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Schools--Corporal Punishment without Civil or Criminal Liability

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STUDENT NOTES

Schools — Corporal Punishment Without Civil or Criminal Liability

"Train up a child in the way he should go and when he is old, he will not depart from it." — Proverbs 22:6

I INTRODUCTION

Although public school administrators persist in predicting that corporal punishment will soon cease to be recognized as a disciplinary tool of teachers, it is well-established in the majority of jurisdictions that a teacher presently has the legal right to inflict moderate physical chastisement upon a pupil in order to maintain decorum in the classroom. As evidenced by recent decisions, the prediction of 111 years ago that “this mode of punishment (corporal punishment) will disappear from the school” has not come to pass.

It is not the purpose of this article, however, to discuss the merits of retaining or abolishing corporal punishment. Rather, it is an attempt to survey several jurisdictions in order to determine to what extent, if any, a public school teacher may physically discipline a student without incurring criminal or civil liability for his actions.

II COMMON LAW

It is well-settled at common law that a teacher stands in loco parentis and is privileged in administering reasonable corporal punishment. Two views are commonly set forth as justifications for

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4 For a discussion favoring the abolition of corporal punishment, see Miller, Resort to Corporal Punishment in Enforcing School Discipline, 1 Syracuse L. Rev. 264 (1949).
the delegation of this historically parental right to teachers. One line of authority holds that a parent, by sending his child to school, has impliedly delegated to the teacher the parent's authority to inflict reasonable physical punishment in order to obtain obedience. However, since most states by statute require compulsory school attendance until a certain age has been reached, it has been contended that this view breaks down in that parents are not voluntarily delegating the right to physically discipline.

The second, and seemingly more sound, justification for permitting a teacher to inflict corporal punishment is that in order to effectively perform his teaching duties, a teacher must necessarily maintain discipline and order in the class. Thus, he requires the power to administer reasonable physical chastisement to achieve his ultimate function.

Regardless of the source from which a teacher acquires the right to physically punish, the issue which the courts must resolve in determining a teacher's liability is the extent to which such right is privileged. While jurisdictions are unanimous in agreeing that a teacher may administer only reasonable corporal punishment, they appear to be split on a determination of what degree of physical discipline constitutes reasonable punishment.

North Carolina, Ohio, Alabama, Illinois, and Pennsylvania have adopted the proposition first espoused in State v. Pendergrass, that a teacher is immune from criminal liability in administering corporal punishment provided that it is not inflicted

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9 Compulsory school attendance shall begin with the seventh birthday and continue to the sixteenth birthday.

10 What result would occur in jurisdictions following the view that a teacher acquires the right to administer corporal punishment as a result of an implied delegation of parental authority, if the parent expressly refused to delegate his parental authority to inflict physical punishment?


with legal malice or does not produce permanent injury or disfigurement." The jurisdictions committed to this view hold that a teacher occupies a quasi-judicial position, and as such the teacher, and not a jury, is the one most qualified to determine whether the punishment inflicted was properly proportioned to the offense. In effect, these states refuse to find a teacher criminally liable for the commission of an error of judgment in administering corporal punishment. Although a jury might determine that the punishment inflicted was unreasonably severe, the teacher incurs no criminal liability unless it was administered maliciously or resulted in permanent harm.

In Drum v. Miller, the North Carolina court applied the criminal test of reasonableness in an action by a pupil to recover damages from a teacher for the commission of an unintentional tort. In that case, the teacher tossed a pencil at the pupil whom he believed to be inattentive to the lecture, striking him in the eye. In passing on the issue of liability, the court determined that an act done by a teacher in the exercise of his authority which results in a permanent injury is not actionable if not prompted by malice, unless an ordinary prudent man could reasonably have foreseen that a permanent injury would naturally or probably result from his act.

Similarly, Ohio, Illinois, and Alabama have adopted the view that a teacher is not civilly liable for inflicting excessive physical force in good faith from motives of duty, unless such punishment results in permanent injury. In Suits v. Glover, where the teacher administered five licks, more or less, with either a ping-pong paddle or a slat from an apple crate to the buttocks of an 8 1/2 year old pupil, the Alabama court said that "[t]o be guilty of an assault and battery, the teacher must not only inflict on the child immoder-
ate chastisement, but he must do so with malice or wicked motives, or he must inflict some permanent injury." 24

The great majority of jurisdictions, however, hold a teacher to be both civilly and penally liable for the administration of excessive corporal punishment regardless of whether such punishment is inflicted from good motives or results in no serious injury. In the leading case of Commonwealth v. Randall, 25 the Massachusetts court approved the trial court's refusal to instruct the jury that the teacher is criminally liable only when he acts with malice and is not liable for errors of judgment.

