

Corporal Punishment in School: 1973

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AS THE new year begins, it appears that the legal right of American school personnel to administer reasonable corporal punishment is inviolate to challenge under the federal Constitution. In November 1972, the Supreme Court of the United States refused to hear a Texas case challenging this traditional privilege of teachers over their students. The opinion of the district court and the affirmation of the circuit court upholding the right thereby remain precedent.

An educator possesses the legal right to administer reasonable chastisement in the performance of his duties. Today this is true within every state in the nation with the two exceptions of New Jersey and, very recently, Massachusetts. Both states specifically prohibit the use of corporal punishment in their schools by statute, the Massachusetts statute having been enacted in March of last year.

While education in the United States historically has been a state function, federal involvement with the schools has increased dramatically within the past two decades. Federal courts especially have not hesitated to intervene when school policies and practices jeopardize federal constitutional rights

of students. Consequently, federal intervention with the corporal punishment privilege of educators has been solicited by opponents of the practice. The landmark Texas case, *Ware v. Estes*, was only one of several suits designed to eliminate the use of physical punishment in the American educational process. Undoubtedly, a review of the corporal punishment practices in contemporary schools by the nation's highest tribunal has been the ultimate objective of these actions.

In the *Ware* case, the cause of action was the contention that the ancient pedagogical practice of physical chastisement violates rights of both parents and students guaranteed by the Eighth and Fourteenth Amendments to the U.S. Constitution. The other cases still pending in the federal courts questioned the venerable educational practice on a variety of constitutional issues. It must be remembered that any or several of these other challenges to corporal punishment conceivably might contain an issue not present

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in the Ware case. Such a difference, if significant under the federal Constitution, could generate a different response from our highest court. In the light of this momentous legal background, the consideration of pertinent legal and historical contributions to the present status of corporal punishment in American schools appears timely.

An examination of the literature of Western education since ancient times reveals that corporal punishment always has been entwined with the educational process. Initially the philosophy, that chastisement was a primary teaching technique essential to achieve learning, was challenged successfully during the great wave of 19th century educational reform. Because his strong and consistent attack spearheaded the drive against the use of corporal punishment as an educational method, one of the many innovations which Horace Mann helped to effect in American school life was a substantial reduction in the number of school chastisements.

Continued study revealed that education literature written during the first third of the present century testified to the continuing decline of the practice. Then it was even speculated that corporal punishment might disappear from American school life through disuse. Surprisingly, at least to these writers, commencing from the late 1950's, the educational literature seems to disclose a reverse trend. Either the reports of contemporary educators are more candid and accurate than were the writings of earlier days, or the use of physical punishment has increased within our schools.

Since corporal punishment has been a constant in the history of education, its practice has generated considerable activity in American courts. Just about every state in the nation has at least one school corporal punishment case on record. Through the years these litigations have added substantially to the common law of the United States relevant to education.

Common law, very simply defined, is the body of legal principles which derive authority from the customs of the people or from the judgments of the courts. In the

absence of statutory provision, American jurists look to this body of legal principles from previously tried cases as a guide in their deliberations. The study of American common law leads to the conclusion that it is difficult, if not impossible, to overestimate the influence which the various state courts have exerted over the development of public education. A look then at the common law applicable to corporal punishment is revealing.

The common law of the United States recognizes that teachers, administrators, and even boards of education stand *in loco parentis* to their students. This venerable concept, that an educator stands in the place of a parent for the purposes of a child's education, stretches back in time through two millennia. The first discoverable legal writer to apply the *in loco parentis* concept directly to the teacher-pupil relationship was the 18th century English jurist, Sir William Blackstone. In defining the teacher-pupil relationship as a partial analog of the parent-child relationship, Lord Blackstone followed the basic common law principle of attaching great value to the customs and practices of society in the adjudication of cases.

