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Corporal Punishment in Schools; Due Process; Cruel and Unusual Punishment; Ingraham v. Wright

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CONSTITUTIONAL LAW

Corporal Punishment in Schools • Due Process • Cruel and Unusual Punishment

Ingraham v. Wright, 97 S. Ct. 1401 (1977).

CORPORAL PUNISHMENT as a means of disciplining school children has been used in this country since colonial days.[1] There have been various constitutional attacks on the practice of inflicting corporal punishment, with varying results, and the issue was finally brought before the Supreme Court in *Ingraham v. Wright*.[2] The Court decided on April 19, 1977 that the Cruel and Unusual Punishment Clause of the eighth amendment does not apply to disciplinary corporal punishment in public schools[3] and that the Due Process Clause of the fourteenth amendment does not require notice and hearing prior to imposition of corporal punishment, as that practice is authorized and limited by the common law.[4]

The parents of James Ingraham and Roosevelt Andrews, two public junior high school students, filed a complaint in the United States District Court for the District of Florida.[5] The students had been corporally punished by school officials for various acts of misbehavior. The three count complaint consisted of two individual damage actions based on the paddlings[6] and the third was a class action for declaratory and injunctive relief filed on behalf of all students in Dade County Schools. All such actions were brought under 42 U.S.C. § 1983.[7] Plaintiffs claimed that such punishment violated the eighth amendment right as to cruel and unusual punishment, and that the

[1] Ingraham v. Wright, 97 S. Ct. 1401, 1407 (1977). *See* H. FALK, CORPORAL PUNISHMENT 11-48 (1941). *See generally* note 27 *infra*.

[2] 97 S. Ct. 1401.

[3] *Id.* at 1408-12.

[4] *Id.* at 1413-18.

[5] *Id.* at 1403.

[6] Ingraham was subjected to more than 20 licks with a paddle while being held over a table in the principal's office and his injuries consisted of painful bruises which caused him to miss eleven days of school. Andrews was punished for minor infractions and on two occasions he was struck on his arms, one depriving him of the use of his arm for a week. *Id.* at 1405.

[7] 42 U.S.C. § 1983 (1970) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

practice of corporal punishment, authorized by Florida statute,[8] deprived them of liberty without procedural and substantive due process of law.

The district court granted defendant's motion for a directed verdict at the end of plaintiff's case, deciding that plaintiff's constitutional rights had not been violated.[9] The court of appeals in an *en banc* opinion affirmed[10] and the Supreme Court granted certiorari.[11]

Historically, the use of corporal punishment by teachers was based on the theory of *in loco parentis,* wherein the teacher's authority was defined as "a partial delegation of parental authority."[12] The theory was that the teacher stood in the place of the parent and therefore had the right to use reasonable corporal punishment to enforce discipline. Although this theory supports the common law privilege granted to teachers to use reasonable physical punishment to enforce discipline, such a privilege can no longer be defended on this ground. As long as a consensual relationship existed between parents and teachers, as when children attended small private schools, the parent could control the discipline his child received; but in modern times when education is compulsory, it is questionable whether parents actually do delegate their authority to control their child's discipline.[13]

In response to current educational practices is the theory that corporal punishment is justified by the state's right to impose any corporal punishment reasonably necessary for the proper education of the child and for the maintenance of group discipline.[14] In determining what punishment is reasonable, it is necessary to consider various factors, such as the nature and seriousness of the offense, the severity of the punishment, the age of the child, and the possibility of an equally effective, but nonphysical means of discipline.[15] Since the teacher is responsible for maintaining discipline and order in the

[8] The statute in effect in the 1970-71 school year was FLA. STAT. ANN. § 232.27 (1977), which read as follows:

> Each teacher or other member of the staff of any school shall assume such authority for the control of pupils as may be assigned to him by the principal and shall keep good order in the classroom and in other places in which he is assigned to be in charge of pupils, but he shall not inflict corporal punishment before consulting the principal or teacher in charge of pupils, and in no case shall such punishment be degrading or unduly severe in its nature.

In 1976, the statute was amended to spell out specific procedural safeguards. 97 S. Ct. 1404 n.6.

[9] Ingraham v. Wright, 525 F.2d 909 (5th Cir. 1976), *cert. granted,* 425 U.S. 990 (1976), *aff'd* 97 S. Ct. 1401 (1977).

[10] 525 F.2d 909.

[11] 425 U.S. 990 (1976).

