only introductory hypothetical I used concerned the religious free-exercise provision, a subject which drew few takers. Three subjects consumed at least 95 percent of the discussion: privacy, censorship, and guns, each emanating from incidents drawn primarily from the home or school environments.

Privacy. The freedom from unreasonable searches and seizures is, of course, at the heart of the fourth amendment. Justice Brandeis' famous dictum that the "right to be let alone" is "the most cherished right of civilized man" resonates and rings in school halls. Teenagers see three villains: police, parents, school officials (and not necessarily in that order).

As to police behavior, students were very curious about the rules: "When can they search a house?"; "When can they search a car?"; "What, exactly, does 'probable cause' mean?"; "How do they get a warrant and when are they required to?" Although a few evidenced some personal exposure to police, most of the questions seemed to come from crime-drama on TV, which provides a mostly false picture of police work and constantly misportrays search-and-seizure law. (I always tell my Criminal Law students that if they want an accurate picture of American police, tune out Hill Street Blues and progeny and turn on to

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Barney Miller.) One particularly memorable exchange occurred in a Portage school, where they must remember me as "Mr. Tact":

Berner: ... and, therefore, police must ordinarily have a search warrant to enter a home for investigative purposes.

Student: Well, maybe if they're investigating a violent murder or something, but do they need one just to look around?

Berner: Yes, except in cases of clear emergency.

Student: Well, I don't know. Bob comes every week just to look around and he's never showed me a warrant. I guess I'll complain to him now; I didn't know my rights before.

Berner: (Stalling for time and clearly bewildered.) I guess it would help me to know who "Bob" is. Is he a policeman?

Student: No, he's my parole officer!

Class: (Pandemonium)

Parental searches, of course, present a different constitutional problem because the Bill of Rights was intended as limiting *government*, not private parties. This so-called "state action" requirement is unproblematic to lawyers who would never think of parental investigation as raising legal issues. What came clearly into focus for me was the reality that a person's *interest in privacy* does not change much with the intruder. Teenagers understand that the legal consequences, and perhaps the motivations, of a Mom or Dad search are different from a police search, but they are nevertheless offended and hurt, perhaps in a more profound way, by such intrusions. If I remember nothing else from these sessions, I will never forget what one eighth-grade girl from Valparaiso said during the discussion. The vocabulary, emotional intensity, and pure analytical insight of the remark was stunning. Sitting in the front row, she said quietly, "My Mom says she wants to trust me. Could you please tell her that trust entails her not looking through my

purse?" Wow! Issues of parental discipline are complicated and controversial. Some experts (and nonexperts, too) would argue that full privacy should not be accorded to teenagers. I don't know the answer, but I can report that the question smells different when you're looking down the barrel at 50-100 teenagers. If you want to persuade them they should not have significant privacy, I can get you the gig.

Until recently, the Supreme Court viewed public school officials as acting in *loco parentis*, and, therefore, not subject to fourth-amendment restraints. In a case arising in New Jersey, the Court held, in 1987, that public-school officials were state actors, and, thus, subject to this prohibition. This decision correctly recognizes that school officials are charged with maintaining a positive learning environment for all students and should not be expected also to embody the special solicitousness of a parent to each child.

Because maintaining an educationally conducive environment is both critical and complex, school personnel may constitutionally operate with fewer restraints than police. Warrants for searches on school property (lockers, purses, etc.) are not necessary and "probable cause" is replaced with the less stringent requirement of "reasonable suspicion." And, of course, the objects of search are broader—not only evidence of crime, but evidence of any violation of school rules (including such things as cigarettes, T-shirts with violent themes or alcohol ads, etc.) But there are now, at least, some restrictions on searching by teachers, principals, etc. (The biggest villains here are sinister folks called "vice-principals." Like Associate Deans, their job descriptions charge them officially to offend people.) And the students are particularly interested in knowing just what those restrictions are. One issue recurred here as it does in police. Although the law requires that the state searcher have a basis for search, it does not, for the most part, require that reason to be communicated to the

search's subject at that time. Much of the resentment could, I think, be removed if the searcher extended the courtesy of explaining the search's purpose more fully. There will, of course, still be cases of honest disagreement about whether or not a particular school rule is educationally necessary. Students believe that some of the searching at school serves no purpose other than harassment, that it is, in the current argot of the teenager, "bogus."

Censorship: Teenagers are generally suspicious of adults who "censor" things. They understand that some materials are inappropriate but do not easily understand why they shouldn't participate in making that judgment. When adults dictate which movies or records they cannot experience, what clothing is inappropriate, teenagers experience both confusion and anger. These were for me the most interesting yet uncomfortable discussions. It helped when I could get the word "censorship" itself out of play.