The establishment of the American system of public education immediately raised questions which could be answered only through litigation in court. One such legal issue concerned the right of the public school teacher to use physical chastisement on students. Throughout the centuries this authority, which the private school teacher traditionally had exercised over the pupil, has been predicated on the *in loco parentis* nature of their relationship. The legal reason for recognition of this concept of the teacher-pupil relationship is that the parent has delegated his own authority over his child to the teacher for the purposes of the child's education.

However, it must be remembered that American education gradually became compulsory by mandate. The American parent has lost even his right to choose whether or not to educate his child. Today all persons having the custody of a child of legal school age are compelled to have the child at school

at the designated times. Legally, they may be coerced if they fail to perform this vital civil obligation. Consequently, the legal description of the parent as the source of the public educator's authority was questionable.

Relying heavily on the legal teaching of Lord Blackstone and the ordinary school customs of existent private schools of that period, the 19th century state courts applied the *in loco parentis* concept to the new system of public education. Two early common law principles which derive from legal construction of the rights and duties arising from the relationship were the teacher's duty to maintain discipline within the classroom and the teacher's right to use physical chastisement if necessary to preserve that discipline.

A Court Given Right

Accordingly, the legal use of corporal punishment by an educator is a court given right. The courts granted this privilege over his students to the American teacher to enable him to perform the duties necessary to achieve the educational goals of the state. Quite early, also, the 1847 Maine case, *Stevens v. Fassett*, clearly distinguished that the delegation of authority to public school personnel was one by law and not one by parental choice. The Maine Supreme Court ruled, however, that the resultant legal effect was the same as if the parent had directly delegated his power as in private education. Subsequently, American courts have not permitted the wishes of a parent to defeat the policy of the state in the education of its children. In the absence of prohibitive statutory provision such as in New Jersey or Massachusetts, a parent's opinions or feelings are powerless to stop the physical chastisement of his child when it is deemed an educational necessity by school personnel.

The law does not permit the abuse of a child by anyone, be he parent or educator. While American courts recognize the privilege of both the parent and the educator, as a person *in loco parentis*, to inflict reasonable corporal punishment, these state courts concurrently have recognized the necessity to safeguard children from excessive physical

punishment administered by an adult. Again an overview of pertinent common law corporal punishment principles illustrates the process utilized by the courts to protect children from abuse. Through their tests established to determine the legality of an act of corporal punishment, American courts have developed various restrictions limiting the privilege.

The immoderate use of physical chastisement is an illegal act which constitutes an assault and battery at law. An assault and battery is classified as an intentional tort; that is, an action implying the intent to injure another. As such it is a criminal action. Both the parent and the educator may be found criminally guilty if they exceed their corporal privilege. The convicted educator also is liable in money damages if a civil suit is brought by the pupil.

In an assault and battery action involving either a parent or an educator, the legal question is whether the corporal punishment privilege has been exceeded. School personnel stand *in loco parentis* to their pupils. Consequently, an *in loco parentis* defense is available to an accused educator. An *in loco parentis* defense means that at common law the rights, duties, and liabilities of school personnel are the same as the parent. In an assault and battery action, the educator is treated exactly as would the parent be in like circumstances. What is legally applicable to a parent is legally applicable to an educator, and the same rules of law are used to judge the actions of both.

In the absence of specific statutory prohibition, the common law rule then is that an educator may reasonably chastise a student. Accordingly, educators in a state with no statutory provision either for or against the use of corporal punishment will be tried according to common law rules generated by previously judged corporal punishment cases.

The legislatures of several states in the nation have exercised their plenary power over education by enacting a statute in either the penal code or the school code which permits an educator to administer corporal punishment. Such legislative action affirms

the common law recognition of the privilege. In such jurisdictions, the courts also interpret the statute by applying the legal principles of previously adjudicated cases.

Consequently, educators, both in states whose statutes permit corporal punishment and in states whose statutes are silent about the matter, will be tried by the common law principles operative within the state. Further, all such educators may utilize the common law generated *in loco parentis* defense.