[12] *See* Note, 26 BAYLOR L. REV. 678 (1974).

[13] *Id.* at 679.

[14] F. HARPER AND F. JAMES, THE LAW OF TORTS 292 (1956).

[15] *Id.* at 290-91.

school, he needs power to enforce his lawful commands, and for this reason, he may, when necessary, use physical punishment on students who do not obey.[16] The Restatement of Torts states:

> One other than a parent who has been given by law or has voluntarily assumed in whole or in part the function of controlling, training, or educating a child, is privileged to apply such reasonable force or to impose such reasonable confinement as he reasonably believes to be necessary for its proper control, training, or education, except insofar as the parent has restricted the privilege of one to whom he has entrusted the child.[17]

This authority of the teacher extends to all offenses which directly and immediately affect the "decorum and morale of the school . . . [and] extends to the infliction of any corporal punishment . . . reasonable under the circumstances."[18]

Ohio, which has consistently supported the rule that a school teacher may use corporal punishment so long as he uses no greater force than is necessary,[19] follows the principle expounded in the North Carolina case of *State v. Pendergrass*.[20] *Pendergrass* grants the teacher complete discretion as to the need and nature of punishment so long as the punishment does not cause lasting injury and is not inflicted maliciously.[21] The more modern view, however, bases the authority of the teacher on the concept that the state's interest in maintaining group discipline and providing a proper education for the child is paramount.[22] Nevertheless, in most states, an educator using excessive or unreasonable force is subject to civil and criminal liability.[23]

Thus the common law does not proscribe corporal punishment per se[24] so that parents and students who want to challenge the system must find other grounds on which to base their attacks. In recent years, these attacks have involved claiming a violation of the student's constitutional rights under the cruel and unusual punishment provision of the eighth amendment and the procedural and substantive due process provisions of the fourteenth amendment.[25] The cases can be categorized in three groups: the first in-

[16] Sims v. Waln, 388 F. Supp. 543, 547 (S.D. Ohio 1974).

[17] RESTATEMENT (SECOND) OF TORTS § 147 (2) (1963).

[18] W. PROSSER, THE LAW OF TORTS § 27 (4th ed. 1971).

[19] 388 F. Supp. at 548.

[20] 19 N.C. 365, 31 Am. Dec. 416 (1837).

[21] Ripps, *The Tort Liability of the Classroom Teacher*, 9 AKRON L. REV. 19, 22 (1975) [hereinafter cited as Ripps].

[22] F. HARPER AND F. JAMES, THE LAW OF TORTS 292 (1956).

[23] Proehl, *Tort Liability of Teachers*, 12 VAND. L. REV. 723, 726 (1959).

[24] 388 F. Supp. at 548.

[25] *Id.*

volves the situation where the eighth amendment was held to apply to corporal punishment in the public schools;[26] the second group is the situation where it was held not to apply;[27] and the third group consists of those cases in which the eighth amendment might apply, had the punishment involved in the cases been deemed to meet the requirements of being cruel and unusual.[28]

In *Bramlett v. Wilson,*[29] a mother brought an action on behalf of three minor children under 42 U.S.C. § 1983,[30] alleging that the superintendent of the public schools which the children were compelled to attend had violated their constitutional rights guaranteed by the eighth and fourteenth amendments of the Constitution. The district court granted defendant's motion to dismiss on the grounds of failure to state a claim upon which relief could be granted; but the Eighth Circuit Court of Appeals reversed and remanded on the ground that corporal punishment "in some circumstances might constitute cruel and unusual punishment."[31] The court did not decide whether it was cruel and unusual punishment per se, but said "[i]t is sufficient that an excessive amount of physical punishment could be held to be cruel and unusual and therefore prohibited."[32]

Concerning the second group of cases, the eighth amendment was held not to apply in *Sims v. Waln*[33] which involved a fifteen year old junior high school student. The plaintiff sought damages and an injunction against defendants to prevent discrimination against the plaintiff or other black persons in the infliction of corporal punishment, and the plaintiff also sought a declaratory judgment holding the Ohio statute unconstitutional. The statute in question allowed reasonable corporal punishment to be inflicted by a teacher or a principal upon a pupil when it was reasonably necessary to preserve discipline.[34] The court held that corporal punishment as such was not contrary to general principles of accepted law; the Ohio statute *was*

[26] Bramlett v. Wilson, 495 F.2d 714 (8th Cir. 1974).