Under the Randall view, supra, a determination of the reasonableness of the punishment is a question of fact for the jury. Several factors must be considered by the jury in determining whether the teacher has abused his privilege of inflicting reasonable corporal punishment. Two such factors are the nature of the offense committed and the punishment administered. Thus it has been held that a teacher is not justified in beating and cutting the face of a child with any weapon which his passions might supply. 26 Similarly, a teacher has been held criminally liable for hitting a small boy "pretty hard" with a two or three feet long switch as large in circumference as his finger in response to the boy's answering a question in a low tone of voice. 27 Along this same line, the Vermont court in Lander v. Seaver, 26 held a teacher to be justified in administering corporal punishment to a pupil whose behavior had a detrimental effect on the conduct of his classmates in that he made remarks in the presence of other students which threatened to lessen the teacher's position of control. 28

Other factors which the jury must take into account in the jurisdictions following Randall are the sex, age, size and apparent physical condition of the pupil. 29 While most of these guidelines are self explanatory, the requirement that a child's physical condition must be considered in determining the reasonableness of the punish-

24 Id. at 50. But see Annot., 43 A.L.R.2d 484, n.6 (1955) to the effect that "a rule by which a teacher would be free of tort liability for immoderate punishment of a pupil ... would ... be entirely inconsistent with fundamental principles of civil justice."
25 70 Mass. (4 Gray) 36 (1855).
26 Cooper v. McJunkin, 4 Ind. 290 (1853).
27 Anderson v. Head, 40 Tenn. (3 Head) 455 (1859).
29 See also VanVactor v. State, 113 Ind. 276, 15 N.E. 341 (1888).
30 Calaway v. Williamson, 139 Conn. 575, 6 A.2d 377 (1944); Sheehan v. Sturgis, 53 Conn. 481, 2 A. 841 (1885).
ment gives rise to an interesting situation where the pupil has an unusual susceptibility to harm which is unknown to the teacher. In passing on this issue, at least two courts have determined that where the punishment was otherwise reasonable and results in injuries caused by an unusual condition of which the teacher was unaware no criminal or civil liability was incurred.

Although several courts have explicitly pointed to the distinction between the two views that have been discussed, it has been contended that the difference is more apparent than real. The basis of this contention is that even in those jurisdictions requiring a showing of malice or permanent injury before a finding of liability, the court or jury is necessarily the final arbiter of whether the punishment was inflicted with legal malice or resulted in permanent harm. Similarly, it is pointed out that in those states which hold the test of reasonableness to be the excessiveness of the punishment, courts tend to require a showing of the administration of extremely severe punishment before holding that the teacher has abused his privilege.

While this argument has some validity, it is submitted that the courts are justified in distinguishing between the two lines of authority. Under the Pendergrass view, a teacher, acting in good faith, will not be penalized for the use of excessive physical force unless his action results in permanent injury. In jurisdictions following Randall, however, the teacher may be found civilly or criminally liable for inflicting immoderate punishment which is administered in good faith, although no permanent harm results. Thus, although a North Carolina jury may determine that a teacher inflicted immoderate corporal punishment upon a pupil, the teacher is still privileged, provided that he is able to prove he acted in good faith and that no serious harm resulted. Under the same set of facts in Vermont, however, the teacher would be both criminally and civilly responsible for his error in judgment.

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29 Note, California Schoolteachers' Privilege to Inflict Corporal Punishment, 15 Harv. L. J. 600 (1904).
III LEGISLATION

Several of the states have codified the teacher’s common law right to inflict corporal punishment on his pupils; some of these statutes are explicit, while in others, the right may be inferred.

At least ten states have statutes which expressly allow a teacher to use some degree of physical force on a pupil, with most of the statutes specifying that a “reasonable” amount of punishment may be administered. The North Carolina, South Dakota, Vermont, and Ohio statutes state that such force or punishment that is reasonable and necessary to maintain control and order may be administered by the teacher. The Virginia statute, on the other hand, permits the teacher to inflict reasonable corporal punishment on a pupil to maintain order and discipline, “provided he acts in good faith and such punishment is not excessive.” In Montana, the parents of the pupil must be notified before corporal punishment is allowed, and the punishment shall be inflicted only in the presence of the teacher and principal and “without undue anger.”

Corporal punishment is allowed in Nevada only after other methods of correction have first been attempted. No punishment about the head and face is authorized, and the parents of the student must be notified. Under the California Education Code, the governing board of a school district shall adopt rules authorizing teachers to administer “reasonable corporal or other punishment” when such action is deemed an appropriate corrective measure. Florida requires that a principal must be consulted before corporal punishment is inflicted, and in no case “shall such punishment be degrading or unduly severe in nature.”

In 1964, Michigan passed a statute which states that except for

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Note, Right of a Teacher to Administer Corporal Punishment to a Student, 5 Wash. L. J. 75, 83 (1965).

California, Florida, Michigan, Montana, Nevada, North Carolina, Ohio, South Dakota, Vermont and Virginia.


For a criticism of the California statute, see Note, California Schoolteachers’ Privilege to Inflict Corporal Punishment, 15 Hastings L. J. 600 (1964).


gross abuse, "no teacher . . . shall be liable to any pupil, his parent or guardian in any civil action for the use of physical force" on a pupil for the purpose of taking weapons from the student or for maintaining proper discipline. Delaware, on the other hand, enacted a statute in 1967 authorizing the chief school officer or principal to inflict corporal punishment upon a pupil, but repealed the statute in 1969.

