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FOSTERING LIBERTY WITHIN THE SCHOOL COMMUNITY

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Stanley Ingber¹ very elegantly posed this question: Do we want to expose students to the experience of liberty? We must first decide whether this is, in fact, what we want to do. Presently there is some controversy in this country about whether to expose students to the experience of liberty.

I personally believe that it is, first and foremost, the role of the family to shape their children's character and instill in their children their values.² It is, however, very much the role of the school to give children practice in expressing their character and the values that they learn at home.³ If

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¹ James Madison Endowed Chair in Constitutional Law, Drake University. See Stanley Ingber, *Liberty and Authority: Two Facets of the Inculcation of Virtue*, 69 ST. JOHN'S L. REV. 421 (1995).

² See C.L. SHANNON, *THE POLITICS OF THE FAMILY FROM HOMO SAPIEN TO HOMO ECONOMICUS* 65-101 (1989) (analyzing necessity of family in developing children's social psychology and values).

It is the family's main function to provide basic physical and] emotional requirements that ensure the development of a healthy, alert, and emotionally secure social human being. These minimal emotional requirements are: first, a physically and socially stable structure where adults provide care and love; second, a fair degree of interaction and communication between the infant/child and adults; and finally, a consistency and predictability in the relations with those adults who are important in the child's life.

Id. at 98-99. A primary function families should perform is the "socialization of children for adult roles, such as those of spouse, parent, worker, neighbor, voter, and community member." SHIRLEY L. ZIMMERMAN, *UNDERSTANDING FAMILY POLICY: THEORETICAL APPROACHES* 75 (1988); see also HAROLD M. VOTH, *FAMILIES: THE FUTURE OF AMERICA* 147-52 (1984) (advocating greater parental authority for sake of children's personality development); Joseph P. Fitzpatrick, *Values, Ethics, and Family Life*, in *HELPING THE FAMILY IN URBAN SOCIETY* 66-78 (Fred DelliQuadri ed., 1963) (extolling importance of family life in development of values).

³ See *FROM YOUTH TO CONSTRUCTIVE ADULT LIFE: THE ROLE OF THE PUBLIC SCHOOL* 1-90 (Ralph W. Tyler ed., 1978) (describing school's role in socialization, focusing on historical perspective, methodology, and relation to parents and state). National, sacred values to which a

schools do not give children the tools and the opportunity to communicate clearly and articulately and to use words and numbers to express their point of view, whatever that point of view is, then we have short-changed children both in terms of their future in the labor force and their effectiveness as citizens.

Back in the late 60's and early 70's, we were focusing more on students' First Amendment rights⁴ of expression, but, today, students' Fourth Amendment rights⁵ are the ones more often confronted in the setting of large urban schools. In either case, balancing the rights of the individual against the needs of the community may be a false dichotomy for two reasons. The first is simply that the quality of community life is hurt by the excessive exercise of authority. The second, and perhaps more significant, reason is that, when individual rights are too frequently subordinated to the larger community, we should look at the nature and size of the community and not focus on the individual as the source of the problem.⁶

Many of the incidents that might disrupt an overly large factory-like school can be handled, discussed, and dealt with in a small school where

child is expected to be exposed in school include democracy, individualism, equality, and human perfectability. Jacob W. Getzels, *The School and the Acquisition of Values*, in FROM YOUTH TO CONSTRUCTIVE ADULT LIFE: THE ROLE OF THE PUBLIC SCHOOL 43-45. The national secular values which schools are expected to impart have undergone a transformation this century. *Id.* at 57. The work-success ethic, independence, and puritan morality have changed social responsibility, conformity, and moral relativism. *Id.*

⁴ See JANET R. PRICE ET AL., THE RIGHTS OF STUDENTS: THE BASIC ACLU GUIDE TO A STUDENT'S RIGHTS 11-32 (3d ed. 1988) (giving context in which some students' rights issues arise under First Amendment: picketing outside school; walking out of class; handing out literature on school property; expressing unpopular views; wearing buttons and other symbols as forms of expression).