[27] Sims v. Waln, 388 F. Supp. 543 (S.D. Ohio 1974); Gonway v. Gray, 361 F. Supp. 366 (D. Vt. 1973). *Cf.* Roberts v. Way, 398 F. Supp. 856 (D. Vt. 1975).

[28] Baker v. Owen, 395 F. Supp. 294 (M.D.N.C.), *aff'd without comment,* 423 U.S. 907 (1975); Glaser v. Marietta, 351 F. Supp. 555 (W.D. Pa. 1972); Ware v. Estes, 328 F. Supp. 657 (N.D. Tex. 1971), *aff'd per curiam,* 458 F.2d 1360 (5th Cir. 1972); Sims v. Board of Education, 329 F. Supp. 678 (D.N.M. 1971).

[29] 495 F.2d 714 (8th Cir. 1974).

[30] *Supra* note 7.

[31] 495 F.2d at 717.

[32] *Id.*

[33] 388 F. Supp. 543 (S.D. Ohio 1974).

[34] OHIO REV. CODE ANN. § 3319.41 (Page 1972) states that:

> A person employed or engaged as a teacher, principal, or administrator in a school, whether public or private, may inflict or cause to be inflicted, reasonable corporal punishment upon a pupil attending such school whenever such punishment is reasonably necessary in order to preserve discipline while such pupil is subject to school authority.

constitutional and the eighth amendment was not applicable in a civil context.[35]

A federal court in Vermont came to the same conclusion in a similar case, *Gonway v. Gray*,[36] involving two twelve year old students who were allegedly subjected to corporal punishment while attending public school. Gonway alleged in his complaint that he had been punished by the defendant Gray, the principal, by the application of several strokes of a belt to his buttocks, after he admitted sending a "dirty note" to a classmate; and Ladue alleged that a mathematics instructor struck him across the face when he questioned a disciplinary decision made by the instructor.[37] Again, the court held that neither the eighth amendment nor fourteenth amendment had been violated. Just as in *Sims*, the court felt that the eighth amendment provided a limitation against penalties for *criminal* behavior and thus was not applicable in the school setting. As to the fourteenth amendment, they held that the Vermont statute which authorized teachers and other school officials to resort to any reasonable punishment, including corporal punishment, in order to maintain discipline in the schools, did not violate the fourteenth amendment's due process requirement.[38] The court also found that the "use of moderate force may be sanctioned to secure important state interests," and that " 'liberty' as guaranteed by the fourteenth amendment does not guarantee the freedom of a school child from the reasonable imposition of school discipline."[39]

The third type of situation, in which courts have held that the eighth amendment might apply if the punishment involved were severe enough, was exemplified in the North Carolina case of *Baker v. Owen*.[40] In this case, a three-judge court considered the claims of a sixth grade boy and his mother that their constitutional rights had been violated when the boy was punished by his teacher over his mother's objections and without procedural due process. The mother alleged that her rights to discipline her child had been violated, and the boy claimed that the circumstances under which the punishment had been administered denied him procedural due process and that the punishment inflicted was cruel and unusual.[41] Here, too, the plaintiffs were challenging the constitutionality of a state statute specifically authorizing such

[35] 388 F. Supp. at 544.

[36] 361 F. Supp. 366 (D. Vt. 1973).

[37] *Id.* at 367.

[38] *Id.*

[39] *Id.* at 369.

[40] 395 F. Supp. 294 (M.D.N.C.), *aff'd without comment*, 423 U.S. 907 (1975).

[41] *Id.* at 296.

punishment.[42] The court decided that Mrs. Baker's claims did not involve fundamental rights and that the state's interest in maintaining order in schools prevailed over the parents' interest in deciding how their children should be disciplined.[43] Also they held, without really considering the eighth amendment issue, that in this case the punishment was not cruel and unusual.[44]

More attention was given by the court to the fourteenth amendment claim of violation of due process. The court first found that a student has a constitutional right in avoiding unnecessary or arbitrary corporal punishment based on the expansive nature of the fourteenth amendment's concept of liberty.[45] Having decided this, they then considered what procedural safeguards should be followed to protect the child's "liberty interest."[46] They agreed with the state's assertion that elaborate time-consuming procedures, such as formal notice and right to counsel before infliction of corporal punishment would destroy its value, as "the essence of corporal punishment is swift and tangible wages for one's transgression."[47] However, they did hold that certain minimal procedures should be required, and since the statute did not provide these, the court suggested inclusion of three requirements: (1) notice to the student, (2) administraion of the punishment in the presence of a second official, and (3) explanation to the parents upon request.