New Jersey is the only state found to expressly disallow the use of corporal punishment, however, such force as is reasonable and necessary may be applied: (1) to quell disturbances threatening physical injury; (2) to obtain possession of weapons; (3) for self-defense; and (4) for protection of persons and property.

Many states have statutes like Oklahoma's which, incorporated under its penal section, states that while it is unlawful to use physical violence against children, a teacher is not prohibited from using ordinary force as a means of discipline "including but not limited to spanking, switching or paddling."

Illinois, Oklahoma, and Pennsylvania have statutes similar to the one in West Virginia in that the teacher stands in loco parentis. However, as will be discussed in Section IV, infra, the mere fact that the teacher is held to stand in place of the parent lends little insight into the issue of his liability for administering excessive corporal punishment. Similarly, the test of reasonableness to be applied is not explicitly covered by such statutes.

IV WEST VIRGINIA

There have been no cases interpreting the civil or criminal liability of a teacher under the West Virginia statute. Thus, whether a teacher is legally responsible for inflicting unreasonable physical

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Notes:


The teacher shall stand in the place of the parent or guardian in exercising authority over the school, and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge . . . shall exercise such authority . . .
chastisement upon a pupil in West Virginia and, if so, which test of reasonableness will be applied is apparently a matter for speculation.

It would appear that the West Virginia court would find little difficulty in holding a teacher criminally liable for inflicting immoderate corporal punishment. Justification for so finding may be inferred from the decision in State v. McDonie, a prosecution for malicious assault against one, other than a teacher, standing in loco parentis. In McDonie, a step-father appealed a conviction for physically assaulting his six year old step-son. One of the grounds for reversal relied upon was the refusal of the trial court to instruct that no malice could be inferred from the mere fact that defendant chastised the boy, since a parent or one standing in loco parentis has the authority to administer correction to his child.

Although admitting that no malice could be attributed to the defendant from the mere fact that he physically disciplined his step-son, the West Virginia Supreme Court of Appeals affirmed the conviction. The court reasoned that when the conduct of one standing in loco parentis exceeds the bounds of correction and actually endangers the child's life or limb, then proof tending to show these facts is just as effectual to prove malice as proof of unjustifiable assault in any other criminal case.

Since the Pennsylvania statute is very similar to West Virginia's, a look at how Pennsylvania interpreted its statute may give some indication of whether West Virginia will hold a teacher civilly liable for assault upon a pupil. The Pennsylvania court was squarely faced with this issue in the case of Rupp v. Zinter. There, plaintiff was struck over his right ear by defendant teacher as he was tapping a pencil to attract the attention of a fellow-student. In determining that the teacher was civilly liable, the court adopted the view espoused in the Restatement of Torts to the effect that those standing in loco parentis, unlike the parent, are under a civil

\[^{\text{89}}\text{W. Va. 186, 109 S.E. 710 (1921).}\]
\[^{\text{89}}\text{See also State v. McDonie, 96 W. Va. 219, 123 S.E. 405 (1924), in which the Supreme Court of Appeals affirmed the conviction of the wife of the defendant in the first McDonie case.}\]
\[^{\text{89}}\text{PA. STAT. ANN. tit. 24, § 13-1117 (1962).\text{"Every teacher . . . shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school, during the time they are in attendance . . . as the parents, guardian or persons in parental relation to such pupils may exercise over them.}\]}
\[^{\text{89}}\text{29 Pa. D. & C. 625 (1957).}\]
\[^{\text{89}}\text{See Restatement (Second) of Torts § 147 (1965).}\]
liability to a child for harm intentionally done to him, unless the act causing the harm is privileged.

Assuming that West Virginia would hold the teacher criminally or civilly liable for the infliction of excessive physical force, the issue must still be resolved as to which test of reasonableness would be applied. Little help in resolving this problem is found by looking to Pennsylvania cases. In two criminal cases4 decided prior to the enactment of legislation placing a teacher in loco parentis, Pennsylvania based the test for reasonableness on whether the teacher administered the punishment maliciously or such punishment resulted in permanent injury. In the civil case of Rupp v. Zinter,5 the Pennsylvania court explicitly stated, however, that malice was not necessary to support a judgment in favor of the plaintiff. Since the plaintiff in that case suffered permanent hearing injury, and since the test for determining liability in the early criminal case was the showing of either malice or permanent injury, it is not known whether the court in Rupp required no proof of malice because of permanent injury or because it repudiated the criminal test.

Since it is apparent that a West Virginia teacher may encounter some difficulty in determining the extent to which he may physically chastise a pupil, he would be wise to heed the words of Judge Corson, to the effect that:

If a teacher feels that corporal punishment must be administered to a pupil, nature has provided a part of the anatomy for chastisement, and tradition holds that such chastisement should there be applied.6

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7Id. at 628.