⁵ See *id.* at 80-89 (explaining issues of students' Fourth Amendment protection against unreasonable search and seizure). Issues include whether school officials can: search students' lockers and desks; require students to submit to blood and urine tests for drugs; use evidence obtained in an illegal search to prosecute or discipline a student; perform strip searches on students. *Id.*

⁶ See CHARLES W. ELIOT, THE CONFLICT BETWEEN INDIVIDUALISM AND COLLECTIVISM IN A DEMOCRACY 43-85 (1967). Principles furthering the good of the community have had a broad effect on education, acting harmoniously with individualistic forces. *Id.* at 81. Universal education is a collective interest furthering democracy. *Id.* at 47. "This collective interest, though in reality identical with the interest of every human individual, nevertheless induces an extraordinary interference with individual liberty at sensitive points . . . [Thus, a community interest is needed] to secure a result which is as beneficent [sic] to the individual as it is to society." *Id.* at 48-49. See generally VIRGINIA HELD, THE PUBLIC INTEREST AND INDIVIDUAL INTERESTS (1970) (describing various theories of relation between individual and public interests, including: preponderance theories of David Hume, Thomas Hobbes, and Jeremy Bentham; common interest theories of Jean Rousseau and V. Pareto; and unitary theories of Plato and Aristotle).

everybody knows each other and the instruction is organized. Such an approach helps children to become masters of the tools of discourse.

Unfortunately, the schools here in New York City are factories, as are the schools in most large, urban settings.⁷ In many of our schools, the students would be the first to say that they need metal detectors, and that they are concerned that metal detectors are not effective enough.⁸

About a year ago, a group of principals from smaller alternative high schools were interviewed. These schools were set up to deal with at-risk students who were not making it in the larger high schools. These principals said that they did not need metal detectors because there are fewer incidents in a small alternative school than in even our elite institutions like Stuyvesant High School.

The reason these smaller schools have less disruptive incidents is that everybody knows everybody, and there is a small enough and intimate enough school organization that kids can learn to exercise autonomy and responsibility in a supportive environment. In such an environment, it is possible to deal with differences and to allow for the expression of different points of view without explosions occurring, without unmanageable conflicts between races, and without unmanageable confrontations among values.

One of the things we must address when we talk about balancing the needs of the individual against those of the larger community is how to make the community more conducive to the exercise of individual rights. We need to discuss how we can make the school community the kind of community that can have a dialogue about values, as Michael A. Rebell⁹

⁷ Although only 5% of the public school districts in the nation's major metropolitan areas are in those areas' central cities, more than 40% of those areas' public school students attend central city public schools. RAYMOND C. HUMMEL & JOHN M. NAGLE, *URBAN EDUCATION IN AMERICA: PROBLEMS AND PROSPECTS* 85 (1973). Central city public school districts "employed close to a third of the teachers and spent more than two-fifths of the dollars expended for public elementary and secondary education in those metropolitan areas." *Id.* at 85-86. The New York City public school system is the most diverse, complex, and immense urban school system in the nation. *Id.* at 86.

⁸ The number of New York City high schools using airport-style metal detectors has risen from two in May of 1994 to seventeen in May of 1995. Liz Willen, *Schools Seek Ways to Curb Weapons Use*, *NEWSDAY*, May 20, 1995, at A13. Fifty-one New York City high schools were scheduled to have them. *Id.*; see also David Stout, *Violence in Schools Said to Rise*, *N.Y. TIMES*, May 19, 1995, at B3 (attributing 41% decrease in number of handguns seized from students to increased use of metal detectors); Raphael Sugarmen, *HS to Put in Metal Detectors*, *DAILY NEWS*, Mar. 29, 1995 (Suburban), at 1 (discussing installation of metal detectors in response to fatal stabbing at high school).

⁹ Michael A. Rebell concentrates in education law and rights of the handicapped. See Michael A. Rebell, Tinker, Hazelwood and the Remedial Role of the Courts in Education Litigations, 69

has suggested. The community and the school have failed when those issues have to be decided by the courts.

Size is only one aspect of the challenge to find a community conducive to individual rights. You can have a very small, intimate, personal school where there is no discourse on values. Discourse on values does not have to be the imposition of values. What better way to teach children about the experience of liberty than to give them the opportunity to work through issues with their school leader and with the community?

Finally, it is imperative that children be taught the value of authority. We cannot live in anarchy. There are two important routes to teaching the value of authority. One is for the authority figure to exercise it responsibly, without changing the rules of the game midstream, as Elliot M. Mincberg¹⁰ suggested. The second route is to engage students at an early age in a discourse on balancing individual rights with the needs of the community. In the education of our children and in their preparation to be citizens of this democracy, it is the discourse that is more important than the final result.

ST. JOHN'S L. REV. 539 (1995).

¹⁰ Elliot M. Mincberg is the legal director of People for the American Way. See Elliot M. Mincberg, *Remarks*, 69 ST. JOHN'S L. REV. 519 (1995).