The *Baker* court relied upon the Supreme Court decision of *Goss v. Lopez*,[48] in which a state statute which gave school authorities power to suspend pupils without requiring procedural safeguards had been challenged.[49]

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[42] N.C. GEN. STAT. § 115-146 (1975) reads as follows:

> *Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.* — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teachers' aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools.... Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.
>
> Principals, teachers, substitute teachers, voluntary teachers, teachers' aides and assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section.

[43] 395 F. Supp. at 299-300.

[44] *Id.* at 296.

[45] *Id.* at 301.

[46] *Id.* at 302.

[47] *Id.*

[48] 419 U.S. 565 (1975).

[49] OHIO REV. CODE ANN. § 3313.66 (Page 1972).

The Supreme Court recognized that a suspension record "could seriously damage the student's standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment."[50] In determining what procedural protections would be necessary before suspension from school could be imposed, the Court considered the state's interest in maintaining discipline and order in the schools without being required to undertake complex and burdensome procedures, against the student's interest in having adequate procedural protections to avoid arbitrary punishment.[51] The Court held that although the state's interest must be protected, procedural due process requires that the student be given "*some* kind of notice and . . . *some* kind of hearing."[52] *Goss* then, requires that for suspensions, the student must have oral or written notice of the charges and an opportunity to present his version of the incident.

These decisions, therefore, led to the case of *Ingraham v. Wright* which raised the issue of substantive due process, as well as the issues previously raised of cruel and unusual punishment and procedural due process, in corporal punishment situations. In addition to the Florida statute involved in this controversy,[53] a school board policy regulation was challenged.[54] Three constitutional arguments were advanced: first, plaintiffs claimed that the punishment inflicted was cruel and unusual in violation of the eighth amendment of the Constitution; second, they claimed corporal punishment is unrelated to achieving any legitimate educational goal and thus violates substantive due process by depriving students of liberty arbitrarily and capriciously; and third, they claimed that they were deprived of fourteenth amendment guarantees of procedural due process.[55]

The district court heard evidence only on count three, the equitable claim, and at the close of plaintiff's case following a week-long trial, the parties agreed to consider the evidence offered on count three as if it had been offered on counts one and two for purposes of a motion for directed verdict. The district court then dismissed all three counts.[56] A panel of the court of appeals voted to reverse concluding that the punishment was so

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[50] 419 U.S. at 575.

[51] *Id.* at 581.

[52] *Id.*

[53] *Supra* note 9.

[54] Dade County School Board Policy 5144, *cited* in 97 S. Ct. at 1405 n.7, authorized corporal punishment when it was determined by the principal that it was necessary because of the failure of other means to secure the student's cooperation. It required that the student should understand the seriousness of the offense and the reason for the punishment and also required the presence of another adult as a witness.

[55] Ingraham v. Wright, 525 F.2d 909, 912 (5th Cir. 1976).

[56] *Id.*

harsh and severe as to violate the eighth and fourteenth amendments.[57] However, on rehearing, the *en banc* court reversed the panel and affirmed the decision of the district court.[58] The opinion of the majority in regard to the eighth amendment claim stated that it does not apply to the infliction of corporal punishment on public school children by public school teachers and administrators. The court considered at great length the legislative history of the eighth amendment and decided that the prohibition against cruel and unusual punishment was meant to be applied in the criminal rather than the civil context, and the court felt that it was not necessary to expand the scope of the eighth amendment to include corporal punishment in schools. They commented that if excessive force had been used, the remedy lay in a criminal or civil tort action and not federal constitutional law.[59] In a footnote, the court remarked on the differences between criminals and school children, saying, "[t]he much greater access of school children through their parents to public opinion and to the political process, in addition to the natural restraint that generally exists when one strikes a child, deters excessive conduct by the school official."[60]

The second issue presented to the court involved substantive due process which has been defined as "freedom from arbitrary and unreasonable legislative action."[61] Generally, courts have agreed that authorization of corporal punishment is neither unreasonable nor unrelated to any legitimate legislative goal of education.[62] In dealing with this issue, the Fifth Circuit Court decided that maintenance of discipline to achieve an effective learning atmosphere was a "proper object for state and local school board regulations"[63] and as long as the regulation bears a reasonable relation to the "legitimate end of maintaining an atmosphere conducive to learning" it does not violate substantive due process.[64]

On the third constitutional question, the procedural due process issue, the court ruled that infliction of a paddling on a school child was not such a grievous loss that procedural protections were due. They distinguished the protections required in *Goss* and *Baker* and stated:

> We refuse to set forth, as constitutionally mandated, procedural standards for an activity which is not substantial enough, on a constitu-

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[57] 498 F.2d 248 (1974).