Student: I don't believe in any form of censorship.

Berner: Let's say you go with your friends to a movie that you very much want to see. Maybe, say, with Tom Cruise. [Giggles of approval] You're enjoying it immensely. Suddenly, I walk in front of the screen and begin a lecture on the Bill of Rights. Would you like to censor me?

Student: Well, that's not censorship.

Berner: Why not? You're going to make me stop talking, right?

Student: Yeah. But that's not censorship. Censorship would be if we stopped you when we shouldn't.

Berner: Good. Let's talk about when we should and should not stop people from talking or listening or reading and just get rid of the word censorship.

Student: [with that shrug teenagers reserve for thick adults] O.K., if you want it that way. It's a perfectly good word, though.

Most of us who buy into the first-

amendment "marketplace of ideas" ideology concede only a few narrow exceptions for censorship, e.g. defamation, falsely shouting "fire" in a crowded theater, etc. But even those most sensitive to censorship are ordinarily willing to carve out a fairly large exception when children are involved. This remains unproblematic provided one need not talk to teenagers about it for, not surprisingly, they cannot appreciate the perspective that age brings to the age question. They certainly do not view the exception as "protective" of their interests development. All of my attempts to link freedoms with responsibility played no better in the classroom than they play around the dinner table.

My only moderate success story here was with a male junior who looked strong enough to throw me out of the auditorium: "So you're saying that freedom and responsibility grow up together in a way. As we are required to take on more responsibility, we get to make more choices."

Berner : Yes, that's a good way of putting it.

Student: [With that twinkle that says, "I got you now"] But I know some adults who are not very responsible at all. How come they get the full freedom?

Berner: That's a great point and I'm sure I cannot completely answer it. There comes a time where you just have to give up trying to make people responsible and hope they get it right. But we're deathly afraid of giving up too early. Can we have a few more years with you folks?

Student: [After considerable thought] Sure. Don't cost nothing.

I was so touched by his response and, at a selfish level, so interested in consolidating this small victory, that I

wimpishly avoided any follow up on the cost issue. After all, only adults, responsible or irresponsible, should have to fret about taxes.

My greatest surprise in this venture is the fervor which many teenagers have on the gun-control question. I would suspect vociferous cleavage on this issue in an urban environment, but not in Valparaiso. At least none of my children or their friends ever talk about it. And if there were strong sentiment, I would have guessed it to be pro-control. There is some of that but there is a very strong pro-gun sentiment active among teenagers; sporting use accounts for some but notions of protection from violent crime, the "if guns are outlawed, only outlaws will have guns" idea, runs very strong among teenagers. We talked about the empirical data, about the fact that the FBI has shown that when a gun is introduced into a home it will, if it kills anyone, kill a family member 85 percent of the time. Yet there is something in the sentiment resistant to empirical refutation; the psychology of control and loss thereof appears a major part of the gun controversy. The autonomy cost implicit in gun control is, after all, much like that in censorship. Teenagers, and many adults for that matter, are much less concerned with guns or teeshirts or hairstyles than with the power to choose about such things. Several years ago, we had an elective course at the law school which virtually all second-year students took. For sound pedagogical reasons, the faculty made it a required course. The student reaction was stunning in its hostility; the fact that they would have chosen to take anyway was treated as irrelevant. If you can make sense of that, the teenage position on guns is easier to understand.

All of these discussions had very

positive meanings for me. For one thing, the experience produced in me a renewed mystic awe of schoolteachers. The hours (as many as seven classes a day), the conditions (if you stand in the hall during class-changing, you can watch all Newtonian principles demonstrated at once), the low pay (a long-recognized national scandal), and the brute fact that teenagers present a never-ending mixture of challenge and dedicated, caring hard work argue, I think, for "automatic sainthood" for those adults who toil in these places.

Moreover, it was a thrill for me to watch young students beginning to appreciate the American ideal that, although the majority rules much of the time, each of us has large freedom and responsibility to work out our destinies free from the dead weight of governmental control or the suffocation of popular opinion. One high-school freshman came up after class, clutching her copy of the Bill of Rights, and said, "This is very short, but there's some awfully good stuff in here, isn't there?" Yep, not bad.

Mixed with the usual anxieties of growing up is the desire to *be* grownup and be treated as such. As teenagers ourselves and then parents, we know the frustrations and joys of working through these times from either side. Part of the benefit of such "working through" is our long overdue revision of our reactions to our own parents.

As I left for college, my Dad told me, "Son, when you were seven, your mother and I thought our hearts would break when you left home. But God, in his infinite wisdom, turned you into a teenager."

Thank God for parents, for teachers, for the Bill of Rights; and, by God, while the prayer is easier to utter some days than others, thank God for teenagers. □