While legal authorities agree that school personnel may administer reasonable corporal punishment in the absence of specific prohibition, it is of equal importance to the parent or educator charged in a corporal punishment action that legal authorities differ about how the punishment is administered. This disagreement has evolved two distinct lines of authority in the United States to judge the actions of an individual accused of violating the corporal punishment privilege. Which line of judicial authority is followed within a state significantly affects the legal interpretation of the facts of the case, and, therefore, its ultimate outcome.

The Protection of Privilege

The older line of authority, or minority rule, holds that the accused individual in a corporal punishment action is within the protection of the privilege unless either permanent injury results from the punishment or unless the action was done with legal malice. In a jurisdiction following this judicial view, the accused parent or educator is the sole judge of both the necessity for and the amount of the punishment. Such a judicial view is of great consequence in corporal punishment cases because states holding this view are much more lenient in their treatment of the parent or the educator than are those states following the alternate line of authority.

The difference between the older view and the so-called newer, or majority, view is that the latter permits a jury to determine both the necessity for and the amount of the punishment. In such a jurisdiction, no

longer is the accused the sole judge of such basic facts at issue. While the majority rule recognizes the corporal punishment privilege, courts utilizing it have modified the use of physical punishment on children by setting many additional limitations on the legal exercise of the privilege.

Today, these common law restrictions, by which state courts following the majority view have limited the corporal punishment privilege, have been incorporated into the corporal punishment policies and practices of many school districts. Unless school usage of corporal punishment should ultimately be declared an unconstitutional practice, the newer or majority rule will remain the most effective legal method yet devised to protect children from the abuses of excessive physical chastisement rendered by either a parent or an educator.

The aforementioned Ware case was brought against the Dallas Independent School District by a group of parents and students opposed to physical chastisement as an educational method. These Texas parents and students contended that the district's use of corporal punishment without securing the prior consent of either the parent or the student violates federal constitutional rights of both. The action alleged that school usage of physical punishment violates the "due process of law" clause of the Fourteenth Amendment because any corporal punishment action is arbitrary, capricious, and devoid of legitimate educational purpose. Further, complained the parent-student plaintiffs, corporal punishment violates the Eighth Amendment because such practice constitutes the cruel and unusual punishment prohibited by that amendment.

The United States District Court, N.D. Texas, Dallas Division, dismissed the complaint for lack of evidence. In its opinion the court acknowledged that some teachers in the school district had abused their corporal punishment privilege. Such violation, however, does not render the practice unconstitutional. The court directed the attention of the plaintiffs to the previously discussed common law remedies available to correct such abuse.

Furthermore, the opinion notes the fail-

ure of the plaintiffs to demonstrate that the corporal policy of the Dallas Independent School District was not related to the competency of the State of Texas in the education of its children. Another factor was the variation in expert testimony about the effect of physical chastisement on children. One expert stated that corporal punishment is always harmful to a child. Another testified that, while corporal punishment may be harmful to a majority of children, it might be helpful in some cases.

Of particular interest to all educators was the testimony of the defendant in the suit, Nolan Estes, Superintendent of the Dallas Independent School District. The corporal punishment policy of this Texas school district reflects the philosophy of B. F. Skinner, the distinguished psychologist. Dr. Estes testified that his district had formulated and adopted its policy after personal consultation with Dr. Skinner, who believes

that corporal punishment is helpful to some children.

When the United States Court of Appeals, Fifth Circuit, affirmed the "well considered memorandum opinion" of the district court, an appeal to the U.S. Supreme Court became the only alternative. The refusal of the highest tribunal to hear the case permits the inference that the use of physical punishment in the American school is not unconstitutional in the American society of 1973. Should our highest court refuse to hear any of the other pending corporal punishment cases, the legal status of the practice will remain as it is today; that is, the school use of corporal punishment is an educational issue subject to the control of each individual state. In such an eventuality, reasonable corporal punishment administered by an educator to a student remains a privilege unless it is removed by action of the state legislature. □

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