[58] 525 F.2d at 909.

[59] *Id.* at 915.

[60] *Id.* at 915 n.5.

[61] *See* Note, 45 U. CIN. L. REV. 500, 501 n.14 (1976).

[62] *Id.* at 501.

[63] 525 F.2d at 916.

[64] *Id.* at 917.

> tional level, to justify the time and effort which would have to be expended by the school in adhering to these procedures or to justify further interference by federal courts into the internal affairs of public schools.[65]

As a result of the decision of the court of appeals, the Supreme Court granted certiorari[66] to hear the case, but limited its review to the questions of cruel and unusual punishment and procedural due process. The Court agreed with the Fifth Circuit judges that the eighth amendment does not apply to the use of corporal punishment to enforce discipline in public schools.[67] They followed the Fifth Circuit's rationale that the eighth amendment was intended for protection of criminals and held that school children do not need such protection since the public school is an

> open institution . . . . Even while at school, the child brings with him the support of family and friends and is rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment.
>
> The openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner . . . . Teachers and administrators are privileged at common law to inflict only such corporal punishment as is reasonably necessary for proper education and discipline of the child; any punishment going beyond the privilege may result in both civil and criminal liability. As long as the schools are open to public scrutiny, . . . common law restraints . . . [should] effectively remedy and deter excesses . . . .[68]

The court then considered the issue concerning the fourteenth amendment due process protection. Since the fourteenth amendment prohibits any state from depriving a citizen of life, liberty or property without due process of law, the first question the Court considered was whether the interests of the plaintiff were within the realm of the protected interests. The Court also considered what procedures would constitute "due process"[69] and concluded that although a pupil's interest in avoiding corporal punishment in school was a constitutionally protected interest, "traditional common law remedies are fully adequate to afford due process."[70] They used a balancing technique between the child's interest in not being subjected to corporal punishment and the traditional view that corporal punishment may be necessary. As a result, the majority determined that there was no "deprivation of

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[65] *Id.* at 919.

[66] 425 U.S. 990 (1976).

[67] 97 S. Ct. at 1409.

[68] *Id.* at 1412.

[69] *Id.* at 1413.

[70] *Id.*

substantive rights as long as disciplinary corporal punishment is within the limits of common law privilege."[71]

In discussing advance procedural safeguards, the Court considered the impracticability of imposing a rule of procedural due process governing corporal punishment and felt it would be a significant burden on the use of corporal punishment which might eliminate its effectiveness when most needed. Also, if corporal punishment in schools were to be abolished, it would be the duty of the community and the legislature to do so, not the function of the Supreme Court to intrude into the region which is primarily an educational responsibility.[72]

It has been recognized that discipline is the foremost problem in schools today.[73] Students and teachers feel threatened and misconduct ranges from the trivial to the very serious. As students' rights have become a reality, teachers seem to have decreasing authority over them, and thus the conflict which arises leads to more disorder and less education. Parents have become disturbed and feel that the schools are failing to function effectively, while teachers and administrators hesitate to take firm disciplinary measures in light of the uncertainty of the law with respect to students' rights.[74] The state of the law prior to *Ingraham,* because of its indefiniteness, gave no guidelines to school administrators in establishing acceptable disciplinary programs. The trend toward more interference[75] with the school's internal policies caused discipline to deteriorate steadily, in part due to the reluctance of school authorities to face a suit if they had misread the tenor of the times.[76]

The decision in *Goss v. Lopez* indicated that many schools needed to review and revamp their suspension and expulsion policies to provide the procedural safeguards mandated. As to corporal punishment, the Supreme Court pointed out that even informal hearings are time-consuming and divert school personnel from educational activities.[77] Thus, if corporal punishment is to be effective, it must be administered quickly. Required prior hearings would discourage most teachers from using corporal punishment when it would be perhaps the most suitable disciplinary action available to the teacher at that time. As the Court pointed out, those teachers most likely

[71] *Id.* at 1415.

[72] *Id.* at 1416.

[73] Note, 11 WAKE FOREST L. REV. 703 (1975).

[74] *Id.*

[75] *See, e.g.,* Goss v. Lopez, 419 U.S. 565 (1975); Tinker v. Des Moines School District, 393 U.S. 503 (1969); Baker v. Owen, 395 F. Supp. 294 (M.D.N.C. 1975).

[76] 11 WAKE FOREST, *supra* note 73, at 703.

[77] 97 S. Ct. at 1417.

to be deterred from using corporal punishment would be the ones least likely to abuse the common law privilege.[78]

Although *Ingraham* proclaims that corporal punishment in schools is not violative of the eighth or fourteenth amendments, it also indicates that such punishment must be that which is authorized and limited by the common law.[79] While the Supreme Court did not feel the necessity to delineate the common law safeguards, it would seem to be in the best interests of school districts and their students to elaborate on these safeguards. By requiring personnel to follow certain procedures in administering corporal punishment, protection could be afforded to pupils from unwarranted punishment and to teachers from unwanted lawsuits.

As Justice Powell pointed out in the majority opinion, school authorities remain liable for damages to the child for any excessive punishment inflicted and, if malice is present and proved, they may be criminally liable.[80] Generally, school districts are protected under the doctrine of sovereign immunity,[81] but the situation is changing since many states, including Ohio, have waived this immunity.[82] It is unlikely, however, that schools will drastically change their discipline policies to increase the use of corporal punishment. Nonetheless, this decision is somewhat of a victory for school officials since it seems to reinforce their authority and may help to uphold discipline in today's schools.

It appears that the only recourse now available to students and parents objecting to corporal punishment would be claims based on common law standards, as corporal punishment per se is not unconstitutional. Although the issue of substantive due process was not considered by the Supreme Court, courts generally have agreed with the Fifth Circuit's holding that authorization of corporal punishment is not unreasonable, nor is it unrelated to legitimate educational goals.[83] Since no legislative misconduct is evident in enacting statutes authorizing corporal punishment, the argument that corporal punishment violates substantive due process does not seem to be a viable one.[84]

In states which have not statutorily authorized corporal punishment, parents unwilling to have their children subjected to corporal punishment for disobeying school regulations may be able to attack the system by using

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[78] *Id.*

[79] *Id.* at 1418.

[80] *Id.* at 1415.

[81] *See* Vacca, *Teacher Malpractice*, 8 U. RICH. L. REV. 477, (1974).

[82] *See* Ripps, *supra* note 21, at 20.

[83] *See* 45 CIN., *supra* note 61, at 501.

[84] *Id.* at 505.

an argument based on the underlying theory of corporal punishment; that is, the doctrine of *in loco parentis.* Their specific argument must be that since the teachers are standing in place of the parents, and since the parents have not authorized the particular form of punishment being used, the teachers do not have the privilege of inflicting such punishment.

"It appears to be well established, that the parents of school children have a fundamental right to bring up their offspring according to their own precepts and convictions."[85] This concept was first recognized by the Supreme Court over fifty years ago in *Meyer v. Nebraska.*[86] There the Court described the components of liberty protected by the fourteenth amendment in the following way: "Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to . . . marry, establish a home and bring up children . . . ."[87] In *Pierce v. Society of Sisters,* the Court upheld the rights of parents to raise their children unencumbered by the state, and stated: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[88] In still another case, *Prince v. Massachusetts,* the Court said:

> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life . . . .[89]

More recent cases have also continued to uphold the integrity of family life and have considered the right of a parent to raise his children to be a basic civil right of man.[90]

One federal district court held that the fundamental rights of a parent to raise his children without the use of corporal punishment were greater than the interest of the school in inflicting such punishment when the parent had previously denied his consent.[91] Thus, absent a parental consent form, a teacher could not inflict corporal punishment on a child in a district which follows this holding without subjecting the school to legal action for trespassing on the basic right of parents to bring up their children as they see fit.[92]

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[85] 26 BAYLOR, *supra* note 12, at 679.

[86] 262 U.S. 390 (1923).

[87] *Id.* at 399.

[88] 268 U.S. 510, 535 (1925).

[89] 321 U.S. 158, 166 (1944).

[90] *See* Wisconsin v. Yoder, 406 U.S. 205 (1972); Stanley v. Illinois, 405 U.S. 645 (1972).

[91] Glaser v. Marietta, 351 F. Supp. 555 (W.D. Pa. 1972).

[92] *See* BAYLOR, *supra* note 12, at 681.

Another factor, however, must be taken into consideration while evaluating the arguments expressed above and that is the interest of the state in maintaining discipline and order in the schools. It was noted by the Court in *Prince* that: "[t]he family itself is not beyond regulation in the public interest as against a claim of . . . liberty. Acting to guard the genuine interest in youth's well being, the state . . . may restrict the parent's control by requiring school attendance . . . ."[93]

In *Baker v. Owen,* the school presented a strong argument against a parent's contention that the right to determine how his child is to be disciplined is a fundamental one, and one which may not be violated. The court rejected Mrs. Baker's suggestion that this right was fundamental, saying:

> We do not read *Meyer* and *Pierce* to enshrine parental rights so high in the hierarchy, of constitutional values. In each case the parental right prevailed not because the Court termed it fundamental and the state's interest uncompelling, but because the Court considered the state's action to be arbitrary, without reasonable relation to an end legitimately within its power.[94]

Although the Supreme Court might someday decide to provide parental rights "the highest degree of constitutional protection" by deciding that they are "implicit" in the concept of liberty in the fourteenth amendment, the Court stated that "reason and common sense" prevented them from making that decision.[95] The *Baker* Court distinguished *Meyer* and *Pierce* by showing that those cases involved a parental concern which was venerable, one that was "worthy of great deference due to its unquestioned acceptance throughout our history."[96] Mrs. Baker's contention, on the other hand, was held by the Court to conflict with the settled tradition of approving corporal punishment as long as it was reasonable. Since *Baker* has been affirmed by the Supreme Court, it would seem that the Court is not likely to consider a parent's approval as being a fundamental right; in fact, the Court mentions in a footnote in *Ingraham* that "parental approval of corporal punishment is not constitutionally required."[97]

It appears that concerned parents would be best advised to focus their efforts on state legislatures and local school boards to manifest their displeasure with corporal punishment of school children. Since both are elective bodies, a concerted effort by parents to ensure that necessary safeguards are provided before corporal punishment is inflicted should produce satisfactory

[93] 321 U.S. at 166.

[94] 395 F. Supp. at 299.

[95] *Id.*

[96] *Id.* at 300.

[97] 97 S. Ct. at 1408 n.22.

results and have the added advantage of keeping control of the schools as local as possible.[98] Finally, students who feel they have been unjustly and excessively punished can resort to the courts for redress in a civil tort action, or if malice was present and can be proved, a criminal action. It remains to be seen, however, whether these judicial safeguards will sufficiently deter the use of unreasonable corporal punishment.

Although the Court did not mandate specific procedural safeguards to be followed, it is likely that most school districts will establish them on their own initiative or under pressure from concerned parents. Alternatively, state legislatures may prescribe certain procedures to be followed whenever corporal punishment is inflicted. Since the Supreme Court has seen fit to trust the school personnel with the privilege of inflicting corporal punishment when necessary, it behooves the school personnel to make certain that it is administered fairly and justly, within the common law standards of reasonableness and necessity.

MARY W. ALTIER

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[98] Many school districts have already adopted safeguards. *E.g.*, Cuyahoga Falls School District, Cuyahoga Falls, Ohio, *Handbook of Policies and Procedures* states:

IV. Corporal Punishment

A. Corporal punishment shall be administered only after the behavior in question has been discussed with the student and he/she has had an opportunity to explain his/her behavior.

B. Corporal punishment is not to be administered in anger and only after suitable warning has been given.

C. Corporal punishment is not to be administered publicly or in the view of other students.

D. The principal or assistant/unit principal shall be present when corporal punishment is inflicted. If the unit principal administers the punishment, the principal shall be notified.

E. Such punishment shall not be excessive and shall not be inflicted above the shoulders of the student.

F. Notification of such punishment shall be made in writing to the Superintendent of schools, together with a description of the reason or reasons therefore.

G. Parents shall be notified when it has been necessary to administer corporal punishment. Such notification may be by telephone or by mail.

Handbook of Policies and Procedures § 415.10 (IV), Cuyahoga Falls City School District, Cuyahoga Falls, Ohio.

Section 415.10 (IV) then spells out a list of specific offenses which may lead to penalties which may include corporal punishment and provides that if additional offenses are put on the list, the students must be informed.

